

# United States Senate

WASHINGTON, DC 20510

July 26, 2019

The Honorable Kevin McAleenan  
Acting Secretary of Homeland Security  
Department of Homeland Security  
245 Murray Lane SW  
Washington, DC 20528

Dear Acting Secretary McAleenan:

We write today regarding the status of the Department of Homeland Security (DHS) report to Congress on the viability of DHS's biometric identification technology, including its privacy implications and accuracy. Section 1919 of the FAA Reauthorization Act of 2018 requires DHS to provide this product within 270 days of enactment.<sup>1</sup> That deadline passed on July 2, 2019, but DHS has yet to issue this critical report.

The deployment of facial recognition and other biometric collection and analysis tools by agencies within DHS has expanded significantly in recent years. In particular, U.S. Customs and Border Protection (CBP) continues to expand the use of facial recognition technology at airports scanning the faces of both international travelers and American citizens. Use of this technology can bring privacy risks, as evidenced by the recent breach of a CBP subcontractor, resulting in the exposure of tens of thousands of peoples' data.<sup>2</sup>

We have previously expressed concern regarding the collection of biometric data by DHS. Specifically, we have called for increased transparency, requesting DHS to pause its use of this technology until the agency issues formal rules that address critical privacy and security concerns. American travelers deserve to fully understand exactly who has access to their biometric data, how long their data will be held, how their information will be safeguarded, and how they can opt out of this data collection altogether.<sup>3</sup>

We believe that the report you are legally required to submit is intended to provide transparency to Congress and the public on the future use of this technology, enabling Congress to exercise

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<sup>1</sup> Pub. Law 115-254.

<sup>2</sup> Drew Harwell & Geoffrey A. Fowler, *U.S. Customs and Border Protection says photos of travelers were taken in a data breach*, Wash. Post (June 10, 2019), [https://www.washingtonpost.com/technology/2019/06/10/us-customs-border-protection-says-photos-travelers-into-out-country-were-recently-taken-data-breach/?utm\\_term=.f7c8bb44ecce](https://www.washingtonpost.com/technology/2019/06/10/us-customs-border-protection-says-photos-travelers-into-out-country-were-recently-taken-data-breach/?utm_term=.f7c8bb44ecce).

<sup>3</sup> Press Release, Senator Edward J. Markey (D-Mass.) and Senator Mike Lee (R-Utah), *Senators Markey and Lee Call for Transparency on DHS Use of Facial Recognition Technology* (Mar. 12, 2019), <https://www.markey.senate.gov/news/press-releases/senators-markey-and-lee-call-for-transparency-on-dhs-use-of-facial-recognition-technology>.


appropriate oversight and to inform future legislative action. Not producing this report stymies our ability to complete this work for the benefit of the American people.

We therefore ask that you immediately provide this report to Congress and offer a detailed explanation of why DHS failed to meet the relevant statutory deadline. We request a response to the letter by August 16, 2019. Thank you for your cooperation on this important issue.

Sincerely,



Edward J. Markey  
United States Senator



Mike Lee  
United States Senator