



TESTIMONY OF:

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

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I. INTRODUCTION

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

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

NYPD uses arbitrary criteria to determine gang membership or affiliation such as living in a “known gang location,” apparel, scars, tattoos, hand signs, and relationships with “known gang

members.” Significantly, commission of any crime(s) is/are not among the criteria. Therefore a teenager who lives in public housing and mimics his peers by showing hand signs in a Facebook photo with no connection to any criminal activity can be included in this database for the rest of their life without any due process protections.

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

II. GANG PROFILING AND POLICING COMMUNITIES POST-FLOYD

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

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

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

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

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

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

Client Story: Patrick

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

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

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

The Bureau of Justice Assistance, a division of the U.S. Department of Justice, has found that "[t]hose who are taken into custody are more likely to accept a plea and are less likely to have their charges dropped."⁶ Indeed, there is ample research documenting that finding, and our experience at BDS affirms it. It should be obvious that anybody who has experienced even a

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

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

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

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

day in Rikers, and who faces the prospect of weeks, months or years inside, is far more likely to accept a plea that involves an admission of guilt than somebody who is free until their trial, regardless of whether or not they are in fact guilty. District Attorneys consistently exploit this leverage.

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

IV. IMPACTS OF GANG DESIGNATIONS ON YOUNG PEOPLE IN CRIMINAL COURT

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

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

Project Redirect is extremely difficult, if not impossible, to complete for most targeted participants. It lasts between eighteen months and two years and requires defendants to abide by a deeply regimented schedule of school, work, and meetings with the DA's office, with deviations for tasks like purchasing milk for the family at a local bodega permitted only with prior approval, often via text messaging. They cannot have contact with others identified as fellow gang members, which may include family and any or all local community members. They are not permitted to use any social media, which for many is the only way to keep in contact with relatives around the world. They must wear button-down shirts, slacks, and ties every day. They cannot wear any so-called "gangsta" type jewelry. They are required to debrief, or inform on others. They must wear ankle monitors and their every movement is tracked by GPS. They receive home visits from Detective Investigators and must make regular visits to the DA's office. Altogether, they are forced to walk around with giant targets on their backs, both as "snitches" to the community and as gang members to the local police officers. This dynamic makes them isolated and vulnerable to violence. Rather than addressing the social marginalization that pushes people into gang membership and possibly problematic behavior, it aggravates internal conflicts within communities. In our experience, almost nobody completes this program. Many "fail" for refusing to debrief. Others "fail" after being arrested for minor infractions in their over-

policed communities. They are then sentenced to their “jail alternative,” namely several years in upstate prisons.

Client Story: Joshua

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

Client Story: David

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

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

V. THE IMPACTS OF GANG ALLEGATIONS ON IMMIGRANT NEW YORKERS

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

Gang accusations by ICE are often based on standing with the wrong people, or wearing the wrong hat, or footwear. Again, these criteria do not amount to criminal conduct, but they yield extremely serious sanctions. In particular, our clients of Central American descent with no

criminal records are profiled and treated as future criminals; this is undemocratic and wrong. It is important to remember that, when these massive raids happen, they can take promising young students, future college graduates, and primary income-earners from the community.

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

Client Story: Jorge

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

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

VI. GANG POLICING MAY INCREASE THE GANG POPULATION

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

Through our Jail Services team, we have seen the way the New York City Department of Correction classifies or misclassifies people as members of gangs and even shares that information with prosecutors. In fact, there is a long history of people being pressured to join

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

gangs by jail staff, some of whom identify as members of gangs, themselves.⁸ We have also heard from detained clients that jail staff instigate or manipulate gang violence as a tool of control. In one incident earlier this year, an officer engaged our client in a verbal argument, ultimately threatening to place him in a unit housing rival gang members. Making good on this threat, our client was later moved to a cell in the jail's intake where he encountered approximately seven members of a rival gang. As planned, he was attacked and suffered two deep cuts on his face, requiring several stitches.

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

VII. RECOMMENDATIONS

1. *Abolish the NYPD gang database*

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

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

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

In 2012, the city launched a Cure Violence initiative, but prevention and intervention efforts that could be effectively implemented to curtail gang violence are underutilized and underfunded. While certain programs that are used may reinforce marginalization through partnerships with the NYPD, others have proven to be successful in strengthening community-based safety and security. At its most effective, the strategy leverages the experiences of young men of color, many of whom are former gang members, to act as "credible messengers" of an anti-violence message and "violence interrupters" to prevent and reduce gun and gang violence. Community-based organizations working under the Cure Violence model employ "violence interrupters" and outreach workers from the community who have themselves experienced violence and also have strong relationships with young adults, community leaders, and service providers.⁹ Violence interrupters stop conflicts before they happen, and outreach workers redirect the

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

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

highest-risk youth away from life on the streets and the criminal system. All of this is done by unarmed community members, who value every person's right to security and protection from harm.

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

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

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

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