

## Qualified Immunity Validates and Perpetuates Violence Against Communities of Color

The Colorado Rights Act (CRA), HB1287 is critical to bringing justice to victims of police brutality, who are disproportionately people of color. **By allowing Coloradans to seek redress for constitutional violations in state courts, the CRA avoids the highly suspect federal doctrine of qualified immunity, which has served in federal courts to protect law enforcement officers who perpetuate discriminatory policing and violence against communities of color.** Qualified immunity is a legal doctrine invented out of whole cloth by the U.S. Supreme Court that protects government agents, particularly law enforcement officers, who violate someone's constitutional rights from federal civil liability. Lawyers, judges, and legal scholars from across the ideological spectrum agree: **Qualified immunity must go.**

When the Supreme Court invented the doctrine of qualified immunity in 1967 it was intended to be a modest exception for those government actors who acted in good faith and reasonably believed their conduct was legal. Since then, the doctrine has expanded to provide broad immunity for law enforcement officers' acts of violence and discrimination. This is particularly true in the police brutality context, where **we have overwhelming evidence of discriminatory policing, that police are unable or unwilling to police themselves, that there is no justice to be had in the criminal courts against bad cops, and that one of the few ways to seek justice while raising the profile on police brutality and discriminatory policing is through civil rights actions.**

Enter the Colorado Rights Act -- this bill will create a new venue for discrimination and brutality claims under our state constitution in state court by creating a damages action and providing for attorneys' fees. It will open our state courthouses to all Coloradans to ensure that they have a fair venue for consideration of their constitutional claims, and it will do so without qualified immunity.

The stories below are just a few examples of blatant abuses by police that were allowed to go unchecked and unaccounted for because of qualified immunity. It should come as no surprise that these stories all involve police brutality against unarmed black and brown people who were left badly injured, with no recourse, no semblance of justice, and no accountability for the officers. **The CRA, in doing away with qualified immunity, will help protect Coloradans from the unfair and unjustifiable results seen in the cases below.**



### ***Tased repeatedly when 7 months pregnant.***

**Malaika Brooks** was seven months pregnant and driving her 11-year-old son to school in Seattle when she was pulled over for speeding. Not understanding what she had done wrong, Malaika refused to sign her ticket. After Malaika told the officers that she was pregnant, they casually discussed where they should tase her in order to get her out of the car, saying, "well, don't do it in her stomach." Officers then proceeded to tase Malaika three separate times, leaving permanent burn scars, before dragging her to the ground and cuffing her. **The Ninth Circuit found that the officers used excessive force in the absence of any threat in violation of the Constitution, but held that the officers could not be held accountable because of qualified immunity.** *Mattos v. Agarano*, 661 F.3d 433 (9th Cir. 2011). <https://www.cnn.com/2012/05/29/justice/scotus-taser-shocks/index.html>



### ***Grenade thrown into bedroom window while asleep.***

**Treneshia Dukes** was asleep in her boyfriend's apartment when law enforcement began a military-style assault on the home. Treneshia's boyfriend was on parole for a forged check, and police had received a tip that he was seen with a "small quantity of a green leafy substance." This prompted the police to raid the home at 5 a.m., providing no warning before throwing a flash-bang grenade through the bedroom window.

Treneshia was hit and suffered severe burns to her arms and legs. Police officers used three flash-bangs in the raid, which ultimately turned up less than a tenth of an ounce of marijuana. **The Eleventh Circuit, while finding that the officer who threw the flash-bang acted with excessive force in violation of the Fourth Amendment, held that throwing an explosive device into an occupied bedroom was not a clearly established constitutional violation. The suit was dismissed.** *Dukes v. Deaton*, 852 F.3d 1035 (11th Cir. 2017). <https://www.theatlantic.com/national/archive/2015/01/hotter-than-lava/384423/> <https://theappeal.org/deceptively-tragic-qualified-immunity-in-police-suits-ce838f392079/>



### ***Shot in the back while unarmed.***

**Ricardo Salazar-Limon** was pulled over for speeding in Texas. When the officer asked for identification, Ricardo complied; when the officer asked Ricardo to exit the car, he did. At some point thereafter, Ricardo began walking away from the officer. The officer shot Ricardo in the back as he walked away, severing his spine and leaving him paralyzed from the waist down. The Fifth Circuit granted the officer qualified

immunity. In a dissent from the Supreme Court's denial of certiorari, Justice Sotomayor noted, "**We have not hesitated to summarily reverse courts for wrongly denying officers the protection of qualified immunity in cases involving the use of force. ... But we rarely intervene where courts wrongly afford officers the benefit of qualified immunity in these same cases.**" *Salazar-Limon v. City of Houston*, 826 F.3d 272 (5th Cir. 2016), *cert. denied*, 137 S.Ct. 1277 (2017).

<https://www.theatlantic.com/politics/archive/2017/04/salazar-limon-houston-excessive-force-police/524091/> ; <https://www.chron.com/local/investigations/item/Bulletproof-Part-1-24419.php>



### ***15 year old boy shot repeatedly for holding a toy gun.***

**Jamar Green** was listening to music and dancing while on his way to school with four friends. A police officer spotted the teenagers, one of whom (not Jamar) was holding a plastic toy gun with a bright orange tip, and fired multiple shots into the group within seconds of encountering them. Jamar, who was fifteen at the time, was shot in the back and sustained severe injuries. **The Ninth Circuit found that the officer's use of deadly force "shock[ed] the conscience" and**

**violated the Fourteenth Amendment, but held that there was no binding precedent with sufficiently similar facts. The officer was therefore entitled to qualified immunity and the claim was dismissed.** *Nicholson v. City of Los Angeles*, 935 F.3d 685 (9th Cir. 2019).

<https://reason.com/2019/08/22/court-rules-cop-who-shot-unarmed-15-year-old-is-protected-by-qualified-immunity/>