



U.S. Customs and Border Protection

India McKinney
Electronic Frontier Foundation
815 Eddy Street
San Francisco, California 94109

Dear Ms. McKinney:

Thank you for your letter dated February 15, 2018, expressing your concerns and requesting additional information regarding the biometric exit program U.S. Customs and Border Protection (CBP) is developing. I also appreciate your participation in the stakeholder outreach session CBP held in San Francisco, California on January 23, 2018.

CBP values the opportunity to meet with privacy advocates and stakeholders, such as our recent meeting in San Francisco, California, to provide updates on CBP's implementation of the biometric entry/exit system. I can assure you that CBP takes privacy obligations seriously and is committed to appropriately protecting the privacy of all travelers.

CBP's public website includes information about the biometric entry/exit program, including Frequently Asked Questions, Privacy Impact Assessments, and Congressional Testimonies. Many of the responses to the items in your letter can be found using the information provided at www.cbp.gov. To further promote transparency and accountability, CBP is providing the below responses and enclosed documents to address your questions.

A list of all the airports that currently participate in the biometric exit program.

- In addition to the airports outlined in CBP *Press Releases* and *Congressional Testimonies*, available at www.cbp.gov, CBP collaborates with airline and airport partners to integrate facial recognition as part of the boarding process at Orlando International Airport and the Los Angeles World Airport.

The legal analysis the agency is relying on to justify the collection of biometrics of U.S. citizens.

- CBP's current technical demonstrations relating to the biometric exit program permit U.S. citizens to request alternative procedures. If CBP does require the collection of biometric information from U.S. citizens in the future, CBP will be transparent with the public regarding the legal basis for the collection of such information.

An explanation of the locations where CBP will be providing meaningful and clear opt out notice to travelers (for example, at entry points, point-of-sale, ticket counters, security checkpoints, and boarding gates) as well as the specific language travelers can use to opt out of the biometric data collection program.

- CBP provides general notification of alternative procedures as well as signage locations in the Privacy Impact Assessments, published on www.dhs.gov/privacy, and through program information, readily available at www.cbp.gov. CBP Tear Sheets are also available to the traveling public, upon request.
- In the event that a U.S. citizen elects not to provide biometric information, an airline gate agent or a CBP Officer may manually verify the traveler's identity and the authenticity of the documentation.

Photographs of the language on signs explaining the procedures in participating airports, as well as photographs of the signage in-situ in the airports in question, as well as any additional information *about the opt-out process*.

- CBP has enclosed copies of the requested photographs with this letter. In addition, copies of airport signage as well as the *Biometric Exit Process Fact Sheet* can be found on www.cbp.gov.

Memoranda of Understanding between CBP, the participating airlines, the facial recognition "cloud verification" system vendor, and any other parties.

- CBP has enclosed redacted Memoranda of Understanding with this letter. These are examples based on agreements we have with airlines and airports.

Information about the algorithm CBP is using to compare photos (provided by NEC), as well as the accuracy information associated with that algorithm.

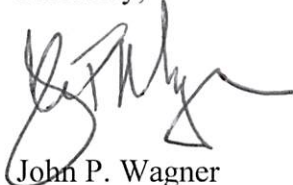
- CBP has a rigorous process to perform internal analysis of system performance in the operational environment on a daily, per flight basis.
- CBP also relies on research, test, and evaluation activities performed by National Institute of Standards and Technology (NIST) and U.S. Department of Homeland Security Science and Technology Directorate to inform the procurement process for algorithms.
- From January 1 through February 28, 2018, CBP processed approximately 359,000 travelers at eleven technical demonstration sites. Of those travelers, CBP has been able to successfully photograph and match 98.6% of travelers who have photos in U.S. Government systems. CBP will continue to actively monitor and refine the performance of this process in order to make incremental improvements.

Technological specifications for transferring data from point of collection to DHS and with vendors and airlines.

- Through the Privacy Impact Assessments, available at dhs.gov/privacy, CBP provides information regarding the handling of all personally identifiable information in a Cloud Service Provider environment. CBP also publishes information about CBP safeguards to secure data and reduce the potential that photos may be lost or stolen under the *Biometric Exit Frequently Asked Questions* on www.cbp.gov.

As CBP continues to make forward progress on the development and implementation of a full biometric entry-exit system, CBP will continue to publish Privacy Impact Assessments, which are readily accessible on www.dhs.gov/privacy. Once again, thank you for your concern as collaboration with all relevant stakeholders is vital to implementing a fully biometric entry-exit system. I look forward to future dialogue and holding the next privacy briefing session later this year.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. Wagner", written over a circular stamp or seal.

John P. Wagner
Deputy Executive Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection

Enclosed
Memoranda of Understanding
Photographs of Signs

MEMORANDUM OF UNDERSTANDING
BETWEEN AND AMONG
U.S. CUSTOMS AND BORDER PROTECTION
AND

(b) (4)

AND

(b) (4)

REGARDING (b) (4) BIOMETRIC PILOT PROJECT AT

(b) (4)

1. PARTIES

The Parties to this Memorandum of Understanding (MOU) are U.S. Customs and Border Protection (CBP), (b) (4) and (b) (4) (b) (4) (collectively, "the Parties").

11. PURPOSE

The purpose of this MOU is for the Parties to collaborate on (b) (4) proposed pilot program to utilize facial biometrics to verify the identity of travelers prior to their departure on (b) (4) international flights from (b) (4) in the United States to (b) (4).

111. AUTHORITIES

CBP is authorized to enter this MOU pursuant to 6 U.S.C. § 301a, and more generally, the Homeland Security Act of 2002, 6 U.S.C. §§ 112 et seq., as amended. Other legal authorities relevant to CBP's participation in the below-referenced pilot program include 8 U.S.C. § 1365b, 8 U.S.C. § 1731, and Section 8 of the Executive Order 13780. Protecting The Nation From Foreign Terrorist Entry Into The United States (Mar. 6, 2017).

(b) (4) represent and warrant that they each have the full power and authority to enter into this MOU and to carry out their respective requirements necessary for its implementation.

IV. RESPONSIBILITIES

(b) (4) working with (b) (4) its technology partner, intends to capture each traveler's photo, in accordance with CBP's specifications, during the boarding process for all (b) (4) international flights from (b) (4) in the United States to (b) (4) collection from the traveler of this information, use of (b) (4) to facilitate processing, and transmission to CBP, is based solely on its contractual relationship with the traveler and other independent authority of (b) (4) which may be obtained through disclosure and consent. (b) (4) is entitled to rely upon (b) (4) authority.

(b) (4) intends to capture the traveler's photo using (b) (4) provided technology and send it to CBP's Traveler Verification Service (TVS) which is expected to match the records biometrically within an agreed degree of accuracy and return a response to (b) (4) provided technology to indicate whether a traveler is clear to board or otherwise requires a manual review of travel documents to confirm identity. CBP's authority to inspect all outbound international travelers is not affected by this arrangement.

The Parties expect to begin the pilot on or before (b) (4) and continue for 45 calendar days. The pilot may be extended for an additional 45 calendar days upon written concurrence of the Parties. The Parties can mutually determine, in writing, to continue or discontinue the pilot per Section XI, below.

(b) (4) understand that CBP's involvement with (b) (4) pilot is for market research and exploratory purposes only. CBP intends to explore future projects to test the TVS in other use cases in collaboration with (b) (4) however, CBP is making no commitment to give (b) (4) any special consideration in any future acquisition. The Parties consent to discuss possible expansion of the pilot to additional flights and/or locations, provided the staff and background infrastructure are available.

CBP intends to:

- 1) Build a biometric gallery of facial images, obtained through various DHS databases, of all travelers intending to depart on the (b) (4) flight as identified through its Advance Passenger Information System (APIS) manifest submissions and CBP's facial image database;
- 2) Use the manifest to determine if CBP agent presence is required at the departure gate and coordinate with (b) (4) in advance to support its airport operations, as appropriate;
- 3) Provide (b) (4) with specifications for the collection and transmission of facial images from travelers to CBP;
- 4) Receive data transmitted by (b) (4) through the (b) (4) provided technology, namely facial photographs captured during the boarding process, and perform the facial matching of each photograph against the pre-established biometric gallery of manifested travelers;
- 5) For each match, transmit an electronic response through the (b) (4) provided technology to (b) (4) pilot boarding system, comprised only of the APIS numeric identifier, to indicate whether the traveler is cleared to continue with the boarding process or manual review by (b) (4) to confirm the traveler's identity is necessary;
- 6) Record a biometrically confirmed departure record for each traveler matched against the biometric gallery of expected travelers;

- 7) Use the (b) (4) captured photo for diagnostic and analytical purposes to evaluate the success of the pilot, to evaluate the potential for expansion of the pilot, and to consider how to improve the efficiency and effectiveness of CBP's biometric exit program; and
- 8) Protect (b) (4) captured photos received under this MOU in accordance with its applicable privacy and security policies and delete such photos from the TVS in accordance with applicable law and policy.

(b) (4) intends to:

- 1) Integrate traveler photo capture into the boarding process for flights within the scope of this MOU, in accordance with CBP's facial matching specifications;
- 2) For each traveler on the flight manifest, capture the traveler photo at boarding that conforms to CBP's facial matching specifications;
- 3) Transmit each conforming traveler photo to CBP's TVS per CBP's technical specifications;
- 4) Permit boarding of the traveler based in part on CBP's biometric facial matching response through the (b) (4) provided technology indicating that the traveler is cleared to continue;
- 5) Perform manual confirmation of each traveler's identity using that traveler's travel documents in the event CBP's response indicates that such review is necessary or as otherwise directed by CBP;
- 6) Consistent with normal operating procedures, promptly contact CBP following any manual review of a traveler's travel documents for which (b) (4) is not able to confirm the traveler's identity, to receive CBP instructions regarding the boarding of such traveler;
- 7) Delete biometric facial matching response provided by CBP in connection with this MOU within 14 days of capture; and
- 8) Develop and implement defined processes and instructions to undertake this pilot.

(b) (4) intends to:

- 1) Provide (b) (4) with technology to perform facial image capture and facilitate transmission to CBP's TVS per CBP's specification and (b) (4) defined process and instructions;
- 2) Provide technology to integrate with (b) (4) Departure Control System (DCS) to provide boarding details;
- 3) Provide a pass-through service to (b) (4) retaining no data, including but not limited to facial images or CBP TVS response transmissions, and excluding log-files, unless explicitly agreed among the Parties;
- 4) Provide (b) (4) with a passenger-facing screen with indicators to guide the boarding process in accordance with (b) (4) defined process and instructions; and
- 5) Provide (b) (4) with an agent application to allow (b) (4) to view traveler information, such as passenger name and seat number, to support (b) (4) customer experience requirements.

(b) (4) intend to develop a separate Scope of Work ("SOW") document describing the boarding process concepts being developed, implemented, and tested by (b) (4) in this pilot initiative, which will define detailed concepts, technical specifications, an implementation schedule, and operating procedures. (b) (4) will provide a copy of the SOW to CBP as a reference and provide updated copies to CBP as changes may be made. CBP may provide input to (b) (4) regarding the SOW, solely on the provisions that pertain to CBP and its operations. Receipt of the SOW by CBP shall not be construed as an endorsement of any kind.

V. PUBLIC COMMUNICATIONS

(b) (4) understand that CBP's involvement with (b) (4) pilot is for market research and exploratory purposes only. CBP is making no commitment to give (b) (4) any special consideration in any future acquisition. Through participation in this pilot initiative, CBP is not officially endorsing or approving the equipment, technology, or process developed by (b) (4). As such, (b) (4) agree not to use any statements or feedback provided by CBP regarding the implementation of the pilot for marketing purposes. All content for public communications regarding the pilot project, including the issuance of press releases or promotional activities, is to be approved by all Parties prior to such release to the public or media.

VI. POINTS OF CONTACT (POC)

Each Party is expected to provide specific contact information for their respective POC- listed below, by separate written communication, within 24 hours of the signing of this MOU, and provide updates of such information as necessary to ensure the information remains current for the duration of the pilot.

CBP Point of Contact

Director, Entry/Exit Policy and Planning
CBP
Entry/Exit Transformation Office
1300 Pennsylvania Ave
Washington, DC 20004

(b) (4) Point of Contact

(b) (4)

(b) (4) Point of Contact

(b) (4)

VII. OTHER PROVISIONS

Nothing in this MOU is intended to conflict with applicable U.S. law or the policies of the U.S. Department of Homeland Security (DHS) and CBP. If a term or provision of this MOU is inconsistent with such authority, then that term or provision shall be invalid, but the remaining terms, provisions, and conditions of this MOU shall remain in full force and effect.

VIII. IMPLEMENTATION

This MOU is to be implemented on the date of the last signature hereon by the Parties.

IX. FUNDS

Each Party is expected to be responsible for its own costs incurred in the implementation of this MOU, and is expected to use its own equipment and personnel resources in performing the activities under this MOU. This MOU does not obligate DHS/CBP funds, nor does this MOU in any way expand CBP's liability for any damage or loss to the other Parties that might arise from implementation of the pilot. CBP's stated intentions are subject to the availability of appropriated funds and changing operational needs.

X. MODIFICATION

This MOU and any annexes or addenda thereto may be modified upon the mutual written consent of the Parties.

XI. DISCONTINUATION

This MOU remains in effect until the completion of the pilot project. The MOU may be extended by mutual written consent of the Parties. Any Parties can discontinue, suspend or terminate the pilot project with 24 hours notification if performance of the pilot is unreasonable or disruption to the CBP or (b) (4) operations.

XII. MISCELLANEOUS

1. This MOU does not confer a right or benefit, substantive or procedural, on behalf of any third party and does not otherwise confer a right on any third party to enforce any provision of this MOU.
2. This MOU represents the entire understanding between and among the Parties. No other understanding, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the Parties thereto.
3. Each Party agrees to permit access to data received by it under this MOU to only those personnel of such Party (including a party's contractors, or personnel of affiliated entities) with an official need to know.
4. CBP understands that (b) (4) terms of use may be implicated by CBP's participation in this pilot. To the extent such end user license agreement(s) include(s) indemnity language and/or other language that would cause CBP personnel or contractor personnel to violate the Antideficiency Act, 31 U.S.C. § 1341, or otherwise violate Federal law, if

- accepted by the personnel in the course of their participation in the pilot, (b) (4) agrees to strike that language and deems it unenforceable.
5. Nothing in this MOU conveys to a party any right, title or interest in any intellectual property right of another party.
 6. Nothing in this MOU obligates a Party to enter into any further agreements with respect to the purpose or preclude any Party from entering into future business agreements or commercial opportunities.
 7. This MOU is governed by federal law, but to the extent necessary, a court of federal jurisdiction will look to the laws of the (b) (4) to resolve disputes between or among the Parties.

XIII. APPROVED BY

Signed for and on behalf of and by its duly authorized representative:

U.S Customs and Border Protection (b) (4)

(b) (6)

Executive Assistant Commissioner Title:

Office of Field Operations

Date:

U.S. Customs and Border Protection Date:

(b) (6)

(b) (6)

(b) (4)

(b) (4)

Title: _____

Date: _____

AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN AND AMONG
U.S. CUSTOMS AND BORDER PROTECTION
AND

(b) (4)

AND

(b) (4)

REGARDING (b) (4) BIOMETRIC PILOT
PROJECT AT (b) (4)

This Amendment No. 1 ("Amendment") is effective (b) (4) (the "Amendment Effective Date") and amends the Memorandum of Understanding by and between U.S. Customs and Border Protection ("CBP"), (b) (4) and (b) (4) (the "MOU"), which was extended on or about (b) (4) are each individually referred to hereinafter as a "Party" and collectively referred to as "Parties".

WHEREAS, the Parties have entered into the MOU and extended its initial term whereby the term of such MOU ends on (b) (4) and

The Parties now desire to extend the term of the MOU, expand the airports and destinations at which the single-token biometric pilot project may occur, and otherwise amend certain terms of the MOU as set forth herein.

NOW THEREFORE, the Parties hereby agree to amend the MOU as follows:

1. Definitions. Any term not otherwise defined in this Amendment shall have the meaning ascribed to it in the MOU.

2. Applicable Airports. All references to (b) (4) shall be amended to also include (b) (4) and all references to (b) (4) shall be deleted and replaced with "international destinations serviced by (b) (4) Specifically:

a. The title of the MOU is hereby deleted and replaced in its entirety as follows:

MEMORANDUM OF UNDERSTANDING
BETWEEN AND AMONG
U.S. CUSTOMS AND BORDER PROTECTION,

(b) (4)

REGARDING (b) (4) BIOMETRIC PILOT PROJECT AT (b) (4)
(b) (4)

b. Section II. Purpose is hereby deleted and replaced in its entirety as follows:

Section II. Purpose The purpose of this MOU is for the Parties to collaborate on (b) (4) proposed pilot program to utilize facial biometrics to verify the identity of travelers prior to their departure on (b) (4) international flights from (b) (4) in the United States, to international destinations serviced by (b) (4) as mutually identified by the Parties.

c. The first sentence of Section IV. Responsibilities is hereby deleted and replaced in its entirety as follows:

Section IV. Responsibilities (b) (4) working with (b) (4) its technology partner, intends to capture each traveler's photo, in accordance with CBP's specifications, during the boarding process for certain mutually identified (b) (4) international flights from (b) (4) in the United States, to international destinations serviced by (b) (4)

d. Number 1) under the heading "CBP intends to" in Section IV. Responsibilities is hereby deleted and replaced in its entirety with the following:

1) Build a biometric gallery of facial images, obtained through various DHS databases, of all travelers intending to depart on mutually identified international (b) (4) flights departing from (b) (4) as identified through its Advance Passenger Information System (APIS) manifest submissions and CBP's facial image database;

3. Responsibilities. Section IV. Responsibilities is further amended as follows:

a. Paragraph 3, beginning with "The Parties expect to begin the pilot on or before (b) (4)" is hereby deleted in its entirety and replaced with the following:

The Parties expect to begin the pilot on or before (b) (4)

b. The final paragraph of Section IV. Responsibilities following items 1 through 5 under the section titled (b) (4) intends to" is hereby deleted in its entirety and replaced with the following:

(b) (4) in conjunction and (b) (4) intend to develop a separate Scope of Work ("SOW") document describing the boarding process concepts being developed, implemented, and tested by (b) (4) in this pilot initiative, which will define detailed concepts, technical specifications, an implementation schedule, and operating procedures, consistent with this MOU.

(b) (4) and CBP, in conjunction with (b) (4) intend to develop operational protocols in support of this initiative to define procedures for both operations and mitigations.

4. Discontinuation. Section XI. Discontinuation is hereby deleted and replaced in its entirety with the following:

Section XI. Discontinuation This MOU remains in effect for six months from the effective date, unless such is extended by mutual written consent of all Parties or terminated pursuant to this Section XI. Any Party may elect to terminate, discontinue, or suspend the pilot project with twenty-four (24) hours' written notification if performance of the pilot is unreasonable or disruptive to CBP or (b) (4) operations. Additionally, this MOU may be terminated upon the mutual agreement of the Parties or by one Party providing at least three (3) weeks' written notice to the other Parties.

5. No Other Amendment. All other terms and conditions of the MOU not explicitly amended by this Amendment shall remain unchanged and in full force and effect.

6. Entire MOU. This Amendment constitutes a modification by written consent of the Parties. The MOU and this Amendment constitute the entire understanding between and among the Parties with respect to the matters contemplated therein, which supersedes all other representations of the Parties, whether written or oral.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives.

U.S Customs and Border Protection

(b) (4)

(b) (6)

Office of Field Operations

U.S. Customs and Border Protection

Date: 10/12/17

(b) (4)

Title: _____

Date: _____



U.S. Customs and
Border Protection



Your photograph is being taken while
boarding the aircraft to compare it against
the passport (or other travel document)
you are using for international travel.
If you are a U.S. citizen, your photo is deleted
after 14 days. For most non-U.S. citizens,
the photograph will be used as a biometric
confirmation of departure from the United States
as required by law (8 U.S.C. §1365b).

If you do not wish to have your picture taken,
please see a CBP officer to request alternative
procedures for identity verification and/or
biometric confirmation of departure
from the United States.

For more information please visit our website at
www.CBP.gov.



Signage Used at Airports:




**U.S. Customs and
Border Protection**

**Your photograph is being taken while
boarding the aircraft to compare it against
the passport (or other travel document)
you are using for international travel.
If you are a U.S. citizen, your photo is deleted
after 14 days. For most non-U.S. citizens,
the photograph will be used as a biometric
confirmation of departure from the United States
as required by law (8 U.S.C. §1365b).**

**If you do not wish to have your picture taken,
please see a CBP officer to request alternative
procedures for identity verification and/or
biometric confirmation of departure
from the United States.**

**For more information please visit our website at
www.CBP.gov.**





U.S. Customs and Border Protection

CBP is capturing photographs of travelers in order to verify that each person presenting a travel document for entry into the U.S. is the true bearer of that document.

**Photos of all travelers will be captured and matched.
Photos of US citizens will be deleted immediately
after the inspection is completed.**

All other photos will be stored in a secure CBP data system, unless they are associated with a law enforcement action, or otherwise shared for a lawful purpose.

If you are a U.S. citizen and do not wish to have your picture taken, please request alternative procedures for identity verification for entry into the United States.

For more information about how CBP is implementing Biometric Entry and Exit, to include information about how CBP safeguards data, photograph retention periods, and permissible data sharing uses, please visit our website at www.CBP.gov.

