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Sent via Email

Governor Jay Inslee
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Dear Commissioner Feek, Daniel Zeitlin, Caitlyn Jekel, Joy Adams, Teresa Eckstein:

Cc: Governor Inslee

Thank you for meeting with us on May 24, 2022, to discuss our concerns with the Employment Security Department's use of ID.me and automated facial recognition technology. We ask you to confirm the following statements we heard at the meeting: (1) ESD is not presently working with ID.me or using automated facial recognition in any capacity, and (2) ESD is not intending to implement any ID.me tools or automated facial recognition in June or on any specific timeline.

We also heard and ask you to confirm that if ESD seeks to use automated facial recognition and/or ID.me, ESD will: (1) comply with RCW 43.386; (4) not use one-to-many identification; (5) not use fingerprints, voice recognition, hand scans, and retinal scans; (6) not store any biometric information; and (7) create an opportunity for claimants to opt out of automated facial recognition.

As we shared at the meeting and in our prior letter sent on April 27, 2022,¹ we continue to have serious concerns about any use of automated facial recognition and/or ID.me by ESD. In particular, we want to emphasize that ESD should not proceed with ID.me, for, among other things, the following reasons:

1. ID.me's software imposes technological barriers to use that are impossible for many claimants to overcome. We also are unconvinced that ID.me has solved the customer service issues discussed on pages 2-4 of the April 27, 2022 letter, which are especially important with respect to those claimants who face technological barriers.²
2. There is a substantial risk of a high error rate with ID.me. In November 2020, Pennsylvania attempted to use ID.me to verify the identity of 400,000 claimants, and only 12.5% were verified. Among the 87.5% of cases that were not verified, the state and ID.me were unable to separate fraudulent claims from legitimate ones. While it is unknown how many of the failed attempts were actually fraudulent claims, community legal aid services reported receiving large numbers of cases where real people had been unable to have their identities verified through ID.me.³
3. There is a likelihood of particularly higher error rates, with ID.me specifically and with facial recognition generally, when used on people of color, women, trans individuals, non-binary individuals, and seniors.⁴ Multiple studies have found the technology is up to 100 times more likely to misidentify Black or Asian faces compared with white faces.⁵ Black women are misidentified at significantly higher rates—nearly 38% compared to that of white men at 0.8%.⁶ This technology is even less reliable when identifying transgender individuals and entirely inaccurate when used on nonbinary individuals.⁷
4. Outsourcing a core government function to a private company that collects a vast amount of highly sensitive personal information about millions of Americans creates a substantial risk of exposure of claimants' personal information. ID.me collects large amounts of biometric data including face and voice prints, government documents, and other identifying information such as social security number, military service record, and data from telecommunications networks, credit card bureaus, and financial institutions. According to ID.me's privacy policy, that information will be retained for up to three years after a person closes their account. The company's privacy policy allows it to retain a person's selfie image and faceprint even after they have requested deletion "as needed to comply with our legal obligations or to help prevent fraud." This overbroad exception is one of many that raises concerns about ID.me accountability to members of the public who may be forced to use ID.me's non-transparent and unaccountable service in order to access critical benefits.

¹ <https://www.aclu-wa.org/docs/joint-letter-idme-facial-recognition-software>

² Id. at 2-4.

³ [IDme-issue-brief-final-11-2-2021.pdf \(clsphila.org\)](#)

⁴ [Many Facial-Recognition Systems Are Biased, Says U.S. Study - The New York Times \(nytimes.com\)](#)

⁵ <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>

⁶ <http://proceedings.mlr.press/v81/buolamwini18a.html>

⁷ <https://www.colorado.edu/today/2019/10/08/facial-recognition-software-has-gender-problem>

5. ID.me has a track record of being untruthful.⁸ Moreover, as a private company, it is not subject to the transparency requirements of a government agency. ID.me claimed for months that it used facial recognition only for one-to-one image comparisons, but in January 2022, it admitted that it also performs “one-to-many” searches against a larger database of photographs. This revelation raises many unanswered questions. For example, it is unclear how many one-to-many facial recognition matches are being conducted, what the error rates are, and if those error rates differ by race or gender. Recently, ID.me denied the use of automated facial recognition in Oregon and several other states, even as the technology was being quietly used on unemployment benefits claimants.⁹

We also emphasize that allowing claimants to opt out of facial recognition does not ameliorate our concerns with ESD using ID.me or any automated facial recognition service. In addition to the concerns raised above, requiring people to opt out in order to avoid being face surveilled poses serious equity concerns. People with less time and fewer resources to understand how their information will be used and navigate opt-out procedures will inevitably have greater difficulty opting out.

We appreciate your willingness to continue this conversation and consider alternative approaches. We would welcome the opportunity to meet and further discuss the aforementioned concerns.

Sincerely,

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

David Tarshes, Staff Attorney
Northwest Justice Project

John Tirpak, Executive Director
Unemployment Law Project

⁸ On the subject of ID.me misleading the public, see, e.g., <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-04-14.CBM%20JEC%20to%20HallID.me%20re%20Use%20of%20FRT.pdf> at 2-3, 6; <https://epic.org/wp-content/uploads/2022/02/Coalition-LetterID.me-and-Face-Verification-Feb2022.pdf> at 2 nn.9, 10.

⁹ <https://www.aclu-wa.org/docs/joint-letter-idme-facial-recognition-software> See ESD PowerPoint slide, “Identity Verification Pathways and Tiers of Support,” presented at March 2022 ESAC Equity Subcommittee meeting