Excessive force is a violation of the Fourth Amendment’s prohibition against “unreasonable searches and seizures.” In Torres v. Madrid the State and Local Legal Center (SLLC) filed a Supreme Court amicus brief arguing that a Fourth Amendment “seizure” has not occurred when police unsuccessfully attempt to restrain someone using physical force.

In this case police officers approached Roxanne Torres thinking she may be the person they intended to arrest. At the time Torres was “tripping” from using meth for several days. She got inside a car and started the engine. One of the officers repeatedly asked her to show her hands but could not see her clearly because the car had tinted windows.

When Torres “heard the flicker of the car door” handle she started to drive thinking she was being carjacked. Torres drove at one of the officers who fired at Torres through the wind shield. The other officer shot at Torres as well to avoid being crushed between two cars and to stop Torres from driving toward the other officer.

Torres was shot twice. After she hit another car, she got out of her car and laid on the ground attempting to “surrender” to the “carjackers.” She asked a bystander to call the police but left the scene because she had an outstanding warrant. She then stole a car, drove 75 miles, and checked into a hospital using an alias.

Torres claims the police officers used excessive force against her in violation of the Fourth Amendment. The Tenth Circuit disagreed noting police officers didn’t attain physical control over Torres after they shot her. The federal circuit courts of appeals are split regarding whether an attempt to detain a suspect by physical force must be successful for a “seizure” to occur.

Among other arguments Torres claims that at common law, “mere touch with the intent to restrain effected an arrest,” and therefore a seizure. The SLLC amicus brief disagrees arguing: “[f]rom the Founding to today, ‘seizure’ has meant to ‘take possession’—thus encompassing an element of physical control.”

The SLLC amicus brief also provides practical reasons for rejecting Torres’s argument. “Fleeing suspects place officers and the public at risk, and [Torres’s] proposed definition would increase incentives to flee. In response, officers may be chilled from using the force necessary to bring suspects under physical control for fear of facing unwarranted excessive-force claims. And permitting individuals who flee to bring a Fourth Amendment claim would not deter unlawful police conduct, given that officers will not know in advance whether suspects will resist and evade capture.”
