

Not Above the Law

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Should government officials be free to violate the rights of others so long as they are doing their job at the time?

With impunity?

That's the question that the Institute for Justice is arguing before the Supreme Court in *Brownback v. King*.

The case concerns James King, whom officers of the law mistook for a fugitive. When they grabbed his wallet and demanded to know his name, King ran, thinking he was being mugged. The officers pursued him and



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then viciously assaulted him — nearly killing him.

Later, the government concocted bogus charges to try to force King to accept a plea bargain. The idea was to prevent him from suing the government for the way he had been treated.

King did not cooperate.

The problem? Many government officials in many circumstances have a get-out-of-prosecution-free card. The doctrine that confers this card is called “qualified immunity.”

In the 1982 case *Harlow v. Fitzgerald*, the Supreme Court opined that this immunity is warranted by “the need to protect officials who are required to exercise discretion” and “can be penetrated only when they have violated clearly established statutory or constitutional rights.”

In practice, however, the immunity being granted often seems more *unqualified* than qualified.

IJ’s premise is simple. “Government officials are not above the law,” says IJ President Scott Bullock. “Those who are charged with enforcing our nation’s laws should be more — not less — accountable for their unconstitutional acts.”

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This is Common Sense. I’m Paul Jacob.