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Houston Security Camera Ordinance: Reasonable Safety Measure or Orwellian Surveillance

Clint Nuckolls
Southern Methodist University, Dedman School of Law

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Houston Security Camera Ordinance: Reasonable Safety Measure or Orwellian Surveillance

*Clint Nuckolls**

ABSTRACT

A new ordinance went into effect in Houston, Texas in July 2022, which looks to leverage technology and require certain businesses to install surveillance cameras at their own cost and turn footage over to the police on demand without a warrant. The ordinance specifically requires bars, nightclubs, convenience stores, sexually oriented businesses, and game rooms to install surveillance cameras, with accompanying lighting at all places where customers are permitted, keep the cameras running at all times, even when the business is closed, and store the footage for at least thirty days, all at the expense of the business owners. The ordinance looks to use the video camera footage to help law enforcement in identifying and apprehending persons alleged to have committed violent crimes which have been on the rise in Houston in recent years. Advocates say that the requirements imposed by the ordinance are reasonable safety measures which will help to deter crime in the city. Critics of the ordinance argue that this is an Orwellian measure which unfairly targets certain businesses and forces small business owners to bear the cost of these measures. The requirement of the ordinance to turn over video surveillance footage to law enforcement on demand without a warrant, calls in to question several issues around the Fourth Amendment, privacy, and property rights. This note will explore the background of the ordinance, who the ordinance impacts, and potential legal questions the ordinance raises.

I. INTRODUCTION

A new ordinance went into effect in Houston, Texas in July, 2022, in which the mayor looks to leverage technology and require various businesses to install surveillance cameras at their own cost and turn footage over to the police on demand without a warrant.¹ The ordinance only requires certain businesses in specific industries to comply with the requirements which include: “bars, nightclubs, convenience stores, sexually oriented businesses,

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* Clint Nuckolls is a 2024 candidate for Juris Doctor from SMU Dedman School of Law. He received a Bachelor of Business Administration from Texas Tech University in 2006 and a Master of Business Administration from Western Kentucky University in 2011.

1. Dan King, *Institute for Justice Calls on Houston to Back Off Plan to Force Businesses to Conduct 24/7 Surveillance*, INST. FOR JUST. (Apr. 20, 2022), <https://ij.org/press-release/institute-for-justice-calls-on-houston-to-back-off-plan-to-force-businesses-to-conduct-24-7-surveillance/> [<https://perma.cc/6Q3P-BKD8>].

and game rooms.”² As of July, they are required to install surveillance cameras with sufficient lighting at all places where customers are permitted, keep the cameras running at all times, even when the business is closed, and store the footage for at least thirty days, all at the expense of the business owners.³ The city attorney and chief of police for Houston noted in their letter to the city council that: “The use of technology is crucial to the safety of our residents and the security of local businesses.”⁴

This ordinance is part of the Mayor Sylvester’s commitment to One Safe Houston, which is a comprehensive violence reduction initiative focused on: (1) violence reduction (2) crisis intervention, response and recovery, (3) youth outreach opportunities, and (4) key community partners.⁵ Advocates say that the requirements imposed by the ordinance “will give the public an extra layer of safety” and “might deter the robbers.”⁶ The ordinance also states that “the use of technology, including but not limited to video camera footage, is helpful to law enforcement in identifying and apprehending persons alleged to have committed violent crimes” which have been on the rise in Houston in recent years.⁷ Houston Police Department (“HPD”) data shows that in 2021, HPD responded to 7,201 crimes at convenience stores, 2,946 crimes at bars and nightclubs, which includes sexually-oriented businesses, and ninety-four crimes at gambling establishments, which are the types of businesses targeted by the ordinance.⁸

Critics of the ordinance argue that this is an Orwellian measure which unfairly targets certain businesses and forces small business owners to bear the cost of these measures.⁹ As the cover letter notes, “There is no impact to the fiscal budget or no additional spending authority” to the city of Hous-

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2. Hous., Tex., Ordinance No. 2022-307 (2022).
 3. King, *supra* note 1.
 4. Cover Letter from Arturo G. Michel & Troy Finner, City Attorney & Chief of Police, City of Hous. City Council, to the City Council Members, City of Hous. City Council (Apr. 3, 2022) (on file with author).
 5. Ordinance No. 2022-307.
 6. Bryce Newberry, *New ordinance requires some Houston businesses to have surveillance cameras, share footage if HPD asks*, CLICK2HOUSTON.COM (July 19, 2022, 5:59 AM), <https://www.click2houston.com/news/local/2022/07/19/new-ordinance-requires-some-houston-businesses-to-have-surveillance-cameras-share-footage-if-hpd-asks/> [<https://perma.cc/KA2Y-5GMJ>].
 7. Ordinance No. 2022-307.
 8. Mycah Hatfield, *Houston crime: Deadline nears for local businesses to install surveillance cameras*, PATABOOK NEWS (July 6, 2022), <https://patabook.com/news/2022/07/06/houston-crime-deadline-nears-for-local-businesses-to-install-surveillance-cameras/> [<https://perma.cc/X4YH-4L5Y>].
 9. King, *supra* note 1.

ton.¹⁰ This is because the small businesses incur all the cost of the required equipment, with the Houston taxpayers skirting the bill. While the city requires the cameras and associated equipment to be installed, the city is not paying for the equipment, which can cost thousands of dollars.¹¹ This ordinance requires these specific establishments to bear the cost to install high-definition surveillance cameras and to archive their footage so it's available for police on demand, without a warrant.¹² Even members of the Houston city council have spoken out on the fact that the ordinance unfairly targets certain businesses and requires them to bear the additional cost.¹³ Fairness questions aside, this ordinance calls in to question several issues around the Fourth Amendment, privacy, and property rights. This note will explore the background of the ordinance, who the ordinance impacts, and potential legal questions the ordinance raises.

II. BACKGROUND

A. Mayor's Initiative to Combat Rising Crime Rates

From 2018-2021, Houston, Texas saw a thirty-nine percent increase in the murder rate.¹⁴ For the year 2021, the total number of these murders which were domestic violence related increased fifty percent from the previous year.¹⁵ HPD data also shows that in 2021, HPD responded to 7,201 crimes at convenience stores, 2,946 crimes at bars and nightclubs, which includes sexually-oriented businesses, and ninety-four crimes at gambling establishments, which make up the businesses targeted by the ordinance.¹⁶ These concerning trends have led the mayor to take action in order to curb the increase in violent crime.

10. Michel & Finner, *supra* note 4.

11. Natalie Hee, *Houston considering surveillance camera ordinance for bars, restaurants to fight crime*, FOX26HOUSTON (Apr. 13, 2022), <https://www.fox26houston.com/news/houston-considering-surveillance-camera-ordinance-for-bars-restaurants-to-fight-crime> [<https://perma.cc/8J28-4YNG>].

12. King, *supra* note 1.

13. Hee, *supra* note 11.

14. Robert Arnold & Debbie Strauss, *Houston leaders cite anger, COVID-19 pandemic, and bond reform as reasons behind rising crime rates*, CLICK2HOUSTON.COM (July 25, 2021, 11:24 PM), <https://www.click2houston.com/news/investigates/2021/07/26/houston-leaders-cite-anger-covid-19-pandemic-and-bond-reform-as-reasons-behind-rising-crime-rates/> [<https://perma.cc/W7D8-YSYU>].

15. Mayor Sylvester Turner, *One Safe Houston*, MAYOR'S PUB. SAFETY INITIATIVE TO COMBAT VIOLENT CRIME (Feb. 2022), <https://www.houstontx.gov/mayor/press/2022/one-safe-houston.pdf> [<https://perma.cc/BT3L-TKBP>].

16. Hatfield, *supra* note 8.

On February 2, 2022, Houston, Texas Mayor Sylvester Turner announced the “One Safe Houston Crime Reduction Initiative” which aimed to address this recent surge in violent crime in the city.¹⁷ The plan looks to invest an additional \$44.6 million in reducing the crime rate in Houston.¹⁸ The core issue, the announcement stated, is the overwhelmed judicial system which has a three to four-year backlog currently for many violent cases.¹⁹ The disruption to the operation of the local court system in 2017 from Hurricane Harvey was exacerbated by the global pandemic which led to a criminal court backlog greater than now exceeds 100,000 cases.²⁰ The mayor lauded the initiative as a “comprehensive violence reduction initiative that links research-based strategies to improve public safety and reduce the harms caused by violent crime.”²¹ Part of the plan involves “leveraging technology with existing organizational resources,” by utilizing innovative technology and to target hotspot locations.²² Additionally, the mayor looks to increase community partnerships to “leverage available real time video through programs such as Community Connect, Ring, Nest and other video security platforms.”²³ The city of Houston, Texas, Ordinance No. 2022-307 looks to do exactly this by requiring certain businesses to install security cameras and retain and make available that footage to law enforcement on demand for a period of thirty days.²⁴ Failure to adhere to this ordinance could result in penalties for these businesses, which include a potential fine of \$500 a day.²⁵

B. Who This Ordinance Impacts

The ordinance only requires certain businesses to comply which includes: “bars, nightclubs, convenience stores, sexually oriented businesses, and game rooms.”²⁶ These businesses were targeted because city officials say this is where crime is concentrated.²⁷ One controversial aspect of this ordi-

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17. A.J. Mistretta, *Statement on One Safe Houston Crime Reduction Initiative*, GREATER HOUS. P'SHIP (Feb. 2, 2022), <https://www.houston.org/news/state-statement-one-safe-houston-crime-reduction-initiative> [https://perma.cc/TM8J-U76F].
 18. Turner, *supra* note 15, at 17.
 19. Mistretta, *supra* note 17.
 20. Turner, *supra* note 15, at 8.
 21. *Id.* at 3.
 22. *Id.* at 4.
 23. *Id.* at 9.
 24. Hous., Tex., Ordinance No. 2022-307 (2022).
 25. Hous., Tex., Code Ordinances ch. 1, § 1-6(a).
 26. Ordinance No. 2022-307.
 27. Nora Mishanec, *Some Houston businesses must now collect security footage or face fines. Here's what to know*, HOUS. CHRON. (July 19, 2022 12:28 PM),

nance is that it requires these business owners to install and maintain the required equipment at their own cost, which some small business owners say is unfair.²⁸ This puts a strain on small business owners who are already “trying to make every penny count.”²⁹ This ordinance also disproportionately impacts the industries who suffered massive losses during the COVID-19 global pandemic such as bars and nightclubs.³⁰

In Texas specifically, restaurants and bars suffered the heaviest total losses during the pandemic losing 112,500 jobs or 10.1%.³¹ In the U.S. as a whole, the number of employees employed by bars and nightclubs reached its lowest number of the past decade in 2020.³² The market size of bars and nightclubs in the U.S. also declined by over \$8 billion in 2020.³³ Convenience stores, which the majority are independently owned,³⁴ are still suffering from the effects of the pandemic with 7-Eleven stores reporting foot traffic at twenty-nine percent below pre-COVID-19 levels,³⁵ and a recent survey stating fifty-two percent of millennials have decreased their shopping frequency in convenience stores in the aftermath of the coronavirus pandemic.³⁶

<https://www.houstonchronicle.com/news/houston-texas/crime/article/houston-business-security-cameras-new-mandate-17314280.php> [https://perma.cc/NK2W-ENLA].

28. Newberry, *supra* note 6.

29. *Id.*

30. Olga Garza et. al., *Weathering the Pandemic: Texas Industries and COVID-19*, COMPTROLLER.TEXAS.GOV (Jan. 2021), <https://comptroller.texas.gov/economy/fiscal-notes/2021/jan/pandemic.php> [https://perma.cc/X6JC-GX45].

31. *Id.*

32. *Bars and nightclubs in the U.S. – statistics & facts*, STATISTA (Feb. 8, 2022), <https://www.statista.com/topics/1752/bars-and-nightclubs/#dossierKeyfigures> [https://perma.cc/LL64-E7YV].

33. *Id.*

34. Thomas Ozbun, *Convenience stores in the U.S. – Statistics & Facts*, STATISTA (Jan. 27, 2022), https://www.statista.com/topics/3869/convenience-stores-in-the-us/#topicHeader__wrapper [https://perma.cc/3WDY-KECL].

35. *A Bright Spot for 7-Eleven, Kum & Go, and Other C-Stores*, GRAVY ANALYTICS (Sept. 9, 2020), <https://gravyanalytics.com/blog/analysis-covid-19-impact-convenience-stores/> [https://perma.cc/2MBM-Y44F].

36. D. Tighe, *Change in convenience store shopping frequency due to the coronavirus pandemic in the United States in 2020, by generation*, STATISTA (Sept. 1, 2022), <https://www.statista.com/statistics/1180377/pre-vs-post-pandemic-c-store-shopping-frequency-by-generation-us/> [https://perma.cc/Y4CY-PM4D].

C. Basis of the Ordinance

The stated goal of the ordinance is to “protect the public health, safety and welfare of the city by increasing security for patrons and employees.”³⁷ Part of the mayor’s initiative is to utilize “research-based strategies to improve public safety,”³⁸ and the ordinance cites a 2019 study by the University of Chicago’s “Crime Lab,” in conjunction with the New York City Police Department.³⁹ This study found that “lighting can reduce nighttime crime in urban areas by up to approximately thirty-six percent.”⁴⁰ The study focused only on lighting, without considering cameras, in forty public housing developments in New York City.⁴¹ And while the Houston city ordinance touts the thirty-six percent reduction in nighttime crime provided by the study, the study notes that in the aggregate, “lighting may reduce serious offending in these communities by approximately four percent,” similar to what would be expected “during a very serious recession.”⁴²

The study also explored the cost benefit analysis of installing the lighting.⁴³ The total cost of the lighting installed for the study was \$5,032,632, which on a per-development basis, is approximately \$129,000 or \$258,000 per development annually.⁴⁴ “[T]he up-front cost of a development-wide lighting upgrade is expected to be between \$3 and \$4 million for a development of approximately 700,000 square feet.”⁴⁵ While this development size is considerably larger than the average establishment targeted under the Houston city ordinance, it is important to note that the University of Chicago study admits that the outcome of four percent reduction of crime is “likely to be cost-beneficial, [only] should the impact of lighting persist over time.”⁴⁶ And that the benefits of crime control will accrue over a relatively long time horizon and therefore postulate that, “spending on technology to be an unat-

37. Hous., Tex., Ordinance No. 2022-307 (2022).

38. Turner, *supra* note 15, at 3.

39. Ordinance No. 2022-307.

40. *Id.*

41. Aaron Chalfin ET AL., *Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City* 9 (CRIME LAB N.Y., 2019), https://urbanlabs.uchicago.edu/attachments/e95d751f7d91d0bcfeb209ddf6adcb4296868c12/store/cca92342e666b1ffb1c15be63b484e9b9687b57249dce44ad55ea92b1ec0/lights_04242016.pdf [https://perma.cc/JV9Z-4NLD].

42. *Id.* at 20.

43. *Id.* at 21.

44. *Id.*

45. *Id.*

46. *Id.* at 22.

tractive proposition.”⁴⁷ Additionally, the study notes, “because the temporary light towers studied were particularly prominent and are not a natural feature of the urban landscape, the intervention may fold in substantial demonstration effects that may not accrue from a more organic intervention.”⁴⁸ In other words, if standard security lighting is installed which isn’t as visible to patrons, the effects on deterrence might be reduced. This calls in to question the mayor’s reliance on this study as the basis for implementing this ordinance for several reasons, including the study’s focus on lighting and the use of temporary light towers. The focus of the Houston ordinance is on the utilization of cameras and making available camera footage to law enforcement, the lighting is only a secondary requirement in order to ensure the camera footage is visible during the night or low light times of day.⁴⁹ So will the addition of cameras speed up the time frame for the realization of crime reduction postulated by the study?

D. Similar Legislation Passed in Other Cities

Similar legislation was passed in the town of Independence, Missouri in 2016.⁵⁰ The ordinance went into effect in 2017 and requires tobacco and convenience stores to install security cameras and retain the footage for thirty days.⁵¹ These businesses were again targeted because “police say these types of businesses see a lot of crime, and they hope the new ordinance will slow down the number of robberies.”⁵² While it is still too early to discern the long-term impact of the ordinance, robberies increased from 2016 to 2017 in Independence, after implementation of the camera ordinance.⁵³ Other studies have shown similar results with some showing an increase in crime after the installation of closed-circuit television (“CCTV”) and concluding that CCTV has not been shown to reduce violent crime.⁵⁴ Similar studies have been done

47. Chalfin et al., *supra* note 41, at 23.

48. *Id.* at 22.

49. *See* Hous., Tex., Ordinance No. 2022-307 (2022).

50. Nicole DiAntonio, *Independence city ordinance requires tobacco and convenience stores to have more surveillance*, Fox4Kc (Jan. 2, 2017, 08:44 AM), <https://fox4kc.com/news/independence-city-ordinance-requires-tobacco-and-convenience-stores-to-have-more-surveillance-cameras/> [https://perma.cc/89NY-F2F8].

51. *Id.*

52. *Id.*

53. *Crime rate in Independence, Missouri (MO): murders, rapes, robberies, assaults, burglaries, thefts, auto thefts, arson, law enforcement employees, police officers, crime map*, CITY-DATA.COM, <https://www.city-data.com/crime/crime-Independence-Missouri.html> (last visited Feb. 10, 2023) [https://perma.cc/9VDY-WFW2].

54. Mun. Tech. Advisory Serv., Rsch. and Info. Ctr., *Is There Empirical Evidence that Surveillance Cameras Reduce Crime?* (Sep., 2016), <https://www.mtas.ten->

in London, which has an extensive camera network, and found that the security cameras have not been effective at deterring crime and “at best, it has a displacement effect – moving crimes from where the cameras are to where they are not.”⁵⁵ Noting that, overall, video surveillance is a prime example of an ineffective technology.⁵⁶ This could be a concern for neighboring businesses in the Houston area which the ordinance does not require installation of surveillance cameras. Simply moving crime from one business to another could be an unintended consequence not contemplated by Houston lawmakers and unwanted by competing small businesses.

III. IMPLEMENTING THE ORDINANCE

A. Requirements of Businesses for Implementation

The Houston ordinance provides very specific requirements on the image quality of the cameras installed and requires the business owners to consult with HPD for the placement of each camera.⁵⁷ In addition, the ordinance requires that each camera be in working order and in operation at all times, even when the facility is not open for business.⁵⁸ The footage must be maintained for thirty days and made available to law enforcement within seventy-two hours of a request.⁵⁹ The ordinance does not specify how the footage must be made available to law enforcement or in what format other than that it is provided in “digital color.”⁶⁰ This places a heavy burden on each business owner to not only install camera equipment and lighting, but to build the infrastructure with the capacity to retain a library of these recordings for the required thirty days. While the cost is difficult to estimate since every business will have different requirements, some estimate this will cost businesses thousands of dollars to implement.⁶¹ Additionally, the requirement for police consultation for the placement of each camera adds to an already lengthy commercial permitting process for businesses in Houston.⁶² This additional

nessee.edu/system/files/knowledgebase/original/Surveillance%20camera%20research%20brief%208_2016.pdf [https://perma.cc/MLM4-D566].

55. Am. Civ. Liberties Union, *Surveillance Cameras and the Attempted London Attacks*, <https://www.aclu.org/other/surveillance-cameras-and-attempted-london-attacks?redirect=CPredirect/30354> (last visited Feb. 10, 2023) [https://perma.cc/FNJ2-UGKF].

56. *Id.*

57. Hous., Tex., Ordinance No. 2022-307 § 28-672(a) (2022).

58. *Id.* § 28-672(b).

59. *Id.* § 28-672(c)–(d).

60. *Id.* § 28-672(c).

61. Hee, *supra* note 11.

62. See HOUS. PUB. WORKS, HOUS. PERMITTING CENT. BLDG. CODE ENF'T, *Commercial Permitting 101*, HOUSTON PUBLIC WORKS, <https://www.houstonpermit>

measure could be devastating for small businesses in these industries operating on a month-to-month cost basis.⁶³

B. Impact of Implementation

While the mayor of Houston might have good intentions with implementing this ordinance, it remains to be seen whether there will be unintended consequences. Aside from the initial cost to the business owners for the equipment, installation, and maintenance, could the cameras have additional economic impact on these businesses by deterring potential customers? Especially patrons of the sexually oriented businesses, who might not want their face or license plate captured by a security camera. Security camera footage is susceptible to abuse and in the wrong hands, can be misused.⁶⁴ For example, a top-ranking police official in Washington, DC was caught trying to blackmail a patron of a gay club, who was married, using police databases to gather information.⁶⁵ He obtained the individual's information by using their license plate number which had been captured by a security camera when it was parked at the club.⁶⁶ Knowing that you are being watched and that footage could be turned over to law enforcement tends to have a chilling effect on people.⁶⁷ Potential customers of sexually-oriented businesses or nightclubs in Houston might second guess patronizing these establishments if there was potential that their information could be made public or used against them.

tingcenter.org/media/1926/download (last visited Feb. 10, 2023) [https://perma.cc/CY8D-SXCS].

63. Julie Verhage, *Most Small Businesses Are Barely Saving Any Money*, *New Study Shows*, BLOOMBERG (Sept. 21, 2016, 05:01 AM), <https://www.bloomberg.com/news/articles/2016-09-21/most-small-businesses-are-barely-saving-any-money-new-study-shows> [https://perma.cc/2FVK-JP49].
64. Am. Civ. Liberties Union, *What's Wrong with Public Video Surveillance?* (Mar. 2002), <https://www.aclu.org/other/whats-wrong-public-video-surveillance> [https://perma.cc/KN39-ZFG7].
65. Avis Thomas-Lester & Toni Locy, *Chief's Friend Accused of Extortion*, WASH. POST (Nov. 26, 1997), <https://www.washingtonpost.com/wp-srv/local/longterm/library/dc/dcpolice/stories/stowe25.htm> [https://perma.cc/9XGJ-5FVD].
66. *Id.*
67. See Jacob Sullum, *Are you getting camera-ready?*, WASH. TIMES (Feb. 18, 2002), <https://www.washingtontimes.com/news/2002/feb/18/20020218-035846-2665r/> [https://perma.cc/8UKK-GJ5M].

IV. LEGAL CHALLENGES

A. The Fourth Amendment and Surveillance Cameras

The debate around new technology and the right to privacy in the legal context is not a new debate.⁶⁸ Samuel Warren and Justice Brandeis wrote, in 1890, about the intrusion of “numerous mechanical devices” into private life and about “recent inventions” which “call attention to the next step which must be taken for the protection of the person.”⁶⁹ Specifically, they addressed the invention of “instantaneous photographs and newspaper[s]” which had “invaded the sacred precincts of private and domestic life.”⁷⁰ Seventy years later, in *Katz v. United States*, the Supreme Court found that a government search occurs when the government intrudes into a person’s expectation of privacy and that “the expectation be one that society is prepared to recognize as ‘reasonable.’”⁷¹ “When a person reveals his or her movement to the public or a third party, the court has found this destroys that expectation of privacy and therefore, the Fourth Amendment does not protect such movement from warrantless law enforcement surveillance.”⁷² However, “there is a ‘world of difference between the limited types of personal information addressed in’⁷³ those earlier cases and the comprehensive information that officers can gather easily and cheaply from their secret, all-seeing pole camera sentries today.”⁷⁴ Laws, such as this one enacted in Houston, call into question the extent of Fourth Amendment protections in public life. “While the Fourth Amendment to the US Constitution offers some protection against video searches conducted by the police, there are currently no general, legally enforceable rules to limit privacy invasions and protect against abuse of CCTV systems.”⁷⁵ The Seventh Circuit recently confronted the increased use of

68. See Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193, 195 (1890) (discussing “recent inventions” such as “instantaneous photographs and newspaper[s]” and their impact on a person’s right “to be let alone”).

69. *Id.* at 195.

70. *Id.*

71. *Katz v. United States*, 389 U.S. 347, 361 (1967).

72. Gillian Vernick, *Supreme Court asked to consider whether long-term pole camera surveillance constitutes search under Fourth Amendment*, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS (Oct. 18, 2021), <https://www.rcfp.org/scotus-pole-camera-surveillance/> [<https://perma.cc/K7VH-N9BD>].

73. *Carpenter v. United States*, 138 S. Ct. 2206, 2219 (2018).

74. Brief for Electronic Frontier Foundation et al. as Amici Curiae Supporting Petitioners at 5, *United States v. Tuggle*, 4 F.4th 505, 511 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 1107 (2022) (No. 21-541).

75. Am. Civ. Liberties Union, *supra* note 64.

cameras for surveillance by law enforcement and the impact to the expectation of privacy and the Fourth Amendment in *United States v. Tuggle*.⁷⁶

Between 2013 and 2016, several federal agencies began investigating a large methamphetamine ring in Illinois.⁷⁷ Travis Tuggle became a key suspect of the investigation and was ultimately prosecuted.⁷⁸ As part of its investigation, law enforcement installed cameras on public property outside of Tuggle’s home and recorded him continuously for eighteen months without obtaining a warrant.⁷⁹ The cameras proved to be critical to the ability of the government to obtain evidence as law enforcement agents could “remotely zoom, pan, and tilt the cameras and review the camera footage in real time” and surveil Tuggle’s home without performing “traditional visual or physical surveillance.”⁸⁰ “Tuggle moved to suppress the footage as violative of his Fourth Amendment right.”⁸¹ But the court denied the request and the Seventh Circuit affirmed, finding the surveillance camera evidence to be reasonable because the cameras “captured events observable to any ordinary passerby” and therefore “[t]he government did not invade an expectation of privacy that society would be prepared to accept as reasonable.”⁸² Accordingly, the use of “cameras here did not constitute a Fourth Amendment search.”⁸³ The Supreme Court denied the petition to review this case.⁸⁴

The Seventh Circuit noted in this opinion that “as society’s uptake of a new technology waxes . . . expectations of privacy in those technologies wane.”⁸⁵ Further providing the example that Americans today, “largely accept that cell phones will track their locations . . . and ever-watching fixed cameras will monitor their movements.”⁸⁶ These concessionary statements seem to foreshadow a future with an ever-increasing digital dragnet.⁸⁷ But the court also acknowledged that “Constitutionally and statutorily mandated protections stand as critical bulwarks in preserving individual privacy.”⁸⁸ These

76. See generally *Tuggle*, 4 F.4th at 511.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Tuggle*, 4 F.4th at 516–17.

83. *Id.*

84. *Tuggle v. United States*, 142 S. Ct. 1107 (2022).

85. *Tuggle*, 4 F.4th at 510.

86. *Id.*

87. Letter from John W. Whitehead, Founder and President, The Rutherford Inst., to the Mayor and Members of the Hous. City Council (June 3, 2022) (on file with author).

88. *Tuggle*, 4 F.4th at 509–10.

statements are seemingly at odds, but reinforce the complex question at hand of balancing an individual's right to privacy and protecting society at large.

V. CONCLUSION

As surveillance cameras continue to become more prevalent in public places, questions will continue to be raised around Fourth Amendment protections and the right to privacy. The Seventh Circuit, in its *Tuggle* opinion, noted that “we are steadily approaching a future with a constellation of ubiquitous public and private cameras accessible to the government that catalog the movements and activities of all Americans.”⁸⁹ The court also “expressed reservations about the ramifications of its decision, despite feeling bound by precedent.”⁹⁰ As with any new emerging technology, the law is often slow to respond and there still remains further questions regarding the Fourth Amendment implications of requiring businesses to install surveillance cameras and make available the footage to law enforcement on demand. The “Framers of the Constitution sought ‘to place obstacles in the way of a too permeating police surveillance.’”⁹¹ A “person does not surrender all Fourth Amendment protection by venturing into the public sphere.”⁹²

89. *Id.* at 509.

90. Vernick, *supra* note 72.

91. *Tuggle*, 4 F.4th at 510 (quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)).

92. *Carpenter*, 138 S. Ct. at 2217.