Congress of the United States

Washington, DC 20515

January 24, 2024

The Honorable Merrick Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland:

We write to urge you to halt all Department of Justice (DOJ) grants for predictive policing systems until the DOJ can ensure that grant recipients will not use such systems in ways that have a discriminatory impact.

On April 15, 2021, many of us demanded that DOJ stop making grants to local, state, and tribal law enforcement agencies for purchasing predictive policing systems if DOJ could not ensure that those systems were "fully documented, subjected to [...] independent audits [...], and [provided] due process" for impacted individuals. The response from DOJ on January 14, 2022 made clear that current DOJ policies do not ensure that these objectives are met. This must change now.

Mounting evidence indicates that predictive policing technologies do not reduce crime. Instead, they worsen the unequal treatment of Americans of color by law enforcement. Predictive policing systems rely on historical data distorted by falsified crime reports and disproportionate arrests of people of color. As a result, they are prone to over-predicting crime rates in Black and Latino neighborhoods while under-predicting crime in white neighborhoods. The continued use of such systems creates a dangerous feedback loop: biased predictions are used to justify disproportionate stops and arrests in minority neighborhoods, which further biases statistics on where crimes are happening.

Under Title VI of the Civil Rights Act of 1964, it is unlawful for programs that the DOJ funds to discriminate on the basis of race, ethnicity, or national origin, even unintentionally. DOJ is required to periodically review whether grant recipients are complying with Title VI and to investigate promptly when any information indicates recipients are not in compliance. DOJ has been making grants for predictive policing systems since at least 2009. However, the January 2022 letter from DOJ did not indicate that the department has investigated any of the cities that received grants under the Edward Byrne Memorial Justice Assistance Grant Program over their use of discriminatory predictive policing software. What is more, DOJ has admitted that it does not even know how much money it has granted to law enforcement agencies for predictive policing systems. This is completely unacceptable.

Until DOJ can ensure that recipients of its grants are in compliance with Title VI, we demand that DOJ pause grants to state, tribal, and local law enforcement agencies that could be used to procure or implement predictive policing technologies (person-based or place-based). We also request that DOJ conduct a thorough inventory of all grants for these systems that it has made to law enforcement agencies since 2009.

Further, we request that the DOJ's forthcoming Presidentially-requested report on ways that "AI can enhance law enforcement efficiency and accuracy, consistent with protections for privacy, civil rights, and civil liberties" specifically investigate predictive policing technologies. The report should assess the accuracy and precision of predictive policing models across protected classes, their interpretability, and their validity, including any limits on assessing their risks posed by a lack of transparency from the companies developing
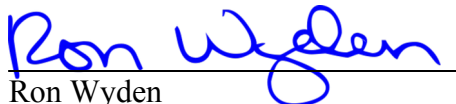
them. The report should recommend whether and how law enforcement agencies can use these technologies to enhance public safety without having discriminatory impacts.

After completing this report, if the DOJ continues to allow federal grant money to be used to purchase predictive policing software, we strongly urge you first to develop and implement the following policies, in order to fulfill the DOJ's long-ignored Title VI obligations:
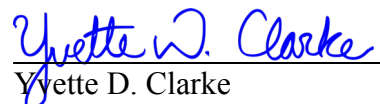
- Establish evidence standards for assessing whether using a particular predictive policing product in a particular way would have an unacceptable risk of discriminatory impact.
  - The standards should require tests of the validity and accuracy of each product across protected classes, among other risk assessments, as well as ongoing evaluations of the product's effects after law enforcement agents begin using it. Assessments should include measures of risks from improper use, both intentional and unintentional.
- Reject any grant application for a predictive policing system if the evidence standards have not been met for the particular product and proposed use.
- Regularly review grant recipients to determine whether they are using predictive policing systems in nondiscriminatory ways and with sufficient transparency to enable individuals and communities to challenge their use.
- Cut off grants for predictive policing technologies for recipients found to be out of compliance with Title VI.
- Maintain a complete and public record of all DOJ grants for predictive policing systems and the results of all compliance reviews.

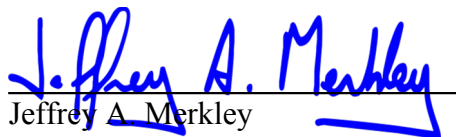Please respond to these requests in writing no later than March 1, 2024.

Sincerely,

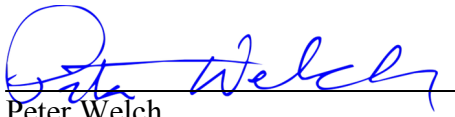Ron Wyden
United States Senator
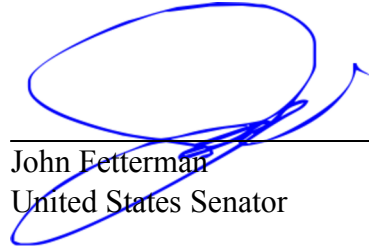
Yvette D. Clarke
Member of Congress
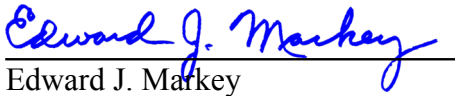

Jeffrey A. Merkley
United States Senator

Alex Padilla
United States Senator

Peter Welch
United States Senator

John Fetterman
United States Senator

Edward J. Markey
United States Senator