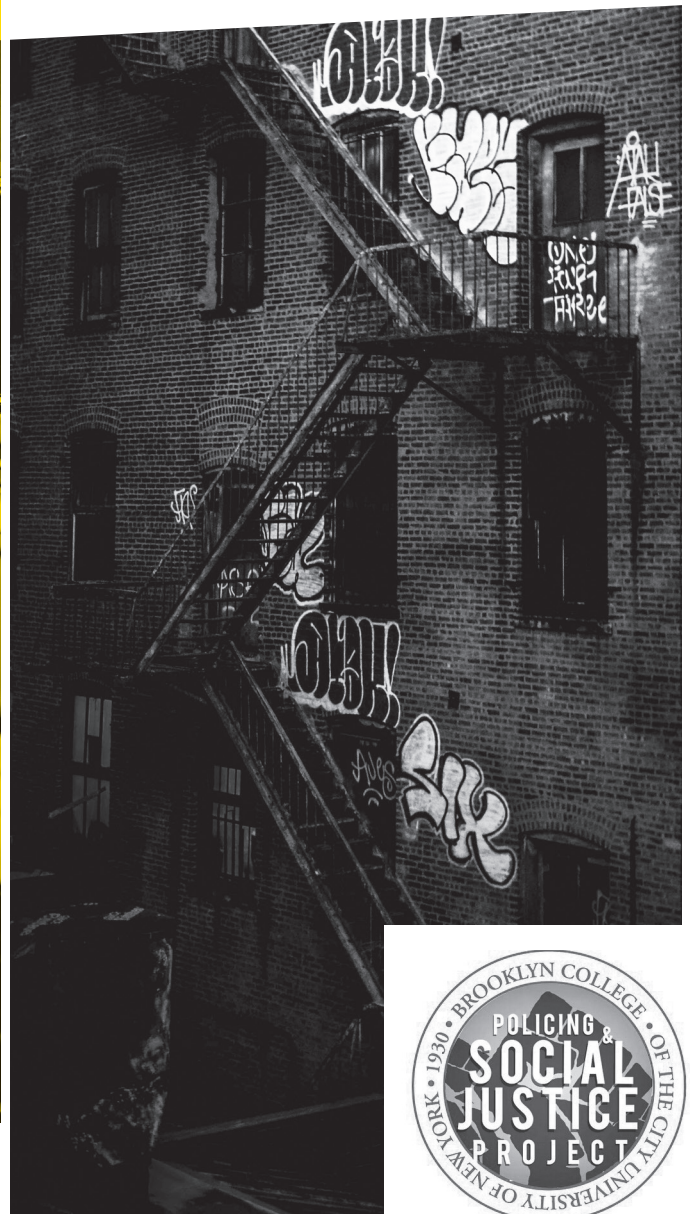


# GANG TAKEDOWNS IN THE DE BLASIO ERA:



## The Dangers of 'Precision Policing'



By **JOSMAR TRUJILLO** and **ALEX S. VITALE**



# TABLE OF CONTENTS

- 1. About & Acknowledgement . . . . . 1**
- 2. Introduction . . . . . 2**
- 3. Gang Raids . . . . . 4**
- 4. Database . . . . . 6**
- 5. SIDEBAR: Inventing gangs . . . . . 11**
- 6. Consequences of Gang Labeling . . . . . 13**
  - i. Harassment, Hyper-Policing
  - ii. Enhanced Bail
  - iii. Indictments, Trials & Plea Deals
  - iii. Employment Issues
  - iv. Housing
  - v. Deportation Risks
- 7. SIDEBAR: School Policing . . . . . 21**
- 8. Focused Deterrence . . . . . 22**
- 9. Prosecutor profile: Cyrus Vance Jr. . . . . 24**
- 10. Action spotlight: Legal Aid’s FOIL Campaign . . . . . 28**
- 11. Conclusion/Recommendations . . . . . 29**

## **ABOUT THE POLICING AND SOCIAL JUSTICE PROJECT AT BROOKLYN COLLEGE**

The Policing and Social Justice Project at Brooklyn College is an effort of faculty, students and community researchers that offers support in dismantling harmful policing practices. Over the past three years, the Project has helped to support actions, convenings, and community events to drive public education and advocacy against the New York City Police Department's gang policing tactics, including its so-called gang database.

## **ABOUT THIS REPORT**

The compilation of this report includes interviews with people in affected communities and family members as well as survey responses from defense attorneys and insights from advocates. This is not intended to be a quantitative research report. The report is intended to highlight what we know, currently, about gang policing practices in New York City.

This report is limited to policing and, to a lesser extent, prosecution strategies. This report also is limited in its analysis on gangs or gang culture. The expert voices on gangs are those who have lived that reality. We hope this report spurs further research, education and advocacy.

## **ACKNOWLEDGEMENTS**

This report was compiled and edited by Josmar Trujillo and Professor Alex Vitale from The Policing and Social Justice Project at Brooklyn College. Additional research support was provided by Amy Martinez.

Insights from interviews of people directly impacted by gang policing, including public housing residents, inspired and spearheaded this report. In many ways, this report is a reflection of the brave voices of community members and family members including Taylonn Murphy Sr., Darlene Murray, Diane Pippen, Shaniqua Williams, Afrika Owes, Kraig Lewis, mothers from the Bronx120 case, and many more.

The report would not have been possible without the help of **The Bronx Defenders** and **Brooklyn Defender Services** as well as the contributions of **The Legal Aid Society**, specifically Anthony Posada from the **Community Justice Unit** and Michelle McGrath from the **Decarceration Project**. The authors would also like to thank Professor Babe Howell, Vidal Guzman, Nathalia Varela and Judy Greene for their critical feedback.

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## INTRODUCTION

In 2012, the NYPD initiated a major change in how it deals with issues of youth violence. That year, then Commissioner Ray Kelly announced “Operation Crew Cut,” which would double the number of officers in the gang unit from 150 to 300. Kelly made it clear that this new operation was intended to target “loosely affiliated groups of teens” who often “identify themselves by the blocks where they live and are responsible for much of the violence in public housing.”<sup>1</sup>

In addition, the NYPD recreated its “Criminal Group Database” to track alleged gang members and wipe out alleged gang violence through large scale conspiracy cases. The result has been thousands of juveniles and adults arrested and charged in gang conspiracy cases, tens of thousands placed into a secretive gang database, and many more subjected to harassment, intimidation, surveillance, and threats.

The new focus on loose associations of young people came just as political and legal challenges to widespread “stop, question, and frisk” practices increased.<sup>2</sup> It appears that the NYPD is merely substituting one set of techniques to tightly manage the lives of young people of color for another and uses the “gang” label to mute public opposition.<sup>3</sup> The NYPD has taken the term gang and turned it into a marker of violence and lawlessness.

While some people define themselves as gangs, there is nothing illegal about such a grouping in and of itself. Police, however, have chosen to define associations of young people as organized criminal enterprises. And even when such groupings are involved in illegal activity, defining them as “illegal gangs” and attempting

to suppress them through mass criminalization is discriminatory and harmful.

Almost every person targeted by these initiatives has been Black or Latinx. This kind of law enforcement relies on the same logic that has driven much of the enormous increase in incarceration over the last 40 years. It is also linked to pathologization of gangs under former mayor Rudy Giuliani at a time when some gangs, namely the Latin Kings, were becoming increasingly politically influential and joining protests against police brutality. The Kings would become the targets of one of the most massive police operations since the era of prohibition.

New York City is making a dangerous and counterproductive mistake in using “gang suppression” techniques to manage the problems of youth violence. Gang suppression policies wrongly assume that deterrence and incapacitation are the only ways to reduce violence. Cities like Oakland, Los Angeles, and Chicago have spent decades trying to “suppress” gangs through intensive surveillance, harassment, and criminalization. These efforts, however, have done nothing to reduce the presence of gangs in these cities. In fact, some research shows that these tactics actually enhance young people’s identification with gang life, and makes these gangs more violent. <sup>4</sup>

When specialized gang units are created they have a tendency to become insulated from oversight from within their departments and from the public. Historically, gang suppression units have been notoriously corrupt and brutal. The LAPD’s CRASH Unit, for example, was responsible for widespread human and civil rights abuses and officers in the unit were later found to be dealing drugs, using excessive force, and falsifying arrests. <sup>5</sup>

During the 1960’s and 70s, the gang intelligence unit of the Chicago Police Department was directly involved in infiltrating and disrupting the Black Panther Party. They shared information with the FBI’s COINTEL Program and coordinated with the State’s Attorney Office that orchestrated the assassination of Black Panther leader Fred Hampton. <sup>6</sup>

More recently, officers in Chicago’s gang unit were involved in torturing suspects to extract confessions and faking evidence. <sup>7</sup> And just last year an FBI investigation found members of the Area Central gang team were involved in robbing drug dealers. <sup>8</sup>

In Portland, Oregon the local police disbanded their Gang Enforcement Team after an outside review by the Portland City Auditor showed that their proactive enforcement efforts had no positive effect on crime rates, utilized high numbers of improper pretextual traffic stops, and were racially skewed. <sup>9</sup>

The NYPD’s own Street Crime Unit, that dealt with “gang crime” at the time, had to be shut down after it was learned that their “We Own the Night” motto reflected their involvement in abuse of force incidents and the killing of unarmed immigrant Amadou Diallo in 1999. The expansion of the size and scope of the New York City’s gang units present new risks of corruption and abuse that have been largely ignored by policymakers.

Historically, New York City avoided some of the more severe gang suppression tactics in other cities. In the 1950s and 60s, the City’s Youth Board deployed large numbers of street workers to try to connect with young

people involved in gangs to try to encourage them to reduce violent conflicts and steer them towards education and employment.<sup>10</sup> By the 1970s, the city established a “Roundtable of Youth” under Mayor Lindsay that met regularly at Gracie Mansion to express youth concerns and attempt to integrate street involved youth into productive problem solving discussions. <sup>11</sup>

As recently as 2008, the Public Advocate’s Office recommended that the City “shift resources to alternatives to detention programs... encourage youth programming that meets the specific needs of the community it serves through the Request for Proposals (RFP) process” as well as involving young people directly in anti-violence initiatives.<sup>12</sup> By avoiding strategies that relied primarily on criminalization and avoiding the labeling of youth as gang members, New York did not develop the kind of multi-generational gang violence seen in LA and Chicago.

This report does not attempt to define what a “gang” is or isn’t. Gangs are not legally defined in New York state either. This report, produced in collaboration with legal and community groups, seeks to document and provide a primer of what is known about New York City’s gang policing infrastructure, including its gang database. Through surveys of defense attorneys and public residents, it highlights the voices of those who see how gang allegations impact people in courtrooms and in their communities.

This report is not intended to be an exhaustive audit of gang policing tactics, which have been developed in secrecy by police. It is intended to be a starting point to encourage more research, transparency and advocacy.

<sup>1</sup> Associated Press, “NYPD Plans to Double Size of Gang Unit.” USA Today. October 10, 2012. <https://www.usatoday.com/story/news/nation/2012/10/02/nypd-gangs-social-media/1607799/>

<sup>2</sup> K. Babe Howell, “Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing.” 5 Univ. Denver Crim. Law Rev. 1. 2015. and Joseph Goldstein & J. David Goodman, Frisking Tactic Yields to Focus on Youth Gangs, New York Times. Sept. 18, 2013, at A1. <https://www.nytimes.com/2013/09/19/nyregion/frisking-tactic-yields-to-a-focus-on-youth-gangs.html>.

<sup>3</sup> Howell, “Gang Policing” and Stephon Johnson, Stop-and-Frisk Makes Way for Operation Crew Cut, Amsterdam News. Sept. 26, 2013, <http://amsterdamnews.com/news/2013/sep/26/stop-and-frisk-makes-way-operation-crew-cut/>.

<sup>4</sup> David C. Brotherton, Youth Street Gangs. New York: Routledge. 2015. Malcolm W. Klein, Gang Cop. New York: AltaMira Press. 2004. Judith Green and Kevin Pranis, “Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies.” Justice Policy Institute. 2007.

<sup>5</sup> Joe Domanick, Blue: The LAPD and the Battle to Redeem American Policing. New York: Simon and Schuster. 2015. Max Felker-Kantor, Policing Los Angeles. Chapel Hill, UNC Press. 2019.

<sup>6</sup> Simon Balto, Occupied Territory: Policing Black Chicago from Red Summer to Black Power. Chapel Hill, UNC Press. 2019 p.201-204.

<sup>7</sup> Spencer Ackerman and Zach Stafford, “Chicago Police Detained Thousands of Black Americans at Interrogation Facility. The Guardian. Aug 5, 2015. <https://www.theguardian.com/us-news/2015/aug/05/homan-square-chicago-thousands-detained>

<sup>8</sup> Jason Meisner et al, “Chicago Cops Stripped of Powers as FBI probes Ripoffs of Drug Dealers.” The Chicago Tribune. Feb 1, 2018. <https://www.chicagotribune.com/news/breaking/ct-met-chicago-cops-stripped-fbi-sting-20180131-story.html>.

<sup>9</sup> Portland City Auditor, “Gang Enforcement Patrol.” Portland City Auditor, Audit Services Division. 2017. <https://www.portlandoregon.gov/auditservices/article/677598>

<sup>10</sup> Judith Green and Kevin Pranis, “Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies.” Justice Policy Institute. 2007.

<sup>11</sup> David C. Brotherton, “Education in the Reform of Street Organizations in New York,” in Louis Kontos et al eds., Gangs and Society: Alternative Perspectives. New York: Columbia University Press, 2003 David C. Brotherton, Youth Street Gangs. New York: Routledge. 2015.

<sup>12</sup> Betsy Gottbaum. “Old Problem, New Eyes: Youth Insights on Gangs in New York City.” Office of the Public Advocate. 2008. <http://www.nyc.gov/html/records/pdf/govpub/moved/pubadvocate/gangs-recs-comboreportfinal.pdf>

## GANG RAIDS

### West Harlem

In 2014, the NYPD, in collaboration with the Manhattan District Attorney's Office, launched a massive gang raid in West Harlem. Hundreds of armed police officers swarmed the Manhattanville and Grant Houses, as well as surrounding buildings, in a coordinated pre-dawn operation. The West Harlem sweep was the largest gang takedown in New York City's history at the time and led to **two indictments of 103 mostly young Black and Latinx individuals**.<sup>13</sup>

Local media outlets appear to have been notified ahead of the raid so as to be prepared for footage of police entering the developments and leaving with handcuffed suspects. The allegation that those arrested were gang members were taken as virtual fact by tabloid and television reporters.

After the raid, several parents of people arrested held a protest outside the Harlem State Office Building. Some said that police pointed guns at them, their children and senior citizens living in the buildings. One mother described her son's arrest:

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*"They came to my house, raided my house and then they assaulted my son. They kicked him in the scrotum – when he was handcuffed. And he's already sick. Just came out the hospital, they raided my house the next day on June 4th and they kicked him in the scrotum when he was down."*<sup>14</sup>

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Taylorn "Bam" Murphy Jr. was one of those indicted. Murphy's sister, Tayshana "Chicken" Murphy, was killed

in a feud between the development. Manhattan District Attorney Cyrus Vance made the connection between Chicken's death and the raid.<sup>15</sup> In interviews for this report, however, Tayshana's father, Taylorn Murphy Sr., criticized the takedowns:

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*"So I think the narrative they were trying to spin was that we did these raids because these two individuals got killed. And you know my daughter was one of the individuals that got killed. And I found that to be very troubling because you know you're trying to pin a whole neighborhood against me and my family. Saying that you're the reason for 400 police officers coming in to our neighborhood and kidnapping individuals or arresting individuals or detaining individuals and I had to immediately speak out about that. I had to immediately say 'hey listen, the two individuals that killed my daughter were already arrested.' You can't be vilifying a whole neighborhood saying they had something to do with my daughter's death because that's not true."*

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Mr. Murphy also suggested that the presence of Columbia University – and its expansion via its multi-million dollar Jerome L. Greene Science Center – contributed to the gang takedowns. Columbia's new campus was located next to Manhattanville as a feud between developments grew.<sup>16</sup> The inference by Mr. Murphy and others who spoke out at rallies was that community issues were swept away in the interest of the University and at the expense of residents.

Mr. Murphy also pointed out that police, in the years before the raid, actually allowed violence to fester, which was a theme researchers heard in other spaces. During a 2017 forum in West Harlem, one young man from the Grant Houses said that when in custody of police officers, he was purposely dropped off in a rival neighborhood. Earlier this year, Brooklyn cops reportedly blared antagonizing "diss" music from their car to tease gang members in a housing project.<sup>17</sup> Mr. Murphy suggested that police could have prevented his daughter's death, but didn't:

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*"They were looking and watching what these young people were doing. They were allowing them to hurt one another. I know that for a fact because 15 minutes before my daughter was killed, we had a VIPER room officer in the VIPER room looking at these cameras and he watched the young man come out of a totally different building across the street with a firearm, menace a group of other individuals and there was no calling, no intervention."*

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### North Bronx

On April 27th, 2016, the NYPD and several federal law enforcement agencies executed another large gang takedown operation, this time in the Bronx. The raid, the result of **two indictments including 120 defendants** surpassed West Harlem to become the biggest gang raid in New York City history. Emails obtained by a journalist showed Immigration and Customs Enforcement's (ICE) Homeland Security Investigations unit internally discuss the media coverage they expected.<sup>18</sup>

The effect on the ground was, as some residents have described it, like "they were arresting [Osama]

bin Laden." Helicopters circled over the Eastchester Gardens housing development. A Homeland Security armored vehicle was driven into the middle of the development's courtyard. A 21-year old man, who mistakenly thought he was a target of the raid, ran from police, climbed out of a window and fell to his death.<sup>19</sup>

The sweep eventually came to be described as the case of the "Bronx 120" by activists and residents, referring to the 120 people accused. A 2019 report from the CUNY School of Law showed that two thirds of those indicted weren't convicted of violence, a third were convicted of Marijuana-related crimes and about half of those indicted weren't even alleged to be gang members by prosecutors themselves.<sup>20</sup>

Instead of local prosecutors, the United States Attorney for the Southern District of New York partnered with the NYPD to bring RICO conspiracy charges. Being charged under the 1970 RICO Act, or the Racketeer Influenced and Corrupt Organizations Act, presented significant challenges for the defendants, including procedural advantages, being retried for past offenses (for which some had already served time) and the prospect of being judged by a federal Southern District jury – which can be a higher-earning, whiter and more police-friendly jury pool than a Bronx jury.

The Bronx 120 takedown became the focus of subsequent stories and films warning of the dangers of police gang labeling and federal RICO laws. Kraig Lewis, the subject of a film, "Trouble Finds You," was arrested in Connecticut the morning of the Bronx raid as he lay in bed with his young son. Lewis was pursuing his MBA degree but instead spent the next 22 months in federal custody after he was initially threatened with capital punishment and then offered lengthy plea deals for crimes he says he didn't commit.

<sup>13</sup> J. David Goodman. "Dozens of Gang Suspects Held in Raids in Manhattan." New York Times. June 4, 2014. <https://www.nytimes.com/2014/06/05/nyregion/dozens-of-suspected-gang-members-arrested-in-raid-of-2-harlem-housing-projects.html>

<sup>14</sup> Josmar Trujillo. "Harlem Mom Speaks Out Against NYPD, Daily News After Gang Raids." Youtube. June 14, 2014. <https://www.youtube.com/watch?v=uyi3tKJthm8>

<sup>15</sup> Christina Santucci. "Vance says gang bust tied to 'Chicken' Murphy slay." QNS. June 14, 2014.

<sup>16</sup> Sarah Hayley Barrett. "After Years of Opposition, Columbia University Comes to Manhattanville." WNYC. October 24, 2016. <https://www.wnyc.org/story/columbia-university-begins-move-manhattanville-campus/>

<sup>17</sup> Wes Parnell et al. "Brooklyn Residents Upset at Two NYPD Cops for Antagonizing Gang Members with Controversial Rap Song Blaring from Their Squad Car." Daily News. February 20, 2019. <http://www.nydailynews.com/new-york/brooklyn/ny-metro-folk-nypd-rap-gang-20190220-story.html>

<sup>18</sup> <https://www.documentcloud.org/documents/3475709-ICE-Officials-Discussing-Bronx-Gang-Raid.html#document/p3>

<sup>19</sup> Chauncey Alcorn et al. "Robbery suspect falls to his death while running from cops during Bronx gang raids." Daily News. April 27, 2016.

<sup>20</sup> Babe Howell and Priscilla Bustamante. "Report on the Bronx 120 Mass 'Gang Prosecution.'" April 2019. [www.bronx120.report](http://www.bronx120.report).

## GANG RAIDS ANALYSIS

Under Mayor Bill de Blasio, the NYPD, along with local and federal prosecutors, launched increasingly larger gang raids based primarily in public housing developments. While difficult to quantify, police officials have testified that in a **two and a half year span over a thousand people were arrested as part of gang investigations.**

Gang raids themselves are violent, dangerous and traumatic experiences for all who experience them. Police utilize assault rifles, battering rams, flash grenades and helicopters. Those affected include neighbors, family members – who have to quickly prepare for debilitating legal battles that can take months, if not years – and the targets themselves. Young children and adolescents, oftentimes the siblings, sons or daughters of those arrested, are almost certainly emotionally damaged by the experience of a police operation. Some can be misidentified as targets, handcuffed and held at gunpoint.

One of the most harrowing and disturbing stories told by West Harlem residents was that of a family whose house was raided and doors knocked off the hinges. One of the children, a sibling of someone arrested, watched as family members argued with officers only to have one officer state that they would be back for him – the younger sibling – in a few years.

The secrecy in the way that gang raids are organized (Who spearheads a takedown – police or prosecutors? What information is shared, including with federal agencies? What personnel, equipment and intelligence are used?), coupled with the state violence that is inflicted, is troubling, to say the least. The tactics are wholly unnecessary and seem to only serve the purpose of a military-like ‘shock and awe’ campaign against predominantly Black communities.

<sup>21</sup> K. Babe Howell, “Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing.” 5 Univ. Denver Crim. Law Rev. 1. 2015.

## NYPD GANG DATABASE

The NYPD admits to categorizing local “crews” – smaller, more local and less formal groupings – alongside gangs within its database. Like gangs, “crews” have no consensus definition. Therefore, the NYPD gang database can be more accurately described as a database of people that police believe to be grouped together. **There is no requirement of a criminal conviction, much less a violent conviction, to being added to the database.**

The NYPD began using its database, or what it calls its **Criminal Group Database**, in its current form in 2014. The size of the database is a source of debate – estimates have put the database over 40,000 while police claim it’s around 17,000 – and information has been guarded by the police department. Nonetheless, thanks for freedom of information requests, some data exists.

### Gang Database Figures

Prior to 2014, CUNY School of Law professor Babe Howell received data from the NYPD indicating that over 20,000 people were added into the NYPD’s gang database between August of 2003 and August of 2013, **99% of whom were non-white.** The racial breakdown of NYPD gang database then, about **90% Black and Hispanic**, mirrored the racial breakdown of people who’d been stopped and frisked by police during that same span. Alarming, **30% of those in the database were children** when added.

New figures from March of 2018 acquired by Howell indicated that over **17,000 people were added to the database from December 2013 through February 2018**, mostly under Mayor Bill de Blasio. The rate at which people into the database under de Blasio was 70% higher than that of the previous administration. Of those added, **over 98% were identified as either Black or Hispanic** – an even more racially disparate scenario than from the previous years.

## HOW IS GANG AFFILIATION DETERMINED BY POLICE?

While almost no one outside of the police department knows who, by name, is on the database, we do know some of the criteria that the police say they use for database inclusion:

- An individual will be entered if he/she admits to membership during debriefing**  
OR
- Through the course of an investigation an individual is reasonably believed to belong to a gang and is identified as such by two independent sources. (Ex. Pct. Personnel, Intel, School Safety, Dept. of Correction, or Outside Agency)**  
OR
- Meets any two below mentioned criteria:**
  - Known gang location
  - Scars/Tattoos Associated with gangs
  - Gang related documents
  - Colors Associated with gangs
  - Association with known gang members
  - Hand signs associated with gangs

The form is titled "I.D.S. Gang Entry Sheet" and contains various fields for reporting gang-related information. It includes sections for "Criteria" with checkboxes for "Must Check A Box" and "IDS Check" (Positive/Negative). There are also fields for "Arrest" details, "Narrative" (with a note to include details of arrest if a crime victim), and "For Intelligence Division Use Only" with fields for "Entered into IDS By" and "Reviewed by Intelligence Division Supervisor".

## Self admission

While admitting to being in a gang to a law enforcement official can be a surefire way of being designated, there are questions with this criteria: is there a process for corroborating what police say was admitted to them? Can or should an individual make an admission without an attorney present? Since “debriefings” – which we understand to be informal interrogations – don’t necessarily occur during arrests, are Miranda rights read and are people allowed to contact their attorneys or, if a minor, their parents?

There is also the question of the validity of admissions, particularly for young people. Bragging and overstating one’s position in a gang, the legitimacy of a gang (i.e. a group of friends that calls themselves a ‘gang’) or claiming that one’s crew of friends is tough or rich can be based less on reality and more on a fictional projection for those who seek value in street culture. What safeguards are in place to ensure self-admission statements are not coerced or fabricated, like false confessions?

Recently, there appears to have been a dangerous expansion of the self-admission criteria: During testimony to the New York City Council on June 13th 2018, NYPD Chief of Detectives, Dermot Shea, added **“social media post admitting to membership in a gang”** to the criteria.

Police interpretation, or perhaps willful misinterpretation, of gang admission on social media can include emojis, hashtags, or other forms of communication. There is also the question of how police can authenticate who is posting or operating a social media account. Making matters worse, the use of social media posts as a way to authenticate gang membership significantly expands an already questionable process by turning the internet into a virtual police precinct.

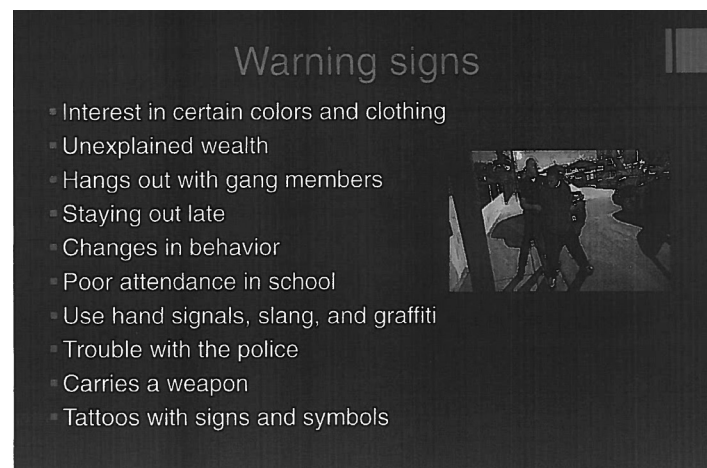
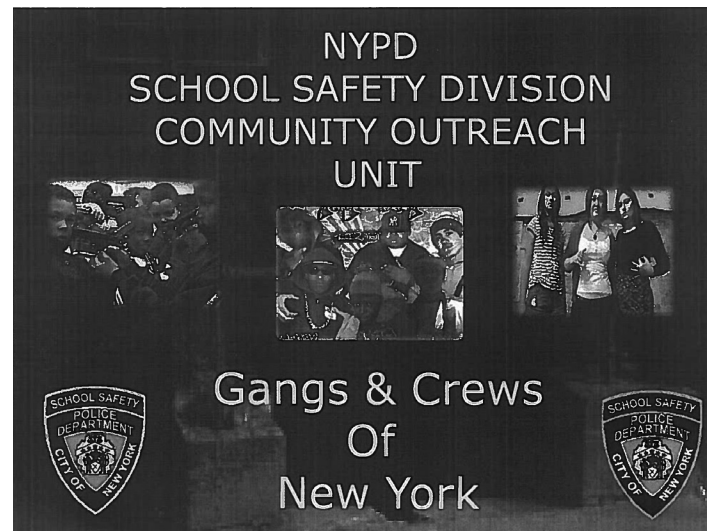
Self-admission can be influenced by the disproportionate power imbalance between an individual, especially a minor, and a police officer. Gang, crew and urban cultures

are also susceptible to racial prejudices by police as well as braggadocious exaggerations by those targeted.

### Independent sources

“Independent sources,” like self-admission, can lead to inclusion on the gang database. However, “independent sources” are not independent. Some listed examples, included **“Pct. Personnel, Intel, School Safety, Dept. of Correction, or Outside Agency.”** However, precinct personnel (Pct. Personnel), the NYPD Intelligence Division (Intel) and School Safety Division are all part of the police department.

As part of other Freedom of Information requests made by the Legal Aid Society, materials that appear to be



used in training **School Safety** agents to identify gang-involved youth, show troubling parameters: “warning signs” to look out for include “unexplained wealth” (prejudicious socio economic assumptions), “trouble with police” (ill-defined and potential proxy for race) and “changes in behavior.”

The **Department of Corrections** (DOC) has its own internal gang tracking system, the Gang Intelligence Unit (GIU). Because DOC oversees a confined population that often has to associate with gangs and others for safety, gang designations can be more overreaching – and follow individuals after they leave jail.

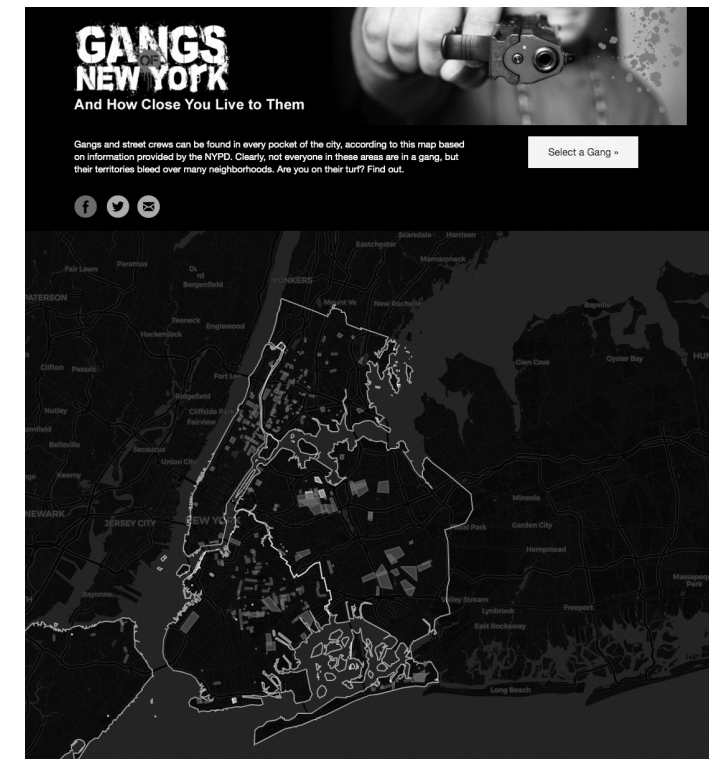
The final corroborating source is the superfluous **“outside agency.”** Do these include state-level or federal law enforcement agencies, some which maintain national databases of their own? Does mutual information sharing between the NYPD and these agencies readily occur? Chief Shea testified in 2017 that the NYPD gang database is not shared outside the NYPD but acknowledged that gang investigations are done in collaboration with federal agencies, casting doubt on those claims.

Another potential source for gang labeling are **Neighborhood Coordination Officers** (NCOs) from the “neighborhood policing” efforts that have expanded in recent years. After a high profile killing of a teenager in the Bronx by alleged gang members, it was local NCOs that led public meetings encouraging community members to watch out for gang activity. According to the NYPD patrol guide, NCO’s have access to schools and watch for “problematic conditions, violent crime, and gang/crew activity.”

### Other criteria (must meet two)

The third pathway into the gang database lays out six options, two which need to be included. **“Known gang location”** and **“associate with known gang members,”**

are likely to be affected by housing segregation and offer considerable overlap in public housing developments, where families share common space and build friendships from childhood. A 2015 New York Daily News gang map<sup>22</sup> published using data from NYPD’s Juvenile Justice Division provides a glimpse “known gang locations,” according to the department:



Credit: New York Daily News

Since most of the areas marked as gang territories by the NYPD are areas with higher concentrations of Black and Latinx populations, a “known gang location” (fulfilling half of the criteria towards gang designation) can serve as a proxy for race. So-called associations might mean shaking hands, talking to or being connected on social media. And, as the city has expanded surveillance of public housing, adding over 4,000 cameras in NYCHA since 2014, public housing is further magnified.<sup>23</sup>

<sup>22</sup> New York Daily News. “Gangs of New York and How Close You Live to Them.” New York Daily News. 2015. <http://interactive.nydailynews.com/2015/12/gangs-of-new-york-city-interactive-map/>  
<sup>23</sup> New York City. “De Blasio Administration Announces Completion of Camera Installation at 22 NYCHA Developments.” New York City. June 7, 2017. <https://www1.nyc.gov/office-of-the-mayor/news/396-17/de-blasio-administration-completion-camera-installation-22-nycha-developments>  
<sup>24</sup> Derek Hawkins. “Bad news for the Juggalos: The FBI’s gang label could be here to stay.” Washington Post. December 19, 2017. <https://www.washingtonpost.com/news/morning-mix/wp/2017/12/19/bad-news-for-the-juggalos-the-fbis-gang-label-could-be-here-to-stay/?noredirect=on>

Other options for fulfilling the third criteria include **“scars/tattoos associated with gangs”** and **“colors associated with gangs.”** While people can age out of gang involvement, few can remove tattoos, making them problematic signifiers of gang activity. In other states, federal law enforcement use of tattoos in making gang designations have been the subject of lawsuits.<sup>24</sup>

### NYPD Testimony at City Council Hearing, June 13th 2018

*“Criminal groups that operate on our streets are drivers of a significant portion of violent crime in the city, and some are prime peddlers of narcotics which drive the subsequent increase in opiate overdoses plaguing our city.*

*While New York City is the safest big city in the nation. In some cases, criminal groups hold pockets of our city hostage, inhibiting mothers from letting their children play outside, or preventing the elderly from taking walks in the neighborhoods.”*

**–Dermot Shea, NYPD Chief of Detectives**

At a 2018 City Council hearing, top NYPD officials invoked the language of mass incarceration, even tying gangs to the opiate epidemic, as they provided insight into how police label and catalogue gang members:

Chief Shea explained that one **Field Intelligence Officer** (FIO) is typically assigned to every NYPD command, accounting for about 100 FIO’s across the city. FIO’s are empowered to make “formal recommendation required in a written narrative in

supporting documentation that justify each individual's inclusion. **Gang Squad** officers from elite units (i.e. Manhattan North Gang Squad, Queens Gang Squad, etc), who have final say on gang designation, do not report to precincts and operate outside of traditional structures. The **Social Media Analysis and Research Team** similarly works under a shroud of relative secrecy and can make recommendations for inclusion."

During the testimony, Chief Shea also elaborated on other "independent sources" the department may use to designate a gang member, suggesting a long list:

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*"It could be a confidential informant. It could be the member's parent, which happens. It could be a teacher. It could be people that live on the block and could be a crime victim if we can substantiate it. There's many different examples."*

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Shea also described "off ramps" for removal: a new review every three years and on an individual's 23rd and 28th birthdays, simply no longer being deemed a gang member, "no police contact or arrest for 3 years" (meaning a single stop or arrest could keep someone in the database) and death. The NYPD claims that thousands have been removed from the database.

## GANG DATABASE ANALYSIS

The NYPD has claimed that people on the gang database aren't chosen for frivolous reasons, have extensive criminal histories and many arrests. They don't say whether those arrests resulted in convictions or are indicative of harassment precisely because of their gang designation.

And with the unilateral power to designate people as gang members, the police department also has the power to designate some crimes as gang-related or gang-motivated, allowing them to potentially control gang crime statistics.

On the other hand, the police department has said that the white nationalist group Proud Boys, who describe themselves as a gang, are not in the database and refuse to acknowledge whether traditional Mafia organizations are included. The NYPD doesn't appear to differentiate between a local "crew" of mostly young men of color from the Mafia when they work to bring conspiracy charges devised precisely for those traditional organized crime syndicates.

Investigations into gang databases elsewhere have uncovered wildly inaccurate information, racial bias and abusive and illegal practices:

- **A recent report by the Chicago Office of the Inspector General found that the Chicago Police Department's database was filled with inaccuracies, was shared with immigration officials, and "potentially undermines public confidence in the Department's legitimacy and effectiveness in the service of its public safety mission."**<sup>25</sup>
- **An audit of the Cal Gang database by the California State Auditor found wild inaccuracies in the database including the presence of infant children and raised concerns regarding fundamental privacy protections.**<sup>26</sup>
- **A review of the UK's Gangs Matrix system by Amnesty International found similar privacy issues based on evidence that data was shared with other**

**government agencies affecting people's access to basic government services and employment. Like the NYPD's gang database, the majority of those in the UK's Gangs Matrix were people of color with little or no criminal history.**<sup>27</sup>

- **In Portland, OR, police decided to end the use of their database in 2017 rather than reveal its inner workings when requested to do so by local journalists.**<sup>28</sup>

Gang policing personnel are also a concern. Studies show gang unit cops exhibit "extreme bias," regardless of bias training [Sim, Correll et al, 2013] and a New York Times article says police misconduct data show NYPD gang cops have been "sued for misconduct more frequently than most patrol officers."<sup>29</sup> A recent search of eBay, the online vending platform, shows commemorative pins and coins from NYPD gang units adorned with images of skeletons, grim reapers and machine guns – showcasing a disturbing mentality.

The NYPD, however, says its database is a part of its "**precision policing**" efforts that allow them to narrowly target those most likely to be involved in serious and on-going criminal activity. Instead, the constant surveillance, inclusion in conspiracy cases, enhanced criminal penalties and other consequences that relate to the database outline a strategy of racialized suppression that undermines safety for the communities that police claim they are working to serve.

## INVENTING GANGS

While the police department has offered limited testimony on the process of entering an individual into the gang database, little is known about how police validate what is or isn't a gang. It is hard to tell what gangs are real, imagined or manufactured partly because there is no way to challenge a gang's existence – raising the question of whether police could invent a gang.

### Oww Oww

The "Oww Oww Gang" was classified as an inactive Brooklyn gang by the NYPD Intelligence Division in 2015. However, residents of Brooklyn's Gowanus Houses, where the gang is said to be based, say that the "gang" doesn't exist.<sup>30</sup> "Oww Oww" was the name of an amateur hip-hop song and video popular in the Gowanus and Wyckoff Houses.<sup>31</sup>

Ronnie Williams was one of the young men from Gowanus that was convicted and alleged to be in the gang. His mother explained how that gang label was fixed onto her son:

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*"As far as I remember, as soon as it started happening they tried to paint him as a gang member. They started saying outwardly [inaudible] referring to him as a "gang member". When he would hang out with his close friends at the time Dante and one of his other really close friends named Nunu, and he was a rapper... So he [Nunu] wrote*

<sup>25</sup> Office of the Inspector General. "Review of the Chicago Police Department's 'Gang Database,'" City of Chicago Office of Inspector General. April 2019. <https://www.documentcloud.org/documents/5816977-OIG-CPD-Gang-Database-Review.html>.

<sup>26</sup> California State Auditor. "The CalGang Criminal Intelligence System," California State Auditor. August 2016. <http://www.voiceofsandiego.org/wp-content/uploads/2016/08/CalGangs-audit.pdf>

<sup>27</sup> Amnesty International. "Met Police Using 'Racially Discriminatory' Gangs Matrix Database," Amnesty International. May 9, 2018. <https://www.amnesty.org.uk/press-releases/met-police-using-racially-discriminatory-gangs-matrix-database>

<sup>28</sup> Carimah Townes. "Portland is Saying Goodbye to its Controversial Gang Database." The Appeal September 12, 2017. <https://theappeal.org/portland-is-saying-goodbye-to-its-controversial-gang-database-e88e6c05262c/>

<sup>29</sup> Ali Winston. "Looking for Details on Rogue N.Y. Police Officers? This Database Might Help." New York Times. March 6, 2019. <https://www.nytimes.com/2019/03/06/nyregion/nypd-capstat-legal-aid-society.html>

<sup>30</sup> Josmar Trujillo. "Brooklyn's Wrongful Convictions Persist With 'Gang' Cases." Huffington Post. February 17, 2018. [https://www.huffpost.com/entry/brooklyns-wrongful-convictions-persist-with-gang\\_b\\_59610852e4b085e766b5131d?guccounter=1](https://www.huffpost.com/entry/brooklyns-wrongful-convictions-persist-with-gang_b_59610852e4b085e766b5131d?guccounter=1)

<sup>31</sup> Ill Flo. "nu money - nu nu - oww oww official video" YouTube. July 5, 2011. <https://www.youtube.com/watch?v=1rHUGf1T3M>



*the song about Gowanus and called it Oww Oww. So they [police] used that to say, like, that was an anthem for their gang.”*

Williams’ sister disputed her brother being in a gang as well as “Oww Oww” being an actual gang:

*“That song became really popular in the community and people would walk by each other and say Oww Oww just because it was Gowanus’ song. But they took that and said that all of those guys who would rep the song, that was a gang. And the name of the gang was Oww Oww... But that would only come from people who weren’t from Gowanus.”*

Music, Hip-Hop in particular, has been used by law enforcement as evidence and markers of gang violence. Rap lyrics have even been used as evidence. However, in the street and Hip-Hop culture, attaching the word ‘gang’ to a group of people or even a song is common but doesn’t signify an organized criminal enterprise. The prevalence of young people posting about or framing community relationships as a “gang” isn’t new, can easily be misconstrued, and shouldn’t be the impetus for the classification of a gang or crew by law enforcement.<sup>32</sup>

### Chico Gang

In February of 2019, a dozen young men in East Harlem were arrested and charged with gang conspiracy, among other allegations, and accused of being members

of the “Chico Gang.” According to the NYPD and Manhattan District Attorney Cyrus Vance, the “gang” was based in the Wagner Houses and formed after the shooting death of Juwan “Chico” Tavarez in 2016.<sup>33</sup>

However, several residents of the Wagner Houses said they weren’t aware of such a gang. Some were familiar with the sayings “Chico Gang” or “Chico World” that became popular in Wagner amongst friends and classmates of Tavarez. There is also no public record of the gang in media articles before the arrest or even in the most recently available NYPD gang map.

While residents reported that classmates wore lanyards with large pictures of Juwan after his death, this could have been an indicator, to police, of involvement in the dubious “Chico Gang.” In one Manhattan courtroom, NYPD detectives on a different case testified that they looked at people wearing similar commemorative pictures “more closely” when looking for retaliatory gang violence.

In a statement from Vance’s Office, authorities referred to the defendants discussing criminal activity on social media as part of the case against them.<sup>34</sup> However, the mining of social media posts, an arena where adolescents and young adults may not understand the implications of what they post and where law enforcement is free to infer whatever meaning helps a criminal case, is a recipe for abuse.

A social media search on any given day can find hundreds, if not thousands of posts referencing a gang, most of which are clearly not related to organized crime. In New York City, police even use emojis to decipher gang identities and threats of gang violence.<sup>35</sup>

In fact, while there is a growing amount of research dedicated to deciphering how social media relates to gang violence, little, if any, has sought to separate public expressions of ‘gangs’ to actual violence.

Amongst youth, words are fluid and meant to be accessible to many. Police can, however, wittingly or unwittingly take dangerous liberties by ascribing criminality or violence to these expressions. One recent report found that police “massively overestimated the direct linkage between what someone does online and what someone does offline.”<sup>36</sup>

Did the Chico Gang ever exist? What is clear in interviews with residents of Wagner Houses is that the community was hurt by the loss of Juwan Tavarez. Notably, some of the charges against those alleged to be in the Chico Gang went back as far as 2015 – before Chico was killed and the gang could have existed.

## CONSEQUENCES OF BEING GANG LABELED

### Harassment & hyper-policing

One of the primary consequences of being labeled a member of a gang by the NYPD, whether formally in the gang database or even informally amongst gang unit and precinct officers, is heightened **harassment and hyper-policing**. Police interactions, despite an overall decrease in reported stops in New York City in recent years, continue to have a disproportionate impact on communities of color – and this could be more pronounced for alleged gang members.

Street-level contact with police has been a constant theme amongst community residents who were

interviewed for this report, specifically mothers and grandmothers. In one interview, a 61-year old woman from East Harlem’s Jefferson Houses described prior harassment of her grandson by police officers from the local housing police unit, PSA 5:

*“They start gathering the information of how old you are around 14 or 15. They start stopping you—now they can’t stop you anymore –I don’t know what they gon’ do. But they stop you. “How old are you?” take you to the precinct—your mother gotta come and get you –you know, stuff like that.”*

With more policing and more arrests came deeper forms of harassment. Police officers would search for her grandson in her apartment, she said. He was arrested several times, including once, she alleged, over a robbery simply because he and his friends were in the vicinity of the incident. That arrest would derail his education, preventing him from graduating high school because he was sent to Rikers Island just before his final Regents high school exam, she said. Ironically, in Rikers, he was continuously assaulted because he didn’t belong to a gang.

*“So...they unfairly label us –them–as gang members. You know I told them he’s not a gang member. He hangs out with friends he grew up with. How’s that a gang? You have 5 people sitting right here—what are you? A gang? They know each other. They known each other all their lives.”*

<sup>32</sup> Stephanie Clifford. “Artist or Gang Leader? Rapper’s Trial Begins.” New York Times. May 27, 2014. <https://www.nytimes.com/2014/05/28/nyregion/rappers-federal-racketeering-trial-begins.html>

<sup>33</sup> Noah Remnick. “A 16-Year-Old Boy Killed, and an East Harlem Neighborhood’s Grief.” New York Times. March 28, 2016. <https://www.nytimes.com/2016/03/29/nyregion/juwan-tavarez-16-killed-an-east-harlem-neighborhoods-grief.html>

<sup>34</sup> Manhattan District Attorney. “DA Vance and Police Commissioner O’Neill Announce Indictment of 12 Members of East Harlem ‘Chico Gang’.” Manhattan DA’s Office. February 8, 2019. <https://www.manhattanda.org/da-vance-and-police-commissioner-oneill-announce-indictment-of-12-members-of-east-harlem-chico-gang/>

<sup>35</sup> Sara Dorn. “New York gangs are using emojis as a secret language to plan crimes.” New York Post. August 3, 2019. <https://nypost.com/2019/08/03/new-york-gangs-are-using-emojis-as-a-secret-language-to-plan-crimes/>

<sup>36</sup> Chip Mitchell. “Study: Cops Overstate Effects Of Social Media On Chicago Gang Violence.” WBEZ. May 10, 2019. <https://www.wbez.org/shows/wbez-news/study-cops-overstate-effects-of-social-media-on-chicago-gang-violence/7f3e77f9-ba83-429b-98b2-2df1bd4ade49>

In a 2015 New York Times article, the focus by police on individuals who they deemed gang-involved was described through the story of a young man from the Brownsville section of Brooklyn named Alexander Williams.<sup>37</sup> Mr. Williams had been arrested numerous times and was one of a few hundred individuals that police were now targeting to combat violence, some of whom were now targets of the policing of smaller offenses, like jaywalking.

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*“Their names and faces are distributed to precincts across the city. Their gang affiliations and Instagram postings are studied by officers. They are repeatedly arrested, stopped or given tickets, including violations for minor offenses like jaywalking.”*

*Mr. Williams, in an interview, described a smothering police presence in his life that ‘does not stop.’ Twice, he said, he has been cited for jaywalking. He denied that he was a member of a gang or that he committed the crimes the police have alleged.”*

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Williams and his friends were often arrested but the charges were almost just as often dismissed. This approach is consistent with the NYPD testimony at the City Council that those on the gang database had on average of over 11 arrests, five of which are felonies.

For another Brooklyn resident, hyper-policing preceded a serious gang charge. Ronnie Williams was alleged to be a member of the “Oww oww” gang (see Sidebar: Inventing Gangs). He was convicted and sentenced for what prosecutors said was his role in a shooting. In interviews for this report, however, Williams’ mother, Diana, and sister, Shaniqua, say that he was not a gang member and

was unfairly swept into an indictment by officers from the 76th precinct who had targeted him for years. His sister explained how her brother felt the need to run from police from an early age:

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*“He told me on one Halloween he was probably 14 or 15 he and his friends were out trick or treating and they started throwing eggs at each other [inaudible] and he said that the cops came and he did like the whoop sound as a warning signal to let people know that they were there and they just kept playing and whatnot and eventually they started to walk away because the cops didn’t leave and he said that he looked back and that they were still following him and he just started to run and he said he ran for a long time. They just kept chasing him. Finally he had to stop because he has asthma. He couldn’t breathe. So he just sat in between 2 cars on the curb and he said that the cops came up to him with their guns out telling him to put his hands up for no reason.”*

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That arrest, she says, marked a pattern of unwarranted attention from cops that began to become more personalized. After chasing him on another occasion, cops said “Oh, you’re pretty fast, huh?” While it is not clear if the NYPD tagged Williams a gang member at a young age, their gang database has included hundreds of entries of minors.

As Williams got older, his mother said, his interactions with police become more serious, including once when officers assaulted him in the hallway of their building. She described probing visits from police when Williams was

16 or 17 years old. In one example, she described a visit from police who wanted to see her son because, they said, people claimed that he had guns in the house.

On the day he was arrested for the charges he’d face in 2016, she said, police knocked on her door and she asked to see a warrant, wary of riot gear-clad cops standing in her hallway. One officer insisted on showing her the warrant – inside. When she opened the door to let one officer in to show her the warrant, all the cops stormed in, ransacked the apartment and arrested her son. She never saw the warrant.

Gang labeling by agencies outside of the police department can also escalate relatively routine encounters with police, such as a car stop. Victor Dempsey, community organizer with the Legal Aid Society, left the Bloods gang in 2014 when he was 19 years old after serving time for attempted robbery. In 2017, however, after being pulled over failure to signal, a minor infraction, NYPD officers handcuffed him and put in in their squad car.<sup>38</sup>

From the backseat of the police car, Dempsey says he saw “security risk group” on the police computer next to his old mugshot. Security Risk Groups are gangs tracked throughout the jail system by the Department of Corrections Gang Intelligence Unit (GIU).<sup>39</sup> The NYPD’s access to Dempsey’s DOC gang designation (which suggests his gang status hadn’t changed in 13 years), dramatically altered the encounter.

### **Enhanced bail**

The problems presented by hyper-policing are compounded when community members labeled as “gang” affiliated reach the court system. In New York, accused persons must be brought before a judge for a bail hearing within 24 hours of their arrest. Judges are only permitted to set bail to ensure that a person returns

to court. Historically in New York courts have been permitted to consider an accused person’s “character, reputation, habits and mental condition” when determining how much bail to set.

This provision of the bail law allows prosecutors to take the NYPD’s gang designation and bring it into the courtroom.

When a prosecutor alleges that someone has gang affiliations, it often results in judges setting high bail, far higher than would be necessary to merely ensure a community member’s return to court. Judges frequently assume “gang member” to mean a person is dangerous or regularly engages in criminal activity. It could also suggest willingness to intimidate, tamper with, or harm witnesses, particularly where someone has been harmed as a result of the alleged crime. While judges are not supposed to factor in these considerations under the law, in reality they are very concerned about releasing someone they perceive to be dangerous. As one defense lawyer who took part in a survey for the report explained, just alleging gang affiliation can change the bail decision for people they represent:

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*“The simple allegation that a person is affiliated with a gang, even when it is merely asserted by a prosecutor and even when it is disputed by a defense lawyer, greatly increases the chance that bail will be set and the amount of bail.”*

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Another attorney put it more succinctly, “Judges freak out when they hear it.” While another stated, “it’s extremely harmful and difficult to refute.” One attorney reported asking a judge to lower the bail amount for a seventeen year old because her client’s family could not afford the amount. After calling the prosecutor and defense lawyer to the bench, the judge commented off

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<sup>37</sup> J. David Goodman. “As Shootings Rise in New York, Police Focus on a Small Number of Young Men.” New York Times. July 21, 2015. <https://www.nytimes.com/2015/07/22/nyregion/as-shootings-rise-in-new-york-police-focus-on-a-small-number-of-young-men.html>

<sup>38</sup> The Takeaway. ““All this time went by and I’m still in a database”: Questions Arise Regarding Police Gang Databases.” WNYC. July 10, 2018.

<sup>39</sup> Shelly Feuer Domash. “Working Gangs From Inside Prison.” Police: The Law Enforcement Magazine. May 1, 1999. <https://www.policemag.com/338700/working-gangs-from-inside-prison>

the record in a concerned tone that the previous judge had written “Trinitario” on the court file. The judge denied the request to lower bail.

The NYPD “gang” designation follows people into the criminal legal system, disadvantaging them from the initial bail decision onward. By using a gang affiliation to request high bail, prosecutors ensure that a person is deprived of their liberty pre-trial. Judges and prosecutors know that people subject to the violence of incarceration are more desperate to secure their release through cooperation with an investigation. For example, Afrika, a young woman from Harlem, had bail set in a gang conspiracy case. When supporters from her church community attempted to pay the bail, the judge would not approve the bond.

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*“Their idea was that I was gonna get locked up, I was gonna be facing this bail issue and then because I was gonna be under pressure I would cooperate and the case would be done.”*

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Beginning January 1, 2020 consideration of an accused person’s “character, reputation, habits and mental condition” has been removed from the bail law. Though the new law does not prohibit prosecutors from raising this via an alleged gang affiliation or judges from considering it, defense lawyers have strong arguments that the legislature removed this language precisely because of the discriminatory manner in which it was being used. In reality it is likely that prosecutors will continue to use an NYPD gang designation in bail arguments and judges will continue to be biased by it. With high or no bail, defendants are further pressured to take plea deals, become cooperating witnesses, or both.

### **Indictments, Trials, and Plea Deals**

In a survey for this report, defense attorneys and public defenders reported the influence of gang allegations in courtrooms:

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*“In many cases, an allegation of gang membership is not an element of a charged crime. In bail applications, prosecutors will simply assert that they have information that a person is a gang member without revealing their sources. We are left to fight blindfolded against the gang allegations. Police can also get young people to admit to “gang affiliation” if they know anyone who is in a gang even when they aren’t in gangs themselves.*

*Because many teenagers in the Bronx know SOMEONE in a gang or have some family member in a gang, it’s very easy for police and prosecutors to claim that they are “gang affiliated.” Teens are then treated as guilty by association without the prosecution needing to prove that they have done anything wrong. Young people in poor black and brown communities specifically end up being targeted and harmed by this practice.”*

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Few terms can color a courtroom like the word ‘gang.’ As another defense lawyer put it, “being in a picture with friends from your neighborhood sometimes seems like sufficient [probable cause] for an indictment.” The power of a gang allegation also affects plea offers from prosecutors, according to another defense attorney:

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*“In the Bronx, cases that involve allegations of gang affiliation often go to the same courtroom/same judge -- this courtroom and judge are notoriously pro-prosecution, speedy trial and discovery rights are completely ignored, and clients get bullied into cooperating or taking unfavorable pleas.”*

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Trials present more problems. Indictments are obtained by offering cooperation agreements to individuals who have already been charged with serious violent offenses if they tie other alleged members of the group to various crimes. Defendants are then often brought up on “conspiracy” charges as a way to admit evidence that is excessive, irrelevant, and not from a credible source, in order to inflate sentencing and charges.

As one juror on a gang trial put it, “conspiracy charges were wide enough to drive a bus through,” referring to the expansive definition of what constitutes “conspiracy.” In this context, juries may wind up finding someone guilty without agreeing on what exact crime they are guilty of committing.

In the trial of a 36-year old father from the Bronx, whose family says had long been harassed by cops from the 47th precinct, federal racketeering charges were brought largely because of his relationship with a co-defendant, who was also a childhood friend. Hearsay testimony and old arrests, including some that were dismissed, were presented as evidence. The jury, on the other hand, wasn’t allowed to hear the full misconduct history of one of the detectives whose testimony proved vital to the prosecution. This detective who made the arrest had at least eight federal civil rights lawsuits filed against him, four totaling about \$235,000 and three for undisclosed sums. The jury was only told about one.

This man’s mother believes the local precinct put her son on the gang indictment because of his past complaints and lawsuits against some of these officers. She was also frustrated by testimony from government witnesses:

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*“So they all get to use that RICO conspiracy to tie them into making this a bigger case. But what I’m seeing is that what they want people to do is they use other people who are un-*

*credible... on another case that could be, uh, incarcerated somewhere. So they’re going to use them and they bring them like ‘Hey, do you know these young men? Gimme something on them, work with us.’ They could say whatever they want to say. I mean, they’re in a situation to say, ‘You know what, I’m going to get a sweet deal to get home.’”*

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To juries, accusations of gang membership can be confused with the crime of conspiracy – a major problem that threatens freedom of association. Since conspiracy charges need to prove the element of agreement to commit a crime, prosecutors may try to prove this agreement by emphasizing that by associating, defendants are tacitly “agreeing” to criminal acts. However, association is not a crime, and does not prove an agreement or intention or even gang membership: gang members and non gang members are part of the same communities, neighborhoods, and families.

In practice, prosecutors often succeed in proving that defendants are part of a conspiracy by introducing evidence that should merely prove that they know each other; the jury is shown countless social media posts and messages. Prosecutors intentionally blur the line between conspiracy and association. After presenting posts and private messages, their content is often “translated” either by gang experts (police officers involved in gang policing, not necessarily with any education or background) or by police cooperators and informants.

Posts can contain rap lyrics and quotes, which are then presented to the jury as matter-of-fact statements made by the co-defendants. Additionally, gang experts may say that they understand the slang used by defendants, but there’s no protocol in place to ensure that evidence is interpreted correctly. In one interview for this report, a

mom described how a picture her son posted of himself holding money was presented in court to suggest he was a drug dealer:

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*“They took that and said, oh, he’s a big-time drug dealer. They criminalize him in any photograph that he had. Not knowing the story where that came from that known what that meant to him and to be able to hold his son to say, I have a son, you know, I’m able to support my family, you know, um, how they pose in pictures and whatever to the message is misconstrued in that sense.”*

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Jury members have to endure weeks or months of this. What results is a general atmosphere of criminality, built by prosecutors, that serves to convince juries less of what crime the defendants are accused of and more that they are associated with a criminal world and therefore must be guilty of something.

Individualized justice is not afforded to people who are connected to gangs and to the alleged behaviors of their co-defendants – who are oftentimes friends and peers but in some cases can even be virtual strangers. In this context, along with the pressures of being incarcerated often without bail, many feel compelled to plead out, boosting conviction rates and creating the impression that collective punishment is in fact producing justice.

## Employment Issues

The NYPD claims that it does not share any information about who is in the database with other agencies, employers, or members of the public. However, in one case reported by the Legal Aid Society, a young person who had been hired for a city position and was undergoing training, was fired because they were in the

<sup>40</sup> Alex S. Vitale. *The End of Policing*. Verso, 2017. In “Ch. 10: Political Policing.”

database. In an interview with a young woman indicted in a gang conspiracy case in Harlem, she reported that she was turned down for jobs because of her gang designation even after he returned from prison.

In these cases, it appears that the gang database may have been used as part of a background clearance. This raises substantial questions about how the database is being used within city government. Is this standard practice for city employment? What safeguards are in place to prevent the NYPD from formally or informally sharing information for the database? There is a long history of police agencies unlawfully sharing information from various types of intelligence files with employers, like the so called “red squads” for much of the 20th Century.<sup>40</sup>

## Housing

Gang takedowns in New York City appear to predominantly target public housing and surrounding communities. In addition to the impact of the criminal justice system, public housing residents and their families face an additional challenge: permanent exclusion.

Spurred by the federal Housing Opportunity Extension (“H.O.P.E.”) Act of 1996 – or what is more commonly known as the “One Strike, You’re Out” policy – the New York City Housing Authority (NYCHA) has developed policies to evict public housing residents based on contact with the criminal justice system. During his 1996 State of the Union address, then President Bill Clinton encouraged states to get tough on gangs and drugs through the zero-tolerance approach embodied by HOPE.

Promoted as a policy to improve “safety and security of its residents,” NYCHA uses permanent exclusion is one aspect of these efforts at the local level as it seeks to bar people arrested for certain offenses from residing or even visiting NYCHA property.<sup>41</sup> Exclusion efforts begin

when the agency files a “termination of tenancy” action when a tenant or “someone under the tenant’s control” takes part in “dangerous conduct.”

As local reporting has shown, tenants, sometimes a parent or guardian of a targeted individual, are compelled to exclude family members in order to avoid eviction. As part of the agreement with NYCHA to stave off eviction, (a process in which some residents don’t know they’re entitled to a lawyer), the apartment is subject to random inspections by the agency. If an excluded person is found in the apartment, eviction proceedings can begin.<sup>42</sup> From a 2015 City Limits article:

Some of the main criticisms of NYCHA’s exclusion policies, and the federal strategy more broadly, is that exclusion efforts and perceived levels of “dangerousness” are shaped by arrests, not necessarily convictions, and that less evidence is needed to exclude or evict because proceedings are civil, not criminal.

NYCHA officials, however, have touted the tactic as an “alternative” to eviction, which could put an entire family at risk. During 2017 testimony at a New York City Council hearing, NYCHA officials remarked about “saving” the tenancy of an elderly grandmother whose grandson had been indicted as part of a 2015 federal gang takedown. They apparently saved her by barring her grandson and leaving her at risk of eviction should he ever visit. It also elevated his risk of homelessness.

Eighteen months after the 2014 West Harlem gang raid, NYCHA had already attempted to kick out at least 28 defendants from the case, successfully excluding 17 of them.<sup>43</sup> While the total number of exclusion proceedings as a result of gang enforcement is not known, gang

takedowns can often lead to exclusions because of the seriousness of the charges that accompany them and because most takedowns seem to be centered in public housing. Exclusion followed the mass 2016 gang raid in the Bronx. From *The Intercept*:

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*“After the Eastchester Gardens raid, many families whose sons had been arrested received letters notifying them that NYCHA had initiated termination proceedings against them. Mattison said she had been late on rent, but that housing officials told her she had broken the lease by letting one of her sons and her granddaughter’s father stay at her apartment without declaring it. Because they were now caught up in a federal case, she said they told her, the whole family had to go.*

*A spokesperson for NYCHA told The Intercept that when the agency learns of the arrest of an individual with connections to public housing, it opens a “rigorous and comprehensive investigation.” In the Eastchester Gardens case, officials identified 16 individuals named in the indictment with connections to tenants, leading to two permanent exclusions – an option given to family members to save the tenancy.”<sup>44</sup>*

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Permanent Exclusion came under heightened scrutiny by community organizations and advocacy groups during a 2017 City Council Hearing. Dozens of legal

<sup>41</sup> New York City Housing Authority. “Permanent Exclusion – Frequently Asked Questions.” <https://www1.nyc.gov/site/nycha/residents/permanent-exclusion-faq.page>

<sup>42</sup> Batya Ungar-Sargon. “NYCHA Questioned on Policy of Banning Arrested Residents.” *City Limits*. June 2, 2015. <https://citylimits.org/2015/06/02/nycha-questioned-on-policy-of-banning-arrested-residents/>

<sup>43</sup> Greg B. Smith. “NYCHA’s move to permanently exclude criminal tenants appreciated by residents, but difficult process.” *New York Daily News*. November 8, 2015. <http://www.nydailynews.com/new-york/nycha-moves-permanently-exclude-criminal-tenants-article-1.2427048>

<sup>44</sup> Alice Speri. “In New York Gang Sweeps, Prosecutors Use Conspiracy Laws to Score Easy Convictions.” *The Intercept*. July 12, 2016. <https://theintercept.com/2016/07/12/in-new-york-gang-sweeps-prosecutors-use-conspiracy-laws-to-score-easy-convictions/>

and community groups criticized the city for pushing residents out of public housing amid a housing crisis. The hearing came as a result of a March 2017 report from the Department of Investigations which chastised NYCHA for not being aggressive enough in its exclusion efforts. The report was fiercely opposed by advocates as “misguided and irresponsible.”

The Department of Investigations (DOI), a New York City law enforcement “watchdog” agency, recommended in the report that NYCHA should more aggressively prosecute cases, transfer exclusion powers from NYCHA civilians to law enforcement; and that the NYPD should amend its patrol guide to automatically report off-site arrests (not convictions) and to use its “computerized systems” (perhaps the gang database) to “flag” referrals for exclusion efforts.

DOI, worked closely with the NYPD during a gang raid in Brooklyn’s Sheepshead-Nostrand Houses in January 2018. After the arrests, former DOI head Mark Peters encouraged NYCHA to increase not only exclusion but also eviction efforts against family members who “should have known” about alleged criminal activity. Alarming, DOI also oversees the Office of the NYPD Inspector General, a police oversight agency which contributors to this report have repeatedly called upon to investigate NYPD gang tactics.<sup>46</sup>

The collaboration between DOI and NYPD on gang sweep exclusions raises questions (If DOI, for example, has used the gang database to expedite NYCHA exclusions) of whether independence exists between DOI and the police department.

Exclusion and eviction pressures triggered by dragnet-like gang prosecutions target mostly Black and non-white NYCHA tenants, as grassroot groups from the “Stop The Raids” coalition have pointed out.<sup>47</sup> For people who are in the depths of poverty or coming home from prison

to piece together their lives, public housing represents one of the only affordable options left in an increasingly unaffordable city.

### Deportation risks

In 2017, New York City became a so-called “sanctuary city,” which is a municipality that limits cooperation with federal immigration enforcement agencies as a matter of policy. However, the NYPD’s collaboration on gang takedowns with the Homeland Security Investigations (HSI) unit, a division with Immigration and Customs Enforcement (ICE), the country’s most prominent immigration enforcement agency, may offer a loophole around any sanctuary protections.

While it is not known how many gang takedowns in New York City have led to deportations, the gang label presents serious and unique legal problems for noncitizens. Immigration practitioners report that allegations of gang affiliation based on gang allegations and gang databases are arising in the immigration context when noncitizens apply for immigration benefits, adjustment of status, and as a pretext to initiate removal proceedings.

Almost all defenses to deportation are discretionary, that is, whether in the judge’s opinion relief is merited. Most individuals bear the burden of proof to show eligibility, which is an uphill battle. People are being denied based on gang-related allegations. There is no right to counsel, so these allegations are very difficult to challenge.

Further, anyone who is subject to deportation can be detained. Bond hearings are subject to discretionary detention and the burden of proof is on the immigrant to show the merits of a grant of bond. In this context, it is extremely difficult to show that someone is not a danger, especially when gang allegations are brought that

immediately prejudice the judge and suggest one has engaged in dangerous conduct. Rules of evidence do not apply, so it is difficult to challenge the various HSI, arrest, and other reports.

After a string of murders in Long Island in 2017, then United States Attorney General Jeff Sessions came to New York to tie the panic around MS-13 to President Donald Trump’s immigration enforcement efforts. Clearly, for those dedicated to an even more zealous, cruel and xenophobic immigration policy, the policing and labeling of undocumented and noncitizen community members as gang members serves as an indispensable tool.

### SCHOOL POLICING

One of the avenues for ending up on the gang database is through classification by a School Resource Officer (SRO). SROs work for the NYPD and there are over 5,000 of them in City schools, funded out of the Department of Education budget at a cost of \$750 million annually.<sup>48</sup> SROs are part of the school to prison pipeline and much of the justification for them has been the fear of “gang violence” in schools.

This had led many schools to become fortified camps with the use of metal detectors, heavy presence of officers and the adoption of a variety of “zero tolerance” disciplinary policies that often result in arrest. These arrests target young people of color almost exclusively, mirroring the racial disparities in the gang database.<sup>49</sup>

These SROs receive specific training on how to identify gang members and associates that rely on superficial assessments. The NYPD and Department

of Education recently revised the memorandum of understanding between them regarding the functioning of SROs in schools.<sup>50</sup> While that MOU restricted police powers in important ways, it did not reduce their role in placing young people on the gang database. Additionally, teachers can also be empowered to help make gang allegations.

Further, reports by SRO’s are found in immigrant children’s immigration files and used as a basis for detaining and deporting immigrant students, particularly Latinx students. Moreover, school district codes of conduct use terms behavior, items, paraphernalia, colors and jewelry as indicators of being “gang related.” However, courts across the country, and the United States Supreme Court have repeatedly determined that labeling conduct as “gang-related” is unconstitutionally vague, violating people’s rights to notice of how their behavior and or appearance is being categorized. This vague labelling of “gang” without description in school district codes of conduct allows for wide-latitude of discriminatory enforcement against students, especially students of color.

Defining the disciplinary issues in schools as “gang” issues further justifies harsh practices that drive students out of school and into the criminal justice system. In some cases the mere suggestion of gang involvement as indicated by wearing certain clothing, walking to school with a regular group of friends, or sharing an interest in certain music can bring on intensive surveillance in the school and even inclusion on the gang database – which invites intensive police scrutiny outside of school as well.

<sup>45</sup> Emma Whitford. “NYC Agency uses Brooklyn Gang Raid to Encourage Evictions of Entire Families from Public Housing.” The Appeal. January, 31, 2018. <https://theappeal.org/nyc-agency-uses-brooklyn-gang-raid-to-encourage-evictions-of-entire-families-from-public-housing-46ec51c9362/>

<sup>47</sup> Ashoka Jegroo. “With Nighttime Raids, Police Wage War on Black and Brown Families in New York.” Truthout. March 31, 2017. <https://truthout.org/articles/with-nighttime-raids-police-wage-war-on-black-and-brown-families-in-new-york/>

<sup>48</sup> The Center for Popular Democracy and the Urban Youth Collaborative. “The \$746 Million a Year School-to-Prison Pipeline: The Ineffective, Discriminatory, and Costly Process of Criminalizing New York City Students.” April 2017. <https://populardemocracy.org/sites/default/files/Executive%20Summary.pdf>

<sup>49</sup> NYCLU. “Criminalizing the Classroom.” NYCLU 2007. <https://www.nyclu.org/en/publications/report-criminalizing-classroom-2007>

<sup>50</sup> Alex Zimmerman. “NYC Announces its First Overhaul of How Police Operate Inside Schools Since Mayor Giuliani.” Chalkbeat. June 20, 2019. <https://chalkbeat.org/posts/ny/2019/06/20/nyc-announces-its-first-overhaul-of-how-police-operate-inside-schools-since-mayor-giuliani/>

## FOCUSED DETERRENCE

Since the introduction of the Juvenile Robbery Intervention Program (J-RIP) in 2007, the NYPD has undertaken a variety of “focused deterrence” programs they claim reduce violent crime through the intensive targeting of young people believed to be most at risk of participation in violence. “Focused Deterrence” programs, developed by criminologist David Kennedy and first implemented in Boston in 1996, attempt to stop gun violence or other serious crime through intensive and targeted enforcement combined with support services.

Ideally, this model begins with a community mobilization effort in partnership with local police. The goal is to send a unified message to young people that serious crime will no longer be tolerated. If it occurs, they will use every resource at their disposal (“pulling levers”) to not only apprehend the assailant but to disrupt the street life of young people involved in crime across the board.

The theory is that young people will choose to avoid violence so that they can concentrate on socializing and low-level criminality free of constant police harassment. This is based on research that showed that a great deal of shooting was not drug or robbery related but involved a constant tit for tat of revenge gunfire by rival factions of young people engaged primarily in turf battles. The key is to break that cycle of retribution and gun carrying.

To achieve this, young people believed to be involved in violence are called into meetings with local police and community leaders and threatened with intensive surveillance and enforcement if the gun violence doesn’t stop. These “call ins” are made possible in part because many of these young people are on probation or parole for past offenses.

<sup>51</sup> NYPD. “NYPD Expands Juvenile Crime Reduction Program.” NYPD July 2, 2009. [http://www.nyc.gov/html/nypd/html/pr/pr\\_2009\\_023.shtml](http://www.nyc.gov/html/nypd/html/pr/pr_2009_023.shtml)

<sup>52</sup> J. David Goodman. “Report Finds Juvenile Program Failed to Reduce Robberies, but Police Are Expanding It.” New York Times. January 4, 2016. <https://www.nytimes.com/2016/01/05/nyregion/report-finds-juvenile-program-failed-to-reduce-robberies-but-police-are-expanding-it.html>

In addition to more intensive enforcement efforts, there is usually an effort to develop some targeted social services with the hope that this will help draw some of these young people away from violence and towards education and employment opportunities.

The original J-RIP program, which began in Brownsville in 2007 and expanded to East Harlem in 2009, targeted juvenile robbery offenders who were back in the community.<sup>51</sup> These youths were given a clear message that they were under enhanced police supervision and would face significant consequences if rearrested. They were also offered mentoring and a few support services by police in hopes of steering them in the right direction.

In practice, J-RIP offered little in the way of services. Young people were given a chance to participate in existing programs like the Police Athletic League (PAL) and were regularly visited by uniformed officers in their homes and on the streets. While these officers were supposed to be acting as mentors and monitors, defense lawyers reported that officers sometimes used these visits as a pretext to conduct searches and that they sometimes called attention to program relationships in front of other youth, potentially marking them as informants—a dangerous label in these neighborhoods.

No real services, such as job placement or family counseling were provided, and the officers involved had no special social services training, playing a primarily surveillance and enforcement role.

A November 2014 NYPD evaluation report showed that a decline in robberies in the target area touted by police mirrored city-wide trends and that J-RIP participants were rearrested at the same or higher rates than youth with similar records in the same and nearby neighborhoods without J-RIP.<sup>52</sup> Even though the 2014

report showed there were no crime reductions under J-RIP, the NYPD has moved forward with an expansion of the program in a different guise: Ceasefire.

In early 2015, the NYPD rolled out NYC Ceasefire under the leadership of Susan Herman, Deputy Commissioner for Collaborative Policing. Ceasefire focuses more on gun crimes and adds group “call-in” meetings in which the targeted youth are brought in and lectured to by police and community members about the harmful effects of their violent actions and the potential enhanced consequences of additional violent offenses.

Participants, mostly forced into Ceasefire through parole or probation, are then placed under extensive surveillance regimes and targeted for enhanced punishments if caught re-offending. They are also offered some minimal services, primarily in the form of a centralized referral phone number run by a local non-profit that is there to link young people to already existing programs.

NYC Ceasefire relies on a logic of collective punishment and has been repeatedly cited in press reports as a key anti-gang initiative by the NYPD.<sup>53</sup> While some stories paint a picture of police and sometimes local clergy members performing door to door outreach, defense attorneys have also reported that their clients are receiving letters from the NYPD, alleging they are gang members and threatening them with enhanced surveillance and prosecutions.

After a Ceasefire “call in,” any serious crime in the targeted catchment area will trigger a set of enhanced penalties for any young person arrested in that area, even if they were not part of the call in, or otherwise notified. Defense attorneys have reported showing up to court with

<sup>53</sup> Abigail Kramer. “Ceasefire: The NYPD Zeroes in on Violent Crime.” City & State. May 1, 2015. <https://www.cityandstateny.com/articles/politics/new-york-city/ceasefire-the-nypd-zeroes-in-on-violent-crime.html>

<sup>54</sup> New York City. “Mayor de Blasio and State Courts Announce “Project Fast Track” to Ensure Shooters are Quickly Apprehended and Remain off the Streets.” New York City. January 12, 2016. <https://www1.nyc.gov/office-of-the-mayor/news/044-16/mayor-de-blasio-state-courts-project-fast-track-ensure-shooters-quickly#/0>

<sup>55</sup> Myles Miller. “A Rare Look Inside the NYPD Unit Tasked with Investigating Gang Shootings.” NY1, October 23, 2019. <https://www.ny1.com/nyc/all-boroughs/news/2019/03/28/a-rare-look-inside-the-nypd-unit-tasked-with-investigating-gang-shootings>

clients who are facing remand (no bail) and enhanced charges because of the collective punishment approach, even though they have no knowledge of the initiative.

Evaluation research of these programs does show some meaningful declines in crime that can even last for years. Overall, though, the results are quite thin. Most reductions are small, occur in only a few crime categories, and don’t last very long. They also continue to reinforce a punitive mindset about how to deal with young people in high crime, high poverty communities, most of whom are not white.

There are also other emerging “deterrence” programs focused on small groups that are outwardly punitive and arguably allow police to overreach their authority. Project Fast Track, announced in 2016, was launched as a collaboration between police, prosecutors and federal law enforcement agencies to “speed up” gun possession cases in New York.<sup>54</sup> The explicit goal was to produce more convictions – and faster. The NYPD unit created to produce better cases, the Gun Violence Suppression Division, has been profiled as a leader in anti-gang policing.<sup>55</sup>

## FOCUSED DETERRENCE ANALYSIS

“Focused deterrence,” relies primarily on intensive punitive enforcement efforts such as surveillance, investigations, arrests, and intensified prosecutions. Also, the social services offered tend to be very thin, involving some counseling and recreational opportunities but rarely access to actual jobs or advanced educational placements. While some youth are able to get GEDs or access social programs, very few wind up with jobs, much less well-paying or stable ones.

In some cases, social supports focus on a variety of life skills and socialization classes which do nothing to create real opportunities for people and reinforce the ethos of personal responsibility that often ends up blaming the victim for their unemployment and educational failure in a community that tends to be incredibly poor, underserved, segregated, and dangerous.

It is certainly true that violent crime is heavily concentrated among a fairly small population of young people in specific neighborhoods. While it may make more sense to target them than indiscriminately stopping and frisking or arresting and summoning hundreds of thousands of people who've committed no serious crimes, deterrence programs like Ceasefire present their own set of problems.

Most young people who engage in serious criminality are already living in harsh and dangerous circumstances. They don't need more threats and punishment in their lives – they need stability, positive guidance, and real pathways out of poverty. This requires a long-term commitment to their well-being, not a telephone referral and home visits by the same people who arrest and harass them and their friends on the streets.

## **PROSECUTOR PROFILE: CYRUS VANCE JR.**

Since at least 2012, the local prosecutor perhaps most willing to engage in gang takedowns and “extreme collaboration” with the NYPD has been Manhattan District Attorney Cyrus Vance Jr. In the gang conspiracy cases that accompanied takedowns in West Harlem, Manhattan DA prosecutors worked “hand in glove” with

police and prison officials, the culmination of a new model: “intelligence-led prosecution.”<sup>56</sup>

In 2010, Vance, not long after being elected, created the Crime Strategies Unit (CSU), which was designed for “rigorous collection of background information about the people, places, and problems driving crime in specific neighborhoods.” The CSU program represents what we believe to be the most important prosecutorial model for gang enforcement in New York City and it preceded a new wave of large scale gang raids in 2011 and 2012 in Harlem.

At the program's outset, the Manhattan District Attorney's Office conducted “precinct-based crime assessments” of each Manhattan precinct that mapped out crime “hot spots” and listed out gangs and crews. According to the Manhattan District Attorney's 2018 “Intelligence-Driven Prosecution: Implementation Guide,” Manhattan is divided into five areas, each of which is assigned an Assistant District Attorney, an intelligence analyst and a community affairs coordinator. At the same time, Assistant District Attorneys, in collaboration with precinct commanders and NYPD Field Intelligence Officers (FIO), identified at least 25 priority offenders in each precinct, which would amount to over 1,000 offenders at the outset of the program.

According to a 2016 study of the prosecution model by the Center for Court Innovation, CSU staff “can continuously expand the list of priority offenders and/or record relevant intelligence.”<sup>57</sup> However, like the NYPD gang database, it is not clear by what process prosecutors make such lists.

The CSU is informed by four programs:

- **The Arrest Alert System is a database and “early warning system” of priority offenders whose arrest immediately alerts the CSU and NYPD personnel.**
- **The Surveillance Camera Interactive Map (SCIM) “shows the locations of and contact information for some 6,000 public and private surveillance cameras in Manhattan.”**
- **The Crime Prevention System database “which targets violent crimes and gathers on one spreadsheet... details about a defendant, including nicknames, which can be linked to additional information: friends, tattoos, telltale scars, Facebook entries, geo-coded street addresses, debriefing tips, excerpts from jailhouse phone calls.”**
- **The InPho program “analyzes recorded inmate phone calls from Rikers Island.”**

We believe that the **Crime Prevention System Database** parallels the NYPD gang database. Not only do some of the same details tracked in the database include criteria used in the NYPD gang database (friends, tattoos, scars, social media), the database is searchable by gang, which suggests that the Manhattan District Attorney is either classifying gangs and gang membership on its own or sharing that information with the police department, which the NYPD has said does not happen.

The **Arrest Alert System** is described as the “nerve center” of the CSU and the Office's overall approach to tracking street crime and gangs. In a 2014 New York Times article, then Assistant District Attorney Kerry Chicon said, “We are constantly adding, deleting, editing and updating the intelligence in the Arrest Alert System. If someone gets out of a gang, or goes to prison for a long time, or moves out of the city or the state,

or ages out of being a focus for us, or dies, we edit the system accordingly — we do that all the time.”<sup>58</sup>

The Arrest Alert System allows for prosecutors and certain police units, like the NYPD Gang Unit, to be alerted through email alerts when certain people are arrested, likely those deemed “priority offenders.” When prosecutors are alerted to the arrest of a priority offender, they can draft enhanced bail applications and elevate charges, according to the Center for Court Innovation report. In open cases, prosecutors can alert the judge of an existing case if there is a second arrest.

One of the advantages for prosecutors is being able to collect information on the suspect not available on their rap sheet, like their gang status. As the Center for Court Innovation report notes, CSU staff “can reach out to the ADA writing up the case in the Early Case Assessment Bureau (ECAB) to inform the prosecutor of pertinent information related to the defendant's criminal activity unavailable on the rap sheet (such as whether the defendant is a member of a violent gang).” This not only changes how a prosecutor might handle a case, it has been shown to change outcomes. According to the Center for Court Innovation report, cases impacted by the Arrest Alert System more often set bail, and when they did bail was higher.

Another function of the Arrest Alert System is to develop area-based intelligence on suspected future gang offenders. As the Center for Court Innovation report describes, “arrest alerts helped prosecutors gather intelligence on up and-coming gang members.”

## **Debriefings**

An alert from the Arrest Alert System can also notify prosecutors when someone is breaking a curfew or violating a condition of parole. It also creates

<sup>56</sup> Chip Brown. “Cyrus Vance Jr.'s ‘Moneyball’ Approach to Crime.” New York Times Magazine. December 3, 2014. <https://www.nytimes.com/2014/12/07/magazine/cyrus-vance-jrs-moneyball-approach-to-crime.html>

<sup>57</sup> Jennifer A. Tallon, Dana Kralstein, Erin J. Farley, and Michael Rempel. “The Intelligence-Driven Prosecution Model: A Case Study in the New York County District Attorney's Office.” The Center for Court Intervention. 2016. [https://www.courtinnovation.org/sites/default/files/documents/IDPM\\_Research\\_Report\\_FINAL.PDF](https://www.courtinnovation.org/sites/default/files/documents/IDPM_Research_Report_FINAL.PDF)

<sup>58</sup> Chip Brown. “Cyrus Vance Jr.'s ‘Moneyball’ Approach to Crime.” New York Times Magazine. December 3, 2014. <https://www.nytimes.com/2014/12/07/magazine/cyrus-vance-jrs-moneyball-approach-to-crime.html>

opportunities for prosecutors to pull suspects into interrogation-like “debriefings.” Former ADA Chicon:

*“Every morning, I talk to my five A.D.A.s, who are experts in their areas. We decide whom we should try to pull out for a debriefing. We don’t debrief people arrested for felonies because we don’t want to compromise a case. We pull people arrested on low-level misdemeanor charges, maybe two or three a week. We read them their Miranda rights. About 80 percent of them will talk. If you speak to a 16-year-old, they might tell you, ‘This kid is running things, this kid is a hanger-on.’”*

*That’s how we find out information like whether a gang has changed their name. We took down the Flow Boyz gang at the Robert F. Wagner housing project in 2012. But a lot of those gang members have aged out, and now there’s a new group of 14- and 15-year-olds who want their own set name. Through debriefings, we learned they call themselves Only the Wagner.”*

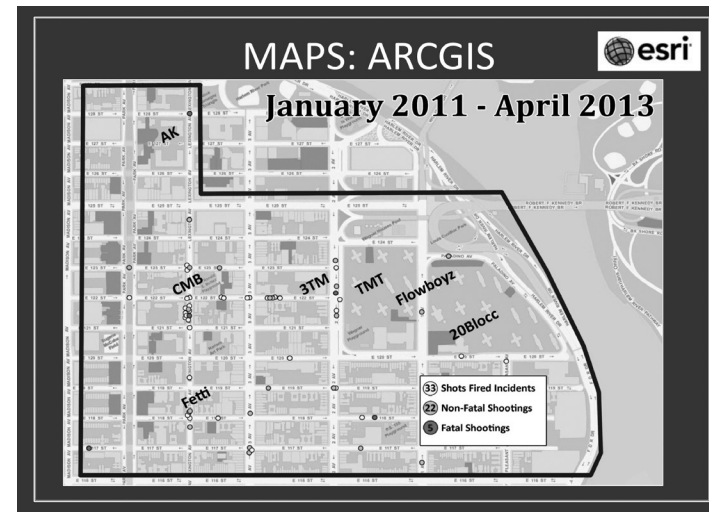
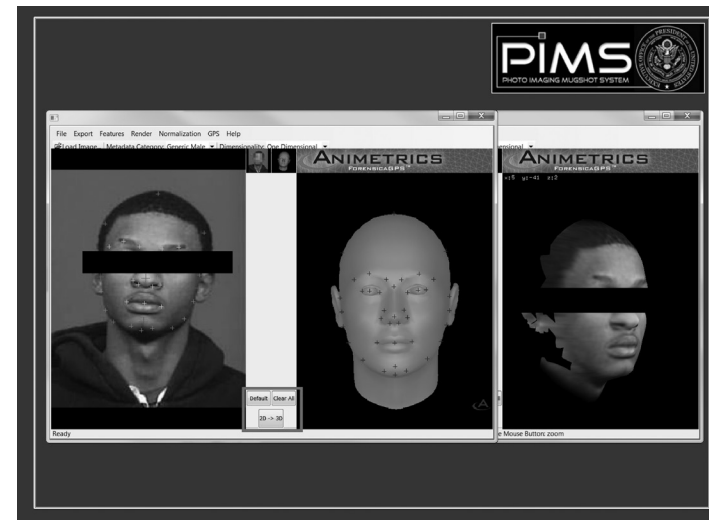
Debriefings are conducted by CSA area prosecutors not to gather additional information or evidence to support the new arrest,” according to the Intelligence-led Prosecution handbook. In other words, prosecutors use debriefings to fish for information that could help them score convictions above misdemeanors. In this sense, debriefings can provide an incentive for low-level police harassment and interactions.

When a debriefing is “positive,” the handbook explains, a “debriefing memo” is created. Memos are disseminated

throughout the office. As cases are built, “photos of defendants associated with geographic hotspots, gangs or specific crime issues are compiled into Microsoft PowerPoint slides which resemble photo arrays - rows of small passport-size photos. Defendants are grouped according to their gang affiliation, geographic area (predominantly a particular housing development hotspot), or other criminal association,” the handbook says.

## Technology

As one of the most visible and well-resourced prosecutors in the country, the Manhattan DA’s Office has become a proponent of using technology. The Photo Imagine Mugshot System (PIMS), which employs facial recognition technology, the ARCGIS map system, which



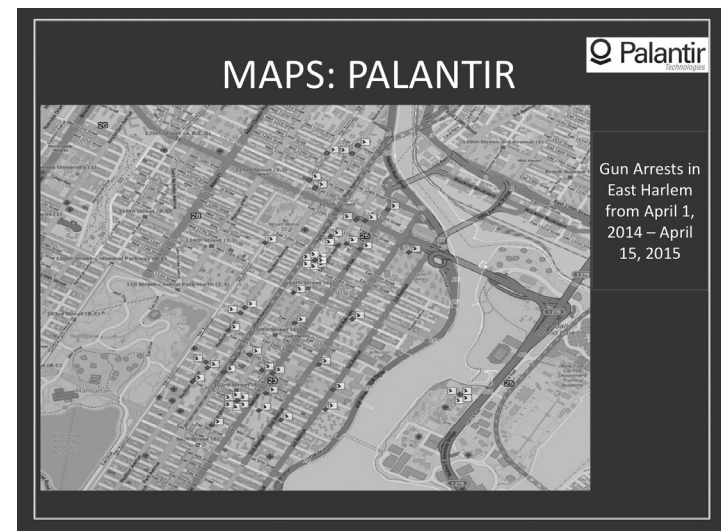
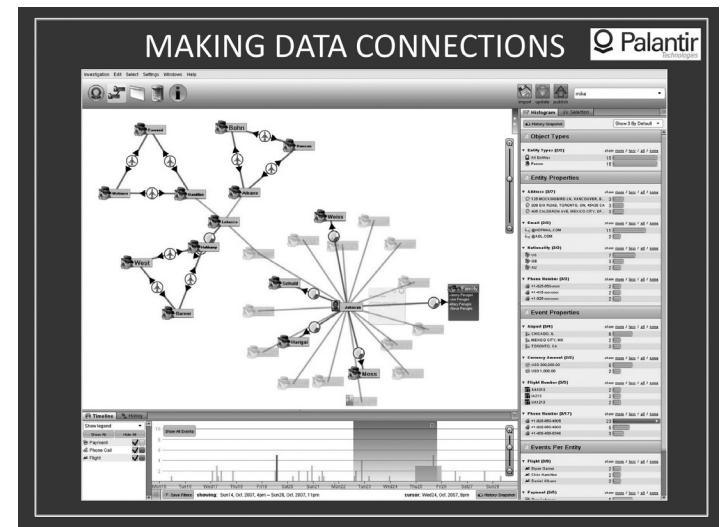
digitally maps out shootings and gang territory, and X-1, which tracks social media posts and direct messages by date(s), time and frequency, are key parts of its Intelligence-led Prosecution model.

All of those programs are provided by private companies. In-house programs include “DANY311, an application allowing ADAs to submit questions to CSU electronically,” as well as the “Glossary of Street Slang,” which the report describes as “a system gathering intelligence from sources such as defendant phone calls within city jail.”

Perhaps the most notable private software used by Vance’s office is Palantir, the California-based data analytics firm that has contracted with the military. Its software has been used by the Manhattan DA to map arrests and make data connections between individuals using addresses, phone numbers and even nationality.

In New York, Palantir technology was reportedly instrumental in helping the NYPD plan a sting operation that led to a gang takedown in Brooklyn that included well-known rapper Bobby Shmurda.<sup>59</sup> According to The Verge, Palantir was also used to construct a controversial “heat list” for the Chicago Police Department using algorithms to predict the most likely violent criminals.<sup>60</sup> It was also uncovered to be part of a secretive “predictive policing” program with the New Orleans Police Department (NOPD) to build racketeering cases against alleged gang members.

New Orleans moved to end their relationship with Palantir partly because local lawmakers didn’t even know the city was using the program since it was funded through a philanthropic organization tied to the mayor. In New York, the Manhattan District Attorney’s Office,



which has vast amounts of money obtained through asset forfeitures, similarly operates with a budget largely free from basic oversight.

Cyrus Vance Jr.’s office has been involved in some of the largest gang conspiracy sweeps New York City has ever seen. It worked with the police on a large gang conspiracy case in East Harlem in 2012 when over 60 people were indicted just as the NYPD was rolling out Operation Crew Cut. Vance himself was notably boastful after the 2014 West Harlem raid. Other prosecutors may follow

<sup>59</sup> William Alden. “How Bobby Shmurda Got Busted with Help from Silicon Valley.” BuzzFeed. July 3, 2017. <https://www.buzzfeednews.com/article/williamalden/how-bobby-shmurda-got-busted-with-help-from-silicon-valley>

<sup>60</sup> Ali Winston. “Palantir has Secretly been using New Orleans to Test its Predictive Policing Technology.” The Verge. February 27, 2018. <https://www.theverge.com/2018/2/27/17054740/palantir-predictive-policing-tool-new-orleans-nopd>



in his steps. The Intelligence-led Prosecution model has reportedly been influential to other prosecutor offices around the country, including Philadelphia and Delaware.

For reformers wary of gang takedowns, Vance is perhaps a poster boy for prosecutors that seek convictions and serious prison time out of questionable gang policing tactics.

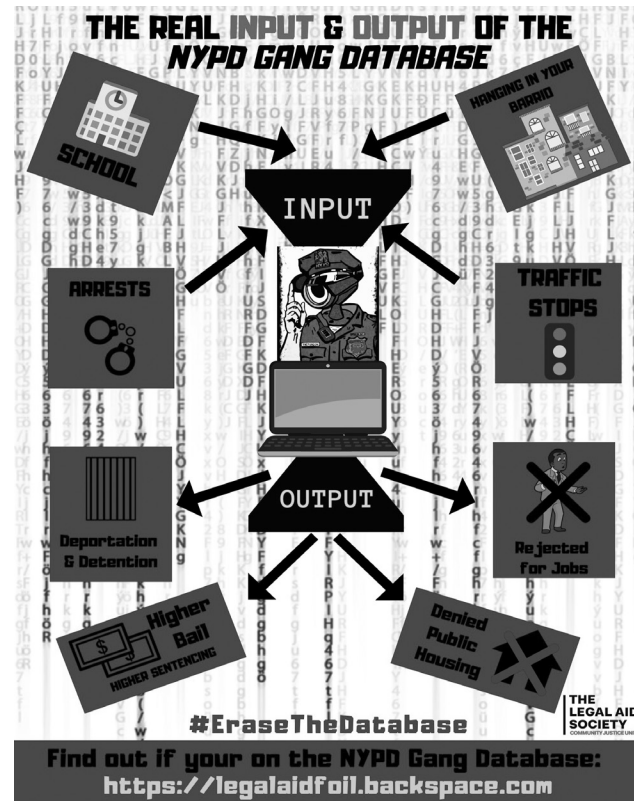
## ACTION SPOTLIGHT: LEGAL AID'S FOIL CAMPAIGN

The Community Justice Unit (CJU) of the Legal Aid Society launched the “Do It Yourself” (D.I.Y.) Freedom of Information Law (FOIL) campaign on February 2018 with the purpose of assisting community members in demanding to know if they had been labeled as gang involved and placed in the NYPD gang database.

Since the police department does not notify individuals about their inclusion into the gang database and there is no requirement of criminality or suspicion of wrongdoing to be placed on it, this further marginalizes communities that are over-policed, depriving them of their right to due process and leaving them without any recourse to challenge that inclusion.

CJU's D.I.Y. FOIL initiative is a way to push back against the black box of secrecy surrounding gang policing by providing community members with a legal tool to demand to know if they have been previously labeled and entered in the gang database.

The CJU launched a website in order to facilitate the D.I.Y. campaign to process FOIL requests more broadly simplifying the process so that people can submit the request directly from their phones or computers.<sup>61</sup> Since launched in 2018, over 350 community members have submitting FOIL requests to the NYPD.



Additionally, CJU has held workshops across New York City with Cure Violence organizations and other community-based organizations raising awareness of the issue and helping people file FOIL requests more broadly; every single request has been outright denied by the police department. This goes against the bedrock principle underlying the Freedom of Information Law, which is supposed to be liberally construed so the public can have maximum access to records of government.

The FOIL initiative has shown that the NYPD is not only comfortable with denying access to every single request, but they are also unwilling to provide records when they have confirmed that they in fact listed the person in their database.

Through the efforts of the FOIL campaign, Legal Aid has also been able to move forward with an Article 78 lawsuit against the NYPD for their failure to disclose

records that they had confirmed existed.<sup>62</sup> They are still in the litigation stage of this case as the NYPD continues to use delay tactics in producing the documents that were requested.

## CONCLUSION/RECOMMENDATIONS

Gang policing replicates the harms of mass incarceration strategies that have come under increased scrutiny. It is dangerous and discriminatory and will not uplift neighborhoods struggling with intra-community violence, gang-related or otherwise. Simply put, the approach is racist policing at its worst.

Efforts to push back against gang databases and gang policing, however, should acknowledge that the presence of gangs, though overstated and demonized by the police and the media, is real. Activists and advocates should not only fight for the rights of those mislabeled or completely “innocent,” but also for those who may be legitimately connected to gangs or crews.

This report concludes that New York City needs to invest in its residents, gang-affiliated or otherwise, instead of criminalizing them. In order to do that, policy-makers need to acknowledge that cities like New York City are failing to address issues of poverty central to violence. Consider that the US is more segregated today than at any time and that the US allows up to 25% of its young people to grow up in extreme poverty. It is from poverty that the vast majority of serious crime originates.

It is important to understand that we cannot have a dual approach of enforcement and investment because gang policing exacerbates these problems, impacting people's ability to find employment and housing. While local officials sometimes talk about getting to the root causes of gang violence, oftentimes these efforts consist of

educational programs run by police and prosecutors that tell young people to avoid gangs without providing them credible alternatives for navigating a hostile environment.

Many young people turn to life on the streets because of problems at home. Their parents are overwhelmed by poverty and the problems that often go with it, such as unstable housing, substance abuse, hunger, and mental illness. Instead of gang takedowns, the city could support parents so that they can better support their children by looking at the structure of working hours and the high costs of childcare as well as direct financial support of families that has been undermined by welfare reforms over the last 30 years.<sup>63</sup>

Still, with more support services in place, the number one challenge young people face is access to stable incomes – even while in school. Expansion of summer employment is an important part of that, but young people also need jobs during the school year to deal with personal and family expenses. Many young people involved in violence also suffer from unstable housing and homelessness. While increased income can help, increases in the stock of truly affordable and public housing (as opposed to banning so-called offenders from housing) is also essential to creating stability for young people.

In schools, education officials need to replace SROs with counselors, restorative justice programs and resources to help students navigate home lives and communities that may be severely disordered and dangerous. Using teachers and SROs to inform on them and criminalize them will serve to undermine their attachment to schooling and drive them out onto the streets, towards violence and/or into the criminal justice system.

One of the primary predictors of violence is past trauma. Youth and adult-aged people involved in violence have

<sup>61</sup> The Legal Aid Society Community Justice Unit. “Are You in the Gang Database?” <https://foil.backspace.com/>

<sup>62</sup> Alice Speri. “NYPD Gang Database Can Turn Unsuspecting New Yorkers into Instant Felons.” *The Intercept*. December 5, 2018. <https://theintercept.com/2018/12/05/nypd-gang-database/>

<sup>63</sup> Elizabeth Palley and Corey S. Shdaimah. *In Our Hands: The Struggle for U.S. Childcare Policy*. New York: NYU Press, 2014.

almost always been the victims of violence either in the community or at home. Even when they may not have personally been the victim, they have witnessed the victimization of friends and family members, often repeatedly. The city should provide services to deal with trauma – including mental health and substance abuse services as well as improved educational and recreational services.

New York City has created a new emergency trauma response capability called Mobile Trauma Units that can respond to shootings and provide immediate interventions and referrals to on-going care as available. But there is a lack of adequate services to refer people to, so that capacity must be expanded. These services need to be culturally appropriate and linked to wrap around health and social services support for young people and their families. Those who have experienced trauma and other adverse childhood experiences (ACEs) are also more likely to have substance abuse and mental health challenges. So, in addition to trauma services, they and their families need access to high quality mental health and substance abuse services on demand.

The city already supports programs designed to reduce shootings and violence by relying on community-based “violence interrupters” or “credible messengers” who work with young people. These “messengers” come from the neighborhoods where violence is a problem and have a reputation on the streets that makes them appropriate for peer to peer outreach, mentoring, and counseling designed to break the cycle of violence.<sup>64</sup> These programs operate on the understanding that violence can operate like a disease, spreading from one victim to another.

The John Jay College of Criminal Justice reported that neighborhoods with credible messenger programs had significant crime reductions compared with similar control areas without them. In the East New York site run by the anti-violence community group Man Up!, gun injury rates fell by 50 percent over four years; the control site in East Flatbush fell by only 5 percent. Similarly, shootings were down by 63 percent in the Save Our Streets South Bronx area, but only 17 percent in the East Harlem control neighborhood. New York City should expand the number of credible messenger programs and equip them with more resources to help young people and their families.<sup>65</sup>

Rather than vilifying and criminalizing “gangs” we should include young people and the groups they form into the community process in ways that don’t force them to renounce the close connections they form with others in the community. This can be done through “social inclusion” strategies that give these social groupings a legitimate voice in shaping the affairs of their communities and the city. Recent work in Latin America by John Jay College’s David Brotherton has shown that these strategies can substantially reduce violence rates.<sup>66</sup>

Gang suppression policing breaks bonds and sows distrust and resentment, especially for young people. Policing and incarceration may actually serve to strengthen gangs, as police officials themselves have conceded. In 2015, the head of the NYPD Gang Division, Kevin Catalina, acknowledged that putting people in Rikers island helped gangs “consolidate” their power: “As a result of, again, jail culture, a lot of them have developed now, not only the crew affiliations that they had, that they developed in the

2000s, but now overall gang affiliations that they picked up while they were inside.”<sup>67</sup>

Using police to solve the problems of young people is a misguided strategy. We need to defund police-led interventions and reinvest that money in the kinds of services that will create healthier and more resilient individuals, families and communities.

## **RECOMMENDED STEPS TO END THE ABUSES OF GANG POLICING:**

- 1. Stop criminalizing people as “gang members”**
- 2. Abolish the NYPD’s gang unit**
- 3. Abolish gang databases (of any kind)**
- 4. Discontinue all “focused deterrence” and other “precision policing” initiatives.**
- 5. Stop using large scale “gang takedowns,” including the utilization of state and federal conspiracy charges**
- 6. Enable protections for immigrants from criminalization and deportation through gang allegations**
- 7. End the use of social media monitoring and other forms of digital surveillance**
- 8. Invest in additional credible messenger programs and expand resources for gang-involved people**
- 9. Divest from policing and instead invest in increased public health programs, sustainable housing, employment development, schools, conflict transformation and alternative accountability models like restorative justice.**
- 10. Investigate and audit current gang suppression practices by the NYPD as well as collaboration with local and federal prosecutors**

<sup>64</sup> The Credible Messenger Justice Center. <https://cmjcenter.org/>

<sup>65</sup> Sheyla A. Delgado, Laila Alsabahi, Kevin Wolff, Nicole Alexander, Patricia Cobar, and Jeffrey A. Butts. “The Effects of Cure Violence in the South Bronx and East New York, Brooklyn.” John Jay College Research and Evaluation Center. October 2017.

<sup>66</sup> David Brotherton and Rafael Gude. “Social Inclusion from Below: The Perspectives of Street Gangs and Their Possible Effects on Declining Homicide Rates in Ecuador.” Inter-American Development Bank. March 2018.

<sup>67</sup> Rosa Goldensohn. “Gangs to Blame for Brooklyn Shootings, Police Say.” DNAINFO. September 27, 2015. <https://www.dnainfo.com/new-york/20150927/bed-stuy/rikers-hardened-youth-gangs-blame-for-brooklyn-shootings-police-say/>

