



STATEMENT OF  
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FOR A HEARING ON

**“About Face: Examining the Department of Homeland Security’s Use of Facial  
Recognition and Other Biometric Technologies, Part II”**

BEFORE THE

U.S. House of Representatives  
Committee on Homeland Security

February 6, 2020

Chairman Thompson, Ranking Member Rogers, and distinguished Members of the Committee, thank you for the opportunity to appear before you to discuss the Department of Homeland Security's (DHS) use of facial recognition technology. DHS's commitment to nondiscrimination in law enforcement and screening activities remains an important cornerstone of our daily work to secure the homeland.

I would like to make three overarching points in my testimony today: 1) the Office for Civil Rights and Civil Liberties (CRCL) has been and continues to be engaged with the DHS operational Components to ensure use of facial recognition technology is consistent with civil rights and civil liberties law and policy; 2) operators, researchers, and civil rights policymakers must work together to prevent algorithms from leading to racial, gender, or other impermissible biases in the use of facial recognition technology; and 3) facial recognition technology can serve as an important tool to increase the efficiency and effectiveness of the Department's public protection mission, as well as the facilitation of lawful travel, but it is vital that these programs utilize this technology in a way that safeguards our Constitutional rights and values. To that end, we welcome the opportunity to work with DHS policymakers and operators, Congress, academic, and other non-governmental entities on these important issues.

## **Introduction**

CRCL supports the DHS mission to secure the nation while preserving individual liberty, fairness, and equality under the law. Established by the *Homeland Security Act of 2002*, CRCL's mission integrates civil rights and civil liberties into all DHS activities by:

- Promoting respect for civil rights and civil liberties in policy development and implementation by advising Department leadership and personnel, and state and local partners;
- Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of remedy, and promoting appropriate attention within the Department to their experiences and concerns;
- Investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel; and
- Leading the Department's equal employment opportunity programs and promoting workforce diversity and merit system principles.

CRCL is a DHS Headquarters office, and the CRCL Officer reports directly to the Secretary of Homeland Security. CRCL works collaboratively with, but independently of, the DHS operational Components, including U.S. Customs and Border Protection (CBP). CRCL's work is not, with limited but important exceptions,<sup>1</sup> remedial in nature.

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<sup>1</sup> CRCL has remedial authority under Section 504 of the Rehabilitation Act of 1973, as amended, which states, "No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability,

Pursuant to statutory authorities under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is responsible for assisting the Department in developing, implementing, and periodically reviewing policies and procedures to ensure the protection of civil rights and civil liberties, including in CBP and other Component screening and vetting programs.

In carrying out its statutory mission, CRCL influences DHS policies and programs throughout their lifecycle. CRCL seeks to engage with Department offices and Components in the development of new policies and programs to ensure that protection of civil rights and civil liberties are fully integrated into their foundations. As implementation begins, CRCL monitors operational execution and engages with stakeholders in order to provide feedback to Department and Component leadership regarding the impacts or consequences of policies and programs. Finally, CRCL investigates complaints and makes recommendations to DHS Components, often related to the creation or modification of policies, or changes to implementation, training, supervision, or oversight. Such complaints include allegations of racial profiling or other impermissible bias. It is important to note that the DHS Office of Inspector General has the right of first refusal to investigate allegations submitted to CRCL.

### **DHS's Use of Facial Recognition Technology and CRCL's Role in Oversight**

DHS currently uses facial recognition technology to support CBP's Biometric Entry-Exit Program and is researching and testing this technology to see if it can be deployed in other mission areas, such as identity verification in Transportation Security Administration passenger screening. A key goal of the Department's use of facial recognition technology is identifying and eliminating, to the extent it exists, any impermissible bias based on race and gender. In addition to the strong civil rights and civil liberties interest in ensuring equality of treatment, the DHS operational Components have a compelling interest in ensuring the accuracy of this or any tool that assists in performing the mission. Improved accuracy and efficiency in the Department's data systems results in better performance of all the DHS missions they support.

DHS partnered with the National Institute of Standards and Technology (NIST) on the assessment of facial recognition technologies to improve data quality and integrity, and ultimately the accuracy of the technology, as a means of eliminating such impermissible bias.

- Currently, the DHS Office of Biometric Identity Management (OBIM) is partnering with NIST to develop a face image quality standard that will improve the accuracy and reliability of facial recognition as it is employed at DHS.
- CBP is partnering with NIST to analyze performance impacts due to image quality and traveler demographics and providing recommendations regarding match algorithms, optimal thresholds for false positives, and the selection of photographs used for comparison.

DHS knows that accuracy and reliability, and the resulting operational value of facial recognition technology, varies depending on how the technology is employed. Variables include

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be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency...." 29 U.S.C. § 794.

the nature of the mission supported, variations in the type and quality of the photographs, environmental factors such as lighting, the manner in which the match is made, and the type of computer processing, including the nature of the algorithms, used to make a match.

Human factors also matter. Users need to be aware of how the technology works, its strengths and weaknesses, and how they can ensure the technology functions in a way that complies with all applicable laws and DHS policy. In addition to being operational considerations, these factors also directly affect the civil rights and civil liberties of those individuals who encounter this DHS technology. In short, the legal and civil rights and civil liberties policy implications of facial recognition technology depend on how the technology is implemented.

CRCL recognizes the potential risks of impermissible bias in facial recognition algorithms, as previously raised by this Committee. CRCL supports rigorous testing and evaluation of algorithms used in facial recognition systems to identify and mitigate impermissible bias. CRCL will continue to support the collaborative relationship between NIST, the DHS Science & Technology Directorate, OBIM, and DHS Components to that end.

### **CRCL Uses Partnerships and Data to Look Beyond the Algorithm**

As discussed above, CRCL seeks to ensure civil rights and civil liberties protections are incorporated into Department and Component programs—including the policies and practices that guide DHS use of facial recognition technology. Our contribution to DHS working groups is one way we fulfill our mission and identify areas that may require further engagement.

CRCL participates in DHS enterprise-level groups working on biometric and facial recognition issues, including:

- The DHS Executive Steering Committee for Biometric Capabilities, which provides coordination and guidance to all DHS and Component-level programs that are developing or providing biometric capabilities in support of DHS mission objectives. The Steering Committee serves as a forum for cross-Component collaboration and the sharing of biometric challenges, needs, concepts, best practices, plans and efforts; and
- The Joint Requirements Council's Counter Terrorism and Homeland Threats Portfolio Team, which is made up of Component subject matter experts from the key functional areas within the Department that validate and prioritize requirements and capability gaps, to include those relating to biometrics and screening and vetting functions.

Another way in which we carry out our role in providing proactive advice is through direct engagement with DHS Components. For example, CRCL has regularly engaged CBP on the implementation of facial recognition technology in its Biometric Entry-Exit Program. We have viewed live demonstrations of the technology at Dulles International Airport and Hartsfield-Jackson Airport in Atlanta. In addition, we reviewed and commented on internal procedures, as well as proposed regulations. CRCL advised on policy and implementation of appropriate accommodations for individuals wearing religious headwear (e.g., individuals whose

headwear may need to be adjusted to take a photograph), for individuals with a sincere religious objection to being photographed, and for individuals who may have a significant injury or disability and for whom taking photographs may present challenges or not be possible. CRCL and the DHS Privacy Office also work cooperatively with the Components to address and mitigate issues such as photograph retention and data sharing.

We fully anticipate continuing to provide advice and guidance on DHS' facial recognition programs as they mature and evolve, whether it is through one of the Department's enterprise-level groups or directly with the operational Components.

Supporting our advisory role on new or proposed policies or programs, I would also like to highlight the distinctive way CRCL uses the information and allegations we receive as part of our compliance process. In addition to the opening of formal investigations in to allegations of civil rights or civil liberties violations, when CRCL does not open an investigation on an allegation, we use the information received to track issues and identify potential patterns of alleged civil rights or civil liberties violations that may require further review. For CBP vetting operations, this data is used to guide CRCL in identifying which policies or programs warrant further investigation to more closely examine potentially serious or systemic issues. Additionally, CRCL shares data with Components annually to provide visibility into the civil rights matters CRCL has received, and publishes data on complaints in the Annual and Semi-Annual Reports to Congress.

### **CRCL's Continuing Efforts to Safeguard Civil Rights and Civil Liberties in DHS's Use of Emerging Technologies**

CRCL recognizes that facial recognition technology and the computing that enable it are emerging technologies. They require intensive support from all entities involved—operators, NIST and other researchers, and oversight offices such as CRCL—to ensure that they are compliant with applicable law and policy, including civil rights and civil liberties protections, in all phases of development and deployment. We understand that successful and appropriate facial recognition technology requires ongoing oversight and quality assurance, initial validation and regular re-validation, and a close relationship between the users and oversight offices. In this way, it can be developed to work properly and without impermissible bias when it achieves initial operating capability, and then continually through its entire project lifecycle. At the same time, we will need to work with the operational Components to ensure that policies and practices evolve, to ensure that the human part of the equation—the users—are also focused on the responsible deployment of this technology, working in a manner that consistently prevents impermissible bias in DHS activities.

As these and future projects develop, CRCL will remain engaged with advocates, technologists, experts and Congress to ensure that civil rights and civil liberties protections are effective and sufficient.

Again, I thank you for the opportunity to appear before you today, and I look forward to answering your questions.