



Monday, December 12, 2022

**STATEMENT OF ASSISTANT CHIEF MICHAEL KEMPER
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY AND THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**COUNCIL CHAMBERS
DECEMBER 12, 2022**

Good morning Chair Hanks, Chair Brooks-Powers and members of the Council. I am Michael Kemper, the Acting Chief of Transit for the New York City Police Department (NYPD). I am joined here today by Deputy Chief Thomas Ponella, Inspector Raymond Porteus, and Director Michael Clarke. On behalf of Police Commissioner Keechant L. Sewell, I am pleased to testify before your committees regarding public safety in the subway system.

Not only is safety in our subways a crucial topic for discussion, but this hearing could not be more timely for me on a personal note. As the new Acting Chief of the Transit Bureau, starting just last week, this hearing also gives me an opportunity to introduce myself to all of you. I knew from an early age that I wanted to help people and there seemed no better place to do that than joining the ranks of the NYPD. I joined the department when I was 20 years old, at the earliest possible time, and have spent the last 31 years doing everything within my ability to make sure New Yorkers are safe. I began my career in 1991 on patrol in the 62nd Precinct in Brooklyn. Since then, I served in a number of precincts, several patrol and detective borough assignments, and in the Office of the Deputy Commissioner of Strategic Initiatives. I held executive positions in several precincts, in the Detective Bureau, and prior to my current appointment, I served as the borough commander for Patrol Borough Brooklyn South. It is a great and humbling honor to bring my experience and knowledge of public safety to our transit system.

We, in the Transit Bureau, have been tasked with the enormous responsibility of protecting the safety of the busiest metropolitan rail system in the nation, comprised of 25 lines, 472 stations, over 6,000 train cars, and over 600 miles of rail track. It cannot be overstated how important our subways are to the residents, businesses and visitors of this great city. Each and every day, millions of New Yorkers utilize our subways for myriad reasons. Whether going to and from work or school, to our businesses to shop, to appointments, or to visit our diverse neighborhoods and attractions, riders deserve to enter our transit system and arrive at their destinations safely. This is my mission and the mission of all transit officers and I look forward to working with all of you to help achieve that goal.

When it comes to crime in our subway system, I think we are at an important moment as the year comes to a close. Last month, major crime in the transit system decreased by nearly 13% when compared to November of last year. This decline is continuing into the opening weeks of December. Moreover, when compared to pre-pandemic ridership levels in 2019, major crime is down by 6.3%. There is certainly more work that needs to be done – year to date index crime is

up by 30% in the subway system – but these recent numbers are encouraging and demonstrate real progress that has been made under this Administration.

Mayor Adams and Commissioner Sewell have made it no secret that they believe – as I am sure all of us here today do – that the subways are the lifeblood of New York City. Safety, however, has to be reflected not just in our stats, but also in the impression of riders – they must feel safe, too. We know that the public often feels a sense of relief when an officer is riding a car or in close proximity on a platform. Throughout the year, the NYPD has increased its visibility and presence throughout the system. Under the Mayor’s Subway Safety Plan, our strategy has been more visibility, more coverage, and more public engagement.

Over 1,000 additional officers were surged into the system earlier this year. Officers have been riding train cars alongside passengers, inspecting stations and other important areas, and covering platforms. When it comes to deployment, particular emphasis is placed on our most active transportation hubs. The uniformed leadership is not immune to this strategy either. Prior to my appointment, I too had to personally patrol the subways, as every executive above the rank of Deputy Inspector must now do. I will obviously do it much more now.

Last month, we began extending tours of 1,200 additional officers each day, which has further enhanced police presence in the subways, enabling officers to cover platforms in at least 300 stations during peak hours. Our Community Affairs Bureau also launched a safety awareness campaign in the fall. This campaign enlists crime prevention officers to visit our busiest stations to conduct public outreach and provide safety tips to riders, such as safeguarding their valuables and being aware of their surroundings.

It is also not just physical presence that contributes to this enhanced visibility in the system. In the fall, the MTA began playing public safety messages on trains and platforms from Police Commissioner Sewell to let riders know that the NYPD is there to help and to alert our officers of unsafe conditions.

The increase of officers in the subway system, including police presence on platforms, not only enhances our response to dangerous situations, but also serves as a deterrent to those who seek to commit crime and makes riders feel safe while waiting for their train to arrive. So far this year, officers have conducted nearly a million subway safety inspections and their hard work has led to a 46% increase in arrests. Of note, arrests for robbery are up by nearly 38% and felony assault is up about 16%.

While I have complete faith in the dedicated men and women of the NYPD, I also know that we cannot do it alone. We have vital partners who lend their expertise to our shared mission in providing a safe experience in the subway.

We have worked seamlessly with our partners in the MTA and the MTA Police under this Administration. We communicate daily to ensure we are deploying resources to where they are needed most. MTA conductors have been announcing our presence on subway platforms and in the trains, and also alerting riders when a station has an NYPD transit district within it. This serves

the dual purpose of allowing riders to know that help is close by if needed and to warn potential perpetrators that the police are present.

The role of cameras in the subways cannot be overstated. Strategically placed, they can be a deterrent to individuals committing crime and provide evidence that can assist in leading police to the perpetrator. The MTA and the NYPD work together closely to monitor live feeds and to provide camera footage to members of our Detective Bureau. To that end, the MTA will be making a further investment in safety by installing more cameras throughout the subway.

Behavioral health challenges add further complexities to ensuring the safety of riders. And again, collaboration with our partner agencies has been critical. Throughout the year, we have deployed Joint Response Teams, which brings the NYPD, the Department of Homeless Services (“DHS”) and community-based providers together to connect chronically homeless individuals with the services they need. These teams have made over 30,000 contacts with people experiencing homelessness this year, with thousands accepting referrals for healthcare services. Overall, more than 7,000 individuals have accepted shelter services from members of the NYPD.

We have also partnered with the Department of Health and Mental Hygiene to team police officers with clinical nurses. These teams cover high-use stations to ensure people who are suffering from mental illness and pose a danger to themselves or others are brought to a hospital where they can obtain the help that they need. Our work is further enhanced by the state, which has created new transition to home units, which help individuals end the cycle of homelessness. They are also launching Safe Option Support (SOS) teams, which will assist individuals suffering from chronic street homelessness to enroll in supportive housing programs and will deploy them throughout New York City. When it comes to mental illness and homelessness in the subways, we know that this is a longstanding and highly complicated topic, and we are willing to play our part alongside our partners, and it has the full support and attention of the NYPD.

Subway ridership continues to grow and, with the holiday season here, there are even more riders using the system. We have had some very positive recent successes, and there are still challenges ahead. I want to remind the public though that this is the best police department in the world. There is no police department that is better trained and better equipped to address these challenges and fulfill the mission of keeping the New York City subway system safe. We cannot allow our riders to feel unsafe while riding the subways. We cannot allow them to be threatened, harassed, or, in the worst cases, subjected to violence. With the Department working together with all stakeholders, we will decrease crime, provide help to those who need it, and further restore the confidence New Yorkers have in the safety of our subway system.

Thank you for the opportunity to introduce myself and speak before you today. We look forward to answering any questions you may have.

Opening

Good morning and thank you for having us here today, especially Chair Brooks-Powers and Chair Hanks, to give an update on public safety in the transit system. I'm Richard Davey, president of MTA New York City Transit, and I'm here with Robert Diehl, our Senior Vice President for Safety and Security, also a 24-year NYPD veteran.

This is my first time appearing in front of the Council since becoming President of Transit, and before we get into it, I'd like to introduce myself a little bit. I came to New York City in May from Boston, where I spent my career working in all aspects of public transportation – serving in Governor Deval Patrick's cabinet as Secretary of Transportation for the State of Massachusetts and General Manager of the Massachusetts Bay Transportation Authority, and in the private sector at Boston Consulting Group working with transit systems across the world including in Sydney, Hong Kong, Singapore and the UK. I was a New Yorker from 1999-2002, including a Manhattanite during 9/11 and am now a constituent of Council Member Bottcher in Hell's Kitchen.

Faster, Cleaner, Safer

In every role, customer satisfaction has been my North Star. And it's the driving force behind Transit's new "Faster, Cleaner, Safer" strategic plan. I know today's testimony is about that third priority, but really all three track together.

I know your constituencies, and my customers, care about having faster service, and so do I. I've directed Transit's speed team to find new ways to further improve service delivery and cut down on subway Customer Journey Time. We're also zeroing in on improving weekend service, hiring Jose Lasalle as our weekend czar to come up with a new service plan that allows us to complete important maintenance work while still getting riders where they need to go.

And we're not forgetting about buses. We're working with the City Department of Transportation and the State Legislature to expand Automated Camera Enforcement on buses, Transit Signal Priority and pushing ahead with our borough-by-borough bus network redesigns. We rolled out the Bronx Redesign to great success in June, are deep into developing the Queens Bus Redesign and released the first Brooklyn Draft Plan last week. And of course, we continue to hire and train new frontline employees to fill gaps in staffing that have caused delays in the past.

Then there's cleanliness, which I think has a lot to do with safety. Through the Station ReNEWvations program, we're making sure visible problems at stations—stuff like broken lightbulbs, faulty PA systems, and busted countdown clocks— are fixed. These are the little things, that even if no one else is around, make our riders feel uncomfortable. So far, we've completed deep cleaning at six of the nine stations located in the Bronx, with the remaining three to be finished by the end of the year. And we have a goal of tackling 50 stations in 2023.

We're also hiring hundreds of new cleaners to service trains and stations as we prepare to reopen bathrooms at eight stations in January.

Work locations are another priority space for us. Maintenance rooms, where our employees are spending their time, need some TLC. So, we've brought someone in to make sure these facilities are improved.

Focus on Safety

But all these efforts really come back to safety and the perception of safety in the system, which we all know has some impact on ridership. It's not the biggest factor behind the lower levels we're seeing – that would be the shift to work-from-home policies, which we can't do anything about – but it's not insignificant either. Customers are telling us in surveys and at our in-person Transit Talks that public safety is a major concern.

So, we have to solve this issue of perception and try to beat back the crime we do have in the system. Because the subways need to be safe and feel safe. Not just to help us win back new riders, but for the sake of those who have been riding with us all along – essential workers and working-class New Yorkers who can't afford a \$50 Uber to get around. They deserve peace of mind and a safe trip.

Luckily, as MTA Chair Janno Lieber has said, our working relationship with the State and City has never been better. Governor Hochul and Mayor Adams have set in motion a comprehensive subway safety initiative that's starting to make a difference.

We closely monitor crime statistics, and the November numbers show transit crime was down more than 13 percent from 2021. Year to date, there were 6.5 percent fewer crimes in the subway than in 2019, the year before COVID. Today we also have fewer riders than before the pandemic, so it's not apples to apples – and it's way too early to celebrate – but it's still real progress that we can trace back to the actions taken by the Mayor and Governor.

As part of their strategy, the NYPD – the lead agency responsible for maintaining public safety underground – is flooding stations and trains with officers. Anybody riding these days can see the increased police presence and hear the announcements about it on trains. But MTAPD is doing its part too. Bobby [Diehl] has been working closely with MTAPD to have officers backfill patrols at subway stations in our commuter rail hubs. MTAPD already has outposts there, so it's a natural extension of duties, and it frees up NYPD officers to be deployed elsewhere in the system.

But the cops are just one tool in a balanced criminal justice tool box. We're also working with District Attorneys, judges, and the courts to expand the use of transit bans across the MTA, so those who harm riders and employees are kept off transit.

A few years back the MTA lobbied successfully for state law allowing judges to implement transit bans as part of sentencing for certain convicted criminals who use our system for their crimes. And just last month Suffolk County approved the first-ever MTA ban on the LIRR and we hope there will be more to come. Expanding the applicability of the transit ban statute is going to be one of our top legislative priorities in Albany in the new session.

We also remain focused on fare evasion. Earlier this year Chair Lieber convened a blue ribbon "Fareness" Panel which will be releasing its report and recommendations soon, but we're already taking steps to combat the problem -- launching pilots for both armed and unarmed gate guards stationed at MetroCard vending machines and the fare array. We're still waiting on more data to understand the full effectiveness, but preliminary analysis is promising.

The emergency slam gates have become a major issue driving fare evasion and we're seeing that in some high-volume stations simply having someone there to manage the gate for its proper purpose is paying for itself and not leading to confrontation.

The last piece of the puzzle is cameras. When I got here, I took a deep dive into Transit's existing camera program, which was already incredibly impressive -- more than 10,000 cameras across 472 stations. Now we're looking to expand into train cars. Back in October, Governor Hochul announced that we're purchasing another 5,400 cameras to be installed on nearly 3,000 subway cars, so that the entire fleet has coverage. The vast majority of Buses are also equipped with cameras -- 90 percent of our 5,800-bus fleet. And all new purchases in the capital program will be fully equipped as well.

Complementing these efforts is our recent announcement that station agents will be coming out of the booth to take an enhanced role in customer service. They're going to our eyes and ears across the station environment – from the turnstiles to the platforms. I know they'll be an invaluable resource for riders.

So, we're leaving no stone unturned when it comes to customer safety. As president of NYC Transit, I take my responsibility to create a safe environment in the subways incredibly seriously. We're here to serve New Yorkers, and we need every rider we can get as we stare down the MTA's fiscal cliff.

Fiscal Cliff

Lastly, and since public safety does play some role in it, I can't pass up the chance to talk about finances. The MTA's operating budget is in dire straits.

In just a few years, we're looking at an annually recurring deficit in the \$2.8-\$2.9 billion range.

The Authority has limited options to balance the budget on its own and none of them are good – cutting service, implementing layoffs, and raising fares. All would be devastating to the City and region's recovery; we need more mass transit, not less. So, we're looking to the City, State, and federal government for help on a new funding model that recognizes mass transit as the essential service that it is, like police, fire, and sanitation. Obviously, the more riders we get back, the lesser the burden on our government partners.

This is while a collective effort in solving the MTA's real public safety issues is so important– not to mention the perception they create, which often outweighs the reality. This City and the MTA have worked together in the past to eradicate crime in the subways and gotten the system to record levels of ridership, and I am confident we can get there again.

So, I look forward to working with all of you on solutions and I thank you for having us here today to discuss this important topic along with our partners from NYPD.

With that, we're happy to take your questions.



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**STATEMENT OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEES ON TRANSPORTATION AND
INFRASTRUCTURE AND PUBLIC SAFETY
DECEMBER 12, 2022**

Good morning,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank Chairs Hanks and Brooks-Powers and the members of the Committees on Public Safety and Transportation and Infrastructure for holding this important hearing.

Every day, millions of people ride the New York City subway system. For many New Yorkers, it is the primary way they get around. We can all agree that riders deserve an efficient, accessible, and safe transit system, and we can again agree that unfortunately that is not the system that we currently have.

Let's put politics aside and speak honestly about the levels of crime in the subway. Compared to the levels of crime this time last year, crime is up in the subway by 40 percent. There have been nine murders in the subway this year, compared to six in the same period last year. It is also important to remember that more people are riding the subway now than there were last year. Most of the increase in crime is for nonviolent offenses, primarily theft. In fact, compared to 2019, felony crimes of murder, burglary, grand larceny, assault, rape, and robbery this year has decreased by four percent. Crime in transit makes up less than two percent of all crime in the city.

Ridership is still far below pre-pandemic levels, and this can be attributed to a number of factors, including more people working from home. The rhetoric around violence in the subways has unfortunately deterred some people from using transit. Regardless of the actual level of crime, people need to feel safe, and while the constant focus on violence boosted some electoral campaigns, it has done real harm to New Yorkers' senses of safety.

Governor Hochul and Mayor Adams have taken a number of measures to appear to crack down on subway crime, from flooding the subways with police officers—who largely stand around texting or watching videos—to pledging to install cameras on every train to authorizing the increased involuntary hospitalization of people perceived to be mentally ill and/or homeless. The presence of police in the transit system is associated with increased arrests for quality-of-life and low-level crimes that disproportionately impact low-income people of more color, such as jumping the turnstile.

Mayor Adams has cited NYC's mental health crisis as a major driver of crime in the subway, and he has historically conflated homelessness and mental illness. Since taking office, Mayor Adams has given the NYPD more latitude to remove people perceived as homeless from subway trains

and stations, and has most recently given the green light for officers, who are not trained mental health professionals, to involuntarily transport people they judge to be experiencing symptoms of mental illness to hospitals.

At the end of October 2022, the NYPD had made 6,793 arrests in the transit system, compared to 4,622 at the same time last year.¹ If increasing the number of police in the subway system has not led to a decrease in crime, what will? Mayor Adams is correct that increasing access to mental health services increases public safety for everyone, but bringing a person to a hospital against their will to be discharged shortly thereafter is not equivalent to robust, affordable, community-based mental health services and resources. Further, involving the police in mental healthcare historically has resulted in escalating situations involving people experiencing a mental health crisis from nonviolent to deadly.

Long wait times for trains and buses is associated with victimization of situational crime.²³ More frequent trains and buses means fewer people standing idly in stations and at bus stops to become suitable targets, especially late at night. One study found that women are more likely to be traveling during these off-peak hours.⁴ Anxiety and frustration over long wait times can escalate into disputes between passengers. Efficient service connects people to resources we know promotes public safety, like job opportunities, healthcare, and other services. More frequent service is also associated with increased ridership, bringing safety in numbers and a faster post-pandemic recovery for the MTA and the city.

I look forward to working with the City Council, New York City Transit, and Mayor Adams to implement strategies we know work to create a safe, equitable, and accessible transit system for all New Yorkers and the city's visitors.

Thank you.

¹ <https://www.cnn.com/2022/10/23/us/new-york-subway-crime-adams-miller/index.html>

² <https://www.ojp.gov/pdffiles/166372.pdf>

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https://static1.squarespace.com/static/61033b9bd377817f5bcc6db9/t/633c655f2aa6da55a17ebc79/1664902496083/SB_RA_SixMinute_Brief_Updated+%281%29.pdf

⁴ <https://wagner.nyu.edu/files/faculty/publications/Pink%20Tax%20Report%202.10.22.pdf>



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Presented before

**The New York City Council Committees on Public Safety
and Transportation and Infrastructure**

Oversight Hearing on Public Safety in the Subway System

December 12, 2022

My name is Yung-Mi Lee and I am the Legal Director of the Criminal Defense Practice at Brooklyn Defender Services (BDS). I thank the City Council Committees on Public Safety and Transportation and Infrastructure for the opportunity to testify today about the growing public discourse regarding crime on the NYC subways system, particularly passengers suffering from housing insecurity and mental illness.

BDS represents approximately 21,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals and administrative staff who are experts in their individual fields. BDS is fortunate to have the support of the City Council to supplement the services we provide as a public defender office in Brooklyn. Through specialized units of the office, we provide extensive wrap-around services that meet the needs of people with legal system involvement, including civil legal advocacy, assistance with educational needs of our clients or their children, housing and benefits advocacy, as well as immigration advice and representation.

Public Focus on Crime in the Subways, Homelessness, and Mental Illness

In recent months, local media has been dominated by stories on mental illness, homelessness, and crime. This narrative has been intertwined with news coverage on crime in the NYC subway system. The coverage continues to spin a false narrative, linking mental illness and homelessness

to increased rates of violence.¹ This damaging messaging exacerbates social stigma, reduces public support of policies to support people living with mental illness,² and falsely asserts policing as a solution. Moreover, it has led to an increase in police presence on our city streets, and specifically on the subway. In October of this year, the New York City Police Department (NYPD) and the MTA dramatically increased officer presence on platforms by approximately 1,200 additional overtime officer shifts each day, equaling approximately 10,000 additional overtime patrol hours every day³

New York relies largely on policing and jails to address issues related to homelessness, mental health and substance use. The same method has been applied to policing on the subways. People experiencing homelessness or a mental health crisis are more likely to be approached by police than medical providers.⁴ Instances where the police respond to mental health crises often involve a violent response that often escalates the situation rather than deescalating it, and in too many cases, has ended in death.⁵ The rollout of non-police responses to mental health crises across the city has been slow, and the NYPD continues to respond in most cases.⁶ Across the country, jails and prisons have become the largest provider of mental health care and New York is no exception. Punitive responses to mental health crises do not help people who are living with mental illness and do not contribute to public safety.

During the height of the COVID-19 pandemic, inpatient psychiatric beds were eliminated and outpatient programs were forced to move to remote formats. People who are living with mental illness who previously struggled to access or remain connected to care were left with even fewer resources. The Council must work with the community to restore—and expand—access to mental health care for New Yorkers in need.

Many of the people we represent have tried for years to access mental health treatment and supportive housing, but have been pushed out of hospitals or housing and met with a lack of appropriate resources in the community. At the best of times, services are limited but as the city emerges from the pandemic, finding appropriate housing or mental health care seems near impossible. People seeking these resources remain on waitlists for months or years for Assertive Community Treatment (ACT) teams, supportive housing, psychiatric visits or other care they require. They are discharged from jail or psychiatric hospitalization with a referral to first-come-first-serve walk-in mental health care and/or a list of congregate shelters. They are denied services for requiring a “higher level of care” or having a co-occurring substance use disorder. With no information on where to turn next, they are often met with police, rearrested,

¹ Heather Stuart, Violence and mental illness: an overview, World Psychiatry, June 2003, Available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525086/>

² *Id.*

³ Security Staff, NYC increases police presence in subway system, Security Magazine, October 24, 2022, Available online at <https://www.securitymagazine.com/articles/98518-nyc-increases-police-presence-in-subway-system?>

⁴ National Alliance on Mental Illness, Jailing people with mental illness, 2019, Available online at <https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Jailing-People-with-Mental-Illness>.

⁵ Eric Umansky, It Wasn't the First Time the NYPD Killed Someone in Crisis. For Kawaski Trawick, It Only Took 112 Seconds, Pro Publica, December 4, 2022, Available online at <https://www.propublica.org/article/it-wasnt-the-first-time-the-nypd-killed-someone-in-crisis-for-kawaski-trawick-it-only-took-112-seconds>

⁶ Greg Smith, Cops Still Handling Most 911 Mental Health Calls Despite Efforts to Keep them Away, The City, July 22, 2021, Available online at <https://www.thecity.nyc/2021/7/22/22587983/nypd-cops-still-responding-to-most-911-mental-health-calls>

incarcerated again, and the cycle continues. Instead of increasing NYPD presence, we urge the city to invest in housing and mental health care for New Yorkers, including community led mental health initiatives, increased access to long term mental health care, supportive housing, and programs that seek to minimize community violence and mitigate trauma exposure response.

Transit Bans are Not the Solution

Banning already vulnerable New Yorkers from accessing public transit is not a solution to the false narrative of increased crime in the New York City subway. In fact, transit bans can act as a contributing factor to many of the already existing problems, when a housing crisis is pushing New Yorkers to seek shelter in the subways system. Though public transportation should act as a great equalizer for New Yorkers, transit bans exacerbate the inequities that exist in our city, making it nearly impossible for New Yorkers facing financial insecurity to access gainful employment and stable, long-term housing.

Restricting those formerly involved in the criminal system from the most affordable mode of transportation can impede their access to jobs, school, court, medical and mental health services—the very things experts say are beneficial to avoiding another offense. Transit bans are based in fearmongering, rather than in fact or science; at a time when state and national leaders are thinking carefully about racial justice and criminal justice reform, a truly progressive legislative agenda demands forward-thinking, evidence-based, data-driven solutions, not counterproductive laws built on fear and misconceptions.

Transit bans could also have a disproportionate impact on many of New York’s already marginalized communities. New Yorkers of color have already been unfairly impacted by the NYPD’s fare evasion enforcement; New Yorkers dealing with housing insecurity and mental illness often seek refuge in our subway system have also been disproportionately impacted. Banning vulnerable New Yorkers from riding the subway, and thereby accessing essential services, is counterproductive, and we should instead focus on addressing the ongoing crises of homelessness and lack of access to mental health services by investing in our communities.

Surveillance Does Not Create Safety

All New Yorkers are subject to a vast and sophisticated surveillance network run by the NYPD and other local agencies. Although the city’s surveillance network largely operates in the shadows, our work, community activism, investigative journalism, and public interest litigation have brought pieces of it into public view.⁷ The city’s invasive and growing surveillance program poses a dangerous threat to our communities’ constitutional and civil rights, yet the NYPD and MTA continue to call for more surveillance. The MTA already has 11,000 cameras throughout the transit system.⁸ While technology and its attendant insights and conveniences are alluring in

⁷ See for example Elizabeth Daniel Vasquez, Opinion: Reining in the NYPD’s Use of Surveillance Technologies, City Limits (Feb. 22, 2022) at <https://citylimits.org/2022/02/22/opinion-reining-in-the-nypds-use-of-surveillance-technologies/>.

⁸ Michael Gormley, New State Law Calls for More MTA Subway Surveillance Cameras, *Newday*, November 23, 2022, Available at <https://www.newsday.com/news/region-state/new-york-city-subway-system-state-law-surveillance-cameras-xwn5wa6z#:~:text=The%20MTA%20said%20it%20now,don't%20transmit%20them%20live.>

their seeming objectivity and infallibility, real-world application—divorced from marketing claims—demonstrates that technological solutions to law enforcement’s surveillance agenda merely replicate the biases and failures of our historical *Handschu* and stop-and-frisk past.⁹ However, technological surveillance brings with it a world of expanding harms that far outstrips traditional surveillance.

New York City has already invested more than \$1 billion in a twenty-year surveillance infrastructure building program.¹⁰ The city is blanketed in surveillance¹¹ and no police department in the country has more military-grade surveillance resources than the NYPD. Despite this the MTA is calling for further investment in this space in order to combat fare evasion. These tools—already heavily invested in and deployed—have only served to expand a burgeoning surveillance state, repeatedly infringing on New Yorkers’ dignity, privacy, and First Amendment freedoms. Instead, the City should act now to rein in the NYPD’s development and use of surveillance technologies.

Though the Department of Transportation’s plan lacks specific details, a few strategies that are identified include expanded camera usage and facial recognition technology. These strategies carry with them histories of political and technical failure and perpetuated bias; none have been demonstrated to positively impact public safety. Across the United States, facial recognition technology is the subject of discussion, debate, and legislation. Bans on facial recognition have been adopted in municipalities across the country, from Portland and San Francisco to Boston and Somerville, and the European Union has banned one of the largest commercial faceprint aggregators, Clearview AI.¹² National and state level bans or moratoriums on facial recognition technology and biometric data systems are being proposed and debated.¹³ Corporations from Microsoft to IBM have publicly denounced the use of technology for mass surveillance and pledged to divest from technology that is used to perpetuate racial injustice.¹⁴

Facial recognition technology has been found to have higher error rates for people of color. The troubling impact on already-marginalized communities is all the more concerning when this bias-infected data is placed in the hands of an agency often linked to pervasive racism and bigotry. Indeed, numerous recent studies reveal the ways that facial recognition technology perpetuates bias and leads to inaccurate identifications. For instance, The National Institute of Standards and Technology (“NIST”) found that facial recognition systems revealed higher false positive rates

⁹ See “*Handschu v. Special Services Division (Challenging NYPD Surveillance Practices Targeting Political Groups)*” at <https://www.nyclu.org/en/cases/handschu-v-special-services-division-challenging-nypd-surveillancepractices-targeting>.

¹⁰ Ali Watkins, How the N.Y.P.D. is using Post-9/11 Tools on Everyday New Yorkers, *NYTimes* (Sept. 8, 2021) at <https://www.nytimes.com/2021/09/08/nyregion/nypd-9-11-police-surveillance.html>.

¹¹ 37 See, e.g., Amnesty International, Inside the NYPD’s Surveillance Machine at <https://banthescan.amnesty.org/decode/>

¹² Kashmir Hill, “[The Secretive Company that Might End Privacy as We Know It](#),” *NYTimes* (Jan. 18, 2021).

¹³ Nathan Sheard, Adam Schwartz, The Movement to Ban Government Use of Face Recognition, *Electronic Frontier Foundation* (May 5, 2022), Available at <https://www.eff.org/deeplinks/2022/05/movement-ban-government-use-face-recognition>.

¹⁴ Larry Magid, IBM, Microsoft and Amazon Not Letting Police use their Facial Recognition Technology, *Forbes* (June 12, 2020). Available at <https://www.forbes.com/sites/larrymagid/2020/06/12/ibm-microsoft-and-amazon-not-letting-police-use-their-facial-recognition-technology/?sh=24d540bb188>.

for women, particularly Black women¹⁵ and that depending on the algorithms used, Black and Asian people were 100 times more likely to be misidentified than white men.¹⁶ Facial recognition systems have also been found to demonstrate “demographic differentials” based on age, producing higher error rates amongst children and the elderly.¹⁷ Given the high levels of policing aimed at communities of color and LGBTQ+ individuals, and the reality that the criminal legal system disproportionately impacts these communities, the people we serve are part of the communities most likely to be unjustly targeted by these faulty surveillance systems.

Increase Access to Fair Fares

It is universally understood that many New York City residents cannot afford to pay for public transportation, yet they rely on it everyday, often multiple times a day, to pick up children, get to work, get to programs, and return home to subsidized or supportive housing or shelters in entirely different neighborhoods or boroughs. More needs to be done to not only make public transportation affordable to low income New Yorkers, but to ensure access to critical benefits. Programs are needed to educate NYC residents and assist them in applying for the Fair Fares and Reduced Fare programs. This should happen automatically when New Yorkers enter shelter or apply for other means tested public benefits for SNAP. Beyond this, BDS would like to emphasize that even half fare is too much for many in the communities we represent and serve, and the city should make the system free for those who cannot afford it.

Additionally, the MTA’s over-reliance on fees and surcharges for fare evasion to raise revenue is not only out of sync with state regulations, but is a morally and fiscally irresponsible way to raise revenue, gouging low income New Yorkers who already cannot afford to pay for public transportation. The current fine for a Transit Adjudication Bureau (TAB) summons for fare evasion is \$50. This fine—for a failure to pay a \$2.75 fare—is more than 18 times the cost of the lost fare, and simply far too costly for a person who was not able to pay in the first place. The monetary penalty for not paying for the bus or subway should not be astronomically higher than the initial fare. This does not even take into account the cost to enter into a payment plan to pay the \$50 fine, an additional \$10 or a 20% surcharge. The city and the MTA have a responsibility to make it easier for all New Yorkers to access subways and buses, not a responsibility to collect every cent possible from those already facing financial insecurity. New York City should reinvest funds spent on aggressive enforcement of fare evasion and punishment and instead focus on ways to make public transit affordable for low income New Yorkers.

Expand Access to Safe, Affordable Housing

There is a severe lack of affordable and stable housing in this city, but people with serious mental health concerns or substance use disorders who are disproportionately homeless or housing insecure face additional barriers to accessing stable housing. People experiencing

¹⁵ Patrick Grother, Mei Ngan, Kayee Hanaoka Face Recognition Vendor Test: Part 3: Demographic Effects. *National Institute of Standards and Technology, US Department of Commerce* (December 2019), Available at <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

homelessness may have difficulties connecting to providers, affording treatment or medication, or accessing transportation to appointments. This creates barriers to securing housing.

Every New Yorker “deserves a dignified place to stay, regardless of immigration status, criminal legal system involvement, and medical and mental health needs. We have a right to shelter law, but that shelter has never been dignified, stabilizing, nor supportive. People choose to stay in the street and in the subways because the shelter system is not desirable, and it is not dignified.”¹⁸ Decades of experience and education has taught us that we cannot simply institutionalize people. Locking up New Yorkers in jails or mental hospitals is not the solution to the mental health crisis in our city. “This practice demonize[s] people with mental health challenges, disappearing them, [in] facilities that [are] dirty, dangerous, and inhumane.”¹⁹

In the midst of the COVID-19 pandemic, some of the people we serve have been released from city jails or hospitals and placed in emergency hotels. This setting has proven to be life-changing for many of the people we serve with serious mental illness (SMI). In lieu of loud, chaotic and often violent congregate shelters, people have private rooms in clean, comfortable buildings where they are treated with dignity and respect. The hotel program has been hugely impactful for our clients—particularly those living with mental illness or substance use disorders—who now have stable, safe housing and access to onsite services. The program currently houses over 600 people, and we know there are over 400 people on the waiting list, many of whom would be released from jail only if they had access to stable housing. Despite the overwhelming success the program has seen over the last two years, it is currently at risk of being shut down. Two of the hotels have already been closed. We urge the City Council to work with MOCJ to ensure the continuation of this model of emergency housing after incarceration – in addition to a continuum of transitional housing, supportive housing, and other affordable housing options.

Pass a New York City Council Resolution in Support of the Treatment Not Jail Act

New York City should commit to creating more off ramps from the criminal legal system. The City Council should call on the legislature to pass and the Governor to sign the Treatment Not Jail Act, S.2881B (Ramos)/A.8524 (Forrest).

In 2009, as part of the Rockefeller Drug Law Reforms, New York State passed the Judicial Diversion Program legislation. Under Criminal Procedure Law Article 216 (CPL 216), this legislation created a pathway for a small subset of people with substance use disorders to avoid prison and potentially have their charges reduced or dismissed after engaging in a course of treatment. This treatment is monitored by specialized court parts in every county in New York. Judicial diversion has successfully enabled thousands of individuals to minimize or avoid a criminal record while receiving the benefit of potentially lifesaving substance use treatment.

¹⁸See for example, <https://citylimits.org/2022/12/07/opinion-vulnerable-new-yorkers-deserve-dignity-mayor-adams-mental-health-proposal-misses-that-mark/>
<https://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/the-callahan-legacy-callahan-v-carey-and-the-legal-right-to-shelter/>

¹⁹ *Id.*

Judicial diversion has also realized the saving of tax dollars, from both reductions in reoffending and the decreased costs per capita of treatment versus incarceration. Unfortunately, CPL 216 diversion is limited to people with substance use disorders charged with a short list of crimes related to substance use. The current law leaves behind people who do not live with substance use disorders, but experience other mental illnesses, developmental disabilities, or cognitive impairments that can be effectively addressed through treatment.

People living with mental health issues deserve treatment, not jail. Mental health intervention through courts can decrease the jail population and provide people with access to treatment they would not otherwise receive if incarcerated. This has been shown to increase mental health program enrollment and completion of these programs reduces homelessness, psychiatric hospitalizations, and rates of recidivism.²⁰ New York can become a leader in diverting people with mental health issues out of the criminal legal system and into treatment by passing the Treatment Not Jails Act.

Conclusion

We appreciate the opportunity to testify before the City Council and engage in the public discourse regarding crime on the NYC subways system, and raise our particular concerns about passengers suffering from housing insecurity and mental illness. While we recognize the need for clean and safe public transit, we urge the council to recognize that the NYC transit system should be accessible to all, and strongly discourage any use of transit bans under the guise of increasing public safety. Furthermore we are concerned with the growing police presence within the subway system, and the lack of access for stable housing and reliable mental health services for those seeking refuge in the subway. The city should not invest even further in costly surveillance projects that do not equal public safety, but instead expand access to safe and affordable housing, mental health care, and psychiatric beds.

Thank you for the opportunity to testify today. If you have any questions, please feel free to contact me at ylee@bds.org.

²⁰ Nazisha Dholakia and Daniela Gilbert, What Happens When We Send Mental Health Providers Instead of Police, *Vera Institute of Justice: Think Justice Blog*, 2021, Available online at <https://www.vera.org/blog/what-happenswhen-we-send-mental-health-providers-instead-of-police>.



PCAC

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Permanent Citizens Advisory Committee to the MTA
Lisa Daglian, Executive Director

Testimony to NYC Council Committee on Transportation and Infrastructure with Public Safety
December 12, 2022

Greetings! I'm Lisa Daglian, Executive Director of the Permanent Citizens Advisory Committee to the MTA (PCAC). Thank you, Chairs Brooks-Powers, and Hanks and members of both Committees, for holding this hearing on a topic that is a top priority for New Yorkers around the five boroughs and the entire region.

It's no secret that COVID decimated ridership on subways, buses and trains. While it's coming back – with just about five million combined riders on December 7th – ridership is struggling to reach 70% of pre-pandemic levels and there are still people who don't feel safe enough to get back onboard. We know that it's important that riders feel safe, in addition to being safe, as we enter our post-COVID world and next normal.

In the run-up to last month's election, a spate of high-profile crimes on New York City buses and subways – highlighted in a too-political spotlight – brought safety concerns more sharply into focus. Following several devastating and high-profile tragedies, the city, state and MTA doubled down on their collaborative efforts to ensure riders are safe and feel safe. That's a crucial step toward getting more people back on transit.

Recent initiatives like the Cops, Cameras and Care program, with the greater and more visible police presence throughout the system – and letting riders know they are on platforms – better care options for those experiencing homelessness and/or mental illness and the investment in new technology are already proving to have a positive effect. With the restoration of a sense of order, crime on transit is now decreasing, especially when compared to pre-pandemic levels.

However, there is still more work to be done to change the narrative and regain the public's trust. Of course, without recurring – and new – sources of funding, these types of programs are unsustainable.

The fact of the matter is transit is safer when more people are using it because there are more "eyes on the system." However, the threat of fare hikes and service cuts looms large over the MTA. Taking these steps to plug a fiscal deficit would only further depress ridership levels and spark a death spiral of more fare hikes and service cuts, resulting in a less safe transit system.

The only way to break this cycle is to stabilize the MTA's finances. That means increasing revenue, which should be done through new sources of operating funding from the city, state and feds to keep and increase service levels, and congestion pricing for capital projects such as more cameras, new entry gates to reduce fare evasion and even platform doors.



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Transit is an essential service, and it deserves to be funded as such—just like our fire and police departments. Riders cannot be expected to pay for saving this system that we all depend on. This is particularly true for low-income riders who often live the farthest from transit but depend on it the most. The Fair Fares program is an important first step to ensuring that all New Yorkers can afford a MetroCard. We applaud the Council for base-lining funding for Fair Fares and investing in riders who need the extra support, and we believe this program must be expanded by doubling eligibility using twice the federal poverty level so more New Yorkers can take advantage of the underutilized program. It should also extend to the commuter rails so that riders who live close to those stations within the five boroughs, in subway deserts, can access the trains they often must forego for affordability. We ask that you consider this in your 2023/24 budget discussions.

A comprehensive marketing strategy that makes transit a more appealing option for New Yorkers would also help, making note of service and enhancements and safety improvements. The MTA should use every tool at their disposal—from rethinking fares to establishing new partnerships with private companies—to get people back on trains and buses. New Yorkers and tourists alike want to take transit, and more investment and improvements will only help prove that riders have made the right choice to depend on the MTA.

There are two additional safety issues that are top of mind that we want to raise as well. First, the presence of e-bikes, e-scooters and even e-mopeds in the transit system. Clearly, we recognize that these mobility devices are important to getting around our vast region, particularly for deliveristas. However – as you know and are looking into – the lithium ion batteries can be extremely dangerous when modified or damaged, especially when charging. They’re also dangerous when being ridden on platforms and even in trains. It is critical to minimize risk to all riders and regulate passage of these e-devices, and we know that the MTA is in the process of developing a plan to do that, particularly forbidding charging of any kind, and riding in stations and on vehicles. We also ask that you don’t forget the transit system when you consider legislation around the batteries and devices.

In addition, rising concerns about the “tripledeemic” caused us on Friday to ask the MTA to ramp up the language it uses on screens and in its communications to go from “Mask Use is Encouraged” to “Mask Use is Strongly Encouraged” as one known – and easy – way of helping keep riders safer during cold, flu, RSV and COVID season. It’s best to bring joy, not germs home for the holidays.

Our transit system is the backbone of the city and region. We can’t let it fall into a death spiral of low ridership and less service — long-term, sustainable operating revenue is crucial to the future of New York. With sustained investment, riders will feel the impacts of faster trips, better safety, and an all-around more pleasant transit experience. We want riders to feel and be healthy and safe at all levels in the system, and continuing to focus on what is showing to be working will help get more people back on board. Investing in transit is investing in riders, and the region.

Thank you.

Partnership for NYC Written Testimony
NYC Council Hearing – Committee on Transportation and Infrastructure with Public Safety –
12/12/2022 11:00 AM

The Transit Innovation Partnership is a public-private initiative launched by the Metropolitan Transportation Authority (MTA) and the Partnership for New York City, with a mission of making New York the global leader in public transit. Since 2018, the Transit Innovation Partnership has successfully leveraged the best ideas of global tech companies to improve the safety and efficiency of New York's public transit system.

Restoring pre-pandemic levels of public transit ridership is critical to the long-term fiscal health of the MTA and to the New York City economy. The MTA faces a fiscal cliff, as public transit ridership remains [approximately 30% lower](#) than pre-pandemic levels.

Concerns over personal safety and security are a significant factor in the drop off in ridership, especially on the subways. This is confirmed by surveys of employers and employees undertaken by the Partnership for New York City (see [survey results](#)). Riders will only return once they feel safe.

To restore confidence in the safety of the system, the Transit Tech Lab, an accelerator program run by the Transit Innovation Partnership, launched the [COVID-19 Recovery Challenge](#). Ten tech companies, chosen from nearly 150 global applicants, were selected to pilot their solutions with the MTA and other transportation agencies in New York and New Jersey.

The technologies ranged from machine learning and computer vision to 3D LiDAR hardware, demonstrating a range of capabilities from detecting track intrusion and fare evasion to identifying instances of unsafe behavior. 3D LiDAR was particularly compelling, as the technology demonstrated 98% accurate, quantifiable passenger flow data at three subway stations and Grand Central Terminal. The 3D LiDAR demonstrated its ability to send an alert if an unsafe event is triggered – all without collecting any personally identifiable information. The MTA [is continuing to test this technology](#) in a yearlong pilot in 2023. Solutions like these are a compelling resource for transit agencies as they work to make our transit networks safer — and there is more where that came from.

During overnight subway closures to disinfect the system during the height of the pandemic, Lab graduate Axon Vibe swiftly created a digital platform to redesign bus routes to help essential workers plan journeys. As customers increasingly rely on mobile devices, Work & Co developed the world's first live subway map, which shows train locations and planned and unplanned service changes as they happen.

As the City Council and other elected leaders consider opportunities to help improve safety for transit riders and restore confidence in public transit, the Transit Innovation Partnership will be a resource to help unlock the expertise and innovation of the global tech community to enhance safety on the city's public transit system.

Vice President of Innovation
Partnership for New York City
transitinnovation.org

Members of the NYC Council,

I am submitting this brief testimony about fare evasion I witnessed recently in the subway system. I was at the Metropolitan Ave G stop in Williamsburg around 2pm on Sunday, November 4, 2022. As I was leaving the south exit I noticed that the emergency exit door in this station had been propped open. I think I observed at least 15 people enter the system without paying through this door.

There is an NYPD transit police output inside this very station. This incident causes me to seriously question whether the NYPD is taking any action whatsoever to ensure safety and fare evasion avoidance in our subway system. There were no officers anywhere in sight.

Thank you,

Kenneth Lav
1st PI
oklyn 31

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Name: Deputy Chief Thomas Ponella

Address: _____

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Name: Inspector Raymond Porteus

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I represent: NYPD

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Name: Director Michael Clarke

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I represent: NYPD

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Name: Raul Rivera

Address: _____

I represent: NYC Drivers Unite

Address: _____

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Name: ROBERT DIEHL

Address: 52 ST, WOODSIDE, NY 11377

I represent: NEW YORK CITY TRANSIT

Address: 2 BROADWAY, NYC, NY

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Name: Touyaka Komatsu (PLEASE PRINT)

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I represent: SELF

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Name: Lisa Daglian (PLEASE PRINT)

Address: 2 Broadway 16C NYC 10004

I represent: Permanent Citizens Advisory Committee to MTA

Address: LDaglian@mtahq.org (PAC)

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Date: December 12, 2022

Name: Charlton D'SOUZA (PLEASE PRINT)

Address: 105th Ave, Queens Village,

I represent: Passengers United

Address: _____

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Date: 12/12/22

Name: Rich Davey (PLEASE PRINT)

Address: 2 Broadway NY NY

I represent: MTA - New York City Transit

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