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**STATEMENT OF
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**BEFORE THE
COMMITTEE ON PUBLIC SAFETY
NEW YORK CITY COUCNIL**

**FOR AN OVERSIGHT HEARING CONCERNING
THE CITY’S POLICE REFORM AND REINVENTION COLLABORATIVE DRAFT
PLAN**

**PRESENTED
March 16, 2021**

Good afternoon, my name is Albert Fox Cahn, and I am the Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”), a New York-based privacy and civil rights group. Thank you for the opportunity to testify today about New York City’s Police Reform and Reinvention Collaborative Draft Plan (“the Plan”).

Last summer, tens of thousands of New Yorkers took to the streets to demand change. The murder of George Floyd by a Minneapolis police officer sparked a collective spasm of fury and grief, and amplified calls to finally address our country’s—and our city’s—legacy of racist policing.

New Yorkers’ cries for meaningful policing reform may have grown louder in the wake Mr. Floyd’s unjust death, but they were hardly new. Black New Yorkers in particular have long called for sweeping changes in policing, only to have their demands ignored. Unfortunately, it is clear from the city’s draft police reform plan that these calls for structural change continue to fall on deaf ears.

In short, this draft of the Plan utterly fails to meet both this critical national moment and New Yorkers’ unwavering demands for social and racial justice. The Plan coopts the language of reform to mask its failure to address many of the practices most responsible for perpetuating discriminatory policing in New York City. Notably, the Plan’s cosmetic proposals contain no reference to the NYPD’s increasingly widespread use of costly and intrusive surveillance technologies that disproportionately harm communities of color.

Sadly, the Plan’s unresponsiveness to community concerns is not surprising given its haphazard, last-minute development. The issuance in August of Governor Cuomo’s Executive Order—which required localities that host police departments to adopt a reform plan by April 1, 2021¹—represented an invaluable opportunity for New York City to finally implement the large-scale policing changes that address its long history of racist police tactics.

Instead, the city waited months to act. The draft before you, cobbled together in weeks with no meaningful public engagement or input, disservices the vital project of police reform. That the city failed until March to post a website for public comments only underscores the disingenuous and opaque process that led to the Plan’s creation.

New Yorkers deserve better. The Plan claims to be “born out of the protest movement and renewed calls for police reform”² following George Floyd’s death. But New Yorkers of color and those victimized by police violence deserve more than just lip service. We cannot wait for even more of our fellow citizens to die before we have the courage to enact sweeping changes.

¹ Exec. Order No. 203, New York State Police Reform and Reinvention Collaborative (June 12, 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_203.pdf.

² New York City Police Reform and Reinvention Collaborative Draft Plan 3 (March 5, 2021), <https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf>.

I. The Draft Plan Fails to Address the NYPD's Use of Surveillance Technologies

A. Failure to Comply with the POST Act

The blatant inadequacy of the Plan is underscored by the fact that it declines to even acknowledge the role of surveillance technology in perpetuating discriminatory policing. This omission is particularly glaring in light of the action this council took last summer to pass the POST Act—a landmark law that aims to draw back the curtain on what tools the NYPD uses to surveil us.³

Less than a year after its passage, however, the NYPD is attempting to subvert the POST Act. The Department's first mandated report under the law, released in January, was so grossly inadequate that it not only undermines public trust, it also violates the NYPD's reporting obligations under the Act. Instead of publishing impact statements telling New Yorkers what surveillance tools it uses—as required by the law—the Department provided copy-and-paste responses that were opaque, misleading, and, at times, blatantly wrong. For example:

- The NYPD stated that its facial recognition technology does not use artificial intelligence or machine learning. But facial recognition is not only one application of artificial intelligence and machine learning technology—it is perhaps the single most widely discussed example of such technologies. Facial recognition has been classified as a form of artificial intelligence and machine learning by everyone from researchers and lawmakers to business leaders—and even the NYPD itself.⁴
- The NYPD also contended that its so-called “gang database” has no disparate impact on the basis of race,⁵ when in fact almost 99 percent of the individuals included in the database are New Yorkers of color.⁶

³ Alan Feuer, *Council Forces N.Y.P.D. to Disclose Use of Drones and Other Spy Tech*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/nyregion/nypd-police-surveillance-technology-vote.html>.

⁴ See, e.g., Steve Lohr, *Facial Recognition Is Accurate, if You're a White Guy*, N.Y. TIMES (Feb. 9, 2018), <https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html>; Tom Simonite, *Congress Is Eyeing Face Recognition, and Companies Want a Say*, WIRED (Nov. 23, 2020), <https://www.wired.com/story/congress-eyeing-face-recognition-companies-want-say/>; Ethan Geringer-Sameth, *The NYPD's Facial Recognition Policy Leaves A Lot of Leeway the Department Says It's Not Using*, GOTHAM GAZETTE (July 22, 2020), <https://www.gothamgazette.com/city/9608-nypd-facial-recognition-policy-leeway-department-not-using-black-livesmatter-protests>.

⁵ See N.Y. POLICE DEP'T, *Criminal Group Database: Impact & Use Policy* 7 (Jan. 11, 2021), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/post-act/criminal-group-database_nypd-impact-and-use-policy_draft-for-public-comment_01.11.2021.pdf.

⁶ Simon Davis-Cohen, *Video: The Heavy Hand of New York's Social Media-Powered Policing*, FAST COMPANY (Apr. 19, 2019), <https://www.fastcompany.com/90337408/the-heavy-hand-of-new-york-city-social-media-fueled-policing-video-documentary>.

Nor did the NYPD's flouting of a democratically enacted law go unnoticed. More than 8,000 public comments were submitted in response to the NYPD's boilerplate-laden policies, showing that New Yorkers demand true transparency in the Department's use of these powerful tools.

Goal 1 of the Plan in front of you aims to achieve "Transparency and Accountability to the People of New York City."⁷ The NYPD can start by following the law and actually complying with the POST Act's reporting requirements.

B. The Role of Surveillance in "Modern-Day Racialized Policing"

The Plan's total elision of any reference to surveillance technology is likewise staggering in light of its stated Goal 3: "Recognition and Continual Examination of Historical and Modern-Day Racialized Policing in New York City."⁸ In fact, the NYPD's widespread use of discriminatory surveillance tools is undoubtedly one of biggest drivers of modern-day racialized policing in New York City.

Nearly all of the NYPD's surveillance tools either exhibit inherent biases or have been deployed in ways that disproportionately harm communities of color. These technologies have no place in New York City and should be categorically banned. Examples of such discriminatory systems (none of which were mentioned in the Plan) include:

- **Facial recognition:** Universities, civil society organizations, and even the U.S. federal government have proven that facial recognition technology is biased and broken. A government study found that facial recognition algorithms falsely identified Black and Asian faces 10 to 100 times more than white faces, and falsely identified women up to five times more than men.⁹ The majority of the public comments submitted in response to the NYPD's facial recognition impact statement—disclosed as part of the POST Act—called for the city council to outlaw all facial recognition in New York City.
- **Drones:** Aerial drones give the NYPD expansive power to monitor residents who are engaging in lawful conduct, particularly those protesting against racism, police violence, and social injustice. The Department has reportedly used drones to surveil the 2019 Puerto Rican Day Parade and last summer's Black Lives Matter protests, among other events.¹⁰ Recently,

⁷ New York City Police Reform and Reinvention Collaborative Draft Plan 6 (Mar. 5, 2021), <https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf>.

⁸ *Id.*

⁹ See Patrick Grother, Mei Ngan & Kayee Hanaoka, NAT'L INST. OF STANDARDS & TECH., *Face Recognition Vendor Test (FRVT)* (2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

¹⁰ Dennis Flores & Jessica Ramos, Opinion, *In The Black Lives Matter Era, Police Drones Must Make Their Final Landing*, GOTHAMIST (July 24, 2020), <https://gothamist.com/news/oped-black-lives-matter-era-police-drones-must-make-their-final-landing>.

the Department unveiled a new robotic “dog” drone to be deployed on the ground in marginalized communities.¹¹

- **Gang database:** The NYPD has for years maintained a discriminatory database of between 18,000 and 43,000 New Yorkers—almost all of whom are non-white—who the NYPD claims are involved in “gangs.”¹² However, the Department’s definition of “gang” for the purposes of the database is disturbingly broad; it requires no commission of any crime and has been said by at least one critic to “criminalize friendships.”¹³ The NYPD claims that any racial bias in the gang database reflects the reality of how gangs recruit—a rationale eerily reminiscent of the justifications the Department used for years to defend its racist stop-and-frisk policy.
- **DNA Database:** The NYPD has reportedly compiled a database of DNA samples for more than 33,000 New Yorkers, many of whom have not committed a crime (and some of whom are as young as 12). This practice of “genetic stop-and-frisk” disproportionately targets Black and Latinx individuals. The NYPD said it would end the DNA database last year, but it has instead expanded it further.¹⁴
- **Fusion Centers and Joint Terrorism Task Force:** Despite previously claiming that none of its systems are used for immigration enforcement, the NYPD shares and receives information with the federal government through intelligence fusion centers and the Joint Terrorism Task Force. These federal-local partnerships lack oversight as well as consistent rules for collecting and sharing information, resulting in poor-quality intelligence that is often based on “misguided notions about the role of race, ethnicity, religion, or political ideology as a terrorism indicator.”¹⁵
- **Predictive Policing Software:** The NYPD has tested, purchased, and deployed software that purports to predict where crimes will unfold in the future.¹⁶ This technology frequently makes inaccurate and biased predictions about future criminal conduct. And because these projections are based on historical data that incorporate decades of human bias regarding

¹¹ Tina Moore & Amanda Woods, *NYPD Deploys Robot Dog After Woman Shot During Brooklyn Parking Dispute*, N.Y. POST (Oct. 29, 2021), <https://nypost.com/2020/10/29/nypd-deploys-robot-dog-after-brooklyn-parking-dispute-shooting/>.

¹² HUMAN RIGHTS WATCH, *Groups Urge NYPD Inspector General to Audit the NYPD ‘Gang Database’* (Sept. 22, 2020), https://www.hrw.org/news/2020/09/22/groups-urge-nypd-inspector-general-audit-nypd-gang-database#_ftn10.

¹³ Alice Speri, *New York Gang Database Expanded by 70 Percent Under Mayor Bill De Blasio*, INTERCEPT (June 18, 2018), <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

¹⁴ Erin Durkin, *New York City Said It Would Purge Its DNA Database. A Year Later, It’s Expanded.*, POLITICO (Feb. 24, 2021), <https://www.politico.com/news/2021/02/24/new-york-city-dna-database-471342>.

¹⁵ Michael Price, BRENNAN CENTER FOR JUSTICE, *National Security and Local Police* 17 (2013), https://www.brennancenter.org/sites/default/files/publications/NationalSecurity_LocalPolice_web.pdf.

¹⁶ See BRENNAN CENTER FOR JUSTICE, *NYPD Predictive Policing Documents* (July 12, 2019), <https://www.brennancenter.org/our-work/research-reports/nypd-predictive-policing-documents>.

where police deploy and who they arrest, predictive policing tools only serve to further entrench discriminatory policing practices.

- **Social Media Monitoring:** The NYPD’s monitoring of New Yorkers on social media, including through the use of artificial intelligence software, is targeted predominantly at communities of color. For example, the NYPD has used social media monitoring tools to surveil Black Lives Matter protestors.¹⁷ And a recent report indicated that the Department used a social media photo of a Black Lives Matter activist to identify the activist’s identity via a facial recognition search.¹⁸

These technologies have no place in New York City. It is laughable for the City and the NYPD to claim that they are serious about addressing “modern-day racialized policing” while completely refusing to reckon with the role of these technologies in driving the continued overpolicing of communities of color.

II. Ending Costly Surveillance Practices Can Help Reduce the NYPD’s Exorbitant Budget

Abolishing these harmful and biased technologies is linked to another reform long-demanded by the public: reining in the NYPD’s out-of-control budget. The NYPD spends millions each year to purchase and deploy unnecessary, intrusive, and arguably unconstitutional surveillance tools.

A recent example of the Department’s embrace of gratuitous surveillance technology is its robotic ground “dog” drone, which starts at around \$74,000.¹⁹ Only two other police departments in the entire country have so far procured and deployed this superfluous tool. As pointed out by Congresswomen Alexandria Ocasio-Cortez, the money which it appears was spent on robotic dog drones would be better put toward education or housing initiatives, rather than on surveillance technologies that will be used to further marginalize underserved communities.²⁰

Of course, the Department’s robotic dog drone is just the top of the iceberg. The NYPD’s budget allots \$159 million for “special expenses,” providing some clue as to just how much the Department spends every year on spying instruments and services—though it’s possible the actual total spent on surveillance could be millions more.²¹

¹⁷ George Joseph, *Years After Protests, NYPD Retains Photos of Black Lives Matter Activists*, APPEAL (Jan. 17, 2019), <https://theappeal.org/years-after-protests-nypd-retains-photos-of-black-lives-matter-activists/>.

¹⁸ James Vincent, *NYPD Used Facial Recognition to Track Down Black Lives Matter Activist*, VERGE (Aug. 18, 2020), <https://www.theverge.com/2020/8/18/21373316/nypd-facial-recognition-black-lives-matter-activist-derrick-ingram>.

¹⁹ Maria Cramer & Christine Hauser, *Digidog, a Robotic Dog Used by the Police, Stirs Privacy Concerns*, N.Y. TIMES (Feb. 27, 2021), <https://www.nytimes.com/2021/02/27/nyregion/nypd-robot-dog.html>.

²⁰ *Id.*

²¹ Rocco Parascandola, *Comptroller Stringer Tells NYPD Surveillance Technology Expenses Can’t Be Kept Secret*, N.Y. DAILY NEWS (July 31, 2020), <https://www.nydailynews.com/new-york/ny-nypd-budget-classified-stringer-20200731-55pwpwz4qzac7hyptmzlr5qyu-story.html>.

Last summer, this council fell short of the public's call to defund the NYPD by at least one billion dollars, despite the committed leadership of Communities United for Police Reform (CPR) and other local organizations. S.T.O.P. reiterates its support of CPR's goal and calls on the city to cut at least one billion dollars from NYPD's operational budget, and also to reconsider the capital budget.