



March 19, 2020

Via First Class and Electronic Mail

The Honorable Bernard C. Young
Mayor
City of Baltimore
100 N. Holliday Street, Room 250
Baltimore, Maryland 21202

Michael Harrison
Police Commissioner
Baltimore Police Department
601 E. Fayette Street
Baltimore, Maryland 21202

RE: Public Education Presentations of the Baltimore Police Department Aerial Investigation Research Pilot Program

Dear Mayor Young and Police Commissioner Harrison:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we write to raise several concerns about the Baltimore Police Department (BPD) Aerial Investigation Research Pilot Program, which is better known to Baltimore City residents as the aerial surveillance plane program.² First, there is no evidence that the program will accomplish the stated goals of investigating and solving crimes. Additionally, reviving an aerial surveillance program, secretly launched and rejected four years ago, in a city that is under a federal consent decree to address racially discriminatory and otherwise unlawful policing practices is unlikely to engender the public trust needed to assist the police with public safety issues.

While we are encouraged by city officials' willingness to host public education sessions about the pilot program,³ the COVID-19 pandemic likely contributed to low participation in the

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. For 80 years, LDF has consistently worked to promote unbiased and accountable policing policies and practices at the national, state, and local levels. For the past five years, we have partnered with local advocates, activists, and attorneys to reform unlawful policing practices in Baltimore City by joining the community call for a federal investigation of the police department, advocating for fair provisions in the police union contract, and calling for more transparency regarding police misconduct complaints.

² See e.g., Justin Fenton, *Baltimore Police back pilot program for surveillance planes, reviving controversial program*, BALT. SUN (Dec. 20, 2019), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-baltimore-police-support-surveillance-plane-20191220-zfhd5ndt1bdurlj5xfr6xhoe2i-story.html>.

³ McKenna Oxenden, *Baltimore Police Department holds first community forum on surveillance plane that's set to launch in April*, BALT. SUN (March 11, 2020), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-community->

first public meeting and cancellation of subsequent meetings scheduled for March 16 and 19. Accordingly, we respectfully urge you to postpone any decisions concerning the aerial surveillance pilot until you have had an opportunity to present the program to the public in a manner that will allow Baltimore residents and stakeholders to provide meaningful input. Ultimately, we strongly recommend that you consider seriously the questions and concerns already raised by Baltimore City residents and utilize less intrusive measures to advance public safety.

I. There is no evidence that the pilot aerial surveillance program will accomplish the anticipated goal – assist the BPD with investigating and solving crimes

In December 2019 when Commissioner Harrison announced plans to pilot an aerial surveillance program in Baltimore, we were struck by his acknowledgement of the uncertain success of the program. Indeed, he stated “the reality is, that we now agree that we don’t know if the program will have any impact on the crime in our city.”⁴ Baltimore city officials also stated that the company has provided no information about the efficacy of the program.⁵ We too question the success of the pilot program. The company city officials have selected to carry out the pilot, Persistent Surveillance Systems, has no track record of success in crime reduction and its services have been rejected in several cities.⁶ Additionally, in 2016, the company and BPD failed to disclose to the public the operation of a similar aerial surveillance program that involved secretly flying a plane over the city. Despite this questionable history, city officials now contemplate utilizing an untested aerial surveillance program, operated by the same company, to assist BPD with investigating and solving crimes. Baltimore would be the first city to use the program for that purpose, according to Commissioner Harrison,⁷ thereby relegating city residents, employees, and visitors as test subjects in an experiment that may cause more harm than good.

Baltimore City residents deserve public safety strategies that are proven effective and not programs with unknown outcomes. Residents have already raised concerns about previous aerial surveillance activities by BPD, including potential privacy violations due to the nature of round-the-clock surveillance and racial discrimination in the deployment of the planes.⁸ City officials

[forum-plane-20200312-xmcrmbzivfc2jp5xgalclqhmvi-story.html](https://www.justice.gov/crt/case-document/file/925036/download). Indeed, BPD is required to “timely disclose to the public” any new type of equipment or technology, including surveillance equipment, that it uses in its enforcement activities. See Consent Decree, *United States v. Police Department of Baltimore City*, ¶ 276, No. 1:17-cv-00099-JKB, Doc. 2-2, (D. MD Jan. 12, 2017), <https://www.justice.gov/crt/case-document/file/925036/download>.

⁴ Tyler Waldman, *Harrison: Surveillance Plane to Return for Trial Program Next Year*, WBAL New Radio 1090 a.m./101.5 FM, (Dec. 20, 2019), <https://www.wbal.com/article/427127/124/harrison-surveillance-plane-to-return-for-trial-program-next-year>; See also, Justin Fenton and Talia Richman, *Baltimore Police back pilot program for surveillance planes, reviving controversial program*, BALT. SUN (Dec. 20, 2019), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-baltimore-police-support-surveillance-plane-20191220-zfhd5ndtlbdurlj5xfr6xhoe2i-story.html>.

⁵ *Id.*

⁶ Dominique Marie Bonessi, *Who is Dr. Ross McNutt?*, WYPR, Nov. 19, 2018, <https://www.wypr.org/post/who-doctor-ross-mcnutt>.

⁷ Barry Sims, *Harrison announces new pilot program for surveillance plane*, WBALTV (Dec. 20, 2019), <https://www.wbal.com/article/baltimore-surveillance-plane-pilot-program/30297186>.

⁸ Justin Fenton and Talia Richman, *Baltimore Police back pilot program for surveillance planes, reviving controversial program*, BALT. SUN (Dec. 20, 2019), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr>

must understand that using mass surveillance methods to attempt to solve crimes will likely perpetuate bias by disproportionately surveilling communities of color even though crimes occur in all neighborhoods in the city.⁹ Data that is “derived from or influenced . . . by individual and societal biases” play a particularly sinister role in policing because they dictate how policing resources are deployed in the future.¹⁰ Additionally, surveillance of individuals on public streets may violate the Fourth Amendment of the U.S. Constitution.¹¹ We respectfully urge city officials to weigh the potentially harmful and unlawful consequences of the proposed aerial surveillance program.

II. An aerial surveillance program in a city with a history of racially discriminatory and otherwise unlawful policing is unlikely to engender the public trust needed to maintain public safety

In August 2016, when news reports revealed that Persistent Surveillance Systems secretly flew aerial surveillance planes over the Baltimore City capturing around 300 hours of footage and sending the footage to BPD,¹² the U.S. Department of Justice (DOJ) had just completed its investigation of BPD.¹³ The DOJ investigation found that BPD engaged in a pattern or practice of racially discriminatory and otherwise unlawful policing in violation of the U.S. Constitution and federal civil rights law.¹⁴ Specifically, it found “overwhelming statistical evidence of racial

[baltimore-police-support-surveillance-plane-20191220-zfhd5ndtlbdurlj5xfr6xhoe2i-story.html](https://www.citylab.com/equity/2016/08/baltimore-police-say-aerial-surveillance-project-is-not-a-secret-spy-program/497327/); Brentin Mock, *Baltimore Police Say Aerial Surveillance is Not a “Secret Spy Program*, CITYLAB (Aug. 24, 2016), <https://www.citylab.com/equity/2016/08/baltimore-police-say-aerial-surveillance-project-is-not-a-secret-spy-program/497327/>; Monte Reel, *Secret Cameras Record Baltimore’s Every Move From Above*, BLOOMBERG BUSINESSWEEK (Aug. 23, 2016), <https://www.bloomberg.com/features/2016-baltimore-secret-surveillance/>; Al Jazeera and Reuters, *FBI spy planes flew 10 times over Freddie Gray protests, documents show*, AL JAZEERA (Oct. 30, 2015), <http://america.aljazeera.com/articles/2015/10/30/fbi-spy-planes-flew-over-baltimore-protests.html>; Jay Stanley, *Mysterious Planes Over Baltimore Spark Surveillance Suspicions*, ACLU (May 6, 2015), <https://www.aclu.org/blog/privacy-technology/mysterious-planes-over-baltimore-spark-surveillance-suspicions>.

⁹ Rashida Richardson, et al., *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 NYU L. REV. 192 (2019), <https://www.nyulawreview.org/wp-content/uploads/2019/04/NYULawReview-94-Richardson-Schultz-Crawford.pdf> [hereinafter “Richardson”]; see Jay Stanley and Catherine Crump, *Protecting Privacy From Aerial Surveillance: Recommendations for Government Use of Drone Aircraft*, ACLU, Dec. 2011, <https://www.aclu.org/files/assets/protectingprivacyfromaerialsurveillance.pdf>.

¹⁰ Richardson, *supra* note 9, at 196-97.

¹¹ See *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (the unique nature of cell phones to track and maintain the movement of citizens at every moment and with pin point accuracy requires the government to acquire a search warrant before its seizure); see also Matthew Feeney, *Surveillance Tech Still a Concern After Carpenter*, CATO INSTITUTE, June 25, 2018 (commenting that Baltimore’s surveillance program may violate the U.S. Constitution after the *Carpenter* case because it would allow BPD to use a third party to travel back in time to track a person’s movement), <https://www.cato.org/blog/surveillance-tech-still-concern-despite-carpenter>; Andrea Carlson, *Electric Eye: Mass Aerial Surveillance and the Fourth Amendment*, 2018 U. ILL. J.L. TECH & POL’Y 167 (2018) (warning of the danger of mass aerial surveillance to personal privacy).

¹² Monte Reel, *Secret Cameras Record Baltimore’s Every Move From Above*, BLOOMBERG BUSINESSWEEK (Aug. 23, 2016), <https://www.bloomberg.com/features/2016-baltimore-secret-surveillance/>.

¹³ U.S. Dep’t of Justice Civil Rights Div., *Investigation of the Baltimore City Police Dep’t*, (Aug. 10, 2016), available at <https://www.justice.gov/opa/file/883366/download> [hereinafter “DOJ Report” or “Report”].

¹⁴ *Id.*

disparities in BPD’s stops, searches, and arrests,”¹⁵ as well as incidents during which BPD officers used racial slurs or other statements that indicated racial bias.¹⁶ And even as DOJ investigated BPD’s policing practices and negotiated an agreement,¹⁷ BPD officers assigned to its Gun Trace Task Force robbed residents, falsified overtime documents, and engaged in other unlawful activities that resulted in the convictions of two and guilty pleas of seven officers.¹⁸ Baltimore City prosecutors ultimately dismissed almost 800 criminal cases involving those officers.¹⁹

Baltimore’s residents of color have suffered enough at the hands of BPD officers and should not suffer the indignation of being subjects in an aerial surveillance experiment that may not amount to anything. As such, the notion that Baltimore City would accept private funding to expose residents to this type of risk offers little comfort to those who have been subjected to unlawful practices and policies. Moreover, it is not yet clear whether the footage captured by the surveillance planes will be owned by the private company or by BPD. If it is privately owned, then we have serious concerns as the private surveillance company is not accountable to the public.

As stated in the federal consent decree, public trust is needed to ensure public safety.²⁰ Residents must trust the police to report crimes and be reliable witnesses.²¹ City officials’ plan to launch the pilot aerial surveillance program to investigate fatal and nonfatal shootings, armed robberies and car jackings committed by residents, but only serious incidents of police misconduct²² creates a double standard that does not engender public trust. The need to investigate crimes allegedly committed by police officers is especially salient in Baltimore as evidenced by the actions of officers who were members of the Gun Trace Task Force.²³ Nevertheless, we are unconvinced that an aerial surveillance program, which Commissioner Harrison reportedly explained has a resolution of “one pixel per person and can’t identify any specific individual

¹⁵ *Id.* at 48-70.

¹⁶ *Id.* at 66.

¹⁷ Consent Decree, *United States v. Police Department of Baltimore City*, No. 1:17-cv-00099-JKB, Doc. 2-2, (D. MD Jan. 12, 2017), <https://www.justice.gov/crt/case-document/file/925036/download> [hereinafter “Consent Decree”].

¹⁸ Jessica Anderson, *Gun Trace Task Force Overview*, BALTIMORE SUN, <http://data.baltimoresun.com/news/gun-trace-overview/>.

¹⁹ Paul Gessler, *Baltimore State’s Attorney Asks For 790 ‘Tainted’ Criminal Cases To Be Thrown Out*, WJZ (Oct. 4, 2019), <https://baltimore.cbslocal.com/2019/10/04/baltimore-states-attorney-asks-for-nearly-800-tainted-criminal-cases-to-be-thrown-out/>.

²⁰ See *Consent Decree*, *supra* note 17, at ¶ 6 (“The Parties recognize that constitutional and effective policing are interdependent and rely on a strong partnership between the police department and the communities that it serves.”).

²¹ See *id.* at ¶¶ 87, 239, 257.

²² McKenna Oxenden, *Baltimore Police Department holds first community forum on surveillance plane that’s set to launch in April*, BALTIMORE SUN (March 11, 2020) (“The plane will focus on targeting four specific crime categories: fatal shootings, nonfatal shootings, armed robberies and carjackings. The commissioner said other crimes will be considered by him on a “case-by-case basis” and that the plane will be for “serious” cases of misconduct.”), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-community-forum-plane-20200312-xmcrmbzivfc2jp5xgalclqhmvi-story.html>.

²³ Phillip Jackson, *At least 20 Baltimore police officers arrested, sentenced or suspended during department’s ugly 2019*, BALTIMORE SUN (Dec. 17, 2019), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-20-baltimore-cops-sentenced-charged-2019-20191217-wtqklwhhqnk3hracuficgzem-story.html>.

because it only appears as a dot on the screen”²⁴ will result in thorough investigations of crimes committed by residents or police.

Accordingly, we urge City officials to identify and adopt proven public safety strategies that will work to reduce crime *and* build trust between the community and BPD. The proposed aerial surveillance plane program is an unproven strategy that may also violate the constitutional rights Baltimore residents.

Thank you for considering our concerns. Please do not hesitate to contact Monique Dixon, Director of State Advocacy, or me with any questions.

Sincerely yours,



Sherrilyn A. Ifill
President and Director Counsel

cc: Dana P. Moore, Acting City Solicitor, Baltimore City
Timothy Mygatt, Deputy Chief, U.S. Department of Justice, Civil Rights Division, Special Litigation Section
Kenneth Thompson, BPD Consent Decree Monitor

²⁴ Mckenna Oxenden, *Baltimore Police Department holds first community forum on surveillance plane that's set to launch in April*, BALT. SUN (March 11, 2020), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-community-forum-plane-20200312-xmcrmbzivfc2jp5xgalclqhmvi-story.html>.