

May 15, 2020

VIA ELECTRONIC MAIL

Ms. E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance
Palais des Nations
CH-1211 Geneva 10
Switzerland
Email: racism@ohchr.org

RE: Submission regarding 2020 thematic report to the General Assembly

Dear Special Rapporteur:

The Electronic Frontier Foundation (EFF) welcomes the United Nations Office of the High Commissioner on Human Rights' (OHCHR) call for submissions for a report on "Race, Borders, and Digital Technologies" that will address the risks of racial discrimination arising from the use of digital technologies in the context of border enforcement and administration policies. We also welcome the publication of our submission on the website of the Special Rapporteur. EFF has previously supported the work of OHCHR and other UN human rights bodies and experts to promote the right to privacy in the digital age.

Located in San Francisco, California, EFF is an international non-governmental organization with over 30,000 members worldwide, dedicated to the protection of human rights in the digital age. EFF engages in strategic litigation in the United States and works in a range of international and national policy venues to protect human rights and empower consumers. EFF is committed to challenging government surveillance arising from the use of digital technologies, especially when that surveillance targets vulnerable and marginalized communities.

In particular, EFF has vast expertise mapping, investigating, and litigating the use of digital surveillance technologies in the United States, and in more recent years, at the U.S.-Mexico border. Our Street-Level Surveillance project provides a clear picture of how law enforcement agencies deploy certain surveillance technologies in the United States. One of the efforts to come of that project is our Atlas of Surveillance: Southwestern Border Communities report, which maps the surveillance technologies used by local, state, and federal authorities in the 23 U.S. counties that border Mexico. Moreover, our litigation demonstrates how the government's use of digital surveillance technologies can affect fundamental rights, especially those of marginalized communities. EFF also has researched in-depth how law enforcement databases are often

used for immigration enforcement purposes and successfully advocated for restrictions to limit when criminal justice data may be used for immigration enforcement.

Street-Level Surveillance Project

EFF's Street-Level Surveillance project provides detailed explanations of how surveillance technologies used by law enforcement agencies in the United States work in practice. These technologies include face recognition, automated license plate readers, drones, body-worn cameras, and cell-site simulators, among others. The guides explaining each of these technologies were written for policymakers, diplomats, human rights defenders, public officials, civil society organizations, journalists, and defense attorneys, as well as members of the public concerned about the erosion of privacy. More information about the project is available at <https://www.eff.org/issues/street-level-surveillance>.

The Atlas of Surveillance: Southwestern Border Communities

In 2019, EFF partnered with the Reynolds School of Journalism at the University of Nevada, Reno to publish "The Atlas of Surveillance: Southwestern Border Communities," a report and database of more than 200 data points that document the types of surveillance technologies deployed by law enforcement in the 23 counties along the U.S.-Mexico border. The report also includes in-depth profiles of six counties in the border region: San Diego County, California; Pima and Cochise counties, Arizona; Doña Ana County, New Mexico; and El Paso and Webb counties, Texas. The research identified a heavy concentration of surveillance technology, even among smaller municipalities. A summary of our main findings is below, and the full report is available at <https://www.eff.org/pages/atlas-surveillance-us-mexico-border-communities>.

- **Biometrics:** We found that 31 law enforcement agencies in San Diego County, California, accessed face recognition technology through a regional partnership, accounting for more than 25,000 queries in 2018 alone. In January 2020, this program was terminated, following the passage of a statewide moratorium on law enforcement's use of mobile face recognition technology. In Texas and Arizona, law enforcement agencies are able to make face recognition requests through their states' respective departments of public safety. In Doña Ana County, New Mexico, the sheriff's office pursued face recognition cameras that are mounted on protective eyewear. Doña Ana County deputies, along with their counterparts in Cameron, Hidalgo, and El Paso counties in Texas, also use iris scanners in jails.
- **Operation Stonegarden:** Local law enforcement agencies along the border often acquire surveillance technologies through Operation Stonegarden, a federal program that funds local police that participate in border security operations. The Laredo Police Department in Texas, and the Yuma County Sheriff's Office and Marana Police Department in Arizona, have acquired automated license plate readers (ALPRs) through Operation Stonegarden. The Hidalgo County Sheriff's

Office, Hidalgo Police Department, Edinburg Police Department, and Pharr Police Department in Texas have used Stonegarden funds to purchase Skycop surveillance trailers, equipped with cameras and ALPRs. Meanwhile, the Webb County Sheriff's department used Operation Stonegarden funds to install 10 surveillance camera towers along its border with Mexico.

- **CBP Surveillance:** Our research maps out the county-by-county placement of a variety of surveillance systems operated by U.S. Customs and Border Protection (CBP) and one of its units, the U.S. Border Patrol. The agencies operate tethered surveillance blimps called "aerostats," some of which are permanently tethered and others of which can be relocated based on need. There are also a variety of surveillance towers throughout the region, often equipped with cameras, radars, and infrared sensors. In addition, the agencies deploy ground sensors, ALPRs, and drones.

Strategic Litigation on Border Surveillance in the United States

In 2017, EFF, the American Civil Liberties Union (ACLU), and ACLU of Massachusetts filed a civil lawsuit on behalf of eleven plaintiffs in federal district court in Massachusetts challenging the government's warrantless, suspicionless searches of cell phones, laptops, and other electronic devices at the U.S. border. We argued that such searches violate the right against search and seizure under the Fourth Amendment and the right to freedom of association under the First Amendment to the U.S. Constitution. In November 2019, the court held that the government must have reasonable suspicion that the electronic device contains digital contraband in order to conduct a border search. Although the court did not agree with our position that a judicial warrant is required for such searches, the court's ruling is the most rights-protective decision in the country on searches of electronic devices at the border. Through its ruling, the district court signaled that the government's invasion of people's digital rights at the border raises significant constitutional concerns. The case is currently up on appeal in the First Circuit Court of Appeals. Links to the district court decision and our briefs are available at <https://www.eff.org/cases/alasaad-v-duke>.

In addition, EFF has two ongoing Freedom of Information Act (FOIA) lawsuits regarding government use of digital technologies at the border.

- In 2019, EFF filed a lawsuit against the U.S. Department of Homeland Security (DHS) and its component agencies U.S. Immigration and Customs Enforcement (ICE) and CBP to obtain information about the agencies' warrantless use of GPS devices to track vehicles entering the United States. In 2012, the U.S. Supreme Court unanimously ruled that warrantless GPS tracking within the United States constitutes a search that must be justified under the Fourth Amendment. EFF found out about the DHS agencies' use of GPS devices at the border from public documents filed in a criminal case where the government admitted to this practice. More information about this FOIA lawsuit is available at

<https://www.eff.org/press/releases/eff-sues-dhs-uncover-information-about-border-agents-using-gps-devices-without>.

- Also in 2019, EFF filed a lawsuit against DHS and its component agencies ICE and CBP to obtain information about the agencies' use of Rapid DNA technology on migrant families at the U.S.-Mexico border. According to media reports, DHS and its component agencies began a pilot program in May 2019 to conduct Rapid DNA testing on families at the border to find individuals who were not related through a biological parent-child relationship and prosecute them for fraud. The pilot program quickly grew to seven locations at the U.S.-Mexico border. Rapid DNA testing has been criticized for failing to meet standards used by accredited DNA laboratories, with a Swedish report showing problems or errors in 36 percent of tests run on one particular Rapid DNA system. More information about this FOIA lawsuit is available at <https://www.eff.org/press/releases/eff-sues-dhs-obtain-information-about-agencys-use-rapid-dna-testing-migrant-families>.

Criminal Justice Databases and U.S. Immigration Enforcement

Since 2017, EFF has engaged with California lawmakers and law enforcement officials to limit how data held by the government may be used by federal agencies for purposes of immigration enforcement. EFF successfully advocated with the California Attorney General's Office to classify immigration enforcement as a form of "misuse" of the California Law Enforcement Telecommunications System (CLETS), a central network for criminal justice and driver data in the state. As a result of this change in policy, Enforcement and Removal Operations, the division of ICE responsible for deportations, was cut off from CLETS as well as regional databases. A post outlining our arguments and the history of EFF's advocacy on this issue is available at <https://www.eff.org/deeplinks/2019/12/california-doj-cuts-ice-deportation-officers-state-law-enforcement-database>.

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We hope these resources provide some insight into how digital surveillance technologies are being used at the U.S.-Mexico border and the ways in which these technologies disproportionately impact vulnerable and marginalized communities. Please do not hesitate to contact us at (415) 436-9333 ext. 204 or saira@eff.org should you need any further information.

Sincerely,



Saira Hussain, Staff Attorney
Katitza Rodriguez, International Rights Director
Dave Maass, Senior Investigative Researcher