



APRIL 2025

## **No Imminent Threat = No Qualified Immunity** *Estate of Aguirre v. County of Riverside; Dan Ponder,*

**No. 23-55718,  
2025 WL 758959,  
(9th Cir. 2025)**

### **Background:**

On April 15, 2016, Sergeant Dan Ponder of the Riverside County Sheriff's Department responded to a call about a suspect destroying property with a bat. When Ponder arrived, he encountered Najera Aguirre holding a bat while standing in the driveway of a residence.

Ponder gave commands for Aguirre to drop the bat and get on the ground. Aguirre did not comply and instead walked toward the street as Ponder continued to order Aguirre to drop the bat. When Aguirre was approximately 10-15 feet away, Ponder deployed pepper-spray and Aguirre stopped walking but was not affected by the pepper spray due to the distance and wind. As a result, Ponder drew his firearm.

Ponder fired six shots, without warning, in two separate volleys. After the first volley of shots, there was a pause lasting approximately 30 seconds before the second volley that ultimately took Aguirre down.

The autopsy showed that four rounds struck Aguirre, two of which were fatal. The bullet paths of the fatal

shots struck Aguirre in his back suggesting that he turned away from Ponder when he was struck.

Aguirre's children filed suit against Ponder and Riverside County alleging excessive force in violation of the Fourth Amendment. After a five-day trial, Ponder moved for judgement as a matter of law which was denied by the District Court.

The jury returned a verdict for the Aguirres and Ponder renewed his motion for judgement as a matter of law, arguing he was entitled to Qualified Immunity. The District Court again denied the motion and Ponder filed this appeal in the Ninth Circuit Court of Appeals.

### **Qualified Immunity**

Police officers have qualified immunity and will not be found civilly liable, even when excessive force is found, unless it was "clearly established". The law related to the constitutional violation is only clearly established if a reasonable officer would understand the conduct was unlawful based on existing law at the time of the incident.

The threshold question presented to the jury in this case was, *inter alia*, "from the perspective of a reasonable officer on the scene. . . whether Aguirre posed an immediate threat of death or of serious bodily injury to the officer or to others."

### **No Imminent Threat = No Qualified Immunity**

The jury determined Aguirre did not pose an imminent threat of death or serious bodily injury to Ponder or others at the time the fatal shots were fired.



When considering Ponder's appeal, the Ninth Circuit analyzed a previous decision with similar circumstances *Walker v. City of Orem* (9th Cir. 2006). In *Walker*, the court determined it was unreasonable for an officer to shoot a suspect who was holding a knife because the suspect never charged at the officer and never made slicing or stabbing motions toward the officer or bystanders. This lack of danger showed there was no evidence of an imminent threat and therefore no qualified immunity for the officer.

In this case, although Ponder testified that he perceived Aguirre to be a threat and claimed Aguirre had charged him, the evidence of the bullet path presented to the jury suggested Aguirre was either standing still or at most walking toward Ponder during the first volley of shots – not charging him. Additionally, none of the witnesses, nor Ponder saw Aguirre swing, throw, or wind up the bat toward anyone before the shooting occurred.

Ponder also testified that after firing the first volley of shots, Aguirre “turned away” from him momentarily. Ponder's testimony, along with forensic evidence that showed the fatal shots struck Aguirre in the back, and eyewitness testimony that nearly 30 seconds passed before the second volley of shots were fired, ultimately led the jury to the conclusion that there was no imminent threat to Ponder or anyone else at the time he was killed.

The Ninth Circuit therefore concluded that the decision to deny qualified immunity to Ponder was proper because it was “clearly established” that using lethal force on a suspect who did not pose an immediate threat was unlawful.

### **Bottom Line:**

The Court in this case recognized the fact that law enforcement must make quick decisions regarding potential threats during dangerous situations but noted, “they are also trained to make ongoing threat assessments and are on clear notice that deadly force is not permitted when there is no immediate threat.”

You must constantly evaluate the need for force – especially deadly force – and reevaluate to determine whether further force is needed. Once there is no longer an immediate threat, the force must stop or risk losing qualified immunity.

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