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at New York University School of Law

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Before the

New York City Council Committee on Public Safety and
Committee on Fire and Criminal Justice

Good afternoon Chairwoman Gibson, Chairwoman Crowley, and members of the Committees. My name is Michael German and I am a fellow with the Brennan Center for Justice at New York University Law School. As a former FBI Special Agent who worked undercover in domestic terrorist groups, I understand the difficult job law enforcement has in trying to prevent acts of terrorism. We all want the NYPD to protect us from criminals and terrorists, using all legal and effective means. In order to succeed, however, law enforcement has to be thoughtful in how it approaches its counterterrorism mandate, so as not to engage in activities that harm individual rights, undermine its relationships with communities, or waste security resources.

The NYPD has made substantial investments in counterterrorism programs since the attacks on September 11, 2001, which is appropriate. But more than 13 years later, we have very little evidence demonstrating whether the methods the NYPD chooses to implement are actually making the city safer. And unfortunately, we know a cost has been imposed on all who live in or visit New York City in terms of our privacy. Suspicionless surveillance and infiltration of communities of Muslim, Arab, and South Asian descent have sown dissension and fear instead of security. These New York communities speak out against terrorism, and the NYPD should be empowering, rather than marginalizing them.

It is critically important to evaluate the effectiveness of NYPD counterterrorism programs, just as any other government activity, to ensure public resources are being used wisely. Unfortunately this is rarely done. In conducting research for their book, *Evidence Based Counterterrorism Policy* (2012), Professors Cynthia Lum and Leslie Kennedy examined over 20,000 research articles on terrorism and counterterrorism, and found only seven rigorous evaluations of counterterrorism tactics. Especially as new threats emerge, we must ensure that the NYPD has objective intelligence to evaluate and address the risks without raising undue public fear, or unfairly imposing on innocent New Yorkers.

Too often law enforcement at all levels have resorted to mass surveillance and bulk data collection, though there is little evidence these are effective methodologies for finding terrorists. Media reports have speculated that NYPD may increase its surveillance of social media, but again, existing research questions whether this could be helpful. Despite significant effort over several decades, studies still show that it is

extremely difficult to accurately predict who might become violent in the future, even for trained law enforcement and mental health professionals. There is simply no good model or profile for predicting who might become a terrorist. Indeed, the cases of Martin Rouleau in Canada, Tamerlan Tsarnaev, David Headley, Maj. Nadal Hasan, and Carlos Bledsoe here in the United States reveal that even when individuals are identified as potential threats to law enforcement and subject to close investigation, it is exceedingly difficult to determine who may become violent at some future date.

Rather than initiate new, or more aggressive surveillance programs, the NYPD should focus on solving violent crimes that continue to impact our communities. The good news is that New York City is a far safer city than it had been in decades past, and the NYPD can no doubt take some credit for this fact. But as the *New York Daily News* reported at the beginning of this year, far too many homicides in the City remain unsolved, which leaves all of us at greater risk but unfortunately impacts underserved minority communities most severely.ⁱ Former NYPD Detective and John Jay College professor Eugene O'Donnell wrote in a companion piece to the article that,

“New Yorkers will be troubled to find out that in some police precincts in the city more than half of those who kill are not caught, leaving them free to kill again... The victims of these killings rarely capture public attention. They are mainly young minority men killed in the outer boroughs. The *Daily News* report strongly suggests that there is an equal-protection gap: Killings in Manhattan generate a full-court press by police while in other lower-income parts of the city police efforts are much less robust, with fewer detectives working a larger number of homicides... Is the NYPD's anti-terrorism apparatus, erected while the World Trade site still smoldered in 2002, fit for purpose in its current shape and size, or should some investigators be redeployed to fight violent crime?”

Before employing untested methods that lack a research basis to believe they will be effective in predicting and preventing future violence, the NYPD should ensure its resources are employed in a manner to protect all New Yorkers from violence. Implying that the desperate acts of troubled individuals are part of a global terrorist conspiracy only aggrandizes their criminal behavior, and risks inspiring imitators.

Terrorists can only succeed when they make our fear overcome our reason. Their tactics are designed to divide us along the racial, religious, ideological, and sectarian lines they dictate. When we stand united in the faith that we can protect ourselves without infringing on the rights of any New Yorkers, we can truly say our city is more secure.

ⁱ Sarah Ryley, Barry Paddock, Rocco Parascandola, and Rich Shapiro, *Tale of Two Cities: Even as Murders Hit Record Low in NYC, a Mountain of Cases Languishes in Outer Boroughs as Cops Focus More Manpower on Manhattan Cases*, NEW YORK DAILY NEWS, Jan. 5, 2014, at: <http://www.nydailynews.com/new-york/nyc-crime/forgotten-record-murder-rate-cases-unsolved-article-1.1566572>