

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
SOUTH CAROLINA PUBLIC )  
INTEREST FOUNDATION and JOHN )  
SLOAN, individually and on behalf of all )  
others similarly situated, )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Case No. 2023-CP-40- \_\_\_\_\_

**SUMMONS**

Plaintiffs, )

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.

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the date of such service. If you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for a judgment by default for the relief demanded in the Complaint and any other relief deemed appropriate.

Dated: April 11, 2023

/s/ James G. Carpenter  
James G. Carpenter, (SC Bar No. 1136)  
Attorney for Plaintiffs

Address: The Carpenter Law Firm, P.C  
819 East North Street  
Greenville, SC 29601  
(864) 235-1269  
*james.carpenter@carpenterlawfirm.net*

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 KEEL, in his official capacity as Chief of )  
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IN THE COURT OF COMMON PLEAS  
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Case No. 2023-CP-40- \_\_\_\_\_

**COMPLAINT  
 FOR DECLARATORY JUDGMENT  
 AND INJUNCTIVE RELIEF**

Defendants.

NOW COME the Plaintiffs, by their undersigned attorneys, and as a Complaint against the Defendants, would show unto the Court:

**INTRODUCTION**

1. The South Carolina State Law Enforcement Division (“SLED”) is an agency of the State of South Carolina. Like every state agency, SLED was created by the South Carolina General Assembly, and it exists solely by virtue of its enabling legislation, the text of which establishes its fundamental purpose: to investigate suspected criminal activity and enforce the criminal laws. S.C. Code Ann. § 23-3-15. Like every state agency, SLED cannot lawfully exceed the scope of the powers afforded to it by the legislature. *See, e.g., Edisto Aquaculture Corp. v. S.C. Wildlife & Marine Res. Dep’t*, 311 S.C. 37, 40 (1993) (explaining the bedrock principle of administrative and constitutional law that an executive agency is “a creature of statute” and “is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged”).

2. SLED has violated that core constitutional principle by creating a statewide surveillance program without any legislative authorization. The program uses a network of automated license plate readers (“ALPRs”)—high-speed, computer-controlled camera systems—to record and store in a database it maintains over a hundred million time- and location-stamped images of license plates each year as vehicles travel South Carolina roads. *See* Exhibit 1, Freedom of Information Act Request # 2022-0118 and Response from SLED (August 3, 2022) [hereinafter “Ex. 1, 2022 FOIA Response”] at 4, “Item 11.” The overwhelming majority of people whose data is collected and held in this surveillance program’s database are in no way whatsoever suspected of or connected to criminal activity.

3. SLED then makes these images in its searchable database available to scores of other municipal, state, and federal agencies. *See id.*, “Item 5”; Exhibit 2, SLED Memorandum, “Retention Time for ALPR Data,” (Aug. 7, 2012) [hereinafter “Ex. 2, SLED ALPR Memo”]. Members of these agencies may search the database without any suspicion of criminal wrongdoing. *See* Exhibit 3, SLED Policy 13.40: Automated License Plate Recognition [hereinafter “Ex. 3, Policy 13.40”] at 2, 4.

4. SLED “does not deny that it currently houses and maintains—and has operated for over ten (10) years—a database that collects and stores non-discriminative information compiled by automated license plate readers.” Defendants’ Return to Petition for Original Jurisdiction, *S.C. Pub. Int. Found. v. S.C. L. Enf’t Div.*, No. 2022-001613 (Dec. 28, 2022) [hereinafter “SLED Return”] at 2.

5. SLED collects ALPR data and maintains it in its database perpetually and indiscriminately. SLED stores the images it collects for three years, along with the time, date, and location at which the images were collected. *See* Ex. 3, Policy 13.40 at 1, 4. SLED collects and stores the images regardless of whether the vehicle owner is suspected of any violation of the law.

6. The South Carolina General Assembly has never authorized SLED’s ALPR data collection program and database, even though it has expressly authorized SLED by statute to

operate other types of public safety databases—including the statewide DNA, gang, and fingerprint databases.

7. In many other states, ALPR programs are expressly authorized and governed by legislatively-enacted statutes.

8. Not only is South Carolina’s ALPR program unconstitutional because it lacks legislative authorization, but it also violates the Administrative Procedures Act (APA) because SLED has failed to promulgate a single formal regulation governing (or even mentioning) the program.

9. Instead, again by SLED’s own admission, the agency’s ALPR program is governed by an informal, internal policy. *See id.*; SLED Return at 5, 6. In developing this policy, SLED did not adhere to rulemaking procedures required by the South Carolina Administrative Procedures Act, such as providing the public an opportunity for notice and comment, even though the policy creates binding norms and rules for SLED, external agencies, and South Carolina residents who are subject to the ALPR surveillance.

10. Given the widespread and rapidly proliferating scope of SLED’s ALPR program, Plaintiffs originally petitioned the South Carolina Supreme Court to exercise its original jurisdiction to consider their complaint. Defendants opposed the Petition in their Return. The Court denied the Petition after finding that “the matter can be determined in a lower court in the first instance.” Order Denying Petition for Original Jurisdiction at 1, *S.C. Pub. Int. Found. v. S.C. L. Enf’t Div.*, No. 2022-001613 (Feb. 9, 2023).

11. Plaintiffs now bring this matter in this Court pursuant to the South Carolina Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10, *et. seq.* Plaintiffs ask this Court to issue declaratory relief and enjoin SLED’s illegal ALPR database because the General Assembly, not an administrative agency, must determine if, when, and how a statewide ALPR program should operate in South Carolina.

**PARTIES AND STANDING**

**12. Plaintiff South Carolina Public Interest Foundation** (“SCPIF”) is a not-for-profit corporation, organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including upholding the Constitution and laws of the State of South Carolina.

**13. Plaintiff John Sloan** is a citizen, resident, taxpayer, and registered elector of the State of South Carolina.

**14. Defendant South Carolina State Law Enforcement Division** is a state agency with rulemaking authority. SLED’s enabling statute vests it with authority over “the investigation of organized criminal activities or combined state-federal interstate criminal activities, all general criminal investigations, arson investigation and emergency event management pertaining to explosive devices.” S.C. Code Ann. § 23-3-15(A)(1).

**15. Defendant Mark Keel** is the Chief of SLED. As Chief, Mr. Keel is the head of the agency, pursuant to S.C. Code Ann. § 23-3-10, and oversees the agency’s rulemaking. He is sued in his official capacity.

**16.** Plaintiffs have public interest standing to bring this action because the case raises matters of great public importance that require guidance from this Court. *See, e.g., Baird v. Charleston Cnty.*, 333 S.C. 519, 531 (1999).

- a) SLED’s operation of a statewide surveillance program without statutory authority is an ongoing violation of the South Carolina Constitution’s bedrock separation of powers principle. The program implicates the privacy interests and individual rights of millions of South Carolina residents whose movements are being recorded and monitored by an unauthorized surveillance database.
- b) The public’s interest in remedying this constitutional violation is particularly strong given the rapid and unchecked proliferation of ALPR cameras across the state; the history of and potential for abuse of ALPR technology; the unauthorized

expenditure of public funds; and the potential for future implementation of similarly unlawful mass surveillance programs using emerging technologies.

- c) There is a pressing need for judicial guidance regarding this ongoing and expanding unauthorized statewide surveillance program.

17. Plaintiff John Sloan also has constitutional standing because his license plate information has been captured and stored in SLED's database without his consent. *See Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 437 S.C. 258, 260 (2022).

18. Mr. Sloan is a resident of Greenville, South Carolina, which is known to have an established network of ALPR cameras that feed into SLED's database. *See Eric Connor, Greenville Adding More Cameras to Read License Plates, Raising Questions of Oversight, Privacy*, POST AND COURIER (Dec. 20, 2020; updated Dec. 28, 2022). Mr. Sloan has regularly driven the roads and highways in Greenville, and in other parts of the state, for 35 years. His information has therefore certainly been captured by ALPR cameras and stored by SLED in its database, showing where Mr. Sloan has traveled and when he has done so.

### JURISDICTION AND VENUE

19. This Court has jurisdiction to hear these claims pursuant to the South Carolina Declaratory Judgment Act, which provides the Court with the "power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20.

20. Venue is appropriate in this Court because Plaintiffs' cause of action arises, at least in part, in Richland County, where SLED is headquartered. S.C. Code Ann. § 15-7-20(2).

### FACTS

#### **I. Automated License Plate Reader Systems**

21. ALPRs are devices that automatically capture passing license plate images and detect license plate characters. As SLED describes them, "ALPRs are cameras linked with software that

allows them to identify and read license plates on vehicles passing along public roadways and then convert the image to a format readable by a computer.” SLED Return at 3.

22. As SLED has further detailed, “[t]here are three different categories of ALPRs: fixed, mobile, and portable. A fixed ALPR is installed in a permanent location, such as a traffic light, telephone pole, or bridge. A mobile ALPR is mounted and installed on a law enforcement patrol car. A portable ALPR is transportable and can be moved and deployed in a variety of venues as needed, such as a trailer.” SLED Return at 3-4.

23. ALPRs can scan hundreds of plates per minute.

24. ALPR systems can notify officers or analysts in real time if a passing license plate is on a “hot list”—i.e., a list of license plates that a government agency has flagged as belonging to a vehicle of interest. SLED Return at 4-5.

25. ALPR cameras also wirelessly transmit the images they capture to data warehouses, where the images are stored along with their associated data, including the time and location at which the license plate was scanned. SLED Return at 4.

26. The warehousing of ALPR data is independent of the ALPR’s hot list function. ALPR systems can be programed to perform one function, the other, or both. SLED Return at 4-5.

## **II. Defendant SLED’s ALPR Program**

27. SLED does not dispute that it “currently houses and maintains—and has operated for over ten (10) years—a database that collects and stores non-discriminative information compiled by automated license plate readers (“ALPRs”).” SLED Return at 2; *see also* Ex. 2, SLED ALPR Memo.

28. SLED maintains that it operates this database to “support[] public-safety related missions.” SLED Return at 2.

29. SLED’s statewide ALPR program includes three primary components:

- a. ALPR hardware;
- b. SLED’s own searchable database of historical ALPR data;
- c. A real-time “hot list” alert system. *See* Ex. 3, Policy 13.40.

### A. SLED's ALPR Hardware

30. SLED owns five portable ALPR trailers and one mounted mobile ALPR device. SLED Return at 3.

### B. SLED's Database<sup>1</sup>

31. SLED maintains a searchable database that includes hundreds of millions of images of license plates traveling on South Carolina roads, each stamped with the time and place the picture was taken. SLED Return at 4.

32. Many law enforcement agencies use their own ALPR devices to capture license plate data that they upload and store on SLED's database. SLED Return at 4; Ex. 1, 2022 FOIA Response at 3-4, "Item 4," "Item 6."

33. SLED collects and retains ALPR images from at least 48 agencies. SLED Return at 4; Ex. 1 2022 FOIA Response at 3, "Item 6."

34. Under SLED's informal ALPR policy—"Policy 13.40"—SLED indiscriminately retains all images and metadata uploaded to the database for three years. *See* Ex. 3, Policy 13.40 at 4.

35. SLED gives at least 99 agencies (from both within and outside South Carolina) access to its ALPR database, and more than 2,000 individual users have active accounts for access. *See* SLED Return at 4; Ex. 1, 2022 FOIA Response at 4, "Item 5," "Item 8" (confirming recent numbers); Exhibit 6, SLED's Response to Freedom of Information Act Request # 2015-153 at 2,

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<sup>1</sup> SLED has entered into sole source contracts with both NDI-Recognition Systems ("NDI-RS") and Vigilant Solutions ("Vigilant") to procure ALPR technology and software. *See* Exhibit 4, South Carolina Law Enforcement Division "Intent to Award Sole Source," (Dec. 18, 2021); Exhibit 5, South Carolina Law Enforcement Division, "Intent to Award Sole Source," (April 25, 2022). For a highly technical explanation of how ALPR software works generally, as well as the specific capabilities of NDI-RS and Vigilant's platforms, see U.S. Dep't of Homeland Security, Science and Technology, "License Plate Recognition Database Software Market Survey Report" (April 2013), <https://www.dhs.gov/publication/license-plate-recognition-database-software>.

“Question 1” (March 5, 2015) [hereinafter “Ex. 6, 2015 FOIA Response”] (showing the variety of agencies that had access to SLED’s ALPR database as early as 2014).

**36.** Any individual or agency with access to the database can run a search based on a license plate, a partial license plate, or an address. *See* Ex. 2, SLED ALPR Memo; *supra* note 1.

- a) A database search based on a license plate will generate a report of every image of that plate in the database, along with the date, time, and location each image was taken.
- b) A database search based on an address will generate a report of all license plates captured at or near a location of the user’s choosing.

**37.** For each search, users can request the full three years of results or narrow by time frame. *See supra* note 1.

**38.** The location tracking of a particular vehicle made possible by accessing the database can reveal years’ worth of sensitive personal information. This can include where an individual traveled, revealing that individual’s contacts and associates; where an individual shopped; what religious services an individual attended; and which medical professionals or counselors an individual visited.

**39.** There is no evidentiary threshold that an officer must satisfy before conducting a search of the database. The only restrictions Policy 13.40 imposes on law enforcement use of ALPR systems is that it be for a “legitimate law enforcement purpose” or “public safety-related mission.” *See* SLED Return at 5, 18; Ex. 3, Policy 13.40 at 2, 4. Policy 13.40 does not define these terms, which are otherwise so vague as to allow for subjective and discriminatory interpretation of those terms by officers searching the database.

**40.** All the ALPR data stored on the database is collected and retained without justification or suspicion of wrongdoing.

**41.** The overwhelming majority of data stored on the database documents the movements and locations of individuals who have never been suspected of or involved in a crime and are not relevant to a criminal or public safety investigation.

42. As of July 13, 2022, SLED’s database contained data from over four hundred million (400,000,000) license plate reads. *See* Ex. 1, 2022 FOIA Response at 4, “Item 11.”

43. The database is growing rapidly. In 2021, SLED received data from 150,738,105 license plate reads—up from 135,368,308 in 2020 and 26,451,216 in 2014. *See id.*; Ex. 6, 2015 FOIA Response at 6, “Question 5.”

44. SLED’s ALPR surveillance database will continue to expand rapidly as municipalities continue to add new ALPR cameras, all of which may feed into the database.<sup>2</sup>

### C. SLED’s Real-Time Hot List Alert System

45. A “hot list” refers to a list of license plates that have been deemed “suspected in criminal activity.” SLED Return at 5.

46. An ALPR system can be configured to generate a real-time alert—a notification to the agency—any time an ALPR camera observes a hot-listed license plate. SLED Return at 5.

47. SLED’s ALPR system is linked to a number of hot lists, including: the SC Department of Motor Vehicles’ lists of vehicles with expired registration tags or lapsed insurance; the FBI’s National Crime Information Center (NCIC) list of stolen vehicles; and hot lists created by any user with “administrative privileges.” *See* SLED Return at 5 n.4; Ex. 6, 2015 FOIA Response at 6, “Question 4”; Ex. 3, Policy 13.40 at 2.

### III. Statutory Framework

48. Defendant SLED is a state agency created by the South Carolina General Assembly. S.C. Code Ann. § 23-3-10.

49. The General Assembly has passed dozens of statutes that authorize, oblige, and constrain SLED’s administration of specific criminal justice and public safety databases, including the Criminal Justice Information Center (a statewide repository for arrest records, custodial

<sup>2</sup> *See, e.g.,* Rickey Ciapha Dennis Jr., *North Charleston Planning to Add Over 700 Cameras Around the City to Expand Surveillance*, THE POST AND COURIER (Apr. 28, 2022), <https://bit.ly/3FKNdNr>; Corinne McGrath, *Horry County Police Department to Install 23 License Plate Readers to Combat Crime*, WMBF (Mar. 21, 2022), <https://bit.ly/3t5FaDa>; *Simpsonville Uses Automated License Plate Readers to Help Fight Crime*, WSPA (Mar. 31, 2021), <http://bit.ly/3T4P3Mg>.

records, and fingerprints collected pursuant to a lawful arrest), S.C. Code Ann. §§ 23-3-15(A)(4), 23-3-110 *et seq.*; the State DNA Database, S.C. Code Ann. §§ 23-3-610 *et seq.*; the Statewide Criminal Gang Database, S.C. Code Ann. § 16-8-330; fingerprint databases, S.C. Code Ann. §§ 23-3-40, 23-3-45, 23-3-120, 37-22-270; and a body-worn camera database, S.C. Code Ann. § 23-1-240, amongst others.

**50.** No South Carolina statute creates, authorizes, governs, or even mentions ALPR devices, databases, or programs.

**51.** SLED's enabling statutes empower the agency to engage in "the investigation of organized criminal activities or combined state-federal interstate criminal activities, all general criminal investigations, arson investigation and emergency event management pertaining to explosive devices." S.C. Code Ann. § 23-3-15(A)(1); *see also* Exhibit 7, South Carolina Law Enforcement Division, "Memorandum of Understanding Pertaining To The Establishment Of The South Carolina Law Enforcement Division Automated License Plate Reader," at 2 (citing § 23-3-15(A)(1) in a section titled "Empowering Statutes"). To that end, SLED may engage in activities like maintaining a "criminal justice data base," S.C. Code Ann. § 23-3-15(A)(4), and a "criminal information and communication system," S.C. Code Ann. § 23-3-110. Such provisions do not authorize the mass collection, storage, and distribution of years' worth of time- and location-stamped vehicle data of millions of individuals who will never be the subject of, or relevant to, a criminal investigation.

**52.** In contrast to South Carolina, numerous states provide express legislative authorization for ALPR databases, along with detailed legislative provisions governing and limiting the operation of those databases. For example, other states: (1) establish strict data retention periods; (2) restrict the use of ALPR data to the investigation of enumerated criminal and traffic offenses; (3) limit access to an ALPR database to officials with specialized training; (4) provide privacy protections to ensure that information in the database is treated confidentially; (5) require the publication of detailed reports concerning the collection and use of ALPR data; (6) establish that

failure to comply with statutory requirements is grounds for exclusion of evidence; and (7) provide a private right of action for individuals harmed by data breaches. *See* N.C. Gen. Stat. Ann. § 20-183.32; Mont. Code Ann. § 46-5-117(d)(V); Md. Code Ann., Public Safety § 3-509(c)(2); Fla. Stat. Ann. § 316.0777(2); Neb. Rev. Stat. Ann. § 60-3206(3); Ark. Code Ann. § 12-12-1805(b)(4)(B); Cal. Civ. Code § 1798.90.54.

#### **IV. Regulatory Framework**

**53.** SLED has not promulgated a single regulation governing the use, operation, or maintenance of its ALPR program. *See* S.C. Code Regs. Ch. 73.

**54.** The entire program is administered, by SLED’s own admission, under the informal policy described above—Policy 13.40—which cannot be enforced by the public and which SLED can amend, revoke, or replace at any time, without notice and without providing an opportunity for public input. *See* SLED Return at 5, 18; Ex. 3, Policy 13.40.

**55.** Although SLED failed to implement Policy 13.40 as a formal regulation—with public notice and comment—Policy 13.40 establishes binding norms that give it regulatory effect. *See* Ex. 3, Policy 13.40. Specifically, Policy 13.40 regulates who may use ALPR systems (Subsection “C”), how the systems may be used (Subsections “A” and “C”), and who may access SLED’s ALPR database (Subsection “E”). *Id.* Policy 13.40 also establishes a binding rule for SLED’s retention of images generated by ALPR systems (Subsection “F”). *Id.* at 4 (“SLED will maintain data and images submitted to [SLED’s database] for a period of three years.”).

**56.** Municipal police departments also have stated expressly that SLED Policy 13.40 is binding on them. For example, Myrtle Beach Police Department Policy # 276 states: “MBPD shall adhere to SLED policy and guidelines related to the storage and/or retrieval of ALPR data as per South Carolina Law Enforcement Division Policy Statement 13:40, Automated License Plate

Recognition.” See Exhibit 8, Myrtle Beach Police Department, Administration Regulations and Operating Procedures # 276, at 4.

57. SLED’s policy also binds the public generally; individuals cannot escape the ALPR cameras while traveling on many South Carolina roads, nor can they prevent their data from being stored in the database for three years.

**V. SLED’s ALPR Program Implicates a Host of Critical Issues and Exposes Members of the Public to Considerable Risk**

58. When law enforcement agencies deploy ALPR programs without legislative authorization, those agencies, not the legislature, make significant policy choices that impact the public’s day-to-day lives.

59. Unregulated ALPR systems and inadequate policies risk widespread infringement on the exercise of constitutional rights and can result in profound invasions of privacy. For example, the International Association of Chiefs of Police (IACP) has warned that ALPR technology can make people “more cautious in the exercise of their protected rights of expression, protest, association, and political participation because they consider themselves under constant surveillance,” and that “mobile LPR units [can] read and collect the license plate numbers of vehicles parked at addiction counseling meetings, doctors’ offices, [and] health clinics.”<sup>3</sup>

60. Unregulated ALPR surveillance systems and inadequate policies can also make confidential databases vulnerable to misuse and abuse. Associated Press journalists reviewed hundreds of *documented* examples of misuse of public safety databases by law enforcement, including ALPR databases, motivated by “romantic quarrels, personal conflicts, or voyeuristic curiosity,” and the desire “to stalk or harass.”<sup>4</sup> There have been multiple instances of law enforcement officers using ALPR technology in particular to track former romantic partners or

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<sup>3</sup> IACP, *Privacy Impact Assessment Report for the Utilization of License Plate Readers* at 2, 13 (Sept. 2009), <https://bit.ly/3t18dbi>.

<sup>4</sup> Sadie Gurman, *Across US, Police Officers Abuse Confidential Databases*, Associated Press (Sept. 28, 2016), [bit.ly/40nkXYJ](https://bit.ly/40nkXYJ).

potential romantic partners and their associates,<sup>5</sup> including a report in South Carolina of “at least one case where ALPRs were used to track the whereabouts of [a] partner by falsely reporting the partner as missing.”<sup>6</sup>

61. Unregulated ALPR programs and inadequate policies also can create vulnerability to security breaches. For example, in 2019, hackers breached an ALPR and facial recognition database belonging to U.S. Customs and Border Patrol.<sup>7</sup> Security breaches and incompetence have caused live streams linked to more than a hundred ALPR cameras in Florida, Louisiana, and California to be exposed online, along with their real-time analytics and hot list alerts.<sup>8</sup>

62. Other legislatively authorized databases that SLED operates have statutory guardrails that protect against these kinds of harms. The state’s DNA database is instructive. A statute specifically prescribes the limited circumstances under which DNA may be collected; sets forth permissible uses of the database; establishes confidentiality requirements; limits access to the database; creates criminal penalties for abuses; establishes expungement procedures by which individuals can have their DNA sample removed from the database; and conditions the continued force of the statute upon SLED’s promulgation of numerous regulations and the legislature’s continued annual appropriations. *See* S.C. Code Ann. §§ 23-3-600 *et seq.*

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<sup>5</sup> *See, e.g.,* Cole West, *Kechi Officer Used License Plate Reader to Track Estranged Wife, Police Say*, KAKE ABC (Oct. 31, 2022), <https://bit.ly/3UtFwPE>; Ellen Dennis, *Everett Ex-Cop Acquitted of Perjury But Is Still Guilty of Stalking*, THE DAILY HERALD (Feb. 14, 2022), <https://bit.ly/3fxPxxg0>; Becky Metrick, *Former Pa. Police Officer Arrested on Stalking Charges Following Standoff*, PENNLIVE (Sept. 28, 2021), <https://bit.ly/3NEoD2U>.

<sup>6</sup> *See* Eric Connor, *Greenville Adding More Cameras to Read License Plates, Raising Questions of Oversight, Privacy*, THE POST AND COURIER (July 16, 2022), <https://bit.ly/3hey7pn>.

<sup>7</sup> Drew Harwell and Geoffrey A. Fowler, *U.S. Customs and Border Protection Says Photos of Travelers were Taken in a Data Breach*, WASH. POST (June 10, 2019), <https://wapo.st/3t1P1tK>.

<sup>8</sup> Electronic Frontier Foundation, *License Plate Readers Exposed! How Public Safety Agencies Responded to Major Vulnerabilities in Vehicle Surveillance Tech* (Oct. 28, 2015), <https://bit.ly/3hgMkSM>.

**CLAIMS FOR RELIEF**

**First Cause of Action  
(Violation of Separation of Powers and *Ultra Vires* Agency Action)  
South Carolina Constitution, art. I, § 8, and art. III, § 1**

63. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

64. Article I, section 8 of the South Carolina Constitution provides: “In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”

65. Article III, section 1 of the South Carolina Constitution vests the legislative power of the State in the South Carolina General Assembly.

66. Pursuant to this separation of powers, executive agencies have “only such powers as have been conferred by law and must act within the authority granted for that purpose.” *Bazzle v. Huff*, 319 S.C. 443, 445 (1995) (citing *Triska v. Dep’t. of Health & Env’t Control*, 292 S.C. 190 (1987)).

67. Defendant SLED is an executive agency of the State of South Carolina. S.C. Code Ann. § 23-3-10.

68. SLED’s general enabling legislation is contained in Chapter 3 of Title 23 of the Code of Laws of South Carolina.

69. Article 1 creates SLED and vests the agency with certain general “authorities and responsibilities.” S.C. Code Ann. § 23-3-10, 23-3-15. These responsibilities include criminal investigations, (§ 23-3-15(A)(1),(3)), the maintenance of the state’s forensic sciences laboratory (§23-3-15 (A)(2)), operation of the statewide “criminal justice data base” (§ 23-3-15(A)(4)), the operation of specialized tactical response units (§ 23-3-15(A)(5)), the operation and regulation of polygraph exams (§ 23-3-15(A)(6)), inspections and enforcement related to alcoholic beverages (§ 23-3-15(A)(7)), “the coordination of counter terrorism efforts” (§ 23-3-15(A)(8)), and other

activities not “inconsistent with the mission of the division or otherwise proscribed by law” (§ 23-3-15(A)(9)).

70. In addition, the South Carolina General Assembly has passed dozens of laws authorizing SLED to operate specifically enumerated databases, departments, and programs, and dozens more laws constraining how those databases, departments, and programs may be administered and used.

71. No provision in SLED’s enabling statutes, or any other statute, expressly or implicitly authorizes SLED’s ALPR program.

72. None of the duties with which SLED is charged implicitly authorize SLED to engage in bulk data collection via the unregulated, widespread, and technology-fueled surveillance of individuals not suspected of any legal misconduct.

73. No statute authorizes SLED to retain sensitive surveillance data for millions of individuals for three years, in a searchable database that may be perused without any evidentiary standard.

74. No statute authorizes SLED to share this database with scores of agencies and thousands of agents and officers from both inside and outside South Carolina.

75. When an agency acts outside the scope of its enabling statute, that action is *ultra vires* and, therefore, unlawful. *See Bazzle v. Huff*, 319 S.C. 443 (1995).

76. This principle is at its strongest in the context of surveillance by law enforcement, where individual privacy and liberty interests are most at stake. Only the legislature can balance the competing policy interests and craft appropriately tailored solutions to promote successful law enforcement with adequate regard for personal security and privacy.

77. SLED’s ALPR database exceeds the agency’s statutory authority and is therefore unlawful.

**Alternative Second Cause of Action  
(Violation of Separation of Powers and Non-Delegation Doctrine)  
South Carolina Constitution, art. I, § 8, and art. III, § 1**

78. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

79. Article I, section 8 of the South Carolina Constitution provides: “In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”

80. Article III, section 1 of the South Carolina Constitution vests the legislative power of the State in the South Carolina General Assembly.

81. It is “well settled” that “the legislature may not delegate its power to make laws” without violating the constitutional principle of separation of powers. *S.C. State Highway Dep’t v. Harbin*, 226 S.C. 585, 594 (1955).

82. The legislature violates this foundational principle when it passes a “statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative body.” *Id.* at 595.

83. The only statutory provisions SLED has referenced as empowering its ALPR program concern the agency’s authorization to maintain criminal justice investigations, databases, and systems.

84. These provisions do not offer any direction, limiting principle, or guidance regarding a statewide program centered on the mass surveillance of countless individuals not suspected or accused of any violation of the law.

85. No statute contemplates, regulates, constrains, or places sufficient legislative guardrails on any aspect of the agency’s ALPR program.

86. Section 23-3-15(A)(1), for instance, confers only two powers—the power to conduct *criminal* investigations and authority over emergency event management pertaining to explosive devices. If that statute is read to authorize a statewide database centered on the mass surveillance of wholly innocent individuals, it would so strip the law of any plain meaning or guiding principle as to repose “absolute, unregulated, and undefined discretion” in SLED. *Id.* It would authorize

SLED to create any sort of surveillance database it wished, aimed at the millions of South Carolinians who are not involved in, relevant to, or accused of, any criminal misconduct.

87. Such a reading would be an unconstitutional delegation of legislative power to an executive agency, in violation of the non-delegation doctrine and Article 1, section 8 of the South Carolina Constitution.

**Alternative Third Cause of Action  
(Violation of the Administrative Procedures Act)  
S.C. Code Ann. §§ 1-23-10, *et seq.***

88. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

89. The South Carolina Administrative Procedures Act (“APA”) dictates the procedures state agencies must follow when promulgating administrative regulations. S.C. Code Ann. §§ 1-23-10, *et seq.*

90. The APA defines a “regulation” as an “agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency.” S.C. Code Ann. § 1-23-10(4).

91. “Whether a particular agency creates a regulation or simply announces a general policy statement depends on whether the agency action establishes a ‘binding norm.’” *Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 454 (2016) (quoting *Home Health Serv., Inc. v. S.C. Tax Comm’n*, 312 S.C. 324, 328 (1994)).

92. SLED is a state agency under the APA. S.C. Code Ann. § 1-23-10(1).

93. SLED Policy 13.40 establishes binding norms—including data retention periods and access requirements—for the dozens of agencies that use SLED’s ALPR hardware and database.

94. SLED Policy 13.40 and its statewide database also establish procedures and practices that bind the public. Anyone who lives, works, shops, or has other responsibilities in covered areas will have their license plate repeatedly photographed and encoded with time and location information. Any collected data will be retained for at least three years, and anyone with access to

the database can run a search on any member of the public's vehicle without regard for evidentiary thresholds.

95. The public cannot opt out of SLED's ALPR database without relinquishing their use of automobiles altogether.

96. Because Policy 13.40 and the ALPR database bind both the public and other law enforcement agencies in South Carolina, SLED was obliged to comply with the APA's procedures for promulgating a regulation before adopting it.

97. Those procedures include: providing notice of drafting and public hearings; conducting a public hearing; reviewing written and oral testimony; issuing any necessary reports; filing the proposed regulation with the Legislative Counsel for submission to the General Assembly; receiving approval from the General Assembly; and publishing the final rule in the State Register. S.C. Code Ann. §§ 1-23-110, *et seq.*

98. SLED did not comply with any of these requirements before adopting Policy 13.40.

99. Accordingly, even if it were determined that SLED's enabling statutes *did* authorize the operation and maintenance of a statewide ALPR database, and even if it were determined those statutes did so without violating the non-delegation doctrine, SLED's failure to comply with the requirements of the APA renders its ALPR database unlawful.

100. SLED Policy 13.40, and the program it implements, violate the South Carolina Administrative Procedures Act.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request the following relief:

- a) A declaration that Defendant SLED's statewide ALPR database exceeds the agency's statutory authority and violates the Separation of Powers clause of the South Carolina Constitution;
- b) In the alternative, should the Court hold that any aspect of SLED's ALPR database is statutorily authorized, a declaration that such statute unconstitutionally delegates legislative

authority to an executive agency in violation of the Separation of Powers clause of the South Carolina Constitution;

c) In the alternative, should the Court hold that SLED's ALPR database is lawfully authorized by statute, a declaration that SLED Policy 13.40 and the program it implements place binding norms on both the public and government entities, and thus should have been promulgated as a regulation under the South Carolina Administrative Procedures Act;

d) An order enjoining the Defendants and their officers, agents, and employees from collecting ALPR data and operating SLED's ALPR database so long as its operation remains unlawful;

e) An award of reasonable attorneys' fees and costs pursuant to S.C. Code Ann. § 15-77-300; and

f) Such other relief as the court deems just and equitable.

Dated: April 11, 2023

Respectfully submitted,

Alesia Flores (SC Bar No. 72857)  
Allie Menegakis (SC Bar No. 103820)  
Flores Menegakis LLC  
2850 Ashley Phosphate Rd, Ste B  
North Charleston, SC 29418  
(843) 823-7444  
[alesia@fmcriminallaw.com](mailto:alesia@fmcriminallaw.com)  
[allie@fmcriminallaw.com](mailto:allie@fmcriminallaw.com)

/s/ James G. Carpenter  
James G. Carpenter, (SC Bar No. 1136)  
The Carpenter Law Firm, P.C  
819 East North Street  
Greenville, SC 29601  
(864) 235-1269  
[james.carpenter@carpenterlawfirm.net](mailto:james.carpenter@carpenterlawfirm.net)

Barry Friedman\*  
Policing Project  
Washington Square Legal Services, Inc.  
40 Washington Square South  
New York, NY 10012  
(212) 992-6950  
[barry.friedman@nyu.edu](mailto:barry.friedman@nyu.edu)  
\* Application for admission  
pro hac vice forthcoming

*Attorneys for Plaintiffs*