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Claudia points out the constitutional violations at issue when a young boy is detained by police while they execute a search warrant at his family home. Through application of several case precedents, she then argues as to the need for redress in this case, even to the extent that the officers in question should be stripped of their qualified immunity from individual liability.

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How Much Is Too Much?
Drawing the Line between Excessive and Reasonable Force

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INTRODUCTION

When executing search and arrest warrants, the procedure used to apprehend and detain a suspect is often controversial. What has become even *more* controversial is the procedure an officer must follow when family members are present during a search. For example, what procedure should police officers adopt when they encounter a child in the process? Where does one draw the line with regard to force used upon children? In these situations, police officers must make quick decisions in a fast paced, unstable, and even dangerous environment. At the same time, this authority must be controlled to prevent the use of force from causing physical or psychological harm to innocent bystanders.

These questions will be explored in this article by focusing on the recent case of *Tekle v. United States.* The legal standards for identifying excessive force, unreasonable detention, or justification to strip police officers of their qualified immunity from personal liability for such actions will be laid out prior to delving into the related cases of *Robinson v. Solano County*, *Franklin v. Foxworth*, and *Muehler v. Mena*. The court's application of these legal standards will then be analyzed by comparing and contrasting *Tekle* to these related cases.

This analysis will ultimately demonstrate that in *Tekle v. United States*, the officers used excessive force when they held guns to eleven-year-old

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Ephraim Tekle's head, continued to point their guns at him for the duration of his father's arrest, and pulled him up roughly by handcuffs. The analysis will also show that Ephraim Tekle was unreasonably detained when he was handcuffed for more than fifteen minutes prior to the arrest of his father. This use of excessive force and unreasonable detention constituted a violation of Tekle's Fourth Amendment right to be free from "unreasonable searches and seizures."[1]

Although the *Tekle* Court was correct in its application of the prevailing legal standard, the measure of unreasonable force and detention remains ambiguous. The officers were correct in detaining Tekle in some way; however, the use of handcuffs and guns was unreasonable and therefore unconstitutional. The force used against Tekle was so severe that a reasonable officer should have known that these actions were unconstitutional at the time they were committed. As a result, the officers in question should not be shielded by qualified immunity and instead should be held personally liable for their actions.

BACKGROUND

The incident in *Tekle v. United States* took place on the morning of March 23, 1998, while police officers were executing a search and arrest warrant at the Tekle residence.[2] This search warrant was based on suspicion of narcotics trafficking and tax-related offenses committed by Tekle's parents,

[1] U.S. Const. amend. IV. The full text of the Fourth Amendment of the Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[2] The *Tekle* opinion was issued with regard to review of a motion for summary judgment. *Teckle v. United States,* 457 F.3d 1088 (9th Cir. 2006).

A "summary judgment" may be granted without trial upon either party's motion when the pleadings and evidence presented to the court show that the material facts are undisputed (i.e., "no genuine issues of material fact" exist) and the court determines that the moving party is entitled to judgment in its favor as a matter of law. Summary judgment may be granted on all or part of the issues involved in the case. See, e.g., Findlaw's Legal Dictionary entry for "judgment: summary," http://dictionary.lp.findlaw.com (last visited February 12, 2007).

Solomon and Lily Tekle. Lily had been arrested earlier that day and had advised the officers to be careful when executing the search warrant because her eleven-year-old son, Ephraim Tekle, was at the residence.

Upon arrival, a total of twenty-three police officers, Drug Enforcement Administration agents, and Internal Revenue Service agents announced their presence in front of the Tekle home over a public-address system.[3] Prior to this announcement, Ephraim Tekle, barefoot and wearing a t-shirt and shorts, emerged from the garage door unaware of the agents' presence.[4] Upon seeing the officers, Tekle immediately started running back inside the garage, ignoring the officers' request to exit with his hands up. Tekle then emerged from the garage and an officer held a gun to his head, searched him, and then handcuffed him.

Tekle was then pulled to his feet by the chain of his handcuffs and ordered to sit on the sidewalk while a total of fifteen to twenty officers kept their guns pointed at him.[5] Approximately fifteen minutes after Tekle's father had been arrested, the officers removed Tekle's handcuffs. Tekle was then told to sit on a stool in the driveway where the officers continued to point their guns at him for an additional fifteen to twenty minutes.

LEGAL STANDARD

General Legal Standards

Tekle claimed that his Fourth Amendment rights to be free from "unreasonable searches and seizures" were violated when officers used "excessive" force against him.[6] It has been previously determined by the courts that "the use of force is contrary to the Fourth Amendment if it is excessive under objective standards of reasonableness."[7] This determination "requires a

[3] *Tekle,* 457 F.3d at 1095.

[4] *Id.* Tekle, although eleven years old at the time, was described by one agent as a "young male, approximately five feet tall" who "appeared to be about twelve to fourteen years old." Due to the summary judgment posture of the case, the *Tekle* Court assumed Tekle appeared "approximately eleven to twelve years old" to the officers.

[5] *Id.* at 1092.

[6] U.S. Const. amend. IV.

[7] *Tekle,* 457 F.3d at 1094.

careful balancing of the 'nature and quality of the intrusion of the individual's Fourth Amendment interests against the countervailing governmental interests at stake.'"[8] In other words, the use of the force in question and the need to use that force must be compared in order to determine which outweighs the other.

When applying the "objective reasonableness" test, attention must be placed on the facts and circumstances of each particular case, including:

- The 'severity of the crime at issue,'
- Whether the individual poses an 'immediate threat to the safety of the officers or others,' and
- Whether the individual is 'actively trying to resist arrest or attempting to evade arrest by flight.'[9]

The application of this legal standard, often referred to as the *Graham* Test, is not limited to these factors. Instead, these factors will be considered as part of the "totality of the circumstances" surrounding a particular incident to determine whether the force in question was reasonable.[10]

Tekle also claimed that he was "unreasonably detained" in handcuffs longer than reasonably necessary in order to effectuate his father's arrest. With regard to this issue, *Michigan v. Summers* is often cited for the proposition that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted."[11] However, the Supreme Court in *Summers* included an exception to this rule, stating that "special circumstances, or possibly a prolonged detention, might lead to a different conclusion in an unusual case."[12] Therefore, detention in the form of handcuffs during an

[8] *Graham*, 490 U.S. at 396.

[9] *Id.* at 396 (*citing Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

[10] *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994) (citing *Tennessee v. Garner*, 471 U.S. at 8-9).

[11] *Michigan v. Summers*, 452 U.S. 692, 705 (1981). This case involved an individual who was detained by police officers while they executed a warrant for a search of narcotics at his home. Narcotics were found in his home and on his person. The U.S. Supreme Court held that the initial detention of the individual and the subsequent search of his person did not violate his Fourth Amendment rights against unreasonable searches and seizures.

[12] *Id.*

ongoing search may constitute a violation of the Fourth Amendment if conducted in an "unreasonable" manner.[13]

Finally, if the officers involved in the detention have abridged an individual's Fourth Amendment rights, then their qualified immunity may be at risk.[14] Qualified immunity "shields government agents from liability for civil damages so long as their conduct does not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'"[15] In other words, qualified immunity from personal liability is at risk if a public official's actions violate a clearly established constitutional right.

Application of Legal Standards in Similar Cases

Robinson v. Solano County

With regard to an "excessive force" claim, the Ninth Circuit Court of Appeals established in *Robinson v. Solano County* that pointing a gun at someone's head may constitute excessive force and thus violate the Fourth Amendment.[16] James Robinson lived on a farm and raised livestock for a living. After seeing two dogs attack and kill his livestock, Robinson shot and killed one of the dogs and wounded the other. Robinson's neighbor, who owned the dogs, phoned the police after he saw Robinson walk down the street holding a shotgun while searching for the wounded dog. A few minutes later, six patrol cars arrived as Robinson, unarmed at this point, came out of his home to explain what had happened.[17]

As Robinson neared the patrol cars, two officers pointed their guns at his head at a distance of six feet and told Robinson to put his hands over his head. While Robinson complied with the officers' orders, one of the officers

[13] *Franklin*, 31 F.3d at 875.

[14] Michael M. Rosen, *A Qualified Defense: In Support of The Doctrine of Qualified Immunity in Excessive Force Cases, With Some Suggestions For Its Improvement*, 35 Golden Gate U. L. Rev. 139, 142 (2005).

[15] *Id*. With regard to qualified immunity, the court must determine whether or not the "'the contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Sacuier v. Katz*, 533 U.S. 194, 202 (2001) (citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

[16] *Tekle*, 457 F.3d at 1095.

[17] *Robinson v. Solano County*, 278 F.3d 1007, 1010 (9th Cir. 2002) (en banc).

moved closer to Robinson's head with his gun, to a distance of three to four feet, also considered "point blank range." Robinson was then handcuffed and "shoved" into the back of the patrol car for approximately fifteen to thirty minutes before it was determined that he had not broken the law and he was therefore released.[18]

Taking the *Graham* factors into account, the court determined that pointing a gun at Robinson's head was excessive and violated his Fourth Amendment rights.[19] These *Graham* factors include, but are not limited to, the nature of the crime at issue, whether the suspect involved poses an immediate threat, and whether he or she is trying to resist arrest or attempting to flee.[20] In addition to the three Graham factors, the *Robinson* Court took into account the number of officers present at the time, whether the suspect was armed, the details of the arrest charges, and whether "other dangerous or exigent circumstances existed at the time of the arrest."[21]

Viewing the above factors in their totality, the Ninth Circuit ruled that the force used by the officer was not justified by the circumstances, and was therefore unreasonable. The court reasoned that the crime Robinson *could* have been charged with would have been a misdemeanor at most; therefore, the severity of the crime was minimal. The court further added that Robinson, who was unarmed and compliant when he approached the patrol car, was outnumbered by the officers. Seen in this light, Robinson did not pose an "immediate threat" toward the officers, nor were there any "dangerous or exigent circumstances" surrounding the incident. According to the court, the intrusion imposed upon Robinson was greater than the governmental need to use such force, creating a Fourth Amendment violation.

Judge Fernandez concurred only in the result but disagreed that excessive force was used against Robinson. He differentiated between the *threat of force* and the actual *use of force*, the latter requiring a "touching" while the former does not. Judge Fernandez disagreed that merely pointing a gun at a suspect constitutes an excessive use of force. Instead, he stated that in order for force to even be applied, there must be a touching between the suspect

[18] *Id*. at 1010-11. Robinson was never actually searched for weapons during the incident and later confessed to having a four-inch utility knife attached to his belt.

[19] *Id*. at 1015.

[20] *Id.* at 1014.

[21] *Id.* (citing *Chew v. Gates*, 27 F.3d 1432, 1440 (9th Cir. 1994)).

and the gun being pointed. Since the officers in *Robinson* did not physically touch Robinson with their guns, there was no actual "use" of force. Instead, there was only a "threat" of force, which Fernandez believed should not constitute a Fourth Amendment violation.[22]

With regard to qualified immunity, the Majority felt that even though "pointing a gun to the head of an apparently unarmed suspect during an investigation can be a violation of the Fourth Amendment, the law was not sufficiently established in the Ninth Circuit to override the officers' claim of qualified immunity."[23] In other words, the officers had not violated a sufficiently 'clearly established constitutional right' and could not be held personally liable for any financial compensation due to Robinson.

Franklin v. Foxworth

Franklin v. Foxworth further illustrates that a search or seizure may be deemed "unreasonable" due to the manner in which it is carried out.[24] This Ninth Circuit Court of Appeals case involved the detention of Johnny Curry, an elderly man who suffered from an advanced state of multiple sclerosis and was therefore unable to walk, feed himself, or control his bowel movements. For these reasons, Curry was under Gloria Franklin's full-time care. The two shared a house in Portland, Oregon. Portland police officers executed a search warrant at the residence based on information that drug activity was taking place in the home and that there was the possibility that a gang member was on the premises.[25]

According to the Portland Police Bureau procedure, it was customary to search and handcuff all individuals on the premises and then move them to a central location for the duration of a search. As Franklin was handcuffed, she informed the officers of Curry's condition and also advised that he should not be moved. After two of the three individuals found on the premises had been handcuffed and moved to the living room, two officers entered Curry's bedroom and found him lying on his bed wearing only a t-shirt.[26]

[22] *Robinson*, 278 F.3d at 1017 (Fernandez, J., concurring).
[23] *Id.* (Majority opinion).
[24] *Franklin*, 31 F.3d at 875.
[25] *Id.* at 874.
[26] *Id.* at 875.

Upon seeing Curry, it became clear to the officers that he suffered from some sort of disability.[27] Nevertheless, Curry was searched, and after it was determined that he was unarmed, he was handcuffed behind his back. An officer then proceeded to carry Curry to the living room because Curry was unable to walk on his own. Curry was seated on the couch with his hands cuffed behind his back and his genitals exposed. It was not until Curry complained some time later that an officer re-cuffed his hands in front of his body and provided him with a blanket to cover himself. Curry remained in this state for over two hours despite the fact that the search of his bedroom had been completed an hour prior and nothing incriminating had been found there.[28]

In *Franklin*, the Ninth Circuit cited *Michigan v. Summers* for the proposition that officers generally have the authority to detain individuals found on the premises during a search for contraband. The *Franklin* Court, relying upon the potential for exception to this rule, concluded that Franklin evidenced one of the "special circumstances" and "unusual case[s]" that would deem this type of detention unreasonable.[29]

In determining the "reasonableness" of the manner in which Curry was detained, the court once again referred to the three *Graham* factors. In addition, in considering the totality of circumstances, the *Franklin* Court included additional factors that should be considered. Specifically, the court stated that a detention may be viewed as "unreasonable if it is unnecessarily painful, degrading, or prolonged, or if it involves an undue invasion of privacy."[30] The court went a step further when it added that "detentions, particularly lengthy detentions of the elderly, or of children, or of individuals suffering from a serious illness or disability raise additional concerns."[31] In other words, detentions involving individuals from one of these categories raise particular concerns that must be taken into account when assessing the reasonableness of the situation.

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[27] *Id.* Several officers testified that Mr. Curry was "an elderly gentleman … and he was not very mobile. He appeared to be ill" and "was suffering from some type of medical disability" which meant "it was difficult for him to get up and walk."

[28] *Id.*

[29] *Id.* at 876.

[30] *Id.*

[31] *Id.*

Based on the totality of the circumstances surrounding Curry's detention, the *Franklin* Court concluded that the manner in which Curry was detained, as well as the length of his detention, was unreasonable. The court stated that prior to entering the residence, the officers had no reason to believe that Curry was armed or a suspect. Both officers also admitted they were fully aware that Curry was suffering from some kind of disability upon entering his bedroom. As a result, the court stated that it should have been clear to the officers that Curry was not a gang member and did not pose an immediate threat to them or the search.[32] The fact that Curry was unable to walk prevented him from even *attempting* to flee, while his weak state also left him unable to resist arrest.

The court found that the officers had acted unreasonably by removing Curry, a "gravely ill and semi-naked man," from his bed and transporting him to the living room without providing him with proper clothing.[33] Moreover, forcing Curry to remain handcuffed on the couch for over two hours after the search of his room had already been completed was also unreasonable. According to the court, Curry should have been returned to his bedroom "within a reasonable time" following the search of his room.[34] Finally, the court added that the above facts taken together were not only unreasonable and violations of Curry's Fourth Amendment rights, but also subjected Curry to "unnecessary and unjustifiable degradation and suffering."[35]

Judge Brunetti, in his concurrence, agreed with the result of the decision, but based only on the fact that Curry was left in a semi-nude condition during the search.[36] Despite Curry's illness, Brunetti argued that the officers were justified in moving Curry and detaining him in handcuffs for the duration of the search. He reasoned that Curry could have disrupted the search by destroying or harboring evidence around his bed. Brunetti also believed that the possibility of an armed gang member on the premises made it reasonable for the officers to detain *everyone* in the premises for security reasons. Despite his view that moving Curry was justified, Brunetti concluded that Curry's treatment during the search was unreasonable and excessive. After it was

[32] *Id.*
[33] *Id.* at 876.
[34] *Id.* at 877.
[35] *Id.* at 878.
[36] *Id.* at 880 (Brunetti, J., concurring).

apparent that Curry did not pose an immediate threat, even Judge Brunetti believed that the officers should not have moved Curry without providing him proper clothing.[37]

Although the court had identified a constitutional violation, the Majority did not address the issue of qualified immunity. In a concurring opinion, Judge Reinhardt stated that the officers should have been stripped of their immunity. Reinhardt reasoned that the officers should have known that removing a seriously ill and harmless man from his bed was *clearly* unreasonable and, therefore, unconstitutional.

Muehler v. Mena

The concern over unreasonable detention in the form of handcuffs was further considered in the Supreme Court case of *Muehler v. Mena*. In this case, officers in Simi Valley, California obtained a search warrant for a home based on an investigation of a gang-related drive-by shooting. This information led officers to believe that at least one gang member was located on the premises and was armed and dangerous.[38] Due to the safety risks involved, a total of eighteen law enforcement agents, including police officers and members of a Special Weapons and Tactics team were dispatched to the site.[39]

The SWAT team members entered Mena's locked bedroom where she was sleeping and handcuffed her at gunpoint along with three other individuals found elsewhere on the premises.[40] Mena, barefoot and in her pajamas, was then instructed to walk though the rain into a converted garage where she and the other three individuals remained, in handcuffs, for two to three hours.[41] One or two officers guarded the detainees during this time and allowed the detainees to move throughout the garage while handcuffed. During the search, officers recovered a handgun with two boxes of ammunition, baseball bats with gang writing, marijuana, and gang paraphernalia.[42]

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[37] *Id.* at 881.

[38] *Muehler v. Mena*, 544 U.S. 93, 95 (2005), *vacating sub nom. Mena v. City of Simi Valley*, 332 F.3d 1255 (9th Cir. Cal. 2003).

[39] *Id.* at 106 (Kennedy J., concurring).

[40] *Id.* at 544 U.S. at 96 (Majority opinion).

[41] *Mena*, 332 F.3d at 1260.

[42] *Muehler*, 544 U.S. at 95-96.

Mena alleged that her Fourth Amendment rights were violated when she was detained "for an unreasonable time and in an unreasonable manner."[43] However, the Supreme Court concluded that Mena's detention was reasonable based on the ruling in *Michigan v. Summers*, which gives officers the authority to "detain the occupants of the premises while a proper search is conducted."[44] The Court reasoned that Mena's detention was necessary to prevent flight, minimize risks to the officers and public, and to ensure that the search could be carried out in an orderly fashion. These interests also require "reasonable force to effectuate the detention," with the "force" in question being the use of handcuffs.[45]

The Supreme Court acknowledged *Graham's* "objective reasonableness" test and the factors involved. Without specifically distinguishing the relevance of each factor, the Court ruled holistically that in balancing the "nature and quality of the intrusion" against the "countervailing governmental interests at stake," the need for detention outweighed the intrusion imposed upon Mena.[46] The Court emphasized that this was "no ordinary search," but rather a dangerous circumstance where officers believed that an armed and dangerous gang member was somewhere on the premises. According to the *Muehler* Court, the use of handcuffs "minimizes the risk of harm to both officers and occupants," especially when it is necessary to detain multiple occupants at once. [47] Therefore, the fact that governmental interests for safety were at a maximum and multiple individuals were being detained, the Court ruled that the circumstances "made the use of handcuffs all the more reasonable."[48]

In reference to Mena's second claim that she was detained for an "unreasonable time," the Court agreed that the duration of a detention can affect its "reasonableness." Despite Mena's detention in handcuffs for two to three hours, the Court found that the governmental interest in promoting a safe search outweighed this intrusion as well. The Court stated that because only one or

[43] *Id.* at 96.

[44] *Summers*, 452 U.S. at 711.

[45] *Muehler,* 544 U.S. at 98-99.

[46] *Id.* at 108. (citing the *Graham* factors, which can apply to an unreasonable detention analysis when use of force, in the form of handcuffs, is also relevant).

[47] *Id.* at 108.

[48] *Id.* at 100.

two officers were guarding multiple individuals at a time, there was an increased concern for the officers' safety as well and need for the use of handcuffs.[49] Since the Majority ruled that Mena's Fourth Amendment rights were not violated, the issue of qualified immunity was not considered.

Justice Kennedy, in his concurrence, agreed with the opinion of the Court, but thought it was necessary "to ensure that police handcuffing during searches becomes neither routine or unduly prolonged."[50] Kennedy stated that although the occupants on the premises were legally-detained suspects in the *Summers* case, notably the officers did not have reason to believe that Mena was the suspect of any crime.[51] He added that handcuffs should be adjusted during detention if they cause "real pain or serious discomfort."[52] Kennedy further believed that handcuffs should be removed when it is apparent to an "objectively reasonable officer" that the officers' safety would not be compromised, nor the search affected.[53] Due to the "totality of the circumstances" as stated in the Majority opinion, Justice Kennedy ultimately agreed that Mena's particular detention in handcuffs was reasonable.[54]

Justice Stevens, joined by Justices Souter, Ginsburg, and Breyer, concurred in the judgment, but disagreed with the way the Court applied the "objective reasonableness" test.[55] Stevens believed that a jury might have determined that Mena did not pose a threat to the officers' safety given her small size, compliant nature, and the fact that she was unarmed. In addition, the officers had no reason to believe that Mena was a gang member, nor did they find any contraband after searching her bedroom.[56] Stevens agreed that the SWAT team initially acted reasonably in detaining all persons on the

[49] *Id.* While the initial detention during the search was proven to be constitutionally valid, Mena also contended that her rights were violated since her detention extended beyond the amount of time needed for the actual search of the premises. Since the Court of Appeals didn't properly examine this argument, the overall decision was vacated and remanded back to the lower court.

[50] *Id.* at 102 (Kennedy, J., concurring).

[51] *Id.* at 103.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.* at 105 (Stevens, J., concurring).

[56] *Id.* at 110.

premises due to the dangerous circumstances surrounding the incident.[57] He further believed, however, that the duration of Mena's detention might have been "unjustifiably prolonged and unreasonable."[58] Rather than discuss the issue of qualified immunity, Justice Stevens would have remanded the case for further consideration of the alleged constitutional violations.

APPLICATION OF THE LEGAL STANDARD IN *TEKLE*

Excessive Force

Referring back to the *Tekle* case, Ephraim Tekle had alleged two separate violations of his Fourth Amendment rights: "excessive force" and "unreasonable detention."[59] Tekle's excessive force claim referred to the use of handcuffs and guns throughout the incident. It had previously been held in *Robinson v. Solano County* that pointing a gun at someone may constitute excessive force.[60] In applying the "objective reasonableness" test from *Graham* and balancing the force used with the officers' need to use such force, the *Tekle* Court concluded that "the need for force, if any, was minimal at best."[61]

In applying the *Graham* factors, the court made note of the fact that Tekle did not pose an immediate threat toward the officers or the public. Tekle was an eleven-year-old child who was unarmed, compliant, and unsuspected of a crime. Tekle posed no immediate threat to the officers, and did nothing that would have led the officers to believe he was attempting to flee or resist arrest. Officers initially held a gun to Tekle's head before they searched and handcuffed him. While Tekle was handcuffed about fifteen to twenty officers kept their guns pointed at him. Even after Tekle's father was in custody, Tekle, now uncuffed, was told to sit on a stool for an additional fifteen to twenty minutes while the officers kept their guns drawn at him. The court ruled that

[57] *Id.* at 108.
[58] *Id.* at 111.
[59] *Tekle*, 457 F.3d at 1094.
[60] *Id.* at 1095.
[61] *Id.* at 1094-95.

the severity of the force used against Tekle was a "very substantial invasion of his personal security."[62]

The *Tekle* Court concluded that it should have been apparent to the officers that the use of guns and handcuffs was unnecessary.[63] In addition to the *Graham* factors, the court also took into account the fact that Tekle was vastly outnumbered by armed officers; this should have confirmed that Tekle did not pose an immediate threat.[64] Based on the totality of these circumstances the court ruled that the force was "greater than reasonable under the circumstances," and violated Tekle's Fourth Amendment rights.[65] Judge Kleinfeld, concurring as to the excessive force claim, agreed that pulling Tekle up by the chain of his handcuffs constituted a "needless and wanton infliction of pain" and a violation of the Constitution.[66]

Unreasonable Detention

Regarding Tekle's unreasonable detention claim, the court ruled that the manner in which the handcuffs were used on Tekle caused his detention to be unreasonable.[67] The court followed the ruling from *Michigan v. Summers,* which stated that occupants may be detained in handcuffs throughout the duration of a search, but only if the detention is carried out in a "reasonable manner" and justified by the "totality of the circumstances."[68] The *Tekle* Court found that the use of handcuffs for fifteen to twenty minutes was unreasonable when Tekle was found to be unarmed, outnumbered by the officers, displayed no signs that he was trying to escape, and cooperated with the officers' orders.[69]

Judge Kleinfeld did not agree with the Majority on this point. Kleinfeld argued that Tekle could, in fact, have interfered with law enforcement in several ways. First, Tekle was between five and six feet tall and could have

[62] *Id.*
[63] *Id.* at 1096.
[64] *Id.*
[65] *Id.*
[66] *Id.* at 1104 (Kleinfeld, J., concurring in the judgment).
[67] *Id.* at 1098 (Majority opinion).
[68] *Id*.
[69] *Id.* at 1099.

either jumped on the officers or run away from them, which would have taken time and personnel away from the search and arrest of Tekle's father. Tekle had already ignored the officers' commands when he initially ran back into the garage instead of putting his hands in the air.[70] With regard to the unreasonable detention claim, Judge Kleinfeld believed that Tekle's detention in handcuffs during the search was reasonable according to the Supreme Court precedent in *Muehler v. Mena*. In *Muehler*, the Court had allowed for "detention in handcuffs for the length of the search" of Mena's residence.[71] Therefore, Kleinfeld viewed *Tekle* and *Muehler* as analogous cases and argued that Tekle, like Mena, was reasonably handcuffed for the duration of the search.

Qualified Immunity

With regard to the officers' qualified immunity claim, the Ninth Circuit compared *Tekle* to the Seventh Circuit case, *McDonald v. Haskins*. In *McDonald*, a police officer held a gun to a nine-year-old child's head threatening to pull the trigger during a search of the residence. The officer argued that he was entitled to qualified immunity because it was not clearly established that pointing a gun at a person's head during a lawful search of the residence was unconstitutional.[72] The court reasoned that the officer should have known that holding a gun to the head of a nine-year-old and threatening to pull the trigger was objectively unreasonable, especially since there was no danger to the officers and the child was neither a suspect nor attempting to flee.[73] Additionally, the court held that just because "no precisely analogous case exists" does not mean that an officer has the right to qualified immunity.[74] For instance, the court reasoned, just because there has never been "a case

[70] *Id.* at 1104 (Kleinfeld, J., concurring). Judge Kleinfeld further disagreed with the idea that Tekle should have been un-cuffed when it became apparent that he was unarmed. Kleinfeld pointed to the fact that in *Muehler*, Mena was not a direct threat, but nevertheless the Court held that she was constitutionally handcuffed throughout the incident. Under similar reasoning, Judge Kleinfeld argued that Tekle could have been constitutioally handcuffed for the duration of the search as well.

[71] *Id.* at 1105.

[72] *Tekle*, 457 F.3d at 1097 (quoting *McDonald v. Haskins*, 966 F.2d 292 (7th Cir. 1992)).

[73] *McDonald v. Haskins*, 966 F.2d 292, 295 (7th Cir. 1992).

[74] *Id*.

accusing welfare officials of selling foster children into slavery" does not give those officials immunity from the legal consequences of committing such actions.[75]

Based on this reasoning, the Seventh Circuit Court of Appeals in *McDonald* "rejected the officers' argument and held that 'the level of generality at which the relevant legal 'rule' is identified cannot be so abstract as to convert the rule of qualified immunity into a rule of virtually unqualified liability.'"[76] In other words, the court held that even though the basic definition of qualified immunity is that it must be "sufficiently clear that a reasonable officer would understand that what he or she is doing violates that right," McDonald could claim qualified immunity simply because there was no case precedent precisely on point.[77] Doing so would make it almost impossible for any officer to lose his qualified immunity, and the deterrent factor would be lost.

Similarly, Tekle was an unarmed, eleven-year-old child that posed no physical threat to the safety of the officers. After initially running back into the garage, Tekle was not attempting to evade arrest or flee the residence. The Ninth Circuit in *Tekle* rejected the officers' claim of qualified immunity and held that the officers had "'fair warning' that the force they used was constitutionally excessive even absent a Ninth Circuit case presenting the same set of facts."[78] Instead, the court referred to the *McDonald* case and suggested that it had given enough "fair warning" to the officers. The *Tekle* Court reasoned that any reasonable officer should know that pointing a gun and threatening to shoot an unarmed child would be considered clearly unconstitutional, and the officers did not receive immunity for their actions.

ANALYSIS

The majority in *Tekle* was correct in concluding that Tekle's Fourth Amendment rights had been violated through the use of excessive force and

[75] *McDonald*, 966 F.2d at 295 (quoting *Murphy v. Morgan*, 914 F.2d 846, 847 (7th Cir. 1990)).

[76] *McDonald*, 966 F.2d at 295 (quoting *Landstrom v. Ill. Dep't of Children & Family Servs.*, 892 F.2d 670, 676 (7th Cir. 1990)).

[77] *Saucier v. Katz*, 533 U.S. 194, 205 (2001).

[78] *Saucier*, 533 U.S. at 205 (quoting *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1056 (9th Cir. 2003), *cert. denied*, 542 U.S. 918 (2004)).

unreasonable detention. The issue of unreasonable detention, however, requires a deeper analysis in order to determine where officers should draw the line with regard to the use of handcuffs. This case also demonstrated that, although controversial, the officers were rightly stripped of their qualified immunity and held personally liable for their actions.

Excessive Force Claim as Compared to Robinson

When compared to *Robinson v. Solano County*, Tekle was subjected to a more serious Fourth Amendment violation. The officers in *Robinson* pointed a gun at Robinson's head after he was previously seen walking down the street holding a shotgun. A portion of his livestock had been killed by two dogs, and Robinson had shot and killed one of these dogs. It is important to note that while Robinson immediately complied with the officers' orders, Tekle had initially disobeyed them by running back into the garage instead of putting his hands up in the air. Nevertheless, given the circumstances surrounding Tekle's apprehension, it was not surprising that he reacted in such a manner. The officers should have expected that a child, unaware of the situation and suddenly exposed to twenty-three armed officers, would react in such a manner initially. Tekle's actions were similar to those of a startled boy, not necessarily those of a child acting in defiance. Additionally, Tekle complied with the officers' orders moments after this "surprise factor" had elapsed. Given the number of officers present at the time, it would have been virtually impossible for Tekle to flee, making the force used against Tekle all the more unreasonable.

Robinson and Tekle were also both outnumbered by armed officers. Neither detainee attempted or demonstrated plans to flee, nor did they pose an immediate threat to the officers. Lastly, neither case gave rise to "dangerous or exigent circumstances"[79] that would have justified the officers pointing their guns toward these individuals. The search warrant at the Tekle home was based on suspicion of narcotics trafficking and tax-related offenses. The officers had no reason to believe that weapons, which would compromise their safety, were located anywhere near young Ephraim Tekle. Similarly, Robinson was unarmed at the time of his apprehension and showed no signs that he had access to a weapon . Therefore, both the *Tekle* and *Robinson* cases were devoid

[79] *Robinson,* 278 F.3d at 1014.

of "dangerous or exigent circumstances" that could have justified the officers' use of force.

Regarding "excessive force," *Tekle* actually involves an even more flagrant violation of Fourth Amendment rights. Tekle was a child while Robinson was a grown man. Young Tekle was unarmed and outnumbered twenty-three officers to one,[80] while Robinson, who was previously seen holding a shotgun, was only guarded by two officers.[81]

Furthermore, Robinson was originally suspected of committing a crime, though it would have been a misdemeanor at most. Although Robinson may not have been armed at the time the officers approached him, the two officers *could have* believed Robinson to be somewhat dangerous since he had previously been using a shotgun. Unlike Robinson, Tekle was never suspected of any crime. Instead, he was an innocent family member who happened to be home at the time the search warrant was executed. Tekle was also held at gunpoint for a longer period of time than Robinson. While Tekle was the subject of twenty-three officers pointing their guns at him for fifteen to twenty minutes, Robinson was exposed to gun-pointing only momentarily before he was placed in a patrol car. This is not to say that the guns pointed at Robinson were not significant, but rather to demonstrate that the force used against Tekle was even more excessive and unnecessary.

Overall, Tekle endured an even *more* unreasonable use of force than was seen in *Robinson,* even though Tekle posed even *less* of a threat, if any. Therefore, the officers' actions were a clear violation of Tekle's Fourth Amendment rights. The case precedent set in *Robinson* should have made this abuse of Tekle's Fourth Amendment rights quite clear to the officers involved.

Unreasonable Detention Claim as Compared to Franklin

Tekle was also "unreasonably detained" in a similar manner to Mr. Curry in *Franklin v. Foxworth*. Both cases dealt with an individual requiring "special precautions," such as children in *Tekle* and the disabled in *Franklin*.[82] The officers in both cases, upon looking at Curry and Tekle, could have placed

[80] *Tekle*, 457 F.3d at 1095.
[81] *Robinson*, 278 F.3d at 1010.
[82] *Franklin*, 31 F.3d at 876.

them in this category. In fact, the officers who detained Curry admitted that they were aware of his disability from the moment they entered the room,[83] and the officers in *Tekle* stated that Tekle looked approximately eleven to twelve years old when he emerged from the garage.[84]

In both cases, the officers also had advance notice of Curry's impaired condition and Tekle's young age prior to encountering these individuals. Curry's caretaker had advised the officers that he was a disabled man and that he should not be moved,[85] while Tekle's mother had cautioned the officers that her eleven-year-old son was at home.[86] The officers in both situations were certainly not obligated to believe these statements. However, this information should have helped them to put their actual observations upon encountering these individuals in context.

In *Franklin*, the method in which the officers carried out Curry's detention, rather than the actual issue of detention, was addressed. Curry, like Tekle, was "unreasonably" detained because the totality of the circumstances did not justify the use of handcuffs or the lack of respect for his privacy. In both cases, the intrusion upon Tekle and Curry's legal rights was greater than the officers' need to use handcuffs.

This is not to say that Curry and Tekle should not have been detained *without* handcuffs until it was established that they did not pose a threat to the officers or the search. Judge Kleinfeld raised a fair point when he stated that Tekle could have jumped on the officers or created some other sort of diversion during the search.[87] Given the fact that the officers were searching for contraband, Curry could also have impeded the search by creating a diversion or interfering with evidence.

The protection of the search may be a valid justification when it comes the use of handcuffs, but it does not justify the prolonged detention experienced by Tekle and Curry. Curry was placed on a couch half naked with his hands cuffed behind his back for over two hours. This treatment certainly cannot be justified without more significant reason to believe that he would have

[83] *Id.* at 875.
[84] *Tekle*, 457 F.3d at 1095.
[85] *Franklin*, 31 F.3d at 875.
[86] *Tekle*, 457 F.3d at 1092.
[87] *Id.* at 1104 (Kleinfeld, J., concurring).

interfered with the officers' search. Similarly, there was no evidence that Tekle, if ordered to remain seated in a designated area, would not have cooperated. It seems far too presumptuous to assume that Tekle *only* cooperated with law enforcement because he was handcuffed and held at gunpoint. Both Tekle and Curry should have been detained for the duration of the search, but *without* the use of handcuffs or guns. The circumstances surrounding both cases, and the fact that both Tekle and Curry belonged to a group of individuals requiring "special precautions," called for the least severe form of detention available instead of something so severe.

Both Claims as Compared to Muehler

The Supreme Court's ruling in *Muehler v. Mena* does nothing to change the foregoing analysis, because the cases are factually different. In *Muehler*, the Supreme Court properly held that the officers reasonably detained Mena and did not use excessive force. However, the facts in *Tekle* are distinct and therefore should not be viewed as analogous to *Muehler*. Tekle was a child being detained alone while Mena was an adult being detained along with three other individuals. Furthermore, the occupants in *Muehler* outnumbered the officers guarding them.[88] This fact is very distinct from Tekle, who was outnumbered by the officers twenty-three to one.[89]

The officers were also dealing with a much more dangerous situation in *Muehler* that involved the possibility of an armed gang member on the premises who had been suspected of previous involvement in a drive-by shooting.[90] The officers had several reasons to detain Mena, including, but not limited to, preventing flight, ensuring the safety of the officers and public, and protecting the completion of the search.[91] In *Tekle*, all three of these interests were satisfied when the officers determined that young Ephraim Tekle was unarmed, posed no physical threat, and had been cooperative with the officers. Therefore, while the need to detain Mena and the other individuals on the premises was at a maximum in *Muehler*, this need was at a minimum in *Tekle*.

[88] *Muehler*, 544 U.S. at 96.
[89] *Tekle*, 457 F.3d at 1095.
[90] *Muehler*, 544 U.S. at 95.
[91] *Id.* at 98.

The same can be said for the amount of force that was reasonable in detaining *Muehler*; nothing so severe was needed in Tekle's case.

Qualified Immunity

Once it has been established that Tekle's Fourth Amendment rights were violated, the issue of qualified immunity must be addressed. Qualified immunity "shields government agents from liability for civil damages so long as their conduct does not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'"[92] The debate with regard to the use of qualified immunity has become so controversial that the very use of this doctrine has been called into question.

In a Golden Gate University Law Review Article entitled, "A Qualified Defense," Michael M. Rosen explains the controversy surrounding qualified immunity and defends the doctrine in excessive force cases. According to Rosen, qualified immunity "strikes a balance between supporting the efforts of law enforcement agents and redressing the wrongs that they visit on ordinary citizens."[93] Rosen argues that law enforcement officials would be much less effective in their duties if they were forced to consider personal consequences for every constitutional misstep. The threat of potential lawsuits would also act as a deterrent for those considering a career in law enforcement.

On the one hand, the very essence of law enforcement is to fight crime and provide an orderly and safe society for the public. An officer's job necessitates "split-second" decision-making in hazardous situations. These police officers continually risk their lives for the good of the public. It can also be argued that the safety and protection offered to the public by these officers could not be achieved without offering the expectation of qualified immunity if they make a mistake. For example, an officer who finds himself in a compromising and dangerous situation, but who fears his actions could inevitably lead to a lawsuit, might fail to act properly, if at all. Without some form of immunity from civil suits, it seems unlikely that an individual would want to become a police officer. Aside from risking their lives for society,

[92] Michael M. Rosen, *A Qualified Defense: In Support of The Doctrine of Qualified Immunity in Excessive Force Cases, With Some Suggestions For Its Improvement*, 35 Golden Gate U. L. Rev. 139, 142 (2005).
[93] *Id.* at 140.

police officers would also be risking their jobs, credibility, and financial security every day as well.

On the other hand, limits upon the reach of an officers' immunity protect the public by deterring careless infringement upon constitutional rights. Without this cautionary deterrent, the same 'heat of the moment' concern for public safety (or an officer's own safety) may create a disincentive for taking the individual rights of suspects or bystanders into account.

All in all, qualified immunity is a necessary doctrine, but should be stripped in extreme situations. Due to the fact that the financial repercussions of individual liability for officers can be very severe, courts should proceed with caution and be extremely conservative in revoking an officer's immunity. Only those situations that truly demonstrate a careless disregard for clearly established legal rights should leave an officer personally liable for his or her actions.

Returning to the case at hand, in conducting a qualified immunity evaluation it must be determined whether Tekle's rights were "clearly established" at the time they were violated so that a reasonable officer would understand that the force used and the nature of the detention were unconstitutional.[94] Thus, if the officers' actions were "not only unconstitutional, but clearly so," they would violate these "clearly established statutory or constitutional rights."[95] The *Tekle* Court had to decide whether it was clearly established at the time of the incident that pointing a gun at a child would be regarded as an unconstitutional use of force. In addition, the court had to rule on whether it was clearly established at the time that handcuffing young Tekle without proper justification would also be an unconstitutional use of force.

Taking the above factors into consideration, the *Tekle* Court was correct in concluding that the officers should have been aware that the force used was "constitutionally excessive even absent a Ninth Circuit case presenting the [exact] same set of facts."[96] Although "reasonable mistakes can be made as to the legal constraints on particular police conduct," the officers'

[94] *Tekle*, 457 F.3d at 1096.

[95] *Franklin*, 31 F.3d at 879 (Reinhardt, J., concurring) (citing *Chew v.Gates*, 27 F.3d 1432 (9th Cir. 1994)).

[96] *Tekle*, 457 F.3d at 1097.

use of force in *Tekle* was far too extreme to be considered a reasonable mistake.[97]

The clear similarities between the *Tekle* and *Robinson* cases should have made this abundantly clear; the Fourth Amendment violation in Tekle's case was even more extreme. Rosen phrased it best when he expressed the importance of placing "certain limits on conduct that is especially repulsive but that is described in no previous case, since failing to do so would simply invite that egregious behavior."[98] Officers who pointed their guns at the head of a child, who was unarmed and unsuspected of a crime, and then handcuffed the child for fifteen to twenty minutes while keeping their guns pointed at him, should have known that it was a clear violation of that child's constitutional rights. Therefore, these officers should be held personally liable for their actions.

While a reasonable officer should have known that the force used against Tekle was excessive, the same does not hold for the issue of unreasonable detention. In light of existing law, an officer could have potentially made a mistake in determining whether it would be unlawful to handcuff Tekle for the duration of his father's arrest. According to *Summers* and *Muehler*, an officer could theoretically detain an individual, in handcuffs, throughout the duration of a search or arrest, under certain circumstances. In this case, the manner in which Tekle's detention was carried out rendered it unreasonable; therefore, it amounted to a constitutional violation. The mere decision to detain Tekle through the duration of the search was not so obviously unreasonable as to strip the officers of their immunity. Rather, it must be viewed in conjunction with the excessive force used to execute that detention. As previously discussed, officers had clear notice that their actions constituted excessive force. That aspect of their behavior constituted a *clear* violation of his constitutional rights.

CONCLUSION

Tekle v. United States dealt with the use of excessive police force against an unarmed eleven-year-old child. There were no factors that would have led the officers to believe that Tekle was attempting to flee or posing a safety threat. Not only were the officers' guns pointing toward Tekle

[97] Michael M. Rosen, *supra* (quoting Justice Kennedy in *Saucier v. Katz*, 533 U.S. 194, 205 (2001)).
[98] *Id.* at 178.

excessively forceful, the fifteen to twenty minutes he remained handcuffed was an unreasonable form of detention. In *Robinson v. Solano County* it was established that pointing a gun at someone can constitute excessive force. In addition, *Muehler v. Mena* and *Franklin v. Foxw*orth addressed the issue of unreasonable detention. *Muehler* concluded that detention in handcuffs for the duration of a search can be valid, while *Franklin* demonstrated that such detention may be valid *only* when justified by the totality of the circumstances. *Franklin* also introduced the notion that certain types of individuals, such as the physically impaired, required specialized treatment. These precautions must be addressed in conjunction with the rest of the circumstances surrounding an incident of alleged constitutional violation.

Overall, taking the totality of the circumstances into account, Ephraim Tekle's Fourth Amendment rights to be free from unreasonable searches and seizures were violated through the use of excessive force and unreasonable detention. It is the court's responsibility to prevent innocent family members and bystanders from being subjected to excessive force at the hands of overzealous police officers. However, our judicial system must support police officers in their efforts to effectively fight crime. A balance between these two competing interests is necessary to ensure that officers are held personally liable for truly egregious behavior against individuals such as Ephraim Tekle. In such cases, an officer's loss of qualified immunity is an appropriate method of deterring future offenses toward constitutional rights, thereby protecting society at large.

While this balance may have tipped in the officers' favor with regard to Ephraim Tekle's unreasonable detention, his case also demonstrated excessive use of force worthy of stripping the officers of their immunity when it comes to the unnecessary use of their handcuffs and guns. Only by carefully policing this balance can the courts fulfill their role in protecting society and our constitutional values.