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ACLU Maryland

April 14, 2026

Chief Marc R. Yamada
Montgomery County Police Department
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Gaithersburg, MD 20878
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*Via email and overnight mail*

Dear Chief Yamada,

We write on behalf of our client Kimberlee Sue Williams, an Oklahoma resident who had never been to Maryland before she was wrongfully arrested in Oklahoma on a Maryland warrant and then jailed for months in Montgomery County, all due to the Montgomery County Police Department's ("MCPD") reliance on an incorrect result from facial recognition technology and lack of adequate follow-up investigation. 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 the Department to identify the failures that led to Ms. Williams' wrongful arrest, provide her with a public apology, and make changes to MCPD 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 Montgomery County for three months, until the prosecution was dismissed in October 2021.[1]

The Montgomery County warrant authorized Ms. Williams' arrest for a pair of fraudulent over-the-counter cash withdrawals at a SunTrust bank branch in Potomac, Maryland, in December 2019. 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.

[1] The prosecution was docketed as Montgomery County District Court Case No. 2D00411861. The underlying investigation was assigned MCPD Incident Report No. 200032527.

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 withdrawals, made at the Potomac Falls Road SunTrust branch on December 26 and 27, 2019, 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 MCPD Detective Brandon Mengedoht, 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, MCPD 1 (Mar. 3, 2020) ("Ex. A").

Adams provided no further 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.

Detective Mengedoht recognized the insufficiency of Adams' purported identification, noting in an email 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 1 (Apr. 20, 2020) ("Ex. B"). Yet it appears that there was no further inquiry into the bank's identification, nor was there any independent verification. The Application for Statement of Charges ("Ex. C"), signed by Detective Michael Adami, made no mention of the facial recognition technology search and represented only that "[t]he bank investigator developed Williams as the suspect." Ex. C at 5. Detective Adami's only gesture at purportedly confirmatory information was to note that Ms. Williams had a prior arrest in Oklahoma in 2017 for writing bad checks, and that "by comparing surveillance photos of the suspect . . . to Williams arrest photos, the writer confirmed that Williams is the suspect pictured in the images the bank provided." *Id.*

Ms. Williams, however, was nowhere near Montgomery County in December 2019. 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. D. 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] attesting to her whereabouts during the relevant timeframe. Decl. of [redacted] ("Ex. E"); Decl. of [redacted] ("Ex. F"); Decl. of [redacted] ("Ex. G").

After more than three weeks at the Comanche County Detention Center in Lawton, Oklahoma, Ms. Williams was transferred to the Montgomery County Correctional Facility on July 14, 2021. On the flight to Maryland, her bag, which contained essential medications, was left behind on the plane, and it was several days before new medication was issued by the jail. Ms. Williams was held for three months at the Montgomery County Correctional Facility, far from her family in a state she had never previously entered. In addition to the general indignities of incarceration, while there she was ill with a serious case of the flu that left her debilitated for several days. Ms. Williams' children found her an attorney, who 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. H"). But prior to trial, the prosecution dismissed the case *nolle prosequi* on October 14, 2021. Docket Report at 2, *Maryland v. Williams*, No. 2D00411861 (Md. Dist. Ct. Oct. 14, 2021) ("Ex. I").

That was not the end of Ms. Williams' ordeal, however. Authorities in Anne Arundel and Prince George's counties had also initiated charges against Ms. Williams based on the same misidentification by the SunTrust investigator. Upon dismissal of the Montgomery County charges, Ms. Williams was 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. She stayed there until the Anne Arundel County and Prince George's County cases were dismissed *nolle prosequi* on December 13 and 17, 2021. Docket Report at 3, *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. J"). All told, Ms. Williams spent six months in jail for crimes she had nothing to do with.

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. E–G. 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.

Last year, Ms. Williams woke up one morning unable to walk. She was diagnosed with Guillain-Barre syndrome, a serious condition where the body's immune system attacks the nerves, often causing paralysis. Ms. Williams now resides in a skilled nursing facility, and although she

has regained some ability to move her legs, she cannot yet walk. Guillain-Barre syndrome is often a reaction to previous viral infections. The last viral infection Ms. Williams is aware of preceding onset of Guillain-Barre symptoms was her flu while in the Montgomery County Correctional Facility. While causation cannot be definitively established at this time, her physician believes that infection is a likely cause of the syndrome.

## II. Predictable MCPD Failures Led to the Wrongful Arrest of Ms. Williams.

A series of predictable failures by MCPD 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. When applying for the arrest warrant, Detective Adami omitted material information from the Statement of Charges, including 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. Because face recognition technology is universally understood to be incapable of supplying a positive identification or probable cause for an arrest, and because a false match from the technology can taint subsequent visual identifications by introducing an innocent face that looks like (but is not) the suspect, withholding that fact misled the magistrate into believing there was probable cause. Had the detectives accurately represented the facts to the magistrate, or conducted an adequate investigation, Ms. Williams would not have been subject to wrongful arrest, prosecution, and prolonged detention.

Ms. Williams acknowledges that the statute of limitations has passed for filing a malicious prosecution claim. Were that not the case, we believe MCPD and the responsible officers would be liable in a civil suit for monetary damages. *See Humbert v. Mayor of Balt. City*, 866 F.3d 546, 555–56 (4th Cir. 2017). Ms. Williams writes, however, 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

[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.

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 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 MCPD personnel relied 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.

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[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.

[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

Williams' arrest MCPD had no policy governing use of face recognition technology in investigations, current MCPD 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* MCPD, Directive No. FC 0627, *Use of Facial Recognition Technology* (Oct. 1, 2024); Md. Code Ann. Crim. Proc. § 2-502(b)(2).

### 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 Adami could "confirm" was that Ms. Williams had a prior conviction for an unrelated minor financial crime (passing a bad check) in a distant state, and that she looked similar to the perpetrator. But "the fact of prior convictions of similar crimes, . . . standing alone cannot sustain a finding of probable cause." *United States v. Melvin*, 419 F.2d 136, 141 (4th Cir. 1969). And the detective's visual comparison of the suspect photo and the facial recognition lead confirmed only that the facial recognition 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

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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").

[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.

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 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 he had 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 Adami cut off the investigation and arrested an innocent woman. Basic investigation would have avoided this result. For example, the investigating detectives never checked whether Ms. Williams could have been at the Potomac Falls Road SunTrust branch in December 2019. There was no evidence of any tie to Maryland, and every indication that she lived far away. The rap sheet in the detectives' possession showed that Ms. Williams was employed in Oklahoma, *see* Ex. L at 16, and Detective Adami noted in the warrant application that Ms. Williams had a prior arrest in Oklahoma, Ex. C at 5.[16] During the relevant period, Ms. Williams was in fact

[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.

[16] The rap sheet also showed prior addresses for Ms. Williams in Ohio and Colorado, but no prior contact with Maryland.

in Oklahoma, a fact that would have been corroborated easily by Ms. Williams' public social media activity, *see* Ex. D, or by other basic investigative steps.[17]

### C. Detective Adami's omission of information in the warrant application misled the court and meets the elements of a malicious prosecution claim.

Detective Adami's conduct in causing the wrongful arrest of Ms. Williams meets the elements of a malicious prosecution claim. A malicious prosecution claim exists where there is an arrest made pursuant to a warrant not supported by probable cause, and where the officer secured the warrant through making material false statements or omitting material facts in the warrant application either deliberately or with a reckless disregard for the truth. *Humbert*, 866 F.3d at 555–56. "Reckless disregard" can be established when, viewing all the evidence, an officer "had obvious reasons to doubt the accuracy of the information he reported." *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007) (quoting *Wilson v. Russo*, 212 F.3d 781, 788 (3d Cir. 2000)).

As discussed above, neither the facial recognition search nor Detective Adami's visual comparison of the surveillance photos with Ms. Williams's previous arrest photos provided a sufficient basis for probable cause. Detective Adami's Application for Statement of Charges misled the court by omitting the material fact that the SunTrust investigator relied on a dubious lead from facial recognition technology. Adami wrote that the suspect was "later identified as Kimberlee Williams" and that "[t]he bank investigator developed Williams as the suspect," but failed to disclose that the SunTrust's investigator had relied on the result of a facial recognition search conducted by an undisclosed entity. Ex. C at 5. Detective Adami knew, from reviewing SunTrust's memo, that SunTrust had relied on facial recognition technology. Exs. A, C. But with Detective Adami's vouching that SunTrust "developed" the suspect and that there was an "identifi[cation]," a magistrate would be primed to believe that there were reliable grounds establishing Ms. Williams as the suspect. Ex. C at 5. If the warrant application had included the fact that the sole basis was a facial recognition search conducted by an unknown entity, using an unknown facial recognition algorithm and an unknown matching database, based on an unknown probe image, and conducted and reviewed by an unknown individual, the magistrate would or should have known that the purported "identifi[cation]" was fundamentally unreliable. Indeed, Detective Mengedoht had already noted the lack of reliability of the SunTrust investigator's purported identification and the need for "a separate verification." Ex. B at 1. Yet Detective Adami concealed core details of the deficient investigation that would have eliminated any pretense of probable cause.

[17] Basic communication with detectives investigating related incidents in Anne Arundel and Prince George's counties would have 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. Memorandum from Sean Adams, Fin. Crimes Investigations, SunTrust, to Sergeant Andrea Sheehan et al. 1 (Mar. 13, 2020) ("Ex. M"). There appears to be no record of any investigation into that name, which would have been an obvious lead.

## III. Redress and Policy Changes

MCPD'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 MCPD'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 MCPD 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 MCPD 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. MCPD's current policy reflects amendments made in light of Maryland's 2024 facial recognition technology statute, Md. Code Ann. Crim. Proc. §§ 2-501–2-510. 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.[18] Unfortunately, MCPD's current policy lacks important safeguards, leaving Montgomery County residents and others vulnerable to misidentifications and wrongful arrests. Simple updates to the policy can substantially mitigate these problems.

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

MCPD's facial recognition technology policy attempts to erect guardrails around facial recognition searches conducted by MCPD personnel, but is silent on how to treat results of facial recognition technology searches conducted and provided by outside entities. Outside entities may conduct facial recognition technology searches in ways inconsistent with MCPD policy, including by running a search for a prohibited purpose, *see* Directive No. FC 0627 § IV.B.2, by failing to require adequate training, *id.* § IV.C.1, and by failing to ensure independent verification by a trained individual, *id.* § IV.C.2. Additionally, as this case demonstrates, outside entities may not

[18] *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.

provide sufficient information for MCPD personnel to assess the reliability of a search or its compliance with MCPD policies.

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

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

MCPD's current policy provides that a facial recognition technology search result "is an investigative lead and cannot be considered a positive identification without further investigation." Directive No. FC 0627 § I. The policy further provides that "[a]ll MCPD results obtained by facial recognition technology" shall be accompanied by a warning that "facial recognition results may not be the sole basis to establish probable cause of an individual and require support by additional, independently obtained evidence." *Id.* § IV.E.3. It is critical that the policy clarify what constitutes adequate "further investigation" or "additional, independently obtained evidence" 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.[19]

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 the suspect, but is not the suspect.[20] Without further guidance, officers are likely to believe that

[19] *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.

[20] 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).

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.[21] Using the DPD policies as a model, the MCPD 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 "additional, independently obtained evidence" under the policy.[22]

- 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.[23]

* * * * *

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

Sincerely,

Lauren J. Yu
Nathan Freed Wessler
American Civil Liberties Union Foundation
Speech, Privacy, and Technology Project

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

[22] *See* Det. Police Dep't, Manual Directive No. 307.5, *Facial Recognition* § 5.3 (2019), *available as* Attachment A to Ex. P, *supra* note 21.

[23] *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 21; *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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