

**Gallagher Sharp Municipal Liability Newsflash:
Sixth Circuit Holds Officer Not Entitled to Qualified Immunity Following Traffic
Stop for "Showing the Finger" to the Officer**

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On March 13, 2019, the United States Court of Appeals for the Sixth Circuit held that a police officer who allegedly pulled over a car when the driver showed him her middle finger was not entitled to qualified immunity.

After receiving a ticket from Officer Minard, Debra Cruise-Gulyas “made an all-too-familiar gesture at Minard with her hand without four fingers showing” as she was driving off. Minard pulled Cruise-Gulyas over again and changed the ticket to reflect a more serious infraction. Cruise-Gulyas sued Minard under 42 U.S.C. Section 1983, “alleging that he violated her constitutional rights by pulling her over a second time and changing the original ticket to a more serious violation.” Specifically, Cruise-Gulyas alleged violations of her Fourth, First, and Fourteenth Amendment Rights.

Officer Minard moved for judgment on the pleadings, arguing that he was entitled to qualified immunity. The District Court denied the motion for judgment on the pleadings, and the Sixth Circuit affirmed.

In a concise opinion, the Sixth Court reasoned that Officer Minard had indeed violated Cruise-Gulyas’s right to be free from an unreasonable seizure under the Fourth Amendment by stopping her a second time because Cruise-Gulyas’ gesture on its own does not create probable cause or reasonable suspicion that she violated any law. Regarding her First Amendment claims, the Court cited multiple cases that held that gesturing with the middle finger is clearly protected speech and any reasonable officer would know that, which was critical in the Court’s finding that “showing the finger” to someone is “clearly established.” Officer Minard’s issuing Cruise-Gulyas a more severe ticket constituted an adverse action “that would deter her from repeating that conduct in the future.”

The full opinion can be found at *Cruise-Gulyas v. Minard*, 6th Cir. No. 18-2196 (March 13, 2019).

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Newsflash
March 14, 2019

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