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# THE ATTACK ON QUALIFIED IMMUNITY FROM BOTH THE LEFT AND THE RIGHT

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# QUALIFIED IMMUNITY

## **Eastern District Cases**

Of the 47 cases where a qualified immunity claim was raised:  
31% of the time the court granted the defendant's motion.

## **Western District Cases**

Of the 68 cases where a qualified immunity claim was raised:  
43% of the time the court granted the defendant's motion.

# QUALIFIED IMMUNITY – HISTORICAL CASES

***Pierson v. Ray***, 386 U.S. 547 (1967).

***Harlow v. Fitzgerald***, 457 U.S. 800 (1982).

***Malley v. Briggs***, 475 U.S. 335 (1986).

Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law."

# QUALIFIED IMMUNITY – HISTORICAL CASES

***Mitchell v. Forsyth***, 472 U.S. 511 (1985).

Held that a district court's order denying a defendant's summary judgment motion was an immediately appealable “collateral order” (i.e., a “final decision”) where: (1) the defendant was a public official asserting a qualified immunity defense; and (2) the issue appealed concerned whether or not certain given facts show a violation of “clearly established” law.

# QUALIFIED IMMUNITY – HISTORICAL CASES

***Johnson v. Jones***, 515 U.S. 304 (1995).

Appellate courts lack jurisdiction to review the denial of qualified immunity when material factual disputes exist.

***Romo v. Largen***, 723 F.3d 670, 677 (6th Cir. 2013) (Sutton, J., concurring).

# QUALIFIED IMMUNITY – HISTORICAL CASES

*Saucier v. Katz*, 533 U.S. 194 (2001).

*Pearson v. Callahan*, 555 U.S. 223 (2009).

The Court modified Saucier's two-step inquiry in two ways.

# QUALIFIED IMMUNITY RECENT SCOTUS DECISIONS

Supreme Court Reversal of **Grant** of Qualified Immunity:

***Sause v. Bauer***, 138 S. Ct. 2561 (Jun. 28, 2018) (per curiam).

Pro Se

Motion to Dismiss

# QUALIFIED IMMUNITY RECENT SCOTUS DECISIONS

Supreme Court Reversal of **Denial** of Qualified Immunity:

*City of Escondido v. Emmons*, 139 S.Ct. 500 (Jan. 7, 2019).



# QUALIFIED IMMUNITY RECENT SCOTUS DECISIONS

Supreme Court Reversal of Denial of Qualified Immunity:

**NINTH CIRCUIT IN THE CROSSHAIRS:**

***County of Los Angeles v. Mendez*, 137 S. Ct. 1539 (2017).**

***Kisela v. Hughes*, 138 S.Ct. 1148 (Apr. 2, 2018).**

# QUALIFIED IMMUNITY

COURTS

## Supreme Court Defends Qualified Immunity For Trigger-Happy Cops, Again

This time they literally couldn't even be bothered to argue about it.

By ELIE MYSTAL

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Apr 2, 2018 at 3:42 PM

# QUALIFIED IMMUNITY RECENT SCOTUS DECISIONS

## Supreme Court Reversal of Denial of Qualified Immunity:

### ***White v. Pauly*, 137 S. Ct. 548 (2017)**

“qualified immunity is important to ‘society as a whole,’ and because as ‘an immunity from suit,’ qualified immunity ‘is effectively lost if a case is erroneously permitted to go to trial.”

“The panel majority misunderstood the ‘clearly established’ analysis: It failed to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment. Instead, the majority relied on *Graham*, *Garner*, and their Court of Appeals progeny, which—as noted above—lay out excessive-force principles at only a general level.

# QUALIFIED IMMUNITY RECENT SCOTUS DECISIONS

Looming Attack from the Right:

***Ziglar v. Abbasi***, 137 S.Ct. 1843 (2017)

Justice Thomas noted in a concurring opinion that, “in an appropriate case, we should reconsider our qualified immunity jurisprudence.”

# QUALIFIED IMMUNITY

## Fifth Circuit (En Banc)

***Cole v. Carson***, 935 F.3d 444 (5th Cir. 2019) (en banc).

Holding: A material fact remained in dispute regarding whether officers had time to give a suspect a warning to disarm before shooting him and that it was clearly established that officers may not use deadly force, without a warning, if they were not in immediate danger.

# QUALIFIED IMMUNITY

## Fifth Circuit (En Banc)

***Cole v. Carson***, 935 F.3d 444 (5th Cir. 2019) (en banc).

### Breakdown of Opinions:

Majority: HIGGINBOTHAM, STEWART, DENNIS, CLEMENT, ELROD, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, COSTA, and ENGELHARDT.

Jones, Circuit Judge, dissented and filed opinion in which Smith, Owen, Ho, Duncan and Oldham, Circuit Judges, joined.

Smith, Circuit Judge, dissented and filed opinion.

Willett, Circuit Judge, dissented and filed opinion.

Ho and Oldham, Circuit Judges, dissented and filed opinion in which Smith, Circuit Judge, joined.

Duncan, Circuit Judge, dissented and filed opinion in which Smith, Owen, Ho, and Oldham, Circuit Judges, joined.

# QUALIFIED IMMUNITY SEVENTH CIRCUIT DEVELOPMENTS

***Estate of Williams v. Indiana State Police***, 797 F.3d 468 (7th Cir. 2015).

Qualified Immunity for Pre-Seizure Conduct

Accepted the District Court's Inferences to Deny Qualified Immunity on Alternative Theory

# QUALIFIED IMMUNITY SEVENTH CIRCUIT DEVELOPMENTS

***Strand v. Minchuk***, No. 18-1514 (Nov. 8, 2018) (Kanne, Scudder, St. Eve)

“If we detect a ‘back door effort’ to contest facts on appeal, we lack jurisdiction.”

***Jackson v. Curry***, No. 17-1898 (Apr. 19, 2018) (Bauer, Manion, Sykes)

Dismissal of appeal



# QUESTIONS

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