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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Thomas W. McGee III, Circuit Court Judge

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Trial Court Case No. 2023-CP-40-01850  
Appellate Case No. 2025-002437

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SOUTH CAROLINA PUBLIC INTEREST FOUNDATION, and JOHN SLOAN,  
individually and on behalf of all others similarly situated,

*Plaintiffs-Appellants,*

v.

SOUTH CAROLINA STATE LAW ENFORCEMENT DIVISION, and  
MARK KEEL, in his official capacity as Chief of the South Carolina State Law  
Enforcement Division,

*Defendants-Respondents.*

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**BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE*  
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Cato Institute is a nonpartisan, nonprofit public policy research organization founded in 1977 and dedicated to the principles of individual liberty, limited government, free markets, and the rule of law. Cato’s Project on Criminal Justice focuses on constitutional limitations on government power, including surveillance authority. Cato regularly participates as *amicus curiae* in cases presenting significant questions of constitutional law, and has a particular interest in cases that implicate the privacy of ordinary citizens and the proper allocation of power among the branches of government.

### INTRODUCTION AND SUMMARY OF THE ARGUMENT

If you’ve driven in the Palmetto State, chances are the government watched you do it. The South Carolina Law Enforcement Division (SLED) oversees a vast network of automatic license plate readers (ALPRs) throughout the state. App. Br. 6. ALPRs “are high-speed, computer-controlled camera systems” that capture all license plate numbers passing by them, together with location, date, and time. *Street Level Surveillance: Automatic License Plate Readers*, ELEC. FRONTIER FOUND. (updated Oct. 1, 2023) [hereinafter *ALPRs*].<sup>2</sup> These systems “can reveal the direction

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<sup>1</sup> No part of this brief was authored by any party’s counsel, and no person or entity other than *amicus* funded its preparation or submission.

<sup>2</sup> Available at <https://tinyurl.com/3s9b79dj>.

and speed a person traveled through triangulation” and, with enough time, “a vehicle’s historical travel.” *Id.* Using just “a few keystrokes,” law enforcement officers can generate a complete map of a person’s movements over time “with few safeguards and little oversight.” Dave Maass, *Data Driven 2: California Dragnet—New Data Set Shows Scale of Vehicle Surveillance in the Golden State*, ELEC. FRONTIER FOUND. (Apr. 22, 2021).<sup>3</sup>

SLED’s ALPR database is not a modest record-keeping tool, but comprehensive statewide surveillance. It combines information from its own ALPRs with those of “42 other law enforcement agencies across South Carolina,” then stores it for up to one year. App. Br. 8. As of early 2025, this system was capturing nearly 150 million observations a year. *Id.* 99.8% have no connection to criminal activity. *Id.*

What makes this database particularly imposing is not just its scale, but SLED’s total control of every aspect of its operation. SLED decides which agencies or officers may access it, on what terms searches may be conducted, and how long data is retained. *Id.* at 10–11. (Indeed, SLED used to retain data for three years before unilaterally—and reversibly—changing course during this litigation. *Id.* at 7 n.1). The database is currently accessible to thousands of law enforcement officers,

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<sup>3</sup> Available at <https://tinyurl.com/35b56y9s>.

including users from at least 71 state, local, and federal agencies. *Id.* at 9. Once given access, a user can search any full or partial license plate number and instantly retrieve a detailed location history of that vehicle—including the date, time, and place of every ALPR capture—potentially exposing sensitive information about a person’s religious beliefs, political affiliations, or medical care. *Id.* What’s more, officers need not meet any evidentiary threshold before running a search. *Id.* at 10. The only limitation SLED imposes is its own undefined requirement that a search further some “public-safety related mission” or “official public safety purposes.” *Id.*

The Appellants have filed suit alleging that the Legislature’s broad delegation of power to SLED to collect records of people’s movements—and retain them for future review and inspection—violates the separation of powers, nondelegation doctrine, and South Carolina Administrative Procedures Act. *Id.* at 5. After hearing cross-motions for summary judgment, the circuit court ruled in favor of SLED. *Id.* at 5–6.

The circuit court’s decision carries consequences that extend beyond the questions of law it purports to resolve. Surveillance technology does not stay within the boundaries its operators initially envision. Systems justified as tools for solving serious crimes end up being abused for routine enforcement, political monitoring—even personal vendettas. The history of law enforcement’s use of database technology is one of mission creep and misuse, enabled not only by bad actors but

by the absence of meaningful external constraints. When an agency writes its own rules, conducts its own audits, and answers to no independent authority, the question is not *whether* distortions will follow, but only when. South Carolinians understand this: community groups, state officials, and members of the General Assembly have all raised alarm about the privacy implications of unchecked ALPR surveillance. Yet the circuit court ignored these warnings and approved of full SLED discretion.

Moreover, the circuit court's rule would invite the warrantless deployment of still more technologies to surveil the public. ALPRs, military-grade drones, financial "audit trails," and other means let the government monitor millions of people with ease, tracking movements, detecting faces, recording digital conversations, and then storing everything for later review. Left unchecked, such tools result in a panopticon.

This Court should reverse the decision below and foreclose a surveillance apparatus that silently records the movements of everyone in South Carolina who dares to venture onto a public street.

## ARGUMENT

### I. SLED'S ALPR DATABASE ENDANGERS SOUTH CAROLINIANS' PRIVACY AND SECURITY.

SLED's ALPR program extends far beyond the handful of cameras the agency itself operates. By aggregating data from more than 42 law enforcement agencies across the state, SLED has constructed a centralized surveillance network that captures and permanently indexes the movements of some 150 million vehicles each year. App. Br. 8. The circuit court's decision affirmatively sanctions that infrastructure—without requiring approval of the Legislature or even public comment.

Comprehensive databases like SLED's have proven to be vectors for abuse. Nothing in the decision below—or in SLED's self-authored Policy 13.40—meaningfully keeps officers from using the database to track whoever they want, whenever they want. SLED has already proven that it will change its policies unilaterally and without notice, changing its data retention period during this case's pendency. *Id.* at 7 n.1. A surveillance system of this magnitude, operated at SLED's sole discretion, places the privacy and security of everyone in the state of South Carolina at risk.

#### A. SLED's ALPR database is ripe for abuse.

While proponents frame ALPRs as a straightforward crime-fighting tool, the absence of any meaningful legal check transforms them into a system primed for

abuse. The dangers are more than theoretical, as officers have already demonstrated a willingness to misuse far less powerful surveillance tools. A 2016 investigation by the Associated Press revealed that police officers across the country routinely exploited confidential databases to surveil “romantic partners, business associates, neighbors, [and] journalists” for “reasons that have nothing to do with daily police work.” Sadie Gurman & Eric Tucker, *Across US, police officers abuse confidential databases*, ASSOCIATED PRESS (Sept. 28, 2016, 12:28 AM).<sup>4</sup> South Carolina is no exception. In 2024, a North Charleston police officer admitted to using city-operated security cameras to spy on his wife. Thomas Gruel, *North Charleston Police officer demoted for using cameras to track wife*, LIVE 5 WCSC (last updated June 24, 2024, 6:34 PM).<sup>5</sup> The officer headed the department’s technology unit and data logs revealed that he used the city’s surveillance cameras “excessively and on various days” in order to track his wife. *Id.*

The risk of abuse extends to the use of ALPR systems. A recent study by the Institute for Justice revealed that officers have used “ALPR camera networks to keep tabs on their romantic interests, including current partners, exes, and even strangers who unwittingly caught their eye in public.” Christopher Ingraham, *Police Have Reportedly Used License Plate Readers to Stalk Romantic Interests at Least 16*

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<sup>4</sup> Available at <https://tinyurl.com/umxmtb3>.

<sup>5</sup> Available at <https://tinyurl.com/5fnzxrs7>.

*Times in Recent Years*, INST. FOR JUST. (last updated May 13, 2026).<sup>6</sup> Particularly alarming is how most abuses have come to light. It has not been through the internal audits that agencies like SLED claim to have in place, see App. Br. 10, but because victims reported the conduct to police in connection with “broader stalking allegations.” Ingraham, *supra*.

Abuse of ALPRs extends beyond romantic surveillance. Officers in Kansas used ALPRs to track a man who wrote a negative op-ed criticizing the local police department. Jay Stanley, *Kansas Town Uses License Plate Readers to Go After Man Who Wrote Op-Ed*, ACLU (Feb. 3, 2026).<sup>7</sup> And in Georgia, a police chief was criminally charged with using license plate readers to stalk and harass individuals who had drawn his personal ire. *Georgia police chief charged with using license plate readers to stalk and harass people*, ASSOCIATED PRESS (Nov. 20, 2025, 12:02 PM).<sup>8</sup>

These abuses share a common thread. They occurred because no meaningful guardrails existed to prevent an officer from treating a powerful surveillance database as a personal tool. The lack of documented misuse in the record is not evidence that SLED’s database is being used responsibly. After all, in South

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<sup>6</sup> Available at <https://tinyurl.com/3xtzbs5a>.

<sup>7</sup> Available at <https://tinyurl.com/ynkz7tyr>.

<sup>8</sup> Available at <https://tinyurl.com/2ndnrczv>.

Carolina, the agency conducting the surveillance is also the one responsible for detecting and reporting its own abuses. *See* Ingraham, *supra* (explaining that the list of known cases involving ALPR abuse is “almost certainly an undercount”). The decision below left gaping vulnerabilities intact.

**B. SLED’s ALPR database vitiates privacy.**

ALPRs collect data at a staggering rate—some capture “thousands of plates per minute.” *ALPRs*, *supra*. When a city deploys ALPRs, locals can do little to avoid them. *Id.* As a result, most of the data they collect is on the movements of ordinary, law-abiding citizens. App. Br. 8. Indeed, 99.8% of SLED’s data points have “no connection to any vehicle of interest . . . when SLED captures and stores them.” *Id.*

ALPRs are often pitched to police and their communities “as tools for solving serious crimes, finding stolen vehicles, and locating missing people.” Jason Koebler, *Police Used Flock to Give a Man a Traffic Ticket*, 404 MEDIA (Mar. 26, 2026, 11:04 AM).<sup>9</sup> But use of these systems routinely drifts toward mundane enforcement—like in Charleston, where a new mobile license plate reader is being used for parking enforcement. Anna Harris, *Charleston’s new mobile license plate reader ramps up tickets, fines*, LIVE 5 WCSC (last updated April 22, 2026, 6:17 PM).<sup>10</sup>

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<sup>9</sup> Available at <https://tinyurl.com/3uane28n>.

<sup>10</sup> Available at <https://tinyurl.com/mrxue7h6>.

ALPRs can also be deployed for more nefarious reasons, such as political surveillance. Over ten months, “more than 50 federal, state, and local agencies ran hundreds of searches through Flock’s national network of surveillance data in connection with protest activity.” Dave Maass & Rindala Alajaji, *How Cops Are Using Flock Safety’s ALPR Network to Surveil Protesters and Activists*, ELEC. FRONTIER FOUND. (Nov. 20, 2025).<sup>11</sup> While some of these protest-related searches may have related to a crime, “in most cases officers did not articulate a criminal offense when running the search.” *Id.* They sought to learn who attended events. *Id.*

This monitoring of constitutionally protected activity could affect freedom of expression for South Carolina college students: “There are cameras everywhere in downtown Clemson,” including police ALPRs. Eriana Meadows, *Clemson police enhance surveillance for better public safety*, WSPA.COM (last updated Dec. 15, 2025, 5:17 AM).<sup>12</sup> Students across the country have already begun self-censoring out of fear that protest participation will follow them. *See* Elena Moore, *For some students who protested war in Gaza, fear and silence is a new campus reality*, NPR (April 12, 2025, 6:01 AM).<sup>13</sup> Now, when a Clemson University student drives to a

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<sup>11</sup> Available at <https://tinyurl.com/3djd33p5>.

<sup>12</sup> Available at <https://tinyurl.com/3hfus43d>.

<sup>13</sup> Available at <https://tinyurl.com/ujy4a8xv>.

rally, demonstration, or organizing meeting, an ALPR could be used to flag her associations or beliefs.

Worse still, South Carolinians have no idea who has access to their location data. SLED's ALPR database is open to "more than 400 individual users from at least 71 different state, local, and federal agencies." App. Br. 9. ICE and other federal agencies can access local and state police ALPR databases. Jason Koebler & Joseph Cox, *ICE Taps into Nationwide AI-Enabled Camera Network, Data Shows*, 404 MEDIA (May 27, 2025, 9:36 AM).<sup>14</sup> Throughout America, officers are helping ICE by "performing lookups in Flock's AI-powered [ALPR] system for 'immigration' related searches." *Id.* There have been "more than 4,000 nation and statewide lookups by local and state police done either at the behest of the federal government or as an 'informal' favor to federal law enforcement." *Id.*

South Carolinians are speaking out. In North Charleston, community groups and residents voiced concerns about a proposed increase in funding for ALPRs. Rickey Ciapha Dennis Jr., *North Charleston's approval of 745 new police cameras draws both criticism and praise*, THE POST & COURIER (June 10, 2022).<sup>15</sup> While some residents supported the city's goal of solving crimes, others expressed privacy

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<sup>14</sup> Available at <https://tinyurl.com/mwz7r2b2>.

<sup>15</sup> Available at <https://tinyurl.com/3v68689b>.

concerns and worry that these cameras enable “discriminatory policing practices.”

*Id.*

Even SCDOT questions the privacy implications of ALPRs on state highways. Then-Transportation Secretary Christy Hall has expressed concern that “there has not been public policy put into place by the South Carolina Legislature regarding the use of [ALPRs], (or the) privacy concerns regarding the collection, handling and disposition of the data they collect.” David Ferrara, *A company installed license plate cameras without permission. SC agency wants clear rules*, THE POST & COURIER (Mar. 11, 2024).<sup>16</sup>

While the General Assembly has not yet enacted a law governing ALPR use, legislation has been repeatedly introduced to restrict access to SLED’s database. Michael Majchrowicz, *SC lawmaker wants restrictions on police using automatic license plate readers*, THE POST & COURIER (updated Feb. 28, 2024);<sup>17</sup> Mary Green, *Lawsuit targets ‘expansive surveillance network’ law enforcement can access to track SC drivers*, LIVE 5 WCSC (updated Nov. 29, 2022, 9:34 PM).<sup>18</sup> The recent Senate Bill 447 would create “a statewide framework for the responsible use of [ALPRs] in South Carolina.” Brian Adams, *Commentary: Give police tools and*

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<sup>16</sup> Available at <https://tinyurl.com/mryw68rv>.

<sup>17</sup> Available at <https://tinyurl.com/yktb9jh5>.

<sup>18</sup> Available at <https://tinyurl.com/ha9zhmyd>.

*rules to keep SC safe*, THE POST & COURIER (Mar. 17, 2026);<sup>19</sup> *see also* S. 447, 126th Gen. Assemb., (S.C. 2025–2026) (sponsored by Sen. Adams). It would also limit data retention to 90 days. S. 447. The absence of enacted legislation and the presence of debate only underscore SLED’s lack of authority to enact novel, sweeping forms of surveillance.

Currently, SLED sets its own access rules, conducts its own audits, and defines its own standards. An officer need not articulate any suspicion, seek supervisory approval, or satisfy any objective criterion before perusing the full location history of any vehicle. *See* App. Br. 10. The decision below wrongly left this arrangement undisturbed. The Legislature, not SLED, must determine who can access the ALPR database and for what purposes.

## **II. THE DECISION BELOW INVITES SLED TO BUILD NETWORKS OF CONTINUOUS SURVEILLANCE.**

Law enforcement agencies are testing and using surveillance systems that enable comprehensive and continuous tracking of citizens, especially when combined. Though the court below suggested that its opinion is limited to ALPRs, its reasoning would sanction nearly all tracking at the sole and unreviewed discretion of police. Pervasive monitoring of the entire state’s residents by ALPRs, drones, and security cameras—without any legislative initiative whatsoever—would be

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<sup>19</sup> Available at <https://tinyurl.com/3au86uzd>.

constitutional so long as the collecting agency can articulate some connection, however attenuated, to criminal investigations or public safety. *See* MSJ Order 11. SLED could aggregate data on millions of innocent residents by blanketing South Carolina with surveillance technologies it operates at its own whims.

### **A. Drones**

“Drones have made surveillance cheaper, easier, and more effective.” Jessica Dwyer-Moss, *The Sky Police: Drones and the Fourth Amendment*, 81 ALB. L. REV. 1047, 1049 (2017–2018). Varying in size from “business jets [to] small enough to fit into the palm of someone’s hand,” they can be “virtually undetectable.” *Id.* at 1048. They can carry cameras, thermal imaging sensors, microphones, license plate readers, facial recognition software, and cell-site simulators. Beryl Lipton, *Drones as First Responder Programs Are Swarming Across the United States*, ELEC. FRONTIER FOUND. (June 27, 2024).<sup>20</sup> Most troublingly, they “observe individuals in previously private and constitutionally protected spaces, like their backyards, roofs, and even through home windows.” *Id.*

More than 1,400 police departments now use drones, a number that is growing as cities continue to adopt “drone as first responder” programs. Jay Stanley, *Eye-in-*

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<sup>20</sup> Available at <https://tinyurl.com/2wp67bz7>. At least one company has started developing Taser-equipped drones. Ese Olumhense, *Axon’s Ethics Board Resigned Over Taser-Armed Drones. Then the Company Bought a Military Drone Maker*, WIRED (Sept. 8, 2023, 1:46 PM), <https://tinyurl.com/mkcwbauv>.

*the-Sky Policing Needs Strict Limits*, ACLU 1 (July 27, 2023).<sup>21</sup> These programs deploy drones in response to 911 calls and other service requests, and they can help officers assess a situation before arriving at the scene. Lipton, *supra*. However, they also enable around-the-clock warrantless—often, suspicionless—surveillance.

Consider what happened to Daniel Posada in Chula Vista, California—the city with the nation’s first and longest-running drone-as-first-responder program. After Daniel and his girlfriend had an argument at a bus stop, a bystander called 911 and a drone was deployed from a police station to investigate. Dhruv Mehrotra & Jesse Marx, *The Age of the Drone Police is Here*, WIRED (June 5, 2024, 6:00 AM).<sup>22</sup> On its way to Daniel, the drone “cross[ed] the airspace of 23 blocks, potentially exposing thousands of Chula Vista residents to the gaze of law enforcement.” *Id.* The drone spied Daniel as he was riding his bike down the street, and “[w]ithin seconds, a police car pulled up alongside him, and an officer was soon rummaging through his pockets”—even though no crime had occurred. *Id.*

Since Daniel’s city began its drone-as-first-responder program in 2018, drones have “criss-cross[ed] the skies . . . nearly 20,000 times.” *Id.* They have amassed hundreds of hours of video footage of the city’s residents, routinely flying “over backyards and above public pools, high schools, hospitals, churches, mosques,

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<sup>21</sup> Available at <https://tinyurl.com/yc37jpmnd>.

<sup>22</sup> Available at <https://tinyurl.com/d9jve3db>.

immigration law firms, and even the city’s Planned Parenthood facility.” *Id.* While Chula Vista maintains that it does not use drones for routine surveillance, records from the city show that it is not uncommon for drones to be deployed in response to minor complaints such as “reports of ‘loud music’, a ‘water leak,’ and someone ‘bouncing a ball against a garage.’” Stanley, *Eye-in-the-Sky Policing*, *supra*, at 2.

Further, not all cities have limited their use of drones to emergency response. They have been used to surveil public events<sup>23</sup> and protests,<sup>24</sup> search for zoning and code violations,<sup>25</sup> enforce pandemic-era social distancing,<sup>26</sup> and even monitor Labor

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<sup>23</sup> Cybele Mayes-Osterman & Josh Meyer, *Military parade is coming to DC soon. Officials gave a preview of what to expect*, USA TODAY (June 10, 2025, 8:13 AM), <https://tinyurl.com/3e4xu6vu> (using drones to surveil crowds at a parade).

<sup>24</sup> Tina Moore, *NYPD used drones for arrests in pro-Palestine protests in NYC*, N.Y. POST (Oct. 28, 2023, 11:45 AM), <https://tinyurl.com/4j459k5n>; A.J. Vicens & Raphael Satter, *As ‘No Kings’ protests denounce Trump, surveillance worries emerge*, REUTERS (Oct. 19, 2025, 12:51 PM), <https://tinyurl.com/2yy97r9t> (discussing concerns about the government using drones to surveil protesters).

<sup>25</sup> Hannah Fry, *Government drones used in ‘runaway spying operation’ to peek into backyards in Sonoma County, lawsuit says*, L.A. TIMES (June 6, 2025, 6:06 PM), <https://tinyurl.com/2bjfuwz4> (discussing alleged use of drones to search for code violations); Matt Powers, *Michigan Supreme Court Creates Giant Loophole for Warrantless Surveillance*, INST. FOR JUST. (May 6, 2024), <https://tinyurl.com/42knayye> (same).

<sup>26</sup> *NJ Town Resorts to Talking Drones to Enforce Social Distancing*, WNBC (Apr. 9, 2020, 11:08 AM), <https://tinyurl.com/mr3rmsk7>; Chaim Gartenberg, *Social-distancing detecting ‘pandemic drones’ dumped over privacy concerns*, THE VERGE (Apr. 23, 2020, 10:51 AM), <https://tinyurl.com/yaev57d9>.

Day weekend backyard parties.<sup>27</sup>

## **B. Security Cameras**

Today’s security cameras bear little resemblance to those of decades past. Many are “capable of 360-degree video, infrared vision, or the ability to pan, tilt, and zoom,” and they “can be equipped with real-time face recognition or license plate recognition software.” *Street Level Surveillance: Surveillance Camera Networks*, ELEC. FRONTIER FOUND. (updated Oct. 1, 2023).<sup>28</sup> They can be linked with ALPRs, smart streetlights,<sup>29</sup> gunshot detection systems,<sup>30</sup> cell-site simulators,<sup>31</sup> and drones, all of which “dramatically expand surveillance capabilities.” Patrick Sisson,

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<sup>27</sup> Jake Offenhartz, *New York police will use drones to monitor backyard parties this weekend, spurring privacy concerns*, ASSOCIATED PRESS (Aug. 31, 2023, 7:53 PM), <https://tinyurl.com/bdf9k25z>.

<sup>28</sup> Available at <https://tinyurl.com/3za9mtbu>.

<sup>29</sup> Michael Silberman, *Streetlights as Spyware*, TECH POL’Y PRESS (Aug. 30, 2023), <https://tinyurl.com/4a8twrrn> (discussing privacy concerns surrounding use of smart streetlights, which allow police to “quietly layer invisible surveillance technologies . . . once [the streetlights are] in place”).

<sup>30</sup> Helen Webley-Brown, et al., *ShotSpotter and the Misfires of Gunshot Detection Technology*, SURVEILLANCE TECH. OVERSIGHT PROJECT (July 14, 2022), <https://tinyurl.com/455bffuk>. See also Dhruv Mehrotra & Joey Scott, *Here Are the Secret Locations of ShotSpotter Gunfire Sensors*, WIRED (Feb. 22, 2024, 8:18 PM), <https://tinyurl.com/msdbuk7s>.

<sup>31</sup> *Cell Site Simulators*, NAT’L ASS’N OF CRIM. DEF. LAWS. (Apr. 28, 2016), <https://tinyurl.com/4vx26fdz> (“Cell Site Simulators, also known as IMSI catchers or Stingrays, mimic cell towers and trick phones within their radius into communicating with them instead, during which they are able to collect information about the device.”).

*Welcome to Chula Vista, where police drones respond to 911 calls*, MIT TECH. REV. (Feb. 27, 2023);<sup>32</sup> *see also* Lipton, *supra*.

New York City is exemplary of the extremes to which pervasive surveillance can go. The NYPD relies on an extensive system of video surveillance to “track and profile millions of New Yorkers each day.” Akela Lacy, *An NYPD Camera Points Directly into Their Bedroom. They’re Suing the City Over it.*, THE INTERCEPT (Oct. 28, 2025, 5:00 AM).<sup>33</sup> These tens of thousands of cameras all feed into one centralized network: the Domain Awareness System. *Id.* This system “collects the identity, location, banking details, vehicle information, social media activity, and friend groups of all who live in or enter the city. It combines these entries with civil and criminal records and converts them into digital profiles, reconstructing, in effect, the private lives of millions.” *Id.*

### **C. Auditory and Through-Wall Surveillance**

Additionally, companies are developing new auditory surveillance systems. Matthew Guariglia, *Flock’s Gunshot Detection Microphones Will Start Listening for Human Voices*, ELEC. FRONTIER FOUND. (Oct. 2, 2025).<sup>34</sup> While it’s unclear exactly how these devices will work, it’s likely that they will rely on microphones to listen

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<sup>32</sup> Available at <https://tinyurl.com/454ndn84>.

<sup>33</sup> Available at <https://tinyurl.com/4wzzx7zn>.

<sup>34</sup> Available at <https://tinyurl.com/ydjj6x47>.

“for human voices in distress” by eavesdropping on conversations. *Id.* Researchers have also developed systems that use radio waves to “see” through walls. Meg Duff, *How Wi-Fi sensing became usable tech*, MIT TECH. REV. (Feb. 27, 2024).<sup>35</sup> These technologies raise the possibility that law enforcement will increasingly be able to “see” and “hear” private activities even through walls.

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The circuit court’s ruling authorizes the collection and storage of 150 million location records of law-abiding citizens without legislative approval and it provides no limiting principles that would stop SLED from claiming the same authority to deploy whatever surveillance technology comes next. Indeed, SLED has now claimed the authority to deploy facial recognition technology on streets throughout the state under the same general provisions at issue here. App. Br. 43. The decision below grants SLED a blank check to surveil South Carolinians.

The South Carolina Constitution does not consign the people to live under the constant gaze of a digital panopticon, built one layer of SLED surveillance at a time. *Cf.* GEORGE ORWELL, 1984 at 3 (1949) (“There was of course no way of knowing whether you were being watched at any given moment. How often, or on what system, the Thought Police plugged in on any individual wire was guesswork.”).

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<sup>35</sup> Available at <https://tinyurl.com/fze7cxcc>.

The separation of powers exists to ensure that consequential decisions—those implicating the privacy, security, and liberty of the people—are made by the representative branch of government. This Court should reverse the decision below and reserve to the General Assembly the power SLED has unlawfully accrued.

### CONCLUSION

For these reasons and those given by the Appellants, this Court should reverse the decision below and remand the case for further proceedings.

Respectfully submitted,

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