

# Can Borders Be Automated Without Violating Rights? A Comparative Study of How the European Union and the United States Regulate Emerging Border Technologies—Including Biometric Identification and Automated Decision-Making Systems—in Migration Management

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## Abstract

This study aims to compare EU and US approaches in border management, assessing whether biometric surveillance systems can balance operational efficiency while protecting migrants' fundamental rights. It identifies potential regulatory improvements to ensure human rights compliance. Emerging border technologies are now central to migration control policies on both sides of the Atlantic. The European Union governs non-EU migrants subject to automated border controls through instruments such as the Entry/Exit System and Eurodac. United States border management follows a security-driven approach overseen by agencies such as the Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP). Both countries have experienced a rise in anti-immigration rhetoric and legislation, influencing the deployment of these technologies and increasing the risk of rights violations. In light of these developments, the core issue lies in ensuring that migration authorities implement biometric surveillance tools in ways that effectively safeguard migrants' privacy, due process, and non-discrimination rights.

Keywords: biometric surveillance, automated border control, security, human rights, data protection

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## I. Introduction

The increasing use of biometric technologies, which record fingerprints and facial images, has reshaped migration management. The European Union and the United States have integrated such technologies into their border infrastructure, yet they do so under markedly different legal and institutional frameworks.

In the European Union, migration management relies upon a multilayered governance structure combining supranational and national mechanisms. Biometric data, defined under Article 4(14) of the General Data Protection Regulation (GDPR) as “personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person,”<sup>1</sup> are collected and stored primarily through two central databases: the Entry/Exit System (EES) and Eurodac. The EES, expected to be fully implemented by 10 April 2026, registers the entry and exit of non-EU nationals crossing the Schengen Area’s external borders using fingerprints and facial images to detect overstays and identity fraud.<sup>2</sup> Originally established to support the Dublin Regulation, the Eurodac stores the fingerprints of asylum seekers and certain irregular migrants to determine which Member State is responsible for examining an asylum claim.<sup>3</sup> These databases operate within a broader legal ecosystem shaped by the General Data Protection

Regulation (GDPR),<sup>4</sup> which governs how data is processed and the forthcoming Artificial Intelligence Act (AI Act), the world’s first comprehensive AI law, which sets rules for the deployment of AI systems based on their risk.<sup>5</sup>

EU oversight is shared between the European Data Protection Supervisor, which supervises the processing of personal data by EU institutions and ensures compliance with the GDP and national data protection authorities (DPAs). Thus, enforcement varies significantly depending on the political context of each country. For example, France’s CNIL has actively regulated how asylum authorities handle sensitive data, while Austria’s DPA tends to adopt a stricter approach to biometric systems used at borders. While the GDPR sets a shared framework for protecting migrants’ personal data, oversight in practice remains uneven, shaped heavily by the independence and priorities of national authorities. This results in uneven decision-making, protection, and outcomes across Member States.

By contrast, in the US, border and migration control is administered through a more centralized institutional model. Key agencies are federally controlled, including the Department of Homeland Security (DHS), which

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<sup>1</sup> Article 4 General Data Protection Regulation [2016] OJ 2 119/1

<sup>2</sup> “EES / ETIAS - European Union.” *Europa.eu*, 2025, <https://travel-europe.europa.eu/ees/what-is-the-ees>

<sup>3</sup> Österreichische Datenschutzbehörde. “Eurodac.” *Österreichische Datenschutzbehörde*, 2025, <https://data-protection-authority.gv.at/europe-international/eur-odac>

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<sup>4</sup> European Union. “Data Protection under GDPR.” *Your Europe - Business*, 14 Oct. 2024,.

[https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index\\_en.htm](https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index_en.htm)

<sup>5</sup> European Parliament. “EU AI Act: First Regulation on Artificial Intelligence.” *European Parliament*, 19 Feb. 2025, <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>

coordinates national security and immigration enforcement;<sup>6</sup> the U.S. Customs and Border Protection (CBP), responsible for border inspections and surveillance;<sup>7</sup> and Immigration and Customs Enforcement (ICE), tasked with interior enforcement and deportation operations.<sup>8</sup> The U.S. employs various automated and biometric systems such as the Automated Biometric Identification System (IDENT) and its successor, Homeland Advanced Recognition Technology (HART), which store and process multimodal biometric data, including fingerprints, iris scans, and facial images for identity verification and security screening.

Legal safeguards in the United States are derived from constitutional and statutory instruments, notably the Fourth Amendment, which protects against unreasonable searches and seizures, and the Privacy Act of 1974, which regulates the collection and use of personal information by federal agencies. However, in the context of border and migration management, these protections are modified by the "border search exception" rule, which allows U.S. government officials to conduct routine searches and inspections of people at the border without a warrant, probable cause, or reasonable suspicion.<sup>9</sup> This approach is

premised on the principle that the sovereign has the inherent right to control entry into the country. In practice this means that migrants are often treated as second-class subjects, with significantly curtailed rights.

Whereas the US approach prioritizes surveillance and operational efficiency often at the expense of individual privacy and due process, the EU's framework aspires to set procedural safeguards through data protection and transparency obligations. These legal and institutional asymmetries have profound implications for migrants' rights. The divergence in institutional design and legal standards not only determines how rights are protected but also how violations are monitored and remedied. Consequently, this article argues that understanding these structural disparities is essential to evaluating if either system complies with international human rights norms through the governance of migration technologies.

## II. Geopolitical and Jurisdictional Influences on Migration Technologies

The deployment of biometric and automated technologies at borders cannot be understood solely through regulatory analysis; it must also be situated within the geopolitical and jurisdictional pressures that shape migration governance. Both the EU and US frame migration as a security emergency, enabling the expansion of surveillance infrastructures in the name of national defence. This framing renders migration management susceptible to political influence, making it subject to shifting agendas. Consequently, the collection of

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<sup>6</sup> USAGov. "U.S. Department of Homeland Security | USAGov." *Www.usa.gov*, 2024, [www.usa.gov/agencies/U-S-Department-of-Homeland-Security](http://www.usa.gov/agencies/U-S-Department-of-Homeland-Security).

<sup>7</sup> "U.S. Customs and Border Protection | USAGov." *Www.usa.gov*, [www.usa.gov/agencies/u-s-customs-and-border-protection](http://www.usa.gov/agencies/u-s-customs-and-border-protection).

<sup>8</sup> U.S. Immigration and Customs Enforcement. "Who We Are." *Www.ice.gov*, 9 May 2023, [www.ice.gov/about-ice](http://www.ice.gov/about-ice).

<sup>9</sup> "Searches and Seizures at the Border and the Fourth Amendment." *Congress.gov*, 2025, [www.congress.gov/crs-product/R46601](http://www.congress.gov/crs-product/R46601).

bodily-coded information exemplifies the broader trend of the “securitisation of identity,”<sup>10</sup> a process in which migrants’ physical and biometric traits are treated as tools for regulating their movement. This approach reflects a shift in which personal identity becomes a means for the state to manage risk and enforce authority. Thus the implementation of biometric identifiers reflects a move away from the principle of universal rights applied equally to all individuals. Instead rights become “engraved” in the body, meaning that access to legal protections is tied to biological markers. This approach recognises that the body is not neutral, but socially constructed and contextualised by factors such as place of birth, kinship, and geography. Biometric systems therefore operate within what Helle Stenum describes as the “body-border,” where the migrant’s body becomes the technological site of control, classification, and surveillance.<sup>11</sup>

### 1.1 The role of Geopolitics in EU border regulation

In recent years, the European Union has faced the politicisation of migration, intensified by the 2015–2016

“refugee crisis”<sup>12</sup> and the Belarus–EU border standoff in 2021.<sup>13</sup> These developments have resulted in accelerated investment in biometric infrastructures. The Eurodac system was originally designed to store the fingerprints of asylum seekers and has now been expanded to include facial recognition, enabling faster identification and cross-checking of migrants across multiple databases.<sup>14</sup> In 2019, the EU also strengthened Frontex, the European Border and Coast Guard Agency, expanding it from a support role for national border authorities to an agency with executive powers<sup>15</sup> and a standing corps of up to 10,000 border guards.<sup>16</sup> The rise of far-right parties in countries such as Germany, Hungary, and the Netherlands

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<sup>12</sup> The 2015–2016 “refugee crisis” was a large-scale movement of asylum seekers fleeing armed conflicts and widespread violence, primarily in Syria, Afghanistan and Iraq. Bermúdez, Sandra. “Refugees Welcome? Cross-European Public Opinion on Asylum Seekers Following the 2015 Crisis.” *Real Instituto Elcano*, 27 Oct. 2020, [www.realinstitutoelcano.org/en/analyses/refugees-welcome-cross-european-public-opinion-on-asylum-seekers-following-the-2015-crisis/](http://www.realinstitutoelcano.org/en/analyses/refugees-welcome-cross-european-public-opinion-on-asylum-seekers-following-the-2015-crisis/).

<sup>13</sup> The 2021 Belarus–EU border standoff describes a crisis in which the government of Alexander Lukashenko was accused of deliberately facilitating the movement of migrants into European Union border states.

<sup>14</sup> Österreichische Datenschutzbehörde. “Eurodac.” *Österreichische Datenschutzbehörde*, 2025, [data-protection-authority.gv.at/europe-international/eurodac](https://data-protection-authority.gv.at/europe-international/eurodac).

<sup>15</sup> Frontex Launches EU-Wide Recruitment Campaign: “Serve People. Protect Europe.” *Europa.eu*, 2025, [www.frontex.europa.eu/media-centre/news/news-release/frontex-launches-eu-wide-recruitment-campaign-serve-people-protect-europe-yU19Ot](http://www.frontex.europa.eu/media-centre/news/news-release/frontex-launches-eu-wide-recruitment-campaign-serve-people-protect-europe-yU19Ot).

<sup>16</sup> “1Border, European. “European Border and Coast Guard: 10 000-Strong Standing Corps by 2027 | News | European Parliament.” *Europa.eu*, 17 Apr. 2019, [www.europarl.europa.eu/news/en/press-room/20190410IPR37530/european-border-and-coast-guard-10-000-strong-standing-corps-by-2027](http://www.europarl.europa.eu/news/en/press-room/20190410IPR37530/european-border-and-coast-guard-10-000-strong-standing-corps-by-2027).

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<sup>10</sup> Stenum, Helle. “The Body-Border – Governing Irregular Migration through Biometric Technology.” *spheres: Journal for Digital Cultures*, no. 4, 2017, [www.spheres-journal.org](http://www.spheres-journal.org).

<sup>11</sup> *ibid*

further reinforces technological solutions in deterrence and accelerated processing, advocating stricter border controls. Italy's decree declaring a "state of emergency" on migration in 2023 illustrates this growing trend in the EU toward securitised approaches to migration management.<sup>17</sup>

The increasing deployment of biometric surveillance and the interoperability of migration databases reflect institutional preferences for harmonised, automated control. The EU Pact on Migration and Asylum institutionalises this approach by implementing solidarity mechanisms that promote faster screenings and coordinated responsibility-sharing among Member States.<sup>18</sup> EU institutions frame these projects as necessary to strengthen Schengen governance and internal security. However, NGOs such as Amnesty International and Human Rights Watch have strongly criticised aspects of the Pact, warning that accelerated procedures "will lead to a surge in suffering" and increase the risk of discrimination against migrants.<sup>19</sup> This dynamic exemplifies technological surveillance, which Didier Bigo's "Ban-opticon" theory explains as being justified through perpetual crisis rhetoric,

where migration and security threats are framed as ongoing emergencies to legitimize continuous state control.

The increased reliance on technology in the EU is further accompanied by an externalisation strategy that pushes migration control beyond EU territory.<sup>20</sup> The EU partners with countries such as Libya, Tunisia, and Turkey to intercept and manage migration flows before they reach Europe. This expands Europe's "digital border," reinforcing historical hierarchies in which non-European populations are subjected to intensified technological surveillance and limited mobility.

#### 1.1.1 The role of Geopolitics in US border regulation

In the United States, border regulation intersects with a persistent narrative emphasizing national security. Migrant management is guided by constitutional protections and statutory safeguards. The Fourth Amendment in the US Constitution uses the term "people" rather than "citizen," to designate the set of individuals whose rights the United States is bound to honour.<sup>21</sup> As a result, non-U.S. citizens, whether lawfully present in the U.S. or not, do have a certain degree of Fourth Amendment rights, as well as rights to due process and equal protection. Under the Supreme Court's ruling in *US v. Verdugo-Urquidez*, any person with "substantial voluntary connections" to the United States is protected by the Fourth Amendment's

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<sup>17</sup> "Italy Declares a State of Emergency over Migration – DW – 04/14/2023." *Dw.com*, [www.dw.com/en/italy-declares-a-state-of-emergency-over-migration-what-does-it-mean/a-65306799](https://www.dw.com/en/italy-declares-a-state-of-emergency-over-migration-what-does-it-mean/a-65306799).

<sup>18</sup> European Commission. "Pact on Migration and Asylum." *European Commission*, 21 May 2024, [home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en).

<sup>19</sup> Bayer, Lili. "Amnesty Warns New EU Deal on Migration and Asylum 'Will Lead to Surge in Suffering' – As It Happened." *The Guardian*, 20 Dec. 2023, [www.theguardian.com/world/live/2023/dec/20/eu-reaches-deal-on-migration-and-asylum](https://www.theguardian.com/world/live/2023/dec/20/eu-reaches-deal-on-migration-and-asylum)

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<sup>20</sup> Metcalfe, Philippa, et al. *Risking Lives: Smart Borders, Private Interests and AI Policy in Europe Acknowledgements*.

<sup>21</sup> Jr, Stephen Perez. "Immigration & the Fourth Amendment - Restore the Fourth." *Restore the Fourth*, 10 Apr. 2025, [restorethe4th.com/immigration-the-fourth-amendment/](https://restorethe4th.com/immigration-the-fourth-amendment/).

prohibition of unreasonable searches, in which the government needs a warrant based on probable cause before conducting a search or seizure.<sup>22</sup> However, these legal safeguards are frequently undermined by political pressures and security-driven policies. Programs such as the Homeland Advanced Recognition Technology System (HART) biometric database often bypass proper judicial oversight. HART aggregates facial recognition, DNA, iris scans, fingerprints, and voice prints—often gathered without a warrant—into a single system capable of identifying individuals in public spaces.<sup>23</sup> Meanwhile, DHS uses this data to locate and target migrants for “digital deportation.” This raises serious concerns regarding the right to privacy.

The second Trump administration has accelerated and expanded these practices, adopting a markedly aggressive stance toward surveillance-based immigration enforcement. The administration’s directives seek to compel full cooperation from local and state law enforcement, leveraging the threat of withholding federal funding to force compliance. Local agencies are expected to provide intelligence, share data, detain individuals and dedicate personnel and resources to assist federal immigration enforcement. This approach effectively deputizes local police as extensions of ICE, increasing the agency’s reach and capacity. As a result, ICE operations have expanded: by 16 November 2025, ICE held a record

~65,135 individuals in detention nationwide and roughly 73.6 % of them had no criminal convictions.<sup>24</sup> This approach reflects a broader political posture that prioritises punitive control over maintaining constitutional safeguards, increasing the likelihood of rights violations and entrenching a model of governance that normalises pervasive monitoring of already marginalised populations.

These concerns are heightened by related enforcement tools. ICE’s access to cellphone metadata to track people suspected of unlawful presence endangers the privacy of citizens and non-citizens alike. Many warrants are issued based solely on checks of error-prone biometric databases, which have repeatedly led to wrongful detainments. Because these cases often involve civil immigration violations rather than criminal offenses, there is typically no determination of probable cause reviewed by a neutral magistrate, making these violations more likely to persist.<sup>25</sup>

In the United States, migration debates are largely centered around the US–Mexico border, which is framed as the country’s central migration issue— a dynamic that contrasts with the European focus on externalised digital borders. Political narratives in the US, promoted by government officials and some mainstream media outlets, often depict Latin American mobility as a national-security threat. In this context, agencies such as DHS, CBP, and ICE deploy AI-driven tools, including facial recognition, at

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<sup>22</sup> *ibid*

<sup>23</sup> Jr, Stephen Perez. “Immigration & the Fourth Amendment - Restore the Fourth.” *Restore the Fourth*, 10 Apr. 2025, [restorethe4th.com/immigration-the-fourth-amendment/](https://restorethe4th.com/immigration-the-fourth-amendment/).

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<sup>24</sup> TRAC Immigration. “Immigration Detention Quick Facts.” *Tracreports.org*, 2025, [tracreports.org/immigration/quickfacts/](https://tracreports.org/immigration/quickfacts/).

<sup>25</sup> Jr, Stephen Perez. “Immigration & the Fourth Amendment - Restore the Fourth.” *Restore the Fourth*, 10 Apr. 2025, [restorethe4th.com/immigration-the-fourth-amendment/](https://restorethe4th.com/immigration-the-fourth-amendment/).

airports, predictive analytics for “risk profiles,” and aerial surveillance along the southern border. These systems extend a historical pattern in the US, where Latino, Indigenous, and Black communities are disproportionately framed as security risks. The border operates as a zone of exception in which ordinary rights protections are weakened or suspended, replaced by technologically mediated forms of control. This echoes Tendayi Achiume’s postcolonial theory, which argues that migration control reproduces colonial hierarchies.<sup>26</sup> Through this perspective, it could be argued that technologies are being tested disproportionately on migrants from Global South regions who have the least political protection. In this sense, biometric technology can be seen as the materialisation of a political thought linked to the panoptical perspective of government—where the state observes and monitors individuals continuously—and to colonial forms of governing through bodily control. For example, fingerprinting was developed in colonial India and technologised in the era of information technology (IT) for criminal and suspect databases.<sup>27</sup> In this sense, borders are not merely territorial lines, but rather serve as a form of “political technology.” Borders must be viewed as ideological constructs shaped by security discourses, state interests and global inequalities.

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<sup>26</sup> Achiume, Tendayi. “Migration as Decolonization.” *Papers.ssrn.com*, 7 Feb. 2019,

[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3330353](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3330353)

<sup>27</sup> Stenum, Helle. “The Body-Border – Governing Irregular Migration through Biometric Technology.” *spheres: Journal for Digital Cultures*, no. 4, 2017, [www.spheres-journal.org](http://www.spheres-journal.org).

## II. Human rights Implications and Policy Challenges

The expansion of biometric and automated systems in migration management raises profound human rights concerns. Biometric identifiers can be deeply intrusive and immutable and are often collected without meaningful consent. A core concern lies in due process, as automated decision-making often lacks transparency, creating difficulties for individuals to contest unfair outcomes or understand how their data is used.

The EU Commission claims that biometric systems reduce discrimination and establish fairer systems of border control. However, in practice, the European Data Protection Supervisor (EDPS) and the National Data Protection Authorities (DPAs) struggle to control interoperable systems. Large-scale systems like Eurodac now store more categories of data for longer periods, including data of minors. This cross-system data-sharing creates complex risk profiles, as large-scale storage of biometric data increases the possibility of data breaches.

In the US, the absence of a comprehensive data-protection framework and the dominance of security logic make it difficult for individuals to contest erroneous biometric data. The country relies on a relatively weak statutory framework, alongside constitutional doctrines that provide broad national security exemptions. The result is a multi-layered surveillance apparatus that treats migrant data as an enforcement asset.

A 2003 SANS Institute<sup>28</sup> report found that biometric technologies are often designed with a white, Western body in mind, making it more difficult for darker-skinned individuals to be accurately enrolled and verified.<sup>29</sup> Professor of Cultural Studies Joseph Pugliese similarly noted that biometric systems are “infrastructurally calibrated to whiteness,” meaning that technical settings and parameters are optimised for white users.<sup>30</sup> The result is that non-white people disproportionately experience system failures, including higher rates of misidentification and, in some cases, wrongful detentions. This mirrors traditional racialized profiling in border control, but now it appears disguised as objective, non-discriminatory technology. Professor Shoshana Amielle Magnet further shows that biometric technologies rely on culturally-coded assumptions about gender, race and class.<sup>31</sup> While marketed as tools to eliminate systemic discrimination, they are produced within contexts marked by persistent biases. Consequently, these systems often reproduce the very inequalities they claim to resolve, undermining the purported fairness of biometric-based migration management. Through this perspective, biometric

identification transforms socially constructed categorisations as technological neutral data.

Both EU and US jurisdictions face challenges in ensuring that automated migration systems protect fundamental human rights. Biometric technologies raise concerns regarding the principle of equal treatment and proportionality, undermining the individual assessment central to refugee and human rights law.

### III. Policy Improvements

Several approaches can be considered to address the challenges and risks posed by the use of biometric and automated migration technologies. Both the EU and the US could adopt mandatory algorithmic impact assessments (AIAs) for all migration-related technologies. Inspired by Hildebrandt’s work on “legal protection by design,” AIAs would evaluate discrimination risks, data-quality concerns and potential rights infringements before deployment.<sup>32</sup> These assessments should be public and independently audited, to increase transparency and accountability.

States should also establish firewalls between migration enforcement and essential public services, as advocated by the Platform for International Cooperation on Undocumented Migrants (PICUM).<sup>33</sup> Such firewalls would prevent biometric data gathered for humanitarian

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<sup>28</sup> The SANS Institute is a US based private company that is a leading provider of cybersecurity training, certifications and research.

<sup>29</sup> Stenum, Helle. “The Body-Border – Governing Irregular Migration through Biometric Technology.” *spheres: Journal for Digital Cultures*, no. 4, 2017, [www.spheres-journal.org](http://www.spheres-journal.org).

<sup>30</sup> Azar, Mitra, et al. “Introduction: Ways of Machine Seeing.” *AI & SOCIETY*, 20 Feb. 2021, <https://doi.org/10.1007/s00146-020-01124-6>.

<sup>31</sup> Fail!, Biometrics. “Duke University Press - When Biometrics Fail.” *Dukeupress.edu*, 2019, [www.dukeupress.edu/when-biometrics-fail](http://www.dukeupress.edu/when-biometrics-fail).

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<sup>32</sup> Hildebrandt, Mireille. “Saved by Design? The Case of Legal Protection by Design.” *NanoEthics*, vol. 11, no. 3, 25 Aug. 2017, pp. 307–311, <https://doi.org/10.1007/s11569-017-0299-0>.

<sup>33</sup> Galletti, Ettore. “Reporting Obligations and “Firewalls” - PICUM.” *PICUM*, 17 Jan. 2025, [picum.org/blog/reporting-obligations-and-firewalls/](http://picum.org/blog/reporting-obligations-and-firewalls/).

or administrative purposes from being repurposed for enforcement.

There is also a need to balance human decision making with asylum-related automated systems. Asylum eligibility, detentions and deportations are high-stakes, context-sensitive decisions that affect individuals' fundamental human rights. Drawing from Professor Virginia Eubanks' critique of "automating inequality," such cases should never be based solely on automated analysis, because algorithms cannot adequately account for the nuanced human factors involved.<sup>34</sup> Independent adjudicators must be able to review the underlying logic, evidence and data sources behind these decisions.

Both jurisdictions should also commit to limiting biometric data retention. By adopting models such as privacy-by-default and time-bounded retention. These constraints would reduce long-term risks associated with large-scale biometric archives.

Finally, policymakers could also consider community-based and rights-centered alternatives to surveillance. This could be achieved by establishing a localised legal support network which would provide migrants with accessible advice and representation to navigate asylum procedures. A humanitarian reception model could also be implemented offering safe accommodation and essential services to ensure humane

treatment upon arrival. Additionally, investment in safe mobility pathways would create legal alternatives to dangerous, irregular crossings. Together these measures offer non-technological solutions that reduce irregular migration without compromising human rights. The effective management of migration requires integrating emerging border technologies with humanitarian measures to ensure security, uphold human rights and provide safe, legal pathways for those in need.

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<sup>34</sup> Kosc, Helen, and Virginia Eubanks. "Review of AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE and PUNISH the POOR." *St Antony's International Review*, vol. 16, no. 2, 2021, pp. 377–380, [www.jstor.org/stable/27256515](http://www.jstor.org/stable/27256515).

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