No. 19-929

In the

Supreme Court of the United States

Roxanne Torres

Petitioners,

V.

Janice Madrid, Richard Williamson, et al.

Respondents.

Petitioner's Brief

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Link to Oral Argument

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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BACKGROUND

Early on the Tuesday morning of July 15th, 2014, Roxanne Torres sat in her car—a Toyota F.J Cruiser—outside her friend's apartment after dropping her off.[1] Around the same time Torres arrived, Officers Janice Madrid and Richard Williamson pulled into the apartment complex in an unmarked car with an arrest warrant for a woman with no relation to Torres.[2] They were looking for Kayenta Jackson, who was "involved with an organized crime ring,"[3] and a series of "white-collar" crimes[4]. As the rain started sprinkling, Torres got into her car and began cleaning up the floor of the vehicle—"either picking up [trash and disposable cups] or...dusting stuff off".[5] Torres stayed seated in her car and was unaware of the officers approaching her vehicle. Officers Madrid and Williamson had been circling the block around the apartment complex and exited their unmarked car when they saw Torres had arrived; they believed her to be the woman they were looking for.[6] The officers were dressed in plain black clothes, New Mexico State Police tactical vests with the police department insignia in yellow print, and sunglasses.[7]

The officers approached the vehicle Torres was in, with Officer Madrid positioned near the front left wheel and Officer Williamson positioned at the

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[1]Hamed, Abdel Rahman. "Torres v. Madrid." *Subscript Law*, edited by Mariam Morshedi, 12 Oct. 2020, subscriptlaw.com/torres-v-madrid#:~:text=In%20the%20dark%20early%20morning,friend%20at%20an%20apartment%20building.&text=Officers%20Madrid%20and%20Williamson%20saw,knew%20something%20about%20the%20target. Accessed 12 Feb. 2021.

[2]Hamed, Abdel Rahman. "Torres v. Madrid." *Subscript Law*, edited by Mariam Morshedi, 12 Oct. 2020, subscriptlaw.com/torres-v-madrid#:~:text=In%20the%20dark%20early%20morning,friend%20at%20an%20apartment%20building.&text=Officers%20Madrid%20and%20Williamson%20saw,knew%20something%20about%20the%20target. Accessed 12 Feb. 2021.

[3]United States, Tenth Circuit Court (10th Cir.). *Roxanne Torres v. Janice Madrid*. Docket no. 18-2134, 2 May 2019

[4]J.A at 42

[5]J.A at 18, 19

[6]Hamed, Abdel Rahman. "Torres v. Madrid." *Subscript Law*, edited by Mariam Morshedi, 12 Oct. 2020, subscriptlaw.com/torres-v-madrid#:~:text=In%20the%20dark%20early%20morning,friend%20at%20an%20apartment%20building.&text=Officers%20Madrid%20and%20Williamson%20saw,knew%20something%20about%20the%20target. Accessed 12 Feb. 2021.

[7]JA at 22, 50

driver's seat door, boxing Torres in (see Fig. 1)[8]. They did not identify themselves as police officers at any point during the event. The tint on Torres's car prevented Officers Madrid and Williamson from looking into the car to confirm or deny their belief that the woman in the car was the woman they came to arrest.[9] Officers Madrid and Williamson began calling out, "Open the door!" and "Show me your hands!" Torres was still preoccupied with cleaning up, however, and did not see or hear them; she did not know they were police officers.[10] When the officers got no response from Torres, they reached for her car door to open it. Officers Madrid and Williamson thus made an unwarranted attempt at search, as they did not receive consent from Torres to open the car door and had no reasonable suspicion to stop her.[11]

When Torres "heard the flicker of the door...[she] got startled", causing her to look up to the window for the first time. She testified saying she only saw a face and that prompted her to put the car into drive, but not to step on the gas. The second time she looked up, Torres saw a gun, and this is what prompted her to put her foot on the gas—she believed she was in danger of being carjacked and attempted to escape.

Officer Madrid testified that she saw the figure inside the car "moving aggressively inside the vehicle", but didn't see a gun, knife, or fist pointed at her.

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[8]JA at 39
[9]JA at 68
[10]JA at 21
[11]Lee, C. (2012). Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis. George Washington Law Faculty Publications and Other Works, 1-50.
https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1804&context=faculty_publications

She did see the car "lunge" at her[12]; thus, she began firing 7 rounds in "a forward fashion at the driver of the vehicle". [13] Officer Williamson shot 6 rounds at the vehicle—testifying that his reason was a "fear [of] being "crush[ed]" between the Cruiser and the neighboring car".[14] His last shot entered through the back window of the car.[15] Sergeant Smith, who was on the scene at the time but did not participate in the shooting, testified that as Torres' vehicle pulled away, that shots continued to be fired; once Officers Madrid and Williamson were out of harm's way, they continued to fire bullets until Torres "was already past them".[16]

One of the bullets hit Torres in the arm, temporarily paralyzing her, and one hit her in the back. Afraid of her life, she continued driving and eventually made it to a hospital. From there she was airlifted to Albuquerque where she was arrested on July 16th, 2014.[17]

Later, Roxanne Torres pled no contest to three crimes:

1. "aggravated fleeing from a law-enforcement officer (Officer Williamson);
2. assault upon a police officer (Officer Madrid);
3. unlawfully taking a motor vehicle."[18]

She filed a civil-rights complaint against Offices Madrid and Williamson in the fall of 2016, citing a claim for excessive force and a claim for conspiracy to exercise excessive force by each of the officers. She said that the, "'intentional discharge of a

[12]JA at 57
[13]JA at 54
[14]United States, Tenth Circuit Court (10th Cir.). *Roxanne Torres v. Janice Madrid*. Docket no. 18-2134, 2 May 2019. Id at 125.
[15]JA at 77
[16]JA at 83, 84
[17]United States, Tenth Circuit Court (10th Cir.). *Roxanne Torres v. Janice Madrid*. Docket no. 18-2134, 2 May 2019.
[18]United States, Tenth Circuit Court (10th Cir.). *Roxanne Torres v. Janice Madrid*. Docket no. 18-2134, 2 May 2019.

firearm. . .exceeded the degree of force which a reasonable, prudent law enforcement officer would have applied,'" and that they had "'formed a single plan through non-verbal communication. . .to use excessive force,'" on her during the interaction. [19]

STATEMENT OF ARGUMENT

The intentional application of physical force to restrain movement is an attempted seizure even if it is ultimately unsuccessful in restraining the suspect, as this Court made clear in *California v. Hodari D.*[20] In this case, the officers attempted to seize Torres, intentionally restraining her movements, discharging 13 rounds of bullets, and shooting her twice. Therefore, the trial and appellate courts erred in dismissing the case in holding that there was no seizure under the Fourth Amendment.

[19]United States, Tenth Circuit Court (10th Cir.). *Roxanne Torres v. Janice Madrid*. Docket no. 18-2134, 2 May 2019. Id. at 15, 16.
[20]California v. Hodari D., 499 U.S. 621 (1991)

ARGUMENT

I: SEIZURE OF A SUSPECT DOES NOT REQUIRE A SUCCESS; APPLICATION OF FORCE DESIGNED TO RESTRAIN OR RESTRICT THE SUBJECT'S MOVEMENT IS A VIOLATION WHEN OBJECTIVE JUSTIFIED LEGAL STANDARDS CANNOT BE MET.

The Fourth Amendment was designed to protect civilians from unjustified intrusions on their freedoms and securities. The Fourth Amendment 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.[21]

Since the Constitution was ratified, the term "seizure" has always included the term "arrest" by government officials rather than cases that deal with the common law of arrest.[22] Thus, as these officers attempted to restrain and arrest Petitioner, this case falls under the umbrella of Fourth Amendment case rulings.

At the time of its adoption, the term "seize" was defined as "to lay...violently or at unawares, wrongfully, or by force" and as "the act of laying hold on suddenly".[23] Applying these original definitions provides insight as to what the intent of the Fourth Amendment was in the 18th century, and thus provides insight as to how it should be applied in this case.[24] Petitioner was subjected to force laid

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[21]U.S. Const. Amend. IV
[22]Declaration of Rights, art. XIV, Mass. Acts, 1780 (using the word "arrest" to refer to "seizures" of a person in Fourth Amendment analogue)
[23]*An American Dictionary of the English Language* (Vol. 67). (1828) (capitalization omitted)
[24] Amar, A. R. (1994). FOURTH AMENDMENT FIRST PRINCIPLES. Harvard Law Review,

upon her violently and suddenly when she was ordered to exit her vehicle and was then shot at through the windows of her car, including when the officers shot at the rear of the car as she moved away. Justice Scalia noted in his opinion for *California vs. Hodari D.,* that seizure under the common law definition at the time of the Framers drafting included that "the mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient,"[25]

In *Hodari D.* the Court held that the "application of physical force to restrain movement" is a "seizure" under the Fourth Amendment, "even when it is ultimately unsuccessful."[26] The Court stated that to comply with "the quintessential 'seizure of the person' under Fourth Amendment jurisprudence...there must be either the application of physical force, however slight or, where that is absent, submission to an officer's "show of authority" to restrain the subject's liberty".[27] A "show of authority" seizure is defined as the application of a force of authority that restrains the liberty of a subject[28]; a physical-force seizure is defined as the intentional application of force by a law enforcement officer designed to objectively restrain the movement of the subject, even if the seizure is ultimately unsuccessful.[29]

107(4). https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1967&context=fss_papers

[25]California v. Hodari D., 499 U.S. 621 (1991)

[26]California v. Hodari D., 499 U.S. 621 (1991)

[27]California v. Hodari D., 499 U.S. 621 (1991)

[28]Congressional Research Service. (2020, November 12). *Torres v. Madrid: Police Use of Force, Fourth Amendment Seizures, and Fleeing Suspects?* (P. G. Berris, Author; Legal Sidebar). https://crsreports.congress.gov/product/pdf/LSB/LSB10552#:~:text=A%20seizure%20generally%20occurs%20when,a%20person%20to%20walk%20away.%E2%80%9D

[29]California v. Hodari D., 499 U.S. 621 (1991)

As the shots firing multiple bullets are an application of physical force, Petitioner was "seized" or was attempted to be seized, under the definition of a physical-force seizure.[30]

Additionally, the intentional aspect of the physical-force seizure is important to determine why this constitutes a seizure. In *County of Sacramento v. Lewis*,[31] the Court established the importance of intent. In *Lewis*, Philip Lewis lost his life in a high-speed chase when he lost control of his motorcycle and crashed; James Smith, one of the pursuing officers, was unable to stop his car in time and crashed into Lewis and the other motorcycle passenger, causing fatal injuries.[32] This Court ruled that the accidental nature of Smith's actions did not constitute an unconstitutional seizure as it was missing the "intentional" aspect of the physical-force seizure definition. In this case, the shots fired at the Petitioner were not accidental and therefore constitute a seizure under common law. Officers intentionally withdrew their guns from their holsters, pointed, and shot thirteen times at the Petitioner.[33] Subsequently, the Petitioner's movement was restrained as a result of one of the bullets entering her back and one paralyzing her left arm. This "show of authority" by "means of physical force" as established in *Terry v. Ohio* further contributes to the requirements of a seizure.[34] Moreover, the shots fired apply to the notion of

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[30] Bellin, J. (2020, October 16). Argument Analysis: Justices Spar Over Stare Decisis, Originalism, Text and What Counts as a Fourth Amendment "Seizure." SCOTUSBlog. Retrieved February 20, 2021, from https://www.scotusblog.com/2020/10/argument-analysis-justices-spar-over-stare-decisis-originalism-text-and-what-counts-as-a-fourth-amendment-seizure/

[31] County of Sacramento v. Lewis, 523 U.S. 833 (1998)

[32] County of Sacramento v. Lewis. (n.d.). Oyez. Retrieved February 19, 2021, from https://www.oyez.org/cases/1997/96-1337

[33] Colb, S. F. (2020, February 26). Is a Gunshot Wound a Seizure? Verdict Justia. Retrieved February 19, 2021, from https://verdict.justia.com/2020/02/26/is-a-gunshot-wound-a-seizure

[34] "Tennessee v. Garner." Oyez. Accessed February 21, 2021. https://www.oyez.org/cases/1984/83-1035.

"intentional" rather than "accidental", a precedent also established in *Brower County v. Inyo*.[35] It bears noting that the offending officers did not have objective reasonable suspicion for a "Terry stop" and cannot justify being in harm's way in shooting at Torres' vehicle as it drove away.

II: PETITIONER WAS SEIZED WHEN THE BULLETS ENTERED HER BODY

A physical-force seizure is defined as the intentional application of force by a law enforcement officer designed to objectively restrain the movement of the subject, even if the seizure is ultimately unsuccessful, as established in *Hodari D.*[36] The facts of this case prove that the Respondents in this case intended to restrict the movements of the Petitioner and used applied physical to do so.

Before this portion of the seizure took place, a series of forceful actions occurred that demonstrated the Respondents' intent to restrain the Petitioner's movements. The Respondents testified to being unable to see the Petitioner's ethnicity, face, gender-identifying features, or hands within the car.[37] Thus, the only explanation for why the Respondents drew their firearms was to prevent her from leaving so they could question her; they aimed to show force to prevent, or restrict, the Petitioner from moving within the car, or moving the vehicle itself. Additionally, this demonstrated that they intended to use force. Had the Respondents not intended to use force if needed, they wouldn't have drawn their firearms. In *Lewis*,

[35] Brower v. County of Inyo, 489 U.S. 593 (1989)
[36] California v. Hodari D., 499 U.S. 621 (1991)
[37] JA at 54, 55, 56

the Court ruled that a lack of intent to use force meant there was no Fourth Amendment violation for a "seizure"; conversely, the intent to use force demonstrated in this action would constitute a seizure if coupled with physical force and the intent to restrain—in this case, accordingly the three elements to constitute a seizure have been legally satisfied.

By firing 13 bullets at the Petitioner as she was fleeing, the Respondents demonstrated their intent to restrict her movements once again. The Respondents testified that they fired as a result of their lives being endangered, however during initial questioning, factual contradictions arose. New Mexico State Police Sergeant Jeff Smith testified that the positions of the Respondents were not as shown in Figure 1 in front of the Torres vehicle, but rather that both Respondents were on the side of the Torres Toyota Cruiser (see Fig. 2).[38] The official trajectory analysis corroborates Smith's testimony; according to the analysis, all shots came from the side or rear of the vehicle.[39] Smith also testified saying the Respondents continued shooting at the car as the Petitioner drove away; the bullets were fired "after [the Petitioner] was already past [the Respondents]".[40] Consequently, the reason for firing—since the Respondents were out of harm's way—was that they intended to restrain the Petitioner's movement, whether it be by shooting her or disabling the car to a stop.

When the Petitioner's flesh was penetrated by the bullets fired by the Respondents, she felt the effects of physical force being laid upon her. One bullet

[38]Figure (1) is detailed in the Appendix section of this brief. This diagram was drawn by the lawyer deposing the Petitioner.
[39]JA at 52, 109
[40]JA at 83

entered from the side, penetrating her left arm; her left arm went into a temporary state of paralysis as a result.[41] The second bullet entered from the rear of the car, penetrating the flesh of her back. Through this, she was momentarily seized for a second time.

The events that occurred on the early morning of July 15th, 2014 constituted a physical-force seizure and thus violated the Petitioner's Fourth Amendment rights.[42] Reiterating the definition of a physical-force seizure—the intentional application of force by a law enforcement officer designed to objectively restrain the movement of the subject, even if the seizure is ultimately unsuccessful—it is clear that a seizure took place in this case.[43] The Respondents demonstrated their intent to use force, their intent to restrict the movements of the Petitioner, and did intentionally apply physical force on her. Thus, the Petitioner was indeed seized upon by the entry of the bullets to her arm and back.

[41] JA at 25

[42] History and Scope of the Amendment. (n.d.). Justia US Law. Retrieved February 19, 2021, from https://law.justia.com/constitution/us/amendment-04/01-search-and-seizure.html

[43] Unreasonable Search and Seizure. (n.d.). Cornell Law School Legal Information Institute. Retrieved February 19, 2021, from https://www.law.cornell.edu/wex/unreasonable_search_and_seizure

REFUTATION

The Respondents argue that *Hodari D.* is dicta and thus is a non-binding decision that the Court does not need to follow in this case. However, Justice Scalia's writing for the majority opinion in *Hodari D.* draws an important distinction between the types of seizures: a "show of authority" seizure and a physical-force seizure.

Justice Scalia opined that the Court understands and established that the Fourth Amendment protects against unreasonable seizures, including seizures of the person, no matter how brief the seizure may be.[44] Using the Restatement of Torts, Justice Scalia supported his definition of what a seizure is.[45] He stated in the case of a "show of authority" seizure, which is what Hodari D. argues was the force he was seized under, a "submission to the assertion of authority" is needed to constitute a "show of authority seizure". This is what the Respondents cling to as they argue that *Hodari D.* is dicta. What the Respondents fail to recognize is that the Court's majority opinion, further stated that if "submission to the assertion of authority" is not present, a seizure may be constituted when physical force—described as "readily bear[ing] the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful"—is present.[46] Thus, Justice Scalia clearly made the distinction between the "show of authority" seizure and a physical-force seizure, and this shows the Respondents' argument to be meritless. Accordingly, the majority opinion of

[44]California v. Hodari D., 499 U.S. 621 (1991)., page 499 U.S 624, 625.
[45]§41, Comment h (1934).
[46]California v. Hodari D., 499 U.S. 621 (1991)., page 499 U.S 626

California vs. Hodari D., is controlling to show that the Petitioner was seized under objective standards of a physical-force seizure.

The Respondents also heavily rely on the common-law established through *Brower v. County of Inyo*, where the Court ruled that physical force and intent were needed to demonstrate a seizure.[47] As discussed above, the Respondents demonstrated their intent to physically restrain or restrict the movement of the Petitioner. When they deliberately used physical force, they satisfied the final element of the seizure here. *Brower* actually supports this ruling as well.The *Brower* Court states, "[Brower's] freedom of movement was never arrested or restrained," and therefore he was not seized according to the Respondents. The Respondents argue that this applies to the Petitioner because she was able to keep her foot on the pedal. What they fail to acknowledge is that the Petitioner did suffer from the freedom of movement being restricted. When the bullet penetrated her left arm, the Petitioner's arm was paralyzed. She testified, "my arm. I lost—like my arm literally lost—like it went paralyzed. I had no control over this arm after being shot".[48] This complies with the *Brower* Court's standard of restricting the freedom of movement being needed to determine a seizure. The Court has yet to determine to what degree of restriction of the freedom of movement is required for all future cases, but the language of *Brower* and *Hodari D.* clearly provide more than enough evidence that being shot would constitute the physical force element of a Fourth Amendment seizure.

[47]Brower v. County of Inyo, 489 U.S. 593 (1989)
[48]JA at 25

CONCLUSION

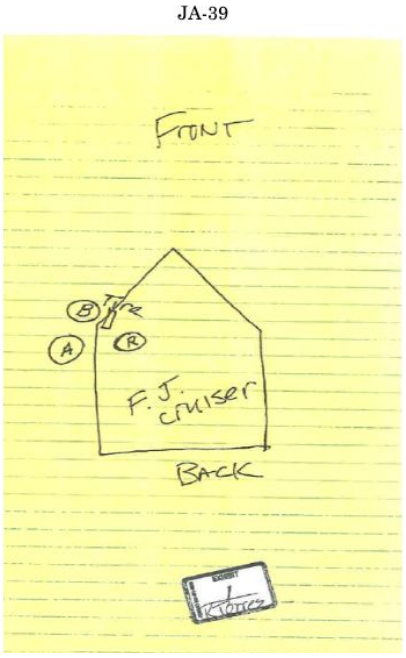
This Court should reverse and remand to the trial court for further proceedings as there was a violation of the Petitioner's Fourth Amendment rights. Allowing the lower court's ruling to stand would shield police shootings from Fourth Amendment investigation. As dangerous and difficult as a police officer's work may be, objective standards articulated in police training and by the Courts, must be enforced to protect citizens from reckless police behavior.[49] Many police officers continue to draw and use guns in unjustified circumstances, rather than for sound law enforcement reasons. Allowing unreasonable conduct to go unpunished violates the very essence of the Fourth Amendment. In the past, the Supreme Court has rebuked the notion of qualified immunity, as Justice Thomas established several times that "strong doubt" and how this doctrine was merely contrived by judges without any historical basis.[50] When law enforcement clearly violates established constitutional rights, this immunity doctrine is inapplicable. Respondents Madrid and Williamson are responsible for the seizure of the Petitioner under the Fourth Amendment jurisprudence, despite the fact that they were ultimately unsuccessful in arresting the Petitioner at the scene.

[49] Kanter, G., & Grosser, J. (n.d.). Torres v. Madrid. Cornell Law School Legal Information Institute. Retrieved February 19, 2021, from http://www.law.cornell.edu/supct/cert/19-292.

[50] Thomas Dissents." Forbes, 15 June 2020, www.forbes.com/sites/nicksibilla/2020/06/15/supreme-court-refuses-to-hear-challenges-to-qualified-immunity-only-clarence-thomas-dissents/?sh=7162d1d37fad. Accessed 19 Feb. 2021.

APPENDIX

Figure 1. Relative Diagram of the Petitioner and Respondent Positions (left); drawn by deposer while questioning Petitioner; (A) is Officer Williamson, (B) is Officer Madrid.



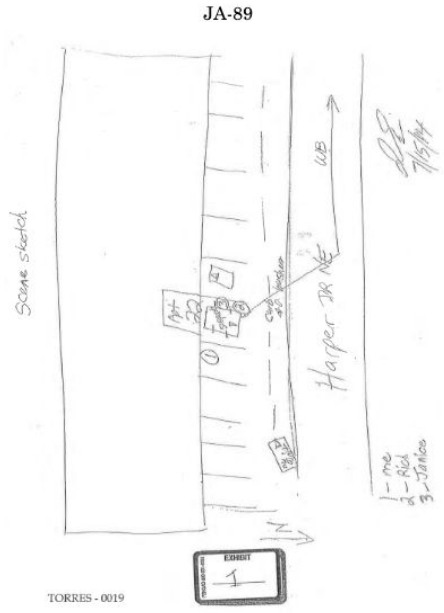


Figure 2. Relative Diagram of Petitioner and Respondent Positions (right); drawn by Witness Smith during the initial interview; (1) is Witness Smith, (2) is Officer Williamson, (3) is Officer Madrid, Arrow signifies direction in which Petitioner exited.