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## Supreme Court says East Bay cop can't be sued for kneeling on prone suspect

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An Alameda County man cannot sue a policeman who knelt on his back while he lay on the ground awaiting arrest after reportedly threatening his girlfriend and her daughter, the U.S. Supreme Court ruled Monday in a case involving the hotly disputed “qualified immunity” doctrine for law enforcement officers.

The high court reversed a lower-court ruling that would have allowed Ramon Cortesluna to seek damages from the Union City officer. Justices relied on a rule the Supreme Court established in 1982 that protects police from liability — even if they violated an individual’s rights — unless those rights were “clearly established” and would have been known to any reasonable officer.

“To show a violation of clearly established law, Cortesluna must identify a case that put (Officer Daniel) Rivas-Villegas on notice that his specific conduct was unlawful,” the court said in an unsigned, unanimous decision. Because the only case Cortesluna’s attorneys and the lower court cited was factually different, the justices said, “Rivas-Villegas is entitled to qualified immunity because he did not violate clearly established law.”

Citing the same doctrine, the Ninth U.S. Circuit Court of Appeals in San Francisco ruled in 2019 that Fresno police could not be sued for allegedly stealing \$226,000 they had seized with a search warrant, because no previous cases had declared such conduct illegal.

Advocates of greater police accountability have called on Congress to repeal qualified immunity. The House of Representatives passed repeal measures last year and this year, but both died in the Senate.

Unless Congress acts, “police officers and other public officials will continue to evade responsibility for violating people’s constitutional rights,” Jay Schweikart of the libertarian Cato Institute said Monday. He was responding to both the Cortesluna case and another unanimous

Supreme Court decision dismissing a suit by the family of an Oklahoma man, Dominic Rollice. Rollice was shot and killed while holding a hammer over his head after officers confronted him in a garage.

In the Union City case, a 12-year-old girl called police one night in November 2016 and said she, her 15-year-old sister and their mother were barricaded in their room because Cortesluna, her mother's boyfriend, had a chain saw and was going to attack them. Five officers arrived and knocked on the door. They said Cortesluna came out, holding a metal object in his hands, but dropped it when ordered to do so.

Seeing a knife in his pocket, police ordered him to get down and raise his hands, and when he instead lowered his head and kept his hands at his sides, an officer shot him twice with pellets. As he was falling, Rivas-Villegas pushed him to the ground with his foot, then knelt on his back for about eight seconds before handcuffing him and pulling him up by the handcuffs. Cortesluna later pleaded guilty to a misdemeanor charge.

A Ninth Circuit panel ruled in October 2020 that Rivas-Villegas could be sued for excessive force, noting that Cortesluna was lying prone, visibly injured, and was not resisting when the officer knelt on him. The panel said a 2000 Ninth Circuit ruling in a Riverside County case would have put the officer on notice that his conduct was illegal.

But the high court said Monday the Riverside case was different: The man in that case was unarmed when an officer knelt on him, causing visible injuries, and police had been responding to a complaint about noises. Cortesluna, by contrast, had a knife in his pocket, the justices said, and the complaint had indicated a threat of domestic violence.

That distinction was disputed by Cortesluna's attorney, Robert Howie, who said his client had already been shot twice with pellets, was not reaching for the knife and "was completely passive" when Rivas-Villegas knelt on him.

Qualified immunity removes incentives for police and government agencies to learn and follow the law, Howie said, and "a solution is needed."

There was no immediate response from Union City or its lawyers.