

## U.S. Supreme Court

# Physical force gets expansive meaning in SCOTUS interpretation of domestic-violence gun ban

Posted Mar 26, 2014 1:03 PM CDT

By [Debra Cassens Weiss](#)

The U.S. Supreme Court has held that offensive touching can qualify as a “misdemeanor crime of domestic violence” that disqualifies the perpetrator from owning a gun.

The court [ruled](#) (PDF) in the case of James Alvin Castleman, who pleaded guilty to the misdemeanor offense of intentionally or knowingly causing bodily injury to the mother of his child. Though the court was unanimous in holding that Castleman’s conviction disqualified him from possessing a gun under federal law, a debate emerged over the meaning of domestic violence.

On one side was Justice Sonia Sotomayor, who wrote the opinion for the court, and on the other was Justice Antonin Scalia, who was among three concurring justices. Justice Samuel A. Alito Jr. wrote the second concurrence, joined by Justice Clarence Thomas.

At issue was the meaning of the federal gun-control law that bars people from possessing guns if they have been convicted of a misdemeanor crime of domestic violence, defined as a crime that “has, as an element, the use or attempted use of physical force.”

Prosecutors had accused Castleman of selling guns on the black market and alleged that he violated the federal gun law because of his prior misdemeanor conviction for bodily injury in Tennessee. The state law defined bodily injury to include a cut, abrasion, bruise, burn or disfigurement. Sotomayor said these injuries constitute a use of force under the common-law meaning.

At common law, Sotomayor said, the element of force in the crime of battery was “satisfied by even the slightest offensive touching.” Because perpetrators of domestic violence are often prosecuted under assault or battery laws, it makes sense for Congress to have considered such offensive touching to satisfy the standard that disqualifies a person from owning a firearm, Sotomayor said.

The word “violent” may connote a substantial degree of force when standing alone, but not in the context of domestic violence, Sotomayor added. Indeed, Sotomayor said, quoting from a 2000 Justice Department [report](#) (PDF), “most physical assaults committed against women and men by intimates are relatively minor and consist of pushing, grabbing, shoving, slapping and hitting.”

“Minor uses of force may not constitute ‘violence’ in the generic sense,” Sotomayor wrote. But a minor act such as a squeeze of an arm, causing a bruise, is “easy to describe as ‘domestic violence,’ when the accumulation of such acts over time can subject one intimate partner to the other’s control.”

In his concurrence, Scalia agreed that Castleman’s conviction disqualified him from owning a gun, but he took issue with Sotomayor’s “inventive, nonviolent definition” of physical force.

The court ignores accepted definitions of domestic violence, Scalia said, opting instead to cite expansive definitions in an amicus brief by the National Network to End Domestic Violence and publications issued by the Justice Department’s Office on Violence Against Women. As an example of the broad definition, Scalia cited amici’s description of domestic violence as acts that humiliate, isolate, frighten and blame; excessive monitoring of a woman’s behavior; repeated accusations of infidelity; and controlling contact with others.

“The offerings of the Department of Justice’s Office on Violence Against Women are equally capacious and (to put it mildly) unconventional,” Scalia said. Its publications describe domestic violence as a pattern of abusive behavior used to maintain control over another, undermining a partner’s sense of self-worth, name-calling, and damaging a partner’s relationship with children, he said.

“Of course,” Scalia said, “these private organizations and the Department of Justice’s (nonprosecuting) Office are entitled to define ‘domestic violence’ any way they want for their own purposes—purposes that can include (quite literally) giving

all domestic behavior harmful to women a bad name. (What is more abhorrent than violence against women?) But when they (and the court) impose their all-embracing definition on the rest of us, they not only distort the law, they impoverish the language. When everything is domestic violence, nothing is.”

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