







## **About EPIC**

The Electronic Privacy Information Center (EPIC) is a 501(c)(3) non-profit public interest research and advocacy center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues. EPIC advocates for privacy, algorithmic fairness, and government accountability.

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## Introduction

**A**n automated decision-making (ADM) system has probably already made a decision about you: whether you qualified for a loan, what news stories you saw on social media, whether your insurance claim was accepted, whether you should be fined for your driving habits, or whether your family member got a kidney from the transplant list.

Many of today's most prominent companies use ADM systems either for or on us: Netflix recommends shows, Citibank makes loans and investments, Google provides search results, Facebook suggests groups to join and friends to connect with, Amazon recommends products, and the list goes on.

Governments are also getting in on the game. The D.C. government, like many others, has outsourced critical governmental decisions to automated decision-making systems. As a result, District residents are surveilled, screened, and scored every day. But because of weak government transparency laws, opaque procurement processes, the decline in local journalism, the power of tech vendors, and other factors, it has been difficult to uncover the details of how ADM systems are used in government programs. This report aims to shed light by providing as comprehensive a view as possible of the many ADM systems that shape the course of District residents' lives.

Automated decision-making systems abound in Washington, D.C. They assign children to schools, inform medical decisions about patients, and impact policing decisions about where to patrol and whom to target. Thomson Reuters, one of the country's largest data brokers, surveils public benefits recipients on behalf of the government and uses ADM systems to rate their likelihood of committing fraud. The Metropolitan Police Department uses automated license plate readers to capture drivers' license plates and feed the plate numbers into databases of residents' locations and travel patterns. In other words, there are increasingly few decisions about D.C. public services that are not at least partially automated.



The public does not have sufficient access to these systems to understand whether they are producing high-quality, accurate, and fair decisions. What little transparency we have does not paint a pretty picture. Overburdened agencies turn to tech in the hope that it can make difficult political and administrative decisions for them. Agencies claim ADM systems are necessary to efficiently decide who gets access to limited resources. At the same time, agencies ignore and downplay political decisions that reduce the amount of resources or create scarcity in the first place, like tax breaks to big businesses or higher hurdles for benefits recipients. Most agencies do not have the time, expertise, or incentives to conduct meaningful oversight. Agencies and tech companies block audits of their ADM tools because companies claim that allowing the public to scrutinize the tools would hurt their competitive position or lead to harmful consequences. As a result, few people know how, when, or even whether they have been subjected to automated decision-making.

As part of EPIC's Screening and Scoring Project, we set out to create a comprehensive list of ADM systems used in public services in a single jurisdiction. We hope to show the extraordinary scope of automated decision-making in the District of Columbia.

EPIC spent 14 months investigating ADM systems used by D.C. government agencies, accessing publicly available information, news articles, and academic research. We filed more than a dozen Freedom of Information Act (FOIA) requests to D.C. agencies and nine further requests to agencies using similar tools elsewhere. Many agencies were unwilling to share information because of companies' claims of trade secrets or other commercial protections. This makes it nearly impossible to identify every ADM system used in D.C., but we feature 29 systems from more than 20 agencies.

In this report, we have used a technique common in qualitative research, called vignettes, to capture what it feels like to experience automated screening and scoring first-hand. Vignettes are short, evidence-based narratives developed to offer social dilemmas for further reflection, especially when sensitive issues are involved. To create the vignettes, we combed through newspapers, listened to hearing testimony, read court cases, and conducted interviews to identify common themes. Then, we crafted fictional characters—Juan Hernandez and CeeCee Montgomery—and wrote two stories about what might have happened to them when they encountered automated decision-making in housing services and unemployment insurance in metro D.C. Every incident included in the vignettes happened to someone and is documented. See each vignette's endnotes for more information on the real-world cases that inspired the story. Vignettes allowed us to pull together many different people's experiences into composite narratives while protecting the identities and privacy of those with whom we spoke or whose experience is otherwise reflected.

*Screened and Scored* presents a bird's-eye view of automated decision-making systems in D.C., describes how these tools might be impacting residents, and offers suggestions for how people in the District can respond.



## VIGNETTE

# Juan Hernandez

In 2011, Juan Hernandez lost his housing when a predatory mortgage company foreclosed on his parent's Columbia Heights home.<sup>1</sup> His parents went to the city's homeless intake center and learned that over 600 families were ahead of them<sup>2</sup> on the District's emergency shelter waiting list.<sup>3</sup> The family had to separate. Juan's father eventually found a place at La Casa on Spring Road, a bilingual transitional housing program. His mother found temporary shelter through Calvary Women's Services, over in Anacostia. Juan, 17, wanted to finish his last year at Bell Multicultural High School, so he lived at friends' houses for the 2011–12 school year.



## ALGORITHM AT WORK

**There is compelling evidence that lending institutions used algorithmic tools to target low-income communities and communities of color for predatory loans—a practice that contributed to the subprime mortgage crisis of 2008–2011.**

Practices of digital predatory inclusion, sometimes called “reverse redlining” or “algorithmic redlining,” can include using consumer data to deliberately seek out “financially vulnerable borrowers for deceptive sales tactics.”<sup>4</sup> According to sociologist Jacob Faber, Black and Latinx borrowers were more than twice as likely to receive subprime loan offers in the run up to the subprime mortgage crisis—even when they had significantly higher incomes than white borrowers.<sup>5</sup> For an in-depth exploration of the historical roots of the practice, see Keeanga-Yamahtta Taylor's *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (2021).

Despite the extra stresses of couch surfing, Juan graduated with honors in May 2012. He deferred his college plans for a year and got a job as a busboy at a local bar and restaurant. He lived with his girlfriend, a waitress, in a month-to-month rental on 14th Street as he saved money for a deposit on a two-bedroom apartment for his parents and younger siblings. One year's college deferment stretched into two. And then the lingering effects of the Great Recession scuttled his plans; he was laid off as the expected economic recovery failed to materialize.<sup>6</sup>

Under stress from unemployment, Juan's relationship broke down. Columbia Heights had gentrified rapidly,<sup>7</sup> and Juan couldn't find housing he could afford on his own. He looked farther afield—he had begun to give up his hope of reunifying his family or staying in the neighborhood. But his unemployment check wouldn't cover rent on a studio, even in University Heights or Brentwood.

The waiting list for public housing and Section 8 vouchers was 28 years long.<sup>8</sup> He put himself on the waiting list and started living in his car.

To maximize his personal safety, Juan sometimes parked overnight in neighborhoods requiring residential passes. After he received two tickets, the Department of Public Works booted and towed his car. He couldn't afford to get it out of impound. Nevertheless, Juan kept working a series of restaurant jobs all over the city.<sup>9</sup> In 2016, at 23 years old, Juan found himself going home from work to a tent in an encampment under the H Street Bridge.<sup>10</sup>

A few years earlier, the District had rolled out a new system intended to help match unhoused people to the most appropriate available housing resource, called the Coordinated Assessment and Housing Placement (CAHP) system.<sup>11</sup> Hearing that CAHP was part of a nation-wide effort to end chronic homelessness,<sup>12</sup> Juan met with a street outreach worker and eagerly participated in a lengthy assessment called the Vulnerability Index and Service Prioritization Decision Assistance Tool (VI-SPDAT).<sup>13</sup>

He wasn't sure how he felt about answering questions like, "Do you ever do things that may be considered to be risky like exchange sex for money, run drugs for someone, have unprotected sex with someone you don't know, share a needle, or anything like that?" But he was desperate. He gritted his teeth, hoped the homeless service agency wasn't sharing his data with the police, and answered as honestly as he could.



#### ALGORITHM AT WORK

**Coordinated entry systems—like CAHP D.C.—have been widely used across the United States and Canada for nearly a decade.**

The process begins when an outreach worker or homeless service organization uses the VI-SPDAT survey to collect data about unhoused people's health, social activity, income, personal habits, experience with violence, social security numbers, demographic information, migration status, and more. This data is entered into a federally approved Homeless Management Information System (HMIS), then a "ranking" algorithm tallies up the results of the VI-SPDAT to give each unhoused person a vulnerability score from 0 (least vulnerable) to 17 (most vulnerable). Simultaneously, housing providers fill out vacancy forms to populate a list of available units. A second algorithm, the "matching" algorithm, is run to identify a person "who is in greatest need of that particular housing type" who "meets its specific eligibility criteria." If a match is made, the unhoused person is assigned a housing navigator, a special caseworker who helps them gather up all necessary documentation. If the application is approved by the housing provider, the unhoused person receives housing or related resources. If not, the match disappears and the matching algorithm is run again to produce a new candidate. For more on coordinated entry systems, see Chapter 3 in Virginia Eubanks's *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor* (2018).

Because he had struggled with insecure housing for more than 5 years, Juan was categorized as chronically homeless, the outreach worker said. But that wasn't enough for the system to categorize him as especially vulnerable.<sup>14</sup> Since he was young, mostly healthy, and employed, Juan was given a score of 5 (out of 17).<sup>15</sup> He wasn't prioritized for permanent supportive housing, but he was offered rapid rehousing resources,<sup>16</sup> including financial help with his first month's rent and security deposit if he could find an available apartment on the private market.

Rapid Rehousing resources don't include a Housing Choice voucher,<sup>17</sup> so Juan would have to pay market rent, between \$450 and \$750 for a room in a shared house, or between \$800 and \$1200 for an apartment.<sup>18</sup> Juan figured that if he could get into stable housing, he could work full time at the District minimum wage of \$13.25 an hour<sup>19</sup>—after taxes, he'd clear about \$400 a week. Maybe he could even afford a small studio.

Re-invigorated by the offer of help with move-in expenses, Juan put all his effort into finding a new apartment. He found a \$800 studio in Bellevue, but there was little public transportation nearby, so it would be hard to get to work. He found a \$715 room in a 5-bedroom shared apartment in NoMa. Then, the jackpot: he found a \$950 studio in Mt. Pleasant—a stretch with his budget, but close to transportation, near his old neighborhood, and a place of his own.<sup>20</sup> He applied.

Days later, he got devastating news: the landlord called him to tell him his application had been denied based on a tenant screening report that showed that he had a criminal record for drug possession and aggravated assault in Texas. Juan was shocked. The farthest he'd ever been from D.C. was a school trip to Philadelphia during middle school.

Juan asked where the tenant screening report came from and was told that it was provided by RentGrow, a private company that buys data about criminal records, evictions, credit reports, income, and other factors and produces a tenant risk score for prospective landlords. Juan told the landlord that the report was wrong. The landlord told him he could challenge it. Juan called RentGrow and was referred to a website to request a free copy of his file. He went to the public library and filled out the online form. Two weeks later, he received a copy of his tenant report.

The report showed that he had an eviction in Nevada as well as the criminal record in Texas. He quickly recognized the problem. The Nevada eviction had actually happened to a Juan Luis Hernandez, who was 69 years old. The criminal record belonged to a Juan Carlos Hernandez, who was currently living in El Salvador.<sup>22</sup> Juan drafted a dispute letter to send back to RentGrow, following the instructions on the website. He called the landlord back to let him know that he was trying to fix his record, but it was too late: the apartment had been snapped up by another applicant.





## ALGORITHM AT WORK

Many landlords, including those in D.C., rely on tenant screening reports to evaluate and filter prospective renters, as well as to decide how much to charge for a security deposit.

According to the Consumer Financial Protection Bureau,<sup>21</sup> a tenant screening report may consist of information from any or all of the following:

- Credit reports
- Rental and eviction history
- Employment verification
- Criminal history
- Sex offender status
- National terrorist watchlist

Most tenant screening companies buy this information in bulk from a variety of sources, then produce a “risk rating” or a “risk score” for potential landlords.

A large number of private companies produce tenant screening reports with very little oversight. These reports have been the subject of investigations, lawsuits, and legislative efforts that challenge their inaccuracies, their unclear dispute and correction process, and their impact on fair housing laws. For more on tenant screening reports, see the further resources section or the RentGrow case study found in this report.

Juan wanted to apply for more apartments, but he learned that nearly all landlords use similar tenant screening reports.<sup>23</sup> It took RentGrow thirty days to “reinvestigate” his case and delete the inaccurate information from his file. A few weeks after his RentGrow record was corrected, Juan applied for three more apartments but was again turned down due to his alleged criminal record. It turned out that all three of those landlords used CoreLogic, a different tenant screening company, which had also confused Juan’s record with the information from a number of other people named Juan Hernandez. He started the process of challenging his CoreLogic record, but he lost all three of those apartments to other applicants in the hot D.C. rental market.

Juan continued to play data-correction whack-a-mole with tenant screening companies for a year. While he submitted dispute letters and waited for reinvestigations, his Rapid Rehousing funds expired.

## FURTHER RESOURCES

### Foreclosure Crisis in Latinx Communities

- Michele Lerner, *Lingering Impact of Foreclosure Crisis is Felt Most in Hispanic and Black Communities, Study Says*, Wash. Post (May 21, 2019), <https://perma.cc/YB7V-PA66>.
- Sarah Mikhitarian, *How the Housing Bust Widened the Wealth Gap for Communities of Color*, Zillow (Apr. 25, 2019), <https://perma.cc/ND4Q-2ZJ6>.
- *Coordinated Assessment and Housing Placement (CAHP) in Washington, D.C.*, <https://perma.cc/U8S4-9WQW>.
- District of Columbia, *Coordinated Assessment and Housing Placement (CAHP) Policy and Procedures for Individuals* (Jan. 2019), <https://perma.cc/98E5-9ZP5>.
- Avi Bajpai & Reginald Black, *While DHS Works to Shelter and Quarantine Homeless Residents, Housing Referrals Have Been Put on Hold*, Street Sense (Apr. 15, 2020), <https://perma.cc/B79S-N7MH>.

### Tenant Screening Reporting

- Lauren Kirchner & Matthew Goldstein, *Access Denied: Faulty Automated Background Checks Freeze Out Renters*, The Markup (May 28, 2020), <https://perma.cc/NK4A-TELR>.
- Lauren Kirchner, *What Can You Do if Your Tenant Background Report Is Wrong?*, The Markup (May 28, 2020), <https://perma.cc/35AU-SGCL>.
- Tex Pasley, Henry Oostrom-Shah, & Eric Sirota, Shriver Ctr. on Poverty Law, *Screened Out: How Tenant Screening Reports Undermine Fair Housing Laws and Deprive Tenants of Equal Access to Housing in Illinois* (Jan. 2021), <https://perma.cc/83YG-G46K>.
- Cyrus Farivar, *Tenant Screening Software Faces National Reckoning*, NBC News (Mar. 14, 2021), <https://perma.cc/LHT2-3SFL>.
- Erin Smith & Heather Vogell, *How Your Shadow Credit Score Could Decide Whether You Get an Apartment*, ProPublica (Mar. 29, 2022), <https://perma.cc/Y39D-3CLE>.
- *McIntyre v. RentGrow, Inc.*, 34 F.4th 87, 90 (1st Cir. 2022).



## PART ONE

# Screened and Scored in D.C.

Automated decision-making is threaded throughout a wide variety of public services in D.C. This section explains what ADM systems are, describes how they work, and provides readers with a comprehensive list of automated decision-making systems in D.C. public services.

## What are Automated Decision-Making Systems and How Are They Used in D.C.?

ADM systems use data-driven or rules-based approaches to replace or inform human decision-making. ADM systems can rely on many different types of tools<sup>24</sup> that share certain basic similarities: they take certain inputs (data), run that data through their statistical model of the world, and produce outputs (decisions).

For example, an ADM system used during pre-trial hearings in D.C. creates an output for how likely an individual is going to either (a) get arrested again or (b) fail to appear at trial. To calculate this output, the D.C. Pretrial Services Agency feeds detailed information about a defendant—including the defendant’s criminal history, employment status, and demographic information—into an ADM tool called a “risk assessment instrument.” Then the risk assessment instrument automatically applies different weights to each piece of information and aggregates a risk score. For more information on D.C. Pretrial Services Agency’s risk assessment instrument, see the case study below.

Automated decision-making systems have different levels of complexity and are used for a wide variety of tasks. Public agencies in D.C. deploy an arsenal of ADM systems: from a simple checklist that determines which member of the homeless community gets priority for housing resources to a machine-learning-based program that attempts to identify fraud when someone applies for unemployment benefits.

The following graphic shows sourced examples of automated decision-making systems used by public agencies in D.C. The information EPIC found through our research, FOIA requests, and interviews is imperfect and incomplete, highlighting the urgent need for proactive disclosure about ADM systems used in the public sector.



EPIC welcomes any information that will improve our list of automated decision-making systems in D.C. Please contact [info@epic.org](mailto:info@epic.org) with modifications or additions. Updates will be reflected in the online version of this graphic, available at: <https://epic.org/ai/screenedinDC>.

**Table: Automated Decision-Making Systems in D.C.**



**EDUCATION**

AGENCY	TOOL	GOALS/DECISIONS MADE
University of the District of Columbia	<b>Aspire, Accomplish, Take on the World (A.AC.T)</b> —EAB, Inc.’s Risk Assessment for Student Guidance	To increase graduation rates by predicting which students are not likely to graduate and alerting school support staff
D.C. Office of Deputy Mayor for Education	<b>EdScape</b> —a set of interactive visualizations and downloadable datasets	To (1) act as a usable source of information that informs how and where new schools, facility capacity, or programs are needed, and (2) provide the public with the same information as policymakers for transparency
	<b>EdStat</b> —a statistical model	To inform policy-making around increasing school attendance
	<b>Predictive Absenteeism Model</b>	To predict which students are likely to miss school



**HEALTH**

AGENCY	TOOL	GOALS/DECISIONS MADE
D.C. Office of Veterans Affairs	<b>COVID-19 Prognostic Tool</b> , developed in-house	To inform COVID-19 treatment and clinical training by automatically generating a 120-day mortality risk score for patients based on age, BMI, preexisting health conditions, and vital signs
D.C. Department of Health	<b>Prescription Drug Monitoring Program</b>	To monitor when and how often certain drugs (opioids, benzodiazepine, etc.) are prescribed
D.C. Medicaid/ Department of Health Care Finance	<b>Electronic Visit Verification (EVV)</b> by Sandata Technologies LLC	To monitor support and billing for home health patients by tracking data about beneficiaries, their caregivers, and the services rendered
D.C. Department of Health Care Finance	<b>InterRAI-Home Care (InterRAI HC)</b>	To facilitate continuing medical care and flag health risks through assessments capturing and evaluating patient data



## HOUSING

AGENCY	TOOL	GOALS/DECISIONS MADE
D.C. Housing Authority	<b>RentGrow</b> —a screening algorithm	To screen out applicants for criminal histories and likelihood of making timely payments for housing
D.C. Interagency Council on Homelessness	<b>Vulnerability Index and Service Prioritization Decision Assistance Tool (VI-SPDAT)</b> —a statistical tool developed by OrgCode Consulting, Inc.	To assist case workers in determining who gets housing assistance first and what that assistance looks like
	<b>Service Prioritization Decision Assistance Tool (SPDAT)</b> —a statistical tool developed by OrgCode Consulting, Inc.	A more comprehensive tool than VI-SPDAT used on individuals who are presumed to be highly vulnerable but score too low on the VI-SPDAT to qualify for permanent supportive housing
D.C. Department of Buildings	<b>Proactive Inspection Program's In-House Risk-Based Algorithm</b>	To choose which buildings will be inspected for housing code violations by using factors like a building's age and landlord's history of violations to determine the which houses should be inspected when



## ECONOMIC OPPORTUNITY

AGENCY	TOOL	GOALS/DECISIONS MADE
D.C. Department of Human Services	<b>Pondera—FraudCaster &amp; CaseTracker</b>	To monitor and manage SNAP referrals and identify potential fraud by analyzing recipient data and generating fraud risk scores
D.C. Department of Employment Services	<b>Pondera—FraudCaster &amp; CaseTracker</b>	To identify potential improper payments and fraud in the unemployment insurance program by compiling data about each recipient and generating an algorithmic risk score
D.C. Office of Contracting and Procurement/ Department of General Services	<b>Dun and Bradstreet's Data Universal Numbering System (D-U-N-S)</b>	To score companies bidding for government contracts, similar to credit scores, using proprietary ratings based on predictive analytics, as well as past suits, liens, and judgments
D.C. Department of Insurance, Securities, and Banking	<b>D.C. REACH (in development)</b>	To develop an alternative credit scoring method for DC residents—part of a broader program aimed at expanding affordable housing and economic opportunity
D.C. Department of Health Care Finance (DHCF)	<b>District of Columbia Access System (DCAS)</b>	To integrate and streamline the Medicaid, SNAP, and TANF benefits process through automated, real-time verification of eligibility information



# CRIMINAL JUSTICE

AGENCY	TOOL	GOALS/DECISIONS MADE
D.C. Department of Youth and Rehabilitative Services	Structured Decision Making (SDM) Tool, developed by DYRS and the Annie E. Casey Foundation	To predict how likely youth offenders are to re-offend and inform how restrictive their placement will be (e.g., whether they will be placed in a juvenile facility) using factors like prior adjudications, school attendance regularity, and peer relationships
	Child And Adolescent Functional Assessment Scale (CAFAS) and Pre-School and Early Childhood Assessment Scale (PECFAS)	To assess youth offenders' day-to-day functioning across different life skills to help determine their placement and treatment during (or instead of) commitment to a facility
D.C. Department of Forensic Sciences	Automated Fingerprint Identification System (AFIS)	To facilitate forensic investigations by analyzing fingerprints and alerting investigators when a fingerprint matches an existing record in the AFIS database
	Automated License Plate Readers (ALPRs)—cameras equipped with technology that selectively finds license plates, reads them, and sends the info to a central database.	To automatically capture license plate numbers, store them in an MPD database, and compare them to a "hot list" of wanted license plates
D.C. Metropolitan Police Department (MPD)	Shotspotter	To detect gunshots through acoustics in real-time and alerting authorities
	Predictive Policing (funded by Department of Justice)	To inform policing efforts through predictive data analytics
	TrapWire	To analyze citizens' reports of "suspicious activity"
	D.C. Gang Database	To track suspected gang members, direct surveillance and police activity toward tracked individuals, and increase sentence severity for those convicted
	D.C. Department of Transportation (DDOT)	D.C. StreetSafe—Automated Traffic Enforcement (ATE)
D.C. Department of Pretrial Services	Pre-Trial Risk Assessment Instrument (RAI)	To recommend appropriate release conditions for criminal defendants by generating individual recidivism risk scores using 43 factors from five categories—criminal history, current charge, criminal justice system status, drug test results, and social/demographic attributes
	The Guidelines Reporting Information Data (GRID) System & Guidelines Scoring System (GSS)	To monitor sentencing trends and inform sentencing guidelines by integrating arrest, court, and criminal history data and calculating criminal history scores
D.C. Superior Court's Family Court, Social Services Division, D.C. Child Guidance Clinic	Structured Assessment of Violence Risk in Youth (SAVRY)	To inform juvenile sentencing decisions by evaluating 24 factors, including an offender's criminal history, social factors, and demographic information, and assigning offenders a recidivism risk score





CASE STUDY

# Pretrial Risk Assessment Instrument

The D.C. Pretrial Services Agency (PSA) has used a pre-trial risk assessment instrument (RAI) since 2012. The RAI promises to predict defendants’ future behavior, especially their likelihood to (1) re-offend before trial and (2) fail to appear at trial. The RAI assigns risk scores based on 70 attributes, from age at arrest and “physical problems” to past arrest and drug test results. The PSA uses the RAI scores to inform pre-trial detention decisions and prioritize policing resources. Across the country, courts and law enforcement use similar tools to set bail, determine sentences, and guide parole supervision.

Information about prior offenses is gathered in the context of past policing behavior—including decisions about who is stopped, cited, searched, ignored, or arrested—which is biased against Black residents. For example, in D.C., Black residents were arrested for opioid offenses nearly seven times as often as white residents between 2017 and 2022.<sup>25</sup> As The Sentencing Project reports, drug offenses are “committed at roughly equal rates across races.”<sup>26</sup> But in 2015, Black people comprised 27% of those arrested for drug law violations in the United States—more than double the Black proportion of the total U.S. population.<sup>27</sup> *Offense* rates may be similar, but arrest and incarceration rates are not. Arrest data—and the predictions about future offenses based on that data—are inextricably linked to how police resources are used and broader cultural assumptions about race and criminality.

Demographic/Social Predictors (10 Current Factors)					
Risk Factor	Current RAI	Previous RAI	Risk Factor	Current RAI	Previous RAI
Defendant is female	X	X	Total number of children defendant has	X	X
Defendant age	X	X	Does defendant live with children	X	X
Defendant is US citizen	X	X	Defendant has emotional problems	X	X
Defendant is DC Resident	X	X	Defendant has physical problems	X	X
Defendant's employment status	X	X	Defendant has prior SSU supervision	X	

Part of a comparative table of D.C. risk assessment factors after a 2019 analysis on bias and effectiveness

Compared to many automated tools, the PSA’s risk assessment instrument is more transparent, with periodic testing and updates when its risk factors are shown to be biased. For example, in 2019, the government reduced the number risk factors from 70 to 43 after independent review, placing more emphasis on recent criminal charges.<sup>28</sup> EPIC also obtained a 2019 Validation Study<sup>29</sup> and a Predictive Bias report,<sup>30</sup> which rated the RAI’s predictive ability and accuracy as “sufficient,” but recommended using the tool with caution, “especially when the client or case is complex.” Still, after these changes and updates, the accuracy of the RAI was about 7% more likely to incorrectly identify Black defendants as high risk compared to their white counterparts.



## PART TWO

## Why Should I Care?

Understanding automated decision-making is important because, as the vignettes in this report show, they make decisions that alter the paths of our lives. People deserve to know whether these systems are accurate, fair, and unbiased, both on their own merits and compared to possible alternatives. Unfortunately, ADM systems often fail to achieve this relatively low standard.

To understand common shortcomings in ADM systems, consider a familiar type of human decisionmaker: a judge. Judges are supposed to follow a prescribed method for making decisions, oversimplified here for clarity:

- Judges hear arguments from both sides and consider the issues and evidence before making a decision.
- Judges' decisions and processes have guardrails to ensure justice and fairness.
- Two of these guardrails are statute and precedent: a judge must interpret the law based on relevant laws written "on the books" (statute) and based on what judges in higher courts have said in similar cases (precedent).
- Judges must explain their decisions in writing so that everyone can understand their reasoning.
- If parties think there was something wrong with the judge's reasoning, they can appeal to a higher court to review the decision and potentially overturn it.

ADM systems should have similar protective mechanisms that ensure accuracy, fairness, and equity. But many do not: they make decisions without much oversight or input, decisions that are difficult to challenge, and decisions that are unfair. In

“ADM systems should have similar protective mechanisms that ensure accuracy, fairness, and equity. But many do not: they make decisions without much oversight or input, decisions that are difficult to challenge, and decisions that are unfair.”

addition, ADM systems tend to shrink complex and persistent problems to fit narrow technological solutions.

## ADM systems make decisions without much oversight or input

Because people impacted by automated decision-making systems are rarely given much information about how they work, it is hard to determine whether these systems are accurate. When government agencies assume ADM systems are accurate, it can be difficult to hold agencies accountable for the harm these tools cause.

Transparency helps protect against inaccuracy and fosters accountability. But public

### FAQ: ARE HUMANS MORE BIASED THAN MACHINES?

Human decisions are inevitably plagued by bias, inaccuracy, and other issues. Remedying structural bias in institutions is crucial. But using opaque and untested automated decision-making systems to aid or replace human decision-making is not the answer. In fact, using ADM systems conceal structural inequities, providing an illusion of progress by replacing a biased individual with an equally biased algorithm. ADM systems learn what is normal by studying the world that exists, including its patterns of discrimination. These systems inevitably make predictions and recommendations that maintain the status quo. Meanwhile, ADM systems tend to operate with less oversight because their automated processes are more opaque than human decision-making. Over generations, we have developed methods to address human foibles, such as cross-examination of witnesses during a trial or due process requirements. These mechanisms are not perfect, but they exist to uphold a standard of fairness. Often, when ADM systems are implemented, these fairness protections go by the wayside. Instead of relying on democratic and constitutional protections, we are often forced to simply trust that the ADM system has made the correct decision.

agencies and their vendors argue that we should not understand how exactly ADM systems work, offering two major justifications for concealing the systems' internal logic.

First, private companies claim that the software or models behind their ADM systems are "proprietary business information," giving them a competitive advantage.

For example, EPIC submitted a FOIA request to the Illinois Department of Employment Security about its use of Pondera software for unemployment insurance fraud detection, the same software used by D.C.'s Department of Human Services and D.C.'s Department of Employment Services.<sup>31</sup> EPIC sought the program's source code, results from tests of its error rates, the factors that it took into account, and other information.<sup>32</sup> In response, Illinois returned

“When government agencies *assume* ADM systems are accurate, it can be difficult to hold agencies accountable for the harm these tools cause.”



a small number of documents, but withheld many others on the basis that they were “proprietary and confidential” with no further explanation.<sup>33</sup>

Second, public agencies and private companies claim that revealing exactly how ADM systems work will embolden bad actors. For example, former Pondera CEO and current Thomson Reuters Vice President John Coss suggested that the logic of ADM systems must be secret because the information could provide a roadmap for fraudsters<sup>34</sup> and “bad guys.”<sup>35</sup> In another instance, Arkansas’s Division of Workforce Services unsuccessfully argued that the agency should be exempt from providing information about their fraud-detection practices because: (1) the Division of Workforce Services is acting in a law enforcement capacity when it seeks out fraud, and (2) because disclosing information about their ADM tools would give potential unemployment insurance fraudsters a “competitive advantage” over legitimate applicants.<sup>36</sup>

These concerns are overblown and misplaced. Information such as a system’s error rates or a list of the factors used to make decisions about life-saving public benefits is not a handbook for fraud. It is necessary information for people subjected to automated decisions.

## **ADM systems make decisions that are hard to challenge**

You have a right to due process when the government makes a decision about your fundamental rights, such as your eligibility for public benefits. Due process ensures that the government cannot arbitrarily, unfairly, and/or inaccurately deprive you of your rights to important resources such as unemployment insurance, nutrition assistance, healthcare, or disability benefits.<sup>37</sup>

This usually means a benefit cannot be terminated without a fair hearing. A fair hearing includes the right to examine evidence, the right to legal representation, and the right to a fair and impartial decision-making through something like a board or an administrative law judge.<sup>38</sup>

These due process protections can be weakened when an agency starts using an ADM system. For example, between 2013 and 2015, the Michigan Unemployment Insurance Agency accused individuals in more than 20,000 cases of fraudulently seeking unemployment payments on the recommendation of an ADM system that turned out to be wrong 93% of the time.<sup>39</sup> The notification process for these decisions was so confusing that most applicants and recipients did not appeal when they were incorrectly deprived of their benefits.<sup>40</sup> By the time the errors were corrected, Michiganders were robbed of tens of thousands of dollars in needed support, spent countless hours spent fighting wrongful charges, lost jobs, had federal tax refunds confiscated, declared bankruptcy, and had their credit scores ruined.<sup>41</sup>



## CASE STUDY

# Automated Traffic Enforcement

For more than 20 years, the Metropolitan Police Department (MPD) has used cameras to enforce traffic violations.<sup>42</sup> In 2009, the MPD adopted Automated License Plate Readers (ALPRs), which automatically capture license plate numbers and match them to a “hot list” of wanted plates.<sup>43</sup> In 2014, MPD integrated their ALPRs with the District’s closed-circuit television (CCTV) system, gunshot detection system, and computer-aided dispatch system.<sup>44</sup> And in October 2019, Mayor Bowser’s executive order transferred this combined automated traffic enforcement (ATE) program from the MPD to the District Department of Transportation (DDOT), where it has remained since.<sup>45</sup>

When an ATE camera identifies speeding associated with a traffic incident, a ticket is mailed to the address where the car’s license plate is registered. However, many car owners—especially those in lower-income communities—share their cars with others like friends and family. Because DDOT assigns liability to the vehicle’s registered owner rather than the driver during a traffic violation,<sup>46</sup> owners of shared cars are more susceptible to being misidentified as traffic violators by ATE and ALPR systems.<sup>47</sup> In effect, ATE and ALPR systems impose disproportional financial burdens on poor and working-class people.

Automated traffic cameras are also placed in more majority-Black neighborhoods than majority-white neighborhoods. Despite Black and white residents being nearly identical proportions of the population in D.C. (45.8% and 45.9% respectively), over half of D.C.’s traffic cameras are located in wards where Black residents are the plurality (Wards 4, 5, and 7). The wards with the highest number of cameras are Ward 4, 5, 6, 7, and 8, which have 45%, 54%, 91%, 49%, and 91% Black populations.<sup>48</sup>

A 2018 analysis found that in D.C., “drivers in predominantly black neighborhoods receive more moving violations and higher fines” than those in predominantly white ones, though they do not experience more crashes.<sup>49</sup> This analysis found that “a driver in a black-segregated area is over 17 times more likely to receive a moving violation (at a cost of 16 times more per resident) than in a white-segregated area.”<sup>50</sup> As Mayor Bowser prepares to add 170 new ATE cameras next year, this exploitative and harmful pattern will likely continue.<sup>51</sup>



## ADM systems make decisions that are unfair

Human behavior is inherently complex and uncertain. ADM systems make predictions about humans by making simplifications and assumptions: a behavioral model is simply a theory about how people will behave in the future based on data collected about how “similar” people behaved in the past. An ADM system’s simplification of human behavior can be consequential, and its assumptions can reflect harmful human biases. A data scientist or administration’s initial belief that fraud is rampant in public service programs, that police officers treat all races equally, or that poor families are more hazardous to their children than middle class families can shape the decisions those tools go on to inform.

**“ An ADM system’s simplification of human behavior can be consequential, and its assumptions can reflect harmful human biases.**

ADM systems are particularly bad at making predictions about outliers, people whose experience is rare, unusual, or outside the mean. For example, EPIC submitted an amicus curiae brief in a case before the Massachusetts Supreme Judicial Court regarding the use of an ADM system that helps decide if an incarcerated person will be released on parole.<sup>52</sup> The Massachusetts Parole Board was using a risk-assessment instrument that places people into high, medium, or low risk categories based on their likelihood of re-offending on release. However, the person they were scoring in this case, Mr. Rodriguez, was a juvenile lifer—a person imprisoned for life for a crime he committed as a minor. Research shows that factors correlating with juvenile lifers’ reoffending differ greatly from the factors correlating with the general population’s likelihood to reoffend.<sup>53</sup> But the ADM system did not take that into account. Decisionmakers lost sight of—or never understood—the fact that they were denying a man his freedom based on statistical models that assumed that everyone behaves the same.

## Automated decision-making systems shrink complex problems to fit narrow technological solutions

ADM systems are often used to do digital triage, which relies on the presumption that resources are inevitably limited and that automated decision-makers, unlike humans, can fairly and efficiently distribute these resources. For example, state workforce agencies in charge of disbursing unemployment insurance are chronically underfunded and understaffed.<sup>54</sup> The result: long wait times to get an application approved, overtaxed phone lines for people who need help, and vulnerability to coordinated fraud campaigns.



State governments have spent a lot of money on technology to automate processes and solve problems instead of taking on potentially more difficult but effective political tasks that could fix larger social or structural problems. These tasks include increasing agency funding, adding more staff, doing away with inefficient means-testing policies, and making policy changes. Moreover, states receive federal incentives to spend money on new technology when they would not get the same support to expand in-person services.

Even government agencies with ample staffing and funding are incentivized to use more technology. The D.C. Metropolitan Police Department's (MPD) adoption of ShotSpotter is illustrative. ShotSpotter uses a series of publicly installed acoustic sensors to "hear" gunshots, estimate via algorithm where the noises are coming from, and sends a police response to the estimated location. In 2006, MPD purchased ShotSpotter with a \$2,000,000 grant from the FBI and initially deployed the technology in Anacostia, a majority-minority neighborhood.<sup>55</sup> MPD has made 12 subsequent purchases from the company, totaling \$4,799,938.07 in the last ten years.<sup>56</sup>

**“ False ShotSpotter alerts send police—expecting an armed suspect—into communities whose members are already more likely to be harmed or killed by officers. ShotSpotter has the potential to contribute to, rather than alleviate, violence.**

ShotSpotter addresses a real problem—gun violence—with an incomplete, pro-carceral, and often incorrect response: dispatching police officers. Police place ShotSpotter sensors almost exclusively in Black and brown neighborhoods.<sup>57</sup> A Chicago Inspector General study showed that more than 90% of the time ShotSpotter alerts yielded no evidence of a gun-related crime.<sup>58</sup> But false ShotSpotter alerts send police—expecting an armed suspect—into communities whose members are already more likely to be harmed or killed by officers.<sup>59</sup> ShotSpotter has the potential to contribute to, rather than alleviate, violence.



## PART THREE

# Automated Decisions and Our Rights

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Automated decision-making systems do not just influence how government decisions are made or how public resources are distributed. They also shape our rights and how we exercise them. This section explores how ADM systems are—often invisibly and without democratic deliberation—changing agency process and public policy in the District of Columbia.

## Civil Rights and Equal Treatment

ADM systems are frequently used in areas that have historically been a focus of civil rights movements, such as the criminal legal system, housing, employment, and public benefits. Throughout the twentieth century, people fought systems of oppression and discrimination on the basis of race, gender, class, disability status, and other characteristics. While many of these fights are ongoing, advocates made progress with laws such as the Fair Housing Act, Civil Rights Act of 1964, and many others.

In the housing context, public and private entities use ADM systems to screen apartment applicants, prioritize who gets public housing, process mortgage loan applications, and more. The Fair Housing Act prohibits discrimination in the sale or rental of housing based on race, color, national origin, religion, gender identity, sexual orientation, familial status, and disability. The law applies to advertisement, application processes, and mortgage lending. It makes disparate impact illegal, regardless of the intent of the decision-maker. In other words, if a housing policy can be shown to perpetuate segregation, it does not matter if policymakers meant to discriminate or not. Despite the law, housing discrimination and segregation remain pervasive in the United States.<sup>60</sup>

The D.C. Human Rights Act expanded the protections in the Fair Housing Act by adding additional protected characteristic and categories. The D.C. Human Rights Act further protects people from discrimination based on age, marital status, personal appearance, family responsibilities, political affiliation, matriculation, genetic information, source of income, place of residence or business, status as a victim of an intrafamily offense, credit information, or status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.<sup>61</sup>

The D.C. Housing Authority (DCHA) uses a third-party tenant screening tool, RentGrow, to help make decisions about whether to accept applicants into its Housing Choice Voucher program, as well as help participating landlords screen applicants for public housing units.<sup>62</sup> RentGrow, like many tenant screening companies, first generates reports by collecting data like past eviction information, credit scores, and criminal records of all members of an applicant’s household, then recommends who should be rejected.

In theory, these factors are legal means to screen housing applicants. In practice, landlords can use these factors as proxies for criteria that are illegal to consider, such as race, familial status, and age. Scholars like Dr. Safiya Noble calls this process “technological redlining,” where racial, cultural, and economic inequities are perpetuated by technology.<sup>63</sup> For example, ADM systems that deny applicants based on criminal records, poor rental payment histories, or a history of eviction disproportionately impacts people of color, victims of domestic violence, and people with disabilities.<sup>64</sup> Black people, specifically, are overpoliced, over-evicted, and tend to rely most heavily on of housing assistance programs in the District.<sup>65</sup>

RentGrow’s tenant screening services perpetuate housing inequity by giving landlords what appears to be an objective basis for rejecting applicants, even when the information underlying the company’s reports reflects historical bias and injustice. Even if RentGrow chooses to exclude factors like race in their screening reports, the company can still utilize proxy variables like ZIP codes.<sup>66</sup> Because the United States is deeply segregated, a ZIP code is a reliable predictor of race.<sup>67</sup>

ADM systems are trained to recognize what is “normal” by looking at historical data, and historical data about housing in the District was collected in the context of oppression and discrimination. Thus, ADM systems effectively encode inequality into their designs, making them more likely to discriminate and deepen inequalities. Dr. Ruha Benjamin describes this process as part of the “New Jim Code.”<sup>68</sup> It is challenging to design automated decision-making systems otherwise or even to measure the extent of the harm they create. D.C. has no laws requiring businesses to audit their algorithms for bias or negative impact.<sup>69</sup> Proposed laws, such as the Stop Discrimination by Algorithms Act proposed by D.C. Attorney General Karl Racine, would do just that. But this kind of legislation has yet to pass in the District.<sup>70</sup>

“ADM systems are trained to recognize what is “normal” by looking at historical data, and historical data about housing in the District was collected in the context of oppression and discrimination. Thus, ADM systems effectively encode inequality into their designs, making them more likely to discriminate and deepen inequalities.”



## CASE STUDY

# Pondera's FraudCaster

In 2020, D.C. Department of Human Services (D.C. DHS) contracted with Pondera Solutions to use their FraudCaster software to predict Supplemental Nutrition Assistance Program (SNAP) benefits fraud.<sup>71</sup> Pondera's FraudCaster compiles sensitive data about public benefits recipients and retailers, feeds that data through its prediction and machine learning algorithms, and spits out scores, alerts, and ranked lists of "all program providers and participants based on their risk for fraud."<sup>72</sup> A high risk score may cause a recipient to lose their benefits or subject them to further investigation. And benefit recipients rarely know that they have been red-flagged.

Pondera Risk Score	Recipient Name	Case Number	Head of Household	Benefit Amount	Residential Address
1	GEORGE WASHINGTON	802165	Yes	\$130,887.17	123 Main Street, Las Vegas, NV 89001
2	THOMAS JEFFERSON	849871	Yes	\$18,963.58	123 Main Street, Los Angeles, CA 90210
3	JOHN ADAMS	808771	Yes	\$43,362.57	123 Main Street, Chicago, IL 60607
4	ABRAHAM LINCOLN	808849	No	\$167,471.85	123 Main Street, Nashville, TN 37211
5	ANDREW JACKSON	807516	Yes	\$60,266.24	123 Main Street, Louisville, KY 40218
6	JAMES MADISON	808519	No	\$29,264.12	123 Main Street, Spokane, WA 99201
7	FRANKLIN PIERCE	801564	No	\$130,379.97	123 Main Street, Salt Lake City, UT 84144
8	THEODORE ROOSEVELT	809546	No	\$133,406.74	123 Main Street, Denver, CO 80214
9	WARREN G. HARDING	803167	No	\$33,873.34	123 Main Street, San Antonio, TX 78206
10	GERALD FORD	807940	Yes	\$17,766.26	123 Main Street, Redding, CA 96001

Flag	Name	Tier	Rank
5003	Ineligible facility residence	1	4
5009	Prolonged out-of-state transactions	3	2

Example of FraudCaster scorecard results that allows the agency to rank the household with the highest level of non-compliance and risk of fraud

Fraudcaster uses data from a wide variety of sources, including data brokers, social networking sites, credit reporting agencies, web scrapers, government databases, agency records, and location tracking.<sup>73</sup> It also covers a wide range of factors, such as how far someone travels to buy groceries, how someone spends their money, and how often a person checks their EBT balance.<sup>74</sup>

Just months before signing the contract with D.C. DHS, Pondera was acquired by Thomson Reuters, a multi-billion-dollar, multinational media conglomerate and data broker. As a result, Pondera now integrates Thomson Reuters' CLEAR investigation platform, a searchable database of billions of public and proprietary records from over 60 data sources, into its FraudCaster software.<sup>75</sup> CLEAR is currently the subject of a class action that alleges that Thomson Reuters creates a "cradle-to-grave dossier" for each person in its database and sells that information to third parties, including to U.S. Immigration and Customs Enforcement (ICE).<sup>76</sup>

In response to EPIC's FOIA request, D.C. DHS said that it had no documents pertaining to accuracy testing of Pondera's tools, and it has not provided statistics on how the Pondera contract has impacted D.C. public benefit recipients. However, stories from other states give cause for concern. In December 2020, California's Employment Development Department hired Pondera to review 10 million unemployment insurance



claims paid out since the beginning of the pandemic. Pondera flagged 1.1 million claims as “suspicious,” and all of the claimants’ benefits were suspended. Further investigation showed that more than 600,000 (54%) of those claims were in fact legitimate.<sup>77</sup>

There is also evidence that Pondera’s software facilitates government efforts to claw back benefits paid in the past by helping public agencies identify purported overpayments that can then be interpreted as debts. In their contract with Nevada, for example, Pondera specified 56 data elements it would examine. Sixteen of these data elements (29%) were directly related to debt rather than predicting or preventing fraud. Pondera’s fraud predictions may be playing out instead as overpayment detection, putting many people through the nightmare of trying to address government “zombie debts” incurred long ago.<sup>78</sup>

## Economic Security

In the late 1960s and early 1970s, the national welfare rights movement fought hard to achieve three legal victories that affirmed that people receiving public benefits should enjoy the same constitutional rights as other citizens.

A victory in *King v. Smith* (1968) overturned the “substitute father” rule that had traditionally assigned any romantic partner financial responsibility for a beneficiary’s children, giving caseworkers wide latitude to pry into sensitive details of welfare recipients’ lives. By decoupling single mothers’ romantic lives from their children’s welfare needs, *King* took one step in the direction of personal and sexual privacy protections.<sup>79</sup>

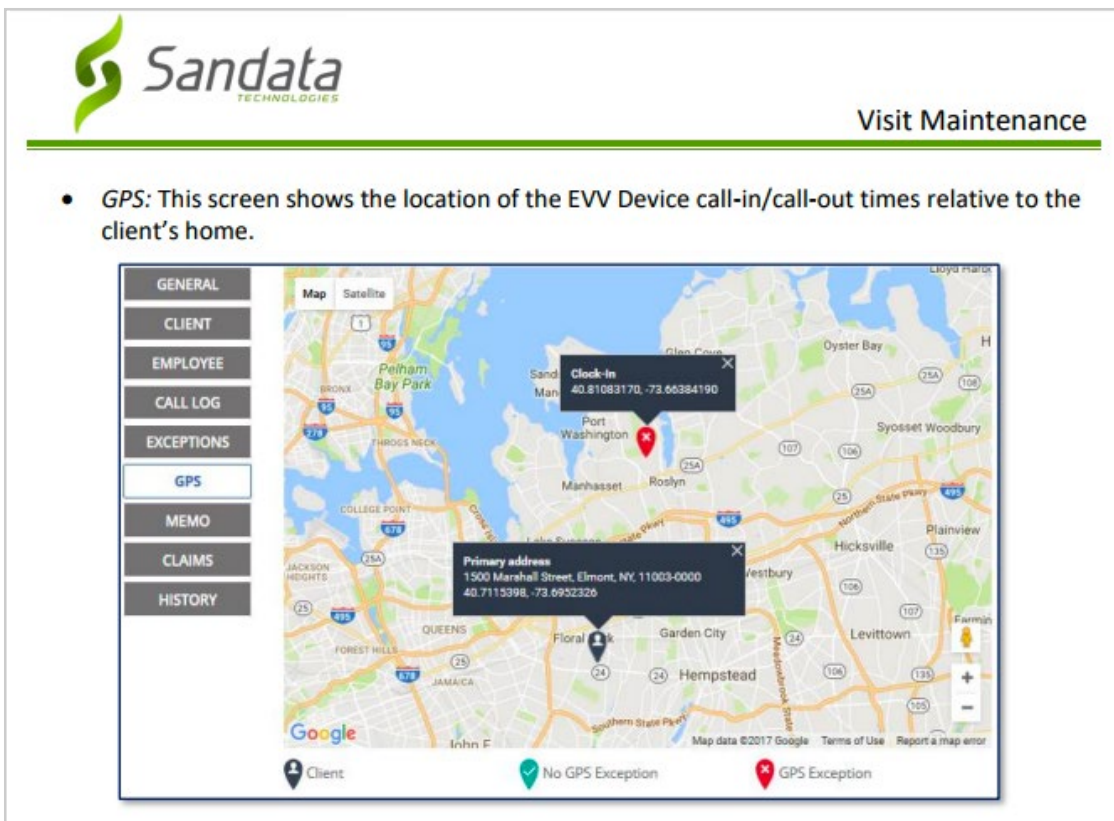
In *Shapiro v. Thompson* (1969), the Supreme Court ruled that residency restrictions—eligibility rules that limited benefits to those who had lived in a state for a minimum period before applying—were unconstitutional restrictions of a person’s right to mobility.<sup>80</sup>

*Goldberg v. Kelly* (1970) enshrined the principle that public assistance recipients have a right to due process and that benefits cannot be terminated without a fair hearing, an administrative process that includes the right to examine evidence, the right to legal representation, and the right to be heard by a fair and impartial decision-maker.<sup>81</sup>

Many of the ADM technologies explored in this report threaten these hard-won rights. For example, some tools threaten or weaken the privacy advances provided by *King v. Smith*. Social media analysis, which is used in the Pondera and RentGrow<sup>82</sup> systems we describe above, could allow caseworkers and landlords to access detailed information about applicants’ and recipients’ personal lives and social networks. Pondera and RentGrow also analyze the whole household or family unit, not just the public benefits applicant.

This means surveillance is being conducted on networks of people, not just individuals.<sup>83</sup> These features are a step backward for the privacy of those receiving welfare and their families.

Some tools threaten mobility protections secured in *Shapiro v. Thompson*. For example, the fraud prediction model used by Pondera flags recipients that travel significant distances to do their grocery shopping.<sup>84</sup> Data collected by Sandata's Electronic Visit Verification (EVV), a digital timesheet that tracks personal care attendant and home healthcare workers paid through Medicaid, includes the care worker's (and therefore the care recipient's) latitude and longitude.<sup>85</sup>



Screenshot of Sandata's EVV app showing care workers' GPS location.  
Image from [Free Wheelin': Life & Travel with a Disability](#)

The systems we describe here also have the potential to degrade the protections of the fair hearing process. Administrative law judges often defer to the judgment of a digital system, which may appear more objective and neutral than evidence presented by caseworkers, police officers, or benefits recipients. In reality, as we have shown above, the scores and predictions produced by automated decision-making systems encode bias and automate inequality.



## CASE STUDY

# RentGrow Tenant Screening

In August 2018, the D.C. Housing Authority (DCHA) began contracting with RentGrow to provide tenant screening services for roughly 57,000 public housing units in the District.<sup>86</sup> Although landlords participating in the District’s Housing Choice Voucher Program (HCVP) have the option to determine tenant eligibility in other ways, many rely extensively on RentGrow’s tenant screening reports to guide eligibility determinations.

To screen potential tenants, RentGrow collects and stores a wide range of user data, including credit history, rental history, civil judgments, and criminal records.<sup>87</sup> The DCHA uses this data to determine preliminary eligibility for the District’s HCVP. When HCVP participants apply for subsidized housing, they are again screened by landlords using RentGrow’s tools. For example, after receiving a HCVP housing application, a participating landlord can generate a RentGrow tenant screening report for potential tenants and all other members of their household. Landlords can customize the reports to see, for instance, whether an applicant has previously fallen behind on rent or been convicted of a drug-related crime. The landlord can rely on the tenant screening report to accept or reject the housing application.

Despite RentGrow’s broad adoption, reports show its tenant screening reports are often inaccurate. For example, as reported by Cyrus Farivar for NBC News in 2021, Marylander Marco Antonio Fernandez filed suit against RentGrow because the company’s tenant screening report contained two inaccuracies that denied him the initial opportunity to rent an apartment.<sup>88</sup> The screening report suggested Fernandez had a drug conviction and three misdemeanors for petty theft despite him having no criminal record. His report included information about an alleged Mexican drug trafficker, also named Marco Antonio Fernandez. The report also flagged that Fernandez was a possible match to someone on a federal sanctions list, despite that person having a different name, date of birth, and address than Mr. Fernandez. While the report was eventually corrected—and Mr. Fernandez was approved to rent the apartment—not all prospective tenants are as lucky.<sup>89</sup>



DCHA's use of RentGrow may leave potential tenants unable to access subsidized housing because of easily avoidable errors, shoddy data practices, and misuse by landlords. Even when RentGrow's screening is error-free, it can unfairly deny housing, violate the law, and disproportionately harm people of color, disabled people, and survivors of domestic violence.<sup>90</sup> For example, landlords have broad discretion to interpret RentGrow's tenant screening reports and determine which factors will affect an applicant's eligibility. The only limitation placed on their discretion is that they must forward applications they deem ineligible to a supervisor for review. And because RentGrow's tenant screening reports often provide seemingly objective support for a decision to reject applications from otherwise eligible minority tenants, supervisor review may not correct every erroneous or biased application decision.





## Privacy and Data Security

Whether created by the government or third parties, automated decision-making systems come with privacy and security risks. ADM systems require governments and companies to collect large amounts of information about people, which are either used to “train” the system or are directly processed by the system.

Sometimes, developers make use of preexisting databases of sensitive personal information compiled by data brokers or the government. Other times, developers create these databases themselves for the specific purpose of training their ADM systems.

Pondera’s FraudCaster is an example of the former: its models are trained on large, preexisting collections of public and commercial data,<sup>91</sup> including Thomson Reuters’s CLEAR database, “which pulls from over 60 data sources to provide access to billions of additional records about individuals.”<sup>92</sup> FraudCaster models pull data from location services, credit reporting agencies, social media scrapers, government record databases, and other data brokers.<sup>93</sup> FraudCaster also uses government agencies’ historical data to train their fraud prediction model.<sup>94</sup> While it may seem less problematic to use a preexisting database than to create a new one, this is not necessarily true. Using preexisting databases compiled through mass surveillance incentivizes and normalizes the privacy-invading practices that created the databases in the first place.

“Each database of personal information created to train an automated decision-making system is a new temptation for mission creep or abuse by governments and a new target for hackers or other bad actors.”

A tool used by D.C.’s Pretrial Services Agency, the risk assessment instrument (RAI), is an example of an automated decision-making system that creates a new database of sensitive information. The RAI shapes the restrictiveness of bail conditions, which can affect whether or not defendants are able to work, grocery shop, or visit family while they await trial. The Pretrial Services Agency feeds the RAI with 43 factors, including sensitive information such as “emotional problems,” number of children, employment status, and citizenship status.<sup>95</sup> This information would not necessarily be collected and pooled if it were not for the RAI. Each database of personal information created to train an automated decision-making system is a new temptation for mission creep or abuse by governments and a new target for hackers or other bad actors.

Data security risks are real, not theoretical. The creation, collection, storage, transfer, and use of sensitive data in ADM systems pose significant risks of unwanted disclosure or misuse. The D.C. government is not immune to ransomware, phishing, data breaches, or malware. In fact, in 2021, the Washington Metropolitan Police Department suffered a ransomware attack during which hackers obtained data that included personnel information.<sup>96</sup> D.C. government leaders, including Mayor Muriel Bowser and Council Chair Phil Mendelson, also had their emails and passwords stolen and leaked in recent data breaches.<sup>97</sup>

Contracts between D.C. and third-party vendors often lack sufficient data protection for the responsible use of ADM systems. In the contracts we received through open records requests, few included use restrictions, data minimization requirements, or purpose specifications. The restrictions that did exist were limited in scope. While contracts reference system security, few require that the ADM systems only collect data for the specific purpose at hand (often called “data proportionality”).<sup>98</sup> For example, D.C. Department of Human Services’ contract with Pondera gives the District sole rights to the data produced by the company, requires “cyber liability” and “professional liability” insurance, and protects the District from liability if its contractor violates residents’ privacy rights. But it does not include a requirement that the company collect only the smallest amount of information necessary from the public to achieve its goal.<sup>99</sup>

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Data security risks are real, not theoretical. The creation, collection, storage, transfer, and use of sensitive data in ADM systems pose significant risks of unwanted disclosure or misuse. The D.C. government is not immune to ransomware, phishing, data breaches, or malware.



## VIGNETTE

# CeeCee Montgomery

CeeCee Montgomery, 39, lives with her 12-year-old daughter, Penny, and her 67-year-old mother, Henrietta, in a duplex in Brightwood. She worked full time as a bartender at a restaurant in Takoma Park for six years before she was laid off on March 16, 2020. Her boss told her to go ahead and file a claim for unemployment in Maryland, because people apply in the state where they work, not the state where they reside. He wasn't sure when the bar would reopen, but told her to stay in touch. She was a great employee and he'd be happy for her to return to work when things went back to normal.

CeeCee tried to set up an account in NetClaims—the Maryland Department of Labor's online portal for unemployment services—within 24 hours of being laid off, but realized she couldn't complete the application on her cellphone. She'd need access to a computer and a broadband connection.<sup>100</sup> CeeCee borrowed a car and headed out to the One-Stop Job Center in Wheaton only to find the office closed and a note up in the window to sign up for “virtual services” or call the office's phone number.<sup>101</sup>



## ALGORITHM AT WORK

**In September 2020, the Maryland Department of Labor (DOL) launched a massive digital transformation project, called BEACON 2.0.**

Maryland DOL described BEACON as a “a multi-year project dating back to 2015 that integrates all benefits, appeals, tax, and reemployment functions of the unemployment insurance system.”<sup>104</sup>

Claimants, the agency promised, would be able to use the system to update claims, see details of eligibility issues, respond to fact-finding questions, upload supporting documentation, file appeals, and track and pay alleged overpayments. Maryland's DOL said that BEACON 2.0 would fix the office's long-standing and well-documented communication problems. But claimants and lawmakers reported errors—CAPTCHA problems, “service unavailable” messages, system freeze-outs—that made the system largely unusable for thousands.<sup>105</sup> Online application tools for public benefits, such as the BEACON 2.0 app, did help millions of people access critical resources when agency offices closed their doors during the pandemic. But web-based social services don't always work seamlessly, and even when they do, they tend to serve those who are least vulnerable best.<sup>106</sup> In 2018, 8% of American households didn't have a computer at home, and 15%—nearly 183,500 households—lacked broadband internet access. Hundreds of thousands of people without access to a computer or internet scrambled to find ways to fill out lengthy applications for food assistance, cash aid, health insurance, and unemployment insurance benefits. People with disabilities, limited English language fluency, and mental health barriers also struggled to navigate complex bureaucracies via technology—and were often unable to reach overburdened caseworkers or call centers workers when they needed support.

She kept trying to call the One-Stop, but the line was always busy.<sup>102</sup> After a few days, she found a friend of Penny's who had a working computer and internet access in her home. She was embarrassed to ask her daughter's friend's mom if she could come over to complete an unemployment application. But she swallowed her pride, put on her mask, filled in the application, and uploaded pictures of her driver's license, social security card, pay stubs, and a letter from her boss stating that the bar closed due to the coronavirus pandemic.<sup>103</sup> She submitted her completed application within a week of her last shift.

A few days later, a Maryland Department of Labor representative called to tell her the restaurant was not challenging her unemployment claim and that she should receive a debit card in the mail soon.<sup>107</sup> CeeCee received regular unemployment insurance payments of \$387 per week<sup>108</sup> until June 29, when the restaurant reopened for patio service and her boss called her back into work part-time. In the "summer without camp," it was lucky that Henrietta could watch Penny at home, and CeeCee was able to return to bartending.

She worked until November, when the restaurant closed for five days after a Covid exposure among staff. Two weeks after that, her boss announced vastly reduced service hours and CeeCee was laid off once more. Back in September, Maryland had launched BEACON 2.0, a new integrated system for claimants to apply and make weekly claim certifications. CeeCee re-opened her claim on BEACON's mobile app and started filing weekly claims again. She could finally manage her unemployment on her cellphone, but she had been making significantly less money because of her reduced hours, and her unemployment check reflected the change, dropping to \$246 a week.<sup>109</sup> Luckily, the Lost Wages Assistance plan provided an extra \$300 a week for six weeks, which kept her family afloat through the holidays.

Then, in February 2021, CeeCee went online to file her weekly claim certification and found that she had been locked out of her BEACON account. An alert informed her that she needed to verify her identity and that her unemployment insurance claim was being investigated for fraud.<sup>110</sup> She had not been informed that she was being investigated or that her benefits were at risk.<sup>111</sup>

CeeCee re-submitted copies of her driver's license, birth certificate and social security card to DOL eight times via postal mail<sup>112</sup>—she couldn't log in to her BEACON account, so she couldn't upload her old pictures. Every week she provided evidence of her identity, but the system wouldn't allow her to file a weekly claim. Her benefits ceased. The household's debt began to mount as she dipped into her saving to cover the mortgage and put basic necessities—food, utilities, phone bills—on a credit card.

She called the One-Stop center and the state's unemployment office over and over. Only once was she able to reach a customer service representative,<sup>113</sup> Cheryl, who asked for information about CeeCee's employer's name and contact information. Cheryl explained that she wanted to give CeeCee's boss a call to clarify her eligibility.<sup>114</sup>

Then silence. Maybe Cheryl couldn't reach her boss? The restaurant was down to a skeleton staff—he must have been busy. CeeCee kept calling and emailing the unemployment office, but the lines were always busy and she didn't hear back. This went on for months.

In April, she finally started to get calls back.<sup>115</sup> The first customer service rep, Mike, simply told her what she already knew—there was a problem with her BEACON account. A week later, she spoke to someone named Pat, who told her that CeeCee actually owed the Department of Labor money. She had been overpaid and would have to pay the unemployment insurance (UI) benefits back. CeeCee started to panic—what did they mean, overpaid?—when Pat said, “Oh, let me fix your BEACON.”



### ALGORITHM AT WORK

**In June 2021, 37,088 Marylanders' unemployment insurance claims were suddenly flagged and their accounts were frozen.**

The reason? They were identified as “potentially fraudulent.” Claimants received no prior notice that their benefits would cease and reported that “they don't know why they've been flagged, they don't know how long they're going to be flagged for, and they don't know the status of their claim.”<sup>117</sup>

The previous month, LexisNexis was awarded a \$7.3 million contract by the state.<sup>118</sup> These were potentially life-altering delays: claimants waiting months for determinations in their UI cases faced eviction, utility shut-offs, and other immediate financial catastrophes. But the Maryland Department of Labor (DOL) characterized their backlogs as the result of a lack of resources and the increased volume of claims. Labor Secretary Tiffany Robinson promised that a new vendor, LexisNexis, could fix the problem by automating the process.

The new contract emerged in a context of nearly hysterical concern about unemployment fraud. On June 1, 2021, Maryland Governor Larry Hogan attempted to discontinue expanded unemployment assistance months in advance of the federal deadlines.<sup>119</sup> On June 21, he decried the “fraudulent activity rampant in unemployment insurance,” and suggested that the state had successfully flagged 1.3 million fraudulent claims during the pandemic.<sup>120</sup> Nearly half of these allegedly fraudulent claims, the Department of Labor asserted, were identified by LexisNexis, based on an algorithmic audit of historical data going back to May 8 that had flagged 508,079 claims as likely fraud.

The DOL insisted that 92.23% of claims flagged were investigated and confirmed as fraudulent.<sup>121</sup> But it is unclear how the fraud was confirmed in these cases. When questioned by lawmakers and reporters, Labor Department spokeswoman Fallon E. Pearre replied that her office does not have information about how claims of fraud are verified as fake and that DOL had referred the flagged claims to federal law enforcement.<sup>122</sup> The Department of Labor's own press release suggests that a claimant failing to upload all necessary documents is understood as verification that the claim is fraudulent.<sup>123</sup>

But, as we see in CeeCee's story, there are many reasons claimants could fail to upload necessary documents, and technical failures exacerbate the problem. Further, as we describe in the Pondera case study within this report, later audits of fraud prediction algorithms often find that most claims were in fact legitimate. See the additional resources section below for more information on LexisNexis, including the legal challenges the company is facing for failing to verify the accuracy of their consumer data, and the company's cooperation with U.S. Immigration and Customs Enforcement (ICE).



CeeCee logged in to BEACON and was horrified. None of the links in the app worked, and she still couldn't file her weekly claims, but the system said that she owed Maryland \$10,719. She hit the button labeled "Appeal" at the top of the screen and filled out the form to request a hearing. A few days later, a confirmation number appeared in the app that included a date and time of a telephone hearing, but no phone number. She waited for a call on the appointed day. No call came. A few days later, she clicked on the appeal button again, and app indicated that her appeal had been canceled.<sup>116</sup>

CeeCee kept calling the unemployment office throughout April and May. Each person she reached gave her a different reason for the overpayment and told her to file an appeal with the "lower" or "upper" group, but she had no idea what that meant. Everyone said that she still had a problem with her BEACON account. Finally, one of the reps told her she was wasting her time and should just figure out a way to pay the money back.<sup>124</sup>

But there was some good news—the weather had improved, the patio at the restaurant was booming again, and her boss wanted her back. She went back to bartending.

In July, her BEACON account suddenly started working again—and she found a huge volume of correspondence she had missed, including a letter from the Chief Hearing Examiner providing details on the appeals process. CeeCee wrote to the Chief Hearing Examiner and waited two weeks for a response. When no reply came, she called the office number on the letter and spoke to one of the Chief Hearing Examiner's staff, who told her that all the people she had spoken to so far were temps who would tell her anything to get her off the phone. She suggested that CeeCee submit a formal appeal to the Board of Appeals.<sup>125</sup>

CeeCee wrote the letter and sent it via certified mail. For the first time, she received a reply quickly: her appeal was denied. The 30-day window to appeal the Department of Labor's decision had elapsed.

## FURTHER RESOURCES

### Maryland's Unemployment Insurance Digital Transformation (BEACON 2.0)

- Tre Ward, *Maryland Launches BEACON 2.0 Unemployment Website*, WBAL (Sep. 21, 2020), <https://perma.cc/GHZ2-E3KW>.
- Mark Roper, *Maryland Lawmakers Vent the Frustrations of Their Unemployed Constituents*, WMAR Baltimore (Jun. 9, 2021), <https://perma.cc/VLZ7-NAFL>.
- Bruce DePuyt, *Maryland's Jobless Benefits App Needs an Upgrade, Lawmakers Say*, Maryland Matters (Oct. 29, 2021), <https://perma.cc/ZLD2-8M8H>.

### Maryland's Unemployment Insurance Claims Delays

- Mallory Sofastaii, *Despite Hiring New Vendor to Verify IDs, 37,000+ Unemployment Claimants Are Still Waiting*, WMAR Baltimore (Jun. 23, 2021), <https://perma.cc/5WWB-GSXM>.
- Elizabeth Shwe, *Unemployed Workers Take Push for Unpaid Benefits to Court*, Maryland Matters (Jul. 21, 2021), <https://perma.cc/39XR-K8CE>.
- Complaint, *Harp v. Hogan*, No. 24-C-21-2999 (Baltimore City Cir. Ct. 2021), <https://perma.cc/8TJL-NVWF>.

### Unemployment Insurance "Overpayments" and Fraud Prediction

- Md. Economic Matters Committee Hearing on HB0955: <https://perma.cc/E67M-PBJT> and <https://perma.cc/R3S7-8CQ9>.
- Ovetta Wiggins, *Maryland Says It Has Detected More Than a Half Million 'Potentially Fraudulent' Jobless Claims Since May*, Wash. Post (Jun. 21, 2021), <https://perma.cc/FK6G-LXBH>.
- Virginia Eubanks, *Zombie Debts Are Hounding Struggling Americans. Will You Be Next?*, The Guardian (Oct. 15, 2019), <https://perma.cc/92TW-7AK5>.

### LexisNexis Risk Solutions

- Sam Biddle, *LexisNexis to Provide Giant Database of Personal Information to ICE*, Intercept (Apr. 2, 2021), <https://perma.cc/Q5HR-EBTU>.
- Womble Bond Dickinson (US) LLP, *LexisNexis Sued for FCRA Violation for Failing to Keep Consumer Data Up-To-Date*, National Law Review (Jun. 10, 2020), <https://perma.cc/Z4SD-4ZU5>.



PART FOUR

# What Can Be Done?

Automated decision-making systems are politics embedded in code. The good news is that we can demand more from our government agencies and the contractors that sell to them.

## What You Can Do: Individuals

If your public benefits—Supplemental Nutrition Assistance Program (SNAP), Temporary Aid to Needy Families (TANF), Medicaid, home heating assistance, housing, veteran’s benefits, childcare subsidies, etc.—are denied, reduced or terminated for any reason, you have a right to a fair hearing.

### D.C. AGENCIES’ GUIDANCE ON REQUESTING A FAIR HEARING

**Board of Veteran’s Appeals (BVA):**

<https://www.va.gov/disability/file-an-appeal/board-of-veterans-appeals/>

If you believe the U.S. Department of Veterans Affairs was wrong in denying, reducing, suspending, or stopping disability compensation, healthcare, housing services, or other VA benefits.

**Child and Family Services Agency (CFSA):**

<https://cfsa.dc.gov/page/fair-hearings>

To appeal a decision by CFSA to deny, reduce or terminate a childcare subsidy; appeal a finding of child abuse or neglect; to appeal a decision to deny, modify, suspend, convert, revoke a foster home license; or to appeal a decision to remove a foster child from your home.

**Department of Employment Services (DOES):**

<https://does.dc.gov/page/appeals>

To appeal a decision about your unemployment benefits.

**Department of Healthcare Finance (DHCF):**

<https://dhcf.dc.gov/page/fair-hearing>

If you believe Medicaid was wrong in denying, reducing, suspending, or stopping a service or resource.

## D.C. AGENCIES' GUIDANCE ON REQUESTING A FAIR HEARING (CONTINUED)

### Department of Human Services (DHS):

<https://dhs.dc.gov/release/department-human-services-fair-hearing-memorandum>

If you believe any action (or inaction) on the part of D.C. DHS resulted in denial, reduction, termination or suspension of TANF, General Public Assistance for Children (GC), Interim Disability Assistance (IDA), work-related benefits, health benefits exchange program, D.C. Healthy Families/Medicaid, SNAP, expedited SNAP, burial assistance, or refugee cash and/or medical assistance.

### District of Columbia Housing Authority (DCHA):

<https://webserver1.dchousing.org/?department=fair-hearings>

For any dispute which you may have with respect to DCHA's actions or failure to act in accordance with your lease or DCHA regulations which adversely affect your rights, duties, welfare, or status.

The [Benefits Tech Advocacy Hub](#) has a comprehensive guide to help you through the fair hearing process.<sup>126</sup> They suggest the following steps, and explain each more thoroughly on their website.

1. Read the notice of the government's decision and contact a legal aid attorney.
2. Complete an appeal form right away if you disagree with the decision.
3. As part of the appeal form, you should have the opportunity to keep receiving your benefits while you appeal. Make sure to request that your benefits continue. Do not agree to reapply instead.
4. Turn your appeal in and get proof (send it by certified mail, take a screenshot, or ask for a receipt).
5. Watch out for a letter with the date and time of the appeal hearing.
6. Get ready for the appeal hearing by getting your case file and asking for witnesses.
7. If something comes up close to the hearing date, ask to reschedule and give a good reason.
8. Prepare to give your best presentation at the hearing.
9. Present your case at the hearing.
10. Wait for the judge's written decision and appeal to a higher court if necessary.

As the Benefits Tech Advocacy Hub points out, the role of automated decision-making systems in your decision might not always be obvious. Here are some questions they suggest asking yourself to identify where ADM might be a factor:

- Did you lose benefits (or did they change) when nothing else changed about your circumstances?
- Does the written notice you received mention words like “system,” “algorithm,” “logic,” or “score”?
- Have District agencies announced anything about a new system, computer or digital transformation?

If you answer yes to any of these questions, an automated decision-making system might be at work in the background of your case. In some instances—mostly when there have been successful legal challenges that force private companies or public agencies to release information—you can request a copy of your score or profile. For example, RentGrow and other tenant screening companies generally have a link you can use to request or dispute a screening report on their website. The Consumer Financial Protection Bureau also maintains a list of consumer reporting companies, including tenant screening companies, “to help you take advantage of your rights to review the information in your consumer reports, and dispute possible inaccuracies.”<sup>127</sup>

In other instances, information is more difficult to find or no legal challenge has compelled the release of details about an automated decision-making system. In that case, you might have luck requesting your agency file via a Freedom of Information Act (FOIA) request. In D.C., you can request your record from any public agency, from the Department of Aging to the Department of Youth Rehabilitation Services. The [D.C. Freedom of Information Act Public Access Portal](#) has great information to get you started. The National Freedom of Information Coalition provides a sample FOIA request if you have not created one before.<sup>128</sup>

In general, we have found that asking for all the files an agency has on you is a good way to start, but you might also ask specifically for “Any score, screening report, prediction, ranking, or risk-rating used in my case.” If you receive responsive information that shows that an automated decision-making system was used in your case, consider reaching out to your local Legal Aid organization and informing them—they might be able to help you understand how being screened and scored impacted your case!

### **D.C. Bar Pro Bono Center**

<https://www.dcbbar.org/pro-bono/free-legal-help/help-for-individuals>

(202) 737-4700

### **Legal Aid Society of the District of Columbia**

<https://www.legalaiddc.org/>

(202) 628-1161



## Neighborhood Legal Services Program of the District of Columbia

<http://www.nlsp.org>

(202) 832-6577

## National Veteran's Legal Services Program

<https://www.nvlsp.org/>

(202) 265-8305

If you are faced with a confusing or shadowy automated decision, know that you are not alone. The more we share information with each other, the more we will understand how automated decision-making is impacting our lives, families, communities, and futures.

## What You Can Do: Organizations

Organizations that support people's struggles for justice and economic security—especially those addressing unemployment insurance, Medicaid, food assistance, or other public benefits—are always overworked and under-resourced. That is especially the case now, during one of the worst global public health crises in living memory. It is easy to think that we are too busy with immediate battles for basic human rights to pay attention to abstract-seeming issues like automated decision-making.

But ADM systems are part of a larger politics of austerity that endangers lives, weakens long-standing legal protections and rights, and re-invigorates discriminatory practices for a digital age. It is crucial to challenge benefits cuts, racist and classist decision-making, and invasive surveillance in the short-term. But, as the Benefits Tech Advocacy Hub points out, it is equally necessary to organize against the “underlying social and political issues that fuel resource scarcity and lead to unequal access” to economic security, community safety, and freedom.

There will be as many ways to respond to technological threats to social and economic justice as there are organizations, but here are a few approaches we think are particularly inspiring and effective:

1. **Peer-to-peer storytelling, research, and support.** Those who are directly impacted by automated decision-making systems in public services know the most about them and are the most invested in creating smart, sustainable solutions to the problems they create. Australia's [#NotMyDebt](#) campaign provides an outstanding example of how peer-to-peer, volunteer-driven networks helped people fight back against automated service cuts, crafted compelling personal stories for media campaigns, and built momentum to achieve long-term political change. And they won, securing a \$112 million settlement for Robodebt victims!

2. **Clinics and campaigns that that address a life-critical need (food, housing, healthcare, legal services) and a technological issue simultaneously.** [Maryland’s Unemployed Workers Union](#) hosts weekly “Unemployed and Workers Rights” clinics that help people file applications, formal grievances and appeals to the Department of Labor. [Los Angeles Community Action Network](#) (LA CAN) offers a clinic that helps unhoused people fight “quality of life” tickets for things like blocking the sidewalk, which can turn into warrants and arrests. At the same time, the organizations gather information about how automated systems are impacting unemployment insurance or how police surveillance is changing in the neighborhood, which becomes a resource for analysis and organizing against systemic injustice.
3. **Hubs and networks for advocates and organizers.** Too often, when faced with a new system that will impact their communities, clients, or constituents, organizations feel like they have to figure out a complex and shadowy process on their own. But constantly reinventing the wheel exhausts us and keeps us from recognizing patterns and potential allies. The Benefits Tech Advocacy Hub offers a model of sharing tools, analysis, and stories. It offers crucial direct resources—including guides to public records requests and fair hearings—as well as a framework for thinking about technology and economic justice and stories about how communities have fought back against unjust ADM systems and won.

## What You Can Do: Policymakers

**Enact policies that address the systemic discrimination that ADM systems tend to reinforce and perpetuate.** By moving away from policies for means-testing benefits, those that allow agencies to pursue past overpayments, and those that constrain police and court decisions, agencies are less likely (and less able) to use ADM systems in ways that negatively impact disadvantaged populations.

**Ban tools that cannot be substantiated.** Policymakers should not allow agencies to procure facial recognition systems, emotion recognition systems, predictive policing systems, and any other systems that do not meet minimum standards of accuracy and impact that are proven in both effectiveness and nondiscrimination. Particularly for government use of automated decision-making systems, agencies or contractors should bear the burden of justifying the appropriateness of ADM systems use.

**Resource:** [Gianclaudio Malgieri & Frank Pasquale, \*From Transparency to Justification: Toward Ex Ante Accountability for AI\* \(May 2022\)](#)

**Ban tools that are discriminatory or facilitate mass surveillance.** Policymakers should not allow government agencies to procure systems that have discriminatory impacts or effects—or those that facilitate mass surveillance. These systems may include facial and object recognition, networked traffic surveillance, profiled data from data brokers, and more.

**Enact laws requiring comprehensive algorithmic governance, including audits and impact assessments.** Algorithmic oversight mechanisms include requiring independent audits that measure the accuracy and civil rights impact of automated decision-making as well as impact assessments. Impact assessments require companies or independent entities to broadly consider the impact of the technology with thorough analysis. For impact assessments to be meaningful, they must measure not only design choices, but also real impacts and results. Additionally, there must be consequences for entities that provide insufficient or misleading information. In countries like Canada, agencies using automated decision-making systems are required to undergo algorithmic impact assessments prior to ADM systems use or continued use. Versions of these requirements were proposed in California’s bill, AB 13, and Washington’s bill, SB 5116.

**Resource:** [Emanuel Moss, Elizabeth Anne Watkins, Ranjit Singh, Madeleine Clare Elish, & Jacob Metcalf, \*Assembling Accountability: Algorithmic Impact Assessment for the Public Interest\*, \*Data & Society\* \(June 2021\)](#)

## APPENDIX A

# Our FOIA Requests: What We Did and Did Not Get

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In 2021, we began substantive research into the District's use of ADM systems and submitted Freedom of Information Act (FOIA) requests to D.C. agencies seeking information about their use of ADM systems. EPIC had previously done work related to ADM systems in the criminal justice context, including submitting open records requests for information about criminal risk assessments.<sup>129</sup> Working off the previous project's records requests to the D.C. Court Services and Offender Supervision Agency (CSOSA) and D.C. Pretrial Services Agency (PSA), we embarked on a new endeavor to try to identify how many D.C. agencies use ADM systems.

We decided to submit targeted records requests to agencies in the areas of health, economic opportunity, housing, criminal justice, education, children and family services, transportation, and contracting and procurement. We conducted open source research on any ADM system used in D.C. and then narrowed down the agencies that would likely have the records. To learn how ADM systems work in assisting government functions and how they impact residents in the District, we requested records like contracts and proposals, validation studies, data sharing agreements, privacy impact assessments, and memoranda and policies. For some requests, we named specific systems or third-party contractors that we knew the agency had contracts with. For other requests, we were broad in seeking records and asked for examples and any references to systems that we believe could fall within what constitutes automated decision-making. In some instances, we had to resubmit parts of our requests to D.C.'s Office of Contracting and Procurement because the agencies did not have contract records about their ADM systems.

EPIC submitted records requests to:

- U.S. Department of Veterans Affairs (VA)\*
- D.C. Housing Authority (DCHA)\*
- D.C. Public Schools (DCPS)
- D.C. Department of Health Services (D.C. DHS)\*
- D.C. Department of Health Care Finance (DCHCF)\*
- D.C. Office of Contracting and Procurement (D.C. OCP)\*
- D.C. Child and Family Services Agency (D.C. CFSA)\*\*
- District Department of Transportation (DDOT)\*\*
- D.C. Department of Employment Services (D.C. DOES)\*\*
- D.C. Department of Youth Rehabilitation Services (D.C. DYRS)\*

*\*released records; \*\*still processing request*

In total, we received responsive records from six agencies. Three agencies have told us that they are still working on our requests, and we are waiting production from one agency to be completed.

We encountered challenges with agency delay and/or our requests being ignored even after numerous attempts to contact the relevant agency. For the requests that broadly sought records about ADM systems, it was up to the agency to interpret what was relevant to the request. In one instance, we had several conversations with the agency and narrowed some of the categories of our requests. Speaking to the agency helped us understand how nuanced some of the systems are and we learned a more from that than solely relying on open records requests. In another request, the agency told us to resubmit the request to D.C. OCP and administratively closed our request without considering other categories of records that should have been in their possession. Despite broadly defining automated decision-making in our requests, we recognize that there are relevant records that were not released to us that should exist because contracts or other secondary agency sources confirm the use of certain ADM systems.

While open records requests are a good way to find out more about government activity, for the purposes of this project we realized that we cannot rely solely on FOIA to obtain information and needed to conduct secondary research to supplement our findings. Information about data sources or factors used in the systems and how the factors affect scores were shielded because of confidentiality or trade secret protections.

Some of the clearest pictures we could paint about one ADM system, Pondera's fraud detection software, was pieced together from open records requests from not only D.C. but also from other states. In addition to D.C. agencies, we also sent Pondera-specific open records requests to public benefits agencies in Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, and Nevada. We received records from several of these states. Information obtained from other state agencies allowed us to tailor our requests, know what types of documents existed, and gave us a better understanding of how the system works.

Here are some notable documents we received from our FOIA requests, including records from our related criminal justice work and from other states about Pondera's fraud detection software:

- D.C. Pretrial Services Agency
  - Produced several documents about risk assessment instruments developed and validated by Maxarth LLC. These documents include:
    - [2019 Validation Study](#) that rated the risk assessment instrument's predictive ability as "sufficient"
    - A [2019 document](#) that shows the government reduced the number of factors in its risk factors from 70 to 43 after a review and placed more emphasis on recent criminal charges
    - A [2019 Predictive Bias Report](#) that concluded that the predictive efficacy of the tools are better among white defendants but error rates were consistent across all races
- Records about Pondera's fraud detection software, FraudCaster, providing details about which data sources FraudCaster pulls from and what types of government data the system needs, its fraud profile indicators, examples of geospatial maps and flag alerts, terms of Pondera's contract agreements between agencies, and a glossary of terms related to the software and dashboard.
  - D.C. Department of Human Services
    - [Pondera FraudCaster Master Design Document](#)
    - [Pondera-DC Award Contract](#)



- NV Department of Health and Human Services
  - [Fraud Profile Indicators](#) for SNAP benefits fraud
  - [FDaaS Implementation Summary](#)
  - [FDaaS System Security Plan](#)
  - [Pondera Legislative Intel Brief](#) that summarized preliminary findings in the initial implementation of FraudCaster for Nevada’s SNAP benefits fraud
  - [Glossary of Terms](#)
- IL Department of Employment Security
  - [Pondera-Illinois Award Contract](#)
- D.C. Housing Authority
  - Two 2018 contracts for different public housing properties between DCHA and RentGrow that has a data use clause that says RentGrow and its parent or affiliated companies “may aggregate, compile, and use” information from the provision of its services to “improve, develop or enhance” services offered by RentGrow. The clause claims that this data does not include personally identifiable information.
    - [RentGrow Agreement 26A](#)
    - [RentGrow Agreement 26B](#)
  - A [sample ineligibly letter](#) for public housing that differs from a [proposed ineligibility letter](#). The proposed letter included a section indicating that the preliminary determination for ineligibility was based on: criminal history report, current/previous landlord verification, credit report/utility reference, low-income-public housing or HCVP rent payment history. The final letter removed that section but included a notice of rights to administrative review.
  - [Draft Applicant Screening Procedures](#) that identifies five main application screening criteria and then details on the process for assessing three of those screening criteria
  - [Applicant Family Selection Criteria](#) document that includes relevant information about personal habits or practices that should be in the admission process

For a comprehensive appendix of all responses to our FOIA request, visit <https://epic.org/ai/screenedinDC>. We will periodically update the appendix as we get records from any remaining agencies.

## APPENDIX B

# ADM Table Sources

*\* Indicates an automated system that was provided by a private contractor*



## EDUCATION

TOOL	SOURCE(S)
A.AC.T. Assessment*	<a href="#">University of District of Columbia Website</a>
EdScape	<a href="#">EdScape Web Page</a>
EdStat	<a href="#">“Every Day Counts!” Web Page</a> <a href="#">2016 Truancy Taskforce Report from D.C. Public Schools (DCPS)</a>



## HEALTH

TOOL	SOURCE(S)
VA's COVID-19 Prognostic Tool	<a href="#">VA Press Release</a>
Prescription Drug Monitoring Program	<a href="#">D.C. Health Program Explainer</a>
Electronic Visit Verification (EVV)	<a href="#">DHCF EVV Background</a>
InterRAI-Home Care (InterRAI HC)	<a href="#">2018-2019 DCHCF Performance Oversight Question Response</a>



## HOUSING

TOOL	SOURCE(S)
RentGrow*	<a href="#">DCHA Contract</a> <a href="#">RentGrow Website</a>
Vulnerability Index and Service Prioritization Decision Assistance Tool (VI-SPDAT)*	<a href="#">Interagency Council on Homelessness Systems Chart</a> <a href="#">VI-SPDAT Manual</a>
Service Prioritization Decision Assistance Tool (SPDAT)*	<a href="#">Interagency Council on Homelessness Systems Chart</a> <a href="#">General SPDAT Manual</a>
Proactive Inspection Program* Risk-Based Algorithm	<a href="#">DOB Algorithm Explainer</a>



## ECONOMIC OPPORTUNITY

TOOL	SOURCE(S)
Pondera FraudCaster & CaseTracker (DHS)*	<a href="#">D.C. DHS Contract</a> <a href="#">Pondera Program Explainer</a>
Pondera FraudCaster & CaseTracker (DHS)*	<a href="#">DOES Services Contract</a> <a href="#">Pondera Program Explainer</a>
D-U-N-S*	<a href="#">D.C. OCP Contracting Requirements</a> <a href="#">D-U-N-S Explainer</a>
D.C. REACH	<a href="#">D.C. REACH Press Release</a>
District of Columbia Access System (DCAS)	<a href="#">DCAS Manual</a> <a href="#">Salesforce Case Study</a>



## CRIMINAL JUSTICE

TOOL	SOURCE(S)
DYRS's Structured Decision (SDM) Tool*	<a href="#">DYRS Tool Explainer</a>
Child and Adolescent Functional Assessment Scale (CAFAS) and Pre-School and Early Childhood Assessment Scale (PECFAS)	<a href="#">DYRS Services Landing Page</a> <a href="#">Tool Explanation Video</a>
Automated Fingerprint Identification System (AFIS)	<a href="#">2019 DFS Annual Report</a>
Automated License Plate Readers (ALPRs)	<a href="#">MPD ALPR General Order</a> <a href="#">Police Complaint Board ALPR Report</a>
Shotspotter*	<a href="#">MPD Press Release and Data</a>
Predictive Policing	<a href="#">NIJ Funding Award</a>
TrapWire	<a href="#">2011 MPD General Order on Suspicious Activity Reporting Program</a> <a href="#">TrapWire Website</a>
D.C. Gang Database	<a href="#">MPD Special Order 09-03</a> <a href="#">Washington Lawyer's Committee Explainer</a>
DDOT's Automated Traffic Enforcement (ATE)	<a href="#">ATE Landing Page</a> <a href="#">Program FAQs/Explainer</a>
Pre-Trial RAI	<a href="#">RAI Press Release</a>
Guidelines Reporting Information Data (GRID) System & Guidelines Scoring System (GSS)	<a href="#">D.C. Sentencing Commission Data Sharing Policy</a> <a href="#">GRID Sentencing Data</a>
Structured Assessment of Violence in Youth (SAVRY)*	<a href="#">2019 AI Now Litigating Algorithms Report</a> <a href="#">SAVRY Model Explainer</a>

# Endnotes

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- 1 A 2019 analysis by Zillow found that Hispanic communities were hit particularly hard by the 2008 housing crisis. Nationwide, Hispanic communities were 2.5 times more likely to experience foreclosure than white communities and 1.25 times more likely to experience foreclosure than Black communities. See Michele Lerner, *Lingering Impact of Foreclosure Crisis is Felt Most in Hispanic and Black Communities, Study Says*, Wash. Post (May 21, 2019), <https://perma.cc/YB7V-PA66>; Sarah Mikhitarian, *How the Housing Bust Widened the Wealth Gap for Communities of Color*, Zillow (Apr. 25, 2019), <https://perma.cc/PF8R-MPDP>.
- 2 Elissa Silverman, *Families in District Struggling for Shelter*, Wash. Post (Oct. 22, 2006), <https://perma.cc/97EZ-FSU6>.
- 3 In 2006, resident protests thwarted an attempt to open new shelter in the neighborhood, even though homelessness had more than doubled since 1996. Paul Schwartzman, *Neighborhood Unites in Opposing Shelter: Residents Fear Proposal for NW Homeless Center Will Reduce Home Values*, Wash. Post (May 26, 2006), <https://perma.cc/RH7D-WK76>; Silverman, *supra* note 2. Three existing shelters in the Columbia Heights area closed between 2008–2014.
- 4 Linda E. Fisher, *Target Marketing of Subprime Loans: Racialized Consumer Fraud and Reverse Redlining*, 18 J. L. & Pol’y 122 (2009), <https://perma.cc/Q6D6-Y2UQ>. For a good introduction to the practice, see also James A. Allen, *The Color of Algorithms: Proposed Research Agenda for Deterring Algorithmic Redlining*, 46 Fordham Urb. L.J. 219 (2019), <https://perma.cc/9N3Y-ESTF>.
- 5 Emily Badger, *The Dramatic Racial Bias of Subprime Lending During the Housing Boom*, Bloomberg (Aug. 16, 2013), <https://perma.cc/ES7L-GNGL>.
- 6 There was a dip in District employment levels in 2011, though there were sharp gains in the hospitality industry in 2012. V. Dion Haynes, *Area Unemployment Rate Drops to 5.6% in January*, Wash. Post (Mar. 23, 2012), <https://perma.cc/T59P-9ALH>. In Ward 1, the pre-pandemic unemployment rate consistently dropped from a high of 6.8% to a low of 4% in 2019—though this may be an effect of gentrification more than a growth of economic equity. See Off. Of Labor Market Res. and Info., D.C. Dep’t of Employment Servs, *2010-2016 Unemployment Rates by Ward Annual Averages*, <https://perma.cc/28AW-SZ6Y>. Even with new hotels and restaurants leading a Ward-wide recovery, workers were feeling the pinch: low wages were not keeping up with area cost of living, leading to unionization attempts, protests, and the Fight for 15 throughout the early 2010s. See, e.g., Candice Choi, *Fast-Food Workers Plan Acts of Civil Disobedience*, Wash. Post (Sep. 1, 2014), <https://perma.cc/F8YW-6M3S>.
- 7 According to Jesse Bardsley, Andrew Melmed, and Wendy Nevett Bazil, housing prices in Columbia Heights rose 146% between 2000 and 2010. The median home value in 2020 was \$655,000. Jesse Bardsley et al., *Columbia Heights: From Segregation to Gentrification: Final Presentation* (Nov. 24, 2021), <https://perma.cc/GC99-F4TH>. Today, according to RentCafe, the average studio in the neighborhood costs \$2,262 a month. See *Average Rent in Columbia Heights DC Washington*, RentCafe, <https://perma.cc/7MCE-8ACT>.
- 8 In 2011, there were 40,000 people waiting for public housing or Section 8 vouchers. That year, the housing authority served 1,700—only 4%—of them. By 2013, the waiting list was so long that the District’s public housing agency announced they would close the list for the first time and encouraged poor families to sign up before it was “suspended indefinitely.” Mike DeBonis, *D.C. Public Housing Waiting List to Close; No New Applicants After April 12*, Wash. Post. (Apr. 3, 2013), <https://perma.cc/AV47-DYE8>.
- 9 A 2021 study from the University of Chicago estimates that 53% of people living in homeless shelters and 40% of unsheltered people were employed, either full or part-time, in the year that people were observed homeless between 2011–2018. Bruce Meyer et al., *Learning about Homelessness Using Linked Survey and Administrative Data*, Becker Friedman Institute (Jun. 2021), <https://perma.cc/P7KW-MDUU>.
- 10 This encampment was broken up in March 2016. See Joe Heim, *Near the U.S. Capitol, an Encampment of the Homeless is Removed by City Workers*, Wash. Post (Mar. 10, 2016), <https://perma.cc/78JU-UQZD>.

- 11 CAHP was launched in February 2014. For more information, see CAHP, <https://perma.cc/U8S4-9WQW>; Ji Kim & Jeanine Santucci, *DC Reassesses System to Funnel Vulnerable Residents into Housing*, Street Sense (Apr. 19, 2017), <https://perma.cc/K22T-HU5W>. For CAHP policies and procedures, see District of Columbia, *Coordinated Assessment and Housing Placement (CAHP) Policy and Procedures for Individuals*, <https://perma.cc/WC3E-GRK8>.
- 12 In 2016 Scott Schenkelberg, President and CEO of Miriam’s Kitchen, a homeless services organization in the District, wrote enthusiastically about the possibility on ending chronic homelessness in D.C., but achieving that goal has proved elusive. See Scott Schenkelberg, *Ending Veteran and Chronic Homelessness in Our Nation’s Capital*, Huff. Post (Aug. 22, 2016), <https://perma.cc/8UPN-LK69>. Between 2016 and the beginning of the pandemic, overall homelessness in the metropolitan Washington area decreased from 12,215 to 9,763 (20%). Homelessness in the District alone dropped from 8,350 to 6,380 (24%). Chronic homelessness in metro Washington has declined from 2,096 to 1,828 (13%). In 2016, 72% of unhoused single adults in the region were Black or African-American; in 2020, it was 73%. For D.C. point-in-time count data, see Metropolitan Washington Council of Governments, *Homelessness in Metropolitan Washington: Results and Analysis from the Annual Point-in-Time (PIT) Count of Persons Experiencing Homelessness* (May 4, 2022), <https://perma.cc/MA7A-VYAC>.
- 13 OrgCode Consulting Inc. & Community Solutions, *Vulnerability Index—Service Prioritization Decision Assistance Tool (VI-SPDAT): Prescreen Triage Tool for Single Adults* (2015), <https://perma.cc/B5DC-JN7Q>.
- 14 “D.C. community leaders have found it difficult to prioritize tie-breaking factors when two equally vulnerable individuals are in need of housing. They considered whether or not the length of stay in a shelter, or time being homeless, should be used as a first tie-breaker when prioritizing people for permanent supportive housing. The length of time spent homeless is currently a third prioritization factor, behind severe medical needs and unsheltered sleeping locations.” In 2017, “Leaders at the most recent D.C. Interagency Council on Homelessness CAHP committee meeting criticized that much of the chronically—but not as medically vulnerable—homeless people in D.C. are being left unserved.” Kim & Santucci, *supra* note 11.
- 15 We filled out the VI-SPDAT for our hypothetical Juan, answering YES to questions that asked if he was living outdoors, had been 2+ years without stable housing, had been attacked and beaten up recently, that his loss of housing had to do with a relationship break down, and that he struggled to do daily self-care like bathing, cleaning clothes, and getting enough food. The great majority of questions on the VI-SPDAT focus on physical and mental health, so he scored relatively low. See OrgCode Consulting Inc. & Community Solutions, *supra* note 13.
- 16 According to the D.C. Department of Human Services, Rapid Rehousing for Individuals is “a short-term subsidy program that assists individuals experiencing homelessness find [sic] affordable permanent housing.” It provides subsidies for up to 12 months to help people pay moving expenses (such as first month’s rent or a security deposit) or utility bills and provides case management services. D.C. Dep’t of Human Services, *Rapid Rehousing for Individuals*, <https://perma.cc/5JNH-VWXF>.
- 17 See CAHP D.C., PowerPoint, *Rapid Rehousing for Single Individuals: How to Explain RRH to Those Who Score a 5–9 on the VI-SPDAT!* (2021), <https://perma.cc/XF5E-A9KG>.
- 18 According to local homeless services organization Friendship Place, these were average D.C. rents in 2019. See *id.*
- 19 The D.C. minimum wage was raised from \$13.25 to \$14.00 an hour on July 1, 2019. Justin Zelikovitz, *D.C. Workers Receive Minimum Wage Increase on July 1, 2019*, DCWageLaw (Jun. 26, 2019), <https://perma.cc/X335-KHXX>.
- 20 Rents based on a search of Rent.com and Apartments.com, decreasing rents by 20% to adjust for rent inflation between 2017 and 2022. The 20% based on national average rent inflation numbers, but rent inflation was probably considerably worse in D.C. than the national average. See iPropertyManagement, *Average Rent Increase Per Year* (Mar. 4, 2022), <https://perma.cc/8TCS-52ZK>.
- 21 Consumer Fin. Prot. Bureau, *What is a Tenant Screening Report?* (Jul. 1, 2021), <https://perma.cc/XRQ5-U4WM>.
- 22 Forty percent of Latinx people in D.C. are of Salvadorian descent. Hernandez is the most common surname in El Salvador, while Juan is the 4th most common first name. There are more than 100 people in D.C. alone with the name Juan Hernandez. See America Counts Staff, *Hispanic Surnames Rise in Popularity*, Census Bureau (Aug. 9, 2017), <https://perma.cc/7MXW-Z5QR>.



- 23 Many attorneys and housing advocates have pointed out that tenant screening reports of this kind traffic in wildly inaccurate data, fail to provide even the most cursory checks for accuracy, increase discrimination, and lock vulnerable people out of housing. In a 2020 collaboration between The Markup and The New York Times, Lauren Kirchner and Matthew Goldstein wrote, “Automated reports are usually delivered to landlords without a human ever glancing at the results to see if they contain obvious mistakes.” Lauren Kirchner & Matthew Goldstein, *Access Denied: Faulty Automated Background Checks Freeze Out Renters*, The Markup (May 28, 2020), <https://perma.cc/NK4A-TELR>.
- 24 ADM can rely on tools such as algorithms, actuarial tools, machine-learning models, artificial intelligence (AI), statistical tools, and risk-assessment instruments. No definition can perfectly describe all these systems, but scholar and attorney Rashida Richardson’s comes close: “Any tool, software, system, process, function, program, method, model, and/or formula designed with or using computation to automate, analyze, aid, augment, and/or replace decisions, judgments, and/or policy implementation.” Rashida Richardson, *Defining and Demystifying Automated Decision Systems*, 81 Md. L. Rev. 785, 795 (2022), <https://perma.cc/5XHA-2VXA>. For more information on the varying terms used throughout the report, visit <https://www.epic.org/analysis/ADM>.
- 25 Colleen Grablick, *D.C.’s Opioid Arrests Reflect Racial Disparities*, WAMU (Sep. 6, 2022), <https://perma.cc/7H5N-4VBX>.
- 26 The Sentencing Project, *Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance* 3 (Mar. 2018), <https://perma.cc/4XAL-6N86>.
- 27 *Id.*
- 28 Memorandum from Off. of Planning, Policy, and Analysis, D.C. Pretrial Services Agency, to EPIC (Feb. 21, 2020), <https://perma.cc/H6LD-83S9> (responding to EPIC’s FOIA request).
- 29 Avinash Bhati, Maxarth LLC, *Pretrial Services Agency for the District of Columbia Risk Assessment Instrument Re-validation Project: Final Report* (May 5, 2019), <https://perma.cc/7KLS-7V6H>.
- 30 Avinash Bhati, Maxarth LLC, *Pretrial Services Agency for the District of Columbia Risk Assessment Instrument Re-validation Project: Predictive Bias Report* (May 5, 2019), <https://perma.cc/8RCY-AAFM>.
- 31 EPIC Freedom of Information Request to Illinois Dep’t of Emp. Services (Oct. 22, 2021), <https://perma.cc/7EPT-XKTF>.
- 32 *Id.* at Documents Requested 2, 5.
- 33 Correspondence on file with authors. Most of the agency’s justifications for withholding information should not apply to the information in the requested documents, especially for information such as the system’s error rates. For example, Pondera’s software’s errors rates are not copyrightable, patentable, trademark-eligible, or considered trade secrets.
- 34 Thomson Reuters, *Follow the Money Fighting Fraud in the Unemployment Insurance System During COVID-19*, <https://perma.cc/BYR6-M7XA>.
- 35 Jon Coss, *Catching Bad Guys: Preventing and Combating Fraud in Government Programs*, Thomson Reuters, <https://perma.cc/Y3W9-ZB5J>.
- 36 *Arkansas Dep’t of Commerce v. Legal Aid of Arkansas*, 645 S.W.3d 9 (Ark. Sup. Ct., June 9, 2022).
- 37 *See King v. Smith*, 392 U.S. 309 (1968); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970).
- 38 Kate Crawford & Jason Schultz, *Big Data and Due Process: Toward a Framework to Redress Predictive Privacy Harms*, 55 B.C. L. Rev. 93, 93, 109 (2014).
- 39 Ryan Felton, *Michigan Unemployment Agency Made 20,000 False Fraud Accusations—Report*, The Guardian (Dec. 18, 2016), <https://perma.cc/JAL4-BZDQ>.
- 40 Memorandum from Luke H. Schafer & Steve Gray to Gay Gilbert, Admin, U.S. Dep’t of Labor (May 19, 2015), <https://perma.cc/U39M-JUSD>.
- 41 *Id.* *See also* Stephanie Wykstra & Undark, *It Was Supposed to Detect Fraud. It Wrongfully Accused Thousands Instead*, Atlantic (Jun. 7, 2020), <https://perma.cc/5TAF-LGCH>.

- 42 Metropolitan Police Dep't, Automated Traffic Enforcement Program: General Order 303-10 (Jan. 27, 2016), <https://perma.cc/2P8A-M8J6>.
- 43 Martin Austermuhle, *License To Track? D.C. Cameras Capturing Millions Of License Plate Numbers*, WAMU (Dec. 10, 2013), <https://perma.cc/J7A3-SCMR>.
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- 45 D.C. Office of the Mayor, Mayor's Order 2019-085 (Sept. 27, 2019), <https://perma.cc/N26R-FYCJ>.
- 46 D.C. District Dep't of Transp., *DC StreetSafe FAQs*, <https://perma.cc/EY2K-K5WD>.
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- 49 William Farrell, *Predominately Black Neighborhoods in D.C. Bear the Brunt of Automated Traffic Enforcement*, D.C. Policy Center (Jun. 28, 2018), <https://perma.cc/B498-CX55>.
- 50 *Id.*
- 51 Anna Spiegel, *DC Mayor Hopes to Triple the Number of Traffic Enforcement Cameras*, Washingtonian (Mar. 24, 2022), <https://perma.cc/Z2A7-7CV6>.
- 52 EPIC Amicus Brief, *Rodriguez v. Massachusetts Parole Board*, 193 N.E.3d 1050 (Mass. Sup. Jud. Ct., Sep. 6, 2022), <https://perma.cc/HUS6-GYSF>.
- 53 *Id.* at 21.
- 54 Tony Romm, *Underfunded, Understaffed and Under Siege: Unemployment Offices Nationwide are Struggling To Do Their Jobs*, Wash. Post (Apr. 6, 2020), <https://perma.cc/SKM8-6EAV>.
- 55 Jennifer Minich & Randy Smith, *A Look at Where, When, and How Gunfire Is Detected in D.C.*, DCist (Oct. 12, 2017), <https://perma.cc/7NSS-Z4GR>.
- 56 Record on file with authors.
- 57 Todd Feathers, *Gunshot-Detecting Tech Is Summoning Armed Police to Black Neighborhoods*, Motherboard (Jul. 19, 2021), <https://perma.cc/TE9M-S7S4>.
- 58 Office of Inspector Gen., City of Chicago, *The Chicago Police Department's Use of ShotSpotter Technology* 3 (Aug. 2021), <https://perma.cc/G9P5-VKF4>.
- 59 Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 Geo. L.J. 1479 (2016).
- 60 See Robert Bartlett et al., *Consumer-Lending Discrimination in the FinTech Era* 5–6 (2019), <https://perma.cc/9U24-Z6P7> (finding that minority homebuyers still face widespread statistical lending discrimination).
- 61 *Protected Traits in D.C.*, D.C. Office of Human Rights, <https://perma.cc/GP73-E3WE>.
- 62 See Contract between D.C. Housing Authority and RentGrow, Inc. (2018), <https://perma.cc/QDD7-QHXM>.
- 63 See Safiya Umoja Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* 1 (2018).
- 64 Lydia X. Z. Brown, *Tenant Screening Algorithms Enable Racial and Disability Discrimination at Scale, and Contribute to Broader Patterns of Injustice*, CDT (Jul. 7, 2021), <https://perma.cc/L4ST-6C8D>.
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- 75 D.C. Dep't of Human Services, *Pondera Master Design Document* 5–6, <https://perma.cc/28C6-2NJF>; Thomson Reuters, *Thomson Reuters CLEAR Overview*, <https://perma.cc/7Y7Q-572S>.
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- 89 See *Fernandez*, 341 F.R.D. at 185.

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- 98 See, e.g., Contract Between D.C. Dep't of Human Services and Pondera Solutions for Fraud Case Management Software (2020), <https://perma.cc/FCC8-FP73>; Section 42, "Rights in Data," *Standard Contract Provisions, District of Columbia Government Supplies and Services Contract* (Jul. 2010), <https://perma.cc/S4V5-PAHQ>.
- 99 The unnecessary over-collection of data violates principles of data minimization found in various privacy laws such as the EU General Data Protection Regulation, which states that the processing of personal data must be limited to what is necessary and relevant to carry out a specified purpose. See generally Info Commissioner's Office, Principle (c): Data Minimisation, <https://perma.cc/U57B-6RQ8>.
- 100 In 2020, 7% of District residents lacked access to a computer and over 14% lacked access to broadband internet service at home. See U.S. Census Bureau, *QuickFacts: District of Columbia*, <https://perma.cc/385X-LB3Z>. There was no app available for NetClaims. See Md. Dep't of Labor, *Claimant Most Frequently Asked Questions—Unemployment Insurance* (Apr. 1, 2020), <https://perma.cc/5D7C-MG4D?type=image>. Since the agency keeps referring to their online system as the "Maryland Unemployment Insurance Internet Website," it is presumed that they did not have a mobile-friendly site. Even after BEACON 2.0 launched, people applying for unemployment in Maryland have faced serious issues. See Maryland Unemployment, Reddit, <https://perma.cc/35T9-DPUQ>.
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- 102 Mallory Sofastaii, *Even with New System, Unemployment Calls Continue to Overwhelm Phone Lines*, WMAR Baltimore (Jun. 10, 2020), <https://perma.cc/RZ7W-9U2K>.
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- 104 Md. Dep't of Labor, *Unemployed Marylanders to Begin Receiving Extra \$300 Payments This Week, Fully Modernized System Launches Later This Month* (Sep. 9, 2020), <https://perma.cc/BY9G-DQA5>.
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- 107 See Complaint 5, *Harp v. Hogan*, No. 24-C-21-2988 (Baltimore Cir. Ct. 2021), [hereinafter "Harp Complaint"] <https://perma.cc/A6E2-NUAX>.

- 108 Assuming a wage of \$17.50 an hour for 40 hours a week and using the Maryland unemployment calculator, available at <https://perma.cc/QTT8-7PEN>.
- 109 Assuming a wage of \$17.50 an hour for 25 hours a week and using the Maryland unemployment calculator, available at <https://perma.cc/QTT8-7PEN>.
- 110 See Harp Complaint at 3.
- 111 See, e.g., the case of Cassandra Tenkate, whose benefits were flagged for review and her payments frozen without notification in June 2021. Mallory Sofastaii, *Despite Hiring New Vendor to Verify IDs, 37,000+ Unemployment Claimants are Still Waiting*, WMAR Baltimore (Jun. 23, 2021), <https://perma.cc/HTH7-DDG5>.
- 112 Harp Complaint at 4.
- 113 Harp Complaint at 3.
- 114 Cassandra Kemp, Supporting Testimony for HB 955, *Unemployment Insurance—Procedures for Recovery of Overpayment of Benefits—Alterations* (Mar. 1, 2022), <https://perma.cc/C92U-R6LA>.
- 115 Maryland hired Accenture to “assist with answering calls from unemployment insurance claimants” in April 2020. The contract quickly ballooned from \$22 million to \$160 million. Mallory Sofastaii, *Maryland Department of Labor Adding Unemployment Call Center Agents, Security Guards*, WMAR Baltimore (Aug. 10, 2021), <https://perma.cc/338L-EAXU>.
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- 117 See Sofastaii, *supra* note 102.
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- 124 See Kemp, *supra* note 114.
- 125 *Id.*
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