# SCOTUS Police Cases

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# Overview of Presentation

- Three very conventional police cases
- Three less than conventional police cases
- Qualified immunity
- Preview

# *Caniglia v. Strom*

- Holding: police community caretaking duties don't justify warrantless searches and seizures in the home
- Unanimous, four-page decision
- Destined to be a loss for local governments
  - Good: very narrow
  - Bad: answers nothing

# Facts

- During an argument with his wife, Edward Caniglia put a handgun on their dining room table and asked his wife to "shoot [him] now and get it over with"
- After spending the night at a hotel Caniglia's wife couldn't reach him by phone and asked police to do a welfare check
- Caniglia agreed to go to the hospital for a psychiatric evaluation after officers allegedly promised not to confiscate his firearms
- The officers went into his home and seized his guns regardless
- Caniglia sued the officers for money damages claiming that he and his guns were unconstitutionally seized without a warrant in violation of the Fourth Amendment

# *Cady v. Dombrowski* (1973): Jaw-dropper

- Dombrowski told police officers after he crashed his car that he was a Chicago cop
- They had his car towed to an unguarded lot
- The next day they searched the car for his service weapon thinking he had to have it with him at all times
- Instead, they found bloody items from when he murdered his brother

# Legal Background

- In *Cady* the Court held that a warrantless search of his impounded vehicle for an unsecured firearm didn't violate the Fourth Amendment
- According to the Court in that case "police officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions,' such as responding to disabled vehicles or investigating accidents"
- The First Circuit ruled in favor of the police officers in *Caniglia* extending *Cady*'s "community caretaking exception" to the warrant requirement beyond the automobile

# Holding

- Justice Thomas, writing for the Court, rejected the First Circuit's extension of *Cady*
- Justice Thomas noted the *Cady* opinion repeatedly stressed the "constitutional difference" between an impounded vehicle and a home
- "In fact, *Cady* expressly contrasted its treatment of a vehicle already under police control with a search of a car 'parked adjacent to the dwelling place of the owner'"

# Could have been Worse

- Caniglia argued that unless a "true emergency," is taking place, no entry into a home by police without a warrant can ever be reasonable
- The Court didn't go that far
- In Justice Alito's words, it simply held that "there is no special Fourth Amendment rule for a broad category of cases involving 'community caretaking'"

# Could have been Better

- Where does this case leave us?
  - Dazed and confused?
- Police **know there is an emergency**—no warrant, no problem; exigent circumstances
- Police think **something bad has happened, be happening, or happen in the near future**; Court isn't clear when or whether a warrant is required

# Might Kavanaugh Be Right?

- I think/hope Justice Kavanaugh is correct "the Court's exigency precedents, as I read them, permit warrantless entries when police officers have an **objectively reasonable basis** to believe that there is a **current, ongoing crisis** for which it is reasonable to act now"
- Justice Kavanaugh offered examples, similar to those in the SLLC brief, of police being able to enter a home without a warrant when a person is suicidal or elderly and uncharacteristically absent from church

# *Sanders v. United States*

- 11-year-old calls grandmother and says mom and boyfriend are "fighting really bad" and "they need[ed] someone to come"; grandmother calls 911 tells police there are 2 other small children in the home; 11-year-old "acts excited" and gestures from an upstairs window as police arrive
- Mom comes outside; she has red marks on her face and neck and appears visibly upset
- Police ask mom to get boyfriend; when she opens the door, they hear a child crying inside
- Police go in

# Does this Entry Violate the Fourth Amendment?

- Police have no warrant
- 8th Circuit says said community caretaking justified the entry
- SCOTUS sends the case back to the 8th Circuit to redecide it after *Caniglia*

# What Happens When Police Get Inside?

- Boyfriend is just inside the door; a (crying) infant is in a nearby playpen
- Find the 11-year-old who tells them there was a gun downstairs and she heard mom yelling "Put the gun down! Put the gun down!" and she heard what she thought was boyfriend choking mom
- Mom told officers there was a gun on the first floor, which they found and took
- Million-dollar question: What if boyfriend never came out and police had to wait to get a warrant to go inside?

# Justice Kavanaugh Has to be Right, Right?

- To be clear, however, the fact that the Eighth Circuit used a now-erroneous label does not mean that the Eighth Circuit reached the wrong result. Caniglia did not disturb this Court's longstanding precedents that allow warrantless entries into a home in certain circumstances. **Of particular relevance here, the Court has long said that police officers may enter a home without a warrant if they have an "objectively reasonable basis for believing that an occupant" is "seriously injured or threatened with such injury."**

# *Torres v. Madrid*

- Holding: a person may be "seized" by a police officer per the Fourth Amendment even if the person gets away
- 5-3 decision written by Chief Justice Roberts

# Facts of the Case are WOW

- Police officers intended to execute a warrant in an apartment complex Though they didn't think she was the target of the warrant, they approached Roxanne Torres in the parking lot. Torres got in a car. According to Torres, she was experiencing methamphetamine withdrawal and didn't notice the officers until one tried to open her car door.
- Though the officers wore tactical vests with police identification, Torres claims she only saw the officers had guns. She thought she was being car jacked and drove away.
- **She claims the officers weren't in the path of the vehicle, but they fired 13 shots, hitting her twice. Torres drove to a nearby parking lot, asked a bystander to report the attempted carjacking, stole another car, and drove 75 miles to a hospital.**

# Arguments and Holding

- Torres sued the police officers claiming their use of force was excessive in violation of the Fourth Amendment's prohibition against "unreasonable searches and seizures"
- The officers argued, and the lower court agreed, that Torres couldn't bring an excessive force claim because she was never "seized" per the Fourth Amendment since she got away
- The "application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person"

# Reasoning—Precedent & Common Law

- In *California v. Hodari D.* (1991), the Supreme Court stated that the common law treated "the mere grasping or application of physical force with lawful authority" as an arrest, "whether or not it succeeded in subduing the arrestee."
- The Chief Justice acknowledged that despite this language, *Hodari D.* didn't answer the question in this case, which involves officer use of force. *Hodari D.* involved police officer "show of authority" which doesn't become an arrest until the suspect complies with the demand to stop.
- Citing to an English case from 1828, the Court "independently" concluded that "the common law rule identified in *Hodari D.*—that the application of force gives rise to an arrest, even if the officer does not secure control over the arrestee—achieved recognition to such an extent that English lawyers could confidently (and accurately) proclaim that '[a]ll the authorities, from the earliest time to the present, establish that a corporal touch is sufficient to constitute an arrest, even though the defendant does not submit.'"

# This Decision is…Unsatisfying

- Problems with relying on common law from England
  - Court doesn't always rely on it
  - Constitution in some instances was intended to reject the common law
  - It is rarely clear what the common law position was
- Citing to the SLLC *amicus* brief, Chief Justice Roberts explicitly rejected the brief's argument that the common law doctrine recognized in *Hodari D.* is just "a narrow legal rule intended to govern liability in civil cases involving debtors"

# *Lange v. California*

- Holding: pursuit of a fleeing misdemeanor suspect does not always justify entry into a home without a warrant
- Rather, "[a]n officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency"
- All nine justices agreed with the result
- No SLLC *amicus* brief in this case; not a Section 1983 case

# Facts

- Arthur Lange drove by a California highway patrol officer while playing loud music and honking his horn
- The officer followed Lange and put on his overhead lights, signaling Lange to pull over
- Lange kept driving to his home which was about 100 feet away
- The officer followed Lange into the garage and conducted field sobriety tests after observing signs of intoxication
- A later blood test showed Lange's blood-alcohol content was three times the legal limit

# Issue

- Lange argued that the warrantless entry into his garage violated the Fourth Amendment
- California argued that pursuing someone suspected of a misdemeanor, in this case failing to comply with a police signal, always qualifies as an exigent circumstance authorizing a warrantless home entry

# Holding and Reasoning

- In instances of a misdemeanants' flight, "[w]hen the totality of circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting"
- "When it comes to the Fourth Amendment, the home is first among equals"
- Misdemeanors vary widely and may be minor
- Likewise, "[t]hose suspected of minor offenses may flee for innocuous reasons and in non-threatening ways"
- "The common law did not recognize a categorical rule enabling such an entry in every case of misdemeanor pursuit"

# Roberts and Alito Concurrence

- Considering numerous factors with a fleeing suspect will be difficult
- How are police officers supposed to know what a person will be charged with?
- According to these Justices, "hot pursuit is not merely a setting in which other exigent circumstances justifying warrantless entry might emerge. **It is itself an exigent circumstance**." "It is the flight, not the underlying offense, that has always been understood to justify the general rule: 'Police officers may enter premises without a warrant when they are in hot pursuit of a fleeing suspect.'"

# Are Roberts and Alito Right this Rule will be Difficult for Police?

- Court says: "Our approach will in many, if not most, cases allow a warrantless home entry"
- Justice Kavanaugh, in a solo concurrence, wonders if the difference between the Chief Justice's concurrence and the majority's approach "will be academic in most cases. That is because cases of **fleeing misdemeanants will almost always also involve a recognized exigent circumstance—such as a risk of escape, destruction of evidence, or harm to others**—that will still justify warrantless entry into a home."

# *City of Chicago v. Fulton*

- Holding: City of Chicago didn't violate the Bankruptcy Code's automatic stay provision by holding onto a vehicle impounded after a bankruptcy petition was filed
- 8-0
- Written by Justice Alito

# Facts and Holding

- The City of Chicago impounds vehicles where debtors have three or more unpaid fines
- Robbin Fulton's vehicle was impounded for this reason
- She filed for bankruptcy and asked the City to return her vehicle; it refused
- The Seventh Circuit held the City violated the Bankruptcy Code's automatic stay provision
- The Supreme Court unanimously reversed

# Bankruptcy 101

- When a bankruptcy petition is filed, an "estate" is created which includes most of the debtor's property
- An automatic consequence of the bankruptcy petition is a "stay" which prevents creditors from trying to collect outside of the bankruptcy forum
- The automatic stay prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate"
- The Bankruptcy Code also has a "turnover" provision which requires those in possession of property of the bankruptcy estate to "deliver to the trustee, and account for" that property

# Holding and Reasoning

- The Supreme Court held that "mere retention" of a debtor's property after a bankruptcy petition is filed doesn't violate the automatic stay. According to Justice Alito, "[t]aken together, the most natural reading of . . . 'stay,' 'act,' and 'exercise control'—is that [the automatic stay provision] prohibits *affirmative acts* that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed."
- However, the Court, conceded it did not "maintain that these terms definitively rule out" an alternative interpretation. According to the Court, "[a]ny ambiguity in the text of [the automatic stay provision] is resolved decidedly in the City's favor" by the turnover provision. First, reading "any act . . . to exercise control" in the automatic stay provision "to include merely retaining possession of a debtor's property would make that section a blanket turnover provision," rendering the turnover provision "largely superfluous." Second, the turnover provision includes exceptions that the automatic stay provision doesn't include. "Under respondents' reading, in cases where those exceptions to turnover . . . would apply, [the automatic stay provision] would command turnover all the same."

# Justice Sotomayor Throws Shade on the SLLC's one Victory

- According to Justice Sotomayor, in a concurring opinion, "the City's policy of refusing to return impounded vehicles satisfies the letter of the Code, it hardly comports with its spirit"
- Justice Sotomayor opined that the City may have violated a number of other provisions of the Bankruptcy Code, including the turnover provision

# *Cedar Point Nursery v. Hassid*

- Holding:  a California regulation allowing union organizers access to agriculture employers' property to solicit support for unionization up to three hours a day, 120 days a year is a per se physical taking under the Fifth and Fourteenth Amendments
- 6-3 conservative/liberal divide
- What does this case have to do with police officer?

Imagine if Stinky Stella was outside and wouldn't stop barking and my neighbors called the police who knocked on my door

How is that any different than union organizers being allowed to go temporarily on growers' land?



# Physical Taking v. Regulatory Taking

- According to Chief Justice Roberts, writing for the majority, "[w]hen the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation"
- But when the government "instead imposes regulations that restrict an owner's ability to use his own property" the restrictions don't require "just compensation" unless they go "too far"

# Physical Taking Here

- The Court held the access regulation "appropriates a right to invade the growers' property" and therefore constitutes a per se physical taking rather than a regulatory taking
- "Rather than restraining the growers' use of their own property, the regulation appropriates for the enjoyment of third parties the owners' **right to exclude**"
- The Court noted that "[t]he right to exclude is 'one of the most treasured' rights of property ownership."
- "Given the central importance to property ownership of the right to exclude, it comes as little surprise that the Court has long treated government-authorized physical invasions as takings requiring just compensation"

# Good News

- State and local government official routinely go onto private property temporarily to do police work and conduct inspections, among many other reasons
- SLLC's *amicus* brief argued temporary entry onto private property by government officials isn't a per se physical taking
- The Court stated that "**government searches** that are consistent with the Fourth Amendment and state law **cannot be said to take any property right** from landowners" and "**government health and safety inspection** regimes will generally **not constitute takings**"

# But Why?

- Unlike a mere trespass, the regulation grants a formal entitlement to physically invade the growers' land. Unlike a law enforcement search, no traditional background principle of property law requires the growers to admit union organizers onto their premises. And unlike standard health and safety inspections, the access regulation is not germane to any benefit provided to agricultural employers or any risk posed to the public.
- **At SCOTUS *amicus* briefs rarely (if ever) win cases; very often they can't prevent loses; but they can prevent broad, devastating losses**

# *United States v. Cooley*

- Holding: an Indian tribe police officer may temporarily detain and search a non-Indian on a public right-of-way that runs through an Indian reservation, based on a suspected violation of state or federal law
- Unanimous opinion written by Justice Breyer
- Relevance to local law enforcement: pro-public safety when any officer may enforce local laws and ordinances on public land

# Facts

- A tribal officer approached a vehicle stopped on a public right-of-way within the Crow Reservation to offer assistance
- The officer ordered Joshua James Cooley, who appeared to be a non-Indian, out of the car and conducted a pat down search after he noticed two semiautomatic rifles lying on the front seat
- While waiting for backup to arrive, the officer saw in the vehicle a glass pipe and plastic bag that contained methamphetamine

# Ninth Circuit Ruling

- The Ninth Circuit suppressed the drug evidence holding the tribal officer had no authority to investigate "nonapparent" violations of state or federal law by a non-Indian on a public right-of-way crossing the reservation
- The tribal officer in this case didn't ask Cooley whether he was non-Indian

# SCOTUS Ruling

- Holding: tribal police officers may detain and search non-Indians traveling on public rights-of-way running through a reservation
- In *Montana v. United States* (1981), the Court articulated the "general proposition that the inherent sovereign powers of an Indian tribe **do not extend to the activities of nonmembers** of the tribe"
- But that general rule has two exceptions including "when that conduct threatens or has some direct effect on the political integrity, the economic security, or the **health or welfare of the tribe**"
- According to the Court, this exception "fits the present case, almost like a glove"
- "To deny a tribal police officer authority to search and detain for a reasonable time any person he or she believes may commit or has committed a crime would make it difficult for tribes to protect themselves against ongoing threats"

# Not Impressed with Ninth Circuit Decision

- Those standards require tribal officers first to determine whether a suspect is non-Indian and, if so, allow temporary detention only if the violation of law is "apparent"
- The first requirement, even if limited to asking a single question, would produce an incentive to lie
- The second requirement—that the violation of law be "**apparent**"—introduces a **new standard** into search and seizure law. Whether, or how, that standard would be met is not obvious. At the same time, because most of those who live on Indian reservations are non-Indians, this problem of interpretation could arise frequently

# Qualified Immunity: A Winning Streak Like No Other

- Until this year, in only **two cases** since 1982 did the Supreme Court hold that police officers violated clearly established law
- Why?
  - Law is very favorable to state and local governments
  - Few cases (especially ones involving the police) have the same facts, so the law is rarely "clearly established"
  - Court is sympathetic to police officers who must make split-second decisions where their lives are on the line

# SCOTUS is Asked to Act

- Starting a few years ago the Supreme Court started receiving petitions not saying the lower court had wrongly applied QI but instead saying the QI should be **overruled** or **modified**
- Beginning in October 2019 the Court started holding a number of these petitions indicating it might take a bunch of the cases together and do something big on qualified immunity
- SLLC and IMLA worked put a brief together to defend qualified immunity

# SCOTUS Refuses to Hear QI Cases

- Nine cases total piled up in May 2020
- Most/all asking the Court to **eliminate** or **modify** the doctrine
- All petitions were denied on June 15, 2020
- Justice Thomas filed a dissenting opinion in one of the cases reiterating his "doubts about our qualified immunity jurisprudence," noting qualified immunity is not included in the text of the statute which allows state and local government officials to be sued for violating the constitution

# Why Was this a Big Deal?

- SCOTUS denies petitions all the time
- Movement to eliminate or modify qualified immunity
  - Justices: Thomas and Sotomayor
  - Lower court judges
  - Academics: Notre Dame Law Review Symposium on the Future of Qualified Immunity
  - CATO took the lead
  - Advocacy groups on the right and left banded together
- Death of George Floyd

# Why Did the Court Not Take Any of the Cases?

- We don't know because the Court doesn't say
- Going theories
  - Justice Sotomayor and Ginsburg (at least) probably wouldn't mind modifying doctrine but probably lack agreement with the conservatives about what to replace it with
  - Justices knew Justice Ginsburg's death was imminent and wanted to avoid saddling a new colleague with an issue this big?

# SCOTUS Changed Course Last Term

- Made three "moves" or "corrections" against qualified immunity
  - And no moves in favor of it!
- None of the cases were heard on the merits with full briefing and oral argument
- All respond to the criticism that Court was constantly summarily reversing qualified immunity **grants**

# *Taylor v. Riojas*

- Brief, unauthored opinion
- Justice Barrett doesn't participate

# Facts

- Trent Taylor to a "pair of shockingly unsanitary cells" for six days
  - He claimed the first cell he was confined in was covered in feces "all over the floor, the ceiling, the window, the walls," and even inside the water faucet
  - The second, frigidly cold cell, "was equipped with only a clogged drain in the floor to dispose of bodily waste"

# Fifth Circuit Decision

- The Fifth Circuit held that Taylor's confinement conditions violated the Eighth Amendment's prohibition on cruel and unusual punishment
- The Fifth Circuit granted the officers qualified immunity because "[t]he law wasn't clearly established" that "prisoners couldn't be housed in cells teeming with human waste" "for only six days"

# SCOTUS Holding and Reasoning

- The Supreme Court noted that "[q]ualified immunity shields an officer from suit when she makes a decision that, even if constitutionally deficient, **reasonably misapprehends the law** governing the circumstances she confronted"
- It reversed the Fifth Circuit's grant of qualified immunity because "no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time"

# Justice Alito Concurrence

- Court shouldn't have heard this case because it involves a misapplication of the law to the facts, which is a "quintessential example" of the kind of case the Supreme Court almost never reviews
- "The Court of Appeals held that the conditions alleged by petitioner, if proved, would violate the Eighth Amendment, and this put correctional officers in the Fifth Circuit on notice that such conditions are intolerable. Thus, even without our intervention, qualified immunity would not be available in any similar future case."
- Given that the Supreme Court did review the Fifth Circuit's grant of qualified immunity on Taylor's cell confinement claim, Justice Alito agreed with the Court's conclusion that the officers should be denied qualified immunity

# Justice Thomas…Wait for it…

- Dissented

# Let's Vote: Would you have Granted these Officers Qualified Immunity?

# *McCoy v. Alamu*

- Case was remanded for reconsideration in light of *Taylor v. Riojas*
- No opinion
- Technically, the Court didn't deny qualified immunity

# Facts

- “McCoy was incarcerated in the prison’s administrative segregation block. The parties agree that Alamu sprayed McCoy with a chemical agent after a different prisoner had twice thrown liquids on Alamu. They disagree about almost everything else.”
- McCoy’s version:  Inmate Jackson twice threw water on Officer Alamu; Officer Alamu grabbed his chemical spray but Jackson held up a sheet; Officer Alamu asked for Jackson name and number; McCoy approached the front of his cell to tell him; sprayed McCoy for no reason
- Officer’s version: he went for cover after being "chunked with an unknown liquid" by Jackson; he sprayed McCoy after he threw "an unknown weapon" at him; which may have been a "piece of rolled toilet paper"

# Fifth Circuit Decision—Constitutional Violation

- Officials may use chemical spray where "reasonably necessary to prevent riots or escapes or to subdue recalcitrant prisoners“
- On McCoy’s adequately supported view of the facts, there was no need to "subdue" McCoy—it was Jackson, not McCoy, who was "recalcitrant"

# Fifth Circuit Decision—Qualified Immunity

- But it was not *beyond debate* that it did, so the law wasn't clearly established. This was an isolated, single use of pepper spray. McCoy doesn't challenge the evidence that Alamu initiated the Incident Command System immediately after the spray, nor that medical personnel promptly attended to him and provided copious amounts of water. Nor does he provide evidence to contest the Use of Force Report's finding that Alamu used less than the full can of spray.
- In somewhat related circumstances, we held that spraying a prisoner with a fire extinguisher "was a *de minimis* use of physical force and was not repugnant to the conscience of mankind." *Jackson v. Culbertson*, 984 F.2d 699, 700 (5th Cir. 1993)
- Similarly here, on these facts, it wasn't beyond debate that Alamu's single use of spray stepped over the *de minimis* line

# Let's Vote: Would you have Granted Qualified Immunity

- On inmate McCoy's version of the facts?

# Harder than You Think?-- *Jackson v. Culbertson*

- While in prison, Jackson started a fire with a match and the core of a role of toilet paper. The fire alarm went off, prompting prison officials to take action. One official arrived with a fire extinguisher. The fire had already gone out by the time he arrived; nonetheless, the official sprayed the remaining ashes, as well as Jackson and two other inmates.
- Because he suffered no injury, we find that the spraying of Jackson with the fire extinguisher was a *de minimis* use of physical force and was not repugnant to the conscience of mankind. *Cf. Olson v. Coleman,* 804 F. Supp. 148, 150 (D.Kan. 1992) (finding a single blow to the head causing a contusion to be *de minimis* and not repugnant); *Candelaria v. Coughlin,* 787 F. Supp. 368, 374 (S.D.N.Y. 1992) (allegation of single incident of guard using force to choke inmate was *de minimis*), *aff'd,* 979 F.2d 845 (2d Cir. 1992)

# Compare the Cases

## Similarities

- **Single incident**
- No merits to subduing either person

## Differences

- **McCoy claimed an injury**
- McCoy didn't do anything wrong

# *Lombardo v. City of St. Louis, Missouri*

- Unauthored
- No briefing or oral argument
- Sent back to the lower court to redecide the case to decide whether police officers used excessive force when restraining Nicholas Gilbert on his stomach for 15-minutes and/or should receive qualified immunity

# Facts

- Gilbert was arrested for trespassing in a condemned building and failing to appear in court for a traffic ticket
- Officers tried to handcuff Gilbert after it appeared he was trying to hang himself in his cell. Gilbert was only 5'3" and 160 pounds but he struggled with multiple officers. Ultimately, they were able to handcuff Gilbert and put him in leg irons. They moved him face down on the floor and held his limbs down at the shoulders, biceps, and legs. At least one officer placed pressure on Gilbert's back and torso. Gilbert tried to raise his chest, saying, "It hurts. Stop."
- After 15 minutes of struggling in this position, Gilbert's breathing became abnormal and he stopped moving. The officers rolled Gilbert over and checked for a pulse. Finding none, they performed chest compressions and rescue breathing. Gilbert was pronounced dead at the hospital.

# Lower Court Rulings

- Gilbert's parents sued the officers claiming they violated the Fourth Amendment by using excessive force
- A federal district court ruled the officers were entitled to qualified immunity because they did not violate a constitutional right that was clearly established at the time
- The Eighth Circuit ruled for the officers holding they did not apply unconstitutionally excessive force

# SCOTUS Ruling

- The Eighth Circuit cited the correct factors in determining whether the use of force was reasonable
- But it was "unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or surrounding circumstances—is per se constitutional so long as an individual appears to resist officers' efforts to subdue him"
- The Eighth Circuit described as "insignificant" the fact that Gilbert was handcuffed and leg shackled when officers kept him in the prone position for 15 minutes

# SCOTUS Ruling

- These details matter because "St. Louis instructs its officers that pressing down on the back of a prone subject can cause suffocation," "well-known police guidance recommending that officers get a subject off his stomach as soon as he is handcuffed because of that risk," and that "guidance further indicates that the struggles of a prone suspect may be due to oxygen deficiency, rather than a desire to disobey officers' commands"
- "Having either failed to analyze such evidence or characterized it as insignificant, the court's opinion could be read to treat Gilbert's 'ongoing resistance' as controlling as a matter of law. Such a *per se* rule would contravene the careful, context-specific analysis required by this Court's excessive force precedent"

# Dissent: Alito, Thomas, Gorsuch

- We should just hear this case on the merits
- Court "unfairly interprets" the 8th Circuit decision
  - Can the Court seriously think that the Eighth Circuit adopted such a strange and extreme position—that the use of prone restraint on a resisting detainee is always reasonable no matter how much force is used, no matter how long that force is employed, no matter the physical condition of the detainee, and no matter whether the detainee is obviously suffering serious or even life-threatening harm?

# What Does this Mean? What's Next for QI in SCOTUS?

- Corrections were minor
- Expect more summary reversals of qualified immunity grants in cases
- Amanda Karras, International Municipal Lawyers Association
  - The Court is trying to signal to lower courts that they need to deny QI in **more egregious cases** and that maybe the **clearly established prong** is being applied in **too mechanically** and needs to be more lenient toward plaintiffs.
- Still don't know a lot about the views of Gorsuch, Kavanaugh, and Barrett
- Might the Court overturn *Pearson v. Callahan* (2009) and require lower court to always decide whether the constitution was violated?

# Juiciest QI Petition

- Always a lot of juicy QI petitions
- *Frasier v. Evans* questions presented
  - Whether training or law enforcement policies can be relevant to whether a police officer is entitled to qualified immunity
  - Whether it has been "clearly established" since at least 2014 that the First Amendment protects the right of individuals to record police officers carrying out their duties in public
- Usual suspects decry QI in *amicus* briefs

# *New York State Rifle and Pistol Association v. Corlett*

- Issue: nay states may prevent persons from obtaining a concealed-carry license for self-defense if they lack "proper cause"
- New York case law requires an applicant to "demonstrate a special need for self-protection distinguishable from that of the general community" to satisfy the proper cause standard
- Wanting a gun, liking guns isn't "proper cause"

# *Thompson v. Clark*

- Larry Thompson asserts that a plaintiff, before suing police officers for "unreasonable seizure pursuant to legal process," must await favorable termination of the criminal proceeding against him or her
- Thompson frames the issue in this case as whether such favorable termination requires the plaintiff to show that the criminal proceeding has "formally ended in a manner **not inconsistent with innocence**," or instead "ended in a manner that **affirmatively indicates innocence**"
-

# Facts

- Larry Thompson's sister-in-law, Camille, who was living with him, reported to 911 that Thompson was sexually abusing his week-old daughter
- Thompson wouldn't let police into his apartment because they didn't have a warrant, blocked their path to entry, and allegedly shoved an officer
- Camille's report was false; she suffered from a mental illness which the officers "sensed" when they were in the apartment
- Police arrested Thompson and he was charged with obstructing governmental administration and resisting arrest
- The prosecutor dropped the charges against him "in the interests of justice"

# Thompson Sues

- Thompson brought a number of civil claims against Officer Clark including one for "unreasonable seizure pursuant to legal process," which he called a claim for "malicious prosecution"

# Second Circuit

- The Second Circuit held that Thompson couldn't bring that claim because he failed to establish that the prosecution against him terminated favorably
- In a 2018 case, *Lanning v. City of Glens Falls*, the Second Circuit held that such a claim requires "affirmative indications of innocence to establish favorable termination"
- In this case Thompson's innocence wasn't established because the only reason the prosecutor gave for dismissing charges against him was "in the interests of justice"
- Thompson argues in favor of the Eleventh Circuit rule that favorable termination occurs when criminal proceedings end in a manner "not inconsistent with . . . innocence"

# Trial

- The Second Circuit allowed Thompson's denial of a right to a fair trial claim (though Thompson was never subjected to a criminal trial) to go to a jury along with a number of other claims, excluding the so-called "malicious prosecution" claim
- Thompson lost all claims before the jury

# SLLC *Amicus* Brief

- The State and Local Legal Center's (SLLC) *amicus* brief argues that the "most analogous common-law tort" to claims for "unreasonable seizure pursuant to legal process" is false imprisonment, not malicious prosecution
- Favorable termination is irrelevant in a false imprisonment claim
- Claims for "unreasonable seizure pursuant to legal process" accrue, for statute-of-limitations purposes, when the seizure pursuant to legal process ends

# SLLC *Amicus* Brief

- The SLLC argues that Thompson should nevertheless lose his claim for "unreasonable seizure pursuant to legal process" for two reasons
- First, he was not "seized for any period after legal process [was] issued." Instead, following his arrest he was held for two days until arraignment, then released on his own recognizance, and not taken into custody again before his charges were dismissed.
- Second, a jury ruled against Thompson's denial of a fair trial claim indicating it either didn't believe the officers lied about Thompson shoving an officer or "that such evidence was fabricated but would not likely have influenced a criminal jury's decision." (If the jury found the evidence was fabricated but would not likely have influenced a criminal jury's decision, it would not undermine the arraignment judge's finding that probable-cause supported imposing on Thompson non-custodial restrictions when he was released on his own recognizance).

# Questions?

Thanks for attending!!