

February 7, 2022

Kristen Clarke, Assistant Attorney General
U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Via U.S.P.S. & Email

Re: Audio Surveillance in U.S. Prisons and Jails

Dear Madame Assistant Attorney General:

We, the undersigned civil rights and privacy organizations, call on the United States Department of Justice Civil Rights Division (“the Division”) to investigate the Office of Justice Programs’ (“OJP”) funding of unproven, invasive, and biased audio surveillance technology in U.S. prisons and jails.

In 2020, prison and jail phone providers, like Securus, recorded tens of thousands of privileged attorney-client 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.¹ 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.

The Department’s Office of Justice Programs (“OJP”) is contributing to these unlawful practices and creating new threats by funding new artificial intelligence surveillance tools deployed in jails and prisons. 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-19.²

A recent case in Suffolk County, New York, illustrates the critical nature and mass scale of this issue that call for urgent action by the Department. According to recent reporting, OJP made a \$700,000 grant to the county for the procurement of Verus, a phone call transcription and search tool manufactured by LEO Technologies.³ Corrections officials in seven states use Verus to automate and expand audio surveillance, including the illegal surveillance of privileged attorney-client communications.⁴ In Suffolk County alone, officials used Verus to surveil over 2.5 million phone calls between April 2019 and May 2019.⁵

Suffolk County officials searched communications for “mara,” an often-benign Spanish word that can refer simply to a group of friends.⁶

This technology appears poised to falsely accuse Spanish-speaking Americans of gang membership, putting them at risk of arrest, administrative punishment, and deportation. The use of biased surveillance tools is a threat to the civil rights of all Americans, and such discriminatory technology⁷ should not be funded by the Department.

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 Division. Accordingly, we ask the Division to investigate OJP's grants to state and local entities that enabled the acquisition and use of communication surveillance technologies, like those provided by Securus and LEO technologies, to monitor communication in prisons and jails across the country.

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. Amend4Rights
8. Aspiration
9. Boston Chapter of Democratic Socialists of America
10. California Public Defenders Association
11. Color of change
12. Defending Rights & Dissent
13. Demand Progress
14. DownsizeDC.org, Inc.
15. Electronic Frontier Foundation
16. Electronic Privacy Information Center (EPIC)
17. Ella Baker Center for Human Rights
18. Empire State Indivisible
19. Ethics in Technology
20. Fight for the Future
21. Freedom To Thrive
22. Housing = Health
23. ICNA Council for Social Justice
24. Immigrant Defense Project
25. Impact Justice
26. Innocence Project
27. International CURE
28. Just Futures Law
29. Justice 4 For Housing Inc
30. Justice Arts Coalition
31. JustLeadershipUSA
32. LatinoJustice PRLDEF
33. Legal Aid Society of NYC
34. Mothers Against Wrongful Convictions
35. Mijente
36. Movement for Family Power
37. Muslim Justice League
38. Neighborhood Defender Service of Harlem
39. NYU Center on Race, Inequality, and the Law
40. Oakland Privacy
41. Ohio Justice and Policy Center
42. Operation Restoration
43. PDX Privacy
44. Policing and Social Justice Project
45. Represent Justice
46. Restore The Fourth
47. South Asian Americans Leading Together (SAALT)
48. The Bronx Defenders
49. The Healing Project
50. United Church of Christ Media Justice Ministry
51. Voqal

52. Washington Lawyers' Committee for Civil
Rights and Urban Affairs
53. WE GOT US NOW

54. Whistleblower & Source Protection
Program (WHISPeR)
55. X-Lab

¹ 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>.

² 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>.

³ *Services - Verus*, LEO Technologies, <https://leotechnologies.com/services/verus>.

⁴ Asher-Schapiro & Sherfinski, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ A 2020 study of automated speech recognition technology found that such systems exhibit substantial racial disparities, with a higher likelihood of error for Black speakers compared to white speakers. Allison Koenecke et al., *Racial Disparities in Automated Speech Recognition*, 117 PNAS 7684–7689 (2020), <https://www.pnas.org/content/117/14/7684>.

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.”)