

**U.S. Immigration and Customs Enforcement
Response to United States Senator Wyden
April 12, 2019**

- 1. For what type of enforcement activities does ICE utilize face recognition capabilities via CBP, Department of State, or other partner systems?**
 - a. Please specify whether ICE utilizes this system for criminal or immigration enforcement, and what, if any, specific criminal investigations the system is utilized for.**

U.S. Immigration and Customs Enforcement (ICE) has limited facial recognition capabilities throughout the course of enforcement activities via U.S. Customs and Border Protection's (CBP) Automated Targeting System-Passenger (ATS-P) and the U.S. Department of State's (DoS) Consular Consolidated Database (CCD). These systems allow for searches against photographs submitted by non-immigrant visa applicants, which are conducted in support of investigative activities. As ATS-P and CCD are owned and maintained by CBP and DoS respectively, ICE does not conduct audits of these systems; however, ICE's usage of these systems is monitored by CBP and DoS.

This investigative capability, which is provided through a partner agency, could be used in support of any investigation being conducted by ICE Homeland Security Investigations (HSI). The ICE HSI mission is to protect the United States from the cross-border crime and illegal migration that threaten national security and public safety. This mission is executed through the enforcement of more than 400 federal statutes and focuses on the illegal movement of people and goods using a diverse combination of law enforcement authorities, capabilities, and assets to disrupt and dismantle cross-border criminal organizations.

In Fiscal Year (FY) 2018, ICE Enforcement and Removal Operations (ERO) implemented a third form of technology potentially available for assignment to participants of the Alternatives to Detention (ATD) – Intensive Supervision Appearance Program (ISAP) III contract: SmartLINK. SmartLINK is an application for a smart phone or tablet that provides a number of capabilities to a participant. One of those capabilities is the use of facial recognition software to identify the participant while they conduct check-ins from any location. When the participant checks in using the facial recognition software, a GPS point is captured. This information can be used to help verify a participant's address, current location, and locations to which they frequent should ICE need to locate the participant. The SmartLINK application does not actively track the participant nor does it take continuous images during the facial recognition process. It takes a single photo and is used exclusively for biometric and location identification.

2. Please describe how ICE obtains or requests facial recognition capabilities through ATS-P and CCD.

a. For example, who provides probe photos, what agencies conducts any matching, and what agencies receive the results of any matching?

As alluded to in the below responses, ICE ERO utilizes facial recognition under ATD ISAP-III, which utilizes facial recognition software known as SmartLINK. ICE ERO does not have facial recognition capabilities through ATS-P and CCD.

To utilize facial recognition capabilities, an ICE HSI Special Agent conducting an investigation would provide a probe photo, and the owner of the system being utilized would attempt to match it. For inquiries submitted through the ATS-P or CCD, CBP or DoS, respectively, would conduct the matching process. ICE HSI, as the agency submitting the request, would receive the result of any positive matching.

3. How many facial recognition searches has ICE requested via ATS-P and CCD since January 1, 2017?

ICE HSI does not track these queries and since the systems belong to outside agencies, does not have the ability to review system queries.

4. Please describe how ICE confirms that matches or identifications by any facial recognition systems are correct before taking further action.

ICE ERO utilizes facial recognition under ATD – ISAP III, which utilizes facial recognition software known as SmartLINK. To use the facial recognition function, the participant aligns their face with an image on the screen of their smartphone and takes the picture themselves. This process is similar to a mobile deposit function for a bank. The image is then matched against a single image of the participant taken at the time of enrollment for verification purposes.

ICE HSI treats matches similar to any other lead or evidence collected during an investigation and does not rely solely on a facial recognition match to establish probable cause of a violation. Specific questions about how the system operates would need to be directed to the system owner.

a. Please describe how, if any way, inaccurate results are maintained by any face recognition systems.

ICE ERO stores ATD – ISAP III participant images for historical and case management purposes, but does not share these outside of the agency. When the participant uses the facial recognition software, the participant takes a self-photograph with their smartphone. Subsequently, the software compares the current image with the master image taken of the participant during enrollment to ensure the participant is abiding by the terms of their enrollment within the ATD – ISAP III program.

5. What evidentiary standard, if any, must be met for ICE to utilize facial recognition capabilities through ATS-P and CCD?

If the question refers to evidentiary standards for use in court, that would be coordinated with the respective U.S. Attorney's Office, but typically these results are not used in court.

ICE ERO does not have facial recognition capabilities through ATS-P and CCD, only through the SmartLINK platform.

a. What, if any, limits are placed on which probe photos can be submitted for face recognition matching?

ICE HSI is not aware of any specific written guidance on which probe photos may be submitted. ICE HSI does have general guidance for submitting queries of law enforcement (LE) databases that applies to facial recognition. Additionally, users are also provided with specific guidance for use of CCD when granted access and when reaffirming or changing passwords on the system every 90 days. All ICE users receive annual training on use of LE systems.

With respect to the facial recognition technology (SmartLINK) used by the ICE ERO ATD – ISAP III contractor, “probe photos” are not used. To use the facial recognition function, the participant aligns their face with an image on the screen of their smartphone and takes the picture themselves, a process that is similar to a mobile deposit function for a bank. The image is then matched against a single image of the participant taken at the time of enrollment for verification purposes. The image is captured and stored for historical and case management purposes, but is not shared outside of the agency.

6. Does ICE share its photo databases with any other federal, state, or local agencies, including departments of motor vehicles, for facial recognition matching use?

a. Does ICE ever submit photos to the facial recognition systems of other federal, state, or local agencies, including departments of motor vehicles, so that those agencies can run facial recognition searches of their systems using ICE-submitted photos?

ICE HSI does not possess, house, maintain and/or submit any type of photographs, facial recognition photographs and/or technologies. For ICE HSI's utilization of CCD and ATS-P, these systems are owned by DoS and CBP respectively, and as such, ICE HSI does not grant any state or local agencies access to those systems.

As previous responses indicate, ICE ERO utilizes facial recognition under ATD – ISAP III through software known as SmartLINK. It should be noted that ICE ERO does not share the participant images collected through the SmartLINK application with any other agency.

7. Please provide all policies and procedures related to ICE's use of facial recognition capabilities through ATS-P and CCS or any other mechanism.

Because ICE HSI considers ATS-P and CCD to be LE systems, facial recognition queries of those systems are subject to the general guidance for access to LE systems.

ICE ERO does not have facial recognition capabilities through ATS-P and CCD, only through the SmartLINK platform. SmartLINK is not a mandate but an option for ATD officers to assign at their discretion.

Recent news reports also suggest that ICE has met with vendors regarding potentially acquiring additional facial recognition capabilities. Please provide the following information:

1. Does ICE have plans to acquire additional facial recognition capabilities, either on its own or through other agencies?

ICE HSI has explored the potential acquisition of various analytic tools for video evidence, to include facial recognition technology, in support ongoing criminal investigations.

ICE ERO is not currently exploring additional facial recognition capabilities as the SmartLINK platform is sufficient for current needs.

a. Has ICE issued any RFPs for facial recognition technologies?

ICE HSI has not issued any requests for proposals (RFPs) for facial recognition technologies.

ICE ERO is unaware of any RFPs that may require facial recognition for ERO's immigration law enforcement purposes.

2. Does ICE have Memorandums Of Understanding (MOU) with any other agencies, including local law enforcement agencies, regarding obtaining facial recognition capabilities?

ICE does not have any MOUs with any other agencies (including LE) for the use of facial recognition technology.

a. If so, please provide those MOUs.

Not applicable.

3. Please provide a complete list of cases for which ICE has explored acquiring facial recognition technology.

ICE HSI initiated over 44,000 investigative cases in FY 2018 and is unaware of any that utilized facial recognition technology. However, ICE HSI has partnered with the Department of Homeland Security Science and Technology in efforts to develop facial recognition capabilities to support HSI's investigative efforts. ICE HSI considers facial recognition technology most immediately viable to support investigations centered on the identification of war criminals, child exploitation perpetrators, and the identification and rescue of victims.

ICE ERO has not explored acquiring facial recognition technology for enforcement purposes. ICE ERO only utilizes the technology as a part of its ATD program.

4. Please provide a list of vendors that ICE has met with since January 1, 2018 regarding acquiring or using facial recognition technology.

On April 25, 2018, ICE HSI met with Vigilant Solutions regarding facial recognition technology. There have not been any follow up meetings or communications since that time.

In January 2018, ICE ERO HQ – ATD and the management from the local ERO Field Office in Fairfax, Virginia, were given presentations on the potential capabilities and uses of facial recognition technology by representatives of Unisys and NextgenID.

a. Please include any relevant agendas, materials, or follow-up communications regarding these meetings.

ICE is unable to provide the requested materials regarding the meeting as the materials belong to the companies who attended the meeting. As such, ICE does not have the authority to release the meeting materials.

5. Has ICE obtained a legal opinion from the General Counsel's office regarding whether existing or potential future uses of facial recognition technology would be lawful?

ICE has not obtained any legal opinions from the General Counsel's office regarding the existing or potential future use of facial recognition technology.

In your October 16th response, you also stated that under ICE's "Alternatives to Detention Intensive Supervision Appearance Program (III) (ATD-ISAPIII), a new form of contractors-owned technology has been introduced that uses facial recognition software known as SmartLINK."

1. When did BI, the provider of ISAPIII, begin deploying SmartLINK at ICE's request?

The SmartLINK application was piloted on two separate occasions: from May 2, 2016 to September 23, 2016, and then again from March 8, 2017 to April 5, 2017. ICE ERO officially deployed SmartLINK on February 5, 2018.

a. What percent of and how many ISAPIII enrollees are using SmartLINK at any given time?

As of January 29, 2019, the total active ATD population is 94,687 participants. Of the total active population, 6,771 aliens, or 7.2 percent, are on the SmartLINK technology.

b. How do the enrollees access SmartLINK; are they required to use their personal devices or does ICE provide smartphones or computers to enrollees?

When participants qualify for a SmartLINK assignment, they use their personal smartphone or tablet to access the program by downloading a free application.

2. What information does ICE and BI collect on enrollees using SmartLINK?

SmartLINK enables ATD officers and case specialists to keep participants focused on the conditions of release via their smartphone or tablet. They are able to verify a participant's identity, determine their location¹, and quickly collect status change information.

a. How long is that information retained?

Information is retained by the contractor (BI) until the end of the awarded contract and then records are turned over to ICE to follow record retention policies as directed by DHS.

b. Who has access to that information and under what conditions?

ICE ATD officers and BI case specialists have access to the information on a need-to-know basis. The information is accessed only through required duties related to ATD – ISAP participation.

c. What limitations exist, if any, on the use of that information?

The information is accessed through required duties related to ATD – ISAP participation.

3. What, if any, information is provided to enrollees using SmartLINK regarding the confidentiality of their data and any limitations on the use of their data?

The participant must agree to terms of use and user license agreement as established by BI prior to use of the SmartLINK application and enrollment. If the participant does not agree to the participation requirements, SmartLINK is not assigned.

¹ The SmartLINK application only locates the participant when they are accessing the SmartLINK application.

4. Please provide any additional documentation in ICE's possession on the deployment of the SmartLINK technology in the context of ISAPIII.

Attached please find “SmartLINK Overview and Participant Enrollment Agreement” and “Alternatives to Detention (ATD) Program SmartLINK Deployment Memorandum.”