GUILT BY ASSOCIATION

HOW POLICE DATABASES PUNISH BLACK AND LATINX YOUTH

ANDY RATTO
NINA LOSHKAJIAN
ELENI MANIS, PHD, MPA

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STOP
SURVEILLANCE TECHNOLOGY
OVERSIGHT PROJECT

Executive Summary

- Police increasingly replace stop-and-frisk practices with databases that crudely profile Black and Latinx youth based on their neighborhoods, peer groups, and clothing.
- These databases ruin lives: police typecast minority youths as gang members without evidence, putting them at risk of false arrest and wrongful deportation.
- Many police departments refuse to implement due process safeguards despite clear evidence that their databases are based on racial profiling, not evidence.
- Even the most rigorous safeguards would be insufficient to mitigate the full range of harms that these databases pose. They must be eliminated in their entirety.

I.   Introduction

Black actors play about two thirds of gang members on TV and in the movies, way out of proportion to gangs' racial makeup in real life.[1] Black men also make up about 70% of gang members in the New York City Police Department's imagination[2]—a kind of racial typecasting that has produced <u>no</u> known benefits to the public while subjecting New Yorkers under no individual suspicion of committing any crime to undue police attention and arrest.

The New York City Police Department ("NYPD") ramped up its efforts to track supposed gang members in direct response to courts declaring "stop-and-frisk," the department's practice of stopping and searching mostly Black and Latinx New Yorkers, racist and unconstitutional.[3] Under stop-and-frisk, the NYPD targeted young Black and Latinx men under no individual suspicion of a crime because they fit the department's racist profile of who engages in criminal activity.[4] The NYPD still engages in stop-and-frisk, despite its harms and demonstrated ineffectiveness.[5] But it has also increasingly relied on dystopian "gang" databases to track the same Black and Latinx New Yorkers based on who they know and where they live—again, no hint of criminal activity required.

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[1] Zachary Crockett, "'Gang Member' and 'Thug' Roles in Film Are Disproportionately Played by Black Actors," Vox, September 13, 2016, https://www.vox.com/2016/9/13/12889478/black-actors-typecasting.

[2] City of New York Department of Investigation, "DOI's Office of the Inspector General for the NYPD Issues Report Examining NYPD's Use and Operation of the Criminal Group Database," April 18, 2023, https://www.nyc.gov/assets/doi/reports/pdf/2023/16CGDRpt.Release04.18.2023.pdf.

[3] *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

[4] *Floyd*, 959 F. Supp. 2d 540, 573–74 (S.D.N.Y. 2013). The court found that 84% of those stopped and searched by the New York Police Department ("NYPD") were Black and Latinx, even though these two groups made up only 52% of the city's population. 88% of individuals were stopped wrongly, with no arrest or summons resulting.

[5] Aaron Katersky and Teddy Grant, "NYPD Safety Team Making High Number of Unlawful Stops, Mostly People of Color: Report," *ABC News*, June 5, 2023, https://abcnews.go.com/US/nypd-safety-team-making-high-number-unlawful-stops/story?id=99850699. *See also* Emily Badger, "The Lasting Effects of Stop-and-Frisk in Bloomberg's New York," *The New York Times*, March 2, 2020, sec. The Upshot, https://www.nytimes.com/2020/03/02/upshot/stop-and-frisk-bloomberg.html.

Who is deemed guilty by association or location? According to the NYPD, ludicrous non-criminal criteria including the activities of one's cousins, neighbors, or classmates, the location of one's home, and the colors of one's clothing are enough to land a person in a gang database. Nationwide, city, state and federal law enforcement agencies compile their own lists of mostly Black and Latinx young men using the same, frequently non-criminal criteria. Some have admitted the absurdity of such criteria: when the Los Angeles Police Department ("LAPD") audited its gang list, it admitted that "the only time that auditors could corroborate gang dress was when… the Subject admitted that the cap was gang-related."[6]

Yet despite law enforcement's willingness to add people to databases based on the flimsiest reasons and without any actual evidence of criminal conduct, the consequences of being an accused gang member couldn't be more real. At every step of the criminal justice process, those included in these databases suffer from prejudicial treatment. When undocumented Americans are flagged, they stand to lose everything, from residency in the U.S. to their work authorization and ability to keep their families together. The only way to comprehensively prevent these harms is to dismantle the offending databases entirely.

II.   How Guilt-by-Association Databases Began

So-called gang databases originated in the early 1980s, when Los Angeles County created "gang injunctions" allowing police to arrest young people for a long list of normally legal activities and petty offenses. Gang injunctions created geographic zones where people could be arrested for carrying a beeper or spray paint, or simply for staying out too late.[7] Injunctions also endorsed guilt by association: police would arrest people for being seen in public in the company of any alleged gang members (on who knows what grounds), even if the individuals were family.[8] In 1987, this community targeting went digital when the LAPD established a computerized system to track alleged gang members and

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[6] Chief of Police Michael Moore, "Review of CalGang Database Entries," 7.

[7] While not the focus of this paper, civil gang injunctions have been used hand-in-hand with gang databases. Civil gang injunctions typically declare gang activity a public nuisance and impose limits and restrictions on alleged gang member conduct. The injunction is enforced in a so-called "safety-zone," which can bring large geographic areas and populations under the threat of arrest for otherwise lawful activities. *See* Karen M. Hennigan and David Sloane, "Overview of: 'Improving Civil Gang Injunctions: How Implementation Can Affect Gang Dynamics, Crime, and Violence,'" *Criminology & Public Policy* 12, no. 1 (2013): 5–5, https://doi.org/10.1111/1745-9133.12001; and "Contrary to California Case Law, Gang Injunctions Infringe Targets' Right to Familial Association," *Harvard Civil Rights-Civil Liberties Law Review*, March 18, 2017, https://journals.law.harvard.edu/crcl/contrary-to-california-case-law-gang-injunctions-infringe-targets-right-to-familial-association/ .

[8] *See* Karen M. Hennigan and David Sloane, "Overview of: 'Improving Civil Gang Injunctions: How Implementation Can Affect Gang Dynamics, Crime, and Violence,'" *Criminology & Public Policy* 12, no. 1 (2013): 5–5, https://doi.org/10.1111/1745-9133.12001; see also "Contrary to California Case Law, Gang Injunctions Infringe Targets' Right to Familial Association," *Harvard Civil Rights-Civil Liberties Law Review*, March 18, 2017, https://harvardcrcl.org/contrary-to-california-case-law-gang-injunctions-infringe-targets-right-to-familial-association/.

their guilty-by-association contacts.[9] The following year, gang databases went statewide when new legislation authorized the creation of the country's first statewide database, amassing records from countless local departments' databases.[10]

Since then, local, state, and federal law enforcement agencies have created a nationwide network of intertwined and overlapping databases that track individuals accused of gang membership, frequently on the basis of noncriminal activity and typically without the accused's knowledge. Police departments in New York, Chicago, Boston, and other major cities maintain such databases, but so do smaller municipalities. A nationwide survey of police departments and sheriff's offices found that about two-thirds partake in this digitized profiling.[11] Almost half of these agencies share their records, too[12]—many presumably through General Dynamics' widely adopted platform for creating and sharing digital profiling data, GangNET.[13] As a consequence, any baseless accusations in one police department's records can really make the rounds—all the way up to federal agencies and across the nation to agencies in other states.

III.   Easy On, No Way Off

Police can add nearly anyone who lives in a neighborhood that they associate with gang activity—usually communities of color or public housing—to a gang database. People don't typically know that they're in a database. And even if they do know, it is commonly impossible to get off. These key facts have been documented time and time again in police database audits.[14] But even in audited

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[9] Lauren M. Pittman, "Constructing A Compromise: The Current State of Gang Database Legislation and How to Effectuate Nationwide Reform," *Iowa L. Rev.* 106 (2020): 1513, https://ilr.law.uiowa.edu/print/volume-106-issue-3/constructing-a-compromise-the-current-state-of-gang-database-legislation-and-how-to-effectuate-nationwide-reform/.

[10] Office of the Attorney General of the State of California Department of Justice, "Attorney General's Annual Report on CalGang for 2022," 2022, https://oag.ca.gov/system/files/media/ag-annual-report-calgang-2022.pdf.

[11] The 2015 National Gang Report Survey consisted of four related but distinct surveys: (i) a street gang survey; (ii) a prison gang survey; (iii) an outlaw motorcycle gang survey; and (iv) a survey on gang activity related to U.S. borders. While a more detailed breakdown of street gang survey respondents is not available, the four component surveys received a total of 569 responses that included over 300 police departments and sheriff's offices across the United States. National Gang Intelligence Center, "National Gang Report 2015," 2015, https://www.fbi.gov/file-repository/stats-services-publications-national-gang-report-2015.pdf/view.

[12] National Gang Intelligence Center, "National Gang Report 2015."

[13] General Dynamics Information Technology, "General Services Administration Multiple Award Schedule Authorized Federal Supply Schedule Price List," March 2023, https://www.gdit.com/szx3os6exj55/7fAWSd9kbkRhci4Am9JFSk/5a919d1e7e5143d29ae1df939acfe889/Pricelist_Sch_84__PO-0023_MAS_Mod_A853_FINAL_March_2023_v2_.pdf. *See also* Tracee Wilkins, "Attorneys and Activists Question Accuracy of Police Gang Database," *NBC4 Washington*, December 22, 2020, https://www.nbcwashington.com/news/local/attorneys-and-activists-question-accuracy-of-police-gang-database/2517076/.

[14] Chicago Office of Inspector General, "Review of the Chicago Police Department's 'Gang Database,'" April 11, 2019, https://igchicago.org/2019/04/11/review-of-the-chicago-police-departments-gang-database/. *See also* City of New York Department of Investigation, "DOI's Office of the Inspector General for the NYPD Issues Report Examining NYPD's Use and Operation of the Criminal Group Database," April 18, 2023, https://www.nyc.gov/assets/doi/reports/pdf/2023/16CGDRpt.Release04.18.2023.pdf. *See also* California State Auditor, "The

jurisdictions like New York City and Chicago where database failures are documented, police practices haven't fundamentally changed.

Inclusion Criteria and Lack of Notice

Individuals are routinely added to gang databases for the flimsiest reasons. In New York City, the NYPD has added people in its gang database for being Facebook friends with an accused gang member or for wishing them "Happy Birthday" on the platform.[15] Being outside late and wearing the wrong colors is also a problem: if a person lives in the same public housing complex as accused gang members, the NYPD may say they frequent a "known criminal group location" (strike one) while wearing gang colors (strike two), which is enough for officers to add them to the database.[16] The NYPD can also add individuals to the database based on two "independent reliable sources," but officers decide who's independent and reliable,[17] and no one checks their judgment.[18] Other jurisdictions are similarly cavalier about accusing individuals of gang membership. In California, it only takes a single "reliable" source to add an individual to a database; police officers can also consider arbitrary criteria such as the clothing someone wears, who they associate with, or what addresses they visit.[19] The same is true for Chicago's database: among other criteria, gang membership can be attributed based on a person's clothing and information from a "reliable" source.[20]

Police who add people to gang databases based on arbitrary and non-criminal criteria violate federal law in many jurisdictions. Federal regulations governing gang databases that receive federal funding prohibit spying without cause: law enforcement can collect and maintain information on a person "only if there is reasonable suspicion that the individual is involved in criminal conduct or activity."[21] When police open gang files on individuals without suspecting them of any particular crime—or

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CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights.," August 2016, https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf.

[15] Legal Defense Fund, "LDF Responds to Department of Investigation's Findings Regarding the NYPD's Criminal Group Database," April 18, 2023, https://www.naacpldf.org/press-release/ldf-responds-to-department-of-investigations-findings-regarding-the-nypds-criminal-group-database/.

[16] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database."

[17] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database."

[18] James Blum, "The NYPD's Gang Database: A New Age of Stop and Frisk," *S.T.O.P. - The Surveillance Technology Oversight Project* (blog), July 23, 2019, https://www.stopspying.org/latest-news/2019/7/23/the-nypds-gang-database-a-new-age-of-stop-and-frisk.

[19] Section 752.4 - Criteria to Be Designated as a Gang Member or Associate, Cal. Code Regs. Tit. 11 § 752.4, accessed July 25, 2023, https://casetext.com/regulation/california-code-of-regulations/title-11-law/division-1-attorney-general/chapter-75-department-of-justice-regulations-for-the-fair-and-accurate-governance-of-the-calgang-database/article-5-designating-a-person-in-the-calgang-database-and-adding-information-to-a-persons-record/section-7524-criteria-to-be-designated-as-a-gang-member-or-associate.

[20] Chicago Police Department, "CPD Combined Comments and Suggestions on Community Commission for Public Safety and Accountability General Order G01-03," March 20, 2023, https://www.chicago.gov/content/dam/city/depts/ccpsa/policies/CPD-Combined-Comments-and-Suggestions-on-CCPSA-Draft-G01-03.pdf.

[21] "Criminal Intelligence Systems Operating Policies," 28 CFR § 23 (1998), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/28cfr_part_23.pdf.

rather, because of where they live, who they know around their neighborhood, and other non-criminal characteristics—they're breaking the law.

But they typically get away with it. In practice, police often have unfettered discretion to add people to gang databases because they are secret. The NYPD, for example, doesn't inform individuals that they've been listed in the database, and has historically declined requests for that information: as of August 2022, the Legal Aid Society had filed 423 Freedom of Information Law ("FOIL") requests on behalf of individuals asking whether they've been accused of gang membership, and every single one had been declined.[22] The organization hosts a website where New Yorkers can easily file a FOIL request to determine if they've been targeted.[23] While Legal Aid is trying to make it as easy as possible for individuals to learn of their status by continuing to file requests, the NYPD refuses to budge, rejecting 98% of requests filed in the past year.[24] Chicago is little better: its post-audit policy for its gang database still lacks a requirement to notify individuals that they've been profiled in the database and fails to provide information on how to appeal one's classification as a gang member.[25] The only way individuals can discover if they have been included in Chicago's gang database is by visiting specific police stations.[26]

California, by contrast, did make an effort to open the rolls of CalGang after a 2016 audit revealed egregious errors in the database. And the errors were appalling—42 babies under one-year-old were falsely listed in CalGang, 28 of whom supposedly ended up there by self-admission of gang membership (the absurdity of which can't be overstated: did they say "goo goo, gang gang"?).[27] In 2017, the state mandated a process for inquiring about one's inclusion in the database.[28] And in 2023— after the California Attorney General revoked access to all of the Los Angeles Police Department's (LAPD) CalGang entries due to widespread malfeasance[29]—California passed a law requiring police to notify individuals that they'd been included.[30] This remains the exception rather than the rule; only Nevada appears to have a similar policy.[31]

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[22] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 16.

[23] "Are You in the NYPD Gang Database?," Legal Aid Society Criminal Defense, https://legalaidfoil.backspace.com.

[24] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 31.

[25] Heather Cherone, "More Than 3 Years After Watchdog Warned Chicago Police Gang Databases Were 'Deeply Flawed,' New System Poised to Launch Despite Objections," *WTTW News*, November 25, 2022, https://news.wttw.com/2022/11/25/more-3-years-after-watchdog-warned-chicago-police-gang-databases-were-deeply-flawed-new.

[26] Cherone, "After Watchdog Warned Chicago."

[27] California State Auditor, "CalGang Criminal Intelligence System," 3.

[28] State of California - Department of Justice - Office of the Attorney General, "CalGang," State of California - Department of Justice - Office of the Attorney General, September 23, 2011, https://oag.ca.gov/calgang.
Anita Chabria and Kevin Rector, "California AG Revokes Police Access to LAPD CalGang Data," GovTech, July 15, 2020, https://www.govtech.com/public-safety/California-AG-Revokes-Police-Access-to-LAPD-CalGang-Data.html.

[30] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 88.

[31] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 88.

Abusive Secrecy

It's not just babies who get added to gang databases under the cover of proverbial night. In Phoenix, police were caught inventing a gang (defined as "extremist" with "violent tendencies") to try to add lawful police protestors to their gang database.[32] Again: Phoenix officers falsely labeled people protesting police abuses as members of a fictional gang called ACAB (All Cops are Bastards) "using wild exaggerations, lies, and an informant with a documented history of lying."[33] In Chicago, an audit found that officers added people to the city's gang database without any justification at all.[34] In a similar vein, in July 2023, a judge ruled that an LAPD officer should face trial for "falsely label[ing] dozens of innocent people as gang members" to boost his perceived productivity.[35] Among other things, the officer appears to have recorded "self-admitted gang membership" for over three dozen people, despite his body camera footage showing the opposite.[36]

Sensational cases aside, loose criteria for gang database inclusion and lax adherence to those criteria mean that already overpoliced communities bear the brunt of wrongful gang accusations. In New York City, the NYPD's new digital stop-and-frisk is its gang database:[37] just another way of disproportionately targeting young Black and Latinx men for police scrutiny because they fit a racist profile that the NYPD associates with criminal conduct.[38] The make-up of the NYPD gang database in 2023 bears this out: 99% of those caught up in the dragnet are Black and Latinx, 98% are male, and more than three-quarters are in their mid-twenties or younger.[39]

New York City is not unique in this: gang databases overrepresent Black and Latinx youth across the country. In Boston, more than 90 percent of accused individuals are Black or Latinx.[40] In Chicago, nearly 96% of the people in Chicago's gang database are Black or Latinx.[41] In California, 85% of

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[32] Dave Biscobing, "'Prime for Abuse': Lack of Oversight Lets Phoenix Police Add Protesters to Gang Database," *ABC15 Arizona in Phoenix (KNXV)*, May 25, 2021, sec. Protest Arrests, https://www.abc15.com/news/local-news/investigations/protest-arrests/prime-for-abuse-lack-of-oversight-lets-phoenix-police-add-protesters-to-gang-database.

[33] Biscobing, "Prime for Abuse."

[34] Chicago Office of Inspector General, "Chicago PD Gang Database," 1, 43-44 (A 2019 Review specifically found that the CPD "[c]annot ensure that CPD members designate individuals as gang members with sufficient, reliable evidence corroborating actual gang involvement").

[35] Eric Leonard, "LAPD Metropolitan Division Officer to Stand Trial in Falsified Gang Data Case," *NBC Los Angeles*, July 7, 2023, https://www.nbclosangeles.com/investigations/lapd-officer-trial-falsified-gang-data-police/3183398/.

[36] Leonard, "LAPD Officer to Stand Trial."

[37] "Testimony to the New York City Council Committee on Public Safety on NYPD's Gang Takedown Effort," NAACP Legal Defense & Educational Fund, Inc., and the Center for Constitutional Rights, June 13, 2018, https://www.naacpldf.org/wpcontent/uploads/City-Council-Testimony-combined-6.13.18.pdf.

[38] *Floyd*, 959 F. Supp. 2d 540, 573–74 (S.D.N.Y. 2013).. The court found that 84% of those stopped and searched by the New York Police Department ("NYPD") were Black and Latinx, even though these two groups made up only 52% of the city's population. 88% of individuals were stopped wrongly, with no arrest or summons resulting.

[39] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 35. 78% are 27 years old or younger.

[40] 2019 statistics. The Editorial Board, "The Boston Police Gang Database Gets Overdue Attention," *The Boston Globe*, January 24, 2022, https://www.bostonglobe.com/2022/01/24/opinion/boston-police-gang-database-gets-overdue-attention/.

[41] Keegan Stephan, "Conspiracy: Contemporary Gang Policing and Prosecutions." *Cardozo L. Rev.* 40 (2018): 991.

people included in the gang database are Black or Latinx.[42] But the statistics alone can't capture how these dragnets upend young people's lives. In one case, a high school sophomore and refugee from gang violence in Honduras was mistaken for a gang member for drawing his school mascot on a calculator.[43] In another, Immigration and Customs Enforcement (ICE) added a student to its gang database for wearing a blue t-shirt, a required part of his school uniform.[44] In another, Kraig Lewis, an MBA student with no criminal record, was inexplicably arrested in New York City's largest gang raid, held without bail, and charged—despite a complete lack of physical evidence—with racketeering conspiracy, narcotics conspiracy, narcotics distribution, and a firearms offense.[45] Desperate to avoid the prospect of decades in jail because of draconian sentencing schemes, Lewis took a plea deal for five years.[46] Innocent people regularly take plea deals because of the "trial penalty": individuals who fight charges in court (rather than accepting a plea deal) face punitive and excessive sentences.[47] The judge in his case eventually intervened, declaring the scenario an "injustice" and releasing him on time served—but Lewis had already spent 22 months in jail.[48]

(Not) Getting Off of Gang Databases
Despite the ease and speed with which officers appear to add Black and Latinx youth to gang databases, it is typically impossible for individuals to get off. Consider California. On paper, at least, CalGang allows individuals to petition to be removed from the database. A recent audit found that in one year, only 11 people succeeded in such petitions[49] of over 100,000 individuals included in the database that year.[50] That's a grade above gang databases like the NYPD's, which as of 2023 has no mechanism for removal at all.[51]

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[42] Stephan, "Conspiracy: Contemporary Gang Policing."

[43] Hannah Dreier, "He Drew His School Mascot — and ICE Labeled Him a Gang Member," *ProPublica*, December 27, 2018, https://features.propublica.org/ms-13-immigrant-students/huntington-school-deportations-ice-honduras/.

[44] Stephan, "Conspiracy: Contemporary Gang Policing," 1020.

[45] Lewis asserts that he was enrolled in the NYPD's gang database. *See* Dean Meminger, "Bronx Man Says Dreams of Music and Law Derailed by NYPD Gang Database," October 6, 2021, https://ny1.com/nyc/all-boroughs/crime/2021/10/06/bronx-man-says-dreams-of-music-and-law-careers-derailed-by-nypd-gang-database. *See also* Southern District of New York, "120 Members And Associates Of Two Rival Street Gangs In The Bronx Charged In Federal Court With Racketeering, Narcotics, And Firearms Offenses," United States Department of Justice, April 27, 2016, https://www.justice.gov/usao-sdny/pr/120-members-and-associates-two-rival-street-gangs-bronx-charged-federal-court.

[46] S.D.N.Y., "Rival Street Gangs Charges."

[47] Clark Neily, "Prosecutors Are Packing Prisons by Coercing Plea Deals, and It's Totally Legal," *NBC News*, August 8, 2019, https://www.nbcnews.com/think/opinion/prisons-are-packed-because-prosecutors-are-coercing-plea-deals-yes-ncna1034201.

[48] S.D.N.Y., "Rival Street Gangs Charges."

[49] Kelly Davis, "Few People Have Successfully Removed Themselves from State Gang Database," *Public Safety*, December 9, 2019, https://voiceofsandiego.org/2019/12/09/few-people-have-successfully-removed-themselves-from-state-gang-database/.

[50] There were 103,813 records in CalGang in 2017. Office of the Attorney General of the State of California Department of Justice, "Attorney General's Annual Report on CalGang for 2017," 2017, https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/ag-annual-report-calgang-2017.pdf.

[51] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database."

IV.   The "RICO" Treatment

At every step of the criminal justice process, being an accused gang member—even on the flimsiest grounds—makes things worse. Simply being in a gang database may not be enough to land someone in prison or jail, but it certainly gives police and prosecutors extraordinary leverage. And those flagged as being connected with gangs, no matter how tenuously, face the threat of prosecution by special gang prosecutors under federal and state laws that pose life-altering punishments.[52]

Bringing Charges: Making Something from Nothing at All
Prosecutors use legislation meant for the most sophisticated and dangerous criminal conspiracies to criminalize Black and Latinx youth, transforming even the most attenuated links between an individual and suspected gang activity into a multitude of charges.[53] Under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") and RICO-like state laws, prosecutors have broad discretion to selectively punish individuals accused of gang membership more severely, charging them as part of a conspiracy rather than based on their own actions. RICO was created to tackle wealthy and powerful criminal organizations, but prosecutors increasingly use it to target "vulnerable, marginalized, and under-resourced individuals" living in over-policed communities.[54]

RICO-type laws allow prosecutors to spin petty offenses into big-crime fantasies, with correspondingly serious charges. The evidence suggests that Black and Latinx youth pay the price again and again. The LAPD raided Stefano Bloch's family home after a teenaged Bloch was wrongly identified as a gang leader for doing graffiti.[55] Instead of being charged with misdemeanor vandalism, prosecutors stuck Bloch with felony charges.[56] After the NYPD discovered Keith Shenery with a small bag of marijuana and a folding knife that his grandfather had given him, prosecutors could have charged Shenery with a misdemeanor.[57] Instead, they charged him with felony possession of a weapon and unlawful possession of marijuana, and throughout his court case prosecutors repeatedly labeled him a gang member, likely due to his wrongful inclusion in the NYPD gang database.[58] In San Diego, prosecutors acknowledged that Las Vegas real estate agent Aaron Harvey was not present for nine

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[52] Rebecca Rader Brown, "The Gang's All Here: Evaluating the Need for a National Gang Database," *Columbia Journal of Law & Social Problems* 42 (2008): 293, 321 (observing that "[p]ersons known or suspected to be in a gang appear to receive harsher treatment at every stage of investigation and adjudication").

[53] *See, for example,* H. Caldwell, "Reeling In Gang Prosecution: Seeking a Balance in Gang Prosecution," *University of Pennsylvania Journal of Law and Social Change* 18 (January 1, 2015): 341, 363.

[54] Babe Howell and Priscilla Bustamante, "Report on the Bronx 120 Mass 'Gang' Prosecution," April 2019, 10 https://bronx120.report/the-report.

[55] Stefano Bloch, "Are You in a Gang Database?," *The New York Times*, February 4, 2020, sec. Opinion, https://www.nytimes.com/2020/02/03/opinion/los-angeles-gang-database.html.

[56] Bloch, "In a Gang Database?."

[57] Alice Speri and Stephanie Tangkilisan, "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/.

[58] Speri and Tangkilisan, "Instant Felons."

shootings and then charged him with nine counts of felony conspiracy anyway, falsely claiming that he "benefited" reputationally as an accused member of the gang behind the shootings.[59]

These aren't one-offs. The NYPD arrested 120 people, predominantly from poor Black and Latinx communities in the Bronx, in its largest gang raid in 2016, and charged them under the RICO Act.[60] RICO requires two "predicate acts" (qualifying illegal activities) to bring charges.[61] Of the Bronx 120, thirty-five people—about 30%—were charged and convicted of federal conspiracy or narcotics conspiracy charges for predicate acts no more serious than selling marijuana.[62] Another 33 were charged based on other kinds of drug sales.[63] Astoundingly, five were charged despite having no predicate acts at all.[64] And despite being swept up in a "gang" indictment, nearly half of the Bronx 120 were not even alleged to be gang members according to the federal prosecutors themselves.[65]

Excessive Bail, Needless Jail
Once an individual is falsely charged, overcharged, or up-charged with gang-related crimes, every other step of the criminal justice process becomes more punitive. Chicago police don't issue tickets to accused gang members who drive with a suspended license: they take them to jail.[66] While the Eighth Amendment prohibits excessive bail,[67] judges still use gang database inclusion to set bail (even when it is not required), to set excessive bail, or to refuse bail entirely.[68] After he was refused bail, Aaron Harvey, the real estate agent, sat in jail for eight months before the charges against him were dismissed for lack of evidence.[69] Bail was initially set at $1.5 million for Kraig Lewis by the magistrate judge, and then revoked entirely when the prosecutor appealed the magistrate's bail conditions before Lewis could even attempt to post bail.[70] Put plainly: the prosecution opposed the release, even with the most stringent conditions, of a man with no criminal record on the sole ground that he was a supposed gang member.

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59 Ali Winston, "You May Be in California's Gang Database and Not Even Know It," *Reveal*, March 23, 2016, http://revealnews.org/article/you-may-be-in-californias-gang-database-and-not-even-know-it/.

60 Joshua D. Wright, "The Constitutional Failure of Gang Databases," *Stanford Journal of Civil Rights & Civil Liberties* 2 (2005): 115, 117-119.

61 18 U.S.C.A. § 1961-1968 (Crime Control Act of 1970).

62 Howell and Bustamante, "Report on the Bronx 120," at 17.

63 Howell and Bustamante, "Report on the Bronx 120," at 17.

64 Howell and Bustamante, "Report on the Bronx 120," at 17.

65 Howell and Bustamante, "Report on the Bronx 120," at 9.

66 Rebecca Marston, "Guilt by Alt-Association: A Review of Enhanced Punishment for Suspected Gang Members," *University of Michigan Journal of Law Reform* 52 (2019): 923, 929-30.

67 U.S. Const. amend. VIII.

68 See, for example, Howell and Bustamante, "Report on the Bronx 120," 624-25 ("higher bail is more likely [for those alleged to have gang affiliations] than for those with similar records, charges and community ties who are not alleged to be in gang databases").

69 Ali Winston, "Not Even Know It."

70 Alice Speri and Stephanie Tangkilisan, "The Largest Gang Raid in NYC History Swept Up Dozens of Young People Who Weren't in Gangs," *The Intercept*, April 25, 2019, https://theintercept.com/2019/04/25/bronx-120-report-mass-gang-prosecution-rico/.

Sentencing

Accused gang members may be more likely to be convicted: gang membership is stigmatizing and can be used to prove motive, and especially skilled prosecutors are often the ones assigned to try accused gang members.[71] Once convicted, individuals in a gang database face more severe punishment. They may be tried by "gang prosecution units" that don't engage in plea bargaining and require prosecutors to seek the maximum penalty.[72] Upon conviction of a gang-related crime, either as a result of a trial or plea bargain, anti-gang legislation also layers on sentencing enhancements (increased penalties for gang-related crimes).[73] In almost half of states, that amounts to a mandatory minimum sentence for gang-related crimes.[74]

Barriers to Rebuilding After Incarceration

Once Kraig Lewis was released from jail, he wasn't allowed to return to his home in Connecticut: he was required to stay in New York, where the one-time MBA student struggled to find work.[75] Lewis was also barred from seeing his co-defendants, the childhood friends who were the only friends he knew in New York.[76] This is par for the course after gang-related convictions. Felony convictions don't make for easy reentry.[77] Individuals with gang-related convictions are routinely prohibited from meeting friends accused of gang membership (and are charged anew if they do).[78] Courts may require them to register as gang members with local law enforcement, even if a person is no longer a gang member or never was in the first place.[79]

Gang Databases Target Immigrants for Arrest and Deportation

ICE makes particularly destructive use of gang databases: in 2022, it deported over 2,600 supposed "gang members."[80] The agency maintains its own secret gang database using GangNET software and the same loose inclusion criteria that plague other gang databases (frequents the wrong locations, is seen with the wrong people, is identified by "reliable" sources as a gang member[81]). GangNET also

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[71] Marston, "Guilt by Alt-Association," 929-30. *See also* Brown, "The Gang's All Here."

[72] Brown, "The Gang's All Here."

[73] Marston, "Guilt by Alt-Association."

[74] Brown, "The Gang's All Here." For example, in Chicago, courts are required to impose a mandatory minimum if the offense was related to the activities of an organized gang. Chicago Office of Inspector General, "Chicago PD Gang Database," 64-65.

[75] Speri and Tangkilisan, "Instant Felons."

[76] Speri and Tangkilisan, "Instant Felons." *See also* Stephan, "Conspiracy: Contemporary Gang Policing," 1025.

[77] Talmon Joseph Smith, "Ex-Prisoners Face Headwinds as Job Seekers, Even as Openings Abound," *The New York Times*, July 6, 2023, sec. Business, https://www.nytimes.com/2023/07/06/business/economy/jobs-hiring-after-prison.html.

[78] Stephan, "Conspiracy: Contemporary Gang Policing," 1025; Brown, "The Gang's All Here," 322; Chicago Office of Inspector General, "Chicago PD Gang Database," 65.

[79] Sean Garcia-Leys, Meigan Thompson and Christyn Richardson, "Mislabeled, Allegations of Gang Membership and Their Immigration Consequences," *University of California at Irvine, Immigrant Rights Clinic*, April 2016, https://www.law.uci.edu/academics/real-life-learning/clinics/ucilaw-irc-MislabeledReport.pdf.

[80] U.S. Immigration and Customs Enforcement, "ICE Annual Report Fiscal Year 2022," December 30, 2022, https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf#page=3.

[81] Ali Winston, "Vague Rules Let ICE Deport Undocumented Immigrants as Gang Members," *The Intercept*, February 17, 2017, https://theintercept.com/2017/02/17/loose-classification-rules-give-ice-broad-authority-to-classify-immigrants-as-gang-members.

supplies ICE with access to participating cities' and states' gang databases.[82] ICE's ability to access municipalities' gang databases appears to exceed sanctuary cities' ability to shield their immigrant residents: a 2019 review of Chicago's gang database found that immigration agencies accessed the database over 32,000 times, in violation of the city's sanctuary law.[83]

ICE uses gang databases to conduct "immigration sweeps" that amount to violent gang raids, "ransack[ing] homes" with guns drawn to arrest supposed gang members.[84] A 2017 operation in New York rounded up immigrants with no criminal records for supposed gang involvement, even though many of them had fled their home countries to escape gang violence.[85] Following immigration sweeps, ICE routinely upcharges detained individuals ("one young man reportedly spent nearly two years in solitary confinement…. before his charges were dropped to marijuana-related offenses."[86]) Being an accused gang member is sufficient grounds for deportation, even in the absence of a crime.[87] Rarely, ICE's reliance on faulty gang databases is called out. At least three judges have stopped database-driven deportation proceedings for absolute lack of evidence.[88]

ICE also uses gang databases to deny immigrants the few benefits available to undocumented Americans. Deferred Action for Childhood Arrivals (DACA) is a lifeline for undocumented youth. It allows undocumented Americans who come to the United States before age sixteen to avoid deportation and apply for a renewable two-year work authorization so they can work or attend school.[89] But inclusion in a gang database derails DACA dreams. The United States Citizenship and Immigration Services ("USCIS") administers DACA and uses ICE's gang database, ICEGangs, to conduct background checks on applicants.[90] If the USCIS discovers that an individual is included in a gang database, it can terminate a DACA applicant's case and refer the applicant to ICE, which can lead to deportation.[91] ICE has detained DACA applicants based on supposed gang involvement with no justification except for applicants' inclusion in a gang database.[92] It detained one DACA recipient, Daniel Ramirez Medina, for almost two months solely because of Medina's erroneous designation as

[82] Richard Irwin, "How ICE Uses Databases and Information-Sharing to Deport Immigrants," *National Immigration Law Center (blog)*, January 25, 2018, https://www.nilc.org/2018/01/25/how-ice-uses-databases-and-information-sharing-to-deport-immigrants/; Stephan, "Conspiracy: Contemporary Gang Policing," 1019.
[83] Chicago Office of Inspector General, "Chicago PD Gang Database," 26.
[84] Stephan, "Conspiracy: Contemporary Gang Policing,"1023.
[85] New York Immigration Coalition, "Swept Up in the Sweep Report," 2018, https://www.nyic.org/2018/06/swept-up-in-the-sweep-report/.
[86] Stephan, "Conspiracy: Contemporary Gang Policing," 1023.
[87] Stephan, "Conspiracy: Contemporary Gang Policing," 1025. Citing Winston "Vague Rules."
[88] Stephan, "Conspiracy: Contemporary Gang Policing,"1020.
[89] American Immigration Council, "The Dream Act: An Overview," 2021, https://www.americanimmigrationcouncil.org/research/dream-act-overview.
[90] U.S. Department of Homeland Security, "Privacy Impact Assessment for the ICEGangs Database," January 15, 2010, https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_ice_icegangs.pdf.
[91] DHS, "Privacy Impact Assessment for the ICEGangs Database."
[92] American Civil Liberties Union (ACLU) et al, "TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children," Statement on the Record to the Senate Judiciary Committee, Subcommittee on Border Security and Immigration, May 23, 2018, https://www.ilrc.org/sites/default/files/resources/stmnt_for_record_aclu_etal_senate_brdr_sec-20180523.pdf.

a gang member, only for ICE to admit to being unable to provide any actual evidence of gang affiliation when probed.[93] A federal judge ordered ICE not to terminate his benefits.[94]

Accused gang membership also derails applications to a program meant to keep immigrant families together. Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) allows parents of US citizens to avoid deportation and apply for work authorization.[95] It explicitly excludes suspected gang members.[96] If an applicant is identified as a suspected gang member, USCIS again must refer the applicant to ICE for possible deportation.[97]

V.   Abolish Gang Databases

Again and again, when faced with external scrutiny and common-sense recommendations, police departments have made it clear that they will not stop their discriminatory typecasting of Black and Latinx youth as gang members. It's also clear that the best recommendations for fixing gang databases simply don't do enough. That means that there is only one feasible solution: they must be abolished.

Common Recommendations Don't Go Far Enough
Auditors have reviewed gang databases in New York City,[98] California,[99] Chicago,[100] and Texas.[101] Courts reviewed Boston's gang database.[102] Their key recommendations concerning gang databases are nearly uniform across the board:

1. *Improve Criteria for Inclusion.* Agencies should stop adding individuals to gang databases based on activities that don't indicate gang membership. (CA,[103] Chicago,[104] Boston[105])

2. *Notice and/or Appeal.* Agencies should notify individuals (especially minors) when they are added to a gang database. At the very least, they should respond to individuals' requests to determine whether they are included in a gang database. Agencies should have appeals

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93 ACLU, "TVPRA and Exploited Loopholes."
94 ACLU, "TVPRA and Exploited Loopholes."
95 ACLU, "TVPRA and Exploited Loopholes."
96 ACLU, "TVPRA and Exploited Loopholes."
97 Immigrant Legal Resource Center, "Understanding Allegations of Gang Membership/Affiliation in Immigration Cases," April 2017, https://www.ilrc.org/sites/default/files/resources/ilrc_gang_advisory-20170509.pdf.
98 City of New York Department of Investigation, "Examining NYPD's Criminal Group Database."
99 California State Auditor, "CalGang Criminal Intelligence System."
100 Chicago Office of Inspector General, "Chicago PD Gang Database."
101 Texas State Auditor, "An Audit Report on The Department of Public Safety's Texas Gang Intelligence Database," August 2022, https://sao.texas.gov/reports/main/22-039.pdf.
102 *Diaz Ortiz v. Garland*, 23 F.4th 1 (1st Cir. 2022).
103 California State Auditor, "CalGang Criminal Intelligence System," 61.
104 Chicago Office of Inspector General, "Chicago PD Gang Database," 3.
105 *Diaz Ortiz v. Garland*, 23 F.4th 1 (1st Cir. 2022), 3.

processes by which minors or all individuals can correct their erroneous gang database records and be removed from a database. (Chicago,[106] Boston,[107] New York[108])

3. *Automatic Purging.* Agencies should regularly, routinely, and automatically expunge entries for individuals who meet certain criteria (e.g., no police encounters or arrests) for a specified period of time. (CA,[109] Chicago,[110] New York[111])

4. *Periodic Checks for Bad Data.* Agencies should audit or allow external audits of their databases, including identifying improper entries (e.g., entries that do not satisfy database criteria for gang membership, entries that are not properly validated or approved, and entries that violate the law). (CA,[112] Chicago,[113] New York,[114] TX[115])

5. *Accountability.* Municipalities must comply with their regulations around gang databases and answer to external parties for that performance (CA,[116] Chicago,[117] New York[118])

These recommendations don't go far enough. They make room for police to maintain that Black kids (but not white kids) hanging out on a stoop are engaging in gang activity.[119] They allow databases to be overinclusive, tracking both non-gang members and individuals who aren't under any individual suspicion of any crime. These recommendations also make no guarantee that white gang members who do commit crimes will be added to gang databases: that is, they are consistent with gang databases being underinclusive, too. And while notice and appeals processes provide important due process rights, they don't eliminate the burden of clearing one's name or prevent plea deals that individuals may agree to under pressure. Automatic purges don't eliminate the burden of being labeled a gang member for three or five years until a person "qualifies" to have their record purged. Periodic checks and audits may reduce but not eliminate mistakes, abuses, and their corresponding harms.

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[106] Chicago Office of Inspector General, "Chicago PD Gang Database," 3.

[107] *Diaz Ortiz v. Garland*, 23 F.4th 1 (1st Cir. 2022), 46.

[108] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 67.

[109] California State Auditor, "CalGang Criminal Intelligence System," 55.

[110] Chicago Office of Inspector General, "Chicago PD Gang Database," 3.

[111] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 9.

[112] California State Auditor, "CalGang Criminal Intelligence System," 55.

[113] Chicago Office of Inspector General, "Chicago PD Gang Database," 3.

[114] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 9.

[115] Texas State Auditor, "Texas Gang Intelligence Database," 13.

[116] California State Auditor, "CalGang Criminal Intelligence System," 5.

[117] Chicago Office of Inspector General, "Chicago PD Gang Database," 53.

[118] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 65.

[119] We thank one of our reviewers for this example.

Insufficient Will for Reform

Practically speaking, these recommendations' insufficiencies are besides the point, because the will to implement them is simply missing. The Chicago Inspector General first audited the Chicago Police Department's gang database in 2019. When it revisited the city's gang database in 2021, it was blunt: "CPD [the Chicago Police Department] has fallen critically short of meeting the commitments it made in response to OIG's April 2019 findings and recommendations" and has no clear plan to make the system "more up-to-date and accurate."[120] Following up on a 2018 request for investigation, S.T.O.P. and other civil rights groups publicly requested an audit of the NYPD gang database in 2020, citing problems including its racial bias, overbroad criteria for inclusion, and lack of due process (notice and appeals) for included individuals.[121] The city's Inspector General effectively gave the NYPD time to address these problems: it did not audit the gang database until 2023… when none of these issues had been resolved. The NYPD gang database is still 99% Black and Latinx, still includes individuals without objective evidence, still fails to notify individuals that they've been included, and still fails to offer an appeals process.[122] The Inspector General's audit also found that the NYPD does not follow its own internal protocols for adding people to the database: for example, one officer in some cases will serve as the reporting officer, reviewing supervisor, and endorser—a process meant to involve three different officers.[123]

CalGang has similarly intractable problems. In 2016, auditors informed CalGang administrators that many entries were groundless and that the system lacked safeguards to ensure its accuracy.[124] Fast forward to 2020, when the LAPD audited its own gang database (constituting 25% of CalGang records) and found widespread "inaccurate information," falsified records, and such systemic problems that the LAPD decided to "permanently withdraw" its participation in CalGang, meaning its officers would no longer be able to add any names to the list.[125] (The audit also revealed that the LAPD sees the folly of identifying gang members by their clothing: as the audit authors remarked, "[i]t is difficult to say with any confidence that these outfits are somehow different from what one sees on the street every day."[126]) Despite this debacle, CalGang's faulty records and California law limiting access to certain members of law enforcement,[127] information from CalGang has been shared

[120] City of Chicago Office of Inspector General, "Follow-Up on the Chicago Police Department's 'Gang Database,'" March 31, 2021, https://igchicago.org/2021/03/31/follow-up-inquiry-on-the-chicago-police-departments-gang-database/.

[121] "Coalition Letter Calls on the NYPD Inspector General to Audit the NYPD 'Gang Database'," Brennan Center for Justice, September 22, 2020, https://www.brennancenter.org/our-work/research-reports/coalition-letter-calls-nypd-inspector-general-audit-nypd-gang-database.

[122] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 10, 34.

[123] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 62.

[124] California State Auditor, "CalGang Criminal Intelligence System."

[125] Chief of Police Michael Moore, Letter to the Honorable Board of Police Commissioners, "Review of CalGang Database Entries by the Metropolitan Division and the Gang Enforcement Details," July 10, 2020, https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/11/BPC_20-0078.pdf.

[126] Chief of Police Michael Moore, "Review of CalGang Database Entries," 7.

[127] The claim from the California Attorney General is that "only approved and trained law enforcement officers and support staff may access CalGang® information." "CalGang Frequently Asked Questions (FAQs)," State of California - Department of Justice - Office of the Attorney General, April 17, 2020, https://oag.ca.gov/calgang/faqs.

with "employers, landlords, public housing, and school administrators, often leading to additional punishments, evictions, and exclusion from services and resources."[128]

Practical and Principled Reasons to Reject Gang Databases

Gang databases don't appear to be effective. A 2016 study found that "CalGang has not been successful in reducing the rate of gang-related crime in Los Angeles."[129] The NYPD's recent gang database audit repeatedly asks the department to clarify how its database helps solve or prevent crimes.[130] More broadly, history shows that aggressively over-policing gangs doesn't help and may increase community danger: during Los Angeles County's $28 billion "war on gangs" in the 1980s and 1990s, gang violence increased and the number of gangs grew sixfold.[131]

And gang databases don't just fail to serve their purpose. While accomplishing nothing good, they trample basic civil rights. Gang databases threaten citizens' fundamental interests in "life, liberty, and property." This harm to life, liberty, and property can happen when an individual's liberty is curtailed by a government action that causes harm to their reputation, along with the violation of a specific legal right (such as the right to receive welfare benefits) or a change in the person's legal status (such as becoming a felon).[132] As such, state and federal agencies must provide notice and appeal opportunities when including individuals, or this violates their rights under the Due Process Clauses of the Fourteenth Amendment, which governs states' and cities' gang databases, and the Fifth Amendment, which governs federal agencies' databases, including ICE's gang database.

Even if gang databases avoid due process violations, law enforcement's overwhelming targeting of Black and Latinx individuals appears to violate the Equal Protection Clause of the Fourteenth Amendment. A decade ago, a court held that the NYPD's stopping and searching city residents—mostly Black and Latinx young men under no suspicion of a crime—was unconstitutional.[133] The court recognized that targeting Black and Latinx youth simply for fitting the NYPD's racist profile of

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[128] Ana Muniz, "What's Wrong with California's Gang Databases and Gang Injunctions," *Open Society Foundations – Voices Blog*, January 22, 2013, https://www.opensocietyfoundations.org/voices/whats-wrong-californias-gang-databases-and-gang-injunctions.

[129] Robin Petering, "The Potential Costs of Police Databases: Exploring the Performance of California's Gang Database (CalGang)," *Journal of Forensic Social Work* 5, no. 1–3 (September 2, 2015): 67–81, 67 https://doi.org/10.1080/1936928X.2015.1109399.

[130] City of New York Department of Investigation, "Examining NYPD's Criminal Group Database," 8, 65.

[131] Connie Rice, "The Only Way to Improve California's Gang Database Is to Abolish It," L.A. Times, February 25, 2020, https://www.latimes.com/opinion/story/2020-02-25/op-ed-california-gang-database-abolish.

[132] Wright, "Constitutional Failure of Gang Databases." *See Paul v. Davis*, 424 U.S. 693 (1976), 708–09.

[133] *Floyd*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).; s*ee, for example,* James Cullen, "Ending New York's Stop-and-Frisk Did Not Increase Crime," *Brennan Center for Justice*, April 11, 2016, https://www.brennancenter.org/our-work/analysis-opinion/ending-new-yorks-stop-and-frisk-did-not-increase-crime.

wrongdoers violated their rights to equality and to be free from unfounded searches.[134] The NYPD cut back its use of stop-and-frisk in 2014 following the court's ruling.[135]

But stop-and-frisk has persisted—both the original version[136] and its data-based reincarnation as the gang database.[137] Gang surveillance commits the same equal protection violations under the false veneer of "data-based policing" and the false claim that because gang databases target only the worst of the worst, law-abiding citizens have nothing to worry about. In fact, police add individuals to gang databases because they live where gangs operate or know accused gang members; they add young men for supposedly looking or dressing like gang members. And in doing so, they commit the fundamental sin of racial profiling: "targeting young Black and Latinx men for stops based on the alleged criminal conduct of other young black or Latinx men," which, as the court emphasized, "violates bedrock principles of equality."[138]

Conclusion

Gang databases target Black and Latinx youth for extra police scrutiny even where there is no reasonable suspicion that they are involved in criminal gang activity.[139] It's no surprise that, as the Chicago Inspector General remarked, a gang database like Chicago's "inhibits [the police] department's ability to build public trust."[140] And it's no surprise that gang databases simply have to go. When Portland, Oregon, abolished the city's gang database, its policymakers "concluded that any [dubious] benefits from the database were outweighed by the hostility the program engendered in the city's black and Latino communities, where residents suspected the police were sharing the list not only with ICE, but also with employers and landlords."[141] Gang databases are unconstitutional and target BIPOC people based on non-criminal conduct, causing serious harm. They endanger individuals who are no more likely to commit a crime than anyone else, enabling and encouraging racial profiling and over-policing. Oversight of gang databases has made little difference. They simply need to go.

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[134]*Floyd*, 959 F. Supp. 2d 540, 573–74 (S.D.N.Y. 2013) . The court found that 84% of those stopped and searched by the New York Police Department ("NYPD") were Black and Latinx, even though these two groups made up only 52% of the city's population. 88% of individuals were stopped wrongly, with no arrest or summons resulting.

[135] James Cullen, "Ending New York's Stop-and-Frisk Did Not Increase Crime," *Brennan Center for Justice*, April 11, 2016, https://www.brennancenter.org/our-work/analysis-opinion/ending-new-yorks-stop-and-frisk-did-not-increase-crime.

[136] Katersky and Grant, "High Number Unlawful Stops." *See also* Emily Badger, "The Lasting Effects of Stop-and-Frisk in Bloomberg's New York," *The New York Times*, March 2, 2020, sec. The Upshot, https://www.nytimes.com/2020/03/02/upshot/stop-and-frisk-bloomberg.html.

[137] NAACP Legal Defense & Educational Fund, Inc., and the Center for Constitutional Rights, "Testimony on NYPD's Gang Takedown Effort."

[138] NAACP Legal Defense & Educational Fund, Inc., and the Center for Constitutional Rights, "Testimony on NYPD's Gang Takedown Effort."

[139] Stephan, "Conspiracy: Contemporary Gang Policing."

[140] Stephan, "Conspiracy: Contemporary Gang Policing."

[141] Emmanuel Felton, "Gang Databases are a Life Sentence for Black and Latino Communities," *Pacific Standard*, March 15, 2018, https://psmag.com/social-justice/gang-databases-life-sentence-for-black-and-latino-communities.