

MEMORANDUM

Date: July 1, 2020

To: All Assembly Members, New York State Assembly; All Senators, New York State Senate

From: Albert Fox Cahn, Esq., Executive Director

Re: The Surveillance Technology Oversight Project Memorandum in Support of S.6435-B/A.9931-A

The Surveillance Technology Oversight Project, Inc. (“S.T.O.P.”) litigates and advocates for New Yorkers’ privacy, dismantling systems of mass surveillance. We write in support of Senate Bill S.6435-B and Assembly Bill A.9931-A, the Protect Our Privacy (“POP”) Act, which would place vital restrictions police unmanned aerial vehicles (“drones”).

All too often, military-grade surveillance technology is deployed in America’s streets and skies without any oversight from local and state governments or the civilians that elect them. Drones are just one aspect of the militarized surveillance that tracks and suppresses political dissent.¹ This spying chills political expression and endangers the Constitution, but it also puts countless Americans of color at risk of wrongful arrest at a time when it has never been clearer just how deadly every police encounter can be.

Within the last two years, the New York Police Department (“NYPD”) acquired 14 drones, including 12 small quadcopters that can reach narrow spaces and two larger drones equipped with thermal imaging cameras that have the ability to record through walls.² The danger posed by this powerful spy equipment is even more concerning given the NYPD’s history of mass surveillance, particularly targeting historically marginalized communities,³ and abuse of similar technology.⁴ Drones make it cheaper and easier to spy on more New Yorkers than would otherwise be possible.

¹ See Albert Fox Cahn and Liz O’Sullivan, *The Militarized Policing They Don’t Want You to See*, THE HILL (Jun. 12, 2020), <https://thehill.com/opinion/national-security/502549-the-militarized-policing-they-dont-want-you-to-see>.

² NYPD *Unveils New Unmanned Aircraft System Program* (Dec. 4, 2018), <https://www1.nyc.gov/site/nypd/news/p1204a/nypd-new-unmanned-aircraft-system-program#/0>.

³ See, e.g., Joseph Goldstein, *New York Police Are Using Covert Cellphone Trackers, Civil Liberties Groups Says*, N.Y. TIMES (Feb. 11, 2016), <https://www.nytimes.com/2016/02/12/nyregion/new-york-police-dept-cellphone-tracking-stingrays.html>.

⁴ See, e.g., Jim Dwyer, *Police Video Caught a Couple’s Intimate Moment on a Manhattan Rooftop*, N.Y. TIMES (Dec. 22, 2005), <http://www.nytimes.com/2005/12/22/nyregion/22rooftop.html> (discussing a 2004 instance wherein an NYPD helicopter filmed a couple on their private balcony for nearly four minutes).

These drones put every aspect of our private lives at risk,⁵ and when it comes to such a tool, the NYPD can't be allowed to police itself.⁶

Without action, the NYPD will be able to track millions of New Yorkers without a warrant, subpoena, or any other form of judicial review. Unlike a stationary camera, a drone can persistently track New Yorkers over the course of hours or even days.

Drone surveillance attacks New Yorkers' fundamental rights to association, expression, and privacy, and strips away the anonymity of public spaces. Without S.6435-B and A.9931-A, many New Yorkers would fear that attending a protest or religious service could land them in a police database.

Warrantless drone surveillance is not just chilling, it's likely unconstitutional.⁷ The harms are even more pronounced when drones are combined with biased facial recognition technology.⁸ S.6435-B and A.9931-A would ban any use of facial recognition analysis with drone video, and it would also ban the police from creating a permanent database of drone data, requiring footage to be deleted after a year. These invasive surveillance practices will likely be struck down in the courts, but New York should not have to endure years of litigation to end this practice, and lawmakers should pass S.6435-B and A.9931-A immediately.

While S.T.O.P. continues to believe we need a complete ban on all police drones, these measures provide the minimum reforms needed to prevent police from turning our skies and our streets into a dystopian surveillance nightmare. We respectfully urge the New York Legislature to pass and the Governor to sign S.6435-B and A.9931-A.

Thank you for the opportunity to submit this comment and for your consideration.

Respectfully submitted,

/s _____
Albert Fox Cahn
Executive Director

⁵ See Albert Fox Cahn and Vanessa L. Gibson, *NYPD Spy Drones Fly into Privacy Headwinds*, JUST SECURITY (Jan. 22, 2019), <https://www.justsecurity.org/62304/nypd-spy-drones-fly-privacy-headwinds/>.

⁶ There are 29 states with laws on drone use and privacy, with at least 18 states requiring police officials to secure warrants for drone video surveillance and searches. See Matt Reynolds, *Do Police Drones Foster Trust or Threaten Civil Rights and Privacy?*, ABA J. (Jun. 1, 2020), <https://www.abajournal.com/magazine/article/do-police-drones-foster-trust-or-threaten-civil-rights-and-privacy>.

⁷ See *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (finding that law enforcement's use of thermal imaging technology constituted a search, in part because it was not in the general public use).

⁸ See, e.g., Albert Fox Cahn, *Surveillance and the City: Facing Up to Facial Recognition*, GOTHAM GAZETTE (Oct. 11, 2019), <https://www.gothamgazette.com/opinion/8842-surveillance-and-the-city-facing-up-to-facial-recognition>; Michael Stauch, *How Policing Reform Can Actually Harm Black Americans*, WASH. POST (Aug. 21, 2019), <https://www.washingtonpost.com/outlook/2019/08/21/how-policing-reform-can-actually-harm-black-americans/>.