FLAGGED FOR LIFE

DRAGNET "GANG" SURVEILLANCE AND POLICING IN NASSAU COUNTY

Report by **Meena Roldan Oberdick | New York, NY | January 2023 | LatinoJustice.org**

ACKNOWLEDGEMENTS

About LatinoJustice PRLDEF

LatinoJustice PRLDEF, founded in 1972 as the Puerto Rican Legal Defense and Education Fund, is a national not-for-profit civil rights organization that advocates for and defends the constitutional rights of Latinos under the law. During its fifty-year history, LatinoJustice has brought impact litigation to address discrimination against Latinos in education, employment, fair housing, immigrants' rights, language rights, redistricting, voting rights, and policing.

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EXECUTIVE SUMMARY

Since the 1990s, the use and maintenance of gang databases have been shown to rely on inaccurate and stigmatizing methods of identification that can lead to increased racial profiling. But in contrast to the widespread public attention and steps toward reform to harmful and racially discriminatory gang policing practices undertaken in major metropolitan areas like Portland, Chicago, Los Angeles, New York City, and Washington, D.C., the use of these tactics in suburban areas like Long Island, New York remains under scrutinized.

LatinoJustice seeks to help fill this information gap. Through interviews, extensive research, and the use of the New York Freedom of Information Laws (FOIL), LatinoJustice has worked to uncover the secretive networks of gang intelligence sharing between law enforcement agencies and the everyday tactics of gang intelligence gathering and policing in Nassau County. This report documents our findings from Freeport in Nassau County, Long Island and offers recommendations to community members and advocates seeking to end this ongoing form of racial profiling and the criminalization of association. This report is not a quantitative or comprehensive analysis of gang policing in Nassau County, but we do hope it can serve as a starting point for further research, education, and community engagement with these issues.

The major conclusions of this report include:

- A majority of gang designations in Freeport Village Police Department's ("FVPD") gang database originated from other external agencies, predominantly from Nassau County Police Department's ("NCPD") First Precinct, Special Investigations Squad, and Gang Investigation Squad.

- The gathering of gang intelligence relies on frequent unlawful stops, pretextual stops, and surveillance of Nassau County's minority communities. These abuses of authority exacerbate community distrust and anxieties about racial bias in policing.

- More than half of the individuals on FVPD's gang database have no listed criminal history.

- FVPD lacks transparency and accountability measures such as notification to individuals of their inclusion, an opportunity to challenge one's inclusion, or a mechanism for seeking one's removal from the database. Because there is no clear review procedure, FVPD's gang intelligence is on average 6.5 years old and as old as 30 years in some instances.

- FVPD lacks a clear definition of what constitutes a "gang." Despite their rising prevalence on Long Island, no white-affiliated hate groups are listed in FVPD's gang database yet Black and Latinx music affinity, spiritual, and prisoners' rights groups are over included.

- FVPD lacks uniform criteria for classifying individuals as gang related. Many of the criteria – such as appearance, location, and association – are overly broad, vague, and may act as proxies for race.
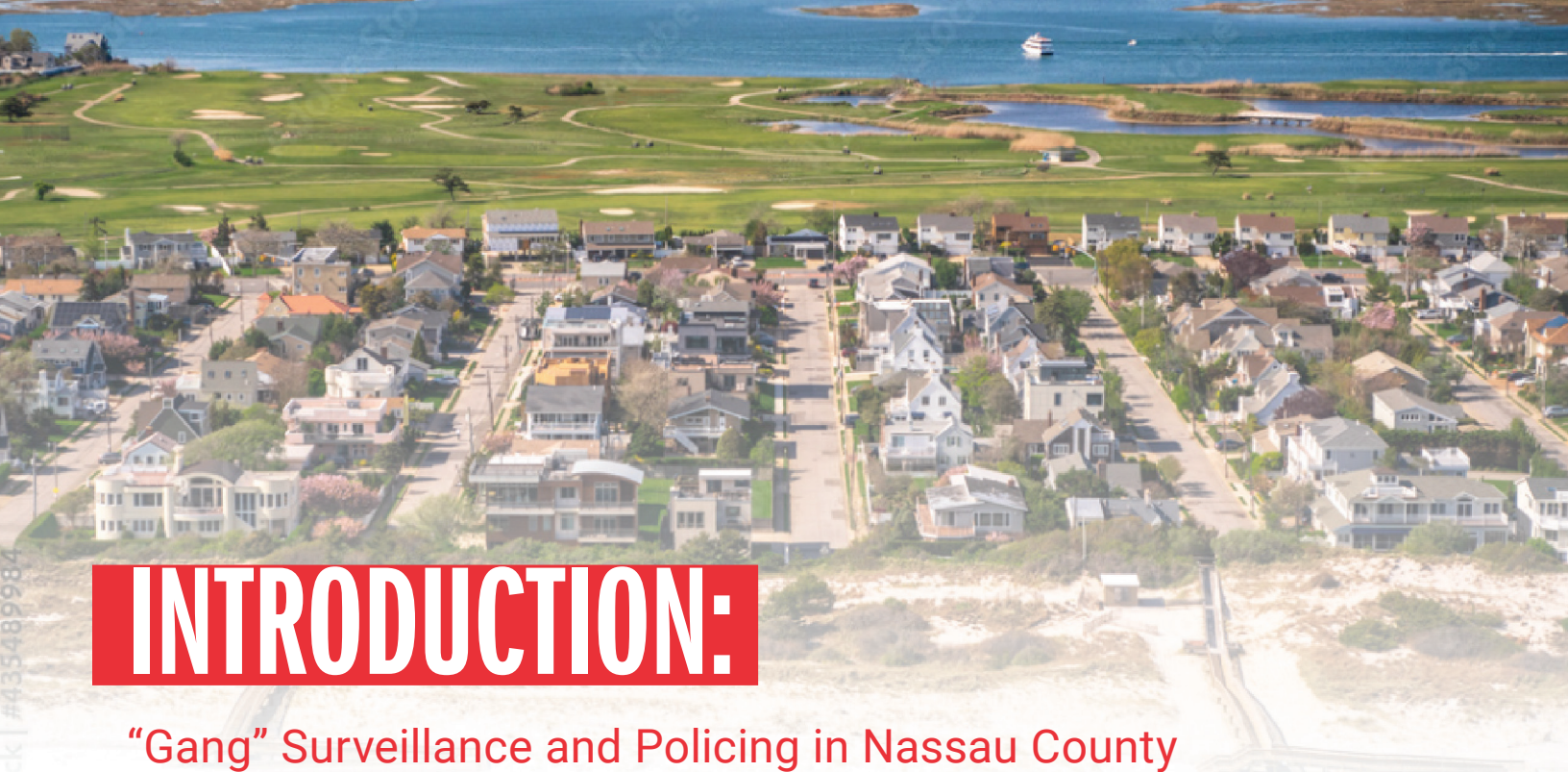
INTRODUCTION:

"Gang" Surveillance and Policing in Nassau County

On a warm spring afternoon in May 2020 on Broadway and Commercial Street in Freeport, New York, the heart of one of Long Island's majority Hispanic communities, a group of three young Latino men sought respite from the sun on a shaded area of the sidewalk. They found a log to sit on and shared a smoke. About thirty minutes had passed when they were approached by two plainclothes Freeport Village Police Department (FVPD) officers, in an unmarked vehicle, who questioned them about the purpose of their business in Freeport. The officers were suspicious of the young men's clothing— blue rosary beads, a blue baseball cap, blue shoelaces, a blue bandana—interpreting these as signs of affiliation with the El Salvadoran street gang Mara Salvatrucha (or MS-13). Nervous, the men consented to a search. The officers took down their names, which they then used to conduct criminal history and warrant checks. The men had no warrants so were allowed to go on their way. But not before being warned to vacate the area for lacking "a valid reason for being in Freeport." Their personal information (including descriptions of their clothing) and the details of the encounter were recorded on a field interview report for "data processing."[1]

Though the police department did not accuse these individuals of any crime, the mere fact of being seen in a certain neighborhood wearing certain colors has been enough to land individuals in the department's gang database for years to come. Nassau County residents currently have no mechanism for checking whether they are flagged as gang affiliated by law enforcement, no mechanism for contesting their inclusion in one of the numerous overlapping gang database, and no mechanism for requesting to have their name removed. Yet, based on their inclusion in a gang database, they and their social network are likely to be subjected to disproportionate surveillance, stops, questioning, and searches by law enforcement for years, indeed decades to come. Moreover, if later charged with a crime or an immigration violation, they may be

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1   This information comes from a May 2020 Freeport Village Police Department field interview report obtained by LatinoJustice through the New York Freedom of Information Laws. See below for a description of field interview reports and their use in gang intelligence gathering in Nassau County.

considered ineligible for pre-trial release, parole, probation, and most forms of immigration relief because of their inclusion in the database.

Interactions like these are routine for Nassau County's majority Black and Latinx communities. In many instances, officers collect information on individuals suspected of gang involvement by directly approaching residents, asking questions, searching them, and noting or photographing their whereabouts, appearance, and associates. In other instances, gang surveillance remains wholly covert through social media monitoring or monitoring by plainclothes police officers in unmarked vehicles.

As discussed in more detail below, the criteria used by Nassau County's numerous, overlapping police departments to intuit gang affiliation are wide-ranging, deeply subjective, inconsistent, and frequently inaccurate. Even worse, because some Nassau County police departments do not review their intelligence information for accuracy or continued relevance, much of the data maintained is old. In the case of FVPD's gang database, gang information is on average six-and-a-half years old, and in some instances, as old as thirty-years.

Through use of the New York Freedom of Information Laws (FOIL) and interviews with community members and members of groups wrongly labelled as gangs, LatinoJustice has worked to uncover the everyday practices of gang policing and surveillance in Nassau County. This report documents our findings and offers recommendations to community members and advocates who seek to end racial profiling and the criminalization of association.

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METHODOLOGY

LatinoJustice began investigating ten Nassau County police departments in November 2021,[2] using the New York Freedom of Information Laws to seek documents related to the departments' criteria for classifying persons as gang-affiliated, the number and demographics of persons classified as such, and documents pertaining to gang intelligence information sharing and interagency cooperation. As of March 2023, only Freeport Village Police Department has produced responsive documents.

In February 2022, LatinoJustice also submitted supplemental FOIL requests to the New York State Division of Criminal Justice Services (NYSDCJS) regarding Long Island police departments' participation in the intelligence-led policing grant the Gun Involved Violence Elimination ("GIVE") Initiative which is in part used to fund gang policing initiatives on Long Island.

This research was also supplemented with publicly available materials, such as legislative testimony, memos, press statements, and reports. Finally, LatinoJustice also conducted targeted interviews with members of organizations unjustifiably labeled as "gangs," community members, advocates, and service providers.

LatinoJustice analyzed and compared the various sources to identify the agencies most involved in gang intelligence gathering and sharing in Nassau County, the demographic characteristics of individuals alleged to be gang affiliated, the bases of gang allegations, and the methods by which Nassau County's law enforcement agencies collect and disseminate gang intelligence.

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2   These police departments were those of Freeport, Garden City, Glen Cove, Hempstead, Lake Success, Malverne, Nassau County, Old Brookville, Oyster Bay Cove, and Port Washington.

THE DOCUMENTS

The Gang Database

In response to LatinoJustice's FOIL requests, Freeport produced a 492-page print-out of its Master Person Index which contains more than 1,700 entries on individuals it has flagged as gang related ("the Freeport Gang Database"). The database was redacted to protect individual's personally identifying information. The database contains demographic data on the individuals suspected of gang affiliation: their gender, date of birth, race, ethnicity, city/town of residence, and organizational affiliations (gang and/or place of work).

Although key demographic information is analyzed in further detail below, the Freeport Gang Database is more than 82% male, and 98% of the people included are alleged to be affiliated with a predominantly Black or Latinx gang.[3] The

average person on the gang database is 35 years old and resides in one of the majority minority neighborhoods of Nassau County: Freeport, Roosevelt, Hempstead, Uniondale, and Baldwin.

The Freeport Gang Database also provides a "Remarks" section that describes the individual's prior interactions with law enforcement, including any arrests or observations of behavior that law enforcement finds suspicious or suggestive of gang membership. Notably, a majority (51%) of the individuals on the Freeport Gang Database have no listed criminal history. Most often, the Remarks section includes nothing more than a blanket assertion that the individual is gang alleged (e.g., "Blood – Gang Member"). In other cases, it sets forth a purported reason for the gang allegation (e.g., being seen in a "gang-prone location" or in the company of other alleged gang related individuals) and/or cites to the external law enforcement records where the gang allegation originated.

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3   The Freeport Gang Database suffers from significant coding issues when it comes to Race/Ethnicity. About 30% of FVPD's racial/ethnic demographic data is either left blank or filled in as "unknown." For that reason, LatinoJustice adopts the methodology employed by Jordan Blair Woods in *Systemic Racial Bias and RICO's Application to Criminal Street and Prison Gangs*, 17 Mich. J. Race & L. 303, 325-326 (2012). The methodology uses inferences from the names of gangs and public information about the gangs' usual membership to determine whether it is predominantly affiliated with one or more racial or ethnic groups. However, it is important to emphasize that these indicators do not make inferences

about individuals' *personal racial identities*. "Gangs that are predominantly affiliated with one racial group may have members who identify as multiracial or identify with a different race from the primary racial affiliation of their gangs." *Id.* at 326.

The Remarks section contains information received from multiple law enforcement agencies and units, including Nassau County Police Department's ("NCPD") Gang Investigations Squad ("GIS") and Special Investigation Squad ("SIS"), NCPD's eight precincts, Nassau County Sheriff's Office, Hempstead Police Department, and New York State Probation and Parole. Thus, although by no means comprehensive, the Freeport Gang Database provides a window into the larger world of county-wide gang policing practices.

Field Interview Reports

Field interviews are one of the primary means through which Nassau County law enforcement agencies – and police departments nationwide[4] – collect information on suspected gang related individuals. Law enforcement agencies have varying standards for what information can be collected on field interview reports. Some police departments prohibit officers from conducting field interviews unless they have reasonable suspicion that the person is engaged in criminal activity.[5] Other departments use field interview reports for broad intelligence gathering purposes or to document "routine" interactions with residents not involved in or suspected of any crime. NCPD and

FVPD fall in the latter category and use field interviews to collect broad information about an individual's residence, place of business, associates, appearance, behavior believed to be suspicious, and perceived ties to gangs.

The Freeport Gang Database cites more than 340 gang-related FI reports originating from NCPD, mostly its First Precinct, which covers the communities of Bellmore, North Bellmore, East Meadow, Merrick, North Merrick, Uniondale, Roosevelt, Baldwin, South Hempstead and Wantagh. The references to these reports in the Freeport Gang Database frequently offer detailed descriptions of the information contained in the NCPD FI reports, including why NCPD officers stopped the person and the outcome of the stop.

In a follow up FOIL request, LatinoJustice requested a random sample of 79 of the hundreds of gang-related incident reports cited in the Freeport Gang Database, whether originating from FVPD or an external agency. FVPD notified LatinoJustice that it could not produce a majority of these cited reports because they were NCPD reports; however, FVPD produced 11 of its own gang-related FI reports from 2010 through 2015, along with a handful of gang-related arrest reports. In addition, LatinoJustice requested copies of all of Freeport's gang-related incident reports from January 2020 to December 2021. In response to this request, Freeport produced 31 gang-related FI reports.

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4   Nationwide, field interviews are the most common means through which law enforcement collects information on suspected gang members. Michael Cannell, Assumed Dangerous Until Proven Innocent: The Constitutional Defect in Alleging Gang Affiliation at Bail Hearings, 63 DePaul L. Rev. 1027, 1034 (2014); Joshua D. Wright, The Constitutional Failure of Gang Databases, 2 Stan. J. Civ. Rts. & Civ. Liberties 115, 120 (2005); Charles M. Katz & Vincent Webb, Policing Gangs in America (2005).

5   U.S. Department of Justice's Office of Justice Program's has stated that "the field interview is defined as 'the brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion, for the purpose of determining the individual's identity and resolving the officer's suspicions concerning criminal activity." U.S. Department of Justice, Office of Justice Programs, *Field Interviews and Pat Down Searches* (May 2000); Cheswold Department of Public Safety, Directive Number 10-2-12, *Field Interviews and Pat-Down Searches* (2013) (noting that field interviews can be perceived as "harassment or intimidation" and defining a field interview as a "brief detainment… based on reasonable suspicion for the purposes of determining the individuals identity and resolving the officers suspicion").

KEY FINDINGS & RECOMMENDATIONS

Gang Allegations Are Arbitrary and Racially Biased

The criteria to designate a group as a "gang" and individuals as gang related are highly arbitrary and overbroad. They are frequently unsupported by evidence, are unverified even when originating from external sources, and are not reviewed or scrubbed when they become outdated. This utter lack of procedural safeguards contributes to the overrepresentation of Blacks and Latinxs on the gang list as the criteria are selectively applied to minority communities who have no opportunity to challenge or contest the label.

What Is A "Gang" Anyway?

There is no universally accepted definition for what constitutes a gang and no accepted criteria for determining gang membership.[6] As noted by Steven Dudley, a researcher and reporter on MS-13, "[f]orty-four states and the District of Columbia have developed different definitions for gangs."[7] While many police departments do not share their definitions of

gangs publicly, a definition can sometimes be found within programmatic materials. Others, such as FVPD, do not have a written departmental definition of a "gang" at all.

For example, while the NCPD has not publicly disclosed its definition of a "gang," in youth training materials the department defined a "gang" as "a group of people [that] have a common name, colors, or symbols and who participate in violence or break the laws."[8] For comparison, in internal New York Police Department (NYPD) presentations, a "gang" has been defined as "a group of persons with a formal or informal structure that includes designated leaders and members, that engage in or are suspected to engage in unlawful conduct."[9] NYPD classifies "crews" even more broadly, as merely "a group of people associated or classed together."[10]

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6   Babe Howell, *Gang Policing: The Post Stop-and-Frisk Justification for Profile-Based Policing*, 5 U. Denv. Crim. L. Rev. 1, 15 (2015); Steven Dudley, *Ms-13: The Making of America's Most Notorious Street Gang* (2020) at 269.

7   Dudley, *supra* note 11 at 269.

8   Nassau County GREAT Training Elementary Book obtained by LatinoJustice through the New York Freedom of Information Laws.

9   Human Rights Watch, *Groups Urge NYPD Inspector General to Audit the NYPD 'Gang Database*, Sept. 22, 2020 (citing Alice Speri, "New York Gang Database Expanded by 70 Percent Under Mayor Bill de Blasio," The Intercept, June 11, 2018).

10   *Id.*

None of these definitions specify the level of organization, leadership, or criminality, if any, required for a group to constitute a "gang." As such, ambiguous and overbroad gang definitions can be and have been employed to criminalize groups of friends, hip hop awareness groups, spiritual communities, and prisoners' rights movements without justification.

To be sure, some people do identify as a gang or crew, and some gang members engage in criminal activity. However, **such associations are not illegal in and of themselves.**[11] Joining a group or association with peers can serve diverse purposes, most of which have nothing to do with committing crimes: a need for collective protection, belonging and friendship, affinity to a music group, affinity to a spiritual or cultural community, a shared sense of style, and national or local pride are all motivating factors for groups' existence.

Yet, the overbreadth and ambiguity baked into these definitions gives rise to a two-tiered system under which white groups are passed over without scrutiny while Black and Latinx individuals are often unable to congregate without raising police suspicion.

Racial Bias in Defining Gangs

Nassau County's broad definition of a gang – a group with a common name, colors, or symbols and who participate in violence or break the laws—should qualify groups like the Proud Boys as gangs. They have a common name. They wear identifiable clothing—in particular a black and yellow polo shirt.[12] Their common symbols are two crisscrossed long guns above a laurel wreath. The group has encouraged and participated in violence.[13] Finally, the

Proud Boys made national headlines for their involvement in attacks on the U.S. capital[14] and members of the group have been found to engage in illegal activity including unlawful gun possession and trafficking,[15] assaults,[16] intimidation,[17] and property destruction.[18]

The point is not that violence and crimes committed by white supremacist groups should be treated as gang crimes, but rather that two contrary standards exist depending largely on the racial composition of the group. It is striking that out of more than 1,700 entries, there are only *two* references to "White Supremacist" gang membership on the Freeport Gang Database (no specific groups are named), one of which appears to be an error because the individual is also classified as a Blood, a well-known predominantly African American gang. Notably, there are also only three motorcycle gang members listed in the Freeport Gang Database, even though the Hell's Angels have a brick-and-mortar headquarters based in the county.[19]

In line with studies of gang databases in other jurisdictions like New York City, Chicago, Los

History of Violence Into Spotlight, NPR (April 9, 2021) (Proud Boys leader quoted saying "justified violence is amazing").

14   "The Proud Boys, whose members have been arrested for violence in New York City and Portland, and whose members were active in the January 6 Insurrection, are active in [New York] state and have had influence within the state GOP." Political Research Associates, *Assessing the Threat of White Nationalism in New York State & Recommendations for Building the Field* (September 2021) at 4; U.S. Department of Justice, *Leader of Proud Boys and Four Other Members Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to U.S. Capitol Breach* (Press Release) (June 6, 2022).

15   Rachel Sharp, *Proud Boys Members Jailed for Seven Years for Unlawfully Possessing 'Ghost Guns'*, Independent (December 5, 2021); U.S. Attorney's Office Northern District of New York, *Proud Boys Member Sentenced to 87 Months on Firearm Charges* (Press Release) (December 2, 2021).

16   Dreisbach *supra* note 29; *Proud Boys Member, Who Pointed Gun, Arrested in Portland*, Reuters (September 30, 2020).

17   National Consortium for the Study of Terrorism and Responses to Terrorism, University of Maryland, *Research Brief: Proud Boys Crimes and Characteristics* (January 2022).

18   Id.

19   Kenneth Garger and Chris Perez, *Hells Angels Are Turning This Long Island Church Into a Local Headquarters*, New York Post (December 17, 2018).

11   Howell, Gang Policing at 15 (citing *Lanzetta v. New Jersey*, 306 U.S. 451, 457–58 (1939)).

12   Elizabeth Segran, *Why the Far Right Proud Boys Co-Opted These Polo Shirts*, Fast Company (October 7, 2020).

13   Tom Dreisbach, *Conspiracy Charges Bring Proud Boys'*

Angeles, and Portland,[20] more than 98% of the individuals on the Freeport gang database are alleged to be involved with predominantly Black and Latinx affiliated gangs.[21] The remaining 2% are unknown because FVPD failed to write which gang the individual is alleged to be involved with, for instance, merely writing "Gang Member."

In contrast to the stark under-inclusion of white associations, the Freeport Gang Database is overinclusive of Black and Latinx cultural and spiritual associations, particularly those that espouse Black Nationalist or Black Liberation beliefs. For instance, there are more than three dozen individuals included in the Freeport Gang Database for their alleged affiliation with the music affinity group **Zulu Nation**. Far from being a criminal enterprise, Zulu Nation is a black-led international community of hip hop lovers who admire the teachings of the musician Afrika Bambaataa. While Afrika Bambaataa was involved in the gang culture of the South Bronx as a youth in the 1970s, not long thereafter he fashioned Zulu Nation to organize and inspire youth of color to overcome negative behaviors and invest in positive, creative endeavors. Zulu Nation members also sometimes unite around shared inclusive, non-denominational spiritual beliefs.[22]

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"We are primarily built on education… We're taught to learn. We're taught to do better with the things that we're learning… We give back to students and do a lot of youth education. We give them tools to make sure they have what they need to properly succeed throughout the school year… These are the types of things you will traditionally see those who are Five Percenters who are true to the culture do. Yeah, we have those of us who do bad things, but that's in everything. You have people who are Christians who go to church, and you have some that don't go to church. Some are coming out of church right now and some are walking into the liquor store. You've got bad or indifferent in everything. Those of us who are more true to the values, you tend to see us polished, you tend to see us educated, and you tend to see us put ourselves in situations that allow us to exert the best part of ourselves and more traditionally be able to utilize that to have an impact on young people." – *B. Original*

Similarly, NCPD and FVPD have also identified the **Nation of Gods and Earths** as a "gang" under its former name the **Five Percent Nation**. But this organization is not a gang—in 2003, after a five-day trial, a federal judge ruled that the Nation of Gods and Earths legally constitutes a religious organization, and that the state's evidence that it was a gang was "singularly unpersuasive."[23]

20   James Blum, *The NYPD's Gang Database*: *A New Age of Stop and Frisk*, Surveillance Technology Oversight Project (July 23, 2018) (noting NYPD's gang database is 99% people of color); *Chicago Gang Database Targets Black and Latino Men*, Mijente (December 4, 2017) (noting Chicago Police Department's gang database is 77% Black & Latinx); Anita Chabria, Leila Miller, *Reforms Want California Police to Stop Using a Gang Database Seen as Racially Biased*, Los Angeles Times (June 24, 2020); Maxine Bergstein, *Portland Police to Halt, Purge All Gang Designations*, The Oregonian (September 8, 2017) (noting Portland's gang database was 81% minority individuals).
21   See *supra* note 5.
22   https://www.zulunation.com/about-zulunation/

23   *Marria v. Broaddus*, 97-cv-8297 NRB, 2003 WL 21782633, at *10 (S.D.N.Y. July 31, 2003).

According to current and former members of the group, this label is unfair, deeply disrespectful, and uninformed. A current member Kenneth Hunter, whose righteous name[24] is Kinetic Intelligence BE Allah, describes the group as a "fluid god-centered community" that, through numerous court battles against state departments of corrections, has won protection under federal law as the legal equivalent to a religion although its members maintain it is not a religion in the traditional sense. Through longstanding advocacy, Nation of Gods and Earths members have brought numerous successful lawsuits to enforce their religious, expressive, and associational rights, including in New York, Connecticut, and Virginia.[25]

As LatinoJustice learned through numerous interviews with members, the group shares its origins with the Nation of Islam and split off as its own branch based on religious reasons in the 1960s. Ever since, it has continued to grow and gain prominence as a response to the history and experiences of anti-Black oppression. Adherents emphasize that today the group's core focus is the acquisition of knowledge as a key path to individual and collective empowerment.

Like most spiritual communities, the group is not a monolith and people come to it for different reasons. It lacks a formal organizational and leadership structure and is better described as a "network of individuals that are like minded."[26] Through this network, Mr. Hunter described finding opportunities to share lessons and continually challenge himself mentally. The

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"We never had a leader you could shoot down and then everything is done. We have leadership in our people. We have lessons that raise ourselves up, that allow us to be independent thinkers. These lessons are going to exist forever. They are helpful. They are truthful. So the Five Percent Nation is not a "gang." Law enforcement can see anybody – two or more people – as a gang, if they have a symbol, certain tattoos. But they don't really know. And they're honest about this. If you look up the definition of a gang by law enforcement they'll tell you 'we don't have a universal definition.' So to say that Five Percent Nation is a gang and you don't know what a gang is shows their real objective. It's the same with the war on drugs. It wasn't a war on drugs, it was a war on Black and Brown people." – *El Sun White*

group also has had a deep influence on hip hop culture and is affiliated with iconic "acts such as Wu-Tang Clan, Busta Rhymes, and 50 Cent."[27]

There are also Latino prisoner rights group members on the Freeport Gang Database. The so-called "Ñetas gang" developed in Puerto Rico in the 1970s and spread to the United States mainland. The proper term for the group is **Asociación Pro-Derechos del Confinado** (Association for Prisoners' Rights) and, as their name implies, they were founded to fight for the respect and equal rights of the confined.[28]

24   As is common in other religious and spiritual communities, Nation of Gods and Earths members take on new names when they have achieved a certain level of spiritual enlightenment within the group's culture. Frequently, the names are bestowed upon members by their fellows.
25   *Supra* note 41; Derek Gilna, *Connecticut DOC Settles Five Percenters Religious Rights Suit*, Prison Legal News (April 3, 2017); *Virginia Federal Court Holds Nation of Gods and Earth is a Religion*, Prison Legal News (May 8, 2018).
26   Interview with Kenneth Hunter, Kinetic Intelligence BE Allah.

27   University of Texas at Austin, Middle Eastern Studies, *The Five Percenters: Islam, Hip-Hop and the Gods of New York* (November 16, 2011); Jonathan Moore, *The Five Percenters: Racist Prison Gang or Persecuted Religion?*, The University of Chicago, Divinity School (May 21, 1999).
28   https://twitter.com/ProDerechoPreso; https://www.facebook.com/AsociacionProderechosNYS/about_details

Even if some Zulu Nation, Nation of Gods and Earths, and Ñetas members have committed crimes, the same could be said of any other large association of people. To tie the crimes of a few with the group as a whole or the culture that it promotes is simply unfair, Mr. Hunter explained. "If a church member were to go and rob a bank, would we consider Christians part of a bank robbing gang?"

Many of the Zulu Nation, Nation of Gods and Earth, and Ñetas members on the Freeport Gang Database have no listed criminal history or a criminal history limited exclusively to drug crimes or vehicle and traffic offenses. Across the board, there is no analysis of whether these crimes have any relationship to the individual's membership in the group. For instance, a 28-year-old Latino Baldwin resident with a history of marijuana violations is listed in the Freeport Gang Database as a Zulu Nation gang member not for his commission of any gang-related crime but for being seen "wearing a **red/green/black wrist band** signifying his affiliation with Zulu Nation Gang."

Branding someone as the member of a gang without evidence that that group actually functions as such and based solely on the color of the individual's bracelet underscore the deep racial biases and arbitrariness of gang classifications. Rather than promoting public safety, these labels work primarily to criminalize constitutionally protected activities and practices that, in other neighborhoods and settings, would be perceived as perfectly ordinary or even welcomed as positive social behaviors.

Who is a "Gang Member"?
The criteria used to identify individuals as gang-related suffer from the same problems as those used to define a "gang": they are subjective

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"In a nutshell, I would define the Nation as a god-centered culture… The Nation has done most greatly for me in getting me to understand myself and how I relate to the world. I do have that shared experience of being in the streets at a very early age – 13 to be precise – having gone through the juvenile system, and Rikers Island, and having served eighteen and a half years in prison. During that time, it was the Nation largely that forced me to confront myself, and a lot of the things I had done and where I was going in life. Through that, I went on to do other things – become a college graduate, a best-selling author, a best-selling editor, as well as becoming a vegan which is the second thing that has helped me to analyze myself and the world, but it's all rooted in coming through the Nation. So, for me the Nation is largely an individual thing in terms of self-development and introspection and then a collective thing with seeing how we fit in as a group and through developing a world view." – *Intelligent Tarref Allah*

and overbroad, making them vulnerable to selective and racially biased application. In addition, law enforcement agencies have differing thresholds for certifying someone as gang-related, yet they routinely accept designations from other agencies without any clear independent verification processes.

FVPD does not have its own written criteria to certify individuals as gang related. Instead it relies on a combination of its own officers' individual discretion and gang designations made by NCPD. NCPD has thirteen criteria for classifying someone as a gang member. To be classified as a gang member, either (1) the individual self admits to gang membership, *or* NCPD identifies "**three** of the following, **not necessarily on the same day**":

2. Tattoos depicting gang affiliation

3. Style of dress consistent with gang membership

4. Possession of gang graffiti on personal property or clothing

5. Use of hand signs or symbols associated with gangs

6. Reliable informant identified person [as a] gang member

7. Associates with known gang members

8. Prior arrests with known gang members: Crimes consistent with usual gang activity

9. Statements from family members indicating gang membership

10. Other law enforcement agencies identifying the subject as a gang member

11. Attendance at gang functions or known gang hangouts

12. Identified by other gang members or rival gang members[29]

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"I was young and looking for something that was all embracing. They introduced me to Black Nationalism and Black struggle… because I'm Latinx too, they pushed me and my brothers to get into our Latinx consciousness… It was deep studies. Lessons upon lessons upon lessons… It was a part of my journey, being incarcerated and finding a way to develop my sense of place and building a foundation where I can move forward. It's a part of my identity. I'm not just a Puerto Rican kid that suffers, I'm more than that. And I got it from this place… Calling them a gang is wrong in so many ways. This was a group that initially grew out of white supremacy, a response to Jim Crow lynching, that was a response to the Ku Klux Klan, then evolved – like everything – into their own splinter group but still very much Black Nationalist and protective of the community… I've been involved in gangs before, and I know the difference. I've known gangs that have rules that say, "once you're in, you're in for life." I've seen people get killed for trying to leave. I've yet to see a group of Five Percent Nation who went and decided to do [that]… I'm not going to say violence doesn't happen, but that's not a part of it. When you come into the Nation, you're supposed to come into a new higher level of enlightenment." – *Steven Mangual, Justice Advocate Coordinator at LatinoJustice and former Nation of Gods and Earths/Five Percent Nation Member*

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29   Nassau County Police Department, Task Force Against Gangs Coordinators Office, *Gang Identifiers*; Dudley, *supra* note 11 at 269.

In practice, there are entries in the Freeport Gang Database and examples of FVPD and NCPD field interview reports that list merely one or two criteria. This suggests that because the three gang membership criteria need not be collected on the same day, NCPD and FVPD sometimes enter individuals into their gang databases based on insufficient criteria in anticipation that later encounters will reveal additional criteria. For instance, the Freeport Gang Database lists a 38-year-old Latino Freeport resident "Samuel" as a possible MS-13 affiliate based solely on observations from a 2019 traffic stop during which NCPD First Precinct officers noted that Samuel was wearing a Chicago Bulls hat. Samuel appears to be listed on the Freeport Gang Database for this reason alone; he has no listed criminal history or other interactions with law enforcement.

No requirement of criminality. Although federal law requires reasonable suspicion that the individual is involved in criminal activity in order to collect intelligence on that person,[30] entries in the Freeport Gang Database demonstrate that neither NCPD or FVPD adhere to this requirement. Rather, NCPD and FVPD frequently flag individuals as gang members or associates based merely on their appearance, relationships, where they live, and the locations they frequent, without any nexus to criminal activity. As a result, the Freeport Gang Database only includes a handful of examples where the individual's criminal history bore a direct relation to the alleged gang affiliation, and **more than one-**

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30   28 C.F.R. 23.20(a)-(c); *Diaz Ortiz v. Garland*, No. 19-1620 (1st Cir. Jan. 10, 2022) (en banc) at *45 (noting 28 C.F.R. 23.20(a) "plainly prohibit [interagency intelligence systems] from collecting '*criminal intelligence information*' about an individual unless' there is reasonable suspicion that the individual is involved in criminal conduct or activity.' … Simply associating with people who may be engaged in criminal activity is not enough"); U.S. Department of Justice, Bureau of Justice Assistance, National Criminal Intelligence Resource Center, Criminal Intelligence Model Policy ("The threshold for collecting information and producing criminal intelligence shall be the 'reasonable suspicion' standard in 28 CFR, Part 23, Section 23.3 c").

Examples of Gang Classifications Based on Clothing

In 2008, FVPD noted that a 17-year-old Black Freeport resident was wearing a belt with "M.O.B." written on it at the time of his arrest for an unspecified charge. This was interpreted as an indication that he is a member of the purported "Money Over Bitches" gang, though prior reports identified him as a member of "Swag Boys."

In 2019, a 27-year-old Latino resident was subjected to a traffic stop by NCPD First Precinct officers for driving through a "gang-prone area" and subsequently flagged as a potential MS-13 gang affiliate for his attire, a **Chicago Bulls hat***.*

On November 25, 2014, NCPD SIS reported that a 16-year-old Latino Roosevelt resident was an MS-13 affiliate per the **"graffiti on [his] person/clothing***."*

On March 3, 2019, NCPD's First Precinct flagged a 21-year-old Roosevelt resident for "wearing **clothes consistent with gangs.***"*

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half of the individuals included in the database (51%) have no criminal history listed at all.

Gang Criteria as Racial Proxies. Gang classification criteria—particularly those that rely on factors such as appearance, association, and location—allow for the targeting of individuals because they look like stereotypes of gang members, not because they actually are involved in gang-motivated or gang-related crimes.[31] Such stereotypes might pertain to particular persons, for instance the stereotype that gang members wear baggy clothing and

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31   Susan Teresa Quin, The Gang Membe*r Label and Juvenile Justice Decision-Making* (2010) at 5.

have tattoos. Or a stereotype might apply to an entire place, such as the stereotype that certain neighborhoods are more dangerous, wherefore individuals who live in or frequent that area are more likely to be dangerous.

Since the 1990s, dominant media and law enforcement narratives have explicitly linked the presence of street gangs and crews to both immigration (particularly the "growing Hispanic population") and the prevalence of low-income housing.[32] The association of gangs with immigrant and low-income communities persists to this day, and is matched by the disinclination to view offenses by White youth as gang-involved, even where they meet gang designation criteria such as having a common name, clothing, or symbology.[33]

Racialized notions of dangerousness also apply to places as much as people. In places that are as intensely segregated as Long Island, New York, location and association function as proxies for race and class. Historically and currently, Long Island is one of the most segregated places in the United States.[34] Over the course of the twentieth century, both visible and invisible racial boundaries were purposefully enforced on Long Island through acts of violence and intimidation,[35] racially exclusionary covenants,[36] discriminatory mortgage lending practices, and racial steering.[37] In 2019, more

than sixty years after racial segregation was declared unconstitutional, Newsday published an award-winning investigation exposing how intentional racial steering practices persist on Long Island to this day.[38]

By broadly identifying entire minority communities that have historically been socially and economically relegated to a handful of neighborhoods as "gang prone locations," law enforcement agencies justify the continued criminalization of mundane public activities that would be perfectly legal in more white and affluent spaces. Once a neighborhood is labelled as a "gang location," everyday activities such as standing at a train station, sitting on the sidewalk, or riding a bike become stigmatized and utilized as pretext for selective street level enforcement and surveillance.[39]

Perhaps unsurprisingly, the locations that police officers select for heightened law enforcement attention significantly overlap with the racialized boundaries of Nassau County's majority non-white neighborhoods. For instance, all of FVPD's gang-related field interviews (for which location data is available) for the period of January 2020 to December 2021 occurred in or on the borders of majority Latinx and Black neighborhoods.

32   In November 1998, for instance, the New York Times quoted then-Port Washington Police Chief William Kilfoil saying: "gangs migrated to the area as a result of the large number of rentals in the area and the availability of jobs that attract immigrants." Shelly Feuer Domash, *Our Gangs: Wars, and Warriors, Go Local*, New York Times (Nov. 22, 1998).
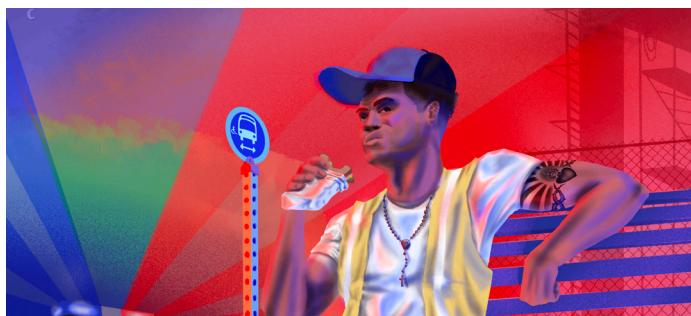33   Linda S. Beres & Thomas D. Griffith, *Gangs, Schools and Stereotypes*, Loyola of Los Angeles Law Review (2004) at 962.
34   Sabrina Lee, *A Tale of Two Communities: Housing Segregation on Long Island* (2021); Erase Racism, *Heading in the Wrong Direction: Growing School Segregation on Long Island* (2015); Bruce Lambert, *Study Calls L.I. Most Segregated Suburb*, New York Times (2002).
35   Christopher Verga, *The Ferguson Brothers Lynchings on Long Island: A Civil Rights Catalyst* (2022) at 22-23, 25.
36   Richard Rothstein, *The Color of Law* (2017) at 79-80.
37   Christopher Verga on behalf of the African American Museum of Nassau County,

Civil Rights on Long Island (2016) at 52-53.
38   Ann Choi, Keith Herbert and Olivia Winslow, *Long Island Divided*, Newsday (2019).
39   Ana Muniz, *Maintaining Racial Boundaries: Criminalization, Neighborhood Context, and the Origins of Gang Injunctions* (2014) at 219, 232; Jordan Blair Woods, *Systemic Racial Bias and RICO's Application to Criminal Street and Prison Gangs* (2012) at 335-36; Howell, *supra* note 11 at 4.
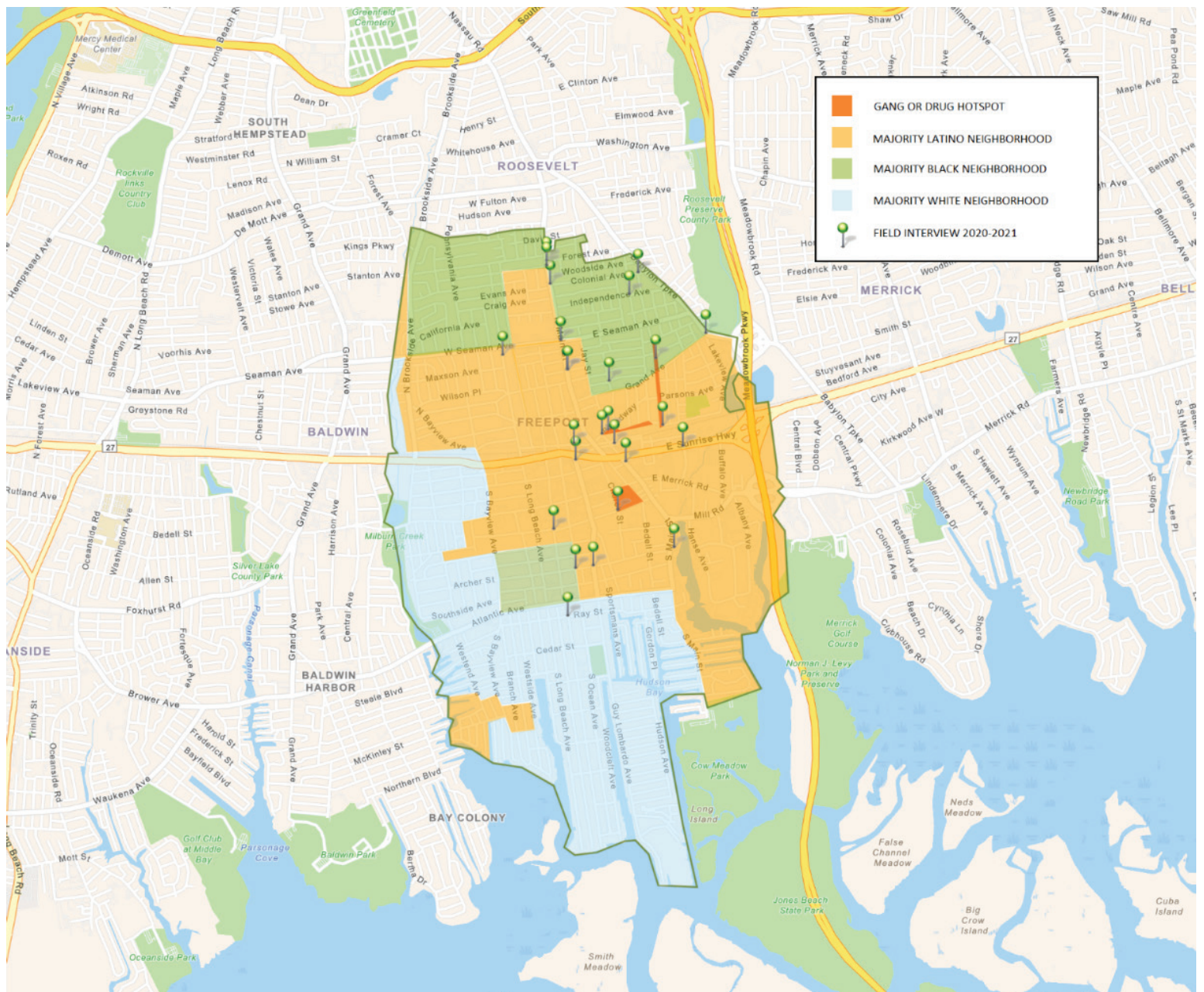
Race/ethnicity census data overlayed with FVPD's gang-related "field interview" (FI) data from January 2020-December 2021 (some FI's not included due to redacted location data). Field interviews are an interaction in which a police officer inquires about a person's business for being in the area. In practice, where gang association is suspected, field interviews usually involve a stop-and-frisk.

Similarly, out of the more than 320 gang-related NCPD First Precinct field interview reports cited to in the Freeport Gang Database, approximately 80% took place in the majority Black and Latinx communities of Roosevelt (45%), Uniondale (20%), and Baldwin (15%). Conversely, only five of the 320 NCPD First Precinct field interview reports cited to in the Freeport Gang Database took place in the predominantly white communities of Massapequa and Wantagh.

As described in the next section, the arbitrary, highly subjective, and racially biased nature of gang membership criteria are further magnified by the lack of procedural safeguards to ensure that individuals are not mistakenly placed on the gang database or that individuals are removed after leaving gang life behind them.

Flagged For Life: Lack of Fair Procedures

Mistakes and inconsistencies in the database are compounded by the lack of notice and opportunity to challenge one's inclusion. Across the board, there are inconsistencies in how FVPD fills out database fields, underscoring the lack of clear guidelines and oversight. For instance, sometimes gang information is included under the field for "Organization Name," whereas in other cases it is included in the "Remarks" Section.

There are also suggestions of erroneous entries in the Freeport Gang Database, for instance, individuals being flagged as both a "Blood" and "White Supremacist." LatinoJustice's review of Freeport's gang-related field interview reports further revealed instances in which individuals denied any gang allegation but were flagged as such nonetheless based solely on their appearance.

In most instances, key fields of the Freeport Gang Database are left blank or are filled out with insufficient information. For instance, many individuals are simply labelled "Gang Member" without any indication of which gang to which they allegedly belong or any supporting details for that designation. Indeed, the vast majority (91%) of individuals in the gang database are conclusory labeled as such without any explanatory information.

To highlight just one of over one thousand examples, a 32-year-old Roosevelt resident is included in the Freeport Gang Database based solely on the conclusory information "MS-13 Gang Member." Unsupported gang designations are particularly troublesome given the fact that individuals are not notified of their inclusion, are not given an opportunity to challenge their inclusion, and have no mechanism for seeking the removal of their name.

No confirmation of extradepartmental intelligence. The majority of gang allegations in the Freeport Gang Database appear to have been copied in from NCPD. In fact, only 28% of the individuals in the Freeport Gang Database landed there on account of FVPD's own independent gang intelligence. The remaining 72% of people are flagged as gang-affiliated by an outside agency, most commonly by NCPD's First Precinct, Gang Intel Squad (GIS), or Special Investigation Squad (SIS). In addition, and to a much lesser extent, the Freeport Gang Database also includes intelligence information originating from Hempstead Police Department, New York State Police, the Nassau County Sheriff's Department, and parole and probation officers.

There is no evidence that FVPD independently verifies the information it receives from these external sources for reliability, importance, and continued relevance, as required by federal regulation.[40] Sometimes the Freeport Gang Database includes a short summary of the contents of the external report while frequently it merely cites the agency and date of the report (e.g., "Blood - Uniondale – Gang Member - GIS 2/14/19" signifying that the individual is alleged to be a Bloods gang member based on information originating from NCPD's Gang Intel Squad on February 14, 2019). Other times, the Freeport Gang Database merely states "NCPD GANGS" without further supporting information.

NCPD's leadership in countywide gang intelligence gathering and sharing was further confirmed by LatinoJustice's correspondences with FVPD about the processing of its FOIL requests. Specifically, in July 2022, LatinoJustice sent a follow-up FOIL request to Freeport asking for a random selection of 79 gang-related police reports cited in Freeport's Gang Database (which contains cites to hundreds

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40   See *supra* note 11.

of such documents). Of the 79 requested reports, only 20 were FVPD records (about 25%). The remainder were NCPD reports, with the exception of one Nassau Sheriff's report.

Once flagged as gang-affiliated, individuals are flagged for life. There is no evidence that FVPD reviews and scrubs the gang intelligence it receives for continued relevance and accuracy. The average age of gang intelligence is surprisingly old, dating as far back as 31 years, with an average age of intelligence of 6.7 years. Because the information is old, the average age of individuals on the gang database is skewed higher than would be typically expected. While active gang membership is typically expected to peak during adolescence,[41] the average age of individuals on Freeport's Gang Database is 35 years old. The oldest person on the database is 72 years old.

The Freeport Gang Database also includes indications that both NCPD and FVPD are aware that their gang intelligence is old but they maintain it nonetheless. For instance, a 2013 entry on a former Trinitarios gang member notes that the individual "stated that he got out of the Trini gang in 2009 after 7 years." Similarly, a 2011 entry on a former Latin King gang member states that the individual told an NCPD Gang Investigation Squad officer that "he has not been active with the Latin Kings for about 10 years." Nonetheless, as of 2022, he was still listed as a "Latin King – Gang Member."

Law enforcement's failure to scrub old intelligence information, let alone give individuals an opportunity to contest this information, has serious real-world consequences. If later arrested for a crime,

individuals on the gang database will face an uphill battle seeking access to pre-trial release, more lenient sentencing, or probation. County District Attorneys frequently argue that gang affiliation is a blanket reason for risk of flight, dangerousness to the community, or recidivism, and defense counsel are rarely, if ever, given access to the underlying documentation to rebut these arguments.[42] Likewise, parole and probation boards may consider gang intelligence information in making their release recommendations and this information is virtually never turned over to the incarcerated person or his advocates.[43]

Individuals on the gang database are also more likely to face adverse immigration consequences, including denials of bond, adverse credibility and good moral character findings, and denials of discretionary relief from deportation.[44] The Freeport Gang Database, for instance, cites to numerous instances in which MS-13-alleged individuals were "released to ICE" between 2015 and 2018.

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41   Justice Policy Institute, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies* (2007) at 40; U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *National Youth Gang Survey Results: Gang Member Demographics, Age* (July 1999).

42   The information contained in this paragraph is based on LatinoJustice's interviews with local criminal law practitioners. *See also* Babe Howell, *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention,* St. Thomas Law Review (2011) (describing impact of gang designations on pre-trial bail determinations).

43   Marilyn D. McShane, Frank P. Williams, H. Michael Dolny, *Effect of Gang Membership on Parole Outcomes,* Journal of Gang Research 10(4) (2003) at 25-38; Lincoln Square Legal Services, Inc., *Appealing Denials of Parole Release in New York State: A Guide to Filing Administrative Appeals and Article 78s* (Current through January 2023) (noting that gang affiliation and other intelligence information may appear in the confidential portion of the parole report).

44   New York Civil Liberties Union, *Stuck with Suspicion* (2019) (describing numerous immigration consequences that flow from gang labels).

Gang Policing Tactics Rely on Counterproductive Abuses of Authority

NCPD and FVPD both have publicly stated that building community trust and promoting fairness in policing are foundational to promoting public safety.[45] However, neither department has yet fully operationalized these goals in practice. Especially when it comes to gang policing tactics, Nassau County law enforcement agencies continue to rely on aggressive and punitive tactics: frequent unjustified stops, pretextual stops, suspicionless searches, and covert and overt surveillance.

The consequence of these practices is the existence of a constitution-free zone for Nassau County's majority Black and Latinx localities— zones in which minority residents' constitutional rights to privacy, liberty, association, expression, and due process are routinely violated by the systemic targeting of associations of color member by member. These intrusive actions are frequently perceived as unfair and unjustified harassment, thereby exacerbating community distrust, anxiety, and the widespread perception of racial bias in policing.

Unlawful Stops

The Fourth Amendment of the U.S. Constitution, which protects against unreasonable searches and seizures, is designed "to prevent random, unjustified interference with private citizens."[46] Based on Fourth Amendment principles, New York law also provides added limitations on when police officers can ask questions, stop, search, or arrest people.

In New York, police officers are generally permitted to approach and request basic, nonthreatening information from people so long as they have an "objective credible reason" for requesting the information.[47] Such information could include the person's name, destination, or general purpose for being in the area. Officers are only permitted to ask more pointed, intrusive questions—such as whether they can search a bag—if they have "founded suspicion" that some criminal activity is afoot. To conduct a "frisk" (an external pat-down of clothing) the officer must have particularized reasonable suspicion that the person is armed or has committed or is about to commit a crime.[48] And an officer cannot conduct a full search unless he has probable cause to believe specific evidence of a crime will be found.[49]

Suspicion of gang involvement, on its own, is not a sufficient basis to stop or search someone.[50] Rather, "[c]ourts upholding the investigative detention of suspected gang members have done so on the basis of facts in addition to [the individual's] appearance which created a reasonable and articulable suspicion that criminal activity '[had] occurred, [was] taking place, or [was] about to take place."[51]

Yet, NCPD and FVPD's own recorded documentation for the reasons for traffic, pedestrian, and bicycle stops shows that they are frequently engaging in investigative stops without legal justification. The Freeport Gang Database cites to hundreds of NCPD and FVPD stops on the basis of suspected gang affiliation alone or on the basis of everyday behaviors that do not rise to the level of founded

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45   Nassau County Police Department, *Executive Order 203 Police Reform Plan* (2021) at 3 ("The County is committed to fostering trust, fairness, and legitimacy while working towards reducing racial disparities"); Freeport Village Police Department, *NYS Police Reform and Reinvention Collaborative* (2021) at 8, 29 (recognizing the values of "foster[ing] trust, fairness, and legitimacy" and noting that biased stops, searches, and arrests are strictly prohibited).
46   *In re Darryl C.*, 947 N.Y.S.2d 483, 490 (1st Dept. 2012).

47   *People v. De Bour*, 40 N.Y.2d 210 (1976).
48   *Id.*
49   *Id.*
50   *Lanzetta v. New Jersey*, 306 U.S. 451, 457-58 (1939); *see also In re Darryl C.*, 947 N.Y.S2d at 486 (presence at a gang-prone location is not sufficient basis to stop and frisk).
51   Christo Lassiter, The Stop and Frisk of Criminal Street Gang Members, 14 Nat'l Black L.J. 1, 39 (1995).

or reasonable suspicion that the individual is engaged in criminal activity. Sometimes, individuals are added to the gang database after being subjected to an unlawful stop; other times, such stops are used to gather additional intelligence on individuals already known to law enforcement to be "gang related."

The number of unlawful stops described in the Freeport Gang Database and related field interview reports reveal that NCPD and FVPD use stops as a core means of collecting gang intelligence. The following examples come from two sources: (1) FVPD's gang-related field interview reports and (2) the descriptions of NCPD field interview reports contained in the Freeport Gang Database.

For instance, on April 17, 2010, plainclothes FVPD officers observed "Julian," a 26-year-old Latino Freeport resident who was "known" to the officer "as a MS13 gang associate and was wearing a blue shirt, with a white shirt underneath, blue shorts and white/blue sneakers." After watching him for five minutes, they saw Julian greet a friend in a manner the officers believed showed "their allegiance to MS13." When officers "approached the two subjects for the purpose of identifying [them] as a possible gang member," the men said they weren't in MS-13 and were released after five minutes. **Twelve years later**, Julian, now 38 years-old, remains on Freeport's gang database based on this stop despite never committing a crime or having any other interactions with law enforcement.

Ten years later, on June 11, 2020, another Latino Freeport resident "Manuel" was stopped by an FVPD officer for sitting on the sidewalk of Commercial Street. The officer's sole purpose for stopping and questioning Manuel was the officer's suspicion that he was affiliated with MS-13. The officers' field interview notes stated

that Commercial Street is a "known MS13 prone location" and that Manuel had tattoos and was from El Salvador. Although Manuel denied any gang affiliation, he was subjected to a search. Before releasing him, the officer also took photographs of Manuel's "face and tattoos" and uploaded them to the department's database. Manuel had no listed criminal history nor was he believed to be engaged in any criminal activity. He was stopped merely for his appearance and for sitting on the sidewalk.

Other entries in the Freeport Gang Database and related field interview reports illustrate how, even without a specific articulated gang allegation, residents are stopped for normal everyday conduct, then subsequently added to the gang database shortly thereafter. For instance, the Freeport Gang Database contains relatively lengthy gang intelligence information on "Michael," a Black 29-year-old Roosevelt resident.

On April 8, 2019, Michael was observed by NCPD First Precinct officers who were manning an "observation point near Hudson Av." The officers observed Michael opening a lock box and believed this behavior to be suspicious. When subsequently stopped and questioned about his business in the area, Michael stated he was a local real estate agent and was able to provide proper ID and the code for the lock box. Though Michael was not accused of any crime, his personal information, whereabouts, and actions were recorded and shared with other law enforcement agencies. Indeed, the very next day, Michael was listed as a Crips gang member in a separate First Precinct Report, which presumably is what landed him in Freeport's Gang Database shortly thereafter.

In subsequent months, NCPD First Precinct officers continued to collect and share

information on Michael. A June 11, 2019 report, for instance, states that "upon observing unmarked RMP [radio motor patrol car], [Michael] attempted to avoid contact with officers – negative for warrants." Given that the vehicle was unmarked, it's questionable that Michael was intentionally trying to avoid police contact. Moreover, even if Michael was intentionally avoiding police contact that would not be grounds to stop him without reasonable suspicion of his involvement in a crime.

The Freeport Gang Database lists numerous similar instances of individuals being stopped by NCPD officers (mostly from the First Precinct) for every day, non-criminal behavior, including "pacing," "trying to get cigarettes," "soliciting to shovel snow," "dragging a large wagon," "running," and "riding a BMX bike," to name just a few.

Pretextual Stops

LatinoJustice's analysis of the Freeport Gang Database and related field interview reports also revealed that NCPD and FVPD use minor traffic violations as pretext to investigate unrelated suspicions of gang ties which would not otherwise justify the stop. Like the unlawful stops described above, pretextual traffic stops are used both to identify new potential gang members and affiliates as well as to collect additional information on individuals already flagged as gang related.

A pretextual stop occurs when an officer stops an individual for a low-level violation—such as a vehicle equipment violation or jaywalking—in order to investigate unrelated activity that the officer believes to be suspicious but is not a legal basis to conduct a lawful stop. In the Freeport Gang Database and related field interviews,

NCPD and FVPD have frequently cited "odor of marijuana" and minor equipment violations as the pretextual basis for conducting investigatory traffic stops and searches involving suspected gang-involved individuals. Such traffic stops were frequently conducted after the officers had surveilled the motorists and, for instance, observed the motorist leaving a location or engaging in behavior deemed suspicious.

Although the U.S. Supreme Court has upheld pretextual stops as constitutionally valid, they have been widely criticized for giving officers too much latitude to engage in racial profiling.[52] While vehicle and traffic regulations often serve important public road safety interests, they can also be easily utilized as a rationale for subjecting motorists to unrelated inquiries and searches based on their appearance.[53] Because of the breadth of vehicle and traffic codes, which "'regulate the details of driving in ways both big and small, obvious and arcane,'" if an officer chooses to follow any given motorist for long enough, it is probable that the motorist will eventually "violate *some* traffic law, making 'any citizen fair game for a stop, almost any time, anywhere, virtually at the whim of the police.'"[54] Given the unfettered discretion officers possess to decide which drivers to focus their attention on, pretext stops heighten the risk that officers will use minor infractions to stop groups based on racial and ethnic biases or "simply appearances that some police officers do not like."[55]

Of the more than forty FVPD gang-related field interview reports LatinoJustice reviewed, more than one-half involved a traffic stop, subsequent to which the officers subjected the driver and/or passengers to questions unrelated to the traffic stop and searched them. The cited reasons for the traffic stops included tinted windows, failure to signal, obstructed windshields, speeding, and odor of marijuana. These textbook pretextual traffic stops, combined with the racial disparities in gang classification set forth above, suggest that NCPD and FVPD are conducting pretextual stops to investigate gang suspicions that are entirely or almost entirely directed at Black and Latinx individuals.

Additionally, on their face, only a few field interviews appeared to be appropriately limited in scope. For instance, on February 14, 2021, plainclothes Freeport officers in an unmarked patrol made a traffic stop of a 37-year-old Black Roosevelt resident for having dark tinted windows. The officers' ensuing questions appear to have been limited to asking the driver—who they noted was a "known" Bloods gang member—for his identity and where he was driving to and from. These types of basic, nonthreatening questions are generally permissible in this context, though they may still be perceived as intrusive and undermine police legitimacy if motorists feel that they are being frequently and unfairly targeted for such stops. Unfortunately, in more than one-half of the instances, the officers engaged in far more intrusive lines of unrelated inquiries and conducted searches of the person and vehicle without the requisite level of suspicion that the individual was involved in any criminal activity.

Prior to March 31, 2021, when New York State legalized the recreational use of cannabis, "odor of marijuana" was frequently cited as the sole justification for subjecting individuals

52   See, e.g., Rushin & Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stan. L. Rev. 637, 637 (2021) ; Long Island Advocates for Police Accountability, Long Island United to Transform Policing & Community Safety and United for Justice in Policing Long Island, *The People's Plan: Reimagining Policing & Public Safety on Long Island* (2021) at *69-70; NY State Police Reform and Reinvention Collaborative: Resources and Guide for Public Officials and Citizens (August 2020) at *29.
53   *Id.*
54   Rushin & Edwards, *supra* at 640-41.
55   *United States v. Scopo*, 19 F.3d 777, 785-86 (2d Cir. 1994) (Newman, C.J., concurring) (cited in Rushin & Edwards at 640-41).

to increasing levels of intrusive questions and searches subsequent to a traffic stop. However, across the more than 40 FVPD gang-related field interview reports LatinoJustice reviewed, not a single search resulted in a positive hit for marijuana or other drugs (though officers noted finding small pocketknives which the owners stated they used for manual work and one individual had an empty pipe in his vehicle though did not show any signs of intoxication).

After cannabis legalization on March 31, 2021, FVPD continued to conduct the same number and types of stops, questions, and searches as it had before. The conclusion that, prior to legalization, at least some officers falsely stated that they had smelled marijuana when the stop was entirely unjustified is unmistakable. Of the 31 gang-related field interview reports obtained for 2020-2021, there were seven stops prior to March 31, 2021 in which the officers cited "odor of marijuana" as the justification to subject individuals to a search of their person and/or vehicle. There were nine similar stops after March 31, 2021 in which the officers did not cite "odor of marijuana" but nonetheless subjected individuals to similar searches of their person and/or vehicle. The only consistent variable across the pre- and post-March 31, 2021 stops is that the individuals stopped were suspected of gang affiliation, suggesting that FVPD officers believe gang affiliation to be a sufficient justification to prolong a traffic stop, subject the driver and passengers to unrelated questioning, and search their persons and vehicle.

Similar to the FVPD findings, of the more than 320 NCPD Field Interviews cited in the Freeport Gang Database, almost one-half involved a vehicle and traffic stop. Of those involving a vehicle and traffic stop, about a quarter suggested a pretext stop based on the available information, and the other half

provided insufficient information to make such a determination. Odor of marijuana was the most cited reason for subjecting vehicle occupants to a search following a traffic stop, and reasons for stops included equipment violations for tints, defective lights, temporary plates, and failure to signal.

For instance, in May 2019, a 30-year-old Freeport resident "Martin" was pulled over by NCPD First Precinct officers in Uniondale for an unspecified traffic violation and "odor of marijuana." Martin and his two passengers were asked to step out of the vehicle and were searched, and the vehicle (including the trunk) was also searched. The officers found no evidence of any criminal activity. Yet, after the stop, the First Precinct officers shared the stop information with FVPD, and the details of the stop and the identities of Martin's passengers were added to the Freeport Gang Database.

Similarly, in November 2018, a 32-year-old Roosevelt resident, "Anthony" (a suspected Crips gang member) was observed by NCPD First Precinct officers inside a 7-11 holding cash and purchasing gift cards. The First Precinct officers then followed Anthony to an ATM where they subjected him to a traffic stop citing "odor of marijuana." They also searched Anthony but did not find any evidence of criminal activity. Having cash, purchasing gift cards, and visiting an ATM are not crimes, yet based on unsubstantiated suspicions about these routine activities, Anthony was subjected to a traffic stop, questioned, and added to FVPD's database.

At times, the connection between pretextual stops and gang investigations is even more explicit. In April 2018, for instance, a 24-year-old Uniondale resident "Daniel" was stopped by NCPD First Precinct officers in Uniondale who were "monitoring gang activity." Citing "odor of marijuana," the officers subjected Daniel to a traffic stop and searched him with negative results. The following year, in June 2019, Daniel was again stopped by First Precinct officers after they "observed [his] vehicle parked in rear of Family Dollar with odor of marijuana." He was again investigated and subjected to a search but was negative for both contraband and warrants. Daniel was flagged as a Bloods gang member the same day in a First Precinct Report and subsequently added to the Freeport gang database.

NCPD officers also frequently make pretextual stops after observing an individual in proximity to certain locations deemed suspicious. Individuals on the Freeport Gang Database were stopped after the officer noted facts such as "vehicle with dark tints in known drug/gang location," "sitting in vehicle in front of known gang location," "vehicle slowing down in known gang location," "entering driveway of known gang location," standing in a group "in known gang location," "exiting a house which is a known drug location," "vehicle next to Velt Deli," "vehicle in parking lot of Family Dollar," "parked at Baldwin Billiards, "vehicle near location of shooting incident," "leaving gang member's residence," and "driving through Baldwin LIRR lot," among others. Because presence at a certain location alone does not give officers reasonable suspicion to make a stop, officers are incentivized to tail drivers seen at such locations until an infraction is observed.

The abundance of pretext stops throughout the Freeport Gang Database and related FVPD and NCPD field interview reports suggest a pattern of officers taking law enforcement action based on mere hunches about affiliation in predominantly Black and Latinx associations, which in practice constitutes racial profiling. Pretext stops contribute to the maintenance of a two-tiered justice system in which residents of predominantly Black and Latinx neighborhoods are exposed to frequent police stops for minor infractions followed by intrusive, unrelated questioning and searches of their persons and vehicles—an experience that is hard to fathom for residents of neighboring more white and affluent neighborhoods.

Surveillance Tactics

In April 2020, near Sunrise Highway and Liberty Avenue in Freeport, an African American man, "James," attempted to visit an auto shop. Finding the shop to be closed, James turned around and walked to a nearby apartment complex. Plainclothes officers in an unmarked vehicle followed him and recorded where he went even though he was not suspected of any crime. He was only "known" to be gang associated. The police department has not identified what public safety purpose this type of information serves, yet a field interview report was "prepared for documentation purposes" and "faxed to data processing."[56] It's unclear whether James "noticed" the officers (as the field interview report states), or recognized them as police, but reports of Nassau County residents feeling under constant surveillance are not uncommon. The pervasiveness of unmarked patrols and plainclothes officers, observation points, social media monitoring, and secret information sharing revealed in the Freeport Gang Database and related field interview reports lends real credence to these feelings.

Figure 1: An example of the unmarked vehicles employed by Freeport Village Police Department.
Source: https://www.freeportny.gov/DocumentCenter/View/9115/2018-Annual-Report.

Gang policing in Nassau County is driven by the aggressive pursuit of information through both covert and overt surveillance methods. Common covert methods, like the undercover monitoring of James' movements through Freeport detailed above, include the use of unmarked, plainclothes patrols and the manning of observation points. Frequently, these covert methods escalate into overt street-level encounters in which suspected gang members are stopped, questioned, frisked, and sometimes photographed, as described above. Whether marked or unmarked, proactive "hot spots" patrols designed to monitor, deter, and suppress any signs of gang activity have also become a ubiquitous presence in Nassau County's majority Black and Latinx neighborhoods. Off the street, these same law enforcement agencies are dedicating significant time and resources into social media monitoring and interagency intelligence sharing and dissemination systems.

Unmarked Police Cars & Plainclothes Patrols.

Unmarked plainclothes patrols have increased across Nassau County in recent years. Originally acquired for the purpose of "enforce[ing] traffic violations,"[57] both FVPD and NCPD's fleets of unmarked vehicles have been put to much wider uses. Of the more than forty FVPD gang-related field interview reports LatinoJustice reviewed, for instance, at least 65% involved unmarked, plainclothes units.

Manning Observation Posts at Hot Spots and Social Gatherings.
In addition to the use of unmarked cars and plainclothes personnel, NCPD and FVPD frequently use observation posts to monitor "hot spots," "gang locations" and "gang activity." Individuals flagged as gang-affiliated were frequently observed, stopped, questioned, and searched for being present at particular locations such as bars, pool halls, and convenience stores. In addition, presence

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56   This information comes from an April 2020 Freeport Village Police Department Field Interview Report obtained by LatinoJustice through the New York Freedom of Information Laws.

57   Freeport Village Police Department, *2018 Annual Report* at *9 (describing use of unmarked police vehicles for traffic enforcement); Long Island Herald, *Protect Yourself from Police Pretenders* (2010) (describing NCPD's use of unmarked vehicles and plainclothes officers).

in the vicinity of a "high crime area," a broad category encompassing people's places of work and residence, is frequently cited as sufficient basis for officers to collect intelligence on Nassau County's Black and Latinx residents. While some of these instances detailed in the Freeport Gang Database and related field interview reports remained wholly covert, many escalate into an overt encounter in which the officers stop, question, and search the individual.

For example, in April 2021, plainclothes FVPD officers "conducting surveillance" on a motel in Freeport observed a "known Blood nine3 gang member" "leaving location on bike, wearing all red." As the officers continued to watch the cyclist ride away, they noticed him ash his cigarette ("littering while smoking") and bike on the wrong side of the street. Based on these pretextual reasons, they stopped him, checked his tattoos, and searched him though the search did not produce any evidence of criminal activity. Although not accused of committing any crime, the interaction was recorded and "Data notified."

To highlight one more of many examples, in January 2019, NCPD First Precinct Officers were manning an "observation point for increased gang activity" in Roosevelt when they saw a suspected Blood gang member "exit location with hood over head." For no stated justification, he was stopped and questioned and the encounter was shared with FVPD.

Gatherings are also a common focal point for surveillance and intelligence gathering in Nassau County. The Freeport Gang Database shows that the FVPD and NCPD monitored people going to protests, barbecues, birthdays, wakes, and video shoots under the apparent pretext that the events were gang-affiliated. For example, on June 3, 2020, during the George Floyd protests, NCPD Seventh Precinct officers collected intelligence on "Henry," a 37-year-old black Baldwin resident, "in Bellmore for appearing in commanded control and appeared to be giving hand signals to the participating protest… Officer was unable to do a field stop due to hazardous situation with the protest." The Freeport Gang Database conclusory labels Henry as a "Folk Nation – Gang Member" but does not cite to any supporting evidence for that assertion.

There are similar entries of both FVPD and NCPD officers surveilling and collecting intelligence on individuals for attending "a BBQ at Glacken Park," "filming a rap video," "hanging out for Memorial Day," and leaving a "vigil."

Monitoring Social Media. In recent years, police have increasingly monitored social media in their attempt to proactively deter and eliminate gang membership and gang-related activity. According to training notices received in response to LatinoJustice's Freedom of Information request, FVPD officers receive continuing instruction on searching and using social media. Only a handful of entries on the Freeport Gang Database include individuals' Facebook and Instagram information. Because FVPD is significantly smaller and less resourced than NCPD, it appears that it does not engage in social media monitoring to the extent that NCPD does.

In 2017, for instance, NCPD Gang Investigation Squad (GIS) Sergeant Michael Marino testified that his unit had "reviewed thousands" of social media posts on sites such as Facebook, YouTube, Twitter, Google, and Instagram and "use these photos and videos as powerful evidence" in gang-related arrests. Even liking a "gang related posting," he warned, would not be "prudent."[58]

The rise of digital policing has been a major cause of concern for community members and advocates nationwide, for instance prompting proposed legislation that would ban police from tracking people using fake social media profiles.[59] In addition to concerns about the deceptive tactics currently employed to trick people into giving law enforcement access to people's profile posts, likes, and friends, other critics have noted the lack of cultural competence in determining whether someone constitutes a genuine public safety threat or is merely posturing to "project a tough image or follow a 'code of the street' in their community to stay safe and protected."[60]

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58   United States House of Representatives Committee on Homeland Security, Testimony of Detective Sergeant Michael Marino, Commanding Officer, Gang investigations Squad, Nassau County Police Department (2018).

59   Surveillance Technology Oversight Project, *NY Legislators, S.T.O.P. Introduce Bill Banning Fake Police SocialMedia Ccounts* (June 9, 2022); Jacob Seitz, *New Bill to Crack Down on Deceptive Social Media Surveillance by Police, Daily Dot* (June 9, 2022).

60   Patton et al., *Stop and Frisk Online: Theorizing Everyday Racism in Digital Policing in the Use of Social Media for Identification of Criminal Conduct and Associations* (2017).

Recommendations

LatinoJustice PRLDEF recommends the following actions:

Nassau County Law Enforcement Agencies Should:

- **Review all existing gang intelligence information** for evidentiary support, accuracy, continued relevancy, and adherence to reasonable suspicion requirements as required by federal law.

- **Delete all gang intelligence information** that is not supported by evidence of reasonable suspicion or is more than 5 years old.

- **Stop collecting, maintaining, and sharing gang information** obtained without reasonable suspicion of the individual's involvement in a crime.

- **Immediately notify** individuals that have been flagged as gang members, affiliates, or associates.

- **Establish processes** for individuals to contest or appeal their gang designation.

- **Establish processes** for regularly reviewing gang designations for evidentiary support, accuracy, and continued relevancy.

- **Establish processes** for purging unsubstantiated, inaccurate, and outdated gang information.

- **Disclose** all formal and informal interagency gang information sharing arrangements.

- **Establish regular auditing** of each agencies' use of interdepartmental gang information.

- **Provide regular public reporting** on each agencies' collection, storage, sharing, and use of gang-related information, including an assessment of its public safety benefit and impact on civil rights and racial disparities in law enforcement.

<u>**Law Enforcement Agencies and Elected Officials Should:**</u>
- **Investigate and evaluate** whether collecting, maintaining, sharing, and using gang intelligence information best serves violence reduction efforts in Nassau County. Such an endeavor could be spearheaded by the U.S. Department of Justice, the New York State Attorney General, Nassau County Executive, and/or Nassau County Legislature, and should be conducted transparently and in partnership with community stakeholders.

- **Dedicate more funding and resources to community-based violence prevention initiatives**, including meaningful support for equitable education, employment, housing, and healthcare resources.

<u>**Community Members and Advocates:**</u>
- **Notify** LatinoJustice PRLDEF or your trusted local social service provider if you believe you have been unjustly targeted by law enforcement.

- **Contact** your local police department and elected officials to share your concerns about racial profiling and discriminatory policing practices.

- **Call on local elected officials** to initiate an investigation into the impact of gang policing on civil rights and racial disparities in policing.

- **Call on state elected officials** to pass state legislation mirroring and strengthening 28 C.F.R. 23, the federal regulation that bans the collection and sharing of criminal intelligence information concerning an individual without reasonable suspicion that the individual is involved in a crime.

FLAGGED for LIFE

"Gang" Surveillance and Policing in Nassau County