

Short Circuit 164

Anthony Sanders 00:04

Hello, and welcome to short circuit your podcast on the Federal Courts of Appeals. I'm your host Anthony Sanders, Director of the Center for judicial engagement at the Institute for Justice. We are recording this Thursday, February 25, 2021. If you haven't already, please subscribe to our newsletter at shortcircuit.org and check out our sister podcast Bound by Oath. And if you're so inclined, give it or this podcast a five star review on Apple podcasts. Today we're talking about records, both records the government has and records the government wants. First, for years New York State barred the release of certain police disciplinary records. The state legislature recently changed that and subjected them to the state's Freedom of Information Act. Well, as you might imagine, the police unions didn't like that change very much and sued the blocking. The Second Circuit just ruled in that case, mostly against the unions. And we'll hear from one of the lawyers who argued it, Tiffany Wright. She represents a group that intervened in the case, Communities United for Police Reform, and is joining us today, Tiffany, welcome to short circuit.

Tiffany Wright 01:13

Happy to be here.

Anthony Sanders 01:14

Next, it's been a long been true that when you enter or leave the United States, you don't have much of an argument to prevent border guards from searching your stuff. But what about your electronic stuff? Well, the First Circuit ruled a couple weeks ago that it's perfectly constitutional for border guards to open up your smartphone or laptop and search away without a warrant and even without any particularized suspicion. My colleague Adam Shelton, our judicial engagement fellow at the Center, will be helping us search for answers. Adam, welcome back to the podcast.

Adam Shelton 01:51

Thanks, Anthony. Happy to be back.

Anthony Sanders 01:53

Well, we're very pleased to have Tiffany Wright on short circuit and this is actually her second IJ podcast. You can hear her on episode three of this season's Bound by Oath where we examine qualified immunity. Tiffany is currently an adjunct professor and supervising attorney at the Howard University civil rights clinic. She's also a senior associate at the DC office of Orrick Herrington and Sutcliffe. And she has accomplished a feat that very few mortals have completed: the federal hat trick. She clerked at the district court level for Judge Lamberth on the US District Court for the District of Columbia, the circuit level for Judge Tatel of the DC circuit. And at the Supreme Court for Justice Sotomayor, we should have her some time just to talk about all the joys of clerking. But for today, Tiffany, tell us about your case at the Second Circuit, the decision, also some of the background about these police records.

Tiffany Wright 02:49

Sure. So, for decades, in New York, there was a law called section 50 A, which bar the relief of almost all misconduct and disciplinary records for law enforcement officers. And so, what this meant was when there were allegations of misconduct, including serious ones, like the police, killing of Amadou Diallo, the police killing of Eric Garner, the families in those cases could not even get basic information, like the names of the officers who were on the scene, or any information about prior disciplinary or misconduct issues with those officers. After the killing of George Floyd, there was a lot of public pressure in New York to repeal section 50 A to allow for the public to seek release of those misconduct records. And after years of the union attempts to prevent the repeal through lobbying and money and all of these arguments that they were making. After all of that, finally, in June of 2020, the New York legislature repeal section 50 A, the governor signed it and shortly thereafter, there was a release of about 81,000 Records, which are now publicly searchable. In the midst of that, the union's reviving all of the arguments that they had previously made against repealing section 50 A, filed suit to have the release of records enjoined. And their arguments were, there were a few arguments that they were making, and it's important to note that all of these arguments they made, to the legislature and the legislature pretty much rejected those arguments and repealed it anyway. But first, the union said that if you if you release these records, you will be robbing us of our right to arbitrate certain things under our collective bargaining agreements, and so their collective bargaining agreements permitted arbitration of or permitted them to petition the chief of personnel to have certain records removed from their personnel folders, and then in a separate section allowed for them to petition for expungement of the record of the case with respect to certain allegedly technical infractions, the union said, If you release these records, you will be taking away our right to arbitrate to block the release of these records under our collective bargaining agreement. So that was argument one. They also said that this was a violation of their due process rights. And of course, there is no federal due process right in this sort of thing. And in order to establish this claim, they would have had to prove what it's called a stigma plus violation. So the release of false information has so stigmatized us that it has robbed us of something in which we have a right, something tangible, like if I were to lose employment altogether. They brought an equal protection claim, saying that this was differential treatment between police officers and other public servants, and even differential treatment between police officers and firefighters and what records would be released. They also claim that the mass release of these records was arbitrary and capricious under the state's analogue to the APA. And brought in of course, their main argument was, we will be irreparably injured if you release these records, because our safety and our lives will be at stake. If the public gets these records, we will face increasing threats and perhaps violence to officers, and it will ruin our reputations and future employment prospects. That was everything that the unions argued seeking an injunction. And we intervened, CPR, Communities United for Police Reform, intervened in the case of the district court to really argue the public interest. So that's the background. And I know that was a lot of background. And

Anthony Sanders 06:49

Before we get to the ruling, I'm just curious, was there a fight about intervention? in the district court,

Tiffany Wright 06:55

There was a fight about intervention in the district court. We had to brief it and what the district court did, because the case was so fast moving so that we could, you know, file briefs in the case, including opposition to the preliminary injunction motion while our intervention motion was pending. But there was a fight, intervention was opposed. And the district court nonetheless granted it and allowed us to participate in the case.

Anthony Sanders 07:22

So then tell us about the district court's ruling. And then what came up to the Second Circuit?

Tiffany Wright 07:28

Sure. So we, after we intervened, I believe by the time we intervened, we'd already filed our opposition to the preliminary injunction motion that the unions filed. And for us, it was really important to build a record, which we didn't think the city had done effectively about what the public's interest in these records is and why it is important that the public have access, not a year from now after the or two years from now after the unions arbitrate everything to death, but right now, so we built that record through affidavits from community members and stakeholders and so forth. The District Court considered all of that and largely rejected the union's arguments and declined to issue the injunction that they were seeking in all but one respect. And so, first, the district court found that on arbitration, there was no harm to the union's right to arbitrate with respect to this section about personnel records, because the section pretty clearly says it's about personnel records and has nothing to do with public release. The District Court rejected the arguments about safety and reputational harm, largely on the basis that the unions have failed to demonstrate that this harm was likely to occur in the absence of an injunction. The District Court rejected the stigma plus due process claims because the unions had one, not proven that any of these records were false. In fact, the records themselves say whether the allegations were unfounded, unsubstantiated, exonerated, and so forth. So there's no paucity at issue here. And also that even if they had established falsity, a stigma, they had not established a plus. So any tangible taking away of a right that belongs to the officers. And the district court also rejected arguments about the Equal Protection Clause because one, law enforcement officers are not a protected class or a suspect class. And there are myriad rational bases for this sort of law. The one area where the district court did grant an injunction was with respect to what is called section eight of the CBA, which allows for the officer to petition for expungement of the record of the case for what's called Schedule A violations and the district court thought that although it wasn't entirely clear, the argument is because these are more technical infractions. The public's interest is not as great and so why not allow the officers to arbitrate this and the language of the CBAS was, according to the district court, a little ambiguous. So having lost on nearly every ground, the union's appeal to the Second Circuit. And the first thing we had to brief and argue was the motion for a stay pending appeal, which was in effect, because the district court had declined to issue an injunction a motion for preliminary injunction from the Second Circuit. We argued that in September of last year, unfortunately, we lost, there was a stay. And then just this past January, after briefing, we argued the actual appeal and we decided to cross appeal on the narrow ground where the district court did grant an injunction because we thought that it was that that was one place where the district court had messed up. And so that is how we got to the appeal. And I'm happy to say more about that if it would be helpful.

Anthony Sanders 10:53

Sure, yeah. Well, let maybe in a moment, we can talk about what the Second Circuit said overall. And although it seems like it largely agreed with the district court and the reasoning with the district court. But what tell us about talk to us about this technical infraction, like how technical is a technical infraction, and how much does it matter?

Tiffany Wright 11:15

So the problem is that because of the level of secrecy and New York was really an outlier, in the amount of secrecy that I mean, not even releasing the names of officers. And so because of that, we have the members of the public and my client, CPR, didn't have much insight into what a scheduled violation really was. And we were not inclined to take the city's word for, oh, these are just technical infractions. Because there have been media reports of more serious violations being funneled through Schedule A. And so for example, if an officer is accused of excessive force, and also use of profanity, right, use of profanity is a pretty technical violation, that will go through Schedule A, and then the excessive force violation would also sort of be funneled through Schedule A, along with the use of profanity. So that was the first clue that we had that maybe these aren't really technical infractions. And then the City of New York recently released the week of oral argument in the Second Circuit, what they call the disciplinary matrix, which lays out what Schedule A actually includes, and it includes things that are in the opinion of the police department, schedule A infractions or so it can be an allegation of excessive force, but in our judgment, it belongs in Schedule A, and we're going to resolve it through command discipline, which is in house discipline, so you lose a vacation day, or something like that. And so it was said that these are technical violations. But all signs point to that not being entirely true. And so that's why that's one reason why we appealed because we're not convinced that they're technical. The other reason we appealed is because it doesn't matter what the CBA says, if something is subject to FOIA, the public has a right to it. And it's very dangerous if the city can go behind closed doors with the union and say, yes, these are subject to FOIA, but we're going to reach an agreement with you, that keeps these records from being released. And so you can't contract with private parties around your obligations under foil. And we thought that that was an important enough principle to warrant a cross appeal.

Anthony Sanders 13:33

Adam, your thoughts?

Adam Shelton 13:35

I think the technical violations thing is really interesting that it seems like they were using it as kind of this catch all provision. That if that, really what with the release of everything else could allow them to, or could encourage them to use that kind of catch all provision to hide even more stuff than they already have been.

Tiffany Wright 13:55

You know, when you maintain this level of secrecy for decades, no one trusts you. And so it's not like the city had been a model of transparency. And so we're gonna believe you when you say these are just technical, all of your behavior suggests that you are not to be believed. When you say you know what a technical infraction is. And so we that's that that was part of our thinking and why we ultimately

decided to pursue a cross appeal, even though this seemed like a very narrow category of records that may not matter much.

Anthony Sanders 14:26

And so now that it's, it is on the, it's still at the preliminary injunction stage, when it gets back to the district court is some of that going to be worked out when you get to final judgment?

Tiffany Wright 14:39

So what the district court, what the Second Circuit said, is that and we lost and what we thought was the best possible way because the Second Circuit pretty unequivocally said you cannot contract around your FOIL obligations, but they said that the record was not sufficiently developed as to what a schedule a violation really is. And the district in the Second Circuit invited us to build that record in the district court and to Acts potentially for modification of the injunction if we're able to build that record. So we are, of course, considering whether or not that's something we want to do. But, you know, if you have to lose, that's a pretty good way to lose where the court says, you know, you just haven't built record, but you're welcome to go back and do so. So we might take them up on that.

Anthony Sanders 15:29

I'm curious on the arguments you made about the contracting away of the of the state's authority. We've done a number of cases at the Institute for Justice about taxicab medallions. And these, you know, cities and efforts, often in recent years, it's been through ride sharing, and Uber and Lyft. But in the in the past, also just opening up the market for taxi cabs, and the existing monopolist taxi cabs will sue and say that, you know, they have this agreement with the city that you would never give anyone else the right to compete against them, because that lowers the value of their medallion. And they have a contract, right, in a sense with the city. And the argument that that we've made an intervening in these cases, and that the cities usually make is that, look, you can't, even if the city somehow did that which that usually they haven't, that they've you can't contract away the city's right to legislate in the future. I mean, the city, you can make a claim that it's unconstitutional, but you can't just contract that right away. Was that, with some of that background case law applicable, in this case, in the context of a collective bargaining agreement,

Tiffany Wright 16:38

It was. That background principle was really important. But thankfully, there were more specific cases in the FOIL context. So you cannot contract around FOIL, which was really helpful. But that principle that you just said, was also important, because another argument that the unions made, they made a ton of arguments. And I've just listed the ones that I thought were their greatest hits. But one of their other arguments was that we have settlement agreements, right. officers have been accused of misconduct and entered into settlement agreements under which there was a confidentiality promise from the city. And they tried to take that and say it's confidential. And so we can get around FOIL, like that's not subject to FOIL. And so that background principle, right, was really important. And it was also important that the Supreme Court said, you know, you don't get to incorporate statutes and policy legislative policies as part of a contract because legislators have to be free to legislate without worrying about that sort of thing. And so, you don't get to take a contract a statute and turn it into an implied right against the government. And so, we definitely talked about those cases in the context of their settlement

agreement arguments. But also, the more specific case law about not contracting around FOIL, bars that as well. So we pressed to the second circuit that that one principle, resolved all of the contractual claims here, settlement agreement, collective bargaining agreement, whatever your agreement is invalid, because this is just not something the city had authority to do.

Anthony Sanders 18:15

So going forward with this, with this now as the precedent and assuming, of course, the district court is going to, the case will complete itself in the same way. What is this going to mean for people in New York, who have been harmed by excessive police force? By unconstitutional or illegal actions of the police, either in the past or the future? What is going to be the change? Do you think in the culture in New York and also it within the police department itself?

Tiffany Wright 18:48

I am not sure about the culture in the police department, I have serious doubts about the likelihood of change in that culture without some significant reform, probably with a lot of outside pressure.

Anthony Sanders 19:04

That's maybe another podcast?

Tiffany Wright 19:05

Yes. We could do a whole separate hour about that. But what I am confident about is what this means is that the people of New York who have to submit to the authority of these officers now have the right to know the histories of these officers that have so much power over citizens every day. And there are two areas that I highlighted at oral argument because they are significant to me. But very often we talk about police violence in these fatal encounters that we see these execution videos that are constantly happening and that is important. But there is a second form of police violence that rarely gets talked about and that's sexual assault and sexual abuse by police officers. And this is something that happens an estimated every five days and because of how bad the underreporting radius for sexual assault is, it is very likely much higher. And so when records are held secret, when a woman or a person, anyone is victimized sexually, and very often the officers who do this prey on women of color, people in the LGBTQ community, because they are marginalized, and less likely to believe, be believed. And so they become natural victims for predatory officers. When that happens, those victims can now look at the history of these officers and say, "Oh, I'm not alone. There are other people who have made these allegations. And if I stand up and report this, I won't be the only one." And there's power in that, and it makes it more likely that victims will have the comfort they need to come forward. And so that's the first thing. And then the second thing is these fatal encounters, and perhaps not fatal encounters, but serious encounters with law enforcement that turned violent because of police, disciplinary issues and misconduct. If you think about what has happened in the aftermath of these events, it's very often a one sided conversation. And so when Eric Garner was killed, everything negative about him that he'd ever done was immediately made public. And you have the police union president out here saying that Daniel Pantaleo, the officer who killed him, is a model police officer, we would all want him policing our streets. And he knew he could say that because the records were secret, but he was a liar, because it was not true. He had several very serious misconduct allegations against him. And so now that section 50 A has been repealed, that information will be immediately available to the public. We don't have to

wait for it to leak through the media. And the families get knowledge that, you know, this is the person who did this to my loved one, and what their history is. And that's important, both for informed public debate, and just for the families who are trying to heal in the aftermath of these things. And so that is what I hope it means going forward for the community.

Anthony Sanders 22:05

That's wonderful news and a wonderful way to put it. And just finally, despite all this fight in New York, isn't it true that this is what most states have anyway, in most jurisdictions, New York was a bit of an outlier here.

Tiffany Wright 22:18

Most states do have more transparency in their in their laws regarding, surrounding police misconduct and violence and those states. I mean, it's been a fight in those days, it was a huge fight in Illinois in Chicago, sure, to get these Records released. They were fighting some of it now in Maryland. And so but yes, by and large, most states are far more liberal than what they were believed in what New York was.

Anthony Sanders 22:47

Well, great. Well, we'll keep our eyes on those fights as well in the future. And now, we're going to turn to fights at the border. Well, happily, not a physical altercations, but unhappily, fights about what is secret? And what is not, it turns out, not very much a secret at all, when you're going through the border. So Adam, tell us about this case from the first circuit, and whether you should leave your smart phone at home next time you're able to leave the country.

Adam Shelton 23:18

Thanks Anthony. Yeah, thank you. So yeah, this case is all about the warrantless searching of electronic devices at us borders. So this includes the border with Mexico, the border with Canada, and the kind of more philosophical border at every single airport across the country when you fly in from a different country. So the case dealt with two different policies of the US Customs and Border Patrol and Immigration and Customs Enforcement. The first policy dealt with basic searches of electronic devices or manual searches of electronic devices. Here, they could, border officers could search your cell phone, search your computer, it had to be disconnected from the internet, whatever kind of comfort that can give. But they could do this without reasonable suspicion. They could do this whenever they wanted to, for whatever reason they wanted to, because it was just kind of it's considered a routine search now. And there's an advanced search, which requires them to hook it up to one of their monitoring systems, otherwise known as a forensic search. For this, they at least need reasonable suspicion, but which is still a far cry from probable cause, or a warrant and through this, they can copy your information and really go through and search your device. And they're not just looking for indications of contraband or digital contraband that you're currently bringing into the country, but for whatever crimes that they are tasked with enforcing. So it's incredibly, incredibly broad. And incredibly worrisome from just a personal privacy point of view. Our electronic devices, our cell phones, and our computers contain so much information about our lives. And some of the plaintiffs here, nine of them were American citizens. One of them was a lawful permanent resident. One of them was a Muslim woman who had pictures of herself and her daughters without headscarves on, on her phone. And they

were male officers that were looking at these photos. There have been journalists who have been kind of intimidated at the border for stories that they're writing. The Columbia Night First Amendment Clinic filed an amicus brief kind of pointing out instances where Wall Street Journal reporters had been harassed for stories that they've been writing. This allows border agents to view attorney-client privilege information, business secrets, one of the clients was works for Jet Propulsion. And they were reviewing like his kind of private communications with business on his business phone. So the information that's accessible on electronic devices is huge. And they try to kind of dispel it with you know, at least with a basic search, it's just manual, but I don't I don't know about you. But for me, when I'm going on a plane, I don't always trust the planes Wi Fi to be kind of reliable to be spotty. So I will download a lot of different information. And I keep most of my photos downloaded on my phone already, so that there's an incredible amount of information that they can just look through, without any real reason, just because they want to, and it's the potential ramifications of this are quite, quite scary when you consider you know, if you're a unpopular political leader from another country, or if you're a reporter with unpopular opinions, or the border agent just doesn't like, you're a frequent traveler, and the border agent just doesn't like you. And the amount of information that is stored on these devices that is now accessible to the government without even reasonable suspicion. And the problem with that is, is if there's no if there's no requirement that there that there be reasonable suspicion, there's no way for you to challenge them even looking at your phone. At least if there was some level of reasonable suspicion, you could say they didn't actually have reasonable suspicion or the reasonable suspicion that they may have had was just a pretext. So here the Second Circuit, or the First circuit, sorry, unfortunately upheld both of these searches, or both of these policies, in really just dismiss the privacy concerns out of hand, they didn't really delve too much into the record that the district court had established with, with Muslim without headscarves with journalists and just said, "Look, at the border, the power of the government is kind of at its zenith to make sure nothing illegal is coming into the country. And that's kind of what it is, and they don't need a warrant, and they can look through your stuff. Because this is such a potentially dangerous system." It'll be interesting to see where this goes going forward, especially with recent Supreme Court decisions about the searching of the electronic devices. In 2014, there was a decision called Riley, where they said you couldn't, they couldn't search a cell phone instant to arrest. So this was somebody who was already, who they already knew as a criminal, who they already found with drugs on him. And the court said, "No, you still can't search his cell phone until you get a warrant." In the second, the First Circuit kind of just dismissed this as saying this is totally different. The border context is totally different. This is where the government's powers highest. So be very interesting to see where this goes, I have to imagine that this will be appealed. And it'll hopefully the Supreme Court will take it up. And we'll see where it goes from there.

Anthony Sanders 28:20

Tiffany, does this make you excited about traveling internationally? When we're able to do so?

Tiffany Wright 28:25

No, It's horrifying. And I'm wondering like, I'm very curious, Adam, what the rationale is for? What is it that the government could possibly need from my cell phone? Like what interest is the government trying to protect, what contraband like, what it, has the court said? What...I'm very curious about just the rationale for this sort of limitless power that the government has, it can't just be you're at the border, so anything goes or maybe it can,

Adam Shelton 28:53

It very much seemed like it was just you're at the border, so anything goes. That the border, that the government's powers at its highest to prevent anything illegal from coming into the country. What this really strikes me as is, you know, especially at airports, with the amount of security we already have to go through at airports. We get scanned everything we have gets x rayed, we're really not going to be bringing contraband or if we're bringing contraband in through the airport is most likely going to be discovered before we get to customs and they look through a cell phone or an electronic device. But because it's because it's the warrant exception to the exception to the warrant requirement. They really just kind of dismissed it and said, "Look, the government interest is so powerful here, we really don't even have to weigh the potential privacy interests." The only other circuit courts that have considered this have generally agreed that the Ninth Circuit limited it a little bit when they said it had to be a search for at least digital contraband. But you still didn't need the reasonable suspicion to look at the phone or the electronic device in the first place as long as it was disconnected from the internet. The problem is, is that audit of the Department of Homeland Security have shown that they don't always follow that policy and make sure that a device is disconnected from the internet before they actually search it. And that's one of the one of the amicus briefs pointed out searches of electronic devices at the border, in 2019, were up eight fold from where they were in 2012. Before this policy was put in place, so we're seeing it used more and more, with very little accountability. And since they don't need reasonable suspicion, there's very few ways to actually challenge this. And what made this case really interesting from just kind of a procedural point of view is it was a civil challenge, rather than a criminal challenge. Usually, you see kind of these types of challenges coming up when somebody is trying to suppress evidence or get evidence thrown out and say, "Look, they shouldn't have searched that anyways," these people just wanted the expungement of the evidence that had been kept or the information that had been kept, even though they had yet to be charged. And there's no, there's no indication that they're going to be charged with any crime, but the evidence is still kind of kept by the government.

Tiffany Wright 31:00

What are the types of things that have been found? Like what is the, what is the digital contraband that the government has found that's actually led to criminal prosecution? Like what crime are they looking for?

Adam Shelton 31:12

In in the first circuit opinion, they didn't really go through that at all. The Ninth Circuit opinion talks about it a little bit more in the kind of the standard is evidence of child pornography, or potentially evidence linking to drugs. But it's really kind of tenuous, as far as what digital contrabands can even be in the first place.

Anthony Sanders 31:37

Yeah, a lot of it seems like, it's just stuff that could be illegal on, you know, on your phone, on your laptop or evidence of crimes. But it's not, it's not crimes that are, or have to do with crossing the border, right? If you want to, if you want to move child pornography, or communications about drug running or whatever, you don't need to go through US Customs to move that into the country these days. And yet, you might happen to have something that is evidence of criminality on your electronic devices. So in

that way, I mean, it really just seems like a “gotcha technique”, which, which is really begging the question about why it is illegal, or why the government gets that the zenith of its to search you as the as the opinion said, at the border. It just seems to, you know, be circular, that there are things that can happen at the border that are dangerous. And so therefore, we get all this ability to search and then the ability to search is, you know, all expansive. That in terms of what crimes they can search you for it does seem pretty capacious. Is it? Is it as broad as say, like intellectual property crimes? So if I have doubt, illegally downloaded Britney Spears songs on my phone, you know, could I be prosecuted for that? Or is it? Is it a little bit narrower? You know, is it more typical, crossing the border type of crimes,

Adam Shelton 33:14

It seemed to be any crime that was enforceable, or that the Department of Homeland Security was kind of charged with enforcing, which is quite a lot of crimes that really aren't related specifically to immigration and just crossing the border. And I think, you know, the warrant exception makes a little bit more sense when it's, you know, you're actually crossing the border. And it's a more of a physical searcher ensuring like, “Hey, you know, what do you actually have on you.” But, with cell phones, with electronic devices, there's so much information that's on there, that would never have been accessible, even 20, 30 years ago, just when you're just crossing the border. And they're kind of protections of well, it doesn't have to be connected to the internet just don't match up because people again, people download things. And a lot of your stuff can be you know, when you go into Gmail, a lot of your emails are already saved. Even once you're disconnected the internet, you can go through emails that are already that are already loaded. The potential danger of this just strikes me as so high, especially when it comes to attorney-client privilege and journalism. Part of this there was also a First Amendment challenge, because of the journalism and because of potential suppression of speech. And again, the court just kind of did away with it and didn't they didn't really balance any of it, they didn't really consider the privacy concerns. It seems like it was really just the government has this power. Yeah, there are some privacy concerns, but they're not really relevant here because it's the border and traditional notions of sovereignty and needing to protect the country from anything illegal or harmful coming into it.

Anthony Sanders 34:53

One thing I couldn't really tell is what's the deal with a password on a device? At some point, it says something about, you know, if you need to put a password in, but can the border guard say, demand that I put my password in? Otherwise he's not going to let me through? Or

Adam Shelton 35:14

I'm not sure how that works, I would assume no, that I think, then you really would be getting into that. Free Speech issues of like actually having like compelled speech, the government saying you must tell me X, Y, and Z in order to go forward. But then again, you have to tell the government quite a lot to get through customs in the first place. I know when I came back from Europe, I had dropped my laptop, and I had to buy a new one. So it's like, did you purchase anything? Are you bringing back anything more than, like \$700 or \$800? And it's like, unfortunately, yes. So I had to go through this whole explanation of, well, I dropped my laptop on the floor, the first week, I was there, and the screen cracked, and I had to buy a new one when I was there, because I was there for classes. So but with the amount of information, they can already ask for it, maybe they can demand a password, I would doubt it. But who

knows with the way the court ruled in here, the government might be kind of emboldened to start doing that, if they don't already.

Anthony Sanders 36:12

Well, the case has gotten a great deal of attention. And it is Alasaad vs. Mayorkas from the First Circuit. So we'll put a link up on the website, as we always do, to that case, and Tiffany's case is Uniformed Fire Officers Association vs. DeBlasio, and a number of other parties involved and near record number of anarchy. So I can tell that the great deal of interest that there was in this case from that list. Well, thank you to both of our guests for coming on and talking about what's going on in the First and Second Circuit. We'll try to move to other parts, maybe warmer parts of the country next time. But in the meantime, I would remind all of you to get engaged.