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High Court Won't Hear Law Enforcer Qualified Immunity Cases (3)

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The U.S. Supreme Court declined to take on several cases involving the controversial "qualified immunity" rule that shields public officials, including law enforcers, from being answerable in court for even the most egregious allegations of rights violations.

Advocates across the political spectrum, including lawyers, academics, and judges bound to apply qualified immunity have sharply criticized it, though the justices have for years balked at calls to upend or refine it.

The rejection, Monday, of a host of cases all at once, with only a one-case dissent from Justice Clarence Thomas—after they'd spurned three others on May 18—shows the justices have virtually no desire to revisit the issue any time soon, putting the ball in Congress' court to pass legislation dealing with the issue if it so chooses.

The court's latest refusal to reconsider the doctrine comes as police violence and accountability has gripped the nation, following the death of George Floyd in Minnesota on May 25 at the knee of a city police officer, murder charges against that officer, and government agents across the country using force against unarmed citizens protesting the status quo.

Under the doctrine, officials can receive immunity from suit if their alleged actions weren't "clearly established" violations of constitutional rights. That's had the effect of keeping serious claims out of court, so long as the specific factual allegations at issue hadn't previously been found by a court to be unlawful.

Critics have characterized that rationale as a Catch-22, in which the lack of such judicial determinations becomes the basis for not making them.

The doctrine was created by the Supreme Court, leading advocates to call on the justices to undo it. In keeping with its usual practice, the high court didn't explain why it denied review of the petitions. It takes four justices to grant review.

'Dereliction of duty'

The Cato Institute's Jay Schweikert, a fierce opponent of the doctrine who worked on some of the appeals seeking to take it down, called the rejections "a shocking dereliction of duty."

While it's "impossible to know for sure what motivated the Court to deny all of these petitions," he said "one possibility is that the Justices were looking closely at developments in Congress—where members of both the House and the Senate have introduced bills that would abolish qualified immunity—and decided to duck the question, hoping to pressure Congress to fix the Court's mess."

Kent Scheidegger, legal director of the Criminal Justice Legal Foundation, which advocates for crime victims and has frequently sided with the government at the high court in criminal matters, said after the denials that, "Given that qualified immunity is a matter of statutory interpretation and amendment of the statute is under active consideration in Congress, I think it is prudent for the Court to leave it alone for now."

A unanimous high court said in a 2009 case that the doctrine "balances two important interests — the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably."

On Monday afternoon, House Judiciary Committee Chair Jerrold Nadler (D-NY), Congressional Black Caucus Chair Karen Bass (D-CA), and Subcommittee on the Constitution, Civil Rights, and Civil Liberties Chair Steve Cohen (D-TN) said the high court's failure to act makes it more important for Congress to do so.

The representatives cited the proposed Justice in Policing Act of 2020, which they said "makes clear that qualified immunity cannot be used as a defense in civil rights suits against federal, state, or local law enforcement officers."

It's "long past time," they added, "to remove this arbitrary and unlawful barrier and to ensure police are held accountable when they violate the constitutional rights of the people whom they are meant to serve."

'Appears to stray'

In the denial from which Thomas dissented on Monday, involving Alexander Baxter's civil rights suit out of Tennessee, the justice said he continues to have "strong doubts about" the doctrine.

In Thomas' view, qualified immunity "appears to stray" from the text of the law that gives people the right to sue government officials in the first place.

Here's what happened in Baxter's case and the others from across the country whose appeals were declined:

- After surrendering to police, Baxter told the justices in this petition, he was bitten by a police dog while sitting with his hands in the air. But even though a prior precedent deemed nearly identical conduct unlawful, a federal appeals court granted immunity to the officials in his case. He argued that made his case "an archetypal example of the problems with current qualified immunity doctrine."
- Immunity also blocked Joshua Brennan's civil rights suit from Michigan, against an officer who went to his house to administer a portable alcohol breath test while Brennan was on probation and subject to random testing. The officer circled the house several times while banging on doors and windows, obscured a security camera with police tape, circled the house several more times while again banging on doors and windows, and "all the while peering into those windows and otherwise causing a nuisance on the property," Brennan said in his petition.

- Another case stemmed from a civil rights suit by a Texas doctor. At the urging of the U.S. Drug Enforcement Administration, Texas medical board officials executed a "no-notice administrative subpoena" on Joseph Zadeh's medical offices, demanding "immediate production of significant quantities of confidential patient medical information, including intensely private patient records concerning mental health issues and domestic relationships," he told the high court. The board obtained the information by threatening to revoke Zadeh's medical license, he told the justices in his petition calling on the high court to "recalibrate or reverse the doctrine of qualified immunity."

- The justices also declined to hear a civil rights suit by a Georgia parent whose 10-year-old son was shot by police in pursuit of a criminal suspect. Officers chased the suspect into Amy Corbitt's yard. Six children including her son were playing there. Officers ordered the children at gunpoint to lie face-down on the ground. The children complied and the unarmed suspect complied with the officers too. But Officer Michael Vickers fired his gun twice at Corbitt's pet dog. He missed twice. But the second time, he shot Corbitt's son in the back of the knee while he was still lying face down, seriously injuring him, Corbitt recounted in her petition.

- The justices also declined to hear an Idaho suit that asked if an officer who has consent to "get inside" a house but instead destroys it from the outside is entitled to qualified immunity in the absence of precisely factually on-point case law. As recounted in Shaniz West's petition, she gave law enforcement consent to enter her home to search for a fugitive whom they incorrectly thought was inside. "Instead of entering the home," she said, "the officers decided to spend hours besieging it, during which time they (among other things) repeatedly fired tear-gas grenades into the house from the outside."

- The high court likewise passed on the suit filed by Brenda Mason and Billy C. Mason individually and on behalf of their deceased son, Quamaine Dwayne Mason. Responding to a 911 call, Lafayatte, La., police officer Martin Faul first released his service dog on 21-year-old Quamaine and almost instantaneously shot at Quamaine Mason eight times, hitting him seven times, the Masons recounted in their petition. A jury found Faul's conduct unreasonable but he was still deemed immune from suit for his actions.

- The justices also declined to hear an appeal challenging immunity for Minneapolis municipal employees who, responding to a 911 call, found 19-year-old college student Jacob Anderson suffering from hypothermia and declared him dead when they failed to detect a pulse in violation of treatment protocols, preventing further aid that may have saved his life, according to the petition filed by his father, William.

- Also among the denied petitions was a rare one that actually involved the denial of law enforcement immunity. The justices declined to review police officers' petition in which they argued that "clearly established law" didn't require them to "shout a warning and wait to determine whether an imminent threat to life has subsided after the warning" before one of them could fire to stop an armed person from moving a firearm in the officer's direction.

There are technically petitions still pending before the justices on the subject, but they aren't seen as good candidates for review. In one of them, the justices didn't even ask for a response to

the petition, which would have been a signal that they're potentially interested in hearing the case.

The cases are Baxter v. Bracey, U.S., No. 18-1287; Brennan v. Dawson, U.S., No. 18-913 and Dawson v. Brennan, U.S., No. 18-1078; Zadeh v. Robinson, U.S., No. 19-676; Corbitt v. Vickers, U.S., No. 19-679; West v. Winfield, U.S., No. 19-899; Mason v. Faul, U.S., No. 19-7790; Anderson v. City of Minneapolis, U.S., No. 19-656; and Hunter v. Cole, U.S., No. 19-753.

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