

MEMORANDUM IN SUPPORT

Date: October 27, 2025

To: All Assembly Members, New York State Assembly; All Senators, New York State Senate; Governor Kathy Hochul

From: The Legal Aid Society

Re: Memorandum in Support of Public Accommodations Biometrics Ban ([S.8004](#) May/[A.6211](#) Simone)

Since 1876, the Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil, and juvenile offices, our staff handles approximately 300,000 cases for low-income families and individuals. In addition to representing individual clients, the Legal Aid Society works to advance systemic change through affirmative litigation and policy advocacy.

The Legal Aid Society emphatically supports the Public Accommodations Biometrics Ban (A.6211/S.8004). This bill prohibits places or providers of public accommodation from using biometrics to identify customers. Without this ban, public accommodations could use facial recognition technology, iris scanning, gait detection, or other biometric technologies on customers as they go about their daily lives—from buying groceries to shopping for school supplies to picking up their prescriptions at the drug store. The bill also prohibits the collection of New Yorkers' biometric data without express written consent. This bill will protect New Yorkers' privacy and prevent abusive and dangerous uses of facial recognition technology and other types of biometric surveillance technologies in places of public accommodation.

Facial recognition systems are unreliable and discriminatory. They are less accurate at identifying people of color, women, children, elderly individuals, and people with certain types of disabilities, than white men.¹ Because their accuracy depends on a person's race and gender, their use predictably leads to discrimination against BIPOC, women, and immigrant communities. For example, the Federal Trade Commission found that Rite Aid's facial recognition technology was disproportionately flagging women of color as potential shoplifters, which was leading to increased surveillance and accusations against them.² Developers also frequently train biometric surveillance

¹ National Academies of Sciences, Engineering, and Medicine, *Facial Recognition Technology: Current Capabilities, Future Prospects, and Governance* at 56, THE NATIONAL ACADEMIES PRESS (2024), <https://doi.org/10.17226/27397>; Joy Buolamwini, *Unmasking the Bias in Facial Recognition Algorithms*, MIT MANAGEMENT SLOAN SCHOOL (Dec. 13, 2023), <https://mitsloan.mit.edu/ideas-made-to-matter/unmasking-bias-facial-recognition-algorithms>; Matt Burgess, *When Face Recognition Doesn't Know Your Face Is a Face*, WIRED (Oct. 15, 2025), <https://www.wired.com/story/when-face-recognition-doesnt-know-your-face-is-a-face/>.

² Press Release, Federal Trade Commission, *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards* (Dec. 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>; Shaun Harper, *Rite Aid Facial Recognition Lawsuit Shows AI Risks of Shopping While Black*, FORBES (Dec. 21, 2023), <https://www.forbes.com/sites/shaunharper/2023/12/21/shopping-while-black-in-the-era-of-ai-lessons-from-a-federal-case-against-rite-aid/>.

systems without including transgender and non-binary individuals, making the systems more likely to misidentify their gender, which can result in discrimination and exclusion.³

New Yorkers should not be forced to accept biometric surveillance as part of simple activities like going shopping or taking their kids to a baseball game. Yet this is the reality across New York. Biased facial recognition systems may exclude dark-skinned people from public spaces including stores and concert venues due to mismatches. The technology also often struggles to identify faces when people are wearing hats—seemingly an obvious issue for venues like Citi Field⁴ attempting to identify fans headed to a baseball game.⁵

Even when facial recognition technology can correctly identify individuals, it is ripe for abuse. Madison Square Garden's CEO, James Dolan, uses facial recognition to keep out employees of law firms suing MSG. For example, he ejected a mother who was trying to watch the Rockettes show at Radio City Music Hall with her daughter and her Girl Scout troop, even though the mother was not working on the case against MSG.⁶ The designer of a T-shirt making fun of Dolan was also banned for life from MSG.⁷ This sort of retaliation sets a chilling precedent for how biometric surveillance technologies can be weaponized.

Public accommodations' collection of biometric data also poses a dire threat to New York's immigrant communities, especially given federal immigration authorities' recent invasive and aggressive overreach. Since Immigration and Customs Enforcement (ICE) was founded in 2003, it has been buying surveillance databases from private companies and amassing digital records from every level of government.⁸ When public accommodations collect information about their patrons, that information often winds up in the hands of data brokers or local law enforcement—both of which frequently share or sell it to ICE.⁹ Many immigrant New Yorkers are staying inside and refraining from going grocery shopping or getting medical care out of fear that they will be tracked or

³ Rachel Mentz, *AI Software Defines People as Male or Female. That's a Problem*, CNN BUSINESS (Nov. 21, 2019), <https://www.cnn.com/2019/11/21/tech/ai-gender-recognition-problem/index.html>.

⁴ Sam Van Doran & David Siffert, *The Mets Should Steal Bases, Not Faces*, N.Y. DAILY NEWS (Sept. 15, 2022), <https://www.nydailynews.com/opinion/ny-oped-bases-not-faces-mets-20220915-cuuul25jjnh5rbzbbsvmrbwauy-story.html>.

⁵ Andrew Cohen, *The New Face of Baseball: Mets to Roll Out Facial Recognition Ticketing at Citi Field*, SPORTS BUSINESS JOURNAL (April 1, 2022), <https://www.sporttechie.com/the-new-face-of-baseball-mets-to-roll-out-facial-recognition-ticketing-at-citi-field>.

⁶ Sarah Wallace, *Face Recognition Tech Gets Girl Scout Mom Booted From Rockettes Show — Due to Where She Works*, NBC N.Y. (Dec. 19, 2022), <https://www.nbcnewyork.com/investigations/face-recognition-tech-gets-girl-scout-mom-booted-from-rockettes-show-due-to-her-employer/4004677/>.

⁷ Mia Sato, *Madison Square Garden's surveillance system banned this fan over his T-shirt design*, THE VERGE (Mar. 28, 2025), <https://www.theverge.com/news/637228/madison-square-garden-james-dolan-facial-recognition-fan-ban>.

⁸ Nina Wang, Allison McDonald, Daniel Bateyko & Emily Tucker, *American Dragnet: Data-Driven Deportation in the 21st Century*, CENTER ON PRIVACY & TECHNOLOGY AT GEORGETOWN LAW (May 10, 2022), <https://www.americandragnet.org>.

⁹ *Id.*; see also Paige Collings & Matthew Guariglia, *Data Brokers Are Selling Your Flight Information to CBP and ICE*, ELECTRONIC FRONTIER FOUNDATION (Jul. 9, 2025), <https://www EFF.org/deeplinks/2025/07/data-brokers-are-selling-your-flight-information-cbp-and-ice>; Matthew Guariglia, *Here's How ICE Illegally Obtained Bulk Financial Records from Western Union*, ELECTRONIC FRONTIER FOUNDATION (Mar. 10, 2022), <https://www EFF.org/deeplinks/2022/03/heres-how-ice-illegally-obtained-bulk-financial-records-western-union>.

deported if they leave their homes.¹⁰ The State of New York should be able to guarantee that leaving their homes does not mean relinquishing all privacy in their biometric data to businesses—and eventually governments—that may use the data to expel them from the country.

Businesses using facial recognition are also lucrative targets for identity thieves and hackers,¹¹ who can, and do, use biometric identifiers to break into computer systems.¹² The collection of biometric identifiers is more dangerous than the collection of other personal identifiers like email addresses and credit card numbers because they are static and almost impossible to change.¹³ When a hacker acquires another person's biometric data, it puts them at risk for identity theft for the rest of their lives.¹⁴ Yet companies are failing to guard against these risks. In addition to the discrimination cited in the FTC's complaint against Rite Aid, the Commission also found that the company collected tens of thousands of photographs of shoppers but failed to implement a comprehensive information security program to protect its consumers' personal data.¹⁵

Banning facial recognition in places of public accommodation is necessary to ensure New Yorkers are able to access public spaces without fear of being tracked or wrongly excluded from essential businesses and participation in everyday activities. We urge the legislature to pass, and the Governor to sign, the Public Accommodations Facial Recognition Ban (A.6211/S.8004).

If you have any questions, please contact Laura Moraff, Staff Attorney in The Legal Aid Society's Digital Forensics Unit: LMoraff@legal-aid.org; (929) 536-1637.

¹⁰ Luis Ferré-Sadurní, *An Immigrant Neighborhood Where Trump Made Inroads Now Fears ICE Raids*, N.Y. TIMES (Mar. 2, 2025), <https://www.nytimes.com/2025/03/02/nyregion/ice-raids-fears-corona-nyc-immigrants.html>; Chris Bolt, *Advocates for Immigrants in New York Say Fear Is Leading to Serious Health Problems*, WAER (Sep. 8, 2025), <https://www.waer.org/news/2025-09-08/advocates-for-immigrants-in-new-york-say-fear-is-leading-to-serious-health-problems>; Jim Grey, *NYC Immigrant Communities Fear New Immigration Crackdown*, VISA VERGE, (Apr. 16, 2025), <https://www.visaverge.com/immigration/nyc-immigrant-communities-fear-new-immigration-crackdown/>; Tanya Rivero, *Communities of Immigrants Living in Constant Fear After Federal Raids*, ABC 7 (Feb. 4, 2025), <https://abc7ny.com/post/west-new-york-immigrants-living-constant-fear-federal-raids/15850233/>; see also Miriam Jordan et. al, *Immigrant Communities in Hiding: 'People Think ICE Is Everywhere'*, N.Y. TIMES (Jan. 30, 2025), <https://www.nytimes.com/2025/01/30/us/immigrant-communities-hiding-ice.html>.

¹¹ Mohamed Lazzouni, *What Happens if Biometric Data Is Breached (And How to Prevent It)*, FORBES (Apr. 25, 2025), <https://www.forbes.com/councils/forbestechcouncil/2025/04/25/what-happens-if-biometric-data-is-breached-and-how-to-prevent-it/>; Dan Rafter, *Biometrics and Biometric Data: What Is It and Is It Secure?*, NORTON, May 6, 2022, <https://us.norton.com/blog/iot/what-is-biometrics>; *US Government Hack Stole Fingerprints of 5.6 Million Federal Employees*, THE GUARDIAN (Sep. 23, 2015), <https://www.theguardian.com/technology/2015/sep/23/us-government-hack-stole-fingerprints>.

¹² Taryn Plumb, *Face Off: Attackers Are Stealing Biometrics to Access Victims' Bank Accounts*, VENTURE BEAT (Feb. 22, 2024), <https://venturebeat.com/security/face-off-attackers-are-stealing-biometrics-to-access-victims-bank-accounts>; A. Dellinger, *Hackers Defeat Vein Authentication by Making a Fake Hand*, ENGADGET (Dec. 28, 2018), <https://www.engadget.com/2018-12-28-hackers-defeat-vein-authentication-by-making-a-fake-hand.html>.

¹³ Anthony Ortega, *Do Biometrics Protect Your Data or Put Your Identity at Risk?*, SPICEWORKS (Oct. 8, 2018), <https://www.spiceworks.com/it-security/data-security/articles/do-biometrics-protect-your-data-or-put-your-identity-at-risk/>.

¹⁴ *Is Your Identity at Risk from Biometric Data Collection?*, BeyondTrust (last accessed Oct. 22, 2025), <https://www.beyondtrust.com/blog/entry/is-your-identity-at-risk-from-biometric-data-collection>.

¹⁵ Press Release, Federal Trade Commission, *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards* (Dec. 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>.