

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

-----  
JESUS C. HERNANDEZ, ET AL.,                    )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
  )  
-----

Pages: 1 through 68  
Place: Washington, D.C.  
Date: November 12, 2019

---

**HERITAGE REPORTING CORPORATION**  
*Official Reporters*  
1220 L Street, N.W., Suite 206  
Washington, D.C. 20005  
(202) 628-4888  
[www.hrccourtreporters.com](http://www.hrccourtreporters.com)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

JESUS C. HERNANDEZ, ET AL., )

Petitioners, )

v. ) No. 17-1678

JESUS MESA, JR., )

Respondent. )

- - - - -

Washington, D.C.

Tuesday, November 12, 2019

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:31 a.m.

APPEARANCES:

STEPHEN I. VLADECK, ESQ., Austin, Texas;

on behalf of the Petitioners.

RANDOLPH J. ORTEGA, ESQ., El Paso, Texas;

on behalf of the Respondent.

JEFFREY B. WALL, Principal Deputy Solicitor

General, Department of Justice, Washington, D.C.;

for the United States, as amicus curiae,

supporting the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	STEPHEN I. VLADECK, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	RANDOLPH J. ORTEGA, ESQ.	
7	On behalf of the Respondent	33
8	ORAL ARGUMENT OF:	
9	JEFFREY B. WALL, ESQ.	
10	For the United States, as amicus	
11	curiae, supporting the Respondent	52
12	REBUTTAL ARGUMENT OF:	
13	STEPHEN I. VLADECK, ESQ.	
14	On behalf of the Petitioners	65
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(11:31 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 17-1678, Hernandez versus Mesa.

Mr. Vladeck.

ORAL ARGUMENT OF STEPHEN I. VLADECK  
ON BEHALF OF THE PETITIONERS

MR. VLADECK: Mr. Chief Justice, and may it please the Court:

When this case was first argued to this Court two years ago, counsel for Respondent and counsel for the United States were both asked whether Petitioners would have a Bivens remedy if Sergio Hernandez had been standing on U.S. soil when he was shot and killed by Respondent. Both said yes.

The question before this Court today is, therefore, whether a Bivens action is nevertheless foreclosed because, in this case, Sergio was standing a few feet to the Mexican side of the border at the time he was shot.

For two reasons, we believe that it isn't. First, the fortuity of where a victim is standing does not, in fact, trigger any of the

1 special factors counseling hesitation identified  
2 by Respondent or the United States.

3 Most importantly, it is difficult to  
4 see how foreign relations could be a special  
5 factor precluding a Bivens suit here if it  
6 wouldn't have precluded a Bivens claim had  
7 Sergio been standing just a few feet away.

8 Moreover, the government's assertion  
9 that permitting Petitioners' suit would  
10 dramatically undermine U.S. foreign relations  
11 and diplomacy is belied by the long history of  
12 successful tort claims against federal law  
13 enforcement officers, including, as in the  
14 Apollon, cases in which the victim was a  
15 foreigner harmed on foreign soil, the Court  
16 awarded damages, and the diplomatic sky did not  
17 fall.

18 Nor does extraterritoriality cut  
19 against a Bivens remedy here. Not only was  
20 Respondent standing on U.S. soil when he pulled  
21 the trigger, but he could not have known in that  
22 instant where the bullet would even land, let  
23 alone the nationality of anyone it might hit.

24 Second and as importantly, for  
25 Petitioners here, it is Bivens or nothing.

1 Neither Respondent nor the United States  
2 seriously disputes that the Westfall Act  
3 preempts the Texas tort remedy Petitioners could  
4 otherwise have pursued, and neither has  
5 identified any other alternative remedy for the  
6 Petitioners here as opposed to other parties in  
7 other cases.

8 All of this goes to why this Court was  
9 right in Abbasi when it explained that there are  
10 powerful reasons to retain Bivens as a remedy  
11 for individual instances of law enforcement  
12 overreach. And it goes to why, even though  
13 Sergio was standing on Mexican soil when he was  
14 shot and killed, this case presents the exact  
15 kind of law enforcement overreach that Abbasi  
16 had in mind.

17 I think Abbasi is a useful place to  
18 begin our analysis because, in that case, not  
19 only did this Court suggest that there were  
20 still important reasons to retain Bivens in law  
21 enforcement contexts, but this Court itself  
22 actually preserved and retained one of the  
23 plaintiffs' Bivens claims. This Court returned  
24 to the district court, rather than dismissing,  
25 the prisoner abuse claim against the warden of

1 the MDC.

2           And we think that reflects four of the  
3 reasons why retaining Bivens in the law  
4 enforcement sphere makes sense. First, as this  
5 Court said in *Abbasi*, it is difficult to  
6 contemplate other remedies when individual  
7 instances of law enforcement overreach are at  
8 play. In those contexts, a damages action after  
9 the fact will usually be the only possible legal  
10 recourse. It's going to be difficult to bring a  
11 claim in advance.

12           Second, the deterrence effect, what  
13 this Court has called the core purpose of  
14 *Bivens*, which is to deter individual officers,  
15 could quite easily be lost in the absence of  
16 remedies in the law enforcement context, unlike  
17 in *Abbasi*, where, as this Court stressed, there  
18 were alternative remedies available to the  
19 plaintiffs.

20           Third, the historical tradition that  
21 we note in our brief, where federal courts and  
22 state courts, going all the way back to the  
23 founding, routinely imposed tort damages against  
24 federal officers acting *ultra vires*, without  
25 suggesting there were separation-of-powers

1 obstacles to doing so, without suggesting that  
2 there was anything wrong with the federal courts  
3 providing a cause of action in those cases.

4 As opposed to, I think, where the  
5 inquiry historically has focused, immunity. Are  
6 there reasons in these cases to actually hold  
7 the -- the defendant officer harmless, not  
8 because there's no cause of action but because  
9 he was acting in good faith or, under the modern  
10 standard, because he did not violate clearly  
11 established rights of which a reasonable officer  
12 in his position would have been aware.

13 JUSTICE KAVANAUGH: They argue --

14 JUSTICE ALITO: If the --

15 JUSTICE KAVANAUGH: Go ahead.

16 JUSTICE ALITO: If the officer in this  
17 case had been a state officer and everything  
18 else was the same, would the victim have a claim  
19 in federal court?

20 MR. VLADECK: So, if the question is  
21 in federal court, Justice Alito, I think it  
22 would depend on diversity. I don't believe the  
23 victim would be able to bring a claim under 1983  
24 because, as the government points out, the  
25 language of that statute limits the class of



1 plaintiffs to U.S. citizens and those subject to  
2 the jurisdiction thereof.

3 But, Justice Alito, Congress, when it  
4 enacted 1983, as Judge Prado noted in his  
5 dissent below, was not thinking about limiting  
6 remedies that were otherwise available; it was  
7 thinking about expanding remedies, in that  
8 context in 1871, to newly freed slaves.

9 So 1983 does nothing to displace  
10 whatever state tort remedies might be available  
11 against state officers. Now, of course, that's  
12 going to vary a bit.

13 JUSTICE GINSBURG: Suppose -- suppose  
14 there were no 1983, and a state officer had done  
15 exactly what the Bureau of Narcotics agents did  
16 in Bivens. Would there be an action against the  
17 state officer?

18 MR. VLADECK: There would be, Justice  
19 Ginsburg. And, actually, I think it's worth in  
20 this context reminding the Court of the  
21 government's position in Bivens. The  
22 government's position in Bivens itself was not  
23 that the federal courts should not be  
24 recognizing these remedies in any context.  
25 Rather, the government's position in Bivens was

1 that New York State tort law would have provided  
2 an adequate remedy, Justice Ginsburg, not just  
3 against the federal officer defendants in Bivens  
4 but also had they been, say, New York City  
5 police officers, that New York trespass law  
6 would have provided the remedy.

7 To quote from the government's brief  
8 in Bivens, a federal remedy should only be  
9 recognized when it is necessary. And the  
10 argument in Bivens was simply as to whether a  
11 complementary federal remedy was necessary to  
12 vindicate the plaintiff's Fourth Amendment  
13 rights, given the existence of New York trespass  
14 law, given the government's argument that New  
15 York trespass law in that context was adequate  
16 to vindicate the plaintiff's Fourth Amendment  
17 interests.

18 And this was the common law model. I  
19 mean, I think we are all familiar with Henry  
20 Hart's dialectic where Professor Hart suggested  
21 that the original understanding was that even  
22 federal officers would be principally  
23 responsible to judges in state court. There was  
24 no general federal question statute.

25 CHIEF JUSTICE ROBERTS: Your -- your

1 -- you reference the government's position in  
2 Bivens. That was almost 50 years ago. In the  
3 interim, there's been a fairly dramatic change  
4 in how we approach things as implying causes of  
5 action, both under statutes and under Bivens.

6 I mean, it's been, what, 40 years,  
7 right, since the last time we recognized a cause  
8 of action in Bivens? So I -- I -- I think you  
9 need to sort of move up half a century and  
10 explain to us why we should take your -- your  
11 approach today regardless of what the -- the  
12 prevailing legal regime was in '71.

13 MR. VLADECK: I take the point,  
14 Mr. Chief Justice, and if I may offer two points  
15 in response. The first is I say all of this by  
16 way of putting Bivens in context. That is to  
17 say that, rather than a bolt from the blue,  
18 Bivens was a continuation of this tradition.

19 But, to -- to wind the clock forward,  
20 which I think is, of course, the -- the task for  
21 the Court today, I think it's worth stressing  
22 that, of the nine cases this Court has decided  
23 since Carlson, which the government points out  
24 at page 11 of its amicus brief, where this Court  
25 has had the opportunity to recognize a Bivens

1 remedy and has chosen not to do so, none of  
2 those involved a claim that an individual  
3 federal law enforcement officer was acting ultra  
4 vires. None of the suits involved the kind of  
5 claim we have here. None of the suits involved  
6 the context in which this historical tradition  
7 was at its richest, Mr. Chief Justice. None of  
8 the suits or at least not all of the cases even  
9 involved claims that would have had a common law  
10 parallel.

11 And so we certainly recognize that  
12 this Court has been increasingly skeptical of  
13 judge-made causes of action in general and of  
14 Bivens in particular. Our point is simply that  
15 that skepticism has been reserved or at least  
16 focused on categories unlike this one.

17 JUSTICE KAVANAUGH: If Bivens were a  
18 statute, in effect, we would apply the  
19 presumption against extraterritorial  
20 application. And the other side argues that,  
21 therefore, even if it were a statute, it  
22 wouldn't apply in a circumstance like this.

23 What's your answer to that?

24 MR. VLADECK: Well, I think we have  
25 two answers, Justice Kavanaugh. And I think the

1 -- the first and most important is that but  
2 Bivens is not a statute and that this Court has  
3 never suggested, for example, that in looking at  
4 whether particular constitutional provisions  
5 apply extraterritorially, we would use any of  
6 the typical presumptions that we apply to  
7 statutes because it is a fundamentally different  
8 task from the perspective of looking at the  
9 extent to which the Constitution applies  
10 overseas versus what Congress would have  
11 intended.

12 But even if this Court, nevertheless,  
13 believes that it's appropriate to map on that  
14 presumption, I actually think Kiobel helps us  
15 more than it hurts us, because, in Kiobel, this  
16 Court said there will still be cases in which  
17 the -- the underlying conduct, the gravamen of  
18 the plaintiff's complaint, involves activity  
19 that touches and concerns U.S. soil with  
20 sufficient force to displace the presumption  
21 against extraterritoriality.

22 And so I think this Court could assume  
23 without deciding that extraterritoriality is a  
24 special factor for purposes of Bivens and still  
25 say this case is different because Respondent

1 was standing on U.S. soil at the time he pulled  
2 the trigger, that is touching and concerning  
3 U.S. territory from my perspective the way  
4 Kiobel meant it.

5 JUSTICE GORSUCH: What would  
6 distinguish --

7 JUSTICE GINSBURG: But the -- the --  
8 the victim, Hernandez, this Court has -- has  
9 said, I think, that a non-citizen who's injured  
10 abroad doesn't have any Fourth Amendment rights.

11 So what is -- it seems like a rather  
12 arid discussion if, at the end of the day, there  
13 is no federal constitutional right that can be  
14 asserted by a non-citizen who is injured abroad.

15 MR. VLADECK: So I think -- I think,  
16 Justice Ginsburg, that Verdugo certainly stands  
17 for the proposition that in that case there was  
18 no Fourth Amendment protection for a Mexican  
19 national whose home was searched by DEA agents  
20 operating in conjunction with the Mexican  
21 government.

22 I think this Court itself suggested in  
23 Hernandez I, two years ago, that the Fourth  
24 Amendment question in the context of a  
25 cross-border shooting is more complicated, and

1 it is the fact that that question is unsettled

2 --

3 JUSTICE GORSUCH: Well, what --

4 MR. VLADECK: -- that is -- sorry.

5 JUSTICE GORSUCH: -- what -- this is  
6 my question, too. I want to pick up on Justice  
7 Ginsburg.

8 What -- what then is the limiting  
9 principle? We have a foreign national injured  
10 abroad by an action in the United States.

11 I can think of a lot of cases that  
12 that's going to encompass, right? And not just  
13 cross-border shootings but all kinds of torts  
14 that can occur transnationally. Would you  
15 capture all of those or -- or --

16 MR. VLADECK: Not at all, Justice  
17 Gorsuch. And as I hope was clear --

18 JUSTICE GORSUCH: It can't -- it can't  
19 be that this is good for one shooting only,  
20 right?

21 MR. VLADECK: No. And, first, I mean,  
22 I think -- I think this Court is well aware that  
23 there's been more than one shooting, so --

24 JUSTICE GORSUCH: I understand that.

25 MR. VLADECK: But -- but no, I mean, I

1 think the -- the larger point is our position  
2 focuses on the law enforcement nature of the  
3 conduct at issue here.

4 And so many of the hypotheticals that  
5 I suspect you are thinking of, Your Honor, that  
6 I'd be thinking of, for a context in which a  
7 U.S. government person in the United States  
8 could --

9 JUSTICE GORSUCH: Why would it be  
10 limited to law enforcement as opposed to other  
11 governmental functions that happen here but  
12 happen to injure persons abroad?

13 MR. VLADECK: Because I think it's in  
14 the law enforcement context that there is the  
15 strongest argument, the strongest appeal to the  
16 historical tradition we note in our briefs,  
17 where there is a straight line dating all the  
18 way back to the founding where it was law  
19 enforcement, where common law remedies against  
20 federal officers were so important.

21 There aren't many examples, I could  
22 find none, of combat operations, for example,  
23 where state courts were imposing tort remedies  
24 against federal officers.

25 JUSTICE GORSUCH: So you'd have us --



1 you'd draw a line there, actively in this case  
2 and say that any -- any actions involving  
3 military operations, diplomatic operations, any  
4 other operations of government are not -- there  
5 -- there's no Bivens action there, it's only for  
6 law enforcement, whatever that means,  
7 operations?

8 MR. VLADECK: So, I mean, I --  
9 obviously, I wouldn't decide more than is  
10 necessary. But I do think --

11 JUSTICE GORSUCH: Ah, ah, okay.  
12 That's what -- that's what I thought you'd say.

13 MR. VLADECK: But -- but, Justice  
14 Gorsuch --

15 JUSTICE GORSUCH: All right. And so  
16 -- so where is, if -- if you're not willing to  
17 draw that line, where is it? And how is this  
18 Court supposed to draw it? You -- you say --  
19 you say you could say this, but I wouldn't say  
20 it. All right.

21 MR. VLADECK: I -- I -- I --

22 JUSTICE GORSUCH: Where would you draw  
23 the line?

24 MR. VLADECK: I think -- I think based  
25 on this Court's jurisprudence, and based on

1 Abbasi itself, I think the line could  
2 reasonably, plausibly, and --

3 JUSTICE GORSUCH: No, no, not  
4 reasonably, plausibly. Where would you have  
5 this Court draw the line?

6 MR. VLADECK: Well, I think, frankly,  
7 there are decisions this Court has handed down  
8 in the Bivens context that I think don't  
9 necessarily -- aren't necessarily consistent  
10 with this full tradition.

11 But it has still left open law  
12 enforcement conduct, Justice Gorsuch. And it's  
13 not just this Court that has done that.

14 Congress, in the 1974 amendment to the  
15 Federal Tort Claims Act, went out of its way to  
16 expand the liability of the United States for  
17 intentional torts committed by law enforcement  
18 officers.

19 JUSTICE SOTOMAYOR: Well --

20 JUSTICE GORSUCH: They are --

21 JUSTICE SOTOMAYOR: -- but I -- it's  
22 not just intentional torts. It's rogue  
23 intentional torts. That's an important limiting  
24 principle.

25 MR. VLADECK: It absolutely is,

1 Justice Sotomayor. And I hope it's clear in our  
2 briefs --

3 JUSTICE SOTOMAYOR: And accepting the  
4 facts of this case, the use of force is on U.S.  
5 land and it's unreasonable because the claim is  
6 that this young man was doing nothing but  
7 standing on the other side of the border.

8 MR. VLADECK: And I think this might  
9 be a -- a -- sort of a more convincing answer, I  
10 hope, to Justice Gorsuch, which is I do believe  
11 that it is relevant to the claim and the  
12 strength of our claim in this case that the  
13 Respondent was, according to the plausible  
14 allegations in the plaintiff's complaint,  
15 violating not just the Constitution but his own  
16 departmental regulations, that we have not just  
17 a law enforcement officer, Justice Gorsuch, but  
18 a law enforcement officer acting ultra vires.

19 JUSTICE BREYER: Are we supposed to  
20 decide this? I mean, I thought -- I wrote a  
21 dissent, I guess, but I thought this is special  
22 because it's American law enforcement, American  
23 soil, and he thought he might be shooting at an  
24 American, and the -- the border in this case is  
25 rather special, it's not just the line, it was

1 the river, and it's administered by an  
2 international commission, dah-dah-dah, okay, I  
3 have about six wonderful reasons that persuaded  
4 only me. Okay.

5 But the --

6 (Laughter.)

7 JUSTICE BREYER: Or now -- now --

8 MR. VLADECK: I believe you also  
9 persuaded --

10 JUSTICE BREYER: -- I thought we're  
11 taking this case on the assumption that the  
12 Fourth Amendment does apply, and the only issue  
13 in front of us is not that but, rather, we  
14 assume that the Fourth Amendment applied, that  
15 it is a clear violation of the Fourth Amendment,  
16 and the question is Abbasi, whether there is a  
17 Bivens action for a clear rogue violation of the  
18 Fourth Amendment that takes place in the way  
19 this does.

20 Is that sufficient, to use the Abbasi  
21 term that -- which I've now lost, but the Abbasi  
22 term that this is some kind of extension of the  
23 Fourth Amendment or that this is some kind of  
24 special situation? That, I thought, was the  
25 issue.

1                   And at some point, I -- I feel, I'll  
2                   try to answer that question, but I'd like to  
3                   hear what you say about that.

4                   MR. VLADECK: I -- I -- I agree  
5                   completely, Justice Breyer. I mean, I think  
6                   that Abbasi -- I don't think Abbasi --

7                   JUSTICE BREYER: I don't care whether  
8                   you agree or not. All I want to hear is your  
9                   argument on -- I don't want to repeat myself --  
10                  but on the assumptions I gave --

11                  MR. VLADECK: Yes.

12                  JUSTICE BREYER: -- what is your  
13                  argument that this is not an extension, that  
14                  this is not special, that this is not an unusual  
15                  thing?

16                  MR. VLADECK: I understand.

17                  JUSTICE BREYER: What's your argument?

18                  MR. VLADECK: So our argument is,  
19                  first, that this Court has long recognized that  
20                  claims against individual law enforcement  
21                  officers for excessive force are what the Fifth  
22                  Circuit called classic Bivens claims.

23                  I believe there's an opinion by then  
24                  Judge Kavanaugh referring to it as the core of  
25                  Bivens to bring a claim that an individual law

1 enforcement officer is acting ultra vires.

2           So, Justice Breyer, I think there's at  
3 least an argument that this might not even be a  
4 new context. But, even if it is a new context,  
5 the government and Respondent have identified  
6 three special factors that they argue counsel  
7 hesitation.

8           First, they say it's because this case  
9 implicates foreign relations and national  
10 security. As we suggest in our briefs, we don't  
11 believe that follows simply from the fact that  
12 Sergio Hernandez was standing on the Mexican  
13 side of the border as opposed to the American  
14 side of the border.

15           The government also argues  
16 extraterritoriality as a special factor. As I  
17 think I hope I explained in response to Justice  
18 Kavanaugh's question, we don't think  
19 extraterritoriality is implicated here because  
20 this case touches and concerns U.S. territory  
21 with sufficient force to displace the  
22 presumption.

23           And the third extra -- the third  
24 special factor invoked by Respondent and the  
25 government is congressional action. And I

1 think, in that context, there's no example of  
2 Congress specifically trying to preclude claims  
3 like Petitioners here.

4 And the only time Congress has ever  
5 spoken to the tort liability of, again, Justice  
6 Gorsuch, this is where we get our test from,  
7 individual federal law enforcement officers,  
8 Congress has expanded that liability.

9 CHIEF JUSTICE ROBERTS: Counsel --

10 JUSTICE GINSBURG: Tell me --

11 CHIEF JUSTICE ROBERTS: -- just to go  
12 with the first of the things you mentioned, the  
13 international relations, there has been  
14 diplomatic correspondence between the Mexican  
15 government and our government with respect to  
16 this -- this -- this incident.

17 The Border Patrol has conducted an  
18 investigation, and it reached the determination  
19 that the action of the agent was not contrary to  
20 policy.

21 And you would have the courts look  
22 into this by avail -- providing a Bivens remedy  
23 that could well come to the opposite conclusion.  
24 So that in terms of our relations with Mexico,  
25 we'd have one agency saying this was not

1 inconsistent with policy. We'd have the court  
2 saying it is.

3           And that is the type of thing that it  
4 makes it at least a -- a new context. You can  
5 say it doesn't make a difference, but, in terms  
6 of our relations with Mexico, they've got two  
7 different things, and at least with respect to  
8 foreign relations, I thought the country was  
9 supposed to speak with one voice.

10           MR. VLADECK: So I do -- I certainly  
11 agree that the -- that the country is supposed  
12 to speak with one voice, Mr. Chief Justice. Two  
13 -- two points in response. The first is, of  
14 course, if the government continues to believe  
15 and if Respondent continues to believe there  
16 would be a Bivens remedy if Sergio Hernandez had  
17 simply been standing on American soil, it's not  
18 clear to me why the same concerns wouldn't be  
19 equally present.

20           That is to say, by that logic, any  
21 time a U.S. officer harms any foreign national,  
22 even if Bivens itself -- if Bivens had been a  
23 foreign national, it's not hard to imagine  
24 similar diplomatic correspondence following from  
25 that incident.



1 JUSTICE KAVANAUGH: They argue it's  
2 not merely the foreign policy implications that  
3 the Chief Justice identified but that border  
4 security is also national security in some  
5 respects and that that's a different context,  
6 slightly different than the foreign relations.

7 Can you address that?

8 MR. VLADECK: Absolutely. And we  
9 certainly agree that border security as a policy  
10 is an important policy of the United States,  
11 that if we were here challenging one of the  
12 government's border patrol policies, this would  
13 be a different case.

14 But I think it's important to note,  
15 back to the Chief Justice's question, that the  
16 dispute here is over whether Respondent violated  
17 the very government policy at issue. That is to  
18 say, we are not challenging a policy of the  
19 government. We are claiming Respondent himself  
20 did not comply with that policy.

21 The government's entitled, Mr. Chief  
22 Justice, to its own preliminary determination of  
23 that question. We don't think it is the kind of  
24 policy to which this Court has historically  
25 accorded deference in the foreign relations and

1 national security sphere, if it's an  
2 after-the-fact factual determination about a  
3 single incident, as opposed to, say, a challenge  
4 to an entire border patrol policy.

5 JUSTICE ALITO: I thought you were  
6 challenging the --

7 JUSTICE SOTOMAYOR: Can you go back  
8 to --

9 JUSTICE ALITO: -- I thought you were  
10 challenging the constitutionality of what was  
11 done, not whether it was consistent with border  
12 patrol policy.

13 MR. VLADECK: So, Justice Alito --

14 JUSTICE ALITO: Is that -- is that --  
15 does that provide the basis for a federal claim?  
16 If it were -- if you put the Fourth Amendment  
17 aside, but the action was contrary to border --  
18 border patrol policy, would that provide the  
19 basis for a federal claim?

20 MR. VLADECK: Not for a damages suit,  
21 of course, but --

22 JUSTICE ALITO: Yes.

23 MR. VLADECK: -- but it is our  
24 position, Justice Alito, that -- just to go back  
25 to my colloquy with Justice Gorsuch, again, the

1 reason why we believe this is in the heartland  
2 of Bivens, notwithstanding the concerns that the  
3 Chief Justice has referred to and that Justice  
4 Kavanaugh alluded to, is because, here, we do  
5 not have a case where the claim is that a  
6 particular policy of the United States in the  
7 foreign relations or national security sphere  
8 was the source of the injury to the plaintiffs.

9 Here, our argument is that the policy  
10 is actually coextensive with the Constitution,  
11 and so that if we are correct, which we have not  
12 yet, of course, had a chance to prove, but if we  
13 are correct that Respondent violated  
14 Petitioner's constitutional -- or Sergio  
15 Hernandez's constitutional rights, Justice  
16 Alito, there would also be a violation of  
17 policy.

18 And so, to us, the questions blend  
19 together because it helps to drive home why this  
20 case is not like the nine cases this Court has  
21 had since Carlson --

22 JUSTICE GINSBURG: Can -- can we --  
23 can we go back to the question that I asked? If  
24 breaking into someone's home and searching and  
25 seizing, if that's not a Fourth Amendment

1 violation because the person is a non-citizen  
2 and it happened abroad, you said a cross-border  
3 shooting is more complicated. Why should it be  
4 different?

5 MR. VLADECK: So, Justice Ginsburg,  
6 with respect, I actually think it was this Court  
7 that said that in Hernandez I. And I think the  
8 reason why is because there is some uncertainty  
9 in the lower courts, as reflected in the Ninth  
10 Circuit's decision in the Rodriguez case, the  
11 original three-judge panel decision in this  
12 case.

13 There is some uncertainty about just  
14 how broadly this Court's decision in  
15 Verdugo-Urquidez, in which the Court said a  
16 Mexican national could not invoke the Fourth  
17 Amendment to challenge the search of his home --  
18 the warrantless search of his home by a DEA  
19 officer, there's uncertainty about how far that  
20 sweeps. Is that a categorical on/off switch at  
21 the border, or are there reasons to actually  
22 think the Fourth Amendment question is more  
23 complicated in the context in which you have  
24 cross-border episodes, especially after  
25 Boumediene? And that is say, does Verdugo still

1 have the same force? Now --

2 JUSTICE SOTOMAYOR: Mr. Vladeck, there  
3 is one part of the Chief's question you didn't  
4 answer. The government's speaking with one  
5 voice, and you said the government should. But  
6 he's posited a big difference here. The  
7 government -- the executive has said this was  
8 not a rogue action. This security guard.  
9 They've concluded on -- based on what, we don't  
10 know -- that this officer was being attacked and  
11 that's why he shot. The allegations of this  
12 complaint are to the contrary.

13 If the court were to rule in favor of  
14 your client -- not the court, but a jury were to  
15 have found in favor of your client, wouldn't we  
16 be speaking in two voices? You haven't  
17 addressed that.

18 MR. VLADECK: Thank you, Justice  
19 Sotomayor. And I think our response is I think  
20 that this Court has never suggested that every  
21 single thing the United States says that has any  
22 bearing on any possible sliver of foreign  
23 relations is the kind of foreign policy where  
24 this Court has said the -- the government should  
25 be allowed to speak with one voice.

1           And so I think there's a meaningful  
2           distinction between a policy that is ex ante  
3           shaping the conduct of our border patrol  
4           officers, of our government officers, where a  
5           judicial decision might call into question the  
6           policy, and a context where the dispute rises  
7           and falls on whether the government's own policy  
8           prohibiting excessive force in violation of the  
9           Constitution was violated. That is to say, it  
10          seems to me that there's merger.

11           JUSTICE KAGAN: But what if,  
12          Mr. Vladeck, you had -- you have this one  
13          incident and the executive branch had a very  
14          different view of what happened than a court  
15          did? A court said there was unconstitutional  
16          conduct here, the use of excessive force. But  
17          the executive branch thought he did everything  
18          by the book, and, you know, he isn't subject --  
19          he shouldn't be subject to any action, even a  
20          disciplinary one.

21           And then the court's decision,  
22          contrary to that -- let's say Mexico wants to  
23          extradite the border patrol officer. And that  
24          puts, I would think, the executive branch in a  
25          quite difficult situation. Should -- you know,

1 Mexico is pointing at a court judgment, but the  
2 executive branch thinks that there's no earthly  
3 reason to extradite. What happens then?

4 MR. VLADECK: Well, I think, Justice  
5 Kagan, there's a critical difference between  
6 what the preclusive effect of a civil judgment  
7 about the unconstitutional conduct by the  
8 officer would prove and whether the Mexican  
9 government would be able to satisfy the very  
10 different inquiry of whether there's sufficient  
11 evidence to sustain a criminal indictment and to  
12 warrant extradition under the terms of the  
13 U.S./Mexico extradition treaty.

14 And I think that's the key point here,  
15 is that, on the government's logic, all it takes  
16 is the government showing up after an incident  
17 and saying, oh, there's some reason why we don't  
18 believe this was unlawful or there's some  
19 foreign relations implication to a judgment  
20 holding it's lawful. And if it's after the  
21 fact, that won't matter; it would still preclude  
22 Bivens.

23 CHIEF JUSTICE ROBERTS: Well, that's,  
24 I think, a fairly unfair characterization of  
25 what the government did in this case. According

1 to their representations, it was a fairly  
2 thorough investigation.

3 And maybe it's -- at the end of the  
4 day, maybe a jury would come to a different  
5 determination than the governmental  
6 investigation, but I don't think that's fully  
7 responsive to the international relations  
8 concerns.

9 MR. VLADECK: That -- that's fair that  
10 you ask --

11 CHIEF JUSTICE ROBERTS: But, even if  
12 not fully responsive, it has to be demonstrated  
13 it's simply a new context for the Bivens  
14 question.

15 MR. VLADECK: That -- that may well  
16 be, and I think our submission is simply that  
17 the question this Court has always suggested in  
18 the Bivens context is how to preserve its core  
19 deterrent purpose, and in a context in which the  
20 government's after-the-fact factual  
21 determination that an officer had acted  
22 appropriately under the circumstances were  
23 sufficient to be a policy choice, that does not  
24 actually give rise to the kind of deference this  
25 Court has historically accorded.



1           Right? That's what we're worried  
2 about because it's not clear how that wouldn't  
3 potentially, if not in this case, swallow the  
4 category, right? That is to say, if Abbasi  
5 meant what it said when it said there are  
6 powerful reasons to retain Bivens in the law  
7 enforcement context, we think that's true,  
8 Mr. Chief Justice, even when the government has  
9 other -- other equities at stake.

10           Because, again, the key for us is when  
11 a court is saying an individual officer has  
12 acted ultra vires, it is not the same thing as  
13 saying the government's policy is somehow  
14 inconsistent with the Constitution.

15           It's not the same thing as saying we  
16 are second-guessing how the government has  
17 chosen to conduct border patrol policies. It's  
18 simply saying this one officer went out of  
19 bounds. And that's the kind of claim that was  
20 historically available at common law. It's the  
21 kind of claim Congress preserved in the FTCA  
22 amendment.

23           And if I may, I think the -- the point  
24 of Abbasi at the end of the day is to draw the  
25 distinction between the kind of claim this Court

1 rejected, which was a high-level challenge to  
2 post-9/11 policies formulated by the attorney  
3 general and the FBI director, and the individual  
4 law enforcement officer engaged in overreach.

5 CHIEF JUSTICE ROBERTS: Thank you,  
6 counsel.

7 Mr. -- Mr. Ortega.

8 ORAL ARGUMENT OF RANDOLPH J. ORTEGA  
9 ON BEHALF OF THE RESPONDENT

10 MR. ORTEGA: Mr. Chief Justice, and  
11 may it please the Court:

12 The Petitioners are asking this Court  
13 to create a cause of action, an implied cause of  
14 action, where none has existed since the  
15 formation of our republic, by extending Bivens  
16 in a new context, where Congress has not -- has  
17 declined to provide a remedy. And Congress's  
18 silence is telling. They've addressed this  
19 issue in the FTCA, which bars foreign claims.  
20 They've addressed it again in the Alien Tort  
21 Statute. And they addressed it again in  
22 Westfall, that carved out an exception for  
23 Bivens.

24 The new context in this case is not  
25 only the transnational aspect but also the

1 utilization of the Fifth Amendment's Due Process  
2 Clause. The new context itself fails, and the  
3 argument that there's a lack of a remedy fails  
4 when the Court takes into consideration the  
5 special factors that are involved in this case:  
6 intruding on the separation of powers, where  
7 Congress and the executive have their domain;  
8 national security -- and border patrol is  
9 national security.

10 The border patrol is the forefront of  
11 our national security. The border patrol, much  
12 like the military, is a paramilitary  
13 organization charged with protecting our  
14 borders. Congress has chosen, and  
15 non-inadvertently, not to create a damages  
16 remedy.

17 And if a damages remedy is  
18 appropriate, it is the unique domain of Congress  
19 to consider the public policy, to balance the  
20 projected costs. And it requires an assessment  
21 of its impact system-wide.

22 The executive is in charge of foreign  
23 affairs. There's an actual dispute in this case  
24 as Mexico would like a remedy and the United  
25 States has argued against a remedy. Mexico --

1                   JUSTICE GINSBURG:  If we can go back  
2                   to the -- this complaint, and at this stage,  
3                   this very preliminary stage, we're supposed to  
4                   accept the complaint's allegations as true,  
5                   which is that, here, we have a rogue officer  
6                   acting in violation of the agency's own  
7                   instruction, using excessive force to kill a  
8                   child at play, how does that call into question  
9                   any foreign policy or national security policy?

10                   MR. ORTEGA:  Well, it would create a  
11                   chilling effect as to the border patrol agents  
12                   in conducting their day-to-day activities, but  
13                   not only a chilling effect, you would be -- the  
14                   lower courts would be in chaos.  There would be  
15                   --

16                   JUSTICE SOTOMAYOR:  Well, doesn't that  
17                   happen if the shooting happened in our own land?  
18                   Meaning a border patrol agent who sees a child  
19                   at play and kills him two feet from the line is  
20                   not chilled.  He knows he can't do that.

21                   What makes it chilling to tell a  
22                   border patrol agent don't shoot indiscriminately  
23                   at children standing a few feet from the border?  
24                   We have to accept the facts of the complaint on  
25                   their face.

1 MR. ORTEGA: That's correct.

2 JUSTICE SOTOMAYOR: All right. On  
3 their face, the complaint says that's what the  
4 border agent did.

5 MR. ORTEGA: But -- but you can't view  
6 it in a vacuum. It would be applicable --

7 JUSTICE SOTOMAYOR: Well, the  
8 vacuum -- what -- this doesn't involve a Mexican  
9 defendant, Mexican law, or Mexican courts. It  
10 involves a U.S. defendant acting on U.S. soil,  
11 pulling the trigger on U.S. soil, and subject to  
12 U.S. law. We're not dragging the border patrol  
13 agent into a Mexican court.

14 So how would we be interfering?

15 MR. ORTEGA: Your Honor, are you --  
16 are you suggesting that the decedent would be  
17 inside of the border of the United States?

18 JUSTICE SOTOMAYOR: No, I just said to  
19 you it involves a U.S. defendant, the border  
20 patrol agent, acting on U.S. soil, pulling the  
21 trigger on U.S. soil, and subjecting the U.S.  
22 border agent to a U.S. court.

23 MR. ORTEGA: But the --

24 JUSTICE SOTOMAYOR: We're not dragging  
25 the agent anywhere else.

1           MR. ORTEGA: That's correct, but the  
2 agent would know when he took his actions that  
3 he was inside of the jurisdiction of the United  
4 States.

5           JUSTICE SOTOMAYOR: He always knows  
6 he's inside and subject to U.S. law. Don't --  
7 that never changes no matter what we do here.

8           MR. ORTEGA: That's correct. But, in  
9 this case, you're asking for -- the Petitioners  
10 are asking for an extension of the Constitution  
11 into a foreign republic, which is quite --

12           JUSTICE BREYER: We assume -- we  
13 assume here that it is extended. We assume the  
14 Fourth Amendment applies, my understanding is.

15                       So we know this place by picture.  
16 It's a culvert. It's a big culvert like here to  
17 the end of the room. And there's a bridge. And  
18 across this bridge, hundreds, perhaps thousands,  
19 of people walk each day on their way to work or  
20 on their way home.

21           Now a border agent who's standing near  
22 the bridge picks up a gun and shoots one of  
23 them. If he's crossed that imaginary line in  
24 the center of the bridge, I take it, you agree  
25 that you can bring a Bivens action?

1 MR. ORTEGA: That's correct.

2 JUSTICE BREYER: And if he is an  
3 American and on the other side, you agree he can  
4 bring a Bivens action?

5 MR. ORTEGA: That would be correct,  
6 Your Honor.

7 JUSTICE BREYER: Okay. So the only  
8 person who cannot bring a Bivens action -- and  
9 the border agent has no idea whether he's  
10 shooting such a person -- is someone who is just  
11 on the Mexican side of the imaginary line on the  
12 bridge and whom he shot deliberately or roguelly  
13 or whatever.

14 MR. ORTEGA: That would be correct,  
15 but --

16 JUSTICE BREYER: See, all right, now  
17 here is the standard. Justice Kennedy writes  
18 it. The necessary inference is that the -- the  
19 necessary -- the inquiry that we're after about  
20 whether this is an extension of a Bivens action,  
21 must concentrate on whether the judiciary is  
22 well suited, absent congressional action, to  
23 weigh the costs and benefits of allowing the  
24 action to proceed, okay?

25 That's my standard. I've given you

1 the facts. What's the problem? We would like  
2 -- we ordinarily have such actions. The  
3 Mexicans want it. They want the action. So  
4 what's the special problem?

5 MR. ORTEGA: It would become a matter  
6 of line drawing. Where would the court --

7 JUSTICE BREYER: No, no, not line  
8 drawing. There's no line drawing problem. We  
9 assume -- the line drawing problem may come in  
10 as to whether the Fourth Amendment applies, but,  
11 here, we're assuming it does. And assuming it  
12 applies, what's the problem with the Bivens  
13 action? What's the line drawing problem there?

14 MR. ORTEGA: It would be the extending  
15 of Bivens into a new country.

16 JUSTICE BREYER: Why is it extending?  
17 I mean, after all, maybe in Hawaii there's never  
18 been a Bivens action brought before on the 14th  
19 island. Is that an extension?

20 MR. ORTEGA: It's not. It's within  
21 the United States. Here, we have --

22 JUSTICE BREYER: Oh, I understand  
23 that. And this is on the other side of the  
24 line. Also, by the way, it was at 7:00 in the  
25 evening, in fact, 7:02. And there never has



1       been a Bivens action brought at 7:02.

2                   MR. ORTEGA:   But there's never been a  
3       Bivens action that involves a transnational  
4       shooting.

5                   JUSTICE BREYER:  Ah, I got that point.  
6       All I am saying is, why is that different in  
7       terms of a problem caused than the fact that it  
8       was 7:02:59 on the fourth island of Hawaii?  You  
9       got my point?

10                  MR. ORTEGA:  I do.

11                  JUSTICE BREYER:  Good.  All right.  He  
12       got it.  Now what's -- what is it?

13                  MR. ORTEGA:  It's -- it's --

14                         (Laughter.)

15                  JUSTICE BREYER:  Don't ask my point.  
16       I want to know your answer.

17                  MR. ORTEGA:  I have to go back to --  
18       to it being different in so much as it is  
19       transnational.  And it --

20                  JUSTICE BREYER:  Well, you've said  
21       that.  All I'm asking you is why that makes a  
22       difference?  Where it's on a bridge, in the  
23       culvert, the -- I won't repeat myself, but I  
24       went through every factor I thought that I could  
25       -- seems to me very, very similar, and I just

1 don't understand it.

2           So far, what you've said is: It will  
3 freeze the border patrol, to which I think good.  
4 I don't think there's an American who --  
5 anywhere in the world who wouldn't want to stop  
6 the kind of action here, so that doesn't seem a  
7 factor cutting against.

8           And, anyway, he can do it if it's an  
9 American, and he doesn't even know if it's an  
10 American.

11           MR. ORTEGA: If there was a remedy to  
12 be fashioned, that would be for Congress to  
13 decide.

14           JUSTICE BREYER: That's a conclusion.  
15 And my answer -- my question is, why?

16           MR. ORTEGA: Because they'll be able  
17 to weigh the costs and benefits of the actual  
18 remedy itself, the limits of the remedy, the  
19 parameters of the remedy for the courts to be  
20 able to provide guidance to the lower courts.

21           There would be very little guidance to  
22 the lower courts --

23           JUSTICE SOTOMAYOR: I -- I don't  
24 understand your answer. You can't shoot an  
25 unarmed juvenile playing. And the remedies

1 limit is that one. That -- that's the only  
2 thing that a court would be deciding, whether  
3 there truly was cause or no cause for this  
4 shooting.

5 MR. ORTEGA: But -- but then wouldn't  
6 the -- the determination would be on an ad hoc  
7 basis, creating instability in the lower courts.

8 JUSTICE SOTOMAYOR: Why? What's the  
9 greater instability when you already admit that  
10 Bivens -- Bivens would apply if that child was  
11 standing two feet from the border? And it even  
12 would apply, according to you, if it was an  
13 American child standing two feet on the Mexican  
14 border. I don't see where the greater  
15 instability arises in that situation.

16 MR. ORTEGA: Well, the instability  
17 would rise because of the -- the actual areas  
18 where you're at. It's a national border with  
19 the border patrol providing national security in  
20 that area.

21 JUSTICE SOTOMAYOR: So why -- what  
22 you're basically saying is Bivens shouldn't  
23 apply ever against a border -- a rogue border  
24 patrol who just stands there shooting people  
25 both on the U.S. side, indiscriminately, takes a

1 gun and just sweeps both sides of the border?

2 MR. ORTEGA: Well, it would apply to  
3 those standing on the United States side  
4 certainly.

5 JUSTICE SOTOMAYOR: Well --

6 JUSTICE BREYER: Let -- let me ask  
7 because I'm putting all my -- this is actually  
8 bothering me. I'm not asking you to -- look, if  
9 we were talking about extending the Fourth  
10 Amendment, I would see a problem. I might think  
11 we should or I might think we shouldn't, but I  
12 might think we should, but I certainly would say  
13 there is a problem.

14 But, once we say the Fourth Amendment  
15 is there in just the same way it is two feet on  
16 the other side, at that point, what's the  
17 special problem of giving a damages remedy to a  
18 Mexican youth just as you would give it to an  
19 American youth, whether that American youth is  
20 over on one side of the border or the other?

21 MR. ORTEGA: Assuming --

22 JUSTICE BREYER: That's where I --  
23 that's -- at that point, I hesitate. I say,  
24 well, that's what we're supposed to find here  
25 under the statute. And -- and what is it?

1                   MR. ORTEGA: Assuming Verdugo did not  
2 foreclose that, then there would not be a  
3 difference.

4                   JUSTICE BREYER: Well, if there's no  
5 difference, then that's the end of it, isn't it,  
6 because Kennedy says, look, he says, you've got  
7 to find -- he's not talking about the Fourth  
8 Amendment. He's actually not even thinking  
9 about that, possibly. I don't know. We're  
10 thinking about Sixth Amendment, Eighth, Tenth  
11 Amendment. I don't know. But -- but assuming  
12 he is, once we're there, the Fourth Amendment  
13 really does apply.

14                   You say you can't think of a  
15 difference. And I can't think of a difference.  
16 So we send the case back. Now consider the  
17 Fourth Amendment.

18                   MR. ORTEGA: Consider the Fourth --

19                   JUSTICE BREYER: Is that what we  
20 should do?

21                   MR. ORTEGA: Well, the Fourth  
22 Amendment, I believe, is foreclosed by Verdugo  
23 in its language claiming that a U.S. agent, even  
24 acting on foreign soil, is not constrained by  
25 the Fourth Amendment.

1 JUSTICE KAVANAUGH: I thought your --

2 JUSTICE BREYER: I'm not sure --

3 JUSTICE KAVANAUGH: I thought your  
4 point was the foreign policy implications are  
5 triggered when it's on the other side of the  
6 border, and that's why we give significance to  
7 the border, but I want to press on that because  
8 wouldn't there be foreign policy implications  
9 even if the victim were a Mexican -- Mexican  
10 national and killed even on the U.S. side of the  
11 border? Those kinds of incidents create lots of  
12 international and foreign policy implications as  
13 well.

14 So why do foreign policy implications  
15 track the border so neatly in your view?

16 MR. ORTEGA: They track the border  
17 because the border is a paramilitary area that  
18 the border patrol patrols under the guidance of  
19 the executive.

20 JUSTICE KAVANAUGH: But do you agree  
21 there could be serious foreign policy  
22 implications even from a incident inside the  
23 United States with a victim who's a Mexican  
24 national?

25 MR. ORTEGA: Absolutely, just the way

1 that there were in this case dealing with the  
2 extradition and the damage -- damages remedy  
3 asked for by the Mexican government and the U.S.  
4 government deciding -- or opposing their request  
5 for a damages remedy.

6 So it's been 40 years and there's been  
7 no extension of Bivens beyond the trilogy that  
8 this Court has -- has outlined. The presumption  
9 against the extension provides the lower courts  
10 stability versus an ad hoc application of the  
11 law.

12 JUSTICE KAVANAUGH: Should we think  
13 about the lack of alternative remedies?  
14 Mr. Vladeck mentioned that, there's just no  
15 remedy at all, which is unlike not all the  
16 Bivens cases but certainly some of them?

17 MR. ORTEGA: But, when you look at the  
18 myriad of special factors, including the  
19 separation of powers, national security, foreign  
20 diplomacy, public policy, and the projected  
21 costs, I think that that creates quite a  
22 different -- a different picture of that. And  
23 it's better left for Congress and the executive  
24 to decide those issues and, specifically,  
25 Congress to balance the public policy, the

1 limits of the law, and to provide guidance for  
2 this Court to interpret an actual statute that  
3 they would have created.

4 I believe the new context of this  
5 nature in a transnational shooting should be  
6 dispositive. An injury to a foreign national on  
7 foreign soil is untenable because excessive  
8 force that relates to a seizure, as we've  
9 discussed, is covered by the Fourth Amendment  
10 and is not a substantive due process claim.

11 It would require an extension of  
12 Boumediene to a foreign country where the U.S.  
13 maintains no jurisdiction whatsoever, whether de  
14 facto or actual. It would create line drawing.  
15 It would create an unpredictable application.  
16 Even if this Court were to fashion a damages  
17 remedy, the application of that remedy would be  
18 very difficult and would create chaos, in my  
19 opinion, of the lower courts in its very  
20 application.

21 JUSTICE KAVANAUGH: Why -- why chaos?  
22 I guess I'm not seeing that. You would just  
23 extend it and it would apply just like Bivens  
24 applies to lots of cases all the time.

25 MR. ORTEGA: Well, it would be line



1 drawing, wouldn't it? The line drawing of the  
2 border, extension of the border.

3 JUSTICE KAVANAUGH: Well, Justice  
4 Sotomayor gave you the line. You have a  
5 defendant on U.S. soil who's a U.S. official.

6 MR. ORTEGA: Well, if he's on -- if  
7 they're in --

8 JUSTICE KAVANAUGH: And then you just  
9 look --

10 MR. ORTEGA: -- the United States,  
11 there's no question --

12 JUSTICE KAVANAUGH: -- and then you  
13 just look at the actions to see whether it was  
14 excessive force. I guess I'm -- I take your  
15 point on the new context, but I guess the chaos  
16 argument's not resonating with me.

17 MR. ORTEGA: The lower courts have  
18 stood on this Court's presumption against the  
19 extension in order to provide stability and  
20 guidance to them in their decisions.

21 Extending it again and extending it  
22 transnationally would create a myriad of  
23 problems.

24 JUSTICE KAGAN: Mr. Ortega, I think  
25 I'm a little bit confused. Do you or do you not

1 contest -- suppose there were a -- a border  
2 patrol officer used excessive force but 10 miles  
3 from the border while carrying out border  
4 security operations.

5 MR. ORTEGA: Ten miles from the border  
6 inside of the United States?

7 JUSTICE KAGAN: Yeah, he's a border  
8 patrol officer, he's acting within the scope of  
9 his employment, it's very important, he's trying  
10 to find people who have crossed the border.  
11 He's engaged in, you know, usual law enforcement  
12 work.

13 Can you bring a Bivens action against  
14 that officer?

15 MR. ORTEGA: The injury is occurring  
16 in the United States or outside of the United  
17 States?

18 JUSTICE KAGAN: You know -- yes, it's  
19 -- it's -- it's in the United States, but this  
20 is border patrol work. This is border work.  
21 This is border security work.

22 MR. ORTEGA: Well, you can bring the  
23 Bivens action if he was actually a rogue officer  
24 acting outside of policy, which does not present  
25 itself here.

1 JUSTICE KAGAN: Well, yeah -- I mean,  
2 if -- if -- if we are assuming that the officer  
3 used excessive force, you can bring the Bivens  
4 action, is that correct?

5 MR. ORTEGA: If it fell outside the  
6 policy, correct. Excessive force.

7 JUSTICE KAGAN: Okay. Now we're  
8 bringing it 10 miles up to the border, except  
9 the person involved -- this is Mr. Vladeck's  
10 hypo -- is -- is on the U.S. side of the border.  
11 Still a Bivens action?

12 MR. ORTEGA: Inside of the -- the  
13 United States border, correct.

14 JUSTICE KAGAN: Okay. So a lot of  
15 foreign affairs concerns are present there, so  
16 too a lot of national security concerns, if  
17 we're saying that border security is a facet of  
18 national security, right?

19 MR. ORTEGA: Correct.

20 JUSTICE KAGAN: Okay. So then the  
21 question is why, when we just moved three inches  
22 over, there's a different answer? That, I  
23 think, is the question that many people have  
24 been asking you.

25 MR. ORTEGA: That's correct. And I

1 believe that the border is real. It's a real  
2 line. And it can't be extended. The  
3 Constitution cannot be extended into a foreign  
4 country. But --

5 JUSTICE KAGAN: Yes, it is a real  
6 line. And, you know, one way to line-draw is  
7 find a real line, I suppose.

8 (Laughter.)

9 JUSTICE KAGAN: But I guess, you know,  
10 usually, the -- the -- the analysis that we go  
11 through in a Bivens claim -- and I think that  
12 this is the analysis that the government wants  
13 us to go through -- is to ask about, are there  
14 special foreign affairs concerns? Are there  
15 special national security concerns?

16 And the question is, why would there  
17 be special foreign affairs and national security  
18 concerns with respect to a shooting that occurs  
19 three inches on one side of the border versus  
20 three inches on the other side of the border or  
21 even a little bit away from the border but very  
22 much involving border security work?

23 MR. ORTEGA: If it keeps going,  
24 extending into Mexico, then there would be no  
25 line. It would just keep going and going. It

1 could be all of Juarez, it could be all of  
2 Chihuahua, it could be all of Mexico. It would  
3 never end. It would be no different than a  
4 drone pilot in Colorado hitting the wrong  
5 village in Syria. He would still be --

6 JUSTICE KAGAN: Well, I think we're  
7 positing a defendant who is in the United States  
8 and who is committing his action in the United  
9 States. So, unless this is a very far-reaching  
10 bullet, I don't think so.

11 MR. ORTEGA: That's correct. And that  
12 was the -- the hypothetical I gave you regarding  
13 a drone pilot in Colorado who happens to hit a  
14 village in Syria. It would be the same action.  
15 He would be in the United States, the victims  
16 would be in Syria, the injury would -- would  
17 occur in Syria.

18 CHIEF JUSTICE ROBERTS: Thank you,  
19 counsel.

20 Mr. Wall.

21 ORAL ARGUMENT OF JEFFREY B. WALL  
22 FOR THE UNITED STATES, AS AMICUS CURIAE,  
23 SUPPORTING THE RESPONDENT

24 MR. WALL: Mr. Chief Justice, and may  
25 it please the Court:

1           A foreign national was killed on  
2 foreign soil by a federal officer patrolling an  
3 international border. That is plainly a new  
4 context for Bivens purposes, and several special  
5 factors counsel hesitation here: clear foreign  
6 relations concerns with Mexico and the need for  
7 border security, clear extraterritoriality, and  
8 clear signals from Congress in 1983 and the FTCA  
9 that it does not approve of damages liability  
10 for injuries abroad.

11           Taking a step back, Abbasi and other  
12 decisions have made lower courts markedly less  
13 willing to imply causes of action for damages.

14           If this Court extends Bivens here, on  
15 these facts, it will threaten to reverse that  
16 trend by undermining this Court's consistent  
17 message about the importance of caution and  
18 judicial modesty in this area.

19           To turn to the first of the three  
20 special factors, the foreign relations with  
21 Mexico, I don't think it's difficult to figure  
22 out exactly why we think Congress might pause,  
23 as it has in 1983 and the FTCA, before extending  
24 damages liability here.

25           The United States and Mexico have an

1 active disagreement over what happened here. We  
2 have bilateral mechanisms for working it out,  
3 like the Border Violence Prevention Council,  
4 which meets and talks about things like use of  
5 force.

6 When we are conducting those  
7 negotiations, if we are taking positions about  
8 what has happened at the border and courts --

9 JUSTICE SOTOMAYOR: Mr. Wall, the  
10 problem is that the allegation here is not about  
11 their meeting and talking about policies. It's  
12 about rogue actions.

13 And -- and I take a look at the amici,  
14 the former, like the CPB, but others who tell me  
15 pretty persuasively and extensively that the  
16 border patrol might be a bit of a mess and that  
17 disciplining is at a minimum here,  
18 investigating, et cetera, is not done in the way  
19 that others of us would think would be  
20 appropriate to an agency.

21 All of those things suggest to me that  
22 the class you want to create is a class of  
23 border patrol agents, whether they shoot across  
24 the border or shoot in the border.

25 MR. WALL: Justice Sotomayor, I'm

1 happy to go through all the reports and the  
2 evidence. I'm happy to say, look, there were 55  
3 incidents of use of force with firearms in  
4 fiscal year '12. There were 15 last year in  
5 fiscal year '18. That's a more than 70 percent  
6 drop.

7 We can go back and forth about whether  
8 we think the Customs and Border Patrol is doing  
9 a good job at the border or not.

10 I think my bottom line point, though,  
11 is that all of that is the subject of  
12 legislative debate. There is a body that can  
13 consider these kinds of questions and tailor a  
14 damages scheme to whatever --

15 JUSTICE SOTOMAYOR: But that --

16 MR. WALL: -- the facts on the --

17 JUSTICE SOTOMAYOR: -- that would mean  
18 --

19 MR. WALL: -- ground are, but --

20 JUSTICE SOTOMAYOR: But that would  
21 have been --

22 MR. WALL: -- that's Congress.

23 JUSTICE SOTOMAYOR: -- that would have  
24 been true in Bivens itself. Someone could have  
25 said there are all sorts of things that control



1 the FBI, and we shouldn't extend Bivens, but we  
2 did because there's a fundamental belief that  
3 unconstitutional actions that stem from the  
4 United States, this agent fired that gun from  
5 here, should provide a remedy.

6 MR. WALL: Yes, as you said in Abbasi,  
7 Bivens was a product of an era in which you  
8 freely and judiciously --

9 JUSTICE SOTOMAYOR: No, it's not a  
10 product of an era.

11 MR. WALL: But that's to be --

12 JUSTICE SOTOMAYOR: I -- I mean --

13 MR. WALL: Justice Sotomayor, that's  
14 what the Court said in Abbasi. You said --

15 JUSTICE SOTOMAYOR: No, no, no. It --  
16 it -- Abbasi -- that's what Abbasi said, but if  
17 you look at Bivens itself, it was based on a  
18 historical finding that rogue actions, even in  
19 foreign soils, taking a ship improperly, doing  
20 other things across the border, required a  
21 remedy.

22 MR. WALL: I -- Justice Sotomayor, if  
23 I may, they're very different. And I want to be  
24 really clear on this with the Court.

25 Yes, it is certainly true that courts

1 for a long time applied the same common law  
2 rules for trespass and the rest to federal  
3 officers that they applied to everybody else.  
4 And that was perfectly fine under federal common  
5 law up until Erie. And it was perfectly fine  
6 under state, statutory, and common law right up  
7 to the Westfall Act.

8 But that's not what the Court was  
9 doing in Bivens and that's not the way it's  
10 conceived of Bivens in its later cases.

11 It was implying a special rule, not  
12 for everybody, but for federal officers directly  
13 under the Constitution in the absence of any  
14 statutory authorization from Congress. That's a  
15 very different animal from what state and  
16 federal courts were doing for a --

17 JUSTICE BREYER: I would like --

18 MR. WALL: -- really long time.

19 JUSTICE BREYER: -- at some point to  
20 hear your three reasons. You had three reasons.  
21 And I hope you -- leave you enough time to go to  
22 the same question I've asked 15 times: Look,  
23 isn't this all a problem for the Fourth  
24 Amendment?

25 But if you assume the Fourth Amendment

1 applies, what's the added problem?

2 MR. WALL: So --

3 JUSTICE BREYER: After all, the Fourth  
4 Amendment suppresses evidence.

5 MR. WALL: So --

6 JUSTICE BREYER: We're not going to  
7 change that, are we? And if the Fourth  
8 Amendment applies, suppressing evidence will  
9 still happen when there's a violation and, after  
10 all, that's arguable in Congress. It creates a  
11 mess in the court, dah-dah-dah. Okay.

12 So what's special about this?

13 MR. WALL: So I'll try to get through  
14 a couple of things really quickly. One, the  
15 friction with Mexico, which I think is pretty  
16 obvious and exemplified by this very case.

17 Two, extraterritoriality. I don't  
18 have much to add to what Justice Kavanaugh said  
19 in Meshal in the D.C. Circuit. If there were a  
20 statute and it were the same as 1983 for federal  
21 officers, I don't take anybody to be disputing  
22 that, absent some clear indication in the  
23 language, that it wouldn't pick up an entry  
24 across the border. And it seems in passing  
25 strange that if this express statute didn't get

1 -- get it, an implied cause of action wouldn't.

2           And even if you disagreed with me on  
3 that, then I think you'd say, look, Congress has  
4 made judgments in this area. It cut off all  
5 liability in the FTCA for things that happened  
6 across the border, injuries abroad. And you  
7 couldn't get it if you were a state officer  
8 under 1983.

9           So at least as far as we can tell in  
10 the judgments Congress has made, it has  
11 recognized that the border is really  
12 significant.

13           And why?

14           JUSTICE KAGAN: Mr. Wall --

15           MR. WALL: Because, when you're  
16 injured abroad, you don't work it out through  
17 damages lawsuits. You work it out through  
18 diplomatic and administrative processes. And  
19 that's always been how Congress has done it.

20           JUSTICE KAGAN: I mean, I think I need  
21 to -- somebody to explain to me a little bit the  
22 kind of foreign affairs concerns that you're  
23 worried about. And, you know, it's easy to just  
24 sort of wave your hands and say foreign affairs  
25 when there's been a cross-border shooting.

1           But I think it would help me at least  
2           to have some specifics about what kind of  
3           situations you're worried about.

4           I mean, here, obviously, Mexico would  
5           prefer that a Bivens action be -- be given. And  
6           that's not dispositive by any means.

7           But I guess I'm wondering, what is the  
8           problem?

9           MR. WALL: I guess the -- the problem  
10          is that the United States and Mexico actively  
11          discuss incidents at the border, both specific  
12          incidents and general policies, right, as they  
13          have for years.

14          And, for instance, CBP revised its use  
15          of force --

16          JUSTICE KAGAN: And as they did in  
17          this case even while the Bivens suit was going  
18          forward. The Bivens claims does not seem to  
19          have prevented Mexico and the United States from  
20          having discussions and negotiations about this  
21          very incident. Did it?

22          MR. WALL: That's right. But the  
23          question under Abbasi isn't, look, can you show  
24          that in every case this is always the kind of  
25          thing --

1 JUSTICE KAGAN: I'm looking for any  
2 case.

3 MR. WALL: Right. And what I'm saying  
4 is I -- take this case. We disagree with  
5 Mexico. We had a pair of cases. In one of  
6 them, we thought the agent acted unlawfully.

7 In the other, we did a very thorough  
8 investigation, it's not in the record, but I've  
9 reviewed all the evidence and would be happy to  
10 talk about it, we concluded he hadn't acted  
11 unlawfully.

12 Mexico believes that we're wrong about  
13 that. It believes we ought to extradite him,  
14 they ought to get their crack.

15 It may believe as a result of this  
16 incident that we're not taking seriously our  
17 policy at the border. That's exactly the sort  
18 of thing that we have an ambassador and a  
19 foreign minister. We have a State Department  
20 and they have one and they talk about these  
21 issues. And there's a --

22 JUSTICE KAGAN: I guess I'm -- I'm  
23 still looking for, you have -- in one state of  
24 the world, you don't have a Bivens claim, in Mr.  
25 Hernandez's position. In another state of the

1 world, he does have a Bivens claim.

2 How does that interfere with the  
3 United States' foreign policy?

4 MR. WALL: Justice Kagan, do you  
5 really think that the next time we go in to talk  
6 to Mexico and we take a position on something at  
7 the border they won't say, how is your  
8 representation credible? You told us last time  
9 that your officer didn't do anything wrong. And  
10 your own courts, potentially even your Supreme  
11 Court, told you you were wrong. I think it does  
12 directly undermine the credibility of the  
13 executive branch in working with a foreign  
14 government.

15 But, even if you thought I were wrong,  
16 you still know --

17 JUSTICE KAGAN: Yeah, why wouldn't --

18 MR. WALL: -- under Chappell --

19 JUSTICE KAGAN: -- why wouldn't the  
20 United States then say, you know, we live in a  
21 country in which courts play an important role  
22 in determining whether conduct is lawful. And  
23 that's not an embarrassment to the United States  
24 or to the executive branch.

25 MR. WALL: Of course, courts play a

1 role, but the role under Abbasi is a limited one  
2 where, if there are special factors that counsel  
3 hesitation, the court says we leave it to  
4 Congress, even if you disagree with me on  
5 foreign relations, you still have clear signals  
6 from Congress in terms of the statutes it's  
7 passed and you have clear extraterritoriality.

8 And we know from Chappell that you  
9 weigh the special factors in aggregate. So the  
10 question just is, across all of these things, is  
11 there enough here to think that we ought to  
12 pause before we judicially imply a cause of  
13 action, and we ought to leave it to Congress.

14 And I just think looking at the  
15 balance, there's clearly enough to say there is  
16 a body that can address these kinds of  
17 on-the-grounds concerns at the border. But it's  
18 Congress. It's not the courts.

19 And I guess the -- the last thing I'd  
20 say is, you know, the Fifth Circuit looking at  
21 this said, look, the facts are tragic. This  
22 Court said last time it's a heartbreaking loss  
23 of life but said this is not a close case under  
24 Abbasi.

25 I -- I disagree with Respondent's



1 counsel about some of the hypotheticals, three  
2 inches inside of the line or 10 miles inside the  
3 line, but you don't have to agree with us on  
4 those or disagree whether there is a Bivens to  
5 think that once you've crossed the border and  
6 you're dealing with foreign nationals on foreign  
7 soil, now you've crossed into territory where  
8 Congress has never gone.

9 JUSTICE KAGAN: Did you say you  
10 disagree, Mr. Wall?

11 MR. WALL: I do.

12 JUSTICE KAGAN: So the three inches  
13 inside the line, what would be the -- the case  
14 there?

15 MR. WALL: I think if you're talk -- I  
16 mean, so take the easiest hypothetical. You  
17 have just foreign nationals going across the  
18 border, right. Certainly grant that a couple of  
19 the special factors aren't going to apply,  
20 extraterritoriality and congressional action.

21 I think you've still likely got  
22 foreign relations and national security  
23 concerns. I think probably best answer is  
24 there's not a Bivens action.

25 JUSTICE KAGAN: And how about 10 miles

1 from the border but doing border security work?

2 MR. WALL: I think maybe you've still  
3 got foreign relations and border security. But,  
4 again, whether or not you agree with us on that,  
5 this is the easy case where all of those special  
6 factors are triggered.

7 CHIEF JUSTICE ROBERTS: Thank you,  
8 counsel.

9 Mr. Vladeck, three minutes.

10 REBUTTAL ARGUMENT OF STEPHEN I.

11 VLADECK ON BEHALF OF THE PETITIONERS

12 MR. VLADECK: Thank you, Mr. Chief  
13 Justice.

14 Let me just say briefly that I take  
15 Mr. Wall's answer to Justice Kagan's last  
16 question to mean that the government has now  
17 changed its position from Hernandez I, where the  
18 government argued that the inside the border  
19 hypothetical would be actionable under Bivens.

20 That aside, I mean, I do want to go  
21 back to putting this case in the broader context  
22 because I think it's important to understand how  
23 we got here. Historically, the whole way that  
24 the tort liability regime worked for government  
25 misconduct was that this Court and state courts

1 looked to existing common law causes of action  
2 and focused on immunity defenses as the way of  
3 calibrating the harm that citizens and others  
4 faced when injured by government officers  
5 against the need to protect officers acting in  
6 good faith, back to Judge Hand in *Gregoire*  
7 versus *Biddle*.

8           The Court struck this balance by  
9 fashioning immunity defenses where the fight  
10 would be over whether the officer was entitled  
11 to immunity or not. And for law enforcement  
12 officers specifically, this Court has long  
13 rejected the argument that there should be any  
14 context in which law enforcement officers,  
15 because of the frequency with which they  
16 interact with average individuals, because of  
17 the nature of their interactions, because of the  
18 powers they have to search, to seize, to arrest  
19 in this context, to use lethal force, did not  
20 justify absolute immunity and instead justified  
21 a more narrower, qualified kind of immunity for  
22 those most likely to come face-to-face with  
23 private citizens.

24           Distilled to its simplest, the  
25 government's position in this case is that

1 officers in what is self-described as the  
2 nation's largest law enforcement agency should  
3 have a functional absolute immunity at least  
4 where foreign nationals are concerned.

5           And our submission is that that is not  
6 consistent with how this Court has always  
7 understood the relationship between causes of  
8 action and immunity defenses in this context.  
9 It is not required by any of this Court's Bivens  
10 decisions. It does not abide by this Court's  
11 suggestion in Abbasi that there are strong  
12 reasons and powerful reasons to retain Bivens in  
13 this context.

14           And it would eliminate the one  
15 deterrence that is meaningfully available to  
16 ensure that officers in the nation's largest law  
17 enforcement agency are complying with the law.  
18 Our rule is --

19           JUSTICE GINSBURG: Before you finish  
20 --

21           MR. VLADECK: -- not case-specific.

22           JUSTICE GINSBURG: -- before you  
23 finish, can you address one decision that the  
24 government seems to put a lot of stock -- stock  
25 in, and that is RJR -- RS -- what is it -- R --

1 is it RJR Nabisco?

2 MR. VLADECK: So, Justice Ginsburg,  
3 that goes again to the question of whether  
4 extraterritoriality is a special factor  
5 counseling hesitation. And I want to be clear,  
6 we agree that there will be much harder cases,  
7 if, say, for example, Agent Mesa was miles into  
8 Mexico, somehow acting under legal authority.

9 But RJR Nabisco reinforces, it does  
10 not distinguish Kiobel in its suggestion that  
11 the presumption against extraterritoriality --  
12 Mr. Chief Justice -- can be displaced when the  
13 underlying conduct touches and concerns U.S.  
14 territory with sufficient force to displace the  
15 presumption.

16 If ever there was a case, Your Honors,  
17 where the underlying conduct touched and  
18 concerned U.S. territory with sufficient force,  
19 it's when a U.S. law enforcement officer  
20 standing on U.S. soil uses lethal force.

21 CHIEF JUSTICE ROBERTS: Thank you,  
22 counsel. The case is submitted.

23 (Whereupon, 12:33 p.m., the case was  
24 submitted.)

25

## Official - Subject to Final Review

<b>1</b>	1 35:6 36:10,20 44:24 49:8,24 66:5 68:8 <b>action</b> [44] 3:19 6:8 7:3,8 8:16 10:5,8 11:13 14:10 16:5 19:17 21:25 22:19 25:17 28:8 29:19 33:13,14 37:25 38:4,8,20,22,24 39:3,13,18 40:1,3 41:6 49:13,23 50:4,11 52:8,14 53:13 59:1 60:5 63:13 64:20,24 66:1 67:8 <b>actionable</b> [1] 65:19 <b>actions</b> [7] 16:2 37:2 39:2 48:13 54:12 56:3,18 <b>active</b> [1] 54:1 <b>actively</b> [2] 16:1 60:10 <b>activities</b> [1] 35:12 <b>activity</b> [1] 12:18 <b>actual</b> [5] 34:23 41:17 42:17 47:2,14 <b>actually</b> [11] 5:22 7:6 8:19 12:14 26:10 27:6,21 31:24 43:7 44:8 49:23 <b>ad</b> [2] 42:6 46:10 <b>add</b> [1] 58:18 <b>added</b> [1] 58:1 <b>address</b> [3] 24:7 63:16 67:23 <b>addressed</b> [4] 28:17 33:18,20,21 <b>adequate</b> [2] 9:2,15 <b>administered</b> [1] 19:1 <b>administrative</b> [1] 59:18 <b>admit</b> [1] 42:9 <b>advance</b> [1] 6:11 <b>affairs</b> [6] 34:23 50:15 51:14,17 59:22,24 <b>after-the-fact</b> [2] 25:2 31:20 <b>agency</b> [4] 22:25 54:20 67:2,17 <b>agency's</b> [1] 35:6 <b>agent</b> [15] 22:19 35:18,22 36:4,13,20,22,25 37:2,21 38:9 44:23 56:4 61:6 68:7 <b>agents</b> [4] 8:15 13:19 35:11 54:23 <b>aggregate</b> [1] 63:9 <b>ago</b> [3] 3:12 10:2 13:23 <b>agree</b> [10] 20:4,8 23:11 24:9 37:24 38:3 45:20 64:3 65:4 68:6 <b>Ah</b> [3] 16:11,11 40:5 <b>ahead</b> [1] 7:15 <b>AL</b> [1] 1:3 <b>Alien</b> [1] 33:20 <b>ALITO</b> [11] 7:14,16,21 8:3 25:5,9,13,14,22,24 26:16 <b>allegation</b> [1] 54:10 <b>allegations</b> [3] 18:14 28:11 35:4 <b>allowed</b> [1] 28:25 <b>allowing</b> [1] 38:23 <b>alluded</b> [1] 26:4 <b>almost</b> [1] 10:2 <b>alone</b> [1] 4:23 <b>already</b> [1] 42:9 <b>alternative</b> [3] 5:5 6:18 46:13 <b>ambassador</b> [1] 61:18 <b>Amendment</b> [32] 9:12,16 13:10,18,24 17:14 19:12,14,15,18,23 25:16 26:25 27:17,22 32:22 37:14 39:10 43:10,14 44:8,10,11,12,17,22,	25 47:9 57:24,25 58:4,8 <b>Amendment's</b> [1] 34:1 <b>American</b> [12] 18:22,22,24 21:13 23:17 38:3 41:4,9,10 42:13 43:19,19 <b>amici</b> [1] 54:13 <b>amicus</b> [4] 1:23 2:10 10:24 52:22 <b>analysis</b> [3] 5:18 51:10,12 <b>animal</b> [1] 57:15 <b>another</b> [1] 61:25 <b>answer</b> [10] 11:23 18:9 20:2 28:4 40:16 41:15,24 50:22 64:23 65:15 <b>answers</b> [1] 11:25 <b>ante</b> [1] 29:2 <b>anybody</b> [1] 58:21 <b>anyway</b> [1] 41:8 <b>Apollon</b> [1] 4:14 <b>appeal</b> [1] 15:15 <b>APPEARANCES</b> [1] 1:16 <b>applicable</b> [1] 36:6 <b>application</b> [5] 11:20 46:10 47:15,17,20 <b>applied</b> [3] 19:14 57:1,3 <b>applies</b> [7] 12:9 37:14 39:10,12 47:24 58:1,8 <b>apply</b> [12] 11:18,22 12:5,6 19:12 42:10,12,23 43:2 44:13 47:23 64:19 <b>approach</b> [2] 10:4,11 <b>appropriate</b> [3] 12:13 34:18 54:20 <b>appropriately</b> [1] 31:22 <b>approve</b> [1] 53:9 <b>area</b> [4] 42:20 45:17 53:18 59:4 <b>areas</b> [1] 42:17 <b>aren't</b> [3] 15:21 17:9 64:19 <b>arguable</b> [1] 58:10 <b>argue</b> [3] 7:13 21:6 24:1 <b>argued</b> [3] 3:11 34:25 65:18 <b>argues</b> [2] 11:20 21:15 <b>argument</b> [21] 1:13 2:2,5,8,12 3:4,7 9:10,14 15:15 20:9,13,17,18 21:3 26:9 33:8 34:3 52:21 65:10 66:13 <b>argument's</b> [1] 48:16 <b>arid</b> [1] 13:12 <b>arises</b> [1] 42:15 <b>arrest</b> [1] 66:18 <b>aside</b> [2] 25:17 65:20 <b>aspect</b> [1] 33:25 <b>asserted</b> [1] 13:14 <b>assertion</b> [1] 4:8 <b>assessment</b> [1] 34:20 <b>assume</b> [7] 12:22 19:14 37:12,13,13 39:9 57:25 <b>assuming</b> [6] 39:11,11 43:21 44:1,11 50:2 <b>assumption</b> [1] 19:11 <b>assumptions</b> [1] 20:10 <b>attacked</b> [1] 28:10 <b>attorney</b> [1] 33:2 <b>Austin</b> [1] 1:17 <b>authority</b> [1] 68:8 <b>authorization</b> [1] 57:14 <b>avail</b> [1] 22:22	<b>available</b> [5] 6:18 8:6,10 32:20 67:15 <b>average</b> [1] 66:16 <b>awarded</b> [1] 4:16 <b>aware</b> [2] 7:12 14:22 <b>away</b> [2] 4:7 51:21
<b>2</b>	2019 [1] 1:10		
<b>3</b>	3 [1] 2:4 33 [1] 2:7		
<b>4</b>	40 [2] 10:6 46:6		
<b>5</b>	50 [1] 10:2 52 [1] 2:11 55 [1] 55:2		
<b>6</b>	65 [1] 2:14		
<b>7</b>	7:00 [1] 39:24 7:02 [2] 39:25 40:1 7:02:59 [1] 40:8 70 [1] 55:5 71 [1] 10:12		
<b>A</b>	a.m [2] 1:14 3:2 <b>Abbasi</b> [22] 5:9,15,17 6:5,17 17:1 19:16,20,21 20:6,6 32:4,24 53:11 56:6,14,16,16 60:23 63:1,24 67:11 <b>abide</b> [1] 67:10 <b>able</b> [4] 7:23 30:9 41:16,20 <b>above-entitled</b> [1] 1:12 <b>abroad</b> [8] 13:10,14 14:10 15:12 27:2 53:10 59:6,16 <b>absence</b> [2] 6:15 57:13 <b>absent</b> [2] 38:22 58:22 <b>absolute</b> [2] 66:20 67:3 <b>absolutely</b> [3] 17:25 24:8 45:25 <b>abuse</b> [1] 5:25 <b>accept</b> [2] 35:4,24 <b>accepting</b> [1] 18:3 <b>accorded</b> [2] 24:25 31:25 <b>according</b> [3] 18:13 30:25 42:12 <b>across</b> [7] 37:18 54:23 56:20 58:24 59:6 63:10 64:17 <b>Act</b> [3] 5:2 17:15 57:7 <b>acted</b> [4] 31:21 32:12 61:6,10 <b>acting</b> [13] 6:24 7:9 11:3 18:18 21:		
		<b>back</b> [13] 6:22 15:18 24:15 25:7,24 26:23 35:1 40:17 44:16 53:11 55:7 65:21 66:6 <b>balance</b> [4] 34:19 46:25 63:15 66:8 <b>bars</b> [1] 33:19 <b>based</b> [4] 16:24,25 28:9 56:17 <b>basically</b> [1] 42:22 <b>basis</b> [3] 25:15,19 42:7 <b>bearing</b> [1] 28:22 <b>become</b> [1] 39:5 <b>begin</b> [1] 5:18 <b>behalf</b> [8] 1:18,20 2:4,7,14 3:8 33:9 65:11 <b>belied</b> [1] 4:11 <b>belief</b> [1] 56:2 <b>believe</b> [14] 3:23 7:22 18:10 19:8 20:23 21:11 23:14,15 26:1 30:18 44:22 47:4 51:1 61:15 <b>believes</b> [3] 12:13 61:12,13 <b>below</b> [1] 8:5 <b>benefits</b> [2] 38:23 41:17 <b>best</b> [1] 64:23 <b>better</b> [1] 46:23 <b>between</b> [5] 22:14 29:2 30:5 32:25 67:7 <b>beyond</b> [1] 46:7 <b>Biddle</b> [1] 66:7 <b>big</b> [2] 28:6 37:16 <b>bilateral</b> [1] 54:2 <b>bit</b> [5] 8:12 48:25 51:21 54:16 59:21 <b>Bivens</b> [82] 3:14,19 4:5,6,19,25 5:10,20,23 6:3,14 8:16,21,22,25 9:3,8,10 10:2,5,8,16,18,25 11:14,17 12:2,24 16:5 17:8 19:17 20:22,25 22:22 23:16,22,22 26:2 30:22 31:13,18 32:6 33:15,23 37:25 38:4,8,20 39:12,15,18 40:1,3 42:10,10,22 46:7,16 47:23 49:13,23 50:3,11 51:11 53:4,14 55:24 56:1,7,17 57:9,10 60:5,17,18 61:24 62:1 64:4,24 65:19 67:9,12 <b>blend</b> [1] 26:18 <b>blue</b> [1] 10:17 <b>body</b> [2] 55:12 63:16 <b>bolt</b> [1] 10:17 <b>book</b> [1] 29:18 <b>border</b> [91] 3:22 18:7,24 21:13,14 22:17 24:3,9,12 25:4,11,17,18 27:21 29:3,23 32:17 34:8,10,11 35:11,18,22,23 36:4,12,17,19,22 37:21 38:9 41:3 42:11,14,18,19,23,23 43:1,20 45:6,7,11,15,16,17,18 48:2,2 49:1,3,3,5,7,10,20,20,21 50:8,10,13,17 51:1,19,20,21,22 53:3,7	

## Official - Subject to Final Review

<p>54:3,8,16,23,24,24 55:8,9 56:20 58:24 59:6,11 60:11 61:17 62:7 63:17 64:5,18 65:1,1,3,18 <b>borders</b> [1] 34:14 <b>both</b> [6] 3:13,17 10:5 42:25 43:1 60:11 <b>bothering</b> [1] 43:8 <b>bottom</b> [1] 55:10 <b>Boumediene</b> [2] 27:25 47:12 <b>bounds</b> [1] 32:19 <b>branch</b> [6] 29:13,17,24 30:2 62:13, 24 <b>breaking</b> [1] 26:24 <b>BREYER</b> [29] 18:19 19:7,10 20:5,7, 12,17 21:2 37:12 38:2,7,16 39:7, 16,22 40:5,11,15,20 41:14 43:6,22 44:4,19 45:2 57:17,19 58:3,6 <b>bridge</b> [6] 37:17,18,22,24 38:12 40: 22 <b>brief</b> [3] 6:21 9:7 10:24 <b>briefly</b> [1] 65:14 <b>briefs</b> [3] 15:16 18:2 21:10 <b>bring</b> [9] 6:10 7:23 20:25 37:25 38: 4,8 49:13,22 50:3 <b>bringing</b> [1] 50:8 <b>broad</b> [1] 65:21 <b>broadly</b> [1] 27:14 <b>brought</b> [2] 39:18 40:1 <b>bullet</b> [2] 4:22 52:10 <b>Bureau</b> [1] 8:15</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>calibrating</b> [1] 66:3 <b>call</b> [2] 29:5 35:8 <b>called</b> [2] 6:13 20:22 <b>came</b> [1] 1:12 <b>cannot</b> [2] 38:8 51:3 <b>capture</b> [1] 14:15 <b>care</b> [1] 20:7 <b>Carlson</b> [2] 10:23 26:21 <b>carrying</b> [1] 49:3 <b>carved</b> [1] 33:22 <b>Case</b> [41] 3:4,11,20 5:14,18 7:17 12:25 13:17 16:1 18:4,12,24 19: 11 21:8,20 24:13 26:5,20 27:10, 12 30:25 32:3 33:24 34:5,23 37:9 44:16 46:1 58:16 60:17,24 61:2,4 63:23 64:13 65:5,21 66:25 68:16, 22,23 <b>case-specific</b> [1] 67:21 <b>cases</b> [14] 4:14 5:7 7:3,6 10:22 11: 8 12:16 14:11 26:20 46:16 47:24 57:10 61:5 68:6 <b>categorical</b> [1] 27:20 <b>categories</b> [1] 11:16 <b>category</b> [1] 32:4 <b>cause</b> [9] 7:3,8 10:7 33:13,13 42:3, 3 59:1 63:12 <b>caused</b> [1] 40:7 <b>causes</b> [5] 10:4 11:13 53:13 66:1 67:7 <b>caution</b> [1] 53:17 <b>CBP</b> [1] 60:14 <b>center</b> [1] 37:24</p>	<p><b>century</b> [1] 10:9 <b>certainly</b> [9] 11:11 13:16 23:10 24: 9 43:4,12 46:16 56:25 64:18 <b>cetera</b> [1] 54:18 <b>challenge</b> [3] 25:3 27:17 33:1 <b>challenging</b> [4] 24:11,18 25:6,10 <b>chance</b> [1] 26:12 <b>change</b> [2] 10:3 58:7 <b>changed</b> [1] 65:17 <b>changes</b> [1] 37:7 <b>chaos</b> [4] 35:14 47:18,21 48:15 <b>Chappell</b> [2] 62:18 63:8 <b>characterization</b> [1] 30:24 <b>charge</b> [1] 34:22 <b>charged</b> [1] 34:13 <b>CHIEF</b> [23] 3:3,9 9:25 10:14 11:7 22:9,11 23:12 24:3,15,21 26:3 30: 23 31:11 32:8 33:5,10 52:18,24 65:7,12 68:12,21 <b>Chief's</b> [1] 28:3 <b>Chihuahua</b> [1] 52:2 <b>child</b> [4] 35:8,18 42:10,13 <b>children</b> [1] 35:23 <b>chilled</b> [1] 35:20 <b>chilling</b> [3] 35:11,13,21 <b>choice</b> [1] 31:23 <b>chosen</b> [3] 11:1 32:17 34:14 <b>Circuit</b> [3] 20:22 58:19 63:20 <b>Circuit's</b> [1] 27:10 <b>circumstance</b> [1] 11:22 <b>circumstances</b> [1] 31:22 <b>citizens</b> [3] 8:1 66:3,23 <b>City</b> [1] 9:4 <b>civil</b> [1] 30:6 <b>claim</b> [21] 4:6 5:25 6:11 7:18,23 11: 2,5 18:5,11,12 20:25 25:15,19 26: 5 32:19,21,25 47:10 51:11 61:24 62:1 <b>claiming</b> [2] 24:19 44:23 <b>claims</b> [9] 4:12 5:23 11:9 17:15 20: 20,22 22:2 33:19 60:18 <b>class</b> [3] 7:25 54:22,22 <b>classic</b> [1] 20:22 <b>Clause</b> [1] 34:2 <b>clear</b> [14] 14:17 18:1 19:15,17 23: 18 32:2 53:5,7,8 56:24 58:22 63:5, 7 68:5 <b>clearly</b> [2] 7:10 63:15 <b>client</b> [2] 28:14,15 <b>clock</b> [1] 10:19 <b>close</b> [1] 63:23 <b>coextensive</b> [1] 26:10 <b>colloquy</b> [1] 25:25 <b>Colorado</b> [2] 52:4,13 <b>combat</b> [1] 15:22 <b>come</b> [4] 22:23 31:4 39:9 66:22 <b>commission</b> [1] 19:2 <b>committed</b> [1] 17:17 <b>committing</b> [1] 52:8 <b>common</b> [8] 9:18 11:9 15:19 32: 20 57:1,4,6 66:1 <b>complaint</b> [6] 12:18 18:14 28:12 35:2,24 36:3 <b>complaint's</b> [1] 35:4</p>	<p><b>complementary</b> [1] 9:11 <b>completely</b> [1] 20:5 <b>complicated</b> [3] 13:25 27:3,23 <b>comply</b> [1] 24:20 <b>complying</b> [1] 67:17 <b>conceived</b> [1] 57:10 <b>concentrate</b> [1] 38:21 <b>concerned</b> [2] 67:4 68:18 <b>concerning</b> [1] 13:2 <b>concerns</b> [15] 12:19 21:20 23:18 26:2 31:8 50:15,16 51:14,15,18 53:6 59:22 63:17 64:23 68:13 <b>concluded</b> [2] 28:9 61:10 <b>conclusion</b> [2] 22:23 41:14 <b>conduct</b> [10] 12:17 15:3 17:12 29: 3,16 30:7 32:17 62:22 68:13,17 <b>conducted</b> [1] 22:17 <b>conducting</b> [2] 35:12 54:6 <b>confused</b> [1] 48:25 <b>Congress</b> [27] 8:3 12:10 17:14 22: 2,4,8 32:21 33:16 34:7,14,18 41: 12 46:23,25 53:8,22 55:22 57:14 58:10 59:3,10,19 63:4,6,13,18 64: 8 <b>Congress's</b> [1] 33:17 <b>congressional</b> [3] 21:25 38:22 64: 20 <b>conjunction</b> [1] 13:20 <b>consider</b> [4] 34:19 44:16,18 55:13 <b>consideration</b> [1] 34:4 <b>consistent</b> [4] 17:9 25:11 53:16 67:6 <b>Constitution</b> [8] 12:9 18:15 26:10 29:9 32:14 37:10 51:3 57:13 <b>constitutional</b> [4] 12:4 13:13 26: 14,15 <b>constitutionality</b> [1] 25:10 <b>constrained</b> [1] 44:24 <b>contemplate</b> [1] 6:6 <b>contest</b> [1] 49:1 <b>context</b> [33] 6:16 8:8,20,24 9:15 10:16 11:6 13:24 15:6,14 17:8 21: 4,4 22:1 23:4 24:5 27:23 29:6 31: 13,18,19 32:7 33:16,24 34:2 47:4 48:15 53:4 65:21 66:14,19 67:8, 13 <b>contexts</b> [2] 5:21 6:8 <b>continuation</b> [1] 10:18 <b>continues</b> [2] 23:14,15 <b>contrary</b> [4] 22:19 25:17 28:12 29: 22 <b>control</b> [1] 55:25 <b>convincing</b> [1] 18:9 <b>core</b> [3] 6:13 20:24 31:18 <b>correct</b> [14] 26:11,13 36:1 37:1,8 38:1,5,14 50:4,6,13,19,25 52:11 <b>correspondence</b> [2] 22:14 23:24 <b>costs</b> [4] 34:20 38:23 41:17 46:21 <b>couldn't</b> [1] 59:7 <b>Council</b> [1] 54:3 <b>counsel</b> [11] 3:12,13 21:6 22:9 33: 6 52:19 53:5 63:2 64:1 65:8 68:22 <b>counseling</b> [2] 4:1 68:5 <b>country</b> [6] 23:8,11 39:15 47:12</p>	<p>51:4 62:21 <b>couple</b> [2] 58:14 64:18 <b>course</b> [6] 8:11 10:20 23:14 25:21 26:12 62:25 <b>COURT</b> [73] 1:1,13 3:10,12,18 4: 15 5:8,19,21,23,24 6:5,13,17 7:19, 21 8:20 9:23 10:21,22,24 11:12 12:2,12,16,22 13:8,22 14:22 16: 18 17:5,7,13 20:19 23:1 24:24 26: 20 27:6,15 28:13,14,20,24 29:14, 15 30:1 31:17,25 32:11,25 33:11, 12 34:4 36:13,22 39:6 42:2 46:8 47:2,16 52:25 53:14 56:14,24 57: 8 58:11 62:11 63:3,22 65:25 66:8, 12 67:6 <b>Court's</b> [7] 16:25 27:14 29:21 48: 18 53:16 67:9,10 <b>courts</b> [25] 6:21,22 7:2 8:23 15:23 22:21 27:9 35:14 36:9 41:19,20, 22 42:7 46:9 47:19 48:17 53:12 54:8 56:25 57:16 62:10,21,25 63: 18 65:25 <b>covered</b> [1] 47:9 <b>CPB</b> [1] 54:14 <b>crack</b> [1] 61:14 <b>create</b> [9] 33:13 34:15 35:10 45:11 47:14,15,18 48:22 54:22 <b>created</b> [1] 47:3 <b>creates</b> [2] 46:21 58:10 <b>creating</b> [1] 42:7 <b>credibility</b> [1] 62:12 <b>credible</b> [1] 62:8 <b>criminal</b> [1] 30:11 <b>critical</b> [1] 30:5 <b>cross-border</b> [5] 13:25 14:13 27: 2,24 59:25 <b>crossed</b> [4] 37:23 49:10 64:5,7 <b>culvert</b> [3] 37:16,16 40:23 <b>curiae</b> [3] 1:23 2:11 52:22 <b>Customs</b> [1] 55:8 <b>cut</b> [2] 4:18 59:4 <b>cutting</b> [1] 41:7</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D.C</b> [3] 1:9,22 58:19 <b>dah-dah-dah</b> [2] 19:2 58:11 <b>damage</b> [1] 46:2 <b>damages</b> [15] 4:16 6:8,23 25:20 34:15,17 43:17 46:2,5 47:16 53:9, 13,24 55:14 59:17 <b>dating</b> [1] 15:17 <b>day</b> [4] 13:12 31:4 32:24 37:19 <b>day-to-day</b> [1] 35:12 <b>de</b> [1] 47:13 <b>DEA</b> [2] 13:19 27:18 <b>dealing</b> [2] 46:1 64:6 <b>debate</b> [1] 55:12 <b>decedent</b> [1] 36:16 <b>decide</b> [4] 16:9 18:20 41:13 46:24 <b>decided</b> [1] 10:22 <b>deciding</b> [3] 12:23 42:2 46:4 <b>decision</b> [6] 27:10,11,14 29:5,21 67:23 <b>decisions</b> [4] 17:7 48:20 53:12 67:</p>
--	--	--	--

## Official - Subject to Final Review

<p>10  <b>declined</b> <sup>[1]</sup> 33:17  <b>defendant</b> <sup>[6]</sup> 7:7 36:9,10,19 48:5 52:7  <b>defendants</b> <sup>[1]</sup> 9:3  <b>defenses</b> <sup>[3]</sup> 66:2,9 67:8  <b>deference</b> <sup>[2]</sup> 24:25 31:24  <b>deliberately</b> <sup>[1]</sup> 38:12  <b>demonstrated</b> <sup>[1]</sup> 31:12  <b>Department</b> <sup>[2]</sup> 1:22 61:19  <b>departmental</b> <sup>[1]</sup> 18:16  <b>depend</b> <sup>[1]</sup> 7:22  <b>Deputy</b> <sup>[1]</sup> 1:21  <b>deter</b> <sup>[1]</sup> 6:14  <b>determination</b> <sup>[6]</sup> 22:18 24:22 25:2 31:5,21 42:6  <b>determining</b> <sup>[1]</sup> 62:22  <b>deterrence</b> <sup>[2]</sup> 6:12 67:15  <b>deterrent</b> <sup>[1]</sup> 31:19  <b>dialectic</b> <sup>[1]</sup> 9:20  <b>difference</b> <sup>[8]</sup> 23:5 28:6 30:5 40:22 44:3,5,15,15  <b>different</b> <sup>[18]</sup> 12:7,25 23:7 24:5,6,13 27:4 29:14 30:10 31:4 40:6,18 46:22,22 50:22 52:3 56:23 57:15  <b>difficult</b> <sup>[6]</sup> 4:3 6:5,10 29:25 47:18 53:21  <b>diplomacy</b> <sup>[2]</sup> 4:11 46:20  <b>diplomatic</b> <sup>[5]</sup> 4:16 16:3 22:14 23:24 59:18  <b>directly</b> <sup>[2]</sup> 57:12 62:12  <b>director</b> <sup>[1]</sup> 33:3  <b>disagree</b> <sup>[5]</sup> 61:4 63:4,25 64:4,10  <b>disagreed</b> <sup>[1]</sup> 59:2  <b>disagreement</b> <sup>[1]</sup> 54:1  <b>disciplinary</b> <sup>[1]</sup> 29:20  <b>disciplining</b> <sup>[1]</sup> 54:17  <b>discuss</b> <sup>[1]</sup> 60:11  <b>discussed</b> <sup>[1]</sup> 47:9  <b>discussion</b> <sup>[1]</sup> 13:12  <b>discussions</b> <sup>[1]</sup> 60:20  <b>dismissing</b> <sup>[1]</sup> 5:24  <b>displace</b> <sup>[4]</sup> 8:9 12:20 21:21 68:14  <b>displaced</b> <sup>[1]</sup> 68:12  <b>dispositive</b> <sup>[2]</sup> 47:6 60:6  <b>dispute</b> <sup>[3]</sup> 24:16 29:6 34:23  <b>disputes</b> <sup>[1]</sup> 5:2  <b>disputing</b> <sup>[1]</sup> 58:21  <b>dissent</b> <sup>[2]</sup> 8:5 18:21  <b>Distilled</b> <sup>[1]</sup> 66:24  <b>distinction</b> <sup>[2]</sup> 29:2 32:25  <b>distinguish</b> <sup>[2]</sup> 13:6 68:10  <b>district</b> <sup>[1]</sup> 5:24  <b>diversity</b> <sup>[1]</sup> 7:22  <b>doing</b> <sup>[7]</sup> 7:1 18:6 55:8 56:19 57:9,16 65:1  <b>domain</b> <sup>[2]</sup> 34:7,18  <b>done</b> <sup>[5]</sup> 8:14 17:13 25:11 54:18 59:19  <b>down</b> <sup>[1]</sup> 17:7  <b>dragging</b> <sup>[2]</sup> 36:12,24  <b>dramatic</b> <sup>[1]</sup> 10:3  <b>dramatically</b> <sup>[1]</sup> 4:10  <b>draw</b> <sup>[6]</sup> 16:1,17,18,22 17:5 32:24</p>	<p><b>drawing</b> <sup>[8]</sup> 39:6,8,8,9,13 47:14 48:1,1  <b>drive</b> <sup>[1]</sup> 26:19  <b>drone</b> <sup>[2]</sup> 52:4,13  <b>drop</b> <sup>[1]</sup> 55:6  <b>Due</b> <sup>[2]</sup> 34:1 47:10</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>each</b> <sup>[1]</sup> 37:19  <b>earthly</b> <sup>[1]</sup> 30:2  <b>easiest</b> <sup>[1]</sup> 64:16  <b>easily</b> <sup>[1]</sup> 6:15  <b>easy</b> <sup>[2]</sup> 59:23 65:5  <b>effect</b> <sup>[5]</sup> 6:12 11:18 30:6 35:11,13  <b>Eighth</b> <sup>[1]</sup> 44:10  <b>El</b> <sup>[1]</sup> 1:19  <b>eliminate</b> <sup>[1]</sup> 67:14  <b>embarrassment</b> <sup>[1]</sup> 62:23  <b>employment</b> <sup>[1]</sup> 49:9  <b>enacted</b> <sup>[1]</sup> 8:4  <b>encompass</b> <sup>[1]</sup> 14:12  <b>end</b> <sup>[6]</sup> 13:12 31:3 32:24 37:17 44:5 52:3  <b>enforcement</b> <sup>[29]</sup> 4:13 5:11,15,21 6:4,7,16 11:3 15:2,10,14,19 16:6 17:12,17 18:17,18,22 20:20 21:1 22:7 32:7 33:4 49:11 66:11,14 67:2,17 68:19  <b>engaged</b> <sup>[2]</sup> 33:4 49:11  <b>enough</b> <sup>[3]</sup> 57:21 63:11,15  <b>ensure</b> <sup>[1]</sup> 67:16  <b>entire</b> <sup>[1]</sup> 25:4  <b>entitled</b> <sup>[2]</sup> 24:21 66:10  <b>entry</b> <sup>[1]</sup> 58:23  <b>episodes</b> <sup>[1]</sup> 27:24  <b>equally</b> <sup>[1]</sup> 23:19  <b>equities</b> <sup>[1]</sup> 32:9  <b>era</b> <sup>[2]</sup> 56:7,10  <b>Erie</b> <sup>[1]</sup> 57:5  <b>especially</b> <sup>[1]</sup> 27:24  <b>ESQ</b> <sup>[6]</sup> 1:17,19 2:3,6,9,13  <b>established</b> <sup>[1]</sup> 7:11  <b>ET</b> <sup>[2]</sup> 1:3 54:18  <b>even</b> <sup>[27]</sup> 4:22 5:12 9:21 11:8,21 12:12 21:3,4 23:22 29:19 31:11 32:8 41:9 42:11 44:8,23 45:9,10,22 47:16 51:21 56:18 59:2 60:17 62:10,15 63:4  <b>evening</b> <sup>[1]</sup> 39:25  <b>everybody</b> <sup>[2]</sup> 57:3,12  <b>everything</b> <sup>[2]</sup> 7:17 29:17  <b>evidence</b> <sup>[5]</sup> 30:11 55:2 58:4,8 61:9  <b>ex</b> <sup>[1]</sup> 29:2  <b>exact</b> <sup>[1]</sup> 5:14  <b>exactly</b> <sup>[3]</sup> 8:15 53:22 61:17  <b>example</b> <sup>[4]</sup> 12:3 15:22 22:1 68:7  <b>examples</b> <sup>[1]</sup> 15:21  <b>except</b> <sup>[1]</sup> 50:8  <b>exception</b> <sup>[1]</sup> 33:22  <b>excessive</b> <sup>[9]</sup> 20:21 29:8,16 35:7 47:7 48:14 49:2 50:3,6  <b>executive</b> <sup>[11]</sup> 28:7 29:13,17,24 30:2 34:7,22 45:19 46:23 62:13,</p>	<p>24  <b>exemplified</b> <sup>[1]</sup> 58:16  <b>existed</b> <sup>[1]</sup> 33:14  <b>existence</b> <sup>[1]</sup> 9:13  <b>existing</b> <sup>[1]</sup> 66:1  <b>expand</b> <sup>[1]</sup> 17:16  <b>expanded</b> <sup>[1]</sup> 22:8  <b>expanding</b> <sup>[1]</sup> 8:7  <b>explain</b> <sup>[2]</sup> 10:10 59:21  <b>explained</b> <sup>[2]</sup> 5:9 21:17  <b>express</b> <sup>[1]</sup> 58:25  <b>extend</b> <sup>[2]</sup> 47:23 56:1  <b>extended</b> <sup>[3]</sup> 37:13 51:2,3  <b>extending</b> <sup>[8]</sup> 33:15 39:14,16 43:9 48:21,21 51:24 53:23  <b>extends</b> <sup>[1]</sup> 53:14  <b>extension</b> <sup>[10]</sup> 19:22 20:13 37:10 38:20 39:19 46:7,9 47:11 48:2,19  <b>extensively</b> <sup>[1]</sup> 54:15  <b>extent</b> <sup>[1]</sup> 12:9  <b>extra</b> <sup>[1]</sup> 21:23  <b>extradite</b> <sup>[3]</sup> 29:23 30:3 61:13  <b>extradition</b> <sup>[3]</sup> 30:12,13 46:2  <b>extraterritorial</b> <sup>[1]</sup> 11:19  <b>extraterritoriality</b> <sup>[11]</sup> 4:18 12:21,23 21:16,19 53:7 58:17 63:7 64:20 68:4,11  <b>extraterritorially</b> <sup>[1]</sup> 12:5</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> <sup>[2]</sup> 35:25 36:3  <b>face-to-face</b> <sup>[1]</sup> 66:22  <b>faced</b> <sup>[1]</sup> 66:4  <b>facet</b> <sup>[1]</sup> 50:17  <b>fact</b> <sup>[7]</sup> 3:25 6:9 14:1 21:11 30:21 39:25 40:7  <b>facto</b> <sup>[1]</sup> 47:14  <b>factor</b> <sup>[7]</sup> 4:5 12:24 21:16,24 40:24 41:7 68:4  <b>factors</b> <sup>[10]</sup> 4:1 21:6 34:5 46:18 53:5,20 63:2,9 64:19 65:6  <b>facts</b> <sup>[6]</sup> 18:4 35:24 39:1 53:15 55:16 63:21  <b>factual</b> <sup>[2]</sup> 25:2 31:20  <b>fails</b> <sup>[2]</sup> 34:2,3  <b>fair</b> <sup>[1]</sup> 31:9  <b>fairly</b> <sup>[3]</sup> 10:3 30:24 31:1  <b>faith</b> <sup>[2]</sup> 7:9 66:6  <b>fall</b> <sup>[1]</sup> 4:17  <b>falls</b> <sup>[1]</sup> 29:7  <b>familiar</b> <sup>[1]</sup> 9:19  <b>far</b> <sup>[3]</sup> 27:19 41:2 59:9  <b>far-reaching</b> <sup>[1]</sup> 52:9  <b>fashion</b> <sup>[1]</sup> 47:16  <b>fashioned</b> <sup>[1]</sup> 41:12  <b>fashioning</b> <sup>[1]</sup> 66:9  <b>favor</b> <sup>[2]</sup> 28:13,15  <b>FBI</b> <sup>[2]</sup> 33:3 56:1  <b>federal</b> <sup>[26]</sup> 4:12 6:21,24 7:2,19,21 8:23 9:3,8,11,22,24 11:3 13:13 15:20,24 17:15 22:7 25:15,19 53:2 57:2,4,12,16 58:20  <b>feel</b> <sup>[1]</sup> 20:1  <b>feet</b> <sup>[7]</sup> 3:21 4:7 35:19,23 42:11,13</p>	<p>43:15  <b>fell</b> <sup>[1]</sup> 50:5  <b>few</b> <sup>[3]</sup> 3:21 4:7 35:23  <b>Fifth</b> <sup>[3]</sup> 20:21 34:1 63:20  <b>fight</b> <sup>[1]</sup> 66:9  <b>figure</b> <sup>[1]</sup> 53:21  <b>find</b> <sup>[5]</sup> 15:22 43:24 44:7 49:10 51:7  <b>finding</b> <sup>[1]</sup> 56:18  <b>fine</b> <sup>[2]</sup> 57:4,5  <b>finish</b> <sup>[2]</sup> 67:19,23  <b>firearms</b> <sup>[1]</sup> 55:3  <b>fired</b> <sup>[1]</sup> 56:4  <b>first</b> <sup>[11]</sup> 3:11,24 6:4 10:15 12:1 14:21 20:19 21:8 22:12 23:13 53:19  <b>fiscal</b> <sup>[2]</sup> 55:4,5  <b>focused</b> <sup>[3]</sup> 7:5 11:16 66:2  <b>focuses</b> <sup>[1]</sup> 15:2  <b>following</b> <sup>[1]</sup> 23:24  <b>follows</b> <sup>[1]</sup> 21:11  <b>force</b> <sup>[20]</sup> 12:20 18:4 20:21 21:21 28:1 29:8,16 35:7 47:8 48:14 49:2 50:3,6 54:5 55:3 60:15 66:19 68:14,18,20  <b>foreclose</b> <sup>[1]</sup> 44:2  <b>foreclosed</b> <sup>[2]</sup> 3:20 44:22  <b>forefront</b> <sup>[1]</sup> 34:10  <b>foreign</b> <sup>[50]</sup> 4:4,10,15 14:9 21:9 23:8,21,23 24:2,6,25 26:7 28:22,23 30:19 33:19 34:22 35:9 37:11 44:24 45:4,8,12,14,21 46:19 47:6,7,12 50:15 51:3,14,17 53:1,2,5,20 56:19 59:22,24 61:19 62:3,13 63:5 64:6,6,17,22 65:3 67:4  <b>foreigner</b> <sup>[1]</sup> 4:15  <b>formation</b> <sup>[1]</sup> 33:15  <b>former</b> <sup>[1]</sup> 54:14  <b>formulated</b> <sup>[1]</sup> 33:2  <b>forth</b> <sup>[1]</sup> 55:7  <b>fortuity</b> <sup>[1]</sup> 3:24  <b>forward</b> <sup>[2]</sup> 10:19 60:18  <b>found</b> <sup>[1]</sup> 28:15  <b>founding</b> <sup>[2]</sup> 6:23 15:18  <b>four</b> <sup>[1]</sup> 6:2  <b>Fourth</b> <sup>[30]</sup> 9:12,16 13:10,18,23 19:12,14,15,18,23 25:16 26:25 27:16,22 37:14 39:10 40:8 43:9,14 44:7,12,17,18,21,25 47:9 57:23,25 58:3,7  <b>frankly</b> <sup>[1]</sup> 17:6  <b>freed</b> <sup>[1]</sup> 8:8  <b>freely</b> <sup>[1]</sup> 56:8  <b>freeze</b> <sup>[1]</sup> 41:3  <b>frequency</b> <sup>[1]</sup> 66:15  <b>friction</b> <sup>[1]</sup> 58:15  <b>front</b> <sup>[1]</sup> 19:13  <b>FTCA</b> <sup>[5]</sup> 32:21 33:19 53:8,23 59:5  <b>full</b> <sup>[1]</sup> 17:10  <b>fully</b> <sup>[2]</sup> 31:6,12  <b>functional</b> <sup>[1]</sup> 67:3  <b>functions</b> <sup>[1]</sup> 15:11  <b>fundamental</b> <sup>[1]</sup> 56:2  <b>fundamentally</b> <sup>[1]</sup> 12:7</p>
--	--	---	---



## Official - Subject to Final Review

<p style="text-align: center;"><b>G</b></p> <p><b>gave</b> [3] 20:10 48:4 52:12  <b>General</b> [5] 1:22 9:24 11:13 33:3 60:12  <b>GINSBURG</b> [13] 8:13,19 9:2 13:7, 16 14:7 22:10 26:22 27:5 35:1 67: 19,22 68:2  <b>give</b> [3] 31:24 43:18 45:6  <b>given</b> [4] 9:13,14 38:25 60:5  <b>giving</b> [1] 43:17  <b>GORSUCH</b> [19] 13:5 14:3,5,17,18, 24 15:9,25 16:11,14,15,22 17:3,12, 20 18:10,17 22:6 25:25  <b>got</b> [8] 23:6 40:5,9,12 44:6 64:21 65:3,23  <b>government</b> [31] 7:24 10:23 13: 21 15:7 16:4 21:5,15,25 22:15,15 23:14 24:17,19 28:5,7,24 29:4 30: 9,16,25 32:8,16 46:3,4 51:12 62: 14 65:16,18,24 66:4 67:24  <b>government's</b> [15] 4:8 8:21,22,25 9:7,14 10:1 24:12,21 28:4 29:7 30: 15 31:20 32:13 66:25  <b>governmental</b> [2] 15:11 31:5  <b>grant</b> [1] 64:18  <b>gravamen</b> [1] 12:17  <b>greater</b> [2] 42:9,14  <b>Gregoire</b> [1] 66:6  <b>ground</b> [1] 55:19  <b>guard</b> [1] 28:8  <b>guess</b> [9] 18:21 47:22 48:14,15 51: 9 60:7,9 61:22 63:19  <b>guidance</b> [5] 41:20,21 45:18 47:1 48:20  <b>gun</b> [3] 37:22 43:1 56:4</p>	<p><b>Hernandez's</b> [2] 26:15 61:25  <b>hesitate</b> [1] 43:23  <b>hesitation</b> [5] 4:1 21:7 53:5 63:3 68:5  <b>high-level</b> [1] 33:1  <b>himself</b> [1] 24:19  <b>historical</b> [4] 6:20 11:6 15:16 56: 18  <b>historically</b> [5] 7:5 24:24 31:25 32: 20 65:23  <b>history</b> [1] 4:11  <b>hit</b> [2] 4:23 52:13  <b>hitting</b> [1] 52:4  <b>hoc</b> [2] 42:6 46:10  <b>hold</b> [1] 7:6  <b>holding</b> [1] 30:20  <b>home</b> [6] 13:19 26:19,24 27:17,18 37:20  <b>Honor</b> [3] 15:5 36:15 38:6  <b>Honors</b> [1] 68:16  <b>hope</b> [5] 14:17 18:1,10 21:17 57: 21  <b>hundreds</b> [1] 37:18  <b>hurts</b> [1] 12:15  <b>hypo</b> [1] 50:10  <b>hypothetical</b> [3] 52:12 64:16 65: 19  <b>hypotheticals</b> [2] 15:4 64:1</p>	<p><b>individuals</b> [1] 66:16  <b>inference</b> [1] 38:18  <b>injure</b> [1] 15:12  <b>injured</b> [5] 13:9,14 14:9 59:16 66: 4  <b>injuries</b> [2] 53:10 59:6  <b>injury</b> [4] 26:8 47:6 49:15 52:16  <b>inquiry</b> [3] 7:5 30:10 38:19  <b>inside</b> [10] 36:17 37:3,6 45:22 49:6 50:12 64:2,2,13 65:18  <b>instability</b> [4] 42:7,9,15,16  <b>instance</b> [1] 60:14  <b>instances</b> [2] 5:11 6:7  <b>instant</b> [1] 4:22  <b>instead</b> [1] 66:20  <b>instruction</b> [1] 35:7  <b>intended</b> [1] 12:11  <b>intentional</b> [3] 17:17,22,23  <b>interact</b> [1] 66:16  <b>interactions</b> [1] 66:17  <b>interests</b> [1] 9:17  <b>interfere</b> [1] 62:2  <b>interfering</b> [1] 36:14  <b>interim</b> [1] 10:3  <b>international</b> [5] 19:2 22:13 31:7 45:12 53:3  <b>interpret</b> [1] 47:2  <b>intruding</b> [1] 34:6  <b>investigating</b> [1] 54:18  <b>investigation</b> [4] 22:18 31:2,6 61: 8  <b>invoke</b> [1] 27:16  <b>invoked</b> [1] 21:24  <b>involve</b> [1] 36:8  <b>involved</b> [6] 11:2,4,5,9 34:5 50:9  <b>involves</b> [4] 12:18 36:10,19 40:3  <b>involving</b> [2] 16:2 51:22  <b>island</b> [2] 39:19 40:8  <b>isn't</b> [5] 3:24 29:18 44:5 57:23 60: 23  <b>issue</b> [5] 15:3 19:12,25 24:17 33: 19  <b>issues</b> [2] 46:24 61:21  <b>itself</b> [10] 5:21 8:22 13:22 17:1 23: 22 34:2 41:18 49:25 55:24 56:17</p>	<p><b>Justice</b> [165] 1:22 3:3,9 7:13,14,15, 16,21 8:3,13,18 9:2,25 10:14 11:7, 17,25 13:5,7,16 14:3,5,6,16,18,24 15:9,25 16:11,13,15,22 17:3,12,19, 20,21 18:1,3,10,17,19 19:7,10 20: 5,7,12,17 21:2,17 22:5,9,10,11 23: 12 24:1,3,22 25:5,7,9,13,14,22,24, 25 26:3,3,15,22 27:5 28:2,18 29: 11 30:4,23 31:11 32:8 33:5,10 35: 1,16 36:2,7,18,24 37:5,12 38:2,7, 16,17 39:7,16,22 40:5,11,15,20 41: 14,23 42:8,21 43:5,6,22 44:4,19 45:1,2,3,20 46:12 47:21 48:3,3,8, 12,24 49:7,18 50:1,7,14,20 51:5,9 52:6,18,24 54:9,25 55:15,17,20,23 56:9,12,13,15,22 57:17,19 58:3,6, 18 59:14,20 60:16 61:1,22 62:4, 17,19 64:9,12,25 65:7,13,15 67:19, 22 68:2,12,21  <b>Justice's</b> [1] 24:15  <b>justified</b> [1] 66:20  <b>justify</b> [1] 66:20  <b>juvenile</b> [1] 41:25</p>
<p style="text-align: center;"><b>H</b></p> <p><b>half</b> [1] 10:9  <b>Hand</b> [1] 66:6  <b>handed</b> [1] 17:7  <b>hands</b> [1] 59:24  <b>happen</b> [4] 15:11,12 35:17 58:9  <b>happened</b> [6] 27:2 29:14 35:17 54: 1,8 59:5  <b>happens</b> [2] 30:3 52:13  <b>happy</b> [3] 55:1,2 61:9  <b>hard</b> [1] 23:23  <b>harder</b> [1] 68:6  <b>harm</b> [1] 66:3  <b>harmed</b> [1] 4:15  <b>harmless</b> [1] 7:7  <b>harms</b> [1] 23:21  <b>Hart</b> [1] 9:20  <b>Hart's</b> [1] 9:20  <b>Hawaii</b> [2] 39:17 40:8  <b>hear</b> [4] 3:3 20:3,8 57:20  <b>heartbreaking</b> [1] 63:22  <b>heartland</b> [1] 26:1  <b>help</b> [1] 60:1  <b>helps</b> [2] 12:14 26:19  <b>Henry</b> [1] 9:19  <b>HERNANDEZ</b> [9] 1:3 3:4,15 13:8, 23 21:12 23:16 27:7 65:17</p>	<p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [1] 38:9  <b>identified</b> [4] 4:1 5:5 21:5 24:3  <b>imaginary</b> [2] 37:23 38:11  <b>imagine</b> [1] 23:23  <b>immunity</b> [8] 7:5 66:2,9,11,20,21 67:3,8  <b>impact</b> [1] 34:21  <b>implicated</b> [1] 21:19  <b>implicates</b> [1] 21:9  <b>implication</b> [1] 30:19  <b>implications</b> [6] 24:2 45:4,8,12,14, 22  <b>implied</b> [2] 33:13 59:1  <b>imply</b> [2] 53:13 63:12  <b>implying</b> [2] 10:4 57:11  <b>importance</b> [1] 53:17  <b>important</b> [9] 5:20 12:1 15:20 17: 23 24:10,14 49:9 62:21 65:22  <b>importantly</b> [2] 4:3,24  <b>imposed</b> [1] 6:23  <b>imposing</b> [1] 15:23  <b>improperly</b> [1] 56:19  <b>inches</b> [5] 50:21 51:19,20 64:2,12  <b>incident</b> [8] 22:16 23:25 25:3 29: 13 30:16 45:22 60:21 61:16  <b>incidents</b> [4] 45:11 55:3 60:11,12  <b>including</b> [2] 4:13 46:18  <b>inconsistent</b> [2] 23:1 32:14  <b>increasingly</b> [1] 11:12  <b>indication</b> [1] 58:22  <b>indictment</b> [1] 30:11  <b>indiscriminately</b> [2] 35:22 42:25  <b>individual</b> [9] 5:11 6:6,14 11:2 20: 20,25 22:7 32:11 33:3</p>	<p style="text-align: center;"><b>J</b></p> <p><b>JEFFREY</b> [3] 1:21 2:9 52:21  <b>JESUS</b> [2] 1:3,6  <b>job</b> [1] 55:9  <b>JR</b> [1] 1:6  <b>Juarez</b> [1] 52:1  <b>Judge</b> [3] 8:4 20:24 66:6  <b>judge-made</b> [1] 11:13  <b>judges</b> [1] 9:23  <b>judgment</b> [3] 30:1,6,19  <b>judgments</b> [2] 59:4,10  <b>judicial</b> [2] 29:5 53:18  <b>judicially</b> [1] 63:12  <b>judiciary</b> [1] 38:21  <b>judiciously</b> [1] 56:8  <b>jurisdiction</b> [3] 8:2 37:3 47:13  <b>jurisprudence</b> [1] 16:25  <b>jury</b> [2] 28:14 31:4</p>	<p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> [23] 29:11 30:5 48:24 49:7, 18 50:1,7,14,20 51:5,9 52:6 59:14, 20 60:16 61:1,22 62:4,17,19 64:9, 12,25  <b>Kagan's</b> [1] 65:15  <b>KAVANAUGH</b> [16] 7:13,15 11:17, 25 20:24 24:1 26:4 45:1,3,20 46: 12 47:21 48:3,8,12 58:18  <b>Kavanaugh's</b> [1] 21:18  <b>keep</b> [1] 51:25  <b>keeps</b> [1] 51:23  <b>Kennedy</b> [2] 38:17 44:6  <b>key</b> [2] 30:14 32:10  <b>kill</b> [1] 35:7  <b>killed</b> [4] 3:16 5:14 45:10 53:1  <b>kills</b> [1] 35:19  <b>kind</b> [15] 5:15 11:4 19:22,23 24:23 28:23 31:24 32:19,21,25 41:6 59: 22 60:2,24 66:21  <b>kinds</b> [4] 14:13 45:11 55:13 63:16  <b>Kiobel</b> [4] 12:14,15 13:4 68:10  <b>known</b> [1] 4:21  <b>knows</b> [2] 35:20 37:5</p> <p style="text-align: center;"><b>L</b></p> <p><b>lack</b> [2] 34:3 46:13  <b>land</b> [3] 4:22 18:5 35:17  <b>language</b> [3] 7:25 44:23 58:23  <b>larger</b> [1] 15:1  <b>largest</b> [2] 67:2,16  <b>last</b> [6] 10:7 55:4 62:8 63:19,22 65: 15  <b>later</b> [1] 57:10  <b>Laughter</b> [3] 19:6 40:14 51:8  <b>law</b> [47] 4:12 5:11,15,20 6:3,7,16 9: 1,5,14,15,18 11:3,9 15:2,10,14,18, 19 16:6 17:11,17 18:17,18,22 20: 20,25 22:7 32:6,20 33:4 36:9,12 37:6 46:11 47:1 49:11 57:1,5,6 66:</p>

## Official - Subject to Final Review

<p>1,11,14 67:2,16,17 68:19  <b>lawful</b> [2] 30:20 62:22  <b>lawsuits</b> [1] 59:17  <b>least</b> [8] 11:8,15 21:3 23:4,7 59:9  60:1 67:3  <b>leave</b> [3] 57:21 63:3,13  <b>left</b> [2] 17:11 46:23  <b>legal</b> [3] 6:9 10:12 68:8  <b>legislative</b> [1] 55:12  <b>less</b> [1] 53:12  <b>lethal</b> [2] 66:19 68:20  <b>liability</b> [7] 17:16 22:5,8 53:9,24  59:5 65:24  <b>life</b> [1] 63:23  <b>likely</b> [2] 64:21 66:22  <b>limit</b> [1] 42:1  <b>limited</b> [2] 15:10 63:1  <b>limiting</b> [3] 8:5 14:8 17:23  <b>limits</b> [3] 7:25 41:18 47:1  <b>line</b> [28] 15:17 16:1,17,23 17:1,5  18:25 35:19 37:23 38:11 39:6,7,8,  9,13,24 47:14,25 48:1,4 51:2,6,7,  25 55:10 64:2,3,13  <b>line-draw</b> [1] 51:6  <b>little</b> [4] 41:21 48:25 51:21 59:21  <b>live</b> [1] 62:20  <b>logic</b> [2] 23:20 30:15  <b>long</b> [5] 4:11 20:19 57:1,18 66:12  <b>look</b> [13] 22:21 43:8 44:6 46:17 48:  9,13 54:13 55:2 56:17 57:22 59:3  60:23 63:21  <b>looked</b> [1] 66:1  <b>looking</b> [6] 12:3,8 61:1,23 63:14,  20  <b>loss</b> [1] 63:22  <b>lost</b> [2] 6:15 19:21  <b>lot</b> [4] 14:11 50:14,16 67:24  <b>lots</b> [2] 45:11 47:24  <b>lower</b> [9] 27:9 35:14 41:20,22 42:7  46:9 47:19 48:17 53:12</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>made</b> [3] 53:12 59:4,10  <b>maintains</b> [1] 47:13  <b>man</b> [1] 18:6  <b>many</b> [3] 15:4,21 50:23  <b>map</b> [1] 12:13  <b>markedly</b> [1] 53:12  <b>matter</b> [4] 1:12 30:21 37:7 39:5  <b>MDC</b> [1] 6:1  <b>mean</b> [16] 9:19 10:6 14:21,25 16:8  18:20 20:5 39:17 50:1 55:17 56:  12 59:20 60:4 64:16 65:16,20  <b>Meaning</b> [1] 35:18  <b>meaningful</b> [1] 29:1  <b>meaningfully</b> [1] 67:15  <b>means</b> [2] 16:6 60:6  <b>meant</b> [2] 13:4 32:5  <b>mechanisms</b> [1] 54:2  <b>meeting</b> [1] 54:11  <b>meets</b> [1] 54:4  <b>mentioned</b> [2] 22:12 46:14  <b>merely</b> [1] 24:2  <b>merger</b> [1] 29:10</p>	<p><b>MESA</b> [3] 1:6 3:5 68:7  <b>Meshal</b> [1] 58:19  <b>mess</b> [2] 54:16 58:11  <b>message</b> [1] 53:17  <b>Mexican</b> [19] 3:21 5:13 13:18,20  21:12 22:14 27:16 30:8 36:8,9,9,  13 38:11 42:13 43:18 45:9,9,23  46:3  <b>Mexicans</b> [1] 39:3  <b>Mexico</b> [19] 22:24 23:6 29:22 30:1  34:24,25 51:24 52:2 53:6,21,25  58:15 60:4,10,19 61:5,12 62:6 68:  8  <b>might</b> [11] 4:23 8:10 18:8,23 21:3  29:5 43:10,11,12 53:22 54:16  <b>miles</b> [6] 49:2,5 50:8 64:2,25 68:7  <b>military</b> [2] 16:3 34:12  <b>mind</b> [1] 5:16  <b>minimum</b> [1] 54:17  <b>minister</b> [1] 61:19  <b>minutes</b> [1] 65:9  <b>misconduct</b> [1] 65:25  <b>model</b> [1] 9:18  <b>modern</b> [1] 7:9  <b>modesty</b> [1] 53:18  <b>Moreover</b> [1] 4:8  <b>Most</b> [3] 4:3 12:1 66:22  <b>move</b> [1] 10:9  <b>moved</b> [1] 50:21  <b>much</b> [5] 34:11 40:18 51:22 58:18  68:6  <b>must</b> [1] 38:21  <b>myriad</b> [2] 46:18 48:22  <b>myself</b> [2] 20:9 40:23</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>Nabisco</b> [2] 68:1,9  <b>Narcotics</b> [1] 8:15  <b>narrower</b> [1] 66:21  <b>nation's</b> [2] 67:2,16  <b>national</b> [25] 13:19 14:9 21:9 23:  21,23 24:4 25:1 26:7 27:16 34:8,9,  11 35:9 42:18,19 45:10,24 46:19  47:6 50:16,18 51:15,17 53:1 64:  22  <b>nationality</b> [1] 4:23  <b>nationals</b> [3] 64:6,17 67:4  <b>nature</b> [3] 15:2 47:5 66:17  <b>near</b> [1] 37:21  <b>neatly</b> [1] 45:15  <b>necessarily</b> [2] 17:9,9  <b>necessary</b> [5] 9:9,11 16:10 38:18,  19  <b>need</b> [4] 10:9 53:6 59:20 66:5  <b>negotiations</b> [2] 54:7 60:20  <b>Neither</b> [2] 5:1,4  <b>never</b> [8] 12:3 28:20 37:7 39:17,25  40:2 52:3 64:8  <b>nevertheless</b> [2] 3:20 12:12  <b>New</b> [16] 9:1,4,5,13,14 21:4,4 23:4  31:13 33:16,24 34:2 39:15 47:4  48:15 53:3  <b>newly</b> [1] 8:8  <b>next</b> [2] 3:4 62:5</p>	<p><b>nine</b> [2] 10:22 26:20  <b>Ninth</b> [1] 27:9  <b>non-citizen</b> [3] 13:9,14 27:1  <b>non-inadvertently</b> [1] 34:15  <b>none</b> [6] 11:1,4,5,7 15:22 33:14  <b>Nor</b> [2] 4:18 5:1  <b>note</b> [3] 6:21 15:16 24:14  <b>noted</b> [1] 8:4  <b>nothing</b> [3] 4:25 8:9 18:6  <b>notwithstanding</b> [1] 26:2  <b>November</b> [1] 1:10</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>obstacles</b> [1] 7:1  <b>obvious</b> [1] 58:16  <b>obviously</b> [2] 16:9 60:4  <b>occur</b> [2] 14:14 52:17  <b>occurring</b> [1] 49:15  <b>occurs</b> [1] 51:18  <b>offer</b> [1] 10:14  <b>officer</b> [31] 7:7,11,16,17 8:14,17 9:  3 11:3 18:17,18 21:1 23:21 27:19  28:10 29:23 30:8 31:21 32:11,18  33:4 35:5 49:2,8,14,23 50:2 53:2  59:7 62:9 66:10 68:19  <b>officers</b> [22] 4:13 6:14,24 8:11 9:5,  22 15:20,24 17:18 20:21 22:7 29:  4,4 57:3,12 58:21 66:4,5,12,14 67:  1,16  <b>official</b> [1] 48:5  <b>okay</b> [9] 16:11 19:2,4 38:7,24 50:7,  14,20 58:11  <b>on-the-grounds</b> [1] 63:17  <b>on/off</b> [1] 27:20  <b>once</b> [3] 43:14 44:12 64:5  <b>one</b> [26] 5:22 11:16 14:19,23 22:25  23:9,12 24:11 28:3,4,25 29:12,20  32:18 37:22 42:1 43:20 51:6,19  58:14 61:5,20,23 63:1 67:14,23  <b>only</b> [13] 4:19 5:19 6:9 9:8 14:19  16:5 19:4,12 22:4 33:25 35:13 38:  7 42:1  <b>open</b> [1] 17:11  <b>operating</b> [1] 13:20  <b>operations</b> [6] 15:22 16:3,3,4,7  49:4  <b>opinion</b> [2] 20:23 47:19  <b>opportunity</b> [1] 10:25  <b>opposed</b> [5] 5:6 7:4 15:10 21:13  25:3  <b>opposing</b> [1] 46:4  <b>opposite</b> [1] 22:23  <b>oral</b> [7] 1:13 2:2,5,8 3:7 33:8 52:21  <b>order</b> [1] 48:19  <b>ordinarily</b> [1] 39:2  <b>organization</b> [1] 34:13  <b>original</b> [2] 9:21 27:11  <b>ORTEGA</b> [48] 1:19 2:6 33:7,8,10  35:10 36:1,5,15,23 37:1,8 38:1,5,  14 39:5,14,20 40:2,10,13,17 41:11,  16 42:5,16 43:2,21 44:1,18,21 45:  16,25 46:17 47:25 48:6,10,17,24  49:5,15,22 50:5,12,19,25 51:23  52:11</p>	<p><b>other</b> [19] 5:5,6,7 6:6 11:20 15:10  16:4 18:7 32:9,9 38:3 39:23 43:16,  20 45:5 51:20 53:11 56:20 61:7  <b>others</b> [3] 54:14,19 66:3  <b>otherwise</b> [2] 5:4 8:6  <b>ought</b> [4] 61:13,14 63:11,13  <b>out</b> [10] 7:24 10:23 17:15 32:18 33:  22 49:3 53:22 54:2 59:16,17  <b>outlined</b> [1] 46:8  <b>outside</b> [3] 49:16,24 50:5  <b>over</b> [5] 24:16 43:20 50:22 54:1 66:  10  <b>overreach</b> [4] 5:12,15 6:7 33:4  <b>overseas</b> [1] 12:10  <b>own</b> [6] 18:15 24:22 29:7 35:6,17  62:10</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m</b> [1] 68:23  <b>PAGE</b> [2] 2:2 10:24  <b>pair</b> [1] 61:5  <b>panel</b> [1] 27:11  <b>parallel</b> [1] 11:10  <b>parameters</b> [1] 41:19  <b>paramilitary</b> [2] 34:12 45:17  <b>part</b> [1] 28:3  <b>particular</b> [3] 11:14 12:4 26:6  <b>parties</b> [1] 5:6  <b>Paso</b> [1] 1:19  <b>passed</b> [1] 63:7  <b>passing</b> [1] 58:24  <b>Patrol</b> [26] 22:17 24:12 25:4,12,18  29:3,23 32:17 34:8,10,11 35:11,  18,22 36:12,20 41:3 42:19,24 45:  18 49:2,8,20 54:16,23 55:8  <b>patrolling</b> [1] 53:2  <b>patrols</b> [1] 45:18  <b>pause</b> [2] 53:22 63:12  <b>people</b> [4] 37:19 42:24 49:10 50:  23  <b>percent</b> [1] 55:5  <b>perfectly</b> [2] 57:4,5  <b>perhaps</b> [1] 37:18  <b>permitting</b> [1] 4:9  <b>person</b> [5] 15:7 27:1 38:8,10 50:9  <b>persons</b> [1] 15:12  <b>perspective</b> [2] 12:8 13:3  <b>persuaded</b> [2] 19:3,9  <b>persuasively</b> [1] 54:15  <b>Petitioner's</b> [1] 26:14  <b>Petitioners</b> [13] 1:4,18 2:4,14 3:8,  14 4:25 5:3,6 22:3 33:12 37:9 65:  11  <b>Petitioners'</b> [1] 4:9  <b>pick</b> [2] 14:6 58:23  <b>picks</b> [1] 37:22  <b>picture</b> [2] 37:15 46:22  <b>pilot</b> [2] 52:4,13  <b>place</b> [3] 5:17 19:18 37:15  <b>plainly</b> [1] 53:3  <b>plaintiff's</b> [4] 9:12,16 12:18 18:14  <b>plaintiffs</b> [3] 6:19 8:1 26:8  <b>plaintiffs'</b> [1] 5:23  <b>plausible</b> [1] 18:13</p>
---	---	---	--

## Official - Subject to Final Review

<p><b>plausibly</b> [2] 17:2,4  <b>play</b> [5] 6:8 35:8,19 62:21,25  <b>playing</b> [1] 41:25  <b>please</b> [3] 3:10 33:11 52:25  <b>point</b> [15] 10:13 11:14 15:1 20:1 30:14 32:23 40:5,9,15 43:16,23 45:4 48:15 55:10 57:19  <b>pointing</b> [1] 30:1  <b>points</b> [4] 7:24 10:14,23 23:13  <b>police</b> [1] 9:5  <b>policies</b> [5] 24:12 32:17 33:2 54:11 60:12  <b>policy</b> [35] 22:20 23:1 24:2,9,10,17,18,20,24 25:4,12,18 26:6,9,17 28:23 29:2,6,7 31:23 32:13 34:19 35:9,9 45:4,8,12,14,21 46:20,25 49:24 50:6 61:17 62:3  <b>posited</b> [1] 28:6  <b>positing</b> [1] 52:7  <b>position</b> [11] 7:12 8:21,22,25 10:1 15:1 25:24 61:25 62:6 65:17 66:25  <b>positions</b> [1] 54:7  <b>possible</b> [2] 6:9 28:22  <b>possibly</b> [1] 44:9  <b>post-9/11</b> [1] 33:2  <b>potentially</b> [2] 32:3 62:10  <b>powerful</b> [3] 5:10 32:6 67:12  <b>powers</b> [3] 34:6 46:19 66:18  <b>Prado</b> [1] 8:4  <b>preclude</b> [2] 22:2 30:21  <b>precluded</b> [1] 4:6  <b>precluding</b> [1] 4:5  <b>preclusive</b> [1] 30:6  <b>preempts</b> [1] 5:3  <b>prefer</b> [1] 60:5  <b>preliminary</b> [2] 24:22 35:3  <b>present</b> [3] 23:19 49:24 50:15  <b>presents</b> [1] 5:14  <b>preserve</b> [1] 31:18  <b>preserved</b> [1] 5:22 32:21  <b>press</b> [1] 45:7  <b>presumption</b> [8] 11:19 12:14,20 21:22 46:8 48:18 68:11,15  <b>presumptions</b> [1] 12:6  <b>pretty</b> [2] 54:15 58:15  <b>prevailing</b> [1] 10:12  <b>prevented</b> [1] 60:19  <b>Prevention</b> [1] 54:3  <b>Principal</b> [1] 1:21  <b>principally</b> [1] 9:22  <b>principle</b> [2] 14:9 17:24  <b>prisoner</b> [1] 5:25  <b>private</b> [1] 66:23  <b>probably</b> [1] 64:23  <b>problem</b> [15] 39:1,4,8,9,12,13 40:7 43:10,13,17 54:10 57:23 58:1 60:8,9  <b>problems</b> [1] 48:23  <b>proceed</b> [1] 38:24  <b>Process</b> [2] 34:1 47:10  <b>processes</b> [1] 59:18  <b>product</b> [2] 56:7,10  <b>Professor</b> [1] 9:20</p>	<p><b>prohibiting</b> [1] 29:8  <b>projected</b> [2] 34:20 46:20  <b>proposition</b> [1] 13:17  <b>protect</b> [1] 66:5  <b>protecting</b> [1] 34:13  <b>protection</b> [1] 13:18  <b>prove</b> [2] 26:12 30:8  <b>provide</b> [7] 25:15,18 33:17 41:20 47:1 48:19 56:5  <b>provided</b> [2] 9:1,6  <b>provides</b> [1] 46:9  <b>providing</b> [3] 7:3 22:22 42:19  <b>provisions</b> [1] 12:4  <b>public</b> [3] 34:19 46:20,25  <b>pulled</b> [2] 4:20 13:1  <b>pulling</b> [2] 36:11,20  <b>purpose</b> [2] 6:13 31:19  <b>purposes</b> [2] 12:24 53:4  <b>pursued</b> [1] 5:4  <b>put</b> [2] 25:16 67:24  <b>puts</b> [1] 29:24  <b>putting</b> [3] 10:16 43:7 65:21</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualified</b> [1] 66:21  <b>question</b> [28] 3:18 7:20 9:24 13:24 14:1,6 19:16 20:2 21:18 24:15,23 26:23 27:22 28:3 29:5 31:14,17 35:8 41:15 48:11 50:21,23 51:16 57:22 60:23 63:10 65:16 68:3  <b>questions</b> [2] 26:18 55:13  <b>quickly</b> [1] 58:14  <b>quite</b> [4] 6:15 29:25 37:11 46:21  <b>quote</b> [1] 9:7</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>RANDOLPH</b> [3] 1:19 2:6 33:8  <b>rather</b> [6] 5:24 8:25 10:17 13:11 18:25 19:13  <b>reached</b> [1] 22:18  <b>real</b> [4] 51:1,1,5,7  <b>really</b> [6] 44:13 56:24 57:18 58:14 59:11 62:5  <b>reason</b> [4] 26:1 27:8 30:3,17  <b>reasonable</b> [1] 7:11  <b>reasonably</b> [2] 17:2,4  <b>reasons</b> [12] 3:23 5:10,20 6:3 7:6 19:3 27:21 32:6 57:20,20 67:12,12  <b>REBUTTAL</b> [2] 2:12 65:10  <b>recognize</b> [2] 10:25 11:11  <b>recognized</b> [4] 9:9 10:7 20:19 59:11  <b>recognizing</b> [1] 8:24  <b>record</b> [1] 61:8  <b>recourse</b> [1] 6:10  <b>reference</b> [1] 10:1  <b>referred</b> [1] 26:3  <b>referring</b> [1] 20:24  <b>reflected</b> [1] 27:9  <b>reflects</b> [1] 6:2  <b>regarding</b> [1] 52:12  <b>regardless</b> [1] 10:11  <b>regime</b> [2] 10:12 65:24</p>	<p><b>regulations</b> [1] 18:16  <b>reinforces</b> [1] 68:9  <b>rejected</b> [2] 33:1 66:13  <b>relates</b> [1] 47:8  <b>relations</b> [18] 4:4,10 21:9 22:13,24 23:6,8 24:6,25 26:7 28:23 30:19 31:7 53:6,20 63:5 64:22 65:3  <b>relationship</b> [1] 67:7  <b>relevant</b> [1] 18:11  <b>remedies</b> [11] 6:6,16,18 8:6,7,10,24 15:19,23 41:25 46:13  <b>remedy</b> [30] 3:15 4:19 5:3,5,10 9:2,6,8,11 11:1 22:22 23:16 33:17 34:3,16,17,24,25 41:11,18,18,19 43:17 46:2,5,15 47:17,17 56:5,21  <b>reminding</b> [1] 8:20  <b>repeat</b> [2] 20:9 40:23  <b>reports</b> [1] 55:1  <b>representation</b> [1] 62:8  <b>representations</b> [1] 31:1  <b>republic</b> [2] 33:15 37:11  <b>request</b> [1] 46:4  <b>require</b> [1] 47:11  <b>required</b> [2] 56:20 67:9  <b>requires</b> [1] 34:20  <b>reserved</b> [1] 11:15  <b>resonating</b> [1] 48:16  <b>respect</b> [4] 22:15 23:7 27:6 51:18  <b>respects</b> [1] 24:5  <b>Respondent</b> [20] 1:7,20,24 2:7,11 3:12,17 4:2,20 5:1 12:25 18:13 21:5,24 23:15 24:16,19 26:13 33:9 52:23  <b>Respondent's</b> [1] 63:25  <b>response</b> [4] 10:15 21:17 23:13 28:19  <b>responsible</b> [1] 9:23  <b>responsive</b> [2] 31:7,12  <b>rest</b> [1] 57:2  <b>result</b> [1] 61:15  <b>retain</b> [4] 5:10,20 32:6 67:12  <b>retained</b> [1] 5:22  <b>retaining</b> [1] 6:3  <b>returned</b> [1] 5:23  <b>reverse</b> [1] 53:15  <b>reviewed</b> [1] 61:9  <b>revised</b> [1] 60:14  <b>richest</b> [1] 11:7  <b>rights</b> [4] 7:11 9:13 13:10 26:15  <b>rise</b> [2] 31:24 42:17  <b>rises</b> [1] 29:6  <b>river</b> [1] 19:1  <b>RJR</b> [3] 67:25 68:1,9  <b>ROBERTS</b> [10] 3:3 9:25 22:9,11 30:23 31:11 33:5 52:18 65:7 68:21  <b>Rodriguez</b> [1] 27:10  <b>rogue</b> [8] 17:22 19:17 28:8 35:5 42:23 49:23 54:12 56:18  <b>roguely</b> [1] 38:12  <b>role</b> [3] 62:21 63:1,1  <b>room</b> [1] 37:17  <b>routinely</b> [1] 6:23  <b>RS</b> [1] 67:25</p>	<p><b>rule</b> [3] 28:13 57:11 67:18  <b>rules</b> [1] 57:2</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>same</b> [10] 7:18 23:18 28:1 32:12,15 43:15 52:14 57:1,22 58:20  <b>satisfy</b> [1] 30:9  <b>saying</b> [11] 22:25 23:2 30:17 32:11,13,15,18 40:6 42:22 50:17 61:3  <b>says</b> [5] 28:21 36:3 44:6,6 63:3  <b>scheme</b> [1] 55:14  <b>scope</b> [1] 49:8  <b>search</b> [3] 27:17,18 66:18  <b>searched</b> [1] 13:19  <b>searching</b> [1] 26:24  <b>Second</b> [2] 4:24 6:12  <b>second-guessing</b> [1] 32:16  <b>security</b> [25] 21:10 24:4,4,9 25:1 26:7 28:8 34:8,9,11 35:9 42:19 46:19 49:4,21 50:16,17,18 51:15,17,22 53:7 64:22 65:1,3  <b>see</b> [5] 4:4 38:16 42:14 43:10 48:13  <b>seeing</b> [1] 47:22  <b>seem</b> [2] 41:6 60:18  <b>seems</b> [5] 13:11 29:10 40:25 58:24 67:24  <b>sees</b> [1] 35:18  <b>seize</b> [1] 66:18  <b>seizing</b> [1] 26:25  <b>seizure</b> [1] 47:8  <b>self-described</b> [1] 67:1  <b>send</b> [1] 44:16  <b>sense</b> [1] 6:4  <b>separation</b> [2] 34:6 46:19  <b>separation-of-powers</b> [1] 6:25  <b>Sergio</b> [7] 3:15,21 4:7 5:13 21:12 23:16 26:14  <b>serious</b> [1] 45:21  <b>seriously</b> [2] 5:2 61:16  <b>several</b> [1] 53:4  <b>shaping</b> [1] 29:3  <b>ship</b> [1] 56:19  <b>shoot</b> [4] 35:22 41:24 54:23,24  <b>shooting</b> [13] 13:25 14:19,23 18:23 27:3 35:17 38:10 40:4 42:4,24 47:5 51:18 59:25  <b>shootings</b> [1] 14:13  <b>shoots</b> [1] 37:22  <b>shot</b> [5] 3:16,22 5:14 28:11 38:12  <b>shouldn't</b> [4] 29:19 42:22 43:11 56:1  <b>show</b> [1] 60:23  <b>showing</b> [1] 30:16  <b>side</b> [17] 3:22 11:20 18:7 21:13,14 38:3,11 39:23 42:25 43:3,16,20 45:5,10 50:10 51:19,20  <b>sides</b> [1] 43:1  <b>signals</b> [2] 53:8 63:5  <b>significance</b> [1] 45:6  <b>significant</b> [1] 59:12  <b>silence</b> [1] 33:18  <b>similar</b> [2] 23:24 40:25  <b>simplest</b> [1] 66:24</p>
--	---	---	--

## Official - Subject to Final Review

<p><b>simply</b> [7] 9:10 11:14 21:11 23:17 31:13,16 32:18  <b>since</b> [4] 10:7,23 26:21 33:14  <b>single</b> [2] 25:3 28:21  <b>situation</b> [3] 19:24 29:25 42:15  <b>situations</b> [1] 60:3  <b>six</b> [1] 19:3  <b>Sixth</b> [1] 44:10  <b>skeptical</b> [1] 11:12  <b>skepticism</b> [1] 11:15  <b>sky</b> [1] 4:16  <b>slaves</b> [1] 8:8  <b>slightly</b> [1] 24:6  <b>sliver</b> [1] 28:22  <b>soil</b> [18] 3:16 4:15,20 5:13 12:19 13:1 18:23 23:17 36:10,11,20,21 44:24 47:7 48:5 53:2 64:7 68:20  <b>soils</b> [1] 56:19  <b>Solicitor</b> [1] 1:21  <b>somebody</b> [1] 59:21  <b>somehow</b> [2] 32:13 68:8  <b>someone</b> [2] 38:10 55:24  <b>someone's</b> [1] 26:24  <b>sorry</b> [1] 14:4  <b>sort</b> [4] 10:9 18:9 59:24 61:17  <b>sorts</b> [1] 55:25  <b>SOTOMAYOR</b> [29] 17:19,21 18:1, 3 25:7 28:2,19 35:16 36:2,7,18,24 37:5 41:23 42:8,21 43:5 48:4 54:9, 25 55:15,17,20,23 56:9,12,13,15, 22  <b>source</b> [1] 26:8  <b>speaking</b> [2] 28:4,16  <b>special</b> [26] 4:1,4 12:24 18:21,25 19:24 20:14 21:6,16,24 34:5 39:4 43:17 46:18 51:14,15,17 53:4,20 57:11 58:12 63:2,9 64:19 65:5 68: 4  <b>specific</b> [1] 60:11  <b>specifically</b> [3] 22:2 46:24 66:12  <b>specifics</b> [1] 60:2  <b>sphere</b> [3] 6:4 25:1 26:7  <b>spoken</b> [1] 22:5  <b>stability</b> [2] 46:10 48:19  <b>stage</b> [2] 35:2,3  <b>stake</b> [1] 32:9  <b>standard</b> [3] 7:10 38:17,25  <b>standing</b> [16] 3:15,21,25 4:7,20 5: 13 13:1 18:7 21:12 23:17 35:23 37:21 42:11,13 43:3 68:20  <b>stands</b> [2] 13:16 42:24  <b>state</b> [16] 6:22 7:17 8:10,11,14,17 9:1,23 15:23 57:6,15 59:7 61:19, 23,25 65:25  <b>STATES</b> [35] 1:1,14,23 2:10 3:13 4:2 5:1 14:10 15:7 17:16 24:10 26: 6 28:21 34:25 36:17 37:4 39:21 43:3 45:23 48:10 49:6,16,17,19 50:13 52:7,9,15,22 53:25 56:4 60: 10,19 62:20,23  <b>States'</b> [1] 62:3  <b>statute</b> [10] 7:25 9:24 11:18,21 12: 2 33:21 43:25 47:2 58:20,25  <b>statutes</b> [3] 10:5 12:7 63:6</p>	<p><b>statutory</b> [2] 57:6,14  <b>stem</b> [1] 56:3  <b>step</b> [1] 53:11  <b>STEPHEN</b> [5] 1:17 2:3,13 3:7 65: 10  <b>still</b> [14] 5:20 12:16,24 17:11 27:25 30:21 50:11 52:5 58:9 61:23 62: 16 63:5 64:21 65:2  <b>stock</b> [2] 67:24,24  <b>stood</b> [1] 48:18  <b>stop</b> [1] 41:5  <b>straight</b> [1] 15:17  <b>strange</b> [1] 58:25  <b>strength</b> [1] 18:12  <b>stressed</b> [1] 6:17  <b>stressing</b> [1] 10:21  <b>strong</b> [1] 67:11  <b>strongest</b> [2] 15:15,15  <b>struck</b> [1] 66:8  <b>subject</b> [6] 8:1 29:18,19 36:11 37: 6 55:11  <b>subjecting</b> [1] 36:21  <b>submission</b> [2] 31:16 67:5  <b>submitted</b> [2] 68:22,24  <b>substantive</b> [1] 47:10  <b>successful</b> [1] 4:12  <b>sufficient</b> [7] 12:20 19:20 21:21 30:10 31:23 68:14,18  <b>suggest</b> [3] 5:19 21:10 54:21  <b>suggested</b> [5] 9:20 12:3 13:22 28: 20 31:17  <b>suggesting</b> [3] 6:25 7:1 36:16  <b>suggestion</b> [2] 67:11 68:10  <b>suit</b> [4] 4:5,9 25:20 60:17  <b>suited</b> [1] 38:22  <b>suits</b> [3] 11:4,5,8  <b>supporting</b> [3] 1:24 2:11 52:23  <b>Suppose</b> [4] 8:13,13 49:1 51:7  <b>supposed</b> [6] 16:18 18:19 23:9,11 35:3 43:24  <b>suppresses</b> [1] 58:4  <b>suppressing</b> [1] 58:8  <b>SUPREME</b> [3] 1:1,13 62:10  <b>suspect</b> [1] 15:5  <b>sustain</b> [1] 30:11  <b>swallow</b> [1] 32:3  <b>sweeps</b> [2] 27:20 43:1  <b>switch</b> [1] 27:20  <b>Syria</b> [4] 52:5,14,16,17  <b>system-wide</b> [1] 34:21</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tailor</b> [1] 55:13  <b>talks</b> [1] 54:4  <b>task</b> [2] 10:20 12:8  <b>Ten</b> [1] 49:5  <b>Tenth</b> [1] 44:10  <b>term</b> [2] 19:21,22  <b>terms</b> [5] 22:24 23:5 30:12 40:7 63: 6  <b>territory</b> [5] 13:3 21:20 64:7 68:14, 18  <b>test</b> [1] 22:6  <b>Texas</b> [3] 1:17,19 5:3</p>	<p><b>there's</b> [33] 7:8 10:3 14:23 16:5 20: 23 21:2 22:1 27:19 29:1,10 30:2,5, 10,17,18 34:3,23 37:17 39:8,17 40:2 41:4 44:4 46:6,14 48:11 50: 22 56:2 58:9 59:25 61:21 63:15 64:24  <b>therefore</b> [2] 3:19 11:21  <b>thereof</b> [1] 8:2  <b>they'll</b> [1] 41:16  <b>they've</b> [4] 23:6 28:9 33:18,20  <b>thinking</b> [6] 8:5,7 15:5,6 44:8,10  <b>thinks</b> [1] 30:2  <b>Third</b> [3] 6:20 21:23,23  <b>thorough</b> [2] 31:2 61:7  <b>though</b> [2] 5:12 55:10  <b>thousands</b> [1] 10:21  <b>threaten</b> [1] 53:15  <b>three</b> [10] 21:6 50:21 51:19,20 53: 19 57:20,20 64:1,12 65:9  <b>three-judge</b> [1] 27:11  <b>today</b> [3] 3:18 10:11,21  <b>together</b> [1] 26:19  <b>took</b> [1] 37:2  <b>tort</b> [10] 4:12 5:3 6:23 8:10 9:1 15: 23 17:15 22:5 33:20 65:24  <b>torts</b> [4] 14:13 17:17,22,23  <b>touched</b> [1] 68:17  <b>touches</b> [3] 12:19 21:20 68:13  <b>touching</b> [1] 13:2  <b>track</b> [2] 45:15,16  <b>tradition</b> [5] 6:20 10:18 11:6 15:16 17:10  <b>tragic</b> [1] 63:21  <b>transnational</b> [4] 33:25 40:3,19 47:5  <b>transnationally</b> [2] 14:14 48:22  <b>treaty</b> [1] 30:13  <b>trend</b> [1] 53:16  <b>trespass</b> [4] 9:5,13,15 57:2  <b>trigger</b> [5] 3:25 4:21 13:2 36:11,21  <b>triggered</b> [2] 45:5 65:6  <b>trilogy</b> [1] 46:7  <b>true</b> [4] 32:7 35:4 55:24 56:25  <b>truly</b> [1] 42:3  <b>try</b> [2] 20:2 58:13  <b>trying</b> [2] 22:2 49:9  <b>Tuesday</b> [1] 1:10  <b>turn</b> [1] 53:19  <b>two</b> [14] 3:12,23 10:14 11:25 13:23 23:6,12,13 28:16 35:19 42:11,13 43:15 58:17  <b>type</b> [1] 23:3  <b>typical</b> [1] 12:6</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U.S.</b> [33] 3:16 4:10,20 8:1 12:19 13: 1,3 15:7 18:4 21:20 23:21 36:10, 10,11,12,19,20,21,21,22 37:6 42: 25 44:23 45:10 46:3 47:12 48:5,5 50:10 68:13,18,19,20  <b>U.S./Mexico</b> [1] 30:13  <b>ultra</b> [5] 6:24 11:3 18:18 21:1 32: 12  <b>unarmed</b> [1] 41:25</p>	<p><b>uncertainty</b> [3] 27:8,13,19  <b>unconstitutional</b> [3] 29:15 30:7 56:3  <b>under</b> [18] 7:9,23 10:5,5 30:12 31: 22 43:25 45:18 57:4,6,13 59:8 60: 23 62:18 63:1,23 65:19 68:8  <b>underlying</b> [3] 12:17 68:13,17  <b>undermine</b> [2] 4:10 62:12  <b>undermining</b> [1] 53:16  <b>understand</b> [6] 14:24 20:16 39:22 41:1,24 65:22  <b>understanding</b> [2] 9:21 37:14  <b>understood</b> [1] 67:7  <b>unfair</b> [1] 30:24  <b>unique</b> [1] 34:18  <b>UNITED</b> [36] 1:1,14,23 2:10 3:13 4: 2 5:1 14:10 15:7 17:16 24:10 26:6 28:21 34:24 36:17 37:3 39:21 43: 3 45:23 48:10 49:6,16,16,19 50: 13 52:7,8,15,22 53:25 56:4 60:10, 19 62:3,20,23  <b>unlawful</b> [1] 30:18  <b>unlawfully</b> [2] 61:6,11  <b>unless</b> [1] 52:9  <b>unlike</b> [3] 6:16 11:16 46:15  <b>unpredictable</b> [1] 47:15  <b>unreasonable</b> [1] 18:5  <b>unsettled</b> [1] 14:1  <b>untenable</b> [1] 47:7  <b>until</b> [1] 57:5  <b>unusual</b> [1] 20:14  <b>up</b> [8] 10:9 14:6 30:16 37:22 50:8 57:5,6 58:23  <b>useful</b> [1] 5:17  <b>uses</b> [1] 68:20  <b>using</b> [1] 35:7  <b>usual</b> [1] 49:11  <b>utilization</b> [1] 34:1</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>vacuum</b> [2] 36:6,8  <b>vary</b> [1] 8:12  <b>Verdugo</b> [4] 13:16 27:25 44:1,22  <b>Verdugo-Urquidez</b> [1] 27:15  <b>versus</b> [5] 3:4 12:10 46:10 51:19 66:7  <b>victim</b> [7] 3:24 4:14 7:18,23 13:8 45:9,23  <b>victims</b> [1] 52:15  <b>view</b> [3] 29:14 36:5 45:15  <b>village</b> [2] 52:5,14  <b>vindicate</b> [2] 9:12,16  <b>violate</b> [1] 7:10  <b>violated</b> [3] 24:16 26:13 29:9  <b>violating</b> [1] 18:15  <b>violation</b> [7] 19:15,17 26:16 27:1 29:8 35:6 58:9  <b>Violence</b> [1] 54:3  <b>vires</b> [5] 6:24 11:4 18:18 21:1 32: 12  <b>VLADECK</b> [46] 1:17 2:3,13 3:6,7,9 7:20 8:18 10:13 11:24 13:15 14:4, 16,21,25 15:13 16:8,13,21,24 17:6, 25 18:8 19:8 20:4,11,16,18 23:10</p>
---	--	--	--

**24:8 25:13,20,23 27:5 28:2,18 29:12 30:4 31:9,15 46:14 65:9,11,12 67:21 68:2**  
**Vladeck's** <sup>[1]</sup> 50:9  
**voice** <sup>[4]</sup> 23:9,12 28:5,25  
**voices** <sup>[1]</sup> 28:16

---

## W

---

**walk** <sup>[1]</sup> 37:19  
**WALL** <sup>[30]</sup> 1:21 2:9 52:20,21,24 54:9,25 55:16,19,22 56:6,11,13,22 57:18 58:2,5,13 59:14,15 60:9,22 61:3 62:4,18,25 64:10,11,15 65:2  
**Wall's** <sup>[1]</sup> 65:15  
**wants** <sup>[2]</sup> 29:22 51:12  
**warden** <sup>[1]</sup> 5:25  
**warrant** <sup>[1]</sup> 30:12  
**warrantless** <sup>[1]</sup> 27:18  
**Washington** <sup>[2]</sup> 1:9,22  
**wave** <sup>[1]</sup> 59:24  
**way** <sup>[16]</sup> 6:22 10:16 13:3 15:18 17:15 19:18 37:19,20 39:24 43:15 45:25 51:6 54:18 57:9 65:23 66:2  
**weigh** <sup>[3]</sup> 38:23 41:17 63:9  
**Westfall** <sup>[3]</sup> 5:2 33:22 57:7  
**whatever** <sup>[4]</sup> 8:10 16:6 38:13 55:14  
**whatsoever** <sup>[1]</sup> 47:13  
**Whereupon** <sup>[1]</sup> 68:23  
**whether** <sup>[26]</sup> 3:14,19 9:10 12:4 19:16 20:7 24:16 25:11 29:7 30:8,10 38:9,20,21 39:10 42:2 43:19 47:13 48:13 54:23 55:7 62:22 64:4 65:4 66:10 68:3  
**who's** <sup>[4]</sup> 13:9 37:21 45:23 48:5  
**whole** <sup>[1]</sup> 65:23  
**whom** <sup>[1]</sup> 38:12  
**will** <sup>[6]</sup> 6:9 12:16 41:2 53:15 58:8 68:6  
**willing** <sup>[2]</sup> 16:16 53:13  
**wind** <sup>[1]</sup> 10:19  
**within** <sup>[2]</sup> 39:20 49:8  
**without** <sup>[3]</sup> 6:24 7:1 12:23  
**wonderful** <sup>[1]</sup> 19:3  
**wondering** <sup>[1]</sup> 60:7  
**work** <sup>[9]</sup> 37:19 49:12,20,21 51:22 59:16,17 65:1  
**worked** <sup>[1]</sup> 65:24  
**working** <sup>[2]</sup> 54:2 62:13  
**world** <sup>[3]</sup> 41:5 61:24 62:1  
**worried** <sup>[3]</sup> 32:1 59:23 60:3  
**worth** <sup>[2]</sup> 8:19 10:21  
**writes** <sup>[1]</sup> 38:17  
**wrote** <sup>[1]</sup> 18:20

---

## Y

---

**year** <sup>[3]</sup> 55:4,4,5  
**years** <sup>[6]</sup> 3:12 10:2,6 13:23 46:6 60:13  
**York** <sup>[5]</sup> 9:1,4,5,13,15  
**young** <sup>[1]</sup> 18:6  
**youth** <sup>[3]</sup> 43:18,19,19