

In the
Supreme Court of the United States



JESSICA PITTS, OFFICER, ET AL.,

Petitioners,

v.

TAYLOR BURKE, AS SPECIAL ADMINISTRATOR
OF THE ESTATE OF THOMAS GAY, DECEASED,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit**

**BRIEF OF AMICUS CURIAE
NATIONAL SHERIFFS' ASSOCIATION
IN SUPPORT OF PETITIONERS**

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IDENTITY AND INTEREST OF THE AMICUS CURIAE¹

THE NATIONAL SHERIFFS' ASSOCIATION (the "NSA") is a non-profit association formed under 26 U.S.C. 501(c)(4). Formed in 1940 the NSA seeks to promote the fair and efficient administration of criminal justice throughout the United States and in particular to advance and protect the Office of Sheriff throughout the United States. The NSA has over 13,000 members and is the advocate for 3,083 sheriffs throughout the United States.

The NSA also works to promote the public interest goals and policies of law enforcement throughout the nation. It participates in the judicial process where the vital interests of law enforcement and its members are affected.

¹ This brief was not authored in whole or in part by counsel for any party. No person or entity other than amicus made a monetary contribution to this brief's preparation or submission. Counsel of record for all of the parties received notice of amicus curiae's intention to file an amicus brief at least 10 days prior to the deadline to file the brief.



SUMMARY OF ARGUMENT

Qualified immunity is critical for public safety. It allows peace officers to protect the public by making split-second decisions without fear of legal ramifications where the law is not clearly established as to what may violate a person's Constitutional rights. Qualified immunity protects taxpayer funds earmarked for public safety by dismissing debatable cases where the law is unclear without the need for protracted discovery and litigation, depriving taxpayers of their funds needed for public safety.

Peace officers are shot almost on a daily basis in this country. They have mere seconds to make life or death decisions. They do not have the luxury of time for a legal analysis and comparison of prior cases with similar facts. Officers must be able to defend their lives within seconds of being confronted with probable deadly threats. Qualified immunity allows officers this leeway.

The relevant inquiry here is whether existing precedent placed the conclusion that Officer Pitts acted unreasonably in these circumstances "beyond debate." If not, then qualified immunity protects actions in the hazy border between excessive and acceptable force. Based on the highly volatile and dangerous nature of the encounter in the instant case, and the lack of precedent with similar facts finding that the use of deadly force in such a situation is unlawful, qualified immunity should have been granted.



ARGUMENT

I. Qualified Immunity Is Critical to Law Enforcement.

Qualified immunity is an immunity to a civil lawsuit that protects peace officers from suit so long as their conduct does not violate clearly established law or constitutional rights of which a reasonable officer would have known. Qualified immunity allows officers to respond to incidents in the field and rely on the current state of the law in making decisions. Qualified immunity does not prevent individuals from recovering damages from law enforcement officers who knowingly violate an individual's constitutional rights. It only prevents debatable lawsuits where the constitutional validity of a particular action was not known at the time.

Qualified immunity protection is important because peace officers are often called upon to make split-second decisions in the field. Then, long after the incident is over, a court, attorneys, legal scholars, and experts will be called upon to decide whether what the officer did, at that very instance, violated someone's Constitutional rights. To make things more difficult, Federal Courts of Appeal across the country often come to different conclusions on whether something is actually a constitutional violation. Even members of the U.S. Supreme Court have frequently disagreed in 5 to 4 decisions as to whether something violates the Constitution.

To retroactively punish a peace officer for conduct that he or she had no way of knowing at the time that such conduct would later be found to violate

the Constitution would be wrong. Fundamental fairness requires that peace officers not be subject to civil monetary judgments for conduct that they would not have known violates the Constitution or in situations where it was not clearly established that their conduct would violate the Constitution.

Denying qualified immunity protection for peace officers in questionable cases is likely to have negative consequences for law enforcement in America. First, persons will be less likely to begin a career with, or remain in, the law enforcement profession, if they know that at any given moment an action that they have taken could subsequently be declared unconstitutional, without warning. And this could result in them being subject to a money judgment for all of their worldly possessions.

Additionally, the denial of qualified immunity in close cases may lead to peace officers refusing to take any action unless it has been declared constitutional prior to the action being taken. Given the speed at which incidents occur and the numerous variations on whether an action could subsequently be deemed unconstitutional, necessary law enforcement activity would most likely be significantly chilled if qualified immunity is denied even where the law is unclear.

Ultimately the denial of qualified immunity where the law is unclear will not only impact law enforcement directly, but also law enforcement's ability to provide public safety to society as a whole. If law enforcement officers are afraid to do their job for fear of a lawsuit at every decision, public safety will suffer. Officers will hesitate to protect their lives or the lives of innocent citizens for fear of repercussions. Tax dollars earmarked for public safety will be used to defend questionable lawsuits that could otherwise be used for public safety.

Therefore, where the law pertaining to a specific factual scenario is not clear, qualified immunity should apply to protect law enforcement from prolonged discovery and litigation. And as explained below, the present case is a prime example of a situation where the law was anything but “clearly established.”

II. Law Enforcement Must Make Split-Second Decisions to Protect Themselves from Deadly Threats.

Law enforcement officers protect the public by putting themselves in harm’s way on a daily basis and, sometimes, multiple times per day. They encounter violent, resisting subjects who may be mentally ill, high on drugs, and/or simply dangerous people intent on harming officers.

Just as to gun violence, since the start of 2021, over 2000 police officers have been shot in the line of duty. National Fraternal Order of Police Press Release, 05 January 2026, *Violence Against Officers in 2025*. Almost daily in 2025 a law enforcement officer was shot in this country. *Id.* This statistic does not even cover the number of officers killed or injured by knives, impact weapons, vehicles or other weapons.

Given these statistics, officers are trained to react instantly to potential weapon threats to stay alive. Besides training and knowledge of these threats, officers’ survival instincts provide automatic reactions to a potentially deadly threat. These reactions may occur in less than one second. During that time, the officer must process perceiving the suspect’s movement, interpreting the action, deciding on a response, and executing the response. Time is of the essence as there are no second place prizes in a gunfight.

In order for peace officers to survive and perform their duties, they must be able to make split-second decisions to protect themselves against likely imminent deadly threats without the threat of civil liability. Qualified immunity provides that protection. Yet courts continually try to overcome the qualified immunity defense by defining “clearly established law” at too high a level of generality as in the present case.

This Court has ruled that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (May 15, 1989). The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving, about the amount of force that is necessary in a particular situation. *Id.* at 396-97.

III. The Law Must Be Clearly Established with Respect to the Particular Circumstances of the Case.

The doctrine of qualified immunity shields officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Mullenix v. Luna*, 577 U.S. 7, 11, *citing*, *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)). A clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right. *Mullenix v.*

Luna, 577 U.S. at 11, *citing*, *Reichle v. Howards*, 566 U.S. 658, 664, 132 S. Ct. 2088, 182 L. Ed. 2d 985, 989 (2012). Courts do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate. *Mullenix v. Luna*, 577 U.S. at 12, *citing*, *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011). Put simply, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. *Mullenix v. Luna*, 577 U.S. at 12, *citing*, *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986).

This Court has repeatedly told courts not to define clearly established law at a high level of generality. *Mullenix v. Luna*, 577 U. S. at 12, *citing*, *al-Kidd*, *supra*, at 742, 131 S. Ct. 2074, 179 L. Ed. 2d 1149. The dispositive question is whether the violative nature of particular conduct is clearly established. *Mullenix v. Luna*, 577 U.S. at 12. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition. *Id.*, *citing*, *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S. Ct. 596, 160 L. Ed. 2d 583 (2004) (per curiam) (quoting *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001)). Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. *Mullenix v. Luna*, 577 U.S. at 12, *citing*, 533 U.S. at 205, 121 S. Ct. 2151, 150 L. Ed. 2d 272.

The relevant inquiry here is whether existing precedent placed the conclusion that Officer Pitts acted unreasonably in these circumstances “beyond debate.”

Mullenix v. Luna, 577 U.S. at 13-14. If not, then qualified immunity protects actions in the “hazy border between excessive and acceptable force.” *Mullenix v. Luna*, 577 U.S. at 18, *citing*, *Brosseau*, 543 U.S., at 201, 125 S. Ct. 596, 160 L. Ed. 2d 583 (quoting *Saucier*, 533 U.S., at 206, 121 S. Ct. 2151, 150 L. Ed. 2d 272).

IV. The Law Was Not Clearly Established in This Volatile, Dangerous Situation.

In the instant case, an officer was confronted with a subject who was behaving erratically, was sweating profusely and was bug-eyed, and was not reacting to officers’ presence. The subject may have been on drugs according to his father, failed to respond to verbal deescalation or repeated taser strikes, and who pushed one of the officers away and had a brief skirmish with officers. In addition, the subject was aggressively approaching the officer in close quarters in a rapidly evolving situation, and was known to have been repeatedly reaching for something in his back pocket (possibly a weapon) and who reached for something in his back pocket upon approaching the officer at the time of the shooting.

For qualified immunity to have been rightfully denied, then any reasonable officer in that position, with mere seconds to decide, would have understood that using deadly force was unlawful; and every officer in that position would have been plainly incompetent or knowingly breaking the law by using deadly force, or would have intentionally been violating the law; and, would have known the law in that situation was beyond debate, all in the span of seconds. The courts below did not identify one case in the 10th Circuit or this Court where such facts clearly established that the

use of deadly force would be unlawful. Universally police are trained to anticipate that a volatile, combative subject reaching for something in his pockets or waistband may be reaching for a weapon. Accordingly, qualified immunity was wrongfully denied.



CONCLUSION

Based on the facts of this case, officers were entitled to qualified immunity. Their split-second actions to stop a likely lethal threat were not clearly established to be a violation of the Constitutional right against excessive force. As such, amicus prays that this Court find officers did not violate decedent's Constitutional right. Alternatively, amicus prays that this Court grant petitioners' Petition for Certiorari and review the case on the merits.

Respectfully submitted,

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