AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Criminal Justice/Due Process/Excessive Force

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

*In 1994, the Presidio Army Base in San Francisco was being converted into a national park, and a large public event was organized to celebrate the occasion. Elliot Katz was the president of the group In Defense of Animals and wanted to protest the possibility that the Army’s Letterman Hospital, located on Presidio, might conduct experiments on animals. He snuck a large banner onto the base and the public seating area for the ceremony. When he unfurled the banner and began to approach Vice President Al Gore, who was speaking at the event, military police officer Donald Saucier grabbed Katz and escorted out of the area and shoved him into a military van. He was driven to a military police station and soon released.*

*Katz filed a “Bivens” suit in federal district court seeking monetary damages against the officer for the use of excessive force in the violation of Katz’s Fourth Amendment rights. The district court dismissed other elements of the suit, but held that the excessive force claim presented a factual claim for a jury and that the resolution of the factual issue would also resolve the question of whether Saucier enjoyed qualified immunity from the suit. The circuit court affirmed that ruling since the rule regarding excessive force and the rule regarding qualified immunity both turned on the objective reasonableness of the officer’s actions in the circumstances. Saucier appealed to the U.S. Supreme Court, which unanimously reversed the lower courts. The majority elaborated a two-part test for qualified immunity that instructed trial courts to first determine whether a constitutional right had been violated and then determine whether that right was clearly established at the time of the offense. Unless an officer’s action violated a clearly established constitutional right, he should be immune from suit.*

JUSTICE [K](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0258116001&originatingDoc=Iebe9c7e2761f11e89d59c04243316042&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))ENNEDY delivered the opinion of the Court.

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The Court of Appeals ruled first that the right was clearly established; and second that the reasonableness inquiry into excessive force meant that it need not consider aspects of qualified immunity, leaving the whole matter to the jury. This approach cannot be reconciled with *Anderson v. Creighton* (1987). . . .

In a suit against an officer for an alleged violation of a constitutional right, the requisites of a qualified immunity defense must be considered in proper sequence. Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive. Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." *Mitchell v. Forsyth* (1985). The privilege is "an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." . . .

A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? . . .

If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable.

In this litigation, for instance, there is no doubt that *Graham v. Connor* (1989) clearly establishes the general proposition that use of force is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness. Yet that is not enough. Rather, we emphasized in *Anderson* "that the right the official is alleged to have violated must have been `clearly established' in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. . . .

The approach the Court of Appeals adopted—to deny summary judgment any time a material issue of fact remains on the excessive force claim—could undermine the goal of qualified immunity to "avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment." *Harlow v. Fitzgerald* (1982). If the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate. *Malley v. Briggs* (1986).

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The qualified immunity inquiry, on the other hand, has a further dimension. The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. 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. An officer might correctly perceive all of the relevant facts but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.

*Graham* does not always give a clear answer as to whether a particular application of force will be deemed excessive by the courts. This is the nature of a test which must accommodate limitless factual circumstances. This reality serves to refute respondent's claimed distinction between excessive force and other Fourth Amendment contexts; in both spheres the law must be elaborated from case to case. Qualified immunity operates in this case, then, just as it does in others, to protect officers from the sometimes "hazy border between excessive and acceptable force,” and to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful.

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In the circumstances presented to this officer, which included the duty to protect the safety and security of the Vice President of the United States from persons unknown in number, neither respondent nor the Court of Appeals has identified any case demonstrating a clearly established rule prohibiting the officer from acting as he did, nor are we aware of any such rule. Our conclusion is confirmed by the uncontested fact that the force was not so excessive that respondent suffered hurt or injury. On these premises, petitioner was entitled to qualified immunity, and the suit should have been dismissed at an early stage in the proceedings.

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*Reversed*.

JUSTICE GINSBURG, with whom JUSTICE STEVENS and JUSTICE BREYER join, concurring.

. . . . Measuring material facts of this case that are not subject to genuine dispute against the *Graham* standard, I conclude that officer Saucier's motion for summary judgment should have been granted. I therefore concur in the Court's judgment. However, I would not travel the complex route the Court lays out for lower courts.

. . . . The two-part test today's decision imposes holds large potential to confuse. Endeavors to bring the Court's abstract instructions down to earth, I suspect, will bear out what lower courts have already observed—paradigmatically, the determination of police misconduct in excessive force cases and the availability of qualified immunity both hinge on the same question: Taking into account the particular circumstances confronting the defendant officer, could a reasonable officer, identically situated, have believed the force employed was lawful? . . .

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JUSTICE SOUTER, concurring in part and dissenting in part.

I . . . would remand the case for application for application of the qualified immunity standard.