

STEVENS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 03–1423

DARIN L. MUEHLER, ET AL., PETITIONERS *v.* IRIS
MENA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 22, 2005]

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, concurring in the judgment.

The jury in this case found that the two petitioners violated Iris Mena’s Fourth Amendment right to be free from unreasonable seizure by detaining her with greater force and for a longer period of time than was reasonable under the circumstances. In their post-trial motion in the District Court, petitioners advanced three legal arguments: (1) They were entitled to qualified immunity because the unconstitutionality of their conduct was not clearly established;¹ (2) the judge’s instruction to the jury was erroneous;² and (3) the evidence was not sufficient to

¹The Court of Appeals’ conclusion that the officers were not entitled to qualified immunity was not challenged in the petition for certiorari and is therefore waived. See *Taylor v. Freeland & Kronz*, 503 U. S. 638, 645–646 (1992).

²The trial judge instructed the jury as follows:

“Generally, a police officer carrying out a search authorized by a warrant may detain occupants of the residence during the search, so long as the detention is reasonable.

“In determining the reasonableness of a detention conducted in connection with a search, you may look to all the circumstances, including the severity of the suspected crime, whether the person being detained is the subject of the investigation, whether such person poses an immediate threat to the security of the police or others or to the

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support the jury's award of punitive damages. The trial judge's thoughtful explanation of his reasons for denying the motion does not address either of the issues the Court discusses today.

In its opinion affirming the judgment, the Court of Appeals made two mistakes. First, as the Court explains, *ante*, at 7, it erroneously held that the immigration officers' questioning of Iris Mena about her immigration status was an independent violation of the Fourth Amendment.³ Second, instead of merely deciding whether there was sufficient evidence in the record to support the jury's verdict, the Court of Appeals appears to have ruled as a matter of law that the officers should have released her from the handcuffs sooner than they did. I agree that it is appropriate to remand the case to enable the Court of Appeals to consider whether the evidence supports Iris Mena's contention that she was held longer than the search actually lasted. In doing so, the Court of Appeals must of course accord appropriate deference to the jury's reasonable factual findings, while applying the correct legal standard. See *Ornelas v. United States*, 517 U. S. 690, 699 (1996).

In my judgment, however, the Court's discussion of the amount of force used to detain Iris pursuant to *Michigan v. Summers*, 452 U. S. 692 (1981), is analytically unsound.

ability of the police to conduct the search, and whether such person is actively resisting arrest or attempting to flee. A detention may be unreasonable if it is unnecessarily painful, degrading, prolonged or if it involves an undue invasion of privacy. A police officer is required to release an individual detained in connection with a lawful search as soon as the officers' right to conduct the search ends or the search itself is concluded, whichever is sooner." *Mena v. Simi Valley*, 332 F. 3d 1255, 1267–1268 (CA9 2003) (alterations omitted; one paragraph break added).

³While I agree with the Court's discussion of this issue, I note that the issue was not properly presented to the Ninth Circuit because it was not raised by either petitioners or respondent.

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Although the Court correctly purports to apply the “objective reasonableness” test announced in *Graham v. Connor*, 490 U. S. 386 (1989), it misapplies that test. Given the facts of this case—and the presumption that a reviewing court must draw all reasonable inferences in favor of supporting the verdict—I think it clear that the jury could properly have found that this 5-foot-2-inch young lady posed no threat to the officers at the scene, and that they used excessive force in keeping her in handcuffs for up to three hours. Although *Summers* authorizes the detention of any individual who is present when a valid search warrant is being executed, that case does not give officers *carte blanche* to keep individuals who pose no threat in handcuffs throughout a search, no matter how long it may last. On remand, I would therefore instruct the Court of Appeals to consider whether the evidence supports Mena’s contention that the petitioners used excessive force in detaining her when it considers the length of the *Summers* detention.

I

As the Court notes, the warrant in this case authorized the police to enter the Mena home to search for a gun belonging to Raymond Romero that may have been used in a gang-related driveby shooting. Romero, a known member of the West Side Locos gang, rented a room from the Mena family. The house, described as a “‘poor house,’” was home to several unrelated individuals who rented from the Menas. Brief for Petitioners 4. Each resident had his or her own bedroom, which could be locked with a padlock on the outside, and each had access to the living room and kitchen. In addition, several individuals lived in trailers in the back yard and also had access to the common spaces in the Mena home. *Id.*, at 5.

In addition to Romero, police had reason to believe that at least one other West Side Locos gang member had lived at the residence, although Romero’s brother told police

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that the individual had returned to Mexico. The officers in charge of the search, petitioners Muehler and Brill, had been at the same residence a few months earlier on an unrelated domestic violence call, but did not see any other individuals they believed to be gang members inside the home on that occasion.

In light of the fact that the police believed that Romero possessed a gun and that there might be other gang members at the residence, petitioner Muehler decided to use a Special Weapons and Tactics (SWAT) team to execute the warrant. As described in the majority opinion, eight members of the SWAT team forcefully entered the home at 7 a.m. In fact, Iris Mena was the only occupant of the house and she was asleep in her bedroom. The police woke her up at gunpoint, and immediately handcuffed her. At the same time, officers served another search warrant at the home of Romero's mother, where Romero was known to stay several nights each week. In part because Romero's mother had previously cooperated with police officers, they did not use a SWAT team to serve that warrant. Romero was found at his mother's house; after being cited for possession of a small amount of marijuana, he was released.

Meanwhile, after the SWAT team secured the Mena residence and gave the "all clear," police officers transferred Iris and three other individuals (who had been in trailers in the back yard) to a converted garage.⁴ To get to the garage, Iris, who was still in her bedclothes, was forced to walk barefoot through the pouring rain. The officers kept her and the other three individuals in the garage for up to three hours while they searched the

⁴The other individuals were a 55-year-old Latina female, a 40-year-old Latino male who was removed from the scene by the Immigration and Naturalization Service (INS), and a white male who appears to be in his early 30's and who was cited for possession of a small amount of marijuana.

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home. Although she requested them to remove the handcuffs, they refused to do so. For the duration of the search, two officers guarded Iris and the other three detainees. A .22 caliber handgun, ammunition, and gang-related paraphernalia were found in Romero's bedroom, and other gang-related paraphernalia was found in the living room. Officers found nothing of significance in Iris' bedroom.⁵ *Id.*, at 6–9.

II

In analyzing the quantum of force used to effectuate the *Summers* detention, the Court rightly employs the “objective reasonableness” test of *Graham*. Under *Graham*, the trier of fact must balance “the nature and quality of the intrusion on the individual's Fourth Amendment interests” against the countervailing governmental interests at stake.” 490 U. S., at 396. The District Court correctly instructed the jury to take into consideration such factors as “the severity of the suspected crime, whether the person being detained is the subject of the investigation, whether such person poses an immediate threat to the security of the police or others or to the ability of the police to conduct the search, and whether such person is actively resisting arrest or attempting to flee.” See n. 2, *supra*. The District Court also correctly instructed the jury to consider whether the detention was prolonged and whether Iris was detained in handcuffs after the search had ended. *Ibid.* Many of these factors are taken from *Graham* itself, and the jury instruction reflects an entirely

⁵One of the justifications for our decision in *Michigan v. Summers*, 452 U. S. 692 (1981), was the fact that the occupants may be willing to “open locked doors or locked containers to avoid the use of force that is not only damaging to property but may also delay the completion of the task at hand.” *Id.*, at 703. Iris, however, was never asked to assist the officers, although she testified that she was willing to do so. See 3 Tr. 42 (June 14, 2001). Instead, officers broke the locks on several cabinets and dressers to which Iris possessed the keys.

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reasonable construction of the objective reasonableness test in the *Summers* context.

Considering those factors, it is clear that the SWAT team's initial actions were reasonable. When officers undertake a dangerous assignment to execute a warrant to search property that is presumably occupied by violence-prone gang members, it may well be appropriate to use both overwhelming force and surprise in order to secure the premises as promptly as possible. In this case the decision to use a SWAT team of eight heavily armed officers and to execute the warrant at 7 a.m. gave the officers maximum protection against the anticipated risk. As it turned out, there was only one person in the house—Iris Mena—and she was sound asleep. Nevertheless, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham*, 490 U. S., at 396. At the time they first encountered Iris, the officers had no way of knowing her relation to Romero, whether she was affiliated with the West Side Locos, or whether she had any weapons on her person. Further, the officers needed to use overwhelming force to immediately take command of the situation; by handcuffing Iris they could more quickly secure her room and join the other officers. It would be unreasonable to expect officers, who are entering what they believe to be a high risk situation, to spend the time necessary to determine whether Iris was a threat before they handcuffed her. To the extent that the Court of Appeals relied on the initial actions of the SWAT team to find that there was sufficient evidence to support the jury's verdict, it was in error.

Whether the well-founded fears that justified the extraordinary entry into the house should also justify a prolonged interruption of the morning routine of a presumptively innocent person, however, is a separate question and one that depends on the specific facts of the case.

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This is true with respect both to how the handcuffs were used, and to the totality of the circumstances surrounding the detention, including whether Mena was detained in handcuffs after the search had concluded. With regard to the handcuffs, police may use them in different ways.⁶ Here, the cuffs kept Iris' arms behind her for two to three hours. She testified that they were "real uncomfortable" and that she had asked the officers to remove them, but that they had refused. App. 105. Moreover, she was continuously guarded by two police officers who obviously made flight virtually impossible even if the cuffs had been removed.

A jury could reasonably have found a number of facts supporting a conclusion that the prolonged handcuffing was unreasonable. No contraband was found in Iris' room or on her person. There were no indications suggesting she was or ever had been a gang member, which was consistent with the fact that during the police officers' last visit to the home, no gang members were present. She fully cooperated with the officers and the INS agent, answering all their questions. She was unarmed, and given her small size, was clearly no match for either of the two armed officers who were guarding her. In sum, there was no evidence that Mena posed any threat to the officers or anyone else.

The justifications offered by the officers are not persuasive. They have argued that at least six armed officers were required to guard the four detainees, even though all of them had been searched for weapons. Since there were

⁶For instance, a suspect may be handcuffed to a fixed object, to a custodian, or her hands may simply be linked to one another. The cuffs may join the wrists either in the front or the back of the torso. They can be so tight that they are painful, particularly when applied for prolonged periods. While they restrict movement, they do not necessarily preclude flight if the prisoner is not kept under constant surveillance.

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18 officers at the scene, and since at least 1 officer who at one point guarded Mena and the other three residents was sent home after offering to assist in the search, it seems unlikely that lack of resources was really a problem. While a court should not ordinarily question the allocation of police officers or resources, a jury could have reasonably found that this is a case where ample resources were available.

The Court suggests that officers are under “no duty to divert resources from the search to make a predictive judgment about whether a particular occupant can be freed from handcuffs.” *Ante*, at 6–7. In reality, the officers *did* make such an inquiry when they filled out the field identification cards, the use of which is standard police practice and takes less than five minutes. Further, the armed officers who guarded Iris had, of course, already been diverted from other search activities. It is therefore difficult to see what additional resources would have been required to determine that she posed no threat to the officers that would justify handcuffing her for two to three hours.

The jury may also have been skeptical of testimony that the officers in fact feared for their safety given that the actual suspect of the shooting had been found at the other location and promptly released. Additionally, while the officers testified that as a general matter they would not release an individual from handcuffs while searching a residence, the SWAT team’s tactical plan for this particular search arguably called for them to do just that, since it directed that “[a]ny subjects encountered will be handcuffed and detained until they can be patted down, their location noted, [field identified], and released by Office Muehler or Officer R. Brill.” 2 Record 53. The tactical plan suggests that they can, and often do, release individuals who are not related to the search. The SWAT team leader testified that handcuffs are not always re-

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quired when executing a search.

In short, under the factors listed in *Graham* and those validly presented to the jury in the jury instructions, a jury could have reasonably found from the evidence that there was no apparent need to handcuff Iris for the entire duration of the search and that she was detained for an unreasonably prolonged period. She posed no threat whatsoever to the officers at the scene. She was not suspected of any crime and was not a person targeted by the search warrant. She had no reason to flee the scene and gave no indication that she desired to do so. Viewing the facts in the light most favorable to the jury's verdict, as we are required to do, there is certainly no obvious factual basis for rejecting the jury's verdict that the officers acted unreasonably, and no obvious basis for rejecting the conclusion that, on these facts, the quantum of force used was unreasonable as a matter of law.

III

Police officers' legitimate concern for their own safety is always a factor that should weigh heavily in balancing the relevant *Graham* factors. But, as Officer Brill admitted at trial, if that justification were always sufficient, it would authorize the handcuffing of every occupant of the premises for the duration of every *Summers* detention. Nothing in either the *Summers* or the *Graham* opinion provides any support for such a result. Rather, the decision of what force to use must be made on a case-by-case basis. There is evidence in this record that may well support the conclusion that it was unreasonable to handcuff Iris Mena throughout the search. On remand, therefore, I would instruct the Ninth Circuit to consider that evidence, as well as the possibility that Iris was detained after the search was completed, when deciding whether the evidence in the record is sufficient to support the jury's verdict.