

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

TRANSPORTATION SECURITY ADMINISTRATION

Intent to Request Revision of Agency Information Collection Activity Under OMB Review:  
TSA PreCheck

Docket ID: TSA-2013-0001

June 22, 2020

---

By notice published May 21, 2020, the Transportation Security Administration (“TSA”) requests comment on the agency’s “revision of agency information collection . . . .” that, among other things, “involves the submission of biographic and biometric information by individuals seeking to enroll in the TSA PreCheck” program.<sup>1</sup> This notice also states that “TSA[] plans to utilize [Department of Homeland Security’s] components’ services, provided via U.S. Customs and Border Protection and the Office of Biometric Identity Management, to support TSA’s biometric-based identification at the checkpoint and citizenship verification through passport information provided by the Department of State.”<sup>2</sup>

Pursuant to the agency’s request for comment, the Electronic Privacy Information Center (“EPIC”) submits these comments to inform TSA of the dangers of using facial recognition technology and urge the TSA to suspend the agency’s plans to use Customs and Border Protection’s (“CBP’s”) facial matching service.

---

<sup>1</sup> *Revision of Agency Information Collection Activity Under OMB Review: TSA PreCheck Application Program*, 85 Fed. Reg. 30,979 (May 21, 2020) [hereinafter “PreCheck Revision”].

<sup>2</sup> *Id.* at 30,980.

## I. Introduction

EPIC is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging civil liberties issues and protect privacy, the First Amendment, and constitutional values.<sup>3</sup> EPIC has a long-standing interest in the privacy and civil liberties issues related to the use biometric identifiers.<sup>4</sup> EPIC has a particular interest in the use of facial recognition technology, which is not only a threat to privacy and civil liberties but has shown to be inaccurate and bias.

EPIC has tracked the use of facial recognition at airports as part of CBP's Biometric Entry-Exit program. Following a 2017 Executive Order to "expedite the completion and implementation of a biometric entry exit tracking system,"<sup>5</sup> EPIC brought various Freedom of Information Act lawsuits to obtain documents related to the program and its use of facial recognition technology.<sup>6</sup>

## II. CBP's Biometric Entry-Exit Program

Through CBP's Biometric Entry-Exit program, CBP has implemented facial recognition technology at several airports to verify the identification of air travelers. The face recognition matches are handled by a cloud-based infrastructure CBP developed known as the Traveler Verification Service ("TVS").<sup>7</sup> TVS verifies identities through real-time facial matching.<sup>8</sup>

---

<sup>3</sup> EPIC, About EPIC (2016), <https://epic.org/epic/about.html>.

<sup>4</sup> EPIC, *Biometric Identifiers*, <https://epic.org/privacy/biometrics/>.

<sup>5</sup> Exec. Order No. 13,780 § 8.

<sup>6</sup> *EPIC v. CBP (Biometric Entry/Exit Program)*, EPIC, <https://epic.org/foia/dhs/cbp/biometric-entry-exit/default.html>; *EPIC v. CBP (Biometric Entry-Exit Alternative Screening Procedures)*, EPIC, <https://epic.org/foia/dhs/cbp/alt-screening-procedures/>.

<sup>7</sup> U.S. Department of Homeland Security, *Privacy Impact Assessment for the Traveler Verification Service*, 6 (Nov. 14, 2018), [https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp056-tvs-january2020\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp056-tvs-january2020_0.pdf).

<sup>8</sup> *Id.* at 2.

CBP's use of facial recognition has come under serious scrutiny. After a story featured documents obtained by EPIC about plans to expand facial recognition at airports,<sup>9</sup> Senators Ed Markey(D-MA) and Mike Lee (R-UT) called for the suspension of the program.<sup>10</sup> More recently, Senator Markey criticized a Department of Homeland Security proposal to require facial recognition identification of all U.S. air travelers.<sup>11</sup> A coalition of over 35 privacy, civil liberties, and civil rights organizations have urged Congress to suspend the use of facial recognition technology by the Department of Homeland Security.<sup>12</sup> In Congressional hearings on DHS' use of facial recognition technology, both sides of the aisle have criticized the CBP's use of facial recognition.<sup>13</sup>

Despite the scrutiny, CBP is in the process of expanding the use of facial recognition at airports, including offering face identification verification as a service through TVS.<sup>14</sup> TSA now plans to use CBP's ill-conceived facial recognition identification service and expand the use of facial recognition at airports.

---

<sup>9</sup> Davey Alba, *The US Government Will Be Scanning Your Face At 20 Top Airports, Documents Show*, BuzzFeed (Mar. 11, 2019), <https://www.buzzfeednews.com/article/daveyalba/these-documents-reveal-the-governments-detailed-plan-for>.

<sup>10</sup> Davey Alba, *These Senators Want Homeland Security To "Pause" Its Airport Facial Recognition Program*, BuzzFeed (Mar. 12, 2019), <https://www.buzzfeednews.com/article/daveyalba/these-senators-want-homeland-security-to-pause-its-facial>.

<sup>11</sup> Press Release, *Senator Markey Blasts Homeland Security Proposal to Mandate Facial Recognition of All U.S. Citizens Traveling at Airports* (Dec. 3, 2019), <https://www.markey.senate.gov/news/press-releases/senator-markey-blasts-homeland-security-proposal-to-mandate-facial-recognition-of-all-us-citizens-traveling-at-airports>.

<sup>12</sup> Letter from EPIC, Coalition of privacy, civil liberties, and civil rights groups to H. Comm. on Homeland Security (July 9, 2019), <https://epic.org/privacy/facerecognition/HSC-Letter-DHS-Suspension-FRT.pdf>.

<sup>13</sup> See, e.g., *About Face: Examining the Department of Homeland Security's Use of Facial Recognition and Other Biometric Technologies, Part II*, House Comm. on Homeland Security, 116th Cong. (Feb. 6, 2020), <https://homeland.house.gov/activities/hearings/about-face-examining-the-department-of-homeland-securitys-use-of-facial-recognition-and-other-biometric-technologies-part-ii>; *About Face: Examining the Department of Homeland Security's Use of Facial Recognition and Other Biometric Technologies*, House Comm. on Homeland Security, 116th Cong. (July. 10, 2019), <https://homeland.house.gov/activities/hearings/about-face-examining-the-department-of-homeland-securitys-use-of-facial-recognition-and-other-biometric-technologies>.

<sup>14</sup> U.S. Department of Homeland Security, *Biometric Entry-Exit Concept of Operations*, 000047 (June 27,2017), <https://epic.org/foia/dhs/cbp/biometric-entry-exit/CBP-Biometric-Entry-Exit-Concept-of-Operations.pdf>.

### **III. Facial Recognition is a Dangerous Surveillance Technology that Lacks Proper Regulation and Disproportionately Impacts Marginalized Groups**

Facial recognition technology is a particular threat to privacy, civil liberties, and civil rights because the technology can easily be used to conduct covert surveillance on a mass scale. This cannot be said for other potential methods of verifying the identification of air travelers. As the technology becomes more ubiquitous, even for seemingly benign applications, the danger and risk the technology poses increases. This is particularly true given the lack of well-defined federal regulations controlling the collection, use, dissemination, and retention of biometric identifiers.<sup>15</sup>

The lack of regulations basically ensures that mission creep will occur and facial recognition programs will expand beyond their original scope. The use of facial recognition to verify one's identification threatens to become a digital national ID that eliminates the ability of individual's to control their identity and places all the power of identification in the hands of the government. This is a dangerous shift as there is little one can do to prevent the collection of one's image, indeed many of the images CBP uses as part of their Traveler Verification Service are obtained from the State Department from individuals who had no choice but to submit a photo to obtain a passport and who had no idea that photo would be kept and used for facial recognition purposes in the future. Ubiquitous identification by government agencies will create new opportunities for tracking and monitoring, and poses a specific risk to the First Amendment rights of free association and free expression.

The burden of TSA's use of facial recognition will disproportionately fall on people of color and women. Studies have shown that facial recognition has significantly higher error rates

---

<sup>15</sup> Jeramie D. Scott, *Facial recognition surveillance is here—but privacy protections are not*, The Hill (July 7, 2017), <https://thehill.com/blogs/pundits-blog/technology/341906-opinion-facial-recognition-surveillance-is-here-but-privacy>.

for darker-skinned individuals and women. One study found that while the maximum error rate for lighter-skinned males was 0.8%, it is 34.7% for darker-skinned females.<sup>16</sup> A recent National Institute of Science and Technology study of 189 software algorithms from 99 developers (a majority of the industry) found that false positives are up to 100 times more likely for Asian and African American faces when compared to White faces.<sup>17</sup>

TSA's use of CBP's facial recognition technology to verify identification of travelers not only adds to the infrastructure of facial recognition technology and its disproportionate impact on people of color and women, it implies the technology is OK to use—given its more legitimacy than it deserves, and will encourage its increased adoption.

#### IV. Conclusion

For the reasons mentioned above, EPIC urges the TSA to halt its plan to implement facial recognition through the use of CBP's Traveler Verification Service. Society is simply not in a place right now for the wide-scale deployment of facial recognition technology. It would be a mistake for TSA to move forward with facial recognition at this time.

Respectfully Submitted,

/s/ Jeramie Scott

Jeramie Scott  
EPIC Senior Counsel

/s/ Kiana Alikhademi

Kiana Alikhademi  
EPIC Summer PhDX Fellow

---

<sup>16</sup> Joy Buolamwini (MIT Media Lab) and Timnit Gebru (Microsoft Research), *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification* (2018), <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>.

<sup>17</sup> National Institute of Science and Technology, *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects* (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.