



MEMORANDUM OF SUPPORT

Date: November 17, 2025

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

From: The Center on Race, Inequality, and the Law at NYU School of Law

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

The Center on Race, Inequality, and the Law at NYU School of Law supports the Public Accommodations Biometrics Ban (S.8004/A.6211) and urges the legislature to pass, and the Governor to sign, this bill.

The Center on Race, Inequality, and the Law at NYU School of Law confronts the laws, policies, and practices that lead to the oppression and marginalization of people of color. We believe that the racism that permeates our present day legal system has deep roots. By documenting the history of racism in America, elevating the stories of those affected by race-based inequality, and vigorously applying a racial lens to analyze unremitting disparities, we identify actionable, forward-looking solutions to address the injustices caused by racism and then take action. This bill is a critical piece of legislation needed to address discriminatory surveillance and the resulting infringement on New Yorkers' privacy.

The Center on Race, Inequality, and the Law uses research, advocacy, litigation, and public education to advance racial and social justice for all. In keeping with this mission, we emphatically support the Public Accommodations Biometric Recognition Ban (S.8004/A.6211). Because of its documented biases and its replication of historically flawed police practices, biometric surveillance is not suitable in places of public accommodation.

Facial recognition is unreliable, discriminatory, and a threat to our everyday life. Facial recognition systems discriminate against BIPOC, Muslim, immigrant, and LGBTQ+ communities. Facial recognition is much more likely to misidentify women of color than middle-aged white men.¹ Developers also frequently train biometric surveillance systems without including transgender and non-binary individuals, rendering their gender identity invisible to the algorithm, and making them

¹ Joy Buolamwini, Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, *Proceedings of Machine Learning Research*, vol 81, 1-15, 2018 p. 1; Jacob Snow, *Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots*, ACLU, July 26, 2018, <https://www.aclu.org/news/privacy-technology/amazons-face-recognition-falsely-matched-28>; Patrick Grother, Mei Ngan, and Kayee Hanaoka, Face Recognition Vendor Test (FRVT), National Institute of Standards and Technology, U.S. Department of Commerce, Dec. 2019; Mei Wang and Weihong Deng, *Deep Face Recognition: A Survey*, 215 *Neurocomputing* 429 (March 14, 2021), <https://doi.org/10.1016/j.neucom.2020.10.081>.

susceptible to misidentification and exclusion.² The Federal Trade Commission has recognized how dangerous it is when stores use this technology irresponsibly, and it recently banned Rite Aid from using facial recognition largely because the algorithm was identifying Black women as shoplifters at a disproportionate rate to other demographics.³

New Yorkers should not be forced to accept biometric surveillance as part of simple activities like buying groceries or taking their kids to a baseball game. Yet this is the reality across New York. Biased facial recognition systems will exclude Black and dark-skinned people from public spaces including stores and concert venues due to incredibly common mismatches. The technology 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 Facial recognition means more police called on more BIPOC New Yorkers, more wrongful arrests, and even more police violence.

When facial recognition works, it is ripe for abuse. Madison Square Garden's James Dolan uses facial recognition to keep out employees of law firms suing MSG. This sort of biometric retaliation sets a chilling precedent for how the rich and powerful can silence their opponent and those helping them fight for their day in court. He even ejected a mother trying to watch the Rockettes show at Radio City Music Hall with her daughter's Girl Scouts troop, even though she never directly worked on any lawsuit against MSG.⁶ He later ejected someone for creating a t-shirt that made fun of him.⁷

With invasive and aggressive overreach from Federal immigration authorities, the collection of biometric data poses an unprecedented threat to New York's immigrant communities. Immigrant New Yorkers are afraid to go about their daily lives.⁸ Businesses that were once bustling are now empty, and people live in fear of being tracked while going to the bakery or a grocery store.⁹ Immigrants should not have to face existential danger simply because they want to buy groceries. Immigrations and Customs Enforcement (ICE) already uses facial recognition regularly and has been documented using tactics like accessing utility records to locate individuals for detention and

² 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>.

³ 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>.

⁴ Sam Van Doran and 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-cuuul25jjnh5rbzbbsvmrbwaauy-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.sportstechie.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/news/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 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>.

⁹ 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>.

deportation.¹⁰ Stores actively partner with law enforcement to voluntarily share data about customers, and the same customer data can easily then be acquired by ICE if the agency simply submits a subpoena request. For example, ICE accessed millions of financial records from Western Union using administrative subpoenas.¹¹ Even in so-called sanctuary jurisdictions, nothing prevents these sorts of private-public partnerships on immigration enforcement.

Businesses using facial recognition are also lucrative targets for identity thieves and hackers,¹² who can, and do, use biometric identifiers to break into computer systems.¹³ More dangerous than other personal identifiers like a social security number, biometric identifiers are static and are almost impossible to change.¹⁴ When a hacker acquires another person's biometric data, it puts them at risk for identity theft for the rest of their lives.¹⁵ In addition to the discrimination cited in the FTC's ban on Rite Aid's use of FRT, the Commission found that the company collected tens of thousands of photographs of shoppers without their knowledge or consent— worse still, Rite Aid stored these photos improperly and shared indiscriminately through a nationwide database.¹⁶

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 daily life. We urge the legislature to pass, and the Governor to sign, the Public Accommodations Facial Recognition Ban (S.8004/A.6211).

¹⁰ 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>.

¹¹ Matthew Guariglia, *Here's How ICE Illegally Obtained Bulk Financial Records from Western Union*, ELECTRONIC FRONTIER FOUNDATION, March 10, 2022, <https://www.eff.org/deeplinks/2022/03/heres-how-ice-illegally-obtained-bulk-financial-records-western-union>.

¹² *US Government Hack Stole Fingerprints of 5.6 Million Federal Employees*, THE GUARDIAN, Sept. 23, 2015, <https://www.theguardian.com/technology/2015/sep/23/us-government-hack-stole-fingerprints>. 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>.

¹³ 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>.

¹⁴ 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/>.

¹⁵ *Is Your Identity at Risk from Biometric Data Collection?*, BeyondTrust (last accessed Oct. 6, 2022), <https://www.beyondtrust.com/blog/entry/is-your-identity-at-risk-from-biometric-data-collection>.

¹⁶ 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>.