

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
CITY OF HAYS, KANSAS,)
 Petitioner,)
 v.) No. 16-1495
MATTHEW JACK DWIGHT VOGT,)
 Respondent.)
- - - - -

Pages: 1 through 74

Place: Washington, D.C.

Date: February 20, 2018

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrccourtreporters.com

| | | |
|----|---------------------------------|-------|
| 1 | C O N T E N T S | |
| 2 | ORAL ARGUMENT OF: | PAGE: |
| 3 | TOBY J. HEYTENS | |
| 4 | On behalf of the Petitioner | 3 |
| 5 | ORAL ARGUMENT OF: | |
| 6 | ELIZABETH B. PRELOGAR | |
| 7 | On behalf of the United States, | |
| 8 | In support of Petitioner | 22 |
| 9 | ORAL ARGUMENT OF: | |
| 10 | KELSI B. CORKRAN | |
| 11 | On behalf of the Respondent | 35 |
| 12 | REBUTTAL ARGUMENT OF: | |
| 13 | TOBY J. HEYTENS | |
| 14 | On behalf of the Petitioner | 70 |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

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

2 (11:06 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next in Case 16-1495, the City of Hays
5 versus Vogt. Mr. Heytens?

6 ORAL ARGUMENT OF TOBY J. HEYTENS

7 ON BEHALF OF THE PETITIONER

8 MR. HEYTENS: Mr. Chief Justice and
9 may it please the Court:

10 The decision below should be reversed
11 for two independent reasons. Reason Number 1:
12 Because the only setting in which a person can
13 be made to be a witness against himself for
14 purposes of the Fifth Amendment is during a
15 proceeding where that person's guilt or
16 punishment are to be adjudicated; that is, at
17 trial.

18 And, second, because regardless of
19 whether it is possible that some types of Fifth
20 Amendment violations could ever occur before
21 trial, the Court should reject any such notion
22 with regard to the specific type of Fifth
23 Amendment violation alleged here, which is the
24 use of statements in violation of Garrity
25 versus New Jersey.

1 JUSTICE GINSBURG: Mr. Heytens --

2 JUSTICE KENNEDY: Your -- Your first
3 statement, I -- was very well stated. The
4 first reason is because the only thing that
5 Double Jeopardy -- that the clause applies to
6 is?

7 MR. HEYTENS: The self-incrimination
8 clause can only be violated during a proceeding
9 where the person whose statements are at issue
10 is being used to adjudicate that person's guilt
11 or punishment for purposes of criminal
12 liability. That's the first reason.

13 JUSTICE GINSBURG: It has to be at
14 trial. So in making that argument, Mr.
15 Heytens, you were recognizing that you are
16 shrinking to almost a vanishing point the
17 possibility of using the Fifth Amendment to
18 block the use against you of incriminating --
19 the -- you -- you're shrinking the privilege to
20 nothing because there aren't many trials
21 nowadays; upwards of 95 percent of cases are
22 disposed by plea bargaining. So by limiting
23 the Fifth Amendment to there must be a trial,
24 there must be a witness at trial, you are
25 saying effectively the Fifth Amendment, which

1 is considered very important, is out of the
2 picture in most criminal cases?

3 MR. HEYTENS: I don't think that's --
4 that's right, Justice Ginsburg. And I think
5 the reason for that is that it's critical to
6 distinguish between two issues.

7 The first issue is when can the
8 privilege against self-incrimination be invoked
9 and the second is when the Self-Incrimination
10 Clause can actually -- can actually be
11 violated.

12 Let me give you an example. Under
13 this Court's decision in Chavez, if Chavez
14 holds nothing else, I understand Chavez to hold
15 this: Nothing that happens inside a police
16 interrogation room can itself constitute a
17 completed violation of the Fifth Amendment.

18 But that is not to say, of course,
19 that an officer is interrogating me I cannot
20 say I decline to answer your questions on the
21 grounds that may incriminate me. So I think
22 it's very important to distinguish between the
23 question of when the privilege can be asserted
24 -- I can assert the privilege in a civil case.
25 I can assert the case in a police interrogation

1 room. I can insert the privilege at someone
2 else's criminal trial and nothing that we're
3 asking the Court to do is inconsistent with any
4 of that.

5 JUSTICE GINSBURG: So, Mr. Heytens, if
6 this defendant, based on what you just said,
7 could refuse to answer the question if it had
8 been put to him at the probable cause hearing,
9 say tell us about that episode when you -- you
10 retained the knife, he could say: I won't,
11 because that might incriminate me, he could
12 raise the privilege.

13 MR. HEYTENS: Absolutely.

14 JUSTICE GINSBURG: But he can't object
15 if prior testimony, if a prior statement to
16 that effect, is introduced at the probable
17 cause hearing. He said it before, it can't be
18 introduced. If he gives the testimony, if he
19 gives the statement at the probable cause
20 hearing, that's right, he doesn't have to
21 incriminate himself but he can't object to the
22 introduce -- introduction of a prior compelled
23 statement.

24 MR. HEYTENS: I -- I understand the
25 apparent anomaly, Justice Ginsburg. And I

1 think the reason, though, for it is the reason
2 he can assert the privilege against
3 self-incrimination at the probable cause
4 hearing is the same reason he could assert it
5 in the police interrogation room. It is the
6 risk that if he gives a statement in that
7 setting, it could later be used against him at
8 a trial on guilt or a trial on the merits and
9 that's the reason that he could assert the
10 privilege at the probable cause hearing but it
11 is not because anything that happens at the
12 probable cause hearing can actually make him a
13 witness against himself.

14 JUSTICE BREYER: What about a grand
15 jury proceeding?

16 MR. HEYTENS: Can it be asserted?
17 Absolutely, Justice Breyer.

18 JUSTICE BREYER: No, can it be
19 prevented?

20 MR. HEYTENS: Justice Breyer, our
21 understanding -- the --

22 JUSTICE BREYER: I mean, I -- I've
23 come across Supreme Court cases which refer to
24 a grand jury proceeding as part of a criminal
25 case. And you cannot introduce it in a

1 criminal case.

2 So what I wondered and seemed to be
3 missing is that I haven't found anything that
4 says, you know, you can't attack the grand jury
5 proceeding later, but that's different. So --
6 so somebody finds a way, gets an order from the
7 judge, he says I don't want these pieces of
8 paper introduced, they were taken from me in
9 violation of my Fifth Amendment right not to be
10 a witness, and I don't want them brought before
11 the grand jury.

12 I'm rather surprised that's never come
13 up.

14 MR. HEYTENS: Well -- well, Justice
15 Breyer, I think it has come up. And I think
16 that points --

17 JUSTICE BREYER: And where are the
18 cases that say, even though the person
19 objected, you can introduce it to the grand
20 jury? I can't find any. And I have found
21 cases that say grand jury is a criminal
22 proceeding.

23 MR. HEYTENS: Right. We certainly
24 understand the grand -- this Court's decision
25 in Counselman to say that the grand jury is

1 part of the criminal case for purposes of the
2 Fifth Amendment. And we think that's very
3 significant because, Justice Breyer, I agree
4 that I'm not aware of any case where the
5 defendant tries to stop the information from
6 being presented to the grand jury.

7 What I am aware of is numerous
8 statements by this Court that says that a
9 defendant may not attack an indictment by
10 claiming that the grand jury considered
11 statements obtained in violation of the Fifth
12 Amendment. By my count, the Court has said
13 that at least three times.

14 JUSTICE KAGAN: Mr. Heytens, you also
15 agree now, don't you, that the probable cause
16 hearing is part of the criminal case? That's
17 not at issue here?

18 MR. HEYTENS: We agree with that, yes.

19 JUSTICE KAGAN: Okay. So then, if I
20 just look at the language of the
21 self-incrimination clause, it's "shall be
22 compelled in any criminal case," which we are
23 in now, and -- and there's no issue here about
24 compulsion, maybe there should be, but there
25 isn't.

1 "Shall be compelled in any criminal
2 case to be a witness against himself. "To be a
3 witness against himself," if I'm just thinking
4 about the natural reading of those terms, it's
5 when my testimony is introduced adverse to my
6 interests in that criminal case.

7 So why isn't that just what we should
8 be asking?

9 MR. HEYTENS: I understand that if you
10 were looking simply at the language, that is a
11 more than plausible interpretation, but I don't
12 think that's the --

13 JUSTICE KAGAN: Kind of the obvious
14 interpretation, right?

15 MR. HEYTENS: Right. But -- but I
16 think it would be inconsistent with a number of
17 things that this Court has already said, and I
18 think it would be inconsistent with some of the
19 concessions that I understand our friend on the
20 other side to have made.

21 Let me give you one very -- very clear
22 example. I think a Gerstein hearing is also
23 pretty clearly part of a criminal case, and I
24 understand the red brief to all but acknowledge
25 that the rule that they're advocating doesn't

1 apply to Gerstein hearing.

2 This Court in Estelle -- I think a
3 competency hearing is clearly part of a
4 criminal case, but this Court said in Estelle
5 that --

6 JUSTICE KAGAN: Well, I don't think
7 Estelle is -- is inconsistent with that because
8 what the Court in Estelle said was that this is
9 actually a neutral determination. And that's
10 understandable when you consider that the
11 victory you win when you're declared
12 incompetent is to continue to be detained as
13 incompetent.

14 So it's -- it's -- it's not like here
15 where it's like: Well, obviously -- obviously,
16 I want to win this so that I can get out of
17 this criminal case.

18 MR. HEYTENS: Sure. Well, I guess two
19 responses to that, Justice Kagan. I think
20 everything you just said also would apply to a
21 grand jury context, and the Court has
22 repeatedly said you can't attack an indictment.
23 So --

24 JUSTICE KAGAN: Yes. I mean, you're
25 quite right that there's a -- if you are right

1 that the grand jury is different and you might
2 be, that there is a kind of anomaly there, but
3 explained, I think, by a kind of historic
4 judgment that grand juries are sacrosanct, that
5 everything has to be secret, that we don't want
6 people poking around in that black box, and
7 none of that is true of just standard probable
8 cause hearings.

9 MR. HEYTENS: We agree with that,
10 Justice Kagan, but I think the anomaly actually
11 goes deeper than that for two reasons. One is
12 that, under Kansas law -- under Kansas law,
13 this probable cause clearing is an express
14 statutory substitute for proceeding by a grand
15 jury.

16 And so we think it would be a little
17 bit strange to say that you have rights at the
18 substitute proceeding that you only have by
19 virtue of state law but --

20 JUSTICE SOTOMAYOR: I'm sorry, how --
21 how is it the same? You -- it's not the same.
22 In a grand jury, there's no adversarial
23 pursuit. There's no judge. There's no
24 defendant's lawyer. There's no anything like
25 the grand jury. So it can't be -- it's an

1 imperfect substitute at best.

2 MR. HEYTENS: Well, I -- I agree that
3 the procedures aren't the same, certainly,
4 Justice Sotomayor. And I understand the
5 procedures are different. I'm not sure what
6 any of that, though, has to do with whether
7 this is a criminal case and whether I'm being
8 made to be made a witness against myself for
9 purposes of the Self-Incrimination Clause, but
10 I think there's an even bigger problem, which
11 is the anomaly is actually not a two-part
12 anomaly; it's a three-part anomaly because, as
13 I read this Court's decisions in *Hurtado* and
14 *Gerstein*, the State of Kansas could choose
15 option number 3, option number 3 being no grand
16 jury, no probable cause hearing, the
17 prosecution goes forward based on nothing but
18 the prosecutor's determination that there is
19 probable cause. And there is no suggestion
20 that it would violate the Self-Incrimination
21 Clause for the prosecutor sitting in her office
22 to consider these statements.

23 So we're in a situation here where, as
24 far as the federal Constitution is concerned,
25 Kansas has three choices: a grand jury, a

1 probable cause hearing, or neither. And it
2 appears clear to me that, in option 1 and
3 option 3, the right that our friends on the
4 other side are asserting would not apply. And
5 so it would seem anomalous that you'd have
6 rights in option 2 that you don't have in
7 option 1 or option 3.

8 But -- but even if the grand jury
9 analogy isn't persuasive to all members of the
10 Court, I think there's another analogy that is
11 extremely damaging, which is the Gerstein
12 analogy because, as I read this Court's
13 decision in Gerstein, the legal question that
14 is decided at a Gerstein hearing, whether there
15 is probable cause to believe that the accused
16 has committed the crime, is legally
17 indistinguishable from the question at Kansas's
18 probable cause hearing.

19 So I'm not sure what the basis on that
20 ground would be for saying that this right
21 applies at the probable cause hearing but
22 doesn't apply at the Gerstein hearing. And I
23 don't think it's plausible to say that it
24 applies at the Gerstein hearing for all the
25 reasons that the Kansas amicus brief gives,

1 because it's simply not going to be practically
2 possible to have this right at a Gerstein
3 hearing, which is a non-adversarial proceeding
4 where there is no right to counsel and which
5 has to be held within 48 hours of arrest and
6 detention.

7 JUSTICE BREYER: Well, I don't -- so
8 back to my first question, I don't know what
9 the answer is in a grand jury proceeding. I do
10 know you can't attack that proceeding at trial,
11 but I don't know whether, as in this case,
12 somebody might, if they were used, bring a 1983
13 claim on the ground that its constitutional
14 rights have been violated. That's what
15 happened here.

16 And I don't know what would happen if
17 because of the circumstance the defendant went
18 before a judge and said: Judge, keep that
19 piece of paper out of the grand jury
20 proceeding.

21 MR. HEYTENS: Justice Breyer --

22 JUSTICE BREYER: So I do think perhaps
23 they should be treated alike, but I don't know
24 what alike is.

25 MR. HEYTENS: Well -- well, Justice

1 Breyer, I think all the reasons that the Court
2 has said that you can't collaterally attack an
3 indictment would also argue in saying that you
4 can't file a 1983 action.

5 JUSTICE BREYER: Why?

6 MR. HEYTENS: Well, because --

7 JUSTICE BREYER: I don't know. Maybe
8 you could. I mean, there -- I -- I don't even
9 know where to go to look that up.

10 MR. HEYTENS: Sure.

11 JUSTICE BREYER: But I assume you've
12 looked it up.

13 MR. HEYTENS: I have, Justice Breyer.
14 And the reasons this Court gave in its most
15 recent decision on the grand -- the collateral
16 attack on the grand jury, the Court said:
17 Well, if you had a right to challenge the
18 evidence that was introduced before you --
19 before -- against you at a grand jury, you
20 would have a right to discovery. You would
21 have a right to try to find out what was
22 happening before the grand jury.

23 JUSTICE BREYER: Yeah, I -- I see
24 that.

25 MR. HEYTENS: Who would --

1 JUSTICE BREYER: So -- so we have an
2 instance where there is a committee
3 investigating Mr. Smith and Mr. Smith takes the
4 Fifth Amendment 90 -- 94 times and then they
5 compel him to give all kinds of statements and
6 then there's a grand jury and he goes to the
7 judge and says: Judge, keep those statements
8 out.

9 MR. HEYTENS: I --

10 JUSTICE BREYER: And Mr. --

11 MR. HEYTENS: -- I understand why
12 Mr. Smith might want to do that.

13 JUSTICE BREYER: Yeah.

14 MR. HEYTENS: But I -- but I guess
15 just --

16 JUSTICE BREYER: And I understand
17 that. He says they were taken in violation of
18 my Fifth Amendment right. And --

19 MR. HEYTENS: So --

20 JUSTICE BREYER: And there we are.
21 Keep them out. Keep them out of the grand
22 jury. Huh. And you're telling me there is --
23 so this is an important case in more ways than
24 one because what we decide here, I guess, would
25 decide the same thing for the grand jury.

1 MR. HEYTENS: Well -- well, Justice
2 Breyer, I -- I'd say two things on that. First
3 and foremost, if he believed that his
4 statements were used in that way, I think it's
5 useful to take a step back and realize nothing
6 that we are saying is to suggest that
7 Mr. Smith, in Justice Breyer's example, would
8 not be file -- entitled to file a motion to
9 suppress each and every one of those statements
10 at his criminal trial.

11 And if that motion prevailed, he would
12 very likely get a dismissal on the charges
13 because, if it was actually true that the
14 government's evidence was almost all derived
15 from his own compelled statements, the granting
16 of the motion to suppress before trial would
17 effectively end the criminal proceeding in his
18 favor.

19 So it's not as if we're -- and the
20 same thing is true here. If Officer Vogt was
21 correct that the -- that the statements that
22 were used were obtained and then used in
23 violation of Garrity -- were obtained in
24 violation of Garrity, and if this case had
25 gotten past the probable cause hearing, I

1 assume and expect that Officer Vogt's lawyer
2 would have filed a motion to suppress all of
3 those statements at trial.

4 And if his Garrity claim was
5 meritorious, I think we need to assume that
6 that motion would have been granted. And if
7 that motion is granted and if all of the
8 evidence was, in fact -- or much of the
9 evidence was derived from those statements, I
10 assume that the criminal proceeding would have
11 ended in his favor. So we're not putting
12 defendants in a position where they don't have
13 an opportunity -- Justice --

14 JUSTICE SOTOMAYOR: I'm -- I'm sorry,
15 can we --

16 JUSTICE ALITO: Mr. Heytens --

17 JUSTICE SOTOMAYOR: Can we step back a
18 second? Your brief notes that the Respondent
19 did not file a motion to suppress his
20 statements or object at the probable cause
21 hearing to their admission.

22 Isn't that a waiver?

23 MR. HEYTENS: Justice, I want to be
24 careful, Justice Sotomayor, about what is and
25 is not in the record. I do not read Mr. Vogt's

1 complaint to allege that he ever filed such an
2 objection. That -- that -- that's what I can
3 say based on the face of it.

4 JUSTICE SOTOMAYOR: Well, you've seen
5 the record.

6 MR. HEYTENS: And based on my review
7 of the transcript, I do not -- it's not in --

8 JUSTICE SOTOMAYOR: So --

9 MR. HEYTENS: It's not in the record,
10 but I understand -- my understanding from the
11 hearing is that he did not file such a motion.

12 JUSTICE SOTOMAYOR: And wouldn't a
13 ruling by us against you just mean that
14 defendants -- whether it's within 48 hours at a
15 hearing that's being held or a probable cause
16 hearing, et cetera, wouldn't we be putting the
17 onus on defendants to raise a valid objection
18 if they have one then?

19 MR. HEYTENS: Justice Sotomayor, I --
20 I would certainly say if the Court were to rule
21 against us, I would urge that you make clear
22 that any such right requires a timely
23 objection.

24 JUSTICE SOTOMAYOR: Well, that's a
25 matter of -- of -- of law. If you don't object

1 to the admission of a statement, you've waived
2 that objection.

3 MR. HEYTENS: That's certainly
4 generally true, Justice Sotomayor, yes. The
5 objection --

6 JUSTICE ALITO: Are you familiar with
7 any cases -- I don't know what the states say
8 about this -- but in federal law that allow a
9 person who thinks that he or she may be under
10 investigation by a grand jury to go to a
11 federal judge and file a motion in limine
12 regarding the evidence that may be presented to
13 the grand jury?

14 MR. HEYTENS: I am not, Justice Alito.

15 JUSTICE ALITO: This would be
16 revolutionary, wouldn't it?

17 MR. HEYTENS: I -- I would agree with
18 that, Justice Alito.

19 If there are no further questions, I'd
20 like to reserve.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Ms. Prelogar.

24

25

1 ORAL ARGUMENT OF ELIZABETH B. PRELOGAR
2 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,
3 IN SUPPORT OF THE PETITIONER

4 MS. PRELOGAR: Mr. Chief Justice, and
5 may it please the Court:

6 The Self-Incrimination Clause
7 prohibits using a defendant's compelled
8 statement to adjudicate his criminal
9 responsibility. That kind of prohibited
10 incriminatory use does not occur in a pretrial
11 probable cause hearing where the defendant's
12 guilt and punishment are not on the line and
13 the only question is whether he'll be bound
14 over to the next stage of the criminal case.

15 I'd like to begin --

16 JUSTICE KAGAN: Ms. -- Ms. Prelogar, I
17 -- I guess that would mean as a conceptual
18 matter, even if not as a practical matter, but
19 as a conceptual matter, that the government
20 could force somebody to testify against himself
21 in such a proceeding?

22 MS. PRELOGAR: Well, to be clear,
23 Justice Kagan, we think that a defendant in
24 that situation would still -- would still have
25 a valid privilege against self-incrimination

1 because he could reasonably fear that anything
2 he says in that probable cause hearing could
3 then be used against him at the ensuing trial
4 to prove his guilt.

5 So a defendant could invoke his
6 privilege to prevent that testimony. And at
7 that point, the only way the government could
8 compel the defendant to speak would be to
9 formally grant him immunity.

10 JUSTICE KAGAN: Yeah. So this is why
11 I said maybe not as a practical matter, but as
12 a conceptual matter, you would be saying that
13 the government could, if it chose and if it
14 accepted certain consequences, could force him
15 to testify against himself?

16 MS. PRELOGAR: Only by granting that
17 immunity and --

18 JUSTICE KAGAN: Right.

19 MS. PRELOGAR: -- as this Court has
20 recognized in the immunity cases, by then
21 conveying on the defendant and conferring on
22 him that --

23 JUSTICE KAGAN: How about this? How
24 about if he didn't testify? Could -- could the
25 government draw an inference against him for

1 failing to testify, as the government could,
2 for example, in a civil case?

3 MS. PRELOGAR: I think that the
4 government could draw the adverse inference,
5 but I think the inference would only matter if
6 the government had already come forward with
7 sufficient evidence to show that you would
8 expect the defendant to respond to that and to
9 speak at that hearing. And at that point, I
10 think the government has already proven
11 probable cause, so I can't imagine any case
12 where it would make a difference to draw an
13 adverse inference against a defendant in that
14 situation.

15 JUSTICE KAGAN: Yeah, I guess my
16 questions are just that it seems odd for
17 something that is understood to be a part of
18 the criminal case, I don't -- I -- I -- I take
19 it that you have no continuing objection to
20 that view either --

21 MS. PRELOGAR: That's right. We think
22 this is part of the criminal case.

23 JUSTICE KAGAN: So, you know, it just
24 seems odd for something that is -- is clearly
25 part of a criminal case to say: Yes, the

1 government can draw an adverse inference, but
2 don't worry, we won't, it will never come up;
3 and, yes, the government could force him to
4 testify against himself, but don't worry, we
5 would have to give him immunity and we -- and
6 we wouldn't want to do that.

7 It just seems conceptually a difficult
8 position.

9 MS. PRELOGAR: Well, I think that the
10 reason we think that that is so and that those
11 things are permissible is because the
12 consequence of that probable cause hearing is
13 simply an interim step in the criminal
14 procedure that will -- that will then go on to
15 the criminal trial.

16 And I think that in the context of
17 that proceeding, where the defendant's not
18 exposed to the risk that those statements are
19 going to be used for the really consequential
20 things, for guilt and punishment, he hasn't
21 presented a witness against himself --

22 JUSTICE SOTOMAYOR: I'm sorry, if you
23 -- if you don't win at the probable cause
24 hearing, that ends the case. So it has a
25 consequence with respect to his innocence or --

1 or not his innocence, but his being proven
2 guilty or not.

3 MS. PRELOGAR: That's --

4 JUSTICE SOTOMAYOR: Because it ends
5 the case.

6 MS. PRELOGAR: That's true --

7 JUSTICE SOTOMAYOR: It can end.

8 MS. PRELOGAR: -- Justice Sotomayor,
9 but I think what the self-incrimination clause
10 focuses on are -- is what the defendant's
11 exposure is. And there's no chance that at the
12 end of that hearing that a magistrate could
13 enter a judgment of conviction and criminal
14 punishment could ensue.

15 JUSTICE SOTOMAYOR: But it increases
16 the possibility of his being found guilty and
17 punishment imposed?

18 MS. PRELOGAR: I think that that can't
19 be the test because it would be inconsistent
20 with this Court's decision in Estelle versus
21 Smith. The Court there recognized that there
22 would be no self-incrimination problem with
23 using a defendant's compelled statement to
24 adjudicate his competence to stand trial.

25 JUSTICE BREYER: What -- what about

1 other things? I mean, how does it work? I've
2 -- I've not conducted grand juries, some of my
3 colleagues have, but, I mean, I can imagine all
4 kinds of unconstitutionally seized evidence
5 that could violate the Fourth Amendment. You
6 could violate the Fifth Amendment's coerced
7 confession. You could violate any one of 15 --
8 not 15, but, you know, five or six different
9 constitutional prohibitions.

10 And if the prosecutor says I'm going
11 to go and introduce all this stuff before the
12 grand jury, does then a defendant have no
13 remedy whatsoever?

14 MS. PRELOGAR: Well, that's what this
15 Court has held in cases like Lawn and Calandra,
16 that a defendant --

17 JUSTICE BREYER: Then does that happen
18 all the time, that in grand juries they
19 introduce coerced confessions, they introduce
20 -- this comes as a surprise to me.

21 MS. PRELOGAR: Well, I think --

22 JUSTICE BREYER: I mean, you have the
23 experience.

24 MS. PRELOGAR: I -- I --

25 JUSTICE BREYER: They introduce

1 illegally seized evidence, they introduce all
2 this constitutionally impermissible evidence.

3 MS. PRELOGAR: Well, the issue,
4 Justice Breyer, is I think that oftentimes it
5 won't be apparent from the outset that the
6 evidence was obtained in -- in violation of the
7 Constitution.

8 JUSTICE BREYER: I just want to know
9 what happens. I guess this is not relevant to
10 what happens, but I -- I -- I can be educated.

11 MS. PRELOGAR: I can tell you --

12 JUSTICE BREYER: And it seems like an
13 important point.

14 MS. PRELOGAR: I can tell you that at
15 pretrial probable cause hearings, both under
16 the federal rule, this is Rule 5.1, and in the
17 majority of state jurisdictions, defendants are
18 prohibited by rule from challenging the
19 admission of evidence on grounds that it was
20 unlawfully acquired.

21 Now that doesn't mean that they lack a
22 remedy. They can file a motion to suppress,
23 they can get that issue resolved before they
24 have to face the consequence of either taking a
25 plea or going to trial.

1 But I think what those rules recognize
2 -- and there are other distinctions between the
3 body of evidence that's available at the
4 probable cause hearing as well. Hearsay is
5 routinely admitted.

6 So I think what those rules recognize
7 is that a probable cause hearing is
8 fundamentally distinct from the issues that are
9 going to be resolved at the guilt stage.

10 It's a lesser consequence for the
11 defendant. He doesn't face the exposure to
12 possibly having his conviction and punishment
13 adjudicated.

14 And for that reason, courts have
15 recognized, and this Court in cases like
16 Gerstein and Brinegar and Barber, have
17 recognized that a defendant doesn't have the
18 same right to have that determination made on
19 the body of evidence that would be admissible
20 at trial.

21 JUSTICE KAGAN: Ms. Prelogar, suppose
22 we rule against you on this issue. Do you
23 think that had -- that that would have
24 necessary consequences for any other kinds of
25 proceedings?

1 MS. PRELOGAR: I think it would depend
2 on the basis on which this Court ruled against
3 us.

4 Now I understand that Respondent has
5 suggested some ways to narrow what I understand
6 to be the Tenth Circuit's rule in this case
7 where, as I read the Tenth Circuit's opinion,
8 once you're in the criminal case, all
9 proceedings are covered.

10 And Respondent identifies some
11 limiting constructions that I think would limit
12 the number of procedures to which the rule
13 would apply, looking at things like what is the
14 legal issue being resolved in the case and what
15 is the potential consequence.

16 So, in that sense, I think that the
17 Court could write an opinion that narrows down
18 on the probable cause hearing that was at issue
19 here. But ultimately, if the Court were --

20 JUSTICE KAGAN: And how about -- Mr.
21 Heytens spent some time talking about Gerstein
22 hearings.

23 Do you think that this is the same --
24 identical to Gerstein hearings so that whatever
25 we did here we would have to do there, or do

1 you think a distinction can be drawn between
2 the two?

3 In other words, if you -- if we rule
4 against you, will the government come back the
5 next time and say, Ah, we lose now, or will you
6 have a good argument to make?

7 MS. PRELOGAR: I'm -- I'm sure we
8 would not lose, or hopefully not. I think the
9 argument we would make would then look at the
10 purpose of the Gerstein hearing and would say
11 the purpose there is to determine whether
12 pretrial detention should continue.

13 And that would be a different purpose
14 than the probable cause determination, which is
15 a bind-over determination. But I think
16 actually that focus on purpose shows why we
17 should prevail in this case, because the -- the
18 purpose of this proceeding is fundamentally
19 different and fundamentally distinct from the
20 kinds of issues that a defendant will face at
21 trial, and from --

22 JUSTICE GINSBURG: Here, it is to --
23 it is to determine whether there's enough
24 evidence to go to trial. And on the one hand,
25 you're conceding that the evidence couldn't

1 come in at trial, but it can be used to
2 determine whether there's enough evidence to go
3 to trial. That seems strange.

4 MS. PRELOGAR: Well, I think, again,
5 Justice Ginsburg, this goes back to the lesser
6 consequences of a probable cause hearing. It's
7 not meant to be a full dress rehearsal for
8 trial and it's not meant to necessarily resolve
9 exactly what evidence is going to be admissible
10 at trial.

11 JUSTICE GINSBURG: But how can you
12 use, to determine whether there's enough
13 evidence to go to trial, evidence that can't
14 come in at trial?

15 MS. PRELOGAR: Again, I think that
16 that's not anomalous when you look at how these
17 proceedings generally operate with the
18 admission of hearsay, for example, with the
19 admission of evidence that might later be
20 determined to have violated the Fourth
21 Amendment.

22 CHIEF JUSTICE ROBERTS: But suppose
23 you don't know at the probable cause hearing
24 whether it's going to be admissible or not
25 because you may not have the defendant's

1 argument, the defendant's side of the case.

2 I mean, that's the whole point about
3 the grand jury proceedings.

4 MS. PRELOGAR: Exactly. I think that
5 that would also be a problem with trying to
6 apply this rule to the Gerstein hearing and to
7 other proceedings where there aren't those same
8 adversarial safeguards or adversarial
9 presentations.

10 I think if this Court were to adopt a
11 rule like the one the Tenth Circuit adopted
12 here, then it really would gum up the works
13 essentially by forcing adjudication of those
14 suppression questions at the outset of a case
15 before any issue could be resolved, before the
16 Gerstein determination could be made or bail
17 set.

18 JUSTICE SOTOMAYOR: Only if it's
19 raised. Only if it's raised.

20 MS. PRELOGAR: Well, Justice
21 Sotomayor, I think that that shows that there
22 are complicated questions about what a
23 defendant would then have to do to preserve an
24 argument.

25 And -- and this Court has earlier in

1 earlier cases observed that a lot of times at
2 the outset of a case the suppression question
3 might be complicated and fact-intensive. A
4 defendant might not realize that he has a valid
5 claim.

6 And so to put the onus on him to --
7 JUSTICE SOTOMAYOR: There's a lot of
8 jurisdictions who already give defendants those
9 rights to do it right at the beginning of the
10 case. Some exercise it. Some don't. A lot
11 don't, because there's a lot of reasons why a
12 defendant doesn't want to do it early on.

13 MS. PRELOGAR: Well, there's certainly
14 a lot of variants in how state jurisdictions
15 handle this issue, but I think the -- the
16 problem --

17 JUSTICE SOTOMAYOR: Very few of them
18 seem gummed up in the way that you're
19 anticipating this will create a problem.

20 MS. PRELOGAR: Well, that's, I think,
21 because, as -- as we read the criminal cases,
22 that this issue hasn't largely arisen, and
23 there hasn't been a requirement that courts
24 adjudicate suppression questions in the
25 sequencing of preliminary proceedings before

1 they resolve other issues in the case.

2 If this Court were to instead adopt a
3 broader rule and find that any use in any
4 proceeding in a criminal case could violate the
5 Fifth Amendment, then I expect that it would
6 require substantial changes to the criminal
7 process.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Ms. Corkran.

11 ORAL ARGUMENT OF KELSI B. CORKRAN

12 ON BEHALF OF THE RESPONDENT

13 MS. CORKRAN: Mr. Chief Justice, and
14 may it please the Court:

15 Our test for a violation of the
16 Self-Incrimination Clause is the one this Court
17 has always applied: A compelled testimonial
18 incriminating statement cannot be used in a
19 criminal case.

20 That test has four requirements. Each
21 of them comes directly from the Fifth
22 Amendment's text, and Petitioner concedes three
23 of them here: That the statement was
24 compelled, that it was used in a criminal case,
25 and that it was by a witness, which means it

1 was testimonial.

2 That leaves only the requirement that
3 the statement be against himself. This Court
4 has long recognized that a statement is against
5 someone when it can be used to criminally
6 prosecute them, when it is incriminating.

7 Petitioner does not contest that
8 Officer Vogt's statement was incriminating.
9 Instead, it urges the Court to redefine the
10 word "against" so that the clause no longer
11 applies in any criminal case but only in the
12 portion of the criminal case where guilt is
13 ultimately adjudicated.

14 There are numerous fatal flaws with
15 this theory. I'll start with the Fifth
16 Amendment's text.

17 Petitioner has no explanation for why
18 the framers would have chosen this circuitous
19 way to limit the clause's application. If the
20 framers had intended the clause to apply only
21 in criminal trials, they wouldn't have hidden
22 that limitation in the word "against." They
23 would have just said "in any criminal trial"
24 instead of "any criminal case."

25 And it's particularly implausible that

1 --

2 JUSTICE KENNEDY: Well, you seem to
3 assume that in a probable cause hearing the
4 state has gathered all of its evidence, that
5 it's -- that it's done all of its
6 investigation, that it has all of its witnesses
7 in order, but that's just not the way probable
8 cause hearings work.

9 MS. CORKRAN: No, certainly not.
10 Probable cause is a very low bar. I think in
11 Caly the Court described it as a reasonable
12 belief that the defendant committed the crime.

13 And so, once we get to that probable
14 cause hearing, if the government has enough
15 evidence to meet that bar outside of the -- the
16 defendant's compelled statement, then there's
17 no reason to get into this issue here. They
18 will be able to show probable cause.

19 JUSTICE KENNEDY: But -- but the point
20 is the government might not have readily
21 available the evidence that it ultimately will
22 use.

23 MS. CORKRAN: Yes, but once we're at
24 the point where we have this adversarial
25 courtroom proceeding, which is the last step

1 before moving to trial, if all the government
2 has at that point to prove probable cause is
3 the defendant's compelled statement, then it
4 makes enormous sense to figure out at that
5 stage whether that statement is admissible or
6 not for the reason Justice Ginsburg pointed out
7 earlier, which is 95 percent of the time this
8 hearing is the whole ball game.

9 Once the prosecution gets its probable
10 cause determination, the vast majority of
11 defendants will choose to plead instead of --

12 JUSTICE ALITO: Well, that's very --

13 CHIEF JUSTICE ROBERTS: Right. But
14 the plea will -- the content of the plea
15 agreement will be affected by whether or not
16 the statements are going to be admissible at
17 trial. It's not as if they don't -- the
18 prosecutor doesn't have to worry about that in
19 deciding what plea to offer.

20 MS. CORKRAN: Yes, well the -- but the
21 defendant will be in a position where they
22 won't know about that admissibility
23 determination until they have rolled the dice
24 and gone to trial. The vast majority of
25 defendants are going to take the more

1 conservative route and take that guilty plea
2 even though the -- the government it turns out
3 didn't have even enough evidence to show
4 probable cause.

5 JUSTICE BREYER: Well, I don't know
6 that that's true. They have -- if they're
7 represented by counsel, counsel can look at it
8 and say: Look, they're never going to be able
9 to use this, so don't plea to that. Maybe
10 they'll offer something else, but the fact that
11 it's going to be resolved in a plea bargain
12 context, rather than an actual trial, I don't
13 see the pertinence of that.

14 MS. CORKRAN: Yeah, I mean, the
15 admissibility of a statement, sometimes it's
16 going to be clear here, when you're talking
17 about a compelled Garrity statement it's
18 obviously not admissible. But a lot of the
19 time there are going to be different questions
20 and it sure -- the defense counsel is going to
21 advise the defendant on the likelihood of
22 success at trial.

23 JUSTICE BREYER: For -- for reasons
24 that are my own problem, I suddenly see now for
25 the first time that if you win here, if you

1 win, this is a major change because it is
2 pretty hard to see how you can say you could
3 attack the preliminary hearing and you cannot
4 attack the grand jury, and you cannot attack
5 the Estelle here --

6 MS. CORKRAN: Yeah.

7 JUSTICE BREYER: -- or all these
8 different hearings they have been talking
9 about, so suddenly whereas you previously
10 haven't done it for whatever set of historical
11 reasons, this will suddenly be subject to a lot
12 of attacks.

13 So that makes me pretty careful.

14 MS. CORKRAN: Yeah.

15 JUSTICE BREYER: And for that reason I
16 looked up whether you objected, because I do
17 not see how the magistrate running the
18 preliminary hearing can know what to do unless
19 somebody tells him that these statements were
20 taken in violation of a Fifth Amendment.

21 One, I don't see where you ever did
22 tell the magistrate that.

23 Two, looking at the transcript of the
24 preliminary hearing, I couldn't find any
25 instance where any of the compelled statements

1 were introduced into the preliminary hearing.

2 So what I would like you to do is to
3 tell me what pages to look at in the
4 preliminary transcript, which I have here,
5 which will show that you did object or at least
6 that some of the compelled statements were
7 used?

8 MS. CORKRAN: So none of this is in
9 the record and the reason it is not --

10 JUSTICE BREYER: It may not be in the
11 record.

12 MS. CORKRAN: Yeah. But I --

13 CHIEF JUSTICE ROBERTS: That's an
14 important point, isn't it?

15 MS. CORKRAN: Yes.

16 JUSTICE BREYER: Of course it's an
17 important point.

18 (Laughter.)

19 MS. CORKRAN: But the --

20 CHIEF JUSTICE ROBERTS: Well, before
21 we start having an extended exchange about
22 material and something that's not in the
23 record, I -- well, I guess I would just like to
24 point out it is not in the record. There is a
25 reason we can find things to what's in the

1 record, including how do we know what this is
2 if it is know the in the record.

3 MS. CORKRAN: But the --

4 CHIEF JUSTICE ROBERTS: How do we know
5 it's been adequately -- had a chance for people
6 to object to it and all that? It's -- it's not
7 just a passing comment that it's not in the
8 record.

9 JUSTICE BREYER: Nor is actually mine
10 a passing comment because Article III of the
11 Constitution says we are to take real cases and
12 controversies. And to decide a major matter
13 where, in fact, going from what is in the
14 record to an earlier stage of this and
15 discovering if it's true, that there was no
16 instance about which you're complaining, in my
17 mind raises the question as to whether this is,
18 in fact, an appropriate case or controversy for
19 the Court to take.

20 CHIEF JUSTICE ROBERTS: And we're
21 supposed to decide whether the cases are
22 controversies according to law. And as far as
23 I'm concerned coming in and saying I want to
24 know about this thing that's not in the record
25 is no different from somebody else coming off

1 of the street and saying: Hey, wait a minute,
2 I know what happened in this case. So go ahead
3 and answer it.

4 MS. CORKRAN: Yeah.

5 CHIEF JUSTICE ROBERTS: It's a
6 question you have been presented with.

7 JUSTICE BREYER: You don't have to
8 answer it.

9 MS. CORKRAN: No, I --

10 CHIEF JUSTICE ROBERTS: No, no, feel
11 free. I'm just saying I will discount the
12 answers because it is not something that's in
13 the record.

14 MS. CORKRAN: Yeah. So, it's really
15 important to explain the reason it is not in
16 the record is because Petitioner chose to seek
17 this Court's interlocutory review at the
18 pleading stage.

19 And so that is why Petitioner has not
20 raised any of those questions before this
21 Court. It has conceded at this point that the
22 complaint adequately alleges that the statement
23 was used in the probable cause hearing,
24 Petitioner is not contesting that.

25 And so none of these questions are

1 ripe for resolution at this point because of
2 Petitioner's cert strategy. And so --

3 JUSTICE ALITO: Well, this is a very
4 -- this is a very odd case. And it wasn't a
5 case of involving -- it's not a case where you
6 had a right to take an appeal. It's a case
7 where we decided to -- we decided to take it,
8 where the city had a right to take the -- to
9 take an appeal.

10 But let me ask you this: What -- did
11 the -- did the city violate the Fifth Amendment
12 at the time when the officer was questioned?

13 MS. CORKRAN: No. The violation was
14 not complete until the statement was used in
15 the criminal case.

16 JUSTICE ALITO: Then why are you suing
17 the city?

18 MS. CORKRAN: So Section 1983
19 establishes liability for causing the
20 deprivation of a constitutional right. And I
21 want to point out Petitioner has not challenged
22 in this Court whether we have adequately
23 alleged proximate causation.

24 JUSTICE ALITO: I understand that.

25 MS. CORKRAN: Yeah.

1 JUSTICE ALITO: I am trying to
2 understand this seems like a very odd case and
3 I am trying to understand what is really
4 involved. That's one thing --

5 MS. CORKRAN: Yeah.

6 JUSTICE ALITO: -- that -- that I
7 don't understand.

8 MS. CORKRAN: So -- so I'll say --

9 JUSTICE ALITO: How did they cause the
10 -- the -- what will your theory be as to how
11 they caused this prosecution?

12 MS. CORKRAN: So the Tenth Circuit
13 applied settled law with regard to proximate
14 causation. All of the court of appeals have
15 held that cause in Section 1983 incorporates
16 common law principles of -- of proximate
17 causation.

18 So what the Tenth Circuit said is when
19 the police chief went to the Kansas bureau of
20 investigation and said: Here are officer
21 Vogt's compelled statements, you should
22 initiate a criminal investigation, it was
23 reasonably foreseeable that that -- those
24 statements would ultimately be introduced in
25 the criminal case. And I will say that the

1 Ninth Circuit and the Seventh Circuit or I
2 guess the Sixth Circuit have addressed very
3 similar circumstances and come to the same
4 conclusion.

5 So I'm not aware of any circuit split
6 on this issue but it is certainly not before
7 the Court. That's a Section 1983 question.

8 Petitioner has chosen to present to
9 the Court the Fifth Amendment question. It's a
10 constitutional question. Everything that's
11 going on below will be decided on remand. So
12 --

13 JUSTICE SOTOMAYOR: Counsel, just so
14 we're clear, I think the concurring opinion in
15 this case did a very good job of pointing out
16 that all of the questions that are being asked,
17 both by Justice Alito and by Justice Breyer,
18 there is a substantial question about whether
19 any of these statements were compelled.

20 MS. CORKRAN: Yeah.

21 JUSTICE SOTOMAYOR: There is a
22 substantial question about whether there was an
23 objection or not. There are lots of questions
24 that the concurrent said still had to be
25 decided, correct?

1 MS. CORKRAN: Yeah. And so if this
2 Court wanted to dig the cases improvidently
3 granted we would certainly not object. I think
4 we said in our brief in opposition that we
5 thought it was premature to take this question
6 at this time, but -- but I can continue to talk
7 about the record -- okay.

8 (Laughter.)

9 MS. CORKRAN: So -- so going back to
10 the --

11 CHIEF JUSTICE ROBERTS: Yeah. Just --

12 MS. CORKRAN: Going back to the
13 question that the question Petitioner presented
14 to this Court --

15 JUSTICE SOTOMAYOR: Could I just go
16 back?

17 MS. CORKRAN: Yeah.

18 JUSTICE SOTOMAYOR: There is a circuit
19 split on this. There is three circuits on one
20 side and three circuits on the other -- four
21 now on the other side.

22 Among those four are now the Tenth,
23 the Ninth, the Seventh and the Second who
24 support your position.

25 MS. CORKRAN: Yeah.

1 JUSTICE SOTOMAYOR: Do you know
2 whether the works have been gummed up in those
3 circuits?

4 MS. CORKRAN: There is no evidence
5 they've been gummed up. And I also want to say
6 about the asserted circuit split the cases that
7 are supposedly in support of the Petitioner's
8 position, none of them actually addressed a
9 circumstance where you had a post-charge
10 pretrial use of the compelled statement. They
11 were all cases similar to Chavez, where the
12 defendant, or I guess the plaintiff, was
13 attempting to rely on pre-charge compulsion to
14 make a Fifth Amendment claim.

15 Now in doing so -- well, I should
16 clarify that in at least one of those cases the
17 compelled statement was also used to initiate
18 the charges.

19 JUSTICE ALITO: Well, unless you can
20 distinguish this from the grand jury --

21 MS. CORKRAN: Yeah.

22 JUSTICE ALITO: -- it is -- the issue
23 has enormous implications for the reasons that
24 were brought out by Justice Breyer's questions.

25 So how could you distinguish this from

1 the grand jury?

2 MS. CORKRAN: Yeah. So I am going to
3 attempt to answer that concisely with the
4 caveat that it would take a second set of
5 briefs to adequately address the nuances of the
6 Court's grand jury jurisprudences, which is why
7 neither we nor the government attempted that.
8 This is just a very different and more
9 complicated question, but my -- my best simple
10 answer is that Hubbell and Counselman hold that
11 the clause applies to grand injuries with this
12 added limitation from Lawn, Calandra and
13 Williams, the courts don't have authority to
14 crack open indictments because of the grand
15 jury status as an independent constitutional
16 fixture. It's not textually assigned to the
17 judicial branch.

18 That said, courts do crack open
19 indictments all the time. That's the whole
20 point of a Kastigar hearing. And when a court
21 finds that a grand jury as made use or
22 derivative use of a compelled immunized
23 statement the remedy is to dismiss the
24 indictment itself unlawful. That is
25 irreconcilable with Petitioner's theory that

1 it's perfectly fine for the government to use
2 compelled statements all the way up to the
3 point of trial.

4 So as a practical matter --

5 JUSTICE KAGAN: Ms. Corkran, suppose
6 that I just did not want to go into the grand
7 jury business, mostly because I think that
8 there is this very long tradition of not
9 cracking them open unless we have to.

10 MS. CORKRAN: Yes.

11 JUSTICE KAGAN: And, you know, it
12 might be there is the same right in the grand
13 jury context but we've just decided in a wide
14 variety of ways that that right does not get
15 remedied in the same way, as easily, as
16 quickly, as anything, as in other contexts.

17 Would it be -- wouldn't that be
18 correct?

19 MS. CORKRAN: Yes, that's fine and --
20 and that's as far as we went in our -- our
21 briefing because, again, this is such a
22 complicated question. But, yes, the -- the
23 Lawn-Calandra-Williams limitation on cracking
24 open indictments would not apply to probable
25 cause hearings, both because the -- the unique

1 historical posture isn't there but also because
2 the nature of the proceeding is so different.
3 A probable cause hearing is an adversarial
4 courtroom proceeding before a judge, so there
5 isn't anything to crack open.

6 So that leads to Petitioner's policy
7 point about whether it makes sense to apply the
8 clause to probable cause hearings in a way
9 that's different than how the clause applies to
10 grand juries. And this Court answered that
11 question in *Coleman v. Alabama* when it said
12 that the Sixth Amendment right to counsel
13 applies to probable cause hearings, the exact
14 sort of probable cause hearing we have at issue
15 here, even though that right does not apply to
16 grand juries.

17 And Justice White's concurrence made
18 the same ominous predictions about the death of
19 probable cause hearings that Petitioner has
20 made here, and it didn't happen. It's 48 years
21 later and the vast majority of states are still
22 using probable cause hearings as the primary
23 mechanism for pursuing felony prosecutions,
24 even though the right to counsel is surely more
25 burdensome on the state than the

1 self-incrimination privilege.

2 So I'd like to go back to the Court's
3 precedent because I think this is important.
4 Not once in the history of this country has
5 this Court relied on the term "witness against
6 himself" -- "himself" to limit when the use of
7 a compelled incriminating testimonial statement
8 violates the clause.

9 JUSTICE ALITO: Well, what is your
10 test for determining whether a proceeding is
11 part of the criminal case for these purposes?

12 MS. CORKRAN: So I would look to the
13 -- the Court's definition of criminal
14 prosecution in Rothgery because we know that a
15 criminal case is at least as broad as a
16 criminal prosecution. And Rothgery says it's
17 the defendant's first appearance before a
18 judicial officer where he is formally told of
19 the charges against him and deprivations are
20 imposed on his liberty. And there's no
21 question that that covers the probable cause
22 hearing here.

23 JUSTICE SOTOMAYOR: How do you
24 distinguish Estelle?

25 JUSTICE ALITO: Does it --

1 MS. CORKRAN: So -- so Estelle was a
2 case about competency. What the Court held in
3 Estelle was that the defendant's rights had
4 been violated by the use of his psychiatric
5 exam at his sentencing proceeding. So that
6 holding in itself forecloses the notion that
7 the clause is only a trial right.

8 What Petitioner and the government are
9 latching onto are two sentences of dicta where
10 the Court said: Well, if the psychiatric exam
11 had been limited to its function of determining
12 whether the defendant understood the charges
13 against him and was capable of assisting in his
14 own defense, then the Fifth Amendment problem
15 wouldn't have arose.

16 That is consistent with our position,
17 and I'll explain why. A competency hearing is
18 part of a criminal case, I imagine, most of the
19 time, but the other three requirements of the
20 clause are going to substantially limit its
21 application to those hearings.

22 So Estelle explains that a routine
23 competency exam is focused exclusively on
24 whether the defendant understands the charges
25 against him and is capable of assisting in his

1 own defense. That determination does not
2 require extracting testimonial incriminating
3 statements from the defendant.

4 And to the extent that the defendant
5 has volunteered to put competency at issue, it
6 might not even be compelled. So --

7 JUSTICE ALITO: But your answer is,
8 though, but in general, then, the -- the clause
9 does not apply or does apply in a competency
10 hearing?

11 MS. CORKRAN: So the clause --

12 JUSTICE ALITO: The evidence --
13 evidence obtained in violation of the -- the
14 privilege would be admissible in a competency
15 hearing or not?

16 MS. CORKRAN: Yeah. So, in the narrow
17 circumstance where a defendant has been forced
18 to undergo a psychiatric exam and, in answering
19 those questions, he makes a compelled
20 incriminating testimonial statement, no, that
21 can't be admitted in the competency hearing
22 because it's part of the criminal case.

23 But that limitation shouldn't affect
24 the utility of competency hearings. I think
25 it's important to point out Estelle didn't even

1 involve a competency hearing. There, the
2 psychiatrist had sent a letter to the judge
3 that simply said: I find that the defendant
4 understands the difference between right and
5 wrong and understands the charges against him
6 and is capable of assisting his defense.

7 JUSTICE ALITO: So what about a
8 Gerstein hearing and a bail hearing?

9 MS. CORKRAN: Yeah. So a Gerstein
10 hearing is not part of the criminal case
11 because it's a Fourth Amendment requirement.
12 It's a substitute for an arrest warrant. So
13 this Court fleshed that point out well last
14 term in Manuel v. City of Joliet. And so
15 Gerstein itself explains that because it's a
16 Fourth Amendment requirement, the whole panoply
17 of rights in the Sixth Amendment do not apply
18 to Gerstein hearings.

19 JUSTICE ALITO: But I thought you said
20 that the -- that the criminal case begins when
21 the -- when the defendant is -- appears in
22 court and is called upon to answer the charges.

23 MS. CORKRAN: Yes. So I don't know
24 that a Gerstein hearing --

25 JUSTICE ALITO: That's not -- a

1 Gerstein doesn't satisfy that?

2 MS. CORKRAN: No, the point of a --
3 well, it depends on whether -- when you would
4 have the Gerstein hearing, but the Gerstein
5 hearing that's contemplated by Gerstein is this
6 hearing within 48 hours of arrest --

7 JUSTICE ALITO: Yeah.

8 MS. CORKRAN: -- where the purpose is
9 to get the arrest warrant after the fact.
10 There's no reason that the Fifth Amendment
11 requirements would apply to that hearing when
12 the Sixth Amendment requirements don't.

13 It's -- it's -- to the extent that
14 it's happening at the same time of the -- as
15 the criminal case, it's -- it's happening in
16 parallel.

17 JUSTICE ALITO: Wouldn't it -- in a --
18 in a federal case, if there's a complaint,
19 wouldn't it begin at the time of the filing of
20 the complaint? Wouldn't that be the beginning
21 of the criminal case?

22 MS. CORKRAN: Yeah. So a Gerstein
23 hearing -- the Gerstein determination could be
24 folded into something that's happening within
25 the criminal case. So I understand that to

1 happen sometimes. The -- the state will
2 quickly file charges and then fold the Gerstein
3 hearing into the arraignment. But there's
4 nothing requiring states to do that.

5 So in an emergency situation where a
6 state -- you know, they need to take physical
7 custody of someone who has confessed to
8 murdering their whole family, this -- the
9 clause would not prohibit the government from
10 then getting that Gerstein determination based
11 on the confession and then later pulling
12 together the evidence necessary to make the
13 probable cause showing in court.

14 JUSTICE ALITO: I'm just not -- I'm
15 not following your answer.

16 MS. CORKRAN: Yeah.

17 JUSTICE ALITO: In a federal case,
18 when a complaint is filed, is that not the
19 beginning of the criminal case, in your view,
20 so that everything that happens after that is
21 part of the criminal case?

22 MS. CORKRAN: Yes, that's right.

23 JUSTICE ALITO: First appearance --
24 the initial appearance in court, that's part of
25 the -- the criminal case. The bail hearing is

1 part of the criminal case. The -- the
2 competent -- if there's a competency hearing,
3 that's part of the criminal case. It's all
4 part of the criminal case.

5 MS. CORKRAN: Yes. And bail
6 determinations are made at different sorts of
7 proceedings, so -- but a Gerstein hearing, what
8 Gerstein is contemplating is this substitute
9 for a warrant. So instead of the -- it's when
10 the police want to take custody of someone
11 before they've gotten the arrest warrant, they
12 can do so and then go to a neutral adjudicator
13 and say: Do I have sufficient evidence to
14 justify the arrest? That is a Fourth Amendment
15 requirement.

16 JUSTICE KAGAN: But if I understand
17 what you're saying -- and maybe I don't -- but
18 it's -- it's a substitute for exactly the
19 proceeding that would take place if the police
20 decided that they needed an arrest warrant, is
21 that right?

22 MS. CORKRAN: Yes, exactly.

23 JUSTICE KAGAN: And in that
24 proceeding, you would say that the privilege
25 does not apply --

1 MS. CORKRAN: Yes. The privilege --

2 JUSTICE KAGAN: -- because the
3 criminal case had not yet commenced --

4 MS. CORKRAN: Yeah, it's not --

5 JUSTICE KAGAN: -- before the arrest
6 has been made, is that correct?

7 MS. CORKRAN: Right. And that's --
8 that's the reasoning of Gerstein when Gerstein
9 says why the Sixth Amendment rights would not
10 apply to that hearing, you know, the -- Justice
11 Alito's, I think, hypothetical, the Gerstein
12 hearing would be happening within the criminal
13 prosecution. But Gerstein says those rights
14 don't apply in that context.

15 JUSTICE BREYER: Is -- is it possible
16 to ask, does -- is this a -- this is a 1983
17 case?

18 MS. CORKRAN: Yes.

19 JUSTICE BREYER: Could we say, in your
20 opinion, before a plaintiff in a 1983 case can
21 bring a claim, that the preliminary hearing
22 consider -- considered matters that were taken
23 in violation of the Fifth Amendment, they must
24 allege in their complaint that they objected
25 before the hearing, for otherwise the

1 magistrate would have no idea what he is
2 supposed to do?

3 MS. CORKRAN: So Petitioner has not
4 asked this Court to interpret Section 1983.

5 JUSTICE BREYER: I know they haven't.
6 I'm asking.

7 MS. CORKRAN: Yeah. So I think that's
8 a question of statutory interpretation and
9 congressional intent. If Congress wanted to
10 limit Section 1983 that way, it could.

11 But there's no indication in the plain
12 language of Section 1983 that it is limited in
13 that way.

14 JUSTICE BREYER: Well, then what is
15 the answer to this? There are many, many ways
16 in which a -- a statement by an individual
17 could violate the -- incrimination. In this
18 case, he is asked questions by his superiors in
19 the Police Department under threat of
20 leaving --

21 MS. CORKRAN: Yeah.

22 JUSTICE BREYER: -- and they don't
23 know that he considers that to be a violation
24 of the Fifth Amendment.

25 MS. CORKRAN: Well, but the --

1 JUSTICE BREYER: Then those statements
2 go to court in a preliminary hearing, and the
3 magistrate doesn't know that the person
4 considers them to be a violation of the Fifth
5 Amendment.

6 What are the magistrates and the
7 Police Department supposed to do? They're not
8 necessarily conversant with all the facts of
9 the case, if no one objects.

10 MS. CORKRAN: Yeah. So I want to
11 start by saying that this Court held in
12 Minnesota v. Murphy that a Garrity privilege is
13 self-executing, that when an employee is in a
14 situation where their boss says to them you
15 will lose your job if you don't make these
16 statements, it self-executes. So you don't
17 have to raise the privilege at -- at that
18 moment.

19 But -- and with response to or in
20 response to what the -- the state is supposed
21 to do, what happened here is highly unusual.
22 Since the 1970s, the Department of Justice and
23 police departments across the country have
24 developed best practices to ensure that
25 compelled statements are not used in criminal

1 investigations.

2 So, once a statement is compelled via
3 an administrative investigation or a grant of
4 immunity, that statement is then formally
5 siloed from any criminal investigation.

6 So what happened here, the police
7 chief's decision to take this compelled
8 statement and hand it to the Kansas Bureau of
9 Investigation and say you should investigate
10 this was highly unusual and, frankly, very hard
11 to understand, given the ubiquity of Garrity
12 protocols in this country.

13 So I -- to go back to your point
14 earlier about whether this is a dramatic
15 revolution, it's not. What we're proposing
16 here is what the law has always been.

17 All -- all police departments across
18 the country and the Department of Justice would
19 say, even before this case coming before the
20 Court, that what the police chief did here was
21 -- was illegal.

22 CHIEF JUSTICE ROBERTS: I don't
23 understand. You -- you talk about it being --
24 being siloed and not being -- so the idea is
25 you're supposed to pretend that the person

1 didn't say what he said in conducting the
2 investigation?

3 MS. CORKRAN: Yes. So the best
4 practices is that whoever was involved in -- in
5 taking that compelled statement is then siloed
6 themselves from the criminal investigation so
7 that the -- the government can prove that the
8 -- the criminal investigation and the ultimate
9 prosecution happened entirely independent of --

10 CHIEF JUSTICE ROBERTS: Well, so if
11 the person says -- you know, they say you've
12 got to tell me what happened or you'll be
13 fired, and the person says, you know, I buried
14 the body here, he's not supposed to tell
15 anybody?

16 MS. CORKRAN: Well, if he was asking
17 that question as part of an administrative
18 investigation --

19 CHIEF JUSTICE ROBERTS: Yeah.

20 MS. CORKRAN: -- then -- then, yes,
21 you can't use that statement.

22 Now there could be an independent
23 criminal investigation --

24 CHIEF JUSTICE ROBERTS: I just want to
25 make sure I understand. So he's investigating

1 it and said do you have anything to do with
2 this, the disappearance, and the person says, I
3 buried the body next to this barn, the person
4 at that point is supposed to say, okay, I'm
5 going to turn this over to Fred and I'm not
6 going to tell him anything?

7 MS. CORKRAN: So you're talking about
8 a government employer making that inquiry of an
9 employee as part of an administrative
10 investigation --

11 CHIEF JUSTICE ROBERTS: Yes.

12 MS. CORKRAN: -- or is the government
13 -- so, under those circumstances, once the
14 government gives the grant of immunity, no,
15 that cannot be used. That's -- that's been the
16 law since Kastigar and Garrity.

17 CHIEF JUSTICE ROBERTS: There's no
18 grant of immunity. There's a -- you've got to
19 tell us or I'm going to fire you. In other
20 words, the same thing here, that it's a
21 compelled statement.

22 MS. CORKRAN: Yes. So then it's a
23 compelled statement, and the privilege is
24 self-executing at least --

25 CHIEF JUSTICE ROBERTS: For the

1 purposes of an ongoing investigation?

2 MS. CORKRAN: Yeah. Yeah. And if
3 that were not the -- the -- if that were not
4 the rule, so if Petitioner's theory would
5 correct -- was correct, then the disincentives
6 for employee cooperation in those sorts of
7 administrative investigations would skyrocket
8 because, if the grant of immunity only applies
9 at trial, you could compel those statements
10 from the employee at pain of losing their job
11 and then turn around and use those statements
12 to criminally prosecute them, keep them in
13 custody all the way up to the point of the
14 criminal trial, at which --

15 JUSTICE KENNEDY: So, if the employer
16 requires a statement to be made and the
17 employee says that a crime was committed, the
18 employer cannot tell the Police Department?

19 MS. CORKRAN: Yes, that's been the
20 rule since Garrity and -- and Kastigar. Now I
21 do want to distinguish between unwarned
22 statements and compelled statements. So an
23 unwarned statement, where the Miranda rights
24 are not read, is not necessarily a
25 constitutional violation. That is a

1 prophylactic exclusionary rule that the court
2 may or may not extend to preliminary hearings.

3 But when it comes to a compelled
4 statement, whether immunized or not, the
5 Constitution is very clear. It cannot be used
6 in a criminal case. And -- and that was what
7 the framers intended as well. We know that the
8 framers based the clause on a common law
9 privilege that specifically applied to
10 preliminary proceedings.

11 JUSTICE SOTOMAYOR: This is such an
12 odd case because I'm not quite sure that there
13 was a compelled statement at all, if the facts
14 as I've read them -- and I know they're not in
15 the record and I know what the chief says --
16 but, first of all, no employer -- his employer
17 didn't compel these statements. He went to his
18 employer because he wanted a different job.

19 MS. CORKRAN: That was true for the
20 first statement, yeah.

21 JUSTICE SOTOMAYOR: All right. On the
22 second statement, he went to his chief and
23 said: I'm resigning.

24 MS. CORKRAN: Sorry. So that's not --
25 that's not actually correct. So he voluntarily

1 made the first statement to the police chief.
2 The police chief then told him he had -- needed
3 to document what had happened on pain of losing
4 his job. That is the compelled statement.

5 Then, after he made that statement, he
6 tendered his resignation, and then there was a
7 third statement in which he gave more details
8 about what had happened. So it's -- the
9 question of the impact of the -- the
10 resignation on that third statement is up for
11 grabs.

12 JUSTICE SOTOMAYOR: Well, I had a --
13 but that's what's going to be litigated below.

14 MS. CORKRAN: Yes.

15 JUSTICE SOTOMAYOR: I thought he had
16 announced his resignation before there was a
17 request for additional --

18 MS. CORKRAN: Yeah. So, in the
19 complaint, that -- that resignation happened
20 between the second and the third statement.

21 JUSTICE SOTOMAYOR: That -- I'll take
22 it.

23 MS. CORKRAN: Okay.

24 JUSTICE SOTOMAYOR: But it's still an
25 odd case.

1 MS. CORKRAN: It is. And, again, it's
2 an odd case because Petitioner chose to seek
3 this Court's review at the pleadings stage and
4 Petitioner chose to present only the Fifth
5 Amendment question to this Court.

6 JUSTICE ALITO: If this case -- if
7 this case goes to trial, you will prove that
8 the officer suffered damage as a result of the
9 probable cause hearing or as a result of having
10 been -- as a result of the admission that he
11 made under alleged -- allegedly under
12 compulsion by the city?

13 MS. CORKRAN: So it would be the use
14 of the statement in the probable cause hearing.
15 The complaint alleges emotional damages,
16 reputational damage, loss of income. Seeks
17 punitive damages. Petitioner has not contested
18 the adequacy of those allegations.

19 JUSTICE ALITO: Yeah, but you -- you
20 will prove that the reason why he didn't get
21 the job with the other police department was
22 the probable cause hearing and not the
23 statement that he made?

24 MS. CORKRAN: No, that would be
25 inconsistent with the complaint. The complaint

1 says that the City of Haysville withdrew the
2 job offer at the point of the criminal
3 investigation by the -- the Kansas Bureau.

4 JUSTICE SOTOMAYOR: That has nothing
5 to do with the probable cause hearing. He
6 wanted the probable cause hearing, so how could
7 the statement have hurt him? How can he put --
8 prove damage?

9 MS. CORKRAN: Yeah, I would just say,
10 on this record, Petitioner has not challenged
11 the adequacy of those allegations. At a
12 minimum, he would be entitled to nominal
13 damages.

14 So I want to just emphasize that what
15 we're talking about here is an incriminating
16 testimonial statement that the government has
17 extracted from the defendant against his will.
18 There is nothing radical about saying that the
19 government should not be able to use that
20 statement for any purpose in a criminal case.

21 That is -- that was the framers'
22 position. They found it offensive to a
23 civilized system of justice to allow
24 prosecutors to -- to enlist defendants as
25 instruments in their own condemnation. They

1 thought it was crucial to our democracy that
2 prosecutions proceed based on the independent
3 labor of the government's officers.

4 Petitioner's theory to the contrary
5 should be rejected. I'm happy to answer any
6 other questions.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Four minutes, Mr. Heytens.

10 REBUTTAL ARGUMENT OF TOBY J. HEYTENS
11 ON BEHALF OF THE PETITIONER

12 MR. HEYTENS: I'd just like to make
13 three quick points in rebuttal: One in
14 response to Justice Kagan's point about the
15 apparent oddity with regard to this particular
16 proceeding, one about suppression hearings, and
17 one about Garrity.

18 So, in response to Justice Kagan's
19 questions about the oddity of this particular
20 type of hearing, I think beyond the fact that
21 the Supreme Court of Kansas has held that the
22 purpose of this hearing is not to adjudicate
23 guilt or punishment, I think an even more
24 important indication of that is that, under
25 Kansas law, nothing that happened at this

1 hearing could conclusively resolve Officer
2 Vogt's guilt or innocence one way or the other.
3 And the way -- the reason that we know that is
4 because the Supreme Court has specifically held
5 that the dismissal of charges after a probable
6 cause hearing is not preclusive of and without
7 prejudice to the state's ability to reinitiate
8 the exact same criminal prosecution.

9 Which is the same rule for grand
10 injures, right? The Court has said that just
11 because a grand jury refuses to return an
12 indictment does not mean that the prosecution
13 cannot ask another grand jury to return an
14 indictment.

15 And, in fact, the Supreme Court of
16 Kansas has reversed trial courts who have
17 dismissed the probable cause hearing on the
18 theory that the government will not be able to
19 carry its proof beyond a reasonable doubt
20 burden at trial because, they've said, that's
21 not the purpose of this hearing. This hearing
22 does not adjudicate guilt or innocence.

23 The point on suppression hearings, I
24 think it's just worth emphasizing again in
25 response to Justice Ginsburg's point, we are

1 not talking about the possibility that someone
2 will have to decide to plead guilty without
3 being able to challenge evidence for one very
4 simple reason: They can file a pretrial motion
5 to suppress.

6 Many -- it is true that a large
7 majority of prosecutions are resolved via
8 guilty plea. But it is also true that before
9 pleading guilty, defendants often file pretrial
10 motions to suppress and only plead guilty after
11 the denial of their motion to suppress.

12 In the federal system, they are even
13 sometimes permitted to file a conditional
14 guilty plea to preserve their ability to
15 challenge the admissibility of the evidence on
16 appeal. So we're not talking about taking
17 people -- away people's ability to challenge.

18 And then last but not least, we didn't
19 discuss it in the initial argument, but this
20 Court -- the second argument that we have
21 raised, the second independent argument,
22 relates that this Court could say whatever the
23 rule might be with regard to other types of
24 Fifth Amendment claims, there can be no Garrity
25 violation until trial.

1 It would actually be very similar to
2 what I understand a super-majority of this
3 Court said in Chavez with regard to Miranda
4 claims. I understand that, in Chavez, the
5 Court was deeply divided about whether there
6 were circumstances in which an involuntariness
7 claim could occur before trial. But, as I
8 understood, even some of the dissenting
9 justices in Chavez said a Miranda claim is
10 something that can only accrue until trial.

11 And I think that would make sense when
12 it comes to Garrity claims. Garrity does not
13 forbid the taking of the statement. There can
14 be no Garrity violation when the statement is
15 taken. The violation under Garrity is the
16 later use of the statement. And so we would
17 suggest that if the Court doesn't want to reach
18 the broader issue, they could simply say that
19 this type of Fifth Amendment violation cannot
20 occur until the statements are used at trial.

21 We ask the Court -- we ask that the
22 judgment below be reversed.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel, the case is submitted.

25 (Whereupon, at 12:04 p.m., the case in

1 the above-entitled matter was submitted.)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Official - Subject to Final Review

| | | | |
|----------|--|---|---|
| 1 | administrative ^[4] 62:3 63:17 64:9 65:7 admissibility ^[3] 38:22 39:15 72:15 admissible ^[7] 29:19 32:9,24 38:5,16 39:18 54:14 admission ^[6] 19:21 21:1 28:19 32:18,19 68:10 admitted ^[2] 29:5 54:21 adopt ^[2] 33:10 35:2 adopted ^[1] 33:11 adversarial ^[5] 12:22 33:8,8 37:24 51:3 adverse ^[4] 10:5 24:4,13 25:1 advise ^[1] 39:21 advocating ^[1] 10:25 affect ^[1] 54:23 affected ^[1] 38:15 agree ^[6] 9:3,15,18 12:9 13:2 21:17 agreement ^[1] 38:15 Ah ^[1] 31:5 ahead ^[1] 43:2 Alabama ^[1] 51:11 alike ^[2] 15:23,24 ALITO ^[29] 19:16 21:6,14,15,18 38:12 44:3,16,24 45:1,6,9 46:17 48:19,22 52:9,25 54:7,12 55:7,19,25 56:7,17 57:14,17,23 68:6,19 Alito's ^[1] 59:11 allegations ^[2] 68:18 69:11 allege ^[2] 20:1 59:24 alleged ^[3] 3:23 44:23 68:11 allegedly ^[1] 68:11 alleges ^[2] 43:22 68:15 allow ^[2] 21:8 69:23 almost ^[2] 4:16 18:14 already ^[4] 10:17 24:6,10 34:8 Amendment ^[34] 3:14,20,23 4:17,23,25 5:17 8:9 9:2,12 17:4,18 27:5 32:21 35:5 40:20 44:11 46:9 48:14 51:12 53:14 55:11,16,17 56:10,12 58:14 59:9,23 60:24 61:5 68:5 72:24 73:19 Amendment's ^[3] 27:6 35:22 36:16 amicus ^[3] 1:22 14:25 22:2 Among ^[1] 47:22 analogy ^[3] 14:9,10,12 announced ^[1] 67:16 anomalous ^[2] 14:5 32:16 anomaly ^[6] 6:25 12:2,10 13:11,12,12 another ^[2] 14:10 71:13 answer ^[12] 5:20 6:7 15:9 43:3,8 49:3,10 54:7 55:22 57:15 60:15 70:5 answered ^[1] 51:10 answering ^[1] 54:18 answers ^[1] 43:12 anticipating ^[1] 34:19 anybody ^[1] 63:15 apparent ^[3] 6:25 28:5 70:15 appeal ^[3] 44:6,9 72:16 | appeals ^[1] 45:14 appearance ^[3] 52:17 57:23,24 APPEARANCES ^[1] 1:17 appears ^[2] 14:2 55:21 application ^[2] 36:19 53:21 applied ^[3] 35:17 45:13 66:9 applies ^[8] 4:5 14:21,24 36:11 49:11 51:9,13 65:8 apply ^[17] 11:1,20 14:4,22 30:13 33:6 36:20 50:24 51:7,15 54:9,9 55:17 56:11 58:25 59:10,14 appropriate ^[1] 42:18 aren't ^[3] 4:20 13:3 33:7 argue ^[1] 16:3 argument ^[18] 1:14 2:2,5,9,12 3:4,6 4:14 22:1 31:6,9 33:1,24 35:11 70:10 72:19,20,21 arisen ^[1] 34:22 arose ^[1] 53:15 around ^[2] 12:6 65:11 arraignment ^[1] 57:3 arrest ^[8] 15:5 55:12 56:6,9 58:11,14,20 59:5 Article ^[1] 42:10 assert ^[5] 5:24,25 7:2,4,9 asserted ^[3] 5:23 7:16 48:6 asserting ^[1] 14:4 assigned ^[1] 49:16 Assistant ^[1] 1:20 assisting ^[3] 53:13,25 55:6 assume ^[5] 16:11 19:1,5,10 37:3 attack ^[9] 8:4 9:9 11:22 15:10 16:2,16 40:3,4,4 attacks ^[1] 40:12 attempt ^[1] 49:3 attempted ^[1] 49:7 attempting ^[1] 48:13 authority ^[1] 49:13 available ^[2] 29:3 37:21 aware ^[3] 9:4,7 46:5 away ^[1] 72:17 | best ^[4] 13:1 49:9 61:24 63:3 between ^[7] 5:6,22 29:2 31:1 55:4 65:21 67:20 beyond ^[2] 70:20 71:19 bigger ^[1] 13:10 bind-over ^[1] 31:15 bit ^[1] 12:17 black ^[1] 12:6 block ^[1] 4:18 body ^[4] 29:3,19 63:14 64:3 boss ^[1] 61:14 both ^[3] 28:15 46:17 50:25 bound ^[1] 22:13 box ^[1] 12:6 branch ^[1] 49:17 BREYER ^[45] 7:14,17,18,20,22 8:15,17 9:3 15:7,21,22 16:1,5,7,11,13,23 17:1,10,13,16,20 18:2 26:25 27:17,22,25 28:4,8,12 39:5,23 40:7,15 41:10,16 42:9 43:7 46:17 59:15,19 60:5,14,22 61:1 Breyer's ^[2] 18:7 48:24 brief ^[4] 10:24 14:25 19:18 47:4 briefing ^[1] 50:21 briefs ^[1] 49:5 Brinegar ^[1] 29:16 bring ^[2] 15:12 59:21 broad ^[1] 52:15 broader ^[2] 35:3 73:18 brought ^[2] 8:10 48:24 burden ^[1] 71:20 burdensome ^[1] 51:25 bureau ^[3] 45:19 62:8 69:3 buried ^[2] 63:13 64:3 business ^[1] 50:7 |
| 2 | 2 ^[1] 14:6 20 ^[1] 1:11 2018 ^[1] 1:11 22 ^[1] 2:8 | best ^[4] 13:1 49:9 61:24 63:3 between ^[7] 5:6,22 29:2 31:1 55:4 65:21 67:20 beyond ^[2] 70:20 71:19 bigger ^[1] 13:10 bind-over ^[1] 31:15 bit ^[1] 12:17 black ^[1] 12:6 block ^[1] 4:18 body ^[4] 29:3,19 63:14 64:3 boss ^[1] 61:14 both ^[3] 28:15 46:17 50:25 bound ^[1] 22:13 box ^[1] 12:6 branch ^[1] 49:17 BREYER ^[45] 7:14,17,18,20,22 8:15,17 9:3 15:7,21,22 16:1,5,7,11,13,23 17:1,10,13,16,20 18:2 26:25 27:17,22,25 28:4,8,12 39:5,23 40:7,15 41:10,16 42:9 43:7 46:17 59:15,19 60:5,14,22 61:1 Breyer's ^[2] 18:7 48:24 brief ^[4] 10:24 14:25 19:18 47:4 briefing ^[1] 50:21 briefs ^[1] 49:5 Brinegar ^[1] 29:16 bring ^[2] 15:12 59:21 broad ^[1] 52:15 broader ^[2] 35:3 73:18 brought ^[2] 8:10 48:24 burden ^[1] 71:20 burdensome ^[1] 51:25 bureau ^[3] 45:19 62:8 69:3 buried ^[2] 63:13 64:3 business ^[1] 50:7 | |
| 3 | 3 ^[5] 2:4 13:15,15 14:3,7 35 ^[1] 2:11 | Calandra ^[2] 27:15 49:12 called ^[1] 55:22 Caly ^[1] 37:11 came ^[1] 1:13 cannot ^[10] 5:19 7:25 35:18 40:3,4 64:15 65:18 66:5 71:13 73:19 capable ^[3] 53:13,25 55:6 careful ^[2] 19:24 40:13 carry ^[1] 71:19 Case ^[84] 3:4 5:24,25 7:25 8:1 9:1,4,16,22 10:2,6,23 11:4,17 13:7 15:11 17:23 18:24 22:14 24:2,11,18,22,25 25:24 26:5 30:6,8,14 31:17 33:1,14 34:2,10 35:1,4,19,24 36:11,12,24 42:18 43:2 44:4,5,5,6,15 45:2,25 46:15 52:11,15 53:2,18 54:22 55:10,20 56:15,18,21,25 57:17,19,21,25 58:1,3,4 59:3,17,20 60:18 61:9 62:19 66:6,12 67:25 68:2,6,7 69:20 73:24,25 cases ^[17] 4:21 5:2 7:23 8:18,21 21:7 23:20 27:15 29:15 34:1,21 42:11,21 47:2 48:6,11,16 causation ^[3] 44:23 45:14,17 cause ^[57] 6:8,17,19 7:3,10,12 9:15 12:8,13 13:16,19 14:1,15,18,21 18:25 19:20 20:15 22:11 23:2 24: | |
| 4 | 48 ^[4] 15:5 20:14 51:20 56:6 | C | |
| 5 | 5.1 ^[1] 28:16 | | |
| 7 | 70 ^[1] 2:14 | | |
| 9 | 90 ^[1] 17:4 94 ^[1] 17:4 95 ^[2] 4:21 38:7 | | |
| A | a.m ^[2] 1:15 3:2 ability ^[3] 71:7 72:14,17 able ^[5] 37:18 39:8 69:19 71:18 72:3 above-entitled ^[2] 1:13 74:1 Absolutely ^[2] 6:13 7:17 accepted ^[1] 23:14 according ^[1] 42:22 accrue ^[1] 73:10 accused ^[1] 14:15 acknowledge ^[1] 10:24 acquired ^[1] 28:20 across ^[3] 7:23 61:23 62:17 action ^[1] 16:4 actual ^[1] 39:12 actually ^[12] 5:10,10 7:12 11:9 12:10 13:11 18:13 31:16 42:9 48:8 66:25 73:1 added ^[1] 49:12 additional ^[1] 67:17 address ^[1] 49:5 addressed ^[2] 46:2 48:8 adequacy ^[2] 68:18 69:11 adequately ^[4] 42:5 43:22 44:22 49:5 adjudicate ^[6] 4:10 22:8 26:24 34:24 70:22 71:22 adjudicated ^[3] 3:16 29:13 36:13 adjudication ^[1] 33:13 adjudicator ^[1] 58:12 | back ^[10] 15:8 18:5 19:17 31:4 32:5 47:9,12,16 52:2 62:13 bail ^[4] 33:16 55:8 57:25 58:5 ball ^[1] 38:8 bar ^[2] 37:10,15 Barber ^[1] 29:16 bargain ^[1] 39:11 bargaining ^[1] 4:22 barn ^[1] 64:3 based ^[7] 6:6 13:17 20:3,6 57:10 66:8 70:2 basis ^[2] 14:19 30:2 begin ^[2] 22:15 56:19 beginning ^[3] 34:9 56:20 57:19 begins ^[1] 55:20 behalf ^[11] 1:18,22,24 2:4,7,11,14 3:7 22:2 35:12 70:11 belief ^[1] 37:12 believe ^[1] 14:15 believed ^[1] 18:3 below ^[4] 3:10 46:11 67:13 73:22 | |

Official - Subject to Final Review

| | | | |
|---|---|---|--|
| <p>11 25:12,23 28:15 29:4,7 30:18 31:14 32:6,23 37:3,8,10,14,18 38: 2,10 39:4 43:23 45:9,15 50:25 51: 3,8,13,14,19,22 52:21 57:13 68:9, 14,22 69:5,6 71:6,17 caused [1] 45:11 causing [1] 44:19 caveat [1] 49:4 cert [1] 44:2 certain [1] 23:14 certainly [8] 8:23 13:3 20:20 21:3 34:13 37:9 46:6 47:3 cetera [1] 20:16 challenge [4] 16:17 72:3,15,17 challenged [2] 44:21 69:10 challenging [1] 28:18 chance [2] 26:11 42:5 change [1] 40:1 changes [1] 35:6 charges [9] 18:12 48:18 52:19 53: 12,24 55:5,22 57:2 71:5 Charlottesville [1] 1:18 Chavez [7] 5:13,13,14 48:11 73:3, 4,9 CHIEF [30] 3:3,8 21:21 22:4 32:22 35:8,13 38:13 41:13,20 42:4,20 43:5,10 45:19 47:11 62:20,22 63: 10,19,24 64:11,17,25 66:15,22 67: 1,2 70:7 73:23 chief's [1] 62:7 choices [1] 13:25 choose [2] 13:14 38:11 chose [4] 23:13 43:16 68:2,4 chosen [2] 36:18 46:8 Circuit [9] 33:11 45:12,18 46:1,1,2, 5 47:18 48:6 Circuit's [2] 30:6,7 circuitous [1] 36:18 circuits [3] 47:19,20 48:3 circumstance [3] 15:17 48:9 54: 17 circumstances [3] 46:3 64:13 73: 6 CITY [8] 1:3 3:4 44:8,11,17 55:14 68:12 69:1 civil [2] 5:24 24:2 civilized [1] 69:23 claim [7] 15:13 19:4 34:5 48:14 59: 21 73:7,9 claiming [1] 9:10 claims [7] 22:24 73:4,12 clarify [1] 48:16 clause [21] 4:5,8 5:10 9:21 13:9,21 22:6 26:9 35:16 36:10,20 49:11 51:8,9 52:8 53:7,20 54:8,11 57:9 66:8 clause's [1] 36:19 clear [7] 10:21 14:2 20:21 22:22 39:16 46:14 66:5 clearing [1] 12:13 clearly [3] 10:23 11:3 24:24 coerced [2] 27:6,19 Coleman [1] 51:11 collateral [1] 16:15</p> | <p>collaterally [1] 16:2 colleagues [1] 27:3 come [9] 7:23 8:12,15 24:6 25:2 31:4 32:1,14 46:3 comes [4] 27:20 35:21 66:3 73:12 coming [3] 42:23,25 62:19 commenced [1] 59:3 comment [2] 42:7,10 committed [3] 14:16 37:12 65:17 committee [1] 17:2 common [2] 45:16 66:8 compel [4] 17:5 23:8 65:9 66:17 compelled [32] 6:22 9:22 10:1 18: 15 22:7 26:23 35:17,24 37:16 38: 3 39:17 40:25 41:6 45:21 46:19 48:10,17 49:22 50:2 52:7 54:6,19 61:25 62:2,7 63:5 64:21,23 65:22 66:3,13 67:4 competence [1] 26:24 competency [11] 11:3 53:2,17,23 54:5,9,14,21,24 55:1 58:2 competent [1] 58:2 complaining [1] 42:16 complaint [10] 20:1 43:22 56:18, 20 57:18 59:24 67:19 68:15,25,25 complete [1] 44:14 completed [1] 5:17 complicated [4] 33:22 34:3 49:9 50:22 compulsion [3] 9:24 48:13 68:12 conceded [1] 43:21 concedes [1] 35:22 conceding [1] 31:25 conceptual [3] 22:17,19 23:12 conceptually [1] 25:7 concerned [2] 13:24 42:23 concessions [1] 10:19 concisely [1] 49:3 conclusion [1] 46:4 conclusively [1] 71:1 concurrence [1] 51:17 concurrent [1] 46:24 concurring [1] 46:14 condemnation [1] 69:25 conditional [1] 72:13 conducted [1] 27:2 conducting [1] 63:1 conferring [1] 23:21 confessed [1] 57:7 confession [2] 27:7 57:11 confessions [1] 27:19 Congress [1] 60:9 congressional [1] 60:9 consequence [5] 25:12,25 28:24 29:10 30:15 consequences [3] 23:14 29:24 32:6 consequential [1] 25:19 conservative [1] 39:1 consider [3] 11:10 13:22 59:22 considered [3] 5:1 9:10 59:22 considers [2] 60:23 61:4 consistent [1] 53:16 constitute [1] 5:16</p> | <p>Constitution [4] 13:24 28:7 42:11 66:5 constitutional [6] 15:13 27:9 44: 20 46:10 49:15 65:25 constitutionally [1] 28:2 constructions [1] 30:11 contemplated [1] 56:5 contemplating [1] 58:8 content [1] 38:14 contest [1] 36:7 contested [1] 68:17 contesting [1] 43:24 context [5] 11:21 25:16 39:12 50: 13 59:14 contexts [1] 50:16 continue [3] 11:12 31:12 47:6 continuing [1] 24:19 contrary [1] 70:4 controversies [2] 42:12,22 controversy [1] 42:18 conversant [1] 61:8 conveying [1] 23:21 conviction [2] 26:13 29:12 cooperation [1] 65:6 CORKRAN [76] 1:24 2:10 35:10, 11,13 37:9,23 38:20 39:14 40:6, 14 41:8,12,15,19 42:3 43:4,9,14 44:13,18,25 45:5,8,12 46:20 47:1, 9,12,17,25 48:4,21 49:2 50:5,10, 19 52:12 53:1 54:11,16 55:9,23 56:2,8,22 57:16,22 58:5,22 59:1,4, 7,18 60:3,7,21,25 61:10 63:3,16, 20 64:7,12,22 65:2,19 66:19,24 67:14,18,23 68:1,13,24 69:9 correct [7] 18:21 46:25 50:18 59:6 65:5,5 66:25 couldn't [2] 31:25 40:24 counsel [11] 15:4 21:22 35:9 39:7, 7,20 46:13 51:12,24 70:8 73:24 Counselman [2] 8:25 49:10 count [1] 9:12 country [4] 52:4 61:23 62:12,18 course [2] 5:18 41:16 COURT [67] 1:1,14 3:9,21 6:3 7:23 9:8,12 10:17 11:2,4,8,21 14:10 16: 1,14,16 20:20 22:5 23:19 26:21 27:15 29:15 30:2,17,19 33:10,25 35:2,14,16 36:3,9 37:11 42:19 43: 21 44:22 45:14 46:7,9 47:2,14 49: 20 51:10 52:5 53:2,10 55:13,22 57:13,24 60:4 61:2,11 62:20 66:1 68:5 70:21 71:4,10,15 72:20,22 73:3,5,17,21 Court's [10] 5:13 8:24 13:13 14:12 26:20 43:17 49:6 52:2,13 68:3 courtroom [2] 37:25 51:4 courts [5] 29:14 34:23 49:13,18 71:16 covered [1] 30:9 covers [1] 52:21 crack [3] 49:14,18 51:5 cracking [2] 50:9,23 create [1] 34:19 crime [3] 14:16 37:12 65:17</p> | <p>criminal [69] 4:11 5:2 6:2 7:24 8:1, 21 9:1,16,22 10:1,6,23 11:4,17 13: 7 18:10,17 19:10 22:8,14 24:18, 22,25 25:13,15 26:13 30:8 34:21 35:4,6,19,24 36:11,12,21,23,24 44: 15 45:22,25 52:11,13,15,16 53:18 54:22 55:10,20 56:15,21,25 57:19, 21,25 58:1,3,4 59:3,12 61:25 62:5 63:6,8,23 65:14 66:6 69:2,20 71:8 criminally [2] 36:5 65:12 critical [1] 5:5 crucial [1] 70:1 curiae [2] 1:22 22:2 custody [3] 57:7 58:10 65:13</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C. [3] 1:10,21,24 damage [3] 68:8,16 69:8 damages [3] 68:15,17 69:13 damaging [1] 14:11 death [1] 51:18 decide [5] 17:24,25 42:12,21 72:2 decided [7] 14:14 44:7,7 46:11,25 50:13 58:20 deciding [1] 38:19 decision [7] 3:10 5:13 8:24 14:13 16:15 26:20 62:7 decisions [1] 13:13 declared [1] 11:11 decline [1] 5:20 deeper [1] 12:11 deeply [1] 73:5 defendant [30] 6:6 9:5,9 15:17 22: 23 23:5,8,21 24:8,13 27:12,16 29: 11,17 31:20 33:23 34:4,12 37:12 38:21 39:21 48:12 53:12,24 54:3, 4,17 55:3,21 69:17 defendant's [12] 12:24 22:7,11 25: 17 26:10,23 32:25 33:1 37:16 38: 3 52:17 53:3 defendants [9] 19:12 20:14,17 28: 17 34:8 38:11,25 69:24 72:9 defense [4] 39:20 53:14 54:1 55:6 definition [1] 52:13 democracy [1] 70:1 denial [1] 72:11 Department [7] 1:21 60:19 61:7, 22 62:18 65:18 68:21 departments [2] 61:23 62:17 depend [1] 30:1 depends [1] 56:3 deprivation [1] 44:20 deprivations [1] 52:19 derivative [1] 49:22 derived [2] 18:14 19:9 described [1] 37:11 details [1] 67:7 detained [1] 11:12 detention [2] 15:6 31:12 determination [11] 11:9 13:18 29: 18 31:14,15 33:16 38:10,23 54:1 56:23 57:10 determinations [1] 58:6 determine [4] 31:11,23 32:2,12</p> |
|---|---|---|--|

Official - Subject to Final Review

| | | | |
|--|---|---|---|
| <p>determined ^[1] 32:20 determining ^[2] 52:10 53:11 developed ^[1] 61:24 dice ^[1] 38:23 dicta ^[1] 53:9 difference ^[2] 24:12 55:4 different ^[14] 8:5 12:1 13:5 27:8 31:13,19 39:19 40:8 42:25 49:8 51:2,9 58:6 66:18 difficult ^[1] 25:7 dig ^[1] 47:2 directly ^[1] 35:21 disappearance ^[1] 64:2 discount ^[1] 43:11 discovering ^[1] 42:15 discovery ^[1] 16:20 discuss ^[1] 72:19 disincentives ^[1] 65:5 dismiss ^[1] 49:23 dismissal ^[2] 18:12 71:5 dismissed ^[1] 71:17 disposed ^[1] 4:22 dissenting ^[1] 73:8 distinct ^[2] 29:8 31:19 distinction ^[1] 31:1 distinctions ^[1] 29:2 distinguish ^[6] 5:6,22 48:20,25 52:24 65:21 divided ^[1] 73:5 document ^[1] 67:3 doing ^[1] 48:15 done ^[2] 37:5 40:10 Double ^[1] 4:5 doubt ^[1] 71:19 down ^[1] 30:17 dramatic ^[1] 62:14 draw ^[4] 23:25 24:4,12 25:1 drawn ^[1] 31:1 dress ^[1] 32:7 during ^[2] 3:14 4:8 DWIGHT ^[1] 1:6</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each ^[2] 18:9 35:20 earlier ^[5] 33:25 34:1 38:7 42:14 62:14 early ^[1] 34:12 easily ^[1] 50:15 educated ^[1] 28:10 effect ^[1] 6:16 effectively ^[2] 4:25 18:17 either ^[2] 24:20 28:24 ELIZABETH ^[3] 1:20 2:6 22:1 else's ^[1] 6:2 emergency ^[1] 57:5 emotional ^[1] 68:15 emphasize ^[1] 69:14 emphasizing ^[1] 71:24 employee ^[5] 61:13 64:9 65:6,10, 17 employer ^[6] 64:8 65:15,18 66:16, 16,18 end ^[3] 18:17 26:7,12 ended ^[1] 19:11</p> | <p>ends ^[2] 25:24 26:4 enlist ^[1] 69:24 enormous ^[2] 38:4 48:23 enough ^[5] 31:23 32:2,12 37:14 39:3 ensue ^[1] 26:14 ensuing ^[1] 23:3 ensure ^[1] 61:24 enter ^[1] 26:13 entirely ^[1] 63:9 entitled ^[2] 18:8 69:12 episode ^[1] 6:9 essentially ^[1] 33:13 establishes ^[1] 44:19 Estelle ^[11] 11:2,4,7,8 26:20 40:5 52:24 53:1,3,22 54:25 et ^[1] 20:16 even ^[15] 8:18 13:10 14:8 16:8 22: 18 39:2,3 51:15,24 54:6,25 62:19 70:23 72:12 73:8 everything ^[4] 11:20 12:5 46:10 57:20 evidence ^[31] 16:18 18:14 19:8,9 21:12 24:7 27:4 28:1,2,6,19 29:3, 19 31:24,25 32:2,9,13,13,19 37:4, 15,21 39:3 48:4 54:12,13 57:12 58:13 72:3,15 exact ^[2] 51:13 71:8 exactly ^[4] 32:9 33:4 58:18,22 exam ^[4] 53:5,10,23 54:18 example ^[5] 5:12 10:22 18:7 24:2 32:18 exchange ^[1] 41:21 exclusionary ^[1] 66:1 exclusively ^[1] 53:23 exercise ^[1] 34:10 expect ^[3] 19:1 24:8 35:5 experience ^[1] 27:23 explain ^[2] 43:15 53:17 explained ^[1] 12:3 explains ^[2] 53:22 55:15 explanation ^[1] 36:17 exposed ^[1] 25:18 exposure ^[2] 26:11 29:11 express ^[1] 12:13 extend ^[1] 66:2 extended ^[1] 41:21 extent ^[2] 54:4 56:13 extracted ^[1] 69:17 extracting ^[1] 54:2 extremely ^[1] 14:11</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face ^[4] 20:3 28:24 29:11 31:20 fact ^[7] 19:8 39:10 42:13,18 56:9 70:20 71:15 fact-intensive ^[1] 34:3 facts ^[2] 61:8 66:13 failing ^[1] 24:1 familiar ^[1] 21:6 family ^[1] 57:8 far ^[3] 13:24 42:22 50:20 fatal ^[1] 36:14 favor ^[2] 18:18 19:11</p> | <p>fear ^[1] 23:1 February ^[1] 1:11 federal ^[7] 13:24 21:8,11 28:16 56: 18 57:17 72:12 feel ^[1] 43:10 felony ^[1] 51:23 few ^[1] 34:17 Fifth ^[28] 3:14,19,22 4:17,23,25 5: 17 8:9 9:2,11 17:4,18 27:6 35:5, 21 36:15 40:20 44:11 46:9 48:14 53:14 56:10 59:23 60:24 61:4 68: 4 72:24 73:19 figure ^[1] 38:4 file ^[11] 16:4 18:8,8 19:19 20:11 21: 11 28:22 57:2 72:4,9,13 filed ^[3] 19:2 20:1 57:18 filing ^[1] 56:19 find ^[6] 8:20 16:21 35:3 40:24 41: 25 55:3 finds ^[2] 8:6 49:21 fine ^[2] 50:1,19 fire ^[1] 64:19 fired ^[1] 63:13 first ^[12] 4:2,4,12 5:7 15:8 18:2 39: 25 52:17 57:23 66:16,20 67:1 five ^[1] 27:8 fixture ^[1] 49:16 flaws ^[1] 36:14 fleshed ^[1] 55:13 focus ^[1] 31:16 focused ^[1] 53:23 focuses ^[1] 26:10 fold ^[1] 57:2 folded ^[1] 56:24 following ^[1] 57:15 forbid ^[1] 73:13 force ^[3] 22:20 23:14 25:3 forced ^[1] 54:17 forcing ^[1] 33:13 forecloses ^[1] 53:6 foremost ^[1] 18:3 foreseeable ^[1] 45:23 formally ^[3] 23:9 52:18 62:4 forward ^[2] 13:17 24:6 found ^[4] 8:3,20 26:16 69:22 four ^[4] 35:20 47:20,22 70:9 Fourth ^[5] 27:5 32:20 55:11,16 58: 14 framers ^[4] 36:18,20 66:7,8 framers' ^[1] 69:21 frankly ^[1] 62:10 Fred ^[1] 64:5 free ^[1] 43:11 friend ^[1] 10:19 friends ^[1] 14:3 full ^[1] 32:7 function ^[1] 53:11 fundamentally ^[3] 29:8 31:18,19 further ^[1] 21:19</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>game ^[1] 38:8 Garrity ^[15] 3:24 18:23,24 19:4 39: 17 61:12 62:11 64:16 65:20 70:17</p> | <p>72:24 73:12,12,14,15 gathered ^[1] 37:4 gave ^[2] 16:14 67:7 General ^[2] 1:21 54:8 generally ^[2] 21:4 32:17 Gerstein ^[34] 10:22 11:1 13:14 14: 11,13,14,22,24 15:2 29:16 30:21, 24 31:10 33:6,16 55:8,9,15,18,24 56:1,4,4,5,22,23 57:2,10 58:7,8 59:8,8,11,13 gets ^[2] 8:6 38:9 getting ^[1] 57:10 GINSBURG ^[10] 4:1,13 5:4 6:5,14, 25 31:22 32:5,11 38:6 Ginsburg's ^[1] 71:25 give ^[5] 5:12 10:21 17:5 25:5 34:8 given ^[1] 62:11 gives ^[5] 6:18,19 7:6 14:25 64:14 got ^[2] 63:12 64:18 gotten ^[2] 18:25 58:11 government ^[26] 22:19 23:7,13,25 24:1,4,6,10 25:1,3 31:4 37:14,20 38:1 39:2 49:7 50:1 53:8 57:9 63: 7 64:8,12,14 69:16,19 71:18 government's ^[2] 18:14 70:3 grabs ^[1] 67:11 grand ^[48] 7:14,24 8:4,11,19,21,24, 25 9:6,10 11:21 12:1,4,14,22,25 13:15,25 14:8 15:9,19 16:15,16, 19,22 17:6,21,25 21:10,13 27:2,12, 18 33:3 40:4 48:20 49:1,6,11,14, 21 50:6,12 51:10,16 71:9,11,13 grant ^[5] 23:9 62:3 64:14,18 65:8 granted ^[3] 19:6,7 47:3 granting ^[2] 18:15 23:16 ground ^[2] 14:20 15:13 grounds ^[2] 5:21 28:19 guess ^[9] 11:18 17:14,24 22:17 24: 15 28:9 41:23 46:2 48:12 guilt ^[11] 3:15 4:10 7:8 22:12 23:4 25:20 29:9 36:12 70:23 71:2,22 guilty ^[8] 26:2,16 39:1 72:2,8,9,10, 14 gum ^[1] 33:12 gummed ^[3] 34:18 48:2,5</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hand ^[2] 31:24 62:8 handle ^[1] 34:15 happen ^[4] 15:16 27:17 51:20 57: 1 happened ^[10] 15:15 43:2 61:21 62:6 63:9,12 67:3,8,19 70:25 happening ^[5] 16:22 56:14,15,24 59:12 happens ^[5] 5:15 7:11 28:9,10 57: 20 happy ^[1] 70:5 hard ^[2] 40:2 62:10 HAYS ^[2] 1:3 3:4 Haysville ^[1] 69:1 he'll ^[1] 22:13 hear ^[1] 3:3 hearing ^[83] 6:8,17,20 7:4,10,12 9:</p> |
|--|---|---|---|

Official - Subject to Final Review

| | | | |
|---|---|---|--|
| <p>16 10:22 11:1,3 13:16 14:1,14,18, 21,22,24 15:3 18:25 19:21 20:11, 15,16 22:11 23:2 24:9 25:12,24 26:12 29:4,7 30:18 31:10 32:6,23 33:6 37:3,14 38:8 40:3,18,24 41:1 43:23 49:20 51:3,14 52:22 53:17 54:10,15,21 55:1,8,8,10,24 56:4,5, 6,11,23 57:3,25 58:2,7 59:10,12, 21,25 61:2 68:9,14,22 69:5,6 70: 20,22 71:1,6,17,21,21</p> <p>hearings [17] 12:8 28:15 30:22,24 37:8 40:8 50:25 51:8,13,19,22 53: 21 54:24 55:18 66:2 70:16 71:23</p> <p>Hearsay [2] 29:4 32:18</p> <p>held [8] 15:5 20:15 27:15 45:15 53: 2 61:11 70:21 71:4</p> <p>HEYTENS [47] 1:18 2:3,13 3:5,6,8 4:1,7,15 5:3 6:5,13,24 7:16,20 8: 14,23 9:14,18 10:9,15 11:18 12:9 13:2 15:21,25 16:6,10,13,25 17:9, 11,14,19 18:1 19:16,23 20:6,9,19 21:3,14,17 30:21 70:9,10,12</p> <p>hidden [1] 36:21</p> <p>highly [2] 61:21 62:10</p> <p>himself [12] 3:13 6:21 7:13 10:2,3 22:20 23:15 25:4,21 36:3 52:6,6</p> <p>historic [1] 12:3</p> <p>historical [2] 40:10 51:1</p> <p>history [1] 52:4</p> <p>hold [2] 5:14 49:10</p> <p>holding [1] 53:6</p> <p>holds [1] 5:14</p> <p>hopefully [1] 31:8</p> <p>hours [3] 15:5 20:14 56:6</p> <p>Hubbell [1] 49:10</p> <p>hurt [1] 69:7</p> <p>Hurtado [1] 13:13</p> <p>hypothetical [1] 59:11</p> | <p>incorporates [1] 45:15</p> <p>increases [1] 26:15</p> <p>incriminate [3] 5:21 6:11,21</p> <p>incriminating [8] 4:18 35:18 36:6, 8 52:7 54:2,20 69:15</p> <p>incrimination [1] 60:17</p> <p>incriminatory [1] 22:10</p> <p>independent [6] 3:11 49:15 63:9, 22 70:2 72:21</p> <p>indication [2] 60:11 70:24</p> <p>indictment [6] 9:9 11:22 16:3 49: 24 71:12,14</p> <p>indictments [3] 49:14,19 50:24</p> <p>indistinguishable [1] 14:17</p> <p>individual [1] 60:16</p> <p>inference [5] 23:25 24:4,5,13 25:1</p> <p>information [1] 9:5</p> <p>initial [2] 57:24 72:19</p> <p>initiate [2] 45:22 48:17</p> <p>injures [1] 71:10</p> <p>injuries [1] 49:11</p> <p>innocence [4] 25:25 26:1 71:2,22</p> <p>inquiry [1] 64:8</p> <p>insert [1] 6:1</p> <p>inside [1] 5:15</p> <p>instance [3] 17:2 40:25 42:16</p> <p>instead [5] 35:2 36:9,24 38:11 58: 9</p> <p>instruments [1] 69:25</p> <p>intended [2] 36:20 66:7</p> <p>intent [1] 60:9</p> <p>interests [1] 10:6</p> <p>interim [1] 25:13</p> <p>interlocutory [1] 43:17</p> <p>interpret [1] 60:4</p> <p>interpretation [3] 10:11,14 60:8</p> <p>interrogating [1] 5:19</p> <p>interrogation [3] 5:16,25 7:5</p> <p>introduce [8] 6:22 7:25 8:19 27: 11,19,19,25 28:1</p> <p>introduced [7] 6:16,18 8:8 10:5 16:18 41:1 45:24</p> <p>introduction [1] 6:22</p> <p>investigate [1] 62:9</p> <p>investigating [2] 17:3 63:25</p> <p>investigation [15] 21:10 37:6 45: 20,22 62:3,5,9 63:2,6,8,18,23 64: 10 65:1 69:3</p> <p>investigations [2] 62:1 65:7</p> <p>invoke [1] 23:5</p> <p>invoked [1] 5:8</p> <p>involuntariness [1] 73:6</p> <p>involve [1] 55:1</p> <p>involved [2] 45:4 63:4</p> <p>involving [1] 44:5</p> <p>irreconcilable [1] 49:25</p> <p>isn't [7] 9:25 10:7 14:9 19:22 41: 14 51:1,5</p> <p>issue [18] 4:9 5:7 9:17,23 28:3,23 29:22 30:14,18 33:15 34:15,22 37: 17 46:6 48:22 51:14 54:5 73:18</p> <p>issues [4] 5:6 29:8 31:20 35:1</p> <p>itself [4] 5:16 49:24 53:6 55:15</p> | <p style="text-align: center;">J</p> <p>JACK [1] 1:6</p> <p>Jeopardy [1] 4:5</p> <p>Jersey [1] 3:25</p> <p>job [7] 46:15 61:15 65:10 66:18 67: 4 68:21 69:2</p> <p>Joliet [1] 55:14</p> <p>judge [9] 8:7 12:23 15:18,18 17:7, 7 21:11 51:4 55:2</p> <p>judgment [3] 12:4 26:13 73:22</p> <p>judicial [2] 49:17 52:18</p> <p>juries [5] 12:4 27:2,18 51:10,16</p> <p>jurisdictions [3] 28:17 34:8,14</p> <p>jurisprudences [1] 49:6</p> <p>jury [39] 7:15,24 8:4,11,20,21,25 9: 6,10 11:21 12:1,15,22,25 13:16,25 14:8 15:9,19 16:16,19,22 17:6,22, 25 21:10,13 27:12 33:3 40:4 48: 20 49:1,6,15,21 50:7,13 71:11,13</p> <p>Justice [180] 1:21 3:3,8 4:1,2,13 5: 4 6:5,14,25 7:14,17,18,20,22 8:14, 17 9:3,14,19 10:13 11:6,19,24 12: 10,20 13:4 15:7,21,22,25 16:5,7, 11,13,23 17:1,10,13,16,20 18:1,7 19:13,14,16,17,23,24 20:4,8,12,19, 24 21:4,6,14,15,18,21 22:4,16,23 23:10,18,23 24:15,23 25:22 26:4, 7,8,15,25 27:17,22,25 28:4,8,12 29:21 30:20 31:22 32:5,11,22 33: 18,20 34:7,17 35:8,13 37:2,19 38: 6,12,13 39:5,23 40:7,15 41:10,13, 16,20 42:4,9,20 43:5,7,10 44:3,16, 24 45:1,6,9 46:13,17,17,21 47:11, 15,18 48:1,19,22,24 50:5,11 51:17 52:9,23,25 54:7,12 55:7,19,25 56: 7,17 57:14,17,23 58:16,23 59:2,5, 10,15,19 60:5,14,22 61:1,22 62:18, 22 63:10,19,24 64:11,17,25 65:15 66:11,21 67:12,15,21,24 68:6,19 69:4,23 70:7,14,18 71:25 73:23</p> <p>justices [1] 73:9</p> <p>justify [1] 58:14</p> <p style="text-align: center;">K</p> <p>KAGAN [22] 9:14,19 10:13 11:6,19, 24 12:10 22:16,23 23:10,18,23 24: 15,23 29:21 30:20 50:5,11 58:16, 23 59:2,5</p> <p>Kagan's [2] 70:14,18</p> <p>KANSAS [12] 1:3 12:12,12 13:14, 25 14:25 45:19 62:8 69:3 70:21, 25 71:16</p> <p>Kansas's [1] 14:17</p> <p>Kastigar [3] 49:20 64:16 65:20</p> <p>keep [5] 15:18 17:7,21,21 65:12</p> <p>KELSI [3] 1:24 2:10 35:11</p> <p>KENNEDY [4] 4:2 37:2,19 65:15</p> <p>Kind [4] 10:13 12:2,3 22:9</p> <p>kinds [4] 17:5 27:4 29:24 31:20</p> <p>knife [1] 6:10</p> <p style="text-align: center;">L</p> <p>labor [1] 70:3</p> <p>lack [1] 28:21</p> | <p>language [3] 9:20 10:10 60:12</p> <p>large [1] 72:6</p> <p>largely [1] 34:22</p> <p>last [3] 37:25 55:13 72:18</p> <p>latching [1] 53:9</p> <p>later [6] 7:7 8:5 32:19 51:21 57:11 73:16</p> <p>Laughter [2] 41:18 47:8</p> <p>law [12] 12:12,12,19 20:25 21:8 42: 22 45:13,16 62:16 64:16 66:8 70: 25</p> <p>Lawn [2] 27:15 49:12</p> <p>Lawn-Calandra-Williams [1] 50: 23</p> <p>lawyer [2] 12:24 19:1</p> <p>leads [1] 51:6</p> <p>least [6] 9:13 41:5 48:16 52:15 64: 24 72:18</p> <p>leaves [1] 36:2</p> <p>leaving [1] 60:20</p> <p>legal [2] 14:13 30:14</p> <p>legally [1] 14:16</p> <p>lesser [2] 29:10 32:5</p> <p>letter [1] 55:2</p> <p>liability [2] 4:12 44:19</p> <p>liberty [1] 52:20</p> <p>likelihood [1] 39:21</p> <p>likely [1] 18:12</p> <p>limine [1] 21:11</p> <p>limit [5] 30:11 36:19 52:6 53:20 60: 10</p> <p>limitation [4] 36:22 49:12 50:23 54:23</p> <p>limited [2] 53:11 60:12</p> <p>limiting [2] 4:22 30:11</p> <p>line [1] 22:12</p> <p>litigated [1] 67:13</p> <p>little [1] 12:16</p> <p>long [2] 36:4 50:8</p> <p>longer [1] 36:10</p> <p>look [9] 20:16 31:9 32:16 39:7, 8 41:3 52:12</p> <p>looked [2] 16:12 40:16</p> <p>looking [3] 10:10 30:13 40:23</p> <p>lose [3] 31:5,8 61:15</p> <p>losing [2] 65:10 67:3</p> <p>loss [1] 68:16</p> <p>lot [7] 34:1,7,10,11,14 39:18 40:11</p> <p>lots [1] 46:23</p> <p>low [1] 37:10</p> <p style="text-align: center;">M</p> <p>made [16] 3:13 10:20 13:8,8 29:18 33:16 49:21 51:17,20 58:6 59:6 65:16 67:1,5 68:11,23</p> <p>magistrate [5] 26:12 40:17,22 60: 1 61:3</p> <p>magistrates [1] 61:6</p> <p>major [2] 40:1 42:12</p> <p>majority [5] 28:17 38:10,24 51:21 72:7</p> <p>Manuel [1] 55:14</p> <p>many [4] 4:20 60:15,15 72:6</p> <p>material [1] 41:22</p> |
|---|---|---|--|

Official - Subject to Final Review

| | | | |
|---|--|---|---|
| <p>matter ^[1] 1:13 20:25 22:18,18,19 23:11,12 24:5 42:12 50:4 74:1</p> <p>matters ^[1] 59:22</p> <p>MATTHEW ^[1] 1:6</p> <p>mean ^[12] 7:22 11:24 16:8 20:13 22:17 27:1,3,22 28:21 33:2 39:14 71:12</p> <p>means ^[1] 35:25</p> <p>meant ^[2] 32:7,8</p> <p>mechanism ^[1] 51:23</p> <p>meet ^[1] 37:15</p> <p>members ^[1] 14:9</p> <p>meritorious ^[1] 19:5</p> <p>merits ^[1] 7:8</p> <p>might ^[11] 6:11 12:1 15:12 17:12 32:19 34:3,4 37:20 50:12 54:6 72:23</p> <p>mind ^[1] 42:17</p> <p>mine ^[1] 42:9</p> <p>minimum ^[1] 69:12</p> <p>Minnesota ^[1] 61:12</p> <p>minute ^[1] 43:1</p> <p>minutes ^[1] 70:9</p> <p>Miranda ^[3] 65:23 73:3,9</p> <p>missing ^[1] 8:3</p> <p>moment ^[1] 61:18</p> <p>most ^[3] 5:2 16:14 53:18</p> <p>mostly ^[1] 50:7</p> <p>motion ^[12] 18:8,11,16 19:2,6,7,19 20:11 21:11 28:22 72:4,11</p> <p>motions ^[1] 72:10</p> <p>moving ^[1] 38:1</p> <p>Ms ^[102] 21:23 22:4,16,16,22 23:16,19 24:3,21 25:9 26:3,6,8,18 27:14,21,24 28:3,11,14 29:21 30:1 31:7 32:4,15 33:4,20 34:13,20 35:10,13 37:9,23 38:20 39:14 40:6,14 41:8,12,15,19 42:3 43:4,9,14 44:13,18,25 45:5,8,12 46:20 47:1,9,12,17,25 48:4,21 49:2 50:5,10,19 52:12 53:1 54:11,16 55:9,23 56:2,8,22 57:16,22 58:5,22 59:1,4,7,18 60:3,7,21,25 61:10 63:3,16,20 64:7,12,22 65:2,19 66:19,24 67:14,18,23 68:1,13,24 69:9</p> <p>much ^[1] 19:8</p> <p>murdering ^[1] 57:8</p> <p>Murphy ^[1] 61:12</p> <p>must ^[3] 4:23,24 59:23</p> <p>myself ^[1] 13:8</p> | <p>next ^[4] 3:4 22:14 31:5 64:3</p> <p>Ninth ^[2] 46:1 47:23</p> <p>nominal ^[1] 69:12</p> <p>non-adversarial ^[1] 15:3</p> <p>none ^[4] 12:7 41:8 43:25 48:8</p> <p>Nor ^[2] 42:9 49:7</p> <p>notes ^[1] 19:18</p> <p>nothing ^[10] 4:20 5:14,15 6:2 13:17 18:5 57:4 69:4,18 70:25</p> <p>notion ^[2] 3:21 53:6</p> <p>nowadays ^[1] 4:21</p> <p>nuances ^[1] 49:5</p> <p>Number ^[5] 3:11 10:16 13:15,15 30:12</p> <p>numerous ^[2] 9:7 36:14</p> | <p>otherwise ^[1] 59:25</p> <p>out ^[16] 5:1 11:16 15:19 16:21 17:8,21,21 38:4,6 39:2 41:24 44:21 46:15 48:24 54:25 55:13</p> <p>outset ^[3] 28:5 33:14 34:2</p> <p>outside ^[1] 37:15</p> <p>over ^[2] 22:14 64:5</p> <p>own ^[5] 18:15 39:24 53:14 54:1 69:25</p> | <p>points ^[2] 8:16 70:13</p> <p>poking ^[1] 12:6</p> <p>police ^[16] 5:15,25 7:5 45:19 58:10,19 60:19 61:7,23 62:6,17,20 65:18 67:1,2 68:21</p> <p>policy ^[1] 51:6</p> <p>portion ^[1] 36:12</p> <p>position ^[7] 19:12 25:8 38:21 47:24 48:8 53:16 69:22</p> <p>possibility ^[3] 4:17 26:16 72:1</p> <p>possible ^[3] 3:19 15:2 59:15</p> <p>possibly ^[1] 29:12</p> <p>post-charge ^[1] 48:9</p> <p>posture ^[1] 51:1</p> <p>potential ^[1] 30:15</p> <p>practical ^[3] 22:18 23:11 50:4</p> <p>practically ^[1] 15:1</p> <p>practices ^[2] 61:24 63:4</p> <p>pre-charge ^[1] 48:13</p> <p>precedent ^[1] 52:3</p> <p>preclusive ^[1] 71:6</p> <p>predictions ^[1] 51:18</p> <p>prejudice ^[1] 71:7</p> <p>preliminary ^[10] 34:25 40:3,18,24 41:1,4 59:21 61:2 66:2,10</p> <p>PRELOGAR ^[31] 1:20 2:6 21:23 22:1,4,16,22 23:16,19 24:3,21 25:9 26:3,6,8,18 27:14,21,24 28:3,11,14 29:21 30:1 31:7 32:4,15 33:4,20 34:13,20</p> <p>premature ^[1] 47:5</p> <p>present ^[2] 46:8 68:4</p> <p>presentations ^[1] 33:9</p> <p>presented ^[5] 9:6 21:12 25:21 43:6 47:13</p> <p>preserve ^[2] 33:23 72:14</p> <p>pretend ^[1] 62:25</p> <p>pretrial ^[6] 22:10 28:15 31:12 48:10 72:4,9</p> <p>pretty ^[3] 10:23 40:2,13</p> <p>prevail ^[1] 31:17</p> <p>prevailed ^[1] 18:11</p> <p>prevent ^[1] 23:6</p> <p>prevented ^[1] 7:19</p> <p>previously ^[1] 40:9</p> <p>primary ^[1] 51:22</p> <p>principles ^[1] 45:16</p> <p>prior ^[3] 6:15,15,22</p> <p>privilege ^[18] 4:19 5:8,23,24 6:1,12 7:2,10 22:25 23:6 52:1 54:14 58:24 59:1 61:12,17 64:23 66:9 9:15 12:7,13 13:16,19 14:1,15,18,21 18:25 19:20 20:15 22:11 23:2 24:11 25:12,23 28:15 29:4,7 30:18 31:14 32:6,23 37:3,7,10,13,18 38:2,9 39:4 43:23 50:24 51:3,8,13,14,19,22 52:21 57:13 68:9,14,22 69:5,6 71:5,17</p> <p>problem ^[7] 13:10 26:22 33:5 34:16,19 39:24 53:14</p> <p>procedure ^[1] 25:14</p> <p>procedures ^[3] 13:3,5 30:12</p> <p>proceed ^[1] 70:2</p> |
| <p style="text-align: center;">N</p> <hr/> <p>narrow ^[2] 30:5 54:16</p> <p>narrows ^[1] 30:17</p> <p>natural ^[1] 10:4</p> <p>nature ^[1] 51:2</p> <p>necessarily ^[3] 32:8 61:8 65:24</p> <p>necessary ^[2] 29:24 57:12</p> <p>need ^[2] 19:5 57:6</p> <p>needed ^[2] 58:20 67:2</p> <p>neither ^[2] 14:1 49:7</p> <p>neutral ^[2] 11:9 58:12</p> <p>never ^[3] 8:12 25:2 39:8</p> <p>New ^[1] 3:25</p> | <p style="text-align: center;">O</p> <hr/> <p>object ^[7] 6:14,21 19:20 20:25 41:5 42:6 47:3</p> <p>objected ^[3] 8:19 40:16 59:24</p> <p>objection ^[7] 20:2,17,23 21:2,5 24:19 46:23</p> <p>objects ^[1] 61:9</p> <p>observed ^[1] 34:1</p> <p>obtained ^[5] 9:11 18:22,23 28:6 54:13</p> <p>obvious ^[1] 10:13</p> <p>obviously ^[3] 11:15,15 39:18</p> <p>occur ^[4] 3:20 22:10 73:7,20</p> <p>odd ^[7] 24:16,24 44:4 45:2 66:12 67:25 68:2</p> <p>oddity ^[2] 70:15,19</p> <p>offensive ^[1] 69:22</p> <p>offer ^[3] 38:19 39:10 69:2</p> <p>office ^[1] 13:21</p> <p>officer ^[9] 5:19 18:20 19:1 36:8 44:12 45:20 52:18 68:8 71:1</p> <p>officers ^[1] 70:3</p> <p>often ^[1] 72:9</p> <p>oftentimes ^[1] 28:4</p> <p>Okay ^[4] 9:19 47:7 64:4 67:23</p> <p>ominous ^[1] 51:18</p> <p>once ^[7] 30:8 37:13,23 38:9 52:4 62:2 64:13</p> <p>one ^[19] 10:21 12:11 17:24 18:9 20:18 27:7 31:24 33:11 35:16 40:21 45:4 47:19 48:16 61:9 70:13,16,17 71:2 72:3</p> <p>ongoing ^[1] 65:1</p> <p>only ^[18] 3:12 4:4,8 12:18 22:13 23:7,16 24:5 33:18,19 36:2,11,20 53:7 65:8 68:4 72:10 73:10</p> <p>onus ^[2] 20:17 34:6</p> <p>open ^[5] 49:14,18 50:9,24 51:5</p> <p>operate ^[1] 32:17</p> <p>opinion ^[4] 30:7,17 46:14 59:20</p> <p>opportunity ^[1] 19:13</p> <p>opposition ^[1] 47:4</p> <p>option ^[7] 13:15,15 14:2,3,6,7,7</p> <p>oral ^[7] 1:13 2:2,5,9 3:6 22:1 35:11</p> <p>order ^[2] 8:6 37:7</p> <p>other ^[17] 10:20 14:4 27:1 29:2,24 31:3 33:7 35:1 47:20,21 50:16 53:19 64:19 68:21 70:6 71:2 72:23</p> | <p style="text-align: center;">P</p> <hr/> <p>p.m ^[1] 73:25</p> <p>PAGE ^[1] 2:2</p> <p>pages ^[1] 41:3</p> <p>pain ^[2] 65:10 67:3</p> <p>panoply ^[1] 55:16</p> <p>paper ^[2] 8:8 15:19</p> <p>parallel ^[1] 56:16</p> <p>part ^[19] 7:24 9:1,16 10:23 11:3 24:17,22,25 52:11 53:18 54:22 55:10 57:21,24 58:1,3,4 63:17 64:9</p> <p>particular ^[2] 70:15,19</p> <p>particularly ^[1] 36:25</p> <p>passing ^[2] 42:7,10</p> <p>past ^[1] 18:25</p> <p>people ^[3] 12:6 42:5 72:17</p> <p>people's ^[1] 72:17</p> <p>percent ^[2] 4:21 38:7</p> <p>perfectly ^[1] 50:1</p> <p>perhaps ^[1] 15:22</p> <p>permissible ^[1] 25:11</p> <p>permitted ^[1] 72:13</p> <p>person ^[10] 3:12 4:9 8:18 21:9 61:3 62:25 63:11,13 64:2,3</p> <p>person's ^[2] 3:15 4:10</p> <p>persuasive ^[1] 14:9</p> <p>pertinence ^[1] 39:13</p> <p>Petitioner ^[25] 1:4,19,23 2:4,8,14 3:7 22:3 35:22 36:7,17 43:16,19,24 44:21 46:8 47:13 51:19 53:8 60:3 68:2,4,17 69:10 70:11</p> <p>Petitioner's ^[6] 44:2 48:7 49:25 51:6 65:4 70:4</p> <p>physical ^[1] 57:6</p> <p>picture ^[1] 5:2</p> <p>piece ^[1] 15:19</p> <p>pieces ^[1] 8:7</p> <p>place ^[1] 58:19</p> <p>plain ^[1] 60:11</p> <p>plaintiff ^[2] 48:12 59:20</p> <p>plausible ^[2] 10:11 14:23</p> <p>plea ^[10] 4:22 28:25 38:14,14,19 39:1,9,11 72:8,14</p> <p>plead ^[3] 38:11 72:2,10</p> <p>pleading ^[2] 43:18 72:9</p> <p>pleadings ^[1] 68:3</p> <p>please ^[3] 3:9 22:5 35:14</p> <p>point ^[27] 4:16 23:7 24:9 28:13 33:2 37:19,24 38:2 41:14,17,24 43:21 44:1,21 49:20 50:3 51:7 54:25 55:13 56:2 62:13 64:4 65:13 69:2 70:14 71:23,25</p> <p>pointed ^[1] 38:6</p> <p>pointing ^[1] 46:15</p> | |

Official - Subject to Final Review

| | | | |
|---|---|---|---|
| <p>proceeding [26] 3:15 4:8 7:15,24 8:5,22 12:14,18 15:3,9,10,20 18:17 19:10 22:21 25:17 31:18 35:4 37:25 51:2,4 52:10 53:5 58:19,24 70:16</p> <p>proceedings [8] 29:25 30:9 32:17 33:3,7 34:25 58:7 66:10</p> <p>process [1] 35:7</p> <p>prohibit [1] 57:9</p> <p>prohibited [2] 22:9 28:18</p> <p>prohibitions [1] 27:9</p> <p>prohibits [1] 22:7</p> <p>proof [1] 71:19</p> <p>prophylactic [1] 66:1</p> <p>proposing [1] 62:15</p> <p>prosecute [2] 36:6 65:12</p> <p>prosecution [9] 13:17 38:9 45:11 52:14,16 59:13 63:9 71:8,12</p> <p>prosecutions [3] 51:23 70:2 72:7</p> <p>prosecutor [3] 13:21 27:10 38:18</p> <p>prosecutor's [1] 13:18</p> <p>prosecutors [1] 69:24</p> <p>protocols [1] 62:12</p> <p>prove [6] 23:4 38:2 63:7 68:7,20 69:8</p> <p>proven [2] 24:10 26:1</p> <p>proximate [3] 44:23 45:13,16</p> <p>psychiatric [3] 53:4,10 54:18</p> <p>psychiatrist [1] 55:2</p> <p>pulling [1] 57:11</p> <p>punishment [8] 3:16 4:11 22:12 25:20 26:14,17 29:12 70:23</p> <p>punitive [1] 68:17</p> <p>purpose [9] 31:10,11,13,16,18 56:8 69:20 70:22 71:21</p> <p>purposes [6] 3:14 4:11 9:1 13:9 52:11 65:1</p> <p>pursuing [1] 51:23</p> <p>pursuit [1] 12:23</p> <p>put [4] 6:8 34:6 54:5 69:7</p> <p>putting [2] 19:11 20:16</p> | <p>readily [1] 37:20</p> <p>reading [1] 10:4</p> <p>real [1] 42:11</p> <p>realize [2] 18:5 34:4</p> <p>really [4] 25:19 33:12 43:14 45:3</p> <p>Reason [20] 3:11 4:4,12 5:5 7:1,1,4,9 25:10 29:14 37:17 38:6 40:15 41:9,25 43:15 56:10 68:20 71:3 72:4</p> <p>reasonable [2] 37:11 71:19</p> <p>reasonably [2] 23:1 45:23</p> <p>reasoning [1] 59:8</p> <p>reasons [9] 3:11 12:11 14:25 16:1,14 34:11 39:23 40:11 48:23</p> <p>REBUTTAL [3] 2:12 70:10,13</p> <p>recent [1] 16:15</p> <p>recognize [2] 29:1,6</p> <p>recognized [5] 23:20 26:21 29:15,17 36:4</p> <p>recognizing [1] 4:15</p> <p>record [17] 19:25 20:5,9 41:9,11,23,24 42:1,2,8,14,24 43:13,16 47:7 66:15 69:10</p> <p>red [1] 10:24</p> <p>redefine [1] 36:9</p> <p>refer [1] 7:23</p> <p>refuse [1] 6:7</p> <p>refuses [1] 71:11</p> <p>regard [5] 3:22 45:13 70:15 72:23 73:3</p> <p>regarding [1] 21:12</p> <p>regardless [1] 3:18</p> <p>rehearsal [1] 32:7</p> <p>reinitiate [1] 71:7</p> <p>reject [1] 3:21</p> <p>rejected [1] 70:5</p> <p>relates [1] 72:22</p> <p>relevant [1] 28:9</p> <p>relied [1] 52:5</p> <p>rely [1] 48:13</p> <p>remand [1] 46:11</p> <p>remedied [1] 50:15</p> <p>remedy [3] 27:13 28:22 49:23</p> <p>repeatedly [1] 11:22</p> <p>represented [1] 39:7</p> <p>reputational [1] 68:16</p> <p>request [1] 67:17</p> <p>require [2] 35:6 54:2</p> <p>requirement [5] 34:23 36:2 55:11,16 58:15</p> <p>requirements [4] 35:20 53:19 56:11,12</p> <p>requires [2] 20:22 65:16</p> <p>requiring [1] 57:4</p> <p>reserve [1] 21:20</p> <p>resignation [4] 67:6,10,16,19</p> <p>resigning [1] 66:23</p> <p>resolution [1] 44:1</p> <p>resolve [3] 32:8 35:1 71:1</p> <p>resolved [6] 28:23 29:9 30:14 33:15 39:11 72:7</p> <p>respect [1] 25:25</p> <p>respond [1] 24:8</p> <p>Respondent [7] 1:7,25 2:11 19:18</p> | <p>30:4,10 35:12</p> <p>response [5] 61:19,20 70:14,18 71:25</p> <p>responses [1] 11:19</p> <p>responsibility [1] 22:9</p> <p>result [3] 68:8,9,10</p> <p>retained [1] 6:10</p> <p>return [2] 71:11,13</p> <p>reversed [3] 3:10 71:16 73:22</p> <p>review [3] 20:6 43:17 68:3</p> <p>revolution [1] 62:15</p> <p>revolutionary [1] 21:16</p> <p>rights [9] 12:17 14:6 15:14 34:9 53:3 55:17 59:9,13 65:23</p> <p>ripe [1] 44:1</p> <p>risk [2] 7:6 25:18</p> <p>ROBERTS [21] 3:3 21:21 32:22 35:8 38:13 41:13,20 42:4,20 43:5,10 47:11 62:22 63:10,19,24 64:11,17,25 70:7 73:23</p> <p>rolled [1] 38:23</p> <p>room [3] 5:16 6:1 7:5</p> <p>Rothgery [2] 52:14,16</p> <p>route [1] 39:1</p> <p>routine [1] 53:22</p> <p>routinely [1] 29:5</p> <p>rule [17] 10:25 20:20 28:16,16,18 29:22 30:6,12 31:3 33:6,11 35:3 65:4,20 66:1 71:9 72:23</p> <p>ruled [1] 30:2</p> <p>rules [2] 29:1,6</p> <p>ruling [1] 20:13</p> <p>running [1] 40:17</p> | <p>7:3 9:21 13:9,20 22:6,25 26:9,22 35:16 52:1</p> <p>sense [4] 30:16 38:4 51:7 73:11</p> <p>sent [1] 55:2</p> <p>sentences [1] 53:9</p> <p>sentencing [1] 53:5</p> <p>sequencing [1] 34:25</p> <p>set [3] 33:17 40:10 49:4</p> <p>setting [2] 3:12 7:7</p> <p>settled [1] 45:13</p> <p>Seventh [2] 46:1 47:23</p> <p>shall [2] 9:21 10:1</p> <p>shouldn't [1] 54:23</p> <p>show [4] 24:7 37:18 39:3 41:5</p> <p>showing [1] 57:13</p> <p>shows [2] 31:16 33:21</p> <p>shrinking [2] 4:16,19</p> <p>side [5] 10:20 14:4 33:1 47:20,21</p> <p>significant [1] 9:3</p> <p>siloed [3] 62:5,24 63:5</p> <p>similar [3] 46:3 48:11 73:1</p> <p>simple [2] 49:9 72:4</p> <p>simply [5] 10:10 15:1 25:13 55:3 73:18</p> <p>Since [3] 61:22 64:16 65:20</p> <p>sitting [1] 13:21</p> <p>situation [5] 13:23 22:24 24:14 57:5 61:14</p> <p>six [1] 27:8</p> <p>Sixth [5] 46:2 51:12 55:17 56:12 59:9</p> <p>skyrocket [1] 65:7</p> <p>Smith [5] 17:3,3,12 18:7 26:21</p> <p>Solicitor [1] 11:20</p> <p>somebody [5] 8:6 15:12 22:20 40:19 42:25</p> <p>someone [5] 6:1 36:5 57:7 58:10 72:1</p> <p>sometimes [3] 39:15 57:1 72:13</p> <p>sorry [4] 12:20 19:14 25:22 66:24</p> <p>sort [1] 51:14</p> <p>sorts [2] 58:6 65:6</p> <p>SOTOMAYOR [33] 12:20 13:4 19:14,17,24 20:4,8,12,19,24 21:4 25:22 26:4,7,8,15 33:18,21 34:7,17 46:13,21 47:15,18 48:1 52:23 66:11,21 67:12,15,21,24 69:4</p> <p>specific [1] 3:22</p> <p>specifically [2] 66:9 71:4</p> <p>spent [1] 30:21</p> <p>split [3] 46:5 47:19 48:6</p> <p>stage [6] 22:14 29:9 38:5 42:14 43:18 68:3</p> <p>stand [1] 26:24</p> <p>standard [1] 12:7</p> <p>start [3] 36:15 41:21 61:11</p> <p>state [9] 12:19 13:14 28:17 34:14 37:4 51:25 57:1,6 61:20</p> <p>state's [1] 71:7</p> <p>stated [1] 4:3</p> <p>statement [53] 4:3 6:15,19,23 7:6 21:1 22:8 26:23 35:18,23 36:3,4,8 37:16 38:3,5 39:15,17 43:22 44:14 48:10,17 49:23 52:7 54:20 60:</p> |
| Q | | S | |
| <p>question [25] 5:23 6:7 14:13,17 15:8 22:13 34:2 42:17 43:6 46:7,9,10,18,22 47:5,13,13 49:9 50:22 51:11 52:21 60:8 63:17 67:9 68:5</p> <p>questioned [1] 44:12</p> <p>questions [16] 5:20 21:19 24:16 33:14,22 34:24 39:19 43:20,25 46:16,23 48:24 54:19 60:18 70:6,19</p> <p>quick [1] 70:13</p> <p>quickly [2] 50:16 57:2</p> <p>quite [2] 11:25 66:12</p> | | | |
| R | | | |
| <p>radical [1] 69:18</p> <p>raise [3] 6:12 20:17 61:17</p> <p>raised [4] 33:19,19 43:20 72:21</p> <p>raises [1] 42:17</p> <p>rather [2] 8:12 39:12</p> <p>reach [1] 73:17</p> <p>read [7] 13:13 14:12 19:25 30:7 34:21 65:24 66:14</p> | | | |

Official - Subject to Final Review

| | | | |
|---|---|--|---|
| <p>16 62:2,4,8 63:5,21 64:21,23 65:16,23 66:4,13,20,22 67:1,4,5,7,10,20 68:14,23 69:7,16,20 73:13,14,16</p> <p>statements [33] 3:24 4:9 9:8,11 13:22 17:5,7 18:4,9,15,21 19:3,9,20 25:18 38:16 40:19,25 41:6 45:21,24 46:19 50:2 54:3 61:1,16,25 65:9,11,22,22 66:17 73:20</p> <p>STATES [8] 1:1,14,22 2:7 21:7 22:2 51:21 57:4</p> <p>status [1] 49:15</p> <p>statutory [2] 12:14 60:8</p> <p>step [4] 18:5 19:17 25:13 37:25</p> <p>still [5] 22:24,24 46:24 51:21 67:24</p> <p>stop [1] 9:5</p> <p>strange [2] 12:17 32:3</p> <p>strategy [1] 44:2</p> <p>street [1] 43:1</p> <p>stuff [1] 27:11</p> <p>subject [1] 40:11</p> <p>submitted [2] 73:24 74:1</p> <p>substantial [3] 35:6 46:18,22</p> <p>substantially [1] 53:20</p> <p>substitute [6] 12:14,18 13:1 55:12 58:8,18</p> <p>success [1] 39:22</p> <p>suddenly [3] 39:24 40:9,11</p> <p>suffered [1] 68:8</p> <p>sufficient [2] 24:7 58:13</p> <p>suggest [2] 18:6 73:17</p> <p>suggested [1] 30:5</p> <p>suggestion [1] 13:19</p> <p>suing [1] 44:16</p> <p>super-majority [1] 73:2</p> <p>superiors [1] 60:18</p> <p>support [5] 1:23 2:8 22:3 47:24 48:7</p> <p>suppose [3] 29:21 32:22 50:5</p> <p>supposed [7] 42:21 60:2 61:7,20 62:25 63:14 64:4</p> <p>supposedly [1] 48:7</p> <p>suppress [8] 18:9,16 19:2,19 28:22 72:5,10,11</p> <p>suppression [5] 33:14 34:2,24 70:16 71:23</p> <p>SUPREME [6] 1:1,14 7:23 70:21 71:4,15</p> <p>surely [1] 51:24</p> <p>surprise [1] 27:20</p> <p>surprised [1] 8:12</p> <p>system [2] 69:23 72:12</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tells [1] 40:19</p> <p>tendered [1] 67:6</p> <p>Tenth [6] 30:6,7 33:11 45:12,18 47:22</p> <p>term [2] 52:5 55:14</p> <p>terms [1] 10:4</p> <p>test [4] 26:19 35:15,20 52:10</p> <p>testify [5] 22:20 23:15,24 24:1 25:4</p> <p>testimonial [6] 35:17 36:1 52:7</p> | <p>54:2,20 69:16</p> <p>testimony [4] 6:15,18 10:5 23:6</p> <p>text [2] 35:22 36:16</p> <p>textually [1] 49:16</p> <p>themselves [1] 63:6</p> <p>theory [6] 36:15 45:10 49:25 65:4 70:4 71:18</p> <p>there's [25] 9:23 11:25 12:22,23,23,24 13:10 14:10 17:6 26:11 31:23 32:2,12 34:7,11,13 37:16 52:20 56:10,18 57:3 58:2 60:11 64:17,18</p> <p>they'll [1] 39:10</p> <p>they've [3] 48:5 58:11 71:20</p> <p>thinking [1] 10:3</p> <p>thinks [1] 21:9</p> <p>third [3] 67:7,10,20</p> <p>though [7] 7:1 8:18 13:6 39:2 51:15,24 54:8</p> <p>threat [1] 60:19</p> <p>three [7] 9:13 13:25 35:22 47:19,20 53:19 70:13</p> <p>three-part [1] 13:12</p> <p>timely [1] 20:22</p> <p>TOBY [5] 1:18 2:3,13 3:6 70:10</p> <p>together [1] 57:12</p> <p>tradition [1] 50:8</p> <p>transcript [3] 20:7 40:23 41:4</p> <p>treated [1] 15:23</p> <p>trial [42] 3:17,21 4:14,23,24 6:2 7:8,8 15:10 18:10,16 19:3 23:3 25:15 26:24 28:25 29:20 31:21,24 32:1,3,8,10,13,14 36:23 38:1,17,24 39:12,22 50:3 53:7 65:9,14 68:7 71:16,20 72:25 73:7,10,20</p> <p>trials [2] 4:20 36:21</p> <p>tries [1] 9:5</p> <p>true [10] 12:7 18:13,20 21:4 26:6 39:6 42:15 66:19 72:6,8</p> <p>try [1] 16:21</p> <p>trying [3] 33:5 45:1,3</p> <p>Tuesday [1] 1:11</p> <p>turn [2] 64:5 65:11</p> <p>turns [1] 39:2</p> <p>two [8] 3:11 5:6 11:18 12:11 18:2 31:2 40:23 53:9</p> <p>two-part [1] 13:11</p> <p>type [3] 3:22 70:20 73:19</p> <p>types [2] 3:19 72:23</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ubiquity [1] 62:11</p> <p>ultimate [1] 63:8</p> <p>ultimately [4] 30:19 36:13 37:21 45:24</p> <p>unconstitutionally [1] 27:4</p> <p>Under [11] 5:12 12:12,12 21:9 28:15 60:19 64:13 68:11,11 70:24 73:15</p> <p>undergo [1] 54:18</p> <p>understand [23] 5:14 6:24 8:24 10:9,19,24 13:4 17:11,16 20:10 30:4,5 44:24 45:2,3,7 56:25 58:16 62:11,23 63:25 73:2,4</p> | <p>understandable [1] 11:10</p> <p>understanding [2] 7:21 20:10</p> <p>understands [3] 53:24 55:4,5</p> <p>understood [3] 24:17 53:12 73:8</p> <p>unique [1] 50:25</p> <p>UNITED [5] 1:1,14,22 2:7 22:2</p> <p>unlawful [1] 49:24</p> <p>unlawfully [1] 28:20</p> <p>unless [3] 40:18 48:19 50:9</p> <p>until [5] 38:23 44:14 72:25 73:10,20</p> <p>unusual [2] 61:21 62:10</p> <p>unwarned [2] 65:21,23</p> <p>up [13] 8:13,15 16:9,12 25:2 33:12 34:18 40:16 48:2,5 50:2 65:13 67:10</p> <p>upwards [1] 4:21</p> <p>urge [1] 20:21</p> <p>urges [1] 36:9</p> <p>useful [1] 18:5</p> <p>using [4] 4:17 22:7 26:23 51:22</p> <p>utility [1] 54:24</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid [3] 20:17 22:25 34:4</p> <p>vanishing [1] 4:16</p> <p>variants [1] 34:14</p> <p>variety [1] 50:14</p> <p>vast [3] 38:10,24 51:21</p> <p>versus [3] 3:5,25 26:20</p> <p>via [2] 62:2 72:7</p> <p>victory [1] 11:11</p> <p>view [2] 24:20 57:19</p> <p>violate [7] 13:20 27:5,6,7 35:4 44:11 60:17</p> <p>violated [5] 4:8 5:11 15:14 32:20 53:4</p> <p>violates [1] 52:8</p> <p>violation [21] 3:23,24 5:17 8:9 9:11 17:17 18:23,24 28:6 35:15 40:20 44:13 54:13 59:23 60:23 61:4 65:25 72:25 73:14,15,19</p> <p>violations [1] 3:20</p> <p>Virginia [1] 1:18</p> <p>virtue [1] 12:19</p> <p>VOGT [3] 1:6 3:5 18:20</p> <p>Vogt's [5] 19:1,25 36:8 45:21 71:2</p> <p>voluntarily [1] 66:25</p> <p>volunteered [1] 54:5</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait [1] 43:1</p> <p>waived [1] 21:1</p> <p>waiver [1] 19:22</p> <p>wanted [4] 47:2 60:9 66:18 69:6</p> <p>warrant [5] 55:12 56:9 58:9,11,20</p> <p>Washington [3] 1:10,21,24</p> <p>way [14] 8:6 18:4 23:7 34:18 36:19 37:7 50:2,15 51:8 60:10,13 65:13 71:2,3</p> <p>ways [4] 17:23 30:5 50:14 60:15</p> <p>whatever [3] 30:24 40:10 72:22</p> <p>whatsoever [1] 27:13</p> <p>whereas [1] 40:9</p> | <p>Whereupon [1] 73:25</p> <p>whether [29] 3:19 13:6,7 14:14 15:11 20:14 22:13 31:11,23 32:2,12,24 38:5,15 40:16 42:17,21 44:22 46:18,22 48:2 51:7 52:10 53:12,24 56:3 62:14 66:4 73:5</p> <p>White's [1] 51:17</p> <p>whoever [1] 63:4</p> <p>whole [5] 33:2 38:8 49:19 55:16 57:8</p> <p>wide [1] 50:13</p> <p>will [27] 3:3 25:2,14,14 31:4,5,20 34:19 37:18,21 38:11,14,15,21 40:11 41:5 43:11 45:10,25 46:11 57:1 61:15 68:7,20 69:17 71:18 72:2</p> <p>Williams [1] 49:13</p> <p>win [5] 11:11,16 25:23 39:25 40:1</p> <p>withdrew [1] 69:1</p> <p>within [5] 15:5 20:14 56:6,24 59:12</p> <p>without [2] 71:6 72:2</p> <p>witness [10] 3:13 4:24 7:13 8:10 10:2,3 13:8 25:21 35:25 52:5</p> <p>witnesses [1] 37:6</p> <p>wondered [1] 8:2</p> <p>word [2] 36:10,22</p> <p>words [2] 31:3 64:20</p> <p>work [2] 27:1 37:8</p> <p>works [2] 33:12 48:2</p> <p>worry [3] 25:2,4 38:18</p> <p>worth [1] 71:24</p> <p>write [1] 30:17</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years [1] 51:20</p> |
|---|---|--|---|