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**STATEMENT OF
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**BEFORE THE
COMMITTEE ON HEALTH AND COMMITTEE ON HOSPITALS
NEW YORK CITY COUNCIL**

**FOR A HEARING CONCERNING
NEW YORK CITY’S PLAN FOR COVID-19 TESTING AND CONTACT TRACING**

**PRESENTED
MAY 15, 2020**

1. Introduction

Good morning, my name is Albert Fox Cahn, and I serve as the Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”). S.T.O.P. advocates and litigates for New Yorkers’ privacy, fighting discriminatory surveillance. I commend the committees for today’s hearing, and I am grateful for the opportunity to discuss the privacy implications of New York City’s tracking and contact tracing efforts around COVID-19.

Last week, Mayor Bill de Blasio announced the City’s plan to test and trace the spread of COVID-19, with a promise to mobilize 1,000 contact tracers by the end of May.¹ Preliminary information suggests that New York City will use a manual model of contact tracing, and we applaud city officials for refusing to adopt a technology-centered approach, such as those developed by Apple and Google. Still, concern remains over how we will protect the vast amounts of data collected by manual contact tracers. We must launch this expanded tracking effort, but if we don’t work deliberately to safeguard New Yorkers’ information, we will undermine our own efforts.

There are many unknowns to the City’s proposed contact tracing system. We don’t know who will have access to the collected data, how the data will be stored, or even how exactly the data will be used. Tracking systems inherently introduce privacy concerns given the sensitivity of health and location data. The government’s limited emphasis on contact tracing to date has contributed to uncertainty about how privacy issues will be handled.

These privacy concerns are particularly acute given the nebulous role of private philanthropies in driving the City’s tracing effort. Mayor de Blasio has said the City is working closely with the Johns Hopkins University and Bloomberg Philanthropies, but he hasn’t provided details on what exact role these organizations will play and what control they’ll have over resulting data. Alarming, one thing we do know is that Mayor de Blasio put New York City Health and Hospitals Corporation, an agency with no contact tracing experience, at the helm of the City’s Test and Trace Corps.

To succeed, the Test and Trace Corps must actively engage with all New Yorkers, making its operations and strategy completely transparent to the public. If contact tracing operates without proper safeguards and oversight, it will not only endanger New Yorkers’ fundamental rights,² it will undermine the public trust that is indispensable to robust participation. Contact tracing is only effective when every member of our community feels safe providing the most intimate health information to contact tracers, but the de Blasio administration isn’t doing enough to provide New Yorkers that safety.

¹ Press Release: *Test and Trace: Mayor de Blasio Announces New York City Test and Trace Corps*, OFFICE OF THE MAYOR (May 8, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/333-20/test-trace-mayor-de-blasio-new-york-city-test-trace-corps>.

² See Peter Swire, *Security, Privacy and the Coronavirus: Lessons From 9/11*, LAWFARE BLOG (Mar. 24, 2020), <https://www.lawfareblog.com/security-privacy-and-coronavirus-lessons-911>; See generally THE COLOR OF SURVEILLANCE CONFERENCE SERIES, GEORGETOWN LAW CTR. ON PRIVACY & TECH., (2019), <https://www.law.georgetown.edu/privacy-technology-center/events/color-of-surveillance-2019/>.

2. Data Protection

For contact tracing to succeed, New Yorkers need to know how our data will be stored, shared and analyzed. The Test and Trace Corps must provide a comprehensive plan for the full lifecycle of data management, including data deletion.

The City must be intentional about how it relies on technology as part of this tracing effort. Numerous for-profit technology firms are trying to convince New York and other jurisdictions that their technology is the answer, despite the fact that they often have no evidence to support the claim that their systems work. Even using a manual contact tracing model, where contact tracers reach out to patients from a call center, the City will still rely on technology to aggregate the database of contacts.

Mayor de Blasio indicated that the City would use Salesforce for this database effort,³ creating a case management system,⁴ enabling city officials to monitor the spread of the disease.⁵ While it's helpful to know the name of the City's proposed vendor, that is simply not enough. The public needs to know who will own the data, who will have access, and whether any supposedly anonymized/aggregated data will leave the City's control.

We also have limited information about exactly what data the City plans to collect. In designing the contact tracing system, we must balance the need for accurate tracing against the risks of collecting too much. Excessive data collection will put New Yorkers at risk while creating a tempting target for everyone from ICE to hackers. Not only must we limit the amount of data collected, but we also need to limit the duration it's held. Unless we delete contact tracing data promptly, the pool of personal information will only grow, and with it, the danger to New Yorkers.

Sadly, there is no guarantee that New York's manual contact tracing won't grow to include new, invasive technologies. We expected that City officials will be inundated with requests from technology vendors who will make outlandish claims about the benefits of their products. Already, at least one Health Department official has raised the possibility of a smartphone app to report COVID-19 symptoms.⁶ Additionally, City officials have indicated that call center tracers may also use automatic texting systems to monitor quarantine compliance.

3. Manual Contact Tracing Best Practices

Manual contact tracing will require City officials to thoughtfully evaluate precisely what data to collect. As tracers are potentially tasked with collecting New Yorkers' names, phone numbers, location history, health insurance data, financial data, and other data points, it is easy to be over-

³ Transcript: *Mayor de Blasio Holds Media Availability*, OFFICE OF THE MAYOR (May 8, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/330-20/transcript-mayor-de-blasio-holds-media-availability>.

⁴ See Elizabeth Kim, *Coronavirus Updates: A 5-Year-Old In NYC Has Died From A Condition Related To COVID-19*, GOTHAMIST (May 8, 2020), <https://gothamist.com/news/coronavirus-updates-may-8>.

⁵ See Noah Higgins-Dunn and William Feuer, *New York City Partners with Salesforce on Coronavirus Contact Tracing Program, Mayor Says*, CNBC (May 8, 2020), <https://www.cnbc.com/2020/05/08/new-york-city-partners-with-salesforce-on-coronavirus-contact-tracing-program-mayor-says.html>.

⁶ Hansi Lo Wang, *Wanted In New York: Thousands Of COVID-19 Contact Tracers*, NPR (May 8, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/08/852123327/wanted-in-new-york-thousands-of-covid-19-contact-tracers>.

inclusive. All too often, New York has taken a “data maximalist” position, collecting as much information on residents as possible, but only later deciding if the information was truly needed. Such an approach is not acceptable for contact tracing.

We must also ensure that there is adequate screening of those who will be entrusted with these intimate portraits of our lives. As of Monday, the City has already conducted 800 initial interviews, and officials are looking to increase the pace of recruitment.⁷ But in the rush to start our tracing efforts, the City must ensure that those hired to trace our movements are deserving of our trust.

In addition to adequate background checks, we need to implement data access controls and audits to ensure that contact tracers are only using their databases for the public good. It’s too easy to imagine contact tracers abusing the tools they’ve been given access to, tracking the movements of a disgruntled neighbor, an estranged spouse, or even children. Proper access controls and auditing will build the level of trust needed to guarantee that New Yorkers will take part in the process.

Beyond creating privacy safeguards, the City must clearly explain the steps it’s taking to the public. Many New Yorkers are deeply skeptical of sharing their health data, their movements, and their personal interactions with a complete stranger. For this reason, privacy safeguards aren’t in tension with effective contact tracing, they are indispensable to its operations.

4. Contact Tracing Coordination

For decades, the Department of Health and Mental Hygiene has run a well-respected and effective contact tracing system, deploying culturally competent contact tracers who mirror the diversity of the city they serve. Like many organizations, we were surprised and saddened to see the Mayor ignore the Department’s unparalleled experience to place the Health and Hospitals Corporation in charge.

The effectiveness of any contact tracing system depends on widespread support, and public health only works when the public trusts the public health system. But rather than actively reassuring New York’s most vulnerable and potentially reluctant residents, the City’s leaders are withholding the details. If the public is unwilling to hand over intimate information about their lives and health, contact tracing will hit a dead end. Our ability to track disease is only as strong as the public’s ability to help.

New Yorkers also need greater clarity on how New York City’s contact tracing efforts will be coordinated with State and regional efforts. With so many essential workers commuting in and out of New York each day, it’s clear that contacts won’t stop at the City’s edge. Given the removal of the Health Department from this effort, and the loss of their unique contact tracing experience, it’s unclear what benefit the City derives from operating a separate, parallel tracing system.

5. Contact Tracing Equity

If it is done well, contact tracing has the potential to narrow the grotesque inequalities that have defined the COVID-19 pandemic for our city. But if it is done poorly, contact tracing will only

⁷ Sally Goldenberg, *Contact Tracing Leadership Change Costing City Delays, Say Involved Parties*, POLITICO (May 12, 2020), <https://www.politico.com/states/new-york/albany/story/2020/05/12/contact-tracing-leadership-change-costing-city-delays-say-involved-parties-1283485>.

exacerbate the factors that have taken such an outsized toll on New Yorkers of color and low-income communities.

That is why the City must ensure Test and Trace deploys a culturally and linguistically competent team of tracers who can reach all New Yorkers. At a time when low income New Yorkers,⁸ Immigrants,⁹ and people of color are both more likely to be essential workers¹⁰ and to have limited access to health care,¹¹ these communities cannot be inaccessible to contact tracers.

The City should prioritize the hiring of trusted community messengers to reach these communities and educate New Yorkers about our tracing effort. The risk isn't merely that we'll overlook pockets of infection, but that our contact tracing data will systematically distort our vision of the facts on the group.

This is especially dangerous as contact tracing data informs the City's broader efforts to combat COVID-19. In the age of data-driven decision making, it's easy for officials to claim that policies simply are responding to the number. But data about and collected by human beings is almost inevitably biased, warped by the subjectivity that goes into creating a data set. As we look to contact tracing for a map of the disease, structural bias and accessibility barriers could easily blind us to many of those communities most impacted by COVID-19.

6. Institutional data sharing

Just as it's vital we protect against contact tracers' misuse of New Yorkers' data, we also need to ensure that no other entity be given access. This danger is most acute for the New York City Police Department (NYPD), which has already played an outsized and destructive role in our City's response to COVID-19. There must be absolutely no circumstances under which police are allowed access to any form of contact tracing data, including supposedly de-anonymized and aggregated information. Any information flow the NYPD whatsoever will chill public engagement, accelerate the spread of COVID-19, and put historically over-policed communities at extreme risk.

Already, we've seen the Police Department use social distancing enforcement to transform a public health crisis into a pipeline for profiling and police misconduct. It is not enough to simply impose restrictions on those who hold contact tracing data, but we must fully understand what role the NYPD is playing in monitoring the spread of COVID-19. That is why I'm renewing my call for enactment of the only bill to comprehensively regulate the NYPD surveillance regime: The Public Oversight of Surveillance Technology ("POST") Act. The POST Act addresses the long-unmet need

⁸ See Connor Maxwell, *Coronavirus Compounds Inequality and Endangers Communities of Color*, CTR. FOR AM. PROGRESS (Mar. 27, 2020), <https://www.americanprogress.org/issues/race/news/2020/03/27/482337/coronavirus-compounds-inequality-endangers-communities-color/>.

⁹ See Emma Goldberg, *When Coronavirus Gets Lost in Translation*, N.Y. TIMES (Apr. 17, 2020), <https://www.nytimes.com/2020/04/17/health/covid-coronavirus-medical-translators.html>; Allyssa M.G. Scheyer, *We Are Killing Them: The Heavy Toll COVID-19 Takes on Undocumented Immigrants*, JURIST (Apr. 22, 2020), <https://www.jurist.org/commentary/2020/04/allyssa-scheyer-covid19-undocumented-immigrants/>.

¹⁰ See Richard Florida, *The Coronavirus Class Divide in Cities*, CITYLAB (Apr. 7, 2020), <https://www.citylab.com/equity/2020/04/coronavirus-risk-jobs-essential-workers-data-class-divide/609529/>.

¹¹ See Cynthia D. Perry and Linda L. Blumberg, *A New Safety Net for Low-Income Families*, URB. INST. (2008), <https://www.urban.org/sites/default/files/publication/33051/411717-Health-Insurance-for-Low-Income-Working-Families-Summary.PDF>.

for civilian oversight of NYPD surveillance practices, particularly the acquisition and deployment of novel, highly invasive technologies. For years, the NYPD has built up an arsenal of spy tools on the public tab while trying to block public notice and debate. These tools include items like facial recognition, IMSI catchers (so-called “stingrays”), and automated license plate readers that can monitor a vehicle’s location throughout the City.

These tools pose a privacy threat to all of us, but they pose a particularly potent threat to members of our immigrant communities. All too often, these systems create a risk of information-sharing with federal agencies, including ICE.

The evidence is clear: civilian oversight of surveillance enhances the public’s trust in police departments and is absolutely necessary for public safety. Now more than ever, New York City must ensure it has appropriate safeguards in place to provide security to the public and to earn the trust that is critical to the success of any contact tracing effort.