

US Supreme Court grants police wide immunity when using excessive force

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The US Supreme Court established an interpretation of qualified immunity this week that effectively grants police legal impunity to use lethal force at will. The court ruled 7 to 2 on Monday that an Arizona police officer who shot a woman outside her own home from the other side of a fence could not be sued on claims that he used excessive force.

The case, *Kisela v. Hughes*, goes beyond previous cases of its kind. The court's decision was unsigned and issued without a full briefing or oral argument, indicating the majority found the decision easy to come to.

In a strongly worded dissent, Associate Justice Sotomayor, joined only by Associate Justice Ruth Bader Ginsburg, said that the court "routinely displays an unflinching willingness to summarily reverse courts for denying officers qualified immunity," but rarely intervenes where courts wrongly grant officers immunity in such cases.

"Such a one-sided approach to qualified immunity transforms the doctrine into an absolute shield for law enforcement officers, gutting the deterrent effect of the Fourth Amendment," she said.

In its opinion, the court's majority found that the officer was entitled to qualified immunity, a legal doctrine that states officers are immune from lawsuits over violations of constitutional rights as long as they don't "violate clearly established statutory or constitutional rights of which a reasonable person would have known."

In May 2010, Tucson, Arizona, police received a "welfare check" call indicating a woman was "acting erratically" and hacking at a tree with a large kitchen knife. When officers arrived at the scene, Hughes, who officers did not know had a history of mental illness, was not moving, appeared calm and was holding the

knife at her side, away from her roommate Sharon Chadwick.

According to Kisela's testimony, the three officers at the scene did not know Chadwick was Hughes's roommate and felt that Hughes was an immediate threat to Chadwick. The three officers on the scene, including Kisela, drew their weapons immediately. In quick succession, Hughes was given two commands to drop the knife, but it is not clear that she heard them.

Chadwick said "Take it easy" to the officers and Hughes before Kisela dropped to the ground and shot Hughes four times through a chain link fence. Hughes fell to the ground, screaming, "Why did you shoot me?" The officers then jumped the fence, handcuffed Hughes, and called paramedics, who transported her to a hospital. The incident unfolded in less than a minute.

Chadwick later said she never felt endangered or threatened by Hughes. Despite this, the court said Kisela acted reasonably, on the grounds that Hughes was carrying a kitchen knife and standing six feet away from another woman and that she failed to drop the knife when ordered.

Hughes survived the shooting and sued Kisela for violating her Fourth Amendment rights, which in this context protects against excessive force. The US Court of Appeals for the Ninth Circuit previously overturned a ruling of a lower District court, allowing the lawsuit to continue, but the Supreme Court overturned the ruling of the appeals court, ending Hughes's suit.

The majority did not decide whether or not Kisela's actions were unconstitutional but stated that "[f]or even assuming a Fourth Amendment violation occurred—a proposition that is not at all evident—on these facts Kisela was at least entitled to qualified immunity."

In contrast to the majority, Sotomayor wrote: "Because Kisela plainly lacked any legitimate interest

justifying the use of deadly force against a woman who posed no objective threat of harm to officers or others, had committed no crime, and appeared calm and collected during the police encounter, he was not entitled to qualified immunity.”

Citing precedent, the majority stated the question of whether an officer used excessive force depends on “the facts and circumstances of each particular case,” whether the suspect is an immediate threat to officers or others. The ruling added, “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”

The majority’s language is only shy of an open defense of police officers using excessive force for any reason. By stating the perspective of an officer is more consequential than objective facts, or the 20/20 vision of hindsight, the highest court in the country is all but endorsing officers’ use of excessive and deadly force.

The decision comes amid protests over the fatal shooting of an unarmed black man by Sacramento police, with demonstrators demanding accountability for the officers who killed 22-year-old Stephon Clark outside his grandmother’s house last month.

The Supreme Court has ruled in favor of officers in a multitude of excessive force cases in recent years, often reversing lower court decisions that deny officers immunity. In 2014, the Supreme Court, with the support of the Obama administration, unanimously granted immunity to Arkansas police officers who killed an unarmed driver and his innocent passenger in a hail of bullets. In 2015, the court also granted immunity to a Texas state trooper who fired into a suspect’s car during a high-speed chase, despite being ordered not to do so.

In her concerned dissent, Sotomayor stated that the ruling “sends an alarming signal to law enforcement and the public.” “It tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished,” she concluded.



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