

**From:** John Travis  
**Sent:** 11/10/2015 11:52 AM  
**Gallagher Sharp Newsflash: Police Use of Deadly Force**

Yesterday, November 9, 2015, the Supreme Court of the United States gave legal immunity to a Texas officer who killed a suspect by shooting the suspect's car as it drove down a highway at high speed. The decision provides broader immunity to police who use deadly force against fleeing suspects.

In *Mullenix v. Luna*, 577 U.S. \_\_\_\_ (2015), Israel Leija, Jr., led officers on a chase at speeds of up to one hundred miles per hour along a highway in Texas. During the chase Leija telephoned police to say that he had a gun and would shoot any officer who tried to stop him. 'Spike strips' were set in the suspect's path, but Officer Mullenix decided to shoot at the vehicle to disable it. Mullenix informed his supervisor of his plan, but instead of waiting for a response he took up a position on an overpass. It was alleged that from this position Mullenix could still hear his supervisor's response to "stand by" and see if the spikes would work first. Mullenix shot at the vehicle six times, causing it to flip over. The suspect was killed by four shots to his upper body. The suspect's family sued Mullenix under §42 U.S.C. 1983, alleging a Fourth Amendment excessive force violation. The district court denied Mullenix's summary judgment on the ground of qualified immunity, and the Fifth Circuit affirmed.

The Supreme Court reversed in a 8-1 decision, finding Mullenix did not violate a "clearly established" constitutional right. Mullenix confronted a reportedly intoxicated fugitive, set on avoiding capture through high-speed vehicular flight, who twice during his flight had threatened to shoot police officers, and who was moments away from encountering an officer at a cross-road. The Court found that the "relevant inquiry is whether existing precedent placed the conclusion that Mullenix acted unreasonably in these circumstances 'beyond debate.'" The Court rejected the argument that the suspect did not pose an immediate threat to the pursuing officers and general public, and cited "the hazy legal backdrop" that lay behind judging of the actions of Mullenix.

Justice Scalia filed a concurring opinion over what to call such incidents. Scalia's view was that the Court should never use the phrase "deadly force" unless the officer's actions were specifically aimed at harming the suspect. Justice Sotomayor, in her dissenting opinion, chastised Mullenix for having no training for the use of his rifle for the situation, emphasizing that he had been advised by a superior officer to "stand by" and wait to see if other officers could stop the suspect's car with road spikes; that he knew that spikes were being put under the bridge over the highway from which he fired; and that none of the other officers had voiced any concerns about their own safety. Moreover, the dissenting opinion cited Mullenix bragging about the incident after it was over, saying "How's that for proactive?" The Court, she concluded, condoned "a 'shoot first, think later' approach to policing."

The full opinion can be found at: [http://www.supremecourt.gov/opinions/15pdf/14-1143\\_f20h.pdf](http://www.supremecourt.gov/opinions/15pdf/14-1143_f20h.pdf).

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