



Victory! Another Court Protects the Right to Record Police

Description

USA: When people fear that the police are about to break the law, they pull out their phones and hit “record.” Doing so promotes police accountability and public discussion of important issues. So, it is great news that yet another federal appellate court has ruled that people have a First Amendment right to record on-duty police. With this ruling, the Tenth Circuit has joined six other federal appellate courts: the [First](#), [Third](#), [Fifth](#), [Seventh](#), [Ninth](#), and [Eleventh](#) Circuits.

The case is [Irizarry v. Yehia](#). Mr. Irizarry is a journalist who records on-duty police. In 2019, while he was recording a traffic stop, Officer Yehia arrived, stood in front of Mr. Irizarry’s camera, and shined a flashlight into the camera. The Tenth Circuit ruled that “Mr. Irizarry was engaged in protected First Amendment activity when he filmed the traffic stop,” and that he “suffered an injury when Officer Yehia stood in front of his camera and shined a flashlight into it ...”

We agree. Police violate the First Amendment when they interfere with people who are recording them. As we explained in our amicus brief filed in the case:

Examples of interference abound. Officers have destroyed civilians’ devices, confiscated their devices and footage, commanded them to delete their footage on threat of arrest, slapped their devices to misdirect their recording, menaced them with guns, and detained or arrested them.

On-duty officers have also attempted to interfere with publication of recordings, by loudly playing popular music. Some online platforms use automated filters to block content that contains copyrighted materials. The officers hope these filters will block publication of recordings of their on-duty activity.

Perhaps most importantly, the Tenth Circuit rejected Officer Yehia's assertion of qualified immunity. This is the dangerous legal doctrine that protects police from accountability unless they violated "clearly established" law. Courts often set this bar too high by requiring binding legal precedent with matching facts. Here, the Tenth Circuit set a more reasonable bar: "even without Supreme Court or Tenth Circuit precedent, persuasive authority from other circuits may clearly establish the law in this circuit when that authority would have put a reasonable officer on notice that his or her conduct was unconstitutional."

We are pleased with the Tenth Circuit's opinion and will continue advocating for even broader protections for the right to record on-duty police. First, while the Tenth Circuit upheld the right to record police "in public," this right will often extend to private places, too, such as when a resident records officers in their home. Second, courts should require many restrictions on the right to record to pass First Amendment strict scrutiny. The Tenth Circuit suggested that they need be "reasonable time, place, and manner restrictions," a lower bar. Third, people like Mr. Irizarry can win a First Amendment claim by showing an officer interfered with their recording. While the Tenth Circuit held Mr. Irizarry properly brought a retaliation claim, because Officer Yehia's conduct would have chilled a reasonable person from recording, that should not be necessary to prevail.

By Adam Schwartz and Mukund Rathi

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