Congress of the United States
Washington, DC 20515
April 15, 2021

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 today to request information regarding the Department of Justice's (DOJ) funding of and oversight over predictive policing algorithms deployed by law enforcement across the United States.

These algorithms, which automate policing decisions, not only suffer from a lack of meaningful oversight regarding whether they actually improve public safety, but it is also likely they amplify biases against historically-marginalized groups. DOJ is often a source of the funding used by local law enforcement agencies to purchase and develop predictive policing technology. For example, according to the Los Angeles Police Department's 2020 Strategic Plan, the development of the Los Angeles Strategic Extraction and Restoration (LASER) Program to Reduce Gun-Related Violence was funded in part by the Bureau of Justice Assistance at the DOJ. We are concerned the DOJ may be devoting scarce taxpayer dollars to ineffective technologies and encouraging local law-enforcement to devote resources to unproven strategies.

Predictive policing algorithms are generally built for two primary tasks: to predict where a crime is likely to occur in a given window of time or to predict which individuals have a high chance of being involved in future criminal activity (as either a victim or perpetrator). The algorithms produce these predictions by evaluating correlations between historical crime data, and some systems also incorporate third-party data such as weather patterns or gunfire detection locations. Vendors market these systems to law enforcement by asserting that they will cut costs, aid resource allocation decisions, improve policing outcomes and eliminate bias by reducing individual officer's discretion.

But, when predictive policing systems have been exposed to scrutiny, auditors have found major problems with their effectiveness and reliability. In particular, Police Department Inspector General investigations in Los Angeles and Chicago have raised concerns within the last two years about the use of these systems, including a lack of adequate data to evaluate the programs, training for personnel, controls for access to data, reliability of the models, and long-term planning to maintain these systems. Due to these investigations, and pressure from advocates, some local governments are beginning to rethink the use of these tools. Both Oakland and New Orleans passed bans on predictive policing in 2020, and a similar ban is under consideration in Pittsburgh. Even the city of Santa Cruz, which was one of the first to deploy predictive policing, passed an ordinance last June that prevents the use of data to predict where crimes may occur because, according to their ordinance, "the propensity for Face Recognition Technology and Predictive Policing Technology to endanger civil rights and civil liberties outweighs these technologies' purported benefits."

Experts also report that predictive algorithms amplify existing biases about where crimes occur or who is likely to commit them by using biased data when training these policing algorithms. A heavily cited New York University Law Review article by Rashida Richardson, Jason Schultz, and Kate Crawford found that nine of 13 police departments studied likely used incorrect "dirty data" to train and use algorithms, and at least nine of these departments acquired these technologies using at least some DOJ funding. This "dirty data" involves historical crime data collected from illegal policing practices, including excessive use of force, harassment of certain populations, and planting evidence on innocent victims. When datasets filled with inaccuracies influenced by historical and systemic biases are used without corrections, these algorithms end up perpetuating such biases and facilitate discriminatory policing against marginalized groups, especially Black Americans.

We are deeply concerned such programs may amount to violations of citizens' constitutional rights to equal protection and due process under the law. We worry that the use of untested black box algorithms with biased training data can directly harm innocent individuals and communities. If law enforcement tactics are based on biased assumptions, location-based algorithms may provide little insight beyond where law-enforcement currently makes arrests. Likewise, individual-focused algorithms may lead to law-enforcement stopping individuals merely because those individuals live in a neighborhood with a higher concentration of previous offenders. These practices could violate the presumption of innocence on which our judicial system relies, and may amount to discrimination based on protected characteristics, like gender, age, and race. In both cases, automating law enforcement decisions can add a false sense of accountability to the process of policing, all the while hiding any bias embedded in the data and other flaws in the technology's design.

We know you share our goal of ensuring just policing and equal justice under the law for all Americans. To that end, we ask DOJ to help ensure that any predictive policing algorithms in use are fully documented, subjected to ongoing, independent audits by experts, and made to provide a system of due process for those impacted. If DOJ cannot ensure this, DOJ should halt any funding it is providing to develop and deploy these unproven tools. To better help our offices understand how DOJ is operating this system of accountability and transparency, please provide us with answers to the following questions no later than May 28, 2021.

1. Has DOJ analyzed the extent to which the use of these technologies comply with the Civil Rights Act of 1964 or other relevant civil rights laws? If so, what was the result of that analysis?
2. Please provide a detailed annual accounting of all federal funding distributed by DOJ and its related agencies in support of activities related to developing and implementing predictive policing algorithms (including for pilots and research) at federal, state, and local levels for Fiscal Years 2010 - 2020. Please indicate all relevant federal accounts, program activity names, and sources of funding including, but not limited to, funding from the Strategies for Policing Innovation (SPI) program & Edward Byrne Memorial Justice Assistance Grant Program,
3. Please also provide a detailed annual accounting of all federal funding distributed by DOJ and its related agencies in support of data collection, data linkage systems (or so called "data fusion centers"), and databases that are used to run, develop, or test predictive
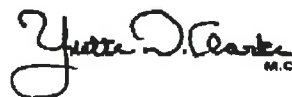
policing algorithms for Fiscal Years 2010 - 2020. Please indicate all relevant federal accounts, program activity names, and sources of funding.

4. Please name each jurisdiction both currently and previously operating predictive policing algorithms funded, in part or in whole, by the DOJ?
   a. What specific systems or software tools are or were being used at each of these sites?
   b. What is the period of time that these projects or technologies are or were funded over?
   c. What specific types of technologies (such as simple formulas, predictive analytics, and machine learning) are being used by these algorithms?

5. Does the DOJ require predictive policing projects and technologies purchased with federal funds, in part or in whole, to:
   a. Be tested for efficacy, validity, reliability, and bias generally and in relation to protected classes such as, but not limited to, race, ethnicity, and sex prior to deployment by federal, state or local agencies? If not, why not?
   b. Require vendors to submit validation studies or audits during the procurement process?
   c. Be audited for efficacy, validity, reliability, and bias generally and in relation to protected classes such as, but not limited to, race, ethnicity, and sex on both an ongoing and retrospective basis (either by the state and local agencies, the DOJ, or external researchers)?
   d. Include training for any operators predictive policing tools regarding the limitations of these technologies and their legal obligations?
   e. Be reviewed retrospectively by police departments to assess efficacy, reliability, bias, and legal concerns regarding use?

6. Does the DOJ require agencies and departments using these tools to perform cost-benefit analyses prior to and after the completion of these projects?

7. Does the DOJ require agencies and departments using these tools to allow individuals to challenge a police decision that is based on the output of these tools?

8. Has the DOJ ever stopped funding or otherwise supporting the use of predictive or automated policing due to concerns with the efficacy or impact of the program? If so, how was that decision made?

9. Has the DOJ evaluated the nationwide impact of predictive policing on people in protected classes? If yes, what was learned from these evaluations?

10. Does the DOJ provide guidance to agencies and departments using these tools on best practices for data sharing, legal discovery and evidentiary obligations?

Thank you for your prompt attention to this matter.

Sincerely,

Ron Wyden
United States Senator

Yvette Clarke
United States Representative

Edward J. Markey
United States Senator

Elizabeth Warren
United States Senator

Jeffrey A. Merkley
United States Senator

Alex Padilla
United States Senator

Raphael Warnock
United States Senator

Sheila Jackson Lee
United States Representative