

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	ERIC J. FEIGIN, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	ERIC R. HENKEL, ESQ.	
7	On behalf of the Respondent	31
8	REBUTTAL ARGUMENT OF:	
9	ERIC J. FEIGIN, ESQ.	
10	On behalf of the Petitioner	64
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument this morning in Case 19-1414, United
5 States versus Cooley.

6 Mr. Feigin.

7 ORAL ARGUMENT OF ERIC J. FEIGIN

8 ON BEHALF OF THE PETITIONER

9 MR. FEIGIN: Thank you, Mr. Chief
10 Justice, and may it please the Court:

11 Indian tribes, like other sovereigns,
12 have the core inherent authority to investigate
13 and detain suspects within their borders for the
14 violation of another sovereign's law.

15 Every single source that this Court
16 looks to in assessing inherent tribal authority
17 confirms that limited ability. The executive
18 has entered into numerous treaties that
19 presuppose it, Congress has ratified those
20 treaties and passed affirmative legislation that
21 reflects it, courts have repeatedly upheld it,
22 and on-the-ground law enforcement practice has
23 long depended on it.

24 The Ninth Circuit's decision here
25 upsets all of those understandings. Its tribal

1 sovereignty analysis would logically suggest
2 that tribes are reduced to no more than private
3 citizens in policing rights-of-way and
4 non-Indian land on their reservations. And I
5 think that's the position Respondent's taking.

6 But even the Ninth Circuit realized
7 how untenable that would be, so it created a
8 novel, complicated, and ultimately unworkable
9 law enforcement regime. The decision below
10 replaces familiar Fourth Amendment standards
11 codified in the Indian Civil Rights Act with an
12 unprecedented standard that nobody is going to
13 know how to apply, officers or courts.

14 It will also force tribal officers to
15 curtail otherwise reasonable policing activities
16 when a suspect claims to be non-Indian or the
17 officer isn't sure about Indian status or the
18 status of the land that he's on.

19 The holding lacks any meaningful
20 support, substantially chills tribes' ability
21 even to enforce their own laws against their own
22 members, and endangers everyone on Indian
23 reservations. It should be reversed.

24 CHIEF JUSTICE ROBERTS: Mr. Feigin,
25 you -- you got my attention when you said --

1 began by saying every single source says that
2 tribes have this inherent authority.

3 I would have thought Montana said the
4 exact opposite. You know, you do argue at the
5 outset there's this inherent authority and
6 nothing took it away.

7 But, as we said in South Dakota versus
8 Bourland, describing Montana, and this is a
9 quote, it said, "After Montana, tribal
10 sovereignty over non-members cannot survive
11 without express congressional delegation and is,
12 therefore, not inherent."

13 So I would have described that as at
14 least one source that says the opposite of what
15 you said.

16 MR. FEIGIN: Well, Your Honor, I -- I
17 do think this Court has recognized inherent
18 authority without express congressional
19 authorization. And as we discuss in our brief,
20 we think the overall standard is the one
21 announced in Colville and in cases before and
22 after, which is that --

23 CHIEF JUSTICE ROBERTS: Well,
24 Montana -- Montana came after Colville. And --
25 and I'm not saying that we haven't recognized

1 some inherent authority, but this is the
2 question of tribal sovereignty over non-members,
3 and I assume that would -- would extend to
4 criminal jurisdiction.

5 MR. FEIGIN: Well, let me make a
6 couple points directly about Montana, Your
7 Honor. I think Montana is how Colville shakes
8 out in the civil, regulatory, and adjudicatory
9 contexts.

10 But even if Your Honor were inclined
11 to apply Montana in these circumstances, which
12 don't involve criminal jurisdiction but
13 on-the-ground policing, nobody is -- is trying
14 or punishing crimes here, I think it would fit
15 within the second Montana exception because it
16 interferes with self-governance.

17 CHIEF JUSTICE ROBERTS: No, I
18 understand that -- that.

19 MR. FEIGIN: Okay.

20 CHIEF JUSTICE ROBERTS: I understand
21 that as an alternative theory, and -- and, you
22 know, we can -- we can talk about that. But you
23 -- you say Montana applies to legislative and
24 civil and regulatory. On what basis would you
25 suggest that executive power, such as is being

1 exercised here, is subject to a different rule
2 than legislative and judicial power?

3 MR. FEIGIN: Well, I think the Court
4 essentially recognized that there's a
5 distinction or at least nodded at such a
6 distinction in both Strate and Atkinson when it
7 expressly noted that it wasn't questioning this
8 particular power that we're discussing here
9 today, which is the power to stop and detain
10 someone on public rights-of-way that run through
11 a reservation, that the --

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 Justice Thomas.

15 JUSTICE THOMAS: Thank you, Mr. Chief
16 Justice.

17 Mr. Feigin, the -- the Ninth Circuit
18 analogized the police officer here to a private
19 citizen. And if we accept that, that the police
20 officer is actually a private citizen here, then
21 why does the statute, the Indian Civil Rights
22 Act, even apply?

23 MR. FEIGIN: Well, Your Honor, the
24 Indian Civil Rights Act contains a very broad
25 definition of the governmental activities of the

1 tribe, and I think it probably would still
2 apply, but I think that's another inconsistency
3 in the Ninth Circuit's opinion that I think
4 makes its conclusion ultimately untenable, which
5 is that they recognize some sovereign authority
6 in one respect, as you note, and then deprive
7 the tribal officer of it in another respect.

8 And I don't think that citizens arrest
9 authority is at all workable or at all what
10 anyone has ever contemplated. Among other
11 things, I don't think citizens arrest authority
12 by anyone's likes would include the ability to
13 do a Terry stop based on reasonable suspicion,
14 which is what traffic stops are, let alone a
15 frisk for weapons.

16 And I think everyone's assumed that
17 tribes can do much more than that, as the
18 treaties reflect, as the statutes reflect, and
19 as on-the-ground practice reflects.

20 JUSTICE THOMAS: So, if we -- if -- if
21 we find that -- that the officer here was within
22 his jurisdiction to engage in this stop, do we
23 have to -- should we ultimately reverse here, or
24 should we send it back to have it analyzed to
25 determine whether or not Terry is satisfied?

1 MR. FEIGIN: I think, if you
2 ultimately agree with -- with us, Justice
3 Thomas, I do think this needs to go back for a
4 Fourth Amendment analysis -- for a Fourth
5 Amendment analysis, if that's your question.

6 JUSTICE THOMAS: Do you, in your
7 discussion with the Chief Justice with respect
8 to Montana, do you think that -- you know, Lara
9 was decided after that and it seemed to undercut
10 Montana. Could you discuss that just a bit?

11 MR. FEIGIN: Well, Your Honor, I -- I
12 -- I don't think that Montana no longer applies
13 to the situations that it applied.

14 After Lara, you have Plains Commerce
15 Bank, which very clearly applies Montana in the
16 contexts to which I think it's clearly
17 applicable, namely, civil, regulatory, and
18 adjudicatory legislation.

19 And we're not asking this Court to say
20 that Montana's curtailed in any way because I
21 don't think the Court needs to say that. I
22 think it's pretty clear from Strate and I
23 believe Your Honor's opinion in Atkinson that
24 the authority we're talking about today is
25 meaningfully different.

1 The main logic of not subjecting
2 non-Indians to tribal adjudication or
3 legislation is that they have no say in making
4 those laws. Here, this is about the enforcement
5 of laws to which they're -- the non-Indians are
6 indubitably subject --

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 MR. FEIGIN: -- namely, state and
10 federal law.

11 CHIEF JUSTICE ROBERTS: Justice
12 Breyer.

13 JUSTICE BREYER: Do you -- would you
14 like to and could you help explain to me an
15 ordinary state policeman has certain authority
16 to make arrests or to investigate situations on
17 an interstate highway. How -- how in your view
18 does the tribal policeman have the same or a
19 lesser authority and why?

20 MR. FEIGIN: So, Your Honor, I think,
21 if the -- at the outset, it's just an inherent
22 sovereign authority that sovereigns can
23 investigate and detain at least briefly and
24 reasonably for violations of other sovereigns'
25 laws.

1 In the context of states, for example,
2 you have the Interstate Rendition Clause of the
3 Constitution that presupposes states can enforce
4 each other's laws. You have this Court's
5 decisions in Di Re and Miller that make, I
6 think, fairly clear that states can enforce
7 federal law.

8 That reflects, Justice Breyer,
9 well-accepted international law principles that
10 allow this. I -- I point you to the Court's
11 decision in United States against Raucher, which
12 is in 117 of the U.S. Reports.

13 And if you look at page 218 of Neil
14 Boister's "Introduction to Transnational
15 Criminal Law," you'll see that the procedural
16 law that's usually applied is -- the procedural
17 law that's understood to apply when there's a --
18 a hand-over of someone is the procedural law of
19 the state that's doing the handing over, not the
20 state that's accepting delivery, that that
21 nation is only applying its substantive law.

22 And the authority that we're asking
23 for here for tribes and that we think tribes
24 have always had and that everyone's always
25 assumed that they had is a -- a -- a more

1 limited authority than even the courts recognize
2 the states have.

3 It's not the authority to do a
4 full-blown arrest. It's not an arrest in their
5 own authority that kicks off an adjudicatory
6 process. It's just investigation and detention
7 in a complementary role. If the state or the
8 federal government says, no, we don't want this
9 person, the tribe has to let him go.

10 JUSTICE BREYER: Why do they have the
11 authority to, say, enforce or arrest anyway or
12 hold people who they believe reasonably are
13 violating Montana law, but then they can't try
14 that person for violating the Indian tribe law?

15 MR. FEIGIN: Well, the logic that this
16 Court's applied for not having non-Indians
17 subject to the tribe's criminal adjudicatory
18 authority is that they have no say in making
19 those laws.

20 That's really not the case here. This
21 is just complementary enforcement. And, Your
22 Honor, it's practically necessary.

23 As this Court has recognized and as
24 Congress has recognized, these -- these areas
25 are policed primarily often by tribal officers.

1 And if they lack this authority, it's going to
2 endanger everyone on the reservation.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Justice Alito.

6 JUSTICE ALITO: Mr. Feigin, do you
7 think you could offer us a general test for
8 distinguishing between those aspects of
9 sovereignty that tribes retained and those that
10 they did not?

11 So, if you -- if I gave you this
12 partial sentence, I wonder if you could complete
13 it: Tribes retain those aspects of sovereignty
14 that -- fill in the rest.

15 MR. FEIGIN: That are -- I mean, I
16 don't think I can do a better job than the Court
17 did in -- in Colville and in, after that, San
18 Carlos reiterating this and in -- in other
19 cases, which is they retain the inherent
20 authority so long as it's not inconsistent with
21 the overriding interests of the federal
22 government.

23 And the Court gave three examples of
24 things that would be inconsistent, namely,
25 foreign relations or control over the alienation

1 of tribal lands to non- -- non-Indians or the
2 adjudication of various matters against
3 non-Indians. But, as I've said, I -- I think
4 this is meaningfully different for -- for a
5 number of reasons.

6 JUSTICE ALITO: Does the authority you
7 claim the tribes retain go further than simply
8 detaining a non-Indian on reasonable suspicion?
9 I think you -- you just said in answer to
10 Justice Breyer that a tribal officer could not
11 actually make an arrest.

12 Could the -- could the officer make a
13 -- the kind of search incident to arrest that
14 would otherwise be possible? For example, if a
15 non-Indian was in the car -- in a car, could the
16 officer search areas of the car that the person
17 could grab and might have -- where there might
18 be a weapon hidden?

19 MR. FEIGIN: Yes, an officer could
20 certainly do that. I mean, that's sort of part
21 of the -- recognized as an ordinary part of a
22 traffic stop.

23 To -- to the extent your question
24 encompasses this, we also think an officer could
25 do a search of the car pursuant to the -- both

1 Gan rationales.

2 JUSTICE ALITO: Well, suppose a --
3 suppose a tribal officer is not -- is not
4 stopping a car on the highway but is driving
5 around the reservation and sees through the
6 window of a house owned by a non-Indian on a
7 parcel of land that this individual owns, and
8 see that there is drugs in plain view.

9 Could -- what can the officer do under
10 those circumstances?

11 MR. FEIGIN: I -- I do think that the
12 officer can go in and -- and do a detention
13 there, and then he -- he has to obviously act
14 reasonably when he does so, and part of acting
15 reasonably is recognizing that he's in a
16 complementary role and he needs to, as Officer
17 Saylor did here, contact state and federal
18 authorities as quickly as is reasonably possible
19 under --

20 JUSTICE ALITO: Thank you. Thank you,
21 Mr. Feigin.

22 CHIEF JUSTICE ROBERTS: Justice
23 Sotomayor.

24 JUSTICE SOTOMAYOR: Mr. Feigin,
25 basically, you -- in your briefs, you've argued

1 that this Court should look to whether the
2 exercise of tribal sovereignty would be
3 consistent with the overriding interests of the
4 federal government.

5 I'm not quite sure what that has to do
6 with much. Shouldn't we be looking at what
7 rights the Indians, the tribal Indians, have
8 been given? And, here, it seems to me that
9 inherent in a detention-and-hold right is the
10 right to investigation.

11 The Ninth Circuit basically said that
12 they can investigate to find out if someone's an
13 Indian or not. And if they're an Indian,
14 presumably, they would have all the rights of
15 further investigation. But I don't know why the
16 Ninth Circuit's limited view of what the right
17 of detention means should control us.

18 MR. FEIGIN: Well, Justice Sotomayor,
19 it --

20 JUSTICE SOTOMAYOR: And -- and isn't
21 that a simpler argument than all the arguments
22 that -- about sovereignty that everyone's been
23 having? If it's a contractual right the Indians
24 have been given, there's no constitutional
25 violation in just being held for the police to

1 determine whether or not you're guilty of a
2 crime sufficient to be arrested.

3 Why can't we just go in -- on that
4 simple basis?

5 MR. FEIGIN: Well, Your Honor, to the
6 extent that you would reach the -- the same
7 result that we're urging today that would
8 preserve traditional understandings of a tribe's
9 authority, I don't -- I don't know that we have
10 a huge interest in -- in deterring you from
11 reaching that by the analytical path that you've
12 described.

13 But I do think that, as a general
14 matter, we do have some interest in this Court
15 reaffirming the existence of inherent tribal
16 authority, which I think pervades this Court's
17 cases. And I think this encompasses the
18 authority that we're talking about today. And I
19 do think that's actually the most
20 straightforward and -- and the best way to reach
21 this result.

22 I -- I -- I'm not here contending that
23 Congress affirmatively granted the authority
24 here. I think that tribes have always had it.
25 They've always been understood to have it. If

1 you look at the reports, for example, the law
2 professors' historical brief, they've exercised
3 it and --

4 JUSTICE SOTOMAYOR: So, if one of my
5 colleagues thinks that Montana controls, you
6 lose?

7 MR. FEIGIN: No, Your Honor. As I was
8 explaining to the Chief Justice, if Montana
9 controls, and we don't think it does, but, if it
10 does, I think this fits under self-governance
11 because it chills enforcement even of tribal law
12 against tribal members because it's difficult to
13 tell --

14 JUSTICE SOTOMAYOR: Counsel, my time
15 is out, but I'm not sure --

16 MR. FEIGIN: Okay.

17 JUSTICE SOTOMAYOR: -- that this is
18 the extreme impact on sovereignty that Montana
19 references.

20 CHIEF JUSTICE ROBERTS: Justice Kagan.

21 JUSTICE KAGAN: Mr. Feigin, if you
22 could continue with this point. I guess what
23 I'd like to know is if there are these two
24 alternative ways that you could have written
25 your brief, and one is the inherent authority

1 way, which you, in fact, used, and the other is
2 the Montana exception 2 way, what are the
3 different consequences of the Court proceeding
4 along either of these paths? And why did you
5 make the choice that you did?

6 MR. FEIGIN: Well, Your Honor, just to
7 be clear, I -- I do think the Montana exception
8 2 choice is an exercise of inherent authority.
9 So I don't know that we're saying anything
10 terribly different.

11 The -- the reason we didn't make the
12 argument that this fits into Montana exception
13 2, our primary argument is because we just don't
14 think Montana applies. I -- I think it really
15 only governs civil adjudicatory and regulatory
16 jurisdiction.

17 But if -- I take Your Honor's question
18 to want me to continue my answer to Justice
19 Sotomayor's, which is that this chills
20 self-governance because it's difficult to tell
21 what kind -- as this Court is familiar with,
22 what kind of land you're on, first of all, and I
23 think the Ninth Circuit's ruling would probably
24 apply to non-Indian fee land. This Court's
25 decided numerous cases in which that issue, the

1 issue of land status, reaches this Court.

2 It's also --

3 JUSTICE KAGAN: I guess, Mr. Feigin, I
4 really was just asking about -- you said we just
5 don't think Montana applies. But, other than
6 sort of analytic purity in your mind, you have
7 no -- you don't see any real difference between
8 the two approaches?

9 MR. FEIGIN: Well, I do think it has
10 broader implications for Indian sovereignty, and
11 I -- I would urge the Court to keep Montana
12 where -- where I think it has always been. And
13 I do think Strate and Atkinson reflect an
14 understanding by the Court that this isn't a
15 Montana situation, but --

16 JUSTICE KAGAN: I guess what I'm
17 really asking is, like, what -- what are these
18 different implications? I mean, I'm just sort
19 of not understanding why you're pushing down one
20 road rather than the other and -- and thought
21 I'd just ask you, why are you pushing down one
22 road rather than the other?

23 MR. FEIGIN: Your Honor, I'm not --
24 I'm not sure it may ultimately make a difference
25 in the outcome in this case, but the federal

1 government does have a very strong interest in
2 preserving tribal authority and -- and tribal
3 sovereignty where appropriate. And I wouldn't
4 want the Court to take this occasion to restrict
5 it even further by suggesting that Montana is
6 the controlling test in -- in all circumstances.
7 I'm not sure that this Court's precedents really
8 support that result.

9 And the Court could -- could leave
10 that for another day and simply -- if -- if the
11 Court prefers, simply assume that Montana
12 exception 2 applies and explain why this fits
13 into Montana exception 2.

14 JUSTICE KAGAN: Thank you, Mr. Feigin.

15 CHIEF JUSTICE ROBERTS: Justice
16 Gorsuch.

17 JUSTICE GORSUCH: Good morning,
18 counsel. I -- I -- I guess I would have
19 approached this thinking that tribal sovereignty
20 remains until and unless Congress has withdrawn
21 it in some fashion and that the relevant
22 question here is, what -- what does the Major
23 Crimes Act do to Indian sovereignty? And,
24 there, it's clear that Congress has withdrawn
25 jurisdiction to try certain non-native people in

1 certain locations within Indian country. Fine.

2 My question approaching it that way,
3 Mr. Feigin, is, where is the line? The Major
4 Crimes Act clearly precludes states or -- or
5 tribes from trying certain individuals,
6 non-native persons, for -- for major crimes in
7 Indian country.

8 But you say it's okay, on the other
9 hand, to -- for a tribal officer to conduct a
10 Terry stop. There's a long distance between a
11 Terry stop and a trial. Where does -- where
12 does the Major Crimes Act kick in to reduce
13 tribal sovereignty?

14 MR. FEIGIN: I -- I'm not actually
15 certain that I would identify the Major Crimes
16 Act as necessarily what -- what draws the
17 jurisdiction here, but if you --

18 JUSTICE GORSUCH: I -- I understand
19 that. But if you could address it based on the
20 premise I've given you.

21 MR. FEIGIN: Certainly, Your Honor. I
22 think where the Major Crimes Act would kick off
23 is -- is something that is considered the
24 beginning of the adjudicatory process. So we're
25 not urging here that tribes have full-blown

1 arrest authority, which I think would be
2 understood as the beginning of the adjudicatory
3 process.

4 So I think the line would be around
5 where we have described it in our briefs, which
6 is a limited detention and investigatory
7 authority that's simply for the purpose of
8 allowing state or federal authorities at some
9 point to take over and conduct an arrest.

10 I think that's confirmed by the
11 statutes in -- in 25 U.S.C. 2804 and -- and
12 surrounding it, which contemplate
13 cross-designation if the federal government
14 wants someone -- wants a tribal officer to be
15 able to conduct an arrest.

16 JUSTICE GORSUCH: Well, if -- if
17 you're going to look to the deputization
18 statute, why doesn't that just foreclose even a
19 Terry stop?

20 MR. FEIGIN: Well, if you --

21 JUSTICE GORSUCH: You say it
22 forecloses an arrest. Why wouldn't it go so far
23 as to foreclose a Terry stop?

24 MR. FEIGIN: Well, Your Honor, if you
25 look at 25 U.S.C. 2806(d), it expressly

1 preserves the investigatory and -- and other
2 relevant powers that tribes possessed before.

3 JUSTICE GORSUCH: Oh, yeah, but you're
4 saying they possessed that authority antecedent
5 to any statute. And -- and -- and I guess my
6 question, again, is, where does that sovereign
7 authority end that's been preserved? And why
8 would it stop at Terry as opposed to an arrest?

9 MR. FEIGIN: Your Honor, if you think
10 it continues fully through an arrest, we
11 wouldn't oppose that result. But I think that
12 might be close -- I do think the arrest is
13 normally understood to kick off an adjudicatory
14 process.

15 I don't think that tribes have been
16 understood to have the authority to conduct
17 arrests on their own. For example, if you look
18 at page 99 of the Indian Law and Order
19 Commission's report, which is cited in the
20 former U.S. Attorney's amicus brief, they do
21 draw the distinction --

22 JUSTICE GORSUCH: Thank you, counsel.
23 My time's expired, I'm afraid.

24 CHIEF JUSTICE ROBERTS: Justice
25 Kavanaugh.

1 JUSTICE KAVANAUGH: Thank you, Chief
2 Justice.

3 Good morning, Mr. Feigin. Does the
4 authority here come from the Constitution?

5 MR. FEIGIN: The authority here comes
6 from the inherent tribe's -- the inherent
7 sovereign authority that tribes possessed before
8 they were incorporated into the United States
9 that they've never lost.

10 JUSTICE KAVANAUGH: And I guess my
11 question remains, does that come from the
12 Constitution, or how does that fit within the
13 Constitution?

14 MR. FEIGIN: I think, within the
15 Constitution, we have the -- you know, the power
16 to conduct commerce with Indian tribes, which
17 recognizes that tribes are separate sovereigns
18 in -- in a sense, and it comes from this Court's
19 cases construing inherent tribal authority,
20 which I think reflects that tribes do retain
21 some authority.

22 I think the Constitution simply
23 recognizes that. I don't think it's -- I don't
24 think the authority we're discussing today is --
25 is affirmatively granted by the Constitution.

1 JUSTICE KAVANAUGH: And I -- it's not
2 affirmatively granted by the Constitution. You
3 also said it's not affirmatively granted by
4 Congress, I think you said in response to
5 Justice Sotomayor. Correct?

6 MR. FEIGIN: That's right. I -- I --
7 I would just emphasize, Justice Kavanaugh, that
8 I do think it is recognized by both of those
9 sources, but I don't think that it is -- we're
10 not looking to some specific provision of either
11 of them as the source of the authority.

12 I -- I think the way the Court has
13 looked at this kind of question is whether it's
14 been withdrawn, as Justice Gorsuch was just
15 saying, and nothing has withdrawn it.

16 JUSTICE KAVANAUGH: The other side
17 says this is, in effect, a separation of powers
18 case and that Congress has given the executive
19 the authority to enter into cross-deputization
20 and that hasn't been done here and that, instead
21 of the courts jumping in, we should let Congress
22 and the Executive Branch fill any public policy
23 holes that may exist. Your response?

24 MR. FEIGIN: I think I have three
25 responses.

1 One is 25 U.S.C. 2806(d), as I was
2 just mentioning to Justice Gorsuch, which
3 preserves the preexisting authority.

4 The second is, as we lay out in our
5 reply brief, the cross-designation authority is
6 great -- contemplated as a greater authority
7 here and requires agreements that would have
8 monitoring and compliance requirements for
9 tribes that present difficulties.

10 And, third, the current
11 cross-designation statutes don't address the
12 issue of steam law, for example, and so we're
13 left with, if we really were trying to solve
14 this problem by cross-designation, it would take
15 some new acts of Congress. And that could be
16 said in any inherent authority case.

17 JUSTICE KAVANAUGH: Thank you, Mr.
18 Feigin.

19 CHIEF JUSTICE ROBERTS: Justice
20 Barrett.

21 JUSTICE BARRETT: Mr. Feigin, I'd like
22 to go back to your interchange with Justice
23 Gorsuch. You said that the authority -- the
24 investigative authority doesn't extend past
25 Terry stops into arrests because arrests mark

1 the beginning of the adjudicatory process.

2 We -- I -- I didn't quite follow
3 whether you were saying to Justice Gorsuch that
4 the reason why tribes lack authority to arrest
5 is because they are implicitly divested of that
6 authority under the Constitution, so even under
7 the Colville rationale or whether it's the
8 cross-deputization statutes or whether it's our
9 prior cases making clear that tribes lack the
10 authority to finally adjudicate the rights,
11 criminally or civilly, of non-members.

12 So could you just explain to me what
13 it is that takes away that authority, or is it
14 that they never possessed it in the first place?

15 MR. FEIGIN: I think they did possess
16 it in the first place, Justice Barrett, just the
17 same way the Court recognized in *Di Re* and
18 *Miller* that states have that authority.

19 I -- I mean, if the Court wants to say
20 that they have that authority, I wouldn't resist
21 it necessarily, but I do think that this Court's
22 decisions primarily that recognize that
23 non-Indians cannot be subject to tribal
24 adjudication is one line of demarcation.

25 And, also, as I suggested to Justice

1 Gorsuch and I think fleshed out a little bit
2 more with Justice Kavanaugh, I think the
3 cross-designation statutes at least contemplate
4 that there will be some kind of affirmative
5 conferral of authority if tribal officers are to
6 conduct arrests that effectively stand in the
7 shoes of federal officer arrests.

8 So I would probably draw the line
9 before we reach that point. And I think, you
10 know, the -- the authority that we're urging
11 here today does stop short of that point because
12 it requires immediately, as soon as reasonable,
13 contacting state and federal authorities.

14 JUSTICE BARRETT: Well, this is my
15 problem, and I'm not suggesting that I think we
16 should say that it stretches that far, but I'm
17 trying to figure out what rationale says that
18 the tribes would retain the authority to do a
19 Terry stop but not to arrest, particularly when
20 you think about the fact that, I mean, one --
21 one reason for the practical problems that you
22 identify is that it's difficult for federal or
23 state authorities to police the public
24 rights-of-way that go through reservations.

25 So, if a tribal officer does a Terry

1 stop, I mean, a Terry stop's supposed to be
2 temporary, who knows how long it might take for
3 a state or federal officer to get there.

4 And then, at some point, you know, as
5 you -- I don't know, at some point, it seems
6 like that would mature into an arrest.

7 MR. FEIGIN: Well, Your Honor, let me
8 -- let me just try to clarify this. I -- I
9 think, in some sense, we're having a little bit
10 of just a terminological debate about what an
11 arrest means. There may be some things that
12 would be colloquially considered an arrest but
13 not formally considered an arrest, and we do
14 think the tribe can do that.

15 As our brief makes clear, we do think
16 they can hold a suspect on probable cause for a
17 reasonable period of time for hand-over, unless
18 and until state and federal authorities tell the
19 tribe that they don't want the person.

20 JUSTICE BARRETT: Well, my time is up,
21 but I'll just say it seems to me that under the
22 Fourth Amendment that is an arrest, but thank
23 you, Mr. Feigin.

24 CHIEF JUSTICE ROBERTS: A minute to
25 wrap up, counsel.

1 MR. FEIGIN: Thank you, Your Honor.

2 I just want to emphasize how
3 unworkable the regime that the Ninth Circuit and
4 Respondents contemplate would be. It would
5 require an uncertain on-the-spot determination
6 of someone's tribal status or Indian status,
7 which is often impossible to do, land status,
8 which is often impossible to do.

9 I don't really think there have been
10 any cases fleshing out the apparent or obvious
11 standard contemplated by the Ninth Circuit or
12 really exploring the mere authority of private
13 citizens arrests, which is what Respondent would
14 leave them with.

15 And it would curtail policing activity
16 that everyone depends on, the ability to respond
17 to a 911 call, like in Navarette, the ability to
18 stop and frisk someone who's casing a jewelry
19 store on non-tribal fee land, like in Terry
20 against Ohio itself.

21 Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Mr. Henkel.

25 ORAL ARGUMENT OF ERIC R. HENKEL

1 ON BEHALF OF THE RESPONDENT

2 MR. HENKEL: Thank you, Mr. Chief
3 Justice, and may it please the Court:

4 This case is resolved by the
5 fundamental propositions that Indian tribes do
6 not possess sovereign authority over non-Indians
7 and that Congress has plenary authority over
8 Indian affairs.

9 The decision below should be affirmed
10 because the detention, search, and arrest of a
11 non-Indian by a tribal officer exceeds tribal
12 self-government authority. I have three basic
13 points to make today.

14 First, Indian tribes do not have
15 inherent police power over non-Indians,
16 especially on non-tribal lands.

17 Second, Congress addressed this issue
18 by giving the Executive Branch broad authority
19 to cross-deputize tribal officers to investigate
20 and police federal crime in Indian country.

21 Finally, no matter why the tribal
22 officer in this case was not cross-deputized,
23 that fact is not a basis to find inherent tribal
24 police power over non-Indians. Instead, it is a
25 basis to respect separation of powers and defer

1 to Congress's plenary authority.

2 The government disregards the unique
3 and limited character of inherent tribal
4 sovereignty. It not only asks this Court to
5 find inherent tribal authority to regulate and
6 police the conduct of non-Indians; it insists
7 that tribes have unlimited authority to police
8 all persons and to enforce all tribal, state,
9 and federal laws governing Indian country.

10 And the government claims this
11 sweeping police authority over U.S. citizens is
12 consistent with overriding federal interests,
13 even though tribes exercise that authority
14 outside the structure of the Constitution, free
15 of political accountability, and cloaked with
16 immunity from civil liability.

17 The government's position is
18 untenable. It ignores that tribal sovereignty
19 is confined to managing tribal land, protecting
20 tribal self-government, and controlling internal
21 relations. In this case, because the exercise
22 of police authority over Mr. Cooley was
23 unrelated to any of these limited interests, the
24 Crow Tribe exceeded its sovereign authority.

25 The decision below should be affirmed.

1 CHIEF JUSTICE ROBERTS: Counsel, I --
2 I think, as Justice Kagan summarized, there's a
3 very important distinction with -- of -- of
4 broader applicability than this case over how
5 you should look at it.

6 Your friend on the other side says
7 there's inherent authority and it hasn't been
8 take -- the question is whether it's been taken
9 away. He cites Colville. I understand your
10 argument to be that, under Montana and
11 subsequent cases interpreting it, there is no
12 inherent authority.

13 But even under Montana, there are
14 exceptions, exceptions in which we've recognized
15 that there is continuing inherent authority, and
16 I wonder why the second exception doesn't apply
17 here. That exception is when the conduct at
18 issue threatens tribal self-governance,
19 self-rule, which we've talked about in terms of
20 political integrity, economic security, health
21 and welfare.

22 What could threaten that more than the
23 idea that you can't do anything about somebody
24 within the reservation that you have good reason
25 to believe is violating criminal law? It would

1 seem to me that's the prototypical case for the
2 exception.

3 MR. HENKEL: Well, Mr. Chief Justice,
4 I think we need to start by looking at what this
5 Court said about the second Montana exception in
6 Atkinson Trading Company and Plains Commerce
7 Bank. Those two decisions severely limit the
8 application of the second Montana exception.

9 CHIEF JUSTICE ROBERTS: Right. I
10 think that's a fair -- fair description, but
11 those were, as has been pointed out, regulatory,
12 civil, adjudicatory, and you can certainly argue
13 it makes sense to have a very limited view in --
14 in that context. But, when you're talking about
15 on-the-ground criminal activity, I wonder if the
16 exception should not be as narrow as it is in
17 those other contexts?

18 MR. HENKEL: Well, I think, here, it's
19 important to look at the status of the land.
20 This is a state highway running through a
21 reservation. There is no landowner's right to
22 exclude. Mr. Cooley was parked on the shoulder.
23 He -- nothing about what he was doing when he
24 was parked there had anything to do with, you
25 know, tribal internal relations or tribal

1 self-government.

2 And so I think it's important to start
3 from the general proposition about what the --
4 what tribal sovereignty is, which it's confined
5 to managing tribal land, protecting tribal
6 self-government, and controlling internal
7 relations.

8 And, here, none of that was
9 implicated. Officer Saylor was enforcing
10 non-tribal laws against a non-Indian. That has
11 nothing to do with the internal relations of the
12 tribe or tribal self-governance.

13 CHIEF JUSTICE ROBERTS: Justice
14 Thomas.

15 JUSTICE THOMAS: Thank you, Mr. Chief
16 Justice.

17 I'd like to continue along that line,
18 counsel. The -- let's change the -- the facts
19 in this case just a bit so that rather than the
20 police officer looking in -- determining that
21 the Respondent was nervous and that he may --
22 had bloodshot eyes; rather, he fit the
23 description of a serial killer that the police
24 officer was alerted to, a serial killer who did
25 not commit any of the crimes on the reservation

1 but happened to be exactly where Respondent was.

2 How would you -- would you make the
3 exact same argument in that case?

4 MR. HENKEL: Well, I -- Justice
5 Thomas, I think it would be important to know
6 how the tribe came to know about the -- the
7 serial killer being --

8 JUSTICE THOMAS: No, I just -- the
9 only facts I've changed in your case, in this
10 case, is that rather than the Respondent being
11 there with bloodshot eyes and sleepy, et cetera,
12 he fit the description that the police officer
13 heard over his radio of a serial killer, but,
14 other than that, all the facts are the same.

15 MR. HENKEL: I -- I think, in that
16 circumstance, the tribal officer could detain.

17 JUSTICE THOMAS: Why?

18 MR. HENKEL: It -- it sounds like he
19 has reliable information coming from,
20 presumably, state or federal law enforcement
21 about this wanted individual.

22 But I do not think that the tribal
23 officer would have authority to investigate and
24 -- and search beyond just trying to determine
25 the person's identity and whether they fit the

1 description.

2 JUSTICE THOMAS: So why does he have
3 the authority to -- to detain there but not here
4 when he has suspicions about possibly, not
5 entirely, weapons and drugs?

6 MR. HENKEL: Well, because I think
7 that in -- in the hypothetical that you posed,
8 again, I am assuming that state or federal law
9 enforcement is the one who put out a BOLO for a
10 -- for a serial killer, and that circumstance,
11 to me, is far different from what we had here,
12 where, after an initial welfare check, Officer
13 Saylor launched into a full-fledged criminal
14 investigation, where he proceeded to ultimately
15 pull Mr. Cooley out of the car at gunpoint and
16 investigate him for suspected drug activity and
17 -- and put him in the back of the patrol unit
18 and then went and searched the vehicle.

19 I think, there, there is -- there's
20 nothing there -- there was -- there was
21 certainly no apparent or obvious crime, as the
22 Ninth Circuit found, and I think that's a
23 critical difference between what happened here
24 and your hypothetical, where there's presumably
25 state or federal law enforcement putting out

1 some sort of notice instructing tribes to look
2 for this person.

3 JUSTICE THOMAS: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Breyer.

6 JUSTICE BREYER: Well, I'd like to
7 continue. What -- what -- what exactly do you
8 think the tribal officer can do and what can't
9 he do and why?

10 MR. HENKEL: Under the facts of this
11 case?

12 JUSTICE BREYER: Well, just in
13 general. I mean, what is the rule? What are
14 the rules that you're -- you're advocating?

15 MR. HENKEL: That the tribal officer
16 needs to first ascertain Indian status when
17 we're -- when we're on non-tribal lands, like we
18 are --

19 JUSTICE BREYER: And so how does he do
20 that? I mean --

21 MR. HENKEL: I think there's -- I
22 think -- yeah, I think there's a number of ways
23 that he or she could do that.

24 JUSTICE BREYER: But he's not an
25 Indian. It turns out he's not an Indian tribe

1 member. I mean, you know, people look -- you
2 can't just look at them and see whether --
3 whether they're Indians or not or -- people look
4 different. So I think that would be a tough one
5 to do. But suppose he turns out -- doesn't look
6 like a member of the tribe. Then what?

7 MR. HENKEL: Well, as the Ninth
8 Circuit concluded, you could -- the officer --
9 officer could start by asking. If the officer
10 is concerned about the truthfulness --

11 JUSTICE BREYER: He's drunk.

12 MR. HENKEL: Well, if -- if we're
13 talking about being in Montana, for example, we
14 have eight federally recognized tribes in
15 Montana, all of whom issue tribal identification
16 cards and all of whom --

17 JUSTICE BREYER: Doesn't have one.

18 MR. HENKEL: Then -- then he could go
19 radio in -- he could get a driver's license and
20 go radio into tribal dispatch to have the tribal
21 --

22 JUSTICE BREYER: It looks like he's
23 going to take off as soon as you get out of the
24 car or stop or go away from the car. You can
25 detain him there. You can detain him there

1 while you radio. Who do you radio?

2 MR. HENKEL: You could radio tribal
3 dispatch or state dispatch.

4 JUSTICE BREYER: They all have that
5 and they know everybody who's in the tribe and
6 they say, yes, we have a man named Mr. Smith in
7 this tribe. Then what?

8 MR. HENKEL: Then they can come out to
9 the scene.

10 JUSTICE BREYER: Oh, they can come out
11 to the scene, but they might be busy. Maybe --

12 MR. HENKEL: Well --

13 JUSTICE BREYER: -- it's a long way
14 away.

15 MR. HENKEL: -- and -- and that's
16 exact -- I think all of these problems that are
17 being posed here is exactly why Congress
18 provided for cross-deputization, because it
19 eliminates all of these problems.

20 JUSTICE BREYER: And how does that
21 work?

22 MR. HENKEL: How does
23 cross-deputization work?

24 JUSTICE BREYER: Yeah.

25 MR. HENKEL: Cross-deputization works

1 by the BIA cross-deputizing tribal officers to
2 police and investigate federal crime in Indian
3 country. So they have to enter into agreement
4 with the BIA.

5 JUSTICE BREYER: And how does that --
6 how many of them have done that?

7 MR. HENKEL: I -- the last statistics
8 that I was able to find were a 2002 report by
9 the Bureau of Justice Statistics, which
10 indicated that 99 percent of tribal law
11 enforcement agencies have cross-deputization
12 agreements with either the BIA, neighboring
13 state authorities, or neighboring tribal
14 authorities.

15 JUSTICE BREYER: So, in your opinion,
16 this is a non-problem; all they have to do is
17 get the right paper?

18 MR. HENKEL: In my opinion, this is --
19 this -- this situation is in the minority of
20 situations. I think, in the vast majority of
21 situations, there is going to be a duly
22 cross-commissioned tribal officer.

23 JUSTICE BREYER: Okay. Thank you.

24 CHIEF JUSTICE ROBERTS: Justice Alito.

25 JUSTICE ALITO: Counsel, it does seem

1 to me that determining whether a person is an
2 Indian, which can mean a member of any tribe,
3 not just the particular tribe whose land is at
4 issue, may be more difficult than you suggest.

5 But what is the tribal officer
6 supposed to do after determining pretty clearly
7 that a person is not an Indian?

8 So consider the situation where the
9 tribal officer has reasonable suspicion that a
10 driver is driving under the influence and would
11 present a danger if allowed to continue to
12 drive, but the officer is pretty certain this
13 person is not an Indian.

14 Let's say the -- the person has a -- a
15 -- a European Union driver's license and shows
16 plane tickets showing that the person arrived in
17 San Francisco two days ago. So it's pretty
18 clear that this person is not an Indian but
19 would present a danger if allowed to continue.

20 What can the tribal officer do there?
21 Just let the person go?

22 MR. HENKEL: I -- I think, if the
23 conduct rises to the level of a potential, you
24 know, ongoing active breach of the peace where
25 public safety is in jeopardy, I think, in that

1 circumstance, that would fit under the Ninth
2 Circuit's apparent standard.

3 But -- but, again, it's going to be
4 fact-dependent. Like here, in this case,
5 Officer Saylor said, well, Mr. Cooley's eyes
6 were bloodshot, but, as he acknowledged, that
7 wasn't nearly enough for him to determine
8 whether or not he was --

9 JUSTICE ALITO: All right. Well, so
10 this person -- the person is not so drunk that
11 it's plain that alcohol is above the level, but
12 the officer has reasonable suspicion.

13 Can the officer ask the person to come
14 out of the car and perform a field sobriety
15 test?

16 MR. HENKEL: I don't believe so, no,
17 he can't.

18 JUSTICE ALITO: So he just has to let
19 that person go?

20 MR. HENKEL: He can call and radio in
21 to state or federal authorities to come to the
22 scene.

23 JUSTICE ALITO: Well, I thought you
24 said that the person can't be detained during
25 that interim period.

1 MR. HENKEL: Well, if he's assess --
2 if he's trying to ascertain Indian status.

3 JUSTICE ALITO: No, the person is not
4 an Indian, 99 percent clear not an Indian.

5 MR. HENKEL: He -- he -- he could
6 certainly ask the individual to stay there while
7 he contacts law enforcement. But can he
8 officially detain? No, I do not think so.

9 JUSTICE ALITO: It's voluntary. All
10 right. So does it depend on the severity of the
11 offense? What if it is a situation where he has
12 reasonable suspicion that this person is a
13 murderer?

14 MR. HENKEL: If he's got reasonable
15 suspicion that this person's a murderer?

16 JUSTICE ALITO: Yeah.

17 MR. HENKEL: No, I don't think he has
18 enough because reasonable suspicion is such a
19 low threshold. I mean, what -- what is that --
20 what are -- what are the surrounding facts that
21 -- that -- I think that, ultimately, if this --
22 if there's information that somebody is a serial
23 killer and they're about to run into a school,
24 again, when -- when there's some sort of active
25 breach of the peace, some sort of imminent

1 threat of violence, there is -- there's a reason
2 at that point to step in and just detain. And I
3 think that comports with the Ninth Circuit's
4 standard.

5 JUSTICE ALITO: All right. Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor.

8 JUSTICE SOTOMAYOR: Counsel, if
9 they're not authorized by law to make -- to do
10 investigations, why are they subject to the
11 Fourth Amendment --

12 MR. HENKEL: Well, they're not
13 strictly --

14 JUSTICE SOTOMAYOR: -- to the Fourth
15 Amendment's exclusionary rule?

16 MR. HENKEL: Well, they're not
17 strictly subject to the Fourth Amendment. It's
18 the Fourth Amendment counterpart under the
19 Indian Civil Rights Act.

20 JUSTICE SOTOMAYOR: Why is that
21 subject to the exclusionary rule? Meaning
22 assuming for the sake of argument that the
23 Indians have a patrol or any neighborhood group
24 has a patrol in their neighborhood, and a --
25 they see someone who they have reasonable

1 suspicion about and detain them for arrest.

2 Would that security -- would that --
3 any items seized by that person be subject to
4 suppression?

5 MR. HENKEL: Yes, they would.

6 JUSTICE SOTOMAYOR: Why?

7 MR. HENKEL: Because --

8 JUSTICE SOTOMAYOR: It's a private
9 security force on my private land.

10 MR. HENKEL: Well --

11 JUSTICE SOTOMAYOR: Or even on the
12 street around my private land. Why are they
13 subject to the Fourth Amendment?

14 MR. HENKEL: Well, the government --

15 JUSTICE SOTOMAYOR: It's not the
16 government acting.

17 MR. HENKEL: The government concedes
18 that the exclusionary rule --

19 JUSTICE SOTOMAYOR: I know they --

20 MR. HENKEL: -- applies to violations
21 that --

22 JUSTICE SOTOMAYOR: -- helped you out
23 by -- I know they helped you out by that. But
24 it seems to me they should have argued in the
25 alternative, but that would have been my

1 litigation strategy. I'm asking you a question.

2 MR. HENKEL: Sure. So --

3 JUSTICE SOTOMAYOR: That question is,
4 why are they subject to the Fourth Amendment,
5 outside of the government's concession?

6 MR. HENKEL: I guess let me answer it
7 by explaining what I think the deterrent effect
8 is. I think that recognizing a tribal --

9 JUSTICE SOTOMAYOR: The Fourth
10 Amendment, that -- that has to do with you
11 asking us to create another rule.

12 I'm asking you, under the rules as
13 they exist right now, if you don't consider them
14 sovereign and you don't consider them acting on
15 behalf of the government because they're not
16 deputized, why are they subject to the Fourth
17 Amendment? Why is anything they found subject
18 to the Fourth Amendment suppression rule?

19 MR. HENKEL: Because the Indian Civil
20 Rights Act includes a Fourth Amendment
21 counterpart, and it -- it --

22 JUSTICE SOTOMAYOR: Whether it's a
23 counterpart or not, it's not the Fourth
24 Amendment.

25 MR. HENKEL: Right, there's no --

1 JUSTICE SOTOMAYOR: The Fourth
2 Amendment says only private actors. Putting --

3 MR. HENKEL: The Fourth Amendment --

4 JUSTICE SOTOMAYOR: -- that aside,
5 counsel, what would happen if I, as a private
6 citizen, had reasonable suspicion that someone
7 was a danger, Justice Alito's hypothetical?
8 Would I be justified -- of a drunken driver --
9 would I be justified in holding that person?

10 MR. HENKEL: That would be pure
11 citizens arrest analysis. You could potentially
12 be subject to a civil claim for false
13 imprisonment, but, certainly, any evidence that
14 you seize isn't going to be subject to
15 suppression for a private act --

16 JUSTICE SOTOMAYOR: Is it false
17 imprisonment if it turns out that the other side
18 -- well, you would say just the detention itself
19 would subject me to liability. Okay. Thank
20 you, counsel.

21 MR. HENKEL: Right. Right.

22 CHIEF JUSTICE ROBERTS: Justice Kagan.

23 JUSTICE KAGAN: Mr. Henkel, the
24 government relies in some significant measure on
25 the idea of cross-enforcement authority, in

1 other words, the belief that sovereigns
2 generally have the power to respond to potential
3 violations of another sovereign's laws.

4 Are you contesting that that authority
5 generally exists, in other words, outside the
6 Indian context, or are you accepting that but
7 just saying it's -- it's different in the Indian
8 context?

9 MR. HENKEL: I -- I'm not accepting
10 that, no. I -- I think the first place to start
11 is a line of analysis that this Court gave in
12 Plains Commerce Bank, where the Court expressly
13 rejected, you know, drawing some sort of
14 parallel between tribal authority and what state
15 and federal authorities they can do.

16 Those -- that line of argument, this
17 Court said, completely overlooks the very
18 reasons that cases like Montana and Oliphant and
19 this one even exist, which is that the sovereign
20 authority of Indian tribes is limited in ways
21 state and federal authority is not.

22 And the -- and the way that it's more
23 limited is because they are not full territorial
24 sovereigns. They do not have authority over all
25 who come within their borders.

1 So I think, when you start from that
2 proposition and then you're -- any analysis --
3 any analogy to, you know, state authority to
4 enforce federal law and -- and vice versa, I
5 mean, there's -- there's no comparison right out
6 of the gate because states and federal
7 authorities are full territorial sovereigns.
8 They have sovereign authority.

9 JUSTICE KAGAN: So -- so you're
10 really -- I mean, on the -- the two alternatives
11 I gave you, you're really resting on the idea
12 that tribal authority is just different from
13 state authority, so that even if we were to find
14 a lot of cross-enforcement as between state
15 officers or as between state officers and the
16 federal government, that doesn't carry over?
17 That's what you're saying?

18 MR. HENKEL: Yes.

19 JUSTICE KAGAN: And -- and --

20 MR. HENKEL: That is what I'm saying.

21 JUSTICE KAGAN: But you don't contest
22 the premise?

23 MR. HENKEL: No, not generally, I do
24 not. I think that -- no, I don't -- I don't
25 contest it.

1 JUSTICE KAGAN: Because, for example,
2 you cite Professor Kerr in your brief, and
3 Professor Kerr contests the premise very --
4 pretty strongly, that there's a whole lot of
5 cross-enforcement -- clear cross-enforcement
6 authority.

7 MR. HENKEL: I -- I -- it -- I think
8 that the issue on -- with cross-enforcement is
9 potentially this: I mean, right now, many state
10 arrests lead to federal prosecutions. It
11 happens all the time. But, usually, the -- the
12 initial state investigation is investigating
13 state crime, violations of state law, which
14 makes sense because the police power is in -- in
15 the state, there's more criminal laws that --
16 that -- that states adopt. And then -- so
17 there's a legitimate state investigation and
18 then they ultimately work with the federal
19 government on handing over the evidence, and
20 there's a federal prosecution.

21 I think a more interesting question is
22 posed when a state doesn't actually punish
23 particular conduct and they're acting purely to
24 enforce federal law. I think there's a
25 potential problem there. I don't think it has

1 anything to do with this case.

2 JUSTICE KAGAN: Thank you Mr. Henkel.

3 MR. HENKEL: That would --

4 CHIEF JUSTICE ROBERTS: Justice
5 Gorsuch.

6 JUSTICE GORSUCH: Good morning,
7 counsel.

8 A question for you that I actually
9 would have liked to have gotten to with
10 Mr. Feigin, but time didn't permit; hopefully
11 you have some thoughts on it as -- AS well.

12 Let's say -- just work with me for the
13 moment and suppose that there is some
14 permissible role here for tribal authorities,
15 and also suppose that in the course of a stop,
16 that the tribal authority engages in some
17 conduct that would violate the Constitution and
18 that your client wanted to pursue a civil claim
19 for that violation. If -- if, of course, in --
20 in the state context, it would be 1983; in the
21 federal officer context, there would be Bivens.

22 What -- what remedy would be available
23 -- perhaps you haven't given this thought, but,
24 if you have, I'm curious what remedy you think
25 might be available against a tribal officer.

1 Would there be a state law remedy? Would there
2 be some federal remedy? What -- what thoughts
3 do you have there?

4 MR. HENKEL: I don't think there would
5 be any remedy in terms of a private cause of
6 action for civil damages. Certainly, tribal
7 officers aren't mentioned in 1983. You can't
8 bring a claim -- claim against a tribe because
9 they have sovereign immunity.

10 You could potentially try to sue the
11 tribe in tribal court, but the likelihood of
12 that being successful is -- is not very good.
13 And, ultimately, in that -- in that situation,
14 even if you could sue him in tribal court, you
15 can't get it into state or federal court, so
16 this Court doesn't sit at the end of the line
17 there.

18 So I think there's very -- there's
19 virtually no remedy other than exclusion of
20 evidence in this circumstance.

21 JUSTICE GORSUCH: Have you thought --
22 and -- and you agree, though, that there would
23 be exclusion under IRCA, right?

24 MR. HENKEL: Yes.

25 JUSTICE GORSUCH: Okay. And then, on

1 -- on -- on the -- on the tort front, have you
2 thought about a state law remedy, a state tort
3 suit, state court --

4 MR. HENKEL: I --

5 JUSTICE GORSUCH: -- for something
6 that happens on the -- either fee-simple land
7 or, as here, a -- you know, a right-of-way?

8 MR. HENKEL: Oh, so -- well, the
9 Montana Supreme Court has found, I believe, that
10 tribal officers are under tribal sovereign
11 immunity --

12 JUSTICE GORSUCH: All right.

13 MR. HENKEL: -- for police activity --

14 JUSTICE GORSUCH: All right.

15 MR. HENKEL: -- when it comes to
16 non-Indians, so at least not in Montana.

17 JUSTICE GORSUCH: Okay. Thank you,
18 counsel. Perhaps --

19 CHIEF JUSTICE ROBERTS: Justice
20 Kavanaugh.

21 JUSTICE GORSUCH: -- Mr. Feigin can
22 help with that.

23 JUSTICE KAVANAUGH: Thank you, Chief
24 Justice.

25 And good morning, Mr. Henkel. You

1 make what I think are forceful
2 separation-of-powers arguments, particularly
3 that Congress has provided for
4 cross-deputization, and that was not taken
5 advantage of here. So I take that point, and
6 that's an important one for me.

7 But, at the same time, a couple other
8 thoughts that I'll throw out there, and then you
9 can react to them.

10 The amicus brief from the former U.S.
11 Attorneys says that "criminal jurisdiction in
12 Indian country is an indefensible morass of
13 complex, conflicting, and illogical commands
14 layered in over decades via congressional
15 policies and court decisions and without the
16 consent of tribal nations."

17 And I don't think you're going to
18 disagree with that description necessarily, and
19 so that leads me to think that one of the things
20 we should be trying to do here is -- is to do no
21 harm because there's lots of ripple effects from
22 a broad decision.

23 And with that in mind, there are
24 statements in our decisions in Duro and Strate
25 that really cut directly against you, as you're

1 -- you're well aware. And you can say those are
2 dicta, and that might be correct, but those have
3 guided the law -- law enforcement for several
4 decades.

5 I think Congress and the executive
6 could reasonably rely on those statements in the
7 Court's decision, certainly the Cohen treatise
8 treats those statements as authoritative in
9 terms of guidance.

10 So why isn't the best thing we can do
11 here just to stick with what we said in those
12 cases? It's not very analytically satisfying,
13 but it's a narrow result. It does not make a
14 morass, as it was described, any worse. What do
15 you think?

16 MR. HENKEL: You mean stick with the
17 -- the statements about detaining and ejecting
18 from the reservation?

19 JUSTICE KAVANAUGH: Yes.

20 MR. HENKEL: I -- I -- I think those
21 statements are -- the problem with those beyond
22 -- you're -- you're right, I -- I think they're
23 dicta, and I think that they -- Duro, for
24 example, was talking about the exclusion power
25 which, we don't have here. But the biggest

1 problem I see under your proposal is that the
2 Court has not defined the source or the scope of
3 what this detain-and-eject power is.

4 JUSTICE KAVANAUGH: Well, that's why
5 -- that's why I said it's not analytically all
6 that satisfying, but it's been out there for 30
7 years, and as described in the Cohen handbook,
8 which is useful as you -- you're well aware, it
9 says, "The Supreme Court has consistently
10 reaffirmed the authority of tribal police to
11 arrest offenders within Indian country and
12 detain them until they can be turned over to the
13 proper authorities, even if the tribe itself
14 would lack criminal jurisdiction."

15 That's the black-letter description.

16 MR. HENKEL: I -- I think the terms
17 "arrest," "detain," and "turn over" are being
18 used fairly loosely. I think we -- what --
19 what's happening -- look at what happened here.
20 There was a detention, an investigation, pulling
21 Mr. Cooley out of the car, putting him in the
22 back of the patrol unit, which I would argue is
23 an arrest, and then going back to his vehicle
24 multiple times to search it for, you know,
25 evidence of crime.

1 And that is far -- I -- I don't think
2 this Court was saying anything like that in Duro
3 or in Strate. It was just they have this
4 general power to eject outsiders from
5 reservations. So I think that it would be more
6 problematic to just stand on those statements
7 going -- going forward.

8 JUSTICE KAVANAUGH: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Barrett.

11 JUSTICE BARRETT: I'd like to pick up
12 where Justice Kavanaugh left off. I mean, on
13 the one hand, as Justice Kavanaugh points out,
14 it's not very analytically satisfying to rely on
15 dicta, particularly from the footnote in Strate.
16 But I want to try this on: You know, you say
17 one problem with our -- you know, or the
18 government's approach or an approach saying that
19 there is some sort of retained authority to
20 police here is that we haven't identified its
21 scope or its source.

22 But, you know, Montana and those cases
23 that followed it relied pretty heavily on the
24 unfairness of imposing tribal law on those who
25 didn't participate in its creation. And in that

1 respect, Strate's footnote is perfectly
2 consistent with that because, as the United
3 States pointed out in argument and in its brief,
4 you know, Cooley and -- and other non-members of
5 the tribe are represented in the creation of
6 federal law.

7 And so it doesn't pose that same
8 problem here. It's -- it's far less of a
9 unfairness and Strate's footnote can be seen to
10 be consistent with that principle, particularly
11 if the United States is right that one way to
12 understand Montana is that that is an instance
13 of implied preemption that cashes out when you
14 consider the assertion of authority to
15 adjudicate finally civil or criminal liability
16 or the imposition of regulations on those who
17 didn't participate in its exercise.

18 So can you explain to me why that
19 would not be a way to reconcile the Strate
20 footnote and the United States' proposed
21 authority here?

22 MR. HENKEL: Well, certainly, Mr.
23 Cooley participates in the federal government,
24 but Mr. Cooley does not participate in tribal
25 government. He has no say in the laws and

1 regulations. He has no --

2 JUSTICE BARRETT: Well, I -- I
3 understand that. That was the premise of my
4 question. But why is it unfair, on that
5 rationale, simply to submit him to the authority
6 of a police officer in a temporary stop?

7 MR. HENKEL: Because it's all
8 happening outside the structure of the
9 Constitution. And as my discussion with Mr. --
10 Justice Gorsuch revealed, there's -- there's no
11 remedy, there's no recourse here if something
12 goes wrong, that if Mr. Cooley's civil rights
13 are violated here, there -- there -- there's
14 nothing he can do because of tribal sovereign
15 immunity and this all occurring outside the
16 structure of the Constitution. And --

17 JUSTICE BARRETT: Okay, well, let me
18 -- let me just stop you there so I can ask this
19 question too: Justice Thomas was asking you,
20 you know, the same hypothetical as Mr. Cooley's
21 stop but substituting in a serial killer.

22 And -- and you said, well, if he fits
23 the description and maybe there might be able to
24 be detention. And I assume that might be an
25 exercise of what the Ninth Circuit described as

1 the apparent or obvious violation of law.

2 That -- that's a new phrase, right?

3 We have reasonable suspicion. We have probable
4 cause. How do you tell if something's an
5 apparent and obvious violation of the law?

6 MR. HENKEL: I -- I -- I think that
7 the obvious and apparent standard is a product
8 of the rule at common law, which is that -- for
9 private citizens arrests, which also apply to
10 officers and that --

11 JUSTICE BARRETT: But how do you apply
12 it?

13 MR. HENKEL: Yeah, so I think that it
14 -- you apply it in terms of -- I forget who
15 posed the hypothetical before of drugs being
16 visible. Certainly if drugs are visible, there
17 is an apparent crime.

18 But I also think there is a breach of
19 the peace aspect when there is something
20 imminent about to occur, when there is public
21 safety that's, you know, in jeopardy and it's in
22 jeopardy now, then there is authority to step in
23 and detain.

24 JUSTICE BARRETT: Thank you, counsel.

25 MR. HENKEL: Thank you.

1 CHIEF JUSTICE ROBERTS: A minute to
2 wrap up, counsel.

3 MR. HENKEL: Thank you, Mr. Chief
4 Justice.

5 The issue here is about inherent
6 tribal authority over non-Indians. Through
7 decades of consistent opinions, this Court has
8 delineated a scope of that authority to exclude
9 police power over non-Indians, especially on
10 non-tribal lands such as the public right-of-way
11 here where Officer Saylor seized and searched
12 Mr. Cooley.

13 Moreover, to the extent this absence
14 of tribal police authority creates a
15 jurisdictional gap in reservation law
16 enforcement, Congress has already filled the gap
17 by providing for cross-deputization of tribal
18 officers.

19 The fact that relevant officials did
20 not avail themselves of cross-deputization in
21 this case does not justify usurping Congress's
22 plenary authority with a judicial finding of
23 inherent tribal authority.

24 Mr. Cooley does not challenge tribal
25 sovereignty. He simply asked that the

1 boundaries of tribal sovereignty be respected as
2 this Court has previously defined them.

3 The court of appeals decision should
4 be affirmed. Thank you.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Rebuttal, Mr. Feigin?

8 REBUTTAL ARGUMENT OF ERIC J. FEIGIN
9 ON BEHALF OF THE PETITIONER

10 MR. FEIGIN: Thank you, Your Honor.

11 I would just want to make four
12 relatively quick points. One is just to touch
13 on remedies for potentially unlawful action.

14 Beyond the exclusionary rule, there
15 would be a suit in tribal court, I think the
16 tribes have every incentive to be solicitous of
17 such a suit because they don't want to get
18 cross-wise with the other authorities.

19 If the officer is a non-Indian, he can
20 be -- which a surprising number of them are --
21 he can be sued in state court. If they -- if
22 tribes -- if a tribal officer really exceeds his
23 boundaries, the federal government could come in
24 and prosecute.

25 And then there -- there could be

1 legislative or executive action that simply
2 precludes these handovers, if Congress actually
3 perceived a problem. But no one has identified
4 any history of abuses.

5 Second, cross-designation is simply
6 not a solution. If you look at our brief and
7 the Cayuga Nation brief they detail the problems
8 with that. Just because someone has a -- in
9 particular they're fickle and you need them with
10 multiple agencies.

11 You can't just have one with the
12 federal government. You'd need one with state
13 or local authorities as well.

14 The third point I -- I wanted to make
15 was to just reinforce why this would be an
16 example of Montana Exception 2, assuming that it
17 applies. It's because of the chilling effect on
18 enforcement against even Indians.

19 I take it that if someone were driving
20 around with a bumper sticker that said "I am not
21 an Indian," they couldn't be stopped. The
22 indeterminacy problems are not solvable by a
23 quick radio call. Issues like tribal status and
24 land status are frequently litigated.

25 They have to at least be resolved back

1 at the station. And under the Ninth Circuit's
2 rule, Officer Saylor, who is a member of the
3 tribe, couldn't even protect himself from what
4 he thought was a potential attack by -- by the
5 Respondent here.

6 And then, finally, I would just like
7 to emphasize, I think, the incoherence of the
8 approach that the other side is urging. They
9 say that you can detain someone who matches the
10 description of a serial killer.

11 Well, how sure do you have to be that
12 he matches the description of the serial killer?
13 Where is that authority coming from?

14 So what if he is not 100 percent sure,
15 or what if he, instead of knowing he matches the
16 description of a serial killer, he simply sees a
17 bloody knife on the passenger seat and he knows
18 that a woman on the reservation has recently
19 been brutally murdered by knife.

20 He has to have the authority to
21 detain. Thank you.

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

24 (Whereupon, at 11:09 a.m., the case
25 was submitted.)

Official - Subject to Final Review

1	affirmative [2] 3:20 29:4 affirmatively [4] 17:23 25:25 26:2, 3 affirmed [3] 32:9 33:25 64:4 afraid [1] 24:23 agencies [2] 42:11 65:10 ago [1] 43:17 agree [2] 9:2 54:22 agreement [1] 42:3 agreements [2] 27:7 42:12 alcohol [1] 44:11 alerted [1] 36:24 alienation [1] 13:25 Alito [14] 13:5,6 14:6 15:2,20 42: 24,25 44:9,18,23 45:3,9,16 46:5 Alito's [1] 49:7 allow [1] 11:10 allowed [2] 43:11,19 allowing [1] 23:8 alone [1] 8:14 already [1] 63:16 alternative [3] 6:21 18:24 47:25 alternatives [1] 51:10 Amendment [16] 4:10 9:4,5 30:22 46:11,17,18 47:13 48:4,10,17,18, 20,24 49:2,3 Amendment's [1] 46:15 amicus [2] 24:20 56:10 Among [1] 8:10 analogized [1] 7:18 analogy [1] 51:3 analysis [6] 4:1 9:4,5 49:11 50:11 51:2 analytic [1] 20:6 analytical [1] 17:11 analytically [3] 57:12 58:5 59:14 analyzed [1] 8:24 announced [1] 5:21 another [6] 3:14 8:2,7 21:10 48:11 50:3 answer [3] 14:9 19:18 48:6 antecedent [1] 24:4 anyone's [1] 8:12 anyway [1] 12:11 apparent [7] 31:10 38:21 44:2 62: 1,5,7,17 appeals [1] 64:3 APPEARANCES [1] 1:17 applicability [1] 34:4 applicable [1] 9:17 application [1] 35:8 applied [3] 9:13 11:16 12:16 applies [8] 6:23 9:12,15 19:14 20: 5 21:12 47:20 65:17 apply [10] 4:13 6:11 7:22 8:2 11:17 19:24 34:16 62:9,11,14 applying [1] 11:21 approach [3] 59:18,18 66:8 approached [1] 21:19 approaches [1] 20:8 approaching [1] 22:2 appropriate [1] 21:3 areas [2] 12:24 14:16 aren't [1] 54:7	argue [3] 5:4 35:12 58:22 argued [2] 15:25 47:24 argument [16] 1:14 2:2,5,8 3:4,7 16:21 19:12,13 31:25 34:10 37:3 46:22 50:16 60:3 64:8 arguments [2] 16:21 56:2 around [4] 15:5 23:4 47:12 65:20 arrest [27] 8:8,11 12:4,4,11 14:11, 13 23:1,9,15,22 24:8,10,12 28:4 29:19 30:6,11,12,13,22 32:10 47: 1 49:11 58:11,17,23 arrested [1] 17:2 arrests [9] 10:16 24:17 27:25,25 29:6,7 31:13 52:10 62:9 arrived [1] 43:16 ascertain [2] 39:16 45:2 aside [1] 49:4 asks [1] 33:4 aspect [1] 62:19 aspects [2] 13:8,13 assertion [1] 60:14 assess [1] 45:1 assessing [1] 3:16 assume [3] 6:3 21:11 61:24 assumed [2] 8:16 11:25 assuming [3] 38:8 46:22 65:16 Atkinson [4] 7:6 9:23 20:13 35:6 attack [1] 66:4 attention [1] 4:25 Attorney's [1] 24:20 Attorneys [1] 56:11 authoritative [1] 57:8 authorities [14] 15:18 23:8 29:13, 23 30:18 42:13,14 44:21 50:15 51: 7 53:14 58:13 64:18 65:13 authority [99] 3:12,16 5:2,5,18 6:1 8:5,9,11 9:24 10:15,19,22 11:22 12:1,3,5,11,18 13:1,20 14:6 17:9, 16,18,23 18:25 19:8 21:2 23:1,7 24:4,7,16 25:4,5,7,19,21,24 26:11, 19 27:3,5,6,16,23,24 28:4,6,10,13, 18,20 29:5,10,18 31:12 32:6,7,12, 18 33:1,5,7,11,13,22,24 34:7,12, 15 37:23 38:3 49:25 50:4,14,20, 21,24 51:3,8,12,13 52:6 53:16 58: 10 59:19 60:14,21 61:5 62:22 63: 6,8,14,22,23 66:13,20 authorization [1] 5:19 authorized [1] 46:9 avail [1] 63:20 available [2] 53:22,25 aware [2] 57:1 58:8 away [5] 5:6 28:13 34:9 40:24 41: 14	basis [4] 6:24 17:4 32:23,25 began [1] 5:1 beginning [3] 22:24 23:2 28:1 behalf [9] 1:21,23 2:4,7,10 3:8 32: 1 48:15 64:9 belief [1] 50:1 believe [5] 9:23 12:12 34:25 44:16 55:9 below [3] 4:9 32:9 33:25 best [2] 17:20 57:10 better [1] 13:16 between [7] 13:8 20:7 22:10 38: 23 50:14 51:14,15 beyond [3] 37:24 57:21 64:14 BIA [3] 42:1,4,12 biggest [1] 57:25 bit [4] 9:10 29:1 30:9 36:19 Bivens [1] 53:21 black-letter [1] 58:15 bloodshot [3] 36:22 37:11 44:6 bloody [1] 66:17 Boister's [1] 11:14 BOLO [1] 38:9 borders [2] 3:13 50:25 both [3] 7:6 14:25 26:8 boundaries [2] 64:1,23 Bourland [1] 5:8 Branch [2] 26:22 32:18 breach [3] 43:24 45:25 62:18 Breyer [2] 10:12,13 11:8 12:10 14: 10 39:5,6,12,19,24 40:11,17,22 41: 4,10,13,20,24 42:5,15,23 brief [1] 5:19 18:2,25 24:20 27:5 30:15 52:2 56:10 60:3 65:6,7 briefly [1] 10:23 briefs [2] 15:25 23:5 bring [1] 54:8 broad [3] 7:24 32:18 56:22 broader [2] 20:10 34:4 brutally [1] 66:19 bumper [1] 65:20 Bureau [1] 42:9 busy [1] 41:11
2	2 [6] 19:2,8,13 21:12,13 65:16 2002 [1] 42:8 2021 [1] 1:11 218 [1] 11:13 23 [1] 1:11 25 [3] 23:11,25 27:1 2804 [1] 23:11 2806(d) [2] 23:25 27:1	argued [2] 15:25 47:24 argument [16] 1:14 2:2,5,8 3:4,7 16:21 19:12,13 31:25 34:10 37:3 46:22 50:16 60:3 64:8 arguments [2] 16:21 56:2 around [4] 15:5 23:4 47:12 65:20 arrest [27] 8:8,11 12:4,4,11 14:11, 13 23:1,9,15,22 24:8,10,12 28:4 29:19 30:6,11,12,13,22 32:10 47: 1 49:11 58:11,17,23 arrested [1] 17:2 arrests [9] 10:16 24:17 27:25,25 29:6,7 31:13 52:10 62:9 arrived [1] 43:16 ascertain [2] 39:16 45:2 aside [1] 49:4 asks [1] 33:4 aspect [1] 62:19 aspects [2] 13:8,13 assertion [1] 60:14 assess [1] 45:1 assessing [1] 3:16 assume [3] 6:3 21:11 61:24 assumed [2] 8:16 11:25 assuming [3] 38:8 46:22 65:16 Atkinson [4] 7:6 9:23 20:13 35:6 attack [1] 66:4 attention [1] 4:25 Attorney's [1] 24:20 Attorneys [1] 56:11 authoritative [1] 57:8 authorities [14] 15:18 23:8 29:13, 23 30:18 42:13,14 44:21 50:15 51: 7 53:14 58:13 64:18 65:13 authority [99] 3:12,16 5:2,5,18 6:1 8:5,9,11 9:24 10:15,19,22 11:22 12:1,3,5,11,18 13:1,20 14:6 17:9, 16,18,23 18:25 19:8 21:2 23:1,7 24:4,7,16 25:4,5,7,19,21,24 26:11, 19 27:3,5,6,16,23,24 28:4,6,10,13, 18,20 29:5,10,18 31:12 32:6,7,12, 18 33:1,5,7,11,13,22,24 34:7,12, 15 37:23 38:3 49:25 50:4,14,20, 21,24 51:3,8,12,13 52:6 53:16 58: 10 59:19 60:14,21 61:5 62:22 63: 6,8,14,22,23 66:13,20 authorization [1] 5:19 authorized [1] 46:9 avail [1] 63:20 available [2] 53:22,25 aware [2] 57:1 58:8 away [5] 5:6 28:13 34:9 40:24 41: 14	C
3	3 [1] 2:4 30 [1] 58:6 31 [1] 2:7	back [7] 8:24 9:3 27:22 38:17 58: 22,23 65:25 Bank [3] 9:15 35:7 50:12 Barrett [1] 27:20,21 28:16 29:14 30:20 59:10,11 61:2,17 62:11,24 based [2] 8:13 22:19 basic [1] 32:12 basically [2] 15:25 16:11	call [3] 31:17 44:20 65:23 came [3] 1:13 5:24 37:6 cannot [2] 5:10 28:23 car [10] 14:15,15,16,25 15:4 38:15 40:24,24 44:14 58:21 cards [1] 40:16 Carlos [1] 13:18 carry [1] 51:16 Case [20] 3:4 12:20 20:25 26:18 27:16 32:4,22 33:21 34:4 35:1 36: 19 37:3,9,10 39:11 44:4 53:1 63: 21 66:23,24 cases [11] 5:21 13:19 17:17 19:25 25:19 28:9 31:10 34:11 50:18 57: 12 59:22 cashes [1] 60:13 casing [1] 31:18 cause [3] 30:16 54:5 62:4 Cayuga [1] 65:7
6	B		
9			
A			
a.m [3] 1:15 3:2 66:24 ability [5] 3:17 4:20 8:12 31:16,17 able [3] 23:15 42:8 61:23 above [1] 44:11 above-entitled [1] 1:13 absence [1] 63:13 abuses [1] 65:4 accept [1] 7:19 accepting [3] 11:20 50:6,9 accountability [1] 33:15 acknowledged [1] 44:6 act [12] 4:11 7:22,24 15:13 21:23 22:4,12,16,22 46:19 48:20 49:15 acting [4] 15:14 47:16 48:14 52:23 action [3] 54:6 64:13 65:1 active [2] 43:24 45:24 activities [2] 4:15 7:25 activity [4] 31:15 35:15 38:16 55: 13 actors [1] 49:2 acts [1] 27:15 actually [7] 7:20 14:11 17:19 22: 14 52:22 53:8 65:2 address [2] 22:19 27:11 addressed [1] 32:17 adjudicate [2] 28:10 60:15 adjudication [3] 10:2 14:2 28:24 adjudicatory [10] 6:8 9:18 12:5,17 19:15 22:24 23:2 24:13 28:1 35: 12 adopt [1] 52:16 advantage [1] 56:5 advocating [1] 39:14 affairs [1] 32:8			

Official - Subject to Final Review

<p>certain [6] 10:15 21:25 22:1,5,15 43:12</p> <p>certainly [10] 14:20 22:21 35:12 38:21 45:6 49:13 54:6 57:7 60:22 62:16</p> <p>cetera [1] 37:11</p> <p>challenge [1] 63:24</p> <p>change [1] 36:18</p> <p>changed [1] 37:9</p> <p>character [1] 33:3</p> <p>check [1] 38:12</p> <p>CHIEF [39] 3:3,9 4:24 5:23 6:17,20 7:12,15 9:7 10:7,11 13:3 15:22 18:8,20 21:15 24:24 25:1 27:19 30:24 31:22 32:2 34:1 35:3,9 36:13, 15 39:4 42:24 46:6 49:22 53:4 55:19,23 59:9 63:1,3 64:5 66:22</p> <p>chilling [1] 65:17</p> <p>chills [3] 4:20 18:11 19:19</p> <p>choice [2] 19:5,8</p> <p>Circuit [8] 4:6 7:17 16:11 31:3,11 38:22 40:8 61:25</p> <p>Circuit's [7] 3:24 8:3 16:16 19:23 44:2 46:3 66:1</p> <p>circumstance [4] 37:16 38:10 44:1 54:20</p> <p>circumstances [3] 6:11 15:10 21:6</p> <p>cite [1] 52:2</p> <p>cited [1] 24:19</p> <p>cites [1] 34:9</p> <p>citizen [3] 7:19,20 49:6</p> <p>citizens [7] 4:3 8:8,11 31:13 33:11 49:11 62:9</p> <p>Civil [16] 4:11 6:8,24 7:21,24 9:17 19:15 33:16 35:12 46:19 48:19 49:12 53:18 54:6 60:15 61:12</p> <p>civilly [1] 28:11</p> <p>claim [5] 14:7 49:12 53:18 54:8,8</p> <p>claims [2] 4:16 33:10</p> <p>clarify [1] 30:8</p> <p>Clause [1] 11:2</p> <p>clear [9] 9:22 11:6 19:7 21:24 28:9 30:15 43:18 45:4 52:5</p> <p>clearly [4] 9:15,16 22:4 43:6</p> <p>client [1] 53:18</p> <p>cloaked [1] 33:15</p> <p>close [1] 24:12</p> <p>codified [1] 4:11</p> <p>Cohen [2] 57:7 58:7</p> <p>colleagues [1] 18:5</p> <p>colloquially [1] 30:12</p> <p>Colville [6] 5:21,24 6:7 13:17 28:7 34:9</p> <p>come [8] 25:4,11 41:8,10 44:13,21 50:25 64:23</p> <p>comes [3] 25:5,18 55:15</p> <p>coming [2] 37:19 66:13</p> <p>commands [1] 56:13</p> <p>Commerce [4] 9:14 25:16 35:6 50:12</p> <p>Commission's [1] 24:19</p> <p>commit [1] 36:25</p> <p>common [1] 62:8</p>	<p>Company [1] 35:6</p> <p>comparison [1] 51:5</p> <p>complementary [3] 12:7,21 15:16</p> <p>complete [1] 13:12</p> <p>completely [1] 50:17</p> <p>complex [1] 56:13</p> <p>compliance [1] 27:8</p> <p>complicated [1] 4:8</p> <p>comports [1] 46:3</p> <p>concedes [1] 47:17</p> <p>concerned [1] 40:10</p> <p>concession [1] 48:5</p> <p>concluded [1] 40:8</p> <p>conclusion [1] 8:4</p> <p>conduct [11] 22:9 23:9,15 24:16 25:16 29:6 33:6 34:17 43:23 52:23 53:17</p> <p>conferral [1] 29:5</p> <p>confined [2] 33:19 36:4</p> <p>confirmed [1] 23:10</p> <p>confirms [1] 3:17</p> <p>conflicting [1] 56:13</p> <p>Congress [16] 3:19 12:24 17:23 21:20,24 26:4,18,21 27:15 32:7, 17 41:17 56:3 57:5 63:16 65:2</p> <p>Congress's [2] 33:1 63:21</p> <p>congressional [3] 5:11,18 56:14</p> <p>consent [1] 56:16</p> <p>consequences [1] 19:3</p> <p>consider [4] 43:8 48:13,14 60:14</p> <p>considered [3] 22:23 30:12,13</p> <p>consistent [5] 16:3 33:12 60:2,10 63:7</p> <p>consistently [1] 58:9</p> <p>Constitution [13] 11:3 25:4,12,13, 15,22,25 26:2 28:6 33:14 53:17 61:9,16</p> <p>constitutional [1] 16:24</p> <p>construing [1] 25:19</p> <p>contact [1] 15:17</p> <p>contacting [1] 29:13</p> <p>contacts [1] 45:7</p> <p>contains [1] 7:24</p> <p>contemplate [3] 23:12 29:3 31:4</p> <p>contemplated [3] 8:10 27:6 31:11</p> <p>contending [1] 17:22</p> <p>contest [2] 51:21,25</p> <p>contesting [1] 50:4</p> <p>contests [1] 52:3</p> <p>context [6] 11:1 35:14 50:6,8 53:20,21</p> <p>contexts [3] 6:9 9:16 35:17</p> <p>continue [6] 18:22 19:18 36:17 39:7 43:11,19</p> <p>continues [1] 24:10</p> <p>continuing [1] 34:15</p> <p>contractual [1] 16:23</p> <p>control [2] 13:25 16:17</p> <p>controlling [3] 21:6 33:20 36:6</p> <p>controls [2] 18:5,9</p> <p>COOLEY [11] 1:6 3:5 33:22 35:22 38:15 58:21 60:4,23,24 63:12,24</p> <p>Cooley's [3] 44:5 61:12,20</p>	<p>core [1] 3:12</p> <p>Correct [2] 26:5 57:2</p> <p>couldn't [2] 65:21 66:3</p> <p>counsel [20] 7:13 10:8 13:4 18:14 21:18 24:22 30:25 31:23 34:1 36:18 42:25 46:8 49:5,20 53:7 55:18 62:24 63:2 64:6 66:23</p> <p>counterpart [3] 46:18 48:21,23</p> <p>country [7] 22:1,7 32:20 33:9 42:3 56:12 58:11</p> <p>couple [2] 6:6 56:7</p> <p>course [2] 53:15,19</p> <p>COURT [45] 1:1,14 3:10,15 5:17 7:3 9:19,21 12:23 13:16,23 16:1 17:14 19:3,21 20:1,11,14 21:4,9,11 26:12 28:17,19 32:3 33:4 35:5 50:11,12,17 54:11,14,15,16 55:3,9 56:15 58:2,9 59:2 63:7 64:2,3,15,21</p> <p>Court's [9] 11:4,10 12:16 17:16 19:24 21:7 25:18 28:21 57:7</p> <p>courts [4] 3:21 4:13 12:1 26:21</p> <p>create [1] 48:11</p> <p>created [1] 4:7</p> <p>creates [1] 63:14</p> <p>creation [2] 59:25 60:5</p> <p>crime [7] 17:2 32:20 38:21 42:2 52:13 58:25 62:17</p> <p>crimes [8] 6:14 21:23 22:4,6,12,15, 22 36:25</p> <p>criminal [11] 6:4,12 11:15 12:17 34:25 35:15 38:13 52:15 56:11 58:14 60:15</p> <p>criminally [1] 28:11</p> <p>critical [1] 38:23</p> <p>cross-commissioned [1] 42:22</p> <p>cross-deputization [9] 26:19 28:8 41:18,23,25 42:11 56:4 63:17, 20</p> <p>cross-deputize [1] 32:19</p> <p>cross-deputized [1] 32:22</p> <p>cross-deputizing [1] 42:1</p> <p>cross-designation [6] 23:13 27:5,11,14 29:3 65:5</p> <p>cross-enforcement [5] 49:25 51:14 52:5,5,8</p> <p>cross-wise [1] 64:18</p> <p>Crow [1] 33:24</p> <p>curious [1] 53:24</p> <p>current [1] 27:10</p> <p>curtail [2] 4:15 31:15</p> <p>curtailed [1] 9:20</p> <p>cut [1] 56:25</p>	<p>33:25 56:22 57:7 64:3</p> <p>decisions [5] 11:5 28:22 35:7 56:15,24</p> <p>defer [1] 32:25</p> <p>defined [2] 58:2 64:2</p> <p>definition [1] 7:25</p> <p>delegation [1] 5:11</p> <p>delineated [1] 63:8</p> <p>delivery [1] 11:20</p> <p>demarcation [1] 28:24</p> <p>Department [1] 1:20</p> <p>depend [1] 45:10</p> <p>depended [1] 3:23</p> <p>depends [1] 31:16</p> <p>deprive [1] 8:6</p> <p>deputization [1] 23:17</p> <p>deputized [1] 48:16</p> <p>Deputy [1] 1:19</p> <p>described [6] 5:13 17:12 23:5 57:14 58:7 61:25</p> <p>describing [1] 5:8</p> <p>description [10] 35:10 36:23 37:12 38:1 56:18 58:15 61:23 66:10, 12,16</p> <p>detail [1] 65:7</p> <p>detain [15] 3:13 7:9 10:23 37:16 38:3 40:25,25 45:8 46:2 47:1 58:12,17 62:23 66:9,21</p> <p>detain-and-eject [1] 58:3</p> <p>detained [1] 44:24</p> <p>detaining [2] 14:8 57:17</p> <p>detention [8] 12:6 15:12 16:17 23:6 32:10 49:18 58:20 61:24</p> <p>detention-and-hold [1] 16:9</p> <p>determination [1] 31:5</p> <p>determine [4] 8:25 17:1 37:24 44:7</p> <p>determining [3] 36:20 43:1,6</p> <p>deterrent [1] 48:7</p> <p>detering [1] 17:10</p> <p>Di [2] 11:5 28:17</p> <p>dicta [3] 57:2,23 59:15</p> <p>difference [3] 20:7,24 38:23</p> <p>different [10] 7:1 9:25 14:4 19:3, 10 20:18 38:11 40:4 50:7 51:12</p> <p>difficult [4] 18:12 19:20 29:22 43:4</p> <p>difficulties [1] 27:9</p> <p>directly [2] 6:6 56:25</p> <p>disagree [1] 56:18</p> <p>discuss [2] 5:19 9:10</p> <p>discussing [2] 7:8 25:24</p> <p>discussion [2] 9:7 61:9</p> <p>dispatch [3] 40:20 41:3,3</p> <p>disregards [1] 33:2</p> <p>distance [1] 22:10</p> <p>distinction [4] 7:5,6 24:21 34:3</p> <p>distinguishing [1] 13:8</p> <p>divested [1] 28:5</p> <p>doing [2] 11:19 35:23</p> <p>done [2] 26:20 42:6</p> <p>down [2] 20:19,21</p> <p>draw [2] 24:21 29:8</p> <p>drawing [1] 50:13</p>
D			
	<p>D.C [2] 1:10,20</p> <p>Dakota [1] 5:7</p> <p>damages [1] 54:6</p> <p>danger [3] 43:11,19 49:7</p> <p>day [1] 21:10</p> <p>days [1] 43:17</p> <p>debate [1] 30:10</p> <p>decades [3] 56:14 57:4 63:7</p> <p>decided [2] 9:9 19:25</p> <p>decision [8] 3:24 4:9 11:11 32:9</p>		

Official - Subject to Final Review

<p>draws ^[1] 22:16 drive ^[1] 43:12 driver ^[2] 43:10 49:8 driver's ^[2] 40:19 43:15 driving ^[3] 15:4 43:10 65:19 drug ^[1] 38:16 drugs ^[4] 15:8 38:5 62:15,16 drunk ^[2] 40:11 44:10 drunken ^[1] 49:8 duly ^[1] 42:21 during ^[1] 44:24 Duro ^[3] 56:24 57:23 59:2</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each ^[1] 11:4 economic ^[1] 34:20 effect ^[3] 26:17 48:7 65:17 effectively ^[1] 29:6 effects ^[1] 56:21 eight ^[1] 40:14 either ^[4] 19:4 26:10 42:12 55:6 eject ^[1] 59:4 ejecting ^[1] 57:17 eliminates ^[1] 41:19 emphasize ^[3] 26:7 31:2 66:7 encompasses ^[2] 14:24 17:17 end ^[2] 24:7 54:16 endanger ^[1] 13:2 endangers ^[1] 4:22 enforce ^[7] 4:21 11:3,6 12:11 33:8 51:4 52:24 enforcement ^[13] 3:22 4:9 10:4 12:21 18:11 37:20 38:9,25 42:11 45:7 57:3 63:16 65:18 enforcing ^[1] 36:9 engage ^[1] 8:22 engages ^[1] 53:16 enough ^[2] 44:7 45:18 enter ^[2] 26:19 42:3 entered ^[1] 3:18 entirely ^[1] 38:5 ERIC ^[8] 1:19,22 2:3,6,9 3:7 31:25 64:8 especially ^[2] 32:16 63:9 ESQ ^[3] 2:3,6,9 ESQUIRE ^[1] 1:22 essentially ^[1] 7:4 et ^[1] 37:11 European ^[1] 43:15 even ^[18] 4:6,21 6:10 7:22 12:1 18:11 21:5 23:18 28:6 33:13 34:13 47:11 50:19 51:13 54:14 58:13 65:18 66:3 everybody ^[1] 41:5 everyone ^[3] 4:22 13:2 31:16 everyone's ^[3] 8:16 11:24 16:22 evidence ^[4] 49:13 52:19 54:20 58:25 exact ^[3] 5:4 37:3 41:16 exactly ^[3] 37:1 39:7 41:17 example ^[9] 11:1 14:14 18:1 24:17 27:12 40:13 52:1 57:24 65:16 examples ^[1] 13:23 exceeded ^[1] 33:24</p>	<p>exceeds ^[2] 32:11 64:22 exception ^[13] 6:15 19:2,7,12 21:12,13 34:16,17 35:2,5,8,16 65:16 exceptions ^[2] 34:14,14 exclude ^[2] 35:22 63:8 exclusion ^[3] 54:19,23 57:24 exclusionary ^[4] 46:15,21 47:18 64:14 executive ^[7] 3:17 6:25 26:18,22 32:18 57:5 65:1 exercise ^[6] 16:2 19:8 33:13,21 60:17 61:25 exercised ^[2] 7:1 18:2 exist ^[3] 26:23 48:13 50:19 existence ^[1] 17:15 exists ^[1] 50:5 expired ^[1] 24:23 explain ^[4] 10:14 21:12 28:12 60:18 explaining ^[2] 18:8 48:7 exploring ^[1] 31:12 express ^[2] 5:11,18 expressly ^[3] 7:7 23:25 50:12 extend ^[2] 6:3 27:24 extent ^[3] 14:23 17:6 63:13 extreme ^[1] 18:18 eyes ^[3] 36:22 37:11 44:5</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact ^[4] 19:1 29:20 32:23 63:19 fact-dependent ^[1] 44:4 facts ^[5] 36:18 37:9,14 39:10 45:20 fair ^[2] 35:10,10 fairly ^[2] 11:6 58:18 false ^[2] 49:12,16 familiar ^[2] 4:10 19:21 far ^[5] 23:22 29:16 38:11 59:1 60:8 fashion ^[1] 21:21 federal ^[38] 10:10 11:7 12:8 13:21 15:17 16:4 20:25 23:8,13 29:7,13, 22 30:3,18 32:20 33:9,12 37:20 38:8,25 42:2 44:21 50:15,21 51:4, 6,16 52:10,18,20,24 53:21 54:2,15 60:6,23 64:23 65:12 federally ^[1] 40:14 fee ^[2] 19:24 31:19 fee-simple ^[1] 55:6 FEIGIN ^[56] 1:19 2:3,9 3:6,7,9 4:24 5:16 6:5,19 7:3,17,23 9:1,11 10:9, 20 12:15 13:6,15 14:19 15:11,21, 24 16:18 17:5 18:7,16,21 19:6 20:3,9,23 21:14 22:3,14,21 23:20,24 24:9 25:3,5,14 26:6,24 27:18,21 28:15 30:7,23 31:1 53:10 55:21 64:7,8,10 fickle ^[1] 65:9 field ^[1] 44:14 figure ^[1] 29:17 fill ^[2] 13:14 26:22 filled ^[1] 63:16 finally ^[4] 28:10 32:21 60:15 66:6 find ^[6] 8:21 16:12 32:23 33:5 42:8 51:13</p>	<p>finding ^[1] 63:22 Fine ^[1] 22:1 first ^[6] 19:22 28:14,16 32:14 39:16 50:10 fit ^[6] 6:14 25:12 36:22 37:12,25 44:1 fits ^[4] 18:10 19:12 21:12 61:22 fleshed ^[1] 29:1 fleshing ^[1] 31:10 follow ^[1] 28:2 followed ^[1] 59:23 footnote ^[4] 59:15 60:1,9,20 force ^[2] 4:14 47:9 forceful ^[1] 56:1 foreclose ^[2] 23:18,23 forecloses ^[1] 23:22 foreign ^[1] 13:25 forget ^[1] 62:14 formally ^[1] 30:13 former ^[2] 24:20 56:10 forward ^[1] 59:7 found ^[3] 38:22 48:17 55:9 four ^[1] 64:11 Fourth ^[17] 4:10 9:4,4 30:22 46:11, 14,17,18 47:13 48:4,9,16,18,20,23 49:1,3 Francisco ^[1] 43:17 free ^[1] 33:14 frequently ^[1] 65:24 friend ^[1] 34:6 frisk ^[2] 8:15 31:18 front ^[1] 55:1 full ^[2] 50:23 51:7 full-blown ^[2] 12:4 22:25 full-fledged ^[1] 38:13 fully ^[1] 24:10 fundamental ^[1] 32:5 further ^[3] 14:7 16:15 21:5</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>Gan ^[1] 15:1 gap ^[2] 63:15,16 gate ^[1] 51:6 gave ^[4] 13:11,23 50:11 51:11 General ^[6] 1:19 13:7 17:13 36:3 39:13 59:4 generally ^[3] 50:2,5 51:23 given ^[5] 16:8,24 22:20 26:18 53:23 giving ^[1] 32:18 Gorsuch ^[22] 21:16,17 22:18 23:16,21 24:3,22 26:14 27:2,23 28:3 29:1 53:5,6 54:21,25 55:5,12,14, 17,21 61:10 got ^[2] 4:25 45:14 gotten ^[1] 53:9 governing ^[1] 33:9 government ^[18] 12:8 13:22 16:4 21:1 23:13 33:2,10 47:14,16,17 48:15 49:24 51:16 52:19 60:23,25 64:23 65:12 government's ^[3] 33:17 48:5 59:18 governmental ^[1] 7:25</p>	<p>governs ^[1] 19:15 grab ^[1] 14:17 granted ^[4] 17:23 25:25 26:2,3 great ^[1] 27:6 greater ^[1] 27:6 group ^[1] 46:23 guess ^[7] 18:22 20:3,16 21:18 24:5 25:10 48:6 guidance ^[1] 57:9 guided ^[1] 57:3 guilty ^[1] 17:1 gunpoint ^[1] 38:15</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hand ^[2] 22:9 59:13 hand-over ^[2] 11:18 30:17 handbook ^[1] 58:7 handing ^[2] 11:19 52:19 handovers ^[1] 65:2 happen ^[1] 49:5 happened ^[3] 37:1 38:23 58:19 happening ^[2] 58:19 61:8 happens ^[2] 52:11 55:6 harm ^[1] 56:21 health ^[1] 34:20 hear ^[1] 3:3 heard ^[1] 37:13 heavily ^[1] 59:23 held ^[1] 16:25 help ^[2] 10:14 55:22 helped ^[2] 47:22,23 HENKEL ^[7] 1:22 2:6 31:24,25 32:2 35:3,18 37:4,15,18 38:6 39:10, 15,21 40:7,12,18 41:2,8,12,15,22, 25 42:7,18 43:22 44:16,20 45:1,5, 14,17 46:12,16 47:5,7,10,14,17,20 48:2,6,19,25 49:3,10,21,23 50:9 51:18,20,23 52:7 53:2,3 54:4,24 55:4,8,13,15,25 57:16,20 58:16 60:22 61:7 62:6,13,25 63:3 hidden ^[1] 14:18 highway ^[3] 10:17 15:4 35:20 himself ^[1] 66:3 historical ^[1] 18:2 history ^[1] 65:4 hold ^[2] 12:12 30:16 holding ^[2] 4:19 49:9 holes ^[1] 26:23 Honor ^[17] 5:16 6:7,10 7:23 9:11 10:20 12:22 17:5 18:7 19:6 20:23 22:21 23:24 24:9 30:7 31:1 64:10 Honor's ^[2] 9:23 19:17 hopefully ^[1] 53:10 house ^[1] 15:6 huge ^[1] 17:10 hypothetical ^[5] 38:7,24 49:7 61:20 62:15</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea ^[3] 34:23 49:25 51:11 identification ^[1] 40:15 identified ^[2] 59:20 65:3 identify ^[2] 22:15 29:22 identity ^[1] 37:25</p>
---	--	---	--

Official - Subject to Final Review

<p>ignores ^[1] 33:18 illogical ^[1] 56:13 immediately ^[1] 29:12 imminent ^[2] 45:25 62:20 immunity ^[4] 33:16 54:9 55:11 61:15 impact ^[1] 18:18 implicated ^[1] 36:9 implications ^[2] 20:10,18 implicitly ^[1] 28:5 implied ^[1] 60:13 important ^[5] 34:3 35:19 36:2 37:5 56:6 imposing ^[1] 59:24 imposition ^[1] 60:16 impossible ^[2] 31:7,8 imprisonment ^[2] 49:13,17 incentive ^[1] 64:16 incident ^[1] 14:13 inclined ^[1] 6:10 include ^[1] 8:12 includes ^[1] 48:20 incoherence ^[1] 66:7 inconsistency ^[1] 8:2 inconsistent ^[2] 13:20,24 incorporated ^[1] 25:8 indefensible ^[1] 56:12 indeterminacy ^[1] 65:22 Indian ^[40] 3:11 4:11,17,22 7:21,24 12:14 16:13,13 20:10 21:23 22:1,7 24:18 25:16 31:6 32:5,8,14,20 33:9 39:16,25,25 42:2 43:2,7,13,18 45:2,4,4 46:19 48:19 50:6,7,20 56:12 58:11 65:21 Indians ^[6] 16:7,7,23 40:3 46:23 65:18 indicated ^[1] 42:10 individual ^[3] 15:7 37:21 45:6 individuals ^[1] 22:5 indubitably ^[1] 10:6 influence ^[1] 43:10 information ^[2] 37:19 45:22 inherent ^[26] 3:12,16 5:2,5,12,17 6:1 10:21 13:19 16:9 17:15 18:25 19:8 25:6,6,19 27:16 32:15,23 33:3,5 34:7,12,15 63:5,23 initial ^[2] 38:12 52:12 insists ^[1] 33:6 instance ^[1] 60:12 instead ^[3] 26:20 32:24 66:15 instructing ^[1] 39:1 integrity ^[1] 34:20 interchange ^[1] 27:22 interest ^[3] 17:10,14 21:1 interesting ^[1] 52:21 interests ^[4] 13:21 16:3 33:12,23 interferes ^[1] 6:16 interim ^[1] 44:25 internal ^[4] 33:20 35:25 36:6,11 international ^[1] 11:9 interpreting ^[1] 34:11 interstate ^[2] 10:17 11:2 Introduction ^[1] 11:14 investigate ^[8] 3:12 10:16,23 16:</p>	<p>12 32:19 37:23 38:16 42:2 investigating ^[1] 52:12 investigation ^[7] 12:6 16:10,15 38:14 52:12,17 58:20 investigations ^[1] 46:10 investigative ^[1] 27:24 investigatory ^[2] 23:6 24:1 involve ^[1] 6:12 IRCA ^[1] 54:23 isn't ^[5] 4:17 16:20 20:14 49:14 57:10 issue ^[9] 19:25 20:1 27:12 32:17 34:18 40:15 43:4 52:8 63:5 Issues ^[1] 65:23 items ^[1] 47:3 itself ^[3] 31:20 49:18 58:13</p> <hr/> <p style="text-align: center;">J</p> <p>JAMES ^[1] 1:6 jeopardy ^[3] 43:25 62:21,22 jewelry ^[1] 31:18 job ^[1] 13:16 JOSHUA ^[1] 1:6 judicial ^[2] 7:2 63:22 jumping ^[1] 26:21 jurisdiction ^[8] 6:4,12 8:22 19:16 21:25 22:17 56:11 58:14 jurisdictional ^[1] 63:15 Justice ^[176] 1:20 3:3,10 4:24 5:23 6:17,20 7:12,14,15,16 8:20 9:2,6,7 10:7,11,11,13 11:8 12:10 13:3,5,6 14:6,10 15:2,20,22,22,24 16:18,20 18:4,8,14,17,20,20,21 19:18 20:3,16 21:14,15,15,17 22:18 23:16,21 24:3,22,24,24 25:1,2,10 26:1,5,7,14,16 27:2,17,19,19,21,22 28:3,16,25 29:2,14 30:20,24 31:22 32:3 34:1,2 35:3,9 36:13,13,15,16 37:4,8,17 38:2 39:3,4,4,6,12,19,24 40:11,17,22 41:4,10,13,20,24 42:5,9,15,23,24,24,25 44:9,18,23 45:3,9,16 46:5,6,6,8,14,20 47:6,8,11,15,19,22 48:3,9,22 49:1,4,7,16,22,22,23 51:9,19,21 52:1 53:2,4,4,6 54:21,25 55:5,12,14,17,19,19,21,23,24 57:19 58:4 59:8,9,9,11,12,13 61:2,10,17,19 62:11,24 63:1,4 64:5 66:22 justified ^[2] 49:8,9 justify ^[1] 63:21</p> <hr/> <p style="text-align: center;">K</p> <p>Kagan ^[13] 18:20,21 20:3,16 21:14 34:2 49:22,23 51:9,19,21 52:1 53:2 Kavanaugh ^[15] 24:25 25:1,10 26:1,7,16 27:17 29:2 55:20,23 57:19 58:4 59:8,12,13 keep ^[1] 20:11 Kerr ^[2] 52:2,3 kick ^[3] 22:12,22 24:13 kicks ^[1] 12:5 killer ^[10] 36:23,24 37:7,13 38:10 45:23 61:21 66:10,12,16</p>	<p>kind ^[5] 14:13 19:21,22 26:13 29:4 knife ^[2] 66:17,19 knowing ^[1] 66:15 knows ^[2] 30:2 66:17</p> <hr/> <p style="text-align: center;">L</p> <p>lack ^[4] 13:1 28:4,9 58:14 lacks ^[1] 4:19 land ^[16] 4:4,18 15:7 19:22,24 20:1 31:7,19 33:19 35:19 36:5 43:3 47:9,12 55:6 65:24 landowner's ^[1] 35:21 lands ^[4] 14:1 32:16 39:17 63:10 Lara ^[2] 9:8,14 last ^[1] 42:7 launched ^[1] 38:13 law ^[37] 3:14,22 4:9 10:10 11:7,9,15,16,17,18,21 12:13,14 18:1,11 24:18 27:12 34:25 37:20 38:8,25 42:10 45:7 46:9 51:4 52:13,24 54:1 55:2 57:3,3 59:24 60:6 62:1,5,8 63:15 laws ^[11] 4:21 10:4,5,25 11:4 12:19 33:9 36:10 50:3 52:15 60:25 lay ^[1] 27:4 layered ^[1] 56:14 lead ^[1] 52:10 leads ^[1] 56:19 least ^[6] 5:14 7:5 10:23 29:3 55:16 65:25 leave ^[2] 21:9 31:14 left ^[2] 27:13 59:12 legislation ^[3] 3:20 9:18 10:3 legislative ^[3] 6:23 7:2 65:1 legitimate ^[1] 52:17 less ^[1] 60:8 lesser ^[1] 10:19 level ^[2] 43:23 44:11 liability ^[3] 33:16 49:19 60:15 license ^[2] 40:19 43:15 likelihood ^[1] 54:11 likes ^[1] 8:12 limit ^[1] 35:7 limited ^[9] 3:17 12:1 16:16 23:6 33:3,23 35:13 50:20,23 line ^[8] 22:3 23:4 28:24 29:8 36:17 50:11,16 54:16 litigated ^[1] 65:24 litigation ^[1] 48:1 little ^[2] 29:1 30:9 local ^[1] 65:13 locations ^[1] 22:1 logic ^[2] 10:1 12:15 logically ^[1] 4:1 long ^[5] 3:23 13:20 22:10 30:2 41:13 longer ^[1] 9:12 look ^[15] 11:13 16:1 18:1 23:17,25 24:17 34:5 35:19 39:1 40:1,2,3,5 58:19 65:6 looked ^[1] 26:13 looking ^[4] 16:6 26:10 35:4 36:20 looks ^[2] 3:16 40:22 loosely ^[1] 58:18</p>	<p>lose ^[1] 18:6 lost ^[1] 25:9 lot ^[2] 51:14 52:4 lots ^[1] 56:21 low ^[1] 45:19</p> <hr/> <p style="text-align: center;">M</p> <p>main ^[1] 10:1 Major ^[6] 21:22 22:3,6,12,15,22 majority ^[1] 42:20 man ^[1] 41:6 managing ^[2] 33:19 36:5 many ^[2] 42:6 52:9 March ^[1] 1:11 mark ^[1] 27:25 matches ^[3] 66:9,12,15 matter ^[3] 1:13 17:14 32:21 matters ^[1] 14:2 mature ^[1] 30:6 mean ^[16] 13:15 14:20 20:18 28:19 29:20 30:1 39:13,20 40:1 43:2 45:19 51:5,10 52:9 57:16 59:12 Meaning ^[1] 46:21 meaningful ^[1] 4:19 meaningfully ^[2] 9:25 14:4 means ^[2] 16:17 30:11 measure ^[1] 49:24 member ^[4] 40:1,6 43:2 66:2 members ^[2] 4:22 18:12 mentioned ^[1] 54:7 mentioning ^[1] 27:2 mere ^[1] 31:12 might ^[9] 14:17,17 24:12 30:2 41:11 53:25 57:2 61:23,24 Miller ^[2] 11:5 28:18 mind ^[2] 20:6 56:23 minority ^[1] 42:19 minute ^[2] 30:24 63:1 Missoula ^[1] 1:22 moment ^[1] 53:13 monitoring ^[1] 27:8 Montana ^[41] 1:22 5:3,8,9,24,24 6:6,7,11,15,23 9:8,10,12,15 12:13 18:5,8,18 19:2,7,12,14 20:5,11,15 21:5,11,13 34:10,13 35:5,8 40:13,15 50:18 55:9,16 59:22 60:12 65:16 Montana's ^[1] 9:20 morass ^[2] 56:12 57:14 Moreover ^[1] 63:13 morning ^[5] 3:4 21:17 25:3 53:6 55:25 most ^[1] 17:19 much ^[2] 8:17 16:6 multiple ^[2] 58:24 65:10 murdered ^[1] 66:19 murderer ^[2] 45:13,15</p> <hr/> <p style="text-align: center;">N</p> <p>named ^[1] 41:6 namely ^[3] 9:17 10:9 13:24 narrow ^[2] 35:16 57:13 narrow ^[2] 11:21 65:7 nations ^[1] 56:16</p>
--	--	--	--

Official - Subject to Final Review

<p>Navarette ^[1] 31:17 nearly ^[1] 44:7 necessarily ^[3] 22:16 28:21 56:18 necessary ^[1] 12:22 need ^[3] 35:4 65:9,12 needs ^[4] 9:3,21 15:16 39:16 neighborhood ^[2] 46:23,24 neighboring ^[2] 42:12,13 Neil ^[1] 11:13 nervous ^[1] 36:21 never ^[2] 25:9 28:14 new ^[2] 27:15 62:2 Ninth ^[15] 3:24 4:6 7:17 8:3 16:11, 16 19:23 31:3,11 38:22 40:7 44:1 46:3 61:25 66:1 nobody ^[2] 4:12 6:13 nodded ^[1] 7:5 non ^[1] 14:1 non-Indian ^[9] 4:4,16 14:8,15 15: 6 19:24 32:11 36:10 64:19 non-Indians ^[13] 10:2,5 12:16 14: 1,3 28:23 32:6,15,24 33:6 55:16 63:6,9 non-members ^[4] 5:10 6:2 28:11 60:4 non-native ^[2] 21:25 22:6 non-problem ^[1] 42:16 non-tribal ^[5] 31:19 32:16 36:10 39:17 63:10 none ^[1] 36:8 normally ^[1] 24:13 note ^[1] 8:6 noted ^[1] 7:7 nothing ^[6] 5:6 26:15 35:23 36:11 38:20 61:14 notice ^[1] 39:1 novel ^[1] 4:8 number ^[3] 14:5 39:22 64:20 numerous ^[2] 3:18 19:25</p> <hr/> <p style="text-align: center;">O</p> <p>obvious ^[5] 31:10 38:21 62:1,5,7 obviously ^[1] 15:13 occasion ^[1] 21:4 occur ^[1] 62:20 occurring ^[1] 61:15 offenders ^[1] 58:11 offense ^[1] 45:11 offer ^[1] 13:7 officer ^[48] 4:17 7:18,20 8:7,21 14: 10,12,16,19,24 15:3,9,12,16 22:9 23:14 29:7,25 30:3 32:11,22 36:9, 20,24 37:12,16,23 38:12 39:8,15 40:8,9,9 42:22 43:5,9,12,20 44:5, 12,13 53:21,25 61:6 63:11 64:19, 22 66:2 officers ^[12] 4:13,14 12:25 29:5 32: 19 42:1 51:15,15 54:7 55:10 62: 10 63:18 officially ^[1] 45:8 officials ^[1] 63:19 often ^[3] 12:25 31:7,8 Ohio ^[1] 31:20 Okay ^[8] 6:19 18:16 22:8 42:23 49:</p>	<p>19 54:25 55:17 61:17 Oliphant ^[1] 50:18 on-the-ground ^[4] 3:22 6:13 8:19 35:15 on-the-spot ^[1] 31:5 one ^[24] 5:14,20 8:6 18:4,25 20:19, 21 27:1 28:24 29:20,21 38:9 40:4, 17 50:19 56:6,19 59:13,17 60:11 64:12 65:3,11,12 ongoing ^[1] 43:24 only ^[5] 11:21 19:15 33:4 37:9 49: 2 opinion ^[4] 8:3 9:23 42:15,18 opinions ^[1] 63:7 oppose ^[1] 24:11 opposed ^[1] 24:8 opposite ^[2] 5:4,14 oral ^[5] 1:14 2:2,5 3:7 31:25 Order ^[1] 24:18 ordinary ^[2] 10:15 14:21 other ^[22] 3:11 8:10 10:24 13:18 19:1 20:5,20,22 22:8 24:1 26:16 34:6 35:17 37:14 49:17 50:1,5 54: 19 56:7 60:4 64:18 66:8 other's ^[1] 11:4 otherwise ^[2] 4:15 14:14 out ^[27] 6:8 16:12 18:15 27:4 29:1, 17 31:10 35:11 38:9,15,25 39:25 40:5,23 41:8,10 44:14 47:22,23 49:17 51:5 56:8 58:6,21 59:13 60: 3,13 outcome ^[1] 20:25 outset ^[2] 5:5 10:21 outside ^[5] 33:14 48:5 50:5 61:8, 15 outsiders ^[1] 59:4 over ^[21] 5:10 6:2 11:19 13:25 23:9 32:6,7,15,24 33:11,22 34:4 37:13 50:24 51:16 52:19 56:14 58:12,17 63:6,9 overall ^[1] 5:20 overlooks ^[1] 50:17 overriding ^[3] 13:21 16:3 33:12 own ^[4] 4:21,21 12:5 24:17 owned ^[1] 15:6 owns ^[1] 15:7</p> <hr/> <p style="text-align: center;">P</p> <p>PAGE ^[3] 2:2 11:13 24:18 paper ^[1] 42:17 parallel ^[1] 50:14 parcel ^[1] 15:7 parked ^[2] 35:22,24 part ^[3] 14:20,21 15:14 partial ^[1] 13:12 participate ^[3] 59:25 60:17,24 participates ^[1] 60:23 particular ^[4] 7:8 43:3 52:23 65:9 particularly ^[4] 29:19 56:2 59:15 60:10 passed ^[1] 3:20 passenger ^[1] 66:17 past ^[1] 27:24 path ^[1] 17:11</p>	<p>paths ^[1] 19:4 patrol ^[4] 38:17 46:23,24 58:22 peace ^[3] 43:24 45:25 62:19 people ^[4] 12:12 21:25 40:1,3 perceived ^[1] 65:3 percent ^[3] 42:10 45:4 66:14 perfectly ^[1] 60:1 perform ^[1] 44:14 perhaps ^[2] 53:23 55:18 period ^[2] 30:17 44:25 permissible ^[1] 53:14 permit ^[1] 53:10 person ^[21] 12:9,14 14:16 30:19 39:2 43:1,7,13,14,16,18,21 44:10, 10,13,19,24 45:3,12 47:3 49:9 person's ^[2] 37:25 45:15 persons ^[2] 22:6 33:8 pervades ^[1] 17:16 Petitioner ^[6] 1:4,21 2:4,10 3:8 64: 9 phrase ^[1] 62:2 pick ^[1] 59:11 place ^[3] 28:14,16 50:10 plain ^[2] 15:8 44:11 Plains ^[3] 9:14 35:6 50:12 plane ^[1] 43:16 please ^[2] 3:10 32:3 plenary ^[3] 32:7 33:1 63:22 point ^[10] 11:10 18:22 23:9 29:9, 11 30:4,5 46:2 56:5 65:14 pointed ^[2] 35:11 60:3 points ^[4] 6:6 32:13 59:13 64:12 police ^[22] 7:18,19 16:25 29:23 32: 15,20,24 33:6,7,11,22 36:20,23 37: 12 42:2 52:14 55:13 58:10 59:20 61:6 63:9,14 policed ^[1] 12:25 policeman ^[2] 10:15,18 policies ^[1] 56:15 policing ^[4] 4:3,15 6:13 31:15 policy ^[1] 26:22 political ^[2] 33:15 34:20 pose ^[1] 60:7 posed ^[4] 38:7 41:17 52:22 62:15 position ^[2] 4:5 33:17 possess ^[2] 28:15 32:6 possessed ^[4] 24:2,4 25:7 28:14 possible ^[2] 14:14 15:18 possibly ^[1] 38:4 potential ^[4] 43:23 50:2 52:25 66: 4 potentially ^[4] 49:11 52:9 54:10 64:13 power ^[13] 6:25 7:2,8,9 25:15 32: 15,24 50:2 52:14 57:24 58:3 59:4 63:9 powers ^[3] 24:2 26:17 32:25 practical ^[1] 29:21 practically ^[1] 12:22 practice ^[2] 3:22 8:19 precedents ^[1] 21:7 precludes ^[2] 22:4 65:2 preemption ^[1] 60:13 preexisting ^[1] 27:3</p>	<p>prefers ^[1] 21:11 premise ^[4] 22:20 51:22 52:3 61:3 present ^[3] 27:9 43:11,19 preserve ^[1] 17:8 preserved ^[1] 24:7 preserves ^[2] 24:1 27:3 preserving ^[1] 21:2 presumably ^[3] 16:14 37:20 38: 24 presuppose ^[1] 3:19 presupposes ^[1] 11:3 pretty ^[6] 9:22 43:6,12,17 52:4 59: 23 previously ^[1] 64:2 primarily ^[2] 12:25 28:22 primary ^[1] 19:13 principle ^[1] 60:10 principles ^[1] 11:9 prior ^[1] 28:9 private ^[12] 4:2 7:18,20 31:12 47:8, 9,12 49:2,5,15 54:5 62:9 probable ^[2] 30:16 62:3 probably ^[3] 8:1 19:23 29:8 problem ^[8] 27:14 29:15 52:25 57: 21 58:1 59:17 60:8 65:3 problematic ^[1] 59:6 problems ^[5] 29:21 41:16,19 65:7, 22 procedural ^[3] 11:15,16,18 proceeded ^[1] 38:14 proceeding ^[1] 19:3 process ^[5] 12:6 22:24 23:3 24:14 28:1 product ^[1] 62:7 Professor ^[2] 52:2,3 professors' ^[1] 18:2 proper ^[1] 58:13 proposal ^[1] 58:1 proposed ^[1] 60:20 proposition ^[2] 36:3 51:2 propositions ^[1] 32:5 prosecute ^[1] 64:24 prosecution ^[1] 52:20 prosecutions ^[1] 52:10 protect ^[1] 66:3 protecting ^[2] 33:19 36:5 prototypical ^[1] 35:1 provided ^[2] 41:18 56:3 providing ^[1] 63:17 provision ^[1] 26:10 public ^[6] 7:10 26:22 29:23 43:25 62:20 63:10 pull ^[1] 38:15 pulling ^[1] 58:20 punish ^[1] 52:22 punishing ^[1] 6:14 pure ^[1] 49:10 practical ^[1] 52:23 purity ^[1] 20:6 purpose ^[1] 23:7 pursuant ^[1] 14:25 pursue ^[1] 53:18 pushing ^[2] 20:19,21 put ^[2] 38:9,17</p>
--	--	---	---

Official - Subject to Final Review

<p>putting ^[3] 38:25 49:2 58:21</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question ^[16] 6:2 9:5 14:23 19:17 21:22 22:2 24:6 25:11 26:13 34:8 48:1,3 52:21 53:8 61:4,19</p> <p>questioning ^[1] 7:7</p> <p>quick ^[2] 64:12 65:23</p> <p>quickly ^[1] 15:18</p> <p>quite ^[2] 16:5 28:2</p> <p>quote ^[1] 5:9</p>	<p>relatively ^[1] 64:12</p> <p>relevant ^[3] 21:21 24:2 63:19</p> <p>reliable ^[1] 37:19</p> <p>relied ^[1] 59:23</p> <p>relies ^[1] 49:24</p> <p>rely ^[2] 57:6 59:14</p> <p>remains ^[2] 21:20 25:11</p> <p>remedies ^[1] 64:13</p> <p>remedy ^[8] 53:22,24 54:1,2,5,19 55:2 61:11</p> <p>Rendition ^[1] 11:2</p> <p>repeatedly ^[1] 3:21</p> <p>replaces ^[1] 4:10</p> <p>reply ^[1] 27:5</p> <p>report ^[2] 24:19 42:8</p> <p>Reports ^[2] 11:12 18:1</p> <p>represented ^[1] 60:5</p> <p>require ^[1] 31:5</p> <p>requirements ^[1] 27:8</p> <p>requires ^[2] 27:7 29:12</p> <p>reservation ^[9] 7:11 13:2 15:5 34:24 35:21 36:25 57:18 63:15 66:18</p> <p>reservations ^[4] 4:4,23 29:24 59:5</p> <p>resist ^[1] 28:20</p> <p>resolved ^[2] 32:4 65:25</p> <p>respect ^[5] 8:6,7 9:7 32:25 60:1</p> <p>respected ^[1] 64:1</p> <p>respond ^[2] 31:16 50:2</p> <p>Respondent ^[9] 1:7,23 2:7 31:13 32:1 36:21 37:1,10 66:5</p> <p>Respondent's ^[1] 4:5</p> <p>Respondents ^[1] 31:4</p> <p>response ^[2] 26:4,23</p> <p>responses ^[1] 26:25</p> <p>rest ^[1] 13:14</p> <p>resting ^[1] 51:11</p> <p>restrict ^[1] 21:4</p> <p>result ^[5] 17:7,21 21:8 24:11 57:13</p> <p>retain ^[5] 13:13,19 14:7 25:20 29:18</p> <p>retained ^[2] 13:9 59:19</p> <p>revealed ^[1] 61:10</p> <p>reverse ^[1] 8:23</p> <p>reversed ^[1] 4:23</p> <p>right-of-way ^[2] 55:7 63:10</p> <p>Rights ^[9] 4:11 7:21,24 16:7,14 28:10 46:19 48:20 61:12</p> <p>rights-of-way ^[3] 4:3 7:10 29:24</p> <p>ripple ^[1] 56:21</p> <p>rises ^[1] 43:23</p> <p>road ^[2] 20:20,22</p> <p>ROBERTS ^[29] 3:3 4:24 5:23 6:17,20 7:12 10:7,11 13:3 15:22 18:20 21:15 24:24 27:19 30:24 31:22 34:1 35:9 36:13 39:4 42:24 46:6 49:22 53:4 55:19 59:9 63:1 64:5 66:22</p> <p>role ^[3] 12:7 15:16 53:14</p> <p>rule ^[10] 7:1 39:13 46:15,21 47:18 48:11,18 62:8 64:14 66:2</p> <p>rules ^[2] 39:14 48:12</p> <p>ruling ^[1] 19:23</p> <p>run ^[2] 7:10 45:23</p>	<p>running ^[1] 35:20</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safety ^[2] 43:25 62:21</p> <p>sake ^[1] 46:22</p> <p>same ^[8] 10:18 17:6 28:17 37:3,14 56:7 60:7 61:20</p> <p>San ^[2] 13:17 43:17</p> <p>satisfied ^[1] 8:25</p> <p>satisfying ^[3] 57:12 58:6 59:14</p> <p>saying ^[11] 5:1,25 19:9 24:4 26:15 28:3 50:7 51:17,20 59:2,18</p> <p>Saylor ^[6] 15:17 36:9 38:13 44:5 63:11 66:2</p> <p>says ^[9] 5:1,14 12:8 26:17 29:17 34:6 49:2 56:11 58:9</p> <p>scene ^[3] 41:9,11 44:22</p> <p>school ^[1] 45:23</p> <p>scope ^[3] 58:2 59:21 63:8</p> <p>search ^[6] 14:13,16,25 32:10 37:24 58:24</p> <p>searched ^[2] 38:18 63:11</p> <p>seat ^[1] 66:17</p> <p>second ^[7] 6:15 27:4 32:17 34:16 35:5,8 65:5</p> <p>security ^[3] 34:20 47:2,9</p> <p>see ^[6] 11:15 15:8 20:7 40:2 46:25 58:1</p> <p>seem ^[2] 35:1 42:25</p> <p>seemed ^[1] 9:9</p> <p>seems ^[4] 16:8 30:5,21 47:24</p> <p>seen ^[1] 60:9</p> <p>sees ^[2] 15:5 66:16</p> <p>seize ^[1] 49:14</p> <p>seized ^[2] 47:3 63:11</p> <p>self-governance ^[5] 6:16 18:10 19:20 34:18 36:12</p> <p>self-government ^[4] 32:12 33:20 36:1,6</p> <p>self-rule ^[1] 34:19</p> <p>send ^[1] 8:24</p> <p>sense ^[4] 25:18 30:9 35:13 52:14</p> <p>sentence ^[1] 13:12</p> <p>separate ^[1] 25:17</p> <p>separation ^[2] 26:17 32:25</p> <p>separation-of-powers ^[1] 56:2</p> <p>serial ^[10] 36:23,24 37:7,13 38:10 45:22 61:21 66:10,12,16</p> <p>several ^[1] 57:3</p> <p>severely ^[1] 35:7</p> <p>severity ^[1] 45:10</p> <p>shakes ^[1] 6:7</p> <p>shoes ^[1] 29:7</p> <p>short ^[1] 29:11</p> <p>shoulder ^[1] 35:22</p> <p>Shouldn't ^[1] 16:6</p> <p>showing ^[1] 43:16</p> <p>shows ^[1] 43:15</p> <p>side ^[4] 26:16 34:6 49:17 66:8</p> <p>significant ^[1] 49:24</p> <p>simple ^[1] 17:4</p> <p>simpler ^[1] 16:21</p> <p>simply ^[10] 14:7 21:10,11 23:7 25:22 61:5 63:25 65:1,5 66:16</p>	<p>single ^[2] 3:15 5:1</p> <p>sit ^[1] 54:16</p> <p>situation ^[5] 20:15 42:19 43:8 45:11 54:13</p> <p>situations ^[4] 9:13 10:16 42:20,21</p> <p>sleepy ^[1] 37:11</p> <p>Smith ^[1] 41:6</p> <p>sobriety ^[1] 44:14</p> <p>Solicitor ^[1] 1:19</p> <p>solicitous ^[1] 64:16</p> <p>solution ^[1] 65:6</p> <p>solvable ^[1] 65:22</p> <p>solve ^[1] 27:13</p> <p>somebody ^[2] 34:23 45:22</p> <p>someone ^[9] 7:10 11:18 23:14 31:18 46:25 49:6 65:8,19 66:9</p> <p>someone's ^[2] 16:12 31:6</p> <p>something's ^[1] 62:4</p> <p>soon ^[2] 29:12 40:23</p> <p>sort ^[8] 14:20 20:6,18 39:1 45:24,25 50:13 59:19</p> <p>Sotomayor ^[24] 15:23,24 16:18,20 18:4,14,17 26:5 46:7,8,14,20 47:6,8,11,15,19,22 48:3,9,22 49:1,4,16</p> <p>Sotomayor's ^[1] 19:19</p> <p>sounds ^[1] 37:18</p> <p>source ^[6] 3:15 5:1,14 26:11 58:2 59:21</p> <p>sources ^[1] 26:9</p> <p>South ^[1] 5:7</p> <p>sovereign ^[12] 8:5 10:22 24:6 25:7 32:6 33:24 48:14 50:19 51:8 54:9 55:10 61:14</p> <p>sovereign's ^[2] 3:14 50:3</p> <p>sovereigns ^[6] 3:11 10:22 25:17 50:1,24 51:7</p> <p>sovereigns' ^[1] 10:24</p> <p>sovereignty ^[18] 4:1 5:10 6:2 13:9,13 16:2,22 18:18 20:10 21:3,19,23 22:13 33:4,18 36:4 63:25 64:1</p> <p>specific ^[1] 26:10</p> <p>stand ^[2] 29:6 59:6</p> <p>standard ^[6] 4:12 5:20 31:11 44:2 46:4 62:7</p> <p>standards ^[1] 4:10</p> <p>start ^[5] 35:4 36:2 40:9 50:10 51:1</p> <p>state ^[40] 10:9,15 11:19,20 12:7 15:17 23:8 29:13,23 30:3,18 33:8 35:20 37:20 38:8,25 41:3 42:13 44:21 50:14,21 51:3,13,14,15 52:9,12,13,13,15,17,22 53:20 54:1,15 55:2,2,3 64:21 65:12</p> <p>statements ^[6] 56:24 57:6,8,17,21 59:6</p> <p>STATES ^[16] 1:1,3,15 3:5 11:1,3,6,11 12:2 22:4 25:8 28:18 51:6 52:16 60:3,11</p> <p>States' ^[1] 60:20</p> <p>station ^[1] 66:1</p> <p>statistics ^[2] 42:7,9</p> <p>status ^[11] 4:17,18 20:1 31:6,6,7 35:19 39:16 45:2 65:23,24</p> <p>statute ^[3] 7:21 23:18 24:5</p> <p>statutes ^[5] 8:18 23:11 27:11 28:8</p>
--	--	---	---

Official - Subject to Final Review

<p>29:3 stay ^[1] 45:6 steam ^[1] 27:12 step ^[2] 46:2 62:22 stick ^[2] 57:11,16 sticker ^[1] 65:20 still ^[1] 8:1 stop ^[18] 7:9 8:13,22 14:22 22:10, 11 23:19,23 24:8 29:11,19 30:1 31:18 40:24 53:15 61:6,18,21 stop's ^[1] 30:1 stopped ^[1] 65:21 stopping ^[1] 15:4 stops ^[2] 8:14 27:25 store ^[1] 31:19 straightforward ^[1] 17:20 Strate ^[7] 7:6 9:22 20:13 56:24 59: 3,15 60:19 Strate's ^[2] 60:1,9 strategy ^[1] 48:1 street ^[1] 47:12 stretches ^[1] 29:16 strictly ^[2] 46:13,17 strong ^[1] 21:1 strongly ^[1] 52:4 structure ^[3] 33:14 61:8,16 subject ^[15] 7:1 10:6 12:17 28:23 46:10,17,21 47:3,13 48:4,16,17 49:12,14,19 subjecting ^[1] 10:1 submit ^[1] 61:5 submitted ^[2] 66:23,25 subsequent ^[1] 34:11 substantially ^[1] 4:20 substantive ^[1] 11:21 substituting ^[1] 61:21 successful ^[1] 54:12 sue ^[2] 54:10,14 sued ^[1] 64:21 sufficient ^[1] 17:2 suggest ^[3] 4:1 6:25 43:4 suggested ^[1] 28:25 suggesting ^[2] 21:5 29:15 suit ^[3] 55:3 64:15,17 summarized ^[1] 34:2 support ^[2] 4:20 21:8 suppose ^[5] 15:2,3 40:5 53:13,15 supposed ^[2] 30:1 43:6 suppression ^[3] 47:4 48:18 49:15 SUPREME ^[4] 1:1,14 55:9 58:9 surprising ^[1] 64:20 surrounding ^[2] 23:12 45:20 survive ^[1] 5:10 suspect ^[2] 4:16 30:16 suspected ^[1] 38:16 suspects ^[1] 3:13 suspicion ^[10] 8:13 14:8 43:9 44: 12 45:12,15,18 47:1 49:6 62:3 suspicious ^[1] 38:4 sweeping ^[1] 33:11</p>	<p>terminological ^[1] 30:10 terms ^[5] 34:19 54:5 57:9 58:16 62: 14 terribly ^[1] 19:10 territorial ^[2] 50:23 51:7 Terry ^[12] 8:13,25 22:10,11 23:19, 23 24:8 27:25 29:19,25 30:1 31: 19 test ^[3] 13:7 21:6 44:15 themselves ^[1] 63:20 theory ^[1] 6:21 there's ^[29] 5:5 7:4 11:17 16:24 22: 10 34:2,7 38:19,24 39:21,22 45: 22,24 46:1 48:25 51:5,5 52:4,15, 17,20,24 54:18,18 56:21 61:10,10, 11,13 therefore ^[1] 5:12 They've ^[3] 17:25 18:2 25:9 thinking ^[1] 21:19 thinks ^[1] 18:5 third ^[2] 27:10 65:14 Thomas ^[13] 7:14,15 8:20 9:3,6 36: 14,15 37:5,8,17 38:2 39:3 61:19 though ^[2] 33:13 54:22 thoughts ^[3] 53:11 54:2 56:8 threat ^[1] 46:1 threaten ^[1] 34:22 threatens ^[1] 34:18 three ^[3] 13:23 26:24 32:12 threshold ^[1] 45:19 throw ^[1] 56:8 tickets ^[1] 43:16 time's ^[1] 24:23 today ^[7] 7:9 9:24 17:7,18 25:24 29:11 32:13 took ^[1] 5:6 tort ^[2] 55:1,2 touch ^[1] 64:12 tough ^[1] 40:4 Trading ^[1] 35:6 traditional ^[1] 17:8 traffic ^[2] 8:14 14:22 Transnational ^[1] 11:14 treaties ^[3] 3:18,20 8:18 treatise ^[1] 57:7 treats ^[1] 57:8 trial ^[1] 22:11 tribal ^[86] 3:16,25 4:14 5:9 6:2 8:7 10:2,18 12:25 14:1,10 15:3 16:2,7 17:15 18:11,12 21:2,2,19 22:9,13 23:14 25:19 28:23 29:5,25 31:6 32:11,11,19,21,23 33:3,5,8,18,19, 20 34:18 35:25,25 36:4,5,5,12 37: 16,22 39:8,15 40:15,20,20 41:2 42:1,10,13,22 43:5,9,20 48:8 50: 14 51:12 53:14,16,25 54:6,11,14 55:10,10 56:16 58:10 59:24 60:24 61:14 63:6,14,17,23,24 64:1,15,22 65:23 tribe ^[19] 8:1 12:9,14 30:14,19 33: 24 36:12 37:6 39:25 40:6 41:5,7 43:2,3 54:8,11 58:13 60:5 66:3 tribe's ^[3] 12:17 17:8 25:6 tribes ^[31] 3:11 4:2 5:2 8:17 11:23,</p>	<p>23 13:9,13 14:7 17:24 22:5,25 24: 2,15 25:7,16,17,20 27:9 28:4,9 29: 18 32:5,14 33:7,13 39:1 40:14 50: 20 64:16,22 tribes' ^[1] 4:20 truthfulness ^[1] 40:10 try ^[5] 12:13 21:25 30:8 54:10 59: 16 trying ^[7] 6:13 22:5 27:13 29:17 37: 24 45:2 56:20 Tuesday ^[1] 1:11 turn ^[1] 58:17 turned ^[1] 58:12 turns ^[3] 39:25 40:5 49:17 two ^[5] 18:23 20:8 35:7 43:17 51: 10</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S ^[4] 11:12 24:20 33:11 56:10 U.S.C ^[3] 23:11,25 27:1 ultimately ^[9] 4:8 8:4,23 9:2 20:24 38:14 45:21 52:18 54:13 uncertain ^[1] 31:5 under ^[17] 15:9,19 18:10 28:6,6 30: 21 34:10,13 39:10 43:10 44:1 46: 18 48:12 54:23 55:10 58:1 66:1 undercut ^[1] 9:9 understand ^[6] 6:18,20 22:18 34: 9 60:12 61:3 understanding ^[2] 20:14,19 understandings ^[2] 3:25 17:8 understood ^[5] 11:17 17:25 23:2 24:13,16 unfair ^[1] 61:4 unfairness ^[2] 59:24 60:9 Union ^[1] 43:15 unique ^[1] 33:2 unit ^[2] 38:17 58:22 UNITED ^[9] 1:1,3,15 3:4 11:11 25: 8 60:2,11,20 unlawful ^[1] 64:13 unless ^[2] 21:20 30:17 unlimited ^[1] 33:7 unprecedented ^[1] 4:12 unrelated ^[1] 33:23 untenable ^[3] 4:7 8:4 33:18 until ^[3] 21:20 30:18 58:12 unworkable ^[2] 4:8 31:3 up ^[4] 30:20,25 59:11 63:2 upheld ^[1] 3:21 upsets ^[1] 3:25 urge ^[1] 20:11 urging ^[4] 17:7 22:25 29:10 66:8 useful ^[1] 58:8 usurping ^[1] 63:21</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>various ^[1] 14:2 vast ^[1] 42:20 vehicle ^[2] 38:18 58:23 versa ^[1] 51:4 versus ^[2] 3:5 5:7 via ^[1] 56:14 vice ^[1] 51:4</p>	<p>view ^[4] 10:17 15:8 16:16 35:13 violate ^[1] 53:17 violated ^[1] 61:13 violating ^[3] 12:13,14 34:25 violation ^[5] 3:14 16:25 53:19 62: 1,5 violations ^[4] 10:24 47:20 50:3 52: 13 violence ^[1] 46:1 virtually ^[1] 54:19 visible ^[2] 62:16,16 voluntary ^[1] 45:9</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wanted ^[3] 37:21 53:18 65:14 wants ^[3] 23:14,14 28:19 Washington ^[2] 1:10,20 way ^[11] 9:20 17:20 19:1,2 22:2 26: 12 28:17 41:13 50:22 60:11,19 ways ^[3] 18:24 39:22 50:20 weapon ^[1] 14:18 weapons ^[2] 8:15 38:5 welfare ^[2] 34:21 38:12 well-accepted ^[1] 11:9 Whereupon ^[1] 66:24 whether ^[14] 8:25 16:1 17:1 26:13 28:3,7,8 34:8 37:25 40:2,3 43:1 44:8 48:22 who's ^[2] 31:18 41:5 whole ^[1] 52:4 whom ^[2] 40:15,16 will ^[3] 3:3 4:14 29:4 window ^[1] 15:6 withdrawn ^[4] 21:20,24 26:14,15 within ^[9] 3:13 6:15 8:21 22:1 25: 12,14 34:24 50:25 58:11 without ^[3] 5:11,18 56:15 woman ^[1] 66:18 wonder ^[3] 13:12 34:16 35:15 words ^[2] 50:1,5 work ^[4] 41:21,23 52:18 53:12 workable ^[1] 8:9 works ^[1] 41:25 worse ^[1] 57:14 wrap ^[2] 30:25 63:2 written ^[1] 18:24</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years ^[1] 58:7</p>
<p style="text-align: center;">T</p> <hr/> <p>talked ^[1] 34:19 temporary ^[2] 30:2 61:6</p>			