

No. 26-58

IN THE
Supreme Court of the United States

JENNIFER KILNAPP,

Petitioner,

v.

BAILEY GANNON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**BRIEF OF THE LAW ENFORCEMENT ACTION
PARTNERSHIP AS AMICUS CURIAE IN
SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The Law Enforcement Action Partnership (LEAP) is a nonprofit organization comprised of police, prosecutors, judges, corrections officials, and other law enforcement veterans advocating for criminal justice and other reforms to make communities safer and more just.

Founded by five police officers in 2002, LEAP's speakers' bureau now numbers more than 275 criminal justice professionals who advise on police community relations, incarceration, harm reduction, drug policy, and global issues. Chief among the issues on which LEAP advocates is police accountability. LEAP understands that accountability is essential for community trust and effective policing and that the failure to hold police accountable for misconduct undermines the ability of all police to do their jobs. Affording victims of police misconduct the opportunity to redress their harm is key to this accountability. Therefore, LEAP supports the petition in this matter because the Sixth Circuit's application of qualified immunity negatively impacts police accountability and should be reversed.

¹ Pursuant to Supreme Court Rule 37.2, counsel for amicus curiae notified the parties on July 24, 2026, of its intention to file this brief, which was more than ten days prior to its due date. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amicus curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief. The printer of this Brief made an in kind contribution towards the production of this Brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

When an officer fires his gun blindly and seriously injures someone, that officer should not be shielded from accountability regardless of whether the person he shot is a suspect who in fact posed no imminent threat, an innocent bystander, or his law enforcement partner.

Qualified immunity is supposed to shield officers from liability only when an officer acts reasonably based on the facts known to him at the time. Since the inception of the qualified immunity doctrine, the purpose has been to perform a delicate balancing act between ensuring that officers and other public officials can perform their regular duties without fear that the law will shift under their feet and ensuring that citizens have a means for holding officers accountable for their misconduct. That purpose has persisted even as the doctrine has developed over the past 60 years.

Despite that clear and persistent purpose, the Sixth Circuit relied on the doctrine to excuse Officer Gannon's actions here. This is so even though there can be no credible claim that the law shifted under Officer Gannon's feet or that it was not already clearly established that his actions—firing his weapon recklessly—could lead to liability.

Furthermore, the failure to hold Officer Gannon accountable for his misconduct contributes to the erosion of the necessary public trust that law enforcement officers rely on to do their important work. That public trust depends on officers being held

accountable when they take actions that are inconsistent with the constitutional rights of other citizens, including their fellow officers.

Accordingly, the Law Enforcement Action Partnership urges this Court to grant the petition for a writ of certiorari.

ARGUMENT

I. The Sixth Circuit’s Rule Does Not Advance The Purpose Of Qualified Immunity

This Court developed qualified immunity doctrine to ensure that “a police officer” would not be “charged with predicting the future course of constitutional law” when performing his regular law enforcement duties. *Pierson v. Ray*, 386 U.S. 547, 557 (1967). In *Pierson*, this Court determined that officers could not be held liable for effectuating arrests under a state statute that was found to be unconstitutional after the arrests occurred. *See id.* at 550-551. This Court concluded that officers are entitled to a “defense of good faith and probable cause” that “require[s] excusing [them] from liability for acting under a statute that [they] reasonably believed to be valid but that was later held unconstitutional on its face or as applied.” *See id.* at 555. Qualified immunity doctrine has evolved since *Pierson*, but it was never intended to unmoor from that foundation.

As the doctrine developed into its current formulation in *Harlow v. Fitzgerald*, this Court maintained that the purpose of qualified immunity had not changed from the balancing act described in previous

cases. 457 U.S. 800, 813-819 (1982); *see also id.* at 819 (“Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action.”).

More recently, writing for the Court in *Pearson v. Callahan*, Justice Alito echoed the same purpose of qualified immunity as cases in the doctrine’s progeny, explaining that “[q]ualified immunity balances two important interests—the need to hold public officials accountable when they exercise power *irresponsibly* and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” 555 U.S. 223, 231 (2009) (emphasis added). Thus, throughout the nearly 60-year history of the doctrine, the balancing act between keeping public officials accountable for their misconduct and granting them some license to be free from liability when the lawfulness of their acts is unknown or unclear has remained the consistent purpose. *See Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (“Our cases have accommodated these conflicting concerns by generally providing government officials discretionary functions with a qualified immunity, shielding them from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated.”). Accordingly, the purpose of qualified immunity is served only in cases where the public official or officer shielded from liability has some credible grounds for believing that his actions were lawful. This is not such a case.

Here, Officer Gannon intentionally and recklessly fired his gun while running down a flight of stairs away from a suspect who was not chasing him. Pet. App. 4a-9a. That intentional and reckless behavior injured Officer Kilnapp and should have been the focus of the qualified immunity inquiry. Simply put, the Sixth Circuit should have asked whether it was objectively reasonable for Officer Gannon to blindly shoot his gun under the circumstances. To ask the question is to know the answer: it was not.

As the Sixth Circuit itself acknowledged, under a “[s]traightforward application of” this Court’s precedents, “Gannon seized Kilnapp” in violation of her Fourth Amendment rights. Pet. App. 19a-20a. Nonetheless, instead of focusing on whether Officer Gannon “perform[ed] his duties reasonably,” *Pearson*, 555 U.S. at 231, the Sixth Circuit focused on whether the law was sufficiently synthesized to establish Officer Gannon’s liability. Pet. App. 35a-36a. But there can be no credible claim here that the law changed under Officer Gannon’s feet. On the contrary, it is difficult to imagine any circumstance where firing a gun without looking while running down a flight of stairs and away from a suspect who is not pursuing you would ever be a legitimate use of lethal force. And, as even the Sixth Circuit acknowledged a series of cases, in varying contexts, acknowledged that Officer Gannon’s behavior, if not his unintended target, could give rise to a Fourth Amendment violation before this Court’s decision in *Torres v. Madrid*, 592 U.S. 306 (2021). See Pet. App. 15a-19a (citing *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989) for the proposition that “[a] seizure occurs even when an unintended person or thing is the object of the detention or taking” and

collecting cases); *see also* *Brendlin v. California*, 551 U.S. 249, 252 (2007) (“A person is seized by the police and thus entitled to challenge the government’s action under the Fourth Amendment when the officer, by means of physical force or show of authority, terminates or restrains his freedom of movement through means intentionally applied.”).

In light of the clear unlawfulness of Officer Gannon’s actions based on the facts known to him at the time he fired his gun, the Sixth Circuit should not have excused Officer Gannon from liability under the qualified immunity doctrine. To do so was in deep conflict with the original and enduring purpose of that doctrine.

II. Failing To Hold Law Enforcement Accountable Erodes Public Trust In Law Enforcement

Effective policing requires cooperation between police and the communities they serve. *See* President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, 1 (2015) (“Trust between law enforcement agencies and the people they protect and serve is essential in a democracy.”). In order for that necessary cooperation to occur, community members must believe that officers will be held accountable when they engage in misconduct. *See* Letter from Law Enforcement Action Partnership to the United States Congress (March 23, 2021) (“In order to improve public safety, we need to build trust in law enforcement, and in order to build trust, there must be transparency

and accountability.”); ² *see also* Tom R. Tyler, Phillip Atiba Goff, & Robert J. MacCoun, *The Impact of Psychological Science on Policing in the United States: Procedural Justice, Legitimacy, and Effective Law Enforcement*, 16 PYSCH. SCI. PUB. INT. 75, 80 (2015) (“Why care about public trust and confidence in the police? Our goal is to suggest that legitimacy—that is, public trust and confidence—can be an important factor in policing and that a focus on legitimacy provides an additional motivational force that lowers crime. Legitimacy is especially important when the focus of concern expands to include issues of cooperation and empowerment.”). It is no surprise then that Americans overwhelmingly express that they want police officers to be held accountable when they engage in misconduct. Emily Ekins, *Poll: 63% of Americans Favor Eliminating Qualified Immunity for Police*, CATO INSTITUTE (July 16, 2020) (“Nearly 8 in 10 Americans (79%) say that if a police officer violates a person’s rights but was ‘unaware at the time that their actions were illegal’ they should be held accountable for that

² Available at: <https://lawenforcementactionpartnership.org/wp-content/uploads/2021/03/National-Law-Enforcement-Qualified-Immunity-Letter-1.pdf> (last accessed Aug. 4, 2026).

misconduct.”)³; *see also* Cato Institute, *Cato Institute Summer 2020 National Survey* (2020).⁴

However, “when a sense of procedural fairness is illusory, this fosters a sense of second-class citizenship, increases the likelihood people will fail to comply with legal directives, and induces anomie in some groups that leaves them with a sense of statelessness.” Fred O. Smith, *Abstention in the Time of Ferguson*, 131 HARV. L. REV. 2283, 2356 (2018); *see also* Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L. J. 2054, 2059 (2017) (“Empirical evidence suggests that feelings of distrust manifest themselves in a reduced likelihood among African Americans to accept law enforcement officers’ directives and cooperate with their crime-fighting efforts.”) (citations omitted). Furthermore, when communities fail to trust law enforcement they may be inclined to rely less on police services when they need them. *See* Matthew Desmond, Andrew V. Papachristos, & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857, 858 (2016).

While this case concerns whether an officer will be held accountable for shooting a fellow officer, it nonetheless raises concerns about officer

³ Available at: <https://www.cato.org/survey-reports/poll-63-americans-favor-eliminating-qualified-immunity-police> (last accessed Aug. 4, 2026).

⁴ Available at: https://www.cato.org/sites/cato.org/files/2020-07/Qualified%20Immunity%20Survey_2020_A.pdf (last accessed Aug. 4, 2026).

accountability. In particular, by bringing her claims forward, Officer Kilnapp broke an unofficial code of silence among officers regarding officer misconduct. David Weisburd & Rosann Greenspan, *Police Attitudes Toward Abuse of Authority: Findings from a National Study*, NAT'L INST. OF JUSTICE 3 (2000) (“[M]ore than two-thirds (67.4 percent) reported that police officers who report incidents of misconduct are likely to be given a ‘cold shoulder’ by fellow officers, and a majority (52.4%) agreed or strongly agree that it is not unusual for police officers to ‘turn a blind eye’ to other officers’ improper conduct.”). While her decision to bring the claim of misconduct forward favors public trust, failing to hold Officer Gannon accountable after the claims of misconduct are brought forward impedes that trust. Furthermore, some community members may be led to ask how likely is an officer to be held accountable when his misconduct injures or kills a fleeing suspect or a civilian if officers are not held accountable when they injure one of their own. Accordingly, individual officer accountability remains critical in this case to support public confidence in law enforcement broadly.

CONCLUSION

For the reasons provided in the petition and this brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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