

## Knives Down, No Immediate Threat: Tenth Circuit Revives Excessive Force Claims in *Baca v. Cosp*

### Description

The Tenth Circuit Court of Appeals recently analyzed the case *Baca v. Cosp*, where the Court considered whether a police officer's use of deadly force against a mentally diminished elderly woman was objectively reasonable under the Fourth Amendment. The decision addresses a crucial issue in law enforcement: determining when a knife-wielding individual actually poses an immediate threat justifying lethal force, and what the law requires when dealing with diminished-capacity suspects in tense, rapidly evolving circumstances.

On April 16, 2022, Amelia Baca, seventy-five years old and suffering from dementia, was at her home in Las Cruces, New Mexico. One of Ms. Baca's daughters called 911, reporting that Ms. Baca had become aggressive, threatened to kill her and her daughter, and appeared to be making stabbing motions with a knife. Officer Jared Cosp, who was just seconds away, arrived on scene and approached the Bacas' residence with his body-worn camera activated. As he walked up the driveway, he heard the sound of metal clanging, as if a piece of metal was being struck repeatedly against a hard surface. When he reached the front door, he saw Ms. Baca inside the living room. Two other women were speaking calmly to her, but they stepped outside upon his request, and one cautioned him to "please be very careful" with Ms. Baca. Left alone with Ms. Baca, Officer Cosp saw she was holding a knife in each hand, pointed toward the floor. He immediately pointed his firearm at her and began shouting commands to drop the knives. Even after one of the women told him Ms. Baca was "mentally sick," he continued yelling with increasing urgency, shining his weapon-mounted flashlight at her. Ms. Baca, meanwhile, stood roughly ten feet away, not making threatening gestures. She transferred one knife so both were in her right hand. At one point, she seemed to direct her gaze away from the officer and momentarily lift her right arm out of his sight before lowering it again. She then looked at him and took two slow steps forward. Although the knives in her hand remained pointed at the ground, Officer Cosp perceived a danger. As her foot landed on the second step, at about six feet away, he fired two shots into her chest. Ms. Baca immediately fell, and, facedown in her own blood, was dragged out into the driveway and handcuffed. Only about forty-five seconds elapsed from the time he arrived at her doorway to the moment of the shooting. Ms. Baca did not survive, and prosecutors did not charge her with any offense.

In the aftermath, Ms. Baca's estate sued Officer Cosp, alleging a violation of the Fourth Amendment through the use of excessive force. The district court granted summary judgment to Officer Cosp on qualified-immunity grounds, reasoning that no genuine dispute of material fact existed about whether Ms. Baca presented a threat and that the Estate failed to show a violation of clearly established law. Ms. Baca's estate appealed to the Tenth Circuit, seeking review of the lower court's decision.

On appeal, the Tenth Circuit reversed the district court's decision and remanded the case for further proceedings. The Court undertook the two-part inquiry for the qualified-immunity analysis: asking first whether the Estate had raised a genuine dispute as to whether a constitutional violation occurred, and second whether the right at issue was "clearly established" at the time of the shooting. The Tenth

Circuit held that a reasonable jury could conclude Officer Cosper violated Ms. Baca's Fourth Amendment right to be free from excessive force. Although Ms. Baca held two knives, she never made slashing or stabbing motions toward the officer or others, nor did she charge at him. She did take two measured steps in his direction, but the knives remained pointed downward. Citing several precedents, the Court explained that it is objectively unreasonable for an officer to use deadly force against someone who is merely holding a knife at her side, without making any hostile, threatening movement.<sup>1</sup> Addressing whether the threat was imminent or immediate, the Tenth Circuit noted that Ms. Baca was seventy-five, mentally diminished, and likely not capable of an aggressive "rush."• The Court also observed that because the yard and driveway offered an accessible retreat path, the officer could have stepped back and waited for backup or employed less-lethal options. The Court underlined that additional officers arrived within minutes, and one officer already at the scene held a taser, which could have been used had Ms. Baca attempted to follow Cosper outside. Turning to the second prong of the qualified-immunity analysis, the Tenth Circuit determined that the law was clearly established long before 2022 that lethal force is impermissible if the individual poses no imminent threat of serious bodily harm. The Court cited *Tenorio v. Pitzer*, where it held that an officer may not shoot a knife-wielding suspect who is not charging or actively striking at anyone, and reaffirmed that prior cases—particularly *Zuchel* and *Walker*—had already drawn a bright line regarding an officer's use of deadly force under similar knife-related circumstances. Because Ms. Baca's behavior and the short-distance encounter fell squarely within that precedent, every reasonable officer would have understood that using lethal force on a non-charging, mentally ill individual with knives pointed at the floor would be unconstitutional. As a result, the Tenth Circuit concluded that neither prong of qualified immunity protected Officer Cosper. His conduct, viewed in the light most favorable to Ms. Baca's estate, could be found objectively unreasonable, and clearly established law prohibited an officer from opening fire in these circumstances. The Court reversed the grant of summary judgment and sent the case back to the district court for further proceedings consistent with its opinion.

This case reminds law enforcement of the importance of assessing the immediate threat posed by a knife-wielding suspect, particularly when that suspect is elderly or suffering from a mental disability. Officers must also account for whether there are safe avenues of retreat or immediate less-lethal options at hand. Even if an individual refuses commands to drop a knife, the justification for deadly force depends heavily on whether an actual threat of serious harm exists at that moment. The decision underscores that longstanding Tenth Circuit precedents already require courts to consider whether the suspect was truly endangering others or if more measured tactics could have safely resolved the situation. Where mental illness factors into the confrontation, officers should be especially cautious, aware that the suspect's behavior might not reflect rational intent to attack, and that de-escalation or time-based strategies can often defuse the risk without resorting to deadly measures. In your daily duties, remember that responding officers must articulate not only the presence of a weapon, but also why the person holding it presented an immediate risk of serious bodily harm at the moment deadly force was used.

## Date Created

05/13/2025