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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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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FACTS

On June 15th, 2014, two New Mexico State Police Officers--Richard Williamson and Janice Madrid--were dispatched to an apartment complex in Albuquerque to serve an arrest warrant on Kayenta Jackson[1]. Jackson had been suspected of various violent crimes and was associated with other individuals who had violent histories, a fact which made the police officers wary once they arrived at the complex. At around 6:30 AM, the officers spotted Petitioner Roxanne Torres and another person standing just outside Jackson's apartment[2]. It is important to note that both Williamson and Madrid wore tactical vests with badges that clearly identified themselves as police officers[3]. Williamson and Madrid walked towards Torres to ask questions about Jackson and noticed that she was making aggressive movements inside the car. Torres did not respond to any calls to identify herself or to show her hands. When Williamson was by the side of Torres's car and Madrid was in front of it, Torres "freaked out" and "put the car into drive".

As Torres drove forward, both Madrid and Williamson pulled out their handguns, fearing for their lives. Madrid was at risk of being directly run over by

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[1] Hamed, Abdel-Rahman. "Torres v. Madrid." *Subscript Law*, 12 Oct. 2020, subscriptlaw.com/torres-v-madrid/.

[2] Hamed, Abdel-Rahman. "Torres v. Madrid." *Subscript Law*, 12 Oct. 2020, subscriptlaw.com/torres-v-madrid/.

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

Torres and Williamson was at risk of being crushed along the neighboring car. Both officers fired at Torres and two of their bullets struck her. Despite this, Torres continued driving forward until she reached the street. After crashing her own car shortly after, she not only stole a nearby car but also drove 75 miles west to Grants, New Mexico. Throughout this process, it is clear that Torres's freedom of movement was not restrained. Torres was airlifted back to Albuquerque, where she was soon identified and arrested a day later. Ultimately, she pleaded no contest to three charges: aggravated fleeing from a law enforcement officer; assault upon a police officer; and unlawfully taking a motor vehicle[4].

On October 21, 2016, Torres filed a civil rights complaint in the US District Court of New Mexico against Williamson and Madrid[5]. In that complaint, Torres asserted that both officers had used excessive force. Torres also asserted that both officers had engaged in conspiracy to use excessive force.

The District Court interpreted Torres' complaint as being the use of excessive force under the Fourth Amendment. To counter Torres's complaints, Officers Williamson and Madrid filed a motion for summary judgement proving that they were entitled to qualified immunity on all of Torres's excessive force complaints due to the simple fact that Torres was never seized. The

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[4] Hamed, Abdel-Rahman. "Torres v. Madrid." *Subscript Law*, 12 Oct. 2020, subscriptlaw.com/torres-v-madrid/.

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

District Court agreed with the fact that Torres was not seized and could not be protected under the Fourth Amendment, granting the Officers motion for summary judgement and dismissing the Petitioner's claims based on the idea that there had been no constitutional violations[6].

On May 2, 2019, the US Court of Appeals for the 10th Circuit further affirmed the District Court's ruling, finding that the officers did not violate a clear statute or constitutional right and that the officer's actions were otherwise covered by qualified immunity[7]. The US Court of Appeals for the 10th Circuit also agreed with the District Court that the Petitioner, Torres, failed to show that she was seized by the officers as she did not stop or submit to the officers' authority.

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

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

SUMMARY OF ARGUMENT

The Fourth Amendment protects people against unreasonable "seizures." Protections against use of excessive force during seizures follow from this guarantee. In *Torres v. Madrid* the petitioner's claim of excessive force is not valid because no seizure actually occurred as defined by this Court's long body of precedent. Established case law demonstrates requirements for excessive force claims and seizures. The officers actions do not meet these requirements. Notably, Torres' capability and decision to flee show that her freedom of movement was never restricted, an essential consideration for determining the presence of a seizure. The 10th Circuit was correct in its application of established precedent and Petitioner has not demonstrated sufficient rationale for this Court to overturn its prior holdings.

I. THE TENTH CIRCUIT COURT'S CONCLUSION THAT PETITIONER WAS NOT SEIZED IS CONSISTENT WITH THIS COURT'S ESTABLISHED PRECEDENT

A. Fourth Amendment Violation Through Excessive Force Requires Seizure

The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. Amend. IV. This amendment serves as an essential protection for citizens against the state. Petitioner Torres' allegations of excessive force are based on a violation of this amendment, as it is well established that the use of "excessive force" in a seizure is "unreasonable." [8]. Multiple courts have held that "To hold an officer personally liable for violation of the Fourth Amendment, the plaintiff must at a minimum be able to demonstrate that the officer actually terminated her freedom of movement by means of the alleged excessive force." [9] "Claims of excessive force [are treated] as seizures subject to the Fourth Amendment's objective requirement for reasonableness."[10] In order to succeed in her claim, Petitioner must prove "both that a 'seizure' occurred and that the seizure was 'unreasonable.'"[11].

The importance of seizure is further established through precedent. "[W]ithout a seizure there can be no claim of excessive force."[12] In the present case, Petitioner argues

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[8] *County of Sacramento v. Lewis*, 523 U.S. 833, 843-44 (1998)
[9] *Schultz v. Braga*, 455 F.3d 470, 483 (4th Cir. 2006)
[10] *Lindsey v. Hyler,* 918 F.3d 1109, 1113 (10th Cir. 2019)
[11] *Brooks v. Gaenzle,* 614 F.3d 1213, 1219
[12] *Jones v. Norton,* 809 F.3d 564, 575 (10th Cir. 2015)

that the "intentional discharge of a fire arm [sic] … exceeded the degree of force which a reasonable, prudent law enforcement officer would have applied."[13] The flaw with Petitioner's claim lies in the effects and success of the force the police officers administered. The Fourth Amendment wasn't violated because there was no use of excessive force considering that Petitioner maintained her freedom of movement following the gunshots and, thus, was never seized.

B. Seizure Never Occurred Because Petitioner Retained Freedom of Movement

A key consideration in determining application of excessive force is one's ability to move. When the Tenth Circuit evaluated Torres' claims, it referenced *Brooks v. Gaenzle* and ultimately found the officers' force failed to control Petitioner's "ability to evade capture or control." Their view of *Brooks v. Gaenzle* noted "a seizure requires restraint of one's freedom of movement."[14] The importance of movement in evaluating seizure is further detailed in many cases with a person being "seized" by police when an officer "by means of physical force or show of authority" restrains freedom of movement[15]. Seizure requires submission of a suspect to a police officer's use of physical force or show of assertion. Physical contact from an officer isn't enough to cause a seizure. In evaluating Petitioner's claims, it's

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

[14] *Brooks v. Gaenzle*, 614 F.3d 1213, 1223-24 (10th Cir. 2010)

[15] *Terry v. Ohio*, 392 U.S. at 19 n.16.

important to understand the gunshots from the police failed to stop or seize Petitioner. She was shot twice in Albuquerque, New Mexico and fled the scene, stole a vehicle, and drove over seventy-five miles west of Albuquerque. Clearly, her movement wasn't restricted by the gunshots. In fact, Petitioner claimed that she was unaware that she had been shot until she had traveled over 75 miles to Grants, New Mexico. Petitioner's ability and decision to drive away demonstrates that there was no seizure. Thus, her excessive force claim is inconsistent with established precedent.

C. Petitioner was Not Seized Under This Court's *Mendenhall* Test

The *Mendenhall* test determines that police have seized an individual "*only if*, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."[16] Recall that a person is "seized" only when using "physical force or a show of authority" to restrain freedom of movement.[17] The importance of mobility is further specified through precedent stating a law enforcement officer must restrain an individual's liberty in order to "seize" a person.[18] In the present case, there was no sign that Petitioner faced a restraint of her freedom of movement. To put this in the framework of the *Mendehall* test, the undisputed facts of the case demonstrate Petitioner felt free to leave and didn't face any restraints on movement.

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[16] *Mendenhall*, 446 U.S. at 554
[17] *Terry v. Ohio*, *supra*, 392 U.S. at 19 n.16
[18] *Terry v. Ohio*, supra, 392 U.S. at 19 n.6

Petitioner went on a headlong flight and drove many miles away from the police officers. The conduct during the encounter between Petitioner and the police officers illustrates Petitioner felt free to leave. Petitioner drove at officers while they were dressed in tactical gear which was explicitly marked to identify them as police officers. Shots were fired and the police officers were almost run over. Petitioner's actions indisputably put the police in danger which is consistent with Petitioner's plea of no contest to aggravated fleeing from a law enforcement officer and assault upon a police officer. Assuming *arguendo* that Petitioner thought she was fleeing "carjackers," the question at hand would be whether innocent flight matters to cases. Fortunately, the question was settled in *Illinois v. Wardlow*, which failed to distinguish "innocent" flight and guilty flight.[19] Looking back at the *Mendenhall Test*, the officers' response to Petitioner and intent to detain her aren't relevant to assessing whether Petitioner felt free to leave. The statements and conduct of the Petitioner illustrate she felt free to leave and dispositively establish that she didn't perceive herself as "seized" by the officers' shots.

D. The Previous Decisions Were Consistent With The Present And Historical Meaning of The Term "Seizure"

A "seizure" means "taking possession" of a criminal suspect.[20] This has been true since the drafting and adoption

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[19] *Illinois v. Wardlow*, 528 U.S. 119, 125-126 (2000)

[20] *California v. Hodari D.,* 499 U.S. at 624

of the Bill of Rights. Established law dictionaries confirm this definition of seizure, "the act or an instance of taking possession of a person or property by legal right or process."[21] The definition of the term "seizure" has remained constant through US history, and 18th century dictionaries confirm this fact. Seizure was defined as "the act of taking forcible possession."[22] Ultimately arguments challenging the meaning of the word seizure or referencing laws present at the Fourth Amendment's creation are insignificant due to a constant meaning of the word "seizure." It would require great linguistic acrobatics to view Torres' extended flight and evasion of capture as consistent with a "seizure" under any definition of the word.

II. *HODARI D*. IS INAPPOSITE IN DETERMINING THE OUTCOME OF THIS CASE

Petitioner's argument relies on this Court's opinion in *California v. Hodari D*. In *Hodari D.*, a *HODARI D*. IS INAPPOSITE IN DETERMINING THE OUTCOME OF THIS CASEjuvenile began running after seeing a police car and a chase ensued. When a police officer neared him, a bag, which was later found to contain narcotics, was thrown by Hodari D. The state court said the juvenile was "seized" when seeing the officer running towards him, disregarding the lack of control over the juvenile's movements, but the Supreme Court disagreed. Petitioners try to take advantage of

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[21] Black's Law dictionary 1631 (11th ed. 2019)

[22] 1 S. Johnson, A Dictionary of the English Language (6th ed. 1785)

non-binding dicta in this decision to be viewed as common law. They also take advantage of confusion between terms when evaluating a narrow question.

A. Petitioner's Interpretation of *Hodari D.* Relies on Non-Binding Dicta Which Was Correctly Recognized by the Tenth Circuit

Throughout her argument in previous courts, Petitioner relied on the word "seizure" meaning the "laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful."[23] The use of this definition exploits a clear inconsistency in a decision with established precedent and attempts to establish non-binding dicta as common law. *Hodari D.* did not involve the use of physical force and the case made it to the Supreme Court for the purpose of deciding whether a seizure occurred when the bag was thrown. The lack of physical force to prompt the discarding of the bag led the Supreme Court to establish a seizure didn't occur until the juvenile was tackled which allowed the bag to be used as admissible evidence. Of course, the court's decision of what constituted a seizure is consistent with all the precedent and common law detailed in Argument I because, in tackling the juvenile, movement was restricted. The issue with this case which Petitioner exploits was in detailing common law principles when this Court stated, "the word 'seizure' readily bears the meaning of a laying on of hands or application of physical force to restrain

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[23] *Hodari D.*, 499 U.S. at 626

movement, even when it is ultimately unsuccessful."[24] That last bit of the quote which at first glance appears to qualify unsuccessful physical force as seizure makes up the foundation of Petitioner's case. There are glaring errors with using this quote as a common law definition of seizure. The success of physical force wasn't relevant to the case the statement is from as the impact of unsuccessful force wasn't important to the judgment in *Hodari D.* Moreover, the common law definition of seizure as stated in *Brooks v. Gaenzle*, a case decided after *Hodari D*. and before the present case, has found this definition to be unsuitable.

The success component of the discussion of seizure should be viewed as dicta (a statement or an opinion that concerns legal propositions that aren't relevant or directly involved to the case at hand) because it wasn't important in the context of *Hodari D.* The quote from which Petitioner draws this misleading conclusion discusses the meaning of seizure and its requirement of physical force. The focus on physical force was to emphasize an action like grabbing which involves some kind of contact. This type of action is present through the police officers tackle which was ruled as a seizure. The extension to the opinion which states "even when it is ultimately unsuccessful" is completely irrelevant to the question presented in *Hodari D*.[25] The physical force in *Hodari D*. led to a successful restriction of movement and detention of the suspect. Since *Hodari D.* dealt with a successful physical action, the contention regarding unsuccessful actions is nothing more than dicta.

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[24] *Hodari D.*, 499 U.S. at 626

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

To further confirm that the mention of unsuccessful force *Hodari D*. is mere dicta, we need to examine the framework of what constitutes dicta rather than a holding. "A holding consists of those propositions along the chosen decisional path or paths of reasoning that (1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment. If not a holding, a proposition stated in a case counts as dicta."[26] In this situation, the language cited by petitioner from *Hodari D.* fail to meet the second and third considerations of what constitutes a holding. The facts of the case don't suggest anything about unsuccessfully applied physical force and the consideration of success wasn't relevant to making the final judgment. The Supreme Court is not bound to follow dicta, a principle demonstrated in many cases including *Central Virginia Community College v. Katz*[27]. The non-binding dicta Petitioner relies on is further expanded on as irrelevant to the present case through *stare decisis* of higher court rulings subsequent to *Hodari D*.

The Tenth Circuit's decision in *Brooks v. Gaenzle* addressed the conflict between important precedent like *Brower v. Cnty. of Inyo*, and *Hodari D*. In *Brooks v. Gaenzle*, the Tenth Circuit looked at a few cases (primarily *Terry v. Ohio*, *United States v. Mendenhall*, and *Tennessee v. Garner)* and found that a seizure "requires restraint of one's freedom of movement and includes apprehension or capture by deadly force." *Brooks* further detailed that it was not enough for "use of deadly force alone" to constitute a seizure because restraint

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[26] Michael Abramowicz & Maxwell Stearns, *Defining Dicta*, 57 STAN. L. Rev. 953, 1065-66 (2005)

[27] *CENTRAL VA. COMMUNITY COLLEGE v. KATZ* 546 U.S. 356 (2006)

of freedom of movement is essential. The plaintiff in the *Brooks* case put forth a similar argument to petitioner about the phrasing of *Hodari D*. The Tenth Circuit explained the issues with dicta as the result of contrasting common law definitions of "arrest" and "seizure" while looking at the "narrow question" presented in *Hodari D*[28].

B. Petitioner's Interpretation of *Hodari D*. Is Patently Illogical

The absurdity of Petitioner's analysis is best demonstrated through a simple real-life example. If a police officer, with reasonable suspicion, requests that two individuals stop and, instead, they successfully flee, there's no seizure. However, in Petitioner's eyes, if the police shoot at both individuals in an attempt to seize them and one is hit in the course of their flight, the one who is shot is "seized" while the other is not—even though neither of them are physically detained. Petitioner's argument would lead to two identical "escapes" resulting in different legal outcomes--a "seizure" in one case and "no seizure" in the other. This simplified version of the present case demonstrates the illogical nature of accepting the non-binding dicta from *Hodari D*.

III. PETITIONER'S CLAIMS RELY ON INAPPLICABLE PRECEDENTS AND COMMON LAW RATIONALE RATHER THAN ESTABLISHED HOLDINGS OF THIS COURT

[28] *California v. Hodari D.* 499 U.S. 621 (1991)

A. Petitioner's Search Clause Analysis is Not Relevant to this Case

Since this Court's prior seizure cases overwhelmingly support the Respondent and work to affirm the 10th Circuit's ruling, Petitioner attempts to include the search clause of the Fourth Amendment in order to broaden the scope of the case. 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.[29]" Madison also emphasized the difference in his first draft, dividing "unreasonable searches and seizures"[30]. Founding fathers tended to fear the exploitation of the Search Clause over the Seizure Clause, warning against "general warrants"[31]. The Search Clause specifically addresses an individual's right to privacy, while the Seizure Clause specifically addresses an individual's freedom of movement. Petitioner cannot claim that the Search Clause is applicable in this case since Torres was never searched. Thus, the usage of Search Clause cases such as Jones and Carpenter are not applicable to Petitioner's seizure-of-a-person claim. This Court should therefore ignore the usage of Search Clause rulings in this case.

B. Historical Common Law Definitions of Arrest Are Not Informative for Determining a "Seizure" under the Fourth Amendment

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[29] U.S. Const. Amend. IV

[30] Madison, James. "Bill of Rights as Proposed." March 1789

[31] Mason, George. "Virginia Declaration of Rights." June 1776

The Constitution is far less malleable than common law. The Constitution is the American blueprint, the foundation for America that rarely sees change or reversal. Common law is ambiguous and subject to constant changes. Petitioner's claim against the police officers involves an originalist syllogism reliant on common law.[32] They state at the time of the Fourth Amendment's creation, the application of physical force to a person in an unsuccessful effort to detain them was considered an "arrest."[33] They note an arrest is a fourth amendment seizure which means the government's application of physical force in an unsuccessful effort to detain them constitutes a seizure.[34] This syllogism has a faulty basis because of its treatment of 18th century laws as binding fact. When evaluating common law principles regarding arrests in Fourth Amendment claims, this Court "has not simply frozen into constitutional law those law enforcement practices that existed at the time of the Fourth Amendment's passage.[35]" This conclusion shows the error with relying on laws from the time of the Fourth Amendment's genesis.

The dangers of relying on common law are detailed in *Hodari D*. in which this Court stated, "neither usage nor common-law tradition makes an attempted seizure a seizure. The common law may have made an attempted seizure unlawful in certain circumstances; but it made many things unlawful very few of which were elevated to constitutional proscriptions.[36]" No amount of calling the terms "arrest" and

[32] KERR, ORIN S. "THE ROLE OF ORIGINALISM IN TORRES V. MADRID." *REASON.COM*, REASON, 11 FEB. 2020

[33] KERR, ORIN S. "THE ROLE OF ORIGINALISM IN TORRES V. MADRID." *REASON.COM*, REASON, 11 FEB. 2020

[34] KERR, ORIN S. "THE ROLE OF ORIGINALISM IN TORRES V. MADRID." *REASON.COM*, REASON, 11 FEB. 2020

[35] *TENNESSEE V. GARNER* 471 U.S. 1 (1985)

[36] *CALIFORNIA V. HODARI D.* 499 U.S. 621 (1991)

"seizure" identical will make them synonymous. The Fourth Amendment protects against "unreasonable … seizures" and doesn't use the word "arrest[37]". An "arrest" refers to the detaining of a person through physical control and custody which is retained against the will of the arrested. A "seizure" doesn't just require less action but fundamentally different circumstances as established in the discussions of the term's definition throughout previous arguments. Petitioner can't contort common law definitions to supersede established definitions and precedents that suggest a different judgment.

C. *Brower* Provides a Clear Test for Determining A Seizure Under the Fourth Amendment

Unlike the irrelevant Search Clause cases and common law, *Brower* provides a binding precedent that directly considers the issue of seizure by physical force and not some intangible metric. In this Court's decision in *Brower v. Inyo County*, there is a clear set of requirements to determine what constitutes an illegal seizure. Brower ruled that for an illegal seizure to occur, there must be an intentional acquisition of physical control with, notably, the officer successfully restraining the freedom of movement[38]. In *Brower*, this ruling is a relevant holding and not mere dicta since Caldwell, the victim in this case, was successfully stopped after crashing in a police blockade, a stoppage that led to his death. This precedent--which requires the successful action of physical control rather than both successful and unsuccessful actions as is found dicta in Hodari D.--was repeated 16 years later in *Brendlin v. California* and clarified that "A police officer may make a seizure by a show of authority and without the use of physical force, but there is no

[37] U.S. Const. Amend. XIV

[38] *Brower v. Inyo County* 489 U.S. 593 (1989)

seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned."[39] This case clearly states that an "actual submission" must occur for there to be a seizure, a submission which is not present in the Petitioner's case.

Brendlin also clarified that another form of seizure could be the submission to authority without any physical touching, something, yet again, not displayed by Petitioner as she fled 75 miles away[40]. Furthermore, *Scott v. Harris* emphasized the "termination" of movement part of the *Brower,* solidifying the idea that a seizure must stop a victim's ability to move[41]. Again, this is not reflected by Petitioner's escape. As in *Brendlin*, *Scott*, and other cases, *Brower* supports affirmation of the 10th Circuit's ruling. As a whole, these cases provide clear guidance for lower courts in determining whether or not a seizure has taken place for Fourth Amendment purposes. It would be a grave mistake to muddy these clear tests by suggesting that "seizures" can take place, when suspects are not actually "seized." This could lead to enormous subjectivity and inconsistency in lower court rulings.

D. Petitioner Does Not Provide Sufficient Justification For Overruling This Court's Considerable Body of Fourth Amendment Seizure Precedent

Petitioner is asking this Court to either overrule or substantially limit the majority of its decisions in prior seizure cases, including *Terry*, *Brower*, *Brendlin*, etc. This is both

[39] *Brendlin v. California* 551 U.S. 249 (2007)
[40] *Brendlin v. California* 551 U.S. 249 (2007)
[41] *Scott v. Harris* 550 U.S. 372 (2007)

unwarranted and unwise. To address said cases, Petitioner proposes to instead replace them with the dicta of *Hodari D.* and follow the precedents set by 18th century laws, much of which is outdated and inapplicable for modern day cases. According to *stare decisis*, however, the Court is bound to follow the prior Fourth Amendment cases that thoughtfully considered these constitutional seizure issues. To overrule a precedent, a special justification is required, one that clearly determines that the precedent was wrong. Not only does Petitioner fail to do this, but it attempts to undo multiple precedents at the same time, a clear violation of *stare decisis* which argues for overturning prior rulings sparingly.[42]

When attempting to overturn a precedent, there are multiple factors that must be considered. These factors include the "workability" of the standard, whether the standard is outdated, and whether the decision was well-reasoned. In this case, Petitioner has failed to prove why Brower was unworkable or outdated, nor has Petitioner shown that Brower, a unanimous decision, was poorly reasoned. This Court should not reverse decades of Fourth Amendment decision making. Instead, this Court should affirm the 10th Circuit Court's decision that relies upon recent precedents such as Brooks v. Gaenzle and the measurable principles and doctrines found in *Brower, Terry, Mendenhall, and Garner.*

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[42] *KIMBLE V. MARVEL ENTM'T LLC*, 135 S.CT. 2401 (2015)

CONCLUSION

Ultimately, this decision boils down to whether a seizure occurred when the police officers tried to stop Torres. *Brooks v. Gaenzle* determines that in order for a seizure to occur, one's freedom of movement must be restrained. As is demonstrated by Torres's escape in which she stole another vehicle and drove 75 miles, Torres's movement was clearly not restrained by the officers and, thus, the actions by the officers do not constitute a seizure. The *Mendenhall* test determines that in order for a seizure to occur a reasonable person must be able to determine that he or she was not free. It is clear that Torres believed she was free since she willingly chose to drive 75 miles before stopping, indicating again that no seizure actually occurred. According to the Black's dictionary definition of seizure, Torres was not seized since at no moment of time was she ever taken possession of. *Brower v. Inyo County* determines that a seizure can only occur if physical control is present. Countless other precedents have expanded upon Brower to specify that a seizure must include the use of physical restraint or submission of authority. And all these precedents work to affirm the 10th Circuit's ruling that there was no seizure in this case.

This Court must decide whether to value the principles established in *Brower v. Inyo County,* which have been expanded by other precedents, or the speculative dicta of *Hodari D. v. California,* which relies on an outdated interpretation of common law and search clauses. Petitioner's use of 18th and 19th century cases holds little weight compared to the recent precedents cited which have tangible metrics to determine if a seizure has occurred.

The District Court of New Mexico and the US Court of Appeals for the 10th Circuit have already ruled in favor of the Respondent by determining that no seizure occurred. We urge this Court to affirm this ruling.

Respectfully submitted,

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