

1 anything to expand the words that Congress used.

2 MR. GANNON: That -- that's -- if -- if you
3 disagree that this is a fair reading of the statute, I'm
4 not going to tell you that the guidelines make it a fair
5 reading of the statute. I --

6 CHIEF JUSTICE ROBERTS: What you're saying
7 is the Attorney General thinks it's a fair reading of
8 the statute.

9 MR. GANNON: I'm --

10 CHIEF JUSTICE ROBERTS: So -- so I should
11 think it's a fair reading of the statute.

12 MR. GANNON: Well, I'm also telling you that
13 we think --

14 (Laughter.)

15 MR. GANNON: I'm -- I'm telling you that we
16 think we have good reasons for this construction, and
17 Justice Breyer asked if there's anybody who's ever
18 adopted this construction before, and I say, yes, the
19 Attorney General publicly did so in 2008. All
20 SORNA-implementing jurisdictions were told this is the
21 way the Federal government reads the statute, and
22 they're supposed to inform sex offenders of this.

23 In this instance, Kansas has informed
24 Mr. Nichols that he has an obligation to provide notice
25 when he is terminating his residence. They've gone

1 above and beyond what SORNA requires by always demanding
2 that he inform Kansas, even though SORNA, under our
3 reading, would allow him to inform any one jurisdiction
4 involved. We think --

5 CHIEF JUSTICE ROBERTS: Just to -- I
6 probably should know this, but Kansas requires him to
7 list any change, right? He has to unregister?

8 MR. GANNON: He has to -- he has to report
9 any change in the residence information, yes.

10 CHIEF JUSTICE ROBERTS: Right. What -- what
11 sort of language did they use?

12 MR. GANNON: That their language does -- it
13 specifically says, "He must reregister any change or
14 termination of residence within three days to the
15 registering law enforcement agency or agencies where
16 last registered."

17 So that's the --

18 CHIEF JUSTICE ROBERTS: But it says "where
19 last registered."

20 MR. GANNON: Where it specifically picks up
21 and says, you have to go back to where you last
22 registered, we think that goes beyond -- that's the way
23 in which Kansas law goes beyond SORNA, because SORNA
24 does not always require that.

25 We think that in a situation like this,

1 SORNA effectively required that, because there's no
2 other place for him to have gone. But we also take
3 Petitioner's concession that SORNA permits him to comply
4 with the requirement to keep his registration current by
5 going to the office in Kansas.

6 And it's the same form. There's no doubt
7 that it's possible for him to report the change in
8 residence there. The form says, what is your address?
9 And it has location start date and location end date,
10 and those can be reported in advance or after the fact.

11 Our position is just that when SORNA gets
12 around to saying what it means to keep your registration
13 information current, you have to do that in at least one
14 place within three business days. And so we think that
15 that means he could do it in Kansas even the day after
16 he moved.

17 If you disagree with that, we still think it
18 also must mean at least, as Justice Alito was
19 explaining, that he has to do it -- he has to comply
20 with it by doing it while there still is one
21 jurisdiction. There's no doubt that Kansas was a
22 jurisdiction involved while he was still residing there.

23 JUSTICE KAGAN: Could I -- could I ask a
24 question, Mr. Gannon, of absolutely no legal
25 significance? Chalk it up to curiosity.

1 Does the Federal government bring many of
2 these prosecutions? Because I might have thought that
3 when sex offenders leave the country permanently, the
4 attitude might be like, good luck and good riddance?

5 (Laughter.)

6 MR. GANNON: Well, I -- I take the point,
7 Justice Kagan, but remember this is somebody who is not
8 just a Federal sex offender. He's on Federal
9 supervisory release. The notion that we have somebody
10 on Federal supervisory release, we're supposed to be
11 keeping track of him and making sure that he's not
12 committing other crimes. If --

13 JUSTICE KAGAN: But you're not -- you're --
14 as I understand the requirement that even you say he's
15 subject to, it's just a requirement that says he's
16 leaving the State. It doesn't -- he's not required to
17 tell you where he's going in the world. He could be
18 going to the Philippines or any other country. So it
19 doesn't really help us in terms of, you know, helping
20 our allies deal with sex offenders.

21 I'm just curious why it is that people --
22 why DOJ makes the decision to bring sex offenders back
23 to this country in such circumstances.

24 MR. GANNON: Well, as -- as I said, he was a
25 Federal sex offender who was on Federal supervisory

1 release who appeared to be on the cusp of committing
2 additional Federal offenses in the Philippines, and so
3 we brought him back. And we do think that there's a
4 Federal interest in this case.

5 But Section 2250 includes cases where
6 somebody is also violating State law, because by
7 definition, all of these registration requirements in
8 SORNA much of the time are also going to be violations
9 of State law.

10 And -- and so in this instance, the problem
11 is that the registry was inaccurate. It's supposed to
12 say where he's living.

13 JUSTICE KAGAN: I am right, right, that when
14 you say he had the responsibility to keep the registry
15 accurate, that's just to say he had the responsibility
16 to tell Kansas he was no longer in Kansas.

17 MR. GANNON: That's right.

18 JUSTICE KAGAN: Even on your view, he had no
19 other responsibilities.

20 MR. GANNON: That -- that's -- that's the
21 applicable responsibility here. That's right.

22 JUSTICE ALITO: In terms of --

23 CHIEF JUSTICE ROBERTS: How -- how do we --
24 how do we know -- I'm sorry. Go ahead, please.

25 JUSTICE ALITO: In terms of Federal policy,

1 hasn't Congress, by the enactment of the new statute and
2 in other ways, evidenced a belief that the United States
3 should not be exporting its pedophile problems to other
4 countries?

5 MR. GANNON: Yes, Justice --

6 JUSTICE ALITO: And countries like the
7 Philippines where the -- the Petitioner here went are
8 known places that are attractive to sex tourists who go
9 there to abuse young children and -- hasn't Congress
10 evidenced a concern about this both for the human rights
11 aspects of the problem and, also, I would think, for
12 relations with the government of the Philippines?

13 MR. GANNON: Absolutely, Justice Alito. And
14 it -- it would have been a Federal offense for him to
15 have engaged in -- in sexually elicit conduct in the
16 Philippines.

17 JUSTICE KAGAN: Right. And I completely
18 understand that, Mr. Gannon, but even your own
19 interpretation doesn't get you the information --

20 (Laughter.)

21 (Lights out.)

22 CHIEF JUSTICE ROBERTS: I knew we should
23 have paid that bill.

24 (Laughter.)

25 JUSTICE KAGAN: My red light on the bench is

1 still working.

2 (Laughter.)

3 JUSTICE KAGAN: -- does not get you the
4 information that you need in order to tell the
5 Philippines, look, you have a sex offender in your
6 midst.

7 MR. GANNON: That's -- that's correct,
8 Justice Kagan. The new statute does that as did the
9 supplemental guidelines that the Attorney General
10 adopted in 2011 under SORNA as additional information
11 that was required. That's not what's at issue in this
12 particular case.

13 JUSTICE SOTOMAYOR: What's so interesting is
14 that regulation tells the States to do this.

15 JUSTICE BREYER: Yeah.

16 JUSTICE SOTOMAYOR: It doesn't tell the sex
17 offender that he's obligated to do it. It says the
18 States must do it.

19 MR. GANNON: It's --

20 JUSTICE SOTOMAYOR: I'm -- it's a little bit
21 odd.

22 MR. GANNON: It's true that the guidelines
23 were addressed. Both the guidelines and the
24 supplemental guidelines were addressed to implementing
25 jurisdictions. They were articulating the Federal

1 government's construction of the statute and -- and what
2 is required.

3 JUSTICE SOTOMAYOR: So now a sex offender is
4 supposed to understand what "involved" means and read a
5 directive to jurisdictions in your regulation and say,
6 ah, that includes me, too.

7 MR. GANNON: Well, we -- we --

8 JUSTICE SOTOMAYOR: Jurisdiction is supposed
9 to do this, but now I've got to do something more.

10 MR. GANNON: Well, but what the jurisdiction
11 was told is that it has to inform sex offenders that
12 they must do this, and that happened here. Kansas
13 informed him that he had to provide notice of any
14 termination or change in his residence. That's what was
15 required by SORNA.

16 JUSTICE SOTOMAYOR: What makes it a State as
17 opposed to a Federal crime? That's really what's at
18 issue here.

19 MR. GANNON: It --

20 JUSTICE SOTOMAYOR: I understand it's a
21 crime.

22 MR. GANNON: Yes.

23 JUSTICE SOTOMAYOR: The question is which
24 kind of crime.

25 MR. GANNON: Yes. And in this instance,

1 Petitioner acknowledges it's a State crime. It is also
2 a Federal crime.

3 Mr. Chief Justice, May I finish answering?

4 CHIEF JUSTICE ROBERTS: Briefly.

5 MR. GANNON: Under Section 2250, because
6 he's a Federal sexual offender, there doesn't even need
7 to be independent travel. It's the violation of the
8 SORNA requirements that makes it a Federal offense.

9 CHIEF JUSTICE ROBERTS: Thank you, counsel.

10 Mr. Hansmeier, you have 11 minutes
11 remaining.

12 REBUTTAL ARGUMENT OF DANIEL T. HANSMEIER

13 ON BEHALF OF THE PETITIONER

14 MR. HANSMEIER: Sorry, Mr. Chief Justice. I
15 don't think I actually reserved time for rebuttal, so
16 thank you.

17 CHIEF JUSTICE ROBERTS: Okay.

18 MR. HANSMEIER: I forgot to say that, but
19 thank you.

20 I would --

21 CHIEF JUSTICE ROBERTS: Oh.

22 MR. HANSMEIER: Justice Breyer, if I can --
23 I'll -- I'll be brief.

24 On the guidelines -- this is actually a
25 direct quote -- the -- the -- according to the

1 Department of Justice, "A jurisdiction may require that
2 changes in registration information be reported by
3 registrants on a more stringent basis than the SORNA
4 minimum standards. For example, requiring that changes
5 of residence be reported before the sex offender moves
6 rather than within three business days following the
7 move."

8 I mean, that's our position. I don't --
9 there are other portions in -- in the guidelines that
10 direct jurisdictions to do this. But that -- but -- but
11 what the -- what the guidelines say right there is -- is
12 exactly what we say, that it -- it is a more stringent
13 requirement.

14 A few other points on the word "current." I
15 think if you -- if you look in the -- in the -- there's
16 a provision on in-person verifications where there is
17 requirements for a current photograph. That word
18 clearly doesn't mean a future. And I think that's
19 important to understand, that when you're talking about
20 current information, it's not future information. I
21 think Justice Kagan mentioned that a few times.

22 On 1621 -- 16921(b)(3), again, that's --
23 that's language directed towards the jurisdictions.
24 That's not a requirement for the offender, and that's
25 how the former jurisdiction would be informed of the

1 change.

2 And if there are no other questions.

3 CHIEF JUSTICE ROBERTS: Thank you, counsel.

4 The case is submitted.

5 (Whereupon, at 11:04 a.m., the case in the
6 above-entitled matter was submitted.)

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<p style="text-align: center;">A</p> <p>a.m 1:13 3:2 55:5 able 37:21 above-entitled 1:11 55:6 absolutely 18:16 47:24 50:13 abuse 50:9 accurate 26:7 30:25 33:9 49:15 acknowledged 36:15 acknowledges 16:10 53:1 add 5:15 addition 5:5 additional 4:18 39:10 49:2 51:10 address 9:13 12:10 13:14 39:8,9 40:19,21 47:8 addressed 38:15 51:23,24 administrative 44:9 admit 10:15 adopted 43:12 45:18 51:10 advance 38:16 39:14,14 47:10 adverse 11:5 agencies 46:15 agency 46:15 ago 3:11 42:2 agree 12:13,14,16 12:18,24 35:12 agrees 13:8 ah 27:15 30:3 52:6 ahead 49:24 aim 6:4 Alito 5:12 9:2 10:20 12:4,18 13:2,4,10 23:22 47:18 49:22,25 50:6,13 allies 48:20</p>	<p>allow 39:6 46:3 allowing 10:16 allows 21:20 amount 10:9 answer 21:9 41:19 44:21 answering 53:3 anybody 40:22 45:17 anymore 35:5 41:15,16 apartment 34:24 appear 13:12 APPEARANCES 1:14 appeared 19:16 20:16 49:1 appears 19:13 applicable 49:21 applies 40:15 arguing 31:18,20 argument 1:12 2:2 2:5,8 3:3,7 10:20 10:25 15:10 16:2 20:2 26:23 53:12 arguments 10:21 arrival 9:14,16,18 13:9 articulates 44:4 articulating 51:25 asked 7:10,17,25 8:9 45:17 aspect 8:14 aspects 50:11 assist 8:4 Assistant 1:17 associated 32:24 assume 15:6 atextual 18:19 attendance 44:1 attitude 48:4 attorney 21:22 31:13 38:5 43:9 43:10,17 44:10,14 44:22 45:7,19 51:9</p>	<p>attractive 50:8 authorized 38:7 awful 27:17</p> <p style="text-align: center;">B</p> <p>b 13:25 14:9 back 12:5 46:21 48:22 49:3 based 7:11 basically 42:6 basis 54:3 bearing 15:9 begins 14:1,2 behalf 1:15,19 2:4 2:7,10 3:8 20:3 53:13 belief 50:2 believe 27:1 32:22 bench 50:25 beyond 46:1,22,23 bill 50:23 bit 51:20 blue 13:21,22 book 13:21 bothering 41:10 bottom 15:10 18:17 Breyer 28:22 29:4 29:7,12,15,18,23 29:25 30:3,7,10 30:19 31:2,22 32:6,11,16,20,21 41:9,19,22 42:10 42:15,17,23 43:2 43:11,16 45:17 51:15 53:22 brief 13:22 18:10 23:9 36:16 40:4 43:18 53:23 Briefly 53:4 briefs 8:25 bring 48:1,22 broader 35:19 36:23 brought 49:3 bunch 15:7 business 10:11</p>	<p>13:11,16 14:3,7 24:6,12,14,16,16 24:17 29:1,9 35:9 39:16 47:14 54:6</p> <p style="text-align: center;">C</p> <p>c 2:1 3:1 13:23 14:5 14:13 15:11 23:4 23:20 25:18 34:11 39:10 California 9:8 capacious 20:15 25:18 26:11 capture 15:20 captured 36:20,22 captures 15:18 35:17 36:7 careful 42:18 case 3:4 4:5 5:9,16 18:22 22:11 23:25 28:11 43:5 49:4 51:12 55:4,5 cases 36:17 49:5 category 35:19 36:13,17,24 37:1 certain 10:9 28:13 certainly 25:16 certiorari 36:16 Chalk 47:25 chance 18:7 change 10:10 13:11 13:14,17 14:8,13 14:17 16:11 20:10 24:7,12 26:16,20 29:2,22 30:2 39:21,22 40:11,19 40:20 46:7,9,13 47:7 52:14 55:1 changed 32:18 38:4 38:13 changes 32:8 35:21 38:8 54:2,4 changing 30:4 39:15 checks 9:6 Chevron 43:13</p>	<p>Chief 3:3,9 5:13 6:24 7:4 19:25 20:4 22:10,16,22 22:24 23:6,10,15 23:24 24:3,5,9,11 24:21 25:3 26:19 26:22 27:3,7,17 27:21 36:25 37:6 37:12,18,24 38:23 39:3 44:8,15,20 44:25 45:6,10 46:5,10,18 49:23 50:22 53:3,4,9,14 53:17,21 55:3 children 50:9 Circuit 3:15,18 circumstances 48:23 citizens 6:8 City 1:15 claiming 43:13 44:13 clear 5:24 14:19 21:10 26:14 28:13 34:18 39:19 41:1 clearly 54:18 client 12:6 Coast 9:6 come 6:12,21 12:4 15:19 comes 17:9 commencement 16:11 commit 28:7 committed 6:15 committing 48:12 49:1 common 19:20 common-sense 40:23 complete 18:7 completely 18:14 50:17 compliant 21:14 complied 21:16 24:1,18</p>
--	---	---	--	---

<p>comply 24:6,14,16 35:9 47:3,19 conceded 28:7 concern 50:10 concerned 5:25 11:10 concerns 6:20,21 concession 47:3 conduct 35:17,19 36:19,22,24 50:15 conformed 33:23 confusing 9:12 Congress 3:22 5:20 5:25 10:17,23 11:6,7,22 13:25 14:4 22:7 25:17 36:21 38:15 41:5 44:11 45:1 50:1,9 connection 8:13,14 consequences 11:5 construction 43:14 45:16,18 52:1 construing 44:16 44:23 content 34:12 context 44:2,4 continues 26:14 contrary 40:23 conveyed 26:17 correct 4:8,15 5:7 5:11 7:7,24 11:1 15:1,16 17:24 22:5,16 40:3 51:7 correctly 18:12 37:1 counsel 19:25 53:9 55:3 countries 11:9,12 50:4,6 country 3:12,17 8:17 14:20 33:16 40:22 44:7 48:3 48:18,23 county 17:1 course 36:18 court 1:1,12 3:10</p>	<p>18:21,21,23,24 19:3,8 20:5 28:20 41:4 Court's 19:10 cover 37:22 covered 22:14 23:12 36:3 37:3 creates 10:8,16 19:14 30:14 crime 3:16 52:17 52:21,24 53:1,2 crimes 48:12 criminal 44:9 crossed 6:2 crosses 6:22 cured 35:15 curiosity 47:25 curious 7:8 48:21 current 14:16 20:7 20:9 21:5,18 23:3 23:7,11 25:6,8,12 25:14 26:6,7 31:8 31:24 33:19,20,22 34:13 35:4,7 39:6 39:8,8,12 42:14 42:18 43:20,24 44:5 47:4,13 54:14,17,20 currently 27:14 34:20 38:19 CURTIS 1:17 2:6 20:2 cusp 49:1</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 3:1 D.C 1:8,18 da-da-da-da-... 29:10 DANIEL 1:15 2:3 2:9 3:7 53:12 date 47:9,9 day 24:16,17,17 35:1 47:15 days 9:20,21 10:11 10:12 13:11,16</p>	<p>14:3,7 16:12 24:6 24:12,14 29:1,10 35:9 38:20 39:16 42:2 46:14 47:14 54:6 deal 48:20 debate 38:18,21 decide 40:21 decides 9:4,5 37:20 38:1 decision 48:22 defendant 15:14,18 18:25 19:13 deference 43:13 define 9:25 defines 19:19 defining 19:12 definition 9:24 42:3 49:7 demanding 46:1 departing 12:9 Department 1:18 44:16 54:1 departs 14:25 departure 4:8 6:6 6:18 11:22 33:15 deregister 4:12 described 22:8 26:10 27:12 details 33:22 difference 12:20 different 15:22 17:3 27:11 33:12 direct 53:25 54:10 directed 36:23 54:23 directive 52:5 directly 13:23 disagree 20:12 23:18 45:3 47:17 dispute 24:4 distinction 13:1 doing 12:15 24:15 47:20 DOJ 48:22 domestic 44:2</p>	<p>doubt 47:6,21 draft 5:20 drives 9:8</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e 1:17 2:1,6 3:1,1 13:24 20:2 effect 16:17 36:10 36:18 effectively 35:17 47:1 either 34:20 elicit 50:15 employed 32:2,7,15 employee 22:12,15 23:13 38:25,25 employer 32:15 employment 15:22 15:23 32:8 44:1 enable 31:25 enactment 3:24 50:1 enforceable 6:12 enforcement 46:15 enforcing 8:5 engaged 50:15 ensure 31:23 ensuring 28:21 entitled 39:20 entity 17:13 especially 39:18 ESQ 1:15,17 2:3,6 2:9 event 14:11 everybody 33:11 evidenced 50:2,10 exactly 8:11 26:3 54:12 examination 10:22 example 7:15 54:4 exchange 30:8 40:10 Excuse 26:2 existed 12:3 expand 44:10 45:1 expanded 44:14</p>	<p>expect 35:25 expected 41:5 expecting 37:16 38:16 explain 30:16 explained 23:23 explaining 27:25 47:19 explanation 39:11 exporting 11:8 50:3 extent 43:9 extradited 28:6 extradition 7:11,13 8:9 28:13</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 16:17 29:15 47:10 fail 3:17 failed 32:3 fails 35:8 failure 4:1 19:6 fair 44:11 45:3,4,7 45:11 falls 13:19 farfetched 29:19,21 fault 30:19 February 15:8 Federal 3:13,16 4:2 4:16,17,24 5:9,14 5:20 6:10,17,19 8:4,4,12,14 12:24 15:6 16:19,23,24 16:25 17:5,9,13 17:17 27:5 28:18 28:19,21 41:6 44:12 45:21 48:1 48:8,8,10,25,25 49:2,4,25 50:14 51:25 52:17 53:2 53:6,8 Federalism 6:20,21 Federally 8:22 file 37:3 files 37:7 finally 3:24</p>
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<p>find 17:20 36:9 38:5 finish 53:3 firmly 31:2 first 3:4,18 14:1 fit 12:11 five 10:12 fled 7:20 fly 38:20 flying 37:7 focuses 26:5 focusing 43:6 following 54:6 foreign 3:12,16 9:5 17:23 forgot 53:18 form 16:10,14,17 16:18,21,23 17:2 17:3 47:6,8 former 54:25 forth 13:25 fundamental 30:24 further 19:23 23:8 future 21:21 54:18 54:20</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 3:1 Gannon 1:17 2:6 20:1,2,4,23 21:3 21:12,16 22:5,16 22:23 23:2,7,14 23:18,25 24:4,8 24:10,13 25:2,4,9 25:13,16,25 26:2 26:8,20 27:1,5,16 27:20,23 28:3,9 28:16,25 29:5,11 29:14,17,20,24 30:1,4,8,21 31:20 31:23 32:10,13,20 32:22 33:2,3,17 33:25 34:6,9,11 34:22 35:1,6,13 35:16,25 36:5,11 36:15 37:5,11,23</p>	<p>38:2 39:2,25 40:3 40:8,16 41:18,21 42:7,13,16,21 43:1,8,12,17,22 44:13,24 45:2,9 45:12,15 46:8,12 46:20 47:24 48:6 48:24 49:17,20 50:5,13,18 51:7 51:19,22 52:7,10 52:19,22,25 53:5</p> <p>gap 18:17 gaps 10:16 general 1:18 21:23 31:13 42:3 43:9 43:10,17 44:14,22 45:7,19 51:9 general's 38:5 44:10 getting 17:21 Ginsburg 4:4,9,22 5:5,8 7:9 8:16 14:16,19,22,24 15:3 16:9,16 17:11 27:24 28:2 28:4,9,12 35:12 35:14,24 36:2,9 36:12 Ginsburg's 7:14 12:5 give 14:22 16:12 22:1 23:21 26:18 39:14 40:20 given 20:24 33:3 35:7 44:21,21 giving 20:10 24:1 go 9:21 15:7 18:7 31:10 44:3 46:21 49:24 50:8 goes 4:11 12:21 13:17 19:5 32:8 46:22,23 going 5:14 6:5 9:20 9:21,21 10:11 12:8 13:7 17:23 20:25 21:7 22:1</p>	<p>28:10 31:12 34:23 37:19,20 39:15 42:21 43:23 45:4 47:5 48:17,18 49:8 good 9:24 10:2 33:11 45:16 48:4 48:4 government 13:7 15:6 45:21 48:1 50:12 government's 18:9 19:12 23:9 28:6 40:4 52:1 grace 35:8 guess 31:17 guidelines 21:22 43:9,12,18 44:10 45:4 51:9,22,23 51:24 53:24 54:9 54:11 guy 42:20</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habitually 10:1 hand 9:3 Hansmeier 1:15 2:3,9 3:6,7,9 4:7 4:15 5:7,11,22 7:2 7:6,14,18,21,24 8:2,7,11,19 9:11 9:23 10:7 11:13 12:14,23 13:3,6 13:20 14:18,21,23 15:1,5,16 16:4,6 16:15,20 17:16,25 18:4,8,15 53:10 53:12,14,18,22 happen 9:4 11:1,2 14:11,11 17:17 happened 11:23 29:2 52:12 happens 4:15 14:14 hear 3:3 heard 18:23 held 3:15</p>	<p>help 16:4 48:19 helping 48:19 helps 16:7 history 3:21 5:24 10:23 11:14,20 12:1 holding 19:9 hole 7:12 home 9:25 human 11:11 50:10 hypothetical 4:22 12:5</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 6:20 40:25 43:3 illegal 44:11 Illinois 4:11,11,13 4:24,25 5:1,2 12:6 12:10,10 imagine 41:13 immediately 15:13 implementation 18:12 38:6 implemented 16:22 implementing 44:17 51:24 implications 11:11 important 11:17 13:22 54:19 in-depth 17:8 in-person 54:16 inaccurate 10:12 11:3,3 39:7 49:11 inaccurately 32:4 incidentally 35:18 include 3:19,22 39:21 included 5:19 includes 37:14 49:5 52:6 independent 53:7 indicate 11:15 indicates 36:21 38:17 indication 12:1</p>	<p>indict 15:7 individual 4:23 6:22 10:8 inescapably 25:20 30:5 inform 13:13 34:13 39:17 40:25 45:22 46:2,3 52:11 information 11:3 15:13 19:3 20:7 20:25 21:5,17,21 23:3,7 25:6 26:16 30:9 31:24 32:24 36:1 39:7,11,14 39:20,23 40:11 43:20,24 46:9 47:13 50:19 51:4 51:10 54:2,20,20 informed 34:2,14 34:17 45:23 52:13 54:25 informing 17:14 24:18 43:25 44:18 informs 23:4 initial 6:1 inoperative 23:16 instance 15:18 45:23 49:10 52:25 intend 38:20 intended 10:23 11:19 18:17 35:20 38:15 interest 28:18,21 49:4 interesting 17:20 51:13 international 11:16 35:20 38:15 interpretation 18:19 28:15,22 31:5 37:2,10 43:7 50:19 interstate 7:15 9:12 involved 13:13 20:11,13 21:18 22:7,9,18 23:19</p>
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<p>24:24 25:1,19,20 26:4,4,11,13,15 27:11 28:23,24,25 29:8,9,9,21,22,25 30:1,6,11,22 32:12,25 34:17 39:17,23 40:10 41:12,17,24 42:1 42:2,4,8,11,13 43:7 46:4 47:22 52:4 involvement 30:14 issue 18:13 40:11 51:11 52:18 itinerary 35:22 37:4,7,14</p> <hr/> <p style="text-align: center;">J</p> <p>job 9:24 10:2 32:15 jurisdiction 5:2 6:3 6:6,18 9:14,14,17 9:19 13:9,12,14 14:24 15:11,12,22 15:23,24,24 19:13 20:11,13 21:18,24 21:24 22:2,4,6,8,9 22:12,14,18,25 23:12,12,19,20,22 24:23 25:1,19 26:4,4,10,17,18 26:18 27:12 29:22 29:23 30:11,12 32:1 33:4 34:1,14 34:17 38:19 39:17 41:17,23 42:5 43:25 44:2 46:3 47:21,22 52:8,10 54:1,25 jurisdiction's 4:2 44:17 jurisdictions 3:25 11:24 12:3 15:14 20:9 25:9 34:14 34:19,20 39:20 40:10 44:6 45:20 51:25 52:5 54:10</p>	<p>54:23 Justice 1:18 3:3,9 4:4,9,22 5:5,8,12 5:13 6:24 7:4,8,9 7:14,16,19,22,25 8:6,8,16,24 9:2,3 9:18 10:6,20 12:4 12:5,18 13:2,4,10 14:16,19,22,24 15:3,9 16:1,5,9,16 17:11,20 18:1,6 18:13 19:25 20:4 20:18 21:1,9,13 22:3,10,17,22,24 23:6,10,15,22,24 24:3,5,9,11,21 25:3,8,12,14,23 26:2,8,19,22 27:3 27:7,17,21,24 28:2,4,9,12,22 29:4,7,12,15,18 29:23,25 30:3,7 30:10,19 31:2,22 32:6,11,16,20,21 33:2,6,18 34:4,7 34:10,16,25 35:3 35:12,14,24 36:2 36:9,12,25 37:6 37:12,18,24 38:23 39:3,24 40:1,5,8 40:12 41:9,19,22 42:10,15,17,23 43:2,11,16,21 44:8,15,16,20,25 45:6,10,17 46:5 46:10,18 47:18,23 48:7,13 49:13,18 49:22,23,25 50:5 50:6,13,17,22,25 51:3,8,13,15,16 51:20 52:3,8,16 52:20,23 53:3,4,9 53:14,17,21,22 54:1,21 55:3</p> <hr/> <p style="text-align: center;">K</p>	<p>Kagan 25:12,14,23 26:2,9 33:2,6,18 34:4,7,10,16,25 35:3 39:24 40:1,5 40:8,12 47:23 48:7,13 49:13,18 50:17,25 51:3,8 54:21 Kan 1:15 Kansas 1:15 4:5,6,8 4:10,13,14,20,23 5:3 6:10,11,16 9:7 11:2 12:6,8,21 13:18,19 15:19 16:22 17:5,6,8 19:16,21 20:13,19 21:14,25,25 22:1 22:6,20 23:19 24:2,18 25:20 26:7,13,14 28:3 30:5,5 32:4,9,11 32:13,19,24,25 33:1 34:1,23 35:2 35:4 40:25 41:13 41:15,16 42:9,24 45:23 46:2,6,23 47:5,15,21 49:16 49:16 52:12 keep 20:7,8 21:5,17 22:21 23:3,4,11 25:5 31:8 33:19 33:20,22 34:12 35:7 39:5,11 43:20,24 44:5 47:4,12 49:14 keeping 48:11 KENNEDY 8:24 9:3,18 10:6 15:9 16:1,5 20:18 21:1 21:9,13 22:3 25:8 key 14:9 22:6 kind 52:24 kinds 31:16 knew 10:18 50:22 know 9:19 11:18 16:7 18:8 26:13</p>	<p>30:4,16,23 31:16 31:17 33:11 34:4 39:13 40:24 42:19 43:23 44:23 46:6 48:19 49:24 known 50:8 Korea 32:18</p> <hr/> <p style="text-align: center;">L</p> <p>language 12:7,12 15:17 17:9 34:10 37:12 41:10 46:11 46:12 54:23 Laughter 30:18 45:14 48:5 50:20 50:24 51:2 law 4:2,3,5,6,24 5:14,16,17,20,21 7:10,11,12 8:1,10 12:16 14:17 17:5 17:5,8,9 18:2 19:4 27:23 28:8 30:24 33:8,12,13 36:3,4 36:7,7 37:3,9,22 41:2,5,6 44:9,12 46:15,23 49:6,9 layperson 27:18 leave 8:16 31:10,11 33:16 48:3 Leavenworth 32:4 33:1 leaves 4:10 6:15 12:21 14:20 41:13 leaving 8:16 13:15 21:14,25 31:10 48:16 left 7:3,4 18:3,3 24:2,19 34:23 35:4 36:3,6 41:14 legal 47:24 legislation 11:17 17:21 18:14 legislative 5:24 10:23 11:14 LESTER 1:3 let's 28:23 41:13</p>	<p>43:2 light 50:25 Lights 50:21 line 18:18 lines 6:2,22 list 46:7 listed 32:14 listing 30:25 32:1,1 literally 31:4 little 9:12 29:19 31:3 51:20 live 6:10 9:7 15:19 19:21 lived 19:15 32:17 lives 10:1 19:17 34:20 living 32:4,5,6 33:1 42:9 49:12 local 17:1 location 9:25 10:1 47:9,9 long 32:25 longer 21:7 30:13 30:14 33:5 42:9 49:16 look 5:23 9:21 11:14 27:8 28:23 31:7 33:13 39:7 40:13,17 51:5 54:15 looked 13:23 31:12 lot 11:4,5 15:19 17:1 27:17 42:12 luck 48:4</p> <hr/> <p style="text-align: center;">M</p> <p>making 48:11 manner 38:6 March 1:9 marshals 8:4 matter 1:11 19:20 41:2 55:6 maximum 26:24 mean 11:19,25 25:25 29:8,8 32:11 38:4 41:22</p>
--	--	---	---	---

<p>41:24,24,25 42:1 42:4,7,11,12 43:2 47:18 54:8,18 meaning 20:14 means 23:4 26:3,4 28:24,25 29:9,11 29:17,21 33:22 34:12 37:15 39:11 47:12,15 52:4 meant 14:4 mention 18:20 mentioned 8:24 10:22 54:21 midst 51:6 mind 19:10 mine 30:21 minimum 4:16,17 6:23 10:19 41:3 54:4 minutes 53:10 missing 5:25 6:5 Missouri 15:20 19:1,3,4 Monday 41:14 mooted 38:21 morning 3:4 34:22 34:23,25 35:3 move 3:17 5:4 9:6 34:24 54:7 moved 3:12 7:21 19:1 42:20 47:16 moves 3:16 12:6 54:5 moving 12:9 20:20 21:24 32:15 38:11 40:21 44:6 multiple 28:19</p> <hr/> <p style="text-align: center;">N</p> <p>N 2:1,1 3:1 name 10:10 narrowly 43:6 need 51:4 53:6 needing 44:5 needs 29:2 38:12 never 42:24</p>	<p>new 7:7 11:17 12:10 17:21 18:14 26:16 35:16,18 36:3,6,7,18,20,21 37:3,13,14,22 38:7,17,21 50:1 51:8 Nichols 1:3 3:4 6:14 7:21 8:12 16:14 19:15 45:24 normally 4:10 21:23 note 19:11 notice 8:17 14:22 16:12 20:10 23:21 24:2 39:14 40:24 45:24 52:13 notices 27:24 40:17 notification 11:22 33:4,15 40:18,20 notified 29:3 notify 4:14 15:24 20:19 notion 48:9</p> <hr/> <p style="text-align: center;">O</p> <p>O 2:1 3:1 obligated 51:17 obligation 4:12,13 4:20,21 21:17 23:16 27:25 31:23 39:9 40:6,14,15 42:16 44:19 45:24 obligations 39:4 40:7 obliged 43:19 Obviously 27:9 occurrence 14:11 occurs 26:21 odd 51:21 offender 3:11,16 6:2,9,14 11:4 22:12 27:13 28:19 30:25 37:15 38:24 40:12,16 48:8,25 51:5,17 52:3 53:6</p>	<p>54:5,24 offenders 4:1 6:1,4 6:19 10:16 16:23 31:1 32:2 33:7 40:7 44:19 45:22 48:3,20,22 52:11 offense 6:15 16:19 19:7 27:24 28:7 50:14 53:8 offenses 49:2 office 12:8 13:18 17:14 47:5 offices 16:24 officials 8:4 16:25 40:6,14 oh 18:15 32:16 40:21 42:23 53:21 okay 27:11 37:6,6 41:22 42:15 53:17 old 36:4,22 once 32:12 one's 9:25 operative 16:17 opposed 52:17 opposing 36:16 option 24:15 oral 1:11 2:2,5 3:7 20:2 order 30:24 43:19 51:4 Oregon 9:8 outset 10:22 outside 16:13 overarching 3:18</p> <hr/> <p style="text-align: center;">P</p> <p>P 3:1 page 2:2 13:21 23:8 23:8 43:21,22 44:3 paid 50:23 parentheses 19:4 parse 27:18 part 23:2 41:3 particular 26:5 28:18 51:12</p>	<p>path 18:22 pedophile 50:3 pedophiles 11:8 penalty 26:24,25 27:18 Pennsylvania 19:2 19:5,6 people 11:5 15:4,4 15:7,19 17:19 31:11 36:8 37:2 41:10 42:12 48:21 period 10:17 13:15 21:15 35:8 permanent 7:12 37:20 permanently 48:3 permits 47:3 person 4:10 5:10 12:7,21 13:12 17:18 29:12 37:7 40:19 person's 18:3 Petitioner 1:4,16 2:4,10 3:8 20:6,12 41:1 50:7 53:1,13 Petitioner's 47:3 Philippines 7:20 11:9 12:22 19:16 19:22 20:21 22:3 22:13 23:17 28:5 32:7,17 37:8,19 37:25,25 38:9,20 48:18 49:2 50:7 50:12,16 51:5 photograph 54:17 phrase 14:2 20:15 20:16 21:8 22:18 25:18 pick 7:12 35:25 picks 46:20 place 17:23 23:17 27:13 32:5 47:2 47:14 placed 40:6 places 40:13 50:8 plausible 10:25</p>	<p>play 6:21 played 6:9 please 3:10 20:5 43:21 49:24 point 18:23 25:17 29:1 36:6,7 38:14 48:6 pointed 27:25 points 54:14 policy 49:25 portions 54:9 position 19:7 20:18 47:11 54:8 possible 47:7 practice 4:16 17:17 pre 15:4 pre-2016 15:4 precisely 42:7 presence 11:4 prevent 12:7 prevents 12:15 previous 43:5 prior 13:15 15:8 prison 18:25 probably 46:6 problem 6:16,25 7:1,2 18:13 34:15 35:10,14 36:14 49:10 50:11 problems 50:3 produce 10:24 produced 10:24 promulgated 21:22 prosecute 37:21 prosecuted 8:22 prosecution 28:18 41:5,6 prosecutions 48:2 prospectively 35:15 36:14 provide 15:13 30:25 33:15 40:18 45:24 52:13 provides 33:21 34:12 39:10 provision 8:2 13:6</p>
---	--	--	---	---

<p>14:15 18:4,9,12 26:15,25 27:6 28:14 35:5,6 37:22 38:6 39:3 39:19 40:24 44:9 54:16 publicly 45:19 pulled 22:18 purpose 30:24 31:25 32:3 33:8 33:10 35:23 37:16 37:17,18,24 38:4 38:8,12 purposes 31:2 pursuant 13:13 20:13 22:7,9,19 24:24 25:19,24 26:5,11 34:17 41:17 pursued 28:5 put 12:2 puts 19:3</p> <hr/> <p style="text-align: center;">Q</p> <p>question 16:1 38:3 47:24 52:23 questions 19:24 55:2 quotation 17:5 quote 53:25</p> <hr/> <p style="text-align: center;">R</p> <p>R 3:1 raise 38:3 RAY 1:3 read 29:16 31:3 38:23 52:4 reader 33:14 reading 18:11 19:12 25:24,25 28:6 34:3 36:4 39:3 40:24 44:11 45:3,5,7,11 46:3 reads 33:14 45:21 reality 10:15 really 8:8 9:13</p>	<p>10:25 11:7 13:24 14:14 19:14 40:14 41:12 48:19 52:17 reason 18:19 42:10 reasonable 33:14 40:19 reasons 3:18 28:19 45:16 rebuttal 2:8 53:12 53:15 received 8:20 40:17 recognize 33:8 recognized 28:20 record 11:3 red 50:25 reference 9:1 16:9 referring 17:4 40:2 refers 22:11 regard 11:17 register 4:12,25 5:17 6:13,25 9:16 10:17 15:15 16:11 17:7,12,18 19:6 20:6 22:19 23:1 27:9,10,13 39:5 registered 15:12 19:1 20:10 25:10 25:21 30:23 46:16 46:19,22 registering 7:5 19:5 46:15 registers 4:11 registrant 22:20 registrants 54:3 registration 3:13 5:1 6:1,3 7:7 8:5 9:9 11:21 16:24 17:7 20:7,9 21:5 21:17 23:3,5,11 23:17 25:5 27:21 31:8 32:14,23 34:13 39:5 43:20 43:24 44:5 47:4 47:12 49:7 54:2 registries 33:9 registry 10:9,12</p>	<p>12:8 13:18 19:14 19:17 26:7 30:25 31:24,25 33:1,21 39:6 49:11,14 regulation 43:4 51:14 52:5 regulations 31:14 31:15 reinforced 20:17 25:21 reinforces 40:25 relations 11:11 50:12 relationship 6:7,7 relatively 36:13 release 8:13,18,20 48:9,10 49:1 released 19:1 relevance 16:2 remain 11:6 remaining 53:11 remains 32:25 remember 48:7 report 3:17 10:10 13:9 14:12,14 21:20,21 28:1 31:17 35:22 37:15 38:8,12 46:8 47:7 reported 38:16 47:10 54:2,5 reporting 12:9 reprinted 43:18 require 4:1 6:25 7:1 13:7 34:3 35:22 46:24 54:1 required 11:22,23 15:14 17:7,8 19:4 20:6,19 21:1,4,4 22:19,20 23:1 43:24 47:1 48:16 51:11 52:2,15 requirement 3:13 3:19,22,24 4:8,25 5:9 6:11,17,23 8:5 9:9 12:2,25 13:3,9 16:11 20:8,8 31:9</p>	<p>32:23 44:4 47:4 48:14,15 54:13,24 requirements 4:18 4:19 17:13 33:24 41:3 49:7 53:8 54:17 requires 8:3 18:2 23:21 33:15 35:7 38:7 46:1,6 requiring 6:3 54:4 reregister 46:13 reserved 53:15 reside 17:22 19:21 21:20 27:15 31:1 32:2 41:15 resided 38:25 42:5 residence 9:19 13:12,17 15:23,24 16:12 20:11,20,22 20:24 26:6,16,21 28:1 29:2 30:2,13 30:13,15 32:18,24 35:21 37:8,20 38:1,11 39:15,21 39:22 40:11 44:1 45:25 46:9,14 47:8 52:14 54:5 resident 19:14 26:7 30:23 34:2 35:2 42:14,18 resides 5:2 9:25 19:18,19 21:20 22:12,14 23:13 24:25 25:4,15 27:13,14,15 38:24 44:6 residing 13:18 21:6 21:7 25:10 38:19 41:15 47:22 resolved 18:14 responded 7:9 Respondent 1:19 2:7 20:3 responsibilities 49:19 responsibility</p>	<p>49:14,15,21 result 10:24 retains 11:2 returned 3:14 7:19 8:1 reveals 3:21 40:9 revoked 8:20 Reynolds 18:21,22 18:24 19:8 riddance 48:4 right 8:12 9:11 14:18,21,23 19:18 19:20 22:10 24:3 26:19 28:24 30:10 33:19 35:2 37:4 41:25 42:1 43:11 46:7,10 49:13,13 49:17,21 50:17 54:11 rights 11:11 50:10 ROBERTS 3:3 5:13 6:24 7:4 19:25 22:10,22,24 23:6,10,15,24 24:3,5,9,11,21 25:3 26:19,22 27:3,7,17,21 36:25 37:6,18,24 38:23 44:8,20,25 45:6,10 46:5,10 46:18 49:23 50:22 53:4,9,17,21 55:3 rolls 42:14,18,22,23 rule 9:15 ruling 36:12 run 42:19</p> <hr/> <p style="text-align: center;">S</p> <p>S 2:1 3:1 sanctions 5:15 satisfied 17:14 satisfy 14:14 saying 6:17 7:16 13:25 16:16,20 17:16 21:5 26:10 28:24 31:6 33:7</p>
--	--	--	--	--

<p>37:7 38:24 39:4 44:15 45:6 47:12 says 5:14,17 9:15 13:10 17:22 18:25 18:25 19:2 21:23 22:25 23:2 24:23 24:25 25:5,18 26:15 27:11,11,12 27:15 31:9,13,16 32:4 33:1,14 34:13,16 38:20 39:13 40:21 41:1 43:22 46:13,18,21 47:8 48:15 51:17 school 44:1 se 35:21 second 3:21 14:2 18:22 Section 20:17 21:19 25:6,22 26:14 28:11 41:8 49:5 53:5 see 11:5 12:19 17:21 29:4 30:7 41:11 seek 7:13 sense 5:13 19:20 sentence 8:21,23 15:10,11,20 29:6 sentenced 14:10 separate 17:12 38:3 serve 33:10 set 37:20 38:1 sets 4:16 13:25 sex 3:11,16 4:1 5:25 6:2,9,14 11:4 16:23 28:19 30:25 31:1 32:2 33:21 44:19 45:22 48:3 48:8,20,22,25 50:8 51:5,16 52:3 52:11 54:5 sexual 53:6 sexually 50:15 sheriffs 17:1 shows 10:23 11:20</p>	<p>sign 16:24 signed 16:14 27:24 significance 47:25 significant 16:2 signs 16:10 silence 29:16 similar 14:5,9 simply 21:14 single 28:10 33:23 41:7 situation 12:20,20 15:21 19:15 39:18 46:25 six-month 8:22 small 15:6 36:13,17 Solicitor 1:17 somebody 27:8 36:6 48:7,9 49:6 somebody's 21:23 somewhat 5:24 soon 26:16 SORNA 4:10,16 5:10 6:12,21,23 7:3,22 8:3 9:23 10:2,15,18 11:15 12:2 14:20 16:10 16:22 17:13 18:22 19:17,19 20:6 21:14 22:14 28:6 41:3 46:1,2,23,23 47:1,3,11 49:8 51:10 52:15 53:8 54:3 SORNA's 3:19,21 3:24 SORNA-implem... 45:20 sorry 49:24 53:14 sort 10:24 46:11 SOTOMAYOR 7:8,16,19,22,25 8:6,8 17:20 18:1,6 18:13 43:21 51:13 51:16,20 52:3,8 52:16,20,23 sought 28:13,17</p>	<p>South 32:18 special 28:21 30:12 specific 33:22 specifically 40:6 43:19 46:13,20 standards 4:16,17 10:19 54:4 start 47:9 State 4:23 5:9,10 5:16,17 6:2,8,9,14 6:22 7:7,9,11 8:1 11:21 12:16 16:21 16:21,23 17:2,2 17:14,18 18:3 27:23 28:4,7 40:14 41:2,5 48:16 49:6,9 52:16 53:1 States 1:1,6,12 3:5 3:13,14 4:18 7:3,5 7:10 8:5 9:5 10:18 11:8 16:13 16:22 17:24 28:20 50:2 51:14,18 statute 12:7,12 19:19 22:4 25:24 33:21 35:17,18 36:18,20,21,23 38:7,17,22 39:19 40:13 43:14 44:10 44:14,17,18 45:3 45:5,8,11,21 50:1 51:8 52:1 statutory 3:21 11:25 15:2 34:10 35:5 strained 28:15 stringent 4:18,19 54:3,12 strong 28:17 structurally 14:5 student 22:13,15 23:13 32:3 34:21 38:25 39:1 subject 3:12 35:4,6 48:15</p>	<p>submitted 55:4,6 subsection 13:13 13:19,23,24,25 14:5,9,13 20:14 20:16 22:7,8,9,11 22:19 23:4,20 24:24,24 25:18,19 25:24 26:5,10,12 34:11,18,18 37:13 39:10 41:17 subsections 14:1 subset 15:6 sudden 6:25 sufficient 12:24 13:5 41:4 summaries 17:5 supervised 8:13,18 8:20 supervision 8:15 supervisory 48:9 48:10,25 supplement 10:18 supplemental 18:10 19:12 51:9 51:24 supplemented 4:17 support 41:11 43:3 43:4,5,6,8 supposed 27:8,14 29:12,15 31:6,7,7 33:8,19 40:13,17 40:18 45:22 48:10 49:11 52:4,8 Supreme 1:1,12 sure 9:7 10:3 48:11 system 10:8 11:21</p>	<p>15:3,5 18:24 34:19 37:13 54:19 talks 35:18,19 tell 4:8,25 5:3,3 17:18,24 18:2 21:25 31:10 32:9 32:19 40:22 42:12 43:16 45:4 48:17 49:16 51:4,16 telling 40:9 45:12 45:15 tells 26:3 51:14 ten 27:1,7,18 ten-month 8:21 Tenth 3:15,17 terminating 20:20 20:21,24 43:25 45:25 termination 16:12 28:1 46:14 52:14 terms 8:17 48:19 49:22,25 text 3:19 13:20 33:12,13,14 44:14 textual 10:20 Thailand 32:8 42:19 thank 19:24,25 53:9,16,19 55:3 thing 17:1 22:17 31:5 things 11:1,2 16:25 31:16 think 5:11,22,24 6:9,19 8:3,7,11 9:11,15,23 10:2,4 10:9,14,17 11:7,9 11:13,16,19,25 12:25 13:8,21,21 13:22,24 14:4,8,8 15:18 16:6,7 18:4 18:11,15,16,21 19:7,9 20:12 21:9 21:19 22:6,17 25:6,17,21 27:3,8 28:17 29:5,20,21</p>
---	---	---	---	--

<p>30:22 32:25 33:25 35:10,11,16 36:5 36:19,21,22 37:23 38:2 39:2,10,17 40:9,16,19 41:2,4 45:11,13,16 46:4 46:22,25 47:14,17 49:3 50:11 53:15 54:15,18,21 thinking 31:9,11 43:6 thinks 45:7 thought 24:23 36:16 38:10 41:12 48:2 three 3:11,18 10:11 13:11,16 14:3,7 24:6,12,14,17 29:1,9 35:9 39:16 46:14 47:14 54:6 three-business-day 10:5 35:8 time 10:9,17 13:17 25:15 26:6 29:1 38:6 49:8 53:15 timely 20:10 times 54:21 title 38:17 today 35:1 37:2 told 40:20 42:8 45:20 52:11 tough 31:3 tourists 50:8 track 48:11 travel 6:12 7:15 9:5 9:12 11:16 17:23 35:20,23 37:16,17 38:13,15 53:7 traveled 15:8 traveling 16:13 trigger 14:8,10 triggered 5:17 true 4:4,6 18:16 24:12,13 25:16 28:9,10 33:5 34:1 34:22 37:11 40:8</p>	<p>41:7 44:2 51:22 trying 30:10 36:9 41:11 Tuesday 1:9 41:14 turn 38:11 turns 38:10 two 9:8,20,21 11:1 11:2 13:25 24:17 39:4 42:2 type 35:17 36:19 typically 15:17</p> <hr/> <p style="text-align: center;">U</p> <p>U.S 18:2 U.S.C 13:5 unconcerned 11:8 underlying 6:20 33:8,10 understand 10:21 21:10 26:8,22,23 29:13 30:11,17 44:18 48:14 50:18 52:4,20 54:19 understood 36:25 37:1 undertook 16:18 unintended 10:3 United 1:1,6,12 3:5 3:13,14 7:10 9:5 11:8 16:13 17:24 28:20 50:2 unnecessary 3:25 unregister 3:20,23 3:25 4:1,20,23 5:18,18,19 6:11 6:18 7:1 9:16 27:10 46:7 unregistering 7:5 unregistration 11:23 12:2 20:8 update 4:25 17:7 updating 7:6 19:2 32:23 use 46:11</p> <hr/> <p style="text-align: center;">V</p>	<p>v 1:5 3:4 vacation 38:10 venues 5:6 verifications 54:16 versa 15:25 vice 15:25 view 21:11 26:9 49:18 violate 5:15 7:9 8:17 violated 4:5 39:9 43:1 violating 26:25 27:5 37:9 49:6 violation 4:2 7:11 7:23 8:1 27:22 28:5 38:12 41:8 53:7 violations 49:8 virtually 28:10 41:7 visit 37:19,25</p> <hr/> <p style="text-align: center;">W</p> <p>want 10:14 18:20 19:11 27:10 41:6 wanted 3:22 11:6 wants 9:6,7 warning 22:2 Washington 1:8,18 9:8 wasn't 10:3 28:2,4 28:12 way 10:13 18:9 19:19 30:12 33:14 36:13 39:3 44:15 45:21 46:22 ways 50:2 We'll 3:3 we're 5:14 6:17 8:8 15:5 31:20 37:12 37:16 39:3,4 43:13 44:13 48:10 weeks 3:11 9:9 weird 19:15 went 50:7</p>	<p>West 9:6 window 10:4,5 wonder 10:25 word 14:1 26:11 28:23 41:11 43:7 54:14,17 words 15:12 29:7 42:17 45:1 work 4:9 6:19 15:19 32:8 working 51:1 works 34:20 world 48:17 wouldn't 38:18 wrong 3:18 7:12 8:10 27:19</p> <hr/> <p style="text-align: center;">X</p> <p>x 1:2,7</p> <hr/> <p style="text-align: center;">Y</p> <p>Yeah 9:2 27:3 31:22 51:15 year 11:21 years 27:1,7,19 32:7,17 42:20,25 young 50:9</p> <hr/> <p style="text-align: center;">Z</p> <p>zero 34:14</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p style="text-align: center;">1</p> <p>1 1:9 10:13 1:13 3:2 11 53:10 11(a) 15:10 11:04 55:5 11a 13:21 40:4 15 32:6,17 15-5238 1:4 3:4 16139(c) 19:7 1621 54:22 16913(a) 38:24 16913(c) 9:15 13:5 18:19</p>	<p>16914(a)(3) 21:19 26:23 27:15 16914(a)(7) 37:14 16917 8:3 16921 25:7 16921(b) 40:1 16921(b)(3) 5:3 20:17 25:22 26:14 40:3,5 54:22 1875 44:23 19 8:3 1996 11:21</p> <hr/> <p style="text-align: center;">2</p> <p>2 14:9 20 2:7 42:25 2006 11:15,23 2008 21:23 43:13 44:17 45:19 2011 51:10 2016 1:9 14:17 21 16:12 38:20 2250 28:11 41:8 49:5 53:5 22a 43:22 24 44:3</p> <hr/> <p style="text-align: center;">3</p> <p>3 2:4</p> <hr/> <p style="text-align: center;">4</p> <p>4 18:11 42 13:5</p> <hr/> <p style="text-align: center;">5</p> <p>50 42:20 53 2:10 56 3:25</p> <hr/> <p style="text-align: center;">6</p> <p>6 27:16</p> <hr/> <p style="text-align: center;">7</p> <p>7A 23:8</p> <hr/> <p style="text-align: center;">8</p> <p>8th 15:8</p>
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9				
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