1   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - - - - - - - - - - - - - - - x

3   MANUEL JOSE LOZANO,   :

4   Petitioner   :   No. 12-820

5   v.   :

6   DIANA LUCIA MONTOYA ALVAREZ   :

7   - - - - - - - - - - - - - - - - - - x

8   Washington, D.C.

9   Wednesday, December 11, 2013

10

11   The above-entitled matter came on for oral

12   argument before the Supreme Court of the United States

13   at 10:06 a.m.

14   APPEARANCES:

15   SHAWN P. REGAN, ESQ., New York, New York; on behalf of

16   Petitioner.

17   LAUREN A. MOSKOWITZ, ESQ., New York, New York; on behalf

18   of Respondent.

19   ANN O'CONNELL, ESQ., Assistant to the Solicitor

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

21   United States, as amicus curiae, supporting

22   Respondent.

23

24

25

1   C O N T E N T S

15

16

17

18

19

20

21

22

23

24

25

1   P R O C E E D I N G S

2   (10:06 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear argument

4   first this morning in Case 12-820, Lozano v. Alvarez.

5   Mr. Regan.

6   ORAL ARGUMENT OF SHAWN P. REGAN

7   ON BEHALF OF THE PETITIONER

8   MR. REGAN: Thank you, Mr. Chief Justice,

9   and may it please the Court:

10   I represent Manuel Jose Lozano, a father who

11   loves his daughter. Respondent kidnapped that daughter

12   and concealed her from Mr. Lozano, first in the United

13   Kingdom for nearly eight months; then in France, then in

14   the United States. In Abbott, this Court recognized

15   child abduction to be one of the worst forms of child

16   abuse, and that the Convention therefore aims to deter

17   and prevent child abduction from occurring in the first

18   instance. Equitable tolling furthers that aim. By

19   contrast the rule adopted by the Second Circuit provides

20   a playbook for thwarting the Convention.

21   JUSTICE GINSBURG: Mr. -- Mr. Regan, you --

22   you want us to apply equitable tolling in a field,

23   family law, where the interest of the child is always of

24   paramount importance and running all through family law

25   is -- is that concern. And changed circumstances figure

1   very large. So decrees that might be final in another

2   area of law are not, because if circumstances change,

3   then the child custody may change. So it seems to me

4   that this area is hugely unfit for equitable tolling

5   that would leave out consideration of the child's best

6   interests.

7   MR. REGAN: Justice Ginsburg, we believe

8   that equitable tolling does provide, within the context

9   of the Convention, consideration -- the opportunity for

10   courts to consider the interests of the child. And

11   that's most poignantly illustrated by some of the cases

12   in which it has been applied.

13   If I may provide an example. An example in

14   Respondent's brief, Mendez Lynch v. Mendez Lynch on page

15   31 of their brief. It's a case in which the Court found

16   equitable tolling is available, and it found equitable

17   tolling applied factually. The Court, however,

18   considered the facts and circumstances of the child's

19   life, including those facts and circumstances that

20   relate to the extent to which the child is settled; but

21   it considered those facts and circumstances within the

22   rubric of the Article 13 analysis, and that is

23   consistent with what other courts have done in what I

24   would -- what I would term more natural Article 12 --

25   JUSTICE KENNEDY: Is that equitable

1   discretion or is that still equitable tolling? Because

2   as I understand equitable tolling, if it applies, and

3   say, there's a 6-month suspension, the child must go

4   back so that there's -- so that the -- that the weighing

5   that you're talking about just doesn't -- doesn't come

6   into play.

7   MR. REGAN: Thank you, Justice Kennedy. And

8   I think this is important because I think this -- this

9   illustrates how foreign courts have miscomprehended

10   equitable tolling, how it would operate, how it operates

11   within the context of the convention. Equitable tolling

12   would prevent the abducting parent from taking advantage

13   of the Article 12-2 exception, that -- that the child

14   should not be returned because the child is now --

15   because the parent has met that minimal routine showing

16   of the child is now settled. He's going to school, he

17   or she is -- has some friends, so on and so forth, that

18   they are living a normal life here.

19   What it does not prevent, and Mendez

20   illustrates this, as do other cases, it does not prevent

21   the court from looking at the Article 13 considerations.

22   So for example, as in Mendez and other cases, the court

23   will still consider if the child -- if the child is of

24   sufficient age and maturity to testify such that this

25   court should take into account his or her views or

1   objections to return, the court can do so.

2   JUSTICE GINSBURG: Where is Article 13 so we

3   can look at it?

4   MR. REGAN: I'm sorry, Justice Ginsburg?

5   JUSTICE SCALIA: Where is it in the

6   materials?

7   MR. REGAN: Mendez v. Lynch.

8   JUSTICE SCALIA: Article 13, which you're

9   referring to.

10   MR. REGAN: Oh, Article 13.

11   JUSTICE SCALIA: I'd like to read it.

12   MR. REGAN: I'm sorry. Article 13 is -- it

13   is at -- I'm sorry. It's at 135a of the Petition

14   Appendix. Excuse me. Article 13 is at 136a. Excuse

15   me. 135a is --

16   JUSTICE KENNEDY: And -- and it does

17   provide -- just while people are looking at it, it does

18   provide that, even though there's in your view equitable

19   tolling, there are still circumstances in which the

20   child would not go back if there's a grave -- grave

21   risk?

22   MR. REGAN: Grave risk of harm.

23   JUSTICE KENNEDY: Grave risk of harm to the

24   child.

25   MR. REGAN: -- or if the court finds that it

1   would be an intolerable situation.

2   JUSTICE KENNEDY: But, again, as Justice

3   Ginsburg questions, it seems to me indicates, there are

4   two different axes here. One is the best interest of

5   the child and the other is an adequate deterrent so that

6   parents don't abduct. But those axes don't cross very

7   often, if at all.

8   MR. REGAN: I respect, Justice Kennedy, it's

9   difficult to balance them. They're somewhat

10   incommensurate or, you know, competing considerations

11   or -- but both very important. We think that equitable

12   tolling properly balances them within the structure of

13   the Convention because equitable tolling, again, it --

14   it prevents this Article 12-2 exception, but it doesn't

15   prevent the Article 13 exception.

16   In fact, in many ways what we're talking

17   about is not inconsistent with what the English court

18   does or did in Cannon. In Cannon, the court said if --

19   where there is concealment and subterfuge, there will be

20   a heightened burden for establishing settlement.

21   Now, in this --

22   JUSTICE KENNEDY: But that still -- but

23   Article 13 still is different from what's in the best

24   interest of the child.

25   MR. REGAN: I think --

1   JUSTICE KENNEDY: Now, it's true that all

2   we're talking about is for the -- during the time in

3   which the hearing takes place, but these hearings take

4   years and expert witnesses are not available or readily

5   available.

6   MR. REGAN: Well, Justice Kennedy, to your

7   point about timing and essentially provisional return, I

8   do think, you know, courts, district courts have shown

9   great adeptness at dealing with those issues. They've

10   entered conditional orders that require the child be

11   returned at a time when the proceeding -- when the

12   testimony is necessary.

13   JUSTICE ALITO: Excuse me. Let me give you

14   this example. Suppose a child is abducted at -- at age

15   one and is concealed for 10 years and then the location

16   of the child is discovered. The other parent files a

17   petition. So that if there's equitable tolling, the

18   petition was filed within one year. But during those 10

19   years, the child has become very well settled in the new

20   country, has learned the language of that country, the

21   customs developed, gone to school, developed

22   relationships, and so forth.

23   Under -- if there is no equitable tolling

24   but the abduction can be taken into account under the

25   doctrine of equitable discretion, that's -- that's one

1   thing. But the way you read this, the way you read the

2   Convention, the equitable tolling would mean that the

3   petition was filed within a year, and unless one of the

4   conditions in Article 13 was met, for example a grave

5   risk that the child's return would expose the child to

6   physical or psychological harm or otherwise place the

7   child in an intolerable situation, then there would

8   be -- then the child would have to be removed.

9   So there is that major difference, isn't

10   there, between those two positions?

11   MR. REGAN: There is a significant

12   difference. And we think that that significant

13   difference is warranted and necessary in order to

14   achieve the effect of deterrence, because the Second

15   Circuit's rule essentially says to abducting parents:

16   If you abduct your child and you conceal your child for

17   12 months, you will be rewarded.

18   JUSTICE ALITO: Well, that's true. The

19   position of the Respondent and the government would give

20   a great incentive for parents to abduct children and

21   hide them for a period of time. But on the other side,

22   as my example I think illustrates, your rule would mean

23   that a child who is very well settled in a particular

24   location would have to be returned to the other country

25   for purposes of the custody determination.

1   So why do you think the Convention should be

2   read one way rather than the other?

3   MR. REGAN: Justice Alito, I hope to make

4   abundantly clear that our position, equitable tolling,

5   would not mandate that that child be returned. All it

6   does -- but it's significant --

7   JUSTICE ALITO: Well, how would it not?

8   MR. REGAN: It -- it changes the question

9   that the court asks. Absent equitable tolling, the

10   courts -- the question on which -- the question before

11   the court is: Is this child settled? And the factors

12   the court's looked at, the courts have looked at it, and

13   it really -- they're -- you know, "settlement" is not

14   defined in the Convention and Congress has left it to

15   courts to decide. And courts look at --

16   JUSTICE SCALIA: Well, which of the

17   articles -- which of the provisions in Article 13

18   would -- would prevent the return in the hypothetical

19   that Justice Alito just gave you?

20   MR. REGAN: Courts have looked at -- and

21   I'll say it -- in the decades --

22   JUSTICE SCALIA: I mean, what -- what does

23   Article 13 allow the court to consider? It says: "It's

24   not bound to order the return if the person,

25   institution, or other body having care of the person of

1   the child was not actually exercising the custody rights

2   at the time of removal or retention." Well, you know --

3   MR. REGAN: That's known as acquiescence.

4   JUSTICE SCALIA: That wouldn't have -- or

5   had consent to or -- that wouldn't apply in his

6   hypothetical or in this case.

7   MR. REGAN: It's really B.

8   JUSTICE SCALIA: B: "There is grave risk

9   that his or her return would expose the child to

10   physical or psychological harm." I mean, we have no

11   reason to believe that -- that your client would --

12   would harm the child or -- or that the parent in Justice

13   Alito's hypothetical would harm the child. "Or

14   otherwise place the child in an intolerable situation."

15   I don't see how any of those things would -- would come

16   to the assistance of the child in -- in Justice Alito's

17   hypothetical.

18   MR. REGAN: If I may explain by way of

19   illustration in some of the cases what courts have

20   looked at. And let me give -- Blondin is another

21   example cited in our brief, cited by the Solicitor

22   General, a Second Circuit, the well-known Second Circuit

23   case. That's a natural Article 12-1 case. Petition is

24   filed before the period of one year expires.

25   The Second Circuit looked at -- or Judge

1 Chin, then-Judge Chin in the district court, looked at

2 the child's facts and circumstances related to

3 settlement as part of that grave risk analysis. There

4 was expert testimony, as there often is in these cases,

5 that the child was suffering from potential -- from

6 post-traumatic stress disorder. Experts testified that

7 return of the child -- the child should not be returned

8 because it presented a grave risk of harm to the child.

9   JUSTICE SCALIA: Physical or psychological

10 harm.

11   MR. REGAN: That's correct. And there are

12 cases, Mendez v. Lynch and others.

13   JUSTICE SCALIA: It might be now and then,

14 but in the routine case that Justice Alito just gave you

15 I don't see how there's any -- any reason at all not to

16 get the child back from wherever he's been for 10 years.

17   MR. REGAN: If I may answer in two ways in

18 the example Justice Alito gave. With a 10-year-old

19 child, it's -- it's very likely that the court would

20 hear from that child. I think the more difficult

21 example is let's make that child 7 or 8. But -- and --

22 and there's no evidence these cases have occurred.

23   JUSTICE KENNEDY: Which court? Which court?

24 To use the --

25   MR. REGAN: United States court.

1   JUSTICE SCALIA: Yeah, but Article 13 does

2   not say the child -- the child can state -- well, let's

3   see. "The child objects to being returned." I guess

4   you could limit to that. "May also refuse to order the

5   return of the child if it finds that the child objects

6   to being returned."

7   MR. REGAN: That's been universally adopted

8   by the courts hearing testimony.

9   JUSTICE SCALIA: So that's the one

10   exception, yes.

11   MR. REGAN: But -- but the grave risk

12   exception, and courts have applied this, it really -- it

13   really just -- it -- it changes the question, like in

14   Cannon.

15   JUSTICE KENNEDY: But in a sense what you're

16   saying is that it's not an automatic -- it's not an

17   automatic rule. The more you argue that Section 13 is

18   applicable, the more you're watering down the very rigid

19   rule that you want in order to say that there has to be

20   deterrence.

21   MR. REGAN: I understand that point.

22   However, there is a difference. And so what we're

23   trying to balance here, and I think -- it's not we.

24   What the Convention balances, what courts applying the

25   Convention have found is the proper balance, is not for

1   courts to say, well, let's try and figure out what the

2   best interests are. In fact, the Convention couldn't be

3   clearer and Congress couldn't have been clearer that

4   that is not where it -- that's where it least wanted

5   courts wading into those waters.

6   JUSTICE BREYER: The Convention says in the

7   preamble that the parties -- that's countries -- are

8   firmly convinced that the interests of the children are

9   of paramount importance in matters relating to their

10   custody. Okay? Paramount importance. So the provision

11   you're talking about, Article 13, says, well, would

12   returning the child lead to physical harm, psychological

13   harm, or otherwise put the child in an intolerable

14   position. So they mean intolerable.

15   So I think this would be a pretty typical

16   case. The husband says he was fine. The wife says, no,

17   he kicked me in the stomach and did a lot of other

18   things. The judge hearing the two sides says I can't

19   say the husband's right.

20   MR. REGAN: Okay.

21   JUSTICE BREYER: So we don't know. Now,

22   your idea is to send the child back to the husband

23   unless the child gets up there and chooses between

24   parents. That's pretty tough on 8- or 9- or 10-year-old

25   children and -- very tough. And you're going to keep --

1   the -- you're going to send it back to the father in

2   this situation unless the mother can prove it's

3   intolerable, either because of physical -- I mean, my

4   goodness, a physical or psychological. All the doctors

5   saying he should stay in New York. A typical problem

6   for a family court judge, really tough.

7   So you have the Convention which says in the

8   preamble look to the interests of the child. You have

9   every other country saying that's what it really means;

10   in other words, they're against you. You have the

11   Department of State, in charge of the treaty, saying

12   that's what it really means and otherwise against you.

13   And so what do you have going for you? That isn't your

14   fault that there isn't too much going for you, but

15   nonetheless, I'd like to know what it is.

16   MR. REGAN: I think we have a lot going for

17   us. You've asked -- I think you've hit, Justice Breyer,

18   on just about every issue that I could possibly want to

19   address today. But -- and -- and let me say, I -- I

20   respect the position of the 8- or 9-year-old child, the

21   difficulty. I was that child before a judge on the --

22   giving that sort of testimony. So I certainly

23   appreciate it.

24   But on this -- this question of best

25   interests, the Convention makes the decided choice if

1   courts -- the Convention defines how courts are to

2   determine that best interest. It doesn't say courts

3   should determine what is in the best interest of the

4   child. It says look at whether the child is settled

5   under Article 12 or, if that's not applicable, you may

6   look at Article 13. Other than that, the presumption is

7   the best interest of the child is for return.

8   You mention that the State Department is

9   against us, which I'm happy to take the opportunity to

10   address here. We don't believe that the State

11   Department's views should be accorded great weight in

12   this situation. Their brief does not speak to the

13   diplomatic consequences of equitable tolling. It

14   doesn't speak to -- it doesn't speak to the idea that

15   equitable tolling will somehow impair our ability to

16   recover children abducted from the United States.

17   JUSTICE GINSBURG: Well, Mr. Regan, aside

18   from the position of the United States, which -- which

19   has changed, you made that point, the determination

20   that's being made at this stage is really one of venue.

21   It's where the main bout will be fought out. And so we

22   don't want that to linger for a long time. We want that

23   decision to be made with dispatch.

24   And as one of the amici brief informs us,

25   many of these what you call kidnappers happen to be

1   badly abused women and if you -- if they had to go under

2   Article 13, then they would have this full-blown, was he

3   really the abuser? Doing it without equitable tolling,

4   that question is reserved for the main -- for the main

5   bout. I suppose if we had a case where the judge isn't

6   certain was the father abuser or not, that judge would

7   feel an obligation to stretch out this venue

8   determination to see if it's an Article 13 situation.

9   MR. REGAN: I think, Justice Ginsburg, the

10   domestic violence situation, which I am entirely

11   sensitive to and appreciate, illustrates the difficulty

12   of these cases and -- and that courts can't really

13   figure out what's -- who's right or who did what in

14   these circumstances. Most of -- usually all of the

15   evidence is overseas on that issue.

16   What the Convention -- the approach the

17   Convention decides on taking is that, first, there is no

18   self-help remedy certainly for concealment, that -- that

19   nothing excuses concealment of the child. And, in fact,

20   to the extent you said there's a goal and a value of

21   shortening these proceedings, to the extent equitable

22   tolling disincentivizes concealment, it does that. I

23   mean, the opposite rule says if you conceal, i.e., you

24   extend that period of time during which there's no

25   relationship, you'll be rewarded.

1   It's an enormous incentive. And our point

2   is there is the proper safety valve. The standard under

3   Article 12-2 is so pedestrian, it is essentially have

4   you failed to be -- aside from abducting your child,

5   since then, have you failed to be a normal parent? Is

6   your child in school? Does he or she go to ballet

7   class? Do you take him or her to church? Do they have

8   friends? All those things were satisfied here. Can you

9   be employed? What's your legal -- what's your

10   immigration status?

11   Now, this case illustrates just how simple

12   and routine that is to achieve. And here, she didn't

13   have a child. She's not here legally. I guess the

14   court found that she had the depth and quantity of

15   friendships that your typical pre-kindergartner has, and

16   that was enough for her to defeat return.

17   The Convention properly balances these

18   things by saying where it presents -- and courts have

19   done this. The district courts are doing this. No one

20   says -- you know, the State, the Solicitor General and

21   our Respondent -- points to a single case where they

22   say, here's equitable tolling and boy, you know, the

23   court got it wrong. Here was the wrong outcome because

24   they applied equitable tolling as they have been doing

25   for nearly two decades. Courts can do this. But the

1   question, as it is in Cannon, can't be as simple as

2   well, are you -- are you doing fine here in the United

3   States?

4   JUSTICE KAGAN: Mr. Regan, Justice Breyer

5   pointed out that all other countries seem to disagree

6   with you. That's obviously a concern of ours when we

7   interpret a treaty, that all other countries interpret

8   it in a -- in a single way. Do you contest that? Are

9   there any other countries that apply equitable tolling

10   rules?

11   MR. REGAN: We believe that it's neither

12   surprising nor momentous that foreign courts have failed

13   to adopt equitable tolling. It's not surprising because

14   they lacked the presumption that we do. It's not as

15   significant for two reasons. One, we think, as I've

16   alluded to, I think they miscomprehend equitable

17   tolling. The Cannon count calls it "too crude," that it

18   won't allow for an accounting of the child's interest.

19   And as -- as the courts in the United States have been

20   clear, it does. It provides --

21   JUSTICE SCALIA: But they may be wrong. Who

22   cares if they're wrong? The point is a treaty should be

23   interpreted uniformly by all the parties to it. And

24   you're telling me, well, all the rest of them interpret

25   it another way, but they're wrong. You know, everybody

1   is out of step but me. That's -- that's just not right.

2   MR. REGAN: Not at all, Justice Scalia. And

3   it was actually -- your question relates to my third

4   point.

5   What those decisions reflect is that the

6   Convention leaves room within Article 12 for the

7   operation of domestic law. Article 12 speaks to

8   commencement of proceedings. You must commence

9   proceedings within one year. It speaks to settlement.

10   The Convention -- it is Congress in ICARA that defines

11   how one commences proceedings. It says you must file in

12   a court that has jurisdiction. That's Section 11603(b)

13   and (f)(3), which are at 117 through 121a of the

14   Petition Appendix.

15   Congress decides that's how you -- how you

16   stop that period, by filing in a court having

17   jurisdiction. Other countries provide nation -- courts

18   of nationwide jurisdiction. Some countries provide that

19   the central authority itself will file the petition for

20   the applicant or will file in its own interest on behalf

21   of the child.

22   JUSTICE SCALIA: None of that is covered by

23   the treaty. Yes, each State may apply its own law with

24   respect to matters not covered by the treaty. But I do

25   not read that to say to me that each State may apply its

1   own law in interpreting the provisions of the treaty and

2   so can create exceptions on the basis of equitable

3   discretion when the treaty has none or because its

4   courts use that in another -- in other contexts, or

5   create an exception on the basis of equitable tolling.

6   This is a matter of interpreting the treaty,

7   not of bringing into effect some other principle of --

8   of State law that overrides the treaty. That's how I

9   read that provision.

10   MR. REGAN: Our position is that if you look

11   at the drafting history here, the drafting history was

12   preliminary draft Article 11 provided for two periods:

13   Automatic return, if you will, return subject to the

14   Article 13 and 20 defenses if you file within 6 months;

15   or for a period -- a discovery rule capped at one year

16   if you didn't know the whereabouts of the child.

17   Some countries said those periods are too

18   short, some said they're too long. Some said we don't

19   want to have to deal with this discovery rule issue,

20   concerned about the evidentiary burdens. What's

21   important is what the drafters did. They extended that

22   first period to a year and then, with respect to this

23   discovery rule concept, they said: We're going to give

24   you Article 18, it provides for return at any time;

25   we're going to provide Article 34, which the explanatory

1   report highlights, is meant to provide for invocation of

2   domestic law or rules, particularly where 12-2 is

3   implicated. And it left for countries to define the --

4   to define key elements of Article 12-2. In doing --

5   JUSTICE SOTOMAYOR: I'm sorry. That's

6   turning legislative history in my mind on its head.

7   They considered directly, if you study the

8   SG's brief, a discovery rule that would have codified

9   equitable tolling. And there was lengthy discussion

10   about it and a decision that they wouldn't do that, that

11   instead they would expand the period to a year where

12   automatic return was required, and they introduced the

13   best interest of the child after that year, and that

14   that was now a balancing of all interests, the parents'

15   and the child's.

16   And you're right, they had other provisions

17   that would affect the possible return or lack thereof,

18   and they never wanted to stop a court from returning a

19   child if it in its equitable discretion decided it was

20   appropriate. But you're turning that legislative

21   history on its head a little bit.

22   MR. REGAN: Justice Sotomayor, we believe

23   that the State Department's reading of that history, of

24   that drafting history, is oversimplified because there

25   were objections to that period, to that -- to that

1   discovery rule that weren't simply to a discovery rule

2   as a general matter. It was that some countries said:

3   We don't want to have to deal with that. Other

4   countries said it needs to be longer.

5   And so the choice that was made was a choice

6   to give countries flexibility to determine how they want

7   to calculate that period, when it should be set, and

8   potentially to employ equitable tolling. The

9   jurisdiction convention --

10   JUSTICE SOTOMAYOR: Don't use up your time.

11   MR. REGAN: The jurisdiction convention is

12   consistent with that idea.

13   CHIEF JUSTICE ROBERTS: Thank you, counsel.

14   MR. REGAN: I'd like to reserve my time.

15   Thank you, Mr. Chief Justice.

16   CHIEF JUSTICE ROBERTS: Ms. Moskowitz.

17   ORAL ARGUMENT OF LAUREN A. MOSKOWITZ

18   ON BEHALF OF THE RESPONDENT

19   MS. MOSKOWITZ: Mr. Chief Justice, and may

20   it please the court:

21   To reverse the Second Circuit's holding and

22   to apply equitable tolling to Article 12 would be

23   squarely at odds with the convention's task, purpose,

24   and drafting history, as well as contrary to the

25   post-ratification understanding and interpretation of

1   every other signatory state to consider the issue.

2   Your Honors, we ended on a note of drafting

3   history, and to return to Justice Sotomayor's question

4   about turning that a bit on its head, I agree. The

5   drafting history specifically shows that the countries

6   considered two periods: One of prompt return, return

7   forthwith within 6 months of the removal; and 6 months

8   from the discovery of the whereabouts of the child if

9   the child were not known.

10   And what the drafters thought -- some

11   thought the period needed to be longer, but there were

12   countries that wanted it to be shorter. There were

13   countries that were very concerned that the child would

14   become settled in the new environment such that

15   uprooting that child again just for purposes of having a

16   custody determination in the -- in the former country of

17   habitual residence would be contrary to that child's

18   interest.

19   So they struck a balance. They -- they

20   negotiated over -- over several drafts and finally

21   arrived at a single period of one year. But that wasn't

22   going to be a cutoff. Instead of having a statute of

23   limitation, statute of proposed construct they said the

24   obligation is going to continue and it's going to

25   continue until the child turns 16, unless it is

1   demonstrated that the child is now settled in her -- in

2   its new environment.

3   JUSTICE ALITO: But what -- what troubles me

4   about your position is that it undermines the best

5   interests of children in a very powerful way insofar as

6   it does not deter, and indeed encourages, provides a

7   great incentive for parents to abduct their children.

8   And that was the central purpose of the Convention, to

9   prevent harm to children and also to parents, but

10   centrally to children who are abducted.

11   And if you have a rule that says if can

12   abduct the child and you can hide for a year, which

13   isn't very difficult, then all you have to do is provide

14   some evidence of settlement, and you are going to -- you

15   are going to win, you are going to deter return.

16   Am I wrong to be concerned about that?

17   MS. MOSKOWITZ: Your Honor, your concern is

18   not wrong, but I think it's not founded on what -- what

19   will happen here. I don't think it encourages abduction

20   and concealment, because that -- those facts of

21   concealment are going to be taken into account into

22   whether the child in fact is settled.

23   JUSTICE ALITO: Well, all right. Perhaps

24   that's the solution to the problem then. I wonder if

25   you would accept that, that there is no equitable

1   tolling, let's assume for the sake of argument, but

2   abduction is a strong factor that weighs against the

3   return, that weighs against the failure to return the

4   child, not just something that can be disposed of in a

5   sentence, which is basically what the district court did

6   here, but a very strong factor that has to be taken into

7   account in the exercise of equitable discretion.

8   Would you disagree with that?

9   MS. MOSKOWITZ: A bit, Your Honor, and

10   it's -- the abduction itself is the -- what triggers the

11   Convention to begin with. Every single case that is

12   heard under the Convention involves a wrongful removal

13   or retention. There will be illegal abduction every

14   time. And the drafters in fact absolutely were trying

15   to address that harm to children.

16   And they -- the paramount interest of the

17   children were designing this Convention, and they did

18   state that there were two --

19   JUSTICE SCALIA: I think they had it in

20   mind, not just the interest of children, but the

21   interest of parents. It's simply not true that in all

22   cases involving children the paramount interest of the

23   child governs. That's not the case, or else we would

24   remove many children from their parents in this country.

25   MS. MOSKOWITZ: Absolutely, Your Honor.

1   JUSTICE SCALIA: Parents have rights.

2   MS. MOSKOWITZ: Absolutely.

3   JUSTICE SCALIA: And that is one of the

4   things that this treaty considers.

5   MS. MOSKOWITZ: Your Honor, it does not

6   consider ultimately the custody determination and with

7   which parent the child should live. That is expressly

8   not part of the Convention, and that is what --

9   CHIEF JUSTICE ROBERTS: Well, it may be --

10   whether or not the child is settled in a particular case

11   is certainly going to be a significant consideration in

12   the custody determination, isn't it?

13   MS. MOSKOWITZ: Yes, Your Honor, I would

14   presume so. But as well as any wrongful acts of either

15   or both parents would be taken into account in the

16   full-blown merits best interest of the child custody

17   determination. What the Convention is trying to address

18   in the instances of where a child is now settled in a

19   new environment after having been at least one year in

20   the new environment is, should the child be uprooted in

21   anticipation of that full-blown hearing.

22   JUSTICE SOTOMAYOR: What's the fairness --

23   CHIEF JUSTICE ROBERTS: The problem is

24   you're each -- you're each using the child as the tool

25   in the objective that you have in representing the

1   parents. On the one side is the allegation of

2   inequitable conduct in concealment. On the other side

3   is the interest in settlement. That's a dispute between

4   two parents, and the child is being used as -- as -- I

5   don't know what -- you know, a tool in implementing

6   those conflicting considerations.

7   And to the extent that the Convention was

8   designed to deter that kind of kidnapping, it adopted

9   a -- a fairly strict rule. And you're each trying to

10   say, oh, the rule doesn't mean what it means, because

11   don't worry, we'll take those considerations into

12   account in addressing custody; and on the other side,

13   well, don't worry because there's not that much

14   difference between 12 and 13.

15   So how are we supposed to decide between

16   those two conflicting considerations of the parents

17   while maintaining the paramount concern, certainly not

18   the exclusive one but the significant one, in the

19   interest of the child.

20   MS. MOSKOWITZ: Yes, Your Honor. And just

21   to address the one point that the Petitioner raised of,

22   don't worry about Article 12 because there's Article 13,

23   those are completely different constructs. In fact,

24   Congress recognized that when it set a different burden

25   of proof for defenses under Article 13 as opposed to the

1 well settled -- settled analysis under Article 12.

2   CHIEF JUSTICE ROBERTS: But that cuts

3 against you in some respects. You say there is such a

4 big difference and therefore it is very important that

5 the kidnapping parent do the best he or she can to

6 conceal the child's presence so they get beyond 13 and

7 into 12.

8   MS. MOSKOWITZ: No, Your Honor, because if

9 the parent is concealing the child -- for example, if

10 the parent is moving from place to place to evade

11 detection or changing the child's name or not enrolling

12 the child in school to avoid detection --

13   JUSTICE SOTOMAYOR: My gosh, all it takes it

14 moving to Peoria. I mean, I don't mean to denigrate

15 Peoria, but all it takes is moving to a place that has

16 no connection to --

17   JUSTICE SCALIA: Justice Sotomayor is from

18 New York.

19   JUSTICE SOTOMAYOR: Yes, obviously.

20   (Laughter.)

21   JUSTICE SOTOMAYOR: Obviously.

22   CHIEF JUSTICE ROBERTS: Those are us from

23 the Midwest think it's actually easier to hide a child

24 in New York.

25   (Laughter.)

1   MS. MOSKOWITZ: Yes, Your Honor.

2   JUSTICE SOTOMAYOR: I do have a point -- a

3   question though. What sense does this make when -- that

4   a child who -- a suit is filed within the year, but the

5   litigation takes 2 or the child who -- the filing is a

6   day after the year, and the litigation takes a year and

7   they're both in the same situation. Why should those

8   two children be treated differently? Why should one

9   have the benefit of settled now and the other not have

10   it?

11   MS. MOSKOWITZ: Your Honor, I think --

12   JUSTICE SOTOMAYOR: What sense does it make

13   when, as Justice Alito indicated, part of the central

14   purposes of the Convention is to avoid the kidnapping of

15   children?

16   MS. MOSKOWITZ: Your Honor, absolutely, that

17   is one of the objectives of the Convention, and it

18   exists because that was presumed to be contrary to the

19   interest of children. And I don't dispute that. In the

20   majority of the cases, that's true.

21   But the concept that the drafters had to

22   grapple with this issue -- they wanted to deter child

23   abductions, absolutely. But they also recognized that

24   at some point in time it wasn't going to be just about

25   children at large. It was going to be about --

1   JUSTICE SOTOMAYOR: So why isn't Article 13

2   enough protection? It has to do with -- and unlike

3   Justice Scalia, I don't think it's psychological or

4   physical harm necessarily by the parent, but by the

5   situation.

6   MS. MOSKOWITZ: Right.

7   JUSTICE SOTOMAYOR: The return. You agree

8   with that.

9   MS. MOSKOWITZ: Yes, Your Honor. I do think

10   it -- it should be broader than that. I think there are

11   courts that -- the Article 13 defense is supposed to be

12   narrow just like the Article 12-2 settled exception.

13   But the settled exception isn't enough -- excuse me,

14   Article 13 isn't enough because the drafters wanted

15   Article 12, too. They wanted to be able to take into

16   account the situation of the child after this one year.

17   And why one year and not one year including the hearing,

18   I think it was a balance. The drafters were concerned

19   both that it was going to be too long and that it was

20   going to be too short.

21   JUSTICE KAGAN: Ms. Moskowitz, going back to

22   Justice Alito's question. Could you tell me how you

23   think this works? You said, in response to Justice

24   Alito, that sometimes concealment can be a factor in

25   determining whether a child is settled. And I presume

1   you mean if somebody conceals the child by moving the

2   child from place to place, the child would not be

3   settled.

4   Is it also a factor in determining whether a

5   settled child should nonetheless be returned?

6   MS. MOSKOWITZ: Your Honor, I -- I -- that's

7   the question of whether and to what extent there is

8   discretion to return a child -- a settled child under

9   Article 12. And I think --

10   JUSTICE KAGAN: Or under Article 18.

11   MS. MOSKOWITZ: Your Honor, Article 18 -- my

12   understanding of Article 18 and the government's

13   interpretation of Article 18 is that Article 18 was

14   designed not as a duty or something arising under the

15   Convention, but a recognition that the Convention is not

16   an exclusive statement and not intended to occupy the

17   space on child abduction and return.

18   JUSTICE SCALIA: I think your answer to

19   Justice Kagan's question has to be no, or else I don't

20   understand what we're doing here.

21   MS. MOSKOWITZ: Your Honor, I struggle with

22   this because I think that there is a reading of the

23   plain language that says no. But it's -- there is a

24   general feeling that there should be some sort of escape

25   hatch --

1   JUSTICE BREYER: Well, what is the answer?

2   I'd like a straight answer in your opinion, because

3   Justice Kagan's case, the mother kidnaps the child.

4   They live in a grain elevator, a nicely refurbished

5   grain elevator, in Peoria for a year. And after the

6   year, a month later the father finds both of them, goes

7   to a family judge -- a very tough job by the way -- and

8   the family judge reads this and he says, well, I have to

9   admit the child is settled here now in Iowa. All right.

10   Is settled.

11   MS. MOSKOWITZ: Okay.

12   JUSTICE BREYER: But send the child back to

13   London, he's going to be just about as settled. I mean,

14   really, it's not that much difference. But I can't say

15   the child is not settled.

16   The father says this is the most unfair

17   thing I've ever seen. She hides out for a year. The

18   child could be just as well back in London. Almost as

19   well. Who knows? Maybe better. But now, what can the

20   family court do -- judge do? That's the straight

21   question we've been trying to get your answer to that,

22   and it isn't an answer to say -- you could say, if

23   that's the answer, I don't know.

24   MS. MOSKOWITZ: Your Honor, in -- in that

25   question, there's -- there's the question of what can

1   they do under the Convention and what can they do.

2   JUSTICE BREYER: No, what can they do? I

3   just want to know if the family court judge will say

4   please settle this, and the two of them won't.

5   MS. MOSKOWITZ: Yes, Your Honor.

6   JUSTICE BREYER: And so now what can the

7   judge do? Is the father simply out of luck or not?

8   MS. MOSKOWITZ: No, Your Honor, because a

9   full-blown merits, best-interest-of-the-child analysis

10   under the -- the custody-type family court proceeding

11   that is envisioned to follow a return petition under the

12   Convention will take all of those facts into account.

13   JUSTICE KAGAN: No, but prior to that.

14   MS. MOSKOWITZ: Prior to.

15   JUSTICE KAGAN: If you could go back to --

16   do you agree with Justice Scalia, that really, at that

17   point, there's nothing to do? Once the determination

18   has been made that the child is settled, there is no

19   remaining discretion that the judge has?

20   MS. MOSKOWITZ: Your Honor, I think there is

21   some discretion under Article 12 to return the settled

22   child, but it cannot be under a set of facts that were

23   completely within the minds of the drafters when they

24   chose the one-year period.

25   JUSTICE SCALIA: But you say -- I don't

1   understand what you're saying. Give us an example.

2   MS. MOSKOWITZ: Your Honor, it's hard to

3   come up with a specific example, but there can't -- it

4   can't be --

5   JUSTICE SCALIA: You just don't want to say

6   no. It seems to me your case requires you to say no,

7   and it's no help to me to say, well, you know, there may

8   be some exceptions that I can't describe. Tell me the

9   exceptions if there are any.

10   MS. MOSKOWITZ: Your Honor, the -- the

11   exception to whether a child that is found to be settled

12   after all the facts --

13   JUSTICE SCALIA: Yes.

14   MS. MOSKOWITZ: -- of concealment are taken

15   to -- into account, there -- there should remain some

16   discretion --

17   JUSTICE SCALIA: Under 13, right? Is that

18   the discretion you're talking about?

19   MS. MOSKOWITZ: No, Your Honor. It's the

20   discretion under Article 12, but it's in the same vein

21   of there is discretion under Article 13 and 20, as well.

22   The way that the language is written in Article 13, for

23   example, states that the State is not bound -- I'm on

24   136-A of the Petition Appendix -- that the State is not

25   bound to order the return if it is established.

1   So it -- it's not saying that the return

2   must be denied if these defenses are established.

3   There's slightly different language in Article 12, which

4   I think is a reflection of the different drafting --

5   JUSTICE ALITO: Well, you -- you're

6   confusing me. Let's say I'm the judge who has to decide

7   this. The one-year period has just past and I have

8   evidence that this child who is now two years old has

9   some friends, goes to play with the friends, goes to the

10   park, has become accustomed to some American customs,

11   knows the neighborhood.

12   So the child is settled to that degree. And

13   you say even if there's been very elaborate -- a very

14   elaborate effort of concealment, no proffered

15   justification for the abduction, no indication that

16   there would be any serious harm if the child were sent

17   back to the U.K., you say that's just too bad. That's

18   your answer?

19   MS. MOSKOWITZ: No, Your Honor. I think

20   some of the factors you pointed out, for example, that

21   there would be no serious harm if the child were

22   returned, not necessarily physical harm or intolerable

23   situation under Article 13, but there -- Article 12

24   settlement does take into account roots. It's not

25   routine, it's not --

1   JUSTICE BREYER: But can you give me any

2   authority? I read that exactly in Article 12, but

3   you've now given me a different impression. What

4   Article 12 says is that if it's less than a year, the

5   child is returned forthwith. If it's more than a year,

6   the child shall be returned forthwith unless -- unless

7   it is demonstrated the child is now settled in its new

8   environment. It doesn't say you don't return it if the

9   child is now well settled in the environment. It just

10   says you don't have to return it forthwith.

11   MS. MOSKOWITZ: Yes, Your Honor.

12   JUSTICE BREYER: So I would have thought

13   that that would have opened room for discretionary

14   factors. But you have not given me a case that said

15   that that's so. You have not given me anybody who said

16   that what I thought was the natural reading, and which

17   you'd like to be the natural reading, you've not given

18   any support for the proposition that it is the natural

19   reading.

20   JUSTICE SCALIA: And I -- I assumed from

21   your brief that that was not the reading you were giving

22   it. And that is not the reading it has to be given,

23   frankly. I read it the other way: "Shall order the

24   return unless it is demonstrated that the child is now

25   settled." I assume that to mean in which case you shall

1   not order the return. Isn't that the way you've been

2   reading it?

3   MS. MOSKOWITZ: No, Your Honor. We do in

4   our --

5   JUSTICE SCALIA: Oh, it is not. Okay.

6   Well, then, gee, we don't have a lot to argue about.

7   JUSTICE KAGAN: Well, if that's the case, if

8   you're reading it that way -- I mean, I was reading it

9   Justice Scalia's way, too.

10   JUSTICE SCALIA: Of course.

11   JUSTICE KAGAN: The first clause says

12   "shall" and the second clause says "shall not." But

13   there is an alternate reading where the first clause

14   says "shall" and the second clause essentially says "may

15   or may not at your discretion." But, boy, that would

16   open up a big discretionary hole if you read it that

17   way, wouldn't it?

18   MS. MOSKOWITZ: No, Your Honor. It

19   shouldn't be read that broadly. It's certainly -- and

20   the House of Lords in England, in In re: M, did find

21   that there was a residual discretion after finding a

22   child was settled.

23   JUSTICE BREYER: So I should read that case

24   because the language says, "unless it is demonstrated

25   the child is now settled. You return it forthwith

1   unless it is demonstrated the child is well settled."

2   Well, now it's demonstrated well settled. Does that

3   mean I cannot return it? Or does it mean I don't have

4   to return it?

5   MS. MOSKOWITZ: Your Honor, I --

6   JUSTICE BREYER: And I say -- or you say I

7   read that case in the House of Lords and I will discover

8   it means you don't have to return it.

9   MS. MOSKOWITZ: That's the way the House of

10   Lords interpreted it.

11   JUSTICE SOTOMAYOR: And they relied on

12   Article 18, didn't they?

13   MS. MOSKOWITZ: No, Your Honor. They found

14   the discretion within Article 12.

15   JUSTICE SCALIA: Ms. Moskowitz, what do you

16   do about Article 13 in that case, which begins:

17   "Notwithstanding the provisions of Article -- of the

18   preceding Article 12, the judicial or administrative

19   authority requesting is not bound to order the return of

20   the child if the person" -- blah, blah, blah. That says

21   to me that under 12 you are bound, and you're telling

22   me, well, you're really not bound under 12. You have

23   discretion anyway.

24   MS. MOSKOWITZ: Your Honor --

25   JUSTICE SCALIA: I, frankly, didn't

1   understand that that was your argument in this case and

2   it -- it puts the whole case in a quite different light.

3   MS. MOSKOWITZ: Article 12, you are

4   absolutely bound to return the child unless you meet one

5   of these exceptions within the one year, forthwith

6   return. Prompt -- prompt return is the idea of the

7   first clause of Article 12. Article --

8   JUSTICE SOTOMAYOR: That's the one year.

9   MS. MOSKOWITZ: Correct. And under Article

10   12-2, that's saying the child -- the court shall --

11   shall also order the return after this 1-year period

12   unless it is demonstrated. And the question is what

13   happens if it's demonstrated, and that's do you have to

14   return still, or can you, or do you have to keep the

15   child here? And I think what the, generally the courts

16   have found -- and it's not unanimous internationally;

17   it's not. Hong Kong says --

18   JUSTICE KENNEDY: In many cases this would

19   be an example. The cost of experts to testify about the

20   child's adoption or adaption or settlement in New York

21   would be very substantial. The experts who had examined

22   the child, the experts who knew about the school, the

23   school's officials themselves, would all have to go to

24   England to testify. Is that a factor that the courts

25   consider, or is that not -- not relevant?

1   MS. MOSKOWITZ: Your Honor, I think those

2   facts are exactly why the settled exception exists. It

3   recognizes that the -- the reason to get the child

4   immediately back under the --

5   JUSTICE KENNEDY: In other words,

6   "settlement" is a code word for saying ease of producing

7   witnesses?

8   MS. MOSKOWITZ: No, Your Honor, it's not.

9   But it certainly is a recognition that the -- the

10   justification for return and prompt return is in part to

11   return to the status quo ante of where child was for

12   purposes of having a custody determination.

13   JUSTICE GINSBURG: May I -- may I ask you, I

14   think your brief -- I may not be remembering it

15   correctly, but I think you -- you said no equitable

16   tolling, and everybody in all the other countries agree

17   on that. But there is equitable discretion. I think

18   that you -- and the question is, is there this equitable

19   discretion notion?

20   MS. MOSKOWITZ: Your Honor --

21   CHIEF JUSTICE ROBERTS: Briefly, please.

22   MS. MOSKOWITZ: Thank you.

23   They're -- the courts are divided

24   internationally on whether equitable discretion exists

25   to return a child that has been determined to be

1   settled. But I think on balance there should be some

2   level of equitable discretion to return a settled child,

3   but not under -- simply because of facts of concealment

4   that were firmly within the minds of the drafters when

5   drafting Article 12.

6   CHIEF JUSTICE ROBERTS: Thank you, counsel.

7   MS. MOSKOWITZ: Thank you.

8   CHIEF JUSTICE ROBERTS: Ms. O'Connell.

9   ORAL ARGUMENT OF ANN O'CONNELL,

10   FOR UNITED STATES, AS AMICUS CURIAE,

11   SUPPORTING THE RESPONDENT

12   MS. O'CONNELL: Mr. Chief Justice --

13   CHIEF JUSTICE ROBERTS: Justice Scalia.

14   JUSTICE SCALIA: What's the government's

15   position on -- on this question we've just been

16   discussing, whether Article 12 is absolute or whether

17   there is discretion even within Article 12, even though

18   specific elements of discretion are contained in Article

19   13?

20   MS. O'CONNELL: It's our position that under

21   Article 12 there is discretion to return a settled

22   child, and that that comes from Article 12 itself. As

23   you pointed out, the language of Article 12 says that if

24   more than a year has passed the court shall order the

25   return of the child, unless the child is settled in her

1   new environment. And that -- I mean, I think it's clear

2   that that could be read in two ways, and the Court has

3   said that when the "similar except shall" formulation --

4   and we cited in our brief the Department of Commerce v.

5   U.S. House of Representatives case. The "similar except

6   shall" language, it's interpreted depending on the

7   context in which it appears.

8   And we think it's very clear from the

9   Convention that in the context of the Convention, and

10   specifically Article 12, that the better reading is that

11   a settled child may be returned.

12   JUSTICE SCALIA: Why doesn't the context

13   include Section 13, which -- which lists specific

14   reasons why you can depart from 12? I mean, it seems

15   very strange to say: And in addition to that there's a

16   whole pot load of other reasons within -- within 12

17   itself.

18   MS. O'CONNELL: Well, Article -- it's true

19   that Articles 13 and 20 are written in expressly

20   discretionary language, but those are sort of set out as

21   exceptions to the rule of Article 12. Article 12 is

22   written up differently, but there's nothing in the

23   Convention that ever says that a child has to stay in

24   the country where she has been abducted.

25   JUSTICE KENNEDY: What's -- what's the -- an

1   example of where a settled child might be returned? A

2   very -- two very good parents, and the child is very

3   adaptable, and so the child can -- is well settled now,

4   but the child will be well settled in the new

5   environment at well. Is that the -- is that the

6   hypothetical?

7   MS. O'CONNELL: In exercising the discretion

8   the court should be -- it's not just a free --

9   free-wheeling discretion that the court is exercising

10   under Article 12. We think it's guided by the purposes

11   stated in the Convention. So yes, first you look at

12   whether the child is settled, and that could be enough

13   to defeat the presumption that an abducted child should

14   be returned.

15   You can also look at whether the child could

16   easily resettle if the child was sent back. For

17   example, a 10-year-old child who was in school and had a

18   lot of friends and a routine in London was abducted to

19   the United States for a year. That child may not -- may

20   be settled in the United States, but she may not have a

21   difficult time resettling.

22   JUSTICE SCALIA: You would expect all the

23   signatories to this treaty to come up with essentially

24   the same exceptions, under -- under what you say is --

25   is the interpretation of Article 12?

1   MS. O'CONNELL: Well --

2   JUSTICE SCALIA: I mean, it seems to me it

3   just makes that article impossible to apply consistently

4   country to country.

5   MS. O'CONNELL: No, I don't think so. And

6   -- and, the other signatories have -- have almost all, I

7   mean I think the Hong Kong court does say that it

8   doesn't have discretion, but it said in that case

9   nevertheless it would, even if it had discretion, it

10   wouldn't order the children returned. But the other

11   courts of signatory countries that have interpreted

12   Article 12 have all found a discretion, whether it be in

13   Article 12 or in Article 8. And if I --

14   JUSTICE SCALIA: Have they exercised it?

15   Have they exercised it, that discretion which they say

16   is there?

17   MS. O'CONNELL: I mean --

18   JUSTICE SCALIA: Have they exercised that

19   discretion not to apply the -- the mandatory requirement

20   of Article 12?

21   MS. O'CONNELL: Yes. I mean, courts in the

22   United States have done that. I think courts in, in

23   other countries --

24   JUSTICE SCALIA: I'm talking about foreign

25   courts.

1   MS. O'CONNELL: -- have as well. Yes.

2   JUSTICE KAGAN: If I understand the way you

3   think this works, you don't -- there's not even a

4   presumption that a settled child will stay, right?

5   You're just saying once you've found a settled child,

6   the obligation to return the child goes away, but at

7   that point it really is a kind of "all things

8   considered" inquiry with no presumption operating at

9   all, just in light of the purposes of the treaty?

10   MS. O'CONNELL: Well, I think the, the last

11   part, Justice Kagan, is the most important part, that it

12   has to be guided by the objectives of the treaty; that

13   it's not a free-wheeling, best interests of the child

14   analysis or where this child should be, but you could

15   take into account the principle in Article 12 that it's

16   harmful to uproot a settled child, but you can also

17   weigh against that the idea that this Convention is

18   really geared in the first place toward preventing

19   abduction.

20   CHIEF JUSTICE ROBERTS: I would think it

21   would be very unusual for a family court in that

22   situation not to go ahead with the custody proceeding

23   before it, because it would think the child is settled.

24   Now, do I send the child back so that they can do the

25   custody proceeding in England, or just go ahead and do

1   it here? Don't you think most family court judges would

2   say let's just go ahead and do it here?

3   MS. O'CONNELL: Well, if there's -- if

4   there's reason to send the child back, even -- even a

5   settled child, we think that the purposes of the

6   Convention should -- should prevail there.

7   CHIEF JUSTICE ROBERTS: What kind of

8   reasons, what kind of reasons would there -- would there

9   be?

10   MS. O'CONNELL: That the --

11   CHIEF JUSTICE ROBERTS: To send the child

12   back?

13   MS. O'CONNELL: That the parent engaged in

14   behavior like concealing the child that is -- that is

15   not condoned under the Convention, that --

16   CHIEF JUSTICE ROBERTS: So you would visit

17   on the child the behavior of the parent?

18   MS. O'CONNELL: We think the court -- I

19   mean, the court has discretion, we think, to order a

20   child's returned even if she's settled. I mean, that --

21   that discretion could be abused if a child has been in

22   the United States, for example, for 5 years and the

23   court says, well, the child was being concealed so we

24   will send the child back. But - but we think -- and

25   there will be some cases in which the court could

1   probably not abuse its discretion by deciding the case

2   either way.

3   But yes, we think on the one hand equitable

4   tolling is not a good way to deal with this problem,

5   because Article 12 specifically wants courts to take

6   into consideration the interest of the child --

7   JUSTICE SOTOMAYOR: Counsel, whatever fears

8   my colleagues have, I've only found two, or I should say

9   my clerks have only found two, published decisions in

10   which courts have returned the child. So it's not as if

11   they are ignoring the settlement issue. In fact, some

12   might say that they are not giving abduction enough

13   weight in -- in enough cases.

14   But I -- the Hong Kong court who said there

15   might not be discretion to return a settled child was

16   not the highest court of Hong Kong, either.

17   MS. O'CONNELL: That's -- that's right. I

18   don't think any of these decisions are from the highest

19   court.

20   JUSTICE SOTOMAYOR: And so if we're going to

21   give uniform meaning, the uniform meaning of

22   international weight is that abduction is one factor for

23   a court to consider in its equitable weighing on

24   settlement, because that's the whole purpose of the

25   Convention. That's a central reason in the preamble.

1   MS. O'CONNELL: That's right.

2   JUSTICE SOTOMAYOR: But isn't there --

3   JUSTICE SCALIA: There's always -- isn't

4   there always abduction? As your friend has pointed out,

5   the whole treaty only applies where the child has been

6   abducted. So you say: Oh, well, there's a special

7   exception to the rules of the treaty where the child has

8   been abducted. But that's what the treaty applies to.

9   MS. O'CONNELL: We understand that an

10   abduction is going to take place in every case. I think

11   we are looking for something more than what happened in

12   this case, some sort of concealment that happened, so

13   that the parent that is left behind and looking for the

14   child cannot find him.

15   JUSTICE ALITO: I don't know what sense -- I

16   don't know what sense that makes. Let's say a child is

17   abducted in Mexico and let's say that the parent who is

18   left behind is not a rich or sophisticated person, and

19   now the child is brought to the United States.

20   And the parent in Mexico has a year to find

21   the child in the United States. Doesn't speak English.

22   Can't easily find a lawyer to handle the case. He's got

23   an enormous country to try to find the child in the

24   United States. How in the world is that going to be

25   done?

1   MS. O'CONNELL: Well --

2   JUSTICE ALITO: You don't need to do very

3   much concealment. You can go to Peoria. You can go to

4   New York City, and -- and it's going to be an enormous

5   struggle to find that child within a year.

6   MS. O'CONNELL: The first thing I'll point

7   out is that Article 12, the drafters assumed that there

8   was going to be some difficulty in locating children,

9   and they decided on this one-year period. But also

10   point out the State Department dedicates significant

11   resources to finding children that are thought to have

12   been abducted to the United States. They have access to

13   all sorts of federal law enforcement databases to try to

14   determine if the child has come here. They have --

15   JUSTICE GINSBURG: How -- how would that be

16   aid be invoked? Take Justice Scalia's example. The

17   parent left behind in Mexico, no resources of her own or

18   his own. How would the State Department get into the

19   act?

20   MS. O'CONNELL: Typically, the left-behind

21   parent will approach the central authority in his or her

22   own country, and typically with an idea of what the

23   abducting parent's connections are to other countries.

24   And so if the United States is singled out as a country

25   to which the child might have been taken, the Mexican

1   central authority would contact the United States

2   central authority, and immediately somebody would be

3   assigned to start looking for that child within the

4   United States.

5   And there are a great number of resources

6   that are channeled toward that through the State

7   Department in working with other Federal agencies,

8   the -- the crime databases, the Federal parent locater

9   service that's used to track down people in the United

10   States to pay child support. It works with State law

11   enforcement agencies who can check school records and

12   driver's license records and things like that. So it's

13   not like it's -- I mean, it is difficult. We are

14   acknowledging that it's quite difficult.

15   JUSTICE KENNEDY: How -- how separate are

16   the two concepts of the well best interest of the child

17   and the interest in policing parents so they don't

18   abduct? At what point do they intersect?

19   MS. O'CONNELL: Well, I mean, we think --

20   the Convention starts with the presumption that a

21   settled child should be returned. And so the starting

22   presumption is always that you should not abduct the

23   child --

24   JUSTICE KENNEDY: The child settled, that's

25   when the abduction took place.

1   MS. O'CONNELL: Excuse me?

2   JUSTICE KENNEDY: You said it started that a

3   settled child should be returned?

4   MS. O'CONNELL: That -- that an abducted

5   child should be returned.

6   JUSTICE KENNEDY: Yes, abducted.

7   MS. O'CONNELL: When the -- a determination

8   that the child is settled can overcome that presumption,

9   and then the other equitable factors, like concealment,

10   come into play.

11   CHIEF JUSTICE ROBERTS: Justice Scalia?

12   JUSTICE SCALIA: You know, I have one more

13   question. At the end of the day, now that I understand

14   the government's position, I don't see any difference

15   between your position and -- and the position of -- of

16   the Petitioner here except that he wants to call it

17   equitable tolling, and you want to say we can take

18   concealment into account under Section 12 --

19   MS. O'CONNELL: No --

20   JUSTICE SCALIA: -- and not apply the

21   absolute rule where there's been concealment. I don't

22   care whether you call it equitable tolling or not.

23   MS. O'CONNELL: I think the positions are

24   quite different, because under an equitable tolling

25   analysis, putting aside that you may be able to satisfy

1   a different Convention defense, like one under Article

2   13 or 20, under an equitable tolling analysis, the court

3   would be prohibited from taking into account whether the

4   child is settled in her new environment in determining

5   whether to send her back.

6   CHIEF JUSTICE ROBERTS: Thank you, counsel.

7   Mr. Regan, five minutes.

8   REBUTTAL ARGUMENT OF SHAWN P. REGAN

9   ON BEHALF OF THE PETITIONER

10   MR. REGAN: I would agree --

11   JUSTICE SOTOMAYOR: That is, in fact, the

12   central difference, isn't it?

13   MR. REGAN: I would agree with Ms. O'Connell

14   that there is a difference.

15   JUSTICE SOTOMAYOR: A huge one, whether the

16   court can --

17   MR. REGAN: The difference is not that a

18   court cannot take the facts and circumstances of the

19   child's life into account. It can. That is -- that is

20   the Mendez case. That's Reyes Olguin. That's Blondin.

21   There are innumerable cases that show that. They can --

22   the Court can take that into account. It's just a

23   question of what is the question to which the Court

24   applies those facts.

25   Under our circumstance, it's not this

1 Article 12-2, is the child doing fine here? Is the

2 child living a normal life? It's a different question.

3 Is the -- is the goal and motive and presumption for

4 return going to be defeated here because it would

5 present a risk of harm to the child? We think that's

6 the right question because that's the only question that

7 deters concealment.

8   JUSTICE BREYER: Are you -- can I ask you

9 how it works here? I realize I don't know. A year has

10 passed. The father never found out where the child was.

11 Now he suddenly finds out. He runs to Iowa. The judge

12 looks at this Convention, and he says, well, the year's

13 passed. You've lost, let's say. And I don't have to --

14 I don't have to return him forthwith. The child's not

15 going to suffer intolerable injury. I can't use that.

16 I don't have to return him forthwith.

17   Now, I look, is he settled? Yes. He's

18 settled. All right. End of the matter. But do we now,

19 in the discretion of the father, have a custody hearing?

20 The father can say, yes, all that's true, but I should

21 have custody. And he goes, and under Iowa law, we see

22 who is entitled to custody. And he has something going

23 for him. Namely, the mother's acted pretty badly,

24 unless she has excusing circumstances in abducting the

25 child.

1   Does that happen or not?

2   MR. REGAN: Well, the custody proceeding

3 would occur in a different court. Of course, it

4 wouldn't occur in the Federal --

5   JUSTICE BREYER: No, it would go to the

6 family court. So is that -- would that happen? Could

7 that happen? Of course, I think.

8   MR. REGAN: Of course. Of course.

9   JUSTICE BREYER: Okay. If the answer is of

10 course, what we're talking about here is on the one

11 hand, we don't want to encourage abductions. On the

12 other hand, we don't want to treat the child as a yo-yo.

13   MR. REGAN: Absolutely.

14   JUSTICE BREYER: So the question is whether

15 the custody hearing will be in a family court in Britain

16 or whether it'll be in a family court in the United

17 States.

18   MR. REGAN: That's right.

19   JUSTICE BREYER: That's the correct

20 question; is that right?

21   MR. REGAN: That is the question. And also

22 the question is how do we deter --

23   JUSTICE BREYER: So our issue about whether

24 there's discretion or -- it's a little bit secondary

25 because we can have a big, full-blown hearing about who

1   should have custody, though, it will be in a different

2   court. It's true. You lose. There is more incentive

3   to kidnap the child. It's also true if you win, there

4   is a much greater likelihood that the custody hearing

5   will be in Britain rather that the United States, which

6   is the yo-yo problem.

7   MR. REGAN: And our concern here, Justice

8   Breyer --

9   JUSTICE BREYER: All right. Now, go -- now

10   say what you want to say. Now, if I understand it

11   correctly.

12   MR. REGAN: Our concern is the deterrence

13   and prevention, which is the goal of the Convention.

14   Justice Scalia asked about other nations in uniformity.

15   And there could be no better reflection about the room

16   created in Article 12 and that this -- that the

17   uniformity is not -- or that this is not a problem where

18   we need to be so concerned about uniformity.

19   In 2006, through the special commission

20   process, the meeting of the -- of the members of the

21   Convention, the United States specifically apprised the

22   other nations that it was employing equitable tolling in

23   the 12-2 context. As the government concedes, no one

24   else disagreed. No one expressed any concern about the

25   United States doing that. That's a clear reflection

1   that there is this room in Article 12.

2   Government's and Respondent's position is

3   that concealment may be taken into account. The problem

4   there is the Respondent still has this enormous

5   incentive to conceal, which is the purpose -- that's the

6   primary goal, to prevent that from happening, concealing

7   abduction. That's the goal of the Convention.

8   But also, there's no standard. They haven't

9   articulated a standard. The government doesn't

10   articulate one. It -- it amounts to a standard that

11   says concealment matters unless it doesn't. That's an

12   enormous -- that ephemeral standard is very difficult

13   for a respondent to overcome. It's very difficult for a

14   district court to apply. And what it does is it creates

15   this incentive to conceal, because no one even knows

16   what the question is.

17   Equitable tolling defines the question

18   within the context of the Convention. It says by

19   tolling, this is the question you should answer. If

20   there's not to be tolling and there are lots of

21   courts -- lots of cases where courts have found we

22   shouldn't toll because the child wasn't concealed or the

23   parent didn't exercise due diligence finding the child,

24   then we'll ask the Article 12-2 question, whether the

25   child is settled.

1   The bottom line is equitable discretion will

2   result in the abduction of more children. Equitable

3   tolling will disincentivize that. I would urge the

4   Court to look at those cases I mentioned, Mendez,

5   Blondin. Reyes Olguin is another one. 2005, Westlaw

6   67094, a 2005 case in the Eastern District of New York,

7   Judge Gleeson where return was denied under these

8   circumstances. Now, that's a natural 12-1 case, I

9   believe. But the court looks at factors of settlement.

10   Excuse me.

11   CHIEF JUSTICE ROBERTS: Thank you, counsel.

12   The case is submitted.

13   (Whereupon, at 11:09 a.m., the case in the

14   above-entitled matter was submitted.)

15

16

17

18

19

20

21

22

23

24

25

A

a.m 1:13 3:2 58:13
Abbott 3:14
abduct 7:6 9:16 9:20 25:7,12 51:18,22
abducted 8:14 16:16 25:10 43:24 44:13,18 49:6,8,17 50:12 52:4,6
abducting 5:12 9:15 18:4 50:23 54:24
abduction 3:15 3:17 8:24 25:19 26:2,10 26:13 32:17 36:15 46:19 48:12,22 49:4 49:10 51:25 57:7 58:2
abductions 30:23 55:11
ability 16:15
able 31:15 52:25
above-entitled 1:11 58:14
Absent 10:9
absolute 42:16 52:21
absolutely 26:14 26:25 27:2 30:16,23 40:4 55:13
abundantly 10:4
abuse 3:16 48:1
abused 17:1 47:21
abuser 17:3,6
accept 25:25
access 50:12
accorded 16:11
account 5:25 8:24 25:21 26:7 27:15

28:12 31:16 34:12 35:15 36:24 46:15 52:18 53:3,19 53:22 57:3
accounting 19:18
accustomed 36:10
achieve 9:14 18:12
acknowledging 51:14
acquiescence 11:3
act 50:19
acted 54:23
acts 27:14
adaptable 44:3
adaption 40:20
addition 43:15
address 15:19 16:10 26:15 27:17 28:21
addressing 28:12
adeptness 8:9
adequate 7:5
administrative 39:18
admit 33:9
adopt 19:13
adopted 3:19 13:7 28:8
adoption 40:20
advantage 5:12
affect 22:17
age 5:24 8:14
agencies 51:7,11
agree 24:4 31:7 34:16 41:16 53:10,13
ahead 46:22,25 47:2
aid 50:16
aim 3:18
aims 3:16

Alito 8:13 9:18 10:3,7,19 12:14,18 25:3 25:23 30:13 31:24 36:5 49:15 50:2
Alito's 11:13,16 31:22
allegation 28:1
allow 10:23 19:18
alluded 19:16
alternate 38:13
Alvarez 1:6 3:4
American 36:10
amici 16:24
amicus 1:21 2:10 42:10
amounts 57:10
analysis 4:22 12:3 29:1 34:9 46:14 52:25 53:2
ANN 1:19 2:9 42:9
answer 12:17 32:18 33:1,2 33:21,22,23 36:18 55:9 57:19
ante 41:11
anticipation 27:21
anybody 37:15
anyway 39:23
APPEARAN... 1:14
appears 43:7
Appendix 6:14 20:14 35:24
applicable 13:18 16:5
applicant 20:20
applied 4:12,17 13:12 18:24
applies 5:2 49:5 49:8 53:24

apply 3:22 11:5 19:9 20:23,25 23:22 45:3,19 52:20 57:14
applying 13:24
appreciate 15:23 17:11
apprised 56:21
approach 17:16 50:21
appropriate 22:20
area 4:2,4
argue 13:17 38:6
argument 1:12 2:2,5,8,12 3:3 3:6 23:17 26:1 40:1 42:9 53:8
arising 32:14
arrived 24:21
article 4:22,24 5:13,21 6:2,8 6:10,12,14 7:14,15,23 9:4 10:17,23 11:23 13:1 14:11 16:5,6 17:2,8 18:3 20:6,7 21:12,14,24,25 22:4 23:22 28:22,22,25 29:1 31:1,11 31:12,14,15 32:9,10,11,12 32:13,13 34:21 35:20,21,22 36:3,23,23 37:2,4 39:12 39:14,16,17,18 40:3,7,7,9 42:5 42:16,17,18,21 42:22,23 43:10 43:18,21,21 44:10,25 45:3 45:12,13,13,20 46:15 48:5 50:7 53:1 54:1

56:16 57:1,24
articles 10:17 43:19
articulate 57:10
articulated 57:9
aside 16:17 18:4 52:25
asked 15:17 56:14
asks 10:9
assigned 51:3
assistance 11:16
Assistant 1:19
assume 26:1 37:25
assumed 37:20 50:7
authority 20:19 37:2 39:19 50:21 51:1,2
automatic 13:16 13:17 21:13 22:12
available 4:16 8:4,5
avoid 29:12 30:14
axes 7:4,6

B

B 11:7,8
back 5:4 6:20 12:16 14:22 15:1 31:21 33:12,18 34:15 36:17 41:4 44:16 46:24 47:4,12,24 53:5
bad 36:17
badly 17:1 54:23
balance 7:9 13:23,25 24:19 31:18 42:1
balances 7:12 13:24 18:17
balancing 22:14

ballet 18:6
basically 26:5
basis 21:2,5
begins 39:16
behalf 1:15,17
2:4,7,14 3:7
20:20 23:18
53:9
behavior 47:14
47:17
believe 4:7 11:11
16:10 19:11
22:22 58:9
benefit 30:9
best 4:5 7:4,23
14:2 15:24
16:2,3,7 22:13
25:4 27:16
29:5 46:13
51:16
best-interest-o...
34:9
better 33:19
43:10 56:15
beyond 29:6
big 29:4 38:16
55:25
bit 22:21 24:4
26:9 55:24
blah 39:20,20,20
Blondin 11:20
53:20 58:5
body 10:25
bottom 58:1
bound 10:24
35:23,25 39:19
39:21,22 40:4
bout 16:21 17:5
boy 18:22 38:15
Breyer 14:6,21
15:17 19:4
33:1,12 34:2,6
37:1,12 38:23
39:6 54:8 55:5
55:9,14,19,23
56:8,9
brief 4:14,15

11:21 16:12,24
22:8 37:21
41:14 43:4
Briefly 41:21
bringing 21:7
Britain 55:15
56:5
broader 31:10
broadly 38:19
brought 49:19
burden 7:20
28:24
burdens 21:20

—————— C ——————

C 2:1 3:1
calculate 23:7
call 16:25 52:16
52:22
calls 19:17
Cannon 7:18,18
13:14 19:1,17
capped 21:15
care 10:25 52:22
cares 19:22
case 3:4 4:15
11:6,23,23
12:14 14:16
17:5 18:11,21
26:11,23 27:10
33:3 35:6
37:14,25 38:7
38:23 39:7,16
40:1,2 43:5
45:8 48:1
49:10,12,22
53:20 58:6,8
58:12,13
cases 4:11 5:20
5:22 11:19
12:4,12,22
17:12 26:22
30:20 40:18
47:25 48:13
53:21 57:21
58:4
central 20:19

25:8 30:13
48:25 50:21
51:1,2 53:12
centrally 25:10
certain 17:6
certainly 15:22
17:18 27:11
28:17 38:19
41:9
change 4:2,3
changed 3:25
16:19
changes 10:8
13:13
changing 29:11
channeled 51:6
charge 15:11
check 51:11
Chief 3:3,8
23:13,15,16,19
27:9,23 29:2
29:22 41:21
42:6,8,12,13
46:20 47:7,11
47:16 52:11
53:6 58:11
child 3:15,15,17
3:23 4:3,10,20
5:3,13,14,16
5:23,23 6:20
6:24 7:5,24
8:10,14,16,19
9:5,7,8,16,16
9:23 10:5,11
11:1,9,12,13
11:14,16 12:5
12:7,7,8,16,19
12:20,21 13:2
13:2,3,5,5
14:12,13,22,23
15:8,20,21
16:4,4,7 17:19
18:4,6,13
20:21 21:16
22:13,19 24:8
24:9,13,15,25
25:1,12,22

26:4,23 27:7
27:10,16,18,20
27:24 28:4,19
29:9,12,23
30:4,5,22
31:16,25 32:1
32:2,2,5,8,8,17
33:3,9,12,15
33:18 34:18,22
35:11 36:8,12
36:16,21 37:5
37:6,7,9,24
38:22,25 39:1
39:20 40:4,10
40:15,22 41:3
41:11,25 42:2
42:22,25,25
43:11,23 44:1
44:2,3,4,12,13
44:15,16,17,19
46:4,5,6,13,14
46:16,23,24
47:4,5,11,14
47:17,21,23,24
48:6,10,15
49:5,7,14,16
49:19,21,23
50:5,14,25
51:3,10,16,21
51:23,24 52:3
52:5,8 53:4
54:1,2,5,10,25
55:12 56:3
57:22,23,25
child's 4:5,18
9:5 12:2 19:18
22:15 24:17
29:6,11 40:20
47:20 53:19
54:14
children 9:20
14:8,25 16:16
25:5,7,9,10
26:15,17,20,22
26:24 30:8,15
30:19,25 45:10
50:8,11 58:2

Chin 12:1,1
choice 15:25
23:5,5
chooses 14:23
chose 34:24
church 18:7
Circuit 3:19
11:22,22,25
Circuit's 9:15
23:21
circumstance
53:25
circumstances
3:25 4:2,18,19
4:21 6:19 12:2
17:14 53:18
54:24 58:8
cited 11:21,21
43:4
City 50:4
class 18:7
clause 38:11,12
38:13,14 40:7
clear 10:4 19:20
43:1,8 56:25
clearer 14:3,3
clerks 48:9
client 11:11
code 41:6
codified 22:8
colleagues 48:8
come 5:5 11:15
35:3 44:23
50:14 52:10
comes 42:22
commence 20:8
commencement
20:8
commences
20:11
Commerce 43:4
commission
56:19
competing 7:10
completely
28:23 34:23
conceal 9:16

17:23 29:6
57:5,15
concealed 3:12
8:15 47:23
57:22
concealing 29:9
47:14 57:6
concealment
7:19 17:18,19
17:22 25:20,21
28:2 31:24
35:14 36:14
42:3 49:12
50:3 52:9,18
52:21 54:7
57:3,11
conceals 32:1
concedes 56:23
concept 21:23
30:21
concepts 51:16
concern 3:25
19:6 25:17
28:17 56:7,12
56:24
concerned 21:20
24:13 25:16
31:18 56:18
conditional 8:10
conditions 9:4
condoned 47:15
conduct 28:2
conflicting 28:6
28:16
confusing 36:6
Congress 10:14
14:3 20:10,15
28:24
connection
29:16
connections
50:23
consent 11:5
consequences
16:13
consider 4:10
5:23 10:23

24:1 27:6
40:25 48:23
consideration
4:5,9 27:11
48:6
considerations
5:21 7:10 28:6
28:11,16
considered 4:18
4:21 22:7 24:6
46:8
considers 27:4
consistent 4:23
23:12
consistently
45:3
construct 24:23
constructs 28:23
contact 51:1
contained 42:18
contest 19:8
context 4:8 5:11
43:7,9,12
56:23 57:18
contexts 21:4
continue 24:24
24:25
contrary 23:24
24:17 30:18
contrast 3:19
convention 3:16
3:20 4:9 5:11
7:13 9:2 10:1
10:14 13:24,25
14:2,6 15:7,25
16:1 17:16,17
18:17 20:6,10
23:9,11 25:8
26:11,12,17
27:8,17 28:7
30:14,17 32:15
32:15 34:1,12
43:9,9,23
44:11 46:17
47:6,15 48:25
51:20 53:1
54:12 56:13,21

57:7,18
convention's
23:23
convinced 14:8
correct 12:11
40:9 55:19
correctly 41:15
56:11
cost 40:19
counsel 23:13
42:6 48:7 53:6
58:11
count 19:17
countries 14:7
19:5,7,9 20:17
20:18 21:17
22:3 23:2,4,6
24:5,12,13
41:16 45:11,23
50:23
country 8:20,20
9:24 15:9
24:16 26:24
43:24 45:4,4
49:23 50:22,24
course 38:10
55:3,7,8,8,10
court 1:1,12 3:9
3:14 4:15,17
5:21,22,25 6:1
6:25 7:17,18
10:9,11,23
12:1,19,23,23
12:25 15:6
18:14,23 20:12
20:16 22:18
23:20 26:5
33:20 34:3,10
40:10 42:24
43:2 44:8,9
45:7 46:21
47:1,18,19,23
47:25 48:14,16
48:19,23 53:2
53:16,18,22,23
55:3,6,15,16
56:2 57:14

58:4,9
court's 10:12
courts 4:10,23
5:9 8:8,8 10:10
10:12,15,15,20
11:19 13:8,12
13:24 14:1,5
16:1,1,2 17:12
18:18,19,25
19:12,19 20:17
21:4 31:11
40:15,24 41:23
45:11,21,22,25
48:5,10 57:21
57:21
covered 20:22
20:24
create 21:2,5
created 56:16
creates 57:14
crime 51:8
cross 7:6
crude 19:17
curiae 1:21 2:10
42:10
custody 4:3 9:25
11:1 14:10
24:16 27:6,12
27:16 28:12
41:12 46:22,25
54:19,21,22
55:2,15 56:1,4
custody-type
34:10
customs 8:21
36:10
cutoff 24:22
cuts 29:2

_____

D

_____

D 3:1
D.C 1:8,20
databases 50:13
51:8
daughter 3:11
3:11
day 30:6 52:13

deal 21:19 23:3
48:4
dealing 8:9
decades 10:21
18:25
December 1:9
decide 10:15
28:15 36:6
decided 15:25
22:19 50:9
decides 17:17
20:15
deciding 48:1
decision 16:23
22:10
decisions 20:5
48:9,18
decrees 4:1
dedicates 50:10
defeat 18:16
44:13
defeated 54:4
defense 31:11
53:1
defenses 21:14
28:25 36:2
define 22:3,4
defined 10:14
defines 16:1
20:10 57:17
degree 36:12
demonstrated
25:1 37:7,24
38:24 39:1,2
40:12,13
denied 36:2 58:7
denigrate 29:14
depart 43:14
Department
1:20 15:11
16:8 43:4
50:10,18 51:7
Department's
16:11 22:23
depending 43:6
depth 18:14
describe 35:8

designed 28:8
32:14
designing 26:17
detection 29:11
29:12
deter 3:16 25:6
25:15 28:8
30:22 55:22
determination
9:25 16:19
17:8 24:16
27:6,12,17
34:17 41:12
52:7
determine 16:2
16:3 23:6
50:14
determined
41:25
determining
31:25 32:4
53:4
deterrence 9:14
13:20 56:12
deterrent 7:5
deters 54:7
developed 8:21
8:21
DIANA 1:6
difference 9:9
9:12,13 13:22
28:14 29:4
33:14 52:14
53:12,14,17
different 7:4,23
28:23,24 36:3
36:4 37:3 40:2
52:24 53:1
54:2 55:3 56:1
differently 30:8
43:22
difficult 7:9
12:20 25:13
44:21 51:13,14
57:12,13
difficulty 15:21
17:11 50:8

diligence 57:23
diplomatic
16:13
directly 22:7
disagree 19:5
26:8
disagreed 56:24
discover 39:7
discovered 8:16
discovery 21:15
21:19,23 22:8
23:1,1 24:8
discretion 5:1
8:25 21:3
22:19 26:7
32:8 34:19,21
35:16,18,20,21
38:15,21 39:14
39:23 41:17,19
41:24 42:2,17
42:18,21 44:7
44:9 45:8,9,12
45:15,19 47:19
47:21 48:1,15
54:19 55:24
58:1
discretionary
37:13 38:16
43:20
discussing 42:16
discussion 22:9
disincentivize
58:3
disincentivizes
17:22
disorder 12:6
dispatch 16:23
disposed 26:4
dispute 28:3
30:19
district 8:8 12:1
18:19 26:5
57:14 58:6
divided 41:23
doctors 15:4
doctrine 8:25
doing 17:3 18:19

18:24 19:2
22:4 32:20
54:1 56:25
domestic 17:10
20:7 22:2
draft 21:12
drafters 21:21
24:10 26:14
30:21 31:14,18
34:23 42:4
50:7
drafting 21:11
21:11 22:24
23:24 24:2,5
36:4 42:5
drafts 24:20
driver's 51:12
due 57:23
duty 32:14

_____

E

E 2:1 3:1,1
ease 41:6
easier 29:23
easily 44:16
49:22
Eastern 58:6
effect 9:14 21:7
effort 36:14
eight 3:13
either 15:3
27:14 48:2,16
elaborate 36:13
36:14
elements 22:4
42:18
elevator 33:4,5
employ 23:8
employed 18:9
employing 56:22
encourage 55:11
encourages 25:6
25:19
ended 24:2
enforcement
50:13 51:11
engaged 47:13

England 38:20
40:24 46:25
English 7:17
49:21
enormous 18:1
49:23 50:4
57:4,12
enrolling 29:11
entered 8:10
entirely 17:10
entitled 54:22
environment
24:14 25:2
27:19,20 37:8
37:9 43:1 44:5
53:4
envisioned
34:11
ephemeral 57:12
equitable 3:18
3:22 4:4,8,16
4:16,25 5:1,2
5:10,11 6:18
7:11,13 8:17
8:23,25 9:2
10:4,9 16:13
16:15 17:3,21
18:22,24 19:9
19:13,16 21:2
21:5 22:9,19
23:8,22 25:25
26:7 41:15,17
41:18,24 42:2
48:3,23 52:9
52:17,22,24
53:2 56:22
57:17 58:1,2
escape 32:24
ESQ 1:15,17,19
2:3,6,9,13
essentially 8:7
9:15 18:3
38:14 44:23
established
35:25 36:2
establishing
7:20

evade 29:10
everybody 19:25
41:16
evidence 12:22
17:15 25:14
36:8
evidentiary
21:20
exactly 37:2
41:2
examined 40:21
example 4:13,13
5:22 8:14 9:4
9:22 11:21
12:18,21 29:9
35:1,3,23
36:20 40:19
44:1,17 47:22
50:16
exception 5:13
7:14,15 13:10
13:12 21:5
31:12,13 35:11
41:2 49:7
exceptions 21:2
35:8,9 40:5
43:21 44:24
exclusive 28:18
32:16
excuse 6:14,14
8:13 31:13
52:1 58:10
excuses 17:19
excusing 54:24
exercise 26:7
57:23
exercised 45:14
45:15,18
exercising 11:1
44:7,9
exists 30:18 41:2
41:24
expand 22:11
expect 44:22
expert 8:4 12:4
experts 12:6
40:19,21,22

expires 11:24
explain 11:18
explanatory 21:25
expose 9:5 11:9
expressed 56:24
expressly 27:7 43:19
extend 17:24
extended 21:21
extent 4:20 17:20,21 28:7 32:7

F

f 20:13
fact 7:16 14:2 17:19 25:22 26:14 28:23 48:11 53:11
factor 26:2,6 31:24 32:4 40:24 48:22
factors 10:11 36:20 37:14 52:9 58:9
facts 4:18,19,21 12:2 25:20 34:12,22 35:12 41:2 42:3 53:18,24
factually 4:17
failed 18:4,5 19:12
failure 26:3
fairly 28:9
fairness 27:22
family 3:23,24 15:6 33:7,8,20 34:3,10 46:21 47:1 55:6,15 55:16
father 3:10 15:1 17:6 33:6,16 34:7 54:10,19 54:20
fault 15:14

fears 48:7
federal 50:13 51:7,8 55:4
feel 17:7
feeling 32:24
field 3:22
figure 3:25 14:1 17:13
file 20:11,19,20 21:14
filed 8:18 9:3 11:24 30:4
files 8:16
filing 20:16 30:5
final 4:1
finally 24:20
find 38:20 49:14 49:20,22,23 50:5
finding 38:21 50:11 57:23
finds 6:25 13:5 33:6 54:11
fine 14:16 19:2 54:1
firmly 14:8 42:4
first 3:4,12,17 17:17 21:22 38:11,13 40:7 44:11 46:18 50:6
five 53:7
flexibility 23:6
follow 34:11
foreign 5:9 19:12 45:24
former 24:16
forms 3:15
formulation 43:3
forth 5:17 8:22
forthwith 24:7 37:5,6,10 38:25 40:5 54:14,16
fought 16:21
found 4:15,16

13:25 18:14 35:11 39:13 40:16 45:12 46:5 48:8,9 54:10 57:21
founded 25:18
France 3:13
frankly 37:23 39:25
free 44:8
free-wheeling 44:9 46:13
friend 49:4
friends 5:17 18:8 36:9,9 44:18
friendships 18:15
full-blown 17:2 27:16,21 34:9 55:25
furthers 3:18

G

G 3:1
geared 46:18
gee 38:6
general 1:20 11:22 18:20 23:2 32:24
generally 40:15
Ginsburg 3:21 4:7 6:2,4 7:3 16:17 17:9 41:13 50:15
give 8:13 9:19 11:20 21:23 23:6 35:1 37:1 48:21
given 37:3,14,15 37:17,22
giving 15:22 37:21 48:12
Gleeson 58:7
go 5:3 6:20 17:1 18:6 34:15 40:23 46:22,25

47:2 50:3,3 55:5 56:9
goal 17:20 54:3 56:13 57:6,7
goes 33:6 36:9,9 46:6 54:21
going 5:16 14:25 15:1,13,14,16 21:23,25 24:22 24:24,24 25:14 25:15,15,21 27:11 30:24,25 31:19,20,21 33:13 48:20 49:10,24 50:4 50:8 54:4,15 54:22
good 44:2 48:4
goodness 15:4
gosh 29:13
government 9:19 56:23 57:9
government's 32:12 42:14 52:14 57:2
governs 26:23
grain 33:4,5
grapple 30:22
grave 6:20,20,22 6:23 9:4 11:8 12:3,8 13:11
great 8:9 9:20 16:11 25:7 51:5
greater 56:4
guess 13:3 18:13
guided 44:10 46:12

H

habitual 24:17
hand 48:3 55:11 55:12
handle 49:22
happen 16:25 25:19 55:1,6,7

happened 49:11 49:12
happening 57:6
happens 40:13
happy 16:9
hard 35:2
harm 6:22,23 9:6 11:10,12 11:13 12:8,10 14:12,13 25:9 26:15 31:4 36:16,21,22 54:5
harmful 46:16
hatch 32:25
head 22:6,21 24:4
hear 3:3 12:20
heard 26:12
hearing 8:3 13:8 14:18 27:21 31:17 54:19 55:15,25 56:4
hearings 8:3
heightened 7:20
help 35:7
hide 9:21 25:12 29:23
hides 33:17
highest 48:16,18
highlights 22:1
history 21:11,11 22:6,21,23,24 23:24 24:3,5
hit 15:17
holding 23:21
hole 38:16
Hong 40:17 45:7 48:14,16
Honor 25:17 26:9,25 27:5 27:13 28:20 29:8 30:1,11 30:16 31:9 32:6,11,21 33:24 34:5,8 34:20 35:2,10

35:19 36:19
37:11 38:3,18
39:5,13,24
41:1,8,20
Honors 24:2
hope 10:3
House 38:20
39:7,9 43:5
huge 53:15
hugely 4:4
husband 14:16
14:22
husband's 14:19
hypothetical
10:18 11:6,13
11:17 44:6

_____
I
_____

i.e 17:23
ICARA 20:10
idea 14:22 16:14
23:12 40:6
46:17 50:22
ignoring 48:11
illegal 26:13
illustrated 4:11
illustrates 5:9,20
9:22 17:11
18:11
illustration
11:19
immediately
41:4 51:2
immigration
18:10
impair 16:15
implementing
28:5
implicated 22:3
importance 3:24
14:9,10
important 5:8
7:11 21:21
29:4 46:11
impossible 45:3
impression 37:3
incentive 9:20

18:1 25:7 56:2
57:5,15
include 43:13
including 4:19
31:17
incommensur...
7:10
inconsistent
7:17
indicated 30:13
indicates 7:3
indication 36:15
inequitable 28:2
informs 16:24
injury 54:15
innumerable
53:21
inquiry 46:8
insofar 25:5
instance 3:18
instances 27:18
institution 10:25
intended 32:16
interest 3:23 7:4
7:24 16:2,3,7
19:18 20:20
22:13 24:18
26:16,20,21,22
27:16 28:3,19
30:19 48:6
51:16,17
interests 4:6,10
14:2,8 15:8,25
22:14 25:5
46:13
international
48:22
internationally
40:16 41:24
interpret 19:7,7
19:24
interpretation
23:25 32:13
44:25
interpreted
19:23 39:10
43:6 45:11

interpreting
21:1,6
intersect 51:18
intolerable 7:1
9:7 11:14
14:13,14 15:3
36:22 54:15
introduced
22:12
invocation 22:1
invoked 50:16
involves 26:12
involving 26:22
Iowa 33:9 54:11
54:21
issue 15:18
17:15 21:19
24:1 30:22
48:11 55:23
issues 8:9
it'll 55:16

_____
J
_____

job 33:7
Jose 1:3 3:10
judge 11:25
14:18 15:6,21
17:5,6 33:7,8
33:20 34:3,7
34:19 36:6
54:11 58:7
judges 47:1
judicial 39:18
jurisdiction
20:12,17,18
23:9,11
Justice 1:20 3:3
3:8,21 4:7,25
5:7 6:2,4,5,8
6:11,16,23 7:2
7:2,8,22 8:1,6
8:13 9:18 10:3
10:7,16,19,22
11:4,8,12,16
12:9,13,14,18
12:23 13:1,9
13:15 14:6,21

15:17 16:17
17:9 19:4,4,21
20:2,22 22:5
22:22 23:10,13
23:15,16,19
24:3 25:3,23
26:19 27:1,3,9
27:22,23 29:2
29:13,17,17,19
29:21,22 30:2
30:12,13 31:1
31:3,7,21,22
31:23 32:10,18
32:19 33:1,3
33:12 34:2,6
34:13,15,16,25
35:5,13,17
36:5 37:1,12
37:20 38:5,7,9
38:10,11,23
39:6,11,15,25
40:8,18 41:5
41:13,21 42:6
42:8,12,13,13
42:14 43:12,25
44:22 45:2,14
45:18,24 46:2
46:11,20 47:7
47:11,16 48:7
48:20 49:2,3
49:15 50:2,15
50:16 51:15,24
52:2,6,11,11
52:12,20 53:6
53:11,15 54:8
55:5,9,14,19
55:23 56:7,9
56:14 58:11
justification
36:15 41:10

_____
K
_____

Kagan 19:4
31:21 32:10
34:13,15 38:7
38:11 46:2,11
Kagan's 32:19

33:3
keep 14:25
40:14
Kennedy 4:25
5:7 6:16,23 7:2
7:8,22 8:1,6
12:23 13:15
40:18 41:5
43:25 51:15,24
52:2,6
key 22:4
kicked 14:17
kidnap 56:3
kidnapped 3:11
kidnappers
16:25
kidnapping 28:8
29:5 30:14
kidnaps 33:3
kind 28:8 46:7
47:7,8
Kingdom 3:13
knew 40:22
know 7:10 8:8
10:13 11:2
14:21 15:15
18:20,22 19:25
21:16 28:5,5
33:23 34:3
35:7 49:15,16
52:12 54:9
known 11:3 24:9
knows 33:19
36:11 57:15
Kong 40:17 45:7
48:14,16

_____
L
_____

lack 22:17
lacked 19:14
language 8:20
32:23 35:22
36:3 38:24
42:23 43:6,20
large 4:1 30:25
Laughter 29:20
29:25

LAUREN 1:17 2:6 23:17
law 3:23,24 4:2 20:7,23 21:1,8 22:2 50:13 51:10 54:21
lawyer 49:22
lead 14:12
learned 8:20
leave 4:5
leaves 20:6
left 10:14 22:3 49:13,18 50:17
left-behind 50:20
legal 18:9
legally 18:13
legislative 22:6 22:20
lengthy 22:9
let's 12:21 13:2 14:1 26:1 36:6 47:2 49:16,17 54:13
level 42:2
license 51:12
life 4:19 5:18 53:19 54:2
light 40:2 46:9
likelihood 56:4
limit 13:4
limitation 24:23
line 58:1
linger 16:22
lists 43:13
litigation 30:5,6
little 22:21 55:24
live 27:7 33:4
living 5:18 54:2
load 43:16
locater 51:8
locating 50:8
location 8:15 9:24
London 33:13 33:18 44:18
long 16:22 21:18

31:19
longer 23:4 24:11
look 6:3 10:15 15:8 16:4,6 21:10 44:11,15 54:17 58:4
looked 10:12,12 10:20 11:20,25 12:1
looking 5:21 6:17 49:11,13 51:3
looks 54:12 58:9
Lords 38:20 39:7,10
lose 56:2
lost 54:13
lot 14:17 15:16 38:6 44:18
lots 57:20,21
loves 3:11
Lozano 1:3 3:4 3:10,12
LUCIA 1:6
luck 34:7
Lynch 4:14,14 6:7 12:12

M
M 38:20
main 16:21 17:4 17:4
maintaining 28:17
major 9:9
majority 30:20
mandate 10:5
mandatory 45:19
Manuel 1:3 3:10
materials 6:6
matter 1:11 21:6 23:2 54:18 58:14
matters 14:9 20:24 57:11

maturity 5:24
mean 9:2,22 10:22 11:10 14:14 15:3 17:23 28:10 29:14,14 32:1 33:13 37:25 38:8 39:3,3 43:1,14 45:2,7 45:17,21 47:19 47:20 51:13,19
meaning 48:21 48:21
means 15:9,12 28:10 39:8
meant 22:1
meet 40:4
meeting 56:20
members 56:20
Mendez 4:14,14 5:19,22 6:7 12:12 53:20 58:4
mention 16:8
mentioned 58:4
merits 27:16 34:9
met 5:15 9:4
Mexican 50:25
Mexico 49:17,20 50:17
Midwest 29:23
mind 22:6 26:20
minds 34:23 42:4
minimal 5:15
minutes 53:7
miscomprehend 19:16
miscomprehe... 5:9
momentous 19:12
month 33:6
months 3:13 9:17 21:14 24:7,7

MONTOYA 1:6
morning 3:4
Moskowitz 1:17 2:6 23:16,17 23:19 25:17 26:9,25 27:2,5 27:13 28:20 29:8 30:1,11 30:16 31:6,9 31:21 32:6,11 32:21 33:11,24 34:5,8,14,20 35:2,10,14,19 36:19 37:11 38:3,18 39:5,9 39:13,15,24 40:3,9 41:1,8 41:20,22 42:7
mother 15:2 33:3
mother's 54:23
motive 54:3
moving 29:10,14 29:15 32:1

N
N 2:1,1 3:1
name 29:11
narrow 31:12
nation 20:17
nations 56:14,22
nationwide 20:18
natural 4:24 11:23 37:16,17 37:18 58:8
nearly 3:13 18:25
necessarily 31:4 36:22
necessary 8:12 9:13
need 50:2 56:18
needed 24:11
needs 23:4
negotiated 24:20
neighborhood

36:11
neither 19:11
never 22:18 54:10
nevertheless 45:9
new 1:15,15,17 1:17 8:19 15:5 24:14 25:2 27:19,20 29:18 29:24 37:7 40:20 43:1 44:4 50:4 53:4 58:6
nicely 33:4
normal 5:18 18:5 54:2
note 24:2
notion 41:19
Notwithstandi... 39:17
number 51:5

O
O 2:1 3:1
O'Connell 42:8 42:9,12,20 43:18 44:7 45:1,5,17,21 46:1,10 47:3 47:10,13,18 48:17 49:1,9 50:1,6,20 51:19 52:1,4,7 52:19,23 53:13
O'CONNELL 1:19 2:9
objections 6:1 22:25
objective 27:25
objectives 30:17 46:12
objects 13:3,5
obligation 17:7 24:24 46:6
obviously 19:6 29:19,21

occupy 32:16
occur 55:3,4
occurred 12:22
occurring 3:17
odds 23:23
officials 40:23
oh 6:10 28:10
    38:5 49:6
Okay 14:10,20
    33:11 38:5
    55:9
old 36:8
Olguin 53:20
    58:5
once 34:17 46:5
one-year 34:24
    36:7 50:9
open 38:16
opened 37:13
operate 5:10
operates 5:10
operating 46:8
operation 20:7
opinion 33:2
opportunity 4:9
    16:9
opposed 28:25
opposite 17:23
oral 1:11 2:2,5,8
    3:6 23:17 42:9
order 9:13 10:24
    13:4,19 35:25
    37:23 38:1
    39:19 40:11
    42:24 45:10
    47:19
orders 8:10
outcome 18:23
overcome 52:8
    57:13
overrides 21:8
overseas 17:15
oversimplified
    22:24

_____
        P
_____
P 1:15 2:3,13 3:1

3:6 53:8
page 2:2 4:14
paramount 3:24
    14:9,10 26:16
    26:22 28:17
parent 5:12,15
    8:16 11:12
    18:5 27:7 29:5
    29:9,10 31:4
    47:13,17 49:13
    49:17,20 50:17
    50:21 51:8
    57:23
parent's 50:23
parents 7:6 9:15
    9:20 14:24
    22:14 25:7,9
    26:21,24 27:1
    27:15 28:1,4
    28:16 44:2
    51:17
park 36:10
part 12:3 27:8
    30:13 41:10
    46:11,11
particular 9:23
    27:10
particularly
    22:2
parties 14:7
    19:23
passed 42:24
    54:10,13
pay 51:10
pedestrian 18:3
people 6:17 51:9
Peoria 29:14,15
    33:5 50:3
period 9:21
    11:24 17:24
    20:16 21:15,22
    22:11,25 23:7
    24:11,21 34:24
    36:7 40:11
    50:9
periods 21:12,17
    24:6

person 10:24,25
    39:20 49:18
petition 6:13
    8:17,18 9:3
    11:23 20:14,19
    34:11 35:24
Petitioner 1:4,16
    2:4,14 3:7
    28:21 52:16
    53:9
physical 9:6
    11:10 12:9
    14:12 15:3,4
    31:4 36:22
place 8:3 9:6
    11:14 29:10,10
    29:15 32:2,2
    46:18 49:10
    51:25
plain 32:23
play 5:6 36:9
    52:10
playbook 3:20
please 3:9 23:20
    34:4 41:21
poignantly 4:11
point 8:7 13:21
    16:19 18:1
    19:22 20:4
    28:21 30:2,24
    34:17 46:7
    50:6,10 51:18
pointed 19:5
    36:20 42:23
    49:4
points 18:21
policing 51:17
position 9:19
    10:4 14:14
    15:20 16:18
    21:10 25:4
    42:15,20 52:14
    52:15,15 57:2
positions 9:10
    52:23
possible 22:17
possibly 15:18

post-ratification
    23:25
post-traumatic
    12:6
pot 43:16
potential 12:5
potentially 23:8
powerful 25:5
pre-kindergar...
    18:15
preamble 14:7
    15:8 48:25
preceding 39:18
preliminary
    21:12
presence 29:6
present 54:5
presented 12:8
presents 18:18
presume 27:14
    31:25
presumed 30:18
presumption
    16:6 19:14
    44:13 46:4,8
    51:20,22 52:8
    54:3
pretty 14:15,24
    54:23
prevail 47:6
prevent 3:17
    5:12,19,20
    7:15 10:18
    25:9 57:6
preventing
    46:18
prevention
    56:13
prevents 7:14
primary 57:6
principle 21:7
    46:15
prior 34:13,14
probably 48:1
problem 15:5
    25:24 27:23
    48:4 56:6,17

57:3
proceeding 8:11
    34:10 46:22,25
    55:2
proceedings
    17:21 20:8,9
    20:11
process 56:20
producing 41:6
proffered 36:14
prohibited 53:3
prompt 24:6
    40:6,6 41:10
proof 28:25
proper 13:25
    18:2
properly 7:12
    18:17
proposed 24:23
proposition
    37:18
protection 31:2
prove 15:2
provide 4:8,13
    6:17,18 20:17
    20:18 21:25
    22:1 25:13
provided 21:12
provides 3:19
    19:20 21:24
    25:6
provision 14:10
    21:9
provisional 8:7
provisions 10:17
    21:1 22:16
    39:17
psychological
    9:6 11:10 12:9
    14:12 15:4
    31:3
published 48:9
purpose 23:23
    25:8 48:24
    57:5
purposes 9:25
    24:15 30:14

38:14,14,24
39:20 40:17
42:23 43:23
47:23 54:12
57:11,18
Scalia 6:5,8,11
  10:16,22 11:4
  11:8 12:9,13
  13:1,9 19:21
  20:2,22 26:19
  27:1,3 29:17
  31:3 32:18
  34:16,25 35:5
  35:13,17 37:20
  38:5,10 39:15
  39:25 42:13,14
  43:12 44:22
  45:2,14,18,24
  49:3 52:11,12
  52:20 56:14
Scalia's 38:9
  50:16
school 5:16 8:21
  18:6 29:12
  40:22 44:17
  51:11
school's 40:23
second 3:19 9:14
  11:22,22,25
  23:21 38:12,14
secondary 55:24
Section 13:17
  20:12 43:13
  52:18
see 11:15 12:15
  13:3 17:8
  52:14 54:21
seen 33:17
self-help 17:18
send 14:22 15:1
  33:12 46:24
  47:4,11,24
  53:5
sense 13:15 30:3
  30:12 49:15,16
sensitive 17:11
sent 36:16 44:16

sentence 26:5
separate 51:15
serious 36:16,21
service 51:9
set 23:7 28:24
  34:22 43:20
settle 34:4
settled 4:20 5:16
  8:19 9:23
  10:11 16:4
  24:14 25:1,22
  27:10,18 29:1
  29:1 30:9
  31:12,13,25
  32:3,5,8 33:9
  33:10,13,15
  34:18,21 35:11
  36:12 37:7,9
  37:25 38:22,25
  39:1,2 41:2
  42:1,2,21,25
  43:11 44:1,3,4
  44:12,20 46:4
  46:5,16,23
  47:5,20 48:15
  51:21,24 52:3
  52:8 53:4
  54:17,18 57:25
settlement 7:20
  10:13 12:3
  20:9 25:14
  28:3 36:24
  40:20 41:6
  48:11,24 58:9
SG's 22:8
SHAWN 1:15
  2:3,13 3:6 53:8
short 21:18
  31:20
shortening
  17:21
shorter 24:12
show 53:21
showing 5:15
shown 8:8
shows 24:5
side 9:21 28:1,2

28:12
sides 14:18
signatories
  44:23 45:6
signatory 24:1
  45:11
significant 9:11
  9:12 10:6
  19:15 27:11
  28:18 50:10
similar 43:3,5
simple 18:11
  19:1
simply 23:1
  26:21 34:7
  42:3
single 18:21 19:8
  24:21 26:11
singled 50:24
situation 7:1 9:7
  11:14 15:2
  16:12 17:8,10
  30:7 31:5,16
  36:23 46:22
slightly 36:3
Solicitor 1:19
  11:21 18:20
solution 25:24
somebody 32:1
  51:2
somewhat 7:9
sophisticated
  49:18
sorry 6:4,12,13
  22:5
sort 15:22 32:24
  43:20 49:12
sorts 50:13
Sotomayor 22:5
  22:22 23:10
  27:22 29:13,17
  29:19,21 30:2
  30:12 31:1,7
  39:11 40:8
  48:7,20 49:2
  53:11,15
Sotomayor's

24:3
space 32:17
speak 16:12,14
  16:14 49:21
speaks 20:7,9
special 49:6
  56:19
specific 35:3
  42:18 43:13
specifically 24:5
  43:10 48:5
  56:21
squarely 23:23
stage 16:20
standard 18:2
  57:8,9,10,12
start 51:3
started 52:2
starting 51:21
starts 51:20
state 13:2 15:11
  16:8,10 18:20
  20:23,25 21:8
  22:23 24:1
  26:18 35:23,24
  50:10,18 51:6
  51:10
stated 44:11
statement 32:16
states 1:1,12,21
  2:10 3:14
  12:25 16:16,18
  19:3,19 35:23
  42:10 44:19,20
  45:22 47:22
  49:19,21,24
  50:12,24 51:1
  51:4,10 55:17
  56:5,21,25
status 18:10
  41:11
statute 24:22,23
stay 15:5 43:23
  46:4
step 20:1
stomach 14:17
stop 20:16 22:18

straight 33:2,20
strange 43:15
stress 12:6
stretch 17:7
strict 28:9
strong 26:2,6
struck 24:19
structure 7:12
struggle 32:21
  50:5
study 22:7
subject 21:13
submitted 58:12
  58:14
substantial
  40:21
subterfuge 7:19
suddenly 54:11
suffer 54:15
suffering 12:5
sufficient 5:24
suit 30:4
support 37:18
  51:10
supporting 1:21
  2:11 42:11
suppose 8:14
  17:5
supposed 28:15
  31:11
Supreme 1:1,12
surprising 19:12
  19:13
suspension 5:3

T

T 2:1,1
take 5:25 8:3
  16:9 18:7
  28:11 31:15
  34:12 36:24
  46:15 48:5
  49:10 50:16
  52:17 53:18,22
taken 8:24 25:21
  26:6 27:15
  35:14 50:25

57:3
takes 8:3 29:13
  29:15 30:5,6
talking 5:5 7:16
  8:2 14:11
  35:18 45:24
  55:10
task 23:23
tell 31:22 35:8
telling 19:24
  39:21
term 4:24
testified 12:6
testify 5:24
  40:19,24
testimony 8:12
  12:4 13:8
  15:22
Thank 3:8 5:7
  23:13,15 41:22
  42:6,7 53:6
  58:11
then-Judge 12:1
thereof 22:17
thing 9:1 33:17
  50:6
things 11:15
  14:18 18:8,18
  27:4 46:7
  51:12
think 5:8,8 7:11
  7:25 8:8 9:12
  9:22 10:1
  12:20 13:23
  14:15 15:16,17
  17:9 19:15,16
  25:18,19 26:19
  29:23 30:11
  31:3,9,10,18
  31:23 32:9,18
  32:22 34:20
  36:4,19 40:15
  41:1,14,15,17
  42:1 43:1,8
  44:10 45:5,7
  45:22 46:3,10
  46:20,23 47:1

47:5,18,19,24
  48:3,18 49:10
  51:19 52:23
  54:5 55:7
third 20:3
thought 24:10
  24:11 37:12,16
  50:11
thwarting 3:20
time 8:2,11 9:21
  11:2 16:22
  17:24 21:24
  23:10,14 26:14
  30:24 44:21
timing 8:7
today 15:19
toll 57:22
tolling 3:18,22
  4:4,8,16,17 5:1
  5:2,10,11 6:19
  7:12,13 8:17
  8:23 9:2 10:4,9
  16:13,15 17:3
  17:22 18:22,24
  19:9,13,17
  21:5 22:9 23:8
  23:22 26:1
  41:16 48:4
  52:17,22,24
  53:2 56:22
  57:17,19,20
  58:3
tool 27:24 28:5
tough 14:24,25
  15:6 33:7
track 51:9
treat 55:12
treated 30:8
treaty 15:11
  19:7,22 20:23
  20:24 21:1,3,6
  21:8 27:4
  44:23 46:9,12
  49:5,7,8
triggers 26:10
troubles 25:3
true 8:1 9:18

26:21 30:20
  43:18 54:20
  56:2,3
try 14:1 49:23
  50:13
trying 13:23
  26:14 27:17
  28:9 33:21
turning 22:6,20
  24:4
turns 24:25
two 7:4 9:10
  12:17 14:18
  18:25 19:15
  21:12 24:6
  26:18 28:4,16
  30:8 34:4 36:8
  43:2 44:2 48:8
  48:9 51:16
typical 14:15
  15:5 18:15
typically 50:20
  50:22

_____
U
_____

U.K 36:17
U.S 43:5
ultimately 27:6
unanimous
  40:16
undermines
  25:4
understand 5:2
  13:21 32:20
  35:1 40:1 46:2
  49:9 52:13
  56:10
understanding
  23:25 32:12
unfair 33:16
unfit 4:4
uniform 48:21
  48:21
uniformity
  56:14,17,18
uniformly 19:23
United 1:1,12,21

2:10 3:12,14
  12:25 16:16,18
  19:2,19 42:10
  44:19,20 45:22
  47:22 49:19,21
  49:24 50:12,24
  51:1,4,9 55:16
  56:5,21,25
universally 13:7
unusual 46:21
uproot 46:16
uprooted 27:20
uprooting 24:15
urge 58:3
use 12:24 21:4
  23:10 54:15
usually 17:14

_____
V
_____

v 1:5 3:4 4:14
  6:7 12:12 43:4
value 17:20
valve 18:2
vein 35:20
venue 16:20
  17:7
view 6:18
views 5:25 16:11
violence 17:10
visit 47:16

_____
W
_____

wading 14:5
want 3:22 13:19
  15:18 16:22,22
  21:19 23:3,6
  34:3 35:5
  52:17 55:11,12
  56:10
wanted 14:4
  22:18 24:12
  30:22 31:14,15
wants 48:5
  52:16
warranted 9:13
Washington 1:8
  1:20

wasn't 24:21
  30:24 57:22
watering 13:18
waters 14:5
way 9:1,1 10:2
  11:18 19:8,25
  25:5 33:7
  35:22 37:23
  38:1,8,9,17
  39:9 46:2 48:2
  48:4
ways 7:16 12:17
  43:2
we'll 3:3 28:11
  57:24
we're 7:16 8:2
  13:22 21:23,25
  32:20 48:20
  55:10
we've 33:21
  42:15
Wednesday 1:9
weigh 46:17
weighing 5:4
  48:23
weighs 26:2,3
weight 16:11
  48:13,22
well-known
  11:22
weren't 23:1
Westlaw 58:5
whereabouts
  21:16 24:8
wife 14:16
win 25:15 56:3
witnesses 8:4
  41:7
women 17:1
wonder 25:24
word 41:6
words 15:10
  41:5
working 51:7
works 31:23
  46:3 51:10
  54:9

world 49:24
worry 28:11,13
  28:22
worst 3:15
wouldn't 11:4,5
  22:10 38:17
  45:10 55:4
written 35:22
  43:19,22
wrong 18:23,23
  19:21,22,25
  25:16,18
wrongful 26:12
  27:14

———————
X
———————
x 1:2,7

———————
Y
———————
Yeah 13:1
year 8:18 9:3
  11:24 20:9
  21:15,22 22:11
  22:13 24:21
  25:12 27:19
  30:4,6,6 31:16
  31:17,17 33:5
  33:6,17 37:4,5
  40:5,8 42:24
  44:19 49:20
  50:5 54:9
year's 54:12
years 8:4,15,19
  12:16 36:8
  47:22
yo-yo 55:12 56:6
York 1:15,15,17
  1:17 15:5
  29:18,24 40:20
  50:4 58:6

———————
Z
———————

———————
0
———————

———————
1
———————
1-year 40:11
10 8:15,18 12:16

10-year-old
  12:18 14:24
  44:17
10:06 1:13 3:2
11 1:9 21:12
11:09 58:13
11603(b) 20:12
117 20:13
12 4:24 9:17
  16:5 20:6,7
  23:22 28:14,22
  29:1,7 31:15
  32:9 34:21
  35:20 36:3,23
  37:2,4 39:14
  39:18,21,22
  40:3,7 42:5,16
  42:17,21,22,23
  43:10,14,16,21
  43:21 44:10,25
  45:12,13,20
  46:15 48:5
  50:7 52:18
  56:16 57:1
12-1 11:23 58:8
12-2 5:13 7:14
  18:3 22:2,4
  31:12 40:10
  54:1 56:23
  57:24
12-820 1:4 3:4
121a 20:13
13 4:22 5:21 6:2
  6:8,10,12,14
  7:15,23 9:4
  10:17,23 13:1
  13:17 14:11
  16:6 17:2,8
  21:14 28:14,22
  28:25 29:6
  31:1,11,14
  35:17,21,22
  36:23 39:16
  42:19 43:13,19
  53:2
135a 6:13,15
136-A 35:24

136a 6:14
16 24:25
18 21:24 32:10
  32:11,12,13,13
  39:12

———————
2
———————
2 30:5
20 21:14 35:21
  43:19 53:2
2005 58:5,6
2006 56:19
2013 1:9
23 2:7

———————
3
———————
3 2:4 20:13
31 4:15
34 21:25

———————
4
———————
42 2:10

———————
5
———————
5 47:22
53 2:14

———————
6
———————
6 21:14 24:7,7
6-month 5:3
67094 58:6

———————
7
———————
7 12:21

———————
8
———————
8 12:21 14:24
  15:20 45:13

———————
9
———————
9 14:24
9-year-old 15:20