Police Prosecutor Update

Issue No. 349
October/November 2021

Probable Cause and nexus to crime needed in Forfeiture cases

Olympic Financial Group Inc v State, No. 21A-CR-1017 (Ind. Ct. App. 9/17/21)

Olympic is a reminder of what is needed in a forfeiture case. And to tighten up your investigations and documentation when a forfeiture is involved.

On April 19, 2021, two couriers working for Olympic were in the process of driving from Vermont to Minneapolis with $709,880 in cash. While on I-65 in Jasper County, they were pulled over by an officer for alleged unsafe lane movement. After the officer confirmed that both occupants had a valid license and no warrants, he began asking them about their travel plans, which did not, by his PC documentation "make sense" to the officer. Eventually, the officer obtained consent to search the vehicle and he forcibly opened a suitcase on the back seat which contained the money. Nothing illegal was found, although a drug K-9 later alerted on the vehicle. Olympic Financial Group is a "Money Services Business" registered with the Treasury Department, and which, as part of its legitimate business model, frequently transports large amounts of physical currency across the United States to various bank locations. No arrests were made, but the currency was seized. A "pad" test of the money the next day revealed that there was illegal drug residue on some of it. That same day, attorneys for Olympic emailed law enforcement about their ownership of the money and the trial court also found probable cause for seizing the money. The case is unclear of what crime the trial court found probable cause was found for.

After Olympic filed a demand for return of the money, the State filed a motion to turn over the money to the federal government for potential forfeiture. The motion did not mention that Olympic claimed ownership of the money and the trial court granted the turnover the same day the request was filed without holding a hearing.

The Court of Appeals reversed the turnover order, finding a lack of probable cause to connect the cash to any criminal activity that would justify seizure of the cash. It noted that possession of large amounts of cash is not by itself illegal. Additionally, no other contraband was found in the vehicle, despite the dog's alert, and the couriers had valid licenses and were never charged with any crimes. As for the potential drug residue found on some of the cash, "Without knowing how many positive indications for drug residue were found on the currency, the mere presence of drug residue on currency in a suitcase in someone's vehicle cannot on its own establish a nexus between the currency and criminal activity."

Because of no probable cause for seizing the money, the Court held that Olympic was entitled to immediate reimbursement of the full amount under Ind. Code § 34-24-1-2(b). Due to this case, you should likely anticipate heightened scrutiny from the US Attorney's Office before they accept a future forfeiture turnover case.

This is a publication of Indiana Prosecuting Attorneys Council which will cover caselaw and various topics of interest to law enforcement officers. Please direct any questions or suggestions you may have for future issues to Rick Frank, Drug Resource Prosecutor at IPAC – RickFrank@ipac.in.gov

"Breaking" definition clarification and Skilled Witness guidance

Wilburn v. State, No. 20A-CR-1709 (Ind. Ct. App. 9/20/21)

Just before a liquor store in Huntington was set to close, a man wearing all black entered the store. He assaulted the store cashier and robbed $150 from the cash register. Police apprehended Anthony Wilburn a few blocks away from the store, based on the cashier's description. A black hoodie jacket was found nearby that likely had Wilburn's DNA on it and the liquor store had an infrared-assisted security camera outside the entrance that captured the robber walking in. ISP Sergeant Timothy Dolby, who had taken an 8-hour course in infrared photography as part of his crime scene investigator training, compared the security camera footage with infrared photographs he had taken of the boots and pants Wilburn was wearing when he was caught. He testified that the boots and pants in both the footage and the photographs appeared to have white markings on them that were not visible in normal lighting. A jury found Wilburn guilty of both F2 burglary and F3 robbery, but the trial court only entered judgment of conviction on the burglary.

The Court of Appeals reversed the burglary conviction and ordered that judgment be entered on the robbery instead. Discussing an issue that had never been addressed in Indiana: the COA held that a person who enters a business establishment during normal hours of operation through an unlocked public entrance **does not break into the building** and, therefore, does not commit burglary. "It is clear that a business owner invites members of the public into the establishment during operating hours and, thus, consents to the entry into the establishment through public, unlocked doors."

The opinion also addressed whether Sergeant Dolby properly testified as a "skilled witness" in describing the infrared camera evidence – guidance that could help in admitting future skilled witness testimony. The COA noted that such witnesses are governed by Ind. Evidence Rule 701, not 702, and there is a "relatively low bar" in admitting skilled witness testimony. "As a result of specialized training in infrared photography, Sergeant Dolby possessed knowledge beyond that of the average juror regarding infrared-assisted surveillance cameras and infrared photography. They added that Sgt. did not testify about any scientific principles behind infrared photography like a 702 witness might – just that the clothing items could be similar.

---------And speaking of ***Possession with Intent/701 witnesses*** – that topic and MUCH MORE is on the agenda for the annual IPAC WINTER CONFERENCE coming up in just a couple weeks. Are you registered? If not, it's not too late! Visit https://www.in.gov/ipac/ipac-training/ for more information and registration link!

LEOs: See two important cases issued by the United States Supreme Court in October concerning allegations of excessive force and good discussions on qualified immunity. They are both attached to this email.

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Lastly – Have a happy and safe Thanksgiving Holiday!

Keep your head on a swivel and be safe.

THIS MONTH's AVOIDING SUPPRESSIONs TIPs

- ✓ **KNOW YOUR STANDARDS:**
- ✓ **Reasonable Suspicion**: Needed for traffic stops; brief investigatory stops, trash pulls: "Reasonable suspicion entails some minimal level of objective justification for making a stop, something more than an unparticularized suspicion or hunch, but less than the level of suspicion required for probable cause." *State v. Campbell*, 905 N.E.2d 51, 54 (Ind. Ct. App. 2009)
- ✓ **Probable Cause**: Needed for an arrest; most searches; search warrants: "the substance of the definition of probable cause is a reasonable ground for belief of guilt and this belief of guilt must be particularized with respect to the person to be searched or seized." *White v. State*, 24 N.E.3d 535, 539 (Ind. Ct. App. 2015).
- ✓ **Preponderance**: More likely than not; 51/49; Mostly used in civil trials.
- ✓ **Beyond a Reasonable Doubt**: Standard for a jury/judge in a criminal trial: "A reasonable doubt is an actual and substantial doubt arising from the evidence, from the facts or circumstances shown by the evidence, or from the lack of evidence on the part of the state, as distinguished from a doubt arising from mere possibility, from bare imagination, or from fanciful conjecture." *Jackson v. State*, 657 N.E.2d 131, 137-138 (Ind. Ct. App. 1995).

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User Name: Rick Frank
Date and Time: Tuesday, November 23, 2021 9:22:00 AM EST
Job Number: 158432873

Document (1)

1. *City of Tahlequah v. Bond, 211 L. Ed. 2d 170*

Client/Matter: -None-
Search Terms: City of Tahlequah v. Bond, 211 L. Ed. 2d 170
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Cases	-None-

City of Tahlequah v. Bond

Supreme Court of the United States

October 18, 2021, Decided

No. 20-1668.

Reporter

211 L. Ed. 2d 170 *; 2021 U.S. LEXIS 5310 **; 29 Fla. L. Weekly Fed. S 24; __ S.Ct. __; 2021 WL 4822664

CITY OF TAHLEQUAH, OKLAHOMA, ET AL. v. AUSTIN P. BOND, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF DOMINIC F. ROLLICE, DECEASED

Notice: The pagination of this document is subject to change pending release of the final published version.

Prior History: [1]** ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Bond v. City of Tahlequah, 981 F.3d 808, 2020 U.S. App. LEXIS 37488, 2020 WL 7038287 (10th Cir. Okla., Dec. 1, 2020)

Core Terms

qualified immunity, garage, hammer

Case Summary

Overview

HOLDINGS: [1]-It was unnecessary to decide whether police officers violated the Fourth Amendment in the first place, or whether recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment. On this record, the officers plainly did not violate any clearly established law. The officers engaged in a conversation with the decedent, followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer and took a stance as if he was about to throw the hammer or charge at the officers, and the officers then shot and killed the decedent. Neither the panel majority nor respondent had identified a single precedent finding a Fourth Amendment violation under similar circumstances. The officers were thus entitled to qualified immunity.

Outcome

Judgment reversed. Per curiam opinion.

LexisNexis® Headnotes

Civil Rights Law > Protection of Rights > Immunity From Liability > Defenses

Torts > Public Entity Liability > Immunities > Qualified Immunity

HN1[] **Immunity From Liability, Defenses**

The doctrine of qualified immunity shields officers from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of

which a reasonable person would have known. Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.

Civil Rights Law > Protection of Rights > Immunity From Liability > Defenses

Torts > Public Entity Liability > Immunities > Qualified Immunity

HN2[] **Immunity From Liability, Defenses**

Courts have been repeatedly told not to define clearly established law at too high a level of generality. It is not enough that a rule be suggested by then-existing precedent; the rule's contours must be so well defined that it is clear to a reasonable officer that the officer's conduct was unlawful in the situation the officer confronted. Such specificity is especially important in the *Fourth Amendment* context, where it is sometimes difficult for an officer to determine how the relevant legal doctrine will apply to the factual situation the officer confronts.

Judges: Roberts, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett.

Opinion

[*171] PER CURIAM.

On August 12, 2016, Dominic Rollice's ex-wife, Joy, called 911. Rollice was in her garage, she explained, and he was intoxicated and would not leave. Joy requested police assistance; otherwise, "it's going to get ugly real quick." *981 F. 3d 808, 812 (CA10 2020)*. The dispatcher asked whether Rollice lived at the residence. Joy said he did not but explained that he kept tools in her garage.

Officers Josh Girdner, Chase Reed, and Brandon Vick responded to the call. All three knew that Rollice was Joy's ex-husband, was intoxicated, and would not leave her home.

Joy met the officers out front and led them to the side entrance of the **[*172]** garage. There the officers encountered Rollice and began speaking with him in the doorway. Rollice expressed concern that the officers intended to take him to jail; Officer Girdner told him that they were simply trying to get him a ride. Rollice began fidgeting with something in his hands and the officers noticed that he appeared nervous. Officer Girdner asked if he could pat Rollice down for weapons. Rollice refused. **[**2]**

Police body-camera video captured what happened next. As the conversation continued, Officer Girdner gestured with his hands and took one step toward the doorway, causing Rollice to take one step back. Rollice, still conversing with the officers, turned around and walked toward the back of the garage where his tools were hanging over a workbench. Officer Girdner followed, the others close behind. No officer was within six feet of Rollice. The video is silent, but the officers stated that they ordered Rollice to stop. Rollice kept walking. He then grabbed a hammer from the back wall over the workbench and turned around to face the officers. Rollice grasped the handle of the hammer with both hands, as if preparing to swing a baseball bat, and pulled it up to shoulder level. The officers backed up, drawing their guns. At this point the video is no longer silent, and the officers can be heard yelling at Rollice to drop the hammer.

He did not. Instead, Rollice took a few steps to his right, coming out from behind a piece of furniture so that he had an unobstructed path to Officer Girdner. He then raised the hammer higher back behind his head and took a stance as if he was about to throw the **[**3]**

hammer or charge at the officers. In response, Officers Girdner and Vick fired their weapons, killing Rollice.

Rollice's estate filed suit against, among others, Officers Girdner and Vick, alleging that the officers were liable under 42 U. S. C. §1983, for violating Rollice's Fourth Amendment right to be free from excessive force. The officers moved for summary judgment, both on the merits and on qualified immunity grounds. The District Court granted their motion. Burke v. Tahlequah, 2019 U.S. Dist. LEXIS 165858, 2019 WL 4674316, *6 (ED Okla., Sept. 25, 2019). The officers' use of force was reasonable, it concluded, and even if not, qualified immunity prevented the case from going further. *Ibid.*

A panel of the Court of Appeals for the Tenth Circuit reversed. 981 F. 3d, at 826. The Court began by explaining that Tenth Circuit precedent allows an officer to be held liable for a shooting that is itself objectively reasonable if the officer's reckless or deliberate conduct created a situation requiring deadly force. Id., at 816. Applying that rule, the Court concluded that a jury could find that Officer Girdner's initial step toward Rollice and the officers' subsequent "cornering" of him in the back of the garage recklessly created the situation that led to the fatal shooting, such that their ultimate use of deadly force was unconstitutional. **[**4]** Id., at 823. As to qualified immunity, the Court concluded that several cases, most notably Allen v. Muskogee, 119 F. 3d 837 (CA10 1997), clearly established that the officers' conduct was unlawful. 981 F. 3d, at 826. This petition followed.

We need not, and do not, decide **[*173]** whether the officers violated the Fourth Amendment in the first place, or whether recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment. On this record, the officers plainly did not violate any clearly established law.

HN1[↑] The doctrine of qualified immunity shields officers from civil liability so long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Pearson v. Callahan, 555 U. S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009). As we have explained, qualified immunity protects "'all but the plainly incompetent or those who knowingly violate the law.'" District of Columbia v. Wesby, 583 U. S. ___, ___ - ___, 138 S. Ct. 577, 199 L. Ed. 2d 453, 456 (2018) (quoting Malley v. Briggs, 475 U. S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986)).

HN2[↑] We have repeatedly told courts not to define clearly established law at too high a level of generality. See, *e.g.*, Ashcroft v. al-Kidd, 563 U. S. 731, 742, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011). It is not enough that a rule be suggested by then-existing precedent; the "rule's contours must be so well defined that it is 'clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" Wesby, 583 U. S., at ___, 138 S. Ct. 577, 199 L. Ed. 2d 453, at 467 (quoting Saucier v. Katz, 533 U. S. 194, 202, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001)). Such specificity is "especially important **[**5]** in the Fourth Amendment context," where it is "sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." Mullenix v. Luna, 577 U. S. 7, 12, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (*per curiam*) (internal quotation marks omitted).

The Tenth Circuit contravened those settled principles here. Not one of the decisions relied upon by the Court of Appeals—Estate of Ceballos v. Husk, 919 F. 3d 1204 (CA10 2019), Hastings v. Barnes, 252 Fed. Appx. 197 (CA10 2007), Allen, 119 F. 3d 837, and Sevier v. Lawrence, 60 F. 3d 695 (CA10 1995)—comes close to establishing that the officers' conduct was unlawful. The Court relied most heavily on Allen. But the facts of Allen

are dramatically different from the facts here. The officers in *Allen* responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to physically wrest a gun from his hands. *119 F. 3d, at 841*. Officers Girdner and Vick, by contrast, engaged in a conversation with Rollice, followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer. We cannot conclude that *Allen* "clearly established" that their conduct was reckless or that their ultimate use of force was unlawful.

The other decisions relied upon by the Court of Appeals are even less relevant. As for *Sevier*, that decision merely noted in dicta that deliberate or reckless preseizure **[**6]** conduct can render a later use of force excessive before dismissing the appeal for lack of jurisdiction. See *60 F. 3d, at 700-701*. To state the obvious, a decision where the court did not even have jurisdiction cannot clearly establish substantive constitutional law. Regardless, that formulation of the rule **[*174]** is much too general to bear on whether the officers' particular conduct here violated the *Fourth Amendment*. See *al-Kidd, 563 U. S., at 742*. *Estate of Ceballos*, decided after the shooting at issue, is of no use in the clearly established inquiry. See *Brosseau v. Haugen, 543 U. S. 194, 200, n. 4, 125 S. Ct. 596, 160 L. Ed. 2d 583 (2004)* (*per curiam*). And *Hastings*, an unpublished decision, involved officers initiating an encounter with a potentially suicidal individual by chasing him into his bedroom, screaming at him, and pepper-spraying him. *252 Fed. Appx., at 206*. Suffice it to say, a reasonable officer could miss the connection between that case and this one.

Neither the panel majority nor the respondent has identified a single precedent finding a *Fourth Amendment* violation under similar circumstances. The officers were thus entitled to qualified immunity.

The petition for certiorari and the motions for leave to file briefs *amici curiae* are granted, and the judgment of the Court of Appeals is reversed.

It is so ordered.

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LexisNexis

User Name: Rick Frank
Date and Time: Tuesday, November 23, 2021 9:24:00 AM EST
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Document (1)

1. *Rivas-Villegas v. Cortesluna, 211 L. Ed. 2d 164*

Client/Matter: -None-
Search Terms: Rivas-Villegas v. Cortesluna, 211 L. Ed. 2d 164
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Cases	-None-

Neutral

As of: November 23, 2021 2:24 PM Z

Rivas-Villegas v. Cortesluna

Supreme Court of the United States

October 18, 2021, Decided

No. 20-1539.

Reporter

211 L. Ed. 2d 164 *; 2021 U.S. LEXIS 5311 **; 29 Fla. L. Weekly Fed. S 25; __ S.Ct. __; 2021 WL 4822662

DANIEL RIVAS-VILLEGAS v. RAMON CORTESLUNA

Notice: The pagination of this document is subject to change pending release of the final published version.

Prior History: [1]** ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Cortesluna v. Leon, 979 F.3d 645, 2020 U.S. App. LEXIS 33792 (9th Cir. Cal., Oct. 27, 2020)

Core Terms

knife, pocket, knee, quotation, responded, marks, door, qualified immunity, excessive force, per curiam

Case Summary

Overview

HOLDINGS: [1]-In an action alleging excessive force under 42 U.S.C.S. § 1983, the court of appeals erred when it determined that the police officer was not entitled to qualified immunity because neither the arrestee nor the court of appeals identified any U.S. Supreme Court case that addressed facts like the ones at issue, and, even assuming that Circuit precedent could clearly establish law for purposes of § 1983, the precedent the court of appeals relied on was materially distinguishable and thus did not govern the facts of this case. The officers were responding to a serious alleged incident of domestic violence possibly involving a chainsaw, the arrestee had a knife protruding from his left pocket, and the officer placed his knee on the arrestee for no more than eight seconds and only on the side of his back near the knife that officers were in the process of retrieving.

Outcome

Petition for certiorari granted. Determination that officer was not entitled to qualified immunity reversed. Per curiam decision.

LexisNexis® Headnotes

Civil Rights Law > Protection of Rights > Immunity From Liability > Defenses

Torts > Public Entity Liability > Immunities > Qualified Immunity

Civil Rights Law > ... > Immunity From Liability > Local Officials > Individual Capacity

HN1[] **Immunity From Liability, Defenses**

Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right. Although the U.S. Supreme Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition.

Civil Rights Law > Protection of Rights > Immunity From Liability > Defenses

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Torts > Public Entity Liability > Excessive Force

Civil Rights Law > ... > Scope > Law Enforcement Officials > Excessive Force

HN2[] **Immunity From Liability, Defenses**

In the context of whether qualified immunity attaches, specificity is especially important in the *Fourth Amendment* context, where it is sometimes difficult for an officer to determine how the relevant legal doctrine will apply to the factual situation the officer confronts. Whether an officer has used excessive force depends on the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. However, these case law standards are cast at a high level of generality. In an obvious case, these standards can clearly establish the answer, even without a body of relevant case law.

Civil Rights Law > ... > Scope > Law Enforcement Officials > Excessive Force

HN3[] **Law Enforcement Officials, Excessive Force**

Precedent involving similar facts can help move a case beyond the otherwise hazy borders between excessive and acceptable force and thereby provide an officer notice that a specific use of force is unlawful.

Judges: Roberts, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett.

Opinion

[*166] PER CURIAM.

Petitioner Daniel Rivas-Villegas, a police officer in Union City, California, responded to a 911 call reporting that a woman and her two children were barricaded in a room for fear that respondent Ramon Cortesluna, the woman's boyfriend, was going to hurt them. After confirming that the family had no way of escaping the house, Rivas-Villegas and the other officers present commanded Cortesluna outside and onto the ground. Officers saw a knife in Cortesluna's left pocket. While Rivas-Villegas and another officer were in the process of removing the knife and handcuffing Cortesluna, Rivas-Villegas briefly placed his knee on the left side of Cortesluna's back. Cortesluna later sued under Rev. Stat. §1979, *42 U. S. C. §1983*, alleging, as relevant,

that Rivas-Villegas used excessive force. At issue here is whether Rivas-Villegas is entitled to qualified immunity because he did not violate clearly established law.

The undisputed facts are as follows. A 911 operator received a call from a crying 12-year-old girl reporting that she, her mother, and **[**2]** her 15-year-old sister had shut themselves into a room at their home because her mother's boyfriend, Cortesluna, was trying to hurt them and had a chainsaw. The girl told the operator that Cortesluna was "'always drinking,'" had "'anger issues,'" was "'really mad,'" and was using the chainsaw to "'break something in the house.'" *Cortesluna v. Leon, 979 F. 3d 645, 649 (CA9 2020)*. A police dispatcher relayed this information along with a description of Cortesluna in a request for officers to respond.

Rivas-Villegas heard the broadcast and responded to the scene along with four other officers. The officers spent several minutes observing the home and reported seeing through a window a man matching Cortesluna's description. One officer asked whether the girl and her family could exit the house. Dispatch responded that they "'were unable to get out'" and confirmed that the 911 operator had "'hear[d] sawing in the background'" and thought that Cortesluna might be trying to saw down the door. *Cortesluna v. Leon, 2018 U.S. Dist. LEXIS 215224, 2018 WL 6727824, *2 (ND Cal., Dec. 21, 2018)*.

After receiving this information, Rivas-Villegas knocked on the door and stated loudly, "'police department, come to the front door, Union City police, come to the front door.'" *Ibid.* Another officer yelled, "'he's coming and has a weapon.'" *Ibid.* **[**3]** A different officer then stated, "'use less-lethal,'" referring to a beanbag **[*167]** shotgun. *Ibid.* When Rivas-Villegas ordered Cortesluna to "'drop it,'" Cortesluna dropped the "weapon," later identified as a metal tool. *Ibid.*

Rivas-Villegas then commanded, "'come out, put your hands up, walk out towards me.'" *979 F. 3d, at 650*. Cortesluna put his hands up and Rivas-Villegas told him to "'keep coming.'" *Ibid.* As Cortesluna walked out of the house and toward the officers, Rivas-Villegas said, "'Stop. Get on your knees.'" *Ibid.* Plaintiff stopped 10 to 11 feet from the officers. Another officer then saw a knife sticking out from the front left pocket of Cortesluna's pants and shouted, "'he has a knife in his left pocket, knife in his pocket,'" and directed Cortesluna, "'don't put your hands down,'" "'hands up.'" *2018 U.S. Dist. LEXIS 215224, 2018 WL 6727824, *2*. Cortesluna turned his head toward the instructing officer but then lowered his head and his hands in contravention of the officer's orders. Another officer twice shot Cortesluna with a beanbag round from his shotgun, once in the lower stomach and once in the left hip.

After the second shot, Cortesluna raised his hands over his head. The officers shouted for him to "'get down,'" which he did. Another officer stated, "'left pocket, he's got a knife.'" *Ibid.* Rivas-Villegas then straddled Cortesluna. He placed his right foot **[**4]** on the ground next to Cortesluna's right side with his right leg bent at the knee. He placed his left knee on the left side of Cortesluna's back, near where Cortesluna had a knife in his pocket. He raised both of Cortesluna's arms up behind his back. Rivas-Villegas was in this position for no more than eight seconds before standing up while continuing to hold Cortesluna's arms. At that point, another officer, who had just removed the knife from Cortesluna's pocket and tossed it away, came and handcuffed Cortesluna's hands behind his back. Rivas-Villegas lifted Cortesluna up and moved him away from the door.

Cortesluna brought suit under *42 U. S. C. §1983*, claiming, as relevant here, that Rivas-Villegas used excessive force in violation of the *Fourth Amendment*.

The District Court granted summary judgment to Rivas-Villegas, but the Court of Appeals for the Ninth Circuit reversed. *979 F. 3d, at 656*.

The Court of Appeals held that "Rivas-Villegas is not entitled to qualified immunity because existing precedent put him on notice that his conduct constituted excessive force." *Id., at 654*. In reaching this conclusion, the Court of Appeals relied solely on *LaLonde v. County of Riverside, 204 F. 3d 947 (CA9 2000)*. The court acknowledged that "the officers here responded to a more volatile situation than did **[**5]** the officers in *LaLonde*." *979 F. 3d, at 654*. Nevertheless, it reasoned: "Both *LaLonde* and this case involve suspects who were lying face-down on the ground and were not resisting either physically or verbally, on whose back the defendant officer leaned with a knee, causing allegedly significant injury." *Ibid.*

Judge Collins dissented. As relevant, he argued that "the facts of *LaLonde* are materially distinguishable from this case and are therefore insufficient to have made clear to every reasonable officer that the force **[*168]** Rivas-Villegas used here was excessive." *Id., at 664* (internal quotation marks omitted).

We agree and therefore reverse. Even assuming that controlling Circuit precedent clearly establishes law for purposes of *§1983*, *LaLonde* did not give fair notice to Rivas-Villegas. He is thus entitled to qualified immunity.

"*HN1*[↑] Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *White v. Pauly, 580 U.S. ___, ___, 137 S. Ct. 548, 551, 196 L. Ed. 2d 463 (2017)* (*per curiam*) (internal quotation marks omitted). A right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna, 577 U. S. 7, 11, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015)* (*per curiam*) (internal quotation **[**6]** marks omitted). Although "this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." *White, 580 U. S., at ___, 137 S. Ct. 548, 551, 196 L. Ed. 2d 463* (alterations and internal quotation marks omitted). This inquiry "must be undertaken in light of the specific context of the case, not as a broad general proposition." *Brosseau v. Haugen, 543 U. S. 194, 198, 125 S. Ct. 596, 160 L. Ed. 2d 583 (2004)* (*per curiam*) (internal quotation marks omitted).

"*HN2*[↑] [S]pecificity is especially important in the *Fourth Amendment* context, where . . . it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Mullenix, 577 U. S., at 12, 136 S. Ct. 305, 193 L. Ed. 2d 255* (alterations and internal quotation marks omitted). Whether an officer has used excessive force depends on "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor, 490 U. S. 386, 396, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)*; see also *Tennessee v. Garner, 471 U. S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)* ("Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either **[**7]** to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force"). However, *Graham*'s and *Garner*'s standards are cast "at a high level of generality." *Brosseau, 543 U. S., at 199, 125 S. Ct. 596, 160 L. Ed. 2d 583*. "[I]n an obvious case, these standards can 'clearly establish' the answer, even without a body of relevant case law." *Ibid.* But this is not

an obvious case. Thus, to show a violation of clearly established law, Cortesluna must identify a case that put Rivas-Villegas on notice that his specific conduct was unlawful.

Cortesluna has not done so. Neither Cortesluna nor the Court of Appeals identified any Supreme Court case that addresses facts like the ones at issue here. Instead, the Court of Appeals relied solely on its precedent in *LaLonde*. Even assuming that Circuit **[*169]** precedent can clearly establish law for purposes of *§1983*, *LaLonde* is materially distinguishable and thus does not govern the facts of this case.

In *LaLonde*, officers were responding to a neighbor's complaint that LaLonde had been making too much noise in his apartment. *204 F. 3d, at 950-951*. When they knocked on LaLonde's door, he "appeared in his underwear and a T-shirt, holding a sandwich in his hand." *Id., at 951*. LaLonde testified that, after he refused to let the officers enter his home, **[**8]** they did so anyway and informed him he would be arrested for obstruction of justice. *Ibid.* One officer then knocked the sandwich from LaLonde's hand and "grabbed LaLonde by his ponytail and knocked him backwards to the ground." *Id., at 952*. After a short scuffle, the officer sprayed LaLonde in the face with pepper spray. At that point, LaLonde ceased resisting and another officer, while handcuffing LaLonde, "deliberately dug his knee into LaLonde's back with a force that caused him long-term if not permanent back injury." *Id., at 952, 960, n. 17*.

The situation in *LaLonde* and the situation at issue here diverge in several respects. In *LaLonde*, officers were responding to a mere noise complaint, whereas here they were responding to a serious alleged incident of domestic violence possibly involving a chainsaw. In addition, LaLonde was unarmed. Cortesluna, in contrast, had a knife protruding from his left pocket for which he had just previously appeared to reach. Further, in this case, video evidence shows, and Cortesluna does not dispute, that Rivas-Villegas placed his knee on Cortesluna for no more than eight seconds and only on the side of his back near the knife that officers were in the process of retrieving. LaLonde, in contrast, **[**9]** testified that the officer deliberately dug his knee into his back when he had no weapon and had made no threat when approached by police. These facts, considered together in the context of this particular arrest, materially distinguish this case from *LaLonde*.

HN3[↑] "Precedent involving similar facts can help move a case beyond the otherwise hazy borders between excessive and acceptable force and thereby provide an officer notice that a specific use of force is unlawful." *Kisela v. Hughes, 584 U. S. ___, ___, 138 S. Ct. 1148, 1153, 200 L. Ed. 2d 449 (2018)* (*per curiam*) (internal quotation marks omitted). On the facts of this case, neither *LaLonde* nor any decision of this Court is sufficiently similar. For that reason, we grant Rivas-Villegas' petition for certiorari and reverse the Ninth Circuit's determination that Rivas-Villegas is not entitled to qualified immunity.

It is so ordered.

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