

A Loophole for the Lawless: “Qualified Immunity” Must Go

On August 11, 2014, officers from the Caldwell, Idaho Police Department asked for Shaniz West’s permission to enter and search her home. They were looking for her ex-boyfriend. West authorized the search and handed over her keys.

Instead of entering and searching the home, though, the police brought in a SWAT team, surrounding the building. “[P]olice repeatedly exceeded the authority Ms. West had given them,” a lawsuit she filed complains, “breaking windows, crashing through ceilings, and riddling the home with holes from shooting canisters of tear gas, destroying most of Ms. West and her children’s personal belongings.”

The “standoff” lasted ten hours. But it wasn’t really a standoff. The only mammal in the home larger than a mouse was West’s dog.

Then the cops went on their merry way, leaving West homeless for two months, with three weeks in a hotel as her only compensation.

She wants more, including the costs of repairing and replacing her ruined personal property, damages for pain, suffering and emotional distress, and punitive damages for the assault on a home she gladly authorized a search of, not an attack on. She deserves all of that.

She isn’t getting it — yet, at least — due to a loophole baked into a vile judicial doctrine called “qualified immunity.”

Qualified immunity protects government employees from liability for things they willfully decide to do while on duty, unless those actions violate “clearly established statutory or constitutional rights of which a reasonable person would have known.”

The loophole is the phrase “clearly established.”

The Ninth Circuit US Court of Appeals ruled that “no Supreme Court or Ninth Circuit case clearly established, as of August 2014, that Defendants exceeded the scope of consent.”

How’s that for circular reasoning? “You can only sue over X if someone else has previously successfully sued for X. ” And no one CAN have successfully sued for X, at least since the loophole was introduced in 1982, because they would have been turned away on the same grounds!

The Institute for Justice wants the US Supreme Court to take up West’s case.

It should do so, and when it rules it should go beyond nixing the “clearly established” loophole and do away with the doctrine of “qualified immunity” entirely.

42 US Code § 1983 provides that “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” may be sued for damages.

Not just if someone has successfully sued on the same grounds before.

And not just if a “reasonable person” would have known better.

Government employees are supposed to know their jobs, including the limits on their authority. If they don’t, they shouldn’t be given guns and badges, let alone protection from liability when they exceed those limits.

“Qualified immunity” is the opposite of “equality under the law.”