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Ring, Amazon Calling: The State Action Doctrine & The Fourth Amendment

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RING, AMAZON CALLING: THE STATE ACTION DOCTRINE & THE FOURTH AMENDMENT

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Abstract: Video doorbells have proliferated across the United States and Amazon owns one of the most popular video doorbell companies on the market—Ring. While many view the Ring video doorbell as useful technology that protects the home and promotes safer neighborhoods, the product reduces consumer privacy without much recourse. For example, Ring partners with cities and law enforcement agencies across the United States thereby creating a mass surveillance network in which law enforcement agencies can watch neighborhoods and access Ring data without the user's knowledge or consent. Because Amazon is not a state actor, it is able to circumvent the due process requirements of the Fourth Amendment. Moreover, through these partnerships, law enforcement agencies may circumvent Fourth Amendment requirements by having Amazon access users' information for them. This Comment argues Amazon should be recognized as a state actor under the state action doctrine so that Ring users are protected by the Fourth Amendment. As technology develops, the law is playing catch-up. This Comment proposes holding private companies—namely Amazon—to the same standards as state actors in order to protect the privacy of consumers.

INTRODUCTION

Since Amazon's acquisition of Ring in February 2018, the Ring Video Doorbell (Ring device) has expanded into many neighborhoods across the nation.[1] The Ring device is generally viewed as one of the best technologies available to deter crime in residential neighborhoods by helping users track who comes to their doors and track down porch

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1. Eugene Kim, *Amazon Buys Smart Doorbell Maker Ring for a Reported $1 Billion*, CNBC (Feb. 27, 2018, 3:55 PM), https://www.cnbc.com/2018/02/27/amazon-buys-ring-the-smart-door-bell-maker-it-backed-through-alexa-fund.html [https://perma.cc/HS96-AYTV]; Jack Narcotta & William Ablondi, *Smart Home Surveillance Camera Market to Surpass $9.7 Billion by 2023 Says Strategy Analytics*, STRATEGY ANALYTICS (Apr. 9, 2018), https://news.strategyanalytics.com/press-release/intelligent-home/smart-home-surveillance-camera-market-surpass-97-billion-2023-says [https://perma.cc/WAJ2-W9FP]; *25% of U.S. Broadband Households Plan to Buy a Smart Video Doorbell in 2019*, PARKS ASSOCS. (Jan. 3, 2019), http://www.parksassociates.com/blog/article/cs-2019-pr9 [https://perma.cc/N2U9-TSKZ]; John Herrman, *Who's Watching Your Porch?*, N.Y. TIMES (Jan. 20, 2020), https://www.nytimes.com/2020/01/19/style/ring-video-doorbell-home-security.html [https://perma.cc/N2U9-TSKZ].

pirates.[2] It also allows users to talk to guests, help neighbors find lost pets, and make sure kids come home from school.[3] Ring device footage has even helped law enforcement catch wanted criminals.[4] Further, users are able to "[g]et real-time crime and safety alerts from . . . neighbors and public safety agencies."[5] In addition to the Ring device and footage, Ring also built Neighbors—a neighborhood watch application where users may share their captured footage—into the Ring application.[6]

However, as Ring expands into more neighborhoods, many are concerned that Amazon has created a surveillance state by partnering with law enforcement agencies and local governments across the United States.[7] Within the partnerships, cities and law enforcement agencies promote the Ring device and, in exchange, Amazon subsidizes the Ring device and grants partnered government entities access to users' content.[8]

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2. PARKS ASSOCS., *supra* note 1; Herrman, *supra* note 1; Daniel Wroclawski, *Best Video Doorbells of 2020*, CONSUMER REPS., https://www.consumerreports.org/video-doorbells/best-video-doorbells-of-the-year/ [https://perma.cc/HJ7W-HWH5].

3. Wroclawski, *supra* note 2; *Video Doorbell*, RING [hereinafter *Video Doorbell*], https://shop.ring.com/products/video-doorbell [https://perma.cc/W79Z-4UPN]; *Ring Neighbors' Community Guidelines*, RING, https://support.ring.com/hc/en-us/articles/115004851266-Ring-Neighbors-Community-Guidelines [https://perma.cc/V3FU-RJTF].

4. *Criminals Caught in the Act by Ring*, RING, https://ring.com/customer-stories/caught-in-the-act [https://perma.cc/LW8B-ADCD]; Caroline Haskins, *'Fuck Crime:' Inside Ring's Quest to Become Law Enforcement's Best Friend*, VICE (Dec. 4, 2019, 10:22 AM), https://www.vice.com/en_us/article/bjw9e8/inside-rings-quest-to-become-law-enforcements-best-friend [https://perma.cc/7V82-L5LB].

5. *Neighbors by Ring*, RING, https://store.ring.com/neighbors [https://perma.cc/B44E-AKR5].

6. Caroline Haskins, *Everything You Need to Know About Ring, Amazon's Surveillance Camera Company*, VICE (Aug. 8, 2019, 7:00 AM), https://www.vice.com/en_us/article/qvg48d/everything-you-need-to-know-about-ring-amazons-surveillance-camera-company [https://perma.cc/WNR3-THVX]; Nick, *Introducing the Neighbors App: The New Neighborhood Watch*, RING (May 8, 2018), https://blog.ring.com/2018/05/08/introducing-the-neighbors-app-the-new-neighborhood-watch/ [https://perma.cc/JNW9-J76900].

7. PARKS ASSOCS., *supra* note 1; Herrman, *supra* note 1; Post Reps., *Security or Surveillance? How Smart Doorbell Company Ring Partners with Police*, WASH. POST, at 21:30 (Aug. 28, 2019), https://www.washingtonpost.com/podcasts/post-reports/security-or-surveillance-how-smart-doorbell-company-ring-partners-with-police/ [https://perma.cc/C4ES-PFQF]; Matthew Guariglia, *Amazon's Ring Is a Perfect Storm of Privacy Threats*, ELEC. FRONTIER FOUND. (Aug. 8, 2019), https://www.eff.org/deeplinks/2019/08/amazons-ring-perfect-storm-privacy-threats [https://perma.cc/57MP-XVSM].

8. Caroline Haskins, *US Cities Are Helping People Buy Amazon Surveillance Cameras Using Taxpayer Money*, VICE (Aug. 2, 2019, 8:20 AM), https://www.vice.com/en_us/article/d3ag37/us-cities-are-helping-people-buy-amazon-surveillance-cameras-using-taxpayer-money [https://perma.cc/2TGY-2Q3V]; Joe Maring, *A Deal with Amazon Lets Local Police Request Ring Footage Directly from Home Owners*, ANDROID CENT. (July 25, 2019), https://www.androidcentral.com/deal-amazon-lets-local-police-request-ring-footage-without-warrant [https://perma.cc/SYC2-CHED]; Alfred Ng, *Amazon's Helping Police Build a Surveillance Network with Ring Doorbells*, CNET (June 5, 2019, 7:55 AM), https://www.cnet.com/features/amazons-helping-police-build-a-

As a result, Amazon gains endorsement by government officials and an expansion of its network.[9] Moreover, cities and law enforcement agencies help Amazon by subsidizing Ring devices with taxpayer money and by openly promoting and endorsing the Ring device to local neighborhoods.[10] Critics argue that the partnerships "threaten[] to blur, if not eliminate, the distinction between private-sector surveillance services and the government's role as enforcer of the law."[11] Those critics point to the fact that Amazon has taken on a duty traditionally reserved for government actors by providing law enforcement agencies with a portal where the agencies can access users' video cameras in real-time, and by coaching agencies to solicit footage from Ring users.[12]

The Fourth Amendment usually provides strong protection for private individuals against intrusions by state actors because it requires state actors to gain consent, obtain a warrant, or have probable cause in order to access private property or track citizens.[13] However, the Fourth Amendment is generally not implicated absent state action.[14] In addition, individuals have no reasonable expectation of privacy under the Fourth Amendment if they voluntarily turn over information to a third party.[15] Nonetheless, users' privacy interests should weigh strongly in favor of

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surveillance-network-with-ring-doorbells/ [https://perma.cc/RA77-ZHNN]; Megan Wollerton, *Ring Doorbells and the Police: What to Do If Surveillance Has You Worried*, CNET (Dec. 1, 2019, 5:00 AM), https://www.cnet.com/how-to/ring-doorbells-and-the-police-what-to-do-if-surveillance-has-you-worried/ [https://perma.cc/HD75-VD77].

9. Maring, *supra* note 8; Ng, *supra* note 8; Wollerton, *supra* note 8.

10. Christina Hall, *Amazon's Ring Is 'The Neighborhood Watch of 2020,' Police Say as Doorbell Cams Proliferate*, USA TODAY (Oct. 31, 2019, 4:38 PM), https://www.usatoday.com/story/tech/2019/10/29/amazon-ring-doorbell-cams-police-home-security/2493974001/ [https://perma.cc/9Z36-CN2G].

11. Sam Biddle, *Amazon's Home Surveillance Chief Declared War on "Dirtbag Criminals" as Company Got Closer to Police*, THE INTERCEPT (Feb. 14, 2019, 10:25 AM), https://theintercept.com/2019/02/14/amazon-ring-police-surveillance/ [https://perma.cc/GRE6-WCVW].

12. Haskins, *supra* note 8; Hall, *supra* note 10; Sidney Fussell, *Amazon Ring Will Survive the Anti-Surveillance Backlash*, THE ATL. (June 24, 2019), https://www.theatlantic.com/technology/archive/2019/06/police-offer-amazon-ring-free-exchange-access/592243/ [https://perma.cc/UC5C-LXMP].

13. *Fourth Amendment*, CORNELL L. SCH.: LEGAL INFO. INST. [hereinafter *Fourth Amendment*], https://www.law.cornell.edu/wex/fourth_amendment [https://perma.cc/VH7K-F254].

14. Burdeau v. McDowell, 256 U.S. 465, 475 (1921) (holding that private action did not implicate the Fourth Amendment because the perpetrator was not acting on behalf of the DOJ); *see also Search & Seizure*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/constitution-conan/amendment-4/search-and-seizure [https://perma.cc/3CEL-CBKQ].

15. Smith v. Maryland, 442 U.S. 735, 734, 743–44 (1979); United States v. Miller, 425 U.S. 435, 443 (1976); Lopez v. United States, 373 U.S. 427, 437–40 (1963). *See generally* Carpenter v. United States, 585 U.S. __, 138 S. Ct. 2206, 2262 (2018) (Gorsuch, J., dissenting) (discussing the holding in *Smith*, 442 U.S. at 743).

protection against state intrusion.

Thus, Amazon should be considered a state actor under the state action doctrine. Under the state action doctrine, a private entity like Amazon may be regarded as a state actor if its actions are entangled with a state actor, or if it is carrying out a public function traditionally reserved for the states.[16] Treating Amazon as a state actor will ensure accountability to the public and provide Fourth Amendment protection to Ring users and other individuals recorded by Ring devices.[17]

This Comment proceeds in four parts. Part I provides background information about the Ring device and the Neighbors application. It also explores Amazon's partnerships with cities and law enforcement agencies across the United States. Part II analyzes the state action doctrine and describes the Entanglement test and the Public Function test as ways to determine whether a private entity qualifies as a state actor. Part III applies the Entanglement test and the Public Function test to Amazon's partnerships with cities and law enforcement agencies, and argues that Amazon is a state actor because its actions are encouraged by, and intertwined with, state actors, to the extent that Amazon performs functions traditionally reserved for the state.[18] Part IV finds that Amazon should be considered a state actor because Ring users' privacy interests will not be adequately protected as long as Amazon is immune from Fourth Amendment obligations. The Comment also argues that Amazon should be made to comply with Fourth Amendment requirements in order to (1) protect Ring users from having their videos distributed by Amazon without probable cause; and (2) prevent the creation of a mass surveillance network where law enforcement may record, keep, and analyze Ring videos.

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16. *See* ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 542 (5th ed. 2015).

17. Under the state action doctrine, private entities that behave like state actors are held to the same constitutional standards as an actual state actor, like the government. *Id.* Specifically, private entities that are considered state actors are subject to the Fourth Amendment. *See id.* at 564; *Fourth Amendment*, *supra* note 13. Treating Amazon as a state actor would make it subject to the requirements of the Fourth Amendment and thus afford greater protection to its users and the innocent bystanders that are captured in Ring videos. *See Equal Protection of the Laws*, CORNELL L. SCH.: LEGAL INFO. INST. [hereinafter *Equal Protection of the Laws*], https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/equal-protection-of-the-laws [https://perma.cc/G7F2-FWPW].

18. *See* CHEMERINSKY, *supra* note 16, at 542. *See generally* Kate Crawford & Jason Schultz, *AI Systems as State Actors*, 119 COLUM. L. REV. 1941, 1957–68 (2019) (discussing the factors necessary to be considered a state actor).

I. RING DEVICE AND NEIGHBORS APPLICATIONS' INTERACTION WITH LOCAL GOVERNMENTS AND LAW ENFORCEMENT AGENCIES

In 2018, Amazon acquired the company Ring for its Ring doorbell device.[19] Since the acquisition, the Ring device has become a staple in many households: according to some research, about 25% of all households that have internet planned to buy a Ring or similar smart video doorbell in 2019.[20] The home surveillance market is expected to cumulatively exceed $9.7 billion by 2023.[21] In addition, the Pew Research Center found that a majority of Americans are "concerned about the way their data is being used by companies (79%) or the government (64%)."[22] Most people surveyed "feel they have little or no control over how these entities use their personal information."[23] Even more Americans—81%—believe that the potential risks with private companies collecting data outweigh the benefits.[24] Amazon's acquisition of Ring and expansion of the Neighbors application has led to partnerships with cities and law enforcement agencies that legitimize these privacy concerns.[25]

A. How the Ring Device and Neighbors Applications Operate

The Ring device is a battery powered video doorbell that is usually placed adjacent to one's front door.[26] The device starts video recording when it is triggered, which happens in one of three ways: when it detects motion, when the doorbell is pressed, or when a user initiates video on demand through the Ring app.[27] Once the Ring device starts video recording, a video file is streamed instantaneously from the Ring device to the cloud.[28] When it is recording, the user can livestream the camera

19. Kim, *supra* note 1; PARKS ASSOCS., *supra* note 1; Herrman, *supra* note 1.

20. PARKS ASSOCS., *supra* note 1.

21. Narcotta & Ablondi, *supra* note 1.

22. Brooke Auxier, Lee Rainie, Monica Anderson, Andrew Perrin, Madhu Kumar & Erica Turner, *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information*, PEW RSCH. CTR. (Nov. 15, 2019), https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/ [https://perma.cc/8W7D-TXUH].

23. *Id.*

24. *Id.*

25. Guariglia, *supra* note 7.

26. *Video Doorbell*, *supra* note 3.

27. *Id.*

28. *Privacy Notice*, RING [hereinafter *Privacy Notice*], https://shop.ring.com/pages/privacy-notice [https://perma.cc/A67D-8L8G?type=image]; *see also Ring Video Doorbell*, SIMPLY HOME, https://www.simply-home.com/ring-doorbell [https://perma.cc/KZD4-38UE].

footage and "see, hear[,] and speak to anyone at [their] door from" any electronic device.[29] Ring users are also able to access the footage anytime on any electronic device via the Ring application where they are stored through a video retention subscription or through download.[30]

Ring also built Neighbors—a neighborhood watch application where users may share their captured footage.[31] All Ring users and people who have downloaded the Ring mobile application are automatically enrolled in Neighbors.[32] Through the Neighbors application, users can share video footage from their personal Ring device directly onto the application.[33] They can alert other users of potential crime, suspicious and unknown visitors, or even lost pets around the neighborhood.[34] Users can also see the general location of each posting on a map in the application and "comment on them, mark the [postings] as helpful, or even share [the posts] to a wider audience on social media."[35] The Neighbors application also allows users to see a watchlist of people who have committed crimes in their area.[36] Neighbors is essentially a social media application that "provides real-time crime and safety alerts from both . . . neighbors and local police."[37]

B. Amazon's Partnerships with Cities and Law Enforcement Agencies

As Ring expands into neighborhoods across the United States, cities and law enforcement agencies are increasingly interested in Amazon's surveillance platform.[38] Since Amazon's acquisition of Ring in 2018,

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29. *Privacy Notice*, *supra* note 28.

30. *Id.*; *Video Doorbell*, *supra* note 3.

31. Haskins, *supra* note 6. Neighbors was launched in May 2018, after Ring was acquired by Amazon in February 2018. Nick, *supra* note 6.

32. Rachel Cericola, *Ring Neighbors Is the Best and Worst Neighborhood Watch App*, N.Y. TIMES: WIRECUTTER (Feb. 14, 2020), https://www.nytimes.com/wirecutter/blog/ring-neighbors-app-review/ [https://perma.cc/5YQ8-M3FS].

33. *Sharing Your Ring Videos*, RING, https://support.ring.com/hc/en-gb/articles/115001834066-Sharing-Your-Ring-Videos [https://perma.cc/H83V-YMN4].

34. Haskins, *supra* note 6.

35. Hayato Huseman, *Do You Need a Ring Doorbell to Join Ring Neighbors?*, ANDROID CENT. (Jan. 25, 2019), https://www.androidcentral.com/do-you-need-ring-doorbell-join-ring-neighbors [https://perma.cc/D53R-5LGD].

36. *Id.*

37. Cericola, *supra* note 32.

38. *See* Caroline Haskins, *New Map Reveals that at Least 231 Cities Have Partnered with Ring*, VICE (Aug. 8, 2019, 5:05 PM), https://www.vice.com/en_us/article/qvg4vx/new-map-reveals-that-at-least-231-cities-have-partnered-with-ring [https://perma.cc/85ZQ-S84S].

Amazon has partnered with at least thirty-one cities in the United States.[39] Amazon attracts cities with promotional agreements and encourages partnerships with police departments by providing them access to an online portal where they can see Ring users' data in their city.[40]

The partnerships between Amazon and cities confer benefits and obligations on both parties. For example, the cities must promote the Ring device to, and buy subsidized Ring devices for, the cities' residents.[41] Moreover, the cities' politicians benefit from the partnerships because they subsidized Ring and they are going to create safer neighborhoods.[42] Some cities have paid up to $100,000 to procure discounted Ring devices for their residents.[43] Participating cities use taxpayer money to pay Amazon "in exchange for hundreds of surveillance cameras."[44] Amazon benefits from this partnership because the Ring device is promoted by cities and the partnerships contribute to a nationwide surveillance network.[45]

In addition to partnering with cities, Amazon also partners with law enforcement agencies across the United States.[46] As of February 2020, Amazon had partnerships with over 800 police departments.[47] Like the partnerships with cities, these partnerships confer benefits and obligations on Amazon and participating law enforcement agencies.[48] For example, Amazon receives the endorsement of law enforcement, the promotion of its Ring devices, and the expansion of its network.[49] In exchange, law

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39. *Id.* (including cities of Boynton Beach, FL and Buckeye, AZ); Haskins, *supra* note 8 (discussing Californian cities such as La Mirada, Alhambra, Maywood, Temple City, Arcadia, La Cañada Flintridge, Rancho Palos Verdes, San Marino, Diamond Bar, Lancaster, West Hollywood, Commerce, South Gate, Monrovia, Temple City, Redondo Beach, and more); *see also* Mike Murphy, *Amazon's Ring May Be Branching Out Beyond Outdoor Cameras*, QUARTZ (June 17, 2019), https://qz.com/1646116/amazons-ring-might-be-getting-more-cameras-patents-show/ [https://perma.cc/Y64G-EBXY] (implying that since Amazon's acquisition of Ring, it has forged partnerships with police departments).

40. Guariglia, *supra* note 7; Haskins, *supra* note 8.

41. *Id.*

42. Haskins, *supra* note 8. Amazon matches the cities' subsidies, which can motivate the participating cities to spend more money on Ring devices. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* It is unclear how else Amazon uses Ring data. Other uses may implicate disparate legal issues which are beyond the scope of this Comment.

46. *See* Cyrus Farivar, *Cute Videos, but Little Evidence: Police Say Amazon Ring Isn't Much of a Crime Fighter*, NBC NEWS (Feb. 15, 2020, 4:16 AM), https://www.nbcnews.com/news/all/cute-videos-little-evidence-police-say-amazon-ring-isn-t-n1136026 [https://perma.cc/CZ3U-8DC2].

47. *Id.*

48. Maring, *supra* note 8; Ng, *supra* note 8; Wollerton, *supra* note 8.

49. Maring, *supra* note 8; Ng, *supra* note 8; Wollerton, *supra* note 8.

enforcement agencies receive free cameras for officers to distribute around local neighborhoods and they gain access to the Neighbors application where they can look at content posted by users.[50] This application also allows law enforcement agencies "to broadcast information about crucial safety issues" to entire communities.[51]

Law enforcement agencies also receive a number of other benefits from partnering with Amazon. First, Ring provides complimentary coaching to police departments on obtaining users' consent to access their cameras and recorded footage.[52] Although police do not need a warrant to access the videos on the Portal, they still need consent from the camera owners for videos not posted to the platform.[53] Thus, Ring has hired people to coach "police on how to obtain footage" from users who do not want to give permission.[54] The coaching is designed to help law enforcement gain access to a customer's footage and teach law enforcement "how to talk to the public."[55]

However, if a user refuses to give permission, law enforcement can request the footage from Amazon directly.[56] Amazon's policy states that law enforcement agencies "*can* request the footage . . . if it has been uploaded to the cloud and the request is sent within 60 days of recording."[57] Ring may:

> access, use, preserve and/or disclose [a user's] Content to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if [they] have a good faith belief that such access, use, preservation or disclosure is reasonably necessary to . . . protect the rights, property or safety

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50. Ng, *supra* note 8; Wollerton, *supra* note 8.

51. Cericola, *supra* note 32; Kate Cox, *Police Can Get Your Ring Doorbell Footage Without a Warrant, Report Says*, ARS TECHNICA (Aug. 6, 2019, 12:00 PM), https://arstechnica.com/tech-policy/2019/08/police-can-get-your-ring-doorbell-footage-without-a-warrant-report-says/ [https://perma.cc/PA5N-HP4B]; Caroline Haskins, *Amazon Is Coaching Cops on How to Obtain Surveillance Footage Without a Warrant*, VICE (Aug. 5, 2019, 10:08 AM), https://www.vice.com/en_us/article/43kga3/amazon-is-coaching-cops-on-how-to-obtain-surveillance-footage-without-a-warrant [https://perma.cc/K3CT-BF7C].

52. Haskins, *supra* note 51.

53. *Id.*

54. *Id.*

55. Matthew Guariglia, *Five Concerns About Amazon Ring's Deals with Police*, ELEC. FRONTIER FOUND. (Aug. 30, 2019), https://www.eff.org/deeplinks/2019/08/five-concerns-about-amazon-rings-deals-police [https://perma.cc/PJ8K-BQTB].

56. Haskins, *supra* note 51.

57. Jay McGregor, *Here's How Amazon's Ring Doorbell Police Partnership Affects You*, FORBES (Aug. 6, 2019, 12:45 PM) (emphasis in original), https://www.forbes.com/sites/jaymcgregor/2019/08/06/heres-how-amazons-ring-doorbell-police-partnership-affects-you/#1df46c8e67a6 [https://perma.cc/7FZC-GAJY].

> of Ring, its users, a third party, or the public as required or permitted by law.[58]

Furthermore, participating law enforcement agencies gain access to the Ring Law Enforcement Portal (Portal)—an application created exclusively for police departments.[59] Amazon created the Portal exclusively for law enforcement to have access to the surveillance footage that is generated by customers' cameras.[60] The Portal provides "a seamless and easily automated experience for police to request and access footage without a warrant, and then store it indefinitely."[61] Through the Portal, police officers can "see all the crime related neighborhood alerts that are posted in their jurisdiction in real time."[62] The Portal also informs law enforcement agencies of the number of Ring devices in a certain area.[63]

Critics point out that "Amazon itself has no 'oversight or accountability' in how the footage—which reportedly does not require a warrant to access—is stored or used after police requests."[64] In fact, once the video is collected, the "footage can be used by law enforcement to conduct facial recognition searches, target protesters exercising their First Amendment rights, teenagers for minor drug possession, or shared with other agencies like ICE or the FBI."[65] In addition to the resources in the Portal, police officers also use the Neighbors application as an investigative tool.[66]

Lastly, Ring has made efforts to streamline the information given to law enforcement agencies. For example, Ring sought to hire a managing editor who crafts news alerts on the application to inform police

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58. *Ring Terms of Service*, RING [hereinafter *Ring Terms of Service*], https://shop.ring.com/pages/terms [https://perma.cc/6QWG-X63E].

59. Cericola, *supra* note 32.

60. Biddle, *supra* note 11.

61. Letter from Fight for the Future et al., to Local, State, & Fed. Offs. (Oct. 7, 2019, 12:18 PM), https://www.fightforthefuture.org/news/2019-10-07-open-letter-calling-on-elected-officials-to-stop/ [https://perma.cc/CR8B-F3VV].

62. Biddle, *supra* note 11 (internal .

63. Cox, *supra* note 51.

64. Charlie Osborne, *Civil Rights Groups Urge Lawmakers to Dissolve Police Partnerships with Ring*, ZDNET (Oct. 9, 2019, 8:47 AM), https://www.zdnet.com/article/civil-rights-groups-urge-lawmakers-to-dissolve-police-partnerships-with-ring/ [https://perma.cc/X2NJ-TZQV].

65. Letter from Fight for the Future et al., *supra* note 61; *see also* Hall, *supra* note 10.

66. Hall, *supra* note 10; *see also* Grace Baek, *Are Video Doorbells and Neighborhood Watch Apps Generating More Fear than Security?*, CBS NEWS (Feb. 24, 2020 7:03 AM), https://www.cbsnews.com/news/neighborhood-watch-apps-ring-doorbells-racial-profiling-2-0-cbsn-originals-documentary/ [https://perma.cc/4MRM-6TMC] (demonstrating one example of how law enforcement agencies use the Neighbors application).

departments about potential crimes.[67] The news alerts that the editor will craft will resemble "a crime log in a city paper."[68] Ring also created a "'request videos' feature [that] allows officers to view a map of available Ring cameras in an area or target a specific address and request footage directly from the owners, no court order required."[69]

On one hand, some believe that the data generated by the Ring devices may be used as a tool "to help police solve crimes and prevent lawless activity before it even happens."[70] On the other hand, even if the Ring devices and Amazon's partnerships with cities and police departments create safer neighborhoods, there is a growing concern among civil rights groups and privacy experts regarding law enforcement's close connection with Amazon.[71] Specifically, the partnerships are concerning because they "threaten[] to blur, if not eliminate, the distinction between private-sector surveillance services and the government's role as enforcer of the law."[72] Some have even described the partnerships as creating "a Big Brother police state" where law enforcement is disguised as a private entity.[73] An open letter signed by thirty-six civil rights groups stated that law enforcement partnerships with Ring result "in the promotion of a private company's products," which is especially concerning considering the mass surveillance network Amazon is creating simultaneously.[74]

Amazon's partnerships with cities and law enforcement agencies help Ring promote their product, while also help build a nationwide surveillance network that is accessible to law enforcement agencies.[75] Therefore, the partnerships are mutually beneficial to Amazon and to state actors such as city governments and law enforcement agencies.[76]

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67. Caroline Haskins, *Amazon Is Hiring a News Editor for Its 'Neighborhood Watch' App*, VICE (Apr. 30, 2019, 7:29 AM), https://www.vice.com/en_us/article/gy4q8j/amazon-is-hiring-a-news-editor-for-its-neighborhood-watch-app [https://perma.cc/GPC9-EGL7].

68. *Id.*

69. Biddle, *supra* note 11.

70. Ben Fox Rubin, *How Ring's Neighbors App Is Making Home Security a Social Thing*, CNET (Dec. 3, 2018, 5:00 AM), https://www.cnet.com/news/how-rings-neighbors-app-is-making-home-security-a-social-thing/ [https://perma.cc/7G9F-ZDP2].

71. *See* Letter from Fight for the Future et al., *supra* note 61.

72. Biddle, *supra* note 11.

73. Hall, *supra* note 10.

74. Osborne, *supra* note 64; Letter from Fight for the Future et al., *supra* note 61.

75. *See infra* section IV.A.

76. Haskins, *supra* note 8.

II. WHO IS A STATE ACTOR UNDER THE FOURTH AMENDMENT?

Under the state action doctrine, an organization may be regarded as a state actor if its actions are entangled with a state actor or if it is carrying out a public function traditionally reserved for the state.[77] This protection is designed to prevent government actors from circumventing due process requirements by acting under the cover of a private organization.[78] Once an organization is found to be a state actor, it is subject to the same constitutional standards as the government.[79]

In order for a private actor to be considered a state actor for Fourth Amendment purposes, it must be considered a state actor under the state action doctrine.[80] In determining whether an actor is an agent of the state for Fourth Amendment purposes, many cases and scholarly articles cite to fundamental Fourteenth Amendment state action cases.[81]

Although the state action doctrine typically applies to state actors, such as government employees,[82] a private entity may be deemed a state actor if (1) the private entity is encouraged by the state and its actions are so intertwined with the state that they are essentially acting together, or (2) it is carrying out a function that is generally reserved for the state.[83] However, prior decisions show that the Court is more likely to apply the state action doctrine to cases that involve race discrimination than other constitutional claims.[84] But the rights at issue in privacy cases are important in a similar, albeit different, respect.[85] Therefore, these cases may shed light on how the law should evolve to match this new technology.

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77. *See* CHEMERINSKY, *supra* note 16, at 542; U.S. CONST. amend. XIV.

78. *See* CHEMERINSKY, *supra* note 16, at 559; U.S. CONST. amend. XIV.

79. *See* CHEMERINSKY, *supra* note 16, at 542; U.S. CONST. amend. XIV.

80. *See* CHEMERINSKY, *supra* note 16, at 542.

81. *See, e.g.*, George v. Edholm, 752 F.3d 1206, 1215 (9th Cir. 2014) (citing Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001)); Crawford & Schultz, *supra* note 18, at 1958 n.95, 1960 nn.99–100, 102 & 106 (2019) (first citing Lugar v. Edmondson Oil Co., 457 U.S. 922, 942 (1982); then citing Blum v. Yaretsky, 457 U.S. 991, 1002–05 (1982); then citing Manhattan Cmty. Access Corp. v. Halleck, 587 U.S. __, 139 S. Ct. 1921, 1933 (2019); then citing Flagg Bros. v. Brooks, 436 U.S. 149, 158, 163 (1978); then citing Jackson v. Metro. Edison Co., 419 U.S. 345, 352–54 (1974); then citing *Brentwood Acad.*, 531 U.S. at 298–302; and then citing Burton v. Wilmington Parking Auth., 365 U.S. 715, 725–26 (1961)).

82. *See* CHEMERINSKY, *supra* note 16, at 541.

83. *See id. See generally* Crawford & Schultz, *supra* note 18, at 1961 (discussing the factors that courts used to determine whether there was state action).

84. CHEMERINSKY, *supra* note 16, at 543.

85. In fact, privacy violations can have serious consequences for many individuals and can disproportionately affect underrepresented communities. *See infra* section IV.B.

The Court has acknowledged that there are many different tests used to identify state action by a private entity.[86] It has also recognized the overlap between the tests.[87] This overlap has left many courts and legal scholars confused as to which state action test should be applied in certain situations.[88] Several scholars have attempted to combine similar tests to streamline the various approaches, but the courts are open to applying different tests.[89] While state action jurisprudence may be confusing, the Court has stated its main goal behind the tests: "determin[ing] whether an action 'can fairly be attributed to the State.'"[90]

The Court has further explained that to bring a state action claim against a private entity, two elements must be met.[91] First, there must be "an alleged constitutional deprivation" caused by the State or "by a person for whom the State is responsible."[92] Second, the depriving party "must be a person who may fairly be said to be a state actor."[93] These elements are considered by both the Public Function test and the Entanglement test.[94]

A. Entanglement Test

A private actor is legally considered a state actor under the Entanglement test when the government has engaged in "some . . . action that can be identified as affirmatively authorizing, encouraging, or

86. *Brentwood Acad.*, 531 U.S. at 306 (Thomas, J., dissenting); *see* Julie K. Brown, *Less Is More: Decluttering the State Action Doctrine*, 73 MO. L. REV. 561, 565 (2008).

87. *See* Brown, *supra* note 86, at 580–81. The factors of the many tests can be interchangeable. *Id.* One law review article suggests that the Entwinement test and Nexus test should be combined, and discusses the confusion and variations between the Entwinement, Symbiotic and Nexus tests. *Id.* In my Comment, I have combined factors that should be substantial in determining state action under the Entanglement test and Public Functions test. *See* Crawford & Schultz, *supra* note 18, at 1966–67 (using entanglement as a factor in the Joint Participation test).

88. *See* Hala Ayoub, *The State Action Doctrine in State and Federal Courts*, 11 FLA. ST. U. L. REV. 893, 915–16 (1984); CHEMERINSKY, *supra* note 16, at 544 ("Also, in some cases, the Court is not clear as to which exception it is discussing.").

89. *See* Ayoub, *supra* note 88, at 916 (discussing the Public Functions theory and the State Involvement or Encouragement theory); Brown, *supra* note 86, at 580–81; CHEMERINSKY, *supra* note 16, at 564; *see also supra* discussion accompanying note 81.

90. *Brentwood Acad.*, 531 U.S. at 306 (Thomas, J., dissenting) (quoting Blum v. Yaretsky, 457 U.S. 991, 1004 (1982)). *See generally* Jackson v. Metro. Edison Co., 419 U.S. 345, 359–60 (1974) (Douglas, J., dissenting) (stating that the Court has also posited the question of "whether the aggregate of all relevant factors compels a finding of state responsibility" (quoting Burton v. Wilmington Parking Auth., 365 U.S. 715, 722–26 (1961))).

91. Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999) (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).

92. *Id.*

93. *Id.*

94. *See id.*

facilitating constitutional violations."[95] Here, there are many factors the court may consider when assessing whether a private entity engaged in state action.[96] Some of the factors are (1) the extent to which the state regulates the private entity; (2) whether the state encouraged or compelled the private conduct, evidenced by the private entity's discretion in decision making; and (3) whether the state and private entity were joint participants in the actions committed.[97] If the court finds entanglement, either the government must end its involvement with the private actor, or the private actor must comply with constitutional requirements.[98]

The third factor, whether there was joint participation by state and private actors, is one of the most important factors.[99] When evaluating this factor, the court examines entanglement based on the parties' conduct, including the relationship between the state actor and the private actor.[100] However, a private entity does not need to be accused of serving as "an officer of the State" to qualify as acting "under color of law."[101] Indeed, the Court has found that a private entity engages in state action when it willfully participates in prohibited activities with a state actor.[102] But courts will only find state action if there is a sufficiently "'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'"[103] Additionally, the joint participation test involves an inquiry into any "mutually conferred benefits" or "mutual interdependence."[104]

The state action doctrine does not apply to all types of activities in

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95. CHEMERINSKY, *supra* note 16, at 564.

96. *See* Brown, *supra* note 86, at 566 (discussing some factors including but not limited to: "1) state regulation, no matter its extent; 2) public funding of a private group; 3) private use of public property; 4) minor presence of public officials on the board of a private entity; 5) the mere approval or acquiescence of the state in private activity; and 6) the utilization of public services by private actors" (citations omitted)); *see also* sources cited *supra* note 81; CHEMERINSKY, *supra* note 16, at 544–45.

97. Brown, *supra* note 86, at 565–66.

98. CHEMERINSKY, *supra* note 16, at 552.

99. *See, e.g.*, Crawford & Schultz, *supra* note 18, at 1966 (discussing the Joint Participation theory); Brown, *supra* note 86, at 567 (discussing the Joint Participation test).

100. *See* Brown, *supra* note 86, at 567; United States v. Adkinson, 916 F.3d 605, 605, 610 (7th Cir.), *cert. denied*, __ U.S. __, 139 S. Ct. 2762 (2019); United States v. Fortney, 772 F. App'x 269, 273 (6th Cir. 2019); George v. Edholm, 752 F.3d 1206, 1216 (9th Cir. 2014).

101. Lugar v. Edmondson Oil Co., 457 U.S. 922, 941 (1982) (quoting United States v. Price, 383 U.S. 787, 794 (1966)).

102. *Id.*; *George*, 752 F.3d at 1215 (stating that the Supreme Court accepted "that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish[]" in a previous Fourth Amendment state action case (quoting Norwood v. Harrison, 413 U.S. 455, 465 (1973))).

103. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (quoting Jackson v. Metro. Edison Co., 419 U.S. 345, 351 (2001)).

104. Brown, *supra* note 86, at 567 (citations omitted).

which public and private actors are intertwined, but it may apply when the activities are sufficiently intertwined.[105] For example, in *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*,[106] the Court determined that a private athletic association engaged in state action because 84% of its members were public schools, it received funds from public schools, it conducted meetings on government property, and it operated in only one state.[107] Essentially, the Court determined that the private entity was a state actor because there was sufficient government entanglement in the Association's activities.[108]

The court also considers whether the nature of the parties' relationship supports finding state action.[109] In *Burton v. Wilmington Parking Authority*,[110] a restaurant that discriminated against people of color was located on government-owned property.[111] In that case, because the government received substantial financial benefits from the landlord-tenant relationship with the restaurant, the Court held that the government was effectively a joint participant in the discrimination.[112] Specifically, the restaurant was built with public funds, the government performed maintenance on the building, and the government financially benefited from the restaurant's profits.[113] Consequently, the Court found that the restaurant and the government were so entangled that the relationship was sufficient to constitute state action.[114] While the Court has limited *Burton*'s holding to apply only to lessees of public property, the Court has also stated that this narrow definition is not necessarily the only interpretation of *Burton*.[115] The Court determined that "the dispositive question in any state-action case is . . . whether the aggregate of all

105. DeBauche v. Trani, 191 F.3d 499, 510 (4th Cir. 1999); *see also Jackson*, 419 U.S. at 357–58; Blum v. Yaretsky, 457 U.S. 991, 1011 (1982).

106. 531 U.S. 288 (2001).

107. *Id.* at 288–90, 297, 304–05.

108. *Id.* at 288–90.

109. Skinner v. Ry. Lab. Execs. Ass'n, 489 U.S. 602, 614 (1989) ("Whether a private party should be deemed an agent or instrument of the Government for Fourth Amendment purposes necessarily turns on the degree of the Government's participation in the private party's activities . . . ."); *see* United States v. Adkinson, 916 F.3d 605, 610 (7th Cir.) ("'A search or seizure by a private party does not implicate the Fourth Amendment' unless the private party 'is acting as an instrument or agent of the government.'" (quoting United States v. Shahid, 117 F.3d 332, 325 (7th Cir. 1997))), *cert. denied*, __ U.S. __, 139 S. Ct. 2762 (2019).

110. 365 U.S. 715 (1961).

111. *Id.* at 723–24.

112. CHEMERINSKY, *supra* note 16, at 557.

113. *Burton*, 365 U.S. at 723–25.

114. *Id.* at 724–25.

115. Jackson v. Metro. Edison Co., 419 U.S. 345, 357–58 (1974) (citing the holding of *Burton*, 365 U.S. at 725–26).

relevant factors compels a finding of state responsibility."[116]

Lastly, courts consider whether an agency relationship exists between the private entity and the state actor looking specifically at the parties' respective interests, the relationship between the private citizen and the private entity, and the extent of collaboration.[117] In *United States v. Adkinson*,[118] a private telecommunications company handed over a defendant's approximate cellphone location to law enforcement after one of its stores had been robbed.[119] The *Adkinson* court held that the private telecommunications company was not an agent of the state under the Fourth Amendment for three reasons.[120] First, the defendant consented to the telecommunications company's cooperation with the government in his contract.[121] Second, the company "acted in its own interest to prevent more robberies of its stores and recover its property . . . ."[122] Third, the private telecommunications company only accessed the defendant's location one time at a general location.[123] Similarly, in *George v. Edholm*,[124] the private physician who performed a cavity search on George was not considered an agent of the state because the court could only establish that the physician was encouraged by the state to perform the search.[125] The court did not find that the physician had intended to assist in the search for the state's investigation.[126] Thus, the private physician was not considered a state actor under the Fourth Amendment.[127]

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116. *Id.* at 360 (Douglas, J., dissenting) (citing the holding of *Burton*, 365 U.S. at 722–26, and discussing how the Court determines whether there is state action).

117. *See* United States v. Adkinson, 916 F.3d 605, 605, 610 (7th Cir.) (holding in the Fourth Amendment state action case that in order "[t]o demonstrate agency, [a defendant] must establish either that [the private actor] agreed to act on the government's behalf and to be subject to its control or that the government ratified [the private actor's] conduct as its own"), *cert. denied*, __ U.S. __, 139 S. Ct. 2762 (2019); United States v. Fortney, 772 F. App'x 269, 273 (6th Cir. 2019) (holding former employer's search of defendant's property was state action under Fourth Amendment due to the symbiotic relationship or nexus test); George v. Edholm, 752 F.3d 1206, 1216 (9th Cir. 2014) (Fourth Amendment state action case).

118. 916 F.3d 605 (7th Cir. 2019).

119. *Id.*

120. *Id.* at 610–11.

121. *Id.* at 605, 610.

122. *Id.* at 610.

123. *Id.* at 611.

124. 752 F.3d 1206 (9th Cir. 2014).

125. *Id.* at 1216.

126. *Id.*

127. *Id.*

B. The Public Function Test

The Court also uses the Public Function test to determine whether a private entity should be considered a state actor.[128] Under the Public Function test, courts have determined that a private party is a state actor when the State tries to circumvent a clear constitutional duty by delegating the State's traditionally exclusive work to that private actor.[129] When applying this test, courts assess whether the private conduct is "traditionally the exclusive prerogative of the State."[130] Very few private entities fall into this category.[131] For example, running elections and operating a town are seen as functions that are traditionally and exclusively public.[132] In contrast, overseeing sports associations, administration of insurance payments, special education, nursing homes, resolution of private lending disputes, and supplying electricity are some functions that are not traditionally and exclusively public.[133]

In *Flagg Bros. v. Brooks*,[134] the Court determined dispute resolutions between debtors and creditors were not traditionally exclusive functions of the state because there are other remedies for resolving private

128. CHEMERINSKY, *supra* note 16, at 545.

129. DeBauche v. Trani, 191 F.3d 499, 508 (4th Cir. 1999) (quoting UAW v. Gaston Festivals, Inc., 43 F.3d 902, 906 (4th Cir. 1995)); *see* Crawford & Schultz, *supra* note 18, at 1961 (noting that under the Public Function test "a private party is a state actor 'when the state has sought to evade a clear constitutional duty through delegation to a private actor . . . [or] delegated a traditionally and exclusively public function to a private actor'" (quoting *DeBauche*, 191 F.3d at 507)).

130. Jackson v. Metro. Edison Co., 419 U.S. 345, 353 (1974) ("[S]upplying of utility service is not traditionally the exclusive prerogative of the State . . . ."); Terry v. Adams, 345 U.S. 461 (1953) (holding elections are an exclusive prerogative of the state); Marsh v. Alabama, 326 U.S. 501 (1946) (holding a private owned city that has all the attributes of a public city is functioning as the exclusive prerogative of the State).

131. Miller v. Vohne Liche Kennels, Inc., 600 F. App'x 475, 475, 477 (7th Cir. 2015) (holding a private dog training company was not a state actor and did not implicate the Fourth Amendment when one of its trained dogs had alerted a police officer to possible drugs so the police officer performed a search under the Fourth Amendment of the defendant's car); Manhattan Cmty. Access Corp. v. Halleck, 587 U.S. __, 139 S. Ct. 1921, 1928–29 (2019).

132. *See Marsh*, 326 U.S. at 505–09 (company town); *Terry*, 345 U.S. at 468–70 (running elections).

133. *See Manhattan Cmty. Access Corp.*, 139 S. Ct. at 1929; Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 55–57 (1999) (insurance payments); Flagg Bros. v. Brooks, 436 U.S. 149, 157–62 (1978) (resolution of a private dispute); Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982) (special education); *Jackson*, 419 U.S. at 353 (electricity utility service); Blum v. Yaretsky, 457 U.S. 991, 1011 (1982) (nursing home); Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 197 (1988) (sport association).

134. 436 U.S. 149, 149 (1978).

disputes.[135] Similarly, in *West v. Atkins*,[136] the State contracted with a doctor to provide medical care to an injured inmate and when the doctor failed to properly treat his injury, the inmate sued the State for violating his Eighth Amendment rights.[137] The Court determined that because the inmate could not have accessed medical treatment elsewhere, it was an exclusive function of the state.[138] A determinative factor of whether there is state action is the role the private actor performs on behalf of the state.[139] The Court held that because Atkins' only option for treatment was the state-provided doctor, the doctor was considered a state actor and so the State was liable for the doctor's actions.[140]

Furthermore, in *Marsh v. Alabama*,[141] the Court extended the holding in *West* and held that a company-owned town was a state actor liable for discriminatory conduct.[142] Specifically, the Court reasoned that the more a private company opens up its property for use by the general public for its own advantage, "the more . . . [its] rights become circumscribed by the statutory and constitutional rights of those who use it."[143] Additionally, "[t]he Court concluded that private property rights of the company did not 'justify the States permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties.'"[144]

The California Supreme Court extended the state action rationale in *Marsh* to the Fourth Amendment.[145] In that case, a private credit card agent's search of the defendant's car to obtain the defendant's credit card was considered state action because law enforcement and the private

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135. *Id.* at 161–64 ("We express no view as to the extent, if any, to which a city or State might be free to delegate to private parties the performance of such functions and thereby avoid the strictures of the Fourteenth Amendment. The mere recitation of these possible permutations and combinations of factual situations suffices to caution us that their resolution should abide the necessity of deciding them.").

136. 487 U.S. 42 (1988).

137. *Id.* at 42, 43, 57. The right is the cruel and unusual standard. *See* Bryan A. Stevenson & John F. Stinneford, *The Eighth Amendment*, NAT'L CONST. CTR., https://constitutioncenter.org/interactive-constitution/interpretation/amendment-viii/clauses/103 [https://perma.cc/WYE9-PTJL].

138. Crawford & Schultz, *supra* note 18, at 1961 ("[T]he exclusivity of the function is . . . defined . . . by the voluntary ability of the plaintiff to access (or obtain) the benefits of that functionality elsewhere.").

139. *Id.* (holding that what determines whether there is state action "is the role that actor plays in the administration of the state's function that governs").

140. *West*, 487 U.S. at 55–58.

141. 326 U.S. 501 (1946).

142. *Id.* at 508–10.

143. *Id.* at 506.

144. CHEMERINSKY, *supra* note 16, at 545–46 (citing *Marsh*, 326 U.S. at 509).

145. John M. Burkoff, *Not So Private Searches and the Constitution*, 66 CORNELL L. REV. 627, 665 (1981) (quoting Stapleton v. Superior Ct., 70 Cal. 2d 97, 103 n.4 (1969)).

credit card agent's aim was to obtain evidence against the defendant and then have law enforcement arrest him.[146] The court stated that "[s]earches and seizures to assist criminal prosecutions may be such an inherently governmental task as to fall under the rationale of *Marsh v. Alabama*."[147]

III. AMAZON'S PARTNERSHIPS WITH CITIES AND LAW ENFORCEMENT AGENCIES QUALIFY IT AS AN AGENT OF THE STATE

A. Applying the Entanglement Test

Amazon should be treated as a state actor under the joint participation factor of the Entanglement test because state actors are so involved in Amazon's actions that the two can be viewed as joint participants in the promotion of Ring.[148]

First, Amazon's partnerships satisfy the joint participation factor of financial benefits because cities subsidize Ring products, law enforcement has access to the Portal and Neighbors application, and Amazon provides coaching to help law enforcement obtain consent to access Ring users' data.[149]

Second, Amazon and partnered cities may be considered joint participants because cities use public funding to support and promote Ring products.[150] Amazon's partnerships with cities and law enforcement officials are similar to the public-private relationships in *Burton* in which state action was present.[151] In *Burton*, the restaurant was built with public funds, the government performed maintenance on the building, and the government benefited from the restaurant's profits.[152] Here, the cities support and promote Ring by using taxpayer money to subsidize Amazon's Ring devices for private residents in exchange for cheaper Ring devices and the ability to promise safer neighborhoods.[153]

Amazon and partnered law enforcement agencies are also joint participants because there is a "high level of mutual interdependence between" them such that Amazon's actions could be attributed to the law

146. *Stapleton*, 70 Cal. 2d at 100.

147. *Id.* at 103 n.4.

148. *See supra* section I.B.

149. Haskins, *supra* note 8; Maring, *supra* note 8.

150. Haskins, *supra* note 8.

151. *Id.*; *see* Burton v. Wilmington Parking Auth., 365 U.S. 715, 723–25 (1961).

152. *Burton*, 365 U.S. at 723–25.

153. Haskins, *supra* note 8 (stating that some cities are paying "up to $100,000 to subsidize the purchase of the company's surveillance cameras for private residents").

enforcement agencies.[154] In exchange for access to the Portal, a coaching service, and a national network of Ring users' data, Amazon benefits from the support and promotion of law enforcement agencies.[155] Amazon's relationship with law enforcement surpasses that of *Adkinson*. Amazon has become an agent for the state because Amazon provides law enforcement agencies with resources and data to which they normally would not have access.[156] In *Adkinson*, a private telecommunications company was not considered an agent of the State because the defendant accepted the company's agreement, the company shared the data in its own interest as opposed to the government's, it was in its own interest to prevent robberies, and the company only accessed the defendant's location once.[157] While Amazon does obtain the consent of users to access their data and location, unlike in *Adkinson*, Amazon is facilitating an ongoing relationship with law enforcement.[158]

One way Amazon is facilitating an ongoing relationship with law enforcement is through the Portal. The Portal is the primary mechanism for interdependence between Amazon and law enforcement agencies.[159] For example, the Portal allows law enforcement agencies to broadcast information regarding safety concerns to entire communities through the Neighbors application.[160] It also allows law enforcement officers to access a large volume of residential surveillance videos.[161] The Portal's "'request videos' feature allows officers to view a map of available Ring cameras in an area or target a specific address and request footage directly from the owners" without a court order.[162]

Not only does Amazon encourage law enforcement, it also assists law enforcement with criminal investigations.[163] Unlike in *George v. Edholm*, in which the court held that a private physician was not a state actor

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154. Brown, *supra* note 86, at 567; Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (quoting Jackson v. Metro. Edison Co., 419 U.S. 345, 351 (2001)); *see* Haskins, *supra* note 4.

155. Haskins, *supra* note 4 (finding that the relationship consists of "police get[ting] a portal where they can request footage from Ring's network of private surveillance cameras, and the company gets the promotional muscle of the police").

156. *See id.* (finding that through Amazon's partnerships, it has quietly been able to "embed[] itself into the functions of law enforcement"); United States v. Adkinson, 916 F.3d 605, 605, 610 (7th Cir.), *cert. denied*, __ U.S. __, 139 S. Ct. 2762 (2019).

157. *Adkinson*, 916 F.3d at 605, 610.

158. Haskins, *supra* note 51; McGregor, *supra* note 57.

159. Cericola, *supra* note 32.

160. *Id.*; Biddle, *supra* note 11.

161. Biddle, *supra* note 11.

162. *Id.*; *see* Cericola, *supra* note 32.

163. Haskins, *supra* note 51; McGregor, *supra* note 57.

because he did not intend the search to assist in the State's investigation, Amazon actually assists the state in Fourth Amendment searches.[164] In fact, Amazon willfully participates in Fourth Amendment searches—which is a prohibited activity—by providing law enforcement access to Ring users' information.[165] Amazon also provides coaching to law enforcement agencies to help them obtain consent from Ring users to access the users' footage and data.[166] Amazon states that a police department "*can* request the footage . . . if it has been uploaded to the cloud and the request is sent within 60 days of recording."[167] And, according to Ring's Terms of Service, Amazon only needs to have a "good faith belief" that disclosure is "reasonably necessary" before releasing the footage to law enforcement.[168] This seems to show that Amazon is intending to assist law enforcement in their investigative search, which under the decision of *George v. Edholm*, would make Amazon an agent of the state.[169]

B. Applying the Public Function Test

Under the Public Function test, Amazon should be treated as a state actor because Amazon carries out part of an essential public function. Through the Ring device, Amazon acts as an ongoing neighborhood watch and allows law enforcement to bypass the requirements of the Fourth Amendment to access Ring users' content without obtaining a warrant.[170]

Amazon is providing an essential public function because it is providing the only known video doorbell service that is promoted and endorsed by law enforcement.[171] In *Flagg Bros.*, the Court determined that the defendant had access to many other remedies for resolving private disputes, whereas in *West*, the incarcerated individual only had access to

164. George v. Edholm, 752 F.3d 1206, 1216 (9th Cir. 2014).

165. Haskins, *supra* note 51.

166. *Id.*

167. McGregor, *supra* note 57.

168. *Ring Terms of Service*, *supra* note 58; *see supra* section I.B.

169. *See George*, 752 F.3d at 1216.

170. *Ring Terms of Service*, *supra* note 58; McGregor, *supra* note 57. Neighborhood policing has been a quintessential, traditional, and exclusive state function in the United States since the 1830s. *See* Olivia B. Waxman, *How the U.S. Got Its Police Force*, TIME (May 18, 2017, 9:45 AM), https://time.com/4779112/police-history-origins/ [https://perma.cc/78AZ-AECK].

171. *See* Haskins, *supra* note 51; McGregor, *supra* note 57; *see also* sources cited *infra* note 173 and accompanying text.

one doctor.[172] Similar to *Flagg Bros.*, and unlike in *West*, Amazon is not the only company providing video doorbells, but it is the only company known to be partnering with cities and law enforcement agencies.[173] In addition, it is the only company to grant government agencies access to a portal which contains valuable surveillance information and resources.[174] Like in *West*, Amazon is the only company with an established and ongoing relationship with law enforcement in which user data is exchanged for profit.[175] Therefore, a court should find Amazon is providing an essential public function.

Amazon's partnerships and involvement with state actors is similar to *Marsh* because some see the partnerships as creating "a Big Brother police state" where Amazon has taken over public law enforcement functions.[176] In *Marsh*, the Court held that a private company town was a state actor because it performed the traditional functions of the state.[177] "[T]he rationale underlying *Marsh* seems equally applicable in the situation where the state permits private organizations to perform police functions."[178] While Amazon does not fully encapsulate public life like a company town does, Amazon functions as a central tool for law enforcement in neighborhood policing, and it facilitates searches through its partnerships.[179]

Providing law enforcement agencies with a tool that may be used in a discriminatory manner is not enough to convert offensive private actions

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172. Flagg Bros. v. Brooks, 436 U.S. 149, 161–64 (1978); West v. Atkins, 487 U.S. 42, 55–58 (1988).

173. *Flagg Bros.*, 436 U.S. at 161–64; *West*, 487 U.S. at 55–58. In fact, there are many companies providing a similar device to the Ring device. Examples include Eufy Video Doorbell, Google Nest Hello, Arlo Video Doorbell, and more. *See Video Doorbell*, EUFY LIFE, https://www.eufylife.com/products/604/656/video-doorbell [https://perma.cc/VQD9-529W]; *Nest Hello*, GOOGLE, https://store.google.com/us/product/nest_hello_doorbell [https://perma.cc/XJA8-JGPE]; *Video Doorbell*, ARLO, https://www.arlo.com/uk/products/arlo-video-doorbell/default.aspx [https://perma.cc/84PJ-7TL6]. *See generally* Herrman, *supra* note 1; Ng, *supra* note 8.

174. Maring, *supra* note 8. In the Portal, law enforcement officers can request user videos, post alerts to specific geographic areas, access a map of all of the Ring devices in the area, request videos directly from Ring users, and manage the videos shared by users on the Neighbors application. *Id.*

175. *West*, 487 U.S. at 43, 57.

176. Hall, *supra* note 10.

177. Marsh v. Alabama, 326 U.S. 501, 508–10 (1946).

178. Burkoff, *supra* note 145, at 637 ("The danger of recurrent invasions of privacy resulting from the assumption of that public function indicates that institutionalized private searches should be subject to constitutional standards." (quoting Note, *Seizure by Private Parties: Exclusion in Criminal Cases*, 19 STAN. L. REV. 608, 617 (1967))).

179. Haskins, *supra* note 4. Through its partnerships, Amazon assists law enforcement with several critical aspects of surveillance, including obtaining data and video camera footage from Ring users through the Portal and the Neighbors application, offering coaching services, and providing protection through Ring's Terms of Service agreement. *See supra* section I.B.

into unconstitutional state action.[180] And, due to the fact that law enforcement can shield its potentially discriminatory behavior behind Amazon's Ring device,[181] the Court should reassess the current limits of the state action doctrine and apply it to Amazon.

IV. AMAZON SHOULD BE CONSIDERED A STATE ACTOR IN ORDER TO PROTECT CITIZENS UNDER THE FOURTH AMENDMENT

As discussed above, Police departments can access Amazon's surveillance resources, which seriously blurs the line between Amazon, a private actor, and law enforcement, a state actor.[182] But Amazon, unlike law enforcement, is not held to the same constitutional standards for privacy even though it is performing traditional state functions. Amazon should be considered a state actor because the Fourth Amendment would (a) help protect Ring users' right to privacy and (b) restrict Amazon's ability to create a mass surveillance network.

A. Amazon Should Be Held to the Standards Under the Fourth Amendment When Giving Law Enforcement Agencies Access to Ring Users' Cameras and Recordings

The Fourth Amendment of the U.S. Constitution is usually the best protection against unwanted police oversight on private property.[183] However, it cannot protect the users and passersby captured on Ring devices because Amazon is a private entity.[184]

Under the Fourth Amendment, state actors cannot search or seize an individual's property without a warrant granted by the state, probable cause, or consent.[185] However, consent is required under the Fourth Amendment for state actors, but when people make information publicly available, consent can be implied for not only state actors but for private parties as well, such as companies.[186] For example, "[u]nder the private

180. *See supra* section I.B; *infra* section IV.B.

181. *See infra* section IV.B.

182. *Supra* section I.B.

183. *See Equal Protection of the Laws*, *supra* note 17.

184. *See supra* section III.

185. U.S. CONST. amend. V (stating that citizens have the right to be free from "unreasonable searches," and "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized").

186. *See, e.g.*, Alafair S. Burke, *Consent Searches and Fourth Amendment Reasonableness*, 67 FLA. L. REV. 509, 517–18 (2015) (discussing how private individuals performing search and seizures

search doctrine, the Fourth Amendment is not implicated where the government does not conduct the search itself, but only receives and utilizes information uncovered by a search conducted by a private party."[187] Thus, Fourth Amendment protections only apply "to governmental action."[188]

The Court has held that an individual has an expectation of privacy for cell phone GPS data collected by a third party, but that holding is not applicable to all data collected by private parties.[189] In *Carpenter v. United States*,[190] the Supreme Court held that the government's use of information originally disclosed by a customer to a private telecommunications company did not "infringe [an individual's] reasonable expectation of privacy because that information [was] freely disclosed to the third party."[191] Moreover, the Court has held many times that a third party may reveal obtained information to government authorities "even if the information is revealed on the assumption that it will be used only for a limited purpose."[192] The Supreme Court has stated that "[c]onsenting to give a third party access to private [property] that remain[s] [the user's] property is not the same thing as consenting to a *search of [that property] by the government*."[193] Many scholars—and even Supreme Court Justices—believe that the "[t]he third-party doctrine is not only wrong, but horribly wrong," because consenting to a private company's policies shouldn't mean that individuals have no expectation of privacy with third party actors, especially when that third party is

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is different than a government entity performing search and seizures under the Fourth Amendment); *see* Elizabeth A. Wright, *Third Party Consent Searches and the Fourth Amendment: Refusal, Consent, and Reasonableness*, 62 WASH. & LEE L. REV. 1841, 1860 (2005); *infra* note 196 and accompanying text.

187. United States v. Reddick, 900 F.3d 636, 637 (5th Cir. 2018), *cert. denied*, __ U.S. __ ,139 S. Ct. 1617 (2019); *see also* Burdeau v. McDowell, 256 U.S. 465 (1921).

188. *Burdeau*, 256 U.S. at 475.

189. Carpenter v. United States, 585 U.S. __, 138 S. Ct. 2206, 2222 (2018); *id.* at 2262 (Gorsuch, J., dissenting) (finding that based on precedent, it is clear "[o]nce you disclose information to third parties, you forfeit any reasonable expectation of privacy you might have had in it").

190. 585 U.S. __, 138 S. Ct. 2206, 2206 (2018).

191. *Id.* at 2262 (Gorsuch, J., dissenting) (discussing the holding in *Smith v. Maryland*, 442 U.S. 735, 743–44 (1979)).

192. United States v. Miller, 425 U.S. 435, 443 (1976) (holding that a bank account holder does not enjoy a reasonable expectation of privacy for his account bank records because they are given to a third party); Lopez v. United States, 373 U.S. 427 (1963).

193. *Carpenter*, 138 S. Ct. at 2263 (Gorsuch, J., dissenting) (emphasis in original); *id.* at 2262 ("Can the government demand a copy of all your e-mails from Google or Microsoft without implicating your Fourth Amendment rights? Can it secure your DNA from 23andMe without a warrant or probable cause? *Smith* and *Miller* say yes it can—at least without running afoul of *Katz*. But that result strikes most lawyers and judges today—me included—as pretty unlikely.").

the government.[194]

In addition, the United States Supreme Court has consistently stated that "a person has no legitimate expectation of privacy in information he [or she] voluntarily turns over to third parties."[195] This means that once an individual voluntarily hands over information to a third party, the government can access it without obtaining a warrant.[196]

Because Amazon is not currently considered a state actor and therefore not subject to the requirements of the Fourth Amendment, Ring users do not have a reasonable expectation of privacy.[197] This principle is a significant barrier to holding Amazon accountable.[198] Some private companies like Google, Microsoft, and Facebook choose to retain their users' data and do not turn it over to state actors unless required by law.[199] Amazon willingly supports and engages with state actors through partnerships with cities and law enforcement agencies.[200] Yet despite

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194. Orin S. Kerr, *The Case for the Third-Party Doctrine*, 107 MICH. L. REV. 561, 563 n.5, 564 (2009).

195. *Smith*, 442 U.S. at 735, 743–44 (holding one cannot have an expectation of privacy with the records of telephone numbers dialed and conveyed with a telephone company, and holding "that installation and use of a pen register by a telephone company does not constitute a 'search' within the meaning of the Fourth Amendment"); *Miller*, 425 U.S. at 443 (holding there is no expectation of privacy with financial records held by a bank and "that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed"); *Lopez*, 373 U.S. at 427.

196. John Villasenor, *What You Need to Know About the Third-Party Doctrine*, THE ATL. (Dec. 30, 2013), https://www.theatlantic.com/technology/archive/2013/12/what-you-need-to-know-about-the-third-party-doctrine/282721/ [https://perma.cc/QB89-H8LS]. While the Stored Communications Act does create some protections for corporations to not give data by users to government entities without consent, it usually requires a lesser standard than the Fourth Amendment. *See* 18 U.S.C. § 2701. The Stored Communications Act requires the Government to show "reasonable grounds" that the records they wish to obtain are "relevant and material to an ongoing criminal investigation." *Id.* § 2703(d). This requirement falls well below the requirement of probable cause for a warrant under the Fourth Amendment because "[a] warrant is required only in the rare case where the suspect has a legitimate privacy interest in records held by a third party." *Carpenter*, 138 S. Ct. at 2211; U.S. CONST. amend. V. For example, GPS monitoring and location information is not considered the same as a tracking device in terms of cell phones. *See Carpenter*, 138 S. Ct. at 2215–16; United States v. Ackies, 918 F.3d 190, 198 (1st Cir. 2019). Only using cell phones as a tracking device has been held under Fourth Amendment scrutiny and thus requires a warrant. *See Carpenter*, 138 S. Ct. at 2206. Thus, the information that Amazon acquires through the Ring device's location is held to a lower standard for police departments to access it.

197. Zack Whittaker, *What Google Does When a Government Requests Your Data*, ZDNET (Jan. 28, 2013), https://www.zdnet.com/article/what-google-does-when-a-government-requests-your-data/ [https://perma.cc/KG5H-YC2D] (arguing that since Amazon is a private company, it "is not fully subject to the Fourth Amendment under US law, which guards against 'unreasonable searches and seizures'"); *see Smith*, 442 U.S. at 735, 743–44; *Miller*, 425 U.S. at 443; *Lopez*, 373 U.S. at 427.

198. Gillian E. Metzger, *Privatization as Delegation*, 103 COLUM. L. REV. 1367, 1373 (2003).

199. *See* Whittaker, *supra* note 197.

200. *See supra* Part I.

Amazon's relative embrace of state actors, Amazon is still treated as a private actor along with Google, Microsoft, and Facebook.[201]

A sentence in Ring's Terms of Service apparently undertakes to alert users that Ring works with law enforcement agencies and other state actors, and that they will share users' data upon forming a "good faith belief" that doing so is "reasonably necessary."[202]

> Ring may access, use, preserve and/or disclose [a user's] Content to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if [they] have a good faith belief that such access, use, preservation or disclosure is reasonably necessary to . . . protect the rights, property or safety of Ring, its users, a third party, or the public as required or permitted by law.[203]

This language is inconspicuous and fails to explicitly state that Amazon is working with police departments and governments. Users are not alerted to Amazon's practice of sharing Ring users' data with law enforcement agencies.[204] Amazon's murky partnerships with law enforcement agencies are especially concerning considering that Ring's Terms of Service allows Amazon to collect twenty-four-hour video surveillance from users' Ring devices.[205] And, depending on the placement of the Ring device, this can include street footage.[206]

In addition to the Terms of Service, Ring's Privacy Notice allows Amazon to collect personal information, including a user's mobile device's geolocation, the location where the Ring device was installed, and information relating to a user's Wi-Fi network.[207] Amazon even obtains recorded content from the Ring device, "such as video or audio recordings, live video or audio streams, images, comments, and data [the Ring devices] collect from their surrounding environment to perform their functions."[208]

While Ring users agree to forgo an expectation of privacy under the Fourth Amendment by consenting to Ring's Terms of Service, they should nonetheless still be protected by the Fourth Amendment. The

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201. *See* Whittaker, *supra* note 197.

202. *Ring Terms of Service*, *supra* note 58.

203. *Id.*

204. *See id.*

205. *See id.*

206. Matthew Guariglia, *What to Know Before You Buy or Install Your Amazon Ring Camera*, ELEC. FRONTIER FOUND. (Feb. 4, 2020), https://www.eff.org/deeplinks/2020/02/what-know-you-buy-or-install-your-amazon-ring-camera [https://perma.cc/JRX3-PBHZ].

207. *Privacy Notice*, *supra* note 28.

208. *Id.*

consent obtained by Amazon through Ring's Terms of Service and Privacy agreements is not enough to satisfy the Fourth Amendment's stringent consent requirement.[209]

Additionally, one of the leading problems with the Terms of Service and Privacy Notice is that they both fail to explicitly communicate the contours of Amazon's partnerships with government agencies.[210] The Terms of Service and the Privacy Notice state that Amazon has access to a user's content and may share it with government agencies as reasonably necessary.[211] But the agreements do not specify what content Amazon is accessing for government agencies, when it is accessing the content, or why they are providing the content to the government.[212] Partnership agreements between law enforcement agencies and Amazon are kept relatively secret; thus users have a very difficult time understanding what they are actually contracting away.[213] But based on the language in the Terms of Service and Privacy Notice, users should expect that all the data collected by their Ring devices may be shared with law enforcement.[214] A Pew Research Center survey also found that only 22% of American adults read privacy policies before agreeing to the terms.[215] Blindly consenting to a private company's policies should not mean that an individual has no expectation of privacy with third party actors, especially when that third party actor is the government.[216]

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209. *See* Burke, *supra* note 186; Wright, *supra* note 186; *see also Ring Terms of Service*, *supra* note 58; *Privacy Notice*, *supra* note 28.

210. *See supra* section I.B; Guariglia, *supra* note 7.

211. *Ring Terms of Service*, *supra* note 58.

212. *See id.*

213. Caroline Haskins, *Amazon Requires Police to Shill Surveillance Cameras in Secret Agreement*, VICE (July 25, 2019, 4:54 PM), https://www.vice.com/en_us/article/mb88za/amazon-requires-police-to-shill-surveillance-cameras-in-secret-agreement [https://perma.cc/33ZV-RTGD] (discussing how the terms of the agreement between the police department of Lakeland, Florida and Amazon were meant to be kept confidential).

214. *Ring Terms of Service*, *supra* note 58; *Privacy Notice*, *supra* note 28; *see supra* section I.B.

215. Auxier et al., *supra* note 22.

216. Kerr, *supra* note 194, at 563 & n.5, 564. These broad and vague agreements lead to an important question: whether Ring's contracts should be considered void for violating public policy or void for unconscionability. *See generally* 8 RICHARD A. LORD, WILLISTON ON CONTRACTS § 18:7 (4th ed. 2020) ("[W]hen there is a strong public policy against a particular practice, a contract or clause inimical to that policy will likely be declared unconscionable and unenforceable unless the policy is clearly outweighed by some legitimate interest in favor of the individual benefited by the provision."). A full analysis of whether these contracts are voidable goes beyond the scope of this Comment.

B. The Fourth Amendment Restricts Amazon's Ability to Create a Mass Surveillance Network.

Treating Amazon as a state actor is also important because it would limit Amazon's ability to create a mass surveillance network, and in turn would protect users' Fourth Amendment rights.

The Supreme Court has acknowledged that visual observation through public street cameras and drones by state actors is constitutionally permissible.[217] In other words, police may observe people on sidewalks and streets without offending the Constitution.[218] The constitutional analysis likely changes, however, when "mere . . . observation" systematically develops into a mass surveillance network.[219]

The Supreme Court adopted a rule "under which the government engages in a Fourth Amendment search any time it intrudes upon an 'expectation of privacy.'"[220] While an individual may expect to be watched by other people when on a public sidewalk, that individual does not expect to be tracked and watched by doorbell cameras that are accessible by law enforcement agencies. A surveillance network where people are constantly being watched by the government is not reasonable.

Some experts suggest that the Fourth Amendment should be implicated when police "are not merely observing but also *recording* images or sounds of people" as part of a mass surveillance network.[221] Justice Alito also alluded to this principle by stating that while short term monitoring of a person's public movements is generally not a Fourth Amendment violation, but "the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy" and thus should constitute a search under the Fourth Amendment.[222] A majority of the

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217. United States v. Jones, 565 U.S. 400, 412 (2012); Marc Johnathan Blitz, *The Fourth Amendment Future of Public Surveillance: Remote Recording and Other Searches in Public Space*, 63 AM. U. L. REV. 21, 39 (2013) ("[P]olice are free to observe not only what is visible in a field, but also what they can see in public streets and roads." (citing California v. Ciraolo, 476 U.S. 207, 213–15 (1986))); Oliver v. United States, 466 U.S. 170 (1984).

218. *Jones*, 565 U.S. at 412 (discussing that a "mere visual observation does not constitute a search" under the Fourth Amendment).

219. *See id.*

220. Blitz, *supra* note 217, at 33 (quoting Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)).

221. *Id.* at 28 (emphasis in original).

222. *Jones*, 565 U.S. at 430 (Alito, J., concurring); *id.* at 415 (Sotomayor, J., concurring) (stating "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy" (quoting *Jones*, 565 U.S. at 430 (Alito, J., concurring))); *see* United States v. Maynard, 615 F.3d 544, 560 (D.C. Cir. 2010) (discussing the fact that "the whole of a person's movements over the course of a month is not actually exposed to the public because the likelihood a stranger would observe all those movements is not just remote, it is essentially nil.").

Supreme Court, however, has not specified "the point at which public tracking may violate the Fourth Amendment."[223]

By allowing law enforcement to access private citizens' surveillance footage, Amazon is violating the Fourth Amendment. Mass collection of the devices' recordings helps create a surveillance network by "tak[ing] ephemeral occurrences in our lives and transform[ing] them into permanent records."[224] Amazon's creation of a public surveillance network is a "dragnet technique[]" that the Fourth Amendment was designed to prohibit.[225] The government should not be able to collect footage of an individual's daily activities and have the possibility of finding something incriminating through the help of Amazon.[226]

There is a growing concern with cities and law enforcement agencies actively promoting Ring devices because it increases surveillance "in a way that has the potential to become a centralized surveillance infrastructure."[227] Giving law enforcement access to Ring devices and private data "facilitates near-constant surveillance by local police, encourages an atmosphere of mistrust between police and residents, [and] exacerbates racial profiling and overpolicing."[228] The proliferation of smart video doorbells "threatens civil rights and liberties throughout the world."[229]

Ring and Neighbors also increase law enforcement's reliance on racial

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223. Blitz, *supra* note 217, at 27 (stating that "[w]e need not identify with precision the point at which the tracking of this vehicle became a search" (citing *Jones*, 565 U.S. at 430 (Alito, J., concurring))).

224. Blitz, *supra* note 217, at 30.

225. *See generally* United States v. U.S. Dist. Ct. (*Keith*), 407 U.S. 297, 327 (1972) (Douglas, J., concurring) (discussing dragnet techniques). Dragnet is defined as "a network of measures for apprehension (as of criminals)." *Dragnet*, MERRIAM-WEBSTER 217 (11th ed. 2016).

226. *See* Blitz, *supra* note 217, at 30.

227. Richard Acello, *Amazon's Ring Doorbell Cameras May Help Deter Package Thefts, But Critics Worry About Overreach*, A.B.A. J. (Apr. 1, 2020, 1:30 AM), https://www.abajournal.com/magazine/article/amazons-ring-doorbell-cameras-may-help-deter-package-thefts-and-other-crimes-but-critics-worry-about-overreach [https://perma.cc/5V9T-5CC8] (quoting Jay Stanley, Senior Pol'y Analyst for the Speech, Priv. & Tech. Project of the ACLU); Guariglia, *supra* note 55.

228. Matthew Guariglia & Bill Budington, *Ring Updates Device Security and Privacy—But Ignores Larger Concerns*, ELEC. FRONTIER FOUND. (Feb. 18, 2020), https://www.eff.org/deeplinks/2020/02/ring-updates-device-security-and-privacy-ignores-larger-concerns [https://perma.cc/JRX3-PBHZ].

229. Michael Kwet, *The Rise of Smart Camera Networks, and Why We Should Ban Them*, THE INTERCEPT (Jan. 27, 2020, 5:53 PM), https://theintercept.com/2020/01/27/surveillance-cctv-smart-camera-networks/ [https://perma.cc/BT37-N2NQ] ("Law enforcement agencies have a long history of using surveillance against marginalized communities, and studies show surveillance chills freedom of expression . . . .").

profiling.[230] Data shows that the Neighbors application "exacerbate[s] racial stereotypes and profiling."[231] Vice conducted an investigative report and found that the majority of over 100 submitted videos captured in a two-month period included people of color.[232] Neighborhood watch platforms that allow for reporting often "facilitate reporting of so-called 'suspicious' behavior that really amounts to racial profiling."[233] While a spokesperson for the Neighbors application stated that posts are proactively monitored and the company's guidelines prohibit racial profiling, the company relies solely on its users to flag any misconduct.[234]

Indeed, Neighbors has facial recognition software—known as Rekognition—which can potentially exacerbate racial profiling and racial disparities within the Neighbors application.[235] Amazon has stated that Rekognition is "tech [that] could serve 'to determine whether the video contains a known criminal (e.g., convicted felon, sex offender, person on a "most wanted" list, etc.) or a suspicious person,' and that the information could go directly to police."[236] A federal government study found that the use of facial recognition software has led to widespread racial bias.[237] This

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230. *See* Kurt Schlosser, *In First Move Since Amazon Acquisition, Ring Launches Neighbors App to Help Users Fight Crime*, GEEKWIRE (May 8, 2018, 11:19 AM), https://www.geekwire.com/2018/first-move-since-amazon-acquisition-ring-launches-neighbors-app-help-users-fight-crime/ [https://perma.cc/HFN9-THQ5]; Caroline Haskins, *Amazon's Home Security Company Is Turning Everyone into Cops*, VICE (Feb. 7, 2019, 12:29 PM), https://www.vice.com/en_us/article/qvyvzd/amazons-home-security-company-is-turning-everyone-into-cops [https://perma.cc/R2JW-Y43Z].

231. Rani Molla, *How Amazon's Ring Is Creating a Surveillance Network with Video Doorbells*, VOX MEDIA (Jan. 28, 2020, 12:08 PM), https://www.vox.com/2019/9/5/20849846/amazon-ring-explainer-video-doorbell-hacks [https://perma.cc/XL7C-83NV].

232. Cericola, *supra* note 32.

233. Guariglia, *supra* note 7 (the news article has an example of a racial profiling story with the Ring doorbell).

234. Cericola, *supra* note 32.

235. *See* Ben Gilbert, *Amazon Sells Facial Recognition Software to Police All over the US, But Has No Idea How Many Departments Are Using It*, BUS. INSIDER (Feb. 21, 2020, 1:45 PM), https://www.businessinsider.com/amazon-rekognition-police-use-unknown-2020-2 [https://perma.cc/S95L-X5E4]; Brian Fung, *Facial Recognition Systems Show Rampant Racial Bias, Government Study Finds*, CNN BUS. (Dec. 19, 2019, 6:37 PM), https://www.cnn.com/2019/12/19/tech/facial-recognition-study-racial-bias/index.html [https://perma.cc/5ZQM-HRSK].

236. Cericola, *supra* note 32; *see* Kori Hale, *Amazon Pitches Shady Facial Recognition Laws*, FORBES (Oct. 1, 2019, 8:00 AM), https://www.forbes.com/sites/korihale/2019/10/01/amazon-pitches-shady-facial-recognition-laws/#47b1e0976f7d [https://perma.cc/WR2A-T6K7]. This is especially concerning considering that Amazon is selling its facial recognition software to police departments all over the United States. There is currently "no governmental oversight in place to oversee [Amazon's] operation." Gilbert, *supra* note 235.

237. A federal government study found that "[r]acial minorities were far more likely than whites to be misidentified." Fung, *supra* note 235; PATRICK GROTHER, MEI NGAN & NAYEE HANAOKA, NAT'L INST. OF STANDARDS & TECH. U.S. DEP'T OF COM., FACE RECOGNITION VENDOR TEST

is especially concerning in light of the increasing number of Ring partnerships with cities and law enforcement. Amazon placed a one-year moratorium on law enforcement use of its Rekognition software due to the 2020 protests in opposition to police brutality.[238] But it did not address the underlying problem of racial profiling in the software.[239] Racial profiling and video surveillance in relation to facial recognition software deserves a full analysis, but it is beyond the scope of this piece.

Treating Amazon as a state actor will protect Ring users and it will protect against the creation of a mass surveillance network. The mass data surveillance supplied by Amazon "possesses some of the same dangers that the framers of the Fourth Amendment intended to prohibit."[240] Ring users would have a reasonable expectation of privacy and the protection of the Fourth Amendment if Amazon was considered a state actor.

CONCLUSION

Amazon should be considered a state actor under the state action doctrine in order to protect against mass surveillance and to hold it under the Fourth Amendment. Amazon partners with cities to promote Ring devices. In turn, cities use taxpayer money to help subsidize Ring devices in order to promote safer neighborhoods. Amazon is able to partner with cities by providing tools and services, such as a mass surveillance network

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(FRVT) PART 3: DEMOGRAPHIC EFFECTS (2019), https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf [https://perma.cc/H6L8-M734]; *see* Drew Harwell, *Federal Study Confirms Racial Bias of Many Facial-Recognition Systems, Casts Doubt on Their Expanding Use*, WASH. POST (Dec. 19, 2019, 11:43 PM), https://www.washingtonpost.com/technology/2019/12/19/federal-study-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/ [https://perma.cc/74ZT-AHC7].

238. Bobby Allyn, *Amazon Halts Police Use of Its Facial Recognition Technology*, NAT'L PUB. RADIO (June 10, 2020, 6:59 PM), https://www.npr.org/2020/06/10/874418013/amazon-halts-police-use-of-its-facial-recognition-technology?t=1594757550379 [https://perma.cc/VQD9-529W].

239. *Id.*

240. 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 2.7(e) (5th ed. 2019) (quoting Jeffrey Rosen, *The Naked Crowd: Balancing Privacy and Security in an Age of Terror*, 46 ARIZ. L. REV. 607, 611 (2004)). The United States Congress has noted this danger. Letter from Raja Krishnamoorthi, Chairman for Subcomm. on Econ. & Consumer Pol'y, House Comm. on Oversight & Reform, 116th Cong., to Brian Huseman, Vice President, Pub. Pol'y, Amazon.com, Inc. (Feb. 19, 2020), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-19.RK%20to%20Huseman-Amazon%20re%20Ring%20%281%29.pdf [https://perma.cc/Y6NU-3CUZ]. In February 2020, the House Oversight and Reform Committee issued a letter to the Vice President of Amazon requesting information and company policies regarding its relationships with state actors and what it does with the data it collects. *Id.* In addition to this, many online outlets have discussed ways in which Ring device users can try and combat the intrusive nature of Amazon's partnerships. *See* Brian X. Chen, *Your Doorbell Camera Spied on You. Now What?*, N.Y. TIMES (Feb. 19, 2020), https://www.nytimes.com/2020/02/19/technology/personaltech/ring-doorbell-camera-spying.html [https://perma.cc/HTC6-773K].

and access to Ring users' data and footage. Thus, Amazon exceeds the traditional roles of a private company by helping law enforcement circumvent the protections of the Fourth Amendment. Therefore, Amazon should be considered a state actor under either the Entanglement test or the Public Functions test to afford consumers protection from Amazon's ongoing and unreasonable searches under the Fourth Amendment.