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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SUMMARY OF ARGUMENT

On July 15, 2014, two New Mexico police officers went to an apartment complex with the intention of arresting a woman. The officers encountered the petitioner, Ms. Torres, out in the parking lot.

Ms. Torres, under the assumption that the officers were instead criminals, began to drive in a threatening and dangerous manner to the officers. The officers then fired at her to protect themselves.

Two bullets hit Ms. Torres, but she did not stop or slow down after being shot, and evaded the police for a full day.

She later filed suit against the police officers for excessive force under the fourth amendment. This suit failed in district court as the court ruled that there was no seizure in this case.

Petitioner then brought it to the United States Court of Appeals for the Tenth Circuit, which ruled in a similar fashion that the suit was not permissible as no seizure had taken place.

The question being asked is whether or not the unsuccessful attempt to stop and detain the petitioner would be considered a "seizure" falling under the fourth amendment.

1. The word "Seizure" requires some element of control. It is not enough to simply touch something or

to have a level of contact. One must succeed, even for the smallest second, in asserting themselves over someone for it to be a seizure. Our definition is based out of the understanding that the words of the constitution would mean what they say to the people. This interpretation also is consistent with the meaning and intent behind the fourth amendment, which would make it a better interpretation than the petitioner.

2. The petitioners definition of "seizure" is not based on a correct understanding of the relationship between the Fourth Amendment, and the ruling in *California v Hodari D.*, or old English Common Law. This is in part because the petitioners' usage of Hodari is rife with dicta. Hodari did not have a problem of physical conflict, but rather a show of authority and submission, which places their description of the physical element of "seizure" as unnecessary to the conclusion. As for the common law, we reflect that their interpretation is historically dubious, and should be seen as separate from the writing of the Fourth Amendment.

3. Using our definition of seizure, Petitioner was not seized because the police officer was unable to assert some level of control over her. She did not stop, nor did she slow down after being shot. Because the police officers were unable to even for the slightest moment restrict her, she was not seized.

ARGUMENT

I. "SEIZURE" REQUIRES AN ELEMENT OF ASSERTING SOME CONTROL

A. "Seizure" Under A Textual and Precedential Analysis Requires Control

Our case is built on the simple understanding that the words of the constitution,

"mean what they conveyed to reasonable people at the time they were written" Antonin Scalia, *Reading Law: The Interpretation of Legal Texts* (2012)

The best way to find out how we should use the constitution is by reading what it says. Thus, in order to provide a consistent method of determining what the law means, we must scrutinize the words of the constitution.

When we apply this framework, we find that "seizure" at the time of the creation required an element of control.- Samuel Johnson, *A Dictionary of the English Language* (1755) (seizure is the "act of taking forcible possession")

This understanding was pointed out in *California v. Hodari D.,*

"From the time of the founding to the present, the word "seizure" has meant a "taking possession," 2

N. Webster, *An American Dictionary of the English* Language 67 (1828); 2 J. Bouvier, *A Law Dictionary* 510 (6th ed. 1856); *Webster's Third New International Dictionary* 2057 (1981). For most purposes at common law, the word connoted not merely grasping, or applying physical force to, the animate or inanimate object in question, but actually bringing it within physical control."*California v. Hodari D., 499 U.S. 621 (1991)*

This makes sense, as one cannot conceive of having been able to seize something without having some level of control.

This element is described in *Terry v Ohio*, as well as other cases,

"whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person." *Terry v. Ohio,* 392 U.S. 1 (1968) See *Brendlin v. California*, 551 U.S. 249 (2007) ("We think that in these circumstances any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission.")

When we apply this understanding to the constitution, we find that this word to reasonable people at the time would at least require some sense of control. For example, had the officers shot and killed Ms. Torres, they would have "seized her". *Mullenix v. Luna,* 577 U.S. ___ (2015)

The Court has once before affirmed the understanding that one must exercise control over one's freedom of movement in *Brower v County of Inyo,*

"Violation of the Fourth Amendment requires an intentional acquisition of physical control…

It is clear, in other words, that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement (the innocent passerby), nor even whenever there is a governmentally caused and governmentally *desired* termination of an individual's freedom of movement (the fleeing felon), but only when there is a governmental termination of freedom of movement *through means intentionally applied.'"* (*Brower v. County of Inyo, 489 U.S. 593* (*1989*))

Of course, this is not all dicta. This language is necessary to decide why the action was in fact a seizure. In Brower, while the main component of contention was the intention, the other language required to maintain the definition of seizure is still necessary because it is a necessary but insufficient burden to explain why the occurrence in Brower was a seizure.

Indeed, in modern times the meaning of the word seizure still requires an element of control. Bryan Gardner, *A Dictionary of Modern Legal Usage 2nd Edition* (1995) ("Seize is principally a

nontechnical lay word meaning: (1) "to take hold of (a thing or person) forcibly or suddenly or eagerly"; (2) "to take possession of (a thing) by legal right")" *Black's Law Dictionary* 1631 (11th ed. 2019) ("forcibly take possession (of a person
or property)")

All of this should lead the court to the conclusion that the "seizure" requires an element of control.

B. This Analysis Is Consistent With The Intentions Of The Fourth Amendment

Petitioners argue that our interpretation is at odds with the intention of the fourth amendment. Regardless of the complex historical debate regarding the intentions of the founding fathers, our interpretation still fits and thus, "furthers rather than obstructs the document's purpose should be favored." Antonin Scalia, *Reading Law: The Interpretation of Legal Texts* (2012)

When constructing the Fourth Amendment, the intention was not specifically to protect people from being shot at, or fought with, or physically abused.

Endemic to the meaning of seizure was the problem of taking control of one's property. As for

privacy, the "searches" element was to protect. The "seizure" on the other hand was to protect the property of the individual (including their own personage).

In the time of the founding fathers, they disliked the British control primarily because they saw that they would violate privacy by searching people with the use of tyrannical "general warrants".

An activist by the name of James Otis Jr. even once described it as, "the worst instrument of arbitrary power...ever was found in the English law-book" James Otis, *Arguments Against Writs of Assistance* (February 1761)

The secondary complaint was that the searches would find their property, and then take it up. The idea that the British could walk into a man's house with a general warrant and then just take things was completely ridiculous to the Americans at the time.

No more is this apparent in "*To The Farmers and Planters of Maryland, Md*"

"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), reprinted in 5 *The Complete Anti-Federalist*

In response, people wanted some sort of protection from this threat. They wanted privacy from intrusion, and for their property to be respected.

This is compounded in other sources from men at the time, see *New York Ratification Convention Debates and Proceedings* (July 19, 1788), "[E]very freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, or his property" :and the *Massachusetts Declaration of Rights* (enacted 1780 as part of state constitution):Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions."

There understandably would have been a problem if we gave police officers the constitutional right to shoot someone and as long as they do not stop, would have been free from consequence. However, this could not be the result as long as the petitioner would seek recompense by pressing battery charges.

Enforcing this judgement will not give free reign to police officers to shoot individuals as long as the individual keeps moving.

The purpose of the amendment was to give the right to privacy from searches, and the right to your own property from seizures.

Of course, this intention nor text did not meaningfully change. The Bill Of Rights as Proposed by James Madison was essentially the same as the The Bill of Rights that was passed (the sole difference being that instead of being the Sixth amendment, it would be the 4th. James Madison, *"Bill of Rights as Proposed*" (March 4, 1789):

II. "SEIZURE" AS DESCRIBED IN THE PETITIONER'S BRIEF IS NOT APPLICABLE

A. Components Of The Meaning of "Seizure" In Hodari Is Dicta

This court should not use the dicta of the Hodari case to decide this case. In our analysis, we do not rely on dicta in *Brower v County of Inyo*. We rely on the rationale behind why what happened was directly a seizure (with stress on the particular point highlighted in the case).

The Hodari case however, has its dicta being used. The ruling in this case was to be about directly whether or not a show of authority was a seizure despite the effect of it. The points about physical contact being all that is required to amount to a common law arrest which then would amount to a seizure is not necessary to come to this ruling. Scalia admits that the question is narrow,

"The narrow question before us is whether, with respect to a show of authority as with respect to application of physical force, a seizure occurs even though the subject does not yield. We hold that it does not." (*California v. Hodari D.,* 499 US 621 - Supreme Court 1991)

Because the language used by the petitioner is not required for Scalia's decision, it is dicta, and should thus be ignored.

B. The Meaning Of "Seizure" As Used In Old English Common Law Is Not Applicable

Petitioner says that we should use the English Common law as applied a long time ago to contextualize what the founding fathers meant when they wrote "seizure".

The court should reject this understanding. While parts of the old English Common law most definitely inspired the writers of the Constitution, it would not make sense to tie in all the concepts from such a thing into the conception of the Constitution.

This old english common law was born out of cases dating back to the 1600s, and debt collectors grabbing hold of people in 18th century England. This is a bridge too far regarding the connections between the United States and the United Kingdom.

In a sense, while we did hail from the United Kingdom, we were also groundbreakers when we

made our own constitution. This would entail that we would need to analyze things not just from our heritage from the English, but from the deliberations and reactions from American colonialists.

To project the common law directly into the constitution would cause a lot of problems, see *California v. Hodari D.*, 499 US 621 - Supreme Court 1991 ("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.")

This historical analysis was already brought out previously above. The idea of searches and seizures was not supposed to be in the sense that the old english common law referred to it, but in the sense that they would react to actual searches and seizures by British soldiers.

Because the context and understanding of these different definitions of seizure are so disconnected, the court should not use them to decide this case.

CONCLUSION

When we read the constitution, we read what it means. When the word "seizure" is written, it is understood that we must go ahead and try and

contextualize what the founding fathers might have meant when they wrote it.

The respondent has taken the easiest option towards concluding this case. Under the common understanding of the word seizure, both then and now, the incident with the Petitioner would not qualify as a seizure. A seizure requires someone to apply force and (even for the briefest of times) assume physical control over Ms. Torres.

This textual interpretation is backed by solid historical analysis of how the founding fathers adopted the Fourth Amendment. Our terms are consistent. ‘

The Petitioner relies on dicta from California V. Hodari D. or common law cases from the 1600s that have very few if any connection to the constitution’s understanding of the term.

This court should rule on using the words that the constitution was intended to be understood as by a reasonable person, not by 1600s common law cases.

This Court should affirm the decision of the Tenth Circuit Court of Appeals in all respects.

Respectfully submitted,

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