Update on Civil Rights Litigation

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SELECTED ISSUES IN FEDERAL CIVIL RIGHTS LITIGATION

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"CATS PAW"

Attribution of discriminatory motive of another to the decision maker.

Vasquez v. Empress Ambulance Service, 835 F.3d 267, 272 (2d Cir., August 29, 2016).

> "refers to a situation in which an employee is fired or subjected to some other adverse employment action by a supervisor who himself has no discriminatory motive, but who has been manipulated by a subordinate who does have such a motive and intended to bring about the adverse employment action," Cook v. IPC Intern. Corp., 673 F.3d 625, 628 (7th Cir., 2012) (Posner, J.) Because the supervisor, acting as agent or the employer, has permitted himself to be used "as the conduit of [the subordinate's] prejudice," Shager v. Upjohn Co., 913 F.2d 398, 405 (7th Cir., 1990), that prejudice may then be imputed to the employer and used to hold the employer liable for employment discrimination."

District Court granted defendant's 12(b)(6) motion in plaintiff's Title VII case ruling discriminatory intent of co-worker, with no decision making authority, could not be attributed to employer (co-worker, who had harassed plaintiff, found out about her complaint to supervisor and created false document trial to implicate her in wrongdoing).

- Circuit expanded United States Supreme Court "cats paw" precedent to cover animus from a co-worker with no supervisory responsibility.
- To do so "plaintiff must show employer was itself negligent in allowing [the co-worker's] false allegations and retaliatory intent behind them to achieve their desired end." Id. at 274.
- If employer in good faith, and non-negligently relies upon co-worker's "false and malign complaint", no cats paw liability. Employer not liable for finding employee guilty of misconduct. No liability simply because it acts on information provided by biased co-worker. Id. at 275.
- If biased informant is him/herself a supervisor, employer will be liable.
- If biased informant is a co-worker, employer must be negligent in manner in which it conducted investigation or otherwise relied upon this information.

See, Blundell v. Nikon Kohden Am., 17 U.S. Dist. LEXIS 8728 *23 n.4 (NDNY, January 23, 2017)

and

Boston v. Taconic Eastchester Mgmnt. LLC, 2016 U.S. Dist. LEXIS 125683 *22-23 (SDNY, September 30, 2016)

both of which discuss Vasquez' cats paw ruling and find plaintiff cannot take advantage of it.

QUERY: Now that issue of employer negligence in conducting investigation into employee complaint is relevant does this traditional question of fact for jury make summary judgment harder for employer to obtain in this type of case?

PRE-TRIAL DETAINEE v. CONVICTED PRISONER
FOURTEENTH AMENDMENT v. EIGHTH AMENDMENT

Kingsley v. Hendrickson, 135 S.Ct. 2466 (June 22, 2015)

5 - Breyer, Ginsburg, Sotomayor, Kennedy, Kagan
4 - Scalia, Roberts, Alito, Thomas

Court decided that a §1983 excessive force case against a pre-trial detainee is measured by only the "objective reasonableness" standard, without a subjective, or state of mind inquiry into the defendant's motivation.

District Court denied defendants' summary judgment motion. Jury instructions included requirement that a jury find corrections officer acted recklessly despite knowing the use of force [taser] created a risk of harm to plaintiff.

Jury Verdict for defendants, affirmed 2-1 by 7th Circuit.

Supreme Court reversed:

- "the defendant's state of mind is not a matter the plaintiff is required to prove". at 2472.
- Pre-trial detainee "must show only that the force purposely or knowingly used against him was objectively unreasonable." at 2473
- Relies upon Graham v. Connor, 490 U.S. 386 (1989), seminal case on excessive force claims against police under Fourth Amendment jurisprudence
- Court notes: "pre-trial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically'". at 2475 (citations omitted).
- Notes PLRA will deter filing of frivolous claims under new standard. at 2476.
- Remand of 7th Circuit to consider if jury instruction requiring "recklessness" by defendants was harmless error [check out if 7th Circuit has ruled]

Willey v. Hendrickson, 801 F.3d 51 (2d Cir., August 28, 2015)

Eighth Amendment case

- Plaintiff a convicted prisoner in DOCS custody
- Plaintiff appeal from award of summary judgment dismissing case

- Involved Unsanitary Conditions of Confinement and Inadequate Nutritional Meals

  Familiar 2 prong Eighth Amendment test citing Farmer v. Brennan, 511 U.S. 825, 832 (1994)

  1) Conditions must present an "objective, sufficiently serious...denial of minimal civilized measure of life's necessities".

  2) "Sufficiently culpable state of mind" on correction officers. 801 F.3d at 66.

- No "bright line durational requirement" for unsanitary conditions claim

- No "minimal level of grotesquerie required"

- Determination of claim requires court to "evaluate the product of these two components". at 68.

- "Serious injury is unequivocally not a necessary element of an Eighth Amendment claim" (emphasis added).

  - Can be relevant to damages and "may shed light on the severity of an exposure

- Same analysis for claim of nutritionally inadequate food. at 69.

- Theft of legal papers from cell - valid "access to courts claim", not governed by Hudson v. Palmer, 468 U.S. 517 (1984), i.e., state law remedy adequate - claim against state for lost or damaged property in Court of Claims.

- Remand - recommend appointment of counsel - re-open discovery

Darnell v. Pineiro, 849 F.3d 17, 2017 U.S. App. LEXIS 2911 (2d Cir., February 21, 2017)

Challenge by pre-trial detainees to horrid conditions in Brooklyn Central Booking holding facility for pre-arraignment arrestees

Typical length of stay in Brooklyn Central Booking was 10-24 hours.

- District Court granted defendants' summary judgment shortly after Supreme Court Kingsley decision and 2 weeks before Second Circuit Willey decision. District Court refused to reconsider ruling in light of either.

Court considered following conditions for pre-trial detainees and its ruling applied to all:

- Overcrowding
- Unusable Toilets
- Garbage and Inadequate Sanitation
- Infestation
- Lack of Toiletries and Order Hygienic Items
- Inadequate Nutrition
- Extreme Temperature and Poor Ventilation
- Deprivation of Sleep
- Crime and Intimidation

- Conditions in Brooklyn Central Booking were "alarming and appalling. at *17.

Caiozzo v. Koreman, 581 F.3d 63, 70 (2d Cir., 2009), pre Darnell case which

was governing rule and for a pre-trial detainee to prove a condition of confinement case must allege/prove corrections officer's acted with 'deliberate indifference' in a subjective sense. Interpreted test for Fourteenth Amendment due process violation by pre-trial detainee to be the same as Eighth Amendment claim for convicted prisoner, i.e., objective and subjective component.

Darnell changed law:

Finds Supreme Court in Kingsley v. Hendrickson altered standard for deliberate indifference under the Fourteenth Amendment due process clause. *26-27

Expands Willey rules for convicted prisoner's unsanitary conditions and lack of nutrition to pre-trial detainee's generally and these 9 conditions specifically. *32

Measure by mix of severity and duration, not the resulting injury. *32

"Under both the Eighth and Fourteenth Amendments, to establish an objective deprivation 'the inmate must show that the conditions, either alone or in combination, pose an unreasonable risk of serious damage to his health (citations omitted), which includes the risk of serious damage to physical and mental (citations omitted) (emphasis added). *27

NOTE: Operating phrase is "increase risk" - not actual damage

States subjective prong of Fourteenth Amendment deliberate indifference inquiry is better described as the "mens rea prong" or "mental element prong". *33

> Explicitly overrules Ciazzo precedent that Fourteenth Amendment due process claims govern pre-trial detainees. Re-evaluated the same as Eighth Amendment cruel and unusual punishment cases for prisoners. *37-38
>
> Therefore, to establish a claim for deliberate indifference to conditions of confinement under the Due Process Clause of the Fourteenth Amendment, the pretrial detainee must prove that the defendant-official acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety. In other words, the "subjective prong" (or "mens rea prong") of a deliberate indifference claim is defined objectively. (emphasis in original) *39-40

Darnell did not involve medical care but difficult to see how, for pre-trial detainees, the same rule will not apply.

Kingsley and Darnell make it easier to plead and thus survive a Rule 12(b)(6) motion and harder to obtain summary judgment in pre-trail detainee lawsuit involving force and conditions of confinement. Now more akin to the "he said, she said" factual dispute issue confronting defendants in police excessive force cases.

Willey eliminates serious injury as an element of Eighth Amendment claim for prisoners and creates flexibility in the evaluation of the seriousness of the challenged condition (grotesquerie) and the length of time the prisoner endured it.

Harris v. Miller, 818 F3d 49 (2d Cir., March 15, 2016).

- Challenge by female inmate in state prison to unusually intrusive strip search in which male co-participated
- Dealt with Fourth Amendment "unreasonable search" and Eighth Amendment "cruel and unusual punishment."

Fourth Amendment

- "Inmates retain a limited right to bodily privacy under the Fourth Amendment"

2 part inquiry

1) Has inmate "exhibited an actual, subjective expectation of bodily privacy"

2) Determine "whether the prison officials had sufficient justification to

intrude on [the inmate's Fourth Amendment rights". at *54

If challenge to isolated search - as opposed to facility policy on searches in general, court must balance:

1) scope of particular intrusion

2) manner in which it is conducted

3) justification for initiating it

4) the place in which it is conducted. at *58.

Eighth Amendment Cruel and Unusual Punishment

a) Subjective Inquiry

1) prisoner must show defendant acted with "a subjectively sufficiently culpable state of mind" shown by actions characterized by "wantonness"

- in force cases test for "wantonness" is whether the force was used in a good faith effort to maintain or restore disciplinary or maliciously and sadistically to cause harm. at *63.

b) Objective Inquiry

- inmate must allege conduct was objectively "harmful enough" or "sufficiently serious" enough to reach constitutional dimensions
- turns on "contemporary standards of decency"
- malicious use of force to cause harm constitutes per se violation of Eighth Amendment
- this is satisfied even if victim does not suffer a serious or significant injury, so long as force used was not de minimus. at. *64.

SUPERVISORY LIABILITY

Colon v. Coughlin, 58 F.3d 865, 873 (2d Cir., 1995)

What is personal involvement of supervisor?

> "(1) The defendant participated directly in the alleged constitutional violation, (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong, (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom, (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts, or (5) the defendant exhibited deliberate indifference to the rights of inmates by failing to act on information indicating that unconstitutional acts were occurring."

But then comes Iqbal v. Ashcroft, 556 U.S. 662, 677 (2009):

> "...the term 'supervisory liability' is a misnomer. Absent vicarious liability, each Government official, his or her title not withstanding, is only liable for his or her own misconduct. In the context of determining whether there is a violation of a clearly established right to overcome qualified immunity, purpose rather than knowledge is required to impose Biven's liability on the subordinate for unconstitutional discrimination; the same holds true for an official with violations arising from his or her superintendent responsibilities.' (emphasis supplied).
>
> Under Iqbal, supervisor must have same culpable state affirmed as required to establish underlying constitutional claims against subordinate.
>
> Iqbal involved intentional discrimination under Equal Protection Clause.

Iqbal impact on Colon:

- Grullon v. City of New Haven, 720 F.3d 133, 139 (2d Cir., 2013)

> Supreme Court decision in Ashcroft "may have heightened the requirements for a showing of a supervisor's personal involvement

with respect to certain constitutional violations", but court had no need to decide since this complaint did not satisfy Colon factors for pleading supervisory liability.

See, Samuels v. Fischer, 168 F.Supp.2d 625, 635-36 (SDNY, 2016) (collecting cases noting Second Circuit has not resolved potential conflict).

Turkmen v. Hasty, 789 F.3d 218 (2d Cir., June, 2015), reh. en banc den. 808 F.3d 197 (2d Cir., December 11, 2015) cert. granted October 11, 2016; argued January, 2017 sub nom Hasty v. Abbasi.

Involves Fifth Amendment Bivens actions alleging Equal Protection and Substantive Due Process violations at Manhattan Detention Center by federal officials with respect to Muslim detainees' post 9/11 challenge to harsh conditions of confinement. Second Circuit ruled claim stated under both theories against various high placed officials and by and large denied qualified immunity.

With respect to supervisory liability. Turkmen stated:

"The proper inquiry is not the name we bestow on a particular theory or standard, but rather whether that standard - be it deliberate indifference, punitive intent, or discriminatory intent - reflects the elements of the underlying constitutional tort. See, Iqbal, 556 U.S. at 676. ("The factors necessary to establish a Bivens violation will vary with the constitutional provisions at issue")." 789 F.3d at 250.

Turkmen avoids directly confronting issue of Colon's viability post Iqbal.

Clear that mere negligence in supervising subordinates, even knowledge that they harbor discriminatory animus toward plaintiff, is insufficient. Most direct impact on Colon factors #2 and #4.

- "Iqbal precludes relying on a supervisor's mere knowledge of a subordinate's mental state (i.e., discriminatory or punitive intent) to infer that the supervisor shared that intent. (Iqbal at 667). Knowing that a subordinate engaged in a rogue discrimination or punitive act is not enough. But that is not to say that where the supervisor condones or ratifies a subordinate's discriminatory or punitive actions the supervisor is free of Biven's reach." Turkmen at 233.

- Harder to plead supervisor liability - especially in case involving a constitutional claim that requires intentional conduct.

See, Mirabella v. O'Keenan, 2016 U.S. Dist. LEXIS 120811 *14-17 (WDNY, September 4, 2016) discussing Supervisory Liability claim post Turkmen.

- May be easier now, post Iqbal to get qualified immunity and summary judgment on supervisory liability claims but watch for Supreme Court decision in Hasty v. Abbasi coming soon.

QUALIFIED IMMUNITY BASICS

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

> Required District Court to first decide if there was a constitutional violation and then, if yes, decide if the law was clearly established at the time of the challenged conduct.

Pearson v. Callahan, 555 U.S. 112 (2009)

> Changed "order of battle" to permit District Court to avoid deciding constitutional questions and just decide if law was clearly established or not.

If opt for Pearson methodology constitutional questions may never be decided, but see

Camreta v. Greene, 563 U.S. 692 (2011)

> Noting usual adjudicatory rules suggest court should forebear resolving unnecessary constitutional issues but notes this "threatens to leave standards of official conduct permanently in limbo". Defendant can repeat conduct time after time and each time get qualified immunity because court does not settle the constitutional questions. at 706. See also, al-Kidd v. Ashcroft, 563 U.S. 731, 735 (2011): "Court's should think carefully before expending scarce judicial resources to resolve difficult and novel questions of constitutional law that will have no effect on the outcome of the case" and see Reichle v. Howards, 131 S. Ct. 2088, 2093 (2012) - "this [the Pearson] approach comports with our usual reluctance to decide constitutional questions unnecessarily."

Compare this approach with

Plumhoff v. Rickard, 134 S.Ct. 2012, 2020 (2014)

> Noting Saucier approach "is often beneficial" because "it promotes the development of constitutional precedent."

Recent Supreme Court cases only deciding immunity issue:

> Sheehan; Taylor; Carroll; Messerschmidt; Mullinex; White; Stanton; Ryburn; Wood

Recent Supreme Court cases deciding both merits and immunity:

Lane v. Franks; Plumhoff v. Rickard; al-Kidd v. Ashcroft

- Often repeated concepts/phrases in qualified immunity decisions. In Messerschmidt v. Millender, 132 S.Ct. 1235, 1244 (2012) court repeated its familiar standard:

> "a reasonable person would have known." Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Qualified immunity 'gives government officials breathing room to make reasonable but mistaken judgment,' and 'protects all but the plainly incompetent or those who knowingly violate the law.' Ashcroft v. al-Kidd, 563 U.S. 731, 743 (2011). See also, White, Taylor, Mullinex, Carroll, Stanton

"a reasonable official" see also Carroll v. Carman, Stanton v. Sims

"every reasonable official" see Taylor v. Barkes; Riechle v. Howards; al-Kidd v. Ashcroft

"any reasonable official" Plumhoff v. Rickard

- To Demonstrate "Clearly Established Law"

"Don't need case on point" Taylor, Mullinex, Stanton, al-Kidd, White

but

"existing precedent must have placed statutory or constitutional questions beyond debate". White, Taylor, Stanton, Mullinex, al-Kidd, Carroll, Riechle

In White v. Pauly, 137 S.Ct. 548 (January 9, 2017) Court went so far as to say Circuit panel "failed to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment." at 552. I assume this means no case from any court, state or federal, of any level.

White v. Pauly Court also noted Circuit court held the case "presented a unique set of facts and circumstances," at 552, which is certainly a green light for finding qualified immunity.

- Court's Must Not Define Clearly Established Law

"at a high level of generality". Clearly established law "must be particularized to the facts of the case". White, Plumhoff, Riechle, Sheehan, al-Kidd

This is particularly important in Fourth Amendment context as qualified immunity protects officers who are in the "hazy border between excessive and acceptable force". Mullinex at 312. (citations omitted).

NOTE: In excessive force cases dealing with high speed chases Court has always granted officers qualified immunity. See, Haugen v. Brossseau, 543 U.S. 194 (2001), Plumhoff; Scott v. Harris, 550 U.S. 372 (2007); Mullenix.

ALSO: In Plumhoff, Court ruled "if lethal force is justified, officers are taught to keep shooting until the threat is over". Thus firing 15 shots in 10 seconds into car killing driver and passenger immunized because record clear driver had not given up.

In analyzing qualified immunity in police excessive force cases, continuum of resistance must be looked at. Force justified so long as threat continues. At what point is suspect no longer a threat? Passive resistence is not active threat, i.e., was second or third taser shot necessary, even if 1st was clearly appropriate?

- What law controls?

Supreme Court fond of noting it has no relevant precedent in its cases:

- "nothing in our cases suggests" a violation - Sheehan
- there is "no decision of this court" that controls - Taylor
- "not a single judicial opinion held conduct unconstitutional" - al-Kidd

In such an instance need a "robust consensus of persuasive authority" that constitutional right exists to establish law was "clearly established". Sheehan, Plumhoff, Taylor, al-Kidd.

NOTE: al-Kidd cites to Wilson v. Layne, 526 U.S. 603, 617 (1999) which held that:

> "Petitioners have not brought to our attention any cases of controlling authority in their jurisdiction at the time of the incident which clearly established the rule on which they seek to rely, nor have they identified a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful." (emphasis added).

"Consensus" dictionary definition

- "Collective opinion or concord, general agreement or accord."
- Query? - Does a consensus mean unanimity?
- Query? - Is a "robust consensus" different from a "consensus"?

- Recent cases routinely use "robust consensus".

Supreme Court does not come out and say Court of Appeal's precedent alone can create controlling authority for qualified immunity purposes. It waffles.

- "Assuming arguendo that controlling Court of Appeals' authority could be a dispositive source of clearly established law..." Riechle v. Howards at 2094. (emphasis added).

- "To the extent that a robust consensus of cases of persuasive authority could itself clearly establish the federal right alleged..." Sheehan at 1788, Taylor at 2044. (emphasis added).

- Not a strong endorsement for relying exclusively on Court of Appeals' decision in the Supreme Court.

  - No controlling case from Supreme Court...}
  - No controlling case from Second Circuit....} qualified immunity likely
  - Split in decisions for other Circuits.....}
  - No controlling precedent from highest state court

- Second Circuit Qualified Immunity Cases

  - Recites Supreme Court rules governing analysis of qualified immunity issues discussed above. See, e.g., Barboza v. D'Agata, 2017 U.S. App. LEXIS 819 (January 18, 2017).

- Clearly Established - Clearly Foreshadows: In Scott v. Fisher, 616 F.3d 100,105 (2d Cir., 2010) Court stated:

> "Even if this or other circuit courts have not explicitly held a law or course of conduct to be unconstitutional, the unconstitutionality of that law or course of conduct will nonetheless be treated as clearly established if decisions by this or other courts 'clearly foreshadow a particular ruling on the issue,' Varrone v. Bilotti, 123 F.3d 75, 79 (2d Cir., 1997) (internal quotation marks omitted), even if those decisions come from courts in other circuits."

Scott *cites* to Weber v. Dell, 804 F.2d 796, 801 (2d Cir., 1986) which found 7 other circuit decisions on point "clearly established" law even though it had not ruled on issue.

See also, Terebesi v. Torreso, 764 F.3d 217, 231 (2d Cir., 2014)

- "Even if this court has not explicitly held a course of conduct to be unconstitutional, we may nevertheless treat the law as clearly established if decisions from this court or other circuits clearly foreshadow a particular ruling on the issue." See n.12 disavowing earlier Second Circuit cases read to mean can only rely on Supreme Court or Second Circuit cases for "clearly established": "Though not binding on this Court, the decision of other circuits may reflect that the contours of the rights in question are clearly established".

See also, Garcia v. Doe, 779 F.3d 84, 92 (2d Cir., 2014)

- On excessive force claims Terebesi held: Police not entitled to qualified immunity with respect to use of stun grenade even though no Second Circuit case dealt with this weapon.

  "An officer is not entitled to qualified immunity on the grounds that the law is not clearly established every time a novel method is used to inflict injury." Terebesi at 237. Ordinary Graham factors used in evaluating use of stun grenade.

- Qualified Immunity

  - Decided on plaintiff's version of facts or undisputed facts.

  - See Myers v. Patterson, 819 F.3d 625 (2d Cir., April 11, 2016) involving probable cause for a Mental Hygiene arrest. The District Court had awarded officer qualified immunity but Circuit reversed and remanded for further development of record since officer's personal knowledge, or knowledge received from reliable sources, not clear with respect to plaintiff's danger to self or others - the only relevant basis for such an arrest.

  - Denial of summary judgment ordinarily not appealable on interlocutory basis, but denial of qualified immunity is, but only to the extent the District Court denied motion as matter of law. See Ricciuti v. Gyzenis, 834 F.3d 162, 167 (2d Cir., August 24, 2016).

  - "[D]efendants may appeal from denials of qualified immunity if they are

> willing, for the purposes of appeal only, to pursue the appeal on the basis of stipulated facts or the facts as alleged by the plaintiff. Alternatively, the defendants may appeal if they assume that all the facts that the district court found to be disputed are resolved in the plaintiff's favor. While we may not inquire into the district court's determination that there was sufficient evidence to create a jury questions, we may resolve whether, as a matter of law, the defendants are entitled to qualified immunity either because the law was not clearly established or because, on the facts assumed for the purposes of appeal, the defendants' conduct did not constitute a violation of a constitutional right." Id. at 167. (citations omitted).

See also, Garcia v. Sistarenik, 603 Fed.Appx. 61 (2d Cir., 2015) (summary order)

Recent United States Supreme Court Qualified Immunity Cases

2017

White v. Pauly, 137 S.Ct. 548 (January 9, 2017)

- Per Curium 8-0 denial of summary judgment based upon qualified immunity by 10th Circuit reversed.
- Fourth Amendment use of deadly force case. Late arriving officer to scene shot decedent without announcing police presence assuming those there before him had.
- Notes: "In the last five years, the court has issued a number of opinions reversing federal courts in qualified immunity issues." at 552.
- Notes: "qualified immunity is important to society as a whole" and that it "is effectively lost if a case is erroneously permitted to go to trial. at 552.
- Supreme Court is clearly frustrated with how Courts of Appeal misapply its principles for resolving immunity claims - particularly how to determine what "clearly established law" is. at 553.

2015

City and County of San Francisco v. Sheehan, 135 S.Ct. 1765 (May 18, 2015)

- 6-2 reversal of 9th Circuit denial of summary judgment based upon qualified immunity.
- Police responded to home of EDP and ultimately shot her. No clearly established law required police to accommodate Sheehan's illness under the Fourth Amendment. Issue of whether ADA required police to accommodate plaintiff's disability was dismissed. Cert. improperly granted.

Taylor v. Barkes, 135 S.Ct. 2042 (June 1, 2015)

- Per Curium 9-0 reversal of 3rd Circuit denial of summary judgment based upon qualified immunity.
- No clearly established law that required prison to have adopted adequate suicide protocols that would have prevented decedent's suicide.

Mullinex v. Luna, 136 S.Ct. 305 (November 9, 2015)

- Per Curium 8-1 reversal of 5th Circuit denial of summary judgment based upon qualified immunity.

- Officer shot at fleeing car to disable it but hit driver killing him. Court found facts so unique that qualified immunity proper since prior deadly force cases not sufficiently close precedent.

2014

Carroll v. Carman, 135 S.Ct. 348 (November 10, 2014)

- Per Curium 9-0 reversal of 3rd Circuit which had set aside jury verdict for police and ruled as a matter of law there was a Fourth Amendment violation. Supreme Court gave officers qualified immunity.

- "Knock and talk" exception to the warrant requirement not clearly established to require only knock at front door. Defendant knocked on back door. This did not violate property owner's clearly established right - - qualified immunity awarded.

Lane v. Franks, 134 S.Ct. 2369 (June, 2014)

- 9-0 affirmed 11th Circuit that qualified immunity was proper but reversed on merits and said there was a First Amendment violation. Defendant, in individual capacity, protected by qualified immunity.

- Court testimony by municipal employee pursuant to subpoena protected First Amendment speech and employee cannot be sanctioned for it. But this rule not clearly established so individual defendant gets qualified immunity.

Wood v. Moss, 134 S.Ct. 2056 (May 27, 2014)

- 9-0 reversal of 9th Circuit which had affirmed denial of motion to dismiss by District Court.

  Protesters alleged First Amendment violation by Secret Service agents who moved them to a more remote location from President than others who were not protesting based upon their views. Supreme Court ruled protesters had no clearly established First Amendment right when balancing alleged viewpoint discrimination with Presidential security.

Plumhoff v. Rickard, 134 S.Ct. 2012 (May 27, 2014)

- 9-0 (with concurrences) reversal of 6th Circuit denial of summary judgment based on qualified immunity and merits. Court decided no Fourth Amendment violation and alternatively, that officers entitled to qualified immunity.

- 15 shots fired to end high speed police chase. Court found shots fired while danger still present and therefore number of shots fired did not matter. Use of deadly force did not violate Fourth Amendment and qualified immunity available to officers.

2013

Stanton v. Sims, 134 S.Ct. 3 (November, 2013)

- Per Curium 9-0 reversal of 9th Circuit denial of summary judgment to officer on merits and qualified immunity. Officer entered plaintiff's yard through fence without warrant in pursuit of misdemeanor suspect. Court only decided qualified immunity issue that such a "hot pursuit" entry was not clearly established to be unconstitutional. Left merits unresolved.

2012

Ryburn v. Huff, 566 U.S. 469 (January 23, 2012)

- Per Curium 9-0 reversal of 9th Circuit denial of qualified immunity after bench trial. Officers came to house to discuss allegations that plaintiff's son made threats to"shoot up" his school. Mother ran into house rather than talk to police or answer their questions concerning presence of guns in house. Police followed her into the house.

Messerschmidt v. Millender, 565 U.S. 535 (February 22, 2012)

- 7-2 reversal of 9th Circuit denial of summary judgment based on qualified immunity to officers.

- Defendant officers executed validly issued search warrant which had been reviewed by superior officer and deputy district attorney. Despite warrant's clear overreach, officers entitled to qualified immunity.

Reichle v. Howards, 132 S.Ct. 2088 (June, 2012)

- 8-0 (with concurrences) reversal of 10th Circuit denial of summary judgment based

upon qualified immunity.

- Found qualified immunity available since not clearly established that an arrest supported by probable cause under Fourth Amendment could nonetheless violate First Amendment if made because of defendant's protected First Amendment activity. Did not decide the underlying constitutional question with respect to legality of retaliatory arrest which is supported by probable cause.

2011

Camreta v. Greene, 563 U.S. 692 (May 26, 2011)

- 7-2 (with concurrences). State child protective worker interviewed young girl regarding alleged abuse by father without a warrant violating her Fourth Amendment rights. 9th Circuit held there was a Fourth Amendment violation but granted defendant qualified immunity. Defendant, the prevailing party, appealed! Court said that was ok but dismissed as moot because girl reached 18. Discussion of beneficial effects of deciding constitutional issue before immunity issue, i.e., Saucier v. Katz, 533 U.S. 194 (2001) rather than Pearson v. Callahan, 555 U.S. 223 (2009) procedure. In dismissing as moot court vacated 9th Circuit opinion since official could not appeal it. Is law "clearly established" for next case?

Ashcroft v. al-Kidd, 563 U.S. 731 (May 31, 2011)

- 8-0 (with concurrences) reversal of 9th Circuit denial of motion to dismiss. Court accepted as true all allegations in complaint as a result. Held valid material witness arrest warrant cannot be challenged on claim of improper motive. Also found qualified immunity available to Attorney General but declined to decide if entitled to absolute immunity.

- Decided merits and qualified immunity issue.