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Supreme Court clears the way for Sonoma County deputy to be tried in shooting of boy holding a pellet gun

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The Supreme Court on Monday allowed parents to press ahead with a lawsuit against a Sonoma County sheriff's deputy who shot and killed their 13-year-old son as he walked on a sidewalk carrying a plastic pellet gun.

The justices without comment or dissent denied the county's appeal seeking immunity for the officer. The court's decision clears the way for the parents' wrongful-death suit to go before a jury.

In recent years, the high court has repeatedly shielded law enforcement officers from similar lawsuits alleging excessive force by extending a rule adopted in the 1980s that gave government officials "qualified immunity" from being sued over constitutional violations unless they did something that the court already had clearly defined as illegal and unconstitutional.

That standard has proved to be almost insurmountable for many victims of excessive police force. Legal scholars and the libertarian Cato Institute have argued that neither the Constitution nor federal law gives the high court this free-wheeling authority to grant immunity, and they have urged the justices to scale back use of the doctrine.

One man embodied the brilliance and eccentricity of the boundary-breaking scientist persona...

Until Monday's order in *Gelhaus vs. Lopez*, most of the time the justices have sided with police.

In April, the court by a 7-2 vote tossed out a lawsuit against an officer who shot a woman in Tucson as she was standing in her yard holding a large knife at her side. The officer came on the scene with two other officers and immediately decided the knife-wielding woman posed a threat to another woman who stood six feet away. The other woman later testified she lived with the shooting victim and did not feel threatened. But in *Kisela vs. Hughes*, the justices reversed the 9th Circuit Court of Appeals and ruled the shooting victim could not sue because no previous case "squarely governed" the situation.

Three years ago, the justices tossed out an excessive force lawsuit against two San Francisco officers who twice forced their way into the living quarters of a woman who had a mental disability. They shot her when she raised a kitchen knife. The justices by a 6-2 vote reversed the 9th Circuit and ruled, in *San Francisco vs. Sheehan*, that the officers were entitled to immunity.

Last year, the 9th Circuit cleared the way for the parents of Andy Lopez to sue Deputy Erick Gelhaus. Lawyers for Sonoma County had appealed and cited the ruling in the Arizona case as

grounds for granting immunity to the officer. They were joined by several California law enforcement groups, including the California State Sheriffs' Assn.

Monday's brief order turning down the appeal has the effect of affirming the 9th Circuit and allowing the suit to go before a jury.

The shooting of Lopez on an October afternoon on a sidewalk in Santa Rosa sparked protests and rallies five years ago. The 5-foot-3 boy was seen carrying a plastic gun that Gelhaus, an Iraq war vet, thought might be an AK-47.

He and another deputy were on patrol when they spotted the boy and pulled their car behind him. Gelhaus jumped from the car, crouched behind the door and shouted: "Drop the gun."

As Lopez turned toward him, Gelhaus fired eight shots and killed him.

No charges were brought against the deputy, but the boy's parents sued him, alleging an excessive use of force and a violation of the 4th Amendment's ban on "unreasonable seizures."

A federal judge in Oakland refused to grant immunity to Gelhaus. The 9th Circuit upheld that decision last year in a 2-1 decision.

Judge Milan D. Smith said the officer did not appear to face danger or an immediate threat to himself or others.

"Andy was walking normally ... in broad daylight in a residential neighborhood," and did not display "aggressive behavior," the judge wrote. Moreover, the deputy "deployed deadly force while Andy was on the sidewalk holding a gun that was pointed down at the ground," and "without having warned [him] that such force would be used," he said.

In a pretrial hearing, Gelhaus had testified that he thought the boy's gun was being raised when Gelhaus fired. In dissent, Judge Clifford Wallace of the 9th Circuit said the suit should have been dismissed because the officer "reasonably believed that Andy was carrying an AK-47."

Noah Blechman, an attorney for Sonoma County, said he was "very disappointed in the outcome. The county will explore all options to move this case to a final resolution."