
2020-2021
United States Supreme Court
Legal Update
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2020-2021 Session
• Lombardo v. City of St. Louis, Missouri, (6-3 Per Curiam opinion on June 28, 2021)
• Standing Akimbo, LLC v. United States, (June 28, 2021)
• Lange v. California, (9-0 Opinion on June 23, 2021)
• Greer v. United States, United States v. Gary, (8-1 Opinion on June 14, 2021)
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• Van Buren v. United States, (6-3 Opinion on June 3, 2021)
• United States v. Cooley, (9-0 Opinion on June 1, 2021)
• Caniglia v. Strom (9-0 Opinion)
• Torres v. Madrid, (5-3 Opinion on March 25, 2021)
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Lombardo v. City of St. Louis
Unsigned Opinion (June 28, 2021)

- The SCOTUS vacated and remanded the Eighth Circuit Court of Appeals case.
- They did so because it was unclear in this excessive force case whether the Eighth Circuit incorrectly thought the use of a prone restraint is per se constitutional so long as an individual appears to resist officers' efforts to subdue him, the U.S. Court of Appeals for the Eighth Circuit's judgment is vacated, and the case is remanded to give the lower court the opportunity in the first instance to employ the careful, context-specific analysis required by this court's excessive force precedent.

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Lombardo v. City of St. Louis
Unsigned Opinion (June 28, 2021)

- 2015 death of Nicholas Gilbert, a homeless man who was arrested for trespassing and for failing to appear in court for a traffic ticket.
- While in a holding cell, Gilbert attempted to hang himself. Three officers responded and entered Gilbert's cell.
- One grabbed Gilbert's wrist to handcuff him, but Gilbert evaded the officer and began to struggle.
- The three officers brought Gilbert, who was 5'3" and 160 pounds, down to a kneeling position over a concrete bench in the cell and handcuffed his arms behind his back.
- Gilbert reared back, kicking the officers and hitting his head on the bench. After Gilbert kicked one of the officers in the groin, they called for more help and leg shackles.
- While Gilbert continued to struggle, two officers his legs together. Emergency medical services personnel were phoned for assistance. Several more officers responded.

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Lombardo v. City of St. Louis
Unsigned Opinion (June 28, 2021)

- They relieved two of the original three officers, leaving six officers in the cell with Gilbert, who was now handcuffed and in leg irons.
- The officers moved Gilbert to a prone position, face down on the floor. Three officers held Gilbert's limbs down at the shoulders, biceps, and legs.
- At least one other placed pressure on Gilbert's back and torso. Gilbert tried to raise his chest, saying, "'It hurts. Stop.'"
- After 15 minutes of struggling in this position, Gilbert's breathing became abnormal, and he stopped moving. The officers rolled Gilbert onto his side and then his back to check for a pulse.
- Finding none, they performed chest com pressions and rescue breathing. An ambulance eventually transported Gilbert to the hospital, where he was pronounced dead.

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Lombardo Cont…

- Gilbert's parents sued the city and the officers, alleging (among other things) that the officers had used excessive force against Gilbert in violation of his constitutional rights.
- The U.S. Court of Appeals for the 8th Circuit dismissed the claims, holding that no reasonable jury could find that officers had used excessive force and therefore the officers could not be held liable.
- On June 28, 2021, the SCOTUS issued a four-page decision in which it emphasized that the determination whether police officers use excessive force "requires careful attention to the facts and circumstances of each particular case" – including factors such as "the relationship between the need for the use of force and the amount of force used" and "the threat reasonably perceived by the officer" as well as "whether the plaintiff was actively resisting."

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Lombardo Cont…

- Although the 8th Circuit cited these factors, SCOTUS noted that it "is unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or sur rounding circumstances—is *per se* constitutional so long as an individual appears to resist officers' efforts to subdue him."
- Moreover, the justices added, the Court of Appeals described other facts – such as that Gilbert had already been handcuffed and his legs were shackled – as "insignificant" when they actually could have been important.
- SCOTUS further noted that there was evidence in the record that "officers placed pressure on Gilbert's back even though St. Louis instructs its officers that pressing down on the back of a prone subject can cause suffocation," and well-known police guidance recommends that officers get a subject off his stomach as soon as he is handcuffed because of that risk. Such guidance further indicates that the suspect may be struggling due to oxygen deficiency, rather than disobedience.

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Lombardo Cont…

- Because the 8th Circuit either "failed to analyze such evidence or characterized it as 'insignificant,'" SCOTUS concluded, it had not conducted the kind of "careful, context-specific analysis required by this Court's excessive force precedent."
- The justices stressed that they were not weighing in on whether the officers had in fact used excessive force or whether, if they did, the officers would ultimately be entitled to qualified immunity. Instead, they wrote, they were simply giving the 8th Circuit "the opportunity to employ an inquiry that clearly attends to the facts and circumstances in answering those questions in the first instance."

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Lombardo Cont…

- Alito dissented, in an opinion that was joined by Thomas and Gorsuch.
- In Alito's view, the 8th Circuit "applied the correct legal standard and made a judgment call on a sensitive question." He suggested that "the Court, unfortunately, is unwilling to face up to the choice between denying the petition (and bearing the criticism that would inevitably elicit) and granting plenary review (and doing the work that would entail)."

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Lombardo Summary

- SCOTUS made clear that excessive force cases are fact and circumstance specific which require a thorough examination by the lower courts.
- Additionally, it is of the utmost importance for every police department to have a sound use of force policy and be up to date on best police practices to protect itself and its officers from potential litigation down the road.
- Here SCOTUS emphasized that St. Louis instructs its officers that pressing down on the back of a suspect can cause suffocation and it is well known in modern policing that officers move a person off of their stomach once they are restrained because of the suffocation risks.
- As we find our way forward together it is incredibly important that we continue to teach ourselves the most up to date and safest techniques, especially in this day and age of intense scrutiny.

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Standing Akimbo, LLC v. United States

594 U.S. ____ (2021)

- Supreme Court Justice Thomas Clarence released a statement pertaining to the federal ban on the cultivation and use of marijuana within states where he noted that it "may no longer be necessary or proper."
- In 2005, SCOTUS held that Congress's power to regulate interstate commerce authorized it "to prohibit the local cultivation and use of marijuana" in *Gonzales* v. *Raich*.
- There, SCOTUS's reasoning was that Congress had "enacted comprehensive legislation to regulate the interstate market in a fungible commodity" and that "exemption[s]" for local use could undermine this "comprehensive" regime.

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- SCOTUS stressed that Congress had decided "to prohibit *entirely* the possession or use of [marijuana]" and had "designate[d] marijuana as contraband for *any* purpose." Prohibiting any intrastate use was, therefore, "necessary and proper" to avoid a "gaping hole" in Congress's "closed regulatory system."
- On June 28, 2021, Justice Thomas released a statement that claimed that although federal law still flatly forbids the intra-state possession, cultivation, or distribution of marijuana, the Government, post-*Raich*, has sent mixed signals on its views.

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- In 2009 and 2013, the Department of Justice issued memorandums outlining a policy against intruding on state legalization schemes or prosecuting certain individuals who comply with state law.
- In 2009, Congress enabled Washington D. C.'s government to decriminalize medical marijuana under local ordinance.
- Additionally, every fiscal year since 2015, Congress has prohibited the Department of Justice from spending funds to prevent states' implementation of their own medical marijuana laws.

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"Half in, Half out Regime"

- Thomas noted that "[t]he federal government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana . . . This contradictory and unstable state of affairs strains basic principles of federalism and conceals traps for the unwary." Given the many approaches and new developments surrounding marijuana, Thomas stated that, "[o]ne can also perhaps understand why business owners in Colorado, like petitioners, may think that their intrastate marijuana operations will be treated like any other enterprise that is legal under state law."

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Lange v. California
(9-0 Opinion on June 23, 2021)

- The Court vacated and remanded the Court of Appeal of California, First Appellate District.
- The Court held that, under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always or categorically qualify as an exigent circumstance justifying a warrantless entry into a home, and is dependent on the facts.

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'Hot'' Pursuit

- One of the most important parts of this discussion is what it actually means to be in a "hot" pursuit.
- "Hot" pursuits usually hold up in court when police are actively pursuing a suspected felon and their chase takes them into private premises, or the police have probable cause to believe that a crime has been committed on private premises.
- The Court has recognized two conditions when officers may use a "hot" pursuit to conduct a warrantless search: one, the need to avoid the destruction of evidence and two, the need to prevent the loss of life or serious injury. Under this definition a "hot" pursuit awards officers an exigent circumstance that would allow them to go into a home without a warrant.

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Lange Cont…

- In 2016 Arthur Lange was driving home around 10 PM. He had his windows down and he was listening to his music at a very loud volume. Occasionally he honked his horn, which ultimately caught the attention of a state highway patrol officer. The officer, Aaron Weikert, followed Lange to his home because he believed Mr. Lange was committing a noise infraction. As Lange neared his home Officer Weikert turned on his overhead lights.

- Lange drove into his garage and before he could fully close the garage door Officer Weikert stopped the door with his foot and forced it to reopen. Weikert began questioning Lange, who appeared to be intoxicated. A blood test later showed that his blood-alcohol level was more than three times the legal limit.

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- Most of the justices agree that you can't simply say that all crimes involving a "hot" pursuit allow for warrantless entry, since that would mean that, according to Justice Breyer "the home isn't [the] castle at all for the most trivial of things".
- On the other hand, a "hot" pursuit only happens when someone commits a crime, so are they giving up Fourth Amendment protections in doing so?
- Another argument by Justice Breyer was to draw a distinction between felonies and misdemeanors, although he worried that this would cause confusing anomalies and further aggravate the problem.
- Several Justices felt that the line separating felonies from misdemeanors is a confusing one and because it varies by state it does not reflect the risks to police officers.

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- A couple of the Justices felt that this case shouldn't be about how to handle a "hot" pursuit, as the pursuit of Lange was far from "hot".
- Justice Alito said, "The argument very simply is that hot pursuit has to be hot, and it has to be a pursuit." Justice Clarence Thomas also felt the encounter in Sonoma was not a "hot" pursuit; he called it a "meandering pursuit."
- According to Rice, "The hot pursuit exception justifies warrantless home entry in a narrow class of cases where a suspect tries to thwart a lawful public arrest by outracing an officer to a dwelling," she said.

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Greer v. United States, United States v. Gary

(8-1 Opinion on June 14, 2021)

- The Court affirmed the Eleventh Circuit Court of Appeals in the *Greer* case and reversed the Fourth Circuit Court of Appeals in the *Gary* case.
- The Court held that in felon-in-possession cases, a *Rehaif* error under 18 U. S. C. §922(g), where the Government in a felon-in-possession case must prove not only that the defendant knew he possessed a firearm, but also that he knew he was a felon when he possessed the firearm, is not a basis for plain error relief unless the defendant first makes a sufficient argument or representation on appeal that he would have presented evidence at trial that he did not in fact know he was a felon.

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Greer & Gary

- In *Rehaif v. United States*, 588 U.S. ___ (2019), SCOTUS held that a conviction for being a felon in possession of a firearm requires proof not only that the defendant knew he had a firearm, but that he was a felon within the meaning of 18 U.S.C. § 922(g).
- Since then, the question before many appellate courts has been whether it would have made any difference in the result had the parties and court known at the time that the government was required to prove knowledge of felon status.

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Greer & Gary

- In its decision, SCOTUS found that neither Greer nor Gary carried their burden of showing a "reasonable probability" that they would not have been convicted or pleaded guilty had the rule of *Rehaif* been observed in their cases. Justice Kavanaugh's opinion points out some common-sense reasons why it would be an "uphill climb" for felons in possession to meet their burden on appeal.
- First, "[i]f a person is a felon, he ordinarily knows he is a felon" and, second, "absent a reason to conclude otherwise, a jury will usually find that a defendant *knew* he was a felon based on the fact that he *was* a felon."

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Terry v. United States

(9-0 Opinion on June 14, 2021)

- The Court affirmed the Eleventh Circuit Court of Appeals. The Court held that a person convicted of a crack offense is eligible for a sentence reduction under the First Step Act of 2018, Pub. L. 115–391, 132 Stat. 5194, only if he or she was convicted of an offense that triggered a mandatory minimum sentence.
- SCOTUS examined whether crack offenders who do not trigger a mandatory minimum qualify for resentencing under The First Step Act of 2018. SCOTUS unanimously held they do not.

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Terry v. United States

- The First Step Act was an effort signed by President Trump in 2018 as a culmination of a bi-partisan efforts to improve criminal justice outcomes, as well as to reduce the size of the federal prison population while also creating mechanisms to maintain public safety.
- The Act focused on reductions in recidivism, incentives that helped lead to inmate success, keeping inmates closer to their families to help confinement mental health, correctional and sentencing reforms, and better overall prisoner oversight.

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Terry v. United States

- In a unanimous decision, SCOTUS held that under the First Step Act a crack offender is only eligible for a sentence reduction if convicted of a crack offense *that triggered a mandatory minimum sentence*.
- No mandatory minimum means no resentencing. Only federal crack cocaine convictions that carry tier one and two penalties are eligible for resentencing under the First Step Act, not tier three.

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Borden v. United States

(5-4 Opinion on June 10, 2021)

- The Court reversed and remanded the Sixth Circuit Court of Appeals. The Court held that an offense with a mental state of recklessness does not qualify as a "violent felony" under the Armed Career Criminal Act's elements clause, 18 U. S. C. §924(e)(2)(B)(i).
- The Court stated "We must decide whether the elements clause's definition of "violent felony" - an offense requiring the "use of physical force against the person of another" - includes offenses criminalizing reckless conduct." We hold that it does not.

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Van Buren v. United States

(6-3 Opinion on June 3, 2021)

- The Court reversed and remanded the Court of Appeals for the Eleventh Circuit. The Court held that an individual "exceeds authorized access" under the Computer Fraud and Abuse Act of 1986, 18 U. S. C. §1030(a)(2), when he accesses a computer with authorization but then obtains information located in particular areas of the computer—such as files, folders, or databases—that are off-limits to him.

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Van Buren

- Nathan Van Buren, a former police sergeant, ran a license-plate search in a law enforcement computer database in exchange for money.
- Van Buren's conduct plainly flouted his department's policy, which authorized him to obtain database information only for law enforcement purposes.
- We must decide whether Van Buren also violated the Computer Fraud and Abuse Act of 1986 (CFAA), which makes it illegal "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter."
- The jury convicted Van Buren, and the District Court sentenced him to 18 months in prison.

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Van Buren

- The CFFA subjects to criminal liability anyone who "intentionally accesses a computer without authorization or exceeds authorized access," and thereby obtains computer information. 18 U. S. C. §1030(a)(2).
- It defines the term "exceeds authorized access" to mean "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accessor is not entitled so to obtain or alter." §1030(e)(6).

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Van Buren

- Van Buren appealed to the Eleventh Circuit, arguing that the "exceeds authorized access" clause applies only to those who obtain information to which their computer access does not extend, not to those who misuse access that they otherwise have.
- The dispute is whether Van Buren was "entitled so to obtain" the record. "Entitle" means "to give . . . a title, right, or claim to something."
- In sum, an individual "exceeds authorized access" when he accesses a computer with authorization but then obtains information located in particular areas of the computer— such as files, folders, or databases— that are off limits to him.
- Van Buren accordingly did not "excee[d] authorized access" to the database, as the CFAA defines that phrase, even though he obtained information from the database for an improper purpose.

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United States v. Cooley

(9-0 Opinion on June 1, 2021)

- The Court vacated and remanded the decision of the Court of Appeals for the Ninth Circuit.
- The Court held that a tribal police officer has authority to detain temporarily and to search a non-Indian traveling on a public right-of-way running through a reservation for potential violations of state or federal law.

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United States v. Cooley

- The defendant, Joshua James Cooley, was arrested after a tribal police officer observed Cooley parked in his vehicle on the side of a road within the Crow Reservation in Montana with "watery, bloodshot eyes" and two firearms laying on the front seat.
- A motion to suppress the evidence was granted on the grounds that the tribal officer was acting outside the scope of his jurisdiction as a Crow Tribe law enforcement officer when he seized Cooley, in violation of the Indian Civil Rights Act of 1968 ("ICRA").
- The Ninth Circuit Court of Appeals affirmed the district court's decision, finding that the tribal police officer lacked jurisdiction to detain Cooley, a non-Native person, without first making any attempt to determine whether he was a Native American. The government appealed to SCOTUS.

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United States v. Cooley

- In a unanimous decision, SCOTUS held that a tribal police officer has authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law.
- SCOTUS reversed the Ninth Circuit and remanded, noting that without the power to detain and search non-Indians in such circumstances it would make it "difficult for tribes to protect themselves against ongoing threats" such as "non-Indian drunk drivers, transporters of contraband, or other criminal offenders operating on roads within the boundaries of a tribal reservation."

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Caniglia v. Strom

(9-0 Opinion)

- The Court vacated and remanded the Court of Appeals for the First Circuit. The Court held *Cady v. Dombrowski* does not justify the removal of Caniglia's firearms from his home by police officers under a "community caretaking exception" to the Fourth Amendment's warrant requirement.
- SCOTUS has ruled action taken by the police, *outside the context of entering a home*, that is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute[,]" does not violate the fourth amendment. *Cady v. Dombrowski*, 413 U.S. 433 (1973)

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- During an argument with his wife at their home, Edward Caniglia retrieved a handgun from the bedroom, put it on the dining room table, and asked his wife to "shoot [him] now and get it over with." She declined and, instead, left to spend the night at a hotel.
- The next morning, Caniglia's wife discovered that she could not reach him by telephone, and she called the police to request a welfare check.
- Consequently, the officers called an ambulance and Caniglia agreed to go to the hospital for a psychiatric evaluation, but only after the officers promised not to confiscate his firearms.
- However, after Caniglia was gone, the officers decided to seize his firearms. The officers entered Caniglia's home, guided by his wife, whom they allegedly misinformed about his wishes, and seized two handguns.

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"No Place Like Home."

- In a unanimous decision, SCOTUS held that the "community caretaking" exception to the Fourth Amendment warrant requirement does not extend to the home.
- However, Justice Thomas added that the First Circuit's "community caretaking" rule in this case went beyond anything the Supreme Court has recognized, stating that "neither the holding nor logic of *Cady*
- SCOTUS made clear that there is truly "no place like home." The key takeaway here is absent consent of the homeowner or exigent circumstances, officers will need a warrant to enter the home as the "community caretaker" exception to the warrant requirement does not extend to the home as it does a motor vehicle.

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Torres v. Madrid

(5-3 Opinion on March 25, 2021)

- The Court vacated and remanded the decision of the Court of Appeals for the Tenth Circuit.
- In this case, the question before the court was "whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting."
- SCOTUS held that the application of 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.

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Torres v. Madrid

- This case concerns the 'seizure' of a 'person,' which can take the form of 'physical force' or a 'show of authority' that 'in some way restrain[s] the liberty' of the person.
- SCOTUS stated that the question before it was "whether the application of physical force is a seizure if the force, despite hitting its target, fails to stop the person."
- Just because you do not physically arrest someone, there was still in *intent* to arrest them, so force needed to fully try to subdue a suspect would all fall under the umbrella of the seizure

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- On July 15, 2014, four New Mexico State Police officers, wearing tactical vests marked with police identification, arrived at an Albuquerque apartment complex to serve an arrest warrant for a woman accused of white-collar crimes, and also "suspected of having been involved in drug trafficking, murder, and other violent crimes."
- Neither officer was standing in the path of Torres' vehicle, but both fired their weapons into the vehicle, firing 13 total shots, two of which struck Torres in the back and temporarily paralyzed her left arm.
- Torres was ultimately arrested for aggravated fleeing from a law enforcement officer, assault on a peace officer, and unlawfully taking a motor vehicle.
- Torres later filed for damages against Officers Madrid and Williams under 42 U.S.C. § 1983, claiming that the officers applied excessive force, making the shooting an unreasonable seizure under the Fourth Amendment.

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Torres v. Madrid

- Under *Hodari D.* SCOTUS explained that "[a]n arrest requires either physical force . . . or, where that is absent, submission to the assertion of authority." SCOTUS further stated that courts throughout the county continue to hold that "an arrest required only the application of force – not control or custody . . ."
- SCOTUS cautioned that the rule announced in this case is narrow. The Court stated, "In addition to the requirement of intent to restrain, a seizure by force – absent submission – lasts only as long as the application of force. That is to say the Fourth Amendment does not recognize any 'continuing arrest during the period of fugitivity.'"

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Torres v. Madrid

- SCOTUS' decision does not include any analysis on whether the officers' use of force employed against Torres was reasonable, or any determination of any damages.
- Therefore, even though the officers' seizure of Torres was not successful, and she was able to flee in a vehicle, the shots fired at her vehicle which struck her person, constituting force "to the body of her person," is considered a seizure under the Fourth Amendment.

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