



Councilor Andrea Campbell
Chair, Committee on Public Safety & Criminal Justice
Boston City Council

March 9, 2021

**RE: CITY COUNCIL COMMITTEE ON PUBLIC SAFETY AND CRIMINAL JUSTICE
HEARING ON DOCKET #0143**

The Charles Hamilton Houston Institute for Race & Justice at Harvard Law School submits this testimony regarding the Boston Regional Intelligence Center’s gang database (Docket [#1043](#)). **We write to urge the City of Boston to eliminate the gang database used by the Boston Police Department whole cloth.** In addition to being unreliable and overbroad, the gang database is a system of surveillance that both grows out of and reproduces systemic racism. The gang database is not a tool that produces community safety. It serves as a fundamental affront to the constitutional rights of Black and Brown people, and it also *compromises* community safety by enabling and reinforcing aggressive policing in communities of color.

In June, the seven justices of the Commonwealth’s Supreme Judicial Court led by the late Chief Justice Ralph Gants urged the legal community to “recognize and confront the inequity and injustice that is the legacy of slavery, of Jim Crow, and of the disproportionate incarceration of African-Americans, and challenge the untruths and unfair stereotypes about African-Americans that have been used to justify or rationalize their repression.” It is this last command—to challenge the untruths and unfair stereotypes—that is most directly triggered here.

Gang policing is built on a foundation of untruths and unfair stereotypes.¹ More than seventy-five percent of the names in Boston’s gang database belong to Black men or teens.² The police monitor what young Black and Latinx people wear, where they go, and who they know. Based on this surveillance, they assign people points according to criteria of police invention, which become the basis for entry into the gang database.³ If you’re a young Black person wearing a red hat, talking

¹ See, e.g., K. Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, 5 UNIV. DENVER CRIM. L. REV. 1, 4 (2015) (“The gang narrative will be used, and has already been used, to justify an even more aggressive regime of stops, summonses, arrests, and surveillance than the pre-*Floyd* regime. The central concepts, however, like those underpinning the stop-and-frisk narrative, are defined so broadly that they can capture any neighborhood or individual the police deem suspicious. No criminal conduct whatsoever is required to be identified as a gang member. 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.”); see also *Commonwealth v. Long*, 485 Mass. 711, 750 (2020) (Budd, J., concurring) (“[T]he officer’s recognition of the vehicle or an occupant from a prior interaction or observation, conversations with other officers, or information in a gang database . . . are the same factors currently used by police to racially profile people of color.”).

² Yawu Miller, *Are there really 160 gangs in Boston?*, BAY STATE BANNER (July 30, 2019), <https://www.baystatebanner.com/2019/07/30/are-there-really-160-gangs-in-boston>.

³ See, e.g., Shannon Dooling, *Here’s What We Know About Boston Police’s Gang Database*, WBUR (June 26, 2019), <https://www.wbur.org/news/2019/07/26/boston-police-gang-database-immigration> (“Boston police provided



to your cousin while standing in your neighborhood, police may designate you an associate of the Bloods gang. That would never happen in a different neighborhood or to a young white person. All told, the gang database operates on specious information and discriminatory inputs. The BRIC proclaims that its database of roughly 5,000 people reflects 160 gangs in the City of Boston, an outrageous assertion given the size of the City of Boston.

The limited available data about gang policing in Boston, although fundamentally secretive and incomplete, are instructive. According to their own coding in published records, every year roughly 40% of the Boston Police Department’s Field Interrogations and Observations (FIOs)—which provide the basis for information in the gang database—are supported by *neither* reasonable suspicion nor probable cause, marked “intel” and “encounter” in Field Interrogation and Observation (FIO) reports—categories related to production of datapoints for the BRIC database.⁴ Further, as this body well knows, over the last decade, each year of available data has shown that 60–70% of FIOs in Boston target Black people, reflecting gross disproportionality compared to population representation.⁵ Indeed, these latest data only became available because City Councilor Campbell demanded their publication.

Further, as alluded to above, just *two percent* of the more than 5,300 unique names in the Boston Regional Intelligence Center Gang Database represent white people.⁶ A staggering 97.7% of names in the gang database belong to people of color. Again, more than seventy-five percent of names are Black men or teens.⁷

redacted documents showing how gang members and associates are tracked. An individual’s name and photo, aliases and nicknames, and gang affiliations are listed. In one example, a man is documented as an ‘INACTIVE’ gang associate who was born in 1996. . . . The report states that the man was wearing a brand of hat that’s known to be worn by gang members (four points). The type of hat was redacted by Boston Police. He was also seen in East Boston ‘alongside 3 other males, all of which are now verified [redacted] gang members’ (two points).”)

⁴ The Boston Police Department designates every FIO as supported by probable cause, reasonable suspicion, intel, or encounter. In 2019, a cumulative 41.6% of FIOs were designated as “intel” or “encounter.” In 2018, a cumulative 39% of FIOs were designated as “intel” or “encounter.” In 2017, a cumulative 37.1% of FIOs were designated as “intel” or “encounter.” See *Boston Police Department Releases Latest Field Interrogation Observation Data*, Boston Police Dep’t (May 8, 2020), <https://bpdnews.com/news/2020/5/8/boston-police-department-releases-latest-field-interrogation-observation-data>; *Boston Police Department Releases Latest Field Interrogation Observation Data*, Boston Police Dep’t (Mar. 13, 2020), <https://bpdnews.com/news/2020/3/13/boston-police-department-releases-latest-field-interrogation-observation-data?rq=fio>.

⁵ See, e.g., Gal Tziperman Lotan, *Data show Boston police stop Black people most often*, Bos. Globe (June 15, 2020), <https://www.bostonglobe.com/2020/06/15/metro/data-show-boston-police-stop-black-people-most-often>; Jan Ransom, *Blacks remain focus of Boston police investigations, searches*, Bos. Globe (Aug. 28, 2017), <https://www.bostonglobe.com/metro/2017/08/28/blacks-remain-focus-boston-police-investigations-searches/PDbFr2QZexCEi3zJTO9mOJ/story.html>; Evan Allen & Travis Andersen, *Evans defends Boston police after ACLU report on racial bias*, Bos. Globe (Oct. 9, 2014), <https://www.bostonglobe.com/metro/2014/10/08/aclu-charges-boston-police-engaged-rationally-biased-tactics-police-call-report-inaccurate/Zev3p7jvRVQ2loKSWncu2H/story.html>.

⁶ Dooling, *supra* note 3 (noting that 2.3% of the gang database names with known races are white people).

⁷ Yawu Miller, *Are there really 160 gangs in Boston?*, Bay State Banner (July 30, 2019), <https://www.baystatebanner.com/2019/07/30/are-there-really-160-gangs-in-boston>.



In a period where we have seen armed groups of white vigilantes storm our institutions of government, we are reminded that law enforcement officers do not use the label “gang” consistently.⁸ The fact that gang databases are almost uniformly comprised of the names of young Black and Latinx men, in every city and state that has one,⁹ demonstrates that police departments choose how to apply and focus their resources in a discriminatory fashion. The Boston Police Department’s gang database exemplifies this pattern. And, unfortunately, our constitutional law has been slow to respond.

Police presently use the label of gang involvement as a pretext for disparate stops and searches, creating a feedback loop of targeted stops then enabling future contact with a lower threshold under the Fourth Amendment and art. 14 of the Massachusetts Declaration of Rights for people who have been labeled gang members by the police. This creates a perverse incentive, emboldening the police to simply give more people gang designations and add more people to the database—giving themselves carte blanche to stop and search whomever they please without any of the important civil liberties protections written into constitutional law. Existing data show that the result is a digital manifest comprised almost exclusively of Black people, as well as aggressive stops and searches by gang unit officers that will *never* see a court of law but that nonetheless violate our core constitutional precepts.

Take for example this FIO report written by Officer Samora Lopes, a member of the Boston Police Department’s gang unit—the Youth Violence Strike Force—who the Supreme Judicial Court has already found engaged in a pattern of racially discriminatory street and motor vehicle stops over a pattern of years in the landmark decision, *Commonwealth v. Long*. Here is an FIO report that Officer Lopes wrote up from an incident in July 2019:

vk07 stopped the above motor vehicle for vals (speed greater than reasonable and proper) at xxx clare ave. the operator later identified

⁸ Aaron Morrison, *Race double standard clear in rioters’ Capitol insurrection*, Associated Press (Jan. 7, 2021), <https://apnews.com/article/congress-storming-black-lives-matter-22983dc91d16bf949efbb60cdda4495d>. Even though white supremacist domestic terrorism outpaces Islamic extremist terrorism in the United States by a [factor of 2:1](#), the federal response devotes [intense resources, including sting operations](#), to stopping the latter but not the former. Following this national pattern, and supported by federal funding, the BRIC and the Boston Police Department choose to focus on building a surveillance infrastructure to target neighborhoods and people of color—particularly Black people, immigrants, Latinx people, and Muslim people.

⁹ *See, e.g.*, City of Chi., Office of Inspector General, Review of the Chicago Police Department’s “Gang Database,” at 4 (2019), <https://igchicago.org/wp-content/uploads/2019/04/OIG-CPD-Gang-Database-Review.pdf> (“OIG’s analysis of Gang Arrest Card data found that Black, African American, and Latinx persons comprise 95% of the 134,242 individuals designated as gang members during arrest, and are designated at both younger and older ages as well as issued more Gang Arrest Cards per person than White gang designees.”); Hum. Rights Watch, Groups Urge NYPD Inspector General to Audit the NYPD “Gang Database,” (Sept. 22, 2020), <https://www.hrw.org/news/2020/09/22/groups-urge-nypd-inspector-general-audit-nypd-gang-database> (“[A]ccording to the latest figures provided by the department, the database is 98.5% nonwhite, and a majority of those individuals are Black (66%) and Latino (31.7%).”).



as xxx stop the motor vehicle and as officers began to approach the mv the operator drove away and then came to a complete stop few feet away. the op immediately began to exit the motor vehicle. officers instructed the operator to stay in the motor vehicle. officers approached the operator and requested the driver's license and m/v registration and informed the operator the reason of the stop. the operator began to become argumentive while fumbling with his wallet and his hands were shaking in a nervous manner. op failed to provide the proper documentations therefore officers issued an exit order for officers safety. the operator refused to exit the motor vehicle and officers used reasonable amount of force to remove the operator. a pat frisk of the operator and the motor vehicle was conducted and yield negative results. the operator was issued a written warning for the aforementioned infraction.¹⁰

After being stopped for speeding, this young Black man, just age 18, was forcibly removed with a “reasonable amount of force” from his car and had a gang unit officer run his hands all over the exterior of his body in an unlawful patfrisk. Of course, in this case the officer found nothing. This is one of thousands of stops this officer conducts every year, many of which go unrecorded.

The Fourth Amendment and art. 14 require a particular reasonable suspicion based on specific, articulable facts that a person is armed and dangerous to conduct a patfrisk and reasonable concerns about officer safety for an exit order from a vehicle. Recent cases in our state high court have come to discount nervous or evasive behavior as a factor in the context of police stops of Black men in large part because of the empirical evidence of discrimination by the Boston Police Department. *See Commonwealth v. Warren*, 475 Mass. 530, 539–40 (2016); *Commonwealth v. Evelyn*, 485 Mass. 691, 708–09 (2020). In *Warren*, the Supreme Judicial Court held that “flight to avoid [police] contact should be given little, if any, weight as a factor probative of reasonable suspicion,” *id.* at 539, and further, that based on the empirically documented history of racial profiling in street stops by police, a Black man running from the police “is not necessarily probative of . . . consciousness of guilt,” *id.* at 540. More recently, in *Evelyn*, the Supreme Judicial Court reaffirmed and expanded the principle, stating that “the reasoning of *Warren* remains relevant to the analysis of reasonable suspicion [and t]hat reasoning applies equally to other types of nervous or evasive behavior in addition to flight.” *Evelyn*, 485 Mass. at 708–09. “Just as an innocent African American male might flee in order to avoid the danger or indignity of a police stop, the fear of such an encounter might lead an African-American male to be nervous or evasive in his dealings with police officers.” *Id.* Accordingly, the Supreme Judicial Court concluded that in assessing whether the police had reasonable suspicion to make a stop, “the weight of the defendant’s nervous and evasive behavior” should be “significantly discount[ed].” *Id.*

¹⁰ Field Contact F190046714, https://www.wokewindows.org/field_contacts/F190046714.



Even based on Officer Lopes’s telling, and in view of this precedent concerning the value of nervous and evasive behavior, this incident did not meet the exit order officer safety standard, let alone reasonable suspicion that this young man was armed and dangerous based on specific, articulable facts. Yet this young man’s case is simply never going to get before a court. Due to a number of factors, including the qualified immunity doctrine in civil cases, the way courts put limits on and give content to the Fourth Amendment is through criminal cases. When a stop or frisk doesn’t result in a criminal charge—which is true in the *overwhelming majority* of cases, though you would never know it from the evening news—there is no remedy for unwanted, aggressive, and discriminatory police contact. This body must intervene to curb this kind of gang unit policing. Eliminating the gang database is one step toward that broader project.

Constant neighborhood presence leads to constant stops and searches that grow out of the gang database and become the basis for its inputs, which in many cases manifests as a transmutation of the [long-discredited](#) “broken windows” theory of policing. We have seen in Boston that the same officers involved in initiatives to [build trust with community members and youth of color](#) have later been identified as perpetrators [in racist policing incidents](#), for example where a young Black man was stopped and surveilled in his neighborhood by Officer Zach Crossen simply for walking down the street to go to his barbershop. According to documents obtained from official public sources and maintained in an online database, Officer Crossen was found by an internal police investigation to have violated the “Bias Free Policing Policy” of the Boston Police Department.¹¹

Gang designations function like a caste: once a person has been branded a gang member, that label follows them in every interaction they have with law enforcement. It becomes the basis for more frequent stops and more aggressive policing.¹² The branded person cannot shun it. Many people age out of criminal activity¹³—and, further, it is entirely possible for someone to land in the gang database who was *never* gang-involved to begin with—yet there is no established process to petition to remove one’s self from the database. There is undeniable injury in Massachusetts police applying gang labels almost exclusively to Black and Brown people and maintaining an overbroad, unreliable, and racist database of purported gang members and associates—something other cities have abandoned because of precisely these concerns.¹⁴

¹¹ See Complaint IAD2018-0095, <https://www.wokewindows.org/complaints/IAD2018-0095>.

¹² See, e.g., JOSMAR TRUJILLO & ALEX S. VITALE, POLICING & SOCIAL JUSTICE PROJECT, BROOKLYN COLLEGE, GANG TAKEDOWNS IN THE DE BLASIO ERA: THE DANGERS OF ‘PRECISION POLICING,’ at 13 (2019), <https://static1.squarespace.com/static/5de981188ae1bf14a94410f5/t/5df14904887d561d6cc9455e/1576093963895/2019+New+York+City+Gang+Policing+Report+-+FINAL%29.pdf> (“One of the primary consequences of being labeled a member of a gang by the NYPD, whether formally in the gang database or even informally amongst gang unit and precinct officers, is heightened harassment and hyper-policing.”).

¹³ See, e.g., Marc Mauer, Sentencing Project, Long-Term Sentences: Time to Reconsider the Scale of Punishment (Nov. 5, 2018), <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment>.

¹⁴ Chicago and Portland, Oregon both eliminated their gang databases due to concerns about racism, inaccuracy, and overbreadth. See Yasmeeen Khan, *Damning Report On NYPD Gang Database Increases Calls To End 'A Tool Of Mass Criminalization'*, Gothamist (Dec. 13, 2019), <https://gothamist.com/news/damning-report-nypd-gang-database-increases-calls-end-tool-mass-criminalization>.



Beyond unwanted police contact and unnecessary stops and searches that erode the feeling of safety in Black and Brown neighborhoods and stoke legitimate distrust and discomfort with the police, our concerns also include the pernicious reality that the BRIC [shares information with ICE](#) to [deport public school students](#). The safest communities are those with the most resources, not those with the most surveillance and policing. The gang database must be eliminated, and instead we must [invest](#) in [sources](#) of [community safety](#), especially [community-led violence prevention and intervention programs](#), which remain staggeringly [underfunded](#) in Boston compared to [peer cities](#) despite [substantial evidence](#) of their [success](#).

Our courts rarely hear from the many people of color who are stopped and searched every day in the Commonwealth where criminal charges never arise—who have invited police suspicion based on hunches implicitly or explicitly tied to the color of their skin and little or nothing more. But this body must hear from these people—your constituents—about harmful encounters with the police.

‘I’ve seen cops deal with white people,’ Weathers said. ‘I know it’s different. The police speak in a respectful way. They act reasonable. That never happens with my people.’ In 2017, Weathers says, his car was surrounded by more than 10 police cruisers at Warren and Dale streets. ‘They came out of nowhere,’ he said. ‘They searched us and pulled us out of the car. They had no reason to. There was no probable cause.’

Violations of the Fourth Amendment occur on a daily basis, youth advocates say, when officers stop, question and search young Black men and women in Boston’s neighborhoods. ‘Nearly everyone I work with has been stopped,’ says Toni Golston, a 15-year-old youth organizer who works with The Center for Teen Empowerment and has herself been stopped and questioned. ‘It’s very belittling. The police assume we’re criminals.’¹⁵

There is a vast body of public health research that shows [other interventions](#) that build up whole communities and improve well-being have substantial effects on reducing violence without displacing it—for example [cleaning and greening](#) neighborhoods, permanent streetlights, public art, paying people a living wage or a basic income guarantee, improving [vacant lots](#) and [refurbishing abandoned buildings](#). The City Council has an opportunity to focus on real community investment as its community safety policy: truly affordable housing, lead abatement, community gardens and greenspace, living wage jobs, basic income payments, access to therapy and treatment for trauma and substance use, youth jobs and programs. **Erase the gang database.**

¹⁵ Yawu Miller, *FIOed: some in Boston face weekly police stops*, Bay State Banner (July 29, 2020), <https://www.baystatebanner.com/2020/07/29/fioed-some-in-boston-face-weekly-police-stops>.