

No. 19-292

**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**

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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**

**THE LANGUAGE OF THE FOURTH AMENDMENT SUPPORTS THE ASSERTION THAT IT PROTECTS INDIVIDUALS “PERSONAL SECURITY” FROM UNREASONABLE SEIZURE, BY EXPANDING THE AMENDMENT WE ARE KEEPING IN LIVE THE PURPOSE OF THE DOCUMENT, FURTHERMORE, IT IS INCONSISTENT TO RULE IN FAVOR OF THE RESPONDENT PURSUANT THE RULINGS IN TENNESSEE V. WILLIAMS, AND BROWER, NEXT, THERE IS PRUDENCE IN SIDING WITH THE PETITIONER IN THE WAY THAT IT SETS PRECEDENT THAT POLICE SHOULD BE HELD RESPONSIBLE FOR UNREASONABLE SHOOTINGS. LASTLY THE EFFECT OF THE BULLET LIMITED MRS. TORREZ’S LIBERTY SATISFYING THE COMMON LAW DEFINITION OF ARREST.**

**ARGUMENT****I. Part I**

The language of the Fourth Amendment supports the argument that the court should vest an interest in individuals "personal security". The words "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" ,the clause "the right of people to be secure in their persons" along with the decisions of courts in the past, create a strong suggestion that the Fourth Amendment is a strong overarching umbrella intended to protect one's own bodily integrity from state actors. This idea is expressed in *Terry v. Ohio, 392 US 1 - Supreme Court 1968* the court said "This inestimable right of

personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."

although a stop and frisk case the court introduces and upholds the idea of "personal security"

Thus the actions of the police officers in this case violate the Fourth amendment because they encroach on the petitioner's "personal security". Officers applied

force in the form of a bullet which invaded Mrs. Torres' personal security in the act of piercing her flesh. Furthermore, the court says in *Terry* that individuals are "free from unreasonable governmental intrusion" and we assert that that government intrusion is not only one in the form of a stop and frisk but also in the form of force. The Supreme Court has in the past ruled that the use of lethal force has qualified seizure under the Fourth Amendment (*Brower v. County of Inyo*, 489 U.S. 593 (1989) *Brower* cites *Tennessee v. Garner* (In *Tennessee v. Garner*, 471 U. S. 1 (1985), all Members of the Court agreed that a police officer's fatal shooting of a fleeing suspect constituted a Fourth Amendment "seizure.") Thus there is precedent showing that seizure is not the physical grasping of an individual but rather the state interfering with one's own bodily integrity or personal security. The only distinguishing factor in the case at hand is that Mrs. Torres evaded police capture, however being apprehended is not required under seizure. According to the common law definition of arrest, which the court has adopted in part (*California v. Hodari D.*, 499 U.S. 621 (1991)) seizure does not have to be successful for seizure to occur. Although the court did not adopt this part of the common law in their analysis, Justice Scalia held this reasoning in high regard and it is simply an appropriate flow of logic for the court to adopt the second example of arrest in this case today.



## II. Part II

The purpose of the Fourth Amendment is to protect those subject to American laws from the people who act to enforce those laws. James Madison stated in the “Bills of Rights as Proposed” that it is the “right of the people to be secure in their persons...against unreasonable searches and seizures”. This amendment is put in place to prevent the encroachment onto a person’s integrity by police officers or government agents. *Graham v. Connor* (490 U.S. 386)

There is a prudential argument present in this case. It has been held that cases such as *Kyllo* trigger the Fourth Amendment protection. It would be inconsistent for this court to hold that a heat signature device can trigger the Fourth Amendment, but physical force, cannot.

By accepting the respondent’s argument and holding that the definition of seizure rests upon success, the requirement for Fourth Amendment relief will be narrowed tremendously. Police officers will have more leniency to commit abuses of power and force. The Fourth Amendment is the only criminal remedy for violations at the hands of the police. “Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing these claims.” *Graham v. Connor*. “We now learn that wrath and outrage cannot be translated into an order to cease the unconstitutional practice, but

only an award of damages to those who are victimized by the practice and live to sue and to the survivors of those who are not so fortunate.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 137 (1983) In his dissent, Justice Marshal explains that in cases of police misconduct under the Fourth Amendment, most times, the remedy is only a civil suit, and not a change in the law. *Brower* solidifies this idea by mentioning that officers only face criminal penalties for “ the most egregious of crimes”. It would be irresponsible for the Court to let police misconduct virtually be swept under the rug, unless it is so evil it must be handled. By reducing the requirements for the remedy, you limit the already miniscule number of ways police can be held accountable.

The prudential argument also extends to what precedent the court sets by siding with the respondent. The consequences of this case are quite dire and in a climate where police action is under great scrutiny, by limiting the scope of the Fourth Amendment you are increasing police special protection and only holding them responsible for the most egregious of action which would be unwise on part of the court.

### **Part III**

Even under the most narrow of scopes of applying the Fourth Amendment Mrs. Torres has still been seized under the common law definition. To quote the analysis in *Hodari* “To constitute a seizure of the person, just as to constitute an arrest -- 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" the case at hand fits the first definition. The police intentionally applied force (gunshot) restricting Mrs. Torres' liberty in the form of her movement, of the 2 bullets that struck the petitioner, one struck her left shoulder rendering her left arm inoperable. This is by definition a restriction of liberty, as the petitioners freedom of movement was limited by the state. Thus, an arrest took place. while opposing counsel may argue that Mrs. Torres' ability to evade police means that her liberty was not restricted. We hold that failure of the police force to not capitalize on their window of seizure does not mean seizure never took place. Justice Scalia speaks on the existence of temporary seizure (*California v. Hodari D.*, 499 U.S. 621 (1991)). "[A]n arrest... is accomplished by merely touching, however slightly, the body of the accused, by the party making the arrest and for that purpose, although he does not succeed in stopping or holding him even for an instant." We would also like to add that, nowhere in the opinion is movement defined or classified as movement away from the police. The respondents may contend that, because the vehicle kept moving, Ms. Torres' movement was not restricted. That is simply not true. The concept of personal liberty and integrity is not subjective and does change with the state of the suspect. In *Graham v. Connor* the petitioner's foot was broken during an unlawful arrest, and the Court held that he was indeed violated. While Ms. Torres was violated from afar, her regular body movement was restricted as her arm was paralyzed by the bullet. That fact is what satisfies Justice Scalia's analysis.



## CONCLUSION

In sum of the arguments made today under a textual analysis of the Fourth amendment we encourage the court to expand the Fourth Amendment to protect one's own "personal security" from the unreasonable actions of state actors. It is logically inconsistent to rule in favor of the respondent, as the court has in the past ruled that the use of lethal force by state actors is in fact seizure, and it is illogical to say that in a scenario where one was shot and killed that seizure is present but when one is shot and named no seizure has occurred. Furthermore the court has already adopted half of the common law definition of arrest. Therefore, it is illogical for the court not to adopt the other half of the common law arrest definition simply because it appears in the dicta of a preceding case. A prudential argument also exists in the fact that police should be held responsible for their actions, failure on part of the police to apprehend Ms. Torres should not disqualify their action of shooting Ms. Torres. By ruling in favor of the petitioner the court sets the precedent that disallows the state to harm our persons and hiding behind special protections. Lastly, even if you do not hold that the Fourth Amendment should not extend to protect our personal security, Fourth Amendment rights are still violated because the common law definition of arrest is satisfied as state actors applied force to restrict petitioners liberty. Throughout American history, people under American jurisdiction have opposed the idea of state actors abusing their badges. "Nay, they often search the clothes, petticoats and pockets of ladies or gentlemen (particularly when they are coming from on board an East India ship), and if they find any the least article that you cannot prove the

duty to be paid on, seize it and carry it away with them; who are the very scum and refuse of mankind, who value not their oaths, and will break them for a shilling.”(To the Farmers and Planters of Maryland, Md. J., Apr. 1, 1788) It is the duty of this court to act on this commonly held idea, that withstood generations.

We pray the court rule in favor of the petitioner and remand for further proceeding.

Respectfully submitted,

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