

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PAMELA WRIDT; ROBERT SAUVE;
ALEIDA DELGADO; ALEIDA ROMAN;
and ANDREA ORTIZ, individually and on
behalf of a class of all others similarly
situated,

Plaintiffs,

v.

CITY OF NEW YORK,

Defendant.

Case No. 25-cv-08903 (ALC)

**BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER
AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

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INTEREST OF *AMICUS CURIAE*¹

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the Constitution applies as robustly as its text and history require and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Through its Domain Awareness System, the City of New York has effectively placed its entire population under perpetual surveillance. The City continually records the movements and activities of its residents through a vast network of cameras and other data inputs, and it enables law enforcement to analyze that information, at the push of a button, whenever a specific person or place falls under suspicion. Indeed, that capacity to “revolutionize” surveillance is the point of the system. E.S. Levine et al., *The New York City Police Department's Domain Awareness System* 8, Articles in Advance (Jan. 18, 2017). And other jurisdictions are following New York City's lead by employing the same technology. *Id.* at 12.

“Those who drafted the [Fourth] Amendment could not have imagined such a technology,” but they believed “that Americans had, as against the Government, the right to be let alone, and that the Fourth Amendment must protect against every unjustifiable intrusion by the Government upon the privacy of the individual.” *Chatrue v. United States*, No. 25-112, slip op. at 32 (U.S. June 29, 2026) (citation omitted). The City's warrantless use of the Domain

¹ No person or entity other than *amicus* and its counsel assisted in or made a monetary contribution to the preparation or submission of this brief. Plaintiffs consent to the filing of this brief, and Defendant takes no position on *amicus*'s request to file this brief.

Awareness System to invade the privacy of its residents is at odds with the Fourth Amendment's text and history, as well as with a consistent body of Supreme Court precedent applying the Amendment's safeguards to modern surveillance innovations. And Plaintiffs are entitled to bring this suit, as they and the locations they frequent are among the people and places being recorded daily and incorporated into the City's "virtual panopticon." *Id.* at 21. The motion to dismiss should be denied.

As history and precedent make clear, the core functions of the Fourth Amendment are twofold: securing the privacies of life against arbitrary government power, and placing obstacles in the way of a too-permeating police surveillance. If left unchecked, however, new technologies and developments in surveillance tools would defeat those aims. Courts are "obligated," therefore, "to ensure that the progress of science does not erode Fourth Amendment protections." *Carpenter v. United States*, 585 U.S. 296, 320 (2018) (citation omitted). When new tools enable the government to invade the privacy of the people in ways that were previously impossible, the "judicial obligation" is to counteract such "encroachment," *Chatrpie*, slip op. at 32 (citation omitted), in order to maintain "that degree of privacy against government that existed when the Fourth Amendment was adopted," *Kyllo v. United States*, 533 U.S. 27, 34 (2001). Otherwise, innovations like the Domain Awareness System would "shrink the realm of guaranteed privacy." *Id.* at 34.

In applying these principles, the Supreme Court consistently takes into account the revolutionary implications of digital technology. For at least four reasons, the Justices have explained, courts cannot do what the City urges here: reflexively extend Fourth Amendment rules that govern traditional investigative methods to the new context of digital-age surveillance. First, digital technology has exponentially multiplied the amount of private information that is

vulnerable to law-enforcement scrutiny, a difference not merely in degree, but in kind. Second, the government can now amass surveillance data with an ease and efficiency once unimaginable—as illustrated by the Domain Awareness System itself—thus surmounting the practical limitations that once helped protect Americans from undue intrusions. Third, digital tools make it possible to retrospectively mine these vast troves of data after collection, targeting people who only later come to law enforcement’s attention. The result is that any person can suddenly find that he or she “has effectively been tailed every moment of every day.”

Carpenter, 585 U.S. at 312. Fourth, these combined developments, if left unconstrained by constitutional guardrails, would effectively place the entire population under continuous surveillance, fundamentally altering the relationship between the people and their government.

While these principles address distinctly modern concerns, they stem from the Fourth Amendment’s original meaning. The text of the Amendment expressly guarantees “the people” a right “to be secure” against unreasonable searches, U.S. Const. amend. IV, and this guarantee reflects the Founders’ chief complaint about the general warrants that prompted the Amendment: the mere existence of such unbridled search authority disturbs the balance of power between the state and its citizens by empowering the government to invade any individual’s privacy arbitrarily or abusively. Indeed, each stage in the history leading to the Fourth Amendment’s adoption reflects these concerns. Because indiscriminate search authority undermines everyone’s security against arbitrary government power, the Founders recognized, it is destructive of liberty. The Amendment’s text and history, therefore, demand that constitutional restraints be placed on any new government tool that facilitates perpetual, population-wide surveillance.

The Domain Awareness System is just such a tool, and Plaintiffs have standing to challenge it. Using this system, New York City is conducting “retrospective surveillance of countless persons and places.” *Chatrie*, slip op. at 25. Plaintiffs, their homes, and the destinations they visit each day are among those persons and places. The system’s perpetual warrantless surveillance thus impairs their Fourth Amendment rights. And the City’s contrary legal arguments all rest on propositions the Supreme Court has rejected. First, individuals can have a protected privacy interest in the details of their movements “even though the movements occurred in public.” *Chatrie*, slip op. at 14. People do not surrender their privacy rights “just by doing the ordinary things [most people] do,” *id.* at 29, that is, exiting their front doors and travelling places. Second, surveillance need not paint an “exhaustive picture” of a person’s “every movement,” MTD 27 (quotation marks omitted), in order to impair Fourth Amendment rights, as *Chatrie* makes clear. Finally, Fourth Amendment injury occurs at the moment a person’s private information is collected by the government, regardless of whether any human being “manually” reviews the information the government has gathered, MTD 18.

For all these reasons, the City’s motion should be denied, and this case should be allowed to proceed.

ARGUMENT

I. Precedent and Original Meaning Support the Plaintiffs’ Fourth Amendment Challenge to the Domain Awareness System.

A. The Fourth Amendment preserves the degree of privacy against government that existed at the Founding.

The Fourth Amendment emerged from “the eighteenth-century equivalent of a surveillance state.” David Gray & Danielle Citron, *The Right to Quantitative Privacy*, 98 Minn. L. Rev. 62, 70 (2013). Before the American Revolution, “the reviled ‘general warrants’ and

‘writs of assistance’” empowered British officers to conduct an “unrestrained search for evidence of criminal activity.” *Riley v. California*, 573 U.S. 373, 403 (2014). “Opposition to such searches was in fact one of the driving forces behind the Revolution itself.” *Id.* General warrants came under fire “because they furnished an infinite power of surveillance,” William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602–1791*, at 122 (2009), which the Founders recognized as an “instrument of arbitrary power” and hence “destructive of English liberty,” as James Otis’s landmark speech against the writs put it. James Otis, *Against Writs of Assistance* (Feb. 24, 1761), <https://teachingamericanhistory.org/document/speech-against-writs-of-assistance/>.

The Founders wanted no repeat of these abuses by their new federal government. The “basic purpose” of the Fourth Amendment was thus “to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Chatrie*, slip op. at 8 (quoting *Carpenter*, 585 U.S. at 303). And after the Civil War, rampant misuse of search and seizure authority by Southern police helped persuade the nation to adopt the Fourteenth Amendment in order to impose the same limits on state and local governments. *See* David H. Gans, “*We Do Not Want to Be Hunted*”: *The Right to Be Secure and Our Constitutional Story of Race and Policing*, 11 Colum. J. Race & L. 239, 262-93 (2021).

“From the founding onward,” therefore, the Supreme Court has recognized two core functions of the Fourth Amendment: “to secure the ‘privacies of life’ against the exercise of ‘arbitrary power,’” *Chatrie*, slip op. at 12 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)), and “to place obstacles in the way of a too permeating police surveillance,” *id.* (quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)). These are the Amendment’s “central” aims. *Carpenter*, 585 U.S. at 305.

The Fourth Amendment could not achieve those goals, however, if it ignored the implications of “new technologies” and “[i]nnovations in surveillance tools.” *Chatrie*, slip op. at 12 (citation omitted). Such “new technological tools . . . risk[] Government encroachment of the sort the Framers, after consulting the lessons of history, drafted the Fourth Amendment to prevent.” *Id.* at 32 (quotation marks omitted). Thus, “as ‘[s]ubtler and more far-reaching means of invading privacy have become available to the Government,’” courts are “obligated . . . to ensure that the ‘progress of science’ does not erode Fourth Amendment protections.” *Carpenter*, 585 U.S. at 320 (quoting *Olmstead v. United States*, 277 U.S. 438, 473-74 (1928) (Brandeis, J., dissenting)). Not unlike Alice and the Red Queen, the Fourth Amendment’s application to new technology must stay moving just “to keep in the same place.” Lewis Carroll, *Through the Looking-Glass* 42 (1871).

By fulfilling this “judicial obligation[] to guard against [the] risk of undue encroachment,” *Chatrie*, slip op. at 32, courts ensure that the Constitution continues to provide “that degree of privacy against government that existed when the Fourth Amendment was adopted,” *Kyllo*, 533 U.S. at 34. “Whatever the form of an attempted incursion, the Fourth Amendment protects Americans’ long-held conviction that no government official should have free access to the most closely kept aspects of their lives.” *Chatrie*, slip op. at 12.

In a prototypical example, the Supreme Court held that using thermal imaging “to explore details of the home that would previously have been unknowable” without physical entry was a “search” and thus presumptively required a warrant. *Kyllo*, 533 U.S. at 40. In another case, the Court asked whether the same was true of using a radio-signal beeper placed in a car to follow that car on a road trip. Although the answer was no, the Court made clear that “different constitutional principles” might apply to “dragnet type law enforcement practices” that could

enable “twenty-four hour surveillance of any citizen.” *United States v. Knotts*, 460 U.S. 276, 284, 283 (1983). True to its word, when the Court later examined the remote monitoring of a car’s movements through GPS surveillance—which yielded more precise results with much less effort—the Court held, “notwithstanding *Knotts*, that privacy was implicated and a search had occurred.” *Chatrie*, slip op. at 22 (discussing *United States v. Jones*, 565 U.S. 400 (2012)).

Similarly, the Court held that the Fourth Amendment did not hinder the police’s use of a primitive “pen register,” which recorded the numbers dialed on a landline phone to make outbound calls. *Smith v. Maryland*, 442 U.S. 735, 736 n.1 (1979). At the time, “few could have imagined a society in which a phone goes wherever its owner goes, conveying to the wireless carrier not just dialed digits, but a detailed and comprehensive record of the person’s movements.” *Carpenter*, 585 U.S. at 309. The Court later responded to that innovation accordingly—recognizing that “the exhaustive chronicle of location information casually collected by wireless carriers today . . . implicates privacy concerns far beyond those considered in *Smith*.” *Id.* at 314-15.

In short, the Supreme Court has not allowed technological advances to give law enforcement the windfall of a “Constitution-free zone,” *Chatrie*, slip op. at 19, or to facilitate novel intrusions on privacy unknown to the Founders. Doing so would allow “technology to shrink the realm of guaranteed privacy.” *Kyllo*, 533 U.S. at 34.

It is therefore beside the point that police officers need not “shield their eyes when passing by a home on public thoroughfares.” MTD 23 (quoting *California v. Ciraolo*, 476 U.S. 207, 213 (1986)). True, officers needed no warrant in 1791 to simply observe things in public, and they need none today. But when a city deploys powerful new technology that effectively puts officers with perfect vision and unflagging memories on every street, 24 hours a day, while

combining and storing their collective observations to be analyzed retrospectively “[w]ith just the click of a button,” *Chatrle*, slip op. at 15 (quotation marks omitted), then a qualitatively new phenomenon has emerged. And the “judicial obligation” is to ensure that this development does not encroach on the degree of privacy against government enjoyed at the Founding. *Id.* at 32.²

B. Digital surveillance tools are categorically different from traditional investigative methods under the Fourth Amendment.

When applying the principles described above, the Supreme Court consistently takes into account the revolutionary impact of digital technology. Put succinctly, the Court’s recent decisions all underscore that “digital is different.” Andrew Guthrie Ferguson, *Why Digital Policing Is Different*, 83 Ohio St. L.J. 817, 820 (2022). Specifically, the Justices have discussed four reasons why courts cannot reflexively transfer Fourth Amendment rules that were developed for traditional investigative methods to the new context of digital-age surveillance.

First, digital technology has exponentially multiplied the sheer amount of private information now vulnerable to law-enforcement scrutiny. This amounts to a difference not merely in degree, but in kind. So, for instance, although warrantless searches incident to arrest are among the oldest accepted law-enforcement practices, the Court refused to extend that authority to modern cell phones. Historically, “a search of a person was limited by physical realities” that restricted how many things a person could carry around. *Riley*, 573 U.S. at 393. But the “immense storage capacity” of cell phones changed matters “in both a quantitative and a qualitative sense.” *Id.*

² Citing *Kyllo*, the City also claims that new technologies amount to a search “only” when they are not in general public use. MTD 24. That is not what *Kyllo* says. *See* 533 U.S. at 34 (stating that a search occurs “at least” in those circumstances). And it is hard to imagine how this principle would exculpate the Domain Awareness System in any event.

Regarding photos, for example, “a search in the pre-digital era could have turned up a photograph or two in a wallet,” but that is quite different from “a search of thousands of photos in a digital gallery,” many of them time-stamped with geolocation data, through which “[t]he sum of an individual’s private life can be reconstructed.” *Id.* at 400, 394. Thus, “a cell phone’s capacity allows even just [this] one type of information to convey far more than previously possible,” *id.* at 394, not to mention the myriad other types of data now stored on phones. Because the “intrusion on privacy” is no longer “physically limited” as it was before cell phones were involved, *id.*, adopting the rules from “a pre-digital analogue” would have led to “a significant diminution of privacy,” *id.* at 400.

Second, the government can now amass surveillance data with an ease and efficiency once unimaginable. “In the precomputer age, the greatest protections of privacy were neither constitutional nor statutory, but practical. Traditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken.” *Jones*, 565 U.S. at 429 (Alito, J., concurring in the judgment). But because digital tools “make long-term monitoring relatively easy and cheap,” *id.*, money and manpower no longer constrain surveillance to the degree they once did. Continuous monitoring of a suspect’s car, for instance, “would have required a large team of agents, multiple vehicles, and perhaps aerial assistance,” an effort likely reserved for “an investigation of unusual importance.” *Id.* But “because GPS monitoring is cheap in comparison to conventional surveillance techniques . . . it evades the ordinary checks that constrain abusive law enforcement practices.” *Id.* at 415-16 (Sotomayor, J., concurring).

In short, “society’s expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue” an individual’s “every single movement . . . for a very long period.” *Carpenter*, 585 U.S. at 310 (quoting *Jones*,

565 U.S. at 430 (Alito, J., concurring in the judgment)). And as the Court has made clear, “new technology should not transform what individuals had reasonably thought they could withhold from the Government.” *Chattrie*, slip op. at 15.

Third, digital tools make it easy not just to gather revealing data about the activities of countless people, but also to store and retrospectively mine that data to target specific individuals who only later come to law enforcement’s attention. Using cell phone location information, for example, “the Government can now travel back in time to retrace a person’s whereabouts,” so police need not “know in advance whether they want to follow a particular individual, or when.” *Carpenter*, 585 U.S. at 312. “Whoever the suspect turns out to be, he has effectively been tailed every moment of every day.” *Id.*

Likewise, when the government employs “geofence” technology to retrace the movements of all cell phones within a given area, “wherever [the] location of interest turns out to be (whether a crime scene or a protest march or even a private home), it has effectively been surveilled for the same boundless time.” *Chattrie*, slip op. at 17. The same is true here with regard to the City’s vast network of camera surveillance—indeed, that is the point of this technology. Because this “retrospective” capacity “gives police access to a category of information otherwise unknowable,” *Carpenter*, 585 U.S. at 312, it erodes the privacy that individuals traditionally had against government scrutiny.

Fourth, and relatedly, the government’s ability to stockpile reams of surveillance data that it can later access retrospectively has the practical effect of placing the entire population under surveillance all of the time. At any given moment, people may not know whether or how the government will make use of the information being compiled about them, just as the government itself may not yet know. Nevertheless, details about their movements and

activities—including visits to sensitive locations they may wish to keep private—are being recorded and stored for future use by the government. “With just the click of a button,” officers using digital tools can later “reconstruct any person’s movements.” *Chatrie*, slip op. at 15 (quotation marks omitted). The Supreme Court has thus accounted for “the seismic shifts in digital technology that ma[k]e possible the tracking of not only [a particular suspect]’s location *but also everyone else’s*.” *Carpenter*, 585 U.S. at 313 (emphasis added). The Court found it “[c]ritically” important, for instance, that “because location information is continually logged for all of the 400 million [cellular] devices in the United States—not just those belonging to persons who might happen to come under investigation—this newfound tracking capacity *runs against everyone*.” *Id.* at 312 (emphasis added). “Only the few without cell phones could escape this tireless and absolute surveillance.” *Id.*

The upshot, with obvious relevance to the Domain Awareness System, is this: “[W]hen . . . officials can select the time-limited set of materials they want from an all-encompassing database,” this gives the government “a virtual panopticon with which to scrutinize its citizens’ activities.” *Chatrie*, slip op. at 21. “What in the past was unknowable suddenly becomes open to view, presenting formerly unimaginable privacy concerns.” *Id.* at 15 (quotation marks omitted). And “by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the government, in its unfettered discretion, chooses to track,” digital-age innovations, if unconstrained by the Fourth Amendment, will “alter the relationship between citizen and government in a way that is inimical to democratic society.” *Jones*, 565 U.S. at 416 (Sotomayor, J., concurring) (citation omitted).

C. Technologies that enable the government to spy on the entire population are subject to Fourth Amendment limits.

To sum up so far, the Fourth Amendment’s “basic purpose” is “to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Chatrie*, slip op. at 10-11 (quoting *Carpenter*, 585 U.S. at 303). “That purpose is central to decisions about whether a Fourth Amendment ‘search’ has occurred.” *Id.* at 11. And a critical factor is whether a “newfound tracking capacity” enables the government to place the entire population under scrutiny through “tireless and absolute surveillance” that “runs against everyone.” *Carpenter*, 585 U.S. at 312; *see Chatrie*, slip op. at 15.

These important principles derive from the Fourth Amendment’s text and original meaning. From its inception, the Amendment has served “both to protect the rights of individuals and to prevent the government from functioning as in a police state.” Donald L. Doernberg, “*The Right of the People*”: *Reconciling Collective and Individual Interests Under the Fourth Amendment*, 58 N.Y.U. L. Rev. 259, 260 (1983). Indiscriminate monitoring represents precisely the type of arbitrary privacy invasion that the Amendment forbids.

Starting with text, the Fourth Amendment’s language does more than prohibit unreasonable searches and seizures: “the *text* of the Fourth Amendment expressly guarantees the right of the people to be *secure*” against such intrusions. *Torres v. Madrid*, 592 U.S. 306, 324 (2021) (emphasis in original) (quotation marks omitted); *see* Samuel Johnson, *A Dictionary of the English Language* (10th ed. 1792) (defining “secure” as “[f]ree from fear; exempt from terror; easy; assured”). “If there is any term in the text that might be described as the core or essence of the provision, ‘right to be secure’ is the leading candidate.” Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 741 (1999). And this right is held by “the people,” a “term of art employed in select parts of the Constitution” that “refers to a

class of persons who are part of a national community.” *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990); see Johnson, *Dictionary, supra* (defining “person” as an “individual or particular man or woman” while defining “people” as “those who compose a community” or “a nation”). In short, the Founders “did not merely create a right of individuals to be free from unreasonable searches or seizures, but a societal right to be free from the fear such practices create.” Richard H. McAdams, *Tying Privacy in Knotts: Beeper Monitoring and Collective Fourth Amendment Rights*, 71 Va. L. Rev. 297, 318-19 (1985).

The Fourth Amendment’s text responds to the Founders’ chief complaint about overbroad search authority. By guarding a “right of the people” to “be secure” against arbitrary government intrusions, this text “gives concrete expression to a right of the people which ‘is basic to a free society.’” *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523, 528 (1967) (quoting *Wolf v. Colorado*, 338 U.S. 25, 27 (1949)). As the Founders recognized, the government’s mere possession of unbridled search authority denies security to everyone, not just those whom the government ends up singling out for scrutiny. That lack of security upsets the balance of power between the people and the state by licensing officers to invade the “privacies of life” arbitrarily or abusively. *Boyd*, 116 U.S. at 630.

The Fourth Amendment’s history confirms the centrality of its concern with the detrimental effects of discretionary search authority on the public at large. Well before American independence, the English common law restricted overbroad search warrants because their mere existence undermined every person’s security against arbitrary power. Edward Coke, later regarded by Americans as the foremost authority on English law, see Leonard W. Levy, *Origins of the Fourth Amendment*, 114 Pol. Sci. Quarterly 79, 80 (1999), put it this way: “[T]hough commonly the houses or cottages of poor and base people be by such warrants

searched etc. *yet if it be lawful, the houses of any subject . . . may be searched . . . upon bare surmises.*” Edward Coke, 4 *Institutes of the Laws of England* 177-78 (1797 ed.) (emphasis added). And when the Crown tried to stifle political dissent by using general warrants to enter homes and seize private papers, a series of landmark cases ensued which shaped American views on search and seizure. Each case emphasized that indefinite search authority undermined the entire population’s security against arbitrary power.

In the celebrated *Wilkes v. Wood*, 19 How. St. Tr. 1153 (C.P. 1763), for example, John Wilkes’s counsel stressed “that the case extended far beyond Mr. Wilkes personally, that it touched the liberty of every subject of this country.” *Id.* at 1153. Upholding general warrants would “fling our liberties into a very unequal balance.” *Id.* at 1153-54. The court agreed that if officers had the discretion to search wherever they wished, “it certainly may affect the person and property of every man in this kingdom.” *Id.* at 1167 (emphasis added). Such arbitrary power was “totally subversive of the liberty of the subject.” *Id.*

John Entick’s case, which was “in the minds of those who framed the fourth amendment” as “explanatory of what was meant by unreasonable searches,” *Boyd*, 116 U.S. at 626-27, further entrenched the principle that indiscriminate search authority harms the entire population, not just those who come under official scrutiny. The broad warrant for Entick’s papers, which authorized “prying into all his private affairs,” was lambasted by his counsel as “injurious to a multitude, and prejudicial to the commonwealth.” *Entick v. Carrington*, 19 How. St. Tr. 1029, 1041, 1039 (C.P. 1765). The court concurred: “It must not be here forgot, that *no subject whatsoever is privileged from this search.*” *Id.* at 1065 (emphasis added). If the warrant were valid, then “the secret cabinets and bureaus of every subject in this kingdom will be thrown open [to] search and inspection.” *Id.* at 1063 (emphasis added).

Other cases struck the same theme. *See Leach v. Money*, 19 How. St. Tr. 1001, 1027 (K.B. 1765) (invalidating general warrant because it was “not fit” to confer broad discretion on officers); *Huckle v. Money*, 95 Eng. Rep. 768, 768-69 (C.P. 1763) (declaring that “the small injury done to the plaintiff” was less important than “the great point of law touching the liberty of the subject,” where officials, “exercising arbitrary power,” were “attempting to destroy the liberty of the kingdom, by insisting upon the legality of this general warrant”). News of these cases “filled the columns of American newspapers from Boston to Charleston.” Levy, *supra*, at 87.

At the time, the colonists were battling a similar assertion of unchecked search authority under writs of assistance, a form of general warrant. Opponents of the writs likewise highlighted the harm inflicted on the entire population by the mere existence of such unrestrained search power. James Otis’s famous speech in Boston, *see Riley*, 573 U.S. at 403, stressed that writs of assistance were “universal” and “perpetual,” affecting “every subject in the king’s dominion.” *Against Writs of Assistance*, *supra*. Lambasting this “monster of oppression” as “the worst instrument of arbitrary power,” Otis declared that it “places the liberty of *every man* in the hands of every petty officer.” *Id.* (emphasis added); *see also Boston Gazette* (Jan. 4, 1762) (“every hous[e]holder in this province, will necessarily become *less secure* than he was before this writ had any existence among us”). Another critique, “which circulated in every colony,” Levy, *supra*, at 91, called unbounded search authority an “engine of oppression,” “dangerous to freedom,” and “utterly destructive to liberty,” John Dickinson, *Letters from a Farmer in Pennsylvania No. IX* (1768). After independence, state constitutions labelled general warrants “dangerous to liberty” and “oppressive.” *E.g.*, Va. Decl. of Rights, art. X (1776); N.C. Const., art. XI (1776).

When the federal Constitution was unveiled, critics denounced its lack of safeguards against indiscriminate search authority, which they argued left everyone perpetually exposed to capricious invasions of privacy. Luther Martin declared that the Constitution “authorizes officers . . . to examine into your private concerns.” *Genuine Information No. VI*, Balt. Md. Gazette (Jan. 15, 1788). Patrick Henry warned that federal officers “may come upon you now” and “go into your cellars and rooms,” and that “*any* man may be seized, *any* property may be taken, in the most arbitrary manner.” 3 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 448-49 (Jonathan Elliot ed., 1836) (emphasis added).

Addressing these critiques after Ratification, James Madison’s draft amendment protected a “right to be secured” held collectively by “the people.” 1 *Annals of Cong.* 452 (1789). Congress’s most significant edit made the people’s right to be secure even more definitive. Whereas the draft said only that this right could not be violated by general warrants, the final version, ratified by the nation, declares that the people’s right to be secure “shall not be violated,” U.S. Const. amend. IV—period.

Fourth Amendment text, history, and precedent, therefore, all call for restraints on innovations that enable perpetual, population-wide surveillance. “Whatever the form of an attempted incursion,” the Amendment guards against tools that would allow “tireless and absolute surveillance of any number of people in any number of places.” *Chatrle*, slip op. at 12, 18 (quotation marks omitted). Whether it be geofencing, cell-site location tracking, or the Domain Awareness System, the technology “is new, but the principle covering it is not: That principle is instead the one our history has given. The Fourth Amendment must, as ever, protect against unjustified governmental intrusion on the privacy of the individual.” *Id.* at 33.

II. The Plaintiffs Have Standing to Challenge the Domain Awareness System.

As Plaintiffs plausibly allege, the Domain Awareness System allows New York City to conduct “retrospective surveillance of countless persons and places.” *Chatrle*, slip op. at 25. Plaintiffs are among those persons, and the locations they frequent daily are among those places. *See* Am. Compl. ¶¶ 111-12, 119, 126-27. Plaintiffs have standing, therefore, to bring their Fourth Amendment claims.

The City’s contrary arguments are unpersuasive. Details about Plaintiffs’ movements and activities are indisputably being collected and incorporated into the Domain Awareness System—through the massive camera network alone, without even considering the system’s many other inputs. But the City portrays this systematic collection as no different from individual human observations, or isolated recordings by rudimentary devices of the past. Thus, the City likens the detailed capture of Plaintiffs’ daily travels—by an integrated network of thousands of cameras—to footage from an isolated video recorder, and to photos taken personally by a police officer. MTD 17, 24. Next, the City argues, Plaintiffs cannot show that law enforcement agents have manually reviewed the information collected about them or subjected it to the system’s sophisticated analytics. MTD 15, 17.

In essence, the City tries to sever each of its individual recordings of Plaintiffs “at specific places and specific times,” MTD 27, from the features of the Domain Awareness System that enable those discrete records to be combined, stored, and analyzed retrospectively as a whole. This overlooks the very aspects of the system that induced New York City to adopt it: the unique capabilities of a cohesive surveillance network that aggregates information from countless individual points of collection. Or as the NYPD’s leadership puts it, “a network of sensors, databases, devices, software, and infrastructure that delivers tailored information and

analytics . . . across every police precinct in the City, on all officers' smartphones." Levine, *supra*, at 2; *see id.* at 5-6 (explaining that "video analytics . . . trigger automated alerts when one of these cameras detects suspicious behavior").

The City's argument also relies on three propositions the Supreme Court has expressly rejected. To start, the City claims that no one has "a protected privacy expectation in what they knowingly expose" to others, so Plaintiffs cannot be injured when the City records them "in areas open and accessible to the public." MTD 17, 23 (quotation marks omitted).

Repudiating that notion, the Supreme Court has more than once recognized a protected privacy interest in the details of a person's movements, "even though the movements occurred in public." *Chatrie*, slip op. at 14 (discussing *Carpenter* and *Jones*). That is because this information "is not truly 'shared' as one normally understands the term." *Id.* at 25 (quoting *Carpenter*, 585 U.S. at 315). When someone's movements are automatically recorded by cell towers, geolocation apps, or the Domain Awareness System's camera network, that person "can hardly help but generate a trail of location data." *Id.* (quotation marks omitted). "The exposure of that information . . . is merely what happens when [someone] avails himself" of a "pervasive and insistent part of daily life." *Id.* at 26. And just as "cell phones and the services they provide" are "indispensable to participation in modern society," *id.* at 25, so is walking out of one's front door and going places. "A cell-phone user is not to be viewed as sharing private information with third parties—which then can be freely passed on to the government—just by doing the ordinary things cell-phone users do." *Id.* at 28-29. Likewise, Plaintiffs are not to be viewed as sharing their private information with law enforcement just by doing what nearly everyone does—leaving the house.

The City also claims that privacy rights are not impaired unless the government’s monitoring produces an “exhaustive picture of [a person’s] every movement,” MTD 27 (quoting *United States v. Tuggle*, 4 F.4th 505, 524 (7th Cir. 2021)), revealing “exact whereabouts over an extended period of time,” MTD 26. First off, the City’s 80,000-camera network and other sensors seem to allow precisely that. *See, e.g.*, Am. Compl. ¶ 24. But regardless, *Chatrie* precludes this narrow view of Fourth Amendment injury.

In *Chatrie*, too, the government “principally argue[d]” that “accessing only a short amount of . . . location information . . . does not count as a Fourth Amendment search.” Slip op. at 18. The Court rejected this “grace-period approach to Fourth Amendment protection.” *Id.* at 21 n.9; *see id.* at 29 (“It does not matter if the time period scrutinized was only two hours.”). Here, as in *Chatrie*, “the Government is wrong about the incapacity of short-term location information to reveal private matters,” *id.* at 20, because “[e]ven short-term monitoring’ of a person’s physical movements can provide ‘a wealth of detail about [his] familial, political, professional, religious, and sexual associations,’” *id.* (quoting *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring) (second alteration in original)). Examples include trips to “the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, [or] the by-the-hour motel.” *Id.* Indeed, the Domain Awareness System “enables police officers to focus on precisely those sites—to see, in a given time block, who shows up,” as well as “to target one-off events of potential interest: a gun show, say, or a political rally.” *Id.*

Finally, the City implies that a person suffers no Fourth Amendment injury until a human being personally reviews the items or information about them that the government has gathered. So according to the City, the collection of video footage revealing the inside of Plaintiffs’ homes

does not harm them unless police officers spend time “observing [the] footage” and “manually record any activities that they are able to observe.” MTD 17-18; *see id.* (“Nor do Plaintiffs allege facts to support that they have actually been ‘watched’ or ‘tracked’ by NYPD officers.”). That is clearly wrong as well. In *Carpenter*, for instance, it was a search “when the Government accessed CSLI from the wireless carriers,” 585 U.S. at 313, regardless of whether any officer ever laid eyes on those records: “the *acquisition* of Carpenter’s CSLI was a search.” *Id.* at 316 (emphasis added); *see id.* (holding that “the Government must generally obtain a warrant supported by probable cause *before acquiring such records*” (emphasis added)). Likewise in *Chatrue*, “police conducted a search *when they gained access to* Location History data.” Slip op. at 4 (emphasis added).

* * *

“Those who drafted the [Fourth] Amendment could not have imagined” a technology like the Domain Awareness System. “But they understood . . . a matter of more transcendent importance: that Americans had ‘as against the Government, the right to be let alone’ and that the Fourth Amendment must protect against ‘every unjustifiable intrusion by the Government upon the privacy of the individual.’” *Chatrue*, slip op. at 32 (quoting *Olmstead*, 277 U.S. at 471 (Brandeis, J., dissenting)). By effectively placing an entire city under continuous surveillance, the Domain Awareness System is just such an intrusion, impairing Plaintiffs’ Fourth Amendment rights, as the text and history of that Amendment make clear.

CONCLUSION

For the foregoing reasons, the motion to dismiss should be denied.

Dated: July 14, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word-count limitations of Local Civil Rule 7.1(c) because it contains 6,136 words, not counting the portions of the brief exempted by the rule. This brief also complies with Rule 2.B of this Court's Individual Practices because it does not exceed 25 pages.

Dated: July 14, 2026

/s/ David H. Gans
David H. Gans

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2026, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel of record.

Dated: July 14, 2026

/s/ David H. Gans
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