

# Justices let two sue Irvine police

**LAW:** Supreme Court reinstates case filed by men who say officers illegally took blood samples for DUI tests.

By **SUSAN KELLEHER**

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The U.S. Supreme Court gave two Orange County men the green light to sue Irvine police on the grounds that officers illegally obtained blood samples from the men after arresting them on suspicion of drunken driving.

Mauricio Baez Fernandez and Jeffrey Capler accuse police of forcing them to undergo blood tests to measure alcohol levels, though they requested breath tests instead. The men could not be reached for comment.

The court's decision is "a vindication of individual liberty and stands for the proposition that no one is above the law, not even the police," said attorney Barry T. Simons, who filed the federal suit in 1996 and is seeking to have it certified as a class-action suit.

The suit, which seeks unspecified damages and a court order banning the alleged abuse of

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blood tests, says police violated state law and the Constitution's Fourth Amendment protection against unreasonable search and seizure.

A federal judge dismissed the suit when it was filed, but it was reinstated in May by the 9th U.S. Circuit Court of Appeals. The city appealed the ruling to the Supreme Court, which denied the appeal Monday.

Attorney Jeffrey Wertheimer, who represents the city of Irvine, said the court's decision would not change police DUI policies because officers always read a list of testing options and allow suspects to pick one. When they don't choose, he said, police usually select blood tests. Police followed that policy in the cases brought to the Supreme Court, he said.

People suspected of drunken driving must allow police to measure their blood-alcohol content.