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TESTIMONY OF THE BRENNAN CENTER FOR JUSTICE

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before the New York City Council Committee on Technology

on Oversight of Local Law 49 & Intros. 1447 and 1806

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Good afternoon members of the Committee on Technology. Thank you Chairman Holden for holding this hearing and inviting the Brennan Center to testify.

My name is Laura Hecht-Felella. I am a Legal Fellow with the Liberty and National Security Program at the Brennan Center for Justice at NYU School of Law. The Brennan Center is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. The Liberty and National Security Program focuses on promoting government accountability and ensuring that government use of new technologies does not violate fundamental rights.

While emerging technologies like automated decision systems (ADS) make it possible for government agencies to work more efficiently, they also have the potential to exacerbate inequalities and bias. This is particularly true when it comes to law enforcement. The Brennan Center has advocated for greater oversight of the New York City Police Department's surveillance tools, including their use of ADS, before the City Council and New York City's Automated Decision Systems Task Force.[1] We also contributed to a report published by AI Now in December 2019, *Confronting Black Boxes: A Shadow Report of the New York City Automated Decision System Task Force*.[2]

The launch of the ADS Task Force in May 2018 positioned New York City as a leader in the regulation of government use of ADS. Unfortunately, the Task Force fell short of its mandate. It was unable to produce substantive policy recommendations or meaningfully

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[1] Angel Diaz, Brennan Center Testimony Before the New York City Automated Decision Systems Task Force, May 30, 2019, https://www.brennancenter.org/our-work/research-reports/testimony-new-york-city-automated-decision-systems-task-force.

[2] Rashida Richardson, ed., "Confronting Black Boxes: A Shadow Report of the New York City Automated Decision System Task Force," AI Now Institute, Dec. 4, 2019, https:// ainowinstitute.org/ads-shadowreport-2019.html.

engage with the public.[3] It also failed to effectively utilize the numerous resources proffered by a coalition of civil rights activists, researchers, and community organizers, including the Brennan Center.[4]

The two bills proposed today, Intros. 1447 and 1806, are important first steps in remediating some of the Task Force's missed opportunities. Mandating an annual inventory of agency data and requiring reporting on agency use of ADS are essential. Oversight is impossible without an understanding of what, how, why, and when ADS are being used by City agencies.

As the City Council engages in efforts to regulate ADS, it is important that it does not carve out an exception for the NYPD. Earlier this year, the Brennan Center published a chart that tracks each of the NYPD's known surveillance tools.[5] Based on the limited public information available, we believe the NYPD employs ADS in its use of automated license plate readers,[6] facial surveillance,[7] predictive policing,[8] and social media monitoring.[9] However, given the lack of public information about the NYPD's technologies, it is likely there are many other ADS that the public and City Council simply do not know about.

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[3] Benjamin Freed, "New York City's Algorithm Task Force To Hold First Public Meetings Nearly A Year After Creation," State Scoop, Mar. 29, 2019, https://statescoop.com/new-york-citys-algorithm-task-force-to-hold-first-public-meetings-nearly-a-year-after-creation/; Diana Budds, "New York City's AI Task Force Stalls," Curbed, Apr. 16, 2019, https://ny.curbed.com/2019/4/16/18335495/new-york-city-automated-decision-system-task-force-ai.

[4] "Automated Decision Systems: Examples of Government Use Cases," AI Now Institute, https://ainowinstitute.org/nycadschart.pdf; Coalition Letter to the NYC ADS Task Force, "Re: New York City's Automated Decision Systems Task Force," Aug. 20, 2018, https://ainowinstitute.org/announcements/letter-to-the-nyc-ads-task-force.html (writing to offer recommendations to the Task Force and providing a list of experts and advocates).

[5] Angel Diaz, "New York City Police Department Surveillance Technology," Brennan Center, Oct. 4, 2019, https://www.brennancenter.org/our-work/research-reports/new-york-city-police-department-surveillance-technology.

[6] Anthony Romero, "Documents Uncover NYPD's Vast License Plate Reader Database," HuffPost, Jan. 25, 2017, https://www.huffpost.com/entry/documents-uncover-nypds-v_b_9070270.

[7] Clare Garvie, "Garbage In, Garbage Out – Face Recognition on Flawed Data," Georgetown Law Center on Privacy & Technology, May 16, 2019, https://www.flawedfacedata.com/.

[8] Rachel Levinson-Waldman & Erica Posey, "Court: Public Deserves to Know How NYPD Uses Predictive Policing Software," Brennan Center, Jan. 28, 2018, https://www.brennancenter.org/blog/court-rejects-nypd-attempts-shieldpredictive-policing-disclosure.

[9] *Millions March NYC v. New York City Police Department*, Index No. 100690/2017, Jan. 14, 2019, available at https://www.documentcloud.org/documents/5684800-Millions-March-Nypd.html#document/p1 (ordering the NYPD to respond to a public records request seeking documents relating to its use of Dataminr, a software program that uses algorithms to monitor social media).

For example, the Brennan Center was party to a multi-year legal dispute with the NYPD to obtain information about the Department's use of predictive policing technologies, which rely on algorithms to analyze large data sets to generate statistical estimates about crime and direct police resources.[10] The heavily redacted documents ultimately produced by the NYPD failed to shed light on a number of key issues – including what datasets are inputted into the predictive policing algorithm and how the predictions are used by precinct commanders. By design, the NYPD's system does not store inputs or outputs, making it difficult to assess the algorithm's effectiveness or potential for bias.[11] The Brennan Center's difficulties in obtaining this information exemplify the NYPD's unwillingness to keep the public informed about its use of ADS and underscore why it is so important that ADS transparency bills like the ones proposed today include the NYPD.

ADS have wide-ranging consequences when used by law enforcement because they can perpetuate and exacerbate racially discriminatory policing practices – in other words, an algorithm is only as good as its data. The NYPD has a history of racially biased policing. In *Floyd v. City of New York*, for example, a federal court found the NYPD had violated the Equal Protection Clause in disproportionately subjecting New Yorkers of color to stop and frisks.[12] Similarly, predictive policing tools have been widely criticized by civil rights advocates for relying on historic crime data derived from decades of biased enforcement against communities of color.[13] If biased historic crime data is being inputted into the NYPD's ADS, it is likely that the resulting outcomes will reinforce and replicate the same prejudices.

The recommendations made in the *Confronting Black Boxes* report are a starting point in addressing these issues. The NYPD should be required to maintain a public, updated list of the ADS technologies it uses and provide a simple description of how each system works. It should conduct a systematic examination of how different racial and ethnic groups will be affected by each of its automated decision systems and provide an opportunity for meaningful public feedback. Lastly, the NYPD should not sign vendor contracts that restrict auditing of ADS or prevent public disclosure of basic information regarding how the systems work.[14]

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[10] Rachel Levinson-Waldman & Erica Posey, "Predictive Policing Goes to Court," Brennan Center, Sept. 5, 2017, http://www.brennancenter.org/blog/predictive-policing-goes-court.

[11] Ali Winston, "'Red Flags' as New Documents Point to Blind Spots of NYPD 'Predictive Policing'," Daily Beast, Jul. 15, 2019, https://www.thedailybeast.com/red-flags-as-new-documents-point-to-blind-spots-of-nypd-predictive-policing.

[12] *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

[13] Leadership Conference on Civil and Human Rights, et al., "Predictive Policing Today: A Shared Statement of Civil Rights Concerns," Aug. 31, 2016, http://civilrightsdocs.info/pdf/FINAL_JointStatementPredictivePolicing.pdf.

[14] *Supra* note 3 at 42.

In addition, the Brennan Center also urges the City Council to pass the POST Act, which would require the NYPD to disclose basic information about the surveillance tools it uses and the existing safeguards to protect the privacy and civil liberties of New Yorkers.[15] The POST Act is a valuable companion to Intros. 1447 and 1806 because it requires more complete reporting on the NYPD's use of surveillance technologies, including ADS. The POST Act is supported by over half the City Council, with thirty-four sponsors and endorsements from the Black, Latino/a, and Asian Caucus and the Progressive Caucus.

Transparency and oversight are essential features of a strong democracy, and the Brennan Center commends the Council for addressing these critical and timely issues.

Thank you again for the opportunity to testify today. I am happy to answer any questions.

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[15] New York City Council Int. 0487-2018, https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3343878&GUID=996ABB2A-9F4C-4A32-B081-D6F24AB954A0. For more on the POST Act, see "The Public Oversight of Surveillance Technology (POST) Act: A Resource Page," Brennan Center, https://www.brennancenter.org/analysis/public-oversight-surveillance-technology-post-act-resource-page.