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Committees on Public Safety and State and Federal Legislation

Public Hearing on Access to Firearms: City and State Efforts to Curb Gun Violence

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My name is Jackie Gosdigian and I am a Senior Policy Counsel at Brooklyn Defender Services (BDS). BDS provides comprehensive public defense services to approximately 25,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Thousands of the people we serve are detained or incarcerated in the City jail system either while fighting their cases in court or upon conviction of a misdemeanor and a sentence of a year or less. We thank the Committee on Public Safety and Committee on State and Federal Legislation and Chairs Hanks and Abreu for the opportunity to address the Council about public safety and gun violence.

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. 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.

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The City Council must not write a blank check to NYPD for surveillance

BDS is concerned about increased funding for surveillance programs, using the pretext that this will put an end to gun violence in New York City. Since January, much of the public political discourse around responding to current levels of gun violence has touted surveillance and policing-based investments as the New York City “solutions” to guns. For example, the Mayor’s Blueprint to End Gun Violence,¹ which he released shortly after being elected, touts the creation of a panopticon of surveillance technology. But there is nothing new or innovative about this technology deployment; New York already built this panopticon, and should instead dismantle it. The surveillance foundation of the Mayor’s Blueprint has been repeated in his proposals to deploy “gun detection” technology in our subways or speaker-armed drones in our neighborhoods. While technology and its attendant insights and conveniences are alluring in their seeming objectivity and infallibility, real-world application—divorced from marketing claims—demonstrates that technological solutions to law enforcement’s surveillance agenda merely replicate the biases and failures of our historical *Handschu*² and stop-and-frisk past without meaningful contribution to public safety.

New York City has already invested more than \$1 billion in a twenty-year surveillance infrastructure building program.³ The City is blanketed in surveillance⁴ and no police department in the country has more military-grade surveillance resources than the NYPD. These tools—already heavily invested in and deployed—did nothing to stop or ameliorate this claimed spike in violence in the first place.⁵ All they have accomplished is to expand a burgeoning surveillance state, repeatedly infringing on New Yorkers’ dignity, privacy, and First Amendment freedoms.⁶

Relevant surveillance technologies already owned, acknowledged, and deployed by the NYPD are outlined in detail in the Appendix and include closed-circuit television, x-ray vans, drones, the

¹ Available online at <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2022/the-blueprint-to-end-gun-violence.pdf>.

² See “*Handschu v. Special Services Division* (Challenging NYPD Surveillance Practices Targeting Political Groups)” at <https://www.nyclu.org/en/cases/handschu-v-special-services-division-challenging-nypd-surveillancepractices-targeting>.

³ Ali Watkins, How the N.Y.P.D. is using Post-9/11 Tools on Everyday New Yorkers, *NYTimes* (Sept. 8, 2021) at <https://www.nytimes.com/2021/09/08/nyregion/nypd-9-11-police-surveillance.htm>

⁴ See, e.g., Amnesty International, Inside the NYPD’s Surveillance Machine at <https://banthescan.amnesty.org/decode/>.

⁵ Elizabeth Daniel Vasquez, Opinion: Reining in the NYPD’s Use of Surveillance Technologies, *City Limits* (Feb. 22, 2022) at <https://citylimits.org/2022/02/22/opinion-reining-in-the-nypds-use-of-surveillance-technologies/>.

⁶ See, e.g., Elizabeth Daniel Vasquez, Dismantle NYC’s Mass Surveillance Project – Start with Jail Recordings, *Truthout.org* (June 1, 2021) at <https://truthout.org/articles/dismantle-nycs-mass-surveillance-project-start-with-jail-recordings/>; James Vincent, NYPD used facial recognition to track down Black Lives Matter activist, *TheVerge.com* (Aug. 18, 2020) at <https://www.theverge.com/2020/8/18/21373316/nypd-facial-recognition-black-lives-matter-activist-derrick-ingram>; Jan Ransom and Ashley Southall, N.Y.P.D. Detectives Gave a Boy, 12, a Soda. He landed in a DNA Database, *NYTimes* (Aug. 15, 2019) at <https://www.nytimes.com/2019/08/15/nyregion/nypd-dna-database.html>.

domain awareness system, license plate readers, facial recognition, and more. This vast investment did not put New York on a different gun violence trajectory than the rest of the country. Unlike public-health and community-based responses to gun violence, access to this menu of surveillance produces no quantifiable reduction in either gun possession or violence.

Take ShotSpotter as an example. 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.⁷ 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."⁸

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. Despite our City's investment in these listening systems, the data indicates that ShotSpotter is not resulting in a reduction in crime, but instead is contributing to over-policing in Black and brown neighborhoods.

Similarly, take the recently reported-on Gun Recidivist Investigation Program (GRIP) list. The list—a seemingly renamed, sleight-of-hand substitution for the embattled Criminal Group Database⁹—is an initiative of the Gun Violence Strategies Partnership. GVSP has been in existence for almost a decade, as framed by the deployment of former Mayor DiBlasio's "Project Fast Track" in 2016. At the time of Fast Track's announcement in 2016, the program emphasized that its NYPD arm would include "an extensive database that will aggregate forensic evidence from a variety of sources and help the police to track trends and identify offenders and groups."¹⁰ The criteria for inclusion in any of these databases—the Gang or Criminal Group database, the GRIP list, or this Fast Track database—are unclear, troubling, and unmonitored. Deploying some version of this kind of data tracking for almost a decade now has done nothing to reduce "gun violence," and instead has subjected specific communities and individuals to intense, long-term, and invasive surveillance.

⁷ The City of Chicago's Office of Inspector General, *The Chicago Police Department's Use of Shotspotter Technology* (Aug. 2021).

⁸ *Id.*

⁹ Eileen Grench, NYPD Gang Database Targeted By City Council Member, *The City*, September 15, 2021, Available online at <https://www.thecity.nyc/2021/9/15/22674782/nypd-gang-database-targeted-city-council>

¹⁰ <https://www1.nyc.gov/office-of-the-mayor/news/044-16/mayor-de-blasio-state-courts-project-fast-track-ensure-shooters-quickly#/0>



New Yorkers are already living in a house built by the runaway surveillance state; more floors in that house are both unnecessary and dangerous. A better plan for the future of this City and its people relies on true investment in its people—in housing, education, and medical and mental health care—and in proven solutions, not the failed technocratic policing visions of the mass incarceration era.

The City must redirect funding to Violence Interrupter Programs, Community Resources, and Post-Arrest Programming

To state that the NYPD does not offer a solution to violence is not a reckless or naive denial of the existence of violence and its impact on communities. Rather, it is a call for real solutions that do not involve funding a dangerous police force that has repeatedly demonstrated disinterest and even aggressive antipathy towards the wellbeing of those same communities.

In 2020, the Center for Court Innovation released a groundbreaking report titled “Gotta Make Your Own Heaven,” detailing the experiences of 330 young New Yorkers with guns, violence, safety, and the police.¹¹ This remarkable study provides a unique, firsthand perspective into the lives of young people and the challenges they face in NYC. Strikingly, the hundreds of young people interviewed consistently identified threats from police as a reason to carry a gun or seek protection within a gang. They identified “violent victimization by police,” “police harassment for small infractions but lack of responsiveness for serious crime,” and “fear of being shot by a police officer” as major contributors to lack of their neighborhood’s safety. Most of the young people interviewed described “an overall sense that the police were a negative force in their communities” and “sens[ed] a lack of care for people in the community.” They also drew a direct connection between the way they were treated as “less than human” and their race.

It is time for this city to acknowledge the roots of this problem and how poverty and access to adequate health care exacerbate these issues, and stop rebranding and putting forth failed policies.

- ***Reallocate funding towards Violence Interrupter programs and community resources***

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.

¹¹ The Center for Court Innovation, “Gotta Make Your Own Heaven: Guns, Safety, and the Edge of Adulthood in New York City,” available at: https://www.courtinnovation.org/sites/default/files/media/document/2020/Report_GunControlStudy_08052020.pdf

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.¹² Violence interrupters stop conflicts before they happen, and outreach workers redirect the highest-risk youth away from life on the streets and the criminal system. All of this is done by unarmed community members, who value every person’s right to security and protection from harm.

The city should also 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.

- ***Reallocate funding for post-arrest programming***

There has been quite a bit of discussion in New York city around different approaches to preventing gun violence. The Brooklyn District Attorney, Eric Gonzalez recently announced that he plans to launch a restorative justice program to stop shootings. But even this “first of its kind” program is not an “alternative to incarceration,” and participants “will be those without pending matters before his office.”¹³ There is a severe lack of programming for young New Yorkers facing charges of alleged gun possession. In Brooklyn, there are only two available alternative to incarceration (ATI) 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 by 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. In our experience, it is nearly impossible to successfully complete this

¹² <https://bds.org/latest/bds-testifies-before-the-nyc-council-on-nypds-gang-takedown-efforts>

¹³ Ben Brachfeld, EXCLUSIVE: Brooklyn DA to launch ‘restorative justice’ program bringing rival gang members together to stop shootings, *Brooklyn Paper*, June 22, 2022, Available online at: <https://www.brooklynpaper.com/exclusive-brooklyn-da-to-launch-restorative-justice-program/>



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.

More funding is needed for programming and alternatives to incarceration for post-arrest unlicensed gun possession cases. But, these alternatives will not be successful without buy-in from District Attorneys, because, as discussed below, harsh mandatory minimum sentencing for simple gun possession make non-jail options useless without DA consent. **It is important to note that at the time this testimony was written, both YCP and Project Redirect have been suspended and are no longer being offered by the Kings County District Attorney’s Office as an alternative to incarceration for anyone.**

Work with State leaders to address systemic issues with the unlicensed firearm possession punishment scheme

Since its enactment, New York’s firearm licensing laws have resulted in discriminatory policing and criminalization of Black and brown people living in urban low-income communities. As public defenders, we represent thousands of people each year, the vast majority of whom are young Black men who face years in prison *not* for firing a gun or committing an act of violence, but for simply possessing a gun. When someone in New York City is prosecuted for possessing an unlicensed firearm they are routinely charged with second-degree criminal possession of a weapon, a “violent felony” punishable by 3.5 to 15 years in prison. N.Y. Penal Law §§ 265.03; 70.02(1)(b). Prison is mandatory even if the person has no record and has never been arrested before.

New York is at an important crossroads for how its leaders will respond to gun violence and we implore the city council not to repeat failed policies of the past. Elected officials across the country and state are approaching the “war on guns” in a tragically similar way to the failed “war on drugs.” Decades of increased punishment for simple possession of an unlicensed firearm has contributed to the state’s crisis of mass incarceration for generations of Black and brown communities. Increasing prison sentences has not been proven to reduce gun violence, and the overuse of arrests for unlicensed gun possession is yet another method to target and incarcerate Black and brown men branding them “criminals” and “violent felons” for life.

We urge the Council, the Mayor, and the Governor to take a hard look at what has not worked in the past. Incarcerating generations of Black and brown New Yorkers through rigid and harsh mandatory minimum sentencing is not a solution to ending gun violence in this City.

Conclusion

Any effort to meaningfully reduce gun violence must start with community investment, by shifting resources away from policing and toward providing the support that individuals, families, and communities need to thrive. Part of this community centered approach includes violence



interrupter programs that prioritize the use of credible messengers. We applaud members of this Council that have supported and touted this type of community investment, but we must go further. We need to stop the use of overly invasive surveillance of communities, with little gain in public safety while sacrificing significant liberties and lives to surveillance's programmatic burdens and interventions. We need to invest in post-arrest programming and alternatives to incarceration, and until state elected officials pass long overdue legislation to end mandatory minimum sentencing, we need real buy-in from the District Attorneys in this city to consider mitigating factors, make reasonable plea-offers, and consent to alternatives to incarceration. Over-surveillance and mass incarceration have not stopped or ameliorated this claimed spike in violence in the first place. It is time for New York City to double down on its investment in public health and community-based solutions to community violence.

If you have any questions about our testimony, please feel free to contact me at Jgosdigian@bds.org.

Appendix: NYPD's Surveillance Technology and Information Sharing Networks

Surveillance Technology	Brief Definition	POST Act ¹⁴ Disclosure: Oversight Required?
Case Management Systems	Electronically stores and aggregates all of NYPD's records and information.	"Court authorization is not required" PDF
Closed-Circuit Television (CCTV)	Provides real-time or recorded video feeds of the City directly to the NYPD or via request. 9,000 cameras were in the DAS live network as of 2016. ¹⁵	"[C]ourt authorization is not necessary" PDF
Cell-Site Simulators	Imitates a cell-phone tower to force all cell phones nearby to connect to the tower and reveal their locations and identities.	"[W]ill only be used for the time period authorized by search warrant" PDF
Criminal Group Database	Aggregates investigative assumptions and biometric/biographical information about community members who the NYPD labels as potentially gang-involved. As of 2019, the NYPD reports that the database is 98.5%% non-white.	"Court authorization is not required to use the Criminal Group Database." PDF
Domain Awareness System (DAS)	Aggregates all surveillance, policing, and intelligence information which the NYPD accesses or generates, regardless of source—including sealed records, CCTV footage, 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	"Court authorization is not necessary in order to use DAS." PDF

¹⁴ In June 2020, the New York City Council enacted the Public Oversight of Surveillance Technology (POST) Act, which "requires the reporting and evaluation of surveillance technologies used by the NYPD." [Int 0487-2018](#).

¹⁵ E.S. Levine, Jessica Tisch, Anthony Tasso, Michael Joy, *The New York City Police Department's Domain Awareness System*, Interfaces at 4 (2017).

	information—for any reason—and to generate predictions based on that data.	
Data Analysis Tools	Organize data and allow search activity within and across structured and unstructured data. “[D]ata analysis tools are capable of processing and sharing audio, video, location, and similar information contained within NYPD datasets.”	“Court authorization is not required to use data analysis tools.” PDF
Digital Forensic Access Tools	Allow NYPD, using both physical devices and software, to extract, search and process data, including encrypted or inaccessible data, from electronic devices, like cellphones.	“In most cases... a search warrant allowing for the use of digital forensic access tools before the technologies are used during an investigation... Digital forensic access tools may also be used in the absence of court authorization with individual consent or if exigent circumstances exist.” PDF
Drone Detection Systems	Identify unmanned aircraft systems “[t]hrough the use of omni-directional, directional, and high-gain directional antennas and frequency sensors.” These systems monitor airspace to detect drones in flight, locate the drone and its operator, identify its speed and altitude, and track its flight path.	Generally, NYPD believes these systems to be exempt from state and federal regulation statutes and thus not requiring of court oversight, but acknowledges that warrants could be required in certain circumstances. PDF
Facial Recognition	Compares probe images to a database of known photos using algorithmic processing. NYPD claims not to use this technology in real time, but only for historical crime investigation. However,	“The NYPD does not seek court authorization prior to the use of facial

	the Department has the real-time technical capability.	recognition technology” PDF
GPS Tracking Devices	Provides real-time location information for the item or person to which the device is attached.	“In most cases, NYPD investigators must first obtain a search warrant” PDF
License Plate Readers (LPR)	Capture images of license plate numbers, convert images to text, and save the location, date, and time into the Domain Awareness System. As of 2017, 2 billion license plate readings were included in DAS. ¹⁶	“Court authorization is not sought prior to NYPD use of LPRs” PDF
Manned Aircraft Systems	Support “operational capabilities” through on-board “video, radar and temperature and location sensor technologies.”	“The NYPD does not seek court authorization prior to the use of manned aircraft systems.” PDF
Media Aggregation Services	Automates the process of scraping the internet for video images, photographs, location data, and online speech and then search and analyzing that data.	“Court authorization is not necessary in order for the NYPD to use media aggregation services.” PDF
Mobile X-Ray Technology	Utilizes mobile x-ray devices to scan cars, structures, and other objects.	“The NYPD does not seek court authorization for its limited use of mobile x-ray technology.” PDF
ShotSpotter	Purports to detect audio associated with gunshot and capture time, location, and audio recording of sound. Research has demonstrated that ShotSpotter’s error rates are substantial ¹⁷ and many cities have	“Court authorization is not necessary” PDF

¹⁶ *Id.*

¹⁷ See, e.g. Juan R. Aguilar, “Gunshot Detection Systems in Civilian Law Enforcement,” 63(4) J. Audio Eng. Society 280, 287 (2015) (noting that studies of ShotSpotter’s accuracy show that only 67% of activations on average are actually produced by real gunshots, and that the rate of misidentifications of gunfire may be as high as 58%); Michael Litch & Georg A. Orrison, “Draft Technical Report For SECURES Demonstration in Hampton and Newport News, Virginia,” National Institute of Justice, at 5, 26, 40 (2011) (noting that for both cities studied using a precursor of ShotSpotter “[t]he cost of the high number of false positives represented a significant problem” & reporting a false positive rate as high as 54% during live-fire tests for the city of Hampton); Lorraine G. Mazerolle, et al., “Field Evaluation of the ShotSpotter Gunshot Location System: Final Report on the Redwood City Field

	found that significant resources are wasted responding to a high volume of false alarms. ¹⁸	
Social Network Analysis Tools	Reviews, processes, and retains information from social media platforms, like Facebook, Twitter, and Instagram. Provides real-time alerts to new activity on designated accounts. Builds social networks, mapping the connections of New Yorkers online and in real life.	“The NYPD does not seek court authorization prior to using social network analysis tools.” PDF
Situational Awareness Cameras	Enables the NYPD to deploy cameras from a distance through the use of remote controlled robots, poles or extenders, etc. The NYPD “Digidog” was an example of this.	“The NYPD does not seek court authorization before using situational awareness cameras.” PDF
Thermographic Cameras	Utilizes thermal imaging or infrared to create heat-signature images, allowing the NYPD to make observations in conditions that “prevent[] traditional observation such as darkness, smoke or gas.”	“The NYPD does not seek court authorization prior to use of thermographic cameras.” PDF
Unmanned Aircraft Systems (UAS)	Allows for aerial surveillance through the use of multi-zoom camera and thermal imaging equipped drones	“[C]ourt authorization is not required” PDF
WiFi Geolocation Tracking Devices	“Identify and estimate the geographic position of WiFi connected devices in real time.”	“[T]he NYPD would not seek court authorization prior to using the device.” PDF

Trial,” U.S. DEPT. OF JUSTICE, at 20 & 25 (2000) (finding a false negative rate of over 20% despite researchers changing their methodology mid-experiment in ways that “greatly assisted the ability of ShotSpotter to achieve a higher true positive rate”).

¹⁸ See, e.g., MacArthur Justice Ctr., *ShotSpotter Creates Thousands of Dead-End Police Deployments that Find No Evidence of Actual Gunfire* (2021), <https://endpolicesurveillance.com/>; Litch & Orrison, “*Draft Technical Report For SECURES Demonstration in Hampton and Newport News, Virginia*,” NATIONAL INSTITUTE OF JUSTICE, at 40 (false alert rate of 63% in Hampton and 66% in Newport News); Nick Selby & David Henderson, “*ShotSpotter Gunshot Location System Efficacy Study*,” Nat’l Org. Black Law Enforcement Exec., at 25 (2011) (dispatchers on average report that 33% or more of ShotSpotter activations are false positives); Vivekae M. Kim, “*Eyes and Ears in Cambridge*,” THE CRIMSON (Oct. 10, 2019), available at <https://www.thecrimson.com/article/2019/10/10/shot-spotter/> (reporting a false positive rate of 82% for the city of Cambridge); Matt Drange, “*ShotSpotter Alerts Police To Lots Of Gunfire, But Produces Few Tangible Results*,” Forbes.com (Nov. 17, 2016), available at <https://www.forbes.com/sites/mattdrange/2016/11/17/shotspotter-alerts-police-to-lots-of-gunfire-but-produces-few-tangible-results/?sh=6e633bde229e> (each of seven cities studied had extremely high rates of unfounded ShotSpotter alerts, for example more than 70% of alerts in Milwaukee were unfounded).



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