

February 7, 2022

Lucy Lang, New York State Inspector General  
New York State Office of the Inspector General  
Empire State Plaza, Agency Building 2, 16th Floor  
Albany, New York 12223  
*Via U.S.P.S. & Email*

**Re: Audio Surveillance in N.Y. Prisons and Jails**

Dear Madame Inspector General:

The undersigned civil rights and privacy organizations call on the New York Office of the Inspector General (“the OIG”) to investigate state and local procurement of unproven, invasive, and biased audio surveillance technology in N.Y. prisons and jails.

In 2020, New York City jails and prisons recorded thousands of phone calls, including 1,500 between attorneys and their incarcerated clients.<sup>1</sup> This was not an isolated problem. Records reveal that the City’s phone provider, Securus, recorded tens of thousands of attorney-client privileged calls across the United States, communications that are protected from surveillance under the Sixth Amendment of the U.S. Constitution and the Federal Wiretap Act.<sup>2</sup> Securus and similar providers have been committing these violations for years. They represent a longstanding and systemic practice of recording privileged communications, and in many cases, turning these communications over to law enforcement and prosecutors.

This attack on New Yorkers’ right to counsel is compounded by prisons and jails’ deployment of new artificial intelligence surveillance tools. In addition to illegally surveilling privileged attorney-client communications, jails and prisons have used these tools for other illegitimate and presumably unapproved purposes, including the discrimination of people of color and restriction of speech related to COVID-19.<sup>3</sup>

A recent case in Suffolk County, New York, illustrates the critical nature and mass scale of this issue that call for urgent action. According to recent reporting, the United States Department of Justice’s Office of Justice Programs made a \$700,000 grant to the county for the procurement of Verus, a phone call transcription and search tool manufactured by LEO Technologies.<sup>4</sup> Corrections officials in New York and six other states use Verus to automate and expand audio surveillance, including the illegal surveillance of privileged attorney-client communications.<sup>5</sup> In Suffolk County alone, officials used Verus to surveil over 2.5 million phone calls between April 2019 and May 2019.<sup>6</sup>

Suffolk County officials searched communications for “mara,” an often-benign Spanish word that can refer simply to a group of friends.<sup>7</sup> This technology appears poised to falsely accuse Spanish-speaking New Yorkers of gang membership, putting them at risk of arrest, administrative punishment, and deportation.

Even absent discrimination, Verus and similar technologies exceed prisons and jails' lawful surveillance powers.<sup>8</sup> Suffolk County officials also targeted people for discussing abuse or COVID-19 dangers, fueling cover-ups that prevent critical media and accountability. These types of restrictions on speech do not serve any legitimate penological goal.

Ultimately, this surveillance infringes the rights of incarcerated Americans, many of whom have not been convicted and are still working on their defenses, as well as those of their families, friends, and loved ones trying to stay connected and supportive, including minor children.

Such abuses call for urgent intervention by the OIG. Accordingly, we ask your office to investigate the acquisition and use of audio surveillance technologies to monitor phone calls in prisons and jails in New York State.

We look forward to working with your staff on this matter. Please contact Surveillance Technology Oversight Project Executive Director Albert Fox Cahn and Worth Rises Executive Director Bianca Tylek with any questions, comments, or concerns.

Sincerely,

1. S.T.O.P. - Surveillance Technology Oversight Project
2. Worth Rises
3. A Little Piece Of Light
4. Access Now
5. Advocacy for Principled Action in Government
6. Alameda County Public Defenders Office
7. Boston Chapter of Democratic Socialists of America
8. Defending Rights & Dissent
9. DownsizeDC.org, Inc.
10. Electronic Privacy Information Center (EPIC)
11. Ella Baker Center for Human Rights
12. Empire State Indivisible
13. Ethics in Technology
14. Fight for the Future
15. Freedom To Thrive
16. Housing = Health
17. ICNA Council for Social Justice
18. Immigrant Defense Project
19. JustLeadershipUSA
20. LatinoJustice PRLDEF
21. Legal Aid Society of NYC
22. Mothers Against Wrongful Convictions
23. Mijente
24. Movement for Family Power
25. Neighborhood Defender Service of Harlem
26. NYU Center on Race, Inequality, and the Law
27. Ohio Justice and Policy Center
28. PDX Privacy
29. Represent Justice
30. The Bronx Defenders
31. The Healing Project
32. Voqal
33. WE GOT US NOW

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<sup>1</sup> Chelsea Rose Marcus, *Over 1,500 Private Phone Calls Between NYC Jail Inmates and Legal Advisers Wrongly Recorded, Audits Show*, New York Daily News, March 20, 2021, <https://www.nydailynews.com/new-york/ny-rikers-jail-phone-records-lawyers-inmates-20210320-rdfb2lmuevgsdg5npad4egoqai-story.html>.

<sup>2</sup> Ella Fassler, “Prison Phone Companies Are Recording Attorney-Client Calls Across the US,” *Vice*, December 13, 2021, <https://www.vice.com/en/article/7kbbey/prison-phone-companies-are-recording-attorney-client-calls-across-the-us>.

<sup>3</sup> Avi Asher-Schapiro & David Sherfinski, *AI Surveillance Takes U.S. Prisons by Storm*, Thomson Reuters Foundation, Nov. 16, 2021, <https://news.trust.org/item/20211115095808-kq7gx>.

<sup>4</sup> *Services - Verus*, LEO Technologies, <https://leotechnologies.com/services/verus>.

<sup>5</sup> Asher-Schapiro & Sherfinski, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Turner v. Safley*, 482 U.S. 78, 89 (1987) (“[W]hen a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”)