February 17, 2022

Roberta Reardon, New York Commissioner of Labor
New York Department of Labor
Building 12, W.A. Harriman Campus
Albany, N.Y. 12440

Via U.S.P.S. & Email

Re: Facial Recognition in the Administration of Public Benefits

Dear Commissioner:

The undersigned civil rights organizations call on the New York Department of Labor ("the Department") to immediately cease its use of ID.me to evaluate applicants for unemployment insurance and all other public benefits. Facial recognition is biased, error-prone, and violates New Yorkers' civil rights. Instead, the Department must adopt alternative, more reliable and secure, methods to verify claims.

During the height of the COVID-19 pandemic, as millions lost their jobs, Governor Cuomo announced New York would condition unemployment insurance upon applicants submitting a face print to the Department.[1] New York then turned to ID.me, a vendor that drew national outrage when selected by the Internal Revenue Service ("IRS") for similar services…a decision the agency later had to reverse.[2]

ID.me, and facial recognition generally, is biased and error-prone. Facial recognition is more inaccurate for darker skin tones, particularly for Black women.[3] The technology has caused wrongful arrests[4] and even mistaken congressmembers for criminals.[5] Deploying such a biased technology in New York is discriminatory. We can't trust ID.me to decide which New Yorkers get the economic lifeline that could mean the difference between losing an apartment or keeping the roof over a family's head…the difference between shopping for groceries and seeing children go hungry.

While facial recognition may stand between New Yorkers and the money they desperately need, the biometric data it collects is a precious commodity for vendors. Even if that data is never

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[1] Whitney Kimball, "25 States Are Forcing Face Recognition on People Filing for Unemployment," *Gizmodo*, July 23, 2021, https://gizmodo.com/25-states-are-forcing-face-recognition-on-people-filing-1847350707; "Governor Cuomo Announces Launch of New ID Verification Tool to Fight Unemployment Fraud, Speed Processing of Claims," *Department of Labor*, February 25, 2021, https://dol.ny.gov/news/governor-cuomo-announces-launch-new-id-verification-tool-fight-unemployment-fraud-speed.

[2] Aimee Picche, "IRS Says It Will Scrap Facial-Recognition ID.me Plan Following Backlash," *CBS News*, February 8, 2022, https://www.cbsnews.com/news/irs-id-me-facial-recognition-tax-returns-backlash/; "Verifying for State Benefits," ID.me, https://help.id.me/hc/en-us/categories/360004475354-Verifying-for-state-benefits.

[3] Joy Buolamwini and Timnit Gebru, "Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification," *Conference on Fairness, Accountability, and Transparency*, 2018, http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf.

[4] Adi Robertson, "Detroit Man Sues Police for Wrongfully Arresting Him Based on Facial Recognition," *The Verge*, April 13, 2021, https://www.theverge.com/2021/4/13/22382398/robert-williams-detroit-police-department-aclu-lawsuit-facial-recognition-wrongful-arrest.

[5] Jacob Snow, "Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots," *ACLU*, July 26, 2018, https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28.

sold, it is a terrifyingly tempting target for hackers, attackers, and cybercriminals. Additionally, questions remain about how ID.me shares biometric data with law enforcement agencies, including Immigration and Customs Enforcement.[6] The Department should never permit this sort of excessive data collection. Instead, we urge you to immediately cancel its contracts with ID.me and find a more secure method of delivering benefits.

We look forward to working with your staff on this matter. Please contact Surveillance Technology Oversight Project Executive Director Albert Fox Cahn at albert@stopspying.org or +1 (212) 518-7573 with any questions, comments, or concerns.

Sincerely,

S.T.O.P. – Surveillance Technology Oversight Project

NYU Center on Race, Inequality, and the Law

National Action Network

Freedom to Thrive

United Voices of Courtland

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[6] "Privacy Policy," ID.me, https://www.id.me/privacy.