STATEMENT OF
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BEFORE THE
COMMITTEE ON IMMIGRATION
NEW YORK CITY COUNCIL

FOR A HEARING CONCERNING
INT. 1706-2019, PROHIBITING A SMART CHIP FROM BEING ADDED TO
NEW YORK CITY IDENTITY CARD

PRESENTED
OCTOBER 2, 2019
Good afternoon, my name is Albert Fox Cahn, and I am the Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”). I speak today in support of Int. 1706, which would prohibit New York City’s (“IDNYC”) municipal identification cards from containing or transmitting any information other than what is printed on the face of the physical card. I thank Chair Menchaca for his leadership in protecting the privacy of all New Yorkers, particularly the undocumented families put at risk by any IDNYC “smart chip.”

Mayor de Blasio’s proposal to equip IDNYC with radio-frequency identification (“RFID”) tags will risk nothing less than mass surveillance.\(^1\) RFID chips are passive, powered by radio waves that create an electric current in the tags, triggering them to broadcast stored information.\(^2\) As a result, RFID chips will broadcast without any action by a cardholder, and potentially even without their knowledge.\(^3\)

Even assuming security best practices, the city could, at best, limit how much data attackers could intercept. No technical solution would prevent an adversary or a government agency from using RFID technology to track cardholders as they go about their daily lives. In this way, even the most limited RFID deployment raises real concerns, but the City is sadly proposing to go much farther. Currently, the administration is proposing to expand data storage so IDNYC can be used for commercial payments, but doing so would only further facilitate the tracking of cardholders through their travel and spending patterns.

Specifically, the administration advocates using IDNYC in conjunction with the Metropolitan Transportation Authority’s (“MTA’s”) new fare-collection system, “One Metro New York,” or “OMNY.” Alarmingly, the MTA and its vendor have failed to fully disclose what data is collected from riders and how it is used.\(^4\) The MTA and third parties could easily allow OMNY to inadvertently morph into a perpetual log of every rider’s movements, tracking who takes part in a political protest or attends mosque.\(^5\)

Since IDNYC is thousands of New Yorkers’ only ID, its use with OMNY would empower the MTA to transform the card into a tool of suspicionless surveillance.\(^6\) The danger is even more


\(^3\) Id.

\(^4\) See SURVEILLANCE TECH. OVERSIGHT PROJECT, OMNY SURVEILLANCE OH MY: NEW YORK CITY’S EXPANDING TRANSIT SURVEILLANCE APPLARATUS 2 (Oct. 1, 2019).

\(^5\) Id. at 5.

\(^6\) Id.
concerning given the New York City Police Department’s (“NYPD’s”) history of mass surveillance, particularly targeting historically marginalized communities.\(^7\)

The combined privacy impact of OMNY and IDNYC will be felt most by the underbanked communities that the new “smart chip” is supposedly designed to serve. This is because riders with credit cards and smart devices would be less likely to pay for their transit with their IDNYC chip. Riders with no other bank account will be forced to face the choice of letting their government ID become a perpetual tracking device or to search out a way to obtain an OMNY pass vending machine. As of today, we have no idea where those machines will be located or how much riders will be forced to pay for the privilege of preserving their privacy.

In Chicago, for example, the vendor behind OMNY deployed a similar transit payment card with fees for cash payment so high that they caused a major backlash.\(^8\) Such fees constitute a privacy tax, one which many of those whom IDNYC was created to benefit cannot afford.\(^9\)

We were promised that IDNYC would give peace of mind to New Yorkers who had no other form of ID, but the new OMNY will put thousands on edge. This is especially true for our undocumented neighbors.\(^10\) And the irony doesn’t end there. It was only a matter of months ago that Mayor de Blasio fought intermediaries ever could have. Even worse, it put that information in the hands of ICE in immigration enforcement. But the Mayor’s new proposal captures far more data than his terrifying effort by Republic Blasio fought neighbors of ID, but the new OMNY will put thousands on edge. This is especially concerning given the New York City Police Department’s (“NYPD’s”) history of mass surveillance, particularly targeting historically marginalized communities.\(^7\)

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In this climate, we know that I.C.E. will use any information at its disposal to target undocumented New Yorkers.\(^12\) The data collected by IDNYC card processors will be nothing short of a treasure

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\(^9\) See Carlos Menchaca et al., *A Danger IDNYC Overbank: Don’t Equip This Card with Financial Technology Chips*, N.Y. DAILY NEWS (Sept. 13, 2019, 5:00 AM), https://www.nydailynews.com/opinion/ny-oped-the-dangerous-push-to-overhaul-idnyc-20190913-qnjil6r4flfd4upsstg43z5fta7q-story.html (“We are talking about the most vulnerable New Yorkers—the homeless, the homebound, the elderly, the young, veterans, immigrants . . .”.


\(^12\) See, e.g., Khristopher J. Brooks, *ICE Arrests More Than 80 Immigrants Over 5 Days on LI*, NYC, NEWSDAY, https://www.newsday.com/long-island/ice-arrests-immigrants-long-island-1.36873559 (last updated Sept. 26, 2019, 8:46 PM);
trove. But it won’t be held by the City, instead, it will be controlled by banks and credit card networks. Even if these companies disagreed with the Trump deportation philosophy, we can’t depend on them to reliably fight off I.C.E.’s attempt to commandeer this information.\(^\text{13}\) And since many IDNYC cardholders are undocumented, location and merchant patterns could be used to create a target list for raids.\(^\text{14}\) We should note that the privacy impact is exacerbated by existing NYPD data sharing agreements with federal agencies.\(^\text{15}\) City officials responded before to these exact same privacy threats. They put in safeguards to block retention of IDNYC cardholders’ identity and residency documentation for longer than absolutely necessary.\(^\text{16}\) They even limited recordkeeping, removing any reference to which types of documents are used to establish identity and residency.\(^\text{17}\) So how can the Administration move forward with this proposal when none of these requirements extends private sector partners? How can they use RFID technology that exposes cardholders to data breaches and identity theft?\(^\text{18}\)

In light of the foregoing, we urge this City Council to enact Introduction 1706 and prohibit the retention or transmission of any additional information in IDNYC cards. This legislation will reinforce the purpose for which the IDNYC program was created: providing a valid, reliable, and privacy-protective form of ID to those New Yorkers most at risk. I thank you for giving me the opportunity to address this urgent issue, and I look forward to working with the Council to safeguard the rights of New Yorkers in the months and years to come.

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13 See N.Y.C. ADMIN. CODE § 3-115(e)(4) (prohibiting disclosure of applicant information except under certain narrow circumstances, such as “[t]o a law enforcement agency that serves the [HRA] a judicial subpoena or judicial warrant”).

14 See SURVEILLANCE TECH. OVERSIGHT PROJECT, supra note 4, at 5.


17 N.Y.C. ADMIN. CODE § 3-115(e)(5).

18 Jorgensen, supra note 10; Menchaca et al., supra note 9.