

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

-----  
ERIK EGBERT, )  
 )  
 Petitioner, )  
 )  
 v. ) No. 21-147  
 )  
ROBERT BOULE, )  
 )  
 Respondent. )  
-----

Pages: 1 through 86  
Place: Washington, D.C.  
Date: March 2, 2022

---

**HERITAGE REPORTING CORPORATION**  
*Official Reporters*  
1220 L Street, N.W., Suite 206  
Washington, D.C. 20005  
(202) 628-4888  
[www.hrccourtreporters.com](http://www.hrccourtreporters.com)

1           IN THE SUPREME COURT OF THE UNITED STATES  
 2   - - - - -  
 3   ERIK EGBERT,                                    )  
 4                                        Petitioner,                                )  
 5                                        v.    ) No. 21-147  
 6   ROBERT BOULE,                                    )  
 7                                        Respondent.                                )  
 8   - - - - -

9  
 10                                       Washington, D.C.  
 11                                       Wednesday, March 2, 2022

12  
 13           The above-entitled matter came on for  
 14   oral argument before the Supreme Court of the  
 15   United States at 10:00 a.m.

16  
 17   APPEARANCES:  
 18   SARAH M. HARRIS, ESQUIRE, Washington, D.C.; on behalf  
 19       of the Petitioner.  
 20   MICHAEL R. HUSTON, Assistant to the Solicitor General,  
 21       Department of Justice, Washington, D.C.; for the  
 22       United States, as amicus curiae, supporting the  
 23       Petitioner.  
 24   FELICIA H. ELLSWORTH, ESQUIRE, Boston, Massachusetts;  
 25       on behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	SARAH M. HARRIS, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	MICHAEL R. HUSTON, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioner	23
9	ORAL ARGUMENT OF:	
10	FELICIA H. ELLSWORTH, ESQ.	
11	On behalf of the Respondent	41
12	REBUTTAL ARGUMENT OF:	
13	SARAH M. HARRIS, ESQ.	
14	On behalf of the Petitioner	82
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 21-147, Egbert versus Boule.

Ms. Harris.

ORAL ARGUMENT OF SARAH M. HARRIS

ON BEHALF OF THE PETITIONER

MS. HARRIS: Mr. Chief Justice, and may it please the Court:

This Court should not expand Bivens for the first time in 40 years.

First, Bivens extensions clash with modern precedent. Bivens interpreted federal courts' jurisdiction over federal questions as authorizing courts to fashion new damages actions. Decades of intervening cases reject that premise and remove any doctrinal basis for Bivens extensions.

Second, this Court has held that any reason to think Congress might doubt the efficacy or the necessity of a damages remedy bars new Bivens actions. Abbasi and Hernandez make respect for the separation of powers the key consideration. But the Constitution vests

1 Congress alone with the power to create damages  
2 actions. Abbasi and Hernandez say courts must  
3 pause if the judiciary isn't well suited to  
4 assess the systemic costs and benefits of a new  
5 damages action. But courts are never equipped  
6 for such predictive empirical judgments.

7           Abbasi and Hernandez also rule out  
8 Bivens extensions if Congress has extensively  
9 legislated in an area. But Congress has  
10 extensively legislated about federal officer  
11 liability without allowing individual damages  
12 actions.

13           Third, at the very least, this Court  
14 should not expand Bivens to First Amendment  
15 retaliation claims or to Fourth Amendment claims  
16 involving border security. Those claims raise  
17 yet further grounds for pause and would explode  
18 the universe of Bivens claims.

19           For First Amendment retaliation  
20 claims, plaintiffs could portray virtually any  
21 governmental action as unconstitutional if taken  
22 for retaliatory reasons, creating especially  
23 amorphous Bivens liability.

24           Further, allowing First and Fourth  
25 Amendment claims against agents involved in

1 border security also implicates national  
2 security, as Hernandez recognized.

3 And, finally, there are many  
4 alternative means to protect these  
5 constitutional interests.

6 I welcome the Court's questions.

7 JUSTICE THOMAS: Well, Ms. Harris, the  
8 -- when you have -- the Fourth Amendment claim  
9 in Bivens is similar to the Fourth Amendment  
10 claim here, so why doesn't that foreclose your  
11 argument that that's excluded?

12 MS. HARRIS: We respectfully disagree.  
13 The Fourth Amendment claim in Bivens is quite  
14 different from the claim here for a number of  
15 reasons.

16 First of all, the class of defendants  
17 and the statutory mission of the officers is  
18 exceedingly different. The Federal Bureau of  
19 Narcotics' mission is not the same in any  
20 respect as the statutory mandate under which  
21 Border Patrol officers are operating, and that  
22 is an important factor under Abbasi for a new  
23 context.

24 And, on top of that, we know, because  
25 Congress and the Court have said so, that the

1 Fourth Amendment applies differently in a border  
2 context. And that, I think, also goes to the  
3 Border Patrol functions. Border Patrol agents  
4 are in dangerous circumstances every day trying  
5 to interdict terrorists, smugglers, illegal  
6 entry and exit of foreign nationals crossing the  
7 border.

8 JUSTICE THOMAS: But couldn't you say  
9 something similar to that about police officers  
10 and the Fourth Amendment? I -- it seems to be  
11 pretty much the same thing.

12 But, beyond that, though, the -- if  
13 the Court adopted your approach, what survives  
14 as far as Bivens claims go?

15 MS. HARRIS: What survives is what we  
16 think the Court recognized in Abbasi would  
17 survive. So the Court said in Abbasi that it is  
18 not questioning the necessity or the stare  
19 decisis value of Bivens in the  
20 search-and-seizure context in which it arose.

21 And I think the next paragraph of  
22 Abbasi illustrates the Court was distinguishing  
23 between claims that would not be a new context  
24 for Bivens and claims that would be. So, again,  
25 I think, if you look at the facts of Bivens and

1 the things that perhaps the DEA is doing today,  
2 that would absolutely survive.

3 I don't think you have to resolve  
4 exactly what is -- is or is not a new context  
5 because this case, I think, is really about what  
6 happens when there is a Bivens extension on the  
7 table when there is something that is absolutely  
8 a new context and what factors should courts be  
9 considering in order to resolve that question.

10 CHIEF JUSTICE ROBERTS: Well, what is  
11 so different? This was a search of somebody on  
12 private -- an unlawful search on private  
13 property. I mean, it was near the Canadian  
14 border. Okay. The guy was a border agent.  
15 Well, that doesn't seem to be particularly  
16 relevant to -- to whether the other fellow was  
17 subject to an illegal search on his private  
18 property.

19 MS. HARRIS: Well, I think there are  
20 two really important things that are missing  
21 from that sort of picture of it, one of which is  
22 that I think everyone agrees that Agent Egbert  
23 was involved in an immigration investigation and  
24 that was the whole reason for being on Mr.  
25 Boule's property, which, again, was a notorious



1 site of smuggling and illegal entry and exit.

2 So the fact that the Border Patrol  
3 agent was indeed exercising --

4 CHIEF JUSTICE ROBERTS: So they have  
5 -- they had more flexibility under the Fourth  
6 Amendment than a regular police officer, you  
7 know, in -- in Des Moines?

8 MS. HARRIS: Yes, and I think, under  
9 both the Court's precedents and what Congress  
10 has said, that is absolutely the case. So the  
11 Court's Montoya decision recognizes the Fourth  
12 Amendment does apply differently at the border,  
13 and Section 8 U.S.C. 1357 is Congress's  
14 recognition that in the border context, there  
15 are a lot of different warrantless searches,  
16 arrests, et cetera, et cetera, that can happen  
17 at the border that you would not have in Des  
18 Moines.

19 And I think all of that's important  
20 because this goes to what the Court said in  
21 Hernandez with respect to the conduct of agents  
22 stationed at the border inherently implicates  
23 national security. That was absolutely true of  
24 Agent Mesa and Hernandez and, I think, applies  
25 equally here because the Court in Hernandez was

1 talking about the kinds of functions Border  
2 Patrol agents are performing at the border,  
3 which again involve --

4 CHIEF JUSTICE ROBERTS: Well, that's  
5 really your point. It has nothing to do with  
6 geography. It's what he was doing, right?

7 MS. HARRIS: It's --

8 CHIEF JUSTICE ROBERTS: He was -- he  
9 was a Border Patrol agent, but it's not -- we  
10 don't have this sort of Fourth Amendment free  
11 zone around the border.

12 MS. HARRIS: That's correct. I think  
13 you have to tie it, obviously, to the officer's  
14 functions. So, if we were talking about, you  
15 know, an IRS agent who happens to be stationed  
16 at the border, there might be different issues  
17 with a Bivens claim in that context, but we  
18 wouldn't be saying just because the IRS agent is  
19 at the border means they can -- you know, they  
20 are entitled to flexibility --

21 JUSTICE SOTOMAYOR: I thought that --

22 MS. HARRIS: -- with respect to the  
23 border.

24 JUSTICE SOTOMAYOR: -- the issue here  
25 was excessive force, and I thought that the

1 person making the claim was a U.S. citizen.  
2 And, in Bivens, it was an excessive force claim  
3 in an -- in a private home. Here, it's an  
4 excessive force claim on the property of an inn  
5 owned by a U.S. citizen.

6 I understand that Customs regulations  
7 require agents to secure warrants absent exigent  
8 circumstances, and we can debate whether this  
9 was exigent circumstances justifying his entry  
10 into this home and his decision to do what he  
11 did. I'm not going to get into those details.

12 But I go back to Justice -- the  
13 Chief's question, which is in what ways does the  
14 Fourth Amendment -- not -- the Fourth  
15 Amendment's excessive force claim differ between  
16 law enforcement agents like narcotics agents,  
17 alcohol -- alcohol and tobacco and firearm  
18 agents, or border patrol?

19 I thought that none of them  
20 constitutionally can use excessive force.

21 MS. HARRIS: Justice Sotomayor, I  
22 think there are a couple reasons why --

23 JUSTICE SOTOMAYOR: Just answer that  
24 question. Can any of them use excessive force?  
25 Being defined as force greater than that

1 necessary.

2 MS. HARRIS: No, of course, excessive  
3 force is something the Fourth Amendment  
4 prohibits, but I think that is not quite the  
5 inquiry when you're thinking about what is a new  
6 context or what are special factors because we  
7 also --

8 JUSTICE SOTOMAYOR: Well, what's a  
9 special factor here? That it's the border,  
10 you're saying, it's Customs agents, but I don't  
11 understand how they don't have the same  
12 constitutional protections that officers have,  
13 qualified immunity, so there's nothing that  
14 we've already said in Wilson versus Sellers that  
15 in a Bivens claim qualified immunity exists.

16 So they have the right to use their  
17 reasonable judgment and not engage in  
18 constitutional conduct. I -- I don't understand  
19 why this is a new context.

20 MS. HARRIS: So two points there.

21 First of all, with respect to why this  
22 is a new context, I -- I think the Abbasi  
23 factors are very clear that a statutory mandate  
24 and a different level of judicial guidance makes  
25 the claim meaningfully different.

1                   And with respect to excessive force  
2                   claims at the border, both Congress and the  
3                   Court have recognized that the need for lethal  
4                   force in certain circumstances and the rules of  
5                   engagement are fundamentally different.

6                   JUSTICE BREYER: That's not --

7                   MS. HARRIS: That has to do --

8                   JUSTICE BREYER: -- this case, is it?

9                   MS. HARRIS: Well, I think it is  
10                  relevant to this case just for the same --

11                  JUSTICE BREYER: I mean, I'm not  
12                  saying it isn't relevant. I just said this  
13                  isn't a case where they're having special rules,  
14                  this isn't a case where they're right at the  
15                  border. This is a case of, you know, what the  
16                  Chief Justice said, okay.

17                  There are 83, I gather, with -- Bureau  
18                  of Justice statistics says there are 83  
19                  different agencies where the officers are  
20                  federal, they are authorized to make arrests,  
21                  they carry firearms, they provide police  
22                  protection as their primary function.

23                  And I take it you think that Bivens  
24                  still applies in Shasta County, California,  
25                  doesn't it?

1 MS. HARRIS: I think it would depend  
2 on --

3 JUSTICE BREYER: No, no, no. It  
4 depends on whether it applies, exactly the same  
5 as the Bivens case, it's Shasta County,  
6 California. It's not New York. Apply?

7 MS. HARRIS: Yes.

8 JUSTICE BREYER: Of course.

9 MS. HARRIS: But I think the --

10 JUSTICE BREYER: And you think it  
11 applies in April and May of this year, even  
12 though Bivens didn't take place in April and  
13 May?

14 MS. HARRIS: Yes, those are --

15 JUSTICE BREYER: Okay.

16 MS. HARRIS: -- per the early records.

17 JUSTICE BREYER: Fine. And now which  
18 of these 83 agencies does it not apply to?

19 MS. HARRIS: So I think the question  
20 under Abbasi is --

21 JUSTICE BREYER: What?

22 MS. HARRIS: -- what is the statutory  
23 -- one of the questions, frankly --

24 JUSTICE BREYER: And one of the --

25 MS. HARRIS: -- what is the statutory

1 mission.

2 JUSTICE BREYER: -- missions with  
3 these people is they often fly in air -- in  
4 helicopters to help keep the peace with others  
5 who are just ordinary policemen or FBI men.

6 I mean, I was going to ask you, what  
7 do you think about the Federal Bureau of  
8 Prisons, the police there? Does it apply there?

9 MS. HARRIS: The Federal Bureau of  
10 Prisons, I think, probably not, because their  
11 statutory --

12 JUSTICE BREYER: No Bivens in the  
13 Federal Bureau of Prisons?

14 MS. HARRIS: So --

15 JUSTICE BREYER: Okay. Even there.  
16 No Bureau -- what about the Federal Bureau of  
17 Investigation? Does it apply there?

18 MS. HARRIS: I think it likely is a  
19 new context, and the reason is the Abbasi --

20 JUSTICE BREYER: Not the Federal  
21 Bureau of Investigation? Bivens doesn't apply  
22 to FBI agents? Is that what you're saying?

23 MS. HARRIS: I'm saying it's a new  
24 context, you'd have to run special factors, and  
25 the reason for that is I think it's a faithful

1 application of Abbasi --

2 JUSTICE BREYER: I see.

3 MS. HARRIS: -- because the statutory

4 --

5 JUSTICE BREYER: Okay.

6 MS. HARRIS: -- mission is --

7 JUSTICE BREYER: All right. I'm just  
8 getting your point of view.

9 MS. HARRIS: Okay.

10 JUSTICE BREYER: And the -- the --  
11 the -- what about the Drug Enforcement  
12 Administration?

13 MS. HARRIS: So the question for the  
14 DEA is that is the successor agency to the  
15 Federal Bureau of Narcotics, and, again, I think  
16 you have to run through the Abbasi factors.

17 JUSTICE BREYER: Okay. I get it.  
18 I'll give you two more. Bureau of Alcohol,  
19 Tobacco, Firearms, and Explosives, in your  
20 opinion, is it obvious that it does apply there,  
21 not obvious, or we go through some mechanism?

22 MS. HARRIS: I think you apply Abbasi,  
23 not obvious, because, again, the question has to  
24 do --

25 JUSTICE BREYER: Okay. Last one, U.S.



1 Mint Police. I actually don't know what the  
2 U.S. Mint Police does, but I suspect it's  
3 important so people don't take all the gold out  
4 of Fort Knox or something, but -- but do the  
5 same thing? Does it apply, obviously, not  
6 apply?

7 MS. HARRIS: Again --

8 JUSTICE BREYER: And, by the way, if I  
9 wanted to, which I don't because my colleagues  
10 would lynch me, the -- I -- I could go through  
11 78 more.

12 MS. HARRIS: Yes.

13 JUSTICE BREYER: And what they have in  
14 common, they carry firearms, they provide police  
15 protection, they're authorized to make arrests.  
16 But you're saying that isn't enough?

17 MS. HARRIS: I'm saying --

18 JUSTICE BREYER: We're going to --

19 MS. HARRIS: -- that's not enough  
20 because grouping all 83 federal agencies  
21 together when they're -- when they range from  
22 the Secret Service, which has obviously a  
23 primary mission, to other law enforcement  
24 agencies is not only new but raises really hard  
25 questions for courts that I don't think courts

1 are equipped to consider --

2 JUSTICE BARRETT: Ms. --

3 MS. HARRIS: -- under Abbasi.

4 JUSTICE BARRETT: -- Ms. Harris, can I  
5 follow up on Justice Breyer's questions? Is --  
6 is your inquiry driven by the mission of the  
7 agency or the mission of the federal officer in  
8 the particular situation?

9 So, for example, would your position  
10 change if, here, Egbert had gone in because he  
11 was -- he just suspected that there had been a  
12 domestic dispute and he was helping out local  
13 law enforcement and he went in?

14 Is what matters the fact that he is a  
15 border patrol agent, or is what matters that  
16 when he went in, he was investigating the  
17 potential smuggling?

18 MS. HARRIS: So I honestly think it's  
19 both because Abbasi seems to be looking at both  
20 the class of defendants, the implications for  
21 the agency, and also the statutory mandate under  
22 which the officer is operating.

23 And I say that because, in a lot of  
24 circumstances, it's going to be difficult to  
25 sort of separate out in one particular instance

1 which exactly are -- you know, is there an  
2 overlapping sort of statutory mandate the  
3 officer is executing.

4 And I think that also goes to the  
5 special factors analysis in the sense that the  
6 ultimate -- one of the ultimate questions is,  
7 are courts well-equipped to figure out the costs  
8 and benefits government-wide --

9 JUSTICE BARRETT: Well, so, in my --  
10 in my hypothetical, where the border agent,  
11 where Egbert goes in and he's not investigating  
12 a border issue, but he's investigating a  
13 domestic dispute or, you know, an assault or  
14 something like that, kind of following up on  
15 Justice Breyer's hypotheticals or questions to  
16 you, would Bivens apply in that circumstance?

17 MS. HARRIS: I don't think so. I  
18 think you could certainly argue the national  
19 security implications might be different in that  
20 case, but I would still be arguing that Bivens  
21 does not apply in that circumstance for all of  
22 the other special factors I've mentioned, and I  
23 would like to also flag alternative remedies are  
24 really important in this context.

25 Again, the Court's test is, is there

1 any single reason to doubt the need -- to think  
2 Congress would doubt the need for a Bivens  
3 remedy. And, in your particular context, the  
4 border patrol agent is still going to be someone  
5 where there's the possibility of Federal Tort  
6 Claims Act liability and a whole raft of  
7 administrative remedies and other potential  
8 outlets for someone to vindicate their interests  
9 in making sure their constitutional rights  
10 aren't violated.

11 JUSTICE KAGAN: Sorry. So, other than  
12 the alternative remedies, your answer to Justice  
13 Barrett's question is sort of across the board  
14 Bivens doesn't apply to border patrol agents,  
15 and if I could just hear again why that is?  
16 What do you think the special factors are that  
17 make all border patrol agents in every context  
18 doing any particular -- any function different?

19 MS. HARRIS: Sure. I think it's a mix  
20 of things. Now, again, I think it's easiest at  
21 the border where the national security  
22 implications, I think, Hernandez has already  
23 recognized --

24 JUSTICE KAGAN: But you would extend  
25 it even if the border patrol agent was not at

1 the border?

2 MS. HARRIS: Yes. And that is  
3 correct, and that is because I think the  
4 cross-cutting reasons against Bivens extensions  
5 make it a very difficult sale. I think that one  
6 of the questions --

7 JUSTICE KAGAN: So, again, what are  
8 those -- what are those reasons?

9 MS. HARRIS: Sure. Happy to go  
10 through them, first of which is just the  
11 doctrinal foundation, so is there reason to  
12 doubt -- to think Congress wouldn't want a  
13 remedy in which there's a separation-of-powers  
14 violation.

15 JUSTICE KAGAN: Well, but that just  
16 begs the question, I mean, why would Congress --  
17 I mean, the question is, like, what's different  
18 about this very large class now that you're  
19 demarcating?

20 MS. HARRIS: Sure. And I think the  
21 second question is whether the judiciary is  
22 well-suited to weigh the costs and benefits for  
23 the -- and the cross-cutting effects on the  
24 border patrol in recognizing such claims,  
25 including whether it -- whether border patrol

1 agents are sort of implementing overlapping  
2 functions.

3 Sort of at one moment, perhaps they  
4 think a search is initially perhaps something  
5 more akin to a routine law enforcement search.  
6 It becomes an immigration enforcement action. I  
7 think there are pretty hard questions about how  
8 it's going to affect --

9 JUSTICE KAGAN: I mean, but don't all  
10 -- all law enforcement officers -- you know,  
11 they do what's needed, and sometimes they're  
12 going to do something that's not strictly in the  
13 wheelhouse and sometimes they're going to -- I  
14 mean, that -- that would apply to everybody,  
15 wouldn't it, that, you know, they -- you know,  
16 there's a -- just a cop on the beat and he might  
17 be doing border patrol someday too.

18 MS. HARRIS: I think it's particularly  
19 acute with respect to the border patrol, but I  
20 do think that this illustrates, again, the level  
21 of generality that Abbasi and Hernandez have now  
22 pick -- pitched the inquiry, which is really  
23 separation-of-powers concerns have to be at the  
24 absolute forefront and is the answer to the  
25 question are courts ever well-suited to figure

1 out the systemic costs on an agency, including  
2 morale, deterrent effect, administrative costs,  
3 and --

4 JUSTICE KAGAN: Well, with respect, it  
5 does seem like, you know -- you know, what --  
6 when Justice Breyer was a little bit making fun  
7 of this, like, you know, on Tuesday and Thursday  
8 but not Wednesday and Friday, I mean, it seems  
9 that that's what you're saying, that we sort of  
10 focus Bivens at this unbelievably minute level  
11 of detail and find out exactly what Bivens was  
12 about and say, oh, sorry, it doesn't apply  
13 because it's Tuesday rather than Monday or it's  
14 April rather than May.

15 MS. HARRIS: Well, I respectfully  
16 disagree with that. I do think we're trying to  
17 faithfully apply exactly what Abbasi says. So I  
18 think the question is how do you distinguish  
19 between trivial differences and differences that  
20 are meaningful from Bivens and which, again,  
21 we're not challenging the stare decisis and  
22 settled law value of Bivens. And so I think  
23 that question really is answered by the Abbasi  
24 new context inquiry, which the Court has said is  
25 broad and easily satisfied.

1           And so I think that has to be the  
2 answer in order to be faithful to what the Court  
3 has already said in this context.

4           CHIEF JUSTICE ROBERTS: Thank you,  
5 counsel.

6           Justice Thomas?

7           JUSTICE THOMAS: No questions.

8           CHIEF JUSTICE ROBERTS: Justice  
9 Breyer, anything further?

10          Justice Alito? No?

11          Justice Gorsuch, anything further?

12          Justice Barrett? No?

13          Thank you, counsel.

14          Mr. Huston.

15                   ORAL ARGUMENT OF MICHAEL R. HUSTON  
16                   FOR THE UNITED STATES, AS AMICUS CURIAE,  
17                   SUPPORTING THE PETITIONER

18          MR. HUSTON: Mr. Chief Justice, and  
19 may it please the Court:

20                 A straightforward application of this  
21 Court's recent Bivens precedents demonstrates  
22 that the judgment of the court of appeals should  
23 be reversed. At step 1 of Abbasi's framework,  
24 both of Respondent's claims would require  
25 extending Bivens to new contexts for the first



1 time in 40 years, and at step 2, multiple  
2 special factors counsel hesitation against the  
3 Court taking that momentous step.

4 On the First Amendment, this Court has  
5 explained that retaliation claims are easy to  
6 allege and hard to disprove and that they have  
7 the potential to chill federal officers'  
8 performance of important functions. That is  
9 especially true here, where Respondent seeks to  
10 impose liability for Agent Egbert's giving of a  
11 tip to another agency suggesting further  
12 investigation.

13 And on the Fourth Amendment,  
14 Respondent's claim is meaningfully different  
15 from the ones in Bivens in ways that bear  
16 directly on the separation of powers. This  
17 Court has recognized that agents' effective  
18 policing of the border has a clear and strong  
19 connection to national security, and Congress  
20 has also determined that law enforcement at the  
21 border is different from other kinds of law  
22 enforcement.

23 All those features give ample reason  
24 to doubt that Congress would have wanted an  
25 individual damages remedy in the circumstances

1 here.

2 I'd like to begin --

3 JUSTICE THOMAS: Following up on the  
4 questions that Ms. Harris was confronted with,  
5 do you think that there is a meaningful  
6 difference between border patrol agents and  
7 narcotics agents?

8 MR. HUSTON: I think that border  
9 patrol agents do present a new context, Your  
10 Honor, at step 1 of Abbasi, but I think whether  
11 special factors counsel hesitation and, thus,  
12 whether a Bivens claim can go forward depends on  
13 what the border patrol agents are doing.

14 So I think this goes directly to the  
15 question that -- that Justice Barrett posed  
16 about what about a situation where a federal  
17 officer performs some duties that do implicate  
18 national security and others that don't.

19 We do think that that makes a very  
20 important difference, and we think that the --  
21 the facts here present a very clear and strong  
22 connection to national security, similar to what  
23 was at issue in Hernandez. That's why a Bivens  
24 claim cannot go forward here.

25 We think the case would be different

1 if you had a border patrol agent who's just  
2 investigating -- you know, assisting with local  
3 law enforcement to perform routine law  
4 enforcement functions.

5 JUSTICE BREYER: Well, after 9/11,  
6 there were quite a few local policemen, I  
7 believe, as well as FBI agents and federal  
8 police, in New York City looking for terrorists,  
9 which is certainly a national law enforcement  
10 function.

11 So is it the position of the Solicitor  
12 General and the government that if any of those  
13 normal agents that fall under Bivens, FBI, I  
14 take it, ordinary police, et cetera, federal  
15 police officials, if they had beaten somebody  
16 over the head unreasonably and acted contrary to  
17 the Constitution, there would be no Bivens  
18 action?

19 MR. HUSTON: Yes, there would be no  
20 Bivens action in --

21 JUSTICE BREYER: So any time -- so  
22 Bivens is not simply -- I'd never heard of that  
23 one. But you're saying that just -- who are the  
24 most ordinary people that Bivens applies to? I  
25 thought FBI agents.

1 MR. HUSTON: I think it is FBI agents.

2 JUSTICE BREYER: I thought DEA agents  
3 too. I was wrong about that?

4 MR. HUSTON: There are many claims  
5 brought against -- there are some claims brought  
6 --

7 JUSTICE BREYER: Yeah, DEA. Okay. I  
8 thought --

9 MR. HUSTON: -- against DEA agents,  
10 but the most common one --

11 JUSTICE BREYER: And I thought --

12 MR. HUSTON: -- is the FBI marshals.

13 JUSTICE BREYER: -- alcohol, tobacco  
14 and so forth. I thought those were just right  
15 at the heart of Bivens.

16 MR. HUSTON: Sure. Your Honor --

17 JUSTICE BREYER: Okay. So now they  
18 have the same job basically if you look at it in  
19 terms of arresting people for violations of  
20 federal law. They have the same authority to  
21 carry weapons. They have the same whatever.  
22 They -- they have the -- what's the word -- they  
23 have the same basic obligation providing police  
24 protection.

25 But you are saying all those people to

1 whom Bivens now applies, if the person they are  
2 arresting is a person who has a connection with,  
3 let's say, foreign dubious groups abroad, no  
4 Bivens action?

5 MR. HUSTON: Yes, that's right, Your  
6 Honor. And I think this --

7 JUSTICE BREYER: Would you call that a  
8 extension of Bivens or a drawing back of what  
9 people thought Bivens was about?

10 MR. HUSTON: I think Abbasi explained  
11 that when an officer is operating pursuant to a  
12 different statutory or legal mandate, that does  
13 give rise to a new context at some point.

14 JUSTICE BREYER: Oh, no, this is --

15 MR. HUSTON: It doesn't --

16 JUSTICE BREYER: -- the same mandate,  
17 the FBI. The same mandate, the DEA. They see a  
18 person walking down New York City with a bomb,  
19 okay, and so they arrest him, and in the course  
20 of that arrestment -- arresting him, they do  
21 something that's shocking or contrary to the  
22 Constitution, and that person with the bomb is  
23 connected with somebody in a foreign country.

24 And you're saying that person with the  
25 bomb has no Bivens action?

1           MR. HUSTON: That's correct, Your  
2 Honor. I think that's illustrated by the  
3 Court's opinion in Abbasi, where the Court  
4 talked about the difference between conditions  
5 of confinement claims like the ones that were at  
6 issue in Carlson and confinement claims like the  
7 ones that were at issue in Abbasi.

8           And the Court said the key difference  
9 is that Abbasi was a case about national  
10 security dissension, and that made all the  
11 difference, even though, at one level of  
12 generality --

13           JUSTICE KAGAN: And -- and how is this  
14 a case about national security? I mean, Justice  
15 Breyer gave you one hypothetical, but this is a  
16 much more prosaic case. I mean, the -- the --  
17 the agent goes in and goes onto somebody's  
18 private property and, essentially, it's to check  
19 on the status of a guest, the immigration status  
20 of a guest. Are you legally in this country or  
21 not?

22           I mean, what does that have -- you  
23 know, sure, you know, borders have something to  
24 do with national security, but every time an --  
25 a border agent checks on immigration status of a

1 person we kind of wave our arms and say national  
2 security and say there's no Bivens remedy  
3 because of that?

4 MR. HUSTON: Your Honor, the Court in  
5 Hernandez said that the protection of the  
6 border, the prevention of the unlawful entry of  
7 persons and drugs and other contraband, has a  
8 clear and substantial connection to national  
9 security.

10 JUSTICE KAGAN: I mean, Hernandez --

11 MR. HUSTON: I think that's --

12 JUSTICE KAGAN: -- is a very different  
13 kind of case, right? It's a cross-border  
14 shooting, and, you know, it clearly had  
15 implications for the relationship between the  
16 United States and Mexico, you know.

17 So whatever you think of Hernandez,  
18 there obviously was a dissent in that, but --  
19 but assume -- you know, assume that the majority  
20 was right. This is not Hernandez, is it?

21 MR. HUSTON: I agree that there's a  
22 factual difference. The cross-border aspect of  
23 Hernandez, which was important to the analysis,  
24 is not present here. That's certainly true.  
25 But if I might just say two things about why I

1 think there are other features of Hernandez that  
2 go --

3 JUSTICE KAGAN: Canada is not going to  
4 much care whether this border agent went on  
5 to -- you know -- you know, checked out this  
6 guy's citizenship or -- or legality in the --

7 MR. HUSTON: Your --

8 JUSTICE KAGAN: -- country.

9 MR. HUSTON: -- Your Honor, I very  
10 respectfully but very vigorously disagree with  
11 that. The -- the -- the agents at -- who work  
12 at the border in Blaine will tell you that their  
13 most important partnership is with the Royal  
14 Canadian Mounted Police. We work together with  
15 them to police our shared border. They protect  
16 their side for our benefit. We protect our side  
17 for their benefit. And it's that mutual  
18 cooperative relationship, which involves daily  
19 type of liaising, that really is what enables us  
20 to protect the border.

21 So I do think that if you have a  
22 situation like the one that Hernandez was  
23 concerned about, where the prospect of Bivens  
24 liability chills border agents' performance of  
25 their duties, that is something that affects



1 Canada in a very real way. It means more people  
2 are sneaking across the border into Canada.

3 But it's not just about preventing  
4 people from going into Canada. Agent Egbert was  
5 on the property that day because the Turkish  
6 guest had undertaken objectively suspicious  
7 travel across the world to stay at a rundown  
8 bed-and-breakfast at a site that is notorious  
9 for cross-border smuggling. Again, the agents  
10 who deal with this property, it is a constant  
11 headache. They've had years where there have  
12 been multiple incidents per week of people  
13 coming across the border into the United States  
14 from Canada.

15 And the agent suspected that day that  
16 that's why the Turkish guest was there, to  
17 facilitate the unlawful entry of persons or  
18 drugs or other things across the border into the  
19 United States or potentially to smuggle himself  
20 or other contraband --

21 JUSTICE KAGAN: That's what the --

22 MR. HUSTON: -- outside the United  
23 States.

24 JUSTICE KAGAN: -- agent says, but  
25 this is a summary judgment motion where we take

1 the facts not as the agent says, right? And --  
2 and if you do that, all that this is, is an  
3 unremarkable check as to whether a guest was  
4 lawfully in the country.

5 MR. HUSTON: Well, Your -- Your Honor,  
6 I think we're happy to take the facts in the  
7 light most favorable to Respondent, but, again,  
8 the Fourth Amendment creates an objective  
9 standard of reasonableness, and I think the  
10 facts here gave ample reason for an objective  
11 suspicion that this guest was involved in  
12 cross-border smuggling activity.

13 And, again, I think Hernandez said  
14 that cross-border smuggling activity, preventing  
15 the unlawful entry of persons and drugs, has a  
16 clear and substantial connection to national  
17 security. I think the Court was exactly right  
18 about that.

19 And, for the reasons I mentioned, I  
20 also think that agents' effective performance of  
21 their duties at the border does make a very  
22 significant difference to our foreign partners,  
23 to our Canadian partners.

24 JUSTICE BARRETT: Mr. Huston --

25 CHIEF JUSTICE ROBERTS: Mr. Huston,

1 give me a hypothetical case where your office  
2 would say Bivens permits a cause of action.

3 MR. HUSTON: Sure, Your Honor. In a  
4 case involving an FBI agent or an agent of the  
5 Park Police or the Marshals Service, something  
6 other than the Federal Bureau of Narcotics or  
7 its successor, the DEA, but that is a routine  
8 domestic search-and-seizure claim or a excessive  
9 force claim, the government has not argued  
10 either before or after Abbasi that those cases  
11 give rise to special factors.

12 Now, of course, the list of things  
13 that can create special factors, as Abbasi  
14 explained, is non-exhaustive, and so the Court  
15 really needs to consider the full picture. It  
16 makes a difference if the FBI agent is there, in  
17 Justice Breyer's hypothetical, to protect  
18 national security, to go after a guy with a  
19 bomb. And it makes a difference if you're  
20 trying to prevent the enter -- entry of drugs or  
21 -- or illegal persons at the border.

22 But, in a -- in that sort of routine,  
23 run-of-the-mill Fourth Amendment case by an FBI  
24 agent, we don't see special factors that  
25 counsel.

1 JUSTICE BARRETT: Mr. --

2 CHIEF JUSTICE ROBERTS: It's a special  
3 factor if drugs -- drugs are involved?

4 MR. HUSTON: Well, in -- no, I'm  
5 sorry, Your Honor, not just the drugs. Drugs  
6 were, of course, the basis for the investigation  
7 in Bivens itself, but it's a special factor if  
8 you are protecting the border because it's --  
9 it's a special factor anytime the agent's  
10 statutory mission is to protect national  
11 security. And the Court has explained that  
12 cross- -- effective protection of the border  
13 implicates directly national security.

14 JUSTICE GORSUCH: Mr. Huston, if I  
15 understand your response to the Chief Justice,  
16 cases identical to Bivens, the government  
17 concedes and the -- and the three cases we've  
18 recognized are -- are permissible, but anything  
19 beyond that we're going to have to do special  
20 factors. Is that a fair characterization?

21 MR. HUSTON: Yes, it is, Your Honor.  
22 And can I -- can I -- I would just like to say  
23 one word about why I think that's the right way  
24 to approach it.

25 That's because I think step 1 of the

1 two-step analysis is really just designed to  
2 perform a quick check to make sure that there  
3 are or are not special factors.

4 And it's really at the step 2 that the  
5 Court performs the full analysis. And you can  
6 see this in both the application of the test in  
7 Abbasi and Hernandez, where the discussion of  
8 whether the context was new was very, very  
9 brief. Most of the analytical work was being  
10 done at step 2 on special factors, and that took  
11 --

12 JUSTICE GORSUCH: Which is why you  
13 think it was appropriate for the Ninth Circuit  
14 to go to step 2 in this case?

15 MR. HUSTON: Absolutely. We think  
16 these -- these contexts are clearly new, both of  
17 them, Your Honor, and -- but we also, of course,  
18 you know, respectfully disagree with the Ninth  
19 Circuit's conclusion that there are not special  
20 factors in this case. So --

21 JUSTICE KAVANAUGH: When you get to  
22 step 2, can you imagine a case where it would  
23 ever be the situation where the special factors  
24 would not apply?

25 MR. HUSTON: Yes. I -- I think it's

1 the answer --

2 JUSTICE KAVANAUGH: What would be an  
3 example of that?

4 MR. HUSTON: I think it's the answer I  
5 gave to the Chief Justice. In a routine  
6 domestic search-and-seizure context or an  
7 excessive force claim involving a U.S. citizen  
8 by an FBI agent, that passes step 1, it's a new  
9 context because that agent has a different  
10 mission than the agent in Bivens.

11 But we would not argue that there are  
12 special factors counseling hesitation unless the  
13 case has facts like it implicates national  
14 security or something like that.

15 JUSTICE GORSUCH: Is -- is it --

16 JUSTICE BARRETT: Mr. Huston, can I  
17 ask --

18 JUSTICE GORSUCH: Go ahead.

19 JUSTICE BARRETT: -- a question about  
20 the government's position on the level of  
21 generality at which we analyze new contexts? So  
22 you've gotten a lot of questions about, well,  
23 would this count, would that count.

24 Would it be the position of the United  
25 States that after Abbasi we should construe the

1 new context against recognizing so that we would  
2 expect a very, very close fit, maybe not the  
3 Tuesday/Thursday, Monday/Wednesday examples that  
4 Justice Breyer was giving you, but is it the  
5 position of the United States that essentially  
6 the Court has said that Bivens remedies are so  
7 disfavored that we should always err on the side  
8 of narrowness? Is that the position of the  
9 United States?

10 MR. HUSTON: I think that's basically  
11 right, Your Honor. I think it follows directly  
12 from the Court's statements in Abbasi that a new  
13 context is broad and that even a minor extension  
14 still qualifies as an extension.

15 But I -- I actually think the  
16 skepticism of Bivens is -- is just as important  
17 at step 2. We think that the institutional  
18 competence of the courts, the fact that creating  
19 a cause of action is fundamentally a legislative  
20 function, not an exercise of the judicial power,  
21 mean that any extension of Bivens is disfavored,  
22 and, thus, when the Court is conducting a step 2  
23 analysis, it should be quite skeptical before it  
24 recognizes new cause -- new Bivens causes of  
25 action.

1 JUSTICE BREYER: Well, yes, but you're  
2 defining -- that wasn't quite the question, I  
3 thought, that -- that you were asking, Justice  
4 Barrett.

5 She was saying, all right, we see a  
6 new factor or could be a new factor, could not.  
7 Should we approach it with skepticism as to  
8 whether it is a new factor or not?

9 Now, there, why is skepticism  
10 justified? It can't be because -- see, if it  
11 isn't a new factor, it falls within what has  
12 already been recognized as something that was --  
13 Congress either wanted or at least permitted, et  
14 cetera.

15 The reason I ask that is Justice  
16 Harlan's opinion in Bivens, which I think is  
17 interesting, traces Bivens the right for a court  
18 to have such a -- a rule way, way back, back to  
19 really the common law, back to England, back to  
20 -- and to John Marshall in -- in -- and --  
21 and -- and so what's the reason -- and John --  
22 John Marshall in Marbury versus Madison, you  
23 know, rights and remedies and so forth.

24 So I got your point, don't extend it.  
25 But I haven't got your point of whether we



1 consider the differences here in this case  
2 something that would be extending it or not to  
3 recognize it would be narrowing it? How do we  
4 do that?

5 MR. HUSTON: Well --

6 JUSTICE BREYER: And why favor the  
7 one? Why have the presumption one way rather  
8 than the other? That's a little elaboration of  
9 what I took as the --

10 MR. HUSTON: The Court has said that  
11 its conception of what makes something a new  
12 Bivens context is broad and that even a modest  
13 extension is still an extension. And the reason  
14 for that is because the -- Justice Harlan in  
15 dissent in Bivens -- or, I'm sorry, not --  
16 Justice Harlan's concurring opinion in Bivens  
17 and the great Chief Justice's opinion were  
18 referring to common law remedies for common law  
19 injuries.

20 And that's very different, as this  
21 Court has explained, from a federal court,  
22 which, of course, doesn't create general common  
23 law.

24 CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1 Justice Thomas?

2 JUSTICE THOMAS: Nothing.

3 CHIEF JUSTICE ROBERTS: Anything

4 further, Justice Breyer? No?

5 Justice Alito? No?

6 Justice Gorsuch?

7 Justice Barrett? No?

8 Thank you, counsel.

9 Ms. Ellsworth.

10 ORAL ARGUMENT OF FELICIA H. ELLSWORTH

11 ON BEHALF OF THE RESPONDENT

12 MS. ELLSWORTH: Mr. Chief Justice, and

13 may it please the Court:

14 Mr. Boule's Fourth Amendment claim is  
15 materially indistinguishable from Bivens itself.

16 A federal law enforcement agent entered private  
17 property without a warrant and used excessive  
18 force, just like the federal agents in Bivens,  
19 as the Court's questions have indicated.

20 The fact that the federal agent  
21 inquired about the visa status of Mr. Boule's  
22 guest in the process does not make this case any  
23 different from the other instances of law  
24 enforcement overreach in the search-and-seizure  
25 context in which this Court has long recognized

1 that a Bivens remedy lies.

2 And this case has none of the foreign  
3 policy or extraterritoriality concerns that  
4 animated the Court's decision in Hernandez.  
5 Instead, this is a case like the Court observed  
6 in -- in Abbasi, where Bivens has continuing  
7 force and even necessity.

8 Mr. Boule's First Amendment claim  
9 addresses conduct that is similar to the conduct  
10 that this Court assumed in Hartman versus Moore  
11 could be remedied via Bivens, but even if it is  
12 a new context, there is no reason to withhold  
13 the remedy here.

14 There's no national security  
15 considerations, no conceivable national security  
16 considerations with regard to the First  
17 Amendment claim, and no alternative  
18 administrative remedial scheme that exists.

19 Awarding damages for federal  
20 officer -- individual damages for federal  
21 officer misconduct has long-standing roots  
22 dating back to the founding and remains  
23 appropriate, albeit more limited, today.

24 And as the Court has observed on  
25 several occasions, Congress in the Westfall Act

1 preserved the availability of individual damages  
2 for constitutional violations. Although the  
3 reach of Bivens may be narrow, the need for the  
4 remedy persists, and the argument that the Court  
5 should not recognize a Bivens remedy in any new  
6 case flies in the face of this Court's decision  
7 just five terms ago in Abbasi and also would  
8 contravene the historical foundations allowing  
9 individual damages to right a federal officer's  
10 constitutional wrong.

11 Mr. Boule's case claims satisfy the  
12 framework set forth in Abbasi and should be  
13 allowed to proceed.

14 I'd welcome the Court's questions.

15 JUSTICE THOMAS: But aren't -- aren't  
16 you up against the fact that we have declined to  
17 apply or extend Bivens in recent history? We've  
18 almost universally declined to expand it into  
19 new contexts?

20 MS. ELLSWORTH: That's -- that's  
21 correct, Justice Thomas. And we don't think  
22 this is a new context for all the reasons that  
23 some of the Court's questions of my friend  
24 indicated. This is an unlawful entry without a  
25 warrant, and this is excessive force on private

1 property against a U.S. citizen on domestic  
2 soil.

3 None of the reasons that the Court has  
4 found would be a Bivens extension in any prior  
5 cases apply here. And even if the Court were to  
6 go to the next step, none of the reasons that  
7 have been offered that might counsel hesitation  
8 would be a reason to withhold a Bivens remedy  
9 here or to think that Congress would not want a  
10 damages remedy in this instance.

11 JUSTICE KAVANAUGH: What about Mr.  
12 Huston's reference to Canada and the cooperation  
13 with Canada, so this is the border context and  
14 it's not just near the border, but there  
15 actually is interaction with the Canadian  
16 authorities on this kind of activity?

17 MS. ELLSWORTH: So a -- a couple  
18 responses to that, Justice Kavanaugh.

19 First of all, I -- I hear the  
20 government and -- and Petitioner to be saying  
21 that the actual proximity to the border doesn't  
22 matter to the position here, that, in fact, the  
23 position is that border patrol agents writ large  
24 should not be subjected to Bivens. So I don't  
25 think this actual proximity and the cooperation

1 with Canada is -- is particularly relevant here.

2 Agent Egbert would take the position  
3 that this conduct is not subject to Bivens if it  
4 happened 20 miles away because of the  
5 immigration-related context that supposedly  
6 applies.

7 And that, to Justice Breyer's  
8 questions, the 83 agencies, the 5,500-mile land  
9 border with Canada, the idea that Bivens doesn't  
10 apply anywhere in that swath would sweep with  
11 far too broad a brush.

12 Now I think it is possible -- and the  
13 Court's decision in Hernandez, of course,  
14 recognizes this -- that there are certain  
15 functions that may be performed by border patrol  
16 agents which may create a new context or may be  
17 a -- a reason counseling hesitation, but not  
18 every function performed by a border patrol  
19 agent falls into that category, and the conduct  
20 of Agent Egbert here certainly does not.

21 JUSTICE BARRETT: Ms. Ellsworth, what  
22 if this had happened -- you know, Smuggler's Inn  
23 was very, very close to the border. What if  
24 this exact same encounter at which Boule alleges  
25 there was excessive force had happened not on

1 his property but right next to the border? What  
2 then?

3 MS. ELLSWORTH: So, as a -- as a  
4 factual matter, his property is right next to  
5 the border?

6 JUSTICE BARRETT: He is right next to  
7 the border? Okay.

8 MS. ELLSWORTH: It's about 10 feet  
9 away.

10 JUSTICE BARRETT: But, like, what if  
11 -- what if we push it up, like, right, right by  
12 the border, it's not his driveway, it's right,  
13 right by the border. Does -- does that change  
14 things for you?

15 MS. ELLSWORTH: I don't think it does,  
16 Your Honor, I really don't, because the -- the  
17 -- the conduct that the agent was engaged in  
18 here was ordinary law enforcement conduct. He  
19 was following up on a tip given to him by Mr.  
20 Boule to come and inquire about the -- or talk  
21 to this Turkish guest.

22 And once that -- once he followed up  
23 on that tip, if you look at Joint Appendix 108,  
24 the agent left. There was no further concern,  
25 no further sort of exigency at the moment.

1                   So I don't think what -- how -- the  
2                   proximity to the border makes a difference.

3                   JUSTICE BARRETT:   So what would he  
4                   have to do for Bivens not to apply?

5                   I mean, the -- you know, Boule has  
6                   been involved in smuggling activity in the past.  
7                   His -- his B&B is called Smuggler's Inn.  His  
8                   license plate says "SMUGGLER."  You know, there's  
9                   this Turkish national who's staying and there's  
10                  suspicion that he's going to, which, in fact, he  
11                  did, cross the border into Canada illegally, and  
12                  -- and this is what Agent Egbert is following up  
13                  on.

14                  What would have to be present?  Can  
15                  you give me a set of facts in which Bivens then  
16                  would not apply?

17                  MS. ELLSWORTH:  Certainly, and I think  
18                  it's the Hernandez case, at least is one  
19                  example.  It's actively patrolling the border,  
20                  attempting to prevent illegal entry, right?  
21                  That's what Agent Mesa was doing in Hernandez.  
22                  That is one of the factors that the Court found  
23                  convincing as to why Bivens shouldn't apply  
24                  there, although the extraterritoriality and the  
25                  foreign relations concerns played a far larger



1 role at least in the Court's opinion.

2 JUSTICE SOTOMAYOR: What --

3 JUSTICE GORSUCH: Counsel -- oh, go  
4 ahead, please.

5 JUSTICE SOTOMAYOR: What I find so  
6 strange about this case is that Mr. Boule is the  
7 one who told the agent about this visitor,  
8 didn't he?

9 MS. ELLSWORTH: That's correct,  
10 Justice Sotomayor.

11 JUSTICE SOTOMAYOR: And --

12 MS. ELLSWORTH: Mr. Boule was a  
13 government informer -- informant for ICE.

14 JUSTICE SOTOMAYOR: Assuming that  
15 that's public knowledge now. And so -- and I  
16 think that Mr. Boule told him he was coming  
17 from -- from an airport, correct?

18 MS. ELLSWORTH: That's correct. He  
19 told him he had flown into the country at  
20 Kennedy Airport in New York and was arriving in  
21 the area at Seattle Tacoma.

22 JUSTICE SOTOMAYOR: All right. I  
23 still don't understand why the agent had to wait  
24 until the car got to the inn, why he couldn't,  
25 if he was curious, have stopped the car

1 anywhere?

2 MS. ELLSWORTH: Well, that's exactly  
3 right, Justice Sotomayor. He could have stopped  
4 the car outside of the property. He could have  
5 stopped the car on the way from the airport. As  
6 Justice Barrett's question indicated, the car  
7 has a distinctive license plate. Agent Egbert  
8 was familiar with it. There was no need to  
9 enter the property in order to conduct the visa  
10 check.

11 JUSTICE SOTOMAYOR: So I guess your  
12 answer is really that whatever the writ large  
13 activity of an agent is, we should be looking at  
14 what the activity was in this case?

15 MS. ELLSWORTH: I think the specific  
16 activity is something the Court has typically  
17 considered in -- in Bivens, the Bivens context  
18 in order to --

19 JUSTICE SOTOMAYOR: And so, as you see  
20 the activity, it's not smuggling; it's an  
21 immigration violation?

22 MS. ELLSWORTH: Exactly. It has  
23 nothing to do with alleged smuggling, and, of  
24 course, as I noted, Mr. Boule was cooperating  
25 with the government rather than in opposition to

1 it.

2 But, if the fact that the agent is  
3 conducting a visa check is sufficient to remove  
4 the conduct from the ambit of Bivens altogether,  
5 that would have extremely broad implications far  
6 beyond border patrol. I mean --

7 JUSTICE ALITO: What if it happened  
8 right at the border? Suppose that someone runs  
9 across the border carrying a big bag of drugs,  
10 and the border patrol agent sees that person and  
11 then tackles the person and allegedly uses  
12 excessive force in detaining the person.

13 What would you say about that?

14 MS. ELLSWORTH: That case would be  
15 much more similar to the conduct in Hernandez.  
16 And, again, the agent would be actively both  
17 stationed at the border, right, stationed at a  
18 checkpoint of some sort, but also attempting to  
19 prevent illegal entry, right?

20 That is the difference in the -- if  
21 we're talking about the law enforcement conduct,  
22 that is one of the differences between what was  
23 -- Agent Mesa was doing in Hernandez and Agent  
24 Egbert --

25 JUSTICE ALITO: Well, how -- okay.

1 How about if it's the other way? This person is  
2 running toward Canada, and the border patrol  
3 agent tackles the person two feet from the  
4 Canadian border.

5 MS. ELLSWORTH: Again, I think it  
6 would depend on whether the agent was actually  
7 stationed at the border, attempting to prevent  
8 unlawful entry and exit. That's not the  
9 circumstance here, but I think that would be a  
10 closer case because, again, that is an  
11 individual border patrol agent who's actively  
12 engaged in trying to stop cross-border conduct,  
13 crime, whatever you call it.

14 That's very different from a law  
15 enforcement officer who comes onto somebody's  
16 property following up on a tip and then, as the  
17 allegations of the -- the case reached this  
18 Court, engages in excessive force. It's a  
19 different --

20 JUSTICE ALITO: At -- at what point do  
21 you think he -- this is not the Bivens question,  
22 but just to understand the background of this,  
23 at what point do you claim the agent violated  
24 your client's Fourth Amendment rights? This is  
25 a public accommodation, right? So --

1 MS. ELLSWORTH: So --

2 JUSTICE ALITO: -- presumably, anybody  
3 can walk up to the door of it. Wouldn't that be  
4 the case?

5 MS. ELLSWORTH: The district court  
6 found, at the Petition Appendix 65a, that the  
7 area where Agent Egbert attempted to question  
8 the Turkish guest, where he was standing and  
9 where Mr. Boule asked him to leave, was the  
10 curtilage of the property, which is protected  
11 within the Fourth Amendment. It is an area very  
12 similar to the area that the Court found in the  
13 Collins versus Virginia case was curtilage  
14 protected by the Fourth Amendment as well.

15 So I -- that is what -- the initial  
16 Fourth Amendment violation is that area, the  
17 fenced-in area right in front of the front door  
18 of Mr. Boule's home --

19 JUSTICE ALITO: Well, I mean, suppose  
20 --

21 MS. ELLSWORTH: -- which is also --

22 JUSTICE ALITO: -- he wanted to -- to  
23 rent a room there. He can -- he could enter,  
24 right? He could walk up to the door to enter.  
25 Suppose he wanted to speak to a guest. I mean,

1 this is not -- I'm just trying to -- this seems  
2 like not the biggest Fourth Amendment case that  
3 we've -- we've ever seen.

4 MS. ELLSWORTH: So -- so let me give a  
5 few responses, Justice Alito.

6 First of all, the -- the district  
7 court found that this was curtilage. That was  
8 not disturbed on appeal by the Ninth Circuit.  
9 So I don't think that question is before the  
10 Court. But taking the question --

11 JUSTICE ALITO: Well, I don't know  
12 that the issue is whether it's curtilage or not  
13 because it's a commercial establishment. But go  
14 ahead.

15 MS. ELLSWORTH: Take -- taking the  
16 question, when Agent Egbert was in this area of  
17 the property and Mr. Boule asked him to leave,  
18 that is the moment --

19 JUSTICE ALITO: Yeah. Okay.

20 MS. ELLSWORTH: -- at which the search  
21 became an unlawful search.

22 JUSTICE ALITO: Okay.

23 JUSTICE GORSUCH: Counsel --

24 JUSTICE KAGAN: Can I take you back to  
25 --

1 JUSTICE GORSUCH: Oh, please. No, go  
2 ahead.

3 JUSTICE KAGAN: -- Justice Kavanaugh's  
4 question about U.S./Canada relations? And, as I  
5 understood it, the way you responded to him is,  
6 look, Petitioner's view would extend far beyond  
7 the border, just anytime a border patrol agent  
8 is involved.

9 But how about if we narrowed  
10 Petitioner's view and we said, okay, it's border  
11 patrol agents acting near the border? Does that  
12 have implications almost as a matter of  
13 necessity for U.S./Canada relations?

14 MS. ELLSWORTH: I don't think it does  
15 as a matter of necessity. It's going to -- it's  
16 going to depend on the facts because not all  
17 border patrol agents are engaged in conduct that  
18 is actively protecting the border at all times.  
19 The mission of the border patrol is much broader  
20 than that, and there are border patrol agents  
21 who at various times, as Justice Breyer's  
22 question to my friend indicated, are engaged in  
23 normal domestic law enforcement activities.

24 So it does -- it depends on the  
25 activity that the agent is involved in. And I

1 would just note --

2 JUSTICE KAGAN: And why does this  
3 activity fall on one side of the line rather  
4 than the other side of the line?

5 MS. ELLSWORTH: Because, again, the  
6 agent was following up on a tip. That's normal  
7 law enforcement activity. The fact that the  
8 tip, though --

9 JUSTICE KAGAN: Well, doesn't it make  
10 a difference what the tip was about?

11 MS. ELLSWORTH: Well, and the fact  
12 that the tip related to -- first of all, the tip  
13 was, I have a legal -- you know, somebody who is  
14 illegally in the country coming to my property.  
15 So there's some factual dispute here or -- or  
16 lack of clarity that would need to be decided by  
17 a fact finder. As Your Honor noted, this comes  
18 to the Court on summary judgment.

19 But, more importantly, if immigration  
20 related, if following up on somebody's  
21 immigration status were sufficient to remove  
22 conduct from the ambit of Bivens, that would --  
23 that -- that sweeps every federal agent, that  
24 sweeps local agents, state agents. I mean,  
25 immigration checks are something that are



1 extremely common.

2 JUSTICE KAVANAUGH: But, here, it's a  
3 tip, to follow up on Justice Kagan's questions,  
4 a tip about someone who's present, and the  
5 officer, exercising experience, says, well, this  
6 person staying there is likely to cross the  
7 border or possible to cross the border into  
8 Canada. So it's an illegal crossing, although  
9 in the opposite direction of the cases that the  
10 border patrol is usually dealing with. And that  
11 goes back to the Canada/U.S. cooperation.

12 But this is not just an illegal  
13 presence case. It seems to me, from the  
14 officer's perspective, it's an illegal crossing  
15 investigation or a potential illegal crossing.

16 MS. ELLSWORTH: So a few responses to  
17 that, Justice Kavanaugh.

18 First of all, the -- the record belies  
19 that claim, right? At Joint Appendix 108, the  
20 agent came. Once he had checked the visa, he  
21 said our job there was done as border patrol  
22 agents and left.

23 The second point I would make is,  
24 unlike in Hernandez, we do not have the  
25 government of Canada before this Court

1 indicating that they disagree with the position  
2 taken by the lower courts or the position taken  
3 by the agency. And the animating -- the foreign  
4 relations animating factor in Hernandez, at  
5 least as I read it, related to the -- the -- the  
6 problem with foreign relations that it would  
7 create for a court, this Court, to somehow  
8 contradict the judgment that the executive had  
9 made.

10 But the third point I would make is --

11 JUSTICE ALITO: But in Hernandez --

12 JUSTICE KAGAN: So it's obvious --

13 JUSTICE ALITO: -- the -- the

14 government of Mexico did not object to having  
15 that suit go forward.

16 MS. ELLSWORTH: No, the government of  
17 Mexico, of course, as -- as the Court --

18 JUSTICE ALITO: Okay.

19 MS. ELLSWORTH: -- is well aware was  
20 -- was supporting the availability of Bivens,  
21 but that would have been in contravention of the  
22 executive's decision not to discipline Officer  
23 Mesa.

24 JUSTICE KAGAN: I mean, I would think  
25 it's obviously true that, you know, Prime

1 Minister Trudeau is not sitting up late thinking  
2 about this case. But is -- is that what's  
3 required?

4 MS. ELLSWORTH: Something more than  
5 the fact of it being proximate to Canada, I  
6 think, has to be required for this Court to  
7 think that foreign relations somehow come into  
8 play. And there's no suggestion, even the  
9 government's representation at argument today,  
10 that there's any interest by the government of  
11 Canada in this particular case or in the conduct  
12 that Agent Egbert was involved in somehow being  
13 remedied or not remedied.

14 And if it were sufficient that Agent  
15 Egbert is a Customs and Border Protect --  
16 Protection officer for that to eliminate the  
17 availability of Bivens, none of this Court's  
18 discussion in Hernandez would have been  
19 necessary, right? That -- Agent Mesa was a CBP  
20 officer as well, and the Court went to great  
21 lengths to explain why it was that Bivens was  
22 not available there.

23 It certainly wasn't sufficient either  
24 that he was affiliated with CBP or even that the  
25 conduct in question was so close to the border.

1 There were many more considerations that the  
2 Court took into account.

3 JUSTICE GORSUCH: Counsel --

4 CHIEF JUSTICE ROBERTS: I think it's  
5 important to keep in mind why we're asking all  
6 these questions and I -- about the border, and  
7 I -- I think we may have missed the sort of  
8 important context.

9 It's not whether we think there's  
10 going to be some, you know, connection to  
11 international affairs but whether Congress,  
12 given that context, would want there to be a  
13 private right of action against a federal  
14 officer but not enough to say something about  
15 it.

16 In other words, we're wondering -- and  
17 this is -- I -- I wonder if your friend on the  
18 other side is -- is doing a little bit of double  
19 counting. We start by saying there has to be  
20 special considerations, but isn't one of the  
21 special considerations the likelihood that  
22 Congress would want their agents to be facing  
23 this type of -- of liability, whether it's  
24 something that's going to present a problem by  
25 the -- at the border in -- in every case or not.

1 MS. ELLSWORTH: Well, let's talk about  
2 what Congress has said here. We have two  
3 indications to the extent that we can read --  
4 read anything into them of what Congress thinks  
5 about this.

6 The first is Section 1357(g)(8), which  
7 subjects state officers who are deputized as --  
8 as CBP officers to the same types of liability  
9 and the same types of immunity as they would be  
10 under federal law. So that's a suggestion by  
11 Congress and understanding that there may well  
12 be civil suits that arise out of conduct like  
13 this.

14 The second indication that we have is  
15 the Westfall Act, which, of course, doesn't  
16 speak to the border context, but it does speak  
17 to the fact that Congress has not seen fit to  
18 eliminate the remedy of individual damages for  
19 -- against constitutional violations for federal  
20 officers.

21 CHIEF JUSTICE ROBERTS: Well, but, I  
22 mean, the argument on the other side is that's  
23 your alternative remedy, the Westfall Act.

24 MS. ELLSWORTH: And if the --

25 CHIEF JUSTICE ROBERTS: You don't need

1 a Bivens action.

2 MS. ELLSWORTH: If the Westfall -- if  
3 the FTCA were sufficient to be an alternative  
4 remedy, first of all, that would have to -- that  
5 would contravene this Court's guidance in  
6 Carlson and Malesko about the FTCA and Bivens  
7 needing to co-exist.

8 But the second point I would make is  
9 the Westfall Act explicitly exempts Bivens  
10 actions. That's what the Court said in Hui  
11 versus Castaneda, and the Westfall Act was  
12 enacted against the backdrop of this Court's  
13 Bivens jurisprudence at least as it existed in  
14 1988, which was, respectfully, far broader than  
15 it is today.

16 So, to -- to the extent we can read  
17 anything into what Congress has done in the  
18 Westfall Act, I think it -- it certainly doesn't  
19 counsel against a Bivens remedy in this case in  
20 the Fourth Amendment context.

21 JUSTICE GORSUCH: Counsel, if I  
22 understand you correctly, you disagree with the  
23 Ninth Circuit at the first step, is that right?

24 The Ninth Circuit said this is a new  
25 context, and you say it is not a new context

1 because the actions of the officers here are  
2 pretty similar to those in Bivens.

3 MS. ELLSWORTH: That's correct. The  
4 Ninth Circuit found this to be a modest  
5 extension. We respectfully submit that it's not  
6 an extension of Bivens, and so the special  
7 factors don't --

8 JUSTICE GORSUCH: Right.

9 MS. ELLSWORTH: -- need to be  
10 considered.

11 JUSTICE GORSUCH: So I -- I -- I  
12 guess, you know, part of my -- here's my big  
13 concern. I'll lay it out. We have a  
14 disagreement about the level of generality we're  
15 supposed to apply at step 1, whether this is or  
16 isn't a new context.

17 And one side argues that we should  
18 look at it more broadly, perhaps you. This is  
19 more like Bivens at a high level of generality.  
20 And the other side tells us we have to get down  
21 to the nitty-gritty. And -- and any deviation  
22 from any specific thing is enough to create  
23 special factors.

24 And then we go to the special factors,  
25 and it's a whole list of disparate

1 considerations that are pretty hard to balance,  
2 I think, we could all agree. And we're told  
3 that, really, the agency matters, but, on the  
4 other side, we're told no, it's the conduct that  
5 matters in the specific case.

6 And in between, it could be the  
7 conduct that could potentially matter in those  
8 circumstances that an officer entering might --  
9 might face. It could be a law enforcement call  
10 that turns into an immigration call or an  
11 immigration call that turns into a law  
12 enforcement call.

13 And then we're talk -- then we talk  
14 about the border, and there, we know that if  
15 it's a shot across the border, that's bad. But  
16 the Smuggler's Inn, which has been disparaged in  
17 its quality today --

18 MS. ELLSWORTH: Unfairly.

19 JUSTICE GORSUCH: -- unfairly, I'm  
20 sure, is sufficiently far from the border that  
21 it -- that it's okay, and then we -- well, then  
22 we had a series of hypotheticals about, well,  
23 what -- what if -- what if the driveway were a  
24 little closer and -- and, you know -- or  
25 whatever.



1                   And I guess I'm just stuck, all right?  
2           What -- what -- what is a good and faithful  
3           judge supposed to try and do with all of this  
4           mess, acknowledging the fact too that this Court  
5           hasn't recognized a new Bivens action in  
6           decades? As you say, the law was very different  
7           in 1988 than it is today. Help.

8                   MS. ELLSWORTH: So let -- let me do my  
9           best, Justice Gorsuch.

10                   I -- I think that the Court should  
11           look to the guidance in Abbasi from five terms  
12           ago, and I know that Hernandez is an intervening  
13           case, but I think Hernandez is almost sui  
14           generis given the facts of that case.

15                   And if the Court looks at Abbasi, the  
16           framework that was set out in Abbasi provides  
17           the Court guidance for what to consider and how  
18           to weigh that, and, in fact, one of the claims  
19           in Abbasi against the individual jailers, as the  
20           Court is aware, was sent back to the Second  
21           Circuit to consider whether special factors  
22           counsel hesitation.

23                   So the Court did, in fact, recognize a  
24           new context in Abbasi. It found that because  
25           the claim was brought -- the conditions of

1 confinement claim was brought under the Fifth  
2 Amendment rather than the Eighth Amendment, that  
3 was a new context, a modest extension, and sent  
4 it back to the Second Circuit for consideration.

5 Now, in the interest of candor, the  
6 Second Circuit or the district court found that,  
7 in fact, there were special factors counseling  
8 hesitation in that case.

9 But the -- the fact remains that the  
10 framework that was set forth in *Abbasi*, I think,  
11 allows the Court to consider and weigh these  
12 different competing factors in the way that  
13 courts do every day in the qualified immunity  
14 context, in applying the exclusionary rule, in  
15 various other factors.

16 JUSTICE GORSUCH: Well, you know, in  
17 those contexts -- take qualified immunity. I --  
18 I -- I -- I kind of get my head around at least  
19 what I'm supposed to try to do there, right, is  
20 the law clearly established, and I look on the  
21 books and see if I can find it.

22 Here, we can't even agree on step 1,  
23 whether this is a new -- I mean, how many years  
24 on from *Bivens* and we can't even agree what a  
25 new context is?

1 MS. ELLSWORTH: Well --

2 JUSTICE GORSUCH: And then -- and  
3 then, when we get to the special factors, I  
4 mean, I think, as our discussion today has  
5 illuminated, it isn't exactly like looking on  
6 the books to see if there's a case on point.

7 MS. ELLSWORTH: And I would say that  
8 the lower courts have not respectfully struggled  
9 to -- to quite the same degree with applying  
10 the -- the Abbasi framework.

11 There have been -- and they're cited  
12 in all the briefs, there have been cases since  
13 Abbasi where lower courts have -- have concluded  
14 that a Fourth Amendment unlawful search and  
15 seizure, like we submit this case, is not a new  
16 context and that Bivens applies.

17 And there have been many other cases  
18 where the Court has concluded either it's a new  
19 context or that special factors apply and has  
20 not --

21 JUSTICE GORSUCH: Except for you argue  
22 on the first one that the Ninth Circuit's wrong,  
23 that this isn't a new context, right? I mean,  
24 you say, well, the lower courts have had no  
25 problem finding this isn't a new context, except

1 for this one did.

2 MS. ELLSWORTH: Well, the Sixth  
3 Circuit in -- in the -- the case cited in our  
4 brief at page 31 found no new context in a  
5 Fourth Amendment --

6 JUSTICE GORSUCH: So we have a  
7 disagreement between the Sixth and Ninth Circuit  
8 on whether this is a new context?

9 MS. ELLSWORTH: Well, it's, obviously,  
10 different cases. But I don't think that -- I  
11 mean, I think the Court can also consider the  
12 same factors that the Court considers in  
13 determining whether something is a new context.  
14 They seem to bleed over into the special factors  
15 as well. Either way you slice them here, I  
16 don't think --

17 JUSTICE GORSUCH: That's another  
18 problem. What do we do about that? The same  
19 considerations at step 1 bleed into step 2,  
20 and -- and -- and normally, when we have a  
21 two-step test, we have two steps. And, here,  
22 it's kind of, as you say, one and a half.

23 MS. ELLSWORTH: Well, and either way,  
24 whether the Court considers it under step 1 or  
25 the Court considers it under step 2, none of the

1 factors that were outlined in *Abbasi*, nor any  
2 other factors that have been raised by either  
3 the United States or Petitioner, are a reason  
4 why this Fourth Amendment claim should not be  
5 allowed to proceed.

6 JUSTICE BARRETT: Ms. Ellsworth, let  
7 me ask you a question, the questions following  
8 up that Justice Breyer and I were asking about  
9 skepticism and given that the Court hasn't  
10 recognized a new *Bivens* claim in decades, given  
11 that the Court has said that they're disfavored.

12 When we're asking these questions  
13 about level of generality and going through the  
14 factors, do you think our precedent puts a thumb  
15 on the scale of skepticism and a thumb on the  
16 scale counseling the Court to treat it as a new  
17 context?

18 MS. ELLSWORTH: I don't think the -- I  
19 don't think the -- I -- I think it's fair to say  
20 that the Court has treated *Bivens* claims with  
21 skepticism over the past several decades. That  
22 is certainly fair.

23 The -- I don't think the Court has put  
24 a thumb on the scale in favor of finding a new  
25 context *per se*. And like I said, in *Abbasi*, the

1 Court found --

2 JUSTICE BARRETT: No, in favor of not  
3 finding a new context.

4 MS. ELLSWORTH: In -- in favor of not  
5 finding a new context, yes.

6 I think what the Court has done has  
7 been appropriately guarded in expanding the  
8 remedy of -- of Bivens beyond where it has  
9 already been recognized.

10 And, of course, it has been recognized  
11 time and again, not just in Bivens, but in  
12 Wilson versus Layne and in other cases in the  
13 Fourth Amendment context.

14 JUSTICE BARRETT: So, like, just so  
15 far we would try to apply precedents so that if  
16 it looks just like Bivens, if it's a Fourth  
17 Amendment excessive force claim or, you know, if  
18 it's another Fourth Amendment, say, unreasonable  
19 search-and-seizure claim, in those contexts, we  
20 would say, okay, fair application of Bivens  
21 means this is exactly the same, but we don't  
22 have to have any skepticism when we're  
23 considering the factors about extending it into  
24 new areas? We're just kind of faithfully  
25 applying it like we would any other precedent,

1       rather than trying to narrow it?

2                   MS. ELLSWORTH:  I -- I think the Court  
3       has already narrowed Bivens substantially.  And  
4       I don't read the Court's more recent decisions  
5       as attempting to further narrow it but rather  
6       attempting to determine how to fit individual  
7       cases within the framework that has been set  
8       forth.

9                   And -- and, of course, this two-step  
10       framework that we're talking about really was  
11       only announced in its current form in the Abbasi  
12       case five years ago.  Prior to that, there  
13       were -- alternative remedies were playing a  
14       larger role in the Court's determination of  
15       whether Bivens was available.

16                   JUSTICE KAGAN:  So do I read you right  
17       in saying something like, look, what Bivens has  
18       become is basically a remedy for Fourth  
19       Amendment violations, and whatever skepticism  
20       you might have outside of that context -- I  
21       mean, I guess there are a couple of other  
22       contexts, right, but -- but -- but the big --  
23       the bulk of Bivens claims are Fourth Amendment  
24       claims.  Whatever skepticism you might have  
25       outside of that, it's inappropriate to import

1 into Fourth Amendment search/excessive force  
2 cases?

3 MS. ELLSWORTH: I -- that's -- I think  
4 that's correct, Your Honor, and that's --  
5 certainly is what courts have called the core or  
6 heartland of Bivens. It's what this Court in  
7 Abbasi recognized was the area in which Bivens  
8 had continuing force and necessity.

9 And so the -- the Fourth Amendment  
10 claim seems much less difficult. I --

11 JUSTICE BARRETT: So that makes your  
12 First Amendment claim a lot more difficult.

13 MS. ELLSWORTH: The First Amendment  
14 claim is -- is -- is an uphill battle, Your  
15 Honor. The First Amendment claim was found to  
16 be a new context by the Ninth Circuit.

17 The Hartman versus Moore case did not  
18 hold that Bivens was available in the First  
19 Amendment context, but it did of course state  
20 that when the vengeful officer is federal, a  
21 Bivens remedy lies. Whether that amounts to  
22 recognizing a Bivens claim or not, the -- the  
23 idea that special factors counsel hesitation in  
24 the First Amendment context we think is not  
25 appropriate in this case or not appropriate in



1 the narrow type of First Amendment retaliation  
2 claim that Mr. Boule is bringing here.

3           This is not a retaliation claim that  
4 relates to malicious prosecution or to arrest or  
5 to anything else that's within, as the Ninth  
6 Circuit put it, "the scope of the official  
7 duties of the officer." What we have here is  
8 Agent Egbert calling and sending a publicly  
9 available news article to these other agencies  
10 with, we allege, retaliatory motive in -- in  
11 retaliation for Mr. Boule's complaints to  
12 supervisors about the conduct on March 20th,  
13 2014.

14           That's the type of retaliation this  
15 Court has called straightforward in terms of  
16 issues of causation. And while it may be an  
17 extension of Bivens to recognize the First  
18 Amendment claim, it is not one in which there  
19 are any special factors that counsel hesitation.  
20 There's no national security concerns. There's  
21 no administrative regime that could be available  
22 to Mr. Boule to otherwise press these claims.

23           The state law claims that both the  
24 Petitioner and the United States have suggested  
25 would be available to Mr. Boule are not

1 available, again because of the Westfall Act  
2 because the conduct, while it is not part of his  
3 official duties, would fall outside his scope of  
4 employment for purposes of Washington law, which  
5 is where this Court looks.

6 And the FTCA is -- while it may be an  
7 alternative remedy in some senses, it is not an  
8 exclusive remedy to Bivens. Mr. Boule also was  
9 not able to actually bring his First Amendment  
10 claims under the FTCA for -- for time-barred  
11 reasons.

12 But, putting that to the side, the  
13 FTCA and the Bivens continue to co- -- and  
14 Bivens continue to coexist, and so that's not a  
15 reason why the First Amendment claim should not  
16 be recognized here.

17 JUSTICE KAGAN: On -- on the Fourth  
18 Amendment front, how do we -- how should we  
19 properly handle invocations of national security  
20 by the government?

21 MS. ELLSWORTH: Well, I would -- I  
22 would remind the Court that the government  
23 didn't see fit to invoke national security or  
24 participate in this case until it reached this  
25 Court. So the government did not participate in

1 the Ninth Circuit or the district court and  
2 suggest that there were some national security  
3 concerns attendant to this claim against a  
4 Border Patrol officer.

5 But I think what the Court should  
6 consider is whether the -- the specific type of  
7 claim that would be recognized, which, again,  
8 here is going to be a garden-variety search and  
9 seizure claim on private property against a U.S.  
10 citizen, that whether there's some national  
11 security considerations that are attendant to  
12 that, and -- and there are none. The only  
13 national security considerations that have been  
14 invoked are the fact that Agent Egbert is  
15 affiliated with the Border Patrol.

16 And that's not sufficient. There may  
17 be some Border Patrol functions that do  
18 implicate national security. In fact, surely  
19 there are. But this is not one of them.

20 JUSTICE ALITO: Do you think it  
21 matters? And -- and do I understand your last  
22 answer to mean that it matters what a particular  
23 Border Patrol agent's usual duties are as  
24 opposed to what the Border Patrol agent is doing  
25 at the time of the alleged tort?

1 MS. ELLSWORTH: I -- I think it's the  
2 latter, Justice Alito. I think it's the conduct  
3 that the agent is involved in at the time.

4 JUSTICE ALITO: Well, so here, he's  
5 following up on a call from your client about  
6 somebody -- why did your client call the agent  
7 about this individual?

8 MS. ELLSWORTH: Actually, Agent Egbert  
9 had stopped Mr. Boule. He performed a -- a  
10 vehicle stop on the road earlier that morning.  
11 And during the course of that stop, Mr. Boule  
12 informed Agent Egbert that there would be  
13 somebody arriving at the inn that evening.

14 JUSTICE ALITO: And why did he inform  
15 him of that?

16 MS. ELLSWORTH: That is not clear from  
17 the record. That's the type of factual  
18 development that we would hope to have the  
19 opportunity to develop at trial.

20 JUSTICE ALITO: You mean, if -- if --  
21 if he knew that one of us was going to check in  
22 to the Smuggler's Inn and he happened to be  
23 stopped by a Border Patrol agent -- well, he  
24 would say, well, by the way, well it's -- maybe  
25 --

1 JUSTICE KAGAN: Suspicious characters.

2 (Laughter.)

3 JUSTICE ALITO: Yeah. Any ordinary  
4 person was checking in to the -- to the -- the  
5 Smuggler's Inn, he would have told the -- the  
6 agent?

7 MS. ELLSWORTH: I -- I don't have the  
8 answer to that, Justice Alito. I mean, I think  
9 -- it's important to keep in mind it's --

10 JUSTICE ALITO: And did he tell him  
11 that his employees had driven all the way to  
12 Seattle to pick up this person and drive the  
13 person back for a two-hour drive?

14 MS. ELLSWORTH: Yes, that's the --  
15 that is, in fact, typically the -- one of the  
16 services that Mr. Boule provided was to pick  
17 people up at the airport.

18 JUSTICE ALITO: Everybody?

19 MS. ELLSWORTH: But one thing we --

20 JUSTICE ALITO: Everybody who checks  
21 in to the Smuggler's Inn, he does that?

22 MS. ELLSWORTH: I -- I don't know if  
23 it is an add-on or if it's part of the -- part  
24 of the rate, Your Honor.

25 (Laughter.)

1           MS. ELLSWORTH: But Mr. Boule, of  
2 course, is -- is working with the government,  
3 previously with CBP, and at the time of the  
4 incident in question, he was working with  
5 Immigration and Customs Enforcement. So whether  
6 that's the reason for him having informed agent  
7 Egbert of this or not, I don't have the answer  
8 to.

9           But the fact of the matter is having a  
10 -- a government informant tell an officer that  
11 somebody is arriving legally in the country, I  
12 just don't think it's reasonable to consider  
13 that to be some reasonable suspicion to -- to  
14 come onto the property.

15           But I don't think the Court needs to  
16 delve into those details and certainly needn't  
17 weigh them. The question is whether this type  
18 of function, coming to check on the visa status  
19 on private property on U.S. soil --

20           JUSTICE ALITO: How -- how far was  
21 this actually from the border? From the point  
22 where this incident occurred, how far from there  
23 to Canada?

24           MS. ELLSWORTH: It's very close --  
25 it's maybe 20 feet. It's not far at all from

1 the border. Thee property -- Mr. Boule's  
2 property actually crosses over into Canada.

3 JUSTICE ALITO: Twenty feet?

4 MS. ELLSWORTH: The proximity to the  
5 border is not an -- to -- to make sure that the  
6 Court is clear, we are not arguing that this is  
7 somehow far enough from the border that it  
8 doesn't implicate the actual line.

9 The issue here is that the -- the  
10 conduct that the agent was involved in has  
11 nothing to do with trying to prevent people from  
12 crossing over to the United States or even from  
13 trying to leave the United States to Canada --

14 JUSTICE ALITO: Why -- why do you say  
15 that?

16 MS. ELLSWORTH: Because the conduct  
17 that the agent was involved in was following up  
18 to ask a question about the visa status of this  
19 individual. He's not trying to attempt to stop  
20 people from crossing into the country when he  
21 went onto Mr. Boule's property to ask these  
22 questions.

23 JUSTICE KAGAN: As I understand it,  
24 the government is now suggesting that that is  
25 what they were concerned with. It -- it seems

1 as though there's just a -- a difference in  
2 one's view of the facts here. Is that correct?

3 MS. ELLSWORTH: And I -- I -- I come  
4 to this Court with the record that I have. In  
5 Joint Appendix 108 is Agent Egbert's sworn  
6 declaration -- declaration indicating that after  
7 he checked the guest's visa status, there was  
8 nothing more for him to do as a Border Patrol  
9 agent and he left.

10 CHIEF JUSTICE ROBERTS: This may be  
11 the same question I tried to ask earlier, but  
12 I've given it a little more thought so I might  
13 be able to phrase it better.

14 We've been talking about does this  
15 agent in this case have something to do with the  
16 border, is it affected in some way? And the  
17 idea, I guess, is if it is, maybe there  
18 shouldn't be a Bivens action, but there -- if  
19 there isn't, maybe there should be.

20 But the context is sort of we're --  
21 we're stepping into the authority that would  
22 normally be vested in Congress in terms of  
23 whether or not to provide a cause of action.  
24 And if Congress were sitting down saying should  
25 there be a cause of action, it's not going be



1 parsing the particular facts, say, well, there  
2 should be a particular cause of action if this,  
3 this, and this. Presumably, they would say  
4 Border Patrol agents are not liable for actions  
5 on the part of this or something like that.

6 And shouldn't we take that into  
7 account and -- and not be so terribly concerned  
8 about the particular facts but more what  
9 Congress would think about the consequences for  
10 its border agents and -- and whether it would  
11 draw a particular line on that basis?

12 MS. ELLSWORTH: Let me try and answer  
13 that question in a few different ways. The  
14 first is the -- what the Court would be doing  
15 here, were it to recognize -- affirm the Ninth  
16 Circuit and recognize the availability of  
17 Bivens, would be to -- to find that this conduct  
18 falls within the cause of action that the Court  
19 has already implied in Bivens in the Fourth  
20 Amendment context, to go to Justice Kagan's  
21 point. So I don't think that the Court would be  
22 involved in -- in that form of implying a cause  
23 of action here because it would fit within the  
24 conduct of Bivens.

25 But Congress has not -- there --

1 there's no suggestion in the statutory  
2 background here that Congress has made any  
3 statements that suggest that it does not view  
4 Border Patrol agents as being susceptible to  
5 Bivens or -- or would have concerns here.

6           And I don't think the Court would need  
7 to engage in the type of weighing that your  
8 question suggests in order to determine that  
9 this conduct, which we can -- we can make it a  
10 higher level of generality, following up on a  
11 tip, going onto private property, questioning an  
12 individual, and using excessive force,  
13 allegedly, all of those -- that's all conduct  
14 that court -- the Court is able to weigh and  
15 judge and weighs and judges in a variety of  
16 different cases.

17           And it's not conduct -- not -- it  
18 wouldn't require the sort of line-drawing that I  
19 think some of the factual questions have -- have  
20 suggested.

21           And the idea that the Border Patrol  
22 writ large can't be subjected to a Bivens  
23 action, not only would it sweep very broadly but  
24 it's also contrary to, you know, the Court's  
25 decision in -- in Hernandez and -- and some

1 other lower courts' decisions that have allowed  
2 Bivens cases to go forward against Border Patrol  
3 agents, Immigration and Custom Enforcement  
4 agents, and other agents who are involved in  
5 either border security or immigration-related  
6 matters, so long as there is not a national  
7 security reason to hesitate, which in this case  
8 there's not.

9 CHIEF JUSTICE ROBERTS: Thank you.  
10 Anything further? No?

11 Thank you, counsel.

12 MS. ELLSWORTH: Thank you, Mr. Chief  
13 Justice.

14 CHIEF JUSTICE ROBERTS: Rebuttal, Ms.  
15 Harris?

16 REBUTTAL ARGUMENT OF SARAH M. HARRIS  
17 ON BEHALF OF THE PETITIONER

18 MS. HARRIS: Thank you, Mr. Chief  
19 Justice.

20 Three quick points: First of all,  
21 there has been a lot of debate about how to  
22 define a new context and what is new in this  
23 context.

24 I think the question -- one of the  
25 questions is what is the heartland of Bivens, is

1 it really any time a law enforcement officer  
2 happens to be performing regular law enforcement  
3 duties or it's something else?

4 I do think that that is not quite  
5 presented here because the actual duties of  
6 whether you look at the Border Patrol or what  
7 Agent Egbert is acting under are specific  
8 statutory authorities for the Border Patrol  
9 involving immigration enforcement, illegal entry  
10 and exit. That's 6 U.S.C. 211, and 8 U.S.C.  
11 1357.

12 We are not talking about the  
13 boundaries of figuring out what did the Court  
14 mean in Abbasi by the context in which there  
15 would not be new extensions of Bivens.

16 So I think a lot of that debate just  
17 depends on how, you know, what happens when you  
18 do have a Bivens extension. And I think that is  
19 this case.

20 And the -- the second point I would  
21 like to make is how broadly should the Court be  
22 looking at the officer's functions or the facts  
23 on the ground. And I think there really is a  
24 contrast between our positions.

25 As perhaps the Chief's most recent

1 question indicates, I don't think it's -- it's  
2 right to think that Congress would be looking at  
3 the granular details of whether Agent Egbert  
4 should have stopped someone, you know, 50 meters  
5 from the Smuggler's Inn or at the Smuggler's Inn  
6 driveway or perhaps on the road up to the  
7 Smuggler's Inn.

8 I think the question that this Court's  
9 cases have looked at, and Hernandez is a  
10 particularly good example, is what is the type  
11 of conduct that the officer is engaged in? It's  
12 not, you know, Agent Mesa and Hernandez engaged  
13 in a purportedly unjustified cross border  
14 killing of a teenager.

15 It is situations where Border Patrol  
16 agents might be needing to use or use -- use --  
17 use force, or here, situations in which Border  
18 Patrol agents are concededly performing  
19 immigration functions.

20 I think that has to be right because  
21 if you were to allow a Bivens claim in this  
22 context, you would be having the prospect of  
23 liability hanging over officers' heads, and they  
24 need to know sort of not just, you know, if you  
25 visit the Smuggler's Inn you'll be -- you'll be

1 subject to Bivens liability but, more broadly,  
2 if you are engaged in an immigration search and  
3 you have to use force, what are the contours of  
4 your liability going to look like?

5           And then zooming out even further,  
6 courts have to ask, I think, under Abbasi and  
7 Hernandez, what are the costs of that going to  
8 be for the Border Patrol? What are the  
9 litigation costs? What are the systemic costs  
10 going to look like? What's a deterrent effect  
11 on top of all of the other remedies that are out  
12 there for dealing with this type of conduct,  
13 including the internal investigations Congress  
14 has mandated?

15           So I think that really is the right  
16 level of generality. And one confirmation of  
17 that is that courts of appeals other than the  
18 Ninth Circuit have, indeed, suggested that  
19 immigration enforcement and the conduct of  
20 agents at the border are always going to be  
21 special factors because they are so intimately  
22 tied to national security and immigration  
23 functions. And those are two things that have  
24 always been entrusted particularly to the  
25 political branches.

1                   And the fact that courts of appeals  
2                   have been seeing that, other than the Ninth  
3                   Circuit, I think, also gives some comfort that  
4                   that is a workable rule, it has not produced bad  
5                   consequences in those circuits, and those are  
6                   three circuits, the Fifth, the Sixth, and the  
7                   Eleventh have said that now for, you know, at  
8                   least several years. So I think that should  
9                   give some additional comfort.

10                   And just one third point, which is  
11                   that the state of play now is there are 60 cases  
12                   in the courts of appeals after Abbasi; only two  
13                   extensions from the Ninth Circuit.

14                   I think that strongly suggests the  
15                   time for Bivens extensions may have been done.  
16                   Thank you.

17                   CHIEF JUSTICE ROBERTS: Thank you,  
18                   counsel. The case is submitted.

19                   (Whereupon, at 11:11 a.m., the case  
20                   was submitted.)

21  
22  
23  
24  
25





## Official - Subject to Final Review

<p><b>better</b> [1] 79:13  <b>between</b> [10] 6:23 10:15  22:19 25:6 29:4 30:15 50:  22 63:6 67:7 83:24  <b>beyond</b> [5] 6:12 35:19 50:6  54:6 69:8  <b>big</b> [3] 50:9 62:12 70:22  <b>biggest</b> [1] 53:2  <b>bit</b> [2] 22:6 59:18  <b>Bivens</b> [13] 3:11,13,14,19,  23 4:8,14,18,23 5:9,13 6:  14,19,24,25 7:6 9:17 10:2  11:15 12:23 13:5,12 14:12,  21 18:16,20 19:2,14 20:4  22:10,11,20,22 23:21,25  24:15 25:12,23 26:13,17,  20,22,24 27:15 28:1,4,8,9,  25 30:2 31:23 34:2 35:7,  16 37:10 38:6,16,21,24 39:  16,17 40:12,15,16 41:15,  18 42:1,6,11 43:3,5,17 44:  4,8,24 45:3,9 47:4,15,23  49:17,17 50:4 51:21 55:22  57:20 58:17,21 61:1,6,9,13,  19 62:2,6,19 64:5 65:24  66:16 68:10,20 69:8,11,16,  20 70:3,15,17,23 71:6,7,18,  21,22 72:17 73:8,13,14 79:  18 80:17,19,24 81:5,22 82:  2,25 83:15,18 84:21 85:1  86:15  <b>Blaine</b> [1] 31:12  <b>bleed</b> [2] 67:14,19  <b>board</b> [1] 19:13  <b>bomb</b> [4] 28:18,22,25 34:  19  <b>books</b> [2] 65:21 66:6  <b>border</b> [128] 4:16 5:1,21 6:  1,3,3,7 7:14,14 8:2,12,14,  17,22 9:1,2,9,11,16,19,23  10:18 11:9 12:2,15 17:15  18:10,12 19:4,14,17,21,25  20:1,24,25 21:17,19 24:18,  21 25:6,8,13 26:1 29:25  30:6 31:4,12,15,20,24 32:2,  13,18 33:21 34:21 35:8,12  44:13,14,21,23 45:9,15,18,  23 46:1,5,7,12,13 47:2,11,  19 50:6,8,9,10,17 51:2,4,7,  11 54:7,7,10,11,17,18,19,  20 56:7,7,10,21 58:15,25  59:6,25 60:16 63:14,15,20  74:4,15,17,23,24 75:23 77:  21 78:1,5,7 79:8,16 80:4,  10 81:4,21 82:2,5 83:6,8  84:13,15,17 85:8,20  <b>boundaries</b> [1] 29:23  <b>Boston</b> [1] 1:24  <b>both</b> [9] 8:9 12:2 17:19,19  23:24 36:6,16 50:16 72:23  <b>BOULE</b> [19] 1:6 3:5 45:24  46:20 47:5 48:6,12,16 49:  24 52:9 53:17 72:2,22,25  73:8 75:9,11 76:16 77:1</p>	<p><b>Boule's</b> [9] 7:25 41:14,21  42:8 43:11 52:18 72:11 78:  1,21  <b>boundaries</b> [1] 83:13  <b>branches</b> [1] 85:25  <b>BREYER</b> [41] 12:6,8,11 13:  3,8,10,15,17,21,24 14:2,12,  15,20 15:2,5,7,10,17,25 16:  8,13,18 22:6 23:9 26:5,21  27:2,7,11,13,17 28:7,14,16  29:15 38:4 39:1 40:6 41:4  68:8  <b>Breyer's</b> [5] 17:5 18:15 34:  17 45:7 54:21  <b>brief</b> [2] 36:9 67:4  <b>briefs</b> [1] 66:12  <b>bring</b> [1] 73:9  <b>bringing</b> [1] 72:2  <b>broad</b> [5] 22:25 38:13 40:  12 45:11 50:5  <b>broader</b> [2] 54:19 61:14  <b>broadly</b> [4] 62:18 81:23 83:  21 85:1  <b>brought</b> [4] 27:5,5 64:25  65:1  <b>brush</b> [1] 45:11  <b>bulk</b> [1] 70:23  <b>Bureau</b> [11] 5:18 12:17 14:  7,9,13,16,16,21 15:15,18  34:6</p> <p style="text-align: center;"><b>C</b></p> <p><b>California</b> [2] 12:24 13:6  <b>call</b> [8] 28:7 51:13 63:9,10,  11,12 75:5,6  <b>called</b> [3] 47:7 71:5 72:15  <b>calling</b> [1] 72:8  <b>came</b> [2] 1:13 56:20  <b>Canada</b> [18] 31:3 32:1,2,4,  14 44:12,13 45:1,9 47:11  51:2 56:8,25 58:5,11 77:  23 78:2,13  <b>Canada/U.S</b> [1] 56:11  <b>Canadian</b> [5] 7:13 31:14  33:23 44:15 51:4  <b>candor</b> [1] 65:5  <b>cannot</b> [1] 25:24  <b>car</b> [5] 48:24,25 49:4,5,6  <b>care</b> [1] 31:4  <b>Carlson</b> [2] 29:6 61:6  <b>carry</b> [3] 12:21 16:14 27:21  <b>carrying</b> [1] 50:9  <b>Case</b> [58] 3:4 7:5 8:10 12:8,  10,13,14,15 13:5 18:20 25:  25 29:9,14,16 30:13 34:1,4,  23 36:14,20,22 37:13 40:1  41:22 42:2,5 43:6,11 47:  18 48:6 49:14 50:14 51:10,  17 52:4,13 53:2 56:13 58:  2,11 59:25 61:19 63:5 64:  13,14 65:8 66:6,15 67:3  70:12 71:17,25 73:24 79:  15 82:7 83:19 86:18,19  <b>cases</b> [16] 3:17 34:10 35:  16,17 44:5 56:9 66:12,17  67:10 69:12 70:7 71:2 81:  16 82:2 84:9 86:11  <b>Castaneda</b> [1] 61:11  <b>category</b> [1] 45:19  <b>causation</b> [1] 72:16  <b>cause</b> [8] 34:2 38:19,24 79:  23,25 80:2,18,22  <b>causes</b> [1] 38:24  <b>CBP</b> [4] 58:19,24 60:8 77:3  <b>certain</b> [2] 12:4 45:14  <b>certainly</b> [10] 18:18 26:9  30:24 45:20 47:17 58:23  61:18 68:22 71:5 77:16  <b>cetera</b> [4] 8:16,16 26:14 39:  14  <b>challenging</b> [1] 22:21  <b>change</b> [2] 17:10 46:13  <b>characterization</b> [1] 35:  20  <b>characters</b> [1] 76:1  <b>check</b> [7] 29:18 33:3 36:2  49:10 50:3 75:21 77:18  <b>checked</b> [3] 31:5 56:20 79:  7  <b>checking</b> [1] 76:4  <b>checkpoint</b> [1] 50:18  <b>checks</b> [3] 29:25 55:25 76:  20  <b>CHIEF</b> [27] 3:3,9 7:10 8:4 9:  4,8 12:16 23:4,8,18 33:25  35:2,15 37:5 40:17,24 41:  3,12 59:4 60:21,25 79:10  82:9,12,14,18 86:17  <b>Chief's</b> [2] 10:13 83:25  <b>chill</b> [1] 24:7  <b>chills</b> [1] 31:24  <b>Circuit</b> [17] 36:13 53:8 61:  23,24 62:4 64:21 65:4,6  67:3,7 71:16 72:6 74:1 80:  16 85:18 86:3,13  <b>Circuit's</b> [2] 36:19 66:22  <b>circuits</b> [2] 86:5,6  <b>circumstance</b> [3] 18:16,  21 51:9  <b>circumstances</b> [7] 6:4 10:  8,9 12:4 17:24 24:25 63:8  <b>cited</b> [2] 66:11 67:3  <b>citizen</b> [5] 10:1,5 37:7 44:1  74:10  <b>citizenship</b> [1] 31:6  <b>City</b> [2] 26:8 28:18  <b>civil</b> [1] 60:12  <b>claim</b> [41] 5:8,10,13,14 9:  17 10:1,2,4,15 11:15,25 24:  14 25:12,24 34:8,9 37:7  41:14 42:8,17 51:23 56:19  64:25 65:1 68:4,10 69:17,  19 71:10,12,14,15,22 72:2,  3,18 73:15 74:3,7,9 84:21  <b>claims</b> [26] 4:15,15,16,18,  20,25 6:14,23,24 12:2 19:6  20:24 23:24 24:5 27:4,5  29:5,6 43:11 64:18 68:20</p>	<p>70:23,24 72:22,23 73:10  <b>clarity</b> [1] 55:16  <b>clash</b> [1] 3:13  <b>class</b> [3] 5:16 17:20 20:18  <b>clear</b> [7] 11:23 24:18 25:21  30:8 33:16 75:16 78:6  <b>clearly</b> [3] 30:14 36:16 65:  20  <b>client</b> [2] 75:5,6  <b>client's</b> [1] 51:24  <b>close</b> [4] 38:2 45:23 58:25  77:24  <b>closer</b> [2] 51:10 63:24  <b>co</b> [1] 73:13  <b>co-exist</b> [1] 61:7  <b>coexist</b> [1] 73:14  <b>colleagues</b> [1] 16:9  <b>Collins</b> [1] 52:13  <b>come</b> [4] 46:20 58:7 77:14  79:3  <b>comes</b> [2] 51:15 55:17  <b>comfort</b> [2] 86:3,9  <b>coming</b> [4] 32:13 48:16 55:  14 77:18  <b>commercial</b> [1] 53:13  <b>common</b> [7] 16:14 27:10  39:19 40:18,18,22 56:1  <b>competence</b> [1] 38:18  <b>competing</b> [1] 65:12  <b>complaints</b> [1] 72:11  <b>concededly</b> [1] 84:18  <b>concedes</b> [1] 35:17  <b>conceivable</b> [1] 42:15  <b>conception</b> [1] 40:11  <b>concern</b> [2] 46:24 62:13  <b>concerned</b> [3] 31:23 78:25  80:7  <b>concerns</b> [6] 21:23 42:3  47:25 72:20 74:3 81:5  <b>concluded</b> [2] 66:13,18  <b>conclusion</b> [1] 36:19  <b>concurring</b> [1] 40:16  <b>conditions</b> [2] 29:4 64:25  <b>conduct</b> [33] 8:21 11:18 42:  9,9 45:3,19 46:17,18 49:9  50:4,15,21 51:12 54:17 55:  22 58:11,25 60:12 63:4,7  72:12 73:2 75:2 78:10,16  80:17,24 81:9,13,17 84:11  85:12,19  <b>conducting</b> [2] 38:22 50:3  <b>confinement</b> [3] 29:5,6 65:  1  <b>confirmation</b> [1] 85:16  <b>confronted</b> [1] 25:4  <b>Congress</b> [29] 3:21 4:1,8,9  5:25 8:9 12:2 19:2 20:12,  16 24:19,24 39:13 42:25  44:9 59:11,22 60:2,4,11,17  61:17 79:22,24 80:9,25 81:  2 84:2 85:13  <b>Congress's</b> [1] 8:13  <b>connected</b> [1] 28:23  <b>connection</b> [6] 24:19 25:</p>	<p>22 28:2 30:8 33:16 59:10  <b>consequences</b> [2] 80:9  86:5  <b>consider</b> [9] 17:1 34:15 40:  1 64:17,21 65:11 67:11 74:  6 77:12  <b>consideration</b> [2] 3:25 65:  4  <b>considerations</b> [9] 42:15,  16 59:1,20,21 63:1 67:19  74:11,13  <b>considered</b> [2] 49:17 62:  10  <b>considering</b> [2] 7:9 69:23  <b>considers</b> [3] 67:12,24,25  <b>constant</b> [1] 32:10  <b>Constitution</b> [3] 3:25 26:  17 28:22  <b>constitutional</b> [7] 5:5 11:  12,18 19:9 43:2,10 60:19  <b>constitutionally</b> [1] 10:20  <b>construe</b> [1] 37:25  <b>context</b> [66] 5:23 6:2,20,23  7:4,8 8:14 9:17 11:6,19,22  14:19,24 18:24 19:3,17 22:  24 23:3 25:9 28:13 36:8  37:6,9 38:1,13 40:12 41:  25 42:12 43:22 44:13 45:5,  16 49:17 59:8,12 60:16 61:  20,25,25 62:16 64:24 65:3,  14,25 66:16,19,23,25 67:4,  8,13 68:17,25 69:3,5,13 70:  20 71:16,19,24 79:20 80:  20 82:22,23 83:14 84:22  <b>contexts</b> [7] 23:25 36:16  37:21 43:19 65:17 69:19  70:22  <b>continue</b> [2] 73:13,14  <b>continuing</b> [2] 42:6 71:8  <b>contours</b> [1] 85:3  <b>contraband</b> [2] 30:7 32:20  <b>contradict</b> [1] 57:8  <b>contrary</b> [3] 26:16 28:21  81:24  <b>contrast</b> [1] 83:24  <b>contravene</b> [2] 43:8 61:5  <b>contravention</b> [1] 57:21  <b>convincing</b> [1] 47:23  <b>cooperating</b> [1] 49:24  <b>cooperation</b> [3] 44:12,25  56:11  <b>cooperative</b> [1] 31:18  <b>cop</b> [1] 21:16  <b>core</b> [1] 71:5  <b>correct</b> [10] 9:12 20:3 29:1  43:21 48:9,17,18 62:3 71:  4 79:2  <b>correctly</b> [1] 61:22  <b>costs</b> [8] 4:4 18:7 20:22 22:  1,2 85:7,9,9  <b>couldn't</b> [2] 6:8 48:24  <b>counsel</b> [18] 23:5,13 24:2  25:11 34:25 40:25 41:8 44:  7 48:3 53:23 59:3 61:19,</p>
---	---	--	--

## Official - Subject to Final Review

<p>21 64:22 71:23 72:19 82:11 86:18  <b>counseling</b> [4] 37:12 45:17 65:7 68:16  <b>count</b> [2] 37:23,23  <b>counting</b> [1] 59:19  <b>country</b> [8] 28:23 29:20 31:8 33:4 48:19 55:14 77:11 78:20  <b>County</b> [2] 12:24 13:5  <b>couple</b> [3] 10:22 44:17 70:21  <b>course</b> [16] 11:2 13:8 28:19 34:12 35:6 36:17 40:22 45:13 49:24 57:17 60:15 69:10 70:9 71:19 75:11 77:2  <b>COURT</b> [97] 1:1,14 3:10,11,20 4:13 5:25 6:13,16,17,22 8:20,25 12:3 22:24 23:2,19,22 24:3,4,17 29:3,8 30:4 33:17 34:14 35:11 36:5 38:6,22 39:17 40:10,21,21 41:13,25 42:5,10,24 43:4 44:3,5 47:22 49:16 51:18 52:5,12 53:7,10 55:18 56:25 57:7,7,17 58:6,20 59:2 61:10 64:4,10,15,17,20,23 65:6,11 66:18 67:11,12,24,25 68:9,11,16,20,23 69:1,6 70:2 71:6 72:15 73:5,22,25 74:1,5 77:15 78:6 79:4 80:14,18,21 81:6,14,14 83:13,21  <b>Court's</b> [21] 5:6 8:9,11 18:25 23:21 29:3 38:12 41:19 42:4 43:6,14,23 45:13 48:1 58:17 61:5,12 70:4,14 81:24 84:8  <b>courts</b> [19] 3:16 4:2,5 7:8 16:25,25 18:7 21:25 38:18 57:2 65:13 66:8,13,24 71:5 85:6,17 86:1,12  <b>courts'</b> [2] 3:15 82:1  <b>create</b> [6] 4:1 34:13 40:22 45:16 57:7 62:22  <b>creates</b> [1] 33:8  <b>creating</b> [2] 4:22 38:18  <b>crime</b> [1] 51:13  <b>cross</b> [5] 35:12 47:11 56:6,7 84:13  <b>cross-border</b> [6] 30:13,22 32:9 33:12,14 51:12  <b>cross-cutting</b> [2] 20:4,23  <b>crosses</b> [1] 78:2  <b>crossing</b> [6] 6:6 56:8,14,15 78:12,20  <b>curiae</b> [3] 1:22 2:8 23:16  <b>curious</b> [1] 48:25  <b>current</b> [1] 70:11  <b>curtilage</b> [4] 52:10,13 53:7,12  <b>Custom</b> [1] 82:3  <b>Customs</b> [4] 10:6 11:10 58:</p>	<p>15 77:5  <hr/> <b>D</b>  <b>D.C</b> [3] 1:10,18,21  <b>daily</b> [1] 31:18  <b>damages</b> [12] 3:16,22 4:1,5,11 24:25 42:19,20 43:1,9 44:10 60:18  <b>dangerous</b> [1] 6:4  <b>dating</b> [1] 42:22  <b>day</b> [4] 6:4 32:5,15 65:13  <b>DEA</b> [7] 7:1 15:14 27:2,7,9 28:17 34:7  <b>deal</b> [1] 32:10  <b>dealing</b> [2] 56:10 85:12  <b>debate</b> [3] 10:8 82:21 83:16  <b>Decades</b> [4] 3:17 64:6 68:10,21  <b>decided</b> [1] 55:16  <b>decision</b> [7] 8:11 10:10 42:4 43:6 45:13 57:22 81:25  <b>decisions</b> [2] 70:4 82:1  <b>decisis</b> [2] 6:19 22:21  <b>declaration</b> [2] 79:6,6  <b>declined</b> [2] 43:16,18  <b>defendants</b> [2] 5:16 17:20  <b>define</b> [1] 82:22  <b>defined</b> [1] 10:25  <b>defining</b> [1] 39:2  <b>degree</b> [1] 66:9  <b>delve</b> [1] 77:16  <b>demarcating</b> [1] 20:19  <b>demonstrates</b> [1] 23:21  <b>Department</b> [1] 1:21  <b>depend</b> [3] 13:1 51:6 54:16  <b>depends</b> [4] 13:4 25:12 54:24 83:17  <b>deputized</b> [1] 60:7  <b>Des</b> [2] 8:7,17  <b>designed</b> [1] 36:1  <b>detail</b> [1] 22:11  <b>details</b> [3] 10:11 77:16 84:3  <b>detaining</b> [1] 50:12  <b>determination</b> [1] 70:14  <b>determine</b> [2] 70:6 81:8  <b>determined</b> [1] 24:20  <b>determining</b> [1] 67:13  <b>deterrent</b> [2] 22:2 85:10  <b>develop</b> [1] 75:19  <b>development</b> [1] 75:18  <b>deviation</b> [1] 62:21  <b>differ</b> [1] 10:15  <b>difference</b> [13] 25:6,20 29:4,8,11 30:22 33:22 34:16,19 47:2 50:20 55:10 79:1  <b>differences</b> [4] 22:19,19 40:1 50:22  <b>different</b> [27] 5:14,18 7:11 8:15 9:16 11:24,25 12:5,19 18:19 19:18 20:17 24:14,21 25:25 28:12 30:12 37:9 40:20 41:23 51:14,19</p>	<p>64:6 65:12 67:10 80:13 81:16  <b>differently</b> [2] 6:1 8:12  <b>difficult</b> [4] 17:24 20:5 71:10,12  <b>direction</b> [1] 56:9  <b>directly</b> [4] 24:16 25:14 35:13 38:11  <b>disagree</b> [6] 5:12 22:16 31:10 36:18 57:1 61:22  <b>disagreement</b> [2] 62:14 67:7  <b>discipline</b> [1] 57:22  <b>discussion</b> [3] 36:7 58:18 66:4  <b>disfavored</b> [3] 38:7,21 68:11  <b>disparaged</b> [1] 63:16  <b>disparate</b> [1] 62:25  <b>disprove</b> [1] 24:6  <b>dispute</b> [3] 17:12 18:13 55:15  <b>dissension</b> [1] 29:10  <b>dissent</b> [2] 30:18 40:15  <b>distinctive</b> [1] 49:7  <b>distinguish</b> [1] 22:18  <b>distinguishing</b> [1] 6:22  <b>district</b> [4] 52:5 53:6 65:6 74:1  <b>disturbed</b> [1] 53:8  <b>doctrinal</b> [2] 3:18 20:11  <b>doing</b> [10] 7:1 9:6 19:18 21:17 25:13 47:21 50:23 59:18 74:24 80:14  <b>domestic</b> [6] 17:12 18:13 34:8 37:6 44:1 54:23  <b>done</b> [5] 36:10 56:21 61:17 69:6 86:15  <b>door</b> [3] 52:3,17,24  <b>double</b> [1] 59:18  <b>doubt</b> [5] 3:21 19:1,2 20:12 24:24  <b>down</b> [3] 28:18 62:20 79:24  <b>draw</b> [1] 80:11  <b>drawing</b> [1] 28:8  <b>drive</b> [2] 76:12,13  <b>driven</b> [2] 17:6 76:11  <b>driveway</b> [3] 46:12 63:23 84:6  <b>Drug</b> [1] 15:11  <b>drugs</b> [9] 30:7 32:18 33:15 34:20 35:3,3,5,5 50:9  <b>dubious</b> [1] 28:3  <b>during</b> [1] 75:11  <b>duties</b> [8] 25:17 31:25 33:21 72:7 73:3 74:23 83:3,5  <hr/> <b>E</b>  <b>earlier</b> [2] 75:10 79:11  <b>early</b> [1] 13:16  <b>easiest</b> [1] 19:20  <b>easily</b> [1] 22:25  <b>easy</b> [1] 24:5</p>	<p><b>effect</b> [2] 22:2 85:10  <b>effective</b> [3] 24:17 33:20 35:12  <b>effects</b> [1] 20:23  <b>efficacy</b> [1] 3:22  <b>EGBERT</b> [22] 1:3 3:4 7:22 17:10 18:11 32:4 45:2,20 47:12 49:7 50:24 52:7 53:16 58:12,15 72:8 74:14 75:8,12 77:7 83:7 84:3  <b>Egbert's</b> [2] 24:10 79:5  <b>Eighth</b> [1] 65:2  <b>either</b> [8] 34:10 39:13 58:23 66:18 67:15,23 68:2 82:5  <b>elaboration</b> [1] 40:8  <b>Eleventh</b> [1] 86:7  <b>eliminate</b> [2] 58:16 60:18  <b>ELLSWORTH</b> [66] 1:24 2:10 41:9,10,12 43:20 44:17 45:21 46:3,8,15 47:17 48:9,12,18 49:2,15,22 50:14 51:5 52:1,5,21 53:4,15,20 54:14 55:5,11 56:16 57:16,19 58:4 60:1,24 61:2 62:3,9 63:18 64:8 66:1,7 67:2,9,23 68:6,18 69:4 70:2 71:3,13 73:21 75:1,8,16 76:7,14,19,22 77:1,24 78:4,16 79:3 80:12 82:12  <b>empirical</b> [1] 4:6  <b>employees</b> [1] 76:11  <b>employment</b> [1] 73:4  <b>enables</b> [1] 31:19  <b>enacted</b> [1] 61:12  <b>encounter</b> [1] 45:24  <b>enforcement</b> [27] 10:16 15:11 16:23 17:13 21:5,6,10 24:20,22 26:3,4,9 41:16,24 46:18 50:21 51:15 54:23 55:7 63:9,12 77:5 82:3 83:1,2,9 85:19  <b>engage</b> [2] 11:17 81:7  <b>engaged</b> [7] 46:17 51:12 54:17,22 84:11,12 85:2  <b>engagement</b> [1] 12:5  <b>engages</b> [1] 51:18  <b>England</b> [1] 39:19  <b>enough</b> [5] 16:16,19 59:14 62:22 78:7  <b>enter</b> [4] 34:20 49:9 52:23,24  <b>entered</b> [1] 41:16  <b>entering</b> [1] 63:8  <b>entitled</b> [1] 9:20  <b>entrusted</b> [1] 85:24  <b>entry</b> [12] 6:6 8:1 10:9 30:6 32:17 33:15 34:20 43:24 47:20 50:19 51:8 83:9  <b>equally</b> [1] 8:25  <b>equipped</b> [2] 4:5 17:1  <b>ERIK</b> [1] 1:3  <b>err</b> [1] 38:7  <b>especially</b> [2] 4:22 24:9</p>	<p><b>ESQ</b> [4] 2:3,6,10,13  <b>ESQUIRE</b> [2] 1:18,24  <b>essentially</b> [2] 29:18 38:5  <b>established</b> [1] 65:20  <b>establishment</b> [1] 53:13  <b>et</b> [4] 8:16,16 26:14 39:13  <b>even</b> [15] 13:11 14:15 19:25 29:11 38:13 40:12 42:7,11 44:5 58:8,24 65:22,24 78:12 85:5  <b>evening</b> [1] 75:13  <b>everybody</b> [3] 21:14 76:18,20  <b>everyone</b> [1] 7:22  <b>exact</b> [1] 45:24  <b>exactly</b> [10] 7:4 13:4 18:1 22:11,17 33:17 49:2,22 66:5 69:21  <b>example</b> [4] 17:9 37:3 47:19 84:10  <b>examples</b> [1] 38:3  <b>exceedingly</b> [1] 5:18  <b>Except</b> [2] 66:21,25  <b>excessive</b> [17] 9:25 10:2,4,15,20,24 11:2 12:1 34:8 37:7 41:17 43:25 45:25 50:12 51:18 69:17 81:12  <b>excluded</b> [1] 5:11  <b>exclusionary</b> [1] 65:14  <b>exclusive</b> [1] 73:8  <b>executing</b> [1] 18:3  <b>executive</b> [1] 57:8  <b>executive's</b> [1] 57:22  <b>exempts</b> [1] 61:9  <b>exercise</b> [1] 38:20  <b>exercising</b> [2] 8:3 56:5  <b>exigency</b> [1] 46:25  <b>exigent</b> [2] 10:7,9  <b>existed</b> [1] 61:13  <b>exists</b> [2] 11:15 42:18  <b>exit</b> [4] 6:6 8:1 51:8 83:10  <b>expand</b> [3] 3:11 4:14 43:18  <b>expanding</b> [1] 69:7  <b>expect</b> [1] 38:2  <b>experience</b> [1] 56:5  <b>explain</b> [1] 58:21  <b>explained</b> [5] 24:5 28:10 34:14 35:11 40:21  <b>explicitly</b> [1] 61:9  <b>explode</b> [1] 4:17  <b>Explosives</b> [1] 15:19  <b>extend</b> [4] 19:24 39:24 43:17 54:6  <b>extending</b> [3] 23:25 40:2 69:23  <b>extension</b> [13] 7:6 28:8 38:13,14,21 40:13,13 44:4 62:5,6 65:3 72:17 83:18  <b>extensions</b> [7] 3:13,19 4:8 20:4 83:15 86:13,15  <b>extensively</b> [2] 4:8,10  <b>extent</b> [2] 60:3 61:16  <b>extraterritoriality</b> [2] 42:3 47:24</p>
--	--	---	---	---

## Official - Subject to Final Review

<p><b>extremely</b> [2] 50:5 56:1</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>face</b> [2] 43:6 63:9</p> <p><b>facilitate</b> [1] 32:17</p> <p><b>facing</b> [1] 59:22</p> <p><b>fact</b> [23] 8:2 17:14 38:18 41:20 43:16 44:22 47:10 50:2 55:7,11,17 58:5 60:17 64:4,18,23 65:7,9 74:14,18 76:15 77:9 86:1</p> <p><b>factor</b> [10] 5:22 11:9 35:3,7,9 39:6,8,11 57:4</p> <p><b>factors</b> [38] 7:8 11:6,23 14:24 15:16 18:5,22 19:16 24:2 25:11 34:11,13,24 35:20 36:3,10,20,23 37:12 47:22 62:7,23,24 64:21 65:7,12,15 66:3,19 67:12,14 68:1,2,14 69:23 71:23 72:19 85:21</p> <p><b>facts</b> [13] 6:25 25:21 33:1,6,10 37:13 47:15 54:16 64:14 79:2 80:1,8 83:22</p> <p><b>factual</b> [5] 30:22 46:4 55:15 75:17 81:19</p> <p><b>fair</b> [4] 35:20 68:19,22 69:20</p> <p><b>faithful</b> [3] 14:25 23:2 64:2</p> <p><b>faithfully</b> [2] 22:17 69:24</p> <p><b>fall</b> [3] 26:13 55:3 73:3</p> <p><b>falls</b> [3] 39:11 45:19 80:18</p> <p><b>familiar</b> [1] 49:8</p> <p><b>far</b> [12] 6:14 45:11 47:25 50:5 54:6 61:14 63:20 69:15 77:20,22,25 78:7</p> <p><b>fashion</b> [1] 3:16</p> <p><b>favor</b> [4] 40:6 68:24 69:2,4</p> <p><b>favorable</b> [1] 33:7</p> <p><b>FBI</b> [2] 14:5,22 26:7,13,25 27:1,12 28:17 34:4,16,23 37:8</p> <p><b>features</b> [2] 24:23 31:1</p> <p><b>federal</b> [32] 3:14,15 4:10 5:18 12:20 14:7,9,13,16,20 15:15 16:20 17:7 19:5 24:7 25:16 26:7,14 27:20 34:6 40:21 41:16,18,20 42:19,20 43:9 55:23 59:13 60:10,19 71:20</p> <p><b>feet</b> [4] 46:8 51:3 77:25 78:3</p> <p><b>FELICIA</b> [3] 1:24 2:10 41:10</p> <p><b>follow</b> [1] 7:16</p> <p><b>fenced-in</b> [1] 52:17</p> <p><b>few</b> [4] 26:6 53:5 56:16 80:13</p> <p><b>Fifth</b> [2] 65:1 86:6</p> <p><b>figure</b> [2] 18:7 21:25</p> <p><b>figuring</b> [1] 83:13</p> <p><b>finally</b> [1] 5:3</p> <p><b>find</b> [4] 22:11 48:5 65:21 80:17</p>	<p><b>finder</b> [1] 55:17</p> <p><b>finding</b> [4] 66:25 68:24 69:3,5</p> <p><b>Fine</b> [1] 13:17</p> <p><b>firearm</b> [1] 10:17</p> <p><b>firearms</b> [3] 12:21 15:19 16:14</p> <p><b>first</b> [31] 3:12,13 4:14,19,24 5:16 11:21 20:10 23:25 24:4 42:8,16 44:19 53:6 55:12 56:18 60:6 61:4,23 66:22 71:12,13,15,18,24 72:1,17 73:9,15 80:14 82:20</p> <p><b>fit</b> [5] 38:2 60:17 70:6 73:23 80:23</p> <p><b>five</b> [3] 43:7 64:11 70:12</p> <p><b>flag</b> [1] 18:23</p> <p><b>flexibility</b> [2] 8:5 9:20</p> <p><b>flies</b> [1] 43:6</p> <p><b>flown</b> [1] 48:19</p> <p><b>fly</b> [1] 14:3</p> <p><b>focus</b> [1] 22:10</p> <p><b>follow</b> [2] 17:5 56:3</p> <p><b>followed</b> [1] 46:22</p> <p><b>following</b> [11] 18:14 25:3 46:19 47:12 51:16 55:6,20 68:7 75:5 78:17 81:10</p> <p><b>follows</b> [1] 38:11</p> <p><b>force</b> [24] 9:25 10:2,4,15,20,24,25 11:3 12:1,4 34:9 37:7 41:18 42:7 43:25 45:25 50:12 51:18 69:17 71:1,8 81:12 84:17 85:3</p> <p><b>foreclose</b> [1] 5:10</p> <p><b>forefront</b> [1] 21:24</p> <p><b>foreign</b> [9] 6:6 28:3,23 33:22 42:2 47:25 57:3,6 58:7</p> <p><b>form</b> [2] 70:11 80:22</p> <p><b>Fort</b> [1] 16:4</p> <p><b>forth</b> [5] 27:14 39:23 43:12 65:10 70:8</p> <p><b>forward</b> [4] 25:12,24 57:15 82:2</p> <p><b>found</b> [11] 44:4 47:22 52:6,12 53:7 62:4 64:24 65:6 67:4 69:1 71:15</p> <p><b>foundation</b> [1] 20:11</p> <p><b>foundations</b> [1] 43:8</p> <p><b>founding</b> [1] 42:22</p> <p><b>Fourth</b> [35] 4:15,24 5:8,9,13 6:1,10 8:5,11 9:10 10:14,14 11:3 24:13 33:8 34:23 41:14 51:24 52:11,14,16 53:2 61:20 66:14 67:5 68:4 69:13,16,18 70:18,23 71:1,9 73:17 80:19</p> <p><b>framework</b> [7] 23:23 43:12 64:16 65:10 66:10 70:7,10</p> <p><b>frankly</b> [1] 13:23</p> <p><b>free</b> [1] 9:10</p> <p><b>Friday</b> [1] 22:8</p> <p><b>friend</b> [3] 43:23 54:22 59:17</p> <p><b>front</b> [3] 52:17,17 73:18</p>	<p><b>FTCA</b> [5] 61:3,6 73:6,10,13</p> <p><b>full</b> [2] 34:15 36:5</p> <p><b>fun</b> [1] 22:6</p> <p><b>function</b> [6] 12:22 19:18 26:10 38:20 45:18 77:18</p> <p><b>functions</b> [11] 6:3 9:1,14 21:2 24:8 26:4 45:15 74:17 83:22 84:19 85:23</p> <p><b>fundamentally</b> [2] 12:5 38:19</p> <p><b>further</b> [11] 4:17,24 23:9,11 24:11 41:4 46:24,25 70:5 82:10 85:5</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>garden-variety</b> [1] 74:8</p> <p><b>gather</b> [1] 12:17</p> <p><b>gave</b> [3] 29:15 33:10 37:5</p> <p><b>General</b> [3] 1:20 26:12 40:22</p> <p><b>generality</b> [8] 21:21 29:12 37:21 62:14,19 68:13 81:10 85:16</p> <p><b>generis</b> [1] 64:14</p> <p><b>geography</b> [1] 9:6</p> <p><b>getting</b> [1] 15:8</p> <p><b>give</b> [8] 15:18 24:23 28:13 34:1,11 47:15 53:4 86:9</p> <p><b>given</b> [6] 46:19 59:12 64:14 68:9,10 79:12</p> <p><b>gives</b> [1] 86:3</p> <p><b>giving</b> [2] 24:10 38:4</p> <p><b>gold</b> [1] 16:3</p> <p><b>Gorsuch</b> [20] 23:11 35:14 36:12 37:15,18 41:6 48:3 53:23 54:1 59:3 61:21 62:8,11 63:19 64:9 65:16 66:2,21 67:6,17</p> <p><b>got</b> [3] 39:24,25 48:24</p> <p><b>gotten</b> [1] 37:22</p> <p><b>government</b> [16] 26:12 34:9 35:16 44:20 48:13 49:25 56:25 57:14,16 58:10 73:20,22,25 77:2,10 78:24</p> <p><b>government's</b> [2] 37:20 58:9</p> <p><b>government-wide</b> [1] 18:8</p> <p><b>governmental</b> [1] 4:21</p> <p><b>granular</b> [1] 84:3</p> <p><b>great</b> [2] 40:17 58:20</p> <p><b>greater</b> [1] 10:25</p> <p><b>ground</b> [1] 83:23</p> <p><b>grounds</b> [1] 4:17</p> <p><b>grouping</b> [1] 16:20</p> <p><b>groups</b> [1] 28:3</p> <p><b>guarded</b> [1] 69:7</p> <p><b>guess</b> [5] 49:11 62:12 64:17 70:21 79:17</p> <p><b>guest</b> [10] 29:19,20 32:6,16 33:3,11 41:22 46:21 52:8,25</p> <p><b>guest's</b> [1] 79:7</p> <p><b>guidance</b> [4] 11:24 61:5</p>	<p>64:11,17</p> <p><b>guy</b> [2] 7:14 34:18</p> <p><b>guy's</b> [1] 31:6</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>half</b> [1] 67:22</p> <p><b>handle</b> [1] 73:19</p> <p><b>hanging</b> [1] 84:23</p> <p><b>happen</b> [1] 8:16</p> <p><b>happened</b> [5] 45:4,22,25 50:7 75:22</p> <p><b>happens</b> [4] 7:6 9:15 83:2,17</p> <p><b>Happy</b> [2] 20:9 33:6</p> <p><b>hard</b> [4] 16:24 21:7 24:6 63:1</p> <p><b>Harlan</b> [1] 40:14</p> <p><b>Harlan's</b> [2] 39:16 40:16</p> <p><b>HARRIS</b> [54] 1:18 2:3,13 3:6,7,9 5:7,12 6:15 7:19 8:8 9:7,12,22 10:21 11:2,20 12:7,9 13:1,7,9,14,16,19,22,25 14:9,14,18,23 15:3,6,9,13,22 16:7,12,17,19 17:3,4,18 18:17 19:19 20:2,9,20 21:18 22:15 25:4 82:15,16,18</p> <p><b>Hartman</b> [2] 42:10 71:17</p> <p><b>head</b> [2] 26:16 65:18</p> <p><b>headache</b> [1] 32:11</p> <p><b>heads</b> [1] 84:23</p> <p><b>hear</b> [3] 3:3 19:15 44:19</p> <p><b>heard</b> [1] 26:22</p> <p><b>heart</b> [1] 27:15</p> <p><b>heartland</b> [2] 71:6 82:25</p> <p><b>held</b> [1] 3:20</p> <p><b>helicopters</b> [1] 14:4</p> <p><b>help</b> [2] 14:4 64:7</p> <p><b>helping</b> [1] 17:12</p> <p><b>Hernandez</b> [35] 3:23 4:2,7 5:2 8:21,24,25 19:22 21:21 25:23 30:5,10,17,20,23 31:1,22 33:13 36:7 42:4 45:13 47:18,21 50:15,23 56:24 57:4,11 58:18 64:12,13 81:25 84:9,12 85:7</p> <p><b>hesitate</b> [1] 82:7</p> <p><b>hesitation</b> [9] 24:2 25:11 37:12 44:7 45:17 64:22 65:8 71:23 72:19</p> <p><b>high</b> [1] 62:19</p> <p><b>higher</b> [1] 81:10</p> <p><b>himself</b> [1] 32:19</p> <p><b>historical</b> [1] 43:8</p> <p><b>history</b> [1] 43:17</p> <p><b>hold</b> [1] 71:18</p> <p><b>home</b> [3] 10:3,10 52:18</p> <p><b>honestly</b> [1] 17:18</p> <p><b>Honor</b> [17] 25:10 27:16 28:6 29:2 30:4 31:9 33:5 34:3 35:5,21 36:17 38:11 46:16 55:17 71:4,15 76:24</p> <p><b>hope</b> [1] 75:18</p> <p><b>Hui</b> [1] 61:10</p>	<p><b>HUSTON</b> [36] 1:20 2:6 23:14,15,18 25:8 26:19 27:1,4,9,12,16 28:5,10,15 29:1 30:4,11,21 31:7,9 32:22 33:5,24,25 34:3 35:4,14,21 36:15,25 37:4,16 38:10 40:5,10</p> <p><b>Huston's</b> [1] 44:12</p> <p><b>hypothetical</b> [4] 18:10 29:15 34:1,17</p> <p><b>hypotheticals</b> [2] 18:15 63:22</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>ICE</b> [1] 48:13</p> <p><b>idea</b> [4] 45:9 71:23 79:17 81:21</p> <p><b>identical</b> [1] 35:16</p> <p><b>illegal</b> [11] 6:5 7:17 8:1 34:21 47:20 50:19 56:8,12,14,15 83:9</p> <p><b>illegally</b> [2] 47:11 55:14</p> <p><b>illuminated</b> [1] 66:5</p> <p><b>illustrated</b> [1] 29:2</p> <p><b>illustrates</b> [2] 6:22 21:20</p> <p><b>imagine</b> [1] 36:22</p> <p><b>immigration</b> [17] 7:23 21:6 29:19,25 49:21 55:19,21,25 63:10,11 77:5 82:3 83:9 84:19 85:2,19,22</p> <p><b>immigration-related</b> [2] 45:5 82:5</p> <p><b>immunity</b> [5] 11:13,15 60:9 65:13,17</p> <p><b>implementing</b> [1] 21:1</p> <p><b>implicate</b> [3] 25:17 74:18 78:8</p> <p><b>implicates</b> [4] 5:1 8:22 35:13 37:13</p> <p><b>implications</b> [6] 17:20 18:19 19:22 30:15 50:5 54:12</p> <p><b>implied</b> [1] 80:19</p> <p><b>implying</b> [1] 80:22</p> <p><b>import</b> [1] 70:25</p> <p><b>important</b> [13] 5:22 7:20 8:19 16:3 18:24 24:8 25:20 30:23 31:13 38:16 59:5,8 76:9</p> <p><b>importantly</b> [1] 55:19</p> <p><b>impose</b> [1] 24:10</p> <p><b>inappropriate</b> [1] 70:25</p> <p><b>incident</b> [2] 77:4,22</p> <p><b>incidents</b> [1] 32:12</p> <p><b>including</b> [3] 20:25 22:1 85:13</p> <p><b>indeed</b> [2] 8:3 85:18</p> <p><b>indicated</b> [4] 41:19 43:24 49:6 54:22</p> <p><b>indicates</b> [1] 84:1</p> <p><b>indicating</b> [2] 57:1 79:6</p> <p><b>indication</b> [1] 60:14</p> <p><b>indications</b> [1] 60:3</p> <p><b>indistinguishable</b> [1] 41:15</p>
--	---	---	--	---

## Official - Subject to Final Review

<p><b>individual</b> [12] 4:11 24:25 42:20 43:1,9 51:11 60:18 64:19 70:6 75:7 78:19 81:12</p> <p><b>inform</b> [1] 75:14</p> <p><b>informant</b> [2] 48:13 77:10</p> <p><b>informed</b> [2] 75:12 77:6</p> <p><b>informer</b> [1] 48:13</p> <p><b>inherently</b> [1] 8:22</p> <p><b>initial</b> [1] 52:15</p> <p><b>initially</b> [1] 21:4</p> <p><b>injuries</b> [1] 40:19</p> <p><b>inn</b> [13] 10:4 45:22 47:7 48:24 63:16 75:13,22 76:5,21 84:5,5,7,25</p> <p><b>inquire</b> [1] 46:20</p> <p><b>inquired</b> [1] 41:21</p> <p><b>inquiry</b> [4] 11:5 17:6 21:22 22:24</p> <p><b>instance</b> [2] 17:25 44:10</p> <p><b>instances</b> [1] 41:23</p> <p><b>Instead</b> [1] 42:5</p> <p><b>institutional</b> [1] 38:17</p> <p><b>interaction</b> [1] 44:15</p> <p><b>interdict</b> [1] 6:5</p> <p><b>interest</b> [2] 58:10 65:5</p> <p><b>interesting</b> [1] 39:17</p> <p><b>interests</b> [2] 5:5 19:8</p> <p><b>internal</b> [1] 85:13</p> <p><b>international</b> [1] 59:11</p> <p><b>interpreted</b> [1] 3:14</p> <p><b>intervening</b> [2] 3:17 64:12</p> <p><b>intimately</b> [1] 85:21</p> <p><b>investigating</b> [4] 17:16 18:11,12 26:2</p> <p><b>investigation</b> [6] 7:23 14:17,21 24:12 35:6 56:15</p> <p><b>investigations</b> [1] 85:13</p> <p><b>invocations</b> [1] 73:19</p> <p><b>invoke</b> [1] 73:23</p> <p><b>invoked</b> [1] 74:14</p> <p><b>involve</b> [1] 9:3</p> <p><b>involved</b> [13] 4:25 7:23 33:11 35:3 47:6 54:8,25 58:12 75:3 78:10,17 80:22 82:4</p> <p><b>involves</b> [1] 31:18</p> <p><b>involving</b> [4] 4:16 34:4 37:7 83:9</p> <p><b>IRS</b> [2] 9:15,18</p> <p><b>isn't</b> [12] 4:3 12:12,13,14 16:16 39:11 59:20 62:16 66:5,23,25 79:19</p> <p><b>issue</b> [7] 9:24 18:12 25:23 29:6,7 53:12 78:9</p> <p><b>issues</b> [2] 9:16 72:16</p> <p><b>itself</b> [2] 35:7 41:15</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>jailers</b> [1] 64:19</p> <p><b>job</b> [2] 27:18 56:21</p> <p><b>John</b> [3] 39:20,21,22</p> <p><b>Joint</b> [3] 46:23 56:19 79:5</p> <p><b>judge</b> [2] 64:3 81:15</p>	<p><b>judges</b> [1] 81:15</p> <p><b>judgment</b> [5] 11:17 23:22 32:25 55:18 57:8</p> <p><b>judgments</b> [1] 4:6</p> <p><b>judicial</b> [2] 11:24 38:20</p> <p><b>judiciary</b> [2] 4:3 20:21</p> <p><b>jurisdiction</b> [1] 3:15</p> <p><b>jurisprudence</b> [1] 61:13</p> <p><b>Justice</b> [202] 1:21 3:3,9 5:7 6:8 7:10 8:4 9:4,8,21,24 10:12,21,23 11:8 12:6,8,11,16,18 13:3,8,10,15,17,21,24 14:2,12,15,20 15:2,5,7,10,17,25 16:8,13,18 17:2,4,5 18:9,15 19:11,12,24 20:7,15 21:9 22:4,6 23:4,6,7,8,8,10,11,12,18 25:3,15 26:5,21 27:2,7,11,13,17 28:7,14,16 29:13,14 30:10,12 31:3,8 32:21,24 33:24,25 34:17 35:1,2,14,15 36:12,21 37:2,5,15,16,18,19 38:4 39:1,3,15 40:6,14,16,24 41:1,2,3,4,5,6,7,12 43:15,21 44:11,18 45:7,21 46:6,10 47:3 48:2,3,5,10,11,14,22 49:3,6,11,19 50:7,25 51:20 52:2,19,22 53:5,11,19,22,23,24 54:1,3,3,21 55:2,9 56:2,3,17 57:11,12,13,18,24 59:3,4 60:21,25 61:21 62:8,11 63:19 64:9 65:16 66:2,21 67:6,17 68:6,8 69:2,14 70:16 71:11 73:17 74:20 75:2,4,14,20 76:1,3,8,10,18,20 77:20 78:3,14,23 79:10 80:20 82:9,13,14,19 86:17</p> <p><b>Justice's</b> [1] 40:17</p> <p><b>justified</b> [1] 39:10</p> <p><b>justifying</b> [1] 10:9</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>KAGAN</b> [23] 19:11,24 20:7,15 21:9 22:4 29:13 30:10,12 31:3,8 32:21,24 53:24 54:3 55:2,9 57:12,24 70:16 73:17 76:1 78:23</p> <p><b>Kagan's</b> [2] 56:3 80:20</p> <p><b>KAVANAUGH</b> [6] 36:21 37:2 44:11,18 56:2,17</p> <p><b>Kavanaugh's</b> [1] 54:3</p> <p><b>keep</b> [3] 14:4 59:5 76:9</p> <p><b>Kennedy</b> [1] 48:20</p> <p><b>key</b> [2] 3:25 29:8</p> <p><b>killing</b> [1] 84:14</p> <p><b>kind</b> [7] 18:14 30:1,13 44:16 65:18 67:22 69:24</p> <p><b>kinds</b> [2] 9:1 24:21</p> <p><b>knowledge</b> [1] 48:15</p> <p><b>Knox</b> [1] 16:4</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>lack</b> [1] 55:16</p> <p><b>land</b> [1] 45:8</p>	<p><b>large</b> [4] 20:18 44:23 49:12 81:22</p> <p><b>larger</b> [2] 47:25 70:14</p> <p><b>Last</b> [2] 15:25 74:21</p> <p><b>late</b> [1] 58:1</p> <p><b>latter</b> [1] 75:2</p> <p><b>Laughter</b> [2] 76:2,25</p> <p><b>law</b> [32] 10:16 16:23 17:13 21:5,10 22:22 24:20,21 26:3,3,9 27:20 39:19 40:18,18,23 41:16,23 46:18 50:21 51:14 54:23 55:7 60:10 63:9,11 64:6 65:20 72:23 73:4 83:1,2</p> <p><b>lawfully</b> [1] 33:4</p> <p><b>lay</b> [1] 62:13</p> <p><b>Layne</b> [1] 69:12</p> <p><b>least</b> [8] 4:13 39:13 47:18 48:1 57:5 61:13 65:18 86:8</p> <p><b>leave</b> [3] 52:9 53:17 78:13</p> <p><b>left</b> [3] 46:24 56:22 79:9</p> <p><b>legal</b> [2] 28:12 55:13</p> <p><b>legality</b> [1] 31:6</p> <p><b>legally</b> [2] 29:20 77:11</p> <p><b>legislated</b> [2] 4:9,10</p> <p><b>legislative</b> [1] 38:19</p> <p><b>lengths</b> [1] 58:21</p> <p><b>less</b> [1] 71:10</p> <p><b>lethal</b> [1] 12:3</p> <p><b>level</b> [10] 11:24 21:20 22:10 29:11 37:20 62:14,19 68:13 81:10 85:16</p> <p><b>liability</b> [10] 4:11,23 19:6 24:10 31:24 59:23 60:8 84:23 85:1,4</p> <p><b>liable</b> [1] 80:4</p> <p><b>liaising</b> [1] 31:19</p> <p><b>license</b> [2] 47:8 49:7</p> <p><b>lies</b> [2] 42:1 71:21</p> <p><b>light</b> [1] 33:7</p> <p><b>likelihood</b> [1] 59:21</p> <p><b>likely</b> [2] 14:18 56:6</p> <p><b>limited</b> [1] 42:23</p> <p><b>line</b> [4] 55:3,4 78:8 80:11</p> <p><b>line-drawing</b> [1] 81:18</p> <p><b>list</b> [2] 34:12 62:25</p> <p><b>litigation</b> [1] 85:9</p> <p><b>little</b> [5] 22:6 40:8 59:18 63:24 79:12</p> <p><b>local</b> [4] 17:12 26:2,6 55:24</p> <p><b>long</b> [2] 41:25 82:6</p> <p><b>long-standing</b> [1] 42:21</p> <p><b>look</b> [11] 6:25 27:18 46:23 54:6 62:18 64:11 65:20 70:17 83:6 85:4,10</p> <p><b>looked</b> [1] 84:9</p> <p><b>looking</b> [6] 17:19 26:8 49:13 66:5 83:22 84:2</p> <p><b>looks</b> [3] 64:15 69:16 73:5</p> <p><b>lot</b> [6] 8:15 17:23 37:22 71:12 82:21 83:16</p> <p><b>lower</b> [5] 57:2 66:8,13,24 82:1</p>	<p><b>lynch</b> [1] 16:10</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>made</b> [3] 29:10 57:9 81:2</p> <p><b>Madison</b> [1] 39:22</p> <p><b>majority</b> [1] 30:19</p> <p><b>Malesko</b> [1] 61:6</p> <p><b>malicious</b> [1] 72:4</p> <p><b>mandate</b> [7] 5:20 11:23 17:21 18:2 28:12,16,17</p> <p><b>mandated</b> [1] 85:14</p> <p><b>many</b> [5] 5:3 27:4 59:1 65:23 66:17</p> <p><b>Marbury</b> [1] 39:22</p> <p><b>March</b> [2] 1:11 72:12</p> <p><b>Marshall</b> [2] 39:20,22</p> <p><b>marshals</b> [2] 27:12 34:5</p> <p><b>Massachusetts</b> [1] 1:24</p> <p><b>materially</b> [1] 41:15</p> <p><b>matter</b> [7] 1:13 44:22 46:4 54:12,15 63:7 77:9</p> <p><b>matters</b> [7] 17:14,15 63:3,5 74:21,22 82:6</p> <p><b>mean</b> [29] 7:13 12:11 14:6 20:16,17 21:9,14 22:8 29:14,16,22 30:10 38:21 47:5 50:6 52:19,25 55:24 57:24 60:22 65:23 66:4,23 67:11 70:21 74:22 75:20 76:8 83:14</p> <p><b>meaningful</b> [2] 22:20 25:5</p> <p><b>meaningfully</b> [2] 11:25 24:14</p> <p><b>means</b> [4] 5:4 9:19 32:1 69:21</p> <p><b>mechanism</b> [1] 15:21</p> <p><b>men</b> [1] 14:5</p> <p><b>mentioned</b> [2] 18:22 33:19</p> <p><b>Mesa</b> [6] 8:24 47:21 50:23 57:23 58:19 84:12</p> <p><b>mess</b> [1] 64:4</p> <p><b>meters</b> [1] 84:4</p> <p><b>Mexico</b> [3] 30:16 57:14,17</p> <p><b>MICHAEL</b> [3] 1:20 2:6 23:15</p> <p><b>might</b> [12] 3:21 9:16 18:19 21:16 30:25 44:7 63:8,9 70:20,24 79:12 84:16</p> <p><b>miles</b> [1] 45:4</p> <p><b>mind</b> [2] 59:5 76:9</p> <p><b>Minister</b> [1] 58:1</p> <p><b>minor</b> [1] 38:13</p> <p><b>Mint</b> [2] 16:1,2</p> <p><b>minute</b> [1] 22:10</p> <p><b>misconduct</b> [1] 42:21</p> <p><b>missed</b> [1] 59:7</p> <p><b>missing</b> [1] 7:20</p> <p><b>mission</b> [10] 5:17,19 14:1 15:6 16:23 17:6,7 35:10 37:10 54:19</p> <p><b>missions</b> [1] 14:2</p> <p><b>mix</b> [1] 19:19</p> <p><b>modern</b> [1] 3:14</p> <p><b>modest</b> [3] 40:12 62:4 65:3</p>	<p><b>Moines</b> [2] 8:7,18</p> <p><b>moment</b> [3] 21:3 46:25 53:18</p> <p><b>momentous</b> [1] 24:3</p> <p><b>Monday</b> [1] 22:13</p> <p><b>Monday/Wednesday</b> [1] 38:3</p> <p><b>Montoya</b> [1] 8:11</p> <p><b>Moore</b> [2] 42:10 71:17</p> <p><b>morale</b> [1] 22:2</p> <p><b>morning</b> [2] 3:4 75:10</p> <p><b>most</b> [6] 26:24 27:10 31:13 33:7 36:9 83:25</p> <p><b>motion</b> [1] 32:25</p> <p><b>Mouted</b> [1] 72:10</p> <p><b>Mounted</b> [1] 31:14</p> <p><b>Ms</b> [113] 3:6,9 5:7,12 6:15 7:19 8:8 9:7,12,22 10:21 11:2,20 12:7,9 13:1,7,9,14,16,19,22,25 14:9,14,18,23 15:3,6,9,13,22 16:7,12,17,19 17:2,3,4,18 18:17 19:19 20:2,9,20 21:18 22:15 25:4 41:9,12 43:20 44:17 45:21 46:3,8,15 47:17 48:9,12,18 49:2,15,22 50:14 51:5 52:1,5,21 53:4,15,20 54:14 55:5,11 56:16 57:16,19 58:4 60:1,24 61:2 62:3,9 63:18 64:8 66:1,7 67:2,9,23 68:6,18 69:4 70:2 71:3,13 73:21 75:1,8,16 76:7,14,19,22 77:1,24 78:4,16 79:3 80:12 82:12,14,18</p> <p><b>much</b> [6] 6:11 29:16 31:4 50:15 54:19 71:10</p> <p><b>multiple</b> [2] 24:1 32:12</p> <p><b>must</b> [1] 4:2</p> <p><b>mutual</b> [1] 31:17</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>narcotics</b> [4] 10:16 15:15 25:7 34:6</p> <p><b>Narcotics'</b> [1] 5:19</p> <p><b>narrow</b> [4] 43:3 70:1,5 72:1</p> <p><b>narrowed</b> [2] 54:9 70:3</p> <p><b>narrowing</b> [1] 40:3</p> <p><b>narrowness</b> [1] 38:8</p> <p><b>national</b> [30] 5:1 8:23 18:18 19:21 24:19 25:18,22 26:9 29:9,14,24 30:1,8 33:16 34:18 35:10,13 37:13 42:14,15 47:9 72:20 73:19,23 74:2,10,13,18 82:6 85:22</p> <p><b>nationals</b> [1] 6:6</p> <p><b>near</b> [3] 7:13 44:14 54:11</p> <p><b>necessary</b> [2] 11:1 58:19</p> <p><b>necessity</b> [6] 3:22 6:18 42:7 54:13,15 71:8</p> <p><b>need</b> [10] 12:3 19:1,2 43:3 49:8 55:16 60:25 62:9 81:6 84:24</p>
--	---	---	---	--

## Official - Subject to Final Review

<p><b>needed</b> [1] 21:11  <b>needing</b> [2] 61:7 84:16  <b>needn't</b> [1] 77:16  <b>needs</b> [2] 34:15 77:15  <b>never</b> [2] 4:5 26:22  <b>new</b> [64] 3:16,23 4:4 5:22 6:23 7:4,8 11:5,19,22 13:6 14:19,23 16:24 22:24 23:25 25:9 26:8 28:13,18 36:8,16 37:8,21 38:1,12,24,24 39:6,6,8,11 40:11 42:12 43:5,19,22 45:16 48:20 61:24,25 62:16 64:5,24 65:3,23,25 66:15,18,23,25 67:4,8,13 68:10,16,24 69:3,5,24 71:16 82:22,22 83:15  <b>news</b> [1] 72:9  <b>next</b> [5] 6:21 44:6 46:1,4,6  <b>Ninth</b> [15] 36:13,18 53:8 61:23,24 62:4 66:22 67:7 71:16 72:5 74:1 80:15 85:18 86:2,13  <b>nitty-gritty</b> [1] 62:21  <b>non-exhaustive</b> [1] 34:14  <b>none</b> [7] 10:19 42:2 44:3,6 58:17 67:25 74:12  <b>nor</b> [1] 68:1  <b>normal</b> [3] 26:13 54:23 55:6  <b>normally</b> [2] 67:20 79:22  <b>note</b> [1] 55:1  <b>noted</b> [2] 49:24 55:17  <b>nothing</b> [6] 9:5 11:13 41:2 49:23 78:11 79:8  <b>notorious</b> [2] 7:25 32:8  <b>number</b> [1] 5:14</p>	<p><b>often</b> [1] 14:3  <b>Okay</b> [19] 7:14 12:16 13:15 14:15 15:5,9,17,25 27:7,17 28:19 46:7 50:25 53:19,22 54:10 57:18 63:21 69:20  <b>once</b> [3] 46:22,22 56:20  <b>one</b> [35] 7:21 13:23,24 15:25 17:25 18:6 20:5 21:3 26:23 27:10 29:11,15 31:22 35:23 40:7,7 47:18,22 48:7 50:22 55:3 59:20 62:17 64:18 66:22 67:1,22 72:18 74:19 75:21 76:15,19 82:24 85:16 86:10  <b>one's</b> [1] 79:2  <b>ones</b> [3] 24:15 29:5,7  <b>only</b> [5] 16:24 70:11 74:12 81:23 86:12  <b>operating</b> [3] 5:21 17:22 28:11  <b>opinion</b> [6] 15:20 29:3 39:16 40:16,17 48:1  <b>opportunity</b> [1] 75:19  <b>opposed</b> [1] 74:24  <b>opposite</b> [1] 56:9  <b>opposition</b> [1] 49:25  <b>oral</b> [7] 1:14 2:2,5,9 3:7 23:15 41:10  <b>order</b> [5] 7:9 23:2 49:9,18 81:8  <b>ordinary</b> [5] 14:5 26:14,24 46:18 76:3  <b>other</b> [32] 7:16 16:23 18:22 19:7,11 24:21 30:7 31:1 32:18,20 34:6 40:8 41:23 51:1 55:4 59:16,18 60:22 62:20 63:4 65:15 66:17 68:2 69:12,25 70:21 72:9 82:1,4 85:11,17 86:2  <b>others</b> [2] 14:4 25:18  <b>otherwise</b> [1] 72:22  <b>out</b> [14] 4:7 16:3 17:12,25 18:7 22:1,11 31:5 60:12 62:13 64:16 83:13 85:5,11  <b>outlets</b> [1] 19:8  <b>outlined</b> [1] 68:1  <b>outside</b> [5] 32:22 49:4 70:20,25 73:3  <b>over</b> [7] 3:15 26:16 67:14 68:21 78:2,12 84:23  <b>overlapping</b> [2] 18:2 21:1  <b>overreach</b> [1] 41:24  <b>owned</b> [1] 10:5</p>	<p>11  <b>particularly</b> [5] 7:15 21:18 45:1 84:10 85:24  <b>partners</b> [2] 33:22,23  <b>partnership</b> [1] 31:13  <b>passes</b> [1] 37:8  <b>past</b> [2] 47:6 68:21  <b>Patrol</b> [50] 5:21 6:3,3 8:2 9:2,9 10:18 17:15 19:4,14,17,25 20:24,25 21:17,19 25:6,9,13 26:1 44:23 45:15,18 50:6,10 51:2,11 54:7,11,17,19,20 56:10,21 74:4,15,17,23,24 75:23 79:8 80:4 81:4,21 82:2 83:6,8 84:15,18 85:8  <b>patrolling</b> [1] 47:19  <b>pause</b> [2] 4:3,17  <b>peace</b> [1] 14:4  <b>people</b> [12] 14:3 16:3 26:24 27:19,25 28:9 32:1,4,12 76:17 78:11,20  <b>per</b> [3] 13:16 32:12 68:25  <b>perform</b> [2] 26:3 36:2  <b>performance</b> [3] 24:8 31:24 33:20  <b>performed</b> [3] 45:15,18 75:9  <b>performing</b> [3] 9:2 83:2 84:18  <b>performs</b> [2] 25:17 36:5  <b>perhaps</b> [6] 7:1 21:3,4 62:18 83:25 84:6  <b>permissible</b> [1] 35:18  <b>permits</b> [1] 34:2  <b>permitted</b> [1] 39:13  <b>persists</b> [1] 43:4  <b>person</b> [16] 10:1 28:1,2,18,22,24 30:1 50:10,11,12 51:1,3 56:6 76:4,12,13  <b>persons</b> [4] 30:7 32:17 33:15 34:21  <b>perspective</b> [1] 56:14  <b>Petition</b> [1] 52:6  <b>Petitioner</b> [12] 1:4,19,23 2:4,8,14 3:8 23:17 44:20 68:3 72:24 82:17  <b>Petitioner's</b> [2] 54:6,10  <b>phrase</b> [1] 79:13  <b>pick</b> [3] 21:22 76:12,16  <b>picture</b> [2] 7:21 34:15  <b>pitched</b> [1] 21:22  <b>place</b> [1] 13:12  <b>plaintiffs</b> [1] 4:20  <b>plate</b> [2] 47:8 49:7  <b>play</b> [2] 58:8 86:11  <b>played</b> [1] 47:25  <b>playing</b> [1] 70:13  <b>please</b> [5] 3:10 23:19 41:13 48:4 54:1  <b>point</b> [15] 9:5 15:8 28:13 39:24,25 51:20,23 56:23 57:10 61:8 66:6 77:21 80:21 83:20 86:10</p>	<p><b>points</b> [2] 11:20 82:20  <b>police</b> [14] 6:9 8:6 12:21 14:8 16:1,2,14 26:8,14,15 27:23 31:14,15 34:5  <b>policemen</b> [2] 14:5 26:6  <b>policing</b> [1] 24:18  <b>policy</b> [1] 42:3  <b>political</b> [1] 85:25  <b>portray</b> [1] 4:20  <b>posed</b> [1] 25:15  <b>position</b> [11] 17:9 26:11 37:20,24 38:5,8 44:22,23 45:2 57:1,2  <b>positions</b> [1] 83:24  <b>possibility</b> [1] 19:5  <b>possible</b> [2] 45:12 56:7  <b>potential</b> [4] 17:17 19:7 24:7 56:15  <b>potentially</b> [2] 32:19 63:7  <b>power</b> [2] 4:1 38:20  <b>powers</b> [2] 3:24 24:16  <b>precedent</b> [3] 3:14 68:14 69:25  <b>precedents</b> [3] 8:9 23:21 69:15  <b>predictive</b> [1] 4:6  <b>premise</b> [1] 3:18  <b>presence</b> [1] 56:13  <b>present</b> [6] 25:9,21 30:24 47:14 56:4 59:24  <b>presented</b> [1] 83:5  <b>preserved</b> [1] 43:1  <b>press</b> [1] 72:22  <b>presumably</b> [2] 52:2 80:3  <b>presumption</b> [1] 40:7  <b>pretty</b> [4] 6:11 21:7 62:2 63:1  <b>prevent</b> [5] 34:20 47:20 50:19 51:7 78:11  <b>preventing</b> [2] 32:3 33:14  <b>prevention</b> [1] 30:6  <b>previously</b> [1] 77:3  <b>primary</b> [2] 12:22 16:23  <b>Prime</b> [1] 57:25  <b>prior</b> [2] 44:4 70:12  <b>Prisons</b> [3] 14:8,10,13  <b>private</b> [11] 7:12,12,17 10:3 29:18 41:16 43:25 59:13 74:9 77:19 81:11  <b>probably</b> [1] 14:10  <b>problem</b> [4] 57:6 59:24 66:25 67:18  <b>proceed</b> [2] 43:13 68:5  <b>process</b> [1] 41:22  <b>produced</b> [1] 86:4  <b>prohibits</b> [1] 11:4  <b>properly</b> [1] 73:19  <b>property</b> [24] 7:13,18,25 10:4 29:18 32:5,10 41:17 44:1 46:1,4 49:4,9 51:16 52:10 53:17 55:14 74:9 77:14,19 78:1,2,21 81:11  <b>prosaic</b> [1] 29:16  <b>prosecution</b> [1] 72:4</p>	<p><b>prospect</b> [2] 31:23 84:22  <b>protect</b> [7] 5:4 31:15,16,20 34:17 35:10 58:15  <b>protected</b> [2] 52:10,14  <b>protecting</b> [2] 35:8 54:18  <b>protection</b> [6] 12:22 16:15 27:24 30:5 35:12 58:16  <b>protections</b> [1] 11:12  <b>provide</b> [3] 12:21 16:14 79:23  <b>provided</b> [1] 76:16  <b>provides</b> [1] 64:16  <b>providing</b> [1] 27:23  <b>proximate</b> [1] 58:5  <b>proximity</b> [4] 44:21,25 47:2 78:4  <b>public</b> [2] 48:15 51:25  <b>publicly</b> [1] 72:8  <b>purportedly</b> [1] 84:13  <b>purposes</b> [1] 73:4  <b>pursuant</b> [1] 28:11  <b>push</b> [1] 46:11  <b>put</b> [2] 68:23 72:6  <b>puts</b> [1] 68:14  <b>putting</b> [1] 73:12</p> <p style="text-align: center;"><b>Q</b></p> <p><b>qualified</b> [4] 11:13,15 65:13,17  <b>qualifies</b> [1] 38:14  <b>quality</b> [1] 63:17  <b>question</b> [35] 7:9 10:13,24 13:19 15:13,23 19:13 20:16,17,21 21:25 22:18,23 25:15 37:19 39:2 49:6 51:21 52:7 53:9,10,16 54:4,22 58:25 68:7 77:4,17 78:18 79:11 80:13 81:8 82:24 84:1,8  <b>questioning</b> [2] 6:18 81:11  <b>questions</b> [23] 3:15 5:6 13:23 16:25 17:5 18:6,15 20:6 21:7 23:7 25:4 37:22 41:19 43:14,23 45:8 56:3 59:6 68:7,12 78:22 81:19 82:25  <b>quick</b> [2] 36:2 82:20  <b>quite</b> [7] 5:13 11:4 26:6 38:23 39:2 66:9 83:4</p> <p style="text-align: center;"><b>R</b></p> <p><b>raft</b> [1] 19:6  <b>raise</b> [1] 4:16  <b>raised</b> [1] 68:2  <b>raises</b> [1] 16:24  <b>range</b> [1] 16:21  <b>rate</b> [1] 76:24  <b>rather</b> [8] 22:13,14 40:7 49:25 55:3 65:2 70:1,5  <b>reach</b> [1] 43:3  <b>reached</b> [2] 51:17 73:24  <b>read</b> [6] 57:5 60:3,4 61:16 70:4,16</p>
--	--	--	---	--

## Official - Subject to Final Review

<p><b>real</b> <sup>[1]</sup> 32:1  <b>really</b> <sup>[19]</sup> 7:5,20 9:5 16:24  18:24 21:22 22:23 31:19  34:15 36:1,4 39:19 46:16  49:12 63:3 70:10 83:1,23  85:15  <b>reason</b> <sup>[18]</sup> 3:21 7:24 14:  19,25 19:1 20:11 24:23 33:  10 39:15,21 40:13 42:12  44:8 45:17 68:3 73:15 77:  6 82:7  <b>reasonable</b> <sup>[3]</sup> 11:17 77:  12,13  <b>reasonableness</b> <sup>[1]</sup> 33:9  <b>reasons</b> <sup>[10]</sup> 4:22 5:15 10:  22 20:4,8 33:19 43:22 44:  3,6 73:11  <b>REBUTTAL</b> <sup>[3]</sup> 2:12 82:14,  16  <b>recent</b> <sup>[4]</sup> 23:21 43:17 70:4  83:25  <b>recognition</b> <sup>[1]</sup> 8:14  <b>recognize</b> <sup>[6]</sup> 40:3 43:5 64:  23 72:17 80:15,16  <b>recognized</b> <sup>[15]</sup> 5:2 6:16  12:3 19:23 24:17 35:18 39:  12 41:25 64:5 68:10 69:9,  10 71:7 73:16 74:7  <b>recognizes</b> <sup>[3]</sup> 8:11 38:24  45:14  <b>recognizing</b> <sup>[3]</sup> 20:24 38:  1 71:22  <b>record</b> <sup>[3]</sup> 56:18 75:17 79:  4  <b>records</b> <sup>[1]</sup> 13:16  <b>reference</b> <sup>[1]</sup> 44:12  <b>referring</b> <sup>[1]</sup> 40:18  <b>regard</b> <sup>[1]</sup> 42:16  <b>regime</b> <sup>[1]</sup> 72:21  <b>regular</b> <sup>[2]</sup> 8:6 83:2  <b>regulations</b> <sup>[1]</sup> 10:6  <b>reject</b> <sup>[1]</sup> 3:17  <b>related</b> <sup>[3]</sup> 55:12,20 57:5  <b>relates</b> <sup>[1]</sup> 72:4  <b>relations</b> <sup>[6]</sup> 47:25 54:4,13  57:4,6 58:7  <b>relationship</b> <sup>[2]</sup> 30:15 31:  18  <b>relevant</b> <sup>[4]</sup> 7:16 12:10,12  45:1  <b>remains</b> <sup>[2]</sup> 42:22 65:9  <b>remedial</b> <sup>[1]</sup> 42:18  <b>remedied</b> <sup>[3]</sup> 42:11 58:13,  13  <b>remedies</b> <sup>[8]</sup> 18:23 19:7,  12 38:6 39:23 40:18 70:13  85:11  <b>remedy</b> <sup>[20]</sup> 3:22 19:3 20:  13 24:25 30:2 42:1,13 43:  4,5 44:8,10 60:18,23 61:4,  19 69:8 70:18 71:21 73:7,  8  <b>remind</b> <sup>[1]</sup> 73:22  <b>remove</b> <sup>[3]</sup> 3:18 50:3 55:21</p>	<p><b>rent</b> <sup>[1]</sup> 52:23  <b>representation</b> <sup>[1]</sup> 58:9  <b>require</b> <sup>[3]</sup> 10:7 23:24 81:  18  <b>required</b> <sup>[2]</sup> 58:3,6  <b>resolve</b> <sup>[2]</sup> 7:3,9  <b>respect</b> <sup>[8]</sup> 3:24 5:20 8:21  9:22 11:21 12:1 21:19 22:  4  <b>respectfully</b> <sup>[7]</sup> 5:12 22:15  31:10 36:18 61:14 62:5 66:  8  <b>responded</b> <sup>[1]</sup> 54:5  <b>Respondent</b> <sup>[6]</sup> 1:7,25 2:  11 24:9 33:7 41:11  <b>Respondent's</b> <sup>[2]</sup> 23:24  24:14  <b>response</b> <sup>[1]</sup> 35:15  <b>responses</b> <sup>[3]</sup> 44:18 53:5  56:16  <b>retaliation</b> <sup>[7]</sup> 4:15,19 24:5  72:1,3,11,14  <b>retaliatory</b> <sup>[2]</sup> 4:22 72:10  <b>reversed</b> <sup>[1]</sup> 23:23  <b>rights</b> <sup>[3]</sup> 19:9 39:23 51:24  <b>rise</b> <sup>[2]</sup> 28:13 34:11  <b>road</b> <sup>[2]</sup> 75:10 84:6  <b>ROBERT</b> <sup>[1]</sup> 1:6  <b>ROBERTS</b> <sup>[18]</sup> 3:3 7:10 8:  4 9:4,8 23:4,8 33:25 35:2  40:24 41:3 59:4 60:21,25  79:10 82:9,14 86:17  <b>role</b> <sup>[2]</sup> 48:1 70:14  <b>room</b> <sup>[1]</sup> 52:23  <b>roots</b> <sup>[1]</sup> 42:21  <b>routine</b> <sup>[5]</sup> 21:5 26:3 34:7,  22 37:5  <b>Royal</b> <sup>[1]</sup> 31:13  <b>rule</b> <sup>[4]</sup> 4:7 39:18 65:14 86:  4  <b>rules</b> <sup>[2]</sup> 12:4,13  <b>run</b> <sup>[2]</sup> 14:24 15:16  <b>run-of-the-mill</b> <sup>[1]</sup> 34:23  <b>rundown</b> <sup>[1]</sup> 32:7  <b>running</b> <sup>[1]</sup> 51:2  <b>runs</b> <sup>[1]</sup> 50:8</p> <p style="text-align: center;"><b>S</b></p> <p><b>sale</b> <sup>[1]</sup> 20:5  <b>same</b> <sup>[20]</sup> 5:19 6:11 11:11  12:10 13:4 16:5 27:18,20,  21,23 28:16,17 45:24 60:8,  9 66:9 67:12,18 69:21 79:  11  <b>SARAH</b> <sup>[5]</sup> 1:18 2:3,13 3:7  82:16  <b>satisfied</b> <sup>[1]</sup> 22:25  <b>satisfy</b> <sup>[1]</sup> 43:11  <b>saying</b> <sup>[16]</sup> 9:18 11:10 12:  12 14:22,23 16:16,17 22:9  26:23 27:25 28:24 39:5 44:  20 59:19 70:17 79:24  <b>says</b> <sup>[6]</sup> 12:18 22:17 32:24  33:1 47:8 56:5</p>	<p><b>scale</b> <sup>[3]</sup> 68:15,16,24  <b>scheme</b> <sup>[1]</sup> 42:18  <b>scope</b> <sup>[2]</sup> 72:6 73:3  <b>se</b> <sup>[1]</sup> 68:25  <b>search</b> <sup>[10]</sup> 7:11,12,17 21:4,  5 53:20,21 66:14 74:8 85:  2  <b>search-and-seizure</b> <sup>[5]</sup> 6:  20 34:8 37:6 41:24 69:19  <b>search/excessive</b> <sup>[1]</sup> 71:  1  <b>searches</b> <sup>[1]</sup> 8:15  <b>Seattle</b> <sup>[2]</sup> 48:21 76:12  <b>Second</b> <sup>[9]</sup> 3:20 20:21 56:  23 60:14 61:8 64:20 65:4,  6 83:20  <b>Secret</b> <sup>[1]</sup> 16:22  <b>Section</b> <sup>[2]</sup> 8:13 60:6  <b>secure</b> <sup>[1]</sup> 10:7  <b>security</b> <sup>[31]</sup> 4:16 5:1,2 8:  23 18:19 19:21 24:19 25:  18,22 29:10,14,24 30:2,9  33:17 34:18 35:11,13 37:  14 42:14,15 72:20 73:19,  23 74:2,11,13,18 82:5,7 85:  22  <b>see</b> <sup>[10]</sup> 15:2 28:17 34:24  36:6 39:5,10 49:19 65:21  66:6 73:23  <b>seeing</b> <sup>[1]</sup> 86:2  <b>seeks</b> <sup>[1]</sup> 24:9  <b>seem</b> <sup>[3]</sup> 7:15 22:5 67:14  <b>seems</b> <sup>[7]</sup> 6:10 17:19 22:8  53:1 56:13 71:10 78:25  <b>seen</b> <sup>[2]</sup> 53:3 60:17  <b>sees</b> <sup>[1]</sup> 50:10  <b>seizure</b> <sup>[2]</sup> 66:15 74:9  <b>Sellers</b> <sup>[1]</sup> 11:14  <b>sending</b> <sup>[1]</sup> 72:8  <b>sense</b> <sup>[1]</sup> 18:5  <b>senses</b> <sup>[1]</sup> 73:7  <b>sent</b> <sup>[2]</sup> 64:20 65:3  <b>separate</b> <sup>[1]</sup> 17:25  <b>separation</b> <sup>[2]</sup> 3:24 24:16  <b>separation-of-powers</b>  <sup>[2]</sup> 20:13 21:23  <b>series</b> <sup>[1]</sup> 63:22  <b>Service</b> <sup>[2]</sup> 16:22 34:5  <b>services</b> <sup>[1]</sup> 76:16  <b>set</b> <sup>[5]</sup> 43:12 47:15 64:16  65:10 70:7  <b>settled</b> <sup>[1]</sup> 22:22  <b>several</b> <sup>[3]</sup> 42:25 68:21 86:  8  <b>shared</b> <sup>[1]</sup> 31:15  <b>Shasta</b> <sup>[2]</sup> 12:24 13:5  <b>shocking</b> <sup>[1]</sup> 28:21  <b>shooting</b> <sup>[1]</sup> 30:14  <b>shot</b> <sup>[1]</sup> 63:15  <b>shouldn't</b> <sup>[3]</sup> 47:23 79:18  80:6  <b>side</b> <sup>[11]</sup> 31:16,16 38:7 55:  3,4 59:18 60:22 62:17,20  63:4 73:12</p>	<p><b>significant</b> <sup>[1]</sup> 33:22  <b>similar</b> <sup>[7]</sup> 5:9 6:9 25:22 42:  9 50:15 52:12 62:2  <b>simply</b> <sup>[1]</sup> 26:22  <b>since</b> <sup>[1]</sup> 66:12  <b>single</b> <sup>[1]</sup> 19:1  <b>site</b> <sup>[2]</sup> 8:1 32:8  <b>sitting</b> <sup>[2]</sup> 58:1 79:24  <b>situation</b> <sup>[4]</sup> 17:8 25:16 31:  22 36:23  <b>situations</b> <sup>[2]</sup> 84:15,17  <b>Sixth</b> <sup>[3]</sup> 67:2,7 86:6  <b>skeptical</b> <sup>[1]</sup> 38:23  <b>skepticism</b> <sup>[9]</sup> 38:16 39:7,  9 68:9,15,21 69:22 70:19,  24  <b>slice</b> <sup>[1]</sup> 67:15  <b>smuggle</b> <sup>[1]</sup> 32:19  <b>Smuggler's</b> <sup>[10]</sup> 45:22 47:  7 63:16 75:22 76:5,21 84:  5,5,7,25  <b>smugglers</b> <sup>[1]</sup> 6:5  <b>smuggling</b> <sup>[8]</sup> 8:1 17:17  32:9 33:12,14 47:6 49:20,  23  <b>SMUGLER</b> <sup>[1]</sup> 47:8  <b>sneaking</b> <sup>[1]</sup> 32:2  <b>soil</b> <sup>[2]</sup> 44:2 77:19  <b>Solicitor</b> <sup>[2]</sup> 1:20 26:11  <b>somebody</b> <sup>[7]</sup> 7:11 26:15  28:23 55:13 75:6,13 77:11  <b>somebody's</b> <sup>[3]</sup> 29:17 51:  15 55:20  <b>someday</b> <sup>[1]</sup> 21:17  <b>somehow</b> <sup>[4]</sup> 57:7 58:7,12  78:7  <b>someone</b> <sup>[5]</sup> 19:4,8 50:8  56:4 84:4  <b>sometimes</b> <sup>[2]</sup> 21:11,13  <b>Sorry</b> <sup>[4]</sup> 19:11 22:12 35:5  40:15  <b>sort</b> <sup>[15]</sup> 7:21 9:10 17:25 18:  2 19:13 21:1,3 22:9 34:22  46:25 50:18 59:7 79:20 81:  18 84:24  <b>SOTOMAYOR</b> <sup>[14]</sup> 9:21,24  10:21,23 11:8 48:2,5,10,11,  14,22 49:3,11,19  <b>special</b> <sup>[34]</sup> 11:6,9 12:13  14:24 18:5,22 19:16 24:2  25:11 34:11,13,24 35:2,7,9,  19 36:3,10,19,23 37:12 59:  20,21 62:6,23,24 64:21 65:  7 66:3,19 67:14 71:23 72:  19 85:21  <b>specific</b> <sup>[5]</sup> 49:15 62:22 63:  5 74:6 83:7  <b>standard</b> <sup>[1]</sup> 33:9  <b>standing</b> <sup>[1]</sup> 52:8  <b>stare</b> <sup>[2]</sup> 6:18 22:21  <b>start</b> <sup>[1]</sup> 59:19  <b>state</b> <sup>[5]</sup> 55:24 60:7 71:19  72:23 86:11  <b>statements</b> <sup>[2]</sup> 38:12 81:3</p>	<p><b>STATES</b> <sup>[16]</sup> 1:1,15,22 2:7  23:16 30:16 32:13,19,23  37:25 38:5,9 68:3 72:24  78:12,13  <b>stationed</b> <sup>[5]</sup> 8:22 9:15 50:  17,17 51:7  <b>statistics</b> <sup>[1]</sup> 12:18  <b>status</b> <sup>[8]</sup> 29:19,19,25 41:  21 55:21 77:18 78:18 79:7  <b>statutory</b> <sup>[13]</sup> 5:17,20 11:  23 13:22,25 14:11 15:3 17:  21 18:2 28:12 35:10 81:1  83:8  <b>stay</b> <sup>[1]</sup> 32:7  <b>staying</b> <sup>[2]</sup> 47:9 56:6  <b>step</b> <sup>[20]</sup> 23:23 24:1,3 25:  10 35:25 36:4,10,14,22 37:  8 38:17,22 44:6 61:23 62:  15 65:22 67:19,19,24,25  <b>stepping</b> <sup>[1]</sup> 79:21  <b>steps</b> <sup>[1]</sup> 67:21  <b>still</b> <sup>[6]</sup> 12:24 18:20 19:4 38:  14 40:13 48:23  <b>stop</b> <sup>[4]</sup> 51:12 75:10,11 78:  19  <b>stopped</b> <sup>[6]</sup> 48:25 49:3,5  75:9,23 84:4  <b>straightforward</b> <sup>[2]</sup> 23:20  72:15  <b>strange</b> <sup>[1]</sup> 48:6  <b>strictly</b> <sup>[1]</sup> 21:12  <b>strong</b> <sup>[2]</sup> 24:18 25:21  <b>strongly</b> <sup>[1]</sup> 86:14  <b>struggled</b> <sup>[1]</sup> 66:8  <b>stuck</b> <sup>[1]</sup> 64:1  <b>subject</b> <sup>[3]</sup> 7:17 45:3 85:1  <b>subjected</b> <sup>[2]</sup> 44:24 81:22  <b>subjects</b> <sup>[1]</sup> 60:7  <b>submit</b> <sup>[2]</sup> 62:5 66:15  <b>submitted</b> <sup>[2]</sup> 86:18,20  <b>substantial</b> <sup>[2]</sup> 30:8 33:16  <b>substantially</b> <sup>[1]</sup> 70:3  <b>successor</b> <sup>[2]</sup> 15:14 34:7  <b>sufficient</b> <sup>[6]</sup> 50:3 55:21  58:14,23 61:3 74:16  <b>sufficiently</b> <sup>[1]</sup> 63:20  <b>suggest</b> <sup>[2]</sup> 74:2 81:3  <b>suggested</b> <sup>[3]</sup> 72:24 81:20  85:18  <b>suggesting</b> <sup>[2]</sup> 24:11 78:  24  <b>suggestion</b> <sup>[3]</sup> 58:8 60:10  81:1  <b>suggests</b> <sup>[2]</sup> 81:8 86:14  <b>sui</b> <sup>[1]</sup> 64:13  <b>suit</b> <sup>[1]</sup> 57:15  <b>suited</b> <sup>[1]</sup> 4:3  <b>suits</b> <sup>[1]</sup> 60:12  <b>summary</b> <sup>[2]</sup> 32:25 55:18  <b>supervisors</b> <sup>[1]</sup> 72:12  <b>supporting</b> <sup>[4]</sup> 1:22 2:8 23:  17 57:20  <b>Suppose</b> <sup>[3]</sup> 50:8 52:19,25  <b>supposed</b> <sup>[3]</sup> 62:15 64:3</p>
---	---	--	---	---

## Official - Subject to Final Review

<p>65:19  <b>supposedly</b> [1] 45:5  <b>SUPREME</b> [2] 1:1,14  <b>surely</b> [1] 74:18  <b>survive</b> [2] 6:17 7:2  <b>survives</b> [2] 6:13,15  <b>susceptible</b> [1] 81:4  <b>suspect</b> [1] 16:2  <b>suspected</b> [2] 17:11 32:15  <b>suspicion</b> [3] 33:11 47:10  77:13  <b>suspicious</b> [2] 32:6 76:1  <b>swath</b> [1] 45:10  <b>sweep</b> [2] 45:10 81:23  <b>sweeps</b> [2] 55:23,24  <b>sworn</b> [1] 79:5  <b>systemic</b> [3] 4:4 22:1 85:9</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> [1] 7:7  <b>tackles</b> [2] 50:11 51:3  <b>Tacoma</b> [1] 48:21  <b>talked</b> [1] 29:4  <b>teenager</b> [1] 84:14  <b>tells</b> [1] 62:20  <b>terms</b> [5] 27:19 43:7 64:11  72:15 79:22  <b>terribly</b> [1] 80:7  <b>terrorists</b> [2] 6:5 26:8  <b>test</b> [3] 18:25 36:6 67:21  <b>Thee</b> [1] 78:1  <b>there's</b> [20] 11:13 19:5 20:  13 21:16 30:2,21 42:14 47:  8,9 55:15 58:8,10 59:9 66:  6 72:20,20 74:10 79:1 81:  1 82:8  <b>They've</b> [1] 32:11  <b>thinking</b> [2] 11:5 58:1  <b>thinks</b> [1] 60:4  <b>Third</b> [3] 4:13 57:10 86:10  <b>THOMAS</b> [9] 5:7 6:8 23:6,  7 25:3 41:1,2 43:15,21  <b>though</b> [5] 6:12 13:12 29:  11 55:8 79:1  <b>three</b> [3] 35:17 82:20 86:6  <b>thumb</b> [3] 68:14,15,24  <b>Thursday</b> [1] 22:7  <b>tie</b> [1] 9:13  <b>tied</b> [1] 85:22  <b>time-barred</b> [1] 73:10  <b>tip</b> [12] 24:11 46:19,23 51:  16 55:6,8,10,12,12 56:3,4  81:11  <b>tobacco</b> [3] 10:17 15:19  27:13  <b>today</b> [7] 7:1 42:23 58:9 61:  15 63:17 64:7 66:4  <b>together</b> [2] 16:21 31:14  <b>took</b> [3] 36:10 40:9 59:2  <b>top</b> [2] 5:24 85:11  <b>Tort</b> [2] 19:5 74:25  <b>toward</b> [1] 51:2  <b>traces</b> [1] 39:17  <b>travel</b> [1] 32:7</p>	<p><b>treat</b> [1] 68:16  <b>treated</b> [1] 68:20  <b>trial</b> [1] 75:19  <b>tried</b> [1] 79:11  <b>trivial</b> [1] 22:19  <b>Trudeau</b> [1] 58:1  <b>true</b> [4] 8:23 24:9 30:24 57:  25  <b>try</b> [4] 64:3 65:19 69:15 80:  12  <b>trying</b> [9] 6:4 22:16 34:20  51:12 53:1 70:1 78:11,13,  19  <b>Tuesday</b> [2] 22:7,13  <b>Tuesday/Thursday</b> [1] 38:  3  <b>Turkish</b> [5] 32:5,16 46:21  47:9 52:8  <b>turns</b> [2] 63:10,11  <b>Twenty</b> [1] 78:3  <b>two</b> [9] 7:20 11:20 15:18 30:  25 51:3 60:2 67:21 85:23  86:12  <b>two-hour</b> [1] 76:13  <b>two-step</b> [3] 36:1 67:21 70:  9  <b>type</b> [10] 31:19 59:23 72:1,  14 74:6 75:17 77:17 81:7  84:10 85:12  <b>types</b> [2] 60:8,9  <b>typically</b> [2] 49:16 76:15</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U.S.</b> [8] 10:1,5 15:25 16:2  37:7 44:1 74:9 77:19  <b>U.S./Canada</b> [2] 54:4,13  <b>U.S.C.</b> [3] 8:13 83:10,10  <b>ultimate</b> [2] 18:6,6  <b>unbelievably</b> [1] 22:10  <b>unconstitutional</b> [1] 4:21  <b>under</b> [15] 5:20,22 8:5,8 13:  20 17:3,21 26:13 60:10 65:  1 67:24,25 73:10 83:7 85:  6  <b>understand</b> [9] 10:6 11:11,  18 35:15 48:23 51:22 61:  22 74:21 78:23  <b>understanding</b> [1] 60:11  <b>understood</b> [1] 54:5  <b>undertaken</b> [1] 32:6  <b>Unfairly</b> [2] 63:18,19  <b>UNITED</b> [16] 1:1,15,22 2:7  23:16 30:16 32:13,19,22  37:24 38:5,9 68:3 72:24  78:12,13  <b>universally</b> [1] 43:18  <b>universe</b> [1] 4:18  <b>unjustified</b> [1] 84:13  <b>unlawful</b> [8] 7:12 30:6 32:  17 33:15 43:24 51:8 53:21  66:14  <b>unless</b> [1] 37:12  <b>unlike</b> [1] 56:24  <b>unreasonable</b> [1] 69:18</p>	<p><b>unreasonably</b> [1] 26:16  <b>unremarkable</b> [1] 33:3  <b>until</b> [2] 48:24 73:24  <b>up</b> [22] 17:5 18:14 25:3 43:  16 46:11,19,22 47:12 51:  16 52:3,24 55:6,20 56:3  58:1 68:8 75:5 76:12,17  78:17 81:10 84:6  <b>uphill</b> [1] 71:14  <b>uses</b> [1] 50:11  <b>using</b> [1] 81:12  <b>usual</b> [1] 74:23</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>value</b> [2] 6:19 22:22  <b>variety</b> [1] 81:15  <b>various</b> [2] 54:21 65:15  <b>vehicle</b> [1] 75:10  <b>vengeful</b> [1] 71:20  <b>versus</b> [8] 3:5 11:14 39:22  42:10 52:13 61:11 69:12  71:17  <b>vested</b> [1] 79:22  <b>vests</b> [1] 3:25  <b>via</b> [1] 42:11  <b>view</b> [5] 15:8 54:6,10 79:2  81:3  <b>vigorously</b> [1] 31:10  <b>vindicate</b> [1] 19:8  <b>violated</b> [2] 19:10 51:23  <b>violation</b> [3] 20:14 49:21  52:16  <b>violations</b> [4] 27:19 43:2  60:19 70:19  <b>Virginia</b> [1] 52:13  <b>virtually</b> [1] 4:20  <b>visa</b> [7] 41:21 49:9 50:3 56:  20 77:18 78:18 79:7  <b>visit</b> [1] 84:25  <b>visitor</b> [1] 48:7</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wait</b> [1] 48:23  <b>walk</b> [2] 52:3,24  <b>walking</b> [1] 28:18  <b>wanted</b> [5] 16:9 24:24 39:  13 52:22,25  <b>warrant</b> [2] 41:17 43:25  <b>warrantless</b> [1] 8:15  <b>warrants</b> [1] 10:7  <b>Washington</b> [4] 1:10,18,  21 73:4  <b>wave</b> [1] 30:1  <b>way</b> [15] 16:8 32:1 35:23 39:  18,18 40:7 49:5 51:1 54:5  65:12 67:15,23 75:24 76:  11 79:16  <b>ways</b> [3] 10:13 24:15 80:13  <b>weapons</b> [1] 27:21  <b>Wednesday</b> [2] 1:11 22:8  <b>week</b> [1] 32:12  <b>weigh</b> [5] 20:22 64:18 65:  11 77:17 81:14  <b>weighing</b> [1] 81:7</p>	<p><b>weighs</b> [1] 81:15  <b>welcome</b> [2] 5:6 43:14  <b>well-equipped</b> [1] 18:7  <b>well-suited</b> [2] 20:22 21:  25  <b>Westfall</b> [8] 42:25 60:15,23  61:2,9,11,18 73:1  <b>whatever</b> [7] 27:21 30:17  49:12 51:13 63:25 70:19,  24  <b>wheelhouse</b> [1] 21:13  <b>Whereupon</b> [1] 86:19  <b>whether</b> [34] 7:16 10:8 13:  4 20:21,25,25 25:10,12 31:  4 33:3 36:8 39:8,25 51:6  53:12 59:9,11,23 62:15 64:  21 65:23 67:8,13,24 70:15  71:21 74:6,10 77:5,17 79:  23 80:10 83:6 84:3  <b>who's</b> [4] 26:1 47:9 51:11  56:4  <b>whole</b> [3] 7:24 19:6 62:25  <b>whom</b> [1] 28:1  <b>will</b> [2] 3:3 31:12  <b>Wilson</b> [2] 11:14 69:12  <b>withhold</b> [2] 42:12 44:8  <b>within</b> [6] 39:11 52:11 70:7  72:5 80:18,23  <b>without</b> [3] 4:11 41:17 43:  24  <b>wonder</b> [1] 59:17  <b>wondering</b> [1] 59:16  <b>word</b> [2] 27:22 35:23  <b>words</b> [1] 59:16  <b>work</b> [3] 31:11,14 36:9  <b>workable</b> [1] 86:4  <b>working</b> [2] 77:2,4  <b>world</b> [1] 32:7  <b>writ</b> [3] 44:23 49:12 81:22</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> [1] 13:11  <b>years</b> [6] 3:12 24:1 32:11  65:23 70:12 86:8  <b>York</b> [4] 13:6 26:8 28:18 48:  20</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>zone</b> [1] 9:11  <b>zooming</b> [1] 85:5</p>
--	---	---	--