

NYPD BIAS

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JULY 5, 2019



On June 26, the Office of the Inspector General for the New York City Police Department (the “OIG”) released a bombshell report [examining](#) how the NYPD investigates complaints of biased policing.¹ Shocking, the report found at least 2,495 bias complaints from 2014 to 2018. Even more alarmingly, the OIG found that the NYPD failed to substantiate a single complaint and failed to adequately investigate or track the majority.²

For two and a half years, the OIG examined NYPD’s over 5,000 pages of NYPD documents, attended NYPD bias trainings, and interviewed bias investigators. In that time, a majority of bias complaints alleged racial discrimination and that the majority of complainants were Black.³⁴

The OIG found that NYPD does not investigate racial slurs and other offensive language, despite rules clearly making that part of “biased policing.” The NYPD only conducts a cursory investigation in cases that also involve false arrest, the use of force, or some other violation of department regulations. NYPD policy it to refer complaints of racial slurs, no matter how vile, to the Civilian Complaint Review Board (CCRB). However, the CCRB does not interpret investigating police bias as falling within its jurisdiction.⁵ Since 2014, the CCRB has substantiated several allegations of slurs used against NYPD officers, yet did not investigate any claims of biased policing against officers—choosing to let the NYPD police itself instead.⁶ Sadly, the CCRB abdicated its duty to investigate, permitting police bias to go virtually unchecked.

The OIG also found the NYPD misclassified complaints and frequently failed to even interview officers and complainants. In some cases, NYPD investigators began work without any bias training. The OIG’s key recommendations included:

1. The CCRB should investigate biased policing complaints under its “abuse of authority” jurisdiction

¹ See OIG-NYPD, *Complaints of Biased Policing in New York City: An Assessment of NYPD’s Investigations, Policies, and Training*, at: <https://cbsnewyork.files.wordpress.com/2019/06/19biasrpt06-26-2019.pdf>.

² Based on an analysis of 888 biased policing allegations filed between late 2014 and early 2017.

³ OIG-NYPD determined 68% of biased policing complaints alleged discriminatory policing based on race, ethnicity, color, or national origin and that the largest category of complainants were Black (66.5%).

⁴ Other complaints alleged biased policing on the basis of religion, disability, sexual orientation, gender identity, gender, age, citizenship status, alienage, housing status, and other non-physical characteristics.

⁵ See OIG, *supra* note 1 at 37.

⁶ Since CCRB does not investigate biased policing, the agency refers those allegations to NYPD. For example, if a CCRB complainant alleged that they were subjected to a vehicle stop without any lawful basis and that they believed the true reason for the stop was their race, CCRB would investigate the lawfulness of the vehicle stop under its “Abuse of Authority” jurisdiction, but refer the allegation of a racial motivation for the stop to NYPD. See *id.* at 14.

2. The NYPD should consider the use of racial slurs and other offensive language as biased policing.
3. The NYPD should develop a pilot mediation program for biased policing complaints, including referral criteria for both uniformed and non-uniformed members.
4. The NYPD should expand biased policing reports to include more details about officer and complainant demographics, the complaint rates for each precinct, and the outcomes of investigations.

History of Race-Based Profiling Statistics

New York City, like nearly all American cities, has a long and tragic history of racially biased policing. In 1999, four NYPD officers shot Amadou Diallo, an unarmed Guinean immigrant, 41 times in his apartment building.⁷ In 2014, an NYPD officer choked Eric Garner to death, ignoring his 11 pleas for air—“I can’t breathe”.⁸ Later that year, the New York City Council charged the NYPD with investigating biased policing complaints, such as racial profiling. Shockingly, prior to that requirement, the NYPD did not even attempt to track biased policing complaints.

Litigation challenging the departments discriminatory “stop-and-frisk” policy⁹ exposed the scope of NYPD racial profiling. Throughout the 2000s, the NYPD increased stops more than 500%, conducting more than 600,000 stops in 2010 alone, nearly all of which targeted New Yorkers of color.¹⁰ This data led the New York City Council to require the NYPD investigate and track racial policing.

In 2011, a bombshell AP report found significant evidence¹¹ that the NYPD conducted widespread religious profiling of Muslim New Yorkers.¹² For example, the NYPD deployed informants and undercover personnel without warrants to investigate Muslims in mosques, coffee shops, and even

⁷ See JANE FRISCH, *The Diallo Verdict: The Overview; 4 Officers In Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES, Feb. 26, 2000, <https://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-overview-4-officers-diallo-shooting-are-acquitted-all-charges.html>.

⁸ See AL BAKER, *BEYOND THE CHOKEHOLD: THE PATH TO ERIC GARNER’S DEATH*, N.Y. TIMES, JUNE 13, 2015, [HTTPS://WWW.NYTIMES.COM/2015/06/14/NYREGION/ERIC-GARNER-POLICE-CHOKEHOLD-STATEN-ISLAND.HTML](https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html).

⁹ In 2013, a federal judge held that NYPD’s policies and practices on “stop, question, and frisk” violated the Fourth and Fourteenth Amendments, primarily because the Court found that those policies and practices resulted in the disproportionate and discriminatory stopping of hundreds of thousands of Black and Latino people. The Court issued an order specifying remedies and appointed a federal monitor to oversee implementation of the Court orders and the parties’ agreements. The Court also required that NYPD “begin tracking and investigating civilian complaints related to racial profiling and other allegations of bias” committed by officers. See generally *Floyd v. City of N.Y.*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

¹⁰ N.Y.C. Local Law No. 71 § 1 (2013),

https://www1.nyc.gov/assets/cchr/downloads/pdf/amendments/Int_1080_2013_bias_profiling.pdf.

¹¹ For an in-depth review of Muslim surveillance by the NYPD, see *Raza v. City of New York*, 998 F. Supp. 2d 70 (E.D.N.Y. 2013).

¹² See *Handschu v. Police Dep’t of N.Y.*, 219 F. Supp. 3d 388 (S.D.N.Y. 2016).

their homes without any suspicion of wrongdoing.¹³ Disturbingly, an earlier OIG report found that over 95% of NYPD investigations targeted Muslim New Yorkers and their allies.¹⁴

Military-grade surveillance tools make racial bias by the police even more nefarious than ever before. The NYPD has routinely outfitted unmarked police cars with automated license plate readers (ALPRs) to record the plates of everyone parked near a mosque.¹⁵ Additionally, newly-released documents reveal that ICE creates “hot-lists” using domain awareness system (DAS)¹⁶ data to track undocumented immigrants.¹⁷

Legislative Action

This OIG report evidences that the NYPD cannot be trusted to police itself. The New York City Council should take affirmative steps to address the department’s troubling history of racial bias. It can do so by passing the Public Oversight of Surveillance Technology (“POST”) Act, which requires the NYPD to systematically develop privacy protections for each and every spy tool it deploys.¹⁸

The POST Act is a comprehensive, yet modest, response to the NYPD’s Orwellian surveillance. It allows the NYPD to continue using these tools—no matter how problematic—by complying with modest protections against waste, discrimination, and misuse. In fact, the POST Act would be one of the weakest surveillance reform bills in the country.¹⁹ San Francisco²⁰ and Oakland²¹ have already banned facial recognition technology, and Massachusetts is even considering a state-wide moratorium on facial recognition²². While the POST Act would not eradicate instances of NYPD racial discrimination, its passage would mitigate some of its deleterious effects.

¹³ See *id.*

¹⁴ See OIG-NYPD, *An Investigation of NYPD’s Compliance with Rules Governing Investigations of Political Activity*, at: https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_intel_report_823_final_for_release.pdf.

¹⁵ See ADAM GOLDMAN & MATT APUZZO, *NYPD Defends Tactics Over Mosque Spying; Records Reveal New Details On Muslim Surveillance*, HUFFPOST, Apr. 25, 2012, https://www.huffpost.com/entry/nypd-defends-tactics-over_n_1298997.

¹⁶ The Domain Awareness System (DAS) utilizes cameras, license plate readers, and radiological sensors to create a real-time surveillance map of New York City to record every car traveling through Manhattan and provides law enforcement sufficient data points to ascertain a driver’s journey from start to finish. See ADAM MARTIN, *NYPD, Microsoft Hope to Make a Mint off New Surveillance System*, THE ATLANTIC, Aug. 8, 2012, <https://www.theatlantic.com/national/archive/2012/08/nypd-microsoft-hope-make-mint-new-surveillance-system/324924/>.

¹⁷ See ZACH WHITTAKER, *ICE Has a Huge License Plate Database Targeting Immigrants, Documents Reveal*, TECH CRUNCH, March 13, 2019, <https://techcrunch.com/2019/03/13/ice-license-plates-immigrants/>.

¹⁸ Public Oversight of Surveillance Technology (POST) Act, Int 0487-2018.

¹⁹ See ACLU, *Community Control Over Police Surveillance*, <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance>.

²⁰ See CONGER, KATE, *San Francisco Bans Facial Recognition Technology*, N.Y. TIMES, May 14, 2019, <https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html>.

²¹ See EDITORIAL BOARD, *San Francisco Banned Facial Recognition. New York Isn’t Even Close*. N.Y. TIMES, May 18, 2019, <https://www.nytimes.com/2019/05/18/opinion/nypd-post-act-surveillance.html>.

²² See MASSACHUSETTS SENATE, *Bill S.1385*, <https://malegislature.gov/Bills/191/S1385>.



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