

Supreme Court issues unanimous decision defending police in fatal shooting

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The US Supreme Court unanimously ruled Tuesday in favor of three Arkansas police officers who fired 15 bullets at a fleeing motorist and his passenger, killing both.

With a vote of nine justices to zero, the Supreme Court held in *Plumhoff v. Rickard* that the officers did not use excessive force and were entitled to “qualified immunity.” A judge-made doctrine with no basis in the Constitution, “qualified immunity” operates to bar civil rights lawsuits that challenge official misconduct. The authoritarian doctrine already results in large numbers of cases being arbitrarily thrown out of court every year, never to be decided by a jury.

The Supreme Court issued its decision in *Plumhoff* in the midst of a rising tide of police killings and violence around the country. Awash with “war on terror” funding and armed to the teeth with military hardware, police in America increasingly operate without restraint and without any conception of basic democratic and legal rights.

Earlier this year in Albuquerque, New Mexico, a police officer was captured on video shooting a homeless man eight times with an assault rifle and saying, “booyah.” This month, bystanders filmed the police gunning down an unarmed man in Long Beach, California. The population confronts an epidemic of similar incidents of police brutality across the country, with the police on average committing between one and two “justifiable homicides” every day.

Tuesday’s decision, authored by Justice Samuel Alito, is a green light for the killings to continue, and it sends a clear signal to the lower courts throughout the country to consider in every case whether police officers should be entitled to “immunity” from the Constitution and from any consequences for their actions.

The Supreme Court’s unanimous opinion reverses the decisions of the Sixth Circuit Court of Appeals as well as

the federal district court that first heard the case, both of which had denied qualified immunity to the officers. The lawsuit was brought on behalf of the deceased driver’s surviving daughter, who argued that the officers had used excessive force in violation of the Fourth Amendment, part of the Bill of Rights.

On July 18, 2004, an officer from the West Memphis, Arkansas Police Department approached a car at a gas station because the car had only one headlight working. The car was being driven by Donald Rickard, with Kelly Allen in the passenger seat. The officer asked for Rickard’s driver’s license. Instead of providing it, Rickard drove away and was pursued by the officer. Five police cars eventually joined the chase.

Eventually Rickard lost control of the car, spun out, and came to a stop. The police attempted to box him in with their cars. When Rickard attempted to maneuver his car to continue fleeing, one officer shot him three times. As he drove away, two other officers fired 12 times into the rear of the car. Likely because Rickard was struck repeatedly by bullets, the car crashed into a building. Rickard and Allen both died from the gunshot wounds and the subsequent car crash.

The Supreme Court’s decision is written entirely in the language of police jargon. No sympathy or compassion is expressed for the two human beings who lost their lives, who are simply labeled “suspects.” Alito tersely dismisses the issue of excessive force under the Fourth Amendment by reasoning that because “Rickard’s flight posed a grave public safety risk,” the “police acted reasonably in using deadly force to end that risk.”

This formula, which is not to be found anywhere in the Constitution, essentially provides for the summary public execution of any person that the police decide is a “grave public safety risk.” In Rickard’s case, it was apparently a “grave public safety risk” to allow someone to escape who was driving with only one operable headlight, and

who had refused to produce a driver's license.

Alito also rejected the argument that 15 shots under the circumstances was excessive: "It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." This idea that the police can open fire whenever they feel "threatened," and they can keep blasting away until they feel "the threat has ended," coincides with increasing numbers of officers being equipped with military-style assault rifles and submachine guns.

With respect to the innocent passenger who was killed, the Supreme Court went out of its way to blame Allen's death on Rickard. "After all," Alito wrote, "it was Rickard who put Allen in danger by fleeing and refusing to end the chase, and it would be perverse if his disregard for Allen's safety worked to his benefit." This logic echoes the attitude of the US military to civilian casualties, which are always blamed on the target's alleged use of "human shields."

According to the doctrine of "qualified immunity," police officers cannot be held responsible for violating laws that are not "clearly established." Under this doctrine, the Supreme Court announced that it was not clearly established that "using lethal force to end a high-speed car chase" would be unconstitutional. Accordingly, Alito wrote, the officers "are entitled to qualified immunity for the conduct at issue because they violated no clearly established law."

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In fact, as recently as 1985, in a case called *Tennessee v. Garner*, the Supreme Court wrote: "The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape... It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead."

The Supreme Court cites the *Tennessee v. Garner* case, but avoids quoting from it. Instead, the justices cite at length from the growing list of authoritarian decisions handed down over the recent period, which by increments have expanded the doctrine of qualified immunity and weakened constitutional protections. In this sense, the *Plumhoff* decision gives an impression of how far things

have already gone, with decision after decision over the past decade rolling back and eliminating basic rights.

Also on Tuesday, the Supreme Court also released a decision in an important free speech case. In that case, *Wood v. Moss*, the Secret Service had arbitrarily and forcibly moved a 2004 anti-Bush demonstration away from the area where the president had stopped for an impromptu dinner, while at the same time leaving a pro-Bush demonstration undisturbed. The anti-Bush protesters argued that the attack on their demonstration violated the First Amendment's protection of free speech, but the Supreme Court upheld the attack under the doctrine of "qualified immunity."

By way of a rationale, the *Wood* decision simply repeats over and over that the protesters were "within grenade-throwing" distance of the president; that the protesters "remained within weapons range of, and had a direct line of sight to, the President's location;" that "200 to 300 protesters were within weapons range." Some of the deep fear with which the ruling class regards the population shines through in these phrases. No evidence was ever presented that any of the anti-Bush protesters had weapons or violent intentions.

In the course of the *Wood* case, a White House manual emerged that had instructed local officials "work with the Secret Service. .. to designate a protest area. .. preferably not in view of the event site or motorcade route." This policy resembles nothing so much as the practice under the *ancien regime* in France of making sure the unwashed rabble was kept out of sight of the carriages of the aristocracy as they were passing through.

The *Plumhoff* and *Wood* decisions represent further steps in the dismantling of democratic forms of rule and the buildup of a police state in the United States.



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