



**TESTIMONY OF CHAD A. MARLOW, ACLU ADVOCACY & POLICY COUNSEL,
IN SUPPORT OF INTRO. 1482**

JUNE 14, 2017

Madam Chair and Members of the Public Safety Committee, my name is Chad Marlow and I am an Advocacy and Policy Counsel at the American Civil Liberties Union. I am pleased to appear before you today to offer the ACLU's strong endorsement of Intro. 1482 – the POST Act.

Many others here today will touch upon the importance of the POST Act in promoting government transparency and greater public involvement in decisions regarding law enforcement use of surveillance technologies. They will properly highlight how these technologies threaten New Yorkers' civil liberties, but that they threaten some communities far more than others. When the ACLU has been able to peer behind the veil of secrecy that has been thrown over the use of these technologies, we have consistently found – from Milwaukee, Wisconsin to Tallahassee, Florida, and from Baltimore, Maryland to Oakland, California – that they are overwhelmingly deployed against communities of color, making them a threat to civil rights as well as to civil liberties. All of these facts support New York City adopting the POST Act, but to avoid redundancy, I instead would like to focus on two other points.

The first is simply to state that in taking up the POST Act, New York City is far from acting alone. The POST Act is a part of a nationwide movement to promote greater government transparency and community input into decisions involving the acquisition and use of surveillance technologies. In considering the POST Act, New York City joins 18 other American cities where similar legislation has already been introduced or has a sponsor who is preparing to introduce it. A version of this bill is also being considered by the State of Maine and by the Bay Area Rapid Transit system in California, which is roughly the equivalent of the MTA in New York City. Grassroots efforts to secure bill sponsors are also underway in more than 40 additional American cities. And presently, public oversight of surveillance technology laws are already on the books in Seattle, Washington and in Santa Clara County, California, the home of Silicon Valley. So lest you be told otherwise, the POST Act is not an isolated or unusual measure – it is part of a national movement, and I congratulate the New York City Council for its engagement in that effort. Of course, to truly protect New Yorkers and to become a national leader in this movement, New York City needs to pass the POST Act into law.

But most importantly, I am here to talk to you about a question the POST Act raises that should be on every City Council Member's mind as they weigh whether to support this measure;

namely, are you committed, truly committed, to doing everything in your power to prevent President Donald Trump from pursuing his illegal and unconstitutional agenda in New York City? Because that is what the POST Act will help our city do. Let me explain.

When Donald Trump ran for President, he told the American public, repeatedly, that upon taking office he would focus his efforts on identifying and deporting millions of undocumented immigrants, on tracking and surveilling Muslims throughout the country and banning their travel to this country, and on promoting even more aggressive policing against communities of color. Say what you will about the President, at least in this regard, he has been a man of his word.

But here is an important wrinkle worth noting: President Trump needs more personnel than are available to him on the federal level to execute these policies, which involve targeting millions of people nationwide and hundreds of thousands of people right here in New York City. Trump needs to enlist the help of local law enforcement, and he has been trying to do just that. Case in point, on January 25, 2017, President Trump signed an executive order reviving “programs that allow the federal government to work with local and state law enforcement agencies . . . to share information to help track and deport [immigrants].”

Now we know the voluntary help Trump needs is not going to be forthcoming in New York City. The Mayor has promised us the NYPD will not actively assist Trump in pursuing his agenda, and we are grateful for that. The Mayor and this Council have proudly declared New York to be an open and welcoming city, a safe city, a sanctuary city, but that is not enough. While New York City has posted guards at its front door to prevent Trump from going after immigrant, Muslim, and other targeted communities, the city has left no one guarding its back door.

What is that back door? It is law enforcement providing passive, secret assistance to Trump by giving him access to NYPD surveillance data. How does this work exactly? By the Trump administration continuing and expanding upon existing Obama-administration programs that have offered millions of dollars in grants to local police forces to purchase surveillance technologies.

The grants work like this: the federal government agrees to pay for a local police department’s surveillance technology in exchange for sharing the information it collects. Such a secret deal might even include the feds receiving real-time access to video and audio feeds. This means if the NYPD uses a Trump-surveillance grant to purchase a Stingray cell-site simulator, when that device captures location data from thousands of cell phones, the Trump administration may be able to directly or indirectly access that data and use it to locate and track immigrants and Muslims. Or if the NYPD uses the grant money to purchase and install surveillance-enabled lightbulbs, President Trump’s federal agencies may be able to access their live and recorded video and audio feeds and use them to spy on communities of color and neighborhoods with high Muslim or foreign-born populations. This is not science fiction – it is science fact. Just last month it was revealed that ICE used a Stingray to locate an undocumented immigrant in

Michigan. And in Oakland, California, Brian Kofer, the chair of that city's Privacy Advisory Commission, stated that his Commission "has a paper trail" showing that ICE has been accessing the Oakland Police Department's automatic license plate reader data. Oakland, incidentally, is also a sanctuary city.

Does the NYPD have such data sharing agreements with the federal government? Is it considering accepting grants that will create or expand such data sharing programs? You, the Members of the City Council of New York, have no idea. The public you represent has no idea. And by keeping us in the dark, the NYPD has deprived us of our ability to speak out against such agreements when they are being contemplated.

The NYPD can do this legally because, right now, it has the unchecked authority to decide, in secret, when and under what terms it acquires and uses surveillance technologies, and with whom it shares surveillance technology data and access. The only way to change that practice is to change the law. That is what the POST Act is all about.

Instead of allowing the NYPD to secretly and unilaterally approve the acquisition and use of surveillance technologies, the POST Act would require the NYPD to provide information about proposed acquisitions and uses to the Council and the public so we are empowered to raise objections with the Mayor and NYPD. And this not only goes for newly acquired technologies, but for ones currently in the field, and it covers data sharing agreements.

In short, the POST Act, if adopted, would undermine the Trump administration's ability to secretly use NYPD surveillance technologies to spy on the public. The POST Act will keep New York City's residents and visitors safe from the real and serious threats that are emanating from the White House. You want to know what the resistance looks like? The POST Act is what it looks like.

Now I know that many members of this Council have spoken out against Trump's targeting of immigrants, Muslims, and other communities, and we are very grateful for that. But now, with the POST Act before you, we have arrived at a critical moment. This is a real opportunity, for all of us, to show how committed we truly are to making New York a city where everyone is welcome and everyone is safe. Words are not enough to keep people safe. Action is required, and now is a time for action.

The ACLU respectfully requests you support the adoption of the POST Act in New York City.