

Legal Sidebar

Qualified Immunity for a Police Shooting

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[White v. Pauly](#) is the Supreme Court's first qualified immunity decision this year. The Court has agreed to review several [others](#). In *White*, a unanimous per curiam decision, the Court overturned a lower court's denial of immunity for an officer who had shot and killed the armed occupant of a home. In the Supreme Court's view, the Officer White's conduct did not violate clearly established law and thus was entitled to qualified immunity.

As a [general rule](#), police officers enjoy immunity from civil liability for conduct committed in the course of the performance of their duties. Unless the facts suggest an exception, officers are entitled to pre-trial dismissal of civil suits rising out of the official conduct. The immunity extends even to instances where the officer's conduct is unconstitutional or otherwise unlawful as long as the conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would have been aware." The "clearly established" law need not be directly on point but must place the question beyond debate so that the immunity "protects all but the plainly incompetent or those who knowingly violate the law."

White began with the police investigation of a night-time, road rage incident involving Daniel Pauly. Although they did not believe they had grounds to arrest Pauly, two officers decide to go to his house to get his side of the story and to determine whether he may have been driving while intoxicated. Pauly lived with his brother in a house situated on a hill behind another larger house. The officers, Mariscal and Truesdale, drove up to the unlit main house and parked. They crept in the rain toward the second house using their flashlights only intermittently. The officers found Pauly's truck parked in front and saw two men moving about inside the house, at which point they radioed Officer White to join them.

[When](#) the brothers became aware that someone was outside, they yelled several times, "who are you?" and "what do you want?" "The officers laughed and said: 'Hey, (expletive), we got you surrounded. Come out or we're coming in.'" If the officers identified themselves, the brothers did not hear it. Instead, the brothers retrieved firearms and announced they had guns. Daniel Pauly fired warning shots out the backdoor. Samuel Pauly opened a front window and pointed a pistol in the direction of Officer White, who had arrived by then and was crouched behind a stone wall, 50 feet away. Officer White shot Samuel Pauly through the window and killed him.

Samuel Pauly's father [sued](#) the three officers under [42 U.S.C. §1983](#), alleging the officers had used excessive force to "seize" Samuel Pauly in violation of his Fourth Amendment rights. Officer White claimed self-defense. The officers moved for summary judgment on the basis of qualified immunity, which the district court denied. They appealed and the U.S. Court of Appeals for the Tenth Circuit [affirmed](#). One member of the panel [dissented](#) on the ground that in light of Officer White's later arrival his action was not contrary to clearly established law. The Supreme Court agreed with the dissent in a per curiam [opinion](#).

Under [prevailing law](#) to qualify as "clearly established," an existing precedent need not be directly on point, but it must be beyond debate. In this instance, the Court [pointed out](#) the Tenth Circuit had "failed to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment." The circuit court had relied instead on cases describing the general principles relating to the use of excessive force. The Supreme Court [emphasized](#) the level of specificity necessary to satisfy the "clearly established" standard:

Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer second-guess the earlier steps already taken by his or her fellow officers in instances like the one White confronted here.

The Court explicitly left [unaddressed](#) the question of whether clear established law might deny qualified immunity for Officers Mariscal and Truesdale, a point which Justice Ginsburg reiterated in her concurring [opinion](#).

Qualified immunity is a creature of common law, which in the context of Section 1983 cases Congress is free to codify, modify, or reject.

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