In June 2023, the New York Civil Liberties Union and the American Civil Liberties Union filed a lawsuit against the New York State Department of Labor (DOL) for not disclosing records regarding the agency's use of automated tools for unemployment insurance identity verification.

The NYCLU and ACLU have now received the records and made them publicly available here. For more background on this case and a summary of the findings from the records, please read on below.

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During the COVID-19 pandemic, New York, like many states across the country, began requiring people applying for unemployment insurance benefits to use automated facial-recognition software to verify their identities. In response to a lawsuit filed by the NYCLU and ACLU, the New York State Department of Labor (DOL) turned over a slew of records about its use of facial-recognition technology. These records shed light on the complicated identity-verification process that unemployment insurance applicants must go through to access their benefits and the privacy and equity concerns with that process.

The DOL relies on software provided by a private technology company, ID.me, to verify the identity of unemployment insurance applicants. ID.me's automated process requires applicants to upload a "video selfie" to the ID.me portal. ID.me then uses its facial-recognition tool, along with artificial intelligence and machine learning technologies, to attempt to verify the applicant's identity.

New York's use of ID.me's facial-recognition software to determine eligibility for unemployment benefits risks creating unjust and inequitable barriers to vital resources. Empirical studies have shown that "the algorithms used in current facial recognition technologies have a racial and gender bias." These technologies produce higher error rates when used to verify the identity of non-white individuals, women, and young people. And, as many New Yorkers have discovered, online facial-recognition technology can be very difficult to use for people with certain disabilities, those who lack compatible computers or phones, and those with limited English proficiency.

New York's use of ID.me also creates significant privacy and security risks. As

the U.S. Department of Labor has explained, "[t]he risks associated with a biometric data breach raises serious privacy concerns for both the public and the government." Relying on a private contractor like ID.me—which has already made deceptive statements about the way its software identifies applicants—to safeguard huge amounts of sensitive information is deeply concerning.

In view of these serious risks, and New York State's lack of transparency regarding its use of ID.me, the NYCLU and ACLU in 2021 filed a Freedom of Information Law Request seeking information regarding the DOL's use of automated tools for unemployment insurance identity verification. The DOL unlawfully ignored the request for almost two years. Finally, after the NYCLU and ACLU filed a lawsuit to compel disclosure, the DOL released a substantial amount of information. Some documents produced by the DOL raise questions about the identity-verification process ID.me has implemented. According to ID.me, unemployment insurance applicants who cannot or do not want to use the online facial-recognition tool may verify their identities in person without turning over their biometric information. But ID.me's documents (see pages 68–69 and 208–09) indicate that applicants may still be asked to take a photo of themselves on an ID.me "Identity Network kiosk" as part of the in-person process, without explaining why the company needs that photo or what it uses that photo for.

Other documents shed light on the challenges that applicants have faced while trying to navigate ID.me's verification process. For example, when the facial-recognition tool fails to identify an applicant—which a 2022 congressional investigation found happens with 10 to 15 percent of users—they often must wait in long lines to reach a human operator and risk being denied benefits to which they are entitled. ID.me's data from May to August of 2022 show that wait times in that period to reach a human operator often exceeded an hour [see, for example, pages 25, 32, 36, and 40]. ID.me's data from February to August of 2021—the first six months after the DOL began requiring the use of facial recognition tools—also show that significant numbers of applicants were unsuccessful in verifying their identities using the online facial-recognition tool and abandon their attempts to do so [see pages 452–57].

And, as the ACLU and ACLU of Oregon discovered through FOIL requests to the Oregon Employment Department, the documents reflect that ID.me made deceptive claims about its technology not only to the public, but also to multiple government agencies like the DOL. As it did in Oregon, ID.me provided "privacy talking points" to the DOL in 2021 that purport to "arm[]" the DOL "with the facts" [see pages 70–72].

But these talking points make the inaccurate claim that ID.me's facial-

recognition tool uses only one-to-one matching (which compares one photo of a user to a single other photo of the user) and not one-to-many matching (which compares one photo of a user to a database of all other faces, essentially querying each face in endless digital lineups). Compared to one-to-one matching, one-to-many matching raises additional privacy concerns and creates higher risks of wrong matches. ID.me made the same deceptive claim to the public about not using one-to-many matching before later admitting that it does.