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Supreme Court to Rule on Police Shooting Case: Excessive Force and Qualified Immunity

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Imagine waking up to your front door opening and being shot multiple times, then finding out the individuals who shot you are protected by qualified immunity. In October 2010, the Mendezes were taking (http://www.scotusblog.com/wp-content/uploads/2016/11/16-369-op-below-9th-cir.pdf) an afternoon nap when they awoke to the sound of their front door opening, followed by the piercing blasts of fifteen gunshots. Five bullets punctured Mr. Mendez's body, leading to the amputation of his lower left leg. His pregnant girlfriend, now wife, Jennifer, was shot once and a second bullet grazed her hand. On the other side of those bullets stood two Los Angeles County Sheriff's Department deputies. The deputies were on the property aiding in the search of a wanted parolee.

In the darkness of the room (http://www.scotusblog.com/wp-content/uploads/2016/11/16-369-op-below-9th-cir.pdf), the deputy saw a silhouette of a man with what he believed to be a rifle, and yelled, "gun!" The "rifle" was actually a BB gun used to kill pests. This is not a completely novel occurrence, and such incidents usually result with officers being individually protected from suit by qualified immunity. Yet

this case is different because the District Court for the Central District of California and the Ninth Circuit Court of Appeal held the two deputies individually liable under the Ninth Circuit's "Provocation Rule." On March 22, 2017, the Supreme Court heard oral arguments for *Los Angeles County, Cal. v. Mendez* (http://www.scotusblog.com/wp-content/uploads/2017/01/16-369-merits-petitioner.pdf). A case that has the potential to provide clarity on the issue of excessive force claims protected by qualified immunity.

> *"The Provocation Rule establishes that law enforcement officers are entitled to qualified immunity from damages, unless the officer intentionally or recklessly provokes a violent confrontation. If the provocation is an independent Fourth Amendment violation, officers may be held liable for their otherwise defensive use of deadly force."*

Although the home in this case (http://www.scotusblog.com/wp-content/uploads/2016/11/16-369-op-below-9th-cir.pdf) might appear unconventional, it was where the Mendezes lived for ten months. Their home is referred to as a wooden "shack" in briefs, but even so, the Fourth Amendment protects "shacks." The Mendezes filed suit against the deputies under 42 U.S.C. § 1983 (https://www.law.cornell.edu/uscode/text/42/1983), alleging their Fourth Amendment rights had been violated by an unreasonable search and seizure. The district court held the deputies' warrantless entry into the shack was a search within the Fourth Amendment and it was not justified by any exigent circumstances or any exceptions to the warrant requirement. The district court also held that the deputies violated the Fourth Amendment knock-and-announce rule by staying silent when they opened the door.

The district court (http://www.scotusblog.com/wp-content/uploads/2016/11/16-369-op-below-9th-cir.pdf) decided that the deputies' shooting was not excessive force under *Graham v. Connor* (https://supreme.justia.com/cases/federal/us/490/386/), however, the court awarded damages under the Ninth Circuit's Provocation Rule. The Provocation Rule establishes that law enforcement officers are entitled to qualified immunity from damages, unless the officer intentionally or recklessly provokes a violent confrontation. If the provocation is an independent Fourth Amendment violation, officers may be held liable for their otherwise defensive use of deadly force. The district court concluded that the deputies' shooting the Mendezes was not excessive force because their mistaken fear upon seeing the BB gun and reacting was objectively reasonable. However, the deputies' were held individually liable because of the prior Fourth Amendment violation and awarded the Mendezes roughly $4 million in damages for the shooting, nominal damages of $1 each for the unreasonable search and the knock-and-announce violation, and attorneys' fees.

The Ninth Circuit agreed (http://www.scotusblog.com/wp-content/uploads/2016/11/16-369-op-below-9th-cir.pdf) and held the deputies violated clearly established Fourth Amendment law by entering the wooden shack without a warrant. The deputies argued that the reaction from Mr. Mendez with the BB gun was not a violent confrontation because he was simply moving it, thus the rule did not apply. The Ninth Circuit held the Provocation Rule only required that the deputies' unconstitutional actions created the situation, which led to the shooting and required the deputies to use force that might have otherwise been reasonable.

The Supreme Court granted partial certiorari (http://www.scotusblog.com/case-files/cases/county-of-los-angeles-v-mendez/) and heard oral arguments on two issues, one of those issues was whether the Ninth Circuit's "Provocation Rule" should be barred because it potentially conflicts with current case law.

In *Graham* (https://supreme.justia.com/cases/federal/us/490/386/), the Supreme Court held an objectively reasonable standard applies when analyzing the facts and circumstances of excessive force claims such as this. The reasonableness standard is from a reasonable officer on the scene rather than applying 20/20

hindsight or looking at any underlying motivation. The Court reasoned that the "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."

In a more recent case, *Scott v. Harris* (https://www.supremecourt.gov/opinions/06pdf/05-1631.pdf), the Supreme Court applied the same objective reasonableness standard, but also looked at the series of events that lead to the force applied by the officer. The Court analyzed the actions of the injured party and held his behavior caused the officer to employ the high level of force, thus the Court found the officers actions were reasonable under the circumstances.

Currently, a circuit split exists (http://www.scotusblog.com/wp-content/uploads/2017/01/16-369-merits-petitioner.pdf) regarding the Ninth Circuit's Provocation Rule. The deputies argue that *Graham* applies and that officers need to be free to make split-second choices to respond to threats of force without stopping to replay their prior actions and evaluate whether someone might later accuse them of provoking the situation. Although this is true, some argue that officers should also be required to follow the Constitution in the first place and held liable if they cause the force to be used. The holding in *Scott* supports this type of analysis. While *Graham* allows for qualified immunity by looking to what an objectively reasonable officer would do in the situation, the Mendezes propose that *Scott* also be applied for a totality of the circumstances approach.

The Proposed "Mendez Test"

The Mendezes propose (http://www.scotusblog.com/wp-content/uploads/2017/02/16-369-respondents-merits-brief.pdf) that the Supreme Court not adopt the Ninth Circuit's Provocation Rule, but instead adopt a new rule regarding excessive force and qualified immunity. The Mendezes propose that when courts are resolving excessive force claims, that "courts may entertain a claim that police action foreseeably created the need for the use of force against a claimant and should apply to the police action the general standard of reasonableness established by *Graham* and *Scott*."

"The Mendezes argue that by applying both cases, consideration would also be given to the 'relative culpability' of the various actors involved and all issues would be evaluated from the perspective of 'a reasonable officer on the scene.'"

Under *Graham* (http://www.scotusblog.com/wp-content/uploads/2017/02/16-369-respondents-merits-brief.pdf), to decide if the prior police action was reasonable "a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake" is required. The Mendezes (http://www.scotusblog.com/wp-content/uploads/2017/02/16-369-respondents-merits-brief.pdf) argue that by applying both cases, consideration would also be given to the "relative culpability" of the various actors involved and all issues would be evaluated from the perspective of "a reasonable officer on the scene." The purposed test differs from the Provocation Rule because it requires "objectively unreasonable conduct instead of an independent constitutional violation."

Here, the lower courts recognized (http://www.scotusblog.com/wp-content/uploads/2017/02/16-369-respondents-merits-brief.pdf) that when the deputies saw the BB gun, their use of force was reasonable and not excessive. However, the deputies being there without a warrant and not announcing their presence was not reasonable. The deputies ultimately caused the situation and its escalation, and they knew they did not have a search warrant. Furthermore, Mr. Mendez would have been justified and not liable for shooting the deputy under California Penal Code § 198.5 (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=198.5.). A California law that allows an individual to use force to protect his or her own home and which many states also have in their books.

How can both parties shoot one another and not be held liable? This is exactly what the Supreme Court can clear up by applying and implementing the proposed Mendez test. Police should not have to run through a checklist while dealing with an emergency situation, however that is why exceptions to the warrant requirement exist. This law would allow for innocent individuals to seek redress when officers so blatantly violate the Fourth Amendment and it leads to irreparable harm, and would hold officers individually liable for their actions.

The argument against the Provocation (http://www.scotusblog.com/wp-content/uploads/2017/01/16-369-merits-petitioner.pdf) Rule is that officers will be held personally liable if they commit even the slightest Fourth Amendment violation and that officers won't be able to make the quick decisions that are often necessary. Another argument originates from the reason that qualified immunity exists in the first place. Qualified immunity (https://www.law.cornell.edu/wex/qualified_immunity) protects government actors from individual liability in lawsuits without having to go through trial. It holds officers accountable when they act irresponsibly, but it also protects officers from lawsuits while acting reasonably. The Provocation Rule is at odds with qualified immunity in this case because here the officers were acting reasonably when they opened fire, however they did not act reasonably when looking at all of the facts in their entirety. The deputies put themselves in the situation, which lead to the unnecessary shooting of two innocent individuals. The deputies caused the shooting by not having a warrant or announcing their presence. This should be taken into consideration and qualified immunity should not protect those who fall into this category.

If the Supreme Court does not adopt the Mendez test, or uphold the Provocation Rule, the deputies in this case and others in the future will not be held individually responsible for their violations of the Fourth Amendment. However, if the Court wants to change the way officers enforce the Constitution, it should adopt the Mendez test to deter police officers from violating the constitution and hiding behind qualified immunity.

CATEGORIES GGU LAW REVIEW • TAGS 4TH AMENDMENT, CONSTITUTION, LAPD, LOS ANGELES COUNTY, MENDEZ, NINTH CIRCUIT, POLICE, POLICE OFFICER, POLICESHOOTING, PROVOCATION RULE, QUALIFIED IMMUNITY, SUPREME COURT