



Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (347) 457-5194
info@bds.org

TESTIMONY OF:

Alyssa Briody

Senior Staff Attorney, Civil Rights and Law Reform Unit

BROOKLYN DEFENDER SERVICES

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Contract and Criminal Justice

Oversight - Contracted Jail Services.

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My name is Alyssa Briody. I am a Senior Staff Attorney in the Civil Rights and Law Reform Unit at Brooklyn Defender Services (BDS). We thank Chair Nurse and Chair Won and the Committees on Criminal Justice and Contracts for the opportunity to testify on the city's contracted jail services.

BDS 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 by the government. For more than 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Thousands of the people we represent are detained or incarcerated in the New York City jail system each year while fighting their cases in court or serving a sentence of a year or less. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields.

In addition to zealous legal defense, BDS provides a wide range of services to address the causes and consequences of legal system involvement. We have built a practice around supporting people who are detained pretrial to mitigate the burdens and trauma created by confinement and to protect our clients from collateral consequences. Through our jail-based programming, we advocate for our clients to access services they are entitled to such as medical care and education. Additionally, our established presence in New York City jails allows us to monitor and document the conditions New Yorkers encounter when incarcerated and advocate for the basic human rights, health, and

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safety of our clients and other incarcerated people. Furthermore, many of the people that we serve live in heavily policed and highly surveilled communities.

DOC continues to operate a broad community surveillance program that targets all of New York City.

Despite the Department claiming they lack human and financial resources, DOC continues to spend millions of dollars on pervasive corporate surveillance products that do not enhance jail safety. Since 2014, DOC has worked with Securus Technologies to transform its phone system into a vast and interconnected mass surveillance system that collects and databases biometric and other personal data not only from those detained in our city jails, but also their families, communities, and advocates.¹ All the data that DOC and Securus collect from both people in custody and community members is uploaded to a database that is accessible by Securus's law enforcement customers nationwide.²

DOC's surveillance system is constructed without any requirement of individual suspicion, no need for court oversight, and no need for a warrant. Merely being poor and unable to afford bail causes people and their families to have fewer rights, less privacy, and diminished dignity compared with those who defend their criminal cases out of custody. Further, unlike other records that are sealed or expunged when a person is released, this surveillance web is verging on permanent with extremely long data retention periods and absolutely no data oversight.

This mass surveillance system is impacting Black and brown communities at a staggering rate, and when combined with the blanket of surveillance deployed by the NYPD, ACS, and other law enforcement entities, it decimates any notion of freedom, justice, and fairness in New York City. DOC is not using the surveillance system to make the jails safer.³ Instead, Securus is gathering personal data from New Yorkers and profiting.

¹ This pervasive surveillance has not always existed in New York City. In fact, universal jail call recording only began here in 2008. And Securus itself was only brought to New York City in 2014. For decades before that, law enforcement was only able to record jail calls in the way they are able to record anyone's phone calls: with a specifically-issued eavesdrop warrant.

² CISION PR NEWSWIRE, Securus Delivers the Most Advanced "Big Data" Analytical Tool in Corrections (Dec. 21, 2015), <https://www.prnewswire.com/news-releases/securus-delivers-the-most-advanced-big-data-analytical-tool-in-corrections-300195882.html>.

³ DOC officials are reviewing only a fraction of the millions of recorded phone calls. According to a FOIL response BDS received, in just a two-year period, from January 1, 2020 through January 1, 2022, DOC records indicate that at least 17,977,510 completed phone calls were recorded. Within that same time period, DOC employees listened to calls 305,381 times, which includes repeated listening to the same recorded phone call. This indicates that within a two-year period, less than 1.7% of phone call recordings were accessed by DOC officials.

Staying in business with Securus endangers New York City’s criminal legal system, our city’s fiscal oversight requirements, and New Yorkers’ safety.

Despite the argument that this surveillance web is necessary for public safety, the truth is that DOC’s surveillance system has resulted in activity that is illegal, unconstitutional, and bordering on fraudulent.

- *Illegal privileged call recordings.* First, this mass surveillance system has resulted in the illegal and unconstitutional recording of attorney-client phone calls. Thousands of phone calls made by people detained at Rikers to their lawyers have been recorded by DOC and Securus, despite those phone numbers being on a designated “do not record” list.⁴ DOC shared many of those recordings with state and federal law enforcement agencies and District Attorney’s offices.⁵ New York is not the first jurisdiction to experience this fundamental invasion of legal privacy: Securus has been subject to hundreds of lawsuits regarding its lax control over the privacy and confidentiality of protected communications.⁶ At the hearing this week, DOC blamed these illegal recordings on an isolated “human error,” but if that were true, why is the same unlawful conduct occurring in jurisdictions across the country?
- *Rejected contract.* Despite this serious breach of confidential information, the Department attempted not only to renew its Securus phone service and surveillance contract, but also to *expand* its use of Securus’s services. Without any public process or meaningful oversight, the Department selected Securus as the vendor to provide electronic tablets to people in custody. At the time, neither the New York City Comptroller nor the BOC knew what the cost of those services would be because “there was no competitive bidding process

⁴ Testimony of New York City Comptroller Brad Lander to the Board of Correction, Mar. 14, 2023, <https://comptroller.nyc.gov/newsroom/testimony-of-new-york-city-comptroller-brad-lander-to-the-board-of-correction-2/>; Noah Goldberg & John Annese, *NYC Correction contractor recorded thousands more lawyer-client jail phone calls than first reported; could jeopardize court cases*, New York Daily News, December 30 2021, <https://www.nydailynews.com/new-york/nyc-crime/ny-audit-shows-doc-listened-in-on-even-more-lawyer-inmate-calls-20211230-zni5qacdhjazok7rdmwyg2wsm-story.html>.

⁵ Chelsea Rose Marcus, *NYC’s 5 DA offices wound up with recordings of confidential jailhouse calls between inmates and lawyers*, New York Daily News, March 21, 2021, <https://www.nydailynews.com/new-york/ny-jails-recordings-attorney-client-privilege-calls-20210321-tzbyxwnle5dc5jgvi5cona6wry-story.html>.

⁶ See, e.g., *United States v. Carter*, 429 F. Supp.3d 788, 798-800, 847 (D. Kan. 2019); Order, *Huff v. Core Civic, Inc.*, No. 17 Civ. 2320 (JAR), Dkt. No. 146 (D. Kan. Sept. 26, 2019); *Romero v. Securus Tech., Inc.*, No. 16 Civ. 1283 (JM) (MDD), 2020 6799401(S.D. Cal. Nov. 19, 2020) (denying motion to dismiss for numerous claims against Securus including claims made pursuant to the California Invasion of Privacy Law); Order, *id.* Dkt. No. 184 (Nov. 19, 2020); *Albert v. Global Tel*Link Corp.*, No. 20 Civ. 01936 (LKG), 2021 WL 4478696 (D. Md. Sept. 30, 2021).

[and] no Request for Proposals or scope of services.”⁷ Comptroller Brad Lander rejected this expanded Securus tablet contract, citing its flagrant breach of City procurement rules.⁸

- *Defeated attempt to expand the surveillance web.* Also, in 2022, amidst public questions about the Department and Securus’s illegal conduct, the Department—at Securus’s suggestion—sought a permanent variance from the Board of Correction’s Minimum Standards to allow the scanning and electronic delivery via tablet of all non-legal mail,⁹ which BDS strongly opposed.¹⁰ This attempt to further expand the Department and Securus’s access to our community’s personal data was defeated for now.

As these examples demonstrate, the Department and Securus’ encroachments on privacy and protected communication are not glitches in an otherwise watertight system. Rather, they are a natural outcome of allowing private companies to collect and store sensitive information and communications.¹¹ Because of Securus’ lax control over the privacy and confidentiality of protected communications, it is unclear who has access to the intimate communications of people in custody. Whether this access is “authorized” for a specific purpose is irrelevant. After all, Securus was not “authorized” to record attorney-client phone calls, but they have done so anyway. Entrusting this company and this Department with a community spying program of this size and scope risks uncorrectable violations of our community’s legal and civil rights.

The only way to be sure the data will not be misused is to ensure it is not collected in the first place. It is for this reason that BDS, together with the Bronx Defenders, New York County Defender Services and Cleary Gottlieb Steen & Hamilton LLP filed a class action lawsuit against DOC seeking to end its unlawful mass surveillance system.¹²

⁷ Testimony of New York City Comptroller Brad Lander to the Board of Correction, Mar. 14, 2023, <https://comptroller.nyc.gov/newsroom/testimony-of-new-york-city-comptroller-brad-lander-to-the-board-of-correction-2/>.

⁸ Forum Staff, [Why My Office Refused to Register DOC Internet Services Contract: Lander](#), NYFocus (March 6, 2024).

⁹ See “Continuing Variance Request to Board of Correction Minimum Standards Section 1-11(e)(1)(i) Regarding Correspondence,” dated Nov. 14, 2022, at <https://www.nyc.gov/site/boc/meetings/january-10-2023.page>.

¹⁰ BDS Opp. Ltr to BOC, Jan. 5, 2023, https://bds.org/assets/files/2023_01_05-BDS-Ltr-re-DOC-Mail-and-Package-Variances-2.pdf; LatinoJustice PRLDEF, BDS, Bronx Defenders, the Neighborhood Defender Service of Harlem, and New York County Defenders, Demand Ltr to BOC, March 10, 2023, <https://bds.org/assets/files/2023-03-10-Joint-Letter-Prior-to-03-14-meeting-FINAL-1.pdf>.

¹¹ Lauren Gill, *Federal Prisons’ Switch to Scanning Mail Is a Surveillance Nightmare*, THE INTERCEPT, September 26, 2021, <https://theintercept.com/2021/09/26/surveillance-privacy-prisons-mail-scan/>.

¹² See Petition, *Reid v. DOC*, Index No. 806245/2024E available at <https://bds.org/assets/files/Verified-Petition-Marcus-Reid-v-Department-of-Correction.pdf>.



DOC must end its community surveillance web.

The DOC first entered its contract with Securus Technologies “for the installation, configuration and maintenance of an inmate telephone system” on October 1, 2014. The original contract was set to run for a five-year term. At the conclusion of that term, DOC had five one-year sole options to renew the Agreement. The contract and its final renewal option expired at the end of this year.

Ending the contract with Securus Technologies would not only preserve New Yorkers’ rights and liberties, it would also save the city money. Presently, it appears that the Department pays Securus approximately \$5.4 million per year for phone and surveillance services. By contrast, almost every other city agency appears to pay well less than \$500,000 per year for phone services.

As the Department will now be required to issue a new RFP for phone services, the Council should ensure the Department limits its RFP to phone services only and abandons its misguided and illegal efforts to act as a domestic spying agency.

The time for New York City to get out of business with predatory surveillance phone and technology companies like Securus is now. Our community’s data should be returned from Securus. Neither our Constitutional rights nor our dignity, privacy, and intimacy should be for sale in our city. New Yorkers deserve more.

If you have any questions, please feel free to reach out to me at abriody@bds.org.