

1 MS. SACHS: But, under 1983, there is  
2 no violation. Her right to just compensation  
3 is what Section 1983 protects. And, of course,  
4 because the Fifth Amendment provides the right  
5 to compensation, and the Fourteenth Amendment  
6 prohibits a state from denying that right, we  
7 have not denied that right.

8 JUSTICE GORSUCH: Counsel, I -- I --

9 JUSTICE KAGAN: Can I go back --

10 JUSTICE GORSUCH: -- I think this gets  
11 back to Justice Breyer's question a little bit,  
12 which is you could say that the violation is  
13 complete upon the taking of the property with  
14 the denial of compensation, as Justice Alito  
15 just alluded to, and you've just denied that  
16 any compensation is due.

17 Or you could say it should wait until  
18 a state litigation process has exhausted  
19 itself. And maybe it makes sense to wait when  
20 the state has acknowledged a duty to pay, and  
21 we can say the state's probably good for it.  
22 And that's where those cases originally came  
23 from, Cherokee and some of the early ones.

24 But maybe -- maybe it doesn't make  
25 sense when the state has denied any obligation

1 to pay. Maybe -- maybe it makes -- maybe it is  
2 different when it's an inverse condemnation,  
3 because when we look at other -- other  
4 constitutional rights, we don't say that a  
5 First Amendment violation isn't complete until  
6 someone has litigated that claim in state court  
7 under state processes or a Fourth Amendment  
8 claim.

9 And when you look at the history of  
10 inverse condemnation suits, they originated in  
11 common law under trespass. It's a simple claim  
12 against the state for trespass. That's what an  
13 inverse condemnation suit is. Nothing more,  
14 nothing less.

15 So why should we single out the --  
16 this particular right, the takings clause, for  
17 such disfavored treatment to wait to exhaust  
18 state remedies that wind up in this ripeness  
19 world to yield a moot federal claim?

20 MS. SACHS: A -- a couple of answers  
21 to that question, Your Honor.

22 Number one, we are not giving  
23 disfavored treatment to property rights. The  
24 Constitution does not protect the right to hold  
25 onto your property when the government has a

1 just reason to take it.

2 And the -- what the Constitution  
3 protects is the right to get just compensation  
4 for that. And this Court since, I think, 1895,  
5 has specifically said inverse condemnation is  
6 an appropriate form of -- of providing that  
7 reasonable, certain, and adequate compensation.

8 JUSTICE GORSUCH: But we could say the  
9 exact same thing with a Fourth Amendment claim  
10 or a First Amendment claim. There are a lot of  
11 great state judges out there, every bit as good  
12 as any federal judge. And there are a lot of  
13 state tort claims that are available equivalent  
14 to the trespass claim of an inverse  
15 condemnation suit.

16 Why don't we wait to see how they  
17 adjudicate a Fourth Amendment violation by a  
18 police officer who's engaged in excessive  
19 force? Why don't we wait for -- when the  
20 prosecutor's engaged in malicious prosecution?  
21 We don't because 1983 says you don't have to  
22 wait. Why not here?

23 MS. SACHS: Actually, with malicious  
24 prosecution, Your Honor, we do. And that's one  
25 example of times when we do require litigants