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TARGETED, LABELED, CRIMINALIZED

Early Findings on the District of
Columbia's Gang Database
January 2024



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Executive Summary

Since 2009, the District of Columbia Metropolitan Police Department (MPD) has surveilled thousands of Black and Latinx residents through its secret Gang Tracking and Analysis System (the DC Gang Database). This ongoing surveillance is not based on the premise of “protection” for all. Instead, the DC Gang Database uses narratives about the dangers of gangs, similar to gang databases in other jurisdictions, to justify person- and place-based surveillance of Black and Latinx people in DC, promoting the idea that they are inherently dangerous. Gang databases provide a ready-made way to justify ongoing surveillance, harassment, and police abuse that are unlikely to elicit widespread public pushback because the people involved are labeled “known gang members.”¹ The DC Gang Database criminalizes activities that are legal, like the gathering of two or more people in certain areas. The demonization of Black and Latinx communities through labeling such conduct as “gang association” justifies a type of policing that undermines social networks and reduces the power of the targeted populations.

A coalition of organizations drafted this report based on data obtained in 2022.² These organizations are focused on making public the discriminatory practices and effects of the DC Gang Database.³ The Metropolitan Police Department (MPD) resisted each opportunity to display transparency. These organizations were only able to procure the data for this report through litigation over multiple DC Freedom of Information Act (FOIA) requests and through collaboration with DC Council Members.⁴ The purpose of this report is to provide the public with tools and knowledge to address the ongoing discriminatory surveillance MPD engages in by using the DC Gang Database and similar systems.

The DC Gang Database is based on the flawed presumption that surveillance of alleged gangs promotes public safety and reduces violent crime within DC. However, experts commissioned by the DC Government have clearly refuted this presumption.⁶ Focusing and basing police tactics on what MPD ambiguously identifies as “gang activity” distracts police and misdirects resources away from methods that can actually reduce violence and promote public safety. Despite possessing this knowledge, MPD continues to dedicate enormous resources and efforts toward the unjustified surveillance of Black and Brown residents it suspects

affiliate with gangs. This report will demonstrate the DC Gang Database has little to do with promotion of public safety.


As of October 19, 2022, the DC Gang Database contained 1,951 individuals who had been identified by MPD as either a “gang associate” or a “gang member.” Inclusion in the database disproportionately impacts Black and Latinx residents: of the 1,951 tracked individuals during the study period, 1,619 (83%) were Black, 288 (12%) were Latinx, and only one individual was White (.05%). This racial disparity tracks geographically as well, with 70% of individuals included in the DC Gang Database living in zip codes of predominately Black and Latinx communities.

MPD uses eight loosely connected criteria to justify placing individuals in the DC Gang Database. However, nearly 75% of all individuals (1,202) in the database are associated with only two criteria: being “observed associating with gang members” and being “observed attending gang meetings” (98% interrelation). The use of weak, undefined inclusion criteria provides MPD officers with nearly uninhibited powers to place individuals in the database, thereby potentially subjecting them to extraordinary police action. Furthermore, the vast majority of the gangs “identified” by the DC Gang Database (99%) are named after street corners or DC apartment complexes that do not necessarily correspond to existing gangs, showing the enormous discretion MPD has in executing this program.⁷

The DC Gang Database is a racially biased and arbitrary surveillance system, and its lack of procedural buffers makes it opaque and difficult to challenge. The systems allow racially biased and discretionary information to disseminate in ways that are difficult to control or retract, often resulting in severe consequences for individuals within and outside our local criminal system and having a disproportionate impact on communities of color. As this report will describe in detail, the DC Gang Database should be discarded rather than fixed because it is a dangerous tool being used to perpetuate systemic racial discrimination. .

DC Gang Database Criteria and Tracking Contradicts the DC Code

DC Code Section 22–951 criminalizes the act of soliciting recruitment or participation in a criminal street gang.⁸ Violation of this code in connection with a felony or violent misdemeanor may result in increased punishments for individuals up to five years.⁹ Under Section 22-951, a criminal street gang is defined as the



association of six or more individuals who, as a condition of membership, must commit or actively participate in committing a crime of violence and which has the purpose of engaging in frequent violation of the law.¹⁰ Despite this definition, the inclusion of a group in the DC Gang Database does not require that the group is involved in violent crime or bases its membership on the intent to commit crimes.¹¹ Further, the DC Gang Database often tracks people based on associations with fewer than six individuals,¹² and regularly tracks individuals with no relation to crimes at all.¹³

Lack of Procedural Fairness and Ongoing Violations of Federal Regulations Illustrate the Impossibility of a “Fair” Gang Database

MPD does not inform individuals of their inclusion within the DC Gang Database; does not have processes for individuals to contest or appeal gang affiliation determination; does not have processes to regularly review or purge faulty designations; and has no internal mechanism to amend inaccurate gang information.¹⁴ MPD has no minimum age for designating individuals as gang members, and has included individuals as young as one year old.¹⁵ MPD continues to violate federal regulation 28 C.F.R. 23, which requires law enforcement agencies to remove individuals after five years if they have not revalidated the individuals’ inclusion in the database.¹⁶ Further, federal regulations hold a gang database should only contain information if there is a reasonable suspicion of a crime, and that crime has to be “definable” and supported.¹⁷ Despite this, DC includes individuals in its Gang Database where there is no reasonable basis to believe a crime has occurred. The combination of a lack of controls with the absence of mechanisms ensuring procedural fairness buffers results in a discriminatory database that is plagued by inaccuracies, undermines public confidence in MPD’s legitimacy, and continues to place DC residents at risk of increased criminal consequences.

Unchecked Data Sharing Exacerbates the Impact of the DC Gang Database

MPD maintains an “ad-hoc” process for sharing data contained in the DC Gang Database that risks severe consequences for impacted individuals.¹⁸ Despite previously reporting that they had shared data with only four agencies,¹⁹ based on their own records, MPD has shared data contained within the DC Gang Database with at least 22 outside entities.²⁰ These entities include US Customs and


Immigration Enforcement (ICE), with which MPD previously claimed it had not shared data. Meanwhile, there are over 400 registered users with access to the DC Gang Database capable of sharing data.²¹ MPD maintains no agreements regulating the sharing of data with outside agencies.²² Therefore, there is no requirement for these entities to delete data shared with them after that information has been deleted from the DC Gang Database. Nor is there any evidence to suggest MPD notifies these agencies when data is deleted. Individuals whose personal information MPD shared with outside entities remain at risk indefinitely for consequences associated with gang affiliation because of the DC Gang Database's lack of safeguards.

The DC Gang Database Leads to Increased Police Interactions and Reinforces Unconstitutional Practices

MPD admits it utilizes the DC Gang Database to adjust deployment of manpower and resources and to predict violent crimes.²³ Such predictions, however, are flawed because of the inaccuracies within the database and the inclusion of individuals who are not known to have committed a violation of the law, let alone violent crimes. This report has discovered MPD uses data contained in the DC Gang Database to issue widespread lookout notices to MPD officers, share images obtained from social media to justify suspicion of gang affiliation, and encourage officers to stop individuals tracked in the database. Specifically, MPD advises officers that inclusion in the database alone provides probable cause to conduct a stop, regardless of whether the officers have intelligence or data to believe the individual is involved in a crime or ongoing criminal activity. Furthermore, when an officer conducts a stop involving an individual identified in one of these lookouts, MPD directs the officers to seek increased consequences against the individual. These consequences include imposing stay away orders for large geographic areas, issuing barring notices at DC Housing Authority properties, and seizing electronic devices as evidence whenever possible.²⁴

The DC Gang Database Disproportionately Impacts Youth and Students

In September 2021, 697 juveniles (19% of the database) were in the DC Gang Database.²⁵ DC Youth Rehabilitative Services (DYRS) and DC Court Social Services both apply risk assessment tools that rely in part on the database to identify youth allegedly involved in gangs. Specifically, DYRS uses an algorithm to determine a recommendation for a juvenile's placement before and after a criminal conviction.²⁶ That algorithm provides up to an additional three points if a



juvenile is suspected of being a gang affiliate. Any score of four or above within the algorithm identifies a juvenile as a “Medium Risk,” making them more likely to be placed outside of the home. Similarly, the DC Court Social Services’ risk assessment tool tracks “gang affiliation” as a special factor for considering whether to detain a juvenile prior to sentencing.²⁷ Both these agencies receive data from the DC Gang Database regarding juveniles’ suspected gang affiliations. Due to this data sharing and tools utilized by each agency, youth in DC tracked on MPD’s Gang Database face severe consequences before ever being convicted of a crime. This includes not being allowed to return to their homes and families while awaiting a verdict on their charges. Consequences can also affect a minor’s ability to attend their school of choice, as suspected associations with gang members can be used to justify expelling a student.

The DC Gang Database and Lack of Transparency Produces Fear within Communities of Color

Interviews and public forum discussions conducted by authors of this report demonstrate community members experience fear and uncertainty about the criteria, use, structure, and purpose of the DC Gang Database. During public education events, community members also shared personal accounts of experiences of harassment and accusations of gang affiliation by MPD officers. Based on accounts provided to this report’s authors, it is apparent that the lack of transparency and associated consequences around the gang database, coupled with the communities’ experiences with law enforcement officers, strain police community relations.

Overview of Key Recommendations

Based on the above findings, the authors of this report provide the following preliminary recommendations to address the fundamental flaws of the DC Gang Database and take immediate steps to reduce its racially disparate impact. In the full report, the authors will further explore the implications of the above-described systems related to the DC Gang Database and expand on recommendations to address its systemic impact.

1. Abolish the DC Gang Database and mandate that any gang affiliation contained within be removed from all other DC agency systems.

2. Require MPD to notify every entity that has obtained data from the DC Gang Database since 2009 of the deletion of such data by MPD, and instruct such agencies to delete the data and refrain from relying on such data in the future.

3. Require MPD to provide notice of the potential impacts of being included in the DC Gang Database to all individuals included since 2009. Such notice should include the period of time the person was in the database, the evidence supporting their inclusion, a venue and instructions for appealing inclusion, and a list of each entity with which MPD shared information regarding their inclusion in the database.

Racist Origins of Gang Policing


Two days after Martin Luther King, Jr. delivered his “I have a dream” speech, the FBI placed him on a watchlist that would permit detention without due process in the event of a “national emergency.”²⁸ His designation? “[T]he most dangerous Negro of the future in this Nation.”²⁹ King was one of an enormous number of Black political activists targeted by the FBI’s COINTELPRO program, an operation initially formed to target the Communist Party but quickly expanded to target all Black civil rights leaders deemed “subversive.”³⁰

In the words of law professor Andrea Dennis, “The foundation for today’s expansive state surveillance system was built upon the lessons learned from America’s history of monitoring Black people in America.”³¹ As is true of other aspects of our criminal legal system, surveillance as a tool for social control originates with this country’s brutal commitment to chattel slavery.³² Over time, the overt justifications offered by law enforcement for surveilling Black and Brown people have shifted, but the purpose and utility have remained the same. Surveillance does not mean “protection” for all communities.

Government surveillance is a powerful means of blocking political mobilization, destroying a community’s sense of safety and solidarity, and crushing dissent. FBI records of Dr. King reveal that the government’s objective was to “expose, disrupt, misdirect, discredit, or otherwise neutralize” the fight for Black rights and Black power.³³ African American studies professor Leigh Raiford puts it plainly: “These documents ... reveal and confirm the kind of root investment in anti-Blackness and quelling dissent that has long been part of our government structure....”³⁴

Despite subsequent declarations by members of the United States Senate that surveillance aimed at “preventing the exercise of First Amendment rights of speech and free association” are “intolerable in a democratic society, even if all of the targets [are] involved in violent activity,” little has changed.³⁵

Across the country and in this nation’s capital, law enforcement agencies at the federal and state level continue to monitor, harass, and attribute criminality to



Black, Brown, and marginalized people under the guise of “security” and “crime control.” As recognized by Angel Diaz, a Liberty and National Security Fellow for the Brennan Center for Justice, “Far from providing useful insights, gang databases provide a ready-made way to justify ongoing surveillance, harassment, and police killings that are unlikely to elicit widespread public pushback because the people involved were ‘known gang members.’”³⁶

Gang databases are used across the United States to track, surveil, and incarcerate individuals, particularly from Black and Latinx communities. Several community organizations have responded to the use of gang databases by law enforcement agencies with lawsuits, FOIA requests, and other methods to halt or slow the collection and use of such data.

Examples of large-scale gang databases have emerged over the last several decades in numerous cities, including, but not limited to, Los Angeles, Portland, and Chicago. In each of these cities, it became clear gang databases were having discriminatory effects by tracking and criminalizing the behavior of almost exclusively minority communities. Because of the severity of the effects these databases had on minority communities, elected officials voted to shut down, pause, or place significant guardrails on each database.

In Los Angeles, audit reports found the gang database to be filled with false information regarding thousands of Black residents, resulting in a pause on the police department’s access to the database.³⁷ Similarly, journalists uncovered that the majority of the individuals listed in Portland’s gang data base were overwhelmingly Black and included for subjective criteria such as wearing gang-related clothing rather than for any suspected criminal activity.³⁸ Meanwhile, in Chicago, public records highlighted how the deeply inaccurate database was used to track over 100,000 Black and Brown residents with minimal justification.³⁹

Rather than learning from the ineffectiveness and discriminatory impact of these databases in other jurisdictions, MPD has elected to maintain the DC Gang Database. This report highlights how, similar to every other instance of the use of gang databases, MPD’s practices have built an ineffective surveillance tool that disproportionately impacts thousands of Black and Brown residents. In the end, the DC Gang Database is based on the same historical justifications as the surveillance of Martin Luther King, Jr.—reinforcement of the subjugation of Black and Brown residents through the blocking of their ability to flourish and politically mobilize.

The DC Gang Database Today

MPD keeps the DC Gang Database secret. Former DC Chief Robert Contee admitted in a letter to the DC Council that MPD does not notify individuals that they have been placed in the database or are being tracked.⁴⁰ There is no way for residents to find out if they are in the database or to contest their inclusion.⁴¹ Only through media efforts and lawsuits against MPD has the public gained access to information about MPD's secret database.⁴²

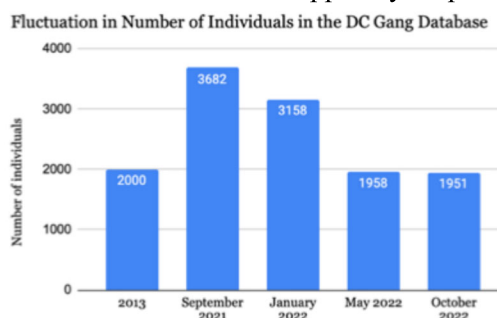
This section aims to answer the basic questions community members may have about MPD's ongoing surveillance of DC residents. Our answers to these questions are limited due to MPD's ongoing resistance to making information about its practices public. Notwithstanding the department's intentional secrecy, the questions this section seeks to answer are:

- *Who is in the DC Gang Database?*
- *What are "gang members" and "associates"?*
- *What are the "gangs" being tracked by MPD?*
- *Where is MPD tracking people?*
- *What are the reasons people are added to the DC Gang Database?*
- *How does MPD validate data in the DC Gang Database?*
- *Who has access to the DC Gang Database?*

Who Is in the DC Gang Database?

Over 14 years, the DC Gang Database has tracked thousands of unknowing DC residents. The size of the database has changed drastically between 2021 and 2022 (the only years with publicly available data). In late 2021, the DC Gang Database contained 3,687 individuals.⁴³ The size of the database dropped to 1,951 (48% drop) by late 2022.⁴⁴ News articles and lawsuits in 2022 highlighting issues with the database and demanding transparency⁴⁵ triggered

Figure 1: The database size dropped by 48 percent in late 2022.

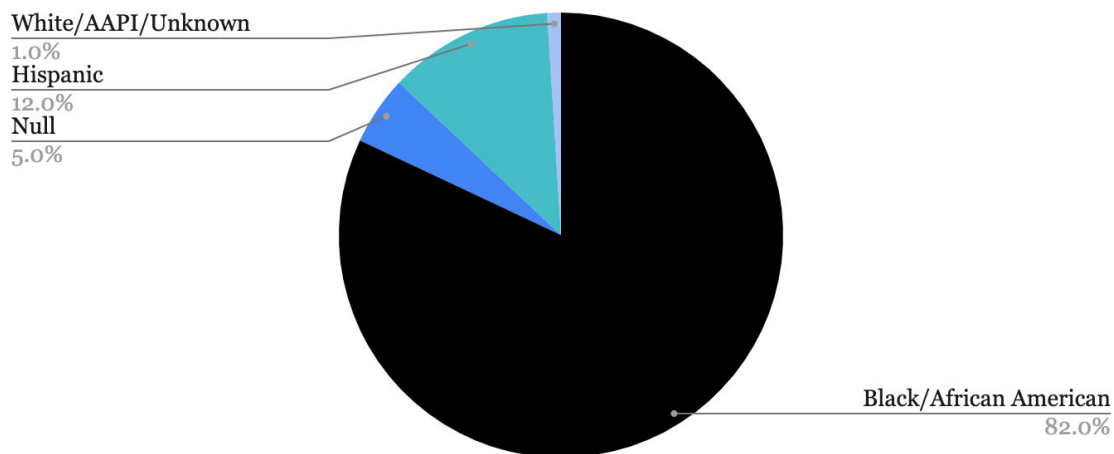


Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

MPD to remove nearly half of individuals tracked. MPD has yet to explain why the DC Gang Database would shrink to almost half its size so suddenly after gaining public attention. This report offers insights into this sudden reduction.

Although the size of the DC Gang Database has changed significantly over the past two years, the racial composition of the database has not. Black individuals make up over 80% of the database, while Latinx individuals represent the next largest population at 12%.⁴⁶ Meanwhile, the DC Gang Database included **one** (1) White individual (out of 1,951) as of October 2022,⁴⁷ despite the existence of white supremacist groups and other White-centered affiliation groups also matching MPD’s definition of a “gang.”⁴⁸

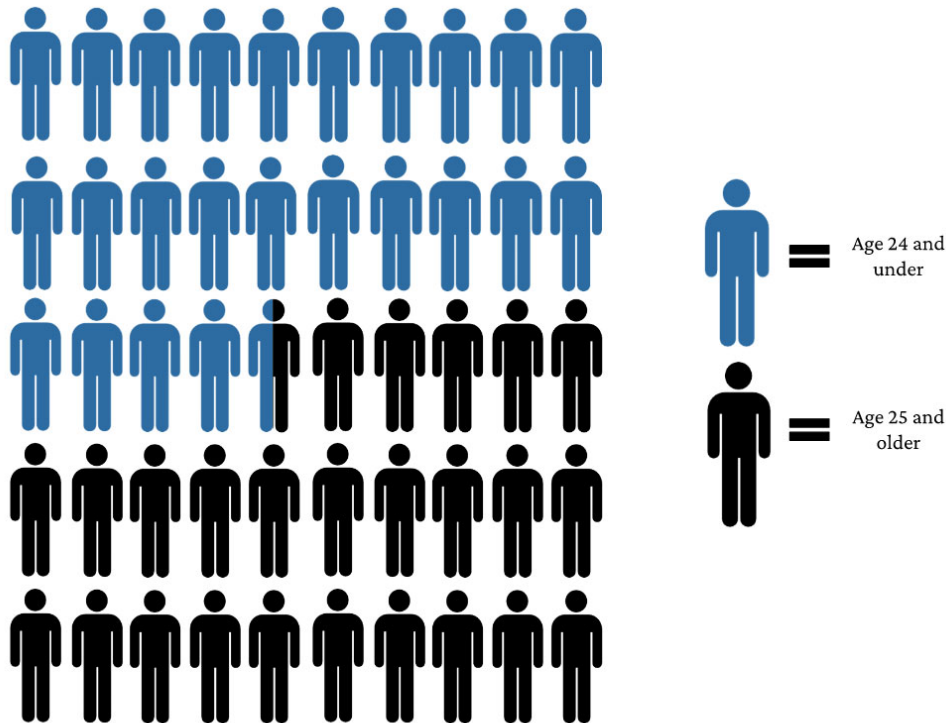
Figure 2: DC Gang Database by Race (January 31, 2022)



Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

This pattern remains consistent when examining young people in the DC Gang Database. In 2021, 697 juveniles (individuals under the age of 18, according to MPD), were in the database, comprising nearly 20% of the total, and 100% were people of color.⁴⁹ Of these young people, MPD labeled 300 as gang associates and another 319 as gang members.⁵⁰

Figure 3: In 2021, 20 percent of the database were juveniles under the age of 18, 100 percent were people of color



Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

What Are “Gang Members” and “Associates”?

MPD Special Order 09-03 (the “Special Order”) refers to several DC criminal codes and definitions to describe the procedures and criteria used to include individuals within the DC Gang Database.⁵¹ Citing the DC Official Code, MPD defines a “criminal street gang” as:

“An association of six (6) or more persons that has a condition of membership or continued membership the committing of or actively participating in a crime of violence, or has one of its purposes or frequent activities the violation of the criminal law of the District or the United States.”⁵²

With this definition as a foundation, MPD uses the following criteria to identify people as “gang members” or “gang associates” and include them in the DC Gang Database:⁵³

- a. Individual is observed associating with documented “gang members”;
- b. Individual is observed displaying gang symbol and/or hand signs;
- c. Individual is observed with gang tattoos;

- d. Individual is observed attending gang meetings;
- e. Individual is arrested in a gang area for an offense that is part of that gang's criminal enterprise; or
- f. An in-custody Department of Corrections background screening supports the individual's gang affiliation.

Because MPD has made no effort to define many of the terms relied upon in these criteria, officers have broad discretion to apply them to anyone. Additionally, unlike the DC Code's definition, MPD's criteria do not require police to show any evidence that an individual has any fidelity to a criminal enterprise. MPD only requires "reasonable suspicion to believe" that any of these criteria have been met.⁵⁴ MPD's Special Order does not define "reasonable suspicion to believe," but when asked by Councilmembers, Former Chief Contee explained:

MPD defines a "reasonable suspicion"...as an MPD member [witnessing] an individual congregating and interacting with multiple known, validated gang/crew members.⁵⁵

Neither Former Chief Contee nor MPD's Special Order explain how an officer is to know or identify "known validated gang/crew members." Rather, Contee explained that officers need not observe criteria in real time, but rather may make observations over social media or through other online surveillance.⁵⁶ These comments highlight the lack of objective procedures to determine if an individual deserves a life-altering classification as a "gang member" or "gang associate."

MPD also states that a person need not meet all criteria to be added to the DC Gang Database. Rather, an officer only needs to believe a person satisfies *two* criteria to mark them as a "gang member" and *one* criterion to mark someone as a "gang associate."⁵⁷ This low barrier for inclusion means a person may be added to the DC Gang Database based solely on an officer's single, out-of-context observation. Simply being in the wrong area one time could lead to inclusion in the database.

Based on these criteria, MPD has labeled thousands of local residents as "gang members" and "gang associates." In 2021, 35% of individuals in the database met only one of the above criteria and were marked as "gang associates."⁵⁸ Meanwhile, 65% of individuals were marked as "gang members."⁵⁹

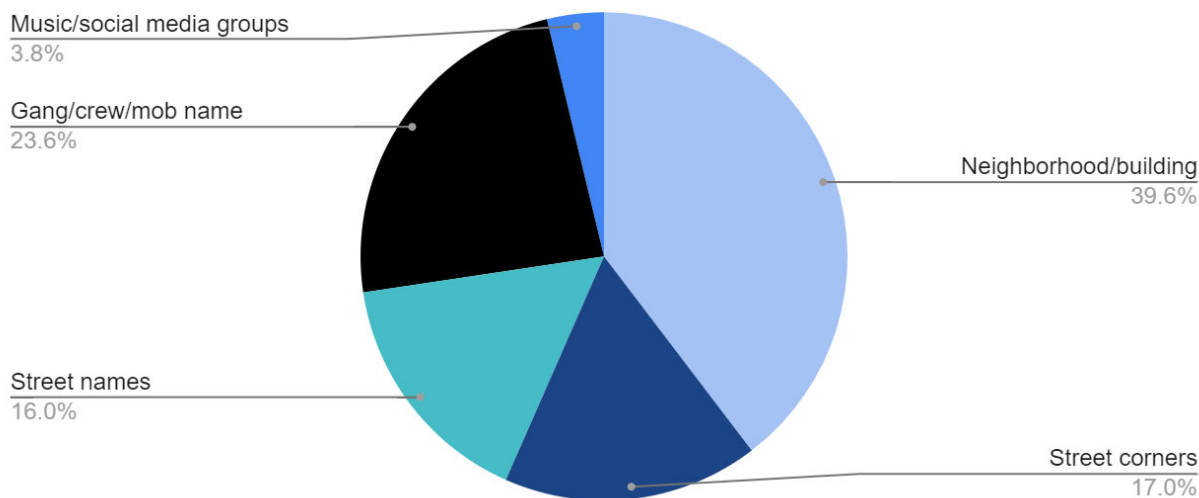
However, after public criticism, MPD informed the DC Council in 2022 that all individuals marked solely as “gang associates” within the DC Gang Database would be removed.⁶⁰ Over a year after making the promise, MPD had still not removed all “gang associates” from the database.⁶¹ Although MPD has made some procedural changes, the department’s continued practice of tracking individuals based on a single criteria demonstrates the agency’s indifference toward DC residents’ lives and privacy, an indifference that has existed since 2009.

What Are the “Gangs” Being Tracked?

MPD’s Special Order defines criminal street gangs as associations of six (6) or more persons with membership conditioned on committing violent crimes or frequently violating DC laws.⁶² As of October 2022, the DC Gang Database tracked one-hundred and eight (108) “gangs” within the DC-Maryland-Virginia (DMV) area.⁶³ However, many of these tracked “gangs” do not meet the definitions set by the DC Official Code, federal regulations, or MPD itself.

More than a quarter (28%) of the “gangs” tracked have five (5) or fewer individuals within them.⁶⁴ Nearly 10% of the “gangs” tracked by MPD have only *one* (1) individual within them.⁶⁵ This is likely because a vast majority of the “gangs” tracked in the DC Gang Database do not follow traditional structures or names, like *MS-13* or *Bloods*. Rather, the vast majority of “gangs” MPD tracks are given the name of street corners or apartment buildings where officers observe individuals congregating.⁶⁶ Further, despite meeting the criteria set under the DC Gang Database and DC Criminal code, no white supremacist groups are contained with the DC Gang Database. MPD’s naming protocol does not illustrate an intelligence-based strategy by MPD to identify or target criminal street gangs as defined by the DC Code. Instead, MPD’s naming practices demonstrate a pattern of targeting groups of People of Color in public spaces—and typically in under-resourced areas—without any tie to violent or criminal activity. MPD’s creation of “gangs” with fewer individuals than DC code definitions permit only exacerbates the problem.

Figure 4: Categories of Gang Entries in DC Gang Database

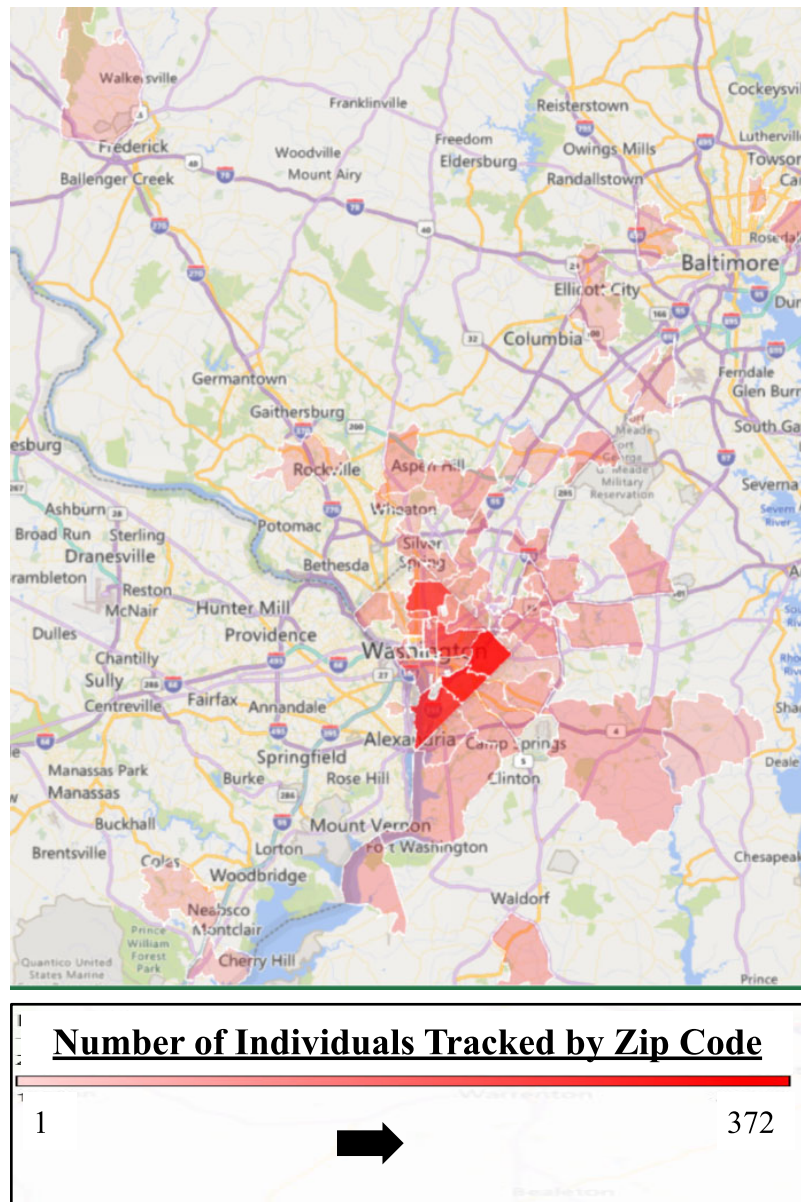


Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

Where Is MPD Tracking Individuals?

The DC Gang Database purports to track individuals across the relatively wide geographic area of DC, Maryland, and Virginia, however, tracked individuals are concentrated in historically Black and Brown zip codes. The three largest concentrations are in zip codes east of the Anacostia River, accounting for 848, or nearly half (43%), of the total.⁶⁷ Meanwhile, zip codes in areas of DC with predominately white residents, like Georgetown, have zero individuals in the database.⁶⁸ The remaining zip codes with individuals tracked by the DC Gang Database follow this disproportionate pattern: zip codes with the highest concentrations of Black and Brown residents have the largest concentration of people contained on the database, while historically white neighborhoods have the fewest. Furthering this disproportionate surveillance focus, the DC Gang Database names over 20 “gangs” after DC public housing complexes.⁶⁹ Of those complexes, MPD tracks over 500 DC Public housing residents on the DC Gang Database. Again, illustrating a focus to surveil historically marginalized communities.

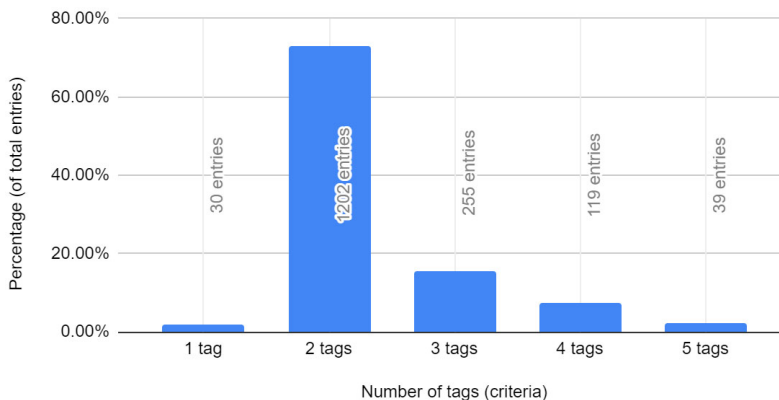
Figure 5: DC Gang Database Extends to Black Communities Surrounding



What Are the Most Common Reasons People Are Added to the DC Gang Database?

As demonstrated, MPD uses a set list of eight criteria to justify adding a person to the DC Gang Database, from which officers may assign as many criteria as they believe to be applicable. From the assignment of these tags, the public is able to determine MPD’s most common justifications for surveilling DC residents.

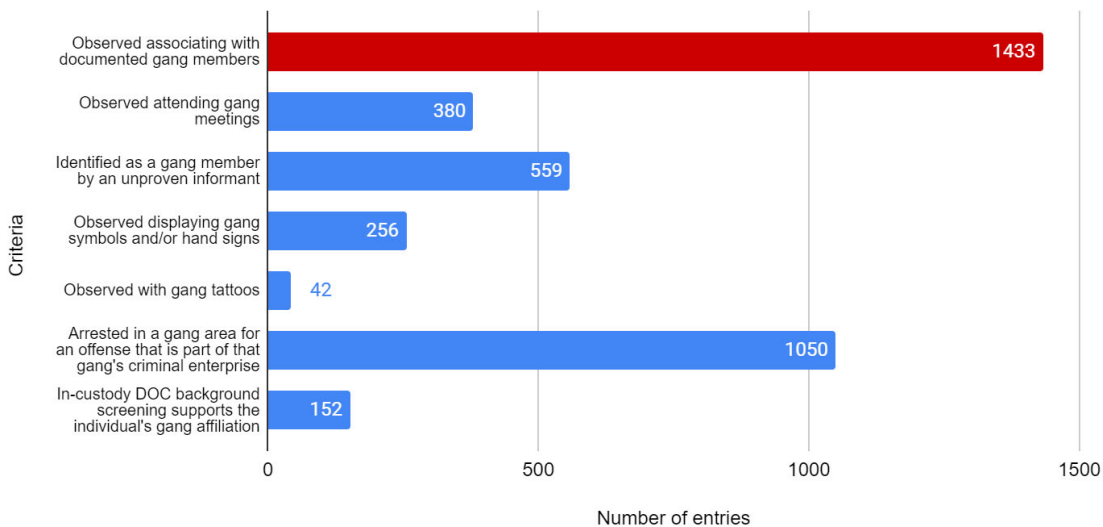
Figure 6: Total Number of Database Entries per Number of Tags/Criteria



Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

Of the 1,951 individuals in the DC Gang Database as of October 2022, MPD attached only two criteria to justify inclusion for the vast majority(73%).⁷⁰ The most frequently used criteria was “observed associating with documented gang members,” which was applied to 1,433 people (73%).⁷¹ After this criteria, there is a significant drop-off in MPD’s use of any other criteria. the below data shows MPD’s heavy preference for placing people in the DC Gang Database based on association and/or arrest location alone.

Figure 7: Most Frequently Used Tags for Database Entries



Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

MPD’s ability and inclination to label individuals as “gang members”, using two criteria, in the database with very little evidence is further demonstrated by how frequently MPD combines these criteria. In fact, the two most popular criteria used together by MPD to label someone as a “gang member” appear nearly 100% of the time.⁷² This means that for the majority of people in the database, MPD justifies their inclusion by claiming to observe them associating with gang members and attending “gang meetings.” In practical terms, this means that if an officer observes a group of people congregating and believes any one of those people is a gang member, both criteria are met and the “gang member” designation may be applied to the entire group.⁷³

Figure 8: MPD justifies inclusion in gang database based on two

Of the total number of X tags, what % are associated with a Y tag? Ex. Of all pIDs observed attending meetings (B4), 97.63% (C4) were also observed associating w/ members (C2).		Y						
		Observed associating w/ members (1433)	Observed attending meetings (380)	Unproven Informant (599)	Gang Symbols or Hand Signs (256)	Gang Tattoos (42)	Arrested for gang offense (1050)	Background Screening (148-150)
X	Observed associating w/ members		25.89%	31.68%	16.40%	2.16%	60.71%	~3.14%
	Observed attending meetings	97.63%		32.63%	21.05%	1.32%	47.89%	~2.89%
	Identified by Unproven Informant	81.22%	22.18%		20.93%	2.15%	42.40%	~6.98%
	Gang Symbols or Hand Signs	91.80%	31.25%	45.70%		5.47%	41.80%	~6.25%
	Gang Tattoos	73.81%	11.90%	28.57%	33.33%		40.48%	~11.9%
	Arrested for gang offense	82.86%	17.33%	22.57%	10.19%	1.62%		~8.86%
	Background Screenings	29.61% - 30.41%	7.24% - 7.43%	25.66% - 26.35%	10.53% - 10.81%	3.29% - 3.38%	61.18% - 62.84%	

Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

How Does MPD Validate Data in the DC Gang Database?

According to US federal regulations for databases like the one used by the District, MPD is required to revalidate or remove individuals contained in the DC Gang Database every five (5) years.⁷⁴ MPD indicates there is an automatically generated list of everyone approaching the five-year anniversary of inclusion in the database. A designated analyst is responsible for reviewing this list monthly and initiating the review of the validation information. In accordance with 28 CFR 23, current information is required to support the individual’s re-validation. If there is no current information, MPD must remove the individual.⁷⁵

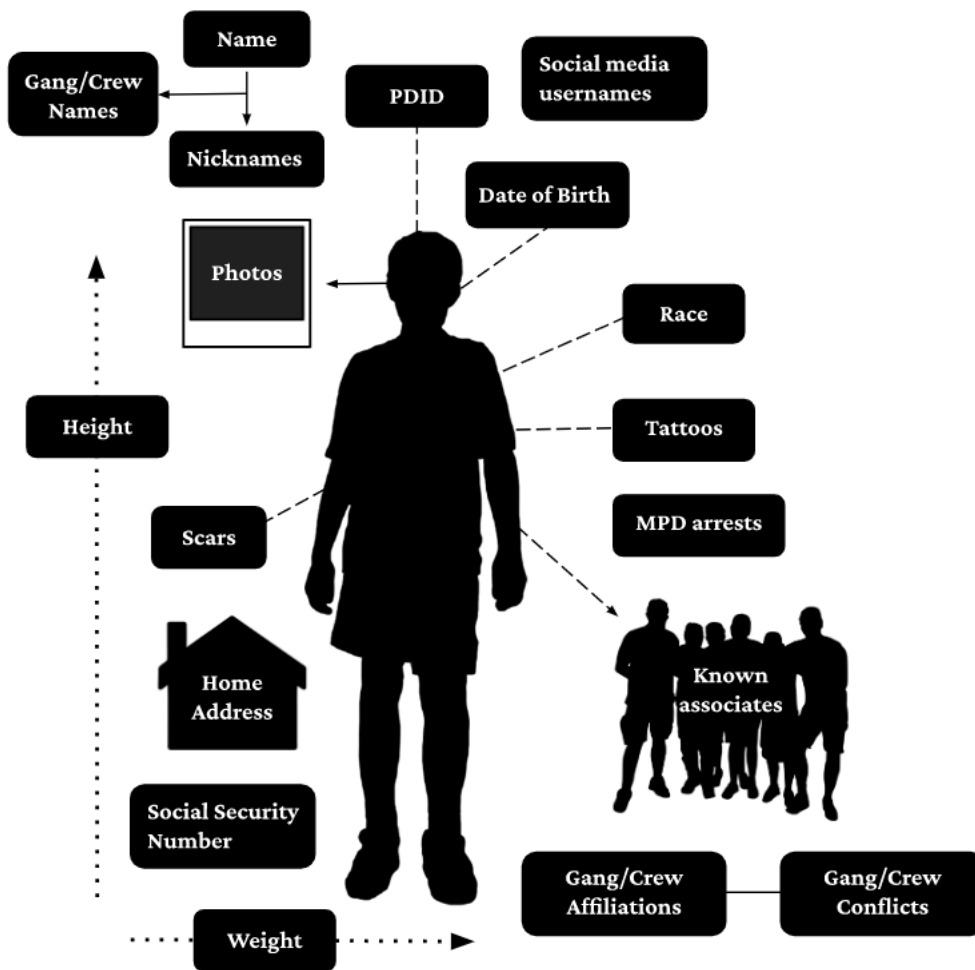
Despite clear federal guidance on validation, MPD has consistently failed to properly validate and revalidate individuals in the DC Gang Database. In MPD's own words: "[S]ome of our validations are lacking the details to support the validation" and "sooner or later the entire unit is going to get burned for this."⁷⁶ This reality is evidenced by recent history: after the public pressured MPD to review its validations within the DC Gang Database in 2022, MPD had to remove 48% of individuals.⁷⁷ Media reports demonstrate that MPD has a long-standing practice of not properly validating individuals in the database and keeping them listed long after their validation data has expired.⁷⁸ Even after MPD's 2022 review, *one-hundred and sixty-seven* (167) individuals remain in the DC Gang Database without validation, in violation of federal regulation 28 CFR 23.⁷⁹

MPD's continued failure to properly validate individuals in the database illustrates the department's inability to maintain the system without prejudice. By their own standards for inclusion, MPD repeatedly fails to justify surveillance of thousands of DC residents. Without any checks, MPD continues its practice of tracking almost exclusively Black and Brown residents without justification or consequences. This practice, coupled with the fact that MPD then shares this non-validated data widely without regulation, has the effect of marking people for life.

Who Has Access to the DC Gang Database?

The DC Gang Database contains a vast array of personal information for those tracked by MPD. This data includes social security numbers, home addresses, photos, and arrest records. This data also includes social media accounts, pictures, and videos collected by MPD about an individual.⁸⁰ As leaks to the public have demonstrated, MPD does not redact or otherwise shield this highly personal data within the database. Further, MPD's Special Order does not provide any guidance on how personal information within the database should be safeguarded by officers or shared with outside entities. The degree of personal data contained within the database, combined with the lack of protections for that data, raises grave concerns, especially when considering the vast number of people and entities with access to the DC Gang Database.

Figure 9: The DC Gang Database has a vast array of personal information, raising privacy concerns.



Source: Chicago Justice Project v. District of Columbia, 22-CA-00175 B, MPD FOIA Production October 19, 2022.

Over 400 MPD employees had access to data within the DC Gang Database as of November 2021.⁸¹ The Violent Crime Suppression Division (VCSD) of MPD’s Investigative Services Bureau is responsible for the administration of the database, validating gang and crewmembers for inclusion in the database, and serving as a liaison and resource to other MPD units in gang identification and validation.⁸²

Individuals with access to data contained in the DC Gang Database have the capability to share data with outside entities.⁸³ MPD admits that it provides personal information from the database to outside entities on an “ad hoc” basis.⁸⁴ MPD does not require these users to specify the reason they are searching on behalf of or providing information to an outside entity.⁸⁵ This means that department has been sharing personal information contained in the DC Gang Database without tracking why that data is shared or how it is being used. MPD

also does not track the requests it receives from outside entities for data and whether those requests are granted.⁸⁶ Despite the lack of tracking, the authors have discovered that the following outside entities have received information from the DC Gang Database:

- DC Housing Authority Police Department⁸⁷
- DC Department of Youth Rehabilitation Services⁸⁸
- Metro Transit Police Department⁸⁹
- FBI – Safe Streets Task Force⁹⁰
- United States Citizenship and Immigration Services – Washington Field Office⁹¹
- Fairfax County Sheriff's Office⁹²
- DC Department of Corrections⁹³
- United States Attorney's Office⁹⁴
- United States Marshals Service⁹⁵
- United States Secret Service⁹⁶
- Charles County, Maryland, Sheriff's Office⁹⁷
- United States Drug Enforcement Agency⁹⁸
- United States Bureau of Alcohol, Tobacco and Explosives⁹⁹
- DC Court Services and Offender Supervision Agency¹⁰⁰
- Montgomery County, Maryland, Police Department¹⁰¹
- Prince George's County, Maryland, Police Department¹⁰²
- DC Public Schools¹⁰³
- United States Park Police¹⁰⁴
- DC Homeland Security and Emergency Management Agency¹⁰⁵
- Washington Regional Threat Analysis Center¹⁰⁶
- United States Probation Office for the District of Columbia¹⁰⁷
- United States Department of Justice¹⁰⁸

The large amount of personal data in the DC Gang Database shared with outside entities in DC and across the country exponentially increases the impact on those tracked. As the remainder of this report examines, this sharing has led to increased criminal penalties for individuals in jurisdictions outside of DC. Outside entities have also used data in the DC Gang Database to support deportations of individuals in other jurisdictions. MPD's ongoing use of the database, a racially discriminatory system with no real procedural safeguards, continues to have significant impacts on people's lives.

Impact on Criminal System

As explained above, the DC Gang Database is fundamentally unreliable. The procedures used by MPD to add individuals to the database do not meet the minimum requirements of due process or federal regulations.¹⁰⁹ Indeed, MPD itself has admitted that “some of [its] validations are lacking the details to support the validation.”¹¹⁰ Internal correspondence illustrates the severity and pervasiveness of this problem, with high-level officers noting that there are “weak/bad validations in the DC Gang Database” and that “sooner or later the entire unit is going to get burned for this.”¹¹¹

Internal correspondence also shows MPD seeks to include as many people in the DC Gang Database as possible, regardless of accuracy.¹¹² In fact, some officers have remarked in correspondence to each other how they are “frustrated” by the number of people in the database.¹¹³ This problem is perpetuated by MPD leadership, which congratulates officers for adding validations and sets goals that prioritize the number of people included.¹¹⁴

MPD Increases the Criminalized Population by Sharing Unreliable Data

Despite the unreliability of the data, MPD shares information from its gang database with other law enforcement agencies both inside and outside of the District, thereby increasing the number of individuals who are swept into the criminal legal system. For instance, MPD communicates with ICE about whether particular individuals have been “validated” in the DC Gang Database.¹¹⁵ This information can then be used to threaten someone’s immigration status or deport them. Indeed, ICE has arrested and detained Public Defender Service clients on the basis of their alleged gang affiliation.

Other federal agencies, like the US Probation Office and the US Secret Service, also submit inquiries to MPD about gang status and rely on that information in their law enforcement capacities. DC’s Court Services and Offender Supervision Agency (CSOSA) similarly inquires about individuals’ purported gang affiliation—information the agency can use to impose onerous supervision conditions and even send individuals back to jail. When those individuals are not in the DC Gang Database, MPD offers to search social media platforms such as Instagram and YouTube to find information that might make them eligible for inclusion.¹¹⁶ MPD shares information from its DC Gang Database broadly with law enforcement agencies in other states as well. For example, MPD communicates

with Prince George's County Police Department, Montgomery County Police Department, and Baltimore Police Department about gang information, including by asking those other departments to fill out validation forms so even more individuals can be added to the DC Gang Database.¹¹⁷ All of this information-sharing broadens the reach of MPD's unreliable gang database and sweeps more people—almost entirely people of color—into the criminal legal system.

The DC Gang Database, and MPD's Related Practices, Create Serious Fourth Amendment Problems

Despite being unreliable and overinclusive, MPD uses inclusion in the DC Gang Database as a reason to stop and search individuals, even when there is no legal basis to do so. The Fourth Amendment guarantees that people in the United States will not be subjected to “unreasonable searches and seizures.” This means that officers cannot stop or search someone unless they have a warrant signed by a judge or probable cause to believe a crime has been committed—such as observing the crime happening.

There is a very limited exception to the requirement that an officer have a warrant or probable cause to seize someone. An officer may temporarily detain someone only if they have “reasonable and articulable suspicion” that the person has recently committed a crime, is in the process of committing a crime, or is soon going to commit a crime.¹¹⁸ That suspicion, however, must be particular to the person being stopped.¹¹⁹ It cannot be just an unsupported “suspicion or hunch”¹²⁰ or guilt by association.¹²¹ Where the activity police are relying on to seize an individual also captures a large category of presumably innocent people,¹²² that activity does not create reasonable suspicion.

MPD's policies and practices fail all these tests. In violation of the Fourth Amendment, MPD's written policies tell officers that being listed in the DC Gang Database alone qualifies as reasonable suspicion. In effect, officers are authorized to stop people in the database anywhere and at any time regardless of whether they have actual suspicion that the person is involved in criminal activity.¹²³ This is exactly the type of unsupported hunch and overly large categorization that is disallowed as the basis for a reasonable suspicion. The impact of this policy is made worse by the fact that, as described above, MPD has been aware for years that the DC Gang Database is highly inaccurate. Thus, there is a high likelihood that when MPD officers stop people simply because they are listed on the database, they are stopping innocent people. This problem is exacerbated by the fact that as of 2021, 35% of people in the database were not identified as gang members, but

rather were labeled as “associates.” As discussed above, all that is required to be considered an associate is to be seen “associating” with someone the police had previously identified (correctly or incorrectly) as a gang member.

However, despite the Fourth Amendment’s clear prohibitions on these kinds of stops, MPD regularly stops individuals solely because they are in the DC Gang Database, or are near or talking to individuals in the DC Gang Database. One lawsuit alleges, for instance, that MPD seized and harassed an individual solely because he was “hanging out with known gang members.”¹²⁴ This practice extends the harms and inaccuracies of the DC Gang Database even further because MPD uses these encounters to help “validate” additional people as gang members. That “validation” then becomes a basis for later stops, searches, and escalating harms, creating a cycle of over-expansive policing that sweeps up entire neighborhoods and families.

Because the DC Gang Database frequently includes people for whom there is no particularized suspicion of criminal activity, membership in the DC Gang Database is a better proxy for race and geography than it is for criminality. For example, an individual could be included in the DC Gang Database because they are friends with a neighbor who MPD has deemed a gang member, or because they stop to talk to their cousin on the way home from school and it turns out their cousin has been listed in the DC Gang Database. That individual’s name and photo would be passed around MPD and when officers next encounter that person in their neighborhood, talking to other neighbors, MPD can use their inclusion in the database as a pretext to stop that person, talk to them, pat them down, or chase them.

These unconstitutional seizures are almost never subjected to public scrutiny. If the person police seized is never arrested, the public may never know about this ongoing harassment. Even if the person is arrested, the officer may list other bases for the stop, omit the gang association, and keep the true basis for the stop secret. After “stop and frisk” was found unconstitutional in New York, Professor Babe Howell explained: “The gang allegation provides a facially race-neutral means for policing the usual suspects in the usual way. However, because gang databases and intelligence are secret, this policing avoids both public and judicial scrutiny.”¹²⁵ Indeed, in instances where the purported “gang association” is revealed during criminal litigation it can be extremely problematic and prejudicial.

Further, because many of DC’s “gangs” are, in reality, groups of individuals who live together in the same neighborhood, “gang association” often serves the same function as “high crime neighborhood” designations in the Fourth Amendment context. Frequently, officers use the “high crime area” descriptor to paint entire neighborhoods as dangerous and to justify their stops. The “high crime neighborhood” label is also tinged with issues of race and class. Though an individual’s presence in a “high crime area” is “among the relevant contextual considerations in a *Terry* analysis,” it cannot be the only factor to justify a stop.¹²⁶ As DC Circuit Judge Brown explained of MPD’s stop and frisk practices in “high crime”-designated neighborhoods:

[T]ry to imagine this scene in Georgetown. Would residents of that neighborhood maintain there was no pressure to comply, if the District’s police officers patrolled Prospect Street in tactical gear, questioning each person they encountered about whether they were carrying an illegal firearm? Nothing about the Gun Recovery Unit’s modus operandi is designed to convey a message that compliance is *not* required.¹²⁷

MPD similarly uses “gang database” labels to paint entire neighborhoods as areas of “gang activity” and the people who live in and visit them as “gang members.” A similar thought experiment to Judge Brown’s is helpful here: imagine that MPD tracked a group of young, white individuals in Georgetown known to use drugs and engage in illegal gambling. MPD monitored their social media, interviewed their friends, and distributed their photos throughout the department. MPD then sent officers to their Georgetown neighborhood and stopped and questioned every individual walking down Prospect Street who they recognized as friends of the gang members. Functionally, that is what MPD does with the DC Gang Database. But instead of young, white individuals in Georgetown, MPD targets communities of color.

MPD’s use of the DC Gang Database—which includes non-individualized determinations, unreliable evidence, unreasonable inferences, and guilt by association—flies in the face of many of the Fourth Amendment’s fundamental protections.

The DC Gang Database Entraps Individuals in the Criminal Legal System and Compounds its Harms

Gang allegations derived from the DC Gang Database are used in myriad ways to increase punishments and entrap minorities in the criminal legal system. From additional criminal charges to increased levels of supervision to harsher conditions of confinement, gang allegations materially impact individuals at every stage of the criminal legal process.


Additional Charges

Recruitment or participation in a gang is a violation under the DC Code that carries a penalty of up to six months in prison (and up to five years in prison if participating in another crime “in association” with any member of the gang).¹²⁸ The law defines “criminal street gang” as an “association or group of 6 or more persons” who, as a condition of membership, must commit or actively participate in committing a crime of violence or which has the purpose of engaging in frequent violation of the law.¹²⁹ The procedures for inclusion in the DC Gang Database, however, do not share this definition, and MPD includes individuals who are merely “observed associating with documented gang members” or “identified by an unproven informant,” among other criteria that do not require any active participation in violating the law. The DC Gang Database tracks associations of fewer than six individuals who have no relation to criminal activity at all. Nevertheless, gang charges—often derived directly from and supported by inclusion in the DC Gang Database—are brought against District residents, including youth sentenced under the Youth Act.

Pre-Trial Release and Supervision

Gang allegations can prevent people from being released pretrial. Judges can also factor gang allegations into their bond assessments. Inclusion in the DC Gang Database can be used to detain an individual prior to trial or to allow arrest by another law enforcement agency while on pretrial release. Being incarcerated pretrial—while presumed innocent—can have irreparable effects on employment, housing, and parental custody. For instance, ICE has arrested individuals in DC Superior Court who are released pending their trial simply because MPD identified the person as a gang member to ICE.

Individuals on supervised release likewise face harmful consequences based on gang allegations. CSOSA requires that some individuals on supervised release wear GPS monitors to track their movements. Often, when an individual is included in the DC Gang Database, CSOSA will impose “exclusion zones”—areas



an individual is not permitted to enter based on that area’s alleged gang affiliation. When whole neighborhoods are swept into the DC Gang Database, this can effectively mean an individual is not able to visit the areas where their family, friends, and entire communities live. The GPS constantly monitors an individual’s movements and generates a log for supervision officers. If someone is caught entering an “exclusion zone,” they can be arrested and re-incarcerated for lengthy periods by the United States Parole Commission, without judicial review.

Impact on Incarcerated People

The Department of Correction (DOC) keeps its own list of alleged gang associates and members in its custody, and internal MPD correspondence reveals that DOC and MPD maintain close contact about who should be added to that list. Indeed, DOC’s Office of Investigative Services touts their use of “intelligence reports from local law enforcement databases” to assist with investigations and operations at the DC Jail.¹³⁰ This relationship is reciprocal: MPD officers visit the DC Jail to collect data for the DC Gang Database, including speaking with people incarcerated there without their lawyer present. MPD also uses the DC Jail census to collect information.¹³¹

As of October 2022, 152 individuals were included in the DC Gang Database because of this collaboration, which also has a material impact on an individual’s incarceration.¹³² In the DC Jail, for instance, unproven gang allegations can lead to prolonged periods of segregation and even solitary confinement.

Sentencing Recommendations

DC prosecutors have argued that gang allegations should be factored into the length of a sentence. The government’s stated rationale is usually that once someone is a gang member, they are forever a gang member. This rationale is troublesome, because most young people age out of the need or desire to be in a gang, if they were ever in one in the first place. It is especially problematic when gang allegations are inherently unreliable and largely based on immutable characteristics—like race or neighborhood of birth—rather than any behavior or activity.

Impact on Youth in DC

The DC Gang Database is consistent with the existing systems of discriminatory profiling and policing in the District. Data obtained in 2022 demonstrates that 44% of individuals in the database are under the age of 24 and that 82% are Black people.¹³³ Geographically, 42% of entries are from “east of the Anacostia River, whose wards contain only 22 percent of DC’s population and are some of the district’s poorest, most predominantly Black, and most heavily policed areas.”¹³⁴ Taken together, the database appears to exacerbate the criminalization and stigmatization of youth of color by discriminatorily targeting and labeling Black and Brown youth as gang members or gang associates.¹³⁵

Inclusion in the database can lead to greater interactions with the police, which can have life or death consequences for Black and Brown youth. Babe Howell, a professor at City University of New York School of Law and an expert on gang policing, describes how “aggressive gang policing creates a ‘self-fulfilling prophecy’—one in which, like stop-and-frisk policing, cops are given rein to ‘put a label’ on young Black and Brown people and then use that label as an excuse to ‘police the hell out of’ them.”¹³⁶

This phenomenon is exemplified in the 2020 pursuit and murder of 18-year-old Deon Kay by MPD.¹³⁷ According to *The Intercept*, “part of the MPD’s justification for the pursuit was that Kay was a ‘validated gang member.’”¹³⁸ However, then-MPD Chief Newsham’s assertions that “Kay was a ‘validated gang member’ who had ‘multiple touches with the criminal justice system’ . . . could not be verified” by the *Post*.¹³⁹

In another fatal 2020 police pursuit, 20-year-old Karon Hylton-Brown was killed when MPD Officer Terence Sutton and Lieutenant Andrew Zabavsky, later convicted of murder, chased Hylton-Brown for failing to wear a helmet and riding an electric scooter on a sidewalk.¹⁴⁰ According to the *Washington Post*, the attorney for MPD Officer Sutton cited Hylton-Brown’s “drug gang membership” as a part of the defense for the officer’s actions.¹⁴¹ Hylton-Brown was also known to Sutton, who was a member of the Crime Suppression Team, which was criticized for “unfairly target[ing] Black neighborhoods and embody[ing] the ‘warrior’ model of

policing.”¹⁴² Following Hylton-Brown’s death, DC Police Commander Randy Griffin explained that “officers are required ‘to give special attention to persons of known bad character,’” suggesting that Officer Sutton might have been pursuing Hylton-Brown based on perceptions of his character gathered from their prior interactions.¹⁴³ This incident had ripple effects for Hylton-Brown’s family and community, including Hylton-Brown’s young daughter who was left fatherless.¹⁴⁴ The profiling of Hylton-Brown is consistent with labeling and categorizing youth based on tenuous connections or assumptions of gang involvement that undergirds the database.

In an MPD Intelligence Branch Daily Activity Report from 2018, an MPD officer “monitor[ed] school dismissal at Cardozo for gang activity” and “made contact with SRO’s to gather Intel on any reported gang activity within the school.”¹⁴⁵ In 2020, MPD officers “met with SRO [redacted] at Ballou for information of any beefs in the school which may extend into the neighborhood”¹⁴⁶ and mentioned that “[i]ntel members made contact with DCPS preparing for the upcoming school year next month.”¹⁴⁷ MPD officers frequently made “school checks,”¹⁴⁸ including at Cardozo,¹⁴⁹ Roosevelt,¹⁵⁰ and Columbia Heights Educational Campus,¹⁵¹ all schools in which at least 95% of students self-identified as Black or Brown. In addition, MPD “intel members conducted a gang presentation at Anacostia High School for DCPS behavioral specialist staff.”¹⁵² These interactions demonstrate a pattern of DC police surveilling Black and Brown students based on a presumption they will engage in “gang activity.” Despite the significant resources dedicated to this surveillance, there is no evidence to suggest these tactics are effective. Even with steps taken to remove SRO (school resource officer) access to the database,¹⁵³ frequent contact between youth and police officers in schools¹⁵⁴ continues the profiling and stigmatization of Black and Brown youth. As one young person put it, “If I was in the [G]ang [D]atabase, I could die[.] I could get blamed for everything. I could be a victim all the time.”¹⁵⁵

Black and Brown youth are endangered in this vicious cycle of discriminatory profiling as their family’s income and neighborhood, all of which is beyond the youth’s control, can be determinative of whether that youth is marked as a “gang member” or an “associate.”¹⁵⁶ As numerous young people have noted, youth are asked by teachers from middle to high school, police officers, and SROs

whether they hang out with a certain group of people.¹⁵⁷ Three Black youth who were interviewed in connection with this report voiced concerns about “racial profiling,” with others voicing concerns of “false accusations” and being a “target” as potential consequences of being in the database.¹⁵⁸ When asked about the database and its impact on her and other young people, one youth advocate stated, “You can have a feeling of—no matter what I do—I will be seen as a criminal or a bad person . . . It makes for a turbulent relationship between cops and youth.”¹⁵⁹

MPD reports from 2019 and 2021 also mention its officers attending “a varsity soccer game where Cardozo was playing against Bell High School,”¹⁶⁰ “monitor[ing] [a] funeral,”¹⁶¹ and “Gang follow up (music video identifications [on] social media, DIO follow ups).”¹⁶² These benign activities show no more than the aspects of community life that can be coded as “gang-related” or “gang-like” by race, class, and geographic location of participants.

The Gang Database Criminalizes Normal Adolescent Behavior

The DC Gang Database relies on vague criteria that criminalizes normal adolescent behavior. MPD can conclude that a young person is a gang member or a gang associate based on the person’s neighborhood, friends, clothing, or tattoos, but all of these “suspicious” characteristics are just as easily explained by typical teenage behavior. For MPD, the difference between “normal” teenage behavior and signs that a young person is in a gang often comes down to race.¹⁶³ As Professor Kristin Henning articulates, “Teenagers signal their loyalty to their clique by sitting together at school, hanging out after class, dressing alike, and giving themselves nicknames and symbols. For most kids, these behaviors are considered normal and even encouraged for healthy social engagement. For Black youth, these behaviors earn them the label of “gang” or “crew” and put them at risk of arrest — just for being in the group.”¹⁶⁴

Emails between members of the Gang Intelligence unit detail MPD’s regular presence in and around DCPS middle and high schools, and their process of proactively attempting to confirm gang database validations through monitoring who students associate with in and outside of school, the clothing they wear, and what they post on their social media.¹⁶⁵ Henning explains the unreliability of such validation methods, saying “police treat emoji, hashtags, ‘likes,’ and Facebook

friendships as an admission of gang membership, and target teenagers for boasting about crimes they didn't commit, making threats against rival groups they have no intention of pursuing, and posting rap lyrics that glorify guns and violence. Unfortunately, police and prosecutors who lack the cultural competencies to accurately interpret urban communication often misinterpret—or intentionally misconstrue—‘signifying’ and bravado as more nefarious than they really are.”¹⁶⁶

The United State Court of Appeals for the First Circuit’s decision in *Ortiz v. Garland* (2022) further speaks to the dangers of criminalizing normal adolescent behavior.¹⁶⁷ In *Ortiz*, the Bureau of Immigration Appeals (BIA) denied Ortiz’s claim for asylum based on his alleged gang membership by the Boston Police Department.¹⁶⁸ But the *en banc*¹⁶⁹ First Circuit overturned the BIA’s order, observing that “Ortiz’s conduct as described in the database,” such as being with friends, was nothing like “‘gang-like’ activities.”¹⁷⁰ The court noted that “absent the unsubstantiated statements that those with whom he associated were gang members, the [Field Interrogation Observations] *show no more than a teenager engaged in quintessential teenage behavior*—hanging out with friends and classmates.”¹⁷¹

Additionally, for some youth of color in DC, simply being born in a certain neighborhood puts a target on their backs. According to Judge Howell, “You can’t exist in certain neighborhoods without belonging to your block’s crew. Unless you’re going to be locked inside all your life, and even that may not be enough.”¹⁷² There are no membership rolls that clearly identify who belongs to a gang and which members of the gang are actually engaging in violence or crime. Journalist Alice Speri in *The Intercept* notes: “More often than not, if you’re born on a block, that’s the group you belong to, regardless of how actively or reluctantly you identify.”¹⁷³

One DC high school student voiced concern that, according to the rules of the DC Gang Database, “people can judge you [based] on what neighborhood you live in.”¹⁷⁴ The database is “messing up kids’ lives based on perceptions about who they are, based on where they live.”¹⁷⁵ Other DC youth voiced concerns that being suspected as a gang member merely because they are hanging out in their neighborhood with their friends could result in harmful consequences.¹⁷⁶ They feared teachers treating them differently, having difficulty getting a job, and even

criminal repercussions for being in the “wrong place,” when that “wrong place” is simply where they live.¹⁷⁷

Department of Youth Rehabilitation Services

Youth in the ‘deep end’ of the juvenile legal system are committed to an executive government agency known as the Department of Youth Rehabilitation Services (DYRS). If a young person is found by a juvenile court judge to have been involved in an offense that would have been a crime if they were an adult (e.g., found guilty), they can be subject to a variety of punishments. When a young person is arrested and requires a determination for custody, the judge may either make a determination that: 1) no additional intervention is needed towards rehabilitation and the young person may return home; 2) the youth should be sent home under probation; or 3) the youth should be placed in the custody of DYRS for a specified amount of time.

For years, DYRS used an initial risk assessment called Structured Decision Making (SDM) to determine youth outcomes.¹⁷⁸ This tool is used by judges to decide outcomes for young folks and is considered highly persuasive. The tool considers several factors to determine a young person’s risk to society, including suspected gang or crew membership and peer relationships with potential crew members. These gang/crew categories add two to three points on the scale, weighing against the return of a young person to their home and families. Every single point makes a difference.¹⁷⁹

For youth falling under the supervision of the DYRS, considerations of gang, crew, or neighborhood affiliation come up in a host of ways. For example, when youth are held in any DYRS facility, assessments are made as to where they are housed based on their neighborhood affiliation in case there is a perceived “beef.” Also, when youth are in a community placement and DYRS seeks to revoke this status, DYRS may raise *clinical* or *safety* concerns regarding the young person’s ability to remain in the community due to potential gang, crew, or neighborhood affiliation. In fact, DYRS may use this as a basis for initial removal, which allows for emergency removals from the community without a youth’s consent.

DYRS consistently communicates with MPD regarding its youth, including sharing lists of “DYRS violent offenders” and notifying MPD when

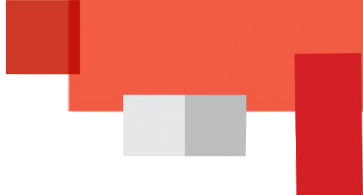
specific youth are getting released from their facilities.¹⁸⁰ This sustained level of communication between DYRS and MPD allows police to maintain constant surveillance over young people and diminishes their opportunity to be free from police harassment as they go through the rehabilitative process.

A Constant Harm on Black and Brown Youth

Black and Brown youth in DC are subjected to high levels of contact with police, which impacts them in a variety of negative ways. In her book *The Rage of Innocence*, Professor Kristin Henning introduces the topic of “Policing as Trauma” with a case study.¹⁸¹ She describes her teenage client, Kevin, who lives in Southeast DC where police are omnipresent.¹⁸² Kevin has been stopped by MPD officers close to his home at least fifty times: “alone and with friends . . . on his way in to buy chips at the convenience store and sometimes on his way back out . . . when he was texting his girlfriend and when he was just waiting at the bus stop or sitting in a folding chair outside his building.”¹⁸³ This constant interaction with the police has serious consequences—beyond those of becoming entangled in the criminal legal system—for Kevin, and for all Black and Brown youth in DC

Youth are likely to develop mental health issues like PTSD and anxiety as a result of interactions with police.¹⁸⁴ Police stops have also been shown to cause sleep quality disturbance for youth, not only those who have been directly stopped by police, but also those who witnessed police stops, and those who personally know someone who has been stopped.¹⁸⁵ Kevin, who was first arrested when he was twelve years old “for arguing with the police,” displays symptoms of PTSD, anxiety, and sleep disturbance.¹⁸⁶ In short, “Kevin has all the signs of trauma.”¹⁸⁷

Black and Brown children are dehumanized¹⁸⁸ and stopped by police at age twelve, or even younger, for normal adolescent behavior.¹⁸⁹ A study published by Professor Phillip Atiba Goff in 2014 found that “Black children are afforded the privilege of innocence to a lesser extent than children of other races.”¹⁹⁰ According to the study, experienced police officers perceived Black boys as, on average, 4.59 years older than their actual age,¹⁹¹ and saw Black boys as “more culpable for their actions (i.e., less innocent) within a criminal justice context” than children of other races.¹⁹² This phenomenon is not limited to Black boys. The report *Girlhood Interrupted: The Erasure of Black Girls’ Childhood* tells of a Black girl’s arrest in New York City for using a metrocard for youth under 19 because the officers did not believe the girl, nor her parents, that she was 15 years old.¹⁹³ The girl was later



treated at a hospital for injuries from being handcuffed while she waited for her mother to bring her birth certificate to the police station.¹⁹⁴

A study published in 2019 showed that Black and Latino boys' frequent contact with the police "predicted more frequent engagement in delinquent behavior."¹⁹⁵ This was true whether or not the stopped boy had engaged in any prior delinquent behavior.¹⁹⁶ Subsequent delinquency increased the younger the boy was at the time of his first police stop.¹⁹⁷ This study suggests that in addition to resulting in trauma, anxiety, PTSD, and poor sleep, contact between Black and Brown youth and law enforcement increases the likelihood of delinquent behavior.¹⁹⁸ However, it is important to note that juvenile delinquency is often correlated with community poverty¹⁹⁹ and trauma.²⁰⁰ According to the National Child Traumatic Stress Network, children who experience trauma adopt a "survival code' [which] differs from the established rules of the majority society, and is a direct consequence of traumatic stress on emotional, physiological, and behavioral factors which place youth at increased risk of committing offenses."²⁰¹ More policing will not address these issues. As one DC young person stated, "We cannot police our way to safety."²⁰²

Impact on Immigration System

The inclusion of immigrants in the DC Gang Database can have dire consequences on their immigration status and ability to stay in the country. These impacts are especially compounded where, as here, MPD shares information about noncitizens in the DC Gang Database with outside entities, including federal immigration agencies. As a result of unverified and baseless allegations of gang membership or involvement, immigrants can face denial of affirmative immigration benefits, arrest by federal immigration enforcement authorities, immigration detention without bond, and deportation. Young Black and Brown immigrants bear the brunt of the consequences of unsubstantiated allegations of gang membership. This section provides an overview of the impact on immigrants when federal immigration agencies become aware of a noncitizen's inclusion in gang databases.

Unlike in other sections of this report, this section illustrates some real-world experiences regarding the impact of “gang” allegations. Examples are available in this context because of the special nature of immigration courts and the documents produced within them. However, due to MPD's secrecy about the DC Gang Database, each of the following case studies are from nearby jurisdictions. The below stories come from attorneys who provided representation to impacted individuals during immigration proceedings. Sources and documents have been withheld related to these stories to protect individual's privacy. Though not DC-based, these examples illustrate the threat of harm immigrants face through inclusion on the DC Gang Database.

A. Denial of Immigration Benefits and Relief

Immigrants who are accused of gang involvement or membership face hurdles applying for certain migration benefits, such as asylum, Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juvenile Status (SIJS), temporary protected status (TPS), and adjustment of status.

Because most immigration benefits are discretionary,²⁰³ evidence of gang affiliation is often taken into account to deny an immigration benefit. The agency that adjudicates these affirmative immigration benefit applications is the United States Citizenship and Immigration Services (USCIS). Most USCIS forms have questions designed to identify potential gang membership or activity. USCIS can

assume gang affiliation based on the applicant's answers to certain questions on the application, information learned during the interview process, or through USCIS's background investigations. When conducting background investigations, USCIS will often cross-reference an individual's biometrics and biographical information with various criminal history databases, including gang databases administered by local police.

Procedural protections for noncitizens are extremely limited in this context. There is generally no right to a hearing before USCIS, no opportunity to examine or challenge evidence that USCIS may use against the noncitizen, and often, no ability to appeal the decision.

Several forms of immigration relief can be impacted by allegations of gang involvement, including but not limited to those listed below.

- **Asylum** is a form of protection from deportation for individuals who fear persecution due to race, religion, nationality, membership in a particular social group, or political opinion. An individual is barred from obtaining asylum if there are "serious reasons" to believe that the individual committed a serious nonpolitical crime before coming to the United States. This bar applies even if there is no conviction. Individuals with prior affiliations with gangs may face this bar when applying for asylum.²⁰⁴ Moreover, because asylum is discretionary, USCIS or an immigration judge can deny relief solely based on allegations of gang involvement or membership.
- **Deferred Action for Childhood Arrivals (DACA)** is a policy that provides protection from deportation to certain individuals who entered the United States without authorization as children. As of December 2022, around 16,000 DACA recipients lived in DC, Maryland, and Virginia, according to USCIS.²⁰⁵ In order to be eligible for DACA, the applicant cannot pose a threat to national security or public safety. Based on allegations of gang membership, even if an individual has not been convicted of a crime, USCIS can determine that the applicant poses a threat to public safety. In fact, one memo explicitly states that suspected gang membership is an explicit justification for disqualification under DACA.²⁰⁶ Moreover, individuals who apply for DACA and are determined by USCIS to be involved with gangs have been referred to US Immigration and Customs Enforcement (ICE) for arrest and placement in removal proceedings.²⁰⁷

- **Temporary Protected Status (TPS)** affords protection from deportation to individuals from certain countries that are designated by the Department of Homeland Security (DHS) as being affected by armed conflict, unprecedented natural disaster, or other extraordinary, temporary conditions. Over 47,000 TPS-holders live in the DMV area.²⁰⁸ Gang allegations can be used to deny TPS to applicants who otherwise qualify for the program because it is a discretionary benefit.
- **Special Immigrant Juvenile Status (SIJS)** is granted to certain undocumented children under the age of 21 who need the protection of a juvenile court because of parental abuse, abandonment, or neglect. Because SIJS is a discretionary benefit, USCIS can deny or revoke SIJS based on gang allegations.²⁰⁹

MPD has shared information about individuals who appear in the DC Gang Database with USCIS when the agency is adjudicating immigration applications. One email from an MPD officer, with the subject line “USCIS Request for Assistance,” notes that an individual with an immigration application “received information from ICE’s Washington Field Office that MPD’s Gang Intel unit provided them with information that he is validated [redacted].” Another MPD officer wrote back with information about the individual’s purported gang membership.

B. Arrest and Removal

Gang membership alone is not a basis under which DHS and its sub-agency, ICE, can arrest or deport someone. However, being undocumented and appearing in a gang database can trigger an arrest.²¹⁰ Even for those noncitizens with immigration status, including lawful permanent resident status, being accused of gang membership may result in a gang-related criminal charge or conviction. In that case, there are several grounds of removability that could be triggered, leading to an ICE arrest.²¹¹

Once a noncitizen is placed in immigration removal proceedings, they can apply for forms of relief from deportation, such as asylum or cancellation of removal. Many forms of immigration relief are discretionary, which means that an immigration judge can ultimately deny relief even if the applicant meets all the statutory requirements for that relief. Unsubstantiated reports of gang involvement or gang-related criminal conduct are used by immigration judges to justify denials

of defensive applications for relief. Such reports are also often used by immigration judges to challenge the credibility of the noncitizen, resulting in denial of relief.²¹²

Gang-related allegations are particularly problematic in the immigration context because—as administrative tribunals under the Executive Branch—immigration removal proceedings do not have the same safeguards present in most other courts of law. First, it is difficult to challenge allegations of gang membership in immigration hearings based on evidentiary or due process concerns because immigration proceedings have lower procedural protections than in the criminal context.²¹³ For example, hearsay is generally admissible in immigration court, and cross examining the police officer who alleged gang involvement is an uphill battle because immigration judges cannot enforce subpoenas. Therefore, ICE uses vague and unsubstantiated allegations of gang involvement, with little to no reliable evidence, to secure someone’s arrest, detention, and removal. Second, individuals in removal proceedings are not afforded the right to government-appointed counsel, thereby forcing them to find and pay for counsel. The lack of government-appointed counsel translates into a lack of representation altogether for many, who cannot afford or find lawyers to represent them. The difficulty of identifying and accessing representation is particularly pronounced for detained immigrants. Without legal representation, it is much harder to challenge the veracity of gang allegations. Third, ICE often introduces these allegations in immigration removal proceedings during the trial instead of prior to trial. This lack of prior notice makes it much more challenging for the noncitizen to have a fair opportunity to dispute the evidence, particularly since outcomes can be determined by the immigration judge on the same day that that evidence, regardless of how baseless it is, is introduced.

Immigrants who are alleged to be involved in gangs have historically been an “enforcement priority” for DHS.²¹⁴ To be an “enforcement priority” means that federal immigration authorities target them for arrest, detention, and deportation. It is also much harder in such cases to get prosecutorial discretion because individuals who are alleged to be gang members are purportedly a priority for removal. Between fiscal years 2018 and 2022, ICE deported over twenty thousand people it deemed as “known or suspected gang members.”²¹⁵

The effects of gang allegations on noncitizens are particularly pronounced in the DC region because MPD has provided information about individuals in the DC

Gang Database directly to ICE, thereby actively contributing to the arrest, detention, and deportation of community members. Internal emails reveal several instances of MPD providing ICE with “Intelligence Branch Gang Validation Forms,” purportedly to assist ICE with the arrest and removal of immigrants. MPD also shares DC Gang Database information with other outside entities, including local law enforcement agencies. Those agencies can then provide ICE with information about noncitizens who are alleged to be involved with gangs.

Case Example: D

In mid-May 2017, D was kicked out of his home and rendered unhoused at the age of 17. D would sleep wherever he could, including in a local forest close to a river, under a bridge, laundry rooms of apartment buildings, and abandoned houses. D also began frequenting Elizabeth House, a local food kitchen, for dinner.

To avoid the dangerous prospect of being alone on the streets, D latched on to J, a school acquaintance who was also unhoused. J had a more extended network of friends that would provide him with petty cash that J shared with D. D would often connect with J and his friends. D was aware that this group had a bad reputation, but he did not ask about it. When they got together, the group would frequently upload photos to social media. Sometimes the group would pose making bullhorn signs or other hand signs with negative social connotations to get the attention of their female peers—a big priority for this group.

During this time of houselessness, D had contact with Laurel, MD, police for the first time. In late June 2017, D and J were outside a restaurant in the Laurel Shopping Center. Officer Diaz-Chavarria arrested J and told D he could not come back to the restaurant. D did not understand why the police had responded that way and when he asked J, J simply explained that Officer Diaz-Chavarria had a personal issue with him. D never stepped back into the restaurant.

On August 25, 2017, the same officer stopped D and J in front of a supermarket in the Laurel Shopping Center and accused them both of trespassing. D was confused because the officer had told him not to go back to the restaurant, not the entire shopping complex. Officer Diaz-Chavarria searched D’s backpack without D’s consent and looked through his cell phone, in which the officer found a picture of D and the group making bullhorn hand signs. Officer Diaz-Chavarria arrested both J and D and charged D with trespassing, a charge that was later nolle prosequi-ed (i.e., the prosecutor declined to pursue the charge). Following this arrest, Officer Diaz-Chavarria began to insist that D was an MS-13

gang member. Later, on September 29, 2017, D went to Elizabeth House for his daily dinner. Officer Diaz-Chavarria appeared and charged D with trespassing, despite D's regular and welcome presence at Elizabeth House. Officer Diaz-Chavarria insisted that D and his friends were MS-13 gang members, an allegation they all denied.

On December 8, 2017, D and J went to Hyattsville District Court. Shortly after exiting the court, an unknown, plain-clothed officer approached D and handcuffed him. The officer took D into a small room where a detective told D that if he identified the "chequeos" and members of his gang, they would release him. D insisted that he was not in a gang. Shortly thereafter, Officer Diaz-Chavarria came into the room with another **unknown** officer. They questioned D about the pictures in which he was making a bullhorn sign. D repeated that he was not a gang member, that he did not know of J being a gang member, and that the pictures were just a joke. Before long, ICE officers arrived, arrested D and took him into ICE custody.

In immigration court, Officer Diaz-Chavarria appeared and testified that J had been seen tagging MS-13 graffiti around Laurel. When asked about the basis for concluding that D was gang-involved, Officer Diaz-Chavarria testified that D was seen frequently with J and that D was in possession of a photo making gang signs with J. Officer Diaz-Chavarria indicated that he had never seen nor heard of D committing any criminal offense besides trespass, but that he was nevertheless sure that D was a gang member. Ultimately, the immigration judge found that D was not credible. She denied all relief and issued a deportation order. D was then deported.

C. Immigration Detention without Bond

Immigration law authorizes the detention of certain immigrants. Mandatory detention, which does not allow the immigrant to be released on bond during the pendency of their removal proceedings, applies to noncitizens who are removable based on a broad range of criminal or terrorism related grounds.²¹⁶ Individuals who are arrested based on gang-related crimes can be placed in mandatory detention and never receive an opportunity to even be considered for release until their immigration proceedings end.

Those who are not in mandatory detention, including individuals who face gang allegations but have not been convicted of any crime, can be released on bond or parole by DHS or an immigration judge if DHS or an immigration judge

determines that they do not pose a danger to society and are not a flight risk. DHS often decides to hold individuals who are suspected of gang membership without bond in immigration detention because they are believed to be a “danger.” Although an immigration judge will review the decision, they will use such allegations to deny bond or increase bond amounts. Moreover, in bond hearings, the burden is often on the noncitizen to prove that they do not pose a danger, which is the reverse of the burden in criminal contexts.

The University of Maryland Carey School of Law Immigration Clinic, Maryland Immigrant Rights Coalition, and the Catholic Legal Immigration Network, Inc. observed bond hearings in the Baltimore immigration court from January 2017 to August 2017.²¹⁷ Their report revealed that “[a]ny allegation of gang membership or affiliation precipitously reduced the odds that the court would set any bond whatsoever; the court denied bond for 7 out of 8 people, or 88%, of the cases where the government alleged gang affiliation.”²¹⁸

Denial of bond has severe consequences for immigrants—immigrants who are detained are much less likely to have legal representation and much more likely to be deported.²¹⁹ As explained above, because of more lax evidentiary standards in immigration proceedings, gang-related allegations in this context are often blindly accepted by immigration judges even when they are unsubstantiated and overbroad.

Case Example: K

On the afternoon of March 28, 2019, K went to Home Depot to solicit employment. He joined three other young men who were there for the same purpose: J, C, and H. K considered them casual acquaintances. In the past, they had kept each other company while soliciting employment. He had never engaged with them in any other context. K had no reason to believe any of the young men were gang affiliated. The young men proceeded to chat to pass the time.

Around 2:30 PM, while the four of them were chatting, Detective Filuta from the Hyattsville City Police approached the group. Detective Filuta did not speak to K. Subsequently, officers from Prince George’s County Police Department arrived on the scene. These officers proceeded to handcuff K without any explanation. When asked why he was being arrested, K recalls that a Spanish-speaking officer told him that if he was not a gang member, he had nothing to worry about. K felt assured by this statement because he was not and had never

been gang affiliated. K believed the error would be quickly corrected and he would be released.

At the station, the four men were placed into different rooms and questioned. K told the police he was not a gang member, but the police indicated that they did not believe him. The police repeatedly demanded that K provide information about other gang members and told K that he would be released if he cooperated. K explained that he did not have any information to give because he did not know anything. K was then transferred to another room and told that immigration officials would be coming to take him into ICE custody. ICE officials arrived and transferred K and J to the Howard County Detention Center. C and H were both released.

On April 24, 2019, with the assistance of counsel, K requested bond. During the bond hearing, counsel argued that K was not a danger to the community because he had no criminal charges, and counsel submitted affirmative evidence documenting K's peaceful and responsible character. Counsel also argued that K was not a flight risk because he had significant ties to the community—including a US fiancé, and an unborn child, brothers, step-children, uncles, aunts, and cousins with legal status—a consistent history of employment, 8 years of residence, a fixed address, and a defense to deportation.

DHS, however, argued that K presented a danger to the community because local police “verified” that he was an active gang member. It moved to admit K's I-213 and the Gang Field Interview Sheet (GFIS) generated by Prince George's County police. K objected to their admission into evidence on the basis that the documents were unreliable given significant inconsistencies between the I-213 and the GFIS, as well as internal contradictions in the I-213. Counsel also argued that it violated constitutional due process to admit the documents into evidence because K would be deprived of his right to cross-examine witnesses against him. Over K's objections, the immigration judge admitted the documents into evidence. Ultimately, the judge denied the request for bond. The court concluded that K had failed to meet his burden of demonstrating that his release from custody would not pose a danger to others because “the evidence shows he is a verified gang member.” To come to these conclusions, the court relied exclusively on hearsay; namely, the allegation contained in the GFIS that a confidential informant told unnamed officers that K was an MS-13 gang member.

Case Example: M

M is young Salvadoran male who has a congenital disease that has left him unable to unfurl some of his fingers. On October 17, 2017, M walked to a shopping center in Hyattsville, MD, with two acquaintances to buy food. While there, a police cruiser appeared and an officer directed the three young men to stop. The two acquaintances ran, while M stayed in place and complied. M then voluntarily permitted the officer to look at his phone, where the officer allegedly observed pictures that are known to be “related” to a local clique. According to M, the officer saw a photo that had an anchor and an optimistic quote. The officer concluded that the picture indicated membership in MS-13 Sailor’s clique. The officer may have also seen pictures of M on his phone where his hands were prominent. To the officer, it may have looked like he was making a bullhorn MS-13 hand sign. As a result of these allegations, M was denied bond in immigration court. In a later hearing on his application for asylum, after hearing extensive testimony from M, including testimony regarding his inability to unfurl his fingers, the DHS attorney all but conceded that police were wrong to label M a gang affiliate.

These examples demonstrate how inclusion in the DC Gang Database can have dramatic repercussions on the ability of noncitizens to obtain immigration benefits, be free from abusive and inhumane detention, and remain with their families and communities in the United States.

Conclusion

In conclusion, after a thorough examination of the DC Gang Database, it is clear that this tool has failed to live up to its intended purpose to promote public safety. Instead, it perpetuates racial and socio-economic disparities and infringes on the civil rights of thousands of individuals in the District.

The DC Gang Database's lack of transparency, inadequate oversight, and high exposure to abuse further compound the harms caused by its use. Gang databases are not effective in reducing gang-related crime and violence in communities. Rather, as is the case in DC, gang databases are tools used to perpetuate discrimination and impose undue pressure on Black and Brown residents. The DC Gang Database has only further marginalized and stigmatized communities already placed at disadvantage by the District government, resulting in increased distrust and fear of law enforcement among DC residents.

Given these shortcomings and its discriminatory effect, it is clear that the DC Gang Database should be abolished. Rather than relying on this flawed and discriminatory tool, it is essential that the District adopts more effective and equitable strategies to promote safety in our communities. This includes investing in community-based interventions and addressing underlying social and economic issues that contribute to crime. Immediate next steps for DC policy-makers can be found below.

Abolishing the DC Gang Database will not only help to protect the civil rights of individuals in the District, but will also lead to more just and effective approaches to public safety that prioritize community empowerment and wellbeing.

Immediate Next Steps

The following list presents immediate next steps DC policymakers should consider implementing based on evidence produced in this report. Taking these actions would not preclude the need to invest in long-term solutions – that is, provide intervention services and address socio-economic disparities in the District --but would address the urgent requirement to protect the civil liberties of residents who are currently facing harassment and discrimination.

1. Pass legislation dismantling the DC Gang Database. This legislation should include the requirement that any data regarding the association of individuals in the database be deleted from all MPD systems.
2. Require the Metropolitan Police Department to provide notice to all individuals identified on the DC Gang Database since its inception. With such notice, MPD should provide individuals information regarding the potential impacts of their inclusion in the database (i.e., criminal history, credit history, background checks, etc.).
3. Mandate that all DC agencies delete any data within their possession originating from the DC Gang Database.
4. Require MPD to send notice to all external recipients of data from the DC Gang Database requesting that all relevant information be deleted.
5. Pass legislation prohibiting adverse actions by DC agencies against individuals solely based on personal associations, in accordance with protections provided by the First Amendment of the United States Constitution.
6. Pass legislation prohibiting government surveillance based strictly on personal association or protected classes, in accordance with the DC Human Rights Act.
7. Reject legislation (such as the “Addressing Crime Trends (ACT) Now Amendment Act of 2023”) that calls for the criminalization of residents based solely on their personal associations.

¹ Angel Diaz, *Data-Driven Policing's Threat To Our Constitutional Rights*, The Brookings Institution (Sept. 13, 2021), <https://www.brookings.edu/techstream/data-driven-policings-threat-to-our-constitutional-rights/>.

² The authors of this report include Chicago Justice Project, Washington Lawyers' Committee for Civil Rights and Urban Affairs, Upturn, Black Swan Academy, Civil Rights Corps, and National Immigration Project. Contributors to this report include the Public Defender Service for the District of Columbia and Upturn.

³ The authors of this report would like to provide a special thank you to Pillsbury Winthrop Shaw Pittman LLP who offered pro bono legal services as part of the *Chicago Justice Project v. District of Columbia* to obtain sources relied in this report. Additionally, we'd like to thank Relativity. The Washington Lawyer's Committee leveraged [RelativityOne](#) through Relativity's [Justice for Change program](#) for purposes of this project. The Justice for Change program provides free use of Relativity's cloud-based e-discovery product to organizations doing legal work on behalf of social justice and racial equity.

⁴ See *Steven Marcus v. DC*, 2021-CA-003709 B; *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B.

⁵ We wish to thank DC Councilmember Charles Allen for his assistance in drafting and submitting questions to the Metropolitan Police Department regarding the DC Gang Database in January 2022.

⁶ "While the vast majority of people involved in shootings, as victim or suspect, are members or associates of street groups/gangs, the motive for the shooting may not be a traditional gang war. Often shootings are precipitated by a petty conflict over a young woman, a simple argument." Washington GVR Report_V12_050322 (dc.gov), p. 11. <https://cjcc.dc.gov/page/cjcc-releases-gun-violence-reduction-strategic-plan>.

⁷ The gangs tracked on the DC Gang Database are: 10th and Gangsta, 10th Place Killas, 1-4 Crew, 1-4 CRT, 14th & R, 14th & W, 14th and Allison, 14th and V, 16th and Levis, 16th and V, 1-7 Crew, 17th and Compton, 1-8 Zone, 18th and Q, 18th Street, 19th and Benning, 19th and Minnesota, 1st and O, 21st and Maryland, 22 Crew, 30th Street, 3500 Crew, 37th Street, 3rd World, 49th and Quarles, 4Deen, 4th Street Mob, 58th, 5th and O, 7th and Girard, 7th and O, 7th and Taylor, Barry Farms, Benning Park, Bloods, Butler Gardens, Choppa City, Clay Terrace, Clifton Terrace, Columbia Heights Village, Congress Park, CRB, Crips, Delafield Crew, Duffy Gang, Edgewood Terrace, Florida Park, Fully Gang, Galveston Place, Garfield Terrace, Greenleaf Gardens, G-Rod, Hillside, Huntwood, Ivy City, James Creek, KDY, Kenilworth, Lady Swagg Gang, Langdon Park, Langston Terrace, Latin Crew, Ledroit Park, Let's Get Work Crew, Lincoln Heights, Lincoln Road, Lincoln Westmoreland, Mactown, Master Crew, Mayfair Paradise, Michigan Park, MLK Crew, Montana Terrace, MS-13, MTP, Orleans Place, Oxford Manor, P and O Street SW, Park Chester, Park Morton, Parkland, Potomac Gardens, Really Ready Gang, Redzone, Riggs Park, Rittenhouse, Rock Creek Church Road, Saratoga, Savannah Terrace, Show Out Crew, Simple City, Slider Crew, Stanton Glen, Stanton Oaks, STC, Sursum Corda Crew, Swagg Gang, Syphax Gardens, Third World, Trap Money, Trenton Place, Trinidad, Uno Mafia, Wahler Place, Warder Street, Wayne Place, Wellington Park, Woodland Crew. 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, p. 11 (February 3, 2022).

⁸ DC Code Section 22-951(a)(1).

⁹ DC Code Section 22-951(b)(1)(2)).

¹⁰ DC Code Section 22-951(e) (1)(A)-(B).

¹¹ MPD Special Order 09-05.

¹² 28% gangs in the DC Gang Database have five (5) or fewer individuals within them. *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 28, 2022, Combined Sheets.

¹³ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B. July 15, 2022, Declaration of Teresa Quon Hyden, p. 8.

¹⁴ 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, pp. 9–11. (February 3, 2022).

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

¹⁶ As of October 19, 2022, there are 167 individuals in the DC Gang Database whose validation dates have expired, in violation of 28 CFR 23.20. *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 28, 2022, Combined Sheets.

¹⁷ 28 CFR 23.20 (a) and (c).

¹⁸ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B. July 15, 2022, Declaration of Teresa Quon Hyden, p. 8.

¹⁹ 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, p. 11 (February 3, 2022).

²⁰ *Id.* Also see, footnotes 89-109. Thus far, we are aware MPD has shared information contained on the DC Gang Database with the following agencies: DC Housing Authority Police Department; DC Department of Youth Rehabilitation Services; Metro Transit Police Department; FBI – Safe Streets Task Force; United States Citizenship and Immigration Services – Washington Field Office; Fairfax County Sheriff’s Office; DC Department of Corrections; United States Attorney’s Office; United States Marshall Service; United States Secret Service; Charles County, Maryland, Sheriff’s Office; United States Drug Enforcement Agency; United States Bureau of Alcohol, Tobacco and Explosives; DC Court Services and Offender Supervision Agency; Montgomery County, Maryland, Police Department; Prince George’s County, Maryland, Police Department; DC Public Schools; United States Park Police; DC Homeland Security and Emergency Management Agency; Washington Regional Threat Analysis Center; United States Probation Office for the District of Columbia; and the United States Department of Justice. Because MPD continues to refuse to produce documents responsive to legitimate FOIA requests, it is reasonable to assume that there are additional organizations being provided with this inaccurate information.

²¹ November 30, 2021, MPD response to Chicago Justice Project Freedom of Information Act Request, p. 3.

²² *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B. July 15, 2022, Declaration of Teresa Quon Hyden, p. 8.

²³ 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, p. 9 (February 3, 2022).

²⁴ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, MPD 2, Batch 11, Fifth Production.

²⁵ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production September 15, 2021, “Scanned Validation Dates.pdf.”

²⁶ DYRS risk assessment and structured decision-Making Validation Study & System Assessment Summary Report. DYRS Risk Assessment and Structured Decision-Making Validation Study & System Assessment Summary Report. (2012, March 5). <https://dyrs.dc.gov/publication/dyrs-risk-assessment-and-structured-decision%E2%80%90making-validation-study-system-assessment-1#:~:text=DYRS%20developed%20and%20implemented%20a%20structured%20decision%20making,as%20high%2C%20medium%2C%20or%20low%20risk%20to%20reoffend.>

²⁷ See DC Superior Court Juvenile Risk Assessment Instrument.

²⁸ Alvaro M. Bedoya, *The Color of Surveillance*, Slate (Jan. 18, 2016), <https://slate.com/technology/2016/01/what-the-fbis-surveillance-of-martin-luther-king-says-about-modern-spying.html>

²⁹ William Sullivan, *Memorandum re: "Negro Question"* (DocID: 32989666), U.S. National Archives and Records Administration, at 8, <https://www.archives.gov/files/research/jfk/releases/docid-32989666.pdf>

³⁰ Virgie Hoban, 'Discredit, Disrupt, And Destroy': FBI Records Acquired By The Library Reveal Violent Surveillance Of Black Leaders, Civil Rights Organizations, Berkeley Library, University of California (Jan. 18, 2021), <https://www.lib.berkeley.edu/about/news/fbi>

³¹ Andrea Dennis, *Mass Surveillance and Black Legal History*, American Constitution Society (Feb. 18, 2020), <https://www.acslaw.org/expertforum/mass-surveillance-and-black-legal-history/>

³² *Id.*

³³ Virgie Hoban, 'Discredit, Disrupt, And Destroy': FBI Records Acquired By The Library Reveal Violent Surveillance Of Black Leaders, Civil Rights Organizations, Berkeley Library, University of California (Jan. 18, 2021), <https://www.lib.berkeley.edu/about/news/fbi>

³⁴ *Id.*

³⁵ COINTELPRO, Encyclopedia Britannica (Jan. 16, 2023), <https://www.britannica.com/topic/COINTELPRO>

³⁶ Angel Diaz, *Data-Driven Policing's Threat To Our Constitutional Rights*, The Brookings Institution (Sept. 13, 2021), <https://www.brookings.edu/techstream/data-driven-policings-threat-to-our-constitutional-rights/>

³⁷ Anita Chabria, Kevin Rector, and Cindy Chang, California bars police from using LAPD records in gang database. Critics want it axed, Los Angeles Times (July 14, 2020), [California bars cops from using LAPD data in gang database - Los Angeles Times \(latimes.com\)](https://www.latimes.com/california/story/2020-07-14/california-bars-cops-from-using-lapd-data-in-gang-database).

³⁸ Oregonian/OregonLive, C. B. | T. (2016, November 4). Who's on Portland's gang list? oregonlive. https://www.oregonlive.com/portland/2016/11/at_least_i_was_on_some_kind_of.html.

³⁹ Tracked & targeted 02/17 - erasethe database.com. (2018, February). <http://erasethe database.com/wp-content/uploads/2018/02/Tracked-Targeted-0217-r.pdf>.

⁴⁰ February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 10.

⁴¹ *Id.* at Page 8.

⁴² See Chris Gelardi, *Hacked Emails Give Unfiltered View Into The DC Police Gang Database* (“Unfiltered View”), Intercept (June 18, 2021), <https://theintercept.com/2021/06/18/dc-police-gang-database-hacked-emails/>; Chris Gelardi, *DC's gang database highlights unconstitutional systems nationwide*, Intercept (January 19, 2022), <https://theintercept.com/2022/01/09/dc-police-gang-database-mpd/>; *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B (MPD failed to conduct an adequate search or produce several records requested beyond statutory timeframe, and then asserted improper exemptions to FOIA law in attempt to withhold responsive records); *Steven Marcus v. District of Columbia*, 21-CA-003709 B (MPD failed to conduct an adequate search or produce any of the records requested in violation on District FOIA law).

⁴³ November 30, 2021, MPD supplemental response to CJP FOIA. Page 5.

⁴⁴ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, October 19, 2022, MPD “Combined Tables” production.

⁴⁵ See Chris Gelardi, *DC's gang database highlights unconstitutional systems nationwide*, Intercept (January 19, 2022), <https://theintercept.com/2022/01/09/dc-police-gang-database-mpd/>; *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B (MPD failed to conduct an adequate search or produce several records requested beyond statutory timeframe, and then asserted improper exemptions to FOIA law in attempt to withhold responsive records); *Steven Marcus v. District of Columbia*, 21-CA-003709 B (MPD failed to conduct an adequate search or produce any of the records requested in violation on District FOIA law).

⁴⁶ See February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 2; *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 19, 2022, Combined Sheets.

⁴⁷ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 19, 2022, Combined Sheets.

⁴⁸ DC Code Section 22-951.

⁴⁹ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, MPD FOIA Production September 15, 2021, “ScannedValidation Dates.pdf.”

⁵⁰ *Id.*

⁵¹ MPD Special Order 09-03. https://go.mpdconline.com/GO/SO_09_03.pdf.

⁵² In February 2022, MPD Chief Contee stated under sworn testimony to DC Council actions were being taken to remove gang affiliates from the DC Gang Database and amend Special Order 09-03. As of October 19, 2022, a small number of gang associates remain on the DC Gang Database. As of April 1, 2023, Special Order 09-03 MPD has failed to amend Special Order 09-03. See http://dc.granicus.com/MediaPlayer.php?view_id=44&clip_id=7121.

⁵³ MPD Special Order 09-03 at Pages 3-4. https://go.mpdconline.com/GO/SO_09_03.pdf.

⁵⁴ *Id.*

⁵⁵ February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 8.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, MPD FOIA Production September 15, 2021, “ScannedValidation Dates.pdf.”

⁵⁹ *Id.*

⁶⁰ February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 8.

⁶¹ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 28, 2022, Combined Sheets.

⁶² MPD Special Order 09-03 at Pages 1-2. https://go.mpdconline.com/GO/SO_09_03.pdf.

⁶³ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 28, 2022, Combined Sheets.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 28, 2022, Combined Sheets

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* 100% of individuals identified as Gang Associates with only one criterion contain the criteria, “observed associating with documented gang member.”

⁷⁴ *See* 28 C.F.R. § 23.20.

⁷⁵ *Id.*

⁷⁶ *See* MPD Final Production Page 223 and Fourth Production 10, Page 235.

⁷⁷ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, October 28, 2022, MPD “Combined Tables” production.

⁷⁸ *See* Chris Gelardi, DC's gang database highlights unconstitutional systems nationwide, Intercept (January 19, 2022), <https://theintercept.com/2022/01/09/dc-police-gang-database-mpd/>.

⁷⁹ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, MPD FOIA Production October 28, 2022, Combined Sheets.

⁸⁰ February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 2.

⁸¹ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, November 30, 2021, MPD response to Chicago Justice Project Freedom of Information Act Request. Page 3.

⁸² *See* February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 1 (including an email exchange in which an employee of the DC Department of Corrections asked for and received specific information on alleged gang member from an MPD employee with access to the DC Gang Database).

⁸³ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Third Production, 1b, page 105.

⁸⁴ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, July 15, 2022, Declaration of Teresa Quon Hyden. Page 8.

⁸⁵ *Id.*

⁸⁶ *Id.* at Page 11.

⁸⁷ February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 11.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, USCIS Email-Redacted, page 2.

⁹² *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, FBI-Fairfax County Sherriffs Office Emails-Redacted .

⁹³ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Third Production, 1b, page 105.

⁹⁴ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Second Production, 2b, page 64.

⁹⁵ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, Privilege Log 9.27.22, page 1.

⁹⁶ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Third Production, USSS-Emails-Redacted.

⁹⁷ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Third Production, 2b, page 64.

⁹⁸ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Third Production, 4f, page 22.

⁹⁹ *Id.* at 27.

¹⁰⁰ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, CSOSA Emails-Redacted.

¹⁰¹ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Fifth Production, 4, page 1.

- 102 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, PGPD Emails, page 27.
- 103 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, DCPS Emails-Redacted, page 6.
- 104 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, USPP Email-Redacted, page 1.
- 105 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, HSEMA-USMS Email-Redacted, page 1.
- 106 *Id.*
- 107 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, US Probation Office Emails-Redacted, page 2.
- 108 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, Privilege Log 9.27.22, page 1.
- 109 *See* Special Order 09-03.
- 110 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Final Production, page 223.
- 111 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Fourth Production, 10, page 235.
- 112 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Fourth Production, 12, pages 83-84.
- 113 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Fifth Production,, 14, page 3.
- 114 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Fourth Production, 12, pages 83-84.
- 115 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Third Production, 2a, page 74.
- 116 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Third Production, 4f, 119-120 (“Intel does not have him validated in the Gang Database. However, if you provide his IG handle we can try to validate him based on his associates on social media.”).
- 117 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Fifth Production⁴, page 169-170.
- 118 *Reid v. Georgia*, 448 U.S. 438, 440 (1980).
- 119 *In re A.S.*, 614 A.2d 534, 537 (DC1992) (citations omitted).
- 120 *Curtis v. United States*, 349 A.2d 469, 471 (DC 1975).
- 121 *Jackson v. United States*, 805 A.2d 979, 990 (DC 2002); *see also Smith v. United States*, 558 A.2d 312, 315 (DC 1989) (“The courts in the District of Columbia have . . . rejected articulable suspicion arguments based upon guilt by association”).
- 122 *Reid v. Georgia*, 448 U.S., 438 441 (1980).

123 Summer crime Initiative Memos (ex. *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA, Third Production, 3, pages 2-31).

124 *Flores v. Duckett*, D.DC 22-22

125 K. Babe Howell, Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing, 5 U. Denv. Crim. L. Rev. 1, 4 (2015).

126 *Robinson v. United States*, 76 A.3d 329, 340 (DC 2013).

127 *United States v. Gross*, 784 F.3d 784, 790 (DC Cir.) cert. denied, 136 S. Ct. 247 (2015) (Brown, J. concurring).

128 *DC Code Section 22-951*.

129 *DC Code Section 22-951(e)*.

130 <https://dccouncil.gov/wp-content/uploads/2023/02/DOC.pdf>

131 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA, Third Production, 4c, page 25.

132 MPD FOIA Production October 28, 2022, Combined Sheets.

133 *FOIA Exhibit A* at 2–3, Chicago Justice Project, <https://chicagojustice.org/wp-content/uploads/2022/03/Exhibits-A-H.pdf> (MPD’s letter to Councilmember Charles Allen on Feb. 3, 2022).

134 Chris Gelardi, *More Kids and Overwhelmingly Black: New Records Show Concerning Trends in DC Gang Database*, The Intercept (Jan. 7, 2022), <https://theintercept.com/2022/01/09/dc-police-gang-database-mpd/> [hereinafter Gelardi, *More Kids*]; see also *FOIA Exhibit A* at 3; Gracie Todd, *Police Cameras Disproportionately Surveil Nonwhite Areas of DC and Baltimore, CNS finds*, Capital News Service (Nov. 19, 2020), <https://cnsmaryland.org/2020/11/19/police-cameras-disproportionately-surveil-nonwhite-areas-of-dc-and-baltimore-cns-finds/>.

135 Gelardi, *More Kids*, *supra* note 24 (quoting Dinesh McCoy) (“MPD’s own data confirms what community members have known and felt for years: that gang policing in this city discriminatorily targets Black and brown DC residents.”).

136 Chris Gelardi, *Hacked Emails Give Unfiltered View into the DC Police Gang Database*, The Intercept (June 18, 2021), <https://theintercept.com/2021/06/18/dc-police-gang-database-hacked-emails/>.

137 *Id.*

138 *Id.*; Peter Hermann and Michael Brice-Saddler, *Police Body-camera Video Shows Man Fatally Shot by DC Officer Had Gun*, Wash. Post (Sept. 3, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-to-release-body-camera-video-of-officer-fatally-shooting-man-in-southeast-washington/2020/09/03/d222fbd4-edd8-11ea-ab4e-581edb849379_story.html/ (explaining that then-MPD Police Chief Peter Newsham, at the news conference following Deon Kay’s death, said that Kay was a “validated gang member.”).

139 Peter Hermann and Michael Brice-Saddler, *Police Body-camera Video Shows Man Fatally Shot by DC Officer Had Gun*, Wash. Post (Sept. 3, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-to-release-body-camera-video-of-officer-fatally-shooting-man-in-southeast-washington/2020/09/03/d222fbd4-edd8-11ea-ab4e-581edb849379_story.html/.

¹⁴⁰ *United States v. Terrence Sutton Grand Jury Indictment before the United States District Court for the District of Columbia* (Sept. 23, 2021) at 3, https://www.washingtonpost.com/context/u-s-v-terrence-sutton-and-andrew-zabavsky/8aab174f-f952-4d85-ac7e-04e94cb00734/?itid=lk_interstitial_manual_44 (“Driving a moped on the sidewalk and riding a moped without a helmet are municipal traffic violations.”).

¹⁴¹ Peter Hermann and Spencer S. Hsu, *DC Officer Charged With Murder After Deadly Pursuit*, Wash. Post (Sept. 24, 2021), https://www.washingtonpost.com/local/public-safety/karon-hylton-terence-sutton-indictment/2021/09/24/927fe35a-1d2c-11ec-8380-5fbadb43ef8_story.html (describing that the attorney for MPD Officer Sutton “defended the officer’s actions as an attempt to make a legal stop of an individual he suspected of committing a crime”).

¹⁴² *Id.*

¹⁴³ Justin Jouvenal, Peter Hermann & Emily Davies, *After a Black Man’s Death, a DC Street Agonizes over the Future of Policing*, Wash. Post (April 23, 2021), https://www.washingtonpost.com/dc-md-va/2021/04/23/karon-hylton-dc-police-protests/?itid=lk_interstitial_manual_23 (“[Commander Griffin] said a very small portion’ of the community fits that description, which includes repeat offenders. Investigators and witnesses blame much of the violence in the area on beefing crews from Kennedy Street and surrounding neighborhoods, according to court records in recent cases.”).

¹⁴⁴ *See id.*

¹⁴⁵ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Document: Fifth Production, Batch 20, page 53 (MPD Intelligence Branch Daily Activity Report on Nov. 28, 2018).

¹⁴⁶ *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Document: Fifth Production, Batch 20, page 91 (MPD email correspondence on Jan. 7, 2020).

¹⁴⁷ FOIA Document: Fifth Production, Batch 20, at 201 (exact date is unclear from the FOIA document).

¹⁴⁸ FOIA Document: Third Production, Batch 4a, at 32 (MPD Intelligence Branch Daily Activity Report on Dec. 6, 2018).

¹⁴⁹ 95% of students self-identified as Black or Hispanic/Latino at Cardozo Education Campus (Black: 45%; Hispanic/Latino: 50%; Asian: 3%; Native/Alaskan: 1%; and white: 1%). See D.C. Public Schools, Cardozo Education Campus (2022–23),

¹⁵⁰ 99% of students self-identified as Black or Hispanic/Latino at Roosevelt High School (Black: 53%; Hispanic/Latino: 46%; and white: 1%). See D.C. Public Schools, Roosevelt High School (2022–23), <https://profiles.dcps.dc.gov/Roosevelt+High+School> (last accessed Jan. 9, 2024).

¹⁵¹ 97% of students self-identified as Black or Hispanic/Latino at Columbia Heights Education Campus (Black: 33%; Hispanic/Latino: 64%; Asian: 1%; multiple races: 1%; and white: 1%). See D.C. Public Schools, Columbia Heights Education Campus (2022–23), <https://profiles.dcps.dc.gov/Columbia+Heights+Education+Campus>, (last accessed Jan. 9, 2024).

¹⁵² *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Document: Third Production, Batch 4b, page 52 (MPD Intelligence Branch Daily Activity Report on Oct. 11, 2018).

¹⁵³ *Letter to Councilmember and Chair Brooke Pinto in Response to the Committee on the Judiciary’s Questions in Advance of the MPD’s Fiscal Year 2022 Performance Oversight Hearing*, District of Columbia Metropolitan Police Department (Mar. 14, 2023), https://dccouncil.gov/wp-content/uploads/2023/03/SUBMITTED_MPD-Perf-Hearing-Responses_03-14-23-signed.pdf.

154 Sam Ford, *Letter Goes Home to DC Public School Families After Third Grader Says Cop Grabbed His Neck*, ABC7News (Mar. 31, 2023), <https://wjla.com/news/local/patterson-elementary-school-raynard-alexis-gibbs-principal-sends-letter-home-mpd-cop-grabs-neck-slams-student-busts-lip-cripps-bloods-gang-assembly-computer-room-washington-dc-victorie-thomas>.

155 Gang Database Dialogue at the Black Swan Academy General Body Meeting (Mar. 8, 2023) [hereinafter Gang Database Dialogue].

156 For example, as a part of gang validation process, a lieutenant observed how individuals shared the “same address” as someone who was already validated in the DC Gang Database and sent a sergeant to “verify their relationship” to see if they can “validate any of them.” FOIA Document: Sixth Production, Batch 9, at 247 (MPD email correspondence on Mar. 20, 2018).

157 Gang Database Dialogue, *supra* note 49.

158 *Id.*

159 Gang Database Discussion at the Police-Free School Weekly Meeting (Feb. 28, 2023) [hereinafter Gang Database Discussion].

160 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Document: Third Production, *supra* note 46, page 43 (MPD Intelligence Branch Daily Activity Report on Oct. 9, 2019).

161 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Document: Third Production, *supra* note 42, page 292 (MPD Intelligence Branch Daily Activity Report on May 26, 2021).

162 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Document: Production One, page 167 (MPD email correspondence on Mar. 2, 2019).

163 Gelardi, *More Kids*, *supra* note 24.

164 Henning, *supra* note 1, at 72-73.

165 *Steven Marcus v. District of Columbia*, 21-CA-003709 B, FOIA Document: Production One, *supra* note 56, page 167; FOIA Document: Third, *supra* note 46, at 70-71.

166 Henning, *supra* note clxii, at 80.

167 *Diaz Ortiz v. Garland*, 23 F.4th 1, 14 (1st Cir. 2022) (en banc).

168 The Boston Police Department uses tenuous observations similar to those used in DC to mark someone as a gang member or a gang associate. “The [Boston Police Department] uses a point system to verify suspected gang members, and different types of conduct are assigned different point values. . . . For example, the Department’s non-exhaustive list of triggering conduct includes having a gang-related tattoo and participating in gang publications, each worth eight points. . . . Also on the list is ‘Contact with Known Gang Member/Associate (FIO),’ which is worth ‘2 points per interaction.’ At the time of Diaz Ortiz’s hearing, a person who accrued six points was labeled a gang associate, and a person who accrued ten points was deemed a gang member.” *Id.* at 9 (internal citations omitted).

¹⁶⁹ See 28 U.S.C. § 46(c) (defining en banc as a court in which “all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Public Law 95–486 (92 Stat. 1633)” sit to adjudicate a claim). Often, en banc hearing is limited and decided when “it is necessary to secure or maintain uniformity of the court’s decisions; or the proceeding involves a question of exceptional importance.” Fed. R. App. P. 35(a).

¹⁷⁰ *Diaz Ortiz*, 23 F.4th at 19.

¹⁷¹ *Id.* (emphasis added).

¹⁷² Alice Speri, *In New York Gang Sweeps, Prosecutors Use Conspiracy Laws to Score Easy Convictions*, The Intercept (July 12, 2016), <https://theintercept.com/2016/07/12/in-new-york-gang-sweeps-prosecutors-use-conspiracy-laws-to-score-easy-convictions/?fbclid=IwAR32KnfU-bb7rz2nGUqhMq9F5DiuQIMQjTyuDLQ2ly9S6etAS3LC18iNhbE>.

¹⁷³ *Id.*

¹⁷⁴ Gang Database Discussion, *supra* note 53.

¹⁷⁵ Gang Database Dialogue, *supra* note 49.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ DYRS has reported to advocates since fall 2021 that they are transitioning away from the SDM tool to use the Youth Level of Service/Case Management Inventory 2.0 (YLS). However, the new YLS interview form still inquires as to a young person’s involvement in a gang/crew and asks if they know any gang/crew members.

¹⁷⁹ DYRS risk assessment and structured decision-Making Validation Study & System Assessment Summary Report. DYRS Risk Assessment and Structured Decision-Making Validation Study & System Assessment Summary Report. (2012, March 5). <https://dyrs.dc.gov/publication/dyrs-risk-assessment-and-structured-decision%E2%80%90making-validation-study-system-assessment-1#:~:text=DYRS%20developed%20and%20implemented%20a%20structured%20decision%20making,as%20high%2C%20medium%2C%20or%20low%20risk%20to%20reoffend>.

Final Production and Vaughn Index, DYRS Emails-Redacted.

¹⁸¹ Kristin Henning, *supra* note *clxii* 204–07 .

¹⁸² *Id.* at 204.

¹⁸³ *Id.* at 205–06.

¹⁸⁴ Amanda Geller et al., *Police Contact and Mental Health*, 29–31 Columbia Public Law Research Paper No. 14-571 (2017), https://scholarship.law.columbia.edu/faculty_scholarship/2078.

¹⁸⁵ Dylan B. Jackson, et al., *Police Stops and Police Behaviors Among At-Risk Youth*, 6 Sleep Health 435, 439 (2020).

¹⁸⁶ Henning, *supra* note *clxii*, at 213, 221.

187 *Id.* at 213.

188 See Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 *J. Personality & Soc. Psych.* 526, 539–40 (2014) [hereinafter *Innocence*]. The term “adultification” has also been used to describe the phenomenon of Black children being viewed and treated as older than they are. Goff uses the term “dehumanization,” and other scholars have objected to the use of the term “adultification” in this context, positing that “conflating adultification with dehumanizing perspectives is intellectually flawed and poses obstacles in discerning alternative framings of what is happening in the lives of young Black [children] and how the broader population is complicit in the process.” Linda M. Burton & Donna-Marie Winn, ‘*Don’t Get it Twisted: Black Girls’ Dehumanization is Not the Same as Adultification*, Duke Council on Race & Ethnicity (July 28, 2017), <https://sites.duke.edu/dcore/tag/adultification/>.

189 Henning, *supra* note 1, at 221–23.

190 *Essence of Innocence*, *supra* note 8, at 539.

191 *Id.* at 535.

192 *Id.* at 540.

193 Rebecca Epstein et al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood* 6, Ctr. on Poverty & Inequality, Georgetown Law (2017), <https://www.blendedandblack.com/wp-content/uploads/2017/08/girlhood-interrupted.pdf>.

194 *Id.*

195 Juan del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 *Proc. Nat’l Acad. Sci.* 8261, 8266 (2019).

196 *Id.* at 8266–67.

197 *Id.* at 8267.

198 See Stephanie Wiley, *The Effect of Police Contact: Does Official Intervention Result in Deviance Amplification?* 62 *Crime & Delinquency* 283, 299 (2013) (“youth who have been stopped or arrested report . . . greater commitment to delinquent peers, and higher levels of delinquency than youth with no police contact. . . . If simply being stopped and questioned has deleterious consequences, policing practices may inadvertently contribute to higher levels of delinquency.”)

199 Carter Hay et al., *Compounded Risk: The Implications for Delinquency of Coming from a Poor Family that Lives in a Poor Community*, 36 *J. Youth & Adolescence*, 593, 602 (2007).

200 *Complex Trauma: In Juvenile Justice-System Involved Youth*, The National Child Traumatic Stress Network (2017), https://www.nctsn.org/sites/default/files/resources/complex_trauma_in_juvenile_justice_system_involved_youth.pdf.

201 *Id.*

202 *Police-Free Schools Written Testimony of an Eastern High School Student #3* (Mar. 31, 2023).

203 U.S. Citizenship and Immigration Services Policy Manual, Vol. 1, Part E, Chapter 8 – Discretionary Analysis, <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8>.

204 *Urbina-Mejia v. Holder*, 597 F.3d 360 (6th Cir. 2010).

205 U.S. Citizenship and Immigration Services, *Count of Active DACA Recipients*, https://www.uscis.gov/sites/default/files/document/data/Active_DACA_Recipients_Dec_FY23_qtr1.pdf#page=5.

206 Visit: Frequently asked questions. USCIS. (2023, November 13). https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#criminal_convictions.

207 Dan Levine & Kristina Cooke, *Mexican ‘DREAMer’ Nabbed in Immigrant Crackdown*, Reuters (Feb. 15, 2017), <https://www.reuters.com/article/us-usa-trump-immigration-arrest-exclusiv-idUSKBN15T307>.

208 Congressional Research Service, *Temporary Protected Status and Deferred Enforced Departure* (Apr. 19, 2022), <https://sgp.fas.org/crs/homesecc/RS20844.pdf#page=28>.

209 Esther Yu Hsi Lee, *Trump Administration Reportedly Changes Rule on Green Cards That Could Affect Thousands*, ThinkProgress (Apr. 18, 2018), <https://thinkprogress.org/trump-administration-reportedly-denying-green-cards-sij-children-16e40ef4c5b3/>.

210 Ali Winston, *U.S. Government Using Gang Databases to Deport Undocumented Immigrants*, The Intercept (Aug. 11, 2016), <https://theintercept.com/2016/08/11/u-s-government-using-gang-databases-to-deport-undocumented-immigrants/>.

211 8 U.S.C. § 1227(a)(2).

212 *See Diaz Ortiz v. Garland*, 23 F.4th 1 (1st Cir. 2022).

213 Adan W. Rodriguez, *Injustice By Another Name: Immigration Detention From A Public Defender Lens*, Capital Area Immigrants’ Rights Coalition (Apr. 10, 2020), <https://www.caircoalition.org/20200410/injustice-another-name-immigration-detention-public-defender-lens>.

214 Under the Obama Administration, participation in gang-related activities was considered a priority for deportation. The Trump Administration’s enforcement priorities were much broader, but ICE continued to specifically target those individuals with allegations of gang involvement. The Biden administration’s enforcement priorities do not include specific references to gangs, but ICE continues to target those noncitizens who ICE believes pose a risk to public safety.

215 U.S. Immigration and Customs Enforcement Annual Report: Fiscal Year 2022, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf#page=28>; U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report, <https://www.ice.gov/doclib/news/library/reports/annual-report/eroReportFY2020.pdf#page=24>.

216 Detention Watch Network, *Mandatory Detention Fact Sheet*, https://www.detentionwatchnetwork.org/sites/default/files/DWN_Mandatory%20Detention_Fact%20Sheet.pdf.

217 University of Maryland Carey School of Law Immigration Clinic, Maryland Immigrant Rights Coalition, and the Catholic Legal Immigration Network, Inc., *Presumed Dangerous: Bond, Representation, and Detention in the Baltimore Immigration Court* (Oct. 18, 2019), <https://www.cliniclegal.org/resources/enforcement-and-detention/presumed-dangerous-bond-representation-and-detention-baltimore>.



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For More Information Contact:

Carlos Andino

Washington Lawyer's Committee

700 14th St NW, Suite 400

202.319.1000

www.washlaw.org

carlos_andino@washlaw.org