

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.:

RAUL MAS CANOSA

Plaintiff,

vs.

CITY OF CORAL GABLES, FLORIDA

&

FLORIDA DEPARTMENT OF STATE

&

FLORIDA SECRETARY OF STATE KEN DETZNER,
FLORIDA DEPARTMENT OF STATE

&

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

&

COMMISSIONER RICHARD L. SWEARINGEN,
FLORIDA DEPARTMENT OF LAW ENFORCEMENT

Defendants.

COMPLAINT

Plaintiff, Raul Mas Canosa, through undersigned counsel, alleges as follows:

Preliminary Statement

1. “[T]he sum of one’s public movements,” “reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.” *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring). Comprehensive monitoring of a vehicle’s public

movements in traffic reveals information of such an “indisputably private” nature it “takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on.” *People v. Weaver*, 12 N.Y.3d 433, 441-442 (N.Y. 2009).

2. As Florida’s Supreme Court has recognized, “[i]n the past, [] extensive tracking and monitoring required substantial government time and resources, which acted as a check on abusive law enforcement practices; but with the ease of electronic tracking and monitoring, those checks no longer exist.” *Tracey v. States*, 152 So.3d 504, 519 (Fla. 2014). Indeed, “such monitoring” can now “be accomplished at a relatively low cost” so that the government is able to “compile a substantial quantum of information about any person whom the government chooses to track.” *Id.* This alters “the relationship between citizen and government in a way that is inimical to democratic society.” *Id.* (quoting *United States v. Cuevas-Perez*, 640 F.3d 272, 285 (7th Cir. 2011) (Flaum, J., concurring)).

3. The unlawful and invasive policies employed by the City of Coral Gables, under the auspices of the Florida Department of State and the Florida Department of Law Enforcement, are likewise inimical to the rights of its citizens to be free from abusive governmental intrusion. Using dozens of automatic license plate recognition cameras and software, the City surreptitiously tracks, records, collects, and aggregates the personal and private activities of its citizens and visitors, without any prior suspicion of wrongdoing. It also stockpiles and analyzes this data for at least three *years*. Furthermore, it shares this data with a private vendor, who sells it to still other governmental entities. This complete surveillance cannot be countenanced by a

free society, and it violates the fundamental rights of every motorist who passes through the “City Beautiful.”

4. This is an action for declaratory relief pursuant to Fla. Stat. § 86.021 to determine the validity of the Florida Department of State’s Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, the Florida Department of Law Enforcement’s “Guidelines for the Use of Automated License Plate Readers,” and the City of Coral Gables’ use of Automated License Plate Recognition cameras, through municipal resolutions, contracts and application.

5. This Court has jurisdiction pursuant to Fla. Stat. § 86.021.

6. Plaintiff requests a speedy hearing and advance on the Court’s trial calendar pursuant to Fla. Stat. § 86.111.

PARTIES, JURISDICTION AND VENUE

7. Plaintiff, Raul Mas Canosa, is a resident of the City of Coral Gables, Florida.

8. Defendant City of Coral Gables is a Municipality located within Miami-Dade County, Florida.

9. Defendant Florida Department of State is an administrative entity, with rulemaking authority under Chapter 119 of the Florida Statutes.

10. Defendant Florida Secretary of State Ken Detzner is the head of the Florida Department of State and is responsible for overseeing the Department’s rulemaking activity.

11. Defendant Secretary Detzner is sued in his official capacity.

12. Defendant Florida Department of Law Enforcement (FDLE) is an administrative entity organized under Chapter 943 of the Florida Statutes.

13. Defendant Commissioner Richard L. Swearingen is the head of the FDLE and is responsible for overseeing the Department's rulemaking activity.
14. Defendant Commissioner Swearingen is sued in his official capacity.
15. Venue is proper in Miami-Dade County, because Defendant City of Coral Gables is located within Miami-Dade County, and because Defendant City of Coral Gables has operated its Automated License Plate Recognition cameras within Miami-Dade County, under the auspices of Defendant Florida Department of State and Defendant FDLE's purported regulations, resulting in the infringement of Plaintiff's rights, privileges and immunities in Miami-Dade County.

FACTS COMMON TO ALL CLAIMS

A. Legislative History

16. Chapter 316 of the Florida Statutes codifies the "Florida Uniform Traffic Control Law."
17. In 2014 the Florida State legislature passed Sections 316.0777 and 316.0778 related to "automated license plate recognition" (ALPR) systems.
18. These provisions provided rules concerning the retention of data obtained by ALPR cameras and the disclosure of such data under public records laws. Fla. Stat. §§ 316.0777, 316.0778.
19. Both provisions defined automatic license plate recognition as a "system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data." Fla. Stat. §§ 316.0777(1)(c), 316.0778(1).
20. Neither section addressed enforcement of traffic laws using these readers. *See id.*
21. Section 316.0778(2) also tasked Defendant Florida Department of State, "[i]n consultation with" Defendant Florida Department of Law Enforcement (FDLE), to "establish a

retention schedule for records containing images and data generated through the use of an automated license plate recognition system.”

22. “The retention schedule must establish a maximum period that the records may be retained.” *Id.*

23. After Section 316.0778 was passed in 2014, Defendant Florida Department of State promulgated Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217.

24. This provided the retention schedule for “license plate records created by license plate recognition systems,” which “include[d], but is not limited to, images of licenses plates and any associated metadata.”

25. This rule provided, “Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series.”

26. Defendant FDLE did not undertake formal rulemaking procedures related to the data retention schedules.

27. Instead, the Criminal and Juvenile Justice Information Systems Council, a council located within Defendant FDLE, issued “Guidelines for the Use of Automated License Plate Readers,” pursuant to the Council’s authority under Fla. Stat. § 943.08.

28. Section 943.08 allows the Council to “facilitate,” “guide,” and “support” data collection and retention by criminal justice agencies.

29. Section 943.08 also empowers the Council with setting out “standards” and “best practices” and “recommendations,” but the statute does not give express rulemaking powers to the Council.

30. The Council’s Guidelines purport to set out “uniform statewide guidelines” for the use of ALPRs. Guidelines, at 1.

31. The Guidelines “are encouraged for all Florida law enforcement agencies operating under the authority of the laws of the state of Florida that own or operate one or more ALPRs, collect and maintain ALPR data, or receive or are provided access to ALPR data collected by another agency.” *Id.* at 2.

32. The Guidelines further require “[e]very Florida law enforcement agency that uses or possesses an ALPR” to adopt a use and data retention policy that is “consistent with these Guidelines.” *Id.*

33. The Guidelines permit the indiscriminate collection of ALPR data from every vehicle license plate in “public view.” *Id.*

34. Such collection may be “repeated or continuous.” *Id.*

35. The stored data may be searched “by authorized persons in furtherance of an active investigation,” regardless of whether the authorized person has particularized suspicion of wrongdoing directed to an individual. *Id.*

36. The stored data may also be disclosed to any “criminal justice agency in the performance of the criminal justice agency’s official duties,” regardless of whether the criminal justice agency has particularized suspicion of wrongdoing directed to an individual. *Id.* at 3.

37. The Guidelines also purport to set out, under Section 316.0778’s authority, that “ALPR data that ... is gathered and retained without specific suspicion may be retained for no longer than 3 anniversary years.” *Id.* at 6.

B. City of Coral Gables’ Action

38. On December 8, 2015, the Coral Gables City Commission adopted Resolution No. 2015-307, authorizing the City to enter into contracts with Safeware, Inc. (a Maryland corporation) and Vigilant Solutions, Inc. (a corporation headquartered in Livermore, California, and a subsidiary of VaaS International Inc.), for the purchase, installation and operation of an ALPR system, as well as a system of closed-circuit television (CCTV) cameras, around the City.

39. The Resolution approved an initial expenditure of \$1.35 million for the project, so that the City could set up dozens of ALPR cameras at strategic points around the City to enable law enforcement to monitor nearly every motorist that passed through the City, 24 hours a day.

40. The Resolution also said the “purpose of this contract is to install a Security Closed Circuit Television (CCTV) system that that would provide the City of Coral Gables Police Department with 24 hour /7 day per week surveillance at various safety sensitive locations throughout the city, in addition to providing invaluable archival data of up to thirty (30) days for investigative purposes.”

41. The Resolution did not specify if this “archival data” related to only the CCTV system or the “contract” as a whole, which included the ALPR system.

42. At the City Commission hearing prior to adoption of the Resolution, Assistant Police Chief Michael Miller was asked if the ALPR system would be able to constantly monitor the hundreds of thousands of cars that entered and exited the City limits every day, and be able to “sift through these millions of cars that w[ould] be coming through all week,” and Assistant Chief Miller testified that it would be capable of operating in that fashion. *City of Coral Gables City Commission Meeting: Agenda Item H-1*, at 5 (Dec. 8, 2015).

43. Or, as Assistant City Manager Frank Fernandez put it, the ALPR system would be “surrounding” the entire City. *Id.* at 6.

44. If any vehicle in the system was “wanted for any type of crime” this information would be “immediately” given to police officers. *Id.* at 4.
45. The ALPR system would also allow law enforcement to “go back on this video, go back on the tags,” and search collected data, by vehicle tag number or even by reviewing all traffic in an area of the City. *Id.* at 5.
46. Assistant Chief Miller made clear, however, that, as initially authorized by the resolution, the City would only “keep the [ALPR] data for 30 days.” *Id.*
47. Since approving the initial installation of the ALPR system, the City has become a “statewide leader” in the use of this technology. Press Release, *Coral Gables is Statewide Leader Using Tracking Technology to Prevent Crime* (May 2, 2018) available at <http://coralgables.com/index.aspx?recordid=4854&page=30>.
48. Indeed, the City has bragged that “by the end of this year, the City will capture close to 30 million license tag readings[.]” *Id.*
49. Furthermore, the City shares all of this data with at least 80 law enforcement agencies, including the Federal Bureau of Investigation, even when the data relates only to innocent activity. Vigilant Solutions, *Agency Data Sharing Report* (May 31, 2018).
50. While embracing the comprehensive use of the ALPR system, the City has, at the same time, quietly abandoned the 30-day data retention limit.
51. Published reports declare that now the “data are saved for *three years* on a private server” operated by the contract vendor. Sarah Blaskey, ‘*Big Brother*’ in Coral Gables? Police Capture Data that Says a Lot About People’s Lives, *Miami Herald*, May 26, 2018, available at <https://www.miamiherald.com/news/local/community/miami-dade/article211734989.html> (emphasis added).

52. In a letter dated, September 6, 2018, Miriam Soler Ramos, City Attorney for Defendant City of Coral Gables, wrote that the 30-day schedule outlined on December 8, 2015, “was not a final policy decision by the City.”

53. Instead, “after reviewing applicable law and the Florida Department of Statute retention schedule,” Defendant City of Coral Gables “opted to model its retention policy as written under the General Retention Schedule, GS2-SL Law Enforcement.”

54. Defendant City of Coral Gables also wrote, “ALPR data will continue to be retained in accordance with the General Retention Schedule, GS2-SL Law Enforcement.”

55. Since the program was approved in late 2015, the City has approved the use of more than \$1.9 million in additional funding to maintain and expand the ALPR system. Coral Gables City Commission Resolution No. 2016-257.

56. Yet the City cannot point to any significant law enforcement benefit from this project.

57. In fact, the only publicized reports indicating a direct success from the ALPR system involve the use of the cameras to ticket motorists for having expired vehicle registration stickers. *See City of Coral Gables City Commission Meeting: Congratulations to Officer Cristino Perez*, No. 2017-6524 (Sept. 26, 2017) (“While working the burglary taskforce, and ALPR system, the system revealed an expired tag. Officer Perez subsequently stopped the defendant and was charged with DWLS and Expired Registration.”).

58. Plaintiff is a longtime resident of the City of Coral Gables.

59. Plaintiff has driven his vehicle through the City of Coral Gables nearly every day since the City adopted the ALPR system.

60. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system hundreds of times since the system was implemented.

61. Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and it continues to retain that information in a searchable form.

62. Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

COUNT I—FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION
PLAINTIFF V. DEFENDANTS FLORIDA DEPARTMENT OF STATE AND
SECRETARY DETZNER

63. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

64. The Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures,” and provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

65. As the United States Supreme Court has recognized, the use of technology to monitor a vehicle’s movement over time, even for a period of 28 days, constitutes a search because it “impinges on expectations of privacy.” *United States v. Jones*, 565 U.S. 400, 430 (2012) (Alito, J., concurring).

66. This is because “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 every single movement of an individual’s car for a very long period.” *Id.*

67. The Supreme Court has further held that “an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through” digital surveillance. *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018).
68. Thus, under the Fourth Amendment to the United States Constitution, “the Government must generally obtain a warrant supported by probable cause *before acquiring*” records of a person’s movement over time. *Id.* at 2220-21 (emphasis added).
69. Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, promulgated by Defendant Florida Department of State allows retention of all data “created by license plate recognition systems,” which “includes, but is not limited to, images of licenses plates and any associated metadata,” for up to three years.
70. Defendant Florida Department of State does not require any state actor to have any quantum of suspicion of criminal activity before collecting this data.
71. Defendant Florida Department of State allows this information to be shared with any law enforcement entity regardless of whether that law enforcement entity has particularized suspicion of wrongdoing directed to an individual.
72. Defendant City of Coral Gables “opted to model its retention policy as written under the General Retention Schedule, GS2-SL Law Enforcement,” and has accordingly amended its prior 30-day retention schedule to allow for three years of data retention.
73. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system thousands of times since the system was implemented.
74. In reliance on Defendant Florida Department of State’s Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners,

Item # 217, Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and it continues to retain that information in a readily searchable form.

75. In reliance on Defendant Florida Department of State's Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

76. Defendant Florida Department of State's Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, is unlawful pursuant to the Fourth Amendment of the United States Constitution and is invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant Florida Department of State's Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, is unconstitutional, prohibit Defendant Secretary Detzner from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT II—FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION
PLAINTIFF V. DEFENDANTS FLORIDA DEPARTMENT OF LAW ENFORCEMENT
AND COMMISSIONER SWEARINGEN

77. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

78. The Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures,” and provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

79. As the United States Supreme Court has recognized, the use of technology to monitor a vehicle’s movement over time, even for a period of 28 days, constitutes a search because it “impinges on expectations of privacy.” *United States v. Jones*, 565 U.S. 400, 430 (2012) (Alito, J., concurring).

80. This is because “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 every single movement of an individual’s car for a very long period.” *Id.*

81. The Supreme Court has further held that “an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through” digital surveillance. *Carpenter v. United States*, 138 S.Ct. 2206, 2217 (2018).

82. Thus, under the Fourth Amendment to the United States Constitution, “the Government must generally obtain a warrant supported by probable cause *before acquiring*” records of a person’s movement over time. *Id.* at 2220-21 (emphasis added).

83. Defendant FDLE’s “Guidelines for the Use of Automated License Plate Readers,” sets out data retention policy for “[e]very Florida law enforcement agency that uses or possesses an ALPR.”

84. Defendant FDLE’s Guidelines permit the indiscriminate collection of ALPR data from every vehicle license plate in “public view.” *Id.* Such collection may be “repeated or continuous.” *Id.*

85. The stored data may be searched “by authorized persons in furtherance of an active investigation,” regardless of whether the authorized person has particularized suspicion of wrongdoing directed to an individual. *Id.*

86. The stored data may also be disclosed to any “criminal justice agency in the performance of the criminal justice agency’s official duties,” regardless of whether the criminal justice agency has particularized suspicion of wrongdoing directed to an individual. *Id.* at 3.

87. The Guidelines also purport to set out, under Section 316.0778’s authority, that “ALPR data that ... is gathered and retained without specific suspicion may be retained for no longer than 3 anniversary years.” *Id.* at 6.

88. Defendant City of Coral Gables has operated its ALPR system in reliance on, and in conformity with, Defendant FDLE’s Guidelines.

89. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system thousands of times since the system was implemented.

90. In reliance on Defendant FDLE’s Guidelines, Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and continues to retain that information in a searchable form.

91. In reliance on Defendant FDLE’s Guidelines, Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

92. Defendant FDLE’s “Guidelines for the Use of Automated License Plate Readers,” are unlawful pursuant to the Fourth Amendment of the United States Constitution, and are invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant FDLE’s “Guidelines for the Use of Automated License Plate Readers,” are unconstitutional, prohibit the Commissioner Swearingen from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT III—FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION
PLAINTIFF V. DEFENDANT CITY OF CORAL GABLES

93. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

94. The Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures,” and provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

95. As the United States Supreme Court has recognized, the use of technology to monitor a vehicle’s movement over time, even for a period of 28 days, constitutes a search because it “impinges on expectations of privacy.” *United States v. Jones*, 565 U.S. 400, 430 (2012) (Alito, J., concurring).

96. This is because “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 every single movement of an individual’s car for a very long period.” *Id.*

97. The Supreme Court has further held that “an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through” digital surveillance. *Carpenter v. United States*, 138 S.Ct. 2206, 2217 (2018).

98. Thus, under the Fourth Amendment to the United States Constitution, “the Government must generally obtain a warrant supported by probable cause *before acquiring*” records of a person’s movement over time. *Id.* at 2220-21 (emphasis added).

99. Defendant City of Coral Gables operates dozens of ALPR cameras at major intersections and other strategic points around the City and continuously collects images and associated metadata of every motorist in camera range.

100. Defendant City of Coral Gables stores these images and associated metadata for a period of three years, in a searchable database.

101. Defendant City of Coral Gables shares all of the images and associated metadata it has collected with at least 80 law enforcement agencies, including the Federal Bureau of Investigation, even when the data relates only to innocent activity and without requiring any showing of individualized suspicion.

102. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system thousands of times since the system was implemented.

103. Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and continues to retain that information in a searchable form.

104. Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

105. Defendant City of Coral Gables’ use of ALPR cameras is unlawful pursuant to the Fourth Amendment of the United States Constitution and is invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant City of Coral Gables' use of its ALPR system is unconstitutional, prohibit the City of Coral Gables from operating its ALPR system or sharing data derived from the ALPR system, order the City of Coral Gables to destroy all records of unlawfully collected information, even if already shared with other entities, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT IV—ARTICLE I, SECTION 23 OF THE FLORIDA STATE CONSTITUTION
PLAINTIFF V. DEFENDANTS FLORIDA DEPARTMENT OF STATE AND
SECRETARY DETZNER

106. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

107. Article I, Section 23 of the Florida State Constitution protects the “right of privacy,” and provides, “Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein.”

108. “Although the general concept of privacy encompasses an enormously broad and diverse field of personal action and belief, there can be no doubt that the Florida amendment was intended to protect the right to determine whether or not sensitive information about oneself will be disclosed to others.” *Rasmussen v. S. Fla. Blood Serv., Inc.*, 500 So. 2d 533, 536 (Fla. 1987).

109. The “right to privacy” attaches whenever a person has a “reasonable expectation of privacy” in the object of the search. *Id.*

110. If such an expectation exists, the right of privacy “is a fundamental right which ... demands [a] compelling state interest” before it can be invaded. *Id.*

111. The state bears the burden of proof “to justify an intrusion on privacy,” which it can meet only by “demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.” *Id.*

112. The use of technology to monitor a vehicle’s movement over time, even for a period of 28 days, constitutes a search because it “impinges on expectations of privacy.” *United States v. Jones*, 565 U.S. 400, 430 (2012) (Alito, J., concurring).

113. The Supreme Court has held that “an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through” digital surveillance. *Carpenter v. United States*, 138 S.Ct. 2206, 2217 (2018).

114. Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, promulgated by Defendant Florida Department of State allows retention of all data “created by license plate recognition systems,” which “includes, but is not limited to, images of licenses plates and any associated metadata,” for up to three years.

115. Defendant Florida Department of State does not require any state actor to have any quantum of suspicion of criminal activity before collecting this data.

116. Defendant Florida Department of State allows this information to be shared with any law enforcement entity regardless of whether that law enforcement entity has particularized suspicion of wrongdoing directed to an individual.

117. Defendant Florida Department of State has not articulated a compelling state interest in promulgating Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217.

118. Defendant Florida Department of State has not explained why the three-year data retention schedule set out in Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, is the least intrusive schedule available to serve a compelling state interest.

119. Defendant City of Coral Gables “opted to model its retention policy as written under the General Retention Schedule, GS2-SL Law Enforcement,” and has accordingly amended its prior 30-day retention schedule to allow for three years of data retention.

120. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system thousands of times since the system was implemented.

121. In reliance on Defendant Florida Department of State’s Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and continues to retain that information in a readily searchable form.

122. In reliance on Defendant Florida Department of State’s Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

123. Defendant Florida Department of State’s Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, is unlawful pursuant to Article I, Section 23 of the Florida State Constitution, and is invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant Florida Department of State's Rule 1B-24.003(1)(b), General Records Schedule 2, Law Enforcement, Correctional Facilities and District Medical Examiners, Item # 217, is unconstitutional, prohibit Secretary Detzner from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT V—ARTICLE I, SECTION 23 OF THE FLORIDA STATE CONSTITUTION
PLAINTIFF V. DEFENDANTS FLORIDA DEPARTMENT OF LAW ENFORCEMENT
AND COMMISSIONER SWEARINGEN

124. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

125. Article I, Section 23 of the Florida State Constitution protects the “right of privacy,” and provides, “Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein.”

126. “Although the general concept of privacy encompasses an enormously broad and diverse field of personal action and belief, there can be no doubt that the Florida amendment was intended to protect the right to determine whether or not sensitive information about oneself will be disclosed to others.” *Rasmussen v. S. Fla. Blood Serv., Inc.*, 500 So. 2d 533, 536 (Fla. 1987).

127. The “right to privacy” attaches whenever a person has a “reasonable expectation of privacy” in the object of the search. *Id.*

128. If such an expectation exists, the right of privacy “is a fundamental right which ... demands [a] compelling state interest” before it can be invaded. *Id.*

129. The state bears the burden of proof “to justify an intrusion on privacy,” which it can meet only by “demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.” *Id.*

130. The use of technology to monitor a vehicle’s movement over time, even for a period of 28 days, constitutes a search because it “impinges on expectations of privacy.” *United States v. Jones*, 565 U.S. 400, 430 (2012) (Alito, J., concurring).

131. The Supreme Court has held that “an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through” digital surveillance. *Carpenter v. United States*, 138 S.Ct. 2206, 2217 (2018).

132. Defendant FDLE’s “Guidelines for the Use of Automated License Plate Readers,” set out data retention policy for “[e]very Florida law enforcement agency that uses or possesses an ALPR.”

133. Defendant FDLE’s Guidelines permit the indiscriminate collection of ALPR data from every vehicle license plate in “public view.” *Id.*

134. Such collection may be “repeated or continuous.” *Id.*

135. The stored data may be searched “by authorized persons in furtherance of an active investigation,” regardless of whether the authorized person has particularized suspicion of wrongdoing directed to an individual. *Id.*

136. The stored data may also be disclosed to any “criminal justice agency in the performance of the criminal justice agency’s official duties,” regardless of whether that criminal justice agency has particularized suspicion of wrongdoing directed to an individual. *Id.* at 3.

137. The Guidelines also purport to set out, under Section 316.0778's authority, that "ALPR data that ... is gathered and retained without specific suspicion may be retained for no longer than 3 anniversary years." *Id.* at 6.

138. Defendant FDLE has not articulated a compelling state interest in promulgating the Guidelines.

139. Defendant FDLE has not explained why the three-year data retention schedule, indiscriminate data collection, and/or presumptive sharing with law enforcement set out in the Guidelines are the least intrusive means available to serve a compelling state interest.

140. Defendant City of Coral Gables has operated its ALPR system in reliance on, and in conformity with, Defendant FDLE's Guidelines.

141. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system thousands of times since the system was implemented.

142. In reliance on Defendant FDLE's Guidelines, Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and continues to retain that information in a readily searchable form.

143. In reliance on Defendant FDLE's Guidelines, Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

144. Defendant FDLE's "Guidelines for the Use of Automated License Plate Readers," are unlawful pursuant to Article I, Section 23 of the Florida State Constitution, and are invalid.

145. WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant FDLE’s “Guidelines for the Use of Automated License Plate Readers,” is unconstitutional, prohibit Commissioner Swearingen from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT VI—ARTICLE I, SECTION 23 OF THE FLORIDA STATE CONSTITUTION
PLAINTIFF V. DEFENDANT CITY OF CORAL GABLES

146. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

147. Article I, Section 23 of the Florida State Constitution protects the “right of privacy,” and provides, “Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein.”

148. “Although the general concept of privacy encompasses an enormously broad and diverse field of personal action and belief, there can be no doubt that the Florida amendment was intended to protect the right to determine whether or not sensitive information about oneself will be disclosed to others.” *Rasmussen v. S. Fla. Blood Serv., Inc.*, 500 So. 2d 533, 536 (Fla. 1987).

149. The “right to privacy” attaches whenever a person has a “reasonable expectation of privacy” in the object of the search. *Id.*

150. If such an expectation exists, the right of privacy “is a fundamental right which ... demands [a] compelling state interest” before it can be invaded. *Id.*

151. The state bears the burden of proof “to justify an intrusion on privacy,” which it can meet only by “demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.” *Id.*

152. The use of technology to monitor a vehicle's movement over time, even for a period of 28 days, constitutes a search because it "impinges on expectations of privacy." *United States v. Jones*, 565 U.S. 400, 430 (2012) (Alito, J., concurring).

153. The Supreme Court has held that "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through" digital surveillance. *Carpenter v. United States*, 138 S.Ct. 2206, 2217 (2018).

154. Defendant City of Coral Gables operates dozens of ALPR cameras at major intersections and other strategic points around the City and continuously collects images and associated metadata of every motorist in camera range.

155. Defendant City of Coral Gables stores these images and associated metadata for a period of three years, in a searchable database.

156. Defendant City of Coral Gables shares all of the images and associated metadata it has collected with at least 80 law enforcement agencies, including the Federal Bureau of Investigation, even when the data relates only to innocent activity and without requiring any showing of individualized suspicion.

157. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system thousands of times since the system was implemented.

158. Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and continues to retain that information in a searchable form.

159. Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

160. Defendant City of Coral Gables has not articulated a compelling state interest in adopting and using its ALPR system in this fashion.

161. Defendant City of Coral Gables has not explained why its indiscriminate data collection, retention of searchable data for three years, and/or presumptive sharing of its data with law enforcement is the least intrusive means available to serve a compelling state interest.

162. Defendant City of Coral Gables' use of ALPR cameras is unlawful pursuant to Article I, Section 23 of the Florida State Constitution and is invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant City of Coral Gables' use of its ALPR system is unconstitutional, prohibit the City of Coral Gables from operating its ALPR system or sharing data derived from the ALPR system, order the City of Coral Gables to destroy all records of unlawfully collected information, even if already shared with other entities, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT VII—IMPROPER RULEMAKING
PLAINTIFF V. DEFENDANTS FLORIDA DEPARTMENT OF LAW ENFORCEMENT
AND COMMISSIONER SWEARINGEN

163. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

164. Defendant FDLE's "Guidelines for the Use of Automated License Plate Readers," set out data retention policy for "[e]very Florida law enforcement agency that uses or possesses an ALPR."

165. Defendant FDLE's Guidelines permit the indiscriminate collection of ALPR data from every vehicle license plate in "public view." *Id.*

166. Such collection may be "repeated or continuous." *Id.*

167. The stored data may be searched “by authorized persons in furtherance of an active investigation,” regardless of whether the authorized person has particularized suspicion of wrongdoing directed to an individual. *Id.*

168. The stored data may also be disclosed to any “criminal justice agency in the performance of the criminal justice agency’s official duties,” regardless of whether that criminal justice agency has particularized suspicion of wrongdoing directed to an individual. *Id.* at 3.

169. The Guidelines also purport to set out, under Section 316.0778’s authority, that “ALPR data that ... is gathered and retained without specific suspicion may be retained for no longer than 3 anniversary years.” *Id.* at 6.

170. Defendant FDLE’s Guidelines constitute unpromulgated rules because they impose binding policies for the use of ALPRs and set binding limits for data retention, and thus they “either require[] compliance, create[] certain rights while adversely affecting others, or otherwise ha[ve] the direct and consistent effect of law.” *See Dep’t of Revenue of State of Fla. v. Vanjaria Enter., Inc.*, 675 So.2d 252, 255 (Fla. Dist. Ct. App. 1996).

171. Defendant FDLE’s Guidelines were not promulgated pursuant to appropriate rulemaking processes. *See Fla. Stat. § 120.54(1)(a).*

172. Instead, the Guidelines were promulgated by the Criminal and Juvenile Justice Information Systems Council, which has no rulemaking authority. *See Fla. Stat. § 943.08.*

173. Defendant City of Coral Gables has operated its ALPR system in reliance on, and in conformity with, Defendant FDLE’s Guidelines.

174. Defendant City of Coral Gables has recorded images and associated metadata of Plaintiff and his vehicle with its ALPR system thousands of times since the system was implemented.

175. In reliance on Defendant FDLE’s Guidelines, Defendant City of Coral Gables has retained all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, and continues to retain that information in a readily searchable form.

176. In reliance on Defendant FDLE’s Guidelines, Defendant City of Coral Gables has shared all of the images and associated metadata it has collected from its ALPR system since its creation, including those associated with Plaintiff, with members of law enforcement without requiring any showing of individualized suspicion.

177. Plaintiff is substantially affected by Defendant FDLE’s Guidelines because these guidelines influence the City of Coral Gables’ collection and use of data related to Plaintiff.

178. Defendant FDLE’s “Guidelines for the Use of Automated License Plate Readers,” are unlawful pursuant to Florida’s Administrative Procedure Act, Florida Statutes §§ 120.52, 120.54, 120.56, and are invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant FDLE’s “Guidelines for the Use of Automated License Plate Readers,” are an invalid unpromulgated rule, prohibit Commissioner Swearingen from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT VIII—INVALID LEGISLATIVE ACTION
PLAINTIFF V. DEFENDANT CITY OF CORAL GABLES

179. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

180. Whether passing an “ordinance” or “resolution,” a municipality generally must adhere to “all the formalities required for passing ordinances” in order to make binding rules of law.

Brown v. City of St. Petersburg, 153 So. 141, 144-45 (Fla. 1933).

181. As a matter of uniform state law, “An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution.” Fla. Stat. § 166.041(4).

182. Section 13 of the Charter of the City of Coral Gables provides that the City Commission “shall act only by ordinance or written resolution.”

183. Furthermore, the ordinance or resolution must be read, and may only be passed by the “affirmative vote of a majority of all [commission] members.” *Id.*

184. The Coral Gables City Commission adopted Resolution No. 2015-307, authorizing the City to enter into contracts with Safeware, Inc. and Vigilant Solutions, Inc., for the purchase, installation and operation of both an ALPR system and CCTV system, by a majority vote.

185. The Resolution stated that the “purpose of this contract [wa]s to install a Security Closed Circuit Television (CCTV) system that that would provide the City of Coral Gables Police Department with 24 hour /7 day per week surveillance at various safety sensitive locations throughout the city, in addition to providing invaluable archival data of up to thirty (30) days for investigative purposes.”

186. The Resolution did not specify if this “archival data” related to only the CCTV system or the “contract” as a whole, which included the ALPR system.

187. The contracts with Safeware, Inc. and Vigilant Solutions, Inc. do not otherwise contemplate data retention limits for either the ALPR or CCTV systems.

188. Prior to adoption of Resolution No. 2015-307 Assistant Police Chief Michael Miller testified before the City Commission that the City would only retain ALPR data for a period of thirty days.

189. Defendant City of Coral Gables currently retains ALPR data for three years, contrary to the limits set out in Resolution No. 2015-307.

190. Defendant City of Coral Gables has not ratified its current three-year data retention schedule by a majority vote of all members of the City Commission.

191. Defendant City of Coral Gables' three-year data retention policy violates Resolution No. 2015-307 and is therefore invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant City of Coral Gables' use of its ALPR constitutes an invalid legislative action, prohibit the City of Coral Gables from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT IX—IMPROPER DELEGATION
PLAINTIFF V. DEFENDANT CITY OF CORAL GABLES

192. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

193. “Generally, a city commission, which is a legislative body of a city, possesses no power to delegate their authority as prescribed in their charter. Municipal officials can only act in accordance with an express grant in their charter and not any implied grant of power.” *Barry v. Garcia*, 573 So. 2d 932, 939 (Fla. Dist. Ct. App. 1991); *see also Brown v. City of St. Petersburg*, 153 So. 140, 140 (Fla. 1933) (city manager may only act as explicitly authorized by City Charter).

194. Section 24 of the Charter of the City of Coral Gables sets out the “[p]ower and duties” of the City Manager.

195. In particular, the City Manager may only “see that the laws and ordinances are enforced,” “appoint and remove” certain “employees,” “exercise control of” departments created by the Commission, “recommend” that the Commission adopt measures, “advise[.]” the Commission on the “financial condition of the City,” and perform duties that “may be required of him by resolution or ordinances of the Commission.” *Id.*

196. Furthermore, even if the municipality has the power to delegate its authority, no Florida lawmaker may delegate to an administrative entity “the power to say what the law shall be.” *Sarasota v. Barg*, 302 So.2d 737 (Fla. 1974); *see also* Fla. Const. Art. 2 § 3 (“No person belonging to one branch shall exercise any powers appertaining to either of the other branches[.]”); *Bailey v. Van Pelt*, 82 So. 789, 793 (Fla. 1919) (“The Legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law[.]”).

197. Defendant City of Coral Gables applied a 30-day data retention period when it adopted its ALPR system in 2015.

198. Resolution No. 2015-307 did not delegate any authority to determine the data retention schedule associated with the ALPR system to any person.

199. The Charter of the City of Coral Gables does not allow the City Commission to delegate any authority to determine the data retention schedule associated with the ALPR system to any person.

200. Since the ALPR system was adopted, the City Manager for Defendant City of Coral Gables has adopted a three-year data retention policy.

201. The City Manager’s three-year data retention policy has not been ratified by a majority vote of the City Commission.

202. Defendant City of Coral Gables’ three-year data retention policy constitutes an improper legislative act and is invalid.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant City of Coral Gables’ use of its ALPR constitutes an invalid legislative action, prohibit the City of Coral Gables from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

COUNT X—PREEMPTION OF CITY ENFORCEMENT
PLAINTIFF V. DEFENDANT CITY OF CORAL GABLES

203. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

204. Chapter 316 of the Florida Statutes, codifies the “Florida Uniform Traffic Control Law.”

205. The “legislative intent” in creating the chapter was “to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities.” Fla. Stat. § 316.002.

206. “It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of” Chapter 316. *Id.*

207. Section 316.007 also says that the provisions of Chapter 316 “shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized.”

208. With the sole exception of “traffic infraction detectors,” “[r]egulation of the use of cameras for enforcing the provisions of this chapter is expressly preempted to the state.” Fla. Stat. § 316.0076.

209. Defendant City of Coral Gables has used, and continues to use, its ALPR system to enforce provisions of the Florida Uniform Traffic Law.

210. Defendant City of Coral Gables’ City Commission has explicitly approved of the use of the ALPR system to enforce vehicle registration provisions of the Florida Uniform Traffic Law. *See City of Coral Gables City Commission Meeting: Congratulations to Officer Cristino Perez*, No. 2017-6524 (Sept. 26, 2017) (“While working the burglary taskforce, and ALPR system, the system revealed an expired tag. Officer Perez subsequently stopped the defendant and was charged with DWLS and Expired Registration.”).

211. Defendant City of Coral Gables’ use of its ALPR system to enforce provisions of the Florida Uniform Traffic Law is preempted to the State, and is therefore unlawful.

WHEREFORE Plaintiff, Raul Mas Canosa, respectfully requests that this Court enter a declaratory judgment that Defendant City of Coral Gables’ use of its ALPR constitutes an invalid legislative action, prohibit the City of Coral Gables from enforcing same, award the Plaintiff his reasonable fees and costs, and grant such other relief as this Court deems just and proper.

Dated: October 5, 2018

Respectfully,

By: /s/David Benjamin
David L. Benjamin, Esq.
(Local Counsel)
Florida Bar Number: 15907
Benjamin & Melmer, LLC
Ingraham Building
25 SE 2nd Ave., Suite 220
Miami, FL 33131

Telephone: (786) 369-8930
Facsimile: (786) 369-8777

and

Caleb Kruckenberg
Litigation Counsel
Michael P. DeGrandis
Senior Litigation Counsel
New Civil Liberties Alliance
1225 19th St. N.W., Suite 450
Washington, D.C., 20036
caleb.kruckenberg@ncla.legal
(202) 869-5217
(Applications for Admission
Pro Hac Vice Pending)