



2022 Legislative Memorandum

Subject: Supporting A.84/S.296 to Prohibit the Use of Reverse Warrants

LatinoJustice PRLDEF (“LatinoJustice”) writes in support of A.84(Quart)/S.296(Myrie) to prohibit the use of reverse location and keyword search warrants. LatinoJustice is a New York-based national civil rights organization that works to change discriminatory practices against Latinxs via advocacy, litigation, and education. We have a track record of investigating and challenging both rogue and systemic police practices that infringe upon the rights of Latinxs.

Reverse location and reverse keyword warrants are a part of the expanding digital dragnet that entangles entire communities in the criminal justice system without individualized and specific suspicion of wrongdoing. They result in the exposure of dozens to thousands of people’s private information to law enforcement for mere presence in the vicinity of a particular area within a given timeframe or for entering certain words or phrases into a search engine. By harnessing the limitless digital data troves collected and warehoused by the private technology industry, modern police departments can access millions of data points that together reveal “the whole pattern of life”¹ at a fraction of the cost of traditional surveillance programs.²

In addition to violating the U.S. and New York State Constitutions’ privacy and reasonable search protections, reverse geolocation warrants pose heightened risks to the communities of color that have historically been subject to disparate police overenforcement.³ Whereas traditional search warrants target data for a single person, cellphone or account, reverse warrants fish for the information of all individuals who happen to be in the proximity of a particular block or neighborhood within a given time frame. Given the legacy of racially segregated localities and school districts in New York State,⁴ location tends to strongly correlate with race, ethnicity, and class.⁵ Reverse warrants thus risk exacerbating the long-standing disparities endemic to policing especially when deployed in highly segregated areas, for example a predominantly Black residential area in Syracuse,⁶ a majority Latino neighborhood on Long Island,⁷ or the area surrounding a major mosque in Queens.⁸

Likewise, reverse keyword warrants can also have the effect of disproportionately targeting an entire minority community where the keyword is tied to a particular ethnic or linguistic group. For instance, in November 2021, Reuters reporters exposed the Suffolk County Sheriff’s Department’s ongoing use of AI surveillance to data mine prison phone conversations in a potentially discriminatory manner. Under this program, the Sheriff collects and scans “as many as 600,000 minutes per month,” and with the help of AI, runs the calls through keyword searches. Tellingly, many of the words searched have had “multiple or benign meanings such as ‘mara,’ which can mean gang or simply a group of friends.”⁹

LatinoJustice’s own review of these public records revealed that Spanish keywords searched by the Suffolk County Sheriff’s Department appeared more likely than English words to be overbroad and general, rather than specifically related to a criminal act. For instance, whereas English keywords included *gun* and *murder*, Spanish keywords included *dulce* (sweet or candy) and



muñeca (doll or wrist). This example illustrates the potential disparate impact that a keyword search can have: If detectives search for a word that is commonly used by Spanish speakers in normal everyday contexts, the result is that Spanish speakers will be more likely than English speakers to have their privacy violated for making a benign everyday Google search.

To be sure, suspicionless, racially and ethnically disparate domestic spying based on geolocation and language patterns have been a part of the American surveillance playbook for decades. Though our contemporary surveillance infrastructure has grown to unprecedented reach and capability, law enforcement agencies have long attempted to create this type of ubiquitous presence in private and public space to monitor and surveil minority communities deemed inherently suspicious or threatening. Through networks of cameras and microphones, legions of confidential informants, and databases from which to create “hot spot” maps and social network analyses, intelligence agents and euphemistically named “community liaison officers” have infiltrated, surveilled, and stigmatized mosques,¹⁰ Central American neighborhoods,¹¹ and Black-led civil rights organizations.¹²

For instance, we are readily reminded of opaque surveillance programs like the decade-long NYPD initiative to monitor anyone in the proximity of a so-called “Muslim hot spot.” Based on the flawed theory that routine practices of the Islamic faith constituted “indicators” of radicalization, for over a decade, intelligence agents collected photographs of worshippers, charity organizers, and students; infiltrated mosques with confidential informants and recording devices; and listened for and even provoked the use of pre-determined keywords or topics like *jihad*, meaning “struggle” in Arabic. Through the NYPD’s “Muslim Surveillance Program,” the ebb and flow of everyday movements and conversations were collected into data points to be analyzed and picked apart by investigators. Yet not one genuine lead ever materialized from these intrusive means.¹³

Similar racial disparities have been documented in other routine NYPD practices. For instance, the NYPD remains under a federal monitorship for racial profiling in pedestrian stops.¹⁴ It has also been widely criticized by the public, as well as by independent observers and members of the New York City Council, for its maintenance of a so-called “gang database” that consists of over 90% people of color.¹⁵ In a recent opinion by the First Circuit, the court scolded the Boston Police Department’s similar database, emphasizing that “the fact that the young men were all Hispanic does not permit an inference that any, or all, of them were gang members.”¹⁶ Given this track record of racially disparate policing, it is all too likely that given the opportunity to use reverse warrants, the NYPD will use them to target communities of color.

Similar concerns apply to other law enforcement agencies throughout the state. For instance, the Suffolk County Police Department remains subject to a U.S. Department of Justice consent decree that was put in place pursuant to a federal investigation into the County’s practice of disparate policing of Latinxs, failure to investigate hate crimes against Latinxs, and failure to take Latinx victims seriously.¹⁷ To date, the County remains under challenge for failing to end its discriminatory practices against Latinxs.¹⁸ Other suburban New York police departments are also



subject to ongoing DOJ investigation for discriminating against Black residents, including most recently, Mount Vernon Police Department.¹⁹

Given the persistence and prevalence of racially discriminatory policing in New York State, paired with continuing de facto segregation, we must be extremely critical of any new technology that would drastically expand law enforcement's ability to fish for suspects out of an ill-defined geographic or linguistic pool. New York State must not tolerate the kind of suspicionless targeting of communities based on geography and language patterns that reverse warrants enable.

LatinoJustice affirms its strong support of A.84/S.296 and urges lawmakers to pass it without delay.

¹ Jennifer Valentino-DeVries, *Tracking Phones, Google is a Dragnet for the Police*, New York Times (Apr. 13, 2019).

² According to the New York Times, Google has historically charged law enforcement \$245 per search warrant, compared to, for example, the \$1,500 per month the NYPD paid to dozens of confidential informants to collect private information from Muslims during the 2001-2013 spying campaign challenged in *Raza v. City of New York*, 998 F. Supp. 2d 70 (E.D.N.Y. 2013).

³ New York Division of Criminal Justice Service, *Comparison of Population to Arrests and Prison Sentenced by Race/Ethnicity, County, and Region* (2016-2020).

⁴ Ann Choi, et al., *Long Island Divided: Parts 1-10*, Newsday (Nov. 17 2019); Brian Purnell and Jeanne Theoharis, *How New York City Became the Capital of the Jim Crow North*, The Washington Post (Aug. 23, 2017); New York Civil Liberties Union, *Building a Better Future: The Structural Racism Built into I-81, and How to Tear it Down* (Dec. 2, 2020); Richard Alba and Steven Romanlewski, *The End of Segregation? Hardly*, Center for Urban Research (March 2021); Sally Goldenberg, *50 Years After Fair Housing Act, New York City Still Struggles with Residential Segregation*, Politico (Apr. 23, 2018).

⁵ E.g., Alana Semuels, *The U.S. Is Increasingly Diverse, So Why Is Segregation Getting Worse?*, Time Magazine (June 21, 2021) (noting, for example, that more than 80% of large metropolitan areas are more segregated in 2019 than they were in 1990); Aaron Williams and Armond Emamdjomeh, *America is More Diverse Than Ever – But Still Segregated*, The Washington Post (May 10, 2018); May Wong, *How Segregated Are We?*, Stanford Business (Aug. 6, 2020) (using GPS data to measure “experiential segregation” and finding that whereas commercial places were less segregated, neighborhoods, churches, and schools remain highly segregated).

⁶ New York Civil Liberties Union, *Building a Better Future: The Structural Racism Built into I-81, and How to Tear it Down* (Dec. 2, 2020).

⁷ Ann Choi, et al., *Long Island Divided: Parts 1-10*, Newsday (Nov. 17, 2019).

⁸ In 2001, the New York City Police Department established a secret surveillance program that mapped, monitored, and analyzed American Muslim daily life in so-called “Muslim hot-spots,” areas with known large populations of Muslim Americans, such as Queens College and business districts in Astoria. See Diala Shamas and Nermeen Arastu, *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, Creating Law Enforcement Accountability & Responsibility (CLEAR Project) (2013).

While it is not the focus of this commentary, it is also crucial that the State evaluate the impact of such invasive tools on Latinx youth. See Danielle Cohen, *NYC School Segregation Report Card: Still Last, Action Needed Now!*, University of Southern California, The Civil Rights Project.

⁹ Avi Asher-Schapiro and David Sherfinski, ‘Scary and Chilling’: AI Surveillance Takes U.S. Prisons by Storm, Reuters (Nov. 15, 2021).

¹⁰ See, e.g., Complaint, *Raza v. City of New York*, 998 F. Supp. 2d 70 (E.D.N.Y. 2013); Diala Shamas and Nermeen Arastu, *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, Creating Law Enforcement Accountability & Responsibility (CLEAR Project) (2013).

¹¹ See, e.g., Alan Feuer, *MS-13 Gang: 96 Charged in Sweeping Crackdown on Long Island*, New York Times (Dec. 20, 2019) (noting the use of wire taps, surveillance, and monitoring or social media accounts of Central Americans on Long Island suspected to have ties to MS-13 members or affiliates).



¹² See, e.g., Mark Chiusano, *Eyes in the Sky*, Newsday (Sept. 30, 2020) (citing the use of police drones to conduct aerial surveillance of BLM protesters on Long Island); Kathleen Culliton, *NYPD Used Instagram to Stalk BLM Protester, Lawsuit Says*, Patch (Oct. 19, 2021).

¹³ Complaint, *Raza v. City of New York*, 998 F. Supp. 2d 70 (E.D.N.Y. 2013); Diala Shamas and Nermeen Arastu, *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, Creating Law Enforcement Accountability & Responsibility (CLEAR Project) (2013).

¹⁴ See *Floyd v. City of New York*, ECF No. 877, 08-cv-1034, (S.D.N.Y. Jan. 13, 2022) (appointing a new monitor).

¹⁵ See Eileen Grench, *NYPD Gang Database Targeted by City Council Member*, The City (Sept. 15, 2021).

¹⁶ *Diaz-Ortiz v. Garland*, No. 19-1620, (1st Cir., Jan. 10, 2022).

¹⁷ U.S. Department of Justice, *United States Agrees to Comprehensive Settlement with Suffolk County Police Department to Resolve Investigation of Discriminatory Policing Against Latinos* (Dec. 3, 2013).

¹⁸ Memorandum and Order, ECF No. 322, *Plaintiffs #1-21 vs. Suffolk County Police Department*, 2:15-cv-02431 (E.D.N.Y. Aug. 4, 2021) (denying the Suffolk County Police Department's motion for summary judgment and allowing 21 Plaintiffs' claims that SCPD continues to discriminate against Latinos, despite the DOJ settlement, to continue to trial).

¹⁹ U.S. Department of Justice, *United States Attorney Damian Williams Announces Investigation of the Mount Vernon Police Department* (Dec. 3, 2021); *Mount Vernon Police Under Civil Rights Investigation for Alleged Discrimination*, NBC New York (Dec. 3, 2021) (quoting U.S. Attorney Damian Williams's announcement that the investigation will assess "whether the Mount Vernon Police Department engages in discriminatory conduct, singling out Black residents").

