

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

NIDAL KHALID NASRALLAH,)
)
 Petitioner,)
)
 v.) No. 18-1432
)
 WILLIAM P. BARR, ATTORNEY GENERAL,)
)
 Respondent.)

Pages: 1 through 69
Place: Washington, D.C.
Date: March 2, 2020

HERITAGE REPORTING CORPORATION

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

NIDAL KHALID NASRALLAH,)

Petitioner,)

v.) No. 18-1432

WILLIAM P. BARR, ATTORNEY GENERAL,)

Respondent.)

- - - - -

Washington, D.C.

Monday, March 2, 2020

The above-entitled matter came on
for oral argument before the Supreme Court of the
United States at 10:05 a.m.

APPEARANCES:

PAUL HUGHES, ESQ., Washington, D.C.;

on behalf of the Petitioner.

MATTHEW GUARNIERI, Assistant to the Solicitor General,

Department of Justice, Washington, D.C.;

on behalf of the Respondent.

	C O N T E N T S	
1		
2	ORAL ARGUMENT OF:	PAGE:
3	PAUL HUGHES, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	MATTHEW GUARNIERI, ESQ.	
7	On behalf of the Respondent	30
8	REBUTTAL ARGUMENT OF:	
9	PAUL HUGHES, ESQ.	
10	On behalf of the Petitioner	64
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 18-1432, Nasrallah versus Barr.

Mr. Hughes.

ORAL ARGUMENT OF PAUL HUGHES
ON BEHALF OF THE PETITIONER

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

When Congress enacted the jurisdiction-stripping provision in (2)(C), it expressly defined the key term "order of removal." It is an order that finds an individual deportable or orders deportation.

A CAT order does neither, and the government does not disagree. CAT relief is temporary, applicable only to the country where an individual is likely to be tortured or killed. If CAT relief is granted, the removal order remains enforceable. As the government says, "a grant of withholding or deferral leaves the final order of removal undisturbed."

When Congress enacted (2)(C), it also stripped jurisdiction of expedited removal

1 orders. This is Section (2)(A), reprinted in
2 the government's brief at page 4a. It bars
3 judicial review of "any individual determination
4 or any other cause or claim arising from or
5 relating to the implementation or operation" of
6 an expedited order of removal. That broader
7 language expanded jurisdiction stripping beyond
8 the removal order itself, but Congress did not
9 use that broader language in (2)(C).

10 If none of this carries the day and if
11 some ambiguity remains, the presumption in favor
12 of judicial review of administrative agency
13 action would do the work. Judicial review of
14 administrative agencies is an essential part of
15 the Constitution's separation of powers.

16 Congress designed CAT relief to be
17 available when all else is stripped away.
18 Congress knowingly rendered those with criminal
19 convictions eligible for protection from likely
20 torture or death. By its plain terms, 2(C) does
21 not bar review of a CAT claim. Ultimately, the
22 CAT claim does not qualify as an order of
23 removal.

24 Again, the government doesn't contend
25 that it fits within the clear statutory

1 definition. And I don't think it can, because
2 the CAT relief comes temporally after in the
3 proceedings the order of removal is entered.

4 JUSTICE GINSBURG: Do you agree --

5 MR. HUGHES: That's both --

6 JUSTICE GINSBURG: -- do you agree
7 that, assuming that review of the -- of BIA
8 fact-finding, assuming that it's available,
9 wouldn't that review be highly deferential to
10 the BIA?

11 MR. HUGHES: Yes, Your Honor, it would
12 be for the substantial evidence review that
13 would govern in circumstances when (2)(C) does
14 not apply. So I agree there is deference to the
15 BIA. But deference doesn't mean there's no
16 judicial review. It just is the appropriate
17 deferential standard that would apply across the
18 board of judicial review of administrative
19 agency fact-finding.

20 JUSTICE ALITO: Do you agree that your
21 CAT claim is covered by the so-called zipper
22 clause?

23 MR. HUGHES: So I think there is an
24 open question, Your Honor, if the zipper clause
25 extends here. Footnote 2 of Jennings suggests

1 that the zipper clause might not apply in
2 context of asylum, and I think this would --
3 would be similarly qualified. But I'm willing
4 to assume for a moment, even if the Court were
5 to think that the zipper clause of (b)(9)
6 applies to the CAT claim, I don't think that's
7 any problem for our position.

8 I think the zipper clause can be
9 thought of doing two potentially different
10 things. The first thing it can do is,
11 consistent with other provisions, both in FARRA
12 and (a)(4), underscore that the various
13 limitations of Section 1252 can be said to
14 apply. That's one thing.

15 JUSTICE ALITO: Well, what about the
16 language of the zipper clause and a comparison
17 of the language of the zipper clause with the
18 language of the criminal alien bar? The zipper
19 clause says that "all questions of law and fact
20 arising from an action taken or proceeding
21 brought to remove an alien from the United
22 States under this subchapter shall be available"
23 -- and this is what may be important -- "only in
24 judicial review of a final order under this
25 section."

1 So, if your CAT claim is covered by
2 the zipper clause, that claim can be reviewed
3 only in judicial review of a final order under
4 this section. And the criminal alien bar says
5 that no court has jurisdiction to review any
6 final order of removal.

7 So, if you put those two things
8 together, why isn't the conclusion that the
9 criminal alien bar prohibits review of your CAT
10 claim?

11 MR. HUGHES: So two things about that,
12 Your Honor. Let me say at the beginning this
13 is not an argument the government advances, of
14 course, so this is not an argument that the
15 government has endorsed, and I think that's for
16 good reason.

17 So two points. One, to say that this
18 is part of the review of the final order of
19 removal is not problematic for us. We don't
20 resist the conclusion that 2(C) applies. The
21 question is, what work does 2(C) do when 2(C)
22 applies? And I'll unpack that for a moment.

23 My second point, however, is that
24 (a)(4) is later in time than (b)(9) of the
25 zipper clause and it was specifically written

1 because there was a jurisdictional gap that
2 existed after FARRA. In the REAL ID Act,
3 Congress sought to foreclose suspension -- the
4 Suspension Clause problem, which led to habeas
5 actions in the district court, and it led to a
6 broader provision in (a)(4) to ensure
7 stand-alone jurisdiction.

8 JUSTICE ALITO: Well, and all this is
9 very complicated, but I still -- I -- I don't
10 know that that answers the question about what
11 the pretty clear meaning of the statutory
12 language is. I mean, the zipper clause to me --
13 and you'll tell me -- these statutes are very
14 complicated, so maybe I don't understand how
15 they fit together, but the zipper clause seems
16 to me the embodiment of the same sort of rule
17 that applies in ordinary civil litigation with
18 respect to a review of a final decision of the
19 -- of a district court.

20 So that -- you take an appeal from the
21 final decision of the district court, but that
22 permits review of everything else leading up to
23 the final decision. And the zipper clause seems
24 to do the same thing. It says that everything
25 that arises in this proceeding is reviewable

1 only in review of the final order of removal.

2 MR. HUGHES: So I think that's --

3 JUSTICE ALITO: And so, therefore,
4 your CAT claim is reviewable only in review of a
5 final order of removal.

6 MR. HUGHES: So the title, again, is
7 Consolidation of Questions for Judicial Review,
8 and I agree with Your Honor that when the CAT
9 claim occurs in situations -- circumstances
10 where there is a final order of removal, if
11 (b)(9) applies, it has the operation -- it's the
12 same effect in (a)(4) in FARRA, to say those two
13 things occur together.

14 What happens is you get review of the
15 final order of removal to the extent that review
16 is allowed. You also, though, independently
17 then have review of the CAT claim.

18 And I think the critical question is,
19 what work does 2(C) do? 2(C) bars courts from
20 engaging in the affirmative act of reviewing the
21 final order of removal. The key textual
22 question here is, when 2(C) bars courts from
23 engaging in that conduct, what is the conduct
24 that 2(C) bars courts from doing? It's
25 reviewing the final order of removal.

1 JUSTICE ALITO: And -- and nothing
2 else? Not -- not all of the preliminary
3 decisions -- all the earlier decisions that lead
4 to the final order of removal?

5 MR. HUGHES: I think the merger
6 principle this Court identified in Chadha is the
7 correct one, which is to say anything on which
8 the final order of removal is contingent would
9 appropriately merge into that and be governed by
10 2(C). So all of those preliminary things Your
11 Honor references would be subject to 2(C).

12 The ultimate question is a practical
13 one, is -- is the nature of the argument in the
14 petition for review, is it one that challenges
15 the validity of the final order of removal? If
16 the answer to that question is yes, it
17 challenges the validity of the final order of
18 removal, we agree 2(C) applies in those
19 circumstances.

20 The CAT order, however, does not
21 challenge the validity of the final order of
22 removal, and the government underscores that
23 point. They say, you win your CAT claim, the
24 final order of removal is undisturbed. That's
25 because it's relief that is applicable only to

1 one country, the country that's identified in
2 the CAT order. It's relief that's temporary; it
3 can be undone later in time if, for example,
4 country conditions change.

5 And, third, the government says
6 because that order, the final order of removal,
7 remains presently effective, they can continue
8 to detain individuals who've been granted CAT
9 relief on the basis of the underlying order of
10 removal --

11 JUSTICE KAVANAUGH: It --

12 MR. HUGHES: -- that the government
13 says is --

14 JUSTICE ALITO: Well, let me approach
15 it one -- one other -- one other way. And under
16 the -- under the provision dealing with CAT
17 claims, you can file a petition under 1252,
18 right?

19 MR. HUGHES: Yes, Your Honor.

20 JUSTICE ALITO: And what is the --
21 what is the nature of the petition that you can
22 file under 1252?

23 MR. HUGHES: There are two independent
24 ways. One is a Section 2242(d) provision under
25 FARRA. That was what was initially enacted

1 under the 1998 enactment. That is tethered into
2 (a)(1). It couples together review of the final
3 order of removal with the petition for review of
4 the CAT claim.

5 That, though, led to a problem where,
6 if there couldn't be judicial review of the
7 final order of removal in what I would call a
8 standalone CAT context or -- or where 2(C), this
9 was prior to 2(D), where 2(C) would strip
10 jurisdiction, there led to a problem where there
11 would be circumstances in which FARRA 2242(d)
12 did not supply jurisdiction.

13 JUSTICE ALITO: Isn't it the case that
14 the only kind of petition that you can file
15 under 1252 is denominated a petition for review
16 of a final order of removal?

17 MR. HUGHES: I think (a)(4), Your
18 Honor, provides a separate basis for someone to
19 file a petition. That was the REAL ID Act
20 solution to this jurisdictional gap I
21 referenced, which led to habeas problems --
22 issues.

23 And the text of (a)(4) provides that a
24 petition for review -- and let me say off the
25 bat there is some awkward language in here, but

1 I think I'll explain why it's not so awkward in
2 context. A -- (a)(4) says a petition for review
3 is "the sole and exclusive means for judicial
4 review."

5 JUSTICE ALITO: A petition for review
6 under 1252, it has to be under 1252?

7 MR. HUGHES: Yes, Your Honor.

8 JUSTICE ALITO: And you agree, I take
9 it, that all of the requirements for a petition,
10 including a CAT petition, that are set out in
11 subsection (b) apply, all of those requirements
12 apply?

13 MR. HUGHES: And, Your Honor, I'll say
14 2(C) applies. I'll say everything in 1252
15 applies.

16 JUSTICE ALITO: All right. If you say
17 that all of the requirements in -- in subpart
18 (b) -- in subsection (b) apply, subsection (b)
19 sets out the requirements for a petition for
20 review of a final order of removal.

21 MR. HUGHES: What happened, Your
22 Honor, this -- I -- I -- I -- I appreciate this
23 is a bit of a Franken-statute here, but Congress
24 enacted (a)(4) after all of the requirements in
25 (b) had already been enacted by AEDPA and ARARA.

1 So what Congress did in (a)(4), which came later
2 in time, by -- by referencing the section, I
3 think it's fairly read to say we are putting
4 (a)(4) in later and we're incorporating saying
5 you can't get around the venue provisions or
6 timeliness provisions or standard of review
7 provisions by incorporating all of the
8 requirements of this section.

9 And, again, my point that I said a
10 moment ago, I don't resist that we could say
11 2(C) generally could be thought to apply. The
12 question is when it applies to a petitioner,
13 1252, what work does it do? And the work it
14 does is answered by the text of 2(C).

15 It very clearly bars the act of
16 reviewing final orders of removal. It doesn't
17 bar review of -- of -- of separately CAT claims.
18 This --

19 JUSTICE KAVANAUGH: Doesn't the CAT
20 order at least temporarily invalidate the order
21 of removal as to a particular country?

22 MR. HUGHES: No, Your Honor.

23 JUSTICE KAVANAUGH: At least in common
24 parlance?

25 MR. HUGHES: I -- I -- I don't think

1 it does because it remains effective and, if the
2 CAT order is removed, the individual can still
3 be sent to that country. But, to get technical
4 about what the definition requires under A-47,
5 it's either the finding of an individual being
6 deportable or being ordered deported. Those are
7 both binary determinations.

8 Either the individual is found
9 deportable or not, and either the individual is
10 found removable -- order of removed or order
11 deported or not. And -- and, again, the
12 government doesn't agree -- disagree with us.
13 In the Guzman Chavez cert petition at page 10,
14 they filed this after their brief, they say
15 "withholding does not address whether an alien
16 is ordered removed."

17 It's the government's position that
18 whether an alien is ordered removed, that binary
19 determination is made by the final order of
20 removal, not the CAT claim. So --

21 JUSTICE KAVANAUGH: And can't --

22 JUSTICE BREYER: What -- what --
23 sorry.

24 JUSTICE KAVANAUGH: Go ahead.

25 JUSTICE BREYER: What -- what -- two

1 things here seem to be difficult for you. I'm
2 not sure. You'll explain why they're not.

3 In 1321, which is rather like the
4 zipper clause, it says you can't review a CAT
5 decision except as part of the review of a final
6 order of removal.

7 And then, in the two provisions,
8 (a)(4) and (a)(5), it says continuously the
9 review in accordance with this section. Now,
10 "in accordance with this section" in respect to,
11 as you know, I mean, in respect to orders of
12 removal means you can review facts, we have a
13 mixed question in front of us, and not -- you
14 cannot review facts for sure and, okay, and so
15 why can you review here, particularly when it
16 said earlier, and later in the zipper clause,
17 you have to -- you -- you can only review this
18 except as part of the review of a final order of
19 removal?

20 Well, if we have a fact argument, see,
21 the judge made a mistake of a fact, you know you
22 can't get that reviewed as part of a final order
23 of removal review. So how -- how can you say
24 here they can?

25 MR. HUGHES: Well, so two answers to

1 that, Your Honor. The -- the second one, which
2 I'll -- I'll get to, is the (a)(4) expanded
3 beyond FARRA because there was a problem with
4 FARRA. But starting with just with FARRA, the
5 except for as part of the review of.

6 What that says is the way that you get
7 review of the CAT claim is you have review of
8 the final order of removal. You have that.
9 That's the (a)(1) 1252 petition. And as part of
10 that review, you have review of the CAT claim.

11 What that doesn't say is that the CAT
12 claim itself is the final order of removal. All
13 that does is, like (b)(9), the zipper clause,
14 consolidates these two different sorts of
15 arguments into the same vehicle, into the same
16 petition for review.

17 And I agree they're all subject to
18 1252 limitations. But take, for example, the
19 limitation in 2(B). We agree the limitation in
20 2(B) applies. That's the limitation that says
21 that if there's a statutory conferral of
22 discretion on the agency, there's no judicial
23 review of that.

24 It applies in this circumstance. It
25 just doesn't do anything because there's nothing

1 discretionary about this determination. That's
2 the same argument we make with respect to 2(C).

3 We don't resist saying that it
4 applies. It just doesn't do anything to the
5 part of the petition for review that challenges
6 the CAT claim.

7 But my second point is, if the Court
8 disagrees with that understanding of FARRA, and
9 I think that's right, but that takes us to the
10 jurisdictional gap that Congress found because
11 we know that Congress in the REAL ID Act did not
12 want courts entertaining habeas actions in the
13 district courts. It did not want the two layers
14 of review. It wanted these matters going to the
15 courts of appeals.

16 In order to ensure that there was not
17 a jurisdictional gap, that's where Congress
18 created (a)(4). And when I was reading the
19 language of (a)(4), it does have the sole and
20 exclusive language, but (a)(4) is written in
21 just the same terms as (a)(1). (a)(1) is the
22 provision that the government points to as
23 providing judicial review over the final order
24 of removal.

25 The way -- the language that (a)(1)

1 uses is "judicial review of a final order of
2 removal is governed only by" and then it cites
3 the Hobbs Act. It's a sort of curious way of
4 conferring jurisdiction, not to say there is
5 judicial review, but says judicial review is
6 governed by the Hobbs Act.

7 (a)(4) says the exact same thing. It
8 says judicial -- the means of judicial review is
9 a Section 1252 petition.

10 We think that (a)(4) confers
11 jurisdiction in just the same way that (a)(1)
12 does. We know that Congress had to do this in
13 order to fix the Suspension Clause problem that
14 was at the heart of the -- the cases.

15 JUSTICE KAVANAUGH: You agree there's
16 no review in the cancellation of removal
17 context?

18 MR. HUGHES: The -- the --

19 JUSTICE KAVANAUGH: Cancellation of
20 removal.

21 MR. HUGHES: That's under the 1229(b).
22 That's -- so that is a 2(C) argument, yes, Your
23 Honor. That 1229(b) goes to whether or not
24 there is a final order of removal entered. If
25 somebody wins cancellation of removal relief,

1 that means there simply is no final order of
2 removal and that fits within the definition of
3 A-47.

4 JUSTICE KAVANAUGH: And the denial of
5 cancellation of removal?

6 MR. HUGHES: Yes, Your Honor.

7 JUSTICE KAVANAUGH: The factual -- the
8 factual components of that?

9 MR. HUGHES: That is part of the final
10 order of removal. That is all well within
11 because, if somebody challenges the denial of
12 cancellation of removal relief, or for those who
13 still have 212(c) relief eligible, any of those
14 things, the upshot of their argument is the
15 final order of removal that was entered against
16 me should be vacated. That's the relief we're
17 --

18 JUSTICE SOTOMAYOR: How about
19 statutory withholding, which is much more
20 comparable to the withholding at issue here?

21 MR. HUGHES: I do think statutory
22 withholding is the one thing in addition to CAT
23 claims that probably our rule sweeps within.
24 The language is less clear there. There's not
25 the (a)(4), the (a)(5) argument and it's not

1 before the Court. But I do think the logic of
2 our argument, the only thing in addition to CAT
3 relief, I think it would --

4 JUSTICE SOTOMAYOR: So what work does
5 (a)(4) and (a)(5) do for you?

6 MR. HUGHES: So (a)(4) and (a)(5) is
7 decisive textual evidence in our view that
8 Congress understood for purposes of Section
9 1252, that a cause or claim under CAT that's
10 addressed in (a)(4) is simply not a final order
11 of removal. That's addressed in (a)(5).

12 Congress, as I mentioned a moment ago,
13 in the REAL ID Act, sought to ensure that all of
14 -- review of all of these different issues would
15 go straight to the courts of appeals. That's
16 why Congress created both (a)(4) and (a)(5). It
17 created two separate independent provisions that
18 were next-door neighbors because it knew that
19 final order of removal, as Congress used that
20 language in 1252, just does not encompass a CAT
21 claim.

22 And I think that's the fundamental
23 problem with the government's argument.

24 JUSTICE SOTOMAYOR: So why does it
25 encompass statutory withholding?

1 MR. HUGHES: Why does --

2 JUSTICE SOTOMAYOR: Why does it
3 necessarily encompass statutory withholding?

4 MR. HUGHES: I -- I -- I'm not sure
5 either of those arguments by their plain text
6 encompass statutory withholding, Your Honor. I
7 think there is potentially a gap. I think this
8 is, to Justice Alito's point, (b)(9), the zipper
9 clause, would tie in an argument about statutory
10 withholding into the review of the final order
11 of removal.

12 JUSTICE SOTOMAYOR: Well, I agree with
13 you that everything comes up -- under your
14 interpretation, everything comes up to the
15 Court. That's what the zipper clause is
16 supposed to do.

17 What you're saying, however, is that
18 because of the definition of what order of
19 removal is, that if it doesn't affect the actual
20 order, that's not barred, the factual review is
21 not barred?

22 MR. HUGHES: That's right, Your Honor.
23 Our -- our ultimate position is a
24 straightforward one of, if the claim in the
25 petition for review challenges the validity of

1 the final order of removal, if it is -- and that
2 is most things that are in a Section 1252 --

3 JUSTICE SOTOMAYOR: Like cancellation
4 of removal, things like that affect that Act?

5 MR. HUGHES: Yes, Your Honor. The
6 only things that I'm aware of that do not fall
7 -- that are not swept within that are CAT
8 relief, CAT withholding, and CAT deferral, and,
9 as Your Honor points out --

10 JUSTICE SOTOMAYOR: All right. So --

11 MR. HUGHES: -- statutory withholding.

12 JUSTICE SOTOMAYOR: -- the -- in one
13 of the briefs -- I can't remember if it was
14 yours or someone else's -- there was a whole
15 list of situations in which CAT claims would be
16 reviewed independent of the petition for renewal
17 -- independent of the decision on the removal.

18 MR. HUGHES: Yes, Your Honor.

19 JUSTICE SOTOMAYOR: How would there be
20 jurisdiction? I understood from your briefs
21 that you think (a)(4) provides independent
22 jurisdiction or (c)(4) provides independent
23 jurisdiction. How would it exist for statutory
24 withholding --

25 MR. HUGHES: So I --

1 JUSTICE SOTOMAYOR: -- in those
2 similar situations where it doesn't come up with
3 the order of removal?

4 MR. HUGHES: I -- I think statutory
5 withholding is more similar -- is less likely to
6 come up in an independent circumstance than CAT.
7 So I'm not sure that those are going to arise as
8 frequently --

9 JUSTICE SOTOMAYOR: Why?

10 MR. HUGHES: -- as --

11 JUSTICE SOTOMAYOR: That's what I
12 don't understand.

13 MR. HUGHES: Well, I think the CAT, as
14 being a final backstop, is the -- the sort of
15 claim that is often seen more independently. I
16 -- I acknowledge, Your Honor, though, that in
17 that -- that narrow range of cases about
18 statutory withholding, I agree that (a)(4)
19 doesn't apply.

20 I do think that there is not a clear
21 answer on where statutory withholding, the
22 jurisdiction falls. I think, though, it falls
23 with -- most likely within (b)(9) because that
24 is an order that then would be related to the
25 proceedings and would be swept in together. So

1 I think (b)(9) would -- would do the work there.

2 I -- I think ultimately, though, this
3 has to be understood against the backdrop
4 presumptions here. One is that there is a
5 presumption in favor of judicial review. And,
6 second, if there was no judicial review for the
7 withholding context, if the statutes were
8 understood that way, there would then be the
9 Suspension Clause problem that would allow
10 independent, stand-alone habeas actions to
11 challenge the denial of the withholding --

12 JUSTICE KAVANAUGH: What do you --

13 MR. HUGHES: -- of the statutory
14 withholding.

15 JUSTICE ALITO: Can I just ask you
16 before your time expires -- and I -- I'd like
17 the government to answer this too -- what you
18 have to say about -- putting aside the question
19 of waiver, about the Eleventh Circuit's holding
20 that the criminal alien bar applies at all in
21 this case, since the ground for removal in this
22 case is 1227(a)(2)(A)(i), right, not --

23 MR. HUGHES: Yes.

24 JUSTICE ALITO: -- (a)(ii)? So if --
25 if they're wrong on that, there's really no

1 reason for us to get to this other issue. And
2 the second part of that question is, although
3 they have said, they have held that the criminal
4 alien bar applies to an alien who has committed
5 a crime of moral turpitude, why wouldn't that
6 fall within 1182(a)(2), which is another --

7 MR. HUGHES: Yeah.

8 JUSTICE ALITO: -- basis for the
9 criminal alien bar?

10 MR. HUGHES: So, to the first part,
11 what we do with that, two quick answers is, one,
12 there's certainly no basis to -- to DIG or not
13 -- this case or not resolve question presented.
14 This is simply a second defect that's been found
15 below. The government's position should be
16 waived if we're right about that. That would
17 just mean there's -- there's -- it doesn't --
18 it's not an obstacle to the question presented.

19 I do think it is within the Court's
20 discretion if it wishes to find plain error or
21 to address the 1227 question in the alternative
22 of deciding the question presented. That's, of
23 course, within the Court's discretion, but --
24 but it's not an issue that we've presented.

25 As to Your Honor's question about why

1 it doesn't fall within 1182, that's for two
2 reasons. One is the reasoning of the Seventh
3 Circuit of Wanjiru. 1182 just is not applicable
4 in these circumstances because it's about
5 admissibility and it applies to criminal
6 convictions that are prior to the alien's
7 technical admissibility. And the Seventh
8 Circuit in Wanjiru explains that when the crime
9 of conviction is post-admission of the
10 non-citizen, 1182 doesn't govern in that
11 circumstance. That -- that's the Wanjiru
12 analysis.

13 Lee v. Gonzales, the Fifth Circuit,
14 takes a different approach. It also agrees that
15 a single crime of moral turpitude is not
16 triggered, and it focuses instead on the text of
17 2(C) because, when you look at the back-end
18 portion of the text of 2(C), the language is a
19 bit unclear, but it references that there are
20 multiple crimes of moral turpitude in that 2(C),
21 which is tying into the Romanette ii portion of
22 the 1227, which says there has to be two or more
23 crimes.

24 So I think those are -- both the Fifth
25 and the Seventh Circuit have provided two

1 independent grounds for arriving at the
2 government's position, which we agree with, that
3 -- that -- that 2(C) shouldn't apply for the
4 separate reason when it's a single crime of
5 moral turpitude.

6 JUSTICE KAVANAUGH: Can you address
7 the government's reliance on Foti and why that
8 decision doesn't carry forward?

9 MR. HUGHES: A few things about Foti,
10 Your Honor. First, we think the holding in Foti
11 is completely consistent with our position and
12 with the --

13 JUSTICE KAVANAUGH: The language in
14 Foti.

15 MR. HUGHES: So -- so the only issue
16 in the language of Foti where it does sweep more
17 broadly, Congress defined the key term, "order
18 of deportation," after Foti, and it defined it
19 in a way that's completely consistent with
20 Foti's holding but is not consistent with Foti's
21 broader language that absolutely anything that
22 occurs in a removal proceeding falls within the
23 order of deportation. If we were with that one
24 sentence in Foti that -- that reads more
25 broadly, it could be a problem.

1 But that's not the case. Congress
2 specifically defined the key term after Foti,
3 and that statutory definition is necessarily
4 what is going to govern here. In Foti, the
5 Court said we have to interpret what's an
6 ambiguous term and we're going to resort to
7 policy, knowing that there are multiple
8 plausible interpretations. Here, there's no
9 resort to that sort of policy sense because
10 Congress has filled the gap.

11 But even if we look to that underlying
12 policy, there, the policy was ensuring that
13 there would be consolidation in one court so you
14 wouldn't have some actions in the district court
15 and some in the courts of appeals. Congress has
16 taken care of that policy issue, and now
17 everything goes to the courts of appeals.

18 And the final point about Foti is Foti
19 was just picking where judicial review was going
20 to be, not whether or not judicial review would
21 be fully stripped. This is a case in which
22 jurisdiction -- is whether or not there is
23 Article III jurisdiction at all, and that very
24 strong presumption here was simply not
25 applicable in -- in Foti.

1 Thank you, Your Honor.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Mr. Guarnieri.

5 ORAL ARGUMENT OF MATTHEW GUARNIERI
6 ON BEHALF OF THE RESPONDENT

7 MR. GUARNIERI: Mr. Chief Justice, and
8 may it please the Court:

9 In Section 1252(a)(2)(C), the term
10 "final order of removal" encompasses the various
11 administrative decisions that are made in the
12 course of removal proceedings, including the
13 denial of an alien's claims for relief or
14 protection from removal.

15 That has been the established
16 understanding of the judicial review provisions
17 of the INA since this Court's 1963 decision in
18 Foti against INS. And Congress incorporated
19 that same understanding into Section 1252 when
20 it enacted IIRIRA in 1996.

21 Now the specific claims at issue here
22 arise under the Convention Against Torture, but
23 CAT claims are no different in this regard. And
24 we know that, in part, because, in the Foreign
25 Affairs Reform and Restructuring Act of 1998,

1 Congress specified that CAT claims would be
2 reviewable only as "part of the review of a
3 final order of removal."

4 And because CAT claims are reviewable
5 only as part of review of a final order of
6 removal, they are subject to Section 1252's
7 limits on final order review, including
8 specifically the criminal alien jurisdictional
9 bar in 1252(a)(2)(C).

10 Petitioner's contrary view, which no
11 court has ever embraced, rests on the premise
12 that the denial of a CAT claim is not the same
13 thing as an order of removal. But the denial of
14 a CAT claim is an integral part of the removal
15 order for purposes of judicial review. That is
16 the lesson of Foti and its progeny, and that is
17 the understanding of the statutory scheme that
18 Congress incorporated into 1252. And as I just
19 explained, that's precisely how FARRA describes
20 review of CAT claims.

21 Petitioner's argument is also
22 self-defeating, as we explain in our brief.
23 Section 1252(a)(1) only authorizes the courts of
24 appeals to exercise Hobbs Act jurisdiction with
25 respect to final orders of removal. If a CAT

1 claim is not reviewable as part of a final order
2 of removal, it is not reviewable at all.

3 Finally, as Justice Sotomayor's
4 questions illustrated this morning, Petitioner's
5 theory can't make sense of the judicial review
6 of claims for statutory withholding of removal;
7 that is, claims for withholding of removal
8 predicated on a fear of persecution rather than
9 a fear of torture.

10 Everything that Petitioner says about
11 what makes CAT claims -- what makes a CAT claim
12 distinct from an order of removal could equally
13 be said for statutory withholding claims. And
14 yet, we know statutory withholding claims are
15 reviewable as part of the final order of
16 removal --

17 JUSTICE GORSUCH: Counsel --

18 MR. GUARNIERI: -- entered at the
19 conclusion of the proceedings.

20 JUSTICE GORSUCH: -- two questions.
21 Take them in whatever order you want or ignore
22 them both. First, what do we do with the fact
23 that the government has repeatedly represented
24 that a CAT order is not a final order of removal
25 and that a final order of removal remains

1 effective whatever happens to the CAT order? So
2 that's one.

3 Number two, can't something be part of
4 a proceeding and yet be different from the --
5 one -- two claims can come in one proceeding,
6 right, and we often have compulsory
7 counterclaims, for example. And why couldn't
8 Congress want a system in which, for efficiency
9 purposes, two distinct questions were presented
10 to the court at the same time without indicating
11 that they are the same issue?

12 MR. GUARNIERI: Well, Justice Gorsuch,
13 if I may take your second question first, we
14 think the language of FARRA is -- quite
15 specifically identifies how Congress understood
16 CAT claims to be reviewable in this context.

17 The relevant language is reproduced at
18 page 18a of the government's brief. And as I
19 quoted earlier, Congress specified that CAT
20 claims would be reviewable only as part of
21 review of the final order of removal, not as a
22 -- a -- a separate proceeding that would occur
23 at the same time as review of the final order of
24 removal.

25 JUSTICE GORSUCH: I understand

1 exactly. It's not a separate proceeding, but
2 that doesn't necessarily mean it's the same
3 thing as a final order of removal, does it?

4 MR. GUARNIERI: Well, no, I agree with
5 that, but the -- the --

6 JUSTICE GORSUCH: Okay. So you agree
7 that one can have two distinct things in a
8 single proceeding?

9 MR. GUARNIERI: Section 1252
10 prescribes a mechanism whereby aliens can seek
11 judicial review of what occurred in the removal
12 proceedings by petitioning for review of the
13 final order that is entered at the end of those
14 proceedings.

15 Since this Court's decision in Foti,
16 the -- the uniform understanding of how judicial
17 review works in this context is that, when the
18 alien petitions for review of that final order
19 which concludes the administrative proceedings,
20 then the various other decisions that were made
21 in the course of the removal proceedings are
22 also reviewable as part of the final order of
23 removal. Foti described those decisions --

24 JUSTICE GORSUCH: But you agree --

25 MR. GUARNIERI: -- as an integral

1 part.

2 JUSTICE GORSUCH: -- it's not the same
3 thing as --

4 MR. GUARNIERI: FARRA uses the same
5 language.

6 JUSTICE GORSUCH: You'd agree that the
7 CAT order is not the same thing as a final order
8 of removal?

9 MR. GUARNIERI: It -- it -- it can be
10 distinguished from the order by which the
11 immigration judge orders the alien to be
12 removed. And as -- as Mr. Hughes has stressed
13 --

14 JUSTICE GORSUCH: Why isn't that the
15 case?

16 MR. GUARNIERI: -- the order of
17 removal remains valid even if the alien is
18 granted CAT protection.

19 JUSTICE GORSUCH: Once the government
20 concedes, as I think it must, right, that --
21 that a CAT order is distinct from, is not the
22 same thing as a final order of removal, why --
23 why isn't that seriously problematic, turning to
24 the first question I asked you?

25 MR. GUARNIERI: Justice Gorsuch, we --

1 we think it is part of the final order of
2 removal. It is an integral and constituent part
3 of the final order of removal. That --

4 JUSTICE GORSUCH: Part of and integral
5 to --

6 MR. GUARNIERI: -- as this Court's
7 Foti decision --

8 JUSTICE GORSUCH: -- but distinct
9 from. How is that?

10 MR. GUARNIERI: It -- it is distinct
11 from the order of removal in the legal sense --

12 JUSTICE GORSUCH: Sounds pretty
13 metaphysical, counsel. I mean, it's -- it's
14 integral to and part of but distinct from.

15 MR. GUARNIERI: Well, Justice --

16 JUSTICE GORSUCH: It's like the Holy
17 Trinity.

18 (Laughter.)

19 MR. GUARNIERI: One could say --
20 Justice Gorsuch, one could make the same
21 observation with respect to the review of final
22 decisions of the district courts.

23 In -- in the course of litigation in
24 district court, a district court may make a
25 variety of decisions that culminate in a final

1 decision.

2 The final decision under the -- the --
3 the statutory provision for review of final
4 decisions to the district court has been
5 universally understood that review of the final
6 decision also encompasses review of the various
7 decisions made earlier in the course of the
8 district court proceedings --

9 JUSTICE KAVANAUGH: Can I ask you a --

10 JUSTICE KAGAN: Well, but --

11 MR. GUARNIERI: -- that merge into the
12 final decision. It's a -- it's similar scheme
13 here.

14 JUSTICE KAVANAUGH: Go ahead.

15 JUSTICE KAGAN: I -- I mean, I think
16 that's very different. All of those decisions
17 are ones leading up to the final decision and
18 the final decision is contingent on them.

19 By the government's own practice and
20 procedures, the CAT scheme does not have that
21 relationship to the final order. I mean, every
22 time you issue a final order, or it -- there's
23 the final order. And when the -- the CAT
24 question comes up, the government says: This
25 does not affect the final order, which continues

1 to be in effect.

2 MR. GUARNIERI: It -- it certainly
3 does affect the final order, Justice Kagan, in
4 this sense: To take this case as a specific
5 example, Petitioner in this case was ordered to
6 be removed to Lebanon. His CAT claim -- the --
7 the -- the gravamen of his CAT claim is that he
8 cannot be removed to Lebanon because he fears
9 that he would be tortured there.

10 If he were to succeed on his CAT
11 claim, the order -- the existing order that he
12 be removed to Lebanon could not be executed.
13 Now there's an order --

14 JUSTICE KAGAN: But the order is -- is
15 for removal from this country. And what the CAT
16 claim does is essentially to put a kind of
17 external constraint on how to implement that
18 order.

19 But the order, as the government
20 repeatedly says when it does this, remains in
21 effect. The person is ordered to leave this
22 country.

23 MR. GUARNIERI: Well, respectfully,
24 Justice Kagan, the order is more specific than
25 that. And, in fact, the implementing

1 regulations require that the country of removal
2 be designated in the order.

3 And if you look at page 47a of the
4 Petition Appendix, there is an example of what
5 these orders look like. And you will find that
6 in here the order specified that Respondent,
7 meaning the Petitioner in this Court, be removed
8 from the United States to Lebanon.

9 JUSTICE BREYER: Well, why is this --
10 why -- look, analogize it if you want. Say it's
11 just like a final order of a district court
12 coming up for review. Fine. We've had a lot of
13 those, all of us, enough to review in the court
14 of appeals. That doesn't mean you apply to the
15 same standard for all of them.

16 If it's a witness complaint, there's a
17 credibility standard that's more -- almost
18 entirely up to the district judge. If it's a
19 fact-finding, it's another thing. If it's an
20 application of law, it's another thing. So
21 fine. It's part of the review of the final
22 order.

23 But, here, the question is should they
24 review facts? And that's a different section,
25 which says you can't review facts in the final

1 order. And what they say to that is, look, if
2 Congress wanted all these things to apply, it
3 wouldn't have written two separate -- 4 and 5,
4 they wouldn't have written two separate
5 provisions.

6 That's a pretty good argument. And
7 you have not a bad argument on the -- on the
8 language. I agree with that.

9 So into this breach steps the
10 presumption in favor of reviewability. Now
11 there we are. And what do you -- what do you
12 have -- I would like to hear what you have to
13 say about that.

14 MR. GUARNIERI: Sure, Justice Breyer,
15 we -- we have two responses about the
16 presumption of the availability of judicial
17 review.

18 First, of course, we do not think the
19 statutory text is ambiguous. We think Congress
20 unambiguously foreclosed judicial review of
21 final orders of removal with respect to criminal
22 aliens.

23 Second, independently of that, we
24 don't think the presumption in favor of judicial
25 review can do any work in this case for the

1 following reason that is specific to this
2 particular case.

3 The term the Court is being asked to
4 interpret here is the term "final orders of
5 removal." That appears in both (a)(2)(c), which
6 is the limitation on final order of review, and
7 also in (a)(1), which is the provision that
8 affirmatively authorizes judicial review.

9 And so a narrowing construction of the
10 term "final order of removal" would sort of give
11 with one hand and take with the other.

12 JUSTICE BREYER: Why is that different
13 from -- from what I've seen 10,000 times? In a
14 court of appeals, we are reviewing a piece of
15 paper called a judgment, right? And it is the
16 order of that judgment that we review.

17 But, when we review it, we have like
18 10 different standards that you apply to
19 different aspects depending on what the argument
20 is. All right?

21 MR. GUARNIERI: Justice Breyer, when
22 Congress enacted the criminal alien
23 jurisdictional bar in (a)(2)(C), it used the
24 term final order in the same sense that it used
25 that term in (a)(1). And under Foti and its

1 progeny, that term encompasses the various other
2 determinations made in the course of the same
3 removal proceedings.

4 JUSTICE KAVANAUGH: Can I ask --

5 MR. GUARNIERI: It's true that --

6 JUSTICE GINSBURG: We pledged -- we
7 pledged to our treaty partners that we would not
8 return a person to a place where the returnee
9 would be likely subject to torture.

10 Does that figure into this analysis at
11 all in how you treat a -- a CAT claim, that we
12 -- we have undertaken and we want other
13 countries to undertake the same pledge, that
14 people will not be returned to places where
15 they're subject to torture?

16 MR. GUARNIERI: No, Justice Ginsburg,
17 I don't think so. The United States has
18 determined that -- that Petitioner will -- is
19 not more likely than not to be tortured if he is
20 returned to Lebanon.

21 The issue in this case is simply
22 whether he is entitled to an additional round of
23 judicial review of the agency fact findings, but
24 --

25 JUSTICE GINSBURG: Is -- is there any

1 --

2 MR. GUARNIERI: -- he will not be
3 tortured. That is the determination that the
4 United States has made.

5 JUSTICE GINSBURG: Is there any
6 impediment -- and this -- this is very limited
7 -- he can be deported any place else in the
8 world, just not to Lebanon? Is there an
9 impediment to deporting him to some other
10 country?

11 MR. GUARNIERI: No, there is not
12 currently an impediment. The -- the Immigration
13 and Nationality Act itself specifies the other
14 countries to which the alien may be removed.
15 There's an ordering in the statute about which
16 alternative countries would be the countries of
17 removal. In a case in which the country of
18 citizenship, he cannot be removed to the country
19 of citizenship.

20 JUSTICE KAVANAUGH: Can I pick up on
21 Justice --

22 JUSTICE ALITO: Does it matter whether
23 he's -- where his country of citizenship where
24 he was born, where he has a residence? Would
25 any of those apply to -- to Mr. Nasrallah?

1 MR. GUARNIERI: Well, I -- I don't
2 know that there have been any administrative
3 proceedings in this particular case to identify
4 an alternative country of removal, but --

5 JUSTICE ALITO: So it would have to be
6 --

7 MR. GUARNIERI: -- certainly, that
8 would be in the analysis.

9 JUSTICE ALITO: -- a country that
10 would accept him? Some country with which he
11 has no connection would have to accept him.

12 MR. GUARNIERI: That's correct.
13 That's correct.

14 JUSTICE KAVANAUGH: Can I pick up on
15 --

16 MR. GUARNIERI: If I can return to a
17 point that I was trying to --

18 JUSTICE KAVANAUGH: -- can I pick up
19 on Justice Breyer's questions for a minute in
20 thinking about how Congress structured this
21 statute?

22 The factual components of the order of
23 removal often are not going to be seriously
24 disputed because it will be convictions for
25 prior offenses. And you've gotten judicial

1 process with respect to those state convictions
2 usually. And that was part of, I think, Senator
3 Abraham's analysis back when this was put in.

4 With respect to a CAT claim, however,
5 the factual components will not have been
6 previously litigated and, indeed, will be very
7 important to the CAT claims.

8 So why would Congress have wanted to
9 preclude judicial review of those highly
10 important factual components of a CAT claim?

11 MR. GUARNIERI: Justice Kavanaugh, the
12 same could be said with respect to an alien's
13 claims for asylum or to statutory withholding of
14 removal. In both of those cases, the sort of --
15 the factual predicate for the claim will not
16 have been previously adjudicated in a criminal
17 proceeding. And yet, Congress unmistakably made
18 a judgment that aliens who come to the United
19 States and commit crimes should be removed from
20 the country as expeditiously as possible.

21 And as part of that judgment, Congress
22 precluded review -- with respect to criminal
23 aliens, Congress limited the review available of
24 a final order of removal, which, as I have said,
25 is a term that encompasses things like --

1 JUSTICE KAVANAUGH: I just don't
2 see --

3 JUSTICE KAGAN: Mr. Guarnieri --

4 MR. GUARNIERI: -- claims for asylum
5 and statutory withholding.

6 JUSTICE KAVANAUGH: I just don't see
7 any language that says the factual components of
8 a CAT claim, which, correct me if I'm wrong, but
9 those are going to be highly important in a lot
10 of these cases, that we, Congress, don't want
11 judicial review, even the deferential judicial
12 review that Justice Ginsburg identified, we
13 don't even want that, of the factual components
14 of the CAT claim?

15 MR. GUARNIERI: Well, of course, (a)
16 -- (a)(2)(C) itself broadly precludes review at
17 all. And then Congress later added (a)(2)(D) as
18 an exception to permit review of -- of questions
19 of law and constitutional claims.

20 Both of those provisions are written
21 to -- to deny review of the entire final order,
22 which encompasses things like --

23 JUSTICE KAVANAUGH: Well, that just
24 begs the question of whether that encompasses,
25 as Justice Gorsuch says, the CAT claim. But

1 there's nothing specific to say as to CAT claims
2 -- and this doesn't defeat your argument, but it
3 is a problem -- there's nothing specific as to
4 CAT claims that say we, Congress, don't want any
5 judicial review of the factual components of CAT
6 claims, which would have been a very serious
7 decision.

8 MR. GUARNIERI: That is -- Congress
9 never used those precise words, but in the
10 Foreign Affairs Reform and Restructuring Act of
11 1998, Congress did direct that CAT claims would
12 be reviewable only as part of the review of a
13 final order, which, in turn, should be read
14 against the backdrop of Section 1252 and
15 Section 1252's limits on final order of review.

16 Congress also reinforced those
17 limitations in the REAL ID Act of 2005, which
18 added --

19 JUSTICE KAVANAUGH: Don't you think
20 that --

21 MR. GUARNIERI: -- subsections (a)(4)
22 and (5).

23 JUSTICE KAVANAUGH: Sorry to
24 interrupt. Don't you think part of that was
25 meant to get everything straight to the court of

1 appeals, as opposed to the district court, so
2 that's what that was about?

3 MR. GUARNIERI: Yes, certainly, but
4 this is a complementary part of the same
5 project. What Congress was intending to ensure
6 here was that review of any CAT claims occur
7 only pursuant to Section 1252 and subject to the
8 limitations Congress had already specified in
9 Sections 12 -- Section 1252.

10 And I think FARRA is a problem for
11 Petitioner here in another sense as well, and
12 that is that FARRA, which was enacted, again, in
13 1998, after the statutory definition on which
14 Petitioner now relies, FARRA clearly
15 contemplated that CAT claims would -- could be
16 reviewed as part of a final order of removal.

17 That really makes no sense on
18 Petitioner's understanding of the statutory
19 scheme because Petitioner claims that there was
20 a jurisdictional gap that Congress didn't solve
21 until the REAL ID Act of 2005, when it added
22 (a)(4) to the statute.

23 But, in fact, we know from FARRA that
24 Congress anticipated that CAT claims would be
25 reviewed as part of final order review.

1 JUSTICE BREYER: No, it doesn't say
2 that. That's why it's difficult. It says you
3 can't review them except as part of the review
4 of a final order of removal.

5 And that means, I take it, that we
6 don't really know, to be honest, whether, when
7 you review this as part of the review of -- of
8 the final order of removal, did it mean to pick
9 up all the standards there in -- you know, that
10 -- that applied to review of a final order of
11 removal, or was it just talking about how you
12 proceed, don't go to five courts, go to the one
13 court and do it at the same time, you know, et
14 cetera?

15 I can't get clear in my mind -- and
16 you have an interest in persuading me one way or
17 the other -- which it really means.

18 MR. GUARNIERI: Justice Breyer, we --
19 we understand that to mean that Congress
20 anticipated that CAT claims would be reviewable
21 only as part of and subject to the limitations
22 on final order review.

23 That also was the administrative
24 understanding of the statute. The -- the
25 implementing regulations in 1998 echoed FARRA's

1 limitation. And the preamble to the
2 rule-making, the attorney general explained that
3 she understood that CAT claims would be
4 reviewable only subject to the existing
5 limitations in Section 1252.

6 So we think the rule-making history
7 also bolsters our understanding of the statute
8 here.

9 JUSTICE KAVANAUGH: What was the
10 nature of that review between 1998 and 2005?
11 Because I'm a little murky on the chronology and
12 how that would have worked in that -- those
13 years.

14 MR. GUARNIERI: Sure. So, with
15 respect to non-criminal aliens, aliens for whom
16 the criminal alien jurisdictional bar is -- was
17 not a problem --

18 JUSTICE KAVANAUGH: Let's talk about
19 criminal aliens.

20 MR. GUARNIERI: Well, for criminal
21 aliens, as a result of this Court's decision in
22 INS against St. Cyr --

23 JUSTICE KAVANAUGH: Before St. Cyr.

24 MR. GUARNIERI: Well, before St. Cyr,
25 the matter was -- was somewhat unclear because,

1 on its face, the criminal alien jurisdictional
2 bar, as it was then written, would preclude
3 review of all final orders by --

4 JUSTICE KAVANAUGH: There would be no
5 review at all, right?

6 MR. GUARNIERI: That's correct,
7 including for --

8 JUSTICE KAVANAUGH: And doesn't that
9 pose a problem given that FARRA seemed to
10 suggest that there would be some review?

11 MR. GUARNIERI: Well, but, for
12 non-criminal aliens, there was -- review was
13 occurring in the ordinary course. An alien who
14 had a CAT claim that was denied in removal
15 proceedings would file a petition for review,
16 and the petition for review would challenge the
17 final order, including the denial of the CAT
18 claim. And the courts of appeals were reviewing
19 cases like that.

20 Now, for criminal aliens, the facts on
21 the ground were somewhat different because the
22 criminal alien jurisdictional bar precluded
23 appellate -- precluded circuit court review
24 entirely, at least for non-constitutional claims
25 for criminal aliens.

1 And so, as a result of this Court's
2 decision in INS against St. Cyr, the courts of
3 appeals determined that FARRA Section 2242(d),
4 which is the provision I've been emphasizing
5 this morning that makes CAT claims reviewable
6 only as part of the final order of removal,
7 courts of appeals concluded that that section
8 did not itself preclude habeas review of CAT
9 claims under the logic of this Court's decision
10 in St. Cyr.

11 JUSTICE BREYER: Is this right?

12 MR. GUARNIERI: Now Congress --

13 JUSTICE BREYER: Is this right? I'm
14 trying to get this straight. I'm just trying to
15 get it straight in my mind. All right?

16 At one point, you had the section
17 which says: Look, person under a final order of
18 removal, if you're a criminal, you can't appeal
19 at all. And you also had the preexisting
20 section that said to the CAT person: You can
21 get review only as part of the review of a final
22 order of removal.

23 So, if you couldn't get it all, you
24 couldn't get it here, it seems, because there
25 was no part -- there was no final order of

1 removal, so it couldn't be part of it.

2 Then, later on, they had this other
3 section say: Wait a minute, you can,
4 Mr. Criminal -- and that's because of St. Cyr
5 perhaps -- you see you can get review of a final
6 order of removal. And now we can get review of
7 our CAT claim because there's something to
8 attach it to.

9 So the question is, did we, in fact,
10 in saying that -- "we" being Congress -- mean
11 that the condition that limits the final order
12 of -- of -- of removal also limit the appeal of
13 the CAT claim, which is no review of fact?

14 And that's why they're saying it's a
15 different thing; this was just a vehicle. And
16 you're saying: No, it isn't a vehicle; it's
17 part of -- it's part of.

18 Okay. I got about that far this
19 morning. And that's why I got to then think,
20 well, there is this presumption in favor of
21 reviewability. That's how I got there.

22 I guess you could tell me, forgetting
23 the reviewability presumption, am I right or
24 wrong so far?

25 MR. GUARNIERI: Justice Breyer, if you

1 examine the legislative history --

2 JUSTICE BREYER: Was I right or wrong?

3 Because I'm not asking for an argument. I just

4 want to know if my analysis is right --

5 MR. GUARNIERI: We don't --

6 JUSTICE BREYER: -- and if --

7 MR. GUARNIERI: -- we don't agree with

8 Petitioner's account of the history that led to

9 the REAL ID Act. According to Petitioner, in

10 the REAL ID Act, Congress understood itself to

11 be solving a perceived lack of jurisdiction in

12 the courts of appeals to review CAT claims.

13 That is -- that is unmistakably incorrect.

14 If you examine the legislative record

15 that preceded the REAL ID Act, what Congress

16 understood itself to be doing was softening or

17 limiting the scope of the criminal alien

18 jurisdictional bar in order to solve the

19 problems that this Court identified in *St. Cyr*.

20 So Congress fixed the problem, as it

21 were, by permitting review of legal claims and

22 constitutional claims for criminal aliens and

23 then amending 1252 in numerous places to make

24 clear that there would be no habeas district

25 court proceedings to review any of the

1 determinations that occur in the ordinary
2 removal proceeding and that 1252 would be the
3 sole and exclusive means for aliens to obtain
4 review of those determinations in the courts of
5 appeals, including and subject to the limits set
6 forth in 1252.

7 Now, as I -- as I began to say
8 earlier, we do think that statutory withholding
9 of removal is -- is a very hard case for
10 Petitioner here because everything that
11 Petitioner says about why CAT claims are
12 different than a final order of removal could
13 equally be said for statutory withholding
14 claims.

15 And, of course, in Foti, this Court
16 itself identified withholding of removal as the
17 kind of decision that, when it occurs in their
18 removal proceeding, is reviewable as part of the
19 final order that's entered at the conclusion of
20 those proceedings.

21 Every court of appeals in the country
22 was reviewing statutory withholding claims in
23 the years post-dating Foti and predating IIRIRA.
24 There is no evidence that Congress meant to
25 eliminate or abrogate that practice when it

1 adopted the definition in 1996 that -- that
2 Petitioner has latched onto.

3 We think also motions to reopen would
4 not meet Petitioner's narrow understanding of
5 what a final order of removal is. When an alien
6 files a motion to reopen the removal
7 proceedings, and the agency denies that motion
8 to reopen, that is not itself a separate finding
9 of removability or an order of removal, and yet
10 it is unmistakably clear that the denial of a
11 motion to reopen can be reviewed as part of
12 final order review.

13 This Court said as much in *Stone*
14 against INS and the text of 1252 continues to
15 reflect it anticipates that there will be
16 appellate proceedings with respect to motions to
17 reopen.

18 So we think --

19 JUSTICE SOTOMAYOR: The problem with
20 --

21 MR. GUARNIERI: -- that both of those
22 are --

23 JUSTICE SOTOMAYOR: -- motions to
24 reopen is that what you are seeking to do is to
25 undo the order of removal, and so that fits

1 quite clearly within your -- your -- the other
2 side's theory.

3 We still -- what you haven't told me
4 is where the language of defining order of
5 removal, how I read that language in the
6 statute? It's the first definition Congress has
7 given.

8 Where in reading that -- those words
9 when Congress has chosen to define them explains
10 CAT claims, or can include CAT -- CAT -- CAT
11 claims?

12 MR. GUARNIERI: We think the language
13 of 1101(a)(47) should be read in light of the --
14 the many decisions that preceded it --

15 JUSTICE SOTOMAYOR: The problem is --

16 MR. GUARNIERI: -- recognizing the
17 final orders of removal --

18 JUSTICE SOTOMAYOR: -- that Congress
19 had those decisions in front of it and it could
20 have chosen to write something much more
21 comprehensive, but it didn't.

22 It could have said order of removals,
23 any orders of removal and all other decisions
24 encompassed by it or all other orders
25 encompassed by -- a part of it. But it didn't.

1 It talked about it just as the order of removal.

2 MR. GUARNIERI: But we -- we think
3 that language is naturally read to include the
4 decisions that precede the order of removal.

5 JUSTICE SOTOMAYOR: It's only
6 naturally --

7 MR. GUARNIERI: -- there is no
8 indication --

9 JUSTICE SOTOMAYOR: -- read that way
10 because we decided, I think it was Foti --

11 MR. GUARNIERI: That's correct.

12 JUSTICE SOTOMAYOR: -- that in terms
13 of channelling review, we wanted everything
14 channeled to the court of appeals. This is a
15 very different question than whether or not
16 you're going to put in a bar that bars review
17 altogether.

18 MR. GUARNIERI: Well --

19 JUSTICE SOTOMAYOR: Channeling and
20 reviewing it, so Congress looked at it and said
21 the one thing we're barring is only removal.

22 MR. GUARNIERI: Well, the -- the
23 definition, it -- it defines a term that is --
24 appears not only in the provisions of the
25 statute that limit review but also in the

1 provisions of the statute that authorize review,
2 as I explained earlier.

3 Section 1252(a)(1) uses this term,
4 "final orders of removal," and there is no
5 indication, and Petitioner has yet to explain
6 why Congress would have wanted to, excludes
7 statutory withholding claims --

8 JUSTICE SOTOMAYOR: Well, according to
9 him --

10 MR. GUARNIERI: -- from reviewability.

11 JUSTICE SOTOMAYOR: According to him
12 maybe they didn't.

13 MR. GUARNIERI: Well --

14 JUSTICE SOTOMAYOR: I don't think he
15 is taking a position in your favor. He is
16 basically saying so what.

17 MR. GUARNIERI: Justice, I think in
18 the reply brief Petitioner makes clear that if
19 you accept his theory, that would mean that
20 statutory withholding claims are not reviewable
21 as part of a final order of removal.

22 Now, in footnote 7 of the reply brief
23 Petitioner has tried to hypothesize some other
24 bases on which courts might be able to review
25 those claims, but that would be a very startling

1 development. Now, also, I think --

2 JUSTICE KAGAN: Mr. Guarnieri, this
3 not a case where we have to figure out the
4 meaning of a term by looking to zillions of
5 different statutory provisions and trying to
6 make sense of them.

7 This -- there is an explicit statutory
8 definition here, and this statutory definition
9 says what a final -- what an order of removal
10 is.

11 It says, "order of deportation," but
12 nobody thinks that that makes a difference. And
13 it says it's an order that concludes that the
14 alien is deportable, which you agree it doesn't
15 do, and it concludes -- and -- or it orders
16 deportation, which you also agree it doesn't do.

17 So you're saying, well, even though
18 there's this explicit definition here, we should
19 look back to a bunch of cases that were decided
20 before the statutory definition came about, that
21 were decided before (a)(4) and (a)(5) came
22 about, that even when they were decided the
23 court said that the language wasn't clear, and
24 the only reason that they were deciding the case
25 that way was because they had a policy concern

1 about bifurcation, which doesn't exist any more.

2 So why would we look to those cases,
3 rather than the explicit statutory definition?

4 MR. GUARNIERI: Well, Justice Kagan,
5 we do think the history that preceded this
6 statute should inform the Court's understanding
7 of it. We are also pointing the Court towards
8 the explicit text of the Foreign Affairs Reform
9 and Restructuring Act, which makes clear that
10 Congress anticipated that CAT claims would be
11 reviewable as part of the final order of review,
12 which is consistent with our reading of the
13 statutory definition, but not Petitioner's
14 unduly narrow understanding of that term.

15 Now, before my time expires, Justice
16 Alito, I would like to address the question that
17 you posed to Petitioner's counsel earlier. We
18 -- we do think that Petitioner has waived any
19 argument that the court of appeals erred in
20 applying the criminal alien jurisdictional bar
21 in this particular case.

22 Petitioner did not seek rehearing en
23 banc on that issue. Petitioner did not seek
24 this Court's review on that issue.

25 Now, having said that, we think the

1 Eleventh Circuit's rule is incorrect and
2 ordinarily a finding of removability under
3 Section 1227(a)(2)(A)(i) is not itself
4 sufficient to trigger the criminal alien
5 jurisdiction bar.

6 But that's of no moment for the
7 purposes of deciding this particular case. We
8 think the Court can decide the case on the
9 premise which Petitioner did not dispute, that
10 --

11 JUSTICE KAVANAUGH: Back to the main
12 argument, the Seventh Circuit and the Ninth
13 Circuit have adopted Petitioner's view of this
14 statute, obviously big circuits with lots of
15 cases.

16 Are you aware of significant problems
17 and how they've been applying substantial
18 evidence review to factual components of CAT
19 claims or other problems that that's generated?

20 MR. GUARNIERI: Your Honor, the -- the
21 -- the standard has made a difference in some
22 cases in the Ninth Circuit. There are -- there
23 are decisions in the Ninth Circuit in which in
24 our view criminal aliens were able to reverse
25 the agency's fact finding on appeal and

1 circumstances in which the Congress -- the
2 statute should have foreclosed that kind of
3 proceeding on appeal.

4 We also --

5 JUSTICE KAVANAUGH: Which way does
6 that cut?

7 MR. GUARNIERI: If I may simply --

8 JUSTICE KAVANAUGH: And doesn't that
9 suggest there, at least the courts thought there
10 were mistakes being made in the administrative
11 process in those cases?

12 MR. GUARNIERI: Well, it's true that
13 there are some decisions in which panels of the
14 Ninth Circuit disagreed with the agency fact
15 finding.

16 But I will just add, if I may, Mr.
17 Chief Justice, the -- the rule that the Seventh
18 and Ninth Circuits have applied is not the rule
19 that Petitioner has advocated here and, in fact,
20 he has abandoned the reasoning of those courts.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Five minutes, Mr. Hughes.

24

25

1 REBUTTAL ARGUMENT OF PAUL HUGHES
2 ON BEHALF OF THE PETITIONER

3 MR. HUGHES: Thank you.

4 I'd like to first begin with a point
5 that the government made about the notion that
6 the removal order is limited to removal only to
7 the country specified in the removal order.

8 Respectfully, that's just legally
9 wrong. The regulation is 8 CFR 1240.12, sub
10 provision (d). It does state that an
11 immigration judge needs to identify one or more
12 countries to which removal is to occur.

13 But the second sentence in that
14 provision, and I quote, "in the event that the
15 Department of Homeland Security is unable to
16 remove the alien to the specified or alternative
17 country or countries, the order of the
18 immigration judge does not limit the authority
19 of the Department of Homeland Security to remove
20 the alien to any other country as permitted by
21 Section 241(b) of the Act.

22 So there is no need to amend or alter
23 the final order of removal in the event of CAT
24 relief to -- to Lebanon, even though that
25 Lebanon specified in that order the individual

1 -- that DHS without further administrative
2 action can remove the individual to any country
3 that's specified in Section 241.

4 And the second point, the government's
5 claims that were --

6 JUSTICE SOTOMAYOR: This is just
7 curiosity to me. Can the government change a
8 port of deportation? Assuming a prisoner comes
9 and says my mother is in this other country, I'd
10 rather go there?

11 MR. HUGHES: I -- I think --

12 JUSTICE SOTOMAYOR: Do you have to go
13 back to the judge to get permission to do that?

14 MR. HUGHES: No, Your Honor. This
15 regulation allows the individual to be sent to
16 other countries in -- in the section, this is in
17 1231 or Section 241. One of the countries that
18 -- can be a country that the individual agrees
19 to go to, I believe, and that is willing to
20 accept that person. So if those things match up
21 and they work with the government, that -- that
22 can be.

23 But it's all laid out, as Justice
24 Alito mentioned a few moments ago, about the
25 different countries and orders that are

1 permitted by the statute. Those are all swept
2 within the order of removal, even if it says
3 Lebanon on it by the regulation.

4 The second point, the government
5 suggests that we're wrong about the legislative
6 -- or about the history of the REAL ID Act. I
7 think we're clear on the text of what (a)(4)
8 does and explain jurisdiction and the clear
9 purpose.

10 But, again, the -- the argument about
11 the history, I think, is a bit misplaced,
12 because if the only piece of legislative history
13 that describes (a)(4) is in the conference
14 report, and the conference report says that its
15 purpose was to "allow aliens in Section 240
16 removal proceedings to seek review in -- in
17 court," so the only snippet of legislative
18 history that we have on (a)(4) says that the
19 purpose of it is to create judicial review.

20 The government's contention that we're
21 just mistaken about the history there, I think
22 is a misplaced argument. This is exactly what
23 Congress sought to do.

24 Now, the next point, I think this is a
25 pretty straightforward question of textual

1 interpretation. This, in AEDPA, Congress
2 stripped courts from doing one specific act.
3 That's the act of reviewing final orders of
4 removal.

5 For all of the reasons we've
6 described, Mr. Nasrallah does not ask the Court
7 here to review the final order of removal. He
8 asks the Court to review something very
9 different. That's the CAT claim.

10 We have described how (a)(4) and the
11 regulations and the definition all confirm that
12 this is not the order of deportation.

13 The government's attempt here is to
14 effectively back-door in through all of these
15 various different provisions a broader effect of
16 (2)(C) than what Congress actually wrote in
17 (2)(C).

18 But (2)(C) was pretty straightforward
19 on its face, because I will remind the court in
20 A-47, that definition, order of deportation, was
21 enacted by Congress for the specific purpose of
22 defining the scope of (2)(C).

23 Congress said in Section 440(a) of --
24 of AEDPA, we are going to strip jurisdiction for
25 criminal aliens with certain convictions. And

1 -- and in 440(b), we're going to define the
2 scope of that. This is just simply outside the
3 scope of the jurisdiction stripping statute that
4 Congress enacted as it defined when it engaged
5 in -- in acting that -- that provision.

6 But, next, if there is any doubt about
7 this, if ultimately the Court thinks that these
8 other provisions create multiple plausible
9 interpretations of the statutory text, this is
10 where the Court's strong presumption in favor of
11 judicial review of agency action would do the
12 work.

13 Again, it's the government's burden
14 not to show that there are multiple plausible
15 interpretations, but that it's interpretation is
16 the only correct one. We think the text is
17 unambiguous in our favor.

18 But if the Court disagrees with us, at
19 the very least there are multiple plausible
20 interpretations, and there the presumption in
21 favor of judicial review would do the work.

22 And -- and then, finally, Congress
23 purposefully chose to make CAT claims absolute.
24 Congress -- this was a broad recognition to the
25 horrors of torture.

1 When there is an error in the
2 administrative process, as the government just
3 identified below, what that means is a court has
4 found that the administrative agency made an
5 error in finding that torture was not more
6 likely than not.

7 When there -- a CAT relief -- when CAT
8 relief is granted, that means that there is a
9 finding that it is more than 50 percent likely
10 that the individual is going to be tortured or
11 expeditiously killed upon removal to that
12 country.

13 The United States has made a firm
14 commitment that our deportation system is not
15 going to be used to send an individual to a
16 place where they are more likely than not to be
17 subject to torture or deportation -- or torture
18 or death.

19 It is completely sensible that
20 Congress did not extend (2)(C) to jurisdiction
21 stripping in these circumstances. Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel. The case is submitted.

24 (Whereupon, at 11:06 a.m., the case
25 was submitted.)

Official - Subject to Final Review

1	7	8	A	B
<p>10 [2] 15:13 41:18 10,000 [1] 41:13 10:05 [2] 1:15 3:2 11:06 [1] 69:24 1101(a)(47) [1] 57:13 1182 [3] 27:1,3,10 1182(a)(2) [1] 26:6 12 [1] 48:9 1227 [2] 26:21 27:22 1227(a)(2)(A)(i) [2] 25:22 62:3 1229(b) [2] 19:21,23 1231 [1] 65:17 1240.12 [1] 64:9 1252 [25] 6:13 11:17,22 12:15 13:6, 6,14 14:13 17:9,18 19:9 21:9,20 23:2 30:19 31:18 34:9 47:14 48:7, 9 50:5 54:23 55:2,6 56:14 1252's [2] 31:6 47:15 1252(a)(1) [2] 31:23 59:3 1252(a)(2)(C) [2] 30:9 31:9 1321 [1] 16:3 18-1432 [1] 3:4 18a [1] 33:18 1963 [1] 30:17 1996 [2] 30:20 56:1 1998 [6] 12:1 30:25 47:11 48:13 49: 25 50:10</p>	<p>7 [1] 59:22</p> <p style="text-align: center;">8</p> <p>8 [1] 64:9</p> <p>a(1) [8] 12:2 17:9 18:21,21,25 19: 11 41:7,25 a(2)(c) [3] 41:5,23 46:16 a(2)(D) [1] 46:17 a(4) [31] 6:12 7:24 8:6 9:12 12:17, 23 13:2,24 14:1,4 16:8 17:2 18:18, 19,20 19:7,10 20:25 21:5,6,10,16 23:21 24:18 47:21 48:22 60:21 66: 7,13,18 67:10 a(5) [7] 16:8 20:25 21:5,6,11,16 60: 21 a(ii) [1] 25:24 A-47 [3] 15:4 20:3 67:20 a.m [3] 1:15 3:2 69:24 abandoned [1] 63:20 able [2] 59:24 62:24 above-entitled [1] 1:13 Abraham's [1] 45:3 abrogate [1] 55:25 absolute [1] 68:23 absolutely [1] 28:21 accept [4] 44:10,11 59:19 65:20 accordance [2] 16:9,10 According [3] 54:9 59:8,11 account [1] 54:8 acknowledge [1] 24:16 across [1] 5:17 Act [23] 8:2 9:20 12:19 14:15 18:11 19:3,6 21:13 23:4 30:25 31:24 43: 13 47:10,17 48:21 54:9,10,15 61: 9 64:21 66:6 67:2,3 acting [1] 68:5 action [4] 4:13 6:20 65:2 68:11 actions [4] 8:5 18:12 25:10 29:14 actual [1] 22:19 actually [1] 67:16 add [1] 63:16 added [3] 46:17 47:18 48:21 addition [2] 20:22 21:2 additional [1] 42:22 address [4] 15:15 26:21 28:6 61: 16 addressed [2] 21:10,11 adjudicated [1] 45:16 administrative [11] 4:12,14 5:18 30:11 34:19 44:2 49:23 63:10 65: 1 69:2,4 admissibility [2] 27:5,7 adopted [2] 56:1 62:13 advances [1] 7:13 advocated [1] 63:19 AEDPA [3] 13:25 67:1,24 Affairs [3] 30:25 47:10 61:8 affect [4] 22:19 23:4 37:25 38:3 affirmative [1] 9:20 affirmatively [1] 41:8 agencies [1] 4:14</p>	<p>agency [8] 4:12 5:19 17:22 42:23 56:7 63:14 68:11 69:4 agency's [1] 62:25 ago [3] 14:10 21:12 65:24 agree [22] 5:4,6,14,20 9:8 10:18 13:8 15:12 17:17,19 19:15 22:12 24:18 28:2 34:4,6,24 35:6 40:8 54: 7 60:14,16 agrees [2] 27:14 65:18 ahead [2] 15:24 37:14 alien [27] 6:18,21 7:4,9 15:15,18 25:20 26:4,4,9 31:8 34:18 35:11, 17 41:22 43:14 50:16 51:1,13,22 54:17 56:5 60:14 61:20 62:4 64: 16,20 alien's [3] 27:6 30:13 45:12 aliens [16] 34:10 40:22 45:18,23 50:15,15,19,21 51:12,20,25 54:22 55:3 62:24 66:15 67:25 ALITO [19] 5:20 6:15 8:8 9:3 10:1 11:14,20 12:13 13:5,8,16 25:15, 24 26:8 43:22 44:5,9 61:16 65:24 Alito's [1] 22:8 allow [2] 25:9 66:15 allowed [1] 9:16 allows [1] 65:15 almost [1] 39:17 already [2] 13:25 48:8 alter [1] 64:22 alternative [4] 26:21 43:16 44:4 64:16 although [1] 26:2 altogether [1] 58:17 ambiguity [1] 4:11 ambiguous [2] 29:6 40:19 amend [1] 64:22 amending [1] 54:23 analogize [1] 39:10 analysis [5] 27:12 42:10 44:8 45:3 54:4 another [4] 26:6 39:19,20 48:11 answer [3] 10:16 24:21 25:17 answered [1] 14:14 answers [3] 8:10 16:25 26:11 anticipated [3] 48:24 49:20 61:10 anticipates [1] 56:15 appeal [5] 8:20 52:18 53:12 62:25 63:3 appeals [16] 18:15 21:15 29:15,17 31:24 39:14 41:14 48:1 51:18 52: 3,7 54:12 55:5,21 58:14 61:19 APPEARANCES [1] 1:17 appears [2] 41:5 58:24 appellate [2] 51:23 56:16 Appendix [1] 39:4 applicable [4] 3:18 10:25 27:3 29: 25 application [1] 39:20 applied [2] 49:10 63:18 applies [15] 6:6 7:20,22 8:17 9:11 10:18 13:14,15 14:12 17:20,24 18: 4 25:20 26:4 27:5 apply [14] 5:14,17 6:1,14 13:11,12, 18 14:11 24:19 28:3 39:14 40:2</p>	<p>41:18 43:25 applying [2] 61:20 62:17 appreciate [1] 13:22 approach [2] 11:14 27:14 appropriate [1] 5:16 appropriately [1] 10:9 ARARA [1] 13:25 argument [29] 1:14 2:2,5,8 3:4,7 7: 13,14 10:13 16:20 18:2 19:22 20: 14,25 21:2,23 22:9 30:5 31:21 40: 6,7 41:19 47:2 54:3 61:19 62:12 64:1 66:10,22 arguments [2] 17:15 22:5 arise [2] 24:7 30:22 arises [1] 8:25 arising [2] 4:4 6:20 around [1] 14:5 arriving [1] 28:1 Article [1] 29:23 aside [1] 25:18 asks [1] 67:8 aspects [1] 41:19 Assistant [1] 1:20 assume [1] 6:4 assuming [3] 5:7,8 65:8 asylum [3] 6:2 45:13 46:4 attach [1] 53:8 attempt [1] 67:13 ATTORNEY [2] 1:6 50:2 authority [1] 64:18 authorize [1] 59:1 authorizes [2] 31:23 41:8 availability [1] 40:16 available [4] 4:17 5:8 6:22 45:23 aware [2] 23:6 62:16 away [1] 4:17 awkward [2] 12:25 13:1</p>	
2				
<p>2 [2] 1:11 5:25 2(B) [2] 17:19,20 2(C) [22] 4:20 7:20,21,21 9:19,19,22, 24 10:10,11,18 12:8,9 13:14 14: 11,14 18:2 19:22 27:17,18,20 28: 3 2(D) [1] 12:9 2(A) [1] 4:1 2(C) [9] 3:12,24 4:9 5:13 67:16,17, 18,22 69:20 2005 [3] 47:17 48:21 50:10 2020 [1] 1:11 212(c) [1] 20:13 2242(d) [3] 11:24 12:11 52:3 240 [1] 66:15 241 [2] 65:3,17 241(b) [1] 64:21</p>				
3				
<p>3 [1] 2:4 30 [1] 2:7</p>				
4				
<p>4 [1] 40:3 440(a) [1] 67:23 440(b) [1] 68:1 47a [1] 39:3 4a [1] 4:2</p>				
5				
<p>5 [2] 40:3 47:22 50 [1] 69:9</p>				
6				
<p>64 [1] 2:10</p>				

Official - Subject to Final Review

<p>behalf [8] 1:19,22 2:4,7,10 3:8 30:6 64:2</p> <p>believe [1] 65:19</p> <p>below [2] 26:15 69:3</p> <p>between [1] 50:10</p> <p>beyond [2] 4:7 17:3</p> <p>BIA [3] 5:7,10,15</p> <p>bifurcation [1] 61:1</p> <p>big [1] 62:14</p> <p>binary [2] 15:7,18</p> <p>bit [3] 13:23 27:19 66:11</p> <p>board [1] 5:18</p> <p>bolsters [1] 50:7</p> <p>born [1] 43:24</p> <p>both [10] 5:5 6:11 15:7 21:16 27:24 32:22 41:5 45:14 46:20 56:21</p> <p>breach [1] 40:9</p> <p>BREYER [13] 15:22,25 39:9 40:14 41:12,21 49:1,18 52:11,13 53:25 54:2,6</p> <p>Breyer's [1] 44:19</p> <p>brief [6] 4:2 15:14 31:22 33:18 59:18,22</p> <p>briefs [2] 23:13,20</p> <p>broad [1] 68:24</p> <p>broader [5] 4:6,9 8:6 28:21 67:15</p> <p>broadly [3] 28:17,25 46:16</p> <p>brought [1] 6:21</p> <p>bunch [1] 60:19</p> <p>burden [1] 68:13</p>	<p>certainly [4] 26:12 38:2 44:7 48:3</p> <p>cetera [1] 49:14</p> <p>CFR [1] 64:9</p> <p>Chadha [1] 10:6</p> <p>challenge [3] 10:21 25:11 51:16</p> <p>challenges [5] 10:14,17 18:5 20:11 22:25</p> <p>change [2] 11:4 65:7</p> <p>channeled [1] 58:14</p> <p>Channeling [1] 58:19</p> <p>channelling [1] 58:13</p> <p>Chavez [1] 15:13</p> <p>CHIEF [7] 3:3,9 30:2,7 63:17,21 69:22</p> <p>chose [1] 68:23</p> <p>chosen [2] 57:9,20</p> <p>chronology [1] 50:11</p> <p>Circuit [10] 27:3,8,13,25 51:23 62:12,13,22,23 63:14</p> <p>Circuit's [2] 25:19 62:1</p> <p>circuits [2] 62:14 63:18</p> <p>circumstance [3] 17:24 24:6 27:11</p> <p>circumstances [7] 5:13 9:9 10:19 12:11 27:4 63:1 69:21</p> <p>cites [1] 19:2</p> <p>citizenship [3] 43:18,19,23</p> <p>civil [1] 8:17</p> <p>claim [42] 4:4,21,22 5:21 6:6 7:1,2,10 9:4,9,17 10:23 12:4 15:20 17:7,10,12 18:6 21:9,21 22:24 24:15 31:12,14 32:1,11 38:6,7,11,16 42:11 45:4,10,15 46:8,14,25 51:14,18 53:7,13 67:9</p> <p>claims [50] 11:17 14:17 20:23 23:15 30:13,21,23 31:1,4,20 32:6,7,11,13,14 33:5,16,20 45:7,13 46:4,19 47:1,4,6,11 48:6,15,19,24 49:20 50:3 51:24 52:5,9 54:12,21,22 55:11,14,22 57:10,11 59:7,20,25 61:10 62:19 65:5 68:23</p> <p>clause [21] 5:22,24 6:1,5,8,16,17,19 7:2,25 8:4,12,15,23 16:4,16 17:13 19:13 22:9,15 25:9</p> <p>clear [12] 4:25 8:11 20:24 24:20 49:15 54:24 56:10 59:18 60:23 61:9 66:7,8</p> <p>clearly [3] 14:15 48:14 57:1</p> <p>come [4] 24:2,6 33:5 45:18</p> <p>comes [5] 5:2 22:13,14 37:24 65:8</p> <p>coming [1] 39:12</p> <p>commit [1] 45:19</p> <p>commitment [1] 69:14</p> <p>committed [1] 26:4</p> <p>common [1] 14:23</p> <p>comparable [1] 20:20</p> <p>comparison [1] 6:16</p> <p>complaint [1] 39:16</p> <p>complementary [1] 48:4</p> <p>completely [3] 28:11,19 69:19</p> <p>complicated [2] 8:9,14</p> <p>components [8] 20:8 44:22 45:5,10 46:7,13 47:5 62:18</p> <p>comprehensive [1] 57:21</p>	<p>compulsory [1] 33:6</p> <p>concedes [1] 35:20</p> <p>concern [1] 60:25</p> <p>concluded [1] 52:7</p> <p>concludes [3] 34:19 60:13,15</p> <p>conclusion [4] 7:8,20 32:19 55:19</p> <p>condition [1] 53:11</p> <p>conditions [1] 11:4</p> <p>conduct [2] 9:23,23</p> <p>conference [2] 66:13,14</p> <p>conferral [1] 17:21</p> <p>conferring [1] 19:4</p> <p>confers [1] 19:10</p> <p>confirm [1] 67:11</p> <p>Congress [67] 3:11,24 4:8,16,18 8:3 13:23 14:1 18:10,11,17 19:12 21:8,12,16,19 28:17 29:1,10,15 30:18 31:1,18 33:8,15,19 40:2,19 41:22 44:20 45:8,17,21,23 46:10,17 47:4,8,11,16 48:5,8,20,24 49:19 52:12 53:10 54:10,15,20 55:24 57:6,9,18 58:20 59:6 61:10 63:1 66:23 67:1,16,21,23 68:4,22,24 69:20</p> <p>connection [1] 44:11</p> <p>consistent [5] 6:11 28:11,19,20 61:12</p> <p>consolidates [1] 17:14</p> <p>Consolidation [2] 9:7 29:13</p> <p>constituent [1] 36:2</p> <p>Constitution's [1] 4:15</p> <p>constitutional [2] 46:19 54:22</p> <p>constraint [1] 38:17</p> <p>construction [1] 41:9</p> <p>contemplated [1] 48:15</p> <p>contend [1] 4:24</p> <p>contention [1] 66:20</p> <p>context [7] 6:2 12:8 13:2 19:17 25:7 33:16 34:17</p> <p>contingent [2] 10:8 37:18</p> <p>continue [1] 11:7</p> <p>continues [2] 37:25 56:14</p> <p>continuously [1] 16:8</p> <p>contrary [1] 31:10</p> <p>Convention [1] 30:22</p> <p>conviction [1] 27:9</p> <p>convictions [5] 4:19 27:6 44:24 45:1 67:25</p> <p>correct [7] 10:7 44:12,13 46:8 51:6 58:11 68:16</p> <p>couldn't [5] 12:6 33:7 52:23,24 53:1</p> <p>counsel [6] 30:3 32:17 36:13 61:17 63:22 69:23</p> <p>counterclaims [1] 33:7</p> <p>countries [9] 42:13 43:14,16,16 64:12,17 65:16,17,25</p> <p>country [25] 3:18 11:1,1,4 14:21 15:3 38:15,22 39:1 43:10,17,18,23 44:4,9,10 45:20 55:21 64:7,17,20 65:2,9,18 69:12</p> <p>couples [1] 12:2</p> <p>course [11] 7:14 26:23 30:12 34:21 36:23 37:7 40:18 42:2 46:15</p>	<p>51:13 55:15</p> <p>COURT [48] 1:1,14 3:10 6:4 7:5 8:5,19,21 10:6 18:7 21:1 22:15 29:5,13,14 30:8 31:11 33:10 36:24,24 37:4,8 39:7,11,13 41:3,14 47:25 48:1 49:13 51:23 54:19,25 55:15,21 56:13 58:14 60:23 61:7,19 62:8 66:17 67:6,8,19 68:7,18 69:3</p> <p>Court's [11] 26:19,23 30:17 34:15 36:6 50:21 52:1,9 61:6,24 68:10</p> <p>courts [21] 9:19,22,24 18:12,13,15 21:15 29:15,17 31:23 36:22 49:12 51:18 52:2,7 54:12 55:4 59:24 63:9,20 67:2</p> <p>covered [2] 5:21 7:1</p> <p>create [2] 66:19 68:8</p> <p>created [3] 18:18 21:16,17</p> <p>credibility [1] 39:17</p> <p>crime [4] 26:5 27:8,15 28:4</p> <p>crimes [3] 27:20,23 45:19</p> <p>criminal [28] 4:18 6:18 7:4,9 25:20 26:3,9 27:5 31:8 40:21 41:22 45:16,22 50:16,19,20 51:1,20,22,25 52:18 53:4 54:17,22 61:20 62:4,24 67:25</p> <p>critical [1] 9:18</p> <p>culminate [1] 36:25</p> <p>curiosity [1] 65:7</p> <p>curious [1] 19:3</p> <p>currently [1] 43:12</p> <p>cut [1] 63:6</p> <p>Cyr [7] 50:22,23,24 52:2,10 53:4 54:19</p>	
C				
<p>c)(4 [1] 23:22</p> <p>call [1] 12:7</p> <p>called [1] 41:15</p> <p>came [4] 1:13 14:1 60:20,21</p> <p>cancellation [6] 19:16,19,25 20:5,12 23:3</p> <p>cannot [3] 16:14 38:8 43:18</p> <p>care [1] 29:16</p> <p>carries [1] 4:10</p> <p>carry [1] 28:8</p> <p>Case [23] 3:4 12:13 25:21,22 26:13 29:1,21 35:15 38:4,5 40:25 41:2 42:21 43:17 44:3 55:9 60:3,24 61:21 62:7,8 69:23,24</p> <p>cases [10] 19:14 24:17 45:14 46:10 51:19 60:19 61:2 62:15,22 63:11</p> <p>CAT [99] 3:16,17,20 4:16,21,22 5:2,21 6:6 7:1,9 9:4,8,17 10:20,23 11:2,8,16 12:4,8 13:10 14:17,19 15:2,20 16:4 17:7,10,11 18:6 20:22 21:2,9,20 23:7,8,8,15 24:6,13 30:23 31:1,4,12,14,20,25 32:11,11,24 33:1,16,19 35:7,18,21 37:20,23 38:6,7,10,15 42:11 45:4,7,10 46:8,14,25 47:1,4,5,11 48:6,15,24 49:20 50:3 51:14,17 52:5,8,20 53:7,13 54:12 55:11 57:10,10,10 61:10 62:18 64:23 67:9 68:23 69:7,7</p> <p>cause [2] 4:4 21:9</p> <p>cert [1] 15:13</p> <p>certain [1] 67:25</p>			D	
			<p>D.C [3] 1:10,18,21</p> <p>day [1] 4:10</p> <p>dealing [1] 11:16</p> <p>death [2] 4:20 69:18</p> <p>decide [1] 62:8</p> <p>decided [4] 58:10 60:19,21,22</p> <p>deciding [3] 26:22 60:24 62:7</p> <p>decision [20] 8:18,21,23 16:5 23:17 28:8 30:17 34:15 36:7 37:1,2,6,12,17,18 47:7 50:21 52:2,9 55:17</p> <p>decisions [16] 10:3,3 30:11 34:20,23 36:22,25 37:4,7,16 57:14,19,23 58:4 62:23 63:13</p> <p>decisive [1] 21:7</p> <p>defeat [1] 47:2</p> <p>defect [1] 26:14</p> <p>deference [2] 5:14,15</p> <p>deferential [3] 5:9,17 46:11</p> <p>deferral [2] 3:22 23:8</p> <p>define [2] 57:9 68:1</p> <p>defined [5] 3:13 28:17,18 29:2 68:4</p> <p>defines [1] 58:23</p> <p>defining [2] 57:4 67:22</p> <p>definition [17] 5:1 15:4 20:2 22:18 29:3 48:13 56:1 57:6 58:23 60:8,8,18,20 61:3,13 67:11,20</p> <p>denial [8] 20:4,11 25:11 30:13 31:12,13 51:17 56:10</p>	

Official - Subject to Final Review

<p>denied ^[1] 51:14</p> <p>denies ^[1] 56:7</p> <p>denominated ^[1] 12:15</p> <p>deny ^[1] 46:21</p> <p>Department ^[3] 1:21 64:15,19</p> <p>depending ^[1] 41:19</p> <p>deportable ^[4] 3:15 15:6,9 60:14</p> <p>deportation ^[10] 3:15 28:18,23 60:11,16 65:8 67:12,20 69:14,17</p> <p>deported ^[3] 15:6,11 43:7</p> <p>deporting ^[1] 43:9</p> <p>described ^[3] 34:23 67:6,10</p> <p>describes ^[2] 31:19 66:13</p> <p>designated ^[1] 39:2</p> <p>designed ^[1] 4:16</p> <p>detain ^[1] 11:8</p> <p>determination ^[4] 4:3 15:19 18:1 43:3</p> <p>determinations ^[4] 15:7 42:2 55:1,4</p> <p>determined ^[2] 42:18 52:3</p> <p>development ^[1] 60:1</p> <p>DHS ^[1] 65:1</p> <p>difference ^[2] 60:12 62:21</p> <p>different ^[19] 6:9 17:14 21:14 27:14 30:23 33:4 37:16 39:24 41:12,18,19 51:21 53:15 55:12 58:15 60:5 65:25 67:9,15</p> <p>difficult ^[2] 16:1 49:2</p> <p>DIG ^[1] 26:12</p> <p>direct ^[1] 47:11</p> <p>disagree ^[2] 3:17 15:12</p> <p>disagreed ^[1] 63:14</p> <p>disagrees ^[2] 18:8 68:18</p> <p>discretion ^[3] 17:22 26:20,23</p> <p>discretionary ^[1] 18:1</p> <p>dispute ^[1] 62:9</p> <p>disputed ^[1] 44:24</p> <p>distinct ^[7] 32:12 33:9 34:7 35:21 36:8,10,14</p> <p>distinguished ^[1] 35:10</p> <p>district ^[14] 8:5,19,21 18:13 29:14 36:22,24,24 37:4,8 39:11,18 48:1 54:24</p> <p>doing ^[4] 6:9 9:24 54:16 67:2</p> <p>doubt ^[1] 68:6</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier ^[7] 10:3 16:16 33:19 37:7 55:8 59:2 61:17</p> <p>echoed ^[1] 49:25</p> <p>effect ^[4] 9:12 38:1,21 67:15</p> <p>effective ^[3] 11:7 15:1 33:1</p> <p>effectively ^[1] 67:14</p> <p>efficiency ^[1] 33:8</p> <p>either ^[4] 15:5,8,9 22:5</p> <p>Eleventh ^[2] 25:19 62:1</p> <p>eligible ^[2] 4:19 20:13</p> <p>eliminate ^[1] 55:25</p> <p>else's ^[1] 23:14</p> <p>embodiment ^[1] 8:16</p> <p>embraced ^[1] 31:11</p> <p>emphasizing ^[1] 52:4</p> <p>en ^[1] 61:22</p>	<p>enacted ^[10] 3:11,24 11:25 13:24,25 30:20 41:22 48:12 67:21 68:4</p> <p>enactment ^[1] 12:1</p> <p>encompass ^[4] 21:20,25 22:3,6</p> <p>encompassed ^[2] 57:24,25</p> <p>encompasses ^[6] 30:10 37:6 42:1 45:25 46:22,24</p> <p>end ^[1] 34:13</p> <p>endorsed ^[1] 7:15</p> <p>enforceable ^[1] 3:21</p> <p>engaged ^[1] 68:4</p> <p>engaging ^[2] 9:20,23</p> <p>enough ^[1] 39:13</p> <p>ensure ^[4] 8:6 18:16 21:13 48:5</p> <p>ensuring ^[1] 29:12</p> <p>entered ^[6] 5:3 19:24 20:15 32:18 34:13 55:19</p> <p>entertaining ^[1] 18:12</p> <p>entire ^[1] 46:21</p> <p>entirely ^[2] 39:18 51:24</p> <p>entitled ^[1] 42:22</p> <p>equally ^[2] 32:12 55:13</p> <p>erred ^[1] 61:19</p> <p>error ^[3] 26:20 69:1,5</p> <p>ESQ ^[4] 1:18 2:3,6,9</p> <p>essential ^[1] 4:14</p> <p>essentially ^[1] 38:16</p> <p>established ^[1] 30:15</p> <p>et ^[1] 49:13</p> <p>even ^[9] 6:4 29:11 35:17 46:11,13 60:17,22 64:24 66:2</p> <p>event ^[2] 64:14,23</p> <p>everything ^[10] 8:22,24 13:14 22:13,14 29:17 32:10 47:25 55:10 58:13</p> <p>evidence ^[4] 5:12 21:7 55:24 62:18</p> <p>exact ^[1] 19:7</p> <p>exactly ^[2] 34:1 66:22</p> <p>examine ^[2] 54:1,14</p> <p>example ^[5] 11:3 17:18 33:7 38:5 39:4</p> <p>except ^[4] 16:5,18 17:5 49:3</p> <p>exception ^[1] 46:18</p> <p>excludes ^[1] 59:6</p> <p>exclusive ^[3] 13:3 18:20 55:3</p> <p>executed ^[1] 38:12</p> <p>exercise ^[1] 31:24</p> <p>exist ^[2] 23:23 61:1</p> <p>existed ^[1] 8:2</p> <p>existing ^[2] 38:11 50:4</p> <p>expanded ^[2] 4:7 17:2</p> <p>expedited ^[2] 3:25 4:6</p> <p>expeditiously ^[2] 45:20 69:11</p> <p>expires ^[2] 25:16 61:15</p> <p>explain ^[5] 13:1 16:2 31:22 59:5 66:8</p> <p>explained ^[3] 31:19 50:2 59:2</p> <p>explains ^[2] 27:8 57:9</p> <p>explicit ^[4] 60:7,18 61:3,8</p> <p>expressly ^[1] 3:13</p> <p>extend ^[1] 69:20</p> <p>extends ^[1] 5:25</p> <p>extent ^[1] 9:15</p>	<p>external ^[1] 38:17</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face ^[2] 51:1 67:19</p> <p>fact ^[12] 6:19 16:20,21 32:22 38:25 42:23 48:23 53:9,13 62:25 63:14,19</p> <p>fact-finding ^[3] 5:8,19 39:19</p> <p>facts ^[5] 16:12,14 39:24,25 51:20</p> <p>factual ^[11] 20:7,8 22:20 44:22 45:5,10,15 46:7,13 47:5 62:18</p> <p>fairly ^[1] 14:3</p> <p>fall ^[3] 23:6 26:6 27:1</p> <p>falls ^[3] 24:22,22 28:22</p> <p>far ^[2] 53:18,24</p> <p>FARRA ^[18] 6:11 8:2 9:12 11:25 12:11 17:3,4,4 18:8 31:19 33:14 35:4 48:10,12,14,23 51:9 52:3</p> <p>FARRA's ^[1] 49:25</p> <p>favor ^[9] 4:11 25:5 40:10,24 53:20 59:15 68:10,17,21</p> <p>fear ^[2] 32:8,9</p> <p>fears ^[1] 38:8</p> <p>few ^[2] 28:9 65:24</p> <p>Fifth ^[2] 27:13,24</p> <p>figure ^[2] 42:10 60:3</p> <p>file ^[5] 11:17,22 12:14,19 51:15</p> <p>filed ^[1] 15:14</p> <p>files ^[1] 56:6</p> <p>filled ^[1] 29:10</p> <p>final ^[114] 3:23 6:24 7:3,6,18 8:18,21,23 9:1,5,10,15,21,25 10:4,8,15,17,21,24 11:6 12:2,7,16 13:20 14:16 15:19 16:5,18,22 17:8,12 18:23 19:1,24 20:1,9,15 21:10,19 22:10 23:1 24:14 29:18 30:10 31:3,5,7,25 32:1,15,24,25 33:21,23 34:3,13,18,22 35:7,22 36:1,3,21,25 37:2,3,5,12,17,18,21,22,23,25 38:3 39:11,21,25 40:21 41:4,6,10,24 45:24 46:21 47:13,15 48:16,25 49:4,8,10,22 51:3,17 52:6,17,21,25 53:5,11 55:12,19 56:5,12 57:17 59:4,21 60:9 61:11 64:23 67:3,7</p> <p>Finally ^[2] 32:3 68:22</p> <p>find ^[2] 26:20 39:5</p> <p>finding ^[7] 15:5 56:8 62:2,25 63:15 69:5,9</p> <p>findings ^[1] 42:23</p> <p>finds ^[1] 3:14</p> <p>Fine ^[2] 39:12,21</p> <p>firm ^[1] 69:13</p> <p>first ^[10] 3:4 6:10 26:10 28:10 32:22 33:13 35:24 40:18 57:6 64:4</p> <p>fit ^[1] 8:15</p> <p>fits ^[3] 4:25 20:2 56:25</p> <p>five ^[2] 49:12 63:23</p> <p>fix ^[1] 19:13</p> <p>fixed ^[1] 54:20</p> <p>focuses ^[1] 27:16</p> <p>following ^[1] 41:1</p> <p>Footnote ^[2] 5:25 59:22</p> <p>foreclose ^[1] 8:3</p> <p>foreclosed ^[2] 40:20 63:2</p>	<p>Foreign ^[3] 30:24 47:10 61:8</p> <p>forgetting ^[1] 53:22</p> <p>forth ^[1] 55:6</p> <p>forward ^[1] 28:8</p> <p>Foti ^[21] 28:7,9,10,14,16,18,24 29:2,4,18,18,25 30:18 31:16 34:15,23 36:7 41:25 55:15,23 58:10</p> <p>Foti's ^[2] 28:20,20</p> <p>found ^[5] 15:8,10 18:10 26:14 69:4</p> <p>Franken-statute ^[1] 13:23</p> <p>frequently ^[1] 24:8</p> <p>front ^[2] 16:13 57:19</p> <p>fully ^[1] 29:21</p> <p>fundamental ^[1] 21:22</p> <p>further ^[1] 65:1</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gap ^[7] 8:1 12:20 18:10,17 22:7 29:10 48:20</p> <p>GENERAL ^[3] 1:6,20 50:2</p> <p>generally ^[1] 14:11</p> <p>generated ^[1] 62:19</p> <p>GINSBURG ^[7] 5:4,6 42:6,16,25 43:5 46:12</p> <p>give ^[1] 41:10</p> <p>given ^[2] 51:9 57:7</p> <p>Gonzales ^[1] 27:13</p> <p>GORSUCH ^[17] 32:17,20 33:12,25 34:6,24 35:2,6,14,19,25 36:4,8,12,16,20 46:25</p> <p>got ^[3] 53:18,19,21</p> <p>gotten ^[1] 44:25</p> <p>govern ^[3] 5:13 27:10 29:4</p> <p>governed ^[3] 10:9 19:2,6</p> <p>government ^[20] 3:17,21 4:24 7:13,15 10:22 11:5,12 15:12 18:22 25:17 32:23 35:19 37:24 38:19 64:5 65:7,21 66:4 69:2</p> <p>government's ^[12] 4:2 15:17 21:23 26:15 28:2,7 33:18 37:19 65:4 66:20 67:13 68:13</p> <p>grant ^[1] 3:22</p> <p>granted ^[4] 3:20 11:8 35:18 69:8</p> <p>gravamen ^[1] 38:7</p> <p>ground ^[2] 25:21 51:21</p> <p>grounds ^[1] 28:1</p> <p>GUARNIERI ^[64] 1:20 2:6 30:4,5,7 32:18 33:12 34:4,9,25 35:4,9,16,25 36:6,10,15,19 37:11 38:2,23 40:14 41:21 42:5,16 43:2,11 44:1,7,12,16 45:11 46:3,4,15 47:8,21 48:3 49:18 50:14,20,24 51:6,11 52:12 53:25 54:5,7 56:21 57:12,16 58:2,7,11,18,22 59:10,13,17 60:2 61:4 62:20 63:7,12</p> <p>guss ^[1] 53:22</p> <p>Guzman ^[1] 15:13</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habeas ^[6] 8:4 12:21 18:12 25:10 52:8 54:24</p> <p>hand ^[1] 41:11</p> <p>happened ^[1] 13:21</p> <p>happens ^[2] 9:14 33:1</p>
---	---	--	---

Official - Subject to Final Review

<p>hard ^[1] 55:9 hear ^[2] 3:3 40:12 heart ^[1] 19:14 held ^[1] 26:3 highly ^[3] 5:9 45:9 46:9 history ^[9] 50:6 54:1,8 61:5 66:6, 11,12,18,21 Hobbs ^[3] 19:3,6 31:24 holding ^[3] 25:19 28:10,20 Holy ^[1] 36:16 Homeland ^[2] 64:15,19 honest ^[1] 49:6 Honor ^[24] 5:11,24 7:12 9:8 10:11 11:19 12:18 13:7,13,22 14:22 17:1 19:23 20:6 22:6,22 23:5,9,18 24:16 28:10 30:1 62:20 65:14 Honor's ^[1] 26:25 horrors ^[1] 68:25 however ^[4] 7:23 10:20 22:17 45:4 HUGHES ^[51] 1:18 2:3,9 3:6,7,9 5:5,11,23 7:11 9:2,6 10:5 11:12,19, 23 12:17 13:7,13,21 14:22,25 16:25 19:18,21 20:6,9,21 21:6 22:1,4, 22 23:5,11,18,25 24:4,10,13 25:13, 23 26:7,10 28:9,15 35:12 63:23 64:1,3 65:11,14 hypothesize ^[1] 59:23</p> <hr/> <p style="text-align: center;">I</p> <p>ID ^[10] 8:2 12:19 18:11 21:13 47:17 48:21 54:9,10,15 66:6 identified ^[6] 10:6 11:1 46:12 54:19 55:16 69:3 identifies ^[1] 33:15 identify ^[2] 44:3 64:11 ignore ^[1] 32:21 ii ^[1] 27:21 III ^[1] 29:23 IIRIRA ^[2] 30:20 55:23 illustrated ^[1] 32:4 immigration ^[4] 35:11 43:12 64:11,18 impediment ^[3] 43:6,9,12 implement ^[1] 38:17 implementation ^[1] 4:5 implementing ^[2] 38:25 49:25 important ^[4] 6:23 45:7,10 46:9 INA ^[1] 30:17 include ^[2] 57:10 58:3 including ^[6] 13:10 30:12 31:7 51:7,17 55:5 incorporated ^[2] 30:18 31:18 incorporating ^[2] 14:4,7 incorrect ^[2] 54:13 62:1 indeed ^[1] 45:6 independent ^[9] 11:23 21:17 23:16,17,21,22 24:6 25:10 28:1 independently ^[3] 9:16 24:15 40:23 indicating ^[1] 33:10 indication ^[2] 58:8 59:5 individual ^[13] 3:15,19 4:3 15:2,5, 8,9 64:25 65:2,15,18 69:10,15</p>	<p>individuals ^[1] 11:8 inform ^[1] 61:6 initially ^[1] 11:25 INS ^[4] 30:18 50:22 52:2 56:14 instead ^[1] 27:16 integral ^[5] 31:14 34:25 36:2,4,14 intending ^[1] 48:5 interest ^[1] 49:16 interpret ^[2] 29:5 41:4 interpretation ^[3] 22:14 67:1 68:15 interpretations ^[4] 29:8 68:9,15, 20 interrupt ^[1] 47:24 invalidate ^[1] 14:20 isn't ^[5] 7:8 12:13 35:14,23 53:16 issue ^[11] 20:20 26:1,24 28:15 29:16 30:21 33:11 37:22 42:21 61:23, 24 issues ^[2] 12:22 21:14 itself ^[10] 4:8 17:12 43:13 46:16 52:8 54:10,16 55:16 56:8 62:3</p> <hr/> <p style="text-align: center;">J</p> <p>Jennings ^[1] 5:25 judge ^[6] 16:21 35:11 39:18 64:11, 18 65:13 judgment ^[4] 41:15,16 45:18,21 judicial ^[39] 4:3,12,13 5:16,18 6:24 7:3 9:7 12:6 13:3 17:22 18:23 19:1,5,5,8,8 25:5,6 29:19,20 30:16 31:15 32:5 34:11,16 40:16,20, 24 41:8 42:23 44:25 45:9 46:11, 11 47:5 66:19 68:11,21 jurisdiction ^[21] 3:25 4:7 7:5 8:7 12:10,12 19:4,11 23:20,22,23 24:22 29:22,23 31:24 54:11 62:5 66:8 67:24 68:3 69:20 jurisdiction-stripping ^[1] 3:12 jurisdictional ^[12] 8:1 12:20 18:10,17 31:8 41:23 48:20 50:16 51:1,22 54:18 61:20 Justice ^[135] 1:21 3:3,9 5:4,6,20 6:15 8:8 9:3 10:1 11:11,14,20 12:13 13:5,8,16 14:19,23 15:21,22,24,25 19:15,19 20:4,7,18 21:4,24 22:2,8, 12 23:3,10,12,19 24:1,9,11 25:12, 15,24 26:8 28:6,13 30:2,7 32:3,17, 20 33:12,25 34:6,24 35:2,6,14,19, 25 36:4,8,12,15,16,20 37:9,10,14, 15 38:3,14,24 39:9 40:14 41:12, 21 42:4,6,16,25 43:5,20,21,22 44:5,9,14,18,19 45:11 46:1,3,6,12,23, 25 47:19,23 49:1,18 50:9,18,23 51:4,8 52:11,13 53:25 54:2,6 56:19,23 57:15,18 58:5,9,12,19 59:8, 11,14,17 60:2 61:4,15 62:11 63:5, 8,17,21 65:6,12,23 69:22</p> <hr/> <p style="text-align: center;">K</p> <p>KAGAN ^[8] 37:10,15 38:3,14,24 46:3 60:2 61:4 KAVANAUGH ^[32] 11:11 14:19,23 15:21,24 19:15,19 20:4,7 25:12</p>	<p>28:6,13 37:9,14 42:4 43:20 44:14, 18 45:11 46:1,6,23 47:19,23 50:9, 18,23 51:4,8 62:11 63:5,8 key ^[4] 3:13 9:21 28:17 29:2 KHALID ^[1] 1:3 killed ^[2] 3:20 69:11 kind ^[4] 12:14 38:16 55:17 63:2 knowing ^[1] 29:7 knowingly ^[1] 4:18</p> <hr/> <p style="text-align: center;">L</p> <p>lack ^[1] 54:11 laid ^[1] 65:23 language ^[26] 4:7,9 6:16,17,18 8:12 12:25 18:19,20,25 20:24 21:20 27:18 28:13,16,21 33:14,17 35:5 40:8 46:7 57:4,5,12 58:3 60:23 latched ^[1] 56:2 later ^[7] 7:24 11:3 14:1,4 16:16 46:17 53:2 Laughter ^[1] 36:18 law ^[3] 6:19 39:20 46:19 layers ^[1] 18:13 lead ^[1] 10:3 leading ^[2] 8:22 37:17 least ^[5] 14:20,23 51:24 63:9 68:19 leave ^[1] 38:21 leaves ^[1] 3:22 Lebanon ^[9] 38:6,8,12 39:8 42:20 43:8 64:24,25 66:3 led ^[6] 8:4,5 12:5,10,21 54:8 Lee ^[1] 27:13 legal ^[2] 36:11 54:21 legally ^[1] 64:8 legislative ^[5] 54:1,14 66:5,12,17 less ^[2] 20:24 24:5 lesson ^[1] 31:16 light ^[1] 57:13 likely ^[9] 3:19 4:19 24:5,23 42:9,19 69:6,9,16 limit ^[3] 53:12 58:25 64:18 limitation ^[5] 17:19,19,20 41:6 50:1 limitations ^[6] 6:13 17:18 47:17 48:8 49:21 50:5 limited ^[3] 43:6 45:23 64:6 limiting ^[1] 54:17 limits ^[4] 31:7 47:15 53:11 55:5 list ^[1] 23:15 litigated ^[1] 45:6 litigation ^[2] 8:17 36:23 little ^[1] 50:11 logic ^[2] 21:1 52:9 look ^[9] 27:17 29:11 39:3,5,10 40:1 52:17 60:19 61:2 looked ^[1] 58:20 looking ^[1] 60:4 lot ^[2] 39:12 46:9 lots ^[1] 62:14</p> <hr/> <p style="text-align: center;">M</p> <p>made ^[13] 15:19 16:21 30:11 34:20 37:7 42:2 43:4 45:17 62:21 63:10 64:5 69:4,13</p>	<p>main ^[1] 62:11 many ^[1] 57:14 March ^[1] 1:11 match ^[1] 65:20 matter ^[3] 1:13 43:22 50:25 matters ^[1] 18:14 MATTHEW ^[3] 1:20 2:6 30:5 mean ^[13] 5:15 8:12 16:11 26:17 34:2 36:13 37:15,21 39:14 49:8, 19 53:10 59:19 meaning ^[3] 8:11 39:7 60:4 means ^[9] 13:3 16:12 19:8 20:1 49:5,17 55:3 69:3,8 meant ^[2] 47:25 55:24 mechanism ^[1] 34:10 meet ^[1] 56:4 mentioned ^[2] 21:12 65:24 merge ^[2] 10:9 37:11 merger ^[1] 10:5 met ^[1] 7:12 metaphysical ^[1] 36:13 might ^[2] 6:1 59:24 mind ^[2] 49:15 52:15 minute ^[2] 44:19 53:3 minutes ^[1] 63:23 misplaced ^[2] 66:11,22 mistake ^[1] 16:21 mistaken ^[1] 66:21 mistakes ^[1] 63:10 mixed ^[1] 16:13 moment ^[5] 6:4 7:22 14:10 21:12 62:6 moments ^[1] 65:24 Monday ^[1] 1:11 moral ^[4] 26:5 27:15,20 28:5 morning ^[4] 3:4 32:4 52:5 53:19 most ^[2] 23:2 24:23 mother ^[1] 65:9 motion ^[3] 56:6,7,11 motions ^[3] 56:3,16,23 much ^[3] 20:19 56:13 57:20 multiple ^[5] 27:20 29:7 68:8,14,19 murky ^[1] 50:11 must ^[1] 35:20</p> <hr/> <p style="text-align: center;">N</p> <p>narrow ^[3] 24:17 56:4 61:14 narrowing ^[1] 41:9 NASRALLAH ^[4] 1:3 3:5 43:25 67:6 Nationality ^[1] 43:13 naturally ^[2] 58:3,6 nature ^[3] 10:13 11:21 50:10 necessarily ^[3] 22:3 29:3 34:2 need ^[1] 64:22 needs ^[1] 64:11 neighbors ^[1] 21:18 neither ^[1] 3:16 never ^[1] 47:9 next ^[2] 66:24 68:6 next-door ^[1] 21:18 NIDAL ^[1] 1:3 Ninth ^[5] 62:12,22,23 63:14,18 nobody ^[1] 60:12</p>
--	--	--	--

Official - Subject to Final Review

<p>non-citizen ^[1] 27:10 non-constitutional ^[1] 51:24 non-criminal ^[2] 50:15 51:12 none ^[1] 4:10 nothing ^[4] 10:1 17:25 47:1,3 notion ^[1] 64:5 Number ^[1] 33:3 numerous ^[1] 54:23</p>	<p>ordinary ^[3] 8:17 51:13 55:1 other ^[22] 4:4 6:11 11:15,15 26:1 34:20 41:11 42:1,12 43:9,13 49: 17 53:2 57:1,23,24 59:23 62:19 64:20 65:9,16 68:8 out ^[5] 13:10,19 23:9 60:3 65:23 outside ^[1] 68:2 over ^[1] 18:23 own ^[1] 37:19</p>	<p>8 29:18 44:17 52:16 64:4 65:4 66: 4,24 pointing ^[1] 61:7 points ^[3] 7:17 18:22 23:9 policy ^[6] 29:7,9,12,12,16 60:25 port ^[1] 65:8 portion ^[2] 27:18,21 pose ^[1] 51:9 posed ^[1] 61:17 position ^[7] 6:7 15:17 22:23 26:15 28:2,11 59:15 possible ^[1] 45:20 post-admission ^[1] 27:9 post-dating ^[1] 55:23 potentially ^[2] 6:9 22:7 powers ^[1] 4:15 practical ^[1] 10:12 practice ^[2] 37:19 55:25 preamble ^[1] 50:1 precede ^[1] 58:4 preceded ^[3] 54:15 57:14 61:5 precise ^[1] 47:9 precisely ^[1] 31:19 preclude ^[3] 45:9 51:2 52:8 precluded ^[3] 45:22 51:22,23 precludes ^[1] 46:16 predating ^[1] 55:23 predicate ^[1] 45:15 predicated ^[1] 32:8 preexisting ^[1] 52:19 preliminary ^[2] 10:2,10 premise ^[2] 31:11 62:9 prescribes ^[1] 34:10 presented ^[5] 26:13,18,22,24 33:9 presently ^[1] 11:7 presumption ^[10] 4:11 25:5 29:24 40:10,16,24 53:20,23 68:10,20 presumptions ^[1] 25:4 pretty ^[5] 8:11 36:12 40:6 66:25 67: 18 previously ^[2] 45:6,16 principle ^[1] 10:6 prior ^[3] 12:9 27:6 44:25 prisoner ^[1] 65:8 probably ^[1] 20:23 problem ^[16] 6:7 8:4 12:5,10 17:3 19:13 21:23 25:9 28:25 47:3 48: 10 50:17 51:9 54:20 56:19 57:15 problematic ^[2] 7:19 35:23 problems ^[4] 12:21 54:19 62:16, 19 procedures ^[1] 37:20 proceed ^[1] 49:12 proceeding ^[12] 6:20 8:25 28:22 33:4,5,22 34:1,8 45:17 55:2,18 63: 3 proceedings ^[17] 5:3 24:25 30:12 32:19 34:12,14,19,21 37:8 42:3 44:3 51:15 54:25 55:20 56:7,16 66:16 process ^[3] 45:1 63:11 69:2 progeny ^[2] 31:16 42:1 prohibits ^[1] 7:9 project ^[1] 48:5</p>	<p>protection ^[3] 4:19 30:14 35:18 provided ^[1] 27:25 provides ^[4] 12:18,23 23:21,22 providing ^[1] 18:23 provision ^[11] 3:12 8:6 11:16,24 18:22 37:3 41:7 52:4 64:10,14 68: 5 provisions ^[14] 6:11 14:5,6,7 16:7 21:17 30:16 40:5 46:20 58:24 59: 1 60:5 67:15 68:8 purpose ^[4] 66:9,15,19 67:21 purposefully ^[1] 68:23 purposes ^[4] 21:8 31:15 33:9 62:7 pursuant ^[1] 48:7 put ^[4] 7:7 38:16 45:3 58:16 putting ^[2] 14:3 25:18</p>
<p style="text-align: center;">O</p> <p>observation ^[1] 36:21 obstacle ^[1] 26:18 obtain ^[1] 55:3 obviously ^[1] 62:14 occur ^[5] 9:13 33:22 48:6 55:1 64: 12 occurred ^[1] 34:11 occurring ^[1] 51:13 occurs ^[3] 9:9 28:22 55:17 offenses ^[1] 44:25 often ^[3] 24:15 33:6 44:23 okay ^[3] 16:14 34:6 53:18 Once ^[1] 35:19 one ^[34] 6:14 7:17 10:7,13,14 11:1, 15,15,15,24 17:1 20:22 22:24 23: 12 25:4 26:11 27:2 28:23 29:13 33:2,5,5 34:7 36:19,20 41:11 49: 12,16 52:16 58:21 64:11 65:17 67: 2 68:16 ones ^[1] 37:17 only ^[30] 3:18 6:23 7:3 9:1,4 10:25 12:14 16:17 19:2 21:2 23:6 28:15 31:2,5,23 33:20 47:12 48:7 49:21 50:4 52:6,21 58:5,21,24 60:24 64: 6 66:12,17 68:16 open ^[1] 5:24 operation ^[2] 4:5 9:11 opposed ^[1] 48:1 oral ^[5] 1:14 2:2,5 3:7 30:5 order ^[156] 3:13,14,16,21,23 4:6,8, 22 5:3 6:24 7:3,6,18 9:1,5,10,15, 21,25 10:4,8,15,17,20,21,24 11:2, 6,6,9 12:3,7,16 13:20 14:20,20 15: 2,10,10,19 16:6,18,22 17:8,12 18: 16,23 19:1,13,24 20:1,10,15 21:10, 19 22:10,18,20 23:1 24:3,24 28: 17,23 30:10 31:3,5,7,13,15 32:1, 12,15,21,24,24,25 33:1,21,23 34:3, 13,18,22 35:7,7,10,16,21,22 36:1, 3,11 37:21,22,23,25 38:3,11,11,13, 14,18,19,24 39:2,6,11,22 40:1 41: 6,10,16,24 44:22 45:24 46:21 47: 13,15 48:16,25 49:4,8,10,22 51:17 52:6,17,22,25 53:6,11 54:18 55: 19,21 56:5,9,12,25 57:4,22 58:1,4 59:21 60:9,11,13 61:11 64:6,7,17, 23,25 66:2 67:7,12,20 ordered ^[5] 15:6,16,18 38:5,21 ordering ^[1] 43:15 orders ^[17] 3:15 4:1 14:16 16:11 31:25 35:11 39:5 40:21 41:4 51:3 57:17,23,24 59:4 60:15 65:25 67: 3 ordinarily ^[1] 62:2</p>	<p style="text-align: center;">P</p> <p>PAGE ^[5] 2:2 4:2 15:13 33:18 39:3 panels ^[1] 63:13 paper ^[1] 41:15 parlance ^[1] 14:24 part ^[47] 4:14 7:18 16:5,18,22 17:5, 9 18:5 20:9 26:2,10 30:24 31:2,5, 14 32:1,15 33:3,20 34:22 35:1 36: 1,2,4,14 39:21 45:2,21 47:12,24 48:4,16,25 49:3,7,21 52:6,21,25 53:1,17,17 55:18 56:11 57:25 59: 21 61:11 particular ^[5] 14:21 41:2 44:3 61: 21 62:7 particularly ^[1] 16:15 partners ^[1] 42:7 PAUL ^[5] 1:18 2:3,9 3:7 64:1 people ^[1] 42:14 perceived ^[1] 54:11 percent ^[1] 69:9 perhaps ^[1] 53:5 permission ^[1] 65:13 permit ^[1] 46:18 permits ^[1] 8:22 permitted ^[2] 64:20 66:1 permitting ^[1] 54:21 persecution ^[1] 32:8 person ^[5] 38:21 42:8 52:17,20 65: 20 persuading ^[1] 49:16 petition ^[23] 10:14 11:17,21 12:3, 14,15,19,24 13:2,5,9,10,19 15:13 17:9,16 18:5 19:9 22:25 23:16 39: 4 51:15,16 Petitioner ^[26] 1:4,19 2:4,10 3:8 14:12 32:10 38:5 39:7 42:18 48: 11,14,19 54:9 55:10,11 56:2 59:5, 18,23 61:18,22,23 62:9 63:19 64: 2 Petitioner's ^[9] 31:10,21 32:4 48: 18 54:8 56:4 61:13,17 62:13 petitioning ^[1] 34:12 petitions ^[1] 34:18 pick ^[4] 43:20 44:14,18 49:8 picking ^[1] 29:19 piece ^[2] 41:14 66:12 place ^[3] 42:8 43:7 69:16 places ^[2] 42:14 54:23 plain ^[3] 4:20 22:5 26:20 plausible ^[4] 29:8 68:8,14,19 please ^[2] 3:10 30:8 pledge ^[1] 42:13 pledged ^[2] 42:6,7 point ^[12] 7:23 10:23 14:9 18:7 22:</p>	<p style="text-align: center;">Q</p> <p>qualified ^[1] 6:3 qualify ^[1] 4:22 question ^[25] 5:24 7:21 8:10 9:18, 22 10:12,16 14:12 16:13 25:18 26: 2,13,18,21,22,25 33:13 35:24 37: 24 39:23 46:24 53:9 58:15 61:16 66:25 questions ^[7] 6:19 9:7 32:4,20 33: 9 44:19 46:18 quick ^[1] 26:11 quite ^[2] 33:14 57:1 quote ^[1] 64:14 quoted ^[1] 33:19</p> <p style="text-align: center;">R</p> <p>range ^[1] 24:17 rather ^[4] 16:3 32:8 61:3 65:10 read ^[6] 14:3 47:13 57:5,13 58:3,9 reading ^[3] 18:18 57:8 61:12 reads ^[1] 28:24 REAL ^[10] 8:2 12:19 18:11 21:13 47:17 48:21 54:9,10,15 66:6 really ^[4] 25:25 48:17 49:6,17 reason ^[5] 7:16 26:1 28:4 41:1 60: 24 reasoning ^[2] 27:2 63:20 reasons ^[2] 27:2 67:5 REBUTTAL ^[2] 2:8 64:1 recognition ^[1] 68:24 recognizing ^[1] 57:16 record ^[1] 54:14 referenced ^[1] 12:21 references ^[2] 10:11 27:19 referencing ^[1] 14:2 reflect ^[1] 56:15 Reform ^[3] 30:25 47:10 61:8 regard ^[1] 30:23 regulation ^[3] 64:9 65:15 66:3 regulations ^[3] 39:1 49:25 67:11 rehearing ^[1] 61:22 reinforced ^[1] 47:16 related ^[1] 24:24 relating ^[1] 4:5 relationship ^[1] 37:21 relevant ^[1] 33:17 reliance ^[1] 28:7</p>	

Official - Subject to Final Review

<p>relief ^[17] 3:17,20 4:16 5:2 10:25 11:2,9 19:25 20:12,13,16 21:3 23: 8 30:13 64:24 69:7,8 relies ^[1] 48:14 remains ^[7] 3:21 4:11 11:7 15:1 32:25 35:17 38:20 remember ^[1] 23:13 remind ^[1] 67:19 removability ^[2] 56:9 62:2 removable ^[1] 15:10 removal ^[135] 3:14,20,23,25 4:6,8, 23 5:3 7:6,19 9:1,5,10,15,21,25 10:4,8,15,18,22,24 11:6,10 12:3,7, 16 13:20 14:16,21 15:20 16:6,12, 19,23 17:8,12 18:24 19:2,16,20,24, 25 20:2,5,10,12,15 21:11,19 22:11, 19 23:1,4,17 24:3 25:21 28:22 30: 10,12,14 31:3,6,13,14,25 32:2,6,7, 12,16,24,25 33:21,24 34:3,11,21, 23 35:8,17,22 36:2,3,11 38:15 39: 1 40:21 41:5,10 42:3 43:17 44:4, 23 45:14,24 48:16 49:4,8,11 51: 14 52:6,18,22 53:1,6,12 55:2,9,12, 16 18 56:5,6,9,25 57:5,17,23 58:1, 4,21 59:4,21 60:9 64:6,6,7,12,23 66:2,16 67:4,7 69:11 removals ^[1] 57:22 remove ^[4] 6:21 64:16,19 65:2 removed ^[12] 15:2,10,16,18 35:12 38:6,8,12 39:7 43:14,18 45:19 rendered ^[1] 4:18 renewal ^[1] 23:16 reopen ^[6] 56:3,6,8,11,17,24 repeatedly ^[2] 32:23 38:20 reply ^[2] 59:18,22 report ^[2] 66:14,14 represented ^[1] 32:23 reprinted ^[1] 4:1 reproduced ^[1] 33:17 require ^[1] 39:1 requirements ^[6] 13:9,11,17,19, 24 14:8 requires ^[1] 15:4 residence ^[1] 43:24 resist ^[3] 7:20 14:10 18:3 resolve ^[1] 26:13 resort ^[2] 29:6,9 respect ^[13] 8:18 16:10,11 18:2 31: 25 36:21 40:21 45:1,4,12,22 50: 15 56:16 respectfully ^[2] 38:23 64:8 Respondent ^[5] 1:7,22 2:7 30:6 39:6 responses ^[1] 40:15 Restructuring ^[3] 30:25 47:10 61: 9 rests ^[1] 31:11 result ^[2] 50:21 52:1 return ^[2] 42:8 44:16 returned ^[2] 42:14,20 returnee ^[1] 42:8 reverse ^[1] 62:24 review ^[148] 4:3,12,13,21 5:7,9,12, 16,18 6:24 7:3,5,9,18 8:18,22 9:1,</p>	<p>4,7,14,15,17 10:14 12:2,3,6,15,24 13:2,4,5,20 14:6,17 16:4,5,9,12,14, 15,17,18,23 17:5,7,7,10,10,16,23 18:5,14,23 19:1,5,5,8,16 21:14 22: 10,20,25 25:5,6 29:19,20 30:16 31:2,5,7,15,20 32:5 33:21,23 34: 11,12,17,18 36:21 37:3,5,6 39:12, 13,21,24,25 40:17,20,25 41:6,8,16, 17 42:23 45:9,22,23 46:11,12,16, 18,21 47:5,12,15 48:6,25 49:3,3,7, 7,10,22 50:10 51:3,5,10,12,15,16, 23 52:8,21,21 53:5,6,13 54:12,21, 25 55:4 56:12 58:13,16,25 59:1, 24 61:11,24 62:18 66:16,19 67:7, 8 68:11,21 reviewability ^[4] 40:10 53:21,23 59:10 reviewable ^[17] 8:25 9:4 31:2,4 32:1,2,15 33:16,20 34:22 47:12 49:20 50:4 52:5 55:18 59:20 61: 11 reviewed ^[6] 7:2 16:22 23:16 48: 16,25 56:11 reviewing ^[8] 9:20,25 14:16 41:14 51:18 55:22 58:20 67:3 ROBERTS ^[4] 3:3 30:2 63:21 69: 22 Romanette ^[1] 27:21 round ^[1] 42:22 rule ^[5] 8:16 20:23 62:1 63:17,18 rule-making ^[2] 50:2,6</p>	<p>seen ^[2] 24:15 41:13 self-defeating ^[1] 31:22 Senator ^[1] 45:2 send ^[1] 69:15 sense ^[8] 29:9 32:5 36:11 38:4 41: 24 48:11,17 60:6 sensible ^[1] 69:19 sent ^[2] 15:3 65:15 sentence ^[2] 28:24 64:13 separate ^[8] 12:18 21:17 28:4 33: 22 34:1 40:3,4 56:8 separately ^[1] 14:17 separation ^[1] 4:15 serious ^[1] 47:6 seriously ^[2] 35:23 44:23 set ^[2] 13:10 55:5 sets ^[1] 13:19 Seventh ^[5] 27:2,7,25 62:12 63:17 shall ^[1] 6:22 shouldn't ^[1] 28:3 show ^[1] 68:14 side's ^[1] 57:2 significant ^[1] 62:16 similar ^[3] 24:2,5 37:12 similarly ^[1] 6:3 simply ^[7] 20:1 21:10 26:14 29:24 42:21 63:7 68:2 since ^[3] 25:21 30:17 34:15 single ^[3] 27:15 28:4 34:8 situations ^[3] 9:9 23:15 24:2 snippet ^[1] 66:17 so-called ^[1] 5:21 softening ^[1] 54:16 sole ^[3] 13:3 18:19 55:3 Solicitor ^[1] 1:20 solution ^[1] 12:20 solve ^[2] 48:20 54:18 solving ^[1] 54:11 somebody ^[2] 19:25 20:11 someone ^[2] 12:18 23:14 somewhat ^[2] 50:25 51:21 sorry ^[2] 15:23 47:23 sort ^[6] 8:16 19:3 24:14 29:9 41:10 45:14 sorts ^[1] 17:14 SOTOMAYOR ^[25] 20:18 21:4,24 22:2,12 23:3,10,12,19 24:1,9,11 56:19,23 57:15,18 58:5,9,12,19 59:8,11,14 65:6,12 Sotomayor's ^[1] 32:3 sought ^[3] 8:3 21:13 66:23 Sounds ^[1] 36:12 specific ^[8] 30:21 38:4,24 41:1 47: 1,3 67:2,21 specifically ^[4] 7:25 29:2 31:8 33: 15 specified ^[8] 31:1 33:19 39:6 48:8 64:7,16,25 65:3 specifies ^[1] 43:13 St ^[7] 50:22,23,24 52:2,10 53:4 54: 19 stand-alone ^[2] 8:7 25:10 standalone ^[1] 12:8 standard ^[5] 5:17 14:6 39:15,17</p>	<p>62:21 standards ^[2] 41:18 49:9 starting ^[1] 17:4 startling ^[1] 59:25 state ^[2] 45:1 64:10 STATES ^[8] 1:1,15 6:22 39:8 42: 17 43:4 45:19 69:13 statute ^[13] 43:15 44:21 48:22 49: 24 50:7 57:6 58:25 59:1 61:6 62: 14 63:2 66:1 68:3 statutes ^[2] 8:13 25:7 statutory ^[38] 4:25 8:11 17:21 20: 19,21 21:25 22:3,6,9 23:11,23 24: 4,18,21 25:13 29:3 31:17 32:6,13, 14 37:3 40:19 45:13 46:5 48:13, 18 55:8,13,22 59:7,20 60:5,7,8,20 61:3,13 68:9 steps ^[1] 40:9 still ^[4] 8:9 15:2 20:13 57:3 Stone ^[1] 56:13 straight ^[4] 21:15 47:25 52:14,15 straightforward ^[3] 22:24 66:25 67:18 stressed ^[1] 35:12 strip ^[2] 12:9 67:24 stripped ^[4] 3:25 4:17 29:21 67:2 stripping ^[3] 4:7 68:3 69:21 strong ^[2] 29:24 68:10 structured ^[1] 44:20 sub ^[1] 64:9 subchapter ^[1] 6:22 subject ^[10] 10:11 17:17 31:6 42:9, 15 48:7 49:21 50:4 55:5 69:17 submitted ^[2] 69:23,25 subpart ^[1] 13:17 subsection ^[3] 13:11,18,18 subsections ^[1] 47:21 substantial ^[2] 5:12 62:17 succeed ^[1] 38:10 sufficient ^[1] 62:4 suggest ^[2] 51:10 63:9 suggests ^[2] 5:25 66:5 supply ^[1] 12:12 supposed ^[1] 22:16 SUPREME ^[2] 1:1,14 suspension ^[4] 8:3,4 19:13 25:9 sweep ^[1] 28:16 sweeps ^[1] 20:23 swept ^[3] 23:7 24:25 66:1 system ^[2] 33:8 69:14</p>
S			
<p>same ^[27] 8:16,24 9:12 17:15,15 18:2,21 19:7,11 30:19 31:12 33: 10,11,23 34:2 35:2,4,7,22 36:20 39:15 41:24 42:2,13 45:12 48:4 49:13 saying ^[8] 14:4 18:3 22:17 53:10, 14,16 59:16 60:17 says ^[31] 3:22 6:19 7:4 8:24 11:5, 13 13:2 16:4,8 17:6,20 19:5,7,8 27:22 32:10 37:24 38:20 39:25 46: 7,25 49:2 52:17 55:11 60:9,11,13 65:9 66:2,14,18 scheme ^[4] 31:17 37:12,20 48:19 scope ^[4] 54:17 67:22 68:2,3 second ^[11] 7:23 17:1 18:7 25:6 26:2,14 33:13 40:23 64:13 65:4 66:4 Section ^[36] 4:1 6:13,25 7:4 11:24 14:2,8 16:9,10 19:9 21:8 23:2 30: 9,19 31:6,23 34:9 39:24 47:14,15 48:7,9 50:5 52:3,7,16,20 53:3 59: 3 62:3 64:21 65:3,16,17 66:15 67: 23 Sections ^[1] 48:9 Security ^[2] 64:15,19 see ^[4] 16:20 46:2,6 53:5 seek ^[4] 34:10 61:22,23 66:16 seeking ^[1] 56:24 seem ^[1] 16:1 seemed ^[1] 51:9 seems ^[3] 8:15,23 52:24</p>	<p>seen ^[2] 24:15 41:13 self-defeating ^[1] 31:22 Senator ^[1] 45:2 send ^[1] 69:15 sense ^[8] 29:9 32:5 36:11 38:4 41: 24 48:11,17 60:6 sensible ^[1] 69:19 sent ^[2] 15:3 65:15 sentence ^[2] 28:24 64:13 separate ^[8] 12:18 21:17 28:4 33: 22 34:1 40:3,4 56:8 separately ^[1] 14:17 separation ^[1] 4:15 serious ^[1] 47:6 seriously ^[2] 35:23 44:23 set ^[2] 13:10 55:5 sets ^[1] 13:19 Seventh ^[5] 27:2,7,25 62:12 63:17 shall ^[1] 6:22 shouldn't ^[1] 28:3 show ^[1] 68:14 side's ^[1] 57:2 significant ^[1] 62:16 similar ^[3] 24:2,5 37:12 similarly ^[1] 6:3 simply ^[7] 20:1 21:10 26:14 29:24 42:21 63:7 68:2 since ^[3] 25:21 30:17 34:15 single ^[3] 27:15 28:4 34:8 situations ^[3] 9:9 23:15 24:2 snippet ^[1] 66:17 so-called ^[1] 5:21 softening ^[1] 54:16 sole ^[3] 13:3 18:19 55:3 Solicitor ^[1] 1:20 solution ^[1] 12:20 solve ^[2] 48:20 54:18 solving ^[1] 54:11 somebody ^[2] 19:25 20:11 someone ^[2] 12:18 23:14 somewhat ^[2] 50:25 51:21 sorry ^[2] 15:23 47:23 sort ^[6] 8:16 19:3 24:14 29:9 41:10 45:14 sorts ^[1] 17:14 SOTOMAYOR ^[25] 20:18 21:4,24 22:2,12 23:3,10,12,19 24:1,9,11 56:19,23 57:15,18 58:5,9,12,19 59:8,11,14 65:6,12 Sotomayor's ^[1] 32:3 sought ^[3] 8:3 21:13 66:23 Sounds ^[1] 36:12 specific ^[8] 30:21 38:4,24 41:1 47: 1,3 67:2,21 specifically ^[4] 7:25 29:2 31:8 33: 15 specified ^[8] 31:1 33:19 39:6 48:8 64:7,16,25 65:3 specifies ^[1] 43:13 St ^[7] 50:22,23,24 52:2,10 53:4 54: 19 stand-alone ^[2] 8:7 25:10 standalone ^[1] 12:8 standard ^[5] 5:17 14:6 39:15,17</p>	<p>T</p> <p>talked ^[1] 58:1 technical ^[2] 15:3 27:7 temporarily ^[1] 5:2 temporarily ^[1] 14:20 temporary ^[2] 3:18 11:2 term ^[16] 3:13 28:17 29:2,6 30:9 41:3,4,10,24,25 42:1 45:25 58:23 59:3 60:4 61:14 terms ^[3] 4:20 18:21 58:12 tethered ^[1] 12:1 text ^[11] 12:23 14:14 22:5 27:16,18 40:19 56:14 61:8 66:7 68:9,16</p>	

Official - Subject to Final Review

<p>textual ^[3] 9:21 21:7 66:25 theory ^[3] 32:5 57:2 59:19 there's ^[19] 5:15 17:21,22,25 19:15 20:24 25:25 26:12,17,17 29:8 37:22 38:13 39:16 43:15 47:1,3 53:7 60:18 therefore ^[1] 9:3 they've ^[1] 62:17 thinking ^[1] 44:20 thinks ^[2] 60:12 68:7 third ^[1] 11:5 though ^[7] 9:16 12:5 24:16,22 25:2 60:17 64:24 tie ^[1] 22:9 timeliness ^[1] 14:6 title ^[1] 9:6 together ^[5] 7:8 8:15 9:13 12:2 24:25 torture ^[9] 4:20 30:22 32:9 42:9,15 68:25 69:5,17,17 tortured ^[5] 3:19 38:9 42:19 43:3 69:10 towards ^[1] 61:7 treat ^[1] 42:11 treaty ^[1] 42:7 tried ^[1] 59:23 trigger ^[1] 62:4 triggered ^[1] 27:16 Trinity ^[1] 36:17 true ^[2] 42:5 63:12 trying ^[4] 44:17 52:14,14 60:5 turn ^[1] 47:13 turning ^[1] 35:23 turpitude ^[4] 26:5 27:15,20 28:5 two ^[24] 6:9 7:7,11,17 9:12 11:23 15:25 16:7,25 17:14 18:13 21:17 26:11 27:1,22,25 32:20 33:3,5,9 34:7 40:3,4,15 tying ^[1] 27:21</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate ^[2] 10:12 22:23 Ultimately ^[3] 4:21 25:2 68:7 unable ^[1] 64:15 unambiguous ^[1] 68:17 unambiguously ^[1] 40:20 unclear ^[2] 27:19 50:25 under ^[22] 6:22,24 7:3 11:15,16,17,22,24 12:1,15 13:6,6 15:4 19:21 21:9 22:13 30:22 37:2 41:25 52:9,17 62:2 underlying ^[2] 11:9 29:11 underscore ^[1] 6:12 underscores ^[1] 10:22 understand ^[4] 8:14 24:12 33:25 49:19 understanding ^[11] 18:8 30:16,19 31:17 34:16 48:18 49:24 50:7 56:4 61:6,14 understood ^[9] 21:8 23:20 25:3,8 33:15 37:5 50:3 54:10,16 undertake ^[1] 42:13 undertaken ^[1] 42:12 undisturbed ^[2] 3:23 10:24</p>	<p>undo ^[1] 56:25 undone ^[1] 11:3 unduly ^[1] 61:14 uniform ^[1] 34:16 UNITED ^[8] 1:1,15 6:21 39:8 42:17 43:4 45:18 69:13 universally ^[1] 37:5 unmistakably ^[3] 45:17 54:13 56:10 unpack ^[1] 7:22 until ^[1] 48:21 up ^[14] 8:22 22:13,14 24:2,6 37:17,24 39:12,18 43:20 44:14,18 49:9 65:20 upshot ^[1] 20:14 uses ^[3] 19:1 35:4 59:3</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacated ^[1] 20:16 valid ^[1] 35:17 validity ^[4] 10:15,17,21 22:25 variety ^[1] 36:25 various ^[6] 6:12 30:10 34:20 37:6 42:1 67:15 vehicle ^[3] 17:15 53:15,16 venue ^[1] 14:5 versus ^[1] 3:5 view ^[4] 21:7 31:10 62:13,24</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wait ^[1] 53:3 waived ^[2] 26:16 61:18 waiver ^[1] 25:19 Wanjiru ^[3] 27:3,8,11 wanted ^[5] 18:14 40:2 45:8 58:13 59:6 Washington ^[3] 1:10,18,21 way ^[11] 11:15 17:6 18:25 19:3,11 25:8 28:19 49:16 58:9 60:25 63:5 ways ^[1] 11:24 whatever ^[2] 32:21 33:1 whereby ^[1] 34:10 Whereupon ^[1] 69:24 whether ^[10] 15:15,18 19:23 29:20,22 42:22 43:22 46:24 49:6 58:15 who've ^[1] 11:8 whole ^[1] 23:14 whom ^[1] 50:15 will ^[11] 39:5 42:14,18 43:2 44:24 45:5,6,15 56:15 63:16 67:19 WILLIAM ^[1] 1:6 willing ^[2] 6:3 65:19 win ^[1] 10:23 wins ^[1] 19:25 wishes ^[1] 26:20 withholding ^[30] 3:22 15:15 20:19,20,22 21:25 22:3,6,10 23:8,11,24 24:5,18,21 25:7,11,14 32:6,7,13,14 45:13 46:5 55:8,13,16,22 59:7,20 within ^[13] 4:25 20:2,10,23 23:7 24:23 26:6,19,23 27:1 28:22 57:1 66:2 without ^[2] 33:10 65:1</p>	<p>witness ^[1] 39:16 words ^[2] 47:9 57:8 work ^[11] 4:13 7:21 9:19 14:13,13 21:4 25:1 40:25 65:21 68:12,21 worked ^[1] 50:12 works ^[1] 34:17 world ^[1] 43:8 write ^[1] 57:20 written ^[6] 7:25 18:20 40:3,4 46:20 51:2 wrote ^[1] 67:16</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years ^[2] 50:13 55:23</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zillions ^[1] 60:4 zipper ^[18] 5:21,24 6:1,5,8,16,17,18 7:2,25 8:12,15,23 16:4,16 17:13 22:8,15</p>
--	--	--