

April 8, 2020

Port of Seattle Commission
2711 Alaskan Way
Seattle, WA 98121

We, the undersigned organizations dedicated to protecting people's rights and civil liberties urge the Commission to reverse the decision authorizing the Port to work collaboratively with U.S. Customs and Border Protection (CBP) to procure and implement facial recognition technology at SeaTac International Airport.

The Port of Seattle Commission:

- (1) Has a choice to *not* collaborate with CBP.
- (2) Should not facilitate the infrastructural expansion of powerful face surveillance technology.
- (3) Should not facilitate CBP's unauthorized surveillance of US citizens.
- (4) Should abide by its professed principles by rejecting collaboration with CBP.

On March 10, 2020, Port Commissioners voted unanimously to collaborate with CBP in rolling out its facial recognition program, ignoring the many privacy, civil liberties, and community organizations that urged the Port to reject participation.¹

Instead of taking into account the serious constituent concerns about the Port participating in CBP's unlawful mass collection of biometric data, Commissioners voted to authorize a \$5.7 million Request for Proposal (RFP)² to procure and implement a facial recognition system at SeaTac International Airport.³

By collaborating with CBP, the Port will be facilitating the infrastructural expansion⁴ of powerful face surveillance technology⁵ that is rife with race and gender biases.⁶

It is important to note that even if this technology operated without bias, its use poses unprecedented threats to our constitutionally protected rights and civil liberties.⁷

In announcing a recent lawsuit against CBP and the Transportation Security Administration (TSA),⁸ the ACLU stated, "Unlike other forms of identity verification, facial recognition technology can

¹ *March 10, 2020 – Port of Seattle Commission Regular Meeting*, PORT OF SEATTLE (Mar. 10, 2020), https://meetings.portseattle.org/index.php?option=com_meetings&view=meeting&Itemid=358&id=1894&active=play.

² *Solicitation Detail: SEA Airport Biometric Air Exit System*, PORT OF SEATTLE (Mar. 16, 2020), <https://hosting.portseattle.org/sops/#/Solicitations/Detail/c1451f2a-7544-ea11-8141-005056bd5ab4>.

³ *March 10, 2020 – Port of Seattle Commission Regular Meeting*, *supra* note 1, at Item 8a Biometric Air Exit Memo.

⁴ Jay Stanley, *The Government's Nightmare Vision for Face Recognition for Airports and Beyond*, ACLU (Feb. 6, 2020), <https://www.aclu.org/news/privacy-technology/the-governments-nightmare-vision-for-face-recognition-at-airports-and-beyond/>

⁵ Jeramie D. Scott, Facial recognition surveillance is here — but privacy protections are not, *The Hill* (Jul. 13, 2017), <https://thehill.com/blogs/pundits-blog/technology/341906-opinion-facial-recognition-surveillance-is-here-but-privacy>

⁶ Patrick Grother et al., *Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects*, U.S. DEP'T. OF COM., NAT'L INST. OF STANDARDS & TECH. (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

⁷ Luke Stark, *Facial Recognition is the Plutonium of AI*, XRDS: CROSSROADS, THE ACM MAG. FOR STUDENTS, Spring 2019, at 55. *Available at* <https://xrds.acm.org/article.cfm?aid=3313129>.

⁸ *Complaint for Injunctive Relief, ACLU v. U.S. DEP'T OF HOMELAND SEC.*, No.1:20-CV-02213 (S.D.N.Y. 2020). *Available at* <https://www.aclu.org/aclu-v-dhs-face-recognition-surveillance-complaint>.

enable undetectable, persistent government surveillance on a massive scale. As this technology becomes increasingly widespread, the government can use it to track individuals' movements and associations, posing grave risks to privacy and civil liberties. When such a technology is placed in the hands of agencies like CBP and the TSA — which have been caught tracking and spying on journalists,⁹ subjecting innocent travelers to excessive and humiliating searches,¹⁰ and targeting and interrogating individuals because of their national origin, religious beliefs, or political views¹¹ — we should all be concerned.”¹²

The Port of Seattle Commission has a choice to *not* collaborate with CBP and should not facilitate CBP's unauthorized surveillance of US citizens.

Port Commissioners have consistently stated an incorrect belief that they have no choice but to collaborate with CBP in implementing their face surveillance program.¹³ We object to this inaccurate message. Airports and airlines are not mandated to participate in CBP's biometric air exit program,¹⁴ and further, Congress has never authorized the biometric collection of U.S. citizen data.¹⁵ Without explicit authorization, CBP should not be scanning the faces of Americans as they depart on international flights, and the Port should not be facilitating this unauthorized scanning.

Moreover, the Port collaborating with CBP would likely violate the Privacy Act, a federal law mandating that data be collected directly from individuals by a federal agency if the data are used as part of the basis of making decisions about access to federal rights and privileges (such as federally-licensed air travel).¹⁶ By collecting facial images and sending them to CBP, the Port would potentially be complicit in CBP's violation of federal law. The Port should not facilitate CBP's unlawful outsourcing of personal data collection.

The Port of Seattle Commission should abide by its professed principles by rejecting collaboration with CBP.

Finally, Port Commissioners have incorrectly concluded that their participation in CBP's face surveillance program would give the Port greater control over the program's implementation. Commissioners have stated that by owning and operating facial recognition systems, the Port would

⁹ Scarlet Kim et al., *The U.S. Government Tracked, Detained, and Interrogated Journalists. We're Suing on Their Behalf*, ACLU (Nov. 20, 2019), <https://www.aclu.org/news/civil-liberties/the-u-s-government-tracked-detained-and-interrogated-journalists-were-suing/>.

¹⁰ Hugh Handeyside, *This Woman's Endless Ordeal Shows How the Watchlisting System Harms Innocent People*, ACLU (Aug. 14, 2018), <https://www.aclu.org/blog/national-security/discriminatory-profiling/womans-endless-ordeal-shows-how-watchlisting-system>.

¹¹ Scarlet Kim & Hugh Handeyside, *CBP Lied About Iranian-American Detentions, Leaked Memo Suggests*, ACLU (Feb. 3, 2020), <https://www.aclu.org/news/immigrants-rights/cbp-said-it-never-told-officers-to-detain-iranian-americans-a-leaked-memo-says-otherwise/>.

¹² Ashley Gorski, *The Government Has a Secret Plan to Track Everyone's Faces at Airports. We're Suing*, ACLU (Mar. 12, 2020), <https://www.aclu.org/news/privacy-technology/the-government-has-a-secret-plan-to-track-everyones-faces-at-airports-were-suing/>.

¹³ *Feb 25, 2020 – Port of Seattle Commission Regular Meeting*, PORT OF SEATTLE (Feb. 25, 2020), https://meetings.portseattle.org/index.php?option=com_meetings&view=meeting&Itemid=358&id=1892&active=play.

¹⁴ Marc Rotenberg et al. *Comments of the Electronic Privacy Information Center to the Department of Homeland Security Data Privacy and Integrity Advisory Committee*, EPIC (Dec. 10, 2018), <https://www.epic.org/apa/comments/EPIC-Comments-DHS-DPIAC-Face-Rec-Report-Dec-2018.pdf>.

¹⁵ See Harrison Rudolph et al., *Not Ready for Takeoff: Face Scans at Airport Departure Gates*, GEO. L. CTR ON PRIV. & TECH. (Dec. 21, 2017), <https://www.airportfacescans.com/>.

¹⁶ 5 U.S.C. § 552a (e)(2) (1974). Available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title5/pdf/USCODE-2018-title5-partI-chap5-subchapII-sec552a.pdf>.

be able to provide the public with clear signage, increasing the opportunity for informed consent and mitigating harm from CBP's activities.¹⁷

However, the Port's decision to work with CBP will have exactly the opposite effect. By voting to authorize the RFP on March 10, Commissioners agreed to comply with CBP's "Biometric Air Exit Business Requirements," which require the Port to install only CBP-approved signage, even if the signage is misleading or incorrect.¹⁸

Additionally, the principles professed by the Port explicitly incorporate Fair Information Practices Principles ("FIPPs"), a set of internationally recognized principles that govern information privacy policies both within government and the private sector.¹⁹ But CBP has promulgated regulations that are incompatible with the FIPPs and the Port's principles. CBP has been able to exempt its systems of records in which it stores facial images from the provisions of the Privacy Act, which would otherwise provide individuals rights to access records, accounting for disclosures, and civil remedies.²⁰ CBP's practices contravene the very principles the Port has stated it is committed to upholding.²¹

Indeed, our state has sent a clear message against Washington's collaboration with CBP. Over the past two years, Washington's state legislature has passed the Keep Washington Working Act and the Courts Open to All Act, which together prohibit state agencies, local law enforcement, and court stakeholders from collaborating with CBP.²²

Therefore, the Port would actually have more power to follow its own principles and better align with statewide work in Washington by rejecting collaboration with CBP in its procurement and implementation of facial recognition systems.

Concerned constituents and organizations representing immigrants, people of color, religious minorities, and gender minorities continue to urge the Port to reject participation in CBP's face surveillance program. Leading up to the March 10th hearing, many of us asked the Commission to delay the vote, given the lack of transparency and public engagement in the decision-making process.²³ Many people could not attend the hearing in person or by teleconference, given the urgent nature of the COVID-19 public health crisis.²⁴ Instead of voting no, or at the very least, delaying the vote, Port Commissioners kept biometrics on the agenda and unanimously voted to collaborate with CBP and approve a \$5.7 million project to procure and implement facial recognition systems.

¹⁷ *March 10, 2020 – Port of Seattle Commission Regular Meeting*, *supra* note 1.

¹⁸ *Biometric Air Exit Business Requirements Version 2.0*, U.S. CUSTOMS AND BORDER PROTECTION, at 9, Item 8 (Jan. 2020), <https://papersplease.org/wp/wp-content/uploads/2020/03/Biometric-Air-Exit-Business-Requirements-Version-2.0.pdf>.

¹⁹ Pam Dixon, *A Brief Introduction to Fair Information Practices*, WORLD PRIV. F. (Dec. 19, 2007),

<https://www.worldprivacyforum.org/2008/01/report-a-brief-introduction-to-fair-information-practices/>.

²⁰ Edward Hasbrouck, *DHS exempts dossiers used for "targeting" from the Privacy Act*, PAPERS, PLEASE (Feb. 8, 2010),

<https://papersplease.org/wp/2010/02/08/dhs-exempts-dossiers-used-for-targeting-from-the-privacy-act/>.

²¹ *Motion 2019-13: A Motion of the Port of Seattle Commission*, PORT OF SEATTLE (Dec. 10, 2019),

https://www.portseattle.org/sites/default/files/2019-12/Motion%202019-13__Biometrics%20Principles.pdf.

²² See *E2S.B 5497, Keep Washington Working (2019)*, <http://lawfilesexxt.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5497-S2.SL.pdf?q=20200401125832>, and *SHB 2567, Courts Open to All (2020)*,

<http://lawfilesexxt.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/2567-S.SL.pdf?q=20200401094053>

²³ Jennifer Lee, *Tell the Port Commission to Push Back Against Face Surveillance*, ACLU OF WASH. (Mar. 9, 2020), <https://www.aclu-wa.org/story/tell-port-commission-push-back-against-face-surveillance>.

²⁴ *Coronavirus disease (COVID-2019) situation reports*, WHO, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/> (last accessed March 31, 2020).

We urge you to reject collaboration in CBP's face surveillance program and reverse the decision to authorize the procurement of facial recognition systems. Especially given the financial impact of the COVID-19 crisis on the Port, Commissioners should prioritize critical Port infrastructure and pandemic responses, not help CBP build and implement a face surveillance system that undermines the Port's own principles and the wishes of Washingtonians. The Port has a critical choice, and it must make the choice that protects people's civil liberties.

Signed,

American Civil Liberties Union of Washington
Asian Counseling and Referral Service
Casa Latina
Center for Human Rights and Privacy
Council on American-Islamic Relations Washington
Densho
Electronic Frontier Foundation
El Centro de la Raza
Electronic Privacy Information Center
Entre Hermanos
Faith Action Network
Fight for the Future
InterIm Community Development Association
Japanese American Citizens League – Seattle Chapter
John T. Williams Organizing Committee
La Resistencia
Legacy of Equality Leadership & Organizing
MAPS-AMEN (American Muslim Empowerment Network)
MediaJustice
Oakland Privacy
OneAmerica
Puget Sound Sage
Real Change News
Surveillance Technology Oversight Project - S.T.O.P.
The Identity Project
Transit Riders Union
Urban League
Washington Association of Criminal Defense Lawyers
Washington Civil and Disability Advocate
Washington Defender Association