

119TH CONGRESS
2D SESSION

S. _____

To limit the Department of Homeland Security’s use of facial recognition.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To limit the Department of Homeland Security’s use of
facial recognition.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ICE Out of Our Faces
5 Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) BIOMETRIC SURVEILLANCE SYSTEM.—The
9 term “biometric surveillance system” means com-
10 puter software that performs facial recognition or

1 other biometric recognition in real time or on a re-
2 cording or photograph.

3 (2) COVERED IMMIGRATION OFFICER.—The
4 term “covered immigration officer” means any indi-
5 vidual who is—

6 (A) authorized to perform immigration en-
7 forcement functions; and

8 (B)(i) an officer, employee, agent, con-
9 tractor, or subcontractor of U.S. Customs and
10 Border Protection;

11 (ii) an officer, employee, agent, contractor,
12 or subcontractor of U.S. Immigration and Cus-
13 toms Enforcement; or

14 (iii) an individual authorized, deputized, or
15 designated to perform immigration enforcement
16 functions pursuant to section 287(g) of the Im-
17 migration and Nationality Act (8 U.S.C.
18 1357(g)).

19 (3) FACIAL RECOGNITION.—The term “facial
20 recognition” means an automated or semi-automated
21 process that—

22 (A) assists in identifying an individual,
23 capturing information about an individual,
24 matching an individual to a list or otherwise
25 generating or assisting in generating surveil-

1 lance or identification information about an in-
2 dividual based on the physical characteristics of
3 the individual's face; or

4 (B) logs characteristics of an individual's
5 face, head, or body to infer emotion, associa-
6 tions, activities, or the location of an individual.

7 (4) OTHER BIOMETRIC RECOGNITION.—The
8 term “other biometric recognition”—

9 (A) means an automated or semi-auto-
10 mated process that—

11 (i) assists in identifying an individual,
12 capturing information about an individual,
13 or otherwise generating or assisting in gen-
14 erating surveillance information about an
15 individual based on the characteristics of
16 the individual's gait or other immutable
17 characteristic ascertained from a distance;

18 (ii) uses voice recognition technology;

19 or

20 (iii) logs characteristics referred to in
21 clause (i) or (ii) to infer emotion, associa-
22 tions, activities, or the location of an indi-
23 vidual; and

1 (B) does not include identification based
2 on fingerprints or palm prints not ascertained
3 from a distance.

4 (5) VOICE RECOGNITION TECHNOLOGY.—The
5 term “voice recognition technology” means an auto-
6 mated or semi-automated process that assists in
7 identifying or verifying an individual based on the
8 characteristics of an individual’s voice.

9 **SEC. 3. PROHIBITION ON THE USE OF BIOMETRIC SURVEIL-**
10 **LANCE BY U.S. IMMIGRATION AND CUSTOMS**
11 **ENFORCEMENT OR U.S. CUSTOMS AND BOR-**
12 **DER PROTECTION.**

13 (a) IN GENERAL.—It shall be unlawful for any cov-
14 ered immigration officer to acquire, possess, access, or use
15 in the United States—

16 (1) any biometric surveillance system; or
17 (2) information derived from a biometric sur-
18 veillance system operated by another entity.

19 (b) BIOMETRIC DATA DELETION.—All information
20 collected by a covered immigration officer for use in, or
21 derived from, a biometric surveillance system, including
22 information collected before the date of the enactment of
23 this Act, shall be deleted not later than 30 days after the
24 date of the enactment of this Act.

25 (c) JUDICIAL INVESTIGATIONS AND PROCEEDINGS.—

1 (1) ADMISSIBILITY.—Except in a judicial inves-
2 tigation or proceeding alleging a violation of this sec-
3 tion, information obtained in violation of this section
4 is not admissible by the Federal Government in any
5 criminal, civil, administrative, or other investigation
6 or proceeding.

7 (2) CAUSE OF ACTION.—

8 (A) IN GENERAL.—A violation of this sec-
9 tion constitutes an injury to any individual ag-
10 grieved by such violation.

11 (B) RIGHT TO SUE.—An individual ag-
12 grieved by a violation of this section may insti-
13 tute proceedings against the Federal Govern-
14 ment whose covered immigration officer is al-
15 leged to have violated this section for the relief
16 described in subparagraph (D) in any court of
17 competent jurisdiction.

18 (C) ENFORCEMENT BY STATE ATTORNEYS
19 GENERAL.—The chief law enforcement officer
20 of a State, or any other State officer authorized
21 by law to bring actions on behalf of the resi-
22 dents of a State, may bring a civil action, as
23 parens patriae, on behalf of the residents of
24 such State in an appropriate district court of
25 the United States to enforce this Act, whenever

1 the chief law enforcement officer or other State
2 officer determines the interests of the residents
3 of such State have been or are being threatened
4 or adversely affected by a violation of this sec-
5 tion.

6 (D) RELIEF.—In a civil action authorized
7 under subparagraph (B) in which the plaintiff
8 prevails, the court may award—

9 (i) actual damages;

10 (ii) punitive damages;

11 (iii) reasonable attorneys' fees and
12 costs; and

13 (iv) any other relief, including injunc-
14 tive relief, that the court determines to be
15 appropriate.

16 (d) CIVIL PENALTIES.—Any covered immigration of-
17 ficer who violates this section may be subject to retraining,
18 suspension, termination, or any other penalty, as deter-
19 mined in an appropriate tribunal, and subject to applicable
20 due process requirements.

21 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion may be construed to preempt or supersede any Fed-
23 eral, State, or local law absent actual conflict with the lim-
24 itations on covered immigration officers imposed by this
25 section.