To create a moratorium on the government use of facial recognition technology until a Commission recommends the appropriate guidelines and limitation for use of facial recognition technology.

IN THE SENATE OF THE UNITED STATES

Mr. Merkley (for himself and Mr. Booker) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To create a moratorium on the government use of facial recognition technology until a Commission recommends the appropriate guidelines and limitation for use of facial recognition technology.

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 “Ethical Use of Facial
5 Recognition Act”.

6 SEC. 2. FINDINGS.

7 Congress finds the following:
(1) Facial recognition is a technology that is increasingly being used and marketed to law enforcement agencies across the United States without appropriate debate or consideration of its impacts.

(2) Facial recognition has been shown to disproportionately impact communities of color, activists, immigrants, and other groups that are often already unjustly targeted.

(3) Facial recognition has a history of being inaccurate, particularly for women, young people, African Americans, and other ethnic groups.

(4) There is evidence that facial recognition has been used at protests and rallies, which could chill speech.

(5) It is critical that facial recognition not be used to suppress First Amendment related activities, violate privacy, or otherwise adversely impact individuals’ civil rights and civil liberties.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term “Commission” means the congressional commission established under section 6.
(2) Covered government official.—The term “covered government official” means any officer, employee, or contractor of a Federal agency.

(3) Facial recognition technology.—The term “facial recognition technology” means the automated or semi-automated process that assists in identifying or verifying an individual based on the characteristics of an individual’s face.

(4) Federal agency.—The term “Federal agency” has the meaning given the term “agency” in section 551 of title 5, United States Code.

(5) Implementation bill.—The term “implementation bill” means a bill—

(A) consisting of the legislative language prepared under section 6(e)(1)(A); and

(B) introduced under section 6(e)(1)(B).

SEC. 4. LIMITS ON USE OF FACIAL RECOGNITION TECHNOLOGY.

A covered government official may not set up any camera to be used in connection with facial recognition technology, access or use information obtained from facial recognition technology, or import facial recognition technology to identify an individual in the United States without a warrant until the date on which Congress enacts legislation implementing the guidelines for use of facial
recognition technology established by the Commission under section 6.

SEC. 5. ENFORCEMENT.

(a) CIVIL ACTION.—Any person aggrieved by a violation of section 4 by a covered government official may bring a civil action for injunctive or declaratory relief in the appropriate district court of the United States.

(b) LIMITATION ON FEDERAL GRANTS.—Notwithstanding any other provision of law, no Federal funds may be used by a State or unit of local government to invest in facial recognition software, purchase facial recognition technology services, or acquire images for use in facial recognition technology systems.

SEC. 6. COMMISSION.

(a) IN GENERAL.—There is established a congressional commission to consider and create guidelines for the use of facial recognition technology in the United States.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 13 members, of whom—

(A) 1 member shall be appointed by the President, and such member shall serve as the Chairperson of the Commission;

(B) 3 members shall be appointed by the Majority Leader of the Senate;
(C) 3 members shall be appointed by the Minority Leader of the Senate;

(D) 3 members shall be appointed by the Speaker of the House of Representatives; and

(E) 3 member shall be appointed by the Minority Leader of the House of Representa-
tives.

(2) EXPERTISE OF MEMBERS.—

(A) IN GENERAL.—Members appointed under paragraph (1) shall represent each of the following groups:

(i) Law enforcement and immigration enforcement officials.

(ii) Privacy and technology experts.

(iii) Communities most impacted neg-
atively by the use of facial recognition technology.

(B) REQUIREMENT.—Not fewer than 7 members of the Commission shall be representa-
tives of the group described in subparagraph (A)(iii).

(c) DUTIES.—The Commission shall—

(1) consider and create guidelines and limita-
tions for the use of facial recognition technology in
the United States to ensure that the use of such technology does not—

(A) create a constant state of surveillance of individuals in the United States that does not allow for a level of reasonable anonymity; 

(B) produce biased or inaccurate results; 

(C) disproportionately impact a racial, ethnic, national origin group, or other protected class of individuals; 

(D) impinge on the privacy, free speech, or due process rights of individuals in the United States; or 

(E) limit the ability of law enforcement officers to track down missing and exploited children and trafficked individuals; and 

(2) consider and recommend the appropriate rules for governing the use and limitations on both government and commercial use of facial recognition technology, including—

(A) whether there are appropriate uses for facial recognition technology without a warrant by government officials in a private or public space; 

(B) what are the appropriate uses and limitations for commercial use, including what
rights individuals should have relating to the
data produced and the use of their likeness in
facial recognition technology;

(C) in what circumstances, if any, govern-
ment officials should be permitted to use facial
recognition without a warrant;

(D) what rules should govern how and
where images may be acquired through facial
recognition technology, taking into account indi-
viduals’ reasonable expectations of privacy or
anonymity;

(E) in what situations individuals should
be able to opt out or required to opt in to the
use of facial recognition technology;

(F) what safeguards need to be put in
place to prevent abuse of facial recognition
technology;

(G) what are appropriate remedies when
facial recognition technology is misused; and

(H) what rights individuals have relating
to the data produced and the use of their like-
ness in facial recognition technology.

(d) REPORT.—Not later than 18 months after the
date of enactment of this Act, the Commission shall sub-
mit a report to Congress that contains—
(1) the guidelines required to be created under subsection (c);

(2) recommendations for implementation of such guidelines; and

(3) any minority views or recommendations of the Commission.

(e) IMPLEMENTATION.—

(1) INTRODUCTION.—Not later than 90 days after the date on which the report required under subsection (d) is submitted to Congress—

(A) Congress shall prepare legislative language to implement the recommendations included in such report; and

(B) the legislative language prepared under subparagraph (A)—

(i) shall be introduced in the Senate (by request) not later than the third day on which the Senate is in session after the date on which the Commission approves the legislative language by the Majority Leader of the Senate or by a Member of the Senate designated by the Majority Leader of the Senate; and

(ii) shall be introduced in the House of Representatives (by request) not later
than the third day on which the House of Representatives is in session after the date on which the Commission approves the legislative language by the Majority Leader of the House of Representatives or by a Member of the House of Representatives designated by the Majority Leader of the House of Representatives.

(2) Consideration in the House of Representatives.—

(A) Referral and reporting.—Any committee of the House of Representatives to which an implementation bill is referred shall report it to the House not later than 3 after the date on which the implementation bill is introduced in the House of Representatives. If a committee fails to report an implementation bill within that period, it shall be in order to move that the House of Representatives discharge the committee from further consideration of the bill. Such a motion shall not be in order after the last committee authorized to consider the bill reports it to the House of Representatives or after the House of Representatives has disposed of a motion to discharge the bill. The previous
question shall be considered as ordered on the motion to its adoption without intervening motion except 20 minutes of debate equally divided and controlled by the proponent and an opponent. If such a motion is adopted, the House of Representatives shall proceed immediately to consider the implementation bill in accordance with subparagraphs (B) and (C). A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(B) PROCEEDING TO CONSIDERATION.—

After the last committee authorized to consider an implementation bill reports it to the House of Representatives or has been discharged from its consideration, it shall be in order to move to proceed to consider the implementation bill in the House of Representatives. Such a motion shall not be in order after the House of Representatives has disposed of a motion to proceed with respect to the implementation bill. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is disposed of shall not be in order.
(C) CONSIDERATION.—An implementation bill shall be considered as read. All points of order against an implementation bill and against its consideration are waived. The previous question shall be considered as ordered on an implementation bill to its passage without intervening motion except 2 hours of debate equally divided and controlled by the proponent and an opponent and one motion to limit debate on an implementation bill. A motion to reconsider the vote on passage of an implementation bill shall not be in order.

(3) EXPEDITED PROCEDURE IN THE SENATE.—

(A) COMMITTEE CONSIDERATION.—An implementation bill introduced in the Senate under paragraph (1) shall be jointly referred to the committee or committees of jurisdiction, which committees shall report the bill and with a favorable recommendation, an unfavorable recommendation, or without recommendation not later than 3 days after the date on which the implementation bill is introduced. If any committee fails to report an implementation bill within that period, that committee shall be automatically discharged from consideration of
the bill, and the implementation bill shall be placed on the appropriate calendar.

(B) MOTION TO PROCEED.—Notwithstanding rule XXII of the Standing Rules of the Senate, it is in order, not later than 3 days of session after the date on which an implementation bill is reported or discharged from all committees to which it was referred, for the Majority Leader of the Senate or the Majority Leader’s designee to move to proceed to the consideration of the implementation bill. It shall also be in order for any Member of the Senate to move to proceed to the consideration of the implementation bill at any time after the conclusion of such 3-day period. A motion to proceed is in order even though a previous motion to the same effect has been disagreed to. All points of order against the motion to proceed to an implementation bill are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of an implementation bill is agreed to, the imple-
mentation bill shall remain the unfinished business until disposed of.

(C) CONSIDERATION.—All points of order against an implementation bill and against consideration of the implementation bill are waived. Consideration of an implementation bill, including amendments thereto, and debatable motions and appeals in connection therewith shall not exceed a total of 30 hours which shall be divided equally between the Majority and Minority Leaders or their designees. A motion further to limit debate on an implementation bill is in order, shall require an affirmative vote of a majority of the Members duly chosen and sworn, and is not debatable. Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal. All time used for consideration of an implementation bill, including time used for quorum calls and voting, shall be counted against the total 30 hours of consideration.

(D) LIMITATIONS ON CONSIDERATION.—A motion to postpone, or a motion to recommit the implementation bill or a motion to proceed
to the consideration of other business is not in order.

(E) Rulings of the Chair on Procedure.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to an implementation bill shall be decided without debate.

(4) Consideration by the Other House.—

(A) In General.—If, before passing an implementation bill, one House receives from the other the implementation bill—

(i) the implementation bill of the other House shall be referred to a committee; and

(ii) the procedure in the receiving House shall be the same as if no implementation bill had been received from the other House.

(5) Rules to Coordinate Action with Other House.—

(A) Treatment of Implementation Bill of Other House.—If the Senate fails to introduce or consider an implementation bill under this section, the implementation bill of
the House of Representatives shall be entitled
to expedited floor procedures under this section.

(B) Treatment of Companion Measures in the Senate.—If following passage of
an implementation bill in the Senate, the Senate then receives the implementation bill from
the House of Representatives, the House-passed implementation bill shall not be debatable. The
vote on passage of the implementation bill in the Senate shall be considered to be the vote on
passage of the implementation bill received from the House of Representatives.

(6) Vetoes.—If the President vetoes an implementation bill, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.