

United States Senate

February 15, 2022

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Rettig,

We appreciate the Internal Revenue Service's (IRS) announcement earlier last week that the agency will be transitioning away from ID.me's facial recognition technology.¹ However, we remain concerned about any continued engagement between the IRS and ID.me and the use of facial recognition technology during this transition. Specifically, we are concerned about whether taxpayers will be offered a meaningful choice to protect their biometric data, whether ID.me will properly manage the vast amount of biometric data provided by taxpayers, and whether there has been substantial oversight of this facial recognition technology since the launch of ID.me verification at the IRS last summer. Given the gravity of the threat to civil rights and civil liberties by this technology, especially against persons of color and immigrants, we ask that:

- The IRS and ID.me clarify whether facial recognition will remain an option for verification during the 2022 filing season. If it will remain an option, we request the IRS clarify how it will ensure taxpayers using ID.me—especially last-minute filers—are not forced to rely on facial recognition technology as their only practical option to avoid long wait times for live-video verification.
- The IRS and ID.me provide a list of all federal, state, or local law enforcement agencies that would have been provided access—or may have access in the future—to biometric data provided through the IRS' ID.me verification system, no later than Friday, February 25, 2022.
- The IRS and ID.me contact taxpayers who have uploaded biometric information to ID.me to inform them of their ability to delete their selfie or photo account immediately after the service is available, and provide them with plain language instructions—in multiple languages—on how to complete the process.

Congress has repeatedly expressed concern with the development of an unconstrained and pervasive surveillance infrastructure, fueled by systems like ID.me.² The Project on Government Oversight (POGO), a leading oversight watchdog, has cautioned that the use of this type of technology often plays an outsized role in law enforcement investigations, despite serious flaws

¹ Internal Rev. Serv., *IRS Announces Transition Away from Use of Third-Party Verification Involving Facial Recognition*, IR-2022-27 (Feb. 7, 2022), <https://www.irs.gov/newsroom/irs-announces-transition-away-from-use-of-third-party-verification-involving-facial-recognition>.

² See, e.g. *About Face: Examining the Department of Homeland Security's Use of Facial Recognition and Other Biometric Technologies Hearing Before the H. Comm. on Homeland Sec.*, 116th Cong. (2020); *Facial Recognition Technology: Its Impact on our Civil Rights and Liberties Hearing Before the H. Comm. on Oversight and Reform*, 116th Cong. (May 22, 2019).

that can lead to wrongful arrests and civil rights violations.³ POGO notes that there have already been three documented cases where individuals were wrongfully arrested—with two instances where individuals were wrongfully imprisoned—based on facial recognition technology.⁴ Moreover, a study by the National Institute of Standards and Technology (NIST) in 2019 found that Asian American and Black individuals were up to 100 times more likely to be misidentified than white men.⁵

Facial recognition technology has also been used by DHS, ICE, and CBP to surveil, target, arrest, and detain immigrants.⁶ The ACLU points out that in 2017, for example, DHS and ICE used this type of technology to tag, track, locate, and arrest 400 people in an operation to target the family members and caregivers of unaccompanied minor children.⁷

Despite well-documented concerns with this technology—especially for individuals who have poor internet service at home, rely on computers in public libraries, use older phones, or for whom English is not their first language⁸—the IRS required the use of this technology to access and review advanced child tax credit (CTC) payment information.⁹ Nearly 35 million families received the advanced Child Tax Credit last year, including numerous Black, Hispanic, Asian, and Native American families,¹⁰ and many immigrant families using an Individual Taxpayer Identification Number (ITIN).¹¹

³ See Jake Laperruque, *Key Facts About Face Recognition for Policymaking*, Project on Gov. Oversight (POGO) (Aug. 21, 2021), <https://www.pogo.org/analysis/2021/08/key-facts-about-face-recognition-for-policymaking/>.

⁴ Kashmir Hill, *Wrongfully Accused by an Algorithm*, N.Y. TIMES (Jun. 24, 2020), <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>; K. Holt, *Facial Recognition Linked to a Second Wrongful Arrest by Detroit Police*, Engadget (July 10, 2020), <https://www.engadget.com/facial-recognition-false-match-wrongful-arrest-224053761.html>; Kashmir Hill, *Another Arrest, and Jail Time, and Bad Facial Recognition Match*, N.Y. TIMES (Dec. 29, 2020), <https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html>.

⁵ PATRICK GROTH, ET AL., FACE RECOGNITION VENDOR TEST (FRVT) PART 3: DEMOGRAPHIC EFFECTS, NAT'L INST. STANDARDS. & TECH. (NIST) (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/nist.ir.8280.pdf> (Finding that false positive rates were highest among West and East African and East Asian persons and lowest among Eastern European individuals (unless the technology was developed in China). That “the effect is generally large, with a factor of 100 more false positives between countries.” When used by domestic law enforcement that the “highest false positives are American Indians, with elevated rates in African American and Asian populations.” And finding that false positives were higher in women than men and the elderly.)

⁶ See, e.g., Catie Edmondson, *ICE Used Facial Recognition to Mine State Driver's License Databases*, N.Y. TIMES, (July 7, 2019), <https://www.nytimes.com/2019/07/07/us/politics/ice-drivers-licenses-facial-recognition.html>.

⁷ ACLU *supra* note 8.

⁸ See Shawn Donnan & Dina Bass, *How Did ID.me Get Between You and Your Identity?*, BLOOMBERG BUSINESSWEEK (Jan. 20, 2022), <https://www.bloomberg.com/news/features/2022-01-20/cybersecurity-company-id-me-is-becoming-government-s-digital-gatekeeper>.

⁹ See IRS, 2021 CHILD TAX CREDIT AND ADVANCED CHILD TAX CREDIT PAYMENTS—TOPIC K: VERIFYING YOUR IDENTITY TO VIEW YOUR PAYMENTS (Feb. 3, 2022), <https://www.irs.gov/credits-deductions/2021-child-tax-credit-and-advance-child-tax-credit-payments-topic-k-verifying-your-identity-to-view-your-payments> (“If you are a new user, you must create an ID.me account at the IRS and verify your identity, ID.me is a trusted credential service provider selected to support IRS.gov login services.”).

¹⁰ See Michael Karpman, et al., *Who Has Received Advanced Child Tax Credit Payments, and How Were the Payments Used?* Urb. Inst. (Nov. 2021), <https://www.urban.org/sites/default/files/publication/105023/who-has-received-advance-ctc-payments-and-how-were-the-payments-used.pdf>.

¹¹ INTERNAL REV. SERV. (IRS), IRS: FAMILIES NOW RECEIVING SEPTEMBER CHILD TAX CREDIT PAYMENTS, IR-20210188 (Sept. 15, 2021), <https://www.irs.gov/newsroom/irs-families-now-receiving-september-child-tax-credit-payments>.

We look forward to receiving a timely response to our requests and will continue to closely monitor the IRS' use of ID.me technology—or any identification verification technology.

Sincerely,



Robert Menendez
United States Senator



Cory A. Booker
United States Senator



Catherine Cortez Masto
United States Senator



Alex Padilla
United States Senator