Tag, You're Seized: The Supreme Court Defines 'Seizure'—Now What?

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Tag, You're Seized: The Supreme Court Defines 'Seizure'—Now What?

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As recent violent altercations between the police and civilians have led to calls for Congress to pass legislative reform, the Supreme Court issued an opinion on March 25th, that appears to give victims of police violence a chance in court.[1] In *Torres v. Madrid*, the Court provided a bright-line rule for what constitutes a "seizure," which closes a large loop-hole that has allowed police misconduct to go unchecked for many years.[2]

The facts of the case are contested, but the Court gave deference to Ms. Torres because the trial court granted the officers request for summary judgment.[3] The Court's opinion stated that the officers approached Ms. Torres who was with a friend near a vehicle.[4] When Ms. Torres and her friend saw the officers, the friend ran away, and Ms. Torres got in her car.[5] Ms. Torres claims to have not noticed that the two officers were police and thought they were car jackers.[6] As the officers tried to calm her dawn, she tried to drive away from the scene. [7] The officers fired multiple shots in which two hit Ms. Torres.[8]

In *Torres*, the Court had to decide whether or not the officers had seized Ms. Torres when they shot her, even though she temporarily evaded the police.[9] Chief Justice Roberts answered in the affirmative ruling a seizure occurs when "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."[10] Many legal scholars expected and supported the Courts decision, yet the broad application of the rule still surprised many people following the case.[11]

While this has been called a "win for government accountability and our constitutional rights,"[12] the ruling will probably not have as big of an effect as far as curtailing police practices. In addition, the bright-line definition of a seizure will force the lower courts to answer several questions left open by the opinion.[13]

First, let's look at what the ruling means for plaintiffs looking to bring a § 1983 suit against officers.[14] In order to bring a § 1983 suit, the Plaintiff must "plead that each Government-official defendant, through the official's individual actions, violated the Constitution." [15] The Court's opinion in *Torres* gives plaintiffs a fighting chance in seeking damages after violent altercations with police.[16] Many activists hope this is a sign the fairly new Court will hold government officials accountable, and will cause more review of police practices as the threat of damages will motivate change.[17] Ms. Torres and other plaintiffs though still are unlikely to succeed at trial due to qualified immunity,[18] and they still must show the officers' conduct was unreasonable.[19]

The Supreme Court made clear that the opinion only answered the issue of whether a seizure occurred but remanded the case for a determination of reasonableness.[20] Celebration of this opinion seems similar to the case of *Graham v. Connor*.[21] Civil rights activists believed they had won a major victory to hold police accountable, but quickly learned the objective reasonableness standard turned into a shield for law enforcement across the nation.[22] Without the Supreme Court changing the reasonableness standard, most plaintiffs will still not be able to prove their seizure was an unreasonable one under *Graham*.

In Ms. Torres's case, the lower court will more than likely rule against her because it will ask "in split-second decision": did the officers act reasonably when they shot at her car?[23] More than likely the outcome will be the officers acted reasonably from what the perceived.[24]

Still, questions linger for later consideration. In an age of seemingly increasing confrontation between police and protestors, how far will "the mere-touch rule" stretch to other less obvious forms of contact?[25] Many of the non-deadly force options for police seem to be implicated by this case as a "mere-touch" extends not only to "hand to body contact" but also "object to body contact."[26] What happens when police shoot tear gas into a crowd, use a flash-bang grenade, or use pepper spray?[27]

It appears the answer will depend upon whether or not the officer had the intent to restrain someone.[28] But what if the officer did not mean to restrain someone in order to detain them, but wanted to restrain their movement for example to stop the progression of a group of protestors? The Court focuses on the privacy interest of a plaintiff in *Torres*, which should extend to the right to protest, but that does not seem to be the meaning of the opinion.[29]

Another Amendment could have been helpful to determine the meaning of a seizure.[30] The Court could have used Due Process Clause's liberty interest to define seizure by seeing a seizure occurs when a government official seeks to impede the freedom of movement for an individual.[31] Perhaps the Court will use this to determine these much harder questions that will come from the new "mere-touch rule." But as the majority indicated, that is a question for another day.

[1] Nina Totenberg, *Supreme Court Dips Gingerly Into Roiling Police Misconduct*, NPR (Mar. 25, 2021, 4:12 PM) https://www.npr.org/2021/03/25/981297231/supreme-court-dips-gingerly-into-roiling-police-misconduct-waters (https://www.npr.org/2021/03/25/981297231/supreme-court-dips-gingerly-into-roiling-police-misconduct-waters)

[2] Jefferey Bellin, *Divided Court Issues Bright-line Ruling on Fourth Amendment Seizures*, SCOTUSBLOG (Mar. 25, 2023, 5:15 PM) https://www.scotusblog.com/2021/03/divided-court-issues-bright-line-ruling-on-fourth-amendment-seizures/ (https://www.scotusblog.com/2021/03/divided-court-issues-bright-line-ruling-on-fourth-amendment-seizures/)

[3] Torres v. Madrid, No. 19-292, slip op. at 2 (592 U.S. Mar. 25, 2021).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*, slip op. at 1.

[10] *Id.* at 17.

[11] Totenberg, *supra* note 1; Bellin, *supra* note 2.

[12] Totenberg, *supra* note 1 (quoting Jaba Tsitsuashvili an attorney for the Institute of Justice).

[13] Torres, slip op. at 23 (Gorsuch J. dissenting). Justice Gorsuch asked, "Does the application of the pepper spray count? Suppose that, intending to capture a fleeing suspect, officers detonate flash-bang grenades that are so loud they damage the suspect's eardrum, even though he manages to run off. Or imagine an officer shines a laser into a suspect's eyes to get him to stop, but the suspect is able to drive away with now-damaged retinas. Are these 'touchings'?"

[14] 42 U.S.C. § 1983 (1996). Congress enacted this statute to allow people who have had their "rights, privileges, or immunities" deprived by a judicial officer to seek a redress in federal courts.

[15] Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009).

[16] Totenberg, *supra* note 1.

[17] *Id.*

[18] *Id.*

[19] Torres, slip op. at 17; *see* Graham v. Connor 490 U.S. 386, 397 (1989).

[20] Torres, slip op. at 17-18.

[21] Charles Lane, Opinion, *A 1989 Supreme Court Ruling is Unintentionally Providing Cover for Police Brutality*, WASH. POST, Jun. 8, 2020, https://www.washingtonpost.com/opinions/a-1989-supreme-court-ruling-is-unintentionally-providing-cover-for-police-brutality/2020/06/08/91cc7b0c-a9a7-11ea-94d2-d7bc43b26bf9_story.html (https://www.washingtonpost.com/opinions/a-1989-supreme-court-ruling-is-unintentionally-providing-cover-for-police-brutality/2020/06/08/91cc7b0c-a9a7-11ea-94d2-d7bc43b26bf9_story.html).

[22] *Id.*

[23] Graham, 490 U.S. at 397.

[24] Lane, *supra* note 14.

[25] Torres, slip op. at 9-10.

[26] *See id.* at 23-25 (Gorsuch J. dissenting).

[27] *Id.* at 25.

[28] *Id.* at 10. Justice Roberts dismissed the hypothetical scenarios raised by the dissent. He said, "[T]he appropriate inquiry is whether the challenged conduct objectively manifests an intent to restrain, for we rarely probe the subjective intent motivations of police officers in the Fourth Amendment context."

[29] Bellin, *supra* note 2.

[30] U.S. CONST. amend. XIV § 1.

[31] Torres, slip op. at 21 (Gorsuch J. dissenting).

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