

**STATEMENT OF CHIEF DERMOT SHEA
CHIEF OF DETECTIVES
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY
COMMITTEE ROOM, CITY HALL
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Good morning Chair Richards and Members of the Council. I am Chief Dermot Shea, the Chief of Detectives for the New York City Police Department (NYPD). I am joined here today with my NYPD colleagues Chief Rodney Harrison, the Chief of Patrol Services Bureau and Oleg Chernyavsky, our Director of Legislative Affairs. On behalf of Police Commissioner James P. O'Neill, we are pleased to testify before your committee today to discuss the NYPD's gang enforcement strategies.

We know that a small fraction of people in the City commit a large portion of our crime. This is why our application of precision policing focuses on finding and arresting these violent actors who weaken the fabric of our neighborhoods through violence and intimidation. Criminal groups that operate on our streets are drivers of a significant portion of violent crime in the city and are some of the prime peddlers of narcotics, driving the substantial increase in opioid overdoses plaguing our city. While New York City is the safest big city in the nation, in some cases criminal groups hold pockets of our city hostage, inhibiting mothers from letting their children play outside or preventing the elderly from taking walks in their neighborhoods. Gang violence is an attack not only on individual people and families, but also on our communities. The intention of these criminal groups and their violent and illegal actions is to create an environment of fear.

When I began my career 28 years ago as a patrol officer in the 46 Precinct, criminal groups, or "gangs" as they are commonly called, in New York City followed a traditional structure – they designated specific leaders, held initiation rites, displayed common gang identifiers, and took punitive actions against those that challenged or left the gang altogether. They tended to engage in large- and small-scale drug dealing, street-level robberies, larcenies, and other general criminal activity to make money. While many gangs still engage in these activities, the traditional structure has fractured. Today, much of the violent crime we face not only comes from traditional criminal groups operating in our streets, but also from smaller groups, often linked by their neighborhood. We refer to these groups as "crews." Crews present many challenges to law enforcement since their lack of a defined structure makes it difficult to predict their activities or document their associations, but they remain at least as dangerous as their more structured counterparts. While street gangs take on different forms, they are similar in that they tend to be motivated by greed and a twisted sense of honor, and they are willing to harm and even kill those who stand in their way.

In the last decade, gangs have greatly expanded their areas of expertise and have not limited themselves to traditional outlets of violent crime and narcotics dealing. As the Department's investigation of human trafficking has become more sophisticated, we have learned how gangs and crews developed significant human trafficking and prostitution rings. In many cases, they engage in these activities to bolster their drug business. Additionally, over the last several years, the Department has seen criminal groups expand into the white-collar crime business, building sophisticated credit-card fraud, identity theft, and organized retail and phone theft schemes. This allows these criminal groups to extend their criminal enterprises beyond the neighborhoods and public housing developments that they besiege.

Our long-term gang investigations are the very definition of precision policing. Of the 789 shootings last year, a staggering 393, or 50%, involved a gang member as either the victim or the perpetrator, which we refer to as "gang-related." Since 2016, the NYPD has engaged in approximately 100 long-term gang investigations resulting in 1,259 arrests. Our gang strategies rely on a combination of modern technology,

better management of police resources, intelligence gathering, and community participation. The Department works closely with our federal and state law enforcement partners during these investigations, as well as with federal and state prosecutors. The new generation of gang members are computer-savvy and creative in exploiting new ways to engage in crime. The gangs and their crimes are significantly more difficult and labor intensive to investigate. The work requires that we conduct long-term investigations, employing numerous investigative techniques, including surveillance, utilizing undercover officers, reviewing financial transactions, and wiretapping phones. Our personnel are trained to detect and map patterns in crime and identify gang and crew membership.

We also partner with federal law enforcement agencies and federal prosecutors. Not only do these partnerships yield valuable intelligence-sharing benefits, but they also have aided in disrupting or dismantling the communication structure of these criminal groups. Since June is Gun Violence Awareness Month, I feel compelled to note that our comprehensive and collaborative approach to gang suppression operates in tandem with our relentless pursuit of people who carry illegal guns. I am sure it is of no surprise that gang members carry guns. We work hard to build better cases so that prosecutors do not decline to prosecute cases involving guns and judges do not suppress the evidence we recover. It stands to reason that a successful gun prosecution will oftentimes take a violent gang member off of our streets. In order to simplify the prosecutor's case, the Department takes DNA swabs of all guns we recover so that we may accurately match the gun to its user. Additionally, we work with our two federal prosecutors to bring gun cases into the federal court system where appropriate. By focusing our resources on building better cases we have been able to change the calculus on carrying guns in our city, making criminals and gang members less likely to carry them.

I believe it is important for me to unequivocally state that our efforts against gangs are not the "new" stop, question, and frisk, as some critics have asserted. The authority for a police officer to engage in stopping, questioning, and possibly frisking a member of the public during a street encounter requires the officer to develop a reasonable suspicion that criminality (a misdemeanor or felony) is afoot. If probable cause is not established during the encounter, the individual is free to leave. The subjects we arrest at the end of a long-term gang investigation, in contrast, are almost invariably pre-indicted by grand juries, providing arrest warrants and charges for each specific individual after probable cause has been established on a case-by-case basis. There is no such thing as a mass arrest warrant for anyone and everyone suspected of being in a gang. It is important to highlight here that only felony cases are presented to grand juries. The significance of a pre-indictment is that we present the evidence we have gathered to a grand jury who decides whether the evidence is sufficient to prosecute each perpetrator. It is only then that we make an arrest.

The approach we have taken leads to significantly stronger cases, where the investigator and prosecutor have been able to review and assess a vast amount of evidence collected, allowing us to charge people who are culpable for significant felonies. In this manner, we are able to gather a more complete picture of the gang, enabling the NYPD to truly dismantle its structure so it cannot merely recruit new members to replace members we were successful in neutralizing. It bears repeating that these arrests are made after a thorough investigation to establish probable cause – usually of violent crime or violent criminal conspiracy. If the investigation fails to yield results, we cannot and will not arrest.

The Department also acknowledges that some of our gang-related enforcement operations in communities may appear overwhelming and intrusive. Some of our operations require a large officer contingent, sophisticated technology, and an aerial presence. Much of this is done out of an abundance of caution given the violent nature of these criminal groups. Some street gangs have employed military-style tactics and use high-powered weaponry, while others have taken advantage of the physical layout of housing complexes, stationing armed lookouts in hallways and on rooftops. Consequently, gang suppression operations are dangerous, and these dangers are not always readily apparent to the public. However, I assure you that the

limited and brief disruption to community life during a gang takedown operation is greatly outweighed by the long-term improvement in community safety the takedown provides.

In addition, the Department follows up most large gang takedowns with a five-point plan to prevent gangs from re-establishing their foothold in the area. The Department endeavors to notify elected officials and community leaders about the arrests. The Department strives to conduct community meetings with informational literature about what has happened and what the gang members have been charged with. Finally, the Department establishes programs in the area to discourage our youth from joining street gangs and holds jobs and resource fairs to provide alternative paths.

The Department also leverages information acquired from social media. Over the last decade, the use of technology by street gangs and crews to facilitate their criminal activities has exploded. This includes the use of online social media platforms. Criminal groups routinely turn to computers and the internet to communicate, to coordinate activity, and to recruit new members. The use of social media by these groups can exacerbate conflicts and amplify insults. Some social media posts among rival gang and crew members place a startling emphasis on revenge attacks. Like public places, public social media platforms are patrolled, in a sense, by trained personnel in accordance with Department policies. We monitor these public-facing platforms for intelligence, enabling us to learn when gang disputes are escalating with the goal of preventing violence.

I want to focus the remainder of my remarks on one critical, though often misunderstood element, of our gang strategy – the use of the NYPD’s Criminal Group Database, or as some refer to it, the “gang database.” Information is critical to modern policing and an invaluable tool for detectives investigating crime. Critics claim that the NYPD arbitrarily enters people into the database who are not criminal group members. They go further to claim that the database is an instance of racial profiling and that people who are entered into the database may suffer consequences even if they are entirely innocent.

Collecting data on members of criminal organizations is nothing new. To dismantle a criminal organization, you have to understand its size, its scope, who its members are, and what crimes each member has committed individually. Historical data collection methods of organized criminal organizations, like the Italian mafia, have been well publicized and glorified in motion pictures. The data was not electronic then. It was stored in file cabinets, on index cards, and on display boards. Today, we still track the membership of organized crime groups, including members of the Russian and Albanian criminal organizations, as well as motorcycle gangs, street gangs and terrorist organizations. The Criminal Group Database primarily contains intelligence relating to street gangs.

Organized crime outfits – which include gangs and crews – are not typically diverse organizations. They are generally comprised of members of a single demographic group. Additionally, as mentioned earlier, street gangs are disproportionately involved in gun violence, and the racial breakdown of our identified criminal group members almost exactly reflects the racial breakdown of our shooting victims.

I want to acknowledge one significant issue that is present in many gang databases in other jurisdictions, including a previous iteration of ours, which was that once a person was added into the database, they were generally not removed. Databases like these have been rightly criticized.

Around 2014 senior leadership of the NYPD performed a top-to-bottom review of the entire Department, including a review of the Department’s Criminal Group Database. At that point, over 34,000 people were entered, without protocols for removal. Much of the intelligence had become old and had to be verified once again. The Department realized it needed to establish procedures to regulate the circumstances under which a person’s name would be entered into the database, as well as criteria for removal.

There are two paths by which a person can be included in the Criminal Group Database. The first path requires that one of the following occur: a self-admission of gang membership to a member of the Department; being identified as a gang member by two independent and reliable sources; or social media posts admitting to membership in a gang. The second path requires two of the following to be true: frequent presence at a known gang location; possession of gang-related documents; association with known gang members; social media posts with known gang members while possessing known gang paraphernalia; scars and tattoos associated with a particular gang, frequent wearing of the colors and frequent use of hand signs that are associated with particular gangs. It is not enough for a person to be in a gang location, or to flash hand signs, or to wear gang colors on a certain day. These actions must be a consistent course of conduct. In fact, each of the over 34,000 people who were in our database were individually reviewed under this criteria as we constructed a new database to replace the existing one. As a result, today, our Criminal Group Database has approximately 17,600 individuals, almost half of where it once stood in 2014, and just over 500 different criminal groups entered. Our goal is to make sure that everyone who is in the database is actually a gang member. We are in the era of precision policing. Saturating the database with non-gang members limits its usefulness.

In addition, there are a limited number of people who can recommend a person be entered into the database and, we have instituted oversight mechanisms to ensure that the recommendation is backed up by evidence. Currently, only a precinct field intelligence officer, a gang detective, or an investigator in the Social Media Analysis and Research Team may recommend that a person be entered into the database. This is a formal recommendation requiring a written narrative and supporting documentation that justify such individual's inclusion. This recommendation is reviewed by a supervisor in the Gang Squad who will either approve or reject the recommendation, or request additional analysis by the Gang Analysis Section before making a decision. This structure creates oversight to ensure that multiple people, who have actual gang expertise, agree that a person should be entered into the database.

Furthermore, the Department has created three avenues to exit the database, reviewing each person every three years, and on their 23rd and 28th birthdays to determine if their actions and records still warrant their inclusion in the database. These safeguards are robust. In the last four years, we have removed over 3,700 entries from the database using these exit ramps. Once a person is removed from the database, the fact that they once were affiliated with a gang is permanently hidden from the database.

Unlike other jurisdictions, entry into the database is not proof of criminal behavior. It is a lead. It alone is not grounds for a stop, arrest or any other enforcement action. The database can only be accessed by NYPD personnel. It does not show up in a person's criminal history, or rap sheet, when that person is fingerprinted. Information is not shared with the New York City Housing Authority or employers conducting background checks, so housing and employment eligibility cannot be affected. The Department does not share that an individual is included in the database with Immigration and Customs Enforcement to be used to initiate deportation proceedings, or affect visa applications or citizen applications. New York State does not permit civil gang injunctions such as those routinely utilized in California. Unlike many states, New York does not have a sentencing enhancement for gang members. Finally, New York does not have a statute that makes it illegal for mere gang membership. A person's presence in the NYPD Criminal Group Database simply does not have the collateral consequences comparable to other jurisdictions.

We work diligently to ensure that we do not accidentally ensnare innocent people into the database. The numbers back this up. 90% of our gang members have been arrested for at least one felony, 75% have been arrested for at least one index crime, and 50% have been arrested for at least one robbery. In fact, the average person in the database has been arrested 11 times, 5 of which are for felonies. Our gang members are responsible for the murders of over 500 people and have been arrested for nearly 18,000 robberies. Already this year, they have been arrested for approximately 2,600 felonies. We also understand the sensitivities around including juveniles in the database—but this concern is misplaced. The average age for

a person in the database is 27 years, while less than 2.5% of the people in the database are under the age of 18.

The database is a vital tool in keeping the city safe. We do not want to start at square one each time one of these groups commits violence, without knowledge of who they or their associates are. When violence erupts between two groups, it is vital for us to know who might retaliate and who is likely to be targeted. Our goal is to try to defuse the situation and stop the violence. Plainly stated, it would be irresponsible for the Department to not track members of gangs.

The cycle of violence can only be interrupted with effective intelligence and policing. This is where the help of our elected officials and neighborhood leaders is critical and can bolster our work. Partnerships with community stakeholders provides immense benefits. If the people in their homes, and in our neighborhoods are positively influencing those who may be entangled in the gang lifestyle, there is a greater likelihood that there will be a sustained effect on their behavior. One of the most important concepts in informing our work on gangs and crews is our strategic focus on identifying crew members with the most influence over their peers, and to distinguish them from the less committed members, who might benefit from education, social services, or other help, to give them the opportunity to change their lives before they get in too deep. Knowing criminal group membership helps guide our efforts through NYC Ceasefire to wean young men and women away from gang life before it is too late.

When the NYPD's CompStat era was launched nearly twenty-five years ago, we pledged to be relentless until New York is in fact the safest city in America. This applies to all communities and neighborhoods in our city. For the NYPD, it will never be an acceptable state of affairs for people to have to dodge bullets from rival gang members when walking down the street or for kids growing up on a block to be exposed to deadly violence by heroin dealers fighting over turf. While the curtailment of violent gangs has been a significant contributing cause of the sustained reductions in crime in New York City, the stubborn persistence of this criminal activity requires constant focus and evaluation of our strategy and a commitment to working with our partners in law enforcement, as well as with the community and local social service providers. Together we can focus on those who are truly driving crime, while offering help and protection to those who are suffering and feeling besieged.

Thank you for the opportunity to testify today. My colleagues and I would be happy to answer any questions that you may have.



Dear Chairperson Richards and Councilmembers of the Committee on Public Safety:

My name is Marne Lenox, and I am an Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc. (LDF). I want to thank Chairperson Richards for holding this critical hearing and submit the following testimony.

I. Introduction

The LDF is the nation's first and foremost civil rights law organization. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice to fulfill the promise of equality for all Americans.

Since its incorporation in 1940, LDF has fought to eliminate the arbitrary role of race in the administration of the criminal justice system by challenging laws, policies, and practices that discriminate against African Americans and other communities of color. In 2010, LDF, with co-counsel the Legal Aid Society and Paul, Weiss, Rifkind, Wharton & Garrison, LLP, filed *Davis, et al. v. City of New York, et al.*, on behalf of plaintiffs challenging the NYPD's policy and practice of unlawfully stopping and arresting New York City Housing Authority (NYCHA) residents and their visitors for criminal trespass. NYCHA residents and their guests do not shed their constitutional rights at their doorsteps. In 2015, the *Davis* plaintiffs reached a settlement with the City that included full participation in the federal court monitoring of the NYPD that the court ordered in *Floyd, et al. v. City of New York*, the historic lawsuit that successfully challenged the NYPD's stop-and-frisk policies.

The NYPD's gang enforcement strategies raise concerns akin to the unconstitutional policing practices that motivated LDF to file suit in *Davis*. The Department's aggressive, military-style gang "takedowns" primarily target public housing residents, the overwhelming majority of whom are people of color. Prior to executing these sweeping gang takedowns, the NYPD conducts criminal investigations relying, in part, on a secret database that indiscriminately designates thousands of New Yorkers as members of gangs or local street "crews" without due process protections. These practices result in imprecise policing, racial profiling, and sweeping civil liberties violations that disproportionately harm communities of color, including the City's public housing community.

The City Council must reaffirm its commitment to constitutional, race-neutral policing by holding the NYPD accountable for its gang policing strategies.

II. The NYPD's gang policies and practices appear to be an aggressive and targeted extension of the unconstitutional, racialized policing tactics challenged in *Davis*.

As part of its gang policing, the NYPD regularly executes military-style gang "takedowns" that target boys and young men of color in low-income communities.¹ These raids are traumatic.

¹ Ben Hattem, *How Massive Gang Sweeps Make Growing Up in the Projects a Crime*, GOTHAMIST (Oct. 24, 2016, 11:02 AM), http://gothamist.com/2016/10/24/gang_sweeps_public_housing.php#photo-1.

They often involve hundreds of highly-trained, heavily-armed law enforcement officials,² including NYPD officers, federal agents, and U.S. Marshals.³ In at least one well-documented takedown, officials detonated flash-bang grenades, broke front doors, and forced residents to crawl in their home hallways on their hands and knees.⁴ Community members frequently mistake gang takedowns for acts of terrorism or war.⁵

The NYPD and District Attorneys' Offices across the City tout these raids and the resulting indictments as effective tools to combat alleged gang violence. This sanitized narrative ignores the substantial harm that gang takedowns inflict on communities of color and exaggerates the danger that arrested individuals pose to society. While a small number of people arrested in gang takedowns are believed to have committed violent or otherwise serious offenses, most are accused of only low-level misconduct. Yet prosecutors rely on conspiracy statutes to demonize those who commit petty offenses by implicating them in violent crimes, making it all but impossible to fight their charges at trial.

One example of this phenomenon is the arrest of our client, Patrick Littlejohn. The NYPD arrested Mr. Littlejohn as part of the April 2016 raid of the Eastchester Gardens NYCHA development in the Bronx, where he has lived his entire life. While just a teenager, Mr. Littlejohn was one of the lead plaintiffs in the *Davis* lawsuit; he was unlawfully arrested for trespassing in his development while visiting a neighbor who was with him at the time of the arrest. In 2016, Mr. Littlejohn was subject to yet another injustice at the hands of the NYPD when he was arrested, along over one hundred other individuals, at his home in a gang takedown. Eventually, the U.S. Attorney's Office agreed not to prosecute Mr. Littlejohn after six months of good behavior, presumably realizing that he was not, in fact, engaged in gang activity. Yet because of his arrest, Mr. Littlejohn lost his job as an after-school basketball coach and tutor. Humiliating pictures of him in handcuffs circulated local media. Today, Mr. Littlejohn is unemployed and still traumatized by this arrest. But he continues to live in Eastchester Gardens.

The targets of these raids and the defendants in these conspiracy cases are often children. Children who grew up together in the same "gang-prone" neighborhoods. Children who attend the same schools, who play basketball together. Children who communicate with their friends on social media. It is quintessential guilt by association. Yet the gang narrative shaped by law enforcement disregards the reality that takedowns have displaced an entire generation of youth of color.⁶

² Liz Cho, et al., *Exclusive: A Look at NYPD 'Precision Policing' Targeting Violent Gangs*, ABC7 WABC-TV (Dec. 14, 2016), <http://abc7ny.com/news/exclusive-a-look-at-nypd-precision-policing-targeting-violent-gangs/1654336/>.

³ Simon Davis-Cohen, *Footage of the Largest Gang Raid in NYPD History Reveals the Agency's Military-Style Tactics*, THE NATION (Sept. 1, 2016), <https://www.thenation.com/article/footage-of-the-largest-gang-raid-in-nypd-history-reveals-the-agencys-military-style-tactics/>.

⁴ *Id.*

⁵ *Id.*

⁶ See Alice Speri, *In New York Gang Sweeps, Prosecutors Use Conspiracy Laws to Score Easy Convictions*, THE INTERCEPT (Jul. 12, 2016, 1:25 PM), <https://theintercept.com/2016/07/12/in-new-york-gang-sweeps-prosecutors-use-conspiracy-laws-to-score-easy-convictions/>.

III. The NYPD's gang policing is the new stop-and-frisk.

Masquerading as “precision policing,” the NYPD’s gang policing is the functional equivalent of the Department’s unconstitutional stop-and-frisk policing tactics. The raids hyper-criminalize low-level misconduct and target the same population of New York City residents that suffered the indignity of the NYPD’s unconstitutional and racially discriminatory stop-and-frisk practices. While the NYPD touts the declining number of police stops as evidence of its compliance with the law, the Department secretly continues to target, surveil, and catalog young men of color.

Just as they do with gang policing today, the NYPD once argued that its stop-and-frisk tactics were designed to investigate and prevent crime. However, the federal court in *Floyd* found that the “NYPD carrie[d] out more stops where there are more black and Hispanic residents, even when other relevant variables are held constant.”⁷ The racial makeup of an area was more predictive of the number of stops taking place in a specific location than the crime rate.⁸ Such blatant race-based policing was neither constitutional nor precise. For example, although 87% of people stopped in 2011 and 2012 were Black or Latino, almost 90% of the people stopped were released without officers finding a basis for issuing a summons or making an arrest.⁹ Significantly, the hit rate for Black people, as measured by the post-stop issuance of a summons or arrest, was nearly 10% less than for white suspects, an indication that people of color were targeted for stops and frisks based on a lesser degree of suspicion than white New Yorkers.¹⁰

Indeed, the court in *Floyd* noted that the “vague and subjective terms” the NYPD used to support their stops—such as an individual’s “furtive movements” or “suspicious bulge,” the fact that a person “fits [a] description” or was present in a “high crime area”—frequently resulted in unlawful, unjustified stops.¹¹ Officers executing gang policing strategies today rely on similarly vague—and troubling—terms and generalizations to justify their designation of individuals as gang members. Among the criteria listed on the NYPD’s Intelligence Division Gang Entry form is “association w[ith] known gang members,” “colors associated w[ith] gangs,” and “known gang location.”¹²

⁷ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 560 (S.D.N.Y. 2013).

⁸ *Id.*

⁹ *Id.* at 584-85.

¹⁰ David Rudovsky & Lawrence Rosenthal, *The Constitutionality of Stop-and-Frisk in New York City*, 162 UNIV. PA. L. REV. ONLINE 117, 122 (2013).

¹¹ *Floyd*, 959 F. Supp. 2d at 559-60.

¹² 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. REV. 1, 16 (2015).

From 2003 through 2011, the number of stops NYPD officers conducted steadily increased, peaking in 2011 at over 600,000 recorded stops in that year alone.¹³ In the years that followed, the stops have steadily declined. In 2015, there were approximately 22,000 stops; in 2016, there were 12,336 reported stops.¹⁴ Today, the NYPD boasts that stop-and-frisk policing is at an all-time low. But the constitutionality of the Department's policing practices remains in question.

As police stops have decreased, the number of individuals identified as gang members in New York City has skyrocketed. This is not a coincidence. The boys and young men subjected to the degradation of unlawful stops and frisks are now stigmatized as dangerous gang members. Over the past four years, the NYPD has designated more than 17,000 individuals as gang members.¹⁵ This increase is more than triple the rate at which names were added to the NYPD gang database during the Bloomberg Administration.¹⁶ Significantly, during this four-year period, more than 99% of these alleged gang members are people of color, while white individuals comprise only 0.8% of the database.¹⁷ In stark contrast, 33.3% of New York City residents are white, 25.5% are Black, and 23.6% are Hispanic.¹⁸ These statistics strongly suggest that the NYPD continues to engage in police practices that use race as a proxy for crime.

IV. The NYPD is not transparent about the due process implications of its gang database.

The NYPD's gang database also raises serious concerns about the violation of individuals' due process rights. It is our understanding that the NYPD does not notify individuals of their inclusion in the database, nor does the Department provide a mechanism for individuals to challenge their gang designation. Further, we do not believe the NYPD reviews the database for errors or purges the database of individuals who are no longer gang affiliated. Absent these safeguards, the NYPD's database places innocent New Yorkers, primarily New Yorkers of color, at substantial risk of due process violations.

¹³ New York Police Department, *Investigative Encounters In-Service Training, Instructor's Guide*, NYPD MONITOR 1, 7 (Nov. 16, 2017), <http://nypdmonitor.org/wp-content/uploads/2017/11/2017-11-16-As-Filed-MonitorsRecommendation-Attachment1.pdf>.

¹⁴ *Id.*

¹⁵ Alice Speri, *New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio*, THE INTERCEPT, (Jun. 11, 2018, 10:49 AM), <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

¹⁶ *Id.* Between 2001 and August 30, 2013, the NYPD added 21,537 people to its gang database. Howell, *supra* note 12. Of those individuals, 48% were Black and 42% were Latino; only 1% of the individuals added to the NYPD's gang database were white. Howell, *supra* note 12.

¹⁷ Speri, *Gang Database Expanded*, *supra* note 15.

¹⁸ The Furman Center for Real Estate & Urban Policy, *The Changing Racial and Ethnic Makeup of New York City Neighborhoods*, STATE OF NEW YORK CITY'S HOUSING & NEIGHBORHOODS 2011 30, 31 (2012), http://furmancenter.org/files/sotc/The_Changing_Racial_and_Ethnic_Makeup_of_New_York_City_Neighborhoods_11.pdf; *see also* 2016 American Community Survey Estimates 1-Year Estimates for NYC & Boroughs, U.S. CENSUS BUREAU, https://www1.nyc.gov/assets/planning/download/pdf/data-maps/nycpopulation/acs/demo_2016acs1yr_nyc.pdf (estimating based on one-race populations that 31.8% of New York City residents are white, 29.2% are Hispanic or Latino, and 22% are Black).

In light of these concerns, several months ago, LDF and the Center for Constitutional Rights (CCR) served the NYPD with two FOIL Requests seeking records concerning the NYPD's gang policing tactics. These Requests are attached as Exhibits A and B. The Requests sought information about whether and how the NYPD protects New Yorkers from the arbitrary denial of their lives, liberties, and property. The NYPD responded to the Requests and provided *some* minimally responsive information. But the Department refused to disclose the vast majority of the requested records. Of particular concern is the NYPD's refusal to provide information about whether the NYPD protects against erroneous gang/crew designation, and if so, what that process is. The fact that the NYPD contests our access to basic information about the rights and liberties of thousands of New Yorkers is deeply troubling. The NYPD's lack of transparency prevents us from understanding the extent of the problems at hand.

The gang database's apparent lack of due process is particularly disconcerting given the likelihood that the Department regularly misidentifies innocent individuals as gang members. Inclusion in the gang database does not require criminal activity.¹⁹ In 2013, the NYPD disclosed that it may certify an individual as a gang member if she meets two of the following six criteria: (1) spends time in a gang-prone location; (2) has scars/tattoos associated with gangs; (3) has gang related documents; (4) wears colors associated with gangs; (5) associates with known gang members; and (6) uses hand signs associated with gang members.²⁰

These criteria are equally as emblematic of innocence as they may be of gang membership. They provide the Department with unfettered discretion to identify and certify any young person in predominantly Black and Latino neighborhoods as gang members. For example, a 16-year-old high school student who has never committed a crime, has no control of her residence in a gang-prone neighborhood, and happens to know "gang-affiliated" people living in her neighborhood risks inclusion in the database. The NYPD's gang membership criteria could easily serve as pretextual justifications for surveilling and monitoring large swaths of individuals who engage in innocent and lawful behavior.

The NYPD database, therefore, is almost certain to suffer the extensive inaccuracies that infect similar databases in other jurisdictions.²¹ A recent state audit of CalGang, California's statewide gang database, revealed that the databank erroneously included the names of forty-two toddlers one year of age or younger; twenty-eight of these names were entered because these babies allegedly admitted gang membership.²² Similarly, a Freedom of Information Act request

¹⁹ Howell, *supra* note 12.

²⁰ *Id.*

²¹ Annie Sweeny, *Massive Gang Database Kept by Chicago Police Under Fire as Inaccurate, Outdated*, CHI. TRIB. (Apr. 30, 2018, 6:46 AM), <http://www.chicagotribune.com/news/local/breaking/ct-met-chicago-police-gang-database-20180411-story.html>; National Immigrant Law Center, *Untangling the Immigration Enforcement Web*, NATIONAL IMMIGRATION LAW CENTER 1, 10-11 (Sept. 2017), <https://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf>; Richard Winton, *California Gang Database Plagued with Errors, Unsubstantiated Entries, State Auditor Finds*, L.A. TIMES (Aug. 11, 2016, 9:10 PM), <http://www.latimes.com/local/lanow/la-me-ln-calgangs-audit-20160811-snap-story.html>.

²² Winton, *supra* note 21.

concerning the Chicago Police Department's gang database revealed that the repository included more than 160 people in their 70s or 80s, along with two people who were allegedly 132 years old.²³

Concerns about the utility and accuracy of Chicago's gang database recently led Chicago's Inspector General to audit the database and investigate how Chicago police gather information about alleged gang members.²⁴ Concerns about California's gang database led to a statewide audit and a formal change in law.²⁵ Concerns about Portland's gang database led to its dismantling.²⁶ Concerns about the NYPD's gang database demand attention and action.

V. Conclusion

The NYPD's gang policing strategy—like its unconstitutional stop-and-frisk and trespass enforcement practices—unduly exposes a disproportionate number of people of color to a host of injustices. Individuals who are wrongly presumed to be gang members face heightened police surveillance; elevated aggression during police encounters; enhanced bail recommendations; elevated charges; and, for some, loss of housing and the threat of deportation.²⁷ These concerns, and the stories you've heard and will continue to hear today, are familiar to communities of colors throughout the City. Decades of ineffective and unconstitutional stop-and-frisk enforcement have become the NYPD's policing legacy. We must not allow history to repeat itself.

We welcome the opportunity to meet with City Councilmembers to discuss this topic in greater depth, but meaningful reform requires transparency from the NYPD. Today, we ask that the New York City Council:

- Encourage the NYPD to comply with FOIL requirements and disclose all records responsive to LDF and CCR's FOIL Requests.
- Create a process to amplify the voices of and solicit input from affected community members to gain a greater understanding of the issues described today.
- Join advocates' calls for a formal investigation into the NYPD's gang policing practices by the Office of the Inspector General for the NYPD.

²³ Mick Dumke, *Chicago's Gang Database is Full of Errors—And Records We Have Prove It*, PROPUBLICA, ILLINOIS (Apr. 19, 2018, 5:00 AM), <https://www.propublica.org/article/politic-il-insider-chicago-gang-database>.

²⁴ Jacqueline Serrato, *Chicago Police Admits Gang Database Error that Enabled ICE Raid*, CHI. TRIB. (Dec. 6, 2017, 1:31 PM), <http://www.chicagotribune.com/hoy/ct-chicago-police-admits-gang-database-error-20171206-story.html>.

²⁵ See Dave Maass, *Victory! Gov. Brown Signs Bill to Overhaul California's Broken Gang Database*, ELECTRONIC FRONTIER FOUND. (Sept. 28, 2016), <https://www.eff.org/deeplinks/2016/09/gov-brown-signs-bill-overhaul-californias-broken-gang-databases>.

²⁶ Josh Saul, *In a First for the Nation, Portland Police End Gang List To Improve Relations with Blacks and Latinos*, NEWSWEEK (Sept. 15, 2017, 6:40 AM), <http://www.newsweek.com/2017/10/06/gang-violence-portland-police-tear-gang-member-list-effort-rebuild-community-665374.html>.

²⁷ Serrato, *supra* note 24; Sean Garcia-Leys, Meigan Thompson, and Christyn Richardson, *Mislabeled: Allegation of Gang Membership and Their Immigration Consequences*, UCI SCH. OF L. IMMIGR. RTS. CLINIC (Apr. 2016), <http://www.law.uci.edu/academics/real-life-learning/clinics/ucilaw-irc-MislabeledReport.pdf>.

EXHIBIT A



December 20, 2017

VIA EMAIL AND FEDEX

New York City Police Department
Records Access Officer
FOIL Unit, Legal Bureau
One Police Plaza, Room 110-C
New York, New York 10038

Re: Freedom of Information Request

Dear Freedom of Information Officer:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) and Center for Constitutional Rights (“CCR”) make this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, pursuant to New York Public Officers Law §§ 84-90. We respectfully request that you provide us with the following information within five business days of your receipt of this letter:

- (1) All documents, including without limitation, training materials, policies, procedures, regulations, protocols, and guidelines, drafted and/or utilized by the NYPD from January 1, 2010 to the present, regarding the criteria for identifying an individual as a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew in any database, log, list, and/or electronic system.
- (2) All documents, including without limitation, training materials, policies, procedures, regulations, protocols, and guidelines drafted and/or utilized by the Detectives Bureau, the Organized Crime Control Bureau (OCCB), and by and each of the nine (9) Police Service Areas, the eight (8) Borough Investigative Chiefs, the Precinct Detective Squads in each of the eight (8) Boroughs, and the Borough and Precinct Gang Squads from January 1, 2010 to the present, regarding the criteria for identifying youth gangs and/or crews.
- (3) All documents reflecting the demographic information—including but not limited to race, sex, and age—of every individual currently included in any database, log, list, and/or



electronic system for suspected or confirmed membership, association, and/or affiliation with any gang and/or crew.

- (4) A copy of the Gang/Group Incident Report (PD377-158).
- (5) All documents, including without limitation, training materials, policies, procedures, regulations, protocols and guidelines regarding how the NYPD's Domain Awareness System is used to monitor and/or identify a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew.

Format

Electronic records should be produced in their unlocked native format with all original metadata and original filenames. Paper documents should be scanned and produced as Adobe PDF files or TIF files. Emails produced should be grouped together with any attachments. When searching emails, please search all folders, including inbox, subject matter folders, sent items, archived items, and deleted items. Please produce all metadata fields for emails, including BCC and all others.

Fee Waiver and Expedited Processing

The above requests are a matter of public interest. Accordingly, we request a fee waiver and expedited processing. The disclosure of the information sought is not for commercial purposes; instead, it will contribute to the public's understanding of government operations.¹

LDF and CCR are non-profit organizations dedicated to civil and human rights, with a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including policing. We have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this Request is to obtain information to further the public's understanding of important policing policies. Access to this information is crucial for LDF, CCR, and the communities we serve to evaluate such policies and their effects.

¹ Letter of Robert Freeman, Executive Director, NYS Committee on Open Government, Opinion No. 11745, available at <http://docs.dos.ny.gov/coog/ftext/fl11745.htm> (last visited Sept. 6, 2017) (“[T]here is nothing in the Freedom of Information Law that prohibits an agency from waiving the fee for copies.”).



Conclusion

As indicated above, the Freedom of Information Law ("FOIL") requires that an agency respond within five business days of receipt of a FOIL request. If you are unable to comply with our records request within five business days, please provide us with a copy of the internal report explaining the delay in accordance with 211-17 of the New York Police Department Guide, Section 9, and let us know when we may expect the requested records.

If this request is denied in whole or in part, please identify the appropriate specific appellate authority and justify all specific deletions by reference to exemptions in the statute. Please do not redact any non-responsive information from any records; we request the complete copies of any records with any responsive information. Additionally, please inform us of the reason(s) for such denial in writing, and provide the name, mailing address, and email address of the person or body to whom an appeal should be directed.

Please direct correspondence related to this request to the undersigned to the following addressee(s):

Marne Lenox
c/o NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, 5th Floor,
New York, NY 10006
Tel.: (212) 965-2256
Email: mLenox@naacpldf.org

Thank you for considering our request.

Sincerely,

\s\ Marne Lenox
Marne Lenox
Assistant Counsel
NAACP Legal Defense and Educational
Fund, Inc.

\s\ Darius Charney
Darius Charney
Senior Staff Attorney
Center for Constitutional Rights

EXHIBIT B

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738
T. (212) 965 2200 F. (212) 226 7592
www.naacpldf.org



Washington, D.C. Office
1444 Eye Street, NW, 10th Floor
Washington, D.C. 20005
T. (202) 682 1300 F. (202) 682 1312

February 22, 2018

VIA EMAIL AND FEDEX

New York City Police Department
Records Access Officer
FOIL Unit, Legal Bureau
One Police Plaza, Room 110-C
New York, New York 10038

Re: Freedom of Information Request

Dear Freedom of Information Officer:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) and Center for Constitutional Rights (“CCR”) make this request for records, regardless of format, medium, or physical characteristics, and including electronic records and information, pursuant to New York Public Officers Law §§ 84-90. We respectfully request that you provide us with the following information within five business days of your receipt of this letter:

- (1) All documents, including but not limited to training materials, policies, procedures, regulations, protocols, and guidelines, drafted and/or utilized by the NYPD from January 1, 2010, to the present that reflect the NYPD’s definition of the following terms:
 - a. Crew
 - b. Gang
- (2) All documents, including but not limited to training materials, policies, procedures, regulations, protocols, and guidelines, drafted and/or utilized by the NYPD from January 1, 2010, to the present, regarding the process by which an individual identified as a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew in any database, log, list, and/or electronic system is notified about his/her inclusion in such database, log, list, and/or electronic system.
- (3) All documents, including but not limited to training materials, policies, procedures, regulations, protocols, and guidelines, drafted and/or utilized by the NYPD from January 1, 2010, to the present, regarding the process by which an individual identified as a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew in



any database, log, list, and/or electronic system may seek to challenge his/her inclusion in such database, log, list, and/or electronic system.

- (4) All documents, including but not limited to training materials, policies, procedures, regulations, protocols, and guidelines, drafted and/or utilized by the NYPD from January 1, 2010, to the present, regarding any challenge by an individual identified as a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew in any database, log, list, and/or electronic system regarding his/her inclusion in such database, log, list, and/or electronic system and the current status of that challenge.
- (5) All documents, including but not limited to training materials, policies, procedures, regulations, protocols, and guidelines, drafted and/or utilized by the NYPD from January 1, 2010, to the present, regarding the process by which any database, log, list, and/or electronic system that identifies an individual as a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew is reviewed, audited, and/or modified for accuracy.
- (6) A list of all public and/or private companies, agencies, and/or organizations, including but not limited to the New York City Department of Education (DOE), the New York City Housing Authority (NYCHA), and the U.S. Immigrations and Customs Enforcement (ICE), with whom the NYPD has shared any database, log, list, and/or electronic system that identifies an individual as a suspected or confirmed member, associate, and/or affiliate of any gang and/or crew from January 1, 2010, to the present.

Format

Electronic records should be produced in their unlocked native format with all original metadata and original filenames. Paper documents should be scanned and produced as Adobe PDF files or TIF files. Emails produced should be grouped together with any attachments. When searching emails, please search all folders, including inbox, subject matter folders, sent items, archived items, and deleted items. Please produce all metadata fields for emails, including BCC.



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Conclusion

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If this request is denied in whole or in part, please identify the appropriate specific appellate authority and justify all specific deletions by reference to exemptions in the statute. Please do not redact any non-responsive information from any records; we request the complete copies of any records with any responsive information. Additionally, please inform us of the reason(s) for such denial in writing, and provide the name, mailing address, and email address of the person or body to whom an appeal should be directed.

Please direct correspondence related to this request to the undersigned via telephone at (212) 965-2256, email at mtenox@naacpldf.org, or by mail at 40 Rector Street, 5th Floor, New York, NY 10006.

¹ Letter of Robert Freeman, Executive Director, NYS Committee on Open Government, Opinion No. 11745, <http://docs.dos.ny.gov/coog/ftext/f11745.htm> (last visited Sept. 6, 2017) ("[T]here is nothing in the Freedom of Information Law that prohibits an agency from waiving the fee for copies.").



Thank you for considering our request.

Sincerely,

\s\ Marne Lenox

Marne Lenox

Assistant Counsel

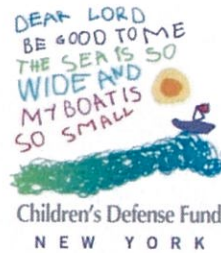
NAACP Legal Defense and Educational Fund, Inc.

\s\ Darius Charney

Darius Charney

Senior Staff Attorney

Center for Constitutional Rights



**Testimony for the New York City Council Committee on Public Safety
Oversight Hearing on NYPD's Gang Takedown Efforts
June 13, 2018**

Good Afternoon. My name is Charlotte Pope and I am the Youth Justice Policy Associate with the Children's Defense Fund-New York (CDF-NY). The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. Through CDF's Cradle to Prison Pipeline® Campaign—a national initiative to stop the funneling of children down life paths that often lead to arrest, conviction and incarceration—CDF-NY works to replace punitive school discipline and safety policies in New York schools with social and emotional supports that encourage a positive school climate.

Thank you to Chair Richards, and to the members and staff of the City Council Committee on Public Safety for the opportunity to testify today.

Introduction

Our testimony intends to highlight the ways that intersections between current gang policing, school policing, and school discipline threatens to push more young people of color out of City schools and into the justice system. During the Council's 2014 hearing on the NYPD's Operation Crew Cut, the NYPD testified about groups of people "linked either by their residence or by the schools they attend which we refer to as crews."¹ In a presentation released by the NYPD more recently, crews are defined as "a group of people associated or classed together."² There is little public transparency around who is or can be considered a possible crew or gang member, and who will thereby be subjected to targeted surveillance and heightened policing. Gang databases in particular raise significant questions around violations of youth privacy, due process, lack of accountability, and racial disparities.³ As of August 30, 2013, the NYPD's Gang Database included over 20,000 people, where about 30% were under 18 years of age when they were added.⁴ We are concerned that the labeling of young people as so-called gang or crew members serves as pretext for intensive policing of young people, which in turn exacerbates school pushout and the school to prison pipeline.

As an active member of the Dignity in Schools Campaign New York, a coalition in large part organized by youth, CDF-NY understands that justice system responses to student behaviors in school do not address the underlying conditions that lead to the unwelcome behaviors, and those measures cannot be relied on to support long-term solutions.⁵ Research, including one ethnographic study in schools across New York City⁶ and another in the Bronx specifically⁷, has found that intense policing and surveillance methods lead students to distrust and avoid school officials – instead of instilling a greater sense of safety, students feel a heightened

¹ See *Oversight: The NYPD's Operation Crew Cut and Crime Reduction Strategies for NYCHA* (2014, April 28). Hearing Transcript page 63. Available at <http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=304831&GUID=66D6AF49-65A7-4AA8-851E-DA8755D55FED&Options=&Search=>.

² Speri, A. (2018, June 11). New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio. *The Intercept*. Available at <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

³ National Juvenile Justice Network. (2016). *Safeguarding the Confidentiality of Youth in the Justice System: Recommendations and Resources*. Available at http://www.njjn.org/uploads/policy-platforms/Juv-confidentiality_safeguards-recommendations_8.1.16_FINAL.pdf.

⁴ Howell, K.B. (2015). *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*. 5 Univ. Denver Crim. Law Rev. 1. Available at https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1067&context=cl_pubs.

⁵ Kupchik, A. (2009). Things are Tough All Over: Race, Ethnicity, Class and School Discipline. *Punishment and Society*, 11: 291-302.

⁶ Weiss, J. (2008) *Under the Radar: School Surveillance and Youth Resistance*. PhD thesis. City University of New York.

⁷ Weiss, J. (2010). Scan This: Examining Student Resistance to School Surveillance. In *Schools Under Surveillance: Cultures of Control in Public Education*. Eds. Torin Monahan & Rodolfo D. Torres.

sense of “danger and disillusion.”⁸ Research on the school-to-prison pipeline describes how the introduction of police officers to schools leads to a “net widening” effect,⁹ disrupts the schooling process and students’ educational trajectories,¹⁰ and has had a disproportionately harmful impact on students of color,¹¹ who are more likely to be arrested at school for behaving in the same ways as their peers.¹² Yet school criminalization continues as new research finds either no correlation with safety or an inverse one.¹³ We are especially concerned by the lack of public transparency around the information sharing that arises from the relationship between the NYPD and the Department of Education (DOE) and the coordinated surveillance of young people in school.

School Policing

During the May 14, 2018 Executive Budget hearing on Public Safety, the NYPD testified that the School Safety Division would be bringing the Neighborhood Coordination Officer (NCO) “philosophy” to schools starting in September in the Bronx and moving citywide after that, remarking that neighborhood policing has “enhanced” the relationship between the patrol officers and the school safety agents.¹⁴ Within the NCO role, as written in the patrol guide, is to “Visit schools frequently and confer with school principals and school safety agents at public schools regarding problematic conditions, violent crime, and gang/crew activity.”¹⁵ We are concerned by the prospect of increased inter-agency discussions, especially given the arbitrary criteria relied on for gang designation. According to the City’s response to a FOIL request from 2014, a person can be certified as an “Identified Gang Member” and entered into the NYPD database when:

1. The person admits to membership during debriefing OR
2. 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 (Ex. Pct. Personnel, Intell, School Safety, Dept. of Correction, or Outside Agency)... OR
3. Meets any two below mentioned criteria
 - a. Known gang Location
 - b. Scars/Tattoos Associated w/ Gangs
 - c. Gang Related Documents
 - d. Colors Associated w/ Gangs
 - e. Association w/ Known Gang members
 - f. Hand Signs Associated with Gangs

This process for designating people – including youth of any age – as a so called “Identified Gang Member” relies on information from school safety, as well as “outside agency” sources, which presumably includes the DOE. Indeed, the DOE has testified that one of the intended goals of the transfer of school safety to the NYPD was to allow the DOE “to share intelligence related to events that occur during the school day that are presumed to be gang-related.”¹⁶

CDF-NY has long been concerned by the depth of “intelligence” sharing institutionalized by the transfer of school safety to the NYPD. In the context of this hearing, we understand that the gang label itself permits and encourages even more aggressive and broader police intrusion into the lives of young people in and out of

⁸ Brooks, K., Schiraldi, V., and Ziedenberg, J. (2000). School House Hype: Two Years Later. *Justice Policy Institute & Children’s Law Center, Inc.* Available at http://www.justicepolicy.org/uploads/justicepolicy/documents/school_house_hype.pdf.

⁹ Devin, D.N., and Gottfredson, D.C. (2018). The Roles of Police Officers in Schools: Effects on the Recording and Reporting of Crime. *Youth Violence and Juvenile Justice*, 16(2): 208-223.

¹⁰ Justice Policy Institute. (2011). Education Under Arrests: The Case Against Police in Schools. Washington, DC: Author. Available at http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf.

¹¹ Sussman, A. (2012). Learning in Lockdown: School Police, Race, and the Limits of Law. *UCLA Law Review*, 59: 788-849.

¹² Katayoon, M. (2011). Students of the Mass Incarceration Nation. *Howard Law Journal*, 54(2): 343-395

¹³ Adams, A.T. (2000). The Status of School Discipline and Violence, 567 ANNALS AM. ACAD. POL. & SOC. SCI. 140; Am. Psychological Ass’n Zero Tolerance Task Force. (2008). Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations, 63 AM. PSYCHOL. 852, 853–54.

¹⁴ See *Executive Budget Hearings – Public Safety*. Video 1:17:00. Available at <http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=605546&GUID=C594C5EC-2D7A-40A2-B04F-982C393B43EC&Options=info&Search=>.

¹⁵ See *Patrol Guide: Neighborhood Coordination Officer*. Page 80. Available at https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf.

¹⁶ See *Oversight – Youth Gang Recruitment* (2001, January 25). Hearing Transcript page 31. Available at <http://legistar.council.nyc.gov/MeetingDetail.aspx?ID=71668&GUID=987E52BE-DA18-424B-83D1-553053E5F961&Options=info&Search=gang>

school.¹⁷ The use of the gang narrative dehumanizes the targets of policing – both those who are labeled as crew members and for those who associate with or have friendships with alleged crew members. Because police contact, stops, arrests, prosecution, and imprisonment are all factors that discourage and impede meaningful participation in school,¹⁸ we urge the Council to prioritize divestment from the intensive policing of youth and instead invest in community responses and supports to alleviate the material conditions that may lead to vulnerability or violence.

School Discipline

The practice of stationing police in school hallways and cafeterias often leads to police responding to and enforcing school disciplinary matters.¹⁹ As one glimpse of this, during the 2016-2017 school year there were 3,261 total suspensions resulting from incidents where NYPD was contacted.²⁰

The DOE's Student Code of Conduct has two distinct infractions that mention "gangs," outlined below.

Discipline Code Infraction	Harshest Response
B26 Engaging in gang-related behavior (e.g., wearing or displaying gang apparel and/or accessories, writing graffiti, making gestures or signs)*	6-10 day suspension; if there is substantial damage to property requiring extensive repair - suspension for 60-90 days
B55 Engaging in threatening, dangerous or violent behavior that is gang-related*	Expulsion

*NOTE: In determining whether the behavior is gang-related, school officials may consult with the Office of Safety and Youth Development's Gang Unit

	Suspensions in SY 2016-2017	Suspensions in SY 2015-2016
B26 Engaging in gang-related behavior ²¹	50+	55+
B55 Engaging in threatening, dangerous or violent behavior that is gang-related	72	111

Infraction B55 is overbroad, sweeping up too many behaviors – “threatening” behavior, “dangerous” behavior, and then “violent” behavior – and potentially resulting in the harshest and least productive consequence for youth – expulsion. Further, there is inconsistency within the code with regard to penalties. A comparable infraction, B37, or “threatening violence,” carries a maximum punishment of a 60-90 day suspension. We are concerned that the gang label is being employed by the Code in order to heighten the suppression of young people, despite research that “getting tough” does not make communities safer but will only increase racial and ethnic disparities as they inevitably target Black and Latinx youth.²²

The wearing of accessories deemed by school administration as so called gang-related is itself a punishable behavior that can be responded to with a 10 day suspension from school. However, disciplinary responses to “wearing or displaying gang apparel and/or accessories” or “making gestures or signs” creates the misimpression that gestures alone indicate affiliation and that gang affiliation alone is a proxy for violence.

¹⁷ Howell, K.B. (2011). *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention*. St. Thomas Law Review, 23. Available at <http://stthomaslawreview.org/articles/v23/4/howell.pdf>.

¹⁸ Kirk, D.S. and Sampson, R.J. (2013). *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*. *Sociology of Education* 88(1): 36-62. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4192649/>; Hirschfield, P. (2009). *Another Way Out: The Impact of Juvenile Arrests on High School Dropout*. *Sociology of Education* 82(4). Available at <http://journals.sagepub.com/doi/10.1177/003804070908200404>

¹⁹ American Civil Liberties Union. (2017). *Bullies in Blue: The Origins and Consequences of School Policing*. Available at https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf.

²⁰ See “NYPD Contacts that resulted in suspensions” <http://schools.nyc.gov/community/city/publicaffairs/Reports.htm>

²¹ The plus sign indicates that some information has been redacted and the number is an underestimate.

²² The Charles Hamilton Houston Institute for Race and Justice, Harvard Law School. (2008). *No More Children Left Behind Bars: A Briefing on Young Gang Violence and Juvenile Crime Prevention*. Available at https://bobbyscott.house.gov/sites/bobbyscott.house.gov/files/migrated/uploads/no_more_children_left_behind_bars.pdf.

Infractions B26 and B55 contain the note “In determining whether the behavior is gang-related, school officials may consult with the Office of Safety and Youth Development’s Gang Unit.” There is little public transparency around the Gang Prevention & Intervention Unit (GPIU) of the Office of Safety and Youth Development, what a school consultation with the office entails, or how a determination of gang affiliated is made.

Without this information, it is not clear how school administrators working with youth are making punishment decisions. Our concern is that these gang definitions, particularly gang definitions that criminalize by dress code, are written in ways that would heighten the policing of youth of color regardless of their behavior and, at the same time, grow the collateral consequences of a suspension to include being listed in the NYPD’s gang database.

Among the listed goals of the GPIU is “Maintain current information and in-house expertise relating to all aspects of gangs and various forms of youth violence.” There is a lack of transparency around what kinds of information sharing are happening between schools and the GPIU as it relates to individual students and adult suspicion, what constitutes “expertise”, and, given concerns around databases, what information is being maintained by the office. Through CDF-NY’s participation on the Mayor’s Leadership Team on School Climate and Discipline’s School Safety Working Group, we sought to amend the Memorandum of Understanding between the NYPD and DOE to contain language that clearly delineates when NYPD personnel can be called in to intervene. One recommendation made in the Leadership Team’s second report was for School Safety personnel responsibilities to be limited to matters where there is a “real and immediate threat of serious physical injury to a member of the school community.”²³ This would help mitigate the many complications inherent to police interventions in school disciplinary matters, by restricting police involvement in student’s lives to situations posing an immediate risk of harm. As of this testimony, it is unclear whether this recommendation will be adopted as part of the final MOU.

As it relates to the Discipline Code, we strongly encourage this Committee to embrace and work to codify the recommendations released by the Dignity in Schools Campaign through their 2012 Model Code of Conduct:²⁴

1. School Resource Officers (SROs), security officers, administrators, teachers or other school staff shall not add students to gang databases, provide information to law enforcement who have authority to add students to gang databases, and/or search or work with law enforcement to search municipal databases to find information on students.
2. A community board that includes parents or guardians, youth advocates, students and social service providers shall regularly review all instances in which students are accused of “gang-related” behavior or labeled as being “gang affiliated” by SROs, security officers, teachers or school staff, to ensure that no racial profiling, or other targeting of certain students or groups of students is taking place.
3. School districts shall provide youth suspected of membership or association with neighborhoods increased supports, mentoring and resources – including access to intervention workers or peace-builders – recognizing that youth who are involved in or drawn to the underground economy are most in need of the positive environment and opportunities that schools provide.

Surveillance Infrastructure

In 2004, City Council passed a bill to increase the installation of cameras in schools by the DOE in conjunction with the NYPD.²⁵ While the final version of the law did not mandate the installation of video surveillance, it required the DOE to assess all schools by the end of 2006.²⁶ Following the introduction of the bill, \$120 million was put into the DOE budget in the five year capital plan for the purpose of placing security cameras in schools.²⁷ By 2008 more than 300 middle and high schools in 130 buildings were set to be equipped with nearly 6,000 cameras belonging to the DOE’s \$120 million Internet Protocol Digital Video Surveillance

²³ The Mayor’s Leadership Team on School Climate and Discipline. (2016). *Maintaining the Momentum: A Plan for Safety and Fairness in Schools*. Available at http://www1.nyc.gov/assets/sclt/downloads/pdf/SCLT_Report_7-21-16.pdf.

²⁴ The Dignity in Schools Campaign. (2012). *A Model Code on Education and Dignity*. Available at http://dignityinschools.org/wp-content/uploads/2017/10/Model_Code_2013-1.pdf.

²⁵ Local Law of 2004, Council Int. No 0150-2004.

²⁶ Ayoub, L.H.. (2013). *School Safety in New York City: Policy, Practice, and Programs from 2002 to 2013*. Center for Court Innovation. Available at <https://www.courtinnovation.org/sites/default/files/documents/School%20Safety%20Policy%20Brief.pdf>.

²⁷ Andreatta, D. (2004, September 16). *Cams for All Schools as Crime Skyrockets*. New York Post. <https://nypost.com/2004/09/16/cams-for-all-schools-as-crime-skyrockets/>.

(IPDVS) system.²⁸ One research study from 2008 found that enhanced surveillance added to students' experiences of being "monitored," "feared," "contained," and "harassed" all in the name of safety and protection.²⁹ A report published nearly ten years later found the same results – students are deeply aware that the persistent advancement of surveillance measures inside their schools has ill-intended consequences on them and their education.³⁰ Further, there is no clear evidence to support the argument that punitive policies result in safer learning environments. At the same time, research consistently finds that students who report high levels of school attachment have higher proportional odds of reporting feeling more safe.³¹ Creating an atmosphere of community and interconnectedness is a prevention strategy that has long proven itself to be a meaningful tool for improving a variety of academic and behavioral outcomes.³²

In addition to the issue of questionable effectiveness in promoting school safety, we are also concerned about youth privacy. The Council's response to the FY2019 Preliminary Budget included the recommendation to spend \$100 million on camera security systems (Internet Protocol Digital Video Surveillance) in schools.³³ When the question of the NYPD's support for camera security systems was raised during the May 14 Executive Budget hearing, the NYPD responded, "We are very favorable on the installation of cameras we think they are very effective at helping us monitor what's going on inside of schools", while noting that "Currently though we only have access to the cameras from the inside the school location. We highly recommend that we have remote access to that." CDF-NY is deeply concerned by such recommendations.

As the Legal Defense Fund and Center for Constitutional Rights point out, people presumed to be gang or crew affiliated already face heightened police surveillance, increased probability of police encounters, and for some, the threat of deportation.³⁴ New school security infrastructure will surely expand the intensive policing of people already experiencing surveillance, especially young people with a gang/crew label. In an article published in 2008, the DOE claimed that while facial recognition software is not being used, the capacity for future installation is there.³⁵ There is currently no effective oversight to limit the extent of surveillance or information collected relating to targeted youth. Operation Crew Cut's approach has been described as one that "melds intelligence gathered by officers on the street with online postings" and "seeks to exploit the online postings of suspected members and their digital connections."³⁶ Growing the NYPD's and the School Safety Division's capacity to watch already targeted students does not address the conditions that make group affiliations helpful to young people.

Conclusion

CDF-NY believes that all city schools need access to models, such as restorative justice practices and collaborative problem solving, that can positively address student needs and lessen the demand for policing and surveillance. Steps towards a positive school climate will come from alternatives to police responses, including training and support for educators and investments in school staff such as mental health workers or restorative practitioners.

Thank you again for this opportunity to testify.

²⁸ Winston, A. (2008, January 21). *What Do Cameras Cure? System Gets Own Scrutiny*. City Limits. Available at <https://citylimits.org/2008/01/21/what-do-cameras-cure-system-gets-own-scrutiny/>.

²⁹ Weiss, J. (2008) *Under the Radar: School Surveillance and Youth Resistance*. PhD thesis. City University of New York.

³⁰ Center for Popular Democracy and the Urban Youth Collaborative. (2017). *The \$746 Million a Year School-to-Prison Pipeline: The Ineffective, Discriminatory, and Costly Process of Criminalizing New York City Students*. Available at http://populardemocracy.org/sites/default/files/STPP_layout_web_final.pdf.

³¹ Connell, N.M. (2018). Fear of Crime at School: Understanding Student Perceptions of Safety as Function of Historical Context. *Youth Violence and Juvenile Justice*, 16(2): 124-136.

³² Connell, N.M. (2018). Fear of Crime at School: Understanding Student Perceptions of Safety as Function of Historical Context. *Youth Violence and Juvenile Justice*, 16(2): 124-136.

³³ See *The New York City Council's Response to the Fiscal 2019 Preliminary Budget and Fiscal 2018 Preliminary Mayor's Management Report*. Available at <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/04/The-Fiscal-2019-Preliminary-Budget-Response.pdf>.

³⁴ See *Re: Public Hearings on the New York City Police Department's Gang Policing Practices*. Available at https://www.scribd.com/document/370966169/2018-02-05-city-council-letter-for-gang-database-hearing-final?secret_password=o7iqQJWtwagV1D2X388I#fullscreen&from_embed.

³⁵ Winston, A. (2008, January 21). *Op. Cit.*

³⁶ Goldstein, J., and Goodman, J.D. (2013, September 18). *Frisking Tactic Yields to a Focus on Youth Gangs*. The New York Times. Available at <https://www.nytimes.com/2013/09/19/nyregion/frisking-tactic-yields-to-a-focus-on-youth-gangs.html>.

**Written Comments of The Bronx Defenders
New York City Council
Hearing of the Public Safety Committee
Oversight -- NYPD's Gang Takedown Efforts
June 13, 2018**

My name is Jeremy Kaplan-Lyman and I am a supervising attorney at The Bronx Defenders. The Bronx Defenders is a community-based public defender office in the South Bronx that provides holistic criminal defense, family defense, civil legal services, and social services to approximately 28,000 Bronx residents every year. On behalf of The Bronx Defenders, I want to thank the Public Safety Committee for the opportunity to discuss our concerns with the NYPD's approach to gang policing and use of secret gang databases.

Introduction

The NYPD has trumpeted its gang enforcement tactics as a surgical approach to policing that focuses police resources on only the most dangerous criminals. The reality, however, as experienced by tens of thousands of Bronx residents, suggests that gang policing replicates many of the abuses and the indiscriminate breadth of the quota-driven stop-and-frisk policing era.

My client's story, which I share with his permission, illustrates the costs that the NYPD's policing imposes on thousands of young New Yorker's of color. He was arrested by the officers from the 42nd precinct over a dozen times before his 18th birthday. He has never been part of anything resembling a gang but that was of no matter to the NYPD. Officers from the 42nd started accusing him of being a gang member around his 15th birthday because, as one officer told him, of the people he hung out with. But the crowd that my client hung out with were just other teenagers from his building and the block on which he was raised. This claim, that my client was part of a gang, brought intense scrutiny from the police in his area. Since a police officer first claimed he was a gang member, my client has been frequently stopped and arrested. When arrested, detectives would often question him about whether he knew anything about unsolved shootings in the area. He did not. In some of these arrests, the police would let my client go without bringing charges. Other times, minor charges for crimes and violations like marijuana possession or resisting arrest were brought by the Bronx District Attorney's office.

Almost all of his charges were eventually dismissed. He still has no criminal record. Yet, according to NYPD records disclosed in a civilian complaint review board case, he is a gang member and he is treated as such. Police officers in his neighborhood continue to arrest him and bring him to the precinct to question him, often without filing charges.

My client's experience is all too common among young men of color throughout the Bronx. Too often do I meet young clients, facing only minor charges, who have been stopped, harassed, and arrested, again and again by officers in the neighborhood because they are suspected of being in gangs. It is heartbreaking to have mother after mother report that their teenage sons keep getting seized by the same police officers for "questioning" with charges rarely being filed.

The Need for Oversight

The experiences of my client and other young people in the Bronx encapsulate many of our office's concerns with the NYPD's current approach to gang policing, which consists of using a massive, secret database to target people of color throughout the city for intensive surveillance and baseless stops and arrests. This surveillance often leads to gang indictments that sweep up entire communities' worth of young people with many accused of participating in a conspiracy by doing nothing more than engaging in protected speech on social media. We are just beginning to see the full scope of the enmeshed consequences that flow from being placed on the database, but we know that gang databases in other cities and states, often riddled with errors, have been used by ICE in deportation cases.¹ The NYPD has not yet disclosed whether it shares the contents of its gang database with other city, state, or federal agencies.

As many of the facets of gang policing and the gang database remain secret, this Committee's first job should be to task the NYPD with providing information about the scope, scale, racial makeup, and practices of gang policing in New York City. Additionally, this Committee should ascertain the outside agencies (e.g. Immigration and Customs Enforcement (ICE)) with which the NYPD is sharing information from its database and seek to prohibit any further sharing of the largely unvetted and uncorroborated information. Experiences of advocates in our office working with Bronx residents suggest areas for increased scrutiny and oversight by the City Council.

¹ See, e.g., Emmanuel Felton, *Gang Databases are a life sentence for Black and Latino Communities*, Pacific Standard (Mar. 15, 2018), <https://psmag.com/social-justice/gang-databases-life-sentence-for-black-and-latino-communities> (ICE targeted non-citizen incorrectly labled a gang member by Chicago Police Department database); Natalie Delgadillo, *Could Gang Affiliation Be Used to Round Up DACA Recipients?*, CityLab (Feb. 17, 2017), <https://www.citylab.com/equity/2017/02/is-gang-affiliation-being-used-to-round-up-daca-recipients/> 517212 (ICE relies on California's CalGang database, which is riddled with errors, to make arrests).

Surveillance and Frequent Baseless Police Encounters

Individuals identified by the NYPD as “gang members” are subjected to frequent surveillance and unwanted police encounters, regardless of their actual participation in criminal activity. Surveillance in the name of gang policing ranges from tracking and collating young people’s social media accounts to, as two Bronx mothers reported to me, officers forcing teenagers to stand to have their photographs taken. Young people report being harassed by police officers on the street, being singled out for stop and frisks, and being picked up by police officers again and again and questioned about gangs and crimes in their area. These encounters often do not result in charges.

Conspiracy Cases: Overbroad, Overly-punitive, and Unfair

Gang policing, surveillance, and the gang database have been used to arrest large numbers of young people at a time. District Attorneys and the NYPD are deploying conspiracy laws, originally designed to fight the mafia, against large numbers of children and young people under the banner of “gang enforcement.” These investigations and indictments often seek to hold responsible an entire community of young people for the crimes of a few. Participation is often proven by social media posts. The so-called “gangs” that District Attorneys are targeting do not resemble the highly organized and hierarchical criminal organizations conspiracy laws were designed to fight. Instead, what the NYPD labels as gangs often turn out to be loosely organized crews of young people. Military-style raids of housing developments by the NYPD to effectuate mass arrests terrorize entire neighborhoods and lead to dangerous and occasionally fatal encounters for residents.

Secret Gang Database

The NYPD’s secret gang database, which appears to play a role in the increased surveillance and baseless seizures of young people, is racially skewed and unfair. Data from a recent freedom of information request revealed that 99.2% of individuals added to the NYPD’s gang database since the beginning of the de Blasio administration have been non-white.² The database is maintained under a cloud of secrecy. While it appears to be easy for New Yorkers to end up on the database, there is no mechanisms for individuals to have themselves removed or challenge their designation as a “gang member.” Most New Yorkers are not even aware they have been classified by the government as a gang member as there is no formal method of

² Alice Speri, New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio, The Intercept (Jun. 11, 2018), <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio>.

obtaining notice that one is placed on the list. This Committee should be asking the NYPD to make publicly available:

- What is the racial and gender makeup of individuals on database?
- How can individuals challenge their inclusion in the database and request their removal?
- What city, state, and federal agencies does the NYPD share the database with?
- What review or audit, if any, does the NYPD do of the individuals placed on the database?

Enmeshed Consequences

The scope, accuracy, and fairness of the gang database are particularly troubling given the role allegations of gang membership play in deportation proceedings. ICE routinely targets individuals for arrest and deportation based on alleged gang affiliation. Once individuals are arrested and placed in removal proceedings, ICE uses alleged gang membership to argue that individuals should be denied bond and as a reason to deport non-citizens. As a result, allegations of gang affiliation can be used to jail non-citizens for years. The extent to which the NYPD is sharing information in its database with ICE is currently unknown. But gang databases in other cities and states have been used by ICE to target, jail, and attempt deport non-citizens.³ The possibility that ICE may be using the NYPD's gang database, or may seek to in the future, calls for stricter oversight of the database itself and who it is being shared with.

The possibility of other city, state, or federal agencies receiving information from the NYPD's gang database raises the spectre of other enmeshed consequences. Potential sharing of information from the secret database creates risks that unvetted and unsubstantiated allegations of gang affiliation will lead to denial of employment opportunities or entitlements like public housing.

The Criminogenic Nature and Psychological Costs of Gang Policing

The irony of the the overreach of the NYPD's approach to gang policing is that it might contribute to more crime, not less. Young people of color and their families bear the psychic scars that come along with the constant surveillance, harassment, and arrests by the NYPD. Those psychic scars include feelings of disillusionment, anger, and marginalization. Scholars have shown that unfairness and abuse at the hands of law enforcement leads to decreased police legitimacy, which, in turn, leads to increased law breaking and unwillingness to cooperate with

³ See footnote 1.

law enforcement.⁴ The problems I have identified lead to the continued deterioration of the relationship between New Yorkers, particularly communities of color, and their police department. A reversal of that trend should be at the heart of any crime reduction efforts.

⁴ See Tom. R. Tyler, et. al, *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, 11 J. of Empirical Leg. Stud. 751, 775 (2014) (concluding that higher police legitimacy predicts lower levels of criminal behavior and increased cooperation with police); Tom R. Tyler, *Policing in Black and White: Ethnic Group Differences in Trust and Confidence in the Police*, 8 Police Q. 322, 322 (2005) (reporting that where citizens do not trust the criminal justice system, they will not use it); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 234, 263 (2008) (showing that where the police are seen as legitimate people are more willing to cooperate with the police, report crimes in their neighborhoods, and more likely to work with neighborhood groups); Jeffery A. Fagan & Garth Davies, *Policing Guns: Order Maintenance and Crime Control in New York*, in *Guns, Crime, and Punishment in America* 191, 209 (Bernard E. Harcourt ed., 2003) (unfair policing practices may lead to increases in crime).



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

**Rebecca Kinsella – Social Worker, Criminal Defense Practice
BROOKLYN DEFENDER SERVICES**

**Presented before
The New York City Council
Committee on Public Safety
Oversight Hearing on NYPD’s Gang Takedown Efforts
June 11, 2018**

My name is Rebecca Kinsella. I am an Adolescent Social Worker at Brooklyn Defender Services (BDS), one of the largest legal service providers in Brooklyn. BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and tools for self-advocacy for over 30,000 clients in Brooklyn every year. I thank the New York City Council Committee on Public Safety and, in particular, Chair Richards, for holding this oversight hearing on the New York Police Department’s (NYPD) gang takedown efforts.

My testimony today is about the mass surveilling of Black and Latinx communities via the NYPD’s gang database, the immense harm caused by a gang designation, and the need for alternative responses to problematic youth behavior. Currently there is no meaningful oversight and accountability for the NYPD gang database, no publicly acknowledged measures to ensure that people are not erroneously placed or kept on the database, no transparency on whether a person is on the database, and no remedy to remove one’s self from it. In response to Freedom of Information Law (FOIL) requests, the NYPD has argued that it cannot tell New Yorkers whether they are in the database because that would reveal non-routine tactics.

NYPD uses arbitrary criteria to determine gang membership or affiliation such as living in a “known gang location,” apparel, scars, tattoos, hand signs, and relationships with “known gang members.” Significantly, commission of any crime(s) is/are not among the criteria. Therefore a teenager who lives in public housing and mimics his peers by showing hand signs in a Facebook

photo with no connection to any criminal activity can be included in this database for the rest of their life without any due process protections.

In spite of the critical flaws which undermine its integrity, the gang database has devastating consequences for those listed, including heightened police harassment, unaffordable bail and elevated criminal sanctions in cases that may otherwise be dismissed, and possibly deportation for immigrant New Yorkers. This undemocratic policing tool exists at a time of precipitously declining violence and statistically marginal influence of gang motivations, as identified by the NYPD, on remaining violence. In these ways, the NYPD database and label as a gang affiliate recall McCarthyism, in which suspicions, and inconclusive and questionable evidence were collected and selectively distributed in order to penalize and even criminalize a person's real or supposed association with a group, with no meaningful opportunities to challenge their designation. BDS urges an immediate elimination of this database. We also recognize the serious and lasting harm of violence within communities, but our relationships with impacted individuals and families and our systemic view of the problem brings us to a very different conclusion than the one drawn by the NYPD, namely that greater opportunity, not repression, military-style raids and mass arrests, is the solution.

GANG PROFILING AND POLICING COMMUNITIES POST-FLOYD

As CUNY Law Professor K. Babe Howell wrote in her seminal 2015 report on gang policing, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, "After years of stopping suspicious people in high-crime areas, the NYPD is addicted to profile-based policing." The U.S. District Court ruling in *Floyd v. City of New York* did not end the practice of stop and frisk or deem it unconstitutional. Rather, the Court ruled the probative cause being a racial profile was unconstitutional and as long as there is a reasonable suspicion of criminal activity the tactic of a stop and frisk is legally permissible. Since then, reported stop-and-frisks have declined, and the NYPD has doubled its anti-gang unit and increased monitoring, particularly via social media.^{1,2} (The Gang Division had already doubled in size shortly after class certification in *Floyd*.)

Many of the people we represent experience an alleged gang affiliation as a justification for a stop and frisk, other forms of police harassment like threatening phone calls and letters, and sometimes arrests for the paltriest of offenses like jaywalking. Once a person is "certified" by the NYPD as a gang member because they meet the criteria mentioned above, there is no established way to challenge that administrative designation in court or elsewhere. In other words, even those who are arrested and whose charges are later dismissed, or who complete a sentence of some kind, may still be subject to invasive and abusive police tactics indefinitely with no recourse. Unlike illegal stops and searches, which occasionally, though rarely relative to their

¹ *N.b.* The decline in reported stop-and-frisks from 685,724 to 22,565 in just a few years defies belief, and many have expressed skepticism about the reporting methods, but the consensus holds that use of this tactic has indeed declined. See New York Civil Liberties Union, *Stop-and-Frisk Data*, available at <https://www.nyclu.org/en/stop-and-frisk-data>.

² K. Babe Howell, *Gang Policing: The Post Stop and Frisk Justification for Profile-Based Policing*, 5 UNIV. DENVER CRIM. L. REV. 1, 16 (2015), available at https://academicworks.cuny.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1067&context=cl_pubs.

extreme frequency, resulted in arrests that could be challenged in court, gang designations are subject to no public accountability.

It is no surprise that inclusion in the NYPD's gang database is racially disproportionate. According to data turned over after FOIL requests submitted by Professor Howell, the NYPD added 21,537 people to its gang database between 2001 and August 30, 2013. 48% were Black and 44% were Latino; only 1% of the individuals added to the NYPD's gang database were white.³ Subsequent FOIL responses received by Professor Howell revealed that an additional 17,000 people were added to the database in the past four years, with less than 1% being white, and a majority being young people, as young as 13.

In the last several years, thousands of New Yorkers have been swept up in so-called "gang" raids or takedowns, nearly all of them Black and/or Latinx.⁴ Many of these raids were conducted as joint operations by the NYPD and state and federal agencies, including the Homeland Security Investigations (HSI) division of Immigration and Customs Enforcement (ICE). The Council should consider the merits, if any exist, of this mass surveillance program. I will detail the harm.

Client Story: Patrick

Patrick, 17, was arrested for alleged trespassing in his own public housing building. Before being taken away by police, his mother showed up with a copy of her lease that included his name. Nonetheless, police had him handcuffed and taken to the stationhouse. He spent approximately 50 hours in lockup and lineups before he was brought to arraignments on misdemeanor trespass charges. Because prosecutors have no case against him, his charges were quickly reduced to a misdemeanor, but the process has already punished him thoroughly. We believe the case against him is without merit and will end with either a dismissal or more likely, if he takes a plea, a non-criminal violation. We also believe he is on the NYPD's gang database, and that is the underlying reason for his terrible ordeal.

THE IMPACTS OF GANG ALLEGATIONS IN COURT: BAIL, JAIL, PLEA DEALS, AND SENTENCING

Gang allegations negatively impact determinations of bail and pre-trial release, plea deals, and sentences. Once a prosecutor alleges on the record that the accused is in a gang, the possibility that a judge will order release on recognizance is significantly reduced, often resulting in unaffordable bail regardless of the merits of the case or the absence of any past failures to appear in court.⁵ That means potentially weeks, months, or even years in jails like Rikers Island or the Metropolitan Correctional Center, the horrors of which have been well-documented, while a person fights the charges against them. Such is the power of the gang label.

³ Howell, *Gang Policing*, 5 UNIV. DENVER CRIM. L. REV. 16. Eight percent of individuals added to the NYPD gang database between 2001 and August 30, 2013, were unidentified by race.

⁴ Deam Meminger, *NYPD Credits Reduction in NYC Murders to Gang Takedowns*, NY1, Nov. 8, 2017, available at <http://www.ny1.com/nyc/bronx/criminal-justice/2017/11/08/nypd-credits-reduction-in-nyc-murders-to-gang-takedowns>.

⁵ K. Babe Howell, *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention*, 23 ST. THOMAS L. REV. 620 (2011) https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1090&context=cl_pubs

The Bureau of Justice Assistance, a division of the U.S. Department of Justice, has found that “[t]hose who are taken into custody are more likely to accept a plea and are less likely to have their charges dropped.”⁶ Indeed, there is ample research documenting that finding, and our experience at BDS affirms it. It should be obvious that anybody who has experienced even a day in Rikers, and who faces the prospect of weeks, months or years inside, is far more likely to accept a plea that involves an admission of guilt than somebody who is free until their trial, regardless of whether or not they are in fact guilty. District Attorneys consistently exploit this leverage.

Compounding the harm of this pressure to plea, prosecutors typically offer harsher deals, including longer jail or prison sentences, to people alleged by NYPD to be part of a gang. Alternative to incarceration programs are often off the table in these cases, as will be explained in the next section. In this way, gang designations contribute to mass incarceration.

IMPACTS OF GANG DESIGNATIONS ON YOUNG PEOPLE IN CRIMINAL COURT

For young New Yorkers facing charges of alleged gun possession or, in some cases, robbery in Brooklyn, there are only two available alternative to incarceration programs: Youth and Congregations in Partnership (YCP) and Project Redirect. Both are run by the Brooklyn District Attorney’s (DA) office, require upfront guilty pleas with severe suspended sentences, and allow for defendants to get their cases dismissed and sealed upon completion. YCP is the preferable option for our clients, as it is less onerous. This program requires young people to participate in weekly meetings with DA staff, attend school or work, and abide a curfew for a year. However, in our experience, adolescents who are alleged to be gang members are never offered this program, and instead are pushed to Project Redirect.

Project Redirect is a deeply problematic program whose secrecy rivals that of the gang database. Much of what we know about it is reported by clients who have participated, as defense attorneys are generally prohibited from accompanying them in discussions about the program with their prosecutors, with the occasional exception of a preliminary briefing. It appears to be geared toward turning our young clients into informants on their friends and neighbors, and mostly sets its participants up for failure. It also appears to be predicated on a measure of deception, as young people are led to believe the program consists of job placements, college admissions support, musical recording opportunities, when in reality they are being co-opted into participating in the gang policing effort.

Project Redirect is extremely difficult, if not impossible, to complete for most targeted participants. It lasts between eighteen months and two years and requires defendants to abide by a deeply regimented schedule of school, work, and meetings with the DA’s office, with deviations for tasks like purchasing milk for the family at a local bodega permitted only with prior approval, often via text messaging. They cannot have contact with others identified as fellow gang members, which may include family and any or all local community members. They are not permitted to use any social media, which for many is the only way to keep in contact with

⁶ Lindsey Devers, Ph.D., *Plea and Charge Bargaining* (U.S. Bureau of Justice Assistance 2011).

relatives around the world. They must wear button-down shirts, slacks, and ties every day. They cannot wear any so-called “gangsta’ type” jewelry. They are required to debrief, or inform on others. They must wear ankle monitors and their every movement is tracked by GPS. They receive home visits from Detective Investigators and must make regular visits to the DA’s office. Altogether, they are forced to walk around with giant targets on their backs, both as “snitches” to the community and as gang members to the local police officers. This dynamic makes them isolated and vulnerable to violence. Rather than addressing the social marginalization that pushes people into gang membership and possibly problematic behavior, it aggravates internal conflicts within communities. In our experience, almost nobody completes this program. Many “fail” for refusing to debrief. Others “fail” after being arrested for minor infractions in their over-policed communities. They are then sentenced to their “jail alternative,” namely several years in upstate prisons.

Client Story: Joshua

Joshua, 17, has no connection with his biological family. He lives with a loving foster mom, who adopted him, and who has many other foster children to care for. As his social worker, I can assure you that he is brilliant and kind. Recently, he was stopped and frisked and found to be in possession of a loaded gun. For the first time in his life, he was arrested. He wants to get the charge dismissed so he can go to college, and he is willing to make real changes in his life, but the truth is he would likely be unable to complete Project Redirect, in part because he refuses to report on others in his community. Moreover, he is accustomed to taking care of himself, and the prospect of adhering to such strict and unforgiving scheduling and oversight is daunting. He can choose between this program, and all but certain and substantial prison time. He will almost certainly take the prison time and permanent criminal record, with all of its irreversible lifelong consequences.

Client Story: David

We began representing David when he was 18 years old. Approximately 3 years prior to our meeting David, he was shot not only in his own neighborhood, but on his own block, not far from his own front door. During the pendency of his case, David was indicted on allegations of gang conspiracy. Devon, who is an incredibly smart young man, would often engage in conversation with me about how lack of resources in the community drove the amount of time he and his friends would spend on the streets.

While he awaited a resolution on his cases, David was jailed on Rikers Island with peers in both of the groups ensnared in the gang conspiracy allegations. David later wrote me a letter while detained in which he outlined suggestions for resolving the disagreements that he and the other young men had, suggesting that prosecutors allow the young men to engage in mediation to prevent further violence by younger generations. Instead, they are all now in prisons upstate.

THE IMPACTS OF GANG ALLEGATIONS ON IMMIGRANT NEW YORKERS

I understand this hearing is focused on the NYPD's gang takedowns, but we cannot ignore the continuum of repression in which they exist, namely the criminalization-to-deportation pipeline. At BDS, many of our clients are trapped in the intersection of oppressive and discriminatory policies at the local, state, and federal level. They face criminal sanctions, the loss of their children, eviction, deportation, and more. So-called gang policing goes to the heart of all of these policies. Our immigration attorneys represent people in deportation proceedings, and we work with the real people and families behind the dehumanizing, misleading propaganda that ICE produces to justify its actions in our communities, particularly with respect to gang allegations. ICE uses the gang label to justify making courthouse arrests, jailing teenagers who came to this country seeking asylum and safety, ripping children from their parents' arms, turning public schools into traps for immigrant students and parents, and indefinitely detaining people of all ages in jails.

Gang accusations by ICE are often based on standing with the wrong people, or wearing the wrong hat, or footwear. Again, these criteria do not amount to criminal conduct, but they yield extremely serious sanctions. In particular, our clients of Central American descent with no criminal records are profiled and treated as future criminals; this is undemocratic and wrong. It is important to remember that, when these massive raids happen, they can take promising young students, future college graduates, and primary income-earners from the community.

At this point, we do not know exactly what information the NYPD shares with ICE, either actively or passively, through shared use of various databases. That said, the damage to a person's residency and immigration status wrought by aggressive prosecution or even mere arrests is clear. The NYPD collects arrestees' fingerprints and shares them with the federal government, which uses them to track and arrest immigrants at home, at work, in court, or elsewhere and ICE uses state-level convictions to strip an immigrant of any lawful status or block them from obtaining any form of relief. Even immigrant New Yorkers on the gang database who have never been arrested may be a serious risk of harm. For example, the suspicion of a gang affiliation can be the reason a DACA application is denied since a lesser known criterion for removal from the program and country is if a person is a confirmed or suspected gang member and, again, we do not know what information the NYPD shares with ICE. In general, we are skeptical of the City's insistence that any law enforcement intel is not shared with federal agencies.

Client Story: Jorge

The New Yorker reported on the story of a teenage boy we represented named Jorge. His story is all too familiar for young Latinx living in areas such as Long Island, young men who may also experience gang violence. Though Jorge was not a part of a gang or did not take part in any criminal activity, he was arrested by ICE. The reason for his arrest was a suspicion of gang membership, because his girlfriend's ex-boyfriend was a MS-13 gang member, he wore a Brooklyn Nets hat, and he was allegedly witnessed engaging in an unspecified gang handshake.⁷ Though Jorge was released from the detention center after a judge ruled that the evidence against

⁷ Jonathan Blitzer, *How Gang Victims are Labelled as Gang Suspects*, THE NEW YORKER, May 6, 2012, available at <https://www.newyorker.com/news/news-desk/how-gang-victims-are-labelled-as-gang-suspects>.

him was too weak, he now has to fight a protracted legal battle to gain any legal status to stay in the US.

Jorge's case is representative of what the New York Immigration Family Unity Project (NYIFUP) team within our office is seeing in cases arising from Suffolk County. Most of our "gang" related cases come to us because the Suffolk County Police Department gives incorrect intel to ICE about our person's affiliation to the MS-13 gang, often deriving from school-based surveillance. In the majority of these cases, this designation is without merit.

GANG POLICING MAY INCREASE THE GANG POPULATION

The discriminatory enforcement and use of a gang database and designation has led to unwarranted police actions directed to people engaging in innocuous behavior and associations. This is a draconian law enforcement and prosecutorial response to gangs, and gang problems. If a person did not have any gang affiliation prior to being arrested, they are likely to be initiated into one once they are sent to jail or prison as a survival mechanism.

Through our Jail Services team, we have seen the way the New York City Department of Correction classifies or misclassifies people as members of gangs and even shares that information with prosecutors. In fact, there is a long history of people being pressured to join gangs by jail staff, some of whom identify as members of gangs, themselves.⁸ We have also heard from detained clients that jail staff instigate or manipulate gang violence as a tool of control. In one incident earlier this year, an officer engaged our client in a verbal argument, ultimately threatening to place him in a unit housing rival gang members. Making good on this threat, our client was later moved to a cell in the jail's intake where he encountered approximately seven members of a rival gang. As planned, he was attacked and suffered two deep cuts on his face, requiring several stitches.

In the context of jail's systemic deprivation and daily humiliations, people join gangs for access to basic necessities, like hygiene products. Gang designations by DOC also result in disqualifications from much needed rehabilitative programs such as Mentally Ill and Chemical Abuse ("MICA") treatment or A Road Not Taken substance abuse program. Unfortunately, we have had several clients finally ready for treatment, but due to a supposed or actual gang membership, they were not able to receive treatment while in jail. These designations also often result in solitary confinement, which is widely recognized as a form of torture and which only adds to the pressure to accept plea deals in exchange for release.

RECOMMENDATIONS

1. *Abolish the NYPD gang database*

⁸ Brad Hamilton, *Brutal System of Teen Beatings Continues at Rikers Island's RNDC Prison*, NY POST, May 6, 2012, available at <https://nypost.com/2012/05/06/brutal-system-of-teen-beatings-continues-at-rikers-islands-rndc-prison/>.

Brooklyn Defender Services calls for the abolishment of the gang database. While we work towards the complete dismantling of this blacklist system, we again ask the Office of the Inspector General for the NYPD to immediately conduct an investigation of the current NYPD gang database.

2. *Increase funding for organizations using the Cure Violence model*

In addition, City Council should consider reallocating resources away from punitive responses to alleged gang membership toward interventions that have proven effective in reducing violence and other unlawful activity. Specifically, we advocate for an increase in funding for community centers, high-quality and engaging programming, and organizations using the Cure Violence Model.

In 2012, the city launched a Cure Violence initiative, but prevention and intervention efforts that could be effectively implemented to curtail gang violence are underutilized and underfunded. While certain programs that are used may reinforce marginalization through partnerships with the NYPD, others have proven to be successful in strengthening community-based safety and security. At its most effective, the strategy leverages the experiences of young men of color, many of whom are former gang members, to act as “credible messengers” of an anti-violence message and “violence interrupters” to prevent and reduce gun and gang violence. Community-based organizations working under the Cure Violence model employ “violence interrupters” and outreach workers from the community who have themselves experienced violence and also have strong relationships with young adults, community leaders, and service providers.⁹ Violence interrupters stop conflicts before they happen, and outreach workers redirect the highest-risk youth away from life on the streets and the criminal system. All of this is done by unarmed community members, who value every person’s right to security and protection from harm.

3. *Reallocate resources to support, rather than profile, marginalized communities*

The city should shift resources away from policing alleged gang or crew members and toward providing the support that individuals, families, and communities need to thrive. This strategy should focus on the root causes of social marginalization and any violent or otherwise problematic behavior.

Thank you for your consideration of our comments. If you have any questions, please contact Saye Joseph in my office at scjoseph@bds.org or (718) 254-0700 Ext. 206.

This testimony was written with Saye Joseph, Policy Associate, and Jared Chausow, Senior Policy Specialist.

⁹ Samuel Lieberman, *Former gang member try to snuff out violence in NYC*, VICE, March 25, 2015, available at https://www.vice.com/en_us/article/kwxeam/former-gang-members-are-trying-to-snuff-out-violence-in-new-york-city-325.



Testimony of

The Legal Aid Society

Before the City Council Committee on Public Safety on NYPD Gang

Oversight

June 13, 2018

Presented by:

Anthony Posada, Esq.
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Criminal Practice
Prepared with the Criminal Practice
Special Litigation Unit

The Legal Aid Society Community Justice Unit

The Legal Aid Society's Community Justice Unit provides preventative legal services and advice under the public health model of the New York City Crisis Management System in specific catchment areas citywide. Our partners are Cure Violence organizations providing anti-violence services through the Council-funded Cure Violence model. This public health model responds to gun violence with comprehensive wrap-around services in the community including mediation, legal services, social services, violence interrupters, and education. The model works on the theory that conflicts addressed by credible messengers from the community prevents further violence without the devastating consequences of incarceration.

There are currently 18 CMS/CV sites in New York City and growing. Each of these CV sites represents a safe space/location in the neighborhood where community members and stakeholders can meet and participate in civic engagement, receive training on a variety of issues including OSHA trainings, mediation, conflict resolution, legal trainings, and avail themselves of wrap-around services like education, employment, mental health and legal representation.

The work of CMS/CV has brought New York City to the lowest incidences of gun violence of any major U.S. city and the fewest shootings in over 30 years.¹ The belief and

¹ NYC, *Mayor de Blasio, City Council Launch Mayor's Office to Prevent Gun Violence*, available at <http://www1.nyc.gov/office-of-the-mayor/news/064-17/mayor-de-blasio-city-council-launch-mayor-s-office-prevent-gun-violence#/0> ; see also Sheyla A. Delgado, Laila Alsabahi, Kevin Wolff, Nicole Alexander, Patricia Cobar and Jeffrey Butts, *The Effects of Cure Violence in the South Bronx and East New York, Brooklyn*, available at <https://johnjayrec.nyc/2017/10/02/cvinsobronxeastny/> (detailing how the evidence shows that the public health approach to violence reduction championed by Cure Violence helps create safe and healthy communities); Center for Court Innovation, *Testing A Public Health Approach to Gun Violence: An Evaluation of Crown Heights Save Our Streets, a Replication of The Cure Violence Model*, available at https://www.courtinnovation.org/sites/default/files/documents/SOS_Evaluation.pdf (one of the first studies based on

commitment to the CMS/CV sites has been expressed by Mayor de Blasio² and by New York Police Department (NYPD) Commissioner O'Neill.

The Racial Disparities of Gang Policing on New Yorkers

The Legal Aid Society has represented hundreds of New Yorkers in Criminal, Supreme and Immigration courts that have been labeled as gang-involved. The gang designation has deep-reaching collateral consequences, which include: deportation, increased bail, enhanced sentencing, restrictive conditions of confinement and increased supervised release, all without the constitutional protections of notice of the designation without the opportunity to challenge inclusion on the database. The current NYPD gang database has 43000 who are 99% non-white and people as young as 12 years old.³

Gang Policing Through Database-Building is a Tool of Hyper-Criminalization

Gang policing through database building creates an overly-inclusive net over immigrant youth and their communities that ICE and the NYPD abuse without any current constitutional protections and with no oversight. Essentially, whoever the police and ICE deem as a gang member will be labeled as such and the fact that the vast majority of those facing that designation are Black and Latinx, including immigrant youth, is a crisis happening right in front of us.

the Cure Violence model in New York City showing how neighborhoods that actively used the model experienced significant drops in crimes and that adjacent neighborhoods without the model experienced increased crime).

² Politico, *City increases spending on public health to combat gun violence*, available at <https://www.politico.com/states/new-york/city-hall/story/2016/11/city-invests-in-public-health-to-combat-gun-violence-106843>

³New York Gang Database Expanded by 70 Percent Under Mayor Bill De Blasio, *available at*, <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>

The Legal Aid Society has represented hundreds of New Yorkers since launching the FOIL Yourself campaign that demand to know if they are in the gang database.⁴ The police have denied 99.9% of those requests. More importantly, we never received any indication that there was a system to remove themselves from the database and nobody who has participated ever received notice that they were being entered onto the database. When neither ICE nor the NYPD provides notice of this devastating gang label being affixed on the person, then one can be labeled gang-involved and be exposed to severe life-altering consequences without ever even knowing about it.

The secretive, unchallengeable form of gang policing is a reality for Black and Latinx New Yorkers from underserved neighborhoods. It is clear that there are no available mechanisms to the public to determine if they have been unconstitutionally labeled as gang-involved, that there is also no opportunity to challenge that designation and that the system disproportionately preys on people of color criminalizing their entire communities.⁵

Unchallengeable Gang Labeling Occurs With No Oversight

The NYPD's unchallengeable gang label impacts a disproportionate number of youth of color with no requirement of wrongdoing. Black and Latinx youth from underserved communities all throughout New York City are subject to surveillance and monitoring only to be labeled as gang involved because they live in a certain neighborhood, they dress with certain colors, making virtually impossible to know which colors are not subject to heightened scrutiny, for knowing and saying hello to people in their neighborhood all without the need to

⁴Legal Aid will show you how to find out if you're in the NYPD's gang database, *available at* <http://www.nydailynews.com/new-york/legal-aid-discover-nypd-gang-database-article-1.3803816>

⁵ *Supra*, note 3.

commit a crime to be labelled gang-involved.⁶ young men are in a public space in a group they are not subject to heightened scrutiny. The fact that these stop and frisk encounters occur less frequently now than in the past and are underreported does not mean that they do not systematically occur, or that the *Floyd*⁷ litigation actually ended this tactic. On the contrary, youth and community members at large from predominantly minority communities such as East New York, Far Rockaway, Harlem, South Bronx, and Stapleton inform us that the NYPD continues to engage in racial-profiling. Some of the stories we have heard include: police officers throwing Black and Latinx youth against walls and cars, claiming that they saw the young person smoking marijuana and demanding to know where are the guns in the neighborhood and then demanding to know information about social media usernames and handles. The criminalization of whole communities through gang policing in New York City remains focused on Black and Latinx youth giving officers another pretext to engage in unlawful interactions that are not conducive to public safety.

***Dehumanizing Gang Policing Deepens the Divide Between the Police and the Community
Increasing Distrust***

The continued criminalization of youth through the NYPD gang database has devastating consequences in the lives of our clients and their communities that completely shapes their perception of the police. Through our work in the Community Justice Unit we were able to join our community partners, Cure Violence organizations across the five boroughs, in sessions of the *Floyd* Joint Remedial Process where the facilitator, retired Judge Ariel Belen, met with youth and young adults in neighborhoods throughout the City. In every

⁶ K. Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, CUNY Academic Works (2015) at pg. 15.

single session, Black and Latinx youth expressed their frustrations with the NYPD's practices of being monitored and surveilled based on how they dress, live, associate and who they hang out with. Black and Latinx youth repeatedly expressed feeling dehumanized, abused, as a result of these practices and afraid every time that the police initiated action and demanded to know their social media usernames and passwords in order to access their information. These racially discriminatory arrests are happening without oversight and constitutional protections begin the criminalization process where young people are labeled as criminal and stigmatized and made to feel shamed and unaccepted which makes them distrust and fear the police.⁸

I would like to share an example of distrust between community members and the police created from aggressive gang policing enforcement. Two police officers came in through a door at the bottom of the staircase and approached the young person. They say that they smelled marijuana in the staircase and he is the only person there. The police make an arrest and process the young person who upon being released from court goes back to the community with a completely different understanding of the role and credibility of the police. That young person is now fearful of walking out of their own apartment for fear of being subjected to police action. Instead, their buildings, sidewalks and staircases become areas that they are fearful of.

An Arrest has a Profound Impact on the Lives of Young People

⁸ Victor M. Rios, *Punished: Policing The Lives of Black and Latino Boys*, NYU Press (2011)

Aggressive enforcement of low-level crimes under Broken Windows policing also leads to increased chances of being labeled a gang member. The deprivation of liberty through the arrest process is already a traumatizing and scarring experience that nobody forgets, especially a young person. When someone is arrested for a low-level offense, like unlawful possession of marijuana for the first time, they are subjected to being searched, handcuffed, placed in police custody to be taken to a precinct where the person must be fingerprinted, photographed, and placed in a cell while all of their possessions are vouchered. All of this information is being stored, maintained and used in databases that have no protections and that are applied exclusively to people of color. Even though the law allows the person under arrest to place a phone call, the arresting officer does not tell them about this and an overwhelming amount of people do not know their right to a call. The person under arrest must wait in the precinct possibly subjected to questioning without knowing that they have a right to ask to speak to an attorney. We only need to look at the Central Park Five to have a clear picture of why this area of police interaction is incredibly important as it sets the stage for the remainder of the case.

The NYPD Gang Databases Shields Racial Profiling and Aggressive Policing

Currently, there is no mechanism to remove oneself from the NYPD gang database. The sheet that outlines the criteria never says that a criminal conviction is required to be entered into the database, which opens the door to endless scenarios where people are labeled without having been arrested or even gone before a judge or public defender. The fact that the racial disparities of the NYPD gang database persists without any current constitutional oversight leaves these discriminatory police practices unchecked. One gaping problem with

this approach is that many of the youth are not engaged in trouble in the first place, yet they are labeled for life under this current secretive regime. In creating a blacklist the behavior of the officers and detectives collecting this information never comes under judicial scrutiny, even when the results are so racially skewed. The failure to hold racially disparate police practices accountable deepens the distrust between the community and the police and it creates incentives for the police to abandon the law and make their own rules.

Gang Database Policing is a Tool of Mass Incarceration

In our current political climate immigrants are being increasingly being labeled as gang members under a system subject to expansive profiling and surveillance that disproportionately impacts people of color.⁹ This means that an extremely wide-net is being cast over these vulnerable communities destabilizing families and undermining constitutional protections. New York state is no stranger to this form of gang policing and labeling that currently sweeps up youth of color in an unprecedented manner resulting in numerous devastating consequences.

Gang Labeling and Bail

Over last five years, discriminatory gang enforcement in New York has created a situation where thousands of New Yorkers, primarily of color, have been entered into the NYPD gang database and detrimentally impacted at the arraignment stage of the process. Because of this biased secretive policing resulting in massive information gathering of records, many of which never resulted in arrest or conviction, many people who are facing higher bail amount because the gang label is being used by the prosecutors to sway the judge when deciding whether or not to set bail. Additionally, prosecutors not only get to see the

⁹ New York Immigration Coalition, Swept Up In The Sweep, available at <http://www.thenyic.org/sweptup> (2018).

label and exploit it to seek convictions, but they are also able to heavily rely on this inaccurate information to enhance sentencing. This perpetuates a cycle of over-reaching unlawful police action based on profiling that is then used by prosecutors in making bail requests.

Gang Labeling and Marijuana DATs

Gang labeling also occurs from marijuana arrests that result in Desk Appearance Tickets (DATs) as this is an area where many youth are subject to debriefings where legal representatives do not accompany them. Many of them have been told to provide their social media login information with no search warrant or probable cause. It is true that marijuana arrests have been declining since 2012 and that the police are issuing more DATs.¹⁰ However, the same racial disparities that plagued marijuana arrests persists in the manner in which DATs are being issued. “*Ethnic disparities in the handling of marijuana arrests remains a cause for concern, primarily at the point of arrest but also throughout case processing.*”¹¹ The fact that there have been more bench warrants as a result of marijuana possession tickets and a continuation of the Jim Crow policing shows that the DAT procedure is an area where police are labeling youth of color as gang-involved.

Gang Labeling and Supervised Release

In the post-conviction context of supervised release such as parole and probation the gang label is considered grounds for severe restrictions. The Ceasefire program touted by the NYPD as a program with services is nothing but a disguised way of continuing to keep increased surveillance to people working to re-integrate themselves in society.

Gang Labeling and Immigration

¹⁰ Unjust and Unconstitutional, 60,000 Jim Crow Marijuana Arrests in Mayor de Blasio’s New York, *available at*, <http://marijuana-arrests.com/docs/Marijuana-Arrests-NYC--Unjust-Unconstitutional--July2017.pdf>

The gang label is grounds for inadmissibility and deportation under the Immigration and Nationality Act (INA).¹² Every year the United States deports thousands of individuals identified as “confirmed or suspected gang members.”¹³ A noncitizen is inadmissible or removable for being deemed a suspected gang member.

Legal Aid represents immigrant youth who are in Immigration and Customs Enforcement (ICE) detention centers facing deportation as a result of being labeled gang-involved not because of a criminal act or a previous arrest or conviction, but as a result of how they dressed, where they lived and whom they associated with leading to resulting in mass deportations that directly feeds into incarceration as well.

The gang label for a noncitizen person immediately triggers a *Padilla* obligation for a Public Defender.¹⁴ The landmark decision in *Padilla v. Kentucky* established the obligation for criminal defense attorneys to advise clients of immigration consequences of a plea. We have specialized criminal-immigration attorneys who are constantly advising us on plea deals for noncitizen clients. Given the recent executive orders on immigration, which have made noncitizens with open criminal cases subject to removal and the growing number of ICE arrests in the courthouses¹⁵, gang labeling and database-building enforcement has destructive in the immigration context requiring attorneys to advise clients with the utmost care.

Dismantling The NYPD Gang Database is Smart Policy

¹²American Bar Association, Marijuana and Immigration, *available at* https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/v32/CJ_v032n01_Spring2017_RAILTON.authcheckdam.pdf

¹³ Immigrant Defense Project, Deportation and Gangs, *available at* <https://www.immigrantdefenseproject.org/deportation-and-gangs/>

We support the dismantling of the racial disproportionate NYPD gang database as we believe it will have a positive impact on public health. It will also improve the criminal justice system by helping stop the funneling of Black and Latinx people into the system and the devastating consequences it creates for immigrant communities. Gang policing that occurs through database building has a disproportionate impact on people of color and it does not enable safer communities or help build in the essential task of building better relationships between the community and the police. Instead of labeling people for how they dress where they live and who they know, creating far-reaching consequences, such as deportation, we should be investing in proven community-based alternatives that work to mediate conflicts and change the hearts and minds of community members around violence. Lastly, the Inspector General of the NYPD must also launch an investigation into the NYPD gang database to confirm whether or not there are mechanisms that ensure that racial disparities in the system are not continuing to jeopardize the integrity of the system.

The Legal Aid Society

The Legal Aid Society is the nation's oldest and largest not-for-profit legal services organization. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 1,900, including more than 1,100 lawyers working with over 700 social workers, investigators,

paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. The Legal Aid Society operates three major practices — Criminal, Civil and Juvenile Rights. The Society's Pro Bono program coordinates volunteer help from law firms, corporate law departments and expert consultants.

The Society's Criminal Practice is the primary public defender in the City of New York. During the last year, our Criminal Practice represented over 230,000 indigent New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. In the context of this practice the Society represents people accused of crimes from their initial arrest through the post-conviction process. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are teenagers who are treated as if they are adults. The Criminal Practice has a specialized unit of lawyers and social workers dedicated to representing many of our youngest clients prosecuted in the criminal system.

Written Testimony

The NYPD's gang takedowns target and criminalize the same Black and Brown population that the City's unconstitutional stop-and-frisk policing tactics did. The NYPD's gang enforcement strategies bear a striking resemblance to the unconstitutional policing practices that motivated LDF to file suit in *Davis*. The NYPD's sanitized narrative concerning gang takedowns ignores the substantial harm these raids inflict on communities of color and exaggerates the danger arrested New Yorkers pose to society. The NYPD relies on a secret, likely inaccurate, and racially disproportionate "gang database" to conduct military-style raids in private homes and low-income housing developments, largely targeting communities of color. Prosecutors rely on conspiracy statutes to demonize boys and young men of color who commit petty offenses by implicating them in violent crimes. People as young as 12 (added under Bloomberg) and 13 (added under de Blasio) have been put into the NYPD gang database. Police surveil social media and build intelligence on the postings of teenagers.

Being included in the gang database potentially subjects New Yorkers to increased police surveillance, a greater chance of police encounters, and for some, the threat of deportation. Trump's fear mongering and ICE's crackdown on alleged gang members increases deportation risks for New Yorkers. There are dangerous and loose criteria used by law enforcement to tag someone a "gang member" include colors/clothes someone wears, where they live, who they know. This stigma carries real harms and impacts people's lives, reentry, etc. Raids are militarized, destructive and unnecessary. People's doors are kicked in with guns pointed at their heads. A young man in 2016 fatally fell off of a roof during a pre-dawn raid in the Bronx. People are overcharged and falsely charged. RICO and state conspiracy statutes were originally designed to combat the mafia and are now used to charge poor young people of color who don't have the means to hire high-price lawyers like mafia members could because of their socioeconomic status.

The NYPD adds New Yorkers to its gang database using arbitrary criteria and offers no recourse for innocent people mistakenly identified as gang members. It is my understanding that not only does the NYPD not tell New Yorkers if they are included in the database through FOIL requests, but the Department also fails to check the database of errors.

- We have a right to know:
 - Who's in the database?
 - How does NYPD decide who it adds to the database?
 - How can someone challenge their inclusion in the database?
 - What steps is the NYPD taking to make sure the database is accurate?
 - Who is the NYPD sharing information and intelligence with?
 - Are NYPD officers trained in gang policing? If so, how?

JUSTICE STRATEGIES

TESTIMONY

Oversight Hearing on the NYPD's Gang Takedown Efforts

New York City Council Public Safety Committee

Judith A. Greene, Director
Justice Strategies

Submitted June 11, 2018

My name is Judy Greene, Director of Justice Strategies – a criminal justice policy institute based here in New York City. I have spent many decades working on criminal justice issues: as a researcher, an educator, and a policy analyst. From 1985 to 1993 I was Director of Court Programs at the Vera Institute of Justice. For the next six years I served as program director of the State-Centered Program for the Edna McConnell Clark Foundation, and as a senior research fellow at the University of Minnesota Law School's Institute on Criminal Justice. During that time, I have authored or co-authored dozens of journal articles, research reports and white papers on a wide range of topics, including sentencing and corrections policy, prison privatization, police accountability and immigration enforcement.

More than a decade ago, the Justice Policy Institute in Washington D.C. commissioned Justice Strategies to produce an in-depth report on what is known about gangs' contribution to problems of crime and violence, as well as the efficacy of common gang control strategies. We began our work with an extensive review of the social science literature on gangs and gang membership, incorporating research that examined gangs from multiple perspectives (e.g. crime control, youth development) using varied techniques (e.g. ethnography, law enforcement data, youth surveys).

We also interviewed a diverse group of stakeholders, including law enforcement officials, scholars, social service providers, and former gang members. Finally, we analyzed youth survey and law enforcement data to test common assumptions about the prevalence of gang membership and the relationship between gang activity and crime rates.

The resulting report, "Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies," was released in July of 2007. As the title suggests, we found that the most common assumptions about gangs and gang control lack foundation in the scientific literature. We hope that the results of our research – briefly summarized in this testimony – will provide an opportunity to pursue more fruitful approaches to further reduce

unacceptably high levels of violence in our communities.

SUMMARY OF RESEARCH FINDINGS

Youth crime in the United States remains near the lowest levels seen in many decades, yet public concern and media coverage of gang activity has skyrocketed since 2016. Fear has spread from neighborhoods with long-standing gang problems to communities with historically low levels of crime. The current administration in Washington has declared the arrival of a national gang “crisis”—tying gangs to terrorism and connecting their formation and growth to everything from lax border enforcement to the illicit drug trade.

President Trump is calling for “tough” police tactics to be used for gang suppression. Yet the evidence points to a different reality and suggests a more thoughtful policy response. The following are our key findings concerning gangs and gang members:

Gangs and gang crime

There is no consistent relationship between law enforcement measures of gang activity and crime trends. One expert observes that gang membership estimates were near an all-time high at the end of the 1990s, when youth violence fell to the lowest level in decades. Our analysis of gang membership and crime data from North Carolina found that most jurisdictions reporting growth in gang membership also reported falling crime rates. Dallas neighborhoods targeted for gang suppression activities reported both a drop-in gang crime and an increase in violent crime during the intervention period.

Gang members account for a relatively small share of crime in most jurisdictions. There are a handful of jurisdictions such as Los Angeles and Chicago where gang members are believed to be responsible for a significant share of crime. But the available evidence indicates that gang members play a relatively small role in the national crime problem despite their propensity toward criminal activity.

Gangs do not dominate or drive the drug trade. National drug enforcement sources claim that gangs are “the primary retail distributors of drugs in the country.” But studies of several jurisdictions where gangs are active have concluded that gang members account for a relatively small share of drug sales and that gangs do not generally seek to control drug markets. Investigations conducted in Los Angeles and nearby cities found that gang members accounted for one in four drug sale arrests. The Los Angeles District Attorney’s Office has reported that just one in seven gang members sold drugs on a monthly basis.

Most gang members join when they are young and quickly outgrow their gang affiliation without the help of law enforcement or gang intervention programs. A substantial minority of youth (7 percent of whites and 12 percent of blacks and Latinos) goes through a gang phase during adolescence, but most youth quit the gang within the first year. One multistate survey found that fully half of eighth-graders reporting gang involvement were former members. When

former gang members cite reasons why they left the gang, they commonly mention high levels of violence, and that they just grew out of it; only rarely do they cite fear of arrest or criminal penalties.

The public face of the gang problem is black and brown, but whites make up the largest group of adolescent gang members. Law enforcement sources report that over 90 percent of gang members are nonwhite, but youth survey data shows that whites account for 40 percent of adolescent gang members. White gang youth closely resemble black and Latino counterparts on measures of delinquency and gang involvement, yet they are virtually absent from most law enforcement and media accounts of the gang problem. The disparity raises troubling questions about how gang members are identified by police.

Gang enforcement

The conventional wisdom on gang enforcement is equally flawed. Media reports are full of stories about cities where crime goes up, a crackdown is launched, and crime goes down. But a review of research on the implementation of gang enforcement strategies—ranging from neighborhood-based suppression to the U.S. Justice Department Office of Juvenile Justice and Delinquency Prevention’s Comprehensive Gang Program Model—provides little reason for optimism. Findings from investigations of gang enforcement efforts in 17 jurisdictions over two decades yielded few examples of success and many examples of failure.

The problems highlighted in the research include:

- Lack of correspondence between the problem, typically lethal and/or serious violence, and a law enforcement response that targets low-level, nonviolent misbehavior.
- Resistance on the part of key agency personnel to collaboration or implementation of the strategy as designed.
- Evidence that the intervention had no effect or a negative effect on crime and violence.
- A tendency for any reductions in crime or violence to evaporate quickly, often before the end of the intervention period.
- Poorly designed evaluations that make it impossible to draw any conclusions about the effect of an intervention.
- Failure of replication efforts to achieve results comparable to those of pilot programs.
- Severe imbalances of power and resources between law enforcement and community partners that hamper the implementation of “balanced” gang control initiatives.

Our specific findings concerning typical gang enforcement strategies:

Police gang units are often formed for the wrong reasons and perceived as isolated and ineffectual by law enforcement colleagues. A survey of 300 large cities found that the formation of gang units was more closely associated with the availability of funding and the size of the Latino population than with the extent of local gang or crime problems. An in-depth study of four cities determined that gang units were formed in response to “political, public, and media

pressure” and that “almost no one other than the gang unit officers themselves seemed to believe that gang unit suppression efforts were effective at reducing the communities’ gang problems.”

Investigators found that gang officers were poorly trained and that their units became isolated from host agencies and community residents. The chief of one police department admitted that he had “little understanding of what the gang unit did or how it operated.” The authors observed that the isolation of gang units from host agencies and their tendency to form tight-knit subcultures—not entirely unlike those of gangs—may contribute to a disturbingly high incidence of corruption and other misconduct.

Heavy-handed suppression efforts can increase gang cohesion and police-community tensions, and they have a poor track record when it comes to reducing crime and violence.

Suppression remains an enormously popular response to gang activity despite concerns by gang experts that such tactics can strengthen gang cohesion and increase tension between law enforcement and community members. Results from Department of Justice–funded interventions in three major cities yield no evidence that a flood of federal dollars and arrests had a positive impact on target neighborhoods. St. Louis evaluators found that dozens of targeted arrests and hundreds of police stops failed to yield meaningful reductions in crime in the targeted neighborhoods, even during the period of intense police activity. Dallas residents saw the incidence of “gang-related” violence fall in target areas but had little to celebrate because the overall violent crime numbers rose during the intervention period. Detroit evaluators reported initial reductions in gun crimes within two targeted precincts, but the apparent gains were short-lived: by the end of the intervention period, the incidence of gun crime in target areas was at preintervention levels and trending upward.

African American and Latino communities bear the cost of failed gang enforcement initiatives. Young men of color are disproportionately identified as gang members and targeted for surveillance, arrest, and incarceration, while whites—who make up a significant share of gang members—rarely show up in accounts of gang enforcement efforts. The Los Angeles district attorney’s office found that close to half of black males between the ages of 21 and 24 had been entered in the county’s gang database even though no one could credibly argue that all of these young men were current gang members. Communities of color suffer not only from the imposition of aggressive police tactics that can resemble martial law, but also from the failure of such tactics to pacify their neighborhoods. One researcher argues that in Chicago, for example, a cycle of police suppression and incarceration and a legacy of segregation have actually helped to sustain unacceptably high levels of gang violence.

Police gang units

The formation of a gang unit is often viewed as a rational response to an emerging gang threat. But researchers have concluded that gang units are more often formed in response to pressure on police to “do something,” or as a way to secure additional resources for the agency. Once gang units are launched, experts have found that they often become isolated from the rest of the police department, a development that can render them ineffective or even facilitate corruption.

The most comprehensive study of gang unit operations has been undertaken by Charles Katz, Edward Maguire, and Dennis Roncek at Arizona State University. They examined factors that influenced the establishment of police gang units in 300 large U.S. cities. They found no relationship between the formation of a gang unit and the size of a community gang or crime problem. Instead, they found that gang units were most likely to be formed in cities with larger Latinx populations, among police departments that received funding for gang control efforts, or that police organizations might be creating units when the community feels threatened by a minority group.

They found that most gang units gravitated toward intelligence-gathering and gang suppression activities while devoting little attention to investigations and very little to prevention. An absence of strong departmental oversight and the physical separation of gang units from the rest of the police force—three of four units operated from “secret” off-site facilities that were known only to gang unit officers—contributed to a “decoupling [that] led gang unit officers to isolate themselves from the rest of the police organization and from the community and its citizens.”

The isolation of gang units from host agencies and their tendency to form tight-knit subcultures—not entirely unlike those of gangs—also contributes to a disturbingly high incidence of corruption and other misconduct. The Los Angeles Police Department’s Rampart scandal is only the most famous example of a gang unit gone bad. Katz and Webb cite several other places where police gang units have drawn attention for aggressive tactics and misconduct, including Las Vegas, where two gang unit officers participated in a drive-by shooting of alleged gang members; Chicago, where gang unit officers worked with local gangs to import cocaine from Miami; and Houston, where gang task force officers were found to routinely engage in unauthorized use of confidential informants, warrantless searches, and firing weapons at unarmed citizen

Gang suppression vs. youth development

Our own research involved collection and comparison of crime and arrest data from various cities. Our attention became riveted on a stark contrast between Los Angeles -- where the nation’s harshest gang enforcement strategies and tactics had originated and been sustained for many decades -- and New York City -- where, since the late 1950s, the primary models for intervention had been developed under the guidance of academic experts into a rich and diverse array of city-funded, community-based “street work” and youth development programs grounded in principles of effective social work practice.

The most recent data available to us when we conducted our assessment was for 2005. The Los Angeles Police Department reported 11,402 gang-related crimes that year, while the New York Police Department reported just 520. After many decades of heavy-handed LAPD gang suppression tactics, the rate of reported gang crime in Los Angeles was an astonishing 49 times higher than in New York City.

As discussed above, the research literature on gang interventions offers scant support for harsh police and prosecution suppression tactics, while evidence for youth development and public

health interventions, such as those offered by violence interrupters and social service programs that target high-risk youths promise a far better chance of positive outcomes.

Crime data reports available on the LAPD website fail to indicate the current level of reported gang crime. For New York City, however, NYPD data provided in the Mayor's Management Report for 2017 indicate that since 2005, the total number of gang-related crimes in our City – just 350 – has declined at a rate that is in line with the decline in overall major felony crimes in our City.

The harsh suppression strategies followed decade after decade in Los Angeles have contributed to, and exacerbated, the problems that have earned that city its notorious status as the “Gang Capitol” of our nation. Yet, given the NYPD's increasing adoption of the counterproductive enforcement tactics that have failed elsewhere, I see our own City moving in exactly the wrong direction.

A better way

At the conclusion of our research, we did not endorse any particular program or approach for reducing the damage done by gangs and gang members. Instead, we pointed toward actions we can take to reduce youth violence. The most effective route toward reducing the harm caused by gangs requires a more realistic grasp of the challenges that gangs pose. The objective should not be to eradicate gangs—an impossible task—but rather to promote community safety.

Promote jobs, education, and healthy communities, and lower barriers to the reintegration into society of former gang members. Many gang researchers observe that employment and family formation help draw youth away from gangs. White youth have greater access to jobs and education, which may explain why there are many white gang members but little discussion of a chronic white gang problem. Creating positive opportunities through which gang members can leave their past behind is the best chance for improving public safety. This requires both investing resources and reforming policies and practices that now deny current and former gang members access to these opportunities.

Redirect resources from failed gang enforcement efforts to proven public safety strategies. Gang lists, gang injunctions, gang sweeps, and ominous-sounding enforcement initiatives reinforce negative images of whole communities and run counter to the positive youth development agenda that has been proven to work. Rather than promoting anti-gang rhetoric and programs, we should do all we can to help former gang members and all youth acquire the skills and opportunities they need to contribute to healthy and vibrant communities.

June 12, 2018

Councilmember Donovan J. Richards, Chair
Public Safety Committee
New York City Council

Dear Councilmember Richards and members of the Committee,

My name is Alex S. Vitale. I'm a professor of sociology and Coordinator of the Policing and Social Justice project at Brooklyn College. I have spent the last 25 years studying policing in the US and internationally. During the last 4 years I have looked at gang policing practices in several major cities including New York, Los Angeles, Chicago, Oakland, and London. For the last 2 years I have been working on developing a network of organization in New York City concerned about large scale gang raids carried out by the NYPD in conjunction with local and federal prosecutors.

During that time we have learned that no such large scale raids are being conducted in Brooklyn, because the DA's office there under both Ken Thompson and Eric Gonzalez has refused to participate in them. While they have brought cases against smaller groups of people with direct ties to violence, they have not cooperated with the NYPD in bringing cases based on loose associations of young people with no evidence of participation in violence. This calls into the question the necessity of these large raids and their justness. We are learning that in many cases, large numbers of people caught up in these raids are poor youth of color with no direct involvement with violence who end up getting prosecuted for low level drug crimes.

The conclusion this suggests is that these raids are not about targeted suppression of violent criminal enterprises as the NYPD suggests, but instead are about the broad criminalization of youth of color in high crime areas as a preemptive strategy of crime prevention. Such preemptive prosecutions violate the fundamental tenets of our criminal justice system that people are innocent until proven guilty and that guilt should not be based on speculation, hearsay, or association.

I have attached a chapter of my new book *The End of Policing* that lays out the fundamental injustices associated with gang suppression policing as well as alternatives. Please let me know if you have any questions.

The End of Policing

Alex S. Vitale



8

Gang Suppression

Malcolm Klein, in his book *Gang Cop*, tells the story of “Officer Paco Domingo,” a composite of dozens of gang officers. Officer Paco sees the gangs on his beat as a source of serious criminality and attempts to control them through aggressive and punitive interactions that often skirt the law. In a typical interaction, he confronts a group of teenagers hanging out on the corner and searches them without any reasonable suspicion or probable cause. He interrogates them about what they’re doing there, then orders them to disperse. He might handcuff them, make them lie on the ground, and order them not to look at him. His goal here is not law enforcement; it’s control and humiliation. Gang cops like Officer Paco believe that intimidation is what dissuades young people from gang activity. The dynamic between street gangs and the police looks a lot like a war between competing gangs, with each side using constantly increasing terror to try to show who is toughest.

After a relative lull in the 1970s, gangs have become larger, more numerous, and widely distributed across the United States. While Los Angeles and Chicago remain outliers in the intensity and extent of gang activity, other cities are gaining ground, giving rise to a wide variety of police-centered suppression strategies at the local, state, and national level. Hundreds of cities and many states now have dedicated gang units that concentrate on intelligence gathering and intensive enforcement. Many states have also added enhanced legal penalties that play a role in mass incarceration. Despite these efforts, gangs remain alive and well, continually renewing

their membership. While the bulk of crimes committed by active gang members involve low-level drug dealing and property crime, violence plays an important role in the cohesion of gang identities, and protecting territory from rivals is at the center of much of this destructive behavior.

Police gang units emerged as a national trend in the 1980s. By 1999, half of all police agencies with over 100 officers had such units. By 2003 there were estimated to be 360 such units, the vast majority of which had been in place for less than ten years.¹ At the national level, the FBI has established 160 Violent Gang Safe Streets Task Forces staffed by nearly a thousand federal law enforcement personnel.²

Gang units tend to take on two main functions: intelligence gathering and street suppression. A few units maintain a largely intelligence-gathering function, channeling information about gang activity to enforcement units in patrol, narcotics, and other divisions. Most, however, are directly involved in suppression. Tactics include both long- and short-term investigations and random patrols. They harass gang members constantly on the street and in their homes and target them for frequent arrest.

These gang units tend to become isolated and insular. Their specialized function and intelligence-gathering aspect lend them an air of secrecy and expertise that they cultivate to reduce outside supervision or accountability. In addition, a strong group loyalty often emerges, similar to that seen in SWAT teams, in which experience, training, and the specialized nature of the work contributes to an “us against the world” attitude. Officers often come to believe that they are the only ones who understand the nature of the problem and the need for heavy-handed tactics to deal with young people who openly defy their authority. They see police executives who embrace community policing and preventative measures as empty suits handing over neighborhoods to the gangbangers and deride non-law-enforcement efforts as empty-headed

coddling of hardened criminals.³ In addition, these units often come to play a role in perpetuating the politics of gang suppression. As part of an effort to maintain funding, they spend a lot of their time speaking to community groups about the threat gangs pose and the need for more suppression efforts. This tends to be one-way communication; these units rarely take input from communities about where and how to carry out their activities. Instead, it is usually part of a self-serving effort to win more resources and keep up the moral panic about youth violence and gangs, as well as to channel all related concerns into continued aggressive policing.

There are a lot of misunderstandings about the nature of gangs, which have come to play a role in the way that police handle them. Strategies that seek to “eradicate” gangs often fail to consider exactly who the targets for such action are, or the effect on those targeted and on the community. Officials often use language that dehumanizes gang members, such as one LA sheriff’s captain who said, “Everyone says: ‘What are we going to do about the gang problem?’ It’s the same thing you do about cockroaches and insects; you get someone in there to do whatever they can do to get rid of those creatures.”⁴ This kind of language opens the door to civil and human rights abuses and is unlikely to result in long-term reductions in gang activity.

This is exactly what has happened in Los Angeles. For years, the LAPD has embraced a series of suppression measures designed to root out gangs. In the 1970s, the department developed specialized antigang units first known as TRASH (Total Resources Against Street Hoodlums) and later sanitized into CRASH (Community Resources Against Street Hoodlums). In 1987, after a series of horrific gang killings, Chief Daryl Gates initiated a massive crackdown called Operation Hammer in which CRASH units, with the support of other units, carried out sweeps of communities with gangs, with little regard for legal standards or whether those arrested

had anything to do with gangs or crime. In one weekend in April 1988, a thousand officers made almost 1,500 arrests, only 103 of which resulted in charges. Officers raided an entire low-income housing development that they erroneously believed was an epicenter for gang-related drug dealing. When no actual gangs or drugs could be found, officers ripped open walls, destroyed furniture and personal belongings, and spray-painted threatening messages like "LAPD Rules" and "Rollin' 30s Die" on the walls. Dozens were arrested, humiliated, and had their property destroyed, but no one was ever convicted of a crime.

By 1990, fifty thousand people had been arrested in such sweeps. Current LAPD chief Charlie Beck points out that these sweeps "undermined the moral authority of the police."⁵ Gang members may have been a source of problems in these communities, but they were still a part of them. They had mothers, cousins, uncles, and friends who viewed the sweeps as the arbitrary, abusive, and disproportionate actions of an occupying army. Many became more sympathetic toward gangs and the young people facing the brunt of this enforcement activity. All the while, crime rates continued to go up—as did excessive-force lawsuits against the police. By the late 1990s, CRASH units had become insular, brutal, and unaccountable. The Rampart Scandal of 1999 unveiled a pattern of corruption and criminality. Dozens of officers were accused of false arrests, unlawful shootings, beatings, and even robbery and drug dealing. Joe Domanick, in his expose of the post-Rodney King LAPD, details the intensity of this corruption and the utter lack of accountability. Excessive force was routine; so were coverups. Shootings and other incidents were only ever investigated by supervisors within CRASH, who often led the effort to make events appear justified on paper. Accounts and paperwork were routinely fabricated in the name of sticking it to the gangbangers. It was within this atmosphere that Rafael Pérez and others began stealing drugs

from the Rampart Division evidence room and reselling them on the streets. When investigators cornered Pérez, he implicated dozens of others in illegal killings, coverups, robberies, and drug dealing. Hundreds of prior convictions had to be overturned; many officers were disciplined or forced to retire; some were incarcerated; millions in damages were paid out.⁶

While police have some useful firsthand knowledge, they too are subject to pressure by politicians and the public, whose views are shaped by sensationalist media coverage as well as movies and television. Communities directly affected also have some immediate knowledge, but they too are remarkably unclear about the exact role of gangs versus unaffiliated youth and tend to have their views skewed by extreme events, which often then become associated with any group of young people hanging out together in public spaces. A group of middle-school kids who hang out together and paint graffiti may be perceived as dangerous, even if they rarely go beyond vandalism and perhaps shoplifting supplies. While more organized gangs often have certain symbols or styles of clothing, these may be difficult for many to distinguish. A lot of property and violent crime are committed by young people, and much of it happens in poor communities, especially black and Latino ones; wealthier kids are generally less likely to get caught and more likely to be dealt with informally or leniently if apprehended.⁷

The police tend to see most youth criminality in gang neighborhoods as gang-related. They also tend to view gangs as highly organized, directed by central leadership, central to local drug markets, and comprised of hardened criminals.⁸ This comports closely with their suppression orientation, which has been amplified by the growth of gang databases, sentencing enhancements, and injunctions.

Even in the most gang-intensive communities, only 10 to 15 percent of young people are in gangs; research consistently shows that most involvement is short-lived, lasting on average

only a year. While some become intensively involved and identified with their gangs, many more have a looser connection and drift in and out depending on life circumstances. Rarely does leaving result in serious consequences. A new child or job are generally sufficient explanation for not being on the streets any longer.⁹

Suppression efforts mostly focus on established members of whom the police are aware. Police assume that these members play a central leadership role in initiating and directing illegal activity, with younger members playing a support role. They believe that getting rid of leaders will disrupt and destabilize the gang, causing it to either dissipate or at least be less violent. The reality is that for every “shot caller” or “old head” that’s locked up, there are many more to take their place. The whole idea of one or two leaders directing gang activity is itself a misunderstanding of the horizontal nature of gangs, with many people playing shifting and overlapping leadership roles at different times and in different circumstances. Just as importantly, much of the violence committed by gang members is performed by younger members hoping to prove themselves, who have had no previous contact with the police and are not in gang databases or under surveillance.¹⁰

Another central misconception is that arrest and incarceration will break the cycle of violence and criminality. The fundamental premise is that young people will either be intimidated by the threat of arrest and incarceration or that removing them from the streets will reduce the number of young people active in gangs and other illegal activities. There is very little evidence to support these ideas. Young people seem largely immune to this deterrent effect. Juveniles rarely make such rational cost-benefit calculations. Instead, they tend to make impulsive decisions, think in very short time horizons, and believe that they will not get caught. Many report that they expect to have very short lifespans and focus on achieving respect and social acceptance on the streets rather

than considering the impact of arrests and incarceration on their future. It could also be argued that, for some, despite the threat of punishment, the gang may still be the “rational” decision in circumstances where legitimate economic opportunities are scarce and there is a need for protection in one’s neighborhood.

Nor do arrests incapacitate gangs. Many are intergenerational, and there are always more young people to fill the shoes of those taken away. Destabilizing existing dynamics of respect and authority can create a power vacuum that encourages more crime and violence as people jockey for prestige. There is also evidence that intensive gang enforcement breeds gang cohesion. The constant threat of police harassment becomes a central shared experience of gang life and contributes to a sense of “us against the world,” in an ironic converse of the police mentality. Gangs often thrive on a sense of adventure; boasting and fraught encounters with the police become central aspects of gang identity. One way to gain respect is to stand up to police harassment in subtle ways, like flashing gang signs or giving them the eye as they drive past. This use of bravado to gain respect can only be accomplished if police are there as an oppositional force.¹¹

What’s more, the many young people incarcerated by this process are now burdened with a criminal record that makes them less employable. They are generally drawn into prison gang activity, which tends to be even more violent than street gangs. Finally, they have often been abused by guards and other inmates. All of this contributes to hardening a criminal identity. Since all but a few of those incarcerated come back to the community at some point, relying on this approach sets these young people and their communities up for failure.

We can see this play out in places like Oakland, California, where young people are subjected to punitive probation and parole policies, policing, and school discipline. Wherever they go they are hounded by government officials, who treat them

as always-already criminals. The effect is what sociologist Victor Rios calls the “youth control complex,” which undermines their life chances by driving them into economic and social failure and long-term criminality and incarceration.¹²

Many cities have doubled down by developing new tools of punishment and suppression such as multi-agency task forces, gang sentencing enhancements, and gang injunctions. The center of these innovations is California, which has extensive gang activity and has also been at the heart of mass incarceration politics and policy over the past thirty years.

San Diego’s Jurisdictions United for Drug Gang Enforcement (JUDGE) targeted gang members believed to be involved in drug dealing. They intensively monitored those with a past drug arrest and arrested more than 80 percent of them in a two-year period. Ninety-seven percent of those arrested were black or Latino. Much of the enforcement focused on probation violations; almost half of those targeted spent six months or more in jail or juvenile facilities. Four years after the program ended, two-thirds of those targeted had been rearrested, usually multiple times. Evaluators of the program noted the high recidivism rate as a clear indication of failure and went so far as to say that the program may have done more harm than good, as incarceration is more likely to lead to additional offenses than drug treatment, improved educational access, and employment are.¹³

Multi-agency task forces, in which local and federal officials work together to develop major cases against gangs, have seen similarly dismal results. In drug cases this involves low-level buy-and-bust operations to develop informants, who then provide information on drug dealers. These dealers are then targeted and whoever is caught is asked to provide evidence against others in the gang. Strong loyalties mean that often people refuse to cooperate or name others outside their group. Rarely do these investigations move higher up the drug distribution chain; generally they have no effect on the

availability of drugs or the cohesiveness and impact of local gangs. Susan Phillips points out that incarcerating earners further destabilizes families and communities.¹⁴

Nevada and California have developed sentencing enhancements that add many additional years to sentences based on loose definitions of gang membership. Anyone the police want to assert is affiliated with a gang can find an extra decade added to their sentence. Neither state has seen a reduction in gang activity; the enhancements have further overpopulated state prisons without providing meaningful relief to youth or their communities.

Gang databases are another problematic area of intervention. California has a statewide database populated with the names of hundreds of thousands of young people, the vast majority of whom are black or Latino. Officers can enter names at will, based on associations, clothing, or just a hunch. There are very few ways of getting your name removed from the list; many people do not even know whether or not they are on it. In some neighborhoods, inclusion on the list is almost the norm for young men. Police and courts use the list to give people enhanced sentences, target them for parole violations, or even target entire neighborhoods for expanded and intensified policing. The Youth Justice Coalition in Los Angeles has documented cases where information in the database has been shared with employers and landlords, despite legal requirements that the database not be publicly accessible.¹⁵

These databases have made possible another new tool: the gang injunction. These are civil injunctions brought by local authorities to try to break up gang-related activities on a broad scale. Rather than targeting individuals for criminal prosecution, they criminalize membership in—or even association with—gangs. San Jose's injunction prohibits "standing, sitting, walking, driving, gathering, or appearing anywhere in public view" with someone suspected of being a gang member. Some injunctions name specific individuals; others are directed

at a gang and anyone believed by police to be associated with that gang is covered, even without prior notification. Those that violate the injunction are subject to criminal prosecution for contempt of court, which is a misdemeanor punishable by up to six months in jail. By 2011, the city of Los Angeles had brought forty-four injunctions targeting seventy-two gangs. People can be penalized for associating with family members and lifelong friends—sometimes without realizing it. People who have long since left gang life but remain in a database may find themselves or those they associate with criminalized for walking down the street together. Ana Muñiz argues that one of the primary functions of these injunctions is maintaining racial boundaries by tightly constraining the behaviors and movements of black and brown youth.¹⁶

Little systematic evaluation of these injunctions has been done, and the studies that exist are far from conclusive. However, most show either no effect or a very short-lived one in which, after a year or two, crime rates return to their previous levels. In one study, the ACLU found that crime activity near an injunction in Los Angeles was merely dispersed and may actually have increased.¹⁷ A gang injunction targeting two neighborhoods in Oakland was withdrawn after residents and criminal justice reform groups such as Critical Resistance showed that it did not make these neighborhoods any safer. Even local police officials admitted that the injunction had been ineffective and undermined police-community relations more broadly.

Social-media-based gang-suppression efforts take guilt by association to a new level. The most notorious is Operation Crew Cut in New York City. In 2012, the NYPD doubled the size of its gang unit to 300 officers and began creating fake social media profiles and using them to monitor the activities of people as young as twelve who are suspected of involvement in crime. They attempt to trick these young people into accepting friend requests, often by creating fake profiles using

photos of attractive young women, to gain access to secure information. The investigators then use this access to track who is friends with whom in order to draw up extensive lists of “known associates.” These associates then get designated as members of a particular gang or crew. The police can then use conspiracy laws and other measures to round up large numbers of young people under the banner of gang suppression without concrete evidence of criminal behavior, just a social media connection to someone suspected of a violent crime.

This is exactly the wrong direction. Law professor Babe Howell argues that New York City’s expanded emphasis on gang suppression is being driven by the legal and political pushback against “stop-and-frisk” policing. She says that when police lost the ability to engage young people of color through street stops, they developed new but similarly invasive gang policing techniques under a new name. In both cases, black and brown youth are singled out for police harassment without adequate legal justification because they represent a “dangerous class” of major concern to police.¹⁸

Reforms

Efforts to take a more nuanced approach to gang and youth violence attempt to closely target youth believed to be at high risk of crime and use social support services to try to steer them off the streets. The two best-known models have been the Spergel Model and “focused deterrence.” Irving Spergel at the University of Chicago developed a comprehensive model for gang intervention that has received extensive support from the Office of Juvenile Justice and Delinquency Prevention.¹⁹ The model calls for a robust mix of suppression strategies and social services. At its best, it involves collaboration between law enforcement, schools, social service providers, and local communities, with an aim toward developing the most

appropriate tools to address local conditions. Some plans involve intensive enforcement toward young people using coordinated teams of police, parole, and prosecutions while also attempting to provide family support, job training, and socialization skills development.

“Focused” or “targeted deterrence” initiatives function in much the same way. Developed by criminologist David Kennedy and first implemented in Boston in 1996, they attempt to stop gun violence through intensive and targeted enforcement combined with support services and appeals from community stakeholders to stop the violence. Ideally, this model begins with a community mobilization effort in partnership with local police. The goal is to send a unified message to young people that gun violence will no longer be tolerated. If it occurs, they use every resource at their disposal to apprehend the assailant and to disrupt the street life of young people involved in crime, across the board (this is called “pulling levers”). The hope is that young people will choose to avoid violence, so that they can concentrate on socializing and low-level criminality free of constant police harassment. This is based on evidence that a great deal of shooting was not drug-related but involved tit-for-tat revenge shootings by warring factions. The key is to break that cycle. To achieve this, police develop “hot lists” of young people they believe are more likely to engage in violent crime, based on a host of sometimes secret factors like prior arrests, involvement in foster care, and even school performance. The young people are called into meetings with local police and community leaders and threatened with intensive surveillance and enforcement if the gun violence doesn’t stop. These “call ins” are made possible in part because many of these young people are on probation or parole for past offenses. There is usually an effort to develop some targeted social services to offer education and employment opportunities.²⁰ In New York under the banner of Operation Ceasefire, if violence does occur after

a call-in, the entire population of young people is targeted for aggressive prosecution on any arrest, even if they were not part of the call-in and had no knowledge of the initiative.

These models are very similar and rely primarily on intensive punitive enforcement efforts. While focused deterrence is more concerned with gun violence, both models rely heavily on traditional gang suppression efforts of investigations, arrests, and intensified prosecutions. The social services offered tend to be very thin, involving some counseling and recreational opportunities but rarely access to actual jobs or advanced educational placement. Life skills and socialization classes do nothing to create real opportunities for people, instead reinforcing an ethos of “personal responsibility” that often ends up blaming the victims for their unemployment and educational failure in communities that are poor, underserved, segregated, and dangerous.

Research on these programs does show some meaningful declines in crime that can even last for years. Overall, though, the results are thin. Most reductions are small, occur in only a few crime categories, and don’t last very long. They also continue to reinforce a punitive mindset regarding how to deal with young people in high-crime, high-poverty communities, most of whom are not white. It is certainly true that violent crime is heavily concentrated among a fairly small population of young people in specific neighborhoods. It makes more sense to target them than to indiscriminately stop and frisk pedestrians or to arrest hundreds of thousands of young people who have either done nothing wrong or are engaged in only minor misbehavior. Despite the claims of the broken-windows theory, there really isn’t a strong connection between the two groups.

The targeting is problematic, because police fail to understand the often amorphous nature of gang membership and the fact that one prior offense doesn’t necessarily mean a strong long-term commitment to crime. This is also a profound

invasion of privacy: people are subjected to intensive police surveillance based on a perceived risk factor rather than any specific criminal or even suspicious behavior. This “predictive policing” is just another form of profiling of young men of color. Most young people who engage in serious crime are already living in harsh and dangerous circumstances. They are fearful of other youth, abusive family members, and the prospect of a future of joblessness and poverty. They don’t need more threats and punishment in their lives. They need stability, positive guidance, and real pathways out of poverty. This requires a long-term commitment to their wellbeing, not a telephone referral and home visits by the same people who arrest and harass them and their friends on the streets. Bill Bratton, in his first stint as NYPD commissioner, pointed out that police officers are not social workers: they’re not trained for it, nor prepared for it, and that’s not their role. Why would they be suited for engaging these young people as mentors or life-skills trainers? They aren’t.

In addition, deterrence theory rarely applies to the young people being targeted. As noted, they are driven by emotions and short-term considerations and impulsiveness, not carefully calculated long-term risk assessments. Violence among this group is often driven by fear, anger, and humiliation, not calculations of material gain.²¹ Threats, intimidation, and incarceration merely intensify those feelings of low self-esteem and, yes, humiliation. In the end, focused deterrence is really a continuation of the punitive practices already employed.

Some police officials who have spent years using punitive methods have begun to question them and look for alternatives. Joe Domanick shows this process playing out in Los Angeles. LAPD chief Charlie Beck, for example, has come to embrace a more community-centered approach. Beck had been an active participant in Daryl Gates’s Operation Hammer, but began to see that without community support, they could accomplish little of long-lasting consequence. He

began to reach out to organizations and young people who were already out on the streets trying to reduce the violence as “gang interventionists.” The LAPD had treated these groups with suspicion or even revulsion in the past. Many are former gang members who had spent time in jail. Police saw them as too close to the street and too critical of the police to be trusted. Beck came to understand that this was exactly what made their work possible. Beck brought them into discussions for the first time. The most concrete outcome was police support for the role of violence interrupters.²²

In the end, though, this was primarily about securing community support for more nuanced but still primarily punitive law enforcement. What remained was a still-dysfunctional system of law enforcement and largely unconnected youth programs. Advocates, such as Connie Rice at the Advancement Project, understood this but were unable to get the city council to realign its emphasis despite putting together an extensive report, *A Call to Action: The Case for a Comprehensive Solution to L.A.’s Gang Violence Epidemic*, which documented the failures of the suppression model and the dysfunction of existing efforts.²³ Today, the overall focus of the LAPD remains on suppression, with some nods to the role of community-based gang interventionists. In fact, in 2014, the LA Youth Justice Coalition developed a plan to redirect 1 percent of the LA County law-enforcement budget toward social programs for youth, including community centers, youth jobs, and violence interrupters.²⁴ That 1 percent would generate around \$100 million a year, a rhetorical intervention that has yet to bear fruit.

Alternatives

Redirecting resources from policing, courts, and jails to community centers and youth jobs is crucial to the real reforms

needed to reduce juvenile violence. We are spending billions of dollars annually to try to police and incarcerate our way out of our youth violence problems while simultaneously reducing resources to improve the lives of children and families.

It makes much more sense to reduce racialized segregated poverty, provide troubled kids with sustained treatment and support, and provide communities with tools to better self-manage their problems without the use of armed police. First, we must have a real conversation about the entrenched, racialized poverty concentrated in highly segregated neighborhoods, which are the main source of violent crime. It is true that crime has declined overall without major reductions in poverty or segregation, but the crime that remains is concentrated in these areas. Unlike aggressive policing and mass incarceration, doing something about racialized poverty and exclusion would have general benefits for society in terms of reducing poverty, inequality, and racial injustice.

In a bit of an overgeneralization, Elliott Currie argues that we need three things to reduce youth offending: “jobs, jobs, and jobs.”²⁵ Most young people would gladly choose a stable, decent-paying job over participation in the black markets of drugs, sex work, or stolen property. The United States is more segregated today than ever before. It allows up to 25 percent of its young people to grow up in extreme poverty, something that just isn’t tolerated in other developed countries. It is from that population that most serious crime originates. The research on whether a short-term increase in the supply of youth jobs (often temporary and low-paying) reduces crime has shown mixed results. What remains to be tested is what would happen if there were a sustained increase in decent-paying jobs over several years. Such an increase might be able to overcome the educational and even cultural dynamics that contribute to black-market participation and violence.

Not every young person in these neighborhoods is ready and able to work, even if jobs were available. So the second

plank is doing something to improve stability for these young people, so many of whom have been subject to soul-crushing poverty, abuse, and violence. What's remarkable is not how much crime they commit but how *little* they do, given this extreme deprivation. For years, the proponents of austerity and neoconservative tough-on-crime politics have claimed that social programs and treatment don't work. Of course no single program by itself can end serious crime; too often, in their scramble for resources, supporters of these programs make overly ambitious claims that set them up for failure. Midnight basketball by itself won't bring an end to crime any more than Police Athletic Leagues will. In many cases, the programs that do get funding tend to deal with those young people with the fewest needs. But most programs avoid those who need help the most; those that do serve them tend to have the best results, but only when they involve a sustained, comprehensive approach that deals with both their problems and those of their families.²⁶ Such "wraparound" services have to be at the center of any youth-violence reduction program.

Finally, we need to build the capacity of communities to solve problems on their own or in true partnership with government. The primary face of local government in poor communities is the police officer, engaged primarily in punitive enforcement actions. Why not build community power and put non-punitive government resources to work instead? Michael Fortner argues that African Americans played an important role in ushering in the era of mass incarceration and overpolicing by demanding that local government do something about crime and disorder.²⁷ What this analysis misses is that many of these same leaders also asked for community centers, youth programs, improved schools, and jobs, but these requests were ignored in favor of more police, enhanced prosecutions, and longer prison sentences. It's time to revisit this equation.

Communities often have good ideas about how to reduce crime through nonpunitive mechanisms, when given access to real resources. One model for pursuing this is community-based restorative justice. In this model, community members, through a representative body, are asked to assess the risks of taking some offenders back into the community instead of sending them to prison.²⁸ They use some or all of the resources that would have been spent on incarceration to develop rehabilitation and prevention programs. One study found that New York State was spending more than \$1 million a year to incarcerate people from a single square block in Brooklyn—and there are many such “million-dollar blocks.”²⁹ Most communities could find ways to spend that money that would achieve much better results than those produced by heavy-handed policing and mass incarceration. Jobs programs, drug treatment, mental health services, and youth services would all help reduce crime and break the cycle of criminalization, incarceration, and recidivism.

At the same time, this model would engage offenders in restitution and harm-reduction projects to help repair the damage they have caused. Abandoned houses that are sites of drug dealing and violence could be rehabilitated to provide stable housing. Older youth could be trained to mentor younger ones about how to resolve disputes without relying on violence, stay in school, and prepare for a difficult job market.

So much of the youth gang and violence problem stems, as David Kennedy’s research points out, from a sense of insecurity.³⁰ When young people are constantly at risk of victimization, they turn to gangs and weapons to provide some semblance of protection. Communities need help in exercising informal controls to try and break this dynamic. There is no one solution to this, but active, positive adult involvement in the lives of these young people would be a major step in the right direction. This would require developing the capacity of parents to be more involved, which means looking at the

structure of working hours and the high costs of childcare.³¹ Often parents are unable to supervise their children adequately because of the intense demands of multiple jobs with erratic schedules. We also need to invest in drug treatment and mental health services to address the difficulties some parents face in managing themselves, much less their children.

Youth workers, coaches, and school counselors can all play a role in mentoring and monitoring young people. In too many cases, however, we are replacing them with more police. When communities demand more police, those resources have to come from somewhere else, and too often they come from schools and community services. This all squares nicely with austerity politics, where social programs are slashed to make way for tax cuts for the rich and enhanced formal social control mechanisms.

Another way to empower communities is to invest heavily in public-health-oriented prevention programs that operate at the neighborhood level. Often undertaken under the banner of “Cure Violence,” these programs try to send strong anti-violence messages to young people, engage them in pro-social activities like after-school art and job training programs, and hold workshops in nonviolence conflict resolution.³² They also employ outreach workers as violence interrupters, who can talk to young people from a shared position. The power of that connection for building credibility cannot be overstated. These workers are trying to break the cycle of violence through rumor control, gang truces, and ongoing engagement with youth out on the streets.

Some places are trying to move in this direction. Minneapolis has a “Blueprint for Action to Prevent Youth Violence,” a multi-agency effort involving government, nonprofits, and community members.³³ Unlike gang-suppression efforts, it’s housed in the health department rather than the police department. The blueprint brings people together to discuss existing problems and programs and tries to coordinate their efforts

GANG SUPPRESSION

and prioritize funding for new services and initiatives. It's a flexible real-time process that responds to conditions as they change. The two main drawbacks are a lack of resources and a lack of buy-in from the police department. This creates a dynamic where young people who are involved in programs and positive activities are still being harassed and arrested by the police.

These programs are not a panacea. Research on their effectiveness is limited and shows mixed results. That is because they need the other parts of the solution to be in place as well. Without community-level changes in employment opportunities, adequate social services for young people with serious life problems, and improved educational structures, no one program can end the violence. There must be a holistic approach that begins by reducing our reliance on the criminal justice system and building political power to demand more comprehensive and less-punitive solutions.

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