

United States Senate

WASHINGTON, DC 20510

January 10, 2021

Chris Magnus
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue NW
Washington, D.C., 20229

Dear Commissioner Magnus,

We write to request additional detailed information regarding the U.S. Customs and Border Protection's (CBP) biometric entry-exit program that uses facial recognition technology at airports, seaports, and land borders. Based on recent reporting, we are concerned that CBP officials are inadequately informing American citizens of their right to opt out of this practice and how the privacy of the data collected is protected. While we greatly appreciated your staff briefing our offices on your agency's use of this technology, we would like to better understand the procedures your agency has put in place to address these concerns.

Reporting indicates the CBP has currently deployed facial recognition technology ("Facial Comparison Technology for Entry") at all but 40 airports in the U.S. – impacting thousands of travelers every day.¹ This technology is being used at seaports and land borders as well. While it is now common for American citizens to be told their photo will be taken in order to proceed through the customs process, countless Americans are not adequately informed about their ability to opt out of this step. Every U.S. citizen should have the opportunity to make an informed decision whether to have their passport photo manually verified by a CBP officer instead of having their biometric data collected and stored in a manner with which they are not familiar.

American travelers should be clearly and proactively informed about procedures for opting out of this process and alternative identity verification procedures, and deserve to know how their information is being stored. If required CBP signage is not readable prior to the capture of biometric data, does not clearly provide data capture or opt-out information, or is not posted at all, then CBP is not protecting the privacy of both Americans who would otherwise consent to, and those who would otherwise refuse, the capture of this data. A Government Accountability Office (GAO) report has confirmed that the aforementioned issues with signage are taking place at airports across the country.²

¹ Facial Recognition:

CBP and TSA are Taking Steps to Implement Programs, but CBP Should Address Privacy and System Performance Issues, <https://www.gao.gov/products/gao-20-568> [GAO Report]; U.S. Customs and Border Protection, <https://biometrics.cbp.gov>; Alazar Moges, *CBP building on facial recognition successes as travelers reap benefits of expedited process*, Federal News Network, September 30, 2021, <https://federalnewsnetwork.com/technology-main/2021/09/cbp-building-on-facial-recognition-successes-as-travelers-reap-benefits-of-expedited-process/#:~:text=Beyond%20use%20at%20land%20borders,multiple%20terminals%20at%20eight%20seaports.>

² GAO Report

Further, as you know, facial recognition technology is not perfect. There have been reports that people of color and women are more likely to be misidentified by this technology. While we understand that CBP uses a distinct methodology that only compares biometric data against manifest data, we would like more information about the process for individuals who are flagged by this system. Every American deserves the same right to privacy and should not undergo drastically different airport processing experiences. Any use of biometric facial recognition technology by CBP should come with policies to ensure that flagged individuals are treated in a safe, fair, and noninvasive manner given the imperfection of facial recognition software.

Please respond to the following questions by February 11, 2022:

1. In addition to updating signage, how will CBP clearly inform every American citizen of their ability to opt out of using biometric facial recognition technology during the customs process?
2. In addition, how will CBP ensure that these signs are visible *before* travelers reach the point at which the technology is used?
3. Does CBP provide signage regarding its use of biometric facial recognition technology in languages other than English at all locations?
4. How does CBP ensure travelers are able to opt out of the use of facial recognition technology without experiencing significant travel delays or public scrutiny?
 - a) Is a CBP officer always available to process American citizens who elect not to use biometric facial recognition technology?
5. How are American citizens informed about the storage and protection of their biometric facial data collected during this process?
 - a) What measures is CBP taking to protect this data from cyberattacks or any other form of unauthorized distribution or release?

We appreciate your partnership in protecting the privacy of Americans and we look forward to your swift response to our inquiry. Thank you.

Sincerely,



Jeffrey A. Merkley
United States Senator



Roy Blunt
United States Senator