

February 7, 2022

Letitia James, New York Attorney General
New York Office of the Attorney General
The Capitol
Albany, N.Y. 12224-0341

Via U.S.P.S. & Email

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

Dear Madame Attorney General:

The undersigned civil rights and privacy organizations call on the New York Office of the Attorney General (“the OAG”) 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.¹ 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.² 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-19.³

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.⁴ 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.⁵ In Suffolk County alone, officials used Verus to surveil over 2.5 million phone calls between April 2019 and May 2019.⁶

Suffolk County officials searched communications for “mara,” an often-benign Spanish word that can refer simply to a group of friends.⁷ 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.⁸ 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 OAG. 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 and urge action on all civil rights violations.

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,

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| 1. S.T.O.P. - Surveillance Technology Oversight Project | 22. Immigrant Defense Project |
| 2. Worth Rises | 23. JustLeadershipUSA |
| 3. A Little Piece Of Light | 24. LatinoJustice PRLDEF |
| 4. Access Now | 25. Legal Aid Society of NYC |
| 5. Advocacy for Principled Action in Government | 26. Mothers Against Wrongful Convictions |
| 6. Alameda County Public Defenders Office | 27. Mijente |
| 7. Aspiration | 28. Movement for Family Power |
| 8. Boston Chapter of Democratic Socialists of America | 29. Neighborhood Defender Service of Harlem |
| 9. Color of change | 30. NYU Center on Race, Inequality, and the Law |
| 10. Defending Rights & Dissent | 31. Ohio Justice and Policy Center |
| 11. Demand Progress | 32. PDX Privacy |
| 12. DownsizeDC.org, Inc. | 33. Policing and Social Justice Project |
| 13. Electronic Frontier Foundation | 34. Represent Justice |
| 14. Electronic Privacy Information Center (EPIC) | 35. Restore The Fourth |
| 15. Ella Baker Center for Human Rights | 36. South Asian Americans Leading Together (SAALT) |
| 16. Empire State Indivisible | 37. The Bronx Defenders |
| 17. Ethics in Technology | 38. The Healing Project |
| 18. Fight for the Future | 39. Voqal |
| 19. Freedom To Thrive | 40. WE GOT US NOW |
| 20. Housing = Health | 41. Whistleblower & Source Protection Program (WHISPeR) |
| 21. ICNA Council for Social Justice | 42. X-Lab |

¹ 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-rdfb2lmuevgsgd5npad4egoqai-story.html>.

² 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>.

³ 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>.

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

⁵ Asher-Schapiro & Sherfinski, *supra* note 3.

⁶ *Id.*

⁷ *Id.*

⁸ *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.”)