

# Lawsuit Argues Warrantless Use of Flock Surveillance Cameras Is Unconstitutional

Jason Koebler : 7-9 minutes : 10/21/2024

A civil liberties organization has filed a federal lawsuit in Virginia arguing that widespread surveillance enabled by Flock, a company that [sells networks of automated license plate readers](#), is unconstitutional under the Fourth Amendment.

“The City of Norfolk, Virginia, has installed a network of cameras that make it functionally impossible for people to drive anywhere without having their movements tracked, photographed, and stored in an AI-assisted database that enables the warrantless surveillance of their every move. This civil rights lawsuit seeks to end this dragnet surveillance program,” the [lawsuit notes](#). “In Norfolk, no one can escape the government’s 172 unblinking eyes,” it continues, referring to the 172 Flock cameras currently operational in Norfolk. The Fourth Amendment protects against unreasonable searches and seizures and has been ruled in many cases to protect against warrantless government surveillance, and the lawsuit specifically says Norfolk’s installation violates that.

Flock cameras, which are called automated license plate readers (ALPRs) have become incredibly popular all over the United States. [More than 5,000 communities](#) around the country have the cameras, which use AI to passively and constantly check which cars are driving by them. Flock has made several incredibly lofty claims over the years, which includes “Flock will [have eliminated crime in America in 10 years](#).”

We have [previously reported](#) that Flock has paid university researchers to conduct studies about the efficacy of its cameras; as we noted in that article, the researchers who worked on that study took issue with the ultimate findings of it.

The lawsuit in Norfolk is being filed by the Institute for Justice, a civil liberties organization that has filed a series of [privacy and government overreach lawsuits](#) over the last few years. Two Virginia residents, Lee Schmidt and Crystal Arrington, are listed as plaintiffs in the case. Schmidt is a Navy veteran who alleges in the lawsuit that the cops can easily infer where he is going based on Flock data.

“Just outside his neighborhood, there are four Flock Cameras. Lee drives by these cameras (and others he sees around town) nearly every day, and the Norfolk Police Department [NPD] can use the information they record to build a picture of his daily habits and routines,” the lawsuit reads. “If the Flock Cameras record Lee going straight through the intersection outside his neighborhood, for example, the NPD can infer that he is going to his daughter’s school. If the cameras capture him turning right, the NPD can infer that he is going to the shooting range. If the cameras capture him turning left, the NPD can infer that he is going to the grocery store. The Flock Cameras capture the start of nearly every trip Lee makes in his car, so he effectively cannot leave his neighborhood without the NPD knowing about it.”

Arrington is a healthcare worker who makes home visits to clients in Norfolk. The lawsuit alleges that it would be trivial for the government to identify her clients.

Robert Frommer, one of the lawyers on the case, told 404 Media that the lawsuit could have easily been filed in any of the more than 5,000 communities where Flock is active, but that Norfolk made sense because the Fourth Circuit of Appeals—which Norfolk is part of—recently held that

persistent, warrantless drone surveillance in Baltimore is unconstitutional under the Fourth Amendment in a case called [\*Beautiful Struggle v Baltimore Police Department\*](#).

“The *Beautiful Struggle* opinion was about a relatively comparatively crude system, just a drone that was flying in the air for 12 hours a day that at most had a couple pixels [on a map] that made it hard to identify anyone,” Frommer said. “By contrast, anyone with the Flock cameras has a crystal clear record of your car, a digital fingerprint that can track you anywhere you go. The police chief even said you can’t really go anywhere in Norfolk without being caught by one of these cameras.”

Frommer is right. Norfolk police chief Mark Talbot [said last year](#), “It would be difficult to drive anywhere of any distance without running into a camera.” Earlier this year, a Virginia state court ordered that information pulled from a Flock camera without a warrant and used in a robbery case against Jayvon Bell [had to be suppressed](#) because it violated the defendant’s Fourth Amendment rights. In that case, Judge Jamilah LeCruise noted that “it would not be difficult for mistakes to be made tying law-abiding citizens to crime due to the nature of the Flock system and in the event a law enforcement officer would seek to create a suspect where one did not otherwise exist, it would be a simple task.”

In a statement sent after publication, Flock pointed 404 Media to several recent cases where judges denied defendants’ motions to suppress evidence collected by Flock on Fourth Amendment grounds.

“Fourth Amendment case law overwhelmingly shows that license plate readers do not constitute a warrantless search because they take photos of cars in public and cannot continuously track the movements of any individual,” a Flock spokesperson said. “Appellate and federal district courts in at least fourteen states have upheld the use of evidence from license plate readers as Constitutional without requiring a warrant, as well as the 9th and 11th circuits. Since the Bell case, four judges in Virginia have ruled the opposite way—that ALPR evidence is admissible in court without a warrant.”

“License plates are issued by the government for the express purpose of identifying vehicles in public places for safety reasons,” they added. “Courts have consistently found that there is no reasonable expectation of privacy in a license plate on a vehicle on a public road, and photographing one is not a Fourth Amendment search.”

In the most recent of those cases, *U.S. vs Martin*, a judge ruled “There is simply no expectation of privacy in the exterior of one’s vehicle...or while driving it on public thoroughfares.”

Norfolk also procured Flock without any city council process. But even if it had, Frommer said, “to be honest, our Constitutional rights aren’t up for debate. This isn’t something where we can just say, ‘Oh, we decided to throw away your Fourth Amendment rights because we think it’s worthwhile.’”

“Well-meaning investigators are going to always want the latest and greatest tools, but those tools come at a cost to our security and our privacy,” he said. “So we need courts to be involved to strike that balance rather than just let investigators decide for themselves what they can do.”

The city of Norfolk did not immediately responded to a request for comment.

***Update: This story has been updated with comment from Flock.***

About the author

Jason is a cofounder of 404 Media. He was previously the editor-in-chief of Motherboard. He loves the Freedom of Information Act and surfing.