

New York City Automated Decision System Task Force Comments Compilation

This document is a compilation of comments or inquiries sent to the New York City Automated Decision System Task Force during its period of public engagement in Spring 2019. It includes documents from the following entities:

AI Now Institute
Brennan Center for Justice
NAACP Legal Defense and Educational Fund, Inc.
New York City Council Member Peter Koo
Office of the New York City Comptroller
Surveillance Technology Oversight Project - S.T.O.P.
The Legal Aid Society

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Written Comments to the New York City Automated Decision System Task Force¹

June 2019

Government administrative agencies are increasingly turning to technical solutions to aid or supplant decision-making procedures, allocate resources, or mitigate pressing concerns. Yet, many important questions about these technical systems remain unanswered because of the lack of meaningful transparency, accountability, and oversight mechanisms. Some of these important questions include:

- What type of systems are currently in use and what are their capabilities?
- Where are these systems currently and prospectively integrated into government decision making or other processes?
- Which agencies are using them?
- Who is currently and prospectively affected by these systems?
- How does an individual or community know when they've been adversely affected by a system and how do they challenge these outcomes?
- When are individuals or communities notified about the current or prospective use of systems and when do agencies consult community members to assess concerns?

At the same time, these technical solutions are being developed by vendors that often lack context specific knowledge about the problem they are attempting to address and are driven by business interests and design standards that are often in conflict with community values or interest (e.g. equity, justice, transparency about decision making processes). Additionally, many of these emerging technologies are “black boxes” that are inscrutable to the government officials that will use the technology as well as the public that is affected by the outcomes. This transparency problem is then compounded by the fact that many vendors also obstruct efforts of transparency or algorithmic accountability through broad proprietary claims, even though there is often no evidence that legitimate inspection, auditing, or oversight poses any competitive risks.²

¹ These written comments supplement oral comments provided by Rashida Richardson, AI Now's Director of Policy Research, at the May 30 New York City Automated Decision System Task Force Public Forum.

² See, e.g., AI Now Institute. (2018, September). Litigating Algorithms: Challenging Government Use of Algorithmic Decision Systems. Retrieved from: <https://ainowinstitute.org/litigatingalgorithms.pdf>.

This dynamic leaves residents and consumers in a position where they must “trust” government agencies and vendors despite pervasive failures that have resulted in significant harms. Some notable and recent failures include:

- A school matching algorithm error that resulted in 144 students receiving false rejection notifications to one of New York City’s coveted high schools.³
- A facial recognition pilot program on New York City’s Robert F. Kennedy Bridge that failed to detect any faces within acceptable parameters. Despite this failed test and statements by the vendor that the current version of the technology will not work under the proposed conditions, the MTA continues to use the technologies on other City bridges and tunnels.⁴
- A flawed algorithm improperly disqualified several New York small business owners from receiving food subsidy payments for alleged fraud.⁵

These consequences fuel growing concerns about government use of automated decision systems and warrant strong and nuanced policy interventions to create greater transparency, oversight, accountability, and equitable outcomes for New Yorkers. **Thus, we offer the following recommendations to the Task Force:**

First, we encourage the Task Force to use existing recommendations and recent state and local policy developments. Last August, the Task Force received a letter with robust recommendations by a group of researchers and advocates, including AI Now.⁶ This letter included detailed policy recommendations based on the provisions of the law and we encourage the task force adopt these recommendations in its final report. Additionally, several US cities and states are considering policy interventions and

³ Amin, R. (2019, April 9). Initially rejected, 144 students learn they were accepted to NYC’s coveted Lab School. *ChalkBeat*. Retrieved from: <https://www.chalkbeat.org/posts/ny/2019/04/09/admissions-error-lab-school-for-collaborative-studies-new-york/>.

⁴ Berger, P. (2019, April 8). MTA’s Facial-Recognition Foray Is a Bust --- Test of technology at high speed on RFK Bridge fails to identify the faces of any drivers. *ProQuest*. Retrieved from: <http://proxy.library.nyu.edu/login?url=https://search.proquest.com/docview/2204499010?accountid=12768>

⁵ Brown, H. C. (2018, October 8). How an Algorithm Kicks Small Businesses Out of the Food Stamps Program on Dubious Fraud Claims. *The Intercept*. Retrieved from: <https://theintercept.com/2018/10/08/food-stamps-snap-program-usda/>.

⁶ (2018, August 17). Re: New York City’s Automated Decision Systems Task Force. [Letter to the Automated Decision Systems Task Force Chairs]. http://assets.ctfassets.net/8wprhvhvnpfc0/1T0KpNv3U0EKAcQKselsqA/52fee9a932837948e3698a658d6a8d50/NYC_ADS_Task_Force_Recs_Letter.pdf.

solutions to address the risks and challenges posed by government use of automated decision system (“ADS”), and we encourage the Task Force to review these bills and recently passed laws to consider whether these approaches can be adopted to address New York City issues and concerns.⁷ For example, Idaho recently adopted a law to mitigate bias concerns related to the use of pretrial risk assessments, and this law explicitly prohibits ADS vendors from asserting trade secrecy claims.⁸

Second, we encourage the Task Force Chairs to take a more liberal interpretation of the Task Force’s mandate so that the report includes concrete recommendations regarding issues that are immediately actionable. It is clear from the comments made by the Task Chairs at the April 4, 2019 City Council Technology Committee Oversight Hearing and the subsequent Task Force Public Forums that the Chairs see the expected 2019 Report as an initial step in a multi-year process.⁹ While we do not expect the Task Force report to serve as a panacea to all New York City ADS concerns and we understand that some issues may require subsequent action by the City Council, Mayor or other governmental bodies outside of New York City; the Task Force can recommend specific actions agencies can take to address immediately actionable concerns. It is not unreasonable to expect that the report should be able to address these more immediate concerns, like how the public should be informed about current and prospective ADS uses that pose great risks to New Yorker’s civil rights and liberties as well as interim procedures for addressing harms created by current ADS use. Expecting New Yorkers to wait several years to learn about systems that may be affecting them or developing procedures for them to challenge ADS decisions and outcomes is unjust. For example, the Department of Education (“DOE”) appeal process for the controversial New York

⁷ See, e.g., N.Y. Legis. Assemb. A-6787. Reg. Sess. 2019-2020. (2019) https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A06787&term=2019&Summary=Y&Actions=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y; N.Y. Legis. Assemb. A-7040. Reg. Sess. 2019-2020. (2019). https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A07040&term=2019&Summary=Y&Actions=Y&Memo=Y&Text=Y.

⁸ Idaho Legislature. House Bill 118. Reg. Sess. 2019. (2019). <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2019/legislation/H0118.pdf> ; see also, Whittaker, M., Crawford, K., Dobbe, R., Fried, G., Kaziunas, E., Mathur, V., West, S. M., Richardson, R., Schultz, J., Schwartz, O. (2018). AI Now Report 2018. Retrieved from: https://ainowinstitute.org/AI_Now_2018_Report.pdf (“Vendors and developers who create AI and automated decision systems for use in government should agree to waive any trade secrecy or other legal claim that inhibits full auditing and understanding of their software”).

⁹ See, The New York City Council. Retrieved from: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=685409&GUID=89DCCB04-63D3-4FB7-8691-1297A680B101&Options=info&Search=>, <https://www1.nyc.gov/assets/adstaskforce/downloads/pdf/Public-Engagement-Forum-4-30-2019.pdf>, and New York Law School. (2019, May 30). *Mayor’s Office - Algorithms Task Force II*. Retrieved from: <https://nyls.mediasite.com/mediasite/Catalog/catalogs/mayors-office-algorithms-task-force-ii-2019-05-30>.

City high school matching does not allow students to challenge errors by the system, they can only appeal school assignment based on limited and predetermined reasons (e.g. medical hardship).¹⁰ The Task Force report should include specific recommendations on how to modify current appeal procedures to ensure that New Yorkers can challenge ADS use that is currently affecting them. This type of recommendation can be immediately actionable by agencies and should not be viewed as outside of the Task Force's current mandate and authority.

Third, the Task Force should require all City agencies to proactively and publicly release data relevant to assessing bias and discrimination concerns related to current and prospective ADS use, and any agency that wishes to be exempt from this requirement should publicly post an explanation for non-disclosure. For example, the school assignment algorithm used by DOE has been the subject of controversy given the extreme racial and socioeconomic segregation¹¹ in New York City schools. In response to these growing concerns, the City enacted the School Diversity Accountability Act,¹² which requires the DOE to publicly release demographic data related to school enrollment by individual grade levels and programs within schools. However, enrollment data does not show whether there are disparities in who applies to specific schools and who actually gets in. In order to accurately assess whether the school assignment algorithm contributes to discriminatory outcomes, interested parties must have access to the assignment algorithm's data (e.g. student choice inputs and matching outputs). This type of data should be proactively and public released by the DOE so researchers, advocates, and New York City families can assess whether this ADS is contributing to segregation in City schools, especially since research shows that where a student goes to school can significantly affect their life opportunities and outcomes.

Fourth, the Task Force should provide a rights protective advisory guidance to all New York City agencies on how to interpret and comply with requests for information regarding agency use of ADS pursuant to the New York Freedom of Information Law ("FOIL"). City agencies have much discretion in assessing which documents are

¹⁰ New York City Department of Education. Retrieved from:

<https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/high-school>.

¹¹ Kucsera, J., & Orfield, G. (2014). New York State's extreme school segregation: Inequality, inaction, and a damaged future. Los Angeles, CA: The Civil Rights Project. Retrieved from:

<https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/ny-norlet-report-placeholder/Kucsera-New-York-Extreme-Segregation-2014.pdf>.

¹² Requiring the department of education to report annually on student demographics in community school districts and high schools. Retrieved from:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1946653&GUID=7329D54A-4E94-443D-9411-BCF5CC0C65D8&Options=&Search=>.

responsive to FOIL requests regarding ADS. Yet, instead of providing the public with information they have a right to review, some agencies have claimed to not understand the technological capabilities or other relevant information about the technologies they are currently using; improperly claimed exemptions to FOIL; or employ other obstructionist practices that have resulted in Article 78 proceedings (i.e. administrative appeals). Challenging such decisions and practices is resource and time intensive, which can have a chilling effect. Given the gravity of the risks some ADS uses pose, the Task Force should ensure that existing laws, like FOIL, are interpreted in a manner that empowers New Yorkers rather than deter them.

Finally, the Task Force should recommend agencies adopt data and decision provenance requirements regarding any data that is collected about individuals and communities and subsequently used in ADS or shared with other agencies for use in ADS. Datasets used to develop or implement ADS can include errors, omissions, and other misrepresentations that can produce biased or inaccurate results.¹³ Detailed documentation of the data used by the ADS and decisions made throughout the design and implementation process can help agencies better anticipate or mitigate adverse outcomes as well as bolster due process rights of individuals or communities adversely affected. In fact, the Task Force recommendations or subsequent agency policies can draw from existing federal laws.¹⁴ We specifically encourage the Task Force to review the Computer Matching and Privacy Protection Act of 1988, which regulates the use of computer matching involving personally identifiable records and provides due process rights for individuals seeking to prevent agencies from taking adverse actions without notice and independent verification.¹⁵

¹³ See, Richardson, R., Schultz, J. M., & Crawford, K. (2019). Dirty Data, Bad Predictions; How Civil Rights Violations Impact Police Data , Predictive Policing Systems, and Justice. *New York University Law Review Online*.

¹⁴ See, Privacy Act of 1974, 5 U.S.C. § 552a.

¹⁵ The Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a(a)(8)-(13), (e)(12), (o), (p), (q), (r), (u).

Written Testimony of Ángel Díaz
Counsel, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
Before the
New York City Automated Decision Systems Task Force
Recommendations Regarding Transparency into City Agencies' Use of Automated Decision
Systems
May 30, 2019

Good evening, chairpersons and members of the Automated Decision Systems Task Force. My name is Ángel Díaz, and I am Counsel for the Liberty and National Security Program at the Brennan Center for Justice. I want to thank you for holding tonight's public forum. We believe a robust public engagement process should inform the Task Force's forthcoming report and recommendations.

The Brennan Center is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. The Liberty and National Security Program focuses on government oversight and accountability, and ensuring that law enforcement efforts to combat crime and terrorism are done effectively but without religious or ethnic profiling.

As part of this work, we actively seek greater transparency and oversight of the NYPD's surveillance tools, including their use of automated decision systems. The Brennan Center is party to a multi-year legal dispute with the NYPD to obtain information about the Department's use of predictive policing technologies. These systems rely on algorithms to analyze large data sets and generate statistical estimates about crime. The estimates are then used to direct police resources.

But predictive policing tools have been roundly criticized by civil rights and civil liberties advocates,¹ as they often rely on historic crime data that both reflects and recreates decades of biased enforcement against communities of color.² Here in New York, even ten years of historic crime data would be tainted by the Department's stop-and-frisk program that disproportionately targeted the city's Black and Latinx communities.³ Relying on this historic data to inform how police officers are deployed in the future is likely to result in the same biased policing.

These concerns motivated our decision to file a public records request seeking information about the NYPD's testing, development, and use of predictive policing. After the NYPD refused to produce documents in response to our initial public records request and a subsequent appeal, we sued. A little over a year later, we received an order from the court ordering the police department to produce many

¹ *See, e.g.*, Leadership Conference on Civil and Human Rights, et al., Predictive Policing Today: A Shared Statement of Civil Rights Concerns (Aug. 31, 2016), available at http://civilrightsdocs.info/pdf/FINAL_JointStatementPredictivePolicing.pdf.

² *See, e.g.*, Jack Smith IV, Crime-prediction Tool PredPol Amplifies Racially Biased Policing, Study Shows, MIC (Oct. 9, 2016), <https://mic.com/articles/156286/crime-predictiontool-pred-pol-only-amplifies-racially-biasedpolicing-study-shows> (last visited Oct. 15, 2017); *See also* Laura Nahmias, NYPD Testing Crime-Forecast Software, POLITICO (July 8, 2015, 5:52 AM EDT), <http://www.politico.com/states/new-york/cityhall/story/2015/07/nypd-testing-crime-forecast-software-090820> (quoting maker of predictive policing software as noting the importance of assessing "how we apply statistics and data in a way that's going to be sensitive to civil rights and surveillance and privacy concerns").

³ *See e.g.*, Benjamin Mueller, "New York Police Dept. Agrees to Curb Stop-and-Frisk Tactics." The New York Times, February 2, 2017, <https://www.nytimes.com/2017/02/02/nyregion/new-york-police-dept-stop-and-frisk.html>.

of the records we had originally requested.⁴ Even then, it took almost a full year from the judge's order before the NYPD finally produced some of the information in our request. While the documents we ultimately received helped to shed light on the NYPD's predictive policing system, we still do not have a full understanding of how it works. We believe this Task Force is uniquely situated to engage in a comprehensive evaluation of the NYPD's predictive policing system.

At the hearing for the establishment of Local Law 49, former Council Member and head of the Technology Committee James Vacca specifically noted the use of predictive policing as a motivating factor in the establishment of this Task Force.⁵ We urge you to evaluate how the NYPD can address and correct any biases in its predictive policing system that may be condemning communities of color to a lifetime of over-policing.

Despite its numerous problems, predictive policing is just one system currently being deployed without accountability or oversight. To give just a few more examples, the NYPD uses each of the following technologies:

- **Facial Recognition.**⁶ Studies of many commercially available products have found unacceptable error rates when analyzing faces that are not white and male.⁷
- **Social Media Monitoring.**⁸ A New York court recently ordered the NYPD to release unredacted documents relating to how the Department uses Dataminr software to monitor social media.⁹ This was in response to a public records request filed by Black Lives Matter activists seeking records about NYPD surveillance of their social media profiles.
- **Automatic License Plate Readers.**¹⁰ NYPD contracts with a company called Vigilant Solutions for access to its massive database of license plate reads.¹¹ If the NYPD shares information captured from its own license plate readers and shares it with other customers of Vigilant Solutions, it may be unwittingly sharing information about undocumented New Yorkers with ICE.¹²

We understand that this Task Force cannot work alone in holding the police department accountable. This is why we recommend that this Task Force's written report call on the City Council to pass a law that would require the NYPD to publish a list of its surveillance tools and the policies in place to

⁴ See Rachel Levinson-Waldman and Erica Posey, "Court: Public Deserves to Know How NYPD Uses Predictive Policing Software," January 28, 2018, <https://www.brennancenter.org/blog/court-rejects-nypd-attempts-shield-predictive-policing-disclosure>.

⁵ See Transcript of the Minutes of the Committee on Technology, October 16, 2017 at Page 8.

⁶ See Clare Garvie, "Garbage In, Garbage Out – Face Recognition on Flawed Data," May 16, 2019, <https://www.flawedfacedata.com/>.

⁷ See e.g., Joy Buolamwini and Timnit Gebru, "Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification", available at <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>.

⁸ See Jessie Gomez, "New York court rules NYPD can't use Glomar to keep surveillance records secret," MuckRock, January 15, 2019,

⁹ See *Millions March NYC v. New York City Police Department*, Index No. 100690/2017, January 14, 2019, available at <https://www.documentcloud.org/documents/5684800-Millions-March-Nypd.html#document/p1>.

¹⁰ See NYCLU "Automatic License Plate Readers," <https://www.nyclu.org/en/automatic-license-plate-readers>.

¹¹ See Anthony Romero, "Documents Uncover NYPD's Vast License Plate Reader Database," HuffPost, January 25, 2017, https://www.huffpost.com/entry/documents-uncover-nypds-v_b_9070270.

¹² See Russell Brandom, "Exclusive: ICE is about to start tracking license plates across the US." The Verge, January 26, 2018, <https://www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions>.

protect the privacy of New Yorkers. The POST Act, Initiative 487, would require just that.¹³ Cities across the country, including San Francisco,¹⁴ Seattle,¹⁵ Nashville,¹⁶ and Cambridge¹⁷ have already passed even stronger community controls. It's time for New York City to catch up.

Last year, we joined a coalition letter to this Task Force with a number of recommendations for how to accomplish its mandate under Local Law 49. We are resubmitting a copy of this letter with our written testimony, but I would like to highlight just a couple of items that pertain to the goals of tonight's public forum.

- First, contracts with technology vendors must include provisions requiring them to disclose information for all datasets used to develop and implement ADS. This information should be maintained by city agencies, and shared with auditors evaluating ADS for disparate impact.
- Second, each city agency deploying an ADS should publish a simple description of how the system works, and how it makes decisions about New Yorkers. These descriptions should be publicly available, and should account for New York's linguistic, socioeconomic, and cultural diversity.
- Third, city agencies should create and publish regular Algorithmic Impact Assessments, ideally before acquiring or building a new ADS. These assessments would review each ADS for fairness, bias, privacy, and related concerns.

In closing, our increasingly data-driven society requires that transparency and accountability do not fall by the wayside. The NYPD's use of surveillance technology threatens to completely redefine the right to privacy, freedom of speech, and equal protection under the law. These foundational values must be jealously guarded if New York City is to remain a strong local democracy.

Thank you again for the opportunity to testify. I am happy to answer any questions.

¹³ For more on the POST Act, short for Public Oversight of Surveillance Technology Act, see "The Public Oversight of Surveillance Technology (POST) Act: A Resource Page, available at

<https://www.brennancenter.org/analysis/public-oversight-surveillance-technology-post-act-resource-page>.

¹⁴ See "Stop Secret Surveillance Ordinance," available at

<https://sfgov.legistar.com/View.ashx?M=F&ID=7206781&GUID=38D37061-4D87-4A94-9AB3-CB113656159A>.

¹⁵ See Ordinance 125376, available at

<https://seattle.legistar.com/LegislationDetail.aspx?ID=3380220&GUID=95404B0E-A22D-434E-A123-B3A0448BD6FA&Options=Advanced&Search=>.

¹⁶ See Ordinance No. BL2017-646, available at

https://www.nashville.gov/mc/ordinances/term_2015_2019/bl2017_646.htm.

¹⁷ See Surveillance Technology Ordinance, available at <http://2f8dep2znrkt2udzwp1pbyxd-wpengine.netdna-ssl.com/wp-content/uploads/2018/12/surveillance-ordinance.pdf>.

Exhibit A

August 17, 2018

Via E-Mail & First Class Mail

Acting Director Emily W. Newman
Deputy Commissioner Brittny Saunders
Mayor's Office of Operations
235 Broadway - 10th Floor
New York, NY 10007

Re: New York City's Automated Decision Systems Task Force

Dear Task Force Chairs Newman and Saunders:

The undersigned organizations and individuals write to offer recommendations to the Automated Decision Systems Task Force, which is mandated by Local Law 49 of 2018. The Task Force is required to present the Mayor and ultimately the public with recommendations on identifying automated decision systems in New York City government, developing procedures for identifying and remedying harms, developing a process for public review, and assessing the feasibility of archiving automated decision systems and relevant data. This is an important opportunity to ensure that emerging technologies, like automated decisions systems, are adopted and implemented fairly and equitably to serve all New Yorkers.

Though we hope the Task Force will engage experts, advocates, and community members over the next year, we are offering the following recommendations in hopes that they can assist the Task Force in answering the varied and complicated questions mandated by Local Law 49 of 2018. We also anticipate that the Task Force's prospective findings and recommendations can serve as a national or international model for other jurisdictions grappling with the opportunities and challenges presented by the use of automated decision systems, so we hope this letter can assist other advocates in their local efforts. This letter includes general recommendations for the Task Force as well as specific recommendations related to the provisions of Local Law 49 of 2018.

General Recommendations for the Task Force

- The effects of an automated decision system will vary by agency, as will the intended goals of the system and the public policy issues the agency seeks to address through use of the automated decision system. As the Task Force evaluates the myriad of issues presented by automated decision systems, we recommend Task Force members consult domain experts and advocates, including but not limited to those listed in the attached appendix, while developing recommendations that relate to or may significantly impact specific issue areas.

- The Task Force should recommend the creation of a permanent independent governmental body whose mission is to (1) help implement subsequent laws, policies, or procedures that are created based on Task Force recommendations, (2) handle enforcement against agencies that fail to comply with aforementioned laws, policies or procedures, and (3) assess when laws, policies or procedures need to be amended to reflect advancements in technology.
- While most of the provisions of Local Law 49 of 2018 seek recommendations regarding government use of automated decision systems within the civil law context, the Task Force should recognize that criminal suspects enjoy the protections of the Fourth, Fifth, Sixth, and Fourteenth Amendments. These protections must be satisfied in addition to any others the Task Force might recommend.

Recommendations on the criteria for identifying which agency automated decision systems should be subject to one or more of the procedures recommended by the Task Force

- The Task Force should adopt the following definition of “automated decision system” to determine which systems should be subject to its recommendations on procedures, rules, policies and actions regarding government use of automated decision systems.
 - An “automated decision system” is any software, system, or process that aims to aid or replace human decision making. Automated decision systems can include analyzing complex datasets to generate scores, predictions, classifications, or some recommended action(s), which are used by agencies to make decisions that impact human welfare.
- Agencies should maintain a public archive identifying automated decision systems that are subject to procedures, rules, policies or actions recommended by the Task Force as well as systems and categories of systems (e.g. short-lived Microsoft Excel formulae) excluded from the recommended procedures, rules, policies or actions, and explanations of their exclusion. The City should also implement a procedure for the public to challenge an agency’s exclusion of an automated decision system.

Recommendations on procedures, rules, policies or actions for how a person may request and receive an explanation of how an agency automated decision system determination was reached

- The City Council and the Mayor should provide agencies annual budgetary support to ensure accessibility of public documents and communications related to the agency’s use of automated decision systems. Agencies should ensure that public documents and communications account for language, socioeconomic, cultural, geographic, education, and digital access differences. This budgetary support should also be used to hire and consult group facilitation experts to design, lead and implement public meetings that are centered on soliciting community concerns regarding existing procedures.

- The City should require procurement contracts to include provisions requiring the vendor to provide information¹ for all datasets used to develop and implement the systems; plain language explanations of how the system makes determinations; any records of bias, fairness or any validation testing performed on the system; design documentation and information about the technical architecture; records of the vendor marketing materials; plans for ongoing maintenance and system updates; response plans for any system changes that result from updates; and any other relevant information that will assist agencies in developing explanations of how an automated decision system determination was reached and compliance with any other Task Force recommended procedures, rules, policies or actions.
- Agency explanations of an automated decision system determination should include general, plain-language descriptions of the automated decision systems' overall function, the degree of human intervention in the system, and an explanation of the specific determination in question.
- Agencies should adopt procedures that guarantee an agency response to a request for an explanation of an automated decision system determination within a 20-day time period. Requests for explanations of automated decision system determinations pertaining to critical issues (e.g. public benefits eligibility or allocation) should have a limited response timeline of five business days. Explanations should include a description of the process and timeline to appeal an automated decision system determination.
- The City should require agencies using automated decision systems to maintain and publish metrics regarding how many requests for explanation it received, whether the explanation resulted in a challenge, and the outcome of that challenge. This information can be published in a privacy-preserving manner but it should allow the public and public officials to assess the efficacy and impact of procedures and practices as well as the utility of automated decision systems.

Recommendations on procedures and standards to determine whether an agency automated decision system disproportionately impacts persons based on protected status

- The City should require agencies to develop a pre-acquisition or development procedure to ensure experts and representatives from directly affected communities are consulted during the development of an automated decision system. Agencies should maintain a public record of external participation. Agencies must ensure that non-agency experts are consulted early in the acquisition or development process, since important policy determinations that can result in disproportionate outcomes occur early in system development.
- The explicit expectation is that automated decision systems should not result in a disproportionately negative effect on members of a protected status, and measures should

¹ Timnit Gebru, et al., Datasheets for Datasets (March 2018), <https://arxiv.org/pdf/1803.09010.pdf>.

be affirmatively undertaken to eliminate disparities. In furtherance of this goal, the City should require all agencies using automated decision systems to adopt a standard for assessing disproportionate impact based on protected status that is tailored to the specific use of the automated decision system. The following is an example of a general standard agencies can consider and modify for its use cases: if an automated decision system selects or affects members of a protected status at a rate that varies by four-fifths or more, then that decision system should not be used unless the agency provides a public explanation of why its use of the system and the specific decision is necessary to achieve an important agency interest, and that there is no less-discriminatory alternative to achieving this interest available.

Recommendations on procedures and standards for addressing instances in which a person is harmed by an agency automated decision system if any such system is found to disproportionately impact persons based on protected status

- When an agency's automated decision system is found to be discriminatory or produces discriminatory outcomes, the agency's policy or system redesign process must include individuals and advocates from the communities or protected class whom the system is found to disproportionately impact. Inclusion of affected individuals and advocates should occur at the beginning of the redesign process and the agency should specifically design pre-meeting preparation sessions for affected individuals and advocates to ensure that they can comfortably and meaningfully participate in the redesign process.
- The City Council should pass a law providing a private right of action for individuals or groups of individuals that are injured by automated decision system determinations that are found to be discriminatory or produce discriminatory results.
- Agencies should define and publicly post a procedure allowing outside researchers or experts access to relevant information to assess whether an automated decision system produces disparities between similarly situated individuals based on protected status.

Recommendations on a process for making information publicly available that, for each agency automated decision system, will allow the public to meaningfully assess how such system functions and is used by the city, including making technical information about such system publicly available where appropriate

- The City should make publicly available online a list of automated decision systems used by agencies, disaggregated by agency. This list should also include:
 - A description of the purpose of the automated decision system, including any decisions that such system is used to make or assist in making and any specific types or groups of persons likely to be affected by those decisions.
 - A description of the procedure for individuals to determine whether and how an automated decision system was used to make a decision that affects them, the

procedure for how a person may challenge a decision where an automated decision system was involved, timelines for each procedure, and expected response time from the agency.

- The degree of human intervention in the automated decision system (e.g. whether a decision-making process is fully automated or if the automated decision system is used for decision-support).
 - Relevant technical information of the system including but not limited to:
 - source code; models; documentation on the algorithms used; design documentation and information about the technical architecture; training data; data provenance information; some justification for the validity of using a model trained on data from a potentially different context than the agency's; the system's intended use as-implemented (e.g. the automated decision system's actual objective function); any records of bias, fairness or any validation testing performed on the system; materials relating to how a user interacts with a system (including wireframes or documentation on how determinations from the system are displayed and communicated).
 - Any marketing materials and training instructions or materials for public servants using the tool.
 - If a contract with a third party would prevent the agency from releasing such technical information, (i) the name of such third party, (ii) an electronic link to a copy of such contract, (iii) the date that the current term of such contract will expire and (iv) a statement explaining why the contract prevents the agency from releasing such technical information. If no such obstacles exist, a plan for publicly releasing such technical information, including the anticipated date of such release.
 - Policies and procedures relating to access, use of the system or input data, and any safeguards to protect system or input data from unauthorized access or use.
 - Documentation of any other agencies or third parties that have access to the automated decision system or input data.
 - Information regarding audits of such systems, including frequency, scope, and public availability of such audits.
 - A statement on who made policy decisions related to the development of the automated decision system model (e.g. score thresholds, system objectives) and a description of how policy decisions were made.
- There should be no exceptions to making the aforementioned list of automated decision systems information public. If an agency attempts to raise agency-specific concerns that would prevent releasing of all or some technical information, the City should require the agency to provide a detailed statement regarding the need for the limitations and review

of the information that can be released without revealing sensitive agency data or resulting in the described concern (e.g. historical input data, testing procedures, etc).

- The City should develop mechanisms to connect transparency requirements more strongly to enforcement. For example, the City can make some agency funding conditional upon meeting certain standards of algorithmic disclosure and interpretability through external, independent audits.
- Agencies that use or intend to use automated decision system should perform an Algorithmic Impact Assessment², preferably before acquiring or building a new automated decision system. Each agency should perform a self-assessment of existing and proposed automated decision systems, evaluating potential impacts on fairness, justice, bias, privacy, civil rights, and other concerns. Agencies should provide a public notice and comment period of the self-assessment and, mitigate and respond to comments or concerns raised by the public before publicly posting the final assessment.

Recommendations on procedures for archiving agency automated decision systems, data used to determine predictive relationships among data for such systems and input data for such systems

- The City should allow outside experts and researchers access to archived input data and other relevant agency data to identify systemic and structural problems that may derive from agency practices and procedures. The findings can be used to identify optimal policy solutions.³
- Agencies should document, archive and publicly post a retention schedule for changelogs of modifications made to the source code or models of an automated decision system, plain text describing changes, and agency-internal communication or communication between agency employees and vendors relating to any changes in the decision-making algorithms to understand how the changes affect decisions using an automated decision system over time.

We welcome the Task Force to use the undersigned as resources during this process and look forward to the Task Force’s prospective findings and recommendations.

Sincerely,

² AI Now Institute, Algorithmic Impact Assessment: A Practical Framework for Public Agency Accountability (April 2018), <https://ainowinstitute.org/aiareport2018.pdf>.

³ For example, data demonstrating that NYPD’s stop-and-frisk practice unlawfully targeted Black and Latino New Yorkers, and that an overwhelming majority of the stops did not lead to evidence of a crime, was only available to a group of legal organizations following racial profiling litigation. If such data were preemptively available for scrutiny then this unlawful practice and subsequent reform could have been identified without costly litigation.

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APPENDIX

Recommended list of experts and advocates that the Task Force should consult when developing recommendations that relate to or may significantly impact specific issue areas.

- **Children Welfare**
 - Individuals: Khiara M. Bridges (Boston University School of Law), Lauren Shapiro (Brooklyn Defender Services), Christine Gottlieb, Ashley Sawyer (Girls for Gender Equity), Lisa Freeman (The Legal Aid Society), Emma Ketteringham (Bronx Defenders), Michelle Burrell (Neighborhood Defender Services of Harlem), Michele Cortese (Center for Family Representation)
 - Organizations: Council of Family and Child Caring Agencies (COFFCA), Silberman School of Social Work, Youth Represent, Community Service Society of New York, CWOP (Child Welfare Organizing Project), RISE
- **Disability Rights**
 - Individuals: Beth Haroules (NYCLU), Chancey Fleet (Data & Society), Kathleen Kelleher (The Legal Aid Society)
 - Organizations: Bazelon Center for Mental Health, New York Association of Psychiatric Rehabilitation Services (NYAPRS)
- **Education/School Choice**
 - Individuals: Aaron Pallas (Columbia Teachers College), Genevieve Siegel-Hawley (Virginia Commonwealth University), Susan Eaton (Brandeis University), Claire Fontaine (Data & Society), Monica Bulger (Future of Privacy Forum), Cara Chambers (The Legal Aid Society)
 - Organizations: IntegrateNYC, Teens Take Charge, ASID, Alliance For Quality Education (AQE NY), NYSUT
- **Employment/Workers Rights**
 - Individuals: Peter Roman-Friedman (Outten & Golden), Annette Bernhardt (U.C. Berkeley Labor Center), Karen Levy (Cornell), Ruth Milkman (CUNY, Murphy Institute), Louis Hyman (Cornell ILR Worker Institute), Ifeoma Ajunwa (Cornell IRL), Julia Ticona (Data & Society), Aiha Nguyen (Data & Society), Alex Rosenblat (Data & Society), Alexandra Mateescu (Data & Society), Karen Cacace (The Legal Aid Society)
 - Organizations: National Employment Law Project (NELP), Make the Road NY
- **Healthcare**
 - Individuals: Valerie J. Bogart (NYLAG), Kadija Ferryman (Data & Society)
 - Organizations: Empire Justice, Medicaid Matters NY

- **Housing**
 - Individuals: Jenny Laurie (Housing Court Answers), Magda Rosa-Rios (The Legal Aid Society)
 - Organizations: Picture the Homeless, YWCA Brooklyn, Manhattan Legal Services
- **Immigration/Refugee Rights**
 - Individuals: Hassan Shafiqullah (The Legal Aid Society), Sarah Deri Oshiro (Bronx Defenders)
 - Organizations: Immigrant Defense Project, International Refugee Assistance Project, ACLU Immigrant Rights Project, LatinoJustice
- **Law Enforcement**
 - Individuals: Brett Stoudt & K. Babe Howell (Public Science, CUNY), Andrew Guthrie Ferguson (University of the District of Columbia Law School), Cynthia Conti-Cook (Legal Aid); Desmond Patton (Columbia University School of Social Work), Lisa Freeman (The Legal Aid Society), Marne Lenox (NAACP LDF)
 - Organizations: Brennan Center for Justice (predictive policing), National Association of Criminal Defense Lawyers (NACDL), Center for Democracy & Technology
- **Other City Operations Systems (Sanitation, Parking, 311, SBS/EDC subsidy programs, etc.)**
 - Individuals: Anthony Townsend (Bits and Atoms)
- **Pretrial**
 - Individuals: Nicole Triplett (NYCLU), Vivian D. Nixon (Community College Fellowship), Marbre Stahly-Butts (Law for Black Lives), Dana M. Delger (Innocence Project), Blase Kearney (Public Defender Service), Molly Louise Kovel (ACLU), Joshua Norkin (Decarceration Project- Legal Aid Society), Lisa Freeman (The Legal Aid Society), Scott Levy (Bronx Defenders), Lisa Schreibersdorf (Brooklyn Defender Services)
 - Organizations: Bronx Defenders, Brooklyn Defender Services, Legal Aid Society, Data 4 Black Lives, LatinoJustice PRLDEF, New York Immigration Coalition: NYIC, Vocal New York, JustLeadershipUSA, New York Communities for Change (NYCC), Neighborhood Defender Service of Harlem, National Association of Criminal Defense Lawyers (NACDL)
- **Privacy/Security/Surveillance**
 - Individuals: Hannah Sassaman (MMP), Vincent Warren & Britney Wilson (Center for Constitutional Rights), David Robinson (Upturn), Kristian Lum (HRDAG), Michael Price (National Association of Criminal Defense Lawyers); Esha Bhandari (ACLU Speech Privacy and Technology Project), Alvaro Bedoya

(Georgetown Law Center on Privacy & Technology), Mary Madden (Data & Society)

- Organizations: Harvard Law's Berkman Klein Center, CAIR-NY, Brennan Center for Justice, CLEAR Project at CUNY, National Association of Criminal Defense Lawyers, Center for Democracy & Technology
- **Public Benefits**
 - Individuals: Richard Alan Eppink (ACLU Idaho), Elizabeth Edwards (National Health Law Program), Kevin De Liban (Legal Aid Arkansas), Susan Welber (The Legal Aid Society)
 - Organizations: FPWA
- **Public Health**
 - Individuals: Rodrick Wallace (New York State Psychiatric Institute), Elizabeth Edwards (National Health Law Program), George Annas (Boston University Law), Wendy Parmet (Northeastern University Law), Wendy Mariner (Boston University School of Public Health), Larry Gostin (Georgetown Law), Rebecca Novick (The Legal Aid Society)
 - Organizations: Community Service Society of New York, Center for Democracy & Technology
- **Re-entry**
 - Individuals: Wesley Caines (Bronx Defenders)
 - Organizations: EXODUS, Fortune Society, Center for Court Innovation, National Association of Criminal Defense Lawyers (NACDL)
- **Sentencing/Parole/Probation**
 - Individuals: Beth Haroules (NYCLU)
 - Organizations: Legal Aid Society (Prisoners Rights), Urban Justice Center, Correctional Association of New York, Center for Court Innovation, National Association of Criminal Defense Lawyers (NACDL)
- **Transportation**
 - Individuals: Noel Hidalgo (Beta NYC), Aaron Naparstek (Vision Zero), Mandu Sen (RPA), Sarah Kaufman (NYU Rudin Center)
 - Organizations: Transportation Alternatives, Vision Zero, Regional Plan Association
- **Voting Rights/Political Participation**
 - Organizations: Demos, Brennan Center for Justice, ACLU Voting Rights Project

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**Written Testimony of the
NAACP Legal Defense and Educational Fund, Inc.**

**Submitted to the New York City
Automated Decision Systems Task Force**

June 17, 2019

Submitted via email at ADSTaskForce@cityhall.nyc.gov.

Chairperson Thamkittikasem and Members of the Task Force:

On behalf of the NAACP Legal Defense and Educational Fund (LDF), we thank the NYC Automated Decision Systems Task Force (the Task Force) for holding important public forums on April 30 and May 30, 2019 to address the core components of Local Law 49 of 2018 (Local Law 49) concerning accountability, fairness, and transparency.

LDF is the nation's first and foremost civil and human rights law organization. Since its founding nearly eighty years ago, LDF has worked at the national, state, and local levels to pursue racial justice and eliminate structural barriers for African Americans in the areas of criminal justice, economic justice, education, and political participation.¹ As part of that work, LDF has also forged longstanding partnerships with local advocates, activists, and attorneys to challenge and reform unlawful and discriminatory policing in New York City, including serving as co-counsel in *Davis v. City of New York*, a federal class-action lawsuit that challenged the New York Police Department's policy and practice of unlawfully stopping and arresting New York City Housing Authority (NYCHA) residents and their visitors for trespassing without the requisite level of suspicion.²

LDF is deeply concerned about the use of data and technology in perpetuation of racial discrimination, including machine-learning algorithms, biased data, and Automated Decisions Systems (ADSs) that rely on both. The NYPD's deployment and implementation of ADSs threaten to exacerbate racial inequities in New York City. The potential discriminatory impact of these systems raises concerns similar to the racially discriminatory and unconstitutional policing practices that historically motivated—and continue to motivate—LDF's litigation, policy, and public education advocacy.

Given these significant concerns, the Task Force's recommendations to Mayor de Blasio and City Council Speaker Corey Johnson must ensure that all ADSs are fair, transparent, and rigorously evaluated. Critically, ADSs must not undermine the City's commitment to public safety practices that are constitutional and non-discriminatory. Equally important, the process for developing these recommendations must foster robust community dialogue and engagement. Moreover, this process must include mechanisms to ensure community members who are directly impacted by these systems have direct input into shaping the recommendations. While Local Law 49 affects decision-making in a wide variety of

¹ LDF, *About Us*, <https://www.naacpldf.org/about-us/> (last accessed June 10, 2019).

² LDF, *Davis v. City of New York*, <https://www.naacpldf.org/case-issue/davis-v-city-new-york/> (last accessed June 10, 2019).

contexts, including, but not limited to, child welfare, education, healthcare, housing, and immigration, this testimony focuses on its discrete, durable, and disproportionate racial impact in the area of policing and law enforcement. Accordingly, LDF makes the following nine preliminary recommendations to this Task Force:

1. The City Must Adopt a Uniform Definition of ADSs

To ensure necessary accountability and transparency, the Task Force must create a broad, uniform definition of an ADS. Under the current definition in Local Law 49, an agency ADS is defined as an “automated decision system used by an agency to make or assist in making decisions concerning rules, policies or actions implemented that impact the public.” During the May 30 public forum, the Task Force announced that it created a “Checklist for Determining Whether a Tool or System is an ADS/Agency ADS.”³ Under this definition, which Task Force members asserted during the forum did not generate consensus among members, an ADS is defined as “computerized implementation of algorithms, including those derived from machine learning or other data processing or artificial intelligence techniques, which are used to make or assist in making decisions.”⁴ Both of these definitions are too limited and fail to capture the full range of systems that agencies are considering implementing or have already implemented. Indeed, during the May 30 forum, Task Force members agreed with these concerns, explaining that these definitions do not capture the broad range of ADSs deployed and implemented.

We therefore recommend adopting the ADS definition that advocates and experts recommended to the Task Force more than eight months ago.⁵ To capture the full range of ADSs, the group recommended defining an ADS as follows:

An automated decision system is any software, system, or process that aims to aid or replace human decision-making. Automated decision systems can include analyzing complex datasets to generate scores, predictions,

³ NYC AUTOMATED DECISION SYSTEMS TASK FORCE, CHECKLIST FOR DETERMINING WHETHER A TOOL OR SYSTEM IS AN ADS/AGENCY ADS (2018), <https://www1.nyc.gov/assets/adstaskforce/downloads/pdf/ADS-TF-Checklist-for-Determining-ADS-Agency.pdf>.

⁴ *Id.*

⁵ Letter from Andrew G. Ferguson, Professor, UDC David A. Clarke School of Law, et al., to the NYC Automated Decision Systems Task (Aug. 17, 2018), http://assets.ctfassets.net/8wprhvhvnpfc0/1T0KpNv3U0EKAcQKseIsqA/52fee9a932837948e3698a6586a8d50/NYC_ADS_Task_Force_Recs_Letter.pdf.

classifications, or some recommended action(s), which are used by agencies to make decisions that impact human welfare.⁶

This more expansive definition helps to ensure that *all* ADSs that affect New Yorkers will be subject to the appropriate scrutiny and that the public will be protected from unfair and inequitable consequences resulting from these systems. During both public forums, community members, organizational representatives, and Task Force members expressed concerns that agency accountability and fairness cannot be meaningfully addressed by the current, narrow definition of ADSs. Accordingly, LDF urges the Task Force to adopt this proposed definition immediately.

2. The City Must Clarify that *All* ADSs and *All* Agencies Using an ADS are Within the Task Force’s Purview and Subject to its Recommendations

At its core, Local Law 49 seeks to ensure that policies and procedures are in place to provide community members and elected officials with tools to analyze and review these systems, as well as to provide structures to ensure community members are involved in decision-making processes. Accordingly, any agency that plans to implement, or has implemented, an ADS is within the Task Force’s purview and subject to its recommendations, including the NYPD.

Indeed, given the far-reaching consequences of technological advances in the NYPD, coupled with the Department’s well-documented history of discriminatory and unconstitutional policing and enforcement practices, any decision to exclude the NYPD from the Task Force’s purview or recommendations would be antithetical to Local Law 49’s intent and purpose. New York City therefore cannot achieve accountability, fairness, or transparency in the implementation of ADSs if some systems are excluded from the Task Force’s purview.

Accordingly, the City must confirm that all ADSs and all agencies using ADSs fall within the Task Force’s ADS review. Failing that, it must create an independent review process before any system can be exempt from the Task Force’s purview and recommendations, which includes an opportunity for the public to challenge the exemption.

3. The City Must Commit to Full Transparency and Disclose Information About the NYPD’s ADSs

According to a chart of known ADSs used by City agencies created by AI

⁶ *Id.*

Now at NYU University,⁷ the NYPD has already implemented or considered implementing the following ADSs without meaningful community engagement or oversight: Automated License Plate Readers,⁸ Facial Surveillance,⁹ Predictive Policing,¹⁰ and Social Media Monitoring.¹¹ This list, however, is most likely underinclusive because the NYPD routinely conceals and fails to disclose the development and use of ADSs, such as Domain Awareness System's place-based predictive policing, from both public and governmental oversight.¹² By concealing its use of ADSs, the NYPD prevents the public from adequately studying the

⁷ *Automated Decision Systems: Examples of Government Use Cases*, AI NOW AT NYU UNIVERSITY 1, 1-4 (2019), <https://ainowinstitute.org/nycadschart.pdf>.

⁸ Information about the NYPD's license plate reader is available at <https://www.nydailynews.com/new-york/nyc-crime/ny-metro-license-plate-reader-grab-20190119-story.html>. For more information on automated license plate readers generally, see *Automated License Plate Readers (ALPRs)*, ELECTRONIC FRONTIER FOUNDATION, <https://www.eff.org/pages/automated-license-plate-readers-alpr>.

⁹ George Joseph and Kenneth Lipp, *IBM Used NYPD Surveillance Footage To Develop Technology That Lets Police Search By Skin Color*, THE INTERCEPT, (Sept. 6, 2018), <https://theintercept.com/2018/09/06/nypd-surveillance-camera-skin-tone-search/>. For additional information the NYPD's use of facial recognition analysis, see Clare Garvie, *Garbage in, Garbage Out: Face Recognition on Flawed Data*, GEORGETOWN LAW CENTER ON PRIVACY AND TECHNOLOGY (May 16, 2019), <https://www.flawedfacedata.com/>.

¹⁰ Rachel Levinson-Waldman and Erica Posey, *Court: Public Deserves to Know How NYPD Uses Predictive Policing Software*, THE BRENNAN CENTER (Jan. 26, 2018), <https://www.brennancenter.org/blog/court-rejects-nypd-attempts-shield-predictive-policing-disclosure>.

¹¹ *America's Cops Take an Interest in Social Media*, THE ECONOMIST (Feb. 21, 2019), <https://www.economist.com/united-states/2019/02/21/americas-cops-take-an-interest-in-social-media>; Annie McDonough, *Privacy Advocates Score Win Against NYPD Over Surveillance Technology*, CITY & STATE NEW YORK (Jan. 22, 2019), <https://www.cityandstateny.com/articles/policy/technology/privacy-advocates-score-win-against-nypd-over-surveillance-technology>; Clay Dillow, *NYPD Creates Facebook-Police Task Force to Mine Social Media for Clues*, POPULAR SCIENCE (Aug. 10, 2011), <https://www.popsci.com/technology/article/2011-08/nypds-facebook-police-mine-social-media-clues-about-crime>.

¹² Steven Melendez, *NYPD Unveils Controversial Algorithm to Track Crime Patterns*, FAST COMPANY (Mar. 20, 2019), <https://www.fastcompany.com/90321778/nypd-unveils-controversial-algorithm-to-track-crime-patterns>; Laura Nahmias, *Police Foundation Remains a Blind Spot in NYPD Contracting Process, Critics Say*, POLITICO (July 13, 2017), <https://www.politico.com/states/new-york/city-hall/story/2017/07/13/police-foundation-remains-a-blind-spot-in-nypd-contracting-process-critics-say-113361>; Ali Winston, *NYPD Attempts to Block Surveillance Transparency Law with Misinformation*, THE INTERCEPT (July 7, 2017), <https://theintercept.com/2017/07/07/nypd-surveillance-post-act-lies-misinformation-transparency/>; *Private Donors Supply Spy Gear to Cops*, PROPUBLICA (Oct. 13, 2014); <https://www.propublica.org/article/private-donors-supply-spy-gear-to-cops>.

impact of these systems and shields itself from accountability. Moreover, concealing this information prevents necessary debate and dialogue, while further sowing mistrust between the NYPD and community members.

Equally alarming, the NYPD plans to continue embedding ADSs in their decision-making processes at a disturbingly aggressive pace. For example, on April 3, 2019, at NYU School of Law, the NYPD's Deputy Chief of Policy and Programs, Thomas Taffe, explained that the Department hired more than 100 civilian analysts since 2017 to use ADS software to analyze the NYPD's crime data.¹³ Moreover, based on information and belief, the NYPD also appears to be building its own ADSs. The NYPD is thus poised to continue building its capacity to rapidly scale up its use of ADSs without public accountability or oversight.

Importantly, the Task Force must also address concerns that the NYPD may circumvent complying with recommendations because doing so would interfere with "law enforcement investigation or operations."¹⁴ The NYPD has relied on this rationale to justify withholding information from the public under New York State Freedom of Information Laws. Without addressing these concerns, which were brought up by community members at the May 30 forum, the NYPD can continue building and testing these technologies on residents without public accountability and oversight—a result that is antithetical to Local Law 49's intent and purpose.

For these reasons, at a minimum, the Task Force must recommend that the NYPD publicly identify, categorize, and share a list of all ADSs that the Department has implemented, plans to implement, or is developing. Once created, this list of ADSs should be continuously updated in real time, and as discussed below, it must be subject to public scrutiny.

4. The City Must Ban the Use of Data Derived from Discriminatory and Biased Enforcement Policies and Practices in ADSs

Because algorithms learn and transform through exposure to data, an algorithm is only as good as the data that is selected to inform it. In other words, ADSs, like all machine-learning technologies, inherit the biases of the data and commands they are given. An ADS's algorithm, therefore, will replicate any biases

¹³ See Zolan Kanno-Youngs, *NYPD Number-Crunchers Fight Crime with Spreadsheets*, THE WALL STREET JOURNAL (July 23, 2018), <https://www.wsj.com/articles/nypd-number-crunchers-fight-crime-with-spreadsheets-1532381806>.

¹⁴ As an example, see section 1(6) of Local Law 49, noting that compliance with the Task Force's recommendations is not required if such compliance would "interfere with a law enforcement investigation or operations."

within its training data—a phenomenon called “training bias.”¹⁵ In other words, bias in, bias out. Training bias can lead to discrimination in at least two ways: (1) reproducing the biases in the data and (2) drawing inferences from, and thus prioritizing, the biases in the data.¹⁶ In the policing context, this means that data derived from and reflecting any of the NYPD’s practices that are discriminatory, illegal, and unconstitutional will infect any algorithm and ADS that is trained with that data. The resulting algorithm or ADS will then carry out and perpetuate that same discrimination—making all decisions either produced by the ADS or relied on based on ADS-generated predictions flawed.

For decades, the NYPD engaged in widespread racial profiling against Black and Latinx residents. Between 2004-2012, the NYPD conducted an astounding 4.4 million stops of City residents as they engaged in their daily lives.¹⁷ A staggering 88 percent of these stops resulted in no further action—meaning a vast majority of those stopped were not engaged in unlawful conduct.¹⁸ In about 83 percent of cases, the person stopped was Black or Latinx, even though the two groups combined accounted for just over one-half the city population.¹⁹ When these discriminatory practices were challenged in *Floyd v. City of New York*, a federal court found the NYPD liable for violating the Fourth Amendment rights of New Yorkers to be free from unreasonable searches and seizures. The court also found that the NYPD’s policies and practices were racially discriminatory in violation of the Equal Protection Clause of the Fourteenth Amendment.²⁰

Similarly, in *Davis v. City of New York*, the NYPD unlawfully stopped and arrested people of color who lived in or visited NYCHA apartments, without reasonable suspicion or probable cause.²¹ The NYPD justified its racially discriminatory arrests by alleging the residents and their visitors were “criminally trespassing” despite the lack of evidence to support officers’ suspicions. Currently,

¹⁵ Solon Barocas and Andrew Selbst, *Big Data’s Disparate Impact*, 104 CAL. L. R. 671, 680-81 (2016).

¹⁶ *Id.* at 680-87.

¹⁷ *Racial Discrimination in Stop-and-Frisk*, N.Y. TIMES, (Aug. 12, 2013), <https://www.nytimes.com/2013/08/13/opinion/racial-discrimination-in-stop-and-frisk.html>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Floyd v. City of New York*, 959 F.Supp.2d 540, 660-665 (S.D.N.Y. 2013).

²¹ Complaint, *Davis v. City of New York*, 2010 WL 9937605 (S.D.N.Y. 2011) (No. 1), https://dev.naacpldf.org/wp-content/uploads/Complaint-1.pdf?_ga=2.49083558.141431006.1559743995-2134253651.1504725451.

the Department's aggressive, military style gang "takedowns" primarily target public housing residents, the overwhelming majority of whom are people of color.²² Prior to executing these sweeping gang takedowns, the NYPD conducts criminal investigations relying, in part, on a secret database that erroneously designates thousands of New Yorkers as members of gangs or local street "crews," often without informing the individual or offering any due process protections.²³ Officers executing gang policing strategies rely on vague and troubling terms and generalizations to justify their frequently erroneous designation of individuals as gang members.²⁴

Of equal concern is the Department's manipulation of its data. For example, it has been reported that the Department made arrests and issued summonses as part of a monthly quota system until as recently as December 2018.²⁵ Additionally, the federal monitor overseeing the NYPD confirmed that the Department is also undercounting street stops.²⁶ Both of these examples underscore how the NYPD's

²² NYPD's Gang Takedown Efforts before the NYC City Council's Comm. on Public Safety (June 13m 2018) (statement of Marne L. Lenox, Associate Counsel, LDF, and Darius Charney, Senior Staff Attorney, the Center for Constitutional Rights), <https://www.naacpldf.org/wp-content/uploads/City-Council-Testimony-combined-6.13.18.pdf>.

²³ *Id.*

²⁴ The NYPD provided its IDS Gang Entry Street and the criteria by which gang members are certified in response to Professor Babe Howell's Freedom of Information Law request, filed on September 2, 2011. In addition to these criteria, the NYPD may certify someone as a gang member if an individual admits membership during a debrief or if, through the course of an investigation, an individual is reasonably believed to belong to a gang and is identified as such by two independent sources, which could include other New York City agencies. K. Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, 5 UNIV. DENVER. CRIM. L. R. 1, 16 (2015).

²⁵ George Joseph, *NYPD Commander's Text Messages Show How The Quota System Persists*, THE APPEAL (Dec. 12, 2018), <https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists/>; Jake Nevins, *'We Didn't Ask Permission': Behind an Explosive NYPD Documentary*, THE GUARDIAN (Aug. 23, 2018); <https://www.theguardian.com/film/2018/aug/23/nypd-documentary-crime-and-punishment-stephen-maing>; Rocco Parascandola & Thomas Tracy, *NYPD Demands All Uniform Officers Undergo 'No Quota' Training for Arrests, Tickets*, DAILY NEWS (Feb. 15, 2018), <https://www.nydailynews.com/new-york/nypd-demands-uniformed-officers-undergo-no-quota-training-article-1.3823160>.

²⁶ *Monitor's Seventh Report*, NYPD Monitor 1, 4,8 (Dec. 13, 2017), http://nypdmonitor.org/wp-content/uploads/2017/12/2017-12-13-FloydLigonDavis-Monitor-Seventh-Report_EAST_80301353_1.pdf; *Monitor's First Report*, NYPD Monitor 1, 48 (July 9, 2015); see also Al Baker, *City Police Officers Are Not Reporting All Street Stops, Monitor Says*, N.Y. TIMES (Dec. 13, 2017), <https://www.nytimes.com/2017/12/13/nyregion/nypd-stop-and-frisk-monitor.html>; J. David Goodman and Al Baker, *New York Police Department is Undercounting Street Stops, Report Says*, N.Y. TIMES (July 9, 2015), <https://www.nytimes.com/2015/07/10/nyregion/some-new-york-police-street-stops-are-going-undocumented-report-says.html>.

data, as well as crime data, may be skewed and inaccurate due to the Department's actions. Indeed, there is a litany of examples when NYPD officers unlawfully arrested, charged, and jailed innocent people who are disproportionately people of color.²⁷

As a result of these and many other racially discriminatory practices, we have substantial concerns that the NYPD's datasets are infected with deeply rooted biases and racial disparities. Consequently, we are likewise concerned that any predictions or output from an ADS that relies on such data, in any capacity, will reproduce and reinforce these biases and disparities.

Further, merely inputting NYPD data into an ADS does not eliminate or remove the embedded biases. This misperception—so-called “tech washing”—invites unwarranted agency deference and the belief that data can be cleansed by putting it into an ADS, thereby producing “accurate,” “objective,” or “neutral” predictions.²⁸ However, because NYPD datasets and others are likely tainted by illegal, discriminatory, and unconstitutional practices, they should be categorized as “dirty data,” meaning, the underlying data is “inaccurate, skewed, or systemically biased.”²⁹ The term “dirty data” is “commonly used in the data mining research community to refer to ‘missing data, wrong data, and non-standard representation of the same data.’”³⁰ However, LDF endorses Rashida Richardson, Jason Schultz, and Kate Crawford's recommendation to expand the definition to include this new category of data that is “derived from or influenced by corrupt, biased, and unlawful practices, including data that has been intentionally manipulated . . . as well as data that is distorted by individual and societal biases.”³¹

We are skeptical that such “dirty data” can ever be cleansed to separate the “good” from the “bad,” the tainted from the untainted.³² Therefore, in committing

²⁷ Rashida Richardson, Jason Schultz, & Kate Crawford, *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 N.Y.U. L. R. 192 (May 2019).

²⁸ Ingrid Burrington, *What Amazon Taught the Cops*, THE NATION (May 27, 2015), <https://www.thenation.com/article/what-amazon-taught-cops/>.

²⁹ Richardson, *supra* note 27, at 193-96.

³⁰ *Id.* at 195.

³¹ *Id.*

³² Vincent Southerland, *With AI and Criminal Justice, The Devil is in the Data*, ACLU (Apr. 9, 2018), <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/ai-and-criminal-justice-devil-data>.

to exclude any data classified as “dirty” from all ADSs,³³ the Task Force should adopt this definition of “dirty data” and make clear that ADSs stemming from or operated by agencies with a history of biased or discriminatory practices or data, begin with the presumption that such data and the resulting ADSs include bias and are therefore unrepresentative. This method, as discussed at both the April 30 and May 30 forums, places the burden on the agency to show that no racial bias or discriminatory impact is present in its underlying datasets or the ADSs’ use, rather than placing the burden on the City’s residents, either as individuals or community members. It also ensures that no ADS incorporates or uses any data which are reasonably suspected to have been derived from discriminatory or biased practices.

5. The City Must Adopt Processes for Determining if an ADS has a Racially Disproportionate Impact on Communities of Color

To avoid discriminatory ADSs, the Task Force’s recommendations should make clear that any data derived from discriminatory, illegal, or unconstitutional policing enforcement or practices, and informs or is incorporated into an ADS, should be presumed invalid due to the likely disproportionate impact on communities of color. It will also require, at a minimum, that an independent third-party conduct a racial equity impact assessment.³⁴ In addition, for all data used in any ADS—including data that is purportedly not derived from discriminatory, illegal, or unconstitutional practices and data that comes from sources other than the NYPD—the following oversight must occur to determine the possible racially disparate impact of an ADS or ADS-generated predictions:

- A racial equity impact assessment;³⁵
- A surveillance impact assessment and report;³⁶

³³ Richardson, *supra* note 27, at 193-98.

³⁴ A Racial Equity Impact Assessment (REIA) is a “systematic examination of how different racial and ethnic groups will likely be affected by a proposed action or decision. REIAs are used to minimize unanticipated adverse consequences in a variety of contexts, including the analysis of proposed policies, institutional practices, programs, plans and budgetary decisions. The REIA can be a vital tool for preventing institutional racism and for identifying new options to remedy long-standing inequities.” THE CENTER FOR RACIAL JUSTICE INNOVATION, *Racial Equity Impact Assessment*, (2019), https://www.raceforward.org/sites/default/files/RacialJusticeImpactAssessment_v5.pdf.

³⁵ *Id.*

³⁶ David Wright & Charles D. Raab, *Constructing a Surveillance Impact Assessment*, 28 COMPUTER L. & SECURITY R. 613 (2012).

- A pre-acquisition, development, or implementation procedure to ensure non-agency experts, representatives from affected communities, and the public at large is consulted before and during the development of an ADS; and
- Agencies’ maintenance of a public record of external participation.

As a starting point, these initial recommendations should be adopted and proposed to community members during any public engagement.

In addition to the above recommendations, no ADS—including those ADSs already implemented—should be used without a thorough review and analysis of (1) all underlying data and (2) the effects the system has on vulnerable communities. This analysis should benefit from the significant input of social science experts, as well as communities who have fallen victim to NYPD’s biased actions in the past. We therefore strongly urge the Task Force to recommend that the City commit to not use any ADS that relies on “dirty data” or has a discriminatory impact. This commitment, along with the above recommendations, is a strong starting point for the City and Task Force to fight against the racial bias present in many agencies today, including racial bias through data and technology.

6. The City Must Remedy and Account for Proxy Factors that Also Produce Discriminatory Results

An agency’s unsupported assertion that it has “scrubbed” either its data or its algorithm of data derived from discriminatory, illegal, or unconstitutional practices is not enough to establish that the algorithm and the ADSs are not biased. First, many agencies will find it difficult to properly identify all the biases in their training data. Second, if directly confronted with their own bias, some agencies may even deny it, rather than attempting to address and scrub the biased data.³⁷ Third, even if all biased data is removed from an algorithm, algorithms can learn biased behavior through proxy factors—factors that may appear neutral but reflect societal and structural biases.³⁸ For example, an algorithm may purposefully exclude all input for race and ethnicity. However, if the algorithm still considers factors that, due to societal constructs, correlate to race—such as

³⁷ Julia Angwin et al., *Machine Bias*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

³⁸ Even when removing “dirty data,” ADSs often reflect the very discriminatory behavior we sought to avoid because “[w]hat we’re doing is using the idea of eliminating individual irrational bias to allow this vast structural bias to sneak in the back door of the system.” Dave Gershgorn, *Algorithms Can’t Fix Societal Problems—and Often Amplify Them*, QUARTZ (Oct. 17, 2018), <https://qz.com/1427159/algorithms-cant-fix-societal-problems-and-often-amplify-them/>.

low-income neighborhoods or employment history—the algorithm’s outputs may nonetheless be racially skewed.³⁹ To protect against racial discrimination and bias by proxy, the Task Force must also develop recommendations, after consultation with experts and community members, so that agencies can address societal and systemic factors that contribute to discriminatory ADSs and to determine ways to mitigate the influence of proxy factors in ADSs.

7. The City Must Establish Procedures for Addressing Harms When ADSs Have an Improper Disproportionate Impact on Communities of Color or Harm Individuals Based on Biased Data

Continuing to rely on ADSs without any pre-implementation processes or safeguards,⁴⁰ such as the recommendations suggested here, risks subjecting entire communities to continued discriminatory and unconstitutional enforcement and policing practices. ADSs could be used to justify disparate treatment of communities of color in terms of how “suspicion” is defined, who is chosen as “targets” for increased enforcement and surveillance, and where these machine-learning tools are deployed—all raising significant constitutional concerns under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution. The use of ADSs threatens to distort reasonable suspicion, expectation of privacy, and freedom of speech doctrines.

The use of predictive policing software, especially when combined with increased surveillance, may curtail people’s freedom of association and speech under the First Amendment. If mere association with friends and family members or “hanging out” in a “chronic crime” or “gang-prone” neighborhood are used as a factor to justify police contact and surveillance, people will be forced to alter their behavior to avoid being subjected to unwarranted police intrusion. This type of surveillance will cast an undue level of suspicion on communities, especially communities of color, that are already vulnerable to racially biased policing.

³⁹ Angwin et al., *supra* note 37; *see also* Virginia Eubanks, *A Child Abuse Prediction Model Fails Poor Families*, WIRED (Jan. 15, 2018) (noting that, though the Allegheny County Family Screening Tool intentionally took steps to avoid racial disparities in its child welfare system, the system was nevertheless biased and produced racially discriminatory results because the developers ignored a major area of societal bias in the child welfare system overall—that people report Black and biracial families to child welfare offices 350 percent more than white families, creating an influx of Black family child welfare cases at the outset), <https://www.wired.com/story/excerpt-from-automating-inequality/>.

⁴⁰ The recommendations in this section should also apply retroactively to ADSs that were implemented without the Task Force’s recommended procedural safeguards.

Further, even outside of the policing context, ADSs are being used to track and surveil communities of color in nearly every space. New York landlords have begun placing facial recognition software in buildings with predominately Black and Latinx residents.⁴¹ Indeed, at the May 30 public forum, City residents stated their landlords have installed invasive facial recognition software without their consent in the buildings where they reside, which primarily comprise Black and Latinx tenants.

Similarly, school districts throughout the country, including in New York State, are considering implementing facial recognition technology as a solution to school safety concerns.⁴² But as described above, these systems will likely reproduce racial and gender biases.⁴³ Moreover, subjecting students to constant surveillance will redefine students' experience, especially for Black and Latinx students who are already subjected to disproportionate levels of discipline and law enforcement contact in schools.⁴⁴

Finally, the City should provide individuals who may be subject to harmful decision-making that results from racially biased data a platform and procedures for redressing that harm simply and swiftly.

These potential constitutional harms further underscore why the Task Force must make bold and expansive recommendations to create procedures and safeguards to protect the public, especially vulnerable communities of color, from potential constitutional and other violations. These safeguards must be created with vulnerable communities in mind, and thus include clear, easily accessible processes for understanding the underlying data used in an ADSs, the agency responsible, and a timely option for refuting the ADSs' implementation.

⁴¹ Erin Durkin, *New York Tenants Fight as Landlords Embrace Facial Recognition Cameras*, THE GUARDIAN (May 30, 2019), <https://www.theguardian.com/cities/2019/may/29/new-york-facial-recognition-cameras-apartment-complex>.

⁴² Ava Kofman, *Face Recognition is Now Being Used in Schools, But It Won't Stop Mass Shootings*, THE INTERCEPT (May 30, 2018), <https://theintercept.com/2018/05/30/face-recognition-schools-school-shootings/>.

⁴³ Joy Buolamwini, *When the Robot Doesn't Seek Dark Skin*, N.Y. TIMES (June 21, 2018), <https://www.nytimes.com/2018/06/21/opinion/facial-analysis-technology-bias.html>.

⁴⁴ Moriah Balingit, *Racial Disparities in School Discipline are Growing, Federal Data Shows*, WASH. POST (Apr. 24, 2018), https://www.washingtonpost.com/local/education/racial-disparities-in-school-discipline-are-growing-federal-data-shows/2018/04/24/67b5d2b8-47e4-11e8-827e-190efaf1f1ee_story.html?utm_term=.37019ac1be8f; see also Ajmel Quereshi and Jason Okonofua, *Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline*, LDF (2017), https://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf.

8. The City Must Create Accountability Structures that Empower All Community Members to Participate in Pre- and Post- Acquisition Decisions About ADS

The City is experimenting on its residents by relying on ADSs to make predictions and decisions without fully understanding how these systems will affect community members. Worse, the City has not required complete ADS transparency or meaningful community engagement, thus excluding the important perspectives and opinions of the very communities that will be affected by ADSs. To date, the City has not provided sufficient mechanisms for non-agency experts and community members to be educated about, and thoroughly evaluate, all ADSs prior to implementation. The City must reaffirm its commitment to accountability and transparency by creating structures that center community members—not machines—in the decision-making process and provide them with meaningful opportunities to give feedback and input about ADSs.

9. The ADS Task Force Should Move Swiftly to Issue Its Recommendations and Request Additional Time, If Needed

Lastly, we stress the Task Force’s duty to thoroughly research and understand the many ways ADSs affect the City’s most vulnerable residents—including low-income communities and communities of color. The Task Force also has the important responsibility of ensuring that the City’s residents—including the most vulnerable ones—are well-educated about ADSs, understand how ADSs will affect their everyday life and, importantly, have ways to meaningfully voice their concerns and feedback. Finally, the Task Force must issue critical recommendations that incorporate community feedback, prevent bias and discrimination in ADS use, and establish procedures for ADS accountability and transparency. Equally important, these recommendations must include clear and concrete procedures that provide City’s residents who are impacted, or likely to be impacted, by an ADS and its underlying algorithm with the power to (1) challenge any agency’s proposed use of an ADS prior to the ADS’s implementation, (2) have access to the information and data necessary to determine whether an ADS is being implemented with or without bias, and (3) hold any City agency accountable when an ADS is not fair and equitable.⁴⁵

Commissioned in May 2018, the Task Force has only until November 16, 2019 to fulfill its mandate pursuant to Local Law 49.⁴⁶ To the extent that it

⁴⁵ NYC AUTOMATED DECISION SYSTEMS TASK FORCE, *See About ADS*, (2019), <https://www1.nyc.gov/site/adstaskforce/about/about-ads.page>.

⁴⁶ “No later than 18 months after such task force is established, it shall electronically submit to

appears unlikely that the Task Force will be able to complete its charge within this timeframe, including soliciting robust public engagement through a transparent process in which the public has the information necessary evaluate the impact of ADSs on their communities, it should seek to extend its deadline.

To date, the Task Force has not implemented a public education campaign nor solicited robust public engagement. Aside from the experts who testified during the public forums and the transcripts of these forums, the Task Force has only created a single educational resource.⁴⁷ While the “Checklist” is helpful, there are no materials identifying ADSs and explaining how agencies are using them. During both public forums, community members discussed how this lack of transparency undermines any meaningful and robust community participation. For example, how can community members meaningfully discuss and share insight about ADSs when they do not have minimal basic information about ADSs being used by agencies and how those ADSs operate? Indeed, during the May 30 forum, one Task Force member agreed that failing to include this foundational information undermines soliciting community input. Instead, community members generally remain unaware of the implications that ADSs may have on their daily lives.

Moreover, although it has been more than a year since the creation of the Task Force, it has yet to hold a community session events, or even release details—for example, dates, times, and locations—about holding any community sessions. The Task Force must do better. The Task Force cannot successfully understand the impact of ADSs on the New Yorkers who have and will continue to be targeted and exploited with ADSs—which are primarily communities of color—without rigorous, targeted, and substantive outreach, education and engagement in these communities.

Additionally, the Task Force should tailor its efforts to educate and include community members in its deliberations to ensure New Yorkers will understand the gravity of ADSs. The Task Force should ensure it and its experts use plain language to educate the public about ADSs, rather than academic or technical language, and that events are publicized well in advance and held in locations or frequented by and easily accessible to the communities likely to be affected by biased ADSs.

Overall, the Task Force has significant work to do in the next five months. Because this work is critical and affects all New Yorkers, we urge the Task Force to dedicate the time and resources to it that this task merits. By the same token,

the mayor and the speaker of the council a report” Local Law 49.

⁴⁷ Checklist, *supra* note 3.

however, the longer the Task Force takes to issue its recommendations, the longer ADSs will operate in New York without necessary guidance on fairness, transparency, and accountability. Accordingly, we strongly urge the Task Force to move swiftly and diligently in issuing its recommendations without compromising the necessary information gathering and careful study that this undertaking requires, and the City's residents deserve. Further, given the limited transparency about ADSs, coupled with the well-documented concerns and harms, the Task Force should consider issuing interim recommendations that use of all ADSs be suspended until the Task Force completes its charge.

Conclusion

In closing, the NYPD's use of ADSs already creates an unprecedented expansion of police surveillance. While the expansion implicates all residents' privacy rights, the burdens and harms are not evenly shared among City residents. Communities of color, particularly Black and Latinx residents, will continue to be disproportionately subjected to profiling, policing, and punishment to the extent that ADSs replicate the biases of the current criminal legal system and law enforcement practices.

Worse, these harms are not limited to the criminal legal system alone. Other City agencies are relying on ADSs to make decisions about education enrollment, child welfare risk and safety assessment, public benefits enforcement, risk assessment for pre-trial decisions, and much more. These systems impact a majority of New York City residents' lives.

Nevertheless, to date, the City has failed to provide necessary public education and information about these systems. Moreover, these systems are being deployed without effective mechanisms for public participation in pre- and post-acquisitions decisions and without regard for the widely known societal and structural racism that persists in nearly every area of life in the City. This current situation is untenable. Residents cannot be subjected to experimental testing of new technology that is being used to guide decision-making processes without rigorous safeguards to ensure accountability and transparency. Implementing and relying on these systems without understanding their impact, particularly their racial justice impact, will exacerbate the current inequities throughout the City.

The rapid, unchecked deployment of ADSs without effective mechanisms for public input, independent oversight, or the elimination of racial discrimination and bias is unacceptable. Data and technology should not be weaponized by New York City against its residents. Accordingly, this Task Force should make recommendations that hold agencies accountable for ensuring that all ADSs—including ADSs currently in use and any future ADSs—are transparent, fair, and

free from racial discrimination and bias.

Thank you for considering these recommendations. If you have any questions, please contact us at 212-965-2200.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a stylized, cursive 'J' followed by a horizontal line extending to the right.

Janai Nelson
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April 26, 2019

Jeff Thamkittikasem, Chair
 New York City Automated Decision Systems Task Force
 Mayor’s Office of Operations
 City Hall
 New York, NY 10007

Dear Chair Thamkittikasem:

Thank you for your testimony at the Committee on Technology Oversight Hearing regarding an Update on Local Law 49 of 2018 in Relation to Automated Decision Systems (“ADS”) Used by Agencies on April 4, 2019. At the hearing, we received testimony from yourself and your co-chairs, Kelly Jin and Brittny Saunders,¹ current and former members of the Automated Decision Systems Task Force (“Task Force”) and advocates.

There were several questions raised about the ADS Task Force regarding the Task Force’s process and the progress of actions for which we would like further explanation. Specifically, there are concerns and questions regarding the Task Force’s compliance with the legislative intent of Local Law 49 of 2018, which required the Task Force to review automated decision systems used in New York City in order to determine whether an agency ADS disproportionately impacts persons based upon a protected category² and, to make recommendations for the development and implementation of a procedure to address instances in which a person may be harmed by an agency automated decision system. We thank you in advance for your timely response to the following questions.

1. In your testimony, you stated, “since it was first convened, the Task Force has devoted a substantial amount of time to clarifying which systems and tools might fall under the Law’s definition of what constitutes an agency ADS. As you can imagine, this has been a challenging but essential step in the Task Force’s work. And I’m not afraid to say that it’s taken more time than we originally thought that it would take.”³
 - How long did the Task Force originally think that the identification of ADS would take?

¹ Kelly Jin, Chief Analytics Officer for Mayor’s Office of Data Analytics and Brittny Saunders, Deputy Commissioner for Strategic Initiatives at the New York City Commission on Human Rights.

² “Age, race, creed, color, religion, national origin, gender, disability, marital status, partnership status, caregiver status, sexual orientation, alienage or citizenship status,” Local Law 49 of 2018.

³ See NYC Automated Decision Systems Task Force Testimony before the New York City Council Committee on Technology, April 4, 2019, 12:38.

- Will the Task Force meet its deadline of November 16, 2019⁴ to examine current ADS used by the City and draft recommendations as required by Local Law 49 of 2018?
2. In your testimony, you stated, “our Task Force has met on a regular basis—both as a full group and in smaller groups.”⁵
 - Please provide the dates of when the Task Force has met, both as a whole and in smaller groups, a list of which members were present, what topics were discussed, as well as an explanation of why the smaller groups were necessary.
 3. In your testimony, you stated, “the ADS Task Force is not going to produce a list of algorithms in use by the city, but will develop and issue the recommendations.”⁶ However, several advocates have already published lists of ADS used by the city. For example, AI Now produced a list⁸, including ADS used in children welfare, criminal justice, education, fire, housing, public benefits, and public health. Other examples of ADS were also mentioned by the advocates at our public hearing on October 16, 2017.
 - Would you be willing to provide a list of ADS currently used by the City, even when not expressly required to do so?
 4. In your testimony, you mentioned that you have not taken any actions to obtain ADS examples.¹¹ However, in your recent interview to The Verge, you said that “[the Task Force] is working on providing new, specific examples, including two from the Department of Transportation and the Department of Education.”¹²
 - Which two examples will you be providing to the Task Force?
 - Since April 4, 2019, what other agencies have you contacted in order to obtain ADS examples?
 - What was the result of your communications?
 - Which agencies do you plan to contact in the near future?
 - How many City-owned or -operated ADS will be described in the forthcoming report?
 - Considering the importance of context when assessing the disproportionate impact of ADS, how useful and accurate recommendations will be without examining specific examples of agency ADS?
 5. Several Task Force members represent city agencies, including NYC Department of Education, NYC Department of Transportation, NYC Police Department, NYC Department of Social

⁴ “No later than 18 months after such task force is established, it shall electronically submit to the mayor and the speaker of the council a report ... The mayor shall, no later than 10 days after receipt of the report ... make such report publicly available online through the city’s website,” Local Law 49 of 2018.

⁵ Jeff Thamkittikasem, Director of the Mayor’s Office of Operations, NYC Automated Decision Systems Task Force Testimony of before the New York City Council Committee on Technology, April 4, 2019, p.2, .1.30.

⁶ *Id.*, p.3, 1.10-13.

⁸ AI Now, *Automated Decision Systems Examples of Government Use Cases, Prepared in advance of NYC Automation Decision Systems Task Force Public Forums*, <https://ainowinstitute.org/nycadschart.pdf>.

¹¹ See NYC Automated Decision Systems Task Force Testimony before the New York City Council Committee on Technology, April 4, 2019, 25:51.

¹² Colin Lecher, *New York City’s Algorithm Task Force is Fracturing*, THE VERGE, April 15, 2019, <https://www.theverge.com/2019/4/15/18309437/new-york-city-accountability-task-force-law-algorithm-transparency-automation>.

Services, Mayor's Office of Criminal Justice and NYC Administration for Children's Services.¹³

- To what extent have you considered examining ADS used by these agencies?
6. Your testimony mentioned privacy and security concerns related to the process of reviewing ADS.¹⁴ You also mentioned that the NYC Chief Privacy Officer “plays an advisory role”¹⁵ to the ADS Task Force.
- Have you considered applying methods of de-identification or anonymization similar to those that the Mayor's Office of Data Analytics (“MODA”) uses in order to protect an individual's privacy?
 - Have you consulted or plan to consult with data scientists or privacy experts regarding the modern methods or tools that are used to protect privacy, especially if personally identifiable information could potentially be disclosed during the process of reviewing ADS?
7. During the hearing, several questions were asked about the Task Force's public engagement. As of the date of the hearing, the only option for the public to communicate with the Task Force was through a comment form on the ADS website.
- How many comments did the Task Force receive via the website form? What about outside of the form?
 - What is the process of addressing these comments and responding to the public?
 - Has the Task Force connected with individuals or groups who were directly impacted by ADS?
 - To date, have individuals or groups who were impacted by ADS attended any Task Force meetings?
 - Will the Task Force commit to increasing public participation and transparency by making publicly available minutes or video of the meetings and public forums?
8. Several letters were sent to the Task Force and the Mayor by the public including letters dated January 22, 2018,¹⁷ August 17, 2018,¹⁸ and March 1, 2019.¹⁹ In the letter dated January 22, 2018, the writers, which included current members of the Task Force, included the following recommendations:

¹³ Howard Friedman, General Counsel, NYC Department of Education; Michael Replegle, Deputy Commissioner for Policy, NYC Department of Transportation; Tanya Meisenholder, Assistant Commissioner for Strategic Initiatives, New York City Police Department; Dan Hafetz, Special Counsel to the First Deputy Commissioner, NYC Department of Social Services; Susan Sommer, General Counsel, Mayor's Office of Criminal Justice; Andrew White, Deputy Commissioner for Policy and Planning, NYC Administration for Children's Services. *See* NYC Automated Decision Systems Task Force, <https://www1.nyc.gov/site/adstaskforce/members/members.page>.

¹⁴ NYC Automated Decision Systems Task Force Testimony of before the New York City Council Committee on Technology, April 4, 2019, 28:03.

¹⁵ *Id.* at 32:40.

¹⁷ January 22, 2017 open letter to Mayor de Blasio; available at <https://ainowinstitute.org/nyc-algo-account-letter.pdf>.

¹⁸ August 17, 2018 open letter to Acting Director Emily W. Newman, Deputy Commissioner Brittny Saunders, Mayor's Office of Operations; available at <https://ainowinstitute.org/nyc-ads-task-force-letter-re-public-engagement-030119.pdf>.

¹⁹ March 1, 2019 open letter to Acting Director Emily W. Newman, Deputy Commissioner Brittny Saunders, New York City Automated Decision Systems Task Force Members; available at <https://ainowinstitute.org/nyc-ads-task-force-letter-re-public-engagement-030119.pdf>.

To the extent possible, all appointees should publicly disclose any engagement, association, and present or prior grant funding from any vendors of automated decision systems used in New York City government. Appointees should also abide by the New York City Conflict of Interest Law.

Avoid appointment of New York City agencies that may have or appear to have conflicts of interest because of pending litigation or public criticism regarding the use of automated decision systems. For this reason, we recommend avoiding appointment of the New York City Police Department, Mayor's Office of Criminal Justice, and the Office of the Chief Medical Examiner.²⁰

- Were any of these recommendations taken into consideration when new members were added to the Task Force?
9. The Task Force's membership was initially announced in May of 2018.²¹ Since then additional members joined, including a new Chair. Currently, the ADS Task Force consists of eighteen members, one chair and two co-chairs.²² While the list of members of the Task Force is publicly available and transparent, the Task Force's operations and processes are not.
- How does the Task Force make decisions? Is quorum or majority vote required?
 - What role does the chair and co-chairs play in making decisions? Are they non-voting members or voting members?
 - How was agency membership on the Task Force determined?
10. During the hearing, you were asked whether "anyone other than members of the Task Force attend the meetings." You answered that "the Mayor's Office of Operations provides staff support for different purposes depending on the topic of the discussion..."²³ Albert Fox Cahn in his testimony, however, noted the following:

One example of Task Force members being structurally disempowered is the role of the Jane Family Foundation ("Foundation"). The Foundation effectively drove the process for much of the first year, despite never being an official, publicly recognized part of the Task Force. The Foundation's role grew from initially providing background briefings to providing proposed language and policy documents for the Task Force to ratify. Increasingly, the Foundation was writing a first draft of the Task Force's report. The Foundation's role drew complaints from numerous Task Force members, so it was eventually phased out, but it's a telling example of how the role of Task Force members themselves was circumscribed as part of this process.²⁴

²⁰ January 22, 2017 open letter to Mayor de Blasio; available at <https://ainowinstitute.org/nyc-algo-account-letter.pdf>.

²¹ *Mayor de Blasio Announces First-In-Nation Task Force To Examine Automated Decision Systems Used By The City*, May 16, 2018, The Official Website of the City of New York, <https://www1.nyc.gov/office-of-the-mayor/news/251-18/mayor-de-blasio-first-in-nation-task-force-examine-automated-decision-systems-used-by>.

²² NYC Automated Decision Systems Task Force, <https://www1.nyc.gov/site/adstaskforce/members/members.page>.

²³ NYC Automated Decision Systems Task Force Testimony before the New York City Council Committee on Technology, April 4, 2019, 21:57.

²⁴ Statement of Albert Fox Chan, Esq., and Liz O'Sullivan, Surveillance Technology Oversight Project, Inc., April 4, 2019, p. 3, l. 2.

- What was the role of the Jane Family Foundation? Are they still involved in the process?
 - Please provide the names, titles, and agencies of staff who have previously provided support, along with their roles with respect to the Task Force.
 - Have any non-city employees, who are not members of the Task Force, attended any Task Force meeting or function? If so, in what capacity?
11. In your testimony, you have mentioned that the Technology Committee members may join the public forums that will be taking place on April 30, 2019 and May 30, 2019 at New York Law School. As of today, some information is now publicly available on the website, but there does not seem to be detailed information regarding public participation.
- How do you plan to invite the general public and experts to the upcoming forums?
 - How many members of the public do you expect to attend?
 - What is the minimum needed for the event to be “successful?”
 - What communities are important to have represented?
 - What steps have you taken to ensure the diversity of attendees?
 - Will the public be able to engage at the forum?
 - If so, how many members?
 - How long will they have to speak?
 - Will Task Force members be asked to respond to the public?
 - We understand that the forums will be livestreamed. Will they be recorded and publicly accessible for future use?
 - Will the public be able to submit real-time comments online for the hearing?
 - Are all Task Force members expected to be in attendance?
12. In your testimony, you testified that the Mayor’s Office of Operations (“MOO”) would be responsible for drafting the report.²⁵ The Task Force currently has one member working for MOO, which is yourself, Jeff Thamkittikasem.
- Will the other named members of the Task Force draft any portion of the report?
 - Will individuals or groups, other than named members of the Task Force, be drafting portions of the report?
 - How many Task Force members’ approval will be needed to publish the report?
 - Is quorum of the Task Force members needed?
 - Can the report be published if a majority of members disapprove of the findings?
 - How will the report memorialize disagreements?
 - Will any/all dissenting opinions by Task Force members be included in the report?
 - How long will Task Force members have to review and comment on the draft report prior to publication?

²⁵ See NYC Automated Decision Systems Task Force Testimony before the New York City Council Committee on Technology, April 4, 2019, 35:40.

13. Lastly, we also would like to confirm that per your statement during the hearing,²⁶ the Technology Committee is welcome to participate at any upcoming Task Force meetings. Kindly let us know when the next Task Force meeting is scheduled.

Local Law 49 was the first of its kind in the country, and it is essential that New York City continues to serve as a model for other jurisdictions that are also pursuing transparency in ADS. We hope that the upcoming report will be a significant step toward achieving governmental transparency.

We look forward to receiving a timely response to our questions and look forward to continuing to work together in building a transparent and accountable process to ensure that the use of ADS in New York City is fair and just.

Sincerely,



Peter Koo
Chair, Committee on Technology
Council Member, District 20

²⁶ *Id.* at 22:44.

JEFF THAMKITTIKASEM
Director, Office of Operations

May 22, 2019

Dear Chair Koo,

We have received your letter of April 26, 2019 regarding our testimony at the Committee on Technology Oversight Hearing on April 4, 2019 concerning the work of the Automated Decisions Task Force, and write in response to your follow up questions and requests for additional information. For convenience, we have included your comments and the related questions/requests below, and included a response in italics following each one.

Question/Request #1

In your testimony, you stated, "since it was first convened, the Task Force has devoted a substantial amount of time to clarifying which systems and tools might fall under the Law's definition of what constitutes an agency ADS. As you can imagine, this has been a challenging but essential step in the Task Force's work. And I'm not afraid to say that it's taken more time than we originally thought that it would take."

How long did the Task Force originally think that the identification of ADS would take?

To clarify, testimony statements reference the Task Force members' understanding of Local Law 49's definition of the term, "automated decision systems" and not identification of ADS. The Task Force did not have a set length of time in mind at the beginning to discuss interpretations of Local Law 49's definition of ADS. Last fall, Task Force members expressed a desire to spend more time as a full group to have these conversations. Reaching consensus about what constitutes an ADS is a threshold step in defining the scope of ADS tools and systems to which the Task Force's recommended protocols will then apply.

Will the Task Force meet its deadline of November 16, 2019 to examine current ADS used by the City and draft recommendations as required by Local Law 49 of 2018?

The Law does not require the Task Force to examine current ADS in use by the City, but rather requires it to issue recommended protocols for: (1) disclosing ADS information to the public; (2) enabling individuals to request an explanation of City decisions affecting them that involve use of an ADS; (3) identifying and (4) addressing any disproportionate impact or harm on protected groups from City decisions made or assisted with an ADS; (5) determining criteria for which ADS should be subject to these procedures; and (6) considering the feasibility of archiving ADS. We expect the Task Force will meet the November 16 deadline in issuing these recommendations.

Question/Request #2

Please provide the dates of when the Task Force has met, both as a whole and in smaller groups, a list of which members were present, what topics were discussed, as well as an explanation of why the smaller groups were necessary.

As is typically the case with large task forces and similar bodies tasked with multiple deliverables, we organized smaller “working groups” as a strategy to tackle specific issues outlined in section 3 of Local Law 49, to keep work moving on multiple fronts. We ultimately discontinued this structure because some Task Force members became concerned that it was challenging for all members to stay abreast of issues, and instead have been convening the full group around all issues, noting that all Task Force members are not always available to attend each meeting. Dates of meetings held are as follows:

6/8/2018	Inaugural Task Force Meeting
7/20/2018	Summer Working Session – ADS Interpretation
8/2/2018	Summer Working Session – ADS Interpretation
8/23/2018	Summer Working Session – ADS Interpretation
9/28/2018	Task Force Meeting #2
10/30/2018	Public Information and Education Working Group
10/30/2018	Internal Oversight Working Group
10/31/2018	Appeals Working Group
11/1/2018	Classification Working Group
11/27/2018	Public Information and Education Working Group
11/27/2018	Internal Oversight Working Group
11/28/2018	Appeals Working Group
11/29/2018	Classification Working Group
12/20/2018	Classification Working Group
2/8/2019	Task Force Meeting #3
2/26/2019	ADS Task Force Process Planning Meeting
2/28/2019	ADS Task Force Process Planning Meeting
3/6/2019	ADS Task Force Meeting #4
3/13/2019	ADS Interpretation Meeting
3/15/2019	ADS Public Forum Planning Meeting
3/29/2019	ADS Public Forum Planning Meeting
4/12/2019	ADS Public Forum Planning Meeting
4/26/2019	ADS Public Forum Planning Meeting
5/3/2019	ADS Public Forum Planning Meeting
5/8/2019	ADS Checklist and Disclosure Protocols documents review
5/17/2019	ADS Deliberation Session 1

As we noted in the hearing, we have worked hard to create a safe space within our Task Force meetings in order to promote candid conversations and deliberation. Preserving this is essential to the development of meaningful recommendations by this group, as it is with other similar bodies. Notably, because our Task Force members are busy individuals who have many competing commitments, meetings are not the only way or means through which Task Force members are able to share their thinking.

Question/Request #3

In your testimony, you stated, “the ADS Task Force is not going to produce a list of algorithms in use by the city, but will develop and issue the recommendations.” However, several advocates have already published lists of ADS used by the city. For example, AI Now produced a list, including ADS used in children welfare, criminal justice, education, fire, housing, public benefits, and public health. Other examples of ADS were also mentioned by the advocates at our public hearing on October 16, 2017.

Would you be willing to provide a list of ADS currently used by the City, even when not expressly required to do so?

There is no list of ADS systems and tools currently in use by the City. Although agencies have used technology and IT systems for many years - for example, to improve efficiencies and workflow, they do

not yet have a common understanding or shared language to identify which systems meet the Local Law 49 definition of an ADS. We are meanwhile, however, working to identify and share information with Task Force members about existing systems that may be considered ADS and that are in use by City agencies, to the extent that such information can, lawfully, be publicly disclosed.

Question/Request #4

In your testimony, you mentioned that you have not taken any actions to obtain ADS examples. However, in your recent interview to The Verge, you said that “[the Task Force] is working on providing new, specific examples, including two from the Department of Transportation and the Department of Education.”

Which two examples will you be providing to the Task Force?

The full Task Force recently reviewed Admissions and Matching in New York City Schools, presented by the Department of Education. Additionally, we are currently discussing an example with the Department of Transportation for review by the Task Force.

Since April 4, 2019, what other agencies have you contacted in order to obtain ADS examples?

As noted, we have contacted the Department of Education, which presented on Admission and Matching to the Task Force. We have also contacted the Department of Transportation to arrange a presentation on an ADS.

What was the result of your communications?

They wanted assurances that there would be a protocol utilized to assess any legal, privacy, and security risks in sharing City ADS information with the Task Force before this information was disclosed.

Which agencies do you plan to contact in the near future?

We are currently in contact with City agency Task Force members to identify additional City agency ADS tools or systems that meet the Law’s definition of ADS for which there has been legal review and approval to disclose the information to Task Force members. We expect to be able to provide an update on this in the coming weeks.

How many City-owned or -operated ADS will be described in the forthcoming report?

As noted, the Law does not require the Task Force or the City to describe specific ADS tools and systems in use by the City. Since the report is not due until November, however, it is premature to say what information if any will be included about the numbers of City-owned or City-operated ADS.

Considering the importance of context when assessing the disproportionate impact of ADS, how useful and accurate will recommendations be without examining specific examples of agency ADS?

Consistent with the legislative history preceding enactment of Local Law 49 and the express language of the law, the Task Force charge is to begin to address these issues by developing mechanisms that can be used to determine whether ADS systems disproportionately impact individuals based on protected classes, and recommend procedures to address any instances in which a person is harmed by such systems. We expect to be able to produce a strong set of recommendations that position the City of New York as a leader for other jurisdictions that may be looking to our work as a model to approach the use of ADS in a thoughtful and responsible way. The Task Force includes individuals who have experience not only with relevant technologies but also individuals with deep insight on the ways in which members

of particular communities have been impacted by a range of government policies. Other Task Force members have a deep understanding of how government functions on a day-to-day basis.

Question/Request #5

Several Task Force members represent city agencies, including NYC Department of Education, NYC Department of Transportation, NYC Police Department, NYC Department of Social Services, Mayor's Office of Criminal Justice and NYC Administration for Children's Services.

To what extent have you considered examining ADS used by these agencies?

We continue to have conversations with City agencies which include those agencies with formal representation on the Task Force regarding potential ADS examples.

Question/Request #6

Your testimony mentioned privacy and security concerns related to the process of reviewing ADS. You also mentioned that the NYC Chief Privacy Officer "plays an advisory role" to the ADS Task Force.

Have you considered applying methods of de-identification or anonymization similar to those that the Mayor's Office of Data Analytics ("MODA") uses in order to protect an individual's privacy?

With input from Task Force members and Co-Chairs (which include MODA), the Chief Privacy Officer has drafted a protocol for assessing the legal, privacy, and security risks in determining the extent to which the City can disclose agency ADS information. This model, which is aligned with City law and policy on disclosure of City information to third parties, considers strategies such as anonymization and data minimization to protect individuals' privacy where appropriate. This model may be useful to the Task Force in developing one of the mandated recommendations: a protocol for public disclosure of ADS information.

Have you consulted or plan to consult with data scientists or privacy experts regarding the modern methods or tools that are used to protect privacy, especially if personally identifiable information could potentially be disclosed during the process of reviewing ADS?

The City's IT Security Standards and Requirements, an existing City policy issued by the City's Department of Information Technology (DoITT) and Cyber Command, requires use of secure transfer and storage protocols in handling information that is deemed private or confidential. The City's Chief Privacy Officer, Cyber Command, and DoITT regularly collaborate on best practices in technical, procedural, physical, and administrative processes to protect the privacy and security of personally identifying information, and disseminate guidance to City agencies on such issues; we expect this collaboration to extend to the Task Force's work.

Question/Request #7

During the hearing, several questions were asked about the Task Force's public engagement. As of the date of the hearing, the only option for the public to communicate with the Task Force was through a comment form on the ADS website.

The Task Force announced its public engagement series in March 2019, with the first public forum held on April 30, 2019.

How many comments did the Task Force receive via the website form? What about outside of the form?

While only two requests have been submitted via the website form, we have received an additional 26 messages directly to the ADS Task Force email address, consisting of media requests and general information inquiries.

What is the process of addressing these comments and responding to the public?

Correspondence is responded to according to the nature of the requests. Media inquiries are acknowledged and directed to the appropriate press officer. General requests for information about the Task Force are directed to the ADS task Force website for additional information about the Task Force's mandates, members, and events. Commentary or recommendations will form a critical part of the body of material on which the Task Force will deliberate and from which they will ultimately draft their recommendations.

Has the Task Force connected with individuals or groups who were directly impacted by ADS?

The Chairs are actively working to identify individuals who identify as people directly impacted by ADS to participate in upcoming public engagement opportunities.

To date, have individuals or groups who were impacted by ADS attended any Task Force meetings?

To date, such individuals have not participated in internal Task Force meetings, as meetings are generally attended by Task Force members (internal Task Force meetings are not subject to the Open Meetings Law).

Will the Task Force commit to increasing public participation and transparency by making publicly available minutes or video of the meetings and public forums?

Yes. Video of our first public forum and the transcript are available online. We will similarly publish video, written remarks, and a transcript of our May 30th forum.

Question/Request # 8

Several letters were sent to the Task Force and the Mayor by the public including letters dated January 22, 2018, August 17, 2018, and March 1, 2019. In the letter dated January 22, 2018, the writers, which included current members of the Task Force, included the following recommendations:
To the extent possible, all appointees should publicly disclose any engagement, association, and present or prior grant funding from any vendors of automated decision systems used in New York City government. Appointees should also abide by the New York City Conflict of Interest Law.
Avoid appointment of New York City agencies that may have or appear to have conflicts of interest because of pending litigation or public criticism regarding the use of automated decision systems. For this reason, we recommend avoiding appointment of the New York City Police Department, Mayor's Office of Criminal Justice, and the Office of the Chief Medical Examiner.

Were any of these recommendations taken into consideration when new members were added to the Task Force?

Yes, the City received and took into consideration recommendations from the public as part of the Task Force member appointment process, including the recommendations set forth in these letters. Also, as noted at the hearing, the City appointed several of the experts suggested by the authors of the January 2018 letter.

Question/Request #9

The Task Force's membership was initially announced in May of 2018. Since then additional members joined, including a new Chair. Currently, the ADS Task Force consists of eighteen members, one chair and two co-chairs. While the list of members of the Task Force is publicly available and transparent, the Task Force's operations and processes are not.

We are confident that the Task Force has been transparent, providing ample details about public engagement and opportunities for experts and members of the public alike to contribute to the conversation. While our meetings are not subject to the Open Meetings Law, the Task Force chairs have been open about both the ongoing processes for the Task Force and the challenges that the Task Force has experienced.

How does the Task Force make decisions? Is quorum or majority vote required?

The Task Force Chairs are responsible for overseeing the general management of the Task Force, including agenda development, meeting facilitation, drafting of documents, event coordination, and outreach. Processes are discussed by Task Force members within internal meetings. Please see the responses to Question 12 for information about voting.

What role does the chair and co-chairs play in making decisions? Are they non-voting members or voting members?

The appointment of co-chairs from the Mayor's Office of Operations, the Mayor's Office of Data Analytics and the City Commission on Human Rights reflects the Administration's recognition of the potential implications of ADS for government operations across agencies, the opportunities and challenges associated with these data-driven technologies, and the substantial equity and fairness questions that are in play. As with other similar bodies, the co-chairs are responsible for ensuring that the Task Force makes steady progress toward fulfilling the mandates set out in Local Law 49. This includes chairing meetings and ensuring ongoing understanding of progress and next steps. Each co-chair is also a voting member of the Task Force like any other member.

How was agency membership on the Task Force determined?

Because the Task Force is charged with developing recommendations for potential implementation by agencies, the administration wanted to make sure that individuals with insight into how agencies operate were able to contribute to the conversation. The agencies in question were selected for a number of reasons. There was a desire to include agencies that fulfill a range of important functions and agencies whose work impacts large numbers of New Yorkers. In addition, there was a recognition that nationwide there has been particular concern about the application of these technologies in certain contexts, such as public benefits, education and law enforcement.

Question/Request #10

During the hearing, you were asked whether "anyone other than members of the Task Force attend the meetings." You answered that "the Mayor's Office of Operations provides staff support for different purposes depending on the topic of the discussion..." Albert Fox Cahn in his testimony, however, noted the following:

One example of Task Force members being structurally disempowered is the role of the Jane Family Foundation ("Foundation"). The Foundation effectively drove the process for much of the first year, despite never being an official, publicly recognized part of the Task Force. The Foundation's role grew from initially providing background briefings to providing proposed language and policy documents for the Task Force to ratify. Increasingly, the Foundation was writing a first draft of the Task Force's report. The Foundation's role drew complaints from numerous Task Force members, so it was eventually phased

out, but it's a telling example of how the role of Task Force members themselves was circumscribed as part of this process.

The Jain family Institute did not begin writing a first draft of the report.

What was the role of the Jane Family Foundation? Are they still involved in the process?

The Jain Family Institute (JFI) is a New York City-based foundation that focuses, in part, on AI and ethics. The organization served as a pro-bono resource for additional project management and research capacity for the Task Force at the direction of the Co-Chairs. The Task Force worked with JFI on the initial phase of the project until December 31, 2018, and is no longer involved in the Task Force process as of that date.

Please provide the names, titles, and agencies of staff who have previously provided support, along with their roles with respect to the Task Force.

The City Support team, comprised of various City staff members from the Mayor's Office of Operations having project management, legal/privacy, and data analytics expertise, have provided ongoing support to Task Force Co-Chairs, at the Chairs' direction. As noted, the names of individual staff members constitutes identifying information under the City's new privacy law.

Have any non-city employees, who are not members of the Task Force, attended any Task Force meeting or function? If so, in what capacity?

As previously noted, our Task Force members are volunteers with multiple competing commitments. As is common with such bodies, on certain occasions, when Task Force members themselves have been unable to join meetings, a delegate from their organization has attended in their stead. In addition, as stated, representatives from JFI attended certain Task Force meetings in a pro bono support capacity.

Question/Request #11

In your testimony, you have mentioned that the Technology Committee members may join the public forums that will be taking place on April 30, 2019 and May 30, 2019 at New York Law School. As of today, some information is now publicly available on the website, but there does not seem to be detailed information regarding public participation.

How do you plan to invite the general public and experts to the upcoming forums?

We have invited the general public and experts to join us at upcoming forums through several channels including through Task Force members directly sharing the forums networks of individuals and organizations, City press releases, and social media.

How many members of the public do you expect to attend? What is the minimum needed for the event to be "successful?"

The Task Force does not qualify a specific number of attendees to be deemed "successful." We believe our first public forum on April 30 at New York Law School was overwhelmingly successful in its objective of providing the Task Force with meaningful expertise and an opportunity to hear from New Yorkers about their thoughts. We had over 40 in-person attendees at this first public forum, and many others joined us through the livestream.

What communities are important to have represented? What steps have you taken to ensure the diversity of attendees?

We have shared announcements about the forums and community sessions with immigrants' rights, racial justice, gender equity, disability rights and other organizations in our networks. We have also provided interpretation and accommodations in order to support participation of non-English speakers and individuals with disabilities.

Will the public be able to engage at the forum? If so, how many members? How long will they have to speak? Will Task Force members be asked to respond to the public?

Yes. The information on our website and circulated via press releases made it clear that members of the general public were invited to provide comments and insights at the public forums. Consistent with this, at our April 30 public forum, we welcomed the public to provide comments and recommendations to the Task Force; this will also be our model for the May 30 public forum. In addition, we will host smaller, more interactive community sessions this summer. We are very excited to foster a broader public conversation and are actively working to do so.

We understand that the forums will be livestreamed. Will they be recorded and publicly accessible for future use?

*Yes. The April 30 livestream recording is available on the ADS website:
<https://nyls.mediasite.com/mediasite/Catalog/catalogs/mayors-office-algorithms-task-force-public-mtg-2019-04-30>.*

Will the public be able to submit real-time comments online for the hearing?

Yes. We encourage the public to send us commentary and recommendations to the Task Force for consideration at ADSTaskForce@cityhall.nyc.gov.

Are all Task Force members expected to be in attendance?

Yes.

Question/Request #12

In your testimony, you testified that the Mayor's Office of Operations ("MOO") would be responsible for drafting the report. The Task Force currently has one member working for MOO, which is yourself, Jeff Thamkittikasem.

Will the other named members of the Task Force draft any portion of the report?

To clarify, the Mayor's Office of Operations will be responsible for the logistical drafting of the report, including: compiling commentary from the public, expert panelists from public forums, and the Task Force members themselves; assembling all commentary into readable formats for Task Force members; documenting Task Force member deliberations and decisions; and mechanical assembly of cohesive drafts. All Task Force members will be contributing their own content for deliberation by the entire Task Force. This approach--in which government staff, not appointees who are volunteering their time draft reports and other materials--is common among government task forces and other similar bodies.

Will individuals or groups, other than named members of the Task Force, be drafting portions of the report?

No.

How many Task Force members' approval will be needed to publish the report? Is quorum of the Task Force members needed?

Can the report be published if a majority of members disapprove of the findings? How will the report memorialize disagreements?

**Will any/all dissenting opinions by Task Force members be included in the report?
How long will Task Force members have to review and comment on the draft report prior to publication?**

[This is to respond to the above 4 questions] The Task Force will be voting not on the report but the individual recommendations to be included in the report. All recommendations compiled will be subject to a vote to either be adopted in the report, or not to be adopted, by a two-thirds majority. All considered recommendations, with the voting outcome, will be documented in the report. In addition, Task Force members will be able to document a comment or dissenting opinion with each considered recommendation. All dissenting opinions will be published in the report. The overall process of deliberation, voting, and report compilation will take place this summer and early fall.

Question/Request #13

Lastly, we also would like to confirm that per your statement during the hearing, the Technology Committee is welcome to participate at any upcoming Task Force meetings. Kindly let us know when the next Task Force meeting is scheduled.

To clarify, at the April 4th hearing we offered a briefing and remain happy to provide one. As noted above, we have worked hard to make our actual Task Force meetings safe spaces for candid deliberation by members. However, we encourage you to join us for our May 30th public forum.

Sincerely,



Jeff Thamkittikasem



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

March 26, 2019

Jeff Thamkittikasem
Director of the Mayor's Office of Operations
City Hall
New York, NY 10007

Re: Transparency and Accountability of City Agency Algorithms and ADS Task Force

Dear Director Thamkittikasem:

I am writing to outline some concerns regarding the transparency, design, and utilization of algorithms within City agencies. While these automated decision systems do, of course, represent a useful tool in this period of accelerated digitization and data collection, the City must introduce sufficient transparency, accountability, and quality-control measures to ensure that these automated systems are exclusively used toward the achievement of a more fair, more effective, and more intelligent city government.

To help advance these goals, the City Council passed a timely and important bill last year. Local Law 49 of 2018 required that the City convene an Automated Decision Systems Task Force to investigate how risk assessments, performance ratings, funding formulas, matchmaking rubrics, screening and selection criteria, and other computer- and mathematically-generated decision-making systems are being deployed across the City. The work of this Task Force is particularly important given the frequent use of algorithms at agency intake facilities, dispatch centers, budget offices, and contracting units.

The Task Force, of course, is responsible for recommending procedures to ensure that the City's automated decision systems are fair, accurate, accountable, and transparent and for drafting a report by November 26, 2019 to outline these recommendations. To fulfill this mandate, it is imperative that the Task Force is privy to the Automated Decision Systems that are currently being utilized by City agencies and that the City help facilitate public hearings to receive feedback from experts and effected parties. Unfortunately, we have seen little evidence that either of these duties have been fulfilled.

In recent years, awareness of the City's use of automated decision systems has grown, but remains incomplete. As we understand, they currently influence *staffing assignment decisions*, such as the buildings that DOB inspectors should prioritize as well as the precincts where police officers are assigned and the blocks where officers should patrol. They influence *citizen-facing decisions*, like whether a child should be removed from their home and placed into foster care; whether a family should receive homeless prevention services; what school a child is assigned to;

and whether someone is released on bail or on supervised release. They influence *budgetary decisions*, such as funding allocations for individual fire houses as well as Department of Education spending on ADA-compliance. And they influence *contracting decisions*, such as the amount that a job training provider is compensated for its work with the Department of Corrections and who is eligible for enrollment in these programs.

These algorithms do not, of course, offer the final word on any of these critical decisions. More often than not, they are advisory rather than determinative, providing guidance to City employees in their decision-making. Still, they carry significant weight in the decision-making process and play an important—if not always explicit—role in final determinations.

It is clear, then, that algorithms should be subject to the same scrutiny with which we treat any regulation, standard, rule, or protocol. It is essential that they are highly vetted, transparent, accurate, and do not generate injurious, unintended consequences. Without such oversight, misguided, outdated, or outright inaccurate algorithms can fester and lead to increasingly problematic outcomes for city residents, employees, and contractors.

As you know, there are a number of ways that algorithms can be flawed and generate suboptimal outcomes.

First, the data that algorithms are derived from can be inaccurate or misleading. This is of particular concern when insufficient time is budgeted for inputting data or where there is an incentive to inflate, deflate, or misclassify outcomes in order to improve performance evaluations.

Moreover, algorithms can embed and institutionalize historic biases. If prior arrest, sentencing, foster care, or other determinations were influenced by prejudiced decisions or laws, for instance, then building an algorithm based on this historic data would perpetuate and amplify those biases.

Second, there can be omitted variable bias, where an algorithm is derived not from the most relevant or appropriate data streams, but from those most easily available (often collected within an agency or agency unit). As such, variables used in an algorithm must be regularly reviewed, updated, and modified in order to maximize its accuracy and reflect any changes in the broader socio-economic or legal context.

Third, the quality of algorithms hinges on the quality of the data scientists who create them. As algorithmic decision-making becomes more prevalent, the number of high-quality, experienced staff analysts should grow in parallel. Moreover, where the City relies on outside contractors to develop these data tools, quality control measures must be in place and these products must be regularly reviewed and refined.

And finally, an algorithm is only as good as the goal it aims to achieve. It is essential, then, to carefully and conscientiously set goals and consider the positive and negative effects of their fulfillment before an algorithm is developed and deployed.

With this in mind, we believe that it is incumbent upon the Comptroller's Office to gain a firmer understanding of how the City's automated decision systems are designed and utilized. To this end, I respectfully request that you provide my office with the following by May 26, 2019:

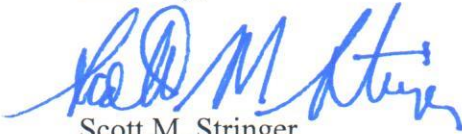
- a) A list of all "citizen-facing" algorithms currently used by City agencies—where automated decision systems inform the provision of a service or the placement in a public facility. This should include, but not be limited to, those utilized for:
 - a. Bail determinations;
 - b. Supervised release decisions;
 - c. Child protective services;
 - d. Homeless prevention services;
 - e. Fraud prevention;
 - f. Domestic violence intervention;
 - g. School selection; and
 - h. Shelter placement.

- b) For each automated decision system identified in the request above, please provide the following:
 - a. The context in which it is used;
 - b. What the automated decision system is intended to measure or reveal;
 - c. A description of how the results inform and influence subsequent decisions and actions;
 - d. A description of how, where, and for how long the results are recorded and saved;
 - e. A list of the staff positions that are tasked with utilizing the automated decision system;
 - f. A description of the training (e.g. how to input data and interpret the results), if any, such staff receive;
 - g. A description of any review process in place (e.g. by supervisors), including whether employees have any discretion to override automated results.

- c) If the automated decision system was developed by an outside entity rather than the agency itself, please provide the following information regarding all relevant contracts in the last five years:
 - a. The name of the vendor;
 - b. The length of the contract;
 - c. Whether the contractor uses a proprietary model;
 - d. The agency's method for testing the quality and accuracy of the algorithm prior to procurement;
 - e. Whether the agency regularly reviews and audits the software and software updates;
 - f. A description of any additional quality control measures in place.

Thank you in advance for your timely response.

Sincerely,



Scott M. Stringer
New York City Comptroller

c: Laura Negron, Chief Privacy Officer for the City of New York
Kelly Jin, Director of the Mayor's Office of Data Analytics
Brittney Saunders, Deputy Commissioner for Strategic Initiatives



40 Rector Street, 9th Floor
New York, New York 10006
www.StopSpying.org | (646) 602-5600

**SUBMISSION OF
ALBERT FOX CAHN, ESQ.
EXECUTIVE DIRECTOR
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT, INC.***

**FOR THE NEW YORK CITY AUTOMATED DECISION SYSTEMS TASK FORCE:
PUBLIC FORUM ON TRANSPARENCY**

May 30, 2019

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Good evening, my name is Albert Fox Cahn, and I serve as the Executive Director for the Surveillance Technology Oversight Project (“STOP”). STOP advocates and litigates for New Yorkers’ privacy rights, fighting discriminatory surveillance. I thank the members of the Automated Decision System (“ADS”) Task Force for providing this public forum and the opportunity for public comments on the Task Force’s crucial work.

Students have long been taught the adage “show your work” as a reminder that process can be as important as outcome. We should demand no less from the city agencies who control those students’ educational fates, nor from the Task Force meant to safeguard those students, and all New Yorkers, from the growing impact of ADS.

I. ADS Transparency Reduces Discrimination and Legal Challenges

There is no reason for agencies to resist ADS transparency the way they have, as it serves both the interest of the public and the agencies. Nationwide, we see the consequences of hasty and covert ADS adoption. Arkansas’s disastrous 2016 transition to algorithmic Medicare benefits haphazardly rolled-back attendants’ hours and left vulnerable patients without clean clothing or even food.¹ When the cuts were challenged, Arkansas failed to defend an algorithm it did not understand in court.

Idaho transitioned to an opaque ADS in 2011 that severely cut Medicaid services for Idahoans with developmental disabilities. As in Arkansas, the cuts were challenged. And, as in Arkansas, the agency lost.² In the end, Idaho settled to scrap the ADS and develop a replacement system with the input and consent of affected Idahoans.

ADS promise to increase efficiency and cut costs, but faulty systems will do neither. New York decisionmakers learned this lesson at the expense of large swaths of the Bronx.³ Transparency and community engagement throughout the ADS development cycle mitigates these harms and promotes ADS that best serve New Yorkers.

II. Best Practices in ADS Transparency

This Task Force, by ensuring agency transparency in ADS adoption and use, can protect New Yorkers from discrimination, ensure the rights of the city’s most vulnerable residents, and limit future agency liability. In drafting its recommendations, the Task Force should look to the research community for best practices.

ADS complexity often confounds disclosure efforts. Without adequate explainability tools and proper training, decisionmakers may not know a model’s methodology or limits. And, decisionmakers may be unduly deferential to the model or unable to explain the ADS’ role in a particular decision. “Model cards” that explain a model’s methodology and limits should be

¹ *Ledgerwood v. Ark. Dep’t of Human Services*, No. 60CV-17 (Pulaski Ct. (ark.) Cir. Ct. Jan. 26, 2017).

² *See K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962 (9th Cir. 2015).

³ Joe Flood, *Why the Bronx Burned*, N.Y. POST (May 16, 2010) <https://nypost.com/2010/05/16/why-the-bronx-burned/>.

considered to properly limit human deference to ADS.⁴ The Task Force should consider human-training practices that teach decisionmakers how bias (conscious and unconscious) impacts ADS outputs and informs decisionmakers of the danger of “automation bias.”⁵ These best practices that inform and train decisionmakers can safeguard against arbitrary, unexplainable, and therefore opaque applications of ADS.

III. The Task Force Should Compile a List of Existing ADS

Opening Task Force meetings to public scrutiny is necessary but not sufficient to promote public discourse.⁶ Nearly every New Yorker has encountered an ADS. And, nearly every New Yorker was and is unaware of those encounters. A comprehensive list of active ADS will increase public awareness and engagement. And, since the Task Force’s effectiveness depends on public engagement, it cannot make meaningful recommendations without a list of active ADS.

The Task Force must compile a list of active ADS to make meaningful recommendations for ADS use and adoption. This Task Force may have been first in the nation but it was not first in the field. Legal scholars and data scientists have written at length about fairness, accountability, and transparency in automated systems, often with the understanding that overly generalized, academic recommendations have clear limits.⁷ A law review article or white paper to add to the towering stack is not the intended end product of this Task Force. Its recommendations should effectuate the academic ideas of this growing interdisciplinary field in New York City.⁸ To do so, the Task Force must know how ADS operate in New York City. Which agencies use them? Who developed them? Where is their impact felt? Before compiling a list and answering these questions, the Task Force’s work will be little more than academic.

⁴ Model cards explain the training materials, methodology, limitations, known biases, and unknown or untested capacities that the models might harbor. Understanding how narrow the focus of a model is, or whether it includes racial features or racial proxy features like zip Code can impact the decision-making of a human agent involved in reading the output of the algorithm.

⁵ “Automation bias” is the phenomenon that people presented with an algorithmic prediction will confirm its truth rather than deny it. As we saw in the Boeing 737 case, poor training can result in catastrophic outcomes, especially when the machines and the humans disagree.

⁶ Cary Coglianese & David Lehr, *Transparency and Algorithmic Governance* 71 ADMIN. L. REV. 1, 20-21 (2019) (discussing Fishbowl and Reasoned Transparency).

⁷ *See, e.g., Id.* at 29 (noting the limitations on the general analysis of transparency procedures for ADS because any process will “depend on how government actually uses machine learning—and even on what kind of machine-learning algorithm it uses”); Robert Brauneis & Ellen P. Goodman, *Algorithmic Transparency for the Smart City* 20 YALE J. L. & TECH 103, 136 (2018) (complaining that because there are “no means of knowing how many algorithms are currently in use, who has developed them, or which governments are using them” there is no way “to generalize from [the authors’] finding”).

⁸ *Id.* at 29 (noting the limitations on the general analysis of transparency procedures for ADS because any process will “depend on how government actually uses machine learning—and even on what kind of machine-learning algorithm it uses”).

IV. The Task Force Meetings Should Be Open to Aid Meaningful Public Discourse

A Task Force created, in large part, to increase transparency should be transparent and must be transparent to be effective. So, we applaud the Task Force's recent efforts to increase public engagement. But, the two public forums held over the past month and the upcoming community-based events should be the beginning and not the end of these efforts.

For this public discourse to meaningfully inform the Task Force's upcoming recommendations, the public needs to see the Task Force's work. Task Force meetings have been kept private over the protestations of the public and members of the Task Force itself. This lack of transparency surprised city councilmembers and the justification for it is unpersuasive. Private meetings without video, audio, or minutes, officials maintain, create a safe space to encourage Task Force members to speak openly about their perspectives. We contest the claim that privacy is necessary to effectively make recommendations meant to promote transparency.

The lethargic pace of the Task Force largely undermines claims that privacy is necessary for Task Force effectiveness. The Task Force has no published draft of its recommendations. And, as of the last glimpse into its progress, the Task Force has no definition of ADS. It appears only marginally closer to fulfilling its legislated duty than it did a year ago at its founding. The time has come for the public to understand what the Task Force is struggling with and be given the opportunity to assist in working through those struggles.

V. Next Steps

New York City led the national movement for ADS transparency. This Task Force has lost that lead. By recommitting to the independence of the Task Force implicit in Local Law 49 and by recommitting to the transparency mandated by Local Law 49, this city can once again lead the march towards the fairer, more transparent, and more effective use of ADS.



COMMENTARY

The New York City Task Force on Algorithmic Accountability

Submitted via email: ADSTaskForce@cityhall.nyc.gov

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Good afternoon. I am Cynthia Conti-Cook, a staff attorney at The Legal Aid Society testifying on behalf of the Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing systemic problems created by the criminal justice system. We thank this Task Force for the opportunity to provide public comment on the various actuarial models that New Yorkers encounter in the criminal justice system.

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of indigent people prosecuted in the State court system. In this capacity, and through our role as counsel in several civil rights cases as well, the Society is in a unique position to testify about the importance of a robust, transparent and function police disciplinary system in New York City.

We encourage the task force to examine the tools confronting New Yorkers at every stage of the criminal justice system, from policing through parole supervision. First I want to identify some of the systems I know of that fall into the task force's scope of study:

(1) We know that NYPD has long used COMPstat to decide how to allocate its policing resources throughout the City. The task force should study any currently operational models available to NYPD personnel to either identify people, places or types of crime to focus their resources on, including any modeling built on databases such as the gang or criminal group database.

(2) After arrest, people are brought in front of a judge who must decide whether or not to set bail. New laws passed through the budget recently limit the use of risk assessment instruments in that any model must not result in discriminatory outcomes, either due to design or implementation.

Nonetheless, a long-problematic model designed by the Criminal Justice Agency is still being used and a revision of that tool is currently being redesigned by CJA and the Mayor's Office of Criminal Justice. Even the revised tool raises significant questions for advocates and community members about racial disparities and aggravating factors that are proxies for symptoms of poverty, and we strongly encourage the task force to evaluate that tool, meet with multiple stakeholders in the criminal justice system as well as community members to understand the scope of our concerns.

(3) For those who will have bail set, there is another tool used to determine eligibility for the Supervised Release program. This tool strongly penalizes subjects based on their age, which has resulted in an alternative model being created for young people initially excluded from the first program. With the Human Rights Data Analysis Group, the Legal Aid Society with other NYC defenders has conducted an analysis of this tool and we would like to share this analysis with the task force.

(4) In the juvenile systems, there is also a pre-trial detention tool used, designed by Vera, to determine whether a young person should be released back to their family and community while charges are pending or whether they should be institutionalized. This tool also deserves the task force's attention.

(5) Also in the juvenile system, the Youth Level of Services tool is used by the Department of Probation to recommend a sentence following an adjudication of guilt. This tool was created by a Canadian team using Canadian data, we don't believe it has been locally validated and includes aggravating factors that identify young people as high risk based on whether they live in single-family households, have access to extracurricular activities as well as other symptoms of class rather than inherent risk behavioral symptoms. While probation officers may divert their final

recommendations from the model's outcome, they may only divert by one step below or above and judges still can override the probation officer's recommendation. This tool, and how it is used by the probation department as well as the judges, is an important tool for the task force to scrutinize.

(6) While there are additional tools used that impact New Yorkers, they are run by state systems, for example, the Department of Correction and Community Services uses the private vendor equivalent to assess people's eligibility for parole release and the level of supervision. Human decision-making discretion has decreased over recent years regarding how people are assessed. If it is possible for the task force to review these models, despite being contracted for by state actors, they should because they greatly impact the lives of New Yorkers as well.

Regarding how the task force should evaluate each of these systems, in addition to other systems in the public sector, I recommend this framework: for each model, ask (1) Who does the model serve and why it was created? (2) What question does the model ask the dataset and is it a limited question likely to be assisted by the model and (3) Where does the data relied on in the model come from?

Using this framework, the task force should consider whether models are created for the purposes of increasing bureaucratic efficiency, offering cover to decision-makers for controversial action (such as decreasing the number of people incarcerated), or increasing fairness? Who demanded a model and were the people who are the subject of the model consulted regarding the creation of the model so they could weigh in, for example, about whether the data relied upon is representative of what it purports to be.

The task force should ask what question does the model ask the dataset to assess? Often there is an incongruity between the goal for the outcome or answer the model is asked to produce and the capacity of the data to answer that question. If the dataset is being queried for a problematic question like whether someone is dangerous, whether someone will be arrested again, whether someone is likely to flee a jurisdiction, and if we know that the data we have could never answer that question, we should pause. Unfortunately, often models are estimating an adjacent answer based on proxy data, but presenting it as "the answer" without the proper contextualization that limits the meaningfulness of the model.

Finally, the task force should ask each model where does the data come from? What are the data points, how are they created, who creates them, what forces result in them beyond the control of the person who is the subject of the prediction or assessment? In the criminal justice context, many of the factors used include arrests, convictions, open cases, warrants, and other criminal justice data points that are the definition of "garbage in".

Police officers are not trained as data collectors and their data collection is often tainted by departmental incentives for productivity, bias, or are just subject to sloppiness because the data's accuracy is not the emphasis of their job. Many of these factors related to arrest data have more to do with the collision frequency people have with police than any other innate criminality. The number of innocent people pleading guilty to misdemeanors and felonies alike, the multi-layered pressures of the criminal justice system to plea, the multi-layered pressures of poverty that cause people to warrant (or not return to court) are all aspects of the data points these tools often rely upon that make them less reliable, and yet they often carry the greatest weight in determining someone's liberty from the model's perspective.

It would also be advantageous for the task force to study the impact of how these models layer upon each other and result in people being subjected to multiple “risk scores” throughout their encounter with the criminal justice system. It’s evident that one person, accused of a crime, maybe subjected to a series of assessments throughout their journey through the criminal justice system and accumulate the effects of these outputs to their detriment as they are assessed in later tools. Of course this accumulation will, as mass incarceration in this country already has, amass in poor communities of color disproportionately and continue the massive divide in this country.

CONCLUSION

We thank you for hearing our testimony today. We look forward to the Task Force’s report which we hope New Yorkers can rely upon in order to create meaningful accountability structures, informed by the needs and values of community members, that are a minimum to community trust in government, let alone governance by algorithm.