

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**

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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 respondents did seize the petitioner even if it was unsuccessful. There is a seizure within the Fourth Amendment by using precedent set by the California v Hodari **499 U.S. 621(1991)** . There was also an intrusion of the body therefore triggering the Fourth Amendment. This conclusion will be done with support of common law.

## ARGUMENT

### **I. Part I Common Law Arrest does not Require a Submission under Physical Force**

#### **A. Two parts when deciding a Seizure**

There are two elements when deciding what constitutes a seizure, one that it was by means of physical force or show of authority and that the application terminated or restrained someone's freedom of movement with the intent to stop as set by *Terry v Ohio* 392 U.S. 1(1968). Physical force is present in fact pattern but does not show that the respondents terminated the movement of petitioner. The facts do however, present a successful restraint of movement. The moment Torres was shot was the moment she was seized. It is crucial that the court follows the language of case law. It is stated in *Michigan v Summers* that a 'seizure' of a person within the meaning of the Fourth Amendment is the meaningful interference, however brief, with an individual's freedom of movement. In this case there is clear intent made by the police officers and that was to stop Torres, this is all that is needed. There needs to be no submission in cases that involve physical force, only those that are of show of authority as cited in *California v Hodari* **499 U.S. 621(1991)**. *Hodari* says an arrest requires either

physical force, or, where that is absent, submission to the assertion of authority. In all, the physical impact must be intentional and must be designed to restrain movement (unlike in *County of Sacramento v Lewis* **523 U.S. 833(1998)** which held there was no seizure where police officers accidentally struck a suspect thrown from a motorcycle during a high-speed pursuit). The respondents seized the petitioner by intentionally shooting her twice, and objectively manifesting an intent to restrain her by stopping her from moving forwards and the seizure only lasted for the brief period of the bullets impact.

The court has previously held that when officers shoot an individual, no seizure occurs unless the shot terminates his movement or otherwise causes the government to have physical control over him. When the police officers shot at Torres, the following actions were based on the officer's decision to shoot. Because the officers shot Torres, she eventually admitted herself into a hospital. She felt as if she had no other place to go except for the hospital and that constitutes a restraint of movement. The petitioner could not go to her home, to another state or go inside a store. Eventually Torres went to a hospital where the police arrested her and because of her limited options, there was a limitation of movement. It can be argued that since Torres had time and the ability to carjack a car and have the interaction with the bystander that she was not restrained. The court concluded in *California v Hodari* **499 U.S. 621(1991)**, that the timing of the



seizure is governed by the citizen's reaction, rather than the officer's conduct.

Here the court should not take this citizen's reaction into consideration, to tell us what will happen in future cases because Torres was under the influence but like many other cases, this court should set the standard of a reasonable person. In *United States v Mendenhall* **446 U.S. 544(1980)**, it is said 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. This leads to the question, would a reasonable person feel like they could leave if they were put in the same situation as Torres and not under the influence? The answer is no. Therefore, with the slight but nevertheless restraint, that the officers had on Torres's movement. This does constitute a seizure and, should not base this unique fact pattern to constitute other reasonable people in society's rights. In all, there are two ways to seize someone by show of authority which requires submission and application of force which does not require the submission to be successful. The seizure itself only lasts the period where the application is being applied and as *California v Hodari* **D 499 U.S. 621(1991)** contends when citing *Thompson v Whitman* **18 WALL 457(1874)**, a seizure is a single act and not a continuous fact. The period where the respondents were they were firing at Torres is the period where she was seized.

## **II. Physical Invasion of the Body**

### **A. Violation of the 4th amendment is present**

For there to be a true violation of the Fourth Amendment, there needs to be an intrusion of the person. It is crucial that we protect personal security as agreed in *Terry v Ohio* **392 U.S. 1(1968)**. In previous cases the court has noted what is an intrusion of the body and what is not. In *Schmerber v California* **384 U.S. 757**, it is said that an invasive surgery may raise privacy concerns weighty enough for the search to require a warrant..but a buccal swab, which involves a brief and minimal intrusion with “virtually no risk, trauma, or pain” does not increase the indignity already attendant to normal incidents of arrest. The buccal swab to process a suspect's DNA was decided to be normal and within procedure but a surgery was not because it was penetrating skin. Here we have a bullet inside the petitioner's arm, meeting the penetration of skin, and the officer shooting, which is not necessarily as standard procedural as taking fingerprints or DNA samples. The definition of an intrusion can be analyzed by the unanimously adopted Virginia Declaration of Right written by George Mason which states “...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.” to not have evidence to support this violation of the fourth amendment is an intrusion and if this court were to find that this fact pattern is not protected under the fourth amendment is diminishing what James Otis declared against writs of assistance “...the power that places the liberty of every man in the hands of every petty officer.” This fact pattern with the subjects being police officers, the question of reasonableness arises. Although not a part of the issue presented, to answer this question we claim the respondents were not reasonable. For the reasonableness requirement to be satisfied when governmental actions infringe upon a citizens constitutional rights there needs to be a side by side analysis as cited in *Wyoming v Houghton* **526 U.S. 295(1999)**.The court, we suggest, should hold them against one another. In doing so we see that the governmental interests do not outweigh the citizens' privacy as there was no governmental interest to begin with. The respondents were there for a separate purpose and there was no suspicion or warrant for Torres until they crossed paths. Therefore there is no governmental interest and the reasonableness requirement is not satisfied.

## CONCLUSION

There was a seizure present when the officers shot bullets at the Petitioner, Roxanne Torres. The bullets constitute as a seizure, because of the physical force and intrusion taking place. Whether the seizure was successful or not is not essential as long as there is intent. This case presents an unlawful seizure by the common law arrest standard. Physical force was implemented on Torres, and there was an invasion by penetration of the skin therefore violating the petitioners 4th Amendment right.

### Prayer

We pray that this honorable court rules in favor of the petitioner, Roxanne Torres and recognizes these claims to be true by abiding by the common law standards.

Respectfully submitted,

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