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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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PEARSON ET AL. *v.* CALLAHAN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 07–751. Argued October 14, 2008—Decided January 21, 2009

After the Utah Court of Appeals vacated respondent's conviction for possession and distribution of drugs, which he sold to an undercover informant he had voluntarily admitted into his house, he brought this 42 U. S. C. §1983 damages action in federal court, alleging that petitioners, the officers who supervised and conducted the warrantless search of the premises that led to his arrest after the sale, had violated the Fourth Amendment. The District Court granted summary judgment in favor of the officers. Noting that other courts had adopted the "consent-once-removed" doctrine—which permits a warrantless police entry into a home when consent to enter has already been granted to an undercover officer who has observed contraband in plain view—the court concluded that the officers were entitled to qualified immunity because they could reasonably have believed that the doctrine authorized their conduct. Following the procedure mandated in *Saucier* v. *Katz*, 533 U. S. 194, the Tenth Circuit held that petitioners were not entitled to qualified immunity. The court disapproved broadening the consent-once-removed doctrine to situations in which the person granted initial consent was not an undercover officer, but merely an informant. It further held that the Fourth Amendment right to be free in one's home from unreasonable searches and arrests was clearly established at the time of respondent's arrest, and determined that, under this Court's clearly established precedents, warrantless entries into a home are *per se* unreasonable unless they satisfy one of the two established exceptions for consent and exigent circumstances. The court concluded that petitioners could not reasonably have believed that their conduct was lawful because they knew that (1) they had no warrant; (2) respondent had not consented to their entry; and (3) his consent to the entry

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of an informant could not reasonably be interpreted to extend to them. In granting certiorari, this Court directed the parties to address whether *Saucier* should be overruled in light of widespread criticism directed at it.

Held:

1. The *Saucier* procedure should not be regarded as an inflexible requirement. Pp. 5–19.

(a) *Saucier* mandated, see 533 U. S., at 194, a two-step sequence for resolving government officials' qualified immunity claims: A court must decide (1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was "clearly established" at the time of the defendant's alleged misconduct, *id.*, at 201. Qualified immunity applies unless the official's conduct violated such a right. *Anderson* v. *Creighton*, 483 U. S. 635, 640. Pp. 5–7.

(b) *Stare decisis* does not prevent this Court from determining whether the *Saucier* procedure should be modified or abandoned. Revisiting precedent is particularly appropriate where, as here, a departure would not upset settled expectations, see, *e.g., United States* v. *Gaudin*, 515 U. S. 506, 521; the precedent consists of a rule that is judge-made and adopted to improve court operations, not a statute promulgated by Congress, see, *e.g., State Oil Co.* v. *Khan*, 522 U. S. 3, 20*;* and the precedent has "been questioned by Members of th[is] Court in later decisions, and [has] defied consistent application by the lower courts," *Payne* v. *Tennessee*, 501 U. S. 808, 829–830. Respondent's argument that *Saucier* should not be reconsidered unless the Court concludes that it was "badly reasoned" or that its rule has proved "unworkable," see *Payne, supra*, at 827, is rejected. Those standards are out of place in the present context, where a considerable body of new experience supports a determination that a mandatory, two-step rule for resolving all qualified immunity claims should not be retained. Pp. 7–10.

(c) Reconsideration of the *Saucier* procedure demonstrates that, while the sequence set forth therein is often appropriate, it should no longer be regarded as mandatory in all cases. Pp. 10–19.

(i) The Court continues to recognize that the *Saucier* protocol is often beneficial. In some cases, a discussion of why the relevant facts do not violate clearly established law may make it apparent that in fact the relevant facts do not make out a constitutional violation at all. And *Saucier* was correct in noting that the two-step procedure promotes the development of constitutional precedent and is especially valuable for questions that do not frequently arise in cases in which a qualified immunity defense is unavailable. See 533 U. S., at 194. Pp. 10–11.

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(ii) Nevertheless, experience in this Court and the lower federal courts has pointed out the rigid *Saucier* procedure's shortcomings. For example, it may result in a substantial expenditure of scarce judicial resources on difficult questions that have no effect on the case's outcome, and waste the parties' resources by forcing them to assume the costs of litigating constitutional questions and endure delays attributable to resolving those questions when the suit otherwise could be disposed of more readily. Moreover, although the procedure's first prong is intended to further the development of constitutional precedent, opinions following that procedure often fail to make a meaningful contribution to such development, as where, *e.g.,* a court of appeals decision is issued in an opinion marked as not precedential. Further, when qualified immunity is asserted at the pleading stage, the answer to whether there was a violation may depend on a kaleidoscope of facts not yet fully developed. And the first step may create a risk of bad decisionmaking, as where the briefing of constitutional questions is woefully inadequate. Application of the *Saucier* rule also may make it hard for affected parties to obtain appellate review of constitutional decisions having a serious prospective effect on their operations. For example, where a court holds that a defendant has committed a constitutional violation, but then holds that the violation was not clearly established, the defendant, as the winning party, may have his right to appeal the adverse constitutional holding challenged. Because rigid adherence to *Saucier* departs from the general rule of constitutional avoidance, cf., *e.g., Scott* v. *Harris*, 550 U. S. 372, 388, the Court may appropriately decline to mandate the order of decision that the lower courts must follow, see, *e.g., Strickland* v. *Washington*, 466 U. S. 668, 697. This flexibility properly reflects the Court's respect for the lower federal courts. Because the two-step *Saucier* procedure is often, but not always, advantageous, those judges are in the best position to determine the order of decisionmaking that will best facilitate the fair and efficient disposition of each case. Pp. 11–17.

(iii) Misgivings concerning today's decision are unwarranted. It does not prevent the lower courts from following *Saucier;* it simply recognizes that they should have the discretion to decide whether that procedure is worthwhile in particular cases. Moreover, it will not retard the development of constitutional law, result in a proliferation of damages claims against local governments, or spawn new litigation over the standards for deciding whether to reach the particular case's merits. Pp. 17–19.

2. Petitioners are entitled to qualified immunity because it was not clearly established at the time of the search that their conduct was unconstitutional. When the entry occurred, the consent-once-

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removed doctrine had been accepted by two State Supreme Courts and three Federal Courts of Appeals, and not one of the latter had issued a contrary decision. Petitioners were entitled to rely on these cases, even though their own Federal Circuit had not yet ruled on consent-once-removed entries. See *Wilson* v. *Layne*, 526 U. S. 603, 618. Pp. 19–20.

494 F. 3d 891, reversed.

ALITO, J., delivered the opinion for a unanimous Court.