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Qualified immunity under fire

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Martin Jim

Martin Jim was a passenger in a stolen pickup truck that had been hemmed in by Bernalillo County Sheriff's patrol cars after an extended chase on Albuquerque's West Side.

The driver of the truck, Isaac Padilla, allegedly was still revving the engine even as deputies stood in front of the vehicle.

Then Deputy Joshua Mora jumped out of his vehicle, ran toward the truck and fired seven shots into it, killing both Padilla and Jim.

NM extends restrictions for another month

A federal civil rights lawsuit brought by Jim's estate named both the county and Mora as defendants.

The county, which was sued on various grounds including allegedly defective policies on shootings, settled the case for $1.9 million after a judge ruled there were enough disputed facts for a jury to conclude that Mora acted unreasonably.

The case against Mora personally?

It was dismissed under the doctrine of "qualified immunity," which is a key protection from civil lawsuits for government officials ranging from Children, Youth and Family Department social workers to teachers to police officers. It basically shields them from lawsuits in the performance of discretionary duties unless their actions clearly violate established law.

And it is a doctrine that as it relates to police cases has drawn intense scrutiny and renewed criticism in the wake of the killing of George Floyd by a Minneapolis police officer earlier this summer – a case in which most scholars would agree qualified immunity would be rejected as a defense.

Some states have or are moving to consider limiting qualified immunity – either in general or just as it relates to police officers. The New Mexico Legislature approved the appointment of a commission to come up with recommendations to be considered during next year's session.

Advocates argue that getting rid of, or limiting, qualified immunity for police officers is crucial to reform. Officers, they say, would think twice about crossing a line if they had personal skin in the game.

Representatives of law enforcement groups say cops have difficult jobs that most perform well. Subjecting all officers to personal liability while working under tough circumstances isn't only unfair, they say, but would make it extremely difficult to recruit and retain police officers to departments that already are understaffed.

Taxpayers on the hook

Padilla didn't give up easily in the 2017 chase. He ran over one set of spike strips set out by deputies and avoided another by swerving into the wrong lane. The chase ended near Coors and Glenrio NW after deputies rammed the truck with their cars for the fourth time during the chase.

Although hemmed in by sheriff's cars, and despite a blown tire and damaged rim, Padilla allegedly kept revving the engine.

Neither Padilla nor Jim was armed, and no firearm was found in the truck. The two officers in front of the truck did not fire their weapons.

Bernalillo County Sheriff's deputies investigate the scene where Isaac Padilla and Martin Jim were shot to death in a stolen truck in November 2017. (Adolphe Pierre-Louis/Albuquerque Journal)

Although she allowed the case to go forward against the county, U.S. District Judge Judith Herrera concluded that Mora "violated no clearly established law and therefore is entitled to qualified immunity."

The case against him was dismissed.

"Plaintiff has not cited, and the court has not found, case law establishing that an officer may not shoot a driver who dangerously flees from police and who, once momentarily apprehended, revs his engine at an officer positioned behind patrol cars that are in the fleeing vehicle's projected path," Herrera wrote.

Albuquerque attorney Sam Bregman, who filed the lawsuit on behalf of Martin Jim's estate, said the ruling illustrates the high bar.

"The courts have ruled that to override qualified immunity requires that the specific facts in the current case have to be found in a previous case."

Since qualified immunity protects only individuals, not government entities, Mora was off the hook. The taxpayers weren't. And even if qualified immunity is abolished, it's likely that government employers will still end up paying judgments against police officers and other individual government employees.

Court doctrine

The term "qualified immunity" is not found in any federal statute.

"It is wholly the construction of the courts," Albuquerque civil rights attorney Phil Davis said.

But it has become the first line of defense in civil rights lawsuits against individual police officers accused of using excessive force.

It has been under attack from such diverse groups as the Cato Institute, the American Civil Liberties Union, supporters of Second Amendment gun rights and the NAACP. These groups have filed friend of the court briefs in selected cases around the country.

After Floyd's death, Democrats in Congress proposed changes to federal civil rights laws that would limit or prohibit the defense of qualified immunity.

In the past, conservative Supreme Court Justices Clarence Thomas and the late Antonin Scalia have questioned whether the court has overstepped its authority in creating it.

Qualified immunity is used as a defense in federal cases brought under Title 42 Section 1983, which originally was passed in 1871 as part of a group of laws to protect freed slaves and others from the Ku Klux Klan.

The law allowed people to sue public officials for violating their civil rights. It was used as the basis for civil rights lawsuits in the 1950s and 1960s. But it wasn't always successful as the Supreme Court began to carve out what is now called qualified immunity.

In one case involving the arrests of 15 Episcopalian priests protesting as "Freedom Riders" in the late 1950s, the court found the arresting officers could not be held liable for enforcing a law that was later found to be unconstitutional.

The test for qualified immunity until 1982 was that the public official believed in good faith that their conduct was lawful, and the conduct was objectively reasonable.

In 1982, the Supreme Court changed the standard and said public officials couldn't be sued individually unless their conduct violated clearly established statutory or constitutional rights that a reasonable person would have known about.

In 2001, the Supreme Court decided that lower court judges should use a two-pronged test – first, deciding if a person's civil rights had been violated and second, deciding if qualified immunity applied.

A Reuters news service study of excessive-force civil rights cases filed between 2005 and 2007 found that people filing the lawsuits against police were successful in overcoming qualified immunity defenses in 56% of the cases.

In 2009, the Supreme Court decided that the two-pronged test was discretionary, and judges could rule on whether qualified immunity applied without determining whether an individual's civil rights were violated.

The Reuters study found that from 2015 to 2019, federal court rulings favored police 57% of the time.

Albuquerque attorney Luis Robles, who defends police officers in civil rights cases, said the 2009 ruling has led to problems.

"That has created a real muddle," Robles said.

Before the 2009 ruling, courts would determine if certain types of police conduct – for example, allowing a police K-9 dog to bite a suspect in the act of surrendering – violated the suspect's civil rights.

Robles said that ruling would instruct police when to call off the dog, even if in the initial case qualified immunity applied, the civil rights violation precedent could be used as a standard in later cases.

Those rulings, and appeals to the federal appeals courts, would give police officers and departments a better idea of what actions would violate a "clearly established statutory or constitutional right."

Daniel Yohalem, a Santa Fe attorney said, " 'Clearly established' now means I have to provide the court with a case with the exact same circumstances in order to overcome qualified immunity."

U.S. District Judge James Browning couldn’t find a similar set of facts in any other case when he dismissed a civil rights lawsuit against several Hobbs police officers in July 2019. Officers were called to a home in Hobbs by a neighbor who reported a domestic dispute.

When officers arrived, they found the garage door open and two people in the garage who told them nothing was wrong. Officers entered the house through the open garage and detained the two people in the garage and one person in the house.

Browning ruled the police entered the house illegally because they had no warrant or probable cause to enter. He also found the officers illegally detained the three people.

But he ruled the officers were protected by qualified immunity because the attorneys representing the three people and the court could not cite another federal case in which police made an illegal entry into a home through an open garage.

“Judge Browning’s ruling exposes the absurdity of qualified immunity,” said Shannon Kennedy, whose firm filed the case. “No case is exactly the same as another.”