WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Testimony of Carlos Andino, Equal Justice Works Fellow, Washington Lawyers' Committee for Civil Rights and Urban Affairs[1]

Before the Council of the District of Columbia, Committee on the Judiciary and Public Safety

Concerning the Year 2021 to 2022 Performance Oversight of the District of Columbia Metropolitan Police Department

February 17, 2022

In a letter to Councilmember Allen this month, the Metropolitan Police Department ("MPD") made troubling admissions about its gang database.[2] MPD admitted that over the last 13 years it built its Gang Tracking and Analysis System ("database" or "D.C. Gang Database") by secretly surveilling D.C. residents, in-person and over social media.[3] MPD admitted it has categorized and tracked our neighbors allegedly to predict their threat of being violent, based merely on their associations.[4] MPD constructed this database providing no notice to individuals that they have been included,[5] much less informing them of the basis for their inclusion or providing a public procedure for disputing it.[6] MPD admitted, as well, that it shares information on the D.C. Gang Database with federal and local agencies, a practice that directly and negatively impacts juveniles and adults in legal proceedings.[7] And MPD acknowledges that its gang database is populated almost exclusively with D.C.'s Black or Brown residents.[8] These revelations highlight a practice that is beyond reform and must be abolished.

In its letter, MPD would like this Council to believe the D.C. Gang Database is fundamentally changing for the better. Admittedly, in the last two months, MPD has removed more than 500 individuals,[9] has begun drafting new policies,[10] and is working to eliminate a category that accounts for nearly 35% of the listed individuals.[11] However, these steps will not alter the fact that the database is premised on almost exclusively surveilling Black and Brown residents. The reality is, the D.C. Gang Database is a discriminatory beast that cannot be saved no matter the facelift.

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[1] The Washington Lawyers' Committee for Civil Rights and Urban Affairs (WLC) is a non-profit civil rights organization that defends the rights of working people and addresses the interconnected issues of poverty, racism, and other forms of discrimination. More information on the organization can be found at https://www.washlaw.org/.

[2] Contee, Robert. "This letter is in response to your correspondence dated January 3, 2022, regarding the Metropolitan Police Department's (MPD) Gang Tracking and Analysis System." Letter to the Honorable Charles Allen (February 3, 2022).

[3] *Id.* at page 2.

[4] *Id.* at page 9.

[5] *Id.* at page 10.

[6] *Id.*

[7] *Id.* at page 11.

[8] *Id.* at page 2.

[9] *Id.*

[10] *Id.* at page 1.

[11] *Id.* at page 8.

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The D.C. Gang Database is based on the theory that whom you associate with determines if you are a threat to society. A theory that squarely conflicts with the principals of our legal system. [12] The D.C. Gang Database actively tracks 3,000 of our Black and Brown neighbors.[13] They have been categorized as being gang members (or associates) without MPD having to meet any due process standards. This continues to include children of color as young as thirteen years old.[14] By contrast, only four White individuals are included in the database,[15] despite the fact that: (1) White individuals make up the plurality of the District's population,[16] and (2) notwithstanding the existence of at least three white nationalist organizations in the District that actively participate in criminal activity, including the January 6th insurrection.[17] On its face, the operation of the gang database even appears to violate MPD's own "Unbiased Policing" policy.[18] Which prohibits:

> The practice of a law enforcement officer singling out or treating differently any person on the sole basis of race, color, ethnicity, national origin, religion, age, gender, gender identity, sexual orientation, family responsibilities, disability, educational level, political affiliation, source of income, place of residence or business of an individual.

Chief Conti acknowledges that the gang database is subject to the limits of 28 CFR 23, yet the policies and practices of MPD conflict with these regulation. The federal regulations contain important limitations. MPD may "collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity." Criminal intelligence information is defined as data that is "**(i)** Is relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and **(ii)** Meets criminal intelligence system

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[12] *See, e. g., United States v. Robel*, 389 U.S. 258 (1967) ("In these cases it has been established that "guilt by association alone, without [establishing] that an individual's association poses the threat feared by the Government," is an impermissible basis upon which to deny First Amendment rights.")

[13] Contee, Robert. "This letter is in response to your correspondence dated January 3, 2022, regarding the Metropolitan Police Department's (MPD) Gang Tracking and Analysis System." Letter to the Honorable Charles Allen (February 3, 2022) at page 2.

[14] Gelardi, C. (2022, January 9). More kids and overwhelmingly black: New records show concerning trends in D.C. Gang Database. The Intercept. Retrieved January 24, 2022, from https://theintercept.com/2022/01/09/dc-police-gang-database-mpd/.

[15] Gelardi, C. (2022, January 9). More kids and overwhelmingly black: New records show concerning trends in D.C. Gang Database. The Intercept. Retrieved January 24, 2022, from https://theintercept.com/2022/01/09/dc-police-gang-database-mpd/.

[16] Bureau, U. S. C. (2021, October 8). The District of Columbia gained more than 87,000 people in 10 years. Census.gov. Retrieved January 24, 2022, from https://www.census.gov/library/stories/state-by-state/district-of-columbia-population-change-between-census-decade.html.

[17] District of Columbia. Southern Poverty Law Center. (2021, December 9). Retrieved December 10, 2021, from https://www.splcenter.org/states/district-columbia.

[18] Metropolitan Police Department General Order OPS 304 15 (GENERAL ORDER (mpdconline.com). See also, Guidance For Federal Law Enforcement Agencies Regarding The Use Of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Or Gender Identity, (December 2014)(GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY (dhs.gov)).

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submission criteria. No such requirement exists under MPD policy that an individual be linked to a specific act prior to inclusion on their gang database. Rather than relating suspected gang affiliation to a specific crime, MPD continues use of broad, ill-defined criteria necessary to be listed as a Gang Member with no relation to a specific crime.

To be a "gang member," all that is required is: (1) for an "unproven informant"—someone the police do not have to establish is reliable—to assert that person is part of a gang and (2), for MPD to "observe" that person "associating" with someone believed to be already in a gang member. Because the term "associating" is not defined anywhere in MPD special orders, officers have virtually unlimited discretion to identify a person as a gang member. The notion that someone may become the subject of government surveillance because they are related to, friends with, or in the same social circle with someone who might be engaging in criminal conduct causes alarm. If that standard was applied with fidelity, few people would not be on the D.C. Gang Database.

The danger of MPD's vast discretion to label almost any person of color as having a gang relationship was illustrated in the unconstitutional stop of Mr. Flores.[19] In 2019, Mr. Flores was stopped, restrained, forcefully pushed against a fence, searched, and subjected to offensive comments by MPD officers. Officers interrogated Mr. Flores and searched his body for tattoos, attempting to find any bit of evidence to tie him to a gang. At no time was Mr. Flores suspected of having committed a crime, or that he was in the process or intending to commit a crime. Instead, the officers' justification for the stop and frisk was that Mr. Flores was seen see speaking to a "known gang members." However, MPD provided no evidence that anyone that night was part of a gang. The officers succeeded only in violating Mr. Flores' rights and leaving him humiliated.

MPD justifies its use of its racially biased gang database by alleging it helps prevent violence, especially gun violence.[20] Reducing gun violence in the District is undoubtedly important, and this Council has recently pushed to hear strategies to curb the uptick in violent incidents.[21] However, gang databases do not reduce violence. In fact, researchers have found that they erode the public's trust in the police and local governments, while providing no evidence that they prevent crime.[22] Rather than focusing on tracking and criminalizing residents, researchers have

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[19] Moyer, J. W. (2022, January 13). Latino man sues two D.C. police officers for alleged illegal stop-and-frisk, homophobic slurs. The Washington Post. Retrieved January 24, 2022, from https://www.washingtonpost.com/dc-md-va/2022/01/13/dc-police-lawsuit/.

[20] Contee, Robert. "This letter is in response to your correspondence dated January 3, 2022, regarding the Metropolitan Police Department's (MPD) Gang Tracking and Analysis System." Letter to the Honorable Charles Allen (February 3, 2022) at page 9.

[21] DC Council members push for info on what's being done to prevent gun violence. WTOP News. (2021, July 29). Retrieved February 9, 2022, from https://wtop.com/dc/2021/07/dc-council-members-push-for-info-on-whats-being-done-to-prevent-gun-violence/.

[22] Kimberly D. Bailey, Watching Me: The War on Crime, Privacy, and the State, 47 U.C. DAVIS L. REV. 1539, 1566 (2014) (citing Joshua D. Wright, The Constitutional Failure of Gang Databases, 2 STAN. J. C.R. & C.L. 115, 121 (2005)).

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emphasized resources should be provided to programs that have been proven to reduce violent crime; like violence interrupters[23] and community-based prevention.[24]

In a city where the police department engaged in more than 81,000 stops in 2020, more than 90% of which were against Black and Hispanic/Latino men,[25] a racially motivated gang database, made up of 95% Black and Brown D.C. residents, encourages MPD officers to conduct unlawful stop and frisks; like that of Mr. Flores. Moreover, the database has been used to support deportations in immigration proceedings outside the District, to increase consequences for juveniles in the criminal justice system, and to deny pre-detention release, among others.

The D.C. Gang Database targets and stigmatizes Black and Brown District residents, based on racist assumptions, stereotypes and flimsy criteria. It is dark and secretive, providing no notice to those included, much less a process for challenging their inclusion. Though the MPD is aware of the serious consequences of being listed in the database, it chooses to ignore them.[26] It is up to the Council to stop MPD's practice of surveilling and tracking residents without genuine relation to a specific crime or threat. Council must abolish the D.C. Gang Database and other law enforcement systems that track individuals unrelated to a specific a criminal activity or enterprise.

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[23] JohnJayREC. (2019, July 10). The effects of cure violence programs in 2 New York City neighborhoods. JohnJayREC.nyc - John Jay College's Research and Evaluation Center. Retrieved February 9, 2022, from https://johnjayrec.nyc/2017/10/02/cvinsobronxeastny/.

[24] Office of the Attorney General. (2021, May 26). Comprehensive strategy for reducing violent crime. Department of Justice. Retrieved February 9, 2022, from https://www.justice.gov/dag/page/file/1397921/download.

[25] See American Civil Liberties Union of the District of Columbia Stops Report. https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf.

[26] Michael Cannell, *Assumed Dangerous until Proven Innocent: The Constitutional Defect in Alleging Gang Affiliation at Bail Hearings*, 1037, 63 DePaul L. Rev. 1027 (2014).