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**STATEMENT OF  
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SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT (“S.T.O.P.”)**

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

**FOR AN OVERSIGHT HEARING ON THE USE OF  
BIOMETRIC IDENTIFICATION SYSTEMS IN NEW YORK CITY**

**PRESENTED  
May 3<sup>rd</sup>, 2023**

Good afternoon, Chair Gutiérrez, Chair Williams, and members of the Committees on Technology and Civil and Human Rights. The Surveillance Technology Oversight Project (“S.T.O.P.”) is a New York-based civil rights and anti-surveillance group. S.T.O.P. advocates and litigates against discriminatory surveillance. Thank you for organizing this important hearing. We appreciate the opportunity to testify today on the harms of biometric surveillance. We urge the Council to pass Intros 1014 and 1024, and to support the introduction of a ban on government use of facial recognition technology (FRT).

## I. Biometric Surveillance is Harmful and Discriminatory

FRT is biased and error prone. FRT systems can be up to 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

Further, allowing businesses and landlords to collect biometric information makes them an even more lucrative target for identity thieves and hackers.<sup>5</sup> 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.<sup>6</sup> More dangerous than other personal identifiers like a social security number, biometric

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<sup>1</sup> 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.

<sup>2</sup> 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>.

<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> *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>.

<sup>6</sup> 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>.

identifiers are static and are almost impossible to change.<sup>7</sup> When a hacker acquires another person's biometric data, it puts them at risk for identity theft for the rest of their lives.<sup>8</sup>

## II. Intros 1014 and 1024

Given the bias, invasiveness, and potential for abuse of FRT, it has no place in New York businesses. And yet it does. 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 passes this important legislation. Last year, the Mets implemented a facial recognition ticketing system at Citi Field.<sup>9</sup> 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.<sup>10</sup>

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 Senators<sup>11</sup> and Attorney General James.<sup>12</sup> 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 Scouts troop.<sup>13</sup> 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. Many of the most popular venues in NYC, owned by MSG, now deploy FRT, and the technology is already used in some grocery stores.<sup>14</sup> 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.

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<sup>7</sup> 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/>.

<sup>8</sup> *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>.

<sup>9</sup> 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>.

<sup>10</sup> 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-cuuul25jinh5rbzbbsvmrbwauy-story.html>.

<sup>11</sup> [Albany takes on attorney ban at Madison Square Garden \(ny1.com\)](https://www.ny1.com).

<sup>12</sup> 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>.

<sup>13</sup> 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/>

<sup>14</sup> 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>.

Intro 1014 specifically prohibits any place or provider of public accommodation from using any biometric recognition technology to verify or identify a customer. It also prohibits businesses from barring entry to customers based on FRT and prevents companies from selling customers biometric data. This would be a crucial step towards protecting New Yorkers and preventing the types of abuses of the technology that we are seeing in places of public accommodation like MSG.

Similarly, use of FRT and other biometric surveillance technologies in residential settings opens tenants to harassment, discriminatory eviction, and compromises their privacy. New Yorkers do not want this invasive technology used in their homes, the most intimate of spaces. In 2019, the tenants of Atlantic Plaza Towers in Brooklyn organized in response to their landlord's attempted installation of FRT and successfully prevented the plan from proceeding.<sup>15</sup> Their organizing highlighted the disproportionate impact of the use of these biometric security systems in low-income communities of color.<sup>16</sup>

The racial bias of FRT will inevitably inconvenience residents in accessing their home and may even elicit an unwarranted law enforcement response. Further, New York City landlords have been accused of sharing tenants' most sensitive information—phone numbers, photos, and even Social Security numbers—with immigration officials.<sup>17</sup> To protect immigrant communities in our city, we cannot let landlords have access to residents' biometric data.

Intro 1024 would prohibit any owner of a multiple dwelling from installing, activating, or using any biometric recognition technology that identifies tenants or the guest of a tenant. The bill should be strengthened through amendments creating a strong private right of action applicable to all provisions, not just sale, with statutory damages and punitive damages, but its passage is critically important to make New Yorkers safer in their homes.

### **III. The Need for Additional Legislation**

While we are heartened to see the introduction of these two bills, we are disappointed that the Council has seemingly ignored the growing threat from how this biased and dangerous tool is used by police. We applaud the Council for paying attention to the issue of use in businesses and in residential settings, but legislation banning its use by government agencies is necessary to meaningfully protect New Yorkers from harm. It's been over a year since S.T.O.P. drafted legislation for the Council to ban police use of FRT, but the Council has not even introduced a bill yet or included it on any committee agenda.

This is an urgent issue. 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

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<sup>15</sup> Yasmin Gagne, *How We Fought Our Landlord's Secretive Plan for Facial Recognition—and Won*, Nov. 22, 2019, FAST COMPANY, <https://www.fastcompany.com/90431686/our-landlord-wants-to-install-facial-recognition-in-our-homes-but-were-fighting-back>.

<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., Lauren Cook, *Queens Landlord Gave Tenant Information to ICE After Discrimination Complaint, Commission Says*, N.Y. DAILY NEWS, July 19, 2017, <https://www.amny.com/news/queens-landlord-gave-tenant-information-to-ice-after-discrimination-complaint-commission-says-1.13810387>.

pseudoscientific tactics that exacerbate the risk of error, such as running scans of celebrity lookalikes.<sup>18</sup> The Georgetown Law Center on Privacy and Technology documented the kinds of abuses that are “common practice” at NYPD.<sup>19</sup> One of the most egregious practices is that of routinely altering photos. The report revealed that NYPD edits of images “often go well beyond minor lighting adjustments and color correction,” and in many instances “amount to fabricating completely new identity points not present in the original photo.”<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup> 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.”<sup>23</sup>

Because of its documented biases and its replication of historically flawed police practices, FRT 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 ban the technology, New York falls further and further behind progressive cities from around the world.<sup>24</sup>

Thank you for the opportunity to testify today.

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<sup>18</sup> 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>.

<sup>19</sup> 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>.

<sup>20</sup> *Id.*

<sup>21</sup> 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>.

<sup>22</sup> Eleni Manis et al., *Scan City: A Decade of NYPD Facial Recognition Abuse* (Surveillance Technology Oversight Project, July 8, 2018).

<sup>23</sup> *Inside the NYPD’s Surveillance Machine*, AMNESTY INTERNATIONAL, <https://banthescan.amnesty.org/decode>.

<sup>24</sup> 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>.