

April 16, 2024

Contact: Daniel Ball, Brooklyn Defenders: dball@bds.org
Michael Jackson, The Bronx Defenders: MJackson@bronxdefenders.org
Lupe Todd-Medina, New York County Defender Services: ltoddmedina@nycds.org

For Immediate Release

NYC Public Defenders File Class Action Lawsuit Against the Department of Correction Over Unlawful Mass Surveillance System

Lawsuit Seeks an End to the Universal Recording of Phone Calls in DOC Facilities

(BRONX, NY) – On behalf of incarcerated New Yorkers, as well as the community members they speak with on the telephone, The Bronx Defenders, Brooklyn Defender Services, New York County Defender Services, and Cleary Gottlieb Steen & Hamilton LLP filed a class action lawsuit Monday evening against the New York City Department of Correction (“DOC”) seeking to end its unlawful mass surveillance.

DOC’s telephone system is, in practice, a mass surveillance project primarily targeting Black, brown and low-income New Yorkers. Universal recording subjects incarcerated people and their loved ones to an unprecedented level of government monitoring and data collection. The system monitors and records nearly every call, and has recorded thousands of confidential calls between attorneys and their incarcerated clients. DOC collects not only the substance of these conversations, but also the biometric, financial, and other personal information of everyone who participates in a call on its network.

Lillian Nelson, the mother of a woman who has been held in DOC custody, explained: “The recording of my private personal calls is an unfair invasion of mine and my family’s privacy. I felt that I had no real choice in the matter, because I needed to use the phone to stay in contact with my daughter and to make sure she was alive and safe.” Because of health issues and work obligations, Ms. Nelson was unable to physically visit Rikers. Since she depended on phone calls to provide support to her daughter, she had to forfeit her personal information to DOC.

DOC’s surveillance system is operated by Securus Technologies, a private contractor with a history of [unlawful surveillance practices](#) and [data breaches](#) in other jurisdictions around the country.

“In the guise of a phone service system, the Department of Correction has constructed a full-scale domestic spying program with the help of Securus,” **said Elizabeth Daniel Vasquez, Director of Brooklyn Defenders’ Science and Surveillance Project.** “Collecting, storing, and sharing deeply personal, biometric, and financial information from New Yorkers, DOC and Securus unlawfully expose countless people to government surveillance on the sole basis of their being detained pretrial or wanting to speak with a loved one who is in DOC custody.”

DOC’s mass surveillance system violates incarcerated New Yorkers’ rights to privacy and association, chills their willingness to speak to their attorneys, isolates them from their family and friends, and damages their mental health in an already traumatic jail environment.

“This mass surveillance system sweeps up not just those who are incarcerated in Rikers Island,” **said Rebecca Phipps, Special Litigation Attorney at New York County Defender Services,** “but entire communities who yearn to stay connected with their loved ones on the inside - small children, teenagers, grandparents, spouses, cousins, friends. The result is that certain communities of New York City, notably the Black and brown communities who have historically borne the brunt of NYC’s discriminatory policing and prosecution, and the low-income communities who cannot afford the bail that would allow their loved ones to fight their cases from home, are surveilled in these intimate ways. The rest of NYC’s communities are not.”

This lawsuit comes after DOC [unlawfully recorded](#) thousands of privileged telephone conversations between people in DOC custody and their defense attorneys—and then disseminated those illicit recordings to prosecutors and law enforcement.

“Every New Yorker has the right to privacy, especially when speaking with their attorney. Recording conversations between individuals awaiting trial and their legal counsel is not only immoral, but unlawful,” **said Ilona Coleman, Director of The Bronx Defender’s Criminal Defense Practice Legal Department.** “Attorney-client privilege was codified to ensure open communication between attorneys and their clients. When DOC records and then disseminates these privileged calls, they contravene the law and, in the process, undermine the trust we have worked so hard to build with those we represent. DOC has blatantly disregarded the basic principles of our legal system.”

Public defender offices began notifying DOC of privilege breaches in 2018, yet only in 2021 did DOC conduct a partial review. This review excluded calls to private and 18B attorneys without explanation, only considered recordings of privileged calls that were sent to law enforcement and truncated the review period to a single year. Still, the findings revealed that within this small sample, there were thousands of privileged calls that were recorded and sent to law enforcement.

Undeterred by these issues, DOC has continued to renew and expand its now \$5.4 million dollar contract with Securus –without conducting performance reviews or public hearings, as required under the New York City Procurement Policy Board rules.

“What DOC is doing is wrong. DOC has violated its own rules, New York and federal law, and the constitutional rights of New Yorkers,” said **Rishi Zutshi, a Litigation Partner at Cleary Gottlieb**. “Through this lawsuit, our clients are asking the court to order DOC to stop its illegal recording practices, to end New York City’s relationship with Securus, and to appoint a monitor to ensure that DOC follows the law.”

For more information on the lawsuit, read the complaint [here](#).

###

The Bronx Defenders is a public defender nonprofit that has developed a holistic model, providing systems-impacted individuals with teams of lawyers, social workers, and advocates dedicated to addressing their unique circumstances, radically transforming how low-income people in the Bronx are represented in the legal system.

Brooklyn Defender Services is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms.

New York County Defender Services is a public defense firm serving New York City’s most vulnerable communities since 1997. We zealously defend people accused of crimes in Manhattan’s Criminal and Supreme Courts, at no cost to the accused.

With more than 1,100 lawyers across 16 offices around the world, Cleary Gottlieb has been committed to legal excellence for over 75 years. Founded in a spirit of inclusiveness, personal and professional responsibility, compassion for the needs of others, and dedication to improving the communities in which we live and work, Cleary Gottlieb is fully committed to the duties of good global citizenship. Each year, Cleary lawyers provide an average of 100,000 hours worldwide to pro bono legal counsel and public service efforts.