

**Written Testimony on Behalf of Community Oversight of Surveillance – D.C.
Coalition Partners**

D.C. Council Committee on the Judiciary and Public Safety

**Public Hearing on B23-0723, The Rioting Modernization Amendment Act of 2020,
B23-0881, The Internationally Banned Chemical Weapon Prohibition Amendment
Act of 2020 and B23-0882, The Comprehensive Policing and Justice Reform
Amendment Act of 2020**

Thursday, October 15, 2020

Dear Chairman Allen and Members of the Committee on the Judiciary:

Thank you for holding this important hearing on much-needed police reform legislation and protestors' rights. Our coalition, the Community Oversight of Surveillance-D.C. (COS-DC), is a local coalition of groups based in Washington, D.C., that is working to secure enactment of legislation here in the District to provide transparency and accountability for government use of surveillance technologies.¹ We are a diverse and growing coalition of local and national stakeholders that include civil rights organizations, technology policy organizations, government oversight organizations, local advocates, and beyond.

Our coalition applauds the efforts that the Committee is undertaking to address police reform in the District. The brutal police killings of George Floyd, Breonna Taylor, and others this past spring—which follow a long history of police brutality toward Black people—has spurred a long overdue reckoning over racial justice in our country, as well as our approach to policing. We are glad that the Committee, and in turn the Council, are responding swiftly and seriously to calls for widespread reform, first with the emergency legislation passed in July² and now with a more permanent set of bills.

However, our COS-DC coalition urges that this reform effort also consider and set rules for police use of surveillance technologies. While it is important to directly address police conduct and accountability, we must realize that increasingly common technical tools contribute to much of the disproportionate policing in the United States, while also enabling police to monitor and potentially stifle dissent. Over the past two decades, police departments and other government agencies across the country have been acquiring, deploying, and gaining access to surveillance equipment, in secret, without any notice to the public or authorization from local legislatures. These technologies include everything from traditional CCTV cameras to large networks of private security and doorbell

¹ Community Oversight of Surveillance DC, <https://takectrldc.org/> (last visited Oct. 16, 2020).

² D.C. Act 23-336, the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, <https://code.dccouncil.us/dc/council/acts/23-336.html>.

cameras, facial recognition systems, license plate readers, gunshot locators with audio surveillance, smart street light bulbs with video surveillance capabilities, drones, and much more.³

Many of these powerful surveillance technologies are extremely privacy invasive, as they provide the government an unprecedented ability to monitor local residents over time, and accumulate vast amounts of personal data (especially when combined). Accordingly, it is critical that residents and local elected officials are able to provide input into whether, and how, any surveillance technology is used in their jurisdiction. For example, numerous studies have established that technologies like facial recognition are biased against women and people of color,⁴ and we now have clear examples of cases in which facial recognition mismatches led to the wrongful arrests of Black men.⁵ Surveillance technologies are also often disproportionately used on communities of color,⁶ leading to higher arrest rates in those communities and potentially feeding this cycle of police brutality and racialized policing.⁷

Beyond the serious issues of privacy-invasiveness and discriminatory policing, First Amendment rights are also at stake. This summer, as Black Lives Matter protestors pushed for racial justice both here in the District and across the country, reports emerged showing that protesters were subject to mass surveillance by police, who used a wide array of these technologies.⁸ Such surveillance can have a chilling effect on speech, and modern surveillance technology has dramatically increased the scope and scale of the already-concerning surveillance of protests—especially protests by and for communities of color. New forms of biometric surveillance can track thousands of protesters from each

³ COMMUNITY CONTROL OVER POLICE SURVEILLANCE: TECHNOLOGY 101, ACLU (2020), <https://www.aclu.org/report/community-control-over-police-surveillance-technology-101>.

⁴ Patrick Grother, Mei Ngan, Kayee Hanaoka, FACE RECOGNITION VENDOR TEST (FRVT) PART 3: DEMOGRAPHIC EFFECTS, NISTIR 8280, NAT'L INST. OF STANDARDS AND TECHNOLOGY (Dec. 2019), available at <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

⁵ Kashmir Hill, *Wrongfully Accused by an Algorithm*, NY Times (Jun. 24, 2020), <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>; Kris Holt, *Facial recognition linked to a second wrongful arrest by Detroit police*, Engadget (July 10, 2020), <https://www.engadget.com/facialrecognition-false-match-wrongful-arrest-224053761.html>.

⁶ See e.g., Brian Barret, *The Baltimore PD's Race Bias Extends to High-Tech Spying, Too*, Wired (Aug. 16, 2016), <https://www.wired.com/2016/08/baltimore-pds-race-bias-extends-high-tech-spying/>; Adam Goldman and Matt Apuzzo, *NYPD Defends Tactics over Mosque Spying; Records Reveal New Details on Muslim Surveillance*, Huffington Post (Feb. 25, 2012), http://www.huffingtonpost.com/2012/02/24/nypd-defends-tactics-over_n_1298997.html;

Dave Mass & Jeremy Gillula, *What You Can Learn From Oakland's Raw ALPR Data*, EFF (Jan. 21, 2015), <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>.

⁷ See Rashida Richardson, Jason Schultz & and Kate Crawford, *DIRTY DATA, BAD PREDICTIONS: HOW CIVIL RIGHTS VIOLATIONS IMPACT POLICE DATA, PREDICTIVE POLICING SYSTEMS, AND JUSTICE* (Feb. 13, 2019). 94 N.Y.U. L. REV. ONLINE 192 (2019), available at SSRN: <https://ssrn.com/abstract=3333423> (discussion of predictive policing technology's threats to rights resulting from the software perpetuating existing and historic racialized policing).

⁸ Rebecca Heilweil, *Members of Congress Want to Know More About Law Enforcement's Surveillance of Protestors*, Vox (Jun. 10, 2020), <https://www.vox.com/recode/2020/5/29/21274828/drone-minneapolis-protests-predator-surveillance-police>.

surveillance camera—and the Metropolitan Police Department (MPD) has hundreds of CCTV cameras across the District.⁹ Unfortunately, due to the lack of laws in place regulating most of these technologies, we may never know the full extent of which technologies have been used to watch Black Lives Matters protesters in the District.

These threats are not hypothetical, and are not only perpetrated by the federal government. We know that the MPD uses facial recognition technology, cell-site simulators, automatic license plate readers, and gunshot locators, among a wide range of other surveillance tools.¹⁰ But we lack complete information about the surveillance technology they possess, and the policies that govern their use. Absent such information we cannot tell if the rights of District residents are protected.

Amidst historic calls for racial justice, and a barrage of threats to those making such calls, it's time to bring oversight and accountability to police use of surveillance technologies in the District, and the Committee should strive to do so in its reform efforts. At the very least, democratic processes must be put in place surrounding the acquisition and use of surveillance tech. The legislation our coalition seeks would do just that—require transparency into what police technologies are in use, and require opportunities for both community and Council input, before they may be deployed.

Over the past few years, local communities across the country have begun to enact these “Community Control Over Police Surveillance” (CCOPS) bills to provide much needed transparency and accountability for local government surveillance programs.¹¹ The purpose of CCOPS is to ensure that residents and lawmakers are empowered to decide whether and how surveillance technology is acquired and used by local law enforcement agencies. To date, sixteen jurisdictions in California, Massachusetts, Michigan, New York, Ohio, Tennessee, and Washington State have adopted local laws based on the CCOPS model, and dozens of other jurisdictions are considering similar proposals.¹² Even the New York Police Department, one of the most historically secretive police departments in the nation, is now governed by a similar ordinance, enacted this summer.¹³

⁹ Deirde Paine. “DC to Spend \$5 Million for Additional 140 Security Cameras Around City.” The DC Post, Nov. 27, 2019, <https://thecpost.com/washington-dc-5-million-new-security-cameras/>.

¹⁰ See e.g., Letter from Chief of Police Cathy L. Lanier to Councilmember Charles Allen, (March 2, 2020), <https://dccouncil.us/wp-content/uploads/2020/03/JPS-Performance-Oversight-Responses-2020-MPD.pdf> (confirming the Metropolitan Police Department’s use of facial recognition technology, automatic license plate readers and cell site simulators in response to Committee and questions); see also, Lauren Sarkesian and Maria Angel, *Debate on Police Surveillance Technologies in D.C. Is Long Overdue* (Sept. 10, 2020), <https://www.newamerica.org/oti/blog/debate-police-surveillance-technologies-dc-long-overdue/>.

¹¹ COMMUNITY CONTROL OVER POLICE SURVEILLANCE, ACLU (last visited Oct. 16, 2020), <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance>; Mailyn Fidler, *Fourteen Places Have Passed Local Surveillance Laws. Here’s How They’re Doing*, Lawfare Blog, Sept. 3, 2020, <https://www.lawfareblog.com/fourteen-places-have-passed-local-surveillance-laws-heres-how-theyre-doing>.

¹² *Id.*

¹³ New York City Code § 14-188, <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-124303>; Alan Feur, *Council Forces N.Y.P.D. to Disclose Use of Drones and Other Spy Tech*, NY Times (Jun. 18, 2020), <https://www.nytimes.com/2020/06/18/nyregion/nypd-police-surveillance-technology-vote.html>.

Now, it's time for the District of Columbia to follow suit. As our nation's capital, Washington, D.C. has long been one of the central places for protest in the United States. District residents need safeguards from inappropriate government surveillance as we exercise our First Amendment rights, as well as protection from everyday discriminatory uses of surveillance technology. This requires transparency and accountability surrounding the technology the MPD already possesses, thorough scrutiny when MPD seeks to obtain new technologies, and ongoing community oversight of the use of all surveillance technologies.

At its core, the legislation we urge the Council to take up would require the D.C. government to:

- Use a transparent public process when any D.C. government agency seeks to acquire and use any surveillance technology.
- Weigh costs and benefits to the District regarding technology the Council is considering, including impact on individual civil rights and civil liberties.
- Establish written rules for use of surveillance technologies to be approved by the Council.
- Create a surveillance advisory group, which would include members with expertise in privacy and technology, that would advise D.C. government agencies and the Council on the civil rights and civil liberties risks related to specific surveillance technologies, and provide impact reports ahead of debates on new technologies.
- Conduct regular audits and evaluations of the use and impact of surveillance technologies, including the impact on rights and liberties.

This legislation would therefore ensure that decisions surrounding police technologies are made with thorough consideration and crucial buy-in from both the D.C. community and the Council. Significantly, it would also provide clear processes and rules that safeguard residents' rights and provide transparency. This process, and the transparency it would bring to our policing, would in turn help to build trust between the community and its police—a goal we know the Committee shares, and that we all seek to achieve now more than ever. It would also ensure that sound financial decisions are made about how we invest in our community's public safety.

To begin the process of considering the legislation we recommend, we as a coalition ask that the Council hold a public roundtable on the state of surveillance in the District this fall, in order to learn from impacted D.C. residents as well as privacy and technology experts. Further, we ask that the Committee consider surveillance-related legislation as soon as possible as part of its comprehensive police reform efforts, and our coalition stands ready to help in these matters.

Thank you for your consideration.

Respectfully,

ACLU-DC
Brennan Center for Justice
Center for Democracy & Technology
Jews United for Justice
New America's Open Technology Institute
The Project On Government Oversight