

CIVIL LAWSUITS LEAD TO BETTER, SAFER LAW ENFORCEMENT

ENDING QUALIFIED IMMUNITY IS A CRITICAL NEXT STEP



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Ending Qualified Immunity Is a Critical Next Step

As the nation seeks solutions to the crises of police brutality and racial injustice in law enforcement, one idea has emerged as a critical starting point for many federal and state lawmakers: abolishing the doctrine of “qualified immunity.” Qualified immunity, a highly controversial doctrine created by the U.S. Supreme Court with what many consider to be “dubious reasoning,”¹ protects police officers from civil liability when they kill or injure someone using excessive force, brutality or other misconduct.² Under this doctrine, even a police officer criminally convicted of murder – as rare as that is³ – could still be immune from accountability in civil court.

Fortunately for victims and their families, qualified immunity does not prevent police departments from being sued. Many such suits have been brought and resulted in important changes to policies and practices, including serving as a tool for police departments to identify and remedy potential widespread abuses. As UCLA law professor Joanna C. Schwartz, a leading expert in police misconduct litigation, wrote in 2011,⁴

[A] small but growing group of police departments around the country have found innovative ways to analyze information gathered from lawsuits. They investigate lawsuit claims as they would civilian complaints, and they discipline, retrain or fire officers when the claims are substantiated. They look for trends in lawsuits suggesting problem officers, units and practices, and they review the evidence developed in the cases for personnel and policy lessons.

In this report, we show how civil lawsuits can play a critical role in moving towards police accountability and reform. These are important cases, but far less impactful than they could be because of qualified immunity. When compensation is awarded to victims and families, it is typically taxpayers who pay,⁵ while the officer who commits the constitutional violation is off the hook.⁶ In other words, if accountability is the goal, compensation is being paid by the wrong people. This only serves to undermine the deterrent function of the civil justice system to control police abuse of power.

Abolishing qualified immunity would be a crucial next step towards accomplishing meaningful accountability, justice and reform. As the libertarian Cato Institute put it, “eliminating qualified immunity is ... one of our most promising means of actually encouraging police officers to respect people’s constitutional rights. It is by no means the only police reform that we need, but it is an indispensable component of meaningful reform.”⁷

BREONNA TAYLOR

On March 13, 2020, Breonna Taylor was shot and killed by plainclothes Louisville, KY police, who had forcibly entered her apartment without warning in the middle of the night as she and her boyfriend slept. Taylor's boyfriend, thinking the officers were intruders, fired at them; three officers reacted by firing over 30 bullets, at least six of which hit Taylor. Her family filed state wrongful death, excessive force, battery, negligence and gross negligence claims, alleging that the 26-year-old medical worker's death would have been avoided had the officers followed police procedures. In September 2020, the City of Louisville settled the family's case for \$12 million.⁸

Under the terms of the settlement, the Louisville Metro Government agreed to police accountability and search warrant reforms as well as changes to its community-related police programs. Taylor's mother said, "Justice for Breonna means that we will continue to save lives in her honor. No amount of money accomplishes that, but the police reform measures that we were able to get passed as a part of this settlement mean so much more to my family, our community, and to Breonna's legacy."⁹ To date, no officer has been charged with her murder.¹⁰

ANTONIO VALENZUELA

Antonio Valenzuela, 40 and father of four, died on February 29, 2020 after a Las Cruces, NM police officer used a chokehold. Valenzuela, on meth, had run away from police; once apprehended, an officer put him in a vascular neck restraint, saying "I'm going to (expletive) choke you out, bro," a statement heard on police video. Valenzuela died at the scene. An autopsy report revealed that his "Adam's apple was crushed, he had swelling in the brain, fractured ribs and damaged blood vessels in his eyes consistent with strangulation," with his death ruled a homicide. Valenzuela's family filed a wrongful death lawsuit against the city of Las Cruces. In August 2020, the case settled for \$6.5 million.¹¹

As part of the settlement, Las Cruces police "agreed to ban all chokeholds and fire any officer who violates the new policy," "adopt a warning system involving officers who use excessive force" and "forge a policy so officers can undergo yearly mental health exams," while the city pledged to "seek to adopt racial bias training for police and may require officers to intervene in possible excessive force episodes...."¹²

STACY KENNY

Stacy Kenny, 33, died on March 31, 2019 after being shot five times by a Springfield, OR police officer during a traffic stop. Kenny was seatbelted and unarmed, but because she was acting oddly due to her schizophrenia, the officer tried to arrest Kenny by pulling her through the car window. Three other officers soon arrived and joined in, grabbing her by her hair, clothing and arms, hitting her head and face with their fists and using a stun gun on her stomach, groin and back. Then, as she was talking to 911 operators on the phone, one of the officers climbed into her car and she started driving. The officer started shooting her, firing multiple rounds and hitting her head, killing her. Kenny's family pursued federal civil rights violations and state wrongful death claims, and in July 2020, the case settled for \$4.55 million.¹³

The settlement "requires the Springfield Police Department to submit to a comprehensive top-to-bottom review of its use of force accountability processes; make needed changes to its use-of-force policy; train its police officers to use the minimum force necessary to accomplish their lawful objectives; and create transparency by requiring a public annual report on use of force."¹⁴

KELVIN RODRIGUEZ

On January 12, 2019, Kelvin Rodriguez, a 33-year-old plant worker and father of three who spoke limited English, had been driving when he saw a police car.¹⁵ He had done nothing wrong, and the officer had no reason to think he had. But as an immigrant, person of color and generally fearful of police, he pulled off the road into an auto dealership parking lot. The police followed him, which frightened him even more. He got out of his car and ran.¹⁶ When the officer "put on his squad lights, Rodriguez immediately returned with his hands up over his head and followed police commands to get down."¹⁷ The officer "dropped his weight onto Rodriguez and kned him in the back,"¹⁸ breaking four of his ribs and lacerating his pancreas and liver. Rodriguez moaned in pain and repeatedly asked for medical assistance, but his pleas were initially ignored. Eventually help came, and he had to be airlifted to a medical facility.¹⁹ He was in intensive care for five days and had to undergo multiple surgeries. In October 2019, he sued²⁰; the case settled for \$590,000 in November 2020.²¹ As part of the settlement, the Worthington Police Department agreed to expand "its fair and impartial policing training as well as foreign language training."²²

YÁÑEZ FAMILY

In the evening of August 20, 2018, agents from the Utah Division of Adult Probation & Parole (AP&P) demanded entry to the Yáñezes' house, claiming that they were looking for an adult member of the family who did not live at the home and was not in fact there. They produced no warrant after repeated requests for one, so the family would not let them in. Agents then broke down the doors, "tackled the mother, Maria, with a riot shield; pinned the father, Munir, to the ground and repeatedly shocked him with a Taser; pointed an automatic rifle at a child before handcuffing him; and forced the other two children to leap from the kitchen window."²³ In January 2020, the Yáñezes sued AP&P agents and officials, as well as the executive director of the Utah Department of Corrections, for excessive force, among other constitutional violations, and sought "policy changes so that these violent and discriminatory raids do not happen again in Utah." In September 2020, the case settled for \$137,000.²⁴

Under the settlement, the Utah Department of Corrections pledged "to provide extra training to its parole and probation agents on how to legally enter a home and avoid racial profiling" as well as "precautions to consider when minors are present."²⁵

STERLING BROWN

On January 26, 2018, pro-basketball player Sterling Brown was taken to the ground, tased and arrested after a parking violation at a Milwaukee, WI Walgreens. Brown, 22, had parked improperly in a handicapped space in the virtually empty lot and gone into the store for a few minutes. When the Milwaukee Bucks guard returned to his car, an officer was waiting for him, became confrontational and called for backup. Additional officers arrived and quickly escalated the encounter, violently tackling, tasing and cuffing Brown, only easing up and taking him to the hospital by ambulance after learning that he played for the Bucks. In June 2018, Brown filed a federal civil rights lawsuit against the city, chief of police, sergeants and officers, alleging unlawful arrest, excessive force and detention. In November 2020, the case settled for \$750,000.²⁶

Under the agreement, "the city of Milwaukee would in a statement admit to a constitutional violation and commit to incorporate changes to the Milwaukee Police Department standard operating procedures. The changes must be implemented within 180 days of execution of the settlement agreement."²⁷

LAUREN GOTTHELF

On November 25, 2017, Lauren Gotthelf was arrested for refusing to sign a Boulder County, CO police ticket that cited her for having her service dog on the mall, smoking in public and throwing her cigarette on the ground. Hours later she found herself handcuffed, strapped into a restraint chair, aggressively pinned down and tased by officers at the county jail. Gotthelf filed a federal civil lawsuit against the county, its sheriff and officers, alleging 14th Amendment violations (namely, use of excessive force and supervisory liability for failure to train and supervise) as well as unlawful discrimination and failure to reasonably accommodate under the Americans with Disabilities Act and the Rehabilitation Act. In September 2020, the case settled for \$400,000.²⁸

As a result of the lawsuit, Boulder County made policy changes, among them: “Prohibiting the use of a [taser] by a deputy while an individual is restrained in a restraint chair”; “Requiring consultation with jail mental health staff before using a restraint chair to restrain a detainee, where possible”; and instituting additional mandatory training of deputies.²⁹

UNLAWFUL STOP-AND-FRISK VICTIMS

From 2008 to 2017, Milwaukee, WI police conducted hundreds of thousands of baseless pedestrian and traffic stops of Black and Latino people under its stop-and-frisk program. In February 2017, six victims, including a military veteran, a grandmother, students and a state legislator, filed a federal class action lawsuit against the city, its police commission and chief of police, alleging that they were unlawfully stopped or stopped and frisked by police while engaged in routine activities, like walking or driving. The case sought damages as well as changes to police practices. In July 2018, the case settled for \$3.4 million.³⁰

The agreement – in force for at least five years and monitored by plaintiffs’ counsel – required the police department and commission to, among other things: “Change policies regarding stops and frisks; Document every stop and every frisk conducted by officers, the reason for the encounter, and related demographic information, regardless of the outcome of the stop; Improve training, supervision, and auditing of officers on stop and frisk and racial profiling issues, and provide for discipline of officers who conduct improper stops or fail to document those stops; Release stop-and-frisk data regularly to the public; Expand and improve the process for the public to file complaints against police officers.”³¹

TEEN IN SOLITARY CONFINEMENT

A 16-year-old boy was put in solitary confinement more than 40 times between 2013 and April 2016 by Grays Harbor County, WA Juvenile Detention staff for minor infractions like leaving a glob of toothpaste on the door to his room. During one eight-day stretch, “he was locked in a padded cell that was spattered with food and blood, with a feces-covered grate over a hole in the ground that had been used as a toilet, and was given only peanut butter and jelly sandwiches and water.” The child and his mother filed a federal lawsuit against the county, its juvenile court administrator, the detention facility director and staff. In November 2017, the case settled for \$45,000.³²

As part of the agreement, the county pledged to make policy changes to minimize use of solitary confinement and ensure that those in isolation “have adequate bathroom amenities and food.” And if a juvenile is placed in solitary confinement, “staff must check in on them up to six times within the first 24 hours to determine if it's still necessary.” The county also agreed to train all juvenile detention staff on the new policies by December 1, 2017.³³

JEREMY MCDOLE

Jeremy McDole, 28 and paralyzed from the waist down, was shot to death by four Wilmington, DE police officers on September 23, 2015 while sitting in his wheelchair. The officers had confronted McDole after receiving a 911 call about a man with a self-inflicted gunshot wound. Bystander video showed an officer pointing a gun at McDole, screaming at him to drop his gun and put his hands up and then firing a shot at McDole when he started fidgeting in his chair and moving his hands toward his waist even though his hands were on the arms of his wheelchair when he was shot. Less than one minute after the initial shot was fired, three other officers shot McDole 15 times, killing him.³⁴ In March 2016, McDole’s family sued the city and police department.³⁵ Nine months later, the case settled for \$1.5 million.

As part of the agreement, Wilmington police pledged to evaluate its current de-escalation tactics and officer training and “consider a comprehensive use of force policy that will outline when force is appropriate and train officers in de-escalation procedures.” In early March 2017 – three months after the settlement was announced – the police chief met with McDole’s family and stated that Wilmington police would adopt an objective use of force standard and annually

undergo training in how to deal with mental health encounters, use of force and de-escalation.³⁶

JAMES BLAKE

On September 9, 2015 former world tennis champion James Blake “was bodyslammed, handcuffed and led away” by New York City police in a case of mistaken identity. He had been waiting for a car outside a Midtown hotel to take him to the U.S. Open when “officers mistook him for a suspect in a credit card fraud ring case.” The officers also “failed to report the mistaken arrest, as they were required to do...” The threat of a lawsuit caused the city to settle with Blake in June 2017; he was reimbursed for attorney fees and travel costs totaling approximately \$175,000.³⁷

Under the agreement, New York City pledged to create a new position with the Civilian Complaint Review Board (CCRB) – the agency that investigates police misconduct – called the “James Blake CCRB Fellowship.” “This individual is intended to help ensure that complaints are investigated both quickly and thoroughly,” said Police Commissioner James P. O’Neill in a statement announcing the settlement.³⁸

CHILD INTERROGATED BY POLICE

On October 24, 2014, Tiverton, R.I. police officers took an 8-year-old girl off a school bus, brought her to a police station without her parents’ knowledge and questioned her for several hours before releasing her. The officers’ actions were based “solely on unsubstantiated claims from another child that the girl was carrying ‘chemicals’ in her backpack, and occurred even after the police found nothing in the backpack.” Her parents sued, and in June 2017, the case settled for \$40,000.³⁹

Under the agreement, the town “adopted a formal protocol to deal with any similar incidents in the future. Among other things, the protocol requires police to immediately inform and involve school officials when an officer wants to remove an elementary school student from a school bus. The policy also bars, absent a likelihood of imminent harm, any police or school official interrogation of the children until their parents are present.”⁴⁰

SAMANTHA RAMSEY

On April 26, 2014, preschool teacher Samantha Ramsey, 19, was shot to death by a Boone County sheriff's deputy while driving away from a large outdoor party along the Ohio River. The officer said he jumped on the hood of Ramsey's car when she began to speed off instead of stopping for a sobriety check. The officer then pulled out his gun and shot Ramsey four times through the windshield, later telling investigators that he thought he would be killed. The officer was never charged or disciplined.⁴¹

Ramsey's family – in addition to three passengers, who claimed to be held at gunpoint as they exited the car after it rolled backward into a ditch – sued, arguing that this officer was not telling the truth.⁴² They said, "Without any warning to Ms. Ramsey or her passengers, [the officer] jumped onto the hood of Ms. Ramsey's car and demanded that she stop the vehicle," and "[a]s Ms. Ramsey was stopping the car [the officer] fired his weapon four times through the windshield. He killed Ms. Ramsey and terrorized her three passengers."⁴³

Discovery revealed, among other things, that: 1) "Boone County conducted an investigation not designed to determine what really happened"; 2) all members of a four-officer panel reviewing the County's investigation of the killing had agreed that if the officer "had let the car just go, the situation wouldn't have happened" and that, instead of shooting Ramsey, he could have "followed in his cruiser or could've taken down plate information and radioed colleagues to stop her"; and 3) the sheriff's deputy might have been on Xanax the night of the shooting.⁴⁴ In December 2016, the case settled for \$3.5 million.

Under the agreement, the sheriff's office pledged to revise its use of force policy, create clearer guidance on officers' use of prescription medication while on duty, have patrol officers wear body cameras by the end of 2017 and involve a police practices expert to help ensure that such reforms are implemented.⁴⁵

MARY HOLMES

On March 26, 2014, Mary Holmes was at the Dudley Square Massachusetts Bay Transportation Authority (MBTA) station in Roxbury when she saw an officer "scream at and shove another Black woman. The situation worried Ms. Holmes so she tried to calm the woman and asked [the officer] to stop being so aggressive. When these efforts failed, she called 9-1-1 for help." In

response, the officer and her partner “pepper-sprayed Ms. Holmes in the face, beat her with a metal baton, and arrested her, handcuffing her hands behind her back while forcing her to the ground.” In August 2015, Holmes filed a lawsuit against the officers. In June 2017, the case settled for \$57,500.⁴⁶

After the lawsuit was filed, the MBTA changed their systems and policies “to monitor officer behavior and provide aggression management training. The superintendent must review all excessive use of force citizen complaints, every such complaint will trigger a request for all available video evidence, and all MBTA police officers must undergo at least 4 hours of ‘Management of Aggressive Behavior’ training. In addition, the MBTA will now post their use of force and several other policies online, and make it easier for civilians to file police complaints.”⁴⁷

ABUSED JUVENILE PRISONERS

In Michigan jails, male prisoners ages 14-17 were placed in adult prisons where many were then sexually abused and harassed by adult male prisoners or prison staff members. In December 2013, seven victims filed a class action lawsuit on behalf of over 1,300 young male prisoners against Michigan’s Department of Corrections (MDOC), wardens and policymakers. In February 2020, the case settled for \$80 million.⁴⁸

According to Public Justice, “Though this litigation, the team was able to: force the state to separate all youth from adults, and decrease the number of youth put in prison from over 400 to less than 25; establish that prisoners are entitled to the protections of basic state civil rights laws and declare that equal protection rights extend to all human regardless of their status; hold the Governor of the state personally liable for the harm to those youth detained in state prisons; void the State’s administrative exhaustion policies, opening up the ability of individuals to challenge unlawful detention practices”; “ensure access to occupational, social, and medical rehabilitative services for affected youth; and obtain other equitable relief to change the culture for how to safely hold, manage, and help rehabilitate youthful individuals in detention.”⁴⁹

KENNY RELEFORD

On October 11, 2012, U.S. Navy veteran Kenny Releford, 38, was shot to death by a Houston, TX police officer as he stood unarmed in the middle of the street. Releford's friend had called police for help after Releford, who suffered from schizophrenia, broke into the friend's home during a mental health crisis. No one in the house had been injured, and Releford went home after the incident. When the officer arrived, he ordered Releford outside with his patrol loudspeaker; Releford complied and began approaching the officer as instructed. Multiple eyewitnesses testified through affidavits that: 1) Releford's hands were clearly visible and unarmed when the officer shot him; and 2) the officer shot Releford again as he tried to get up from the street.⁵⁰

Two years later, Releford's father sued,⁵¹ arguing, among other things, that officers were poorly trained and that the Houston Police Department "repeatedly improperly cleared officers who'd shot or killed unarmed people — even when the department's own internal affairs investigations revealed violations of training, policies or state law."⁵² In June 2017, the case settled for \$260,000.

As reported by the *Houston Chronicle*, "Because of rulings in the case by U.S. District Judge Keith Ellison, the Houston Police Department was compelled to release previously secret internal reviews of Releford's shooting as well as of other unarmed Houstonians." These documents publicly confirmed systemic problems for the first time, including information that "contradicted the officer's account in the fatal shooting of a mentally ill double amputee named Brian Claunch, who was in a wheelchair when an HPD officer shot and killed him in 2012."⁵³ Publicity surrounding the lawsuit "boosted public awareness about police use-of-force and weaknesses in HPD's reviews of officer-involved shootings."⁵⁴

JAIME REYES

Jaime Reyes, 28-years-old, died on June 6, 2012 after being shot multiple times in the back by a Fresno, CA police officer. Reyes, on meth, had run away from police; an officer shot him as he neared the top of a fence and then three more times in the back as he lay face down on the ground. He was frisked, handcuffed and later provided with medical assistance, ultimately dying at the hospital after failed emergency surgery. Less than a year later, Reyes' parents filed a wrongful death action against the City of Fresno, its police chief and officers from the Fresno

Police Department. According to the complaint, Reyes never had anything in his hands, never threatened the officers and was more than five yards ahead of the officer when he was first shot. It was only as he lay motionless from the three additional shots that officers found an unloaded gun wrapped in a plastic bag in his shorts pocket.⁵⁵ In November 2016, the case settled for \$2.2 million.

As part of the settlement, the Fresno Police Department agreed to: 1) change its use-of-force policy; 2) train sergeants and patrol officers not to fire extra bullets unnecessarily; and 3) train homicide detectives and police Internal Affairs officers to consider witness statements that conflict with accounts by officers at the scene.⁵⁶

RONALD ARMSTRONG

On April 23, 2011, 43-year-old Ronald Armstrong, who suffered from bipolar disorder and paranoid schizophrenia, died after being tased multiple times by Pinehurst, NC police. His sister had taken him to the hospital since he was in mental crisis from being off his medication. He fled the hospital to a grassy street corner nearby, and three officers were unsuccessful in their attempts to coax him back. He then sat down, wrapping himself around a stop sign post. One officer drew his taser and told him he would be tased. He was then tased five separate times over two minutes. Officers removed Armstrong and pinned him face-down on the ground, one placing a knee and another standing on his back while applying handcuffs and shackling his legs. The officers then got up and walked away, leaving Armstrong facedown, handcuffed, shackled and not moving. He died soon after.

In April 2013, family members sued the village of Pinehurst and three police officers for excessive force when executing the involuntary commitment order. The case was dismissed, with the court finding that the officers had qualified immunity.⁵⁷ But the case “prompted cities in the five-state region from Maryland to South Carolina to adopt new restrictions” on police use of Tasers.⁵⁸

DARIUS PINEX

Darius Pinex, a 27-year-old father of three, was shot to death during a January 7, 2011 traffic stop in Chicago, IL’s Englewood neighborhood. The officers claimed that they stopped Pinex’s car with their guns drawn after hearing an emergency radio alert about a similar vehicle

connected to a shooting, and that Pinex refused orders, drove in reverse and accelerated forward. According to the officers, this justified opening fire on his car and shooting him in the head.⁵⁹

Pinex's family sued in June 2012,⁶⁰ arguing that the officers were not telling the truth, that the "officers aggressively cut off Pinex's car, rushed out with guns drawn and pointed, all the while screaming at [them]" and then "fired an initial shot without reason, provoking Pinex into fleeing."⁶¹ But the family was led to believe there was no recording of the emergency dispatch or documents supporting their version of events. This was a lie.

In mid-jury trial, the judge learned that: 1) the city attorney had found a recording of the actual alert the officers heard before the stop; 2) the actual alert contradicted the officers' story about an emergency call connecting a car like Pinex's to an earlier shooting; and 3) the city attorney had uncovered the actual alert a week before trial.⁶² In a January 2016 opinion, the judge chastised the city attorney for intentionally withholding this crucial piece of evidence, criticized another city attorney for failing to make a reasonable effort to find that evidence and ordered a new trial.

Widespread publicity about the ruling prompted the city's Federal Civil Rights Litigation (FCRL) Division to announce greater transparency regarding active cases. In addition, the mayor's corporation counsel "instituted several new procedures, including a policy that drastically reduces the Police Department's role in collecting documents for litigation." And within days of the decision, Chicago's mayor hired a former U.S. attorney to conduct an extensive review of the FCRL department; that six-month inquiry resulted in over 50 recommendations of reforms.

The case ultimately settled for \$2.34 million in December 2016.⁶³

BRUCE KLOBUCHAR

Bruce Klobuchar, the 25-year-old son of a former police officer, died in August 1995 after Los Angeles, CA police bound his legs and hands together behind his back. The officers claimed he was under the influence of drugs and causing a disturbance and that they had decided to "hogtie" him because other restraint methods proved ineffective. The county coroner found that restraint contributed to his death.⁶⁴

In February 1996, Klobuchar's parents filed a lawsuit against the city of Los Angeles and its police department. Discovery showed that dozens of people had died while, or immediately

after, being hogtied, and that the police department had known for nearly a decade that the restraint procedure could be lethal. The case settled in July 1997, with the city agreeing to pay Klobuchar's family \$750,000.

As part of the settlement, the city agreed to ban "hogtying."⁶⁵

NOTES

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⁶⁴ Matt Lait, “Council Oks Settlements in Police Suits,” *Los Angeles Times*, July 23, 1997, <http://articles.latimes.com/1997/jul/23/local/me-15441>; Matt Lait, “Controversial Police Restraint To Be Banned,” *Los Angeles Times*, July 4, 1997, <http://articles.latimes.com/1997/jul/04/local/me-9731>

⁶⁵ E-mail correspondence from Carol Watson, attorney for Klobuchar’s family, dated October 3, 2000, regarding *Klobuchar v. City of Los Angeles*, No. BC-144490 (Los Angeles County Super. Ct., Cal., filed February 15, 1996); Matt Lait, “Controversial Police Restraint To Be Banned,” *Los Angeles Times*, July 4, 1997, <http://articles.latimes.com/1997/jul/04/local/me-9731>