



Courts Grant Qualified Immunity to Cops in More Than Half of Cases When Invoked

C.J. Ciaramella

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Federal appeals courts regularly grant police officers immunity from civil rights lawsuits under a doctrine known as "qualified immunity." According to a Reuters [investigation](#) published today, they grant it in more than half the cases where it is invoked.

Reuters analyzed 252 federal appellate opinions from 2015 to 2019 where law enforcement defendants claimed qualified immunity. The courts ruled in the police's favor in 57 percent of the cases.

They have done this more often in recent years, establishing what Reuters calls a "growing tendency, influenced by guidance from the Supreme Court, to grant police immunity." The courts also increasingly avoid ruling on whether the alleged conduct violated the Constitution, "thereby avoiding establishing a precedent for future cases and making it harder to win cases against the police."

Under the 50-year-old doctrine of qualified immunity, police and other government employees are shielded from lawsuits where the civil right they allegedly infringed hasn't been "clearly established," or where a reasonable officer wouldn't have known about it.

The investigation comes as the U.S. Supreme Court will decide whether to hear 13 different petitions concerning qualified immunity at a conference later this month. The high number may be a sign that the justices are finally ready reconsider the doctrine.

On its face, qualified immunity is supposed to protect public officials from frivolous lawsuits related to their official job duties, but the confusing precedent has been construed so pedantically by some courts that plaintiffs must find precedents that match the exact circumstances of their case. Qualified immunity effectively short-circuits civil litigation against individual police officers, ensuring that the cases never make it to trial or settlement.

Reason Foundation (the nonprofit that publishes this website), the Cato Institute, and the American Civil Liberties Union (ACLU) have all filed petitions and amicus briefs asking the Supreme Court to review the current standard for qualified immunity.

Reason has written extensively about how qualified immunity protects individual police officers from liability in case of clearly excessive and abusive conduct. Most recently, a U.S. District Court judge in South Dakota granted qualified immunity to several police officers who forced plaintiffs to undergo involuntary catheterizations—despite finding that the practice violated the Fourth Amendment—because there wasn't a "robust consensus" on the constitutionality of cops and nurses holding down suspected drug users and shoving tubes up their urethras.

Last September, the Ninth Circuit Court of Appeals ruled that Fresno police officers accused of stealing more than \$225,000 while executing a search warrant were protected by qualified immunity. A month before that, a Ninth Circuit panel granted qualified immunity to an officer who without warning shot a 15-year-old holding an airsoft gun.

"Under the circumstances, a rational finder of fact could find that [Officer Michael] Gutierrez's use of deadly force shocked the conscience and was unconstitutional under the Fourteenth Amendment," the panel wrote. But "because no analogous case existed at the time of the shooting, the district court erred by denying Gutierrez qualified immunity for this claim."

The Reuters analysis found about three dozen cases where courts found that police violated plaintiffs' constitutional rights but nonetheless granted them qualified immunity:

Outside of Dallas, Texas, five officers fired 17 shots at a bicyclist who was 100 yards away, killing him, in a case of mistaken identity. In Heber City, Utah, an officer threw to the ground an unarmed man he had pulled over for a cracked windshield, leaving the man with brain damage. In Prince George's County, Maryland, an officer shot a man in a mental health crisis who was stabbing himself and trying to slit his own throat.

The ACLU's Supreme Court petition is on behalf of Alexander Baxter, a Nashville man who was bitten by a police dog while he had his hands in the air, surrendering. Baxter sued, alleging excessive force, but the 6th Circuit Court of Appeals ruled in 2018 that it wasn't clear using a police dog to apprehend him while his hands were raised was unconstitutional.

Sitting members of the federal judiciary have also assailed the doctrine. U.S. Circuit Judge Don Willett wrote in a 2018 decision that "to some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the first to behave badly."

There are some sympathetic ears on the Supreme Court for overhauling, or at least reconsidering, qualified immunity. Justice Clarence Thomas wrote in 2017 that the doctrine should be revisited, while Justice Sonia Sotomayor has bemoaned its effects on lawsuits over police misconduct.

"Such a one-sided approach to qualified immunity transforms the doctrine into an absolute shield for law enforcement officers, gutting the deterrent effect of the Fourth Amendment,"

Sotomayor wrote in a 2018 dissent. "It tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished."