



## **Cops stopped him from filming a traffic stop, but changed their tune when they went to court**

**After police in Lakeland, Colorado, blocked cop watchers from filming a traffic stop, they're now facing a civil rights lawsuit that could result in a historic upending of qualified immunity.**

Taya Graham and Stephen Janis

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Qualified immunity is a legal precedent that has allowed cops to evade accountability for violating civil rights for decades. But recent arguments in front of the federal circuit appeals court by two cop watchers could bring that precedent to an end. The *Police Accountability Report* examines how the actions taken by police in Lakeland, Colorado, to prevent First Amendment activists Liberty Freak and Eric Brandt from filming a seemingly routine traffic stop could lead to a legal showdown that might make it easier to hold police accountable.

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Taya Graham: Hello. My name is Taya Graham, and welcome to the *Police Accountability Report*. As I always make clear, this show has a single purpose: holding the politically powerful institution of policing accountable. To do so, we don't just focus on the bad behavior of individual cops. Instead, we examine the system that makes bad policing possible. Today, we will achieve that goal by reporting on developments in a case involving a Colorado cop watcher that might – And I repeat, might – Have a profound effect on a legal precedent that has made bad cops immune from civil rights lawsuits, and how the implications about an upcoming ruling could affect filming cops across the country.

But before we get started, I want you to know that if you have evidence of police misconduct, please email it to us privately at [PAR@therealnews.com](mailto:PAR@therealnews.com), and please like, share, and comment on our videos. You know I read your comments, and that I appreciate them. And of course, you can always reach out to me directly @tayasbaltimore on Facebook or Twitter. And, if you can, please consider hitting the Patreon donate link pinned in the comments below, because we do have some extras there for our PAR family. All right, we've gotten that out of the way.

Now, as many of you know, there is, to say the least, an inherent bias in our criminal justice system. That is, when it comes to accountability, the scales of justice are, generally speaking,

tipped towards the institution of law enforcement, as we've seen in countless cases across the country that we have covered. Part of this imbalance is due to a concept that we've talked about often on the show called qualified immunity. It is a legal precedent that evolved to protect public officials from so-called 1983 suits. Federal Code 1983 was actually passed during the Reconstruction era, and was designed to give US citizens the right to sue public officials who had violated their rights, a history that we will unpack later.

But as the law was implemented, the court began to carve out exceptions in certain cases. Namely, public officials could not be held accountable if the right in question was not "clearly established," a precedent that we will be focusing on today as we unpack a case brought by a cop watcher who is challenging the precedent in a major civil rights lawsuit.

The story starts when cop watchers Abodi Irizarry, also known as Liberty Freak, and Eric Brandt were recording a traffic stop in Lakewood, Colorado. The pair had been quietly filming a DUI sobriety test being administered by police. That's when a cop named Yehia decided he would intervene and block Liberty Freak from filming. Let's watch.

[VIDEO CLIP BEGINS]

Officer Yehia: Can I help you?

Liberty Freak: No.

Officer Yehia: All right.

Liberty Freak: I don't need your help. Is there a fucking problem, [crosstalk] you fucking goon?

Officer Yehia: [crosstalk] out of my face, asshole.

Liberty Freak: Get the fuck out of my fucking line, man. What's wrong with you? Clown.

Officer Yehia: Are you a clown?

[VIDEO CLIP ENDS]

Taya Graham: However, blocking Abodi's ability to record the traffic stop was just the beginning, because shortly after he stood in front of Abodi's camera, the officer actually backed up into him. Take a look.

[VIDEO CLIP BEGINS]

Officer Yehia: Can I help you?

Liberty Freak: No.

Officer Yehia: All right.

Liberty Freak: I don't need your help.

[VIDEO CLIP ENDS]

Taya Graham: But that wasn't the end of the encounter. Not at all, because Officer Yehia got into a squad car and drove at Eric Brandt, who was also filming at the time.

[VIDEO CLIP BEGINS]

Eric Brandt: Come at me with a deadly weapon. I'll [buzzing]

Liberty Freak: Get out of his way.

Eric Brandt: I'm not going to get out of the way.

Liberty Freak: He can get through there just fine.

Eric Brandt: Running at me at a high speed. What the fuck is wrong with you, bitch? Zero nine, Lakewood police hot hit bitch right there.

[VIDEO CLIP ENDS]

Taya Graham: Now, this all might have been just written off as another troubling encounter with police bent upon stopping cop watchers from monitoring their actions. But in fact, just the opposite happened, and it's quite possible that the officer might rue the day he decided to interfere with two citizen journalists exercising their First Amendment rights. That's because Abodi and Eric Brandt decided to sue Lakewood county police, a case that was initially dismissed by a circuit court in Colorado due to, and you guessed it, qualified immunity. The circuit judge ruled that the right to record had not been established, even though Colorado had passed a law guaranteeing that right in 2016. But then, something really curious happened, perhaps even unexpected.

As their suit made its way through the courts, other organizations joined in, including the US Department of Justice Civil Rights Division, the Electronic Frontier Foundation, and the Cato Institute, among others. All of whom argued in amicus briefs that the case was critical to preserving First Amendment rights. And also, in the case of the Cato Institute, a misuse of the concept of qualified immunity.

And all of these arguments were on display last week, as the case was argued before the 10th circuit court of appeals. Now, cameras were not allowed in the courtroom, and it is against the law to broadcast the audio. However, thanks to a friend of the show, friends and code, we have a transcript of the proceedings. Which is why I thought it would be useful to review some of the arguments.

The key question during the hearing was if the right to record had already been established. In other words, would a reasonable officer have known when he interfered with Liberty Freak's ability to record the traffic stop that his actions were a violation of an already established Constitutional right?

Well, what do you think? Is the First Amendment really an obscure, little known, unestablished right? But the hearing turned truly bizarre when the lawyers for the officer were confronted with a critical question. As you can see in this video, after blocking Liberty Freak from filming, Officer Yehia got into a squad car and drove at Eric Brandt, who was also filming at the time. That action prompted the justice to ask the officer's lawyer this, "Even if Yehia wasn't aware of the First Amendment right to record, didn't he know that driving his car at a person with a camera was a violation of their rights?"

I'm serious. That's what the justices ask. And to find out how the lawyer responded, I'm joined by a reporting partner Stephen Janis, who's been reviewing the transcripts. Now just a note. We did an interview with Liberty Freak shortly before he reported to prison in Colorado to serve six months for another case related to free speech, which we will show you later. But for now, we're going to talk to Stephen. Stephen, thank you so much for joining me.

Stephen Janis: Taya, thanks for having me. I appreciate it.

Taya Graham: So what was the lawyer's response to the judge who asked if the police officer Yehia should have known it was not okay to drive at a person filming police, and why is that relevant to the case?

Stephen Janis: It's a very tortured argument. And the reason it's relevant is simply because there are certain aspects of the Constitution, or certain things that a person should know intuitively. In other words, there's precedent that says, okay, even if it isn't an established right, you should still know it's not okay to drive at someone who's trying to exercise their First Amendment right. And so the lawyer kept trying to go back to the idea which all lawyers for cops use, that somehow this wasn't established, as if the First Amendment was some new idea. But instead the lawyer ended I think sounding kind of stupid, to be honest with you, because he's trying to make an argument there's no way the cops should have known, I can't drive as someone with a camera. And that's absurd.

Taya Graham: Now, this case focuses on the legal precedent of qualified immunity. We interviewed one of the organizations about their support for Abodi and Eric's case. Can you talk about what they said?

Stephen Janis: Yeah. We talked to the Cato Institute, which filed a brief on behalf of Abodi, and we talked to a man named Jay Schweikert, who was a person who is kind of an expert on qualified immunity. And it's really a twisted story. You're talking about a precedent that evolved out of a statute that was supposed to ensure people's rights by allowing them to sue. Let's listen to what he had to say.

Jay Schweikert: You know, the doctrine of qualified immunity routinely protects public officials, including and especially police officers, from civil liability, even when they have violated someone's Constitutional rights. And so civil rights attorneys, criminal defense attorneys whose clients had had their rights violated, and scholars who worked in this area all were seeing how meritorious civil rights claims could not go addressed because of what is, in essence, a lawless legal technicality, and that's qualified immunity.

And so Congress, to give teeth to the 14th Amendment, created this federal cause of action, which simply meant if your rights were violated by a state or local official, you could sue them in federal court and get a remedy. So very straightforward. And the language of the statute is very straightforward. It pretty much says any person acting under color of state law who violates your Constitutional rights shall be liable to the party injured. Period.

That's it. Nothing about any immunities, nothing. And for about a hundred years, the courts interpreted that statute to mean essentially what it said. There's actually a very important case in the early 20th century called *Myers v. Anderson*, which involved a lawsuit against state officials who used a grandfather clause statute to deny the right to vote to several Black citizens. And those citizens sued these election officials under section 1983. And those defendants raised a kind of proto version of what would later become the qualified immunity defense. They said, hey, we didn't know that this statute was unconstitutional. So even if we did violate their Constitutional rights, we weren't acting in bad faith. So we shouldn't be liable. And the court easily rejected that argument and basically said, what are you talking about? That's irrelevant. Their rights are protected under the 15th Amendment. You violated those rights. Therefore you are liable under this statute. Period.

But then about half a century later, the Supreme Court essentially reversed itself in a case called *Pearson v. Ray*. This is a 1967 decision that was actually... This is very similar to the *Myers* decision. It involved police officers who had arrested civil rights protestors under an anti loitering statute that violated the First Amendment. But in this case, the Supreme Court said, well, even if you violated their Constitutional rights, they have to show that you were not acting in good faith. And in this case, the Supreme Court was kind of grounding this decision on the common law tort of false arrest. So in private tort actions in the 19th century, you could sue a police officer for false arrest. But if the officer had good faith and probable cause that you had committed a crime, they wouldn't be liable for that tort.

So the Supreme Court kind of analogized that and said, so because that was the law of false arrest at common law, we're going to read that good faith defense into this statute and say that you can raise a similar good faith defense under section 1983. Now I think that decision was wrong. But if that's where things had stood, I don't think this would be the issue that it is today. Because at that point in time, the Supreme Court was still requiring actual good faith on the part of defendants sued under section 1983. But that changed in a 1982 decision called *Harlow v. Fitzgerald*.

And this is really the case that invented qualified immunity in the modern sense. And what the court said there was, actually, it's irrelevant whether or not defendants are acting in good faith. The only thing that matters is whether they violated clearly established law. And that phrase "clearly established law" is really the key to understanding modern qualified immunity. Because what it means in practice is that a defendant will get qualified immunity unless there is a prior judicial decision involving nearly the same factual scenario as the present case. In other words, it's quite often the case that courts will say, yes, your rights were violated, but we can't find a prior case where someone else's rights were violated in quite the same way. So therefore qualified immunity, and the case is dismissed.

Stephen Janis: So Taya, as you could tell, this is really, really bizarre. You have a statute, it's there to ensure our rights, and yet this legal precedent evolves that allows public officials to completely ignore it. I mean, really it allows them to be ignorant. It almost, I think in a way, incentivizes ignorance of the law. I didn't know it was established right. So as you can see, it's really twisted.

Taya Graham: So wait, they're saying that this precedent was carved out basically to make it easier for public officials to make the case, hey, I didn't know it was a right, and absolve themselves from responsibility. Am I getting this right? That ignorance of the law can be an excuse for them?

Stephen Janis: And yeah, Taya, basically really, in a sense, it was like they passed the law to ensure our civil rights and then got cold feet about it and said, you know what? We can't let this happen. Almost made the whole thing worse. So really, I think it raises a lot of questions about our legal system, a lot about legal precedent. And maybe we have to stop thinking about laws and codifications being some sort of secular Bible. Maybe they're just, some of them are irrational and need to be tossed out.

Taya Graham: And now we're going to show you some excerpts from an interview I did with Liberty Freak shortly before he reported to jail.

[INTERVIEW CLIP BEGINS]

Taya Graham: Liberty Freak, thanks for joining me. So you have to turn yourself in. What charges are these related to?

Liberty Freak: This is related to a charge that I got in the city of Inglewood, but it was prosecuted and courted over in Arapahoe County, Colorado. Basically the entire thing was because I called the security guard a name.

Taya Graham: So what name did you call him?

Liberty Freak: I called him a pussy. He was having an altercation with Eric, I was like, wow, you're a pussy. And he's like, what'd you call me? I said, a pussy. And he is like, are you... He goes, are you harassing me right now? And I was like, yes, you pussy.

[VIDEO CLIP BEGINS]

Security Guard: After he told me I was fucking stupid.

Liberty Freak: That's right.

Security Guard: After you told me I was [crosstalk].

Liberty Freak: Poor baby.

Security Guard: – Disrespected me –

Liberty Freak: Poor baby, poor baby. Aw, you soft tender little girl, you poor Skippy.

Security Guard: Wow, are you recording this?

Liberty Freak: Yes I am.

Security Guard: This is how you're harassing. You're harassing me right now.

Liberty Freak: I'm harassing you? You're a pussy. You're a pussy. You're a pussy. Yeah. Write me up. You're a pussy.

[VIDEO CLIP ENDS]

Liberty Freak: Because I called him a pussy three times in a row, I call this my Beetlejuice case, because the judge even admitted in the court that if I just would've called him a pussy once I would've been okay. But being that I called him a pussy three times in a row, that made it repeated taunts. And I was like, that's not how that law works, but it doesn't matter. When it's corrupt all the way up to the judge, there's no law you can present. There's nothing that protects you. There's no Constitution that protects you, nothing. Nothing like...

[VIDEO CLIP BEGINS]

Liberty Freak: Somebody call the Inglewood police department, right. You better not fucking touch me. [inaudible] Hey, touch me. [shouting in distance].

Hey, Hey dude, get your fucking hands off me. Hey, get your fucking hands off me. What the fuck? Hey, I'm a sick man, god damn it.

[VIDEO CLIP ENDS]

Taya Graham: So it seems you're facing six months in prison essentially for using profanity. How are you holding up?

Liberty Freak: I'm concerned. I'm concerned for my health. You know, as far as the whole [COVID] thing or whatever. I had this tooth removed because the dental plan in jail is they ignore you until the tooth falls out on its own. And that's not even a joke.

Speaker: Wow.

Liberty Freak: And the judge is adamant that I served six months from my offense, knowing my illnesses, knowing there was no violence involved. There was nothing, it was just simply an issue of words. But she feels that I need to serve six months for calling somebody names.

Taya Graham: Your other case that concerns a cop interfering with you filming a car stop, that is going to circuit court, right?

Liberty Freak: Yeah. We won our arguments and we will be having oral arguments in the state Supreme Court here on May 18. Unfortunately I will not be able to attend the oral arguments of my biggest achievement. But it's okay. It'll be recorded forever. So I'm going to request to see if

maybe they can give me a writ from the jail to where I can possibly, hopefully, God willing, attend on the phone, maybe.

Taya Graham: You have a lot of people and organizations backing this case.

Liberty Freak: Not on my behalf, but in favor of our argument. They don't call it on my behalf. They just say in favor of whatever. So I'll take it.

[INTERVIEW CLIP ENDS]

Taya Graham: Now. One of the things we like to do on the show is penetrate the veil, so to speak, of the legal system which governs our lives. That is, consider how the law is often construed in ways that might not seem as fair or even logical as it appears on the surface.

Which brings me to a concept which underlies a large swath of how police can and cannot violate our rights. It's a legal idea that is the root of the argument in the case regarding Liberty Freak's right to record the police. In the hearings over Abodi's case, it was referenced thusly: Would a reasonable officer have known that interfering in Abodi and Eric's right to record was violating an established right? That is, would a rational actor have been aware that attempting to prevent them from recording police performing their duties in public not be cognizant of the fact that they both had the First Amendment right to film?

Sounds like an odd question. As I said before, the First Amendment is hardly unknown. But what I want to focus on in this case is the notion of reasonableness. It's a seemingly innocuous word which pervades the legal guidelines that govern police in a variety of situations. Among them, when and if they can use deadly force.

But I also think it's a word that leads to troubling contradictions and allows cops to evade responsibility for their actions. I mean, just think about it for a moment. This whole notion of reasonableness twists the responsibility of police in ways I think are often overlooked because it sort of assumes that the system which they inhabit and the actions they take are by default reasonable. In other words, there is a presumption of reasonableness which pervades law enforcement, a sense that regardless of how they behave or what decision they make, the whole process is rational and inevitable, and can't be second guessed.

What do I mean? Well, let's look at an example of how rational police actually are, especially when afforded the opportunity to act as they see fit. The story involves an obscure law in the state of New Jersey that prohibits anyone from having a frame on their license plate that obscures any of the information on the tag itself. As you probably know, many people like to use frames to show support for their alma mater or sports teams or military service, et cetera. But apparently New Jersey police found these plates a little too enticing. Turns out that from 2017 to 2022, New Jersey state troopers wrote 500,000 summons for minor infractions of the law. Let me repeat, in just five years, law enforcement officers issued half a million tickets for what was at best a minor issue with a license plate. And I'm not talking about obscuring a letter or number.

No, the vast majority of citations were for partially obscuring the words "New Jersey." Seriously. Does that sound reasonable to you? In fact, cops wrote so many tickets that the New Jersey state legislature decided to intervene and change the law. The new law would allow



motorists to have a frame that partially obscures the word New Jersey or Garden State. So in light of our contemplation of the implications of the concept of a reasonable police officer, what does this particular example of officer discretion tell us about the idea in general?

Well, I think it demonstrates that our legal system is, again, premised upon some pretty sketchy legal thinking. Because as we've witnessed time and time again on this show, officers have exhibited an inclination to act unreasonably, given the chance. More often than not, when confronted with choices to be reasonable, they often choose to take the least reasonable path possible.

I mean, how else can you explain writing half a million citations to motorists who use something as diabolical as a license plate frame? Or how can an officer argue in court he was reasonably unaware of the First Amendment. The point I'm trying to make is that the language used to ascribe power to officers is just too damn easy to manipulate. That is, the discretion we give to officers is too often simply an inherent bias against our Constitutional rights. And what is alarming about these words is how much latitude they actually give officers to be unreasonable. How it precludes almost any sense of responsibility and accountability in favor of simply letting an officer do as they please and then argue in court they didn't know any better because they were behaving reasonably.

Oh, and by the way, the new law says the license plate holders are not subject to a fine. And I quote, "If they do not reasonably obscure any of the identifying numbers on the tag." Are we just supposed to hope that New Jersey police will suddenly become reasonable? Are we supposed to hope that officer Yehia is now aware of the First Amendment? Are we supposed to just hope that our legislatures are going to intervene in every state to correct this double standard of police being able to plead ignorance of the law? I think that might be testing the limits of reason itself. I know it's testing my patience, and probably yours as well.

I'd like to thank Abodi, also known as Liberty Freak, for speaking with us. Thank you Abodi. And of course I want to thank Jay Schweikert of the Cato Institute for speaking with us and taking the time to explain the possibilities for abolishing qualified immunity. And of course I want to thank intrepid reporter Stephen Janis for his writing, research, and editing on this piece. Thank you, Stephen.

Stephen Janis: Taya, thank you for having me. I appreciate it.

Taya Graham: And I want to thank the mods of the show, Noli Dee and Lacey R. For their support. Thank you. And a very special thanks to our Patreons, especially our super friends, Shane Bushta and Pineapple Girl. We appreciate you. And I look forward to thanking each and every one of you personally in our next live stream.

And I want you watching to know that if you have evidence of police brutality or misconduct, please share it with us and we might be able to investigate for you. Please reach out to us. You can email us tips privately at [par@therealnews.com](mailto:par@therealnews.com) and share your evidence of police misconduct. You can also message us at Police Accountability Report on Facebook or Instagram, or @eyesonpolice on Twitter. And of course, you can always message me directly @tayasbaltimore on Twitter or Facebook. And please like and comment, I do read your

comments and appreciate them. And we have a Patreon link pinned in the comments below. So if you do feel inspired to donate, we don't run ads or take corporate dollars, so anything you can spare is greatly appreciated. My name is Taya Graham, and I am your host of the *Police Accountability Report*. Please be safe out there.

*Jay Schweikert is a research fellow with the Cato Institute's Project on Criminal Justice. His research and advocacy focuses on accountability for prosecutors and law enforcement, plea bargaining, Sixth Amendment trial rights, and the provision and structuring of indigent defense.*