

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 JOSE ANTONIO LOPEZ, :

4 Petitioner, :

5 v. : No. 05-547

6 ALBERTO R. GONZALES, :

7 ATTORNEY GENERAL; :

8 and :

9 REYMUNDO TOLEDO-FLORES, :

10 Petitioner, :

11 v. : No. 05-7664

12 UNITED STATES. :

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14 Washington, D.C.

15 Tuesday, October 3, 2006

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17 The above-entitled matter came on for oral

18 argument before the Supreme Court of the United States

19 at 10:03 a.m.

20 APPEARANCES:

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22 Petitioner Lopez.

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Official

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2 Department of Justice, Washington, D.C.; on behalf of  
3 the Respondents.

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P R O C E E D I N G S

[10:03 a.m.]

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Lopez versus Gonzales and Toledo-Flores versus United States.

Mr. Long.

ORAL ARGUMENT OF ROBERT A. LONG, JR.

ON BEHALF OF PETITIONER LOPEZ

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

A drug-trafficking crime is defined in 18 U.S. Code Section 924(c) as any felony punishable under the Controlled Substances Act or two other Federal statutes. "Punishable" is a key term. If that word is omitted, the remaining phrase, "any felony under the Controlled Substances Act," clearly refers to felony violations of the Controlled Substances Act. The parties agree that "punishable" means "subject to criminal sanctions." So, a "drug-trafficking crime," under 924(c), is conduct that is subject to being punished under the Controlled Substances Act.

State felonies are not, themselves, punishable under the Controlled Substances Act. It is not a Federal crime to violate State law. The defendant's conduct may be punishable under both Federal and State law, but a

1 State felony is not a felony punishable under the  
2 Controlled Substances Act.

3 JUSTICE KENNEDY: Well, do you agree that if  
4 there were a State conviction for an offense that would  
5 have been punishable under the Federal law, their both  
6 being felonies, that enhancement can apply, in that  
7 instance, and that that does meet the definition?

8 MR. LONG: Yes, Justice Kennedy. Our position  
9 is, if the conduct would violate a felony provision of the  
10 Controlled Substances Act or one of the other two Federal  
11 statutes, it then is a drug-trafficking crime under 18  
12 U.S. Code Section 924(c), and, therefore, it is an  
13 aggravated felony.

14 But there are three additional textual  
15 indications, in addition to simply the "felony punishable"  
16 language, that misdemeanor offenses under the Controlled  
17 Substances Act are not drug-trafficking crimes under  
18 Section 924(c). The first one is, there are other  
19 provisions of Section 924 -- (e), (g), and (k) -- where  
20 Congress actually used very similar language. It referred  
21 to conduct punishable under the Controlled Substances Act  
22 or the two other statutes, or offenses under the  
23 Controlled Substances Act or the two other Federal  
24 statutes. But then, it added an express reference to  
25 State offenses, so --

1 JUSTICE SCALIA: Where --

2 MR. LONG: -- the implication is that when  
3 Congress meant to include State offenses, it said so.

4 JUSTICE SCALIA: Where are those sections?

5 MR. LONG: The -- you can find them; they're in  
6 the appendix to Lopez's blue brief, Justice Scalia --

7 JUSTICE SCALIA: Okay.

8 MR. LONG: -- and the provisions on (e), (g),  
9 and (k) -- 924 begins on page 3A of the appendix, and (e)  
10 begins on 5A, and you can pick up -- (g) is on 6A, (k) is  
11 on 7A.

12 JUSTICE SCALIA: What are the sections -- (b)?

13 MR. LONG: They're subsections (e), (g), and  
14 (k).

15 JUSTICE SCALIA: All right.

16 CHIEF JUSTICE ROBERTS: Well, that doesn't carry  
17 too much weight, though, because the provision that -- I'm  
18 looking at (g) (3), "violates any State law relating to any  
19 controlled substance," can be broader than what's  
20 punishable under the Federal Controlled Substances --

21 MR. LONG: It --

22 CHIEF JUSTICE ROBERTS: -- Act.

23 MR. LONG: It is a bit broader, Mr. Chief  
24 Justice, but if you look at all of these provisions, the  
25 implication is clearly that Congress was referring to

1 State law when it meant to include State law. I mean, the  
2 -- if you looked at (e), for example, there it's a  
3 parallel construction; it's not broader. I think perhaps  
4 the government would say, "Well, we're talking about  
5 offenses." That's a little different from a felony, but  
6 "offenses" is actually a broader term.

7 I'll mention an additional statute, which was  
8 not in the appendix -- 18 U.S. Code Section 3559(c)(2)(H).  
9 This provision -- it's a similar provision; it defines a  
10 "serious drug offense" as an offense that is punishable  
11 under the specific sections of the Controlled Substances  
12 Act, or an offense under State law that, had the offense  
13 been prosecuted in a court of the United States, would  
14 have been punishable under the CSA.

15 An additional textual indication is, it's agreed  
16 -- and this Court has already said, in *Gonzales* against  
17 the United States, that a drug-trafficking crime under  
18 924(c), under the criminal statute, must be a Federal  
19 crime. 924(c)(1)(A) refers to a crime that may be  
20 prosecuted in a court of the United States, and that  
21 clearly refers to a Federal crime. The definition of  
22 drug-trafficking crime, by its term, says it is for  
23 purposes of 924(c), so there is no reason why Congress  
24 would have wanted to include State felonies in a  
25 definition that applies to a Federal criminal provision

1 that all concede applies only to Federal predicate  
2 offenses. And --

3 JUSTICE ALITO: In --

4 MR. LONG: -- the Government's interpretation  
5 would significantly broaden Section 924(c) to include  
6 Federal misdemeanors.

7 JUSTICE ALITO: In 8 U.S.C. 1101(a)(43)(B),  
8 what, in your view, does the first phrase, "illicit  
9 trafficking in a controlled substance," add to the  
10 reference to a drug-trafficking crime --

11 MR. LONG: Justice --

12 JUSTICE ALITO: -- as defined by 924(c)?

13 MR. LONG: Justice Alito, in our view, "illicit  
14 trafficking" means any offense that has a trafficking  
15 element -- that is, distribution, possession with intent  
16 to distribute, manufacture --

17 JUSTICE ALITO: But are there any trafficking  
18 offenses that would not fall within 924(c) if you define a  
19 "trafficking offense" that way?

20 MR. LONG: Yes. They're -- most offenses under  
21 the Controlled Substances Act are trafficking offenses.  
22 There are a few that are simple possession. There is a  
23 date-rap drug that I will not try to pronounce, but it's  
24 listed in 21 U.S.C. Section --

25 JUSTICE ALITO: Well, no, there --



1 MR. LONG: -- 844.

2 JUSTICE ALITO: -- are possessory -- there are  
3 "mere possession" offenses that are outlawed by 924(c),  
4 but is it not the case that any -- if you interpret  
5 "trafficking" to mean trafficking in the way the word  
6 would be used in ordinary speech -- that any State  
7 trafficking offense you can think of would have a  
8 corresponding felony violation under the Controlled  
9 Substances Act, so that if you read the statute that way,  
10 the initial phrase is superfluous?

11 MR. LONG: I believe the Government has a  
12 footnote in their brief where they suggest there are some  
13 State trafficking offenses that actually do not have a  
14 parallel in Federal law. Soliciting, I think, may be one  
15 of them. So, I think there are, in fact, some. And our  
16 position, of course, is that by adding illicit trafficking  
17 -- any trafficking offense, State or Federal, whether or  
18 not it is punishable under the Controlled Substances Act,  
19 is an aggravated felony.

20 JUSTICE ALITO: Let me ask the same question a  
21 different way. If -- since 924(c) includes some "mere  
22 possession" offenses, and illicit trafficking in a  
23 controlled substance includes all violations of 924(c),  
24 doesn't that show that the way Congress used "illicit  
25 trafficking in a controlled substance" is not in the sense

1 in which the term is used in ordinary speech, but's much  
2 broader, so that it can include "mere possession"  
3 offenses?

4 MR. LONG: The -- Justice Alito, there is an  
5 argument -- it's developed in the brief of the American  
6 Bar Association -- that, because illicit trafficking is  
7 the general category, that all the aggravated felonies in  
8 this category should have a trafficking component; and,  
9 therefore, the felonies punishable under the Controlled  
10 Substances Act that are "simple possession" offenses  
11 should not, in fact, be included. That is not an argument  
12 that we have pressed in our brief. We read the phrase to  
13 say "illicit trafficking, including any felony punishable  
14 under the Controlled Substances Act." So, I would agree  
15 with you, to the extent that if it is a felony punishable  
16 under the Controlled Substances Act, Congress has said, by  
17 definition, that it is included in the category of illicit  
18 trafficking.

19 JUSTICE BREYER: But that's ambiguous. That's  
20 perfectly ambiguous. Because, the case of your client, it  
21 is a felony, and it is punishable under the Controlled  
22 Substances Act.

23 MR. LONG: Well, Justice Breyer, it is a  
24 misdemeanor under --

25 JUSTICE BREYER: No, that's --

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1 MR. LONG: -- the Controlled --

2 JUSTICE BREYER: -- right. But it is a felony  
3 under South Dakota law. And what the statute says -- and  
4 that's the Government's argument -- they say "any felony  
5 punishable under the Controlled Substances Act." They  
6 don't mean, necessarily, any felony punishable as a felony  
7 under the Controlled Substances Act.

8 MR. LONG: Well --

9 JUSTICE BREYER: It might mean anything that is  
10 a --

11 MR. LONG: But --

12 JUSTICE BREYER: -- felony, and --

13 MR. LONG: But --

14 JUSTICE BREYER: -- it is also punishable; in  
15 which case, you lose. But, in the first case, you win.

16 MR. LONG: But, you know --

17 JUSTICE BREYER: So, what am I supposed to look  
18 to, to decide which is --

19 MR. LONG: Well, you could look to the case of  
20 Jerome against United States, which is -- which was a  
21 unanimous decision of this Court -- in which the Court  
22 held that the -- just the phrase "any felony" --

23 JUSTICE BREYER: Uh-huh.

24 MR. LONG: -- in the Federal bankruptcy statute  
25 should be interpreted to mean any Federal felony, so --

1 JUSTICE BREYER: Oh, but you don't mean that,  
2 because you're prepared to concede -- at least I thought  
3 you were, until your last argument -- you're prepared to  
4 concede that if a person engages in a crime that is  
5 punishable as a felony under South Dakota law, and it is  
6 also punishable as a felony under Federal law, under 801,  
7 et seq, well, that counts.

8 MR. LONG: Well, but, I mean, the Government --

9 JUSTICE BREYER: Do you --

10 MR. LONG: -- accuses us --

11 JUSTICE BREYER: Do you concede that --

12 MR. LONG: The --

13 JUSTICE BREYER: -- or not?

14 MR. LONG: The Government accuses us of making  
15 that concession --

16 Justice Breyer: No, no.

17 MR. LONG: -- but we --

18 JUSTICE BREYER: You --

19 MR. LONG: -- really don't.

20 JUSTICE BREYER: -- you say your answer is, you  
21 don't make the concession?

22 MR. LONG: We really don't. I mean, we concede  
23 that if the -- I mean, 8- -- 924(c), the criminal statute,  
24 says nothing about State law. It says nothing about any  
25 conviction under Federal or State law. It's simply a

1 question of whether the conduct is punishable, capable of  
2 being punished, under the Controlled Substances Act --

3 JUSTICE KENNEDY: But I thought that --

4 MR. LONG: -- the Federal statute.

5 JUSTICE KENNEDY: -- was the concession you made  
6 in response to my --

7 MR. LONG: Well --

8 JUSTICE KENNEDY: -- question.

9 MR. LONG: -- yes. I -- but I just want to be  
10 careful about the language in which we make --

11 JUSTICE STEVENS: But you --

12 MR. LONG: -- this concession --

13 JUSTICE STEVENS: -- make the concession, as I  
14 understand it, because it's a Federal felony, not because  
15 it's a State felony --

16 MR. LONG: Right.

17 JUSTICE STEVENS: -- isn't that right? Yes.

18 JUSTICE GINSBURG: Is it --

19 MR. LONG: Precisely.

20 JUSTICE GINSBURG: Is it -- if this is an  
21 ambiguous statute, do you -- what mileage do you get from  
22 Barrett? There is certainly an argument that what was --  
23 Congress was trying to do was to codify that practice of  
24 saying, "If there is analogous felony -- if there is  
25 analogous crime under State law, that should be included."

1 And that made good sense.

2 MR. LONG: Yes. If it's ambiguous, and you look  
3 to the legislative history, I think we get considerable  
4 mileage from Barrett. The Congress was pretty clear that  
5 what it was doing was codifying Barrett. The Barrett  
6 approach, which was then followed by the BIA for more than  
7 a decade, was that they would count State drug crimes, but  
8 only if they were felonies under the Federal statutes,  
9 under the Controlled Substances Act. So, I think we get  
10 considerable mileage out of that.

11 JUSTICE GINSBURG: What --

12 JUSTICE KENNEDY: You've --

13 JUSTICE GINSBURG: -- about the --

14 JUSTICE KENNEDY: -- answered Justice Breyer by  
15 citing the Jerome case. After Jerome, we decided United  
16 States vs. Gonzales, having to do with the consecutive or  
17 concurrent sentencing terms. And it -- are those two  
18 cases in some tension? Gonzales didn't mention Jerome.  
19 And I noticed that none of the briefs mentioned it either.  
20 Is there some tension in the cases? And, if so, is this a  
21 case where, when we write an opinion, whatever the  
22 outcome, we should talk about that? And, if that's so,  
23 what should we say?

24 MR. LONG: I don't see any tension. Gonzales  
25 was just about consecutive versus concurrent sentences

1 under State versus Federal law. I mean, the Court has  
2 applied that principle --

3 JUSTICE KENNEDY: But it does --

4 MR. LONG: For example, in Taylor --

5 JUSTICE KENNEDY: -- it does seem to limit the  
6 broad statement in Jerome, without mentioning Jerome.

7 MR. LONG: Well, but -- I mean, with respect,  
8 Justice Kennedy, I don't see how it limits it. And there  
9 have been other cases -- Taylor is an example -- where the  
10 Court adopted a single definition of "burglary" for  
11 purposes of 924(e). That applies the Jerome principle. I  
12 mean, it's a principle that has been applied in a number  
13 of this Court's cases.

14 CHIEF JUSTICE ROBERTS: But has it ever been  
15 applied in a -- to a statute that specifically says that  
16 the term "aggravated felony" applies to an offense  
17 described in this paragraph, whether in violation of  
18 Federal or State law?

19 MR. LONG: Well --

20 CHIEF JUSTICE ROBERTS: That would seem to me to  
21 be a very express legislative repudiation of the Jerome --

22 MR. LONG: Well --

23 CHIEF JUSTICE ROBERTS: -- principle.

24 MR. LONG: -- when we get to that language, Mr.  
25 Chief Justice -- and I do think it helps the analysis to

1 first decide, What is the definition of a "drug-  
2 trafficking crime" under 924(c), the criminal statute?  
3 Once you've decided that -- now, when you move back to the  
4 INA, there is this language. The term "aggravated felony"  
5 applies to an offense described in 101(a)(43), whether in  
6 violation of Federal or State law, or the law of a foreign  
7 country. Now, we think that's pretty straightforward. It  
8 has to be an offense described. So, the simple example is  
9 money laundering. It -- the offense described in 18 U.S.  
10 Code Section 1956, "money laundering," is an aggravated  
11 felony. So, a violation of State law or of foreign law  
12 can be an aggravated felony, but only if it is the offense  
13 described in 1956. If States or a foreign government has  
14 a broader definition of "money laundering," that can't  
15 count, because it's not the offense described. And when  
16 you turn to a drug-trafficking crime, the way that offense  
17 is described in 101(A)(43) is -- Congress picked up, in  
18 its entirety and without any modification, the definition  
19 of "drug-trafficking crime" in 924(c), a felony punishable  
20 under the Controlled Substances Act.

21 So, if you agree that, in the criminal statute,  
22 that means a felony violation of the Controlled Substances  
23 Act, the offense described is the felonies in the  
24 Controlled Substances Act, not the felonies in the  
25 misdemeanors. And State -- if State law wants to call a



1 -- something that's a misdemeanor under Federal law a  
2 felony, they can do that, but they can't expand the  
3 offense described. The offense described, the way  
4 Congress did that, is --

5 JUSTICE STEVENS: But are you saying it would  
6 also include State trafficking offense, because it's  
7 described in the word "trafficking"?

8 MR. LONG: Yes. I'm focusing on the definition  
9 of "drug-trafficking crime." It -- also, there's the  
10 illicit trafficking piece of this. And, I should add, any  
11 State offense that is illicit trafficking is going to be  
12 an aggravated felony. We recognize that.

13 If there are no further questions, I'd like to  
14 reserve the balance of my time.

15 CHIEF JUSTICE ROBERTS: Thank you, Mr. Long.  
16 Mr. Crooks, we'll hear now from you.

17 ORAL ARGUMENT OF TIMOTHY CROOKS  
18 ON BEHALF OF PETITIONER TOLEDO-FLORES

19 MR. CROOKS: Mr. Chief Justice, and may it  
20 please the Court:

21 I would first like to address the Government's  
22 contention that Mr. Toledo-Flores's appeal is moot. His  
23 appeal of his sentence is not moot, primarily because he  
24 is still subject to the sentence that is the subject of  
25 that appeal. Even though Mr. Toledo-Flores was released

1 from prison on April 21st of this year, and deported to  
2 Mexico, he's still subject to the supervised-release  
3 portion of his sentence, because supervised release is not  
4 automatically extinguished by deportation.

5 CHIEF JUSTICE ROBERTS: But there's no  
6 supervised release of people outside the United States.

7 MR. CROOKS: There's no supervision of people  
8 outside the United States, Mr. Chief Justice, but he is  
9 still subject to the jurisdiction of the District Court,  
10 and still subject to the conditions of supervised release  
11 that are not dependent upon supervision.

12 CHIEF JUSTICE ROBERTS: Well, like what?

13 MR. CROOKS: Well, for example, he shall not  
14 excessively use alcohol, he shall not associate with  
15 persons who --

16 CHIEF JUSTICE ROBERTS: What's going to happen  
17 to him if he does that?

18 MR. CROOKS: If the District Court learns about  
19 it he could be violated -- he could be extradited back  
20 from Mexico, and he could face up to a year more in  
21 prison.

22 CHIEF JUSTICE ROBERTS: Has anything like that  
23 ever happened before with people subject to supervised  
24 release who are then deported? It would be the first  
25 time, if the District Court did that, right?

1           MR. CROOKS:  There have been instances in the  
2 case law where people on supervised release have been  
3 extradited back from foreign countries based on violations  
4 of their supervised release.  But the point is, under the  
5 statutory scheme, Mr. Toledo-Flores is still subject to  
6 the District Court's jurisdiction.  The District Court  
7 retains jurisdiction to modify his supervised release, to  
8 change the conditions, or to cut the supervised release.  
9 If the District Court learns of a violation and a  
10 violation warrant is filed within the supervised-release  
11 period then the supervised-release period is effectively  
12 tolled and the District Court --

13           JUSTICE GINSBURG:  And that --

14           MR. CROOKS:  -- retains --

15           JUSTICE GINSBURG:  -- that period has how many  
16 months to run?

17           MR. CROOKS:  Until April 20th of next year, Your  
18 Honor.

19           JUSTICE GINSBURG:  Do you -- you said you rely  
20 primarily on that argument -- do you have another  
21 argument?

22           MR. CROOKS:  Yes, we do, Your Honor.  After  
23 April 20th, of course, in accordance with this Court's  
24 decisions in *Spencer v. Kemna* and *Lane v. Williams*, the  
25 Court needs to look for a collateral consequence of the

1 then-expired sentence. And, in this case, we point to the  
2 possibility that a retrospective reduction in the term of  
3 imprisonment -- which, of course, will not give excess  
4 prison time back to Mr. Toledo-Flores -- but even to  
5 reduce the number of the sentence, on paper, could be a  
6 favorable factor for him to get a waiver of  
7 inadmissibility, should he ever want to get a nonimmigrant  
8 visa in the future to come visit his U.S.-citizen  
9 children.

10 JUSTICE SCALIA: We have a case involving  
11 standing which says that -- you know, the doctrine of  
12 standing is more than a -- an exercise in the -- in the  
13 conceivable. And this seems to me an exercise in the  
14 conceivable. Nobody thinks your client is really, you  
15 know, abstaining from tequila down in Mexico because he's  
16 on supervised release in the United States, or is going --  
17 is going to apply -- having been deported from the country  
18 for criminal offenses, is going to apply to come back in  
19 the -- these are ingenious exercises in the conceivable.  
20 This is just not the real world.

21 MR. CROOKS: Well, my answer to that, Justice  
22 Scalia, is that this Court has never said that an appeal  
23 of a sentence may become moot before that sentence is  
24 expired. And in cases like Lane v. Williams and Spencer  
25 v. Kemna, the sentences were completely expired, and,

1 therefore, the Court had to look for collateral  
2 consequences of the now-expired sentence. Here, in  
3 consequence -- in contrast, Mr. Toledo-Flores is still  
4 under the sentence, which is a direct consequence --

5 JUSTICE SCALIA: That depends on whether you  
6 consider the sentence to be effectively expired once he  
7 leaves the country, if the sentence is one of supervised  
8 release, which is impossible once he leaves the country.  
9 Supervision being impossible, supervised release is not a  
10 realistic consequence of the prior conviction.

11 MR. CROOKS: But that argument could be made  
12 with respect to a person who is in the United States, who  
13 is subject to a term of probation where the only condition  
14 is that he not further violate the law. In that --

15 CHIEF JUSTICE ROBERTS: Well, no, because --

16 MR. CROOKS: -- instance --

17 CHIEF JUSTICE ROBERTS: -- in that -- in that  
18 instance, action can be taken against him if he does  
19 further violate the law under the terms of probation. The  
20 point is that the jurisdiction of the probation office or  
21 the District Court doesn't extend to Mexico.

22 MR. CROOKS: Well, that's true. But if we're  
23 talking about future violations of the law, it is very  
24 often the case that persons who are deported to Mexico do  
25 come back, and do have their supervised release --

1 CHIEF JUSTICE ROBERTS: Well --

2 MR. CROOKS: -- revoked.

3 CHIEF JUSTICE ROBERTS: -- you don't want to say  
4 that your case is not moot because your client is going to  
5 violate the law again in the future.

6 MR. CROOKS: No, not at all, Your Honor, but I'm  
7 saying that, in the respect that you just talked about for  
8 the U.S. citizen, it's not any different, that the court  
9 retains jurisdiction to violate the supervised release,  
10 and to revoke it, and then to send him back to prison.

11 JUSTICE SOUTER: No, but it is different, in the  
12 respect that he would first have to violate the law by  
13 entering the United States.

14 MR. CROOKS: That is true. But in most cases,  
15 that is the only violation of supervised release for which  
16 they are later revoked. And, in that respect, it would be  
17 no different from a person who violates his probation by  
18 driving while intoxicated or committing some other legal  
19 violation.

20 JUSTICE BREYER: Do you work in --

21 JUSTICE GINSBURG: On --

22 JUSTICE BREYER: -- this area?

23 JUSTICE GINSBURG: On collateral consequences,  
24 do you have -- what is your best authority to say that in  
25 -- it would keep this case from being moot?

1           MR. CROOKS: We cited, in our reply brief at  
2 page 4, Your Honor, the Hamdi case, United States v.  
3 Hamdi, from the Second Circuit, where the Second Circuit  
4 found that the possibility of reducing the term of  
5 imprisonment, even retrospectively, could have an impact  
6 on the ability to get a waiver of inadmissibility in --

7           JUSTICE GINSBURG: Because --

8           MR. CROOKS: -- the future.

9           JUSTICE GINSBURG: Because the length of the  
10 sentence counts heavily in the attorney general's  
11 assessment, is that --

12          MR. CROOKS: That's correct, Your Honor. In  
13 Hamdi, they pointed out that the length of the sentence  
14 goes to two of the three factors that are evaluated by  
15 Immigration officials -- under a decision called Matter of  
16 Heronka -- that are used in evaluating whether a person  
17 should be granted a waiver of inadmissibility in the  
18 discretion of the attorney general --

19          JUSTICE SCALIA: Do you think there's a  
20 realistic possibility that this person is going to be  
21 readmitted? A realistic possibility?

22          MR. CROOKS: I do not know, Your Honor. He's --

23          JUSTICE SCALIA: Oh.

24          MR. CROOKS: -- got U.S. citizen --

25          JUSTICE SCALIA: Do you think there's a

1 realistic possibility he's going to try to get readmitted,  
2 so that he can be subjected to really enforced supervised  
3 release?

4 MR. CROOKS: Well, I think that there is a  
5 possibility that he -- he could qualify for a nonimmigrant  
6 visa at some point --

7 JUSTICE SCALIA: Has he applied for such a visa?  
8 Has he expressed any intention to apply?

9 MR. CROOKS: He has not, Your Honor, but he does  
10 have U.S.-citizen --

11 JUSTICE SCALIA: Well --

12 MR. CROOKS: -- children --

13 JUSTICE SCALIA: -- then it's an exercise in the  
14 conceivable, it seems to me.

15 MR. CROOKS: But this Court has never held that  
16 a -- it would be unfair to hold that an appeal of a  
17 sentence can be moot while that sentence is still in  
18 effect, and when it can still have consequences for Mr.  
19 Toledo-Flores. And that's what distinguishes this case  
20 from all the other cases decided by this Court, is that  
21 the sentence itself is the concrete and continuing injury  
22 that defeats --

23 JUSTICE STEVENS: May I --

24 MR. CROOKS: -- mootness in this case.

25 JUSTICE STEVENS: -- ask this question? It's --



1 presuming -- supposing we say it's not moot, and you  
2 prevail. Could he be resentenced without being present in  
3 court?

4 MR. CROOKS: Yes, he could, Your Honor. We do  
5 resentencing in absentia all the time in the Southern  
6 District of Texas --

7 JUSTICE BREYER: In the Southern --

8 MR. CROOKS: -- in circumstances that are  
9 similar.

10 JUSTICE BREYER: In the -- have you ever heard  
11 of, or had, a client -- or heard of a person from Mexico  
12 who had been deported because he has been involved in  
13 drugs, and the Government wants to bring him back because  
14 he may be a witness -- maybe something develops, some  
15 other members of the gang are there, they'd like his  
16 information?

17 MR. CROOKS: That does happen occasionally.  
18 People are paroled, then, to testify in court proceedings  
19 or to cooperate with Federal --

20 JUSTICE BREYER: So, if --

21 MR. CROOKS: -- or State --

22 JUSTICE BREYER: -- they pick up some friends of  
23 his who are engaged in drugs, the Government might decide  
24 to try to get him back.

25 MR. CROOKS: That's correct, Your Honor.

1 JUSTICE SCALIA: Is there any indication that  
2 that's in the works, or is this just another conceivable  
3 thing?

4 MR. CROOKS: There is no indication in the  
5 record --

6 JUSTICE SCALIA: Yes.

7 MR. CROOKS: -- that that is in the work. I do  
8 want to point out that --

9 JUSTICE BREYER: Well, it's conceivable, I  
10 guess, that people will break their parole. Often it  
11 doesn't happen; sometimes it does. Sometimes they want to  
12 get him back; sometimes they don't.

13 MR. CROOKS: That's all very true, Justice  
14 Breyer.

15 I wanted to point out that, in Campo Serrano,  
16 which we've cited in our brief, this Court held that a  
17 deported alien's probation term was a continuing criminal  
18 sentence that saved the case from mootness. And the Court  
19 pointed to the fact that he -- that the deported alien in  
20 Campo Serrano could, just like Mr. Toledo-Flores, have his  
21 conditional release revoked, and he could be reimprisoned,  
22 upon a finding that he had violated his conditions. And  
23 we believe that Campo Serrano points very strongly in the  
24 direction that this case is not moot.

25 On the merits, I would just like to point out

1 that the interpretation that is advanced by the  
2 petitioners here promotes the very sort of uniformity that  
3 this Court has found desirable in cases like Jerome v.  
4 United States and its progeny, including Taylor v. United  
5 States, in that the same conduct of conviction will have  
6 the same immigration and same Federal sentencing  
7 consequences, irrespective of the labels or maximum prison  
8 terms affixed by the particular States that set out that  
9 conduct. And --

10 CHIEF JUSTICE ROBERTS: Thank you, Counsel.

11 MR. CROOKS: Thank you.

12 CHIEF JUSTICE ROBERTS: Mr. Kneedler.

13 ORAL ARGUMENT OF EDWIN S. KNEEDLER

14 ON BEHALF OF RESPONDENTS

15 MR. KNEEDLER: Mr. Chief Justice, and may it  
16 please the Court:

17 In order for a State drug offense to be an  
18 aggravated felony under Section 1101(a)(43)(B) of the INA,  
19 two -- there are two requirements. The underlying conduct  
20 must be punishable under the Controlled Substances Act or  
21 one of the other specified Federal statutes, and it must  
22 be a felony.

23 Because Petitioner's underlying conduct here was  
24 punishable under the Controlled Substances Act, and was a  
25 felony under State law, they are -- they were properly

1 found to have committed aggravated felonies. That  
2 conclusion follows, not just from Section 924(c), but,  
3 more importantly, by the fact that what is relevant here  
4 is, What is the meaning of 1101(a)(43), which is the  
5 operative provision, which just happens to incorporate the  
6 definition of "drug-trafficking crime" from 924(c)? And  
7 there are three features of 1101(a)(43) with --

8 JUSTICE KENNEDY: Why don't you say "it just  
9 happens"? I mean --

10 MR. KNEEDLER: No. No. But -- no, but -- yes.  
11 No, it's --

12 JUSTICE KENNEDY: -- it's there in the statute.

13 MR. KNEEDLER: It's -- I'm sorry.

14 JUSTICE KENNEDY: That's why you're here.

15 MR. KNEEDLER: It expressly incorporates it,  
16 yes. Yes. But the -- but the operative provision is  
17 section 1101(a)(43) of the INA, and there are three  
18 features of that that we think reinforce this conclusion.  
19 The first is that the consequences of aggravated felony  
20 status under the INA turn on whether one is convicted, not  
21 whether they have committed the crime, and that's true  
22 both with respect to the enhancement of sentences under  
23 1326 and the -- and the immigration consequences. And we  
24 think it makes particular sense when you're talking about  
25 a conviction to look about how the -- to look at how the

1 crime is treated under the jurisdiction of conviction.

2 JUSTICE SCALIA: I thought the Government has  
3 taken the position -- and as far as I know, all the Courts  
4 of Appeals have bought the Government's argument -- that  
5 there -- you do not need a conviction --

6 MR. KNEEDLER: You do --

7 JUSTICE SCALIA: -- that so --

8 MR. KNEEDLER: -- not need a conviction under  
9 Section 924 if you're bringing a prosecution under Section  
10 924(c).

11 JUSTICE SCALIA: Yes. You don't --

12 MR. KNEEDLER: You do not -- you do not need a  
13 conviction. But, in order -- the immigration consequences  
14 --

15 JUSTICE SCALIA: Yes, but --

16 MR. KNEEDLER: -- have been --

17 JUSTICE SCALIA: -- but 924(c) is incorporated  
18 in 1101(a)(43). It's --

19 MR. KNEEDLER: Right.

20 JUSTICE SCALIA: -- incorporated. So, you want  
21 us to interpret 924(c) one way for criminal convictions --  
22 a criminal sentence -- that is, you don't need a  
23 conviction in order to get the enhancement -- but another  
24 way for --

25 MR. KNEEDLER: No.

1 JUSTICE SCALIA: -- for the INA?

2 MR. KNEEDLER: Our point is not that 924(c)  
3 requires a conviction when it's in the Immigration Act,  
4 it's that the immigration consequences of that  
5 incorporation turn on whether someone was convicted of an  
6 aggravated felony.

7 JUSTICE SCALIA: Why is --

8 MR. KNEEDLER: So --

9 JUSTICE SCALIA: -- that?

10 MR. KNEEDLER: Well, the ground of deportation  
11 that refers to "aggravated felony" refers to someone who  
12 has been convicted of an aggravated felony. The  
13 ineligibility for cancellation of removal turns on whether  
14 someone has been convicted of an aggravated felony, and  
15 the enhanced penalties under Section 1326 for someone  
16 whose illegal reentry, following aggravated felony, is for  
17 a conviction for an aggravated felony. So, my point is  
18 that, under the INA, the consequences turn on conviction,  
19 and it makes sense to look at the jurisdiction of  
20 conviction -- here, State law -- to see whether it -- to  
21 look at the -- to determine the status of the crime. And  
22 since State law determines it to be a felony, that's the  
23 --

24 JUSTICE GINSBURG: Mr. Kneedler --

25 MR. KNEEDLER: -- proper place to look.

1           JUSTICE GINSBURG: -- if there is room for more  
2 than one construction of this statute, it seems to me  
3 unseemly, in the immigration context, to say that two  
4 people who have committed the identical acts, one of them  
5 is barred from ever coming back, doesn't have any of the  
6 dispensations, and the other does, because of the  
7 happenstance of the State in which they were convicted.  
8 That kind of disuniformity in an area where the  
9 Constitution expressly charges Congress with authority to  
10 make uniform laws, it's -- doesn't that uniform-law  
11 specification in the Constitution tug in the direction of  
12 the interpretation that Mr. Long was --

13           MR. KNEEDLER: No, we --

14           JUSTICE GINSBURG: -- presenting to us?

15           MR. KNEEDLER: -- we think it does, for several  
16 reasons. First, with respect to the constitutional  
17 requirement, the uniformity provision applies to uniform  
18 rules of naturalization; that is, citizenship. This --  
19 we're not talking about citizenship here, we're talking --  
20 we're talking about the eligibility of aliens to remain in  
21 the country. Beyond that, even where the Uniformity  
22 Clause applies -- and there's, for example, a parallel  
23 Uniformity Clause for bankruptcy -- that's never been  
24 interpreted to mean that consequences of certain conduct  
25 under State law can have no impact on bankruptcy law, and

1 that there can't be a variation. The State-law homestead  
2 exemption under the -- under the bankruptcy laws is a good  
3 example of that.

4 But, going beyond that, with respect to the  
5 issue of uniformity generally, Congress has established  
6 uniform standards in Section 1101, either in terms of  
7 identifying the conduct in certain instances; in other  
8 instances, by identifying the minimum sentence that was  
9 actually imposed. In this case, we think, with respect to  
10 drug-trafficking crimes, it -- it's imposed a uniform  
11 standard, in terms of the length of the sentence; it has  
12 to be a felony. That's -- that is uniformity.

13 But the -- to answer your point more directly,  
14 it is a principle throughout 1101(a)(43) that one looks to  
15 State law, not to -- not to a -- some supposed uniform  
16 standard of Federal law. And, for example, if you --  
17 several subparagraphs -- and if you'll -- 1101(a)(43) is  
18 set out at page 12(a) of the appendix to our brief --  
19 three subparagraphs -- (j), (q), and (t) -- refer to the  
20 sentence that may be imposed for a violation. Well, when  
21 you're talking about a State conviction, that's clearly  
22 referring to the sentence that may be imposed under State  
23 law for a conviction. Four other subparagraphs -- (f),  
24 (g), (r), and (s) -- turn on the sentence that was  
25 actually imposed. That means that -- in the case of a



1 State crime, as we have here, that State law has to  
2 authorize the sentence, and that the State Court, applying  
3 State sentencing principles, has actually imposed a crime  
4 of -- for -- of at least 1 year. So, it is -- it is  
5 infused in Section 1101(a)(43) that, in fact, you do look  
6 to the consequences of an offense under State law.

7 JUSTICE BREYER: I'm prepared to accept perfect  
8 ambiguity here, linguistically. And I thought of an  
9 empirical question, that you may know the answer to, that  
10 might shed some light.

11 Now, going along the way -- maybe I'm making a  
12 mistake to point it out, if I am -- but I go to the key  
13 thing here, which is the words in 924(c), What is a  
14 "drug-trafficking crime"? A "drug-trafficking crime" is a  
15 crime -- "any felony punishable under the Controlled  
16 Substances Act." That could mean an act, physically, that  
17 is a felony under some law, and is also punishable under  
18 the Controlled Substances Act as a misdemeanor. Okay?  
19 Felony under -- it could pick that up. And it also could  
20 mean any conduct which is punishable as a felony under the  
21 Controlled Substances Act. And I could look at those  
22 words a thousand times and not have a clue which it means.

23 So, I thought of an empirical test. This  
24 statute, 924(c), happens to be a statute that, if you  
25 engage in a drug-trafficking crime, as defined, and you

1 have a gun with you, you get mandatory 5 years. That's  
2 the point of it. And the Government does all the  
3 prosecuting. So, in how many cases where a person  
4 committed a misdemeanor offense, simple possession, and  
5 had a gun, did the Government insist that they get the 5-  
6 years minimum? Now, if you're prepared to tell me "a lot  
7 of 'em," I'm prepared to tell you, the Government has  
8 consistently interpreted the statute the way you are now.  
9 But if you're prepared to tell me "zero," I would say I  
10 would be suspicious of an interpretation that comes along  
11 now for the first time. And my mind is open on it. I'm  
12 quite interested in the answer.

13 MR. KNEEDLER: To my knowledge, we have not  
14 brought crime -- prosecutions under 924(c)(1), based on  
15 the circumstances you posit, but that's --

16 JUSTICE BREYER: But if --

17 MR. KNEEDLER: -- but I don't think that that  
18 goes very far with respect to answering this question.  
19 For one thing, as this Court pointed out in the Gonzales  
20 decision, the requirement that there be a Federal crime,  
21 and, therefore, a Federal felony under 924(c)(2), comes  
22 from the language in 924(c)(1) that says that the crime  
23 must be subject to prosecution in a court of the United  
24 States. And this Court, in Gonzales, said it's that  
25 language that renders the -- renders it a requirement that

1 it be a Federal crime. The definition of --

2 JUSTICE BREYER: No, no. We both agree. All --  
3 everybody agrees here. It doesn't have to be a Federal  
4 crime.

5 MR. KNEEDLER: It doesn't have to be --

6 JUSTICE BREYER: And --

7 MR. KNEEDLER: -- under 1101 --

8 JUSTICE BREYER: Correct, it doesn't have --

9 MR. KNEEDLER: Right.

10 JUSTICE BREYER: -- to be. It could be conduct  
11 that violates the State law, but -- and punish it under  
12 the State law -- but the conduct involved would have to  
13 constitute what is a felony under the Controlled  
14 Substances --

15 MR. KNEEDLER: Would have to --

16 JUSTICE BREYER: -- Act.

17 MR. KNEEDLER: -- in our view, it would have to  
18 constitute --

19 JUSTICE BREYER: A felony or a misdemeanor.

20 MR. KNEEDLER: -- it would have to be punishable  
21 under the Controlled Substances --

22 JUSTICE BREYER: Yes.

23 MR. KNEEDLER: -- Act.

24 JUSTICE BREYER: All right.

25 MR. KNEEDLER: But the important point here is

1 --

2 JUSTICE BREYER: All right. So, I say it's  
3 suspicious.

4 MR. KNEEDLER: But the question is not what  
5 924(c) (2) means, standing alone or in the abstract; it's  
6 what it means, as incorporated into 1101(a) (43). And --

7 CHIEF JUSTICE ROBERTS: And, of --

8 MR. KNEEDLER: -- there --

9 CHIEF JUSTICE ROBERTS: -- course, that's --  
10 when you get to that, it must give you pause that your  
11 analysis is of a term, "drug-trafficking crime" or  
12 "illicit trafficking," and your theory leads to the  
13 conclusion that simple possession equates with drug  
14 trafficking.

15 MR. KNEEDLER: Well, the Petitioner has  
16 conceded, as I understand it -- I heard Mr. Long, I think,  
17 concede -- that possession offenses can constitute  
18 aggravated felonies under this provision, that there is  
19 the recidivist possession, there is the possession of the  
20 date-rape drug, there is possession of 5 grams or more of  
21 cocaine. All of those are specified as being -- of being  
22 felonies under the -- under 940 -- or 844. But, beyond  
23 that, it's important to take into account that a lot of  
24 State statutes dealing with drugs do not -- are not  
25 patterned directly after the Federal statute, and there's

1 no reason why Congress would have insisted that they do so  
2 in order for this statute to operate sensibly. And one  
3 notable example, for instance, is, when it comes to  
4 possession of a substantial amount of drugs, that that  
5 certainly would create a strong implication that the  
6 defendant was engaged in trafficking activities, or  
7 intended to.

8           The Federal statute deals with that by making it  
9 a felony to possess with intent to distribute the drug. A  
10 number of States don't do that. They, instead, have  
11 graduated possession offenses, based on the quantity of  
12 drugs that the defendant is possessing; that above a  
13 certain quantity of drugs, it would be a felony. They're  
14 getting at the same problem, but they've come at it in a  
15 different way.

16           JUSTICE GINSBURG: Then, in those cases, you can  
17 say the conduct would constitute a felony under the  
18 Federal statute; but here, if I recall correctly, the  
19 amount involved would not have qualified for possession  
20 with intent to distribute, under Federal law.

21           MR. KNEEDLER: Well, it would always be up to  
22 the jury to decide that. Now, in Mr. Lopez's case, he was  
23 -- he was initially charged with a series of offenses that  
24 went beyond the aiding and abetting of possession that he  
25 ultimately pleaded guilty to, but, as he testified in his

1 -- in his immigration hearing, his aiding and abetting of  
2 possession was assisting someone in purchasing drugs,  
3 which was, itself, a trafficking element. And so, this  
4 shows that the way the State crimes are defined or applied  
5 are often getting at what Federal law --

6 JUSTICE STEVENS: Yes. We have a case in which  
7 we're assuming, for our purposes, we just have possession.  
8 I mean, I understand the facts of this case. And I wanted  
9 to ask -- I have two questions, Mr. Kneedler. One of them  
10 -- the second one, I'd ask that -- you were going to  
11 mention three different points, one about conviction; you  
12 had two other points you didn't get to. I want to learn  
13 what those were. But, before that, it seems to me that,  
14 when you put the whole statute -- all the -- all the  
15 different statutory provisions together, you really boil  
16 down and focus on 924(c)(2) and the words "for purpose of  
17 this subsection, the term 'drug-trafficking crime' means  
18 any felony punishable under the Controlled Substances  
19 Act." And if the word "Federal" had been inserted before  
20 the word "felony" in the statute, would that not make the  
21 statute perfectly clear?

22 MR. KNEEDLER: It probably would, but I think  
23 it's interesting that the version of 924(c) that was in  
24 effect prior to 1988 said exactly that. It said "felony  
25 violation of Federal law."

1 JUSTICE STEVENS: It was a question of --

2 MR. KNEEDLER: It was -- it was explicit.

3 JUSTICE STEVENS: -- whether the change was  
4 intended to be --

5 MR. KNEEDLER: Well, but --

6 JUSTICE STEVENS: -- substantive --

7 MR. KNEEDLER: -- Congress --

8 JUSTICE STEVENS: -- or merely --

9 MR. KNEEDLER: But --

10 JUSTICE STEVENS: -- stylistic.

11 MR. KNEEDLER: -- Congress did change it, in the  
12 1988 Act, but it did it -- and this is significant -- it  
13 did it in connection with two changes in the immigration  
14 law. One is the enactment of the definition of  
15 "aggravated felony," which, as I have explained, the  
16 definition of "aggravated felony" looks to State law, in a  
17 number of respects, in terms of the severity of the  
18 offense or the punishment actually imposed. That was one  
19 change.

20 The other change that was made in the 1988 Act  
21 was to amend Section 1326 with respect to illegal  
22 reentries, and it did that by enhancing the penalty for  
23 conviction of any felony other than an aggravated felony,  
24 and an aggravated felony. And certainly the conviction of  
25 any felony includes State law offenses in this --

1 JUSTICE STEVENS: Just again, Mr. Kneedler --  
2 focusing again on that specific language, you're saying,  
3 in effect, that that phrase means any State or Federal  
4 felony punishable under the Federal statutes.

5 MR. KNEEDLER: It says -- yes, it says "any  
6 felony." And that is our -- doing it -- and what --

7 JUSTICE STEVENS: And is it ever true that a  
8 State felony is punishable under a Federal statute?

9 MR. KNEEDLER: The conduct is --

10 JUSTICE STEVENS: Yes, I know, but --

11 MR. KNEEDLER: -- punishable. The conduct is  
12 punishable, not --

13 JUSTICE STEVENS: -- but do you know of any  
14 instance where we've said a State felony is punishable  
15 under a Federal statute?

16 MR. KNEEDLER: I think not -- I think not used  
17 in that sense, but I think it's important -- it's  
18 important to look at the language, as a whole. It does  
19 not say "punishable as a felony under" --

20 JUSTICE STEVENS: But you do agree --

21 MR. KNEEDLER: -- "under the Controlled" --

22 JUSTICE STEVENS: -- that the key to the case is  
23 how we read that one sentence.

24 MR. KNEEDLER: Well, no, I agree that the -- I --  
25 in my view, the key to the case is in 1101(a)(43),



1 because, if you look at the structure of 1101(a)(43) --  
2 and this gets to the question you -- you said -- you  
3 mentioned that I had three reasons. One is that under the  
4 -- under the INA, the conviction consequences turn on the  
5 conviction of an aggravated felony, and it only makes  
6 sense to look at the jurisdiction of conviction to  
7 determine the nature of the crime, whether it's a felony.

8 JUSTICE SCALIA: Well, but you don't -- you  
9 don't look to the jurisdiction of conviction. Are you  
10 telling me you require a conviction? You -- I thought you  
11 told me you don't require a conviction.

12 MR. KNEEDLER: No. Under 924(c), you don't.  
13 But under the -- under the -- if you're bringing a Federal  
14 prosecution under 924(c), the term "aggravated felony" has  
15 no role in that determination. It is a -- it is a  
16 separate Federal crime. We're talking about, here, the  
17 consequences of -- the consequences of being an aggravated  
18 felon under 1101(a)(43) are, Where does the definition of  
19 "aggravated felony" apply? It only applies under the INA  
20 if someone has been convicted of an aggravated felony.  
21 You're only -- you're only subject to deportation for  
22 aggravated felony if you've been convicted, you're  
23 ineligible for cancellation or removal, you're subject to  
24 sentence enhancement. All those things follow on  
25 conviction. And we think it only makes sense to look to

1 the jurisdiction of conviction. That is --

2 JUSTICE SOUTER: All right, Mr. Kneedler,  
3 assuming that -- as I understand it, the answer you just  
4 gave, your second point, as well as the point that you and  
5 Justice Stevens were debating, turns, in your view, on a  
6 definition, or a reading, of the statute that would work  
7 this way: that if, under State law, the act were a felony,  
8 but, under Federal law, the action was merely a  
9 misdemeanor, it would still, for purposes of this  
10 definition, be an aggravated felony.

11 MR. KNEEDLER: That's correct.

12 JUSTICE SOUTER: That -- isn't that very  
13 strange, that Congress would have wanted a reading of the  
14 statute that would turn its definition of a "misdemeanor  
15 crime" into an aggravated felony for purposes of the  
16 immigration law?

17 MR. KNEEDLER: I don't think so at all. And for  
18 one -- for one thing -- as I've mentioned, the structure  
19 of the act, as a whole, of 1101(a)(43) -- and there are  
20 numerous subsections -- look to how the crime -- what the  
21 authorized punishment was, or look to how the person was  
22 actually sentenced under State law, not under Federal law.

23 JUSTICE SOUTER: No, but I'm --

24 MR. KNEEDLER: And I --

25 JUSTICE SOUTER: -- saying, if --

Official

1 MR. KNEEDLER: No -- I --

2 JUSTICE SOUTER: No, go ahead.

3 MR. KNEEDLER: I also haven't mentioned the  
4 explicit provision, that one of the other Justices  
5 mentioned earlier -- I think, the Chief Justice -- that  
6 the penultimate sentence of 1101(a)(43) says that  
7 something -- a -- an offense constitutes an aggravated  
8 felony, whether in violation of Federal or State laws.

9 JUSTICE SOUTER: Well --

10 MR. KNEEDLER: So --

11 JUSTICE SOUTER: -- I know it says that, but  
12 that doesn't necessarily take you any further than saying  
13 that if the words of the statute refer to something that  
14 could be a State law felony, under the -- under the  
15 penultimate sentence, it will count. It does not  
16 necessarily answer the question that we have, and that is  
17 whether a particular reference in the statute is a  
18 reference to a Federal felony or a State felony. So, it  
19 has a -- the penultimate sentence has work to do. And, in  
20 fact, we can see the work being done in the -- in the very  
21 definition of "drug trafficking" -- but it doesn't  
22 necessarily lead to the conclusion that you draw from it.

23 MR. KNEEDLER: Well, we think -- we think it is  
24 quite a -- we think it's a strong confirmation of the  
25 pattern in 1101(a)(43), that the statute looks to what

1 happened in State Court, and the State punishment that was  
2 authorized there, and the express mention of that -- or --

3 JUSTICE SOUTER: Even when --

4 MR. KNEEDLER: -- requirement.

5 JUSTICE SOUTER: -- the consequence, in effect,  
6 is to turn for -- turn the gravity of the Federal  
7 misdemeanor into the gravity of --

8 MR. KNEEDLER: But the --

9 JUSTICE SOUTER: -- a felony that --

10 MR. KNEEDLER: -- the Federal Controlled --

11 JUSTICE SOUTER: -- just happens to be a State  
12 felony.

13 MR. KNEEDLER: The Federal Controlled Substances  
14 Act does not occupy the field of drug control in the  
15 country, any more than any other Federal crime occupies  
16 that field. And --

17 JUSTICE SOUTER: No, I realize that. But, if  
18 we're asking, "What is important in the mind of Congress,  
19 for purposes of the immigration law?" one would suppose  
20 that the most obvious touchstone of importance is the way  
21 Federal law deals with it -- i.e., in the case of a crime,  
22 whether Federal law calls it a felony or Federal law calls  
23 it a misdemeanor. You know, in your reading, when Federal  
24 law calls it a misdemeanor, if State law calls it a  
25 felony, it becomes a Federal felony for the immigration

1 law. And that's what seems to me odd.

2 MR. KNEEDLER: Right. And this is not the only  
3 place where that consequence can arise. There are --  
4 there are cases involving "What's a crime of violence?"  
5 which is -- which, under subparagraph (g), is another  
6 aggravated felony. The crime of violence is defined in 18  
7 U.S.C. Section 16, subsection (b) of that -- this Court  
8 considered that statute in *Leocal* -- requires that the  
9 offense be a felony which creates a serious risk of  
10 physical harm. The courts have looked to the State law of  
11 conviction to determine whether something is a felony --

12 JUSTICE SCALIA: Mr. Kneedler, could --

13 JUSTICE SOUTER: Yes, but --

14 MR. KNEEDLER: -- under that provision.

15 JUSTICE SOUTER: May I just ask one --

16 JUSTICE SCALIA: Sure.

17 JUSTICE SOUTER: It's one thing to turn to State  
18 law to get an answer where there is no other answer. The  
19 problem here is that State law and Federal law are at odds  
20 in determining the gravity of the offense. The Federal  
21 law, on my hypothesis, would say, "It is minor; it's just  
22 a misdemeanor." The State says, "No, it is a felony." It  
23 seems to me very odd, given the tension between the State  
24 and Federal classifications, to say that, for Federal  
25 purposes, the State classification is going to trump the

1 Federal classification; and that's a different situation  
2 from the one you posit.

3 MR. KNEEDLER: Well, and -- if I could just  
4 mention one other -- on other example, under the theft-  
5 offense category in subsection -- I think it's (f) --  
6 where a theft offense is deemed to be an aggravated felony  
7 if a sentence of at least 1 year was imposed. There are  
8 misdemeanor offenses there that -- as a matter of Federal  
9 law, it can be a misdemeanor for certain types of theft  
10 offenses; and yet, they are covered as aggravated  
11 felonies. And, again, that would --

12 JUSTICE SCALIA: Mr. Kneedler, could I ask you  
13 about your assertion that you "look to the State of  
14 conviction"? What do you mean by that? For purposes of  
15 1101. Does that mean, if you're convicted, in State  
16 court, of a misdemeanor -- and even though that action  
17 would be a Federal felony, it's not an aggravated felony?

18 MR. KNEEDLER: That is our position, yes.  
19 Because the requirement -- the --

20 JUSTICE SCALIA: So, it's sort of a double  
21 inconsistency. Not only do you treat State -- State  
22 actions that are -- that are minimal -- I'm sorry, where  
23 the State treats it more seriously than the Federal  
24 Government, not only do you follow the State, but, where  
25 the State treats it less leniently than the Federal

1 Government, you also follow the State.

2 MR. KNEEDLER: Well, and --

3 JUSTICE SCALIA: Is that right?

4 MR. KNEEDLER: Yes. And we -- yes. We think  
5 that's --

6 JUSTICE SCALIA: So, you look to the State of  
7 conviction. What --

8 MR. KNEEDLER: that's --

9 JUSTICE SCALIA: That's for purposes of the  
10 immigration law.

11 MR. KNEEDLER: Of the immigration law. And,  
12 again, we think that --

13 JUSTICE SCALIA: Okay. Now, do you do the same  
14 for purposes of the felony enhancement provision?

15 MR. KNEEDLER: 924(c)? No, you don't, because --

16 JUSTICE SCALIA: You --

17 MR. KNEEDLER: -- the aggravated-felony question  
18 has no -- has no -- the "aggravated felony" term has no  
19 operative significance under 924 --

20 JUSTICE SCALIA: Well, that seems to me --

21 MR. KNEEDLER: -- itself.

22 JUSTICE SCALIA: -- very strange. You would  
23 look to the -- you would look to the State law for  
24 purposes of the immigration section; but, for purposes of  
25 924(c), what would you look to? Either one. Either one.

1     Whichever --

2             MR. KNEEDLER:  No, 924 --

3             JUSTICE SCALIA:  -- whichever -- for 924 --

4     whichever one would make it a felony.

5             MR. KNEEDLER:  No, under --

6             JUSTICE SCALIA:  You lose.

7             MR. KNEEDLER:  -- under 924(c)(1), this Court --

8     this Court, in the Gonzales case, said that it -- that it

9     has to be a Federal crime, but not because of the --

10            JUSTICE SCALIA:  Yes.

11            MR. KNEEDLER:  -- definition in --

12            JUSTICE SCALIA:  Right.

13            MR. KNEEDLER:  -- 924(c)(2) --

14            JUSTICE SCALIA:  All right.

15            MR. KNEEDLER:  -- but --

16            JUSTICE SCALIA:  If it's a felony under either

17     one, for purposes of 924(c), you lose, right?

18            MR. KNEEDLER:  I don't think I --

19            JUSTICE SCALIA:  If the act is either a State

20     felony or a Federal felony, you lose.  I mean, the

21     defendant gets the enhanced sentence, right, under 924(c)?

22            MR. KNEEDLER:  No.

23            JUSTICE SCALIA:  No?

24            MR. KNEEDLER:  Under 924(c), the cases that have

25     been brought have all been situations where it is a



1 Federal offense. But, because -- not because of the  
2 language in 924(c)(2) --

3 JUSTICE SCALIA: Well --

4 MR. KNEEDLER: -- but because of the -- of the  
5 language --

6 JUSTICE SCALIA: Listen.

7 MR. KNEEDLER: -- in 924(c)(1).

8 JUSTICE SCALIA: Listen. My question is a  
9 simple one. If it's -- it seems to me, if it's -- what  
10 you're saying is, if it is either a felony under Federal  
11 law or a felony under State law, you get the enhanced  
12 sentence under 924(c), isn't that right?

13 MR. KNEEDLER: I -- my understanding of the way  
14 924(c)(1) has operated is that if it is a misdemeanor  
15 under Federal law, but maybe it would be a Federal felony,  
16 it would not be -- it would not give rise to the  
17 enhancement, because it is not a --

18 JUSTICE SCALIA: I thought that's --

19 MR. KNEEDLER: -- it --

20 JUSTICE SCALIA: -- what the whole argument is  
21 about, whether it has to be a felony under Federal law.  
22 You're telling me, if it's a misdemeanor under Federal  
23 law, that you don't get --

24 MR. KNEEDLER: But not --

25 JUSTICE SCALIA: -- the enhanced sentence?

1 MR. KNEEDLER: -- but not under -- not under  
2 924(c)(2) --

3 JUSTICE BREYER: But why not?

4 MR. KNEEDLER: -- the definitional --

5 JUSTICE SCALIA: You've thoroughly confused me  
6 now.

7 JUSTICE BREYER: But 924(c)(1) says that if you  
8 have a gun, and you have a drug-trafficking crime, book, 5  
9 years.

10 Okay, now we go to two, what's a "drug-  
11 trafficking crime"? It means any felony punishable under  
12 the -- under the Controlled Substances Act. Now, in your  
13 definition, we first look to see whether simple possession  
14 is punishable under the -- in Controlled Substances Act.  
15 It sure is. It sure is. It's punishable as a  
16 misdemeanor. So, it meets that. Under your definition,  
17 is it a felony? Yup, it's a felony in South Dakota.  
18 Okay. So, now we've got a prosecution, in Federal Court  
19 in South Dakota. And, on your reading of the statute,  
20 that guy should get a bump-up of 5 years.

21 MR. KNEEDLER: No, that is not our reading of  
22 the statute. The --

23 JUSTICE BREYER: Because?

24 MR. KNEEDLER: The only thing that is  
25 incorporated into 1101(a)(43) is the definition in (c)(2)

1 -- not (c)(1), the definition of --

2 JUSTICE BREYER: Yes.

3 MR. KNEEDLER: -- of "drug-trafficking crime" in  
4 (c)(2), which says --

5 JUSTICE BREYER: Yes.

6 MR. KNEEDLER: -- "felony punishable under the  
7 Controlled" --

8 JUSTICE BREYER: Right.

9 MR. KNEEDLER: -- "Substances Act."

10 JUSTICE BREYER: Right.

11 MR. KNEEDLER: That is what gets plugged into --

12 JUSTICE BREYER: That's correct.

13 MR. KNEEDLER: -- 1101(a)- --

14 JUSTICE BREYER: Right.

15 MR. KNEEDLER: -- -(43).

16 JUSTICE BREYER: Right.

17 MR. KNEEDLER: Along with all of the other  
18 provisions in 1101(a)(43), you look to State law, in the  
19 case of a State offense -- the State of conviction, the  
20 jurisdiction --

21 JUSTICE BREYER: Yes.

22 MR. KNEEDLER: -- of conviction -- to determine  
23 the nature of the crime.

24 JUSTICE BREYER: But you still have to know  
25 whether that word, "felony," in (2) means "any felony

1 punishable as a felony under the Controlled" --

2 MR. KNEEDLER: Right. And --

3 JUSTICE BREYER: -- "Substances Act."

4 MR. KNEEDLER: And --

5 JUSTICE BREYER: And there --

6 MR. KNEEDLER: -- a number --

7 JUSTICE BREYER: Yeah. You have to know the  
8 answer to that.

9 MR. KNEEDLER: -- a number of Courts of Appeals  
10 that have looked at this in the sentencing context over  
11 the years have concluded that it -- that the absence of  
12 that language is very significant, and the presence of the  
13 language that says "any felony" is also significant.

14 JUSTICE SCALIA: Never mind sentencing, let's  
15 get back to the immigration. If I understand what you're  
16 now saying, if you're convicted in State Court of action  
17 that is a Federal felony, but it's just a State  
18 misdemeanor -- right? -- you look to the State of  
19 conviction, and it would be a misdemeanor, and the  
20 immigration provisions would not -- would not take effect.  
21 Is --

22 MR. KNEEDLER: Yes.

23 JUSTICE SCALIA: -- that right?

24 MR. KNEEDLER: And that -- and that -- that's  
25 not true --

1 JUSTICE SCALIA: That's extraordinary.

2 MR. KNEEDLER: No, but it's -- that's not --  
3 only true under this provision of 1101(a)(4). The other  
4 -- the other provisions -- (f) and (g) and (j) and (q) and  
5 (t) that I mentioned, that looked to the sentence that may  
6 be imposed under State law, or that was actually imposed  
7 -- would, likewise, render someone in that situation who  
8 was convicted of only a misdemeanor in State Court -- even  
9 though it might be a felony under Federal law, they would  
10 not be -- they would not be convicted of an aggravated  
11 felony, because --

12 JUSTICE GINSBURG: Mr. Kneedler --

13 MR. KNEEDLER: -- of the way Congress chose to  
14 write 1101(a)(43).

15 JUSTICE STEVENS: But is --

16 JUSTICE GINSBURG: Do you --

17 JUSTICE STEVENS: -- that a reasonable -- let's  
18 say the statute's ambiguous, and you've convinced us  
19 there's no constitutional requirement of uniformity. But  
20 is it reasonable to assume that Congress would want the  
21 different consequences to depend on the State of  
22 conviction?

23 MR. KNEEDLER: I think it is. I mean, they're  
24 --

25 JUSTICE STEVENS: Is there anything in the

1 legislative history suggesting that?

2 MR. KNEEDLER: I think -- as I say, I think it's  
3 on face of the statute.

4 JUSTICE GINSBURG: Barrett suggests otherwise.  
5 If what Congress was trying to do was to codify that  
6 practice of looking for an analogous crime under State  
7 law, that's -- that seems to me the -- at least what  
8 Congress was trying do.

9 MR. KNEEDLER: Well, that -- the legislative  
10 history of the amendment in 1990 does not discuss the  
11 aspect of Barrett that went to the comparison to decide  
12 what -- in what circumstances there would be an analogous  
13 Federal crime. It was clear that it wanted to ratify the  
14 result that State crimes are covered.

15 But we think that that was evident from the 1988  
16 amendments to -- that both enacted the definition of  
17 "aggravated felony," revised the definition of "drug-  
18 trafficking crime" to delete the requirement that it be a  
19 Federal felony -- that was deleted in 1988 -- and enhanced  
20 sentences --

21 JUSTICE GINSBURG: You --

22 MR. KNEEDLER: -- under 1326, clearly on the --  
23 on -- by reference to whether someone was convicted of a  
24 State felony, without any -- without any general Federal  
25 minimum.

1 JUSTICE GINSBURG: May I --

2 MR. KNEEDLER: What Congress --

3 JUSTICE GINSBURG: May I just switch gears for a  
4 moment, because your time is almost up, and we -- you  
5 haven't addressed the mootness problem in Toledo-Flores.

6 MR. KNEEDLER: In Toledo-Flores.

7 JUSTICE GINSBURG: Is the Second Circuit wrong  
8 in U.S. v. Hamdi? Because it seems to me that U.S. v.  
9 Hamdi is on all fours with respect to mootness.

10 MR. KNEEDLER: Yes. We think it is wrong, be --  
11 under this Court's decision in Spencer versus Kemna and  
12 other cases, that, if the possible consequence turns on a  
13 discretionary judgment that may be made by someone else,  
14 that is too speculative to constitute a real live case or  
15 controversy. And that's what I understand Toledo-Flores  
16 to be arguing, is that if he applied for discretionary  
17 relief in the future, that it might -- it might matter,  
18 because his sentence might be reduced slightly.

19 I should point out that in the District Court  
20 Toledo-Flores conceded that if he didn't get an eight-  
21 level sentence enhancement, he would get a four-level  
22 sentence enhancement, because this is at least a felony,  
23 within the meaning of the adjacent provision of the  
24 guidelines. That would result in a guideline range of 24  
25 to 30 months. He would then have gotten 24 months, under

1 that guideline range, the very same thing that he got  
2 here. And, under the guidelines at the time, a term of  
3 supervised release was mandatory. And a 1-year term of  
4 supervised release was mandatory in those circumstances.  
5 He would have gotten exactly the same term of supervised  
6 release if he had been -- if he had gotten only the four-  
7 level enhancement, rather than the eight-level  
8 enhancement.

9 I also think that it is somewhat farfetched to  
10 think that, given the fact that Toledo-Flores had more  
11 than 12 illegal entries into the United States, and  
12 various State offenses, that the determination of whether  
13 the attorney general would actually grant discretionary  
14 relief would turn on a marginal difference in the sentence  
15 on that particular offense.

16 CHIEF JUSTICE ROBERTS: Thank you, Mr. Kneedler.  
17 Mr. Long, you have 4 minutes remaining.

18 REBUTTAL ARGUMENT OF ROBERT A. LONG, JR.

19 ON BEHALF OF PETITIONER LOPEZ

20 MR. LONG: Thank you, Mr. Chief Justice.

21 In answer to Justice Breyer's question, Mr.  
22 Kneedler said that a Federal misdemeanor is a drug-  
23 trafficking crime under Section 924(c) if a State punishes  
24 it as a felony. He said, "Well, the Federal Government  
25 never prosecutes Federal misdemeanors under Section



1 924(c)." He said, "The reason is because of  
2 924(c)(1)(A)," and the language there is, it has to be an  
3 offense for which the person may be prosecuted in a court  
4 of the United States. But that language -- a person may  
5 be prosecuted in a court of the United States for a  
6 misdemeanor. So, the Government is making an argument  
7 that, to my knowledge, has never been accepted by any  
8 court, has not ever been advanced by the Government in a  
9 criminal context, and that would significantly expand  
10 Section 924(c) and numerous other criminal statutes that  
11 we cite in our brief that used the same definition of  
12 "drug-trafficking crime."

13 The -- Mr. Kneedler also said that the  
14 aggravated felony provisions in Section 101(a)(43) refer  
15 to State law, but I read them just the opposite. There  
16 are two kinds. There are 21 of them. Many of them say,  
17 "an offense described in 18 U.S. Code Section X." I mean,  
18 that's really what -- we're dealing with one of those  
19 here. So, it clearly goes to Federal law to define the  
20 offense. Now, if State law or foreign law also punishes  
21 that offense, then it's an aggravated felony, but,  
22 clearly, Federal law is defining the offense.

23 There are other categories, such as murder and  
24 theft, that are defined, in general terms; but the  
25 Government's position, as I understand it, is, again, you

1 use a generic uniform definition. You don't pick any  
2 definition that the States may have. The Court just  
3 granted --

4 CHIEF JUSTICE ROBERTS: Well, I thought -- I  
5 thought you conceded that a State offense could constitute  
6 illicit trafficking --

7 MR. LONG: Well, yes --

8 CHIEF JUSTICE ROBERTS: -- in a Controlled  
9 Substance --

10 MR. LONG: Yes, Mr. Chief Justice. But, again,  
11 to be clear -- and I think this is consistent with the  
12 Government's position in other cases -- ultimately, there  
13 will be some uniform Federal definition of what  
14 constitutes illicit trafficking. It would be -- some  
15 commercial element would probably be the definition the  
16 Court hasn't decided. States can define it more broadly.  
17 But the actual definition -- just as the definition of  
18 "burglary" or "theft" --

19 JUSTICE ALITO: You think there's a uniform  
20 Federal definition of a theft offense?

21 MR. LONG: Well, it's -- I mean, as -- this --  
22 in the Taylor case, in burglary, the Court has a  
23 methodology for this. You pick a sort of generic  
24 definition. It may not -- it may not come from a Federal  
25 statute; it could --

1 JUSTICE ALITO: There's -- they'll -- there's no  
2 variation in State offenses that would fall within that, a  
3 theft offense?

4 MR. LONG: Well, it's -- again, this is -- the  
5 provision we're dealing with is -- looks to Federal law,  
6 the Controlled Substances Act and two other statutes. My  
7 understanding of the Government's position -- and it's  
8 consistent with this Court's cases, in Taylor -- is that,  
9 even when it's a generic offense, you would -- you would  
10 still have a uniform definition. And that is certainly  
11 consistent with the principle of uniformity that applies  
12 both in criminal law and in immigration law. I mean, if  
13 there's any ambiguity, at the end of the day, ambiguities  
14 are supposed to be resolved in favor of uniformity,  
15 uniform Federal law -- uniform Federal criminal law, and  
16 uniform immigration law. Effectively, what the Government  
17 is arguing that -- is that States can banish noncitizens,  
18 and can do so by enacting drug laws, deciding to make a  
19 simple possession offense a felony. That's a decision  
20 that a State would make, almost certainly, for reasons  
21 that have little or nothing to do with immigration, and  
22 it's highly unlikely that Congress would have left that  
23 determination to States.

24 On uniformity, aggravated felonies is a  
25 condition for citizenship. If you're convicted of an

Official

1 aggravated felony, you may not become a U.S. citizen. You  
2 are foreclosed from establishing good moral character.  
3 So, in fact, citizenship is at stake here, and the  
4 Uniformity Clause is in play.

5 If there are no further questions, thank you.

6 CHIEF JUSTICE ROBERTS: Thank you, Mr. Long.

7 The case is submitted.

8 [Whereupon, at 11:03 a.m., the case in the  
9 above-entitled matter was submitted.]

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<b>A</b>	<p><b>adopted</b> 15:10</p> <p><b>advanced</b> 27:1 57:8</p> <p><b>affixed</b> 27:8</p> <p><b>aggravated</b> 5:13 9:19 10:7 15:16 16:4,10 16:12 17:12 27:18 28:1,19 30:6,11,12,14 30:16,17 36:18 39:15,16,23,24 41:5,14,17,19 41:20,22 42:10 42:15 43:7 45:6 46:6,10 46:17 47:18 53:10 54:17 57:14,21 59:24 60:1</p> <p><b>aggravated-fe...</b> 47:17</p> <p><b>agree</b> 4:17 5:3 10:14 16:21 35:2 40:20,24</p> <p><b>agreed</b> 7:15</p> <p><b>agrees</b> 35:3</p> <p><b>ahead</b> 43:2</p> <p><b>aiding</b> 37:24 38:1</p> <p><b>ALBERTO</b> 1:6</p> <p><b>alcohol</b> 18:14</p> <p><b>alien</b> 26:19</p> <p><b>aliens</b> 31:20</p> <p><b>alien's</b> 26:17</p> <p><b>Alito</b> 8:3,7,12,13 8:17,25 9:2,20 10:4 58:19 59:1</p> <p><b>ambiguities</b> 59:13</p> <p><b>ambiguity</b> 33:8 59:13</p> <p><b>ambiguous</b> 10:19,20 13:21 14:2 53:18</p> <p><b>amend</b> 39:21</p>	<p><b>amendment</b> 54:10</p> <p><b>amendments</b> 54:16</p> <p><b>American</b> 10:5</p> <p><b>amount</b> 37:4,19</p> <p><b>analogous</b> 13:24 13:25 54:6,12</p> <p><b>analysis</b> 15:25 36:11</p> <p><b>answer</b> 12:20 20:21 32:13 33:9 34:12 42:3 43:16 45:18,18 52:8 56:21</p> <p><b>answered</b> 14:14</p> <p><b>answering</b> 34:18</p> <p><b>ANTONIO</b> 1:3</p> <p><b>appeal</b> 17:22,23 17:25 20:22 24:16</p> <p><b>Appeals</b> 29:4 52:9</p> <p><b>APPEARAN...</b> 1:20</p> <p><b>appendix</b> 6:6,9 7:8 32:18</p> <p><b>applied</b> 15:2,12 15:15 24:7 38:4 55:16</p> <p><b>applies</b> 7:25 8:1 15:11,16 16:5 31:17,22 41:19 59:11</p> <p><b>apply</b> 5:6 20:17 20:18 24:8 41:19</p> <p><b>applying</b> 33:2</p> <p><b>approach</b> 14:6</p> <p><b>April</b> 18:1 19:17 19:23</p> <p><b>area</b> 22:22 31:8</p> <p><b>arguing</b> 55:16 59:17</p> <p><b>argument</b> 1:18 3:2,5,8,11 4:3</p>	<p>4:7 10:5,11 11:4 12:3 13:22 17:17 19:20,21 21:11 27:13 29:4 49:20 56:18 57:6</p> <p><b>asking</b> 44:18</p> <p><b>aspect</b> 54:11</p> <p><b>assertion</b> 46:13</p> <p><b>assessment</b> 23:11</p> <p><b>Assistant</b> 1:23</p> <p><b>assisting</b> 38:2</p> <p><b>associate</b> 18:14</p> <p><b>Association</b> 10:6</p> <p><b>assume</b> 53:20</p> <p><b>assuming</b> 38:7 42:3</p> <p><b>attorney</b> 1:7 23:10,18 56:13</p> <p><b>authority</b> 22:24 31:9</p> <p><b>authorize</b> 33:2</p> <p><b>authorized</b> 42:21 44:2</p> <p><b>automatically</b> 18:4</p> <p><b>a.m</b> 1:19 4:2 60:8</p>	<p>54:11</p> <p><b>based</b> 19:3 34:14 37:11</p> <p><b>begins</b> 6:9,10</p> <p><b>behalf</b> 1:21,24 2:2 3:4,7,10,13 4:8 17:18 27:14 56:19</p> <p><b>believe</b> 9:11 26:23</p> <p><b>best</b> 22:24</p> <p><b>beyond</b> 31:21 32:4 36:22 37:24</p> <p><b>BIA</b> 14:6</p> <p><b>bit</b> 6:23</p> <p><b>blue</b> 6:6</p> <p><b>boil</b> 38:15</p> <p><b>book</b> 50:8</p> <p><b>bought</b> 29:4</p> <p><b>break</b> 26:10</p> <p><b>Breyer</b> 10:19,23 10:25 11:2,9 11:12,14,17,23 12:1,9,11,13 12:16,18,20 14:14 22:20,22 25:7,10,20,22 26:9,14 33:7 34:16 35:2,6,8 35:10,16,19,22 35:24 36:2 50:3,7,23 51:2 51:5,8,10,12 51:14,16,21,24 52:3,5,7</p> <p><b>Breyer's</b> 56:21</p> <p><b>brief</b> 6:6 9:12 10:5,12 23:1 26:16 32:18 57:11</p> <p><b>briefs</b> 14:19</p> <p><b>bring</b> 25:13</p> <p><b>bringing</b> 29:9 41:13</p> <p><b>broad</b> 15:6</p> <p><b>broaden</b> 8:5</p>
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