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Supreme Court petitioned on police officers' legal immunity

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ARLINGTON, VA.

James King had no idea that the men who grabbed him and took his wallet were plainclothes officers looking for a fugitive. So he ran off. And when they caught him, he took a monstrous beating.

Bystanders also were confused. One called 911 to report the beating, telling a dispatcher: "They're going to kill this man."

King, 27, was a college student at Grand Valley State in Michigan in 2014 when he was beaten. He sued the officers who arrested him, but a judge tossed out the case, ruling that the officers were entitled to immunity for their actions.

King's case is one of several taken up by the Arlington-based Institute for Justice in an effort to get the U.S. Supreme Court to reconsider the "qualified immunity" doctrine, which frequently shields police officers and other government agents from lawsuits when they are accused of violating a person's constitutional rights.

"The biggest problem is, these doctrines have no basis in the history of this country," said Anya Bidwell, one of King's lawyers with the institute. "They are inconsistent with our founding principles."

The qualified immunity doctrine was first enunciated by the Supreme Court in 1967, and expanded greatly by the court in the 1980s. As it currently stands, officers can only be held liable for their actions if a court has previously found officers liable in an analogous circumstance, Bidwell said.

The Institute also has petitioned the high court to take the case of Shaniz West, whose home in Caldwell, Idaho, was destroyed by officers looking for her ex-boyfriend. They hope to learn as soon as later this month whether the justices will review the cases.

One of the officers sued by King is an FBI agent who was participating in a federal-local task force in Grand Rapids, Michigan. The FBI and a Grand Rapids spokesman declined comment. A spokeswoman for the City of Caldwell did not respond to an email seeking comment.

In a phone interview, King said he feels lucky to be alive after being beaten by officers who seemed unfazed by the fact that bystanders were witnessing the attack in broad daylight. He said one of his lawyers told him that if he'd been black, he would have been killed.

“I thought I was going to be killed,” he said. “And there are people all over the country who deal with this on a daily basis.”

King was charged with resisting arrest and assaulting a police officer. Court records indicate he bit one of the officers who had him in a chokehold. A jury acquitted King on all charges.

Justices have signaled some interest in the topic. In 2017, Justice Clarence Thomas wrote that the court should find an appropriate case to reconsider the doctrine. As with other elements of criminal justice reform, a left-right coalition of liberals concerned about police abuse and conservatives concerned about unaccountable government has emerged to agitate for change.

While there is strong momentum for reconsidering the qualified immunity doctrine, it has its defenders. In a Notre Dame Law Review Journal titled “A Qualified Defense of Qualified Immunity,” professors Aaron Nielson and Christopher Walker write that the doctrine is entitled to a significant measure of deference now that it has been in place for 50 years, and indeed expanded by the high court over time.

“Absent dramatic new information, until and unless Congress says otherwise, qualified immunity should remain our law,” the authors write.

Cities and local governments also support the immunity, arguing that police need a measure of protection to do their job without looking over their shoulders.

Lisa Soronen, executive director of the State and Local Legal Center, which advocates for local governments before the Supreme Court, said qualified immunity is key to the financial solvency of state and local governments which could otherwise be overwhelmed by lawsuits.

Also, it's important for officers to know they have some legal protection on the job, she said.

“You don't want an officer hesitating,” she said. “They have to act in these hard situations.”

She said the doctrine has been under attack since it was targeted by a libertarian think tank, the Cato Institute. But she said changing a doctrine that has stood for decades could end up confusing the immunity issue rather than clarifying it.

“Relaxing the idea may sound like a good idea, but where do you draw the line?” she asked.