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Boy, handcuffed at age 7 for crying, loses lawsuit after court rules school officer took 'reasonable course of action'

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Kalyb Wiley-Primm was just 7 years old when he found himself face to face with the law — not because he did anything wrong, but because, after being taunted by a group of boys about his hearing impairment in the middle of class, he began to cry, which led to his being escorted out of the room — and handcuffed — by school officer Brandon Craddock.

“He didn’t know if the man was going to take him to jail,” Kalyb’s mother, Tomesha Primm, had said at the time of the 2014 incident in Kansas City, MO, during which her son was left cuffed, with minimal supervision, for at least 15 minutes. As a result, the boy had sore wrists and night terrors, prompting his mom to permanently remove him from the school and have the American Civil Liberties Union of Missouri file a lawsuit against Kansas City Public Schools on his behalf, alleging the officer violated her son’s fourth amendment right to be free of excessive force and unreasonable seizure.

Now, after being tied up in court for years, the 8th Circuit Court of Appeals has come to its final decision — ruling, shockingly, in favor of the officer, by calling his use of handcuffs on the not-quite-4-foot, 50-pound child a “reasonable course of action.”

“Would the officer have removed, handcuffed a 7-year-old white girl?” asked just one angry critic on social media, where many have taken up a discussion of the case’s implicit bias. It all rests with the officer’s defense of “qualified immunity” — a doctrine with a complicated and contentious history.

“Qualified immunity” was a law created to protect law-enforcement officials who were being sued due to “reasonable but mistaken judgments about open legal questions." It explicitly did not protect "the plainly incompetent or those who knowingly violate the law,” meaning that, initially, the law was intended to protect the rights of benevolent officers who’d made an understandable error and called for an official to have acted out of “good faith.”

In a nutshell, it operates as an unwritten defense to certain civil rights lawsuits, preventing plaintiffs from recovering damages for violations.

But over the years, the application of the defense has shifted.

In 1981’s Harlow v. Fitzgerald, the defense changed from relying on “good faith” to instead setting the standard that even officials who violate peoples’ rights on purpose will be protected

— unless the victim can show that his or her right was "clearly established," putting the burden of proof upon the victim and inadvertently broadening the loopholes of the law.

As policy analyst Jay Schweikert explained in a recent article for the Cato Institute, the new standard "is incredibly difficult for civil rights plaintiffs to overcome because the courts have required not just a clear legal rule, but a prior case on the books with functionally identical facts."

There have, however, been a few exceptions where the courts felt they did not need a set precedent in order to deny an official immunity.

The 1995 Hope v. Pelzer case, for example, concerned correction officers who had handcuffed a shirtless prisoner with his arms above his head — to a hitching post, for seven hours, in the scalding sun. A guard even teased the victim by giving water to a guard dog right in front of him. The Supreme Court found these actions to be such an "obvious" violation of constitutional rights that the officers should have known better and ruled that the defense did not apply.

Still, since the 1981 case, this immunity clause has been stretched in favor of law enforcement on numerous occasions of excessive force, with Kalyb's case the most recent.

Just before that ruling, in July, came one in the case of Corbitt v. Vickers — a situation that started as a manhunt for Christopher Barnett and ended with the shooting of a 10-year-old child. During the search, Barnett wandered into a backyard where six children and their caretaker were playing.

When officers arrived, they instructed everyone to lay on the ground, even the kids — two of which were under 3 at the time. In an attempt to shoot the family dog (which posed no threat), Officer Michael Vickers missed and shattered a child's knee. His family sued, but the 11th Circuit granted Vickers qualified immunity stating that, according to precedents, "a Fourth Amendment violation occurs only when [an officer] intentionally targets the person [harmed]."

Similarly, in a 2004 case, pregnant Malaika Brooks was driving her 11-year-old son to school in Seattle, Wash., when police pulled her over for speeding. When she refused to sign her ticket, officers twisted her arm behind her back, tased her and dragged her body to the middle of the road, handcuffing her face-down. Although Brooks sued the officers — and six federal judges agreed that the officers' use of severe force violated the U.S. Constitution — those judges ultimately dismissed her case, granting the involved officers "qualified immunity."

The late Judge Stephen Reinhardt, of the U.S. Court of Appeals for the Ninth Circuit, criticized that defense in 2015, noting that most often when qualified immunity is successfully used to protect police, it's being used "as a mechanism to stunt the development of constitutional rights."

The defense could even be an issue in the 2020 election. In an interview with *The Root*, Democratic presidential candidate Julián Castro calls for Congress to "reform and restrict" qualified immunity, thus holding police more accountable.

"If an officer is going to be civilly liable, then that officer is going to think twice, which he or she should do before they use force against a civilian," he said, proposing a limited use of qualified immunity, as well as a "People First Policing Plan," in which he promises an "end to over-aggressive policing and racially discriminatory policing."

For starters, though, law enforcement may want to take heed to Kalyb's suggestion, made at a press conference in 2016: "Just don't handcuff children," he said. "That's it."