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 UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

## BRIEF FOR PETITIONER


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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"?

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Constitutional Provisions**



**Statutes**



**Other Authorities**

## JURISDICTION

This case comes to the Court on writ of certiorari from the Tenth Circuit. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment, U.S. Const. amend. IV, 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.

## FACTS OF THE CASE

On July 15, 2014, Petitioner Roxanne Torres had parked her car at an apartment complex. JA 14. Four New Mexico state police officers, including Respondents Janice Madrid and Richard Williamson, arrived at the same complex to arrest a different woman. Pet. App. 2a, 10a-11a, 22a. Respondents approached and attempted to open the driver's side door of Ms. Torres' vehicle while she was seated inside. JA 18-20. Believing Respondents were armed carjackers, Ms. Torres drove forward to escape. JA 23. As the car began to move, Respondents opened fire on Ms. Torres, trying to stop her. JA 51-52 (Madrid dep.); JA 111-12 (Williamson dep.). Two of the bullets entered her back and

temporarily paralyzed Ms. Torres's left arm. JA 25, 30-31.

Ms. Torres continued driving. JA 25. She took a car from a parking lot nearby and drove to a hospital in Grants, New Mexico. JA 27-32. Given the extent of her injuries, she was airlifted to a hospital in Albuquerque. JA 27-33. The next day, officers apprehended Ms. Torres at the hospital. Pet. App. 4a, 12a.

Ms. Torres sued Respondents under 42 U.S.C. § 1983 for violating her Fourth Amendment right to be free from unreasonable seizures by shooting her in the back. JA 4-10. The district court granted summary judgment for Respondents on the basis that "Ms. Torres was never seized," and could not bring an excessive-force suit under the Fourth Amendment. Pet. App. 13a.

The Tenth Circuit affirmed the district court decision. Pet. App. 8a.

## SUMMARY OF ARGUMENT

This Court's past precedents and common law definition of seizure lead to the determination that an unsuccessful attempt to detain a suspect by use of physical force is a seizure within the meaning of the Fourth Amendment. An invasion of a person's privacy and security is a violation of the Fourth Amendment, a standard upheld by the Court since the time of the Founding. The Court should look to both common law and *Hodari*'s precedent to determine that an unsuccessful attempt to detain a person is still a seizure under the jurisprudence of the Fourth Amendment. *Hodari* recognizes that "the mere grasping or application

of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient." *California v. Hodari D.* 499 U.S. 621, 624 (1991). While objective modern tests like *Mendenhall* have arisen through the advancement of our legal jurisprudence, it is pivotal to recognize that these tests have no bearing on this case as it is a seizure through means of "physical force" not a "show of authority". While balancing both private and public interests, ruling for Petitioner would not forsake government administrability as it would only cause clarification for whether a Fourth Amendment seizure would occur, whereas a ruling for Respondents would minimize the liberties of the people in exchange for government interest. Ruling for Petitioner follows precedent while also recognizing the Fourth Amendment's duty to protect and preserve the liberties of personal liberty and security.

## ARGUMENT

### I. This Court's precedents support Petitioner.

Using the Court's past precedents to guide its analysis, this Court will find that the unsuccessful attempt to detain a suspect by means of physical force, in such a way that restrains the suspect's liberty, is a seizure within the meaning of the Fourth Amendment.

#### A. The Court has recognized in the past that an invasion of a person's body and security is a violation of the Fourth Amendment.

Past precedent has made it clear what constitutes an invasion of privacy. The Court has recognized that

an action as simple as a frisk can be a "serious intrusion upon the sanctity of the person." *Terry v. Ohio*, 392 U.S. 1, 17 (1968). In this case before the Court today, Petitioner Roxanne Torres was shot by a bullet directly in the back—a clear and robust invasion of a person's body. When comparing a frisk to a bullet wound in the back, the latter has a greater and more explicit invasion of privacy than the former. Compiling precedent onto precedent, "[t]he intrusiveness of a seizure by means of deadly force is unmatched." *Tennessee v. Garner*, 471 U.S. 1, 9 (1985). A bullet wound to the back is an irrefutable means of deadly force.

In creating these past precedents, the Court prioritizes one's right and liberty to their own person rather than the effectiveness of the respective invasion of privacy. While Respondents can debate about how and why the effectiveness of the invasion of privacy is relevant, past precedent proves, regardless, that the simple invasion of privacy itself constitutes a Fourth Amendment seizure. Whether the invasion of privacy successfully led to the arrest and detention of the suspect at hand is irrelevant because it neglects the essential matter of the Fourth Amendment to preserve and protect the right of the people "to be secure in their person… against unreasonable searches and seizures". U.S. Const. amend. IV.

Search cases also prove this point by recognizing that any intrusion regardless of magnitude is included by the Fourth Amendment. Whether it be a cheek swab, a urine sample, or a breathalyzer test, the Fourth Amendment still applies even in these limited circumstances. *Maryland v. King*, 569 U.S. 435, 446 (2013). The suggestion that a bullet wound does not

apply to the Fourth Amendment is absurd and nonsensical.

Respondents made an evident and unambiguous attempt to stop Ms. Roxanne Torres through physical force and means intentionally applied. This is extremely apparent when viewing the two bullet wounds in Ms. Torres' back. Both police officers intended to stop Ms. Torres' movement. Pet. App. 3a-4a; JA 111-112 (Williamson dep.); JA 52-53 (Madrid dep.). From the Framer's perspective at the time of Founding, Respondents actuated a "physical force" seizure of Ms. Torres through means intentionally applied.

### B. The past precedent laid out by the Court confirms that a seizure occurs regardless of it leading to the successful detention of the suspect at-hand.

The Court ruled previously that a Fourth Amendment seizure … [occurs] *only when* there is a governmental termination of freedom of movement *through means intentionally applied*." *Brower v. County of Inyo*, 489 U.S. 593, 596-597 (1989) (emphasis added). In *Brower*, the suspect, Brower, crashed into a roadblock placed by the police. The query posed was whether it was a seizure or not. The ruling in *Brower* placed emphasis on the purposeful cessation of movement when considering whether a Fourth Amendment seizure takes place. It did not consider--and it shouldn't have either--whether the assailant was seized if the roadblock was unsuccessful. The Court's language should be analyzed thoroughly—*Brower* focused on the means intentionally applied in effectuating a seizure, not the usefulness of the termination of

movement. It was to juxtapose a situation where police officers accidentally terminated movement in which case a Fourth Amendment seizure would not occur because no means were intentionally applied. *Brower*'s focus throughout its ruling was on the objective *intention* of police officers executing a termination of movement—not whether the termination was successful. This analysis of the language used in *Brower*'s ruling nullifies Respondent's arguments that *Brower* is evidence of physical force being successful to create a Fourth Amendment seizure.

Aforementioned analysis also applies to *Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400 (2007). In *Brendlin*, a car was at a traffic stop, and the passenger was seized in addition to the driver of the vehicle. The submission to the show of authority in *Brendlin* makes it non-applicable to this case's Fourth Amendment seizure. Physical force was not brought up or reviewed in *Brendlin* because it is a completely different form of seizure than the one that takes place in the case before the Court here. In *Brendlin*, the seizure is a result of a show of authority, whereas in Torres, the seizure is a result of physical force through means intentionally applied. *Brendlin* points out that "[a] person is seized by the police ... when the officer, 'by means of physical force or show of authority,' terminates or restrains his freedom of movement 'through means intentionally applied.'" 551 U.S., at 254 (first quoting *Florida v. Bostick*, 501 U.S. 429, 434 (1991); then quoting *Brower*, 489 U.S., at 597); see *Brooks v. Gaenzle*, 614 F.3d 1213, 1221 (10th Cir. 2010) (similarly relying on this language). The emphasis is on "*means intentionally applied*." *Brower*, 489 U.S., at 597. In the case before the

Court, the issue unresolved is whether the termination of movement is indispensable, a question that is not answered in *Brendlin*. Therefore, respondents cannot use this case to create proffer for answering whether termination of movement is needed or not.

Furthermore, Respondents may try to use *Terry* in order to supplant the previous cases where termination of movement has not been a focal point; however, even here, precedent favors Petitioner time and time again. Similar to *Brendlin* and *Brower*, the suspect Terry did submit to police authority and the question of whether termination of movement was necessary or not was not posed. Respondents may use the language in *Terry* that "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." 392 U.S., at 19, n.16. Yet, this only further proves Petitioner's point that unsuccessful physical force still invades her privacy and right to "to be secure in their person . . . against unreasonable searches and seizures." U.S. Const. amend. IV. *Terry* and cases like it all still support Petitioner's claims of Fourth Amendment seizure being actuated through physical force via means intentionally applied. The physical touching of the police officer to the person through means intentionally applied in order to restrict movement constitutes a seizure regardless of that force's success in restraining movement or not.

Modern tests do not hurt Petitioner's argument. Tests like the one in *United States v. Mendenhall*, 446 U.S. 544 (1980) do not apply to this case as they involved "show of authority" seizures rather than "physical force" seizures. It is crucial to understand that the

sheer number of past precedent relevant in this case all support Petitioner. While Respondents may argue otherwise, it is undeniable that "A person is seized and thus entitled to challenge the government's action when officers, *by physical force or a show of authority, terminate or restrain* the person's freedom of movement *through means intentionally applied*." *Brendlin*, 127 S.Ct., 2405 (emphasis added) (internal quotations and citations omitted). The point at which Respondents' bullets came in contact with Ms. Torres' back was the momentary seizure triggered by the Fourth Amendment with respect to past precedent.

### C. The Court should follow *Hodari*'s precedent to rule that an unsuccessful attempt to detain a suspect by physical force is a seizure.

In *California v. Hodari D.*, 499 U.S. 621, the Court outlined the role of submission as a prerequisite to a Fourth Amendment seizure "with respect to a show of authority as with respect to application of physical force." *Id.,* at 626. Although a "show of authority" seizure requires submission, the Court reasoned that "[t]o constitute an arrest, however—the quintessential 'seizure of the person' under our Fourth Amendment jurisprudence—the mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient." *Id.,* at 624. The Court need only apply the same reasoning as *Hodari* to the present case to rule that an unsuccessful attempt to detain a suspect by physical force is a seizure.

### 1. *Hodari* correctly applies the common-law of arrest to "seizures of the person".

The Court in *Hodari* held that "an arrest requires either physical force . . . or, where that is absent, submission to the assertion of authority." 499 U.S.*,* at 626. In the case, Hodari D. discarded a rock of crack cocaine while being chased by a police officer. The Court denied his motion to suppress the evidence as the result of an "unreasonable" seizure on the grounds that "since Hodari did not comply with that injunction [the showing of police lights and calls to stop] he was not seized until he was tackled" a moment later by the officer. *Id.,* at 629. Integral to the analysis was the distinction between a seizure involving physical force versus a show of authority, a distinction first articulated in *Terry*: "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." 392 U.S., 19, n. 16. Since *Terry*, the Court has maintained this line of analysis for both seizures by physical force (see, *supra*, analysis of *Brower*) and shows of authority (see, *supra,* analysis of *Mendenhall*).

In *Hodari*, the Court solidified this distinction by supporting it with the common-law of arrest. When analyzing Fourth Amendment seizures, the Court considers the common-law to ensure that it does "not construe words used in the Constitution so as to give them a meaning more narrow than one which they had in the common parlance of the times in which the Constitution was written." *United States v. Se. Underwriters Ass'n*, 322 U.S. 533, 539 (1944). In *Atwater v. City of*

*Lago Vista*, 532 U.S. 318 (2001), the Court followed the same line of reasoning put forth in *Hodari* by analyzing the common-law definition of an unreasonable arrest, stating that "[i]n reading the Amendment, [the Court is] guided by the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing." 532 U.S., at 326 (internal quotations and citation omitted). The line of reasoning used in *Hodari* is, therefore, a valid one.

In its analysis of the role of submission in a seizure "with respect to a show of authority as with respect to application of physical force," the Court in *Hodari* defined, correctly, a "seizure of the person" as understood at the time of the Founding. 499 U.S., at 626. When the Founders chose the word "seizures", the implicit assumption was that "an arrest [was] the quintessential 'seizure of the person'." *Id.*, at 624. Definitions from the Founding era support this interpretation. Samuel Johnson defined an "arrest" as "any . . . seizure of the person." 1 Samuel Johnson, *A Dictionary of the English Language* (6th ed. 1785). Similarly, Noah Webster defines the verb "arrest" as "[t]o take, seize, or apprehend by virtue of a warrant from authority" (spelling modernized in all). 1 Noah Webster, *An American Dictionary of the English Language* (1828). Webster's definition reveals that the ideas of seizure, arrest, and warrant were inextricably linked at the time of the Founding. Article 14 of the Massachusetts Declaration of Rights (1780), for instance, protects citizens against "all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions," but later refers to the act of executing a

search or seizure as "to make search in suspected places, or to arrest one or more suspected persons, or to seize their property." Mass Decl. of Rights of 1780, art. XIV. While the act of searching corresponds to the act of "mak[ing] search in suspected places," the act of seizing corresponds to both the act of "arrest[ing] . . . persons" and "seiz[ing] . . . property," thus equating "seizures of . . . person" to an arrest. *Ibid*. Subsequent case law has reaffirmed this interpretation of a seizure. The Court posited in *Hodari* that "[A]n officer affects an arrest of a person whom he has authority to arrest, *by laying his hand on him for the purpose of arresting him*, though he may not succeed in stopping and holding him." 499 U.S., at 624-625 (quoting *Whitehead v. Keyes*, 85 Mass., at 501) (emphasis added). (Cf. Johnson's *A Dictionary of the English Language* (defining the verb "arrest"): "to *seize*; to *lay hands on*; to detain by power" (emphasis added)). An analysis of the common-law led the Court to correctly equate constitutional "seizures of the person" with an arrest and to consider the common-law of arrest when analyzing the presence or absence of a seizure.

Looking to the common-law, the Court determined that the distinction between a seizure by show of authority and a seizure by physical force relies on the presence, or absence, of "a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful." 499 U.S., at 626. The Court references the analysis of the English case *Genner v. Sparkes*, 1 Salk. 79 (1704), an example of a case at the time of the Founding that demonstrates the

common-law definition of arrest at the time.[1] In this case, an English court "ruled that no arrest had occurred because the bailiff never touched the individual," notwithstanding the bailiff's attempted arrest. CACtr. Br. 15-16. The application of physical force defined the line between the presence or absence of an arrest. Such cases illustrate that in the common-law of arrest at the time of the Founding, and, therefore, the Framers' view of "seizure," "[t]o constitute an arrest . . . the mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient." 499 U.S., at 624. Since the officer never touched Hodari, that basic requirement for a common-law arrest by physical force was not met. However, in the case before the Court, the discharge of physical force by Respondents led to a traumatic and crippling injury to Petitioner.

**2. Following the Court's reasoning in *Hodari* leads to the conclusion that Petitioner was seized when the**

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[1] In *Genner*, "a bailiff found a person he was attempting to arrest in that person's yard. The bailiff declared that he was carrying out an arrest, but the subject held him off by brandishing a fork and retreated into his home. The court ruled that no arrest had occurred because the bailiff never touched the individual. The court explained, however, that if 'the bailiff had touched him that had been an arrest,' which would have then entitled the bailiff to pursue the individual into his home." CACtr Br. 15-16 (internal citation omitted). The Court references this case in its decision in *Hodari*: "as where the bailiff had tried to arrest one who fought him off by a fork, the court said, 'If the bailiff had touched him, that had been an arrest'" 499 U. S. at 625 (quoting A. Cornelius, *Search and Seizure* 163-164 (2d ed. 1930)) (internal citation omitted).

**bullets fired by Respondents hit her body.**

Unlike *Hodari*, Respondents applied physical force to Petitioner with the intent to restrain her freedom of movement. Of the bullets fired by Respondents, two bullets hit Petitioner in the back. JA 30-31. These bullets were intended "to stop the driver" and "to stop the action of [her car]." JA 52, 99. Although the lethal force did not stop Petitioner's car, it left Petitioner with "no control over [her] arm after being shot" since it was "paralyzed." JA 25. Thus, the bullets were an "application of physical force to restrain movement" not only because they were intended to terminate Petitioner's ability to drive her car, but also because they resulted in a wound that impaired Petitioner's ability to move her arm. 499 U.S., at 626. Since "[a] seizure is 'a single act, not a continuous fact,'" a seizure by physical force occurred at the moment the bullets pierced Petitioner's body. *Id.,* at 625 (quoting *Thompson v. Whitman*, 18 Wall. 457, 471 (1874)). The Court should, therefore, vacate the decision below and remand.

## II. Respondents' arguments fail.

Respondents' misguided arguments lead to the incorrect conclusion that Petitioner was not seized by police officers. A bullet wound that inhibits movement is unequivocally a seizure, and any arguments by Respondents' to the contrary fail to apply precedent and Founding principles.

### A. Any arguments concerning the "reasonableness" of Respondents' actions are irrelevant.

The question of reasonableness has not yet been litigated with reference to the case now before the Court. The district court ruled that "[b]ecause the officers did not stop [Petitioner] by shooting at her, there was no seizure," and the Tenth Circuit Court of Appeals affirmed the district court's ruling that no seizure occurred. *Torres v. Madrid*, 1:16-cv-01163-LF-KK (D. N.M. Aug. 20, 2018); *Torres v. Madrid*, 18-2134 (10th Cir. May 2, 2019). Both decisions cite the requirement in *Brooks v. Gaenzle*, 614 F.3d 1213 (10th Cir. 2010) that Torres "must show both that a 'seizure' occurred and that the seizure was 'unreasonable.'" 614 F.3d, at 1219. This Court also made clear in *Graham v. Connor*, 490 U.S. 386 (1989) "that all claims that law enforcement officers have used excessive force — deadly or not — in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." 490 U.S., at 395. The underlying assumption of this holding in *Graham* is that the identification of a "seizure of a free citizen" comes before any analysis of the seizure "under the Fourth Amendment and its 'reasonableness' standard." *Id.*, at 395. Thus, the question of whether the seizure was "unreasonable" was addressed in neither the district nor Tenth Circuit decisions and should be addressed on remand in district court. Any arguments Respondents make concerning reasonableness are, therefore, irrelevant to the question at hand: whether or not an unsuccessful attempt to detain a suspect by physical force is a seizure under the Fourth Amendment.

### B. Respondents fail to balance public and private interests.

In accordance with the Court's past jurisprudence, its ruling must involve a "careful balancing of governmental and private interests." *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985). Thus, it must define a seizure in such a way that balances the need to protect personal liberty with the potential to "inhibit public officials in the discharge of their duties." *Atwater*, 532 U.S. 318, 351, n. 22. (The latter is the principle of administrability.) While a ruling for Petitioner would establish a precedent that respects individual liberty and provides for administrability, Respondents look only to governmental interests and threaten protections of liberty.

### 1. A ruling for Petitioner would not limit administrability of reasonable seizures.

The administrability of a ruling for Petitioner would be simple: a gunshot that hinders the freedom of movement of a suspect is a seizure. By relying on objective standards dictated in *Brower* and *Hodari*—intention, means, and result—instead of subjective suspect response, which may vary widely given the situation, an officer can "determine in advance whether the conduct contemplated will implicate the Fourth Amendment." *Michigan v. Chesternut*, 486 U.S. 567, 574 (1988). Because it will not affect the judgment of "reasonableness," a ruling for Petitioner will not lead to "second-guessing of difficult police decisions" any more than this Court's past rulings. *Tennessee v. Garner*, 471 U.S., at 31 (O'CONNOR, J., dissenting). Instead, such a ruling would guarantee "constitutional scrutiny [for] the initial stages of the contact between the policeman and the citizen," and would not affect

the administrability of reasonable seizures by physical force. *Terry*, 392 U.S., 19.

**2. In contrast, a ruling for Respondents would go too far in sacrificing personal liberty for government interests.**

Respondents may argue that the Court should value an interest in encouraging cooperation with government officers by penalizing evasion (see *Hodari*, where fleeing from police resulted in a failed motion to exclude evidence since no seizure by show of authority occurred). Indeed, *Brooks v. Gaenzle*, a case which the district court and Tenth Circuit rely on, furthers this principle of penalizing flight. In *Brooks* the Tenth Circuit found no seizure occurred when a fleeing suspect, Brooks, was shot in the buttocks by police officers, but was still able to evade arrest. According to the circuit court's ruling, the suspect "still had enough spring in his step to evade police in the mall parking lot before being chased and apprehended at a nearby home" three days after the initial attempt to detain him. 614 F.3d, at 1217 (internal quotations and citation omitted). (See, also, *Farrell v. Montoya*, 878 F.3d 933 (10th Cir. 2017), where the circuit court, applying *Brooks*, found no seizure occurred when Farrell and her family unlawfully drove away during a traffic stop, prompting an officer to shoot at the car, without hitting any persons inside the car, in an unsuccessful attempt to stop it). The suspect, by fleeing a show of authority, could not have been seized. These decisions ensure administrability by ruling that "compliance with police *orders* to stop should therefore be encouraged." *Hodari*, 499 U.S., 627 (emphasis added).

However, the district court, Tenth Circuit, and Respondents incorrectly assume *Brooks* controls in this case. Unlike the preceding cases, the "orders to stop" were accompanied by bullets which hit Petitioner, wounded her, prevented her from moving her arm, and ultimately forced her to stop at a hospital. *Id.*; JA 25, 31-32. The seizure occurred when the bullet pierced her back, and her inability to move her arm and her need to seek medical attention reveal that her movement was hindered.

Ruling for Respondents to remove constitutional scrutiny from physical force seizures during flight would go too far in sacrificing constitutional protections for administrability. The narrow question in this case is one of bullet wounds, not generalized seizures. Allowing the constitutional scrutiny of potentially lethal force to hinge on the actions of the suspect removes the accountability that officers must face for "unwarranted intrusion by the State" through bullets that could be deadly. *Schmerber v. California*, 384 U.S. 757, 767 (1966). Not every physical contact between a suspect and officer is a seizure, but a governmental application of physical force as substantial as a bullet wound must constitute a seizure subject to constitutional scrutiny and accountability.

### C. Ruling for Respondents violates the role of the Fourth Amendment in preserving the bodily integrity and personal liberty of the individual.

The Fourth Amendment, like the rest of the Bill of Rights, protects the individual citizen against an overreaching government. In the context of this

amendment, the goal is to preserve the bodily integrity and personal liberty of the individual. Prior to the American Revolution, the British government violated personal liberty through writs of assistance. These general warrants were, as James Otis disparages in his "Arguments Against Writs of Assistance," "a power that places the liberty of every man in the hands of every petty officer." James Otis, Arguments Against Writs of Assistance (1761).[2] The Framers created the Fourth Amendment "to protect personal privacy and dignity against unwarranted intrusion by the State." *Schmerber*, 384 U.S. at 767. Ruling for Respondents undermines this protection.

It would be a mistake "to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen." *Terry*, 392 U.S., 19. The Framers aimed to protect the People from government officers, and this protection cannot only activate once the suspect is within the custody of the officer. Nor should that protection be removed if a suspect flees. Until proven guilty by due process, every citizen has a right to be free of any unreasonable "invasion of bodily integrity [that] implicates an individual's most personal and deep-rooted expectations of privacy." *Missouri v. McNeely*, 133 S.Ct. 1552, 1558 (2013) (internal quotations and citations omitted). Given the prevalence of firearms as tools for police officers, the initial confrontation between a suspect and officer *must* be subject to judicial scrutiny, as the bullet wound, by itself, can destroy the bodily integrity of any citizen.

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[2] http://www.nhinet.org/ccs/docs/writs.htm

The danger of ruling for Respondents is that such a ruling would up-end the purpose of the Fourth Amendment. Instead of scrutinizing the actions of the government officer, the Fourth Amendment would evaluate the actions of the suspect: if the suspect submits, then a seizure has occurred, but if the suspect flees, then no seizure has occurred. Under a ruling for Respondents, "[t]he timing of the seizure is governed by the citizen's reaction, rather than by the officer's conduct." *Hodari*, 499 U.S., at 643 (STEVENS, J., dissenting). With a seizure by show of authority, this logic suffices, as the suspect cannot claim physical harm. But in the case before the Court, following this reasoning will allow intrusions of personal liberty and bodily integrity without activating the Fourth Amendment. The Court must rule for Petitioner to uphold these Founding principles of the Fourth Amendment and reinforce the protections of personal liberty.

## CONCLUSION

This Court should reverse the judgment of the Court of Appeals, and the case should be remanded for further proceedings.

Respectfully submitted,

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