



46-01 20th Avenue
Astoria, New York 11105

Council on American-Islamic Relations

www.cair-ny.org | (646) 665-7599

**STATEMENT OF
ALBERT FOX CAHN, ESQ.
LEGAL DIRECTOR
COUNCIL ON AMERICAN-ISLAMIC RELATIONS, NEW YORK, INC.**

**BEFORE THE
COMMITTEE ON PUBLIC SAFETY
NEW YORK CITY COUNCIL**

**FOR A HEARING CONCERNING
OVERSIGHT – ABOLISH ICE
PRECONSIDERED INT – IN RELATION TO PROHIBITING NEW YORK CITY
FROM CONTRACTING WITH ENTITIES ENGAGED IN IMMIGRATION
ENFORCEMENT**

**PRESENTED
Thursday, September 6, 2018**

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 in support of the pre-considered introduction, prohibiting City contracts with immigration enforcement entities. We are proud to partner with the Council and community leaders to confront discriminatory immigration enforcement agencies that operate without transparency, public accountability, or adherence to the basic rule of law. After all, these dehumanizing efforts are often aimed at Muslim New Yorkers and other historically marginalized communities.

While the pre-considered initiative is a crucial step, it is just one of many needed to protect our city from the Trump Administration’s campaign against immigrant communities. Crucially, the Council must also address the myriad of ways that the New York City Police Department (“NYPD”) directly and indirectly aids U.S. Immigrations and Customs Enforcement (“ICE”). Yes, the City’s laws bar NYPD officers from enforcing immigration laws, but they still can collect the information ICE uses to target so many New Yorkers.

At the start of this year, Mayor Bill de Blasio reiterated his promise “that our police officers and employees will not be a part of a federal deportation force.”¹ However, just a few months later, we learned that ICE’s New York office targeted individuals fingerprinted by the NYPD,² demanding that these New Yorkers appear at ICE’s office, and placing many in deportation proceedings. City leaders widely denounced the letters as a “new low”, but they are just one example of how the NYPD can aid ICE’s campaign against immigrant New Yorkers.

The NYPD’s sweeping surveillance of communities of color is innately intertwined with immigration enforcement; it is impossible to address one without addressing the other. The NYPD’s deployment of novel and highly invasive surveillance technologies potentially give ICE new ways to track thousands, even millions of New Yorkers. Just today, news broke that the NYPD provided IBM with video footage of thousands of New Yorkers, images taken without their knowledge or consent. IBM allegedly used the footage to improve its artificial intelligence software’s ability to racially profile individuals.³

¹ De Blasio Administration Announces Citywide Guidance and NYPD Protocol to Codify Restrictions on Assistance with Federal Immigration Enforcement, Jan. 31, 2018.

² Ryan Devereaux, John Knefel, *ICE Evades Sanctuary Rules by Using NYPD Fingerprints to Find Immigrants and Send Them Call-in Letters*, THE INTERCEPT, Apr. 26, 2018, <https://theintercept.com/2018/04/26/ice-sends-threatening-letters-to-immigrants-increasing-climate-of-fear-in-new-york-city/>.

³ *George Joseph, Kenneth Lipp, IBM Used NYPD Surveillance Footage to Develop Technology That Lets Police Search by Skin Color*, THE INTERCEPT, Sep. 6, 2018, <https://theintercept.com/2018/09/06/nypd-surveillance-camera-skin-tone-search/>

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The NYPD was able to deploy tools like “stingrays,” fake cell towers that collect sensitive location and communications data.⁴ 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.⁵ Without accountability and transparency for the collection, retention, and sharing of the data of New York citizens, there can be no meaningful commitment that ICE does not have access to that data, and no way to assure that New York City is not empowering the federal deportation force.

In another alarming case, earlier this year, NYPD renewed a contract with the private firm Vigilant Solutions, exchanging information from automated license plate readers. While any such partnership raises serious concerns, such concerns intensified following reports in January that ICE had contracted with the very same vendor to gain access to real-time license plate information from across the country.⁶ The use of private companies as intermediaries for data collection allows ICE to circumvent sanctuary city restrictions, potential making New York’s license plate technologies a tool for immigration enforcement.⁷ We have been given assurances that the NYPD contract protected New Yorkers’ location data, and I appreciate those promises, but we need more than assurances, we need comprehensive protections for immigrant New Yorkers.

While we know about license plate readers, the NYPD purchased countless other tools with private and federal funds, circumventing any disclosure to the lawmakers we depend on to oversee our police forces. One measure that CAIR-NY supports in response is the POST Act, which would be an important step forward in the stand against abusive immigration enforcement practices, and would do so by strengthening police oversight, promoting public safety, and safeguarding New Yorkers’ privacy rights.

Under the POST Act, the NYPD must issue an “impact and use policy” report when choosing to use a new surveillance tool.⁸ This report must describe the technology, rules, and guidelines for the use of

⁴ 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>.

⁵ *Id.*

⁶ Russell Brandom, *Exclusive: ICE is about to start tracking license plates across the US*, THE VERGE, Jan. 26, 2018, <https://www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions>.

⁷ Pete Bigelow, *License-Plate Readers May Help Target Illegal Immigrants, Or You*, CAR AND DRIVER, Jan. 31, 2018, <https://www.caranddriver.com/news/license-plate-readers-may-help-target-illegal-immigrants-or-you>.

⁸ N.Y. CITY COUNCIL 1482 § 1 (N.Y. 2017), ch. 1, 14 ADMIN. CODE OF N.Y.C. § 14-167(b) (as proposed)

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that technology, and safeguards for protecting any data collected.⁹ The City Council and the people of New York City would then be allowed to provide feedback on such an acquisition.¹⁰ Thus, the POST Act strikes a delicate balance, requiring sufficient information to ensure oversight, while protecting operational details, sources, and methods.

The POST Act will benefit all New Yorkers, but it will offer particularly powerful protection for our Muslim neighbors. 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 neighborhoods and Muslim families.¹¹ Additionally, NYPD officials have conducted blanket surveillance of entire mosques, surveilling men, women, and children for nothing more than practicing their faith.¹² Some local businesses were even classified as "place[s] of concern" for nothing more than having customers of Middle Eastern descent.¹³

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.¹⁴

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.¹⁵

⁹ *Id.* at 14-167(a) (as proposed)

¹⁰ *Id.* at 14-167(e-f) (as proposed)

¹¹ 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 ENF'T 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>.

¹² Apuzzo & Goldstein, *supra* note 7.

¹³ 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>.

¹⁴ 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/.

¹⁵ 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

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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.¹⁶

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.¹⁷ 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.¹⁸

Unfortunately, last year's sanctuary city privacy laws, Initiatives 1557-A and 1588-A, largely exempted the NYPD from the privacy guarantees that many hoped would safeguard immigrant New Yorkers. These bills enacted comprehensive protection against information-sharing with third parties, including the federal government, but then completely exempted the NYPD from their terms.¹⁹ We must not replicate that oversight.

Ultimately, while the pre-considered initiative today is a crucial step, it is just one of many needed to protect our city from the Trump Administration's campaign against immigrant communities. The Council must also address the myriad of ways in which the NYPD assists ICE. I thank you for giving

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.

¹⁶ 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).

¹⁷ OFFICE OF THE INSPECTOR GEN. FOR THE N.Y. POLICE DEP'T, *supra* note 25, at 1.

¹⁸ *Id.* Such conduct undermines the ability of independent bodies to effectively review police compliance with legal guidelines. *Id.* at 2.

¹⁹ N.Y.C. Admin. Code. § 23-1202(d)(1)(a) "This subdivision shall not require any such notification where the collection or disclosure is by or to the police department in connection with an open investigation of criminal activity;"

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me the opportunity to address these urgent issues, and I look forward to working with the Council to safeguard the rights all New Yorkers targeted by the President's deportation initiatives.