

United States Senate
WASHINGTON, DC 20510

June 10, 2020

The Honorable William Barr
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Chad Wolf
Acting Secretary
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

Dear Attorney General Barr and Acting Secretary Wolf:

On May 25, the world witnessed the killing of George Floyd by the Minneapolis Police Department. Since then, Americans in more than 350 cities across the nation have taken to the streets to protest this grave injustice.¹ But George Floyd's death is just the most recent provocation that the country has endured.

We must acknowledge the long history of injustices that have contributed to the demonstrations in the streets today. We must remember Trayvon Martin, Eric Garner, Michael Brown, Tamir Rice, Walter Scott, Philando Castile, Breona Taylor, and all the victims of lethal police force.² We must recognize the 400 years of inequality that Black and minority communities have suffered in this country.

Advances in facial recognition technologies should not be weaponized to victimize Americans across the nation who are standing up for change. It is no secret that Clearview AI's controversial facial recognition tool³ is used by law enforcement throughout your departments⁴ despite the numerous legal challenges it faces.⁵ However, scientific studies have repeatedly shown that facial recognition algorithms are significantly less accurate for people with non-white skin tones.⁶

The federal government's use of technology to identify each individual at a demonstration en masse has a chilling effect on all of our protected First Amendment activities. Identifying Americans who are peacefully demonstrating using existing facial recognition technology is particularly dangerous because this information would be of dubious accuracy and could be stolen or otherwise leaked. The Black Lives Matter movement was unjustly surveilled by law

¹ <https://www.nbcnews.com/news/us-news/map-protests-rallies-george-floyd-spread-across-country-n1220976>

² <https://www.bbc.com/news/world-us-canada-52905408>

³ <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>

⁴ <https://www.buzzfeednews.com/article/ryanmac/clearview-ai-fbi-ice-global-law-enforcement>

⁵ <https://www.theverge.com/2020/5/7/21251387/clearview-ai-law-enforcement-police-facial-recognition-illinois-privacy-law>

⁶ <https://www.wired.com/story/amazon-facial-recognition-congress-bias-law-enforcement/>;
<https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>

enforcement in 2014⁷ and additional actions against those protesting systemic racism would infringe on their First Amendment rights and further divide the country.

We are disturbed by numerous reports that the Department of Justice and Department of Homeland Security agencies are participating in the technological surveillance of protests across the country, well beyond the scope of their authorities. The Drug Enforcement Administration has been explicitly instructed to “conduct covert surveillance” that is unrelated to its mission of enforcing controlled substance laws.⁸ A U.S. Customs and Border Protection predator drone was flown over the Minneapolis protests to “provide live video” for local law enforcement,⁹ potentially infringing on the rights of the same Americans it is supposed to protect.¹⁰ Therefore, we ask that you respond to the following questions by June 19, 2020.

1. Have any agencies in your department collected personally identifiable information of Americans who have gathered in response to George Floyd’s death? If so, for each instance please specify the agency and—
 - a. Cite the authority under which you have gathered this information; and
 - b. Detail the policies and processes that apply to the access and retention of this data.

2. Have any agencies in your department utilized facial recognition technology during the daily, nationwide demonstrations that began May 25, 2020? If so, for each instance please specify the agency and—
 - a. The date(s) and location(s) of activities where facial recognition technology was deployed;
 - b. Which facial recognition systems were utilized;
 - c. Whether your facial recognition technology is combined with cameras of any kind to produce real-time or near real-time feedback;
 - d. If any of your facial recognition tools have been independently tested for accuracy or discriminatory bias, who conducted said tests, the testing process and the results;
 - e. The oversight processes in place to prevent infringement on First Amendment freedoms; and
 - f. The processes to ensure compliance with applicable privacy laws.

3. Have any agencies in your department accumulated photo or video footage of the daily, nationwide demonstrations that began May 25, 2020? If so, for each instance please specify the agency and—
 - a. The sources from which the photos and videos were obtained;

⁷ <https://www.cnn.com/2019/01/18/us/nypd-black-lives-matter-surveillance/index.html>

⁸ <https://www.buzzfeednews.com/article/jasonleopold/george-floyd-police-brutality-protests-government>

⁹ <https://www.govtech.com/security/Predator-Drone-over-Minneapolis-Stokes-Surveillance-Fears.html>

¹⁰ <https://www.cbp.gov/about>

- b. The days and locations of demonstrations covered by the photos or videos; and
- c. Which agency policies and processes apply to the curation and retention of the photos and videos?

Thank you for your prompt attention to this matter.

Sincerely,



United States Senator
Sherrod Brown



United States Senator
Ron Wyden



United States Senator
Cory A. Booker

CC: Timothy Shea, Acting Administrator, Drug Enforcement Administration;
Mark A. Morgan, Acting Commissioner, Customs and Border Protection;
Matthew Albence, Acting Director, Immigration and Customs Enforcement