



## Supreme Court divides on when a shooting by police can be considered excessive force

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People pause outside the Supreme Court building in Washington on Sunday. (Patrick Semansky/AP)

The Supreme Court on Thursday expanded protection for those who sue after being injured by police, saying that an unconstitutional “seizure” can take place even if the person is able to avoid being detained or arrested.

The court on a 5-to-3 vote approved a lawsuit from a woman shot by police when they had come to arrest someone else, even though she was able to drive away and thus was not held by physical force.

“The question in this case is whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting,” wrote Chief Justice John G. Roberts Jr.

“The answer is yes: The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person.”

Roberts was joined by fellow conservative Justice Brett M. Kavanaugh and liberal Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan.

Conservative Justices Clarence Thomas and Samuel A. Alito Jr. joined an occasionally sarcastic dissent by Justice Neil M. Gorsuch, which implied that the majority was looking for a way to rule for the woman because of recent concern over police shootings.

“The majority holds that a criminal suspect can be simultaneously seized and roaming at large,” Gorsuch wrote, adding, “It’s a seizure even if the suspect refuses to stop, evades capture, and rides off into the sunset never to be seen again. That view is as mistaken as it is novel.”

The case was argued before Justice Amy Coney Barrett joined the court, and she did not participate in the ruling.

The chief justice applied the Constitution’s prohibition of unreasonable searches and seizures and Supreme Court precedent to facts that seemed inspired by the methamphetamine-fueled television drama “Breaking Bad.”

It started when New Mexico State Police arrived at an Albuquerque apartment complex in July 2014 to serve an arrest warrant. Roxanne Torres was not the person on the warrant, but Officers Janice Madrid and Richard Williamson thought she might be.

Roberts said the facts are “hotly contested.” But in Torres’s version, she was coming down from a meth high and noticed only that people with guns were approaching. She jumped into her car and took off. The officers fired 13 shots, striking her twice in the back and temporarily paralyzing her left arm.

Steering with her right arm, she escaped, crashed and then jumped into a Kia Soul, which happened to be idling nearby. She drove 75 miles to Grants, N.M.

“The good news for Torres was that the hospital in Grants was able to airlift her to another hospital where she could receive appropriate care,” Roberts wrote. “The bad news was that the hospital was back in Albuquerque, where the police arrested her the next day.”

Torres pleaded no contest to aggravated fleeing from a law enforcement officer, assault on a peace officer and unlawfully taking a motor vehicle, according to court documents.

But two years later, she sued, saying the officers used excessive force and thus made the shooting an unreasonable seizure under the Fourth Amendment.

A district judge dismissed the suit, and the U.S. Court of Appeals for the 10th Circuit affirmed, saying “a suspect’s continued flight after being shot by police negates a Fourth Amendment excessive-force claim.”

The court said “no seizure can occur unless there is physical touch or a show of authority,” and that “such physical touch (or force) must terminate the suspect’s movement.”

But Roberts said that approach was too limited, and pointed to a 1991 Supreme Court decision written by Justice Antonin Scalia. It said “the word ‘seizure’ readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful.”

It follows, Roberts wrote, that it is not necessary for the officers to have physically touched or captured Torres.

“We therefore conclude that the officers seized Torres for the instant that the bullets struck her.”

Roberts noted that allowing Torres to pursue her suit did not mean she should prevail.

“We leave open on remand any questions regarding the reasonableness of the seizure, the damages caused by the seizure, and the officers’ entitlement to qualified immunity,” Roberts wrote, referring to the legal protection officers may receive for their official actions.

Gorsuch’s dissent criticized the ruling at length and speculated on the majority’s intentions.

“Maybe it is an impulse that individuals like Ms. Torres *should* be able to sue for damages,” he wrote.

He added: “Sometimes police shootings are justified, but other times they cry out for a remedy. The majority seems to give voice to this sentiment.”

Roberts responded: “There is no call for such surmise. At the end of the day we simply agree with the [reasoning] set forth thirty years ago by Justice Scalia, joined by six of his colleagues, rather than the competing view urged by the dissent today.”

Torres was supported by the Justice Department and legal organizations on both the left and the right.

Jay Schweikert of the libertarian Cato Institute said that if the lower court ruling had been affirmed, “it would have had the perverse effect of immunizing police for many unlawful shootings, simply because the shooting occurred before the police actually had physical control of the suspect.”

“Especially now, at a time when public confidence in law enforcement is at an all-time low, police officers who unreasonably and unnecessarily use lethal force must be held accountable,” Schweikert said in a statement.

The case is *Torres v. Madrid*.

### **Court rejects Ford's request in injury cases**

Also Thursday, the court turned aside Ford Motor Co.’s attempt to keep courts in states where people were injured or killed in accidents involving their vehicles from hearing the resulting liability cases.

The justices all disagreed with the Michigan-based company’s argument that its ties to Minnesota and Montana were too tenuous to allow the lawsuits there. The company contended the cases should be heard in states where the company is headquartered or where the individual cars were manufactured or sold.

But Kagan said there was plenty to link Ford to those states.

“By every means imaginable — among them, billboards, TV and radio spots, print ads, and direct mail — Ford urges Montanans and Minnesotans to buy its vehicles,” Kagan wrote, adding, “Ford works hard to foster ongoing connections to its cars’ owners.”

Both accidents occurred in 2015. Markkaya Gullett was killed in Montana when the tread separated from a tire on a 1996 Ford Explorer. Adam Bandemer suffered brain damage in Minnesota when the air bag in a Crown Victoria in which he was a passenger failed to inflate, the opinion said.

All of the justices agreed the high courts in Montana and Minnesota were correct to let the lawsuits proceed, but Thomas, Gorsuch and Alito disagreed with the reasoning in the majority opinion.

Barrett did not take part in the case, which was argued before she joined the court.

The cases are *Ford Motor Co. v. Montana Eighth Judicial District Court* and *Ford v. Bandemer*.