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Rogue Cops: The Supreme Court Is Turning America Into a Constitution-Free Zone

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"No one should get used to their rights. Predicting with certainty which ones, if any, will go, or when, is impossible."—Mary R. Ziegler, legal historian

The Supreme Court has spoken: there will be no consequences for cops who brutalize the citizenry and no justice for the victims of police brutality.

Although the Court's 2021-22 rulings on qualified immunity for police who engage in official misconduct were largely overshadowed by its politically polarizing rulings on abortion, gun ownership and religion, they were no less devastating.

The doctrine of qualified immunity was intended to insulate government officials from frivolous lawsuits, but the real purpose of qualified immunity is to ensure that government officials are not held accountable for official misconduct.

In *Egbert v. Boule*, the Court gave total immunity to Border Patrol agents who beat up a bed-and-breakfast owner, in the process carving out a massive exception to the Fourth Amendment for border police (and by extension, other federal police) who unconstitutionally use excessive force. As journalist Ian Millhiser concludes, "*Egbert v. Boule* is a severe blow to the proposition that law enforcement must obey the Constitution."

In *Cope v. Cogdill*, the Court let stand a Fifth Circuit ruling that granted qualified immunity to jail officials who watched a suicidal inmate strangle himself without intervening or calling for help. Likewise, in *Ramirez v. Guadarrama*, the Court let stand a lower court ruling granting qualified immunity to police officers who fired their tasers at a suicidal man who had doused himself in gasoline, causing the man to burst into flames.

Both *Cope* and *Ramirez* move the goal posts for the kind of misconduct that merits qualified immunity, suggesting that even sheer incompetence is excusable when it involves a cop.

It's a chilling reminder that in the American police state, 'we the people' are at the mercy of law enforcement officers who have almost absolute discretion to decide who is a threat, what constitutes resistance, and how harshly they can deal with the citizens they were appointed to 'serve and protect."

This is how unarmed Americans keep dying at the hands of militarized police.

Under the guise of qualified immunity, there have been no consequences for police who destroyed a private home by bombarding it with tear gas grenades during a SWAT team raid gone awry, or for the cop who mistakenly shot a 10-year-old boy after aiming for and missing the non-threatening family dog, or for the arresting officer who sicced a police dog on a suspect who had already surrendered.

Qualified immunity is how the police state stays in power.

Although the U.S. Supreme Court recognized in *Harlow v. Fitzgerald* (1982) that suing government officials for monetary damages is "the only realistic avenue" of holding them accountable for abusing their offices and violating the Constitution, it has ostensibly given the police and other government agents a green light to shoot first and ask questions later, as well as to probe, poke, pinch, taser, search, seize, strip and generally manhandle anyone they see fit in almost any circumstance, all with the general blessing of the courts.

Whether it's police officers breaking through people's front doors and shooting them dead in their homes or strip searching motorists on the side of the road, these instances of abuse are continually validated by a judicial system that kowtows to virtually every police demand, no matter how unjust, no matter how in opposition to the Constitution.

Make no mistake about it: this is what constitutes "law and order" in the American police state.

These are the hallmarks of a police state: where police officers, no longer mere servants of the people entrusted with keeping the peace, are part of an elite ruling class dependent on keeping the masses corralled, under control, and treated like suspects and enemies rather than citizens.

Unfortunately, we've been traveling this dangerous road for a long time now.

A review of critical court rulings over the past several decades, including rulings affirming qualified immunity protections for government agents by the U.S. Supreme Court, reveals a startling and steady trend towards pro-police state rulings by an institution concerned more with establishing order, protecting the ruling class, and insulating government agents from charges of wrongdoing than with upholding the rights enshrined in the Constitution.

Indeed, as Reuters reports, qualified immunity "has become a nearly failsafe tool to let police brutality go unpunished and deny victims their constitutional rights." Worse, as Reuters concluded, "the Supreme Court has built qualified immunity into an often insurmountable police defense by intervening in cases mostly to favor the police."

For instance, police can claim qualified immunity for warrantless searches. In *Anderson v. Creighton*, the Supreme Court ruled that FBI and state law enforcement agents were entitled to qualified immunity protections after they were sued for raiding a private home without a warrant and holding family members at gunpoint, all in a search for a suspected bank robber who was not in the house.

Police can claim qualified immunity for using excessive force against protesters. In *Saucier v. Katz*, the Court ruled in favor of federal law enforcement agents who forcefully tackled a protester as he attempted to unfurl a banner at Vice President Gore's political rally. The Court reasoned that the officers acted reasonably given the urgency of protecting the vice president.

Police can claim qualified immunity for shooting a fleeing suspect in the back. In *Brosseau v. Haugen*, the Court dismissed a lawsuit against a police officer who shot Kenneth Haugen in the back as he entered his car in order to flee from police. The Court ruled that in light of existing case law, the cop's conduct fell in the "hazy border between excessive and acceptable force" and so she did not violate clearly established law.

Police can claim qualified immunity for shooting a mentally impaired person. In *City of San Francisco v. Sheehan*, the Court ruled in favor of police who repeatedly shot Teresa Sheehan during the course of a mental health welfare check. The Court ruled that it was not unreasonable for police to pepper spray and shoot Sheehan multiple times after entering her room without a warrant and encountering her holding a knife.

Police officers can use lethal force in car chases without fear of lawsuits. In *Plumhoff v. Rickard*, the U.S. Supreme Court declared that police officers who used deadly force to terminate a car chase were immune from a lawsuit. The officers were accused of needlessly resorting to deadly force by shooting multiple times at a man and his passenger in a stopped car, killing both individuals.

Police can stop, arrest and search citizens without reasonable suspicion or probable cause. In a 5-3 ruling in *Utah v. Strieff*, the U.S. Supreme Court effectively gave police the go-ahead to embark on a fishing expedition of one's person and property, rendering Americans completely vulnerable to the whims of any cop on the beat.

Police officers can stop cars based on "anonymous" tips or for "suspicious" behavior such as having a reclined car seat or driving too carefully. In a 5-4 ruling in *Navarette v. California*, the U.S. Supreme Court declared that police officers, under the guise of "reasonable suspicion," can stop cars and question drivers based solely on anonymous tips, no matter how dubious, and whether or not they themselves witnessed any troubling behavior. Then in *State v. Howard*, the Kansas Supreme Court declared that motorists who recline their car seats are guilty of suspicious behavior and can be subject to warrantless searches by police. That ruling, coupled with other court rulings upholding warrantless searches and seizures by police renders one's car a Constitution-free zone.

Americans have no protection against mandatory breathalyzer tests at a police

checkpoint, although mandatory blood draws violate the Fourth Amendment (*Birchfield v. North Dakota*). Police can also conduct sobriety and "information-seeking" checkpoints (*Illinois v. Lidster* and *Mich. Dep't of State Police v. Sitz*).

Police can forcibly take your DNA, whether or not you've been convicted of a crime. In *Maryland v. King*, a divided U.S. Supreme Court determined that a person arrested for a crime who is supposed to be presumed innocent until proven guilty must submit to forcible extraction of their DNA. Once again the Court sided with the guardians of the police state over the defenders of individual liberty in determining that DNA samples may be extracted from people arrested for "serious" offenses. The end result of the ruling paves the way for a nationwide dragnet of suspects targeted via DNA sampling.

Police can use the "fear for my life" rationale as an excuse for shooting unarmed individuals. Upon arriving on the scene of a nighttime traffic accident, an Alabama police officer shot a driver exiting his car, mistakenly believing the wallet in his hand to be a gun. A report by the Justice Department found that half of the unarmed people shot by one police department over a seven-year span were "shot because the officer saw something (like a cellphone) or some action (like a person pulling at the waist of their pants) and misidentified it as a threat."

Police have free reign to use drug-sniffing dogs as "search warrants on leashes." In *Florida v. Harris*, a unanimous U.S. Supreme Court determined that police officers may use highly unreliable drug-sniffing dogs to conduct warrantless searches of cars during routine traffic stops. The ruling turns man's best friend into an extension of the police state, provided the use of a K-9 unit takes place within a reasonable amount of time (*Rodriguez v. United States*).

Not only are police largely protected by qualified immunity, but police dogs are also off the hook for wrongdoing. The Fourth Circuit Court of Appeals ruled in favor of a police officer who allowed a police dog to maul a homeless man innocent of any wrongdoing.

Police can subject Americans to strip searches, no matter the "offense." A divided U.S. Supreme Court actually prioritized making life easier for overworked jail officials over the basic right of Americans to be free from debasing strip searches. In its 5-4 ruling in *Florence v. Burlington*, the Court declared that any person who is arrested and processed at a jail house, regardless of the severity of his or her offense (i.e., they can be guilty of nothing more than a minor traffic offense), can be subjected to a strip search by police or jail officials, which involves exposing the genitals and the buttocks. This "license to probe" is now being extended to roadside stops, as police officers throughout the country have begun performing roadside strip searches—some involving anal and vaginal probes—without any evidence of wrongdoing and without a warrant.

Police can break into homes without a warrant, even if it's the wrong home. In an 8-1 ruling in *Kentucky v. King*, the U.S. Supreme Court placed their trust in the discretion of police officers, rather than in the dictates of the Constitution, when they gave police greater leeway to break into homes or apartments without a warrant. Despite the fact that the police in question ended up pursuing the *wrong* suspect, invaded the *wrong* apartment and violated just about every tenet that stands between us and a police state, the Court sanctioned the warrantless raid, leaving Americans with little real protection in the face of all manner of abuses by police.

Police can use knock-and-talk tactics as a means of sidestepping the Fourth Amendment. Aggressive "knock and talk" practices have become thinly veiled, warrantless exercises by which citizens are coerced and intimidated into "talking" with heavily armed police who "knock" on their doors in the middle of the night. Andrew Scott didn't even get a chance to say no to such a heavy-handed request before he was gunned down by police who pounded aggressively on the wrong door at 1:30 a.m., failed to identify themselves as police, and then repeatedly shot and killed the man when he answered the door while holding a gun in self-defense.

Police can carry out no-knock raids if they believe announcing themselves would be dangerous. Police can perform a "no-knock" raid as long as they have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile or give occupants a chance to destroy evidence of a crime (*Richards v. Wisconsin*). Legal ownership of a firearm is also enough to justify a no-knock raid by police (*Quinn v. Texas*). For instance, a Texas man had his home subject to a no-knock, SWAT-team style forceful entry and raid based solely on the suspicion that there were legally-owned firearms in his household. The homeowner was actually shot by police through his closed bedroom door.

Police can recklessly open fire on anyone that might be "armed." Philando Castile was shot and killed during a routine traffic stop allegedly over a broken taillight merely for telling police he had a conceal-and-carry permit. That's all it took for police to shoot Castile four times in the presence of his girlfriend and her 4-year-old daughter. A unanimous Supreme Court declared in *County of Los Angeles vs. Mendez* that police should not be held liable for recklessly firing *15 times* into a shack where a homeless couple had been sleeping because the grabbed his BB gun in defense, fearing they were being attacked.

Police can destroy a home during a SWAT raid, even if the owner gives their consent to enter and search it. In *West v. Winfield*, the Supreme Court provided cover to police after they smashed the windows of Shaniz West's home, punched holes in her walls and ceilings, and bombed the house with so much tear gas that it was uninhabitable for two months. All of this despite the fact that the suspect they were pursuing was not in the house and West, the homeowner, agreed to allow police to search the home to confirm that.

Police can suffocate someone, deliberately or inadvertently, in the process of subduing them. "I can't breathe" has become a rallying cry following the deaths of Eric Garner and George Floyd, both of whom died after being placed in a chokehold by police. Dozens more have died in similar circumstances at the hands of police who have faced little repercussions for these deaths.

Clearly, as I make clear in my book *Battlefield America: The War on the American People* and in its fictional counterpart *The Erik Blair Diaries*, the system is rigged.

Because the system is rigged, *because* the government is corrupt, and *because* the U.S. Supreme Court has consistently chosen to protect the police at the expense of the people, we are dealing with a nationwide epidemic of court-sanctioned police violence carried out with impunity against individuals posing little or no real threat.

This is how "we the people" keep losing.

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