



Written by [C. Mitchell Shaw](#) on January 2, 2018

DHS to Spend \$1 Billion to Expand Illegal Facial Scanning Program at Airports

As 2018 begins, the surveillance state is  gearing up for even greater surveillance of American citizens. The Department of Homeland Security (DHS) is setting aside \$1 billion for a biometric scanning program to capture the faces of those leaving the country at airports. That scanning includes the faces of American citizens, even though DHS has no legal authority to conduct that surveillance.

The Center on Privacy and Technology at Georgetown University Law School recently [released the results of a study](#) it conducted on the program. As the executive summary of that report states:

At Boston's Logan International Airport, travelers at one international boarding gate will be surprised that they are being told to stop before what looks like a sophisticated camera. But it's more than just a camera — the device compares each traveler's face to a Department of Homeland Security (DHS) biometric database to verify her identity and flags as many as 1 in 25 travelers for further scrutiny. These face scans have been deployed at eight other airports, too. In Atlanta, Chicago, Las Vegas, Miami, New York City, Houston, and Washington, D.C., travelers departing on certain international flights have their faces scanned by DHS. If DHS' current plans are executed, every traveler flying overseas, American and foreign national alike, will soon be subject to a face recognition scan as part of this "biometric exit" program.

This sophisticated biometric screening system could cost up to one billion dollars. Congress has already created a "9-11 Response and Biometric Exit Account" to fund a biometric exit program in that amount. Yet, curiously, neither Congress nor DHS has ever justified the need for the program. Congress never provided a rationale for it. For its part, DHS says that airport face scans are designed to verify the identities of travelers as they leave the country and stop impostors traveling under someone else's identity. But DHS itself has repeatedly questioned "the additional value biometric air exit would provide" compared with the status quo and the "overall value and cost of a biometric air exit capability," even as it has worked to build it.

That "neither Congress nor DHS has ever justified the need for the program" while setting aside as much as \$1 billion to pay for it is not the only — or even greatest — objection to the program. There is the fact that (whether needed or not) the program is unconstitutional and likely illegal. The study from Georgetown Law's Center on Privacy and Technology doesn't miss that, either. Section B is headed "DHS' Airport Face Scan Program May Violate Federal Law" and says in part:

DHS' current face scan-based program also may not comply with federal law. The program may exceed the authority granted to DHS by Congress because Congress has never explicitly authorized biometric collections from Americans at the border. Even if DHS has sufficient legal authority for the program, DHS has failed to complete a prerequisite public rulemaking process for the program, as mandated by federal law.



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So without any constitutional or legal authority, DHS is scanning the faces of scores of thousands of American citizens at the departure gates of select airports as they prepare to fly abroad. Those biometric scans are then entered into a huge database that also has no constitutional or legal authority to exist. And all the while, DHS is planning to spend \$1 billion to extend the program to cover every international airport and scan the faces of every departing American.

As the report explains about the likely illegality of the program, “Congress has passed legislation at least nine times concerning authorization for the collection of biometric data from foreign nationals, but no law directly authorizes DHS to collect the biometrics of Americans at the border.” Furthermore, “U.S. citizens have been conspicuously absent from the statutory text of every law under this program for the last 14 years.” Concerning this, the report asserts, “If Congress wanted to tell DHS to collect Americans’ biometrics at the border, it easily could have done so. It never has,” adding, “Without explicit authorization, DHS cannot and should not be scanning the faces of Americans as they depart on international flights, as it is currently doing.”

As part of the “war on terror” in the wake of 9/11, [the rise of the surveillance state](#) has brought us to a place where programs like this are considered normal. And while this program is packaged as a way to fight terrorism, no valid explanation is offered for why Americans leaving the country would be subjected to having their facial scans taken, collected, and stored.

This program is not an anomaly, either. In July 2015, *The New American* [reported](#) that DHS had developed a video surveillance program to be used at airports to predict the behavior of passengers and guests based on their facial expressions, posture, and body language.

As this writer said then:

In the beginning of the “war on terror,” which was launched in the wake of 9/11, few would have believed that in a decade and a half the American public would have become so desensitized to blanket surveillance that such a program could ever happen in the open.

Now, as 2018 begins, the surveillance state is pushing even beyond *that* with plans to turn every international airport into a hub of biometric surveillance. Because when it comes to surveillance hawks, too much surveillance is never enough.

And while DHS packages all of this as part of the “war on terror” (implying that it is needed), they don’t even pretend it works. Section C of the report — under the heading, “DHS’ Airport Face Scan Program May Be Technically Flawed” — says:

DHS’ face- scan-based biometric exit program may also fail as a technical matter: DHS has never measured the efficacy of airport face scans at catching impostors traveling with fraudulent credentials. There is good reason to be skeptical of the system’s efficacy. Due to the challenges inherent to face recognition, it would be difficult for DHS to develop a system that is effective at catching every impostor without severely inconveniencing all other travelers.

Furthermore, while DHS claims that an important goal of the program is to detect and stop “visa overstay travel fraud” (a situation where a foreign national has an accomplice leave the country using the foreign national’s credentials while the foreign national actually stays behind, undetected), DHS isn’t even measuring the performance of the program with that “goal” in mind. According to the report:

Problematically, DHS uses the wrong metric to evaluate the system’s success. DHS currently measures performance based on how often the system correctly accepts travelers who are using



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true credentials. But if the aim of this system is to detect and stop visa overstay travel fraud — as DHS suggests — it is critical and perhaps *more* important to assess how well it performs at correctly rejecting travelers who are using fraudulent credentials. Yet DHS is not measuring that.

And even at that, the system incorrectly tags roughly four percent (or 1 out of 25) travelers as fraudulent, even though they are traveling with their own correct credentials.

So, while scores of thousands of American citizens have had their facial biometrics unconstitutionally and illegally scanned and stored, and millions more are soon to find their rights likewise violated, DHS cannot even *claim* the program does what the agency says it was designed for. What it does do — and do very well — is create a database of illegal facial recognition scans of American citizens while conditioning those citizens to accept greater and greater encroachment of their rights. And that appears to be the real goal.

Photo of airport facial-recognition kiosk: AP Images



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