

VIA EMAIL

Los Angeles Board of Police Commissioners
100 West First Street, Suite 134
Los Angeles, CA 90012

November 18, 2021

RE: LAPD Acquisition of Surveillance Technology

Dear Board of Police Commissioners:

We understand this Commission is currently re-assessing the process through which the Los Angeles Police Department acquires surveillance technology and has stated its intent to give the community a “meaningful voice” in the decision whether and how surveillance technologies will be used. If this Commission truly seeks to respond to the community’s consistent demands, it will prohibit LAPD from expanding its surveillance arsenal and end its existing surveillance systems. Creating a new approval process or approval criteria for acquiring surveillance contradicts the community’s demands, and we oppose any efforts by this Commission to enact such a process or criteria.

Broad coalitions of community members have made it clear time and time again to the LAPD and to this Commission that to respect the rights of people in Los Angeles, the LAPD’s dragnet surveillance capabilities must end. This Commission’s own history of consistently refusing to heed community opposition and instead expanding dangerous and discriminatory surveillance, and LAPD’s persistent refusal to comply with the law or its own policies with respect to how those systems are used—with specific disregard to the rights and safety of Black and Latinx communities—demonstrates that neither can be expected to meaningfully follow any process for acquiring new surveillance intended to limit the acquisition or use of surveillance technology to reflect the community’s interests, including any process grounded in the ACLU-developed Community Control Over Police Surveillance (“CCOPS”) model.

We know that during the September 28, 2021 Commission meeting, the CCOPS model was discussed. Fundamentally, this model is about *community* control. Its purpose is to put the community in control of surveillance decisions, which requires that decisionmakers center and address community concerns about surveillance technology. To operate as intended, oversight entities must be willing to say “No” when police seek to acquire or use surveillance technologies that the public opposes. But the Police Commission has consistently demonstrated that it will not do so. Further, the LAPD has demonstrated that it will misrepresent and misuse any surveillance system it possesses. The ACLU of Southern California opposes any effort to exploit the CCOPS

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model to sanction the adoption of new surveillance technologies by LAPD and undermine its purpose to put the community in control of surveillance decisions.

For instance, when LAPD’s proposed use of unmanned aerial vehicles, or drones, came before the Commission—a debate that first arose in 2014¹—the public overwhelmingly opposed it. Yet in 2017, the Commission allowed LAPD to move forward with this highly-disputed program in the face of overwhelming public opposition. The public expressed this opposition in town halls (despite attempts to circumvent community input by strategically holding these meetings in Van Nuys, Silver Lake, San Pedro, and Westwood rather than in communities most impacted by overpolicing and surveillance),² letters (with over 1,675 submitted and only 6% in support of drones),³ and petitions (one spearheaded by ACLU SoCal with over 1,900 signatories⁴ and another with more than 700 signatories⁵), all unequivocally urging the Department not to deploy drones over Los Angeles. The public cannot take seriously the Commission’s newly-stated desire to be responsive to community concerns when it so blatantly ignored this clear statement of community opposition—which the Commission actively solicited—and caved to the Department’s desire to expand its surveillance capabilities.

Moreover, while the September 28 panelists asserted that better outcomes will result from community participation in the creation of policies, “guardrails” on the use of surveillance, and regular reporting on LAPD’s use of these technologies, LAPD’s longstanding and consistent failure to follow its own policies (let alone the law), its provision of false and misleading information regarding its use of these programs, and its consistent deployment of these programs to target Black and Latinx communities, individuals, and causes demonstrates that it should not be given more surveillance power regardless of the policies that purport to bind its use.

Among the many examples of LAPD’s failure to comply with its own policies or accurately report its use of surveillance technologies is its history with the Chronic Offender Bulletin, in which LAPD claimed it identified and subjected to increased surveillance only people who were “violent repeat offenders,”⁶ based on an “in-depth analyses” of their criminal histories, gang affiliations, and previous detentions.⁷ It was later uncovered that these individuals subjected to pretextual stops and targeted for “extraction” from their communities as validated “chronic offenders” were haphazardly selected at the whim of individual officers, and nearly half of those

¹ Kate Mather, “Should the LAPD use drones? Here’s what’s behind the heated debate,” Los Angeles Times (August 8, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-lapd-drones-20170808-story.html> (recalling that “public outcry” led to the LAPD’s drones “collecting dust” for more than 3 years).

² Kate Mather and Cindy Chang, “Should the LAPD test drones? Police get an earful from the public,” Los Angeles Times (Aug. 23, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-lapd-drones-feedback-20170823-story.html>.

³ Makeda Easter and Kate Mather, “Civilian oversight panel hears guidelines for LAPD use of drones,” (October 3, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-lapd-drones-20171002-story.html>.

⁴ See “Protect Your Privacy; Keep Drones Out of L.A.,” ACLU of Southern California, <http://aclusocal.org/no-drones> (showing 1,935 signatories as of October 6, 2017).

⁵ See “Drone-Free LAPD. No Drones, LA!”, MoveOn.org Petitions, <https://petitions.moveon.org/sign/drone-free-lapd-no-drones-1> (showing 707 signatories as of October 6, 2017).

⁶ Bureau of Justice Assistance U.S. Department of Justice, “Los Angeles, California Smart Policing Initiative: Reducing Gun-Related Violence through Operation LASER” (Oct. 2012), p. 2. Available at <http://newweb.jssinc.org/wp-content/uploads/2014/11/Spotlight-on-Operation-LASER.pdf>. (Hereinafter “Smart Policing”).

⁷ *Id.* at p. 6.

targeted had zero or a single past arrest for a violent crime, in violation of the stated purposes and use policies for this program.⁸

Another example is LAPD's use of the CalGang database, in which officers fabricated evidence of gang membership to justify labeling Black and Latino young men as gang members and include them in a statewide intelligence database. In August 2019, the LAPD published an audit of its use of CalGang reporting near-total compliance with its own policies and 100 percent of gang designations supported by sufficient evidence.⁹ Less than six months after these representations, the public learned that LAPD officers had falsified evidence of gang membership to wrongly add Black and Latino men into the same database—resulting in criminal charges against some of these officers. The California Department of Justice also suspended LAPD's use of CalGang and prohibited other agencies from using LAPD data because of “significant misuse of the gang-tracking database by LAPD personnel, including entry of false information.”¹⁰ This suspension coincided with the Inspector General's review of body camera footage and other data from the same period as the 2019 audit, which found corroboration for only 42% of the entries supporting gang designation and numerous entries that were directly contradicted by observed evidence. Additionally, the Inspector General's review found disparities in officers' willingness to wrongly label individuals as gang members and subject them to tracking within the CalGang database—with 11 percent of records obtained in the predominately-Latinx neighborhoods within the Central Bureau being entered into the database despite insufficient evidence, and no such records obtained from the predominately-white neighborhoods within the West Bureau being inappropriately entered.

Yet another is the Department's secret and widespread use of face recognition for more than a decade, all while consistently denying it ever used the deeply invasive technology.¹¹ For more than ten years, the Department used face recognition software nearly 30,000 times at the same time it denied to journalists and researchers it had done so. After public outcry, the Department offered to the Commission a purported use policy for the use of face recognition. Yet again, despite overwhelming public opposition to the program, the Commission adopted the use policy and sanctioned the use of face recognition—notwithstanding the dangers of the technology and the Department's blatant lies to the public about its use.¹²

Finally, the panel's attempt to justify the adoption of new surveillance technologies by suggesting that it would allow LAPD to track potential violence by white supremacist organizations is disingenuous and contrary to LAPD's longstanding practice of using its surveillance systems to target Black, Latinx, and progressive activist organizations. For instance,

⁸ OIG Report at p. 15–16.

⁹ Los Angeles Police Department, Audit Division, “CalGang Criminal Intelligence System Audit,” August 2019.

¹⁰ Attorney General Javier Becerra, Press Release, “Attorney General Becerra Restricts Access to LAPD-Generated CalGang Records, Issues Cautionary Bulletin to All Law Enforcement, and Encourages Legislature to Reexamine CalGang Program,” July 14, 2020, available at <https://oag.ca.gov/news/press-releases/attorney-general-becerrarestricts-access-lapd-generated-calgang-records-issues>.

¹¹ Kevin Rector and Richard Winton, “Despite past denials, LAPD has used facial recognition software 30,000 times in last decade, records show,” Los Angeles Times, Sep. 21, 2020, available at <https://www.latimes.com/california/story/2020-09-21/lapd-controversial-facial-recognition-software>.

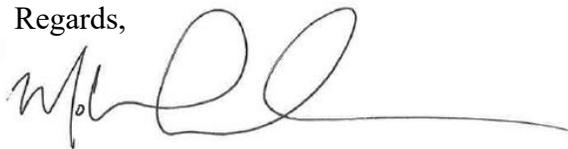
¹² Kevin Rector, “LAPD panel approves new oversight of facial recognition, rejects calls to end program,” Los Angeles Times, Jan. 12, 2021, available at <https://www.latimes.com/california/story/2021-01-12/lapd-panel-approves-new-oversight-of-facial-recognition-rejects-calls-to-end-program>.

notwithstanding LAPD's false statements disclaiming the use of Dataminr during protests related to the murder of George Floyd, the public later learned that LAPD monitored social media posts associated with Black Lives Matter.¹³ And when confronted with protests and counterprotests by groups on opposing ends of the political spectrum, LAPD responded by ignoring violence committed by white supremacist organizations, reacting with less severity to those groups, and falsely attributing violent conduct to the groups that oppose the supremacists.¹⁴

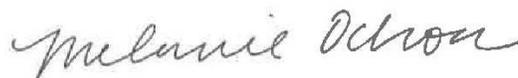
If LAPD acquires more surveillance technologies, its own record demonstrates that it will use them against the same communities that it already the targets for ongoing monitoring and tracking. And we can be sure the true extent of LAPD's use of these dangerous technologies will not be uncovered until long after they cause harm.

Again, ACLU SoCal believes that the only way to protect the community from the unfettered use of surveillance that will inevitably be used to disproportionately target Black and Latinx people is to prohibit LAPD from obtaining these surveillance systems in the first instance. This is the only conclusion that can reasonably be drawn from the historical and present-day practices of the LAPD, of which the above is merely an illustration, not a comprehensive recounting.

Regards,



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Melanie Ochoa
Director of Police Practices

¹³ Lexis-Olivier, "Official Emails Show that LAPD Worked With a Controversial Social Media Surveillance Company During George Floyd Protests," L.A. Taco, Sept. 3, 2021, available at <https://www.lataco.com/lapd-social-media-surveillance-protest/>.

¹⁴ Kevin Rector and James Queally, "Violence at anti-vaccine protest brings new criticism of LAPD tactics, claims of bias," LA Times, Aug. 20, 2021, available at <https://www.latimes.com/california/story/2021-08-20/la-protest-violence-rises-lapd-confronts-new-claims-of-bias>.