STATEMENT OF
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BEFORE THE COMMITTEE ON PUBLIC SAFETY,
NEW YORK CITY COUNCIL

FOR A HEARING ON THE
MAYOR'S BLUEPRINT TO END GUN VIOLENCE

PRESENTED
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Good morning, Chair Hanks and members of the Committee on Public Safety. My name is Nina Loshkajian, and I am a Legal Fellow at the Surveillance Technology Oversight Project ("S.T.O.P."), a New York-based civil rights and anti-surveillance group. S.T.O.P. advocates and litigates against discriminatory surveillance. I appreciate the opportunity to testify today on our concerns with Mayor Adams' Blueprint to End Gun Violence. New York must address gun violence, but the Mayor's plan replicates dangerous and discredited strategies that have failed New Yorkers for generations and endangered our communities.

I.   Gun Detection Technology

Mayor Adams' Blueprint vaguely promises "new technology to identify suspects and those carrying guns." Spending millions of dollars on gun detection pseudoscience will accomplish only one thing: wasting taxpayers' money.

While the Mayor has failed to identify what vendors and technologies he's evaluating, we're particularly concerned about any use of object or behavior recognition.[1] This untested technology risks mistaking everyday items for a gun. Preliminary data suggests it is both inaccurate and can be blocked by something as simple as a coat pocket. Lockport school district in upstate New York adopted the technology, only for it to wrongly flag broom handles as guns.[2] Such a system would likely inundate the NYPD with false reports of guns, sending officers charging into potentially deadly encounters.

Some may be tempted to find comfort in the Mayor's suggestion that gun detection "technology will not be the sole means to make arrests, but as another tool as part of larger case-building efforts." However, this should raise alarm bells. What this really means is that the NYPD will evade judicial scrutiny in cases in which it uses gun detection technology. Judges will not be able to assess the reliability of the evidence, and defendants will never fully get their day in court. As we have seen with facial recognition technology, defendants are rarely told when the technology leads to their arrest.[3]

II.   Facial Recognition Technology

Another aspect of the Blueprint that Mayor Adams touts as a solution to gun violence is facial recognition technology, but the reality is facial recognition technology will only put New Yorkers at risk, particularly our Black and brown neighbors.

This software is biased, broken, and, when it does work, is antithetical to a democratic society. Artificial intelligence ("A.I.") is the aggregation of countless human decisions, codified into algorithms. But as a result, human bias infects A.I. systems. For example, if facial recognition software is programmed to only recognize two genders, we leave transgender and non-binary individuals invisible.[4] If a security camera learns who is "suspicious looking" using pictures of inmates, the photos will just teach the A.I. to replicate the mass incarceration of Black and brown men.

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[1] Mark Sullivan, *The Capitol Riot is Spurring New Interest in Gun-Detection AI*, FAST COMPANY, Jan. 15, 2021, https://www.fastcompany.com/90594180/capitol-gun-detection-ai-zeroeyes-omnilert.
[2] Todd Feathers, *Facial Recognition Company Lied to School District About its Racist Tech*, VICE, Dec. 1, 2020, https://www.vice.com/en/article/qjpkmx/fac-recognition-company-lied-to-school-district-about-its-racist-tech.
[3] Clare Garvie, Alvaro Bedoya & Jonathan Frankle, *The Perpetual Line-Up: Unregulated Police Face Recognition in America* (Oct. 18, 2016), https://www.perpetuallineup.org/findings/transparency-accountability.
[4] Rachel Mentz, *AI Software Defines People as Male or Female. That's a Problem*, CNN BUSINESS, Nov. 21, 2019, https://www.cnn.com/2019/11/21/tech/ai-gender-recognition-problem/index.html.

In this way, A.I. can learn to be just like us, exacerbating structural discrimination against marginalized communities.[5] In the case of facial recognition, this leads to systems that are over 99% accurate for white men, but which can be wrong more than 1 in 3 times for some women of color.[6] The same exact software, the same exact hardware—but dramatically different outcomes for Black and brown New Yorkers. Numerous people, disproportionately Black, have been wrongly arrested after being misidentified through facial recognition.[7]

Given this spy tool's bias, it has no place in New York policing. And yet it does. New York Police Department (NYPD) Officers reported in open-records litigation that the City used facial recognition more than 22,000 times in just three years. Officers use pseudoscientific tactics that exacerbate the risk of error, such as running facial recognition scans of celebrity lookalikes.[8] There are also reports that police used this technology to target Derrick Ingram for his leadership of a peaceful Black Lives Matter protest. Police later surrounded Derrick's home with more than 50 officers as part of a retaliatory raid.[9] Using facial recognition to monitor political demonstrations chills the freedom of assembly at the heart of our First Amendment.

Facial recognition searches are also skewed by where surveillance cameras are placed in our city. With disproportionately high placement in low-income communities of color,[10] the technology further replicates historical biased policing. A recent analysis by Amnesty International found that "areas across all boroughs with higher incidents of stop-and-frisk are also areas with the greatest current exposure to facial recognition," and further, "the higher the proportion of non-white residents, the higher the concentration of facial recognition compatible CCTV cameras."[11]

Because of its documented biases and its replication of historically flawed police practices, facial recognition technology should not be used by the NYPD or any other government agency. We call on the Council to introduce legislation banning all government use of facial recognition. In continuing to fail to act to prohibit the technology, New York falls further and further behind progressive cities from around the world.[12]

III. Bail Reform Rollbacks and Risk Assessment Algorithms

Mayor Adams lays out a plan to revise and roll back bail reform, by having judges consider "dangerousness" when setting bail. Considering dangerousness is itself a dangerous path for New York City to go down. We fear

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[5] Sarah Myers West, Meredith Whittaker, Kate Crawford, *Discriminating Systems: Gender Race and Power in AI*, AI NOW INSTITUTE, p 6.

[6] Joy Buolamwini, Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, Proceeds of Machine Learning Research*, vol 81, 1-15, 2018 p. 1.

[7] Kashmir Hill, *Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match*, N.Y. TIMES, Dec. 29, 2020, https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html.

[8] Khari Johnson, *NYPD Used Facial Recognition and Pics of Woody Harrelson to Arrest a Man*, VENTUREBEAT, May 16, 2019, https://venturebeat.com/2019/05/16/nypd-used-facial-recognition-and-pics-of-woody-harrelson-to-arrest-a-man.

[9] George Joseph & Jake Offenhartz, *NYPD Used Facial Recognition Technology in Siege of Black Lives Matter Activist's Apartment*, GOTHAMIST, Aug. 14, 2020, https://gothamist.com/news/nypd-used-facial-recognition-unit-in-siege-of-black-lives-matter-activists-apartment.

[10] Eleni Manis et al., *Scan City: A Decade of NYPD Facial Recognition Abuse* (Surveillance Technology Oversight Project, July 8, 2018).

[11] *Inside the NYPD's Surveillance Machine*, AMNESTY INTERNATIONAL, https://banthescan.amnesty.org/decode.

[12] Shannon Flynn, *13 Cities Where Police Are Banned from Using Facial Recognition Tech*, INNOVATION & TECH TODAY, Nov. 18, 2020, https://innotechtoday.com/13-cities-where-police-are-banned-from-using-facial-recognition-tech; Kyle Wiggers, *AI Weekly: EU Facial Recognition Ban Highlights Need for U.S. Legislation*, VENTUREBEAT, Oct. 8, 2021, https://venturebeat.com/2021/10/08/ai-weekly-eu-facial-recognition-ban-highlights-need-for-u-s-legislation.

this proposal will use risk assessment algorithms to determine which New Yorkers will be detained and which will be set free, further exacerbating the problems that would be wrought by such a change.

Dangerousness is currently not a factor that can be considered in making determinations on pre-trial detention, nor has it ever been in New York, and that should remain the case. Perceived dangerousness is usually nothing more than a guess, and more problematically can often be a proxy for a person's race or ethnicity. What's more, proposed rollbacks on bail reform are misguided, as bail reform is not to blame for gun violence. A recent report by Comptroller Brad Lander found that bail reform laws passed by the New York State legislature in 2019 did not lead to an increase in the number or share of people rearrested post-release.[13]

Use of artificial intelligence to assess dangerousness, specifically through risk assessment algorithms, is another mistake. These tools crudely analyze age, criminal history, employment status, substance use, and other factors, claiming to predict the future and whether that individual is likely to show up to court. Rather than a crystal ball, these tools are a mirror, reflecting back our own historical biases and failing to treat us individual human beings.[14] Algorithms frequently "associate two things, such as poverty and recidivism or race and crime, and bake[] the association into how they find information and produce results."[15] In December 2021, a U.S. Department of Justice report found that the federal tool for assessing "dangerousness," PATTERN, led to significant and concerning racial disparities.[16] Despite their baked-in bias, such risk assessment tools have been used in pre-trial detention in New York since 2019.[17]

Expanding algorithmic decision-making over pretrial detention is a step in the wrong direction. Not only would this run contrary to New Yorker's broad support of bail reform,[18] but it will also replicate the biases of the criminal justice system and contribute to mass incarceration.[19] Considering dangerousness is a change that should be blocked, but the City must also go further and roll back the AI risk assessment tool for pre-trial detention deployed under the de Blasio administration.

IV. Information Sharing with Federal Agencies

The Mayor's Blueprint advocates for deepening "information sharing with the ATF, FBI, and all federal partners," directly undermining New York's promise to be a sanctuary city. Rather than expanding information sharing, the City should be restricting the ways that NYPD data is weaponized by U.S. Immigrations and

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[13] N.Y.C. Comptroller, *NYC Bail Trends Since 2019*, March 22, 2022, https://comptroller.nyc.gov/reports/nyc-bail-trends-since-2019.

[14] *Risk Assessment Tools*, MAPPING PRETRIAL INJUSTICE, https://pretrialrisk.com/the-basics/risk-assessment-algorithms.

[15] *Bias in Algorithms*, MAPPING PRETRIAL INJUSTICE, https://pretrialrisk.com/the-basics/bias-in-algorithms.

[16] U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *2021 Review and Revalidation of the First Step Act Risk Assessment Tool*, Dec. 2021, https://www.ojp.gov/pdffiles1/nij/303859.pdf ("PATTERN overpredicted the risk of Black individuals relative to white individuals on the general recidivism tools.")

[17] Corinne Ramey, *Algorithm Helps New York Decide Who Goes Free Before Trial*, WALL STREET JOURNAL, Sept. 20, 2020, https://www.wsj.com/articles/algorithm-helps-new-york-decide-who-goes-free-before-trial-11600610400.

[18] *ICYMI: New York State Legislative Leaders Agree: There Is No Connection Between the Rise in Violent Crimes and New York Bail Reforms, and Reforms Must Be Protected*, FWD.US, Feb. 22, 2022, https://www.fwd.us/news/icymi-new-york-state-legislative-leaders-agree-there-is-no-connection-between-the-rise-in-violent-crimes-and-new-york-bail-reforms-and-reforms-must-be-protected.

[19] Bryce Covert, *A Bail Reform Tool Intended to Curb Mass Incarceration Has Only Replicated Biases in the Criminal Justice System*, THE INTERCEPT, July 12, 2020, https://theintercept.com/2020/07/12/risk-assessment-tools-bail-reform.

Customs Enforcement ("ICE"). City law bars NYPD officers from enforcing immigration laws,[20] but they still can collect the information ICE uses to target so many New Yorkers. And this information can easily make its way into the hands of ICE through various channels including "fusion centers" funded by the Department of Justice and DHS, New York City's Joint Terrorism Task Force (JTTF) led by the FBI, and partnerships with Homeland Security Investigations (HSI). These federal partners of the NYPD will turn over data to ICE, as they are not confined by New York City's promise to be a sanctuary city.

In recent years, we've heard how ICE targets those fingerprinted by the NYPD,[21] placing many in deportation proceedings. When New Yorkers are arrested, they may be fingerprinted, and while the NYPD does not itself keep a fingerprint database, it runs the prints they take through the state police database. The state database is run through the FBI database, which is accessible to ICE.

The NYPD was able to deploy tools like "stingrays," fake cell towers that collect sensitive location and communications data.[22] Like many of the NYPD's tools, stingrays spy not only on the target of an investigation, but also on untold numbers of innocent bystanders.[23] The citizens of New York should be assured that New York City agencies are not allowing ICE access to their personal information and that New York City is not empowering the federal deportation force. The NYPD's deployment of novel and highly invasive surveillance technologies potentially gives ICE new ways to track thousands, even millions of New Yorkers.

This data sharing break Mayor Adams' campaign pledge that he would keep New York City a sanctuary city.[24] The Adams administration has insisted it will "protect immigrant communities" and "severely restrict" cooperation between the NYPD and ICE, including removing ICE from city buildings and facilities.[25] So long as the NYPD and its vendors are providing data to ATF and other federal agencies, the City will be doing the exact opposite—exposing immigrant communities to harm rather than protecting them. The Council must ensure the Mayor keeps true to his word. Deeper information sharing with federal partners will threaten the safety of our undocumented neighbors.

In sum, the Blueprint is misguided. It touts ineffective and discriminatory surveillance technology as a solution to gun violence. This technology will not make our City safer. The Council should take all steps necessary to ensure resources are directed towards proven community-based solutions to violence, not wasted on building up NYPD surveillance infrastructure.

Thank you for the opportunity to testify today.

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[20] N.Y.C. Local Law No. 228 (2017); N.Y.C. Mayor, *De Blasio Administration Announces Citywide Guidance and NYPD Protocol to Codify Restrictions on Assistance with Federal Immigration Enforcement*, Jan. 31, 2018, https://www1.nyc.gov/office-of-the-mayor/news/075-18/de-blasio-administration-citywide-guidance-nypd-protocol-codify-restrictions-on.

[21] Ryan Devereaux, John Knefel, *ICE Evades Sanctuary Rules by Using NYPD Fingerprints to Find Immigrants and Send Them Call-in Letters*, THE INTERCEPT, Apr. 26, 2018, https://theintercept.com/2018/04/26/ice-sends-threatening-letters-to-immigrants-increasing-climate-of-fear-in-new-york-city/.

[22] Joseph Goldstein, *New York Police Are Using Covert Cellphone Trackers, Civil Liberties Group Says*, N.Y. TIMES, Feb. 11, 2016, https://www.nytimes.com/2016/02/12/nyregion/new-york-police-dept-cellphone-tracking-stingrays.html.

[23] *Id.*

[24] Eddie Corp, *Adams Pledges to Keep NYC a 'Sanctuary City' From Becoming the Next Mayor*, DIGIS MAK, Oct. 18, 2021, https://digismak.com/adams-pledges-to-keep-nyc-a-sanctuary-city-from-becoming-the-next-mayor.

[25] Giulia McDonnell Nieto del Rio, *Pro-Cop Eric Adams Wants to Limit ICE Deportations. Can He Do It?*, DOCUMENTED, Nov. 5, 2021, https://documentedny.com/2021/11/05/eric-adams-ice.