

February 9, 2024

Luke Clippinger, Chair  
Sandy Bartlett, Vice Chair  
House Judiciary Committee  
House Office Building  
6 Bladen St., Room 101  
Annapolis, MD 21401

**RE: House Bill 338 - Criminal Procedure - Facial Recognition Technology - Requirements, Procedures, and Prohibitions – Unfavorable**

I, Magdalena Tsiongas, write to voice my strong opposition to HB 338/SB 182, which establishes requirements, procedures, and prohibitions relating to the use of facial recognition technology (“FRT”) by law enforcement. Research shows that FRT algorithms are biased and the technology is particularly error-prone for people with darker skin, women, young people, and transgender and nonbinary people. Moreover, law enforcement use of FRT can cause harm to wrongfully accused individuals. As such, we fundamentally believe that the guardrails this bill sets to limit the use of FRT by law enforcement are insufficient and use of FRT by law enforcement will disproportionately harm Black and other marginalized Marylanders.

In addition to the numerous studies evaluating accuracy and bias in FRT, there have been several documented examples of real-world harm caused by law enforcement use of FRT: of the six known cases of FRT misidentification, all of them have been Black people. Most recently, Porcha Woodruff—who was 8-months pregnant at the time she was confronted by police in Detroit—was wrongfully arrested and held in jail for 11 hours after being implicated as a suspect due to misidentification by FRT. While in the holding cell, Ms. Woodruff experienced contractions and spasms, had a possible panic attack, and became dehydrated. She later shared that “she was embarrassed to be arrested in front of her neighbors and that her daughters were traumatized.”

The exceptions in HB 338 are too broad to effectively limit the use of FRT by law enforcement. Specifically, HB 338 includes several loopholes or vaguely written exceptions which would broaden the scope for law enforcement use of FRT. Additionally, HB 338 lacks adequate measures for creating transparency when it comes to law enforcement’s use of FRT. Without strong measures that require documentation and publication of law enforcement’s use of FRT, Marylanders will remain in the dark regarding law enforcement use of FRT and this can further complicate efforts by community members who are advocating for more transparency regarding policing practices in Maryland. We are concerned that the bill will fail to adequately limit law enforcement use of FRT and that law enforcement use of FRT will contribute to racially

disparate policing, increased surveillance of marginalized communities, and wrongful arrests.

Due to the threats that use of FRT by law enforcement pose, the use of FRT must be **(1)** narrow and explicitly limited, **(2)** consistent and independently assessed for accuracy and bias, and **(3)** made known to Marylanders through published access to annual reports and the results of audits.

Since HB 338 does not provide adequate provisions for any of these measures, we do not believe this bill offers Marylanders protection from the proven harms of FRT use by law enforcement.

Although law enforcement already use FRT in Maryland, which is disconcerting given the lack of information made publicly available about the technology's use, we believe this HB 338 lacks the safeguards necessary to protect Marylanders' rights. For these reasons, I respectfully submit this testimony in opposition to HB 338.