



40 Rector Street, 9<sup>th</sup> Floor  
New York, New York 10006

[www.StopSpying.org](http://www.StopSpying.org) | (571) 766-6273

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**STATEMENT OF  
ALBERT FOX CAHN, ESQ.  
EXECUTIVE DIRECTOR  
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT, INC.**

**BEFORE THE  
COMMITTEE ON TECHNOLOGY  
NEW YORK CITY COUNCIL**

**FOR A HEARING CONCERNING,  
OVERSIGHT - COMMISSION ON PUBLIC INFORMATION AND  
COMMUNICATION'S COLLABORATION IN DEVELOPING CITY INFORMATION  
POLICIES AND PROMOTING GOVERNMENTAL TRANSPARENCY.**

**PRESENTED  
February 12, 2019**

Good morning, my name is Albert Fox Cahn, and I serve as the Executive Director for the Surveillance Technology Oversight Project (“STOP”). STOP advocates and litigates the privacy rights of New Yorkers impacted by suspicionless, warrantless surveillance. I commend the committee and Chairman Koo for today’s hearing; for bringing much-needed attention to the fight for governmental transparency.

For the past year, I’ve have been proud to partner with the City as part of its Automated Decision Systems Task Force, meeting with City leaders, academics, and advocates to shape recommendations for the future role of artificial intelligence in New York City Government. As part of my role in the task force, I have noted that while Transparency is crucial in every area of government, it is nowhere more vital than in policing, where mistakes can quickly rob New Yorkers of their liberty, or even their life.

As part of today’s hearing, I urge the committee to note the urgent need for greater transparency of New York City Police Department (“NYPD”) surveillance practices, especially those tools that use artificial intelligence and other automated decision systems. Specifically, I speak today in support of the POST Act<sup>1</sup>, which would be an important step forward in strengthening police oversight, promoting public safety, and safeguarding New Yorkers’ privacy rights.

Historically, the NYPD deployed novel and highly invasive surveillance technologies in ways that circumvented democratic oversight and accountability. The NYPD used private and federal funds, without any disclosure to the lawmakers we depend-on to oversee our police forces. With this unaccountable funding, the NYPD was able to deploy tools like “stingrays,” fake cell towers that collect sensitive location and communications data.<sup>2</sup> Like many of the NYPD’s new tools, stingrays spy not only on the target of an investigation, but also on untold numbers of innocent bystanders.<sup>3</sup>

Let me be clear, the POST Act does not prohibit the NYPD from using new surveillance tools. Rather, it merely secures this Council’s indispensable role in reviewing when and how such tools are deployed. Under the POST Act, the NYPD must issue an “impact and use policy” report when choosing to use a new surveillance tool.<sup>4</sup> This report must describe the technology, rules, and guidelines for the use of that technology, and safeguards for protecting any data collected.<sup>5</sup> The City

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<sup>1</sup> Public Oversight of Surveillance Technology (POST) Act, Int 0487-2018.

<sup>2</sup> 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>.

<sup>3</sup> *Id.*

<sup>4</sup> N.Y. CITY COUNCIL 1482 § 1 (N.Y. 2017), ch. 1, 14 ADMIN. CODE OF N.Y.C. § 14-167(b) (as proposed)

<sup>5</sup> *Id.* at 14-167(a) (as proposed)

Council and the people of New York City would then be allowed to provide feedback on such an acquisition.<sup>6</sup> Thus, the POST Act strikes a delicate balance, requiring sufficient information to ensure oversight, while protecting operational details, sources, and methods.

Civilian oversight of policing and intelligence gathering is not only a fundamental American value, it is essential for effective policing. As then-President Obama's Task Force on 21st Century Policing found, "[l]aw enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy."<sup>7</sup> The NYPD's current procurement methods are not only undemocratic, but they harm the NYPD's very mission of promoting public safety.

The POST Act will benefit all New Yorkers, but it will offer particularly powerful protection for our Muslim neighbours. For years, Muslim New Yorkers have faced a pattern of unjust and unconstitutional NYPD surveillance. Specifically, the NYPD's Intelligence Division engaged in extensive, suspicionless surveillance of majority Muslim neighbourhoods and Muslim families.<sup>8</sup> Additionally, NYPD officials have conducted blanket surveillance of entire mosques, surveilling men, women, and children for nothing more than practicing their faith.<sup>9</sup> Some local businesses have even been classified as "place[s] of concern" for nothing more than having customers of middle eastern dissent.<sup>10</sup>

The facts are clear, the NYPD is engaged in widespread, discriminatory policing practices. According to the Office of the Inspector General for the NYPD ("OIG"), over 95% of recent NYPD political and religious investigations targeted Muslim individuals and organizations.<sup>11</sup> The

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<sup>6</sup> *Id.* at 14-167(e-f) (as proposed)

<sup>7</sup> PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 12 (2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>8</sup> Matt Apuzzo & Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, N.Y. TIMES, Apr. 15, 2014, [https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?\\_r=0](https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?_r=0); *see also* DIALA SHAMAS & NERMEEN ARASTU, MUSLIM AM. CIVIL LIBERTIES COAL., CREATING LAW ENF'T ACCOUNTABILITY & RESPONSIBILITY & ASIAN AM. LEGAL DEF. & EDUC. FUND, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 10 (2013), <https://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

<sup>9</sup> Apuzzo & Goldstein, *supra* note 7.

<sup>10</sup> Adam Goldman & Matt Apuzzo, *NYPD: Muslim Spying Led to No Leads, Terror Cases*, ASSOCIATED PRESS, Aug. 21, 2012, <https://www.ap.org/ap-in-the-news/2012/nypd-muslim-spying-led-to-no-leads-terror-cases>.

<sup>11</sup> OFFICE OF THE INSPECTOR GEN. FOR THE N.Y. POLICE DEP'T, N.Y. CITY DEP'T OF INVESTIGATION, AN INVESTIGATION OF NYPD'S COMPLIANCE WITH RULES GOVERNING INVESTIGATIONS OF POLITICAL ACTIVITY 1 n.1 (2016), [https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig\\_intel\\_report\\_823\\_final\\_for\\_release.pdf](https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_intel_report_823_final_for_release.pdf). In

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pattern of discriminatory surveillance is completely at odds with the fact that the overwhelming majority of terrorist attacks in the United States are committed by right-wing extremists and white supremacists. Let me repeat that fact, since it is so often lost in our media environment: right-wing extremists and white supremacists commit the overwhelming majority of terrorist attacks in the United States. That is not the findings of partisans, that is the conclusion of groups ranging from the Anti-Defamation League, to the Southern Poverty Law Center, to the U.S. General Accountability Office.<sup>12</sup>

In contrast to the undercover practices documented above, the novel NYPD surveillance practices governed by the POST Act often are completely invisible to the target, making them much more dangerous to our freedom of speech and religion. The need for oversight is only heightened by the NYPD's clear track record of disregarding those few existing restrictions on surveillance of protected First Amendment activity. According to the OIG, over half of NYPD intelligence investigations continued even after the legal authorization for them expired.<sup>13</sup> Also, the OIG found that the NYPD frequently violated legal guidelines governing these investigations in other ways, such as through its use of boilerplate language in undercover officer authorization forms.<sup>14</sup>

In light of the foregoing, we urge this City Council to enact the POST Act. This legislation will provide vital transparency for the NYPD's acquisition of, and use of, surveillance technology. I thank you for giving me the opportunity to address these urgent issues, and I look forward to working with the Council to safeguard the rights of Muslim New Yorkers in the months and years to come.

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its investigation, the OIG reviewed a random selection of 20% of cases closed or discontinued between 2010 and 2015 of each case type. *Id.* at 14.

<sup>12</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-17-300, COUNTERING VIOLENT EXTREMISM: ACTIONS NEEDED TO DEFINE STRATEGY AND ASSESS PROGRESS OF FEDERAL EFFORTS 4 (2017), <https://www.gao.gov/assets/690/683984.pdf>; David Neiwert, *Trump's Second Travel Ban Once Again Misidentifies Source of Domestic Terrorist Threat*, SOUTHERN POVERTY LAW CENTER (Mar. 13, 2017), <https://www.splcenter.org/hatewatch/2017/03/13/trumps-second-travel-ban-once-again-misidentifies-source-domestic-terrorist-threat>; *Murder and Extremism in the United States in 2016*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/resources/reports/murder-and-extremism-in-the-united-states-in-2016> (last visited June 13, 2017).

<sup>13</sup> OFFICE OF THE INSPECTOR GEN. FOR THE N.Y. POLICE DEP'T, *supra* note 25, at 1.

<sup>14</sup> *Id.* Such conduct undermines the ability of independent bodies to effectively review police compliance with legal guidelines. *Id.* at 2.