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Justices Won't Review Legal Protections For Police Officers. Justice Thomas Feels Differently.

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The US Supreme Court announced Monday that a majority of the justices once again voted against revisiting qualified immunity, the legal doctrine that protects police against being sued for excessive force and civil rights violations.

Justice Clarence Thomas was the exception, writing separately in a short dissent that he was ready to take on the issue, which has gotten fresh attention after the recent deaths of George Floyd, Breonna Taylor, and other Black men and women during encounters with law enforcement. No other justice joined him, however.

Under a series of Supreme Court decisions starting in the 1980s, law enforcement officers — and other government actors — who are sued over actions they take on the job can claim immunity if they didn't violate "clearly established" laws or constitutional rights that a "reasonable" person would be aware of at the time.

In practice, the qualified immunity defense has meant that even in cases where judges found that what a police officer did was unconstitutional or unlawful, cases were thrown out because that violation wasn't "clearly established."

Opponents of qualified immunity see abolishing the doctrine and letting police face civil lawsuits as a critical tool for holding law enforcement accountable for abuses of power. They note that state and local governments often end up paying judgments in cases where police lose. Police groups argue officers need freedom to respond to dangerous and fast-moving situations without worrying about a lawsuit later.

The Supreme Court on Monday denied petitions in seven cases where lower courts had dismissed claims against law enforcement officers who claimed qualified immunity. They included cases where officers were accused of releasing a police dog on a suspect who had surrendered; of shooting a 10-year-old child who was lying on the ground while the officer was aiming for a dog; and deploying tear gas inside a house after the officers had permission to enter.

The court also declined to hear an eighth case where a lower court ruled that officers who shot a 17-year-old boy was not entitled to immunity. According to the lower court decision, the boy was armed and holding a gun to his head, and he was shot without warning, causing him to fire on himself. Although the sides were flipped in that case, with the officers asking the justices to step in, it also involved a broad request that the court revisit how qualified immunity is applied in cases against law enforcement.

The court earlier this year denied other petitions in qualified immunity cases, including one that involved officers accused of stealing hundreds of thousands of dollars in cash and rare coins when they executed a search warrant.

Monday's orders mean the issue remains in limbo before the Supreme Court, but members of Congress are considering legislative fixes in the meantime. Rep. Justin Amash, a member of the Libertarian Party, and Rep. Ayanna Pressley, a Democrat, this month introduced a bill to end qualified immunity.

There are still two qualified immunity cases that the court could agree to hear during its next term, which starts in October.

In *Cooper v. Flaig*, Norman Cooper, a 33-year-old Black man, died after two police officers used a Taser on him nine times, according to court filings. Cooper was under the influence of drugs and experiencing an "acute mental health crisis," according to his family's lawyers, but they said he was unarmed and "never attempted to make physical contact with anyone."

A district judge denied immunity to the officers, but the US Court of Appeals for the 5th Circuit reversed that decision.

The other case, *Davis v. Ermold*, is about a lawsuit against Kim Davis, the former county clerk in Kentucky who refused to issue marriage licenses to same-sex couples; the doctrine of qualified immunity can broadly protect public employees, including police, from being sued. In Davis' case, she had asked the Supreme Court to step in after a lower court denied her immunity against a civil rights lawsuit.

Jay Schweikert, a policy analyst at the libertarian think tank the Cato Institute, told BuzzFeed News in an email that he didn't think it was likely the justices would use either of those cases to take up qualified immunity, however.

Schweikert is an opponent of qualified immunity who has been involved in urging the Supreme Court to abolish it. He noted that the court removed the Cooper and Davis cases from the list of petitions the justices considered the last time they met on June 11, and he said it's unlikely Thomas would have written a dissent if the court was getting ready to announce it would take up the issue.

"This is, to put it bluntly, a shocking dereliction of duty," Schweikert wrote, responding to the court's announcement. "As Cato has argued for years, qualified immunity is an atextual, ahistorical judicial invention, which shields public officials from liability, even when they break

the law. The doctrine not only denies justice to victims whose rights have been violated but also exacerbates our crisis of confidence in law enforcement."

Thomas wrote that qualified immunity, as federal courts apply it now, "appears to stray" from the text of the Civil Rights Act of 1871, the law that gave individuals the right to sue government actors for violating their constitutional rights.

The law doesn't mention immunity, Thomas wrote, and for the first 100 years it was in effect, the Supreme Court didn't find that state actors were entitled to immunity if they'd acted in "good faith."

Thomas wrote that there "may be no justification for a one-size-fits-all, subjective immunity based on good faith," and that he had "strong doubts" about the current state of qualified immunity.

"Given the importance of this question, I would grant the petition," he wrote.