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STATEMENT OF
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BEFORE THE
COMMITTEE ON PUBLIC SAFETY
NEW YORK CITY COUNCIL

FOR A HEARING CONCERNING,
CREATING COMPREHENSIVE REPORTING AND OVERSIGHT OF NYPD
SURVEILLANCE TECHNOLOGIES

PRESENTED
June 14, 2017*

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Good morning, my name is Albert Fox Cahn, and I serve as the Legal Director for the New York Chapter of the Council on American-Islamic Relations (“CAIR-NY”). CAIR-NY is a leading civil rights advocacy organization for the Muslim community here in New York City and across New York State. I speak today in support of the POST Act, which would be an important step forward in strengthening police oversight, promoting public safety, and safeguarding New Yorkers’ privacy rights.

Historically, the New York City Police Department (“NYPD”) deployed novel and highly invasive surveillance technologies in ways that circumvented democratic oversight and accountability. The NYPD used private and federal funds, without any disclosure to the lawmakers we depend-on to oversee our police forces. With this unaccountable funding, the NYPD was able to deploy tools like “stingrays,” fake cell towers that collect sensitive location and communications data.¹ Like many of the NYPD’s new tools, stingrays spy not only on the target of an investigation, but also on untold numbers of innocent bystanders.²

Let me be clear, the POST Act does not prohibit the NYPD from using new surveillance tools. Rather, it merely secures this Council’s indispensable role in reviewing when and how such tools are deployed. Under the POST Act, the NYPD must issue an “impact and use policy” report when choosing to use a new surveillance tool.³ This report must describe the technology, rules, and guidelines for the use of that technology, and safeguards for protecting any data collected.⁴ The City Council and the people of New York City would then be allowed to provide feedback on such an acquisition.⁵ Thus, the POST Act strikes a delicate balance, requiring sufficient information to ensure oversight, while protecting operational details, sources, and methods.

Civilian oversight of policing and intelligence gathering is not only a fundamental American value, it is essential for effective policing. As then-President Obama’s Task Force on 21st Century Policing found, “[l]aw enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy.”⁶ The NYPD’s current procurement methods are not only undemocratic, but they harm the NYPD’s very mission of promoting public safety.

¹ Joseph Goldstein, *New York Police Are Using Covert Cellphone Trackers, Civil Liberties Group Says*, N.Y. TIMES, Feb. 11, 2016, <https://www.nytimes.com/2016/02/12/nyregion/new-york-police-dept-cellphone-tracking-stingrays.html>.

² *Id.*

³ N.Y. CITY COUNCIL 1482 § 1 (N.Y. 2017), ch. 1, 14 ADMIN. CODE OF N.Y.C. § 14-167(b) (as proposed)

⁴ *Id.* at 14-167(a) (as proposed)

⁵ *Id.* at 14-167(e-f) (as proposed)

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The POST Act will benefit all New Yorkers, but it will offer particularly powerful protection for our Muslim neighbours. For years, Muslim New Yorkers have faced a pattern of unjust and unconstitutional NYPD surveillance. Specifically, the NYPD's Intelligence Division engaged in extensive, suspicionless surveillance of majority Muslim neighbourhoods and Muslim families.⁷ Additionally, NYPD officials have conducted blanket surveillance of entire mosques, surveilling men, women, and children for nothing more than practicing their faith.⁸ Some local businesses have even been classified as "place[s] of concern" for nothing more than having customers of middle eastern dissent.⁹

In addition, Muslim New Yorkers who opened their doors to law enforcement, hoping to help their community, frequently were rewarded with suspicion and surveillance. In one example, Sheikh Reda Shata welcomed FBI agents and NYPD officers into his mosque, trying to build a bridge between the community and law enforcement, but was nonetheless monitored by an undercover police officer.¹⁰

Muslim New Yorkers who are targeted for their faith often self-censor or pull back from their religious practices. Although most Muslim New Yorkers continue to unapologetically practice their faith in the face of police harassment, some have stopped attending their places of worship.¹¹ Those who continue to attend services face frequently insurmountable barriers to building trust with those around them, knowing that a friendly co-congregant may secretly be an undercover officer.¹² Other

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⁶ PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 12 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁷ Matt Apuzzo & Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, N.Y. TIMES, Apr. 15, 2014, https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?_r=0; see also DIALA SHAMAS & NERMEEN ARASTU, MUSLIM AM. CIVIL LIBERTIES COAL., CREATING LAW ENFT ACCOUNTABILITY & RESPONSIBILITY & ASIAN AM. LEGAL DEF. & EDUC. FUND, MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 10 (2013), <https://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

⁸ Apuzzo & Goldstein, *supra* note 7.

⁹ Adam Goldman & Matt Apuzzo, *NYPD: Muslim Spying Led to No Leads, Terror Cases*, ASSOCIATED PRESS, Aug. 21, 2012, <https://www.ap.org/ap-in-the-news/2012/nypd-muslim-spying-led-to-no-leads-terror-cases>.

¹⁰ Eileen Sullivan, *NYPD Spied on Anti-terror Muslim Leader as He Dined with Bloomberg*, NBC NEWS, Oct. 6, 2011, https://www.nbcnews.com/id/44796663/ns/us_news-life/t/nypd-spied-anti-terror-muslim-leader-he-dined-bloomberg/.

¹¹ SHAMAS & ARASTU, *supra* note 7, at 12-14.

¹² *Id.* at 18.

New Yorkers are afraid to practice their faith as they'd wish, refraining from wearing a beard, a headscarf, or other visible signifiers of their religion.¹³ Moreover, Muslim faith leaders often speak guardedly to their congregations, fearful that an out-of-context statement, or even speaking a disfavoured dialect, might spark an investigation.¹⁴

Muslim student groups have also faced widespread and discriminatory surveillance. New York's Muslim Student Associations have been targeted with informants and undercover officers for as little as organizing a rafting trip¹⁵ or having members deemed "politically active."¹⁶ One reason why the POST Act is so crucial is that many of the most invasive NYPD programs have never produced a single lead, let alone stop a terrorist act.¹⁷ Yet these same technologies and tactics, whose rewards are so nebulous, have a very clear cost.

Students who later learn they were targeted can suffer lasting psychological harm and life-long struggles with trust and self-censorship.¹⁸ One Muslim student at Hunter College said that many fear that political engagement will result in being spied on.¹⁹ Another CUNY student spoke of how she feels she doesn't know who to trust anymore.²⁰ At Brooklyn College, following revelations of NYPD surveillance on campus, attendance of Islam Awareness Week events plummeted.²¹ One CUNY student withdrew from Muslim Student Association events after police came to his home to question him about his political opinions.²² While the worst documented abuses may have ceased with the disbandment of the NYPD's "Demographics Unit," Many Muslim students still fear speaking in class about political issues, worried that they will be misinterpreted and investigated.²³

¹³ *Id.* at 15-18.

¹⁴ *Id.* at 18.

¹⁵ Chris Hawley, *NYPD Monitored Muslim Student All over Northeast*, ASSOCIATED PRESS, Feb. 8, 2012, <https://www.ap.org/ap-in-the-news/2012/nypd-monitored-muslim-students-all-over-northeast>.

¹⁶ N.Y. POLICE DEP'T, NYPD INTELLIGENCE DIVISION: STRATEGIC POSTURE 2006 17 (2006), https://www.nyclu.org/sites/default/files/releases/Handschu_Exhibit7b_%28StrategicPostureredacted%29_2.4.13.pdf.

¹⁷ Goldman & Apuzzo, *supra* note 9.

¹⁸ WATCHED (The Shorts Collective, LLC 2017).

¹⁹ SHAMAS & ARASTU, *supra* note 7, at 23.

²⁰ *Id.* at 42.

²¹ *Id.*

²² *Id.* at 43.

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Younger students have not been immune to this. Some educators have sought Know-Your-Rights workshops to quell student fears of surveillance for children as young as eleven.²⁴

These tragic accounts are not anomalous, they reflect an ongoing pattern of discriminatory police conduct. According to the Office of the Inspector General for the NYPD (“OIG”), over 95% of recent NYPD political and religious investigations targeted Muslim individuals and organizations.²⁵ The pattern of discriminatory surveillance is completely at odds with the fact that the overwhelming majority of terrorist attacks in the United States are committed by right-wing extremists and white supremacists. Let me repeat that fact, since it is so often lost in our media environment: right-wing extremists and white supremacists commit the overwhelming majority of terrorist attacks in the United States. That is not CAIR-NY’s finding, that is the conclusion of groups ranging from the Anti-Defamation League, to the Southern Poverty Law Center, to the U.S. General Accountability Office.²⁶

In contrast to the undercover practices documented above, the novel NYPD surveillance practices governed by the POST Act often are completely invisible to the target, making them much more dangerous to our freedom of speech and religion. The need for oversight is only heightened by the NYPD’s clear track record of disregarding those few existing restrictions on surveillance of protected First Amendment activity. According to the OIG, over half of NYPD intelligence investigations continued even after the legal authorization for them expired.²⁷ Also, the OIG found that the NYPD frequently violated legal guidelines governing these investigations in other ways, such as through its use of boilerplate language in undercover officer authorization forms.²⁸

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²³ *Id.* at 44-45.

²⁴ *Id.* at 43.

²⁵ OFFICE OF THE INSPECTOR GEN. FOR THE N.Y. POLICE DEP’T, N.Y. CITY DEP’T OF INVESTIGATION, AN INVESTIGATION OF NYPD’S COMPLIANCE WITH RULES GOVERNING INVESTIGATIONS OF POLITICAL ACTIVITY 1 n.1 (2016), https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_intel_report_823_final_for_release.pdf. In its investigation, the OIG reviewed a random selection of 20% of cases closed or discontinued between 2010 and 2015 of each case type. *Id.* at 14.

²⁶ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-17-300, COUNTERING VIOLENT EXTREMISM: ACTIONS NEEDED TO DEFINE STRATEGY AND ASSESS PROGRESS OF FEDERAL EFFORTS 4 (2017), <https://www.gao.gov/assets/690/683984.pdf>; David Neiwert, *Trump’s Second Travel Ban Once Again Misidentifies Source of Domestic Terrorist Threat*, SOUTHERN POVERTY LAW CENTER (Mar. 13, 2017), <https://www.splcenter.org/hatewatch/2017/03/13/trumps-second-travel-ban-once-again-misidentifies-source-domestic-terrorist-threat>; *Murder and Extremism in the United States in 2016*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/education/resources/reports/murder-and-extremism-in-the-united-states-in-2016> (last visited June 13, 2017).

²⁷ OFFICE OF THE INSPECTOR GEN. FOR THE N.Y. POLICE DEP’T, *supra* note 25, at 1.

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In light of the foregoing, we urge this City Council to enact the POST Act. This legislation will provide vital transparency for the NYPD's acquisition of, and use of, surveillance technology. I thank you for giving me the opportunity to address these urgent issues, and I look forward to working with the Council to safeguard the rights of Muslim New Yorkers in the months and years to come.

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²⁸ *Id.* Such conduct undermines the ability of independent bodies to effectively review police compliance with legal guidelines. *Id.* at 2.