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Committee on Public Safety

Oversight Hearing on the NYPD's Use of Stop-and-Frisk and Other Investigative Encounters

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My name is Jackie Gosdigian and I am a Supervising Policy Counsel at Brooklyn Defender Services (BDS). BDS provides comprehensive public defense services to approximately 22,000 people each year who are accused of a crime, facing the removal of their children, or challenging deportation. We thank the Committee on Public Safety, particularly Chair Salaam, for the opportunity to address the Council about the New York City Police Department's (NYPD) use of stop-and-frisk and other investigative encounters.

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 the educational needs of our clients or their children, housing and benefits advocacy, and immigration advice and representation.

Public transparency is an essential measure for holding the NYPD, and other law enforcement agencies, accountable for the discriminatory and abusive policing practices they employ. These practices criminalize and harm New Yorkers, disproportionately Black and Latine New Yorkers,

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LGBTQIA+ New Yorkers, and New Yorkers experiencing homelessness. Discriminatory and abusive policing practices make all New Yorkers less safe. In order to make our city safer for all of our community members, the City Council must take action now and ensure greater transparency and accountability.

Background on Broken Windows Policing

In the early 1990s, under the Dinkins and Giuliani administrations, the NYPD first began to employ “broken windows” policing policies and tactics. Operating under the false assumption that the proliferation of low-level offenses leads to more serious offenses, officers were given leeway to intervene in communities across the city at their own discretion. Officers quickly became more assertive in addressing what they saw as crimes, and the common standard of “probable cause” was reduced to “reasonable suspicion.” This, in turn, evolved into stop-and-frisk, or the practice of stopping and searching pedestrians on the street, primarily in low-income communities of color.

Unsurprisingly, stop-and-frisk had the greatest impact on Black and Latine New Yorkers, as well other marginalized groups. At the height of the NYPD’s stop-and-frisk abuses, hundreds of thousands of Black and Latine New Yorkers were stopped each year—many of whom had committed no crime at all. The legacy of stop-and-frisk remains; the NYPD continues to stop thousands of New Yorkers of color each year. In 2020, Black and Latine New Yorkers made up 91% of reported stops.

In 2013, a federal court issued the landmark decision in *Floyd v. City of New York* that found that the NYPD’s racially biased practice to stop, question, and frisk Black and Latine New Yorkers was unconstitutional. In her ruling, Judge Scheindlin appointed an independent monitor to oversee NYPD’s practices to stop-and-frisk. Since August 2013, Independent Monitor Mylan Denerstein and her team have evaluated NYPD’s use of stop and frisk, reviewed NYPD training materials, audited body worn camera footage and NYPD reports, assessed compliance with the constitution, reported findings to the court and the public, and recommended new avenues for accountability.¹ In this time, the Monitor has prepared 22 public reports. The most recent report, published on October 7, 2024, cautioned that NYPD has increased the use of unconstitutional, racially motivated stop-and-frisk practices over the last year: “The NYPD appears to be headed in the wrong direction and must take immediate steps, including discipline when appropriate, to correct this failure to properly document *Terry* [stop-and-frisk] stops.”²

Subsequently, Hon. Analisa Torres requested the court prepare a report on the NYPD’s politics and practices related to misconduct stops. This report, published on September 19, 2024, by Hon.

¹NYPD Monitor, *Our Work*, (2023), <https://www.nypdmonitor.org/our-work/>

² Mylan Denerstein, *Twenty-Second Report of the Independent Monitor: Underreporting of Terry Stops by the NYPD*, (October 7, 2024, October), <https://www.nypdmonitor.org/wp-content/uploads/2024/10/2024.10.07-937-1-NYPD-Underreporting-of-Terry-Stops-Report.pdf>

James Yates critically examines “the efficacy, fairness, and integrity of the City’s policies, practices, and procedures with respect to police misconduct during stops.”³ Despite ongoing independent monitoring and the supervision by this court, NYPD continues to use unconstitutional stop-and-frisk tactics and has flagrantly disregarded any public accountability efforts.

The Yates Report indicates that after a downward trend in stops for several years (with a low of 8,948 in 2021), the number of stop-and-frisk reports has nearly doubled to 15,102 and 16,971 in 2022 and 2023 respectively.⁴ The racial disproportionality in stops has actually *increased* since the 2013 court finding. While in 2013 Black and Hispanic New Yorkers were 5.0 and 2.6 times more likely to be stopped and frisked than white New Yorkers, in 2019 that jumped up to 6.6 and 3.2 times respectively.⁵ Strikingly, many of these stops are never recorded by the NYPD officer.

When New Yorkers experience racially-biased and unconstitutional policing practice, there are a number of ways to make a complaint of misconduct. Yet, when cases where the CCRB or another oversight body has substantiated that an officer did engage in unconstitutional stop-and-risk, “officers rarely, if ever, receive a penalty.”⁶

Unlawful Police-Citizen Encounters are Still Happening in NYC

After the 2013 *Floyd* decision, the NYPD has employed a variety of other tactics to harass, detain, and ultimately arrest Black and Latine New Yorkers. Across the city, vulnerable New Yorkers are subjected to constant police presence and surveillance; these same New Yorkers are also our community members who are most likely to be subjected to abuse at the hands of the NYPD. The NYPD has a long history of establishing “specialty groups,” “task forces,” and “response teams” to address perceived issues and crises in New York City. With a lack of oversight and supervision, these groups have a shared history of employing egregious violence against communities of color and low-income communities in our city.

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

³ James Yates, *Report to the Court on Police Misconduct and Discipline* (Sept. 19, 2024), at 1, <https://www.nypdmonitor.org/wp-content/uploads/2024/09/Discipline-Report.pdf>

⁴ *Id* at 8

⁵ *Id* at 111-12

⁶ *Id* at 480

media.⁷ The NYPD's Gang Division had already doubled in size shortly after class certification in *Floyd*.

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.⁸ 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.

Many of the people we represent who are deemed to be "gang involved" by the NYPD experience stop and frisks by the police, and 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 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 jail sentence of some kind, may still be subject to invasive and abusive police tactics indefinitely with no recourse because their name remains on the NYPD's "gang database". 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.

The gang narrative is used to justify even more aggressive stops, summonses, arrests, and surveillance than before stop-and-frisk was declared unconstitutional. 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 Latine.⁹ The City Council should move to eliminate the Gang Database and pass Intro 798, which would abolish the NYPD Gang Database altogether.

The NYPD's Gang Squad and other similar, specialized units with vast histories of abuse and misconduct must also be abolished. The abuses committed by these units, which often operate without even the minimal oversight of local precincts, are not unique to specialized operations. However, these units exemplify the most destructive tendencies of policing.

⁷K. 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

⁸ 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.

⁹ Dean 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>.

It is not enough to merely reshuffle members of these units in a symbolic gesture, as has been the case with the notoriously violent Anti-Crime Unit. The units should be disbanded entirely, NYPD members determined to be culpable must be fired, and the methods of policing exemplified by these units must be extinguished.

As part of his mayoral campaign, Mayor Adams promised to reduce gun violence and crime in New York City by reestablishing the NYPD's Anti-Crime team, which had been disbanded by the De Blasio administration¹⁰. In 2022, these plainclothes police teams were relaunched and rebranded as "Neighborhood Safety Teams," despite the concerns of activists, advocates, and community members¹¹. Plainclothes officers—from the anti-crime team and other units—have long been accused of using aggressive and violent tactics. While plainclothes officers make up a small portion of the overall police force, they were found to have been involved in nearly one-third of killings by police in 2018.¹² Because of this, the anti-crime team was disbanded in 2020, for the second time, after being disbanded in the 1990s. Despite the controversy surrounding the unit at the time, which included multiple lawsuits and a federal investigation, many of the officers from within the Street Crime Unit (SCU), as it was then known, were reassigned to other anti-crime teams, many of which utilized the exact same egregious policing tactics that had gotten the SCU disbanded in the first place.¹³

The Importance of Data Collection and Police Oversight Legislation

After the passage of the How Many Stops Act, which requires NYPD to provide quarterly reports detailing information on level one, two, and three investigative encounters between the police and civilians, it has become even more clear that NYPD continues to engage in racial disparate policing. The data from NYPD's first report shows that 95.8% of stops target non-white individuals.¹⁴

¹⁰ George Joseph and Gabriel Sandoval, Eric Adams Wants To Bring Back The NYPD's Most Controversial Unit, *The City*, 2021, Available at <https://www.thecity.nyc/2021/4/27/22404899/eric-adams-bring-back-anti-crime-unit>

¹¹ Sara Dorn, NYPD's Neighborhood Safety Teams are mostly making low-level arrests, data shows, *City and State*, 2022, Available at <https://www.cityandstateny.com/politics/2022/04/nypds-neighborhood-safety-teams-are-mostly-making-low-level-arrests-data-show/365450/>

¹² George Joseph and Liam Quigley, Plainclothes NYPD cops are involved in a staggering number of killings, *The Intercept*, 2018, Available at <https://theintercept.com/2018/05/09/saheed-vassell-nypd-plain-clothes>

¹³ Rachel Holliday Smith and Eileen Grench, Know Your Rights With the NYPD's New 'Neighborhood Safety Teams', *The City*, 2022, Available at <https://www.thecity.nyc/justice/2022/3/21/22990229/eric-adams-neighborhood-safety-teams-plainclothes-cops-nypd-rights>

¹⁴ New York City Police Department, *Investigative Encounters*, <https://www.nyc.gov/site/nypd/stats/reports-analysis/investigative-encounters.page>

Public defenders usually become aware of police misconduct in connection with an encounter that results in an arrest. It is only after an arrest that someone is brought to court and speaks with their attorney about what happened to them. The vast majority of police-citizen encounters that do not result in an arrest go unreported or are overlooked. That is why data from the How Many Stops Act is critical. Also included in NYPD's first report is that more than half of police initiated stops of citizens are "self-initiated" and not in response to any reported crime and the number of stops has been increasing, as NYPD is on track to exceed the number of stops in 2023, demonstrating a trend of escalating the use of terry stops under the current NYPD.¹⁵

Our hope is that the data obtained from the How Many Stops Act will assist the city and the public in monitoring and regulating the actions of the NYPD, especially given the increase in their budget and staffing numbers, and near constant presence in primarily Black, Latine, and low-income neighborhoods.

Oversight of Body Worn Camera and other Surveillance Technology is Crucial for Police Accountability

Body worn cameras, if utilized properly, can shed light on the thousands of law enforcement interactions many New Yorkers, particularly Black and Latine people, experience each day. Police misconduct continues to go unmonitored and unchecked. The secrecy of police disciplinary systems perpetuates this misconduct and precludes public scrutiny of law enforcement. Research has shown that officers wearing body cameras were involved in fewer use-of-force incidents and body worn cameras can also increase the likelihood that an officer acting on racial biases—or committing misconduct—will be discovered, investigated, and disciplined.¹⁶

Body cameras are only a useful tool to assist in transparency and accountability if they are used properly and judges, prosecutors, and law enforcement officers investigate and carry out disciplinary measures for incidents of misconduct. Moreover, timely access to evidence, especially body camera footage, is critical for defense attorneys to conduct the investigations, research, and analysis necessary for their clients to receive a complete defense. For external sharing, each of the NYPD's data systems are designed to make the collection and sharing of information—particularly the kind of information required by New York's discovery statute—quick, straightforward, and simple. However, even though it has never been easier to disclose information electronically in a timely manner, turnover of discovery, including body camera footage, continues to be inexcusably delayed. These delays can be directly attributed to a fundamental lack of transparency about NYPD's systems and NYPD's failure to turn over their records to the District Attorneys, causing pre-trial delays and backlogs in the court system.

¹⁵ *Id.*

¹⁶ See Murphy, Julian R., *Is It Recording? Racial Bias, Police Accountability, and the Body-worn Camera Activation Policies of the Ten Largest U.S. Metropolitan Police Departments in the USA*, 9 Column. J. Race & L. 141 (2018).

ShotSpotter, a gunshot detection technology employed by the NYPD, is another example that demonstrates the urgent need for enforceable standards and oversight of X. ShotSpotter operates through an extensive network of microphones mounted in targeted neighborhoods, predominantly in Black, Latine, and low-income communities, designed to detect percussive sounds and classify them as gunfire or not based on a combination of algorithmic analysis and human review. However, the NYC Comptroller's recent audit found that ShotSpotter's classifications were accurate only 13% of the time, meaning that 87% of alerts led police to non-gunfire events, often consuming officer resources without adding meaningful safety benefits.¹⁷ Further, Brooklyn Defender Services' own report analyzes nine years of NYPD's Shotspotter performance data, confirming that over the entirety of its use in NYC, over 83% of alerts were not determined to be gunfire.¹⁸

ShotSpotter's lack of accuracy is not only a potential drain on resources; since ShotSpotter alerts frequently lead to stops based on alerts we now know are highly inaccurate, the system increases the likelihood of stop-and-frisks without reasonable suspicion or legal justification. Essentially, ShotSpotter functions like an unreliable informant, with police using its alerts to justify stops that lack the evidentiary support required for reasonable suspicion. This pattern not only leads to unjustified stops but also increases the chance that police responding to an alert will approach on heightened alert, raising the risk of escalation during interactions that are based on faulty information. Chicago, along with several other large cities, has since canceled its wasteful and dangerous ShotSpotter contract. New York City's own contract with ShotSpotter is up for renewal in December. While technological tools like Shotspotter are marketed as simple ways to increase NYPD efficiency, these tools fundamentally alter the landscape of policing and surveillance, disproportionately burdening communities that are already facing the brunt of police interaction and violence.

Despite its inaccuracies and unreliability, NYPD has still not officially cancelled its contract with Shotspotter, which was up for renewal on December 12, 2024, effectively "Tech-Washing" its approach to broken windows policing, i.e. providing technical justification for disproportionate deployment to Black neighborhoods for policing when that technical alert is neither accurate nor valid.¹⁹

¹⁷ Office of the N.Y.C. Comptroller, *Audit Report on the New York City Police Department's Oversight of Its Agreement with ShotSpotter Inc. for the Gunshot Detection and Location System* (June 20, 2024), <https://comptroller.nyc.gov/reports/audit-report-on-the-new-york-city-police-departments-oversight-of-its-agreement-with-shotspotter-inc-for-the-gunshot-detection-and-location-system/>.

¹⁸ Brooklyn Defender Services, *Confirmed: ShotSpotter Technology Increases Surveillance and Policing of Black and Latine New Yorkers, While Failing to Reduce Gun Violence*, (December 2024), <https://bds.org/assets/files/Brooklyn-Defenders-ShotSpotter-Report.pdf>

¹⁹ Nick Pinto, 83 Percent of ShotSpotter Alerts Might Not Have Been Gunfire at All, *HellGate*, (December 4, 2024), <https://hellgatenyc.com/nypd-shotspotter-data-report/>

The ever-increasing budget of the NYPD is not only concerning to public defenders, but should be concerning to all New Yorkers. New York City has already invested more than \$1 billion in a twenty-year surveillance infrastructure building program.²⁰ The city is blanketed in surveillance.²¹ No police department in the country has more military-grade surveillance resources than the NYPD. These tools have done nothing to stop or ameliorate the claimed spike in violence. All they have accomplished is expanding a burgeoning surveillance state, repeatedly infringing on New Yorkers' dignity, privacy, and First Amendment freedoms.²² Transparency in funding for NYPD is necessary for the city to have meaningful oversight of the department²³ and information on surveillance technology that is available to the NYPD.²⁴

We Must Hold NYPD Accountable

It is impossible to divorce modern American policing from its roots in racist and classist enforcement. The New York City Police Department was formed in 1845 in direct response to workers' rights demonstrations, an influx of immigrant populations, and demands by elites to crack down on so-called quality-of-life behaviors associated with these communities. These formative directives and punishment paradigms are still present today. Neighborhoods that are subjected to constant police presence and surveillance are also home to community members who are most likely to be abused at the hands of the NYPD. They are also the exact neighborhoods in which the NYPD chooses to deploy teams of plainclothes officers, like Neighborhood Safety Teams.

²⁰ 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>

²¹ See, e.g., Amnesty International, Inside the NYPD's Surveillance Machine at <https://banthescan.amnesty.org/decode/>.

²² 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>.

²³ See Also Int 0948-2023. The bill would increase the frequency and expand the scope of existing reports required to be produced by the New York City Police Department ("NYPD"). Such reporting includes, but is not limited to, disclosure of information and data related to the NYPD's use of stop-question-and-frisk, its deployment of officers and use of overtime spending, and crime status information, such as data on criminal complaints, arrests, and summons issued. Additionally, all such reports would be required to be publicly posted on the NYPD's website.

²⁴ "[The Police Foundation's] 2019 filing describes funding that "provides equipment, expertise, training and technical services to upgrade the NYPD's technological capabilities," including "installing cutting-edge software and upgrading database security and infrastructure." at Greg Smith, NYPD Backs Bill to Disclose How it Spends Private Donations—But Isn't Divulging Yet, *The City* (March 29, 2023) at <https://www.thecity.nyc/2023/3/29/23661122/nypd-police-foundation-law-enforcement>.



As defenders, we see the direct results of two salient data-backed trends that are consistent with this bias in enforcement: Black and brown New Yorkers are disproportionately targeted for stops and arrests, and individual officers who engage in racist, biased, or hateful behavior remain on the job. It is imperative that we recognize racist policing includes instances that do not involve direct statements of racist intent. We cannot allow the biases displayed by these specialized units and the egregious practices they employ to continue to entangle Black and Latine New Yorkers in the criminal legal system.

Conclusion: A Return to Broken Windows Policing.

Overall, the creation of these specialty groups, task forces, and response teams, combined with a web of surveillance technologies, represents a covert return to broken-windows policing and the stop-and-frisk abuses of the late 1990s and early 2000s. Through them, the NYPD has created a new locus for police-citizen encounters, one that not only lacks oversight and increases the number of unnecessary stops New Yorkers are subjected to, but also one that poses an increased risk of violence for vulnerable New Yorkers. We are hopeful that the data the Council receives from the How Many Stops Act, along with the testimony from impacted advocates and organizations, will assist the city in regulating and controlling the city's police force, which continues to trample on the rights of the citizens it has sworn to protect.

Thank you again to the Committee on Public Safety, Chair Salaam, and Speaker Adams for the opportunity to address the Council about the NYPD's use of Stop and Frisk. Please reach out to Jacqueline Gosdigian, Supervising Policy Counsel with Brooklyn Defender Services, at jgosdigian@bds.org with any questions.