SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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ROXANNE TORRES,)

Petitioner,)

v.) No. 19-292

JANICE MADRID, ET AL.,)

Respondents.)

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9

10 Washington, D.C.

11 Wednesday, October 14, 2020

12

13 The above-entitled matter came on

14 for oral argument before the Supreme Court of

15 the United States at 10:00 a.m.

16

17 APPEARANCES:

18 KELSI B. CORKRAN, ESQUIRE, Washington, D.C.;

19 on behalf of the Petitioner.

20 REBECCA TAIBLESON, Assistant to the Solicitor General,

21 Department of Justice, Washington, D.C.;

22 for the United States, as amicus curiae,

23 supporting vacatur and remand.

24 MARK D. STANDRIDGE, ESQUIRE, Las Cruces, New Mexico;

25 on behalf of the Respondents.

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear

4 argument first this morning in Case 19-292,

5 Torres versus Madrid.

6 Ms. Corkran.

7 ORAL ARGUMENT OF KELSI B. CORKRAN

8 ON BEHALF OF THE PETITIONER

9 MS. CORKRAN: Mr. Chief Justice, and

10 may it please the Court:

11 In the early morning, Respondents

12 approached Roxanne Torres in her car and

13 attempted to open the door without announcing

14 they were police officers. Believing she was

15 being car-jacked, Ms. Torres drove away, and as

16 she did, Respondents fired 13 shots at her. Two

17 of the bullets hit her in the back.

18 In rejecting Ms. Torres's claim that

19 the shooting violated the Fourth Amendment, the

20 court of appeals did not consider whether

21 Respondents' use of deadly force was reasonable.

22 By the court's reasoning, Respondents could have

23 shot Ms. Torres without any provocation and it

24 would not have violated the Fourth Amendment

25 because, instead of remaining in the parking

1 lot, she drove herself to the hospital.
2 The court of appeals' decision
3 conflicts with the ordinary meaning of the word
4 "seizure" at the time of the Fourth Amendment's
5 adoption, and it conflicts with this Court's
6 precedent. In Hodari D., the Court unanimously
7 recognized that when a government officer
8 inflicts physical force on a person with the
9 intent to restrain them, that person is seized
10 within the meaning of the Fourth Amendment,
11 regardless of whether that restraint is
12 successful.
13 As Hodari D. explains, this is because
14 the Fourth Amendment must protect today what it
15 protected when it was adopted, and in
16 determining what the Fourth Amendment protected
17 at the founding, this Court has always looked at
18 the common law definitions of search and
19 seizure, and with respect to seizures of
20 persons, the common law of arrest.
21 The Court explained in Atwater that an
22 examination of the common law of arrest tells us
23 what the founding generation would have
24 understood to be an unreasonable seizure of a
25 person. The common law of arrest leaves no

1 doubt that when Respondents' bullets entered
2 Ms. Torres's back, she was seized within the
3 original meaning of the Fourth Amendment.
4 Several centuries' worth of cases and
5 commentary, both before and after the founding,
6 uniformly recognize that physical force intended
7 to restrain is an arrest even if the subject
8 evades capture.
9 CHIEF JUSTICE ROBERTS: Ms. Corkran,
10 what if the police had shot out the tires of her
11 car, but she was able to continue driving on?
12 You know, they were those self-sealing tires
13 that you can get.
14 Would that be a seizure?
15 MS. CORKRAN: No, it would not,
16 because there would be no application of
17 physical force to her body.
18 CHIEF JUSTICE ROBERTS: Well, I
19 thought there was an element of intent to hamper
20 movement to your analysis. So what if they were
21 aiming at the wheels or tires but hit her while
22 -- while aiming somewhere else? Would that
23 be --
24 MS. CORKRAN: So this Court --
25 CHIEF JUSTICE ROBERTS: -- would that

1 be a seizure?

2 MS. CORKRAN: Yes, if -- so they have

3 shot her tires and that -- but -- they've shot

4 at her tires but -- but unintentionally hit her?

5 CHIEF JUSTICE ROBERTS: Yes.

6 MS. CORKRAN: Yes, understood. So,

7 under those circumstances, the answer would be

8 yes, because they have physically impacted her

9 through means intentionally applied. That's the

10 test from Brower.

11 CHIEF JUSTICE ROBERTS: But they're

12 applied to -- to the car, really, not to her.

13 It was only inadvertent that they struck --

14 struck her. I thought there was a --

15 MS. CORKRAN: This Court has --

16 CHIEF JUSTICE ROBERTS: -- I thought

17 there was a requirement of hampering movement or

18 laying of hands, for that matter, and you

19 wouldn't have that, or would you? Are you

20 saying, if it's completely inadvertent, it still

21 constitutes a seizure?

22 MS. CORKRAN: No, because, in that

23 circumstance, they are shooting at the car with

24 the intent to restrain the driver. I think that

25 would be akin to the barricade erected in

1 Brower, which, this Court held, seized the
2 driver there because he was seized by the
3 instrumentality put in place or set in motion by
4 the -- the police in order to effect the
5 seizure.
6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.
8 Justice Thomas.
9 JUSTICE THOMAS: Thank you, Chief
10 Justice.
11 Yes. Ms. Corkran, what -- are there
12 any cases at common law where the touching was
13 -- there was a differentiation -- distinction
14 between touching with an in -- inanimate object
15 or a projectile, as opposed to actual corporal
16 touching or touching -- laying on as hand -- of
17 hands, as the Chief Justice mentioned?
18 MS. CORKRAN: Yes, so there was one
19 case from 1604, the Countess of Rutland, where
20 the sergeant of arms effectuated the seizure by
21 touching the Countess with the edge of the mace
22 in declaring her his prisoner.
23 But, more generally, because the --
24 during the founding era, the arrests were
25 primarily effectuated by civil citizens who were

1 not armed, it was -- it was far rarer for them
2 to -- to have any sort of weapon or mechanism
3 for -- for applying physical force in that way.
4 JUSTICE THOMAS: Were those actual
5 criminal prosecutions?
6 MS. CORKRAN: So the Countess of
7 Rutland case was a civil case. Most of the
8 cases we cite are civil arrest cases because
9 criminal arrests were rare at the founding.
10 There was no police force in the United States
11 until the 1840s, and criminal opinions were even
12 rarer.
13 We do cite one, State v. Townsend, and
14 there are a few others from the antebellum era,
15 but most of the cases from the founding era are
16 civil arrest cases. As this Court recognized in
17 Payton, whether an arrest occurred at common law
18 typically arose in the context of civil damages
19 suits for false arrest or trespass on the body,
20 similar to what we have here.
21 JUSTICE THOMAS: If someone is hit
22 with a projectile and does not stop, let's say a
23 rock, a snowball, a -- a stone, would that be an
24 arrest or seizure under your analysis or your
25 approach?

1 MS. CORKRAN: Yes. I think, under the
2 standard that the Court articulated in Brower,
3 it would be, because the seizure is effected by
4 the instrumentality put in place or set in
5 motion to effect the seizure. So that would be
6 akin to the -- the barricade in Brower.
7 JUSTICE THOMAS: Thank you.
8 CHIEF JUSTICE ROBERTS: Justice
9 Breyer.
10 JUSTICE BREYER: Maybe this is just
11 repetitious -- thank you, good morning -- but
12 would you repeat or would you state your view on
13 attempted seizures? It says the right of people
14 to be secure against unreasonable seizures and
15 searches shall not be violated.
16 Well, does that include any right to
17 be free of attempted seizures that are
18 unreasonable?
19 MS. CORKRAN: No, because the founders
20 didn't incorporate the common law of attempted
21 seizures into the Constitution. So it's only
22 the terms that the founders used in the Fourth
23 Amendment that are incorporated into it and must
24 be applied according to their original meaning.
25 JUSTICE BREYER: Thank you. That's

1 fine.

2 CHIEF JUSTICE ROBERTS: Justice Alito.

3 JUSTICE ALITO: If a military sniper

4 shoots someone from a distance of 1,000 yards,

5 would we say that the sniper had seized that

6 person?

7 MS. CORKRAN: Yes, because the -- the

8 sniper shot the bullet with the intent of

9 applying physical force to the person in order

10 to restrain them --

11 JUSTICE ALITO: In ordinary --

12 MS. CORKRAN: -- so that's the --

13 JUSTICE ALITO: -- in ordinary speech,

14 would we say that, the sniper seized that

15 person?

16 MS. CORKRAN: I think -- I agree with

17 Justice -- with Hodari D.'s point that -- that,

18 yes, ordinary --

19 JUSTICE ALITO: It's a simple --

20 MS. CORKRAN: -- meaning that --

21 JUSTICE ALITO: -- it's a simple

22 question. In ordinary --

23 MS. CORKRAN: Yes. So the --

24 JUSTICE ALITO: -- speech, would we

25 say that? We would say --

1 MS. CORKRAN: Yep.
2 JUSTICE ALITO: -- the sniper seized
3 the person? I'll give you another example. If
4 a baseball pitcher intentionally beans the
5 batter, would we say, wow, that pitcher just
6 seized the batter?
7 MS. CORKRAN: I -- I don't know that
8 we'd use it in that context, but I would point
9 to Hodari D.'s example, she seized the purse
10 snatcher, but he broke out of her grip --
11 JUSTICE ALITO: Yeah, that person --
12 MS. CORKRAN: -- as --
13 JUSTICE ALITO: -- the person seized
14 the -- the purse snatcher because the person had
15 a grip on the -- on the purse snatcher for at
16 least a moment. So it's really hard for me to
17 see how your argument squares with the language
18 of the Fourth Amendment, which prohibits
19 unreasonable seizures, but let me move on very
20 quickly to another point.
21 Do you have any cases that hold that,
22 at common law, shooting someone constituted an
23 arrest?
24 MS. CORKRAN: No, there were no
25 shooting cases at the founding because arrests

1 were not effectuated with guns at that point,
2 but --
3 JUSTICE ALITO: So your argument --
4 MS. CORKRAN: -- this Court recognized
5 that --
6 JUSTICE ALITO: -- I mean, your
7 argument is not consistent with the language of
8 the Fourth Amendment and you want us to expand
9 the concept of an arrest beyond where it stood
10 at common law, is that correct?
11 MS. CORKRAN: No, Your Honor. We are
12 asking the Court to affirm the original meaning
13 of the Fourth Amendment. And I think that's
14 important because we started by talking about
15 what -- what the word means today, but, of
16 course, for the purposes of interpreting
17 constitutional text, we look to the ordinary
18 meaning to the founding --
19 JUSTICE ALITO: Yeah, I thought your
20 --
21 MS. CORKRAN: -- generation.
22 JUSTICE ALITO: -- I thought your
23 argument was that an arrest at common law
24 constitutes a seizure, but you have no --
25 MS. CORKRAN: Yes.

1 JUSTICE ALITO: -- authority for the
2 proposition that shooting somebody was an arrest
3 at common law?
4 MS. CORKRAN: The -- the Court
5 recognized in Castleman that the common law
6 concept of force includes its indirect
7 application to the extent that pulling a trigger
8 would be considered an indirect application, but
9 we looked -- we looked to the common law to
10 determine what force was at the time.
11 And I don't think there's any real
12 dispute that -- that shooting someone or hitting
13 them with a bat or any sort of application of
14 force using an instrument would have qualified
15 under that original meaning of seizure.
16 JUSTICE ALITO: Thank you.
17 CHIEF JUSTICE ROBERTS: Justice
18 Sotomayor.
19 JUSTICE SOTOMAYOR: Counsel, picking
20 up on that last point, it is a little odd to say
21 that a police officer who touches you has seized
22 you in the common law, but, if he has a baton in
23 his hand and touches you with the baton, he's
24 done so indirectly, so he hasn't seized you,
25 and, if he takes a gun and shoots the bullet at

1 you, that's not a seizure because it's a
2 projectile.
3 I'm assuming your -- what your
4 statement was to my two prior colleagues is that
5 the common law didn't draw that kind of
6 distinction because it made no sense, correct?
7 MS. CORKRAN: That's correct. Every
8 circumstance you just described would have
9 fallen within the original meaning of seizure at
10 the founding.
11 JUSTICE SOTOMAYOR: Now can you
12 explain why this case is so important? Meaning,
13 if you don't -- if you weren't to have a Fourth
14 Amendment violation, would the Due Process
15 Clause provide you with a remedy?
16 MS. CORKRAN: So I -- I -- I don't
17 think that the remedy provided by the Due
18 Process Clause is adequate here at least under
19 the current regime, where we have the
20 conscience-shocking standard.
21 There are all sorts of abuses by the
22 government of power that would fall short of the
23 conscience-shocking standard, even though they
24 would be unreasonable uses of excessive force.
25 JUSTICE SOTOMAYOR: Thank you,

1 counsel.

2 CHIEF JUSTICE ROBERTS: Justice Kagan.

3 JUSTICE KAGAN: Ms. Corkran, there are

4 quite a number of statements in Hodari D. that

5 support your position. But Mr. Standridge says

6 that they're all dicta and that we are not bound

7 to take account of them. I -- I was just

8 wondering what your response to that was.

9 MS. CORKRAN: Certainly, the Court's

10 holding in Hodari D. that the common law of

11 arrest defines a Fourth Amendment seizure is

12 binding precedent. That was the foundation of

13 the -- the Court's finding of no seizure in that

14 case.

15 And the -- the Court's discussion of

16 what the common law of arrest has held, which

17 was that touch intended to restrain is a seizure

18 regardless of whether there's submission, you

19 know, I -- I don't know that I would say it's

20 binding in the sense that it was necessary to

21 the Court's outcome, but the courts thoroughly

22 considered the question presented here.

23 That -- those were not generalized

24 stray statements made in a different context.

25 The Court was considering this question, and all

1 nine Justices agreed that the circumstances we
2 have here would amount to a -- a common law
3 arrest and, thus, a Fourth Amendment seizure.
4 JUSTICE KAGAN: And as -- as you read
5 the common law cases, do you get any sense of
6 why it was that those cases said that mere touch
7 was enough? I mean, is there a rationale that
8 accompanies that rule?
9 MS. CORKRAN: The founding generation
10 recognized that the infliction of physical force
11 on the body is itself an intrusion regardless of
12 whether the person is able to walk away.
13 This Court recognized in -- in an 1891
14 case, Union Pacific v. Botsford, that the touch
15 of a stranger without lawful authority is itself
16 an indignity, a trespass, and assault. And so
17 that -- that was the concept at the founding
18 that the -- the Framers gave constitutional
19 weight in the Fourth Amendment.
20 JUSTICE KAGAN: Thank you, Ms.
21 Corkran.
22 CHIEF JUSTICE ROBERTS: Justice
23 Gorsuch.
24 JUSTICE GORSUCH: Counsel, as I
25 understand it, your client would have had a good

1 common law claim in New Mexico but for the
2 statute of limitations running, is that right?
3 MS. CORKRAN: There was no -- I'm not
4 -- that's -- that's my understanding as well. I
5 can confirm --
6 JUSTICE GORSUCH: Okay, thank you.
7 Thank you. That's fine.
8 With respect to Hodari D., do -- do
9 you agree that -- that the language you're
10 relying on was not necessary to the decision?
11 MS. CORKRAN: I -- the -- the second
12 part, that -- that -- that the common law of
13 arrest does not require submission, was not
14 necessary to the conclusion. However, the --
15 the first part, which is that the common law of
16 arrest defines a Fourth Amendment seizure, was
17 necessary and, therefore, is binding.
18 JUSTICE GORSUCH: Well, let -- let's
19 -- let's explore that. The -- the common law of
20 arrest, the laying on of hands, near as I can
21 tell, it kind of arose in the Dickensian debt
22 collector process, that if you could get a hand
23 on somebody through the window of the house,
24 that then enabled you to go -- go in and grab
25 them inside the house.

1 What -- what -- what -- what's --
2 what's incorrect about that and why should we,
3 in -- in defining the word "seizure," rely on
4 debt collection practices defining the term
5 "arrest" in England?
6 MS. CORKRAN: So, as the Court
7 observed in Payton, at common law, disputes over
8 whether arrests occurred typically arose in
9 civil damage -- damages actions for trespass or
10 false arrest. And that supports our position.
11 The founding --
12 JUSTICE GORSUCH: But they were
13 usually in debt collection processes, isn't that
14 correct?
15 MS. CORKRAN: There -- there were --
16 yes, a number of them are debt collector --
17 JUSTICE GORSUCH: Okay. And --
18 MS. CORKRAN: -- cases, although --
19 JUSTICE GORSUCH: -- and back then,
20 guns were not unknown at that time, and -- and
21 it's pretty hard to find a case in which
22 somebody is shot and that's been held to be even
23 an arrest, let alone a seizure, isn't that
24 right?
25 MS. CORKRAN: Yeah, that -- yes, Your

1 Honor, that's correct, because most arrests were
2 effectuated by private citizens on --
3 JUSTICE GORSUCH: Okay. Okay. And
4 then going back to the Chief Justice's example,
5 if a huge roadblock were put before an
6 individual and everybody shoots at him, but
7 nobody hits him, but his window's open and he
8 gets scraped going by, I mean, they meant to
9 stop him with the -- with the roadblock, and he
10 gets scraped, so it's intentionally applied,
11 that's a seizure your under your theory, right?
12 MS. CORKRAN: I think so, if I
13 followed the hypothetical correctly, in the
14 sense that the -- the -- the shooting was
15 intended, the bullet was intended to hit him.
16 JUSTICE GORSUCH: But the bullet
17 didn't hit him. There were bazookas going off.
18 There -- there's all sorts of massive show of
19 force, but he doesn't stop; he keeps going.
20 He's blasting through at 100 miles an hour, and
21 he blasts through and on he goes, bazookas
22 firing anywhere. Still not seized by any of
23 that because that's a show of force, but he gets
24 scraped through the window as he goes by -- by
25 the roadblock, and that was intentionally

1 applied force, for sure.

2 That's -- that's a seizure in -- in

3 your book, even though it --

4 MS. CORKRAN: Yes.

5 JUSTICE GORSUCH: -- wouldn't be a

6 seizure for show of force purposes, right?

7 MS. CORKRAN: So -- so, no, I don't

8 think that -- that scenario, what I understand

9 now. Apologies, I misunderstood initially.

10 There, the -- the scraping, I think, is -- is

11 not caused by the -- the means intentionally

12 applied to restraining --

13 JUSTICE GORSUCH: Well, let's say it

14 is.

15 MS. CORKRAN: -- the suspect.

16 JUSTICE GORSUCH: Let's say it is

17 intentionally applied force because they have a

18 roadblock and they want the roadblock to stop

19 him.

20 MS. CORKRAN: Yeah. Well, so --

21 JUSTICE GORSUCH: And it scrapes him.

22 MS. CORKRAN: -- so, yes, under the --

23 this Court's articulation of the intent

24 requirement in Brower, but I just want to

25 emphasize that the intent requirement --

1 JUSTICE GORSUCH: So just to -- just
2 to be clear, that -- that -- that is not a show
3 of force seizure under Hodari D. and its
4 holding, but it is under your theory?
5 MS. CORKRAN: No, our -- our -- our
6 theory is exactly the same as Hodari D.
7 CHIEF JUSTICE ROBERTS: Thank you.
8 Thank you, counsel.
9 Justice Kavanaugh.
10 JUSTICE KAVANAUGH: Thank you.
11 And good morning, Ms. Corkran. With
12 respect to Brower, the other side, as you know,
13 relies heavily on the language in that, which
14 says that a Fourth Amendment seizure occurs only
15 when there is a governmental termination of
16 freedom of movement through means intentionally
17 applied. What would you suggest we do with that
18 language?
19 MS. CORKRAN: So I -- I would turn to
20 what the Court said in Armour and Company v.
21 Wantock, which is that the words of our opinion
22 must be read in light of the facts under
23 discussion. And the entire focus of Brower and,
24 in particular, that sentence is on the intent
25 requirement. Did the officers who erected the

1 barricade intend to restrain the driver for the
2 purposes of a seizure? And the driver there was
3 killed on impact, so the termination of movement
4 was besides the point in that case.
5 JUSTICE KAVANAUGH: And then I think a
6 few of the questions so far have tried to
7 illustrate a potential distinction between how
8 we normally use the word "seizure" in ordinary
9 speech and how it's been used historically
10 versus maybe the legal, common law use that
11 you've described.
12 Is that accurate? How -- how should
13 we deal with that distinction between ordinary
14 usage, and why shouldn't we just follow the
15 ordinary usage of the term "seizure"?
16 MS. CORKRAN: Well, I would look to
17 Hodari D.'s discussion of this, which explains
18 that to the extent the ordinary meaning of
19 "seizure" at the time of the founding was more
20 expansive than how we normally think about
21 seizures today, it's the ordinary meaning at the
22 time of the founding that controls, especially
23 if the modern understanding risks diminishing
24 the constitutional right.
25 This Court has repeatedly recognized

1 that the Constitution must, at minimum, protect
2 today what it protected at the time it was
3 adopted.
4 JUSTICE KAVANAUGH: Thank you.
5 CHIEF JUSTICE ROBERTS: Ms. Taibleson?
6 MS. TAIBLESON: Mr. Chief -- Mr. Chief
7 Justice --
8 CHIEF JUSTICE ROBERTS: Oh, I'm sorry
9 -- I'm sorry. Excuse me. Ms. Corkran, you can
10 take a minute to wrap up if you'd like.
11 MS. CORKRAN: Oh, thank you, Your
12 Honor.
13 I've said a lot today about important
14 -- the importance of preserving the Fourth
15 Amendment's original protections, but our
16 position also makes sense doctrinally and
17 practically.
18 This Court has long recognized that,
19 at its core, the Fourth Amendment protects
20 against unreasonable government intrusion with
21 personal security, including invasive physical
22 touch. We see that in Terry v. Ohio, Maryland
23 v. King, and Winston v. Lee, among others. It's
24 a principle that flows from the Fourth
25 Amendment's express protection of the person,

1 that is, the body, and it's violated the moment
2 a police officer applies physical force to a
3 person's body, regardless of whether they're
4 able to walk away.
5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.
7 Ms. Taibleson.
8 ORAL ARGUMENT OF REBECCA TAIBLESON
9 FOR THE UNITED STATES, AS AMICUS CURIAE,
10 SUPPORTING VACATUR AND REMAND
11 MS. TAIBLESON: Mr. Chief Justice, and
12 may it please the Court:
13 In California against Hodari D., this
14 Court explained that a person is seized within
15 the meaning of the Fourth Amendment when the
16 police intentionally apply restraining physical
17 force to his body. If a subject does not stop,
18 the seizure lasts only a moment, the moment of
19 physical impact, and may have limited
20 implication. Like any seizure, though, it must
21 be reasonable.
22 For nearly 30 years, Hodari D. has
23 provided a clear and administrable rule to
24 determine when physical contact between an
25 officer and a citizen implicates the Fourth

1 Amendment. This case requires the Court only to
2 reaffirm that rule.
3 The facts of this case make it an easy
4 one under Hodari D. It is undisputed that
5 officers shot Ms. Torres as part of an effort to
6 stop her and to stop her vehicle. She was,
7 therefore, seized. But she did not stop, and so
8 the seizure was momentary.
9 Whether that seizure was
10 constitutional and whether Respondents may be
11 civilly liable in this case are questions that
12 should be answered on remand under the Fourth
13 Amendment. This Court should, therefore, vacate
14 the decision below.
15 CHIEF JUSTICE ROBERTS: Counsel, I --
16 I wondered if there was some tension between
17 your position and Ms. Corkran's. Several times
18 in your brief, you talk about that -- that the
19 -- the touch can be too light to qualify as a
20 seizure. I'm looking at, for example, page 13,
21 where you say, you know, tapping somebody on the
22 shoulder and asking for immigration paperwork
23 would not constitute a seizure and that the
24 contact must be designed to restrain movement.
25 Is there any distinction between your

1 view of that and the -- and Ms. Corkran's?

2 MS. TAIBLESON: Mr. Chief Justice, I'm

3 not sure there's a distinction between our

4 position and Petitioner's. I'm not sure

5 Petitioners take an explicit position on those

6 fleeting non-restraining physical touches.

7 But we do think that an important

8 restriction on the test and a restriction that

9 is reflected in Hodari D. is that the physical

10 touch must reflect an effort to restrain

11 movement.

12 That is consistent with this Court's

13 decision in INS against Delgado, which, as you

14 referenced, involved a shoulder tap. Hodari D.

15 includes that restriction in defining a seizure.

16 And the common law sources cited in Hodari D.

17 are consistent with that restriction.

18 CHIEF JUSTICE ROBERTS: So, if there's

19 a tap on the shoulder and the officer says,

20 you're -- I don't mean to hold you up, you're

21 free to go, but, you know, I want to talk to you

22 about this, does that qualify as a seizure?

23 MS. TAIBLESON: No, Your Honor.

24 CHIEF JUSTICE ROBERTS: Okay. Thank

25 you, counsel.

1 Justice Thomas.

2 JUSTICE THOMAS: Counsel, I'm a bit

3 confused. Hodari D. did not hold that there was

4 a seizure, did it?

5 MS. TAIBLESON: On the facts of the

6 Hodari D. case, no, there was no seizure.

7 JUSTICE THOMAS: So this was an

8 individual who had thrown drugs away and then

9 was later tackled, right?

10 MS. TAIBLESON: Correct, Your Honor.

11 JUSTICE THOMAS: So I don't see how,

12 on those facts, the -- the -- the sum of the

13 language in Hodari D. can do as much work as you

14 seem to be requiring it to do.

15 MS. TAIBLESON: Oh, Justice Thomas,

16 the question in Hodari D. was whether Hodari --

17 that's the child -- had -- was seized at the

18 moment that he discarded his drugs, which was

19 before he was tackled.

20 There was no dispute that he was

21 seized in the tackling, but because at the

22 moment he discarded his drugs, no police officer

23 had touched him in any way, the Court determined

24 that he was not seized at that time.

25 JUSTICE THOMAS: But the seizure after

1 the tackling and the submission or the control
2 had -- was the only seizure there, so I don't
3 know -- you seem to be using your -- your
4 definition or at least the explanation in Hodari
5 for what has -- what constituted a seizure when
6 there was a finding that there was no seizure
7 there as a basis for your argument.
8 Anyway, let me move on to your case
9 law. Can you think of a single case in -- at
10 common law where there was a touching by an
11 inanimate object, for example, a projectile,
12 that did not result in the submission that was
13 -- that constituted a seizure?
14 MS. TAIBLESON: No, I don't have a
15 case precisely like that, Justice Thomas. I
16 think my friend mentioned the Countess of
17 Rutland case from 1604 in which there was an
18 indirect touching, but, in that case, the
19 Countess, who was the arrestee, did sub -- sub
20 -- submit to the arrest and she didn't flee.
21 That being said, the language in
22 Countess of Rutland case -- indicates that the
23 touching through the mace alone was what
24 effected the arrest.
25 JUSTICE THOMAS: Thank you.

1 CHIEF JUSTICE ROBERTS: Justice
2 Breyer.
3 JUSTICE BREYER: No, go ahead. Thank
4 you very much.
5 CHIEF JUSTICE ROBERTS: Justice Alito.
6 JUSTICE ALITO: Maybe you can clarify
7 something for me about your position. Let's say
8 that the Petitioner in this case had been struck
9 by one bullet. For what period of time would
10 she have been seized in your view?
11 MS. TAIBLESON: Justice Alito, she
12 would have been seized at the moment of impact
13 of the bullet, and that is all.
14 JUSTICE ALITO: And -- and that's it.
15 Okay.
16 So this is what really confuses me
17 about your position. At the bottom of page 18
18 of your brief, you say that "any damages claimed
19 in a civil suit would be limited to harms
20 traceable to the brief moment of the seizure."
21 I would have thought that damages in a
22 case like this, if this is a valid claim, would
23 constitute the effects of having been shot,
24 medical expenses, pain and suffering, lost
25 income, and all that sort of thing.

1 Could you explain what you meant by
2 that statement?
3 MS. TAIBLESON: Of course, Justice
4 Alito. What we meant to say was that, in many
5 cases, the fleeting physical force seizure will
6 be something that's far less than a bullet.
7 And so, you know, for example, if an
8 officer grasps a subject's arm and the subject
9 wriggles out of the grasp, that is a seizure
10 under the Fourth Amendment, but it's not the
11 type of seizure that could sustain meaningful
12 damages under Section 1983.
13 Of course, in this case, the seizure
14 is not that. The seizure was a bullet to
15 Ms. Torres's body. And so we do think that, you
16 know, that is the moment of seizure that should
17 be analyzed, the bullet, for the purposes of
18 damages under 1983 in this case.
19 JUSTICE ALITO: Well, I still don't
20 understand what that means in concrete terms.
21 Certainly, her -- her injury is traceable to the
22 -- to the -- to having been shot. Is it
23 traceable to the brief moment of the seizure,
24 which is what you say in your brief?
25 MS. TAIBLESON: We think the brief

1 moment of seizure is -- is the bullet entering
2 Ms. Torres's body. So I think they are one and
3 the same for the purposes of --
4 JUSTICE ALITO: Well, can she get
5 damages for, let's say, pain and suffering? Yes
6 or no?
7 MS. TAIBLESON: Yes, Your Honor,
8 assuming that the tort principles that govern
9 under Section 1983 would -- would provide for
10 such damages.
11 JUSTICE ALITO: All right. Thank you.
12 CHIEF JUSTICE ROBERTS: Justice
13 Sotomayor.
14 JUSTICE SOTOMAYOR: Counsel, you rely,
15 as does your friend, on Hodari D. Both of you
16 believe, I think -- and if I'm wrong, let me
17 know -- that the language in Hodari is not
18 dicta. Could you articulate why you think it's
19 not dicta?
20 MS. TAIBLESON: Justice Sotomayor, the
21 facts in Hodari D. did not involve a physical
22 force seizure at the moment in question in that
23 case, so I suppose you could imagine the Court
24 in Hodari D. having resolved the question
25 presented there on different reasoning, but that

1 is not what the Hodari D. court did.
2 Instead, the Court expressly framed
3 the question presented as whether, with respect
4 to a show of authority, as with respect to
5 application of physical force, a seizure occurs
6 even though the subject does not yield.
7 The Court then has a long discussion
8 of physical force seizure and specifically
9 concludes that the application of restraining
10 physical force, even if unsuccessful, can be a
11 seizure.
12 That language has never been
13 abrogated, and that particular point was agreed
14 to by the defense. So we take the Hodari D.
15 Court at its word.
16 And Hodari D. did establish a clear
17 and administrable line that has been in place
18 for 30 years. So we are not asking the Court to
19 revisit that language in Hodari D. today.
20 JUSTICE SOTOMAYOR: It seems somewhat
21 logical. It was necessary to the reasoning of
22 the Court in reaching its decision.
23 MS. TAIBLESON: We certainly don't
24 think it's language that we could simply set
25 aside. Of course, we advocated for a different

1 position in Hodari D. This Court rejected it,
2 and so we are here respecting, you know, what
3 the Court said in Hodari D.
4 JUSTICE SOTOMAYOR: Thank you,
5 counsel.
6 CHIEF JUSTICE ROBERTS: Justice Kagan.
7 JUSTICE KAGAN: Ms. Taibleson, I
8 wanted to ask you about exactly that question
9 that you just said at the end because your
10 office did take a different view in Hodari D.
11 This -- this question was -- was --
12 was viewed as important to the resolution of the
13 case there, and the office said -- and I'm
14 quoting here -- "at common law, the concept that
15 someone could be in flight and yet also be
16 seized would have been unfathomable."
17 So this is not a criticism of a change
18 of position. I just want to understand what
19 accounts for the change of position in this
20 case.
21 MS. TAIBLESON: Yes, Your Honor. If
22 you read our brief in Hodari D. and then you
23 read the decision in Hodari D., it's quite clear
24 that this Court considered and rejected the
25 government's position, both the bottom line and

1 the reasoning and the inferences that we drew
2 from the common law.
3 So we're -- we didn't certainly feel
4 comfortable simply, you know, running it back.
5 It's also true that, as I -- as I sort of
6 alluded to before, for the last 30 years, Hodari
7 D. has provided a clear and administrable
8 standard to determine when these interactions
9 between a police officer and a citizen rise to
10 the level of the Fourth Amendment.
11 And the United States' interest here
12 is in establishing a clear and predictable rule
13 that law enforcement can apply in the heat of
14 the moment in the field, and we think the rule
15 established in Hodari D. achieves those ends.
16 JUSTICE KAGAN: And -- and, Ms.
17 Taibleson, along the lines of one of the Chief
18 Justice's questions, I mean, is there anything
19 that Petitioner's counsel said in her argument
20 or, for that matter, in her brief with which
21 you, the government, disagrees?
22 MS. TAIBLESON: No, Your Honor. The
23 one thing I would say is that Petitioner's brief
24 does not take an express position on how to
25 analyze the intent required for a fleeting

1 physical force seizure, and we have tried to
2 emphasize that that's an objective inquiry under
3 this Court's cases. So that's a I wouldn't say
4 disagreement but, rather, a slight difference
5 between Petitioner's position and ours.
6 JUSTICE KAGAN: Thank you, Ms.
7 Taibleson.
8 CHIEF JUSTICE ROBERTS: Justice
9 Gorsuch.
10 JUSTICE GORSUCH: Counsel, in terms of
11 clear administrable lines, the Fourth Amendment,
12 as -- as interpreted by this Court, the seizures
13 of papers require actual control, effects actual
14 control, show of force under Hodari D., actual
15 control.
16 Here alone, this is an anomaly, isn't
17 it?
18 MS. TAIBLESON: Yes, Your Honor. And
19 I think that's one of the arguments we made in
20 our briefs in Hodari D. That being said, you
21 know, in --
22 JUSTICE GORSUCH: Okay.
23 MS. TAIBLESON: -- a show of authority
24 --
25 JUSTICE GORSUCH: If that's the case,

1 I -- I guess I'm curious what -- what -- what
2 authority do you have in terms of the original
3 and ordinary meaning of the word "seizure" at
4 the time of the Fourth Amendment that would --
5 would countenance that difference?
6 And -- and -- and how -- I guess
7 you're going to tell me that that incorporates
8 arrest doctrine, but how do we know that, and
9 what -- what authority do we have for that? The
10 founders were well aware of the word "seizure"
11 and well aware of the word "arrest" and they
12 deliberately did not use "arrest," it seems.
13 Why should we incorporate Dickensian
14 debt collection practices which were enabled by
15 a very liberal view of arrest to allow somebody
16 to reach through a window, grab somebody, why --
17 why should we incorporate those practices into
18 the term "seizure"?
19 MS. TAIBLESON: This Court has
20 recognized again and again that an arrest is the
21 quintessential seizure of the person. That's in
22 Payton as well as Hodari D.
23 And this Court has also consistently
24 looked to common law cases to help inform the
25 meaning of the Fourth Amendment, including civil

1 cases. Entick against Carrington, of course,
2 which is one of the hallmark common law cases
3 this Court has looked to in defining the Fourth
4 Amendment, was a civil trespass case.
5 We do agree that the common law rule
6 arose in a different context from the one that
7 we're talking about here. But what the common
8 law and the Fourth Amendment have in common --
9 JUSTICE GORSUCH: Okay. If we're
10 going to do -- if we're going to do the common
11 law of arrest, I -- I thought I heard you
12 disagree with your friend earlier and that there
13 -- it's pretty hard to find a case involving a
14 projectile that constitutes an arrest even under
15 the very liberal Dickensian type debt collection
16 practices cases.
17 MS. TAIBLESON: That's true, Your
18 Honor, there's not a gun shooting or a
19 projectile flying through the air case that I'm
20 aware of. But --
21 JUSTICE GORSUCH: It's not like guns
22 were unknown at the time, right?
23 MS. TAIBLESON: I think my friend -- I
24 agree with my friend that -- that guns were not
25 regularly used in the course of an arrest at the

1 time.

2 CHIEF JUSTICE ROBERTS: Thank you,

3 counsel.

4 JUSTICE GORSUCH: They were not --

5 CHIEF JUSTICE ROBERTS: Justice --

6 Justice Kavanaugh.

7 JUSTICE KAVANAUGH: Thank you, Chief

8 Justice.

9 And good morning, Ms. Taibleson.

10 On your brief in Hodari D., the

11 solicitor general's brief said that the

12 historical evidence defined the term "seizure"

13 as requiring actual control over the person or

14 thing seized. And the brief said, as a matter

15 of original understanding, one could not be

16 arrested or seized until he was in the physical

17 custody of the seizer and within his control.

18 The Court in Hodari D., as you point

19 out, did not adopt that position, but was the

20 Court wrong about the original understanding?

21 In other words, who's correct about the original

22 understanding, the solicitor general's brief or

23 Justice Scalia's opinion for the Court?

24 MS. TAIBLESON: Well, Your Honor, our

25 brief in Hodari D., to support that rule, cited

1 many common law sources involving the seizure of
2 goods, such as ships, in which the seizure was
3 consummated with control over the item.
4 And what Hodari D. said was that that
5 is not quite the right source of law to look to
6 in analyzing the seizure of a person, which is
7 the arrest.
8 And it's true that even in our Hodari
9 D. brief, we cited some sources indicating that
10 an arrest could be complete at the point of mere
11 touching. So, at this point, we -- we take
12 Justice Scalia's opinion in Hodari D. at its
13 word, and -- and we're not asking the Court to
14 revisit the original meaning of a seizure under
15 the Fourth Amendment.
16 JUSTICE KAVANAUGH: I just want to
17 make sure. Are you saying Justice Scalia was --
18 it's not only precedent, but Justice Scalia was
19 right, or are you not saying that?
20 MS. TAIBLESON: I'm saying I -- I
21 think Justice Scalia drew a distinction between
22 the common law sources that is accurate and --
23 and that you could even potentially see in our
24 Hodari brief if you -- if you blink. So, yes, I
25 think he was right.

1 JUSTICE KAVANAUGH: Thank you.
2 CHIEF JUSTICE ROBERTS: A minute to
3 wrap up, Ms. Taibleson.
4 MS. TAIBLESON: Thank you, Mr. Chief
5 Justice.
6 Under this Court's precedents, the
7 intentional application of restraining physical
8 force to a subject's body, even when that force
9 is unsuccessful, is a seizure. And the seizure
10 lasts for as long as the physical force is being
11 applied. There is simply no other way to read
12 Hodari D. This Court has never called Hodari D.
13 into doubt, nor has it ever decided a case whose
14 result goes the other way.
15 This Court has also repeatedly
16 emphasized that the Fourth Amendment analysis is
17 an objective one. The Hodari D. test focuses
18 not on an officer's mental state but rather on
19 how a reasonable person would have understood
20 his conduct.
21 Under that test, Ms. Torres was
22 seized, albeit briefly, so the Fourth Amendment
23 applies. But, as in any case, the fact that a
24 seizure occurred is the beginning and not the
25 end of the Fourth Amendment inquiry.

1 This Court should vacate and remand so
2 that the courts below may apply a reasonableness
3 standard and analyze qualified immunity.
4 Thank you.
5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.
7 Mr. Standridge.
8 ORAL ARGUMENT OF MARK D. STANDRIDGE
9 ON BEHALF OF THE RESPONDENTS
10 MR. STANDRIDGE: Mr. Chief Justice,
11 and may it please the Court:
12 A seizure under the Fourth Amendment
13 occurs when a police officer acquires physical
14 possession, custody, or control over a suspect.
15 From the time of the founding to the present,
16 and as a matter of common sense, the acquisition
17 of physical control over a person has been
18 necessary to effectuate a seizure.
19 Whatever the means employed by the
20 police, the end point is the same. The police
21 action must result in the officer's acquisition
22 of custody over the person, terminating the
23 person's movement. In other words, the suspect
24 must be stopped by the very instrumentality set
25 in motion or put in place by the police officer.

1 Petitioner Roxanne Torres was not
2 seized by either Janice Madrid or Richard
3 Williamson on July 15, 2014. While these
4 officers shot at and hit Petitioner, they did
5 not acquire physical custody or control over
6 her. Petitioner did not stop or even slow down
7 in response to being shot. Instead, she fled
8 the scene, stole another vehicle, sped 75 miles
9 west of Albuquerque, New Mexico, and eluded
10 arrest for over a full day.
11 The fundamental flaw of the
12 Petitioner's argument here is that at no time
13 did the officers acquire possession, custody, or
14 control over her. Indeed, Petitioner never
15 stopped in response to the police action. As
16 the officers did not seize Petitioner, they
17 cannot be held liable to her for excessive force
18 in violation of the Fourth Amendment.
19 The Tenth Circuit correctly held as
20 much below, and its decision must be affirmed.
21 Mr. Chief Justice, I look forward to
22 the Court's questions.
23 CHIEF JUSTICE ROBERTS: Okay. Mr.
24 Standridge, I'd like to follow up with some of
25 the questions that Justice Gorsuch asked of --

1 of your friend.

2 There are a lot of cases about private

3 citizens, you know, mere touches and -- and all

4 that, that, nonetheless, are held to constitute

5 an arrest. Is that the same? Is there any

6 reason we shouldn't translate those into police

7 effecting a seizure?

8 MR. STANDRIDGE: Absolutely, Mr. Chief

9 Justice. We should not translate that body of

10 case law cited by the Petitioner regarding the

11 mere touch rule because it arose in a very

12 limited and narrow context.

13 As the Court has pointed out

14 repeatedly today, it arose in the context of

15 Dickensian debt collection practices existing in

16 the late 18th Century. The constabulary and the

17 bailiffs of the late 18th Century are far

18 different from our modern police force of today.

19 In fact, as Petitioner pointed out, we didn't

20 have public modern police forces until the

21 mid-19th Century.

22 CHIEF JUSTICE ROBERTS: But I thought

23 our --

24 MR. STANDRIDGE: This --

25 CHIEF JUSTICE ROBERTS: -- I thought

1 our cases made clear that the Fourth Amendment
2 was designed to protect at least the level of
3 bodily integrity, personal security that was
4 secured at common law. Is -- is there -- there
5 -- and our cases certainly look to common law
6 precedents about arrest, even if by, you know,
7 Dickens or anybody else. And what authority do
8 you have for that distinction?
9 MR. STANDRIDGE: Your Honor, I'd cite
10 first to Payton versus New York, this Court's
11 opinion that -- where the Court noted that the
12 common law rules of arrest developed in legal
13 contexts that substantially differ from the
14 cases that the Court sees before it today and
15 that these important differences between the
16 common law rules that existed relating to
17 arrests at the time of the framing and those
18 that have evolved through the process of
19 interpreting the Fourth Amendment in light of
20 contemporary norms and contemporary conditions
21 require that we depart, that we reject historic
22 relics that are not suited to the modern era.
23 The -- the part-time constabulary that
24 was in charge of -- of ferreting out debtors and
25 bringing back -- bringing them back before the

1 court, it's -- it's simply different from what
2 we expect of police officers working today. Our
3 public dedicated police force is there to arrest
4 or to investigate and make arrests for crimes.
5 CHIEF JUSTICE ROBERTS: What -- you
6 emphasized the fact that Ms. Torres drove on and
7 -- and wasn't actually apprehended, I guess, for
8 -- for a day. But what if she hadn't been able
9 to continue on or what if she was able to drive
10 on only for a couple hundred yards? Would your
11 conclusion be any different?
12 MR. STANDRIDGE: I would say that if
13 Ms. Torres -- if Ms. Torres stopped in a --
14 within a reasonable distance, within -- within
15 maybe 50 feet or -- or -- or a half a block from
16 the -- the -- the scene of the shooting,
17 allowing a reasonable police officer -- allowing
18 a reasonable amount of time for the police to go
19 and acquire control over her as a result of them
20 shooting her and stopping her, then, yes, that
21 certainly would constitute a seizure.
22 But -- but viewing this set of facts
23 from an objective standpoint, no -- no
24 reasonable person, no ordinary person as a
25 matter of common sense could say that a person

1 who is shot by the police but continues to drive
2 well out of range, well out of their sight, and
3 eludes them for a full day could be seized as a
4 matter of the Fourth Amendment.
5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.
7 Justice Thomas.
8 JUSTICE THOMAS: Thank you, Mr. Chief
9 Justice.
10 Mr. Standridge, I'd like you to -- on
11 Hodari D., I'd like you to give us your reasons
12 for why some of that language that seems to
13 dispose of this case in Hodari D. is not -- is
14 dicta?
15 MR. STANDRIDGE: Absolutely, Justice
16 Thomas. The -- the simple fact of the matter is
17 that Hodari D. did not involve a use of force,
18 as did Brower versus County of Inyo and the
19 present case.
20 This Court was not called upon -- the
21 facts of Hodari D. did not involve a claim that
22 police officers, in pursuing young Mr. Hodari
23 D., touched him or got ahold of him at any point
24 before he discarded the drugs.
25 As the Court pointed out, Mr. Hodari

1 was not seized until he was tackled. It -- it
2 becomes a binary question. You are either
3 seized and in control of the police or you are
4 not.
5 So the discussion about what may have
6 occurred at common law, the -- the -- the
7 possible factual presentations of when someone
8 may have been arrested at common law showed the
9 outer bounds of -- of what an arrest can be.
10 But because that discussion was
11 divorced from the facts of the Hodari D. case,
12 it is dicta and it is thus not binding on this
13 Court. The -- the ultimate holding of Hodari D.
14 supports the Tenth Circuit's reasoning below.
15 JUSTICE THOMAS: Are you familiar with
16 any of the cases that have followed the -- the
17 reasoning that Petitioner points to in Hodari D?
18 MR. STANDRIDGE: In terms of the --
19 the circuits that have since looked at the --
20 that -- that bit of common law discussion and --
21 JUSTICE THOMAS: Exactly. As -- as a
22 holding.
23 MR. STANDRIDGE: I am, Your Honor.
24 And -- and I would submit that those circuits,
25 which were few and far between, were mistaken in

1 -- in applying that discussion as the actual
2 holding of Hodari D.
3 JUSTICE THOMAS: When I asked Ms.
4 Corkran about the -- someone being arrested
5 merely by the touching of an inanimate object, I
6 think she referred to, and I don't want to
7 mischaracterize what she said, but I think she
8 referred to the Isabelle of -- Countess Isabel
9 of Rutland case in 1605.
10 Are you familiar with that case?
11 MR. STANDRIDGE: I am.
12 JUSTICE THOMAS: Could you tell us
13 what your take is as to whether or not that
14 constitutes precedent for the mere touching with
15 an inanimate object being the equivalent of an
16 arrest?
17 MR. STANDRIDGE: I would say with
18 respect to that case, Justice Thomas, that it
19 too is -- is divorced from the facts of this
20 case. In fact, I think, as the government just
21 conceded in -- in the Countess case, the -- the
22 officer or the bailiff did touch the -- the
23 person with the end of -- of the inanimate
24 object but that second step, the step of
25 control, occurred when the person submitted to

1 the authority. That's not true of this case.

2 JUSTICE THOMAS: So you're saying

3 as -- that the Countess was compelled to

4 actually be taken to the compter and --

5 basically the equivalent of jail, so that would

6 be the seizure, I tended to have read it that

7 way too.

8 The -- are there any cases that you've

9 seen where the mere touch has been applied to

10 someone outside of the criminal context or in --

11 in any of the cases that dealt with the criminal

12 context in -- at common law?

13 MR. STANDRIDGE: I have not, Your

14 Honor.

15 JUSTICE THOMAS: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice

17 Breyer.

18 JUSTICE BREYER: Good morning.

19 Suppose that a policeman without a warrant wants

20 to search a private person's house, enters in

21 the middle of the night. Before he can do

22 anything, he doesn't look for a single thing, no

23 chance to look for or search for anything, a big

24 dog drives him out.

25 Is that a search?

1 MR. STANDRIDGE: It -- I don't, Your
2 Honor, I think that it is not, because the --
3 the officer, though he has entered into the
4 home, has not obtained information. And that's
5 -- that's the hallmark of a -- of an invasive or
6 unreasonable search under the Third Amendment.
7 JUSTICE BREYER: So a person -- a
8 police officer intending to search, breaking
9 into somebody's house, has not committed a
10 search unless he has a chance to look around.
11 And you say something similar here, that that
12 doesn't seem to me to make the right of the
13 people to be secure in their persons or houses
14 from unreasonable searches and seizures, much
15 protection, a whole area, no protection at all.
16 MR. STANDRIDGE: What I would say to
17 that, Justice Breyer, is that the seizure clause
18 of the Fourth Amendment and the search clause of
19 the Fourth Amendment do protect different
20 interests.
21 The seizure clause protects against
22 unreasonable termination of a person's freedom
23 of movement. It -- it -- it protects -- it
24 secures the right of the people to be secure in
25 their persons, in their ability, in their

1 liberty to move.

2 The search clause is -- is -- is

3 somewhat more broad. It -- it -- it protects

4 against the -- the idea that the government can

5 enter into a house with a general warrant,

6 search for whatever information it wants, and

7 then --

8 JUSTICE BREYER: If they don't search,

9 it's not a search because the big dog scared

10 them off. Same harm, I mean, pretty bad harm.

11 I mean --

12 MR. STANDRIDGE: It is, Your Honor,

13 but -- and it may be actionable under some other

14 provision of law. It may be --

15 JUSTICE BREYER: Any authority -- any

16 authority that if you don't actually look around

17 because you're scared off first, it's not a

18 search?

19 MR. STANDRIDGE: I don't have that

20 specific authority --

21 JUSTICE BREYER: I wouldn't be

22 surprised.

23 MR. STANDRIDGE: I wouldn't be

24 surprised, too, but -- but just given my

25 understanding of the difference between the

1 seizure clause and the search clause, my
2 understanding of this Court's case law is that
3 searches occur when --
4 JUSTICE BREYER: Okay. Forget
5 searches because I'm trying to make a point.
6 MR. STANDRIDGE: Sure.
7 JUSTICE BREYER: My point is you could
8 read this Fourth Amendment as applying to
9 attempts because the same harm is there, and
10 it's attempted search -- attempted seizure.
11 But we haven't read it that way. And,
12 therefore, we need a line that's somewhat bigger
13 than the one you propose, and Hodari and the
14 others are an effort to draw that line and it's
15 as good a line as any. All right.
16 Your response.
17 MR. STANDRIDGE: I -- I disagree with
18 that, Your Honor. I think Hodari D. did draw
19 the distinction between attempted seizure and
20 actual seizures and I think Brower set forth the
21 hallmarks of what an actual seizure by physical
22 force is. It's a stoppage of movement. It's
23 termination of freedom.
24 It -- it's taking possession, it's
25 physical control. That is an easily

1 administrable rule for police officers working
2 in the field and it's also easily understand by
3 the common person, it comports with common sense
4 and common understanding through 200 years of
5 dictionary definitions and case law on the
6 ordinary notion of seizure.
7 JUSTICE BREYER: Thank you.
8 CHIEF JUSTICE ROBERTS: Justice Alito.
9 JUSTICE ALITO: Well, picking up on
10 the ordinary notion of seizure, suppose a police
11 officer is attempting to arrest someone, grabs
12 that person's shirt and holds on to the shirt
13 for a couple of seconds. And then the person
14 breaks free, flees, and disappears.
15 Has that person been seized?
16 MR. STANDRIDGE: That person has been
17 seized, Justice Alito, for the matter of seconds
18 for which -- under which they were under the
19 control of the officer. If the officer in
20 grabbing the person's shirt held the person in
21 place for a non-zero amount of time, for a few
22 seconds, at that point, it is a seizure.
23 Again, it's a binary question. You
24 are either under the control of the police
25 officer or you are not. Once the person breaks

1 free of the officer's grasp and runs away, the
2 person has broken that seizure that might have
3 existed for a few seconds.
4 JUSTICE ALITO: So a -- a seizure does
5 not require the submission to the law
6 enforcement officer and it doesn't require that
7 a person be permanently taken into custody. It
8 simply requires that the -- the person who is
9 doing the seizing has control of that person for
10 some period of time; is that your understanding?
11 MR. STANDRIDGE: That is my
12 understanding, Your Honor, that the -- the
13 officer, acting with the intent to bring the
14 person under their control, actually then
15 acquires that control. Those are the two
16 necessary elements of the seizure.
17 JUSTICE ALITO: You presumably --
18 well, you certainly know more about New Mexico
19 law than -- than I do. Is there any reason why
20 this could not have been brought as a battery
21 claim under New -- under New Mexico law?
22 MR. STANDRIDGE: There's absolutely no
23 reason, Your Honor. For -- for reasons that are
24 not clear in the record, this particular
25 plaintiff filed her lawsuit directly in federal

1 court, after the period -- the statute of
2 limitations had expired for state law claims
3 under our sovereign immunity statute.
4 She -- she did file in time the --
5 within the three-year limitations period we
6 allow for, Section 1983 claims, but a -- a -- a
7 more prudent course of action would have been to
8 file not only the -- the federal claim but to
9 also file a pendent claim for assault and/or
10 battery under New Mexico law.
11 And as far as I can tell, there was no
12 impediment here that would have -- would have
13 precluded that.
14 JUSTICE ALITO: Would the officers
15 have had defenses under New Mexico law that are
16 more generous than those that would be available
17 under 1983?
18 MR. STANDRIDGE: I don't believe so,
19 Your Honor. We do have a good faith defense
20 that comes from New Mexico Supreme Court case
21 law.
22 However, the New Mexico Supreme Court
23 case law also counsels trial judges against
24 granting summary judgment. We are a very
25 summary judgment adverse state. So I believe I

1 can represent, as an officer of this Court and
2 the state courts of New Mexico, that it is
3 likely an assault or battery claim brought by a
4 petitioner such as -- or a plaintiff such as
5 this Petitioner wouldn't survive summary
6 judgment and would likely have to have been
7 resolved at trial.
8 JUSTICE ALITO: Thank you.
9 CHIEF JUSTICE ROBERTS: Justice
10 Sotomayor.
11 JUSTICE SOTOMAYOR: Counsel, there is
12 an element to the Fourth Amendment that all of
13 our cases, including Hodari, recognized by
14 Justice Scalia, who very much was a advocate of
15 the common law and -- and quite well informed
16 about it generally, that has to do with the
17 Fourth Amendment's protection of bodily
18 integrity. It is why we call putting a needle
19 in someone's arm a seizure that requires either
20 probable cause or exigent circumstances, et
21 cetera.
22 And all of the common law cases that
23 the other side has quoted to talk about not the
24 seizure of the person in stopping their motion
25 but the seizure of the person with respect to

1 the touching of that person because even a touch
2 stops you. It may be for a split second, but it
3 impedes your motion -- movement and offends your
4 integrity.
5 You want us to add something more to
6 the word "seizure," you say, because common
7 sense says that when a person is held for some
8 imperceptible period of time, a few seconds,
9 more than a few seconds, I don't know what your
10 answer to Justice Alito meant, that that is more
11 of a seizure than putting a bullet in someone.
12 Am I understanding your argument
13 accurately?
14 MR. STANDRIDGE: I think, Justice
15 Sotomayor, I -- I disagree. I don't believe we
16 are asking the Court today to add anything, to
17 add any extra layer of analysis to the seizure
18 issue beyond what is already existent in this
19 Court's case law and in the common law. And --
20 JUSTICE SOTOMAYOR: Excuse me,
21 counsel, no, you're asking us to reject the
22 clear line drawn by Hodari and say that Justice
23 Scalia was wrong about what the common law
24 showed. That's exactly what you're asking us to
25 do. You're saying it was pure dicta; his entire

1 analytical approach was wrong.
2 MR. STANDRIDGE: I don't know, Your
3 Honor -- Your Honor, that we're suggesting that
4 Justice Scalia was incorrect in his discussion
5 of a particular facet of common law, that --
6 that lurking in the outer boundaries of the
7 common law of arrest that -- was this idea that
8 a person could be -- could be arrested as a
9 matter of constructive arrest by the mere touch.
10 JUSTICE SOTOMAYOR: Well, let's --
11 let's put it -- the Fourth Amendment doesn't
12 talk about arrest. It talks about seizure.
13 Those are two very -- well, a -- a seizure is a
14 form of arrest, whether you stay arrested or
15 not. Just as in your example of the person
16 pulling away and running away, you can still be
17 seized, you can still be arrested, and then run
18 away.
19 MR. STANDRIDGE: Yes, I -- I believe
20 that is correct, Justice Sotomayor. Every
21 custodial arrest, every -- every traditional
22 arrest is a seizure, but not every form of
23 arrest would constitute a seizure, absent that
24 element of control, absent that element of the
25 officer taking possession over the person, which

1 was not -- which was not -- is not a feature of
2 constructive arrest --
3 JUSTICE SOTOMAYOR: But that was not
4 -- that's not -- that idea of control, as
5 opposed to intrusion, laying your hand on
6 someone, that was all the common law talked
7 about, wasn't it? You try to distinguish away
8 those cases, but that's all they reference.
9 MR. STANDRIDGE: Respectfully, no,
10 Your Honor. I -- I would -- I would point to
11 the English decision in Genner versus Sparks,
12 for example, where the court made the
13 distinction between the arrest by the touch
14 allowing the bailiff to break into the house to
15 actually seize the debtor, who is in the house.
16 I would also certainly point to
17 contemporary dictionary definitions existing at
18 the time, for example, Johnson's Dictionary of
19 the English Language, that -- that said to seize
20 is to take possession of or to grasp. For that
21 reason --
22 JUSTICE SOTOMAYOR: Grasp. Counsel,
23 grasp. Counsel, thank you. My time is up.
24 MR. STANDRIDGE: Thank you, Your
25 Honor.

1 CHIEF JUSTICE ROBERTS: Justice Kagan.
2 JUSTICE KAGAN: Mr. Standridge, when
3 Hodari D. said, and I'm quoting now, "an arrest
4 is effected by the slightest application of
5 physical force, despite the arrestee's escape,"
6 that's what you're saying is dicta?
7 MR. STANDRIDGE: Yes, Your Honor.
8 JUSTICE KAGAN: And when Hodari D.
9 said -- I'm going to try your patience a little
10 bit. I'm sorry.
11 MR. STANDRIDGE: That's fine.
12 JUSTICE KAGAN: When Hodari D. said,
13 "to constitute an arrest, however -- the
14 quintessential seizure of the person under our
15 Fourth Amendment jurisprudence -- the mere grasp
16 or their application of physical force with
17 lawful authority, whether or not it succeeded in
18 subduing the arrestee, was sufficient," that's
19 dicta?
20 MR. STANDRIDGE: That is again,
21 because it was divorced from the actual facts of
22 the Hodari case.
23 JUSTICE KAGAN: And -- so yes. And
24 when Hodari D. says, "the word 'seizure' readily
25 bears the meaning of a laying on of hands or

1 application of physical force to restrain
2 movement, even when it's ultimately
3 unsuccessful," that would be dicta?
4 MR. STANDRIDGE: I believe it would.
5 Again --
6 JUSTICE KAGAN: Just a yes or no.
7 MR. STANDRIDGE: Yes, Your Honor.
8 JUSTICE KAGAN: Yes. And -- I'll --
9 I'll stop. But it's not because I couldn't go
10 on. Hodari D. says this, I count, six times,
11 either in its own language or quoting somebody
12 else. And that's kind of amazing, because it's
13 only a seven-page opinion.
14 So this is just like all over the
15 opinion. It's the way that Justice Scalia
16 reached his conclusion as to that case. So how
17 could it be that that is not binding on us?
18 MR. STANDRIDGE: Because, Your Honor,
19 it stands in contrast to the ultimate holding of
20 Hodari D. where Justice Scalia noted that in
21 order to seize a person or in order to
22 effectuate a seizure, from the time of the
23 founding to the present, the -- the object of
24 the seizure must be taken possession of. That a
25 seizure --

1 JUSTICE KAGAN: I guess what I -- what
2 -- I'm sorry, Mr. Standridge. I didn't mean to
3 interrupt.
4 MR. STANDRIDGE: No, that's fine, Your
5 Honor.
6 JUSTICE KAGAN: I guess what strikes
7 me is that you're using an -- an impoverished
8 understanding of what precedent is as opposed to
9 what dicta is. I mean, these are not what we
10 sometimes call stray statements, things that we
11 said without thinking about them, things that we
12 said without sort of realizing the consequences.
13 These -- these statements have a kind
14 of self-consciousness and a kind of clarity that
15 one, you know, seldom sees in a judicial
16 opinion. And it's clearly the way Justice
17 Scalia thought he was coming to this conclusion.
18 And the conclusion, you're right, it's not a
19 force case, but essentially he's saying: Well,
20 look, you either need force or you need
21 submission. And he's going through the common
22 law to suggest why those -- those requirements
23 were not met.
24 So I guess I -- I'll just ask you
25 again, I mean, if anything other than an

1 ultimate holding is not dicta, this is not
2 dicta, isn't it?
3 MR. STANDRIDGE: If anything other
4 than -- other than --
5 JUSTICE KAGAN: You know, if dicta
6 extends to anything beyond -- and -- excuse me.
7 If non- -- if -- if -- unless dicta is
8 everything except the ultimate holding, this is
9 not dicta?
10 MR. STANDRIDGE: No, I disagree, Your
11 Honor. I think that in any discussion that is
12 -- that is moored in the facts of the case that
13 leads to the ultimate holding would not be
14 dicta. And that was -- that was the discussion
15 in Hodari D. that attempted seizures are beyond
16 the scope of the Fourth Amendment and that
17 seizures require the taking of possession.
18 And, in fact, in looking at Hodari D.,
19 I -- I noted that Justice Scalia cited to the
20 case of the Josefa Segunda in 1825, where a -- a
21 custom or, pardon me, a revenue inspector had
22 attempted to seize a ship. And this Court said
23 he hadn't done so, in part because he did not
24 use force sufficient to compel the submission of
25 the crew and captain of the -- of that ship.

1 JUSTICE KAGAN: Thank you,
2 Mr. Standridge.
3 CHIEF JUSTICE ROBERTS: Justice
4 Gorsuch.
5 JUSTICE GORSUCH: Thank you.
6 Counsel, your colleagues on the other
7 side suggest that your rule will lead to tricky
8 line-drawing problems. What -- what -- what do
9 you say to that?
10 MR. STANDRIDGE: I respectfully
11 disagree, Your Honor, as you might imagine. Our
12 -- our rule has a definite and logical end
13 point. An officer in the field will know
14 whether or not he or she has seized a suspect
15 because they'll know whether that person has
16 been brought under their possession, custody, or
17 control.
18 Now, an officer in the field may then
19 -- contemplate that if they use some level of
20 force, and the person that is the subject of
21 that force is not brought under their control or
22 is not stopped.
23 A -- a reasonable officer under County
24 of Sacramento versus Willis could then also
25 assume that the fleeing person may come back

1 with a Fourteenth Amendment claim for violation
2 of the substantive Due Process Clause.
3 Now, in terms of asking police
4 officers working in the field to understand
5 whether or not they have seized a person for the
6 purposes of the Fourth Amendment, this is the
7 easily administrable rule that this Court tends
8 to look for.
9 JUSTICE GORSUCH: Okay. And as I
10 think you just noted, and I -- I just want to
11 make sure I understand, you agree not only would
12 there be a battery claim under state law, there
13 could potentially be a Fourteenth Amendment
14 excessive force kind of claim as well?
15 MR. STANDRIDGE: That is precisely
16 correct, Your Honor. It becomes something of a
17 flow chart. A -- a -- a given plaintiff who
18 believes that they have been the subject of
19 physically abusive governmental conduct or
20 excessive police force can plead their facts in
21 their complaint. Then they claim in Count 1
22 that this constituted a seizure, it constituted
23 an unreasonable -- unreasonable seizure, and
24 that's violated my Fourth Amendment rights.
25 In the alternative, if this was not a

1 seizure, it is still physically abusive
2 governmental conduct that shocks the conscience
3 of the Court. That's the defendant's reliable
4 under the Fourteenth Amendment, to say nothing
5 of pendent state law battery claims or assault
6 claims.
7 It's -- it's a bit of a tradeoff. In
8 the Fourth Amendment context, the plaintiff has
9 to overcome that initial hurdle, that threshold
10 issue of showing the seizure, whereas, under the
11 Fourteenth Amendment, they would not, but then
12 they still have to show that the conduct falls
13 within the culpability spectrum identified by
14 this Court in Sacramento versus Lewis.
15 JUSTICE GORSUCH: It -- is it your
16 view that the common law of arrest is wholly
17 irrelevant when we're interpreting the term
18 "seizure" under the Fourth Amendment, or does it
19 have some role to play?
20 MR. STANDRIDGE: It -- it absolutely
21 does have a role to play, Your Honor. We look
22 at the common law of arrest as it existed at the
23 time to see if it gives us a clear picture as to
24 what the common sense common understanding of
25 the term "seizure" was.

1 Where it does not, then this Court
2 looks inward. It looks to how it has
3 traditionally analyzed these terms or defined
4 these terms in light of contemporary norms.
5 JUSTICE GORSUCH: Okay. In -- in
6 terms of Hodari D., would anything be different
7 about the Court's holding there if -- if the
8 passage about arrests were excised?
9 MR. STANDRIDGE: No, Your Honor, I
10 don't believe it would, because the -- the
11 holding that is moored to the facts of that case
12 would still stand. The -- the --
13 JUSTICE GORSUCH: Why is that?
14 MR. STANDRIDGE: Well, because the --
15 the idea that looking at it from an objective
16 standpoint, whether Mr. Hodari, young Hodari D.,
17 was seized at the time he threw the drugs away,
18 which was the narrow issue there, just the
19 analysis of -- of those facts in light of this
20 Court's existing precedent compelled the result
21 that the Court actually reached. He was not
22 seized --
23 JUSTICE GORSUCH: Okay.
24 MR. STANDRIDGE: -- until he --
25 JUSTICE GORSUCH: Is there -- is there

1 any -- a -- a number of lower courts, of course,
2 held that this passage was dicta.
3 Is there anything disrespectful about
4 saying that some portions of a judicial opinion
5 are -- are essential to its holdings and others
6 may not have been fully considered, especially
7 when there's been no adversarial testing, as
8 there wasn't in Hodari?
9 MR. STANDRIDGE: I don't believe so.
10 I don't believe it's a matter of disrespect. I
11 simply would -- would posit that it is a matter
12 of careful judicial analysis.
13 CHIEF JUSTICE ROBERTS: Justice
14 Kavanaugh.
15 JUSTICE KAVANAUGH: Thank you, Chief
16 Justice.
17 And good morning, Mr. Standridge.
18 With respect to Hodari, I think there are two
19 issues. First, was Justice Scalia right in the
20 discussion? And then second is the precedent
21 question.
22 On the first question of whether he
23 was right, you're arguing, as I understand it,
24 that Justice Scalia and really all nine justices
25 in that case were wrong about the original

1 meaning of the Fourth Amendment. And I'd like
2 you to explain why -- where you think they made
3 the mistake.
4 MR. STANDRIDGE: I don't -- I wouldn't
5 say that the common law discussion in Hodari D.
6 was incorrect. It -- it certainly stated a rule
7 of arrest that existed in the Dickensian era.
8 Where I think the difference is as
9 applicable to this case is that it was not a
10 complete picture of the common law of arrest as
11 it existed at the time of the ratification of
12 the Fourth Amendment.
13 The ordinary meaning even then, even
14 200 years ago, was that an arrest, a typical
15 arrest, resulted in the person being in custody
16 or being taken possession of by the arresting
17 officer.
18 But, again, I think that the Hodari
19 Court -- and I believe this was recognized later
20 in Sacramento versus Lewis, that that particular
21 discussion would simply explain what the Hodari
22 case was not in the --
23 JUSTICE KAVANAUGH: Well, can I -- I
24 guess I'm a little confused. In your view, is a
25 mere touch but a touch with intent to restrain,

1 is that a seizure or not?
2 MR. STANDRIDGE: It is not, because it
3 is missing the element of control.
4 JUSTICE KAVANAUGH: Okay. Even though
5 the common law cases did -- did -- as cited by
6 Justice Scalia, said that touching -- mere
7 touching with intent to restrain was -- I think
8 you are saying it's wrong?
9 MR. STANDRIDGE: Well, what I'm saying
10 is that, as -- as a broad proposition, it is
11 wrong. It -- the -- the cases cited by the
12 Court in Hodari and cited and relied on by the
13 Petitioner here were, again, limited to that --
14 that civil debtor context that is not corollary
15 or not compatible with the -- the modern
16 conditions of -- of police work as we know them
17 today.
18 JUSTICE KAVANAUGH: In terms of Hodari
19 D. as -- as a precedent, picking up, I think, on
20 what Justice Kagan said, I read the case to say
21 there are two ways you could have been seized,
22 one by force with intent to restrain or one by a
23 show of authority, but in the show of authority,
24 you need actual submission.
25 Those are the two avenues that the

1 opinion outlined as I read it. And neither was
2 met in that case, leading, as Justice Thomas
3 said, to the bottom-line holding that there was
4 no seizure there.
5 Is that an incorrect reading?
6 MR. STANDRIDGE: No, Your Honor. I
7 believe you have the reading of Hodari exactly
8 correct.
9 JUSTICE KAVANAUGH: The other side
10 makes a point, and I think Justice Breyer was
11 getting at this, there's some symmetry with
12 Jones, the GPS case, of placing a GPS on your
13 car, intent to search, touching your body with
14 intent to restrain.
15 Can you respond to that symmetrical
16 argument that the other side makes and whether
17 there would be any, I guess, lack of symmetry
18 with Jones if we were to rule in your favor
19 here?
20 MR. STANDRIDGE: Yes, Your Honor.
21 Because Jones was a -- a search case that was
22 brought under the -- the search clause, there is
23 an asymmetry given the different interests
24 protected respectively by the seizure clause and
25 the search clause.

1 Again, the search clause is -- is more
2 broad. It -- it doesn't only affect the
3 stoppage of a person's movement or the restraint
4 of their liberty. The -- the search clause is
5 aimed at any action that invades the person's
6 interest in privacy. And so that is where the
7 asymmetry comes from. And that is why Jones is
8 not analogous to the facts of this case.
9 JUSTICE KAVANAUGH: Okay. Thank you.
10 CHIEF JUSTICE ROBERTS: Mr.
11 Standridge, a minute to wrap up.
12 MR. STANDRIDGE: Thank you, Mr. Chief
13 Justice.
14 I will end today where I began. From
15 the time of the founding to the present, a
16 Fourth Amendment seizure has required
17 possession, custody, or control. That was a
18 matter of common sense and common understanding
19 in 1791. It was a matter of common sense and
20 common understanding throughout the 18th and
21 19th Centuries and 20th Century and on through
22 today.
23 At no time was Roxanne Torres ever
24 under the custody, control, or possession of
25 either Janice Madrid or Richard Williamson. And

1 because she cannot meet that hurdle, she cannot
2 meet that threshold question of showing that she
3 was seized, she cannot bring a claim under the
4 Fourth Amendment for violation of the -- of the
5 right against unreasonable seizures.
6 And it's for those reasons, Your
7 Honors, that we request that the Tenth Circuit's
8 decision be affirmed in all respects.
9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.
11 Ms. Corkran, three minutes for
12 rebuttal.
13 REBUTTAL ARGUMENT OF KELSI B. CORKRAN
14 ON BEHALF OF THE PETITIONER
15 MS. CORKRAN: Thank you, Your Honor.
16 To start first with Justice Gorsuch's
17 question about the Framers' textual choice,
18 it -- it made sense for the Framers to use the
19 word "seizure" because the word "arrest" covers
20 only seizures of persons, and they needed
21 language that would also encompass seizures of
22 property.
23 Their use of the word "seizure" to
24 cover arrests was consistent with the founding
25 era dictionaries and case law, which treated

1 arrests and seizures of persons synonymously.
2 As Ms.
3 As Ms. Taibleson said, we see that in
4 Entick v. Carrington, where the Court repeatedly
5 refers to the arrest of the plaintiff as a
6 seizure, as did the underlying warrant at -- at
7 issue. And that was a criminal arrest.
8 Second, Mr. Standridge cited Payton as
9 supporting his position, but there the Court
10 found that the common law was unsettled about
11 the legality of a warrantless home -- home
12 invasion to make a felony arrest.
13 In contrast, Respondents have not
14 cited a single founding-era case where the Court
15 found that no arrest or no seizure occurred
16 because the suspect escaped after the -- the
17 officer touched him. This is not an area where
18 there's any doubt about the common law.
19 And with respect to the -- the lack of
20 cases involving inanimate -- inanimate objects,
21 as I said earlier, this Court recognized in
22 Castleman that the application of -- or that the
23 -- that the common law force included it --
24 indirect application. And that's consistent
25 with Brower.

1 In drafting the Fourth Amendment, the
2 framers chose a term, "seizure of person," that
3 was widely understood at the time to include any
4 touch intended to restrain even when
5 unsuccessful. That common law reflected the
6 founding generation's belief that the infliction
7 of physical force on the body is itself a
8 profound intrusion on personal liberty,
9 regardless of whether it results in physical
10 control.
11 That is the concept that the founders
12 gave constitutional significance in the Fourth
13 Amendment. And to the extent we think about
14 seizures differently today, it is the ordinary
15 meaning at the founding that matters for the
16 purposes of interpreting constitutional text.
17 Contemporary shifts in language do not diminish
18 our constitutional rights.
19 The alternative offered by Respondents
20 is a regime that, as a practical matter,
21 provides no constitutional protection from
22 excessive force by the government so long as the
23 victim can escape afterwards. A Constitution
24 that's unconcerned with the police shooting
25 someone without any provocation so long as the

1 person doesn't immediately stop moving, it's not
2 just counterintuitive; it defies the sanctity of
3 the person that forms the foundation of the Bill
4 of Rights, the right to be secure in our bodies
5 from unreasonable government intrusion.
6 The Court should reaffirm what it
7 unanimously concluded in Hodari D. 30 years ago.
8 At the founding, the Fourth Amendment prohibited
9 the government from attempting to restrain
10 private citizens with unreasonable physical
11 force, regardless of submission, and it
12 continues to provide that protection today.
13 Thank you.
14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.
16 The case is submitted.
17 (Whereupon, at 11:17 a.m., the case
18 was submitted.)
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