

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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JAMES E. SNYDER, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) No. 23-108  
 )  
 ) UNITED STATES, )  
 )  
 ) Respondent. )  
 )  
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P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 23-108, Snyder versus United States.

Ms. Blatt.

ORAL ARGUMENT OF LISA S. BLATT

ON BEHALF OF THE PETITIONER

MS. BLATT: Mr. Chief Justice, and may it please the Court:

Section 666 applies to 19 million state, local, and tribal officials and anyone else whose employer receives federal benefits, including 14 million Medicare-funded healthcare workers. Congress did not plausibly subject all of these people to 10 years in prison just for accepting gifts, especially when federal officials face only two years for accepting gifts under 201(c).

666 punishes corruptly receiving anything of value intending to be influenced or rewarded. "Corruptly intending to be influenced" covers classic bribes, where officials get upfront payments in exchange for official conduct, while "corruptly intending to

1 be rewarded" covers bribes paid after the fact  
2 and to officials who aren't actually influenced.

3 The government argues "corruptly"  
4 under 666 means wrongful, immoral, depraved, or  
5 evil. But the government tried this case and  
6 countless others on the theory that "corruptly"  
7 just meant knowingly. Regardless, the  
8 government's new definition is implausible and  
9 stunningly vague.

10 No gratuity statute -- that's none  
11 whatsoever -- uses the word "corruptly" and for  
12 good reason. The government can't tell you what  
13 gifts are corrupt -- are corrupt. What gift is  
14 too much for the doctor who saves your life? Is  
15 pornography an immoral gift?

16 The federalism and due process  
17 implications of the government's view are  
18 gobsmacking. All states prohibit bribery, but  
19 localities and states take an -- infinite  
20 approaches to gifts and outside compensation.

21 Affirmance would let federal  
22 prosecutors second-guess all of these judgments.  
23 Meanwhile, state and local officials will have  
24 no way of knowing what gift would subject them  
25 to 10 years in prison. Remember, extensive

1 guidance tells federal employees that accepting  
2 anything over \$20 is a crime.

3 It would be downright Kafkaesque to  
4 subject state and local officials to a  
5 standardless and severe regime where federal  
6 interests are at their weakest.

7 I welcome questions.

8 CHIEF JUSTICE ROBERTS: Ms. Blatt, if  
9 I find a lost pet and return it to the owner and  
10 the owner's grateful and gives me \$10, that's a  
11 reward, right, even though nothing else happened  
12 in advance between the owner and -- and me?

13 MS. BLATT: So, yes, divorced from,  
14 you know, a crime that makes it a corrupt --  
15 corruptly giving something of value intending to  
16 be rewarded, the word "reward," just divorced  
17 from text of a statute, context, common sense at  
18 least in this case, sure, "reward" can mean both  
19 a bribery and -- a quid pro quo bribery and a  
20 gratuity.

21 And we think it's very significant in  
22 all the statutes that use "reward" to mean  
23 gratuities, they're vastly different in four  
24 respects here. They all say, when "reward" is  
25 used to mean gratuities -- these are cited at

1 page 31 of our brief. They make clear that no  
2 quid pro quo payment is required. They say you  
3 can't receive any authorized fee or  
4 compensation.

5 Also, there are 13 gratuity statutes  
6 identified in the brief. Virtually all of them  
7 have no express mens rea whatsoever. They have  
8 vastly lower penalties. And they almost  
9 exclusively apply to federal officials. And I  
10 think that just highlights that gratuity  
11 statutes are generally prophylactic rules where  
12 the government has a direct interest.

13 And at least here, to use "corruptly"  
14 in a gratuity statute would make this statute a  
15 unicorn. It literally has no accepted meaning.  
16 It doesn't exist in any other statute. I don't  
17 think anyone knows what a corrupt gratuity is.

18 JUSTICE KAGAN: But if -- I -- I would  
19 think that demanding mens rea would cut against  
20 you. In other words, if you add in demanding  
21 mens rea to the statute, one will have less fear  
22 that the statute is going to be applied in an  
23 overbroad way. So you're using that on your  
24 side, but I would think that it's really the  
25 government's argument.

1 MS. BLATT: No. Government -- mens  
2 rea can't help you if it's standardless and has  
3 no -- no meaning and just leaves it up to a jury  
4 and, I guess, federal prosecutors.

5 JUSTICE KAGAN: So your view is  
6 dependent on the vagueness of the standard? If  
7 we just knew that it was a serious, a demanding  
8 mens rea standard, then it would cut for the  
9 government?

10 MS. BLATT: No, it's not just that  
11 it's vague. It's also unheard of and  
12 ahistorical. And I just don't think the  
13 government's story holds up. The government's  
14 story is, hey, in 1986, we had this gratuity  
15 language and we add the word "corruptly."

16 But that, of course, is not true. You  
17 had a statute that was identical to Section  
18 201(c) that was a gratuity statute. And the  
19 government -- the Congress did not just sneak in  
20 the word "corrupt." They deleted that statute  
21 in toto, hook, line, and sinker, and added  
22 "corruptly intending to be influenced, rewarded"  
23 in a way that looks much more like the 201(b)  
24 bribery statute.

25 JUSTICE SOTOMAYOR: I'm sorry, I



1 thought the original 666 covered gratuities, and  
2 what Congress then did is, instead of copying  
3 the bribery statute, 201(a), it decided to copy  
4 the gratuity statute, 201(c).

5 So, if they intended bribery, why  
6 didn't they just copy the statute that meant  
7 bribery?

8 MS. BLATT: So, in 1984, the statute  
9 read you can't give or accept anything for or  
10 because official conduct. And that is the  
11 gratuity statute. That language got deleted in  
12 toto.

13 JUSTICE SOTOMAYOR: Well, but that's  
14 the point. Why not borrow then the language  
15 from 201(a) -- the -- from 201(b) -- I'm sorry  
16 -- instead --

17 MS. BLATT: 201(b).

18 JUSTICE SOTOMAYOR: -- (b) instead of  
19 (c). I said (a), but I meant (b).

20 MS. BLATT: And our point is it looks  
21 a lot like, more 201(b), which is -- has the  
22 "corruptly intending to be influenced." And I  
23 just don't think the story is that adding --

24 JUSTICE SOTOMAYOR: But they had that  
25 language, but they chose something broader and

1 different. And so I don't understand.

2 MS. BLATT: I don't think it's broader  
3 at all, and let me see if I can be clear on  
4 this. 201(b) is very different. The Court in  
5 McDonnell said you can actually be convicted if  
6 you don't have any intent to be influenced under  
7 bribery.

8 But, under this statute, 666, the  
9 government has --

10 JUSTICE SOTOMAYOR: They didn't have  
11 McDonnell in front of them, so I don't know what  
12 that has to do with anything.

13 MS. BLATT: Well, let me -- let --

14 JUSTICE SOTOMAYOR: They -- they had  
15 clear bribery language in 201(b), and, instead,  
16 they chose something closer to the gratuity  
17 language of 201(c).

18 MS. BLATT: So it doesn't look  
19 anything like 201(c) and every -- nor any other  
20 gratuity statute in the U.S. Code, and --

21 JUSTICE SOTOMAYOR: All right. Can I  
22 go to the disparity that you were talking about?

23 MS. BLATT: Mm-hmm.

24 JUSTICE SOTOMAYOR: 666, when it was  
25 clearly a gratuity, had 10-year statute --

1 penalty. So it was always disparate from other  
2 statutes involving federal officers.

3 So what do I take from that?

4 MS. BLATT: Well --

5 JUSTICE SOTOMAYOR: Meaning you say  
6 that Congress couldn't have intended to treat  
7 state from federal officials differently. But  
8 it always did.

9 MS. BLATT: Well, all --

10 JUSTICE SOTOMAYOR: It did before it  
11 amended 666.

12 MS. BLATT: I wouldn't consider two  
13 years always. It was a short-lived statute that  
14 was immediately deleted. So -- and I don't even  
15 know if the government had any prosecutions.

16 But if I could just finish my answer  
17 on what I don't think the government has a  
18 response to, if a jury finds that a official was  
19 not influenced because he would have taken the  
20 same vote anyway, the jury has to acquit if the  
21 statute had just said "intending to be  
22 influenced." And so "intending to be rewarded"  
23 is absolutely critical in this statute, and that  
24 is not the case of the federal bribery statute.  
25 This statute actually requires either an intent

1 to be influenced or an intent to be rewarded.

2 The other thing I can say about the  
3 disparate penalties is that no other statute in  
4 the U.S. Code puts gratuity on par with bribery.  
5 And the government's -- under the government's  
6 view, you'd never ever have to either charge,  
7 much less prove, an intent to influence because,  
8 under their view, any payment that is an intent  
9 to reward under their reading renders any need  
10 to prove intent to influence completely  
11 superfluous, irrelevant, and unnecessary.

12 And that is an outlier in -- in  
13 history and in the U.S. Code.

14 JUSTICE JACKSON: Can I ask you --

15 JUSTICE SOTOMAYOR: But --

16 JUSTICE JACKSON: -- why -- oh, sorry.

17 JUSTICE SOTOMAYOR: I'm sorry, go  
18 ahead.

19 JUSTICE JACKSON: Why do you keep  
20 saying that this doesn't look like anything  
21 else? I'm looking at 215.

22 MS. BLATT: Mm-hmm.

23 JUSTICE JACKSON: And it uses almost  
24 exactly the same language. It has "corrupt,"  
25 "corruptly." It has "giving, offering,

1 promising anything of value to a person with the  
2 intent to influence or reward." When I look at  
3 the legislative history of 215, it says -- or  
4 666 says that it's modeled off of 215. And  
5 215's legislative history says it includes  
6 gratuities.

7           So I'm just trying to understand what  
8 you mean about this not looking like anything  
9 else.

10           MS. BLATT: Of course. Let me take on  
11 Section -- Section 215. So, you're -- you're  
12 right, the -- the -- the wording is quite  
13 identical, and the only court to address the  
14 issue has held 215 is a bribery statute.

15           But, on the legislative history, to be  
16 sure, a footnote in the legislative history of  
17 Section 215 mentions that that statute applies  
18 to gratuity.

19           But, if we're going to rely on  
20 legislative history, I'll take the footnote in  
21 the legislative history of Section 666 itself.  
22 When it references the Section 215 statute, it  
23 only refers to bribery.

24           But now we're really going to be  
25 worrying over footnotes in legislative history,

1 I'll -- I'll take ours.

2 But the -- the other thing I would say  
3 about 215, which is extraordinary, is that there  
4 is a provision, I think it's 215(d), that says  
5 -- orders federal agencies to give guidance.

6 So every federal agency has issued  
7 extensive guidance to bank officials. There's  
8 massive guidance, of course, to federal  
9 officials. There is no such guidance, and had  
10 the government issued guidance, it would just  
11 make the federalism implications all the more  
12 bizarre.

13 So bank officials are told here's what  
14 you can and cannot do, and there's no --

15 JUSTICE JACKSON: And are they told  
16 you can -- you can accept gratuities in the 215  
17 context?

18 MS. BLATT: The -- the guidelines  
19 which were promulgated after Section 666 was  
20 passed, but, again, I --

21 JUSTICE JACKSON: No, I'm sorry,  
22 what's the answer to --

23 MS. BLATT: The guidelines do --

24 JUSTICE JACKSON: -- can they accept  
25 --

1 MS. BLATT: -- the guidelines do  
2 assume that 215 applies to gratuities.

3 JUSTICE JACKSON: Okay. And the --

4 MS. BLATT: And that is the  
5 government's --

6 JUSTICE JACKSON: -- the language is  
7 identical to 666, correct?

8 MS. BLATT: Correct. But the only  
9 court -- no court has held that Section 215  
10 applies to gratuities. It's got a 30-year  
11 sentence. And even if you did think it did, I  
12 would say the title at least mentions gifts.  
13 The legislative history says it means gifts.  
14 And there is a provision for guidance. None of  
15 those three things are true under Section 666.

16 The title says bribery. The  
17 legislative history only mentions bribery. And  
18 there's no guidance. And it is truly  
19 unthinkable -- unthinkable that officials would  
20 not know what type of -- of -- of gift is  
21 corrupt. They -- even a gift basket, I don't  
22 know where on the Harry & David menu the gift  
23 becomes corrupt. It --

24 JUSTICE JACKSON: Well, that's -- go  
25 ahead.

1 MS. BLATT: It ends at 319, it starts  
2 at 1999.

3 JUSTICE BARRETT: Ms. Blatt, can I ask  
4 you, so you're referencing some of the  
5 horribles, and your brief points out, you know,  
6 the Harry & David gift baskets, the -- the --  
7 the tip, the gift card to your garbage  
8 collector, that sort of thing.

9 Can you point to any actual  
10 prosecutions or convictions even that have  
11 pursued those kinds of --

12 MS. BLATT: Just -- just two --

13 JUSTICE BARRETT: -- troubling --

14 MS. BLATT: -- in our reply brief.

15 And I don't know if they reached a conviction.  
16 But somebody was charged for soliciting  
17 donations to a sports league, and then another  
18 defendant was charged for having -- having  
19 plaques and luncheon for female judges, and that  
20 was considered it.

21 But this Court -- I mean, there's just  
22 legions of cases that say you're not going to  
23 interpret a statute with crazy breadth on the  
24 trust me assumption of federal prosecutors.

25 JUSTICE SOTOMAYOR: Doesn't the --



1 JUSTICE BARRETT: And what about --  
2 oh.

3 JUSTICE SOTOMAYOR: I'm sorry.

4 JUSTICE BARRETT: Just one other  
5 question. So, you know, federalism breadth  
6 aside, you also point out that for private  
7 entities that take federal funds -- and this  
8 would also channel into them -- apart from the  
9 pandemic money, are there other reasons to think  
10 that federal funds would pull private entities  
11 into this?

12 MS. BLATT: Yes. You held in Fischer  
13 that it covers Medicare, which is one of the  
14 largest industries in this country. It covers  
15 every nurse, doctor, orderly, anyone in the  
16 hospital.

17 JUSTICE BARRETT: But restaurants and  
18 some of the -- yes, hospitals, of course.

19 MS. BLATT: It covers any grantee, and  
20 I think we gave in the brief, I literally  
21 Googled government grantees, and there's just  
22 tons and tons, Lockheed, lobster --

23 JUSTICE SOTOMAYOR: I'm sorry, doesn't  
24 the nexus requirement get rid of most of this?  
25 The tax collector, the person who just says

1 thank you generally.

2 MS. BLATT: I -- I don't --

3 JUSTICE SOTOMAYOR: The -- the nexus  
4 requirement says that the gratuity must be "in  
5 connection with any business transaction or  
6 series of transactions of a covered" -- "covered  
7 entity involving anything of value of 5,000 or  
8 more."

9 MS. BLATT: Right.

10 JUSTICE SOTOMAYOR: The trash  
11 collectors, not having anything to do with 5,000  
12 or the contract itself.

13 MS. BLATT: The doctor who removes  
14 your wart, fine. But the doctor who takes your  
15 gallbladder out or does your face, like my  
16 plastic surgeon, no, that's worth over 5,000.

17 (Laughter.)

18 MS. BLATT: Well, no, seriously --

19 JUSTICE GORSUCH: I -- I -- I -- I --

20 MS. BLATT: -- I'm not even joking.  
21 Snow removal is worth over 5,000. Writing a  
22 letter for your kid to get into college, that's  
23 priceless. There are -- I could go on and on  
24 and on. The --

25 JUSTICE SOTOMAYOR: But it still has

1 to have a nexus to that contract.

2 MS. BLATT: Yes, and people give gifts  
3 all the time to nurses after an operation. That  
4 is a crime.

5 JUSTICE KAGAN: Do -- do you think --

6 JUSTICE GORSUCH: I -- I -- I -- I'm  
7 sorry.

8 JUSTICE KAGAN: Go ahead. Go ahead.

9 JUSTICE GORSUCH: Sure. Okay. I had  
10 thought that the government had actually pursued  
11 prosecutions below on the theory that the \$5,000  
12 in connection with business requirement could be  
13 satisfied by pointing, for example, to a police  
14 officer's salary was more than \$5,000.

15 MS. BLATT: The government took an  
16 outrageous view expansively, which is why they  
17 used 666 over 201, because they didn't think it  
18 had to be linked to an official action. But  
19 they did fancy footwork in their brief and says  
20 no, no, we won't do that anymore, so we'll keep  
21 it closer to 201. But, no, they've -- that's  
22 why they love 666.

23 JUSTICE GORSUCH: I thought there was,  
24 in fact, an affirmed conviction in the Seventh  
25 Circuit in United States versus Robinson along

1 just that point.

2 MS. BLATT: You can ask them, because  
3 I think they're a little cagey on how much they  
4 will give on what a business or transaction is.  
5 But, even assuming it's tight, it doesn't take  
6 that much to do snow removal that's worth over  
7 5,000 or the police officer who helps your --  
8 you know, find your kid who's kidnapped.

9 This is like -- government officials  
10 and healthcare workers do stuff worth over  
11 \$5,000 --

12 JUSTICE GORSUCH: Can I --

13 MS. BLATT: -- every day, every  
14 second, every minute.

15 JUSTICE GORSUCH: Can I ask --

16 JUSTICE KAGAN: These --

17 JUSTICE GORSUCH: No, your turn now.

18 JUSTICE KAGAN: Go ahead. Go ahead.

19 JUSTICE GORSUCH: No, please.

20 JUSTICE KAGAN: Do you think that the  
21 horrors also apply to the bribery side of the  
22 statute? I mean, what strikes me about this  
23 statute is the number of people that it covers.

24 But you can imagine all of your  
25 horrors being done on the bribery side. You

1 know, I give the orthodontist for my kids hockey  
2 tickets so that -- and we kind of -- it is a  
3 quid pro quo so that, you know, my kid gets the  
4 best appointment or something like that.

5 I mean, you can imagine a whole lot of  
6 cases where, even though there's an explicit  
7 bribe, it also seems like, really, we're  
8 criminalizing that? So I'm just wondering  
9 whether the horribles only apply to gratuities,  
10 as opposed to there are horribles in this  
11 statute because of the kinds of people it  
12 applies to.

13 MS. BLATT: No, they -- no, I  
14 disagree, Justice Kagan, for this reason. Under  
15 Section 201, there's a 15-year sentence for  
16 bribery. Government hates to have to prove a  
17 quid pro quo. And there's a two-year sentence  
18 for gratuity, where it's really easy to get a  
19 water bottle plus a mug and it's over \$20.  
20 There's vast, vast difference.

21 The government -- if it's that no big  
22 deal, let the government just prove quid pro  
23 quo. Just let them. It's much more damaging.  
24 The government has a direct interest. If you  
25 have to prove there was an influence on your

1 official conduct, at least the government says  
2 it impacts the federal program.

3 Here, they have six different ways  
4 where they're defining "corrupt:" if it's not  
5 benign, if it was against the employer's rules,  
6 if it's against common sense rules, if you're  
7 conscious of wrongdoing, which I had no idea  
8 what it means, if it could skew your official  
9 decisionmaking. It is very different to say --  
10 and I do think the fact that all states prohibit  
11 bribery cold and not all states -- some  
12 employers in some localities allow gifts.

13 JUSTICE JACKSON: But, Ms. --

14 MS. BLATT: They just do --

15 JUSTICE KAVANAUGH: How would you --

16 MS. BLATT: -- because they're not  
17 corrupt --

18 JUSTICE KAVANAUGH: How would you --

19 MS. BLATT: -- unless it's  
20 prophylactic.

21 JUSTICE KAVANAUGH: Sorry. How would  
22 you define "corruptly" if you had to in this  
23 particular provision?

24 MS. BLATT: Well, we would win if it  
25 was defined under half of it violated your

1 employer rules, common sense ethical rules, or  
2 consciousness of wrongdoing.

3 I don't know what "benign" means. I  
4 don't know what "immoral" means. I mean, the  
5 government says we waived, but they don't tell  
6 us what we should have --

7 JUSTICE GORSUCH: Now --

8 MS. BLATT: -- what we should have  
9 asked for. They never spelled out what that  
10 instruction would look like.

11 JUSTICE GORSUCH: -- I -- I -- I --

12 JUSTICE KAVANAUGH: Well, just --

13 JUSTICE GORSUCH: No, I'm sorry,  
14 please.

15 JUSTICE KAVANAUGH: Just on that, I  
16 thought you did ask for jury instructions that  
17 would make clear that an after-the-action  
18 agreement --

19 MS. BLATT: A hundred percent.

20 JUSTICE KAVANAUGH: -- would require  
21 acquittal.

22 MS. BLATT: JA-18 objects to the  
23 definition of "corruptly" on JA-28 by saying,  
24 very clearly laying out the sine qua non of  
25 bribery is that quid pro quo payment and the

1 jury would have to convict if it only found a  
2 gratuity.

3 What the government is trying to say  
4 is that we should have said something other than  
5 the way the government's prosecuted every other  
6 666 case on just a knowing theory, and they've  
7 said six different ways what that would look  
8 like.

9 And if you charge -- again, I'm sure  
10 you will ask them what the jury should be  
11 charged what common sense ethical rules are. I  
12 mean, the restaurant example alone, I don't know  
13 where it's -- I'm pretty sure Chipotle would be  
14 okay, Inn at Little Washington wouldn't, but ask  
15 them about The Cheesecake Factory.

16 (Laughter.)

17 JUSTICE GORSUCH: Well, I'm not going  
18 to ask them about The Cheesecake Factory.  
19 Somebody else may.

20 MS. BLATT: Okay.

21 JUSTICE GORSUCH: But -- but I'm going  
22 to ask you a little bit more about "corruptly"  
23 --

24 MS. BLATT: Okay.

25 JUSTICE GORSUCH: -- and -- and the



1 mens rea that you think it should import here,  
2 putting aside the jury instructions and the  
3 debate over forfeiture.

4 You mentioned consciousness of  
5 wrongdoing, which the Court mentioned also in  
6 Arthur Andersen if I recall.

7 MS. BLATT: Mm-hmm.

8 JUSTICE GORSUCH: And that suggests, I  
9 think, that you have to know that it's unlawful.  
10 It's one of those rare statutes --

11 MS. BLATT: And willful.

12 JUSTICE GORSUCH: -- where perhaps  
13 ignorance of the law is a defense, if you will.

14 What do you think of that?

15 MS. BLATT: So, no, that's some other  
16 case. "Corruptly" has a very, very specific  
17 definition with bribery. It cannot possibly  
18 mean one thing for bribery and something else in  
19 this statute. It clearly means quid pro quo.

20 "Bribery" has always had both common  
21 law, historic, 201. "Corruptly" means quid pro  
22 quo in this context. I think, when you have  
23 Arthur Andersen, official proceedings, document  
24 destruction, what have you, "corruptly" can mean  
25 all kinds of things.

1 JUSTICE SOTOMAYOR: Ms. Blatt, it  
2 makes no sense what you're saying to me. Here's  
3 a case in which someone is -- that's the  
4 allegation -- demanding money, gets it basically  
5 for no services, spends his time giving two or  
6 three different reasons and services that he  
7 performed, which he didn't, and there's a series  
8 of meetings or phone calls, texts, et cetera,  
9 before the second contract is awarded between  
10 these people.

11 At some point, can't a jury see that  
12 as a demand for payment for services?

13 MS. BLATT: Well --

14 JUSTICE SOTOMAYOR: And you're giving  
15 no definition that would cover that kind of  
16 behavior.

17 MS. BLATT: So, first of all --

18 JUSTICE SOTOMAYOR: I think that's  
19 different than the situation the Chief posited.  
20 I find someone's wallet and I tell them: I'm  
21 not giving it up to you unless I get a tip.

22 MS. BLATT: Yeah. So --

23 JUSTICE SOTOMAYOR: I want half the  
24 money in the wallet. Right?

25 MS. BLATT: -- it's none of the

1 federal government's business if a local  
2 official is doing nothing wrong with state and  
3 local laws and complied with all local laws.  
4 Most of their brief has nothing to do with their  
5 theory. Their brief is somehow there was  
6 improper steering by his buddy, who's now the  
7 head of sanitation and trash, which is a little  
8 bit ironic. But their theory is of a --  
9 JUSTICE SOTOMAYOR: But you -- you --  
10 MS. BLATT: Their -- the --  
11 JUSTICE SOTOMAYOR: -- you are  
12 suggesting that the federal government can't say  
13 there is something wrong with demanding payment  
14 after the fact for an official act.  
15 MS. BLATT: That -- the --- the -- the  
16 government has not -- sorry. Congress has not  
17 criminalized gratuity against state, local, and  
18 tribal officials.  
19 JUSTICE SOTOMAYOR: You are --  
20 MS. BLATT: Absolutely.  
21 JUSTICE SOTOMAYOR: Answer my  
22 question, yes or no?  
23 MS. BLATT: Yes, that's not a crime.  
24 JUSTICE SOTOMAYOR: It's not a  
25 crime --

1 MS. BLATT: Not a federal crime.

2 JUSTICE JACKSON: But I --

3 JUSTICE SOTOMAYOR: -- for state  
4 officials to run around the country with respect  
5 to federal contracts and say: I voted for X,  
6 now pay me?

7 MS. BLATT: It's not a federal  
8 contract, but if there's bribery --

9 JUSTICE SOTOMAYOR: For -- I'm  
10 sorry -- a state contract.

11 MS. BLATT: If -- if the government  
12 thinks there was a quid pro quo, which they did  
13 here, they did allege and try to argue to the  
14 jury there was bribery, but you're making it a  
15 case where --

16 JUSTICE SOTOMAYOR: No, I'm making a  
17 -- I'm asking a simple question. It's all right  
18 according to you or it's wrong for federal law  
19 to attempt to take the situation which is  
20 alleged here that demanding payment for official  
21 acts --

22 MS. BLATT: Well, I --

23 JUSTICE SOTOMAYOR: -- is wrong?

24 MS. BLATT: So you keep saying  
25 demanding. If he had asked for to go fund -- to

1 please give me my go fund money for my kid's  
2 cancer surgery, I think, in your view, that's a  
3 crime. And I'm saying Congress could not have  
4 possibly intended --

5 JUSTICE SOTOMAYOR: Well, I'm not sure  
6 what --

7 MS. BLATT: -- to put that official in  
8 10 years.

9 JUSTICE ALITO: Well, is it -- I mean,  
10 is the --

11 MS. BLATT: But that's the problem  
12 with your example.

13 JUSTICE ALITO: -- is the question  
14 whether it would be wrong for Congress to  
15 criminalize that or whether, in fact, Congress  
16 has criminalized it?

17 MS. BLATT: Yes. It's the latter.

18 JUSTICE ALITO: It's the latter. So,  
19 okay.

20 JUSTICE JACKSON: And why doesn't the  
21 language cover -- I mean, I understand you --  
22 we've -- we're all thinking about this in terms  
23 of gratuities, and that opens the door to all of  
24 the, you know, relatively benign examples that  
25 you bring up, you know, when someone's just sort

1 of showing thanks for doing services.

2 But the statute does not use the word  
3 "gratuities." In fact, the statute uses  
4 terminology that's very similar to what Justice  
5 Sotomayor just said, right? "Someone who  
6 corruptly solicits or demands" -- and I'm  
7 skipping here -- "anything of value intending to  
8 be rewarded."

9 MS. BLATT: And the --

10 JUSTICE JACKSON: And that -- and  
11 those are the facts that the government is at  
12 least alleging in this case.

13 MS. BLATT: And "corruptly" is -- is  
14 completely a foreign concept to "gratuity," and  
15 it's very familiar --

16 JUSTICE JACKSON: No, but I'm not --

17 MS. BLATT: -- to bribery.

18 JUSTICE JACKSON: Set aside  
19 "gratuity." I'm just looking at the statute.  
20 Why is -- aren't the facts that the government  
21 alleges here fitting entirely with the  
22 statement, the text of this statute?

23 MS. BLATT: Because the plain language  
24 of "reward" can mean bribes, and it has -- it  
25 has been used that --

1 JUSTICE JACKSON: And it can't mean  
2 after the fact seeking a payment in -- for  
3 something that you've done officially?

4 MS. BLATT: "Rewarding" can plainly  
5 mean bribes to officials who aren't actually  
6 influenced. You give me money and either you're  
7 never going to take the vote or you couldn't  
8 take it anyway. It also applies to  
9 after-the-fact payments.

10 And if I can just say one other thing  
11 because you say on reward about "corrupt," a  
12 thousand dollar bottle of wine.

13 JUSTICE JACKSON: No, but that's a  
14 gratuity.

15 MS. BLATT: A \$2,000 bottle of wine.

16 JUSTICE JACKSON: But -- but I guess,  
17 if the person is demanding it as a result of  
18 something that they've done --

19 MS. BLATT: It applies to givers --

20 JUSTICE JACKSON: -- it would be the  
21 same scenario.

22 MS. BLATT: -- equally. It's the same  
23 statute that applies to the givers. So you and  
24 anyone else in this room who gives an expensive  
25 bottle of wine to a nurse in connection with --

1 JUSTICE JACKSON: Is she demanding it?

2 MS. BLATT: -- a \$5,000 surgery --

3 JUSTICE JACKSON: Is she demanding it  
4 for having done something in -- to me or my  
5 family?

6 MS. BLATT: You have to divorce 601 --  
7 the giver to the taker. I mean, yeah, the giver  
8 to the taker. It's the exact same wording. It  
9 applies to anyone who gives with an intent to  
10 reward. That's the plain language. And I  
11 think, in your view, you have to draw a line  
12 between the two-buck chuck at Trader Joe's and  
13 the wine that goes up to 500,000.

14 And I don't know where the  
15 government's line is. There is no drop-down  
16 menu on Amazon for mens rea. People -- there's  
17 just not a -- there's -- there is no gratuity --  
18 there are 13 gratuity statutes. None of them  
19 are like this. They have no mens rea because  
20 they're just prophylactic bright-line rules, you  
21 can't get that compensation, which is why that  
22 is the federal rule.

23 You get even a dollar, it is a crime  
24 regardless of mens rea. And there are 11,000  
25 pages of guidance to make sure that when you're



1 a federal employee you don't go to jail for two  
2 years. I don't know what every single person --

3 JUSTICE JACKSON: So what is  
4 "rewarded" doing in this statute? Because,  
5 basically, you've defined it as bribery. And we  
6 have "intending to in" -- "to be influenced."  
7 So what is the work of "rewarded"?

8 MS. BLATT: Two critical things. And  
9 the government has a response -- it's not a good  
10 one -- on one of them. They have no response to  
11 my first point. It takes the issue of timing  
12 and causation off the table, and where they  
13 don't have a response is on causation.

14 The statute, if it just said  
15 "intending to be influenced," a jury would have  
16 to acquit if the jury found the person wasn't  
17 influenced. Like a gun -- I don't know, take a  
18 pro-gun or an anti-gun person who says --

19 JUSTICE JACKSON: I don't understand  
20 that. It says "intending to be influenced." It  
21 has -- it doesn't say you have to actually have  
22 been influenced. So --

23 MS. BLATT: Well --

24 JUSTICE JACKSON: -- I mean, isn't a  
25 bribery you're intended to -- you're intending

1 to be influenced? Okay.

2 MS. BLATT: No, if the jury -- if he  
3 says, I wasn't influenced, I would have taken  
4 the vote anyway, the jury would have to acquit.  
5 I wasn't influenced. I didn't even intend to be  
6 influenced because I told my God, my wife, and  
7 my son that I was going to vote that way anyway.  
8 I had no intent to be influenced.

9 And on -- our second one is after the  
10 fact. Now I agree you could stretch the English  
11 language, but I just think it refers to more  
12 naturally an upfront payment is -- before the  
13 vote is an intent to be influenced and I'll do  
14 it, and then after the vote is taken just more  
15 naturally refers to reward, which is what the  
16 Fifth and First Circuit found, was that it  
17 totally takes timing off the table.

18 And so "corrupt" is doing all the work  
19 of quid pro quo. And "intending to influence"  
20 and "rewarded" is doing the work on either the  
21 timing of the payment or the -- the way you  
22 intend it.

23 CHIEF JUSTICE ROBERTS: Thank you,  
24 counsel.

25 Justice Alito, anything further?

1 Justice Kagan?

2 Justice Gorsuch?

3 JUSTICE GORSUCH: I know we discussed  
4 this in Sabri, but I'm just curious, your  
5 thoughts on, I guess, what Justice Alito framed  
6 as the first question. What are the limits to  
7 what Congress can do to federalize state  
8 substantive criminal law here?

9 MS. BLATT: Yeah. So Sabri is  
10 definitely in the context of bribery, and so the  
11 question would be if the section -- sorry -- the  
12 1984 version just criminalized gratuities and  
13 said for or because of official act 10-year  
14 penalty, and you would have to -- that -- there,  
15 you would meet, I think, the Spending Clause  
16 clear statement and the clear statement under  
17 Bass to upset the federal/state balance, and you  
18 have a pure Sabri question.

19 I mean, it's tough. I think what the  
20 government would say, the only thing they  
21 intimated in their brief is that sometimes the  
22 gift could be so bad, I don't know, a Ferrari,  
23 that it might skew your official decisionmaking.

24 And the problem with that is they  
25 don't have an answer, what about the toy

1 Ferrari? I mean, so they still have the  
2 vagueness problem, but I think their argument  
3 would be, although it's way less, it's certainly  
4 much weaker than bribery. I think their skewing  
5 is the way they would get around the sort of, I  
6 guess, whatever you call it, Spending Clause  
7 authority or Article I authority.

8 But it was bribery. It was definitely  
9 bribery was at issue --

10 JUSTICE GORSUCH: In Sabri.

11 MS. BLATT: -- with the campaign  
12 finance and with the connection with the federal  
13 program, was clearly a bribery quid pro quo.

14 JUSTICE GORSUCH: And, here, we have a  
15 very different scenario with gratuities. And  
16 did Congress really -- did it clearly mean to  
17 displace all state law?

18 MS. BLATT: It's clear it's not clear  
19 to me.

20 JUSTICE GORSUCH: Yeah.

21 MS. BLATT: Not when it just looks  
22 nothing like any other gratuity statute in  
23 history or on the books today.

24 JUSTICE GORSUCH: Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Kavanaugh?

2 JUSTICE KAVANAUGH: You've suggested a  
3 few times that state and local governments  
4 regulate gratuities of state and local  
5 officials.

6 Can you give us some more color on  
7 that? Is there a disparity? You know, some  
8 jurisdictions will say up to \$50, others up to  
9 \$100?

10 MS. BLATT: Yeah, it's infinite. Some  
11 of them will say, even if you do it, give the --  
12 give the gift back. They don't put you in jail  
13 for 10 years. I mean, the -- the government --  
14 I mean, yeah, no, there's an infinite.

15 Here, it was not even alleged that --  
16 Portage and Indiana have extensive ethical  
17 rules. There's no allegation that the  
18 Petitioner did anything in violation of those  
19 rules.

20 And although the federal government  
21 has its own, every employer has different rules.  
22 Even in the banking context, DOJ is supposed to  
23 work with the bank and make sure that, you know,  
24 it's copacetic, and even then, DOJ says, we may  
25 second-guess the banking rules if we find them

1 unreasonable, but they're supposed to at least  
2 work out ahead of time, but there's just --  
3 there's a lot of cities and there's a lot of  
4 states, and I don't think most states even have  
5 gratuity laws.

6 JUSTICE KAVANAUGH: Thank you.

7 MS. BLATT: So they're just making  
8 something a crime that's not.

9 CHIEF JUSTICE ROBERTS: Justice  
10 Jackson?

11 JUSTICE JACKSON: Yeah. So, if you're  
12 right and there's a distinction between bribes  
13 and gratuities in the way that you're positing  
14 it, I guess we'd have a statute in which  
15 Congress is intending to prohibit an official  
16 from going to a company ahead of time and  
17 saying: Pay me \$15,000 and I will steer the  
18 garbage truck contracts to your company.

19 But Congress would not have intended  
20 to prohibit that same official from steering the  
21 garbage truck contracts to the company and after  
22 the fact going to them and saying: Okay, give  
23 me \$15,000.

24 MS. BLATT: Yeah. And --

25 JUSTICE JACKSON: And I guess I don't

1 understand how you have a statute that is  
2 rationally drawing a distinction between those  
3 two scenarios.

4 MS. BLATT: Oh, Sun-Diamond, Justice  
5 Scalia goes on and on and on, like his -- one of  
6 his favorite cases ever, he just goes on and on  
7 about the big difference between a bribery,  
8 that's where you pay the money in exchange, and  
9 a gratuity, that the action is taken is after  
10 the fact. 201 made that distinction.

11 And so the other thing I would say --  
12 and you can ask the government -- the  
13 government's position does not depend on  
14 steering. This could have been the best garbage  
15 track -- garbage truck contract in the history  
16 of the planet but didn't like the \$10,000 or  
17 didn't like the type of gift.

18 They ask -- they say it's okay to give  
19 coffee and doughnuts to the police who work  
20 around the clock. Well, what about the police  
21 who coerced a confession? Is that corrupt?  
22 Same gift, same donut.

23 The government's theory to the jury  
24 has nothing to do with the steering. It's just  
25 they want to do that to make, you know, the --

1 the client look bad. It is simply you got  
2 something of value after the fact because it  
3 related to official conduct, which doesn't  
4 depend on any misconduct at all by the official.

5 And, again, Sun-Diamond is literally  
6 all about the difference, and even in  
7 Sun-Diamond, this Court went crazy to make sure  
8 federal officials were protected because two  
9 years was too long for federal officials to go  
10 to jail for a gratuity.

11 CHIEF JUSTICE ROBERTS: Thank you,  
12 counsel.

13 Ms. Sinzdak.

14 ORAL ARGUMENT OF COLLEEN R. SINZDAK  
15 ON BEHALF OF THE RESPONDENT

16 MS. SINZDAK: Mr. Chief Justice, and  
17 may it please the Court:

18 The federal government needs to ensure  
19 the money it appropriates to local governments  
20 for public benefits is allocated in a way that  
21 maximizes the benefits to its citizens, not the  
22 rewards for local officials.

23 Congress therefore enacted Section 666  
24 to bar officials from corruptly accepting  
25 payments with the intent to be influenced or



1 rewarded in connection with their official  
2 duties.

3           Petitioner asks this Court to weaken  
4 Section 666's protection for the public fisc by  
5 holding that a person does not violate Section  
6 666 when he corruptly solicits a payment with  
7 the intent to be rewarded unless he has also  
8 agreed to accept the reward beforehand.

9           But that requirement of a beforehand-  
10 agreement finds no basis in the statutory text.  
11 The plain meaning of "reward" readily covers a  
12 payment given in return for an official action  
13 or decision that is already complete.

14           So a police chief who sends his  
15 officers to foil a burglary at a store and then  
16 demands the store owner pay him \$10,000 for his  
17 officers' work, he acts with the intent to be  
18 rewarded.

19           A safety inspector who issues a  
20 building permit for a dangerous project and then  
21 solicits a \$30,000 payment acts with the intent  
22 to be rewarded.

23           And a mayor who steers a contract for  
24 a particular business and then asks that  
25 business to pay him \$13,000 for the contract

1 acts with the intent to be rewarded, whether or  
2 not the contractor agreed to give him the reward  
3 before the contract closed.

4 Petitioner's argument to the contrary  
5 ignores both the plain meaning of the term  
6 "rewarded" and the statutory history. In 1984,  
7 Congress enacted a flat bar on the acceptance of  
8 bribes and gratuities. It was modeled directly  
9 on the one in Section 201(c) that applies to  
10 federal employees.

11 In 1986, Congress narrowed that bar to  
12 carve out a subset of only the most culpable  
13 gratuities by adding a corruptly mens rea and an  
14 express exception for bona fide salary and  
15 benefits paid in the ordinary course of  
16 business.

17 Now Congress's textual fix worked.  
18 Petitioners haven't pointed to any real-world  
19 examples of Section 666 prosecutions for the  
20 sort of innocuous gift-giving activity that  
21 occurs in the ordinary course of business, and  
22 I'm happy to explain why the -- the two examples  
23 in their reply brief really just aren't what  
24 they are describing.

25 But the Court should therefore reject

1 Petitioner's invitation to artificially narrow  
2 the reach of Section 666.

3 I welcome the Court's questions.

4 CHIEF JUSTICE ROBERTS: Counsel, under  
5 your theory, there are two offenses in 666, the  
6 gratuity and the bribery. And a gratuity is  
7 really just a bribery without a quid pro quo,  
8 right?

9 MS. SINZDAK: So, first of all,  
10 there's a single offense, corruptly accepting a  
11 payment, and then there are two means of  
12 committing that offense, either intending to be  
13 influenced or intending to be rewarded.

14 So it's -- it's one offense, the  
15 corrupt acceptance, and then two different  
16 means. And, you're right, there -- there --  
17 they overlap a lot of times when you're  
18 accepting a payment.

19 CHIEF JUSTICE ROBERTS: Well, I don't  
20 know if they overlap. It seems one is a lesser  
21 included offense than the other, right?  
22 Gratuity -- why isn't the bribery thing just  
23 surplusage?

24 MS. SINZDAK: No --

25 CHIEF JUSTICE ROBERTS: You -- you can

1 -- you just show a gratuity and, as I say, it's  
2 just kind of bribery without the quid pro quo.  
3 That's all you need to show.

4 MS. SINZDAK: No, there are going to  
5 be situations where somebody is going to accept  
6 a payment intending to be influenced without  
7 intending to be rewarded. So that's going to  
8 happen. When somebody accepts a bribe and says:  
9 Yes, this -- this \$10,000, it's going to  
10 influence me in making this decision, but I  
11 haven't made up my mind yet, and maybe they turn  
12 to someone else and say, hey, you know, somebody  
13 else gave me \$10,000 to influence me, sure, you  
14 know, \$20,000 might push me in another  
15 direction. At that point, the -- the person  
16 gets \$20,000 and does what the second person  
17 wanted.

18 Now, in the second situation, I think  
19 that is somebody who's both intending to be  
20 influenced and intending to be rewarded because  
21 they're going to do something for that \$20,000.

22 But, in the first situation, there is  
23 nothing to be rewarded. So they aren't going to  
24 -- so they are intending to be influenced, but  
25 they haven't made a decision. They haven't

1 taken an act. So they aren't intending to be  
2 rewarded.

3 JUSTICE KAGAN: But, no, that's a  
4 strange hypothetical, right? It doesn't really  
5 happen in the real world.

6 MS. SINZDAK: I'm not sure that's --

7 JUSTICE KAGAN: I mean, I guess what  
8 I'm suggesting is that you have to work pretty  
9 darn hard to get out of the problem that the  
10 Chief Justice suggested.

11 MS. SINZDAK: No, I -- I don't think  
12 so for two reasons. First of all, I don't think  
13 it's so farfetched to imagine a mayor who says  
14 kind of, you know, I -- I'm taking bids on the  
15 contract and, hey, it sure would help if you put  
16 a payment, you know -- you know, you offered me  
17 something too, and then I think you are going to  
18 have a few different payments happening with the  
19 intent to be influenced but not rewarded.

20 But the second point is that I think  
21 this lesser included offense comes from the  
22 relationship between 201(b), which covers  
23 bribery for federal officials, and 201(c), which  
24 covers gratuities.

25 And the 201(c) offense is a broader

1 offense. It's the for or because of language.  
2 There's no corruptly mens rea. There's no  
3 express exception for bona fide salary and  
4 compensation. So, there, I think it actually  
5 can be described as a lesser included offense.

6 But, here, it's not that all  
7 gratuities are covered within the rewarded  
8 because, of course, the other restrictions  
9 within Section 666 still apply. So it has to be  
10 accepted corruptly, and we have the exception  
11 for --

12 JUSTICE KAVANAUGH: What -- what is --  
13 keep going, sorry. What --

14 MS. SINZDAK: Oh, no, I was just going  
15 to say the exception for bona fide salary.

16 JUSTICE KAVANAUGH: Well, I think the  
17 problem you have is what does "corruptly" mean.

18 MS. SINZDAK: So I think Arthur  
19 Andersen decide -- described "corruptly." It  
20 said it has to be corrupt, so that means  
21 wrongful or evil or immoral. And there has --

22 JUSTICE KAVANAUGH: So does a \$100  
23 Starbuck gift certificate as a thank you to the  
24 city council-person who -- for working on a new  
25 zoning reg, is that corrupt or not?

1 MS. SINZDAK: So, no, and let me tell  
2 you exactly why. I think that the reason --

3 JUSTICE KAVANAUGH: How about a \$500  
4 one?

5 MS. SINZDAK: So I think it would be  
6 helpful to set out what the guidelines are going  
7 to be here because, when there's a corruptly  
8 mens rea, what you -- you usually see in the  
9 jury instructions, sometimes it says  
10 consciousness of wrongdoing, so you have to know  
11 that what you're doing is wrong, but sometimes  
12 what the jury instructions do is isolate what is  
13 actually wrongful, what is obviously wrongful  
14 about this conduct.

15 So I think, when we're talking about  
16 corruptly in connection with rewards, you have  
17 to isolate what's wrongful, and what's wrongful  
18 is when it appears that the government is for  
19 sale. What's wrongful -- so -- so here are  
20 three specific --

21 JUSTICE KAVANAUGH: Well, you're  
22 change --

23 JUSTICE GORSUCH: Counsel --

24 JUSTICE KAVANAUGH: -- you're changing  
25 the hypothetical. The -- the hypothetical is

1 the action's taken and a citizen gives a thank  
2 you, and it could be a gift card to Starbucks or  
3 it could be tickets to a concert or game and  
4 just drops it off to the person, thank you for  
5 all your hard work on this issue, appreciate  
6 you.

7 MS. SINZDAK: So I do not want to get  
8 away from "corruptly." I also want to point out  
9 that, of course, there's other limitations  
10 within the statute. So, if the -- the business  
11 or transaction that's being rewarded isn't worth  
12 at least \$5,000 --

13 JUSTICE KAVANAUGH: I understand that.

14 MS. SINZDAK: -- you're not going to  
15 get there.

16 JUSTICE KAVANAUGH: Assume it --

17 MS. SINZDAK: Okay. I just want to  
18 make sure because I do think, for example, in  
19 Sun-Diamond, Justice Scalia said that requiring  
20 this connection with a particular act is going  
21 to eliminate innocuous gift-giving for federal  
22 officials --

23 JUSTICE KAVANAUGH: But you can't --

24 MS. SINZDAK: -- who don't have --

25 JUSTICE KAVANAUGH: I'm going to press



1 on this. What is innocuous and what is not?  
2 And, just as important, how is the official  
3 supposed to know ahead of time, oh, the \$100  
4 gift certificate's okay, but the larger one's  
5 not, or the set of books or the framed photo --

6 MS. SINZDAK: So, again --

7 JUSTICE KAVANAUGH: -- or --

8 MS. SINZDAK: -- I think there are  
9 three circumstances where the official is going  
10 to know that what he's doing is obviously  
11 wrongful. The first one is where he took the  
12 public act with the intent to be rewarded.

13 JUSTICE GORSUCH: No, no, no.

14 JUSTICE KAVANAUGH: Assume -- assume  
15 that's not the --

16 JUSTICE GORSUCH: You're collapsing  
17 two different things.

18 MS. SINZDAK: Well, I can't just --

19 JUSTICE GORSUCH: Counsel, you're  
20 collapsing two different things there.

21 JUSTICE KAVANAUGH: That's not my  
22 hypothetical.

23 JUSTICE GORSUCH: Yeah.

24 JUSTICE KAVANAUGH: My hypothetical is  
25 the person, the official knew nothing about the

1 potential for the gratuity after the fact.

2 MS. SINZDAK: So that's going to make  
3 it harder for the government to prove corruptly,  
4 but there are two other circumstances --

5 JUSTICE KAVANAUGH: Why? Why?

6 MS. SINZDAK: Because corrupt --  
7 because "corruptly" has to get at what's  
8 obviously wrongful in the statute, which is  
9 where you are performing public acts for private  
10 gain. So, if that's --

11 JUSTICE GORSUCH: Counsel, I'm sorry  
12 to interrupt --

13 JUSTICE ALITO: But that's a bribe.

14 JUSTICE GORSUCH: -- but I am going to  
15 interrupt there because I think the questions  
16 and the ones I'm interested in have to do with  
17 mens rea on "corruptly." And I think that's  
18 what Justice Kavanaugh is getting at.

19 SO put aside the actus reus for a  
20 moment. You say "corruptly" carries with it  
21 some mens rea.

22 MS. SINZDAK: Absolutely.

23 JUSTICE GORSUCH: What is it?

24 MS. SINZDAK: Consciousness of  
25 wrongdoing.

1 JUSTICE GORSUCH: So you think the  
2 defendant has to know that what he is doing is  
3 unlawful?

4 MS. SINZDAK: Or wrongful. He -- he  
5 doesn't have --

6 JUSTICE GORSUCH: Unlawful or --

7 MS. SINZDAK: -- to know about the  
8 specific -- well, he does not --

9 JUSTICE GORSUCH: -- wrongful?

10 MS. SINZDAK: Or wrongful, inherently  
11 wrongful. That's correct.

12 JUSTICE GORSUCH: Where does that --  
13 where does that come from?

14 MS. SINZDAK: That comes from Arthur  
15 Andersen. So --

16 JUSTICE GORSUCH: Well, the  
17 consciousness of wrongdoing usually means that I  
18 know. I mean, wrongdoing is defined by law  
19 usually, right? But you're saying -- you're  
20 saying no, it doesn't -- he doesn't have to know  
21 that it's unlawful. He has to know that it is  
22 unlawful or -- fill in the blank.

23 MS. SINZDAK: Wrongful. And I think  
24 sometimes actually -- so unlawful is usually,  
25 you're right, going to get you there. And,

1 here, I think we have someone who did everything  
2 he could to hide that he was getting this money  
3 and said that it was a consulting fee. So you  
4 have a lot of evidence of consciousness --

5 JUSTICE GORSUCH: How do you know if  
6 it's wrongful if it's -- if it's perfectly  
7 legal?

8 MS. SINZDAK: Well, so it is -- it was  
9 not perfectly --

10 JUSTICE GORSUCH: I mean, is it a sin?  
11 Are we now talking about something that, you  
12 know -- you know, something that would be a -- a  
13 venal sin, or does it have to be a mortal one?

14 MS. SINZDAK: I want to ground us in  
15 the facts of this case. So I think it's  
16 important here to establish that the Indiana  
17 code actually bars giving a gratuity to a public  
18 official. The Indiana --

19 JUSTICE GORSUCH: I'm not asking about  
20 Indiana.

21 MS. SINZDAK: -- Portage -- okay. I  
22 hear that.

23 JUSTICE GORSUCH: I'm asking about  
24 what the government's position is on "corruptly"  
25 and mens rea, and you say it has to be unlawful

1 or wrongful. And wrongful in what sense?

2 MS. SINZDAK: So, again, I think what  
3 we're talking about here is wrongful in the  
4 sense that Arthur Andersen said evil, corrupt,  
5 immoral. And sometimes that's when --

6 JUSTICE GORSUCH: Immoral?

7 MS. SINZDAK: That is what this Court  
8 said in Arthur Andersen.

9 JUSTICE GORSUCH: So a gift of  
10 pornography, as -- as -- as your counsel --  
11 friend on the other side pointed out in her  
12 opening, is -- is -- would that count in the  
13 government's view?

14 MS. SINZDAK: It needs to be wrongful  
15 in the way -- in the way that the statute is  
16 targeting. So, here, again, what the statute is  
17 targeting, the obviously wrongful conduct that  
18 the statute is targeting is taking public acts  
19 for private gain. So where, again -- and I'm  
20 just going to give you the three circumstances.

21 JUSTICE KAVANAUGH: That -- that  
22 defeats your whole theory -- I'm sorry --  
23 because, if the public act was done, completed,  
24 I've done -- we're done with the new zoning reg,  
25 we're done with the new school board decision,

1 and then the gratuity, the gift, the thank you  
2 arrives, you're still going to prosecute those  
3 cases as corrupt under your theory of what  
4 "corruptly" means, correct?

5 MS. SINZDAK: Where one of three  
6 circumstances is met.

7 JUSTICE KAVANAUGH: So that means  
8 where you haven't taken the public action for  
9 private gain.

10 MS. SINZDAK: No. I think that's  
11 where the -- the -- the problem is coming in.  
12 So, here, for example, imagine that the official  
13 just knows that the Buha brothers, they pay big  
14 rewards to people who give them contracts. So  
15 what he decides to do is award the contract to  
16 the Buha brothers. Afterwards, he's going to  
17 ask for the payment. That is corrupt. He took  
18 --

19 JUSTICE KAVANAUGH: The facts of this  
20 case are great in that sense for you to respond  
21 to the question, but there are 19 million  
22 employees who are going to --

23 MS. SINZDAK: And what I'm saying --

24 JUSTICE KAVANAUGH: -- wonder about  
25 the thank yous.

1 MS. SINZDAK: -- for all of those  
2 employees, the government is going to have to  
3 peruse -- pardon me -- to prove corruption. So,  
4 if they can't prove that the person actually did  
5 -- and let me get out the other two because  
6 there are two others.

7 JUSTICE KAVANAUGH: I will.

8 MS. SINZDAK: If it can't prove that  
9 the person actually took the act intending to be  
10 rewarded, which gives you corruptly, they can  
11 also sometimes prove that by taking this  
12 payment, let's say it's \$100,000 for having won  
13 a case, in the future, the person is going to be  
14 trying to win cases to get the money rather than  
15 for -- in the interests of the public.

16 And then there's also going to be --  
17 with certain payments, it's just going to be  
18 clear that if the public official takes this,  
19 it's going to look like the government is for  
20 sale, and that's because the --

21 CHIEF JUSTICE ROBERTS: Well, every  
22 time --

23 JUSTICE ALITO: Does this --

24 CHIEF JUSTICE ROBERTS: -- every time  
25 you -- go ahead.

1 JUSTICE ALITO: Does this provision  
2 apply to campaign contributions?

3 MS. SINZDAK: Section 666 applies to  
4 campaign contributions. Under McCormick, there  
5 needs to be a quid pro quo in the campaign  
6 context, so -- pardon me -- in the campaign  
7 contribution context. So the government does  
8 not prosecute where there is --

9 JUSTICE ALITO: So where do you get --

10 MS. SINZDAK: -- a bona fide campaign  
11 contribution.

12 JUSTICE ALITO: -- how does that fit  
13 into the statutory language?

14 MS. SINZDAK: So what we've taken it  
15 is there would be an as-applied constitutional  
16 objection if we were trying to prosecute a --  
17 campaign contributions on a -- sorry -- bona  
18 fide campaign contributions on a pure gratuities  
19 theory.

20 And -- and, sorry, if I could just get  
21 -- get back again to --

22 JUSTICE KAGAN: Well, how -- how about  
23 this? I mean, this statute applies to more than  
24 government officials. It applies to pretty much  
25 every hospital. It applies to pretty much every



1 university. So let's say billionaire patient  
2 comes to a hospital and gets extra special  
3 treatment. He gets appointments when nobody  
4 else would get it. He gets surgery scheduled  
5 when nobody else would. And -- and it's all  
6 done because everybody knows he's a billionaire  
7 patient, and they're hoping that he'll give an  
8 eight-figure gift to the hospital.

9 How about that? Does that fit?

10 MS. SINZDAK: So it needs to be -- you  
11 walk through the statutory requirements. The  
12 pay -- there needs to be the acceptance or the  
13 solicitation of money in connection with  
14 particular business or transactions.

15 JUSTICE KAGAN: Well, they're  
16 definitely going to accept the eight-figure gift  
17 when it comes.

18 (Laughter.)

19 MS. SINZDAK: Oh, sorry. Are you  
20 talking about the -- they're -- on the promise  
21 of this eight-figure gift?

22 JUSTICE KAGAN: No. I'm just saying  
23 they treat him really super nicely because they  
24 are very hopeful and -- that he's going to  
25 recompense them for all the special

1 consideration that they've given. Does that fit  
2 or does it not fit?

3 MS. SINZDAK: So it -- the government  
4 is going to have to prove that accepting that --  
5 that reward would be corrupt and that the --

6 JUSTICE KAGAN: Well, a lot of people  
7 --

8 MS. SINZDAK: -- hospital understands  
9 that it's corrupt.

10 JUSTICE KAGAN: -- a lot of people do  
11 not think it's good to give super-rich people  
12 better healthcare than not-so-super-rich people.  
13 So I could see a jury saying that's pretty  
14 immoral, but probably every hospital in America  
15 does it.

16 MS. SINZDAK: Well, the hospital has  
17 to have consciousness of wrongdoing. So it's  
18 what the hospital thinks that matters there,  
19 right? The hospital has to understand that in  
20 accepting that money, they're -- they are  
21 committing wrongdoing. And -- and so --

22 JUSTICE KAGAN: Well, but there's a  
23 jury that's going to decide whether they're  
24 committing wrongdoing or not, and a jury might  
25 say that sounds pretty corrupt.

1           And all I'm suggesting is that given  
2           that this -- that this statute applies not just  
3           to government officials but to pretty much,  
4           like, every important institution in America, I  
5           mean, that seems quite extraordinary that when  
6           you do stuff hoping, thinking it might earn you  
7           a big gift, even if it's just for the  
8           institution, not to put in your own pocket, that  
9           -- that that would land you 10 years in prison?

10           MS. SINZDAK: Let me say -- respond to  
11           that in two ways. First of all, under Section  
12           201(c), the federal government officials are  
13           undisputedly bound by these sorts of  
14           requirements with no corruptly mens rea.

15           And in -- in -- in Sun-Diamond, this  
16           Court said that requiring a tight connection  
17           between the reward and specific -- and specific  
18           official acts or, here, you would say specific  
19           business or -- business or transactions worth  
20           more than \$5,000, that was going to eliminate  
21           many, many of these cases.

22           And I don't think that -- we  
23           haven't -- again, Petitioner isn't here pointing  
24           to a mountain of cases where this has gone  
25           horribly astray. So Section 201(c) does it for

1 government officials without the "corruptly."

2 I'd also note -- and I think you were  
3 pointing this out earlier with the -- in the  
4 colloquy with Petitioner -- that it's not going  
5 to get us out of this problem to just graft on  
6 an atextual beforehand agreement because all  
7 that has to happen is that that rich -- that  
8 rich patient says to the doctors and nurses,  
9 hey, if you treat me well, there's -- there's  
10 going to be a nice big gift for the hospital at  
11 the end. And -- and then the -- the beforehand  
12 agreement requirement just isn't going to do  
13 anything.

14 CHIEF JUSTICE ROBERTS: Counsel, you  
15 said --

16 MS. SINZDAK: So I think that's why --  
17 yes.

18 CHIEF JUSTICE ROBERTS: -- you said  
19 the -- your friend on the other side hasn't  
20 pointed to a lot of examples in the real world.  
21 But we've had several cases where we've made the  
22 very clear point that we don't rely on the good  
23 faith of the prosecutors in deciding cases like  
24 this.

25 MS. SINZDAK: That's right. And in

1 1986, neither did Congress with respect to local  
2 and public officials. That's why it added the  
3 corruptly mens rea, which has to be proved to a  
4 jury, and that's why Congress added an express  
5 exception for bona fide salary for compensation  
6 in the ordinary course of business.

7 So Congress really did confront all of  
8 the concerns that I think the Court is -- is  
9 reflecting today, and it said we recognize we do  
10 not want to just cover innocuous gift-giving  
11 activity.

12 JUSTICE ALITO: And what is the --  
13 what is your answer to Justice Kagan's  
14 hypothetical? That's a question that would be  
15 submitted to the jury, and the jury would have  
16 to decide whether the donor acted wrongfully and  
17 the hospital acted wrongfully, right?

18 MS. SINZDAK: They would have to prove  
19 that the hospital understood that it was  
20 wrongful to accept that payment. Now, again,  
21 that's going to be the case. If the donor --  
22 under Petitioner's theory, that's the case if  
23 the donor is telling the hospital when he goes  
24 in for the surgery --

25 JUSTICE ALITO: No, no, no, no --

1 MS. SINZDAK: -- which I think he's  
2 going to.

3 JUSTICE ALITO: -- no, no, no, don't  
4 turn it into a bribe. It's a gratuity. It's  
5 after the fact. There's no agreement.

6 MS. SINZDAK: Well, no. I --

7 JUSTICE ALITO: But -- so it would be  
8 whether the hospital knew that it was wrongful?

9 MS. SINZDAK: So, yes, that's --

10 JUSTICE ALITO: I mean, suppose there  
11 are internal emails and one -- you know, one  
12 official says, you know, we really should be  
13 treating -- shouldn't be giving such special  
14 treatment to billionaires and another email  
15 says, you know, get real, we need money, and et  
16 cetera, et cetera.

17 MS. SINZDAK: At the end of the day,  
18 Congress is entitled to draw the statutes and to  
19 make the bars the way it wants to. The reason,  
20 though, that I was pushing back and giving you  
21 the bribery hypothetical is that I really do  
22 think that what I'm hearing today is there are  
23 some payments that just aren't or some gifts  
24 that just aren't corrupt, and that's going to be  
25 true whether you're pursuing a bribery

1 prosecution --

2 JUSTICE GORSUCH: And how does --  
3 counsel, how -- how does anyone in the real  
4 world know the line? Put aside billionaires and  
5 hospitals. Deal with small gifts with teachers,  
6 doctors, police officers, all the time.

7 And one could make an argument if it  
8 -- if -- if consciousness of wrongdoing doesn't  
9 mean consciousness of illegality, awareness of  
10 illegality, if it means something more abstract  
11 than that, how does this statute give fair  
12 notice to anyone in the world as to -- and I  
13 hate to do it, but I'm going to -- the  
14 difference between the Cheese Factory and --

15 JUSTICE ALITO: Cheesecake.

16 (Laughter.)

17 JUSTICE GORSUCH: -- and -- and -- and  
18 --

19 JUSTICE BARRETT: Inn at Little  
20 Washington.

21 JUSTICE GORSUCH: -- and the Inn at  
22 Little Washington. Thank you, thank you. How  
23 does anyone know?

24 MS. SINZDAK: Well, again, Justice  
25 Gorsuch, I do not mean to suggest that if you

1 are aware that you are violating the law, that's  
2 not going to establish consciousness of  
3 wrongdoing.

4 JUSTICE GORSUCH: No. No, no.  
5 Counsel, put that aside. We all --

6 MS. SINZDAK: Okay.

7 JUSTICE GORSUCH: You've -- you've  
8 rejected that as the definition of consciousness  
9 of wrongdoing. You say it includes  
10 consciousness of either illegality, which I  
11 would have thought might mean wrongdoing, but  
12 I'm wrong. It can mean something more than  
13 that. It can mean a venial sin, it can mean a  
14 mortal sin. How does -- how does somebody who  
15 accepts The Cheesecake Factory know a trip to  
16 The Cheesecake Factory for nice treatment at the  
17 hospital, for treating my child well in school,  
18 for an arrest made, how does that person know  
19 whether that falls on what you call the  
20 wrongfulness side of the equation or not?

21 MS. SINZDAK: Well, certainly, they  
22 can look at ethical guideline -- guidance and --  
23 guidelines as they were for the City of Portage.

24 JUSTICE GORSUCH: How about looking at  
25 state law? Counsel, how about, like, looking at



1 state law as --

2 MS. SINZDAK: They could -- they could  
3 do that as well.

4 JUSTICE GORSUCH: Yeah. And let's say  
5 it's all legal under state law. And you would  
6 -- and --

7 MS. SINZDAK: If it's all legal under  
8 state law, the government is not going to be  
9 able to prove consciousness of wrongdoing.

10 JUSTICE GORSUCH: Why -- why not?

11 MS. SINZDAK: I think -- I think that  
12 where we've come --

13 JUSTICE KAVANAUGH: Why?

14 JUSTICE GORSUCH: Why not? We're  
15 going to have --

16 MS. SINZDAK: Because I think --

17 JUSTICE GORSUCH: Counsel, please.

18 MS. SINZDAK: Sure.

19 JUSTICE GORSUCH: We're going to have  
20 internal emails just like Justice Alito posited.  
21 Some people say, oh, I wouldn't go to The  
22 Cheesecake Factory, that would look bad --

23 (Laughter.)

24 JUSTICE GORSUCH: -- you know, or  
25 maybe you should go to The Cheesecake Factory

1 but not Little -- Inn at Little Washington. A  
2 lot of nice places to me. But you're going to  
3 have evidence and you could prove it, and a jury  
4 might well convict.

5 MS. SINZDAK: Sure, and that's why the  
6 act also has to be wrongful. This is actually a  
7 protection, Justice Gorsuch, so I think that  
8 maybe we're talking a little bit at  
9 cross-purposes --

10 JUSTICE KAVANAUGH: Well, can I ask --

11 MS. SINZDAK: -- because what I'm  
12 trying to say here is that the government has to  
13 show that it's wrongful and the person's aware  
14 that it's wrongful.

15 So, if it's lawful under state law,  
16 then the -- the -- the defendant is going to be  
17 able to come in and say, no, look, this is  
18 lawful under state law. So it wasn't wrongful.  
19 The state obviously didn't think it was  
20 wrongful. And, by the way, I had no idea --

21 JUSTICE GORSUCH: But you're going to  
22 --

23 JUSTICE KAVANAUGH: Is that an  
24 automatic rule?

25 JUSTICE GORSUCH: Yeah.

1 JUSTICE KAVANAUGH: Is that an  
2 automatic rule that -- is that a safe harbor?  
3 If it's lawful under state law or local law,  
4 then you cannot be federally prosecuted for the  
5 gratuity under this statute?

6 MS. SINZDAK: If it -- if it's lawful  
7 under the governing rules that apply to the  
8 person?

9 JUSTICE KAVANAUGH: In other words,  
10 it's not made unlawful. If it's not made  
11 unlawful --

12 MS. SINZDAK: I mean, I --

13 JUSTICE KAVANAUGH: -- let me finish  
14 -- by the relevant state law or local law, is  
15 that an automatic -- automatic safe harbor such  
16 that the federal government cannot prosecute  
17 under this statute?

18 MS. SINZDAK: Yes, but, you know, I  
19 have to just for the sake of the public  
20 integrity unit say that if a city mayor decided  
21 to change all the ethics rules to allow him to  
22 take billions of dollars in -- in connection  
23 with contracting, then I don't think he could  
24 get it in.

25 But, otherwise, yes, we're not -- so,

1 again, this is what I'm trying to say. The  
2 consciousness of wrongdoing isn't a trap for the  
3 --

4 JUSTICE KAVANAUGH: Should there be a  
5 --

6 JUSTICE ALITO: But say a --

7 MS. SINZDAK: -- unwary. It's to help  
8 the unwary.

9 JUSTICE ALITO: -- a little town has  
10 no rules about gratuities, so you can't  
11 prosecute anybody in that town under 666?

12 MS. SINZDAK: No. So, first of all,  
13 there would be state rules. Absolutely, there's  
14 going to be state rules. I took just --

15 JUSTICE ALITO: All right. There's no  
16 applicable -- the state has left the -- the  
17 regulation of gratuities to the municipalities.  
18 And a particular town has got 3,000 people,  
19 2,000 people, 1,000 people. It has no rules  
20 about the gratuities that police officers can  
21 accept.

22 MS. SINZDAK: Look, if the police  
23 officer can come forward and say, I just had no  
24 idea this was wrongful because there were no  
25 applicable rules, there was no applicable state

1 law, then the government isn't going to be able  
2 to prove consciousness of wrongdoing.

3 JUSTICE ALITO: Then -- the question  
4 was whether that's an automatic rule.

5 MS. SINZDAK: No, no --

6 JUSTICE ALITO: And, first, you said  
7 it was, and now -- an automatic safe harbor.  
8 Now I think you're saying it's not.

9 MS. SINZDAK: No, I disagree. Let me  
10 distinguish between two things. One is a case  
11 where there are ethics rules that say this  
12 is permissible, okay?

13 If there are ethics rules that say  
14 this is permissible, if there are state laws  
15 that say this kind of gratuity is permissible,  
16 that is a safe -- safe harbor, other than --

17 JUSTICE KAVANAUGH: I -- I --

18 JUSTICE SOTOMAYOR: Usually --

19 JUSTICE KAVANAUGH: -- changed the  
20 language of the --

21 MS. SINZDAK: Okay. Maybe I didn't  
22 hear that.

23 JUSTICE KAVANAUGH: -- question then  
24 to say also what if it's just, to Justice  
25 Alito's point, not made unlawful?

1 MS. SINZDAK: Ah, ah, ah, ah. I see.

2 Okay. So I think there --

3 JUSTICE KAVANAUGH: What's the answer  
4 there? Is that a safe harbor?

5 MS. SINZDAK: It's not necessarily a  
6 safe harbor if it's obviously wrongful conduct,  
7 but I will say it does not mean --

8 JUSTICE KAVANAUGH: What is obviously  
9 wrongful?

10 MS. SINZDAK: So, yes.

11 JUSTICE JACKSON: Isn't -- counsel,  
12 isn't --

13 JUSTICE KAVANAUGH: And what's the  
14 jury instruction -- what -- maybe this is a good  
15 way to say it. What is the exact wording of the  
16 jury instruction on corruptly in your view?

17 MS. SINZDAK: So I think there's two  
18 different options. One is to isolate what is  
19 obviously wrongful in the particular case.  
20 That's what happened here, right?

21 So, in this case -- and let me -- I  
22 think this is a helpful way of seeing how it  
23 played out. Petitioner was not saying: Oh,  
24 it's -- I -- I didn't know it was wrongful to  
25 take a \$13,000 payment. What -- what Petitioner

1 was saying is: Oh, I wasn't taking a \$13,000  
2 reward, I was actually taking consulting fees.

3 So the jury instructions here said:  
4 What the jury has to find is that the Petitioner  
5 understood that this was a reward. So that's  
6 what separated the wrongful from the innocent  
7 conduct. So that's one way of doing jury  
8 instructions, to look at a particular case and  
9 just say: Okay, what would make accepting \$8  
10 million for a hospital patient --

11 CHIEF JUSTICE ROBERTS: Well, I don't  
12 think that -- I don't think that gets you very  
13 far from the things where people have been  
14 talking about, understood that this was a  
15 reward. I mean, they understand that the, you  
16 know, plate of cookies or whatever is a reward.

17 MS. SINZDAK: So --

18 CHIEF JUSTICE ROBERTS: But that  
19 doesn't mean that they should be -- be facing  
20 the criminal exposure we're talking about.

21 MS. SINZDAK: Yes. Pardon me. And  
22 we're not saying that if the government was  
23 somehow prosecuting a plate of cookies, this  
24 instruction would be sufficient. What I'm  
25 saying is that in most cases, there's actually

1 no dispute about whether it would be wrongful to  
2 accept thousands of dollars in return for having  
3 done some official act.

4 The dispute is about, well, was it?  
5 Was it a reward for doing that specific official  
6 act or was it something else entirely?

7 CHIEF JUSTICE ROBERTS: Well, you say  
8 that it --

9 JUSTICE JACKSON: Well --

10 CHIEF JUSTICE ROBERTS: -- you say  
11 that it doesn't -- you know, that it's -- the  
12 government's not going to go after you for the  
13 plate of cookies.

14 MS. SINZDAK: That's right.

15 CHIEF JUSTICE ROBERTS: But, I mean,  
16 you know, Al Capone went to jail for tax fraud,  
17 right, not for killing however many people.

18 MS. SINZDAK: That's right.

19 CHIEF JUSTICE ROBERTS: And, you know,  
20 you were careful to make sure you weren't  
21 stepping on the toes of the public integrity  
22 unit, but I suspect they have a different  
23 perspective on a lot of these things than others  
24 might.

25 MS. SINZDAK: No, no, in terms of



1 whether the reward needs to be --

2 CHIEF JUSTICE ROBERTS: Whether they  
3 can go after something that other people might  
4 regard as really sort of normal type of let's  
5 say gratuity, you know, whether it's a Christmas  
6 gift for the -- for the trash collectors or  
7 something like that.

8 MS. SINZDAK: No, I disagree. And  
9 they certainly couldn't in the Seventh Circuit  
10 if you look at 41A, the -- the Seventh Circuit  
11 said that accepting something corruptly is  
12 knowing that it's forbidden so that this is  
13 already --

14 JUSTICE JACKSON: So, counsel, isn't  
15 --

16 MS. SINZDAK: -- in the Seventh  
17 Circuit --

18 JUSTICE JACKSON: -- isn't -- isn't  
19 that really the answer to Justice Kagan's  
20 hypothetical that sort of got -- got us down  
21 this road?

22 MS. SINZDAK: It did.

23 JUSTICE JACKSON: In other words, to  
24 the extent that we have an ordinary practice of,  
25 you know, unfortunate as it may be, you know,

1 high-profile, special, you know, people,  
2 billionaires who come to hospitals and it's sort  
3 of understood generally that the development  
4 office is going to be notified and afterwards  
5 that person might, in fact, be asked to give a  
6 donation to the hospital that treated him so  
7 well, et cetera. That's sort of standard  
8 practice.

9           So, in a situation like that, I would  
10 think the government's position is that is not  
11 wrongful from the standpoint of corruption. We  
12 could not prove consciousness of wrongdoing  
13 related to anybody who's doing that sort of  
14 thing precisely because it's standard practice.

15           But, when you have a situation like  
16 this one, where it's not standard practice for a  
17 garbage contract to be given to a particular  
18 company and then the company that received that  
19 contract to pay out money, \$13,000 for the  
20 officials who were involved, that doesn't happen  
21 very often.

22           And so, when we're in that world, then  
23 perhaps we do have a dispute about whether or  
24 not there was wrongful behavior, consciousness  
25 of wrongdoing, et cetera. But that's what

1 separates all these other standard practice, the  
2 cookies, the gift cards, the whatever, that's  
3 normal practice, as opposed to --

4 JUSTICE BARRETT: Unless it's a  
5 corrupt -- what if -- what if it's a corrupt,  
6 like -- sorry to pick, you know, on Illinois or  
7 Chicago, but what if you're talking about some  
8 sort of local unit or a corrupt hospital where  
9 that actually is kind of corrupt practice that  
10 everyone would agree would be wrongdoing?

11 Not the donation to the hospital.  
12 Talk about something that's more unsavory.  
13 Maybe these rewards are just kind of accepted in  
14 this small town, and -- and, you know, you can't  
15 use that guideline then that Justice Jackson is  
16 talking about about what's standard because  
17 graft could be standard or gratuities could be  
18 standard even in unsavory cases.

19 MS. SINZDAK: So the government has  
20 the burden of proof. They need to prove that  
21 somebody acted corruptly with consciousness of  
22 wrongdoing. I certainly agree with Justice  
23 Jackson that if a person knows that this kind of  
24 behavior is happening all the time, that's the  
25 evidence they're going to put in to make it very

1 difficult for the government to meet their  
2 burden of proof.

3 I take your point --

4 JUSTICE SOTOMAYOR: Counsel, can I --

5 MS. SINZDAK: -- that the government  
6 might say, well, this is an obviously corrupt --

7 JUSTICE SOTOMAYOR: Counsel?

8 MS. SINZDAK: -- hospital, here's all  
9 the other evidence of that.

10 JUSTICE SOTOMAYOR: Counsel, my head  
11 is spinning.

12 MS. SINZDAK: Yes.

13 JUSTICE SOTOMAYOR: I see the  
14 questions before us as twofold. Does the  
15 language of -- of this 201(c) include a  
16 gratuity? It's very hard for me to think  
17 otherwise because the language is pretty clear.  
18 So, if it's clear that it includes gratuity, a  
19 lot of these questions have to do with what kind  
20 of gratuity, and that's where I think my  
21 colleagues are focused on what does the word  
22 "corruptly" mean.

23 And you are fighting their suggestion  
24 that if you limit it to accepting rewards that  
25 are unlawful -- I think Justice Gorsuch said,

1 unlawful defined how? He would say under state  
2 law, I think. I don't want to be putting words  
3 into his mouth, but I think he would say  
4 unlawful by state law.

5 But you want to broaden it. You want  
6 to say by ethical rules. But assume we -- we  
7 put that aside. Can you live with yes, it  
8 includes gratuities but only if you define  
9 "corruptly" as being unlawful, the way that  
10 Andersen suggested that went a little more  
11 broadly?

12 MS. SINZDAK: With -- with the  
13 understanding of unlawfulness, yes, absolutely.  
14 And let me answer that directly. Let me also  
15 say that I -- I -- I take your point,  
16 "rewarded" -- I think the reason we're talking  
17 about "corruptly" is because "rewarded" just  
18 very clearly does cover after-the-fact payments.  
19 There is no beforehand-agreement requirement.

20 And I think that to the extent there's  
21 a dispute about exactly how you would define  
22 "corruptly," that isn't before the Court because  
23 they did not object to the definition of  
24 "corruptly."

25 JUSTICE SOTOMAYOR: I understand it's

1 not before the Court, but it really is because,  
2 if we -- if it's not defined that way, I think  
3 there's a sense of then "gratuity" has no  
4 meaning, that anyone that could -- it would be  
5 so vague that it would be impossible.

6 MS. SINZDAK: It would just be the  
7 provision that applies to federal officials in  
8 Section 201(c), which doesn't have the corruptly  
9 mens rea.

10 JUSTICE SOTOMAYOR: Yes.

11 MS. SINZDAK: That's right.

12 JUSTICE SOTOMAYOR: Obviously.

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 counsel.

15 Justice Alito?

16 JUSTICE ALITO: Well, I'm not sure I  
17 understood your most recent colloquy with  
18 Justice Sotomayor.

19 You said that it would be -- that  
20 "corruptly" should or could reasonably be  
21 interpreted to mean unlawful under state law?  
22 Is that what you said?

23 MS. SINZDAK: I said -- I think she  
24 asked whether we could live with a definition,  
25 and I said that understanding that it was

1 unlawful is a definition I think that certainly  
2 would be preferable to carving out gratuities  
3 from the statute altogether.

4 JUSTICE ALITO: So, if something is  
5 not unlawful under state law, then it cannot be  
6 prosecuted as a gratuity under 666?

7 MS. SINZDAK: If the person -- the  
8 person needs to understand that what they're  
9 doing is wrongful. I mean, this is why we do  
10 think it means more than --

11 JUSTICE ALITO: And that's a -- it's  
12 really a simple --

13 MS. SINZDAK: Yeah, I mean,  
14 absolutely, because --

15 JUSTICE ALITO: Counsel, really --

16 MS. SINZDAK: Yes.

17 JUSTICE ALITO: -- it's a simple  
18 question.

19 MS. SINZDAK: Okay. Let me just be  
20 clear.

21 JUSTICE ALITO: Because it's a  
22 yes-or-no question.

23 MS. SINZDAK: Let me be clear. I can  
24 live --

25 JUSTICE ALITO: I just want to

1 understand your position.

2 MS. SINZDAK: Yes. Absolutely. I can  
3 live with, as I said to Justice Sotomayor, that  
4 narrow definition. I do not think it is  
5 correct. So that's the distinction that I am  
6 trying to draw.

7 But, if the Court is intent on saying  
8 we have this statute that Congress wrote that  
9 says you can't accept a payment intending to be  
10 rewarded, but it has to be corrupt. If the  
11 Court thinks that what Congress wrote is not  
12 good enough, it's not protective enough of city  
13 officials and we need to graft a limit on, I  
14 would certainly rather you graft on a limit that  
15 is still going to catch people who are, like  
16 Petitioner, taking large sums of money after  
17 they awarded a contract with every intent to get  
18 that -- large sums of money.

19 I would certainly rather you accept --  
20 leave some room for that as opposed to carving  
21 it out entirely.

22 JUSTICE ALITO: Okay. And just to  
23 summarize so I understand where you are, you  
24 think that "corruptly" means moral -- immoral or  
25 wrongful, and it requires knowing, the person



1 must know that what is being done is immoral or  
2 wrongful?

3 MS. SINZDAK: Know that it's  
4 forbidden. Again, I'm just -- to be honest, I'm  
5 quoting Arthur Andersen. So I think, if you're  
6 looking for --

7 JUSTICE ALITO: Just tell me what --

8 MS. SINZDAK: -- my definition of  
9 "corruptly" --

10 JUSTICE ALITO: Just tell me --

11 MS. SINZDAK: Sure.

12 JUSTICE ALITO: -- what the definition  
13 is.

14 MS. SINZDAK: So what Arthur Andersen  
15 said is that "corrupt" needs to be wrongful,  
16 evil, immoral, and a consciousness of  
17 wrongdoing. So that's it. That's what we're  
18 looking at.

19 JUSTICE ALITO: Okay. And where does  
20 -- where would one look to find the rules of  
21 wrongfulness and immorality that would be  
22 applied in that situation?

23 MS. SINZDAK: Well, again, I think  
24 that the criminal laws are a great place to  
25 look, so where the conduct is obviously

1 unlawful. You can also look at ethical codes  
2 and regulations if you're not sure whether  
3 something is obviously wrongful.

4 None of this was litigated in this  
5 case because, again, there was no dispute that  
6 accepting a \$13,000 payment for having granted a  
7 contract was wrongful, which I think was what he  
8 was doing.

9 JUSTICE ALITO: I -- I -- we -- I  
10 think we understand that. But we didn't really  
11 take this case just to decide whether this case  
12 was correctly -- this particular case was  
13 correctly decided. We took it to explore the  
14 meaning of this provision.

15 Was the jury instruction here on  
16 "corruptly" correct?

17 MS. SINZDAK: It was in the  
18 circumstances of this case because there was no  
19 dispute about whether accepting a reward was  
20 wrongful. But, Justice Alia, that's what --  
21 sorry, pardon me. Justice Alito, that is  
22 precisely what I'm trying to say. You do have  
23 to look at the circumstances because you have to  
24 isolate what was wrongful.

25 And, here, there was no dispute that

1 taking \$13,000 as a payment for having granted a  
2 contract was wrongful. That's why Petitioner  
3 didn't object to the jury instructions.

4 JUSTICE ALITO: Is -- is this the  
5 standard instruction that the government has  
6 requested --

7 MS. SINZDAK: In the Seventh --

8 JUSTICE ALITO: -- in 666 gratuity  
9 cases?

10 MS. SINZDAK: In the Seventh Circuit,  
11 this comes from the model jury instructions. I  
12 would say that in -- in the prosecutions that I  
13 have seen, there just hasn't really been room to  
14 argue that the person -- that the -- the  
15 acceptance of the payment wasn't wrongful  
16 because what the government has been prosecuting  
17 is taking money and then doing everything that  
18 you can to cover up the fact that you took the  
19 money as a reward.

20 And, there, it's pretty easy to show  
21 consciousness of wrongdoing, right?

22 JUSTICE ALITO: But I --

23 MS. SINZDAK: I think what you're all  
24 talking about is these fringe cases where, oh,  
25 it's not really clear because the person

1 actually took it openly and notoriously. That's  
2 going to make it really hard for the government  
3 to show consciousness of wrongdoing if it's had  
4 --

5 JUSTICE ALITO: If we looked at the  
6 jury instructions in 50 666 gratuity cases, what  
7 would we find on the question of "corruptly"?

8 MS. SINZDAK: So --

9 JUSTICE ALITO: What would -- what  
10 would the jury be told? Here, what the jury was  
11 told is -- am I right, page 28 of the Joint  
12 Appendix -- a person acts corruptly when he acts  
13 with the understanding that something of value  
14 is to be offered or given to reward or  
15 influence.

16 So, as to gratuity, to reward in  
17 connection with his official duties. I mean,  
18 all that has to be -- the person has to know is  
19 that this is a reward.

20 MS. SINZDAK: In this --

21 JUSTICE ALITO: It doesn't have to be  
22 immoral, wrongful, or anything else.

23 MS. SINZDAK: Again, that's -- in the  
24 circumstances of this case, there was no  
25 dispute.

1 JUSTICE ALITO: I -- I --

2 MS. SINZDAK: So I take your point.

3 JUSTICE ALITO: -- I -- I understand  
4 that. I understand that. I -- I'm not -- I  
5 don't want to talk about the circumstances of  
6 this case.

7 MS. SINZDAK: I know.

8 JUSTICE ALITO: I want to talk about  
9 what the law means and what the government's  
10 position has been on the issue of "corruptly" in  
11 other cases. Is this standard or, if we look at  
12 the others outside of the Seventh Circuit, the  
13 "corruptly" is defined as immoral or wrongful?

14 MS. SINZDAK: So the Second Circuit, I  
15 believe, has instructions that ask about a  
16 wrongful purpose. And, of course, if the -- if  
17 the defendant thinks, look, I didn't know what  
18 -- that taking this reward was wrong, then he  
19 can ask for an instruction saying, I had no --  
20 asking the jury to decide whether he understood  
21 that the -- taking the reward was wrong.

22 So there can be that express request.  
23 And -- and -- and this is just -- I'm just sort  
24 of taking a page from Arthur Andersen on all of  
25 this. "Corruptly" is, I admit, a relatively

1 unique -- or a unique mens rea, but it's one  
2 with a rich historical pedigree. So it's not  
3 that the government is making up some new limit.  
4 It's not that Congress in 1986, when it was  
5 trying to -- to eliminate innocuous gratuities,  
6 was doing something wild and crazy by saying,  
7 you know, we're going to use the corruptly mens  
8 rea because that is going to make sure that when  
9 people don't understand that what they're doing  
10 is wrongful, that when they're engaged in what  
11 everyone would reasonably think or at least, you  
12 know, that somebody would reasonably think was  
13 just innocuous conduct, then they're not going  
14 to be prosecutable because the government just  
15 isn't going to be able to show that that was  
16 corruptly.

17 JUSTICE SOTOMAYOR: Counsel --

18 CHIEF JUSTICE ROBERTS: I'm sorry.

19 Are you done?

20 JUSTICE ALITO: Well, I am concerned  
21 about the breadth of -- the breadth of your  
22 interpretation, and it all seems to rest on the  
23 understanding of "corruptly."

24 The person who gives a reward simply  
25 because that person is grateful may not know

1 what the ethics rules are with respect to the  
2 recipient of this reward. So is that a defense?

3 MS. SINZDAK: Certainly, that -- that  
4 person could ask for a jury instruction saying  
5 they need to -- there needs to be consciousness  
6 of wrongdoing, so they need to have understood  
7 that what they were doing was wrongful. These  
8 are sort of obscure ethics rules, they didn't  
9 know -- you know, the person could say, I didn't  
10 know about them. These are obscure ethics  
11 rules. How would anybody know, you know, \$25,  
12 \$50? And, yes, then they're entitled to a jury  
13 instruction saying no, there had to be a  
14 consciousness of wrongdoing.

15 JUSTICE ALITO: I mean, we can think  
16 of lots of different hypotheticals, and there  
17 are a lot in the briefs and a lot have occurred.  
18 I'll just give you one more and then I'll stop.

19 So the owner of a -- of a car  
20 dealership gets money under -- during -- as a  
21 result of COVID, enough money to -- to qualify,  
22 and the owner is thankful to a firefighter for  
23 saving the life of his daughter, and so, when  
24 that firefighter comes in to -- his car breaks  
25 down and wants a new car, but at that time,

1 people are lined up, the cars are in short  
2 supply, and the -- the dealer says, okay, well,  
3 you know what, for you, I'll put you at the top  
4 of the list, is that a -- is that a violation?

5 MS. SINZDAK: If he does not have a  
6 consciousness of wrongdoing, if he does not  
7 understand that what he is doing is wrong, I  
8 don't think the government -- no, there's not  
9 going to be a conviction for that.

10 Again, the -- the corruptly --

11 JUSTICE ALITO: There's not going to  
12 be a conviction because the jury is going to be  
13 sympathetic to this fellow?

14 MS. SINZDAK: No, because it's not  
15 going to fulfill the corruptly mens rea. Again,  
16 I want to be clear because I think we get --  
17 keep losing sight of this. Section 201(c) bars  
18 for federal officials just accepting gratuities,  
19 and it has no corruptly mens rea.

20 The corruptly mens rea is a break.  
21 It's a break that Congress put in as an extra  
22 help to make sure that people who are bound by  
23 Section 666 aren't going to be prosecuted for  
24 all of this innocuous conduct.

25 So I think this idea that by putting



1 in something to protect -- an extra protection  
2 for Section 66 -- people covered by Section 666,  
3 you could somehow render all the coverage of --  
4 of gratuities totally vague and unclear, I mean,  
5 that just can't be right.

6 CHIEF JUSTICE ROBERTS: Thank you.  
7 Thank you, counsel.

8 Justice Sotomayor?

9 JUSTICE SOTOMAYOR: Counsel, you  
10 answered Justice Alito by saying the instruction  
11 here was correct. But I'm reading the Seventh  
12 Circuit opinion at page 580, and the court is  
13 talking about that it's recognizing the  
14 disparate penalties for gratuities between  
15 federal and state officers, and the difference  
16 is mitigated -- this is the court's words -- by  
17 the additional requirement in Section 666 that  
18 the reward be paid or received corruptly.

19 And it defined "corruptly," i.e., with  
20 the knowledge that giving or receiving the award  
21 -- reward is forbidden.

22 MS. SINZDAK: That's right.

23 JUSTICE SOTOMAYOR: All right. But  
24 that wasn't part of the charge here.

25 MS. SINZDAK: At 41A? No, because,

1 again, the Petitioner was not -- was not  
2 arguing.

3 JUSTICE SOTOMAYOR: So -- so the  
4 charge wasn't correct. It was just not the --  
5 any error was not preserved to be --

6 MS. SINZDAK: I mean, that's an issue  
7 that could be dealt with on remand. But what I  
8 would say -- yes. Yes.

9 JUSTICE SOTOMAYOR: I understand.  
10 Just answer my question.

11 MS. SINZDAK: Yes, I am. So --

12 JUSTICE SOTOMAYOR: All right. Now  
13 stop, okay?

14 MS. SINZDAK: Okay.

15 JUSTICE SOTOMAYOR: Assuming if you go  
16 back below, if we say that -- I'm not saying  
17 we're going to say it -- that it doesn't -- that  
18 666 doesn't cover any kind of gratuity, what  
19 happens? Is this a reversal or a vacate and  
20 remand?

21 MS. SINZDAK: It's a vacate and remand  
22 because the government was pursuing a bribery  
23 theory.

24 JUSTICE SOTOMAYOR: As well?

25 MS. SINZDAK: Yes.

1 JUSTICE SOTOMAYOR: And so it was --  
2 we don't know what the acquittal went to,  
3 whether it went --

4 MS. SINZDAK: Well --

5 JUSTICE SOTOMAYOR: -- to the bribery  
6 or to the reward?

7 MS. SINZDAK: So -- pardon me. It's a  
8 -- it's a single offense, the corrupt --

9 JUSTICE SOTOMAYOR: Mm-hmm.

10 MS. SINZDAK: -- acceptance offense,  
11 that can be committed through intending to be  
12 influenced or rewarded.

13 Now the -- the district court actually  
14 found that there was sufficient evidence to  
15 convict purely on the -- on the quid pro quo  
16 gratuity theory.

17 JUSTICE SOTOMAYOR: I remember that,  
18 yes.

19 MS. SINZDAK: Yeah.

20 JUSTICE SOTOMAYOR: Okay.

21 MS. SINZDAK: So --

22 JUSTICE SOTOMAYOR: So -- and if I  
23 don't disagree with that, then is there a  
24 retrial?

25 MS. SINZDAK: No, we think that there

1 would be because the evidence was sufficient to  
2 convict on the -- on the -- on the bribery.

3 JUSTICE SOTOMAYOR: That was --

4 MS. SINZDAK: But, again, that's  
5 something for remand.

6 JUSTICE SOTOMAYOR: All right. Thank  
7 you, counsel.

8 MS. SINZDAK: Mm-hmm.

9 CHIEF JUSTICE ROBERTS: Justice Kagan?

10 JUSTICE KAGAN: I think I've got your  
11 view of "corruptly."

12 MS. SINZDAK: I'm glad.

13 JUSTICE KAGAN: But, if you put that  
14 aside, are there any safe harbors in this  
15 statute -- and just like if you would list for  
16 me the safe harbors that the government thinks  
17 exists either on the face of this statute or in  
18 the way you're prosecuting this statute, just  
19 give me a list.

20 MS. SINZDAK: Sure. So the -- the  
21 safe harbors that come from the text, so this is  
22 in a sort of trust us argument. There's the  
23 that it has to be in connection with business or  
24 transactions worth \$5,000.

25 JUSTICE KAGAN: Got it, five --

1       \$5,000.

2                   MS. SINZDAK: Right. That's the  
3 Sun-Diamond, there has to be the nexus, that's  
4 going to kick out a whole bunch of innocuous  
5 conduct, more even than --

6                   JUSTICE KAGAN: Just -- just list  
7 them.

8                   MS. SINZDAK: Just list them? Okay.  
9 So the corruptly mens rea, the nexus  
10 requirement, the \$5,000 floor, and the express  
11 exception for bona fide salary and compensation  
12 in the ordinary course of business.

13                   JUSTICE KAGAN: Anything else?

14                   MS. SINZDAK: That's -- that's all --  
15 well, and pardon me, and then the First  
16 Amendment protection that says that under  
17 McCormick we understand that to mean that there  
18 really has to be an express quid pro quo when  
19 we're dealing with a bona fide campaign  
20 contribution.

21                   JUSTICE KAGAN: Nothing else that the  
22 government can say we realize that this doesn't  
23 appear on the text of the -- in the text of the  
24 statute on, you know, like you just read it, but  
25 we never prosecute X, Y, or Z?

1 MS. SINZDAK: I mean, you -- you've  
2 told me to sort of set aside "corruptly."

3 JUSTICE KAGAN: Yes, set aside.

4 MS. SINZDAK: And I think that's where  
5 a lot of that comes in. But, for example, the  
6 government does not prosecute pure charitable  
7 contributions. Sometimes charitable  
8 contributions are used as a funnel, so it's just  
9 sort of like you pay into the charity and then  
10 that goes right into the person's pocket, but  
11 the government doesn't -- doesn't prosecute  
12 these -- the -- the just a pure charitable  
13 contribution.

14 If you actually look at the facts of  
15 the cases that they're citing, I think one of  
16 them is from the Local 150, that's the Donegal  
17 prosecution, there's actually thousands and  
18 thousands of dollars of payments of all  
19 different kinds. That's actually on -- on  
20 Westlaw. You can look at the facts. They're  
21 quite dramatic. So that's not just pure  
22 charitable contributions.

23 Similarly, I think they refer to a  
24 building inspector case. In that case, somebody  
25 was giving -- the building inspector was giving

1 permits and then -- and then getting, again,  
2 large amounts of money from developers having  
3 given them the permit, so I think we had 30 -- a  
4 \$240,000 loan, \$30,000 the person just got to  
5 keep scot-free.

6           So -- so I guess I'm kind of trying to  
7 give you a picture of the sort of prosecutions,  
8 which I -- I -- I guess I'm not kind of  
9 including in here the kind of apple for teacher  
10 and the like, you know, the hypotheticals that  
11 you see in Petitioner's brief. They're just not  
12 even on the radar in terms -- of the government.

13           So I think those are just what we're  
14 looking for is, again, corrupt acceptance of a  
15 payment with the intent to be rewarded in  
16 connection with business or transactions worth  
17 at least \$5,000. And when we're talking about  
18 all these hypotheticals, they just in the  
19 government's view, I think in any court's view,  
20 in any jury's view, they just don't fall into  
21 that.

22           JUSTICE KAGAN: Okay. Thank you.

23           CHIEF JUSTICE ROBERTS: Justice  
24 Gorsuch?

25           JUSTICE GORSUCH: Counsel, you in your

1 brief make the point that we have to interpret  
2 "rewarded" your way rather than your friend's  
3 way because, otherwise, we're going to have a  
4 superfluity problem.

5 In a case we're going to hear in a  
6 couple of days, the government makes the  
7 opposite argument and says that -- I think it  
8 says overlap is not uncommon in criminal  
9 statutes, and, therefore, superfluity doesn't  
10 come into play.

11 Which is it?

12 MS. SINZDAK: So I think that,  
13 certainly, sometimes there is superfluity in a  
14 statute. There's belt and suspenders.

15 JUSTICE GORSUCH: Yes.

16 MS. SINZDAK: The reason not here,  
17 Justice Gorsuch --

18 JUSTICE GORSUCH: Yeah. Why -- why --  
19 why does it matter here, but it doesn't two days  
20 from now?

21 MS. SINZDAK: So the reason that it  
22 matters in this case -- and I can't, of course,  
23 speak for other cases -- but the reason it  
24 matters --

25 JUSTICE GORSUCH: Well, is --



1 MS. SINZDAK: -- to this case is that,  
2 well, because I'm here about this case. So the  
3 reason is that --

4 JUSTICE GORSUCH: You represent the  
5 government of the United States, which I would  
6 hope would take consistent positions across  
7 cases.

8 MS. SINZDAK: We -- and we --

9 JUSTICE GORSUCH: So, counsel --

10 MS. SINZDAK: Let me explain to you  
11 why we are.

12 JUSTICE GORSUCH: Thank you.

13 MS. SINZDAK: So Congress added the  
14 term -- it added "intended to be influenced or  
15 rewarded" in 1986, so there, adding the  
16 "rewarded" to what would otherwise have been  
17 language closely top -- closely tracking Section  
18 201(b), they clearly were trying to add  
19 something to cover more, to cover additional  
20 material. So, there, when we have Section  
21 201(b), which would be the example of what you  
22 would do if you wanted to cover only the type of  
23 quid pro quo bribery that Petitioner is talking  
24 about, they had that, but they didn't just take  
25 201(b) and plop it into Section 666.

1 JUSTICE GORSUCH: I got it.

2 MS. SINZDAK: Instead, they added  
3 "rewarded."

4 JUSTICE GORSUCH: Counsel, I -- I got  
5 it. I got it, okay?

6 And earlier this term the government  
7 argued that it would defy common sense for  
8 Congress not to have required more serious  
9 sentences for more serious crimes in Pulsifer.

10 MS. SINZDAK: Mm-hmm.

11 JUSTICE GORSUCH: And that -- that --  
12 that argument prevailed.

13 Here, you're suggesting that it makes  
14 sense for the more serious offense of bribery  
15 and the less -- lesser offense of receiving a  
16 gratuity to receive the same punishment. Can  
17 you -- can you reconcile that one for me?

18 MS. SINZDAK: Of course, the  
19 government looks first to the text, and we know  
20 that the text here says that the 10-year penalty  
21 it did in 1984 when Petitioner acknowledges that  
22 it undisputedly covered gratuities.

23 But I -- I can give you a historical  
24 reason why I think we have that, you know, the  
25 two years under 1962 and the -- and the 10-year

1 maximum --

2 JUSTICE GORSUCH: That -- that wasn't  
3 -- that wasn't my question. Why would -- why  
4 would both bribery and receipt of a gratuity  
5 have the same 10-year sentence here and we  
6 should ignore that, but we were supposed to take  
7 cognizance of that kind of issue just last  
8 month?

9 MS. SINZDAK: Because Section 666 was  
10 enacted as part of the 1984 Crime Control Act,  
11 which also enacted the sentencing guidelines.  
12 And so Congress was moving from a situation  
13 where, as it had in 201, it was specifying  
14 specific sentences for specific law -- for  
15 specific types of breaking of a law. So there's  
16 201(b). It had the two-year maximum for that.

17 In 1984, Congress is doing sentencing  
18 guidelines, so it's saying we're going to have,  
19 you know, a maximum, but we're not going to  
20 worry about that because we're going to have  
21 mandatory guidelines that are going to take care  
22 of this. And then, in fact, if you look,  
23 Section 666 is listed both --

24 JUSTICE GORSUCH: Well, the mandatory  
25 --

1 MS. SINZDAK: -- under the gratuities  
2 guidelines --

3 JUSTICE GORSUCH: -- guidelines  
4 argument was the same point that was made in  
5 Pulsifer, and you -- you said that wasn't enough  
6 there.

7 MS. SINZDAK: So just -- just to  
8 finish my point, if you look at the guidelines,  
9 the -- there is a gratuity guideline that  
10 applies to Section 666. There is a bribery  
11 guideline that applies to Section 666. Under  
12 the gratuity guidelines, people are not getting  
13 more than two-year sentences. And Petitioner  
14 hasn't pointed to anywhere that has happened.

15 JUSTICE GORSUCH: Okay. Last one.  
16 And it -- this is circling back to Justice  
17 Kagan. And, again, put aside the -- the  
18 question about "corruptly."

19 It seems to me that -- that the major  
20 safeguard that you pointed to in that discussion  
21 was the \$5,000 threshold. Is that right? The  
22 \$10,000 threshold and the \$5,000 threshold?

23 MS. SINZDAK: I think the bona fide  
24 salary exception is pretty important.

25 JUSTICE GORSUCH: Okay. Okay, got

1 that. Okay.

2 With respect to those thresholds, the  
3 government seems to have argued that they're  
4 satisfied pretty easily. In connection with  
5 business of an organization, the government's  
6 argued that we can take account of the salary of  
7 police officers, which are obviously more than  
8 \$5,000. So, because a police department  
9 receives \$10,000 and the police officer makes  
10 more than \$5,000, any gift of any value would  
11 seem to qualify. What am I missing there?

12 MS. SINZDAK: No, that's not quite  
13 right. So I think you're talking about the case  
14 in which there was a -- a drug dealer who was  
15 giving, I think \$1,000 --

16 JUSTICE GORSUCH: No, I'm not talking  
17 --

18 MS. SINZDAK: I mean, that is the --  
19 the case in which the -- yes.

20 JUSTICE GORSUCH: That's the case  
21 where the Seventh Circuit said that --

22 MS. SINZDAK: Right.

23 JUSTICE GORSUCH: -- \$5,000 was  
24 satisfied by the police officer's salary.

25 MS. SINZDAK: Right.

1 JUSTICE GORSUCH: That's true.

2 MS. SINZDAK: And the reason was  
3 because they were counting up how many salary  
4 hours the police officers would have spent, and  
5 they were evaluating that. So it wasn't just  
6 kind of like a police officer makes more than  
7 \$5,000.

8 JUSTICE GORSUCH: So anytime an  
9 employee at a hospital does more than \$5,000  
10 worth of work on behalf of a patient, or a  
11 teacher spends more than \$5,000 worth of time  
12 with a student, then that -- that -- that  
13 threshold would be satisfied in the government's  
14 view?

15 MS. SINZDAK: Where the specific  
16 transaction and business is worth more than  
17 \$5,000, yes.

18 JUSTICE GORSUCH: Okay. Thank you.

19 CHIEF JUSTICE ROBERTS: Justice  
20 Kavanaugh?

21 JUSTICE KAVANAUGH: You -- you've said  
22 several times, I think, that some gratuities,  
23 some thank yous should be proscribed either  
24 because of the appearance problem they present,  
25 government officials getting payments like that,

1 or because they're suggestive of something more  
2 nefarious that might also be going on with  
3 respect to the government official.

4 And, you know, I -- there's widespread  
5 agreement on that, I think, and I certainly do  
6 as well agree on that. I think there are two  
7 issues here you need to deal with, though, and  
8 I'm going to come back to them.

9 One is we're talking about state and  
10 local officials who might have different state  
11 and local rules than what the federal  
12 government's going to come in and superimpose on  
13 them. The second issue is the word "corruptly."  
14 And you said, I think, that the word "corruptly"  
15 was a break on an otherwise broad statute and so  
16 it's a good thing here, right?

17 And I accept that, but the problem is  
18 the word "corruptly" then creates enormous  
19 uncertainty and vagueness about where the line  
20 is drawn. And so, when you have state and local  
21 officials who have one set of rules they think  
22 they're following, coupled with a vague federal  
23 line that they have no idea where that's drawn,  
24 and it's up to 10 years in prison, that's a  
25 problem.

1 MS. SINZDAK: So I think, to -- to --  
2 to alleviate that concern, it is consciousness  
3 of wrongdoing. So, if there's uncertainty -- if  
4 there's uncertainty about whether accepting that  
5 reward is wrongful, the government isn't going  
6 to be able to prove that the person had this  
7 consciousness of wrongdoing. So I think --

8 JUSTICE KAVANAUGH: Well, you nicely  
9 anticipated my next question, which is to drill  
10 down again, and you did with Justice Sotomayor,  
11 on "wrongful," and Justice Gorsuch as well.

12 I think it's your backup position. I  
13 think you said you could live with it. But I'm  
14 going to make sure I've got it. An instruction  
15 that says you're -- you're only guilty under  
16 this statute, paraphrasing, if you -- if the  
17 conduct was unlawful under state or local law?

18 MS. SINZDAK: Can I live with that?

19 JUSTICE KAVANAUGH: Are you okay with  
20 that?

21 MS. SINZDAK: Over cutting out  
22 gratuities entirely? I mean, yes, I'm going to  
23 take the -- the -- the narrower statutory  
24 surgery.

25 JUSTICE KAVANAUGH: And knew that it



1 was unlawful? Because you've said consciousness  
2 of wrongdoing.

3 MS. SINZDAK: Yes.

4 JUSTICE KAVANAUGH: So consciousness  
5 of illegality. In other words, this statute  
6 would be narrowed to a situation where it was  
7 unlawful under state or local law and you knew  
8 it was unlawful under state or local law to take  
9 that gratuity. That's your -- I mean --

10 MS. SINZDAK: Yes. Yes.

11 JUSTICE KAVANAUGH: -- that's better  
12 from your perspective than --

13 MS. SINZDAK: That's absolutely  
14 better. I think it might be worse for some  
15 defendants where the state or local law has some  
16 ticky-tacky requirement that they just couldn't  
17 possibly have known was -- was really wrongful.  
18 So I think this is actually less protective in  
19 some ways, but I'm certainly willing to live  
20 with it.

21 JUSTICE KAVANAUGH: Well, that may  
22 indicate that even the backup position's no  
23 good. But that's a --

24 MS. SINZDAK: No, I don't -- I don't  
25 think so.

1 JUSTICE KAVANAUGH: -- you're arguing  
2 against yourself there a little.

3 MS. SINZDAK: No, I -- I don't think  
4 so. Again, the very worst is -- I -- I think  
5 what you could be saying is that, you know, we  
6 know that gratuities are barred under Section  
7 201(c) with no corruptly mens rea. I mean, if  
8 you think that "corruptly" just can't be --

9 JUSTICE KAVANAUGH: But I'm going to  
10 -- can I just --

11 MS. SINZDAK: -- adding anything --

12 JUSTICE KAVANAUGH: -- can I just stop  
13 you there?

14 MS. SINZDAK: -- then we just go to  
15 Section 201(c).

16 JUSTICE KAVANAUGH: That lends to the  
17 clarity point, and it's clear there. But, here,  
18 when you put "corruptly" in, now you don't know  
19 where the line is. You don't know if the  
20 concert tickets, the game tickets, the gift card  
21 to Starbucks, whatever, where is the line, and  
22 so there's vagueness. That creates the problem  
23 that there is here.

24 MS. SINZDAK: No, I -- I disagree.

25 JUSTICE KAVANAUGH: And you -- and you

1 say -- this is my last question. You said these  
2 fringe cases as compared to this case. I -- I  
3 think the "fringe cases" are the everyday  
4 concern.

5 MS. SINZDAK: Again, there's a  
6 requirement of consciousness of wrongdoing. So,  
7 if the person couldn't know that this behavior  
8 was wrongful because it was unclear, because  
9 there are some line-drawing difficulties,  
10 because some people think this is wrong and some  
11 people think it's right, then the government  
12 isn't going to be able to meet its burden of  
13 proof.

14 JUSTICE KAVANAUGH: Well, that's --

15 MS. SINZDAK: So it's not introducing  
16 vagueness.

17 JUSTICE KAVANAUGH: You're -- you're  
18 sitting in a criminal courtroom after, you know,  
19 you're a -- you're a regular, you know, police  
20 officer or a local official, you've depleted  
21 your money, you've -- to defend yourself, you're  
22 -- you've lost your job because you're  
23 prosecuted, and it's like, oh, well, the good  
24 news is they won't be able to meet my -- the  
25 burden of proof because some people thought it

1 was okay to do this?

2 MS. SINZDAK: No. I mean, prosecutors  
3 have a responsibility not to bring prosecutions  
4 that don't meet the statute. And what I'm  
5 saying is that the statute prevents that kind of  
6 prosecution. So it's a -- it's a -- it's a --  
7 it's what Congress said, we don't want to reach  
8 innocuous conduct. We want to make sure. We  
9 were going to put in a mens rea that makes sure  
10 that you understand that what you're doing is  
11 wrongful and you do it anyway. That's the  
12 nature of this mens rea. It's a break.

13 JUSTICE KAVANAUGH: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice  
15 Barrett?

16 JUSTICE BARRETT: Okay. So I'm  
17 increasingly worried about the scope of the  
18 government's position. I -- I'd like you to  
19 tell me how your backup position that you were  
20 just talking about with Justice Kavanaugh works  
21 for the private university or the private  
22 hospital employee that Justice Kagan was  
23 pointing out satisfies the grant amount. And  
24 I'll say, you know, as Justice Gorsuch pointed  
25 out, I don't think that the nexus requirements

1 or the \$5,000 requirement does a whole lot of  
2 work and, you know, for the surgery, the  
3 employee's time, or the police officer's time  
4 working your case or the professor's time  
5 spending like -- trust me, tutoring is  
6 expensive. I've paid a lot of tutoring bills.  
7 You know, the professor is spending all this  
8 extra time, you know, out -- outside of class.

9 So if state and local laws -- I mean,  
10 I assume you're encompassing ethics rules for  
11 state and local government employees in your  
12 answer to Justice Kavanaugh?

13 MS. SINZDAK: Yeah.

14 JUSTICE BARRETT: So how does that  
15 cash out for the private people?

16 MS. SINZDAK: So, if it's acceptable  
17 under those rules, I think it's a safe harbor,  
18 is what we've been discussing.

19 JUSTICE BARRETT: Right, but I'm  
20 saying that these ethics rules aren't going to  
21 apply in the private context to the car dealer,  
22 the private university, the private hospital  
23 that's swept in because of the federal funds.

24 MS. SINZDAK: Oh, I -- I don't think  
25 that's really necessarily true. I think many

1 entities, like hospitals, research institutions,  
2 the entities that are actually being covered  
3 here, they do have ethics rules, so there is  
4 going to be something to look at. But also that  
5 they can certainly --

6 JUSTICE BARRETT: But not the state  
7 and -- I guess let me just, like, pin you down.  
8 I'm not saying that they won't have ethics  
9 rules.

10 MS. SINZDAK: Mm-hmm.

11 JUSTICE BARRETT: The hospitals, the  
12 universities, et cetera, they're going to have  
13 ethics rules. I don't know about the car  
14 dealerships.

15 (Laughter.)

16 JUSTICE BARRETT: But what I'm saying  
17 is, if local -- state and local government rules  
18 don't apply to them, where do you look for your  
19 backup position? Is it like, you know, the  
20 university ethics rules, the hospital ethics  
21 rules?

22 MS. SINZDAK: I -- I think where --  
23 where I look is whether they had, you know -- I  
24 think the easiest thing is whether there would  
25 be concrete evidence that this was wrongful.

1 So, yes, if their entity's rules barred the  
2 thing, then I think that's going to be pretty  
3 good evidence.

4 If it's unclear, though, Justice  
5 Barrett, I just want to again tell you that  
6 there has to be a consciousness of wrongdoing.  
7 So, if there just was nowhere they could look  
8 and there was no way for them to know that  
9 taking the, you know, cashmere blanket for the  
10 tutoring was wrongful, then the government can't  
11 show consciousness of wrongdoing and it can't  
12 prosecute in that case.

13 JUSTICE BARRETT: Can't show it?  
14 So -- but -- but you're kind of sliding, I  
15 guess, into the not backup position but the  
16 immoral or this is unsavory or this is wrong?

17 MS. SINZDAK: No, they need to show  
18 that the person understood that what they were  
19 doing was wrongful. So, if they -- the  
20 government cannot show that what the person --  
21 that the person understood what they were doing  
22 was wrongful, was against the law is the easiest  
23 way to show that, but if they don't have any  
24 laws to point to, if they don't -- just don't  
25 have any -- anything that they can point to,

1 then they're not going to be able to prove that  
2 the person would know, would understand that  
3 what they're doing is wrongful.

4 JUSTICE BARRETT: But, under your  
5 first order position, there wouldn't be anything  
6 to point to, right, because I thought your first  
7 order position -- like your backup is if it's  
8 proscribed by law. But I thought your first  
9 order position was if it's wrong, if it's  
10 immoral, if people would know this is corrupt.

11 MS. SINZDAK: So our -- our position  
12 is just -- just -- let me be clear, it's that  
13 the act has to be wrongful and the person has to  
14 have consciousness of wrongdoing. That  
15 requirement of consciousness of wrongdoing, we  
16 recognize that. That's not a backup position.  
17 That's a first order.

18 JUSTICE BARRETT: No, no. I know. I  
19 know.

20 MS. SINZDAK: Right.

21 JUSTICE BARRETT: But I'm saying,  
22 like, you said if the person doesn't have any  
23 place to look to know that it's wrongful, and  
24 I'm saying that I thought your first order  
25 position was that they don't have a specific



1 place to look because you should know it's  
2 immoral, you should know it's wrong.

3 MS. SINZDAK: I -- I think that the  
4 government can certainly -- I think it's going  
5 -- the government has to say this is something  
6 that is so obviously wrongful that everyone  
7 would know.

8 And I would say that in the  
9 circumstances you're pointing to, the government  
10 isn't going to take that position. They're not  
11 going to be able to say that just because -- you  
12 know, that -- it has to be obviously wrongful  
13 because what they're saying is we don't have  
14 evidence to demonstrate that this specific  
15 person knew that what they were doing was  
16 wrongful.

17 But this is something that is just so  
18 obviously inherently unlawful or unwrong --  
19 sorry, not unlawful, I don't want to confuse  
20 things -- inherently wrongful that the person  
21 would be bound to know.

22 And I agree with you that when it's  
23 something that is either permitted by ethics  
24 rules or it's just never governed by ethics  
25 rules, this isn't something that people even

1 think about in the ethics world maybe because  
2 cookies are just so, you know, obvious, then  
3 there's just -- the government -- that -- that  
4 -- there isn't going to be that consciousness of  
5 wrongdoing.

6 The government isn't going to be able  
7 to show and they're not -- and -- and,  
8 therefore, the statute does not cover that --  
9 that person because they do not understand that  
10 it is wrongful.

11 CHIEF JUSTICE ROBERTS: Justice  
12 Jackson?

13 JUSTICE JACKSON: So I guess I'm just  
14 totally confused in a lot of ways because I -- I  
15 had understood this case to be about a totally  
16 different part of the statute. So -- and by  
17 what I mean is that suddenly it seems as though  
18 it's becoming a vehicle to investigate the  
19 corruptly solicits or demands element as opposed  
20 to the influenced or rewarded element.

21 And I read the question presented to  
22 be about reward, like what does reward mean.  
23 You know, the -- the Petitioner's statement of  
24 the question presented is whether 666  
25 criminalizes gratuities without any quid pro quo

1 agreement to take those actions.

2 So I thought we were looking at reward  
3 and determining whether or not you needed a quid  
4 pro quo. But it sounds like there's a lot of  
5 concern about the corruptly element.

6 So can I ask you, do we need to take a  
7 position on "corruptly" here to rule in your  
8 favor on the question presented in this case?

9 MS. SINZDAK: No. To rule in our  
10 favor, you just have to look and say that  
11 rewarded obviously encompasses rewards that are  
12 accepted without a beforehand agreement.

13 JUSTICE JACKSON: All right. And if  
14 we were going to think about "corruptly," I  
15 guess I'm trying to understand how this case on  
16 these facts even really presents that issue.

17 I mean, I understand all of these  
18 hypotheticals about the blankets and the  
19 Starbucks and the -- you know, the -- the -- the  
20 gray areas around where people could say is this  
21 person really acting corruptly.

22 But was there a dispute in this case  
23 that it was corrupt for this official to -- if  
24 he was taking a reward, to receive the \$13,000  
25 under these circumstances?

1 MS. SINZDAK: No. And that's  
2 generally the way these cases go. It's not  
3 someone saying I took a reward, but I thought it  
4 wasn't wrongful, so it's not someone disputing  
5 the consciousness of wrongdoing point. It's  
6 someone saying I wasn't taking a reward, I was  
7 taking something for being friends.

8 JUSTICE JACKSON: And that's -- so  
9 that's --

10 MS. SINZDAK: I was taking something  
11 for --

12 JUSTICE JACKSON: -- how --

13 MS. SINZDAK: -- compensation, that's  
14 right.

15 JUSTICE JACKSON: That's how that came  
16 up here.

17 MS. SINZDAK: Exactly.

18 JUSTICE JACKSON: So that's why in  
19 response to Justice Sotomayor this wasn't a  
20 question that was put to the jury about -- like,  
21 this is why it's not in the jury instructions,  
22 this question of what is the definition of  
23 "corruptly," because he essentially conceded  
24 that element for the purpose of this case?

25 MS. SINZDAK: Right. He did not

1 challenge the jury instructions on "corruptly,"  
2 even though the district -- the district court  
3 had already rejected the request to narrow the  
4 statute to gratuities, so it's not true that he  
5 didn't protest the "corruptly" definition  
6 because he was trying to get to -- to get at it  
7 a different way, right?

8           The -- the district court had already  
9 said gratuities are going to come in. He  
10 doesn't contest the "corruptly" jury instruction  
11 here because he wasn't saying it's rightful to  
12 accept the payment.

13           JUSTICE JACKSON: Right. He wasn't in  
14 the gray area scenario where people could say --

15           MS. SINZDAK: Exactly.

16           JUSTICE JACKSON: -- well, I thought  
17 this was right. He wasn't doing that.

18           All right. So final question. With  
19 respect to the question I asked Ms. Blatt, if we  
20 hold constant the "corruptly" aspect of this,  
21 the demand aspect of this, we assume that's all  
22 met and now we're really just focusing on  
23 reward, "intended to be influenced or rewarded,"  
24 could -- can you articulate why Congress would  
25 not have wanted "rewarded" to include these

1 gratuities?

2           In other words, it seems as though  
3 that element is equating bribes, quid pro quo  
4 bribes, with rewards, what I'm thinking of as  
5 gratuities in this context.

6           If we agree with Petitioner, it sounds  
7 as though there -- Congress would have wanted to  
8 prohibit one and not the other, and I can't  
9 figure out why that would be.

10           MS. SINZDAK: I -- I can't either  
11 because, again, gratuities have long been  
12 recognized to be as corrupt as rewards in many  
13 circumstances. We have the bar on gratuities in  
14 our Constitution itself. We have Blackstone  
15 saying that the acceptance of gratuities is --  
16 is -- is -- is corrupt and that, you know, the  
17 Romans were wrong to permit it.

18           We have Congress barring not just  
19 bribery but also the -- the acceptance of  
20 gratuities without the corruptly mens rea in  
21 Section 201. So there's just no reason. And --  
22 and that's not because Congress was, like, an  
23 overly -- overly moral being in this respect.  
24 It's because it's the same harm.

25           If there's a beforehand agreement in

1 this case, it doesn't change anything because  
2 it's crystal-clear that what the -- the  
3 Petitioner was doing was taking a public act  
4 intending to get that reward.

5 And -- and whether there's a  
6 beforehand agreement or not, the harm is,  
7 instead of doing the public act for the public  
8 good, he's doing the public act for his own --  
9 to line his own pockets.

10 JUSTICE JACKSON: Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,  
12 counsel.

13 CHIEF JUSTICE ROBERTS: Rebuttal, Ms.  
14 Blatt.

15 REBUTTAL ARGUMENT OF LISA S. BLATT

16 ON BEHALF OF THE PETITIONER

17 MS. BLATT: Thank you, Mr. Chief  
18 Justice.

19 I mean, at least we should get a 9-0  
20 remand because everything that we heard today  
21 was not charged to the jury. It is truly, as a  
22 former government lawyer, baffling how someone  
23 could just say that it was not contested, that  
24 this was wrongful.

25 No citation. Of course, it was

1 contested. The whole argument was this was a  
2 legitimate consulting agreement because local  
3 officials don't make any money.

4 And just because the government says  
5 it at argument doesn't make it true, especially  
6 when they don't have a citation. There was no  
7 jury instruction. And then, at times, I feel  
8 like we're in a Senate room drafting language.

9 She literally said, here's what the  
10 guidelines are going to look like going forward.  
11 What we're going to do is we're going to isolate  
12 wrongfulness, we're going to talk about if it  
13 appears for public sale and on and on and on,  
14 and then she said consciousness of wrongdoing 36  
15 times.

16 Consciousness of wrongdoing has never  
17 appeared, and here's where, if we're going to  
18 look at text, guess what, "corruptly" applies to  
19 bribery. It has to mean the same thing.  
20 Corruptly as a consciousness of wrongdoing has  
21 never been the mens rea for bribery.

22 And so now every single prosecution  
23 for bribery, I guess a defendant is entitled to  
24 an instruction, I didn't know what I was doing  
25 was wrongful. I didn't know it was unlawful.



1 My hospital said I could do this. No. She  
2 wants a separate rule for "corruptly."

3 And to say that it's not part of the  
4 case is absurd. "Corruptly" means quid pro quo.  
5 Intending to be influenced and intending to be  
6 rewarded are parts of that quid pro quo.

7 The other thing I just want to get to,  
8 and Justice Kavanaugh got on this, there is a  
9 statute that she -- the -- the statute applies  
10 to accepting. It also applies to anyone who  
11 gives. That's 666(a)(2). So 300 million  
12 Americans are covered by this. Anyone who gives  
13 a gift commits a crime if it's corrupt.

14 Now that consciousness of wrongdoing  
15 has to apply to the person who goes to the car  
16 dealership or to the billionaire or the poor  
17 person who wants to give a toy -- a toy truck.

18 And then she said, well, I guess it's  
19 standard practice and you have to ask for it and  
20 be for sale. You see something, you say, you  
21 know, I like your water bottle, it's got that,  
22 you know, nice little Apple logo. Here, take  
23 it. Gratuity, you just give your job away for  
24 sale. You literally said, you know, you want  
25 it, you can have it, or they asked for it.

1                   I mean, this is -- this is  
2 preposterous that this would go into inherently  
3 wrongful. I still can't figure out what about  
4 escort services. That seems not standard  
5 practice to give that to your university  
6 admissions. But maybe a plaque would be? Or  
7 maybe a crystal -- a crystal would be. There's  
8 just -- there's literally no guidance here.

9                   And the real irony is at least the  
10 banking officials would have more guidance.  
11 This is just kind of made up as -- as like it  
12 sounds like in moot court they worked this out  
13 because it would sound good.

14                   The stuff on the lesser included and  
15 greater -- greater included was gibberish. It  
16 is a -- recognized in government manuals that  
17 this is a greater included offense.

18                   And she said, well, it only applies to  
19 "demand." But the statute says "demand or  
20 agrees to accept." So, if you agree to accept  
21 something, you don't have to demand. That's  
22 clearly a bribery. There is no set of  
23 circumstances where, if you've proved -- proved  
24 a reward, you would ever need to prove a  
25 bribery. And that's why the government manual

1 says go for -- go for broke, go for both. All  
2 you need to do is prove one, and you'll at least  
3 get, at least in the federal officials, a  
4 two-year conviction. Here, you get a 10-year  
5 conviction. The government sought six years  
6 here. We showed examples where they've -- they  
7 prosecuted for four years.

8           And the other thing in terms of the  
9 line-drawing, I don't know why "can I get a ride  
10 in the Uber" would not count because that's  
11 asking for, you know, part of -- part of a -- a  
12 value. And this definition of consciousness of  
13 wrongdoing, I don't think it gives anybody any  
14 guidance whatsoever about what happens day in  
15 and day out. So at least we get a remand.

16           And -- and, Justice Sotomayor, on the  
17 harmless error under Nader, I'm not sure why she  
18 said evidence sufficiency. The standard is  
19 beyond a reasonable doubt. They'd have to show  
20 the jury instruction, and so there would have to  
21 be overwhelming evidence of bribery. And so  
22 that would have to be worked on a remand. But  
23 none of this was in the jury instruction. It  
24 was adequately yelling to the -- the top of the  
25 roof that this could only apply to gratuity,

1 i.e., gratuities were not wrongful.

2 Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you,  
4 counsel.

5 The case is submitted.

6 (Whereupon, at 11:43 a.m., the case  
7 was submitted.)

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## Official - Subject to Final Review

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