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**STATEMENT OF
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BEFORE THE COMMITTEE ON CONSUMER AND WORKER PROTECTION,
NEW YORK CITY COUNCIL
FOR AN OVERSIGHT HEARING ON THE USE OF
FACIAL RECOGNITION TECHNOLOGY IN NEW YORK CITY BUSINESSES**

**PRESENTED
February 24, 2023**

Good morning, Chair Velázquez and members of the Committee on Consumer and Worker Protection. 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 the harms of facial recognition technology (FRT). We urge the Council to ban the use of this discriminatory and invasive software in places of public accommodation.

Thank you, Chair Velázquez, for organizing this important hearing. At the outset, though, we express disappointment at the fact that this hearing is focused on only one small aspect of FRT. The Council has seemingly ignored the growing threat from how this biased and dangerous tool is used by police and landlords. While we are heartened to see the Council paying attention to the issue of use in businesses, a much more comprehensive analysis of the unique harms of FRT in different contexts and legislation banning its use in multiple settings is necessary to protect New Yorkers now. It’s been over two years since S.T.O.P. drafted legislation for the Council to ban the use of FRT, but the Council has not even introduced these bills yet or included them on any committee agenda.

When it comes to FRT in New York City businesses, New Yorkers should not be forced to accept biometric surveillance as part of simple activities like buying groceries or taking their kids to a baseball game. Yet this is the reality in our city, and it will continue to be until the Council acts. FRT puts New Yorkers, particularly Black and brown New Yorkers, at risk, and subjects them to discrimination.

I. Built-In Bias and Security Risks

FRT is biased and error-prone. Artificial intelligence (“A.I.”) is the aggregation of countless human decisions, codified into algorithms. A.I. can learn to be just like us, exacerbating structural discrimination against marginalized communities.¹ In the case of facial recognition, this leads to systems that can be 99% accurate for middle-aged white men under ideal lighting in laboratory conditions, but can be wrong more than 1 in 3 times for some women of color, even under similar conditions.² The same exact software, the same exact hardware—but dramatically different outcomes for Black and brown New Yorkers. Numerous people, disproportionately Black, are wrongly arrested after being misidentified through facial recognition.³

Human bias infects A.I. systems. If a security camera learns who is “suspicious looking” using pictures of inmates, the A.I. replicates human bias and discrimination. When facial recognition software can only recognize two genders, we leave transgender and non-binary individuals susceptible to misidentification and wrongful arrest.⁴ Immigrants suffer as well. A biometric scanning feature on a Customs and Border Protection (CBP) app failed to accept photos of dark-skinned African and Haitian migrants applying for asylum.⁵

¹ Sarah Myers West, Meredith Whittaker, Kate Crawford, *Discriminating Systems: Gender Race and Power in AI*, AI NOW INSTITUTE, p 6.

² 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.

³ 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>.

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>.

⁵ Melissa del Bosque, *Facial Recognition Bias Frustrates Black Asylum Applicants to US, Advocates Say*, THE GUARDIAN, Feb. 8, 2023, <https://www.theguardian.com/us-news/2023/feb/08/us-immigration-cbp-one-app-facial-recognition-bias>.

Further, allowing businesses to collect biometric information makes them an even more lucrative target for identity thieves and hackers.⁶ Biometric identifiers are frequently used for ID verification and allocating public benefits; this makes an individual’s biometric information an attractive target for fraudsters, as hackers can, and do use biometric identifiers to access computer systems.⁷ More dangerous than other personal identifiers like a social security number, biometric identifiers are static and are almost impossible to change.⁸ When a hacker acquires another person’s biometric data, it puts them at risk for identity theft for the rest of their lives.⁹

II. Potential for Abuse

Facial recognition can identify any person, at any time, in any place—giving its operator incredible power. In recent months, James Dolan, the owner of Madison Square Garden Entertainment Corporation (MSG), has faced scrutiny for his use of FRT at the company’s venues, including from New York State Senators¹⁰ and Attorney General James.¹¹ Dolan has used the incredible power of FRT to seek vengeance against MSG’s foes, blocking access to ticketholders who are affiliated with law firms involved in pending lawsuits against MSG. In one case, this meant ejecting a mother trying to watch the Rockettes show at Radio City Music Hall with her daughter’s Girl Scout troop.¹² Business owners, especially wealthy, celebrity business owners, should not be allowed to use such dangerous tech to follow their whims or punish anyone who displeases them. It is easy to envision a situation in which a business uses FRT not only against perceived threats from outside the company, but also against its own employees who sue them for violating the law. The Council must act to stop retaliation against whistleblowers and others exercising their legal rights.

New York Police Department (NYPD) officers reported in open-records litigation that the department used FRT more than 22,000 times in just three years. Officers use pseudoscientific tactics that exacerbate the risk of error, such as running scans of celebrity lookalikes.¹³ The Georgetown Law Center on Privacy and Technology documented the kinds of abuses that are “common practice” at NYPD.¹⁴ One of the most egregious practices is that of routinely altering photos. The report revealed that NYPD edits of images “often go well beyond

⁶ *US Government Hack Stole Fingerprints of 5.6 Million Federal Employees*, THE GUARDIAN, Sept. 23, 2015, <https://www.theguardian.com/technology/2015/sep/23/us-government-hack-stole-fingerprints>. Dan Rafter, *Biometrics and Biometric Data: What Is It and Is It Secure?*, NORTON, May 6, 2022, <https://us.norton.com/blog/iot/what-is-biometrics>.

⁷ A. Dellinger, *Hackers Defeat Vein Authentication by Making a Fake Hand*, ENGADGET, Dec. 28, 2018, <https://www.engadget.com/2018-12-28-hackers-defeat-vein-authentication-by-making-a-fake-hand.html>.

⁸ Anthony Ortega, *Do Biometrics Protect Your Data or Put Your Identity at Risk?*, SPICEWORKS, Oct. 8, 2018, <https://www.spiceworks.com/it-security/data-security/articles/do-biometrics-protect-your-data-or-put-your-identity-at-risk/>.

⁹ *Is Your Identity at Risk from Biometric Data Collection?*, BeyondTrust (last accessed Oct. 6, 2022), <https://www.beyondtrust.com/blog/entry/is-your-identity-at-risk-from-biometric-data-collection>.

¹⁰ *Albany takes on attorney ban at Madison Square Garden (ny1.com)*.

¹¹ Andrea Vittorio, *Madison Square Garden Pressed by NY AG James Over Face Scans*, BLOOMBERG LAW, Jan. 25, 2023, <https://news.bloomberglaw.com/privacy-and-data-security/madison-square-garden-pressed-by-ny-ag-james-over-face-scans>.

¹² Sarah Wallace, *Face Recognition Tech Gets Girl Scout Mom Booted From Rockettes Show — Due to Where She Works*, NBC N.Y., Dec. 19, 2022, <https://www.nbcnewyork.com/investigations/face-recognition-tech-gets-girl-scout-mom-booted-from-rockettes-show-due-to-her-employer/4004677/>

¹³ 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>.

¹⁴ Clare Garvie, “Garbage In, Garbage Out: Face Recognition on Flawed Data,” Georgetown Law Center on Privacy and Technology, May 16, 2019, <https://www.flawedfacedata.com>.

minor lighting adjustments and color correction,” and in many instances “amount to fabricating completely new identity points not present in the original photo.”¹⁵

Police also abuses FRT to surveil protestors. There are reports that the NYPD used FRT 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.¹⁶

Facial recognition searches are also skewed by where surveillance cameras are placed in our city. The technology is misused in a way that further replicates historical biased policing, with disproportionately high placement of cameras in low-income communities of color.¹⁷ 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.”¹⁸

III. Business Use of FRT in NYC and the Need for a Ban

Given the bias, invasiveness, and potential for abuse of FRT, it has no place in New York businesses. And yet it does. This year, the Mets implemented a facial recognition ticketing system at Citi Field.¹⁹ In partnership with Wicket, a computer vision company, the Mets are encouraging fans to upload selfies on MLB.com to register their faces and then check-in at the gates. The Mets have touted this system as a new high-tech amenity. But FRT is not an amenity, it is discriminatory surveillance. And it is far from high-tech, as it often struggles to identify faces when people are wearing hats, seemingly an obvious issue for fans headed to a baseball game.²⁰ Additionally, many of the most popular venues in NYC, owned by MSG, now deploy FRT, and the technology is already used in some grocery stores.²¹ Stores like Brooklyn Fare and Westside Market may be scanning the face of every single customer walking through their stores and storing that sensitive personal data indefinitely.

Public accommodations’ use of FRT is already harming New Yorkers, and this use must be banned immediately. We have worked with Council Members to push for a suite of soon-to-be introduced legislation that would ban the use of FRT in three contexts: by law enforcement and other government agencies, by landlords, and by owners of places of public accommodation.

Our proposed legislation specifically prohibits places of public accommodation from using biometric surveillance tools and any information derived from biometric surveillance tools. Our bills also create a private right of action, empowering individuals whose biometric data has been collected illegally. This would prevent

¹⁵ *Id.*

¹⁶ 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>.

¹⁷ Eleni Manis et al., *Scan City: A Decade of NYPD Facial Recognition Abuse* (Surveillance Technology Oversight Project, July 8, 2018).

¹⁸ *Inside the NYPD’s Surveillance Machine*, AMNESTY INTERNATIONAL, <https://banthescan.amnesty.org/decode>.

¹⁹ Andrew Cohen, *The New Face of Baseball: Mets to Roll Out Facial Recognition Ticketing at Citi Field*, SPORTS BUSINESS JOURNAL, April 1, 2022, <https://www.sportstechie.com/the-new-face-of-baseball-mets-to-roll-out-facial-recognition-ticketing-at-citi-field>.

²⁰ Sam Van Doran and David Siffert, *The Mets Should Steal Bases, Not Faces*, N.Y. DAILY NEWS, Sept. 15, 2022, <https://www.nydailynews.com/opinion/ny-oped-bases-not-faces-mets-20220915-cuuul25jjnh5rbzbbvsmrbwauy-story.html>.

²¹ Lisa Fickenscher, *Retailers Busting Thieves with Facial-Recognition Tech Used by MSG’s James Dolan*, N.Y. POST, Feb. 12, 2023, <https://nypost.com/2023/02/12/retailers-busting-thieves-with-facial-recognition-tech-used-at-msg>.

the types of abuses of the technology that we are seeing in places of public accommodation like MSG. We hope that this proposed legislation will be included on the agenda of a Council hearing in the near future, and that members of the Committee on Consumer and Worker Protection will support it, as urgent action is needed.

Thank you for the opportunity to testify today.