

US Supreme Court expands immunity for killer cops

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With the death toll from police brutality continuing to mount, the US Supreme Court on Monday issued a decision expanding the authoritarian doctrine of “qualified immunity,” which shields police officers from legal accountability.

When a civil rights case is summarily dismissed by a judge on the grounds of “qualified immunity,” the case is legally terminated. It never goes to trial before a jury and is never decided on its constitutional merits.

In March of 2010, Texas Department of Public Safety Trooper Chadrin Mullenix climbed onto an overpass with a rifle and, disobeying a direct order from his supervisor, fired six shots at a vehicle that the police were pursuing. Mullenix was not in any danger, and his supervisor had told him to wait until other officers tried to stop the car using spike strips. Four shots struck Israel Leija, Jr., killing him and causing the car, which was going 85 miles per hour, to crash. After the shooting, Mullenix boasted to his supervisor, “How’s that for proactive?”

The *Luna v. Mullenix* case was filed by Leija’s family members, who claimed that Mullenix used excessive force in violation of the Fourth Amendment, part of the Bill of Rights. The district court that originally heard the case, together with the Fifth Circuit Court of Appeals, denied immunity to Mullenix on the grounds that his conduct violated clearly established law. The Supreme Court intervened to uphold Mullenix’s entitlement to immunity—a decision that will set a precedent for the summary dismissal of civil rights lawsuits against police brutality around the country.

This is the Supreme Court’s response to the ongoing wave of police mayhem and murder. The message is clear: The killings will continue. Do not question the police. If you disobey the police, you forfeit your life.

So far this year, more than 1,000 people have been killed by the police in America. Almost every day, there are new videos posted online showing police shootings,

intrusions into homes and cars, asphyxiations, beatings and taserings.

Last week, two police officers in Louisiana opened fire on Jeremy Mardis, a six-year-old autistic boy, and his father Chris Few. The boy’s father had his hands up during the shooting and is currently hospitalized with serious injuries. His son succumbed to the police bullets while still buckled into the front seat of the car.

The Supreme Court’s decision reflects the fact that in the face of rising popular anger over police killings, the entire political apparatus—including all of the branches of government—is closing ranks behind the police. This includes the establishment media, which has largely remained silent about Monday’s pro-police Supreme Court decision.

The police operate with almost total impunity, confident that no matter what they do, they will have the backing of the state. Two weeks ago, a South Carolina grand jury refused to return an indictment against the officer who was caught on video killing 19-year-old Zachary Hammond. This follows the exoneration of the police who killed Michael Brown in Ferguson, Missouri, Eric Garner in New York City and Tamir Rice in Cleveland.

The Obama administration’s position regarding the surge of police violence was most clearly and simply articulated by FBI director James Comey in a speech on October 23. “May God protect our cops,” Comey declared. He went on to accuse those who film the police of promoting violent crime. Meanwhile, in virtually every police brutality case that has come before the federal courts, the Obama administration has taken the side of the police.

On Monday, the Supreme Court went out of its way to cite approvingly an *amicus curiae* (friend of court) brief filed by the National Association of Police Organizations (NAPO), which defended Mullenix. With this citation, notwithstanding its ostensible role as a neutral arbiter and

guarantor of the Constitution, the Supreme Court sent a clear signal as to which side it is on.

During the imposition of de facto martial law in Ferguson last year, NAPO issued statements vociferously defending Michael Brown's killer, labeling demonstrators as "violent outsiders," and denouncing "the violent idiots on the street chanting 'time to kill a cop!'"

"Qualified immunity" is a reactionary doctrine invented by judges in the later part of the 20th century to shield public officials from lawsuits. As a practical matter, this doctrine allows judges to toss out civil rights cases without a jury trial if, in the judge's opinion, the official misconduct in question was not "plainly incompetent" or a "knowing violation of clearly established law."

Over recent decades, the doctrine has been stretched to Kafkaesque proportions to shield police officers from accountability. In the landmark case of *Tennessee v. Garner* (1985), the Supreme Court held that it violates the Constitution to shoot an "unarmed, nondangerous fleeing suspect," and required an imminent threat of death or serious bodily injury before the police could open fire. But the Supreme Court in its decision on Monday dismissed this language as constituting a "high level of generality" that was not "particular" enough to "clearly establish" any particular constitutional rights.

Since cases that are dismissed on the grounds of qualified immunity do not result in decisions on the constitutional issues, this circular pseudo-logic ensures that no rights will ever be "clearly established." It also ensures that, instead of the democratic procedure of a jury trial, cases involving the police will be decided by judges.

The Supreme Court issued Monday's decision without full briefing or oral argument, designating it "per curiam," i.e., in the name of the court, not any specific judges.

Justice Antonin Scalia filed a concurring opinion, displaying his trademark sophistry. According to Scalia, Mullenix did not use "deadly force" within the meaning of the Supreme Court's prior cases, since he was shooting at a car, not a person. (Four bullets struck Leija, but none of the six shots struck the engine block at which Mullenix was supposedly aiming.)

Justice Sonia Sotomayor filed the sole dissent, noting that this decision "renders the protections of the Fourth Amendment hollow," and sanctions a "shoot first, think later" approach to policing. However, Sotomayor wrote that she would have used a "balancing" analysis instead, in which a "particular government interest" would need to be "balanced" against the use of deadly force. This

"balancing" rhetoric mirrors the Obama administration's justifications for assassination and domestic spying, according to which national security is balanced against democratic rights.

The Bill of Rights itself—that old, yellow, forgotten piece of paper—does not make itself contingent on the subjective mental states of police officers, "clearly established law," or the "balancing" of "government interests."

America confronts a massive social crisis. Decades of endless war and occupations abroad, the degradation of wages and living conditions at home, the enrichment of a tiny layer of financial criminals at the expense of the rest of the society, rampant speculation and corruption at the highest levels—these factors contribute to mounting social tensions and the danger, from the standpoint of the ruling class, of the growth of social opposition. Such opposition can already be seen, in its earliest stages, in the struggle by autoworkers against the sellout contract being imposed by the United Auto Workers union.

Like the tyrant who proposes to solve the problem of hunger by imposing a hefty fine on everyone who starves, the Supreme Court's decision Monday confirms that the entire social system has nothing to offer by way of a solution to the crisis except more of the same.

The abrogation of democratic rights, torture, military commissions, drone assassinations, unlimited surveillance, the lockdown of entire cities, internment camps, beatings, murder, martial law, war—this is how the ruling class plans to deal with the social crisis. Notwithstanding the epidemic of police violence, the flow of unlimited cash and military hardware to police departments from the Department of Homeland Security and the Pentagon continues unabated.

The buildup of the police as a militarized occupation force operating outside the law, pumped up and ready to kill, must be seen as a part of preparations by the ruling class for mass repression and dictatorship in response to the growth of working class opposition.



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