

## SCOTUS Opinion: Probable Cause To Arrest Defeats A First Amendment Retaliatory Arrest Claim

28 May 2019

In [\*Nieves v. Bartlett\*](#), during a winter sports festival, an intoxicated Russell Bartlett confronted Sergeant Nieves who was talking to other attendees, and told the officer to leave. Nieves backed off, but later Bartlett physically interfered with another officer's questioning of an attendee, and Nieves initiated arrest. Bartlett was slow to comply and was handcuffed on the ground. Bartlett claimed that Nieves said, after the arrest, "bet you wish you would have talked to me now," and used that as the basis for a retaliatory arrest claim against the officers for violating his First Amendment rights. The district court held that the existence of probable cause defeated the claim, but the Ninth Circuit reversed. The Court, in an opinion by Chief Justice Roberts, reversed and remanded. The Court held that a retaliatory arrest claim requires that the retaliatory motive be the but-for cause of the injury, and the existence of probable cause will usually defeat such a determination, but that a claim could still exist where an officer uses discretion to not pursue others for which probable cause exists, but targets the defendant instead. Justice Thomas concurred, agreeing with the result, but arguing that there should be no exception for discretionary arrests. Justice Gorsuch agreed with the result but dissented in part, positing several circumstances in which he thought probable cause should not defeat a retaliatory arrest claim. Justice Ginsburg agreed with the result in part, but argued that there was enough evidence of retaliatory motive in Nieves' statement that might have prevailed at trial. Justice Sotomayor dissented, arguing that retaliatory arrest claims should be viewed in the same way as other First Amendment retaliation claims. A link to the opinion is [here](#).

## SCOTUS Opinion: Probable Cause To Arrest Defeats A First Amendment Retaliatory Arrest Claim

28 May 2019

In [\*Nieves v. Bartlett\*](#), during a winter sports festival, an intoxicated Russell Bartlett confronted Sergeant Nieves who was talking to other attendees, and told the officer to leave. Nieves backed off, but later Bartlett physically interfered with another officer's questioning of an attendee, and Nieves initiated arrest. Bartlett was slow to comply and was handcuffed on the ground. Bartlett claimed that Nieves said, after the arrest, "bet you wish you would have talked to me now," and used that as the basis for a retaliatory arrest claim against the officers for violating his First Amendment rights. The district court held that the existence of probable cause defeated the claim, but the Ninth Circuit reversed. The Court, in an opinion by Chief Justice Roberts, reversed and remanded. The Court held that a retaliatory arrest claim requires that the retaliatory motive be the but-for cause of the injury, and the existence of probable cause will usually defeat such a determination, but that a claim could still exist where an officer uses discretion to not pursue others for which probable cause exists, but targets the defendant instead. Justice Thomas concurred, agreeing with the result, but arguing that there should be no exception for discretionary arrests. Justice Gorsuch agreed with the result but dissented in part, positing several circumstances in which he thought probable cause should not defeat a retaliatory arrest claim.

(CONTINUED)

**SCOTUS OPINION: PROBABLE CAUSE TO ARREST DEFEATS A FIRST AMENDMENT RETALIATORY ARREST CLAIM**

Justice Ginsburg agreed with the result in part, but argued that there was enough evidence of retaliatory motive in Nieves' statement that might have prevailed at trial. Justice Sotomayor dissented, arguing that retaliatory arrest claims should be viewed in the same way as other First Amendment retaliation claims. A link to the opinion is [here](#).

**TAGGED:** [scotus](#), [First Amendment](#), [Probable Cause](#), [SCOTUS opinion](#), [Retaliatory Arrest](#), [Nieves v. Bartlett](#)