

11-262 REICHLER V. HOWARDS

DECISION BELOW: 634 F.3d 1131

LOWER COURT CASE NUMBER: 09-1201, 09-1202

QUESTION PRESENTED:

Petitioners, two Secret Service agents on protective detail, arrested respondent following an encounter with Vice President Richard Cheney. Petitioners had probable cause to arrest respondent, who in violation of 18 U.S.C. § 1001 falsely denied making unsolicited physical contact with the Vice President. Respondent thereafter brought a First Amendment retaliatory arrest claim against petitioners.

The questions presented are:

1. Whether, as the Tenth Circuit siding with the Ninth Circuit held here, the existence of probable cause to make an arrest does not bar a First Amendment retaliatory arrest claim; or whether, as the Second, Sixth, Eighth, and Eleventh Circuits have held, probable cause bars such a claim, including under *Hartman v. Moore*, 547 U.S. 250 (2006).

2. Whether the Tenth Circuit erred by denying qualified and absolute immunity to petitioners where probable cause existed for respondent's arrest, the arrest comported with the Fourth Amendment, it was not (and is not) clearly established that *Hartman* does not apply to First Amendment retaliatory arrest claims, and the denial of immunity threatens to interfere with the split-second, life-or-death decisions of Secret Service agents protecting the President and Vice President.

JUSTICE KAGAN TOOK NO PART.

CERT. GRANTED 12/5/2011