

Butler joins effort to control facial recognition software

February 5, 2024



U.S. Senator Laphonza Butler (D-CA) joined Reverend Raphael Warnock (D-GA), U.S. Senate Majority Whip Dick Durbin (D-IL), Chair of the Senate Judiciary Committee, and 15 other Senators in raising concerns with the Department of Justice (DOJ) that funding facial recognition software, which can be inaccurate and unreliable, may lead to violations of Title VI of the Civil Rights Act, which prohibits “discrimination under any program or activity receiving Federal financial assistance.”

The Senators also called for additional action and oversight from DOJ concerning these fallible technologies. The letter follows widespread reporting about Georgia resident, Randal Quran Reid, who was arrested in November 2022 while driving to his mother’s house for a crime committed in Louisiana, a state Reid has never visited. Reid’s case is not an anomaly: there are at least five other publicly known cases of Black people falsely arrested based on nothing more than a facial recognition software match.

“We are deeply concerned that facial recognition technology may reinforce racial bias in our criminal justice system and contribute to arrests based on faulty evidence,” wrote the Senators to the Department of Justice. “Errors in facial recognition technology can upend the lives of American citizens. Should evidence demonstrate that errors systematically discriminate against communities of color, then funding these technologies could facilitate violations of federal civil rights laws.”

Numerous academic and government studies establish that facial recognition technology is especially likely to misidentify not only Black faces, but Native American, and Asian faces as well. One study found that facial recognition software was up to twice as likely to find false positives for Black and Asian faces.

In addition to Senators Butler, Warnock and Chair Durbin, the letter is signed by Cory Booker (D-NJ), Ben Cardin (D-MD), John Fetterman (D-PA), Mark Kelly (D-AZ), Edward J. Markey (D-MA); Jeff Merkley (D-OR), Alex Padilla (D-CA), Gary Peters (D-MI), Bernard Sanders (I-VT), Brian Schatz (D-HI), Tina Smith (D-MN), Chris Van Hollen (D-MD), Elizabeth Warren (D-MA), Peter Welch (D-VT), Ron Wyden (D-OR).

“The explosion of artificial intelligence and algorithmic systems is raising crucial questions about how new technologies will exacerbate existing racial disparities,” said Cody Venzke, Senior Policy Counsel in the ACLU’s National Political Advocacy Department. “Those questions are even more pressing in law enforcement, where AI-driven facial recognition technology has increased error rates for Black, Native American, and Asian people and has led to multiple false arrests. Facial recognition technology threatens basic civil rights, and today’s letter asks crucial questions about the DOJ’s role in supporting and perpetuating its use.”

“Facial recognition technology is a racially biased tool with unchecked potential to limit civil rights and liberties,” said Brandon Tucker, Senior Director of Policy & Government Affairs at Color Of Change. “Its use increases the surveillance of Black people by corporate actors and law enforcement agencies. Strong anti-surveillance principles and anti-discrimination principles are vital to prevent improper data collection and use. We stand behind any and all efforts to better protect and strengthen the civil rights and liberties for all, particularly in Black communities.”

A full copy of the letter can be found below:

Dear Attorney General Garland:

We write to request information about the U.S. Department of Justice’s (DOJ) funding and oversight of facial recognition tools and other biometric technologies under the Civil Rights Act of 1964 and other applicable federal statutes and regulations.

In recent years, facial recognition and other biometric technologies have become widely used in law enforcement. However, these technologies can be unreliable and inaccurate, especially with respect to race and ethnicity. An April 6, 2023 report in the New York Times provided a particularly vivid example of the consequences of misidentification. In 2022, Randal Quran Reid, a Georgia resident, was arrested while driving to his mother’s home outside of Atlanta the day after Thanksgiving. He was accused of retail theft in Louisiana, though he said he had never been to the state. Law enforcement officials refused to explain why he had been targeted, and Mr. Reid was jailed for six days. His family had to spend thousands of dollars in legal fees to determine he had been falsely identified, free him from jail, and clear his name. Reporting confirmed that facial recognition technology was used to initially identify Mr. Reid.

In at least five other publicly known cases, Americans have been arrested based on little or nothing more than an incorrect facial recognition match. All six victims were Black people.

We are concerned that the use of certain forms of biometric technology, such as facial recognition technology, may potentially violate Title VI of the Civil Rights Act of 1964, which prohibits “discrimination under any program or activity receiving Federal financial assistance” based on “race, color, or national origin.”

The law prohibits intentional discrimination as well as discriminatory effects. Title VI thus restricts the ability of grant recipients funded by agencies like DOJ to deploy programs or technologies that may result in discrimination.

Thank you and we look forward to your prompt response.