No. 19-292

In the Supreme Court of the United States

ROXANNE TORRES, *PETITIONER*,

v.

JANICE MADRID AND RICHARD WILLIAMSON,
RESPONDENTS.

On Writ of Certiorari to the U.S. Court of Appeals for the Tenth Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Is an unsuccessful attempt to detain a suspect by use of physical force a "seizure" within the meaning of the Fourth Amendment or must physical force be successful in detaining a suspect to constitute a "seizure"?

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CASES

PRIMARY SOURCES

John F. Kennedy Proclamation 3537 (1963)

President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 189 (1967)

The Josefa Segunda, 10 Wheat. 312, 325-26 (1825)

The Judiciary Act of 1789 (Chap. XX., 1 Stat. 73)

U. S. Const. amend. IV

Warrant for the Ship Charming Sally; 7/9/1803; Sherman, Isaac v. Charming Sally, Schooner; Case Files, 1790 - 1917; Records of District Courts of the United States, Record Group 21; National Archives at Boston, Waltham, MA.

STATEMENT OF CASE

On the morning of Tuesday, July 15, 2014 police arrived at an apartment complex in Albuquerque, New Mexico to arrest a woman, Kayenta Jackson who was involved in a crime ring with numerous criminal activities. Police officers and Respondents, Janice Madrid and Richard Williamson, arrived at the apartment complex at around 6:30 in the morning. During this time, the officers saw Petitioner, Roxanne Torres, standing outside her vehicle. The officers were unsure if Torres was the woman they were targeting, so they approached her wearing black tactical vests with badges that clearly identified them as police officers. Seeing the officers approach her, Torres immediately got into her vehicle and started the engine. Officer Williamson and Officer Madrid approached the car and commanded Torres to show them she was unarmed and unaggressive, as she projected a series of furtive movements. Petitioner allegedly believed the officers were carjackers and impulsively put her car into drive. As Officer Madrid was standing very close to the front of the vehicle, both officers drew their firearms, fearing that Torres may try to hit them with her car. Despite being struck by two bullets, Petitioner continued to operate her vehicle without slowing down. After running over a curb and some landscaping, Torres steered onto a road and drove to a nearby parking lot, where she asked a bystander to call the police. Due to an outstanding warrant for her arrest, Petitioner stole a vehicle that was left running and drove over 70 miles to a hospital in Grants, New

Mexico. It was when she arrived at the hospital that she noticed, for the first time, that she had been shot. From this hospital, she was flown to a hospital in Albuquerque and arrested the very next day. Torres was charged with aggravated fleeing from a law enforcement officer, assault upon a police officer, and unlawfully taking a motor vehicle, which she pleaded no contest to.

Over two years later, solely on the basis of federal law, Petitioner decided to file a civil rights complaint, asserting claims of excessive force on Respondents, who in turn used qualified immunity on all excessive force claims due to Petitioner's lack of seizure. The district court agreed and ruled that there was not enough sufficient evidence to prove Torres had been seized, rendering a ruling in favor of Respondents.

In May of 2019, the United States Court of Appeals upheld the lower court's ruling, rendering that under the first prong of the judicial qualified immunity analysis, Petitioner's claims of excessive force failed. With these courts in agreement with each other, the Court should see as to upholding this same ruling for the matters of Roxanne Torres v. Madrid et al. Petitioner failed to submit to the authority of the law enforcement personnel and thus has no viable claim in regards to unlawful seizure on the grounds of the Fourth Amendment.

SUMMARY OF ARGUMENT

From its inception, the United States Constitution has recognized the Fourth Amendment's term "seizure" to mean intentionally taking possession, custody, or control of a person. Despite Petitioner filing this complaint on the basis of the Fourth Amendment, there has not been sufficient evidence to corroborate that Petitioner was seized by Respondents. Petitioner's ability to make conscious decisions, drive, and steal a car highlight the lack of seizure that took place. Seizure by the Court's interpretation requires a restraint to one's freedom of movement, which did not occur on the morning of July 15, 2014. Roxanne Torres was not only a threat to herself, but also placed two officers and the public in danger with her reckless and dangerous actions. Respondents, Officer Madrid and Officer Williamson, used appropriate force in order to try and apprehend Petitioner, and are subject to the protections of qualified immunity. This Court must continue performing stare decisis, especially in this case where case law exists and must be reviewed when answering the question presented. The Court is required to commit to stare decisis and have a solid basis for rejecting past case law beyond the claim that the ruling was wrongfully decided.

ARGUMENT

I. THE UNSUCCESSFUL ATTEMPT, BY RESPONDENTS, TO DETAIN PETITIONER WAS NOT AN IMPLICATION OF THE FOURTH AMENDMENT.

A. Petitioner was Not Seized Under the Court's Definition of a Seizure

The occurrences of July 14, 2015 were not an implication of the Fourth Amendment, because Roxanne Torres was not seized according to the Fourth Amendment. The Fourth Amendment[1] states, "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] In the Supreme Court Case *Terry v. Ohio*[3], the term seizure was defined as when an officer of the law "has in some way restrained the liberty of a citizen,"[4] through the use of physical force or show of authority. In the case, *Ingraham v. Wright*[5], liberty is defined as "freedom from bodily

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

[2] *Id.*

[3] 392 U.S. 1 (1968).

[4] *Id.* at 19 n.16

[5] 430 U.S. 651 (1977).

restraint and punishment"[6] and "a right to be free from and to obtain judicial relief, for unjustified intrusions on personal security."[7] Similarly, the original definition of a "seizure" by Justice Alito, in his dissent for *Manuel v. City of Joliet*[8], clearly indicates that a seizure constitutes a deprivation of liberty in which a person is taken fully into custody. Petitioner presented a freedom of movement, even after unsuccessful attempts of Respondents to seize her.

A *warrant for the ship Charming Sally*[9] from 1803 shows the militarized struggle of seizing ships containing Africans after the Atlantic Slave Trade. This warrant, which was created during a time when English common law was very prevalent, explains that a seizure cannot be accomplished without the capturing of the ship. Furthermore, in an appeal from 1825, *The Josefa Segunda*,[10] it was established that a ship which escaped even under attack was in no way seized.

A seizure has only taken place when the person's liberty is conceded and they are unable to obtain proper personal security. However, in this case, Petitioner's judgement and freedoms were not

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[6] *Id.* at 674

[7] *Id.* at 651

[8] 580 U.S. ___ (2017).

[9] Warrant for the Ship Charming Sally; 7/9/1803; Sherman, Isaac v. Charming Sally, Schooner; Case Files, 1790 - 1917; Records of District Courts of the United States, Record Group 21; National Archives at Boston, Waltham, MA.

[10] The Josefa Segunda, 10 Wheat. 312, 325-26 (1825).

infringed upon by Respondents, but by her consumption of drugs, specifically methamphetamine, on the morning of the incident. Torres was reportedly "tripped out" which hindered her ability to make reasonable decisions. The officers attempted to keep both themselves and the public safe through their actions, and there is not reasonable evidence to suggest that Roxanne Torres was 'seized' according to the Fourth Amendment and its interpretations. Roxanne Torres managed to maintain her ability to move, continue driving, and eventually illegally obtain control of another motor vehicle.

B. Petitioner Maintained Her Freedom of Movement

Countering Petitioner's claim that Respondents' use of physical force in an attempt to terminate her movement in itself was a violation of the Fourth Amendment, Respondents look to *Brooks v. Gaenzle*[11], which clearly lists out that without the termination of the suspect's movement, the suspect has not been seized. This Court also declared that the mere use of force alone is not enough to constitute a seizure. Additionally, the Courts also "held that a suspect's continued flight after being shot by police negates a Fourth Amendment excessive-force claim."[12] This directly correlates to the outcome of the case of *Torres v. Madrid*. In the attempt to apprehend her, Petitioner was shot in the back twice, however this did not restrict her freedom of movement. Even after being

[11] 614 F.3d 1213 (10th Cir. 2010).

[12] *Id.*

shot, Petitioner was able to take control of another vehicle which did not belong to her. She was also able to drive that car over 70 miles to a hospital before being apprehended by the officers.

Furthered in *Adams v. City of Auburn Hills*[13], the use of deadly force is not enough to constitute a seizure either on the grounds that the suspect has the ability to leave at any time. Petitioner, the suspect in this case, based on reasonable observations and conduct of Officers Madrid and Williamson, did in fact have the freedom of movement and transported herself away from Respondents despite Respondents' unsuccessful attempts to stop and seize her. Petitioner continued to move and transported herself to a hospital, where she was then arrested later on for an outstanding arrest warrant. With the inclusion of these definitions, Petitioner's Fourth Amendment rights were simply not violated.

II. PAST RULINGS OF THIS COURT ALIGN WITH AND VERIFY THE RULINGS OF THE LOWER COURTS

A. This Court's *Mendenhall Test* Proves The Absence Of A Seizure

When reviewing the rulings of the District and Circuit Court, in this case, this Court must compare them closely with the case law which has been established by the Court itself over the past several

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[13] 336 F.3d 515, 519 (6th Cir. 2003).

decades in regards to the Fourth Amendment. In *United States v. Mendenhall*,[14] Justice Stewart first developed a test to be applied in determining whether someone has been 'seized' within the scope of the Fourth Amendment. The *Mendenhall Test* defines, on the grounds of the Fourth Amendment, that a seizure occurs only when "a reasonable person would have believed that he was not free to leave."[15] If this had been the case, and a seizure had occurred, Petitioner would not have successfully escaped from the police officers at her apartment complex. As outlined in *United States v. Mendenhall*, law enforcement officers may approach a suspect and converse without constituting a seizure. In this case, Respondents approached Petitioner to converse, although Petitioner did not allow for a conversation with law enforcement, and instead fled the apartment complex immediately. Respondents performed their duties as law enforcement in approaching Petitioner to ensure she was unarmed and unaggressive. This is very similar to the conduct of the DEA agents in *United States v. Mendenhall*, in which the Court found their conduct "a permissible investigative stop"[16] using the standards of *United States v. Brignoni-Ponce*[17] and *Terry v. Ohio*[18] on the basis that there was "justified a suspicion of criminal activity."[19]

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[14] 446 U.S. 544 (1980).

[15] *Id.* at 554

[16] *Id.* at 549

[17] 422 U. S. 873 (1975).

[18] 392 U.S. 1

[19] 446 U.S. 544, 549 (1980).

B. A Search Is Not Equivalent To A Seizure

Though the 4th Amendment protects the American people from unreasonable searches and seizures from the government, as outlined in *United States v. Jacobsen*[20], the two entities must be analyzed by the Court separately. In *United States v. Jacobsen*, the Court found that the Fourth Amendment "protects two types of expectations, one involving 'searches,' the other 'seizures.'"[21] The Court then proceeds to provide distinct explanations on these two entities.

In this case, Petitioner was not seized by Respondents within the meaning of the Fourth Amendment. Justice Harlan's concurring opinion in *Terry v. Ohio*[22] is very indicative of the boundary between a search becoming a seizure. An officer merely approaching and questioning an individual does not constitute a seizure under the meaning of the Fourth Amendment, even if the officer is a law enforcement official, according to Justice Harlan's concurring opinion. Respondents shot their firearms at Petitioner not to seize or detain her, but to maintain their own safety as Petitioner was driving her vehicle in the direction of Respondents. Likewise, the DEA officers in *Mendenhall* were found to not have violated the Fourth Amendment by this Court as they had conducted regular and routine questioning of the suspect[23]. Therefore, the Court must uphold the rulings of the lower Courts in this case as Respondents

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[20] 466 US 109 (1984).

[21] *Id.* at 113

[22] 392 U.S. 1 at 31 (Harlan, J., concurring).

[23] 446 U.S. 544 (1980).

have demonstrated that they were at the apartment complex of Petitioner for a regular and routine site investigation as part of their duties as law enforcement officers. The Court is required to examine *Mendenhall* and other case law, within the limits of the doctrine of stare decisis, to overrule *California v. Hodari D.*[24]

III. PETITIONER RELIES SOLELY ON IRRELEVANT PRECEDENT AND HAS FAILED TO CONTEST THIS COURT'S CONSTITUTIONAL PRECEDENTS AND CASE LAW

Petitioner has made claims connecting this case to *Hodari D.*, however, Petitioner has failed to contest all of the current and set case law which displays that no seizure was performed. This court is required to conduct stare decisis in establishing precedents and case law from prior Fourth Amendment questions. The constitutional issues regarding seizures presented in those cases will absolutely outline Respondents' argument and highlight weaknesses of Petitioner's. Case law spanning from the Court's inception to the present aligns with the decisions made by the lower courts in this case. It is the duty of this Court to ensure that these precedents are observed in detail. Overruling these precedents cannot be taken lightly as it mustn't be a small matter. There must have been some egregious act beyond a belief of wrong ruling and

[24] 499 US 621 (1991).

decision. The process of stare decisis will surely force the Court to weigh the value of precedence and establish grounds for authority in reviewing these sets of case law in relation to this case.

A. Solely Precedent Which Rules on Seizure by Physical Force can Dictate This Case's Ruling

It is imperative that this Court remain consistent with case law and only look at the precedents which directly involve the topic of seizure by physical force and nothing else. There is a surplus of case law which will allow the Court to agree with the rulings of the lower courts, such as the relevance of *Cameron v. City of Pontiac*[25], with many of them centering around *Tennessee v. Garner*[26]. Justice O'Connor's dissent[27] in *Tennessee v. Garner* leads the Court to subscribing to the authority that a police officer's use of deadly force to seize an "unarmed, nonviolent fleeing"[28] suspect is not a violation of the suspect's Fourth Amendment constitutional rights.

Referring again to *Tennessee v. Garner,* this Court's ruling found that it was unconstitutional to kill someone through use of deadly force if the decedent and suspect posed no threat to the general public and was apparently unarmed.[29] This ruling must be reflected upon to see that Respondents did

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[25] 623 F. Supp. 1238 (1986).

[26] 471 U.S. 1 (1985).

[27] *Id.* at 24 (O'Conner, J., dissenting).

[28] *Id.* at 25 (O'Conner, J., dissenting).

[29] *Id.* at 20

not intend to kill Petitioner, but instead needed to seize her for the safety of the general public as she presented a threat and it was unknown if she was armed. It is crucial to see that Petitioner suffered from no fatal injuries and was able to continue driving her vehicle.

B. *Hodari D.* Must Have no Bearing on This Case's Ruling Since Physical Force was Not Under Question and Common Law Does Not Apply

Petitioner has built her case around *California v. Hodari D.*[30], however it must be understood that this case law in no way presented the issue of deadly use of force. The situation and circumstances of what happened between this juvenile and a police officer are very different from what happened in this case, in which the officers had been unable to seize Petitioner, hence her fleeing the scene. In *Hodari D.*, the juvenile ran through an alley and officers followed in suspicion and gave chase. "Looking behind as he ran, he did not turn and see Pertoso until the officer was almost upon him, whereupon he tossed away what appeared to be a small rock. A moment later, Pertoso tackled Hodari, handcuffed him, and radioed for assistance. Hodari was found to be carrying $130 in cash and a pager; and the rock he had discarded was found to be crack cocaine."[31] The California state court held that Hodari was "seized" upon seeing law enforcement chasing him despite the fact that there

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[30] 499 US 621 (1991).

[31] *Id.* at 623

was no control of his movement by the officer at that point in the chase[32]. However, this Court did not agree. *Hodari D.* should have no bearing on this Court's ruling on this case considering that the only question presented to the Court was whether or not this juvenile, Hodari D., had been seized after seeing law enforcement and tossing the narcotics away upon seeing said law enforcement. In no way did the question before the court in *Hodari D.* relate to a component regarding use of physical force.

The Court must reject the notion presented by Petitioner that an unsuccessful use of force constitutes an arrest, or seizure in the context of the Fourth Amendment. In *Hodari D.*, the Court noted that physical force, with the hopes of controlling movement, constitutes a seizure.[33] However, this was never established as constitutional principle by the Court as the Court held, in its ruling for *Hodari D.*, that submission to law enforcement was required to constitute a seizure.[34]

With the doctrine of stare decisis, the Court must shift its jurisprudence in regards to newer cases. The Court must employ constitutional variability when deciding on cases which deal with outdated and archaic interpretations of terms. In this case, Petitioner's dependency on common law principles of the eighteenth and nineteenth centuries should have no bearing on this case and should not be seen in the general view of the question before the

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[32] *Id.*

[33] *Id.* at 626

[34] *Id.* at 621

Court today. *The Judiciary Act of 1789*[35] makes clear the limitations which must exist when reviewing and citing common law by emphasizing that "the right of a common law remedy" shall only be provided "where the common law is competent to give it."[36] A following section of this statute enacts "[t]hat the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply."[37] In *Hodari D.*, the Court noted that "neither usage nor common-law tradition makes an attempted seizure a seizure."[38] The Court emphasized that very few circumstances, when common law principle has affected the Fourth Amendment, have resulted in an adoption by constitutional jurisprudence by this Court. Common law, though an essential part of the Court's jurisprudence, must only be effective where applicable. In this case, Petitioner's attempt to discard decades of precedents which object to Petitioner's idea of a seizure, and therefore its correlation with a common law arrest, must not influence this Court's decision. This Court ruled on *Wyoming v. Houghton*[39] nearly a decade after *Hodari D.* to further describe the usage of common law principle in regards to the Fourth Amendment. Justice Scalia, who wrote the majority opinion in not

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[35] The Judiciary Act of 1789 (Chap. XX., 1 Stat. 73).

[36] *Id.* at § 9

[37] *Id.* at § 34

[38] 499 US 621, 626 n.2 (1991).

[39] 526 US 295 (1999).

only *Houghton* but both *Brower* and *Hodari D.* as well, citing from *Hodari D.*, made clear that "the common law when the [Fourth] Amendment was framed"[40] is to be considered and applied when a question faces the court in which the court must determine if there was a governmental Fourth Amendment violation. The usage of common law in regards to the Fourth Amendment by this Court is wholly contextualized in Justice Breyer's concurring opinion in *Houghton* when he notes that "history is meant to inform, but not automatically to determine, the answer to a Fourth Amendment question."[41] Though the question presented before the court in *Houghton* was in regards to a search, the Court's proscriptive analysis of common law principle in regards to the Fourth Amendment as a whole holds relevant to this case.

English common law of the eighteenth and nineteenth centuries considers an arrest to be any physical force in which a law enforcement should "lay hands on" an individual. In order to understand the context of the idea that physical force equates to a seizure, the Court should review the policing practices of this time period. In similar questions presented before it, the Court has held that the circumstances which surround an issue must be considered.[42] When looking at the circumstances of ancient English common law, *Stevenson v. State*[43] makes it clear that policing was structurally different

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[40] *Id.* at 299

[41] *Id.* at 307 (Breyer, J., concurring).

[42] 536 U.S. 194 (2002).

[43] 287 Md. 504 (Md. 1980).

during the eighteenth and nineteenth centuries compared to the present. It was often private individuals making citizen's arrests without the firearms or weapons which police forces and law enforcement personnel have readily available to them today. A time when community accountability and community policing was more dominant than crown-appointed authorities is in no way comparable to the policing practices of today. Therefore, the Court must not raise these ancient practices of policing to constitutional principle as it did not do in other precedents such as *Tennessee v. Garner*. According to the Court's ruling in *County of Sacramento v. Lewis*[44], common law principle is not within the scope of the Fourth Amendment and should therefore have no bearing on this case.

C. Petitioner Has Failed to Contest This Court's Case Law

As noted in *Michigan v. Bay Mills Indian Community*[45], the doctrine of stare decisis is "a foundation stone of the rule of law."[46] This Court is obligated to follow the principles set out by its Fourth Amendment cases where the question presented before the Court is applicable to this case. After reviewing the decades of precedents which support the rulings of the lower courts in this case, the Court will see, clearly, that *Hodari D.* is not sufficient to triumph the case law set out by the Court in those

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[44] 523 US 833 (1998).

[45] 572 US 782 (2014).

[46] *Id.* at 798

cases. Specifically, we ask the Court to consider the rulings in the cases of *Brendlin v. California*[47] and *Brower v. Inyo County*[48], along with previously mentioned *Terry v. Ohio*. In *Brendlin*, this Court ruled that, within the view of the Fourth Amendment, when a vehicle is stopped by law enforcement at a traffic stop, both the driver and passenger are seized. As laid out in *Brendlin*, there must be physical control of an individual's "freedom of movement" in order to constitute a seizure under the Fourth Amendment.[49] In other words, a citizen must have no liberty of movement in order to constitute a seizure, thus conflicting with Petitioner's ability to transport herself dozens of miles and have no proximity to any control or physical restraint from Respondents, therefore implicating a "seizure without actual submission."[50] Furthermore, an "intentional acquisition of physical control"[51], as laid out by this Court in *Brower*, never occurred on behalf of Respondents, therefore making it impossible for this case to constitute a seizure in accordance with this Court's past rulings in relation to physical force and seizures. There is a lack of contest to the *Brower* standard on the part of Petitioner. *Brower*, which holds much significance on the case at hand, has not been proven illogical by Petitioner, and neither has *Brendlin*, *Mendenhall*, or *Terry*. This failure to contest the most viable precedent of the case at hand

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[47] 551 US 249 (2007).

[48] 489 US 593 (1989).

[49] 551 US 249, 254 (2007).

[50] *Id.* at 254

[51] 489 U.S. 593, 596 (1989).

requires the Court to affirm the ruling of the Tenth Circuit. This Court has a history of strong reluctance to discard such applicable case law. As such, it is crucial that the dicta of *Hodari D.* does not overrule the aforementioned rulings.

IV. RESPONDENTS ARE PROTECTED BY THE DOCTRINE OF QUALIFIED IMMUNITY AS THE OFFICERS WERE REASONABLY FULFILLING THEIR DUTIES AND DUE TO THE LACK OF CLEAR ESTABLISHMENT THAT PETITIONER'S CONSTITUTIONAL RIGHTS WERE INFRINGED UPON

With the responsibility of being a police officer comes the risk that is implied. Qualified Immunity, as defined in the Supreme Court case *Harlow v. Fitzgerald*[52], is a doctrine granted as protection to government individuals if the official (1) "contends that he took all his actions in good faith,"[53] and (2) "the conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[54] Following this test, both Officer Madrid and Officer Williamson are entitled to the protections of qualified immunity. The officers did not arrive on scene expecting to draw their weapons at Petitioner, however, the turn of events caused Respondents to act in good faith to help protect all. Additionally, Petitioner acted aggressively in her car, giving the officers the

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[52] 457 U.S. 800 (1982).

[53] *Id.* at 804

[54] *Id.* at 818

impression that she planned to use her car as a weapon. Petitioner was also under the influence of methamphetamine which severely hindered her ability to act reasonably. 'Tweaking' is a common side effect of drug usage which results in periods of irritability, paranoia, and confusion. Therefore, the officers not only acted in good faith, but also acted in an objectively reasonable manner.

Additionally, *Kisela v. Hughes*[55], a case very similar to this, which involved a woman who acted erratically and threatened the safety of the officer on scene. It resulted in the officer firing his firearm and hitting the woman, which he was soon sued for. In the ruling of *Kisela*, the Court stated that "in the absence of a decision in that circuit or by the Supreme Court clearly defining the right the officer violated"[56]... "the officer is entitled to qualified immunity for his actions."[57] There is no precedent which explicitly states that the actions of Respondents, Officer Madrid and Officer Williamson, were in violation of the rights provided by the Fourth Amendment. In cases such as this, it is important to consider the safety of the officers who were simply trying to fulfill their duty of serving and protecting the people. The lack of specific precedents that correspond to the issue of the case, prove that Respondents are entitled to the protections of qualified immunity (*Mullenix v. Luna*[58]). The inclusion of mere generalizations and the lack of a

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[55] 584 US ____ (2018).

[56] *Id.*

[57] *Id.*

[58] 577 U. S. ____ (2015).

clear establishment of the infringement upon Petitioner's rights, highlights the importance of qualified immunity to shield officers from trivial accusations and frivolous lawsuits. Additionally, in *Pearson v. Callahan*[59], the Court overturned its prior decision from *Saucier v. Katz*[60], which required the courts to look at "(1) whether the facts alleged or shown 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."[61] The Court ruled that this task would be utilized in the lower courts, and in this case, the lower courts determined that there was no violation of Petitioner's Fourth Amendment rights considering she was not seized. Qualified immunity is a very specific and case-to-case theory which can only be removed from the picture if the officer was aware of their unconstitutional actions and they acted in an unreasonable manner, which is not what occurred on the morning of July 14, 2015. The officers reasonably fulfilled their duty by utilizing the force necessary to apprehend Petitioner through the use of their duty-issued firearms.

In her case against Respondents, Petitioner claims the officers used 'excessive force' to try and seize her, however, according to the Tenth Circuit decision from *Brooks v. Gaenzle*[62], "a suspect's continued flight after being shot by police negates a

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[59] 555 U.S. 223 (2009).

[60] 533 U.S. 194 (2001).

[61] 555 U.S. 223 (2009).

[62] 614 F.3d 1213 (10th Cir. 2010).

Fourth Amendment excessive-force claim."[63] The legal definition of excess force refers to "force in excess of what a police officer reasonably believes is necessary."[64] Both officers, Officer Madrid and Officer Williamson, acted quickly and responsibly in the face of danger. During the confrontation between Petitioner and Respondents, Officer Madrid was positioned near the front wheel of Petitioner's vehicle. After Petitioner placed her car into drive and began moving forward, Officer Madrid felt severely unsafe and believed as though Petitioner would try to use violence to escape the situation. According to *Graham v. Connor*[65], excessive force claims "must identify the specific constitutional right allegedly infringed by the challenged application of force and then judge the claim by reference to the specific constitutional standard which governs that right."[66] Respondents acted in a manner that was both reasonable and necessary in order to maintain the safety of both themselves and others. Additionally, there was no violation of a specific right protected by the Fourth Amendment, highlighting how the excessive force claims are insufficient and inconclusive. Even before the situation escalated to the withdrawal of firearms, Petitioner refused to comply with the officers commands to 'show them her hands' and instead responded with 'furtive and aggressive movements.' Petitioner was given the opportunity to comply with

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[63] *Id.* at 1219

[64] "Excessive Force". LII / Legal Information Institute, 2021, ww.law.cornell.edu

[65] 490 U.S. 386 (1989).

[66] *Id.* at 386

the directions of the officers, yet she refused to cooperate and instead, placed the lives of two officers in danger. According to the *President's Commission on Law Enforcement and Administration of Justice, Task Force Report*[67], an officer can utilize deadly force "if the officer believes there is a substantial risk that the person whose arrest is sought will cause death or serious bodily harm if his apprehension is delayed."[68] It also states that "officers should be allowed to use any necessary force, including deadly force, to protect themselves or other persons from death or serious injury."[69] Respondents were reasonable in their actions against Petitioner as she posed a serious and immediate threat to the officers and the public. Believing Petitioner may use her vehicle as a weapon, Respondents acted quickly believing Torres would present a significant threat if her arrest was delayed. Due to the fact that Respondents did not utilize excessive force or act unreasonably to obtain control over Petitioner, there is no support for the claim that Petitioner was seized under the definition of the Fourth Amendment.

CONCLUSION

Throughout the history of the United States, police officers and law enforcement personnel have been regarded as the protectors of American society.

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[67] President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 189 (1967).

[68] *Id.* at 202

[69] *Id.* at 202-203

John F. Kennedy, in *Proclamation 3537* of 1963, states, "from the beginning of this Nation, law enforcement officers have played an important role in safeguarding the rights and freedoms which are guaranteed by the Constitution and in protecting the lives and property of our citizens."[70]Americans have presented a feeling of safety and security in the face of law enforcement agencies. Petitioner's Fourth Amendment rights were not violated in the attempted seizure by Respondents due to Petitioner's maintained freedom of movement, the inability of Petitioner to produce a viable contest to the case law dictated by this Court, the precedent and history supporting this nation's definition of seizure, and the lack of concrete evidence to support excessive force claims. Petitioner was not "seized' by Respondents; therefore, there was no violation of her Fourth Amendment rights.

This court should affirm the decision of the Tenth Circuit Court of Appeals and rule in favor of Respondents, Officer Madrid and Officer Williamson.

Respectfully submitted,

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[70] John F. Kennedy Proclamation 3537 (1963).