Did you hear the one about 2 guys who told jokes about the cops? They landed in jail.

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When it comes to internet humor, not everyone gets the joke. Fortunately, the consequences of being momentarily fooled by an Onion or Babylon Bee article are usually minimal, aside from personal embarrassment.

But when police officers don't get the joke, the results can be more dire.

Humorless government agents have recently inflicted unlawful retaliation against harmless pranksters, and courts have shielded those agents from accountability. The risk to our First Amendment rights from these decisions is no laughing matter.

Two recent civil rights lawsuits illustrate this emerging threat to free speech.

Parody on Facebook led to arrest

In the first, Anthony Novak of Parma, Ohio, was arrested and spent four days in jail for creating and maintaining a Facebook account parodying his local police department. To make his parody work and make the page look convincing at first glance, he copied the name and profile picture of the official Facebook account of the local police department.

Although some people may have been fooled after only a quick look, a closer read revealed the page's unserious nature. The parody page lacked the Facebook designations for an authenticated government-associated page, and in its mere 12 hours of existence, the page featured only seven posts.

The first six posts advertised outlandish initiatives such as a free abortion program offered by the Parma Police and a modest proposal to rid the city of its homeless population through a program of starvation. Despite the facially absurd nature of the posts, Novak was arrested and charged with "disrupting police operations" under Ohio law.

Sheriff's team arrested man for making zombie jokes

In the second case, Waylon Bailey of Rapides Parish, Louisiana, was arrested after posting a faux warning to his Facebook friends during the early days of the pandemic. Bailey wrote that the Rapides Parish Sheriff's Office had been instructed to shoot "the infected" on sight. His over-

the-top post was complete with all-caps text, emojis and a hashtag reference to Brad Pitt's zombie movie "World War Z."

Additionally, exchanges between Bailey and his friends in the comments made it clear that his audience was in on the zombie joke.

Despite all this evidence of the post's innocuous nature, Bailey was arrested and charged with violating Louisiana's "terrorizing" statute.

Fortunately, Novak was eventually acquitted and Bailey's charges were later dropped. Both then sued to receive compensation for their ordeals. But in both cases, the police raised the defense of qualified immunity, a judge-made doctrine that insulates government officials from liability for violating constitutional rights.

Plaintiffs can overcome qualified immunity only if they can identify a case with nearly identical facts as a precedent and prove that the constitutional right in question was "clearly established" at the time it was violated. In both cases, courts found that this bar was not met and denied relief.

Both decisions were wrong, however, because humor and parody are clearly protected by the First Amendment under longstanding precedent. And speech protected by the First Amendment cannot be the basis for an arrest.

If a reasonable reader would understand the speech in question to be a joke, the government cannot criminalize that speech under general laws banning "disruption" or "threats." This straightforward standard is adaptable to new mediums such as social media posts. The fact that some members of the online audience may be temporarily fooled does not deprive a parody of First Amendment protection.

In both cases, there was plenty of context for the reasonable reader to consider. For Novak, this included the absurdity of the posts, the page's brief period of activity and the absence of a Facebook designation for a government account. For Bailey, this also included the absurd nature of his post and the way that others interacted with it in the comments.

These observations should have been sufficient for any reasonable officer to recognize the speech in question was protected. The officers' arguments that they subjectively believed the posts were intended to disrupt police operations or cause injury were no defense given the absurdity of the posts. Qualified immunity should not shield the police for failing to see what should have been clear to anyone.

Novak is now petitioning the Supreme Court for review, and Bailey is appealing to the U.S. Court of Appeals for the 5th Circuit. Both courts should send a clear message that online humor is protected by the First Amendment to the same extent as humor written in any other medium, by professionals and amateurs alike.

The future of internet speech should not hinge on whether the police can take a joke.

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