Request for Information (RFI) on Public and Private Sector Uses of Biometric Technologies: Responses

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This comment regards the past and present use, and misuse, of facial recognition technology by Customs and Border Protection (CBP), and the impact and harm of such misuse on members of the public. This comment is submitted by a member of the public and addresses topic numbers 1, 3, 4, and 6.

Background information on CBP’s use of facial recognition is widely available. The agency directs members of the public passing through its checkpoints to have pictures of their faces taken by automated kiosks, or by cameras mounted to the booths at which their agents interact with members of the public.

The agency consistently represents, in posted signage and in sworn testimony to Congress (for example, to the Committee on Homeland Security on July 10, 2019 >https://www.youtube.com/watch?v=JFnGJva8aU< ), that for US citizens participation in these facial recognition programs is voluntary. Yet repeated experience across several airports and several years time shows that individuals declining to take part are harassed, intimidated, subject to selective profiling, or even told that they have no choice.

I travel extensively both for business and for personal reasons, thus I frequently pass through CBP checkpoints. I consistently decline to have my picture taken. My reasons for doing so are several fold.

I do not trust any assurances regarding retention or non retention of photographs taken. Numerous historical examples (e.g. the illegal use of census data for Japanese internment during the second world war) demonstrate the general fact that assurances from government agencies regarding the retention and use of data cannot be relied upon.

I do not trust that such photographs will not fall into the hands of third parties. Countless mass data breaches, including several stunning losses by government agencies of their most closely guarded secrets (for example, loss by the Office of Personnel Management (OPM) of more than 22 million records about government employees and job applicants, including highly sensitive information about holders of security clearances, and the loss by the National Security Agency (NSA) of possibly their entire arsenal of computer exploits to a group known as the Shadow Brokers) demonstrate that no institution inside or outside of government is currently capable of adequately securing its data.

I value the privacy of images of my face inherently. I am most especially concerned about possible future use of these photographs, whether retained by CBP or by a third party, to aid in facial recognition identifying myself in large databases of photos such as those available online, or in feeds from surveillance cameras, thus compromising the privacy of my movements and other important privacies of life.
I submit these reasons for the benefit of OSTP, however I should not need to explain these reasons to CBP. If they intend to maintain, including in sworn testimony to Congress, that participation in their facial recognition programs is “voluntary”, then an individual choosing not to participate should not be interrogated regarding his reasons for making that choice. Yet this has been my lived experience.

I have encountered the booth mounted cameras three times, once in ATL in 2019, and twice in IAH in 2021. All three times the CBP agent repeatedly and aggressively questioned my reasons for declining to have my picture taken and impugned this choice.

The most recent time, the agent stated explicitly that I would be sent to “secondary” if I made this choice. When I politely indicated that my decision was to opt out of having my photo taken, the agent followed through with this threat. I was detained for approximately one hour and a half (making me late for my connecting flight), my bags were searched, and I was subjected to further and lengthy interrogation, including as to my reasons for not wanting my picture taken. As the first agent made quite explicit, none of this would have happened had I relented and allowed my photo to be taken.

In addition to the booth mounted cameras, I have encountered the kiosks dozens of times. In nearly every case, travelers were being directed to use the kiosks with no indication given that there existed an option not to use them, other than in fine print on a notice on the screen of the kiosks themselves. In each case, I would indicate that I choose not to use the kiosks.

In about half of these instances, I was told that use of the kiosks were mandatory. In such cases, I pointed out that a notice presented on the screen of the kiosks explicitly states that their use is voluntary.

In some cases the person directing me to the kiosk and informing me that their use is mandatory would read the statement from the screen or consult a supervisor or coworker before allowing me to proceed. In several cases I was detained for several minutes as a result of choosing not to use the kiosk, and in several cases I was subjected to an aggressive and sometimes lengthy interrogation regarding my reason for declining to use the kiosk.

This experience highlights an obvious best practice procedure relating to the use of facial recognition technology, which has not been and is not being adhered to by CBP: where participation in a facial recognition program is supposed to be voluntary, individuals choosing not to participate should not be harassed, intimidated, subject to selective profiling, punished, or told that participation is mandatory.

Claims from parties using facial recognition technology that participation in such use is voluntary should be closely scrutinized. Statistics regarding number of people choosing to opt-out should be viewed skeptically and with an eye to the possibility that many people do not know that they have this option, and that many other people may realize or suspect that they will be harassed or intimidated if they choose to exercise such option.