



Supreme Court may consider making it easier to sue police for misconduct

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As calls grow nationwide for reforms in law enforcement following the death of George Floyd, the U.S. Supreme Court will soon announce if it will jump into the debate by considering whether it should be easier to sue police for serious misconduct.

Law enforcement officers who behave badly are rarely prosecuted, so lawsuits brought by victims of misconduct are often the only way to hold them accountable. And there's no other way for victims to get compensation for a violation of their rights. But a string of decisions by the Supreme Court has made it very difficult for victims to win in court.

One of the cases the court is considering comes from Idaho, where Shaniz West gave police the keys to her house when they were looking for her ex-boyfriend, who was a fugitive. But instead of going in, they bombarded the house for hours with tear gas, destroying everything inside. It turned out he wasn't there, but when she sued she lost. Lower courts sided with the police, saying no court had ever explicitly ruled that giving police authority to enter your home did not constitute permission to bomb it with tear gas.

That's how the Supreme Court's 1982 rule works. Known as qualified immunity, it says police cannot be held legally responsible for violating someone's civil rights unless courts have clearly established that the conduct is illegal. It was intended to protect police from frivolous lawsuits and prevent judges from second-guessing every split-second decision law enforcement officers must make.

Applying that rule, a federal appeals court ruled against a Georgia mother whose 10-year-old son was wounded in the knee by a deputy sheriff. He was looking for a suspect who had wandered into her yard. After ordering her and her children to lie on the ground and while the unarmed suspect was arrested, the deputy fired at the non-threatening family dog. He missed, but the round struck the child.

"Qualified immunity means that government officials can get away with violating your rights as long as they violated them in a way nobody thought of before," said Anya Bidwell, a lawyer for

the Institute of Justice, which is urging the Supreme Court to take up the issue. "That means that the most egregious abuses are frequently the ones for which no one can be held to account."

Another lawyer for the group, Clark Neily, said if family members of George Floyd decides to sue Minnesota police officer Derek Chauvin and others, they will need to find an existing court ruling that said a police officer may not kneel on the neck of a suspect who is not resisting, ignoring his pleas for help, until he passes out.

"If no such case happens to be on the books, their case will be summarily tossed out of court," Neily said. "Such is the perversity of the Supreme Court's qualified immunity doctrine."

A survey by the Reuters found that in the past few years, lower courts ruled in favor of the police about 60 percent of the time. And when the police lose and appeal, the Supreme Court nearly always rules in their favor.

Two Supreme Court justices on opposite sides of the ideological spectrum have repeatedly questioned the rule. Sonia Sotomayor, perhaps the court's most liberal member, said it has created "an absolute shield for law enforcement officers." Clarence Thomas has said the doctrine has no basis in the Constitution.

Reflecting their concerns is an unusual combination of liberal and conservative groups, including the ACLU, the NAACP Legal Defense and Education Fund, and the libertarian Cato Institute, urging the Supreme Court to take up the issue and abandon the rule.

Defenders of the court's qualified immunity doctrine say it protects police officers who, in the heat of the moment, make reasonable decisions that turn out to be mistaken. Abandoning it, said the lawyer for the Georgia deputy who shot the dog, "would leave hundreds of thousands of law enforcement officers exposed to potential liability, likely second guessing themselves in situations where a hesitation to act could mean the difference between life and death."

The court could announce as early as Monday whether it will take up the issue in its term that begins in the fall.