

ELIMINATING THE USE OF GANG DATABASES

THE PROBLEM

Many law enforcement agencies across the country rely on gang databases. However, these databases have come under fire, including by those directly impacted by them, because they are discriminatory, error-ridden, over-inclusive, an affront to due process, self-perpetuating, and a barrier to employment:

- **Discriminatory:** Young Black and Brown men are over-represented in gang databases. For example, researchers at the University of Illinois at Chicago found that 70 percent of the men on Chicago's gang database are Black, 25 percent are Latino, and less than 5 percent are white. The study also found that 95.3 percent of people added to the gang database before they turned 18 are Black or Latinx.¹
- **Error-ridden:** Gang databases are notoriously error-ridden. For example, an audit of a state-wide California database found 42 alleged gang members who were babies under one year old when they were added onto the database, 28 of whom were added for supposedly admitting to gang membership.²
- **Over-inclusive:** There are no uniform criteria for adding someone to a gang database, and the criteria can be minimal and unrelated to criminal activity. For example, some individuals have been added to databases simply for living in a neighborhood that suffers from gang activity or wearing certain colors.³
- **An affront to due process:** Being added to a gang database lacks due process protections, despite the potentially severe consequences which include deportation and criminal gang enhancements, an extra punishment if the initial crime was for the benefit of or in association with a criminal street gang. Gang allegations are rarely corroborated and the evidence used is often unreliable. Those added to gang databases are typically not informed about their inclusion, let alone told the reasons for their inclusion and given an opportunity to contest them.⁴
- **Self-perpetuating:** Gang databases are shared widely, including with Immigration and Customs Enforcement (ICE). Some databases add individuals

simply because another gang database lists them, compounding initial errors.⁵

- **A barrier to employment:** Because being included in a gang database can appear in a background check, it can create a barrier to employment and result in long periods of unemployment.⁶

The combination of the above elements is particularly harmful to immigrants who are not U.S. citizens because inclusion in a gang database can result in an ICE arrest, prolonged detention, or deportation. This is the case for two reasons. First, ICE has broad discretion about whom to target for arrest and detention. They have used gang allegations to justify targeting many youths. For example, in 2017, ICE conducted Operation Matador, which sought to target gang members and resulted in the arrest of 475 primarily young men.⁷ In 2017, a Chicago youth filed a lawsuit alleging that his erroneous inclusion in a gang database resulted in ICE violently arresting him in an operation targeting gang members.⁸ The Chicago Police Department admitted that his inclusion in the database was a mistake.⁹

Second, immigration agencies in charge of adjudicating cases do not provide immigrants with due process protections. This means that baseless and uncorroborated gang allegations can be used as evidence against an immigrant fighting detention and deportation. For example, immigration judges have used gang allegations to conclude that a youth is too dangerous to be released on bond,¹⁰ resulting in prolonged detention and increased likelihood of deportation. Additionally, gang allegations have resulted in adjudicators—both immigration judges and the U.S. Citizenship and Immigration Services (USCIS)—denying applications for immigration relief, including asylum.¹¹

THE SOLUTION

- **Eliminate gang databases:** Prohibit the use of gang databases altogether. Disable any existing gang databases immediately. Gang databases are not effective in reducing gang violence; comprehensive prevention and intervention programs are.¹² Notify

the agencies the database has been shared with of its elimination to minimize collateral consequences, including in the immigration realm. Additionally, because inclusion in one gang database is often used as a basis for inclusion in other gang databases, encourage other law enforcement agencies using gang databases to delete any entries based on the defunct database.

- **Audit the databases:** To study the extent of the problem, and to help build support for the ultimate goal of eliminating your local gang databases, invest in an external and independent audit of the databases. The audit should include a report of internal inconsistencies, impossibilities (see above for an example of infants admitting to gang membership), and inequities. The report should be made public, along with an accessible summary of the key findings. The criteria used for inclusion in the databases --and the agencies the database shares information with--should also be made public.
- **Notify those listed on the databases and give them an opportunity to contest inclusion:** Require that law enforcement agencies notify those listed on the database of their inclusion, the reason for their inclusion, the agencies the database was shared with, and potential consequences they could face because of their inclusion. If the database will not be disabled imminently, provide an opportunity and process for individuals to contest their inclusion. This could, for example, be done through an initial administrative challenge that could be appealed in court.
- **Support those who face harm as a result of being in the database:** In the case of the database being disabled or a person's name being eliminated after an audit or an individual successfully contesting their inclusion, create capacity within a local agency to support those who face harm as a result of being in the database. For example, this agency could write a letter to an immigration judge considering whether someone is too "dangerous" to be released on bond explaining why inclusion in the database should not be used as evidence of gang membership and dangerousness.
- **Create an enforcement mechanism:** Include a private right of action, giving private individuals the right to sue to enforce any ordinance passed intended to protect the rights of individuals included in gang databases. This should include the availability of monetary damages. In addition to private individuals, there could be a government agency tasked with enforcing the relevant laws.

LOCAL EXAMPLES

- **Cook County, Illinois:** On February 21, 2019, the Cook County Board voted to permanently dismantle local gang databases.¹³ The ordinance requires the Cook County Sheriff's Office to "enact the final destruction" of the regional

gang database once it gets permission from a commission that oversees state public records laws and prohibits it from maintaining, recreating, or sharing information on the database.

- **California:** On August 11, 2016, the California State Auditor published the results of the CalGang state database audit, which advocates and elected officials were able to use to push for reforms. A similar audit can be done at the local level.¹⁴

Gang Databases Are Just One Piece of the Surveillance

Puzzle: We are just beginning to understand the surge in surveillance technology used by local governments, including the police, and its effects on criminal and immigration justice. In the last few years, localities have started to explore how they can regulate the use of surveillance technology in their jurisdictions. *Take Back Tech: How to Expose and Fight Surveillance Tech in Your City*, published in July 2019 by Mijente, Just Futures Law, and the UCI Law Immigrant Rights Clinic explores "how organized communities can begin the process of researching, educating, and demanding accountability around surveillance and data collection done by their own local governments."

LANDSCAPE AND RESOURCES

Additional resources and materials are available at Advancement Project, Youth Justice Coalition, University of California, Irvine School of Law, American Civil Liberties Union, and Just Futures Law.

Co-authored by Center for Popular Democracy and United We Dream.



NOTES

ELIMINATING THE USE OF GANG DATABASES

1. University of Illinois at Chicago Policing in Chicago Research Group, *Expansive and Focused Surveillance: New Findings on Chicago's Gang Database* (June 2018).
2. Chris Sommerfedt, *Audit Discovers Toddlers in California Gang Database*, N.Y. Daily News (Aug. 15, 2016), <http://www.nydailynews.com/news/national/audit-discovers-toddlers-california-gang-database-article-1.2751798>.
3. Babe Howell, *Gang Policing: The Post Stop-And-Frisk Justification for Profile-Based Policing*, 5 Univ. Denv. Crim. L. Rev. 1, 15 (2015).
4. The New York Immigration Coalition (NYIC) & City University of New York (CUNY) School of Law's Immigrant and Non-Citizen Rights Clinic (INRC), *Swept Up in the Sweep: The Impact of Gang Allegations on Immigrant New Yorkers*, 9 (May 2018).
5. Howell, *supra* note 1, at 651.
6. See Annie Sweeney and John Byrne, "Chicago police announce new gang database as leaders hope to answer questions of accuracy and fairness," Chicago Tribune (Feb. 26, 2020), available at <https://www.chicagotribune.com/news/breaking/ct-chicago-police-gang-database-overhaul-react-20200226-gisz-55rytzbsdkyy4kmbb4jrrou-story.html> (noting that "[s]ome classified as gang members have reported struggling to find work after the affiliations popped up on background checks").
7. *Joint Operation nets 24 transnational gang members, 475 total arrests under Operation Matador*, Official Website of the Department of Homeland Security (Mar. 29, 2018), <https://www.ice.gov/news/releases/joint-operation-nets-24-transnational-gang-members-475-total-arrests-under-operation>.
8. Jacqueline Serrato, *Police Admits Gang Database Error that Enabled ICE Raid*, Chicago Tribune (Dec. 6, 2017), available at <https://www.chicagotribune.com/hoy/ct-chicago-police-admits-gang-database-error-20171206-story.html>.
9. *Id.*
10. New York Civil Liberties Union (NYCLU) and the New York Immigration Coalition (NYIC), *Stuck with Suspicion: How Vague Gang Allegations Impact Relief & Bond for Immigrant New Yorkers* (2019).
11. *Id.*
12. See Connie Rice, Op-Ed: *The only way to improve California's gang database is to abolish it*, Los Angeles Times (Feb. 25, 2020), available at <https://www.latimes.com/opinion/story/2020-02-25/op-ed-california-gang-database-abolish>. See also Advancement Project, *A Call to Action: Los Angeles' Quest to Achieve Community Safety* (2012), available at https://www.advancementprojectca.org/wp-content/uploads/2015/09/imce/AP%20Call%20to%20Action_LAQuest%20To%20Achieve%20Community%20Safety%20-%20EXEC%20SUMM.pdf.
13. Rachel Hinton, *Cook County board votes to permanently dismantle gang database*, Chicago Sun Times (Feb. 21, 2019), <https://chicago.suntimes.com/2019/2/21/18371652/cook-county-board-votes-to-permanently-dismantle-gang-database>.
14. *The CalGang Criminal Intelligence System: As a Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights*, California State Auditor (Aug. 11, 2016), available at <https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>.