



THE WEEK

The policing problem SCOTUS could fix — but won't

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For a while in 2020, "there was some hope that the Supreme Court might walk back its 50-year jurisprudence on qualified immunity, the doctrine that makes it nearly impossible to recover damages when police violate the Constitution," *The Washington Post's* Radley Balko noted last week. There was political momentum on the issue after the murder of George Floyd by Minneapolis police — I wrote about this at the time — and, as Balko recalls, "the court ruled last term in favor for the plaintiffs in two cases involving horrific abuse by prison guards."

Last month, however, SCOTUS unanimously overturned two appeals court decisions, granting qualified immunity to officers in use-of-force cases in Oklahoma and California. And on Monday, the court declined to hear *Frasier v. Evans*, a case in which police officers in Denver violated the First Amendment rights of a man, Levi Frasier, who was recording their conduct, including "officers hitting [a] suspect in the face and knocking a pregnant woman onto the ground."

Here's a summary of key facts of the case from Cato Institute attorney Jay Schweikert:

[T]he City of Denver had instructed its officers on the right to record police since 2007, and the defendants here had taken a course covering exactly this subject just a year before the incident. The record also plainly supported the conclusion that the officers' subjective motive was retaliation against Frasier for recording them: one of them yelled "Camera!" as Frasier recorded them using force on an arrestee; the officers followed Frasier to his van and demanded both his identification and the video; they threatened to arrest him after he refused to volunteer his video; they illegally searched his tablet for the recording; and they let him leave only when they thought he did not have any video recording of them. [Jay Schweikert via *Unlawful Shield*]

If that seems like unlawful conduct for which law enforcement officers, of all people, should be held to account, well, welcome to frustration about qualified immunity — and about the Supreme Court's apparent refusal to correct this problem of the court system's own making.