



Supreme Court Bolsters Police Immunity In Face Of Criticism

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The U.S. Supreme Court on Monday granted qualified immunity to several police officers accused of civil rights violations, indicating that despite growing criticism, the qualified immunity doctrine is here to stay, an expert said.

In a pair of summary rulings Monday morning, the justices said that the Ninth and Tenth Circuits were wrong to deny a liability shield to California and Oklahoma police officers facing civil rights lawsuits for kneeling on a suspect's back and fatally shooting a hammer-wielding suspect, respectively. In both cases, the high court said the courts of appeals had relied on factually dissimilar precedents in holding that the officers' conduct violated the suspects' clearly established rights. There were no recorded dissents.

Qualified immunity shields law enforcement and other government officials from being held liable for violating people's rights unless it was "clearly established" that the misconduct was illegal. To show that it was clearly established, the Supreme Court has required plaintiffs to point to binding precedent involving factually similar situations.

The doctrine has come under staunch criticism from across the ideological spectrum in recent years, most notably **from Justice Clarence Thomas**, a staunch originalist and textualist who shuns so-called judge-made doctrines. Other critics say it has little basis in common law or statutory law and can be exceedingly difficult to overcome, and has the effect of protecting police misconduct.

The Supreme Court's rare **reversal** of qualified immunity in favor of a Texas prison inmate's civil rights lawsuit last year led some to believe that the justices would change their approach under the doctrine. But the justices have otherwise rejected numerous petitions challenging the basis of qualified immunity, and Monday's decisions send a strong message, according to Jay Schweikert of the Cato Institute.

"The message that the court is sending is that they're not going to reconsider any fundamental aspect of qualified immunity and that they are reaffirming the basic idea that in most cases, overcoming qualified immunity will require finding a prior case with nearly identical facts," Schweikert told Law360 in an interview on Monday. "That was the reasoning in both of these decisions. They're very similar opinions."

"I think [Monday's rulings] are important because of how ordinary they are, rather than because the cases themselves are displaying any sort of surprising or novel reasoning about qualified immunity," he added.

One of the cases decided Monday involved a November 2016 incident in which Union City, California, police officers responded to a 911 call from a 12-year-old girl saying that she and her mother were barricaded in a bathroom to protect themselves from her mother's boyfriend, Ramon Cortesluna, who the girl said was trying to saw through the door.

After Cortesluna complied with orders to leave the house, police saw that he had a knife in his pocket. Cortesluna claims that police officers shouted conflicting directions and fired a beanbag shotgun before Officer Daniel Rivas-Villegas applied excessive force by shoving him to the ground with his foot and placing his knee on the suspect's back while another officer handcuffed him.

The Supreme Court said Monday that the Ninth Circuit was wrong to find that Rivas-Villegas violated Cortesluna's clearly established constitutional rights while kneeling on his back. The Ninth Circuit had relied on its own precedent, called LaLonde vs. County of Riverside, in which the court found in favor of a plaintiff who was lying facedown and not resisting when an officer placed a knee on their back, allegedly causing injury.

But the Supreme Court said Monday that the facts of the LaLonde decision were not similar enough to Cortesluna's case, citing its own qualified immunity decisions holding that specificity is paramount in adjudicating excessive force claims.

"In LaLonde, officers were responding to a mere noise complaint, whereas here they were responding to a serious alleged incident of domestic violence possibly involving a chainsaw," the Supreme Court said, although Cortesluna's attorney insists there was no chainsaw. "In addition, LaLonde was unarmed. Cortesluna, in contrast, had a knife protruding from his left pocket for which he had just previously appeared to reach."

"On the facts of this case, neither LaLonde nor any decision of this court is sufficiently similar," the court said. "For that reason, we grant Rivas-Villegas' petition for certiorari and reverse the Ninth Circuit's determination that Rivas-Villegas is not entitled to qualified immunity."

Cortesluna's attorney, Robert Howie of Howie & Smith LLP, objected to the Supreme Court's characterization of events. He said the situation "had cooled" since the arrival of the officers and that Cortesluna's stance was "completely passive."

Howie said that basing an officer's liability on their "knowledge of constitutional limits set by

prior defining cases involving specific fact situations is a problematic solution for a rule on its face."

"A solution is needed," he said. "Like the rules of exclusion of evidence, civil liability of public entities provides the pressure to establish a viable instruction for police officers."

Also on Monday, the court said that Tahlequah, Oklahoma, police officers did not violate the clearly established rights of Dominic Rollice when they fatally shot him after he allegedly raised a hammer as if to attack them during a domestic dispute call. The Tenth Circuit said that a jury could have found that, by cornering Rollice, the officers could have recklessly created the situation that led to the shooting.

Once again, the Supreme Court said that the Tenth Circuit had relied on too dissimilar cases to hold that the officers could be found liable for civil rights violations.

The court said the Tenth Circuit primarily relied on its own 1997 in Allen v. Muskogee to find that the officers acted unlawfully by recklessly creating a situation requiring deadly force. But, the Supreme Court said, "The officers in Allen responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to physically wrest a gun from his hands." By contrast, the court said, the officers in this case "engaged in a conversation with Rollice, followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer."

"Not one of the decisions relied upon by the Court of Appeals ... comes close to establishing that the officers' conduct was unlawful," the high court said.

An attorney for Rollice's estate, David M. Shapiro of the Roderick & Solange MacArthur Justice Center, said in a statement Monday, "We are certainly disappointed with the result, and we are considering possible next steps."