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P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 19-292, Torres versus Madrid.

Ms. Corkran.

ORAL ARGUMENT OF KELSI B. CORKRAN

ON BEHALF OF THE PETITIONER

MS. CORKRAN: Mr. Chief Justice, and may it please the Court:

In the early morning, Respondents approached Roxanne Torres in her car and attempted to open the door without announcing they were police officers. Believing she was being car-jacked, Ms. Torres drove away, and as she did, Respondents fired 13 shots at her. Two of the bullets hit her in the back.

In rejecting Ms. Torres's claim that the shooting violated the Fourth Amendment, the court of appeals did not consider whether Respondents' use of deadly force was reasonable. By the court's reasoning, Respondents could have shot Ms. Torres without any provocation and it would not have violated the Fourth Amendment 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.

21 So what if they were aiming at the
22 wheels or tires but hit her while -- while
23 aiming somewhere else? Would that 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 shot at
4 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 -- a 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. Well, does that
16 include any right to be free of attempted
17 seizures that are unreasonable?

18 MS. CORKRAN: No, because the founders
19 didn't incorporate the common law of attempted
20 seizures into the Constitution. So it's only
21 the terms that the founders used in the Fourth
22 Amendment that are incorporated into it and must
23 be applied according to their original meaning.

24 JUSTICE BREYER: Thank you. That's
25 fine.

1 CHIEF JUSTICE ROBERTS: Justice Alito.

2 JUSTICE ALITO: If a military sniper
3 shoots someone from a distance of 1,000 yards,
4 would we say that the sniper had seized that
5 person?

6 MS. CORKRAN: Yes, because the -- the
7 sniper shot the bullet with the intent of
8 applying physical force to the person in order
9 to restrain them --

10 JUSTICE ALITO: In ordinary --

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

12 JUSTICE ALITO: -- in ordinary speech,
13 would we say that, the sniper seized that
14 person?

15 MS. CORKRAN: I think -- I agree with
16 Justice -- with Hodari D.'s point that -- that,
17 yes, ordinary --

18 JUSTICE ALITO: It's a simple --

19 MS. CORKRAN: -- meaning that --

20 JUSTICE ALITO: -- it's a simple
21 question. In ordinary --

22 MS. CORKRAN: Yes. So the --

23 JUSTICE ALITO: -- speech, would we
24 say that? We would say --

25 MS. CORKRAN: Yep.

1 JUSTICE ALITO: -- the sniper seized
2 the person? I'll give you another example. If
3 a baseball pitcher intentionally beans the
4 batter, would we say, wow, that pitcher just
5 seized the batter?

6 MS. CORKRAN: I -- I don't know that
7 we viewed it in that context. I would point to
8 Hodari D.'s example, she seized the purse
9 snatcher, but he broke out of her grip --

10 JUSTICE ALITO: Yeah, that person --

11 MS. CORKRAN: -- as --

12 JUSTICE ALITO: -- the person seized
13 the -- the purse snatcher because the person had
14 a grip on the -- on the purse snatcher for at
15 least a moment. So it's really hard for me to
16 see how your argument squares with the language
17 of the Fourth Amendment, which prohibits
18 unreasonable seizures, but let me move on very
19 quickly to another point.

20 Do you have any cases that hold that,
21 at common law, shooting someone constituted an
22 arrest?

23 MS. CORKRAN: No, there were no
24 shooting cases at the founding because arrests
25 were not effectuated with guns at that point,

1 but --

2 JUSTICE ALITO: So your argument --

3 MS. CORKRAN: -- this Court recognized
4 that --

5 JUSTICE ALITO: -- I mean, your
6 argument is not consistent with the language of
7 the Fourth Amendment, and you want us to expand
8 the concept of an arrest beyond where it stood
9 at common law, is that correct?

10 MS. CORKRAN: No, Your Honor. We are
11 asking the Court to affirm the original meaning
12 of the Fourth Amendment. And I think that's
13 important because we started by talking about
14 what -- what the word means today, but, of
15 course, for the purposes of interpreting
16 constitutional text, we look to the ordinary
17 meaning to the founding --

18 JUSTICE ALITO: Yeah, I thought your
19 --

20 MS. CORKRAN: -- generation.

21 JUSTICE ALITO: -- I thought your
22 argument was that a -- an arrest at common law
23 constitutes a seizure, but you have no --

24 MS. CORKRAN: Yes.

25 JUSTICE ALITO: -- authority for the

1 proposition that shooting somebody was an arrest
2 at common law?

3 MS. CORKRAN: The -- the Court
4 recognized in Castleman that the common law
5 concept of force includes its indirect
6 application to the extent that pulling a trigger
7 would be considered an indirect application, but
8 we looked -- we looked to the common law to
9 determine what force was at the time.

10 And I don't think there's any real
11 dispute that -- that shooting someone or hitting
12 them with a bat or any sort of application of
13 force using an instrument would have qualified
14 under that original meaning of seizure.

15 JUSTICE ALITO: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Sotomayor.

18 JUSTICE SOTOMAYOR: Counsel, picking
19 up on that last point, it is a little odd to say
20 that a police officer who touches you has seized
21 you in the common law, but, if he has a baton in
22 his hand and touches you with the baton, he's
23 done so indirectly, so he hasn't seized you,
24 and, if he takes a gun and shoots the bullet at
25 you, that's not a seizure because it's a

1 projectile.

2 I'm assuming your -- what your
3 statement was to my two prior colleagues is that
4 the common law didn't draw that kind of
5 distinction because it made no sense, correct?

6 MS. CORKRAN: That's correct. Every
7 circumstance you just described would have
8 fallen within the original meaning of "seizure"
9 at the founding.

10 JUSTICE SOTOMAYOR: Now can you
11 explain why this case is so important? Meaning,
12 if you don't -- if you weren't to have a Fourth
13 Amendment violation, would the Due Process
14 Clause provide you with a remedy?

15 MS. CORKRAN: So I -- I -- I don't
16 think that the remedy provided by the Due
17 Process Clause is adequate here at least under
18 the current regime, where we have the
19 conscience-shocking standard.

20 There are all sorts of abuses by the
21 government of power that would fall short of the
22 conscience-shocking standard, even though they
23 would be unreasonable uses of excessive force.

24 JUSTICE SOTOMAYOR: Thank you,
25 counsel.

1 CHIEF JUSTICE ROBERTS: Justice Kagan.

2 JUSTICE KAGAN: Ms. Corkran, there are
3 quite a number of statements in Hodari D. that
4 support your position. But Mr. Standridge says
5 that they're all dicta and that we are not bound
6 to take account of them. I -- I was just
7 wondering what your response to that was.

8 MS. CORKRAN: Certainly, the Court's
9 holding in Hodari D. that the common law of
10 arrest defines a Fourth Amendment seizure is
11 binding precedent. That was the foundation of
12 the -- the Court's finding of no seizure in that
13 case.

14 And the -- the Court's discussion of
15 what the common law of arrest held, which was
16 that touch intended to restrain is a seizure
17 regardless of whether there's submission, you
18 know, I -- I don't know that I would say it's
19 binding in the sense that it was necessary to
20 the Court's outcome, but the Court thoroughly
21 considered the question presented here.

22 That -- those were not generalized
23 stray statements made in a different context.
24 The Court was considering this question, and all
25 nine Justices agreed that the -- the

1 circumstances we have here would amount to a --
2 a common law arrest and, thus, a Fourth
3 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, an 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 -- there was no --
4 I'm not -- that's -- that's my understanding as
5 well. I 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 act -- damages actions for trespass
10 or false arrest. And that supports our
11 position. 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 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 everywhere. 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 -- possibly I misunderstood initially.
10 There, the -- the -- the scraping, I think, is
11 -- is not caused by the -- the means
12 intentionally 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 -- protection of

1 the person, that is, the body, and it's violated
2 the moment a police officer applies physical
3 force to a person's body, regardless of whether
4 they're 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, a
17 -- a child, had -- was seized at the moment that
18 he discarded his drugs, which was before he was
19 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 in 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 of 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. But
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 unknown either, though.

6 CHIEF JUSTICE ROBERTS: Justice --
7 Justice Kavanaugh.

8 JUSTICE KAVANAUGH: Thank you, Chief
9 Justice.

10 And good morning, Ms. Taibleson. On
11 your brief in Hodari D., the solicitor general's
12 brief said that the historical evidence defined
13 the term "seizure" as requiring actual control
14 over the person or thing seized. And the brief
15 said, as a matter of original understanding, one
16 could not be arrested or seized until he was in
17 the physical custody of the seizer and within
18 his control.

19 The Court in Hodari D., as you point
20 out, did not adopt that position. But was the
21 Court wrong about the original understanding?
22 In other words, who's correct about the original
23 understanding: the solicitor general's brief or
24 Justice Scalia's opinion for the Court?

25 MS. TAIBLESON: Well, Your Honor, our

1 brief in Hodari D., to support that rule, cited
2 many common law sources involving the seizure of
3 goods, such as ships, in which the seizure was
4 consummated with control over the item.

5 And what Hodari D. said was that that
6 is not quite the right source of law to look to
7 in analyzing the seizure of a person, which is
8 the arrest.

9 And it's true that even in our Hodari
10 D. brief, we cited some sources indicating that
11 an arrest could be complete at the point of mere
12 touching. So, at this point, we -- we take
13 Justice Scalia's opinion in Hodari D. at its
14 word, and -- and we're not asking the Court to
15 revisit the original meaning of a seizure under
16 the Fourth Amendment.

17 JUSTICE KAVANAUGH: I just want to
18 make sure. Are you saying Justice Scalia was --
19 it's not only precedent, but Justice Scalia was
20 right, or are you not saying that?

21 MS. TAIBLESON: I'm saying I -- I
22 think Justice Scalia drew a distinction between
23 the common law sources that is accurate and --
24 and that you could even potentially see in our
25 Hodari brief if you -- if you blink. So, yes, I

1 think he was right.

2 JUSTICE KAVANAUGH: Thank you.

3 CHIEF JUSTICE ROBERTS: A minute to
4 wrap up, Ms. Taibleson.

5 MS. TAIBLESON: Thank you, Mr. Chief
6 Justice.

7 Under this Court's precedents, the
8 intentional application of restraining physical
9 force to a subject's body, even when that force
10 is unsuccessful, is a seizure. And the seizure
11 lasts for as long as the physical force is being
12 applied. There is simply no other way to read
13 Hodari D. This Court has never called Hodari D.
14 into doubt, nor has it ever decided a case whose
15 result goes the other way.

16 This Court has also repeatedly
17 emphasized that the Fourth Amendment analysis is
18 an objective one. The Hodari D. test focuses
19 not on an officer's mental state but, rather, on
20 how a reasonable person would have understood
21 his conduct.

22 Under that test, Ms. Torres was
23 seized, albeit briefly, so the Fourth Amendment
24 applies. But, as in any case, the fact that a
25 seizure occurred is the beginning and not the

1 end of the Fourth Amendment inquiry.

2 This Court should vacate and remand so
3 that the courts below may apply a reasonableness
4 standard and analyze qualified immunity.

5 Thank you.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Mr. Standridge.

9 ORAL ARGUMENT OF MARK D. STANDRIDGE
10 ON BEHALF OF THE RESPONDENTS

11 MR. STANDRIDGE: Mr. Chief Justice,
12 and may it please the Court:

13 A seizure under the Fourth Amendment
14 occurs when a police officer acquires physical
15 possession, custody, or control over a suspect.
16 From the time of the founding to the present,
17 and as a matter of common sense, the acquisition
18 of physical control over a person has been
19 necessary to effectuate a seizure.

20 Whatever the means employed by the
21 police, the end point is the same. The police
22 action must result in the officer's acquisition
23 of custody over the person, terminating the
24 person's movement. In other words, the suspect
25 must be stopped by the very instrumentality set

1 in motion or put in place by the police officer.

2 Petitioner Roxanne Torres was not
3 seized by either Janice Madrid or Richard
4 Williamson on July 15, 2014. While these
5 officers shot at and hit Petitioner, they did
6 not acquire physical custody or control over
7 her. Petitioner did not stop or even slow down
8 in response to being shot. Instead, she fled
9 the scene, stole another vehicle, sped 75 miles
10 west of Albuquerque, New Mexico, and eluded
11 arrest for over a full day.

12 The fundamental flaw of the
13 Petitioner's argument here is that at no time
14 did the officers acquire possession, custody, or
15 control over her. Indeed, Petitioner never
16 stopped in response to the police action. As
17 the officers did not seize Petitioner, they
18 cannot be held liable to her for excessive force
19 in violation of the Fourth Amendment.

20 The Tenth Circuit correctly held as
21 much below, and its decision must be affirmed.

22 Mr. Chief Justice, I look forward to
23 the Court's questions.

24 CHIEF JUSTICE ROBERTS: Okay. Mr.
25 Standridge, I'd like to follow up with some of

1 the questions that Justice Gorsuch asked of --
2 of your friend.

3 There are a lot of cases about private
4 citizens, you know, mere touches and -- and all
5 that, that, nonetheless, are held to constitute
6 an arrest. Is that the same? Is there any
7 reason we shouldn't translate those into police
8 effecting a seizure?

9 MR. STANDRIDGE: Absolutely, Mr. Chief
10 Justice. We should not translate that body of
11 case law cited by the Petitioner regarding the
12 mere touch rule because it arose in a very
13 limited and narrow context.

14 As the Court has pointed out
15 repeatedly today, it arose in the context of
16 Dickensian debt collection practices existing in
17 the late 18th Century. The constabulary and the
18 bailiffs of the late 18th Century are far
19 different from our modern police force of today.
20 In fact, as Petitioner pointed out, we didn't
21 have public modern police forces until the
22 mid-19th Century.

23 CHIEF JUSTICE ROBERTS: But I thought
24 our --

25 MR. STANDRIDGE: This --

1 CHIEF JUSTICE ROBERTS: -- I thought
2 our cases made clear that the Fourth Amendment
3 was designed to protect at least the level of
4 bodily integrity, personal security that was
5 secured at common law. Is -- is there -- there
6 -- and our cases certainly look to common law
7 precedents about arrest, even if by, you know,
8 Dickens or anybody else. And what authority do
9 you have for that distinction?

10 MR. STANDRIDGE: Your Honor, I'd cite
11 first to Payton versus New York, this Court's
12 opinion that -- where the Court noted that the
13 common law rules of arrest developed in legal
14 contexts that substantially differ from the
15 cases that the Court sees before it today and
16 that these important differences between the
17 common law rules that existed relating to
18 arrests at the time of the framing and those
19 that have evolved through the process of
20 interpreting the Fourth Amendment in light of
21 contemporary norms and contemporary conditions
22 require that we depart, that we reject historic
23 relics that are not suited to the modern era.

24 The -- the part-time constabulary that
25 was in charge of -- of ferreting out debtors and

1 bringing back -- bringing them back before the
2 court is -- is simply different from what we
3 expect of police officers working today. Our
4 public dedicated police force is there to arrest
5 or to investigate and make arrests for crimes.

6 CHIEF JUSTICE ROBERTS: What -- you
7 emphasized the fact that Ms. Torres drove on and
8 -- and wasn't actually apprehended, I guess, for
9 -- for a day. But what if she hadn't been able
10 to continue on, or what if she was able to drive
11 on only for a couple hundred yards? Would your
12 conclusion be any different?

13 MR. STANDRIDGE: I would say that if
14 Ms. Torres -- if Ms. Torres stopped in a --
15 within a reasonable distance, within -- within
16 maybe 50 feet or -- or -- or a half a block from
17 the -- the -- the scene of the shooting,
18 allowing a reasonable police officer -- allowing
19 a reasonable amount of time for the police to go
20 and acquire control over her as a result of them
21 shooting her and stopping her, then, yes, that
22 certainly would constitute a seizure.

23 But -- but viewing this set of facts
24 from an objective standpoint, no -- no
25 reasonable person, no ordinary person as a

1 matter of common sense could say that a person
2 who is shot by the police but continues to drive
3 well out of range, well out of their sight, and
4 eludes them for a full day could be seized as a
5 matter of the Fourth Amendment.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Justice Thomas.

9 JUSTICE THOMAS: Thank you, Mr. Chief
10 Justice.

11 Mr. Standridge, I'd like you to -- on
12 Hodari D., I'd like you to give us your reasons
13 for why some of that language that seems to
14 dispose of this case in Hodari D. is not -- is
15 dicta?

16 MR. STANDRIDGE: Absolutely, Justice
17 Thomas. The -- the simple fact of the matter is
18 that Hodari D. did not involve a use of force,
19 as did Brower versus County of Inyo and the
20 present case.

21 This Court was not called upon -- the
22 facts of Hodari D. did not involve a claim that
23 police officers, in pursuing young Mr. Hodari
24 D., touched him or got ahold of him at any point
25 before he discarded the drugs.

1 As the Court pointed out, Mr. Hodari
2 was not seized until he was tackled. It -- it
3 becomes a binary question. You are either
4 seized and in control of the police or you are
5 not.

6 So the discussion about what may have
7 occurred at common law, the -- the -- the
8 possible factual presentations of when someone
9 may have been arrested at common law show the
10 outer bounds of -- of what an arrest can be.

11 But because that discussion was
12 divorced from the facts of the Hodari D. case,
13 it is dicta and it is thus not binding on this
14 Court. The -- the ultimate holding of Hodari D.
15 supports the Tenth Circuit's reasoning below.

16 JUSTICE THOMAS: Are you familiar with
17 any of the cases that have followed the -- the
18 reasoning that Petitioner points to in Hodari
19 D.?

20 MR. STANDRIDGE: In terms of the --
21 the circuits that have since looked at the --
22 that -- that bit of common law discussion and --

23 JUSTICE THOMAS: Exactly. As -- as a
24 holding.

25 MR. STANDRIDGE: I am, Your Honor.

1 And -- and I would submit that those circuits,
2 which were few and far between, were mistaken in
3 -- in applying that discussion as the actual
4 holding of Hodari D.

5 JUSTICE THOMAS: When I asked Ms.
6 Corkran about the -- someone being arrested
7 merely by the touching of an inanimate object, I
8 think she referred to -- and I don't want to
9 mischaracterize what she said -- but I think she
10 referred to the Isabel of -- Countess Isabel of
11 Rutland case in 1605.

12 Are you familiar with that case?

13 MR. STANDRIDGE: I am.

14 JUSTICE THOMAS: Could you tell us
15 what your take is as to whether or not that
16 constitutes precedent for the mere touching with
17 an inanimate object being the equivalent of an
18 arrest?

19 MR. STANDRIDGE: I would say with
20 respect to that case, Justice Thomas, that it
21 too is -- is divorced from the facts of this
22 case. In fact, I think, as -- as the government
23 just conceded in -- in the Countess case, the --
24 the officer or the bailiff did touch the -- the
25 person with the end of -- of the inanimate

1 object. But that second step, the step of
2 control, occurred when the person submitted to
3 the authority. That's not true of this case.

4 JUSTICE THOMAS: So you're saying
5 as -- that the Countess was compelled to
6 actually be taken to the computer and --
7 basically the equivalent of jail, so that would
8 be the seizure. I tended to have read it that
9 way too.

10 The -- are there any cases that you've
11 seen where the mere touch has been applied to
12 someone outside of the criminal context or in
13 any of the cases that dealt with the criminal
14 context in -- at common law?

15 MR. STANDRIDGE: I have not, Your
16 Honor.

17 JUSTICE THOMAS: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Breyer.

20 JUSTICE BREYER: Good morning.
21 Suppose that a policeman without warrant wants
22 to search a private person's house, enters in
23 the middle of the night. Before he can do
24 anything, he doesn't look for a single thing, no
25 chance to look for or search for anything, a big

1 dog drives him out.

2 Is that a search?

3 MR. STANDRIDGE: It -- no, Your Honor,
4 I -- I think that it is not, because the -- the
5 officer, though he has entered into the home,
6 has not obtained information. And that's --
7 that's the hallmark of a -- of an invasive or an
8 unreasonable search under the Fourth Amendment.

9 JUSTICE BREYER: So a person -- a -- a
10 -- a police officer intending to search,
11 breaking into somebody's house, has not
12 committed a search unless he has a chance to
13 look around. And you say something similar
14 here, that that doesn't seem to me to make the
15 right of the people to be secure in their
16 persons or houses from unreasonable searches and
17 seizures, much protection, a whole area, no
18 protection at all.

19 MR. STANDRIDGE: What I would say to
20 that, Justice Breyer, is that the seizure clause
21 of the Fourth Amendment and the search clause of
22 the Fourth Amendment do protect different
23 interests.

24 The seizure clause protects against
25 unreasonable termination of a person's freedom

1 of movement. It -- it -- it protects -- it
2 secures the right of the people to be secure in
3 their persons, in their ability, in their
4 liberty to move.

5 The search clause is -- is -- is
6 somewhat more broad. It -- it -- it protects
7 against the -- the idea that the government can
8 enter into a house with a general warrant,
9 search for whatever information it wants, and
10 then --

11 JUSTICE BREYER: If they don't search,
12 it's not a search because the big dog scared
13 them off. Same harm, I mean, pretty bad harm.
14 I mean --

15 MR. STANDRIDGE: It is, Your Honor,
16 and it may be actionable under some other
17 provision of law. It may be --

18 JUSTICE BREYER: Any authority -- any
19 authority that if you don't actually look around
20 because you're scared off first, it's not a
21 search?

22 MR. STANDRIDGE: I don't have that
23 specific authority --

24 JUSTICE BREYER: I wouldn't be
25 surprised.

1 MR. STANDRIDGE: I wouldn't be
2 surprised too, but -- but just given my
3 understanding of the difference between the
4 seizure clause and the search clause, my
5 understanding of this Court's case law is that
6 searches occur when the officers --

7 JUSTICE BREYER: Okay. Forget
8 searches because I'm trying to make a point.

9 MR. STANDRIDGE: Sure.

10 JUSTICE BREYER: My point is you could
11 read this Fourth Amendment as applying to
12 attempts because the same harm is there, and
13 it's attempted search -- attempted seizure.

14 But we haven't read it that way. And,
15 therefore, we need a line that's somewhat bigger
16 than the one you propose, and Hodari and the
17 others are an effort to draw that line and it's
18 as good a line as any.

19 All right. Your response.

20 MR. STANDRIDGE: I -- I disagree with
21 that, Your Honor. I think Hodari D. did draw
22 the distinction between attempted seizures and
23 actual seizures, and I think Brower set forth
24 the hallmarks of what an actual seizure by
25 physical force is. It's a stoppage of movement.

1 It's termination of freedom. It is a taking
2 possession, it's physical control.

3 That is an easily administrable rule
4 for the police officers working in the field,
5 and it's also easily understood by the common
6 person. It comports with common sense and
7 common understanding through 200 years of
8 dictionary definitions and case law on the
9 ordinary notion of "seizure."

10 JUSTICE BREYER: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice Alito.

12 JUSTICE ALITO: Well, picking up on
13 the ordinary notion of "seizure," suppose a
14 police officer is attempting to arrest someone,
15 grabs that person's shirt and holds onto the
16 shirt for a couple of seconds, and then the
17 person breaks free, flees, and disappears.

18 Has that person been seized?

19 MR. STANDRIDGE: That person has been
20 seized, Justice Alito, for the matter of seconds
21 for which -- under which they were under the
22 control of the officer. If the officer in
23 grabbing the person's shirt held the person in
24 place for a non-zero amount of time, for a few
25 seconds, at that point, it is a seizure.

1 Again, it's a binary question. You
2 are either under the control of the police
3 officer or you are not. Once the person breaks
4 free of the officer's grasp and runs away, the
5 person has broken that seizure that might have
6 existed for a few seconds.

7 JUSTICE ALITO: So a -- a seizure does
8 not require the submission to the law
9 enforcement officer, and it doesn't require that
10 a person be permanently taken into custody. It
11 simply requires that the -- the person who is
12 doing the seizing has control of that person for
13 some period of time. Is that your
14 understanding?

15 MR. STANDRIDGE: That is my
16 understanding, Your Honor, that the -- the
17 officer, acting with the intent to bring the
18 person under their control, actually then
19 acquires that control. Those are the two
20 necessary elements of a seizure.

21 JUSTICE ALITO: You presumably --
22 well, you certainly know more about New Mexico
23 law than -- than I do. Is there any reason why
24 this could not have been brought as a battery
25 claim under New -- under New Mexico law?

1 MR. STANDRIDGE: There's absolutely no
2 reason, Your Honor. For -- for reasons that are
3 not clear in the record, this particular
4 plaintiff filed her lawsuit directly in federal
5 court after the period -- the statute of
6 limitations had expired for state law claims
7 under our sovereign immunity statute.

8 She -- she did file in time the --
9 within the three-year limitations period we
10 allow for Section 1983 claims, but a -- a -- a
11 more prudent course of action would have been to
12 file not only the -- the federal claim but to
13 also file a pendent claim for assault and/or
14 battery under New Mexico law. And as far as I
15 can tell, there was no impediment here that
16 would have -- would have precluded that.

17 JUSTICE ALITO: And would the officers
18 have had defenses under New Mexico law that are
19 more generous than those that would be available
20 under 1983?

21 MR. STANDRIDGE: I don't believe so,
22 Your Honor. We do have a good-faith defense
23 that comes from New Mexico Supreme Court case
24 law.

25 However, New Mexico Supreme Court case

1 law also counsels trial judges against granting
2 summary judgment. We are a very summary
3 judgment-averse state. So I believe I can
4 represent, as an officer of this Court and the
5 state courts of New Mexico, that it is likely an
6 assault or battery claim brought by a petitioner
7 such as -- or a plaintiff such as this
8 Petitioner wouldn't survive summary judgment and
9 would likely have to have been resolved at
10 trial.

11 JUSTICE ALITO: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice
13 Sotomayor.

14 JUSTICE SOTOMAYOR: Counsel, there is
15 an element to the Fourth Amendment that all of
16 our cases, including *Hodari*, recognized by
17 Justice Scalia, who very much was a advocate of
18 the common law and -- and quite well informed
19 about it generally, that has to do with the
20 Fourth Amendment's protection of bodily
21 integrity. It is why we call putting a needle
22 in someone's arm a seizure that requires either
23 probable cause or exigent circumstances, et
24 cetera.

25 And all of the common law cases that

1 the other side has quoted to talk about not the
2 seizure of the person in stopping their motion
3 but the seizure of the person with respect to
4 the touching of that person because even a touch
5 stops you. It may be for a split second, but it
6 impedes your motion -- movement and offends your
7 integrity.

8 You want us to add something more to
9 the word "seizure," you say, because common
10 sense says that when a person is held for some
11 imperceptible period of time, a few seconds,
12 more than a few seconds, I don't know what your
13 answer to Justice Alito meant, that that is more
14 of a seizure than putting a bullet in someone.

15 Am I understanding your argument
16 accurately?

17 MR. STANDRIDGE: I think, Justice
18 Sotomayor, I -- I disagree. I don't believe we
19 are asking the Court today to add anything, to
20 add any extra layer of analysis to the seizure
21 issue beyond what is already existent in this
22 Court's case law and in the common law.

23 JUSTICE SOTOMAYOR: Excuse me,
24 counsel, no, you're asking us to reject the
25 clear line drawn by Hodari and say that Justice

1 Scalia was wrong about what the common law
2 showed. That's exactly what you're asking us to
3 do. You're saying it was pure dicta; his entire
4 analytical approach was wrong.

5 MR. STANDRIDGE: I don't know, Your
6 Honor -- Your Honor, that we're suggesting that
7 Justice Scalia was incorrect in his discussion
8 of a particular facet of common law, that --
9 that lurking in the outer boundaries of the
10 common law of arrest that -- was this idea that
11 a person could be -- could be arrested as a
12 matter of constructive arrest by a mere touch.

13 JUSTICE SOTOMAYOR: Well, let's --
14 let's put it -- the Fourth Amendment doesn't
15 talk about arrest. It talks about seizure.
16 Those are two very -- well, a -- a seizure is a
17 form of arrest, whether you stay arrested or
18 not. Just as in your example of the person
19 pulling away and running away, you can still be
20 seized, you can still be arrested, and then run
21 away.

22 MR. STANDRIDGE: Yes, I -- I believe
23 that is correct, Justice Sotomayor. Every
24 custodial arrest, every -- every traditional
25 arrest is a seizure, but not every form of

1 arrest would constitute a seizure, absent that
2 element of control, absent that element of the
3 officer taking possession over the person, which
4 was not a -- was not a feature of constructive
5 arrest --

6 JUSTICE SOTOMAYOR: But that was not
7 --

8 MR. STANDRIDGE: -- in the Dickensian
9 era.

10 JUSTICE SOTOMAYOR: -- that -- that
11 idea of control, as opposed to intrusion, laying
12 your hand on someone, that was all the common
13 law talked about, wasn't it? You try to
14 distinguish away those cases, but that's all
15 they reference.

16 MR. STANDRIDGE: Respectfully, no,
17 Your Honor. I -- I would -- I would point to
18 the English decision in Genner versus Sparks,
19 for example, where the court made the
20 distinction between the arrest by the touch
21 allowing the bailiff to break into the house to
22 actually seize the debtor, who is in the house.

23 I would also certainly point to the
24 contemporary dictionary definitions existing at
25 the time, for example, Johnson's Dictionary of

1 the English Language, that -- that said to seize
2 is to take possession of or to grasp. For that
3 reason --

4 JUSTICE SOTOMAYOR: Grasp. Counsel,
5 grasp. Counsel, thank you. My time is up.

6 MR. STANDRIDGE: Thank you, Your
7 Honor.

8 CHIEF JUSTICE ROBERTS: Justice Kagan.

9 JUSTICE KAGAN: Mr. Standridge, when
10 Hodari D. said, and I'm quoting now, "an arrest
11 is effected by the slightest application of
12 physical force, despite the arrestee's escape,"
13 that's what you're saying is dicta?

14 MR. STANDRIDGE: Yes, Your Honor.

15 JUSTICE KAGAN: And when Hodari D.
16 said -- I'm going to try your patience a little
17 bit. I'm sorry.

18 MR. STANDRIDGE: That's fine.

19 JUSTICE KAGAN: When Hodari D. said,
20 "to constitute an arrest, however -- the
21 quintessential seizure of a person under our
22 Fourth Amendment jurisprudence -- the mere grasp
23 in their application of physical force with
24 lawful authority, whether or not it succeeded in
25 subduing the arrestee, was sufficient," that's

1 dicta?

2 MR. STANDRIDGE: That is again,
3 because it was divorced from the actual facts of
4 the Hodari case.

5 JUSTICE KAGAN: And -- so yes. And
6 when Hodari D. says, "the word 'seizure' readily
7 bears the meaning of a laying on of hands or
8 application of physical force to restrain
9 movement, even when it's ultimately
10 unsuccessful," that would be dicta?

11 MR. STANDRIDGE: I believe it would.
12 Again --

13 JUSTICE KAGAN: Just a yes or no.

14 MR. STANDRIDGE: Yes, Your Honor.

15 JUSTICE KAGAN: Yes. And when -- I'll
16 -- I'll -- I'll stop. But it's not because I
17 couldn't go on. Hodari D. says this, I count,
18 six times, either in its own language or quoting
19 somebody else. And that's kind of amazing,
20 because it's only a seven-page opinion.

21 So this is just like all over the
22 opinion. It's the way that Justice Scalia
23 reached his conclusion as to that case. So how
24 could it be that that is not binding on us?

25 MR. STANDRIDGE: Because, Your Honor,

1 it stands in contrast to the ultimate holding of
2 Hodari D. where Justice Scalia noted that in
3 order to seize a person or in order to
4 effectuate a seizure, from the time of the
5 founding to the present, the -- the object of
6 the seizure must be taken possession of --

7 JUSTICE KAGAN: I guess what I --

8 MR. STANDRIDGE: -- that a seizure --

9 JUSTICE KAGAN: -- what -- I'm sorry,
10 Mr. Standridge, I didn't mean to interrupt.

11 MR. STANDRIDGE: No, that's fine, Your
12 Honor.

13 JUSTICE KAGAN: I guess what strikes
14 me is that you're using a -- an impoverished
15 understanding of what precedent is as opposed to
16 what dicta is. I mean, these are not what we
17 sometimes call stray statements, things that we
18 said without thinking about them, things that we
19 said without sort of realizing the consequences.

20 These -- these statements have a kind
21 of self-consciousness and a kind of clarity that
22 one, you know, seldom sees in a judicial
23 opinion. And it's clearly the way Justice
24 Scalia thought he was coming to this conclusion.
25 And the conclusion, you're right, it's not a

1 force case, but, essentially, he's saying:
2 Well, look, you either need force or you need
3 submission. And he's going through the common
4 law to suggest why those -- those requirements
5 were not met.

6 So I -- I guess I -- I'll just ask you
7 again, I -- I mean, if anything other than an
8 ultimate holding is not dicta, this is not
9 dicta, isn't it?

10 MR. STANDRIDGE: If anything other
11 than -- other than an ultimate --

12 JUSTICE KAGAN: You know, if dicta
13 extends to anything beyond -- and -- excuse me.
14 If -- if non- -- if -- if -- if -- unless dicta
15 is everything except the ultimate holding, this
16 is not dicta?

17 MR. STANDRIDGE: No, I disagree, Your
18 Honor. I think that any discussion that is --
19 that is moored in the facts of the case that
20 leads to the ultimate holding would not be
21 dicta. And that was -- that was the discussion
22 in Hodari D. that attempted seizures are beyond
23 the scope of the Fourth Amendment and that
24 seizures require the taking of possession.

25 And, in fact, in looking at Hodari D.,

1 I -- I noted that Justice Scalia cited to the
2 case of the Josefa Segunda in 1825, where a -- a
3 customs -- or, pardon me, a revenue inspector
4 had attempted to seize a ship. And this Court
5 said he hadn't done so, in part because he did
6 not use force sufficient to compel the
7 submission of the crew and captain of the -- of
8 that ship.

9 JUSTICE KAGAN: Thank you,
10 Mr. Standridge.

11 CHIEF JUSTICE ROBERTS: Justice
12 Gorsuch.

13 JUSTICE GORSUCH: Thank you.

14 Counsel, your colleagues on the other
15 side suggest that your rule will lead to tricky
16 line-drawing problems. What -- what -- what do
17 you say to that?

18 MR. STANDRIDGE: I respectfully
19 disagree, Your Honor, as you might imagine. Our
20 -- our rule has a definite and logical end
21 point. An officer in the field will know
22 whether or not he or she has seized a suspect
23 because they'll know whether that person has
24 been brought under their possession, custody, or
25 control.

1 Now an officer in the field may then
2 contemplate that if they use some level of force
3 and the person that is the subject of that force
4 is not brought under their control or is not
5 stopped.

6 A -- a reasonable officer under County
7 of Sacramento versus Willis could then also
8 assume that the fleeing person may come back
9 with a Fourteenth Amendment claim for violation
10 of the substantive Due Process Clause.

11 Now, in terms of asking police
12 officers working in the field to understand
13 whether or not they have seized a person for the
14 purposes of the Fourth Amendment, this is the
15 easily administrable rule that this Court tends
16 to look for.

17 JUSTICE GORSUCH: Okay. And as I
18 think you just noted, and I -- I just want to
19 make sure I understand, you agree not only would
20 there be a battery claim under state law, there
21 could potentially be a Fourteenth Amendment
22 excessive force kind of claim as well?

23 MR. STANDRIDGE: That is precisely
24 correct, Your Honor. It becomes something of a
25 flow chart. A -- a -- a given plaintiff who

1 believes that they have been the subject of
2 physically abusive governmental conduct or
3 excessive police force can plead their facts in
4 their complaint. Then they claim in Count 1
5 that this constituted a seizure, it constituted
6 an unreasonable -- unreasonable seizure, and
7 that's violated my Fourth Amendment rights.

8 In the alternative, if this was not a
9 seizure, it is still physically abusive
10 governmental conduct that shocks the conscience
11 of the Court. That's the defendants are liable
12 under the Fourteenth Amendment, to say nothing
13 of pendent state law battery claims or assault
14 claims.

15 It -- it's a bit of a tradeoff. In
16 the Fourth Amendment context, the plaintiff has
17 to overcome that initial hurdle, that threshold
18 issue of showing the seizure, whereas, under the
19 Fourteenth Amendment, they would not, but then
20 they still have to show that the conduct falls
21 within the culpability spectrum identified by
22 this Court in Sacramento versus Lewis.

23 JUSTICE GORSUCH: It -- is it your
24 view that the common law of arrest is wholly
25 irrelevant when we're interpreting the term

1 "seizure" under the Fourth Amendment, or does it
2 have some role to play?

3 MR. STANDRIDGE: It -- it absolutely
4 does have a role to play, Your Honor. We look
5 at the common law of arrest as it existed at the
6 time to see if it gives us a clear picture as to
7 what the common sense common understanding of
8 the term "seizure" was.

9 Where it does not, then this Court
10 looks inward. It looks to how it has
11 traditionally analyzed these terms or defined
12 these terms in light of contemporary norms.

13 JUSTICE GORSUCH: Okay. In -- in
14 terms of Hodari D., would anything be different
15 about the Court's holding there if -- if the
16 passage about arrests were excised?

17 MR. STANDRIDGE: No, Your Honor, I
18 don't believe it would, because the -- the
19 holding that is moored to the facts of that case
20 would still stand. The -- the --

21 JUSTICE GORSUCH: Why is that?

22 MR. STANDRIDGE: Well, because the --
23 the idea that looking at it from an objective
24 standpoint, whether Mr. Hodari, young Hodari D.,
25 was seized at the time he threw the drugs away,

1 which was the narrow issue there, just the
2 analysis of -- of those facts in light of this
3 Court's existing precedent compelled the result
4 that the Court actually reached. He was not
5 seized --

6 JUSTICE GORSUCH: Okay.

7 MR. STANDRIDGE: -- until he --

8 JUSTICE GORSUCH: Is there -- is there
9 any -- a -- a number of lower courts, of course,
10 held that this passage was dicta.

11 Is there anything disrespectful about
12 saying that some portions of a judicial opinion
13 are -- are essential to its holdings and others
14 may not have been fully considered, especially
15 when there's been no adversarial testing, as
16 there wasn't in Hodari?

17 MR. STANDRIDGE: I don't believe so.
18 I don't believe it's a matter of disrespect. I
19 simply would -- would posit that it is a matter
20 of careful judicial analysis.

21 CHIEF JUSTICE ROBERTS: Justice
22 Kavanaugh.

23 JUSTICE KAVANAUGH: Thank you, Chief
24 Justice.

25 And good morning, Mr. Standridge.

1 With respect to Hodari, I think there are two
2 issues. First, was Justice Scalia right in the
3 discussion? And then second is the precedent
4 question.

5 On the first question of whether he
6 was right, you're arguing, as I understand it,
7 that Justice Scalia and really all nine justices
8 in that case were wrong about the original
9 meaning of the Fourth Amendment. And I'd like
10 you to explain why -- where you think they made
11 the mistake.

12 MR. STANDRIDGE: I don't -- I wouldn't
13 say that the common law discussion in Hodari D.
14 was incorrect. It -- it certainly stated a rule
15 of arrest that existed in the Dickensian era.

16 Where I think the difference is as
17 applicable to this case is that it was not a
18 complete picture of the common law of arrest as
19 it existed at the time of the ratification of
20 the Fourth Amendment.

21 The ordinary meaning even then, even
22 200 years ago, was that an arrest, a typical
23 arrest, resulted in the person being in custody
24 or being taken possession of by the arresting
25 officer.

1 But, again, I think that the Hodari
2 Court -- and I believe this was recognized later
3 in Sacramento versus Lewis -- that that
4 particular discussion would simply explain what
5 the Hodari case was not in the --

6 JUSTICE KAVANAUGH: Well, can I -- I
7 guess I'm a little confused. In your view, is a
8 mere touch but a touch with intent to restrain,
9 is that a seizure or not?

10 MR. STANDRIDGE: It is not, because it
11 is missing the element of control.

12 JUSTICE KAVANAUGH: Okay. Even though
13 the common law cases did -- did -- as cited by
14 Justice Scalia, said that touching -- mere
15 touching with intent to restrain was -- I think
16 you are saying it's wrong?

17 MR. STANDRIDGE: Well, what I'm saying
18 is that, as -- as a broad proposition, it is
19 wrong. It -- the -- the cases cited by the
20 Court in Hodari and cited and relied on by the
21 Petitioner here were, again, limited to that --
22 that civil debtor context that is not corollary
23 or not compatible with mod -- the modern
24 conditions of -- of police work as we know them
25 today.

1 JUSTICE KAVANAUGH: In terms of Hodari
2 D. as -- as a precedent, picking up, I think, on
3 what Justice Kagan said, I read the case to say
4 there are two ways you could have been seized,
5 one by force with intent to restrain or one by a
6 show of authority, but in the show of authority,
7 you need actual submission.

8 Those are the two avenues that the
9 opinion outlined as I read it. And neither was
10 met in that case, leading, as Justice Thomas
11 said, to the bottom-line holding that there was
12 no seizure there.

13 Is that an incorrect reading?

14 MR. STANDRIDGE: No, Your Honor. I
15 believe you have the reading of Hodari exactly
16 correct.

17 JUSTICE KAVANAUGH: The other side
18 makes a point, and I think Justice Breyer was
19 getting at this, there's some symmetry with
20 Jones, the GPS case, of placing a GPS on your
21 car, intent to search, touching your body with
22 intent to restrain.

23 Can you respond to that symmetrical
24 argument that the other side makes and whether
25 there would be any, I guess, lack of symmetry

1 with Jones if we were to rule in your favor
2 here?

3 MR. STANDRIDGE: Yes, Your Honor.
4 Because Jones was a -- a search case that was
5 brought under the -- the search clause, there is
6 an asymmetry given the different interests
7 protected respectively by the seizure clause and
8 the search clause.

9 Again, the search clause is -- is more
10 broad. It -- it doesn't only affect the
11 stoppage of a person's movement or the restraint
12 of their liberty. The -- the search clause is
13 aimed at any action that invades the person's
14 interest in privacy. And so that is where the
15 asymmetry comes from. And that is why Jones is
16 not analogous to the facts of this case.

17 JUSTICE KAVANAUGH: Okay. Thank you.

18 CHIEF JUSTICE ROBERTS: Mr.
19 Standridge, a minute to wrap up.

20 MR. STANDRIDGE: Thank you, Mr. Chief
21 Justice.

22 I will end today where I began. From
23 the time of the founding to the present, a
24 Fourth Amendment seizure has required
25 possession, custody, or control. That was a

1 matter of common sense and common understanding
2 in 1791. It was a matter of common sense and
3 common understanding throughout the 18th and
4 19th Centuries and 20th Century and on through
5 today.

6 At no time was Roxanne Torres ever
7 under the custody, control, or possession of
8 either Janice Madrid or Richard Williamson. And
9 because she cannot meet that hurdle, she cannot
10 meet that threshold question of showing that she
11 was seized, she cannot bring a claim under the
12 Fourth Amendment for violation of the -- of the
13 right against unreasonable seizures.

14 And it's for those reasons, Your
15 Honors, that we request that the Tenth Circuit's
16 decision be affirmed in all respects.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Ms. Corkran, three minutes for
20 rebuttal.

21 REBUTTAL ARGUMENT OF KELSI B. CORKRAN
22 ON BEHALF OF THE PETITIONER

23 MS. CORKRAN: Thank you, Your Honor.

24 To start first with Justice Gorsuch's
25 question about the Framers' textual choice,

1 it -- it made sense for the Framers to use the
2 word "seizure" because the word "arrest" covers
3 only seizures of persons, and they needed
4 language that would also encompass seizures of
5 property.

6 Their use of the word "seizure" to
7 cover arrests was consistent with the founding
8 era dictionaries and case law, which treated
9 arrests and seizures of persons synonymously.

10 As Ms. Taibleson said, we see that in
11 *Entick v. Carrington*, where the Court repeatedly
12 refers to the arrest of the plaintiff as a
13 seizure, as did the underlying warrant at -- at
14 issue. And that was a criminal arrest.

15 Second, Mr. Standridge cited Payton as
16 supporting his position, but, there, the Court
17 found that the common law was unsettled about
18 the legality of a warrantless home -- home
19 invasion to make a felony arrest.

20 In contrast, Respondents have not
21 cited a single founding-era case where the Court
22 found that no arrest or no seizure occurred
23 because the suspect escaped after the -- the
24 officer touched him. This is not an area where
25 there's any doubt about the common law.

1 And with respect to the -- the lack of
2 cases involving inanimate -- inanimate objects,
3 as I said earlier, this Court recognized in
4 Castleman that the application of -- or that the
5 -- that the common law force included it --
6 indirect application. And that's consistent
7 with Brower.

8 In drafting the Fourth Amendment, the
9 Framers chose a term, "seizure of person," that
10 was widely understood at the time to include any
11 touch intended to restrain even when
12 unsuccessful. That common law reflected the
13 founding generation's belief that the infliction
14 of physical force on the body is itself a
15 profound intrusion on personal liberty,
16 regardless of whether it results in physical
17 control.

18 That is the concept that the founders
19 gave constitutional significance in the Fourth
20 Amendment. And to the extent we think about
21 seizures differently today, it is the ordinary
22 meaning at the founding that matters for the
23 purposes of interpreting constitutional text.
24 Contemporary shifts in language do not diminish
25 our constitutional rights.

1 The alternative offered by Respondents
2 is a regime that, as a practical matter,
3 provides no constitutional protection from
4 excessive force by the government so long as the
5 victim can escape afterwards. A Constitution
6 that's unconcerned with the police shooting
7 someone without any provocation so long as the
8 person doesn't immediately stop moving is not
9 just counterintuitive; it defies the sanctity of
10 the person that forms the foundation of the Bill
11 of Rights, the right to be secure in our bodies
12 from unreasonable government intrusion.

13 The Court should reaffirm what it
14 unanimously concluded in *Hodari D.* 30 years ago.
15 At the founding, the Fourth Amendment prohibited
16 the government from attempting to restrain
17 private citizens with unreasonable physical
18 force, regardless of submission, and it
19 continues to provide that protection today.

20 Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel. The case is submitted.

23 (Whereupon, at 11:17 a.m., the case
24 was submitted.)

25

Official - Subject to Final Review

1	<p>action ^[4] 41:22 42:16 55:11 72:13 actionable ^[1] 51:16 actions ^[1] 18:9 actual ^[11] 7:15 8:4 35:13,13,14 38:13 48:3 52:23,24 61:3 71:7 actually ^[6] 45:8 49:6 51:19 54:18 59:22 68:4 add ^[3] 57:8,19,20 adequate ^[1] 14:17 administrable ^[6] 24:23 32:17 34:7 35:11 53:3 65:15 adopt ^[1] 38:20 adopted ^[2] 4:15 23:3 adoption ^[1] 4:5 adversarial ^[1] 68:15 advocate ^[1] 56:17 advocated ^[1] 32:25 affect ^[1] 72:10 affirm ^[1] 12:11 affirmed ^[2] 42:21 73:16 afterwards ^[1] 76:5 ago ^[2] 69:22 76:14 agree ^[5] 10:15 17:9 37:5,24 65:19 agreed ^[2] 15:25 32:13 ahead ^[1] 29:3 ahold ^[1] 46:24 aimed ^[1] 72:13 aiming ^[2] 5:21,23 air ^[1] 37:19 akin ^[2] 6:25 9:6 AL ^[1] 1:6 albeit ^[1] 40:23 Albuquerque ^[1] 42:10 Alito ^[32] 10:1,2,10,12,18,20,23 11:1,10,12 12:2,5,18,21,25 13:15 29:5,6,11,14 30:4,19 31:4,11 53:11,12,20 54:7,21 55:17 56:11 57:13 allow ^[2] 36:15 55:10 allowing ^[3] 45:18,18 59:21 alluded ^[1] 34:6 alone ^[3] 18:23 28:23 35:16 already ^[1] 57:21 alternative ^[2] 66:8 76:1 although ^[1] 18:18 amazing ^[1] 61:19 Amendment ^[59] 3:19,24 4:10,14,16 5:3 9:22 11:17 12:7,12 14:13 15:10 16:3,19 17:16 21:14 23:19 24:15 25:1,13 30:10 34:10 35:11 36:4,25 37:4,8 39:16 40:17,23 41:1,13 42:19 44:2,20 46:5 50:8,21,22 52:11 56:15 58:14 60:22 63:23 65:9,14,21 66:7,12,16,19 67:1 69:9,20 72:24 73:12 75:8,20 76:15 Amendment's ^[4] 4:4 23:15,25 56:20 amicus ^[3] 1:22 2:7 24:9 among ^[1] 23:23 amount ^[3] 16:1 45:19 53:24 analogous ^[1] 72:16 analysis ^[6] 5:20 8:24 40:17 57:20 68:2,20 analytical ^[1] 58:4 analyze ^[2] 34:25 41:4</p>	<p>analyzed ^[2] 30:17 67:11 analyzing ^[1] 39:7 and/or ^[1] 55:13 announcing ^[1] 3:13 anomaly ^[1] 35:16 another ^[3] 11:2,19 42:9 answer ^[2] 6:7 57:13 answered ^[1] 25:12 antebellum ^[1] 8:14 anybody ^[1] 44:8 Anyway ^[1] 28:8 appeals ^[1] 3:20 appeals' ^[1] 4:2 APPEARANCES ^[1] 1:17 applicable ^[1] 69:17 application ^[12] 5:16 13:6,7,12 32:5,9 40:8 60:11,23 61:8 75:4,6 applied ^[10] 6:9,12 9:23 19:10 20:1,12,17 21:17 40:12 49:11 applies ^[2] 24:2 40:24 apply ^[3] 24:16 34:13 41:3 applying ^[4] 8:3 10:8 48:3 52:11 apprehended ^[1] 45:8 approach ^[2] 8:25 58:4 approached ^[1] 3:12 area ^[2] 50:17 74:24 arguing ^[1] 69:6 argument ^[19] 1:14 2:2,5,10,13 3:4,7 11:16 12:2,6,22 24:8 28:7 34:19 41:9 42:13 57:15 71:24 73:21 arguments ^[1] 35:19 arm ^[2] 30:8 56:22 armed ^[1] 8:1 Armour ^[1] 21:20 arms ^[1] 7:20 arose ^[6] 8:18 17:21 18:8 37:6 43:12,15 around ^[2] 50:13 51:19 arrest ^[64] 4:20,22,25 5:7 8:8,16,17,19,24 11:22 12:8,22 13:1 15:10,15 16:2 17:13,16,20 18:5,10,23 28:20,24 36:8,11,12,15,20 37:11,14,25 39:8,11 42:11 43:6 44:7,13 45:4 47:10 48:18 53:14 58:10,12,15,17,24,25 59:1,5,20 60:10,20 66:24 67:5 69:15,18,22,23 74:2,12,14,19,22 arrested ^[6] 38:16 47:9 48:6 58:11,17,20 arrestee ^[2] 28:19 60:25 arrestee's ^[1] 60:12 arresting ^[1] 69:24 arrests ^[10] 7:24 8:9 11:24 18:8 19:1 44:18 45:5 67:16 74:7,9 articulate ^[1] 31:18 articulated ^[1] 9:2 articulation ^[1] 20:23 aside ^[1] 32:25 assault ^[4] 16:16 55:13 56:6 66:13 Assistant ^[1] 1:20 assume ^[1] 65:8 assuming ^[2] 14:2 31:8 asymmetry ^[2] 72:6,15 attempted ^[9] 3:13 9:13,16,19 52:</p>	<p>13,13,22 63:22 64:4 attempting ^[2] 53:14 76:16 attempts ^[1] 52:12 Atwater ^[1] 4:21 authority ^[14] 12:25 16:15 32:4 35:23 36:2,9 44:8 49:3 51:18,19,23 60:24 71:6,6 available ^[1] 55:19 avenues ^[1] 71:8 aware ^[3] 36:10,11 37:20 away ^[10] 3:15 16:12 24:4 27:8 54:4 58:19,19,21 59:14 67:25</p>
2	<p>200 ^[2] 53:7 69:22 2014 ^[1] 42:4 2020 ^[1] 1:11 20th ^[1] 73:4 24 ^[1] 2:9</p>		
3	<p>3 ^[1] 2:4 30 ^[4] 24:22 32:18 34:6 76:14</p>		
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