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Defeating Qualified Immunity: How to Map Conduct to a "Clearly Established" Right

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The Supreme Court decided Zorn v. Linton, a per curiam qualified-immunity reversal, on March 23, 2026.

Qualified immunity shields an officer sued under 42 U.S.C. section 1983 unless the officer violated a right that was clearly established when the officer acted. In excessive-force and arrest cases, the second half of that test usually decides the motion. This memorandum states how the Supreme Court and the Ninth Circuit measure whether a right was clearly established, who carries the burden, and when the ruling can be appealed, as of November 2026.

I. Question Presented

What showing defeats a qualified-immunity defense on the clearly-established prong, and how do courts in the Ninth Circuit apply that standard?

II. Short Answer

The plaintiff must identify controlling authority, or a robust consensus of persuasive authority, that placed the unlawfulness of the officer's particular conduct beyond debate. The precedent need not be identical. It must, however, define the right with a high degree of specificity. Without such precedent, the plaintiff prevails only in the rare case where the violation is obvious. In the Ninth Circuit, the plaintiff bears this burden. A denial of immunity that turns on an issue of law is immediately appealable; a denial that rests on a genuine factual dispute is not.

III. Governing Law

A. The Standard and Its Sequence

Officials performing discretionary functions are shielded from damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." (*Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).) The inquiry has two prongs: whether a right was violated, and whether it was clearly established. In *Pearson v. Callahan*, 555 U.S. 223, 236 (2009), the Court held that the mandatory sequence of *Saucier v. Katz* "should no longer be regarded as mandatory." Lower courts may decide either prong first.

B. What "Clearly Established" Means

"We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." (*Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).) The Court in *al-Kidd* added that it had "repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality." (*Id.* at 742, citation omitted.)

District of Columbia v. Wesby, 583 U.S. 48 (2018), states the rule most precisely. The principle must be "settled law," meaning it is dictated by "controlling authority" or "a robust 'consensus of cases of persuasive authority.'" It must also clearly prohibit the officer's conduct in the particular circumstances. In *Kisela v. Hughes*, 584 U.S. 100 (2018) (per curiam), which reversed the Ninth Circuit, the Court stressed that "[s]pecificity is especially important in the Fourth Amendment context" and that officers are immune in excessive-force cases unless existing precedent "squarely governs" the facts.

C. The Obvious-Case Exception

Hope v. Pelzer, 536 U.S. 730 (2002) held that officials "can still be on notice that their conduct violates established law even in novel factual circumstances," and rejected any requirement that prior cases be "fundamentally similar." The question is whether the law gave the officer "fair warning." In *Taylor v. Riojas*, 592 U.S. 7, 8–9 (2020) (per curiam), the Court applied *Hope* and held that "no reasonable correctional officer could have concluded" that confining a prisoner for days in cells covered in human waste was constitutional. It relied on *Hope*'s statement that a general rule "may apply with obvious clarity to the specific conduct in question."

IV. Analysis

A. Framing the Right

The decisive move is usually the description of the right. In *Zorn v. Linton*, 607 U.S. 568 (2026) (per curiam), decided March 23, 2026, the Second Circuit had read its precedent to establish that "the gratuitous use of pain compliance techniques" on a passively resisting protester is excessive force. The Supreme Court summarily reversed. It held that this principle lacked the "high degree of specificity" that *Wesby* requires, and that courts generally "need to identify a case where an officer acting under similar circumstances . . . was held to have violated" the Constitution. Justice

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Sotomayor, joined by Justices Kagan and Jackson, dissented. *Zorn* is the Court's most recent statement of the standard and confirms that summary reversal remains a live risk when a circuit frames the right broadly.

B. Matching Facts to Precedent

Rivas-Villegas v. Cortesluna, 595 U.S. 1 (2021) (per curiam), shows how the Court tests a proffered precedent. The Ninth Circuit had relied solely on *LaLonde v. County of Riverside*, 204 F.3d 947 (9th Cir. 2000), in denying immunity to an officer who briefly knelt on an arrestee's back. The Supreme Court reversed. It identified three differences: *LaLonde* arose from "a mere noise complaint," the plaintiff there was unarmed, and the officer there "deliberately dug his knee" into the plaintiff's back, while the officer in *Rivas-Villegas* knelt "for no more than eight seconds" beside a knife being retrieved. The Court also reserved, twice, whether circuit precedent can clearly establish law at all, reasoning "[e]ven assuming that circuit precedent can clearly establish law for purposes of § 1983." The reservation matters in the Ninth Circuit, where plaintiffs most often rely on circuit decisions. A plaintiff relying on Ninth Circuit precedent should therefore show the factual match element by element: the nature of the offense, the presence or absence of a weapon, the level of resistance, and the duration and degree of force.

C. When No Close Precedent Exists

The obvious-case route remains open but narrow. *Hope* and *Taylor* rested on conditions the Court described as obviously cruel or extreme. *Wesby* and *Rivas-Villegas* each held that the case before the Court was not an obvious one. Counsel should treat the exception as a secondary argument, supported by the most extreme facts in the record, and not as a substitute for a factual analogue.

D. Burden in the Ninth Circuit

In *Shafer v. County of Santa Barbara*, 868 F.3d 1110, 1118 (9th Cir. 2017), the plaintiff argued that the deputy bore the burden on the clearly-established prong. The Ninth Circuit disagreed: it is the plaintiff who "bears the burden of showing that the rights allegedly violated were 'clearly established.'" Because the plaintiff failed to identify sufficiently specific precedent, the court held the deputy entitled to qualified immunity, on an appeal that followed a jury verdict for the plaintiff.

E. Interlocutory Appeal

Qualified immunity is "an immunity from suit rather than a mere defense to liability." For that reason, a denial of immunity, "to the extent that it turns on an issue of law," is an appealable final decision under 28 U.S.C. section 1291. (*Mitchell v. Forsyth*, 472 U.S. 511 (1985).) The limit is *Johnson v. Jones*, 515 U.S. 304 (1995): a defendant "may not appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial." A plaintiff opposing summary judgment should therefore tie the immunity question to specific disputed facts, so that the appellate court must accept the plaintiff's version.

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V. Practical Considerations

- **Build the precedent table early.** List each controlling decision with its offense, weapon, resistance, warnings, and force. *Rivas-Villegas* and *Zorn* decided the cases on exactly those variables.
- **Date the law.** The precedent must predate the conduct. Decisions issued afterward cannot supply notice.
- **State the right at the level of the facts.** A right framed as freedom from "excessive force" or "gratuitous" force invites reversal under *al-Kidd* and *Zorn*.
- **Preserve factual disputes.** Under *Johnson*, genuine disputes of fact may defeat appellate jurisdiction over an interlocutory appeal.
- **Plead parallel state claims.** Qualified immunity is a defense to the federal claim under 42 U.S.C. § 1983. State-law claims are governed by their own immunity rules.

VI. Authorities Cited

- 42 U.S.C. § 1983
- *Zorn v. Linton*, 607 U.S. 568 (2026) (per curiam)
- *Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021) (per curiam)
- *Taylor v. Riojas*, 592 U.S. 7 (2020) (per curiam)
- *Kisela v. Hughes*, 584 U.S. 100 (2018) (per curiam)
- *District of Columbia v. Wesby*, 583 U.S. 48 (2018)
- *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)
- *Pearson v. Callahan*, 555 U.S. 223 (2009)
- *Hope v. Pelzer*, 536 U.S. 730 (2002)
- *Johnson v. Jones*, 515 U.S. 304 (1995)
- *Mitchell v. Forsyth*, 472 U.S. 511 (1985)
- *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)
- *Shafer v. County of Santa Barbara*, 868 F.3d 1110 (9th Cir. 2017)

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