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‘Qualified immunity’: How US police are shielded from lawsuits

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Muhammad Muhaymin called out for “Allah” as six Phoenix police officers pinned him to the street, a knee on his neck, his arms twisted and handcuffed.

“Allah can’t help you now,” one officer said as they roughly tried to hog-tie him.

Muhaymin, who was homeless and unarmed, called out he could not breathe. Minutes later he died, a brown pool of vomit spreading out under his face.

“No, he’s dead,” an officer said, stepping back.

Muyhaymin, 43, had tried to bring his dog with him to use a public toilet at a community centre next to a park where he lived.

Police were called. They ran his name against a database and found an outstanding warrant for failure to appear in court on a minor charge. They ended by choking him, his family says.

Muhaymin’s death in 2017 is similar to the killing of George Floyd in Minneapolis that sparked worldwide protests against police abuse in 2020. But in Muhaymin’s case, no viral videos were posted on social media and no criminal charges brought against the officers.

“It really, really is beyond me. I can’t understand how something like this happened,” said Mussallina Muhaymin about her brother’s death in 2017.

“He was just so peaceful and calm and polite,” Mussallina told Al Jazeera. “You have a man begging for his life. He said he can’t breathe. You heard the life coming out of him. It was like they tortured him.”

Local authorities initially sought to portray Muhammad as an aggressive person who had resisted arrest. When Phoenix officials refused to open a criminal investigation of the officers involved, Muhaymin’s family filed a wrongful death claim for \$10m in civil court. Now a judge is deciding behind closed doors whether to dismiss the case on grounds of “qualified immunity”.

That means, where prosecutors often avoid bringing criminal charges against police, recourse through the civil courts for people whose rights were violated is often blocked.

Phoenix police body-camera video shows Muhaymin was “very polite, committed no crime that day, tried to use a public restroom and died for it”, said Haytham Faraj, a lawyer representing Mussalina and Muhammad’s two children.

“One officer had a knee to his neck for about seven minutes and then he gets off and another officer gets on, for a total of eight minutes and 27 seconds. And there’s about five other officers that are on his back on his arms and his legs while he’s handcuffed.”

There are thousands of similar cases of police abuse nationwide that have been dismissed by judges under the principle of qualified immunity, lawyers say.

The International Association of Chiefs of Police, an advocacy group based in Alexandria, Virginia, defends qualified immunity, saying it allows police to “make split-second decisions, and rely on the current state of the law in making those decisions”.

“He should never have even been arrested,” said Michael Haddad, a lawyer representing the Gonzalez family.

“He was thrown to the ground. He was never fighting with the officers, and they put a lot of weight on his back, even on the back of his neck,” Haddad told Al Jazeera.

“He was struggling to breathe. And ultimately, after they had control of him, they still kept weight on his back and then he just stopped moving.”

The family intends to file a civil rights lawsuit against the city but qualified immunity will be a legal hurdle that could draw out the proceedings for years.

Qualified immunity has “morphed over the years” and “the Supreme Court has decided to really tighten it up and lower courts have followed them making it harder and harder for victims of police misconduct”, Haddad said.

In February, a federal appeals court granted immunity to two Texas police officers who Tased a man who was having a mental health crisis and had doused himself with petrol.

The officers were warned by a third officer that using Tasers on Gabriel Olivas would set him on fire. But they did it anyway, leading to Olivas’s death in the hospital days later.

“Everybody recognises that qualified immunity is a very significant part of our policing problem, and needs to be addressed,” said Clark Neily, a lawyer at the CATO Institute who has supported a lawsuit by the Olivas family.

In Congress, progressive Democrats are pushing for a provision in reform legislation that would end qualified immunity. Republicans in the Senate are opposed.

“We are concerned by recent discussions that the provisions ending qualified immunity ... may be removed in order to strike a bipartisan deal in the Senate,” Representative Cori Bush, a former Black Lives Matter activist from St Louis, and nine House progressives said in a May 20 letter to congressional leaders.

Experts see room for compromise. One solution being discussed would allow civil rights lawsuits against police departments and municipalities while protecting individual officers from claims.

Last year, in a concession after Floyd's death, the Major Cities Chiefs Association said it would agree to allow more civil rights lawsuits against officers whose "conduct was not objectively reasonable".

Meanwhile, US courts continue to throw out abuse claims against the police. On May 18, a court dismissed a claim by a Louisiana man who had been thrown to the ground and severely beaten by four officers after he was pulled over for driving with a bad tail light.

A police officer in Iowa, who kned a restrained man 20 to 30 times in the eye causing permanent vision damage, violated the man's rights but could not be sued.

In Georgia, police lost control of an attack dog that ripped flesh from the leg of a man who was handcuffed and kneeling on the ground. A judge dismissed his claims.

A man in Ohio had been sleeping in his car before police shot him dead. His family sued, but the case was dismissed. The family appealed to the US Supreme Court but on Monday justices declined to review the case, letting the dismissal stand.