

## THE APPLICATION OF PHYSICAL FORCE TO THE BODY OF A PERSON WITH INTENT TO RESTRAIN IS A SEIZURE EVEN IF THE PERSON DOES NOT SUBMIT AND IS NOT SUBDUED

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*Torres v. Madrid et al.*

U.S. Supreme Court  
March 25, 2021

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Officers Madrid and Williamson entered an apartment complex to execute an arrest warrant for a woman accused of white collar and violent crimes. The officers observed Torres standing near her car in the parking lot and approached her. Torres, at the time experiencing methamphetamine withdrawal, got into the driver's seat and, thinking the officers were carjackers trying to steal her car, hit the gas to escape them. Both officers fired 13 shots to stop Torres, striking her twice in the back and temporarily paralyzing her left arm. Torres sought damages alleging a civil rights violation under 42 U. S. C. § 1983. She argued the shooting was a seizure under the Fourth Amendment, even though she was not subdued; and that the officers used excessive force. The District Court granted summary judgment to the officers and the Tenth Circuit affirmed.

The Supreme Court analyzed whether the application of physical force is a seizure if the force, despite hitting its target, fails to stop the person. In a 5-to-3 split decision, with Justice Barrett taking no part, the Court held that the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued. As such, the officers seized Torres by shooting her with intent to restrain her movement.

The majority reasoned that the application of physical force to a person's body for the purpose of arresting him or her is an arrest—not an *attempted* arrest—even if the person does not yield. "Mere touch" is sufficient for arrest; and no party or *amicus curiae* had argued that use of bullets to restrain Torres made a difference in the analysis. The majority also clarified that the use of force must be made with objectively manifested intent to restrain in order to constitute an arrest. The seized person's subjective perceptions do not alter the objective test, which is measured by the officer's conduct.

The dissenting Justices criticized the majority for applying principles of common law civil arrests (of debtors) to a criminal arrest. They argued that criminal arrest requires an officer to acquire possession, focusing on "intentional acquisition of physical control." It warned that the majority was creating a new cause of action in exceedingly rare cases: "non-conscience-shocking-but-still-unreasonable batteries intended to result in possession that don't achieve it." The dissent also tested the scope of "touchings" by giving examples of other weapons possibly used during arrest. The majority had limited its holding to "force used to apprehend" and declined to opine on matters not presented—pepper spray, flash-bang grenades, lasers, and the like.

The decision was limited to the seizure issue and did not address Torres' claim that the seizure was unreasonable. The Court remanded the case for decisions on the reasonableness of the seizure, damages caused by the seizure, and the officers' entitlement to qualified immunity.

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As an associate in the firm's [Appellate Department](#), [Petra Lonska Emerson](#) works closely with trial attorneys preparing critical motions. Petra's practice includes governmental liability, medical and legal malpractice, employment law, civil rights, insurance defense and bad faith, product liability, school law, and construction defect.