

No. 19-292

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**In the Supreme Court of the  
United States**

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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 PETITIONER/RESPONDENTS**

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## **QUESTIONS 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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## **SUMMARY OF ARGUMENT**

An unsuccessful attempt to detain a suspect does not constitute to be a seizure, therefore is not a violation of the fourth amendment right. A seizure is a state in which the suspect is not able to leave by their will and must address and be addressed by the police. In Torres' case, Officer Madrid and Officer Williamson observed Torres' aggressive and suspicious movements, resulting in the conclusion that Torres may be a potential threat and suspect. Officer Madrid's position in the anterior of the car put her in a place of danger as Torres accelerated, thus resulting in the decision to shoot with the intention to protect Officer Madrid's life and to stop Torres from driving, as they also had the suspicion that Torres may be a suspect. Torres was not held by Officer Madrid nor Officer Williamson, therefore this is not constituted as a seizure and would not be considered a fourth amendment violation. Police officers Madrid and Williamson's actions when encountering Torres does not constitute a seizure, as Torres did not have her freedom of movement restrained by Madrid and Williamson. A physical force must be successful in detaining a suspect to be able to constitute a "seizure" within the meaning of the 4th amendment.

## ARGUMENT

### I. Part I

The Declaration of Rights, established in 1776, to declare the separation from British rule states the rights of those in our country. The fourth right states, “That (general) warrants, whereby any officer or messenger may be commanded to search suspected places (without evidence of a fact committed,) or to seize any person or persons (not named, or whose offence is) not particularly described (and supported by evidence,) are grievous and oppressive, and ought not to be granted” (amend. IV), indicating that the unreasoned seizure of any person is not permitted. However, the definition of seizure within the fourth amendment indicates that the person seized by authorities cannot leave under their own will nor cannot ignore the officer’s request.

This was evidently not the situation Torres was in. Torres was able to start the car and drive, leaving the premises of the parking lot, and was not held under the control of Officer Williamson or Officer Madrid, making this unable to be constituted as a seizure. Though Officer Williamson and Madrid did fire, this was done through self protection, as Officer Madrid was in a position in which Torres was able to injure her, resulting in the initiative to fire the shots, as well as the reasoning that Torres was conducting “furtive” and “aggressive” movements. It is clear that

the shots did injure Torres, however she continued to drive the vehicle, once again indicating that she was able to leave by her free will. Additionally, she refused the request made by the officers at the car window, thus exemplifying that she was not seized, as she did not submit to the Officers' authority.

#### **A. Subpart A**

Furthering the definition of the act of seizure, the Supreme Court precedent of *Roxanna Torres v. Janice Madrid, et al.*, states that “the term ‘seize’ has always meant to ‘take possession’ - and thereby exercise physical control” (*Torres v. Madrid, et al.*). Torres is extending the definition of a seizure, into the bullet wounds, however this cannot be determined as a physical force from officers Madrid and Williamson. In *Tennessee v. Garner*, 471 U. S. 1 (1985), it was deemed that, “Whenever an officer restrains the freedom of a person to walk away, he has seized that person”. Evidently, this is not applicable to Torres arguing that she was seized, as she had full capability to operate the vehicle and exit the parking lot, making her ability to “walk away”, unrestrained. In Garner’s case, argued on October 30, 1985, his father brought to the court that the actions of Officers Elton Hymon and Leslie Wright violated Garner’s right of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment. Garner, shot as he attempted eluding capture, in his case had resulted in the reasoning that “the killing of a fleeing suspect is a ‘seizure’ under the Fourth Amendment” (*Tennessee v. Garner*, 471 U. S. 1 (1985), ). In contrast to this Torres, though similar as stated

before in being shot, clearly was able to move. In Garner's case, he was restricted, as he was then transported to a hospital, unable to elude capture. Torres, eluded capture as she drove away from the location of Madrid and Williamson, once again enforcing her case cannot constitute a seizure. Tennessee v. Garner also determined that "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force", applicable to Torres' case, in which Williamson shot Torres as Madrid was determined to be in a position in which Torres was able to act as a threat of physical harm. Additionally, Torres was seen making aggressive hand gestures, furthering the suspicions that Torres could have been acting as a threat, constituting the use of a gun in the use to protect Madrid.

## **II. Part II**

According to article the sixth, The Bill of Rights as Proposed, 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" (United States Bill of Rights as Proposed). This source implies that people should only be searched if there is actual proof by a warrant that justifies the specific inspection.

Officer Madrid and Williamson had an arrest warrant for a woman named Kayenta Jackson. Torres was in her Toyota and was dropping off a friend in the same apartment complex as Jackson. The Officers parked their patrol car near Torres's vehicle and approached Torres, simply because she was in the realm of the same living area as Jackson, which made her a potential suspect. Instead of listening to the officers' orders, she refused to open the doors of the car and drove away from the officers. As a result of self-defense and Torres being a potential suspect, the officers shot Torres as an attempt to stop her from driving over one officer and to unknowingly stop someone that could have been Jackson. Therefore, this situation would not be defined as an "unreasonable search[es] or seizure[s]" as the officers were unsure of the identity of Torres and Torres was not under the control of the police.

#### **A. Subpart A**

In the Supreme court precedent, *Brower v. County of Inyo* 498 U.S. 593 (1989), a similar situation to that of *Torres v. Madrid* is shown. On October 23, 1984, Brower crashed into a police roadblock, and passed away, when he was driving a stolen car over the speed limit, attempting to escape the police. This was argued as a violation of the Fourth Amendment, and the petitioners alleged that "brutal, excessive, unreasonable and unnecessary physical force" was used. The roadblock was "effectively concealed" behind a curve with no light at nighttime, an 18-wheel tractor-trailer was used to block Brower's escape, and headlights were used to blind Brower of the tractor-trailer. However, it was

concluded that this event was not considered a “seizure”, and that the roadblock was not “unreasonable or unnecessary” in this situation.

The definition of a seizure is referred to, again, in this case, defined as “[w]henver an officer restrains the freedom of a person to walk away”. Therefore, in this case, it was concluded that the Fourth Amendment was not violated as Brower was beyond the control of the police’s authority, and the action of the roadblock was not considered a seizure. A seizure “requires an intentional acquisition of control”. The term “seizure” cannot be applied to a situation that is unintended and unpredictable. These similar situations of the confusion of the term “seizure” are shown time and time again in cases such as *United States v. Leon*, 468 U.S. (1984), *Anderson v. Creighton*, 483 U.S. (1987), and *Harlow v. Fitzgerald*, 457 U.S. (1982). Furthermore, all of these precedents regarding an officer attempting to restrain a suspect with a violent act, results in the action not being constituted as a seizure, and thus not being a violation of the Fourth Amendment. This can be directly compared to *Torres v. Madrid*, as Torres was not under the control of the officer, and was not restrained. It is clear that the action of Officer Madrid and Williamson correlates to the previous cases, which would justify that their actions would not be considered a seizure, and accordingly, not a violation of the Fourth Amendment.

## CONCLUSION

Evidently, the case of *Torres v. Madrid, et al.*, the respondents urge the court to form their ruling on the basis of the definition of seizure. Seizure under the Fourth Amendment requires the restraint and physical force applied to the person detained, and does not allow them to leave by free will. By this, Torres' Fourth Amendment rights were not violated by Officer Madrid nor by Officer Torres, evident in Torres able to continue to operate the vehicle and elude escape. Additionally, the shots fired at Torres should be deemed constitutional as seen in *Tennessee v. Garner*, as Torres had previously made hand gestures that indicated that she can be a threat to the safety of the officers, as well as Madrid was located in a spot where Torres could have caused physical harm, thus justifying the use of a gun in Williamson's circumstance. Additionally, Torres argues that the bullet wounds, with no identified exit wounds, would extend to constitute a seizure, however this cannot indicate any restriction or physical restraint by the officers, as she continued to operate the vehicle. We urge the Supreme Court to rule their judgement on the basis of the plain definition of a seizure by the Fourth Amendment, and deem that the actions of Officers Madrid and Williamson, not a violation of the Fourth Amendment, as it was not a physical restraint of petitioner Torres and therefore cannot constitute to be a seizure. Physical force must be used and successful in detaining a suspect to constitute a seizure under the Fourth Amendment, and as this did not happen in *Torres v. Madrid, et al.*, this cannot be considered a violation of the Fourth Amendment.

Respectfully submitted,

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