

Brief of the Week: Dealing with deadly force

By Jamie Schuman [All Articles](#)

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Houston solo Martin Siegel
Image: Mark Graham

Note: This story was updated to correct the misattribution of a quote cited in the petition in the *Elizondo* case.

Like many lawyers, Martin Siegel gets daily e-mails that describe recent court rulings. But a squib about *Elizondo v. The City of Garland* caught his eye for its seemingly critical tone.

"Once again the Court finds that circumstances legally justify the use of deadly force against a mentally ill person threatening suicide," the Bar Association of the Fifth Federal Circuit wrote. In [a petition for certiorari](#), Siegel challenges the U.S. Court of Appeals for the Fifth Circuit's February decision in *Elizondo*. It held that a Texas police officer did not use excessive force when he shot and killed a troubled teenager whose family had called 911 for help.

At first glance, the *Elizondo* fact pattern seemed unusual to Siegel, who has a private appellate practice in Houston. He investigated, and, to his surprise, found many cases where relatives seek aid for a mentally ill person but officers treat the scene like a law-enforcement situation rather than a medical one. "Family members who want a more protracted or restrained approach are often shunted aside," Siegel explained.

Ruddy Elizondo's family sued both the police officer and the 230,000-person city of Garland, Texas under 42 U.S.C. § 1983. Two months before ruling against the Elizondos, the Fifth Circuit rejected a separate civil-rights claim from relatives of another suicidal man whom a different Garland cop had shot to death.

Circuits are split on how to analyze claims that an officer used excessive force in violation of the Fourth Amendment. The Fifth and four others only look at whether the policeman felt threatened at the moment he fired shots at a suspect. Three jurisdictions consider additional factors, such as whether the officer provoked the confrontation.

Siegel wants the Supreme Court to endorse the broader approach. He also is asking it to find that a person's "obvious mental illness" should be one of the circumstances that reduces an officer's justification for using force. Such rulings could motivate cities to do a better job of training police on how to respond to people with psychiatric problems, he said.

In an *amicus* brief in support of Siegel's petition, six leading mental-health organizations recommend that policemen study how psychiatric issues affect people's behavior and learn how to de-escalate these encounters without using force. Techniques include establishing rapport, avoiding threats, waiting for backup and staying away from a suspect's personal space.

The officer in *Elizondo* did not follow this advice. In March 2009, 17-year old Ruddy Elizondo had come home from a night out with friends when his mother found him crying in his bedroom and holding a small kitchen knife to his stomach. Because Elizondo had attempted suicide a few weeks earlier, his sister called 911.

Upon arriving at the home, police officer William Green kicked open the teenager's bedroom door, pointed a gun at him and yelled at him to drop his knife. Elizondo tried to shut his door but the officer forced it open. Elizondo then cursed at the cop, told him to shoot him, and raised his knife. Green shot the teen three times.

"How he could possibly assume that it was reasonable and appropriate to yell and make threats with a semi-automatic pistol against a teenager in his own bedroom – who posed only a minimal to moderate threat to only himself with a kitchen knife – is beyond reasonable comprehension," said Harold Warren, a former Dallas police official whose expert witness testimony Siegel cited in his brief.

In its narrow analysis, the Fifth Circuit ignored Green's provocations and did not consider Elizondo's illness to be a mitigating factor, Siegel argued in the petition, which he filed in May. The high court is scheduled to consider whether to grant review in the case on Sept. 24.

Siegel warned that "opaque language" in high court decisions has fueled the circuit split on excessive force claims. *Tennessee v. Garner* requires that courts weigh the "totality of the circumstances" when determining if a cop's use of deadly force was constitutional. *Graham v. Connor* instructs circuits to pay attention to the facts of each case, but employs a "reasonableness at the moment standard," which acknowledges that cops must make quick judgments.

"The Delphic guidance provided in two decades-old excessive force decisions has fostered inconsistency and left police, judges and juries uncertain about the limits of permissible force in a type of case that recurs all too often," Siegel wrote.

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