

Civil Rights Law—Ambiguity of “Any-Crime” Rule Entitles Police Officer to Qualified Immunity in Malicious Prosecution Claim—*Rivera-Guadalupe v. City of Harrisburg*, 124 F.4th 295 (3d Cir. 2024).

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Under 42 U.S.C. § 1983, an individual may bring a civil action against government officials or employees for “deprivation of any rights, privileges, or immunities secured by the Constitution and laws.”¹ Initially created to protect government employees from frivolous legal action, the doctrine of qualified immunity is now at the center of controversy in light of concerns around police violence and misconduct.² In *Rivera-Guadalupe v. City of Harrisburg*,³ the Third Circuit Court of Appeals addressed whether a constitutional right to be “prosecuted only for charges . . . each supported by probable cause” was “clearly established” at the relevant time, such that the police officer who made the arrest could claim qualified immunity in a suit alleging malicious prosecution.⁴ The Third Circuit held that the district court erred in barring the police officer’s qualified immunity defense on the grounds that there was no clearly established constitutional right at the relevant time due to precedential ambiguity within the jurisdiction.⁵

This civil action arose from the criminal prosecution of Jorge Rivera-Guadalupe, the plaintiff, after a shooting occurred at his residence in May 2017.⁶ At the time, Rivera-Guadalupe was living in a boarding house in Harrisburg, Pennsylvania, where the conditions were unpleasant with “rampant” drugs and alcohol.⁷ On May 22, 2017, the day after Rivera-Guadalupe was robbed and

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1. See 42 U.S.C. § 1983 (codifying one’s right to sue government officials for deprivation of rights).

2. See *Qualified Immunity*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/qualified-immunity/> [perma.cc/G6TC-D7RR] (last visited Jan. 19, 2025) (summarizing context and controversy surrounding qualified immunity for law enforcement officers); see also Ed Yohnka et al., *Ending Qualified Immunity Once and for All Is the Next Step in Holding Police Accountable*, AM. C.L. UNION (Mar. 23, 2021), <https://www.aclu.org/news/criminal-law-reform/ending-qualified-immunity-once-and-for-all-is-the-next-step-in-holding-police-accountable> [perma.cc/UMU4-AME6] (describing mass protests against qualified immunity doctrine in response to police killings); Tyler Kendall, *Qualified Immunity Is at the Forefront of the Debate on Policing*, CBS NEWS (July 7, 2020), <https://www.cbsnews.com/news/qualified-immunity-policing-debate/> [perma.cc/9FDL-8VN4] (discussing legislative efforts aimed at reforming policing and qualified immunity).

3. 124 F.4th 295 (3d Cir. 2024).

4. See *id.* at 299 (stating issue considered by Third Circuit).

5. See *id.* at 303 (announcing holding of case-in-chief).

6. See *Rivera-Guadalupe v. Pierce*, No.1:19-CV-1400, 2023 WL 2647859, at *1 (M.D. Pa. Mar. 27, 2023) (providing background of civil suit).

7. See 124 F.4th at 297 (describing nature of Rivera-Guadalupe’s dwelling).

physically assaulted by a few strangers at the boarding house, his close friend, Christopher Valkosak, came to stay with him to provide additional protection.⁸ Around eleven o'clock that evening, when Valkosak was standing in the doorway of Rivera-Guadalupe's room, two men attacked Valkosak.⁹ One of the men, who was "dark-skinned" and in a black hoodie, took out a gun and shot Valkosak in the stomach before fleeing the scene.¹⁰

Detective Jacob Pierce, one of the defendants in the civil action, led the investigation of the shooting.¹¹ During his investigations, he interviewed Valkosak, who stated that Rivera-Guadalupe took a gun from under his mattress and left his room.¹² Detective Pierce also interviewed a neighbor who witnessed the incident and described the attacker as a "tall Black male dressed in black."¹³ After the interview, Detective Pierce used the neighbor's description of the shooter to apply for a warrant to search Rivera-Guadalupe's room, which he successfully obtained.¹⁴ He omitted from the warrant application, however, certain details about Rivera-Guadalupe that varied from the neighbor's description of the shooter—specifically that Rivera-Guadalupe was "short, of Puerto Rican descent, and walk[ed] with a limp."¹⁵ With the search warrant, officers found marijuana, a knife, and other items—but no gun—in Rivera-Guadalupe's room, which ultimately formed the basis for his arrest.¹⁶

The judge at the preliminary hearing found probable cause to continue Rivera-Guadalupe's detention upon hearing witness testimony from Valkosak, Detective Pierce, and Valkosak's roommate.¹⁷ The Commonwealth ultimately brought four charges against Rivera-Guadalupe—possession of a firearm, possession of

8. *See id.* (providing context for events that led to shooting incident at boarding house).

9. *See id.* (recounting attack of Valkosak).

10. *See id.* (detailing shooting incident). Valkosak suffered grave injuries and was taken to the hospital, where he later spoke to the detective investigating the incident. *See Rivera-Guadalupe v. Pierce*, No.1:19-CV-1400, 2023 WL 2647859, at *1 (M.D. Pa. Mar. 27, 2023) (stating Valkosak's level of injury and subsequent events after shooting).

11. *See Rivera-Guadalupe v. Pierce*, No.1:19-CV-1400, 2023 WL 2647859, at *1 (M.D. Pa. Mar. 27, 2023) (describing background of Detective Pierce and his involvement with incident at hand).

12. *See* 124 F.4th at 297 (summarizing Valkosak's interview). The Third Circuit presumed that Rivera-Guadalupe left to chase Valkosak's attacker. *See id.* (stating Third Circuit's presumption).

13. *See id.* (providing neighbor's observation of shooting).

14. *See id.* (detailing Detective Pierce's process of applying for warrant).

15. *See id.* (pointing out inadequacies in Detective Pierce's warrant application).

16. *See* 124 F.4th at 297-98 (describing items found in Rivera-Guadalupe's residence). Detective Pierce applied for an arrest warrant after the search by submitting a criminal complaint with an affidavit of probable cause, and Rivera-Guadalupe was arrested on May 23, 2017. *See Rivera-Guadalupe v. Pierce*, No.1:19-CV-1400, 2023 WL 2647859, at *1 (M.D. Pa. Mar. 27, 2023) (detailing events after search at Rivera-Guadalupe's residence that led to his arrest).

17. *See* 124 F.4th at 298 (summarizing outcome of preliminary hearing). Even though Valkosak's roommate testified at the hearing, he was not a resident in Rivera-Guadalupe's boarding house, nor was he present during the shooting. *See id.* (providing information about witness testimony at hearing). Furthermore, though Detective Pierce received a tip regarding the shooter's identity, he did not mention that call; the Commonwealth also did not call upon the neighbor that Detective Pierce interviewed after the shooting. *See id.* (stating concerns regarding witness testimony at preliminary hearing).

a firearm without a license, robbery, and theft by unlawful taking—but the jury found Rivera-Guadalupe not guilty on all four counts.¹⁸ Though Rivera-Guadalupe was finally acquitted, he had already been incarcerated for over eighteen months, from May 2017 to December 2018.¹⁹ In 2019, Rivera-Guadalupe filed suit in the Middle District of Pennsylvania, alleging a malicious prosecution claim under § 1983 against a few defendants, including Detective Pierce.²⁰ The District Court dismissed the suit against all defendants except Detective Pierce, who further sought dismissal on the basis of qualified immunity; the District Court again declined to dismiss the suit against Detective Pierce, reasoning that precedents within the jurisdiction did not entitle him to qualified immunity in this situation.²¹ On appeal, the Third Circuit recognized that contradictory holdings in precedents within the jurisdiction created ambiguity of the law, regarding whether a constitutional right to face prosecution only for charges individually substantiated by probable cause was clearly established at the time of prosecution, and ultimately held that the District Court erred in denying qualified immunity to Detective Pierce.²²

“Any citizen of the United States or other person within the jurisdiction” who has a federally-protected right invaded by local governments and their employees

18. See *id.* (stating charges that prosecution brought against Rivera-Guadalupe at trial and jury’s decision). The Commonwealth originally charged Rivera-Guadalupe with nine offenses: attempted homicide, unlawful possession of a firearm, possession of an unlicensed firearm, conspiracy to commit aggravated assault, robbery, recklessly endangering another person, possession of marijuana, conspiracy to commit homicide, and conspiracy to commit aggravated assault. See *Rivera-Guadalupe v. Pierce*, No.1:19-CV-1400, 2023 WL 2647859, at *1 (M.D. Pa. Mar. 27, 2023) (listing initial charges against Rivera-Guadalupe). The prosecution mistakenly listed the charge of “conspiracy to commit aggravated assault” twice in its complaint and omitted the “theft by unlawful taking” charge. See *id.* at *1 n.1 (explaining prosecution’s mistakes in initial charges).

19. See 124 F.4th at 298 (totaling Rivera-Guadalupe’s time spent incarcerated).

20. See *id.* (describing background of civil suit brought by Rivera-Guadalupe). Rivera-Guadalupe also alleged malicious prosecution in violation of the Fourth and Fourteenth Amendments, state law, and policies set forth by other precedents. See *id.* at 298 n.3 (reciting claims alleged by plaintiff in case-in-chief). Other defendants involved included the City of Harrisburg’s Bureau of Police, the Dauphin County District Attorney’s Office, and the Dauphin County First Assistant District Attorney. See *id.* (listing other defendants sued by Rivera-Guadalupe). The Fourth Amendment establishes the principle of probable cause. See U.S. CONST. amend. IV (enshrining protection against “unreasonable searches and seizures”). The Fourteenth Amendment prohibits states from depriving one of “life, liberty, or property, without due process of law.” See *id.* amend. XIV (safeguarding one’s right to due process).

21. See 124 F.4th at 298-99 (describing Detective Pierce’s attempt to seek dismissal of malicious prosecution claim). The District Court initially dismissed the suit against all defendants except Detective Pierce, by holding that Rivera-Guadalupe’s complaint failed to state a claim. See *Rivera-Guadalupe v. Pierce*, No.1:19-CV-1400, 2023 WL 2647859, at *2 (M.D. Pa. Mar. 27, 2023) (providing District Court’s reasoning for dismissing claims against various defendants). The District Court applied the holding in *Johnson v. Knorr*, concluding that the “any-crime” rule did not apply to malicious prosecution claims to entitle Detective Pierce to qualified immunity. See 124 F.4th at 299 (summarizing District Court’s reasoning for denying qualified immunity to Detective Pierce).

22. See 124 F.4th at 297, 299 (critiquing confusion caused by tension between precedents applied and stating holding).

may bring a direct cause of action under § 1983.²³ Originally introduced as part of the Civil Rights Act of 1871 during the Reconstruction Era, the statute was aimed at enforcing the Fourteenth Amendment to mitigate widespread violence directed at emancipated slaves from groups like the Ku Klux Klan.²⁴ To this day, § 1983 continues to provide compensatory remedies to individuals whose federal rights were violated by state actors, allowing those injured by government agencies and their employees to recover.²⁵ Though the statute was enacted in the nineteenth century, it was not until after the *Monroe v. Pape*²⁶ decision in 1961 that § 1983 suits began to increase exponentially.²⁷ Not only did *Monroe*

23. See 42 U.S.C. § 1983 (defining who may bring cause of action under statute); Anne H. Turner, SECTION 1983: OVERVIEW §§ 2-3 (2024), Westlaw W-001-8382 (explaining basic provision of statute). Courts have held that U.S. citizens, aliens, and corporations may bring a § 1983 suit, whereas the United States, an Indian tribe, or state agencies are not considered proper plaintiffs for such a suit. See Turner, *supra*, § 3 (distinguishing proper plaintiffs in § 1983 suit). The statute allows proper plaintiffs to bring a claim against local government entities and employees, like a municipality or county, state or U.S. territory employees in their individual capacity, and private individuals acting for state or local governments, but excludes from its scope: the federal government, its agencies and employees, and a state and its officials acting in their official capacity. See *id.* §§ 3-4 (detailing potential defendants under § 1983 suit). Plaintiffs who would like to assert a claim of a constitutional right violation against the federal government, its agencies, and officials may do so under the *Bivens* doctrine. See WHITNEY K. NOVAK, CONG. RSCH. SERV., LSB10492, POLICING THE POLICE: QUALIFIED IMMUNITY AND CONSIDERATIONS FOR CONGRESS 1 (2023) (comparing differences in bringing civil rights claims against federal versus state and local government officials). In the case-in-chief, Rivera-Guadalupe brought the civil action pursuant to § 1983, and all defendants involved were on the municipal level. See *supra* note 20 and accompanying text (chronicling details of case-in-chief).

24. See Allen C. Guelzo & Darrell A.H. Miller, *Ku Klux Klan Act of 1871, "An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes,"* NAT'L CONST. CTR., <https://constitutioncenter.org/the-constitution/historic-document-library/detail/ku-klux-klan-act-of-1871-april-20-1871-an-act-to-enforce-the-provisions-of-the-fourteenth-amendment-to-the-constitution-of-the-united-states-and-for-other-purposes> [perma.cc/67JW-K45N] (last visited Feb. 2, 2025) (summarizing background of Civil Rights Act of 1871). The Civil Rights Act of 1871, also known as the Ku Klux Klan Act, was part of the Enforcement Acts passed by Congress during the Reconstruction Era. See Nicholas Mosvick, *Looking Back at the Ku Klux Klan Act*, NAT'L CONST. CTR. (Apr. 20, 2021), <https://constitutioncenter.org/blog/looking-back-at-the-ku-klux-klan-act> [perma.cc/8HM6-KWQ3] (providing historical context of Civil Rights Act of 1871); see also *The Enforcement Acts of 1870 and 1871*, U.S. SENATE, <https://www.senate.gov/artandhistory/history/common/generic/EnforcementActs.htm> [perma.cc/W3JN-K3MU] (last visited Feb. 2, 2025) (describing timeline of Enforcement Acts of 1870 and 1871).

25. See *Felder v. Casey*, 487 U.S. 131, 141 (1988) (noting central purpose of § 1983). The Supreme Court interpreted § 1983 not as a source for any substantive rights, but merely as a way to recover for violations of rights granted by the U.S. Constitution and other federal statutes. See *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979) (establishing view on purpose of § 1983).

26. 365 U.S. 167 (1961).

27. See Richard Briffault, *Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1135-36 (1977) (discussing trends of § 1983 since its enactment). In 1960, approximately only 300 federal cases were filed under all the civil rights acts, whereas almost 8,000 cases were filed under § 1983 by 1972. See *id.* at 1172 (comparing number of suits filed under civil rights acts and § 1983 over time). In *Monroe*, plaintiffs sued the City of Chicago and individual Chicago Police Department officers under § 1983, alleging a violation of the Fourth Amendment. See *Monroe v. Pape*, 365 U.S. 167, 168-70 (1961) (presenting issue of *Monroe*). Thirteen police officers broke into the plaintiffs' home, made them stand naked while the police raided every room in the home, and detained and interrogated one of the plaintiffs without allowing him to contact his attorney before releasing him and without bringing criminal charges against him. See *id.* at 169 (detailing facts of *Monroe*). The Court ultimately allowed

establish a trend of using § 1983 for redress when there is a violation of federal rights, it also opened the door for civilians to sue police officers, setting the stage for future debates regarding police liability towards civilians and police immunity in suits against them.²⁸

The Supreme Court first discussed immunity for police officers in *Pierson v. Ray*,²⁹ where it held that police officers who acted with probable cause and good faith should be entitled to such a defense when facing a § 1983 suit.³⁰ This area of law continued to develop when the Supreme Court established the modern qualified immunity doctrine for public officials in *Harlow v. Fitzgerald*.³¹ In *Harlow*, the Court distinguished between absolute and qualified immunity, holding that government officials are entitled to qualified immunity to balance protecting citizens' rights for a damages remedy, public officials acting within their official duty, and public interest.³² *Harlow* created a liability shield from civil damages for government officials acting in their capacity based on an objective standard, concluding that the doctrine applies as long as the conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."³³ Over time, the Supreme Court has addressed the

plaintiffs to proceed with their § 1983 claim despite the available remedies under state law that the plaintiffs did not pursue. See *id.* at 191-92 (stating holding in *Monroe*).

28. See Briffault, *supra* note 27, at 1172 (presenting impact of *Monroe* on § 1983 litigation); *supra* note 27 (discussing trend of § 1983 suits and facts of *Monroe*). *Monroe* exempted municipalities from § 1983 coverage, but the Supreme Court overruled this exemption in *Monell v. Department of Social Services*. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978) (concluding § 1983 applies to municipalities and local government units based on legislative history); KEVIN F. O'MALLEY ET AL., 3B FEDERAL JURY PRACTICE AND INSTRUCTIONS, pt. VII, ch. 165, note 1 (6th ed. 2025) (introducing development of interpretation of § 1983 in case law).

29. 386 U.S. 547 (1967).

30. See *id.* at 556-57 (making good faith defense and probable cause available to police officers in § 1983 action); see also NOVAK, *supra* note 23, at 2 (describing roots of police immunity). In *Pierson*, law enforcement arrested a group of White and Black clergymen when they attempted to use segregated facilities at a public transit station as a form of protest. See *Pierson v. Ray*, 386 U.S. 547, 548-49 (1967) (presenting facts of *Pierson*). The clergymen brought the suit against city police officers and a municipal police justice, alleging violation of civil rights under § 1983 and liability for false arrest and imprisonment. See *id.* at 549-50 (portraying background of *Pierson*). *Pierson* noted that although police officers are not entitled to absolute and unqualified immunity under common law, § 1983 should be interpreted within the framework of tort liability, which holds individuals responsible for the consequences of their conduct, and therefore, allows police officers to use common law defenses in a § 1983 suit. See *id.* at 555-57 (discussing Supreme Court's reasoning for its holding); NOVAK, *supra* note 23, at 2 (summarizing *Pierson* holding and reasoning).

31. See 457 U.S. 800, 807 (1982) (discussing qualified immunity doctrine); NOVAK, *supra* note 23, at 2-3 (positioning *Harlow*'s impact on modern police qualified immunity).

32. See *Harlow v. Fitzgerald*, 457 U.S. 800, 807, 815, 818 (1982) (declaring importance of qualified immunity for government officials and discussing holding). Absolute immunity protects officials holding special responsibilities or those constitutionally shielded from suit in all three governmental branches, such as legislators and judges acting in their official capacity and functions, as well as prosecutors, and even the President of the United States. See *id.* at 807 (detailing groups of government officials protected under absolute immunity doctrine).

33. See *id.* at 818 (defining test to determine application of qualified immunity doctrine). The *Harlow* objective test diverges from previous good-faith defense standards that considered both the objective and subjective states of mind of government officials involved. See *id.* at 815 (eliminating subjective aspect when applying qualified immunity). In addition to acting as a liability shield, the qualified immunity doctrine protects public

scope of the qualified immunity doctrine, specifically focusing on defining what constitutes clearly established statutory or constitutional rights.³⁴ The development of the qualified immunity doctrine is not without controversy; in recent years, concerns over police brutality and excessive use of force have exacerbated the debate, raising a question of how far to extend police qualified immunity to balance the “countervailing interests” outlined in *Harlow*.³⁵

officials from the costs of litigation. See Kit Kinports, *The Supreme Court’s Quiet Expansion of Qualified Immunity*, 100 MINN. L. REV. HEADNOTES 62, 62-63 (2016) (explaining provisions of qualified doctrine established in *Harlow*). The qualified immunity doctrine is available for local government officials sued under § 1983, which includes law enforcement officers such as the police. See NOVAK, *supra* note 23, at 1 (declaring availability of qualified immunity doctrine for local police); see also Turner, *supra* note 23, § 3 (summarizing how courts construed § 1983 to impose liability on local government employees and entities). For example, a police officer facing a malicious prosecution suit generally has qualified immunity if their conduct was objectively reasonable, if they were acting within their scope of employment, and acted with no malice. See 52 AM. JUR. 2D *Malicious Prosecution* § 88 (2025) (defining when law enforcement officers entitled to qualified immunity under malicious prosecution claim).

34. See Kinports, *supra* note 33, at 65-66 (examining development of qualified immunity standard since *Harlow*); NOVAK, *supra* note 23, at 3 (describing Supreme Court’s tendency to define clearly established law when deciding qualified immunity cases). The Supreme Court outlined the complete qualified immunity standard in *Mullenix v. Luna*, rounding up key definitions from its opinions spanning the last thirty years:

The doctrine of qualified immunity shields officials from civil liability so long as their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” A clearly established right is one that is “sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” “We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.” Put simply, qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.”

577 U.S. 7, 11-12 (2015) (citations omitted) (internal quotation marks omitted) (quoting, in order, *Pearson v. Callahan*, 555 U.S. 223, 231 (2009); *Reichle v. Howards*, 566 U.S. 658, 664 (2012); *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011); *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). More recently, the Supreme Court stressed the importance of “specificity” when evaluating whether the public official’s conduct violated clearly established law. See *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019) (holding specificity crucial to determine whether clearly established right existed in qualified immunity cases); see also *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011) (cautioning against generalizing what constituted clearly established rights). The Third Circuit applies a similar standard and clarified that the right at issue should be defined at the proper level of specificity. See *Sharp v. Johnson*, 669 F.3d 144, 159 (3d Cir. 2012) (declaring Third Circuit’s standard when defining clearly established right).

35. See Kinports, *supra* note 33, at 67-68 (critiquing Supreme Court’s definition of controlling standard for qualified immunity); *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982) (describing balancing interests of citizens, public officials, and public benefits); Karen Blum, *Qualified Immunity: Achieving a Better Balance*, BOS. BAR J., Feb. 25, 2025, <https://bostonbar.org/journal/qualified-immunity-achieving-a-better-balance/> [perma.cc/VX6C-JYEP] (expressing concerns that development in qualified immunity doctrine contradict with original intent to balance interests). In addition to criticizing the Supreme Court for failing to balance counteracting interests when developing the qualified immunity doctrine, scholars have critiqued Justice Scalia’s approach in *Ashcroft*, accusing the Court of sneakily redefining the clearly-established-law standard by only partially quoting from precedent, making it harder for plaintiffs to bring a claim. See Kinports, *supra* note 33, at 65 (analyzing Justice Scalia’s decision to replace “a reasonable official” with “every reasonable official” in *Ashcroft*); Karen Blum, Erwin Chemerinsky & Martin A. Schwartz, *Qualified Immunity Developments: Not Much Hope Left for Plaintiffs*, 29 TOURO L. REV. 633, 654, 656 (2013) (recognizing no Justice challenged Justice Scalia’s subtle change in language when listing clearly established standard). Advocates for the qualified immunity doctrine are concerned

Despite the Supreme Court’s attempts to clarify the doctrine over the years, what constitutes clearly established law to justify the application of the defense remains a key source of tension, with scholars commenting that its evolution has created more confusion than clarity.³⁶ Certain rulings in lower courts also reflect this view, where some judges critique the Supreme Court’s interpretation of the qualified immunity doctrine, particularly the overly specific requirement for

that without the protection of such a doctrine, it would be more challenging to recruit and retain law enforcement officers, in turn lowering proactive policing, increasing crime, and endangering public safety. See Scott Erickson, *Protecting Qualified Immunity*, AM. FIRST POL’Y INST. (Oct. 17, 2023), <https://americafirstpolicy.com/issues/issue-brief-protecting-qualified-immunity> [perma.cc/QDJ4-JM6E] (raising concerns against ending qualified immunity); NOVAK, *supra* note 23, at 4 (stressing importance of doctrine in allowing police flexibility to act accordingly in emergency situations). On the other hand, opponents challenge the doctrine by claiming that it has no basis in common law, fails to achieve its intended policy goals, and harms the development of constitutional law. See Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797, 1836 (2018) (summarizing critiques for qualified immunity doctrine); NOVAK, *supra* note 23, at 3 (articulating concerns over heightened specificity of clearly-established-law standard and impact on plaintiffs’ recovery). Apart from legal discourse surrounding this doctrine, the death of George Floyd at the hands of Minneapolis police in 2020 caused the federal legislature to also introduce police reform bills that push for either the elimination or further protection of the qualified immunity doctrine. See Kendall, *supra* note 2 (reporting on federal legislation that discusses police reform and qualified immunity); Erickson, *supra* (comparing bills related to qualified immunity introduced by federal Democratic and Republican legislators). Some states and municipalities have taken the matter into their own hands by attempting to resolve the debate over the qualified immunity doctrine through legislation, the appellate process, or amendments to the municipal administrative code. See Gary S. Gildin, *Legislative Efforts to Abolish Qualified Immunity Yield Mixed Results*, STATE CT. REP. (May 30, 2024), <https://state-courtreport.org/our-work/analysis-opinion/legislative-efforts-abolish-qualified-immunity-yield-mixed-results> [perma.cc/SS5L-AGQV] (documenting activities in various states outlawing or broadening qualified immunity defense).

36. See Blum, Chemerinsky & Schwartz, *supra* note 35, at 657 (recognizing challenges created by lack of clarity on qualified immunity defense in § 1983 claims). To determine what constitutes clearly established law, courts should first identify the relevant source of law—whether a violation of a constitutional right under current law is alleged—then decipher what is necessary to make the law clearly established, which is the more confusing aspect of the inquiry. See *id.* at 653 (breaking down standard for defining clearly established law); see also *Saucier v. Katz*, 533 U.S. 194, 201 (2001) (outlining mandatory two-prong inquiry to analyze qualified immunity issue). In *Pearson v. Callahan*, the Supreme Court reformulated *Saucier*’s two-step inquiry by subsequently holding that judges have discretion to determine which of the two prongs they think requires analysis first, which practically gives judges the permission to ignore the first step of the analysis completely. See 555 U.S. 223, 236-37 (2009) (holding *Saucier* analysis not mandatory and justifying divergence from inflexible *Saucier* two-step test). The Supreme Court began its analysis in *Pearson* by addressing *stare decisis* and defending its decision not to follow the *Saucier* precedent based on prevalent criticisms of the rigidity of the test and constant defiance by lower courts. See *id.* at 233-35 (reasoning rescission of *Saucier* test acceptable despite *stare decisis*). Overall, the Supreme Court has interpreted the clearly-established-law standard inconsistently in the past, sending inconsistent messages to lower courts on how to appropriately apply the standard to a § 1983 claim. See Blum, Chemerinsky & Schwartz, *supra* note 35, at 653-55 (comparing Supreme Court’s varying languages and instructions in qualified immunity suits); see also Karen M. Blum, *Section 1983 Litigation: the Maze, the Mud, and the Madness*, 23 WM. & MARY BILL OF RTS. J. 913, 946 (2015) (reviewing how Supreme Court applied different clearly established law standards when reviewing circuit court decisions). Critics are concerned that the continuous and inconsistent redefining of the doctrine will create barriers for enforcing police accountability. See Andrew Chung et al., *Shielded: Supreme Defense*, REUTERS INVESTIGATES (May 8, 2020), <https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/> [perma.cc/5KPW-PFXH] (showcasing instances where courts granted immunity to police despite harming unarmed civilians); see also Blum, Chemerinsky & Schwartz, *supra* note 35, at 654-55, 657 (describing how courts blatantly ignore pro-plaintiff interpretation of clearly-established-law standard).

clearly established law.³⁷ With a more narrow standard, critics worry that plaintiffs find it increasingly challenging to prevail against a qualified immunity defense, even when police clearly exerted excessive force and caused death or serious bodily injuries.³⁸ On the other hand, some scholars maintain that the undefeatable nature of the qualified immunity doctrine is overstated, because it is often not the reason that plaintiffs' claims fail and there is a recent trend of circuit courts reversing qualified immunity grants.³⁹

Rivera-Guadalupe reflects the discourse around the clearly-established-law standard, highlighting tensions within the Third Circuit specifically around

37. See, e.g., *McGarry v. Bd. of Cnty. Comm'rs*, 294 F. Supp. 3d 1170, 1188 n.13 (D.N.M. 2018) (highlighting critiques by lower court); see also Alex Bodaken, Student Contribution, *Beating Qualified Immunity on Appeal*, 57 AM. CRIM. L. REV. ONLINE 98, 100 (2020), <https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2020/05/57-4-Bodaken-Beating-Qualified-Immunity-on-Appeal.pdf> [perma.cc/D6TB-SUVL] (depicting narrow construction of clearly established law by Supreme Court); *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011) (instructing courts not to define clearly established law generally); *Chung et al.*, *supra* note 36 (noting criticism that current standard requires almost identical facts for qualified immunity claim to prevail). Judge Browning of the U.S. District Court for the District of New Mexico expressed his concern that it is unrealistic for cases always to share perfectly identical or highly similar facts, and that in fact, most cases have facts that would rarely reoccur in a substantially similar manner. See *McGarry v. Bd. of Cnty. Comm'rs*, 294 F. Supp. 3d 1170, 1188 n.13 (D.N.M. 2018) (condemning recent qualified immunity jurisprudence and standard set implicitly by Supreme Court). Judge Browning further argued that the Supreme Court, in its narrowly defined standard for clearly established law, has practically rendered § 1983 claims obsolete because lower courts follow the "unwritten signs" conveyed in appellate courts' opinions. See *id.* (predicting impact of narrow standard of law on future § 1983 claims). Scholars, however, have also noted that despite some judges' skepticism of the qualified immunity doctrine, it was still uncommon for judges to criticize the doctrine explicitly, nor was there immediate refusal to apply the doctrine. See Bodaken, *supra*, at 104 (examining judicial criticism of qualified immunity doctrine).

38. See *Chung et al.*, *supra* note 36 (claiming plaintiffs alleging excessive force challenged when bringing case against police due to qualified immunity). The authors argued that, in excessive force cases, the renewed standard in *Pearson* allowed judges to only determine whether it was clearly established that the conduct was unlawful, without needing to address whether excessive force was indeed used. See *id.* (characterizing impact of changing qualified immunity standard on judges' rulings); Blum, Chemerinsky & Schwartz, *supra* note 35, at 647 (noting significance of *Pearson* holding on lower courts); see also *Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (allowing judges' discretion to decide whether to address if plaintiff sufficiently alleged constitutional right violation). As such, this created a trend of appeals courts simply ignoring the excessive force analysis entirely, even when there is atrocious police misconduct, further failing to establish a clear precedent that could offer a potential remedy to future plaintiffs who allege excessive force by police. See *Chung et al.*, *supra* note 36 (setting forth vicious cycle that fails plaintiffs in excessive force cases).

39. See Bodaken, *supra* note 37, at 98, 102 (challenging view that qualified immunity makes major difference in litigation outcomes). A study of circuit court cases from 2017 to 2019 that reviewed district court grants of qualified immunity defense revealed that only twenty-three out of 104 cases were overturned, suggesting that the doctrine is relatively weak when facing an appeal. See *id.* at 103 (comparing reversal of cases that involve qualified immunity-related issues with other types of cases). Another study reviewed dockets in five district courts to evaluate how qualified immunity might impact § 1983 claims. See Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 19 (2017) (introducing study methodology). This study finds that defendants were unable to raise a qualified immunity defense due to procedural reasons or that such a defense was unnecessary because the case was already dismissed sua sponte. See *id.* at 48 (concluding qualified immunity rarely the reason to end § 1983 claims). Nevertheless, the study also recognizes that, regardless of the role that qualified immunity plays in courtrooms, the doctrine could affect plaintiffs' decisions to initiate suit or accept settlement, and attorneys' decisions to accept cases and the advice they give to potential clients. See *id.* at 50-51 (considering other effects of qualified immunity doctrine on § 1983 claims throughout litigation process).

whether probable cause was sufficiently established to insulate Detective Pierce from the malicious prosecution suit.⁴⁰ The court first provided a brief overview of the qualified immunity standard to set the stage for its later analysis, maintaining that qualified immunity does not apply when: 1) the police officer's conduct violated a constitutional right, and 2) the right at issue was defined at "the appropriate level of specificity" and clearly established.⁴¹ Because the parties primarily disputed the issue of probable cause, the court defined the constitutional right at issue as "the right to be prosecuted only for charges . . . each supported by probable cause."⁴² The court decided only to address the clearly-established aspect, opining that such an analysis is sufficient to conclude the dispute.⁴³ The court recognized that the distinct holdings in *Wright v. City of Philadelphia*⁴⁴ and *Johnson v. Knorr*,⁴⁵ both Third Circuit precedents, created a genuine question as to whether the right to face prosecution only for charges individually supported by probable cause was clearly established when Rivera-Guadalupe was prosecuted.⁴⁶

The key issue in *Wright* primarily concerned a false arrest claim, but the court, when analyzing what constituted probable cause in such a claim, applied the same reasoning to the malicious prosecution claim, stating that the existence of probable cause for any chargeable offense under the circumstances is sufficient.⁴⁷ In *Johnson*, the Third Circuit rejected the holding in *Wright* by specifically distinguishing between the burden of probable cause needed in a false arrest claim and the burden needed in a malicious prosecution claim, warning that *Wright* was

40. See 124 F.4th at 298-99 (articulating Pierce's arguments that varying jurisdictional standards extinguish existence of clearly established law).

41. See *id.* (discussing when qualified immunity may or may not apply). This test is essentially the same as that established in *Saucier* and *Pearson*, and the court here also recognized its discretion to decide which question to address first. See *id.* (explaining court's discretion in qualified immunity analysis); *supra* note 36 (tracing evolution of *Saucier* test and subsequent modification in *Pearson*). The court further defined a clearly established right as one where "every reasonable official would have understood" that his conduct violated that right at the time of such conduct. See 124 F.4th at 299-300 (reiterating definition of clearly established right); see also *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (providing definition of clearly established right).

42. See 124 F.4th at 299 (determining constitutional right at issue subjected to clearly-established-law analysis).

43. See *id.* (focusing analysis on whether clearly established right exists).

44. 409 F.3d 595 (3d Cir. 2005).

45. 477 F.3d 75 (3d Cir. 2007).

46. See 124 F.4th at 299-300 (presenting precedential tension that dictates analysis of core issue).

47. See *Wright v. City of Philadelphia*, 409 F.3d 595, 602, 604 (3d Cir. 2005) (announcing reasoning and holding in *Wright*); 124 F.4th at 300 (summarizing key points in *Wright*). When probable cause for one charge can automatically defeat a malicious prosecution claim for any other charges, it is also known as the any-crime rule. See 124 F.4th at 299 (restating district court's holding that *Wright*'s any-crime rule does not apply to malicious prosecution claims). The plaintiff in *Wright* was accused of breaking into the house that she claimed to have been sexually assaulted in after she returned to collect her personal items and additional belongings from the assailants; her charges were later dismissed. See *Wright v. City of Philadelphia*, 409 F.3d 595, 597-98 (3d Cir. 2005) (stating facts of *Wright*). The plaintiff subsequently sued the police officers who were involved under § 1983, alleging false arrest and malicious prosecution claims. See *id.* at 598 (providing procedural background of *Wright*).

too broad and could potentially shield officers accused of malicious prosecution when they had probable cause for only one of the charges.⁴⁸ Here, though the Third Circuit agreed with the lower court's analysis that *Wright* and *Johnson* are distinguishable, the Third Circuit disagreed with its dismissal of the present tension and challenged the lower court's holding that *every* reasonable official would have understood that the law would never allow charging someone "with a laundry list of crimes" based on probable cause on only one crime.⁴⁹ In particular, the Third Circuit emphasized the tension that stemmed from the distinctive holdings in *Wright* and *Johnson* within the present jurisdiction, which is one that has also manifested in circuit splits across the nation.⁵⁰ Based on the confusion prevalent at all levels of courts across the nation, especially the disagreement among the circuit courts, the Third Circuit finally held that the law was not

48. See *Johnson v. Knorr*, 477 F.3d 75, 82-83 (3d Cir. 2007) (differentiating malicious prosecution from false arrest claims). In *Johnson*, the court reasoned that malicious prosecution involves the addition of unjustified charges to a defendant's indictment, which would likely unjustly burden the defendant, whereas the coverage of a false-arrest claim is limited to only the detention period prior to the issuance of process or arraignment, and the burden is more minor. See *id.* 82-84 (comparing burden against defendant if additional charges brought when evaluating false arrest versus malicious prosecution). The Third Circuit also distinguished *Wright* from *Johnson* on the facts. See 124 F.4th at 300-01 (pointing out additional distinctions in *Wright* and *Johnson*).

49. See 124 F.4th at 301 (highlighting Third Circuit's critique of district court's holding). The Third Circuit argued that the pertinent analysis for whether a constitutional right is clearly established is whether it was "beyond debate" based on relevant precedent, attacking the lower court's conclusion that a complex issue is not equivalent to an ambiguous issue. See *id.* (contrasting judge's ability to evaluate case differences with that of every reasonable official).

50. See *id.* at 301-02 (portraying national and jurisdictional tension regarding application of any-crime rule). Within the Third Circuit, there has been ample legal commentary attempting to reconcile the tension between *Wright* and *Johnson*. See *id.* at 301 (acknowledging inconsistencies). One decision stressed that the tension highlights the complexity of analyzing a malicious prosecution claim with multiple charges due to its highly fact-based nature, and that *Wright* must control when analyzing probable cause. See *Kossler v. Crisanti*, 564 F.3d 181, 194 (3d Cir. 2009) (discussing challenge when reconciling holding in *Wright* and *Johnson*); *id.* at 194 n.8 (specifying *Wright* should control because decided earlier even assuming irreconcilable conflict). Another decision more specifically applied the *Johnson* reasoning, again trying to separate the analysis of probable cause in a false arrest claim from a malicious prosecution claim. See *Dempsey v. Bucknell Univ.*, 834 F.3d 457, 477 (3d Cir. 2016) (applying holding in *Johnson*). The perplexity of this area of law extends into the Third Circuit's non-precedential opinions and lower courts, where judges must wrestle with the tension themselves to determine whether to apply *Wright* or *Johnson* in a malicious prosecution cause of action. See 124 F.4th at 302 (observing debate in lower courts within Third Circuit). Compare *DeLade v. Cargan*, No. 3:16-CV-00415, 2019 WL 1387704, at *16-17 (M.D. Pa. Mar. 27, 2019) (applying *Wright* and granting summary judgment on malicious prosecution claim), and *Davis v. Graber*, No. 14-1416, 2017 WL 222298, at *1 (W.D. Pa. Jan. 18, 2017) (subscribing to *Wright*'s authority in malicious prosecution action and dismissing claims), with *Harvard v. Cesnalis*, 973 F.3d 190, 199 n.3 (3d Cir. 2020) (using definition from *Johnson* to explain probable cause in malicious prosecution claim), and *Simonson v. Borough of Taylor*, 839 F. App'x 735, 740 n.7 (3d Cir. 2020) (citing to both *Wright* and *Johnson* when discussing probable cause analysis). The Second, Sixth, and Eleventh Circuit Courts of Appeals have also debated whether the any-crime rule would apply to malicious prosecution cases, ultimately leading to the Supreme Court's recent *Chiaverini* decision that settled the debate once and for all. See 124 F.4th at 302 (juxtaposing varied holdings in circuit courts to highlight conflict in law); *Chiaverini v. City of Napoleon*, 602 U.S. 556, 561 (2024) (holding presence of probable cause for one charge does not automatically defeat malicious prosecution claim). The *Chiaverini* holding was the same as that in *Johnson*, where the Third Circuit required a stricter burden of probable cause in a malicious prosecution claim. See 124 F.4th at 297 (declaring Third Circuit anticipated *Chiaverini* holding in *Johnson* almost twenty years ago).

clearly established at the time of Rivera-Guadalupe’s arrest in 2017, and therefore, the district court erred in denying Detective Pierce’s qualified immunity defense.⁵¹

The Third Circuit’s holding in *Rivera-Guadalupe*, though effective in resolving a specific ambiguity in the law that existed within the jurisdiction, fails to address the tension surrounding the qualified immunity doctrine, especially the clearly-established-law prong in the analysis.⁵² The discussion of the standard to determine whether qualified immunity defense can apply spans merely a paragraph, and the definition of when a right is clearly established was discussed in merely two sentences, with no acknowledgement of the wide range of debate present within qualified immunity jurisprudence.⁵³ If it is not clear what really constitutes clearly established law, and a court holds that no clearly established law exists at the relevant time of the incident that led to the suit, the court is effectively giving law enforcement officers the benefit of the doubt, but at the cost of the damages and harm suffered by the plaintiff.⁵⁴ Clearly established law requires courts to put an issue beyond debate, but the standard to determine what constitutes clearly established law itself is far from being beyond debate, which raises a question of how courts across the nation can fairly interpret and apply the doctrine.⁵⁵

Considering the intent of the doctrine outlined in *Harlow* to balance “countervailing interests” of citizens, public employees who are acting within their official duty, and public interest, the Third Circuit’s holding feels particularly

51. See 124 F.4th at 303 (stating holding). The Third Circuit deferred to the Supreme Court’s previous statement that it is unjust for courts to burden police with money damages for “picking the losing side of the controversy” if judges can’t even agree on the issue themselves. See *id.* (explaining reasoning for holding); see also *Wilson v. Layne*, 526 U.S. 603, 618 (1999) (questioning fairness of holding police accountable if no clearly established law). Post-*Chiaverini*, the Supreme Court has now clarified that the any-crime rule does not apply to malicious prosecution claims. See 124 F.4th at 303 (discussing impact of *Chiaverini*); see also *Chiaverini v. City of Napoleon*, 602 U.S. 556, 561 (2024) (announcing holding).

52. See 124 F.4th at 303 (holding no clearly established law due to ambiguities in precedents, entitling Pierce to qualified immunity); see also *supra* note 36 and accompanying text (highlighting widespread disagreement on application of doctrine and interpretation of clearly established law).

53. See 124 F.4th at 299-300 (defining qualified immunity doctrine and clearly established right).

54. See Blum, Chemerinsky & Schwartz, *supra* note 35, at 653 (stressing difficulties in determining what makes law clearly established); 124 F.4th at 303 (ruling in favor of officer due to unclear law). The Third Circuit challenged the lower court’s comment that it was unreasonable to expect “every reasonable official” to be able to discern differences in the law as judges could. See *supra* note 49 and accompanying text (pointing out Third Circuit’s criticism of lower court’s holding). Nevertheless, the lower court’s holding that it is inappropriate to bring “a laundry list” of charges against someone based on probable cause for only one crime on its face seems aligned with provisions in the U.S. Constitution. See U.S. CONST. amend. IV (guaranteeing establishment of probable cause prior to searches and seizures); *id.* amend. XIV (ensuring individuals receive due process of law before deprivation of life, liberty, or property).

55. See *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (defining clearly established); Blum, *supra* note 36, at 945-46 (noting Supreme Court required either almost identical facts or significantly similar facts in precedents).

lacking.⁵⁶ By not challenging the unclear standard when analyzing the clearly-established-law aspect, *Rivera-Guadalupe* becomes yet another case within the qualified immunity jurisprudence that applies the heavily-critiqued, narrow standard of the test, presenting further barriers for plaintiffs who wish to bring a claim against police officers under § 1983.⁵⁷ The Third Circuit itself recognized that it was not fair for police to have to bear the cost of money damages if judges cannot agree on a constitutional question, but on the other hand, is it fair for plaintiffs to bear the cost of the loss of their liberty, their physical safety, and in some cases, even their lives?⁵⁸ Here, even though *Rivera-Guadalupe* was ultimately acquitted, he had to endure eighteen months of incarceration, where his physical freedom and liberty were infringed upon.⁵⁹ Referring back to the history and intent of the qualified immunity doctrine, the doctrine is not working as it should to balance the *Harlow* interests, and instead creates further chasms between civilians and law enforcement officers.⁶⁰

Given the various debates surrounding the qualified immunity doctrine, it is apparent why critics are concerned about its influence on police behavior, the public's perspectives, and plaintiffs' outcomes in litigation.⁶¹ Some scholars recognize that qualified immunity does not always contribute to plaintiffs losing on appeal and recommend other litigation strategies to those seeking redress from a violation of a constitutional right.⁶² Among the many unanswered questions in

56. See *supra* text accompanying note 32 (recognizing when government officials entitled to qualified immunity defense). Contrast *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982) (setting forth balancing consideration), with 124 F.4th at 303 (reversing district court's denial of qualified immunity).

57. See *Chung et al.*, *supra* note 36 (claiming lack of precedents that allow relief in appalling acts of police violence or misconduct). Though courts should avoid engaging in judicial activism, judges can critique and express their concerns if they find genuine issues with a specific area of law. See *supra* note 37 and accompanying text (laying out how judges and scholars have critiqued Supreme Court's treatment of doctrine).

58. See 124 F.4th at 303 (noting unfairness when subjecting police to money damages when law not beyond debate); *Chung et al.*, *supra* note 36 (recounting cases where qualified immunity protected law enforcement officers who killed or gravely harmed civilians); *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982) (recognizing counteracting interests between rights of citizens, public officials, and public interest).

59. See 124 F.4th at 298 (narrating *Rivera-Guadalupe*'s eighteen-month incarceration despite jury acquitting him of all charges post-trial).

60. See *supra* note 35 and accompanying text (highlighting prevalent tension present within qualified immunity doctrine).

61. See *Schwartz*, *supra* note 35, at 1818-20 (recognizing three ways in which qualified immunity jeopardizes government accountability). First, officers may feel emboldened to act with immunity because they might perceive that they are "unpunish[able]." See *id.* at 1818 (describing influence of qualified immunity doctrine on police behavior). Second, it may be more challenging for plaintiffs who suffered a constitutional right violation to bring a § 1983 claim due to increased barriers resulting from the doctrine. See *id.* at 1818-19 (observing chilling effect of doctrine on plaintiffs). Finally, it may lead to confusion around how police departments should develop their policies and trainings. See *id.* at 1819-20, 1820 n.138 (discussing modification in trainings based on Supreme Court opinions).

62. See *Bodaken*, *supra* note 37, at 103 (noting courts of appeal do not overturn qualified immunity at higher rate); *supra* note 39 and accompanying text (pointing out qualified immunity not always reason for plaintiffs' loss); *Bodaken*, *supra* note 37, at 105-08 (recommending strategies for plaintiffs to combat qualified immunity defense on appeal). Some strategies include focusing instead on procedural posture, segmenting case

qualified immunity jurisprudence, two questions reign: What is the future of the qualified immunity doctrine, and how do we make sense of it within our current context?⁶³ Perhaps, beyond the judicial branch continuing to mold and develop the doctrine, federal and local legislative branches can play a role in resolving certain aspects of debates within this area of law.⁶⁴

In *Rivera-Guadalupe v. City of Harrisburg*, the Third Circuit held that there was no clearly established right at the time of Rivera-Guadalupe’s arrest, which entitles the police officer to a qualified immunity defense in a § 1983 claim. The Third Circuit resolved ambiguities around the application of the any-crime rule when faced with analyzing a malicious prosecution claim versus a false arrest claim, consistent with the Supreme Court’s recent *Chiaverini* decision. It fails to address, however, the broader debate surrounding the clearly-established-right standard when the qualified immunity doctrine is raised as a defense by a police officer, calling into question whether the *Harlow* interests are sufficiently balanced by the current interpretation of the doctrine. It is unclear what the future of the doctrine holds, considering widespread discourse on its applicability and potentially negative impact on plaintiffs, but maybe other branches of government can help provide clarity.

facts by time, and identifying and centering flagrantly illegal facts when bringing suit. *See id.* (describing potentially effective strategies to beat qualified immunity).

63. *See* Blum, Chemerinsky & Schwartz, *supra* note 35, at 657 n.175 (emphasizing unanswered questions regarding qualified immunity doctrine). Especially considering the highly politicized nature of this doctrine as it relates to police reform, the future of the doctrine remains uncertain. *See* Kendall, *supra* note 2 (connecting police reform with qualified immunity and highlighting partisan nature of stance on reform).

64. *See* NOVAK, *supra* note 23, at 4 (offering considerations for Congress regarding qualified immunity reform); Gildin, *supra* note 35 (describing how states can broaden or limit qualified immunity doctrine through various avenues). Congress has the authority to modify, broaden, or eliminate the qualified immunity doctrine because it is a product of statutory interpretation. *See* NOVAK, *supra* note 23, at 4 (laying out Congress’s authority over products of statutory interpretation).

