March 14, 2022

The Honorable Steven Bradford
1021 O Street, Suite 7210
Sacramento, CA 9581

RE: SB 1038 (Bradford) – as introduced: SUPPORT

Dear Senator Bradford:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I am writing in strong support of your Senate Bill 1038, which would ensure the continued state law protection of Californians' civil rights against the use of biometric surveillance (facial recognition) by law enforcement on officer-worn body cameras. Since 2020, existing California law has effectively prevented the harms of body camera face surveillance, protecting privacy, safeguarding our freedom of speech, preventing wrongful imprisonment of Californians due to misidentification, and halting the creation of vulnerable biometric databases. NACDL is proud to have been part of the coalition supporting the 2020 law. SB 1038 prevents this important law from sunsetting in 2023.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. NACDL's nearly 10,000 members (40,000 with state affiliate members) include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system. Critical to this mission are NACDL's efforts to identify and reform flaws and inequities in the criminal legal system, and specifically address systemic racism and its impact on the administration of justice.

In 2015, NACDL convened a Body Camera Task Force, comprised of criminal defense lawyers from across the country. The task force received input from a variety of experts and studied academic reports and technical materials and subsequently released a report in 2017 entitled, Policing Body Cameras: Policies and Procedures to Safeguard the Rights of the Accused, that includes recommendations to protect the rights of the accused in body camera jurisdictions.

The report makes the recommendation for policies that prohibit the use of any biometric technologies in conjunction with body cameras. The Fourth Amendment protects citizens against unreasonable searches, which are those in which the government violates a subjective expectation of privacy that society recognizes as reasonable. Using body cameras as dragnet surveillance tools of individuals, most of whom are suspected of no crime, raises serious privacy concerns and implicates the constitutional rights of individuals whose biometric data is collected and searched.

Facial recognition-enabled police body cameras permit pervasive and ongoing surveillance of the public, registering and reporting who we are and where we go. Allowing face and biometric systems to be added to police body cameras would threaten the civil rights and civil liberties of all residents and visitors and pose a disproportionate threat to marginalized Californians, including people of color and those living in highly policed communities.

Californians value privacy as an essential element of their individual freedom. Article 1 Section 1 of the state constitution grants all Californians an inalienable right to privacy, a right that doesn't end when we step outside.[1] In a free country, people should not be required to show our IDs to every police officer we pass on the street. Facial recognition on body cameras would automate this type of forcible identification.

Facial recognition has no place on officer body cameras. Law enforcement body cameras were intended to guard against police misconduct, not to be used as a tool to surveil the public. The manner by which body cameras operate in practice, which involves the constant motion of officers and wide-angle images that skew faces, risks producing blurry and low-quality images that lead false matches, resulting in mistaken encounters and wrongful arrests.

Facial recognition has also been repeatedly demonstrated to misidentify women, young people and people of color.[2] Members of the California legislature and the California Congressional delegation have experienced this disproportionate error rate firsthand in tests comparing them against mug-shot databases.[3] Multiple Black men have been wrongfully arrested in other states due to false matches. If a police body camera with facial recognition misidentified a person, that error could misinform an officer's decision about how to approach a person or even use of deadly force. SB 1038 reinforces the California law that helps prevent similar life-changing mistakes.

Moreover, prominent technology companies are in consensus against the police use of facial recognition to track communities. Companies like Microsoft, Amazon, and IBM have declined to sell facial recognition systems to law enforcement. Axon, the largest body camera maker has also rejected the use of facial recognition for body cameras, citing the potential inaccuracy and abuse. California's current law mirrors this consensus.

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[1] Article I Declaration of Rights [Section 1-Section 32]: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS&sectionNum=SECTION%201.&article=I#:~:text=All%20people%20are%20by%20nature,safety%2C%20happiness%2C%20and%20privacy.

[2] Joy Buolamwini & Timnit Gebru, Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, Proceedings of Machine Learning Research 81: 1-15, 2018, http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf; Natasha Singer, Amazon Is Pushing Facial Technology That a Study Says Could Be Biased, New York Times, Jan 24, 2019, https://www.nytimes.com/2019/01/24/technology/amazon-facial-technology-study.html.

[3] Dustin Gardiner, *Facial recognition misidentified 26 California lawmakers as criminal suspects,* SF Chronicle, Aug. 13, 2019, https://www.sfchronicle.com/politics/article/Facial-recognition-misidentified-26-California-14301190.php; Natasha Singer, *Amazon's Facial Recognition Wrongly Identifies 28 Lawmakers, A.C.L.U. Says*, New York Times, July 26, 2018, https://www.nytimes.com/2018/07/26/technology/amazon-aclu-facial-recognition-congress.html.

All Californians should be worried about facial recognition on body cameras – but the risks of this technology are particularly acute in communities where police misconduct regularly threatens the safety of Black people, Latinos, and immigrants. We thank you for defending this important civil rights law.

For these reasons, NACDL supports SB 1038.

Sincerely,

Monica Reid, Senior Director of Advocacy
National Association of Criminal Defense Lawyers

Cc:

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