

## U.S. Supreme Court Again Cautions Against Using Overly Generalized Cases to Find That “Clearly Established Precedent” Precludes Qualified Immunity

*City of Tahlequah v. Bond and Rivas-Villegas v. Cortesluna*

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Qualified immunity protects officers from civil liability, provided their conduct does not violate citizens’ clearly established rights. Case law typically establishes when an officer’s conduct violates “clearly established rights.” This week, the United States Supreme Court reiterated in a pair of cases that “clearly established law” means facts specific to the situation in which the officers were involved. Overly generalized precepts gleaned from different factual situations do not clearly establish the law officers must follow.

In the first case, *Rivas-Villegas v. Cortesluna*, officers responded to a call that a woman and her children were barricaded in a room and that her boyfriend, Cortesluna, was trying to hurt them with a chainsaw. When Cortesluna came to the door, officers instructed him to drop his weapon and he complied. After telling him to get on his knees, officers saw he had a knife in his pocket. Cortesluna was told to keep his hands up. When he lowered them, an officer shot him twice with a beanbag round. Officers then told Cortesluna to get on the ground. The defendant officer briefly straddled Cortesluna with his left knee on Cortesluna’s back while he raised up Cortesluna’s arms behind his back. Cortesluna was in that position for no more than eight seconds.

Cortesluna sued under § 1983, alleging the officer applied excessive force and violated Cortesluna’s civil rights. The district court held the officer was entitled to qualified immunity and granted him summary judgment. The Ninth Circuit reversed, holding that “existing precedent put him on notice that his conduct constituted excessive force.” For the “existing precedent,” the court relied on one of its own cases, *LaLonde v. County of Riverside*.

The U.S. Supreme Court reversed, explaining that *LaLonde*, which was factually distinguishable from this case, did not give the officer notice that his specific conduct was unlawful, even “assuming that controlling Circuit precedent clearly establishes law for purposes of § 1983.” To show clearly established law, a plaintiff must identify a case that puts the officer on notice that the officer’s *specific* conduct was unlawful. Further, by “assuming” that circuit precedent could constitute clearly established law, the Court seemed to signal that circuit precedent might not be sufficient to constitute “clearly established law” for purposes of qualified immunity. The Court repeatedly referenced the absence of specific Supreme Court case law with these specific facts.

The Court similarly held that qualified immunity applied in the second case, *City of Tahlequah v. Bond*. There, police responded to a domestic dispute. Rollice, the caller’s ex-husband, grabbed a hammer from his tool bench while he was speaking to the officers. The officers drew their weapons and ordered him to drop the hammer. Instead, he raised the hammer over his head as if he might throw the hammer or charge the officers. Two officers fired their weapons, killing him.

Rollice’s estate sued under § 1983, alleging excessive force and a civil rights violation. The district court granted summary judgment for the officers, finding the use of force reasonable and that the officers were entitled to qualified immunity even if the use of force was not reasonable. The Tenth Circuit reversed, holding that qualified immunity did not apply because several cases clearly established that their conduct was unlawful.

Again the Supreme Court reversed, holding that qualified immunity shielded the officers. As in *Cortezluna*, the Court reiterated that clearly established law cannot be defined at too high of a level of generality and the cases on which the Tenth Circuit had relied were factually distinguishable. Because neither the Tenth Circuit majority nor the plaintiff had identified any precedent that found a Fourth Amendment violation under similar circumstances, the officers were entitled to qualified immunity.

These cases remind lower courts that to deny qualified immunity requires factually similar cases, perhaps from the U.S. Supreme Court, to create “clearly established” precedent.

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