

United States Senate

WASHINGTON, DC 20510

June 22, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

We write to urge the Federal Trade Commission (FTC) to use the full scope of its authority to protect members of Black communities, other communities of color, and immigrant communities in the United States. Individuals in these communities are uniquely vulnerable to threats from discriminatory online practices, biometric surveillance, consumer predation, and anti-competitive behavior. With its full complement of Commissioners, the FTC has a responsibility to use every tool at its disposal to combat these harms.

Addressing the threats of discriminatory and harmful online data practices must be central to the FTC's efforts. Today, online platforms collect troves of personal information from users and then leverage that data to power algorithms that threaten users' civil rights. For example, reports indicate that popular websites and apps have engaged in biased housing advertisement delivery,¹ discriminatory employment opportunity amplification,² and vast collection of location data from religious minorities, which can facilitate harmful surveillance.³ As commercial and social activity continues to move online, these discriminatory and harmful data practices have real-world, lasting impacts. The FTC should build on its guidance regarding biased algorithms⁴ and use its full enforcement and rulemaking authority to stop damaging practices involving online data and artificial intelligence.⁵

¹ Sam Biddle, *Facebook's Ad Algorithm Is A Race And Gender Stereotyping Machine, New Study Suggests*, The Intercept (Apr. 3, 2019), <https://theintercept.com/2019/04/03/facebook-ad-algorithm-race-gender/>.

² *Id.*

³ Ben Brody, *Muslim group urges the FTC to rein in location-tracking industry*, Protocol (Apr. 12, 2022), <https://www.protocol.com/bulletins/muslim-ftc-location-tracking>.

⁴ Federal Trade Commission, *Aiming for truth, fairness, and equity in your company's use of AI* (Apr. 19, 2021), <https://www.ftc.gov/business-guidance/blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai>.

⁵ Letter from Senators Blumenthal and Markey, to Chair Lina Khan, Federal Trade Commission (Sept. 20, 2021), <https://www.blumenthal.senate.gov/imo/media/doc/2021.09.20%20-%20FTC%20-%20Privacy%20Rulemaking.pdf>.

The FTC must also use its full authority to combat invasive and discriminatory biometric surveillance tools. Facial recognition technologies, which are already being deployed in retail,⁶ entertainment,⁷ and housing settings,⁸ are capable of fundamentally threatening individuals' expectation that they can move, assemble, or simply appear in public without being identified. Facial recognition tools and other biometric surveillance applications pose unique threats to Black, Brown, Indigenous, and immigrant communities because these technologies disproportionately misidentify these individuals. In fact, a study by the National Institute of Standards and Technology found that Black and Asian people were up to 100 times more likely to be misidentified than white male faces.⁹ However, the unique threats that biometric surveillance tools pose to marginalized communities extend beyond inaccuracy issues. Communities of color are already systematically subjected to over-surveillance, and research shows that private businesses have disproportionately deployed facial recognition technology in non-white neighborhoods.¹⁰ The use of increasingly powerful biometric surveillance technologies has the concerning potential to violate privacy rights and exacerbate existing injustices. The FTC has already shown leadership in the area of facial recognition,¹¹ and it should build on these efforts.

As the digital economy continues to expand, the FTC must also be vigilant about identifying scams that pose unique threats to Black consumers, other consumers of color, and immigrant communities. Reports show that scammers have deliberately targeted immigrant community groups on messaging platforms,¹² and research indicates that forty percent of Black and Brown consumers have been targeted by fraudsters.¹³ The coronavirus pandemic has only exacerbated the risk of falling victim to devastating scams as consumers seek health information and

⁶ Kim Hart, *Facial recognition surges in retail stores*, Axios (July 19, 2021), <https://www.axios.com/2021/07/19/facial-recognition-retail-surge>.

⁷ Alison Fox, *Disney World Is Testing Facial Recognition Technology for Entry to Magic Kingdom*, Travel + Leisure (Mar. 24, 2021), <https://www.travelandleisure.com/travel-news/disney-world-facial-recognition-entry>; Kaleigh Rogers, *That Time the Super Bowl Secretly Used Facial Recognition Software on Fans*, Vice (Feb. 7, 2016), <https://www.vice.com/en/article/kb78de/that-time-the-super-bowl-secretly-used-facial-recognition-software-on-fans>.

⁸ Tanvi Misra, *The Tenants Fighting Back Against Facial Recognition Technology*, Bloomberg (May 7, 2019), <https://www.bloomberg.com/news/articles/2019-05-07/when-facial-recognition-tech-comes-to-housing>.

⁹ National Institute of Standards and Technology, *NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software* (Dec. 19, 2019), <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>.

¹⁰ Jeffery Dastin, *Rite Aid deployed facial recognition systems in hundreds of U.S. stores*, Reuters (Jul, 28, 2020), <https://www.reuters.com/investigates/special-report/usa-riteaid-software/>.

¹¹ Federal Trade Commission, *FTC Finalizes Settlement with Photo App Developer Related to Misuse of Facial Recognition Technology* (May 7, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/05/ftc-finalizes-settlement-photo-app-developer-related-misuse-facial-recognition-technology>.

¹² Juliana Jiménez J. and Rommel Ojeda, *Scam messages are targeting Latino immigrants. Here's how to avoid them.*, NBC News (Dec. 15, 2021), <https://www.nbcnews.com/news/latino/scam-messages-are-targeting-latino-immigrants-avoid-rcna8861>.

¹³ Derek Major, *AARP Report Reveals 40% of Black and Latino Adults Have Been Targeted By Scams*, Black Enterprise (Aug. 10, 2021), <https://www.yahoo.com/video/aarp-report-reveals-40-black-112558777.html>.

economic relief.¹⁴ The FTC has made critical strides in identifying how scams and fraud target marginalized communities¹⁵ and has brought enforcement actions against several bad actors.¹⁶ The FTC should double down on this work and pursue aggressive enforcement action against scammers who target vulnerable consumers.

FTC action to combat harmful consolidation and anti-competitive practices is another critical prong of the work the Commission should do to protect consumers in Black, Brown, Indigenous, and immigrant communities. Evidence suggests that market consolidation has directly contributed to the decline of minority-owned businesses,¹⁷ and corporate mergers have the potential to harm Black workers and other workers of color.¹⁸ Racial justice should be a core principle when the FTC is evaluating mergers and considering antitrust action or guidance. We agree that the FTC should move away from its traditional “value-neutral” antitrust evaluation and instead move towards an approach that advances racial justice.¹⁹

Consumers in Black communities, other communities of color, and immigrant communities are often harmed first and worst in today’s economy. We commend you for your attention to the unique threats to these individuals and call on you to do even more to address these issues.

Thank you for your attention to this important matter.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator

¹⁴ Greg Iacurci, *Covid-related fraud has cost Americans \$342 million*, CNBC (Mar. 24, 2021), <https://www.cnbc.com/2021/03/24/covid-fraud-costs-americans-382-million-dollars.html>.

¹⁵ Federal Trade Commission, *Serving Communities of Color: A Staff Report on the Federal Trade Commission’s Efforts to Address Fraud and Consumer Issues Affecting Communities of Color*, (Oct. 2021), https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf.

¹⁶ Federal Trade Commission, *Record-setting \$10 million FTC-Illinois settlement takes on car dealers’ unauthorized add-ons and discriminatory lending practices* (Apr. 4, 2022), <https://www.ftc.gov/business-guidance/blog/2022/04/record-setting-10-million-ftc-illinois-settlement-takes-car-dealers-unauthorized-add-ons>.

¹⁷ Brian S. Feldman, *The Decline of Black Business*, Washington Monthly (Mar. 19, 2017), <https://washingtonmonthly.com/2017/03/19/the-decline-of-black-business/>.

¹⁸ Janet Kidd Stewart, *Mergers Leave Many Workers Wary, Skeptical*, Chicago Tribune (Mar. 20, 2001), <https://www.chicagotribune.com/news/ct-xpm-2001-03-20-0103200353-story.html>.

¹⁹ Lauren Feiner, *How FTC Commissioner Slaughter wants to make antitrust enforcement antiracist*, CNBC (Sep. 26, 2020), <https://www.cnbc.com/2020/09/26/ftc-commissioner-slaughter-on-making-antitrust-enforcement-antiracist.html>.



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