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Hawatmeh v. City of Henderson: Ninth Circuit Clarifies Standards for Use of Force in Hostage Scenarios

By **Daigle Law Group**

May 12, 2026

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The United States Court of Appeals for the Ninth Circuit recently released a ruling in *Hawatmeh v. City of Henderson*. This case stems from a volatile hostage situation that occurred in December 2020 after Jason Bourne confronted his neighbors, Dianne Hawatmeh and her daughter Yasmeen, about making a noise complaint against him. Bourne initially walked away without issue but came running after the Hawatmehs as they continued to their apartment. He forced himself inside their apartment, fatally shooting Dianne and their housekeeper and severely wounding Yasmeen.

Inside the apartment, twelve-year-old Joseph Hawatmeh called 9-1-1, informing them that someone was inside with a gun and providing the name of the apartment complex. Bourne fired his gun while Joseph was on the phone and told him that he “ha[d] 10 seconds to find the keys” to their family’s Escalade. After finding the keys and taking Joseph hostage, Bourne fled and barricaded himself and Joseph inside the Escalade.

The Henderson Police Department received additional 9-1-1 calls reporting the situation. Bourne also called 9-1-1 using Joseph’s cell phone. He informed them that he had a gun, had taken a hostage, and wanted a helicopter. Throughout the call, he continued threatening Joseph’s life.

Henderson PD swiftly dispatched officers. Police quickly surrounded the vehicle and established a perimeter, attempting to contain the situation. Since Bourne was threatening to kill Joseph, SWAT personnel were also called. Sergeant Jaime Smith was informed that Bourne had threatened Joseph’s life. He tried to communicate with Bourne while a dispatcher continued speaking with Bourne on the call.

During these efforts, Sergeant Smith was informed that Bourne was telling Joseph to open his mouth, alluding to the fact that he was going to shoot him in the brain. Sergeant Smith directed one officer to “[t]ake the shot if [he] had it.”¹ The officer fired a single shot, killing Bourne. Two seconds later, other Henderson police officers fired at the vehicle, and Sergeant Smith repeatedly yelled at them to stop and cease fire. These shots also unfortunately struck and killed Joseph.

Procedural Posture

Ihab Hawatmeh, Joseph's father, filed a lawsuit under 42 U.S.C. § 1983, claiming that Joseph's death was the direct result of the officers' unreasonable use of deadly force under the Fourth Amendment and deliberate indifference to his safety under the Fourteenth Amendment's Due Process Clause.

The district court dismissed all claims, finding that there were no Fourth or Fourteenth Amendment violations. Accordingly, the court dismissed the *Monell* claim for failing to state a constitutional violation. Ihab appealed.

The United States Court of Appeals for the Ninth Circuit

On appeal, the Ninth Circuit Court of Appeals carefully reviewed the plaintiff's arguments and ultimately affirmed the district court's dismissal of the case. The court began by addressing whether Hawatmeh had been unlawfully seized by officers during the hostage standoff.

Ihab argued that Joseph was seized "when the HPD officers surrounded the Escalade and blocked the parking lot exits with their vehicles; when Sergeant Smith ordered Bourne and Joseph to raise their hands; and when the HPD officers shot Joseph."² The court explained that a seizure occurs only when a government actor intentionally terminates a person's freedom of movement through physical force or a show of authority.

The court cited *United States v. Mendenhall*, which held that a seizure occurs "only if, in view of all circumstances surrounding the incident, a reasonable person would have believed that they were not free to leave."³ While a reasonable person in Joseph's position would not have felt free to leave, the court emphasized that this was due to being a hostage, not due to the officers' conduct.

Here, Bourne's threats of death restricted Joseph from leaving the car. Thus, the rest of the encounter was due to Bourne's actions, including the officers surrounding the vehicle and setting up a perimeter. Moreover, the officers' gunfire was aimed not at Joseph, but at the armed Bourne, who had already committed multiple murders and posed an immediate threat. Since the officers intended to rescue Joseph and not restrain him, the court held that Joseph was not seized in the constitutional sense. Thus, the court ultimately ruled that although Joseph's death was the result of police gunfire, it was an unintentional and unfortunate collateral consequence of the officers' lawful attempt to neutralize a violent offender.

The Ninth Circuit also emphasized that even if one accepted that Joseph was seized when he was struck by police bullets, the officers would still be entitled to qualified immunity. Under the doctrine of qualified immunity, officers are protected from civil liability unless they violated a clearly established constitutional right that any reasonable officer would have understood at the time.⁴

In this case, there is no right to be free of excessive force in a hostage situation. Therefore, the court found that there was no clearly established constitutional right. Further, the court stated that even if there was a clearly established right, the officers could not have reasonably understood their conduct to be unconstitutional. Thus, the court concluded that the officers would be entitled to qualified immunity if there had been a constitutional violation.

The court then examined whether the officers deprived Ihab of his “Fourteenth Amendment liberty interest in the companionship and society” of his son.⁵ The court correctly applied the “shocks the conscience” test, which examines whether officials’ conduct was so egregious, arbitrary, or abusive of governmental power that it violates the fundamental principles of ordered liberty.⁶ The court reaffirmed that in fast-paced and dangerous situations, the applicable standard is whether the officers acted with a specific intent to harm unrelated to any legitimate law enforcement purpose.

Here, the court concluded that the officers’ actions, while tragic in result, were driven by the legitimate objective of stopping a dangerous gunman who had already murdered innocents and posed a continuing lethal threat. There was no evidence that the officers acted maliciously, sadistically, or with deliberate indifference toward Joseph’s life. Given the intense, split-second nature of the decision-making, the court found that the conduct did not shock the conscience.

Since the court found no underlying constitutional violation under either the Fourth or Fourteenth Amendment, it also rejected the plaintiff’s *Monell* claim against the City of Henderson. Under *Monell v. Department of Social Services*, 436 U.S. 58 (1978), liability can arise only if a constitutional violation results from an official policy, custom, or failure to train.⁷ Since the court determined that the individual officers had not violated Joseph’s constitutional rights, there was no legal foundation for imposing liability on the city or its police department. Even assuming that the police department’s training or supervision could have been improved, the claim would fail due to the absence of any constitutional harm. Accordingly, the Ninth Circuit affirmed the district court’s judgment in full.

Key Takeaways

Hawatmeh emphasizes that deadly force aimed at an armed suspect who has already killed and is actively threatening others is likely to be viewed as directed at the suspect and not at the hostage under Fourth Amendment claims. Officers should be clear, through tactics, positioning, and post-incident documentation, that their intent was to stop the assailant and not to restrain or harm the hostage. It is also crucial for agencies to train their officers to articulate threat assessments, the immediacy of danger, and the priority of life in real time and in reports, as these become critical when

courts assess whether conduct “shocks the conscience” under the Fourteenth Amendment.

Lastly, *Hawatmeh* highlights that municipal liability hinges on the existence of an underlying constitutional violation. Without a violation, *Monell* claims will fail even if tactics are heavily criticized after the fact. Therefore, it is crucial to have well-documented training and policies for hostage and barricade incidents so that when force is used, agencies can show adherence to structured decision-making, use-of-force policies, crisis negotiation principles, and coordinated command-and-control practices.

Citations

¹ *Hawatmeh v. City of Henderson*, 159 F.4th 591, 598 (9th Cir. 2025).

² *Id.* at 599.

³ *United States v. Mendenhall*, 446 U.S. 544, 546 (1980).

⁴ *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

⁵ *Hawatmeh*, 159 F.4th at 602.

⁶ *Porter v. Osborn*, 546 F.3d 1131, 1136–1137 (9th Cir. 2008).

⁷ See *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (per curiam) (“If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of constitutionally excessive force is quite beside the point.”); see also *Benavidez v. County of San Diego*, 993 F.3d 1134, 1153–54 (9th Cir. 2021) (requiring a plaintiff to “include sufficient facts to support a reasonable inference ... of a constitutional violation” to support a failure-to-train *Monell* theory).

Originally published at <https://dlglearningcenter.com/hawatmeh-v-city-of-henderson-ninth-circuit-clarifies-standards-for-use-of-force-in-hostage-scenarios/>

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