



Amicus Briefs Support Veteran Beaten by Police To Get His Day Before U.S. Supreme Court

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This spring, the U.S. Supreme Court will consider whether to grant review in *Oliva v. Nivar*, a police accountability case. If review is denied, more than 20,000 federal police in Texas, Mississippi and Louisiana will be free to violate the Constitution, no matter how egregious their conduct.

José Oliva is a Vietnam veteran with a 25-year career in federal law enforcement. Five years ago, he was on his way to a dentist appointment at a Veterans Affairs hospital when three VA security guards attacked him in an unprovoked assault caught on video, choking José and tackling the 70-year-old man who posed no threat.

“It was three against one, and they had guns; I knew better than to resist,” José said when describing the assault.

Prosecutors refused to charge the officers, so José sued them in federal court for their violation of his Fourth Amendment rights by using excessive force. José won in the trial court, which held that the officers were not entitled to qualified immunity, but the 5th U.S. Circuit Court of Appeals held that because the officers worked for the *federal*—rather than state or local—government, they could not be sued for constitutional violations, no matter how outrageous their actions.

“There is no reason to treat federal law enforcement differently from its state and local counterparts,” said Patrick Jaicomo, an attorney for the Institute for Justice, which represents José. “Having this two-track system of accountability provides additional loopholes for avoiding a day in court, making it difficult to achieve meaningful reforms.”

“The Supreme Court has an opportunity here to make it clear that when federal law enforcement uses excessive force, they will face exactly the same consequences as those who happen to work for a state or a municipality,” said IJ Attorney Anya Bidwell, co-counsel in this case.

In addition to the Institute for Justice’s brief filed on behalf of José, a number of amicus (or “friend of the court”) briefs have been filed by notable scholars and public policy experts across various disciplines and philosophical outlooks, all of whom urge the Court to accept José’s case. These include:

- A brief on behalf of Peter Schuck. Prof. Schuck is the Simeon E. Baldwin Professor of Law Emeritus at Yale University. He is a legend in the field of constitutional

accountability. He wrote a treatise—*Suing Government: Citizen Remedies for Official Wrongs* (1983)—which became the foundational text on the subject and inspired many great legal minds to get involved in the field. In his brief, Prof. Schuck argues that the 5th Circuit’s decision denying José Oliva his day in court “departs radically from this Court’s established framework for evaluating damages claims against federal officials for constitutional torts, creating a split among the circuits.” Supreme Court review, therefore, is not only warranted but badly needed.

- A brief on behalf of Seth Stoughton. Prof. Stoughton is a former police officer, who, among other appointments, teaches at the University of South Carolina School of Law. He is a well-respected authority on the use of force issues that plague our nation today. According to his brief, the 5th Circuit is home to one of the largest federal law enforcement forces in the country. There are more than 18,000 federal law enforcement officers in Texas alone, with the 5th Circuit overall hosting more than 20,500 federal police. This means that if the 5th Circuit’s decision is allowed to stand, a constitutional remedy will “effectively be abolished exactly where it is most crucial.” In his brief, Prof. Stoughton urges the Supreme Court to take up this case and reverse the horrible holding that prevents José from getting his day in court.
- A brief that crosses philosophical boundaries on behalf of the ACLU, Cato Institute, DKT Liberty Project, and Law Enforcement Action Partnership. The brief argues that our current moment calls for a reevaluation of the excessive force jurisprudence and also for getting back to the original principles of this country’s founding, such as that where there is a right, there must be a remedy. The legal precedent in *Bivens*, in which the U.S. Supreme Court ruled that those in federal law enforcement could be held accountable for their actions, has proven to be one of the most powerful tools for remedying government abuses. The decision below in José’s case cannot be allowed to stand lest this tool be denied to those who most need it.

“We are grateful for the support of Professors Schuck and Stoughton, as well as ACLU, Cato, LEAP, and DKT,” said Scott Bullock, president and general counsel of the Institute for Justice. “It is incredible to have such commitment, especially at this early stage of the Supreme Court review. The Constitution is not an empty promise but provides vitally important constraints on government power. We ask the Supreme Court to grant review and make this absolutely clear to federal courts nationwide.”

This case is being litigated as part of the Institute for Justice’s Project on Immunity and Accountability, which seeks to hold government officials more accountable when they violate individual rights. As part of the Project, IJ will continue to fight against the many special protections that shield government officials from accountability.