



Supreme Court announcement on reexamining qualified immunity for police could come soon

Melissa Quinn

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The death of George Floyd in Minneapolis last week after a police officer pressed his knee to Floyd's neck for nearly nine minutes, leaving him struggling to breathe, sparked nationwide protests against police brutality and calls for policing reforms.

While Congress has begun crafting legislation aimed at addressing inequities in the criminal justice system, the Supreme Court could as soon as Monday announce whether it, too, will jump into the national conversation on policing as it weighs appeals involving the legal doctrine that shields law enforcement from lawsuits for constitutional violations.

At their weekly conference Thursday, the justices were scheduled to discuss at least half a dozen cases pending before the court that involve qualified immunity, the legal doctrine that protects government officials from liability for conduct on the job unless they violate "clearly established" constitutional rights.

The doctrine was created by the high court decades ago, but legal experts calling on the Supreme Court to rethink qualified immunity believe the standard victims must meet to hold law enforcement accountable has become exceedingly difficult to reach.

"Qualified immunity has become a get-out-of-jail-free card," Emma Andersson, a senior staff attorney at the American Civil Liberties Union, told CBS News.

Andersson and the ACLU are representing Alexander Baxter, a Tennessee man, in one of the cases discussed by the justices Thursday. Baxter was bitten in the armpit by a police dog after surrendering to Nashville police who responded to a report of a residential burglary. The dog was released by one of the officers, Spencer Harris, after Baxter sat on the ground and raised his hands in surrender, according to the ACLU's petition with the Supreme Court.

Another dispute before the Supreme Court involves a 10-year-old boy in Georgia who was shot by a police officer after pursuing a suspect into the boy's yard. The officer fired two shots at the family's dog, missing both times, but hitting the 10-year-old in the knee. In a third case, an Idaho woman gave police consent, and her keys, to enter her home to search for her ex-boyfriend, who was wanted on an outstanding warrant. But law enforcement instead fired tear-gas grenades into the house in an effort to draw the man, who wasn't there, out. Instead, it destroyed the house and displaced the woman, Shaniz West, and her children for two months.

In each of the cases, law enforcement involved in the incidents were sued for civil rights violations under the Fourth Amendment, but officers successfully asserted qualified immunity.

"There are a number of potential avenues for government accountability," Andersson said. "In the context of police brutality, these avenues too often fail. For example, we too rarely see prosecutions of police officers who murder people. We too rarely see effective internal disciplinary measures or robust civilian oversight. Civil suits are supposed to give victims and their families the opportunity to seek their own justice when the criminal legal system and other avenues fail them. Qualified immunity is a significant barrier in these civil cases and contributes to a larger legal ecosystem that has a gaping deficit in accountability for police brutality."

The broad leeway afforded to police officers and other government offices because of qualified immunity has united a coalition of stakeholders across the ideological spectrum, with groups like the libertarian Cato Institute, the conservative Americans for Prosperity and the NAACP Legal Defense and Educational Fund coming together to urge the justices to revisit the legal doctrine.

"Qualified immunity denies justice to victims of unconstitutional misconduct. It imposes cost prohibitive burdens on civil-rights litigants. And it harms the very public officials it seeks to protect," the groups wrote in a brief to the Supreme Court in support of Baxter's case.

Even at the Supreme Court, two of its justices typically on opposing ends of decisions have publicly raised concerns with the doctrine, albeit for different reasons. Thomas questions the legal origins of qualified immunity, while Sotomayor fears for the broad leeway it gives police who engage in misconduct.

In 2017, Thomas urged the high court to reconsider its qualified immunity jurisprudence when it found an appropriate vehicle for doing so, writing, "until we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress." One year later, in 2018, Sotomayor wrote that a Supreme Court decision in favor of a Tucson, Arizona, police officer "tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished. "

"Requiring government actors to be careful before treading on someone's constitutional rights is the only reasonable approach if you truly value those rights and want to ensure that they thrive rather than wither over time," Andersson said. "As qualified immunity has become an increasingly high bar, it has become tougher for victims of government misconduct to vindicate their rights in court."

Defenders of qualified immunity warn that curbing the doctrine or doing away with it altogether could lead to frivolous lawsuits, bankrupt officers who are sued over their conduct and cause them to alter their behavior on the job.

But Andersson pushed back on those predictions, noting that officers are indemnified, and monetary judgments don't come out of their own pockets.

"They're not being personally bankrupted by the rare cases in which they lose. And the court shouldn't be so concerned about the possibility that a legal doctrine might result in police officers exercising greater restraint before acting," she said. "Greater restraint is precisely what we need to see, especially before officers take actions that jeopardize another human being's life."

"In the last few weeks, as people have watched the video of Mr. Floyd being murdered and seen our government respond brutally to even peaceful protests, more and more Americans understand that restraint in law enforcement is something we must collectively strive for, not something to fear," she added.

If the justices agree to take up any of the cases involving qualified immunity Monday — it takes four votes for the Supreme Court to agree to hear a case — its decision will come against the backdrop of the nationwide protests against police brutality that have exploded following Floyd's death May 25.

But oral arguments will be held in its next term, which begin in October, with a decision coming before the end of June 2021.

Still, efforts are also proceeding in Congress to do away with the legal shield for law enforcement, though the likelihood of success for legislative efforts is unclear.

In the House, GOP-turned-independent Congressman Justin Amash of Michigan has joined forces with Democratic Congresswoman Ayanna Pressley of Massachusetts to introduce a bill that would end qualified immunity and the two are soliciting support from other lawmakers.

"The brutal killing of George Floyd by Minneapolis police is merely the latest in a long line of incidents of egregious police misconduct," Amash and Pressley wrote in a letter to colleagues. "This pattern continues because police are legally, politically and culturally insulated from consequences for violating the rights of the people whom they have sworn to serve. That must change so that these incidents of brutality stop happening."

House Speaker Nancy Pelosi also announced Thursday a new legislative initiative, to be unveiled Monday, focused on reforming police practices, including bringing an end to qualified immunity.