IN THE SUPREME COURT OF THE UNITED STATES

- - - - - - - - - - - - - - - - - - - x

INTEGRITY STAFFING :

SOLUTIONS, INC., :

Petitioner :

v. : No. 13-433

JESSE BUSK, ET AL. :

- - - - - - - - - - - - - - - - - - - x

Washington, D.C.

Wednesday, October 8, 2014

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:03 a.m.

APPEARANCES:

PAUL D. CLEMENT, ESQ., Washington, D.C.; on behalf of Petitioner.

CURTIS E. GANNON, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of United States, as amicus curiae, supporting the Petitioner.

MARK R. THIERMAN, ESQ., Reno, Nev.; on behalf of Respondents.

C O N T E N T S

ORAL ARGUMENT OF PAGE

PAUL D. CLEMENT, ESQ.

On behalf of the Petitioner 3

ORAL ARGUMENT OF

CURTIS E. GANNON, ESQ.

On behalf of United States,

as amicus curiae, supporting the Petitioner 17

ORAL ARGUMENT OF

MARK R. THIERMAN, ESQ.

On behalf of the Respondents 27

REBUTTAL ARGUMENT OF

PAUL D. CLEMENT, ESQ.

On behalf of the Petitioner 55

P R O C E E D I N G S

(10:03 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 13-433, Integrity Staffing Solutions v. Busk.

Mr. Clement.

ORAL ARGUMENT OF PAOL D. CLEMENT

ON BEHALF OF PETITIONER

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

Going through security as part of the egress process is a classic postliminary activity that is non-compensable under the Portal-to-Portal Act. It is materially similar to the process of checking out at the end of the day or waiting in line to do so, which is a quintessential postliminary activity under the Act.

The Ninth Circuit erred in treating this time as integral and indispensable to a principal activity and Respondent's position that the time is compensable without regard to whether it is an integral or indispensable activity is more problematic still.

JUSTICE KAGAN: Mr. Clement -- excuse me -- can I give you a hypo?

Suppose that there's an employer with cash registers, and there's a very extensive process for

closing out the cash registers, and that extensive process is to protect against theft. If it weren't for that concern, you could close out a cash register much more quickly. Or the same for bank tellers or the same for casino dealers, you know, that there's, like, a 20-minute process which is essentially an antitheft security process. And it happens at the end of the shift when the cashier goes off duty.

What's the difference between that case and going through security in -- at Amazon?

MR. CLEMENT: Well, I think one difference is not -- I'm not crystal clear that that time would not be non-compensable because I think that's sort of the winding down period, which is, I think, with -- at least potentially within the ambit of preliminary and postliminary activities.

JUSTICE KAGAN: Do you know, by the way? I mean, before you get on to that, do you know how that's treated under the law? Because I guess my assumption was that this kind of period would be treated as compensable. But if that's not right, let me know.

MR. CLEMENT: Well, it's a problem with hypotheticals because I don't know that that particular case has arisen. I would think that would be actually a close question under the Act, because you do have the

notion under the Portal-to-Portal Act that preliminary activities and postliminary activities are non-compensable. And that, if you go back to Mt. Clemens, which used the term "preliminary," that included the sort of wind up process and might well include this sort of wind down process at the work station.

JUSTICE SCALIA: Couldn't you say that closing down the cash register is part of the job?

MR. CLEMENT: You could.

JUSTICE SCALIA: But getting yourself inspected as you leave -- as you leave the place of business is not part of the job. The other case where it's just part of the job.

MR. CLEMENT: You could definitely say that, Justice Scalia, and I meant to say that --

JUSTICE SCALIA: You could not only say it; it seems to me true.

MR. CLEMENT: Well, all the better, then, to say it, which is that this then becomes an easier case than that because it is part of the egress process, which is really the process of getting from your --

JUSTICE KENNEDY: But part of Justice Kagan's hypothetical was that the 20 minutes or the 30 minutes is just for antitheft purposes. Or I'll

interpret her hypothetical that way. Just for antitheft purposes. Otherwise the cashiers -- the records and so forth are turned up.

But just for antitheft protection, you need the 20 or 30 minutes. If I can interpret the hypothetical that way, then it seems to me to be the same.

MR. CLEMENT: I don't think it's the same. I think it's an arguable case under the Act that it still might be postliminary, but I think if you look at the cases that are out there, the courts have struggled a bit with the preliminary and postliminary activities that take place at the work station.

Where I don't think they've struggled until the Ninth Circuit decision here is when you're talking about time after you've left the primary work station and when you're in the process of going to the doors.

JUSTICE KAGAN: That would seem to make it depend on a compete fortuity. You know, if I -- if I have the cashier walk from the -- the -- with her tray to the manager's station and do the same thing there on the way out the door, there would be one answer, and if she does it at the cashier's station, it would be another answer. And that seems not particularly sensible.

MR. CLEMENT: Well, there are some not particularly sensible results under the Portal-to-Portal Act because things do turn on where activities take place vis-à-vis walking time. But I do think what makes this an easier case than your hypothetical is the exit screenings are a logical part of the egress process. The other side in this case tries to raise the specter of lawn mowing being uncompensated and car washing being uncompensated, but no employer requires to you take a couple of swipes at a car on your way out the door.

JUSTICE GINSBURG: Mr. Clement, is it -- is it irrelevant that we're told here that because there are not enough security checkers and because all the shifts get out at the same time, what could be a five-minute process turns out to be 25 minutes, 25 minutes of the workers' time, and 20 of those allegedly would not occur if the employer had -- provided sufficient staffing.

MR. CLEMENT: Justice Ginsburg, ultimately, we don't think that allegation is relevant here. Now, it is just an allegation. But the reason that I say that it's not relevant here is twofold. One, the one thing we know from the Portal-to-Portal Act and the pre-Portal-to-Portal Act cases is the pure length of time of something does not take it out of preliminary or

postliminary activities.

If you go back to the Jewell Ridge case and look at Justice Jackson's dissent, he makes crystal clear that the travel time at issue there was over an hour total, and nonetheless the clear import of Portal-to-Portal Act is to treat that hour as non-compensable time.

The second reason why I think this waiting time at the exit would be particularly a bad candidate for treating as compensable just because it was relatively long is because it's not uniform 25 minutes. And so it's directly analogous to the time that was -- people had to wait to go in and punch the clock at the pottery factory in Mt. Clemens.

And even the Mt. Clemens Court didn't treat the waiting time to punch in as compensable. And I think part of the reason was that it didn't really make any sense. It took eight minutes for everybody to get through, but that would create all sort of anomalies where the first person who got through would get treated -- would get paid for eight more minutes than the last person that got through.

JUSTICE SOTOMAYOR: But that's true -- I'm sorry. That's true of a workday generally. Some people have to close down the shop; others don't. So it takes

the people who are closing down the shop longer. I'm not worried about --

MR. CLEMENT: Could I stop you there, though? I think that's not really true of the compensable principal time of the workday after the Portal-to-Portal Act, which is whistle to whistle.

JUSTICE SOTOMAYOR: Yeah, but could we start -- could we start with that question?

MR. CLEMENT: Sure.

JUSTICE SOTOMAYOR: What's a principal activity? How is it defined? Because pre or post-activity to a principal activity, you still have to define what a principal activity is. And -- and so I think, isn't a principal activity work that benefits the employer in some way?

MR. CLEMENT: No, Justice Sotomayor. And I think it's important to get two concepts separate. One is work under the Fair Labor Standards Act. And for purposes of that, all you really do need is things that are required by the employer for the employer's benefit that require a minimum amount of exertion. That's the test from this Court's cases.

But principal activities is a separate and more demanding test under the Portal-to-Portal Act. And the way I'd think about the statute is the Fair Labor

Standards Act makes all work presumptively compensable. And then only when you get to something that is arguably postliminary or preliminary do you have to ask a question that involves principal activities. Because if you have compensable work and it's not even arguably preliminary or postliminary, it's compensable without regard to the Portal-to-Portal Act.

But when you get to the Portal-to-Portal Act, then you have to look, is this a preliminary and postliminary activity. And if it is, then it's presumptively noncompensable unless it's integral and indispensable to a principal activity.

JUSTICE KENNEDY: Well, let's -- let's take Justice Ginsburg's hypothetical. Let's -- let's assume that it takes 25 minutes to check out and that it would be very easy for the employer to hire a few more checkers and make it 5 minutes. Just assume that that's the fact.

Why isn't the long line in -- caused by very few checkers for the benefit of the employer? It's for the benefit of the employer to hire fewer checkers.

MR. CLEMENT: It might be for the benefit of the employer in that set of circumstances, Justice Kennedy, but that doesn't make it not postliminary activity and not compensable. And if you look at the

universe of all noncompensable time under the Portal-to-Portal Act, I think in every instance you could say if the employer only did more, he could reduce -- he or she, it could reduce that time.

And so, if you go back --

JUSTICE SCALIA: He could move his plant, for example, to be closer to the city where the employees live, right? So it takes him an hour to get to work. It's his fault that it -- that it takes them an hour instead of just 10 minutes. He should move his plant. It's just a matter of cost, right?

MR. CLEMENT: That's exactly right, Justice Scalia. And you can ticket from the commuting time to the commuting time internally if you go back to those trams in the -- in the coal mining cases. If the employer added more trams or more tram drivers, presumably, that travel time would be reduced.

JUSTICE KENNEDY: Is it -- is it always irrelevant to the analysis that it's for or not for the benefit of the employer?

MR. CLEMENT: It is irrelevant for the Portal-to-Portal Act analysis. And as I said, it's not irrelevant to the analysis at all because the fact that it is for the employer's benefit is part of what makes it compensable work presumptively or work under the Fair

Labor Standards Act.

But when you get to applying the Portal-to-Portal Act, that is activity that even though it's work, even though it's required by the employer, and even though it's for the benefit of the employer, is nonetheless noncompensable by the terms of the Portal-to-Portal Act. And if I could just continue the --

JUSTICE SOTOMAYOR: All right. That's -- that's not quite right, because if the employer requires you to put on a particular outfit that you can't do the work without, we've said that's compensable.

MR. CLEMENT: I don't think you have a case --

JUSTICE SOTOMAYOR: So -- and -- but donning generally isn't, so I'm not sure quite how you can take out that element from this analysis.

MR. CLEMENT: Justice Sotomayor, I don't think there's a case of this Court that says just because the employer requires something that would otherwise be superfluous that it therefore becomes integral and indispensable. And so I would actually take --

JUSTICE SOTOMAYOR: I agree with you. It can't be superfluous. It can't be something that's --

for the benefit of the employee. Putting on clothes to keep yourself from being splattered with a nonharmful substance is for the benefit of the employee. But --

MR. CLEMENT: But -- but take something where a particular employer has an idiosyncratic view and actually wants their employers -- employees to have a certain color smock or a certain piece of equipment that's not actually particularly integral and indispensable to anything.

I don't think anything in this Court's cases would say just because the employer required it, it is therefore compensable.

And I think if you go back to the quintessential example of something that is postliminary and noncompensable, the time clocks, the checking out process, all of that is required by the employer and for the employer's benefit.

And so I don't think you can meaningfully distinguish the exit screening from those quintessentially postliminary noncompensable things.

JUSTICE BREYER: Indispensable. Indispensable. Hardly anything is indispensable. Where -- where does that word come from?

MR. CLEMENT: Well, the word comes from this Court's decision in Steiner and it would -- it comes

from the Labor Department's --

JUSTICE BREYER: The Labor Department says -- they're here saying it's the correct test, which I think is -- well, perhaps more important, is there a close and direct relationship? Which I understand a little bit better. Isn't that labor?

MR. CLEMENT: That's their gloss on what integral and indispensable means.

JUSTICE BREYER: Oh, I see.

MR. CLEMENT: And what I -- what I would say --

JUSTICE BREYER: Well, I mean, it can't literally mean indispensable, can it? Because then anything at the end of the day, they're probably five ways of doing it. The cash registers, you can do it this way. You can do it that way. I mean --

MR. CLEMENT: Well, I -- with all due respect, Justice Breyer, I do think the test should be indispensable. And I do think there are plenty things --

JUSTICE BREYER: If I can think of a way at the end of the day that the employer could have done it by saving a little more time or something like that, then it's postliminary.

MR. CLEMENT: Well, if it's otherwise

postliminary, it doesn't come outside of that exception and become a principal activity. And I think two points to make here. One is, you know, I think the knife sharpening in King Packing, for example, really is indispensable. You can't run a butchering operation without sharp knives.

I think you can perfectly well run a warehouse facility without egress security. So I think these are different.

JUSTICE KAGAN: Actually, Amazon, I don't think you can. I mean, what makes it Amazon? It's a system of inventory control that betters everybody else in the business. And what's really important to Amazon is that it knows where every toothbrush in the warehouse is. And that's just as integral to what Amazon does and to what it requires its employees to do as, for example, the -- I'm going back to my hypos -- but the person who closes out the cash register, the person who closes out the bank teller operation, is that this is sort of a necessary part of what -- of what the -- the folks who do all the stocking and the unshelving and shelving do at Amazon.

MR. CLEMENT: Well, I guess I would beg to differ, Justice Kagan. I think, certainly, everything in the Amazon facility is barcoded and the like, and

everybody knows where everything is, but there's always the possibility that somebody not barcode an incoming item at all and put it in their pocket.

Now, if they're doing that, they're not discharging their principal activities, and if they're detected on the way out, I mean, that might help keep the next person on mission, but that doesn't make it integral and indispensable to discharging the primary job duty.

JUSTICE SCALIA: I suppose that it is also necessary to Amazon's business that it know how many hours each of its workers has worked, so it knows how much to pay them and doesn't pay them more, right? And -- and yet, there's no doubt whatever, is there, that punching in and punching out is not -- is -- is preliminary and postliminary, right?

MR. CLEMENT: I hope there's no doubt about that, Justice Scalia. And I do think that the exit security screenings are just the modern -- modern analogue of that. Not only do they both come at the employer's insistence and for the employer's benefit, but they also have this process of verifying that the employers are essentially behaving in an honest and -- and -- way.

It's the same way as trying to ensure that a

employee is not lying about having worked an eight-hour day. You use the time clocks to verify that. You also use the exit screening for that process. And the other aspect of it that makes it so closely analogous is they are a logical part of the egress process. They are part of getting you from your principal work station to the exit doors at the end of the day, classically postliminary activity.

If that's not -- if the Court is to treat that as compensable, then it's not clear what's left of the Portal-to-Portal Act. The Portal-to-Portal Act was Congress's judgment that these kind of preliminary and postliminary activities should not be compensable.

It would be perfectly rational to have a system where you compensated employees from portal to portal, and that's basically the regime that this Court created in a series of cases culminating in Mt. Clemens Pottery. But it's just as clear that Congress reversed that result in Portal-to-Portal Act.

If I could reserve the balance of my time.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Gannon.

ORAL ARGUMENT OF CURTIS E. GANNON

FOR THE UNITED STATES

AS AMICUS CURIAE, SUPPORTING PETITIONER

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

The Portal-to-Portal Act generally accepted from mandatory compensation the activities that are associated with the process by which employees arrive on the employer's premises at the entrance to portal and get to the place where they perform their principal work activities at the beginning of the day, and then the process by which they leave at the end of the day and get to the exits.

We think the security screenings here are noncompensable because they are postliminary activities, and they are not integral and indispensable to the employees' principal work activities.

JUSTICE GINSBURG: You said in your brief that there are some security searches that would be compensable. So would you tell us which ones are and which ones aren't?

MR. GANNON: Well, I think you're referring to footnote 18 of our brief, Justice Ginsburg.

JUSTICE GINSBURG: Yes.

MR. GANNON: And there we talk about the fact that the employer can't just require lots of other things to be done at the end of the day and call those things postliminary. I don't think that we have any

particular examples of searches in mind. There aren't cases that deal with compensable searches. But I think the question there would be whether the activity has so fundamentally changed the nature of what's going on that it no longer resembles the ordinary process of checking out. The reason why we think --

JUSTICE GINSBURG: You can't think of an example, then, where a security check, an exit security check, would be compensable?

MR. GANNON: Well, I think it would probably have to be a type of search that is so dramatically different, more intrusive, more time-consuming, the search itself, not just the time waiting in line, that it's fundamentally transformed the nature of the activity. So I think to the extent that some of the examples that are suggested in the briefs, like drug testing, you could analogize that in some way to an anti-theft search. One of the hypotheticals has to do with a person who works in a pharmaceutical manufacturing facility, have they taken the pharmaceuticals. The employer may want to test them on the way out.

And I'd say that drug testing is not the type of thing that is normally associated with entering and leaving the property. It's not the ordinary course

of checking in and checking out, waiting in line to do so, the types of things that the Labor Department was thinking about in 1947 when it adopted the interpretive regulation that gave those examples.

And I also think that drug testing is not the sort of thing that's classically associated with the entrances and the exits. It's the sort of thing that is usually done somewhere else. And that's different from security and safety screenings, most of which I understand Respondents concede are not actually going to be compensable.

And so we think that those are the two reasons why in this case this looks like something that is both postliminary -- it happens as part of a process of getting out, it is -- it happens at the door, at the portal or near there -- and it is not integral and indispensable. It is different from the activities that were at issue in Steiner or in King Packing or in IBP, because the employees when they are on the work floor doing their job, surely they do have access to merchandise. It is of course important to Amazon, as you pointed out, Justice Kagan, that they not take the merchandise. Amazon and Integrity Staffing want to know where the merchandise is.

But the idea that this benefits the employer

or is required by the employer isn't enough to make it compensable because, as Mr. Clement was just saying, that's the test for whether something is work. That's what was the test under Mt. Clemens, and Congress excepted from that a class of activities, preliminary and postliminary activities, that are noncompensable. Travel time and preliminary and postliminary activities like time clocks punching in and punching out, that's required by the employer. It benefits the employer. That's not enough to make it compensable.

JUSTICE KAGAN: But is the idea, then, Mr. Gannon, just -- you know, it's basically a door test? I mean, portal to portal. It might make sense just to have a door test, exits and entrances.

MR. GANNON: I think that it has -- to be more precise about it, I think that canonically most of the activities are going to be associated with the process of getting in and out. Those were the -- those were the things that were at issue in the Portal-to-Portal Act cases that Congress was effectively reversing when it adopted the Portal-to-Portal Act. And I think it's the continuous workday rule that's going to make it --it makes sure that it happens only at the beginning and the end of the day. I think that, to be more precise about it, though, the way the statute is

phrased, it talks about these being activities that occur before the principal work activities begin at the end of the day or after they cease. Something isn't preliminary if you've already started doing your principal activities and it's not postliminary if you haven't already ceased them.

So the question is whether this is itself a principal activity by virtue of being integral and indispensable and --

JUSTICE KENNEDY: Can we write this case without discussing whether or not this is for the benefit of the employer? Or do we have to address that?

MR. GANNON: Well, I think that it's always going to be for the benefit of the employer if it comes up in the context of the Portal-to-Portal Act, because we wouldn't be concerned about whether the exception --

JUSTICE KENNEDY: So you're saying that is really not at all helpful or necessary for the analysis?

MR. GANNON: I don't think it is, because that's the antecedent question about whether it would have been compensable under the FLSA. If it doesn't benefit the employer, if it's not required by the employer, it wouldn't have been work, you don't need to decide whether it's preliminary and postliminary and therefore excepted from the mandatory compensation

requirement.

JUSTICE KENNEDY: So you can -- so we assume that it's for the benefit of the employer.

MR. GANNON: Yes. I think that it almost certainly is always going to be for the benefit of the employer, just like time clocks are, just like you could say the requirement in Tennessee Coal and Jewell Mining, the mine cases, that employees were required to ride from the face -- from the portal of the mine, down to the face where they are going to be working, they were required to ride in the ore skiff -- in the ore skiff, and presumably that benefitted the employer for all sorts of reasons. They didn't have to make more room for people to walk. They didn't have to worry about employees getting injured by skiffs that were going by. And that's not enough to ensure --

JUSTICE KAGAN: Can I give you a different hypo, which is similar to some of the ones that have been floating around in a brief, but it's actually based on real life circumstances. There was a judge ages ago in the Southern District of New York who had his clerks -- all that they did was help him with his opinions and his cases and that was their principal activity, but had his clerks come early in order to cut his grapefruit and otherwise make breakfast for him. And would that be

compensable?

MR. GANNON: Well, setting aside the question of whether the law clerks were covered by the FLSA to begin with --

JUSTICE KAGAN: Yeah, yeah, yeah, yeah, yeah.

MR. GANNON: -- I take the point that that would be compensable, and I think there we're talking about a kind of activity that isn't preliminary or postliminary. We do think that those words have independent meaning. As we discuss in our brief --

JUSTICE BREYER: The one question I have for your side is this. I would -- perhaps no one else would, but I a pay a lot of attention to the Labor Department.

MR. GANNON: So do we, Justice Breyer.

JUSTICE BREYER: Yes, I understand that.

But this is a dismissal of a complaint and it seems to me normally what happens is you debate these facts on the summary judgment. I don't know if they want to introduce something else. I mean, in my own mind, I can think of five things I'd like to know about the activity and about other activities and, you know, is it more like the cash register, is it more like this or that. So shouldn't we send it back so if they wanted

to develop the record further, they can?

MR. GANNON: I think, as the facts are alleged here, we know enough to know that these activities are not --

JUSTICE BREYER: No matter what? I mean, suppose it turns out that the warehouse thing -- you look all over the country and this kind of warehouse employee, of course they have security checks and they have a special kind of security checks, other people don't have them. This is just normal that a warehouse employee does have a security check at the end of the day, and, boy, it begins to look a little bit more integral. It begins to look like part of the job, just as he has to put the books back on the shelf. He has to put the books back on the shelf and he has to get a security check.

MR. GANNON: Putting books back on the shelf, closing out the cash register, taking the cash car to the supervisor, all of those things we think are compensable. Those are not --

JUSTICE BREYER: Then what's different about this? What you do is you put it back on the shelf, you go get your security checked, and there we are.

MR. GANNON: Because those are still the activities that the employee is paying you to perform,

and so that is the job that you are doing. You're still handling the money, you're still --

JUSTICE KAGAN: I guess I just don't understand that, Mr. Gannon, because, as Justice Kennedy said, the point of my hypo was that it's not part of the job. It's actually an antitheft mechanism.

MR. GANNON: But it's part of the job because it's things that have to be done in order to -- I mean, the employer has set up the procedure in order to manage the cash. The cash has to be taken somewhere at the end of the day. When you're doing all of that --

JUSTICE KAGAN: The cash could be taken somewhere much more quickly and much more easily if the employer were not worried about the employee pocketing some of it, you know. I mean, you could just put it in a big bag, versus going through this very, very careful sort of inventory control.

MR. GANNON: I don't think the purpose is enough to distinguish. And we discuss at the end of our brief about how there are safety and security searches, that the purposes overlap a lot here, whether the employer is trying to protect its time when it requires somebody to do punching in or punching out or protect its property. I think the purpose is very difficult to make that the distinguishing factor.

But there we think that those activities are still what the employer is paying you to do. They're not -- when you're done with the cash drawer, when you've turned in the cash and then you're done, you've ceased your principal activities for the day, now you need to walk out the door. And if at the door, they want to look in your purse, we think that that doesn't transform the time it took you from being done with your job to getting off the property into being compensable any more than it would with the donning and doffing cases.

Once you had finished taking off the garb, you were done, and then if you still had to walk you weren't getting paid. In IBP, this Court held that when you were waiting in line to put on the equipment in the morning, if the employer decides that they're just a Nervous Nellie and they want you to be wearing all sort of extra security equipment that nobody really thinks is important but the employer demands that you do, and they think it benefits them, then you're going to have to get paid for the time it takes to put that on, but not the time you are waiting in line to do so.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Mr. Thierman.

ORAL ARGUMENT OF MARK R. THIERMAN

ON BEHALF OF THE RESPONDENTS

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

We agree that there are levels of analysis and the first level is, is this work; and under 785.7 of the regs this is work because it's an activity required for the benefit of the employer. Having said it's work, the question then becomes, is it a principal activity. Not whether it is integral and indispensable, but is it a principal activity, because we never get to integral and indispensable, we never get to postliminary and preliminary, if it is a standalone or a principal activity. And to answer that question --

JUSTICE ALITO: Just -- before you get to that, to understand the structure of your argument, if we were to disagree with you on the question of whether it's a principal activity that means you would lose this case? You haven't argued that this is integral and indispensable, have you?

MR. THIERMAN: The Ninth Circuit has taken the position it's integral and indispensable. We have not argued that. We have argued that the Ninth Circuit test -- there are two tests. There's --

JUSTICE ALITO: Have you abandoned that argument?

MR. THIERMAN: No, I think we've basically put the argument in a different place.

JUSTICE ALITO: Where in your brief do I find your argument on integral and indispensable?

MR. THIERMAN: We adopt the same test as the Ninth Circuit. We just say that it proves principal activity. We don't say it proves integral and indispensable. So we have the same test --

JUSTICE ALITO: So a principal activity is something that's integral and indispensable and then a postliminary activity could be compensable if it's also integral and indispensable?

MR. THIERMAN: No. A principal activity is something that the employer tells to you do for the benefit of the employer that's not carved out by one of the exceptions, the exceptions being travel under 254(a)1, checking in and checking out and --

JUSTICE SCALIA: Cutting grapefruit for the judge would be a separate principal activity.

MR. THIERMAN: It would, because the judge told to you do it.

CHIEF JUSTICE ROBERTS: Yes, but this is -- no one's principal activity is going through security screening. The employer doesn't hire somebody, I need somebody to go through employee screening. He hires

them to do something else and then the employee screening is certainly not the principal.

MR. THIERMAN: But no one hired the clerks of this Court to wear morning jackets, yet it is a requirement of the job. Would they be -- are they required to do it? Yes. If they are required to do it on site, that is you require the changing on site by the regulations, it must be compensable. You could have waiters wear uniforms if you required --

JUSTICE SCALIA: I think you hire them to wear proper attire. Of course, you do. You could hire a policeman to wear police uniforms --

MR. THIERMAN: Then you hire warehousemen not to steal merchandise.

JUSTICE SCALIA: No, that's not part of their job as a warehouseman. That isn't what they are hired for. Policemen are hired to look like policemen and act like policemen. And people who argue for the Solicitor General are hired to speak like lawyers and dress like members of the SG's office. I think that's the difference between a principal activity and something that's postliminary or preliminary.

MR. THIERMAN: Well, it depends on the view you take of their job, if you look at the tasks they are performing or do you look at their overall function.

Their overall function is to move merchandise without losing it. If they don't -- if they ship to the wrong address, if they drop it in the wrong bin and it can't be received, it's not there the next day they look for that particular item in that particular bin, then they haven't done their job. And if they steal, it's the same thing.

CHIEF JUSTICE ROBERTS: Well then, I guess I don't understand what "principal" means. You're saying everything that is related somehow to the job is principal. I would have thought principal has to do with things that are more significantly related.

You would say, typically, if somebody asked what do you do, if you were one of these people, you would say, oh, I fill orders for Amazon. I mean, it may be part of that that you go through security at the end of the day, but that doesn't make it a principal activity.

MR. THIERMAN: The term "principal" doesn't mean that it's overwhelmingly important. It means it's one of your job tasks. And just like making the grapefruit --

CHIEF JUSTICE ROBERTS: Then I don't know why don't you say "activities" rather than "principal activities"?

MR. THIERMAN: The statute uses the word "principal activity."

CHIEF JUSTICE ROBERTS: I know you say it because you want to fit under the statute, but I'm saying I don't understand. It seems to me you're just saying anything that is required for the benefit of the employer is a principal activity.

MR. THIERMAN: We are saying that anything that is required -- a person is hired to do what they are told to do. That's your job. It's not whether it exists in some kind of abstract job function or abstract flow chart. The worker isn't sitting there deciding, well, gee, is this a principal activity?

CHIEF JUSTICE ROBERTS: The workers are told: You've got to check out. It's something they are told they have to do.

MR. THEIRMAN: That's right.

CHIEF JUSTICE ROBERTS: And under your theory that would be a principal activity.

MR. THIERMAN: No. Workers are told they have to return their tools, which they have to pay for; they have to punch out or check out; and then after that, and 20 minutes after that, they have to be searched. So the idea that this is just a part of checking out is wrong, factually, in this case.

It is also wrong that when you -- for example, roll calls. Roll calls for -- are a checking in function, but yet because there's more to it than just checking in it's compensable, whereas just saying, hi, I'm here, is not compensable.

JUSTICE SCALIA: Just as the employer does not hire somebody to check in, that's not the job. I want to employ you to check in? Of course not.

So also, an employer does not hire somebody in order to be inspected when he leaves. I don't see how you can call it a principal activity.

MR. THIERMAN: If the employer --

JUSTICE SCALIA: And it's not indispensable to the taking care of the material in the warehouse. It's indispensable to -- it's important to the employer and he requires it just as he requires punching in and punching out. But that doesn't make it part of the job.

MR. THIERMAN: It's indispensable to keeping your job. If you don't go through the security --

JUSTICE SCALIA: Well, that's true, but so is punching in and punching out.

MR. THIERMAN: And there is this carveout for checking in and checking out, which we acknowledge. It is a separate, discrete function and it is a -- it is not a work of consequence, which is actually the second

part of the definition under --

JUSTICE KAGAN: The other way to look at this is that the reason why checking in and checking out is not compensable is because it does have to do with this going in and going out. You know, it's all about ingress and egress, and that's what the Portal-to-Portal Act was about. And if I make you go through a security gate as part of getting out of a factory, then it just becomes part of this -- the principal design of the Portal-to-Portal Act was about going in and going out and this is part of that.

MR. THIERMAN: But I can't have an assembly line where you start at one end and at the end of the assembly line, you're done for the day and say everything along the way since it leads to your exit is going to be a part of the egress process.

JUSTICE BREYER: What you have here which you could address in this is -- he's quite right, Mr. Clement. Steiner uses the words three or four times, the integral and indispensable, but they qualify activities that take place outside of regular work hours. I think here it's conceded that it takes place outside regular work hours, it's indeed after checkout, etcetera. So the question becomes integral and indispensable and they have gloss on that and so forth.

Okay.

So I'm in the situation probably I'd say go with the Labor Department. They are the ones who are in charge of this. And they are saying you lose. They point to something in 1951. And I have two questions. The first one is, is there anything else you want to put in besides this very detailed complaint? And the second question is, okay, why don't you lose? What am I supposed to do with that opinion? It's sitting there --

MR. THIERMAN: It's not reasoned. It doesn't --

JUSTICE BREYER: Well, that's true, but it's never seen in ad law in this area that -- okay, you can cite Skidmore et cetera. But --

MR. THIERMAN: They don't even rely on it. It's not an interpretation of the regulations. I think what happened is is the bundle --

JUSTICE BREYER: But they are telling us now.

MR. THIERMAN: They are telling us now, but I think it's bundled. The question is, do we bundle this process or do we unbundle it. We say, just like the cashier -- by the way, we represent a lot of employees who sue casinos for the fact that they punch out, go downstairs, count their bank and then tally up,

it takes 15 to 20 minutes, and then they go out a special door for casino employees, and is all that egress or is that a separate act?

JUSTICE BREYER: Well, the answer to the first question, which was yes or no, there isn't anything else you want to put in the record. You are perfectly content with our deciding this on the facts that are in the complaint?

MR. THIERMAN: I would put in the record just what I just told Justice Kagan. That is, that this is a discrete act. This is not a wait -- they punch out first. They don't punch out at the end. They don't punch out during. They punch out -- the checking in and checking out function is completely finished. They hand in their tools. They hand in, which they're paid for because that the Department of Labor says you have to be paid for, and the regulations don't -- none of the briefs talk about the 7 -- the 785 series of regulations which define work. And the 785 series define work as basically when you're under the control and doing what the employer tells to you do. And there are --

JUSTICE GINSBURG: And how do you explain that you're not compensated for the time you are on the line waiting to don your protective gear? Protective

gear, donning it itself, that's a required part of the job, and you're compensated for that. But you're not compensated for the wait to do that.

MR. THIERMAN: Because it's a way in versus a way out. You're leaving. So the continuous workday works in favor of the employee in this time. The continuous workday starts at the donning part, it ends at the doffing part. And in the Steiner case and Alvarez the doffing, the wait to doff, was covered because it was part of the continuous work day. It -- it -- so it's the mirror image of when coming in. We're not saying they should get paid for waiting on line to come in. We're saying they should get paid waiting on line to be searched. They are already checked out. It's to be searched, and drug testing is compensable. When they send to you a physical to get drug tested or a physical to do a job, that's compensable time.

CHIEF JUSTICE ROBERTS: All of this is subject to collective bargaining. In other words, you're sitting down and you say we want it to be $15 an hour and you're asking for a dollar raise and you'll say, look, one reason we should get it is because we have to wait a half hour to get out or whatever, and that's -- whether it's compensable time or not, that can certainly be a factor that goes into the collective

bargaining.

MR. THIERMAN: Well --

CHIEF JUSTICE ROBERTS: This comes out because it's after the fact. And after it's all taken place, you go back and say we should get -- what are these, double damages or --

MR. THIERMAN: Liquidated damages are discretionary, it's --

CHIEF JUSTICE ROBERTS: But going forward, they can always say, oh, we're not going -- the court says we're not going to get compensated for this time so we're going to insist on a higher amount of the hourly wage for the 8 hours that we do get compensated for.

MR. THIERMAN: Well --

JUSTICE KAGAN: Are these employees unionized?

MR. THIERMAN: These are non-union employees. They are all non-union employees.

CHIEF JUSTICE ROBERTS: Well, a lot of the employees covered by this are union employees, right?

MR. THIERMAN: Actually, the -- the Petitioner makes a big deal about this avalanche of things happening, but so far out of the 7,000 or so FLSA work -- lawsuits that are filed every -- every year, there are only five or six defendants who have ever been

hit with this in the last ten years. And no, they are mostly non-union companies.

You are talking about 3.0, and the clothes changing is a separate exception. But in fact, the reg on that says if it was required by law or the employer and it's not covered by the union contract, then it is compensable. So it is the requirement that the employer tell you to do it that, I think is the linchpin to make something a principal activity.

If the employer didn't have a mandate, if the employer says to Justice Scalia, well, I don't really care how you get here but you better show up at 8 o'clock, get here at 7:30, you can get here at 7:45. You take the risk you're going to be late. That's a different story. That's a different standard. That's the integral and indispensable.

JUSTICE SCALIA: What if the employer says I have to take a particular employer-owned trolley to get to the place where I work?

MR. THIERMAN: It's covered by a specific exception under the 254(a)(1). It's the travel. Mt. Clemens was the furthest extension of work we have. They rolled back Mt. Clemens. They rolled back a part of Tennessee Coal, which was the travel time, but when they rolled back Mt. Clemens, they only rolled back a

portion of it. They rolled back the going from the portal to your work station part of it. They didn't roll back everything that was in Mt. Clemens.

Even though it's in the briefs, I'm sure the Petitioner would not want to the de minimus rule to be eviscerated. It is a rule for their favor. That's in Mt. Clemens. There's lots of stuff in Mt. Clemens that still survives on both sides. But Mt. Clemens rolled back -- was rolled back by the Portal-to-Portal Act by the concept of you're on the property, you're in the employ. I mean, where -- Nevada has one of the -- is -- actually has that kind of sense of employment as opposed to the Federal employment, which is a much more employee -- employer directed. You do what you're told. Your day starts when your first command comes down.

Here's -- the last command is to be searched. And it doesn't take 2 minutes; it takes 20 minutes, because they don't want to open up more kiosks and -- and -- or use some kind of queueing theory and shorten the lines. That's their choice.

It's also a way of enforcing a -- a policy or a way of -- there are other ways to make sure people don't steal things. They could use cameras. They could use -- they could use a tally. They could make people stand by their bench at the end of the day and they go

through every bin. Certainly that would be compensable.

It's -- the fact is they chose this method. It's an employer's choice to do it, because it's the cheapest method to do it, to discourage employee theft. And if is the merchandise isn't there at the -- at the end of the day or the beginning of the next shift, you can't do your job. So in that sense, it is indispensable. You need that merchandise not to be stolen so you can fill your orders.

But just the command itself, unless it's a carveout, which we have a carveout for changing -- for checking in, checking out. We have a carveout for travel, community-type travel. It's work because you're told to do it and it's not an employee's position to say, gee, I don't think this is work or I don't think this is compensable. They used the example of sneaking out the back door. We don't want employees to be going, oh, well, I'm not getting paid for this, so I'm going to sneak out the back door.

Now, when it's a non-mandated -- employer non-mandated task, then we have a whole set of different rules. That's when we use integral and indispensable. Then we say: Is it necessary? Is it indispensable? Was he doing it for his own convenience or was he doing it for the employer's because he couldn't do the job

without it?

If we have a situation where we're -- we're told to do it and he doesn't do it, he's fired, I think that's -- that's ipso facto indispensable to his job, whether it makes sense or not from the employer's point of view. I mean, employers make people do all kinds of things that don't make sense.

Anyway, the fact is that there are lots of examples in the regs of things that are just not -- that are not standalone jobs that are principal activities. And if the -- if the definition of a principal activity requires it to be related to something else --

JUSTICE SOTOMAYOR: I think you -- I think you may have misspoke. There aren't standalone -- standalone jobs that are not principal activities.

MR. THIERMAN: I'm sorry. I did it backwards. There are jobs that are not standalone, that are portions of the day that are principal activities. The grapefruit would be one. You don't make grapefruit all day long for the judge. There are -- so the concept that it has to be a job in and of itself that you can have somebody else to do it is wrong.

The changing clothes, the engage to wait. If you look in the -- if you look in the legislative history and you look in the regulations, there are two

scenarios that Senator Cooper says explains everything. The first one is waiting -- is you've got to come in and oil your machine before you can do your job. That's integral and indispensable. But the second one is laying out work for other people. Now, we don't even know what that particular person's job is. For all we know, they could be the coffee maker or the -- or the gofer or whatever, but they have a task that has been assigned by their employer that they must be paid for doing, the laying out the work of other people. That's not integral and indispensable to their job. But it's a specific task. It's a principal activity. And that's -- and that's what I think the legislation contemplates.

JUSTICE ALITO: Those are all things that somebody might pay somebody to do individually. So if the -- if the law clerk didn't prepare the grapefruit, the judge might hire somebody else to come in and prepare the grapefruit. But this is different, isn't it? Because nobody would -- you wouldn't pay anybody just to come in and go through a security --

MR. THIERMAN: And nobody would pay anyone to have their changing into a uniform to be a waiter. But if you require the changing on site, it's compensable. No one --

JUSTICE ALITO: All I'm saying is that the examples you gave are -- are quite different because those are like mowing the lawn, things like that, those are things you would pay somebody. If you didn't have this employee do it, you could -- you might hire somebody else to do it.

MR. THIERMAN: The problem is waiting to receive instructions. Okay. That is clearly engaged to wait; you're waiting to receive instructions. If you aren't going to do anything with those instructions, that's not a job. You don't say if someone's a professional instruction-receiving person. That's not a job. Yet it's a principal activity. You are engaged to wait. And it doesn't matter whether you're engaged to wait because the employer wants you there on the ready for something to happen or the employer just says, you know, I feel like having the factory full on Tuesday. Maybe -- whatever the employer wants to do, assuming it's not illegal --

JUSTICE ALITO: No, I understand that, but it's -- that enables you to do the thing that the employer is paying you for. It's different from the examples that you gave.

MR. THIERMAN: It is if you're not -- if it does, in fact, lead to that. But there are employers

who say -- they're OCD, they want everyone there till 8 o'clock, even if you have nothing to do. I'm paying you to stay till 8:00 o'clock, you stay till 8:00 o'clock. There's nothing that is coming out of that, but yet you are told to stay, so you stay. And there's no -- there's no function to it. I mean, the employers do things like that or they do it for reasons that we don't know or we won't understand and we don't care because that's our system. They are allowed to run their business that way. And a corollary of that is that they tell people what to do. And, you know, the old rule in the union shop is obey and grieve. If you don't like, do it and then grieve it later.

The same thing here. It doesn't make sense what we're doing, but we're going to do it. And that's -- and, you know, maybe it's a slow day and he just wants to make his -- the employer wants to keep the people busy. Whatever it is, if the employer tells to you do it and it's not within these carveouts, it -- it is compensable.

And the drug testing is another example. The drug testing is compensable. Why? Because your freedom -- you're giving up your time. Your freedom isn't -- and you're doing it because the employer told told you to do it.

JUSTICE SCALIA: Suppose the employer has enough stations that it just takes a minute to go through. Would you still be making the argument that that's compensable?

MR. THIERMAN: If the -- if the employees go through in a minute, it's de minimis. And that's -- and that's the safety valve or the escape valve. First we decide if it's work; second we decide if it's within the postliminary and preliminary carveout; and third we decide if it's de minimis.

JUSTICE SCALIA: Gotcha. Okay. Five minutes?

MR. THIERMAN: The Ninth Circuit uses a ten-minute rule. It -- it varies. I mean, it -- it -- if it's constantly done every day for ten minutes exactly, it gets close. But three minutes, it's trivial.

But we're not talking trivial here. We're talking 20, 25 minutes. And it's 20 to 25 minutes not necessary to be done if they didn't have the screening, if they didn't have that -- that type of screening. You know, you take off your clothes, you take off your shoes, you put your jacket down, you empty your pockets. And then the metal detector goes off anyway and they take you aside and they do another screening. That's

not de minimis. That's a whole long process. If you go through the airport, we know it.

The funny thing is, you ask about the -- we do this on the way into an airport. Nobody screens you on the way out of an airport. I don't think the government very often screens people on the way out of a building. It could be an exception, I know. But -- but generally speaking, people are screened on the way in, and that's because it's not for the benefit of the employer, it's for the benefit of the public, for their security and safety.

This is not a security check. This is not patting you down for weapons or taking out nuclear secrets or anything like that. This is why -- this is only a theft deterrent mechanism. In fact, one could argue that the -- that the search itself, whether they find anything or not, has an effect on every other employee who knows it's happening. It's a --

JUSTICE BREYER: What would the rule be -- suppose there weren't a special section about clothing. Suppose that didn't exist and -- and suppose you had to change into a uniform. Would that be compensable or not?

MR. THIERMAN: Well, the way the -- the way the history --

JUSTICE BREYER: What is the history?

MR. THIERMAN: The way the history is, it says if it's necessary for the job and then they distinguish between changing on site and changing off site. So we're not talking about protective clothing. We're talking about decorative clothing. Okay? And the -- and the argument is you change once in the morning when you go to work. That you do on your own time. And if the employer says, I want you to wear a blue shirt instead of a pink shirt or a yellow shirt, he's not really adding to your burden. All he's doing is selecting your clothes for you.

JUSTICE BREYER: But if it's a uniform --

MR. THIERMAN: But if it's -- even if it's a uniform, if you could wear it to work -- and this happens with police officers. If they can wear their uniform to work and the -- and the locker room at work is just for the convenience of the officers, it's not compensable. But if they have to change on site for whatever reason -- in clean rooms they have to change on site because they need those uniforms to be pressed. In one of our cases we have involving a casino, they don't want their image diluted by seeing uniform outside --

JUSTICE BREYER: So you're saying if you didn't have that special section, this is compensable.

If it were a change of clothing, it had to take place on site.

MR. THIERMAN: Exactly.

JUSTICE BREYER: And so this isn't really different from that.

MR. THIERMAN: That's right. It's not different from that because they're telling you you have to stay on site.

JUSTICE BREYER: You're on site and it's no -- it's the same kind of burden that you might have to have protective clothes or some kind of special thing that you change into on site.

MR. THIERMAN: Right. They -- the employer requires it for the employer's convenience and it doesn't fall in the travel exception. It's not checking in and checking out because, as I've said, the checking in and checking out, first of all, is a very, very minor task.

JUSTICE BREYER: What's the example that you you found that's the closest to this that favors you?

MR. THIERMAN: Drug testing.

JUSTICE BREYER: Hmm?

MR. THIERMAN: Drug testing.

JUSTICE BREYER: Drug testing.

MR. THIERMAN: Because drug testing you can

do on the way out or you can do it on the -- on the way in or -- and -- and if they want to test you on the way out because they want you to go -- I mean, there are ways of defeating a drug test by taking other chemicals. So they escort you to the bathroom, they make somebody sit there and watch you while you -- while you -- while you give them a sample and then they go test it, and they won't let you leave until you're done testing it -- until they're done testing it and they have a result. That's a close example. And yet --

JUSTICE BREYER: I mean, is that well established?

MR. THIERMAN: There's DOL memo of 1997, September 15, and it says drug testing is compensable. Physical exams for truck drivers and other types of people are compensable. Fueling the truck when you're done with your trip is compensable.

JUSTICE SCALIA: Is waiting to put on protective gear compensable?

MR. THIERMAN: Waiting to put on, no; waiting to put off, yes.

JUSTICE SCALIA: Say it -- say it again?

MR. THIERMAN: Waiting to put on, no.

JUSTICE SCALIA: No.

MR. THIERMAN: Waiting to put off, yes.

See, we're -- we're dealing with a continuous workday rule and we're on the other end of it. Most of the cases everyone is talking about are preliminary to work. We're talking postliminary if -- or principal activity. And on the way out, it's the continuous workday rule works in favor of the employee. On the way in, it works in favor of the employer because the clock hasn't started. Anyway --

JUSTICE SOTOMAYOR: All of the examples you've just been giving and what you say the rules are --

MR. THIERMAN: Yes.

JUSTICE SOTOMAYOR: -- are they part of the labor regulations?

MR. THIERMAN: Yes. They're -- they're --

JUSTICE SOTOMAYOR: So I can find them?

MR. THIERMAN: Yes. They're in -- they're in the -- what the -- what the government and Petitioner don't discuss is the 785 series. The 785 series is what's work. The 785 series says that if you are required to take a -- a seminar, even if it's nothing to do with what you -- what you are employed to do, it's compensable.

If it's a voluntary seminar, then it -- then there's a -- a kind of a test. Well, is it related to

your work, not related to your work, is it going to advance your work or not advance it. But if it's totally unrelated to your work, but you're required to take the seminar, whether it's after hours or right after class -- or right after the work, it's compensable. There are a whole series of --

JUSTICE SCALIA: Unless it's covered by the Portal-to-Portal Act. And the Portal-to- Portal Act is an exception to that.

MR. THIERMAN: No. The regulations point blank say it's covered. There's no Portal-to-Portal Act argument on those regulations.

JUSTICE SCALIA: The notion that if it is compensable work it's covered, there is an exception to -- there's an exception to what the employer requires. He can require some things and yet not be liable for, under -- under the Act, to pay for those things. That's what the Portal-to-Portal Act is about.

MR. THIERMAN: The -- and we say those exceptions that he's not required to pay for or the transportation to and from the mine, which is (1)(a) -- or (a)(1) of the Portal -- 254(a)(1), and then you don't get to (a)(2) if it's a -- if it's a principal activity. And the regulations on attending seminars does not discuss any exemption about way in or way out. It

simply says that if the employer mandates you take a seminar, no matter what it's on, they have to pay you for the time.

So there's no Portal-to-Portal Act issue if it's a principal activity. And what the regulations of 78 -- 785 say, these are lists of things that are compensable because the employer told you to do it. And it's -- whether it's fueling the truck at the end of the day -- you don't need to have the truck fueled at the end of the day because you're already done driving, so it's not integral and indispensable to anything. Those are the kind of things that the Portal-to-Portal Act doesn't cover because they're principal activities.

I -- I could -- I could -- sexual harassment training, another one. We require employees to go through sexual harassment training. Is that a part of their job? It's a task. It's required of them.

JUSTICE BREYER: What about checkout?

MR. THIERMAN: Checking out meaning?

JUSTICE BREYER: Well, they say this is like checkout. You go -- you go check out, put your time card in, check out.

MR. THIERMAN: Yes. That is, punching in, punching out is an exception. Checking in and checking out is an exception.

JUSTICE BREYER: Why? What's the theory? I mean, what's the theory?

MR. THIERMAN: Well, the theory, I think -- I -- I think that in 1947, that's what they -- they thought it was such a -- I don't want to use the word "de minimis" because it has whole other meaning, but it's --

JUSTICE BREYER: But they're thinking -- see, the other side says, well, this is like checking out, you know.

MR. THIERMAN: But it's not. And that's -- and isn't that a factual question for a jury? But it's not. It's not like checking out because they've already checked out and you don't check out twice. I mean, you don't. You don't check out twice. And the difference between checking in -- because, like, I don't have a checkout example -- but the difference in checking in and a roll call -- and -- and you must get paid for roll calls -- is that the employer tells you to be there at a certain time and do this thing where -- and that's compensable. But if a -- so if you guild or if you put the one straw on top of the checking out, you break the camel. And -- and it's a very, very small exception, because generally speaking, we want people not to work off the clock, because this is what this case is all

about. It's about --

CHIEF JUSTICE ROBERTS: Thank you. Thank you, counsel.

MR. THIERMAN: -- working off the clock.

Thank you, Your Honors.

CHIEF JUSTICE ROBERTS: Mr. Clement you have four minutes.

REBUTTAL ARGUMENT OF PAUL D. CLEMENT

ON BEHALF OF THE PETITIONER

MR. CLEMENT: Thank you, Mr. Chief Justice. Just a few points in rebuttal.

I'd like to start with what is the linchpin of principal activities. Principal activities is obviously a term introduced to the Act by the Portal-to-Portal Act. The regulations define that as work of consequence. Now, my friend would like you to say that the linchpin is whether it's required. Here's why that makes no sense at all. Whether you get into the Fair Labor Standards Act in the first instance is determined by whether it's required. Now, it doesn't much -- do much good for Congress to say, don't worry about that, employers. We have an exception for you. But the exception is also never satisfied as long as it's required. That would give the exception no --

JUSTICE BREYER: That isn't really, I think,

their main point. I think this is -- this isn't really like they say, just checking out. What it is more like is drug testing. You heard the argument. Drug testing --

MR. CLEMENT: I heard their argument.

JUSTICE BREYER: -- a seminar that you'd have on the thing about sexual harassment, da, da, da. Okay. So what is your response?

MR. CLEMENT: Especially as my friend describes drug testing, it doesn't sound like any logical part of the egress process. And I think that's why those things are not covered. They're not covered not because --

JUSTICE KAGAN: But you, certainly, Mr. Clement, make it part of the egress process. I mean, if this is just ingress/egress and I -- I -- seems as though that's part of what the Portal-to-Portal Act does. Why not make it part of the egress process and then there would be a wholly different outcome; is that right?

MR. CLEMENT: Well, no, I don't think so. I think at some point, the Court can obviously take -- police employers that want to lard on things that have nothing to do with the egress process and say you've got a wash my car on the way out. And as he describes the

drug testing process, you're actually diverted from your process of exiting. You're escorted -- escorted to -- to the restroom and monitored while you do it. It doesn't sound anything like an egress process.

And those activities are covered not because they are postliminary activities that are integral and indispensable. Those activities are covered because they're work under the FLSA and the portal-to-portal exceptions for postliminary and preliminary activity simply don't apply. And that covers car washing; it covers drug testing; it covers also these videos. It really is quite different. But the checkout process, which is part of the egress process, really does make this very close.

One other point of clarification on this, Justice Scalia, you were exactly right when you said the 785 series, which they want to rely on, are about hours worked under the Fair Labor Standards Act. They say what's in the universe of things that are potentially subject to the exceptions of the Portal-to-Portal Act.

The principal activities is defined in the regulations in the 790 series, which is all about the Portal-to-Portal Act and 790.A is helpfully entitled principal activities. What are principal activities? Not anything that the employer requires, but work of

consequence and that gets you to this concept that work of consequence is things like cutting grapefruit or preparing every work station in the facility or driving the bus that gets people to the mine. Work of consequence is not checking in and checking out. It is not going through security. Nobody gets paid to go through security all day. Now, it also -- nobody gets paid take a bath all day either. And so that's why -- that's not a complete test. You still have to ask the final question, which is whether it's integral and indispensable to the principal activities.

Now, my friends really don't want to talk about that, I think, with good reason because this clearly is not integral and indispensable. And I don't think you can make not stealing indispensable to the workday; otherwise, all these employees could stay home away from the -- the merchandise and they'd never steal a thing and that would be their work function. It just doesn't work. The work function is to fulfill the orders.

I want to say one last thing about your opening hypothetical, Justice Kagan. There is another difference between your hypothetical and this situation, which at least as I understood your hypothetical, if an employee has to stay at their work station and while a

20-minute process goes on, that's the employer requiring them to be on the premises for an extra 20 minutes. That's much more like being engaged to wait than waiting to engage.

JUSTICE KAGAN: I gave it to you two ways. And one was at your work station and the other was an employer, who knowing that there was this ingress/egress rule, made it part of the ingress/egress process. So that's my other question repeated again.

MR. CLEMENT: But -- but even as to the modified hypothetical, if you have to stay on the employer's premises for an extra 20 minutes, that's closer to being engaged to wait as opposed to waiting to engage. The allegations here are not that this process takes 25 minutes. It can take up to 25 minutes if you're in the very back of the line. And I think one of the many reasons not to adopt their rule is you don't want to create an incentive for every employee to try to get to the back of the line, which is hardly going to speed things up.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

The case is submitted.

(Whereupon, at 11:05 a.m., the case in the above-entitled matter was submitted.)

A

$15 37:20
a.m 1:14 3:2 59:23
abandoned 28:24
above-entitled 1:12 59:24
abstract 32:11 32:11
accepted 18:3
access 20:20
acknowledge 33:23
act 3:13,16 4:25 5:1 6:9 7:3,23 7:24 8:6 9:6,18 9:24 10:1,7,9 11:2,22 12:1,3 12:7 17:11,11 17:19 18:3 21:20,21 22:15 30:18 34:7,10 36:3,11 40:9 52:8,8,11,17 52:18 53:4,12 55:14,15,19 56:17 57:18,20 57:23
activities 4:16 5:2,2 6:12 7:3 8:1 9:23 10:4 16:5 17:13 18:4,8,12,14 20:17 21:5,6,7 21:17 22:1,2,5 24:23 25:4,25 27:1,5 31:24 31:25 34:21 42:10,15,18 53:13 55:13,13 57:5,6,7,21,24 57:24 58:11
activity 3:12,16 3:19,21 9:11 9:12,13,14 10:10,12,25 12:3 15:2 17:8 19:3,15 22:8 23:23 24:9,23 28:6,8,10,13 28:17 29:7,9 29:11,13,19,23 30:21 31:18 32:2,7,13,19 33:11 39:9 42:11 43:12 44:13 51:4 52:23 53:5 57:9
ad 35:13
added 11:16
adding 48:11
address 22:12 31:3 34:18
adopt 29:5 59:17
adopted 20:3 21:21
advance 52:2,2
ages 23:20
ago 23:20
agree 12:24 28:4
airport 47:2,4,5
AL 1:7
ALITO 28:14 28:24 29:3,9 43:15 44:1,20
allegation 7:20 7:21
allegations 59:14
alleged 25:3
allegedly 7:16
allowed 45:9
Alvarez 37:9
Amazon 4:10 15:10,11,13,15 15:22,25 20:21 20:23 31:15
Amazon's 16:11
ambit 4:15
amicus 1:20 2:8 17:25
amount 9:21 38:12
analogize 19:17
analogous 8:12 17:4
analogue 16:20
analysis 11:19 11:22,23 12:17 22:18 28:4
anomalies 8:19
answer 6:22,24 28:13 36:4
antecedent 22:20
anti-theft 19:18
antitheft 4:6 5:25 6:1,4 26:6
anybody 43:20
anyway 42:8 46:24 51:8
APPEARAN... 1:15
apply 57:10
applying 12:2
area 35:13
arguable 6:9
arguably 10:2,5
argue 30:18 47:16
argued 28:18,22 28:22
argument 1:13 2:2,5,9,12 3:3 3:7 17:23 27:25 28:15,25 29:2,4 46:3 48:7 52:12 55:8 56:3,5
arisen 4:24
arrive 18:5
aside 24:2 46:25
asked 31:13
asking 37:21
aspect 17:4
assembly 34:12 34:14
assigned 43:9
Assistant 1:18
associated 18:5 19:24 20:6 21:17
assume 10:14,17 23:2
assuming 44:18
assumption 4:19
attending 52:24
attention 24:14
attire 30:11
avalanche 38:22

B

back 5:3 8:2 11:5,14 13:13 15:17 24:25 25:14,15,17,22 38:5 39:23,23 39:25,25 40:1 40:3,9,9 41:17 41:19 59:16,19
backwards 42:17
bad 8:9
bag 26:16
balance 17:20
bank 4:4 15:19 35:25
barcode 16:2
barcoded 15:25
bargaining 37:19 38:1
based 23:19
basically 17:16 21:12 29:1 36:20
bath 58:8
bathroom 50:5
beg 15:23
beginning 18:8 21:24 41:6
begins 25:12,13
behalf 1:16,20 1:22 2:4,7,11 2:14 3:8 28:1 55:9
behaving 16:23
bench 40:25
benefit 9:20 10:20,21,22 11:20,24 12:5 13:1,3,17 16:21 22:12,14 22:22 23:3,5 28:7 29:15 32:6 47:9,10
benefits 9:14 20:25 21:9 27:20
benefitted 23:12
better 5:19 14:6 39:12
betters 15:12
big 26:16 38:22
bin 31:3,5 41:1
bit 6:12 14:6 25:12
blank 52:11
blue 48:10
books 25:14,15 25:17
boy 25:12
break 54:22
breakfast 23:25
Breyer 13:21 14:2,9,12,18 14:21 24:12,16 24:17 25:5,21 34:17 35:12,18 36:4 47:19 48:1,13,24 49:4,9,19,22 49:24 50:11 53:18,20 54:1 54:8 55:25 56:6
brief 18:15,20 23:19 24:11 26:20 29:3
briefs 19:16 36:18 40:4
building 47:7

bundle 35:17,21
bundled 35:21
burden 48:11 49:10
bus 58:4
business 5:13 15:13 16:11 45:10
Busk 1:7 3:5
busy 45:18
butchering 15:5

C

C 2:1 3:1
call 18:24 33:11 54:18
calls 33:2,2 54:19
camel 54:23
cameras 40:23
candidate 8:9
canonically 21:16
car 7:8,10 25:19 56:25 57:10
card 53:22
care 33:14 39:12 45:8
careful 26:16
carved 29:15
carveout 33:22 41:11,11,12 46:9
carveouts 45:19
case 3:4 4:9,24 5:13,20 6:9 7:5 7:7 8:2 12:14 12:19 20:13 22:10 28:18 32:25 37:8 54:25 59:22,23
cases 6:11 7:24 9:22 11:15 13:10 17:17 19:2 21:20 23:8,23 27:11 48:22 51:3
cash 3:24 4:1,3 5:9 14:15 15:18 24:24 25:18,18 26:10 26:10,12 27:3 27:4
cashier 4:8 6:20 35:23
cashier's 6:23
cashiers 6:2
casino 4:5 36:2 48:22
casinos 35:24
caused 10:19
cease 22:3
ceased 22:6 27:5
certain 13:7,7 54:20
certainly 15:24 23:5 30:2 37:25 41:1 56:14
cetera 35:14
change 47:22 48:7,19,20 49:1,12
changed 19:4
changing 30:7 39:4 41:11 42:23 43:23,24 48:4,4
charge 35:4
chart 32:12
cheapest 41:4
check 10:15 19:8,9 25:11 25:16 32:15,22 33:7,8 47:12 53:21,22 54:14 54:15
checked 25:23 37:14 54:14
checkers 7:13 10:17,20,21
checking 3:14 13:15 19:5 20:1,1 29:17 29:17 32:25 33:2,4,23,23 34:3,3 36:13 36:14 41:12,12 49:15,16,16,17 53:19,24,24 54:9,13,16,17 54:22 56:2 58:5,5
checkout 34:23 53:18,21 54:17 57:12
checks 25:8,9
chemicals 50:4
Chief 3:3,9 17:21 18:1 27:23 28:2 29:22 31:8,23 32:3,14,18 37:18 38:3,9 38:19 55:2,6 55:10 59:21
choice 40:20 41:3
chose 41:2
Circuit 3:17 6:15 28:20,22 29:6 46:13
circumstances 10:23 23:20
cite 35:14
city 11:7
clarification 57:15
class 21:5 52:5
classic 3:12
classically 17:7 20:6
clean 48:20
clear 4:12 8:4,5 17:10,18
clearly 44:8 58:14
Clemens 5:4 8:14,15 17:17 21:4 39:22,23 39:25 40:3,7,7 40:8
Clement 1:16 2:3,13 3:6,7,9 3:22 4:11,22 5:10,15,19 6:8 7:1,11,19 9:3,9 9:16 10:22 11:12,21 12:13 12:18 13:4,24 14:7,10,17,25 15:23 16:17 21:2 34:19 55:6,8,10 56:5 56:9,15,21 59:10
clerk 43:17
clerks 23:21,24 24:3 30:3
clock 8:13 51:7 54:25 55:4
clocks 13:15 17:2 21:8 23:6
close 4:3,25 8:25 14:5 46:16 50:10 57:14
closely 17:4
closer 11:7 59:13
closes 15:18,18
closest 49:20
closing 4:1 5:9 9:1 25:18
clothes 13:1 39:3 42:23 46:22 48:12 49:11
clothing 47:20 48:5,6 49:1
coal 11:15 23:7 39:24
coffee 43:7
collective 37:19 37:25
color 13:7
come 13:23 15:1 16:20 23:24 37:13 43:2,18 43:21
comes 13:24,25 22:14 38:3 40:15
coming 37:11 45:4
command 40:15 40:16 41:10
community-ty... 41:13
commuting 11:13,14
companies 39:2
compensable 3:20 4:21 8:10 8:16 9:5 10:1,5 10:6,25 11:25 12:12 13:12 17:10,13 18:17 19:2,9 20:11 21:2,10 22:21 24:1,8 25:20 27:9 29:11 30:8 33:4,5 34:4 37:15,17 37:24 39:7 41:1,16 43:25 45:20,22 46:4 47:22 48:19,25 50:14,16,17,19 51:23 52:6,14 53:7 54:21
compensated 17:15 36:24 37:2,3 38:11 38:13
compensation 18:4 22:25
compete 6:19
complaint 24:18 35:7 36:8
complete 58:9
completely 36:14
concede 20:10
conceded 34:22
concept 40:10

42:20 58:1
concepts 9:17
concern 4:3
concerned 22:16
Congress 17:18 21:4,20 55:21
Congress's 17:12
consequence 33:25 55:16 58:1,2,5
constantly 46:15
contemplates 43:14
content 36:7
context 22:15
continue 12:7
continuous 21:22 37:5,7 37:10 51:1,5
contract 39:6
control 15:12 26:17 36:20
convenience 41:24 48:18 49:14
Cooper 43:1
corollary 45:10
correct 14:3
cost 11:11
counsel 17:21 27:23 55:3 59:21
count 35:25
country 25:7
couple 7:10
course 19:25 20:21 25:8 30:11 33:8
court 1:1,13 3:10 8:15 12:19 17:9,16 18:2 27:14 28:3 30:4 38:10 56:22
Court's 9:22 13:10,25
courts 6:11
cover 53:13
covered 24:3 37:9 38:20 39:6,20 52:7 52:11,14 56:12 56:12 57:5,7
covers 57:10,11 57:11
create 8:19 59:18
created 17:17
crystal 4:12 8:3
culminating 17:17
curiae 1:20 2:8 17:25
CURTIS 1:18 2:6 17:23
cut 23:24
cutting 29:18 58:2

D

D 1:16 2:3,13 3:1,7 55:8
D.C 1:9,16,19
da 56:7,7,7
damages 38:6,7
day 3:15 14:14 14:22 17:2,7 18:8,9,24 21:24 22:3 25:12 26:11 27:5 31:4,17 34:14 37:10 40:15,25 41:6 42:18,20 45:16 46:15 53:9,10 58:7,8
de 40:5 46:6,10 47:1 54:6
deal 19:2 38:22
dealers 4:5
dealing 51:1
debate 24:19
decide 22:24 46:8,8,10
decides 27:16
deciding 32:12 36:7
decision 6:15 13:25
decorative 48:6
defeating 50:4
defendants 38:25
define 9:13 36:19,20 55:15
defined 9:11 57:21
definitely 5:15
definition 34:1 42:11
demanding 9:24
demands 27:19
Department 1:19 14:2 20:2 24:15 35:3 36:16
Department's 14:1
depend 6:19
depends 30:23
describes 56:10 56:25
design 34:9
detailed 35:7
detected 16:6
detector 46:24
determined 55:20
deterrent 47:15
develop 25:1
differ 15:24
difference 4:9 4:11 30:21 54:15,17 58:23
different 15:9 19:12 20:8,17 23:17 25:21 29:2 39:15,15 41:21 43:19 44:2,22 49:5,7 56:19 57:12
difficult 26:24
diluted 48:23
direct 14:5
directed 40:14
directly 8:12
disagree 28:16
discharging 16:5,8
discourage 41:4
discrete 33:24 36:11
discretionary 38:8
discuss 24:11 26:19 51:19 52:25
discussing 22:11
dismissal 24:18
dissent 8:3
distinguish 13:19 26:19 48:4
distinguishing 26:25
District 23:21
diverted 57:1
doff 37:9
doffing 27:10 37:8,9
doing 14:15 16:4 20:20 22:4 26:1,11 36:21 41:24,24 43:10 45:15,24 48:11
DOL 50:13
dollar 37:21
don 36:25
donning 12:15 27:10 37:1,7
door 6:22 7:10 20:15 21:12,14 27:6,6 36:2 41:17,19
doors 6:17 17:7
double 38:6
doubt 16:14,17
downstairs 35:25
dramatically 19:11
drawer 27:3
dress 30:20
drivers 11:16 50:15
driving 53:10 58:3
drop 31:3
drug 19:16,23 20:5 37:15,16 45:21,22 49:21 49:23,24,25 50:4,14 56:3,3 56:10 57:1,11
due 14:17
duty 4:8 16:9

E

E 1:18 2:1,6 3:1 3:1 17:23
early 23:24
easier 5:20 7:5
easily 26:13
easy 10:16
effect 47:17
effectively 21:20
egress 3:11 5:21 7:6 15:8 17:5 34:6,16 36:3 56:11,15,18,24 57:4,13
eight 8:18,21
eight-hour 17:1
either 58:8
element 12:17
employ 33:8 40:11
employed 51:22
employee 13:1,3 17:1 25:8,11 25:25 26:14 29:25 30:1 37:6 40:14 41:4 44:5

47:18 51:6 58:25 59:18
employee's 41:14
employees 11:8 13:6 15:16 17:15 18:5,14 20:19 23:8,15 35:24 36:2 38:15,18,18,20 38:20 41:17 46:5 53:15 58:16
employer 3:24 7:9,17 9:15,20 10:16,20,21,23 11:3,16,20 12:4,5,10,20 13:5,11,16 14:22 18:23 19:21 20:25 21:1,9,9 22:12 22:14,22,23 23:3,6,12 26:9 26:14,22 27:2 27:16,19 28:7 29:14,15,24 32:7 33:6,9,12 33:15 36:21 39:5,7,10,11 39:17 40:14 41:20 43:9 44:15,16,18,22 45:17,18,24 46:1 47:10 48:9 49:13 51:7 52:15 53:1,7 54:19 57:25 59:1,7
employer's 9:20 11:24 13:17 16:21,21 18:6 41:3,25 42:5 49:14 59:12
employer-own... 39:18
employers 13:6 16:23 42:6 44:25 45:6 55:22 56:23
employment 40:12,13
empty 46:23
enables 44:21
ends 37:7
enforcing 40:21
engage 42:23 59:4,14
engaged 44:8,13 44:14 59:3,13
ensure 16:25 23:16
entering 19:24
entitled 57:23
entrance 18:6
entrances 20:7 21:14
equipment 13:7 27:15,18
erred 3:17
escape 46:7
escort 50:5
escorted 57:2,2
Especially 56:9
ESQ 1:16,18,22 2:3,6,10,13
essentially 4:6 16:23
established 50:12
et 1:7 35:14
etcetera 34:24
everybody 8:18 15:12 16:1
eviscerated 40:6
exactly 11:12 46:16 49:3 57:16
example 11:7 13:14 15:4,16 19:8 33:2 41:16 45:21 49:19 50:10 54:17
examples 19:1 19:16 20:4 42:9 44:2,23 51:9
exams 50:15
excepted 21:5 22:25
exception 15:1 22:16 39:4,21 47:7 49:15 52:9,14,15 53:24,25 54:23 55:22,23,24
exceptions 29:16 29:16 52:20 57:9,20
excuse 3:22
exemption 52:25
exertion 9:21
exist 47:21
exists 32:11
exit 7:5 8:9 13:19 16:18 17:3,7 19:8 34:15
exiting 57:2
exits 18:10 20:7 21:14
explain 36:23
explains 43:1
extension 39:22
extensive 3:25 4:1
extent 19:15
extra 27:18 59:2 59:12

F

face 23:9,10
facility 15:8,25 19:20 58:3
fact 10:18 11:23 18:23 35:24 38:4 39:4 41:2 42:8 44:25 47:15
facto 42:4
factor 26:25 37:25
factory 8:14 34:8 44:17
facts 24:20 25:2 36:7
factual 54:12
factually 32:25
Fair 9:18,25 11:25 55:19 57:18
fall 49:15
far 38:23
fault 11:9
favor 37:6 40:6 51:6,7
favors 49:20
Federal 40:13
feel 44:17
fewer 10:21
filed 38:24
fill 31:15 41:9
final 58:10
find 29:4 47:17 51:16
finished 27:12 36:14
fired 42:3
first 3:4 8:20 28:5 35:6 36:5 36:12 40:15 43:2 46:7 49:17 55:19
fit 32:4
five 14:14 24:22 38:25 46:11
five-minute 7:15
floating 23:19
floor 20:19
flow 32:12
FLSA 22:21 24:4 38:23 57:8
folks 15:20
footnote 18:20
forth 6:3 34:25
fortuity 6:19
forward 38:9
found 49:20
four 34:19 55:7
freedom 45:23 45:23
friend 55:16 56:9
friends 58:12
fueled 53:9
fueling 50:16 53:8
fulfill 58:19
full 44:17
function 30:25 31:1 32:11 33:3,24 36:14 45:6 58:18,19
fundamentally 19:4,14
funny 47:3
further 25:1
furthest 39:22

G

G 3:1
Gannon 1:18 2:6 17:22,23 18:1,19,22 19:10 21:12,15 22:13,19 23:4 24:2,7,16 25:2 25:17,24 26:4 26:7,18
garb 27:12
gate 34:8
gear 36:25 37:1 50:19
gee 32:13 41:15
General 1:19 30:19
generally 8:24 12:16 18:3 47:8 54:24
getting 5:11,22 17:6 20:15 21:18 23:15 27:9,14 34:8

41:18
Ginsburg 7:11 7:19 18:15,20 18:21 19:7 36:23
Ginsburg's 10:14
give 3:23 23:17 50:7 55:24
giving 45:23 51:10
gloss 14:7 34:25
go 5:3 8:2,13 11:5,14 13:13 25:23 29:25 31:16 33:19 34:7 35:2,25 36:1 38:5 40:25 43:21 46:2,5 47:1 48:8 50:3,7 53:15,21,21 58:6
goes 4:8 37:25 46:24 59:1
gofer 43:8
going 3:11 4:10 6:17 15:17 19:4 20:10 21:17,22 22:14 23:5,10,15 26:16 27:20 29:23 34:5,5 34:10,10,16 38:9,10,11,12 39:14 40:1 41:17,18 44:10 45:15 52:1 58:6 59:19
good 55:21 58:13
Gotcha 46:11
government 47:6 51:18
grapefruit 23:24 29:18 31:22 42:19,19 43:17 43:19 58:2
grieve 45:12,13
guess 4:19 15:23 26:3 31:8
guild 54:21

H

half 37:23
hand 36:15,15
handling 26:2
happen 44:16
happened 35:17
happening 38:23 47:18
happens 4:7 20:14,15 21:23 24:19 48:16
harassment 53:14,16 56:7
hear 3:3
heard 56:3,5
held 27:14
help 16:6 23:22
helpful 22:18
helpfully 57:23
hi 33:5
higher 38:12
hire 10:16,21 29:24 30:10,11 30:13 33:7,9 43:18 44:5
hired 30:3,17,17 30:19 32:9
hires 29:25
history 42:25 47:25 48:1,2
hit 39:1
Hmm 49:22
home 58:16
honest 16:23
Honors 55:5
hope 16:17
hour 8:5,6 11:8 11:10 37:21,23
hourly 38:12
hours 16:12 34:22,23 38:13 52:4 57:17
hypo 3:23 23:18 26:5
hypos 15:17
hypothetical 5:24 6:1,6 7:5 10:14 58:22,23 58:24 59:11
hypotheticals 4:23 19:18

I

IBP 20:18 27:14
idea 20:25 21:11 32:24
idiosyncratic 13:5
illegal 44:19
image 37:11 48:23
import 8:5
important 9:17 14:4 15:13 20:21 27:19 31:20 33:15
incentive 59:18
include 5:6
included 5:5
incoming 16:2
independent 24:11
indispensable 3:18,21 10:12 12:22 13:9,21 13:22,22 14:8 14:13,19 15:5 16:8 18:13 20:17 22:9 28:9,11,19,21 29:4,8,10,12 33:13,15,18 34:20,25 39:16 41:8,22,23 42:4 43:4,11 53:11 57:7 58:11,14,15
individually 43:16
ingress 34:6
ingress/egress 56:16 59:7,8
injured 23:15
insist 38:12
insistence 16:21
inspected 5:12 33:10
instance 11:2 55:19
instruction-re... 44:12
instructions 44:8,9,10
integral 3:18,20 10:11 12:22 13:8 14:8 15:15 16:8 18:13 20:16 22:8 25:13 28:9,10,18,21 29:4,7,10,12 34:20,24 39:16 41:22 43:4,11 53:11 57:6 58:10,14
Integrity 1:3 3:4 20:23
internally 11:14
interpret 6:1,5
interpretation 35:16
interpretive 20:3
introduce 24:21
introduced 55:14
intrusive 19:12
inventory 15:12 26:17
involves 10:4
involving 48:22
ipso 42:4
irrelevant 7:12 11:19,21,23
issue 8:4 20:18 21:19 53:4
item 16:3 31:5

J

jacket 46:23
jackets 30:4
Jackson's 8:3
JESSE 1:7
Jewell 8:2 23:7
job 5:9,13,14 16:9 20:20 25:13 26:1,6,7 27:9 30:5,16 30:24 31:6,10 31:21 32:10,11 33:7,17,19 37:2,17 41:7 41:25 42:4,21 43:3,6,11 44:11,13 48:3 53:17
jobs 42:10,15,17
judge 23:20 29:19,20 42:20 43:18
judgment 17:12 24:20
jury 54:12
Justice 1:19 3:3 3:9,22 4:17 5:8 5:11,16,17,23 5:23 6:18 7:11 7:19 8:3,23 9:7 9:10,16 10:13 10:14,23 11:6 11:12,18 12:9 12:15,18,24 13:21 14:2,9 14:12,18,21 15:10,24 16:10 16:18 17:21 18:1,15,20,21 19:7 20:22 21:11 22:10,17 23:2,17 24:5 24:12,16,17 25:5,21 26:3,4

26:12 27:23 28:2,14,24 29:3,9,18,22 30:10,15 31:8 31:23 32:3,14 32:18 33:6,13 33:20 34:2,17 35:12,18 36:4 36:10,23 37:18 38:3,9,15,19 39:11,17 42:13 43:15 44:1,20 46:1,11 47:19 48:1,13,24 49:4,9,19,22 49:24 50:11,18 50:22,24 51:9 51:13,16 52:7 52:13 53:18,20 54:1,8 55:2,6 55:10,25 56:6 56:14 57:16 58:22 59:5,21

K

Kagan 3:22 4:17 6:18 15:10,24 20:22 21:11 23:17 24:5 26:3,12 34:2 36:10 38:15 56:14 58:22 59:5
Kagan's 5:24
keep 13:2 16:6 45:17
keeping 33:18
Kennedy 5:23 10:13,24 11:18 22:10,17 23:2 26:4
kind 4:20 17:12 24:9 25:7,9 32:11 40:12,19 49:10,11 51:25 53:12
kinds 42:6
King 15:4 20:18
kiosks 40:19
knife 15:3
knives 15:6
know 4:5,17,18 4:21,23 6:19 7:23 15:3 16:11 20:23 21:12 24:20,22 24:23 25:3,3 26:15 31:23 32:3 34:5 43:6 43:7 44:17 45:8,11,16 46:22 47:2,7 54:10
knowing 59:7
knows 15:14 16:1,12 47:18

L

labor 9:18,25 12:1 14:1,2,6 20:2 24:14 35:3 36:16 51:14 55:19 57:18
lard 56:23
late 39:14
law 4:19 24:3 35:13 39:5 43:17
lawn 7:8 44:3
lawsuits 38:24
lawyers 30:19
laying 43:5,10
lead 44:25
leads 34:15
leave 5:12,12 18:9 50:8
leaves 33:10
leaving 19:25 37:5
left 6:16 17:10
legislation 43:13
legislative 42:24
length 7:24
let's 10:13,13,14 10:14
level 28:5
levels 28:4
liable 52:17
life 23:20
linchpin 39:8 55:12,17
line 3:15 10:19 19:13 20:1 27:15,22 34:13 34:14 36:25 37:12,14 59:16 59:19
lines 40:20
Liquidated 38:7
lists 53:6
literally 14:13
little 14:6,23 25:12
live 11:8
locker 48:17
logical 7:6 17:5 56:11
long 8:11 10:19 42:20 47:1 55:23
longer 9:1 19:5
look 6:10 8:3 10:9,25 25:7 25:12,13 27:7 30:17,24,25 31:4 34:2 37:22 42:24,24 42:25
looks 20:13
lose 28:17 35:4,8
losing 31:2
lot 24:14 26:21 35:23 38:19
lots 18:23 40:7 42:8
lying 17:1

M

machine 43:3
main 56:1
maker 43:7
making 31:21 46:3
manage 26:10
manager's 6:21
mandate 39:10
mandates 53:1
mandatory 18:4 22:25
manufacturing 19:20
MARK 1:22 2:10 27:25
material 33:14
materially 3:14
matter 1:12 11:11 25:5 44:14 53:2 59:24
mean 4:18 14:12 14:13,16 15:11 16:6 21:13 24:21 25:5 26:9,15 31:15 31:20 40:11 42:6 45:6 46:14 50:3,11 54:2,14 56:16
meaning 24:11 53:19 54:6
meaningfully 13:18
means 14:8 28:17 31:9,20
meant 5:16
mechanism 26:6 47:15
members 30:20
memo 50:13
merchandise 20:21,23,24 30:14 31:1 41:5,8 58:17
metal 46:24
method 41:2,4
mind 19:1 24:22
mine 23:8,9 52:21 58:4
minimis 46:6,10 47:1 54:6
minimum 9:21
minimus 40:5
mining 11:15 23:7
minor 49:17
minute 46:2,6
minutes 5:24,25 6:5 7:15,16 8:11,18,21 10:15,17 11:10 32:23 36:1 40:17,18 46:12 46:15,16,19,19 55:7 59:2,12 59:15,15
mirror 37:11
mission 16:7
misspoke 42:14
modern 16:19 16:19
modified 59:11
money 26:2
monitored 57:3
morning 3:4 27:16 30:4 48:8
move 11:6,10 31:1
mowing 7:8 44:3
Mt 5:3 8:14,15 17:17 21:4 39:22,23,25 40:3,7,7,8

N

N 2:1,1 3:1
nature 19:4,14
near 20:16
necessary 15:20 16:11 22:18 41:23 46:20 48:3
need 6:4 9:19 22:23 27:6

29:24 41:8 48:21 53:9
Nellie 27:17
Nervous 27:17
Nev 1:22
Nevada 40:11
never 28:10,11 35:13 55:23 58:17
New 23:21
Ninth 3:17 6:15 28:20,22 29:6 46:13
non-compensa... 3:13 4:13 5:3 8:7
non-mandated 41:20,21
non-union 38:17 38:18 39:2
noncompensa... 10:11 11:1 12:6 13:15,20 18:12 21:6
nonharmful 13:2
normal 25:10
normally 19:24 24:19
notion 5:1 52:13
nuclear 47:13

O

O 2:1 3:1
o'clock 39:13 45:2,3,4
obey 45:12
obviously 55:14 56:22
occur 7:17 22:2
OCD 45:1
October 1:10
office 30:20
officers 48:16,18
oh 14:9 31:15 38:10 41:18
oil 43:3
okay 35:1,8,13 44:8 46:11 48:6 56:8
old 45:12
once 27:12 48:7
one's 29:23
ones 18:17,18 23:18 35:3
open 40:18
opening 58:22
operation 15:5 15:19
opinion 35:9
opinions 23:22
opposed 40:12 59:13
oral 1:12 2:2,5,9 3:7 17:23 27:25
order 23:24 26:8 26:9 33:10
orders 31:15 41:9 58:20
ordinary 19:5 19:25
ore 23:11,11
outcome 56:19
outfit 12:11
outside 15:1 34:21,23 48:23
overall 30:25 31:1
overlap 26:21
overwhelmingly 31:20

P

P 3:1
Packing 15:4 20:18
PAGE 2:2
paid 8:21 27:14 27:21 36:16,17 37:12,13 41:18 43:9 54:18 58:6,8
PAOL 3:7
part 3:11 5:9,13 5:14,21,23 7:6 8:17 11:24 15:20 17:5,5 20:14 25:13 26:5,7 30:15 31:16 32:24 33:17 34:1,8,9 34:11,16 37:1 37:7,8,10 39:23 40:2 51:13 53:16 56:11,15,17,18 57:13 59:8
particular 4:23 12:11 13:5 19:1 31:5,5 39:18 43:6
particularly 6:24 7:2 8:9 13:8
patting 47:13
PAUL 1:16 2:3 2:13 55:8
pay 16:13,13 24:14 32:21 43:16,20,22 44:4 52:17,20 53:2
paying 25:25 27:2 44:22 45:2
people 8:13,24 9:1 23:14 25:9 30:18 31:14 40:22,24 42:6 43:5,10 45:11 45:18 47:6,8 50:16 54:24 58:4
perfectly 15:7 17:14 36:7
perform 18:7 25:25
performing 30:25
period 4:14,20
person 8:20,22 15:17,18 16:7 19:19 32:9 44:12
person's 43:6
Petitioner 1:5,17 1:21 2:4,8,14 3:8 17:25 38:22 40:5 51:18 55:9
pharmaceutical 19:19
pharmaceutic... 19:21
phrased 22:1
physical 37:16 37:17 50:15
piece 13:7
pink 48:10
place 5:12 6:13 7:4 18:7 29:2 34:21,22 38:5 39:19 49:1
plant 11:6,11
please 3:10 18:2 28:3
plenty 14:19
pocket 16:3
pocketing 26:14
pockets 46:23
point 24:7 26:5 35:5 42:5 52:10 56:1,22 57:15
pointed 20:22
points 15:2 55:11
police 30:12 48:16 56:23
policeman 30:12
policemen 30:17 30:17,18
policy 40:21
portal 17:15,16 18:6 20:16 21:13,13 23:9 40:2 52:8,22
Portal-to 52:8
portal-to-portal 3:13 5:1 7:2,23 8:6 9:6,24 10:7 10:8 11:2,22 12:3,7 17:11 17:11,19 18:3 21:20,21 22:15 34:6,10 40:9 52:8,11,18 53:4,12 55:15 56:17 57:8,20 57:23
portion 40:1
portions 42:18
position 3:19 28:21 41:14
possibility 16:2
post-activity 9:12
postliminary 3:12,16 4:16 5:2 6:10,12 8:1 10:3,6,10,24 13:14,20 14:24 15:1 16:16 17:8,13 18:12 18:25 20:14 21:6,7 22:5,24 24:10 28:11 29:11 30:22 46:9 51:4 57:6 57:9
potentially 4:15 57:19
pottery 8:14 17:18
pre 9:11
pre-Portal-to-... 7:24
precise 21:16,25
preliminary 4:15 5:1,4 6:12 7:25 10:3,6,9 16:16 17:12 21:5,7 22:4,24 24:9 28:12

30:22 46:9 51:3 57:9
premises 18:6 59:2,12
prepare 43:17 43:19
preparing 58:3
pressed 48:21
presumably 11:17 23:12
presumptively 10:1,11 11:25
primary 6:16 16:8
principal 3:18 9:5,10,12,13 9:14,23 10:4 10:12 15:2 16:5 17:6 18:7 18:14 22:2,5,8 23:23 27:5 28:8,10,12,17 29:6,9,13,19 29:23 30:2,21 31:9,11,11,17 31:19,24 32:2 32:7,13,19 33:11 34:9 39:9 42:10,11 42:15,18 43:12 44:13 51:4 52:23 53:5,13 55:13,13 57:21 57:24,24 58:11
probably 14:14 19:10 35:2
problem 4:22 44:7
problematic 3:21
procedure 26:9
process 3:12,14 3:25 4:2,6,7 5:5,6,21,22 6:17 7:6,15 13:16 16:22 17:3,5 18:5,9 19:5 20:14 21:18 34:16 35:22 47:1 56:11,15,18,24 57:1,2,4,12,13 59:1,8,14
professional 44:12
proper 30:11
property 19:25 26:24 27:9 40:10
protect 4:2 26:22,23
protection 6:4
protective 36:25 36:25 48:5 49:11 50:19
proves 29:6,7
provided 7:17
public 47:10
punch 8:13,16 32:22 35:24 36:12,12,13,13
punching 16:15 16:15 21:8,8 26:23,23 33:16 33:17,21,21 53:23,24
pure 7:24
purpose 26:18 26:24
purposes 5:25 6:2 9:19 26:21
purse 27:7
put 12:11 16:3 25:14,15,22 26:15 27:15,21 29:2 35:6 36:6 36:9 46:23 50:18,20,21,23 50:25 53:21 54:21
Putting 13:1 25:17

Q

qualify 34:20
question 4:25 9:8 10:4 19:3 22:7,20 24:3 24:12 28:8,13 28:16 34:24 35:8,21 36:5 54:12 58:10 59:9
questions 35:5
queueing 40:19
quickly 4:4 26:13
quintessential 3:16 13:14
quintessentially 13:20
quite 12:10,16 34:18 44:2 57:12

R

R 1:22 2:10 3:1 27:25
raise 7:7 37:21
rational 17:14
ready 44:15
real 23:20
really 5:22 8:17 9:4,19 15:4,13 22:18 27:18 39:12 48:11 49:4 55:25 56:1 57:12,13 58:12
reason 7:21 8:8 8:17 19:6 34:3 37:22 48:20 58:13
reasoned 35:10
reasons 20:13 23:13 45:7 59:17
rebuttal 2:12 55:8,11
receive 44:8,9
received 31:4
record 25:1 36:6 36:9
records 6:2
reduce 11:4,4
reduced 11:17
referring 18:19
reg 39:4
regard 3:20 10:7
regime 17:16
register 4:3 5:9 15:18 24:24 25:18
registers 3:25 4:1 14:15
regs 28:6 42:9
regular 34:21,23
regulation 20:4
regulations 30:8 35:16 36:17,19 42:25 51:14 52:10,12,24 53:5 55:15 57:22
related 31:10,12 42:12 51:25 52:1
relationship 14:5
relatively 8:11
relevant 7:20,22
rely 35:15 57:17
Reno 1:22
repeated 59:9
represent 35:23
require 9:21 18:23 30:7 43:24 52:16 53:15
required 9:20 12:4 13:11,16 21:1,9 22:22 23:8,11 28:6 30:6,6,9 32:6,9 37:1 39:5 51:21 52:3,20 53:17 55:17,20 55:24
requirement 23:1,7 30:5 39:7
requires 7:9 12:10,20 15:16 26:22 33:16,16 42:12 49:14 52:16 57:25
requiring 59:1
resembles 19:5
reserve 17:20
respect 14:18
Respondent's 3:19
Respondents 1:23 2:11 20:10 28:1
response 56:8
restroom 57:3
result 17:19 50:9
results 7:2
return 32:21
reversed 17:18
reversing 21:21
ride 23:8,11
Ridge 8:2
right 4:21 11:8 11:11,12 12:9 12:10 16:13,16 32:17 34:18 38:20 49:6,13 52:4,5 56:20 57:16
risk 39:14
ROBERTS 3:3 17:21 27:23 29:22 31:8,23 32:3,14,18 37:18 38:3,9 38:19 55:2,6 59:21
roll 33:2,2 40:3 54:18,18
rolled 39:23,23 39:25,25 40:1 40:8,9

room 23:13 48:17
rooms 48:20
rule 21:22 40:5 40:6 45:12 46:14 47:19 51:2,5 59:8,17
rules 41:22 51:10
run 15:5,7 45:9

S

S 2:1 3:1
safety 20:9 26:20 46:7 47:11
sample 50:7
satisfied 55:23
saving 14:23
saying 14:3 21:2 22:17 31:9 32:5,6,8 33:4 35:4 37:12,13 44:1 48:24
says 12:19 14:3 36:16 38:11 39:5,11,17 43:1 44:16 48:3,9 50:14 51:20 53:1 54:9
Scalia 5:8,11,16 5:17 11:6,13 16:10,18 29:18 30:10,15 33:6 33:13,20 39:11 39:17 46:1,11 50:18,22,24 52:7,13 57:16
scenarios 43:1
screened 47:8
screening 13:19 17:3 29:24,25 30:2 46:20,21 46:25
screenings 7:6 16:19 18:11 20:9
screens 47:4,6
search 19:11,13 19:18 47:16
searched 32:24 37:14,15 40:17
searches 18:16 19:1,2 26:20
second 8:8 33:25 35:7 43:4 46:8
secrets 47:14
section 47:20 48:25
security 3:11 4:7 4:10 7:13 15:8 16:19 18:11,16 19:8,8 20:9 25:8,9,11,16 25:23 26:20 27:18 29:23 31:16 33:19 34:7 43:21 47:11,12 58:6 58:7
see 14:9 33:10 51:1 54:9
seeing 48:23
seen 35:13
selecting 48:12
seminar 51:21 51:24 52:4 53:2 56:6
seminars 52:24
Senator 43:1
send 24:25 37:16
sense 8:18 21:13 40:12 41:7 42:5,7 45:14 55:18
sensible 6:25 7:2
separate 9:17,23 29:19 33:24 36:3 39:4
September 50:14
series 17:17 36:18,19 51:19 51:19,20 52:6 57:17,22
set 10:23 26:9 41:21
setting 24:2
sexual 53:14,16 56:7
SG's 30:20
sharp 15:6
sharpening 15:4
shelf 25:14,15 25:18,22
shelving 15:21
shift 4:8 41:6
shifts 7:14
ship 31:2
shirt 48:10,10 48:10
shoes 46:23
shop 8:25 9:1 45:12
shorten 40:20
show 39:12
side 7:7 24:13 54:9
sides 40:8
significantly 31:12
similar 3:14 23:18
simply 53:1 57:10
sit 50:6
site 30:7,7 43:24 48:4,5,19,21 49:2,8,9,12
sitting 32:12 35:9 37:20
situation 35:2 42:2 58:23
six 38:25
Skidmore 35:14
skiff 23:11,11
skiffs 23:15
slow 45:16
small 54:23
smock 13:7
sneak 41:19
sneaking 41:16
Solicitor 1:18 30:19
Solutions 1:4 3:5
somebody 16:2 26:23 29:24,25 31:13 33:7,9 42:22 43:16,16 43:18 44:4,6 50:5
someone's 44:11
sorry 8:24 42:16
sort 4:13 5:5,6 8:19 15:19 20:6,7 26:17 27:17
sorts 23:13
Sotomayor 8:23 9:7,10,16 12:9 12:15,18,24 42:13 51:9,13 51:16
sound 56:10 57:4
Southern 23:21
speak 30:19
speaking 47:8 54:24
special 25:9 36:2 47:20 48:25 49:11
specific 39:20 43:12
specter 7:7
speed 59:20
splattered 13:2
staffing 1:3 3:4 7:18 20:23
stand 40:25
standalone 28:12 42:10,14 42:15,17
standard 39:15
Standards 9:18 10:1 12:1 55:19 57:18
start 9:8,8 34:13 55:12
started 22:4 51:8
starts 37:7 40:15
States 1:1,13,20 2:7 17:24
station 5:7 6:13 6:16,21,23 17:6 40:2 58:3 58:25 59:6
stations 46:2
statute 9:25 21:25 32:1,4
stay 45:3,3,5,5 49:8 58:16,25 59:11
steal 30:14 31:6 40:23 58:17
stealing 58:15
Steiner 13:25 20:18 34:19 37:8
stocking 15:21
stolen 41:9
stop 9:3
story 39:15
straw 54:22
structure 28:15
struggled 6:11 6:14
stuff 40:7
subject 37:19 57:20
submitted 59:22 59:24
substance 13:3
sue 35:24
sufficient 7:18
suggested 19:16
summary 24:20
superfluous 12:21,25
supervisor 25:19

supporting 1:20 2:8 17:25
suppose 3:24 16:10 25:6 46:1 47:20,21 47:21
supposed 35:9
Supreme 1:1,13
sure 9:9 12:16 21:23 40:4,22
surely 20:20
survives 40:8
swipes 7:10
system 15:12 17:15 45:9

T

T 2:1,1
take 6:13 7:3,9 7:25 10:13 12:16,23 13:4 20:22 24:7 30:24 34:21 39:14,18 40:17 46:22,22,25 49:1 51:21 52:4 53:1 56:22 58:8 59:15
taken 19:20 26:10,12 28:20 38:4
takes 8:25 10:15 11:8,9 27:21 34:22 36:1 40:17 46:2 59:15
talk 18:22 36:18 58:12
talking 6:15 24:8 39:3 46:18,19 48:5 48:6 51:3,4
talks 22:1
tally 35:25 40:24
task 41:21 43:8 43:12 49:18 53:17
tasks 30:24 31:21
tell 18:17 39:8 45:11
teller 15:19
tellers 4:4
telling 35:18,20 49:7
tells 29:14 36:21 45:18 54:19
ten 39:1 46:15
ten-minute 46:14
Tennessee 23:7 39:24
term 5:4 31:19 55:14
terms 12:6
test 9:22,24 14:3 14:18 19:21 21:3,4,13,14 28:23 29:5,8 50:2,4,7 51:25 58:9
tested 37:16
testing 19:17,23 20:5 37:15 45:21,22 49:21 49:23,24,25 50:8,9,14 56:3 56:4,10 57:1 57:11
tests 28:23
Thank 17:21 27:23 55:2,2,5 55:10 59:21
theft 4:2 41:4 47:15
THEIRMAN 32:17
theory 32:19 40:19 54:1,2,3
they'd 58:17
Thierman 1:22 2:10 27:24,25 28:2,20 29:1,5 29:13,20 30:3 30:13,23 31:19 32:1,8,20 33:12,18,22 34:12 35:10,15 35:20 36:9 37:4 38:2,7,14 38:17,21 39:20 42:16 43:22 44:7,24 46:5 46:13 47:24 48:2,14 49:3,6 49:13,21,23,25 50:13,20,23,25 51:12,15,17 52:10,19 53:19 53:23 54:3,11 55:4
thing 6:21 7:23 19:24 20:6,7 25:6 31:7 44:21 45:14 47:3 49:11 54:20 56:7 58:18,21
things 7:3 9:19 13:20 14:20 18:24,25 20:2 21:19 24:22 25:19 26:8 31:12 38:23 40:23 42:7,9 43:15 44:3,4 45:7 52:16,18 53:6,12 56:12 56:23 57:19 58:2 59:20
think 4:11,13,14 4:24 6:8,9,10 6:14 7:4,20 8:8 8:17 9:4,14,17 9:25 11:2 12:13,19 13:10 13:13,18 14:4 14:18,19,21 15:2,3,7,8,11 15:24 16:18 18:11,19,25 19:2,6,7,10,15 20:5,12 21:15 21:16,22,24 22:13,19 23:4 24:8,10,22 25:2,19 26:18 26:24 27:1,7 27:20 29:1 30:10,20 34:22 35:16,21 39:8 41:15,15 42:3 42:13,13 43:13 47:5 54:3,4 55:25 56:1,11 56:21,22 58:13 58:15 59:16
thinking 20:3 54:8
thinks 27:18
third 46:9
thought 31:11 54:5
three 34:19 46:16
ticket 11:13
till 45:1,3,3
time 3:18,19 4:12 6:16 7:4 7:14,16,25 8:4 8:7,9,12,16 9:5 11:1,4,13,14 11:17 13:15 14:23 17:2,20 19:13 21:7,8 23:6 26:22 27:8,21,22 36:24 37:6,17 37:24 38:11 39:24 45:23 48:9 53:3,21 54:20
time-consuming 19:12
times 34:20
told 7:12 29:21 32:10,15,16,20 36:10 40:14 41:14 42:3 45:5,24,25 53:7
tools 32:21 36:15
toothbrush 15:14
top 54:22
total 8:5
totally 52:3
training 53:15 53:16
tram 11:16
trams 11:15,16
transform 27:8
transformed 19:14
transportation 52:21
travel 8:4 11:17 21:7 29:16 39:21,24 41:13 41:13 49:15
tray 6:20
treat 8:6,15 17:9
treated 4:19,20 8:21
treating 3:17 8:10
tries 7:7
trip 50:17
trivial 46:17,18
trolley 39:18
truck 50:15,16 53:8,9
true 5:18 8:23 8:24 9:4 33:20 35:12
try 59:18
trying 16:25 26:22
Tuesday 44:17
turn 7:3
turned 6:3 27:4
turns 7:15 25:6
twice 54:14,15

two 9:17 15:2 20:12 28:23 35:5 42:25 59:5
twofold 7:22
type 19:11,24 46:21
types 20:2 50:15
typically 31:13

U

ultimately 7:19
unbundle 35:22
uncompensated 7:8,9
understand 14:5 20:10 24:17 26:4 28:15 31:9 32:5 44:20 45:8
understood 58:24
uniform 8:11 43:23 47:22 48:13,15,17,23
uniforms 30:9 30:12 48:21
union 38:20 39:6 45:12
unionized 38:16
United 1:1,13,20 2:7 17:24
universe 11:1 57:19
unrelated 52:3
unshelving 15:21
use 17:2,3 40:19 40:23,24,24 41:22 54:5
uses 32:1 34:19 46:13
usually 20:8

V

v 1:6 3:5
valve 46:7,7
varies 46:14
verify 17:2
verifying 16:22
versus 26:16 37:4
videos 57:11
view 13:5 30:23 42:6
virtue 22:8
vis-à-vis 7:4
voluntary 51:24

W

wage 38:13
wait 8:13 36:11 37:3,9,23 42:23 44:9,14 44:15 59:3,13
waiter 43:23
waiters 30:9
waiting 3:15 8:8 8:16 19:13 20:1 27:15,22 36:25 37:12,13 43:2 44:7,9 50:18,20,21,23 50:25 59:3,13
walk 6:20 23:14 27:6,13
walking 7:4
want 19:21 20:23 24:21 27:7,17 32:4 33:8 35:6 36:6 37:20 40:5,18 41:17 45:1 48:9,23 50:2,3 54:5,24 56:23 57:17 58:12,21 59:18
wanted 24:25
wants 13:6 44:15,18 45:17 45:17
warehouse 15:8 15:14 25:6,7 25:10 33:14
warehouseman 30:16
warehousemen 30:13
wash 56:25
washing 7:8 57:10
Washington 1:9 1:16,19
watch 50:6
way 4:17 6:1,6 6:22 7:10 9:15 9:25 14:16,16 14:21 16:6,24 16:25 19:17,22 21:25 34:2,15 35:23 37:4,5 40:21,22 45:10 47:4,5,6,8,24 47:24 48:2 50:1,1,2 51:5,6 52:25,25 56:25
ways 14:15 40:22 50:4 59:5
We'll 3:3
we're 7:12 24:8 37:11,13 38:10 38:11,12 42:2 42:2 45:15,15 46:18,18 48:5 48:6 51:1,1,2,4
we've 12:12 29:1
weapons 47:13
wear 30:4,9,11 30:12 48:9,15 48:16
wearing 27:17
Wednesday 1:10
weren't 4:2 27:14 47:20
whistle 9:6,6
wholly 56:19
wind 5:5,6
winding 4:14
word 13:23,24 32:1 54:5
words 24:10 34:19 37:19
work 5:6 6:13 6:16 9:14,18 10:1,5 11:9,25 11:25 12:4,12 17:6 18:7,14 20:19 21:3 22:2,23 28:5,6 28:7 33:25 34:21,23 36:19 36:20 37:10 38:24 39:19,22 40:2 41:13,15 43:5,10 46:8 48:8,15,17,17 51:3,20 52:1,1 52:2,3,5,14 54:24 55:16 57:8,25 58:1,3 58:4,18,19,19 58:25 59:6
workday 8:24 9:5 21:22 37:5 37:7 51:1,5 58:16
worked 16:12 17:1 57:18
worker 32:12
workers 7:16 16:12 32:14,20
working 23:10 55:4
works 19:19 37:6 51:6,6
worried 9:2 26:14
worry 23:14 55:21
wouldn't 22:16 22:23 43:20
write 22:10
wrong 31:2,3 32:25 33:1 42:22

X

x 1:2,8

Y

yeah 9:7 24:5,5 24:5,5,6
year 38:24
years 39:1
yellow 48:10
York 23:21

Z

0

1

1 52:21,22
10 11:10
10:03 1:14 3:2
11:05 59:23
13-433 1:6 3:4
15 36:1 50:14
17 2:8
18 18:20
1947 20:3 54:4
1951 35:5
1997 50:13

2

2 40:17 52:23
20 5:24 6:5 7:16 32:23 36:1 40:18 46:19,19 59:2,12
20-minute 4:6 59:1
2014 1:10
25 7:15,15 8:11 10:15 46:19,19 59:15,15
254(a)(1) 39:21 52:22
254(a)1 29:17
27 2:11

3

3 2:4
3.0 39:3
30 5:24 6:5

4

5

5 10:17
55 2:14

6

7

7 36:18
7,000 38:23
7:30 39:13
7:45 39:13
78 53:6
785 36:18,19
51:19,19,20
53:6 57:17
785.7 28:5
790 57:22
790.A 57:23

8

8 1:10 38:13
39:13 45:2
8:00 45:3,3