SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- -

ZF AUTOMOTIVE US, INC., ET AL.,)
Petitioners,)
v.) No. 21-401
LUXSHARE, LTD.,)
Respondent.)

- -

ALIXPARTNERS, LLP, ET AL.,)
Petitioners,)
v.) No. 21-518
THE FUND FOR PROTECTION OF INVESTORS')
RIGHTS IN FOREIGN STATES,)
Respondent.)

- -

Pages: 1 through 113

Place: Washington, D.C.

Date: March 23, 2022

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

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -

3 ZF AUTOMOTIVE US, INC., ET AL.,)

4 Petitioners,)

5 v.) No. 21-401

6 LUXSHARE, LTD.,)

7 Respondent.)

8 -

9 ALIXPARTNERS, LLP, ET AL.,)

10 Petitioners,)

11 v.) No. 21-518

12 THE FUND FOR PROTECTION OF INVESTORS')

13 RIGHTS IN FOREIGN STATES,)

14 Respondent.)

15 -

16 Washington, D.C.

17 Wednesday, March 23, 2022

18

19

20 The above-entitled matter came on for

21 oral argument before the Supreme Court of the

22 United States at 10:00 a.m.

23

24

25

1 APPEARANCES:

2

3 ROMAN MARTINEZ, ESQUIRE, Washington, D.C.; on behalf

4 of the Petitioners in 21-401.

5 JOSEPH T. BAIO, ESQUIRE, New York, New York; on behalf

6 of the Petitioners in 21-518.

7 EDWIN S. KNEEDLER, Deputy Solicitor General,

8 Department of Justice, Washington, D.C.; for the

9 United States, as amicus curiae, supporting the

10 Petitioners.

11 ANDREW R. DAVIES, ESQUIRE, New York, New York; on

12 behalf of the Respondent in 21-401.

13 ALEXANDER A. YANOS, ESQUIRE, New York, New York; on

14 behalf of the Respondent in 21-518.

15

16

17

18

19

20

21

22

23

24

25

1 C O N T E N T S

2 ORAL ARGUMENT OF: PAGE:
3 ROMAN MARTINEZ, ESQ.
4 On behalf of the Petitioners in 21-401 4
5 ORAL ARGUMENT OF:
6 JOSEPH T. BAIO, ESQ.
7 On behalf of the Petitioners in 21-518 28
8 ORAL ARGUMENT OF:
9 EDWIN S. KNEEDLER, ESQ.
10 For the United States, as amicus
11 curiae, supporting the Petitioners 51
12 ORAL ARGUMENT OF:
13 ANDREW R. DAVIES, ESQ.
14 On behalf of the Respondent in 21-401 77
15 ORAL ARGUMENT OF:
16 ALEXANDER A. YANOS, ESQ.
17 On behalf of the Respondent in 21-518 94
18 REBUTTAL ARGUMENT OF:
19 ROMAN MARTINEZ, ESQ.
20 On behalf of the Petitioners in 21-401 109
21
22
23
24
25

1 P R O C E E D I N G S
2 (10:00 a.m.)
3 CHIEF JUSTICE ROBERTS: Justice Thomas
4 is unable to be present today but will
5 participate in consideration and decision of the
6 cases on the basis of the briefs and the
7 transcript of oral arguments.
8 We'll hear argument this morning in
9 Case 21-401, ZF Automotive US Incorporated
10 versus Luxshare, Limited, and the consolidated
11 case.
12 Mr. Martinez.
13 ORAL ARGUMENT OF ROMAN MARTINEZ
14 ON BEHALF OF THE PETITIONERS IN 21-401
15 MR. MARTINEZ: Mr. Chief Justice, and
16 may it please the Court:
17 Section 1782's text, structure, and
18 history make clear that district courts are not
19 authorized to grant discovery for use in purely
20 private foreign arbitrations. The key statutory
21 language is the complete phrase "foreign
22 tribunal." That phrase most naturally refers to
23 government tribunals, just like the phrase
24 "foreign leader" most naturally refers to
25 government leaders.

1 Ordinary and legal usage confirm that
2 interpretation. So do nearby provisions using
3 the same phrase, as well as this Court's
4 decision in Intel.
5 The history supports us too. The
6 rules commission drafted this statute under a
7 direct command from Congress in the 1958 Act to
8 promote interstate comity and assist the
9 judicial and quasi-judicial arms of foreign
10 governments. The commission, Senate, and House
11 reports all show that the drafters chose the
12 words "foreign tribunal" to achieve these
13 government-focused objectives.
14 Luxshare misreads the text and ignores
15 the context. It can't identify a single person,
16 not a lawmaker, judge, lawyer, scholar, anyone
17 who ever claimed 1782 covers private
18 arbitrations, either in 1964 or for decades
19 afterwards.
20 Luxshare's approach would flood
21 district courts with discovery applications,
22 undermine the goals of arbitration, and inflict
23 asymmetric harm on American companies and
24 American businesses. Congress didn't intend
25 these results.

1 Below, Luxshare admitted that, under
2 the rules Luxshare itself agreed to, the German
3 arbitrators in this case would refuse to order
4 the discovery it's now seeking here. You should
5 reject any interpretation of 1782 that
6 encourages parties to run to U.S. courts to
7 circumvent their agreements in this way.
8 Congress did not force American judges to
9 referee private discovery fights in purely
10 private, non-governmental arbitrations abroad.
11 I welcome the Court's questions.
12 And I'd like to start perhaps with the
13 statutory text.
14 CHIEF JUSTICE ROBERTS: Mr. Martinez,
15 why isn't it natural to think of a foreign
16 tribunal as one established under the laws of a
17 foreign country? A tribunal in Italy, you know,
18 its existence is, say, due to Italian corporate
19 law or whatever, and enforceability of its
20 judgments might well be particularly compelling
21 in Italy. I don't know why it's necessarily
22 referencing a governmental entity.
23 MR. MARTINEZ: Well, I think a couple
24 points to that, Your Honor.
25 I think the complete phrase "foreign

1 tribunal," that's sort of a common construction,
2 adding the adjective "foreign" to a noun that
3 has, you know, strong governmental connotations.
4 We've given the examples in our brief of
5 "foreign leader," "foreign flag," "foreign law,"
6 "foreign official."
7 When -- when people hear those --
8 those sort of phrases using the word "foreign"
9 with -- with a noun like that, I think it most
10 naturally conjures up the idea of a -- a -- an
11 official, a flag, a leader of a government. And
12 I think that's the sort of intuition, that's the
13 common construction. And I think that common
14 construction --
15 CHIEF JUSTICE ROBERTS: Well, it kind
16 of -- it might be because you don't think of
17 private people as having their own flags, but
18 "tribunal," I mean, I understand your argument
19 that it carries a governmental connotation, but
20 I'm not sure that excludes a -- that that
21 excludes any other tribunal.
22 I mean, the arbitral bodies function
23 as a tribunal. It's natural to refer to them in
24 that way. And particularly when you add
25 "foreign," it seems to me that that means it's,

1 you know, a private arbitral body, a tribunal,
2 that happens to be located, set up in a foreign
3 country, in France.
4 MR. MARTINEZ: So -- so a couple
5 points on that, Your Honor.
6 I do think the phrase -- a phrase like
7 "foreign leader" would not be sort of ordinarily
8 used to refer to a non-governmental entity. You
9 know, the -- the captain of the Manchester
10 United football team is foreign and is a leader
11 but is not a foreign leader.
12 CHIEF JUSTICE ROBERTS: Yeah, yeah,
13 but -- but it -- it -- it is a leader.
14 MR. MARTINEZ: Sure.
15 CHIEF JUSTICE ROBERTS: But, you know,
16 the tribunals are also adjudicatory bodies. And
17 "foreign" carries significance in that it is set
18 up in -- in Italy. It's not like a gratuitous
19 word that can only convey the notion of
20 governmental.
21 MR. MARTINEZ: Well, I -- I guess a
22 couple points.
23 First of all, in ordinary usage, if
24 you just look empirically -- and this is the --
25 the study that we -- the usage study, the Corpus

1 Linguistic study that we cite in our reply brief
2 -- what -- what the study did was it sort of
3 comprehensively looked at five different
4 databases involving tens of thousands of
5 documents, millions of words, and it
6 historically --
7 CHIEF JUSTICE ROBERTS: Yeah, I don't
8 quite know what to make of that. That's --
9 that's something new. I mean, have we relied on
10 that source before?
11 MR. MARTINEZ: Not this particular
12 study, but you absolutely have used that same
13 methodology before. I think the best example is
14 the Court's decision in Muscarello, where the
15 Court --
16 CHIEF JUSTICE ROBERTS: I mean, have I
17 ever done that before?
18 MR. MARTINEZ: Have you ever done
19 that? I think -- I think, if I -- if I recall
20 correctly, Your Honor, I think you wrote the
21 decision in AT&T versus FCC, which sort of
22 similarly looked beyond dictionary definitions
23 to kind of a couple different -- what the -- the
24 -- the academics would call a corpus, but the --
25 the sort of body of U.S. judicial opinions, U.S.

1 statutes. And -- and I think it's a common way
2 of -- of trying to tease out the ordinary
3 meaning, to survey ordinary usage.
4 JUSTICE BARRETT: Mr. Martinez, the
5 Court has never -- the Court has never used the
6 Corpus Linguistics database before. You know,
7 the Sixth Circuit has, the Utah Supreme Court
8 has, but this Court has not done -- I mean,
9 Muscarello was a more informal survey, as was
10 the Chief's opinion in AT&T, correct?
11 MR. MARTINEZ: Right. And so I think
12 what -- what the Corpus Linguistics study here
13 does is take that same methodology and make it
14 more accurate and reliable by being more
15 comprehensive. But I think it's the same
16 general idea, and the idea is, essentially, if
17 we're going to figure out what the ordinary
18 meaning of language is, let's look to see how
19 ordinary people use it in all sorts of different
20 contexts.
21 So I don't think it's methodologically
22 new. I think it's just a little bit more
23 scholarly, a little bit more reliable. They use
24 Latin words, which maybe makes it a little
25 scarier in some way, but I think it's the same

1 basic idea.

2 But, Chief Justice, I -- I do want to

3 get back to your -- your point about -- about

4 "tribunal" and "foreign tribunal." I think that

5 what's interesting is that, if you look

6 historically, that phrase, as a unified whole,

7 is sort of -- has historically empirically been

8 used to refer to government entities.

9 I think you're right that if you took

10 the word "tribunal" alone in ordinary speech,

11 that would pose a somewhat different question.

12 But, if you look at the way Congress has used

13 the word "tribunal" historically, at the time

14 that this statute was passed in 1964, Congress

15 had used "tribunal" many times in statutes.

16 Every single time, it had used the word

17 "tribunal" to refer to a government entity.

18 And in situations after 1964, I think

19 there are a couple of -- of examples where

20 Congress used the phrase "arbitral tribunal," I

21 think what's notable is that it added the -- the

22 adjective "arbitral" because it wanted to signal

23 that it was going beyond its standard sort of

24 government-focused usage of "tribunal" to -- to

25 capture arbitral tribunal.

1 JUSTICE KAGAN: Yeah, but --
2 JUSTICE KAVANAUGH: In this -- go
3 ahead.
4 JUSTICE KAGAN: Go ahead.
5 JUSTICE KAVANAUGH: Go.
6 JUSTICE KAGAN: You know, back then,
7 arbitration was not as settled a practice as it
8 is now, but now we just commonly refer to
9 arbitral tribunals, right, and we don't think
10 anything of it.
11 And I guess the idea that when you put
12 "foreign" in -- in front of something, all of a
13 sudden it connotes government, I mean, you have
14 some -- some examples where it does. You know,
15 foreign language doesn't connote government.
16 MR. MARTINEZ: Right.
17 JUSTICE KAGAN: If I say it's a
18 foreign university, I may or may not be speaking
19 of a government-run school. If I say it's a
20 foreign city, all I mean is a city that happens
21 to be in another country.
22 I mean, it all depends, right? And I
23 guess my broader question is, like, really, what
24 can you take from this language? I -- I mean,
25 I'm all for, you know, being serious about

1 language when there's something to be serious
2 about, but I don't know -- I don't know --
3 MR. MARTINEZ: Well --
4 JUSTICE KAGAN: -- what this language
5 tells us.
6 MR. MARTINEZ: -- I -- I -- I think --
7 let me move past the ordinary meaning because I
8 do think our sources do give you something just
9 about that phrase.
10 But I think that that's just one piece
11 of the puzzle because we have a bunch of other
12 arguments based on the stat -- broader statutory
13 context, the history, and the policy that
14 Congress was trying to enact here that really, I
15 think, reinforce our reading of the statutory
16 language.
17 Going to the -- the broader statutory
18 context, we've cited three neighboring
19 provisions: the -- the practice or procedure
20 clause in 1782, the State Department middleman
21 provision in 1781, and the judgment order and
22 decree language in 1696.
23 We think all of the -- none of those
24 is a hundred percent dispositive. It's not
25 going to, like, be a -- a slam dunk, you know,

1 case winner for us on its own, but I think that
2 constellation of provisions operating together,
3 each one of them kind of favors our side and I
4 think reinforces the point that, here, you are
5 using the phrase "foreign tribunal" kind of like
6 you would use the phrase "foreign leader" as
7 opposed to "foreign food."
8 I think, in addition to that, though,
9 Your Honor, we can look to the history, and,
10 here, you have history that is overwhelmingly,
11 in -- in my view -- I'm biased -- but, in my
12 view, on our side.
13 This statute was drafted by the rules
14 commission, and the rules commission drafted the
15 statute to implement a specific -- sorry,
16 drafted the -- the -- the proposed language to
17 implement the statutory directive in the 1958
18 Act.
19 And that directive, which is on 14A of
20 the -- the Solicitor General's appendix, was to
21 draft legislation that would improve assistance
22 to foreign courts and quasi-judicial agencies
23 with the purpose of enhancing cooperation
24 between the United States and foreign countries.
25 So look at the focus of that '58 Act

1 and its directive: quasi-judicial agencies,
2 cooperation with foreign countries. The focus
3 there is on aid to governmental adjudicators,
4 not to private arbitrators.
5 And so the rules commission, when it
6 got this command from Congress, it sat down and
7 it translated that command into the statutory
8 language that would become 1782, and not only
9 did it write the statute to implement the
10 command, but it also wrote a 105-page report
11 telling Congress and the world what it had done.
12 And what does the report say? On page
13 17, it says: We are implementing the statutory
14 command that appears in Section 2 of the 1958
15 Act. So it links the language that it chose,
16 the legislation that it drafted, to the specific
17 directive that it was given by Congress,
18 quasi-judicial agencies, cooperation with
19 foreign countries.
20 Then later in the report, on page 45,
21 when it's discussing its choice of the -- the
22 phrase "foreign tribunal," it specifically says
23 we're -- we're -- we chose these words because
24 we wanted to pick up something more than just
25 foreign courts. We wanted to broaden it a

1 little bit. And we wanted to broaden it to
2 cover investigating magistrates, foreign
3 administrative tribunals, and quasi-judicial
4 agencies.
5 All of those are government-focused.
6 Quasi-judicial, by the way, I think the
7 Halliburton brief has -- has the Black's Law
8 Dictionary of quasi-judicial. That -- that
9 refers to government officials.
10 So not only do you have the '58 Act,
11 but you have the rules commission report which
12 chose where -- I mean, these are experts, eight
13 of the top experts on -- on law and
14 international law in the country that were on
15 this commission. They chose words to implement
16 the statutory directive, which was limited to
17 government-focused objectives. They put those
18 words in the legislation. They issued a
19 105-page report telling everyone what they had
20 done.
21 Congress then took that report, put it
22 -- or the committees took that -- that report
23 explaining the language. They cut-and-pasted
24 the -- the -- the explanation into the Senate
25 report, into the House report. They then

1 enacted the statute without change.
2 And then this Court comes along a
3 number of years later, and when it's
4 interpreting the statute in Intel,
5 methodologically, what does it do? It looks to
6 the exact same historical sources that we're
7 pointing to: the 1958 Act, the rules
8 commission, the House report, the Senate report.
9 And not only does it look to those
10 sources, but it looks to the exact same points
11 that we're making about the -- the judicial --
12 the governmental objectives, the quasi-judicial
13 agency goal of -- of this statute.
14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.
16 Justice Breyer?
17 JUSTICE BREYER: I mean, the language
18 goes -- it's true they were thinking probably of
19 government then, but the language can be read
20 more broadly, and, unlike then, now commercial
21 arbitration is resolving lots and lots of
22 matters that businesses used to bring before
23 courts.
24 And so what's the problem? Why not
25 treat them the same way as these quasi-judicial,

1 et cetera, used to be treated?
2 MR. MARTINEZ: I -- I think --
3 JUSTICE BREYER: Purpose is similar.
4 Language, similar. Nothing that says you can't.
5 Why not?
6 MR. MARTINEZ: I think that -- I think
7 that the history and the language foreclose you
8 from doing that. But even if we were just
9 looking at the policy objectives, I think it
10 would be very strange to think that Congress
11 would have -- would have wanted to create the
12 results that this statute creates on Luxshare's
13 reading.
14 JUSTICE BREYER: No, you've read, as
15 I've read, the amicus briefs, which have several
16 ways of preventing this interpretation from
17 getting out of hand, probably the most important
18 being a Intel modification which would say don't
19 order discovery unless the tribunal wants the
20 discovery.
21 MR. MARTINEZ: Right, but that would
22 -- and, Justice Breyer, I know you dissented in
23 Intel and were more attuned to some of the
24 challenges that the statute would pose, but I
25 think that's at odds with this Court's

1 interpretation of the statute.
2 JUSTICE BREYER: Well, I can look at
3 that, but my -- my question --
4 MR. MARTINEZ: Right.
5 JUSTICE BREYER: -- is -- is a
6 practical question.
7 MR. MARTINEZ: Sure.
8 JUSTICE BREYER: If the language
9 allows it, like foreign language, you know, not
10 government, state arbitration tribunals, hmm,
11 what about those? Well, government's involved.
12 Well, so?
13 You see, if you do take that approach,
14 I want you to talk about that. Then what
15 happens?
16 MR. MARTINEZ: So I think that --
17 JUSTICE BREYER: Why is this so
18 terrible?
19 MR. MARTINEZ: I think there are four
20 problems, and I'll just do -- do it quickly --
21 JUSTICE BREYER: Okay.
22 MR. MARTINEZ: -- cognizant of the
23 time.
24 One, I think it's going to overburden
25 U.S. district courts and put U.S. district

1 courts in a position of essentially meddling or
2 playing a role in private arbi- -- proceedings
3 abroad, where there might not be a strong U.S.
4 interest. I think it's notable that the
5 government is on our side and I think recognizes
6 that that's kind of an unusual place to put
7 district courts.
8 Number two, I do think it undermines
9 the goals of arbitration because, when parties
10 sign up to arbitration, the -- the reason
11 they're often doing that is to opt for a more
12 streamlined set of procedures that don't include
13 the kind of burdensome discovery you see in
14 litigation.
15 So, when you have a bunch of parties
16 making a contract overseas, an arbitration
17 contract, I think it would come as quite a
18 surprise to them that -- that they're suddenly
19 triggering the potential for intrusive,
20 burdensome, and time-consuming discovery
21 proceedings that might happen in the United
22 States. So I think it's contrary to the
23 contract goals, contract-based goals of
24 arbitration.
25 Number three, I think that this

1 statute asymmetrically disadvantages American
2 citizens and American businesses. I think
3 that's a bad policy consequence. I also think,
4 though, that that provides a useful window into
5 Congressional intent.
6 It seems very unlikely to me that
7 Congress would have passed a statute that would
8 have burdened, whether they're U.S. third
9 parties or whether they're U.S. parties --
10 JUSTICE BREYER: All right. On -- on
11 the burden, I've read that England, France,
12 Spain, I think, and I can't -- Germany, they all
13 follow this approach --
14 MR. MARTINEZ: Yeah.
15 JUSTICE BREYER: -- or something like
16 it, and -- and they think that attracts business
17 and it's good for their economy and it's good
18 for their bar because people will come to their
19 courts to settle commercial disputes or at least
20 their arbitrations.
21 MR. MARTINEZ: Your Honor, I -- I
22 don't think that's --
23 JUSTICE BREYER: How am I wrong? Go
24 ahead.
25 MR. MARTINEZ: I think you're -- I

1 don't think that's right.
2 First of all, if you look at the Berne
3 treaties, those are the handful of -- of
4 counter-examples that allow anything even, like,
5 arguably in the same ballpark as this. The
6 majority of states go the other way.
7 Even with respect to those states,
8 though, the discovery that is potentially
9 available to foreign arbitrations under the laws
10 of those countries is completely different from
11 what we're talking about here.
12 In those countries, you can't get it
13 before the arbitral panel is constituted. You
14 can only get it with the permission of the
15 arbitrator.
16 And the actual discovery that's
17 ordered is not like U.S. style, you know, give
18 me all the documents, you know, all the emails
19 using this term over this year period, but it's
20 -- we're talking about very targeted.
21 So no country in the world would grant
22 this kind of request. And, certainly, Luxshare
23 and the amicus briefs have not cited anything.
24 I think the final sort of policy point
25 -- and this is really -- this builds on -- on

1 what I was just saying. I think, if Luxshare is
2 right about what the statute means, it really
3 puts the United States as an outlier with
4 respect to its treatment of international
5 arbitration, and I think comity is really all
6 about harmonizing, when possible, U.S. law with
7 the law of other countries.
8 And I just think it's very -- it's
9 anomalous, it's not a -- it's not good policy,
10 but it's also not a good approximation of what
11 Congress was trying to get at with this statute,
12 to think that it wanted to uniquely disadvantage
13 American parties and -- and make the United
14 States an outlier on the international stage in
15 this way.
16 CHIEF JUSTICE ROBERTS: Justice Alito,
17 anything?
18 Justice Sotomayor, anything?
19 Justice Gorsuch, anything further?
20 JUSTICE KAVANAUGH: Two questions.
21 First, the briefs set up a divide between
22 looking at the literal meaning of individual
23 words versus the ordinary meaning of the phrase
24 as a whole. Why should we go with the ordinary
25 meaning of the phrase as a whole when we seem to

1 have cases that sometimes go with the literal
2 meaning of individual words?
3 MR. MARTINEZ: I -- I think this --
4 this Court's cases overwhelmingly say, including
5 some of the cases that arguably go the other
6 way, a case like Bostock, for example, I think
7 these -- even Bostock recognizes that the
8 ordinary meaning of the words govern.
9 You can't use sort of a specialized
10 meaning or a historical meaning to trump the
11 plain language. So, if -- if -- if this were a
12 conflict between there's only one reading and it
13 says X, but we're coming in and using history
14 and something else to say, oh, it really means
15 Y, that wouldn't be permissible. But that's not
16 what we're doing here.
17 What we're doing is trying to find the
18 ordinary meaning of the -- the language. And
19 what this Court has said in cases like AT&T is
20 that it's an -- it's not an appropriate mode of
21 statutory construction to take a phrase, chop it
22 up into its constituent parts, get a dictionary,
23 find the broadest possible dictionary definition
24 of each word, and then glue it all together.
25 That just doesn't -- that doesn't work. That's

1 not appropriate.

2 And I think that's ultimately what

3 Luxshare's interpretation is doing.

4 JUSTICE KAVANAUGH: Second question is

5 how would you define "governmental" in this

6 context? And this gets really to both cases,

7 but do you have a definition that we can use

8 that would distinguish "governmental" from

9 "nongovernmental"?

10 MR. MARTINEZ: I -- I would -- I would

11 say -- I guess what I would say -- for purposes

12 of defining "foreign tribunal," I would say that

13 the tribunal needs to be created by the

14 government and exercising authority conferred by

15 the government.

16 And then let me just add one point. I

17 don't think it's enough -- I think the Chief may

18 have been alluding to this idea, and Luxshare

19 alludes to it briefly when talking about the

20 Fourth Circuit's approach. It's definitely not

21 enough that there is a court at the end of the

22 day that might be asked to enforce the award. I

23 think that court involvement is not enough to

24 governmentalize what -- what is -- what everyone

25 else would think of as a private arbitration.

1 And there are a couple reasons for
2 that. I think courts enforce private contracts
3 all the time, and we all recognize that the
4 contracts themselves remain private. So the
5 fact that there's, like, judicial involvement
6 doesn't kind of, you know, make it a -- a public
7 contract in any sort of meaningful way.
8 I think, secondly on that, U.S. courts
9 across the country have had to wrestle with the
10 idea of whether arbitrators are state actors for
11 constitutional purposes. Courts have uniformly
12 rejected that idea. I think there are five
13 circuits out there have said arbitrators are not
14 state actors, I think recognizing that
15 arbitration really is something that's private.
16 And then -- and then, finally, I do
17 think that having a judicial role is not enough
18 to make an arbitration governmental because the
19 judicial role is so limited. Whether it's under
20 the FAA or under Section 1059 of the German
21 Civil Procedure Code, review of arbitrations,
22 when you're being asked to enforce an
23 arbitration -- enforce an arbitral judgment or
24 award, is extremely limited, and if -- if a
25 court comes in and sees a -- an error of law, it

1 can't correct it.

2 And so that doesn't -- if a court

3 doesn't have the ability to correct an error of

4 law, it's not really judicial review. It's not

5 really governmental involvement at all.

6 JUSTICE KAVANAUGH: One follow-up on

7 that. Sorry to prolong it. Do you look at

8 whether the arbitrators themselves are

9 government appointed, government paid,

10 government removable, or --

11 MR. MARTINEZ: I -- I think that --

12 JUSTICE KAVANAUGH: -- is that

13 relevant?

14 MR. MARTINEZ: -- I think that those

15 are factors that could bear on this. I -- I do

16 think that that is a legitimate -- I don't think

17 that that is like the only test, like looking at

18 where the paycheck comes from, because, frankly,

19 there are all sorts of different arrangements,

20 including, you know, some arrangements that --

21 that we would say would fall within the category

22 of, you know, international -- intergovernmental

23 arbitral tribunals that might sometimes use

24 private adjudicators in the sense that they're

25 not like government officials.

1 JUSTICE KAVANAUGH: Thank you.
2 CHIEF JUSTICE ROBERTS: Justice
3 Barrett?
4 Thank you, counsel.
5 Mr. Baio.
6 ON BEHALF OF THE PETITIONERS IN 21-401
7 ORAL ARGUMENT OF JOSEPH T. BAIO
8 MR. BAIO: Mr. Chief Justice, and may
9 it please the Court:
10 The ad hoc arbitration initiated by
11 the fund is not a proceeding before an
12 international tribunal as that phrase is used in
13 Section 1782. In order to constitute an
14 international tribunal, the decisionmaker must
15 owe its existence and its powers to an
16 international agreement between or among
17 sovereign nations.
18 Here, the treaty between Lithuania and
19 Russia did not create the ad hoc arbitration
20 panel, and it did not empower that panel to
21 resolve investor disputes. The panel was
22 created when the fund, which is not a party to
23 the treaty, elected to take up Lithuania's
24 standing offer and consent to arbitrate with a
25 potential class of unknown private investors.

1 The resulting ad hoc panel of
2 non-governmental arbitrators, selected by the
3 disputants as equal parties, was empowered by
4 the parties' consent to arbitrate and not by the
5 treaty.
6 Do you have any questions, Your Honor?
7 CHIEF JUSTICE ROBERTS: Sure. The --
8 you're quite right that the panel is -- private
9 parties participate and not the countries
10 themselves, but -- but this just seems to me as
11 quite different, for example, from the case --
12 or the issue we were just talking about.
13 You have two governments behind this
14 whole enterprise. They, for their own
15 particular reasons, have set up this -- this
16 mechanism. It's not a purely private
17 undertaking or -- or endeavor.
18 And I think that sovereign character
19 maybe suggests less support for the position
20 that you're arguing for.
21 MR. BAIO: I think, Your Honor, the
22 statutory language is focusing not on whether it
23 is such a proceeding, but it's whether it is an
24 international tribunal. It's focusing on the
25 decisionmaker itself.

1 Now, in this case, and as you have
2 said in other cases, let's start with the
3 treaty. The treaty itself simply says and is
4 designed to encourage people in Lithuania to
5 invest in Russia and in Russia to invest in
6 Lithuania, a fairly common occurrence.
7 And how it achieves that is by giving
8 an option to the investor to escape from the
9 courts, to escape from a governmental
10 adjudicator, to have a resolution that is shorn
11 of governmental implication.
12 You pick an ad hoc arbitration panel
13 under private rules. Everyone selects the
14 arbitrator as at regular arbitration. It is
15 final and will be binding on the sovereign when
16 you sue the sovereign or you arbitrate against
17 the sovereign. You eschew courts. You're going
18 nowhere near them. There isn't any appellate
19 right. Indeed, it's final.
20 So what this treaty is doing is it's
21 assuring the investor that there will not be a
22 governmental decisionmaker that's going to be
23 involved in the outcome. You can go and avoid
24 home court advantage.
25 Now that's the opposite, I --

1 JUSTICE SOTOMAYOR: Counsel, I'm --
2 MR. BAIO: Sorry.
3 JUSTICE SOTOMAYOR: -- I'm having a
4 very hard time understanding that distinction.
5 MR. BAIO: Okay.
6 JUSTICE SOTOMAYOR: International
7 tribunals generally want to select neutral
8 judges that are not the state's, an individual
9 state's decision, but a combined decision by an
10 adjudicatory body that it considers neutral.
11 MR. BAIO: Yes.
12 JUSTICE SOTOMAYOR: Now I'm not going
13 to define neutrality for them, but virtually all
14 I know of them, most of them don't even require
15 judges, they let the states pick whatever judges
16 they want with whatever background they want,
17 and they even often permit those bodies to
18 decide the procedural rules.
19 MR. BAIO: Yes.
20 JUSTICE SOTOMAYOR: So I don't
21 understand the emphasis on a state adjudicator.
22 Now, if you're talking about selection
23 of the adjudicator, which is what I think you
24 mean --
25 MR. BAIO: Yes.

1 JUSTICE SOTOMAYOR: -- all right?
2 Lithuania picked one of the -- correct?
3 MR. BAIO: Yes.
4 JUSTICE SOTOMAYOR: What's the
5 difference between it doing it directly and the
6 investor state saying I'm going to give my
7 agency to the investor? I can pick any
8 adjudicator I want in the world.
9 MR. BAIO: Yes.
10 JUSTICE SOTOMAYOR: Why is it wrong
11 for me to say I'm going to have my Secretary of
12 State do it or I'm going to have an individual
13 do it? The reason I ask this question is
14 because I think -- and that's what I want you to
15 respond to -- that the issue is one of the
16 treaty, that it is an agreement between two
17 sovereign nations to submit a dispute that could
18 involve both of them in a -- in an adjudicatory
19 body that they have created.
20 And I don't see -- that's my
21 definition.
22 MR. BAIO: Okay.
23 JUSTICE SOTOMAYOR: How do you say
24 this doesn't fit that definition?
25 MR. BAIO: Quite -- that's -- there's

1 a lot there to unpack, Your Honor, and I will
2 try to address each part of it.
3 Let's start with the notion of
4 neutrality. I'm not talking about neutrality.
5 I'm talking about non-governmental. So I'm an
6 investor. I'm a Russian national. I invest in
7 Lithuania.
8 If Lithuania expropriates my
9 investment, do I want to go to a Lithuanian
10 court? It's governmental. I'm not suggesting
11 that that court is necessarily biased, but it's
12 a home field.
13 Would I want to be disputing something
14 with Lithuania before a Lithuania judiciary?
15 Even if they are honest and impartial, it is
16 non-governmental. It is telling -- the two
17 countries are telling investors you will not be
18 burdened by our courts if you don't want to do
19 it.
20 Now I don't think the treat -- so
21 that's the difference. I'm not saying
22 neutrality. I'm saying non-governmental.
23 When the parties then select the
24 arbitrators, it looks just like any other
25 arbitration. Lithuania is the respondent in

1 that case. They pick one arbitrator. They
2 don't have control over the outcome.
3 The other arbit- -- the other
4 arbitrator is selected by the individual. And
5 they must collectively pick someone else. There
6 is no governmental role, other than the
7 government is a party and has agreed to follow
8 private arbitration rules and continue.
9 JUSTICE SOTOMAYOR: So --
10 MR. BAIO: And they will be bound --
11 JUSTICE SOTOMAYOR: -- give me your
12 definition of what constitutes an international
13 tribunal. Define it for me.
14 MR. BAIO: An international tribunal
15 --
16 JUSTICE SOTOMAYOR: It can't be the
17 decisionmaker.
18 MR. BAIO: It is a decisionmaker that
19 owes both its existence and its powers to an
20 international agreement by or between or among
21 sovereigns.
22 And that does not happen here. The
23 tribunal doesn't exist or the decisionmaker
24 doesn't exist. This treaty was passed in 2004.
25 Now it could have created an entity that would

1 resolve disputes. It could make it
2 governmental. They could appoint governmental
3 agents to do that. That was not done here.
4 They specifically give four
5 alternatives that the claimant gets to pick to
6 escape any governmental review in the
7 decisionmaking. And I think the statute is
8 referring to the decisionmaker, not its origin,
9 not whether there is a state that's involved
10 anywhere as a party, if it's -- it's -- it's
11 tribunal-focused. It's the deliberative body
12 itself, is it a private adjudicator?
13 Now Justice Breyer asked the question
14 of, well, what happens if we go the other way,
15 particularly on what I'll call the --
16 JUSTICE SOTOMAYOR: Thank you. You're
17 -- you're turning to his question.
18 MR. BAIO: No, I -- I'm sorry, Your
19 Honor. I may not have finished.
20 JUSTICE SOTOMAYOR: No, you finished.
21 MR. BAIO: Okay. Thank you, Your
22 Honor. I -- I hope I'm not finished, but --
23 JUSTICE SOTOMAYOR: Well, yeah.
24 MR. BAIO: -- I -- I completed my
25 answer.

1 Justice Breyer, you know, the -- the
2 parade of horribles, I'm not going to -- to go
3 down that road, but -- but what does it mean if
4 a tribunal is any decisionmaker, if you go that
5 broadly, or an international tribunal is any --
6 anything outside that's -- or foreign that is
7 outside the United States.
8 Think of the number of decisionmakers
9 that there are out there. And we use the
10 example of the ersatz television judges who
11 decide disputes. That is actually an
12 arbitration. Those people sign an arbitration
13 agreement. The adjudicator wears a robe, stands
14 up on TV, and makes a decision.
15 Is the United States, which does not
16 favor broad discovery in arbitrations under the
17 FAA, going to recognize that if there is the
18 German equivalent of Judge Judy, that -- that
19 they will be entitled --
20 JUSTICE BREYER: You don't have to do
21 that. I mean, you know, that's the dissent in
22 Intel. You have a narrow definition of
23 "tribunal."
24 MR. BAIO: Yes.
25 JUSTICE BREYER: And it seems to me

1 you're swept up once we say, if we said, that
2 private arbitrations are part of this.
3 MR. BAIO: Oh, yes. I -- I think I --
4 JUSTICE BREYER: And -- and -- and so
5 the thing that's pushing me, I'm not an expert
6 in this, but the Restatement says we should.
7 MR. BAIO: We should what, Your Honor?
8 JUSTICE BREYER: That we should say
9 that private tribunals are -- I mean, that's at
10 least -- Berman's brief, you know, I read that,
11 and -- and they say the Restatement is -- is
12 against you and against your side on this.
13 MR. BAIO: But -- but the Restate --
14 that is simply nomenclature. We're talking
15 about a statute that extends to foreign
16 litigants the opportunity to come to the United
17 States and seek discovery from United States
18 citizens.
19 Once you move into the arbitration
20 forum, you have now -- that is the foreign
21 entity -- you've created a wonderful incentive
22 for me as a litigator to start the arbitration
23 outside the United States if I can and then say
24 it's an external arbitration and then have at
25 the courts for discovery.

1 JUSTICE BREYER: No, you can't if you
2 follow -- if you add Intel and, you know, the
3 Japanese tribunal and the others saying, of
4 course, that's a problem, what you say.
5 MR. BAIO: Yes.
6 JUSTICE BREYER: And so what we have
7 to do is -- is say that this discovery here
8 takes place if and only if the foreign tribunal
9 says it wants it.
10 MR. BAIO: Well, that didn't happen
11 here, Your Honor, right? The foreign tribunal
12 --
13 JUSTICE BREYER: Yeah. All right. It
14 might not have happened there, but this is a
15 broad problem that I'm worried about. And I
16 have the government on the one side. It sounds
17 like the Restatement's on the other side. There
18 are a lot of real experts on this who are on the
19 other side, and I'm having trouble with this
20 case --
21 MR. BAIO: Yes.
22 JUSTICE BREYER: -- all right, not
23 surprisingly.
24 MR. BAIO: There -- there certainly is
25 a lot of --

1 JUSTICE BREYER: Okay. And --- and --
2 and, therefore, the things that you say, I can
3 think of matching problems no matter what. If
4 we go against -- if we take the first, you know,
5 we say only applies to foreign governmental
6 things, only governmental.
7 Hey, you produce a wonderful example
8 of that, of whether it is or isn't.
9 MR. BAIO: Yes.
10 JUSTICE BREYER: And we'll have to
11 decide cases like that.
12 MR. BAIO: Yes, and I -- I think that,
13 frankly, Your Honor, mine is fairly easy just
14 because of what the treaty says.
15 JUSTICE BREYER: I know you think
16 yours is easy and you want to win, but what I
17 want to do is figure out what kind of opinion to
18 write and how to decide.
19 MR. BAIO: I understand.
20 JUSTICE BREYER: So -- so I'm putting
21 you in my dilemma --
22 MR. BAIO: Yes.
23 JUSTICE BREYER: -- which is
24 Restatement, the experts over here, a lot of
25 them, including the Japanese tribunal,

1 government over here. You claim, my God, this
2 will be a mess. Fourteen briefs say here's what
3 you do to stop the mess.
4 MR. BAIO: Yes.
5 JUSTICE BREYER: They won't stop it
6 totally. All right.
7 MR. BAIO: No, it won't stop it
8 totally, there's no doubt about it, Your Honor,
9 but, if you look at a statute that moved from
10 courts to foreign or international tribunals,
11 has an enacting statute beforehand that told the
12 commission look at quasi-judicial agencies when
13 you are deciding how to broaden this.
14 There -- there's no easy one-shot
15 answer, but the difference between the two
16 definitions, one of them being circumscribed in
17 what I think is a reasonable way, that will be
18 for you Justices to determine, but I think that
19 that works, as opposed to the opposite, which is
20 any outside United States decisionmaker.
21 If an orchestra decides that they want
22 -- a national orchestra decides that it wants to
23 have a particular audition for violinists and
24 they all vote, that is a decisionmaking. It
25 might even be by a governmental entity.

1 But it is certainly not a tribunal
2 that was created by, in my case, two sovereigns
3 acting together and deciding here is what will
4 -- here's the -- the instrument. Here's the
5 vehicle that will resolve the case.
6 They did not do that here. And I
7 think you can carve out those. Can you come up
8 with a completely outcome-determinative answer?
9 I don't know. But you certainly can with what's
10 before you, I believe, Your Honor.
11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.
13 Justice Alito, anything further?
14 Justice Sotomayor?
15 JUSTICE SOTOMAYOR: The W -- the World
16 -- World Trade Organization --
17 MR. BAIO: Yes.
18 JUSTICE SOTOMAYOR: -- is made up of
19 foreign states, and it has a dispute settlement
20 plan between the states.
21 MR. BAIO: Yeah.
22 JUSTICE SOTOMAYOR: The states can
23 petition the WTO, it picks the arbitrators, and
24 the states can then adjudicate their dispute
25 between. That would be an international

1 tribunal?

2 MR. BAIO: It depends, Your Honor. I

3 -- I'm sorry, I don't --

4 JUSTICE SOTOMAYOR: On what?

5 MR. BAIO: It depends on whether they

6 are selecting as the -- the parties, the

7 disputants, they are selecting the arbitrators.

8 If they're doing it in that fashion,

9 that's one --

10 JUSTICE SOTOMAYOR: I'm sorry, I don't

11 understand.

12 MR. BAIO: Okay.

13 JUSTICE SOTOMAYOR: The fact that the

14 WTO selects the arbitrators makes a difference

15 for you?

16 MR. BAIO: Yes. If the individual

17 disputants are selecting an arbitration panel

18 that is basically made up of private

19 individuals, if the WHO is not establishing,

20 creating, a standing body that will be resolving

21 these disputes, you do not have an international

22 tribunal.

23 JUSTICE SOTOMAYOR: All right. Tell

24 me why. The WTO is a world international state

25 agency.

1 MR. BAIO: Yes.

2 JUSTICE SOTOMAYOR: They create a
3 dispute settlement body that says the states can
4 come to it and say we want you --

5 MR. BAIO: Yes.

6 JUSTICE SOTOMAYOR: -- the WHO, to
7 settle this dispute between us. WTO picks the
8 arbitral panel, and the states submit to its
9 jurisdiction. That's not an international
10 tribunal?

11 MR. BAIO: No, that would be, as you
12 described it -- and I -- I apologize, I
13 misunderstood you, Your Honor. That sounds like
14 it was an entity that was created by two or more
15 sovereigns acting through the WHO.

16 So, yes, in that case, the entity is
17 established by the governments -- by the treaty.
18 Nothing is established by this treaty.

19 JUSTICE KAGAN: So --

20 CHIEF JUSTICE ROBERTS: Justice Kagan?

21 JUSTICE KAGAN: -- so just in that
22 vein, I mean, suppose there's a treaty and it's
23 between two countries and it's to resolve
24 disputes between those two countries.

25 MR. BAIO: Yes.

1 JUSTICE KAGAN: But they don't want to
2 set up any kind of standing organization.
3 Instead, they want to use arbitrators. And the
4 arbitrators, there will be one set for Dispute 1
5 and another set for Dispute 2, all right?
6 But the treaty just says we're going
7 to go to arbitration to resolve any differences
8 between them. Is the eventual arbitral panel an
9 international tribunal?
10 MR. BAIO: That is a -- that's a
11 situation where it's state to state. That is
12 the nature of --
13 JUSTICE KAGAN: It is state to state.
14 It's meant to be essentially this case but state
15 to state?
16 MR. BAIO: Right, or is it more like
17 "I'm Alone," that series of cases, or the mixed
18 German claims --
19 JUSTICE KAGAN: Well, you're -- now
20 you're going above my knowledge.
21 MR. BAIO: I'm sorry. Okay.
22 JUSTICE KAGAN: So let's stick to my
23 hypothetical.
24 MR. BAIO: Yes. If -- if it is two
25 countries coming together or more than two

1 countries creating --
2 JUSTICE KAGAN: It's a treaty, and
3 they create a system of arbitration.
4 MR. BAIO: Yes. That could be --
5 depending on whether the tribunal itself -- it
6 -- it's selected by the states; that is, the
7 states themselves select --
8 JUSTICE KAGAN: Yeah. Eventually,
9 when a dispute arises, then the -- the states
10 pick arbitrators in the normal fashion that --
11 that private parties pick arbitrators.
12 MR. BAIO: I think the -- the Court
13 could -- could find that that is not a -- an
14 international tribunal because the decisionmaker
15 itself was not created by the act of the
16 sovereigns and it was not empowered by them.
17 That is the specific tribunal.
18 It is a much closer case, Your Honor.
19 JUSTICE KAGAN: So -- so it's a much
20 closer case because --
21 MR. BAIO: Than mine.
22 JUSTICE KAGAN: -- it's state to
23 state?
24 MR. BAIO: Because state to state.
25 JUSTICE KAGAN: Yeah. So --

1 MR. BAIO: And it involves the --
2 JUSTICE KAGAN: -- I guess one
3 question then would be why is state to state so
4 different from investor state when states used
5 to represent investors directly and now they
6 don't? This is a better system. Why should
7 that difference matter?
8 MR. BAIO: Well --
9 JUSTICE KAGAN: But, if you think, as
10 you said at the end, that my system also is not
11 an international tribunal, then I guess I want
12 to ask you another question about why -- why
13 that should be, because then you're saying,
14 well, a standing body that they set up would be
15 an international tribunal, but if they send up
16 -- set up a standing system under which they
17 pick arbitrators as disputes arise, that doesn't
18 count as an in -- international tribunal, and I
19 guess I wonder why that should be.
20 MR. BAIO: I said -- and I apologize,
21 Your Honor, I said it could. And -- and --
22 JUSTICE KAGAN: Well, you have to --
23 MR. BAIO: -- it really does -- it's
24 not so --
25 JUSTICE KAGAN: -- you have to come

1 out one way or the other.

2 MR. BAIO: -- helpful, but -- no, I

3 think that it depends upon the nature of the

4 decisionmaker. And, here, you could say the

5 decisionmaker ultimately is being selected by

6 sovereigns and only sovereigns.

7 That is not our case. That is not a

8 case where they are yielding to a common citizen

9 and giving up the opportunity to have their own

10 courts review it. So I -- I think that it is

11 different. I think it's different from when --

12 our treaty, which simply is an agreement to

13 arbitrate if the claimant chooses it.

14 That's not what you're describing.

15 And you are describing the establishment of a

16 deliberative body by the governments themselves

17 eventually. That's not what we have in our

18 case. So I think you could conclude, yes, that

19 is a international tribunal without disturbing

20 my analysis, I hope.

21 CHIEF JUSTICE ROBERTS: Justice

22 Gorsuch?

23 JUSTICE GORSUCH: In this vein, it

24 seems like one thing we do know is that in 1964

25 the rules committee was trying to capture

1 entities like the U.S.-German Mixed Claims
2 Commission --
3 MR. BAIO: Yes.
4 JUSTICE GORSUCH: -- and the U.S.-
5 Canada arbitration.
6 MR. BAIO: Yes.
7 JUSTICE GORSUCH: Why do those fall on
8 the side of the line of being international
9 tribunal -- foreign tribunals on your account?
10 MR. BAIO: Those were state-to-state
11 disputes, and the -- the treaty or the
12 commission or the document that was involved
13 created an entity, and in both of those cases,
14 the adjudicators are government officials
15 usually from both countries. That is richly
16 governmental. That is certainly created by the
17 international interchange between the company --
18 between the countries. And it is staffed with
19 government officials usually from both sides and
20 it has sort of a diplomatic side to it.
21 But that is entirely different. And
22 that fits within, I think, the definition that
23 I'm offering the Court, which is, is this -- is
24 the decisionmaker basically created by the
25 entities, the two governmental entities? And is

1 it exercising the power of those two entities?
2 And in the case of "I'm Alone" and in the case
3 of the German Mixed Claims Commission, that was
4 exactly the case.
5 Of course, German Mixed Claims
6 Commission was together for 17 years, decided
7 over a thousand disputes between the countries.
8 So that's a very different animal. And I don't
9 think anyone would say that that is not an
10 international -- those are not international
11 tribunals.
12 JUSTICE GORSUCH: Thank you.
13 CHIEF JUSTICE ROBERTS: Justice
14 Kavanaugh?
15 JUSTICE KAVANAUGH: Just so I'm clear
16 on your answer to Justice Kagan's question, if
17 we were to rule for you here, I understood you
18 to say you could distinguish the state-to-state
19 situation based on some differences there --
20 MR. BAIO: Yes.
21 JUSTICE KAVANAUGH: -- or,
22 alternatively, perhaps the principle that you
23 would win on here would apply in the
24 state-to-state situation, but we don't have to
25 answer that question one way or the other in

1 this case. Is that --
2 MR. BAIO: I -- I think that's
3 correct, Your Honor. Yes.
4 JUSTICE KAVANAUGH: Okay. Second, the
5 question I asked Mr. Martinez as well. For the
6 arbitrators themselves, of what significance is
7 it that -- who appoints them, who pays them, and
8 who can remove them?
9 MR. BAIO: Well, I think, if -- if the
10 body is established by the treaty and it is
11 staffed with government employees, let's say
12 Russia and Lithuania, and they are agents of the
13 two countries, I think then you start to have an
14 international tribunal. I think that's
15 different.
16 JUSTICE KAVANAUGH: Thank you.
17 CHIEF JUSTICE ROBERTS: Justice
18 Barrett?
19 Thank you, counsel.
20 MR. BAIO: Thank you, Your Honor.
21 Thank you, Justices.
22 CHIEF JUSTICE ROBERTS: Mr. Kneedler.
23
24
25

1 ORAL ARGUMENT OF EDWIN S. KNEEDLER

2 FOR THE UNITED STATES, AS AMICUS CURIAE,

3 SUPPORTING THE PETITIONERS

4 MR. KNEEDLER: Mr. Chief Justice, and

5 may it please the Court:

6 Section 1782 was enacted as part of a

7 1964 law specifically designed to promote comity

8 with other governments by improving existing

9 practices of judicial assistance in litigation.

10 Arbitration is an alternative to litigation. It

11 is not a form of litigation.

12 Section 1782 accordingly applies to

13 requests for evidence from courts or other

14 adjudicatory bodies established by the

15 government and exercising authority, official

16 authority, conferred by a government.

17 But Section 1782 does not authorize

18 the obtaining of evidence for a panel of private

19 arbitrators assembled pursuant to an agreement

20 between parties to a dispute. That is so

21 because -- that is so whether the agreement is

22 formed in a contract between two private parties

23 to arbitrate or when a private investor takes up

24 the offer by a -- by a government to arbitrate a

25 dispute rather than going to court and

1 litigating it.

2 This government focus is strongly

3 supported by the text of 1782 as -- and we think

4 the most natural reading is, of the term

5 "foreign" or "international tribunal," one

6 having a governmental character. And we think

7 that's particularly true in an act of Congress

8 that was passed to improve methods of

9 cooperation in litigation with other countries.

10 It's used in a formal legal sense in -- in that

11 way.

12 Arbitration is handled separately, for

13 example, under the United States Code in a whole

14 title, Title IX. And arbitration --

15 provisions for enforcement of arbitration are

16 handled separately.

17 Other provisions of the -- of the 1964

18 Act reinforce this conclusion even further, as

19 explained in the briefs, 1781, 1782, and 1696,

20 but I particularly want to focus on the

21 background of this. Prior -- the background --

22 CHIEF JUSTICE ROBERTS: Well, before

23 -- before you do that, Mr. Kneedler, you are

24 supporting two very different petitioners or at

25 least with quite distinct status, and I wonder

1 if you could spend a couple moments talking
2 about that, how you, representing the
3 government, looks at these -- the -- the
4 differences between the two entities?
5 MR. KNEEDLER: Well, I -- there --
6 there are certain differences, but -- but I -- I
7 think, fundamentally, they are the same because,
8 in the private -- in the private arbitration
9 situation, it's private arbitrators who are
10 assembled because the parties have agreed to
11 arbitrate and they select the arbitrators.
12 That is -- that is exactly what is
13 happening in the investor state situation. All
14 the treaty does is obligate each party to offer
15 to -- to -- to arbitrate. It's the investor who
16 takes up the offer, and it's only then that the
17 agreement to arbitrate is reached.
18 CHIEF JUSTICE ROBERTS: Well, I know,
19 but I -- I would have thought -- I would have
20 thought you, given your obligations representing
21 the United States in the international sphere,
22 might regard the second case as distinct in the
23 sense that this isn't, you know, General Motors
24 and Volvo or whoever coming to set up something
25 and it just happens to be overseas.

1 But it's two sovereign nations coming
2 together, and I would have thought that might
3 have made a significant difference to the State
4 Department.
5 MR. KNEEDLER: It does not. We -- we
6 view the investor state situation for these
7 purposes to be just like the private arbitration
8 because it -- because it functions just like the
9 private arbitration. There is a standing offer
10 to arbitrate from the government.
11 And if -- if the private investor
12 accepts that offer, there is an agreement to
13 arbitrate formed. At that point, the foreign
14 government is stepping out of its governmental
15 role, just like when a sovereign waives
16 sovereign immunity, it is becoming a private
17 person or just like a private person.
18 And, as I said, 1782, just like the
19 whole 1964 Act, was enacted to further comity
20 with other governments. This has the potential
21 to undermine that by putting U.S. courts --
22 CHIEF JUSTICE ROBERTS: What if --
23 MR. KNEEDLER: -- intruding them into
24 arbitrations involving foreign governments or
25 private parties --

1 CHIEF JUSTICE ROBERTS: What if --
2 MR. KNEEDLER: -- anywhere in the
3 world.
4 CHIEF JUSTICE ROBERTS: -- what if the
5 arbitral -- the arbitrators were selected by the
6 governments, in other words, and -- and it was a
7 standing entity? This is the body of
8 arbitrators selected by Lithuania and Russia to
9 decide disputes under this agreement.
10 MR. KNEEDLER: That might well be
11 different. And I -- and I think it's important
12 to understand the background of the -- of the
13 term "international tribunal" in 1782.
14 The -- the -- the foreign tribunal
15 deals with individual foreign states, and we
16 think those tribunals are governmental because
17 the predecessor to 1782 for foreign states was
18 clearly limited to courts and slightly expanded
19 here to include other things like courts.
20 For international tribunals, that
21 phrase is picked up directly from the
22 predecessor statutes that we put -- that we have
23 in our brief, Section 270, and those statutes
24 were enacted to deal with two specific
25 international arbitrations that were -- or,

1 excuse me, international tribunals that were
2 mentioned by counsel.
3 One is the treaty with Canada -- or
4 Great Britain involving a dispute over the
5 sinking of a vessel and the other the mixed
6 claim commission. Now the mixed claim
7 commission might be closer to what you're
8 describing.
9 And there, there was an agreement
10 between Germany and the United States to form
11 what was an official governmental or
12 intergovernmental body. It was established by
13 them. They appointed the arbit- -- the two
14 governments appointed the arb- -- the members of
15 the -- of the panel, and it was exercising the
16 combined governmental power of those two -- of
17 -- of those two entities.
18 And Congress -- there were -- there
19 were some problems with the way those two
20 entities operated in terms of their getting
21 evidence. Congress passed statutes in 1930 and
22 1933 which were codified in 270, as we
23 explained, in an effort to try to enable those
24 bodies to get evidence by -- by -- and
25 authorizing them to administer oaths, to issue

1 subpoenas, which are clearly governmental
2 things.
3 1782 comes along, and what the -- what
4 Congress did was, picking up on that same phrase
5 "international tribunal," put it in 1782 but
6 eliminated some of the limitations on the
7 operation of those predecessor statutes, which
8 were limited to situations in which the United
9 States was a party to the dispute.
10 The rules commission explained that
11 why should it be limited in that way. I think
12 that -- and they said they wanted to put it on
13 the same footing as the foreign government
14 tribunals by their -- their -- foreign
15 governmental establishments, but they shouldn't
16 be limited, and -- and so they shouldn't be
17 limited to cases in which the United States is a
18 party or the United States would get evidence
19 for itself.
20 So it wanted to remove those
21 limitations. But it didn't change the term
22 "international tribunal," which, in those prior
23 statutes, was unquestionably limited to
24 governmental bodies issuing subpoenas and -- and
25 administering oaths.

1 JUSTICE KAGAN: Mr. Kneedler, can I
2 ask you about the purpose of this statute and
3 how it figures here? I mean, as I understand
4 it, this is a statute that's designed to advance
5 international comity, and I think, of all the
6 parties here, you're the expert in international
7 comity.
8 So I guess just to go back to the
9 Chief Justice's question about why you picked
10 this position, you know, putting the legal
11 arguments to the side and focusing more on the
12 arguments about how this advances or doesn't the
13 purpose of the statute to advance international
14 comity and the role of the United States with
15 respect to foreign nations, essentially, like,
16 what does the State Department say about this
17 question?
18 MR. KNEEDLER: Well, the -- the
19 position of the State Department and the United
20 States is -- is --
21 JUSTICE KAGAN: Right. I'm -- I'm
22 asking why?
23 MR. KNEEDLER: Yeah. No, no. Well, I
24 mean, first of all, we think it's compelled by
25 the -- by the statute and what it was driving

1 at, which is comity with other nations, which is
2 what the State Department was doing and what
3 Congress was doing.
4 Arbitration is something very
5 different. And we recognize that when Congress
6 has addressed the question of evidence, getting
7 evidence in arbitration, in Section 7 of the
8 Federal Arbitration Act, that applies only
9 domestically. It -- it -- only the arbitrator
10 can request information. There's no pretrial
11 discovery. It's limited to the place where the
12 arbitrator sits.
13 What -- what is proposed here has none
14 of those limitations. It could be discovery
15 about any dispute anywhere in the world between
16 a government and a -- and an investor that the
17 United States Government has no responsibility
18 for.
19 And so the -- the United States would
20 be reluctant, I think, to -- to endorse a system
21 in which our courts could intrude into -- into
22 that foreign system and say you can get
23 discovery in the United States in aid of that
24 when that sort of thing is not available
25 anywhere.

1 JUSTICE BREYER: Suppose we said you
2 can't.
3 MR. KNEEDLER: Pardon me?
4 JUSTICE BREYER: Suppose we said you
5 can't, which I mean to say I have the same
6 question Justice Kagan had. Why?
7 I mean, these -- these briefs talk
8 about England. They talk about Spain. They
9 talk about France. And a lot of them say -- the
10 Japanese tribunal I think particularly -- say --
11 say that -- that this can't be used in these
12 situations anyway unless the arbitrator wants.
13 MR. KNEEDLER: But --
14 JUSTICE BREYER: And that meant that
15 makes it coherent and consistent with local
16 arbitrators.
17 MR. KNEEDLER: And that -- and that
18 would in turn involve the United States court,
19 as -- as was true in the AlixPartners case here,
20 and extensive undertakings to say what would --
21 because -- what would --
22 JUSTICE BREYER: All right. But
23 that's -- that's a --
24 MR. KNEEDLER: -- what -- what does
25 the arbitrator want?

1 JUSTICE BREYER: -- is that what is
2 driving -- is it that, that they're worried that
3 the court won't be able to say whether a
4 tribunal in some other country did or did not?
5 Then say send us a letter. I mean -- I mean, I
6 can think of many ways around that.
7 MR. KNEEDLER: Well, it -- it's --
8 JUSTICE BREYER: But is that what --
9 my question --
10 MR. KNEEDLER: Well --
11 JUSTICE BREYER: -- is really Justice
12 Kagan's, why?
13 MR. KNEEDLER: Well, I --
14 JUSTICE BREYER: What is it that the
15 State Department --
16 MR. KNEEDLER: -- I understand the
17 practicality in a particular case, but I think
18 the -- the -- the points that I'm raising that
19 have been raised by others raise important
20 policy questions that are for Congress to
21 decide.
22 Again, the Federal Arbitration Act is
23 where Congress has addressed arbitration. It
24 has provided for the acquisition of evidence
25 only for domestic arbitrations and in very

1 limited ways. And before that is extended
2 elsewhere, that raises serious questions that
3 the State Department, the United States
4 Government, would want to focus on. Should it
5 be limited to situations where the arbitrator is
6 already appointed? What limitations should be
7 placed on it? Should there be no pretrial
8 discovery? There are all sorts of -- of issues
9 that would have to be addressed.
10 And also, if the United States accepts
11 this sort of -- or United States courts do this,
12 they're not getting anything by way of comity in
13 return. There's no such thing as comity with a
14 foreign arbitration panel established by the
15 agreement of two parties, whether they're --
16 even when it's an investor in a foreign state.
17 There's no comity relationship that is being
18 served here.
19 If anything, there's the potential for
20 friction and undermining it because states have
21 agreed to enter into the -- there are now 2,000
22 BITs in the world. States have offered to enter
23 into these to simplify the procedure for
24 resolving these disputes and using arbitration
25 in the same way a private party does and to de-

1 -- depoliticize and take out of the -- the
2 diplomatic circle these disputes.
3 But, if you have a U.S. court engaged
4 in discovery, it creates the potential for --
5 for controversy and -- and for having the United
6 States involved that is -- in -- in something
7 that is really none of its business.
8 JUSTICE KAVANAUGH: And that --
9 MR. KNEEDLER: And that's very
10 different from the relationship with courts in
11 another country or inter- -- formal
12 international tribunals, it was mentioned here,
13 because they're part of what the United States
14 was trying to do, was to encourage other
15 governments to do something in a reciprocal way.
16 The 1964 Act actually addresses this. It -- it
17 wants to improve the -- the methods of
18 facilitation in litigation, in judicial
19 assistance --
20 JUSTICE SOTOMAYOR: Counsel, my -- my
21 --
22 MR. KNEEDLER: -- and encourage others
23 to do that as well.
24 JUSTICE SOTOMAYOR: -- my problem with
25 what you're saying is 1782 itself assumes that

1 the order the district court gives may prescribe
2 the practices and procedure for discovery,
3 taking into account what the international
4 tribunal will do.
5 So going back to Justice Breyer's
6 question, the international -- we could say or
7 -- or a court looking at this really should see
8 what the international tribunal wants because
9 it's required to take that into consideration.
10 And I would assume it would be an abuse of
11 discretion to go much further without a
12 compelling reason.
13 But putting that aside, you've already
14 said that you agree that "international
15 tribunal" was intended to cover the U.S.-
16 Germany state-to-state investment settlement
17 mechanism and the U.S.-Canada one.
18 MR. KNEEDLER: Right.
19 JUSTICE SOTOMAYOR: Those were created
20 by treaty of the parties, between the parties.
21 Each of them gave up their sovereignty to --
22 well, they didn't give up their sovereignty, but
23 they agreed to permit suits against each other
24 by each other and to settle what was essentially
25 private disputes in a representative capacity.

1 I am still having a very hard time
2 understanding how your position is not stepping
3 on issues of foreign relations by stopping
4 states from creating dispute resolution
5 mechanisms involving its sovereign powers. I'm
6 -- I'm having a hard time.
7 What you're basically saying is you
8 can't -- you have to undergo the expense of
9 creating and -- of funding an independent body,
10 of having it do a hundred things at a time or
11 even maybe one, but you have to go through that
12 expense because that formality is important to
13 us.
14 I don't understand that.
15 MR. KNEEDLER: It's not just the
16 formality. It's the fact that it is -- it's not
17 an abdication of sovereign authority in that --
18 in -- in -- in the -- in the state-to-state
19 situation, it's an expression of sovereign
20 authority and that sovereign --
21 JUSTICE SOTOMAYOR: Well, that's what
22 a treaty is.
23 MR. KNEEDLER: -- governmental
24 authority --
25 JUSTICE SOTOMAYOR: A treaty is an

1 expression of state sovereignty that says:
2 Investors can't sue me, I'm going to give up
3 that sovereign right. Your investors, my
4 friend, on the other side of the continent, you
5 -- your investors can sue me but only in this
6 way.
7 MR. KNEEDLER: No -- well, I mean,
8 first of all, they're not suing, and I think
9 that's an --
10 JUSTICE SOTOMAYOR: I think --
11 MR. KNEEDLER: -- that's an -- that's
12 a very important distinction. Arbitration is an
13 alternative to invocation of the judicial
14 process. And 1782 originally referred only to
15 courts, and it was slightly expanded in 1964 to
16 say courts and other quasi-judicial entities.
17 It's clear that with respect to foreign
18 governments -- or foreign courts, that 1782 is
19 talking about governmental bodies.
20 There -- and the commission's report,
21 incorporated into the Senate report, makes clear
22 that Congress wanted to do the same thing and
23 put them on the same footing as -- as foreign
24 courts or foreign tribunals.
25 And -- and it's clear that they were

1 picking up on the international tribunal as used
2 in the very specialized way with respect to the
3 two tribunals that you are mentioning. Both of
4 -- in both of those situations, the tribunal was
5 formally and officially created by the
6 sovereigns themselves, not by some private
7 agreement, and, also, they were exercising
8 official power. Power is something that's
9 sovereign. It's -- it's a -- it's a
10 administration of justice, to use the -- the
11 term in the definition of "court" that we think
12 is central here.
13 A private arbitral --
14 JUSTICE SOTOMAYOR: Thank you,
15 counsel.
16 MR. KNEEDLER: -- panel is not
17 administering justice. It's trying to divine
18 the intent of two parties to an agreement, which
19 is very different.
20 CHIEF JUSTICE ROBERTS: Thank -- thank
21 you, Mr. Kneedler.
22 Justice Breyer, anything further?
23 Justice Alito?
24 Justice Kagan?
25 Justice Gorsuch?

1 JUSTICE GORSUCH: Mr. Kneedler, help
2 me write two paragraphs of this opinion, first,
3 the paragraph that distinguishes the -- the
4 arbitration agreement in the second case
5 involving Lithuania from the U.S.-Canada and
6 German claims tribunal. That's the first
7 paragraph.
8 MR. KNEEDLER: Okay. With respect to
9 that, the distinction is in the -- I think you
10 said the United States-Canada agreement.
11 JUSTICE GORSUCH: Yeah.
12 MR. KNEEDLER: That was a -- that was
13 a body established by the -- directly
14 established by the two governments, and they
15 were exercising official power conferred by the
16 -- by those two governments.
17 The -- the arbitration in the
18 AlixPartners case has neither of those
19 characteristics. Lithuania, like Russia, made a
20 -- made an offer to arbitrate if the -- if the
21 investor chooses. When the investor takes the
22 state up on that, that there forms an agreement
23 to arbitrate. It's not the treaty. It's the
24 agreement. The states offer the private
25 investors acceptance of it.

1 I think that's reflected in this
2 Court's decision in BG Group about another --
3 another BIT treaty. So the one is an -- the --
4 the -- the body, which is what the test looks at
5 under 1782, is private. It's private
6 arbitrators selected pursuant to an agreement.
7 It's not governmental.
8 JUSTICE GORSUCH: And, second, one
9 paragraph on how you define a foreign or
10 international tribunal.
11 MR. KNEEDLER: Well, I -- I think it's
12 encapsulated with -- with what I said before.
13 The tribunal has to be established by the
14 government and has to be exercising governmental
15 authority, the -- administering justice in the
16 way we think of governmental courts or
17 quasi-judicial bodies, which is all that
18 Congress intended to pick up and that -- that it
19 did pick up in the 1964 Act, organs of
20 government.
21 And -- and that, we think, is a
22 foreign tribunal, and the same principle applies
23 in international tribunal, which was the form of
24 tribunal that Congress picked up.
25 It's also important to recognize, for

1 example, 1782 and the rest of the 1964 Act use
2 the term "letter rogatory" -- "rogatory" --
3 JUSTICE GORSUCH: Right.
4 MR. KNEEDLER: -- which is a -- which
5 is something only courts issue, not -- and --
6 and -- and things like that are scattered
7 throughout the 1964 Act, references to tribunal
8 officer or -- or agency, which has a
9 governmental character. Rules of practice of a
10 foreign government, which is suggesting -- or
11 the tribunal, which is suggesting standing
12 bodies having their -- their own rules. So the
13 statute and -- and -- and its history and its
14 precursors are -- are all pervasively imbued
15 with a governmental character.
16 It's hard to come away with reading
17 these statutes, their background, the reports
18 explaining what the commission was up to,
19 without saying these are governmental and has
20 not -- there's not a mention of arbitration
21 there, which I said has always been treated
22 differently.
23 JUSTICE GORSUCH: Thank you.
24 CHIEF JUSTICE ROBERTS: Justice
25 Kavanaugh?

1 JUSTICE KAVANAUGH: As has been noted,
2 Mr. Kneedler, you know the foreign relations
3 implications and undoubtedly have consulted with
4 the State Department at length on this, so I
5 just want to -- you to tie up. Ruling for the
6 Respondent in the investor state case, the
7 second case, would cause problems for comity and
8 U.S. foreign relations because?
9 MR. KNEEDLER: Well, I -- you know, I
10 can't be specific about it. I mean, the main
11 point I'm -- the main point I'm making is that
12 international comity is with foreign
13 governments, and this isn't -- this isn't that.
14 And the United States gets nothing in return in
15 comity by opening its courts to do this. It
16 exposes U.S. litigants, but another litigant who
17 -- who's in a foreign country would not -- would
18 not be exposed to the same sort of thing.
19 And so, when it comes to international
20 comity, often what the United States wants to do
21 is to do something reciprocal, to adopt
22 something and hope other countries will do it,
23 which is what the 1964 Act was about.
24 But opening up U.S. courts
25 unilaterally to this sort of discovery that has

1 never been permitted, even in domestic
2 arbitration, is a unilateral act with a -- with
3 an ad hoc panel in a -- you know, somewhere
4 around the world that -- that could upset a
5 foreign government with no -- with no benefit,
6 comity interchange for the United States.
7 JUSTICE KAGAN: And it's not --
8 JUSTICE KAVANAUGH: Go ahead.
9 JUSTICE KAGAN: May I?
10 JUSTICE KAVANAUGH: Mm-hmm.
11 JUSTICE KAGAN: It's not true that the
12 foreign countries with whom the United States
13 has entered into the treaty would expect this in
14 any way, is -- is -- is that correct?
15 MR. KNEEDLER: Well, I think that's
16 also part of it. I mean, you know, maybe some
17 -- maybe one would, but there's no reason to
18 think that they would or, frankly, that they
19 should.
20 And before we enter into that sort of
21 thing, it seems to me it's -- it's not just a --
22 a question of treaties, but -- but we're talking
23 about judicial procedure, and it's something
24 that Congress can weigh the various policies, as
25 I mentioned, should there be conditions on the

1 -- on the acquisition of evidence.
2 What -- what should the timing be?
3 Are there certain types of foreign BITs that
4 should be accepted and not others? And I think
5 the State Department would -- would -- would
6 want to weigh -- we all would want to weigh in
7 on the particulars of how that should happen
8 rather than reading this into a -- a 1964
9 statute that -- that there's no indication had
10 anything to do with arbitration.
11 The United States had not even
12 ratified the New York convention on
13 international commercial arbitration in 1964
14 when -- when this -- when this was enacted.
15 JUSTICE KAVANAUGH: And you alluded to
16 this earlier, I think, but I want to make sure
17 I'm clear, that you think it could cause a
18 problem if a U.S. court were resolving discovery
19 disputes, including in the second case, because
20 a state, foreign state, would be a party in that
21 --
22 MR. KNEEDLER: I --
23 JUSTICE KAVANAUGH: -- and that can
24 create problems, but I just want you to --
25 MR. KNEEDLER: I --

1 JUSTICE KAVANAUGH: -- spell that out.
2 MR. KNEEDLER: I'm not saying that
3 every -- every -- I'm -- I'm making sort of a
4 more general point. I'm not saying that any one
5 dispute would be -- would be a problem, or I'm
6 not saying in this particular case.
7 What I am saying is that -- that the
8 situation -- situation is instinct with the --
9 with that potential. And there's no -- nothing
10 in the statute that controls it. And it would
11 be -- this Court in Intel declined to impose
12 rules about when you can seek discovery and the
13 timing and all of that.
14 And -- but -- so I think it would --
15 that would not be an appropriate solution here
16 either. Before the gate is opened at all, I
17 think there should be either an act of Congress
18 or a treaty that is specifically addressed to
19 arbitration rather than judicial assistance with
20 courts.
21 JUSTICE KAVANAUGH: Thank you.
22 CHIEF JUSTICE ROBERTS: Justice
23 Barrett?
24 JUSTICE BARRETT: I just have one
25 clarifying question. Justice Kagan asked you

1 about what another country might expect. And
2 I'm wondering whether the expectations of the
3 countries factor into this calculus at all or
4 what they might have intended in a treaty?
5 Justice Sotomayor pointed out that, if
6 there's some formality involved, that might
7 create more expense for the foreign countries.
8 So what if they said we want this
9 private -- you know, there's some existing
10 private arbitrator and we're going to call this,
11 however, for purposes of disputes arising under,
12 you know, this agreement, the Lithuanian-Russian
13 tribunal.
14 Could they, even though maybe the body
15 otherwise doesn't have the kinds of
16 characteristics that you're identifying, could
17 they simply by designating it as such reflect an
18 intent to designate a private body, private
19 arbitrator, as one that exercises sort of
20 governmental authority?
21 MR. KNEEDLER: I -- I -- I think that
22 would be problematic too. I mean, I -- I think
23 the -- I think the formality, I mean, the -- the
24 question is what was Congress intending. And I
25 think -- I think Congress was -- had

1 specifically in mind formality because the
2 exercise of sovereign power is a formal power.
3 You want -- you want it written in
4 law. You want it -- you want it regular.
5 JUSTICE BARRETT: So the formality of
6 saying we want to call this the Lithuanian-
7 Russian tribunal simply for this purpose, but
8 it's an -- otherwise, it's a standing body that
9 handles private disputes, that kind of formality
10 wouldn't counsel what the countries did?
11 MR. KNEEDLER: Well, I -- I, you know,
12 I -- I'm not aware of a situation like that.
13 And I think it would be prudent to, you know,
14 reserve that because the -- the characters --
15 the -- the central character of the BIT here is
16 one that is very common. And I think that's all
17 the Court needs to decide and should reserve
18 that and I think also should reserve the
19 state-to-state question in situations that don't
20 involve the kind of presentation of claims to a
21 commission. There's sort of litigation before a
22 commission in that situation. That may be
23 different from a boundary dispute between states
24 or things that are -- that are really sovereign.
25 And, you know, those might be put to one side

1 for another reason.
2 But I think the touchstone ought to be
3 the test that I -- I suggested, which is a
4 simple one: Was it established by a government
5 or governments and is it exercising governmental
6 power or, the equivalent in the international
7 format, is it exercising official power on
8 behalf of the two governments?
9 And that should be the touchstone. If
10 there are questions about the interpretation of
11 a particular agreement, if the -- if the foreign
12 treaty you're describing was just trying to get
13 around that or something labeling it, I don't
14 think that would count. I -- I think they --
15 they have -- if it's going to be governmental,
16 they have to develop it and establish it as --
17 establish it as government.
18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.
20 Mr. Davies.
21 ORAL ARGUMENT OF ANDREW R. DAVIES
22 ON BEHALF OF THE RESPONDENT IN 21-401
23 MR. DAVIES: Mr. Chief Justice, and
24 may it please the Court:
25 Congress has authorized assistance to

1 foreign tribunals. The best, most natural
2 interpretation of that broad phrase includes a
3 foreign-seated commercial arbitral tribunal.
4 A commercial arbitral tribunal is a
5 tribunal because it's authorized to render an
6 adjudication of the parties' legal rights that
7 is final, unless it's set aside by a reviewing
8 court. That's consistent with this Court's
9 interpretation of "tribunal" in Intel and with
10 contemporaneous usage of "tribunal" to mean
11 commercial arbitral tribunals.
12 And a foreign-seated commercial
13 arbitral tribunal is foreign because its legal
14 domicile or its juridical home is in another
15 jurisdiction. There is no basis to draw an
16 arbitrary line at the tribunals of foreign
17 countries. That limitation is not supported by
18 the statutory language or context or by Intel.
19 Providing assistance to commercial
20 arbitral tribunals seated in other countries
21 promotes cross-border commercial arbitration and
22 international comity. It allows foreign
23 tribunals handling cross-border commercial
24 disputes to make better informed evidence-based
25 decisions, provides access to evidence that

1 would otherwise be out of reach, and it
2 encourages other countries in turn to
3 reciprocate by assisting arbitral tribunals
4 here, and that, in turn, promotes this country's
5 pro-arbitration policy.
6 And the statute does this with a range
7 of safeguards. Parties that don't want
8 assistance can opt out by agreeing not to seek
9 it. The arbitral institutions can prohibit or
10 limit it through their rules. And we're talking
11 here only about a grant of authority to
12 entertain a request.
13 As this case shows, nothing requires a
14 district court to grant all of the assistance
15 that's requested or any of it.
16 I'll be pleased to answer the Court's
17 questions.
18 CHIEF JUSTICE ROBERTS: Counsel, we
19 just heard from the government's representative,
20 who made a number of representations about the
21 government's views with relation to other
22 governments around the world.
23 Now they're -- those are, of course,
24 not determinative, but I wonder if you have a
25 response to those concerns.

1 MR. DAVIES: Mr. Chief Justice, the
2 government and the Petitioners are taking an
3 awfully narrow view of comity. This Court in
4 Mitsubishi Motors and in Scherk, in the course
5 of enforcing arbitration agreements, noted that
6 arbitration does promote international comity in
7 the international commerce space.
8 And -- and so it really is very narrow
9 a view that they are taking. As I've said, it
10 really does promote comity. It does encourage
11 other countries to assist tribunals here.
12 And I know that my friend was
13 dismissive of the number of countries that have,
14 in fact, reciprocated, but the countries that
15 have are major arbitral centers. It's the
16 United Kingdom. It's France. It's Sweden.
17 It's Switzerland. So there is some evidence
18 that the reciprocation, the comity, has actually
19 happened.
20 JUSTICE GORSUCH: Counsel, I think
21 that the concern was, in addition to what you
22 described, more of a -- a question of Congress's
23 prerogatives here and -- and the political
24 branches' prerogatives in this area, the State
25 Department and other branches, parts of the

1 executive branch.

2 In 1964, a foreign tribunal, an

3 international tribunal, there's a lot of

4 evidence that it was a court or something very

5 much like a court, and arbitration on the scale

6 that we're talking about today was unknown.

7 And that maybe we could rejigger the

8 Intel factors to say you've got to ask the

9 arbitrator first and he's got to agree or we --

10 we -- there's a lot of workarounds that we -- we

11 could patch up, I suppose. That's the argument

12 I understand you to be making.

13 But that the government's position is,

14 well, maybe it would like to be heard on some of

15 these things in -- in a legislative process and

16 that 1782 was itself a product of legislation,

17 and the court's jurisdiction in these matters,

18 especially involving foreign international

19 questions, questions of comity, are usually

20 resolved by the political branches rather than

21 by -- by this one.

22 So I -- I -- I -- I took that to be

23 the thrust of Mr. Kneedler's presentation.

24 Could you address that?

25 MR. DAVIES: There was a process

1 leading up to the 1964 statute. This statute
2 was --
3 JUSTICE GORSUCH: Well, of course.
4 And, again, and I hate to repeat myself, but, in
5 1964, I don't think anybody thought Congress was
6 contemplating the world in which we live today
7 with respect to international arbitration, okay?
8 And -- and -- and so, again, if -- if
9 that's true, take that premise, all right, and
10 you may contest it, but just accept it for
11 purposes of the question that I think there's a
12 lot of evidence in the statute, letters
13 rogatory, processes and procedures, 16 -- what
14 is it, 1965 -- sorry, 1696, 1781, those
15 provisions, a lot of evidence there talking
16 about courts.
17 And that, to the extent we're going to
18 start invoking comity, shouldn't this Court be
19 hesitant to -- to -- to -- to step into that
20 kind of international breach?
21 MR. DAVIES: No. Congress has already
22 enacted a statute that covers foreign tribunals,
23 including foreign-seated commercial arbitral
24 tribunals. If Congress --
25 JUSTICE GORSUCH: Again, I'm going to

1 ask you one more time. Assume that that's
2 really, you know, not as clear as you think it
3 is, okay? Why shouldn't I err in the other
4 direction of allowing the political branches to
5 address this question first?
6 MR. DAVIES: I mean, it sounds as
7 though the political branches want to be heard
8 in respect of a potential amendment to the
9 statute. I think that that may be appropriate
10 --
11 JUSTICE GORSUCH: All right.
12 MR. DAVIES: -- if there are
13 unforeseen applications of this --
14 JUSTICE GORSUCH: I understand you
15 contest the premise of the question.
16 MR. DAVIES: To -- to -- to address
17 the question about the -- the -- the fact that
18 there is no basis to -- to limit this statute to
19 the tribunals of foreign countries, I mean,
20 that's not something that's supported by
21 contemporaneous usage.
22 And, in fact, it's not supported by
23 Intel either. In Intel, the tribunal was a
24 tribunal because it had a quasi-judicial
25 adjudicative function. The Court referred to

1 its authority to determine liability, a
2 disposition that'll be final unless overturned
3 by a reviewing court.
4 And it's significant that in Intel,
5 the government urged the Court to rule on the
6 basis that that tribunal was governmental in
7 nature. It's at page 16 of the government's
8 amicus brief in Intel. The Court clearly paid
9 close attention to the government's amicus brief
10 in Intel but did not accept that -- that basis
11 for ruling.
12 And, really, to go back to the
13 legislative history, we don't think the Court
14 needs to look at the legislative history. We
15 think that, in context, the text of the statute
16 is clear enough, and so there is no need.
17 JUSTICE BREYER: All right. But I --
18 I -- I'm still with Justice Gorsuch's question.
19 Look, as -- I don't want to rephrase it because
20 I think he phrased it exactly right. Assume I
21 don't agree with you. I do not believe that
22 this statute is so clear in its history and
23 language, okay?
24 And I worry because there are lots of
25 problems once you go to arbitration, for private

1 commercial arbitration. Company A wants to get
2 a lot of information before there's even a
3 proceeding started. Two, they want to get some
4 information of a kind that the foreign
5 proceeding wouldn't want to get. It can't under
6 that law. Three, four, five, they're all
7 listed.
8 And now I understand the government's
9 view. There are too many problems extending
10 this. There are only two circuits that have
11 done it. And maybe -- I don't know about what
12 the Restatement said. I haven't read it.
13 But go to Congress. Now we're not
14 asking people who are penniless and have no
15 influence to go to Congress. We're asking major
16 companies in the United States and abroad who
17 use this system, commercial arbitration, go to
18 Congress and get it worked out.
19 Now that I think I learned, whether he
20 intended to say it or not -- I think he did --
21 from the government. And so don't we want to
22 know what you think about that?
23 MR. DAVIES: Your Honor, the issues
24 that -- that have been identified can all be
25 addressed within the statute encompassing these

1 types of -- of tribunals.
2 There was a reference to the
3 difficulty caused when evidence assistance is
4 sought before an arbitration has begun. Well,
5 the statute we know already encompasses that
6 because Intel said the proceeding only has to be
7 in contemplation.
8 For future cases, there could be a
9 rule that the Intel discretionary factors now
10 include a requirement to exercise caution before
11 the tribunal has been constituted. Perhaps you
12 only grant assistance if there are some kind of
13 exceptional circumstances.
14 So all of those concerns can be
15 addressed within the structure of the statute
16 that we already have.
17 JUSTICE GORSUCH: I think the question
18 we're -- we're -- we're presenting is there are
19 going to be a lot of these questions, aren't
20 there? I mean, you're right, 1782, you don't
21 require proceedings. They don't have to exist.
22 Arbitration, we contemplate how far -- how close
23 in time do we have to expect this arbitration to
24 exist. What if -- how much -- how many of the
25 arbitrators have to agree, or maybe they don't?

1 It all runs very counter to our
2 intuitions about arbitration, which is that it's
3 supposed to be quick, it's supposed to be
4 governed by an arbitrator, we're not supposed to
5 have U.S.-style discovery.
6 And 1782 is a very liberal grant of
7 discovery. And -- and, yes, maybe we can devise
8 a workaround. I don't doubt it. I mean, I'm --
9 I'm quite confident Justice Breyer can come up
10 with an excellent list of factors that I'd
11 probably vote for if I were a legislator.
12 But I guess the question is, why --
13 why should we be doing that? Why shouldn't you
14 go to Congress?
15 MR. DAVIES: Ultimately, the answer to
16 this is that we -- we have a broad statute. And
17 -- and there was -- there was reference, when my
18 friend was arguing, to -- to the phrase "foreign
19 tribunal" and it having a governmental
20 limitation.
21 Neither side has been able to point to
22 usage of that term to mean what it is asking the
23 Court to rule now. We don't have an example of
24 it being used to reference arbitral tributnals,
25 and my friend doesn't have an example of it

1 being used to reference courts and non-judicial
2 adjudicative bodies of foreign countries.
3 And that's not terribly surprising
4 because Congress and this Court wouldn't have
5 had much reason prior to the 1970s to be talking
6 about foreign commercial arbitral tribunals at
7 all. And it's different from "foreign leader"
8 or "personal privacy." Those are phrases that,
9 based on usage, have some linguistic resonance
10 that's narrower than the ordinary meaning of
11 their terms.
12 And so what Congress has done is used
13 a broad phrase that didn't then have a
14 particular narrow meaning. And so there is
15 really no basis to do anything, other than apply
16 the most natural meaning of the two words,
17 "tribunal" as interpreted in Intel to mean an
18 adjudicative body that has the authority to make
19 a final ruling subject only to court review and
20 -- and "foreign."
21 And we know that in the 1964 statute,
22 Congress did not use the word "foreign" to mean
23 foreign governmental. When Congress wanted to
24 say foreign governmental in the 1964 statute in
25 Section 5 of it, it used the words "of a foreign

1 country." That's how it referenced the official
2 document of a foreign government. When it used
3 the word "foreign" in Section 2 of the same
4 statute, it was referring only to things outside
5 the United States, documents located overseas.
6 And so putting these terms together,
7 which is really all that we can do because there
8 was no definition of the term as a -- you know,
9 as a phrase at that point, that covers foreign
10 commercial arbitral tribunals.
11 CHIEF JUSTICE ROBERTS: Well, what you
12 --
13 JUSTICE SOTOMAYOR: Mr. Davies -- I'm
14 sorry.
15 CHIEF JUSTICE ROBERTS: What you've
16 just done in your presentation, of course, is
17 take the two words and sever them and focus on
18 one -- sort of one at a time and then treat
19 those as -- as constituents.
20 Well, your friend on the other side
21 makes the point that you need to look at the
22 phrase as a phrase. It's not what does a
23 tribunal mean, what does foreign mean? It's
24 what is a foreign tribunal?
25 Do you have any response to that?

1 MR. DAVIES: Mr. Chief Justice,
2 neither side has been able to demonstrate a
3 preexisting understanding of the -- of the
4 phrase "foreign tribunal."
5 My friend referenced the Corpus
6 Linguistics study. The -- the Court should
7 disregard that. That was self-published. It's
8 full of gaps. It's full of typographical
9 errors. Self-published three days before the
10 reply brief was filed. It says that it was done
11 by -- by some coders. It doesn't tell us --
12 it's inconsistent whether there were two or
13 three coders. But, ultimately, all it ends up
14 doing is establishing that the phrase didn't
15 really have a meaning as of 1964. They only
16 were able to come up with a couple of hundred
17 usages ever.
18 And so, here, really, what the Court
19 can do is to look to the words that were used,
20 "tribunal" as interpreted in Intel and as used
21 at the time to mean commercial arbitral tribunal
22 and "foreign" as used in the 1964 statute to
23 mean outside the United States.
24 I do accept that the 1958 statute that
25 established the commission used the expression

1 "agencies," but that was not the expression that
2 Congress used when it came to write the 1964
3 statute. It used a different phrase, "foreign
4 tribunal," presumably to mean something
5 different.
6 And my friend referenced the fact that
7 for decades after the -- the statute was
8 enacted, it was understood that it didn't apply
9 to foreign commercial tribunals. That's really
10 not right. I mean, the absence of commentary
11 one way or the other on this really doesn't tell
12 us that there was an understanding that it
13 didn't apply to foreign commercial tribunals.
14 In fact, there's little evidence that
15 this statute was used by private litigants for
16 much of anything prior to the 1990s. It may be
17 that this statute just sort of passed into --
18 into obscurity. That's what had happened with
19 the 1855 statute that started this. And so
20 little evidence that it was used for much of
21 anything before the 1990s.
22 If I could address some of the -- the
23 policy issues that were discussed during my
24 friend's presentation.
25 Really, this does support commercial

1 arbitration, and in the international commercial
2 context, the considerations are different than
3 they are in purely domestic arbitrations.
4 Evidence gathering, discovery, is not
5 alien to foreign commercial arbitrations. And
6 this is all subject to the proviso that, if the
7 parties don't want it or the institutions don't
8 want it, then they can prohibit it.
9 And there was a reference in the
10 government's presentation --
11 CHIEF JUSTICE ROBERTS: You mean in a
12 case-by-case basis the arbitrators would
13 prohibit it?
14 MR. DAVIES: Well, the parties could
15 prohibit it in their arbitration agreements.
16 CHIEF JUSTICE ROBERTS: Oh.
17 MR. DAVIES: And the arbitration
18 institutions could prohibit it in the rules that
19 apply to -- to all of the arbitrations that they
20 perform.
21 CHIEF JUSTICE ROBERTS: Thank you.
22 MR. DAVIES: There was a reference to
23 the -- the -- the conflict or the asymmetry with
24 Section 7 of the -- of the Federal Arbitration
25 Act.

1 And, to be sure, there is an asymmetry
2 because Section 1782 permits assistance to
3 foreign tribunals that's not available for
4 domestic arbitral proceedings or domestic
5 judicial proceedings, pre-filing discovery,
6 requests by interested non-parties. But I think
7 that's -- that's explicable on -- on two
8 potential bases.
9 One is the policy ground. I've talked
10 about, you know, Congress was trying to assist
11 in the resolution of cross-border commercial
12 disputes. It's not that Americans are targeted
13 by Section 1782 requests. American businesses
14 themselves are involved in foreign arbitral
15 proceedings and, therefore, can use the
16 assistance that it offers.
17 And I think the other explanation,
18 potential explanation for this asymmetry is much
19 more prosaic. I mean, we have three different
20 regimes, assistance to foreign proceedings,
21 assistance to domestic arbitral proceedings, and
22 domestic judicial proceedings, all enacted
23 separately decades apart with little evidence
24 that Congress has ever really considered whether
25 they fit together and, if so, how.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.
3 Justice Breyer, anything further?
4 Justice Sotomayor?
5 Justice Kagan?
6 Justice Gorsuch?
7 Justice Barrett? No?
8 Thank you, counsel.
9 Mr. Yanos.
10 ORAL ARGUMENT OF ALEXANDER A. YANOS
11 ON BEHALF OF THE RESPONDENT IN 21-518
12 MR. YANOS: Thank you, Mr. Chief
13 Justice, and may it please the Court:
14 I -- I want to begin with, since I'm
15 last in the order, with some of the questions
16 that arose earlier today.
17 I heard the United States say over and
18 again that arbitration was not contemplated in
19 Section 1782. I think that's just flat wrong.
20 First of all, it's irrelevant in any
21 event because, as -- as Justice Scalia in his
22 concurrence in Intel pointed out and as this
23 Court described in Bostock, what's important is
24 what the language of the statute says, not what
25 was intended in the minds of various Senate

1 reports.

2 But, in any event, the Senate report

3 and the House report contemporaneously

4 emphasized the importance of that German Mixed

5 Claims Commission to its desire to amend

6 Section 1782 as it did.

7 And I think it's worth recalling that

8 the German Mixed Claims Commission set up a

9 tribunal where each government appointed one

10 commissioner and then -- and the -- the word

11 used is an "umpire" as the -- effectively the

12 chair. That's an arbitration. That's plain and

13 simple.

14 So it can't be the case that no

15 arbitrations were contemplated within the

16 meaning of the concept of tribunal. And that

17 was an international tribunal, and ours is as

18 well.

19 And with that, I welcome the Court's

20 questions.

21 If there are none, I want to --

22 CHIEF JUSTICE ROBERTS: Well, I --

23 I'll begin with the same question I had for your

24 friend. What -- what do you -- how do you react

25 to the government's representations of the

1 foreign policy impacts?

2 Again, the decision on what the

3 statute means is, of course, ours. But we do

4 look to what the position of the United States

5 is when -- particularly when dealing with

6 something that has an effect on foreign affairs.

7 MR. YANOS: Absolutely. I -- that's

8 actually exactly where I was going to go.

9 The first thing I would mention is

10 that a number of sovereigns have invoked

11 Section 1782 in connection with Bilateral

12 Investment Treaty disputes, Turkey, Equador.

13 That's -- that's in -- in our brief in one of

14 the footnotes.

15 So it's not only investors who have

16 invoked Section 1782 to obtain third-party

17 discovery. So, you know, comity should --

18 should take that into account as well.

19 And the other is that, obviously, the

20 Mixed Claims Commission had no ability to

21 reciprocate to the United States when it was

22 coming to discovery. So comity is not purely a

23 bilateral question. It's a question of

24 respecting international tribunals created by

25 sovereigns or imbued with authority by

1 sovereigns and giving those tribunals respect
2 and promote -- you know, assisting them.
3 And I should mention that Mixed Claims
4 Commissions existed well beyond the
5 German-American Mixed Claims Commission. There
6 were a number formed involving foreign
7 sovereigns like Mexico and France, and, of
8 course, the U.S. was an innovator in this
9 respect going all the way back to the Jay
10 Treaty, but those were effectively disputes
11 involving private property.
12 Starting with the Jay Treaty, the
13 whole point was that there were U.S. citizens
14 whose property was damaged by the Brit --
15 British forces, and there were British subjects
16 whose property was -- was damaged by United
17 States forces, and this was an opportunity where
18 there was espousal, of course, for one
19 government to represent those interests in a
20 dispute.
21 And that's exactly what's happening
22 here, except that we've cut out, as -- as I
23 think it was Justice Kagan mentioned --
24 CHIEF JUSTICE ROBERTS: Well, the
25 extent -- the extent to which any proceeds would

1 be distributed, that -- that wasn't resolved. I
2 mean, it was a case involving the state.
3 MR. YANOS: The state was representing
4 the individual, and the property that -- the
5 funds that were received by the state were then
6 provided to the individual.
7 And that's how the Mixed Claims
8 Commission worked as well. I --
9 CHIEF JUSTICE ROBERTS: I -- I guess,
10 tell me again exactly what your reliance on the
11 Jay Treaty and the original trial action is. I
12 don't see that as a private entity. I don't see
13 in which way -- in what way it is distinct from
14 simply a case.
15 MR. YANOS: Oh. Well, because in --
16 in -- whether we're talking about the Jay Treaty
17 or the Mixed Claims Commission, each sovereign
18 appointed a commissioner and then the two
19 sovereigns jointly appointed an umpire.
20 Those persons were not, at the moment
21 they were serving on this Commission, operating
22 as a U.S. -- whether they were previously a U.S.
23 judge or a judge from Great Britain or Germany,
24 at the moment they were serving as commissioners
25 or arbitrators or umpires, they were sitting in

1 a completely different capacity.
2 They were arbitrators. They were
3 sitting in a dispute effectively private between
4 two sovereigns. In our case, the sovereign has
5 appointed one arbitrator. The -- the foreign
6 investor has appointed the second arbitrator.
7 And the two jointly have -- have appointed the
8 chair.
9 But what -- what's most important is
10 that the arbitration could not -- the arbitral
11 tribunal could not exist without the impetus of
12 the treaty both in terms of the offer to
13 arbitrate but also the arbitration -- the law
14 applicable to the dispute. As -- as the Chief
15 Justice noted in -- in the dissent in BG, this
16 is a fundamentally sovereign dispute.
17 The -- the sovereign is allowing a
18 tribunal to sit in judgment of its legislation,
19 of its sovereign acts. Did it breach the
20 treaty? Did it -- did it engage in
21 expropriation without compensation? Did it
22 treat an individual unfairly or inequitably?
23 Did it fail to provide full protection and
24 security? These are --
25 JUSTICE GORSUCH: Mr. Yanos, let me

1 see if I --

2 MR. YANOS: Yes. Thank you.

3 JUSTICE GORSUCH: -- I mean, I think I

4 -- I take your point to the Chief Justice that

5 any account on the other side has to recognize

6 the existence of these arbitral panels between

7 Canada and the Mixed Claims Commission with

8 Germany.

9 But I also take there the distinction

10 that's being proffered by the other side to go

11 something like this, all right, that there it

12 was state-to-state. Here, there's a private

13 party involved.

14 There, there was some exercise of

15 governmental authority. Those commissions could

16 -- for example, I think the U.S.-Canada one

17 could issue subpoenas, administer oaths. Here,

18 there's none of that.

19 And, here, additionally, though there

20 is a treaty, as you point out, between states,

21 there's just no indication that -- that in -- in

22 -- in reaching those treaties, they understood

23 -- those states understood that they could be

24 subjecting themselves to full U.S. discovery.

25 And there's some indication that they

1 thought they wouldn't be doing that by agreeing
2 to arbitration, which takes us back to, in my
3 mind, again, the kind of, well, if we're really
4 not sure here, right, what -- what they signed
5 up for or what this statute says, shouldn't this
6 be left to Congress?
7 There's a lot there to unpack. Have
8 at it.
9 MR. YANOS: I look forward to it.
10 The first thing I would remind the
11 Court is that this is third-party discovery.
12 This is not an end-around discovery within the
13 arbitration process. I'm not seeking --
14 JUSTICE GORSUCH: That -- that -- that
15 doesn't work for me, all right? And I -- I'm
16 just putting my cards on the table.
17 MR. YANOS: Okay.
18 JUSTICE GORSUCH: I understand that,
19 yes, it's third-party discovery, but, boy, I
20 don't know anybody who represents a party who
21 doesn't dread the scope of third-party subpoena
22 practice and the expense and the delay that's
23 involved.
24 And, again, before we'd assume that --
25 that -- that foreign states have signed up for

1 that in America, shouldn't we be a little -- a
2 little cautious?
3 MR. YANOS: Well, I -- I appreciate
4 the point, although I would again remind you
5 that sovereigns themselves have invoked 1782 in
6 the U.S. to obtain discovery from third parties
7 as well.
8 But I -- I think that the broader
9 point is that whether -- whether we're talking
10 about third-party discovery in support of, you
11 know, criminal court proceedings in Spain or a
12 Bilateral Investment Treaty dispute in France in
13 relation to a treaty signed by Russia and
14 Lithuania, nobody out -- outside of the U.S.
15 signed up for third-party discovery dealing with
16 those issues, but Congress decided that it
17 wanted to provide support to those foreign or
18 international tribunals.
19 And that's what this Court is
20 enforcing. And I think that's where -- where we
21 need to -- to, you know, put our focus. And
22 that's why I mentioned the -- fundamentally, you
23 know, whether we take it as a phrase,
24 "international tribunal," or we -- we take the
25 two constituent elements, an "international"

1 "tribunal," we know that the tribunal could be
2 arbitral because the German Mixed Claims
3 Commission was an arbitral tribunal.
4 So then the question is, does the word
5 "international" carry so much water that it says
6 no, it can't possibly be an investment treaty
7 arbitration tribunal; it has to only be a
8 tribunal where two -- the two sovereigns are
9 involved? And I just don't see that the word
10 "international" can carry that -- that kind of
11 weight.
12 JUSTICE SOTOMAYOR: Mr. Yanos, I agree
13 with you that some international tribunals,
14 particularly those that prosecute individuals,
15 often don't involve the foreign states in the
16 litigation. So we have plenty of those around.
17 Why they're international, we can discuss.
18 But I'd like you to go back to Justice
19 Gorsuch's question. The other side says there
20 are important distinctions that take this away
21 from those other forms of arbitration. The
22 first, and not unimportantly, is that the
23 agreement doesn't create the arbitration
24 mechanism. The agreement has to be invoked by a
25 private party or by the government. So that's a

1 big distinction in their mind.
2 Others are that the parties are -- are
3 not resolving state-to-state disputes but
4 private litigant disputes. So, there, it's a
5 private dispute, not a government-to-government
6 dispute.
7 So could you address those two
8 differences?
9 MR. YANOS: Yes. First of all, to
10 answer the second part of your question first, I
11 think it's highly important that this tribunal
12 is deciding whether Lithuania breached its
13 obligations to Russia.
14 It -- it is a hybridized institution,
15 a Bilateral Investment Treaty tribunal, right,
16 because it is at once public international law
17 and private international law. The -- the --
18 there -- it's a dispute where there's been an
19 offer created in a -- required in a treaty and
20 an acceptance provided by an individual.
21 But then the arbitral tribunal itself
22 has to answer a very particular question. The
23 question is, did Lithuania breach its
24 obligations to Russia? Not did it breach its
25 obligations to an individual like my client?

1 Did it breach its obligations to Russia?

2 And the obligations are to Russia that

3 it would not take citizens' property without

4 fair, prompt, and adequate compensation, that it

5 would treat them fairly and equitably. Those

6 are promises that Lithuania did not make to my

7 client. My client is not a party to the treaty.

8 It made that promise to Russia, to the Russian

9 Federation.

10 And so it is a fundamentally

11 international dispute from that perspective, and

12 that's why -- what I meant when I said that the

13 law applicable is the law of the treaty, the law

14 between two sovereigns.

15 And then, to -- to come back to the

16 first part of your question, which is, yes, it

17 is true, again, that there was a private

18 litigant that accepted the offer of arbitration

19 in the treaty, but, again, the first part is --

20 is -- is fundamental as well, that the sovereign

21 made the offer, and the reason the sovereign

22 made the offer is because it was required to do

23 so in the context of reciprocal promises to --

24 between sovereigns.

25 If I may address one other point, and

1 this is -- this relates to the policy
2 considerations. This treaty and many, many
3 other treaties include language that says that
4 the investor has the opportunity to decide. We
5 could have gone to the Lithuanian courts or we
6 could have commenced an arbitration to resolve
7 the dispute as to whether our property was
8 expropriated.
9 And as was noted in the earlier
10 colloquy, 1782 does not require a proceeding to
11 have been initiated in order to come to the U.S.
12 courts, okay? You can contemplate a proceeding.
13 So what would be the effect of saying
14 that a Bilateral Investment Treaty tribunal is
15 not an international tribunal within the meaning
16 of the statute? Litigants would simply bring
17 their discovery applications sooner. They would
18 say, well, I haven't filed; I have sent a
19 trigger letter. The trigger letter, which is --
20 in -- in my world, the -- the parlance of that
21 is a notice of -- of a dispute under the treaty.
22 It doesn't have to accept a particular form of
23 dispute resolution that can be done later.
24 So the litigant can say: I have
25 notified the state of my -- of the fact of a

1 dispute, but I haven't decided. I may go to
2 court; I may go to arbitration. So, since the
3 court option is clearly a foreign tribunal
4 within the meaning of 1782, let's have my
5 discovery now, and then I'll file the request
6 later.
7 So we'd effectively only be forcing
8 litigants to bring disputes earlier. It would
9 also be asymmetrical because the -- the
10 governments would not have the opportunity to
11 make the same application, so you wouldn't have
12 Turkey or Lithuania or Ecuador seeking
13 discovery.
14 So I think our result is much better
15 from an international law standpoint.
16 CHIEF JUSTICE ROBERTS: Counsel, you
17 generously cited my dissent in the BG Group
18 case. I went and looked back at it. It turns
19 out that seven members of the Court joined
20 Justice Breyer's majority opinion. What do I --
21 MR. YANOS: And I was counsel --
22 CHIEF JUSTICE ROBERTS: -- what do I
23 do with that?
24 MR. YANOS: -- for the petitioner in
25 that case.

1 CHIEF JUSTICE ROBERTS: Oh. Well,
2 congratulations.
3 (Laughter.)
4 CHIEF JUSTICE ROBERTS: I mean, does
5 that affect the point for which you was citing
6 -- you were citing the dissent?
7 MR. YANOS: No, it doesn't because I
8 don't think Justice Breyer argued that it was
9 any less of a sovereign capacity that -- that
10 the agreements were being made in the treaty.
11 My point was only that I thought that
12 the dissent more fundamentally described the --
13 the nature of what is agreed in a Bilateral
14 Investment Treaty. The -- the majority opinion
15 didn't really go into it as -- in as great a
16 detail. But that wasn't, of course, what --
17 what the fundamental issue was in the case,
18 although perhaps the dissent would have argued
19 it was.
20 JUSTICE BREYER: It was a very good
21 dissent. Just not good enough to join it.
22 CHIEF JUSTICE ROBERTS: Justice --
23 Justice Kennedy thought so but no one else.
24 JUSTICE BREYER: Yes.
25 CHIEF JUSTICE ROBERTS: Justice

1 Breyer, anything further? No?
2 Justice Alito, anything else? Okay.
3 Justice Gorsuch?
4 Justice Kavanaugh? No?
5 Thank you, counsel.
6 MR. YANOS: Thank you.
7 CHIEF JUSTICE ROBERTS: Mr. Martinez.
8 REBUTTAL ARGUMENT OF ROMAN MARTINEZ
9 ON BEHALF OF THE PETITIONERS IN 21-401
10 MR. MARTINEZ: Three quick points,
11 Your Honors.
12 First of all, this case turns on the
13 text and history of the key phrase and in
14 particular the -- the meaning of the entire
15 phrase "foreign tribunal" or "foreign
16 international tribunal."
17 Luxshare has conceded what I think was
18 apparent from their briefs, which is that they
19 don't have any evidence, any example, of the
20 phrase "foreign tribunal," the one that's used
21 in this statute, ever being used to cover
22 private arbitrations. They don't give us a
23 dictionary example. They don't give us a
24 statute. They don't give us a court decision, a
25 newspaper, nothing.

1 And so, instead, what they do is they
2 criticize our use of -- our statutory arguments.
3 They say we don't have an example either. But
4 that's not right. We have the Corpus
5 Linguistics study, which, if you want to look at
6 it or not, we think you should look at it.
7 My friend criticized the study in
8 various ways. We think you can judge for
9 yourself. There's a 283-page appendix that's
10 appended to the study that lets you kind of
11 check their work.
12 More importantly, though, it's just
13 not true, as my friend said, that we have not
14 cited a single example of anyone using the
15 phrase "foreign tribunal" to go beyond courts to
16 cover other types of quasi -- of governmental
17 entities. The very best example of that is this
18 exact statute, this exact statute.
19 The rules commission itself said we're
20 using the word "foreign tribunal" because we
21 want to pick up quasi-judicial agencies, foreign
22 administrative tribunals, and investigating
23 magistrates. So this example, I think, refutes
24 their case. And in the absence of any example
25 on their side, I think we win sort of the plain

1 text argument. And I think that's true in both
2 cases. If you look at the text, the surrounding
3 context, and the history, I think we have the
4 better reading.
5 Second, I just want to touch on the
6 possible workaround Justice Breyer suggested,
7 which is essentially allowing this kind of
8 discovery only when the arbitrator says it's
9 okay. We don't think that's work -- a workable
10 solution for a couple reasons.
11 First of all, Intel forecloses it
12 because Intel contemplates that 1782 can be used
13 pre-arbitration. So that's a categorical
14 problem. My friend on the other side says:
15 Okay, well, you can essentially rewrite Intel by
16 making it essentially a requirement. I don't
17 think this Court is -- is -- I don't think
18 anyone's asked the Court to rewrite Intel, and
19 that's not really presented or a good solution.
20 Because of the Intel problem, what
21 would then happen, Justice Breyer, is that the
22 parties would have to argue about what a
23 hypothetical arbitrator, if and when he's later
24 appointed, would do and how that person might
25 conceivably think about the possible use of 1782

1 evidence.
2 So they're going to be just guessing.
3 And they're not going to be guessing in a -- in
4 a place where they're going to have a lot of
5 guidance because, in a lot of the arbitration
6 contracts, it doesn't specify this -- this --
7 the rules governing discovery.
8 In a lot of those contracts and under
9 the laws of the countries, it basically says the
10 arbitrator gets to decide. So they're going to
11 be doing guesswork. And in a lot of cases,
12 courts are going to be guessing wrong or doing a
13 lot of work and then it turns out that the
14 arbitrator didn't want the information anyway.
15 It also doesn't solve the comity
16 problem, the fact that -- that the United States
17 would be an outlier, because U.S.-style
18 discovery is so broad, and 1782 is so easily
19 abused to get evidence, even evidence that's
20 outside the United States, so long as you have
21 someone in the United States that you can go
22 after to -- to seek that evidence from.
23 What all this means is that the
24 solution here is to go to Congress. If Congress
25 wants to fix this statute or tailor it in any of

1 these ways that anyone has suggested here,
2 that's the appropriate solution. We ask you to
3 reverse.
4 CHIEF JUSTICE ROBERTS: Thank you,
5 counsel. The case is submitted.
6 (Whereupon, at 11:51 a.m., the case
7 was submitted.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1

1 [1] **44:**4
10:00 [2] **1:**22 **4:**2
105-page [2] **15:**10 **16:**19
1059 [1] **26:**20
109 [1] **3:**20
11:51 [1] **113:**6
14A [1] **14:**19
16 [2] **82:**13 **84:**7
1696 [3] **13:**22 **52:**19 **82:**14
17 [2] **15:**13 **49:**6
1781 [3] **13:**21 **52:**19 **82:**14
1782 [35] **5:**17 **6:**5 **13:**20 **15:**8 **28:**13 **51:**6,12,17 **52:**3,19 **54:**18 **55:**13,17 **57:**3,5 **63:**25 **66:**14,18 **69:**5 **70:**1 **81:**16 **86:**20 **87:**6 **93:**2,13 **94:**19 **95:**6 **96:**11,16 **102:**5 **106:**10 **107:**4 **111:**12,25 **112:**18
1782's [1] **4:**17
1855 [1] **91:**19
1930 [1] **56:**21
1933 [1] **56:**22
1958 [5] **5:**7 **14:**17 **15:**14 **17:**7 **90:**24
1964 [23] **5:**18 **11:**14,18 **47:**24 **51:**7 **52:**17 **54:**19 **63:**16 **66:**15 **69:**19 **70:**1,7 **71:**23 **73:**8,13 **81:**2 **82:**1,5 **88:**21,24 **90:**15,22 **91:**2
1965 [1] **82:**14
1970s [1] **88:**5
1990s [2] **91:**16,21

2

2 [3] **15:**14 **44:**5 **89:**3
2,000 [1] **62:**21
2004 [1] **34:**24
2022 [1] **1:**17
21-401 [10] **2:**4,12 **3:**4,14,20 **4:**9,14 **28:**6 **77:**22 **109:**9
21-518 [5] **2:**6,14 **3:**7,17 **94:**11
23 [1] **1:**17
270 [2] **55:**23 **56:**22
28 [1] **3:**7
283-page [1] **110:**9

4

4 [1] **3:**4
45 [1] **15:**20

5

5 [1] **88:**25
51 [1] **3:**11
58 [2] **14:**25 **16:**10

7

7 [2] **59:**7 **92:**24
77 [1] **3:**14

9

94 [1] **3:**17

A

a.m [3] **1:**22 **4:**2 **113:**6
abdication [1] **65:**17
ability [2] **27:**3 **96:**20
able [4] **61:**3 **87:**21 **90:**2,16
above [1] **44:**20
above-entitled [1] **1:**20
abroad [3] **6:**10 **20:**3 **85:**16
absence [2] **91:**10 **110:**24
absolutely [2] **9:**12 **96:**7
abuse [1] **64:**10
abused [1] **112:**19
academics [1] **9:**24
accept [4] **82:**10 **84:**10 **90:**24 **106:**22
acceptance [2] **68:**25 **104:**20
accepted [2] **73:**4 **105:**18
accepts [2] **54:**12 **62:**10
access [1] **78:**25
accordingly [1] **51:**12
account [4] **48:**9 **64:**3 **96:**18 **100:**5
accurate [1] **10:**14
achieve [1] **5:**12
achieves [1] **30:**7
acquisition [2] **61:**24 **73:**1
across [1] **26:**9
Act [20] **5:**7 **14:**18,25 **15:**15 **16:**10 **17:**7 **45:**15 **52:**7,18 **54:**19 **59:**8 **61:**22 **63:**16 **69:**19 **70:**1,7 **71:**23 **72:**2 **74:**17 **92:**25
acting [2] **41:**3 **43:**15
action [1] **98:**11
actors [2] **26:**10,14
acts [1] **99:**19
actual [1] **22:**16
actually [4] **36:**11 **63:**16 **80:**18 **96:**8
ad [5] **28:**10,19 **29:**1 **30:**12 **72:**3
add [3] **7:**24 **25:**16 **38:**2
added [1] **11:**21
adding [1] **7:**2
addition [2] **14:**8 **80:**21
additionally [1] **100:**19
address [7] **33:**2 **81:**24 **83:**5,16 **91:**22 **104:**7 **105:**25
addressed [6] **59:**6 **61:**23 **62:**9 **74:**18 **85:**25 **86:**15
addresses [1] **63:**16
adequate [1] **105:**4
adjective [2] **7:**2 **11:**22
adjudicate [1] **41:**24
adjudication [1] **78:**6
adjudicative [3] **83:**25 **88:**2,18
adjudicator [6] **30:**10 **31:**21,23 **32:**8 **35:**12 **36:**13
adjudicators [3] **15:**3 **27:**24 **48:**14
adjudicatory [4] **8:**16 **31:**10 **32:**18 **51:**14
administer [2] **56:**25 **100:**17
administering [3] **57:**25 **67:**17 **69:**15
administration [1] **67:**10
administrative [2] **16:**3 **110:**22
admitted [1] **6:**1
adopt [1] **71:**21
advance [2] **58:**4,13
advances [1] **58:**12
advantage [1] **30:**24
affairs [1] **96:**6
affect [1] **108:**5
afterwards [1] **5:**19
agencies [7] **14:**22 **15:**1,18 **16:**4 **40:**12 **91:**1 **110:**21
agency [4] **17:**13 **32:**7 **42:**25 **70:**8
agents [2] **35:**3 **50:**12
agree [5] **64:**14 **81:**9 **84:**21 **86:**25 **103:**12
agreed [6] **6:**2 **34:**7 **53:**10 **62:**21 **64:**23 **108:**13
agreeing [2] **79:**8 **101:**1
agreement [23] **28:**16 **32:**16 **34:**20 **36:**13 **47:**12 **51:**19,21 **53:**17 **54:**12 **55:**9 **56:**9 **62:**15 **67:**7,18 **68:**4,10,22,24 **69:**6 **75:**12 **77:**11 **103:**23,24
agreements [4] **6:**7 **80:**5 **92:**15 **108:**10
ahead [4] **12:**3,4 **21:**24 **72:**8
aid [2] **15:**3 **59:**23
AL [2] **1:**3,9
ALEXANDER [3] **2:**13 **3:**16 **94:**10
alien [1] **92:**5
Alito [4] **23:**16 **41:**13 **67:**23 **109:**2
ALIXPARTNERS [3] **1:**9 **60:**19 **68:**18
allow [1] **22:**4
allowing [3] **83:**4 **99:**17 **111:**7
allows [2] **19:**9 **78:**22
alluded [1] **73:**15
alludes [1] **25:**19
alluding [1] **25:**18
alone [3] **11:**10 **44:**17 **49:**2
already [5] **62:**6 **64:**13 **82:**21 **86:**5,16
alternative [2] **51:**10 **66:**13
alternatively [1] **49:**22
alternatives [1] **35:**5
although [2] **102:**4 **108:**18
amend [1] **95:**5
amendment [1] **83:**8
America [1] **102:**1
American [7] **5:**23,24 **6:**8 **21:**1,2 **23:**13 **93:**13
Americans [1] **93:**12
amicus [7] **2:**9 **3:**10 **18:**15 **22:**23 **51:**2 **84:**8,9
among [2] **28:**16 **34:**20
analysis [1] **47:**20
ANDREW [3] **2:**11 **3:**13 **77:**21
animal [1] **49:**8
anomalous [1] **23:**9
another [10] **12:**21 **44:**5 **46:**12 **63:**11 **69:**2,3 **71:**16 **75:**1 **77:**1 **78:**14
answer [9] **35:**25 **40:**15 **41:**8 **49:**16,25 **79:**16 **87:**15 **104:**10,22
anybody [2] **82:**5 **101:**20
anyone's [1] **111:**18
anyway [2] **60:**12 **112:**14
apart [1] **93:**23
apologize [2] **43:**12 **46:**20
apparent [1] **109:**18
APPEARANCES [1] **2:**1
appears [1] **15:**14
appellate [1] **30:**18
appended [1] **110:**10
appendix [2] **14:**20 **110:**9
applicable [2] **99:**14 **105:**13
application [1] **107:**11
applications [3] **5:**21 **83:**13 **106:**17
applies [4] **39:**5 **51:**12 **59:**8 **69:**22
apply [5] **49:**23 **88:**15 **91:**8,13 **92:**19
appoint [1] **35:**2
appointed [11] **27:**9 **56:**13,14 **62:**6 **95:**9 **98:**18,19 **99:**5,6,7 **111:**24
appoints [1] **50:**7
appreciate [1] **102:**3
approach [4] **5:**20 **19:**13 **21:**13 **25:**20
appropriate [5] **24:**20 **25:**1 **74:**15 **83:**9 **113:**2
approximation [1] **23:**10
arb [1] **56:**14
arbi [1] **20:**2
arbit [2] **34:**3 **56:**13
arbitral [34] **7:**22 **8:**1 **11:**20,22,25 **12:**9 **22:**13 **26:**23 **27:**23 **43:**8 **44:**8 **55:**5 **67:**13 **78:**3,4,11,13,20 **79:**3,9 **80:**15 **82:**23 **87:**24 **88:**6 **89:**10 **90:**21 **93:**4,14,21 **99:**10 **100:**6 **103:**2,3 **104:**21
arbitrary [1] **78:**16
arbitrate [14] **28:**24 **29:**4 **30:**16 **47:**13 **51:**23,24 **53:**11,15,17 **54:**10,13 **68:**20,23 **99:**13
arbitration [79] **5:**22 **12:**7 **17:**21 **19:**10 **20:**9,10,16,24 **23:**5 **25:**25 **26:**15,18,23 **28:**10,19 **30:**12,14 **33:**25 **34:**8 **36:**12,12 **37:**19,22,24 **42:**17 **44:**7 **45:**3 **48:**5 **51:**10 **52:**12,14,15 **53:**8 **54:**7,9 **59:**4,7,8 **61:**22,23 **62:**14,24 **66:**12 **68:**4,17 **70:**20 **72:**2 **73:**10,13 **74:**19 **78:**21 **80:**5,6 **81:**5 **82:**7 **84:**25 **85:**1,17 **86:**4,22,23 **87:**2 **92:**1,15,17,24 **94:**18 **95:**12 **99:**10,13 **101:**2,13 **103:**7,21,23 **105:**18 **106:**6 **107:**2 **112:**5
arbitrations [16] **4:**20 **5:**18 **6:**10 **21:**20 **22:**9 **26:**21 **36:**16 **37:**2 **54:**24 **55:**25 **61:**25 **92:**3,5,19 **95:**15 **109:**22
arbitrator [19] **22:**15 **30:**14 **34:**1,4 **59:**9,12 **60:**12,25 **62:**5 **75:**10,19 **81:**9 **87:**4 **99:**5,6 **111:**8,23 **112:**10,14
arbitrators [27] **6:**3 **15:**4 **26:**10,13 **27:**8 **29:**2 **33:**24 **41:**23 **42:**7,14 **44:**3,4 **45:**10,11 **46:**17 **50:**6 **51:**19 **53:**9,11 **55:**5,8 **60:**16 **69:**6 **86:**25 **92:**

12 **98**:25 **99**:2
area [1] **80**:24
aren't [1] **86**:19
arguably [2] **22**:5 **24**:5
argue [1] **111**:22
argued [2] **108**:8,18
arguing [2] **29**:20 **87**:18
argument [17] **1**:21 **3**:2,5,8,12,15, 18 **4**:8,13 **7**:18 **28**:7 **51**:1 **77**:21 **81**: 11 **94**:10 **109**:8 **111**:1
arguments [5] **4**:7 **13**:12 **58**:11,12 **110**:2
arise [1] **46**:17
arises [1] **45**:9
arising [1] **75**:11
arms [1] **5**:9
arose [1] **94**:16
around [5] **61**:6 **72**:4 **77**:13 **79**:22 **103**:16
arrangements [2] **27**:19,20
aside [2] **64**:13 **78**:7
assembled [2] **51**:19 **53**:10
assist [3] **5**:8 **80**:11 **93**:10
assistance [14] **14**:21 **51**:9 **63**:19 **74**:19 **77**:25 **78**:19 **79**:8,14 **86**:3, 12 **93**:2,16,20,21
assisting [2] **79**:3 **97**:2
assume [4] **64**:10 **83**:1 **84**:20 **101**: 24
assumes [1] **63**:25
assuring [1] **30**:21
asymmetric [1] **5**:23
asymmetrical [1] **107**:9
asymmetrically [1] **21**:1
asymmetry [3] **92**:23 **93**:1,18
AT&T [3] **9**:21 **10**:10 **24**:19
attention [1] **84**:9
attracts [1] **21**:16
attuned [1] **18**:23
audition [1] **40**:23
authority [13] **25**:14 **51**:15,16 **65**: 17,20,24 **69**:15 **75**:20 **79**:11 **84**:1 **88**:18 **96**:25 **100**:15
authorize [1] **51**:17
authorized [3] **4**:19 **77**:25 **78**:5
authorizing [1] **56**:25
AUTOMOTIVE [2] **1**:3 **4**:9
available [3] **22**:9 **59**:24 **93**:3
avoid [1] **30**:23
award [2] **25**:22 **26**:24
aware [1] **76**:12
away [2] **70**:16 **103**:20
awfully [1] **80**:3

B

back [10] **11**:3 **12**:6 **58**:8 **64**:5 **84**: 12 **97**:9 **101**:2 **103**:18 **105**:15 **107**: 18
background [5] **31**:16 **52**:21,21 **55**:12 **70**:17
bad [1] **21**:3
BAIO [65] **2**:5 **3**:6 **28**:5,7,8 **29**:21 **31**:2,5,11,19,25 **32**:3,9,22,25 **34**: 10,14,18 **35**:18,21,24 **36**:24 **37**:3,7, 13 **38**:5,10,21,24 **39**:9,12,19,22 **40**: 4,7 **41**:17,21 **42**:2,5,12,16 **43**:1,5, 11,25 **44**:10,16,21,24 **45**:4,12,21, 24 **46**:1,8,20,23 **47**:2 **48**:3,6,10 **49**: 20 **50**:2,9,20
ballpark [1] **22**:5
bar [1] **21**:18
BARRETT [7] **10**:4 **28**:3 **50**:18 **74**: 23,24 **76**:5 **94**:7
based [3] **13**:12 **49**:19 **88**:9
bases [1] **93**:8
basic [1] **11**:1
basically [4] **42**:18 **48**:24 **65**:7 **112**: 9
basis [7] **4**:6 **78**:15 **83**:18 **84**:6,10 **88**:15 **92**:12
bear [1] **27**:15
become [1] **15**:8
becoming [1] **54**:16
beforehand [1] **40**:11
begin [2] **94**:14 **95**:23
begun [1] **86**:4
behalf [15] **2**:3,5,12,14 **3**:4,7,14,17, 20 **4**:14 **28**:6 **77**:8,22 **94**:11 **109**:9
behind [1] **29**:13
believe [2] **41**:10 **84**:21
Below [1] **6**:1
benefit [1] **72**:5
Berman's [1] **37**:10
Berne [1] **22**:2
best [3] **9**:13 **78**:1 **110**:17
better [4] **46**:6 **78**:24 **107**:14 **111**:4
between [30] **14**:24 **23**:21 **24**:12 **28**:16,18 **32**:5,16 **34**:20 **40**:15 **41**: 20,25 **43**:7,23,24 **44**:8 **48**:17,18 **49**:7 **51**:20,22 **53**:4 **56**:10 **59**:15 **64**:20 **76**:23 **99**:3 **100**:6,20 **105**:14, 24
beyond [4] **9**:22 **11**:23 **97**:4 **110**:15
BG [3] **69**:2 **99**:15 **107**:17
biased [2] **14**:11 **33**:11
big [1] **104**:1
Bilateral [6] **96**:11,23 **102**:12 **104**: 15 **106**:14 **108**:13
binding [1] **30**:15
bit [5] **10**:22,23 **16**:1 **69**:3 **76**:15
BITs [2] **62**:22 **73**:3
Black's [1] **16**:7
bodies [10] **7**:22 **8**:16 **31**:17 **51**:14 **56**:24 **57**:24 **66**:19 **69**:17 **70**:12 **88**: 2
body [19] **8**:1 **9**:25 **31**:10 **32**:19 **35**: 11 **42**:20 **43**:3 **46**:14 **47**:16 **50**:10 **55**:7 **56**:12 **65**:9 **68**:13 **69**:4 **75**:14, 18 **76**:8 **88**:18
Bostock [3] **24**:6,7 **94**:23
both [10] **25**:6 **32**:18 **34**:19 **48**:13, 15,19 **67**:3,4 **99**:12 **111**:1
bound [1] **34**:10
boundary [1] **76**:23
boy [1] **101**:19
branch [1] **81**:1
branches [4] **80**:25 **81**:20 **83**:4,7
branches' [1] **80**:24
breach [5] **82**:20 **99**:19 **104**:23,24 **105**:1
breached [1] **104**:12
Breyer [47] **17**:16,17 **18**:3,14,22 **19**: 2,5,8,17,21 **21**:10,15,23 **35**:13 **36**: 1,20,25 **37**:4,8 **38**:1,6,13,22 **39**:1, 10,15,20,23 **40**:5 **60**:1,4,14,22 **61**: 1,8,11,14 **67**:22 **84**:17 **87**:9 **94**:3 **108**:8,20,24 **109**:1 **111**:6,21
Breyer's [2] **64**:5 **107**:20
brief [9] **7**:4 **9**:1 **16**:7 **37**:10 **55**:23 **84**:8,9 **90**:10 **96**:13
briefly [1] **25**:19
briefs [8] **4**:6 **18**:15 **22**:23 **23**:21 **40**: 2 **52**:19 **60**:7 **109**:18
bring [3] **17**:22 **106**:16 **107**:8
Brit [1] **97**:14
Britain [2] **56**:4 **98**:23
British [2] **97**:15,15
broad [6] **36**:16 **38**:15 **78**:2 **87**:16 **88**:13 **112**:18
broaden [3] **15**:25 **16**:1 **40**:13
broader [4] **12**:23 **13**:12,17 **102**:8
broadest [1] **24**:23
broadly [2] **17**:20 **36**:5
builds [1] **22**:25
bunch [2] **13**:11 **20**:15
burden [1] **21**:11
burdened [2] **21**:8 **33**:18
burdensome [2] **20**:13,20
business [2] **21**:16 **63**:7
businesses [4] **5**:24 **17**:22 **21**:2 **93**:13

C

calculus [1] **75**:3
call [4] **9**:24 **35**:15 **75**:10 **76**:6
came [2] **1**:20 **91**:2
Canada [3] **48**:5 **56**:3 **100**:7
capacity [3] **64**:25 **99**:1 **108**:9
captain [1] **8**:9
capture [2] **11**:25 **47**:25
cards [1] **101**:16
carries [2] **7**:19 **8**:17
carry [2] **103**:5,10
carve [1] **41**:7
Case [43] **4**:9,11 **6**:3 **14**:1 **24**:6 **29**: 11 **30**:1 **34**:1 **38**:20 **41**:2,5 **43**:16 **44**:14 **45**:18,20 **47**:7,8,18 **49**:2,2,4 **50**:1 **53**:22 **60**:19 **61**:17 **68**:4,18 **71**:6,7 **73**:19 **74**:6 **79**:13 **95**:14 **98**: 2,14 **99**:4 **107**:18,25 **108**:17 **109**: 12 **110**:24 **113**:5,6
case-by-case [1] **92**:12
cases [14] **4**:6 **24**:1,4,5,19 **25**:6 **30**: 2 **39**:11 **44**:17 **48**:13 **57**:17 **86**:8 **111**:2 **112**:11
categorical [1] **111**:13
category [1] **27**:21
cause [2] **71**:7 **73**:17
caused [1] **86**:3
caution [1] **86**:10
cautious [1] **102**:2
centers [1] **80**:15
central [2] **67**:12 **76**:15
certain [2] **53**:6 **73**:3
certainly [5] **22**:22 **38**:24 **41**:1,9 **48**:16
cetera [1] **18**:1
chair [2] **95**:12 **99**:8
challenges [1] **18**:24
change [2] **17**:1 **57**:21
character [5] **29**:18 **52**:6 **70**:9,15 **76**:15
characteristics [2] **68**:19 **75**:16
characters [1] **76**:14
check [1] **110**:11
CHIEF [56] **4**:3,15 **6**:14 **7**:15 **8**:12, 15 **9**:7,16 **11**:2 **17**:14 **23**:16 **25**:17 **28**:2,8 **29**:7 **41**:11 **43**:20 **47**:21 **49**: 13 **50**:17,22 **51**:4 **52**:22 **53**:18 **54**: 22 **55**:1,4 **58**:9 **67**:20 **70**:24 **74**:22 **77**:18,23 **79**:18 **80**:1 **89**:11,15 **90**: 1 **92**:11,16,21 **94**:1,12 **95**:22 **97**: 24 **98**:9 **99**:14 **100**:4 **107**:16,22 **108**:1,4,22,25 **109**:7 **113**:4
Chief's [1] **10**:10
choice [1] **15**:21
chooses [2] **47**:13 **68**:21
chop [1] **24**:21
chose [5] **5**:11 **15**:15,23 **16**:12,15
circle [1] **63**:2
Circuit [1] **10**:7
Circuit's [1] **25**:20
circuits [2] **26**:13 **85**:10
circumscribed [1] **40**:16
circumstances [1] **86**:13
circumvent [1] **6**:7
cite [1] **9**:1
cited [4] **13**:18 **22**:23 **107**:17 **110**: 14
citing [2] **108**:5,6
citizen [1] **47**:8
citizens [3] **21**:2 **37**:18 **97**:13
citizens' [1] **105**:3
city [2] **12**:20,20
Civil [1] **26**:21
claim [3] **40**:1 **56**:6,6
claimant [2] **35**:5 **47**:13
claimed [1] **5**:17
claims [15] **44**:18 **48**:1 **49**:3,5 **68**:6 **76**:20 **95**:5,8 **96**:20 **97**:3,5 **98**:7,17 **100**:7 **103**:2
clarifying [1] **74**:25
class [1] **28**:25
clause [1] **13**:20
clear [9] **4**:18 **49**:15 **66**:17,21,25 **73**:17 **83**:2 **84**:16,22
clearly [4] **55**:18 **57**:1 **84**:8 **107**:3
client [3] **104**:25 **105**:7,7
close [2] **84**:9 **86**:22
closer [3] **45**:18,20 **56**:7

Code [2] **26:**21 **52:**13
coders [2] **90:**11,13
codified [1] **56:**22
cognizant [1] **19:**22
coherent [1] **60:**15
collectively [1] **34:**5
colloquy [1] **106:**10
combined [2] **31:**9 **56:**16
come [11] **20:**17 **21:**18 **37:**16 **41:**7 **43:**4 **46:**25 **70:**16 **87:**9 **90:**16 **105:** 15 **106:**11
comes [5] **17:**2 **26:**25 **27:**18 **57:**3 **71:**19
coming [5] **24:**13 **44:**25 **53:**24 **54:** 1 **96:**22
comity [26] **5:**8 **23:**5 **51:**7 **54:**19 **58:** 5,7,14 **59:**1 **62:**12,13,17 **71:**7,12, 15,20 **72:**6 **78:**22 **80:**3,6,10,18 **81:** 19 **82:**18 **96:**17,22 **112:**15
command [5] **5:**7 **15:**6,7,10,14
commenced [1] **106:**6
commentary [1] **91:**10
commerce [1] **80:**7
commercial [22] **17:**20 **21:**19 **73:** 13 **78:**3,4,11,12,19,21,23 **82:**23 **85:** 1,17 **88:**6 **89:**10 **90:**21 **91:**9,13,25 **92:**1,5 **93:**11
commission [30] **5:**6,10 **14:**14,14 **15:**5 **16:**11,15 **17:**8 **40:**12 **48:**2,12 **49:**3,6 **56:**6,7 **57:**10 **70:**18 **76:**21, 22 **90:**25 **95:**5,8 **96:**20 **97:**5 **98:**8, 17,21 **100:**7 **103:**3 **110:**19
commission's [1] **66:**20
commissioner [2] **95:**10 **98:**18
commissioners [1] **98:**24
Commissions [2] **97:**4 **100:**15
committee [1] **47:**25
committees [1] **16:**22
common [7] **7:**1,13,13 **10:**1 **30:**6 **47:**8 **76:**16
commonly [1] **12:**8
companies [2] **5:**23 **85:**16
company [2] **48:**17 **85:**1
compelled [1] **58:**24
compelling [2] **6:**20 **64:**12
compensation [2] **99:**21 **105:**4
complete [2] **4:**21 **6:**25
completed [1] **35:**24
completely [3] **22:**10 **41:**8 **99:**1
comprehensive [1] **10:**15
comprehensively [1] **9:**3
conceded [1] **109:**17
conceivably [1] **111:**25
concept [1] **95:**16
concern [1] **80:**21
concerns [2] **79:**25 **86:**14
conclude [1] **47:**18
conclusion [1] **52:**18
concurrence [1] **94:**22
conditions [1] **72:**25
conferred [3] **25:**14 **51:**16 **68:**15
confident [1] **87:**9
confirm [1] **5:**1
conflict [2] **24:**12 **92:**23
congratulations [1] **108:**2
Congress [48] **5:**7,24 **6:**8 **11:**12,14, 20 **13:**14 **15:**6,11,17 **16:**21 **18:**10 **21:**7 **23:**11 **52:**7 **56:**18,21 **57:**4 **59:** 3,5 **61:**20,23 **66:**22 **69:**18,24 **72:** 24 **74:**17 **75:**24,25 **77:**25 **82:**5,21, 24 **85:**13,15,18 **87:**14 **88:**4,12,22, 23 **91:**2 **93:**10,24 **101:**6 **102:**16 **112:**24,24
Congress's [1] **80:**22
Congressional [1] **21:**5
conjures [1] **7:**10
connection [1] **96:**11
connotation [1] **7:**19
connotations [1] **7:**3
connote [1] **12:**15
connotes [1] **12:**13
consent [2] **28:**24 **29:**4
consequence [1] **21:**3
consideration [2] **4:**5 **64:**9
considerations [2] **92:**2 **106:**2
considered [1] **93:**24
considers [1] **31:**10
consistent [2] **60:**15 **78:**8
consolidated [1] **4:**10
constellation [1] **14:**2
constituent [2] **24:**22 **102:**25
constituents [1] **89:**19
constitute [1] **28:**13
constituted [2] **22:**13 **86:**11
constitutes [1] **34:**12
constitutional [1] **26:**11
construction [4] **7:**1,13,14 **24:**21
consulted [1] **71:**3
contemplate [2] **86:**22 **106:**12
contemplated [2] **94:**18 **95:**15
contemplates [1] **111:**12
contemplating [1] **82:**6
contemplation [1] **86:**7
contemporaneous [2] **78:**10 **83:** 21
contemporaneously [1] **95:**3
contest [2] **82:**10 **83:**15
context [9] **5:**15 **13:**13,18 **25:**6 **78:** 18 **84:**15 **92:**2 **105:**23 **111:**3
contexts [1] **10:**20
continent [1] **66:**4
continue [1] **34:**8
contract [5] **20:**16,17,23 **26:**7 **51:** 22
contract-based [1] **20:**23
contracts [4] **26:**2,4 **112:**6,8
contrary [1] **20:**22
control [1] **34:**2
controls [1] **74:**10
controversy [1] **63:**5
convention [1] **73:**12
convey [1] **8:**19
cooperation [4] **14:**23 **15:**2,18 **52:** 9
corporate [1] **6:**18
Corpus [6] **8:**25 **9:**24 **10:**6,12 **90:**5 **110:**4
correct [6] **10:**10 **27:**1,3 **32:**2 **50:**3 **72:**14
correctly [1] **9:**20
counsel [18] **17:**15 **28:**4 **31:**1 **41:** 12 **50:**19 **56:**2 **63:**20 **67:**15 **76:**10 **77:**19 **79:**18 **80:**20 **94:**2,8 **107:**16, 21 **109:**5 **113:**5
count [2] **46:**18 **77:**14
counter [1] **87:**1
counter-examples [1] **22:**4
countries [31] **14:**24 **15:**2,19 **22:** 10,12 **23:**7 **29:**9 **33:**17 **43:**23,24 **44:**25 **45:**1 **48:**15,18 **49:**7 **50:**13 **52:**9 **71:**22 **72:**12 **75:**3,7 **76:**10 **78:** 17,20 **79:**2 **80:**11,13,14 **83:**19 **88:** 2 **112:**9
country [11] **6:**17 **8:**3 **12:**21 **16:**14 **22:**21 **26:**9 **61:**4 **63:**11 **71:**17 **75:**1 **89:**1
country's [1] **79:**4
couple [9] **6:**23 **8:**4,22 **9:**23 **11:**19 **26:**1 **53:**1 **90:**16 **111:**10
course [10] **38:**4 **49:**5 **79:**23 **80:**4 **82:**3 **89:**16 **96:**3 **97:**8,18 **108:**16
COURT [59] **1:**1,21 **4:**16 **9:**15 **10:**5, 5,7,8 **17:**2 **24:**19 **25:**21,23 **26:**25 **27:**2 **28:**9 **30:**24 **33:**10,11 **45:**12 **48:**23 **51:**5,25 **60:**18 **61:**3 **63:**3 **64:** 1,7 **67:**11 **73:**18 **74:**11 **76:**17 **77:** 24 **78:**8 **79:**14 **80:**3 **81:**4,5 **82:**18 **83:**25 **84:**3,5,8,13 **87:**23 **88:**4,19 **90:**6,18 **94:**13,23 **101:**11 **102:**11, 19 **107:**2,3,19 **109:**24 **111:**17,18
Court's [10] **5:**3 **6:**11 **9:**14 **18:**25 **24:**4 **69:**2 **78:**8 **79:**16 **81:**17 **95:**19
courts [41] **4:**18 **5:**21 **6:**6 **14:**22 **15:** 25 **17:**23 **19:**25 **20:**1,7 **21:**19 **26:**2, 8,11 **30:**9,17 **33:**18 **37:**25 **40:**10 **47:**10 **51:**13 **54:**21 **55:**18,19 **59:**21 **62:**11 **63:**10 **66:**15,16,18,24 **69:**16 **70:**5 **71:**15,24 **74:**20 **82:**16 **88:**1 **106:**5,12 **110:**15 **112:**12
cover [4] **16:**2 **64:**15 **109:**21 **110:** 16
covers [3] **5:**17 **82:**22 **89:**9
create [7] **18:**11 **28:**19 **43:**2 **45:**3 **73:**24 **75:**7 **103:**23
created [15] **25:**13 **28:**22 **32:**19 **34:** 25 **37:**21 **41:**2 **43:**14 **45:**15 **48:**13, 16,24 **64:**19 **67:**5 **96:**24 **104:**19
creates [2] **18:**12 **63:**4
creating [4] **42:**20 **45:**1 **65:**4,9
criminal [1] **102:**11
criticize [1] **110:**2
criticized [1] **110:**7
cross-border [3] **78:**21,23 **93:**11
curiae [3] **2:**9 **3:**11 **51:**2
cut [1] **97:**22
cut-and-pasted [1] **16:**23

D

D.C [3] **1:**16 **2:**3,8
damaged [2] **97:**14,16
database [1] **10:**6
databases [1] **9:**4
DAVIES [18] **2:**11 **3:**13 **77:**20,21,23 **80:**1 **81:**25 **82:**21 **83:**6,12,16 **85:** 23 **87:**15 **89:**13 **90:**1 **92:**14,17,22
day [1] **25:**22
days [1] **90:**9
de [1] **62:**25
deal [1] **55:**24
dealing [2] **96:**5 **102:**15
deals [1] **55:**15
decades [3] **5:**18 **91:**7 **93:**23
decide [9] **31:**18 **36:**11 **39:**11,18 **55:**9 **61:**21 **76:**17 **106:**4 **112:**10
decided [3] **49:**6 **102:**16 **107:**1
decides [2] **40:**21,22
deciding [3] **40:**13 **41:**3 **104:**12
decision [10] **4:**5 **5:**4 **9:**14,21 **31:**9, 9 **36:**14 **69:**2 **96:**2 **109:**24
decisionmaker [13] **28:**14 **29:**25 **30:**22 **34:**17,18,23 **35:**8 **36:**4 **40:** 20 **45:**14 **47:**4,5 **48:**24
decisionmakers [1] **36:**8
decisionmaking [2] **35:**7 **40:**24
decisions [1] **78:**25
declined [1] **74:**11
decree [1] **13:**22
define [4] **25:**5 **31:**13 **34:**13 **69:**9
defining [1] **25:**12
definitely [1] **25:**20
definition [9] **24:**23 **25:**7 **32:**21,24 **34:**12 **36:**22 **48:**22 **67:**11 **89:**8
definitions [2] **9:**22 **40:**16
delay [1] **101:**22
deliberative [2] **35:**11 **47:**16
demonstrate [1] **90:**2
Department [11] **2:**8 **13:**20 **54:**4 **58:**16,19 **59:**2 **61:**15 **62:**3 **71:**4 **73:** 5 **80:**25
depending [1] **45:**5
depends [4] **12:**22 **42:**2,5 **47:**3
depoliticize [1] **63:**1
Deputy [1] **2:**7
described [4] **43:**12 **80:**22 **94:**23 **108:**12
describing [4] **47:**14,15 **56:**8 **77:** 12
designate [1] **75:**18
designating [1] **75:**17
designed [3] **30:**4 **51:**7 **58:**4
desire [1] **95:**5
detail [1] **108:**16
determinative [1] **79:**24
determine [2] **40:**18 **84:**1
develop [1] **77:**16
devise [1] **87:**7
dictionary [5] **9:**22 **16:**8 **24:**22,23 **109:**23
difference [6] **32:**5 **33:**21 **40:**15

42:14 **46**:7 **54**:3
differences [5] **44**:7 **49**:19 **53**:4,6 **104**:8
different [25] **9**:3,23 **10**:19 **11**:11 **22**:10 **27**:19 **29**:11 **46**:4 **47**:11,11 **48**:21 **49**:8 **50**:15 **52**:24 **55**:11 **59**:5 **63**:10 **67**:19 **76**:23 **88**:7 **91**:3,5 **92**:2 **93**:19 **99**:1
differently [1] **70**:22
difficulty [1] **86**:3
dilemma [1] **39**:21
diplomatic [2] **48**:20 **63**:2
direct [1] **5**:7
direction [1] **83**:4
directive [5] **14**:17,19 **15**:1,17 **16**:16
directly [4] **32**:5 **46**:5 **55**:21 **68**:13
disadvantage [1] **23**:12
disadvantages [1] **21**:1
discovery [42] **4**:19 **5**:21 **6**:4,9 **18**:19,20 **20**:13,20 **22**:8,16 **36**:16 **37**:17,25 **38**:7 **59**:11,14,23 **62**:8 **63**:4 **64**:2 **71**:25 **73**:18 **74**:12 **87**:5,7 **92**:4 **93**:5 **96**:17,22 **100**:24 **101**:11,12,19 **102**:6,10,15 **106**:17 **107**:5,13 **111**:8 **112**:7,18
discretion [1] **64**:11
discretionary [1] **86**:9
discuss [1] **103**:17
discussed [1] **91**:23
discussing [1] **15**:21
dismissive [1] **80**:13
disposition [1] **84**:2
dispositive [1] **13**:24
disputants [3] **29**:3 **42**:7,17
dispute [29] **32**:17 **41**:19,24 **43**:3,7 **44**:4,5 **45**:9 **51**:20,25 **56**:4 **57**:9 **59**:15 **65**:4 **74**:5 **76**:23 **97**:20 **99**:3,14,16 **102**:12 **104**:5,6,18 **105**:11 **106**:7,21,23 **107**:1
disputes [23] **21**:19 **28**:21 **35**:1 **36**:11 **42**:21 **43**:24 **46**:17 **48**:11 **49**:7 **55**:9 **62**:24 **63**:2 **64**:25 **73**:19 **75**:11 **76**:9 **78**:24 **93**:12 **96**:12 **97**:10 **104**:3,4 **107**:8
disputing [1] **33**:13
disregard [1] **90**:7
dissent [7] **36**:21 **99**:15 **107**:17 **108**:6,12,18,21
dissented [1] **18**:22
distinct [3] **52**:25 **53**:22 **98**:13
distinction [5] **31**:4 **66**:12 **68**:9 **100**:9 **104**:1
distinctions [1] **103**:20
distinguish [2] **25**:8 **49**:18
distinguishes [1] **68**:3
distributed [1] **98**:1
district [7] **4**:18 **5**:21 **19**:25,25 **20**:7 **64**:1 **79**:14
disturbing [1] **47**:19
divide [1] **23**:21
divine [1] **67**:17
document [2] **48**:12 **89**:2
documents [3] **9**:5 **22**:18 **89**:5
doing [15] **18**:8 **20**:11 **24**:16,17 **25**:3 **30**:20 **32**:5 **42**:8 **59**:2,3 **87**:13 **90**:14 **101**:1 **112**:11,12
domestic [7] **61**:25 **72**:1 **92**:3 **93**:4,4,21,22
domestically [1] **59**:9
domicile [1] **78**:14
done [11] **9**:17,18 **10**:8 **15**:11 **16**:20 **35**:3 **85**:11 **88**:12 **89**:16 **90**:10 **106**:23
doubt [2] **40**:8 **87**:8
down [2] **15**:6 **36**:3
draft [1] **14**:21
drafted [5] **5**:6 **14**:13,14,16 **15**:16
drafters [1] **5**:11
draw [1] **78**:15
dread [1] **101**:21
driving [2] **58**:25 **61**:2
due [1] **6**:18
dunk [1] **13**:25
during [1] **91**:23

E

each [9] **14**:3 **24**:24 **33**:2 **53**:14 **64**:21,23,24 **95**:9 **98**:17
earlier [4] **73**:16 **94**:16 **106**:9 **107**:8
easily [1] **112**:18
easy [3] **39**:13,16 **40**:14
economy [1] **21**:17
Ecuador [1] **107**:12
EDWIN [3] **2**:7 **3**:9 **51**:1
effect [2] **96**:6 **106**:13
effectively [4] **95**:11 **97**:10 **99**:3 **107**:7
effort [1] **56**:23
eight [1] **16**:12
either [5] **5**:18 **74**:16,17 **83**:23 **110**:3
elected [1] **28**:23
elements [1] **102**:25
eliminated [1] **57**:6
elsewhere [1] **62**:2
emails [1] **22**:18
emphasis [1] **31**:21
emphasized [1] **95**:4
empirically [2] **8**:24 **11**:7
employees [1] **50**:11
empower [1] **28**:20
empowered [2] **29**:3 **45**:16
enable [1] **56**:23
enact [1] **13**:14
enacted [8] **17**:1 **51**:6 **54**:19 **55**:24 **73**:14 **82**:22 **91**:8 **93**:22
enacting [1] **40**:11
encapsulated [1] **69**:12
encompasses [1] **86**:5
encompassing [1] **85**:25
encourage [4] **30**:4 **63**:14,22 **80**:10
encourages [2] **6**:6 **79**:2
end [2] **25**:21 **46**:10
end-around [1] **101**:12
endeavor [1] **29**:17
endorse [1] **59**:20
ends [1] **90**:13
enforce [4] **25**:22 **26**:2,22,23
enforceability [1] **6**:19
enforcement [1] **52**:15
enforcing [2] **80**:5 **102**:20
engage [1] **99**:20
engaged [1] **63**:3
England [2] **21**:11 **60**:8
enhancing [1] **14**:23
enough [6] **25**:17,21,23 **26**:17 **84**:16 **108**:21
enter [3] **62**:21,22 **72**:20
entered [1] **72**:13
enterprise [1] **29**:14
entertain [1] **79**:12
entire [1] **109**:14
entirely [1] **48**:21
entities [10] **11**:8 **48**:1,25,25 **49**:1 **53**:4 **56**:17,20 **66**:16 **110**:17
entitled [1] **36**:19
entity [11] **6**:22 **8**:8 **11**:17 **34**:25 **37**:21 **40**:25 **43**:14,16 **48**:13 **55**:7 **98**:12
Equador [1] **96**:12
equal [1] **29**:3
equitably [1] **105**:5
equivalent [2] **36**:18 **77**:6
err [1] **83**:3
error [2] **26**:25 **27**:3
errors [1] **90**:9
ersatz [1] **36**:10
escape [3] **30**:8,9 **35**:6
eschew [1] **30**:17
especially [1] **81**:18
espousal [1] **97**:18
ESQ [6] **3**:3,6,9,13,16,19
ESQUIRE [4] **2**:3,5,11,13
essentially [8] **10**:16 **20**:1 **44**:14 **58**:15 **64**:24 **111**:7,15,16
establish [2] **77**:16,17
established [12] **6**:16 **43**:17,18 **50**:10 **51**:14 **56**:12 **62**:14 **68**:13,14 **69**:13 **77**:4 **90**:25
establishing [2] **42**:19 **90**:14
establishment [1] **47**:15
establishments [1] **57**:15
ET [3] **1**:3,9 **18**:1
even [16] **18**:8 **22**:4,7 **24**:7 **31**:14,17 **33**:15 **40**:25 **52**:18 **62**:16 **65**:11 **72**:1 **73**:11 **75**:14 **85**:2 **112**:19
event [2] **94**:21 **95**:2
eventual [1] **44**:8
Eventually [2] **45**:8 **47**:17
everyone [3] **16**:19 **25**:24 **30**:13
evidence [24] **51**:13,18 **56**:21,24 **57**:18 **59**:6,7 **61**:24 **73**:1 **78**:25 **80**:17 **81**:4 **82**:12,15 **86**:3 **91**:14,20 **92**:4 **93**:23 **109**:19 **112**:1,19,19,22
evidence-based [1] **78**:24
exact [4] **17**:6,10 **110**:18,18
exactly [6] **49**:4 **53**:12 **84**:20 **96**:8 **97**:21 **98**:10
example [17] **9**:13 **24**:6 **29**:11 **36**:10 **39**:7 **52**:13 **70**:1 **87**:23,25 **100**:16 **109**:19,23 **110**:3,14,17,23,24
examples [3] **7**:4 **11**:19 **12**:14
excellent [1] **87**:10
except [1] **97**:22
exceptional [1] **86**:13
excludes [2] **7**:20,21
excuse [1] **56**:1
executive [1] **81**:1
exercise [3] **76**:2 **86**:10 **100**:14
exercises [1] **75**:19
exercising [9] **25**:14 **49**:1 **51**:15 **56**:15 **67**:7 **68**:15 **69**:14 **77**:5,7
exist [5] **34**:23,24 **86**:21,24 **99**:11
existed [1] **97**:4
existence [4] **6**:18 **28**:15 **34**:19 **100**:6
existing [2] **51**:8 **75**:9
expanded [2] **55**:18 **66**:15
expect [3] **72**:13 **75**:1 **86**:23
expectations [1] **75**:2
expense [4] **65**:8,12 **75**:7 **101**:22
expert [2] **37**:5 **58**:6
experts [4] **16**:12,13 **38**:18 **39**:24
explained [3] **52**:19 **56**:23 **57**:10
explaining [2] **16**:23 **70**:18
explanation [3] **16**:24 **93**:17,18
explicable [1] **93**:7
exposed [1] **71**:18
exposes [1] **71**:16
expression [4] **65**:19 **66**:1 **90**:25 **91**:1
expropriated [1] **106**:8
expropriates [1] **33**:8
expropriation [1] **99**:21
extended [1] **62**:1
extending [1] **85**:9
extends [1] **37**:15
extensive [1] **60**:20
extent [3] **82**:17 **97**:25,25
external [1] **37**:24
extremely [1] **26**:24

F

FAA [2] **26**:20 **36**:17
facilitation [1] **63**:18
fact [10] **26**:5 **42**:13 **65**:16 **80**:14 **83**:17,22 **91**:6,14 **106**:25 **112**:16
factor [1] **75**:3
factors [4] **27**:15 **81**:8 **86**:9 **87**:10
fail [1] **99**:23
fair [1] **105**:4
fairly [3] **30**:6 **39**:13 **105**:5
fall [2] **27**:21 **48**:7
far [1] **86**:22
fashion [2] **42**:8 **45**:10
favor [1] **36**:16
favors [1] **14**:3
FCC [1] **9**:21

Federal [3] **59**:8 **61**:22 **92**:24
Federation [1] **105**:9
field [1] **33**:12
fights [1] **6**:9
figure [2] **10**:17 **39**:17
figures [1] **58**:3
file [1] **107**:5
filed [2] **90**:10 **106**:18
final [6] **22**:24 **30**:15,19 **78**:7 **84**:2 **88**:19
finally [1] **26**:16
find [3] **24**:17,23 **45**:13
finished [3] **35**:19,20,22
First [20] **8**:23 **22**:2 **23**:21 **39**:4 **58**:24 **66**:8 **68**:2,6 **81**:9 **83**:5 **94**:20 **96**:9 **101**:10 **103**:22 **104**:9,10 **105**:16,19 **109**:12 **111**:11
fit [2] **32**:24 **93**:25
fits [1] **48**:22
five [3] **9**:3 **26**:12 **85**:6
fix [1] **112**:25
flag [2] **7**:5,11
flags [1] **7**:17
flat [1] **94**:19
flood [1] **5**:20
focus [7] **14**:25 **15**:2 **52**:2,20 **62**:4 **89**:17 **102**:21
focusing [3] **29**:22,24 **58**:11
follow [3] **21**:13 **34**:7 **38**:2
follow-up [1] **27**:6
food [1] **14**:7
football [1] **8**:10
footing [2] **57**:13 **66**:23
footnotes [1] **96**:14
force [1] **6**:8
forces [2] **97**:15,17
forcing [1] **107**:7
foreclose [1] **18**:7
forecloses [1] **111**:11
FOREIGN [124] **1**:13 **4**:20,21,24 **5**:9,12 **6**:15,17,25 **7**:2,5,5,5,6,8,25 **8**:2,7,10,11,17 **11**:4 **12**:12,15,18,20 **14**:5,6,7,22,24 **15**:2,19,22,25 **16**:2 **19**:9 **22**:9 **25**:12 **36**:6 **37**:15,20 **38**:8,11 **39**:5 **40**:10 **41**:19 **48**:9 **52**:5 **54**:13,24 **55**:14,15,17 **57**:13,14 **58**:15 **59**:22 **62**:14,16 **65**:3 **66**:17,18,23,24 **69**:9,22 **70**:10 **71**:2,8,12,17 **72**:5,12 **73**:3,20 **75**:7 **77**:11 **78**:1,13,16,22 **81**:2,18 **82**:22 **83**:19 **85**:4 **87**:18 **88**:2,6,7,20,22,23,24,25 **89**:2,3,9,23,24 **90**:4,22 **91**:3,9,13 **92**:5 **93**:3,14,20 **96**:1,6 **97**:6 **99**:5 **101**:25 **102**:17 **103**:15 **107**:3 **109**:15,15,20 **110**:15,20,21
foreign-seated [3] **78**:3,12 **82**:23
form [4] **51**:11 **56**:10 **69**:23 **106**:22
formal [3] **52**:10 **63**:11 **76**:2
formality [7] **65**:12,16 **75**:6,23 **76**:1,5,9
formally [1] **67**:5
format [1] **77**:7
formed [3] **51**:22 **54**:13 **97**:6
forms [2] **68**:22 **103**:21
forum [1] **37**:20
forward [1] **101**:9
four [3] **19**:19 **35**:4 **85**:6
Fourteen [1] **40**:2
Fourth [1] **25**:20
France [6] **8**:3 **21**:11 **60**:9 **80**:16 **97**:7 **102**:12
frankly [3] **27**:18 **39**:13 **72**:18
friction [1] **62**:20
friend [11] **66**:4 **80**:12 **87**:18,25 **89**:20 **90**:5 **91**:6 **95**:24 **110**:7,13 **111**:14
friend's [1] **91**:24
front [1] **12**:12
full [4] **90**:8,8 **99**:23 **100**:24
function [2] **7**:22 **83**:25
functions [1] **54**:8
FUND [3] **1**:12 **28**:11,22
fundamental [2] **105**:20 **108**:17
fundamentally [5] **53**:7 **99**:16 **102**:22 **105**:10 **108**:12
funding [1] **65**:9
funds [1] **98**:5
further [8] **23**:19 **41**:13 **52**:18 **54**:19 **64**:11 **67**:22 **94**:3 **109**:1
future [1] **86**:8

G

gaps [1] **90**:8
gate [1] **74**:16
gathering [1] **92**:4
gave [1] **64**:21
General [4] **2**:7 **10**:16 **53**:23 **74**:4
General's [1] **14**:20
generally [1] **31**:7
generously [1] **107**:17
German [10] **6**:2 **26**:20 **36**:18 **44**:18 **49**:3,5 **68**:6 **95**:4,8 **103**:2
German-American [1] **97**:5
Germany [5] **21**:12 **56**:10 **64**:16 **98**:23 **100**:8
gets [4] **25**:6 **35**:5 **71**:14 **112**:10
getting [4] **18**:17 **56**:20 **59**:6 **62**:12
give [10] **13**:8 **22**:17 **32**:6 **34**:11 **35**:4 **64**:22 **66**:2 **109**:22,23,24
given [3] **7**:4 **15**:17 **53**:20
gives [1] **64**:1
giving [3] **30**:7 **47**:9 **97**:1
glue [1] **24**:24
goal [1] **17**:13
goals [4] **5**:22 **20**:9,23,23
God [1] **40**:1
Gorsuch [24] **23**:19 **47**:22,23 **48**:4,7 **49**:12 **67**:25 **68**:1,11 **69**:8 **70**:3,23 **80**:20 **82**:3,25 **83**:11,14 **86**:17 **94**:6 **99**:25 **100**:3 **101**:14,18 **109**:3
Gorsuch's [2] **84**:18 **103**:19
got [3] **15**:6 **81**:8,9
govern [1] **24**:8
governed [1] **87**:4
governing [1] **112**:7
government [47] **4**:23,25 **7**:11 **11**:8,17 **12**:13,15 **16**:9 **17**:19 **19**:10 **20**:5 **25**:14,15 **27**:9,9,10,25 **34**:7 **38**:16 **40**:1 **48**:14,19 **50**:11 **51**:15,16,24 **52**:2 **53**:3 **54**:10,14 **57**:13 **59**:16,17 **62**:4 **69**:14,20 **70**:10 **72**:5 **77**:4,17 **80**:2 **84**:5 **85**:21 **89**:2 **95**:9 **97**:19 **103**:25
government's [9] **19**:11 **79**:19,21 **81**:13 **84**:7,9 **85**:8 **92**:10 **95**:25
government-focused [4] **5**:13 **11**:24 **16**:5,17
government-run [1] **12**:19
government-to-government [1] **104**:5
governmental [48] **6**:22 **7**:3,19 **8**:20 **15**:3 **17**:12 **25**:5,8 **26**:18 **27**:5 **30**:9,11,22 **33**:10 **34**:6 **35**:2,2,6 **39**:5,6 **40**:25 **48**:16,25 **52**:6 **54**:14 **55**:16 **56**:11,16 **57**:1,15,24 **65**:23 **66**:19 **69**:7,14,16 **70**:9,15,19 **75**:20 **77**:5,15 **84**:6 **87**:19 **88**:23,24 **100**:15 **110**:16
governmentalize [1] **25**:24
governments [18] **5**:10 **29**:13 **43**:17 **47**:16 **51**:8 **54**:20,24 **55**:6 **56**:14 **63**:15 **66**:18 **68**:14,16 **71**:13 **77**:5,8 **79**:22 **107**:10
grant [6] **4**:19 **22**:21 **79**:11,14 **86**:12 **87**:6
gratuitous [1] **8**:18
Great [3] **56**:4 **98**:23 **108**:15
ground [1] **93**:9
Group [2] **69**:2 **107**:17
guess [10] **8**:21 **12**:11,23 **25**:11 **46**:2,11,19 **58**:8 **87**:12 **98**:9
guessing [3] **112**:2,3,12
guesswork [1] **112**:11
guidance [1] **112**:5

H

Halliburton [1] **16**:7
hand [1] **18**:17
handful [1] **22**:3
handled [2] **52**:12,16
handles [1] **76**:9
handling [1] **78**:23
happen [5] **20**:21 **34**:22 **38**:10 **73**:7 **111**:21
happened [3] **38**:14 **80**:19 **91**:18
happening [2] **53**:13 **97**:21
happens [5] **8**:2 **12**:20 **19**:15 **35**:14 **53**:25
hard [4] **31**:4 **65**:1,6 **70**:16
harm [1] **5**:23
harmonizing [1] **23**:6
hate [1] **82**:4
hear [2] **4**:8 **7**:7
heard [4] **79**:19 **81**:14 **83**:7 **94**:17
help [1] **68**:1
helpful [1] **47**:2
hesitant [1] **82**:19
highly [1] **104**:11
historical [2] **17**:6 **24**:10
historically [4] **9**:6 **11**:6,7,13
history [13] **4**:18 **5**:5 **13**:13 **14**:9,10 **18**:7 **24**:13 **70**:13 **84**:13,14,22 **109**:13 **111**:3
hmm [1] **19**:10
hoc [5] **28**:10,19 **29**:1 **30**:12 **72**:3
home [3] **30**:24 **33**:12 **78**:14
honest [1] **33**:15
Honor [22] **6**:24 **8**:5 **9**:20 **14**:9 **21**:21 **29**:6,21 **33**:1 **35**:19,22 **37**:7 **38**:11 **39**:13 **40**:8 **41**:10 **42**:2 **43**:13 **45**:18 **46**:21 **50**:3,20 **85**:23
Honors [1] **109**:11
hope [3] **35**:22 **47**:20 **71**:22
horribles [1] **36**:2
House [4] **5**:10 **16**:25 **17**:8 **95**:3
however [1] **75**:11
hundred [3] **13**:24 **65**:10 **90**:16
hybridized [1] **104**:14
hypothetical [2] **44**:23 **111**:23

I

idea [8] **7**:10 **10**:16,16 **11**:1 **12**:11 **25**:18 **26**:10,12
identified [1] **85**:24
identify [1] **5**:15
identifying [1] **75**:16
ignores [1] **5**:14
imbued [2] **70**:14 **96**:25
immunity [1] **54**:16
impacts [1] **96**:1
impartial [1] **33**:15
impetus [1] **99**:11
implement [4] **14**:15,17 **15**:9 **16**:15
implementing [1] **15**:13
implication [1] **30**:11
implications [1] **71**:3
importance [1] **95**:4
important [10] **18**:17 **55**:11 **61**:19 **65**:12 **66**:12 **69**:25 **94**:23 **99**:9 **103**:20 **104**:11
importantly [1] **110**:12
impose [1] **74**:11
improve [3] **14**:21 **52**:8 **63**:17
improving [1] **51**:8
INC [1] **1**:3
incentive [1] **37**:21
include [4] **20**:12 **55**:19 **86**:10 **106**:3
includes [1] **78**:2
including [5] **24**:4 **27**:20 **39**:25 **73**:19 **82**:23
inconsistent [1] **90**:12
Incorporated [2] **4**:9 **66**:21
Indeed [1] **30**:19
independent [1] **65**:9
indication [3] **73**:9 **100**:21,25
individual [12] **23**:22 **24**:2 **31**:8 **32**:12 **34**:4 **42**:16 **55**:15 **98**:4,6 **99**:22 **104**:20,25
individuals [2] **42**:19 **103**:14

inequitably [1] **99:**22
inflict [1] **5:**22
influence [1] **85:**15
informal [1] **10:**9
information [4] **59:**10 **85:**2,4 **112:**14
informed [1] **78:**24
initiated [2] **28:**10 **106:**11
innovator [1] **97:**8
Instead [2] **44:**3 **110:**1
instinct [1] **74:**8
institution [1] **104:**14
institutions [3] **79:**9 **92:**7,18
instrument [1] **41:**4
Intel [25] **5:**4 **17:**4 **18:**18,23 **36:**22 **38:**2 **74:**11 **78:**9,18 **81:**8 **83:**23,23 **84:**4,8,10 **86:**6,9 **88:**17 **90:**20 **94:**22 **111:**11,12,15,18,20
intend [1] **5:**24
intended [5] **64:**15 **69:**18 **75:**4 **85:**20 **94:**25
intending [1] **75:**24
intent [3] **21:**5 **67:**18 **75:**18
inter [1] **63:**11
interchange [2] **48:**17 **72:**6
interest [1] **20:**4
interested [1] **93:**6
interesting [1] **11:**5
interests [1] **97:**19
intergovernmental [2] **27:**22 **56:**12
international [75] **16:**14 **23:**4,14 **27:**22 **28:**12,14,16 **29:**24 **31:**6 **34:**12,14,20 **36:**5 **40:**10 **41:**25 **42:**21,24 **43:**9 **44:**9 **45:**14 **46:**11,15,18 **47:**19 **48:**8,17 **49:**10,10 **50:**14 **52:**5 **53:**21 **55:**13,20,25 **56:**1 **57:**5,22 **58:**5,6,13 **63:**12 **64:**3,6,8,14 **67:**1 **69:**10,23 **71:**12,19 **73:**13 **77:**6 **78:**22 **80:**6,7 **81:**3,18 **82:**7,20 **92:**1 **95:**17 **96:**24 **102:**18,24,25 **103:**5,10,13,17 **104:**16,17 **105:**11 **106:**15 **107:**15 **109:**16
interpretation [8] **5:**2 **6:**5 **18:**16 **19:**1 **25:**3 **77:**10 **78:**2,9
interpreted [2] **88:**17 **90:**20
interpreting [1] **17:**4
interstate [1] **5:**8
intrude [1] **59:**21
intruding [1] **54:**23
intrusive [1] **20:**19
intuition [1] **7:**12
intuitions [1] **87:**2
invest [3] **30:**5,5 **33:**6
investigating [2] **16:**2 **110:**22
investment [8] **33:**9 **64:**16 **96:**12 **102:**12 **103:**6 **104:**15 **106:**14 **108:**14
investor [19] **28:**21 **30:**8,21 **32:**6,7 **33:**6 **46:**4 **51:**23 **53:**13,15 **54:**6,11 **59:**16 **62:**16 **68:**21,21 **71:**6 **99:**6 **106:**4
investors [8] **28:**25 **33:**17 **46:**5 **66:**2,3,5 **68:**25 **96:**15
INVESTORS' [1] **1:**12
invocation [1] **66:**13
invoked [4] **96:**10,16 **102:**5 **103:**24
invoking [1] **82:**18
involve [4] **32:**18 **60:**18 **76:**20 **103:**15
involved [10] **19:**11 **30:**23 **35:**9 **48:**12 **63:**6 **75:**6 **93:**14 **100:**13 **101:**23 **103:**9
involvement [3] **25:**23 **26:**5 **27:**5
involves [1] **46:**1
involving [9] **9:**4 **54:**24 **56:**4 **65:**5 **68:**5 **81:**18 **97:**6,11 **98:**2
irrelevant [1] **94:**20
isn't [6] **6:**15 **30:**18 **39:**8 **53:**23 **71:**13,13
issue [6] **29:**12 **32:**15 **56:**25 **70:**5 **100:**17 **108:**17
issued [1] **16:**18
issues [5] **62:**8 **65:**3 **85:**23 **91:**23 **102:**16
issuing [1] **57:**24
Italian [1] **6:**18
Italy [3] **6:**17,21 **8:**18
itself [11] **6:**2 **29:**25 **30:**3 **35:**12 **45:**5,15 **57:**19 **63:**25 **81:**16 **104:**21 **110:**19
IX [1] **52:**14

J

Japanese [3] **38:**3 **39:**25 **60:**10
Jay [4] **97:**9,12 **98:**11,16
join [1] **108:**21
joined [1] **107:**19
jointly [2] **98:**19 **99:**7
JOSEPH [3] **2:**5 **3:**6 **28:**7
judge [5] **5:**16 **36:**18 **98:**23,23 **110:**8
judges [5] **6:**8 **31:**8,15,15 **36:**10
judgment [3] **13:**21 **26:**23 **99:**18
judgments [1] **6:**20
judicial [14] **5:**9 **9:**25 **17:**11 **26:**5,17,19 **27:**4 **51:**9 **63:**18 **66:**13 **72:**23 **74:**19 **93:**5,22
judiciary [1] **33:**14
Judy [1] **36:**18
juridical [1] **78:**14
jurisdiction [3] **43:**9 **78:**15 **81:**17
Justice [240] **2:**8 **4:**3,3,15 **6:**14 **7:**15 **8:**12,15 **9:**7,16 **10:**4 **11:**2 **12:**1,2,4,5,6,17 **13:**4 **17:**14,16,17 **18:**3,14,22 **19:**2,5,8,17,21 **21:**10,15,23 **23:**16,16,18,19,20 **25:**4 **27:**6,12 **28:**1,2,2,8 **29:**7 **31:**1,3,6,12,20 **32:**1,4,10,23 **34:**9,11,16 **35:**13,16,20,23 **36:**1,20,25 **37:**4,8 **38:**1,6,13,22 **39:**1,10,15,20,23 **40:**5 **41:**11,13,14,15,18,22 **42:**4,10,13,23 **43:**2,6,19,20,20,21 **44:**1,13,19,22 **45:**2,8,19,22,25 **46:**2,9,22,25 **47:**21,21,23 **48:**4,7 **49:**12,13,13,15,16,21 **50:**4,16,17,17,22 **51:**4 **52:**22 **53:**18 **54:**22 **55:**1,4 **58:**1,21 **60:**1,4,6,14,22 **61:**1,8,11,11,14 **63:**8,20,24 **64:**5,19 **65:**21,25 **66:**10 **67:**10,14,17,20,22,23,24,25 **68:**1,11 **69:**8,15 **70:**3,23,24,24 **71:**1 **72:**7,8,9,10,11 **73:**15,23 **74:**1,21,22,22,24,25 **75:**5 **76:**5 **77:**18,23 **79:**18 **80:**1,20 **82:**3,25 **83:**11,14 **84:**17,18 **86:**17 **87:**9 **89:**11,13,15 **90:**1 **92:**11,16,21 **94:**1,3,4,5,6,7,13,21 **95:**22 **97:**23,24 **98:**9 **99:**15,25 **100:**3,4 **101:**14,18 **103:**12,18 **107:**16,20,22 **108:**1,4,8,20,22,22,23,24,25,25 **109:**2,3,4,7 **111:**6,21 **113:**4
Justice's [1] **58:**9
Justices [2] **40:**18 **50:**21

K

KAGAN [31] **12:**1,4,6,17 **13:**4 **43:**19,20,21 **44:**1,13,19,22 **45:**2,8,19,22,25 **46:**2,9,22,25 **58:**1,21 **60:**6 **67:**24 **72:**7,9,11 **74:**25 **94:**5 **97:**23
Kagan's [2] **49:**16 **61:**12
KAVANAUGH [22] **12:**2,5 **23:**20 **25:**4 **27:**6,12 **28:**1 **49:**14,15,21 **50:**4,16 **63:**8 **70:**25 **71:**1 **72:**8,10 **73:**15,23 **74:**1,21 **109:**4
Kennedy [1] **108:**23
key [2] **4:**20 **109:**13
kind [19] **7:**15 **9:**23 **14:**3,5 **20:**6,13 **22:**22 **26:**6 **39:**17 **44:**2 **76:**9,20 **82:**20 **85:**4 **86:**12 **101:**3 **103:**10 **110:**10 **111:**7
kinds [1] **75:**15
Kingdom [1] **80:**16
KNEEDLER [44] **2:**7 **3:**9 **50:**22 **51:**1,4 **52:**23 **53:**5 **54:**5,23 **55:**2,10 **58:**1,18,23 **60:**3,13,17,24 **61:**7,10,13,16 **63:**9,22 **64:**18 **65:**15,23 **66:**7,11 **67:**16,21 **68:**1,8,12 **69:**11 **70:**4 **71:**2,9 **72:**15 **73:**22,25 **74:**2 **75:**21 **76:**11
Kneedler's [1] **81:**23
knowledge [1] **44:**20

L

labeling [1] **77:**13
language [25] **4:**21 **10:**18 **12:**15,24 **13:**1,4,16,22 **14:**16 **15:**8,15 **16:**23 **17:**17,19 **18:**4,7 **19:**8,9 **24:**11,18 **29:**22 **78:**18 **84:**23 **94:**24 **106:**3
last [1] **94:**15
later [5] **15:**20 **17:**3 **106:**23 **107:**6 **111:**23
Latin [1] **10:**24
Laughter [1] **108:**3
law [19] **6:**19 **7:**5 **16:**7,13,14 **23:**6,7 **26:**25 **27:**4 **51:**7 **76:**4 **85:**6 **99:**13 **104:**16,17 **105:**13,13,13 **107:**15
lawmaker [1] **5:**16
laws [3] **6:**16 **22:**9 **112:**9
lawyer [1] **5:**16
leader [9] **4:**24 **7:**5,11 **8:**7,10,11,13 **14:**6 **88:**7
leaders [1] **4:**25
leading [1] **82:**1
learned [1] **85:**19
least [3] **21:**19 **37:**10 **52:**25
left [1] **101:**6
legal [5] **5:**1 **52:**10 **58:**10 **78:**6,13
legislation [5] **14:**21 **15:**16 **16:**18 **81:**16 **99:**18
legislative [3] **81:**15 **84:**13,14
legislator [1] **87:**11
legitimate [1] **27:**16
length [1] **71:**4
less [2] **29:**19 **108:**9
letter [4] **61:**5 **70:**2 **106:**19,19
letters [1] **82:**12
liability [1] **84:**1
liberal [1] **87:**6
limit [2] **79:**10 **83:**18
limitation [2] **78:**17 **87:**20
limitations [4] **57:**6,21 **59:**14 **62:**6
Limited [13] **4:**10 **16:**16 **26:**19,24 **55:**18 **57:**8,11,16,17,23 **59:**11 **62:**1,5
line [2] **48:**8 **78:**16
Linguistic [2] **9:**1 **88:**9
Linguistics [4] **10:**6,12 **90:**6 **110:**5
links [1] **15:**15
list [1] **87:**10
listed [1] **85:**7
literal [2] **23:**22 **24:**1
Lithuania [18] **28:**18 **30:**4,6 **32:**2 **33:**7,8,14,14,25 **50:**12 **55:**8 **68:**5,19 **102:**14 **104:**12,23 **105:**6 **107:**12
Lithuania's [1] **28:**23
Lithuanian [3] **33:**9 **76:**6 **106:**5
Lithuanian-Russian [1] **75:**12
litigant [4] **71:**16 **104:**4 **105:**18 **106:**24
litigants [5] **37:**16 **71:**16 **91:**15 **106:**16 **107:**8
litigating [1] **52:**1
litigation [8] **20:**14 **51:**9,10,11 **52:**9 **63:**18 **76:**21 **103:**16
litigator [1] **37:**22
little [9] **10:**22,23,24 **16:**1 **91:**14,20 **93:**23 **102:**1,2
live [1] **82:**6
LLP [1] **1:**9
local [1] **60:**15
located [2] **8:**2 **89:**5
long [1] **112:**20
look [21] **8:**24 **10:**18 **11:**5,12 **14:**9,25 **17:**9 **19:**2 **22:**2 **27:**7 **40:**9,12 **84:**14,19 **89:**21 **90:**19 **96:**4 **101:**9 **110:**5,6 **111:**2
looked [3] **9:**3,22 **107:**18
looking [4] **18:**9 **23:**22 **27:**17 **64:**7
looks [5] **17:**5,10 **33:**24 **53:**3 **69:**4
lot [17] **33:**1 **38:**18,25 **39:**24 **60:**9

81:3,10 82:12,15 85:2 86:19 101:7 112:4,5,8,11,13
lots [3] 17:21,21 84:24
LTD [1] 1:6
LUXSHARE [9] 1:6 4:10 5:14 6:1,2 22:22 23:1 25:18 109:17
Luxshare's [3] 5:20 18:12 25:3

M

made [10] 41:18 42:18 54:3 68:19,20 79:20 105:8,21,22 108:10
magistrates [2] 16:2 110:23
main [2] 71:10,11
major [2] 80:15 85:15
majority [3] 22:6 107:20 108:14
Manchester [1] 8:9
many [6] 11:15 61:6 85:9 86:24 106:2,2
March [1] 1:17
MARTINEZ [37] 2:3 3:3,19 4:12,13,15 6:14,23 8:4,14,21 9:11,18 10:4,11 12:16 13:3,6 18:2,6,21 19:4,7,16,19,22 21:14,21,25 24:3 25:10 27:11,14 50:5 109:7,8,10
matching [1] 39:3
matter [3] 1:20 39:3 46:7
matters [2] 17:22 81:17
mean [46] 7:18,22 9:9,16 10:8 12:13,20,22,24 16:12 17:17 31:24 36:3,21 37:9 43:22 58:3,24 60:5,7 61:5,5 66:7 71:10 72:16 75:22,23 78:10 83:6,19 86:20 87:8,22 88:17,22 89:23,23 90:21,23 91:4,10 92:11 93:19 98:2 100:3 108:4
meaning [19] 10:3,18 13:7 23:22,23,25 24:2,8,10,10,18 88:10,14,16 90:15 95:16 106:15 107:4 109:14
meaningful [1] 26:7
means [5] 7:25 23:2 24:14 96:3 112:23
meant [3] 44:14 60:14 105:12
mechanism [3] 29:16 64:17 103:24
mechanisms [1] 65:5
meddling [1] 20:1
members [2] 56:14 107:19
mention [3] 70:20 96:9 97:3
mentioned [5] 56:2 63:12 72:25 97:23 102:22
mentioning [1] 67:3
mess [2] 40:2,3
methodologically [2] 10:21 17:5
methodology [2] 9:13 10:13
methods [2] 52:8 63:17
Mexico [1] 97:7
middleman [1] 13:20
might [17] 6:20 7:16 20:3,21 25:22 27:23 38:14 40:25 53:22 54:2 55:10 56:7 75:1,4,6 76:25 111:24
millions [1] 9:5
mind [3] 76:1 101:3 104:1
minds [1] 94:25
mine [2] 39:13 45:21
misreads [1] 5:14
misunderstood [1] 43:13
Mitsubishi [1] 80:4
mixed [15] 44:17 48:1 49:3,5 56:5,6 95:4,8 96:20 97:3,5 98:7,17 100:7 103:2
Mm-hmm [1] 72:10
mode [1] 24:20
modification [1] 18:18
moment [2] 98:20,24
moments [1] 53:1
morning [1] 4:8
most [9] 4:22,24 7:9 18:17 31:14 52:4 78:1 88:16 99:9
Motors [2] 53:23 80:4
move [2] 13:7 37:19
moved [1] 40:9
much [11] 45:18,19 64:11 81:5 86:24 88:5 91:16,20 93:18 103:5 107:14
Muscarello [2] 9:14 10:9
must [2] 28:14 34:5
myself [1] 82:4

N

narrow [4] 36:22 80:3,8 88:14
narrower [1] 88:10
national [2] 33:6 40:22
nations [5] 28:17 32:17 54:1 58:15 59:1
natural [5] 6:15 7:23 52:4 78:1 88:16
naturally [3] 4:22,24 7:10
nature [4] 44:12 47:3 84:7 108:13
near [1] 30:18
nearby [1] 5:2
necessarily [2] 6:21 33:11
need [3] 84:16 89:21 102:21
needs [3] 25:13 76:17 84:14
neighboring [1] 13:18
neither [3] 68:18 87:21 90:2
neutral [2] 31:7,10
neutrality [4] 31:13 33:4,4,22
never [3] 10:5,5 72:1
New [9] 2:5,5,11,11,13,13 9:9 10:22 73:12
newspaper [1] 109:25
nobody [1] 102:14
nomenclature [1] 37:14
non-governmental [6] 6:10 8:8 29:2 33:5,16,22
non-judicial [1] 88:1
non-parties [1] 93:6
none [5] 13:23 59:13 63:7 95:21 100:18
nongovernmental [1] 25:9
normal [1] 45:10
notable [2] 11:21 20:4
noted [4] 71:1 80:5 99:15 106:9
Nothing [6] 18:4 43:18 71:14 74:9 79:13 109:25
notice [1] 106:21
notified [1] 106:25
notion [2] 8:19 33:3
noun [2] 7:2,9
nowhere [1] 30:18
number [8] 17:3 20:8,25 36:8 79:20 80:13 96:10 97:6

O

oaths [3] 56:25 57:25 100:17
objectives [4] 5:13 16:17 17:12 18:9
obligate [1] 53:14
obligations [6] 53:20 104:13,24,25 105:1,2
obscurity [1] 91:18
obtain [2] 96:16 102:6
obtaining [1] 51:18
obviously [1] 96:19
occurrence [1] 30:6
odds [1] 18:25
offer [13] 28:24 51:24 53:14,16 54:9,12 68:20,24 99:12 104:19 105:18,21,22
offered [1] 62:22
offering [1] 48:23
offers [1] 93:16
officer [1] 70:8
official [8] 7:6,11 51:15 56:11 67:8 68:15 77:7 89:1
officially [1] 67:5
officials [4] 16:9 27:25 48:14,19
often [4] 20:11 31:17 71:20 103:15
Okay [17] 19:21 31:5 32:22 35:21 39:1 42:12 44:21 50:4 68:8 82:7 83:3 84:23 101:17 106:12 109:2 111:9,15
once [4] 37:1,19 84:25 104:16
one [45] 6:16 13:10 14:3 19:24 24:12 25:16 27:6 32:2,15 34:1 38:16 40:16 42:9 44:4 46:2 47:1,24 49:25 52:5 56:3 64:17 65:11 69:3,8 72:17 74:4,24 75:19 76:16,25 77:4 81:21 83:1 89:18,18 91:11 93:9 95:9 96:13 97:18 99:5 100:16 105:25 108:23 109:20
one-shot [1] 40:14
only [30] 8:19 15:8 16:10 17:9 22:14 24:12 27:17 38:8 39:5,6 47:6 53:16 59:8,9 61:25 66:5,14 70:5 79:11 85:10 86:6,12 88:19 89:4 90:15 96:15 103:7 107:7 108:11 111:8
opened [1] 74:16
opening [2] 71:15,24
operated [1] 56:20
operating [2] 14:2 98:21
operation [1] 57:7
opinion [5] 10:10 39:17 68:2 107:20 108:14
opinions [1] 9:25
opportunity [5] 37:16 47:9 97:17 106:4 107:10
opposed [2] 14:7 40:19
opposite [2] 30:25 40:19
opt [2] 20:11 79:8
option [2] 30:8 107:3
oral [12] 1:21 3:2,5,8,12,15 4:7,13 28:7 51:1 77:21 94:10
orchestra [2] 40:21,22
order [7] 6:3 13:21 18:19 28:13 64:1 94:15 106:11
ordered [1] 22:17
ordinarily [1] 8:7
Ordinary [13] 5:1 8:23 10:2,3,17,19 11:10 13:7 23:23,24 24:8,18 88:10
Organization [2] 41:16 44:2
organs [1] 69:19
origin [1] 35:8
original [1] 98:11
originally [1] 66:14
other [50] 7:21 13:11 22:6 23:7 24:5 30:2 33:24 34:3,3,6 35:14 38:17,19 47:1 49:25 51:8,13 52:9,17 54:20 55:6,19 56:5 59:1 61:4 63:14 64:23,24 66:4,16 71:22 78:20 79:2,21 80:11,25 83:3 88:15 89:20 91:11 93:17 96:19 100:5,10 103:19,21 105:25 106:3 110:16 111:14
others [5] 38:3 61:19 63:22 73:4 104:2
otherwise [3] 75:15 76:8 79:1
ought [1] 77:2
out [21] 10:2,17 18:17 26:13 36:9 39:17 41:7 47:1 54:14 63:1 74:1 75:5 79:1,8 85:18 94:22 97:22 100:20 102:14 107:19 112:13
outcome [2] 30:23 34:2
outcome-determinative [1] 41:8
outlier [3] 23:3,14 112:17
outside [8] 36:6,7 37:23 40:20 89:4 90:23 102:14 112:20
over [7] 22:19 34:2 39:24 40:1 49:7 56:4 94:17
overburden [1] 19:24
overseas [3] 20:16 53:25 89:5
overturned [1] 84:2
overwhelmingly [2] 14:10 24:4
owe [1] 28:15
owes [1] 34:19
own [5] 7:17 14:1 29:14 47:9 70:12

P

PAGE [4] 3:2 15:12,20 84:7
paid [2] 27:9 84:8
panel [15] 22:13 28:20,20,21 29:1,8 30:12 42:17 43:8 44:8 51:18 56:15 62:14 67:16 72:3
panels [1] 100:6
parade [1] 36:2
paragraph [3] 68:3,7 69:9
paragraphs [1] 68:2
Pardon [1] 60:3
parlance [1] 106:20
part [8] 33:2 37:2 51:6 63:13 72:16

104:10 105:16,19
participate [2] 4:5 29:9
particular [10] 9:11 29:15 40:23 61:17 74:6 77:11 88:14 104:22 106:22 109:14
particularly [8] 6:20 7:24 35:15 52:7,20 60:10 96:5 103:14
particulars [1] 73:7
parties [26] 6:6 20:9,15 21:9,9 23:13 29:3,9 33:23 42:6 45:11 51:20,22 53:10 54:25 58:6 62:15 64:20,20 67:18 79:7 92:7,14 102:6 104:2 111:22
parties' [2] 29:4 78:6
parts [2] 24:22 80:25
party [12] 28:22 34:7 35:10 53:14 57:9,18 62:25 73:20 100:13 101:20 103:25 105:7
passed [6] 11:14 21:7 34:24 52:8 56:21 91:17
past [1] 13:7
patch [1] 81:11
paycheck [1] 27:18
pays [1] 50:7
penniless [1] 85:14
people [7] 7:7,17 10:19 21:18 30:4 36:12 85:14
percent [1] 13:24
perform [1] 92:20
perhaps [4] 6:12 49:22 86:11 108:18
period [1] 22:19
permissible [1] 24:15
permission [1] 22:14
permit [2] 31:17 64:23
permits [1] 93:2
permitted [1] 72:1
person [4] 5:15 54:17,17 111:24
personal [1] 88:8
persons [1] 98:20
perspective [1] 105:11
pervasively [1] 70:14
petition [1] 41:23
petitioner [1] 107:24
Petitioners [15] 1:4,10 2:4,6,10 3:4,7,11,20 4:14 28:6 51:3 52:24 80:2 109:9
phrase [33] 4:21,22,23 5:3 6:25 8:6,6 11:6,20 13:9 14:5,6 15:22 23:23,25 24:21 28:12 55:21 57:4 78:2 87:18 88:13 89:9,22,22 90:4,14 91:3 102:23 109:13,15,20 110:15
phrased [1] 84:20
phrases [2] 7:8 88:8
pick [13] 15:24 30:12 31:15 32:7 34:1,5 35:5 45:10,11 46:17 69:18,19 110:21
picked [4] 32:2 55:21 58:9 69:24
picking [2] 57:4 67:1
picks [2] 41:23 43:7
piece [1] 13:10
place [4] 20:6 38:8 59:11 112:4
placed [1] 62:7
plain [3] 24:11 95:12 110:25
plan [1] 41:20
playing [1] 20:2
please [5] 4:16 28:9 51:5 77:24 94:13
pleased [1] 79:16
plenty [1] 103:16
point [19] 11:3 14:4 22:24 25:16 54:13 71:11,11 74:4 87:21 89:9,21 97:13 100:4,20 102:4,9 105:25 108:5,11
pointed [2] 75:5 94:22
pointing [1] 17:7
points [6] 6:24 8:5,22 17:10 61:18 109:10
policies [1] 72:24
policy [11] 13:13 18:9 21:3 22:24 23:9 61:20 79:5 91:23 93:9 96:1 106:1
political [4] 80:23 81:20 83:4,7
pose [2] 11:11 18:24
position [7] 20:1 29:19 58:10,19 65:2 81:13 96:4
possible [4] 23:6 24:23 111:6,25
possibly [1] 103:6
potential [9] 20:19 28:25 54:20 62:19 63:4 74:9 83:8 93:8,18
potentially [1] 22:8
power [9] 49:1 56:16 67:8,8 68:15 76:2,2 77:6,7
powers [3] 28:15 34:19 65:5
practical [1] 19:6
practicality [1] 61:17
practice [4] 12:7 13:19 70:9 101:22
practices [2] 51:9 64:2
pre-arbitration [1] 111:13
pre-filing [1] 93:5
precursors [1] 70:14
predecessor [3] 55:17,22 57:7
preexisting [1] 90:3
premise [2] 82:9 83:15
prerogatives [2] 80:23,24
prescribe [1] 64:1
present [1] 4:4
presentation [5] 76:20 81:23 89:16 91:24 92:10
presented [1] 111:19
presenting [1] 86:18
presumably [1] 91:4
pretrial [2] 59:10 62:7
preventing [1] 18:16
previously [1] 98:22
principle [2] 49:22 69:22
Prior [4] 52:21 57:22 88:5 91:16
privacy [1] 88:8
private [59] 4:20 5:17 6:9,10 7:17 8:1 15:4 20:2 25:25 26:2,4,15 27:24 28:25 29:8,16 30:13 34:8 35:12 37:2,9 42:18 45:11 51:18,22,23 53:8,8,9 54:7,9,11,16,17,25 62:25 64:25 67:6,13 68:24 69:5,5 75:9,10,18,18 76:9 84:25 91:15 97:11 98:12 99:3 100:12 103:25 104:4,5,17 105:17 109:22
pro-arbitration [1] 79:5
probably [3] 17:18 18:17 87:11
problem [9] 17:24 38:4,15 63:24 73:18 74:5 111:14,20 112:16
problematic [1] 75:22
problems [7] 19:20 39:3 56:19 71:7 73:24 84:25 85:9
procedural [1] 31:18
procedure [5] 13:19 26:21 62:23 64:2 72:23
procedures [2] 20:12 82:13
proceeding [7] 28:11 29:23 85:3,5 86:6 106:10,12
proceedings [10] 20:2,21 86:21 93:4,5,15,20,21,22 102:11
proceeds [1] 97:25
process [4] 66:14 81:15,25 101:13
processes [1] 82:13
produce [1] 39:7
product [1] 81:16
proffered [1] 100:10
prohibit [5] 79:9 92:8,13,15,18
prolong [1] 27:7
promise [1] 105:8
promises [2] 105:6,23
promote [5] 5:8 51:7 80:6,10 97:2
promotes [2] 78:21 79:4
prompt [1] 105:4
property [6] 97:11,14,16 98:4 105:3 106:7
proposed [2] 14:16 59:13
prosaic [1] 93:19
prosecute [1] 103:14
PROTECTION [2] 1:12 99:23
provide [2] 99:23 102:17
provided [3] 61:24 98:6 104:20
provides [2] 21:4 78:25
Providing [1] 78:19
provision [1] 13:21
provisions [6] 5:2 13:19 14:2 52:15,17 82:15
proviso [1] 92:6
prudent [1] 76:13
public [2] 26:6 104:16
purely [5] 4:19 6:9 29:16 92:3 96:22
purpose [5] 14:23 18:3 58:2,13 76:7
purposes [5] 25:11 26:11 54:7 75:11 82:11
pursuant [2] 51:19 69:6
pushing [1] 37:5
put [11] 12:11 16:17,21 19:25 20:6 55:22 57:5,12 66:23 76:25 102:21
puts [1] 23:3
putting [6] 39:20 54:21 58:10 64:13 89:6 101:16
puzzle [1] 13:11

Q

quasi [1] 110:16
quasi-judicial [14] 5:9 14:22 15:1,18 16:3,6,8 17:12,25 40:12 66:16 69:17 83:24 110:21
question [40] 11:11 12:23 19:3,6 25:4 32:13 35:13,17 46:3,12 49:16,25 50:5 58:9,17 59:6 60:6 61:9 64:6 72:22 74:25 75:24 76:19 80:22 82:11 83:5,15,17 84:18 86:17 87:12 95:23 96:23,23 103:4,19 104:10,22,23 105:16
questions [12] 6:11 23:20 29:6 61:20 62:2 77:10 79:17 81:19,19 86:19 94:15 95:20
quick [2] 87:3 109:10
quickly [1] 19:20
quite [7] 9:8 20:17 29:8,11 32:25 52:25 87:9

R

raise [1] 61:19
raised [1] 61:19
raises [1] 62:2
raising [1] 61:18
range [1] 79:6
rather [4] 51:25 73:8 74:19 81:20
ratified [1] 73:12
reach [1] 79:1
reached [1] 53:17
reaching [1] 100:22
react [1] 95:24
read [6] 17:19 18:14,15 21:11 37:10 85:12
reading [7] 13:15 18:13 24:12 52:4 70:16 73:8 111:4
real [1] 38:18
really [30] 12:23 13:14 22:25 23:2,5 24:14 25:6 26:15 27:4,5 46:23 61:11 63:7 64:7 76:24 80:8,10 83:2 84:12 88:15 89:7 90:15,18 91:9,11,25 93:24 101:3 108:15 111:19
reason [7] 20:10 32:13 64:12 72:17 77:1 88:5 105:21
reasonable [1] 40:17
reasons [3] 26:1 29:15 111:10
REBUTTAL [2] 3:18 109:8
recall [1] 9:19
recalling [1] 95:7
received [1] 98:5
reciprocal [3] 63:15 71:21 105:23
reciprocate [2] 79:3 96:21
reciprocated [1] 80:14
reciprocation [1] 80:18
recognize [5] 26:3 36:17 59:5 69:25 100:5
recognizes [2] 20:5 24:7
recognizing [1] 26:14
refer [5] 7:23 8:8 11:8,17 12:8
referee [1] 6:9
reference [6] 86:2 87:17,24 88:1

92:9,22
referenced [3] **89**:1 **90**:5 **91**:6
references [1] **70**:7
referencing [1] **6**:22
referred [2] **66**:14 **83**:25
referring [2] **35**:8 **89**:4
refers [3] **4**:22,24 **16**:9
reflect [1] **75**:17
reflected [1] **69**:1
refuse [1] **6**:3
refutes [1] **110**:23
regard [1] **53**:22
regimes [1] **93**:20
regular [2] **30**:14 **76**:4
reinforce [2] **13**:15 **52**:18
reinforces [1] **14**:4
reject [1] **6**:5
rejected [1] **26**:12
rejigger [1] **81**:7
relates [1] **106**:1
relation [2] **79**:21 **102**:13
relations [3] **65**:3 **71**:2,8
relationship [2] **62**:17 **63**:10
relevant [1] **27**:13
reliable [2] **10**:14,23
reliance [1] **98**:10
relied [1] **9**:9
reluctant [1] **59**:20
remain [1] **26**:4
remind [2] **101**:10 **102**:4
removable [1] **27**:10
remove [2] **50**:8 **57**:20
render [1] **78**:5
repeat [1] **82**:4
rephrase [1] **84**:19
reply [2] **9**:1 **90**:10
report [15] **15**:10,12,20 **16**:11,19, 21,22,25,25 **17**:8,8 **66**:20,21 **95**:2, 3
reports [3] **5**:11 **70**:17 **95**:1
represent [2] **46**:5 **97**:19
representations [2] **79**:20 **95**:25
representative [2] **64**:25 **79**:19
representing [3] **53**:2,20 **98**:3
represents [1] **101**:20
request [4] **22**:22 **59**:10 **79**:12 **107**: 5
requested [1] **79**:15
requests [3] **51**:13 **93**:6,13
require [3] **31**:14 **86**:21 **106**:10
required [3] **64**:9 **104**:19 **105**:22
requirement [2] **86**:10 **111**:16
requires [1] **79**:13
reserve [3] **76**:14,17,18
resolution [4] **30**:10 **65**:4 **93**:11 **106**:23
resolve [6] **28**:21 **35**:1 **41**:5 **43**:23 **44**:7 **106**:6
resolved [2] **81**:20 **98**:1
resolving [5] **17**:21 **42**:20 **62**:24 **73**:18 **104**:3
resonance [1] **88**:9
respect [10] **22**:7 **23**:4 **58**:15 **66**:17 **67**:2 **68**:8 **82**:7 **83**:8 **97**:1,9
respecting [1] **96**:24
respond [1] **32**:15
Respondent [10] **1**:7,14 **2**:12,14 **3**: 14,17 **33**:25 **71**:6 **77**:22 **94**:11
response [2] **79**:25 **89**:25
responsibility [1] **59**:17
rest [1] **70**:1
Restate [1] **37**:13
Restatement [4] **37**:6,11 **39**:24 **85**: 12
Restatement's [1] **38**:17
result [1] **107**:14
resulting [1] **29**:1
results [2] **5**:25 **18**:12
return [2] **62**:13 **71**:14
reverse [1] **113**:3
review [5] **26**:21 **27**:4 **35**:6 **47**:10 **88**:19
reviewing [2] **78**:7 **84**:3
rewrite [2] **111**:15,18
richly [1] **48**:15
RIGHTS [2] **1**:13 **78**:6
road [1] **36**:3
robe [1] **36**:13
ROBERTS [44] **4**:3 **6**:14 **7**:15 **8**:12, 15 **9**:7,16 **17**:14 **23**:16 **28**:2 **29**:7 **41**:11 **43**:20 **47**:21 **49**:13 **50**:17,22 **52**:22 **53**:18 **54**:22 **55**:1,4 **67**:20 **70**:24 **74**:22 **77**:18 **79**:18 **89**:11,15 **92**:11,16,21 **94**:1 **95**:22 **97**:24 **98**: 9 **107**:16,22 **108**:1,4,22,25 **109**:7 **113**:4
rogatory [3] **70**:2,2 **82**:13
role [6] **20**:2 **26**:17,19 **34**:6 **54**:15 **58**:14
ROMAN [5] **2**:3 **3**:3,19 **4**:13 **109**:8
rule [4] **49**:17 **84**:5 **86**:9 **87**:23
rules [19] **5**:6 **6**:2 **14**:13,14 **15**:5 **16**: 11 **17**:7 **30**:13 **31**:18 **34**:8 **47**:25 **57**:10 **70**:9,12 **74**:12 **79**:10 **92**:18 **110**:19 **112**:7
Ruling [3] **71**:5 **84**:11 **88**:19
run [1] **6**:6
runs [1] **87**:1
Russia [12] **28**:19 **30**:5,5 **50**:12 **55**: 8 **68**:19 **102**:13 **104**:13,24 **105**:1,2, 8
Russian [3] **33**:6 **76**:7 **105**:8

S

safeguards [1] **79**:7
same [21] **5**:3 **9**:12 **10**:13,15,25 **17**: 6,10,25 **22**:5 **53**:7 **57**:4,13 **60**:5 **62**: 25 **66**:22,23 **69**:22 **71**:18 **89**:3 **95**: 23 **107**:11
sat [1] **15**:6
saying [15] **23**:1 **32**:6 **33**:21,22 **38**: 3 **46**:13 **63**:25 **65**:7 **70**:19 **74**:2,4,6, 7 **76**:6 **106**:13
says [20] **15**:13,22 **18**:4 **24**:13 **30**:3 **37**:6 **38**:9 **39**:14 **43**:3 **44**:6 **66**:1 **90**: 10 **94**:24 **101**:5 **103**:5,19 **106**:3 **111**:8,14 **112**:9
scale [1] **81**:5
Scalia [1] **94**:21
scarier [1] **10**:25
scattered [1] **70**:6
Scherk [1] **80**:4
scholar [1] **5**:16
scholarly [1] **10**:23
school [1] **12**:19
scope [1] **101**:21
seated [1] **78**:20
Second [10] **25**:4 **50**:4 **53**:22 **68**:4 **69**:8 **71**:7 **73**:19 **99**:6 **104**:10 **111**: 5
secondly [1] **26**:8
Secretary [1] **32**:11
Section [18] **4**:17 **15**:14 **26**:20 **28**: 13 **51**:6,12,17 **55**:23 **59**:7 **88**:25 **89**:3 **92**:24 **93**:2,13 **94**:19 **95**:6 **96**: 11,16
security [1] **99**:24
see [9] **10**:18 **19**:13 **20**:13 **32**:20 **64**: 7 **98**:12,12 **100**:1 **103**:9
seek [4] **37**:17 **74**:12 **79**:8 **112**:22
seeking [3] **6**:4 **101**:13 **107**:12
seem [1] **23**:25
seems [6] **7**:25 **21**:6 **29**:10 **36**:25 **47**:24 **72**:21
sees [1] **26**:25
select [4] **31**:7 **33**:23 **45**:7 **53**:11
selected [7] **29**:2 **34**:4 **45**:6 **47**:5 **55**:5,8 **69**:6
selecting [3] **42**:6,7,17
selection [1] **31**:22
selects [2] **30**:13 **42**:14
self-published [2] **90**:7,9
Senate [6] **5**:10 **16**:24 **17**:8 **66**:21 **94**:25 **95**:2
send [2] **46**:15 **61**:5
sense [3] **27**:24 **52**:10 **53**:23
sent [1] **106**:18
separately [3] **52**:12,16 **93**:23
series [1] **44**:17
serious [3] **12**:25 **13**:1 **62**:2
served [1] **62**:18
serving [2] **98**:21,24
set [13] **8**:2,17 **20**:12 **23**:21 **29**:15 **44**:2,4,5 **46**:14,16 **53**:24 **78**:7 **95**:8
settle [3] **21**:19 **43**:7 **64**:24
settled [1] **12**:7
settlement [3] **41**:19 **43**:3 **64**:16
seven [1] **107**:19
sever [1] **89**:17
several [1] **18**:15
shorn [1] **30**:10
shouldn't [7] **57**:15,16 **82**:18 **83**:3 **87**:13 **101**:5 **102**:1
show [1] **5**:11
shows [1] **79**:13
side [20] **14**:3,12 **20**:5 **37**:12 **38**:16, 17,19 **48**:8,20 **58**:11 **66**:4 **76**:25 **87**:21 **89**:20 **90**:2 **100**:5,10 **103**:19 **110**:25 **111**:14
sides [1] **48**:19
sign [2] **20**:10 **36**:12
signal [1] **11**:22
signed [4] **101**:4,25 **102**:13,15
significance [2] **8**:17 **50**:6
significant [2] **54**:3 **84**:4
similar [2] **18**:3,4
similarly [1] **9**:22
simple [2] **77**:4 **95**:13
simplify [1] **62**:23
simply [7] **30**:3 **37**:14 **47**:12 **75**:17 **76**:7 **98**:14 **106**:16
since [2] **94**:14 **107**:2
single [3] **5**:15 **11**:16 **110**:14
sinking [1] **56**:5
sit [1] **99**:18
sits [1] **59**:12
sitting [2] **98**:25 **99**:3
situation [11] **44**:11 **49**:19,24 **53**:9, 13 **54**:6 **65**:19 **74**:8,8 **76**:12,22
situations [6] **11**:18 **57**:8 **60**:12 **62**: 5 **67**:4 **76**:19
Sixth [1] **10**:7
slam [1] **13**:25
slightly [2] **55**:18 **66**:15
Solicitor [2] **2**:7 **14**:20
solution [5] **74**:15 **111**:10,19 **112**: 24 **113**:2
solve [1] **112**:15
someone [2] **34**:5 **112**:21
sometimes [2] **24**:1 **27**:23
somewhat [1] **11**:11
somewhere [1] **72**:3
sooner [1] **106**:17
sorry [9] **14**:15 **27**:7 **31**:2 **35**:18 **42**: 3,10 **44**:21 **82**:14 **89**:14
sort [24] **7**:1,8,12 **8**:7 **9**:2,21,25 **11**: 7,23 **22**:24 **24**:9 **26**:7 **48**:20 **59**:24 **62**:11 **71**:18,25 **72**:20 **74**:3 **75**:19 **76**:21 **89**:18 **91**:17 **110**:25
sorts [3] **10**:19 **27**:19 **62**:8
Sotomayor [37] **23**:18 **31**:1,3,6,12, 20 **32**:1,4,10,23 **34**:9,11,16 **35**:16, 20,23 **41**:14,15,18,22 **42**:4,10,13, 23 **43**:2,6 **63**:20,24 **64**:19 **65**:21, 25 **66**:10 **67**:14 **75**:5 **89**:13 **94**:4 **103**:12
sought [1] **86**:4
sounds [3] **38**:16 **43**:13 **83**:6
source [1] **9**:10
sources [3] **13**:8 **17**:6,10
sovereign [25] **28**:17 **29**:18 **30**:15, 16,17 **32**:17 **54**:1,15,16 **65**:5,17,19, 20 **66**:3 **67**:9 **76**:2,24 **98**:17 **99**:4, 16,17,19 **105**:20,21 **108**:9
sovereigns [17] **34**:21 **41**:2 **43**:15 **45**:16 **47**:6,6 **67**:6 **96**:10,25 **97**:1,7 **98**:19 **99**:4 **102**:5 **103**:8 **105**:14,24
sovereignty [3] **64**:21,22 **66**:1
space [1] **80**:7

Spain [3] **21**:12 **60**:8 **102**:11
speaking [1] **12**:18
specialized [2] **24**:9 **67**:2
specific [5] **14**:15 **15**:16 **45**:17 **55**:24 **71**:10
specifically [5] **15**:22 **35**:4 **51**:7 **74**:18 **76**:1
specify [1] **112**:6
speech [1] **11**:10
spell [1] **74**:1
spend [1] **53**:1
sphere [1] **53**:21
staffed [2] **48**:18 **50**:11
stage [1] **23**:14
standard [1] **11**:23
standing [9] **28**:24 **42**:20 **44**:2 **46**:14,16 **54**:9 **55**:7 **70**:11 **76**:8
standpoint [1] **107**:15
stands [1] **36**:13
start [6] **6**:12 **30**:2 **33**:3 **37**:22 **50**:13 **82**:18
started [2] **85**:3 **91**:19
Starting [1] **97**:12
stat [1] **13**:12
State [43] **13**:20 **19**:10 **26**:10,14 **31**:21 **32**:6,12 **35**:9 **42**:24 **44**:11,11,13,13,14,15 **45**:22,23,24,24 **46**:3,3,4 **53**:13 **54**:3,6 **58**:16,19 **59**:2 **61**:15 **62**:3,16 **66**:1 **68**:22 **71**:4,6 **73**:5,20,20 **80**:24 **98**:2,3,5 **106**:25
state's [2] **31**:8,9
state-to-state [8] **48**:10 **49**:18,24 **64**:16 **65**:18 **76**:19 **100**:12 **104**:3
STATES [72] **1**:1,13,22 **2**:9 **3**:10 **14**:24 **20**:22 **22**:6,7 **23**:3,14 **31**:15 **36**:7,15 **37**:17,17,23 **40**:20 **41**:19,20,22,24 **43**:3,8 **45**:6,7,9 **46**:4 **51**:2 **52**:13 **53**:21 **55**:15,17 **56**:10 **57**:9,17,18 **58**:14,20 **59**:17,19,23 **60**:18 **62**:3,10,11,20,22 **63**:6,13 **65**:4 **68**:24 **71**:14,20 **72**:6,12 **73**:11 **76**:23 **85**:16 **89**:5 **90**:23 **94**:17 **96**:4,21 **97**:17 **100**:20,23 **101**:25 **103**:15 **112**:16,20,21
States-Canada [1] **68**:10
status [1] **52**:25
statute [58] **5**:6 **11**:14 **14**:13,15 **15**:9 **17**:1,4,13 **18**:12,24 **19**:1 **21**:1,7 **23**:2,11 **35**:7 **37**:15 **40**:9,11 **58**:2,4,13,25 **70**:13 **73**:9 **74**:10 **79**:6 **82**:1,1,12,22 **83**:9,18 **84**:15,22 **85**:25 **86**:5,15 **87**:16 **88**:21,24 **89**:4 **90**:22,24 **91**:3,7,15,17,19 **94**:24 **96**:3 **101**:5 **106**:16 **109**:21,24 **110**:18,18 **112**:25
statutes [8] **10**:1 **11**:15 **55**:22,23 **56**:21 **57**:7,23 **70**:17
statutory [13] **4**:20 **6**:13 **13**:12,15,17 **14**:17 **15**:7,13 **16**:16 **24**:21 **29**:22 **78**:18 **110**:2
step [1] **82**:19
stepping [2] **54**:14 **65**:2
stick [1] **44**:22
still [2] **65**:1 **84**:18
stop [3] **40**:3,5,7
stopping [1] **65**:3
strange [1] **18**:10
streamlined [1] **20**:12
strong [2] **7**:3 **20**:3
strongly [1] **52**:2
structure [2] **4**:17 **86**:15
study [10] **8**:25,25 **9**:1,2,12 **10**:12 **90**:6 **110**:5,7,10
style [1] **22**:17
subject [2] **88**:19 **92**:6
subjecting [1] **100**:24
subjects [1] **97**:15
submit [2] **32**:17 **43**:8
submitted [2] **113**:5,7
subpoena [1] **101**:21
subpoenas [3] **57**:1,24 **100**:17
sudden [1] **12**:13
suddenly [1] **20**:18
sue [3] **30**:16 **66**:2,5
suggested [3] **77**:3 **111**:6 **113**:1
suggesting [3] **33**:10 **70**:10,11
suggests [1] **29**:19
suing [1] **66**:8
suits [1] **64**:23
support [4] **29**:19 **91**:25 **102**:10,17
supported [4] **52**:3 **78**:17 **83**:20,22
supporting [4] **2**:9 **3**:11 **51**:3 **52**:24
supports [1] **5**:5
suppose [4] **43**:22 **60**:1,4 **81**:11
supposed [3] **87**:3,3,4
SUPREME [3] **1**:1,21 **10**:7
surprise [1] **20**:18
surprising [1] **88**:3
surprisingly [1] **38**:23
surrounding [1] **111**:2
survey [2] **10**:3,9
Sweden [1] **80**:16
swept [1] **37**:1
Switzerland [1] **80**:17
system [7] **45**:3 **46**:6,10,16 **59**:20,22 **85**:17

T

table [1] **101**:16
tailor [1] **112**:25
talked [1] **93**:9
targeted [2] **22**:20 **93**:12
team [1] **8**:10
tease [1] **10**:2
television [1] **36**:10
tells [1] **13**:5
tens [1] **9**:4
term [8] **22**:19 **52**:4 **55**:13 **57**:21 **67**:11 **70**:2 **87**:22 **89**:8
terms [4] **56**:20 **88**:11 **89**:6 **99**:12
terrible [1] **19**:18
terribly [1] **88**:3
test [3] **27**:17 **69**:4 **77**:3
text [8] **4**:17 **5**:14 **6**:13 **52**:3 **84**:15 **109**:13 **111**:1,2
that'll [1] **84**:2
themselves [10] **26**:4 **27**:8 **29**:10 **45**:7 **47**:16 **50**:6 **67**:6 **93**:14 **100**:24 **102**:5
there's [30] **13**:1 **24**:12 **26**:5 **32**:25 **40**:8,14 **43**:22 **59**:10 **62**:13,17,19 **70**:20 **72**:17 **73**:9 **74**:9 **75**:6,9 **76**:21 **81**:3,10 **82**:11 **85**:2 **91**:14 **100**:12,18,21,25 **101**:7 **104**:18 **110**:9
therefore [2] **39**:2 **93**:15
thinking [1] **17**:18
third [2] **21**:8 **102**:6
third-party [6] **96**:16 **101**:11,19,21 **102**:10,15
Thomas [1] **4**:3
though [7] **14**:8 **21**:4 **22**:8 **75**:14 **83**:7 **100**:19 **110**:12
thousand [1] **49**:7
thousands [1] **9**:4
three [7] **13**:18 **20**:25 **85**:6 **90**:9,13 **93**:19 **109**:10
throughout [1] **70**:7
thrust [1] **81**:23
tie [1] **71**:5
time-consuming [1] **20**:20
timing [2] **73**:2 **74**:13
title [2] **52**:14,14
today [4] **4**:4 **81**:6 **82**:6 **94**:16
together [8] **14**:2 **24**:24 **41**:3 **44**:25 **49**:6 **54**:2 **89**:6 **93**:25
took [4] **11**:9 **16**:21,22 **81**:22
top [1] **16**:13
totally [2] **40**:6,8
touch [1] **111**:5
touchstone [2] **77**:2,9
Trade [1] **41**:16
transcript [1] **4**:7
translated [1] **15**:7
treat [5] **17**:25 **33**:20 **89**:18 **99**:22 **105**:5
treated [2] **18**:1 **70**:21
treaties [4] **22**:3 **72**:22 **100**:22 **106**:3
treatment [1] **23**:4
treaty [49] **28**:18,23 **29**:5 **30**:3,3,20 **32**:16 **34**:24 **39**:14 **43**:17,18,22 **44**:6 **45**:2 **47**:12 **48**:11 **50**:10 **53**:14 **56**:3 **64**:20 **65**:22,25 **68**:23 **69**:3 **72**:13 **74**:18 **75**:4 **77**:12 **96**:12 **97**:10,12 **98**:11,16 **99**:12,20 **100**:20 **102**:12,13 **103**:6 **104**:15,19 **105**:7,13,19 **106**:2,14,21 **108**:10,14
trial [1] **98**:11
tribunal [114] **4**:22 **5**:12 **6**:16,17 **7**:1,18,21,23 **8**:1 **11**:4,4,10,13,15,17,20,24,25 **14**:5 **15**:22 **18**:19 **25**:12,13 **28**:12,14 **29**:24 **34**:13,14,23 **36**:4,5,23 **38**:3,8,11 **39**:25 **41**:1 **42**:1,22 **43**:10 **44**:9 **45**:5,14,17 **46**:11,15,18 **47**:19 **48**:9 **50**:14 **52**:5 **55**:13,14 **57**:5,22 **60**:10 **61**:4 **64**:4,8,15 **67**:1,4 **68**:6 **69**:10,13,22,23,24 **70**:7,11 **75**:13 **76**:7 **78**:3,4,5,9,10,13 **81**:2,3 **83**:23,24 **84**:6 **86**:11 **87**:19 **88**:17 **89**:23,24 **90**:4,20,21 **91**:4 **95**:9,16,17 **99**:11,18 **102**:24 **103**:1,1,3,7,8 **104**:11,15,21 **106**:14,15 **107**:3 **109**:15,16,20 **110**:15,20
tribunal-focused [1] **35**:11
tribunals [40] **4**:23 **8**:16 **12**:9 **16**:3 **19**:10 **27**:23 **31**:7 **37**:9 **40**:10 **48**:9 **49**:11 **55**:16,20 **56**:1 **57**:14 **63**:12 **66**:24 **67**:3 **78**:1,11,16,20,23 **79**:3 **80**:11 **82**:22,24 **83**:19 **86**:1 **87**:24 **88**:6 **89**:10 **91**:9,13 **93**:3 **96**:24 **97**:1 **102**:18 **103**:13 **110**:22
trigger [2] **106**:19,19
triggering [1] **20**:19
trouble [1] **38**:19
true [8] **17**:18 **52**:7 **60**:19 **72**:11 **82**:9 **105**:17 **110**:13 **111**:1
trump [1] **24**:10
try [2] **33**:2 **56**:23
trying [9] **10**:2 **13**:14 **23**:11 **24**:17 **47**:25 **63**:14 **67**:17 **77**:12 **93**:10
Turkey [2] **96**:12 **107**:12
turn [3] **60**:18 **79**:2,4
turning [1] **35**:17
turns [3] **107**:18 **109**:12 **112**:13
TV [1] **36**:14
two [45] **20**:8 **23**:20 **29**:13 **32**:16 **33**:16 **40**:15 **41**:2 **43**:14,23,24 **44**:24,25 **48**:25 **49**:1 **50**:13 **51**:22 **52**:24 **53**:4 **54**:1 **55**:24 **56**:13,16,17,19 **62**:15 **67**:3,18 **68**:2,14,16 **77**:8 **85**:3,10 **88**:16 **89**:17 **90**:12 **93**:7 **98**:18 **99**:4,7 **102**:25 **103**:8,8 **104**:7 **105**:14
types [3] **73**:3 **86**:1 **110**:16
typographical [1] **90**:8

U

U.S [27] **6**:6 **9**:25,25 **19**:25,25 **20**:3 **21**:8,9 **22**:17 **23**:6 **26**:8 **48**:4 **54**:21 **63**:3 **64**:15 **71**:8,16,24 **73**:18 **97**:8,13 **98**:22,22 **100**:24 **102**:6,14 **106**:11
U.S.-Canada [3] **64**:17 **68**:5 **100**:16
U.S.-German [1] **48**:1
U.S.-style [2] **87**:5 **112**:17
ultimately [4] **25**:2 **47**:5 **87**:15 **90**:13
umpire [2] **95**:11 **98**:19
umpires [1] **98**:25
unable [1] **4**:4
under [16] **5**:6 **6**:1,16 **22**:9 **26**:19,20 **30**:13 **36**:16 **46**:16 **52**:13 **55**:9 **69**:5 **75**:11 **85**:5 **106**:21 **112**:8
undergo [1] **65**:8
undermine [2] **5**:22 **54**:21
undermines [1] **20**:8
undermining [1] **62**:20

understand [12] **7:**18 **31:**21 **39:**19 **42:**11 **55:**12 **58:**3 **61:**16 **65:**14 **81:**12 **83:**14 **85:**8 **101:**18
understanding [4] **31:**4 **65:**2 **90:**3 **91:**12
understood [4] **49:**17 **91:**8 **100:**22,23
undertaking [1] **29:**17
undertakings [1] **60:**20
undoubtedly [1] **71:**3
unfairly [1] **99:**22
unforeseen [1] **83:**13
unified [1] **11:**6
uniformly [1] **26:**11
unilateral [1] **72:**2
unilaterally [1] **71:**25
unimportantly [1] **103:**22
uniquely [1] **23:**12
UNITED [50] **1:**1,22 **2:**9 **3:**10 **8:**10 **14:**24 **20:**21 **23:**3,13 **36:**7,15 **37:**16,17,23 **40:**20 **51:**2 **52:**13 **53:**21 **56:**10 **57:**8,17,18 **58:**14,19 **59:**17,19,23 **60:**18 **62:**3,10,11 **63:**5,13 **68:**10 **71:**14,20 **72:**6,12 **73:**11 **80:**16 **85:**16 **89:**5 **90:**23 **94:**17 **96:**4,21 **97:**16 **112:**16,20,21
university [1] **12:**18
unknown [2] **28:**25 **81:**6
unless [4] **18:**19 **60:**12 **78:**7 **84:**2
unlike [1] **17:**20
unlikely [1] **21:**6
unpack [2] **33:**1 **101:**7
unquestionably [1] **57:**23
unusual [1] **20:**6
up [45] **7:**10 **8:**2,18 **15:**24 **20:**10 **23:**21 **24:**22 **28:**23 **29:**15 **36:**14 **37:**1 **41:**7,18 **42:**18 **44:**2 **46:**14,15,16 **47:**9 **51:**23 **53:**16,24 **55:**21 **57:**4 **64:**21,22 **66:**2 **67:**1 **68:**22 **69:**18,19,24 **70:**18 **71:**5,24 **81:**11 **82:**1 **87:**9 **90:**13,16 **95:**8 **101:**5,25 **102:**15 **110:**21
upset [1] **72:**4
urged [1] **84:**5
usage [9] **5:**1 **8:**23,25 **10:**3 **11:**24 **78:**10 **83:**21 **87:**22 **88:**9
usages [1] **90:**17
useful [1] **21:**4
using [8] **5:**2 **7:**8 **14:**5 **22:**19 **24:**13 **62:**24 **110:**14,20
Utah [1] **10:**7

V

various [3] **72:**24 **94:**25 **110:**8
vehicle [1] **41:**5
vein [2] **43:**22 **47:**23
versus [3] **4:**10 **9:**21 **23:**23
vessel [1] **56:**5
view [6] **14:**11,12 **54:**6 **80:**3,9 **85:**9
views [1] **79:**21
violinists [1] **40:**23
virtually [1] **31:**13
Volvo [1] **53:**24
vote [2] **40:**24 **87:**11

W

waives [1] **54:**15
wanted [11] **11:**22 **15:**24,25 **16:**1 **18:**11 **23:**12 **57:**12,20 **66:**22 **88:**23 **102:**17
wants [9] **18:**19 **38:**9 **40:**22 **60:**12 **63:**17 **64:**8 **71:**20 **85:**1 **112:**25
Washington [3] **1:**16 **2:**3,8
water [1] **103:**5
way [29] **6:**7 **7:**24 **10:**1,25 **11:**12 **16:**6 **17:**25 **22:**6 **23:**15 **24:**6 **26:**7 **35:**14 **40:**17 **47:**1 **49:**25 **52:**11 **56:**19 **57:**11 **62:**12,25 **63:**15 **66:**6 **67:**2 **69:**16 **72:**14 **91:**11 **97:**9 **98:**13,13
ways [5] **18:**16 **61:**6 **62:**1 **110:**8 **113:**1
wears [1] **36:**13
Wednesday [1] **1:**17
weigh [3] **72:**24 **73:**6,6
weight [1] **103:**11
welcome [2] **6:**11 **95:**19
whatever [3] **6:**19 **31:**15,16
Whereupon [1] **113:**6
whether [25] **21:**8,9 **26:**10,19 **27:**8 **29:**22,23 **35:**9 **39:**8 **42:**5 **45:**5 **51:**21 **61:**3 **62:**15 **75:**2 **85:**19 **90:**12 **93:**24 **98:**16,22 **102:**9,9,23 **104:**12 **106:**7
who's [1] **71:**17
whoever [1] **53:**24
whole [7] **11:**6 **23:**24,25 **29:**14 **52:**13 **54:**19 **97:**13
whom [1] **72:**12
will [16] **4:**4 **21:**18 **30:**15,21 **33:**1,17 **34:**10 **36:**19 **40:**2,17 **41:**3,5 **42:**20 **44:**4 **64:**4 **71:**22
win [3] **39:**16 **49:**23 **110:**25
window [1] **21:**4
winner [1] **14:**1
within [8] **27:**21 **48:**22 **85:**25 **86:**15 **95:**15 **101:**12 **106:**15 **107:**4
without [7] **17:**1 **47:**19 **64:**11 **70:**19 **99:**11,21 **105:**3
wonder [3] **46:**19 **52:**25 **79:**24
wonderful [2] **37:**21 **39:**7
wondering [1] **75:**2
word [12] **7:**8 **8:**19 **11:**10,13,16 **24:**24 **88:**22 **89:**3 **95:**10 **103:**4,9 **110:**20
words [14] **5:**12 **9:**5 **10:**24 **15:**23 **16:**15,18 **23:**23 **24:**2,8 **55:**6 **88:**16,25 **89:**17 **90:**19
work [5] **24:**25 **101:**15 **110:**11 **111:**9 **112:**13
workable [1] **111:**9
workaround [2] **87:**8 **111:**6
workarounds [1] **81:**10
worked [2] **85:**18 **98:**8
works [1] **40:**19
world [13] **15:**11 **22:**21 **32:**8 **41:**15,16 **42:**24 **55:**3 **59:**15 **62:**22 **72:**4 **79:**22 **82:**6 **106:**20
worried [2] **38:**15 **61:**2
worry [1] **84:**24
worth [1] **95:**7
wrestle [1] **26:**9
write [4] **15:**9 **39:**18 **68:**2 **91:**2
written [1] **76:**3
wrote [2] **9:**20 **15:**10
WTO [4] **41:**23 **42:**14,24 **43:**7

Y

YANOS [19] **2:**13 **3:**16 **94:**9,10,12 **96:**7 **98:**3,15 **99:**25 **100:**2 **101:**9,17 **102:**3 **103:**12 **104:**9 **107:**21,24 **108:**7 **109:**6
year [1] **22:**19
years [2] **17:**3 **49:**6
yielding [1] **47:**8
York [7] **2:**5,5,11,11,13,13 **73:**12
yourself [1] **110:**9

Z

ZF [2] **1:**3 **4:**9