

IN THE SUPREME COURT OF THE UNITED STATES

No. 19-292

ROXANNE TORRES, PETITIONER

v.

JANICE MADRID, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting vacatur and remand and that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

This case presents the question whether a law-enforcement officer's shooting of a subject who continues to flee should be analyzed as a Fourth Amendment seizure for purposes of

determining its constitutionality. Petitioner filed this action under 42 U.S.C. 1983 against respondents, alleging that they violated the Fourth Amendment by shooting her. The court of appeals affirmed the grant of summary judgment in respondents' favor solely on the theory that the Fourth Amendment has no application to petitioner's claims. In the court of appeals' view, respondent was not seized within the meaning of the Fourth Amendment because she managed to flee after being shot. The United States has filed a brief as amicus curiae in support of vacatur and remand, contending that although further proceedings may well show that respondents' actions were constitutional or that damages liability is otherwise unwarranted, the court of appeals erred in concluding that no Fourth Amendment seizure occurred.

The United States has a substantial interest in the interpretation of the Fourth Amendment, which applies to both federal and state law-enforcement officers. The United States often defends federal law-enforcement officers who face personal liability for alleged Fourth Amendment violations. The United States also prosecutes law-enforcement officers who willfully violate the Fourth Amendment, see 18 U.S.C. 242, and brings civil actions to address systemic Fourth Amendment violations by law enforcement, see 34 U.S.C. 12601 (Supp. V 2017). Issues relating to the question presented could also arise in the context of a suppression motion in a federal criminal case.

The government has previously presented oral argument as

amicus curiae in cases concerning the interpretation and application of the Fourth Amendment. See, e.g., California v. Hodari D., 499 U.S. 621 (1991); Manuel v. City of Joliet, 137 S. Ct. 911 (2017); Kansas v. Glover, No. 18-556. We therefore believe that participation by the United States in oral argument in this case would be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

FEBRUARY 2020