



October 21, 2023

*Via Electronic Mail*

Lisa O. Monaco  
Deputy Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**RE: Concerns about the Department of Justice’s 2023 Racial Profiling Guidance**

Dear Deputy Attorney General Monaco:

The undersigned civil rights, civil liberties, and racial justice organizations write to express our deep concern about core provisions of the Justice Department’s recently issued Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability (“Guidance”).

We appreciate that the Guidance expands the covered protected characteristics to include disability, though the exclusion of nationality and sex characteristics continues to cause concern. We also believe that to the extent the Guidance’s anti-bias prohibitions explicitly cover a greater range of law enforcement and intelligence personnel and activities than the previous 2014 guidance, it is a step forward. However, while the Guidance’s preface correctly recognizes that “biased practices are unfair; negatively impact privacy, civil rights, and civil liberties; engender mistrust; and perpetuate negative and harmful stereotypes,” the discretionary and vague standard it sets forth will not prevent these harms, as demonstrated by several of the examples of application in the Guidance itself.

Moreover, the Guidance should not purport to reflect bare-minimum constitutional requirements but should seek to exceed them so that violations of the policy do not automatically constitute an infringement on individuals’ constitutional rights. The Guidance will likely be cited as authoritative by state and local law enforcement who may adopt it explicitly or implicitly. Relatedly, although it is promising that this Guidance applies to joint task forces with state and local officers, its significant flaws risk undermining stronger anti-bias provisions that may be applicable under state and local law.

Thus, the impact of the Guidance will be broader than its direct application to Justice Department law enforcement and intelligence officers and activities. Given this significant influence, the Guidance should mandate law enforcement and intelligence practices that consider and respond to longstanding patterns of bias, which it does not do.

We urge the Department to revise its Guidance to implement a more stringent and protective standard and to remove problematic examples such as those identified below. Finally, we urge the Department to conduct audits of its programs to assess 1) the extent to which protected traits are used, and 2) the impact of these practices on civil rights and civil liberties to inform the Department’s ongoing efforts to address, prevent, and remedy racial profiling.

## **I. The Guidance's Non-Discrimination Standard is Insufficient to Eliminate Bias and Unlawful Practices**

The Department's new standard risks actually perpetuating bias and fails to provide sufficient constraints on the use of protected characteristics. The Guidance permits officials to consider protected traits such as race and religion in deciding whom to surveil or investigate when two vague and overly broad criteria are met:

- (1) There is trustworthy context- and content-specific information, with sufficient details regarding factors such as locality, time frame, method, and purpose to provide assurance that the information is reliable and links persons possessing a particular listed characteristic to: an identified criminal incident, scheme, or organization; a threat to national or homeland security; a violation of Federal immigration or customs law; or an authorized intelligence activity; and
- (2) Law enforcement personnel reasonably believe the law enforcement activity, including national or homeland security operations or intelligence activity to be undertaken is merited under the totality of the circumstances, weighing all factors, including any temporal exigency or the nature of any potential harm to be averted.

This standard will protect against only the most blatant, explicit bias and fails to address and account for the full scope of systemic, structural, and implicit bias that too often infects law enforcement and intelligence decision-making and action. It offers little direction to law enforcement and intelligence officers and does not provide sufficient assurance to the public that the Department will deploy practices that ensure the utmost in fairness, equality, and impartiality.

The standard suffers from two fundamental flaws. First, while the terms "specific" and "trustworthy" have been well-considered in certain Fourth Amendment contexts, agencies' use of the terms in the national and homeland security contexts often lacks clear meaning and may not adhere to strong rights-protective standards. One consequence is that the terms used in the Guidance therefore provide little direction to officers. As detailed below, the examples provided in the Guidance demonstrate how often information the Department deems "trustworthy" can lack credibility and be based on stereotypes about groups of persons sharing a protected trait. The standard, in part, connects reliance on protected traits to "an identified criminal incident, scheme, or organization," "a threat to national or homeland security" or "an authorized intelligence activity," all of which are so elastic in meaning that they could too easily serve as pretexts for biased profiling.

Second, according to the standard, when officers assess appropriate reliance on protected traits under the "totality of the circumstances," they "must reasonably believe" their reliance on a protected characteristic is merited. Reasonable belief is vague and untethered from any criminal standard well understood by law enforcement and intelligence officers. The Guidance does not require officers to articulate any factual basis for their determinations, meaning it evades rigorous analysis, evaluation, and compliance. The Guidance standard, in practice, relegates protected traits to the status of any other characteristic that an officer may consider in the totality of an inquiry, which risks perpetuating the biases the Guidance intends to limit.

Finally, we appreciate that the Guidance explicitly extends its applicability to activities "carried out solely or in part by automated systems or artificial intelligence and substantively similar tools," but it provides no indication of how this will be effectuated. We note that other policies that may apply as well to these tools often include carveouts for the law enforcement and intelligence functions covered by the Guidance. Such carveouts leave federal officials to whom this Guidance applies, as well as the public at large, in the dark as to limits on the use of protected characteristics through automated systems.

## II. The Guidance Fails to Eliminate Biased Law Enforcement Practices

Through examples that are meant to demonstrate the application of its standard, the Guidance undermines its own aim of preventing profiling and risks ineffective and biased law enforcement and intelligence practices that may result in potentially unlawful conduct.

### A. The Guidance risks ineffective law enforcement practices which cause systemic and structural bias, and which the Department's own investigations have found to be unlawful.

The Guidance posits that “certain seemingly characteristic-based efforts, if properly supported by reliable, empirical data can in fact be neutral and appropriate.” In an example on page 5, it suggests that where data analytics indicate “gun-related crime” is occurring in a neighborhood of a single race, aggressive enforcement of low-level offences could be appropriate.<sup>1</sup> Not only have courts found such practices to be discriminatory, but: (1) criminal justice data is biased and highly unreliable; and (2) aggressive enforcement of low-level offenses reflects a failed public safety strategy that has repeatedly been found to be ineffective and discriminatory.

#### a. *Data used in law enforcement analytic tools have often been found to be biased and unreliable.*

This example fails to acknowledge the bias and unreliability of the data used in many common law enforcement analytic tools. Data used in law enforcement analytic tools (frequently prior arrest data and criminal complaint data) reflects racially biased policing practices, a history of racial segregation, and lack of investment particularly in Black communities.<sup>2</sup> Racial prejudice against Black people in law enforcement has been a persistent problem in many areas, as demonstrated by the racial disparities in uses-of-force,<sup>3</sup> stops and arrests,<sup>4</sup> and searches with low hit rates.<sup>5</sup> These often result in part from higher deployment rates in under-resourced communities of color, especially Black communities,<sup>6</sup> due to histories of racial segregation, disparate investment, racialized criminalization, and police violence. Data analytics tools may also incorporate faulty technology, making the data itself unreliable, as well as racially biased in its deployment. For example, gunshot detection systems, which are often concentrated in communities of color,<sup>7</sup> have been shown to have high rates of false alerts,<sup>8</sup> leading some jurisdictions to end their use.<sup>9</sup> Promoting aggressive law enforcement activity on the basis of tools that reflect and amplify bias simply creates a false veneer of objectivity often called “tech-washing” and results in a feedback loop that perpetuates discriminatory law enforcement.<sup>10</sup>

#### b. *The Guidance endorses the failed strategy of aggressive enforcement of low-level offenses, which is an ineffective public safety strategy and can be unlawful.*

Just and effective public safety solutions are needed for communities experiencing violence such as those that address the root causes of violence. However, intensifying enforcement of low-level offenses does not do so. The Department itself recently cited a Nashville study finding the “practice of making large numbers of stops in high crime neighborhoods does not appear to have any effect on crime,” and determined that “[s]tudies from across the country have found that overreliance on pretextual stops leads to racial disparities without meaningfully improving public safety.”<sup>11</sup>

Further, aggressively policing low-level offenses in Black and Brown communities can lead to civil rights violations,<sup>12</sup> as has been documented in the Department's own investigations. A strategy encouraging “proactive” policing, including for low-level offenses, can result in frequent stops of people that may, at times, lack sufficient justification under the Fourth Amendment. And these practices carry a risk of discrimination on the basis of race, when disparately enforced based on race. For example, the Department found that the Louisville Metro Police Department's

(LMPD) use of pretextual stops and disparate enforcement of minor traffic offenses in majority Black neighborhoods contributed to LMPD’s pattern or practice of discriminatory policing and other constitutional violations.<sup>13</sup> The Department noted that LMPD’s stated goal of violent crime reduction did not justify the practices.<sup>14</sup> Similarly, in Minneapolis, the Department found that the Minneapolis Police Department’s use of minor, pretextual stops “created stark racial disparities that violate the law, [and] also yielded few gains to public safety.”<sup>15</sup> In New York, a practice of pedestrian stops based on “suspicions of general criminal wrongdoing” that led to stark racial disparities has been found unconstitutional.<sup>16</sup> To avoid appearing to endorse systemic racial discrimination and unconstitutional law enforcement activity, the Department should remove this example on page 5.

B. The Guidance may allow officers to take enforcement actions inappropriately based on protected characteristics and stereotypes.

At several points, the Guidance may allow racial profiling by permitting officers to rely solely or predominantly on a protected characteristic when taking enforcement action. It also embraces proxies for racial profiling that frequently arise in the policing of criminalized groups. These practices can put large groups of people who share a protected characteristic at risk of improper action with little or no justification. Such policing practices have been found to be unconstitutional,<sup>17</sup> and examples illustrating these practices have no place in a policy whose aim is to prevent racial profiling, and which could have significant influence on police departments across the country.

In one section, the Guidance permits officers to rely on a protected characteristic to affect arrests “even if it is the primary descriptive information available[,]”<sup>18</sup> which implies that more descriptive information—such as height, build, appearance, or clothing—is not available. Elsewhere, the Guidance permits officers to rely only on race and gender when questioning suspects, provided they “exercise caution,” which may result in unconstitutional policing. Courts have warned that descriptions that are primarily based on race and gender will likely not meet the constitutional requirements of the Fourth Amendment.<sup>19</sup> These portions of the Guidance also raise clear Equal Protection Clause concerns, as an equal protection claim can be established where race is a motivating factor for an encounter, regardless of whether it is the primary motivation.<sup>20</sup>

The Guidance also includes an example that promotes gang policing practices, which contribute to the racial profiling of Black and Latinx people.<sup>21</sup> These practices perpetuate harmful stereotypes that contribute to the historic and current criminalization of Blackness, and Black youth by casting a presumption of criminality over family and social relationships.<sup>22</sup> Harmful gang policing practices permeate from local law enforcement into federal agencies. For example, the FBI, Department of Homeland Security, and Bureau of Alcohol, Tobacco, and Firearms were among the most frequent external users of Chicago’s Gang Database,<sup>23</sup> which was recently dismantled because it was riddled with errors and overwhelming racial disparities.<sup>24</sup> The New York City Police Department’s gang database is comprised of 99 percent of Black and Latino people,<sup>25</sup> and uses criteria that considers where people live and the clothes they wear when designating them as gang members.<sup>26</sup>

Gang policing ensnares entire communities of color in aggressive enforcement, often without reliable indicators of criminal involvement. An example in the Guidance permits officers to focus enforcement on people of a race who are dressed in a certain manner, under the assumption that they are gang members.<sup>27</sup> Here, gang policing serves as a proxy for racial profiling. To be cognizant of and responsive to problematic gang policing patterns, the Guidance should remove any standards and examples that legitimize these practices.

C. National and homeland security and intelligence activities loopholes in the Guidance permit bias.

The Guidance's new standard not only permits bias but also endorses a number of problematic examples related to national and homeland security. The Guidance's example on developing sources<sup>28</sup> is one such instance of impermissibly permitting bias. This example suggests that if a terrorist group is predominantly composed of a particular ethnic group, then the FBI is justified in targeting members of that ethnic group to develop intelligence sources. In the example, FBI agents are relying *solely or primarily* on a person's ethnic identity to develop sources. The officers do not have any information other than the protected characteristic that ties individuals to the terrorist group or any criminal incident. Indeed, the example is at pains to note that "[t]here is no specific information that the organization is currently a threat to the United States." Inclusion of "recent travel" to the entire region of "southeast Asia" (or even a particular country, if one were identified) does not serve as any kind of meaningful limit. Instead, there is no fact-based, trustworthy and specific indicia of criminal activity.

Targeting individuals based solely on their ethnicity is the essence of racial profiling. And FBI and other law enforcement agencies' pressure on people to become informants is one of the major complaints that communities of color have raised as emblematic of discrimination that views them through a security threat lens, especially Muslim, Black, and Latinx communities, and, increasingly, Asian American and Pacific Islander communities. This example should have prohibited consideration of ethnicity in this context.

The Guidance also preserves an example from the 2014 guidance that encourages the mapping of racial and ethnic communities.<sup>29</sup> The example permits federal law enforcement officers to map "population demographics, including concentrations of ethnic groups" so long as it is pursuant to an "authorized intelligence or investigative purpose." But an "authorized intelligence or investigative purpose" is vague and overbroad, and the Guidance does nothing to cabin its sweeping reach. Civil society groups and communities of color have long complained that, for example, the FBI's collection and mapping of demographic data using protected characteristics for targeting purposes invites unconstitutional racial profiling. Indeed, the FBI's asserted authority to map data for "domain awareness" and "intelligence analysis" activities pursuant to the 2008 FBI Domestic Intelligence and Operations Guide (DIOG) contributed to the wrongful targeting of Middle-Eastern and Muslim communities in Michigan, Black communities in Atlanta, Chinese and Russian communities in San Francisco, and Latinx communities in Alabama, New Jersey, and Georgia.<sup>30</sup>

In each of these instances, there was no fact-based, trustworthy and specific indicia of criminal activity. An "authorized intelligence purpose" as broad as this can piggyback on the low standard for FBI assessments, which allows agents to open investigations without a factual predicate for suspicion of actual criminal wrongdoing.<sup>31</sup> Regardless of the purpose, racial or ethnic mapping further cements problematic stereotypes that falsely ascribe criminal "propensities" to minority communities of color. Thus, using such flawed methods is a recipe for biased and ineffective law enforcement. Moreover, state and local law enforcement can and do wrongly follow federal agencies' lead, as the New York City Police Department infamously did with demographic mapping<sup>32</sup> that formed the basis of its unconstitutional Muslim surveillance program.<sup>33</sup>

### **III. The Department of Justice Must Audit Its Reliance on Protected Traits**

The Department is long overdue to implement a rigorous and systematic audit of its programs and operations for bias based on the use of protected characteristics. The Department's Inspector General, in its reviews, has highlighted that a lack of data undermines the ability to assess whether operations that impacted civil rights were impartial or effective.<sup>34</sup> Accordingly, the

Department should conduct ongoing reviews of how personnel rely on protected traits and the impact that reliance has on the public's rights.

Useful models exist for this work. Ad hoc reviews already conducted by the Department in other areas, such as its audit of the FBI's widespread use of Section 702 of the FISA Amendments Act of 2008 to investigate Americans, can serve as examples.<sup>35</sup> And data analyses of law enforcement agencies' actions conducted during pattern-or-practice investigations by the Civil Rights Division, such as instances cited above, inform assessments of whether state and local law enforcement agencies' actions are compliant with civil rights laws. These reviews may offer guidance on particular methodologies that may be useful in audits of federal law enforcement and intelligence programs.

Audits to determine bias should focus on whether a protected trait was relied upon, the justification (or lack thereof), and the impact such reliance had on the public – both on individual persons and on groups sharing protected traits. Audits should cover a range of representative programs, including programs that cast a wide net over large numbers of people, such as watchlists, and those that rely on predictive algorithms and risk assessment tools to inform officer activity. At the same time, more targeted programs focusing on particular groups or people—such as FBI's assessments of individual subjects or groups—should also be scrutinized. Objectivity and transparency in this process are critical. Auditors should be conflict-free and independent from the part of the agency being reviewed. Results of audits should be made public to the fullest extent possible, and any non-public findings and their bases should be summarized in public documentation. Finally, in the interest of protecting privacy, the Department should use data that is already collected, and not collect new material.

\* \* \*

In conclusion, we urge the Department to revise its Guidance to implement a more stringent standard for law enforcement and intelligence activities to prevent bias and unlawful conduct. The Department should as a matter of urgency correct the examples in the Guidance in line with the concerns raised above before conducting any training on these standards. Finally, we urge the Department to implement a system of audits to evaluate the impact of its programs and policies on people and groups based on their protected characteristics.

We welcome the opportunity to meet with you and your staff to discuss the concerns and recommended steps outlined in this letter. Please do not hesitate to contact Puneet Cheema, Manager of the Justice in Public Safety Project at the Legal Defense Fund, at [pcheema@naacpldf.org](mailto:pcheema@naacpldf.org), Hina Shamsi, Director of the ACLU National Security Project, at [hshamsi@aclu.org](mailto:hshamsi@aclu.org), Faiza Patel, Senior Director of the Liberty and National Security Program at the Brennan Center for Justice, at [PatelF@brennan.law.nyu.edu](mailto:PatelF@brennan.law.nyu.edu), and Nadia Aziz, Senior Program Director, Fighting Hate + Bias, The Leadership Conference on Civil and Human Rights at [aziz@civilrights.org](mailto:aziz@civilrights.org).

Sincerely,

Legal Defense Fund

American Civil Liberties Union

Brennan Center for Justice

The Leadership Conference on Civil and Human Rights

Cc:

Vanita Gupta, Associate Attorney General of the United States

Shoba Sivaprasad Wadhia, DHS Officer for Civil Rights and Civil Liberties

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<sup>1</sup> U.S. Dep't of Just., *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability* 5 (Apr. 18, 2023) (hereafter, "Guidance").

<sup>2</sup> National Library of Medicine, *Racial Disparities in Neighborhood Arrest Rates During the COVID-19 Pandemic*, 67 (Feb. 2022), (after accounting for socioeconomic and other neighborhood-level factors in arrest rates, substantial residual arrest differences between Black and White populations remain, explained largely by inequitable enforcement practices.), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8751464/>; Sandhya Dirks, *Rising crime statistics are not all they seem*, NPR (Nov. 3, 2022), <https://www.npr.org/2022/11/01/1133790735/rising-crime-statistics-are-not-all-that-they-seem>.

<sup>3</sup> Wendy Sawyer, *Among individuals who have any contact with police, people of color disproportionately experience the use of force* (figure), in *Visualizing the racial disparities in mass incarceration*, Prison Pol'y Initiative (July 27, 2020),

[https://www.prisonpolicy.org/blog/2020/07/27/disparities/?gclid=CjwKCAjw38SoBhB6EiwA8EQVLsUYJ59I7dFnNaZXRmWHWYGfauYPjqliaeyvNKhUD2VdS1P1KiT36BoCfYoQAvD\\_BwE#policing](https://www.prisonpolicy.org/blog/2020/07/27/disparities/?gclid=CjwKCAjw38SoBhB6EiwA8EQVLsUYJ59I7dFnNaZXRmWHWYGfauYPjqliaeyvNKhUD2VdS1P1KiT36BoCfYoQAvD_BwE#policing) (citing Bureau of Just. Stat., *Contacts Between Police and the Public*, 2015 tbl. 1, 18, <https://bjs.ojp.gov/content/pub/pdf/cpp15.pdf>).

<sup>4</sup> Wendy Sawyer, *Black youth are arrested far out of proportion to their share of all youth in the U.S.* (figure), in *Visualizing the racial disparities in mass incarceration*, Prison Pol'y Initiative (July 27, 2020),

[https://www.prisonpolicy.org/blog/2020/07/27/disparities/?gclid=CjwKCAjw38SoBhB6EiwA8EQVLsUYJ59I7dFnNaZXRmWHWYGfauYPjqliaeyvNKhUD2VdS1P1KiT36BoCfYoQAvD\\_BwE#policing](https://www.prisonpolicy.org/blog/2020/07/27/disparities/?gclid=CjwKCAjw38SoBhB6EiwA8EQVLsUYJ59I7dFnNaZXRmWHWYGfauYPjqliaeyvNKhUD2VdS1P1KiT36BoCfYoQAvD_BwE#policing) (citing Census Bureau, *Annual Estimates of the Resident population by Sex, Age, Race, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2019*, <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/national/asrh/nc-est2019-asr6h.xlsx>, and Fed. Bureau of Investigation, *Arrests by Race and Ethnicity, 2018 Crime in the United States, 2018*, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-43>).

<sup>5</sup> See, e.g., U.S. Dep't of Just., *Investigation of the Baltimore Police Department* 53 (Aug. 10, 2016), <https://www.justice.gov/crt/file/883296/download>.

<sup>6</sup> Robin Smyton, *How Racial Segregation and Policing Intersect in America*, TuftsNow (June 17, 2020), <https://now.tufts.edu/2020/06/17/how-racial-segregation-and-policing-intersect-america>.

<sup>7</sup> Todd Feathers, *Gunshot-Detecting Tech Is Summoning Armed Police to Black Neighborhoods*, VICE (Jul. 19, 2021),

<https://www.vice.com/en/article/88nd3z/gunshot-detecting-tech-is-summoning-armed-police-to-blackneighborhoods?fbclid=IwAR3W9CjNa1QVLHk8JrutFG85RKIwHYcBAfuqTRVv5iSziwkh-uyC4sa43qg> ("In all four cities, the data shows that the sensors are also placed almost exclusively in majority Black and brown neighborhoods, based on population data from the U.S. Census."); *ShotSpotter Study Findings*, End Police Surveillance by MacArthur Just. Ctr., <https://endpolicesurveillance.com/> ("In Chicago, ShotSpotter is only deployed in the police districts with the highest proportion of Black and Latinx residents. ShotSpotter deployments are concentrated only in those neighborhoods.").

<sup>8</sup> *ShotSpotter Generated Over 40,000 Dead-End Police Deployments in Chicago in 21 Months, According to New Study*, MacArthur Just. Ctr. (May 3, 2021), <https://www.macarthurjustice.org/shotspotter-generated-over-40000-dead-end-police-deployments-in-chicago-in-21-months-according-to-new-study/> (finding in 21-month study of ShotSpotter deployments from July 1, 2019 to April 14, 2021 that "89% turned up no gun-related crime and 86% led to no report of any crime at all" despite "more than 40,000 dead-end ShotSpotter deployments"); Stephanie Agnew, *Lawsuit: Chicago Police Department Relies on Faulty 'Evidence' from ShotSpotter to Make Arrests*, Chi. Appleseed (Aug. 24, 2022), <https://www.chicagoappleseed.org/2022/08/24/lawsuit-cpd-faulty-evidence-from-shotspotter/> ("In Chicago, it was discovered that more than 90% of ShotSpotter alerts lead police to find no evidence to corroborate gunfire when police arrive at the location ShotSpotter sent them: no shooting, no shell casings, no victims, no witnesses, no guns recovered.").

<sup>9</sup> Cornelius Frolik, *Dayton not renewing contract with ShotSpotter program*, Dayton Daily News (Oct. 5, 2022), <https://www.daytondailynews.com/local/dayton-not-renewing-contract-with-shotspotter-program/PYGLLNVRJGUHEAF4OSJJ7K4NA/> ("A local group called the Coalition on Public Protection said independent research and data from Dayton's system found the technology was ineffective at reducing gun violence."); Matt Stroud, *What Happens at the End of a ShotSpotter Contract?*, Ill. Answers Project (June 2, 2023), <https://illinoisanswers.org/2023/06/02/chicago-shotspotter-contract-cancel-brandon-johnson/> ("Atlanta has decided against ShotSpotter sensors after two experimental trials in 2018 and 2022. New Orleans ended its

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relationship with ShotSpotter in 2013. Trenton, New Jersey declined to renew its ShotSpotter contract in 2016. Charlotte, San Antonio, Troy, New York, and Fall River, Massachusetts, also backed out of contracts. Portland's mayor announced Thursday that the Oregon city would not move forward with its plans to install ShotSpotter devices.”).

<sup>10</sup> Vincent Southerland, *With AI and Criminal Justice, the Devil is in the Data*, ACLU (Apr. 9, 2018), <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/ai-and-criminal-justice-devil-data>.

<sup>11</sup> U.S. Dep't of Just., *Investigation of the Louisville Metro Police Department and Louisville Metro Government* 51 (Mar. 8, 2023), <https://www.justice.gov/crt/case-document/file/1572951/download>.

<sup>12</sup> Thurgood Marshall Inst. at the NAACP Legal Defense & Educ. Fund, *The Truth Behind Crime Statistics* 4, <https://www.naacpldf.org/wp-content/uploads/2022-08-03-TMI-Truth-in-Crime-Statistics-Report-FINAL-2.pdf>; Denise Brown & Howard Henderson, *Preventing gun violence takes more than police*, Brookings Inst. (Mar. 31, 2022), <https://www.brookings.edu/articles/preventing-gun-violence-takes-more-than-police/> (“... municipalities have to weigh the negative effects that accompany adding more police officers, such as increasing arrests for low-level crimes which contribute to mass incarceration and disproportionately affect Black communities. Exposure to the criminal justice system itself can perpetuate underlying issues that contribute to violent crime and recidivism, such as low socioeconomic status and unemployment, homelessness, and poor mental health.”).

<sup>13</sup> U.S. Dep't of Just., *supra* note 13, at 40.

<sup>14</sup> U.S. Dep't of Just., *supra* note 13, at 43-44.

<sup>15</sup> U.S. Dep't of Just., *Investigation of the City of Minneapolis and the Minneapolis Police Department* 35 (June 16, 2023), [https://www.justice.gov/d9/2023-06/minneapolis\\_findings\\_report.pdf](https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf).

<sup>16</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 563, 658-60; 665-66 (S.D.N.Y. 2013).

<sup>17</sup> *See, e.g., United States v. Street*, 917 F.3d 586, 594 (2019) (citing *United States v. Turner*, 699 A.2d 1125, 1128-29 (D.C. 1997)) (“[w]ithout more, a description that applies to large numbers of people will not justify the seizure of a particular individual. This is especially true where the description is based primarily on race and sex[.]”).

<sup>18</sup> U.S. Dep't of Just., *supra* endnote 1, at 6.

<sup>19</sup> *Supra*, note xvii.

<sup>20</sup> *See, e.g., Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-266 (1977) (“When there is a proof that a discriminatory purpose [\*266] has been a motivating factor in the decision, this judicial deference is no longer justified.”).

<sup>21</sup> U.S. Dep't of Just., *supra* endnote 1, at 9.

<sup>22</sup> Josmar Trujillo & Alex S. Vitale, *Gang Takedowns in the De Blasio Era: The Dangers of ‘Precision Policing,’* The Policing & Social Just. Project at Brooklyn College (2019), <https://static1.squarespace.com/static/5de981188ae1bf14a94410f5/t/5df14904887d561d6cc9455e/1576093963895/2019+New+York+City+Gang+Policing+Report+-+FINAL%29.pdf> (“While some people define themselves as gangs, there is nothing illegal about such a grouping in and of itself. Police, however, have chosen to define associations of young people as organized criminal enterprises.”).

<sup>23</sup> *Review of the Chicago Police Department’s “Gang Database,”* City of Chi. Off. of Inspector Gen., at 25 (Apr. 2019), <https://igchicago.org/wp-content/uploads/2023/08/OIG-CPD-Gang-Database-Review.pdf>.

<sup>24</sup> Chris Tye, *Oversight commission shuts down Chicago Police gang database*, CBS News (Sept. 7, 2023), <https://www.cbsnews.com/chicago/news/oversight-commission-shut-down-chicago-police-gang-database/>.

<sup>25</sup> N.Y.C. Dep't of Investigation, *An Investigation into NYPD’s Criminal Group Database*, 34 fig. 4 (Apr. 2023), <https://www.nyc.gov/assets/doi/reports/pdf/2023/16CGDRpt.Release04.18.2023.pdf>.

<sup>26</sup> *Id.* at 25, 46-47.

<sup>27</sup> *See* Guidance at 9.

<sup>28</sup> *See* Guidance at 12.

<sup>29</sup> *See* Guidance at 14.

<sup>30</sup> *ACLU EYE on the FBI: The FBI Is Engaged In Unconstitutional Racial Profiling and Racial “Mapping,”* ACLU (Oct. 20, 2011), <https://www.aclu.org/documents/aclu-eye-fbi-fbi-engaged-unconstitutional-racial-profiling-and-racial-mapping>.

<sup>31</sup> Just Security, *Domestic Investigations and Operations Guide*, Fed. Bureau of Investigation (Mar. 3, 2016), [https://www.justsecurity.org/wp-content/uploads/2019/03/FBI.DIOG\\_.pdf](https://www.justsecurity.org/wp-content/uploads/2019/03/FBI.DIOG_.pdf)

<sup>32</sup> *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, The Creating Law Enf't Accountability & Resp. (CLEAR) Project at the CUNY Sch. of Law (2013), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

<sup>33</sup> *Factsheet: The NYPD Muslim Surveillance Program*, ACLU (June 17, 2013), <https://www.aclu.org/documents/factsheet-nypd-muslim-surveillance-program>.

<sup>34</sup> *See* Off. of the Inspector Gen. Eval. and Inspections Div. 15-3, *Review of the Drug Enforcement Administration’s Use of Cold Consent Encounters at Mass Transportation Facilities* 34, U.S. Dep't of Just. (Jan. 2015), <https://oig.justice.gov/reports/2015/e153.pdf> (“[W]e found that the DEA does not collect sufficient data on cold consent encounters to assess whether they are being conducted impartially or effectively[.]”).

<sup>35</sup> *See, e.g.,* Off. of Internal Auditing, *FISA Query Audit May 2023*, Fed. Bureau of Investigation (May 10, 2023), <https://www.fbi.gov/file-repository/fisa-query-audit-051023.pdf/view>.