

Excessive Force and the Fourth Amendment

Joshua Skinner
October 6, 2022



Excessive Force under the Fourth Amendment,
Individual and Municipal Liability

THE CONSTITUTIONAL BASICS



Excessive Force and the Fourth Amendment

- **The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.**

Graham Factors

- Is the use of force excessive under objective standards of reasonableness?
 - 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 (1989)

Individual Liability

- Has the plaintiff alleged or shown a violation of a constitutional right?
- Was the police officer's conduct objectively unreasonable in light of clearly established law?

Supervisor Liability

- Did the supervisor either fail to supervise or train the officer who used excessive force?
- Is there a causal link between the failure to train or supervise and the violation of the plaintiff's rights?
- Did the failure to train or supervise amount to deliberate indifference?

Municipal Liability

- Municipal liability requires
 1. An official policy or custom, of which
 2. A policymaker can be charged with actual or constructive knowledge, and
 3. A constitutional violation whose 'moving force' is that policy or custom.

Unintended Consequences

- Mapp v. Ohio (1961) – Supreme Court applies exclusionary rule to state and local governments
- Terry v. Ohio (1968) – Supreme Court permits police to “stop and frisk” without evidence being subject to the exclusionary rule
- Whren v. United States (1996) – Supreme Court permits police to make stops for minor offenses in hopes of finding evidence of a more serious issue (so called “pretextual stops”)

Municipal Liability

- Municipal liability requires
 1. An official policy or custom, of which
 2. A policymaker can be charged with actual or constructive knowledge, and
 3. A constitutional violation whose 'moving force' is that policy or custom.

Lawful arrest, false imprisonment, and the use of force

THE TORT BACKGROUND



Lawful arrest and use of force

- Was the defendant attempting to lawfully detain the plaintiff (without the plaintiff's consent)?
- Was the use or amount of force necessary to secure the arrest and detention of the accused?

Self-defense and defense of others

- Does the officer reasonably believe that the force is immediately necessary to protect the officer (or another) against the other's use or attempted use of unlawful force?
- Does the officer know or have reason to believe that the person against whom the force is used was committing or attempting to commit a violent crime?

RECENT FIFTH CIRCUIT DECISIONS



Recent Excessive Force Cases

Supreme Court

- Rivas-Villegas v. Cortesluna (October 2021)
- Lombardo v. City of St. Louis (June 2021)
- Only 11 cases decided since 1989, including *Graham v. Connor*

Fifth Circuit

- 27 decisions involving qualified immunity **in the excessive force context** in the past two years

Heads or Tails?

Reversed on appeal

- Crane v. City of Arlington (in part)
- Craig v. Martin
- Ramirez v. Escajeda
- Salazar v. Molina
- Solis v. Serrett
- Smith v. Heap
- Buehler v. Dear
- Timpa v. Dillard
- J.W. v. Paley
- Tucker v. City of Shreveport
- Hinson v. Martin (in part)
- Aguirre v. City of San Antonio
- Pearce v. FBI Agent Doe
- Ramirez v. Guadarrama
- Joseph v. Bartlett (in part)

Affirmed on appeal

- Crane v. City of Arlington (in part)
- Greene v. DeMoss
- Tyson v. Sabine
- Wilson v. City of Bastrop
- Harmon v. City of Arlington
- Jackson v. Gaeutreaux
- Hinson v. Martin (in part)
- Batyukova v. Doege
- Hutcheson v. Dallas County
- Cloud v. Stone
- Roque v. Harvel
- Valencia v. Davis
- Joseph v. Bartlett (in part)
- Angulo v. Brown
- Duran v. Brooks

Graham Factors and Qualified Immunity

- Has the plaintiff alleged or shown a violation of a constitutional right? (Is the use of force excessive under *objective standards of reasonableness*?)
- Was the police officer's conduct *objectively unreasonable* in light of clearly established law?

Which issue was dispositive?

Dismissal on merits

- Craig v. Martin
- Salazar v. Molina
- Solis v. Serrett
- Smith v. Heap
- Buehler v. Dear
- Wilson v. City of Bastrop
- Harmon v. City of Arlington
- Jackson v. Gautreaux
- Hinson v. Martin
- Hutcheson v. Dallas County
- Roque v. Harvel
- Cloud v. Stone
- Pearce v. FBI Agent Doe
- Ramirez v. Guadarrama
- Angulo v. Brooks

Dismissal on qualified immunity

- Ramirez v. Escajeda
- Tyson v. Sabine County
- J.W. v. Paley
- Tucker v. City of Shreveport
- Batyukova v. Doege
- Valencia v. Davis

Questioning Qualified Immunity

- Justice Thomas: “[We] ought to return to the approach of asking whether immunity was historically accorded the relevant official in an analogous situation at common law.”

Baxter v. Bracey,
140 S.Ct. 1862 (2020)
- Ilan Wurman, “The common law cases reveal ... that beyond [an inquiry analogous to that in *Graham*], there were no immunities, and whether an officer used excessive force was always a question for the jury, not the judge.”

District Courts v. Fifth Circuit

Reversed on appeal

- Crane v. City of Arlington (in part)
- Craig v. Martin
- **Ramirez v. Escajeda**
- Salazar v. Molina
- Solis v. Serrett
- Smith v. Heap
- Buehler v. Dear
- Timpa v. Dillard
- **J.W. v. Paley**
- **Tucker v. City of Shreveport**
- Hinson v. Martin (in part)
- Aguirre v. City of San Antonio
- Pearce v. FBI Agent Doe
- Ramirez v. Guadarrama
- Joseph v. Bartlett (in part)

Affirmed on appeal

- Crane v. City of Arlington (in part)
- Greene v. DeMoss
- **Tyson v. Sabine**
- Wilson v. City of Bastrop
- Harmon v. City of Arlington
- Jackson v. Gaeutreaux
- Hinson v. Martin (in part)
- **Batyukova v. Doege**
- Hutcheson v. Dallas County
- Cloud v. Stone
- Roque v. Harvel
- **Valencia v. Davis**
- Joseph v. Bartlett (in part)
- Angulo v. Brown
- Duran v. Brooks

Bolded cases reflect dismissal based on qualified immunity

Graham Factors and Qualified Immunity

- Has the plaintiff alleged or shown a violation of a constitutional right? (Is the use of force excessive under objective standards of reasonableness?)
- Was the police officer's conduct objectively unreasonable in light of clearly established law?

Qualified Immunity Appeals

Reversed on appeal

- Craig v. Martin
- Ramirez v. Escajeda
- Salazar v. Molina
- Solis v. Serrett
- Smith v. Heap
- Buehler v. Dear
- J.W. v. Paley
- Tucker v. City of Shreveport
- Hinson v. Martin (in part)
- Pearce v. FBI Agent Doe
- Ramirez v. Guadarrama
- Joseph v. Bartlett (in part)

Affirmed on appeal

- Greene v. DeMoss
- Hinson v. Martin
- Roque v. Harvel (in part)
- Joseph v. Bartlett (in part)
- Durant v. Brooks

Interlocutory Appeal and Prong 1

Reversed on appeal

- **Craig v. Martin**
- Ramirez v. Escajeda
- **Salazar v. Molina**
- **Solis v. Serrett**
- **Smith v. Heap**
- **Buehler v. Dear**
- J.W. v. Paley
- Tucker v. City of Shreveport
- **Hinson v. Martin (in part)**
- **Pearce v. FBI Agent Doe**
- **Ramirez v. Guadarrama**
- **Joseph v. Bartlett (in part)**

Affirmed on appeal

- Greene v. DeMoss
- Hinson v. Martin
- Roque v. Harvel (in part)
- Joseph v. Bartlett (in part)
- Durant v. Brooks

Reducing Conflict

Lawful detention

- Craig v. Martin
- Salazar v. Molina
- Solis v. Serrett
- Smith v. Heap
- Buehler v. Dear
- Timpa v. Dillard
- J.W. v. Paley
- Tucker v. City of Shreveport
- Hinson v. Martin
- Aguirre v. City of San Antonio

Defense of persons

- Crane v. City of Arlington
- Ramirez v. Escajeda
- Wilson v. City of Bastrop
- Harmon v. City of Arlington
- Jackson v. Gautreaux
- Batyukova v. Doege
- Ramirez v. Guadarrama

Common Law Principles as Guide to Constitutional Analysis

RETURNING TO TORT LAW



Lawful Detention

- When may a take down be used?
- When may a taser be used?
- How are officers trained regarding mental illness and the effects of drug use?
- When may prone maximal restraint be used?

Defense of Persons

- Could a reasonable officer believe that the force is immediately necessary to protect the officer or others from the use or attempted use of unlawful force?
- Could a reasonable officer believe that the use of deadly force is immediately necessary to protect the officer or others from the use or attempted use of deadly force?
- Was the person against who force is used committing or attempting to commit a violent crime?

Tyson v. Sabine County

- Deputy Sheriff Boyd was making a “welfare check” on Melissa Tyson.
- Boyd identified himself as a sheriff and was wearing a shirt identifying him as such.
- Boyd commented that he sometimes arrested people who had marijuana paraphernalia (after seeing hers).
- Boyd allegedly coerced Melissa into engaging in various sexual acts.
- Was Boyd attempting to “seize” or arrest Melissa?
- Is it reasonable for a deputy sheriff to pressure someone into engaging in sexual activities through use of his official position? (He is currently under indictment)
- Was Boyd “using force” in the way meant under Fourth Amendment case law?

Ramirez v. Escajeda

- Officer Escajeda was responding to a report of someone committing suicide.
- Escajeda found Daniel Ramirez in the process of hanging himself from a basketball hoop.
- It was dark and Escajeda was afraid Daniel might have a weapon.
- Escajeda ordered Daniel to show his hands, which he did not.
- Escajeda tased Daniel once, then took down his body.
- Daniel died at ER.
- Was Escajeda attempting to “seize” or arrest Daniel?
- Is it reasonable for an officer to use a taser against an unknown person simply because the person does not show his hands and it is dark?
- Was Daniel committing the type of act that should create a presumption that use of force is reasonable?

Ramirez v. Guadarrama

- Olivas was threatening to kill himself and burn his house down, which his family was in.
- He was covered in gasoline and had a lighter.
- He had doused the house in gasoline as well.
- Two officers tased Olivas. The first tase set him on fire.
- The officers and family escaped.
- He died and the house burned.
- Were the officers attempting to “seize” or arrest Olivas?
- Is it reasonable for an officer to use deadly force to prevent a person from using deadly force on the officer or others?
- Was Olivas committing the type of act that should create a presumption that use of force is reasonable?

QUESTIONS?

Joshua Skinner

joshua.skinner@arlingtontx.gov

