



**Statement on behalf of
the Center for Democracy & Technology
before the
D.C. Council Committee of the Judiciary and Public Safety
Performance Oversight Hearing on the Metropolitan Police Department**

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By Ridhi Shetty

Chairman Allen and members of the Committee, thank you for the opportunity to testify at today's hearing. My name is Ridhi Shetty, and I am a Policy Counsel at the Center for Democracy & Technology (CDT). CDT is a nonprofit, nonpartisan 501(c)(3) organization based in D.C. that advocates for civil rights and civil liberties in the digital age. CDT works on many areas involving impacts of public and private sector uses of technology, including in law enforcement. We urge the Council to adopt legislation that requires community input into the use of surveillance technologies by agencies of the District including the Metropolitan Police Department (MPD), as well as Council approval of such use. Impacted communities must be recognized and treated as key stakeholders in decisions about whether and how agencies may use these technologies.

Our country's long history of police brutality toward Black people and other people of color, and increased attention to that ongoing reality in recent years, spurred widespread calls for racial justice in 2020. Nevertheless, last week, the Washington Post reported that since it began tracking fatal shootings by police in 2015, the total number of people fatally shot by police slightly increased each year and demographics of people who have been fatally shot have remained fairly constant.¹ As of 2020, Black people make up approximately 41% of the District's population but the majority of fatal shootings by police,² and across the country, Black, Indigenous, and Latinx people are killed disproportionately to their representation in the

¹ Marisa Iati et al., *Fatal Police Shootings in 2021 Set Record Since the Post Began Tracking, Despite Public Outcry*, WASH. POST (Feb. 9, 2022, 5:22 pm), <https://www.washingtonpost.com/investigations/2022/02/09/fatal-police-shootings-record-2021/>.

² U.S. Census Bureau, *Racial and Ethnic Diversity in the United States: 2010 Census and 2020 Census*, <https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html>; *Police Shootings Database 2015-2022*, WASH. POST (last updated Feb. 14, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

population.³ Data on other use-of-force incidents are hard to come by because law enforcement agencies have failed to report data on fatal police encounters that do not result from shootings.⁴ In order to ensure that policing reforms advance racial justice, it is critical to examine the mechanisms and biases in law enforcement practices that lead to use-of-force incidents. Police use of surveillance technologies targets already overpoliced communities, which precipitates the types of encounters that involve use of force.⁵

Prevalent surveillance technologies, including those used in the District, range from CCTV and doorbell cameras to gunshot detection systems, facial recognition systems, and license plate readers.⁶ They also include tools that extract data from mobile devices and mine through social media accounts.⁷ These tools process data pertaining to facial appearance, movements and behaviors, sounds, and online speech. Surveillance technologies process this data in isolation from necessary context, and the lack of context makes it even easier to justify excessive, if not deadly, police responses to certain situations.⁸ As a result, surveillance technologies have

³ Brita Belli, *Racial Disparities in Police Shootings Unchanged Over 5 Years*, YALE NEWS (Oct. 27, 2020), <https://news.yale.edu/2020/10/27/racial-disparity-police-shootings-unchanged-over-5-years>.

⁴ Tom Jackman, *FBI May Shut Down Police Use-of-Force Database Due to Lack of Police Participation*, WASH. POST (Dec. 9, 2021, 6:00 am), <https://www.washingtonpost.com/crime-law/2021/12/09/fbi-police-shooting-data/>.

⁵ See e.g., Todd Feathers, *Police are Telling ShotSpotter to Alter Evidence from Gunshot-Detecting AI*, VICE (Jul. 26, 2021, 9:00 am), <https://www.vice.com/en/article/qj8xbg/police-are-telling-shotspotter-to-alter-evidence-from-gunshot-detecting-ai>.

⁶ Chris Mills Rodrigo, *Gunshot Detection Firm ShotSpotter Expands with New DC Office*, THE HILL (Jul. 14, 2021, 3:18 pm), <https://thehill.com/policy/technology/563028-gunshot-detection-firm-shotspotter-expands-with-new-dc-office>; Gracie Todd, *Police Cameras Disproportionately Surveil Nonwhite Areas of DC and Baltimore*, CNS FINDS, CAPITAL NEWS SERVICE (Nov. 19, 2020), <https://cnsmaryland.org/2020/11/19/police-cameras-disproportionately-surveil-nonwhite-areas-of-dc-and-baltimore-cns-finds/>; Lauren Feiner and Annie Palmer, *Rules Around Facial Recognition and Policing Remain Blurry*, CNBC (last updated Jun. 14, 2021, 10:52 am), <https://www.cnbc.com/2021/06/12/a-year-later-tech-companies-calls-to-regulate-facial-recognition-met-with-little-progress.html>; Press Release, D.C. Office of Police Complaints, *Police Complaints Board Releases Report on Automated License Plate Readers*, (Sept. 25, 2020), <https://policecomplaints.dc.gov/release/police-complaints-board-releases-report-automated-license-plate-readers>.

⁷ LOGAN KOEPKE, ET AL., UPTURN, MASS EXTRACTION (2020), <https://www.upturn.org/work/mass-extraction/>; Creede Newton, *D.C. Police Closely Watched Anti-Racist Groups for Years*, SOUTHERN POVERTY LAW CTR. (Dec. 23, 2021), <https://www.splcenter.org/hatewatch/2021/12/23/dc-police-closely-watched-anti-racist-groups-years>.

⁸ See JOSEPH M. FERGUSON AND DEBORAH WITZBURG, CITY OF CHICAGO OFFICE OF INSPECTOR GENERAL, *THE CHICAGO POLICE DEPARTMENT'S USE OF SHOTSPOTTER TECHNOLOGY* 22 (2021), <https://igchicago.org/wp-content/uploads/2021/08/Chicago-Police-Departments-Use-of-ShotSpotter-Technology.pdf>; Sarah Jones, *33-50 Percent of Police Use-of-Force Incidents Involve a Person Who is Disabled*, WTHR (Jun. 19, 2020, 9:42 PM), <https://www.wthr.com/article/news/33-50-percent-of-police-use-of-force-incidents-involve-a-person-who-is-disabled-has-disability/531-011bddff-a5f0-4d2a-9ad2-6964623bc32d>.

sustained historical patterns of discriminatory policing, and they have enabled wrongful arrests of Black and brown people, violating civil rights and due process rights.⁹

Law enforcement has also used these technologies to criminalize legally-protected activity – in an ironic turn, law enforcement officers have used surveillance technologies to target racial justice protests sparked by police brutality.¹⁰ Moreover, the MPD is not the only District agency that relies on surveillance technologies. For example, the D.C. Housing Authority has deployed surveillance cameras throughout public housing in the District.¹¹ In addition to chilling the exercise of free speech, such use of surveillance technologies threatens individual privacy, and these tools are often built using data obtained without consent.¹²

Yet, the most overpoliced communities have repeatedly had little to no say in whether government agencies use surveillance technologies that will affect these communities most. Communities with the most at stake must play a critical role in this decision-making process.

CDT is a member of Community Oversight of Surveillance-DC (COS-DC), a coalition of local and national organizations and individuals committed to bringing public oversight and accountability to how District agencies procure and use surveillance technologies.¹³ We urge the Council to introduce and pass legislation that requires Council approval any time a District agency wants to purchase, acquire, or use surveillance technologies, and that provides for meaningful community input.

COS-DC has developed a proposed bill that provides a viable path for the D.C. Council and the public to engage with decisions about proper use of modern surveillance technologies. CDT supports adoption of this D.C.-specific legislation. It would ensure that decisions about the use

⁹ See Tate Ryan-Mosley, *The New Lawsuit That Shows Facial Recognition is Officially a Civil Rights Issue*, MIT TECH. REV. (Apr. 14, 2021), <https://www.engadget.com/facial-recognition-false-match-wrongful-arrest-224053761.html>.

¹⁰ Jordan Williams, *Watchdog: Six Federal Agencies Used Facial Recognition Software to ID George Floyd Protesters*, THE HILL (Jun. 29, 2021, 5:20 pm), <https://thehill.com/policy/technology/560805-watchdog-6-federal-agencies-used-facial-recognition-software-to-id-george>.

¹¹ Press Release, D.C. Hous. Auth., *DCHA Unveils New Command Center and Customer Solutions Center* (May 11, 2021), <https://webserver1.dchousing.org/?recentnews=dcha-unveils-new-command-center-and-customer-solutions-center>; Sarah Payne, *DCHA Looks to Increase Safety Through Surveillance*, HILLRAG (May 19, 2021), <https://www.hillrag.com/2021/05/19/dcha-looks-to-increase-safety-through-surveillance/>.

¹² SHARON BRADFORD FRANKLIN, CTR. FOR DEMOCRACY & TECH, *RECOGNIZING THE THREATS: CONGRESS MUST IMPOSE A MORATORIUM ON LAW ENFORCEMENT USE OF FACIAL RECOGNITION TECH* (OCT. 14, 2021), <https://cdt.org/wp-content/uploads/2021/10/Recognizing-the-Threats-Congress-Must-Impose-a-Moratorium-on-Law-Enforcement-Use-of-Facial-Recognition-Tech.pdf>.

¹³ *About Community Oversight of Surveillance in D.C.*, <https://takectrldc.org/about-cosdc/>.

of surveillance technologies are made with thoughtful consideration and buy-in from the public and elected lawmakers, and that the operation of approved technologies is subject to rules that safeguard residents' rights and provide transparency.

The COS-DC legislation would empower the Council and the public in four key ways:

- First, the legislation would create a transparent and public process for considering surveillance technology proposals by requiring that all acquisition and use of such technologies by D.C. agencies be subject to Council approval following a public hearing.
- Second, District agencies would be required to create written rules for use of surveillance technologies and submit the rules to the D.C. Council for approval. These submissions would include surveillance impact reports explaining how a technology works and will impact the community, as well as surveillance use policies that set out specific guidelines for the technology's use by the agency.
- Third, the legislation would establish an independent privacy advisory commission composed of impacted District community members and civil rights, racial justice, civil liberties, and data and privacy experts. This body would advise and help inform D.C. agencies and the Council on civil rights and civil liberties risks of specific surveillance technologies and their use in the District.
- Fourth, the legislation would require periodic assessments and annual evaluation of the District's use of surveillance technology to ensure that costs to residents and to their rights do not outweigh any potential benefits, and to assess whether D.C.'s use of surveillance technology furthers public safety goals.

To date, at least twenty-one jurisdictions have passed similar legislation, and we urge the Council to make D.C. the next jurisdiction to do so.¹⁴ The Council must work *with* the public, community advocates, and privacy and technology experts to ensure that affected communities living in the District are protected from discriminatory uses and unintended consequences of surveillance technologies. CDT and our partners in COS-DC look forward to working with the Council in this effort.

¹⁴ ACLU, *Community Control Over Police Surveillance*, <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance>.