

MEMORANDUM OF SUPPORT FOR THE REVERSE LOCATION AND REVERSE KEYWORD SEARCH PROHIBITION ACT

A.3306 Assemblymember Solages/S.217 Senator Myrie
May 2023

The Surveillance Technology Oversight Project supports The Reverse Location And Reverse Keyword Search Prohibition Act (A.3306 Solages/S.217 Myrie) and urges the legislature to pass, and the Governor to sign, this bill.

The Surveillance Technology Oversight Project (S.T.O.P.) litigates and advocates for New Yorkers' privacy, working to abolish local governments' systems of mass surveillance. Our work highlights the discriminatory impact of surveillance on Muslim Americans, immigrants, the LGBTQ+ community, indigenous peoples, and communities of color, particularly the unique trauma of anti-Black policing. S.T.O.P. fights to ensure that technological advancements don't come at the expense of age-old rights. We hope to transform New York City and State into models for the rest of the United States of how to harness novel technologies without adversely impacting marginalized communities.

New York's police and prosecutors are using alarming new legal tactics to gain unprecedented access to New Yorkers' location history. "Geofence warrants" allow police to compel Google and other tech companies to identify every person in a specified place during a specified period.¹ This geographic area could be as small as an apartment or as large as a city, allowing police to track nearly limitless numbers of people with a single court order. Unlike normal search warrants, which require proof that an individual is suspected of a particular crime, these search warrants are issued when the police don't even know how many people's information will be provided, let alone have probable cause that they each have a connection to a crime.

A.3306 and S.217 would ban both geofence warrants and keyword warrants, a related practice that allows police to compel Google and other search engines to reveal everyone who searched for a specific name, event, or address. Both of these general warrants violate the Constitution and could easily be weaponized to track political protests, religious services, and other sensitive sites.

A 2019 example: the Manhattan District Attorney's office² obtained a reverse location warrant for the site of a fight involving the pro-Trump group the "Proud Boys" to attempt to identify the counter-protesters at the event.

¹ <https://www.nacdl.org/getattachment/816437c7-8943-425c-9b3b-4faf7da24bba/nacdl-geofence-primer.pdf>

² <https://gothamist.com/news/manhattan-da-got-innocent-peoples-google-phone-data-through-a-reverse-location-search-warrant>.

A.3306 and S.217 would also ban police purchases of similar data from tech companies and data brokers. Increasingly, police are able to buy the information that they can't force companies to hand over in court. Even if a company like Google were to refuse such a request, countless other data brokers would readily sell our information to any bidder, including the police. We can't put a price on the Fourth Amendment, but police departments routinely do, and it's shockingly low.

- **Geofence and keyword searches put New Yorkers at risk of false arrest.** In several cases, geofence warrants have misled police to suspect innocent bystanders of serious crimes. In one case, an Arizona man was wrongly arrested for a murder when he was miles away because someone else was logged into his Google account.³ And in another case, a Florida man was wrongly connected to a crime simply for riding his bike around the neighborhood, when officers wrongly thought he was circling the scene of a crime.⁴
- **Geofence warrants are growing quickly.** Between 2017 and 2019, Google saw a 7,500% increase in requests. Recently, they disclosed that Geofence warrants now account for a majority of all U.S. warrants.⁵ One federal magistrate wrote that “[t]he government’s undisciplined and overuse of this investigative technique in run-of-the-mill cases that present no urgency or imminent danger poses concerns to our collective sense of privacy and trust in law enforcement officials.”⁶ A U.S. District Court judge held in a separate case that a geofence warrant “plainly violates the rights enshrined in” the Fourth Amendment.⁷
- **Opting out is impossible for many.** Many delivery companies demand their drivers and bicyclists must be trackable. There are countless other ways that New Yorkers are coerced to provide their location data as the cost of modern life. Whether it’s ordering a package, taking a car, making a payment, or even connecting with friends, countless apps are tracking our location every day.
- **Geofence and keyword searches threaten First Amendment rights.** Our police and prosecutors cannot be trusted with tools that can be so easily weaponized against protesters, religious communities, and undocumented New Yorkers. For years, the NYPD targeted protesters and political activists with the highest levels of surveillance, a pattern repeated during more recent Black Lives Matter protests.

If implemented, the Reverse Location and Reverse Keyword Search Prohibition Act would do the following:

- Ban New York courts from issuing geofence and keyword warrants.

³ <https://www.wired.com/story/creepy-geofence-finds-anyone-near-crime-scene/>

⁴ <https://www.nbcnews.com/news/us-news/google-tracked-his-bike-ride-past-burglarized-home-made-him-n1151761>

⁵ https://services.google.com/fh/files/misc/supplemental_information_geofence_warrants_united_states.pdf

⁶ *In re Search of Info. Stored At Premises Controlled By Google*, No. 20 M 392 (N.D. Ill. Aug. 24, 2020).

⁷ *U.S. v. Chatric*, No. 3:19-cr-130, 2 (E.D. Va. Mar. 3, 2022)(available at [https://www.nacdl.org/Document/United-States-v-Chatric-EDVA-Ruling-\(2022\)](https://www.nacdl.org/Document/United-States-v-Chatric-EDVA-Ruling-(2022))).

- Ban police from purchasing equivalent geofence and keyword data.
- Exclude any evidence obtained in violation of the law at trial.
- Bar New York courts and police from assisting with out-of-state geofence warrants.

Geofence warrants and keyword warrants pose a clear threat to New Yorkers, putting them at risk of false arrest, chilling First Amendment rights to protest and worship, and giving police an Orwellian power to track the public. By passing this bill, New York will demonstrate its commitment to New Yorkers' safety from false arrest, civil rights, and the privacy rights enshrined in our Constitution. For these reasons, we urge the legislature to pass and the Governor to sign the Reverse Location And Reverse Keyword Search Prohibition Act (A.3306 Solages/S.217 Myrie).