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Justices Turn Down Trio of Qualified Immunity Doctrine Cases

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The U.S. Supreme Court rejected three separate appeals involving the controversial doctrine of "qualified immunity," which shields government officials from liability for alleged rights violations—even egregious ones.

Advocates across the political spectrum have been clamoring for the court to curtail or even eliminate the doctrine that they say too often deprives civil rights plaintiffs of the ability to challenge abusive behavior by police and other public officials.

Officials can receive qualified immunity from suit if their alleged actions weren't "clearly established" violations of constitutional rights. That's had the effect of keeping even the most seemingly outlandish conduct out of court, so long as the specific factual allegations at issue hadn't previously been found by a court to be unlawful.

Monday's denials in three unrelated cases—from Nebraska, California, and Louisiana—show that the justices aren't ready to take on the issue. Not yet, anyway. At least 10 other petitions on the subject remain pending on the high court's docket.

The justices were initially set to consider 13 qualified immunity appeals at their private conference on Friday, including these three now declined. That raised speculation as to whether the court might be eyeing one or more of the petitions as a vehicle for taking up the doctrine that's been criticized not just by lawyers and academics, but even by some of the lower court judges bound to apply it.

Yet the court only wound up considering these three cases at the conference, putting the others on hold and, in turn, causing further confusion and speculation about its qualified immunity plans.

Thursday's conference

The rejection of these three cases doesn't make those plans clearer. After the denials, the justices put the remaining petitions back on for consideration at this Thursday's conference, so the next chapter in the high court's qualified immunity saga could be published by the court in an orders list next week.

Jay Schweikert of the Cato Institute deemed the denials "definitely a disappointment," pointing to what he called the "especially egregious applications of qualified immunity" in two of the

cases. In the Nebraska matter, a police officer received qualified immunity after allegedly body-slamming a small woman who walked away from him during an interview.

In the California case, officers allegedly stole $225,000 in cash and rare coins while executing a search warrant.

In successfully opposing high court review, the Nebraska officer observed in his brief to the justices that, "for more than 30 years, the Court has repeatedly emphasized that the objective reasonableness of a particular use of force by law enforcement must consider the totality of the facts within the perception of the officer at the scene."

He said he seized the woman in a "bear hug" and "brought her to the grass after she physically obstructed police operations, proceeded to move toward a person involved in a heated altercation with one of her family members, and ignored respondent's verbal instruction to return."

In fending off the California appeal, those officers told the justices that no theft took place, and that calls from outside groups, including Cato, to eliminate or curtail qualified immunity "should provide no support for review of this case."

Despite the closely-watched nature of the issue, none of the three denials prompted separate statements from any of the justices, including Justices Sonia Sotomayor and Clarence Thomas, who have suggested that the court further examine the issue.

Powder dry

That could show that some members of the court are keeping their powder dry for one or more of the still-pending petitions, or it could simply reinforce the court's lack of interest in taking up the issue for whatever reason.

As an example of the high court's thinking on the subject, in a 2017 ruling, the justices cautioned against second-guessing an officer's actions in a police-shooting case.

Still, some qualified immunity critics see hope on the docket.

Schweikert added that "the fact that the Justices denied these petitions doesn't necessarily mean they aren't still interested in revisiting qualified immunity." He noted the 10 outstanding petitions that were taken out of consideration from the justices' last conference.

Among those petitions, he said, are ones that "raise the fundamental question of whether the doctrine should be reconsidered entirely." Their rescheduling could "indicate that the Justices are *more* interested in addressing this larger question, rather than taking a narrower approach," Schweikert said.

But even if the court takes up one or more of the remaining petitions, it's unlikely that a "seismic shift is in the offing" when it comes to the immunity doctrine, said Kent Scheidegger, of the Criminal Justice Legal Foundation, who has filed many briefs over the years supporting the government at the high court in various cases.

"This is a well-established body of law," he said, and, unlike constitutional doctrine, "it is one that Congress could change any time if it wanted to."

The cases are Kelsay v. Ernst, U.S., No. 19-682, review denied 5/18/20; Jessop v. City of Fresno, U.S., No. 19-1021, review denied 5/18/20; and Clarkston v. White, U.S., No. 19-1093, review denied 5/18/20.