

BACKGROUND

Face Recognition and Driver's License Photo-Sharing

OCTOBER 2019

For many years, the Federal Bureau of Investigation (FBI) and U.S. Immigration and Customs Enforcement (ICE) have asked states to use their own face (or facial) recognition systems to search photos in their department of motor vehicles (DMV) databases.¹ They have also obtained photos from state DMV databases through automated systems such as Nlets Photo Sharing, state networks such as Cal-Photo, or by simply requesting photo-sharing.

This use of DMV photos for law enforcement and immigration enforcement purposes is part of a larger context in which local, state, and federal law enforcement agencies, including ICE, have long relied on driver's license databases to obtain information about drivers and car owners, including their addresses.²

This backgrounder provides information about ICE's use of DMV photos and states' face-recognition technology as well as some steps that states can take to restrict access to photos in their DMV databases and to limit how photos can be used.

What is face recognition?

Face-recognition technology **compares** one photographic image against many photos stored in a database.³ Searches are run against *all* the images in the DMV database, not simply the photos of particular individuals suspected of wrongdoing or of violating immigration laws. Here's how the Georgetown Law Center on Privacy and Technology explains **face recognition**:

Face recognition is the automated process of comparing two images of faces to determine whether they represent the same individual.

Before face recognition can identify someone, an algorithm must first find that person's face within the photo. This is called face detection. Once detected, a face is "normalized" — scaled, rotated, and aligned so that every face that the algorithm

¹ See *Documents Obtained Under Freedom of Information Act: How U.S. Immigration & Customs Enforcement and State Motor Vehicle Departments Share Information* (NILC, May 2016), www.nilc.org/ice-dmvs-share-information/; *Untangling the Immigration Enforcement Web: Basic Information for Advocates about Databases and Information-Sharing Among Federal, State, and Local Agencies* (NILC, Sep. 2017), www.nilc.org/untangling-immigration-enforcement-web/; and Harrison Rudolph, "ICE Searches of State Driver's License Databases," *Medium/Center on Privacy & Technology at Georgetown Law*, July 8, 2019, <https://medium.com/center-on-privacy-technology/ice-searches-of-state-drivers-license-databases-4891a97d3e19>.

² *Untangling the Immigration Enforcement Web*, note 1 (above), pp. 16–18.

³ *Street-Level Surveillance: A Guide to Law Enforcement Spying Technology* (Electronic Frontier Foundation), <https://www.eff.org/issues/street-level-surveillance>. <https://www.eff.org/pages/face-recognition>.

LOS ANGELES (Headquarters)
3450 Wilshire Blvd. #108 – 62
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax



WASHINGTON, DC
P.O. Box 34573
Washington, DC 20043
202 216-0261
202 216-0266 fax

processes is in the same position. This makes it easier to compare the faces. Next, the algorithm extracts features from the face — characteristics that can be numerically quantified, like eye position or skin texture. Finally, the algorithm examines pairs of faces and issues a numerical score reflecting the similarity of their features.⁴

How does ICE obtain driver's license photos for immigration enforcement?

- ICE may obtain driver's license photos as an approved user of state systems such as **Cal-Photo** or from the many states that participate in **Nlets Photo Sharing**.⁵
- The **FBI has agreements** with at least 16 states to allow searches of their driver's license photos through the states' face-recognition systems.⁶
- **ICE asks states** to use their face-recognition technology to match a photo against photos in their DMV databases.⁷
- **ICE Enforcement and Removal Operations (ERO)** field offices are in regular communication with state DMVs outside of the formal automated networks. Individual ERO agents have informal relationships with state DMVs that allow them to request and obtain information and photos in driver's license and vehicle registration databases and to collaborate with DMVs in immigration enforcement.⁸

What's wrong with ICE's use of photo-sharing and face-recognition technology?

- **No federal laws govern** the use of face-recognition technology.⁹
- Photo-sharing and the use of face-recognition software are carried out without drivers' consent or knowledge.
- **ICE's use of face recognition** is shrouded in secrecy. An ICE spokesperson refused to answer questions about how the agency uses face-recognition searches, saying that

⁴ Clare Garvie, Alvaro Bedoya, and Jonathan Frankle, *The Perpetual Lineup: Unregulated Police Face Recognition in America* (Center on Privacy & Technology at Georgetown Law, Oct. 18, 2016), <https://www.perpetuallineup.org/>. <https://www.perpetuallineup.org/background>.

⁵ Cal-Photo: *How California Driver's License Records Are Shared with the Department of Homeland Security* (NILC & ACLU of Northern California, Dec. 2018), www.nilc.org/wp-content/uploads/2019/01/DMV-PRA-report-2018-12.pdf, pp. 4, 9; Nlets: "Our Members" (map on Nlets website), <https://www.nlets.org/our-members/grantmaps?mapid=d26b4e70-934e-11e3-9a61-00155d003202>. Nlets is a state-owned nonprofit. According to its website, "Nlets links together and supports every state, local and federal law enforcement, justice and public safety agency for the purposes of sharing and exchanging critical information." "What We Do" (Nlets website), <https://www.nlets.org/about/what-we-do>.

⁶ *Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy* (U.S. Govt. Accountability Office, GAO-16-267, May 2016), pp. 47–48, <http://www.gao.gov/assets/680/677098.pdf>. See also Clare Garvie, Alvaro Bedoya, and Jonathan Frankle, *The Perpetual Lineup: Unregulated Police Face Recognition in America* (Center on Privacy & Technology at Georgetown Law, Oct. 18, 2016), <https://www.perpetuallineup.org/>.

⁷ *Untangling the Immigration Enforcement Web*, note 1 (above), pp. 18–19.

⁸ *Documents Obtained Under Freedom of Information Act*, note 1 (above).

⁹ Reis Thebault, "California Could Become the Largest State to Ban Facial Recognition in Body Cameras," *Washington Post*, Sep. 11, 2019, <https://www.washingtonpost.com/technology/2019/09/12/california-could-become-largest-state-ban-facial-recognition-body-cameras/>.

“investigative techniques are generally considered law-enforcement sensitive.”¹⁰ The FBI has belatedly and incompletely issued system of records notices and privacy impact assessments (PIAs),¹¹ but U.S. Department of Homeland Security (DHS) agencies such as ICE have not done even that.

- **Face-recognition technology is often inaccurate**, especially when applied to images of women and people of color.¹²
- The use of a state’s face-recognition software affects U.S. citizens as well as noncitizens. When a state runs its face-recognition software against driver’s license photos at ICE’s request, **all photos in the database are searched**.¹³

How can you find out about the mechanisms by which DHS agencies obtain and use driver’s license photos in your state?

- The mechanisms by which agencies within DHS obtain and use photos stored in DMV databases may differ from state to state. Potential means of obtaining the information include public records act requests (PRAs) or conversations with the DMV or the state attorney general’s office.
- **Determine whether** your state runs face-recognition searches against photos in DMV databases at the request of ICE or the FBI, or if the federal agencies can conduct their own face-recognition searches against the databases.¹⁴ **Determine whether** your state shares driver’s license photos through automated systems such as Nlets Photo Sharing or based on a simple request.¹⁵ These searches and photo-sharing could be restricted or prohibited administratively in some states.

What can your state do to limit ICE access to and use of photographs and images?

States can take affirmative steps to protect the privacy of DMV information, including photographs:

- Be transparent about the mechanisms through which ICE obtains photos from the state’s DMV databases and uses the state’s face-recognition technology.

¹⁰ Drew Harwell, “FBI, ICE Find State Driver’s License Photos Are a Gold Mine for Facial-Recognition Searches,” *Washington Post*, July 7, 2019, <https://www.washingtonpost.com/technology/2019/07/07/fbi-ice-find-state-drivers-license-photos-are-gold-mine-facial-recognition-searches/>.

¹¹ *Face Recognition Technology: DOJ and FBI Have Taken Some Actions in Response to GAO Recommendations to Ensure Privacy and Accuracy, but Additional Work Remains* (U.S. Govt. Accountability Office, GAO-19-579T, June 4, 2019), <https://www.gao.gov/assets/700/699489.pdf>.

¹² Jake Laperruque, *Unmasking the Realities of Facial Recognition* (Project On Government Oversight, Dec. 5, 2018), <https://www.pogo.org/analysis/2018/12/unmasking-the-realities-of-facial-recognition/>.

¹³ “ICE Searches of State Driver’s License Databases,” note 1 (above).

¹⁴ Alexis Arnold, “What States Do to Protect Undocumented Immigrants’ Driver’s License Information,” *HuffPost*, July 12, 2019, https://www.huffpost.com/entry/undocumented-immigrants-drivers-license-state-privacy-laws_n_5d2788cae4b0bd7d1e197225.

¹⁵ Nlets map, note 5 (above).

- States can use *administrative* measures to limit ICE access to DMV information and can prohibit the disclosure of driver's license photos or the use of face-recognition technology at ICE's request.
- Enact *legislation* that prohibits the use of face-recognition technology and protects the confidentiality of photos provided in applying for a license.
 - Enact legislation that specifically prohibits your state from running face-recognition searches against photos in the DMV databases at the request of ICE, the FBI, or other federal agencies or that allows the federal agencies to run their own face-recognition searches against the databases.
 - Enact legislation that imposes restrictions on transmission of driver's license photos through automated systems or based on a request from a law enforcement agency, such as a requirement for a judicial warrant or a court order.
- Monitor and audit ICE's use of DMV photos.