



# Police Law Bulletin



City Attorneys' Office

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## UNITED STATES SUPREME COURT



### **The Application of Physical Force With Intent To Restrain a Suspect, Even If Unsuccessful, Is a Fourth Amendment Seizure**

***Torres v. Madrid***, \_\_\_ U.S. \_\_\_ (Mar. 25, 2021). Law enforcement officers were attempting to serve an arrest warrant early in the morning at an apartment complex in New Mexico. They noticed the plaintiff standing in the parking lot and realized that she was not the subject of the warrant, but wished to speak with her. As they approached, the plaintiff entered her car. The plaintiff, who at the time was experiencing methamphetamine withdrawal, did not notice the officers' presence until one of them tried to open her car door. Although the officers wore tactical vests marked with police identification, Torres only noticed armed men surrounding her vehicle and sped off, fearing a carjacking. Although not in the path of the vehicle, the officers fired 13 rounds at the car as it drove away. The plaintiff was struck twice in her back, temporarily paralyzing her left arm. Steering with her right arm, Torres exited the apartment complex, drove a short distance, and stopped in a parking lot. After asking a bystander to report a carjacking, Torres stole a vehicle that happened to be idling nearby. She then drove 75 miles to a hospital which airlifted her to another hospital for appropriate care. It was at the second hospital that police arrested her the following day. She pleaded no contest to fleeing from a law enforcement officer, assault on a peace officer, and unlawfully taking a motor vehicle.

Torres later sued under 42 U.S.C. § 1983 for excessive force, alleging that the shooting was an unreasonable Fourth Amendment seizure. The district court summarily found in favor of the officers, and the Tenth Circuit affirmed. Both courts held that no seizure occurs when an officer's use of force fails to obtain control of the suspect. The Supreme Court granted Torres' appeal.

Under the Fourth Amendment, a seizure of a person occurs when law enforcement applies physical force or when a person submits to an officer's show of authority. While a show of authority (such as an order for a suspect to halt) does not become a seizure unless and until the suspect complies, an application of force to a suspect's body creates a seizure even if it does not

result in actual control or detention. In the case at hand, the fact that the application of force was from a distance (by way of the bullets) did not meaningfully alter the analysis. The Court observed, “The required ‘corporal seizing or touching the defendant’s body’ can be as readily accomplished by a bullet as by the end of a finger.”

The Court did note that not all applications of force or touches will constitute a seizure. For Fourth Amendment purposes, only where an officer applies force with an “intent to restrain” the suspect does the use of force rise to the level of a seizure. An accidental or incidental touching would not qualify, nor would the use of force for a purpose other than with the intent to restrain. Taking the facts of this case into consideration, the Court concluded that the officers seized the plaintiff by using force with an intent to restrain her.

The Court noted its holding was narrow. A seizure is just the first step in the analysis required to determine Torres’ claim. The Fourth Amendment does not forbid all or even most seizures—only unreasonable ones. The sole determination by the Court was that officers seized Torres by shooting her with intent to restrain her movement. The case was sent back to the trial court to determine the reasonableness of the seizure, potential damages caused by the seizure, and the officers’ entitlement to qualified immunity.