

## SCOTUS: Excessive Force

### Description

On June 28, 2021, the Supreme Court of the United States (SCOTUS) examined the topic of excessive force in the case of *Lombardo v. City of St. Louis*. In an unsigned opinion — and over the dissents of three justices — SCOTUS threw out the 8th Circuit Court ruling in favor of the officers—which dismissed the excessive force suit filed by the man’s parents—and sent it back to the lower court for another look.

### Facts

The lawsuit arose from the 2015 death of Nicholas Gilbert, a homeless man who was arrested for trespassing and for failing to appear in court for a traffic ticket. While in a holding cell, Gilbert attempted to hang himself. Three officers responded and entered Gilbert’s cell. One grabbed Gilbert’s wrist to handcuff him, but Gilbert evaded the officer and began to struggle. The three officers brought Gilbert, who was 5’3” and 160 pounds, down to a kneeling position over a concrete bench in the cell and handcuffed his arms behind his back. Gilbert reared back, kicking the officers and hitting his head on the bench. After Gilbert kicked one of the officers in the groin, they called for more help and leg shackles. While Gilbert continued to struggle, two officers shackled his legs together. Emergency medical services personnel were phoned for assistance. Several more officers responded. They relieved two of the original three officers, leaving six officers in the cell with Gilbert, who was now handcuffed and in leg irons. The officers moved Gilbert to a prone position, face down on the floor. Three officers held Gilbert’s limbs down at the shoulders, biceps, and legs. At least one other placed pressure on Gilbert’s back and torso. Gilbert tried to raise his chest, saying, “It hurts. Stop.” After 15 minutes of struggling in this position, Gilbert’s breathing became abnormal, and he stopped moving. The officers rolled Gilbert onto his side and then his back to check for a pulse. Finding none, they performed chest compressions and rescue breathing. An ambulance eventually transported Gilbert to the hospital, where he was pronounced dead.

Gilbert’s parents sued the city and the officers, alleging (among other things) that the officers had used excessive force against Gilbert in violation of his constitutional rights. The U.S. Court of Appeals for the 8th Circuit dismissed the claims, holding that no reasonable jury could find that officers had used excessive force and therefore the officers could not be held liable.

### SCOTUS Decision

On June 28, 2021, the Court issued a four-page decision in which it emphasized that the determination whether police officers use excessive force “requires careful attention to the facts and circumstances of each particular case” – including factors such as “the relationship between the need for the use of force and the amount of force used” and “the threat reasonably perceived by the officer” as well as “whether the plaintiff was actively resisting.” Although the 8th Circuit cited these factors, SCOTUS noted that it “is unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or surrounding circumstances—is per se constitutional so long as an individual appears to resist officers’ efforts to subdue him.”

Moreover, the justices added, the Court of Appeals described other facts – such as that Gilbert had already been handcuffed and his legs were shackled – as “insignificant,” when they actually could have been important. SCOTUS further noted that there was evidence in the record that “officers placed pressure on Gilbert’s back even though St. Louis instructs its officers that pressing down on the back of a prone subject can cause suffocation,” and well-known police guidance recommends that officers get a subject off his stomach as soon as he is handcuffed because of that risk. Such guidance further indicates that the suspect may be struggling due to oxygen deficiency, rather than disobedience.

Because the 8th Circuit either “failed to analyze such evidence or characterized it as ‘insignificant,’” SCOTUS concluded, it had not conducted the kind of “careful, context-specific analysis required by this Court’s excessive force precedent.” The justices stressed that they were not weighing in on whether the officers had in fact used excessive force or whether, if they did, the officers would ultimately be entitled to qualified immunity. Instead, they wrote, they were simply giving the 8th Circuit “the opportunity to employ an inquiry that clearly attends to the facts and circumstances in answering those questions in the first instance.”

Alito dissented, in an opinion that was joined by Thomas and Gorsuch. In Alito’s view, the 8th Circuit “applied the correct legal standard and made a judgment call on a sensitive question.” He suggested that “the Court, unfortunately, is unwilling to face up to the choice between denying the petition (and bearing the criticism that would inevitably elicit) and granting plenary review (and doing the work that would entail).”

## **Takeaways**

SCOTUS made clear that excessive force cases are fact and circumstance specific which require a thorough examination by the lower courts. Additionally, it is of the utmost importance for every police department to have a sound use of force policy and be up to date on best police practices to protect itself and its officers from potential litigation down the road.

**Lombardo v. City of St. Louis, 594 U.S. \_\_\_\_ (2021)**

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