

US SUPREME COURT CLARIFIES STANDARD FOR “QUALIFIED IMMUNITY” DEFENSE FOR POLICE OFFICERS

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In Brosseau v. Haugen, 125 S.Ct. 596 (December 13, 2004), the Supreme Court of the United States held that a police officer is entitled to qualified immunity from a civil rights lawsuit if he “reasonable misapprehends” the law governing the circumstances with which he was confronted. In Brosseau, a fleeing suspect was shot in the back by a police officer and subsequently brought a § 1983 action alleging the use of excessive force. The District Court for the Western District of Washington granted summary judgment to the officer on the grounds of qualified immunity, but the Ninth Circuit Court of Appeals reversed and remanded, holding that the officer had violated the suspect’s Fourth Amendment right to be free from excessive force. The Ninth Circuit reasoned that, because the right to be free from the use of excessive force is “firmly established” the officer was not entitled to qualified immunity.

The Supreme Court of the United States disagreed holding instead that:

Qualified 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. Saucier v. Katz, 533 U.S. 206 (qualified immunity operates to protect officers from the sometimes hazy border between excessive and acceptable force).

125 S.Ct. 599.

The Supreme Court noted that the Ninth Circuit Court of Appeals misapplied the “clearly established” standard because it asked whether the constitutional right at issue was clearly established at too high a level of generality. The Ninth Circuit took as sufficient the fact that the *right to be free from excessive force* is clearly established, but it failed to ask whether, in light of the circumstances confronting the officer, it was clearly established *that the officer’s actions violated the constitutional rights of the suspect*. The Supreme Court ruled that it is this more specific inquiry, which must be performed in qualified immunity cases.

Remember that the qualified immunity defense only shields individuals from liability and does not protect municipalities. If the alleged constitutional violation is the result of a custom, policy, or practice of the government entity, even a “reasonable misapprehension” of the law will not be a defense.