

# LIGHTS, CAMERA, IMMUNITY: HOW TECH IS REWRITING THE RULES

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“The development of full artificial intelligence  
could spell the end of the human race.” – Stephen  
Hawking

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## INTRODUCTION

In an era where police can scan a crowd with drones and identify suspects in seconds using facial recognition, the law still clings to doctrines written for a world of rotary phones and paper reports.

Qualified immunity is a legal doctrine that shields government officials, including police officers, from personal liability for violating constitutional rights unless their conduct breaches a law that was “clearly established” at that time. This effectively protects officials and by extension, their agencies from financial damages.<sup>1</sup>

Qualified immunity, as currently applied, is dangerously out of sync with the digital tools shaping modern policing. The integration of body-worn cameras, license plate readers, and facial recognition technologies captures police interactions in real time, producing evidence that challenges qualified immunity by undermining subjective claims of good faith.<sup>2</sup> As law enforcement increasingly relies on black-box tools like facial recognition, predictive algorithms, and drone surveillance, the logic behind accountability falters.<sup>3</sup> This error is most prevalent when arrests stem from flawed systems rather than human judgment.<sup>4</sup> To restore accountability, the doctrine must evolve alongside the tools it governs. If the law can’t recognize a digital violation, can it still deliver justice in a digital age?

## I. BACKGROUND: HOW QUALIFIED IMMUNITY AFFECTS POLICING POLICY?

In 1975, the Supreme Court in *Wood v. Strickland* recognized that government officials could face liability for constitutional violations if they acted with “malicious intent” or in

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1. Qualified Immunity, NAT’L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/civil-and-criminal-justice/qualified-immunity> (last visited December 13, 2025).

2. *Atlas of Surveillance Glossary*, Electronic Frontier Foundation, <https://www.atlasofsurveillance.org/glossary> (last visited December 13, 2025).

3. Williams v. City of Detroit: *Face Recognition False Arrest*, ACLU, <https://www.aclu.org/cases/williams-v-city-of-detroit-face-recognition-false-arrest> (last visited October 23, 2025).

4. *Id.*

“reckless disregard” of clearly established rights.<sup>5</sup> Seven years later, in 1982, *Harlow v. Fitzgerald*, the Court abandoned the subjective standard and replaced it with the objective standard, asking whether a reasonable official would have known that the conduct violated clearly established law.<sup>6</sup>

The doctrinal shift in *Harlow* reshaped the landscape of qualified immunity. In *Anderson v. Creighton*, the Court required that the “clearly established” right be defined in light of the specific facts confronting the officer.<sup>7</sup> Subsequent cases such as *District of Columbia v. Wesby* and *City of Escondido v. Emmons* deepened this requirement by demanding a close factual match between prior precedent and the case at hand.<sup>8</sup> As a result, courts now routinely grant immunity not because the conduct was lawful, but because no prior case addressed the same facts with sufficient specificity.<sup>9</sup> In effect, the more novel or egregious the violation, the more likely it is to be shielded from review.

The increasingly rigid framework has not gone unnoticed. The Court’s insistence on near-identical precedent has drawn sustained criticism from scholars, jurists, and even members of the court itself.<sup>10</sup> Justice Ginsburg, for example, cautioned that such a narrow approach to qualified immunity tilts “too heavily in favor” of law enforcement.<sup>11</sup>

## II. IS IT TIME THE LAW CAUGHT UP WITH THE LENS?

Policing today looks nothing like it did a generation ago. Body-worn cameras, facial recognition, fusion centers, predictive policing, and other AI-powered surveillance tools now capture police conduct in real time, offering objective evidence that was once unavailable.<sup>12</sup> Nevertheless, courts continue to apply

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5. *Wood v. Strickland*, 420 U.S. 308, 322 (1975).

6. *Harlow*, 457 U.S. at 818.

7. *Anderson v. Creighton*, 483 U.S. 635 (1987).

8. *See* *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018); *City of Escondido v. Emmons*, 586 U.S. 505, 508 (2019) (per curiam).

9. *See* *Wesby*, 583 U.S. at 63; *Emmons*, 586 U.S. at 508.

10. Alexander A. Reinert, *The Rise of Qualified Immunity*, 106 *Geo. L.J.* 1, 25–30 (2017).

11. *District of Columbia v. Wesby*, 583 U.S. 48, 68 (2018) (Ginsburg, J., concurring in the judgment).

12. NAT’L CONF. OF STATE LEGISLATURES, *supra* note 2.

qualified immunity using precedent-driven standards that often stem from flawed surveillance tech.<sup>13</sup> The gap between what technology reveals and what doctrine permits is growing, and with it, concerns about justice, accountability, and constitutional integrity.<sup>14</sup>

This isn't just a theoretical flaw; it's a silent fracture in the law. Even when body camera footage exposes the facts in stark detail, victims of police violence are often left without remedy.<sup>15</sup> Courts demand precedent that mirrors the present moment almost identically, dismissing new forms of evidence as legally irrelevant.<sup>16</sup> In doing so, the courts shield misconduct from scrutiny and allow outdated doctrine to override technological clarity. The faster technological innovation moves, the more glaring the law's resistance becomes, jeopardizing both accountability and the Constitution's promise.<sup>17</sup>

The phrase "Constitution's promise" refers to the core guarantees of due process, equal protection, and the right to seek redress for official misconduct.<sup>18</sup> Yet when courts prioritize outdated precedent over unmistakable, modern evidence, the vitality of constitutional rights is placed in jeopardy. These fundamental protections risk becoming hollow guarantees, as

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13. *Williams, supra* note 6.

14. See Ken Wallentine, *Body-Worn Camera Video Supports Award of Qualified Immunity*, Lexipol, <https://www.lexipol.com/resources/blog/body-worn-camera-video-supports-award-of-qualified-immunity/> (last visited October 13, 2025); see also Bryan Lammon, *A Video-Evidence Exception for Qualified Immunity Appeals*, Final Decisions PLLC, <https://finaldecisions.org/a-video-evidence-exception-for-qualified-immunity-appeals/> (last visited December 17, 2025).

15. *Olivias v. Guadarrama*, No. 20-10055, 2021 WL 393191 (5th Cir. Feb. 8, 2021) (per curiam).

16. See Wallentine, *supra* note 22.

17. Hon. Maritza Dominguez Braswell, *Law at the Speed of Innovation: Thinking Beyond Our Systems and Structures*, Thomson Reuters Inst., <https://www.thomsonreuters.com/en-us/posts/ai-in-courts/law-at-the-speed-of-innovation/> (last visited December 17, 2025).

18. See *Due Process vs. Equal Protection: Your Constitutional Rights Explained*, Govfacts, <https://govfacts.org/explainer/due-process-vs-equal-protection-your-constitutional-rights-explained/> (last visited December 17, 2025).

qualified immunity expands beyond policing into other domains, including classrooms, hiring decisions, and correctional facilities.<sup>19</sup>

### III. THE ROLE OF TECHNOLOGY IN MODERN POLICING

Technological interventions have emerged as alternative mechanisms for oversight.<sup>20</sup> Leading these innovations are body-worn cameras and artificial intelligence tools, which promise to enhance transparency by documenting real-time encounters between “officers and community members,” thereby providing a clearer record for oversight and accountability.<sup>21</sup>

Modern law enforcement agencies are increasingly integrating artificial intelligence technologies to enhance operational efficiency, improve public safety, and ensure accountability.<sup>22</sup> These tools enable real-time data analysis, predictive policing, and streamlined workflows.<sup>23</sup>

As of 2025, facial recognition is one of the most well-established applications of biometric technology, routinely used to identify suspect or victims by comparing facial features captured in images or videos with databases of known individuals.<sup>24</sup> Law Enforcement use of related technologies also support fingerprint matching, DNA analysis, and even ear biometrics, reflecting a broader trend toward algorithmic identification.<sup>25</sup>

This broader reliance on technology in policing coincided with a distinct accountability movement. The 2014 death of Michael Brown catalyzed a national reckoning over police practices, prompting the widespread adoption of body-worn cameras as a technological remedy to perceived institutional

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19. See also *Qualified Immunity | Beyond Policing*, Constitutional Accountability Center, <https://www.theconstitution.org/think-tank/qualified-immunity-beyond-policing/> (last visited December 17, 2025).

20. Brett Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, Nij j. No. 280 (January 2019), <https://www.ojp.gov/pdffiles1/nij/252035.pdf>.

21. Chapman, *supra* note 28, at 2.

22. Nicole Ezech, Amber Widgery & Chelsea Canada, *Artificial Intelligence and Law Enforcement: The Federal and State Landscape*, Nat'l conf. of state legislatures (February 3, 2025), <https://www.ncsl.org/civil-and-criminal-justice/artificial-intelligence-and-law-enforcement-the-federal-and-state-landscape>.

23. *Id.*

24. *Id.*

25. *Id.*

failures.<sup>26</sup> Backed by federal funding and executive support, agencies across the country embraced body-worn cameras with the expectation that they would provide an objective record of police-community interactions, deter misconduct, and restore public trust.<sup>27</sup> This reflects the paradox of deploying technology for accountability, only to have it in the wrong hands, function as a shield that protects officers instead of exposing misconduct.

While some studies report modest reductions in use of force incidents and citizen complaints, others find no statistically significant improvements.<sup>28</sup> One reason for this mixed record lies in the infrastructure itself. Axon, whose body-worn cameras represent the most widely adopted platform among major law enforcement agencies worldwide.<sup>29</sup> Trusted by officers for capturing accurate accounts of daily encounters, Axon devices also provide high-quality evidence and efficient workflows relied upon across the justice system.<sup>30</sup> Yet despite its operational value, Axon stores over 100 petabytes of footage, totaling over 5,000 years' worth of data, most of which goes unreviewed.<sup>31</sup>

To address the overwhelming volume of unreviewed body-worn camera footage, law enforcement agencies have begun implementing artificial intelligence tools capable of analyzing video and audio recordings from body-worn cameras, surveillance systems, and other sources.<sup>32</sup> These tools use “natural language processing” to transcribe audio and to identify and flag officer verbal conduct that is inappropriate or inconsistent with departmental policy.<sup>33</sup> In parallel, computer vision algorithms detect gestures, facial expressions, and physical movements.<sup>34</sup>

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26. *Rethinking Response Part Two: AI to Analyze Body-Worn Camera Footage*, Policing Project (May 8, 2025), <https://www.policingproject.org/rethinking-response-articles/2025/5/8/part-two-body-worn-camera-analytics>.

27. *Id.*

28. *Id.*

29. Axon Flex 2, Axon, <https://www.axon.com/products/axon-flex-2> (last visited December 17, 2025).

30. *Id.*

31. *Policing Project*, *supra* note 39.

32. *Id.*

33. *See Policing Project*, *supra* note 39.

34. *Id.*

Together, these technologies aim to transform raw footage into actionable insights for oversight and accountability.

#### IV. JUDICIAL TREATMENT OF BODY CAM AND AI EVIDENCE

##### A. *Body-Worn Cameras*

Despite the widespread adoption of body-worn cameras, courts continue to treat video evidence inconsistently; a pattern the Illinois Supreme Court acknowledged in *People v. Collins*, where judges often minimize the evidentiary weight of footage that appears, at first glance, to offer objective proof.<sup>35</sup> Courts have been slow to embrace video and audio evidence, reflecting a deeper judicial discomfort with technologies that unsettle long-standing frameworks for assessing credibility and determining facts.

In *Scott v. Harris*, the U.S. Supreme Court treated dashboard footage as dispositive, stating that “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”<sup>36</sup>

The situation highlights the challenges of applying modern surveillance capabilities with evidentiary standards designed for a pre-digital courtroom. The problem is especially pronounced when courts issue conflicting rulings on cases involving nearly identical video evidence or uphold immunity even in the face of footage that seems to document clear misconduct.<sup>37</sup>

Courts’ inconsistent treatment of video evidence is not merely theoretical; it produces divergent outcomes in strikingly similar fact patterns.<sup>38</sup> In one jurisdiction, body-worn camera footage is credited as dispositive proof,<sup>39</sup> while an adjacent court

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35. *People v. Collins*, 2022 IL 127584, ¶ 47 (“The nature of the video became more prejudicial than probative.”(quoting id. ¶ 37)).

36. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

37. *See, e.g., Scott v. Harris* 550 U.S. 372, 378 n.5 (2007) (asserting that the dashcam footage “depict[ed] the events in question,” and allowing the video to “speak for itself” but resulting in a dissenting opinion that reached the opposite factual conclusion based on the same evidence).

38. Joanna C. Schwartz, *Qualified Immunity’s Boldest Lie*, 88 U. Chi. L. Rev. 1043 (2021).

39. *See, e.g., Scott*, 550 U.S. at 380 (holding that evidence “blatantly contradicted” the plaintiff’s account and justified summary judgment).

may discount or even exclude nearly identical visual evidence.<sup>40</sup> These contradictions expose a fundamental doctrinal instability in how courts weigh visual evidence against testimonial norms, particularly in cases involving police conduct, use of force, or evidentiary disputes.<sup>41</sup>

These doctrinal inconsistencies are compounded by another troubling trend. Despite the proliferation of body-worn cameras and dashboard footage, courts frequently grant qualified immunity to law enforcement officers even when video evidence appears to show constitutional violations.<sup>42</sup> This doctrinal pattern reflects a deeper tension between the promise of visual objectivity and the legal threshold for overcoming immunity. Courts have often regarded video evidence as insufficient to portray “clearly established law,”<sup>43</sup> thereby shielding officers from liability regardless of what the footage depicts.

Building on *Scott v. Harris*, the Supreme Court signaled a willingness to privilege objective video evidence over conflicting testimony, holding that courts need not credit a version of events that the video disputes.<sup>44</sup> Alarming, despite the visual clarity, numerous lower court rulings confirm that similar footage often fails to surmount the qualified immunity barrier. For example, in *City of Tahlequah v. Bond*, the Supreme Court reinstated qualified

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40. See *Baez v. Commonwealth*, 79 Va. App. 90, 893 S.E.2d 604, 617–18 (2023) (declining to treat body-worn camera footage as dispositive and requiring testimonial authentication).

41. Mitch Zamoff, *Assessing the Impact of Police Body Camera Evidence on the Litigation of Excessive Force Cases*, 54 Ga. L. Rev. 1, 35–42 (2020) (arguing that courts inconsistently interpret body camera footage and sometimes privilege officer testimony over visual evidence).

42. See, e.g., *Kisela v. Hughes*, 584 U.S. \_\_\_, 138 S. Ct. 1148, 1154 (2018) (per curiam) (granting immunity where officer shot a woman holding a knife, despite video evidence, because no prior case clearly established the unlawfulness of the conduct).

43. See *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (“A Government official’s conduct violates clearly established law when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right.”); *City of Tahlequah*, 595 U.S. at 12 (“We have repeatedly told courts not to define clearly established law at too high a level of generality.”).

44. *Scott v. Harris*, 550 U.S. 372, 389 (2007) (“When opposing parties tell two different stories, one of which is blatantly contradicted by the record... a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”).

immunity for officers who shot a man holding a hammer, reasoning that no prior case had “clearly established” the law with the requisite factual specificity, thereby treating the video evidence of the shooting as legally insufficient to defeat the defense.<sup>45</sup>

The modern jurisprudence of qualified immunity treats video evidence as persuasive but not transformative.<sup>46</sup> This disjunction between what is seen and what is legally recognized demands a reevaluation of how courts engage with surveillance technology in constitutional litigation.

## V. IMPLICATIONS FOR CIVIL RIGHTS AND MINORITY COMMUNITIES

While legislative and procedural reforms offer structural clarity, their real-world impact hinges on how technology reshapes the lived experience of civil rights enforcement. The integration of AI and video evidence into § 1983 litigation carries profound implications for communities historically marginalized by policing practices.<sup>47</sup> As courts and lawmakers revise evidentiary standards, they must also confront the social consequences of these reforms, especially regarding racial justice, democratic accountability, and the balance between efficiency and civil liberties.<sup>48</sup>

### A. *Potential for Greater Protection*

The integration of AI and video evidence into § 1983 litigation offers a powerful tool for exposing racial bias and

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45. *City of Tahlequah*, 595 U.S. at 12.

46. *See* *City of Tahlequah*, *supra* note 62, at 12.

47. *See* Stanford Center for Racial Justice, *Using AI to Drive Public Safety Research*, Stanford Law School (2025), <https://law.stanford.edu/stanford-center-for-racial-justice/projects/using-ai-to-drive-public-safety-research/> (discussing how AI analysis of body-worn camera footage can uncover patterns in police-community interactions and improve fairness and procedural justice, particularly in communities disproportionately affected by law enforcement).

48. *See* Rashida Richardson, *Algorithmic Justice and Civil Rights Enforcement*, 59 Harv. C.R.-C.L. L. Rev. 1, 10–15 (2024) (arguing that unregulated algorithmic tools risk exacerbating racial disparities in law enforcement and civil rights adjudication).

enhancing accountability.<sup>49</sup> Algorithmic analysis of body-worn camera footage can detect patterns of disparate treatment, identify excessive force clusters, and reveal inconsistencies between officer narratives and visual records.<sup>50</sup> Rashida Richardson has argued that algorithmic tools, when properly regulated, can illuminate systemic disparities that traditional evidentiary methods obscure.<sup>51</sup> In *McCoy v. Alamu*, the Fifth Circuit upheld qualified immunity for a corrections officer who pepper-sprayed an inmate without provocation, despite video evidence and internal inconsistencies in the officer's account.<sup>52</sup> Had AI-assisted review protocols been in place, they could have reconstructed the incident timeline, identified escalation triggers, and contextualized the officer's conduct within broader patterns of force.

### B. Risks of Technological Overreach

Despite their promise, AI tools carry significant risks when deployed without democratic oversight. Rebecca Wexler warns that forensic algorithms often operate as "black boxes," shielded by trade secret protections that prevent defendants from challenging their reliability.<sup>53</sup> In the civil rights context, this "black box" nature makes it difficult to detect errors, biases, or misuse, especially when the technology is used to justify police conduct or deny liability.<sup>54</sup> Without community input and

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49. See Rashida Richardson, Jason M. Schultz & Kate Crawford, *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 N.Y.U. L. Rev. 192, 193–94 (2019) (noting that predictive systems often rely on data generated during periods of racially biased and unlawful policing practices).

50. See Farhang Heydari et al., *Putting Police Body-Worn Camera Footage to Work: A Civil Liberties Evaluation of Truleo's AI Analytics Platform*, Policing Project, NYU School of Law (2024), <https://truleo.co/hubfs/ssrn-5030758%20%282%29.pdf>.

51. *Id.*

52. *McCoy v. Alamu*, 950 F.3d 226, 230–32 (5th Cir. 2020).

53. Rebecca Wexler, *Code of Silence: How Private Companies Hide Flaws in the Software Used to Analyze Evidence*, 107 Geo. L.J. 1279, 1285–89 (2019) (critiquing the evidentiary risks of unregulated forensic algorithms and the lack of transparency in AI tools used in legal proceedings).

54. See Roger Allan Ford & W. Nicholson Price II, *Privacy and Accountability in BlackBox Medicine*, 23 Mich. Telecomm. & Tech. L. Rev. 1, 29–31 (2016).

procedural safeguards, AI may reinforce existing disparities under the guise of objectivity.<sup>55</sup> Legislative reform must therefore mandate transparency, public auditing, and inclusive governance structures to ensure that technological interventions serve justice rather than subvert it.

### C. *Balancing Efficiency with Justice*

Law enforcement agencies increasingly rely on AI to streamline investigations and justify use-of-force decisions.<sup>56</sup> While efficiency is a legitimate institutional interest, it must be balanced against civil liberties and evidentiary fairness.<sup>57</sup> Courts must resist the temptation to treat algorithmic outputs as dispositive, especially when they conflict with visual records or eyewitness testimony.<sup>58</sup> The Fifth Circuit's decision in *Argueta v. Jaradi* illustrates this tension, as the court expanded appellate review without resolving contradictions between footage and officer accounts.<sup>59</sup> Procedural reforms, such as rebuttable presumptions when video contradicts reports can help navigate this balance by preserving judicial discretion while elevating objective evidence.<sup>60</sup>

### D. *Addressing Counterarguments*

Critics may argue that AI tools are too unreliable or that rebuttable presumptions risk undermining officer credibility.<sup>61</sup> As

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55. Wexler, *supra* note 83, at 1287.

56. See Rashida Richardson, *Police Data Bias and Predictive Policing*, AI Now Institute (2018), <https://ainowinstitute.org/policing.html> (discussing how biased data and AI tools are used to justify enforcement decisions).

57. U.S. Dep't of Justice, *supra* note 70.

58. See Maura Grossman & Paul Grimm, *Judicial Approaches to Acknowledged and Unacknowledged AI-Generated Evidence*, 26 Colum. Sci. & Tech. L. Rev. 1, 15–18 (2025), <https://journals.library.columbia.edu/index.php/stlr/article/view/13890> (warning against overreliance on AI-generated evidence in the face of conflicting human testimony or visual records).

59. See *Argueta v. Jaradi*, No. 22-20350, 75 F.4th 1010, 1016–18 (5th Cir. 2023) (expanding appellate review in qualified immunity cases involving video evidence without resolving evidentiary contradictions).

60. Lammon, *supra* note 22 (arguing for procedural reforms when video contradicts officer accounts).

61. Wexler, *supra* note 83, at 1285–89 (describing how trade secret protections obscure forensic algorithm flaws and raise reliability concerns); see

Wexler and Richardson both emphasize, the problem is not the existence of AI but its unregulated deployment.<sup>62</sup> Properly designed protocols can mitigate bias, enhance interpretability, and ensure that AI serves as a supplement, not a substitute for judicial reasoning.<sup>63</sup> Moreover, rebuttable presumptions do not eliminate officer testimony; they simply recalibrate the evidentiary hierarchy when objective contradictions arise.<sup>64</sup>

#### VI. DOES TECHNOLOGY UNDERMINE THE JUSTIFICATIONS FOR QUALIFIED IMMUNITY?

The recurring failure of video evidence to overcome qualified immunity reveals more than just evidentiary inconsistency; it exposes a deeper structural tension between modern technology and the doctrine's foundational logic.<sup>65</sup> Qualified immunity was originally conceived as a means of protecting officials who act in good faith amid legal uncertainty.<sup>66</sup> However, in an era defined by body-worn cameras, real-time surveillance, and digital

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also Will Douglas Heaven, *Predictive Policing Algorithms Are Racist. They Need to Be Dismantled*, MIT Tech. Rev. (July 17, 2020), <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/>.

62. See Wexler, *supra* note 82, at 1285–89; Richardson, *supra* note 76, at 14–15.

63. See David Uriel Socol de la Osa & Nydia Remolina, *Artificial Intelligence at the Bench: Legal and Ethical Challenges of Informing—or Misinforming—Judicial Decision-Making Through Generative AI*, 6 Data & Pol'y (2024), <https://www.cambridge.org/core/journals/data-and-policy/article/artificial-intelligence-at-the-bench-legal-and-ethical-challenges-of-informing-or-misinforming-judicial-decision-making-through-generative-ai/D1989AC5C81FB67A5FABB552D3831E46> (arguing that well-designed AI protocols can enhance judicial reasoning when used transparently and supplementally).

64. See Fed. R. Evid. 301; see also LegalClarity, *What Is a Rebuttable Presumption in Law?* (July 14, 2025), <https://legalclarity.org/what-is-a-rebuttable-presumption-in-law/> (explaining that rebuttable presumptions shift evidentiary burdens without excluding contrary testimony).

65. Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 Yale L.J. 2, 45–52 (2017) (documenting how courts often discount video evidence and maintain qualified immunity despite factual clarity).

66. Alexander A. Reinert, *Qualified Immunity at Trial*, 93 Notre Dame L. Rev. 2065, 2069 (2018).

reconstruction, the legal landscape of “uncertainty” that once supported the doctrine is increasingly diminished.<sup>67</sup>

These technologies often provide objective, timestamped, and reviewable accounts of contested encounters, reducing the factual ambiguity that once justified qualified immunity.<sup>68</sup> The Supreme Court acknowledged this evidentiary power in *Scott v. Harris*, treating dashboard video as dispositive in resolving factual disputes.<sup>69</sup> Yet courts continue to demand near-identical precedent to defeat immunity, even when video evidence clearly depicts unconstitutional conduct.<sup>70</sup> Joanna Schwartz’s empirical research reveals that qualified immunity is routinely granted despite the availability of such evidence, underscoring a doctrinal disconnect between technological clarity and legal standards.<sup>71</sup> Pattern-based clarity, especially when supported by recurring technological evidence, should inform the clearly established law standard even in the absence of factually identical precedent.

This doctrinal recalibration calls for abandoning rigid precedent matching in favor of a standard that reflects evidentiary clarity and reasonable perception.<sup>72</sup> Courts should ask whether a reasonable officer, viewing the same video or digital reconstruction, would understand the conduct to be unconstitutional.<sup>73</sup> This reframing suggests a video-informed

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67. Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1806–10 (2018) (arguing that qualified immunity persists even when video and other objective evidence clarify the facts); Andrew D. Selbst, *Negligence and AI’s Human Users*, 100 B.U.L. Rev., 1320–25 (discussing how AI-generated outputs can clarify factual disputes and reshape legal standards of reasonableness).

68. See *Scott*, 550 U.S. 372, 378–81 (treating dashcam video as objective, reviewable evidence that can resolve factual disputes by direct observation).

69. *Id.* at 379.

70. See *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (holding that “existing precedent must have placed the statutory or constitutional question beyond debate”)

71. Schwartz, *supra* note 96, at 1820.

72. Schwartz, *supra* note 98, at 1806–10 (documenting cases where courts granted immunity despite clear video evidence and arguing that the doctrine fails to achieve its intended policy goals).

73. See *Scott*, 550 U.S. at 378–81 (treating video footage as objective evidence that can resolve factual disputes); *Selbst*, *supra* note 98, at 1320–25 (arguing that AI-generated outputs can clarify facts and reshape reasonableness standards).

reasonableness test: would a reasonable official, confronted with this footage, recognize the conduct as unconstitutional under existing principles? With the use of modern technology, this evidentiary clarity enables courts to assess constitutional violations with greater precision, though the qualified immunity doctrine has not kept pace with these evidentiary advances.<sup>74</sup> In cases where such evidence depicts misconduct with clarity, the absence of a factually identical precedent should not bar liability.<sup>75</sup>

A. *Reasonable Person Standard*

Qualified Immunity was originally conceived as a pragmatic shield for government officials navigating ambiguous legal terrain.<sup>76</sup> The Supreme Court has repeatedly emphasized that the doctrine exists to afford “breathing room” for reasonable mistakes made in the course of discretionary duties, particularly in high-pressure or rapidly evolving situations.<sup>77</sup>

The court’s justification rests on two interrelated premises: first, that constitutional standards are often vague or evolving; and second, that public officials, especially law enforcement officers, must make split-second decisions without the benefit of legal counsel or judicial hindsight.<sup>78</sup> In such contexts, the Court has reasoned that liability is inappropriate unless the unlawfulness of the conduct is apparent in light of pre-existing law

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74. *Scott v. Harris*, 550 U.S. 372, 378-81 (2007) (treating video footage as objective evidence that can resolve factual disputes); *Selbst*, *supra* note 98, at 1320–25 (arguing that AI-generated outputs can clarify facts and reshape reasonableness standards).

75. *See* Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 *Notre Dame L. Rev.* 1797, 1806–10 (2018) (arguing that courts grant immunity despite clear video evidence when no identical precedent exists); Tyler Finn, *Qualified Immunity Formalism: “Clearly Established Law” and the Right to Record Police Activity*, 119 *Colum. L. Rev.* 439, 445–50 (2019) (criticizing the requirement for factually identical precedent and advocating for a more functional standard).

76. *See* Karen M. Blum, *Qualified Immunity: Time to Change the Message*, 93 *Notre Dame L. Rev.* 1887, 1890–91 (2018) (explaining the historical development of qualified immunity as a pragmatic doctrine).

77. *Harlow*, 457 U.S. at 818.

78. *See* *Graham v. Connor*, 490 U.S. 386, 396–97 (1989) (emphasizing the need to evaluate police conduct from the perspective of a reasonable officer on the scene, not with 20/20 hindsight).

so clear that “every reasonable official” would understand it violates constitutional rights.<sup>79</sup>

However, the original justification for qualified immunity, protecting officials from liability for reasonable mistakes in unsettled areas of law, no longer applies in a policing environment dominated by technology. Modern surveillance tools, body-worn cameras, and AI-generated outputs increasingly provide objective, reviewable accounts of contested encounters.<sup>80</sup> This evidentiary clarity enables courts to assess constitutional violations with greater precision,<sup>81</sup>—even as the qualified immunity doctrine struggles to keep pace.<sup>82</sup>

As the next section explores, the rise of objective visual evidence, including body-worn cameras, surveillance footage, and AI-generated reconstructions, continues to erode the ambiguity that once justified qualified immunity’s protective scope.<sup>83</sup>

### *B. Proposed Reforms*

The uneven judicial handling of visual evidence across jurisdictions reveals a more fundamental breakdown: the law’s evidentiary framework has lagged behind the technological realities of modern policing. To preserve the doctrinal integrity and normative legitimacy of qualified immunity, courts and legislatures must rethink how they engage with objective, real-time evidence.

### *C. Judicial Reform*

Courts must develop jurisprudence that gives greater weight to objective visual and AI-generated evidence in excessive force litigation. Current doctrine often treats video footage as

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79. *Ashcroft*, 563 U.S. 731, 741 (2011).

80. Wexler, *supra* note 91 (exploring how surveillance and forensic technologies affect evidentiary clarity); Andrew D. Selbst, *Negligence and AI’s Human Users*, 100 B.U.L. Rev. 1315, 1320–25 (2020) (arguing that AI-generated outputs can clarify facts and reshape legal standards of reasonableness).

81. *Scott*, 550 U.S. at 378–81 (treating video footage as objective evidence that can resolve factual disputes); Selbst, *supra* note 98, at 1320–25.

82. Schwartz, *supra* note 98, at 1806–10.

83. See Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 Yale L.J. 2, 45–52 (2017) (documenting how courts often discount video evidence and maintain qualified immunity despite factual clarity).

supplementary rather than dispositive, even when it clearly contradicts officer testimony or reveals unconstitutional conduct. To address this, courts should do three things:

*Recognize video and AI analysis as central to Fourth Amendment adjudication*, especially in qualified immunity cases when factual disputes hinge on visual clarity.

*Reframe the “clearly established” standard* to account for real-time, objective evidence.

*Incorporate evidentiary presumptions* that favor plaintiffs when visual evidence contradicts official reports, shifting the burden of justification to the state.

#### D. Legislative Reform

To prevent objective evidence, particularly video and AI analysis from being marginalized by antiquated liability standards;<sup>84</sup> Congress must provide statutory clarity and technological uniformity.<sup>85</sup> The proposals below aim to modernize 42 U.S.C. § 1983 and embed evidentiary precision into the legal framework governing police misconduct.<sup>86</sup>

First, amend 42 U.S.C. § 1983 to clarify standards of liability in cases involving objective tech evidence. The current statute does not distinguish between subjective testimony and objective visual data, leaving courts without guidance on how to weigh body-worn camera footage or algorithmic reconstructions in excessive force cases.<sup>87</sup> Legislative reform should codify the evidentiary weight of such materials and clarify liability thresholds when visual evidence contradicts officer accounts.<sup>88</sup>

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84. See *Scott v. Harris*, 550 U.S. 372, 378–81 (2007); Martin A. Schwartz & Jessica Silbey, *Analysis of Videotape Evidence in Police Misconduct Cases*, BU Sch. of L. Faculty Scholarship Paper 1373, at 118–22 (2009), [https://scholarship.law.bu.edu/faculty\\_scholarship/1373/](https://scholarship.law.bu.edu/faculty_scholarship/1373/).

85. See Michaela Calhoun, *No Sword, No Shield, No Problem: AI in Pro Se Section 1983 Suits*, 95 Colo. L. Rev. F. 1, 3–5 (2024) (arguing that Section 1983’s current framework fails to accommodate emerging technologies and proposing reforms to integrate AI-driven evidence into civil rights litigation).

86. See *Lifting the Legislative Rug: A Proposal for Congressional Abrogation of Qualified Immunity*, 67 B.C. L. Rev. 3194, 3201–03 (2024) (proposing amendments to 42 U.S.C. § 1983 to clarify liability standards and address evidentiary gaps in excessive force cases).

87. *Id.*

88. *Id.* at 3202–03

Secondly, mandate standardized AI analysis of video in misconduct cases. Despite the growing use of AI tools to reconstruct incidents, detect anomalies, and identify excessive force patterns, no federal standards govern their admissibility or interpretive reliability.<sup>89</sup> Congress should establish protocols for AI-assisted video analysis to ensure consistency across jurisdictions and prevent disconnected evidence. This argument fills a critical void in contemporary legal discussion, reflecting an immediate and emerging doctrinal need that current legislative frameworks have yet to satisfy.<sup>90</sup>

### *E. Procedural Reform*

Meaningful reform requires procedural safeguards that ensure courts engage directly with objective evidence before granting qualified immunity. One necessary intervention is a rule requiring courts to review and cite body-worn camera footage when resolving immunity at the summary judgment stage. Although the Supreme Court in *Scott v. Harris* emphasized that video evidence can “speak for itself” when it blatantly contradicts a plaintiff’s account,<sup>91</sup> lower courts routinely treat video footage as merely corroborative or by bypass the visual record altogether, relying instead on officer narratives or subjective accounts.<sup>92</sup> Procedural clarity would ensure that visual evidence is not sidelined by narrative testimony.

A second procedural reform involves establishing rebuttable evidentiary presumptions against officers when body-worn camera footage materially conflicts with official reports. In such cases, the burden of justification should shift to the state, discouraging post hoc rationalizations and reinforcing the primacy of objective evidence in excessive force adjudication. Courts have long

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89. See *Artificial Intelligence and Civil Rights Litigation: Bridging the Evidentiary Gap*, 58 Stan. Tech. L. Rev. 112, 118–22 (2025).

90. Wexler, *supra* note 83, at 1285–89 (critiquing the evidentiary risks of unregulated forensic algorithms and the lack of transparency in AI tools used in legal proceedings).

91. *Scott*, 550 U.S. at 378.

92. *Latits v. Phillips*, *supra* note 74, at 552–53 (granting qualified immunity despite dashboard camera footage showing a fatal shooting during a low-speed chase); *Arguenta v. Jaradi*, *supra* note 88, at 1016–18 (expanding appellate review without resolving contradictions between video and officer testimony).

struggled with how to weigh visual contradictions, often defaulting to officer narratives even when video evidence suggests constitutional violations. Thus, these procedural reforms would operationalize the evidentiary precision made possible by modern technology and reinforce the integrity of qualified immunity adjudication.

## VII. CONCLUSION

While critics rightly caution that technology is fallible, pointing to footage gaps, poor resolution, or biased AI,<sup>93</sup> these limitations do not justify judicial disengagement. Similarly, some argue that increased video surveillance has not meaningfully changed police behavior.<sup>94</sup> Indeed, studies on body-worn camera adoption show mixed results; some departments report reductions in use-of-force incidents and citizen complaints, while others see minimal change.<sup>95</sup>

The proper response to these critiques is doctrinal innovation, not judicial stasis.<sup>96</sup> A rebuttable presumption does not nullify the officer's account. It simply shifts the requirement of justification when objective digital evidence contradicts the factual claim.<sup>97</sup> Properly designed protocols can enhance interpretability, mitigate bias, and ensure that AI and video evidence serve as supplements, not substitutes, for judicial reasoning.<sup>98</sup>

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93. Wexler, *supra* note 83.

94. See Cynthia Lum et al., *Body-Worn Cameras: What the Evidence Tells Us*, Nat'l Inst. of Just. (Nov. 2019), <https://nij.oip.gov/topics/articles/body-worn-cameras-what-evidence-tells-us>.

95. See Police Exec. Research Forum, *Body-Worn Cameras: A Decade Later* 8–12 (2023), <https://www.policeforum.org/assets/BWCdecadelater.pdf>.

96. See Karen Blum, *Qualified Immunity: Achieving a Better Balance*, 69 B. B. J. 1 (2025), <https://bostonbar.org/journal/qualified-immunity-achieving-a-better-balance/> (arguing that courts must evolve doctrinal tools to meet modern accountability challenges).

97. See Fed. R. Evid. 301, [https://www.law.cornell.edu/rules/fre/rule\\_301](https://www.law.cornell.edu/rules/fre/rule_301) (explaining that rebuttable presumptions shift the burden of production without eliminating contrary testimony); see also Lammon, *supra* note 8 (proposing procedural reforms when video contradicts officer accounts).

98. Socol de la Osa & Remolina, *supra* note 94.

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Qualified immunity, as currently applied, fails to keep pace with the realities of modern policing technology.<sup>99</sup> Courts must integrate technological evidence more meaningfully into constitutional analysis, ensuring that evolving enforcement tools are matched by evolving doctrinal safeguards.<sup>100</sup> In doing so, they reinforce the constitutional imperative of accountability without sacrificing procedural fairness.<sup>101</sup>

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99. *Blum, supra* note 144.

100. *Lammon, supra* note 22.

101. *Socol de la Osa & Remolina, supra* note 94.