



**NEW YORK CITY COUNCIL
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS
JOINTLY WITH THE COMMITTEE ON PUBLIC SAFETY**

**TESTIMONY OF JOCELYN E. STRAUBER
COMMISSIONER, NEW YORK CITY DEPARTMENT OF INVESTIGATION**

CONCERNING DOI'S OFFICE OF THE INSPECTOR GENERAL FOR NYPD

**MONDAY, APRIL 11, 2022
COUNCIL CHAMBERS**

Good morning Chair Brewer and members of the Committee on Oversight and Investigations, and Chair Hanks and members of the Committee on Public Safety. My name is Jocelyn Strauber and I am the Commissioner of the New York City Department of Investigation ("DOI"). I appreciate the opportunity to speak with you today about DOI's Office of the Inspector General for the New York City Police Department ("OIG-NYPD"), a unit created in 2014 in accordance with Local Law 70, which was enacted in response, in part, to the community's concerns about certain police tactics. The law directed the DOI Commissioner to appoint an Inspector General to "investigate, review, study, audit and make recommendations relating to the operations, policies, programs and practices of NYPD." Consistent with that broad mandate, the OIG-NYPD principally has conducted broad examinations of NYPD policies and practices and issued public reports recommending reforms.

As with all agencies we oversee, our goal with respect to NYPD is to identify policies and procedures that could benefit from improvement and to propose changes we deem necessary in public reports, to improve policing and to increase transparency as well as confidence in the police force. Community engagement is critical to our work. The advocacy community was instrumental in the creation of an Inspector General with oversight of the Police Department. They continue to bring concerns to our attention and to some extent, they inform some areas for review. NYPD is also an important partner in our process. The Department's feedback on our reports helps ensure that our recommendations are achievable and feasible, and that they don't compromise the safety of the public or law enforcement. I am particularly sensitive to these issues at this time, as the City confronts a surge in violent crime that makes NYPD's work especially challenging. Of course DOI, the advocacy community, and NYPD do not always agree on the appropriate reforms but we are committed to a thoughtful process that allows consideration of multiple viewpoints on this very important work.

Since it was formed in 2014, OIG-NYPD has made a total of 185 recommendations for changes and improvements to NYPD policies and procedures, in public reports setting out in detail our investigative steps and explaining our conclusions. These recommendations and reports, like all DOI recommendations, are on our public website, where we also track implementation by the relevant agencies.

I am proud to say that the vast majority of our recommendations have been accepted by NYPD. Over 80% of those recommendations have been implemented, partially implemented, or accepted in principle, meaning that NYPD has agreed to implement them, but has not yet done so. To break down those numbers, 72% of the 185 recommendations have been implemented, or partially implemented; 9.8% of them have been accepted in principle. In addition, 3.3% of the recommendations remain "under consideration" by NYPD, meaning the Police Department has not taken a position on them, and 14.7 % of them were "rejected." A sixth category is "no longer applicable," meaning that these recommendations are no longer relevant, for example because of a procedural change by NYPD.

Before I discuss specifics about OIG-NYPD's work, I want to provide Committee members with important context about how DOI operates, and how OIG-NYPD operates within it.

DOI, created almost 150 years ago, is one of the oldest law enforcement agencies in the country. An independent, non-partisan investigative entity, its mission is to identify and eradicate fraud, abuse, waste and corruption in City government. Our investigations lead to referrals to prosecutors for criminal charges, to the agencies we oversee for disciplinary proceedings, to the Conflicts of Interest Board for violations of the City's conflict of interest laws. We also make recommendations to remedy the vulnerabilities and deficiencies we find, to prevent future corruption and wrongdoing. When we identify systemic issues, we may issue public reports that provide even greater insight into our findings and recommendations. The City Charter and Executive Orders that give DOI its broad jurisdiction and investigative powers provide its authority to obtain City records, including NYPD records. While Local Law 70 created a specific Inspector General for NYPD, it did not change or limit DOI's existing authority over all city agencies, including NYPD. It does give the Mayor authority, in consultation with DOI and NYPD, to determine how "sensitive" NYPD information provided to DOI will be treated.

DOI is organized as 12 oversight units, led by one or two Inspectors General, each with responsibility for an agency or a group of agencies, such as infrastructure, housing and buildings, public

housing, and City-run hospitals, among others. Each unit includes attorneys, investigators, analysts, auditors and administrative personnel. OIG-NYPD is one oversight unit; it focuses on NYPD.

OIG-NYPD is unique among DOI's oversight units with respect to the systemic investigations it conducts of police practices and procedures resulting in public reports. OIG-NYPD receives public complaints from an array of constituents and the public, including community advocacy groups, law enforcement personnel (including NYPD), elected officials, and other units within DOI. Each complaint is reviewed and is either assigned for investigation or, as more often happens given the volume and nature of these complaints, referred to another appropriate oversight agency for review. As you are aware, two other civilian entities also oversee policing: the Civilian Complaint Review Board ("CCRB"), an independent agency that investigates complaints filed by the public concerning police interactions with civilians and the Commission to Combat Police Corruption ("CCPC"), which monitors NYPD's internal efforts, principally handled by NYPD's Internal Affairs Bureau ("IAB"), to detect, remedy and prevent police corruption.

And at the state level, since 2021 the New York State Office of the Attorney General has had authority over local police departments, including NYPD, through its Law Enforcement Misconduct Investigative Office. That office reviews and makes recommendations relating to the operations and policies of state and local law enforcement agencies. Civil litigation and criminal prosecution are two other forms of oversight. For instance, prior federal litigation regarding stop, question, and frisk led to a court-ordered monitor to oversee reforms relating to this law enforcement tactic.

In light of these various forms of oversight of the police department, OIG-NYPD has focused primarily on examinations of operations, policies, procedures and practices within the Police Department. OIG-NYPD considers a variety of inputs in determining what examinations to undertake, including complaint trends, media reports, community concerns and interactions with NYPD.

Today, I want to bring you up to speed on the work of OIG-NYPD, what I have done since I came to DOI six weeks ago to identify the challenges the unit faces, and how I plan to advance the unit's important work and help it reach its full potential.

As I mentioned earlier, since 2015, OIG-NYPD has issued a total of 17 reports containing 185 recommendations; 82 percent of those have been implemented, partially implemented, or accepted in principle. That rate is consistent with rates for DOI recommendations generally for the past several fiscal years, which range from approximately 86 to 93 percent.

OIG-NYPD's investigative and report-drafting process is rigorous, and involves substantial guidance and oversight by the Inspector General and the DOI executive staff. To ensure that we've understood the issues correctly, and to facilitate feedback on our recommendations, we share a draft of our reports with NYPD prior to public release. We incorporate any changes we deem necessary prior to issuance. Other units follow the same practice with the agencies they oversee. While we generally don't change our recommendations, we find that agency input is very valuable to our process.

To give just a few examples of the significant issues that OIG-NYPD has examined since the Unit was created, leading to public reports and recommendations for change which NYPD has adopted:

- We reviewed 10 cases where the CCRB determined that NYPD officers used chokeholds and issued four recommendations that have all been implemented, including furthering transparency with respect to the Police Commissioner's disciplinary decisions and increasing coordination with CCRB to refine the disciplinary system for improper use of force;
- We reviewed NYPD's use of force policies and issued more than a dozen recommendations, the majority of which have been implemented, including that NYPD compile and publish data regarding the percentage of cases in which the Police Commissioner reduces or declines discipline;
- We reviewed NYPD's approach to handling interactions with people in mental crisis. As a result NYPD implemented our recommendations that strengthened its training and procedures for responding to interactions with people in mental crisis;
- We exposed deficiencies in NYPD's Special Victims Division and Adult Sex Crimes unit and issued recommendations that staffing in the unit be increased and training expanded;

- In 2016, we issued a report concerning “quality of life” enforcement, focused on the 2010 to 2015 period. We looked at the narrow question whether an increase in summons and misdemeanor charges for “quality of life crimes” in that period was linked to a decrease in felony crime and found that it was not. We did not address the broader efficacy of quality of life enforcement in general. NYPD implemented four recommendations from that report and rejected several others. We plan to continue to engage with the Police Department with respect to the rejected recommendations, as is our practice.
- We examined NYPD’s investigations, policies and training as they relate to complaints of biased policing in New York City. NYPD implemented our recommendations that included strengthening investigative training on this issue and led to the creation of a new unit at CCRB. While NYPD rejected the majority of the 21 recommendations issued, those recommendations continue to stand and DOI is hopeful that NYPD will engage in further discussion about them.

Furthermore, in my first month and a half at DOI I have reviewed several OIG-NYPD reports, in addition to the annual report, and I expect that we will issue a number of reports this year on topics that I know are of importance to the community and this council, including one relating to the so-called “Gang Database.”

Once a report is issued, OIG-NYPD continues to monitor NYPD practices that are relevant to the recommendations that we have made, including those recommendations that have been rejected or that may no longer be applicable, because policing strategies can shift and provide new opportunities to reconsider past recommendations.

In addition to our in-depth investigations, we stay up to date on police practices through a variety of efforts, including attending NYPD trainings, which we find extremely valuable to our investigators’ ability to better understand NYPD’s practices, which leads to better and more informed recommendations.

In its first eight years, OIG-NYPD has accomplished a great deal. However, for a number of reasons — including, but not limited to, the impact of the pandemic on City resources and on NYPD and DOI in

particular and the related challenges to accessing NYPD records, facilities and staff — fewer reports have been issued by the Unit in the last two years than in prior years. In fact, DOI's numbers are down across the board due to similar issues related to the pandemic and its impact on resources.

As we emerge from the pandemic and I consider how to ensure that units across DOI are as productive as possible, I recognize that there are a number of areas for improvement relating to the work of this unit in particular.

Let me address some of the issues I see and my plans for the future, specifically as they relate to OIG-NYPD access to NYPD records, staffing of OIG-NYPD, and the workflow process within the unit:

- **Access to NYPD Records, Facilities and Staff**

Access to NYPD records, facilities and staff that is both meaningful and timely is paramount for OIG-NYPD to do its job, and I understand that direct and unencumbered access has been a challenge in the past. As a result, I have already had two meetings with NYPD officials since I arrived at DOI, and I have additional meetings planned in the near future. In those meetings, I have received assurances that NYPD is committed to tackle these challenges with us and most importantly to provide clear channels for elevating any delays or limitations on access so that they can be promptly addressed and resolved. I know that the Legal Department, which plays a key role in reviewing our requests and gathering, reviewing and producing the relevant materials, is managing the demands of multiple oversight agencies seeking information as well as discovery-related requests, among other pressures, but I am optimistic that with regular, open communication, we can achieve an improved pace of production from NYPD. This in turn will allow our investigations to proceed more quickly, allowing us to issue our reports more promptly. To that end, DOI and NYPD are in the process of scheduling a series of standing meetings to review DOI's outstanding requests, not only at the Inspector General and Deputy Inspector General level, but also at the executive staff level. I plan to personally participate in these meetings.

- **Staffing**

I want to provide the facts for Committee members so there is a comprehensive understanding of where we are and what we plan to do regarding staffing. OIG-NYPD marked its highest number of staff in 2017 at 38 staff members, and that number declined to its current 20 staff members. The reduction in staffing certainly has contributed to the decrease in reports issued by the Unit, and it is attributable in part to natural attrition combined with the economic realities in the City over the past several years, which led to City-wide hiring freezes or restrictions and presented significant challenges to filling vacancies not just within OIG-NYPD but throughout DOI.

At this moment, we are aiming to fill vacancies and bring OIG-NYPD up to an appropriate level of staffing, which I expect will be somewhere between 25 and 30. This will include hiring a new Inspector General ("IG"); as you know the former IG resigned in December 2021. To that end, DOI has received a number of well-rounded resumes, and has spoken with several qualified and promising candidates. That process is active and continuing. My plan is to have a new IG in place by summer – an individual with broad law enforcement experience, supervisory and management experience in developing and leading investigations, and who can productively engage both with the community and community advocates as well as with NYPD officials. There are of course other vacancies at the unit at various levels which we will also seek to fill promptly, with the input of the new Inspector General once that person is hired.

- **Streamlining Internal Workflow**

Reports are the foundation of OIG-NYPD's work. I am assessing the report-writing process for all of DOI, including OIG-NYPD. I want to make our reports more readily comprehensible to the public and more concise. I'd also like to streamline the report-writing process itself, so that drafting and editing will be more efficient. Since my arrival at DOI, I

have already reviewed several draft reports from OIG-NYPD and as I noted, I am confident that as we emerge from the pandemic-related challenges we will soon be back to our earlier pace of issuing several reports a year.

Effective policing and public confidence in NYPD are vital to New York City. OIG-NYPD's comprehensive investigations, meaningful recommendations, and public reports play an important role in meeting those critical objectives. I look forward to strengthening the Unit in the coming months, maintaining a robust dialogue with NYPD and streamlining our processes here at DOI so that we can continue to pursue this important work.

Thank you and I am happy to take your questions.

TESTIMONY OF

**Elizabeth Daniel Vasquez,
Director, Science and Surveillance Project**

BROOKLYN DEFENDER SERVICES

Presented before

**The New York City Council Committees on Public Safety and Investigation and Oversight
Oversight Hearing on DOI's Office of the Inspector General for the NYPD.**

April 11, 2022

My name is Elizabeth Daniel Vasquez. I am the Director of the Science & Surveillance Project at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. I thank Chairs Hanks and Brewer for inviting us to testify today about the DOI's Office of the Inspector General for the NYPD.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. We represent approximately 25,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing and benefits advocacy, as well as immigration advice and representation.

Many of the people that we serve live in heavily policed and highly surveilled communities. These communities bear the brunt of the NYPD's privacy-destroying and abusive behavior, including through the wrongful seizure of their personal belongings, the unannounced addition of their deeply personal information (including DNA profiles, social networks, and every day habits) into unregulated law enforcement databases like the gang database, and the unceasing subjection of "the privacies of life"¹ to police gaze through cameras, sensors, microphones, digital scraping tools, and their underlying, mass-aggregating databases like the Domain Awareness System.

¹ *Carpenter v. United States*, 138 S. Ct. 2206, 2213–14 (2018) ("Although no single rubric definitively resolves which expectations of privacy are entitled to protection, the analysis is informed by historical understandings of what was deemed an unreasonable search and seizure when the Fourth Amendment was adopted. On this score, our cases have recognized some basic guideposts. First, that the Amendment seeks to secure the privacies of life against

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I want to thank the Committees on Public Safety and Investigation and Oversight for holding an important discussion not only on the functioning of the DOI's Office of Inspector General for the NYPD, but also more broadly and critically on the kind and quality of public oversight required to police the most technically-advanced law enforcement agency in the world.

The Urgent Need for Surveillance Oversight

Twenty years after 9/11, a combination of security choices and technological advances (including increased processing speeds and decreased storage costs) have put our society on track to become a true surveillance state. Reliance on big data techniques is in vogue across all sectors. And since late 1960s federal investment in the "professionalization" of policing elevated technology as the way forward in the criminal legal sector, law enforcement has wholeheartedly embraced surveillance technology as the future of policing.

Nowhere are these realities more true than in post-9/11 New York City.² We have outlined in prior testimony to the Public Safety Committee the breadth of technologies owned and deployed by the NYPD.³ Today, however, we focus instead on the lack of oversight, regulation, and constraint in this space. As a society, we are at an inflection point; the decisions we make now will determine whether a free society remains possible or whether we lose that vision forever.

As Professor Andrew Ferguson noted before the United States Congress in 2019, "the Fourth Amendment will not save us from the privacy threat posed by [surveillance] technolog[ies]. The Supreme Court is making solid strides in trying to update Fourth Amendment principles in the face of new technology, but they are chasing an accelerating train and will not catch up. Legislation is needed to respond to the real-time threats of real-time technology."⁴

The Role of the DOI's Office of Inspector General for the NYPD

Launched in 2014, the Office of Inspector General for the NYPD was tasked by the City Council with "the goal of enhancing the effectiveness of the department, increasing public safety, protecting civil liberties and civil rights, and increasing the public's confidence in the police force, thus building stronger police-community relations."⁵

Since its inception, the OIG-NYPD has issued a total of 17 reports. Only two of those reports have addressed the impact of NYPD's bloated surveillance apparatus on civil liberties and civil rights or the public's confidence in the police force. This is a grave mistake.

arbitrary power. Second, and relatedly, that a central aim of the Framers was to place obstacles in the way of a too permeating police surveillance."

² Ali Watkins, "[How the NYPD is Using Post-9/11 Tools on Everyday New Yorkers](#)," NYTimes (Sept. 8, 2021).

³ See <https://bds.org/assets/files/City-Council-Mayors-Blueprint-Joint-Defender-Testimony-FINAL.pdf>

⁴ Andrew Guthrie Ferguson, "[Written Testimony of Professor Andrew Guthrie Ferguson before the House of Representatives Committee on Oversight and Reform](#)," Hearing on Facial Recognition Technology: Its Impact on our Civil Rights and Liberties (May 22, 2019).

⁵ Local Law No. 70 § 1.

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As a civilian body vested with broad investigatory powers, it is the role of the OIG-NYPD to explore systemic issues within the NYPD that perpetuate biased policing, have a disproportionate impact on Black, brown, and low-income communities, and escape other structures of oversight and accountability. Despite this set of duties, the OIG-NYPD has presided over an era of expanded and expanding police technological armament without conducting any investigations into that growth.

POST Act Responsibilities

The Public Oversight of Surveillance Technology (POST) Act of 2020 was passed by the City Council to increase transparency around the NYPD's growing surveillance arsenal. The POST Act required the NYPD to publicly publish impact and use policies for each surveillance technology the Department owned. Those policies were required to address not only capabilities and implementation, but also information about the disparate impact of the technologies' use.

In ostensible compliance with the POST Act, the first set of draft disclosures from the Department were published on January 11, 2021. Following a 45-day comment period, the Department then issued final disclosures on April 11, 2021. During the public comment period, multiple commenters and entities noted that the NYPD's disclosures were inaccurate, were essentially copy-and-paste jobs, and fundamentally failed to comply with the POST Act's requirements.⁶ Many of these public comments were sent directly to the Department of Investigation, in addition to the NYPD.

Even without these public comments and filed grievances about the NYPD's failure to comply with the law, the POST Act itself requires the OIG-NYPD to prepare an annual audit of the NYPD's POST Act disclosures, assessing compliance, describing known or suspected violations, and publishing recommendations. It has been a full calendar year since the NYPD first issued their final disclosures and the OIG-NYPD has not publicly reached out to commenters who raised concerns about the NYPD's POST Act compliance *or* published the legally required annual audit of the Department's disclosures.

The NYPD's POST Act disclosures did uncover a stark fact related to the need for surveillance oversight specifically. Review of those disclosures as a body reveals that the Department does not believe a warrant is required before using over 85% of the technologies they identify. Whether the NYPD is correct about the lack of constitutional or statutory constraint in this space or the Department's ability to operate these technologies without seeking court oversight aside, this departmental perspective merely highlights the critical need for legislative and civilian oversight body intervention in this space.

Broader Oversight Responsibilities for Surveillance and Science

⁶ See, e.g., Public Comments submitted by Brooklyn Defender Services; [a Coalition of Advocates and Academics](#); [the New York Civil Liberties Union](#); [the Electronic Privacy Information Center](#); and [the Legal Aid Society](#).

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Even without direct legislative direction to investigate the NYPD's use of science and surveillance technology, it is clear that the OIG-NYPD has and *should have* broader obligations of oversight and investigation in this space than the Office is currently acknowledging. The abysmal pace of the Office's investigations and the startling lack of creativity in identifying, opening, and pursuing investigations calls into question the effectiveness of the DOI's OIG-NYPD itself.

Areas for necessary oversight by the OIG-NYPD include:

1. Criminal Group Database

The NYPD maintains a secretive, internal list called the Criminal Group Database—also known as the Gang Database—in which the Department labels almost exclusively young Black and Latinx New Yorkers as gang members. Over 99 percent of the people on the database are non-white. There is no independent oversight of who is placed in this database, individuals do not need to be convicted of any crime to be placed on it, and there is no way to challenge gang designations. Criteria for designation include “living in a known gang area” and “association with gang members.”

People who are labeled as gang members are targeted for harassment and abuse by police. They are charged with inchoate crimes and crime by association, rather than the commission of specific acts, and are held pre-trial for years on the basis of those associations alone. Massive NYPD resources are spent building cases in back rooms instead of improving the lives of young people and their communities. Gang policing criminalizes affiliation with friends, relatives, and neighbors without achieving community safety. This practice is costly in both human and fiscal terms.

According to the Grassroots Advocates for Neighborhood Groups and Solutions (G.A.N.G.S.) Coalition, between 2003 and 2013 about 30% of people added to the database were children, some as young as 12. The NYPD continually expands the ways that someone can be added to their catalog. The database is also riddled with errors. BDS has represented numerous people who are incorrectly identified as gang members; others are misidentified as belonging to a certain group.

Even in instances where the database correctly identifies someone as a gang member, police cataloging of young people does not enhance community safety. The NYPD surveils children and young adults, sometimes for years, without alerting parents that their children are being surveilled or investigated. Mass surveillance, such as through the Domain Awareness System (DAS) and these types of covert gang operations, commands enormous budgetary expenses without measurable improvements in safety.

Almost five years ago—in unplanned unison with inspectors and auditors in several other major cities—the OIG-NYPD opened an investigation into the NYPD's Gang Database. Those other inspector general and auditing offices have long since published eye-opening reports documenting the harms, inaccuracies, and broad deleterious social impacts of gang databases.⁷

⁷ See, e.g., The City of Chicago's Office of Inspector General, [Review of the Chicago Police](#)

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Meanwhile, the OIG-NYPD has yet to publish its report and will not commit to a firm publication date. The Office has publicly acknowledged since 2021 that it was either in the final stages of its investigation or had actually concluded its investigation and drafted its report, but the published report remains unavailable somewhere within DOI. During her testimony before the Council on Monday, the Commissioner acknowledged that she had been provided with a draft of the report within her earliest days in office. However, she refused to commit to a certain release or publication date, saying only that the report would be issued within the year.

It is well past time for the OIG-NYPD to release its report. It is also well past time for the City Council to act to address the inappropriate political pressures being placed on this allegedly independent oversight office, the unconscionable delays being erected by the NYPD and others, and the abysmal pace of the Office's investigations and reporting.

Even without the OIG-NYPD's final report, the City Council should move to eliminate the Gang Database and to rein in horrifically abusive and violative NYPD gang policing practices.

2. NYPD's purchase, development, and deployment of new tools

In 2021, through the work of the Legal Aid Society, it became public that the NYPD had purchased a large number of surveillance tools and technologies using an unregulated slush fund called the "Special Expenses Fund."⁸ Wired reported: "The secret purchases stem from 2007, when officials in the comptroller's office, the Office of Management and Budget, and the NYPD crafted a 'memorandum of understanding' that permitted the NYPD to withhold contracts for tools used in 'confidential operations' from public scrutiny or city council approval."⁹

However, this latest public disclosure of NYPD's secretive acquisition and development of surveillance technologies was not unusual or new. In fact, for more than a decade, it has been clear that the NYPD has entered corporate partnerships,¹⁰ as well as procured numerous high-tech tools using NYPD Foundation funds to avoid public scrutiny or city council approval.¹¹ The OIG-NYPD has not conducted a single investigation into NYPD's technology procurement practices.

More troublingly, beginning in 2008, the NYPD leveraged a partnership with Microsoft to build "the complex surveillance platform called the Domain Awareness System."¹² "Developed in direct

Department's "Gang Database" (April 2019) (publishing its report in early 2019, Chicago's investigation into CPD's gang database began when the Public Safety section became operational in 2017); California State Auditor, *The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights*, Report 2015-130 (Aug. 11, 2016) (publishing its audit in mid-2017, California's state auditor began its investigation of CalGang in 2015).

⁸ Sidney Fussell, "[The NYPD Had a Secret Fund for Surveillance Tools](#)," Wired.com (Aug. 10, 2021).

⁹ *Id.*

¹⁰ George Joseph and Kenneth Lipp, "[IBM Used NYPD Surveillance Footage to Develop Technology That Lets Police Search by Skin Color](#)," The Intercept (Sept. 6, 2018).

¹¹ Laura Nahmias, "[Police foundation remains a blind spot in NYPD contracting process, critics say](#)," Politico.com (July 13, 2017).

¹² Elizabeth Daniel Vasquez, "[Opinion: Reining in the NYPD's Use of Surveillance Technologies](#)," CityLimits (Feb. 22, 2022).

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response to 9/11, the DAS aggregates all surveillance, policing, and intelligence information which the NYPD accesses or generates, regardless of source. The DAS includes sealed records, closed-circuit video footage from cameras located all over the city, and social media information for children as young as 12, among many other data points. NYPD officers then use the system to search all of that information—for any reason—and to generate predictions based on that data.”¹³

While the DAS was originally a carefully restricted counter terrorism tool,, the NYPD soon turned the DAS into a mobile application for general policing. By 2016, every NYPD officer could access the DAS on their department-issued cellphones and, later, in-car tablets.

Despite this roll-out occurring *after* the creation of the OIG-NYPD and despite repeated public complaints about the DAS’s civil liberties implications, the OIG-NYPD has conducted no investigation into the policies, procedures, deployment, or use of the DAS. The only governmental entity to conduct any kind of audit of the program was the Comptroller’s Office in 2015, prior to the full-scale deployment of the system.¹⁴ That limited audit revealed a number of troubling issues with the DAS, including that people who were no longer employed by the NYPD retained credentials to access the system and that the Integrity Control Officers allegedly responsible for monitoring DAS user activities received no set guidelines or guidance on the criteria for their reviews.

It is well past time for the OIG-NYPD to seriously engage with the NYPD’s procurement, creation, deployment and use of surveillance technologies. The drumbeat of public alarm across this sector should have been enough to draw the Office’s attention, but to ensure true responsibility in this area, the Council should consider amending Local Law No. 70 to make the Office’s responsibilities, powers, and independence to pursue investigations in this space more explicit.

3. Property seizure

Many people are victimized by racist and classist police practices such as constant police presence in their neighborhoods, surveillance, pretextual car stops, and routine stop-and-frisks. An often-overlooked element of these police interactions is the common NYPD practice of seizing property, particularly cellphones, from New Yorkers, oftentimes repeatedly and without legal authorization. While these seizures implicate New Yorkers’ well-established Constitutional rights to be free of governmental theft and unreasonable search and seizure, they also implicate New Yorkers’ privacy interests. The NYPD’s technical capabilities to examine and extract the contents of those cellphones raise serious concerns about the NYPD’s agenda in systematically seizing them.

These seizures occur whether or not the owner is ultimately prosecuted for, or even accused of, criminal conduct. We know that phones and other items are routinely taken from victims and witnesses, as well as from people whose arrests were deemed faulty by prosecutors. Property is taken when it has no connection to alleged criminal conduct, and it is kept and sometimes sold by

¹³ *Id.*

¹⁴ NYC Comptroller, [Audit Report on the Information System Controls of the Domain Awareness System Administered by the New York City Police Department](#) (June 26, 2015).

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the police after they have stonewalled the rightful owner attempting to secure its return. **Furthermore, we have every reason to believe, given the NYPD's data capabilities and the testimony of cellphone and laptop owners about the state of their items after police seizure, that the NYPD is using its unchecked power to seize property as a warrantless and illegal intelligence-gathering tool.**

The Police Department's Property Clerk division has long kept custody over any property seized by police officers from citizens. The entirety of the Property Clerk's authority is derived from Section 14-140 of the City's Administrative Code. There is no state statute bearing on the matter. There is no meaningful check on property retention by New York City police as part of the criminal process.

This local ordinance has been outmoded for many years and is in serious need of sweeping reform. It dates back to the 1940s. In the law's current form, the police regularly take away a person's property, often, but not always, as part of an arrest of the person or of a family member. The process by which a person can recover such seized property is confusing to unrepresented people, and completely lacking in basic due process.

We urge the City Council to support a robust legislative response to this harm and not just simply create new rules for the NYPD to decline to follow.

- **Hundreds of thousands of New Yorkers are impacted by property seizure every year, with police failing to return personal property to nearly half of them.**

Police disproportionately target Black, Latinx, and low-income people for stops, searches, and arrests.¹⁵ The people who are most likely to encounter the police, and thus the most likely to have their property seized, are also the most likely to be subjected to police violence.¹⁶ This makes it challenging—and potentially dangerous—for them to intentionally engage with police, as would be required to retrieve their property. These same people are also the least likely to be able to afford legal assistance or replacements for expensive items such as cellphones. The NYPD practice of property seizure compounds the racial and economic inequities inherent to policing in our City and throughout the nation.

The NYPD released official data on citywide property seizures from 2020 as mandated by Administrative Code 14-169.¹⁷ The data, while striking, marked a continuation of trends from prior years for which there is available data. While fewer total items were taken, about the same

¹⁵ Data from the Legal Aid Society from 2019 showed that nearly all people who were stopped and frisked by the NYPD—a practice that persists despite extensive litigation—were people of color, accounting for 90%. In Kings County, where our organization is located, a 2019 report showed that 86% of all people charged with crimes in the borough over a six month period were people of color.

¹⁶ The New York Times, “Why Was a Grim Report on Police Deaths Never Released?”
<https://www.nytimes.com/2020/06/19/opinion/police-involved-deaths-new-york-city.html>

¹⁷ New York City Police Department, Report: Seized Property, available at:
<https://www1.nyc.gov/site/nypd/stats/reports-analysis/seized-property.page>.

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percentage was returned. For example, in 2020, the NYPD took 55,511 phones and returned only 33,851. They took 99,986 items of clothing and returned less than half. They took 38,602 forms of identification and returned about one third.. More than 300 vehicles taken for “safekeeping,” having no evidentiary value, were never returned. Roughly \$81 million in cash was forfeited through the offices of the city’s five District Attorneys.¹⁸ More cash was taken and never returned to the owners. The NYPD netted \$425,967.50 in the sale of items other than vehicles on the police auction website Propertyroom.com, the proceeds of which went to the NYPD pension fund.¹⁹ Many more items, as we know from our experience, were taken and simply never cataloged.

- **The “process” for property retrieval is unreasonable, arbitrary, and unpredictable.**

As defense attorneys, we can attest that we—trained advocates and lawyers—find the NYPD’s property return “process” taxing, time-consuming, frustrating, and ad hoc. Even more dauntingly, this issue very often leaves people to navigate this system without legal counsel. Victims and witnesses of crimes, specifically shootings, have their phones seized by police but are not provided with legal assistance to fight for their return. In an exercise of pure legal fiction, people whose cases district attorneys decline to prosecute—meaning these individuals are never arraigned and thus never connected to a defense attorney, and their cases are never docketed and thus never assigned to a prosecutor—are still required by the NYPD, impossibly, to provide a docket number and receive a release from the prosecutor on their non-existent cases. People who are detained, searched, and released similarly cannot provide required documentation for their belongings. Those who can provide such documentation, usually at the conclusion of their case, are often no better off.

The NYPD also requires that a person come to collect their belongings themselves and will not release property to legal counsel. This policy invites confrontations with officers who wrongly insist that the items cannot be returned. People who have histories of police-related trauma, including the instances where their property was seized without cause, are required to advocate for themselves with members of the NYPD who create arbitrary, inconsistent, and sometimes impossible requirements for property to be returned.

While much of the NYPD practice related to property seizure is targeted and intentional, people attempting to retrieve their belongings are also subjected to incompetence and capriciousness—sometimes being sent on wild goose chases to various NYPD property clerks before being

¹⁸ While there is a criminal forfeiture statute in NY (N.Y. Penal Law § 480), most of this is surrendered through plea agreements whereby defendants agree to “forfeit” cash seized at arrest as part of a plea. Without this “voluntary” surrender of cash the DA has a very high burden to meet for criminal forfeiture and it is only applicable to certain felony drug convictions. This \$81 million is not to be confused with civil cash forfeiture litigation pursued by the NYPD. The civil forfeiture secured by District Attorneys are often in small amounts recovered by police from an arrested person’s pockets or belongings and are achieved through common cash-for-disposition schemes, where a person will surrender their right to pursue the return of their property or cash in exchange for a more favorable plea or case outcome.

¹⁹ New York City Police Department, Report: Seized Property, available at: <https://www1.nyc.gov/site/nypd/stats/reports-analysis/seized-property.page>.

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informed that their property is gone without a trace. Many people are forced to abandon their property after multiple visits, having been sent on a stressful and fruitless quest that proves disruptive to work, childcare, school, and other considerations. As we can attest, the NYPD is not particularly good at keeping track of cash, valuables, and other items that come into their possession. People arrested wearing gold chains or jewelry will be told that their items were never vouchered, and those items are never seen again. People whose phones were documented as being seized by police will be told that they are no longer in NYPD possession, with no information as to the items' whereabouts. Their only recourse is to file suit in small claims court, a time-consuming process where no legal counsel is afforded and where, as in criminal proceedings, the NYPD, with its vast resources, enjoys a significant advantage.

- **The NYPD seizes and keeps items regardless of their alleged connection, if any, to criminal conduct by the owner.**

As discussed above, the NYPD takes items from people regardless of the reason they are being confronted by the police. Whether or not someone is accused—not to mention convicted—of a crime, their property is often seized by members of the Department. We often speak with people who come to us for help retrieving their property. The circumstances vary widely, but a common thread is the frustration they feel at the lack of responsiveness and responsibility from the NYPD and prosecutors.

While the justification for seizing property incidental to an arrest is the need to obtain and preserve evidence needed in a criminal prosecution, it is the NYPD, not the prosecutors, who determine how property will be vouchered and, as a result, what rules will govern its retention and return.

One might presume that property held as evidence in an ongoing criminal prosecution would be the most difficult for an owner to get back. Yet except for property vouchered for “safekeeping” – returnable as soon as the owner appears with sufficient identification— “arrest evidence” is the least contentious category the NYPD currently uses. While the hoops a defendant must jump through to retrieve property vouchered as “arrest evidence” are still substantial and confusing, there are regulations laying out procedures and deadlines governing the process for requesting and obtaining a district attorney's release and for demanding property's return from the property clerk. In contrast, a growing number of New Yorkers are struggling to retrieve property vouchered as “investigatory”. This designation, seemingly created out of thin air to circumvent the burdensome due process that accompanies retention of property vouchered as evidence, is alleged to be a justification to retain property indefinitely without court order and without oversight. Phones, clothing, and other property are often held for months without any prosecutorial involvement and the NYPD's “procedures” dictate that the only remedy is to convince the arresting officer to change the property's designation to safekeeping manually. No other personnel at the NYPD or the law department will concede anyone else has authority to mark the investigation as concluded or release the property.

It is essential that the imposition of any new rules be both enforceable against the NYPD and crafted to avoid burden-shifting to the person whose property has been taken, such as by creating

avenues of relief where the onus is on the aggrieved party to follow up, show up, and fight an intransigent bureaucracy.

- **What the NYPD does with technology in their possession is shrouded in secrecy.**

Since approximately 2018, the NYPD has had the technological capability to break into electronic devices, particularly cellphones, regardless of the password or encryption status of those devices.²⁰ Two spytech companies—GrayShift and Cellebrite—provide tools that allow law enforcement to crack almost any cellphone.²¹ Those same companies, amongst others, also sell tools that will create complete digital images (i.e. a precise copy) of a device’s contents. These tools not only copy the direct physical items saved on the device (e.g. photos taken by the cellphone), but also can copy data that is stored in applications or in the cloud (e.g. Facebook data, Google Maps data, or Apple iCloud data).²² The NYPD routinely uses digital forensic tools to image cellphones and other digital devices.

As the United States Supreme Court recognized in 2014, “[a cell] phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form.” *Riley v. California*, 134 S.Ct. 2473, 2491 (2014). That information is available to the NYPD from every seized phone in a matter of minutes. As long as the NYPD does not attempt to directly use seized information in a criminal prosecution, but instead only uses that data for intelligence gathering, database construction, and investigative leads, no court process regulates the NYPD’s digital search capabilities. Even if the NYPD returned digital devices that had been imaged, as long as they did not encounter some form of technical error, it is not as if those devices would display a message (or retain any clear indication) that they had been cracked or imaged.

Without true accountability and transparency around NYPD’s activities involving seized digital devices, like phones, we (as defenders) are left only with what is known about the department’s capabilities (as discussed above) and the alarm-raising reality that officers are routinely and unjustifiably seizing digital devices from our clients and communities.

4. Surveillance technology errors and malfeasance

Not only should the OIG-NYPD be examining the systemic deployment of surveillance technologies and analytical systems, but the Office should also be a watchdog for technological error and malfeasance:

²⁰ Agreement to Provide Gray Key Device and Licenses for the New York City Police Department, dated Aug. 17, 2018, available at https://www.documentcloud.org/documents/20392994-18s119-executed-agreement-with-redactions-accepted_redacted-legal-10897172.

²¹ Jack Nicas, “The police can probably break into your phone,” *NYTimes* (Oct. 21, 2020), <https://www.nytimes.com/2020/10/21/technology/iphone-encryption-police.html>

²² Logan Koepke, Emma Weil, Urmila Janardan, Tinuola Dada, and Harlan Yu, “Mass Extraction: The Widespread Power of U.S. Law Enforcement to Search Mobile Phones.” *Upturn* (Oct. 2020), <https://www.upturn.org/reports/2020/mass-extraction/>.

- **Shotspotter**

In 2021, after an independent investigation conducted by journalists and academics, the Chicago Office of Inspector General's Public Safety Section acted on the reported inquiry and data and conducted an investigation into the accuracy and deployment of the ShotSpotter system in the City of Chicago.²³ The Chicago OIG concluded: "from its analysis that CPD responses to ShotSpotter alerts can seldom be shown to lead to investigatory stops which might have investigative value and rarely produce evidence of a gun-related crime. Additionally, OIG identified evidence that the introduction of ShotSpotter technology in Chicago has changed the way some CPD members perceive and interact with individuals present in areas where ShotSpotter alerts are frequent."²⁴

The technology deployed in New York City is identical to that deployed in Chicago. NYPD's public statements regarding ShotSpotter's deployment here—namely that deployment targets "high crime areas"—mimics precisely the Chicago Police Department's statements about deployment. The OIG-NYPD should be conducting a similar investigation into the accuracy and deployment-decision impact on biased policing of New York's ShotSpotter investment.

- **Clearview AI technology**

In April 2021, BuzzFeed broke the news that despite NYPD's public assurances that the Department had never formally contracted with the controversial facial recognition company Clearview AI,²⁵ documents obtained by the news outlet indicated that the NYPD's public statements had been misleading at best.²⁶ Those records revealed that the NYPD *had* included Clearview AI amongst its list of acknowledged vendors, beginning in 2018, and that NYPD officers had independently set up and used promotional accounts from the company to conduct unmonitored, undocumented, and unregulated facial recognition analysis in their cases.²⁷

In light of these disclosures alone, the OIG-NYPD should be conducting an investigation into the NYPD's public misstatements about their relationship with Clearview AI, the extent of the actual relationship, the extent of NYPD officer use of the technology, and the failures of NYPD policy to regulate and manage NYPD use of facial recognition technology in cases.

- **NYPD's access to DOC's Securus databases, including attorney-client call recordings**

²³ The City of Chicago's Office of Inspector General, [The Chicago Police Department's Use of Shotspotter Technology](#) (Aug. 2021).

²⁴ *Id.*

²⁵ Kashmir Hill, "[The Secretive Company that Might End Privacy as We Know It](#)," NYTimes (Jan. 18, 2021).

²⁶ Caroline Haskins, "[The NYPD Has Misled the Public About Its Use of Facial Recognition Tool Clearview AI](#)," BuzzFeedNews (April 6, 2021).

²⁷ *Id.*

In March 2021, it became public that the City’s Department of Corrections illegally recorded more than 1,500 privileged calls between people incarcerated in its jail and their attorneys c.²⁸ In addition to this illegal recording project, which was facilitated by Securus Technologies,²⁹ it was revealed that those illegal recordings had been shared with District Attorney’s offices throughout the City, as well as with the NYPD.³⁰

This breach of New Yorkers’ constitutional rights should have sparked an immediate investigation by the OIG-NYPD into the illegal recording program, as well as what recordings were obtained by the NYPD, what access the NYPD has departmentally to Securus’s call recording databases, and the policies and procedures in place to regulate NYPD access, use and reliance on those recordings.

5. Forensic laboratory mistakes and malfeasance

In addition to these needed areas of technological oversight, the OIG-NYPD should also be exercising its authority to audit and review the repeated scientific mistakes and malfeasance occurring in the City’s law enforcement-related laboratories. Two examples:

- **Coding errors affecting thousands of drug cases**

In March 2021, the NYPD’s Police Laboratory notified its accrediting body, ANSI National Accreditation Board (ANAB), that a coding error in NYPD’s in-house manipulation of purchased analytical software had resulted in a bug. The NYPD’s error was introduced into the program’s code in fall of 2016, but was not caught until March of 2021. For five years, the coding error caused NYPD Controlled Substances Laboratory reports to display incorrect values for test results.

In other words, while blatantly asserting that the error did not impact the accuracy of casework, the Laboratory reported that false reports had been issued in all cases involving mass spectral data printouts for a period of *five years*.

These errors were introduced to the system by the NYPD’s manipulation to the source code of a purchased software package. The purchased software package produces a robust set of forms, charts, and data for printing and disclosure to reflect the testing and analysis conducted within the package. However, in the interest of efficiency and, perhaps, reduced transparency, the NYPD’s Lab chose to edit the software’s code to curate the forms, charts, and data produced, reducing the volume of printing and disclosure to a handful of pages instead of the full documentation. It was

²⁸ Elizabeth Daniel Vasquez, “[Dismantle NYC’s Mass Surveillance Project – Start with Jail Recordings](#),” TruthOut (June 1, 2021).

²⁹ Securus Technologies is a purported prison telecom company that makes its profits off of marketing, selling, and deploying a broad set of surveillance technologies. New York City’s pension funds are the single largest investor in Securus Technologies.

³⁰ Chelsea Rose Marcus, “[NYC’s 5 DA offices wound up with recordings of confidential jailhouse calls between inmates and lawyers](#),” NYDailyNews (March 22, 2021).

this effort to reduce disclosure that introduced the error and caused false data to be disclosed across thousands of cases.

More troublingly still, though the lab’s protocols require analysts to review the line of data that was affected by the coding error in their analysis, the coding error went unnoticed for *five* years.

The OIG-NYPD should be conducting an investigation into the NYPD’s curation of drug-testing related disclosures, the policies and procedures that allowed for the introduction of this coding error, the failure of the lab’s quality assurance processes to catch this error, and the true impact of this error on justice in New York City’s criminal legal system.

6. NYC’s rogue DNA database

In 1997, the New York City Office of Chief Medical Examiner (OCME) implemented a system for collecting previously-typed DNA profiles into a searchable local database. Originally, the OCME’s local database was called LINKAGE. In 2014, the lab absorbed the LINKAGE database into the local level of the CODIS database,³¹ called the Local DNA Index System (“LDIS”).

Meanwhile, at the state level, the New York State legislature had created the State DNA Databank in 1994 with the passage of Executive Law § 995. That database became operational in 1996. By law, when it comes to known contributors, the New York database can only house DNA collected from people convicted of a crime. While the list of crimes for which a conviction permits DNA sample collection has grown five times since 1996, the New York State legislature has repeatedly rebuffed efforts to expand DNA collection to people who are arrested but never convicted of a crime.³²

Despite New York State’s careful balance between the individual’s rights to genetic and basic privacy, as well as due process, and the State’s interest in crime solving, the City of New York’s agencies—the NYPD and the OCME—have chosen to operate a rogue DNA database that reaches samples taken from persons not authorized for collection. In other words, the OCME’s “LDIS”

³¹ By way of brief background, CODIS (Combined DNA Index System) is actually the software databasing package developed and provided by the Federal Bureau of Investigation to DNA laboratories around the country. The CODIS database system consists of three levels: the National DNA Index System (NDIS); the State DNA Index System (SDIS); and the Local DNA Index System (LDIS). As the administrator of the CODIS database system, the FBI promulgates detailed regulations governing the types of samples that can be uploaded to NDIS, as well as quality assurance standards for labs conducting testing that feeds into NDIS.

³² It is worth noting that, in 1999, the legislative record reflects that then-Mayor Rudy Giuliani even specifically requested that the legislature expand collection to arrestees. Mayor Giuliani asserted: “While the City enthusiastically supports this legislation and acknowledges the positive effect it will have on solving crime, it should be noted that the City of New York believes DNA testing upon arrest would allow for even greater efficiency and effectiveness in law enforcement. Examining DNA samples at the time of arrest would dramatically increase the ability of police to accurately identify or negate one’s potential culpability while under arrest.” The New York State Legislature refused to expand the database to arrestees.

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does an end run around New York State’s carefully prescribed scheme. Over the last five years, the OCME’s rogue database has been growing.³³

The expansion of this rogue database began in the years *after* the creation of the OIG-NYPD. Despite repeated legal challenges brought in individual cases, multiple news articles raising alarms about the database, City Council hearings, and now a large-scale class action against the City, the OCME and NYPD’s rogue database has never been investigated by any civilian oversight body, including the OIG-NYPD.

- **Growth of the OCME’s Rogue Database**

This unauthorized database has been fed in part by the surreptitious collection of individuals’ saliva samples by the NYPD. We have watched videos where our clients have asserted their right to counsel as they drink from a water bottle or smoke a cigarette offered to them by the police. NYPD has even been observed offering teenagers cigarettes in addition to juice bottles or water bottles for DNA collection. No person, let alone a child, would envision that accepting a cigarette to smoke in the middle of a public building with the blessing of the police would mean that their DNA profile would end up in perpetuity in a database. Then they are led out of the interrogation room, the cigarette butts and juice bottles are left in an intentionally placed ashtray or garbage bin. The police then collect the cigarette butts and bottles for evidence. This same game plays out with water cups and juice or water bottles, and DNA profiles are collected by the thousands.

The local database is in contravention to Executive Law § 995-d, which dictates that the results of DNA testing are confidential, and which specifically protects the right of a defendant to nondisclosure of his or her DNA information.

As Dr. Howard Baum, former Technical Leader of the OCME and creator of the local database, has stated: he never envisioned that the database would become the repository of profiles that the NYPD dragnettted from Black and brown communities. Our clients have been directly impacted by dragnets – the systematic search for someone such as “a Black male in Brownsville” — practices that target our clients particularly because they are Black or because they are male or because they reside in a particular neighborhood.

Dr. Baum never envisioned that the database would include thousands of profiles from people who were tricked into handing over their DNA without consent or court-order. He never envisioned that the local database would include people who were merely detained – sometimes never even arrested, and many never convicted of any crimes. Even our clients who consented to have their DNA taken have told us that they had no real understanding that their cooperation meant that their DNA would stay in a government database forever.

The local database was also set up long before DAS was created by the NYPD and Microsoft to aggregate data collected by the NYPD across the city. While the DAS’s role in aggregating

³³ Ann Givens and Robert Lewis, “Push to solve gun cases fuels rapid growth of New York’s DNA database,” New York Daily News (Sept. 25, 2017), at <https://www.nydailynews.com/new-york/nyc-crime/push-solve-gun-cases-fuels-growth-new-york-dna-database-article-1.3516711>.

surveillance camera video is well known, another DAS function is its ability to inform officers whether or not an individual detainee's DNA profile is in the database – thus making the detainee a target for DNA collection by individual police officers.

- **The OCME and NYPD DNA Collection and Storage Practice's Threat to our Community's Liberty is Growing**

The current practices of the NYPD mean that it is not only the countless numerical profiles of mainly people of color that are warehoused in an electronic database. For each of those warehoused profiles, the OCME maintains extracts of the DNA in tiny vials. As technologies emerge, law enforcement and the lab can go back to that vial and effectively interrogate the DNA to invade the genetic privacy of the individual's genetic code in even deeper and more disturbing ways.

Genetic genealogy, which has been much reported-on in the news recently, is only the latest incarnation. This technique uses DNA analysis methods that mine more of the human genome for sensitive information than a traditional forensic DNA test and surveil not just the individual's DNA but also the DNA of that individual's entire family line.

The DNA technique employed in genetic genealogy—Single Nucleotide Polymorphism (SNPs) testing or Next Generation Sequencing—is now being considered for widespread forensic uses by the law enforcement community. Whereas traditional DNA testing—Short Tandem Repeat (STR) testing—only measures the lengths of certain segments of non-coding regions on our genome, SNPs and NextGen testing actually code the genome (revealing the specific As, Gs, Ts, and Cs we all learned about in high school) and potentially reveal deeply intimate details including things like predisposition to disease and susceptibility to addiction. And where STR testing only looks at a very small percentage of the overall genome, SNPs testing looks at huge percentages of the overall genome, revealing the most private elements of ourselves.

In the face of this brave new world of genetic testing and the overall threat to privacy, as well as our First Amendment associational freedoms, we need to think about historically targeted communities when considering emerging technologies. The OCME and the NYPD, without oversight or regulation are effectively building a warehoused library of entire communities' genetic extracts. With emerging technologies like genetic genealogy and so-called Next Generation Sequencing, the genetic privacy of not only the individual but the individual's family will come under surveillance by law enforcement.

We now know that 'Junk DNA' is not really "junk" at all: it can be tied by inference to other areas on the human genome, that in turn can reveal sensitive information like susceptibility to disease.³⁴ As technologies emerge and forensic profiles become even more revealing of a person's biological status, it is incumbent upon our elected officials to protect the genetic privacy of all people. This includes both ensuring that civilian oversight bodies like the OIG-NYPD actually do their jobs and initiate investigations into mass civil liberties violations like those affected by the rogue DNA

³⁴ See "Statistical Detection of Relatives Typed with Disjoint Forensic and Biomedical Loci," Cell 175, 848–858, October 18, 2018, and "Linkage disequilibrium matches forensic genetic records to disjoint genomic marker sets," PNAS | May 30, 2017 | vol. 114 | no. 22 | 5671–5.

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database, but also—in this specific instance—that the Council act to end the local DNA database once and for all.

Conclusion

We thank the Council for holding this hearing, and giving us an opportunity to highlight these issues in science and surveillance oversight and the role of the OIG-NYPD. We urge the Council to use every mechanism in your power to dismantle NYPD's sprawling and dangerous surveillance apparatus. We thank the City Council for the opportunity to testify today. If you have any questions or concerns, do not hesitate to contact me at evasquez@bds.org.



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Testimony of CLEAR Senior Staff Attorney Naz Ahmad before the New York City Council
Committee on Public Safety & Committee on Oversight Investigations
April 11, 2022

The Creating Law Enforcement Accountability & Responsibility project (CLEAR) at CUNY School of Law respectfully submits the following testimony concerning oversight of the Office of Inspector General for the New York Police Department (OIG-NYPD). The CLEAR project serves communities and movements targeted by so-called national security law enforcement practices. CLEAR is housed at Main Street Legal Services Inc., the clinical arm of CUNY School of Law. CLEAR served as co-counsel in [Raza v. City of New York](#), challenging the NYPD's suspicionless surveillance of Muslims in the New York City area. CLEAR also co-authored [Mapping Muslims](#), a report documenting the community effects of the same suspicionless spying program.

CLEAR welcomed the creation of the Office of the Inspector General for the NYPD when it was created in 2013. CLEAR, like many other organizations at the time, recognized the need for an independent entity responsible for investigating the operations, policies, programs, and practices of the NYPD. The OIG-NYPD serves an important and distinct function from that of the Civilian Complaint Review Board (CCRB) and the NYPD's Internal Affairs Bureau.

Since the creation of the OIG-NYPD, the office has conducted several noteworthy investigations, releasing reports that provide important transparency to the public about certain of the NYPD's policies, programs, and practices. In its first published report, the OIG investigated

accountability concerning ten NYPD chokehold cases. Additionally, in 2021, OIG-NYPD released a report concerning the NYPD's response to the 2020 George Floyd Protests, including an investigation of the Intelligence Bureau's role in the response to the protests.

Notably, in 2016, OIG-NYPD issued a report concerning the NYPD's Compliance with Rules Governing Investigations of Political Activity. In addition to finding that the NYPD Intelligence Bureau was often non-compliant with several of the rules governing the conduct of these investigations, the OIG-NYPD also noted that more than 95% of all the targets under investigation were Muslim or engaged in political activity associated with Islam.¹ The report affirmed that the impact of the NYPD's investigations into political activity disproportionately affected Muslim communities in New York City. Since then, the NYPD has not released any updated statistics concerning the targets of NYPD investigations of political activity, otherwise known as *Handschu* investigations because they are governed by a set of rules agreed to in *Handschu v. Special Services Divison*. As of now, it is reasonable to believe that the Intelligence Bureau's activities still overwhelmingly target Muslims and/or political activity associated with Islam. As OIG-NYPD noted in the 2016 report, "in the past, investigations have focused on others, including Black and Latino activists, student groups, socialists, and political protesters."²

It is long past time for the OIG-NYPD to conduct a new investigation of the NYPD's compliance, including the demographics of the targets of its investigations. Nearly six years have passed since the NYPD-OIG released the results of its investigation into the NYPD's compliance with the *Handschu* rules.³ Since then, the Civilian Representative appointed to the Handschu

¹ Office of Inspector General – NYPD, *An Investigation of NYPD's Compliance with Rules Governing Investigations of Political Activity*, 1, n.1 (Aug. 23, 2016), https://www1.nyc.gov/assets/doi/reports/pdf/2016/2016-08-23-Oig_intel_report_823_final_for_release.pdf.

² *Id.*

³ The Handschu Rules were revised shortly after the NYPD-OIG completed its investigation. Proposed Stipulation of Settlement, Ex. A, *Raza v. City of New York*, 1:13-cv-03448-PKC (E.D.N.Y. Mar. 19, 2017), ECF No. 129-2.

Committee has issued four annual reports, concerning the NYPD's compliance with the Handschu Rules.⁴ The Civilian Representative, however, has not released any information concerning demographics of the targets of these investigations. In addition to reviewing compliance with the Handschu Rules, the OIG-NYPD can continue to serve an important function in alerting the public as to whether the NYPD's investigations of political activity still overwhelmingly target Muslims. This issue remains of importance, as high-ranking NYPD officials continue to casually dismiss the harms caused by the NYPD's Muslim spying program, as well as the extent of the program. Last month, Deputy Commissioner John Miller reportedly stated at a different city council hearing, in response to a question from Councilmember Hanif: "I know from my own conversation with Muslim members of the community and Muslim community leaders, that there are people... who will believe forever... [that] there were spies in their mosques who are trying to entrap people" and then "There is no evidence that that occurred based on every objective study that's been done."⁵ This is in direct contradiction to the original 2011 – 2012 reporting of the Associated Press on the matter, not to mention CLEAR's report, *Mapping Muslims*, and the experiences of our clients and communities we serve. All of this affirms the importance of an updated investigation into the NYPD's compliance with the Handschu Rules, including a review of the demographics of their targets, as well as the extent of any sharing of material with other law enforcement agencies.

In addition, CLEAR joins other groups who have called for and are awaiting the results of OIG-NYPD's investigation into the NYPD's gang database. OIG-NYPD confirmed in July 2021 that their three year long investigation was nearly complete and "in the final stages."⁶ Many groups

⁴ All reports available at: <https://www.cunyclear.org/raza-v-city-of-new-york>.

⁵ Zainab Iqbal, *NYPD's top official faces backlash for downplaying Muslim surveillance*, Middle East Eye (Mar. 22, 2022), <https://www.middleeasteye.net/news/new-york-police-department-top-official-backlash-downplaying-muslim-surveillance>.

⁶ Eileen Grench, *Department of Investigation Confirms Probe of NYPD Gang Database after Advocates Rally*, The City (July 27, 2021), <https://www.thecity.nyc/2021/7/27/22597212/departments-of-investigation-probes-nypd-gang-database>.

have long called for an investigation into the use of the gang database by the NYPD and it is long past time for OIG-NYPD to release the results of its investigation.

LatinoJustice testimony before the Public Safety Committee of the City Council

April 11, 2022

Dear Members of the Public Safety Committee, the Committee on Oversight, and the City Council, my name is Andrew Case, I am Senior Counsel at LatinoJustice PRLDEF, and I am grateful for the opportunity to speak to you today about the encroachment on the independence of the Office of the Inspector General for the NYPD by the Mayor's Office over the past eight years.

Local Law 70 was a landmark piece of legislation, creating New York's first independent Inspector General for the NYPD. It was passed by the City Council over Mayor Bloomberg's veto, and the lead sponsors for the bill are now both citywide elected officials, serving as the Public Advocate and the Comptroller.

Public demand for true independent oversight of the NYPD's policies and practices drove the Council to create the OIG to fill a unique role in city government. The CCRB focuses on specific complaints against individual officers. The Commission to Combat Police Corruption lacks subpoena power. The OIG filled a needed specific role: investigating policy and practice issues at the NYPD as a fully independent agency. The two issues that most drove the creation of the agency were the NYPD's policy of racially profiling Black and Brown New Yorkers and its policy of targeting the Muslim community for surveillance.

From the start, the fact that the OIG reported to a mayoral appointee—the head of DOI—created concerns. But those concerns appeared to be mitigated by the selection of Phil Eure, a proven leader on police reform who had created and led Washington DC's Office of Police Complaints, and had successfully implemented reforms on a reluctant department. Mr. Eure was greeted with enthusiasm. And from January 2015 through August 2016, his office released six significant reports: on chokeholds, on increasing police accountability using data from lawsuits, on

body-worn cameras, on use of force practices, on Broken Windows policing, and on political surveillance.

These last two reports, on the issues that led to the creation of the agency, were revelatory. The OIG's purely data-driven analysis showed, definitively, that Broken Windows Policing—arresting people who engage in low-level “quality of life” offenses such as riding a bicycle on a sidewalk—had no impact on felony crime. This finding vindicated those who criticized Broken Windows—a policy the Adams Administration has vowed to re-instate—as merely a form of racial profiling. NYPD stops, even though they are down overall, continue to show significant racial disparities. And the Inspector General's reporting on political surveillance showed that 95% of that surveillance was directed against Muslims, and that the NYPD “routinely” violated the *Handschu* guidelines when conducting such operations, including extending operations beyond their legal deadlines in more than half the cases.

But these bombshell reports did not lead to any change at the NYPD. Instead, the police department issued its own counter-reports in which it defended practices that were shown to be ineffective by the OIG and unlawful by the courts. Instead, the administration took steps to reign in the independence of the Inspector General's Office.

Over the past four years, the reduction in the independence of the OIG has been dramatic. In both presentation and substance, the Inspector General has been demoted from an independent agency housed within DOI to simply another of the DOI “inspector generals” assigned to a particular city agency. While the OIG once had its own website and social media presence, it is now listed as simply a “department” within DOI. And on the DOI website, the NYPD inspector general is listed simply as one of twelve “squads,” alongside the IGs for NYCHA, Sanitation, and Department of Buildings. By comparison, the only other independent IG—the Special

Commissioner for Investigations of Schools--retains its own independent web presence and is not among the squads on the DOI organizational chart.

This administration is moving to cement the demotion of the IG to a purely subservient role. The Civil List shows that Mr. Eure's job was listed at over \$220,000 per year, and he had a decade of experience at the Department of Justice before creating and running the DC Office of Police Complaints for another ten years. He had twenty years of experience holding police officers accountable before being named Inspector General. The current job listing for the OIG lists a salary of \$130,000 to \$145,000 per year and requires only four years of post-college experience.

The demoting of the Inspector General has serious consequences. In the last eighteen months of the prior administration, OIG issued only two reports: one on officer wellness and one on sharing body worn camera footage. OIG appeared to be shut out of the most significant policing report issued in years—the DOI report on the violent NYPD response to the 2020 demonstrations against police violence—Inspector General Eure was “thanked for his wise counsel” but the report was issued by DOI, not the IG.

An Inspector General that lacks true independence will fail in its mission regardless of the quality of the person in the role. Most notably, the agency has acknowledged that it has been working on a report on the NYPD's “criminal group database,” also known as the gang database. The gang database is a collection of names of Black and Latino youth whom the NYPD selectively targets for enforcement action. The NYPD does not disclose how people are put in the database nor how they are removed. Litigation in Chicago and Boston that has shed light on similar databases shows that they criminalize association, identifying people as “gang members” because they have been seen once or twice with other people identified as “gang members,” often for the same sketchy reasons. This long-delayed report appears to have been squashed by the last administration, and in

an administration where the IG lacks independence, it is now likely to be released only in a compromised format, if at all.

The OIG's failure to report on the policies and the practices of the NYPD has serious consequences. LatinoJustice, for example, is releasing a report today on 181 officers whom the CCRB found lied in their interviews with the agency, but whom the NYPD did not punish or underpunished, and in many instances failed to place on the "Brady Lists" provided to district attorneys' offices. Of 181 officers whom the CCRB found testified falsely—more than half of whom gave testimony that contradicted audio or video evidence—the NYPD disciplined only five. This is exactly the kind of report that the OIG can and should be doing. A compromised OIG, one that does not release reports that have been essentially completed for months, threatens to undermine the core goals that led to the creation of the agency in the first place.

Exhibit A

**City of New York
DEPARTMENT OF INVESTIGATION
Job Vacancy Notice**

Civil Service Title: Inspector General	Level: M4
Title Code No: 31145	Salary: \$130,000.00 - \$145,000.00
Office Title: Inspector General	Work location: 180 Maiden Lane
Division/Work Unit: OIG-NYPD	Number of Positions: 1

Job Description

As of August 2, 2021, all new hires must be vaccinated against the COVID-19 virus, unless they have been granted a reasonable accommodation for religion or disability. If you are offered city employment, this requirement must be met by your date of hire, unless a reasonable accommodation for exemption is received and approved by the hiring agency.

The New York City Department of Investigation (DOI) is one of the oldest law enforcement agencies in the country with a mission of combating municipal corruption. It serves the people of New York City by acting as an independent and nonpartisan watchdog for New York City government, City agencies, and City employees, vendors with City contracts, individuals and entities that receive City funds.

DOI's Office of the Inspector General for the New York City Police Department (OIG-NYPD) is authorized to investigate, review, study, audit, and make recommendations relating to the operations, policies, programs, and practices of the New York City Police Department (NYPD), with the goal of enhancing effectiveness, increasing public safety, protecting civil liberties and civil rights, and increasing the public's confidence in the police force.

DOI is seeking to fill the position of Inspector General for OIG-NYPD to lead the unit in systemic oversight of the NYPD. Duties and responsibilities include:

1. Managing and overseeing systemic investigations and reviews of the NYPD's operations, policies, practices, and programs including document requests and issuance of subpoenas, reviews of records, interviews, and related investigative activities.
2. Drafting and editing reports of investigative findings that include recommendations to the NYPD.
3. Representing the Commissioner and DOI before the NYPD; federal, state, and local prosecutor and law enforcement agencies; other City agencies; and community organizations and the public concerning matters relating to DOI's responsibilities.
4. Supervising the OIG-NYPD staff of investigators, attorneys, policy analysts, auditors, and outreach personnel in the performance of investigations, reviews, and community engagement.
5. Participating in the recruitment and hiring of OIG-NYPD staff, including ensuring proper training and awareness in current policing and accountability issues.
6. Maintaining familiarity with current policing issues, both at NYPD and nationwide, to identify possible areas of concern and topics for further review.
7. Performing other assignments of a confidential or sensitive nature as directed by agency leadership.

If selected, the candidate will be fingerprinted and undergo a background investigation. In addition, for positions that have a law enforcement and/or investigative function, the candidate's consumer credit history will be reviewed during the background investigation, and as otherwise permitted by NYC Administrative Code § 8-107(24)(b)(2)(A)

Qualification Requirements

1. A baccalaureate degree from an accredited college or university and four years of full-time experience in investigation, auditing, law enforcement, law security, management analysis, or in a major operational area of the agency to which the assignment is to be made; at least 18 months of which must have been in a supervisory, administrative, managerial or executive capacity, and the approval of the Commissioner of Investigation; or
2. 2. Education and/or experience equivalent to "1" above. However, all candidates must have the approval of the Commissioner of Investigation and 18 months of supervisory, administrative, managerial or executive experience; or 18 months of experience in the exercise of discretion and professional judgment in significant policy matters related to criminal justice or areas particularly relevant to the Office of the Inspector General to which the candidate would be assigned

Preferred Skills

1. Ten or more years of investigative, legal, or oversight experience - preferably at a police oversight entity, inspector general's office, or prosecutor's office - conducting and supervising complex investigations.
2. Demonstrated ability in the principles, methods, and techniques of systemic investigations including but not limited to assessing complex data analysis for patterns, performing large scale document and policy review, conducting interviews, identifying findings of potential deficiencies or weaknesses, and recommending improvements to policies and procedures.
3. Knowledge of the organization, duties, and policies of local police departments; the laws and regulations governing policing; and police oversight and accountability issues. Experience with NYPD or NYC government agencies and operations, policies, and procedures is a plus.
4. Professional experience managing multiple operations and supervising staff.
5. Strong written and oral communication skills, and conflict resolution skills.
6. Juris Doctor, Certified Fraud Examiner, and/or other relevant degree in criminal justice, law enforcement, or social sciences.
7. Proven ability to handle highly confidential and sensitive information.
8. Highest professional and ethical standards.
9. Project management experience and ability to identify and optimize work flow.
10. The ability to interact with a diversity of backgrounds and perspectives and to communicate effectively with all who have a stake in policing, including but not limited to the general public, complainants, community organizations, NYPD employees, and other City officials.
11. The ability to carry out the duties of the IG for the NYPD in a manner that reflects sound judgment, independence, fairness, and objectivity.

To Apply:

All current City Employees may apply by going to Employee Self Service (ESS) <http://cityshare/ess> Click on Recruiting Activities/Careers and search for the specific Job ID# 515069.

All other applicants, please go to www.nyc.gov/career/search and search for the specific Job ID# 515069.

Please do not email, mail or fax your resume to DOI directly. Submissions of resumes does not guarantee an interview. Due to the high volume of resumes DOI receives for positions, only selected candidates will be contacted.

New York City residency is generally required within 90 days of appointment. However, City Employees in certain titles who have worked for the City for two continuous years may also be eligible to reside in Nassau, Suffolk, Putnam, Westchester, Rockland, or Orange County. To determine if the residency requirement applies to you, please discuss with the agency representative at the time of interview.

Appointments are subject to Office of Management & Budget approval for budgeted headcount.

Post Date: 1/19/2022

Post Until: 3/20/2022

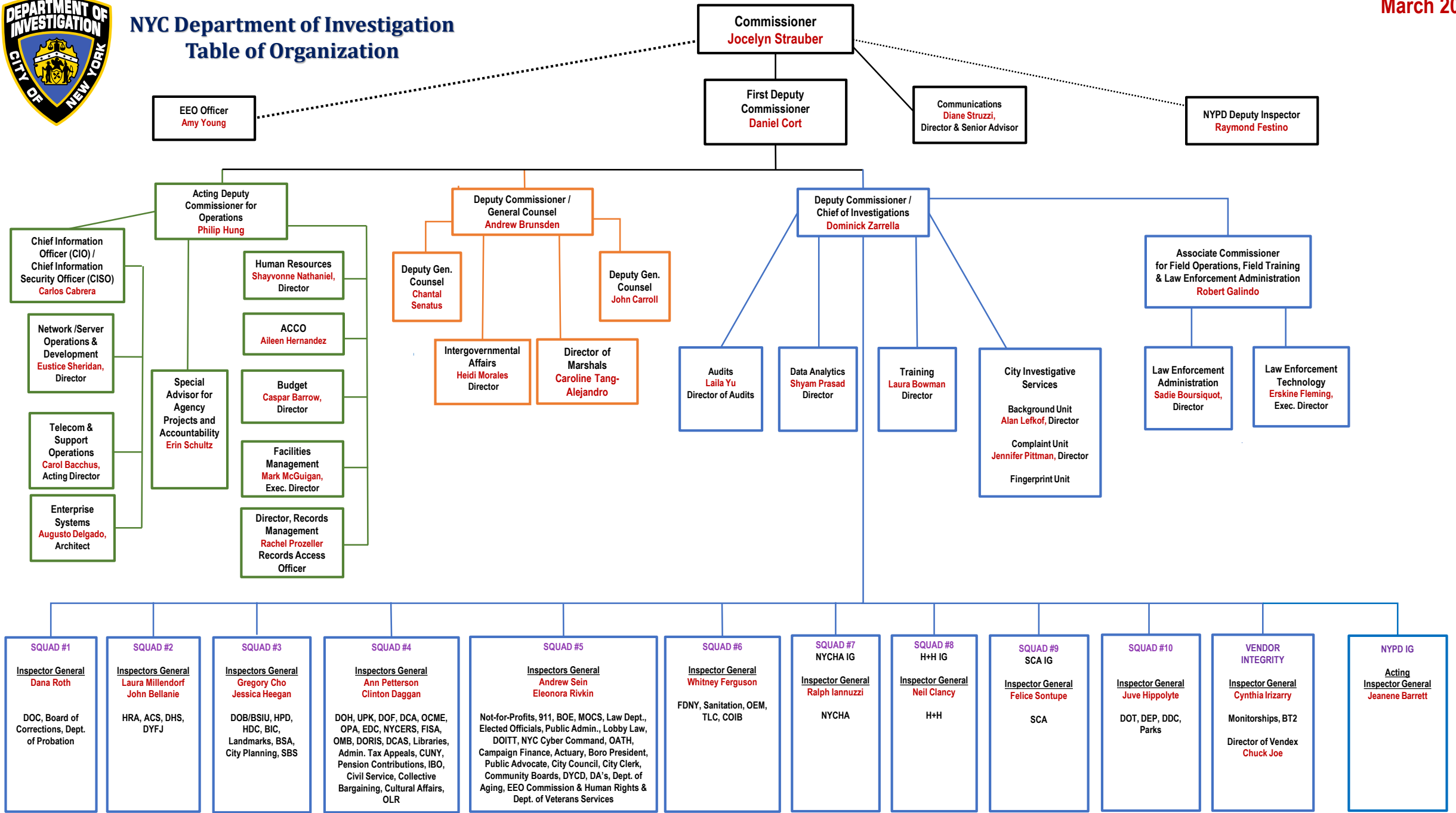
JVN: 032-2022-515069

The City of New York is an equal opportunity employer and is strongly committed to a policy of non-discrimination. We are committed to recruiting a diverse and inclusive talent pool.

Exhibit B



NYC Department of Investigation Table of Organization





TESTIMONY

New York City Council

Committee on Oversight and Investigations

Committee on Public Safety

Oversight and Investigations: Office of the Inspector General for the NYPD

April 11, 2022

The Legal Aid Society
199 Water Street
New York, NY 10038

Contact: Marva Brown
Staff Attorney
Law Reform and Special Litigation Unit
646-592-1449 (cell)
MCBrown@Legal-Aid.org

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“Quies custodiet ipsos custodes? (Who watches the watchers?)”

INTRODUCTION

The Legal Aid Society submits this testimony to the New York City Council’s Committee on Oversight and Investigations concerning New York City Department of Investigation (DOI) Office of the Inspector General for the NYPD (OIG-NYPD or the “Office”). We thank the members of the NYC Council, Committee on Oversight and Investigations, Committee on Public Safety, and Chairs Gale Brewer and Kamillah Hanks, for holding this important oversight hearing and for allowing Legal Aid to testify on behalf of the communities we serve.

In 2013, OIG-NYPD was created as one component of a package of police accountability bills known as the Community Safety Act. The creation of an Inspector General for the NYPD was strongly supported by community organizations¹ and the City Council, despite opposition from both former Mayor Bloomberg and former Police Commissioner Kelly.² OIG-NYPD’s broad mandate to investigate and issue reports and recommendations on systemic issues relating to the NYPD’s policies, programs, and procedures has presented a significant opportunity to address the harmful practices experienced on a daily basis by the communities The Legal Aid Society represents.

While many OIG-NYPD reports have undoubtedly shed light on significant policing issues in our city, OIG-NYPD has ultimately fallen short of its potential to address critical policing issues. We ask this Council to dedicate considerable resources to address the issues that have stymied OIG-NYPD’s work and to develop sustainable solutions in consultation with the Mayor,

¹ See: <https://www.changethenypd.org/community-safety-act>

² https://www.nytimes.com/2013/06/27/nyregion/new-york-city-council-votes-to-increase-oversight-of-police-dept.html?smid=tw-share&_r=1&

community organizations, experts in the field of civilian oversight, and former OIG-NYPD staff, in order to ensure that OIG-NYPD can provide timely and effective civilian oversight.

THE LEGAL AID SOCIETY'S TESTIMONY ON THE OFFICE OF THE INSPECTOR

GENERAL FOR THE NYPD

I. The Council Must Address Obstacles Inhibiting OIG-NYPD's Responsiveness to Community Concerns

OIG-NYPD's broad authority to investigate, review, study, audit, and make recommendations relating to NYPD operations, policies, programs, and procedures leaves it uniquely positioned to shed light on the many practices that negatively impact our clients on a day-to-day basis. Several OIG-NYPD investigations have demonstrated the clear value of unbiased, independent civilian oversight and the transparency that it can provide. For example, OIG-NYPD's 2018 report detailing the NYPD's disturbing mismanagement of the Special Victims Division³ has been referenced in several hearings held by this Council, and has continued to serve as the benchmark for evaluating whether or not NYPD leadership has since taken steps to improve the Division's staffing levels and investigations into sex crimes.⁴ Similarly, DOI's investigation into the NYPD's response to the George Floyd Protests⁵ has

³ *The Community Safety Act*, Communities United For Police Reform, <https://guides.libraries.uc.edu/c.php?g=222561&p=1472886> (last visited April 14, 2022).

⁴ Annie McDonough, *NYPD Sex Crimes Division is Still Understaffed*, City&StateNY (Oct. 15, 2021), <https://www.cityandstateny.com/politics/2021/10/nypd-sex-crimes-division-still-understaffed-council-member-says/186151/>.

⁵ Margaret Garnett, *Investigation into NYPD Response to the George Floyd Protests*, NYC Dept. of Investigation (Dec. 2020), <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>.

served as an valuable resource to civil rights litigators, including our Law Reform and Special Litigation Unit, who seek to hold NYPD accountable in the courts.

Despite the impacts of these reports, OIG-NYPD has ultimately failed to meet its oversight potential. OIG-NYPD investigations into urgent and critical issues have dragged along for years, depriving the public of reports on the findings of their investigations, and allowing harmful police practices that affect primarily vulnerable communities and communities of color to continue to go unchecked. As such, The Legal Aid Society's experience with OIG-NYPD has been one of frustration. Since OIG-NYPD's inception, we have drawn from the observations of attorneys within our criminal defense practice and experiences of our clients to bring complaints regarding NYPD practices to OIG-NYPD's attention. In addition, we have on several occasions provided data and other information to support OIG-NYPD's investigations. Despite this, many of the issues we have raised have gone unaddressed for years.

In the testimony that follows, we detail the observations that have colored our frustrations with OIG-NYPD's work to-date. We also discuss two particular issues that we believe have served as obstacles inhibiting OIG-NYPD's ability to be responsive to community concerns.

A. OIG-NYPD Investigations Take Too Long to Complete, Resulting in Few Reports on Critical Policing Issues

An alarmingly high proportion of OIG-NYPD investigations are taking inordinate amounts of time to complete. In its most recent annual report, the Office revealed that 16 out of its 36 ongoing investigations have been open for over two years.⁶ More than one quarter (27.7%) of

⁶ Jocelyn E. Strauber, *Eighth Annual Report Issued by DOI Office of the Inspector General for the NYC Police Department*, NYC Dept. of Investigation (Mar. 31, 2022), https://www1.nyc.gov/assets/doi/press-releases/2022/March/08OIGNYPDAnnualRpt_Release_3312022.pdf p. 4.

these investigations have been open for more than three years.⁷ These timelines significantly reduce the impact that OIG-NYPD's oversight function can have, and allow many harmful NYPD practices to continue unabated and without scrutiny by the community, this Council, and the courts.

To our knowledge, a handful of these investigations are related to complaints filed or are from information provided by The Legal Aid Society over the course of several years. As New York City's largest public defender organization, which serves many of the communities most directly impacted by aggressive and unaccountable policing, we are uniquely positioned to provide insights regarding concerning patterns in NYPD practices. Despite this, **none of the issues we have raised with OIG-NYPD have resulted in a public report detailing the findings of their investigation.**

In 2018, we sent two letters to OIG-NYPD detailing patterns of sexual misconduct and false arrests experienced by a number of our clients during interactions with undercover officers in the NYPD's Vice Enforcement Division. Subsequent investigative reporting by ProPublica provided even further information on similar trends of egregious misconduct by officers within the Vice Enforcement Division, including statistics demonstrating the racially disproportionate impacts of this Division's enforcement efforts.⁸ In response, several city and state officials also called for an

⁷ Id.

⁸ Joshua Kaplan and Joaquin Sapien, *NYPD Cops Cash In on Sex Trade Arrests With little Evidence, While Black and Brown New Yorkers Pay the Price*, ProPublica (Dec. 7, 2020), <https://www.propublica.org/article/nypd-cops-cash-in-on-sex-trade-arrests-with-little-evidence-while-black-and-brown-new-yorkers-pay-the-price>.

investigation into the Vice Division's undercover operations.⁹ To date, no public report on this matter has been issued and the status of the investigation remains unknown.

OIG-NYPD's investigation into the NYPD's gang database has similarly been mired in significant delay. While we were pleased by Commissioner Strauber's announcement during this hearing that the Office's report on the issue will be released at some point this year — a rare public update on an OIG-NYPD investigation likely made in acknowledgement of the public's frustration with this topic — we note that several organizations, including The Legal Aid Society, requested this investigation as early as 2017.¹⁰ Similar to the systemic issues within the Vice Enforcement Division, we have learned more about how the gang database criminalizes young men of color almost exclusively from investigative reporting¹¹ than we have learned from an official entity created with special authority and access to information to specifically address issues such as these. Throughout the several years that it has taken to complete this investigation, many of our clients have suffered significant harms and unfair disadvantages in court proceedings.

When compared to similar civilian oversight agencies in large cities, such as the Public Safety Section of the Office of the Inspector General in Chicago¹² and the Office of the Inspector

⁹ Joshua Kaplan and Joaquin Sapien, *New York Lawmakers Demand NYPD Halt Undercover Sex Trade Stings*, ProPublica (Dec. 16, 2020), <https://www.propublica.org/article/new-york-lawmakers-demand-nypd-halt-undercover-sex-trade-stings>.

¹⁰ Jillian Jorgensen, *Activists Urge Inspector General to Probe NYPD's Gang Policing Tactics*, NY Daily News (May 16, 2017), <https://www.nydailynews.com/new-york/manhattan/activists-urge-inspector-general-probe-nypd-gang-databases-article-1.3171323>.

¹¹ Alice Speri, *NYPD Gang Database Can Turn Unsuspecting New Yorkers Into Instant Felons*, The Intercept (Dec. 5, 2018), <https://theintercept.com/2018/12/05/nypd-gang-database/>; Alice Speri, *New York Gang Database Expanded By 70 Percent Under Mayor Bill De Blasio*, The Intercept (June 11, 2018), <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

¹² *About Our Office & Public Safety*, Office of Inspector General Chicago, <https://igchicago.org/about-the-office/our-office/public-safety-section/> (last visited April 14, 2021).

General in Seattle¹³ — both of which were established *after* OIG-NYPD was established — OIG-NYPD has been significantly less productive and has produced far fewer public reports. We urge this Council to address this persistent issue in a way that will allow OIG-NYPD to be consistently responsive to policing issues in our city.

II. OIG-NYPD's Work is Stymied by NYPD Obstruction and a Lack of Independence

Over the past several years, this Council has been informed repeatedly of two recurrent issues inhibiting OIG-NYPD's work: NYPD's consistent refusal to cooperate with its investigations, and the Inspector General's lack of independence from DOI and the DOI Commissioner.

We urge this Council to examine these issues critically and develop a transparent and collaborative process to remedy them. While, on the surface, it appears that the Inspector General for the NYPD is no different from other inspectors general within DOI, this is not the case. OIG-NYPD is tasked with examining critical issues that directly impact public safety as well as the rights and wellbeing of New Yorkers, and most often the city's most vulnerable communities. Unlike other city agencies overseen by DOI's various squads, the agency overseen by OIG-NYPD wields significant power, both in City Hall and in the daily lives of New Yorkers, and has long maintained a culture of impunity, from the officers on the street to executives in One Police Plaza. This necessitates a break from the current approach.

A. The NYPD Has a Long Track Record of Non-cooperation with Civilian Oversight Agencies

¹³ Office of Inspector General, <http://www.seattle.gov/oig> (last visited April 14, 2021).

A clear contributor to OIG-NYPD's inability to be responsive to community concerns is the NYPD's longstanding track record of obstructing investigations by withholding documents requested by OIG-NYPD, delaying their production, and otherwise failing to cooperate. Full cooperation, timely and unfettered access to law enforcement records, and access to law enforcement executives are widely accepted as necessary conditions for effective civilian oversight.¹⁴ Resolving these issues should be a priority for this Council.

DOI's report on the NYPD's response to the George Floyd Protests stated plainly that "the recurring challenge of extracting documents and records from NYPD to facilitate effective oversight is a persistent theme" and that "NYPD historically has not responded to oversight agencies' requests with appropriate speed, openness, or alacrity".¹⁵ Indeed, a large share of OIG-NYPD reports have made some reference to this very issue. To highlight just a few of these examples:

- During OIG-NYPD's investigation into how NYPD shares body-worn camera footage with other city agencies, NYPD refused to make anyone available for a meeting requested by OIG-NYPD¹⁶

¹⁴ Vitoroulis, Michael, Cameron McElhiney, and Liana Perez. 2021. *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*. Washington, DC: Office of Community Oriented Policing Services. p. 66-67

¹⁵ Margaret Garnett, *Investigation into NYPD Response to the George Floyd Protests*, NYC Dept. of Investigation (Dec. 2020), <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>.p. 99-100

¹⁶ Margaret Garnett, DOI's Office of Inspector General For the NYPD Report Examines Use of NYPD's Body-Worn Camera Footage by City Police Oversight Agencies And Recommends The CCRB Be Granted Direct Access to NYPD's BWC Footage Platform, NYC Dept. of Investigation (Nov. 5, 2021), <https://www1.nyc.gov/assets/doi/press-releases/2021/November/21BWCRelease.Rpt.11.05.2021.pdf> p. 2

- When following up on NYPD’s policies and procedures for investigating allegations of bias by non-uniformed employees, NYPD did not provide information requested by OIG-NYPD¹⁷
- During OIG-NYPD’s follow up on recommendations relating to NYPD’s compliance with rules governing investigations into political activity, NYPD did not provide a copy of a revised policy guide that it claims it created¹⁸
- During OIG-NYPD review of 2019 litigation data, NYPD withheld information relating to the Police Action Litigation System (PALS) on the basis of attorney-client privilege, even though the privilege does not bar disclosure to the Department of Investigation¹⁹

These failures to cooperate are in clear violation of longstanding executive orders as well as several provisions of the city charter, which state plainly that the DOI Commissioner “shall have the authority to examine, copy, or remove any document prepared, maintained or held by any agency”²⁰; that OIG-NYPD shall have similarly broad access, with mayoral review of disputes concerning particularly sensitive documents²¹; and that cooperation with investigations conducted pursuant to the city charter shall be a condition of employment.²² Indeed, they amount to obstruction. A ProPublica article on this particular issue revealed that several OIG-NYPD

¹⁷ Jocelyn E. Strauber, *Eighth Annual Report Issued By DOI’s Office of the Inspector general for the New York City Police Department*, NYC Dept. of Investigation (Mar. 31, 2022), https://www1.nyc.gov/assets/doi/press-releases/2022/March/08OIGNYPDAnnualRpt_Release_3312022.pdf p. 16

¹⁸ Margaret Garnett and Philip K. Eure, *Annual Report 2020 Office of the Inspector General for the NYPD*, NYC Dept. of Investigation (April 2020), https://www1.nyc.gov/assets/doi/reports/pdf/2020/OIGNYPD_SixthAnnualReportFinal_4.9.2020.pdf p. 55.

¹⁹ Margaret Garnett & Philip K. Eure, *2019 Assessment of Litigation Data Involving NYPD*, NYC Dept. of Investigation (Apr. 2019), https://www1.nyc.gov/assets/doi/reports/pdf/2019/Apr/13LitData_pressrelease_report_43019.pdf p. 18.

²⁰ Exec. Order 16 § 4(a) (1978)

²¹ N.Y.C. Charter § 803(c)(3)

²² N.Y.C. Charter § 1128

investigations have remained open largely due to NYPD's failure to produce requested documents.²³

This Council must work to ensure that OIG-NYPD is capable of accessing all documents and other information required for its investigations on a timely basis by codifying direct access to many of the NYPD databases regularly used by OIG-NYPD, including body-worn camera footage, and ensuring that NYPD leadership and other staff face consequences for obstruction and non-cooperation.

B. The Council Must Ensure Independence of the Inspector General and OIG-NYPD

Independence is a defining and absolutely critical feature of civilian oversight agencies such as OIG-NYPD.²⁴ While independence in this context is typically taken to mean independence from NYPD, this Council must broaden its conceptualization of independence to consider additional factors that may result in undue and inappropriate influence which would negatively impact the work of the next Inspector General and OIG-NYPD as a whole.

The alarm about OIG-NYPD's independence was first sounded publicly in an article by BuzzFeed, which detailed revelations by current and former OIG-NYPD staff that a former DOI Commissioner regularly interfered in the OIG-NYPD investigations, reports, and communications with the public.²⁵ This included allegedly shelving a report on discipline for

²³ Topher Sanders, *Inspecting The NYPD "Puzzle Palace"*, ProPublica (April 15, 2021), <https://www.propublica.org/article/inspecting-the-nypd-puzzle-palace>.

²⁴ Vitoroulis p. 63-64

²⁵ Kendall Taggart, *The Former Top Official Overseeing the NYPD Inspector General Shelved A Report About Officers Who Lied*, BuzzFeed (Nov. 26, 2018), <https://www.buzzfeednews.com/article/kendalltaggart/nypd-inspector-general-discipline-false-statements>

officers who made false or misleading statements during official proceedings to discouraging the office's investigation into the NYPD's gang database.

Several people with first-hand experience at OIG-NYPD have also alluded to issues surrounding the office's independence. A letter submitted by a group of former OIG-NYPD staff to several city officials, including members of the City Council, in March of 2021 stressed that "unambiguous, independent authority" should be a key principle for police oversight in New York City. More explicitly, as you have likely read in the testimony of a former Director of Policy Analysis at OIG-NYPD, the Council was urged to focus on "OIG-NYPD's power to operate within its current placement in the City's Department of Investigation (DOI)", examining "whether the Inspector General must report to the DOI Commissioner or even other officials within DOI". We echo these concerns regarding OIG-NYPD's independence. Since its inception, OIG-NYPD has been led and staffed by individuals with significant expertise in policing and police oversight. Their analyses and judgements concerning particular issues should not be filtered or otherwise undermined by the fundamental tensions that arise from the current structure of OIG-NYPD's placement within DOI.

Since its inception, OIG-NYPD has been led and staffed by individuals with significant expertise in policing and police oversight.

Although the DOI Commissioner is among the two mayoral appointees subject to advice and consent of this Council, we note that the mayor ultimately retains the authority to unilaterally remove the DOI Commissioner without cause. Given that the mayor also appoints the Police Commissioner, this yields a potential conflict of interest that reduces the independence of an office which, as stated earlier, is charged with a uniquely difficult and sensitive task. Thus, while

Justice in Every Borough.

the Council may work to ensure the integrity of the DOI Commissioner before their confirmation, this fundamental conflict still exists, and the Council has few options to address issues of independence or interference down the line.

III. Conclusion

At a time when the mayor and NYPD leadership are doubling down on aggressive and antiquated tactics, ensuring that OIG-NYPD is appropriately resourced and capable of carrying out its mandate without obstruction and interference should be a priority of this Council. We believe that an oversight entity such as OIG-NYPD has significant potential to shed light on the most pressing policing issues in our city, but only if this Council, working alongside community organizations and those most impacted, to develop a collaborative process for addressing the aforementioned obstacles inhibiting OIG-NYPD's ability to be truly responsive to concerns raised by the community.

TESTIMONY

**The New York City Council
Committee on Oversight and Investigations
Committee on Public Safety**

**April 11, 2022 Oversight Hearing on the
Department of Investigation Office of the Inspector General for the NYPD**

NAACP Legal Defense &
Educational Fund, Inc.
40 Rector Street, 5th Fl.
New York, N.Y. 10006

April 14, 2022

Dear Chairwoman Brewer, Chairwoman Hanks, and members of the committees:

My name is Katurah Topps and I am Policy Counsel at NAACP Legal Defense and Educational Fund, Inc. (“LDF”). On behalf of LDF, I thank you for inviting LDF to testify during this critical oversight hearing (the “Hearing”) on the Department of Investigation (“DOI”) Office of the Inspection General for the New York Police Department (“OIG”).

I. Introduction

LDF’s work to address police violence and misconduct dates to its inception.¹ *See, e.g., Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949; the men were brutally beaten by sheriff’s deputies to force confessions). Additionally, LDF litigated *Tennessee v. Garner*, 471 U.S. 1 (1985), a seminal case that held, for the first time, that police officers cannot shoot “fleeing felons” who do not pose a threat to officers or members of the public. LDF’s current efforts related to policing are centralized in our Justice in Public Safety Project (“JPP”), which uses litigation, policy advocacy, public education, and community organizing strategies to: (1) ensure accountability for police brutality and misconduct through community oversight and changes to laws and policies; (2) promote policing and public safety practices that eliminate the pernicious influence of racial and other biases; and (3) support a new paradigm of public safety that drastically reduces the presence of armed law enforcement in communities of color. LDF also serves as co-counsel in *Davis v. City of New York*, a federal class-action lawsuit challenging the New York City Police Department’s (“NYPD” or “Department”) policy and practice of unlawfully stopping and arresting Black and Latinx New York City Housing Authority residents and their visitors for trespassing.² Lastly, LDF was involved in the successful federal class action lawsuit *Floyd v. City of New York* challenging the NYPD’s practices of racial profiling and unconstitutional stop and frisks of New York City Residents.³ These experiences provide us a unique perspective into the NYPD’s history and culture of abusive and racially biased policing practices, especially against Black and brown communities, and inform the recommendations below.⁴

The DOI, and more specifically, OIG, is responsible for “investigating, reviewing, studying, auditing and making recommendations relating to the operations, policies, programs and practices” of the NYPD.⁵ Advocates and impacted communities have long called for the OIG to investigate, audit, and make recommendations on the NYPD’s gang policing practices and use of technology, without success. Now, an emboldened NYPD has reinstated many of its harmful practices through its Blueprint to End Gun Violence (“Blueprint” or the “Plan”),⁶ Subway Safety Plan (“Subway Plan”),⁷ and Citywide Crime and Quality of Life Enforcement Initiative (“the Initiative”).⁸ We hope this testimony will shed light on the harms associated with these practice and move this Council and the OIG to take action to address the concerns.

II. NYPD Has an Extensive History of Enforcement Practices That Disproportionately Harm New Yorkers of Color

a. NYPD's gang enforcement practices have repeatedly been shown to be violent and racially discriminatory, with minimal oversight from DOI

In 2018⁹ and 2019,¹⁰ LDF and other advocates testified before this Council to share our concerns regarding the NYPD's gang enforcement strategies. As we testified then, the NYPD maintains a gang database (or "criminal groups database") that uses overly broad criteria to designate thousands of New Yorkers as members of gangs or local street "crews."¹¹ The NYPD disproportionately confers such affiliation on Black and Latinx New Yorkers and subjects them to heightened surveillance¹² and criminalization; lacks transparency in its use of the database and surveillance practices;¹³ uses violent and aggressive policing tactics;¹⁴ and fails to provide due process protections to those individuals included in the database.¹⁵ Again, this remains true today.

The DOI confirmed last year that it had begun examining the NYPD's gang database in 2018. In July 2021, nearly three years after the investigation began, the DOI confirmed that its investigative review was in its final stages.¹⁶ However, to date, the report has not been published and the NYPD's problematic gang policing practices continue.

A major concern regarding the NYPD's gang enforcement strategies is the overly broad criteria¹⁷ used to identify someone as a gang member or associated with gang activity. Examples of such criteria include, an individual's friendship or association with others believed to be connected with gang activity; the presence of an individual in a neighborhood that has gang activity; or an individual's wearing of black, gold, yellow, red, purple, green, blue, white, brown, khaki, gray, orange, or lime green.¹⁸ If a person meets two of the Department's overly broad criteria, an officer may add them to the gang database.¹⁹ Reports have revealed that the database erroneously includes individuals who have not engaged in criminal activity,²⁰ and are not involved in gang activity.²¹ Yet, the NYPD has not addressed these issues and adds individuals to the database without notice or a mechanism for recourse.²²

The same groups of people subjected to the degradation of unlawful stops and frisks are now stigmatized as dangerous gang members. The NYPD gang policing practices so closely resemble the unconstitutional racial targeting of Stop and Frisk, that many refer to them as Stop and Frisk 2.0.²³ As of June 2019, over 97% of the individuals in the database are Black or Latinx. Though nearly 32% of NYC residents are white,²⁴ and nationally on average, white people make up approximately 25% of gangs,²⁵ only 1.1% of those listed in the NYPD's gang database are white. Black people, on the other hand, represent 22% of NYC's population, but 75% of those in its gang database are Black, (including Black Latinx).²⁶ From 2014 to 2018, as police stops under stop and frisk decreased, the number of individuals identified as gang members in New York City has skyrocketed.²⁷

Being included in the gang database and therefore designated a potential gang member or associate has immediate and troublesome consequences such as heightened police surveillance(including social-media surveillance), enhanced bail recommendations, restrictive conditions of confinement, increased supervised release restrictions, and, for many, loss of housing and the threat of deportation.²⁸ In some cases, those wrongly included in the gang database face

life-altering prosecution and lengthy imprisonment stemming from mass conspiracy indictments,²⁹ enhanced sentencing,³⁰ and elevated charges.³¹ In addition to individual harms, the NYPD's military-style gang raids, often taking place in public housing,³² have traumatized entire communities and forced them to experience horrific instances of violence and the separation of families and loved ones due to incarceration.³³ These gang raids have involved assault rifles, battering rams, flash grenades, and other violent tools,³⁴ and resulted in hundreds of arrests, of which only a small number are of individuals actually suspected of serious offenses, and much higher numbers are of people accused of low-level offenses or who have no prior criminal history at all.³⁵

While we acknowledge that many councilmembers supported a recent bill³⁶ to end the NYPD's gang database, true public safety requires more. This Council and the OIG must hold the NYPD accountable for its continued use of the constitutionally untenable gang database and gang policing practices, and reaffirm its commitment to constitutional, race-neutral policing. In doing so, the OIG should also recommend solutions to remedy the harm that NYPD's gang policing has caused. To prevent continuing use of its abusive and aggressive gang policing tactics, we urge this Council to ensure the OIG's office promptly completes its investigation into the NYPD's gang practices and its use of the gang database and publishes a thorough report of its findings. This Council should also create a process to amplify the voices of, and solicit input from, affected community members, and invest in community-based programs shown to reduce the violence that the NYPD's database and gang enforcement tactics purport to address.

b. *NYPD has consistently failed to be transparent about its surveillance tools and use of technology as required by the POST Act*

To increase transparency into NYPD's use of surveillance and other technology, on June 18, 2020, this Council passed the Public Oversight of Surveillance Technology Act ("POST Act"), mandating that the NYPD publicly disclose its surveillance technology "impact and use policies," including descriptions of the capabilities of its surveillance technology; rules and prohibitions on use; policies on data retention, access, and security measures; and any potential disparate impacts the technology may have on protected groups.³⁷ The POST Act also requires the NYPD to update its existing surveillance technology policies with an addendum if the Department seeks or acquires enhancements to the technology, or uses it in a manner not previously disclosed.³⁸ It also requires the Department to publicly propose any new surveillance technology use to the public at least 90 days before it uses such technology.³⁹ In spite of the POST Act's transparency requirements, the NYPD initially failed to comply with the Act's disclosure requirements. In February 2021, LDF joined several advocates to highlight the omissions in the NYPD's disclosures of its impact and use policies.⁴⁰ Yet, when the NYPD released its final impact and use policies in April 2021, it failed to remedy a number of the omissions we and others had identified, and instead made minimal changes to its policies.⁴¹

Because of the NYPD's refusal to adhere to the POST Act's transparency requirements, and its opacity around its surveillance and technology tools, the Department's use of technology is still largely unregulated and hidden from public view. As an oversight measure, the POST Act requires the OIG to conduct and release an annual audit of the NYPD's compliance with the Post Act.⁴² However, to date, the OIG's office has not released such a report. In fact, the OIG's office has not released a report on NYPD surveillance practices or their effects in over six years⁴³, yet

the NYPD has significantly increased its use of surveillance.⁴⁴ As a result, the Department has operated with minimal public oversight of its rapidly expanding surveillance practices. We strongly urge the OIG to begin thoroughly investigating the NYPD's use of technologies that facilitate surveillance and publish a report of its findings as the POST Act mandates. A failure to do so places the rights and freedoms of all New Yorkers in jeopardy, particularly racial justice protestors and protest organizers,⁴⁵ youth on social media,⁴⁶ and religious minority groups,⁴⁷ all of whom have been subject to NYPD surveillance for their engagement in lawful or protected activities.

The NYPD's use of technology results in the regular surveillance of New Yorkers with an alarming dismissal of basic privacy considerations and surveillance and use of technology which disproportionately targets New Yorkers of color. For example, the NYPD accesses over 15,280 surveillance cameras in Manhattan, Brooklyn, and the Bronx, allowing it to track individuals' movements across boroughs at any given time.⁴⁸ The cameras are focused on neighborhoods with high concentrations of Black and Latinx New Yorkers. For example, in the Brooklyn neighborhood of East New York, which is comprised of over 54% Black and 30% Latinx residents, thousands of cameras span the neighborhood—making this the most surveilled neighborhood out of the three boroughs.⁴⁹ Overall, in the Bronx, Brooklyn, and Queens, the higher the proportion of non-white residents, the higher the concentration of facial recognition-compatible cameras.⁵⁰ The NYPD's use of predictive policing tools,⁵¹ drones,⁵² license plate readers,⁵³ aerial surveillance,⁵⁴ surveillance cameras, facial recognition technology,⁵⁵ social media surveillance,⁵⁶ and shot spotters,⁵⁷ have all resulted in heightened surveillance, over-policing, and increased arrest or incarceration, of communities of color.⁵⁸

While New Yorkers of color bear the greatest risk of being subject to the NYPD's surveillance, the Department's strong opposition to transparency affects rights of privacy and due process all New Yorkers. The NYPD's tools include increasingly powerful, military-grade equipment and surveillance capabilities.⁵⁹ For example, when the NYPD began using military vans with x-ray technology to surveil cars and buildings, it largely refused to disclose how it used the vans; the public health risks; whether the department seeks judicial approval through a warrant before it uses them; or how long the NYPD retains images the vans capture.⁶⁰ When the Department began purchasing and operating Stingray cell tower simulators—a surveillance device that mimics cell phone towers and captures location and identifying information through cell phones—it did so without notice to the public.⁶¹ In response to a FOIL request, the Department eventually disclosed that from 2008 to 2015, it used Stingrays over 1000 times without public knowledge, without a policy governing its use, and without obtaining a warrant.⁶² The NYPD uses powerful and invasive methods to surveil ordinary, innocent civilians on a regular basis, acting with little regard for the constitutional rights of privacy, due process, and free speech, among others.

Given NYPD's frequent use of surveillance technologies and attempts to avoid transparency, we urge OIG to begin investigating NYPD's mass surveillance practices and release a public report as the POST Act mandates. Only with sufficient oversight and visibility can we ensure that the rights and freedoms of all New Yorkers, but particularly those who are most marginalized, are respected.

III. Mayor Adams' Blueprint to End Gun Violence Risks Exacerbating the Dangers of NYPD's Aggressive Policing Practices Without Providing Sustainable, Long-term Solutions to the Likely Causes of the Violence

On January 24, 2022, Mayor Adams introduced his Blueprint as a response to the recent increase in gun violence in New York City.⁶³ While it is true that homicides in most U.S. cities increased in 2020, for both the country, and New York state, violent crime has been on a decline for the past 30 years and the recent increase in homicides remains lower than the homicide peak in the mid-90s.⁶⁴ Additionally, the current crime increase is limited to the last two years, during which the nation—and New Yorkers alike—have faced a global pandemic.⁶⁵ Research shows a strong relationship between pandemic-induced community destabilization and the recent rise in violent crime and homicide rates, both nationally and in New York state.⁶⁶ In fact, a recent analysis of 61 major U.S. cities, including New York City, and CDC data shows that cities with the highest COVID-19 death rates are also experiencing the highest increases in homicides.⁶⁷ Economic insecurity and income equality, both of which have been exacerbated by the COVID-19 pandemic, most clearly correlate with the different trajectories cities experienced following the homicide increase in 2020.⁶⁸

New York City's Black and Latinx communities struggled for key resources prior to COVID-19.⁶⁹ Then, as this City became the epicenter of COVID-19 infection and death rates, those same communities disproportionately experienced the highest rates of COVID-19 infection and death⁷⁰--removing many Black and Latinx wage-earners and compounding the effects of economic and social instability.⁷¹ Despite the likely public health and economic causes of the recent increases in violence, the Blueprint primarily employs aggressive policing and harsh, punitive practices, rather than a holistic public health approach to address the violence.

The Blueprint relies upon significant increases in police presence and activity in the City's most resource-deprived neighborhoods—and notably, the same neighborhoods that the NYPD has over-policed. Specifically, the Blueprint mandates increased patrols and officer presence, including through Neighborhood Safety Teams; expanded police surveillance and use of facial recognition and other troublesome technologies; implementation of a modified version of the previously disbanded and notoriously violent Anti-Crime Unit; and expanded officer stops and searches at bus and train stations.⁷² The Blueprint also suggests rolling back bail and other key criminal legal system reforms.⁷³ But research has shown that bail reform is not responsible for the increase in violent crime in 2020, nor is its repeal likely to increase public safety or bring the city back to its 2019 crime rate.⁷⁴ Further, reviewing the effects of increased law enforcement funding over time makes clear that increased policing does not necessarily cause a decrease in crime.⁷⁵ Cities with increased police funding and without bail reform or progressive prosecutors, also experienced an increase in homicides in 2020.⁷⁶

Instead, increased policing methods such as those outlined in the Blueprint have been shown to contribute to the disenfranchisement and overcriminalization to Black and brown communities.⁷⁷⁷⁸ For example, the Department's efforts to reduce gun violence beginning in the late 90s expanded officer patrols and led to hundreds of thousands of unconstitutional stops that disproportionately targeted Black and Latino males, aged 14-24.⁷⁹ From 2004- 2012, officers made 4.4 million stops.⁸⁰ Over 80% of these stops were of Black or Latinx individuals, despite a lower likelihood of Black New Yorkers yielding a weapon or having contraband than white New

Yorkers.⁸¹ Furthermore, 80% of the Black and Latinx individuals stopped between 2014 and 2017 were found to have no weapon and no summons or arrest was executed. Similarly, NYPD specialty units, like the plainclothes and Strategic Response Group (“SRG”)⁸² units, which were disbanded due to the volume of complaints about their misconduct, have a documented history of employing aggressive and violent practices that target low-income Black and brown communities, and have resulted in the deaths and injuries of too many New Yorkers.⁸³

By resorting again to the same problematic policing practices of the past, the NYPD risks repeating its prior mistakes and further harming communities of color. The Blueprint explicitly targets the 30 precincts suffering the most from gun violence,⁸⁴ which are also neighborhoods where predominantly Black and brown New Yorkers reside.⁸⁵ Research has demonstrated that violence occurs in areas that have suffered from disinvestment.⁸⁶ Rather than repeating the mistakes of the past, this Council should provide vulnerable communities experiencing increased violence with resources and non-carceral services that create long-term, sustainable safety. This includes economic stability, affordable and quality housing, education, and healthcare, physically improved neighborhoods,⁸⁷ and community-led violence prevention and intervention programs.⁸⁸ These methods have all proven to be successful in reducing violent crime and increasing public safety without the harms associated with increased policing and should be prioritized in the City’s budget.⁸⁹

IV. The NYPD’s Reinstatement of Broken Windows Policing is Ineffective and Harmful

Last month, the NYPD announced the Initiative as a response to the increased shootings, thefts, and quality-of-life offenses.⁹⁰ The Initiative places additional law enforcement officers in neighborhoods and housing developments to “proactively enforce” low-level offenses that the NYPD erroneously claims are precursors to violent crime, such as public drinking, public urination, playing dice games, marijuana sales, and driving without a license.⁹¹

Research shows that the low-level enforcement practices the Initiative outlines, which implements a policing philosophy known as Broken Windows, are often discriminatory and ineffective, and contrary to the NYPD’s assertion is *not* a “proven best practice for reducing violent crime.”⁹² The National Academies of Sciences reviewed almost four decades of research and did not find any evidence that aggressive police tactics for minor offenses make cities safer.⁹³ In fact, when there has been a decrease in aggressive enforcement of low-level offenses, there was a corresponding decrease in civilian complaints of major crimes, suggesting that actions and solutions other than aggressive policing make New York City safer.⁹⁴ For example, between 2010 and 2015, when quality of life enforcement and summons rates dramatically declined, there was no commensurate increase in felony crime.⁹⁵ Moreover, after reviewing six years of summons, arrest, and complaint data, even the OIG’s report did not find any evidence that linked NYC’s drop in felony crimes to quality of life policing,⁹⁶ noting instead the lack of a demonstrable direct link.⁹⁷ Research in four other major cities—Chicago, Los Angeles, Baltimore, and Boston—all similarly demonstrated no relationship between focusing on low-level misdemeanors and reducing violent crime.⁹⁸

The Initiative is also likely to worsen the already disparate policing and incarceration of Black and Latinx communities in New York.⁹⁹ By its own description, the Initiative states that the

Bronx and Brooklyn “will mainly experience the first wave of increased enforcement,” specifically “the neighborhoods of Brownsville, East New York, and Cypress Hills” – which are areas with predominately Black and Latinx residents.¹⁰⁰ Moreover, the NYPD’s recent enforcement of low-level offenses has already caused disproportionate criminalization of communities of color. Recently, the Legal Aid Society found that, in 2021, over 91% of the NYPD’s low-level arrests for offenses such as driving without a valid license, loitering, MTA fare evasion, and public urination, were of people of color.¹⁰¹ Not only is this type of policing overly punitive, and mentally and emotionally taxing,¹⁰² it can be deadly.¹⁰³ The nation watched as NYPD officers killed Eric Garner as a result of an interaction for the minor and non-violent offense of selling loose cigarettes on the street.¹⁰⁴ George Floyd was initially stopped for using a counterfeit \$20 bill.¹⁰⁵

The NYPD’s recent Subway Plan also uses harsh and punitive enforcement techniques rather than providing long-term support to those New Yorkers who may be unable to afford the \$2.75 subway fare or who seek refuge in the subway because they are unhoused. The Subway Plan allows officers to forcefully eject marginalized persons from the subway and use enforcement practices for offenses like sleeping or being loud on a train.¹⁰⁶ Not only are such aggressive tactics ineffective,¹⁰⁷ they also risk inflicting serious harm on the people subjected to them. Solutions that promote safe, affordable, and supportive housing, particularly for individuals struggling economically, or experiencing homelessness or mental illness, are critical to long-term safety and wellness.¹⁰⁸ City council should expand supportive housing programs in New York and limit the NYPD’s unnecessary criminalization of unhoused people. We urge the OIG to investigate the NYPD’s enforcement of low-level offenses and its efforts to return to broken windows policing. We urge the City Council to implement sustainable solutions that address people’s underlying economic and health needs to prevent violence in communities without the harms caused by increased policing.

Conclusion

The NYPD's policing practices—both past and present—unduly expose a disproportionate number of people of color to a host of injustices in our criminal justice system. The NYPD has a legacy of decades of ineffective, unconstitutional, and racially discriminatory policing. We call upon this Council and the OIG to take immediate action to ensure the NYPD does not repeat its problematic history by implementing harmful practices with little to no transparency, oversight, or accountability. This requires, among other things, that the OIG be fully independent from the NYPD¹⁰⁹ and addresses any NYPD efforts to delay or impede the OIG's work.¹¹⁰

We welcome the opportunity to meet with City Councilmembers to discuss this topic in greater depth. If you have any questions, please contact Puneet Cheema at pcheema@naacpldf.org or (646) 574-5666 or Katurah Topps at ktopps@naacpldf.org or (646) 592-3761.

Sincerely,

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¹ See e.g., *Brown v. Bd of Ed.*, 347 U.S. 483 (1954); *Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949 and brutally beaten by sheriff's deputies to force confessions); see also LDF's statements on the cases, available at <https://www.naacpldf.org/case-issue/landmark-brown-v-board-education> and <https://naacpldf.org/press-release/naacp-legal-defense-fund-statement-on-the-florida-state-legislatures-resolution-exonerating-the-groveland-four/>.

² See *Davis v. City of New York*, 959 F. Supp. 2d 324 (S.D.N.Y. 2013).

³ See *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

⁴ See LDF's Justice in Public Safety Project at <https://tminstituteldf.org/advocacy/campaigns/policing-reform/ldf-action/>; see also *Davis v. City of New York*, *supra* n. 2 (LDF served as co-counsel challenging the NYPD's unlawful policy and practice of routinely stopping and arresting public housing residents without reasonable suspicion or probable cause in a racially discriminatory manner), <https://naacpldf.org/case-issue/davis-v-city-new-york/> and LDF's work in Ferguson, MO (supporting community members' efforts to eliminate Ferguson Police Dept's racially discriminatory practices and improve public safety, <https://www.naacpldf.org/news/ldf-comments-on-the-implementation-opof-the-ferguson-consent-decree/>).

⁵ *Inspector General for NYPD*, CITY OF NEW YORK, <https://www1.nyc.gov/site/doi/offices/oignypd.page> (last visited Apr. 7, 2022).

⁶ See Press Release, City of New York, Blueprint to End Gun Violence (Jan. 24, 2022), <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2022/the-blueprint-to-end-gun-violence.pdf> [hereinafter Blueprint to End Gun Violence].

⁷ See Press Release, City of New York, Subway Safety Plan (Feb. 18, 2022) <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2022/the-subway-safety-plan.pdf> [hereinafter Subway Safety Plan].

⁸ See Press Release, NYPD, NYPD Announces Citywide Crime and Quality-of-Life Enforcement Initiative (Mar. 23, 2022) <https://www1.nyc.gov/site/nypd/news/p00040/nypd-citywide-crime-quality-of-life-enforcement-initiative> [hereinafter Quality-of-Life Initiative].

⁹ *NYPD's Gang Takedown Efforts: Hearing Before the New York City Council Committee on Public Safety*, Sess. 2018 to 2021, (NYC 2018) (statement of NAACP Legal Defense and Educational Fund), available at https://web.archive.org/web/20181021040545/https://www.naacpldf.org/files/case_issue/City%20Council%20Testimony%20combined%206.13.18.pdf [hereinafter 2018 LDF Testimony].

¹⁰ *Re: A Local Law to Amend the Administrative Code of the City of New York, in Relation to Providing Notice to Minors Included in the Criminal Groups Database: Hearing Before the New York City Council Committee on Public Safety*, Sess. 2018 to 2021 (NYC 2019) (statement by Liliana Zaragoza, Policy Counsel at NAACP Legal Defense and Educational Fund), available at <https://www.naacpldf.org/wp-content/uploads/2019-06-27-LDF-City-Council-Hearing-Testimony-Complete.pdf> [hereinafter 2019 LDF Testimony].

¹¹ JOSMAR TRUJILLO AND ALEX S. VITALE, POLICING AND SOCIAL JUSTICE PROJECT AT BROOKLYN COLLEGE, GANG TAKEDOWNS IN THE DE BLASIO ERA: THE DANGERS OF 'PRECISION POLICING' (2019), <https://policingandjustice.org/s/2019-New-York-City-Gang-Policing-Report-FINAL.pdf> [hereinafter *New York City Gang Policing Report*].

¹² K. Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, 5 UNIV. DENVER CRIM. L. REV. 1, 16 (2015).

¹³ Michael Sisitzky & Ben Schaefer, *The NYPD Published Its Arsenal of Surveillance Tech. Here's What We Learned*, NYCLU (Feb. 24, 2021) (noting that even after the NYPD shared its full suite of surveillance technology, there was still lack of clarity about protections against sharing sensitive information data illegally and that in general the disclosures included misrepresentations and inaccurate statements about which technology includes artificial intelligence, machine learning, or video analytics); The Bronx Defenders et al., *Public Comment on the NYPD's Draft Impact & Use Policies for the Criminal Group Database and Social Network Analysis Tools at 2-3, 5-6* (Feb. 25, 2021), https://www.bronxdefenders.org/wp-content/uploads/2021/02/Written-Comment-on-NYPDs-Draft-Impact-Use-Policies-for-the-Gang-Database-and-Social-Network-Analysis-Tools_BXD_CCR_LAS_LDF.pdf [hereinafter "Public Comment"] ("LAS has assisted New Yorkers who submitted FOIL requests demanding to know if they were included in the Gang Database, and the NYPD has denied 350 of those requests relying on boilerplate language without any specific reason for the denial").

¹⁴ *New York City Gang Policing Report* (noting that the NYPD's gang raids involve assault rifles, battering rams, flash grenades, and are violent and traumatic experiences for those that experience them).

¹⁵ Public Comment at 2-3, 5-6 (noting that, as of June 27, 2019, more than 98% of the Gang Database includes people of color and NYPD's overly broad gang designations "drive[] the increased surveillance, over-policing, and mass criminalization of Black and Latinx youth who are labeled as gang members and considered suspect without proof of criminal conduct").

¹⁶ Eileen Grench, *Department of Investigation Confirms Probe of NYPD Gang Database After Advocates Rally*, THE CITY, July 27, 2021, <https://www.thecity.nyc/2021/7/27/22597212/department-of-investigation-probes-nypd-gang-database> ("DOI has an ongoing examination on the NYPD's gang database, which began in 2018, and is now in its final stages," said Diane Struzzi, a Department of Investigation spokesperson [on July 27, 2021].")

¹⁷ *Id.* ("New Yorkers can...be added [to the gang database] if any two of the following apply: 'frequent presence at a known gang location;' 'association with known gang members;' 'frequent wearing of [gang] colors;' and 'frequent use of hand signs that associated with a particular gang'").

¹⁸ NYPD, CRIMINAL GROUP DATABASE: IMPACT AND USE POLICY 4 (2021), available at https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/post-final/criminal-group-database-nypd-impact-and-use-policy_4.9.21_final.pdf [hereinafter *Gang Database IUP*]; see also 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-deblasio/>.

¹⁹ See Speri, *New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio*, <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

²⁰ See Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*.

²¹ Nick Pinto, *NYPD Disputes Gang Database Number – But Its Math Doesn’t Add Up*, THE INTERCEPT, June 14, 2018, <https://web.archive.org/web/20180919204109/https://theintercept.com/2018/06/14/nypd-gang-database-city-council-dermot-shea/> (finding that more than 8% of individuals in the Gang Database (as of February 2018) are under 18 years old).

²² Jake Offenhartz, *The NYPD’s Expanding Gang Database is Latest Form of Stop & Frisk, Advocates Say*, GOTHAMIST, Jun. 13, 2018, https://web.archive.org/web/20181026062804/http://gothamist.com/2018/06/13/nypd_gang_database_nyc.php; see also Public Comment, *supra* note 13, at 4, available at https://www.bronxdefenders.org/wp-content/uploads/2021/02/Written-Comment-on-NYPDs-Draft-Impact-Use-Policies-for-the-Gang-Database-and-Social-Network-Analysis-Tools_BXD_CCR_LAS_LDF.pdf (“Although the Gang Database IUP states that individuals labeled as gang members are reviewed every three years, it omits the NYPD’s elsewhere-stated policy that any arrest—or even police contact unrelated to gang activity—in the prior three years is grounds to remain in the database”) (citing Response to a Freedom of Information Law Request filed on behalf of a Legal Aid Society client (on file with LAS)).

²³ See Public Comment, https://www.bronxdefenders.org/wp-content/uploads/2021/02/Written-Comment-on-NYPDs-Draft-Impact-Use-Policies-for-the-Gang-Database-and-Social-Network-Analysis-Tools_BXD_CCR_LAS_LDF.pdf.

²⁴ 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/nyc-population/acs/demo_2016acs1yr_nyc.pdf.

²⁵ See e.g., Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing* and K. Babe Howell, *Fear Itself: The Impact of Allegations of Gang Affiliation on Pretrial Detention*, 23 ST. THOMAS L. REV. 620, 627-643 (2011).

²⁶ Daryl Khan, *New York City’s Gang Database Is 99% People of Color, Chief of Detectives Testifies*, JUVENILE JUSTICE INFORMATION EXCHANGE, June 14, 2018, <https://jjie.org/2018/06/14/new-york-citys-gang-database-is-99-people-of-color-chief-of-detectives-testifies/>.

²⁷ Speri, *New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio*, [https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-deblasio/\(from-January-2014-to-February-2018,-the-number-of-people-in-the-gang-database-increased-by-70%\)](https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-deblasio/(from-January-2014-to-February-2018,-the-number-of-people-in-the-gang-database-increased-by-70%)).

²⁸ New York City Gang Policing Report at 1, 13-21, available at <https://policingandjustice.org/s/2019-New-York-City-Gang-Policing-Report-FINAL.pdf>.

²⁹ 2019 LDF Testimony at 3, available at (citing BABE HOWELL AND PRISCILLA BUSTAMANTE, REPORT ON THE BRONX 120 MASS “GANG” PROSECUTION (2019), available at <https://bronx120.report/the-report/> [hereinafter Bronx 120 Report]). <https://www.naacpldf.org/wp-content/uploads/2019-06-27-LDF-City-Council-Hearing-Testimony-Complete.pdf> (citing BABE HOWELL AND PRISCILLA BUSTAMANTE, REPORT ON THE BRONX 120 MASS “GANG” PROSECUTION (2019), available at <https://bronx120.report/the-report/> [hereinafter Bronx 120 Report]).

³⁰ New York City Gang Policing Report at 1, 13-21, available at <https://policingandjustice.org/s/2019-New-York-City-Gang-Policing-Report-FINAL.pdf>.

³¹ *Case: NYPD’s “Gang” Policing Tactics*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, <https://www.naacpldf.org/case-issue/nypds-gang-policing-tactics/> (last visited Apr. 12, 2022).

³² Ben Hattem, *How Massive Gang Sweeps Make Growing Up in the Projects a Crime*, GOTHAMIST, Oct. 24, 2016, http://gothamist.com/2016/10/24/gang_sweeps_public_housing.php#photo-1; see also Bronx 120 Report at 9, 11, available at <https://bronx120.report/the-report/>.

³³ 2019 LDF Testimony, available at <https://www.naacpldf.org/wp-content/uploads/2019-06-27-LDF-City-Council-Hearing-Testimony-Complete.pdf>.

³⁴ New York City Gang Policing Report, available at <https://policingandjustice.org/s/2019-New-York-City-Gang-Policing-Report-FINAL.pdf>.

³⁵For example, in one particularly egregious raid of the Eastchester Gardens public housing facility in the Bronx, billed by police as “the largest gang takedown in New York City history,” 45 of the 117 people arrested had no prior criminal record and more than half were never accused of having any gang membership. During this raid, helicopters swarmed the complex before dawn and 700 officers served no-knock warrants, used battering rams to knock down doors, forced families to lie on the floor at gunpoint, and dragged out those they arrested for suspected gang involvement – two-thirds of whom were not charged with violent crimes. See Eileen Grench, *NYPD Gang Database Targeted by City Council Member*, THE CITY, Sept. 15, 2021, <https://www.thecity.nyc/2021/9/15/22674782/nypd-gang-database->

[targeted-city-council](#); Bronx 120 Report at 23, <https://bronx120.report/the-report/> (describing how in the violent Bronx 120 raid of the Eastchester Gardens public housing facility, 700 officers with no-knock warrants and helicopters overhead swarmed the complex before dawn, using battering rams to knock down doors, forcing families to lie on the floor at gunpoint, and dragging out those they arrested for suspected gang involvement – 2/3 of which were not charged with violent crimes); Alice Speri, *The Largest Gang Raid in NYC History Swept Up Dozens of Young People Who Weren't in Gangs*, THE INTERCEPT, Apr. 25, 2019, <https://theintercept.com/2019/04/25/bronx-120-report-mass-gang-prosecution-rico/> (pointing to other examples of the long-term harms of the gang database and gang raids).

³⁶ Int. No. 2473, Sess. 2018 to 2021 (NYC 2021), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5354656&GUID=C18FA9E5-A941-43C3-A732-9F8C072D74F3&Options=ID|Text|&Search=2473>.

³⁷ Public Oversight of Surveillance Technology Act, Int. No. 487-A, Sess. 2018 to 2021 (NYC 2018) (codified at N.Y.C. CITY CHARTER CH. 34 § 803 (c-1) and N.Y.C. ADMIN. CODE § 14-188), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3343878&GUID=996ABB2A-9F4C-4A32-B081-D6F24AB954A0> [hereinafter POST Act].

³⁸ POST Act at 3, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3343878&GUID=996ABB2A-9F4C-4A32-B081-D6F24AB954A0>.

³⁹ *Id.*

⁴⁰ See Letter from AI Now Institute, NYU, et al. to Dermot Shea, Police Commissioner and Margaret Garnett, Commissioner of the Dept. of Investigation (Feb. 24, 2021), available at <https://www.naacpldf.org/wp-content/uploads/POST-Act-Joint-Submission-02-24-21.pdf> [hereinafter Letter to NYPD Commissioner and DOI Commissioner]; see also [Public Comment at 4](#), available at https://www.bronxdefenders.org/wp-content/uploads/2021/02/Written-Comment-on-NYPD-Draft-Impact-Use-Policies-for-the-Gang-Database-and-Social-Network-Analysis-Tools_BXD_CCR_LAS_LDF.pdf (finding that in addition to social media surveillance concerns, the NYPD's proposal did not adequately curtail the length of data storage, did minimize inter-agency data sharing – including to immigration agencies – nor tailor its boilerplate policy terms to the technology loopholes already utilized at the time of the proposal.)

⁴¹ For example, in February 2021, LDF raised concerns that the NYPD's impact and use policy for the criminal group database that “[failed] to address the reality that 98.5% of the individuals in the database are nonwhite,” instead including only “a simple recitation of civil rights laws and antidiscrimination policies.” See Letter to NYPD Commissioner and DOI Commissioner, <https://www.naacpldf.org/wp-content/uploads/POST-Act-Joint-Submission-02-24-21.pdf>. This has not changed in the final version, which again fails to address the disparate impact realities of the gang database. See [Gang Database IUP](#), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/post-final/criminal-group-database-nypd-impact-and-use-policy_4.9.21_final.pdf. Similarly, LDF also raised concerns about how the NYPD would prevent facial recognition technology from being used to identify lawful protestors. See Letter to NYPD Commissioner and DOI Commissioner, <https://www.naacpldf.org/wp-content/uploads/POST-Act-Joint-Submission-02-24-21.pdf>. However, the final impact and use policy made minimal, non-substantive changes from the draft version and merely re-stated official department policy without acknowledging the reality of false arrests and political targeting due to the use of facial recognition. See NYPD, FACIAL RECOGNITION: IMPACT AND USE POLICY (2021), available at https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/post-final/facial-recognition-nypd-impact-and-use-policy_4.9.21_final.pdf. Most fundamentally, as LDF previously emphasized in February 2021, the NYPD's disparate impact analyses in these documents consistently focus on *intentional* discrimination and neglect to address issues of unconscious bias, systemic discrimination, and the realities of how these technologies actually affect communities of color, which is the crux of an accurate and honest disparate impact analysis.

⁴² POST Act, *supra* note 37 (stating in the bill summary that “[t]he inspector general for the NYPD shall audit the surveillance impact and use policy to ensure compliance with its terms”); N.Y.C. Charter Ch. 34 § 803(c-1) (“The commissioner [of the Department of Investigation] shall prepare annual audits of surveillance technology impact and use policies as defined in section 14-188 of the administrative code that shall: 1. assess whether the New York city police department’s use of surveillance technology, as defined in section 14-188 of the administrative code, complies with the terms of the applicable surveillance technology impact and use policy; 2. describe any known or reasonably suspected violations of the surveillance technology impact and use policy, including but not limited to complaints

alleging such violations made by individuals pursuant to paragraph (6) of subdivision c of this section; and 3. publish recommendations, if any, relating to revisions of any surveillance technology impact and use policies”).

⁴³ See OIG-NYPD, AN INVESTIGATION OF NYPD’S COMPLIANCE WITH RULES GOVERNING INVESTIGATIONS OF POLITICAL ACTIVITY (2016), https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_intel_report_823_final_for_release.pdf.

⁴⁴ See, for example Ali Watkins, *How the N.Y.P.D. Is Using Post-9/11 Tools on Everyday New Yorkers*, N.Y. TIMES, Oct. 13, 2021, <https://www.nytimes.com/2021/09/08/nyregion/nypd-9-11-police-surveillance.html> (the NYPD’s “spending on intelligence and counterterrorism nearly quadrupled between 2006 and 2021, up to \$349 million from \$83 million in 2006”); Tate Ryan-Mosley, *A New Map of NYC’s Cameras Shows More Surveillance in Black and Brown Neighborhoods*, MIT TECHNOLOGY REVIEW, Feb. 14, 2022, <https://www.technologyreview.com/2022/02/14/1045333/map-nyc-cameras-surveillance-bias-facial-recognition/> (the NYPD used facial recognition in at least 22,000 cases between 2016 and 2019).

⁴⁵ *Int. No. 187 – Creating Comprehensive Reporting and Oversight of NYPD Surveillance Technologies: Hearing Before the New York City Council Committee on Public Safety*, Sess. 2018 to 2021 (NYC 2019) (statement by NAACP Legal Defense and Educational Fund), available at https://issuu.com/naacp_ldf/docs/2019-12-17_nyc_council_draft_testimony_on_the_post [hereinafter LDF 2019 Int. No. 187 Testimony] (citing Max Jaegar NY Post) (describing how in 2017, NYPD secretly spied on lawful Black Lives Matter protesters by monitoring their cell phones and social media).

⁴⁶ Public Comment, https://www.bronxdefenders.org/wp-content/uploads/2021/02/Written-Comment-on-NYPDs-Draft-Impact-Use-Policies-for-the-Gang-Database-and-Social-Network-Analysis-Tools_BXD_CCR_LAS_LDF.pdf (describing how in 2011, Harlem teen Jelani Henry was falsely arrested on gang violence-related charges, “based in large part on his social media activity, including ‘likes’ of Facebook posts from some of the gang’s members.”).

⁴⁷ See LDF 2019 Int. No. 187 Testimony, *supra* note 41 (citing Matt Apuzzo and Adam Goldman in the NYT) (The lawsuit eventually settled, with the court ordering reforms like implementation of an anti-religious discrimination policy, limits on the use of undercover officers, limits on investigations, a higher threshold to engage in investigation, and an outside civilian representative to oversee the safeguards); see also *Factsheet: The NYPD Muslim Surveillance Program*, ACLU, <https://www.aclu.org/other/factsheet-nypd-muslim-surveillance-program> (last visited Apr. 12, 2022) (Since at least 2002, the “NYPD’s Intelligence Division has singled out Muslim religious and community leaders, mosques, student associations, organizations, businesses, and individuals for pervasive surveillance”).

⁴⁸ AMNESTY INTERNATIONAL, SURVEILLANCE CITY: NYPD CAN USE MORE THAN 15,000 CAMERAS TO TRACK PEOPLE USING FACIAL RECOGNITION IN MANHATTAN, BRONX AND BROOKLYN (2021), <https://www.amnesty.org/en/latest/news/2021/06/scale-new-york-police-facial-recognition-revealed/> [hereinafter Amnesty International Report].

⁴⁹ *Id.* (counting 3,590 surveillance cameras at intersections in Manhattan, 8,220 in Brooklyn, and 3,470 in the Bronx, which account for 47% of the intersections in New York City).

⁵⁰ *Inside the NYPD’s Surveillance Machine*, AMNESTY INTERNATIONAL, <https://banthescan.amnesty.org/decode/> (last visited Apr. 12, 2022).

⁵¹ Rachel Levinson-Waldman and Erica Posey, *Court: Public Deserves to Know How NYPD Uses Predictive Policing Software*, THE BRENNAN CENTER FOR JUSTICE (Jan. 26, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/court-public-deserves-know-how-nypd-uses-predictive-policing-software>; see also Will Douglas Heaven, *Predictive Policing Algorithms are Racist. They Need to be Dismantled*, MIT TECHNOLOGY REVIEW, Jul. 17, 2020, <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>.

⁵² Faine Greenwood, *How to Regulate Police Use of Drones*, TECHSTREAM (Brookings), Sept. 24, 2020, <https://www.brookings.edu/techstream/how-to-regulate-police-use-of-drones/> (describing law enforcement’s use of drones to spy on alleged drug deals and homeless encampments, and to arrest three Black Lives Matter protesters).

⁵³ George Joseph, *What Are License-Plate Readers Good For? Automatic Plate-Readers Catch Few Terrorists or Violent Criminals But Do Plenty of Harm to Low-Income Communities of Color*, BLOOMBERG NEWS, Aug. 5, 2016, <https://www.bloomberg.com/news/articles/2016-08-05/license-plate-readers-catch-few-terrorists-but-lots-of-poorpeople-of-color>.

⁵⁴ Denise Lavoie, *Court Finds Baltimore Aerial Surveillance Unconstitutional*, ASSOCIATED PRESS, Jun. 24, 2021, <https://apnews.com/article/baltimore-courts-503b2eb629abf94c25edf4111baf64bd>.

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- ⁵⁵ Letter to NYPD Commissioner and DOI Commissioner, available at <https://www.naacpldf.org/wp-content/uploads/POST-Act-Joint-Submission-02-24-21.pdf>.
- ⁵⁶ See ÁNGEL DÍAZ, BRENNAN CENTER FOR JUSTICE, NEW YORK CITY POLICE DEPARTMENT SURVEILLANCE TECHNOLOGY (2019), <https://www.brennancenter.org/our-work/research-reports/new-york-city-police-department-surveillance-technology>.
- ⁵⁷ Todd Feathers, *Gunshot-Detecting Tech Is Summoning Armed Police to Black Neighborhoods*, VICE, July 19, 2021, <https://www.vice.com/en/article/88nd3z/gunshot-detecting-tech-is-summoning-armed-police-to-blackneighborhoods?fbclid=IwAR3W9CjNa1QVLHk8JrutFG85RKIwHYcBAfuqTRVv5iSziwkh-uyC4sa43qg> (finding that ShotSpotter frequently generates false alerts and deployed exclusively in non-white neighborhoods).
- ⁵⁸ Rashida Richardson, et al., *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 NYU L. REV. 192 (2019), <https://www.nyulawreview.org/wpcontent/uploads/2019/04/NYULawReview-94-Richardson-Schultz-Crawford.pdf>.
- ⁵⁹ See Díaz (citing drones, x-ray vans, ShotSpotter, surveillance towers as part of the NYPD’s surveillance technology and noting that the police do not allow the public and its elected officials to learn basic information about those technologies).
- ⁶⁰ See Isabelle Glimcher, *Brooklyn Court: NYPD’s Use of Cell-Phone Trackers Unconstitutional*, BRENNAN CENTER FOR JUSTICE (Dec. 8, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/brooklyn-court-nypds-use-cell-phone-trackers-unconstitutional> (quoting Justice Martin Murphy who held that a Stingray “by its very nature...intrudes upon an individual’s reasonable expectation of privacy, acting as an instrument of eavesdropping, and requires a separate warrant supported by probably cause).
- ⁶¹ Sidney Fussell, *The NYPD Had a Secret Fund for Surveillance Tools*, WIRED, Aug. 10, 2021, <https://www.wired.com/story/nypd-secret-fund-surveillance-tools/> (finding that since 2007, “New York City police bought a range of surveillance tools—including facial recognition software, predictive policing software, vans equipped with x-ray machines to detect weapons, and “stingray” cell site simulators—with no public oversight” through a fund “that did not require approval by the city council or other municipal officials”).
- ⁶² *NYPD Has Used Stingrays More than 1,000 Times Since 2008*, NYCLU (February 11, 2016), <https://www.nyclu.org/en/press-releases/nypd-has-used-stingrays-more-1000-times-2008>
- ⁶³ Blueprint, available at <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2022/the-blueprint-to-end-gun-violence.pdf>.
- ⁶⁴ Cecelia Low-Weiner, *Bail Reform in the Empire State: A Look at the History & Future of Cash Bail Legislation in New York*, CUNY INSTITUTE FOR STATE AND LOCAL GOVERNANCE: INSIGHTS (Apr. 5, 2022), <https://islg.cuny.edu/blog/bail-reform-in-new-york> (finding that although there was an uptick in violence in 2020, it was still lower than what New York experienced in the 1990s. “Prior to the introduction of bail reform, New York City was already on a steady path to reducing its jail population with no evidenced impact on crime rates. In fact, crime rates were at their lowest in 2019. Bail reform further decreased jail populations and early data suggests that the overwhelming majority of those released under the new policy did not go on to commit subsequent acts of violence. According to NY Office of Court Administration data, in 2020, only 2 percent of people released pretrial were rearrested for a violent felony.”).
- ⁶⁵ *Major Crime in NYC*, MAYOR’S OFFICE OF CRIMINAL JUSTICE, https://criminaljustice.cityofnewyork.us/individual_charts/mayor-crime-in-nyc/ (last visited Apr. 12, 2022) (noting that 2019 was New York City’s lowest year of crime since 1993).
- ⁶⁶ Daniel Semenza, *Evidence from Philadelphia Shows that Eviction Destabilizes Communities and May Lead to Increased Crime Rates in US Cities*, LSE PHELAN US CENTRE: UNITED STATES POLITICS AND POLICY BLOG (SEPT. 10, 2021), <https://blogs.lse.ac.uk/usappblog/2021/09/10/evidence-from-philadelphia-shows-that-eviction-destabilizes-communities-and-may-lead-to-increased-crime-rates-in-us-cities/> (noting that, while controlling for poverty, neighborhoods with higher eviction rates also had higher rates of homicide, robbery, and burglary) ; see also KESHA MOORE, THE THURGOOD MARSHALL INSTITUTE, STRUCTURAL RACISM IS A PUBLIC HEALTH CRISIS: ADDRESSING RACIAL DISPARITIES IN COVID-19 (2020), available at <https://tminstituteldf.org/addressing-racial-disparities-in-covid-19/>.
- ⁶⁷ KESHA MOORE ET AL., THURGOOD MARSHALL INSTITUTE, DESCRIPTIVE ANALYSIS OF HOMICIDE TRENDS IN 61 MAJOR U.S. CITIES, 2015-2021 (2022), <https://docs.house.gov/meetings/JU/JU08/20220308/114470/HHRG-117-JU08-20220308-SD006.pdf> [hereinafter “TMI Report”].

⁶⁸ Cities with the highest increase in homicides during the pandemic also had the highest income inequality in 2019. See Heather L. Sipsma et al., *Spending on Social and Public Health Services and Its Association with Homicide in the USA: An Ecological Study*, 7 *BMJ Open*, No. 10, <https://bmjopen.bmj.com/content/7/10/e016379.long>. See also TMI Report, *id.*

⁶⁹ See, for example NEW YORK URBAN LEAGUE, THE STATE OF BLACK NEW YORK 13, 25, 43, available at <https://www.nyul.org/sobny> (in 2018, the poverty rate for Latinx and Black New Yorkers is 27% and 23%, respectively, compared to 13% for white New Yorkers; 57% and 58% of Latinx and Black New Yorkers have a computer in the home and access to broadband, compared to 82% of white New Yorkers; Black New Yorkers experience a 7.3% rate of infant mortality compared to 2.7% for white New Yorkers, along with other worse health outcomes).

⁷⁰ NYC DEPARTMENT OF HEALTH, RACIAL INEQUITIES IN COVID-19 HOSPITALIZATIONS DURING THE OMICRON WAVE IN NYC (2022), available at <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/black-hospitalizations-omicron-wave.pdf> (observing longer delays to diagnosis COVID-19 among Black New Yorkers and disproportionately higher COVID-19 hospitalizations among Black New Yorkers).

⁷¹ See *id.* (finding that Black and Latino New Yorkers, and those in high-poverty neighborhoods, were likely to experience financial hardship due to the pandemic, not have access to remote work arrangements, and not have adequate space for quarantine and isolation).

⁷² Blueprint to End Gun Violence, *supra* note 6.

⁷³ See Blueprint to End Gun Violence, *supra* note 6 at 10-14 (suggesting allowing judges to take dangerousness into account in deciding bail, amending Raise the Age to be able to target 16 and 17 year olds arrested on a gun charge, and treating the carrying of a gun the same way whether the individual displays it or not)..; TMI Report, <https://islg.cuny.edu/blog/bail-reform-in-new-york>.

⁷⁴ TMI Report at 1 (“neither bail reform practices nor changes in prosecutor policies can adequately explain the increase in homicides.”); Cecelia Low-Weiner, <https://islg.cuny.edu/blog/bail-reform-in-new-york> (“many cities experienced similar increases regardless of whether or not similar bail policies were in place”); Press Release, Redmond Haskins et al., Brooklyn Defenders et al., NYC Defender Joint Statement in Response to Mayor Adams’ Remarks on Gun Violence (Feb. 9, 2022), <https://bds.org/assets/files/01-24-22-NYC-Defender-Joint-Statement-in-Response-to-Mayor-Adams-Remarks-on-Gun-Violence.cleaned.pdf> (The data is clear: bail reform has not contributed to any increase in crime; rather, it has helped address the crisis in our local jails and allowed New Yorkers to remain safely at home with their families and communities while they fight their cases).

⁷⁵ See *National Police Funding Database*, THURGOOD MARSHALL INSTITUTE, <https://policefundingdatabase.org/> (according to the National Police Funding Database, Little Rock, Arkansas, had more than twice the number of police per 1,000 people as other similarly sized cities, and Richmond, Virginia, had almost three times. Despite such an overrepresentation of police, Richmond’s 2021 homicides were 60% above the five-year pre-pandemic average, and Little Rock’s homicide increase was 73% above the five-year pre-pandemic average. Additionally, a review of 10 cities across the country with traditional prosecutors, no bail reform, spending an average of \$2.1 million annually on policing. Yet, their average number of homicides increased 35 % from 2019-2020 and an additional 21% increase from 2020 to 2021.

⁷⁶ TMI Report, *supra* note 62.

⁷⁷ See e.g., KENNETH NOVAK, ET AL., *POLICE & SOCIETY* 98 (Oxford University Press, 7th ed. 2017) (finding that increased police patrols did not affect crime rates, including violent crime, nor did they make people feel safer); *Victims*, THE MURDER ACCOUNTABILITY PROJECT (2021), <https://www.murderdata.org/p/victims.html> (noting the rate of unsolved homicides is higher for Black people than for white people, at 40% and 20%, respectively); Robin Smyton, *How Racial Segregation and Policing Intersect in America*, TUFTSNOW, June 17, 2020, <https://now.tufts.edu/articles/how-racial-segregation-and-policing-intersect-america> (finding that in highly segregated Rust Belt cities, predominantly Black neighborhoods are simultaneously over-policed when it comes to surveillance and social control, and under-policed when it comes to emergency services).

⁷⁸ See generally Tana Geneva, *NYPD Cops Accused of Racism, Sexism, and Homophobia Cost the City \$500,000 over Four Years*, THE INTERCEPT, Jan. 6, 2021, <https://theintercept.com/2021/01/06/nypd-lawsuits-complaints-bias/> (noting that between 2015 and 2018, over 70 lawsuits were filed against NYPD officers for language and conduct motivated by racist, sexist, or homophobic bias. Even when NYPD efforts are aimed towards supporting communities in need, such as NYPD’s efforts to prevent the spread of COVID-19 in 2020, videos and data revealed that NYPD targeted and used abusive tactics on Black and Brown communities, in sharp contrast to the helpful tactics used in

predominately white or affluent neighborhoods. The Department’s actions were so harmful that eventually advocates for equality and safety, medical professionals, the New York City Police Benevolent Association, city officials, and numerous impacted community members, jointly called for the immediate removal of NYPD in all public health and safety efforts, related to COVID-19.).

⁷⁹ STOP AND FRISK IN THE DE BLASIO ERA, NYCLU (2019) https://www.nyclu.org/sites/default/files/field_documents/20190314_nyclu_stopfrisk_singles.pdf

⁸⁰ *Floyd*, 959 F. Supp. 2d 540, 556 (“The New York City Police Department [] made 4.4 million stops between January 2004 and June 2012. Over 80% of these 4.4 million stops were of blacks or Hispanics.”); *see also* Taahira Thompson, *NYPD’s Infamous Stop-and-Frisk Policy Found Unconstitutional*, The Leadership Conference Education Fund (Aug. 21, 2013), <https://civilrights.org/edfund/resource/nypds-infamous-stop-and-frisk-policy-found-unconstitutional/#:~:text=According%20to%20the%20court’s%20opinion,were%20Black%20and%20Latino%20people>.

⁸¹ *See Floyd*, *supra* note 81; *see also* Thompson, *supra* note 81 (“The likelihood a stop of an African-American New Yorker yielded a weapon was half that of White New Yorkers stopped and the likelihood of finding contraband on an African American who was stopped was one-third that of White New Yorkers stopped.”).

⁸² *See, e.g.*, Jake Offenhartz, *How an NYPD Anti-Terror Squad Became a Tool for Cracking Down on Protests*, THE GOTHAMIST, February 19, 2021 (<https://gothamist.com/news/how-elite-anti-terror-squad-transformed-nypds-approach-protest-policing>) (“As the march moved downtown, members of the SRG — equipped with bicycles and clad in combat-style chest plates and shoulder pads — quickly cleared the street, shoving nearby demonstrators, including NYC Public Advocate Jumaane Williams. Police arrested 18 protesters, including the organizer...who was tackled to the ground and charged with carrying a bullhorn.”).

⁸³ *See* Ali Watkins, *N.Y.P.D. Disbands Plainclothes Units Involved in Many Shootings*, N.Y. TIMES, June 15, 2020, <https://www.nytimes.com/2020/06/15/nyregion/nypd-plainclothes-cops.html> (noting that the Anti-Crime Units were responsible for 31% of fatal police shootings from 2000 to 2018, and caused the deaths of Amadou Diallo, a vendor who officers shot 41 times after mistaking his wallet for a gun, and Saheed Vassell, a mentally ill man who pointed a metal pipe at officers, and others). Aside from Mr. Diallo and Mr. Vassell, the Anti-Crime Units have also caused the deaths of Sean Bell, Ramarley Graham, Shantel Davis, Kimani Gray, Eric Garner, Saheed Vassell, Antonio Williams, and more.

⁸⁴ *Blueprint to End Gun Violence*, *supra* note 6, at 5, <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2022/the-blueprint-to-end-gun-violence.pdf> (The NYPD plans to enhance existing Public Safety Units with new Neighborhood Safety Teams in 30 precincts where 80% of violence occurs).

⁸⁵ *Id.* (“The [NYPD] expects to launch [Public Safety Units]...with a special focus on the 30 precincts where 80% of violence occurs.”)

⁸⁶ *See* HANNA LOVE, BROOKINGS, WANT TO REDUCE VIOLENCE? INVEST IN PLACE (2021), available at <https://www.brookings.edu/research/want-to-reduce-violence-invest-in-place/> (“Violence is spatially concentrated within America, disproportionately occurring within a select set of high-poverty disinvested neighborhoods—and within these neighborhoods, a select set of streets. These are also places where the proportion of people of color is highest and indicators of structural disadvantage (such as poverty, lower educational attainment, and high unemployment) cluster.”)

⁸⁷ *See* VERA INSTITUTE OF JUSTICE, COMMUNITY VIOLENCE INTERVENTION PROGRAMS, EXPLAINED 4 (2021), available at <https://storage.googleapis.com/vera-web-assets/inline-downloads/community-violence-intervention-programs-explained-report.pdf> (finding that neighborhoods in Baltimore, New York City, and Philadelphia that have adopted the Cure Violence model have seen shootings and killings decrease by more than 30 percent. “For every dollar invested in Cure Violence, cities can save up to \$18 in reduced medical and criminal legal system costs.”); VERA INSTITUTE OF JUSTICE, INVESTING IN EVIDENCE-BASED ALTERNATIVES TO POLICING: COMMUNITY VIOLENCE INTERVENTION 2 (2021), available at <https://www.vera.org/downloads/publications/alternatives-to-policing-community-violence-intervention-fact-sheet.pdf> (An example of a community based intervention focusing on healthcare are hospital-based violence interruption programs (HVIP). HVIPs take a trauma-informed approach and return between \$10.07 and \$15.11 worth of benefits back into the healthcare system); Michelle C. Kondo et al., *Neighborhood Interventions to Reduce Violence*, 39 ANN. REV. OF PUB. HEALTH 253, 266 (2018), accessible at <https://www.annualreviews.org/doi/pdf/10.1146/annurev-publhealth-040617-014600> (The “most consistent evidence” of effective crime interventions relates to “housing and blight remediation.” “Demolition of high-rise public

housing and provisions for affordable scattered-site housing” has reduced rates of “homicide, assault, and violent crime in general”).

⁸⁸ URBAN INSTITUTE, A RESEARCH-BASED PRACTICE GUIDE TO REDUCE YOUTH GUN AND GANG/GROUP VIOLENCE 19 (2022), available at <https://www.urban.org/sites/default/files/publication/105303/a-research-based-practice-guide-to-reduce-youth-gun-and-gang-group-violence.pdf>.

⁸⁹ *Id.*

⁹⁰ Quality-of-Life Initiative, <https://www1.nyc.gov/site/nypd/news/p00040/nypd-citywide-crime-quality-of-life-enforcement-initiative>.

⁹¹ *Id.*, and Broken Windows, Broken Trust: The NYPD’s Racially Discriminatory Quality of Life Policing, THE LEGAL AID SOCIETY, Mar. 29, 2022, https://legalaidnyc.org/wp-content/uploads/2022/03/LAS_Report-on-Racial-Disparities-in-Broken-Windows-Policing_3.29.2022.pdf [hereinafter “The Legal Aid Society”].

⁹² Quality-of-Life Initiative, *supra* note 91; *see also* Sarah Childress, *The Problem with “Broken Windows” Policing*, PBS (Jun. 28, 2016), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/>.

⁹³ NATIONAL ACADEMIC OF SCIENCES, ENGINEERING, AND MEDICINE, PROACTIVE POLICING: EFFECTS ON CRIME AND COMMUNITY RELATIONS 167 (2018) (aggressive police tactics that focus on misdemeanor arrests generate small to null impacts on crime).

⁹⁴ THE LEGAL AID SOCIETY, *supra* note 92 (noting that a seven-week period of less-aggressive enforcement in the winter of 2014-2015 led to a reduction of roughly 2,100 major crime complaints).

⁹⁵ Mark G. Peters & Philip K. Eure, *An Analysis of Quality-of-Life Summonses, Quality-of-Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015*, NEW YORK CITY DEPARTMENT OF INVESTIGATION (June 2016), <https://www1.nyc.gov/assets/oignypd/downloads/pdf/Quality-of-Life-Report-2010-2015.pdf> (felony crime rates were either stagnant or declining).

⁹⁶ An Analysis of Quality-of-Life Summonses, Quality-of-Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015, New York City Department of Investigation, accessible at (questioning whether there is systemic data to support the effectiveness of quality-of-life summonses and misdemeanor arrests).

⁹⁷ *Id.* at 3 (specifically finding that the quality-of-life summons rate, the rate of summonses for bicycles on sidewalks, and the open container summons rate all declined in tandem with the violent crime rate in multiple boroughs) “OIG-NYPD’s analysis has found no empirical evidence demonstrating a clear and direct link between an increase in summons and misdemeanor arrest activity and a related drop in felony crime. Between 2010 and 2015, quality-of-life enforcement rates and in particular, quality-of-life summons rates have dramatically declined, but there has been no commensurate increase in felony crime.”

⁹⁸ Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, CHICAGO PUBLIC LAW AND LEGAL THEORY WORKING PAPER NO. 93 (2005), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=743284 (moving people to communities with less social or physical disorder—the key intervening factor in the broken windows theory—does not lead to reductions in people’s criminal behavior).

⁹⁹ *See* Bill Hutchinson, “Blacks Account for Nearly Half of All NYC Arrests 6 Years After End of Stop-and-Frisk: NYPD Data,” ABC News, Jun. 30, 2020, <https://abcnews.go.com/US/blacks-account-half-nyc-arrests-years-end-stop/story?id=71412485> (finding that Black people accounted for 48% of arrests from 2006 to 2019 despite comprising 24% of the population, Hispanics were 34% of the arrests and 29% of the population, while Whites were 43% of the population and 11% of the arrests).

¹⁰⁰ NYPD Announces Citywide Crime and Quality-of-Life Enforcement Initiative, NYPD (Mar. 23, 2022), <https://www1.nyc.gov/site/nypd/news/p00040/nypd-citywide-crime-quality-of-life-enforcement-initiative>

¹⁰¹ *See* THE LEGAL AID SOCIETY, *supra* note 86, evaluating offenses like driving without a valid license, loitering, MTA fare evasion, open container, public urination, with a category for “other assorted quality of life level offenses.” Finding that NYPD’s racially disparate broken windows enforcement raises serious concerns about whether the Department can carry out this new Quality of Life Initiative in a lawful manner and without further alienating the residents of predominantly Black and Latinx neighborhoods being targeted for the “most aggressive enforcement.”

¹⁰² Police Violence: Physical and Mental Health Impacts on Black Americans, Medical News Today, <https://www.medicalnewstoday.com/articles/police-violence-physical-and-mental-health-impacts-on-blackamericans#Consequences-for-mental-health>; *see also* Amanda Geller et. al, *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321, 2324 (2014); *see also* New York Advisory Committee to the U.S. Commission on Civil Rights, *The Civil Rights Implications of “Broken Windows” Policing in NYC and*

General NYPD Accountability to the Public (Mar. 2018), at 11, accessible at <https://www.usccr.gov/files/pubs/2018/03-22-NYSAC> (surveying New York City youth of color ages 12-24 who have an intense police presence in all parts of their lives: “they feel they are being watched when they wake up and see police in their courtyards; they see police in their hallways at school; and they are constantly alerted to the NYPD’s presence through police standing on street corners”).

¹⁰³ Campaign Zero, *End Broken Windows*, <https://campaignzero.org/brokenwindows.html> (“in 2014, police killed at least 287 people who were involved in minor offenses and harmless activities like sleeping in parks, possessing drugs, looking “suspicious” or having a mental health crisis”).

¹⁰⁴ Al Baker et al., “Beyond the Chokehold: The Path to Eric Garner’s Death,” *THE NEW YORK TIMES*, Jun. 13, 2015, <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html>

¹⁰⁵ David Leonhardt, “George Floyd and the Fury in Minneapolis,” *THE NEW YORK TIMES*, May 28, 2020, <https://www.nytimes.com/2020/05/28/opinion/letters/george-floyd-police-minnesota.html>.

¹⁰⁶ See MTA Rules of Conduct, <https://new.mta.info/document/36821> (listing corresponding fines for violations); see also Greg B. Smith, Adams Plan to Remove Homeless People From the Subway ‘Right Away’ Has Hit a Delay, *The City* (Feb. 27, 2022), accessible at <https://www.thecity.nyc/2022/2/27/22952335/adams-plan-to-remove-homeless-people-from-the-subway-right-away-has-hit-a-delay> (noting that on the first day of the Subway Plan’s launch, The City reporters witnessed two NYPD officers accosting and forcefully ejected a homeless person from the subway, while seizing the individual’s possessions and threatening arrest. The unhoused person left the subway without short or long-term supports and threat of police arrest—demonstrating how the Plan fundamentally fails to address the underlying drivers of homelessness).

¹⁰⁷ Ben Haroules and Simon McCormack, *We Can’t Police Our Way Out of Homelessness and Mental Health Crises*, NYCLU (March 24, 2022), <https://www.nyclu.org/en/news/we-cant-police-our-way-out-homelessness-and-mental-health-crises> (“[u]sing the police as the solution to deep-rooted issues of homelessness, racism, and a dearth of mental health care resources does not get at the heart of the social ills we are facing. It could actually make things worse by, for example, saddling people with criminal records that make it harder for people to obtain housing. And studies have made clear that coercing people into getting mental health care is ineffective and does little to actually improve people’s mental health.”).

¹⁰⁸ Ehren Dohler et al., Center on Budget and Policy Priorities, *Supportive Housing Helps Vulnerable People Live and Thrive in the Community 1* (2016), <https://www.cbpp.org/research/housing/supportive-housing-helps-vulnerable-people-live-and-thrive-in-the-community>; Urban Institute, *Housing First Breaks the Homelessness-Jail Cycle* (2021), <https://www.urban.org/features/housing-first-breaks-homelessness-jail-cycle>

¹⁰⁹ See Int. 0881-2012, accessible at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1138391&GUID=46EF84F3-F4D4-4B84-BCB2-042A5AC7E674&Options=ID|Text|Search> (creating an Office of the Inspector General “with all powers necessary to conduct independent reviews of the department’s policies, practices, programs and operations” because “[i]ndependent oversight of police operations leads to improved police practices and a more accountable police force”).

¹¹⁰ Topher Sanders, *Inspecting the NYPD “Puzzle Palace,”* ProPublica (Apr. 15, 2021), <https://www.propublica.org/article/inspecting-the-nypd-puzzle-palace> (“The NYPD withheld documents from the IG, delayed handing pending documents over to the IG, lied to the IG, restricted the IG’s access to information, had NYPD attorneys present in IG interviews to chill testimony...”); see also Groups Urge NYPD Inspector General to Audit the NYPD “Gang Database,” Human Rights Watch (Sept. 22, 2020), <https://www.hrw.org/news/2020/09/22/groups-urge-nypd-inspector-general-audit-nypd-gang-database#> (noting a lack of an independent assessment to check whether the NYPD actually checks gang base entries every three years as well as on an individual’s twenty-third and twenty-eighth birthdays and unclear identity of sources that can add individuals to the database).



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**STATEMENT OF
EVAN ENZER AND DAVID SIFFERT
OF THE
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT (“S.T.O.P.”)
BEFORE THE COMMITTEE ON OVERSIGHT AND INVESTIGATIONS
AND THE COMMITTEE ON PUBLIC SAFETY,
NEW YORK CITY COUNCIL
FOR A HEARING ON THE
DOP’S OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD
PRESENTED
APRIL 11, 2022**

The Surveillance Technology Oversight Project (“S.T.O.P.”) is a community-based civil rights group that advocates and litigates against discriminatory surveillance at state and local levels. Our work highlights the impact of surveillance on Muslim Americans, immigrants, the LGBTQ+ community, Indigenous peoples, and communities of color, particularly the unique trauma of anti-Black policing. We would like to call attention to the Office of Inspector General for the NYPD’s (OIG-NYPD) long delay of investigations into NYPD’s surveillance programs and call for increasing its independence from the Department of Investigations and NYPD.

In 2020, a coalition of civil rights organizations called for OIG-NYPD to investigate NYPD’s Gang Database.¹ The Database is a discriminatory tool that tags individuals for increased monitoring based on factors like what they wear, who they know, and where they spend time.² NYPD is significantly more likely to find clothes and associations indicative of gang membership when an individual—often a child—lives in a BIPOC neighborhood.³ 98% of the people in the Database are Black or Latinx.⁴

In 2021, OIG-NYPD finally announced it had been investigating the Database since 2018.⁵ Now, after four years of alleged investigation, OIG-NYPD has not released any findings.⁶ Meanwhile, NYPD continues using the Database—entrenching discrimination and harming the long-term well-being of Black and Latinx New Yorkers.

OIG-NYPD has also ignored its mandate to publish a surveillance audit. Until recently, the NYPD could buy surveillance technology without any community oversight. To correct this, the City enacted the Police Oversight of Surveillance Technology Act (the POST Act) in July 2020.⁷ The POST Act requires OIG-NYPD to annually audit the NYPD to ensure compliance with the new ordinance.⁸ Yet, more than a year after the annual audit requirement came into effect, OIG-NYPD has not released a surveillance audit and has not indicated that it will in the near future.

It has been over six years since OIG-NYPD published any report on surveillance. OIG-NYPD published its last surveillance report in 2016 when it confirmed that NYPD routinely violated surveillance rules by targeting Muslim New Yorkers.⁹ NYPD surveillance has become even

¹ *Groups Urge NYPD Inspector General to Audit the NYPD “Gang Database,”* Human Rights Watch (Sept. 22, 2020), <https://www.hrw.org/news/2020/09/22/groups-urge-nypd-inspector-general-audit-nypd-gang-database>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Eileen Grench, *Department of Investigation Confirms Probe of NYPD Gang Database After Advocates Rally*, The City (July 27, 2021), <https://www.thecity.nyc/2021/7/27/22597212/departement-of-investigation-probes-nypd-gang-database>.

⁶ Eileen Grench, *Youth, Advocates See Pros and Cons in Adams’ Sprawling Public Safety Proposals*, The City (Jan. 27, 2022), <https://www.thecity.nyc/2022/1/27/22905781/youth-advocates-see-pros-and-cons-in-adams-sprawling-public-safety-proposals>.

⁷ *POST Act*, STOP, <https://www.stopspying.org/post-act>.

⁸ New York City, Local Law 65 (2020), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3343878&GUID=996ABB2A-9F4C-4A32-B081-D6F24AB954A0>.

⁹ Tom Hays, *Inspector General: NYPD Skirted Rules for Surveillance*, Associated Press (Aug. 23, 2016), <https://apnews.com/article/religion-nyc-wire-ny-state-wire-us-news-government-surveillance-63e2d09bfbfb47b9a045357609ac9bc2>. *An Investigation of NYPD’s Compliance with Rules Governing Investigations of Political Activity*, DOI (2016), https://www1.nyc.gov/assets/doi/reports/pdf/2016/2016-08-23-Oig_intel_report_823_final_for_release.pdf.

more extreme since then. The police used facial recognition over 20,000 times in the last six years,¹⁰ and New York is poised to invest even more into untested and discriminatory technology.¹¹ OIG-NYPD vowed in 2016 to fill “the need for ongoing oversight” given “NYPD’s compliance failures,”¹² but it has not released a single report on the subject in the six years since.

Additionally, OIG-NYPD’s structural ties to the mayoral administration and NYPD raise serious concerns about its effectiveness. OIG-NYPD’s parent agency, DOI, regularly partners with NYPD to investigate and prosecute crimes.¹³ It is difficult for any agency, including DOI, to be critical of an ally in one matter when its other investigations rely on their assistance. Moreover, because DOI reports to the Mayor, OIG-NYPD must worry about political retribution when it does criticize the police department.¹⁴ In the past, insiders at the OIG-NYPD noted that superiors shut down their investigation of the Gang Database and other abusive practices.¹⁵ Further, DOI’s former commissioner asserts that Mayor DeBlasio terminated him for being critical of the NYPD and other agencies controlled by the mayor.¹⁶ DOI, NYPD, and the Office of the Mayor are too closely entangled for OIG-NYPD to provide genuine police oversight.

New York City needs strong police oversight. In the last month alone, the Civilian Complaint Review Board cited over 100 NYPD officers for abusing and criminally assaulting demonstrators during the 2020 George Floyd protests.¹⁷ But NYPD officials and other representatives have defended the police instead of taking responsibility for their unjustifiable actions.¹⁸ This was not an isolated case of NYPD leaders refusing to take responsibility. This

¹⁰ *STOP Condemns NYPD for 22k Facial Recognition Searches*, STOP (Oct. 23, 2020), <https://www.stopspying.org/latest-news/2020/10/23/stop-condemns-nypd-for-22k-facial-recognition-searches>.

¹¹ Sally Goldenberg and Joe Anuta, *Adams Eyes Expansion of Highly Controversial Police Surveillance Technology*, Politico (Feb. 8, 2022), <https://www.politico.com/news/2022/02/08/adams-police-surveillance-technology-00006230>.

¹² *An Investigation*, *supra* note 9.

¹³ *Bronx Gang Member Charged With Double Murder And Shooting Of 16-Year-Old*, DOJ (April 1 2022), <https://www.justice.gov/usao-sdny/pr/bronx-gang-member-charged-double-murder-and-shooting-16-year-old>; *Two New York City Correction Officers Among Six Defendants Charged with Conspiring to Accept Bribes and Smuggle Contraband into Rikers Island Facilities for Gang Members*, DOJ (April 5, 2022), <https://www.justice.gov/usao-edny/pr/two-new-york-city-correction-officers-among-six-defendants-charged-conspiring-accept>.

¹⁴ Kendall Taggart, *The Former Top Official Overseeing the NYPD Inspector General Shelved A Report About Officers who Lied*, BuzzFeed News (Nov. 26, 2018), <https://www.buzzfeednews.com/article/kendalltaggart/nypd-inspector-general-discipline-false-statements>.

¹⁵ *Id.*

¹⁶ *Id.*, *City Council Needs to Investigate Mark Peters’ Shocking Claims*, NY Post (Nov. 19, 2018), <https://nypost.com/2018/11/19/city-council-needs-to-investigate-mark-peters-shocking-claims/>; *Statement From DOI Commissioner Mark Peters* (Nov. 18, 2018), https://www1.nyc.gov/assets/doi/press-releases/2018/nov/36MGPstmet_11192018.pdf.

¹⁷ *More Than 100 NYPD Cops Cited for Misconduct During George Floyd Protests, Panel Says*, NBC News (March 24, 2022), <https://www.nbcnewyork.com/news/local/more-than-100-nypd-cops-cited-for-misconduct-during-george-floyd-protests-panel-says/3614700/>; Matt Troutman, *65 NYPD Cops Committed Misconduct In George Floyd Protests: CCRB*, Patch (Oct. 18, 2021), <https://patch.com/new-york/new-york-city/65-nypd-cops-committed-misconduct-george-floyd-protests-ccrb>. DOI found NYPD procedures deficient, but it also praised NYPD and limited itself to analyzing NYPD procedures and tactics rather than condemning its suppression of First Amendment rights and endorsement of violent methods. *Investigation into NYPD Response to the George Floyd Protests*, DOI, (Dec. 2020), <https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>.

¹⁸ *More Than 100 NYPD Cops Cited*, *supra* note 21; Gustaf Kilander, *Over 100 New York Police Officers Guilty of Misconduct during BLM Protests, Report Finds*, The Independent (March, 25, 2022),

administration has continued the long pattern of NYPD's failing to take account for its discriminatory actions. Just days before the CCRB released its findings, an NYPD official testified under oath that there is "no evidence" NYPD infiltrated Mosques to entrap Muslims.¹⁹ NYPD's history of targeting Mosques is a known fact and claims to the contrary are not credible.²⁰

OIG-NYPD's job is to serve as an oversight body for NYPD; instead, it has acted as an accomplice in NYPD's avoidance of accountability. New Yorkers deserve better. We propose the following first steps in ensuring that OIG-NYPD does its job:

1. OIG-NYPD must immediately publish its delayed reports on the Gang Database and POST Act compliance. The Gang Database report should highlight the Database's equity effects and discuss the adequacy of its systems and procedures. Likewise, the initial and ongoing POST Act audits should be detailed. They must include the categories of technology NYPD uses, the technologies' makes and models, what NYPD uses the technology for, and who can access data the technology collects.
2. OIG-NYPD should also begin new investigations into facial recognition and gunshot detection systems. These technologies' discriminatory effects and adverse impacts on civil liberties are well documented.²¹ NYPD uses these technologies to circumvent the constitutional safeguards that protect innocent people from government harassment.²² Worse, the technologies don't even work—their enormous error rates are unjustifiable.²³ NYPD's expanded use of this technology has occurred without OIG-NYPD oversight, and that must end.²⁴
3. OIG-NYPD also needs structural reform. In the short-term, DOI Commissioner Strauber should install OIG-NYPD leadership committed to holding NYPD accountable for its misconduct and committed to providing thorough oversight, as required by law. In the middle-term, the City Council should require regular oversight hearings wherein OIG-NYPD leadership reports to the City Council on its work investigating NYPD. The City Council should also have advice & consent and removal power over OIG-NYPD leadership, to ensure that these reports meet the Council's expectations. Lastly, in the long term, the Council should look at moving OIG-NYPD into an agency that is entirely independent of

<https://www.independent.co.uk/news/world/americas/crime/new-york-blm-protests-guilty-nypd-b2044384.html>; John Bolger and Alice Sperry, *NYPD "Goon Squad" Manual Teaches Officers to Violate Protestors Rights*, *The Intercept* (April 7, 2021), <https://theintercept.com/2021/04/07/nypd-strategic-response-unit-george-floyd-protests/>.

¹⁹ Joe Anuta, *Muslim Leaders Want NYPD Official Censured for Denying Post-9/11 Surveillance*, *Politico* (March 23, 2023), <https://www.politico.com/news/2022/03/23/muslim-leaders-want-nypd-official-censured-00019450>.

²⁰ *Id.*

²¹ Eleni Manis, et. al., *Scan City* (July 8, 2021), <https://www.stopspying.org/scan-city>; *End Police Surveillance*, MacArthur Justice Center, <https://endpolicesurveillance.com/>.

²² Eleni Manis, *supra* note 26; *End Police Surveillance*, *supra* note 26, *The Chicago Police Department's use of ShotSpotter Technology*, Chicago OIG (Aug. 24, 2021), <https://igchicago.org/wp-content/uploads/2021/08/Chicago-Police-Departments-Use-of-ShotSpotter-Technology.pdf>.

²³ Eleni Manis, *supra* note 26; *End Police Surveillance*, *supra* note 26; Chicago OIG, *supra* note 27.

²⁴ Sally Goldberg, *supra* note 11; Eleni Manis and Jackie Singh, *Cancel the NYPD's ShotSpotter Contract*, *NY Daily News* (Dec. 13, 2021), <https://www.nydailynews.com/opinion/ny-oped-cancel-nypd-shotspotter-20211213-u4bzdkcp55epxhpqsl7wur7xvy-story.html>.

DOI and the Mayor. This could function as a permanent and independent Office of the NYPD Monitor, with leadership appointed by the Council.

OIG-NYPD has failed to provide meaningful oversight over NYPD, instead serving as a cynical accomplice. OIG must take concrete actions to do its job; DOI must install OIG leadership that will fulfill statutory mandates; and the City Council must look towards structural changes that will allow the Council itself to have access to the information it needs to create policy around policing in New York City. Thank you for your time, and we are available to meet with any of you to discuss these issues further.

Thank you to the chair and to the Committee members for allowing my testimony today. My name is Raimondo Graziano, I am a Community Organizer and a member of Community Board 10. I reside in Howard Beach NY, in the 32nd Council District. Not enough New Yorkers are engaged enough in the day-to-day governance of their city. They are simply concerned with getting by, surviving and attempting to make a life for their families. So for those of us that do have the opportunity to speak on these issues, and speak for our communities, we should all be doing so at each chance we have.

One issue on the minds of many New Yorkers is quality of life. Fears and concerns of the rising cost of living as well as a perception—whether justified or not—of skyrocketing crime.

One issue that is not getting enough attention, or enough resources to address the slew of inequities inherent within it, is the issue of rising homelessness in this city. This is a quality of life issue, a public safety issue, and frankly, should be an issue directed at the oversight committee for the failure to hold anyone accountable for the maddening lack of attention and care directed at the most vulnerable New Yorkers, prodded on by both a lack of political will and corruption.

It is a quality of life issue because the quality of life for these individuals is ignored. New Yorkers who would like the opportunity to work, to serve their communities, and to be productive members of the of this city, but instead are denied the aid they truly need—which is housing, real housing and access to services that aid them in getting their lives on track. They are denied this opportunity by this Council and by this administration. For those who are housed, who pay taxes and expect their elected officials to advocate for them, I ask you: what is your representative doing to advocate for you? Are they earning that taxpayer-funded salary? If they were, they'd be putting your tax dollars to work by putting New Yorkers to work, securing them housing and moving this City forward.

It is an issue of public safety when we have thousands of New Yorkers sleeping on the streets on any given night; some suffering from mental illnesses and dependencies, making them both a danger to themselves and to the public absent the services they are denied by this council and this administration. According to the *The Bowery Mission*, “Every night, nearly 2,400 people sleep on the street, in the subway system or in other public spaces.”

Likewise, it is an issue of public safety given the abysmal state of the shelter system in this city. The safety of those who are vulnerable is

compromised by the only option city officials seem to give those experiencing this issue, besides punting the responsibility to private organizations.

Look at the numbers: *From the New York Coalition for the Homeless*, “In February 2022, there were 48,482 homeless people, including 15,045 homeless children, sleeping each night in New York City’s main municipal shelter system. A near-record 18,833 single adults slept in shelters each night in February 2022.”

It is an issue for the oversight committee because of the policies of this administration on clearing encampments and the manner in which it was done. Without offering an immediate viable solution, separate from the shelter system for the Homeless individuals who were violently removed from their housing situation. *From the New York Times*,: “New York City Clears 239 Homeless Camps. Only 5 People Move to Shelters. In the subways, nearly 80 people a week accepted shelter over a four-week period, Mayor Adams said. Officials have not yet said how many stayed off the street.”

This is appalling. A misuse of taxpayer dollars, and a callous attempt by the Adams administration to adjust the perception of safety on the streets of New York. The actionable silence on the part of this council is

deafening.

It is not confined to one council district, it is not a Democrat or Republican issue. It is a city-wide, transient, and critical issue that needs to be addressed and righted. It is a gross dereliction of duty on the part of this administration, the prior administration, and this council.

Enough half measures, enough meaningless events, enough meet-and-greets with constituents to find out the issues in the community. You were elected to do a job. If you don't know what's going on in your districts and in this city, and you want to rely on your constituents—who are busy earning a living to pay your salaries by extension—God help us. Do your god-damn jobs, get it done.



Muslim Community Network Testimony for NYC Council Committee on Oversight & Investigations and the Committee on Public Safety's hearing on *Oversight - DOI's Office of the Inspector General for the NYPD.*

April 11, 2022

Dear Hon. Chairpersons and the entire Committees on Public Safety, Oversight, and Investigations,

First, we want to thank you for scheduling this important hearing focused on oversight on DOI's office of the Inspector General for the NYPD, it's work in holding the institution and it's officer's accountable, and most importantly, protecting our civil rights and liberties. Founded in 2003, Muslim Community Network (MCN) is NYC's go-to civil-society Muslim organization engaged in civic education and advocacy. MCN's mission, which emerged following the rise in Islamophobia and discrimination against Muslims in the United States after September 11, 2001, is to shape the public's understanding of Islam and what it means to be Muslim in the United States through civic education, leadership development, and advocacy. MCN's main policy and advocacy priorities include 1) hate crime prevention work to collect data on anti-religious hate crimes against Muslim communities in NYC and inform anti-discrimination laws and policies; 2) raising awareness on and advocating for policies and issues impacting the Muslim community on the city, state, and federal level; and 3) diversity education to build bridges between the large Muslim-American population, other faith communities and government institutions through speaker series and workshops at schools, hospitals, private companies and government agencies.

MCN continues to be concerned about the NYPD's alarming history of surveilling and profiling members of the Muslim community in NYC. Muslim New Yorkers who come from various ethnic backgrounds and make up religious and community leaders, students, healthcare workers, business owners, taxi drivers, and all parts of the NYC community at large continue to feel discriminated against, unsafe, and traumatized by the heavy and unlawful surveillance on our communities since the rollout of the NYPD's Muslim Surveillance Program in 2002.

MCN is calling on DOI to investigate the serious complaints about profiling based on religion and ethnic background and to make sure that it does not happen again under Mayor Adam's "Blueprint to End Gun Violence." The Blueprint's "tough approach on crime" ignores the root causes of it, and instead of solving the issue, might itself become the issue by increasing wrongful arrest and violation of the civil liberties and rights of minority groups such as Muslims who continue to be discriminated against. As recent as January 31st, 2022, we all witnessed how NYPD Officer Riggs Kwong brutally attacked a middle-aged Muslim man by spitting on him, calling him a terrorist, and other offensive Islamophobic slurs, punching him multiple times, and then falsely reporting it. This is disgusting and absolutely unacceptable for officers of a department that is tasked with protecting us.

Funding that is being used to increase surveillance on our communities under the "Blueprint to End Gun Violence" should be allocated towards strengthening our schools, hospitals, youth, and adult programs and providing social services to the most vulnerable, as well as providing more culturally and religious relevant training, and de-escalation workshops to NYPD officers.

Secondly, having cultural competency, language access and sensitivity is crucial in the NYPD's work to report and investigate anti-religious hate crimes not just against the Muslim community, but also Jews, Sikhs, and other religious minorities. Unfortunately, the NYPD's annual hate crime report fails to account for the many incidents of hate and bias experienced by Muslims in NYC. Our experiences with hate are too often disregarded, minimized, and never investigated.

As part of MCN's hate crime prevention work, we created a **Hate Crime Prevention Survey** in 2019, that was distributed in schools, Mosques, and other institutions across New York City. The survey collected data on how Muslims experience hate crimes by asking for age, gender, race, ethnicity of survivors, and the location of the incident. Additionally, the survey asks survivors to indicate the degree or severity of the crime committed by asking survivors to list the types of crime or bias committed, and a narrative of the incident. Lastly, the survey allows survivors to make proposals that will inform advocacy for hate crime prevention. In MCN's survey of 150 Muslims in NYC, the results showed that:

- **42.24% experienced anti-religious hate crimes in the form of verbal abuse**
- **41.38% were harassed based on their religion and ethnicity**
- **23.28% experienced hate crimes in the form of dangerous threats**
- **20.69% experienced cyberbullying**
- **17.24% were victims of physical assault**
- **7.76% experienced damage to their property**

In just 2022, we have collected up 26 reports from community members who have been victims of anti-Muslim hate crimes within the past two years. In addition to this alarming data about the many ways that hate crimes are experienced in our communities, the survey results also revealed that the majority of Muslims who experience hate crimes in NYC are young people from ages 10-18 years old. It is crucial that the NYPD properly report and investigate these incidents when a complaint is made and that it works with Muslim CBOs to learn about our communities in order to be able to serve us the right way and respect our human and civil rights and liberties as NYC residents.

Once again, we want to thank Chairperson Brewer, Chairperson Hanks, and all the members of the Committees on Oversight and Investigation and Public Safety for your time and for providing us the space to share our concerns.

Sincerely,

Muslim Community Network
110 Wall Street, New York, NY 10005
[Home - Muslim Community Network NY \(mcnny.org\)](http://mcnny.org)

Aniqa Nawabi, Executive Director
Aniqa.Nawabi@mcnny.org
AjiFanta Marenah, Civic Education & Advocacy Program Coordinator
AjiFanta@mcnny.org



TESTIMONY OF:

**GRASSROOTS ADVOCATES FOR NEIGHBORHOOD GROUPS &
SOLUTIONS**
(G.A.N.G.S. COALITION)

Presented by Judith A. Greene before the New York City Council
Committee on Oversight & Investigations and the
Committee on Public Safety

Hearing on Oversight –
DOI's Office of the Inspector General for the NYPD.

April 11, 2022

Grassroots Advocates for Neighborhood Groups and Solutions is a city-wide coalition of community activists, civil rights attorneys, law professors and academic scholars. The organizational membership includes Brooklyn Defender Services; The Immigrant Defense Project; Justice Strategies; LatinoJustice PRLDEF; The Legal Aid Society; The Policing & Social Justice Project at Brooklyn College and the Surveillance and Technology Oversight Project (STOP).

My personal concerns about effective accountability by law enforcement agencies began more than 40 years ago when, as Director of Women's Resources for the

San Francisco Sheriff's Department, I directed an investigation of physical and sexual abuse of women at the hands of the city's police officers. Subsequently I have served as Director of Court Programs at the Vera Institute of Justice, a Research Fellow at the University of Minnesota Law School, a Research Associate for the RAND Corporation and a Senior Soros Justice Fellow. I founded Justice Strategies in 1999, becoming a member of the GANGS Coalition in 2017.

On May 16, 2017, the Coalition sent a letter to Philip Eure, then Inspector General for the NYPD, expressing concerns about the police department's reliance on large-scale military-style gang raids to attempt to control violent crime, and about the surveillance methods being used by NYPD to classify and track young people as gang members. In that context we expressed particular alarm about the gang database (the so-called "Criminal Group Database") and the use of data-mining software and fake social media accounts as tools to spy on people, some of whom may have no record of criminal activity and almost all of whom are non-white.

The importance of our request cannot be overstated. Investigations by oversight agencies in other jurisdictions have shown that use of gang databases by police is highly problematic. Criteria for inclusion are vague and over-broad. Database entries include wild inaccuracies. Information is shared broadly with other agencies, jeopardizing the status of immigrants and adversely affecting access to basic public services and employment opportunities for all.

We requested that the office investigate and report on the issues we were raising. Subsequent meetings and communications with the Inspector General and his staff were substantive and cordial. More than a year had passed by with no further contact, however, when we got word that Mark Peters — then Commissioner of the New York City Department of Investigations, the City agency that houses the OIG-NYPD — had blocked investigation of the gang database.

We took our concerns to members of the city council who had been instrumental in establishment of the OIG-NYPD. On August 27, 2018, Brad Lander and Jumaane Williams sent a letter to Commissioners Peters and Eure requesting that the investigation be taken up and outlining a series of detailed questions for the inquiry:

- What are the standards and protocols for entry and removal of individuals from the database? Who is authorized to enter individuals, and how are they trained and supervised in this work?
- How does the NYPD define, identify, or demarcate a group of individuals as a gang for entry into the gang database? Does the database draw distinctions between different kinds of groups (e.g., “gangs,” “sets,” “crews” or “cliques”)?
- How many individuals are entered into the database even though they have no underlying criminal predicate?
- Does the database record differentiations between membership, affiliation or association with a particular gang?
- How can an individual find out whether they are in the database? How can an individual seek to be removed from the database?
- How are parents of minors who are placed in the database informed?
- What are the standards and protocols for initiating and conducting surveillance or other law enforcement actions of those in the database? Who authorizes these actions, and with what standards?
- How is information about individuals shared with other criminal justice agencies for use in bail determination, criminal prosecution, sentencing, corrections or other aspects of criminal justice case processing? What are the standards and protocols for such actions?
- Are the data shared or disseminated to anyone outside the NYPD? Is there dissemination to the FBI, or to federal immigration authorities? To any non-criminal justice city agencies, e.g. NYCHA or CUNY?
- Are periodic audits conducted to insure the accuracy and relevance of the data?
- What due process, human rights, civil liberty and/or privacy protections are in place to avoid misclassification of individuals and/or prevent misuse of the data?
- Is the operation of the database in compliance with relevant federal, state, and local guidelines, including the prohibition on bias-based profiling passed by the City Council as Local Law 71 of 2013?

We understand that the August 2018 letter helped to move things forward, yet many more months passed by with no indication about when — or if — a report would be forthcoming.

On December 6, 2019 an additional letter was sent to the OIG-NYPD. This one was signed by 16 members of the New York State Assembly, three New York State Senators and three members of the New York City Council. These public officials cited the two and a half year delay in responding to our original request and asked a set of questions that somewhat broadened the scope of the inquiry:

- How is the NYPD using social media to collect intelligence? Are police officers misrepresenting themselves through fake social media accounts? What investigative safeguards are in place to distinguish between actual criminal involvement and youthful boasting and symbolic posturing?
- How is the NYPD using large scale data mining software? Is the police department sharing or using information obtained through private technology, like Palantir, in collaboration with district attorneys or federal law enforcement officials?
- How are members of specialized units that deal with gangs (i.e. gang squad) selected? Do those members have more arrests and more claims of misconduct and/or use of force than other officers?
- What processes are there to ensure that people who are removed from the gang database are not simply put into another database?
- Is there bias in the labeling of some youth criminal activity as “gang related” and thus included in this database?
- Does the NYPD share gang information with any outside agencies? Does the NYPD share any information with Homeland Security or Immigrations and Customs Enforcement?

Today, nearly five years after making our original request, we come before you to express our dismay and anger. We wish to make it clear that over the course of dealing with this matter, we have found no reason to believe that the fault lay at the doorstep of Commissioner Eure or his staff. We understand that an investigation was undertaken, and that a report has been compiled, yet it has never been released.

We believe that ours is not the only investigation request that has been stymied by interference from the DOI and the NYPD. Our experience is well aligned with public reports about the elements that have impeded the effective functioning of the OIG-NYPD. An April 2021 investigation by ProPublica revealed that NYPD staff

have long withheld documents, restricted access to information and to witnesses, and lied to OIG staff.¹

Facing these difficulties, Mayor De Blasio proposed to relocate the OIG-NYPD via merger into the New York City Civilian Complaint Review Board. We strongly oppose that idea. The history of the CCRB's own incapacities in meeting its narrow mission of recommending disciplinary action for police misconduct does not instill confidence that such a move could invest the OIG-NYPD with the independent power and scope it needs to fully execute its broader responsibilities as the principal oversight agency for the NYPD.

New York City stands at a pivot point in regard to police policies and practices. Mayor Eric Adams and Police Commissioner Keechant Sewell are making every effort to move our City backward to "Giuliani Time." They have revived and rebranded the violent and deadly Street Crime Unit that upgraded "stop and frisk" into "stop-and-shoot." They are reinstating the failed Broken Windows criminalization of poverty. They are rousting unhoused people from the streets and subways into a dangerous and unhealthy public shelter system. They plan to increase the level and scope of police surveillance in an already bloated panopticon, turning our entire City into a 24/7 police lineup. They are intensifying NYPD cooperation with federal crime control task force operations that are impervious to local oversight and unfettered by federal consent decrees such as *Handschu*.

The current administration's removal of restraints on police conduct heightens our fear that some of the most vulnerable residents in our city will surely suffer indignity, abuse and death at the hands of those charged to "protect and serve." The OIG-NYPD is an insufficient but absolutely necessary tool for gaining at least some measure of transparency and public control over an agency whose dedication to secrecy and impenetrability is legendary.

In so far as it can be independently empowered, the OIG-NYPD could become a vital source of information and insight for the City Council as you struggle to set policy for and oversee operations of the NYPD. We urge you to consider reestablishment of the OIG-NYPD as a completely independent City agency, separate from either the DOI or the CCRB, with sufficient power to compel

¹ Tophers Sanders. "Inspecting the NYPD 'Puzzle Palace'." *ProPublica*, April 15, 2021

compliance of NYPD staff and access to all relevant City employees, facilities, documents, files, records and data that are necessary to perform its duties.²

² The Office of Inspector General of the Seattle Police Department is empowered by its City Council through the following ordinance:

3.29.210 Office of Inspector General for Public Safety - Independence

A. The City shall provide staff and resources that it deems sufficient to enable OIG to perform all of its responsibilities specified in this Chapter 3.29. The Inspector General shall submit an annual budget request to the Mayor. The OIG budget shall be appropriated in a Budget Control Level that is independent of any other City department. The Inspector General may advocate for resources directly to Councilmembers or the Council during the budget process and throughout the year.

B. Except as prohibited by law, OIG shall have timely, full, and direct access to all relevant City employees, facilities, documents, files, records, and data in OPA, SPD, and other City departments and offices that are necessary to perform its duties set forth in this Chapter 3.29. Should any City department decline to provide OIG access to documents or data, the declining department shall provide the Inspector General with an itemization describing the documents or data withheld and the legal basis for withholding access to each item.

C. OIG shall have authority to observe reviews, meetings, and trainings, such as SPD administrative investigation unit meetings, disciplinary hearings, or discussions of misconduct complaint investigations.

Exhibit 1

Philip Eure

Office of the Inspector General for the New York City Police Department

New York City Department of Investigation

80 Maiden Lane

New York, NY 10038

May 16, 2017

Dear Mr. Eure,

We, the undersigned group of law professors, community activists, civil rights attorneys, and academics, write to highlight policing practices that we believe require your attention. We are very concerned about the NYPD's reliance on large-scale military-style gang raids to attempt to control violent crime. Over the last several years, hundreds of people have been arrested and charged with state conspiracy or federal RICO violations as a result of NYPD investigations. In many cases, individuals are charged with conspiracy to commit murder or other violent crimes absent allegations or direct involvement, raising substantial concerns about arrest and prosecutions based on guilt by association rather than actual involvement in violent crimes. Media reports indicate that many of these cases are built at least in part on police monitoring of social media accounts and the creation of fake social media accounts to lure others to "befriend" them, giving police access to otherwise private information. Many of those targeted by these practices are juveniles and almost all of them are non-white. We have also become aware through press reports and Freedom of Information requests that the NYPD is using one or more databases to classify and track people as gang members. In addition, the defense bar reports that the NYPD is utilizing large data mining software such as Palantir and sharing that information with federal law enforcement agencies. We also understand that these investigations involve substantial electronic surveillance of people including access to CCTV data in public housing complexes, wiretaps, and possibly the use of Stingray technology. The individuals being prosecuted pursuant to these raids are facing lengthy prison sentences.

We are also concerned about the way these raids are taking place. The NYPD, sometimes in partnership with Federal law enforcement agencies, often stage militarized raids with SWAT teams and helicopters. These methods seem unnecessarily risky for police, the accused, their families, and communities given that the police have been engaged in long term surveillance of those arrested.

We do not believe there has been adequate or informed public discussion of the methods being used to identify, arrest, and prosecute alleged gang members, especially in large state and federal

conspiracy cases. This discussion has been hampered in part by a lack of information about these practices. In an effort to have a more fully informed public discussion of these issues we ask you to investigate and report on the following aspects of NYPD gang enforcement.

Attached are several articles that outline a variety of NYPD investigative and arrest practices related to these raids

1) How is the NYPD using gang databases? How are people selected to be placed in the database? Is there a way to challenge this placement? How is this database used in the course of enforcement actions? How is it decided when a police officer should use an "I.D.S. Gang Entry Sheet"? Is the "Gang Division's Membership list" the only gang database being used? How are police officers trained on how to distinguish members in gangs?

2) How is the NYPD using social media to collect intelligence? Are police officers misrepresenting themselves through fake social media accounts? Are juveniles subject to this targeting? Are they pressuring people, especially minors, to hand over social media passwords or connect their networks to law enforcement in some way? How do police use this information? Is the presence of photos on social media showing alleged gang signs, tattoos, or colors, enough to bring police to undertake further surveillance or other enforcement action? Are such photos collected and stored in a database to be used as evidence of criminal activity or criminal conspiracies? What investigative safeguards are in place to distinguish between actual criminal involvement and youthful boasting and symbolic posturing? Should the use of fake social media accounts be governed by the recent Handshu settlement agreement?

3) How is the NYPD using large scale data mining software? What are the internal trainings and guidelines for the use of such technology or for surveillance technology such as Cell Site Simulators (also known as "Stingrays")? What privacy safeguards are in place? With whom is data being shared?

4) What is the basis for the NYPD undertaking large scale surveillance and enforcement action against young people in a specific area? Is it driven by relative crime rates, the availability of informants or other intelligence, political pressure, calls from the public, or other factors?

5) How do NYPD gang conspiracy investigations interact with on-going "focused deterrence" and "Cure Violence" initiatives that seek to use different methods to control crime? What other alternative strategies might the city pursue to reduce violence among young people that doesn't rely on surveillance, arrests, and prosecutions? Are there circumstances in which gang enforcement has undermined such work?

6) What are the criteria for designating a group of people a gang? What are the methods or guidelines used by the NYPD to differentiate between “crews” and other loose associations of young people who are not involved in violence and those groups or individuals that are?

7) Is there racial bias in the labeling of some youth criminal activity as “gang related” and thus included in this database? What is the racial breakdown of people in gang databases, subjected to surveillance, or arrested on gang related charges? Are there any primarily white groups of youth involved in ongoing criminal activity tied to a specific residential community? Have any of them been characterized as a gang by the NYPD?

8) What are the guidelines for how officers engaged in surveillance and other intelligence gathering activities should respond to crimes they witness while they are in progress? Have there been cases where violent acts were allowed to take place to preserve investigative integrity? Are there cases where enforcement action was taken based on surveillance even though it might have risked exposing a long term or ongoing investigation?

9) How is information being shared with federal law enforcement agencies? Does the NYPD share gang database information with any other law enforcement agencies? Does the NYPD share any information with Homeland Security or Immigrations and Customs Enforcement? What kinds of data does the NYPD receive from Federal law enforcement?

10) Is there an operational reason why arrests in these cases are conducted as raids with SWAT teams utilizing “non-knock” warrants? If these people have been under surveillance for extended periods, could other less aggressive techniques be used that don’t jeopardize the safety of suspects, family members, and officers?

We hereby request a meeting with you to discuss this request and how we might be able to assist in your investigation.

Sincerely,



Alex S. Vitale, Coordinator, Policing and Social Justice Project, Brooklyn College

Additional signatories below

5 Boro Defenders

Black Alliance for Just Immigration

Black Lives Matter - NYC

Black Lives Matter of Greater New York

Brooklyn Defender Services

Cardozo Chapter of National Lawyers Guild

Center for Constitutional Rights

Coalition to End Broken Windows

Copwatch Patrol Unit

The CUNY Law Defenders Clinic

The CUNY Law Police Accountability Organization

El Grito de Sunset Park

Enlace

ICE-Free NYC

Incarcerate Workers Organizing Committee NYC

Jails Action Coalition

Just Leadership USA

Legal Aid Society

National Lawyers Guild - NYC

Neighborhood Defender Services of Harlem

NYC Shut It Down

Police Reform Organizing Project

Queens Neighborhoods United

Reform RICO

Stop NYPD Spying

Urban Justice Center

War Resisters League

Youth Represent

Individuals

David Brotherton, John Jay College

Judith Greene, Justice Strategies

Babe Howell, CUNY Law School

Louis Kontos, John Jay College

Johnny Perez, Reentry Specialist

Brett Stoudt, John Jay College

Exhibit 2



THE COUNCIL OF
THE CITY OF NEW YORK

August 27, 2018

Commissioner Mark G. Peters
New York City Department of Investigation
83 Maiden Lane
New York, NY 10038

Inspector General Philip Eure
Office of the Inspector General for the New York City Police Department
New York City Department of Investigation
80 Maiden Lane
New York, NY 10038

Re: Request for Investigation of the NYPD's Gang Database

Dear Commissioner Peters and Inspector General Eure:

We are writing to request that the Office of the NYPD Inspector General conduct an independent investigation and evaluation of the NYPD's Criminal Group Database (AKA the "gang database").

Since 2012, the NYPD has maintained this database -- adding and removing individuals, conducting surveillance and enforcement based on inclusion in the database, and sharing information with other criminal justice agencies -- with very limited transparency.

The request is driven in part by troubling and insufficient information that the City Council received at a hearing of the Public Safety Committee on the topic on June 13th, 2018.

At the Council's hearing, the NYPD indicated that the database currently contains nearly 17,500 people, approximately 95% of whom are black or Latino. They confirmed that entry into the gang database does not require any evidence of criminality or suspicion of wrongdoing, and that the information that someone is included in the database is sometimes shared with prosecutors.

There do not appear to be clear mechanisms for notifying the parents of minors who were placed in the database, or for getting oneself removed.

The NYPD testified that it has cut the list by half since 2014. However, their statistics were difficult to reconcile. NYPD Chief of Detectives Dermot Shea told the Council that 3,737 people had been removed from the list in the previous four years, but separately indicated that there had been 16,500-person drop. Statistics about the database are not regularly made available to the public.

The Council also heard testimony from people affected by the database that just being on the list subjects them to further surveillance, enhanced bail recommendations and heightened charges.

We therefore request that OIG-NYPD conduct a review of the gang database, including but not limited to:

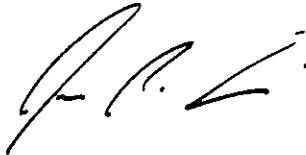
- What are the standards and protocols for entry and removal of individuals from the database? Who is authorized to enter individuals, and how are they trained and supervised in this work?
- How does the NYPD define, identify, or demarcate a group of individuals as a gang for entry into the gang database? Does the database draw distinctions between different kinds of groups (e.g. "gangs," "sets," "crews," or "cliques")?
- How many individuals are entered into the database even though they have no underlying criminal predicate?
- Does the database record differentiations between membership, affiliation or association with a particular gang?
- How can an individual find out whether they are in the database? How can an individual seek to be removed from the database?
- How are parents of minors who are placed in the database informed?
- What are the standards and protocols for initiating and conducting surveillance or other law enforcement actions of those in the database? Who authorizes these actions, and with what standards?
- How is information about individuals shared with other criminal justice agencies for use in bail determination, criminal prosecution, sentencing, corrections or other aspects of criminal justice case processing? What are the standards and protocols for such actions?
- Is the data shared or disseminated to anyone outside the NYPD? Is there dissemination to the FBI, or to federal immigration authorities? To any non-criminal justice city agencies, e.g. NYCHA or CUNY?
- Are periodic audits conducted to insure the accuracy and relevance of the data?
- What due process, human rights, civil liberty and/or privacy protections are in place to avoid misclassification of individuals and/or prevent misuse of the data?
- Is the operation of the database in compliance with relevant federal, state, and local guidelines, including the prohibition on bias-based profiling passed by the City Council as Local Law 71 of 2013?

We request that the OIG-NYPD conduct such a review, and hope the NYPD will cooperate with you in the review and adoption of the recommendations you develop, in order to best protect the safety and rights of all New Yorkers.

Sincerely,



Council Member Brad Lander



Council Member Jumaane Williams

Exhibit 3



Philip Eure
Office of the Inspector General for the New York City Police Department
New York City Department of Investigation
80 Maiden Lane
New York, NY 10038

December 6th, 2019

Dear Inspector General Eure:

My office is very concerned about the NYPD's so-called gang database, or "criminal group database." As you may know, thousands of people have been catalogued as gang members within this secretive database – almost all of them are people of color. Some of the police department's tactics were discussed during a City Council hearing in June of 2018 but there are still aspects that are concerning and which merit a closer examination.

I am also aware that a coalition of legal and community advocates requested that your office probe these methods two and a half years ago. A number of the militarized gang raids that these advocates believe are launched as a result of the database have taken place in upper Manhattan, where I have engaged with public housing residents who are very concerned about these police practices. I am requesting that your office provide a thorough investigation of the police department's tactics, with particular consideration to these questions:

- How is the NYPD using social media to collect intelligence? Are police officers misrepresenting themselves through fake social media accounts? What investigative safeguards are in place to distinguish between actual criminal involvement and youthful boasting and symbolic posturing?
- How is the NYPD using large scale data mining software? Is the police department sharing or using information obtained through private technology, like Palantir, in collaboration with district attorneys or federal law enforcement officials?
- How are members of specialized units that deal with gangs (i.e. gang squad) selected? Do those members have more arrests and more claims of misconduct and/or use of force than other officers?
- What processes are there to ensure that people who are removed from the gang database are not simply put into another database?
- Is there bias in the labeling of some youth criminal activity as "gang related" and thus included in this database?

- Does the NYPD share gang information with any outside agencies? Does the NYPD share any information with Homeland Security or Immigrations and Customs Enforcement?

73rd AD

Carmen De La Rosa
Assemblymember
72nd AD

Harvey Epstein
Assemblymember
74th AD

Yuh-Line Niou
Assemblymember
65th AD

Robert Rodriguez
Assemblymember
68th AD

Al Taylor
Assemblymember
71st AD

Ron Kim
Assemblymember
40th AD

Catalina Cruz
Assemblymember
39th AD

Walter Mosley
Assemblymember
57th AD

Carlina Rivera
Councilmember
2nd District

Jessica Ramos
State Senator
13th SD

Assemblymember
75th AD

Aravella Simotas
Assemblymember
36th AD

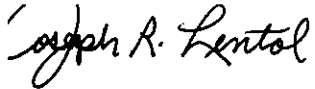
Antonio Reynoso
Councilmember
34th District

Latoya Joyner
Assemblymember
77th AD

Erik M. Dilan
Assemblymember
54th AD

Zellnor Myrie
State Senator
20th SD

Charles Barron
Assemblymember
60th AD



Joe Lentol
Assemblymember
50th AD



Mark Levine
Councilmember
7th District



Jeffron Aubry
Assemblymember
35th AD



Julia Salazar
State Senator
18th SD

**Remarks to the Committee on Oversight and Committee on Public Safety
New York City Council**

April 11, 2022

Professor Candace McCoy, J.D., Ph.D.

Graduate Center and John Jay College, City University of New York

Good morning. Thank you very much for the invitation to speak with you today. It is a pleasure to observe the very important work of achieving robust oversight of police operations in New York City is continuing under your watch.

As you know, on March 25, 2021, City Council adopted Resolution No. 1584, “pursuant to State Executive Order Number 203,” which set out the New York City Police Reform and Reinvention Collaborative Plan. This aspirational document covered a wide variety of ideas drawn from a period of public meetings and input. Of note are its goals of improving NYPD response to mentally ill people, the unhoused, immigrants, victims of sexual and domestic violence, and disabled people, as well as repairing damage done by biased policing. Also of note was a call for the NYPD to enter into a process of accreditation with the Commission on Law Enforcement Accreditation and a statement that the NYPD budget for Fiscal Year 2022 be provided to City Council in more detail.

Also on March 25, 2021, fourteen former staff members of the Office of the Inspector General for the New York Police Department (OIG-NYPD) sent a letter to mayoral appointees who were charged with carrying out the policies of the DiBlasio administration in matters related to criminal justice, including police reform. We cc’d several municipal officials, including Council Member Adrienne E. Adams in her role as chair of the Committee on Public Safety. Therefore, I am sure the Committee on Public Safety has seen the letter and I hope was able to share it with the Committee on Oversight as well. (See letter attached.)

I was one of those staffers, having served as Director of Policy Analysis for the OIG-NYPD from 2016-2018. I want to make it clear that my remarks here today are my own opinions, not those of other signatories of that letter, though of course everyone is keenly interested in the direction of police oversight in our City.

In our letter, we encouraged an open, transparent fact-finding process to determine the best way forward in designing an effective police oversight structure for the New York City Police Department, stating that “we all agree that police reform is necessary ongoing work and that determining the best structure for conducting police oversight requires very careful consideration.” Insofar as this hearing today may be the start of such a process, I applaud you.

In organizing such a process, several avenues are open. You could continue your own hearings, building on what you are doing today. Or you could organize a “study and recommend” commission which would report back to you. Or you could collaborate with other

city agencies, as well as the monitoring team currently overseeing compliance with the federal court order in *Floyd v. New York City*, and organize an *ad hoc* advisory panel to study the issues and advise you on options for action. Surely there are other avenues you could imagine. Just as the former staffers did not opine on which police oversight structure would be best for New York City, I am not opining on which process we should choose to get to it. But what I do know, and what the fourteen former staffers urged, is that a participatory and transparent process of information-gathering and brainstorming should occur. Council in its wisdom can determine who can do this and how, but we firmly hope that the issue will remain at the forefront and conditions under which police oversight is conducted in New York City will then improve.

Our letter of March 2021 also strongly urged the Mayor and City Council to address issues of the independence of the Office of the Inspector General of the NYPD. There are many meanings of the word “independence” in this context, and I want to delineate them here and request that Council focus on the various issues related to independence “writ large.” The three meanings of “independence” of the OIG-NYPD that I have identified are:

- ✓ OIG-NYPD’s power to operate within its current placement in the City’s Department of Investigation (DOI), concerning whether the Inspector General must report to the DOI Commissioner or even other officials within DOI
- ✓ OIG-NYPD’s power to choose what NYPD problems, policies, and procedures the OIG will investigate and recommend be changed
- ✓ OIG-NYPD’s power to obtain data, interviews, and documents unconstrained by NYPD’s preferences. This power is often called “access” and independence means that neither NYPD nor DOI nor other city agencies are permitted to constrain it.

As to the first point, the former staff members of OIG-NYPD did not make any particular suggestion in our letter. There are many possibilities and that is why City Council should study the issue further. My own opinion is that the Inspector General should *not* report to the Commissioner of the DOI or any of the Commissioner’s deputies, nor will DOI issue OIG-NYPD reports. Nevertheless, economy of scale in office administration and access to investigative and prosecutorial resources point to keeping the Inspector General’s office – though not the authority to initiate investigations or issue reports and recommendations -- in DOI. Whether such a structure would satisfy the need for the Inspector General’s independence is a matter for New York to decide.

The second meaning of “independence” is closely related to the first, but I set it apart in order to highlight its importance. Of primary concern is that OIG-NYPD must have complete say over what it investigates. Topics of great importance in police accountability are known to OIG-NYPD not only through its community outreach and public complaints functions, but because the Inspector General is a national leader in police accountability and deeply knowledgeable on these issues. The Inspector General also hires staff with these particular

strengths, but insofar as DOI can prevent the IG from hiring the people the IG chooses, independence wilts. The current arrangement in which the Office of the Inspector General is subsumed in DOI will always present a tension between OIG's work and the prosecutorial mindset of DOI – which is completely appropriate for DOI, but not for an Inspector General's office charged by Local Law 70 to investigate policies, programs, and practices of the NYPD.

Finally, the most important meaning of “independence” is “*not dependent on the New York Police Department itself.*” That an oversight agency is incapable of obtaining data, documents, and interviews from the department over which oversight is supposedly exercised is unconscionable. During my time as the Director of Policy Analysis at the OIG-NYPD, I observed constant stonewalling and slow-walking on the part of NYPD officials, which were designed to stymie our investigations. As NYPD probably expected, not only did this repress the office's productivity, but it adversely affected staff morale and excellent young professionals left the OIG to apply their oversight skills elsewhere.

The NYPD has to be willing to accept oversight as a normal course of operations. The OIG-NYPD cannot be dependent on it to provide investigatory material. Indeed, DOI has highlighted the problem in its report of December, 2020.¹ Its finding that “the process of obtaining materials from NYPD has not always gone smoothly” is an understatement. Nevertheless, over time, during the give-and-take over reports and recommendations the OIG-NYPD was able to make and to which the NYPD responded, remarkably the NYPD has embraced a great many changes in policies and procedures which it initially tried to dodge and prevent.² In candid moments, NYPD personnel acknowledge that many of the changes are for the best and that NYPD would probably not have made them on its own. Over past decades, such an awareness has developed between NYPD's Internal Affairs office and the Citizens'

¹This problem was well described in DOI's findings and recommendations for improving OIG-NYPD operations, reported in the December 2020 report on how the NYPD handled street protests in the aftermath of George Floyd's killing.

<https://www1.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>

At pp. 99-102, the report covered these issues and stated that:

“Varying legal provisions govern New York City's oversight entities' access to police records. However, all generally require the NYPD to fully cooperate, provide relevant documents, except where other laws prohibit disclosure, and mandate that its officers and employees appear for interviews on pain of discipline or termination.

Specifically, the NYPD must provide the CCRB with ‘records and other materials which are necessary for investigations.’ Similarly, the CCPC is entitled to ‘any and all documents, records, reports, files or other information relating to any matter within [its] jurisdiction.’ DOI has ‘authority to examine, copy or remove any document prepared, maintained or held by any agency,’ and the statute specific to OIG-NYPD contemplates similarly broad access, with mayoral review of disputes about the circumstances of access to documents that may be particularly sensitive. [footnotes omitted] Despite these seemingly broad rights of access, the process of obtaining materials from NYPD has not always gone smoothly.”

² See OIG-NYPD's most recent annual report, its eighth, in which the recommendations from all previous reports are set out and in which NYPD's responses and reforms are in response to them are highlighted.

https://www1.nyc.gov/assets/doi/press_releases/2022/March/08OIGNYPDAnnualRpt_Release_3312022.pdf

Commission to Prevent Corruption. As a result, CCPC's audit of public complaints of corruption by NYPD personnel has arguably prevented new instances of organized corruption such as the wrongdoing uncovered in the Serpico scandal and subsequently by Knapp and Mollen Commissions. We would hope that eventually a similar dynamic can develop between OIG-NYPD and the agency over which it exerts oversight. City Council has a role here to check in regularly with OIG-NYPD to be sure the NYPD is in fact cooperating.

Again, thank you very much for inviting me to consider these important issues with you. I would be happy to answer any questions today, and in the future I hope you will reach out to the City University of New York – the greatest urban public university in the world, as the subway signs say! – for consultation, research and discussion.

Candace McCoy

Professor of Criminal Justice

The Graduate Center and John Jay College

Cmccoy@gc.cuny.edu

March 25, 2021

Dean Fuleihan
First Deputy Mayor
City Hall
New York, New York 10007
Dfuleihan@cityhall.NYC.gov

Marcos Gonzalez Soler
Chief of Staff, Mayor's Office of Criminal Justice
1 Centre Street
New York, New York 10007
Msoler@cityhall.NYC.gov

Chelsea Davis
Chief Strategy Officer, Office of the First Deputy Mayor
City Hall
New York, New York 10007
Cdavis@cityhall.NYC.gov

Dear First Deputy Mayor Fuleihan, Mr. Soler, and Ms. Davis:

We are former staff of the Office of the Inspector General for the New York City Police Department (OIG-NYPD) and we submit this letter as part of the public comment process for the City's reform plan for the NYPD. Collectively we represent more than fifty years of experience in police oversight and well over a century and a half's worth of years in public service, and we have a diverse set of professional backgrounds. We hold a variety of views regarding policing in NYC and how OIG-NYPD can be most effective, but we all agree that police reform is necessary ongoing work and that determining the best structure for conducting police oversight requires very careful consideration.

Our comments concern the following proposal from page 15 of the March 5, 2021, "NYC Police Reform and Reinvention Collaborative Draft Plan":

3. *Consolidate and strengthen NYPD oversight by expanding the Civilian Complaint Review Board's authority to incorporate the powers of NYC's Department of Investigation Office of the Inspector General for the NYPD and the Commission to Combat Police Corruption.*

We recognize that this proposal overlaps with the Mayor's commitment to implement the following recommendation from the Department of Investigation's (DOI) December 2021 report ("Investigation into NYPD Response to the George Floyd Protests"):

“The Mayor and City Council should consider consolidating existing police oversight functions into a single agency, headed by an independent board.”

Our response to these proposals comes from our experience not only as oversight professionals with diverse experiences in this field, but as individuals who helped build OIG-NYPD from the ground up and who corresponded with other cities that were also building or reforming their police oversight structures. We had front row seats to the challenges of starting an oversight entity, and we want to make sure the City’s work is informed by the lessons that we learned.

Ensuring an Open and Informed Process for Revamping Oversight

We are not commenting on whether to consolidate the functions of the three police oversight bodies identified in these proposals or what various alternative options might be. Instead, at this point we are deeply concerned about ensuring that the process for determining whether and how to change the organizational structures of police oversight agencies in NYC should be deliberate and based on certain fundamental principles of independent oversight applicable to all.

Accordingly, we strongly believe that any efforts to revamp police oversight in NYC should adhere to the following principles and parameters:

- 1) **Open Process:** Key to effective oversight work is credibility and legitimacy. These come from the public. If the public does not support oversight and does not believe they have a stake in oversight, oversight will not succeed. The Mayor’s Reform Plan proceeded from a series of public hearings on desired reforms, which we applaud. Furthermore, the specific issue of how to restructure police oversight agencies, a subset of police reform concerns, requires input as well from members of the public who have worked specifically with such agencies in the past. For instance, when other cities across the country (e.g., Chicago, Seattle, Newark, etc.) have decided to launch or revise their police oversight structure, they have conducted a public process that encompasses deep research and professional consultations into various options. Such a process includes:
 - a) Receiving public comment through hearings and written feedback.
 - b) Soliciting feedback from oversight experts, oversight practitioners from outside NYC, and oversight organizations like NACOLE.
 - c) Engaging in fact-finding research regarding other oversight models.
 - d) Consulting with NYC’s existing oversight entities (CCRB, OIG-NYPD, CCPC, etc.), NYPD, and their stakeholders.

- e) Holding open meetings for all of the above, similar to a Charter Revision Commission.
- 2) **Unambiguous, Independent Authority:** Each oversight entity should have clear legal authority that articulates the role, structure, obligations, and powers of the entity and establishes the independence of the entity from NYPD and from City Hall. Codified authority will be the touchstone of the entities' work, so it is vital that reform be done thoughtfully and thus correctly. This current process is an opportunity to examine what authority needs clarification, and it cannot be rushed.
- 3) **Data Collection and Availability:** Currently, each NYC police oversight agency collects relevant information and data but does not necessarily share it with other oversight agencies. The agencies should be invited to discuss how they might collaborate in merging or sharing such data, improving efficiency in its collection and accessibility and strengthening its impact on police oversight.
- 4) **Unfettered Access:** Without prompt and unfettered access to NYPD documents and employees, oversight cannot do the important work that the public expects. As documented in DOI's recent report, as illustrated in prior OIG-NYPD reports, and as City Hall surely is aware, NYPD's resistance to providing such access has been a leading obstacle to OIG-NYPD's important work. Any efforts to reform oversight must address this issue by establishing clear and strong rules regarding oversight's access to NYPD, articulating the few circumstances in which access may be limited, and providing sanctions for non-compliance.
- 5) **NYPD Compliance:** Even the most perfect organizational design for an oversight entity will fail if there is not cooperation and compliance from the NYPD. NYPD's resistance to oversight is discussed in DOI's report and is something we all experienced constantly as OIG-NYPD staff. It is real and it must be dealt with at both a structural and cultural level. That is, structures must be in place to ensure compliance, and City Hall must ensure that NYPD leadership creates a culture of compliance within the Department.

To be clear, because current OIG-NYPD leadership and staff would be impacted by the reform plan proposal in ways we are not, and because it would be unfair for us to speak on behalf of current staff, we have not consulted with current OIG-NYPD employees on this. However, we strongly advise that you do. OIG-NYPD leadership and staff are at the

March 25, 2021

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frontlines of police oversight and have the best sense of what is needed now to make oversight stronger. Consulting with them means having them at the table on an ongoing basis. We are fortunate to have public servants like them, and it would be a loss to move forward with a process than does not incorporate their perspectives and take advantage of their expertise.

We appreciate the opportunity to submit this comment and hope that it is helpful to your process. We would like to meet with relevant City authorities such as representatives of the Mayor's office and City Council and hope you will reach out to us. Thank you for taking steps to strengthen police oversight in the City that we all love.

Respectfully submitted,

Sandra Musumeci
Candace McCoy
Rebecca Engel
Joseph Lipari
Olabisi Matthews
John Kim
Jonathan Razack

And seven additional former OIG-NYPD staff who wish to remain anonymous in light of their current public service roles

Cc: Adrienne E. Adams, City Council Member and Chair of Public Safety Committee
Jumaane D. Williams, New York City Public Advocate
Margaret Garnett, Commissioner of New York City Department of Investigation
Philip K. Eure, Inspector General for the New York City Police Department
Frederick Davie, Chair of Civilian Complaint Review Board
Jonathan Darche, Executive Director of Civilian Complaint Review Board
Kathy Hirata Chin, Acting Chair of Commission to Combat Police Corruption
Brad Lander, City Council Member
Thomas Giovanni, Deputy Executive Assistant Corporation Counsel

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jocelyn Strauber

Address: 180 Maiden Lane

I represent: Department of Investigation

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Michael Vitaroulis

Address: _____

I represent: Legal Aid Society

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Ajzenla Marenals

Address: 110 Wall Street

I represent: Muslim Community Network

Address: 110 Wall Street NY, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/11/22

Name: Towaf Komatsy (PLEASE PRINT)

Address: _____

I represent: Self

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4-11-22

Name: Judith A. Greene (PLEASE PRINT)

Address: 139 Washington Avenue

I represent: The G.A.N.'s Coalition

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

Committee on Oversight hearing in favor in opposition

Date: 4/11/22

Name: Candace McCoy (PLEASE PRINT)

Address: 165 East 60th Street #1B

I represent: myself

Address: _____

Please complete this card and return to the Sergeant-at-Arms



Muslim Community Network Testimony for NYC Council Committee on Oversight & Investigations and the Committee on Public Safety's hearing on *Oversight - DOI's Office of the Inspector General for the NYPD.*

April 11, 2022

Dear Hon. Chairpersons and the entire Committees on Public Safety, Oversight, and Investigations,

First, we want to thank you for scheduling this important hearing focused on oversight on DOI's office of the Inspector General for the NYPD, its work in holding the institution and its officer's accountable, and most importantly, protecting our civil rights and liberties. Founded in 2003, Muslim Community Network ((MCN) is NYC's go-to civil-society Muslim organization engaged in civic education and advocacy. MCN's mission, which emerged following the rise in Islamophobia and discrimination against Muslims in the United States after September 11, 2001, is to shape the public's understanding of Islam and what it means to be Muslim in the United States through civic education, leadership development, and advocacy. MCN's main policy and advocacy priorities include 1) hate crime prevention work to collect data on anti-religious hate crimes against Muslim communities in NYC and inform anti-discrimination laws and policies; 2) raising awareness on and advocating for policies and issues impacting the Muslim community on the city, state, and federal level; and 3) diversity education to build bridges between the large Muslim-American population, other faith communities and government institutions through speaker series and workshops at schools, hospitals, private companies and government agencies.

MCN continues to be concerned about the NYPD's alarming history of surveilling and profiling members of the Muslim community in NYC. Muslim New Yorkers who come from various ethnic backgrounds and make up religious and community leaders, students, healthcare workers, business owners, taxi drivers, and all parts of the NYC community at large continue to feel discriminated against, unsafe, and traumatized by the heavy and unlawful surveillance on our communities since the rollout of the NYPD's Muslim Surveillance Program in 2002.

MCN is calling on DOI to investigate the serious complaints about profiling based on religion and ethnic background and to make sure that it does not happen again under Mayor Adam's "Blueprint to End Gun Violence." The Blueprint's "tough approach on crime" ignores the root causes of it, and instead of solving the issue, might itself become the issue by increasing wrongful arrest and violation of the civil liberties and rights of minority groups such as Muslims who continue to be discriminated against. As recent as January 31st, 2022, we all witnessed how NYPD Officer Riggs Kwong brutally attacked a middle-aged Muslim man by spitting on him, calling him a terrorist, and other offensive Islamophobic slurs, punching him multiple times, and then falsely reporting it. This is disgusting and absolutely unacceptable for officers of a department that is tasked with protecting us.

Funding that is being used to increase surveillance on our communities under the "Blueprint to End Gun Violence" should be allocated towards strengthening our schools, hospitals, youth, and adult programs and providing social services to the most vulnerable, as well as providing more culturally and religious relevant training, and de-escalation workshops to NYPD officers.

Secondly, having cultural competency, language access and sensitivity is crucial in the NYPD's work to report and investigate anti-religious hate crimes not just against the Muslim community, but also Jews, Sikhs, and other religious minorities. Unfortunately, the NYPD's annual hate crime report fails to account for the many incidents of hate and bias experienced by Muslims in NYC. Our experiences with hate are too often disregarded, minimized, and never investigated.

As part of MCN's hate crime prevention work, we created a **Hate Crime Prevention Survey** in 2019, that was distributed in schools, Mosques, and other institutions across New York City. The survey collected data on how Muslims experience hate crimes by asking for age, gender, race, ethnicity of survivors, and the location of the incident. Additionally, the survey asks survivors to indicate the degree or severity of the crime committed by asking survivors to list the types of crime or bias committed, and a narrative of the incident. Lastly, the survey allows survivors to make proposals that will inform advocacy for hate crime prevention. In MCN's survey of 150 Muslims in NYC, the results showed that:

- **42.24% experienced anti-religious hate crimes in the form of verbal abuse**
- **41.38% were harassed based on their religion and ethnicity**
- **23.28% experienced hate crimes in the form of dangerous threats**
- **20.69% experienced cyberbullying**
- **17.24% were victims of physical assault**
- **7.76% experienced damage to their property**

In just 2022, we have collected up 26 reports from community members who have been victims of anti-Muslim hate crimes within the past two years. In addition to this alarming data about the many ways that hate crimes are experienced in our communities, the survey results also revealed that the majority of Muslims who experience hate crimes in NYC are young people from ages 10-18 years old. It is crucial that the NYPD properly report and investigate these incidents when a complaint is made and that it works with Muslim CBOs to learn about our communities in order to be able to serve us the right way and respect our human and civil rights and liberties as NYC residents.

Once again, we want to thank Chairperson Brewer, Chairperson Hanks, and all the members of the Committees on Oversight and Investigation and Public Safety for your time and for providing us the space to share our concerns.

Sincerely,

Muslim Community Network
110 Wall Street, New York, NY 10005
[Home - Muslim Community Network NY \(mcnny.org\)](http://Home-MuslimCommunityNetworkNY(mcnny.org))

Aniqa Nawabi, Executive Director
Aniqa.Nawabi@mcnny.org
AjiFanta Marenah, Civic Education & Advocacy Program Coordinator
AjiFanta@mcnny.org



TESTIMONY OF:

**GRASSROOTS ADVOCATES FOR NEIGHBORHOOD GROUPS &
SOLUTIONS**
(G.A.N.G.S. COALITION)

Presented by Judith A. Greene before the New York City Council
Committee on Oversight & Investigations and the
Committee on Public Safety

Hearing on Oversight –
DOI's Office of the Inspector General for the NYPD.

April 11, 2022

Grassroots Advocates for Neighborhood Groups and Solutions is a city-wide coalition of community activists, civil rights attorneys, law professors and academic scholars. The organizational membership includes Brooklyn Defender Services; The Immigrant Defense Project; Justice Strategies; LatinoJustice PRLDEF; The Legal Aid Society; The Policing & Social Justice Project at Brooklyn College and the Surveillance and Technology Oversight Project (STOP).

My personal concerns about effective accountability by law enforcement agencies began more than 40 years ago when, as Director of Women's Resources for the

San Francisco Sheriff's Department, I directed an investigation of physical and sexual abuse of women at the hands of the city's police officers. Subsequently I have served as Director of Court Programs at the Vera Institute of Justice, a Research Fellow at the University of Minnesota Law School, a Research Associate for the RAND Corporation and a Senior Soros Justice Fellow. I founded Justice Strategies in 1999, becoming a member of the GANGS Coalition in 2017.

On May 16, 2017, the Coalition sent a letter to Philip Eure, then Inspector General for the NYPD, expressing concerns about the police department's reliance on large-scale military-style gang raids to attempt to control violent crime, and about the surveillance methods being used by NYPD to classify and track young people as gang members. In that context we expressed particular alarm about the gang database (the so-called "Criminal Group Database") and the use of data-mining software and fake social media accounts as tools to spy on people, some of whom may have no record of criminal activity and almost all of whom are non-white.

The importance of our request cannot be overstated. Investigations by oversight agencies in other jurisdictions have shown that use of gang databases by police is highly problematic. Criteria for inclusion are vague and over-broad. Database entries include wild inaccuracies. Information is shared broadly with other agencies, jeopardizing the status of immigrants and adversely affecting access to basic public services and employment opportunities for all.

We requested that the office investigate and report on the issues we were raising. Subsequent meetings and communications with the Inspector General and his staff were substantive and cordial. More than a year had passed by with no further contact, however, when we got word that Mark Peters — then Commissioner of the New York City Department of Investigations, the City agency that houses the OIG-NYPD — had blocked investigation of the gang database.

We took our concerns to members of the city council who had been instrumental in establishment of the OIG-NYPD. On August 27, 2018, Brad Lander and Jumaane Williams sent a letter to Commissioners Peters and Eure requesting that the investigation be taken up and outlining a series of detailed questions for the inquiry:

- What are the standards and protocols for entry and removal of individuals from the database? Who is authorized to enter individuals, and how are they trained and supervised in this work?
- How does the NYPD define, identify, or demarcate a group of individuals as a gang for entry into the gang database? Does the database draw distinctions between different kinds of groups (e.g., “gangs,” “sets,” “crews” or “cliques”)?
- How many individuals are entered into the database even though they have no underlying criminal predicate?
- Does the database record differentiations between membership, affiliation or association with a particular gang?
- How can an individual find out whether they are in the database? How can an individual seek to be removed from the database?
- How are parents of minors who are placed in the database informed?
- What are the standards and protocols for initiating and conducting surveillance or other law enforcement actions of those in the database? Who authorizes these actions, and with what standards?
- How is information about individuals shared with other criminal justice agencies for use in bail determination, criminal prosecution, sentencing, corrections or other aspects of criminal justice case processing? What are the standards and protocols for such actions?
- Are the data shared or disseminated to anyone outside the NYPD? Is there dissemination to the FBI, or to federal immigration authorities? To any non-criminal justice city agencies, e.g. NYCHA or CUNY?
- Are periodic audits conducted to insure the accuracy and relevance of the data?
- What due process, human rights, civil liberty and/or privacy protections are in place to avoid misclassification of individuals and/or prevent misuse of the data?
- Is the operation of the database in compliance with relevant federal, state, and local guidelines, including the prohibition on bias-based profiling passed by the City Council as Local Law 71 of 2013?

We understand that the August 2018 letter helped to move things forward, yet many more months passed by with no indication about when — or if — a report would be forthcoming.

On December 6, 2019 an additional letter was sent to the OIG-NYPD. This one was signed by 16 members of the New York State Assembly, three New York State Senators and three members of the New York City Council. These public officials cited the two and a half year delay in responding to our original request and asked a set of questions that somewhat broadened the scope of the inquiry:

- How is the NYPD using social media to collect intelligence? Are police officers misrepresenting themselves through fake social media accounts? What investigative safeguards are in place to distinguish between actual criminal involvement and youthful boasting and symbolic posturing?
- How is the NYPD using large scale data mining software? Is the police department sharing or using information obtained through private technology, like Palantir, in collaboration with district attorneys or federal law enforcement officials?
- How are members of specialized units that deal with gangs (i.e. gang squad) selected? Do those members have more arrests and more claims of misconduct and/or use of force than other officers?
- What processes are there to ensure that people who are removed from the gang database are not simply put into another database?
- Is there bias in the labeling of some youth criminal activity as “gang related” and thus included in this database?
- Does the NYPD share gang information with any outside agencies? Does the NYPD share any information with Homeland Security or Immigrations and Customs Enforcement?

Today, nearly five years after making our original request, we come before you to express our dismay and anger. We wish to make it clear that over the course of dealing with this matter, we have found no reason to believe that the fault lay at the doorstep of Commissioner Eure or his staff. We understand that an investigation was undertaken, and that a report has been compiled, yet it has never been released.

We believe that ours is not the only investigation request that has been stymied by interference from the DOI and the NYPD. Our experience is well aligned with public reports about the elements that have impeded the effective functioning of the OIG-NYPD. An April 2021 investigation by ProPublica revealed that NYPD staff

have long withheld documents, restricted access to information and to witnesses, and lied to OIG staff.¹

Facing these difficulties, Mayor De Blasio proposed to relocate the OIG-NYPD via merger into the New York City Civilian Complaint Review Board. We strongly oppose that idea. The history of the CCRB's own incapacities in meeting its narrow mission of recommending disciplinary action for police misconduct does not instill confidence that such a move could invest the OIG-NYPD with the independent power and scope it needs to fully execute its broader responsibilities as the principal oversight agency for the NYPD.

New York City stands at a pivot point in regard to police policies and practices. Mayor Eric Adams and Police Commissioner Keechant Sewell are making every effort to move our City backward to "Giuliani Time." They have revived and rebranded the violent and deadly Street Crime Unit that upgraded "stop and frisk" into "stop-and-shoot." They are reinstating the failed Broken Windows criminalization of poverty. They are rousting unhoused people from the streets and subways into a dangerous and unhealthy public shelter system. They plan to increase the level and scope of police surveillance in an already bloated panopticon, turning our entire City into a 24/7 police lineup. They are intensifying NYPD cooperation with federal crime control task force operations that are impervious to local oversight and unfettered by federal consent decrees such as *Handschu*.

The current administration's removal of restraints on police conduct heightens our fear that some of the most vulnerable residents in our city will surely suffer indignity, abuse and death at the hands of those charged to "protect and serve." The OIG-NYPD is an insufficient but absolutely necessary tool for gaining at least some measure of transparency and public control over an agency whose dedication to secrecy and impenetrability is legendary.

In so far as it can be independently empowered, the OIG-NYPD could become a vital source of information and insight for the City Council as you struggle to set policy for and oversee operations of the NYPD. We urge you to consider reestablishment of the OIG-NYPD as a completely independent City agency, separate from either the DOI or the CCRB, with sufficient power to compel

¹ Topher Sanders. "Inspecting the NYPD 'Puzzle Palace'." *ProPublica*, April 15, 2021

compliance of NYPD staff and access to all relevant City employees, facilities, documents, files, records and data that are necessary to perform its duties.²

² The Office of Inspector General of the Seattle Police Department is empowered by its City Council through the following ordinance:

3.29.210 Office of Inspector General for Public Safety - Independence

A. The City shall provide staff and resources that it deems sufficient to enable OIG to perform all of its responsibilities specified in this Chapter 3.29. The Inspector General shall submit an annual budget request to the Mayor. The OIG budget shall be appropriated in a Budget Control Level that is independent of any other City department. The Inspector General may advocate for resources directly to Councilmembers or the Council during the budget process and throughout the year.

B. Except as prohibited by law, OIG shall have timely, full, and direct access to all relevant City employees, facilities, documents, files, records, and data in OPA, SPD, and other City departments and offices that are necessary to perform its duties set forth in this Chapter 3.29. Should any City department decline to provide OIG access to documents or data, the declining department shall provide the Inspector General with an itemization describing the documents or data withheld and the legal basis for withholding access to each item.

C. OIG shall have authority to observe reviews, meetings, and trainings, such as SPD administrative investigation unit meetings, disciplinary hearings, or discussions of misconduct complaint investigations.

Exhibit 1

Philip Eure

Office of the Inspector General for the New York City Police Department

New York City Department of Investigation

80 Maiden Lane

New York, NY 10038

May 16, 2017

Dear Mr. Eure,

We, the undersigned group of law professors, community activists, civil rights attorneys, and academics, write to highlight policing practices that we believe require your attention. We are very concerned about the NYPD's reliance on large-scale military-style gang raids to attempt to control violent crime. Over the last several years, hundreds of people have been arrested and charged with state conspiracy or federal RICO violations as a result of NYPD investigations. In many cases, individuals are charged with conspiracy to commit murder or other violent crimes absent allegations or direct involvement, raising substantial concerns about arrest and prosecutions based on guilt by association rather than actual involvement in violent crimes. Media reports indicate that many of these cases are built at least in part on police monitoring of social media accounts and the creation of fake social media accounts to lure others to "befriend" them, giving police access to otherwise private information. Many of those targeted by these practices are juveniles and almost all of them are non-white. We have also become aware through press reports and Freedom of Information requests that the NYPD is using one or more databases to classify and track people as gang members. In addition, the defense bar reports that the NYPD is utilizing large data mining software such as Palantir and sharing that information with federal law enforcement agencies. We also understand that these investigations involve substantial electronic surveillance of people including access to CCTV data in public housing complexes, wiretaps, and possibly the use of Stingray technology. The individuals being prosecuted pursuant to these raids are facing lengthy prison sentences.

We are also concerned about the way these raids are taking place. The NYPD, sometimes in partnership with Federal law enforcement agencies, often stage militarized raids with SWAT teams and helicopters. These methods seem unnecessarily risky for police, the accused, their families, and communities given that the police have been engaged in long term surveillance of those arrested.

We do not believe there has been adequate or informed public discussion of the methods being used to identify, arrest, and prosecute alleged gang members, especially in large state and federal

conspiracy cases. This discussion has been hampered in part by a lack of information about these practices. In an effort to have a more fully informed public discussion of these issues we ask you to investigate and report on the following aspects of NYPD gang enforcement.

Attached are several articles that outline a variety of NYPD investigative and arrest practices related to these raids

1) How is the NYPD using gang databases? How are people selected to be placed in the database? Is there a way to challenge this placement? How is this database used in the course of enforcement actions? How is it decided when a police officer should use an "I.D.S. Gang Entry Sheet"? Is the "Gang Division's Membership list" the only gang database being used? How are police officers trained on how to distinguish members in gangs?

2) How is the NYPD using social media to collect intelligence? Are police officers misrepresenting themselves through fake social media accounts? Are juveniles subject to this targeting? Are they pressuring people, especially minors, to hand over social media passwords or connect their networks to law enforcement in some way? How do police use this information? Is the presence of photos on social media showing alleged gang signs, tattoos, or colors, enough to bring police to undertake further surveillance or other enforcement action? Are such photos collected and stored in a database to be used as evidence of criminal activity or criminal conspiracies? What investigative safeguards are in place to distinguish between actual criminal involvement and youthful boasting and symbolic posturing? Should the use of fake social media accounts be governed by the recent Handshu settlement agreement?

3) How is the NYPD using large scale data mining software? What are the internal trainings and guidelines for the use of such technology or for surveillance technology such as Cell Site Simulators (also known as "Stingrays")? What privacy safeguards are in place? With whom is data being shared?

4) What is the basis for the NYPD undertaking large scale surveillance and enforcement action against young people in a specific area? Is it driven by relative crime rates, the availability of informants or other intelligence, political pressure, calls from the public, or other factors?

5) How do NYPD gang conspiracy investigations interact with on-going "focused deterrence" and "Cure Violence" initiatives that seek to use different methods to control crime? What other alternative strategies might the city pursue to reduce violence among young people that doesn't rely on surveillance, arrests, and prosecutions? Are there circumstances in which gang enforcement has undermined such work?

6) What are the criteria for designating a group of people a gang? What are the methods or guidelines used by the NYPD to differentiate between "crews" and other loose associations of young people who are not involved in violence and those groups or individuals that are?

7) Is there racial bias in the labeling of some youth criminal activity as "gang related" and thus included in this database? What is the racial breakdown of people in gang databases, subjected to surveillance, or arrested on gang related charges? Are there any primarily white groups of youth involved in ongoing criminal activity tied to a specific residential community? Have any of them been characterized as a gang by the NYPD?

8) What are the guidelines for how officers engaged in surveillance and other intelligence gathering activities should respond to crimes they witness while they are in progress? Have there been cases where violent acts were allowed to take place to preserve investigative integrity? Are there cases where enforcement action was taken based on surveillance even though it might have risked exposing a long term or ongoing investigation?

9) How is information being shared with federal law enforcement agencies? Does the NYPD share gang database information with any other law enforcement agencies? Does the NYPD share any information with Homeland Security or Immigrations and Customs Enforcement? What kinds of data does the NYPD receive from Federal law enforcement?

10) Is there an operational reason why arrests in these cases are conducted as raids with SWAT teams utilizing "non-knock" warrants? If these people have been under surveillance for extended periods, could other less aggressive techniques be used that don't jeopardize the safety of suspects, family members, and officers?

We hereby request a meeting with you to discuss this request and how we might be able to assist in your investigation.

Sincerely,



Alex S. Vitale, Coordinator, Policing and Social Justice Project, Brooklyn College

Additional signatories below

5 Boro Defenders
Black Alliance for Just Immigration
Black Lives Matter - NYC
Black Lives Matter of Greater New York
Brooklyn Defender Services
Cardozo Chapter of National Lawyers Guild
Center for Constitutional Rights
Coalition to End Broken Windows
Copwatch Patrol Unit
The CUNY Law Defenders Clinic
The CUNY Law Police Accountability Organization
El Grito de Sunset Park
Enlace
ICE-Free NYC
Incarcerate Workers Organizing Committee NYC
Jails Action Coalition
Just Leadership USA
Legal Aid Society
National Lawyers Guild - NYC
Neighborhood Defender Services of Harlem
NYC Shut It Down
Police Reform Organizing Project
Queens Neighborhoods United
Reform RICO
Stop NYPD Spying
Urban Justice Center
War Resisters League
Youth Represent

Individuals

David Brotherton, John Jay College
Judith Greene, Justice Strategies
Babe Howell, CUNY Law School
Louis Kontos, John Jay College
Johnny Perez, Reentry Specialist
Brett Stoudt, John Jay College

Exhibit 2



THE COUNCIL OF
THE CITY OF NEW YORK

August 27, 2018

Commissioner Mark G. Peters
New York City Department of Investigation
83 Maiden Lane
New York, NY 10038

Inspector General Philip Eure
Office of the Inspector General for the New York City Police Department
New York City Department of Investigation
80 Maiden Lane
New York, NY 10038

Re: Request for Investigation of the NYPD's Gang Database

Dear Commissioner Peters and Inspector General Eure:

We are writing to request that the Office of the NYPD Inspector General conduct an independent investigation and evaluation of the NYPD's Criminal Group Database (AKA the "gang database").

Since 2012, the NYPD has maintained this database -- adding and removing individuals, conducting surveillance and enforcement based on inclusion in the database, and sharing information with other criminal justice agencies -- with very limited transparency.

The request is driven in part by troubling and insufficient information that the City Council received at a hearing of the Public Safety Committee on the topic on June 13th, 2018.

At the Council's hearing, the NYPD indicated that the database currently contains nearly 17,500 people, approximately 95% of whom are black or Latino. They confirmed that entry into the gang database does not require any evidence of criminality or suspicion of wrongdoing, and that the information that someone is included in the database is sometimes shared with prosecutors.

There do not appear to be clear mechanisms for notifying the parents of minors who were placed in the database, or for getting oneself removed.

The NYPD testified that it has cut the list by half since 2014. However, their statistics were difficult to reconcile. NYPD Chief of Detectives Dermot Shea told the Council that 3,737 people had been removed from the list in the previous four years, but separately indicated that there had been a 16,500-person drop. Statistics about the database are not regularly made available to the public.

The Council also heard testimony from people affected by the database that just being on the list subjects them to further surveillance, enhanced bail recommendations and heightened charges.

We therefore request that OIG-NYPD conduct a review of the gang database, including but not limited to:

- What are the standards and protocols for entry and removal of individuals from the database? Who is authorized to enter individuals, and how are they trained and supervised in this work?
- How does the NYPD define, identify, or demarcate a group of individuals as a gang for entry into the gang database? Does the database draw distinctions between different kinds of groups (e.g. "gangs," "sets," "crews," or "cliques")?
- How many individuals are entered into the database even though they have no underlying criminal predicate?
- Does the database record differentiations between membership, affiliation or association with a particular gang?
- How can an individual find out whether they are in the database? How can an individual seek to be removed from the database?
- How are parents of minors who are placed in the database informed?
- What are the standards and protocols for initiating and conducting surveillance or other law enforcement actions of those in the database? Who authorizes these actions, and with what standards?
- How is information about individuals shared with other criminal justice agencies for use in bail determination, criminal prosecution, sentencing, corrections or other aspects of criminal justice case processing? What are the standards and protocols for such actions?
- Is the data shared or disseminated to anyone outside the NYPD? Is there dissemination to the FBI, or to federal immigration authorities? To any non-criminal justice city agencies, e.g. NYCHA or CUNY?
- Are periodic audits conducted to insure the accuracy and relevance of the data?
- What due process, human rights, civil liberty and/or privacy protections are in place to avoid misclassification of individuals and/or prevent misuse of the data?
- Is the operation of the database in compliance with relevant federal, state, and local guidelines, including the prohibition on bias-based profiling passed by the City Council as Local Law 71 of 2013?

We request that the OIG-NYPD conduct such a review, and hope the NYPD will cooperate with you in the review and adoption of the recommendations you develop, in order to best protect the safety and rights of all New Yorkers.

Sincerely,



Council Member Brad Lander



Council Member Jumaane Williams

Exhibit 3



Philip Eure
Office of the Inspector General for the New York City Police Department
New York City Department of Investigation
80 Maiden Lane
New York, NY 10038

December 6th, 2019

Dear Inspector General Eure:

My office is very concerned about the NYPD's so-called gang database, or "criminal group database." As you may know, thousands of people have been catalogued as gang members within this secretive database – almost all of them are people of color. Some of the police department's tactics were discussed during a City Council hearing in June of 2018 but there are still aspects that are concerning and which merit a closer examination.

I am also aware that a coalition of legal and community advocates requested that your office probe these methods two and a half years ago. A number of the militarized gang raids that these advocates believe are launched as a result of the database have taken place in upper Manhattan, where I have engaged with public housing residents who are very concerned about these police practices. I am requesting that your office provide a thorough investigation of the police department's tactics, with particular consideration to these questions:

- How is the NYPD using social media to collect intelligence? Are police officers misrepresenting themselves through fake social media accounts? What investigative safeguards are in place to distinguish between actual criminal involvement and youthful boasting and symbolic posturing?
- How is the NYPD using large scale data mining software? Is the police department sharing or using information obtained through private technology, like Palantir, in collaboration with district attorneys or federal law enforcement officials?
- How are members of specialized units that deal with gangs (i.e. gang squad) selected? Do those members have more arrests and more claims of misconduct and/or use of force than other officers?
- What processes are there to ensure that people who are removed from the gang database are not simply put into another database?
- Is there bias in the labeling of some youth criminal activity as "gang related" and thus included in this database?

- Does the NYPD share gang information with any outside agencies? Does the NYPD share any information with Homeland Security or Immigrations and Customs Enforcement?

13th AD

Carmen De La Rosa
Assemblymember
72nd AD

Harvey Epstein
Assemblymember
74th AD

Yuh-Line Niou
Assemblymember
65th AD

Robert Rodriguez
Assemblymember
68th AD

Al Taylor
Assemblymember
71st AD

Ron Kim
Assemblymember
40th AD

Catalina Cruz
Assemblymember
39th AD

Walter Mosley
Assemblymember
57th AD

Carlina Rivera
Councilmember
2nd District

Jessica Ramos
State Senator
13th SD

Assemblymember
75th AD

Aravella Simotas
Assemblymember
36th AD

Antonio Reynoso
Councilmember
34th District

Latoya Joyner
Assemblymember
77th AD

Erik M. Dilan
Assemblymember
54th AD

Zellnor Myrie
State Senator
20th SD

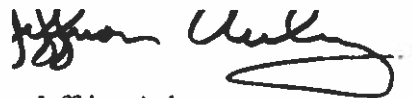
Charles Barron
Assemblymember
60th AD



Joe Lentol
Assemblymember
50th AD



Mark Levine
Councilmember
7th District



Jeffrion Aubry
Assemblymember
35th AD



Julia Salazar
State Senator
18th SD

