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April 27, 2022

Sent via Regular Mail & EMAIL

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Commissioner Cami Feek
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Dear Governor Inslee, Commissioner Feek, Daniel Zeitlin, Julie Lord, Joy Adams, Teresa Eckstein:

We are writing to request an actual and verifiable halt to the Employment Security Department's use of automated facial recognition. We have serious concerns about ESD's current and planned adoption of software for automated facial recognition from the company ID.me, as set forth in more detail below. We believe that: (1) the software imposes technological barriers to use that are impossible for many claimants to overcome, (2) there is substantial risk of a high error rate, particularly among people of color, women, and seniors, and (3) there is substantial risk of exposure of claimants' personal information.

We write from our long experience (1) assisting claimants who are appealing benefit denials at the Unemployment Law Project, (2) advocating for low-income state residents needing civil legal aid at the Northwest Justice Project, and (3) protecting everyone from laws and policies that infringe on constitutional rights at the American Civil Liberties Union of Washington.

We do not write on a blank slate. Many organizations and individuals have already raised serious concerns about ID.me. These include, for example:

-The Internal Revenue Service, which, less than three months after announcing it would be using ID.me’s automated facial recognition software, determined that it would transition away from working with ID.me.¹

-At least eighteen members of the United States Senate, both Republicans and Democrats.²

-The Oversight Committee and the Select Subcommittee on the Coronavirus Crisis of the United States House of Representatives, which expressed “serious concerns about the efficacy, privacy, and security of ID.me’s technology” in a joint letter to the company on April 14, 2022.³

-A coalition of 47 organizations, applauding the IRS decision to cease use of ID.me and calling on other state and federal agencies to follow suit.⁴

-Community Legal Services of Philadelphia, through its issue brief, ID.me Presents Barriers for Low Income People Seeking Unemployment Insurance and Other Government Benefits.⁵

Multiple aspects of ID.me render its use problematic. These include:

Technological Barriers. Of great concern to us is the inequity of imposing methods of identity verification that may be manageable for people to carry out when they have smartphones, access to and familiarity with office technology, advanced education, proficiency in English, and no disabilities—but that are difficult, sometimes impossible, for claimants lacking one or more of those advantages. “Requiring access to reliable internet service and a quality webcam or smartphone camera will undoubtedly exclude numerous older Americans as well as people from low income and other marginalized communities.”⁶

The joint letter of the two U.S. House Committees determined that the “ID.me process creates disproportionate obstacles for older individuals who may face challenges using new technology,

¹ <https://www.forbes.com/sites/ashleaebeling/2022/02/07/irs-to-drop-facial-scan-idme-verification-for-online-accounts/>; <https://www.irs.gov/newsroom/irs-announces-transition-away-from-use-of-third-party-verification-involving-facial-recognition>; <https://www.irs.gov/newsroom/irs-unveils-new-online-identity-verification-process-for-accessing-self-help-tools>

² https://www.finance.senate.gov/imo/media/doc/id_me_letter_to_rettig.pdf;
<https://www.finance.senate.gov/imo/media/doc/Wyden%20irs%20id%20me%20letter.pdf>;
<https://www.finance.senate.gov/imo/media/doc/021522%20Letter%20to%20DOL%20on%20Digital%20Identity.pdf>

³ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf>

⁴ <https://epic.org/wp-content/uploads/2022/02/Coalition-Letter-ID.me-and-Face-Verification-Feb2022.pdf>

⁵ <https://clsphila.org/wp-content/uploads/2021/11/IDme-issue-brief-final-11-2-2021.pdf>

⁶ <https://epic.org/wp-content/uploads/2022/02/Coalition-Letter-ID.me-and-Face-Verification-Feb2022.pdf> at 2; see also “No Internet, No Unemployment”, <https://www.cpr.org/2021/07/07/colorado-unemployment-idme-glitch-internet-access/>.

residents of rural and low-income areas without high-speed internet access, and households that share technological devices for school, remote work, or job hunting.”⁷

Community Legal Services of Philadelphia observed that, in addition to the problem that many of its clients do not have computers or smartphones at all, ID.me does not work with smartphones not bought from major vendors, sim cards, or pre-paid phones. Moreover, “[e]ven for those who have or get access to the needed technology, they often lack the necessary skills to use it in a manner that results in their verifying their identities through ID.me.”⁸

At a time when Washington has declared its commitment to equity and diversity, adoption of automated facial recognition technology represents a stark swerve off-course. Blocking eligible claimants from receiving unemployment benefits carries great cost. It can mean leaving thousands of people in Washington to struggle without a modest basic income after experiencing job loss, despite having been promised the protection of unemployment insurance. In a recession or state of emergency, that effect would be multiplied.

Campaigns to adopt aggressive identity verification by state agencies often fixate on the cost of fraud to the state or employers and the benefits of preventing fraud. Less attention is directed to the impact upon claimants who are owed benefits following a job loss, but are barred from receiving them.

Disadvantaging desperate families and workers in service of fraud prevention is diametrically opposed to Washington law, which specifically requires that the laws governing unemployment insurance be construed liberally (not narrowly) to prevent suffering from unemployment, the “greatest hazard of our economic lives.”⁹

High Error Rates. A study by the U.S. Department of Commerce’s National Institute of Standards and Technology examined 189 facial recognition software algorithms. Although results differed across algorithms, the study revealed a number of disturbing tendencies. These included (1) higher rates of false positives for African American, Asian, and Native American faces among U.S.-developed algorithms, (2) higher rates of false positives for women than for men, (3) higher rates of false positives for seniors, and (4) higher rates of false negatives for Asian and Native American faces.¹⁰ As the letter by the 47-member coalition noted, a state agency receiving federal funds that engages in practices that discriminate on the basis of race, as many of these algorithms do, violates Title VI of the Civil Rights Act.¹¹

⁷ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf> at 5.

⁸ <https://clsphila.org/wp-content/uploads/2021/11/IDme-issue-brief-final-11-2-2021.pdf> at 3-4.

⁹ RCW 50.01.010

¹⁰ <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>; <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>; see also <https://www.finance.senate.gov/imo/media/doc/021522%20Letter%20to%20DOL%20on%20Digital%20Identity.pdf> at 1; <https://epic.org/wp-content/uploads/2022/02/Coalition-Letter-ID.me-and-Face-Verification-Feb2022.pdf> at 1-2.

¹¹ <https://epic.org/wp-content/uploads/2022/02/Coalition-Letter-ID.me-and-Face-Verification-Feb2022.pdf> at 1; see also <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf> at 3.

Pennsylvania’s experience with ID.me demonstrates the flaws in the ID.me software. In November 2020, the state attempted to use ID.me to verify the identity of 400,000 claimants. Only 12.5% were verified. While this figure includes both claimants who were unable to use the system for technological reasons and claimants where the system failed to work properly (as well as, potentially, some number of fraudulent applications), the 12.5% success rate does not speak well of ID.me. By September 2021, over 12,900 attempts by claimants to use ID.me had resulted in failure.¹² The joint letter of the two U.S. House Committees also noted “the large volume of data that ID.me regularly misidentifies as fraudulent.”¹³

Inability of Claimants to Get Assistance from ID.me. The problems of (1) unemployment benefit claimants who lack the appropriate technology or the technological expertise to use ID.me, and (2) errors committed by ID.me’s software, described above, are exacerbated by the fact that ID.me “frequently has unacceptably long wait times for users to be screened by humans after being rejected by the company’s automated scanning system.”¹⁴ “[U]sers of ID.me that needed to verify their identity with a human operator have faced significant obstacles, wait times lasting hours, and delays lasting days or weeks.”¹⁵

The joint letter of the two U.S. House Committees detailed the failings of ID.me in this regard, noting, as examples:

- applicants in Colorado “faced up to ten hour waits for help with the company’s verification process”;
- applicants in Nevada spent “seven to eight hours per day waiting for ID.me support, only to be disconnected when they reached the end of the line”;
- applicants in Florida were “locked out of their unemployment accounts for up to six weeks, with bills piling up in the interim”;
- in many cases, including 1.4 million accounts in California, “people who were already collecting unemployment insurance saw their payments suddenly frozen after ID.me’s rollout in their states.”¹⁶

Exposure of Claimants’ Personal Information. When 15 U.S. Senators wrote to the IRS Commissioner, expressing concern about IRS collaboration with ID.me, they noted that “ID.me requires a trove of personal information,” including not only government-issued photo i.d., W-2, DHS trusted traveler card, and utility bills, but also a video “selfie” and biometric data, including “fingerprints, voiceprints, hand scans, facial geometry recognition and iris or retina recognition.” They noted that “[t]here is ample reason to be concerned about an IRS contractor’s ability to

¹² <https://clsphila.org/wp-content/uploads/2021/11/IDme-issue-brief-final-11-2-2021.pdf> at 3.

¹³ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf> at 4.

¹⁴

<https://www.finance.senate.gov/imo/media/doc/021522%20Letter%20to%20DOL%20on%20Digital%20Identity.pdf> at 1.

¹⁵ <https://epic.org/wp-content/uploads/2022/02/Coalition-Letter-ID.me-and-Face-Verification-Feb2022.pdf> at 3. See also <https://clsphila.org/wp-content/uploads/2021/11/IDme-issue-brief-final-11-2-2021.pdf> at 4-5

¹⁶ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf> at 5; see also id. at 1-2.

safely manage, collect and store this unprecedented level of confidential, personal data.”¹⁷ Others have also expressed concern about the risk of data breaches that could provide access to such sensitive information.¹⁸

Outsourcing Identity Verification to the Private Sector. We agree with the many commentators who have expressed concern about the government outsourcing identity verification to the private sector. As Senators Brown, Warren, and Wyden expressed it, “[q]uite simply, the infrastructure that powers digital identity, particularly when used to access government websites, should be run by the government, and certainly not a company with a track record of misleading the public.”¹⁹

In fact, a public alternative advocated by the Senators and others exists. The General Services Administration operates login.gov, which can be made available to state unemployment agencies such as ESD.²⁰

Inconsistent ESD Communications and Actions Regarding Use of ID.me. Our concerns about ESD use of automated facial recognition are amplified by the fact that ESD’s statements and actions regarding its use and intended use of ID.me’s software have not been consistent.

In March, following the IRS decision to halt use of ID.me,²¹ ID.me stated that it would make available to government entities a new option to verify identity without using automated facial recognition.²² ESD then assured stakeholder groups, including representatives of the undersigned, that its proposed use of automated facial recognition would not begin until June 2022. ESD invited the stakeholder groups to submit comments while the proposed use of automated facial recognition was being considered.²³

Upon further inquiry this month, we were told by ESD that only a pilot project of ID.me’s automated facial recognition has been carried out so far (last fall) and that further use of ID.me has been suspended. ESD also said it is now using only manual methods of verifying identity.

¹⁷ https://www.finance.senate.gov/imo/media/doc/id_me_letter_to_rettig.pdf at 1-2.

¹⁸ See, e.g., <https://epic.org/wp-content/uploads/2022/02/Coalition-Letter-ID.me-and-Face-Verification-Feb2022.pdf> at 3.

¹⁹

<https://www.finance.senate.gov/imo/media/doc/021522%20Letter%20to%20DOL%20on%20Digital%20Identity.pdf> at 1. On the subject of ID.me’s misleading the public, see, e.g.,

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf> at 2-3, 6; <https://epic.org/wp-content/uploads/2022/02/Coalition-Letter-ID.me-and-Face-Verification-Feb2022.pdf> at 2 nn.9, 10.

²⁰ Id. at 1, 2; <https://www.finance.senate.gov/imo/media/doc/Wyden%20irs%20id%20me%20letter.pdf> at 2; see also March 14, 2022 Unemployment Insurance Tech Coordinating Coalition Letter to National Economic Council (attached) (Government “should strongly prefer publicly administered solutions—like Login.gov—administered by state agency staff.”).

²¹ <https://www.irs.gov/newsroom/irs-announces-transition-away-from-use-of-third-party-verification-involving-facial-recognition>

²² <https://insights.id.me/press-releases/ID.me-announces-options-for-selfie-deletion-and-identity-verification-without-automated-facial-recognition/>

²³ ESD representatives speaking at the March 17, 2022, meeting of the Employment Security Advisory Committee (ESAC) Equity Diversity and Inclusion Subcommittee

Despite these assurances, it appears ESD is continuing to use automated facial recognition. Claimants have shared with us selfie images requested by ESD, which suggest that ESD is already actively using automated facial recognition. Indeed, ESD 's website²⁴ still links claimants to ID.me, without any indication that use of automated facial recognition is on hold.

In addition, a detailed potential plan to use ID.me automated facial recognition was issued by ESD to members of the ESAC equity subcommittee in March. While, in theory, the plan would offer alternatives bypassing ID.me (phone lines and reasonable accommodation options), the accompanying flowchart shows that all of the other pathways to identity verification—including in-person verification at WorkSource or UPS and "human-based selfie check"—involve collection of biometrics, again indicating that ESD proposes to employ widely automated facial recognition.²⁵

Moreover, we have not seen any indication that ESD has complied with Chapter 43.386 RCW or claimed an exemption from its requirements. That chapter requires filing with the Technology Services Board (TSB) a notice of intent to procure a facial recognition service, taking specific steps to obtain public review and comment, and producing an accountability report to the TSB.

It is also troubling to learn, as the ACLU recently discovered, that in Oregon and several other states, ID.me denied the use of automated facial recognition, and state officials obfuscated their use of ID.me, even as the technology was being quietly employed on unemployment benefit claimants.²⁶

Whatever stage of adoption of automated facial recognition Washington has now reached, we believe it is a mistake to embrace this flawed technology for the purpose of preventing fraud in unemployment insurance programs. The technological barriers, the high error rate, the technology's biased handling of facial images of people of color, the risk of data breach exposing claimants' to identity theft, and the dangers of surveillance measures in general are grave concerns.

We request that ESD make clear the specific automated facial recognition methods it is employing to verify claimant identity as well as the agency's exact policy and intentions on use of automated facial recognition. We urge ESD to be candid with the public about its practices, policies, and intentions.

Conclusion

As the two U.S. House Committees noted, “it does not appear that [states that contracted with ID.me to process unemployment insurance applications] and their unemployed residents were

²⁴ <https://esd.wa.gov/unemployment/ID.me>. Accessed April 20, 2022.

²⁵ See ESD PowerPoint slide, "Identity Verification Pathways and Tiers of Support," presented at March 2022 ESAC Equity Subcommittee meeting (attached)

²⁶ <https://www.cyberscoop.com/ID.me-aclu-oregon-states-messaging-facial-recognition/>

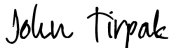
well served by ID.me's products."²⁷ Instead, "ID.me's performance failures and technological requirements may have undermined the effectiveness, efficiency, and equity of pandemic-related unemployment assistance programs."²⁸

While the mandate of preventing fraud is important, it is not necessary to achieve this goal by sacrificing fair access to benefits. Claimants and their families rely on this promised assistance to meet basic needs during periods of unemployment, automated facial technology carries alarming risks, and effective alternatives exist.

In light of ID.me's many failures in other states, and in light of the significant harm visited on unemployed people in those states whose access to benefits was wrongfully delayed or denied by ID.me, no good reason exists for Washington to work with ID.me. We call on ESD to cease its consideration of ID.me, place a hold on the use of automated facial recognition technology for identity verification, and provide written confirmation that it has taken these steps.

Sincerely,

DocuSigned by:



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John Tirpak, Executive Director
Unemployment Law Project


DocuSigned by:



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Allyson O'Malley-Jones, Staff Attorney
Northwest Justice Project

DocuSigned by:



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Jennifer Lee, Technology & Liberty Project Manager
American Civil Liberties Union of Washington

Attachments:

March 14, 2022 Unemployment Insurance Tech Coordinating Coalition Letter to National Economic Council;

"Identity Verification Pathways and Tiers of Support," ESD Presentation to ESAC EDI Subcommittee March 2022

²⁷ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf> at 5.

²⁸ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20Hall-ID.me%20re%20Use%20of%20FRT.pdf> at 4.

ATTACHMENT 1

March 14, 2022 Unemployment Insurance Tech Coordinating Coalition
Letter to National Economic Council

To: Brian Deese, Director, National Economic Council
Seth Harris, Deputy Director, National Economic Council Gene Sperling,
America Rescue Plan Act Coordinator

From: Unemployment Insurance Tech Coordinating Coalition

Date: March 14, 2022

Subject: Suggestions on proposed executive order on fraud prevention

The Unemployment Insurance (UI) Tech Coordinating Coalition welcomes the Biden-Harris Administration's commitment to issue an executive order (EO) to "prevent and detect identity theft involving public benefits, while protecting privacy and civil liberties and preventing bias that results in disparate outcomes." We especially welcome the prospect of "new actions to support the victims of identity fraud," in this case, the large number of UI claimants who have had their identities misused by criminal syndicates.

We offer five additional ideas for consideration as the EO is drafted related to UI.

1. **Focus state-led fraud investigations on serious criminal syndicates:** The EO should make serious criminal syndicates the explicit focus of anti-fraud activities rather than misunderstandings, errors, and confusion that led to individual overpayments. Giving states overbroad discretion may result in measures to penalize individual claimants, further frustrating benefit access, especially for those from the BIPOC community.

One advocate explained to us an older worker's UI benefits remained "locked" for months because their identity was not adequately verified. They were unable to complete the verification process due to the technology requirements. In another case, a state advocate reported that low-income persons and others in marginalized communities lack access to non-digitized means of verifying identity and those alternative methods are often difficult to access.

2. **Make UI fraud victims whole:** The EO should ensure that UI applicants wrongly victimized by identity fraud have remedies that make them whole. State employment agencies should be required to provide status notifications about their identity theft cases to victims of identity fraud. The resources available in U.S. Attorneys' offices should be available to victims to provide the opportunity to be heard during the investigation and to receive resource assistance, including financial support, consistent with federal law and policy.

3. **Assign the Department of Labor to lead on UI anti-fraud efforts:** Public benefits in general are broad in scope. For individual programs such as UI, however, it is critical that the Department of Labor has a leadership role in determining the standards to apply in pursuing cases. DOL is already administering a \$2 billion American Rescue Plan Act appropriation that has fraud prevention as one of its goals. Efforts to address fraud in UI administration should take DOL's activities into account and be well coordinated.

4. **Support the development of better tools for identity verification:** Developing tools people can use to better control, protect, and assert their identity online is one of the best ways to prevent identity fraud. The EO should accelerate the creation of secure, equitable, inclusive, and privacy-protecting digital identity services people can use to prove who they are when applying for benefits online. The EO should strongly prefer publicly administered solutions—like Login.gov—administered by state agency staff, and tools that allow people to “reuse” the identity verification process to get a driver's license or state ID card, rather than requiring them to repeat an intrusive new process.

5. **Require better targeted anti-identity fraud measures:** Claimants need to be allowed to apply for benefits before they are required to verify their identity. The EO should clarify that identity verification must take place after an application is filed, not as a requirement to file. Once an application is filed, there are methods to flag claims with a greater probability of identity fraud that can be examined for enhanced ID verification.

We appreciate the opportunity to offer these suggestions and look forward to working with the administration in addressing this important concern.

Sincerely,

Marcus Courtney & Adam
Bobrow Co-Convenors
Unemployment Insurance Tech Coordinating Coalition

About the UI Tech Coalition: The Unemployment Insurance (UI) Tech Coordinating Coalition formed in November 2020 to identify solutions to backlogged claims, fraud, and other tech issues in the UI system that resulted in millions of workers not receiving billions in aid. The Coalition brings together advocates, experts, technologists, unions, and workforce agency executives to propose solutions to policy makers at the White House, Department of Labor, Congress, and in the states.

ATTACHMENT 2

"Identity Verification Pathways and Tiers of Support"
ESD Presentation to ESAC EDI Subcommittee March 2022

Identity Verification Pathways and Tiers of Support

