SUPREME COURT OF THE UNITED STATES

No. 98–83

CHARLES H. WILSON, ET UX., ET AL., PETITIONERS *v.* HARRY LAYNE, DEPUTY UNITED STATES MARSHAL, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[May 24, 1999]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

While executing an arrest warrant in a private home, police officers invited representatives of the media to accompany them. We hold that such a "media ride along" does violate the Fourth Amendment, but that because the state of the law was not clearly established at the time the search in this case took place, the officers are entitled to the defense of qualified immunity.

I

In early 1992, the Attorney General of the United States approved "Operation Gunsmoke," a special national fugitive apprehension program in which United States Marshals worked with state and local police to apprehend dangerous criminals. The "Operation Gunsmoke" policy statement explained that the operation was to concentrate on "armed individuals wanted on federal and/or state and local warrants for serious drug and other violent felonies." App. 15. This effective program ultimately resulted in over 3,000 arrests in 40 metropolitan areas. Brief for

Federal Respondents Layne et al. 2.

One of the dangerous fugitives identified as a target of "Operation Gunsmoke" was Dominic Wilson, the son of petitioners Charles and Geraldine Wilson. Dominic Wilson had violated his probation on previous felony charges of robbery, theft, and assault with intent to rob, and the police computer listed "caution indicators" that he was likely to be armed, to resist arrest, and to "assaul[t] police." App. 40. The computer also listed his address as 909 North StoneStreet Avenue in Rockville, Maryland. Unknown to the police, this was actually the home of petitioners, Dominic Wilson's parents. Thus, in April 1992, the Circuit Court for Montgomery County issued three arrest warrants for Dominic Wilson, one for each of his probation violations. The warrants were each addressed to "any duly authorized peace officer," and commanded such officers to arrest him and bring him "immediately" before the Circuit Court to answer an indictment as to his probation violation. The warrants made no mention of media presence or assistance.[1]

In the early morning hours of April 16, 1992, a Gunsmoke team of Deputy United States Marshals and Montgomery County Police officers assembled to execute the Dominic Wilson warrants. The team was accompanied by a reporter and a photographer from the Washington Post,

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[1]The warrants were identical in all relevant respects. By way of example, one of them read as follows:

"The State of Maryland, to any duly authorized peace officer, greeting: you are hereby commanded to take Dominic Jerome Wilson if he/she shall be found in your bailiwick, and have him immediately before the Circuit Court for Montgomery County, now in session, at the Judicial Center, in Rockville, to answer an indictment, or information, or criminal appeals unto the State of Maryland, of and concerning a certain charge of Robbery [Violation of Probation] by him committed, as hath been presented, and so forth. Hereof fail not at your peril, and have you then and there this writ. Witness." App. 36–37.

who had been invited by the Marshals to accompany them on their mission as part of a Marshal's Service ride-along policy.

At around 6:45 a.m., the officers, with media representatives in tow, entered the dwelling at 909 North StoneStreet Avenue in the Lincoln Park neighborhood of Rockville. Petitioners Charles and Geraldine Wilson were still in bed when they heard the officers enter the home. Petitioner Charles Wilson, dressed only in a pair of briefs, ran into the living room to investigate. Discovering at least five men in street clothes with guns in his living room, he angrily demanded that they state their business, and repeatedly cursed the officers. Believing him to be an angry Dominic Wilson, the officers quickly subdued him on the floor. Geraldine Wilson next entered the living room to investigate, wearing only a nightgown. She observed her husband being restrained by the armed officers.

When their protective sweep was completed, the officers learned that Dominic Wilson was not in the house, and they departed. During the time that the officers were in the home, the Washington Post photographer took numerous pictures. The print reporter was also apparently in the living room observing the confrontation between the police and Charles Wilson. At no time, however, were the reporters involved in the execution of the arrest warrant. Brief for Federal Respondents Layne et al. 4. The Washington Post never published its photographs of the incident.

Petitioners sued the law enforcement officials in their personal capacities for money damages under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971) (the U. S. Marshals Service respondents) and, Rev. Stat. §1979, 42 U. S. C. §1983 (the Montgomery County Sheriff's Department respondents). They contended that the officers' actions in bringing members of the media to observe

and record the attempted execution of the arrest warrant violated their Fourth Amendment rights. The District Court denied respondents' motion for summary judgment on the basis of qualified immunity.

On interlocutory appeal to the Court of Appeals, a divided panel reversed and held that respondents were entitled to qualified immunity. The case was twice reheard en banc, where a divided Court of Appeals again upheld the defense of qualified immunity. The Court of Appeals declined to decide whether the actions of the police violated the Fourth Amendment. It concluded instead that because no court had held (at the time of the search) that media presence during a police entry into a residence violated the Fourth Amendment, the right allegedly violated by petitioners was not "clearly established" and thus qualified immunity was proper. 141 F. 3d 111 (CA4 1998). Five judges dissented, arguing that the officers' actions did violate the Fourth Amendment, and that the clearly established protections of the Fourth Amendment were violated in this case. *Id.*, at 119 (opinion of Murnaghan, J.)

Recognizing a split among the Circuits on this issue, we granted certiorari in this case and another raising the same question, *Hanlon* v. *Berger*, 525 U. S. ___ (1998), and now affirm the Court of Appeals, although by different reasoning.

II

The petitioners sued the federal officials under *Bivens* and the state officials under §1983. Both *Bivens* and §1983 allow a plaintiff to seek money damages from government officials who have violated his Fourth Amendment rights. See §1983; *Bivens, supra,* at 397. But government officials performing discretionary functions generally are granted a qualified immunity and are "shielded from liability for civil 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).

Although this case involves suits under both §1983 and *Bivens*, the qualified immunity analysis is identical under either cause of action. See, *e.g.*, *Graham* v. *Connor*, 490 U. S. 386, 394, n. 9 (1989); *Malley* v. *Briggs*, 475 U. S. 335, 340, n. 2 (1986). A court evaluating a claim of qualified immunity "must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all, and if so, proceed to determine whether that right was clearly established at the time of the alleged violation." *Conn* v. *Gabbert*, 526 U. S. ___, ___ (1999) (slip op., at 4). This order of procedure is designed to "spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn-out lawsuit." *Siegert* v. *Gilley*, 500 U. S. 226, 232 (1991). Deciding the constitutional question before addressing the qualified immunity question also promotes clarity in the legal standards for official conduct, to the benefit of both the officers and the general public. See *County of Sacramento* v. *Lewis*, 523 U. S. 833, 840–842, n. 5 (1998). We now turn to the Fourth Amendment question.

In 1604, an English court made the now-famous observation that "the house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose." *Semayne's Case*, 77 Eng. Rep. 194, 5 Co. Rep. 91a, 91b, 195 (K. B.). In his *Commentaries on the Laws of England*, William Blackstone noted that

> "the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity: agreeing herein with the sentiments of antient Rome. . . . For this reason no doors can in gen-

> eral be broken open to execute any civil process; though, in criminal causes, the public safety supersedes the private." William Blackstone, 4 Commentaries on the Laws of England 223 (1765–1769).

The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home: "The right of the people to be secure in their persons, *houses*, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U. S. Const. Amd. IV (Emphasis added.) See also *United States* v. *United States District Court* 407 U. S. 297, 313 (1972) ("[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed").

Our decisions have applied these basic principles of the Fourth Amendment to situations, like those in this case, in which police enter a home under the authority of an arrest warrant in order to take into custody the suspect named in the warrant. In *Payton* v. *New York*, 445 U. S. 573, 602 (1980), we noted that although clear in its protection of the home, the common-law tradition at the time of the drafting of the Fourth Amendment was ambivalent on the question of whether police could enter a home without a warrant. We were ultimately persuaded that the "overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic" meant that absent a warrant or exigent circumstances, police could not enter a home to make an arrest. *Id.*, at 603–604. We decided that "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Ibid.*

Here, of course, the officers had such a warrant, and they were undoubtedly entitled to enter the Wilson home in order to execute the arrest warrant for Dominic Wilson. But it does not necessarily follow that they were entitled to bring a newspaper reporter and a photographer with them. In *Horton* v. *California*, 496 U. S. 128, 140 (1990), we held "[i]f the scope of the search exceeds that permitted by the terms of a validly issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional without more." While this does not mean that every police action while inside a home must be explicitly authorized by the text of the warrant, see *Michigan* v. *Summers*, 452 U. S. 692, 705 (1981) (Fourth Amendment allows temporary detainer of homeowner while police search the home pursuant to warrant), the Fourth Amendment does require that police actions in execution of a warrant be related to the objectives of the authorized intrusion, see *Arizona* v. *Hicks*, 480 U. S. 321, 325 (1987). See also *Maryland* v. *Garrison*, 480 U. S. 79, 87 (1987) ("[T]he purposes justifying a police search strictly limit the permissible extent of the search").

Certainly the presence of reporters inside the home was not related to the objectives of the authorized intrusion. Respondents concede that the reporters did not engage in the execution of the warrant, and did not assist the police in their task. The reporters therefore were not present for any reason related to the justification for police entry into the home– the apprehension of Dominic Wilson.

This is not a case in which the presence of the third parties directly aided in the execution of the warrant. Where the police enter a home under the authority of a warrant to search for stolen property, the presence of third parties for the purpose of identifying the stolen property has long been approved by this Court and our common-law tradition. See, *e.g.*, *Entick* v. *Carrington*, 19 How. St. Tr. 1029, 1067 (K. B. 1765) (in search for stolen goods case,

"[t]he owner must swear that the goods are lodged in such a place. He must attend at the execution of the warrant to shew them to the officer, who must see that they answer the description") (quoted with approval in *Boyd* v. *United States*, 116 U. S. 616, 628 (1886)).

Respondents argue that the presence of the Washington Post reporters in the Wilsons' home nonetheless served a number of legitimate law enforcement purposes. They first assert that officers should be able to exercise reasonable discretion about when it would "further their law enforcement mission to permit members of the news media to accompany them in executing a warrant." Brief for Respondents Layne et al. 15. But this claim ignores the importance of the right of residential privacy at the core of the Fourth Amendment. It may well be that media ride-alongs further the law enforcement objectives of the police in a general sense, but that is not the same as furthering the purposes of the search. Were such generalized "law enforcement objectives" themselves sufficient to trump the Fourth Amendment, the protections guaranteed by that Amendment's text would be significantly watered down.

Respondents next argue that the presence of third parties could serve the law enforcement purpose of publicizing the government's efforts to combat crime, and facilitate accurate reporting on law enforcement activities. There is certainly language in our opinions interpreting the First Amendment which points to the importance of "the press" in informing the general public about the administration of criminal justice. In *Cox Broadcasting Corp.* v. *Cohn*, 420 U. S. 469, 491–492 (1975), for example, we said "in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations." See also *Richmond Newspapers, Inc.* v. *Virginia*, 448 U. S. 555, 572–573 (1980). No one could gain-

say the truth of these observations, or the importance of the First Amendment in protecting press freedom from abridgement by the government. But the Fourth Amendment also protects a very important right, and in the present case it is in terms of that right that the media ride-alongs must be judged.

Surely the possibility of good public relations for the police is simply not enough, standing alone, to justify the ride-along intrusion into a private home. And even the need for accurate reporting on police issues in general bears no direct relation to the constitutional justification for the police intrusion into a home in order to execute a felony arrest warrant.

Finally, respondents argue that the presence of third parties could serve in some situations to minimize police abuses and protect suspects, and also to protect the safety of the officers. While it might be reasonable for police officers to themselves videotape home entries as part of a "quality control" effort to ensure that the rights of homeowners are being respected, or even to preserve evidence, cf. *Ohio* v. *Robinette*, 519 U. S. 33, 35 (1996) (noting the use of a "mounted video camera" to record the details of a routine traffic stop), such a situation is significantly different from the media presence in this case. The Washington Post reporters in the Wilsons' home were working on a story for their own purposes. They were not present for the purpose of protecting the officers, much less the Wilsons. A private photographer was acting for private purposes, as evidenced in part by the fact that the newspaper and not the police retained the photographs. Thus, although the presence of third parties during the execution of a warrant may in some circumstances be constitutionally permissible, see *supra*. at 7–8, the presence of *these* third parties was not.

The reasons advanced by respondents, taken in their entirety, fall short of justifying the presence of media

inside a home. We hold that it is a violation of the Fourth Amendment for police to bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home was not in aid of the execution of the warrant.[2]

III

Since the police action in this case violated the petitioners' Fourth Amendment right, we now must decide whether this right was clearly established at the time of the search. See *Siegert*, 500 U. S., at 232–233. As noted above, Part-II *supra*, government officials performing discretionary functions generally are granted a qualified immunity and are "shielded from liability for civil 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., at 818. What this means in practice is that "whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time it was taken." *Anderson* v. *Creighton*, 483 U. S. 635, 639 (1987) (citing *Harlow*, *supra*, at 819); see also *Graham* v. *Connor*, 490 U. S., at 397.

In *Anderson*, we explained that what "clearly established" means in this context depends largely "upon the level of generality at which the relevant 'legal rule' is to be

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[2] Even though such actions might violate the Fourth Amendment, if the police are lawfully present, the violation of the Fourth Amendment is the presence of the media and not the presence of the police in the home. We have no occasion here to decide whether the exclusionary rule would apply to any evidence discovered or developed by the media representatives.

established." 483 U. S., at 639. "Clearly established" for purposes of qualified immunity means that "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Id.*, at 640 (internal citations omitted); see also *United States* v. *Lanier*, 520 U. S. 259, 270 (1997).

It could plausibly be asserted that any violation of the Fourth Amendment is "clearly established," since it is clearly established that the protections of the Fourth Amendment apply to the actions of police. Some variation of this theory of qualified immunity is urged upon us by the petitioners, Brief for Petitioner 37, and seems to have been at the core of the dissenting opinion in the Court of Appeals, see 141 F. 3d, at 123. However, as we explained in *Anderson*, the right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was clearly established. *Anderson*, 483 U. S., at 641. In this case, the appropriate question is the objective inquiry of whether a reasonable officer could have believed that bringing members of the media into a home during the execution of an arrest warrant was lawful, in light of clearly established law and the information the officers possessed. Cf. *ibid.*

We hold that it was not unreasonable for a police officer in April 1992 to have believed that bringing media observers along during the execution of an arrest warrant (even in a home) was lawful. First, the constitutional question presented by this case is by no means open and shut. The Fourth Amendment protects the rights of homeowners from entry without a warrant, but there was a warrant here. The question is whether the invitation to the media exceeded the scope of the search authorized by the war-

rant. Accurate media coverage of police activities serves an important public purpose, and it is not obvious from the general principles of the Fourth Amendment that the conduct of the officers in this case violated the Amendment.

Second, although media ride-alongs of one sort or another had apparently become a common police practice,[3] in 1992 there were no judicial opinions holding that this practice became unlawful when it entered a home. The only published decision directly on point was a state intermediate court decision which, though it did not engage in an extensive Fourth Amendment analysis, nonetheless held that such conduct was not unreasonable. *Prahl* v. *Brosamle*, 98 Wis. 2d 130, 154–155, 295 N. W. 2d 768, 782 (App. 1980). From the federal courts, the parties have only identified two unpublished District Court decisions dealing with media entry into homes, each of which upheld the search on unorthodox non-Fourth Amendment right to privacy theories. *Moncrief* v. *Hanton*, 10 Media L. Rptr. 1620 (ND Ohio 1984); *Higbee* v. *Times-Advocate*, 5 Media L. Rptr. 2372 (SD Cal. 1980). These cases, of course, can not "clearly establish" that media entry into homes during a police ride-along violates the Fourth Amendment.

At a slightly higher level of generality, petitioners point to *Bills* v. *Aseltine*, 958 F. 2d 697 (CA6 1992), in which the Court of Appeals for the Sixth Circuit held that there were material issues of fact precluding summary judgment on the question of whether police exceeded the scope of a

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[3] See, *e.g.*, *Florida Publishing Co.* v. *Fletcher*, 340 So. 2d 914, 918 (1976) (it "'is a widespread practice of long-standing'" for media to accompany officers into homes), cert. denied, 431 U. S. 930 (1977); Zoglin, Live on the Vice Beat, Time, Dec. 22, 1986, p. 60 (noting "the increasingly common practice of letting TV crews tag along on drug raids").

search warrant by allowing a private security guard to participate in the search to identify stolen property other than that described in the warrant. *Id.*, at 709. *Bills*, which was decided a mere five weeks before the events of this case, did anticipate today's holding that police may not bring along third parties during an entry into a private home pursuant to a warrant for purposes unrelated to those justifying the warrant. *Id.*, at 706. However, we cannot say that even in light of *Bills*, the law on third-party entry into homes was clearly established in April 1992. 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.

Finally, important to our conclusion was the reliance by the United States marshals in this case on a Marshal's Service ride-along policy which explicitly contemplated that media who engaged in ride-alongs might enter private homes with their cameras as part of fugitive apprehension arrests.[4] The Montgomery County Sheriff's Department also at this time had a ride-along program that did not expressly prohibit media entry into private homes. Deposition of Sheriff Raymond M. Kight, in No. PJM–94–1718, p. 8. Such a policy, of course, could not make reason-

[4]A booklet distributed to Marshals recommended that "fugitive apprehension cases . . . normally offer the best possibilities for ride-alongs." App. 4–5. In its discussion of the best way to make ride-alongs useful to the media and portray the Marshal's Service in a favorable light, the booklet noted that reporters were likely to want to be able to shoot "good action footage, not just a mop-up scene." It advised agents that "[i]f the arrest is planned to take place inside a house or building, agree ahead of time on when the camera can enter and who will give the signal." *Id.*, at 7.

able a belief that was contrary to a decided body of case law. But here the state of the law as to third parties accompanying police on home entries was at best undeveloped, and it was not unreasonable for law enforcement officers to look and rely on their formal ride-along policies.

Given such an undeveloped state of the law, the officers in this case cannot have been "expected to predict the future course of constitutional law." *Procunier* v. *Navarette*, 434 U. S. 555, 562 (1978). See also *Wood* v. *Strickland*, 420 U. S. 308, 321 (1975); *Pierson* v. *Ray*, 386 U. S. 547, 557 (1967). Between the time of the events of this case and today's decision, a split among the Federal Circuits in fact developed on the question whether media ride-alongs that enter homes subject the police to money damages. See 141 F. 3d, at 118–119; *Ayeni* v. *Mottola*, 35 F. 3d 680 (CA2 1994), cert. denied, 514 U. S. 1062 (1995); *Parker* v. *Boyer*, 93 F. 3d 445 (CA8 1996), cert. denied, 519 U. S. 1148 (1997); *Berger* v. *Hanlon*, 129 F. 3d 505 (CA9 1997), cert. granted, 525 U. S. ___ (1998). If judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy.

For the foregoing reasons, the judgment of the Court of Appeals is affirmed.

It is so ordered.