First Amendment Frontlines: Laredo Litigation Looms and the Lingering Legalities for Law Enforcement

Description

In recent developments regarding a First Amendment case that continues to be revisited, the Fifth Circuit Court of Appeals rendered its decision in the case of *Villarreal v. City of Laredo*. The crux of this case revolves around the critical balance between First Amendment rights in the evolving legal landscape surrounding citizen journalism, and how this intersects with law enforcement officers' entitlement to qualified immunity.

This case began when Priscilla Villarreal, a citizen journalist in Laredo, Texas, was arrested for obtaining non-public information from a Laredo police officer. The Fifth Circuit Court of Appeals initially reversed a district court's dismissal of Villarreal's claims under the First and Fourth Amendments. However, a subsequent decision by the U.S. Court of Appeals for the Fifth Circuit has raised questions about the case once again. As this case has now reached its third appeal since 2019, the Fifth Circuit recently ruled that officers had probable cause to arrest Villarreal, and that the statute under which she was arrested was not clearly unconstitutional, contrary to what one might expect considering the context of criminalization of journalism.

This case resurfaced after Villarreal, a controversial citizen journalist from Laredo, Texas, was arrested and charged with a felony under 39.06(c) of the Texas Penal Code, which makes it a crime for someone to ask for or receive non-public information from a public servant intending to advance or harm another person. In 2017, Villarreal publicly reported on a U.S. Border Patrol agent who committed suicide. After learning about the incident from an employee who worked close to the scene of the suicide, Villarreal reached out to a Laredo police officer, who confirmed the agent's name. In her report, she released the name of the agent before the police issued a formal statement to the public. A month later, Villarreal published the last name of a family involved in a fatal car accident in Laredo. After receiving word of the accident, she contacted the same Laredo officer for verification. After learning that there was a warrant for her arrest, Villarreal turned herself in to the Laredo Department. Allegedly, Laredo officers responded by taking photos of her in handcuffs, laughing, and mocking her during the booking process.

Given the extensive and complex history of this case, it is crucial to understand the decisions reached by the Courts as this case has navigated its way through the District Court and the Fifth Circuit over time. In 2019, Villarreal filed suit under 42 U.S.C. § 1983 against the Laredo Police Department, the city of Laredo, Webb County, among others, alleging violations of her First, Fourth, and Fourteenth Amendment rights. Specifically, she claimed direct and retaliatory violations of free speech and freedom of the press, wrongful arrest and detention, selective enforcement in violation of equal protection, civil conspiracy, and supervisory and municipal liability. The district court dismissed her First Amendment infringement claim against officers, finding that any violation that occurred was not clearly established at the time when Laredo officers arrested Villarreal, granting the officers qualified immunity.

On the case's first pass to the Fifth Circuit in 2021, the Court took a closer look at the case by reviewing the findings of the district court. Here, the Fifth Circuit reversed in part the judgment of the district court

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that dismissed her First and Fourth Amendment claims. The Circuit held that the defendants were not entitled to qualified immunity because the arrest was “obviously” unconstitutional. Writing for the majority, the Court stated, “It should be patently obvious to any reasonable police officer that the conduct alleged in the complaint constitutes a blatant violation of Villarreal’s constitutional rights. And that should be enough to defeat qualified immunity.”

The second pass to the Fifth Circuit in 2022 rendered an identical result, reaffirming the Circuit’s prior decision from 2021. This new decision in 2022 was accompanied by a concurring and dissenting opinion from the Chief Judge of the Fifth Circuit. As a result, the 2022 Fifth Circuit opinion was vacated and ordered to be reheard. In 2022, having already heard the case twice, the Fifth Circuit maintained their view: arresting a person for engaging in acts of journalism was a clear violation of the individual’s First Amendment rights.

In recent developments, the case took a turn when it reached the Fifth Circuit for a third time. The question for the en banc Court considered whether government officials are entitled to qualified immunity in a suit alleging that they violated a journalist’s constitutional rights by arresting and prosecuting her simply for asking a police officer a question. The Fifth Circuit affirmed the district court’s dismissal of Villarreal’s 1983 claims, reiterating that the officers and officials involved are entitled to qualified immunity. The Circuit’s recent ruling in January 2024 resulted in a dramatically different conclusion from the Court’s prior decisions in the case.

Hearing the case once again, the Circuit found in favor of law enforcement. The Court held that the officers involved had probable cause for the arrest. Going a step further, the Court determined that the Texas Penal Code law at issue was not so obviously unconstitutional that the officers should have been aware of its potential conflict with the First Amendment. The majority opinion critiqued Villarreal’s method of using an unofficial source to gather information, a practice that has been crucial in journalism history for uncovering significant issues.

This decision underscores the complexity of defining what constitutes “public information” and the legality of soliciting this information from government officials. It also challenges the notion that common practices of journalism, particularly those involving “backchannel sources,” are undoubtedly protected under the First Amendment. For law enforcement, keep in mind that the significance of the First Amendment, though often overlooked, cannot be overstated, especially in light of rulings such as *Villarreal v. City of Laredo*. This case underlines the essential need for officers to thoroughly understand and carefully consider the implications of the First Amendment in their daily duties and decision-making processes. It is crucial for law enforcement to recognize that their actions have profound impacts on the constitutional rights of individuals, particularly concerning freedom of speech and press. Encouraging a deeper appreciation and respect for these rights within the law enforcement community enhances the effectiveness and integrity of policing. By actively engaging with these foundational rights, officers can better navigate the complexities of modern law enforcement and avoid potential legal pitfalls that arise from misunderstanding or underestimating the First Amendment’s reach and relevance.

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