

US Courts of Appeal on Public Filming

First Circuit

Iacobucci v. Boulter, 193 F. 3d 14 - Court of Appeals, 1st Circuit 1999

A police officer is not a law unto himself; he cannot give an order that has no colorable legal basis and then arrest a person who defies it. 25

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Glik v. Cunniffe, 655 F. 3d 78 - Court of Appeals, 1st Circuit 2011

In this interlocutory appeal, the defendant police officers challenge an order of the district court denying them qualified immunity on Glik's constitutional claims. We conclude, based on the facts alleged, that Glik was exercising clearly-established First Amendment rights in filming the officers in a public space, and that his clearly-established Fourth Amendment rights were violated by his arrest without probable cause. We therefore affirm. 79

Gathering information about government officials in a form that can be readily disseminated to others serves a cardinal first amendment interest in protecting and promoting the free discussion of governmental affairs. 83

The First Amendment right to gather news is, as the Court has often noted, not one that inures solely to the benefit of the news media; rather, the public's right of access to information is coextensive with that of the press. 84

In our society, police officers are expected to endure significant burdens caused by citizens' exercise of their First Amendment rights. See *City of Houston v. Hill*, 482 U.S. 451, 461, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987) ("[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers."). Indeed, "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Id.* at 462-63, 107 S.Ct. 2502. The same restraint demanded of law enforcement officers in the face of "provocative and challenging" speech, *id.* at 461, 107 S.Ct. 2502 (quoting *Terminiello v. Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131 (1949)), must be expected when they are merely the subject of videotaping that memorializes, without impairing, their work in public spaces. 84

In summary, though not unqualified, a citizen's right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment. 85

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Gericke v. Begin, 753 F. 3d 1 - Court of Appeals, 1st Circuit 2014

In this interlocutory appeal, the defendant-appellant police officers challenge the district court's order denying them qualified immunity on Gericke's First Amendment retaliatory prosecution claim. Based on Gericke's version of the facts, we conclude that she was exercising a clearly established First Amendment right when she attempted to film the traffic stop in the absence of a police order to stop filming or leave the area. We therefore affirm. 3

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Third Circuit

Fields v. City of Philadelphia, 862 F. 3d 353 - Court of Appeals, 3rd Circuit 2017

“Simply put, the First Amendment protects the act of photographing, filming, or otherwise recording police officers conducting their official duties in public.” 356

“The First Amendment protects actual photos, videos, and recordings, and for this protection to have meaning the Amendment must also protect the act of creating that material. There is no practical difference between allowing police to prevent people from taking recordings and actually banning the possession or distribution of them. As illustrated here, because the officers stopped Ms. Geraci from recording the arrest of the protestor, she never had the opportunity to decide to put any recording to expressive use....” 358

“The First Amendment protects the public’s right of access to information about their officials’ public activities. It “goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.” Access to information regarding public police activity is particularly important because it leads to citizen discourse on public issues, “the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” That information is the wellspring of our debates; if the latter are to be “uninhibited, robust, and wide-open,” the more credible the information the more credible are the debates. To record what there is the right for the eye to see or the ear to hear corroborates or lays aside subjective impressions for objective facts. Hence to record is to see and hear more accurately. Recordings also facilitate discussion because of the ease in which they can be widely distributed via different forms of media. Accordingly, recording police activity in public falls squarely within the First Amendment right of access to information. As no doubt the press has this right, so does the public.” 359

“We do not say that all recording is protected or desirable. The right to record police is not absolute. “[I]t is subject to reasonable time, place, and manner restrictions.” *Kelly*, 622 F.3d at 262; see *Whiteland Woods, L.P. v. Twp. of W. Whiteland*, 193 F.3d 177, 183 (3d Cir. 1999). But in public places these restrictions are restrained.” 360

“If a person’s recording interferes with police activity, that activity might not be protected.” 360

“In sum, under the First Amendment's right of access to information the public has the commensurate right to record — photograph, film, or audio record — police officers conducting official police activity in public areas.” 360

“We ask much of our police. They can be our shelter from the storm. Yet officers are public officials carrying out public functions, and the First Amendment requires them to bear bystanders recording their actions. This is vital to promote the access that fosters free discussion of governmental actions, especially when that discussion benefits not only citizens but the officers themselves.” 362

“Additionally, the U.S. Department of Justice issued recommendations in May, 2012, that all police departments “affirmatively set forth the First Amendment right to record police activity.” 363

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Fifth Circuit

Turner v. Lieutenant Driver, 848 F. 3d 678 - Court of Appeals, 5th Circuit 2017

“We conclude that First Amendment principles, controlling authority, and persuasive precedent demonstrate that a First Amendment right to record the police does exist, subject only to reasonable time, place, and manner restrictions.” 688

In addition to the First Amendment’s protection of the broader right to film, the principles underlying the First Amendment support the particular right to film the police. 689

Filming the police contributes to the public's ability to hold the police accountable, ensure that police officers are not abusing their power, and make informed decisions about police policy. Filming the police also frequently helps officers; for example, a citizen's recording might corroborate a probable cause finding or might even exonerate an officer charged with wrongdoing. 689

Protecting the right to film the police promotes First Amendment principles. 690

We agree with every circuit that has ruled on this question: Each has concluded that the First Amendment protects the right to record the police. 609

Nonetheless, we note that when police departments or officers adopt time, place, and manner restrictions, those restrictions must be "narrowly tailored to serve a significant governmental interest."⁵² That said, to be constitutionally permissible, a time, place, and manner restriction "need not be the least restrictive or least intrusive means of serving the government's interests."⁵³ 690

⁵² *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

⁵³ *Id.* at 2535 (internal quotation marks omitted).

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Seventh Circuit

American Civil Liberties Union of Ill. v. Alvarez, 679 F. 3d 583 - Court of Appeals, 7th Circuit 2012

"loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (plurality opinion) 590

"injunctions protecting First Amendment freedoms are always in the public interest." [1] *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir.2006). 590

"The act of *making* an audio or audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press rights as a corollary of the right to disseminate the resulting recording." 596

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Ninth Circuit

Fordyce v. City of Seattle, 55 F. 3d 436 - Court of Appeals, 9th Circuit 1995

"Fordyce sought damages from the officers in their individual capacities pursuant to 42 U.S.C. § 1983 for interfering with his First Amendment right to gather news and for arresting him without the requisite probable cause for allegedly violating Wash.Rev.Code § 9.73.030." 438

"The district court based some of its dispositive rulings on its conclusion that the record contained "no evidence that would permit a rational jury to find that [Fordyce] was assaulted." [Fordyce](#), 840 F.Supp. at 788. We respectfully disagree. As we read the record, a genuine issue of material fact does exist regarding whether Fordyce was assaulted and battered by a Seattle police officer in an attempt to prevent or dissuade him from exercising his First Amendment right to film matters of public interest. Fordyce testified in a deposition that his camera was deliberately and violently smashed into his face by Officer Elster while Fordyce was publicly gathering information with it during the demonstration. Although

corroboration is not required to establish a genuine issue of material fact when the issue is established by sworn testimony, Fordyce's allegation is nonetheless corroborated by his videotape, which is in the record and which we have reviewed. Thus, as to Officer Elster, the matter did not merit a grant of summary judgment with respect either to the First Amendment claims under 42 U.S.C. § 1983 or to the supplemental state law claims of assault and battery. These claims merit a trial." 439

"For the foregoing reasons, we REVERSE and REMAND the district court's grant of summary judgment as to Officer Elster because a genuine issue of material fact exists concerning Officer Elster's alleged assault and battery against Fordyce prior to Fordyce's arrest. We also REVERSE and REMAND the grant of summary judgment as to Officer Elster on the § 1983 claims, because a genuine issue of material fact exists concerning whether he interfered with Fordyce's First Amendment right to gather news." 443

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Askins v. US DEPARTMENT OF HOMELAND SECURITY, Dist. Court, SD California 2013

"Adkins also adequately pled a violation of his First Amendment rights. In order to state a claim for a First Amendment violation, a plaintiff must allege (1) that he was engaged in a constitutionally protected activity, (2) that the officers' actions would chill a person of ordinary firmness from continuing to engage in that activity and (3) that the protected activity was a substantial or motivating factor in the officers' conduct. See *Mendocino Env'tl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300-01 (9th Cir. 1999). Here, Adkins alleged that he was engaged in constitutionally protected First Amendment activity when he asserted his right to take photos. See *City of Houston v. Hill*, 482 U.S. 451, 461 (1987) ("[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers."). Adkins also alleged that the officers' actions would chill a person of ordinary firmness from criticizing the police; arrest without probable cause is an adequate chill. See *Beck v. City of Upland*, 527 F.3d 853, 870-71 (9th Cir. 2008). Finally, Adkins alleged that the officers' "desire to cause the chilling effect was a but-for cause" of Adkins' arrest, see *Skoog v. Cnty. of Clackamas*, F.3d 1221, 1232 (9th Cir. 2006), and that there was no probable cause to arrest him, see *Reichle v. Howards*, 132 S.Ct. 2088, 2094-95 (2012). Adkins' First Amendment rights were clearly established at the time of his arrest. See *Hill*, 482 U.S. at 462-63; *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995)." 469

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Eleventh Circuit

Smith v. City of Cumming, 212 F. 3d 1332 - Court of Appeals, 11th Circuit 2000

As to the First Amendment claim under Section 1983, we agree with the Smiths that they had a First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct. The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest. See *Blackston v. Alabama*, 30 F.3d 117, 120 (11th Cir.1994) (finding that plaintiffs' interest in filming public meetings is protected by the First Amendment); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir.1995) (recognizing a "First Amendment right to film matters of public interest"); *Iacobucci v. Boulter*, No. CIV.A. 94-10531, 1997 WL 258494 (D.Mass, Mar. 26, 1997) (unpublished opinion) (finding that an independent reporter has a protected right under the First Amendment and state law to videotape public meetings); see also *United States v. Hastings*, 695 F.2d 1278, 1281 (11th Cir.1983) (finding that the press generally has no right to information superior to that of the general public) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)); *Lambert v. Polk County*, 723 F.Supp. 128, 133 (S.D.Iowa 1989) ("[I]t is not just news organizations ... who have First Amendment rights to make and display videotapes of events...."); *Thompson v. City of Clio*, 765 F.Supp. 1066, 1070-71 (M.D.Ala.1991) (finding that city council's ban on member's attempt to record proceedings regulated conduct protected by the First Amendment); cf. *Williamson v. Mills*, 65 F.3d 155 (11th Cir.1995) (reversing district court's grant of qualified immunity to a law enforcement officer who seized the film of and arrested a participant in a demonstration for photographing undercover officers). Thus, the district court erred in concluding that there was no First Amendment right. 1333

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