

June 18, 2025

Chair Snell Rodriguez and Members of the Milwaukee Equal Rights Commission:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide comments in opposition to the direct or indirect use of facial recognition technology by the Milwaukee Police Department.

At this point in time, the proliferation and use of surveillance technology by the Milwaukee Police Department or any law enforcement agency should give everyone pause. We are already seeing how surveillance technology is being weaponized in real time. Data gathered from facial recognition, automated license plate readers, artificial intelligence, and other surveillance tools are being used to target and detain individuals. The Department of Homeland Security is rapidly expanding its surveillance interface in local communities for immigration enforcement. Surveillance is being used to monitor and prosecute political protesters, people seeking reproductive healthcare, LGBTQ+ individuals, and doctors trying to provide care.

These are not projections – these are present-day realities carried out by bad actors within the federal government and local jurisdictions.

For example, over the past few weeks investigative reporting has illuminated how searches of Flock automated license plate reader (ALPR) data have been used for federal immigration enforcement through side-door access provided by local law enforcement agencies.¹ In Texas, a sheriff's office searched data from more than 83,000 ALPR cameras nationwide to investigate a woman suspected of self-managing an abortion.² The Trump administration has expanded work with the private company Palantir to “consolidate data across the government so it could potentially compile a master list of personal information on Americans.”³

While local law enforcement agencies—including the Milwaukee Police Department—may have good intentions, history reminds us how quickly larger systems can override those intentions. Data collected in Milwaukee does not stay in Milwaukee. Once our data enters a federal pipeline or a database connected to surveillance tools in the private sector, it can be accessed, shared, and used in ways we cannot predict—or stop.

¹ “ICE Taps into Nationwide AI-Enabled Camera Network, Data Shows,” 404 Media (May 27, 2025), <https://www.404media.co/ice-taps-into-nationwide-ai-enabled-camera-network-data-shows/>.

² “She Got an Abortion. So A Texas Cop Used 83,000 Cameras to Track Her Down.” Electronic Frontier Foundation (May 30, 2025), <https://www.eff.org/deeplinks/2025/05/she-got-abortion-so-texas-cop-used-83000-cameras-track-her-down>.

³ “Lawmakers Demand Palantir Provide Information About U.S. Contracts,” New York Times (June 17, 2025), <https://www.nytimes.com/2025/06/17/technology/palantir-government-contracts-democrats-letter.html>.

Law enforcement of facial recognition technology specifically raises a number of civil rights and liberties concerns, including contributing to unjustified arrests and other encounters with police, exacerbating racism in policing outcomes and access to benefits and services, and violating Milwaukeeans' right to privacy.

Facial Recognition Automates Discrimination

FRT consistently shows racial and gender biases that persist despite improvements in algorithm training data. Even under optimal conditions, FRT systems are not designed to positive identification. Rather, at most the technology provides an “algorithmic best guess.”⁴ The data used to train facial recognition algorithms is overwhelmingly skewed toward white male faces. As a result, these systems perform best on white men—and worst on those who exist at the intersections of multiple marginalized identities: Black women, trans people, nonbinary individuals, the elderly, and children.

Joy Buolamwini and Timnit Gebru’s landmark 2018 study, “Gender Shades,” revealed that commercial facial recognition systems had an error rate of just 0.8% for lighter-skinned men, but up to 34.7% for darker-skinned women.⁵ Widely reported National Institute for Standards & Technology (NIST) testing in 2019 found FRT algorithms were up to 100 times more likely to misidentify Asian and African American people than white men, and that women and younger individuals were also subject to disparately high misidentification rates.⁶ While some reports indicate that demographic differentials in false match rates have lessened for some algorithms, testing by NIST and academic researchers indicates that the problem persists.⁷

Contrary to the assurances of law enforcement agencies, human review of FRT results often exacerbates, rather than ameliorates, the deep unreliability of this technology. This is due, in part, to cognitive biases towards trusting computer outputs and because human identifications based on FRT results are tainted by the propensity of the technology to return images of lookalikes who are not actually the suspect.

⁴ “Does A.I. Lead Police to Ignore Contradictory Evidence?,” The New Yorker (Nov. 13, 2023), <https://www.newyorker.com/magazine/2023/11/20/does-a-i-lead-police-to-ignore-contradictory-evidence/>; see also Nat’l Acad. of Scis., Facial Recognition: Current Capabilities, Future Prospects, and Governance 48–49 (2024), <https://www.nationalacademies.org/our-work/facial-recognition-current-capabilities-future-prospects-and-governance>.

⁵ “Study finds gender and skin-type bias in commercial artificial-intelligence systems,” MIT News (Feb. 11, 2018), <https://news.mit.edu/2018/study-finds-gender-skin-type-bias-artificial-intelligence-systems-0212>.

⁶ Patrick Grother et al., U.S. Dep’t of Com., Nat’l Inst. for Standards & Tech., Face Recognition Vendor Test Part 3: Demographic Effects 2–3, 8 (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>; See also Drew Harwell, Federal Study Confirms Racial Bias of Many Facial-Recognition Systems, Casts Doubt on Their Expanding Use, Wash. Post (Dec. 19, 2019), <https://www.washingtonpost.com/technology/2019/12/19/federalstudy-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/>.

⁷ Patrick Grother, U.S. Dep’t of Com., Nat’l Inst. for Standards & Tech., Facial Recognition Vendor Test (FRVT) Part 8: Summarizing Demographic Differentials 15 (July 2022), https://pages.nist.gov/frvt/reports/demographics/nistir_8429.pdf; See also “MPD pushes for more facial recognition technology as a federal report shows persistent bias,” Neighborhood News Service (Jun. 15, 2025), <https://milwaukeeenns.org/2025/06/15/mpd-pushes-for-more-facial-recognition-technology-as-a-federal-report-shows-persistent-bias/>.

Wrongful Arrests: Real Harm, Real People

The error rate of facial recognition systems is not just a technical problem—it impacts the physical liberty interests of human beings. The trauma of an arrest and even a short time in jail can have devastating, long-lasting consequences for presumptively innocent individuals and their families. Many people across the country have already suffered wrongful arrests and detentions due to faulty FRT matches:

- Nijeer Parks⁸ in New Jersey, Robert Williams⁹ in Detroit, and Michael Oliver¹⁰ in Ferndale, Michigan—all Black men—were misidentified by FRT and wrongfully arrested.
- Porcha Woodruff,¹¹ a pregnant Black woman in Detroit, was wrongly arrested based on an FRT match.
- Randal Reid,¹² a Georgia man, was jailed for days due to a false facial recognition match for a crime in Louisiana—a state he had never visited.
- Steve Talley¹³ was wrongfully arrested twice in Colorado because of flawed facial recognition technology.
- Kylese Perryman¹⁴—a Black man in Minneapolis—filed a lawsuit after being arrested due to a misidentification by FRT.

Police say a simple warning will prevent face recognition wrongful arrests. That’s just not true. Even when police heed warnings to take additional investigative steps, they exacerbate the unreliability of face recognition results.¹⁵

⁸ “Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match,” New York Times (Jan. 6, 2021), <https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html>.

⁹ “Man wrongfully arrested by Detroit police with facial recognition tech settles lawsuit,” Detroit Free Press (June 28, 2024), <https://www.freep.com/story/news/local/michigan/detroit/2024/06/28/man-wrongfully-arrested-with-facial-recognition-tech-settles-lawsuit/74243839007/>.

¹⁰ “Wrongful arrest exposes racial bias in facial recognition technology,” CBS News (Nov. 19, 2020), <https://www.cbsnews.com/news/detroit-facial-recognition-surveillance-camera-racial-bias-crime/>.

¹¹ “Eight Months Pregnant and Arrested After False Facial Recognition Match,” New York Times (Aug. 6, 2023), <https://www.nytimes.com/2023/08/06/business/facial-recognition-false-arrest.html>.

¹² “Lawsuit: Man claims he was improperly arrested because of misuse of facial recognition technology,” ABC News, (Oct. 3, 2023), <https://abcnews.go.com/US/lawsuit-man-claims-falsely-arrested-misuse-facial-recognition/story?id=103687845>.

¹³ “Man arrested for bank robbery files \$10 million suit against Denver Police Department,” Denver 7 (Sept. 15, 2016), <https://www.denver7.com/news/local-news/man-arrested-for-bank-robbery-files-10-million-suit-against-denver-police-department>.

¹⁴ “In lawsuit, Minneapolis man says facial recognition tech led to his false arrest,” MPR News (June 28, 2023), <https://www.mprnews.org/story/2023/06/28/in-lawsuit-minneapolis-man-says-facial-recognition-tech-led-to-his-false-arrest>.

¹⁵ <https://www.aclu.org/news/privacy-technology/police-say-a-simple-warning-will-prevent-face-recognition-wrongful-arrests-thats-just-not-true>

Protest Surveillance and the Criminalization of Dissent

Facial recognition is a powerful tool for identifying and punishing dissent. This kind of surveillance chills participation in democracy, especially when used without a warrant or oversight.

- In 2015, Baltimore police used FRT¹⁶ amid protests against the police killing of Freddie Gray to find individuals with outstanding warrants and arrested them directly from the crowd, in order to disrupt, punish, and discourage protesters.
- During the 2020 BLM protests, FRT was used to identify protestors from video footage in numerous cities including Washington, D.C.,¹⁷ New York City,¹⁸ and Miami.¹⁹
- Just ten days ago, the Los Angeles Times reported that a police helicopter flew over demonstrators protesting immigration raids by ICE and announced, “I have all of you on camera. I’m going to come to your house,” suggesting the LAPD could be using FRT to identify and retaliate against protesters.²⁰

Lack of Transparency in Law Enforcement Use of FRT

Law enforcement often omits material information about face recognition use from warrant applications. Police have a constitutional obligation to provide accurate information in arrest and search warrant applications so judges can independently determine whether there is probable cause. However, police routinely overstate the certainty of face recognition matches and withhold details about FRT searches that would let judges understand why those searches lack reliability and are not a proper basis for probable cause. In some cases, police completely conceal the fact of their reliance on facial recognition.

Inadequate disclosures continue post-arrest, where prosecutors routinely resist turning over adequate information about FRT use as part of their pre-trial disclosure obligations under *Brady*²¹ and related doctrines. In an unknown number of cases, the government fails to even notify defendants of the fact that FRT was used in the investigation, much less details of that use.

¹⁶ “Maryland’s Use of Facial Recognition Software Questioned by Researchers, Civil Liberties Advocates,” The Baltimore Sun (Oct. 18, 2016), <https://www.baltimoresun.com/news/crime/bs-md-facial-recognition-20161017-story.html>.

¹⁷ “Facial recognition used to identify Lafayette Square protester accused of assault,” Washington Post (Nov. 2, 2020), https://www.washingtonpost.com/local/legal-issues/facial-recognition-protests-lafayette-square/2020/11/02/64b03286-ec86-11ea-b4bc-3a2098fc73d4_story.html.

¹⁸ “NYPD used facial recognition to track down Black Lives Matter activist,” The Verge (Aug. 18, 2020), <https://www.theverge.com/2020/8/18/21373316/nypd-facial-recognition-black-lives-matter-activist-derrick-ingram>.

¹⁹ “Cops in Miami, NYC arrest protesters from facial recognition matches,” Ars Technica (Aug. 19, 2020), <https://arstechnica.com/tech-policy/2020/08/cops-in-miami-nyc-arrest-protesters-from-facial-recognition-matches/>.

²⁰ “An LAPD Helicopter Claimed Cops Identified Protesters From Above and Would “Come to Your House,” Mother Jones (June 9, 2025), <https://www.motherjones.com/politics/2025/06/los-angeles-ice-protests-helicopter/>.

²¹ Jaylla Brown, “We Don’t All Look the Same: Police Use of Facial Recognition and the *Brady* Rule,” Federal 74 Communications Law Journal 331 (2022), http://www.fclj.org/wp-content/uploads/2022/06/74.3.1_Police-Use-of-Facial-Recognition-and-the-Brady-Rule_Proof.pdf.

Say No to Facial Recognition Use in Milwaukee

We urge Milwaukee leaders to **ban the use of facial recognition technology** and then adopt a **Community Control Over Police Surveillance (CCOPS) ordinance**²² creating a framework for ensuring transparency and democracy in the use of *all* surveillance tech used or deployed in our city. The Community deserves a say in if and how invasive surveillance technologies are used, how and where they are deployed against residents, if and how their data is stored and shared with third parties, and whether spending our limited tax dollars on surveillance technologies is the best way to promote public safety. **Milwaukee residents should not be surveilled in secret.**

²² <https://www.aclu-wi.org/ccops>; <https://www.aclu.org/community-control-over-police-surveillance>