

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*.

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

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**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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"Torres v. Madrid." Oyez. Accessed February 22, 2021.  
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## SUMMARY OF ARGUMENT

In *Torres V Madrid*, officers displayed an unreasonable seizure which violated the defendant's Fourth Amendment rights and used excessive force given that Torres was not armed. In 2014, Roxanne Torres entered her vehicle in an attempt to flee two police officers, New Mexico State Police Officers Richard Williamson and Janice Madrid. As Torres attempted to flee, the two officers fired two shots which struck Torres in the back but did not prevent her from driving away from the incident. Clearly, gunshots striking Ms. Torres in the back with the intention of stopping her indicated a seizure. The language of the Fourth Amendment is ambiguous but based on precedent of *Hodari D.* even if a detainment is unsuccessful it should be considered a "seizure" and therefore Ms. Torres should be protected under the Fourth Amendment. The necessity of the "seizure" to be successful to be a seizure is not part of the Fourth Amendment and the spirit of the law does not insist on a successful restraint. The common law of arrest leaves no doubt that when Torres was shot it was considered a restraint and therefore would be considered a "seizure" based on the Fourth Amendment. When the Fourth Amendment was constructed, "seizure" meant physically constraining the individual without any language indicating whether the constraint was successful or not. Ms. Torres deserves full protection under the Fourth Amendment since she was "seized" during the incident of 2014 by being unsuccessfully stopped by two gunshots that lodged into her back.

## ARGUMENT

I. To fully understand the case of *Torres v Madrid*, Common Law must be applied since the Fourth Amendment does not clearly define what connotes a “seizure.” Based on precedent in *Hodari D.*, Torres was restrained, even if unsuccessfully so, and therefore should be provided protection under the Fourth Amendment. The Fourth Amendment protects the right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, which 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.<sup>1</sup>

A. The origin of the Fourth Amendment came from the colonists’ resistance to the British “Writs of Assistance” which basically allowed the British to search colonists’ houses, warehouses and personhood without any cause.<sup>2</sup> To protect against this, the Fourth Amendment became a part of the Bill of Rights. This amendment serves to protect our people, and it

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<sup>1</sup> U.S. Const. amend. IV. Accessed February 22, 2021.

<sup>2</sup> Encyclopedia Editors, ed., “Writs of Assistance,” *Britannica*, last modified February 28, 2020, <https://www.britannica.com/topic/writ-of-assistance>.

should not be dismissed lightly and this is an essential argument in the case of *Torres v Madrid*. Torres deserves to be protected in the Bill of Rights. How is it that holding one physically is a seizure, but shooting someone is not? Torres was restrained in the incident and therefore her rights should be protected under the Fourth Amendment.

II. Anything that impedes one's motion should be protected under the Fourth Amendment whether it is by "touch" or a "bullet." An important ruling and precedent is *United States v. Mendenhall* which ruled that: "[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."<sup>3</sup> And clearly, in the Torres case, any reasonable person would have to conclude that Ms. Torres was not free to leave. Another case *Brendlin v. California* ruled that seizure may occur by "physical force or show of authority."<sup>4</sup> Clearly, in the Torres case, the officers showed

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<sup>3</sup> *United States v. Mendenhall*, 446 U.S. 544 (1980)

<sup>4</sup> "*Brendlin v. California*." Oyez. Accessed February 22, 2021. <https://www.oyez.org/cases/2006/06-8120>.



authority by their actions consistent with a “seizure” and hence Ms. Torres should have been protected under the Fourth Amendment.

A. In another supreme court case, *Graham v. Connor*, the officers acknowledge that “a Fourth Amendment seizure occurs whenever government officials have in some way restrained the liberty of a citizen. In the Torres case, it is difficult to say that Torres’ liberty was not restrained.”<sup>5</sup>

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<sup>5</sup> *GRAHAM V. CONNOR*, 490 U.S. 386

## CONCLUSION

In *Torres v Madrid*, Ms. Torres' rights were violated as she was seized and not given protection under the Fourth Amendment. The entire case hinges on the definition of "seizure" in the Fourth Amendment. The court argues that since the defendant was unsuccessfully detained by the use of physical force then it is not considered "seizure" according to the Fourth Amendment. Given Common Law and precedent in *Hodari D*, this interpretation of the Constitution is flawed, and a seizure did take place when Ms. Torres was restrained by two gunshots into her back. The success of the restraint is not relevant because the intent of the gunshots was to restrain Ms. Torres. A person's protection under the Fourth Amendment is important, and restricting this right without good cause is against the Constitution of The United States. Precedent that "seizure" be interpreted as a physical restraint regardless of success, or a restraint of one's liberty is evidence that Ms. Torres should be afforded this protection.

Respectfully submitted,

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