To prohibit biometric surveillance by the Federal Government without explicit statutory authorization and to withhold certain Federal public safety grants from State and local governments that engage in biometric surveillance.

IN THE SENATE OF THE UNITED STATES

Mr. Markey (for himself, Mr. Merkley, Mr. Sanders, Ms. Warren, and Mr. Wyden) introduced the following bill; which was read twice and referred to the Committee on _____________

A BILL

To prohibit biometric surveillance by the Federal Government without explicit statutory authorization and to withhold certain Federal public safety grants from State and local governments that engage in biometric surveillance.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Facial Recognition and
5 Biometric Technology Moratorium Act of 2021”.

6 SEC. 2. DEFINITIONS.
7 In this Act:
(1) Biometric Surveillance System.—The term “biometric surveillance system” means any computer software that performs facial recognition or other remote biometric recognition in real time or on a recording or photograph.

(2) Byrne Grant Program.—The term “Byrne grant program” means the grant program authorized under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.), whether characterized as the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Local Government Law Enforcement Block Grants Program, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(3) Facial Recognition.—The term “facial recognition” means an automated or semi-automated process that—

(A) assists in identifying an individual, capturing information about an individual, or otherwise generating or assisting in generating surveillance information about an individual based on the physical characteristics of the individual’s face; or
(B) logs characteristics of an individual’s face, head, or body to infer emotion, associations, activities, or the location of an individual.

(4) **FEDERAL OFFICIAL**.—The term “Federal official” means any officer, employee, agent, contractor, or subcontractor of the Federal Government.

(5) **IN THE UNITED STATES**.—The term “in the United States” means all areas within the external boundary of the United States, its territories and possessions, including airports, ports of entry, and border zones.

(6) **OTHER REMOTE BIOMETRIC RECOGNITION**.—The term “other remote biometric recognition”—

(A) means an automated or semi-automated process that—

(i) assists in identifying an individual, capturing information about an individual, or otherwise generating or assisting in generating surveillance information about an individual based on the characteristics of the individual’s gait or other immutable characteristic ascertained from a distance;

(ii) uses voice recognition technology; or
(iii) logs such characteristics to infer emotion, associations, activities, or the location of an individual; and

(B) does not include identification based on fingerprints or palm prints.

(7) Voice recognition technology.—The term “voice recognition technology” means the automated or semi-automated process that assists in identifying or verifying an individual based on the characteristics of an individual’s voice.

SEC. 3. PROHIBITION ON FEDERAL GOVERNMENT USE OF BIOMETRIC SURVEILLANCE.

(a) In general.—Except as provided in subsection (b), it shall be unlawful for any Federal agency or Federal official, in an official capacity, to acquire, possess, access, or use in the United States—

(1) any biometric surveillance system; or

(2) information derived from a biometric surveillance system operated by another entity.

(b) Exception.—The prohibition set forth in subsection (a) does not apply to activities explicitly authorized by an Act of Congress that describes, with particularity—

(1) the entities permitted to use the biometric surveillance system, the specific type of biometric
authorized, the purposes for such use, and any pro-
hibited uses;

(2) standards for use and management of infor-
mination derived from the biometric surveillance sys-
tem, including data retention, sharing, access, and
audit trails;

(3) auditing requirements to ensure the accu-
ra cy of biometric surveillance system technologies,
standards for minimum accuracy rates, and accuracy
rates by gender, skin color, and age;

(4) rigorous protections for due process, pri-
va cy, free speech and association, and racial, gender,
and religious equity; and

(5) mechanisms to ensure compliance with the
provisions of the Act.

(e) JUDICIAL INVESTIGATIONS AND PROCEEDINGS.—

(1) ADMISSIBILITY.—Except in a judicial inves-
tigation or proceeding alleging a violation of this sec-
tion, information obtained in violation of this section
is not admissible by the Federal Government in any
criminal, civil, administrative, or other investigation
or proceeding.

(2) CAUSE OF ACTION.—
(A) IN GENERAL.—A violation of this section constitutes an injury to any individual aggrieved by a violation of this Act.

(B) RIGHT TO SUE.—An individual described in subparagraph (A) may institute proceedings against the Federal Government whose official is alleged to have violated this section for the relief described in subparagraph (D) in any court of competent jurisdiction.

(C) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—The chief law enforcement officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as parens patriae, on behalf of the residents of that State in an appropriate district court of the United States to enforce this Act, whenever the chief law enforcement officer or other State officer has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this Act.

(D) RELIEF.—In a civil action brought under subparagraph (B) in which the plaintiff prevails, the court may award—
(i) actual damages;
(ii) punitive damages;
(iii) reasonable attorneys’ fees and costs; and
(iv) any other relief, including injunctive relief, that the court determines to be appropriate.

(d) CIVIL PENALTIES.—Any Federal official who is found to have violated this section may be subject to retraining, suspension, termination, or any other penalty, as determined in an appropriate tribunal, subject to applicable due process requirements.

(e) FEDERAL FUNDING.—

(1) IN GENERAL.—No Federal funds may be obligated or expended by a Federal law enforcement agency for the purchase or use of a biometric surveillance system.

(2) UNALLOCATED FUNDS.—No Federal agency may use any unallocated funds appropriated to the agency for the purchase or use of a biometric surveillance system.

(f) RULES OF CONSTRUCTION.—Nothing in this section may be construed—

(1) to prohibit the National Institute of Standards and Technology (NIST) from testing or re-
searching biometric surveillance systems or other remote biometric recognition technologies in commercial use; or

(2) to preempt or supersede any Federal, State, or local law that imposes a more stringent limitation than the limitations described in this section.

SEC. 4. MORATORIUM ON STATE AND LOCAL GOVERNMENT USE OF BIOMETRIC SURVEILLANCE SYSTEMS.

(a) FEDERAL FINANCIAL ASSISTANCE.—Beginning on the first day of the first fiscal year beginning after the date of the enactment of this Act, a State or unit of local government is ineligible to receive Federal financial assistance under the Byrne grant program unless the State or unit of local government is complying with a law or policy that is substantially similar to the prohibition set forth in section 3(a).

(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed to preempt or supersede any Federal, State, or local law that imposes a more stringent limitation than the prohibition set forth in section 3(a).