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RE: Suspension of TACIDS Face Recognition Program

To Pam Scanlon, Mayor John Minto and Members of the SANDAG Public Safety Committee:

On behalf of the Electronic Frontier Foundation (EFF), I write today to inform you that on October 9, 2019, Gov. Gavin Newsom signed into law A.B. 1215, which implements a three-year moratorium on face recognition and other biometric surveillance in connection with cameras carried by law enforcement officers. Under A.B. 1215, law enforcement officers are prohibited from using the Tactical Identification System (TACIDS), a program that has put 1,309 such devices in the hands of law enforcement officials across San Diego County. With the law set to take effect on January 1, 2020, we urge the San Diego Association of Governments (SANDAG) to begin the process immediately to suspend this fatally flawed program that threatens the civil liberties of people in California.

The Automated Regional Justice Information System (ARJIS) has overseen the TACIDS program since 2007, when the agency first received federal funding to explore mobile face recognition. As of 2018, the program has grown to more than 25,000 face recognition queries per year. More than 30 agencies have face recognition devices provided through the TACIDS program, including federal agencies such as the U.S. Marshals and Immigration and Customs Enforcement (ICE).

Through the TACIDS program, law enforcement officers are provided with smartphones and tablets that they carry while in the field. When an officer takes a photo of an individual, for example during a traffic stop, that image is then queried against the San Diego County Sheriff's 1.4-million-record booking photo database.

A.B. 1215 ensures that law enforcement officers cannot use the cameras they carry to subject the public to dangerous and invasive biometric surveillance. This is exactly the kind of surveillance that happens every day under the TACIDS program. As the legislature noted in the findings prefacing the bill, “The use of facial recognition and other biometric surveillance is the functional equivalent of requiring every person to show a personal photo identification card at all times in violation of recognized constitutional rights.”

Pursuant to section 832.19(b) of the Penal Code added by A.B. 1215:

(b) A law enforcement agency or law enforcement officer shall not install, activate, or use any biometric surveillance system in connection with an officer camera or data collected by an officer camera.¹

The law defines an officer camera as “a body-worn camera or similar device that records or transmits images or sound and is attached to the body or clothing of, or carried by, a law enforcement officer.”²

ARJIS was formed as a Joint Powers Authority by city and county agencies to provide criminal justice information services to agencies that are explicitly covered by A.B. 1215. These agencies are also listed as members of ARJIS. SANDAG/ARJIS has a responsibility to follow the laws of the state of California that affect its member organizations. The continued operation of this program may trigger enforcement actions against member agencies under A.B. 1215’s remedy provisions.

We also have serious concerns about ICE’s involvement in this program. Currently that federal agency has 7 TACIDS mobile devices. Between 2016 and 2018, ICE agents conducted 309 face recognition queries using these devices, while U.S. Border Patrol conducted 53 more. This use likely is not consistent with section 7284.6(a)(1) of the California Values Act (S.B. 54), which was designed to restrict how state resources may be used in immigration enforcement.³

According to the ARJIS Acceptable Use Policy for Facial Recognition and a Master Control Agreement between the San Diego County Sheriff’s Office, “TACIDS data access and use is governed by the California Department of Justice (CalDOJ) California

¹ Text of A.B. 1215 available at https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB1215

² *Ibid.*

³ Text of the California Values Act available at https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180SB54

Law Enforcement Telecommunications System (CLETS) Policies, Practices and Procedures (PPP).⁴ As of February 2019, the CLETS PPP was amended to include language related to the California Values Act. Specifically, federal, state, and local law enforcement “shall not use any non-criminal history information contained within these databases for immigration enforcement purposes.”⁵ In addition, an October 10, 2018 bulletin from the California Department of Justice on California Values Act Database Guidance further restricts sharing of non-criminal history information and “personal information about a person that is not available to the public, and that is not attached to a person's criminal history” for immigration enforcement purposes.⁶ In addition to providing access to mugshots and other images maintained by the San Diego County Sheriff, the TACIDS system separately creates and stores biometric profiles of individuals that are not available to the public.⁷

As part of the process of moving into compliance with A.B. 1215, we urge SANDAG/ARJIS and the SANDAG Public Safety Committee to conduct an audit to probe whether ICE’s access to TACIDS and TACIDS devices violates either the letter or the spirit of the California Values Act.

Pursuant to the ARJIS Acceptable Use Policy for Face Recognition, TACIDS policies are required to be brought before the SANDAG Public Safety Committee and the SANDAG Board of Directors “at least once per year for review and determination regarding the need for amendments.”⁸ A review of Public Safety Committee meeting agendas on the SANDAG website indicates that no such hearing on the TACIDS policy has occurred in several years.

We urge the SANDAG Public Safety Committee to schedule a hearing on this matter at its earliest opportunity and suspend the TACIDS program. Please confirm receipt of this letter and alert me to any developments via email at dm@eff.org or by phone at 415-436-9333 x151.

⁴ ARJIS Acceptable Use Policy for Facial Recognition, at 3, available at <http://www.arjis.org/RegionalPolicies/ARJIS%20Facial%20Recognition%20AUP%20-%20Approved%20-%20Rev150213.pdf>

⁵ CLETS Polices, Practices and Procedures, at 30, available at <https://www.documentcloud.org/documents/5996502-Clets-Ppp-022019.html>

⁶ California Values Act’s Database Guidance, at 2, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/18-10-cjis.pdf? (citing Cal. Gov’t Code § 7284.6(a)(1)(D) (prohibiting California law enforcement agencies from “[p]roviding personal information . . . about an individual . . . unless that information is available to the public”).

⁷ Agency-wide SANDAG Privacy Impact Assessment (updated June 2018), at 24, available at https://www.sandag.org/uploads/publicationid/publicationid_4508_24189.pdf

⁸ ARJIS Acceptable Use Policy for Facial Recognition, at 10.

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Best regards,

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