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April 27, 2021

**Via Mail**

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

**Re: Concerns about the New York City Police Department’s Criminal Group Database and associated policing practices**

Dear Mr. Eure,

We write on behalf of the New York City Bar Association’s (the “City Bar”) Civil Rights Committee, Criminal Courts Committee, and Criminal Justice Operations Committee to highlight our concerns about the New York City Police Department’s (the “NYPD”) Criminal Group Database (the “Gang Database” or “Database”) and associated policing practices. We respectfully urge your office to investigate how the Database is compiled and used, and to issue a public report on your findings.<sup>1</sup>

The City Bar is an organization dedicated to equipping and mobilizing the legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice. The City Bar has approximately 25,000 members, all of whom are lawyers or

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<sup>1</sup> A similar request has been made by Human Rights Watch and others. *See Groups Urge NYPD Inspector General to Audit the NYPD “Gang Database,”* (Sept. 22, 2020), <https://www.hrw.org/news/2020/09/22/groups-urge-nypd-inspector-general-audit-nypd-gang-database>. (All websites last visited Apr. 19, 2021).

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

law students in New York as well as other jurisdictions. The City Bar’s Civil Rights Committee is committed to advancing civil rights and eliminating discrimination. The Criminal Courts Committee studies the workings of the Criminal Term of the New York State Supreme Court, as well as the New York City Criminal Court. And the Criminal Justice Operations Committee focuses on issues relevant to New York State penal law and procedure and the functioning of the courts with regard to criminal cases.

We are concerned that overbroad criteria for placement in the Gang Database, combined with a lack of process and severe consequences for individuals listed therein, disproportionately and unjustifiably harm Black and Latinx people. Moreover, the NYPD’s practices related to the Gang Database have remained secret, preventing public understanding and oversight. For these reasons, it is critically important that the Inspector General conduct an investigation and issue a public report about the Database.

One concern is that the bases that the NYPD uses to identify people for placement in the database are overbroad and open to discriminatory bias. While the NYPD has not provided definitions of the terms central to the database—“gang” and “crew”—what public information is available indicates that these terms are given a sweeping interpretation that might include a group of people who simply live in the same apartment building.<sup>2</sup> The criteria for inclusion in the Database are similarly overbroad. For example, the NYPD monitors social media accounts for “self-admissions” of affiliation.<sup>3</sup> Such perceived “admissions” might include something as innocuous as youthful boasting or joking about a friend group, or something as easily misinterpreted as an emoji or hashtag.<sup>4</sup> Critically, statements on social media relating to membership in a crew or affiliation with a gang are generally protected speech and not necessarily indicative of criminal behavior. The NYPD’s “Operation Crew Cut,” created in 2013 to target “loosely affiliated groups of teens,” employed such online monitoring and has led to tens of thousands of individuals being placed in the Gang Database.<sup>5</sup> On June 13, 2018, NYPD Commissioner Dermot Shea testified before the City Council Committee on Public Safety that 99% of the approximately 17,600 people listed in the Gang Database were Black and Latinx—an

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<sup>2</sup> Alice Speri, *New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio*, THE INTERCEPT (June 11, 2018, 11:49 A.M.), <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/> (noting that NYPD internal presentations define a “gang” as “a group of persons with a formal or informal structure that includes designated leaders and members, that engage in or are suspected to engage in unlawful conduct,” and a “crew” as “a group of people associated or classed together: company, set, team, dang group, gang,” with “no initiations” and “no consequences if you leave”).

<sup>3</sup> See *id.*; Daryl Khan, *New York City’s Gang Database Is 99% People of Color, Chief of Detectives Testifies*, Juvenile Justice Information Exchange (June 14, 2018), <https://jjiie.org/2018/06/14/new-york-citys-gang-database-is-99-people-of-color-chief-of-detectives-testifies/>.

<sup>4</sup> See Josmar Trujillo & Alex S. Vitale, *Gang Takedowns in the de Blasio Era: The Dangers of “Precision Policing,”* Brooklyn College: Social Justice Project, <https://static1.squarespace.com/static/5de981188ae1bf14a94410f5/t/5df14904887d561d6cc9455e/1576093963895/2019+New+York+City+Gang+Policing+Report+-+FINAL%29.pdf>.

<sup>5</sup> See Josmar Trujillo & Alex S. Vitale, *Gang Takedowns in the de Blasio Era: The Dangers of “Precision Policing,”* Brooklyn College: Social Justice Project, <https://static1.squarespace.com/static/5de981188ae1bf14a94410f5/t/5df14904887d561d6cc9455e/1576093963895/2019+New+York+City+Gang+Policing+Report+-+FINAL%29.pdf>.

astounding admission.<sup>6</sup> This is a particularly shocking statistic given that the overall New York City population is only 24.3% Black and 29.2% Latinx.<sup>7</sup> Thus, it is evident that the application of overbroad criteria for placement in the Gang Database has led to an overwhelmingly disproportionate placement of Black and Latinx individuals in the Gang Database.

Furthermore, the consequences for people who end up in the Gang Database are significant and wide-ranging. While the NYPD has not disclosed its information sharing policy,<sup>8</sup> alleged membership in a gang may be used as a factor in school discipline, criminal proceedings and sentencing, immigration benefits adjudications and removal proceedings, and even to deny someone a job.<sup>9</sup> Moreover, the impact of being labeled a gang member has the potential to increase and intensify future interactions with law enforcement including increased surveillance and searches.<sup>10</sup>

Gang database policing also dehumanizes members of Black and Latinx communities and severely restricts their freedom of association and their right to express themselves. Youth report feeling uncomfortable in their own neighborhoods and having to be careful about what they wear and who they are seen with out of fear that such factors will be used against them as evidence of gang involvement.<sup>11</sup> And because most gang raids take place in low-income communities, typically targeting NYCHA public housing developments, the practice effectively criminalizes poverty through ongoing surveillance over people living in those communities and their friends and family members.

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<sup>6</sup> Daryl Khan, *New York City's Gang Database Is 99% People of Color, Chief of Detectives Testifies*, JUVENILE JUSTICE INFORMATION EXCHANGE (June 14, 2018), <https://jjiie.org/2018/06/14/new-york-citys-gang-database-is-99-people-of-color-chief-of-detectives-testifies/>.

Shea testified that the Criminal Group Database “has approximately 17,600 individuals, almost half of where it once stood in 2014” with “over 34,000 people.” *Id.* However, only two days earlier, the Intercept reported that data from a public records request revealed that “as of February 2018, there were 42,334 people in the database — a 70 percent increase since [New York City Mayor] de Blasio took office in January 2014.” Alice Speri, *New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio*, THE INTERCEPT (June 11, 2018, 11:49 A.M.), <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>. Compare Statement of Chief Dermot Shea Before the N.Y.C. Council Committee on Public Safety (June 13, 2018), <https://jjiie.org/wp-content/uploads/2018/06/Gang-Testimony-Public-Version.docx> with Speri, *supra* note 2.

<sup>7</sup> See 2018 American Community Survey 1-Year Estimates, “Demographic and Housing Estimates,” New York City and Boroughs, [https://www1.nyc.gov/assets/planning/download/pdf/planning-level/nyc-population/acs/dem\\_2018acs1yr\\_nyc.pdf](https://www1.nyc.gov/assets/planning/download/pdf/planning-level/nyc-population/acs/dem_2018acs1yr_nyc.pdf).

<sup>8</sup> See Nick Pinto, *NYPD Added Nearly 2,500 New People to Its Gang Database in the Last Year*, THE INTERCEPT (June 28, 2019), <https://theintercept.com/2019/06/28/nypd-gang-database-additions/>.

<sup>9</sup> *Id.*; Testimony of Oleg Chernyavsky, June 27, 2019; Heather Murphy, *Los Angeles Officers Suspended After Boy is Wrongly Labeled a Gang Member*, THE NEW YORK TIMES (Jan. 8, 2020), <https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>; Hannah Dreier, *He Drew His School Mascot—and ICE Labeled Him a Gang Member*, PROPUBLICA (Dec. 27, 2018), <https://features.propublica.org/ms-13-immigrant-students/huntington-school-deportations-ice-honduras/>

<sup>10</sup> Heather Murphy, *Los Angeles Officers Suspended After Boy is Wrongly Labeled a Gang Member*, THE NEW YORK TIMES (Jan. 8, 2020), <https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>.

<sup>11</sup> Emily Nanko, *NYC Teens Share How Criminal Justice System Impacts Their Communities* (Oct. 16, 2019), <https://nextcity.org/daily/entry/nyc-teens-share-how-criminal-justice-system-impacts-their-communities>.

Moreover, individuals receive no notice when they are placed in the Gang Database, and it is virtually impossible to challenge this designation. While the NYPD has said they routinely remove people from the database,<sup>12</sup> the public has little insight into this process.

The lack of available information about these practices means New Yorkers are unable to have an adequate or informed public discussion about the methods being used to identify, arrest, and prosecute alleged gang members. The NYPD has substantial discretion over the operation of the Gang Database and there is little public oversight. Moreover, the NYPD has routinely denied Freedom of Information Law requests from individuals seeking information about whether they are listed in the Database.<sup>13</sup> Such a denial prevents full transparency to both the individuals placed in the Gang Database and the public, calls into question the integrity of the NYPD's practices and procedures with respect to the Database, and raises due process concerns for those individuals placed in the Database.

In fact, experiences elsewhere have shown that gang databases are inherently inaccurate, discriminatory, and open to abuse. Moreover, they do not improve public safety. In January of this year, more than a dozen Los Angeles police officers were suspended or reassigned after an incident in which a youth was mislabeled as a gang member.<sup>14</sup> The incident led to an investigation into whether this police unit was falsifying records.<sup>15</sup>

Similarly, the Inspector General of Chicago released a report in April 2019 on the Chicago Police Department's ("CPD") gang database describing major concerns regarding "the lack of transparency . . . in the CPD's 'gang database.'"<sup>16</sup> With regard to data quality concerns, the report noted that arresting officers would label occupations for those with "Gang Arrest Cards" as: "SCUM BAG," "BUM," "CRIMINAL," "BLACK," "DORK," "LOOSER [*sic*]," and "TURD."<sup>17</sup> This unprecedented report on a city's gang database "reveal[ed] serious flaws, unverifiable information, and calls on the department to make immediate changes."<sup>18</sup> Underscoring the severe consequences of placement on such a database, the report noted that immigration officials, education agencies and the FBI accessed the CPD database more than a million times over the last decade.<sup>19</sup> The report recommended the CPD make changes if it

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<sup>12</sup> Statement of Chief Dermot Shea Before the N.Y.C. Council Committee on Public Safety (June 13, 2018), <https://jije.org/wp-content/uploads/2018/06/Gang-Testimony-Public-Version.docx>.

<sup>13</sup> Taylornn Murphy Sr., Anthony Posada, *Like Trump's "Animals" Comment, Police Anti-Gang Tactics Dehumanize* (June 11, 2018), <https://citylimits.org/2018/06/11/cityviews-like-trumps-animals-comment-police-anti-gangtactics-dehumanize/>.

<sup>14</sup> Heather Murphy, "Los Angeles Officers Suspended After Boy is Wrongly Labeled a Gang Member," THE NEW YORK TIMES (Jan. 8, 2020), <https://www.nytimes.com/2020/01/08/us/lapd-gang-database.html>.

<sup>15</sup> *Id.*

<sup>16</sup> City of Chicago Office of Inspector General, Review of the Chicago Police Department's "Gang Database" (April 2019), <https://igchicago.org/wp-content/uploads/2019/04/OIG-CPD-Gang-Database-Review.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Jacqueline Serrato, *Watchdog: Seriously flawed Chicago gang database undermines public trust in police*, THE CHICAGO REPORTER (Apr. 12, 2019), <https://www.chicagoreporter.com/watchdog-seriously-flawed-chicago-gang-database-undermines-public-trust-in-police/>.

<sup>19</sup> *Id.*

continued to use the gang database, as it was riddled with inaccuracies.<sup>20</sup> As a result, Cook County, the county where Chicago is located, passed an ordinance ending its regional gang database.<sup>21</sup>

We are concerned that the same flaws highlighted in Chicago's Office of the Inspector General report exist with respect to the NYPD's Gang Database. And these concerns are heightened in view of the broader context of the NYPD's fraught history of engagement with communities of color. This includes, most notably, the NYPD's stop and frisk policy, which was found unconstitutional around the same time Operation Crew Cut began.<sup>22</sup>

Over the past three years, a coalition of legal and community advocates has repeatedly requested that your office investigate the NYPD's practices and procedures with respect to the Gang Database. They have been joined in this request by various Assembly Members, state Senators and City Council members.<sup>23</sup> Recently, four of the five candidates currently running for Manhattan District Attorney have indicated they are in favor of ending use of the database.<sup>24</sup> We add our voice to calls for the Office of the Inspector General to investigate, review, and report on the following aspects of NYPD gang enforcement:

1. How is the NYPD using social media to collect intelligence? Are police officers using fake social media accounts to conduct surveillance and/or connect with certain groups or individuals as part of this process?
2. What investigative safeguards are in place to distinguish between actual criminal involvement and youthful boasting and symbolic posturing, which is entitled to First Amendment protection?
3. Is the NYPD using large-scale data mining software? How is that data used and stored? Is the NYPD sharing or using information obtained through private technology services, like Palantir, in collaboration with district attorneys and/or federal law enforcement officials?

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<sup>20</sup> *Id.*

<sup>21</sup> Sarah Lustbader and Vaidya Gullapalli, *A Victory Against a Gang Database in Cook County, Illinois*, *The Appeal*, <https://theappeal.org/a-victory-against-a-gang-database-in-cook-county-illinois/>.

<sup>22</sup> Alice Speri, *New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio*, *THE INTERCEPT* (June 11, 2018, 11:49 A.M.), <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

<sup>23</sup> *See, e.g.*, Coalition Letter to Philip Eure, National Association of Criminal Defense Lawyers (Sept. 22, 2020) <https://www.nacdl.org/Document/Letter-NYPDOIG-AuditGangDatabase-09222020>; *Queens lawmakers question gang database tactics in letter to NYPD Inspector General*, (Dec. 10, 2019), <https://queenseagle.com/all/2019/12/10/queens-lawmakers-question-gang-database-tactics-in-letter-to-nypd-inspector-general>.

<sup>24</sup> People's Coalition for Manhattan DA Accountability, "Meet the Candidates: Candidates Questionnaire," <https://peopleforprosecutoraccountability.org/candidate-comparison/>; *see also* *Activists Press Manhattan District Attorney Candidates on How Far They'll Go on Reform*, *GOTHAM GAZETTE* (Feb. 3, 2021), <https://www.gothamgazette.com/state/10132-activists-manhattan-district-attorney-candidates-reform-promises>.

4. How are members of specialized units that deal with gangs (i.e. gang squads) selected? How do those members compare with other officers in terms of numbers of claims of misconduct against them and/or use of force?
5. What processes are there to ensure that people who are removed from the Gang Database are removed from all NYPD labeling and tracking databases, as appropriate?
6. Is there racial bias or other protected status bias in the labeling of some youth criminal activity as “gang related” and thus included in the Gang Database?
7. What is the basis for the NYPD undertaking large-scale surveillance and enforcement action against young people in a specific area? Is it driven by relative crime rates, the availability of informants or other intelligence, political pressure, calls from the public, or other factors?
8. Does the NYPD share gang-related information with any outside agencies? Does the NYPD share any gang-related information with Homeland Security or Immigrations and Customs Enforcement? Does the NYPD seek gang-related information from any local, state, or federal agency?
9. How do the NYPD gang conspiracy investigations interact with ongoing “focused deterrence” and “Cure Violence” initiatives that seek to use different methods to control crime? What alternative strategies might the city pursue to reduce violence among young people that do not rely on surveillance, arrests, and prosecutions using the Gang Database? Have current gang enforcement practices undermined development of such strategies?
10. Should the NYPD continue its use of the Gang Database?

Thank you for your attention to these issues. We hope that your office will take seriously the need for an investigation of and public report on the NYPD's practices related to its gang database and the impact of those practices on New York City communities, particularly low-income communities and communities of color.

Respectfully,

Zoey Chenitz, Co-Chair  
Kevin E. Jason, Co-Chair  
Civil Rights Committee

Terri S. Rosenblatt, Chair  
Criminal Courts Committee

Tess M. Cohen, Chair  
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