A Qualified Immunity Case That the Federal Courts Got Right

Damon Root

March 12, 2020

Qualified immunity is a controversial legal doctrine that generally shields police officers and other government officials from being sued when they violate citizens' constitutional rights. In most cases, as the Cato Institute's legal scholar Clark Neily memorably put it, the doctrine amounts to "a get-out-of-responsibility-free card for rights-violating cops who shoot first and ask questions never."

Thankfully, the U.S. Court of Appeals for the 5th Circuit took a different view in a qualified immunity case decided this week. Amador v. Vasquez originated in 2015 when Deputies Greg Vasquez and Robert Sanchez of the Bexar County, Texas, Sheriff's Department shot and killed a man named Gilbert Flores while responding to a call about an alleged domestic violence incident. When the deputies arrived, Flores was holding a knife and behaving erratically. Twelve minutes after the encounter began, while Flores stood some 30 feet away with his hands raised in apparent surrender, the deputies opened fire. They justified their use of deadly force by claiming that Flores posed an immediate threat to them.

Flores' wife and family subsequently filed suit against the two deputies, arguing that the fatal shooting violated his Fourth Amendment right to be free from the use of excessive force. Vasquez and Sanchez urged the courts to squash the suit, claiming their actions were protected by qualified immunity.

The U.S. District Court for the Western District of Texas rejected the deputies' position. In its decision this week, the U.S. Court of Appeals for the 5th Circuit did the same. "A reasonable officer would have understood that using deadly force on a man holding a knife, but standing nearly thirty feet from the deputies, motionless, and with his hands in the air for several seconds, would violate the Fourth Amendment," the ruling declared. The family's excessive force suit against the deputies "should proceed to trial."

Among the jurists who signed on to that ruling was Judge Don Willett. There is little surprise in that. Since joining the 5th Circuit in 2017, Willett has rarely missed the opportunity to raise doubts about the constitutionality of modern qualified immunity doctrine. "To some observers," Willett remarked in a 2018 case, "qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior."

Willett has even butted heads over qualified immunity with some of his fellow Trump-appointed judges on the 5th Circuit. In Cole v. Carson (2019), Judge James Ho and Judge Andrew Oldham faulted Willett's "one-sided approach" to qualified immunity for being too tough on the cops.

"Originalism for plaintiffs, but not for police officers," Ho and Oldham asserted, "is not principled judging."

Willett fired back in a footnote. "As for the sidelong critique of me in the dissenting opinion of Judges Ho and Oldham," he wrote, "it is, respectfully, a pyromaniac in a field of straw men." It is neither unoriginalist nor unprincipled, Willett pointed out, for a federal judge to question the constitutionality of qualified immunity. "Justice Thomas—no 'halfway originalist'—has done the same."

The federal bench could use a few more judges in the Willett mold in future qualified immunity