

**Statement on behalf of
the Center for Democracy & Technology
before the
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
By Mana Azarmi, Policy Counsel

Chairman Allen and members of the Committee, thank you for the opportunity to testify at today's hearing. My name is Mana Azarmi and I am a Policy Counsel with the Center for Democracy & Technology.¹ CDT is a nonprofit advocacy organization headquartered in D.C. dedicated to advancing the rights of the individual in the digital world.

The killings of George Floyd, Breonna Taylor, and so many other Black people at the hands of the police have sparked a long overdue reckoning on how our country approaches policing. This reckoning must include by extension, police use of surveillance technology. Unchecked and secret high-tech policing may exacerbate existing racial inequality in our society, and has the potential to chill the exercise of First Amendment-protected speech, intrude on individual privacy, and cast entire communities under a cloak of suspicion.² This summer protestors agitating for racial justice around the nation and here in the District were met not only with physical violence, but also the watchful digital eyes of government.³ Seeking protection from one form of government abuse should not subject a person to another form of it.

District residents need assurances that we are protected from inappropriate government surveillance when we take to the streets, and that we are protected from discriminatory uses of surveillance technology.⁴ This requires scrutinizing the technology the MPD already possesses,

¹ Center for Democracy & Technology, www.cdt.org/about. Our Freedom, Security & Technology Project is dedicated to protecting individual privacy from unwarranted government intrusion. <https://cdt.org/area-of-focus/government-surveillance/>.

² 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>.

³ Heather Kelly and Rachel Lerman, *America is awash in cameras, a double-edged sword for protesters and police*, WaPo (Jun. 3, 2020), <https://www.washingtonpost.com/technology/2020/06/03/cameras-surveillance-police-protesters/>; Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, N.Y. Times (Jun. 19, 2020), <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

⁴ For an overview of the types of surveillance technology owned by local police departments please see, COMMUNITY CONTROL OVER POLICE SURVEILLANCE: TECHNOLOGY 101, ACLU (2020), <https://www.aclu.org/report/community-control-over-police-surveillance-technology-101>.

and the technology it may one day seek to obtain. For example, currently, MPD possesses facial recognition technology,⁵ which studies demonstrate is less accurate when used on people with darker skin and women,⁶ heightening the risk of misidentification and false arrest for such individuals.⁷ Any interaction with police may be lethal—especially for communities of color—and this technology risks increasing such encounters. Facial recognition technology can also be used to identify individuals at sensitive locations that may reveal religious or political preferences, such as at places of worship or social protests. We do not know if MPD’s technology has been tested for racial bias, or if it is routinely re-evaluated for biases. We do not know if MPD has adopted robust safeguards to protect individual rights. We are in the dark because MPD did not engage the public or City Council prior to deciding to acquire the technology. If in the future, MPD decides to acquire predictive policing software—which is also riddled with racial bias concerns⁸—there is nothing in place to trigger and inform City Council consideration of such a decision. Worse still, without our knowledge, MPD may already possess it. The stakes are simply too great for privacy, civil rights and civil liberties for this lack of oversight to be acceptable.

CDT is a member of a coalition of organizations called Community Oversight of Surveillance-DC, or COS-DC, which seeks to pass legislation that would require transparency, meaningful public input, and D.C. Council approval for all DC government uses of surveillance technology.⁹ Our proposed ordinance would ensure democratic control over police surveillance technology, and would subject its uses to oversight and auditing to ensure that policies are adopted to protect individual rights, and that they are abided by. This process would help breed trust in the community, and it would help the City Council make responsible financial decisions about how to invest in public safety.

Sixteen jurisdictions around the nation have already passed laws like this.¹⁰ DC should be next. To begin the process of considering the COS-DC legislation we ask the Council to hold a public

⁵ 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 in response to Committee questions).

⁶ 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>.

⁷ 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/facial-recognition-false-match-wrongful-arrest-224053761.html>.

⁸ 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>.

⁹ *Community Oversight of Surveillance DC*, <https://takectrldc.org/> (last visited Oct. 14, 2020).

¹⁰ *COMMUNITY CONTROL OVER POLICE SURVEILLANCE*, ACLU (last visited Oct. 14, 2010), <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance?redirect=feature/community-control-over-police-surveillance>. See e.g., OAKLAND, CAL., ORDINANCE NO. 13,489, MUN. CODE CH. 9.64 (Supp. 2019) (adopted May 15, 2018), *available at*

roundtable on the state of surveillance in the District this fall. The public and our representatives in City Council must play a meaningful role in decisions about community policing in the fight for racial justice. Attention must be paid to police surveillance technology as well. CDT and our partners in COS-DC look forward to working with members of the Council in this effort.

<http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/standard/oak070617.pdf>; SAN FRANCISCO, CAL., ORDINANCE NO. 102-19, STOP SECRET SURVEILLANCE ORDINANCE, ADMINISTRATIVE CODE-ACQUISITION OF SURVEILLANCE TECHNOLOGY (adopted May 14, 2019), *available at* <https://sfgov.legistar.com/View.ashx?M=F&ID=7206781&GUID=38D37061-4D87-4A94-9AB3-CB113656159A>; NASHVILLE, TENN., ORDINANCE NO. BL2017-646, METRO. CODE § 13.08.08 (Supp. 2019) (adopted June 7, 2017), *available at* https://www.nashville.gov/mc/ordinances/term_2015_2019/bl2017_646.htm.