

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
DANNY RICHARD RIVERS,)
Petitioner,)
v.) No. 23-1345
ERIC GUERRERO, DIRECTOR,)
TEXAS DEPARTMENT OF CRIMINAL)
JUSTICE, CORRECTIONAL)
INSTITUTIONS DIVISION,)
Respondents.)
- - - - -

Pages: 1 through 59

Place: Washington, D.C.

Date: March 31, 2025

HERITAGE REPORTING CORPORATION
Official Reporters
1150 Connecticut Avenue, N.W., Suite 305
Washington, D.C. 20036
(202) 628-4888
www.hrccourtreporters.com

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -
3 DANNY RICHARD RIVERS,)
4 Petitioner,)
5 v.) No. 23-1345
6 ERIC GUERRERO, DIRECTOR,)
7 TEXAS DEPARTMENT OF CRIMINAL)
8 JUSTICE, CORRECTIONAL)
9 INSTITUTIONS DIVISION,)
10 Respondents.)
11 - - - - -

12
13 Washington, D.C.
14 Monday, March 31, 2025
15

16 The above-entitled matter came on for
17 oral argument before the Supreme Court of the
18 United States at 11:46 a.m.
19
20
21
22
23
24
25

1 APPEARANCES:
2 PETER A. BRULAND, Washington, D.C.; on behalf of the
3 Petitioner.
4 AARON L. NIELSON, Solicitor General, Austin, Texas; on
5 behalf of the Respondent.
6 MATTHEW GUARNIERI, Assistant to the Solicitor General,
7 Department of Justice, Washington, D.C.; for the
8 United States, as amicus curiae, supporting the
9 Respondent.
10
11
12
13
14
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	PETER A. BRULAND, ESQ.	
4	On behalf of the Petitioner	4
5	ORAL ARGUMENT OF:	
6	AARON L. NIELSON, ESQ.	
7	On behalf of the Respondent	35
8	ORAL ARGUMENT OF:	
9	MATTHEW GUARNIERI, ESQ.	
10	For the United States, as amicus	
11	curiae, supporting the Respondent	47
12	REBUTTAL ARGUMENT OF:	
13	PETER A. BRULAND, ESQ.	
14	On behalf of the Petitioner	54
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (11:46 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument next in Case 23-1345, Rivers versus
5 Guerrero.

6 Mr. Bruland.

7 ORAL ARGUMENT OF PETER A. BRULAND

8 ON BEHALF OF THE PETITIONER

9 MR. BRULAND: Mr. Chief Justice, and
10 may it please the Court:

11 Congress did not slam the door on
12 exculpatory evidence that emerges while a
13 prisoner's first habeas case is on appeal.
14 Outside of habeas, there's always been a pathway
15 to bring late-breaking claims to an appellate
16 court's attention.

17 And, historically, habeas was no
18 different. The near-uniform practice in the
19 decades before AEDPA was to consider such claims
20 on the merits, as part and parcel of a
21 prisoner's first habeas case, without a word
22 about successive litigation. Congress enacted
23 AEDPA against that backdrop, and as Banister
24 tells us, it did not redefine what counts as
25 successive.

1 The other side's rule is unmoored from
2 text and history, and it also comes at a cost.
3 Viable constitutional claims that would have
4 warranted habeas relief will fall through the
5 cracks under their rule. That means every claim
6 of sentencing error, every claim of structural
7 error, and every Brady or Napue claim that
8 doesn't show innocence by clear and convincing
9 evidence.

10 The reason those claims don't fly
11 under 2244 is that Congress decided the state's
12 interest in repose outweighs the interest in
13 getting those claims right. But the other side
14 has never explained why they're entitled to
15 repose while they're still defending the
16 conviction on appeal. And you're not going to
17 hear an explanation this morning.

18 The small universe of cases where our
19 rule makes a difference is the universe of cases
20 where both the district court and the court of
21 appeals agree that a new claim deserves its day
22 in court. Those cases will be rare, but when
23 they arise, AEDPA does not strip district courts
24 of the power to consider new evidence that would
25 warrant habeas relief.

1 The lower courts here made a threshold
2 jurisdictional error and so never reached the
3 merits or any procedural issues. This Court
4 should reverse and remand.

5 I welcome your questions.

6 JUSTICE THOMAS: How would you defined
7 "second and successive"?

8 MR. BRULAND: Well I would define it,
9 Justice Thomas, based on the history, because
10 Banister says you look at the history --

11 JUSTICE THOMAS: Well, you --
12 post-AEDPA, how would you define it?

13 MR. BRULAND: Post-AEDPA, I would say
14 the second or successive petition is something
15 that, in 1996, when Congress used that phrase,
16 ordinary members of the bar would have
17 recognized as settled is second or successive.
18 And then AEDPA says we look at the purpose
19 behind -- I'm sorry, Banister says we look at
20 the purposes behind the statute, judicial
21 economy, piecemeal litigation -- hastening
22 finality. And Banister tells us that that's how
23 you look at it.

24 And this case, I think, is easier than
25 Banister or Gonzalez because the statute itself

1 answers that. Here we have Congress
2 specifically considering how amendments should
3 work in habeas, and Congress says amendments in
4 habeas work just like amendments in ordinary
5 civil litigation. And Congress said that
6 there's a small sliver of amendments that are
7 subject to the second or successive rules and
8 only those.

9 JUSTICE THOMAS: And don't we
10 normally -- in the mine-run cases consider
11 second-in-time to be "second and successive"?

12 MR. BRULAND: So, Justice Thomas, if I
13 were just looking at the phrase, I would say
14 yes, that's how I would look at "second or
15 successive." But this Court has said "second or
16 successive" is a term of art. And so all I'm
17 saying today is what this Court said in
18 Banister, which is that we look at the history
19 and the purposes.

20 And, again, I think this case is
21 easier than Banister because we have a statutory
22 hook. And going to that statutory hook, 2242
23 gives us the general rule. And then
24 2266(b)(3)(B) gives us the only exception.
25 Congress specifically thought about which

1 amendments should be subject to the rules
2 governing second or successive petitions, and it
3 said in 2266(b)(3)(B), it's only this tiny
4 sliver, filed by prisoners on death row in
5 opt-in states after the state files its answer.

6 And I think it would disregard
7 Congress's drafting choices to apply the rules
8 governing second or successive petitions outside
9 that tiny sliver. And I think my friend, Mr.
10 Guarnieri is with me on that. Page 17 of their
11 brief, they say 2266(b)(3)(B), that's the
12 exception and then other amendments follow the
13 federal rules.

14 And if there's any question about
15 that, I would turn to history, as I said,
16 Justice Thomas, and here you had the
17 near-uniform practice leading up to AEDPA was
18 that mid-appeal efforts to amend were not
19 treated as successive.

20 And I think my favorite case on that
21 is the Harisiades case because Texas needs the
22 Court to say that the district court and the
23 court of appeals with Learned Hand on the panel
24 and all nine members of this Court plus, I
25 guess, the Solicitor General and the line

1 prosecutor, all saw the effort to amend after
2 the appeal was filed and didn't say a word about
3 it -- I guess forgot that it was second or
4 successive.

5 And this is a -- not a case where that
6 issue was just lurking in the record. If you
7 look at the prisoner's blue brief, he says on
8 page 10 to 11 I filed my notice of appeal, and
9 then I moved to amend. And then he argues the
10 core of the amendment issue in his merits brief.

11 JUSTICE JACKSON: And he had a
12 judgment. I guess -- what I'm trying to
13 understand -- so, first of all, is your primary
14 argument that after judgment against him on the
15 habeas claim that existed, he appeals it, and
16 during the pendency of an appeal, if he seeks to
17 amend the existing habeas claim, you say what?
18 Because the appeal is still pending, he can do
19 it?

20 MR. BRULAND: Not necessarily, Justice
21 Jackson. Because the appeal is still pending,
22 it's not second or successive. It might be a
23 bad amendment. It might die for Rule 15
24 reasons. It might be --

25 JUSTICE JACKSON: How do you square

1 that with Gonzalez and the idea that the
2 judgment is doing some work here?

3 MR. BRULAND: So, Justice Jackson,
4 Gonzalez did not face the question presented
5 here, because there was no pending appeal in
6 Gonzalez. The -- really, Gonzalez comes in a
7 year after abandoning his appeal, when all of us
8 up here agree that a habeas claim in that
9 posture would be second or successive.

10 And so, in Gonzalez, anything that
11 comes in would be second or successive. And
12 that's why the Court is saying, well, you can't
13 come in and circumvent the statute. And --

14 JUSTICE JACKSON: Well, why wouldn't
15 you be circumventing the statute here by just,
16 you know, interpreting anything that comes in
17 during an appeal as not being second or
18 successive?

19 MR. BRULAND: Well --

20 JUSTICE JACKSON: I mean, we have a
21 statute in which Congress was very clear about
22 limiting the number of filings or at least
23 applying pretty restrictive rules to the ability
24 to file another application.

25 And so I guess what I -- it -- it

1 boils down to for me at least is trying to
2 understand the work of the judgment in providing
3 the dividing line as to whether things filed
4 after that -- assuming the judgment remains in
5 effect, are -- are -- why aren't they second or
6 successive and wouldn't you be undermining AEDPA
7 to say otherwise?

8 MR. BRULAND: So two responses,
9 Justice Jackson. First, if you assume that what
10 Rivers filed was second or successive and were
11 just trying to circumvent the statute, then I
12 lose. But that's not how Banister looked at it.

13 Banister said we have a statutory
14 phrase, "second or successive" habeas corpus
15 application, that event meant something in 1996
16 when Congress enacted the statute. And the way
17 we figure out what it meant is we look at
18 pre-AEDPA history and practice and doctrine and
19 AEDPA's purposes.

20 So going squarely to your question, my
21 point is that, leading up to AEDPA, a filing
22 that came in during the appeal might have lost
23 on the merits. Banister says, well, that
24 doesn't count for the analysis.

25 JUSTICE JACKSON: I understand.

1 But -- aren't you reading a lot into Banister?

2 I mean, wasn't that in a 59(e) scenario?

3 MR. BRULAND: It was in a 59(e)
4 scenario, Justice --

5 JUSTICE JACKSON: And -- and didn't
6 that have something to do with the analysis? I
7 mean, the point there was that the judgment was
8 suspended, such that -- you know, it's very -- a
9 limited amount of time, and it wasn't really the
10 appeal or lack of an appeal or whatnot that
11 seemed to be doing the work.

12 It was about the nature of the
13 judgment under a 59(e) scenario.

14 MR. BRULAND: So, Justice Jackson, I
15 agree that Banister was focused on that
16 question, and Banister wasn't focused on the
17 question before you today, the question of well,
18 what do we do when new evidence arises on the
19 appeal?

20 My -- my point is that Banister gives
21 us the logic that we're supposed to use in
22 analyzing, well, how do we treat a claim or a
23 filing that's not a 59(e). And what I would say
24 is Banister says look to the history, look to
25 the purposes. And here I think we have history

1 in droves.

2 We give you the Harisiades case, the
3 Strand case out of the Tenth Circuit, all of
4 these other cases where prisoners leading up to
5 AEDPA lob in motions to the court and then --

6 JUSTICE KAVANAUGH: Well the -- the SG
7 says that the considered trend in the years
8 shortly before the enactment of AEDPA in 1996
9 was to treat efforts to amend a habeas
10 application mid-appeal as second or successive
11 applications.

12 So they say by the time we got to
13 1996, what you're talking about really wasn't
14 the case. Do you want to address that?

15 MR. BRULAND: Two points, Justice
16 Kavanaugh. First, I disagree with them on the
17 history. I don't think that was the considered
18 trend.

19 But just to take a step back, you
20 could say the same thing about Banister. If you
21 look at Banister, the opinion cites one case
22 from 1965, one case from 1988, where 59(e)
23 motions were not deemed successive. And then
24 Texas comes in on the other side with a case
25 from 1993.

1 But that didn't turn the tide in
2 Banister because for purposes of the historical
3 analysis, I think the best place to look is page
4 325 of the Scalia-Garner treatise. And what
5 they say is when you're trying to figure out
6 what sort of history Congress would have picked
7 up, you look at, well, would a member of the bar
8 view this as settled?

9 And they say if it's just a couple of
10 opinions going one way or the other way, well,
11 that's not the kind of history that Congress
12 would have picked up. And going back to
13 Banister, I think the history here is even
14 stronger, at least as strong as it was in
15 Banister.

16 Petitioners there come in with cases
17 out of five circuits where courts didn't treat
18 59(e) motions as second or successive. We give
19 you cases out of six circuits. Then on the
20 other side of the ledger it's déjà vu, Justice
21 Kavanaugh.

22 Texas and its amici come in in
23 Banister. They have one case out of the Eighth
24 Circuit, where the court says, 59(e), second or
25 successive. And here they found one case out of

1 the Eighth Circuit applying the very same logic
2 that this Court wrote off as a historical
3 outlier in Banister.

4 So I -- I think the history is at
5 least as clear here as it was in Banister.

6 JUSTICE GORSUCH: If we're going to
7 look at history, and habeas being civil
8 litigation, you know, the default rule is that
9 when the district court relieves itself of a
10 case, after 59, and it goes to the court of
11 appeals, you don't just get to Rule 15 file an
12 amendment willy-nilly. The case is in the court
13 of appeals. I mean, that's -- you know,
14 baseline historical practice is -- is -- is
15 relevant.

16 What about that? I mean, you're
17 asking for us to treat habeas differently than
18 any other form of civil litigation.

19 MR. BRULAND: So I sure hope not,
20 Justice Gorsuch. The point that I'm trying to
21 make is that --

22 JUSTICE GORSUCH: Well, explain to me
23 why not. Because I've never heard of being able
24 to amend my complaint when I'm on appeal in --
25 in -- in a 12(b)(6) -- after a 12(b)(6)

1 dismissal. Boy, I would have liked to have done
2 that a couple of times.

3 (Laughter.)

4 MR. BRULAND: Justice Gorsuch, I think
5 you're absolutely right. And I want to take a
6 step back because I think it's important to be
7 precise about the doctrine.

8 So I'm not saying that you get to
9 amend your 12(b)(6) complaint after -- while
10 you're up on appeal.

11 My point is historically appellate
12 courts were open to new evidence or new claims
13 that come in. I think the best case there is
14 the Shotwell case. That's a case where the
15 Solicitor General comes into this Court at the
16 cert stage. They lost in the court of appeals.
17 And the Solicitor General says, look, I've got
18 two new affidavits that I think show that the
19 respondent pulled a fast -- pulled -- pulled a
20 fast one on the lower courts. So please,
21 Supreme Court, would you kick it back down?

22 And the Court says, look, we are a
23 court of review, not first view, so we're not
24 going to take a crack at the merits, but they
25 say two things. They say, first, we believe the

1 Solicitor General. This is new.

2 JUSTICE GORSUCH: Yeah, I -- I accept
3 that we have that power, especially when this --
4 the government is admitting an error, right,
5 or -- or some other important new
6 considerations.

7 But as a general rule in civil
8 practice, if I come in and say, boy, I got a
9 great amendment and -- and I'm in front of a
10 panel of -- they roll their eyes and they say,
11 nice, that's a nice thing you have there. You
12 probably should have done that earlier, friend,
13 you know, go file a 60(b). That's what they
14 say.

15 MR. BRULAND: Well, Justice Gorsuch, I
16 think you're right. If you come in to the court
17 of appeals or even the district court, you're
18 probably going to get laughed out of court most
19 of the time but my point is a different one.

20 My point is about the power that
21 courts have. And what I would say is for a long
22 time appellate courts have been open to claims
23 and denied most of them, but been open to
24 claims. And so I -- I hope I'm not asking for
25 anything in habeas that we wouldn't have in

1 ordinary civil litigation.

2 My point is when you file that in
3 habeas, it's not second or successive. It's
4 probably dead for other reasons but it's not
5 second or successive.

6 JUSTICE SOTOMAYOR: Sorry. I'm -- I'm
7 not sure I follow your argument. If it's normal
8 civil litigation and not habeas, if you file
9 a -- a motion to amend between a final judgment
10 in the district court and an appeal, the
11 district court has no inherent power to open --
12 to grant that motion, correct?

13 MR. BRULAND: Correct.

14 JUSTICE SOTOMAYOR: All it could do is
15 a 62.1, make a suggestion to the -- to court of
16 appeals, correct?

17 MR. BRULAND: Yes.

18 JUSTICE SOTOMAYOR: Here you didn't
19 ask them to make a suggestion. So not having
20 asked them to do it, why do you think the motion
21 is still alive after the court of appeals
22 affirmed the judgment below?

23 MR. BRULAND: Well, two responses,
24 Justice Sotomayor.

25 JUSTICE SOTOMAYOR: How could the

1 court -- the district court reopen absent 60(b)?
 2 That's my point. You could reopen under 6 --
 3 you could reopen under 60(b) to consider your
 4 motion, correct?

5 MR. BRULAND: Correct.

6 JUSTICE SOTOMAYOR: All right. But
 7 none of that happened. You didn't ask them to
 8 indicate under 62.1 and the court of appeals
 9 didn't vacate or remand the matter to the
 10 district court to make the motion to amend still
 11 live, right?

12 MR. BRULAND: So I -- I agree with you
 13 on the second half, Justice Sotomayor. I
 14 disagree about what the record shows on the
 15 first half.

16 If you look at Joint Appendix 107,
 17 Rivers is asking, he says, look, please,
 18 district court, would you consider an
 19 interlocutory review.

20 Now, in --

21 JUSTICE SOTOMAYOR: He can't do a --
 22 that's the point. It may have been a product of
 23 him being pro se. And if he had hired you then,
 24 you probably would have made a motion --

25 MR. BRULAND: So, Justice Sotomayor --

1 JUSTICE SOTOMAYOR: -- the proper
2 motion, but he didn't.

3 MR. BRULAND: Well, my point is -- is
4 twofold. First, I think he did ask for an
5 interlocutory review. I will grant he --

6 JUSTICE SOTOMAYOR: There is no
7 interlocutory relief, meaning you admitted that
8 the district court does not have the power to
9 adjudicate the motion to amend. The most it
10 could do is what 62.1 permits, which is an
11 indication to the court of appeals.

12 MR. BRULAND: Yes. And my --

13 JUSTICE SOTOMAYOR: And that's not an
14 interlocutory appeal.

15 MR. BRULAND: So I -- I take what he
16 was asking for. The only plausible way to
17 construe what he was asking for is as an
18 indicative ruling.

19 Now, the district court took up his
20 motion to amend and didn't reach the merits. It
21 said: Look, I don't have the jurisdiction to
22 open the front cover because this is a second or
23 successive petition.

24 JUSTICE SOTOMAYOR: That's correct.

25 MR. BRULAND: So we're asking you to

1 hold that that was a mistake under AEDPA. And
2 you asked about the relief on --

3 JUSTICE SOTOMAYOR: But you -- he
4 presented the same thing to the court of
5 appeals, basically the same motion, and the
6 court of appeals did not grant a vacate and
7 remand.

8 MR. BRULAND: Well, that --

9 JUSTICE SOTOMAYOR: It wasn't
10 convinced by whatever he presented. It may have
11 made an error, but that wasn't appealed either.

12 MR. BRULAND: So, Justice Sotomayor, I
13 don't think the court of appeals saying we're
14 not going to enlarge the record shows us what it
15 would do in response to an interlocutory -- or
16 I'm sorry --

17 JUSTICE SOTOMAYOR: It could have done
18 what --

19 MR. BRULAND: -- indicative.

20 JUSTICE SOTOMAYOR: -- it could have
21 done what we did in the case you cite.

22 MR. BRULAND: Well, that's --

23 JUSTICE SOTOMAYOR: If there had been
24 a confession of error or if it was convinced
25 that something truly untoward had happened, it

1 could have vacated and remanded.

2 MR. BRULAND: Well, Justice Sotomayor,
3 I think there's a meaningful difference between
4 a prisoner mailing in some typewritten pages and
5 one of the court of appeals' colleagues picking
6 up the phone and saying, look --

7 JUSTICE SOTOMAYOR: In civil
8 litigation, absent a vacate and remand by the
9 court of appeals, would the motion have to be
10 considered under 60(b)?

11 MR. BRULAND: If there's no indicative
12 ruling and if there's no vacatur and remand,
13 then the only way to reopen the judgment would
14 be 60(b), unless the court of appeals reverses
15 or vacates otherwise.

16 JUSTICE SOTOMAYOR: Correct. Thank
17 you.

18 JUSTICE JACKSON: Counsel, can I have
19 you address the threshold arguments that are
20 being made about standing and the relief?

21 MR. BRULAND: Yes. So, first, as to
22 standing, this Court has -- or, I'm sorry, as to
23 standing, we have appellate standing because an
24 order from this Court reversing the Fifth
25 Circuit would lead to the potential for redress.

1 And what we would say there is we
2 would go back to the district court and we would
3 file a 60(b)(6) motion to bring back the
4 order -- I'm sorry -- bring back the initial
5 habeas petition. And for purposes of standing
6 and mootness, the probability of success is --
7 is not on the table, so it's just a question
8 about the district court's power.

9 And there the argument would be --
10 it's an integrity-based argument under footnote
11 4 of Gonzalez. We would be saying in this
12 position, the Supreme Court has just decided
13 that we were right about the AEDPA question.
14 So, district court, respectfully, would you
15 please reopen the judgment denying the initial
16 appeal -- or initial petition. Then the motion
17 to amend would still be pending and the --

18 JUSTICE JACKSON: You're saying we
19 don't have to care about whether or not that is
20 going to be successful?

21 MR. BRULAND: Yes, that's right.

22 JUSTICE JACKSON: Just have the
23 opportunity to do it?

24 MR. BRULAND: That's right. It's a
25 question about the district court's power.

1 Texas is coming in and saying, well, look,
2 there's nothing that you could on remand. And
3 we've identified a procedure that would let the
4 district court grant Rivers redress.

5 JUSTICE JACKSON: What about the
6 habeas jurisdiction and the fact that he's in
7 custody on one charge versus the other?

8 MR. BRULAND: Yes. We're challenging
9 the convictions for which he's still in custody.
10 I don't take the other side to be arguing that
11 the new exculpatory evidence doesn't undermine
12 those convictions. They certainly didn't argue
13 that in the brief in opposition or below.

14 I take them to be challenging us on
15 the merits, but I don't take them to be saying,
16 as a matter of habeas jurisdiction, that
17 there's -- that the -- the evidence wouldn't go
18 as a jurisdictional matter.

19 JUSTICE JACKSON: Thank you.

20 MR. BRULAND: Now, my -- my friends on
21 the other side, I think, are going to stand up
22 and say a word about the floodgates. And so I
23 do want to address that. And the reason that
24 our approach doesn't open the floodgates is that
25 it comes with a structural barrier and an

1 absolute jurisdictional backstop. And that's
2 borne out by what we've seen in the Second
3 Circuit over the last two decades.

4 So I'll start with the structural
5 piece. For any of this to get off the ground,
6 the habeas petitioner has to go to the district
7 court, convince the district court to issue an
8 inter- -- or -- an indicative ruling on a habeas
9 petition that it's just denied. And then the
10 absolute jurisdictional backstop is the court of
11 appeals has to agree to remand the case for
12 further proceedings.

13 And at both steps of those analysis,
14 the prisoner has the burden of showing that
15 amendment here would not be futile, that it's
16 timely. That kicks out a lot of cases because
17 AEDPA has a one-year statute of limitations.
18 The prisoner is also going to have to show that
19 it's not going to be a -- a dead case on the
20 merits.

21 Then you go up to the court of
22 appeals. And we've -- we've cited cases. The
23 Louisiana against Becerra case, where the
24 Western District of Louisiana sent up a flare to
25 the Fifth Circuit, and the Fifth Circuit said,

1 no, we -- we don't think this amendment should
2 go forward. It's not timely. You should have
3 brought it earlier.

4 So the court of appeals is doing
5 another review. And all of this is borne out by
6 what we've seen in the Second Circuit over the
7 last 20 years because the Second Circuit has
8 read AEDPA our way. They've said 2244 doesn't
9 kick in until the end of the appeal.

10 And I will tell you I've read more of
11 these cases than I care to remember. There's
12 about one or two per year over the last 20
13 years. And what you see, time and time again,
14 is prisoners come in and they say, look, I just
15 got some new evidence, or something changed and
16 I want to fight it out. And in one- or two- or
17 three-page opinions, a magistrate judge or the
18 district court judge has no trouble addressing
19 those claims.

20 And just to take a step back, at
21 bottom, I think this case is really a venue
22 case, like the EPA cases you had last week
23 because, these claims are coming in one way or
24 the other. The question is just who's the
25 frontline decision-maker going to be.

1 I can tell you when a prisoner gets
2 new evidence or thinks the prisoner has a new
3 claim while the appeal is pending, he's going to
4 send something in to some court. And then some
5 decision-maker is going to have to decide, well,
6 what do I do with it? And what --

7 JUSTICE ALITO: Mr. Bruland, is the
8 argument that you're making today and the
9 primary argument that you make in your brief the
10 same argument that you made in your petition?

11 MR. BRULAND: Justice Alito, it's the
12 same claim. We say at the --

13 JUSTICE ALITO: Is it the same
14 argument?

15 MR. BRULAND: The 2242 argument is new
16 at the merits stage, yes. And this Court has
17 been very clear that I can come in and make
18 arguments at the merits stage in support of the
19 same claim raised in a petition. I don't take
20 my friends --

21 JUSTICE ALITO: Is there a conflict in
22 the circuits on this new argument that you're
23 making today?

24 MR. BRULAND: Well, there's a conflict
25 in the circuits because a bunch of circuits

1 reject the idea that an amendment is not a
2 second or successive petition. That's what the
3 Fifth Circuit said below. Rivers said all along
4 I filed an amendment. That means it's okay
5 under Rule 15 and, therefore, it's not second or
6 successive.

7 The Fifth Circuit said not so fast.
8 We think 2244 applies right after final
9 judgment. They didn't cite Banister. And so
10 that is the same argument that Rivers has been
11 making. And the Fifth Circuit rejected the
12 argument that it's an amendment; therefore, it
13 should be okay.

14 Now, I do want to go to the point
15 that --

16 JUSTICE ALITO: Well, we've had a -- a
17 mini-epidemic of cert petitions that have
18 convinced us to take a case because there's
19 supposedly a conflict on a certain issue, and
20 then once cert is granted, the argument that is
21 advanced by the petitioners, quite a bit
22 different from what we were sold at the petition
23 stage.

24 Is this another outbreak of the same
25 disease?

1 MR. BRULAND: I don't think so,
2 Justice Alito, and I think the best evidence
3 there is the United States is never shy about
4 pointing out when a petitioner strays from the
5 QP or the petition. And I don't hear my friends
6 from the United States to be making that
7 argument.

8 But even if you're worried about the
9 amendment theory, I would say the timing
10 argument, even Texas agrees, that that is
11 squarely within the question presented. And
12 that is an issue over which the lower courts
13 have certainly disagreed.

14 JUSTICE ALITO: Thank you.

15 MR. BRULAND: And what I would say
16 there on the timing question, we also have
17 context and history on our side there.

18 And, again, to go back to your
19 question, Justice Gorsuch, this is not a case
20 where I'm coming in and asking for special
21 favours for habeas petitioners. All I'm saying
22 is it might be a bad amendment. The lower
23 courts might take five minutes, look at it and
24 say this is going nowhere. All I'm asking you
25 to say is whatever it is, it's not second or

1 successive.

2 And one reason to think that it's not
3 second or successive is, as your opinion, your
4 separate opinion, in Edwards against Vannoy
5 pointed out, we have this long-standing
6 principle in habeas that finality means this
7 court says go away or affirms on the merits or
8 the opportunity to seek cert runs out.

9 So, again, I'm not saying let's create
10 a special loophole or porthole or anything for
11 habeas prisoners to come in. All I'm saying is,
12 whatever the words "second or successive" habeas
13 application meant in 1996, they don't refer to
14 this sort of filing because, historically, those
15 kinds of filings were not deemed abuses of the
16 writ.

17 And so if you agree with us on the
18 AEDPA question, I will grant Texas will have a
19 lot of civil procedure arguments below. I'm
20 sure they'll have a lot of merits arguments
21 below. All we're asking to you decide is this
22 narrow question of -- may I finish, Mr. Chief?

23 CHIEF JUSTICE ROBERTS: Sure.

24 MR. BRULAND: All I'm asking you to
25 decide is this narrow question of what counted

1 as a second or successive habeas corpus
2 application in 1996, and it wasn't this.

3 CHIEF JUSTICE ROBERTS: Thank you
4 counsel.

5 Justice Thomas?

6 Justice Alito?

7 Justice Sotomayor?

8 JUSTICE SOTOMAYOR: You did point out
9 to us in the -- your cert petition a circuit
10 split. I'm not sure the Third Circuit rule is
11 consistent with what you claim it is. It's more
12 consistent with what we were speaking about
13 earlier.

14 The Third Circuit rule says, when a
15 district court gets a motion to amend, it should
16 exercise its discretion to hold the appeal
17 pending the court of appeals' decision. And it
18 can only consider it or grant it if the court of
19 appeals vacates and remand.

20 So that's always the case, correct?

21 MR. BRULAND: That's right, Justice
22 Sotomayor.

23 JUSTICE SOTOMAYOR: So the Third
24 Circuit, I don't think, is inconsistent with
25 anything.

1 The Second Circuit does have some very
2 charitably loose language that -- that a motion
3 to amend is never second or successive. But I,
4 like you, had my law clerk look at what the
5 Second Circuit was doing, and I got a bunch of
6 cases where the district court didn't wait for
7 the court of appeals to rule but instead said it
8 was an abuse of -- the motion to amend was an
9 abuse of the writ. So I don't know -- and they
10 dismissed and the circuit didn't do anything.

11 So I'm not sure the rule is as
12 absolute as you say. They're basically
13 following and saying hold it until the circuit
14 acts. And if we vacate and remand, then you can
15 consider it.

16 MR. BRULAND: I think that's right,
17 Justice Sotomayor. Here's how I understand it.
18 Under Federal Rule -- Civil Procedure 62.1, it
19 says the district court can always consider
20 something that comes in. And the district court
21 has three options. It can deny it outright. I
22 think that's most of the cases that you and I
23 were discussing. It can also defer ruling. I
24 think that's one of the things that the Third
25 Circuit was focused on. I think your opinion in

1 the Ching case has the footnote that says the
2 same thing. Or -- and this is the -- the other
3 alternative we were talking about -- it can send
4 up a flare to the court of appeals and say this
5 raises a substantial issue.

6 So my -- what I'm suggesting here is
7 the Second Circuit --

8 JUSTICE SOTOMAYOR: So you're
9 suggesting sort of a, what should I call it,
10 procedural thing? Don't call it second or
11 successive and refer to the court of appeals,
12 but instead deny it now?

13 MR. BRULAND: Justice Sotomayor, I
14 want to be very clear about the doctrine because
15 there are two separate questions. There's the
16 question of is it second or successive as
17 Congress used that phrase in 1996? And then
18 there is an analytically distinct question of
19 what should you do with it procedurally.

20 My -- the only question I'm asking you
21 to answer is what is the meaning of "second or
22 successive" habeas corpus application in 1996?
23 And then we've also tried to give you some
24 comfort about the procedural pathway. And so,
25 yes, that is one of the things that a district

1 court can do.

2 And, in fact, that's what most of the
3 courts in the Second Circuit that we've seen
4 have done, is just take one look, deny them
5 outright.

6 And the last thing I would add is the
7 other side comes in and says: Well, how is that
8 square with your efficiency argument, if the
9 prisoner can just file something in the middle
10 of the appeal and then file a second or
11 successive petition?

12 I didn't find a single case in the
13 Second Circuit where that happened. Prisoners
14 are taking no for an answer. And if they
15 didn't, boy, if I were a court of appeals judge,
16 I would be glad to have a short opinion
17 explaining why this amendment goes nowhere.

18 JUSTICE SOTOMAYOR: Thank you.

19 CHIEF JUSTICE ROBERTS: Justice Kagan?

20 Justice Gorsuch?

21 Justice Kavanaugh?

22 Justice Jackson?

23 Thank you, counsel.

24 Mr. Nielson.

25

1 ORAL ARGUMENT OF AARON L. NIELSON

2 ON BEHALF OF THE RESPONDENT

3 MR. NIELSON: Mr. Chief Justice and
4 may it please the Court:

5 Rivers' new petition filed years after
6 an appealed final judgment is second or
7 successive under AEDPA for multiple reasons.
8 I'm going to start with precedent.

9 Under Gonzalez and Banister, Rule
10 59(e) motions aren't successive, while Rule
11 60(b) motions generally are, because, quoting
12 from Banister, a Rule 59(e) motion is a one-time
13 effort to bring alleged errors in a just issue
14 decision to a habeas court's attention before
15 taking a single appeal.

16 Rivers' theory, however, would allow
17 him to repeatedly allege new claims having
18 nothing to do with the final judgment issued
19 years ago, after he appealed.

20 I think Banister's logic is all but
21 dispositive here.

22 I would also like to respond to some
23 of the things I heard from my friend during his
24 argument. He says that the time before AEDPA in
25 1996 there were six circuits on his side. I

1 don't agree with that at all. I urge the Court
2 to look at the brief from Arkansas. Arkansas
3 goes through the cases right before AEDPA's
4 enactment.

5 I would also urge the Court to look at
6 page 16 and 17 of the reply brief. I think
7 that's where he's getting that. You will notice
8 he cites cases on his side, Fourth, Fifth, and
9 Eighth, and then he says Fourth, Fifth, and
10 Eighth agree with us. The cases that agree with
11 us were later in time. They were closer to
12 1996.

13 He also says -- you know, we talked
14 about this was a pro se, which I understand and
15 I am sympathetic to, but Sidley was brought in
16 not, you know, just for the cert stage. They
17 filed the motion to stay the Fifth Circuit's
18 judgment pending certiorari.

19 None of their new argument is in that
20 either. This isn't an example of a pro se
21 person not knowing what to do. This was Sidley
22 Austin not raising the argument.

23 As to standing, the Court has
24 jurisdiction to address the split that it
25 thought it was hearing. That is a question

1 about res judicata from the first judgment, does
2 it bar the second case.

3 What the Court doesn't have
4 jurisdiction to do is to open a case that is not
5 in front of it. That case was closed. The
6 first petition was dismissed in a final judgment
7 in 2018. The Fifth Circuit affirmed in 2022.
8 This Court denied cert in 2023. That case is
9 done. I don't know how the Court could reopen
10 that case.

11 As the habeas jurisdiction, again,
12 he's not in custody for what he's talking about.
13 I don't know how he can have -- how this Court
14 can have habeas jurisdiction there.

15 As to the Second Circuit rule, look,
16 your definitely have the opportunity to have
17 multiple appeals under that rule. Because you
18 could have the first one, and then you amend,
19 and you get another final judgment, and you have
20 a second one.

21 This Court said in *Banister* you can't
22 do that.

23 And as to the new argument, there is
24 no split, Justice Alito. In fact, on our side
25 *United States v. Arrington*, 2014, from the D.C.

1 Circuit, Judge Srinivasan, joined by Judges
2 Garland and Millett, said you can't use 2106 to
3 get around AEDPA in that way.

4 I -- I welcome the Court's questions.

5 JUSTICE THOMAS: How would you define
6 "second or successive"? I think they're -- some
7 think that -- it -- the appeal has to be final.
8 And I think most would just simply say the
9 judgment of district court. What -- what's your
10 view?

11 MR. NIELSON: I think the Court
12 answered it in Banister. I think if you have
13 the first application, and then you have another
14 application after the final judgment, sometimes
15 as suspended by Rule 59(e), if you're doing it
16 again the second time, that is second and
17 successive.

18 I think that's how we take the Court's
19 decision in Banister. I think that answers the
20 question, respectfully, Your Honor.

21 JUSTICE JACKSON: What if the judgment
22 is vacated? I'm trying to understand the
23 scenario. Even if we agree with you that, you
24 know, the judgment is the line and the person
25 appeals, goes up to the Fifth Circuit or

1 whatever circuit, and they agree and vacate the
2 judgment and send it back.

3 Any filings that had been submitted by
4 the prisoner in that interim, could they be
5 considered by the district court on remand?

6 MR. NIELSON: No, we don't think so,
7 Your Honor, but I want to make sure that we
8 understand. If that is this Court's rule, Texas
9 still prevails because there wasn't a remand
10 after the Fifth --

11 JUSTICE JACKSON: No, I understand.

12 MR. NIELSON: Okay.

13 JUSTICE JACKSON: That's not this
14 case. But I -- I -- I -- I guess I'm a little
15 worried about a world in which if we are pegging
16 this to the judgment, the judgment is
17 subsequently vacated and there's new evidence
18 now in the record and the district court is
19 being called upon by the vacatur and the remand
20 to review it, I don't understand why -- totally
21 not this case --

22 MR. NIELSON: Yeah.

23 JUSTICE JACKSON: -- but I don't
24 understand why at that point now the new
25 evidence doesn't get considered as an amendment

1 of the initial habeas filing.

2 MR. NIELSON: So -- so the way this
3 works in ordinary civil litigation -- and then I
4 will do an AEDPA gloss on it. In ordinary
5 litigation, if there is a remand from the court
6 of appeals --

7 JUSTICE JACKSON: Accompanying a
8 vacatur of the judgment.

9 MR. NIELSON: With -- with a vacatur
10 of the judgment, you still are going to be
11 limited by the scope of the remand. It's not
12 like if there's a remand, now everything is up
13 for grabs.

14 It's still you're limited -- and,
15 again, if the Court needs to look at cases on
16 this, Wright and Miller Section 1488, I think
17 it's footnote 11 is the one that discusses this
18 line of cases, the -- the scope of the -- of the
19 mandate rule.

20 So, you know, for instance, you have a
21 case about a contract claim and --

22 JUSTICE JACKSON: So could the court
23 of appeals indicate, having, you know, been
24 alerted to the fact that there's this new
25 evidence out there -- I mean, I guess I -- I --

1 I don't understand a world in which new evidence
2 surfaces that everyone agrees could not have
3 been found before, and here it is, and it's
4 relevant to the issue of habeas.

5 I appreciate your argument that after
6 we have a judgment, you -- you know -- if -- if
7 as long as the judgment stands, consideration of
8 that would be a second or successive kind of
9 scenario under AEDPA.

10 But if there is no judgment, because
11 it goes up to the court of appeals and the
12 judgment is vacated, it's unclear to me why the
13 new evidence that is relevant to the initial
14 habeas petition couldn't be looked at by a
15 district court reviewing that habeas petition.

16 If -- if the court of appeals says you
17 can, then you can?

18 MR. NIELSON: Again, it would be -- as
19 long as it is within the scope of the mandate.

20 JUSTICE JACKSON: Of -- of the
21 mandate. Yeah.

22 MR. NIELSON: Which often would be --
23 again, it would depend on the facts of the case.

24 But the AEDPA gloss on all of this is
25 under AEDPA, you have the COA requirement.

1 JUSTICE JACKSON: Yes.

2 MR. NIELSON: So the scope of the
3 appeals are inherently going to be limited. So
4 the scope of the mandate is going to be narrower
5 than in an ordinary case.

6 So imagine you have a case where
7 somebody says: I have a Brady claim and a
8 Strickland claim. And the district court says:
9 You lose on both. The Fifth -- the -- the court
10 of appeals -- I said the Fifth Circuit. The
11 court of appeals grants a COA as to the Brady
12 issue and then reverses.

13 Back in front of the district court,
14 you can't say, well, I'm going to bring a
15 different Strickland claim and a Napue claim,
16 because that's not within the scope of --

17 JUSTICE JACKSON: I see.

18 JUSTICE KAVANAUGH: On the Second
19 Circuit experience, I think your initial
20 response is precedent in text, but it's taken on
21 its own, it's workability.

22 Do you have a concern about how
23 workable it's been in the Second Circuit? It
24 seems like it's worked fine.

25 MR. NIELSON: Well, I -- we -- we

1 don't think it's worked fine. The case that we
2 cite was the Anderson case out of Connecticut,
3 where -- it seemed like a pretty straightforward
4 issue. The poor judge has to go through three
5 separate lines of analysis to try to figure out
6 what to do with this thing. And that's, I
7 think, a pretty straightforward case.

8 But I would also, you know, recognize
9 that, by definition, you're going to have
10 multiple appeals possible out of -- out of a
11 single case. So you have the very first one
12 that is up on appeal. While that's happening,
13 all the way up to this Court, up in certiorari
14 petition, they file a second one. They can keep
15 litigating that.

16 Well, that means you're going to get
17 two appeals out of a single -- what they claim
18 is a single application. That doesn't make any
19 sense.

20 And I think it's important to
21 recognize that 2244(b) doesn't mean you lose.
22 2244(b) means you have to go to the court of
23 appeals. And we're talking about mid-appeal
24 cases.

25 So that means, you know, unless it's,

1 like, day 29, so we're not just past Rule
2 59(e) -- 59(b) -- 59(e), rather, we're talking
3 about a case where you already have a court of
4 appeals panel who is already looking at this
5 thing.

6 It seems to me a lot more efficient
7 for that panel to be able to have the
8 opportunity to look at the new material, rather
9 than sending it back to a district court or a
10 magistrate judge three years ago, you know, 1500
11 cases later. They're not going to possibly
12 remember what that case was about, whereas you
13 have a panel looking at it right now.

14 JUSTICE KAVANAUGH: If we -- if we
15 conclude the pre-'96 case law is just a mixed
16 bag, doesn't -- doesn't cut either way?

17 MR. NIELSON: Well, I mean, I -- I
18 would urge -- I think the Court already answered
19 the history, in both Gonzalez and Bannister.

20 JUSTICE KAVANAUGH: On -- on -- on
21 this issue.

22 MR. NIELSON: Sure. But, a -- again I
23 think the Court has already answered the history
24 in Gonzalez and Banister.

25 Because in every Circuit Court, if you

1 file a motion to amend a case that has been
2 closed for years, it's either one of two things:
3 It's either a nullity, in other -- it does not
4 exist, or it will be construed as a Rule 60(b)
5 motion. That is the rule in Moore's Federal
6 Practice.

7 We can cite other cases as well, we
8 have a whole string cite of these cases.

9 What we know from Gonzalez and
10 Banister, that if it's a Rule 60(b), well, then
11 it's already second -- second and successive.

12 So I don't think the history works for
13 them. They do have a couple of cases where they
14 say, well, that looks like amendment, but they
15 didn't grant relief in any of those cases.
16 We're reading a lot into silence, especially
17 because we have cases like Judge Arnold's
18 decision from the Eighth Circuit. You know, he
19 knows a little thing about civil procedure, and
20 he says no, you can't -- you can't do this. I
21 think that would be the relevant history.

22 So you have all the cases that say
23 60(b) mid-appeal, that counts as second or
24 successive, and you have someone who tries to
25 get around that with Rule 15, and they say,

1 well, that's second and successive too. That's
2 the history in 19 -- leading up right to 1996.

3 If there are no further questions.

4 JUSTICE GORSUCH: Just one on habeas
5 jurisdiction. Why don't -- why -- why -- why
6 don't we have it? I understand he may have
7 completed one -- one sentence, but he's serving
8 concurrent sentences for other -- other things.
9 He claims his amendment will help him with
10 those.

11 MR. NIELSON: Yeah. A -- a -- a
12 couple of answers. One --

13 JUSTICE GORSUCH: One will do.

14 MR. NIELSON: Okay. Well -- well, the
15 easier answer is hall --

16 JUSTICE GORSUCH: The better answer
17 hopefully.

18 (Laughter.)

19 MR. NIELSON: Well, then -- all -- all
20 right.

21 JUSTICE GORSUCH: Just answer it.

22 MR. NIELSON: I will give you -- the
23 easier answer to write an opinion is that was
24 the subject of the first habeas proceeding. The
25 state post-conviction court said there's three

1 lawyers that said you did this. You say they --
2 you didn't -- you didn't say that; they did.
3 That's a finding of fact.

4 Then he goes to the federal
5 post-conviction court about that, and that's
6 about the sexual abuse charges. And he has to
7 show that that is wrong. And he has no
8 evidence. And the district court says no
9 habeas, the Fifth Circuit affirms, and this
10 Court denies certiorari. That issue is closed.

11 CHIEF JUSTICE ROBERTS: Anything
12 further? No?

13 Thank you, counsel.

14 Mr. Guarnieri.

15 ORAL ARGUMENT OF MATTHEW GUARNIERI
16 FOR THE UNITED STATES, AS AMICUS CURIAE,
17 SUPPORTING THE RESPONDENT

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

20 Petitioner litigated his first Section
21 2254 application to a final judgment and was
22 granted a certificate of appealability. Two and
23 a half years later, while his appeal was still
24 pending, he went back to the district court and
25 filed what he came to characterize as a motion

1 to amend his first application.

2 Neither the Rules of Civil Procedure
3 nor the statutes applicable to habeas
4 proceedings grant -- permit granting such a
5 post-judgment request to amend. As a matter of
6 black-letter civil procedure law, a party may
7 not amend its pleadings after the entry of
8 judgment without first obtaining relief from the
9 judgment.

10 And in habeas proceedings, when a
11 prisoner requests relief from the judgment
12 mid-appeal to add new claims or to replead old
13 claims on the basis of allegedly new evidence,
14 Section 2244(b) applies.

15 Petitioner's request to inject new
16 claims or new evidence into these proceedings
17 cannot go forward unless he can satisfy AEDPA's
18 stringent gatekeeping requirements.

19 I welcome the Court's questions.

20 CHIEF JUSTICE ROBERTS: Is there any
21 way in which your argument for the United States
22 differs from that of Respondent?

23 MR. GUARNIERI: I -- I don't think so,
24 Mr. Chief Justice. Texas has taken a position
25 on a number of subsidiary issues with respect to

1 the operation of Federal Rule of Civil Procedure
2 62.1. The United States has not taken a
3 position on those issues.

4 But with respect to the main points at
5 issue in this case, I think the United States
6 and Texas are fully aligned. And I -- I --

7 JUSTICE BARRETT: Counsel, I -- I was
8 just going to say Petitioner points out that the
9 government doesn't complain about the new
10 argument injected in the brief. And you didn't
11 say anything in your brief. Do you want to say
12 anything now?

13 MR. GUARNIERI: I -- I -- I could
14 share the Court's frustration. I don't -- I
15 don't want to presuppose how the Court has
16 reacted to the merits arguments in this case,
17 but if there is a sense of frustration that
18 Petitioner's arguments have evolved
19 substantially from the certiorari stage to the
20 merits stage, I -- I could entirely understand
21 that frustration.

22 We have not urged the Court to dispose
23 of the case on those grounds, principally
24 because the United States does not have any
25 particular federal interest in whether

1 Petitioner preserved specific arguments in this
2 case. We are participating here so that the
3 Court -- because -- we think it's important to
4 get the underlying legal rules correct, and on
5 those points, again, I think we are in a
6 lockstep agreement with Texas on all the points
7 that matter.

8 JUSTICE BARRETT: Well, speaking of
9 those rules, do you want to articulate exactly
10 what rule statement you would be looking for and
11 how you think it might affect 2255?

12 MR. GUARNIERI: Sure. I think the
13 key -- and -- and this is -- comes directly from
14 the opinion of the Fifth Circuit in this case.
15 The key point is that the limitations in Section
16 2244(b) on the filing of second or successive
17 applications come into play when a district
18 court has entered a judgment on a first
19 application on the merits. It is the entry of
20 judgment that marks the terminal point in the
21 proceedings after which the gatekeeping
22 procedures in AEDPA apply.

23 And it doesn't -- I think, if you
24 agree with us on that, then it doesn't really
25 matter whether the Petitioner comes into court

1 and characterizes the relief that he is
2 requesting as a form of post-judgment amendment
3 or as a motion for relief from the judgment
4 under 60(b) or perhaps as a request to the court
5 of appeals itself to vacate and remand under 28
6 U.S.C. 2106 for the purpose of granting an
7 amendment.

8 All of those things, those are just
9 the procedural vehicles for requesting relief
10 from the judgment in order to add new claims or
11 to replead old claims with new evidence. Those
12 are two of the things that this Court identified
13 in Gonzalez as the kinds of arguments made after
14 judgment that are properly treated as second or
15 successive applications under Section 2244(b).

16 JUSTICE SOTOMAYOR: So where -- are --
17 you're not disagreeing with your colleague
18 that -- or are you -- that if the court of
19 appeals vacates and remands and vacates the
20 judgment, is it then second and successive?

21 MR. GUARNIERI: No, I -- I think -- I
22 think the point that my colleague was making was
23 that the constraint there is going to be the
24 scope of the remand from the court of appeals.
25 But if you set that constraint aside, if the

1 court of appeals has vacated the judgment on a
2 first application for some reason other than
3 just clearing the way for amendment and the case
4 goes back to the district court, then we do
5 think that in that case the state prisoner is in
6 the same posture as pre-judgment before the case
7 went up on appeal, and they can seek to amend as
8 permitted under Rule 15.

9 Now, that's not this case. The Fifth
10 Circuit of -- properly affirmed in the
11 Petitioner's initial appeal, and in the second
12 appeal, I think, the Fifth Circuit correctly
13 recognized that Section 2244(b) requires
14 treating the -- the filing that Petitioner made
15 in this case as an application to file a second
16 or successive application and was properly
17 transferred to the Fifth Circuit for AEDPA
18 gatekeeping.

19 JUSTICE BARRETT: Given that this is
20 not this case, do you think we need to ask -- or
21 answer Justice Sotomayor's question in the
22 opinion about the vacate and remand scenario?

23 MR. GUARNIERI: No, there's -- there
24 was no occasion to do that here, but I do think
25 that that is how, in general, the -- the -- the

1 situation would properly be governed on -- on
2 the -- on a remand.

3 Now, again, I want to emphasize that
4 that presupposes that the court of appeals is
5 remanding for some reason other than just to
6 clear the way for amendment. I mean, that is
7 the kind of vacatur that my friend is requesting
8 here.

9 On his view of how this works, if you
10 discover -- claim to discover some new evidence
11 in the course of your appeal from a final
12 judgment on your first application, the -- the
13 state prisoner could go to the court of appeals
14 and request a vacatur and remand for no purpose
15 other than avoiding the limitations that would
16 otherwise apply to a Rule 60(b) motion filed in
17 the district court itself, which, again, under
18 Gonzalez, would have to be treated as a second
19 or successive application.

20 We don't think that kind of remand
21 is -- is permissible as a matter both under the
22 authority vested in the courts of appeals under
23 Section 2106 and just under AEDPA gatekeeping.

24 But if you were in a situation in
25 which the court of appeals vacates and remands

1 for some other reason, the district court made a
2 mistake in its entry of the first judgment and
3 the case goes back down, then, yes, I do think
4 there could be an opportunity for amendment in
5 those circumstances.

6 CHIEF JUSTICE ROBERTS: Anything
7 further? No?

8 Thank you, counsel.

9 MR. GUARNIERI: Thank you, Mr. Chief
10 Justice.

11 CHIEF JUSTICE ROBERTS: Mr. Bruland,
12 rebuttal?

13 REBUTTAL ARGUMENT OF PETER A. BRULAND
14 ON BEHALF OF THE PETITIONER

15 MR. BRULAND: Thank you. Justice
16 Sotomayor, Justice Barrett, I want to resist the
17 idea that that's not this case. Our whole
18 point, the only question we're asking you to
19 decide is, did the district court make a
20 threshold jurisdictional error about the meaning
21 of AEDPA?

22 I think it did for the textual
23 reasons, the historical reasons, the purposive
24 reasons. And if that's right, then I think the
25 correct remedy would be to reverse and to send

1 it back down. And what we would say then is we
2 could have the debate about, well, maybe they
3 would say harmless error because they don't like
4 the procedures or they have merits arguments,
5 but we would be asking you to correct the
6 threshold jurisdictional error that they made
7 about the meaning of 2244(b). That was what cut
8 everything off.

9 Now, I don't think there's any
10 daylight between what I'm asking you to do and
11 what the Third Circuit and even the Second
12 Circuit have said. It all goes to what
13 Mr. Guarnieri just said about, well, for some
14 other reason. And I don't understand where
15 that's coming from, because 2106 doesn't say
16 "for some other reason." And I don't see there
17 being any sort of penumbral emanations from Rule
18 60(b) that curtail the appellate court's power
19 to vacate.

20 So then the question becomes, well,
21 where are we getting this you can't ask the
22 district court to send up a flare so that the
23 court of appeals can vacate just because you
24 want to amend. It seems like what they're
25 asking to you do is put an atextual gloss on

1 2106 such that if you're asking for a certain
2 form of relief, then that doesn't fly.

3 I'm not in -- sure where that comes
4 from, but it certainly doesn't come from AEDPA.
5 And this Court could reverse just saying the
6 meaning of 2244(b) is not what the lower court
7 said. And you could save all of this stuff
8 about the procedures and 2106 for another day.

9 We're just asking you to reverse on
10 the threshold AEDPA ground, which is
11 analytically distinct from the procedural
12 pathway.

13 Justice Alito, I want to take just one
14 more crack at addressing your concerns about the
15 QP. What I would say is the amendment argument
16 is a narrower ground that answers directly the
17 QP. We framed it broadly. We said does 2244
18 apply to all, some, or no mid-appeal habeas
19 filings? The amendment argument says, well, it
20 sure doesn't apply to all because textually,
21 historically, and looking at AEDPA's purposes,
22 an amendment is not a second or successive
23 petition.

24 I could understand the other side's
25 argument, if I were coming up here asking you to

1 accept something broader, but usually as an
2 advocate, it's a good thing to be standing up
3 here offering a narrow ground for relief with a
4 statutory hook.

5 Justice Kavanaugh, I want to say a few
6 words to you about workability because I think
7 that is the key or a key point in this case. It
8 really does come down to what is the proper
9 venue because a prisoner who gets new evidence
10 is going to race to court no matter what
11 decision this Court reaches today. And then
12 some district court or some court of appeals is
13 going to have to decide what to do.

14 But please don't take my word for it.
15 Don't take General Nielson's word for it. I
16 urge to you look at the judge's amicus brief,
17 because you have 17 of your former Article III
18 colleagues with nearly 300 years -- or 300 years
19 of experience collectively as appellate judges
20 and district court judges and magistrate judges
21 and what they're in here telling you is the
22 other side's rule is burdensome for the judicial
23 system as a whole. That's because the court of
24 appeals is going to happen -- have to open a
25 brand new original proceeding every time one of

1 these claims comes through the door.

2 And, remember, these claims are coming
3 whatever this Court says. So I think it's a
4 whole lot more efficient looking at AEDPA's
5 purposes to channel these things through the
6 district court, the single decisionmaker most
7 familiar with the case, which as Banister said
8 and Magwood said, the district court can take a
9 five-minute glance at this and say, no, it loses
10 on the merits, so no need to bother the court of
11 appeals.

12 These claims are coming. And the most
13 workable solution is to say they get channeled
14 through the district court while the appeal is
15 pending. I will be the first to grant Congress
16 inverted the normal presumption that appellate
17 courts are courts of review, not first view,
18 once the first case is over.

19 But while the first case is still
20 pending, 2244 does not apply. And it does not
21 flip that presumption. And I think the judges
22 well explain why there's no evidence that's what
23 Congress intended.

24 Again, the last thing I'll say and
25 then I'll sit down early, we are just asking you

1 to reverse the lower court's threshold error
 2 about the meaning of 2244, and then we can fight
 3 out whether Danny Rivers has merits issues or
 4 procedural issues.

5 Bottom line, Danny Rivers might have
 6 99 problems; it's just 2244 isn't one of them.
 7 We would ask you to reverse. Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
 9 counsel.

10 The case is submitted.

11 (Whereupon, at 12:38 p.m., the case
 12 was submitted.)

13

14

15

16

17

18

19

20

21

22

23

24

25

Official

<p>1</p> <p>10 ^[1] 9:8 107 ^[1] 19:16 11 ^[2] 9:8 40:17 11:46 ^[2] 1:18 4:2 12(b)(6) ^[3] 15:25,25 16:9 12:38 ^[1] 59:11 1488 ^[1] 40:16 15 ^[5] 9:23 15:11 28:5 45:25 52:8 1500 ^[1] 44:10 16 ^[1] 36:6 17 ^[3] 8:10 36:6 57:17 19 ^[1] 46:2 1965 ^[1] 13:22 1988 ^[1] 13:22 1993 ^[1] 13:25 1996 ^[1] 6:15 11:15 13:8, 13 30:13 31:2 33:17,22 35:25 36:12 46:2</p> <hr/> <p>2</p> <p>20 ^[2] 26:7,12 2014 ^[1] 37:25 2018 ^[1] 37:7 2022 ^[1] 37:7 2023 ^[1] 37:8 2025 ^[1] 1:14 2106 ^[6] 38:2 51:6 53:23 55:15 56:1,8 2242 ^[2] 7:22 27:15 2244 ^[7] 5:11 26:8 28:8 56:17 58:20 59:2,6 2244(b) ^[8] 43:21,22 48:14 50:16 51:15 52:13 55:7 56:6 2254 ^[1] 47:21 2255 ^[1] 50:11 2266(b)(3)(B) ^[3] 7:24 8:3, 11 23-1345 ^[1] 4:4 28 ^[1] 51:5 29 ^[1] 44:1</p> <hr/> <p>3</p> <p>300 ^[2] 57:18,18 31 ^[1] 1:14 325 ^[1] 14:4 35 ^[1] 3:7</p> <hr/> <p>4</p> <p>4 ^[2] 3:4 23:11 47 ^[1] 3:11</p> <hr/> <p>5</p> <p>54 ^[1] 3:14 59 ^[1] 15:10 59(b) ^[1] 44:2 59(e) ^[12] 12:2,3,13,23 13:22 14:18,24 35:10,12 38:15 44:2,2</p> <hr/> <p>6</p> <p>6 ^[1] 19:2 60(b) ^[12] 17:13 19:1,3 22:</p>	<p>10,14 35:11 45:4,10,23 51:4 53:16 55:18 60(b)(6) ^[1] 23:3 62.1 ^[5] 18:15 19:8 20:10 32:18 49:2</p> <hr/> <p>9</p> <p>99 ^[1] 59:6</p> <hr/> <p>A</p> <p>a.m ^[2] 1:18 4:2 AARON ^[3] 2:4 3:6 35:1 abandoning ^[1] 10:7 ability ^[1] 10:23 able ^[2] 15:23 44:7 above-entitled ^[1] 1:16 absent ^[2] 19:1 22:8 absolute ^[3] 25:1,10 32:12 absolutely ^[1] 16:5 abuse ^[3] 32:8,9 47:6 abuses ^[1] 30:15 accept ^[2] 17:2 57:1 Accompanying ^[1] 40:7 acts ^[1] 32:14 add ^[3] 34:6 48:12 51:10 address ^[4] 13:14 22:19 24:23 36:24 addressing ^[2] 26:18 56:14 adjudicate ^[1] 20:9 admitted ^[1] 20:7 admitting ^[1] 17:4 advanced ^[1] 28:21 advocate ^[1] 57:2 AEDPA ^[27] 4:19,23 5:23 6:18 8:17 11:6,21 13:5,8 21:1 23:13 25:17 26:8 30:18 35:7,24 38:3 40:4 41:9,24, 25 50:22 52:17 53:23 54:21 56:4,10 AEDPA's ^[5] 11:19 36:3 48:17 56:21 58:4 affect ^[1] 50:11 affidavits ^[1] 16:18 affirmed ^[3] 18:22 37:7 52:10 affirms ^[2] 30:7 47:9 ago ^[2] 35:19 44:10 agree ^[12] 5:21 10:8 12:15 19:12 25:11 30:17 36:1,10, 10 38:23 39:1 50:24 agreement ^[1] 50:6 agrees ^[2] 29:10 41:2 alerted ^[1] 40:24 aligned ^[1] 49:6 ALITO ^[10] 27:7,11,13,21 28:16 29:2,14 31:6 37:24 56:13 alive ^[1] 18:21 allege ^[1] 35:17 alleged ^[1] 35:13 allegedly ^[1] 48:13 allow ^[1] 35:16 already ^[5] 44:3,4,18,23 45:</p>	<p>11 alternative ^[1] 33:3 amend ^[22] 8:18 9:1,9,17 13:9 15:24 16:9 18:9 19:10 20:9,20 23:17 31:15 32:3,8 37:18 45:1 48:1,5,7 52:7 55:24 amendment ^[23] 9:10,23 15:12 17:9 25:15 26:1 28:1,4,12 29:9,22 34:17 39:25 45:14 46:9 51:2,7 52:3 53:6 54:4 56:15,19,22 amendments ^[6] 7:2,3,4,6 8:1,12 amici ^[1] 14:22 amicus ^[4] 2:8 3:10 47:16 57:16 amount ^[1] 12:9 analysis ^[5] 11:24 12:6 14:3 25:13 43:5 analytically ^[2] 33:18 56:11 analyzing ^[1] 12:22 Anderson ^[1] 43:2 another ^[6] 10:24 26:5 28:24 37:19 38:13 56:8 answer ^[8] 8:5 33:21 34:14 46:15,16,21,23 52:21 answered ^[3] 38:12 44:18, 23 answers ^[4] 7:1 38:19 46:12 56:16 appeal ^[32] 4:13 5:16 9:2,8, 16,18,21 10:5,7,17 11:22 12:10,10,19 15:24 16:10 18:10 20:14 23:16 26:9 27:3 31:16 34:10 35:15 38:7 43:12 47:23 52:7,11,12 53:11 58:14 appealability ^[1] 47:22 appealed ^[3] 21:11 35:6,19 appeals ^[49] 5:21 8:23 9:15 15:11,13 16:16 17:17 18:16,21 19:8 20:11 21:5, 6,13 22:9,14 25:11,22 26:4 31:19 32:7 33:4,11 34:15 37:17 38:25 40:6,23 41:11, 16 42:3,10,11 43:10,17,23 44:4 51:5,19,24 52:1 53:4, 13,22,25 55:23 57:12,24 58:11 appeals' ^[2] 22:5 31:17 APPEARANCES ^[1] 2:1 appellate ^[7] 4:15 16:11 17:22 22:23 55:18 57:19 58:16 Appendix ^[1] 19:16 applicable ^[1] 48:3 application ^[17] 10:24 11:15 13:10 30:13 31:2 33:22 38:13,14 43:18 47:21 48:1 50:19 52:2,15,16 53:12,19 applications ^[3] 13:11 50:17 51:15</p>	<p>applies ^[2] 28:8 48:14 apply ^[6] 8:7 50:22 53:16 56:18,20 58:20 applying ^[2] 10:23 15:1 appreciate ^[1] 41:5 approach ^[1] 24:24 aren't ^[3] 11:5 12:1 35:10 argue ^[1] 24:12 argues ^[1] 9:9 arguing ^[1] 24:10 argument ^[36] 1:17 3:2,5,8, 12 4:4,7 9:14 18:7 23:9,10 27:8,9,10,14,15,22 28:10, 12,20 29:7,10 34:8 35:1,24 36:19,22 37:23 41:5 47:15 48:21 49:10 54:13 56:15, 19,25 arguments ^[9] 22:19 27:18 30:19,20 49:16,18 50:1 51:13 55:4 arise ^[1] 5:23 arises ^[1] 12:18 Arkansas ^[2] 36:2,2 Arnold's ^[1] 45:17 around ^[2] 38:3 45:25 Arrington ^[1] 37:25 art ^[1] 7:16 Article ^[1] 57:17 articulate ^[1] 50:9 aside ^[1] 51:25 Assistant ^[1] 2:6 assume ^[1] 11:9 assuming ^[1] 11:4 atextual ^[1] 55:25 attention ^[2] 4:16 35:14 Austin ^[2] 2:4 36:22 authority ^[1] 53:22 avoiding ^[1] 53:15 away ^[1] 30:7</p> <hr/> <p>B</p> <p>back ^[16] 13:19 14:12 16:6, 21 23:2,3,4 26:20 29:18 39:2 42:13 44:9 47:24 52:4 54:3 55:1 backdrop ^[1] 4:23 backstop ^[2] 25:1,10 bad ^[2] 9:23 29:22 bag ^[1] 44:16 Banister ^[32] 4:23 6:10,19, 22,25 7:18,21 11:12,13,23 12:1,15,16,20,24 13:20,21 14:2,13,15,23 15:3,5 28:9 35:9,12 37:21 38:12,19 44:24 45:10 58:7 Banister's ^[1] 35:20 Bannister ^[1] 44:19 bar ^[3] 6:16 14:7 37:2 BARRETT ^[4] 49:7 50:8 52:19 54:16 barrier ^[1] 24:25 based ^[1] 6:9 baseline ^[1] 15:14 basically ^[2] 21:5 32:12</p>	<p>basis ^[1] 48:13 Becerra ^[1] 25:23 becomes ^[1] 55:20 behalf ^[8] 2:2,5 3:4,7,14 4:8 35:2 54:14 behind ^[2] 6:19,20 believe ^[1] 16:25 below ^[5] 18:22 24:13 28:3 30:19,21 best ^[3] 14:3 16:13 29:2 better ^[1] 46:16 between ^[3] 18:9 22:3 55:10 bit ^[1] 28:21 black-letter ^[1] 48:6 blue ^[1] 9:7 boils ^[1] 11:1 borne ^[2] 25:2 26:5 both ^[5] 5:20 25:13 42:9 44:19 53:21 bother ^[1] 58:10 bottom ^[2] 26:21 59:5 Boy ^[3] 16:1 17:8 34:15 Brady ^[3] 5:7 42:7,11 brand ^[1] 57:25 brief ^[10] 8:11 9:7,10 24:13 27:9 36:2,6 49:10,11 57:16 bring ^[5] 4:15 23:3,4 35:13 42:14 broader ^[1] 57:1 broadly ^[1] 56:17 brought ^[2] 26:3 36:15 BRULAND ^[53] 2:2 3:3,13 4:6,7,9 6:8,13 7:12 9:20 10:3,19 11:8 12:3,14 13:15 15:19 16:4 17:15 18:13, 17,23 19:5,12,25 20:3,12, 15,25 21:8,12,19,22 22:2, 11,21 23:21,24 24:8,20 27:7,11,15,24 29:1,15 30:24 31:21 32:16 33:13 54:11, 13,15 bunch ^[2] 27:25 32:5 burden ^[1] 25:14 burdensome ^[1] 57:22</p> <hr/> <p>C</p> <p>call ^[2] 33:9,10 called ^[1] 39:19 came ^[3] 1:16 11:22 47:25 cannot ^[1] 48:17 care ^[2] 23:19 26:11 Case ^[70] 4:4,13,21 6:24 7:20 8:20,21 9:5 13:2,3,14, 21,22,24 14:23,25 15:10, 12 16:13,14,14 21:21 25:11,19,23 26:21,22 28:18 29:19 31:20 33:1 34:12 37:2,4,5,8,10 39:14,21 40:21 41:23 42:5,6 43:1,2,7,11 44:3,12,15 45:1 49:5,16,23 50:2,14 52:3,5,6,9,15,20 54:3,17 57:7 58:7,18,19</p>
---	---	---	--	---

Official

<p>59:10,11 cases [26] 5:18,19,22 7:10 13:4 14:16,19 25:16,22 26: 11,22 32:6,22 36:3,8,10 40: 15,18 43:24 44:11 45:7,8, 13,15,17,22 cert [7] 16:16 28:17,20 30:8 31:9 36:16 37:8 certain [2] 28:19 56:1 certainly [3] 24:12 29:13 56:4 certificate [1] 47:22 certiorari [4] 36:18 43:13 47:10 49:19 challenging [2] 24:8,14 changed [1] 26:15 channel [1] 58:5 channeled [1] 58:13 characterize [1] 47:25 characterizes [1] 51:1 charge [1] 24:7 charges [1] 47:6 charitably [1] 32:2 CHIEF [15] 4:3,9 30:22,23 31:3 34:19 35:3 47:11,18 48:20,24 54:6,9,11 59:8 Ching [1] 33:1 choices [1] 8:7 Circuit [41] 13:3 14:24 15:1 22:25 25:3,25,25 26:6,7 28:3,7,11 31:9,10,14,24 32: 1,5,10,13,25 33:7 34:3,13 37:7,15 38:1,25 39:1 42: 10,19,23 44:25 45:18 47:9 50:14 52:10,12,17 55:11, 12 Circuit's [1] 36:17 circuits [6] 14:17,19 27:22, 25,25 35:25 circumstances [1] 54:5 circumvent [2] 10:13 11: 11 circumventing [1] 10:15 cite [5] 21:21 28:9 43:2 45: 7,8 cited [1] 25:22 cites [2] 13:21 36:8 civil [14] 7:5 15:7,18 17:7 18:1,8 22:7 30:19 32:18 40:3 45:19 48:2,6 49:1 claim [19] 5:5,6,7,21 9:15, 17 10:8 12:22 27:3,12,19 31:11 40:21 42:7,8,15,15 43:17 53:10 claims [20] 4:15,19 5:3,10, 13 16:12 17:22,24 26:19, 23 35:17 46:9 48:12,13,16 51:10,11 58:1,2,12 clear [6] 5:8 10:21 15:5 27: 17 33:14 53:6 clearing [1] 52:3 clerk [1] 32:4 closed [3] 37:5 45:2 47:10 closer [1] 36:11</p>	<p>COA [2] 41:25 42:11 colleague [2] 51:17,22 colleagues [2] 22:5 57:18 collectively [1] 57:19 come [12] 10:13 14:16,22 16:13 17:8,16 26:14 27:17 30:11 50:17 56:4 57:8 comes [13] 5:2 10:6,11,16 13:24 16:15 24:25 32:20 34:7 50:13,25 56:3 58:1 comfort [1] 33:24 coming [7] 24:1 26:23 29: 20 55:15 56:25 58:2,12 complain [1] 49:9 complaint [2] 15:24 16:9 completed [1] 46:7 concern [1] 42:22 concerns [1] 56:14 conclude [1] 44:15 concurrent [1] 46:8 confession [1] 21:24 conflict [3] 27:21,24 28:19 Congress [15] 4:11,22 5: 11 6:15 7:1,3,5,25 10:21 11:16 14:6,11 33:17 58:15, 23 Congress's [1] 8:7 Connecticut [1] 43:2 consider [8] 4:19 5:24 7: 10 19:3,18 31:18 32:15,19 consideration [1] 41:7 considerations [1] 17:6 considered [5] 13:7,17 22: 10 39:5,25 considering [1] 7:2 consistent [2] 31:11,12 constitutional [1] 5:3 constraint [2] 51:23,25 construe [1] 20:17 construed [1] 45:4 context [1] 29:17 contract [1] 40:21 conviction [1] 5:16 convictions [2] 24:9,12 convince [1] 25:7 convinced [3] 21:10,24 28: 18 convincing [1] 5:8 core [1] 9:10 corpus [3] 11:14 31:1 33: 22 correct [11] 18:12,13,16 19: 4,5 20:24 22:16 31:20 50: 4 54:25 55:5 CORRECTIONAL [1] 1:8 correctly [1] 52:12 cost [1] 5:2 couldn't [1] 41:14 Counsel [7] 22:18 31:4 34: 23 47:13 49:7 54:8 59:9 count [1] 11:24 counted [1] 30:25 counts [2] 4:24 45:23 couple [4] 14:9 16:2 45:13</p>	<p>46:12 course [1] 53:11 COURT [140] 1:1,17 4:10 5: 20,20,22 6:3 7:15,17 8:22, 22,23,24 10:12 13:5 14:24 15:2,9,10,12 16:15,16,21, 22,23 17:16,17,18 18:10, 11,15,21 19:1,1,8,10,18 20: 8,11,19 21:4,6,13 22:5,9, 14,22,24 23:2,12,14 24:4 25:7,7,10,21 26:4,18 27:4, 16 30:7 31:15,17,18 32:6,7, 19,20 33:4,11 34:1,15 35:4 36:1,5,23 37:3,8,9,13,21 38:9,11 39:5,18 40:5,15,22 41:11,15,16 42:8,9,11,13 43:13,22 44:3,9,18,23,25 46:25 47:5,8,10,19,24 49: 15,22 50:3,18,25 51:4,12, 18,24 52:1,4 53:4,13,17,25 54:1,19 55:22,23 56:5,6 57:10,11,12,12,20,23 58:3, 6,8,10,14 court's [11] 4:16 23:8,25 35:14 38:4,18 39:8 48:19 49:14 55:18 59:1 courts [13] 5:23 6:1 14:17 16:12,20 17:21,22 29:12, 23 34:3 53:22 58:17,17 cover [1] 20:22 crack [2] 16:24 56:14 cracks [1] 5:5 create [1] 30:9 CRIMINAL [1] 1:7 curiae [3] 2:8 3:11 47:16 curtail [1] 55:18 custody [3] 24:7,9 37:12 cut [2] 44:16 55:7</p>	<p>definition [1] 43:9 denied [3] 17:23 25:9 37:8 denies [1] 47:10 deny [3] 32:21 33:12 34:4 denying [1] 23:15 DEPARTMENT [2] 1:7 2:7 depend [1] 41:23 deserves [1] 5:21 die [1] 9:23 difference [2] 5:19 22:3 different [4] 4:18 17:19 28: 22 42:15 differently [1] 15:17 differs [1] 48:22 directly [2] 50:13 56:16 DIRECTOR [1] 1:6 disagree [2] 13:16 19:14 disagreed [1] 29:13 disagreeing [1] 51:17 discover [2] 53:10,10 discretion [1] 31:16 discusses [1] 40:17 discussing [1] 32:23 disease [1] 28:25 dismissal [1] 16:1 dismissed [2] 32:10 37:6 dispose [1] 49:22 dispositive [1] 35:21 disregard [1] 8:6 distinct [2] 33:18 56:11 district [46] 5:20,23 8:22 15:9 17:17 18:10,11 19:1, 10,18 20:8,19 23:2,8,14,25 24:4 25:6,7,24 26:18 31: 15 32:6,19,20 33:25 38:9 39:5,18 41:15 42:8,13 44: 9 47:8,24 50:17 52:4 53: 17 54:1,19 55:22 57:12,20 58:6,8,14 dividing [1] 11:3 DIVISION [1] 1:9 doctrine [3] 11:18 16:7 33: 14 doing [5] 10:2 12:11 26:4 32:5 38:15 done [6] 16:1 17:12 21:17, 21 34:4 37:9 door [2] 4:11 58:1 down [6] 11:1 16:21 54:3 55:1 57:8 58:25 drafting [1] 8:7 droves [1] 13:1 during [4] 9:16 10:17 11: 22 35:23</p>	<p>efficient [2] 44:6 58:4 effort [2] 9:1 35:13 efforts [2] 8:18 13:9 Eighth [5] 14:23 15:1 36:9, 10 45:18 either [5] 21:11 36:20 44: 16 45:2,3 emanations [1] 55:17 emerges [1] 4:12 emphasize [1] 53:3 enacted [2] 4:22 11:16 enactment [2] 13:8 36:4 end [1] 26:9 enlarge [1] 21:14 entered [1] 50:18 entirely [1] 49:20 entitled [1] 5:14 entry [3] 48:7 50:19 54:2 EPA [1] 26:22 ERIC [1] 1:6 error [10] 5:6,7 6:2 17:4 21: 11,24 54:20 55:3,6 59:1 errors [1] 35:13 especially [2] 17:3 45:16 ESQ [4] 3:3,6,9,13 even [6] 14:13 17:17 29:8, 10 38:23 55:11 event [1] 11:15 everyone [1] 41:2 everything [2] 40:12 55:8 evidence [22] 4:12 5:9,24 12:18 16:12 24:11,17 26: 15 27:2 29:2 39:17,25 40: 25 41:1,13 47:8 48:13,16 51:11 53:10 57:9 58:22 evolved [1] 49:18 exactly [1] 50:9 example [1] 36:20 exception [2] 7:24 8:12 exculpatory [2] 4:12 24:11 exercise [1] 31:16 exist [1] 45:4 existed [1] 9:15 existing [1] 9:17 experience [2] 42:19 57: 19 explain [2] 15:22 58:22 explained [1] 5:14 explaining [1] 34:17 explanation [1] 5:17 eyes [1] 17:10</p>
D				
<p>D.C [4] 1:13 2:2,7 37:25 déjà [1] 14:20 DANNY [3] 1:3 59:3,5 day [3] 5:21 44:1 56:8 daylight [1] 55:10 dead [2] 18:4 25:19 death [1] 8:4 debate [1] 55:2 decades [2] 4:19 25:3 decide [5] 27:5 30:21,25 54:19 57:13 decided [2] 5:11 23:12 decision [5] 31:17 35:14 38:19 45:18 57:11 decision-maker [2] 26:25 27:5 decisionmaker [1] 58:6 deemed [2] 13:23 30:15 default [1] 15:8 defending [1] 5:15 defer [1] 32:23 define [3] 6:8,12 38:5 defined [1] 6:6 definitely [1] 37:16</p>				
E				
<p>earlier [3] 17:12 26:3 31:13 early [1] 58:25 easier [4] 6:24 7:21 46:15, 23 economy [1] 6:21 Edwards [1] 30:4 effect [1] 11:5 efficiency [1] 34:8</p>				
F				
<p>face [1] 10:4 fact [5] 24:6 34:2 37:24 40: 24 47:3 facts [1] 41:23 fall [1] 5:4 familiar [1] 58:7 fast [2] 16:20 28:7 favorite [1] 8:20 favors [1] 29:21 federal [6] 8:13 32:18 45:5 47:4 49:1,25</p>				

Official

<p>few ^[1] 57:5</p> <p>Fifth ^[19] 22:24 25:25,25 28:3,7,11 36:8,9,17 37:7 38:25 39:10 42:9,10 47:9 50:14 52:9,12,17</p> <p>fight ^[2] 26:16 59:2</p> <p>figure ^[3] 11:17 14:5 43:5</p> <p>file ^[11] 10:24 15:11 17:13 18:2,8 23:3 34:9,10 43:14 45:1 52:15</p> <p>filed ^[10] 8:4 9:2,8 11:3,10 28:4 35:5 36:17 47:25 53:16</p> <p>files ^[1] 8:5</p> <p>filing ^[6] 11:21 12:23 30:14 40:1 50:16 52:14</p> <p>filings ^[4] 10:22 30:15 39:3 56:19</p> <p>final ^[10] 18:9 28:8 35:6,18 37:6,19 38:7,14 47:21 53:11</p> <p>finality ^[2] 6:22 30:6</p> <p>find ^[1] 34:12</p> <p>finding ^[1] 47:3</p> <p>fine ^[2] 42:24 43:1</p> <p>finish ^[1] 30:22</p> <p>first ^[27] 4:13,21 9:13 11:9 13:16 16:23,25 19:15 20:4 22:21 37:1,6,18 38:13 43:11 46:24 47:20 48:1,8 50:18 52:2 53:12 54:2 58:15,17,18,19</p> <p>five ^[2] 14:17 29:23</p> <p>five-minute ^[1] 58:9</p> <p>flare ^[3] 25:24 33:4 55:22</p> <p>flip ^[1] 58:21</p> <p>floodgates ^[2] 24:22,24</p> <p>fly ^[2] 5:10 56:2</p> <p>focused ^[3] 12:15,16 32:25</p> <p>follow ^[2] 8:12 18:7</p> <p>following ^[1] 32:13</p> <p>footnote ^[3] 23:10 33:1 40:17</p> <p>forgot ^[1] 9:3</p> <p>form ^[3] 15:18 51:2 56:2</p> <p>former ^[1] 57:17</p> <p>forward ^[2] 26:2 48:17</p> <p>found ^[2] 14:25 41:3</p> <p>Fourth ^[2] 36:8,9</p> <p>framed ^[1] 56:17</p> <p>friend ^[4] 8:9 17:12 35:23 53:7</p> <p>friends ^[3] 24:20 27:20 29:5</p> <p>front ^[4] 17:9 20:22 37:5 42:13</p> <p>frontline ^[1] 26:25</p> <p>frustration ^[3] 49:14,17,21</p> <p>fulled ^[1] 16:19</p> <p>fully ^[1] 49:6</p> <p>further ^[4] 25:12 46:3 47:12 54:7</p> <p>futile ^[1] 25:15</p>	<p style="text-align: center;">G</p> <p>Garland ^[1] 38:2</p> <p>gatekeeping ^[4] 48:18 50:21 52:18 53:23</p> <p>General ^[10] 2:4,6 7:23 8:25 16:15,17 17:1,7 52:25 57:15</p> <p>generally ^[1] 35:11</p> <p>gets ^[3] 27:1 31:15 57:9</p> <p>getting ^[3] 5:13 36:7 55:21</p> <p>give ^[4] 13:2 14:18 33:23 46:22</p> <p>Given ^[1] 52:19</p> <p>gives ^[3] 7:23,24 12:20</p> <p>glad ^[1] 34:16</p> <p>glance ^[1] 58:9</p> <p>gloss ^[3] 40:4 41:24 55:25</p> <p>Gonzalez ^[13] 6:25 10:1,4,6,6,10 23:11 35:9 44:19,24 45:9 51:13 53:18</p> <p>GORSUCH ^[12] 15:6,20,22 16:4 17:2,15 29:19 34:20 46:4,13,16,21</p> <p>got ^[5] 13:12 16:17 17:8 26:15 32:5</p> <p>governed ^[1] 53:1</p> <p>governing ^[2] 8:2,8</p> <p>government ^[2] 17:4 49:9</p> <p>grabs ^[1] 40:13</p> <p>grant ^[9] 18:12 20:5 21:6 24:4 30:18 31:18 45:15 48:4 58:15</p> <p>granted ^[2] 28:20 47:22</p> <p>granting ^[2] 48:4 51:6</p> <p>grants ^[1] 42:11</p> <p>great ^[1] 17:9</p> <p>ground ^[4] 25:5 56:10,16 57:3</p> <p>grounds ^[1] 49:23</p> <p>GUARNIERI ^[13] 2:6 3:9 8:10 47:14,15,18 48:23 49:13 50:12 51:21 52:23 54:9 55:13</p> <p>GUERRERO ^[2] 1:6 4:5</p> <p>guess ^[6] 8:25 9:3,12 10:25 39:14 40:25</p> <p style="text-align: center;">H</p> <p>habeas ^[42] 4:13,14,17,21 5:4,25 7:3,4 9:15,17 10:8 11:14 13:9 15:7,17 17:25 18:3,8 23:5 24:6,16 25:6,8 29:21 30:6,11,12 31:1 33:22 35:14 37:11,14 40:1 41:4,14,15 46:4,24 47:9 48:3,10 56:18</p> <p>half ^[3] 19:13,15 47:23</p> <p>hall ^[1] 46:15</p> <p>Hand ^[1] 8:23</p> <p>happen ^[1] 57:24</p> <p>happened ^[3] 19:7 21:25 34:13</p> <p>happening ^[1] 43:12</p>	<p>Harisiades ^[2] 8:21 13:2</p> <p>harmless ^[1] 55:3</p> <p>hastening ^[1] 6:21</p> <p>hear ^[3] 4:3 5:17 29:5</p> <p>heard ^[2] 15:23 35:23</p> <p>hearing ^[1] 36:25</p> <p>help ^[1] 46:9</p> <p>hired ^[1] 19:23</p> <p>historical ^[4] 14:2 15:2,14 54:23</p> <p>historically ^[4] 4:17 16:11 30:14 56:21</p> <p>history ^[20] 5:2 6:9,10 7:18 8:15 11:18 12:24,25 13:17 14:6,11,13 15:4,7 29:17 44:19,23 45:12,21 46:2</p> <p>hold ^[3] 21:1 31:16 32:13</p> <p>Honor ^[2] 38:20 39:7</p> <p>hook ^[3] 7:22,22 57:4</p> <p>hope ^[2] 15:19 17:24</p> <p>hopefully ^[1] 46:17</p> <p>however ^[1] 35:16</p> <p style="text-align: center;">I</p> <p>idea ^[3] 10:1 28:1 54:17</p> <p>identified ^[2] 24:3 51:12</p> <p>Ill ^[1] 57:17</p> <p>imagine ^[1] 42:6</p> <p>important ^[4] 16:6 17:5 43:20 50:3</p> <p>inconsistent ^[1] 31:24</p> <p>indicate ^[2] 19:8 40:23</p> <p>indication ^[1] 20:11</p> <p>indicative ^[4] 20:18 21:19 22:11 25:8</p> <p>inherent ^[1] 18:11</p> <p>inherently ^[1] 42:3</p> <p>initial ^[7] 23:4,15,16 40:1 41:13 42:19 52:11</p> <p>inject ^[1] 48:15</p> <p>injected ^[1] 49:10</p> <p>innocence ^[1] 5:8</p> <p>instance ^[1] 40:20</p> <p>instead ^[2] 32:7 33:12</p> <p>INSTITUTIONS ^[1] 1:9</p> <p>integrity-based ^[1] 23:10</p> <p>intended ^[1] 58:23</p> <p>inter ^[1] 25:8</p> <p>interest ^[3] 5:12,12 49:25</p> <p>interim ^[1] 39:4</p> <p>interlocutory ^[5] 19:19 20:5,7,14 21:15</p> <p>interpreting ^[1] 10:16</p> <p>inverted ^[1] 58:16</p> <p>isn't ^[2] 36:20 59:6</p> <p>issue ^[13] 9:6,10 25:7 28:19 29:12 33:5 35:13 41:4 42:12 43:4 44:21 47:10 49:5</p> <p>issued ^[1] 35:18</p> <p>issues ^[5] 6:3 48:25 49:3 59:3,4</p> <p>itself ^[4] 6:25 15:9 51:5 53:17</p>	<p style="text-align: center;">J</p> <p>JACKSON ^[25] 9:11,21,25 10:3,14,20 11:9,25 12:5,14 22:18 23:18,22 24:5,19 34:22 38:21 39:11,13,23 40:7,22 41:20 42:1,17</p> <p>joined ^[1] 38:1</p> <p>Joint ^[1] 19:16</p> <p>judge ^[7] 26:17,18 34:15 38:1 43:4 44:10 45:17</p> <p>judge's ^[1] 57:16</p> <p>Judges ^[5] 38:1 57:19,20,20 58:21</p> <p>judgment ^[44] 9:12,14 10:2 11:2,4 12:7,13 18:9,22 22:13 23:15 28:9 35:6,18 36:18 37:1,6,19 38:9,14,21,24 39:2,16,16 40:8,10 41:6,7,10,12 47:21 48:8,9,11 50:18,20 51:3,10,14,20 52:1 53:12 54:2</p> <p>judicata ^[1] 37:1</p> <p>judicial ^[2] 6:20 57:22</p> <p>jurisdiction ^[8] 20:21 24:6,16 36:24 37:4,11,14 46:5</p> <p>jurisdictional ^[6] 6:2 24:18 25:1,10 54:20 55:6</p> <p>JUSTICE ^[118] 1:8 2:7 4:3,9 6:6,9,11 7:9,12 8:16 9:11,20,25 10:3,14,20 11:9,25 12:4,5,14 13:6,15 14:20 15:6,20,22 16:4 17:2,15 18:6,14,18,24,25 19:6,13,21,25 20:1,6,13,24 21:3,9,12,17,20,23 22:2,7,16,18 23:18,22 24:5,19 27:7,11,13,21 28:16 29:2,14,19 30:23 31:3,5,6,7,8,21,23 32:17 33:8,13 34:18,19,19,20,21,22 35:3 37:24 38:5,21 39:11,13,23 40:7,22 41:20 42:1,17,18 44:14,20 46:4,13,16,21 47:11,18 48:20,24 49:7 50:8 51:16 52:19,21 54:6,10,11,15,16 56:13 57:5 59:8</p> <p style="text-align: center;">K</p> <p>Kagan ^[1] 34:19</p> <p>KAVANAUGH ^[8] 13:6,16 14:21 34:21 42:18 44:14,20 57:5</p> <p>keep ^[1] 43:14</p> <p>key ^[4] 50:13,15 57:7,7</p> <p>kick ^[2] 16:21 26:9</p> <p>kicks ^[1] 25:16</p> <p>kind ^[4] 14:11 41:8 53:7,20</p> <p>kinds ^[2] 30:15 51:13</p> <p>knowing ^[1] 36:21</p> <p>knows ^[1] 45:19</p> <p style="text-align: center;">L</p> <p>lack ^[1] 12:10</p> <p>language ^[1] 32:2</p>	<p>last ^[6] 25:3 26:7,12,22 34:6 58:24</p> <p>late-breaking ^[1] 4:15</p> <p>later ^[3] 36:11 44:11 47:23</p> <p>laughed ^[1] 17:18</p> <p>Laughter ^[2] 16:3 46:18</p> <p>law ^[3] 32:4 44:15 48:6</p> <p>lawyers ^[1] 47:1</p> <p>lead ^[1] 22:25</p> <p>leading ^[4] 8:17 11:21 13:4 46:2</p> <p>Learned ^[1] 8:23</p> <p>least ^[4] 10:22 11:1 14:14 15:5</p> <p>ledger ^[1] 14:20</p> <p>legal ^[1] 50:4</p> <p>limitations ^[3] 25:17 50:15 53:15</p> <p>limited ^[4] 12:9 40:11,14 42:3</p> <p>limiting ^[1] 10:22</p> <p>line ^[5] 8:25 11:3 38:24 40:18 59:5</p> <p>lines ^[1] 43:5</p> <p>litigated ^[1] 47:20</p> <p>litigating ^[1] 43:15</p> <p>litigation ^[10] 4:22 6:21 7:5 15:8,18 18:1,8 22:8 40:3,5</p> <p>little ^[2] 39:14 45:19</p> <p>live ^[1] 19:11</p> <p>lob ^[1] 13:5</p> <p>lockstep ^[1] 50:6</p> <p>logic ^[3] 12:21 15:1 35:20</p> <p>long ^[3] 17:21 41:7,19</p> <p>long-standing ^[1] 30:5</p> <p>look ^[31] 6:10,18,19,23 7:14,18 9:7 11:17 12:24,24 13:21 14:3,7 15:7 16:17,22 19:16,17 20:21 22:6 24:1 26:14 29:23 32:4 34:4 36:2,5 37:15 40:15 44:8 57:16</p> <p>looked ^[2] 11:12 41:14</p> <p>looking ^[6] 7:13 44:4,13 50:10 56:21 58:4</p> <p>looks ^[1] 45:14</p> <p>loophole ^[1] 30:10</p> <p>loose ^[1] 32:2</p> <p>lose ^[3] 11:12 42:9 43:21</p> <p>loses ^[1] 58:9</p> <p>lost ^[2] 11:22 16:16</p> <p>lot ^[7] 12:1 25:16 30:19,20 44:6 45:16 58:4</p> <p>Louisiana ^[2] 25:23,24</p> <p>lower ^[6] 6:1 16:20 29:12,22 56:6 59:1</p> <p>lurking ^[1] 9:6</p> <p style="text-align: center;">M</p> <p>made ^[9] 6:1 19:24 21:11 22:20 27:10 51:13 52:14 54:1 55:6</p> <p>magistrate ^[3] 26:17 44:10 57:20</p>
--	---	---	---	--

Official

Magwood ^[1] 58:8 mailing ^[1] 22:4 main ^[1] 49:4 mandate ^[4] 40:19 41:19, 21 42:4 March ^[1] 1:14 marks ^[1] 50:20 material ^[1] 44:8 matter ^[9] 1:16 19:9 24:16, 18 48:5 50:7,25 53:21 57:10 MATTHEW ^[3] 2:6 3:9 47:15 mean ^[9] 10:20 12:2,7 15:13,16 40:25 43:21 44:17 53:6 meaning ^[6] 20:7 33:21 54:20 55:7 56:6 59:2 meaningful ^[1] 22:3 means ^[6] 5:5 28:4 30:6 43:16,22,25 meant ^[3] 11:15,17 30:13 member ^[1] 14:7 members ^[2] 6:16 8:24 merits ^[18] 4:20 6:3 9:10 11:23 16:24 20:20 24:15 25:20 27:16,18 30:7,20 49:16,20 50:19 55:4 58:10 59:3 mid-appeal ^[6] 8:18 13:10 43:23 45:23 48:12 56:18 middle ^[1] 34:9 might ^[8] 9:22,23,24 11:22 29:22,23 50:11 59:5 Miller ^[1] 40:16 Millett ^[1] 38:2 mine-run ^[1] 7:10 mini-epidemic ^[1] 28:17 minutes ^[1] 29:23 mistake ^[2] 21:1 54:2 mixed ^[1] 44:15 Monday ^[1] 1:14 Moore's ^[1] 45:5 mootness ^[1] 23:6 morning ^[1] 5:17 most ^[8] 17:18,23 20:9 32:22 34:2 38:8 58:6,12 motion ^[23] 18:9,12,20 19:4,10,24 20:2,9,20 21:5 22:9 23:3,16 31:15 32:2,8 35:12 36:17 45:1,5 47:25 51:3 53:16 motions ^[5] 13:5,23 14:18 35:10,11 moved ^[1] 9:9 multiple ^[3] 35:7 37:17 43:10 <hr/> N <hr/> Napue ^[2] 5:7 42:15 narrow ^[3] 30:22,25 57:3 narrower ^[2] 42:4 56:16 nature ^[1] 12:12 near-uniform ^[2] 4:18 8:	17 nearly ^[1] 57:18 necessarily ^[1] 9:20 need ^[2] 52:20 58:10 needs ^[2] 8:21 40:15 Neither ^[1] 48:2 never ^[5] 5:14 6:2 15:23 29:3 32:3 new ^[34] 5:21,24 12:18 16:12,12,18 17:1,5 24:11 26:15 27:2,2,15,22 35:5,17 36:19 37:23 39:17,24 40:24 41:1,13 44:8 48:12,13,15,16 49:9 51:10,11 53:10 57:9,25 next ^[1] 4:4 nice ^[2] 17:11,11 NIELSON ^[21] 2:4 3:6 34:24 35:1,3 38:11 39:6,12,22 40:2,9 41:18,22 42:2,25 44:17,22 46:11,14,19,22 Nielson's ^[1] 57:15 nine ^[1] 8:24 none ^[2] 19:7 36:19 nor ^[1] 48:3 normal ^[2] 18:7 58:16 normally ^[1] 7:10 nothing ^[2] 24:2 35:18 notice ^[2] 9:8 36:7 nowhere ^[2] 29:24 34:17 nullity ^[1] 45:3 number ^[2] 10:22 48:25 <hr/> O <hr/> obtaining ^[1] 48:8 occasion ^[1] 52:24 offering ^[1] 57:3 often ^[1] 41:22 okay ^[4] 28:4,13 39:12 46:14 old ^[2] 48:12 51:11 once ^[2] 28:20 58:18 one ^[30] 13:21,22 14:10,23,25 16:20 17:19 22:5 24:7 26:12,16,23 30:2 32:24 33:25 34:4 37:18,20 40:17 43:11,14 45:2 46:4,7,12,13 56:13 57:25 59:6 one-time ^[1] 35:12 one-year ^[1] 25:17 only ^[8] 7:8,24 8:3 20:16 22:13 31:18 33:20 54:18 open ^[8] 16:12 17:22,23 18:11 20:22 24:24 37:4 57:24 operation ^[1] 49:1 opinion ^[8] 13:21 30:3,4 32:25 34:16 46:23 50:14 52:22 opinions ^[2] 14:10 26:17 opportunity ^[5] 23:23 30:8 37:16 44:8 54:4 opposition ^[1] 24:13 opt-in ^[1] 8:5 options ^[1] 32:21	oral ^[7] 1:17 3:2,5,8 4:7 35:1 47:15 order ^[3] 22:24 23:4 51:10 ordinary ^[6] 6:16 7:4 18:1 40:3,4 42:5 original ^[1] 57:25 other ^[28] 5:1,13 8:12 13:4,24 14:10,20 15:18 17:5 18:4 24:7,10,21 26:24 33:2 34:7 45:3,7 46:8,8 52:2 53:5,15 54:1 55:14,16 56:24 57:22 otherwise ^[3] 11:7 22:15 53:16 out ^[24] 11:17 13:3 14:5,17,19,23,25 17:18 25:2,16 26:5,16 29:4 30:5,8 31:8 40:25 43:2,5,10,10,17 49:8 59:3 outbreak ^[1] 28:24 outlier ^[1] 15:3 outright ^[2] 32:21 34:5 Outside ^[2] 4:14 8:8 outweighs ^[1] 5:12 over ^[5] 25:3 26:6,12 29:12 58:18 own ^[1] 42:21 <hr/> P <hr/> p.m ^[1] 59:11 PAGE ^[5] 3:2 8:10 9:8 14:3 36:6 pages ^[1] 22:4 panel ^[5] 8:23 17:10 44:4,7,13 parcel ^[1] 4:20 part ^[1] 4:20 participating ^[1] 50:2 particular ^[1] 49:25 party ^[1] 48:6 past ^[2] 16:19 44:1 pathway ^[3] 4:14 33:24 56:12 pegging ^[1] 39:15 pendency ^[1] 9:16 pending ^[10] 9:18,21 10:5 23:17 27:3 31:17 36:18 47:24 58:15,20 penumbral ^[1] 55:17 per ^[1] 26:12 perhaps ^[1] 51:4 permissible ^[1] 53:21 permit ^[1] 48:4 permits ^[1] 20:10 permitted ^[1] 52:8 person ^[2] 36:21 38:24 PETER ^[5] 2:2 3:3,13 4:7 54:13 petition ^[18] 6:14 20:23 23:5,16 25:9 27:10,19 28:2,22 29:5 31:9 34:11 35:5 37:6 41:14,15 43:14 56:23 Petitioner ^[13] 1:4 2:3 3:4,14 4:8 25:6 29:4 47:20 49:	8 50:1,25 52:14 54:14 Petitioner's ^[3] 48:15 49:18 52:11 Petitioners ^[3] 14:16 28:21 29:21 petitions ^[3] 8:2,8 28:17 phone ^[1] 22:6 phrase ^[4] 6:15 7:13 11:14 33:17 picked ^[2] 14:6,12 picking ^[1] 22:5 piece ^[1] 25:5 piecemeal ^[1] 6:21 place ^[1] 14:3 plausible ^[1] 20:16 play ^[1] 50:17 pleadings ^[1] 48:7 please ^[7] 4:10 16:20 19:17 23:15 35:4 47:19 57:14 plus ^[1] 8:24 point ^[19] 11:21 12:7,20 15:20 16:11 17:19,20 18:2 19:2,22 20:3 28:14 31:8 39:24 50:15,20 51:22 54:18 57:7 pointed ^[1] 30:5 pointing ^[1] 29:4 points ^[5] 13:15 49:4,8 50:5,6 poor ^[1] 43:4 porthole ^[1] 30:10 position ^[3] 23:12 48:24 49:3 possible ^[1] 43:10 possibly ^[1] 44:11 post-AEDPA ^[2] 6:12,13 post-conviction ^[2] 46:25 47:5 post-judgment ^[2] 48:5 51:2 posture ^[2] 10:9 52:6 potential ^[1] 22:25 power ^[8] 5:24 17:3,20 18:11 20:8 23:8,25 55:18 practice ^[6] 4:18 8:17 11:18 15:14 17:8 45:6 pre-'96 ^[1] 44:15 pre-AEDPA ^[1] 11:18 pre-judgment ^[1] 52:6 precedent ^[2] 35:8 42:20 precise ^[1] 16:7 presented ^[4] 10:4 21:4,10 29:11 preserved ^[1] 50:1 presumption ^[2] 58:16,21 presuppose ^[1] 49:15 presupposes ^[1] 53:4 pretty ^[3] 10:23 43:3,7 prevails ^[1] 39:9 primary ^[2] 9:13 27:9 principally ^[1] 49:23 principle ^[1] 30:6 prisoner ^[11] 22:4 25:14,18 27:1,2 34:9 39:4 48:11	52:5 53:13 57:9 prisoner's ^[3] 4:13,21 9:7 prisoners ^[5] 8:4 13:4 26:14 30:11 34:13 pro ^[3] 19:23 36:14,20 probability ^[1] 23:6 probably ^[4] 17:12,18 18:4 19:24 problems ^[1] 59:6 procedural ^[6] 6:3 33:10,24 51:9 56:11 59:4 procedurally ^[1] 33:19 procedure ^[7] 24:3 30:19 32:18 45:19 48:2,6 49:1 procedures ^[3] 50:22 55:4 56:8 proceeding ^[2] 46:24 57:25 proceedings ^[5] 25:12 48:4,10,16 50:21 product ^[1] 19:22 proper ^[2] 20:1 57:8 properly ^[4] 51:14 52:10,16 53:1 prosecutor ^[1] 9:1 providing ^[1] 11:2 pulled ^[2] 16:19,19 purpose ^[3] 6:18 51:6 53:14 purposes ^[8] 6:20 7:19 11:19 12:25 14:2 23:5 56:21 58:5 purposive ^[1] 54:23 put ^[1] 55:25 <hr/> Q <hr/> QP ^[3] 29:5 56:15,17 question ^[24] 8:14 10:4 11:20 12:16,17,17 23:7,13,25 26:24 29:11,16,19 30:18,22,25 33:16,18,20 36:25 38:20 52:21 54:18 55:20 questions ^[5] 6:5 33:15 38:4 46:3 48:19 quite ^[1] 28:21 quoting ^[1] 35:11 <hr/> R <hr/> race ^[1] 57:10 raised ^[1] 27:19 raises ^[1] 33:5 raising ^[1] 36:22 rare ^[1] 5:22 rather ^[2] 44:2,8 reach ^[1] 20:20 reached ^[1] 6:2 reaches ^[1] 57:11 reacted ^[1] 49:16 read ^[2] 26:8,10 reading ^[2] 12:1 45:16 really ^[6] 10:6 12:9 13:13 26:21 50:24 57:8 reason ^[8] 5:10 24:23 30:2 52:2 53:5 54:1 55:14,16
---	--	---	---	---

Official

<p>reasons [6] 9:24 18:4 35:7 54:23,23,24</p> <p>REBUTTAL [3] 3:12 54:12, 13</p> <p>recognize [2] 43:8,21</p> <p>recognized [2] 6:17 52:13</p> <p>record [4] 9:6 19:14 21:14 39:18</p> <p>redefine [1] 4:24</p> <p>redress [2] 22:25 24:4</p> <p>refer [2] 30:13 33:11</p> <p>reject [1] 28:1</p> <p>rejected [1] 28:11</p> <p>relevant [4] 15:15 41:4,13 45:21</p> <p>relief [13] 5:4,25 20:7 21:2 22:20 45:15 48:8,11 51:1, 3,9 56:2 57:3</p> <p>relieves [1] 15:9</p> <p>remains [1] 11:4</p> <p>remand [21] 6:4 19:9 21:7 22:8,12 24:2 25:11 31:19 32:14 39:5,9,19 40:5,11,12 51:5,24 52:22 53:2,14,20</p> <p>remanded [1] 22:1</p> <p>remanding [1] 53:5</p> <p>remands [2] 51:19 53:25</p> <p>remedy [1] 54:25</p> <p>remember [3] 26:11 44:12 58:2</p> <p>reopen [6] 19:1,2,3 22:13 23:15 37:9</p> <p>repeatedly [1] 35:17</p> <p>replead [2] 48:12 51:11</p> <p>reply [1] 36:6</p> <p>repose [2] 5:12,15</p> <p>request [4] 48:5,15 51:4 53:14</p> <p>requesting [3] 51:2,9 53:7</p> <p>requests [1] 48:11</p> <p>requirement [1] 41:25</p> <p>requirements [1] 48:18</p> <p>requires [1] 52:13</p> <p>res [1] 37:1</p> <p>resist [1] 54:16</p> <p>respect [2] 48:25 49:4</p> <p>respectfully [2] 23:14 38:20</p> <p>respond [1] 35:22</p> <p>Respondent [8] 2:5,9 3:7, 11 16:19 35:2 47:17 48:22</p> <p>Respondents [1] 1:10</p> <p>response [2] 21:15 42:20</p> <p>responses [2] 11:8 18:23</p> <p>restrictive [1] 10:23</p> <p>reverse [6] 6:4 54:25 56:5, 9 59:1,7</p> <p>reverses [2] 22:14 42:12</p> <p>reversing [1] 22:24</p> <p>review [6] 16:23 19:19 20:5 26:5 39:20 58:17</p> <p>reviewing [1] 41:15</p> <p>RICHARD [1] 1:3</p> <p>RIVERS [9] 1:3 4:4 11:10</p>	<p>19:17 24:4 28:3,10 59:3,5</p> <p>Rivers' [2] 35:5,16</p> <p>ROBERTS [9] 4:3 30:23 31:3 34:19 47:11 48:20 54:6,11 59:8</p> <p>roll [1] 17:10</p> <p>row [1] 8:4</p> <p>rule [33] 5:1,5,19 7:23 9:23 15:8,11 17:7 28:5 31:10, 14 32:7,11,18 35:9,10,12 37:15,17 38:15 39:8 40:19 44:1 45:4,5,10,25 49:1 50:10 52:8 53:16 55:17 57:22</p> <p>rules [8] 7:7 8:1,7,13 10:23 48:2 50:4,9</p> <p>ruling [4] 20:18 22:12 25:8 32:23</p> <p>runs [1] 30:8</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>same [12] 13:20 15:1 21:4, 5 27:10,12,13,19 28:10,24 33:2 52:6</p> <p>satisfy [1] 48:17</p> <p>save [1] 56:7</p> <p>saw [1] 9:1</p> <p>saying [14] 7:17 10:12 16:8 21:13 22:6 23:11,18 24:1, 15 29:21 30:9,11 32:13 56:5</p> <p>says [27] 6:10,18,19 7:3 9:7 11:23 12:24 13:7 14:24 16:17,22 19:17 30:7 31:14 32:19 33:1 34:7 35:24 36:9, 13 41:16 42:7,8 45:20 47:8 56:19 58:3</p> <p>Scalia-Garner [1] 14:4</p> <p>scenario [6] 12:2,4,13 38:23 41:9 52:22</p> <p>scope [7] 40:11,18 41:19 42:2,4,16 51:24</p> <p>se [3] 19:23 36:14,20</p> <p>second [66] 6:7,14,17 7:7, 11,14,15 8:2,8 9:3,22 10:9, 11,17 11:5,10,14 13:10 14:18,24 18:3,5 19:13 20:22 25:2 26:6,7 28:2,5 29:25 30:3,12 31:1 32:1,3,5 33:7, 10,16,21 34:3,10,13 35:6 37:2,15,20 38:6,16,16 41:8 42:18,23 43:14 45:11,11, 23 46:1 50:16 51:14,20 52:11,15 53:18 55:11 56:22</p> <p>second-in-time [1] 7:11</p> <p>Section [7] 40:16 47:20 48:14 50:15 51:15 52:13 53:23</p> <p>see [3] 26:13 42:17 55:16</p> <p>seek [2] 30:8 52:7</p> <p>seeks [1] 9:16</p> <p>seemed [2] 12:11 43:3</p> <p>seems [3] 42:24 44:6 55:24</p> <p>seen [3] 25:2 26:6 34:3</p>	<p>send [5] 27:4 33:3 39:2 54:25 55:22</p> <p>sending [1] 44:9</p> <p>sense [2] 43:19 49:17</p> <p>sent [1] 25:24</p> <p>sentence [1] 46:7</p> <p>sentences [1] 46:8</p> <p>sentencing [1] 5:6</p> <p>separate [3] 30:4 33:15 43:5</p> <p>serving [1] 46:7</p> <p>set [1] 51:25</p> <p>settled [2] 6:17 14:8</p> <p>sexual [1] 47:6</p> <p>SG [1] 13:6</p> <p>share [1] 49:14</p> <p>short [1] 34:16</p> <p>shortly [1] 13:8</p> <p>Shotwell [1] 16:14</p> <p>show [4] 5:8 16:18 25:18 47:7</p> <p>showing [1] 25:14</p> <p>shows [2] 19:14 21:14</p> <p>shy [1] 29:3</p> <p>side [10] 5:13 13:24 14:20 24:10,21 29:17 34:7 35:25 36:8 37:24</p> <p>side's [3] 5:1 56:24 57:22</p> <p>Sidley [2] 36:15,21</p> <p>silence [1] 45:16</p> <p>simply [1] 38:8</p> <p>single [6] 34:12 35:15 43:11,17,18 58:6</p> <p>sit [1] 58:25</p> <p>situation [2] 53:1,24</p> <p>six [2] 14:19 35:25</p> <p>slam [1] 4:11</p> <p>sliver [3] 7:6 8:4,9</p> <p>small [2] 5:18 7:6</p> <p>sold [1] 28:22</p> <p>Solicitor [6] 2:4,6 8:25 16:15,17 17:1</p> <p>solution [1] 58:13</p> <p>somebody [1] 42:7</p> <p>someone [1] 45:24</p> <p>sometimes [1] 38:14</p> <p>sorry [5] 6:19 18:6 21:16 22:22 23:4</p> <p>sort [4] 14:6 30:14 33:9 55:17</p> <p>SOTOMAYOR [32] 18:6,14, 18,24,25 19:6,13,21,25 20:1,6,13,24 21:3,9,12,17,20, 23 22:2,7,16 31:7,8,22,23 32:17 33:8,13 34:18 51:16 54:16</p> <p>Sotomayor's [1] 52:21</p> <p>speaking [2] 31:12 50:8</p> <p>special [2] 29:20 30:10</p> <p>specific [1] 50:1</p> <p>specifically [2] 7:2,25</p> <p>split [3] 31:10 36:24 37:24</p> <p>square [2] 9:25 34:8</p> <p>squarely [2] 11:20 29:11</p>	<p>Srinivasan [1] 38:1</p> <p>stage [7] 16:16 27:16,18 28:23 36:16 49:19,20</p> <p>stand [1] 24:21</p> <p>standing [7] 22:20,22,23, 23 23:5 36:23 57:2</p> <p>stands [1] 41:7</p> <p>start [2] 25:4 35:8</p> <p>state [4] 8:5 46:25 52:5 53:13</p> <p>state's [1] 5:11</p> <p>statement [1] 50:10</p> <p>STATES [13] 1:1,18 2:8 3:10 8:5 29:3,6 37:25 47:16 48:21 49:2,5,24</p> <p>statute [8] 6:20,25 10:13, 15,21 11:11,16 25:17</p> <p>statutes [1] 48:3</p> <p>statutory [4] 7:21,22 11:13 57:4</p> <p>stay [1] 36:17</p> <p>step [3] 13:19 16:6 26:20</p> <p>steps [1] 25:13</p> <p>still [12] 5:15 9:18,21 18:21 19:10 23:17 24:9 39:9 40:10,14 47:23 58:19</p> <p>straightforward [2] 43:3,7</p> <p>Strand [1] 13:3</p> <p>strays [1] 29:4</p> <p>Strickland [2] 42:8,15</p> <p>string [1] 45:8</p> <p>stringent [1] 48:18</p> <p>strip [1] 5:23</p> <p>strong [1] 14:14</p> <p>stronger [1] 14:14</p> <p>structural [3] 5:6 24:25 25:4</p> <p>stuff [1] 56:7</p> <p>subject [3] 7:7 8:1 46:24</p> <p>submitted [3] 39:3 59:10, 12</p> <p>subsequently [1] 39:17</p> <p>subsidiary [1] 48:25</p> <p>substantial [1] 33:5</p> <p>substantially [1] 49:19</p> <p>success [1] 23:6</p> <p>successful [1] 23:20</p> <p>successive [52] 4:22,25 6:7,14,17 7:7,11,15,16 8:2,8, 19 9:4,22 10:9,11,18 11:6, 10,14 13:10,23 14:18,25 18:3,5 20:23 28:2,6 30:1,3, 12 31:1 32:3 33:11,16,22 34:11 35:7,10 38:6,17 41:8 45:11,24 46:1 50:16 51:15,20 52:16 53:19 56:22</p> <p>suggesting [2] 33:6,9</p> <p>suggestion [2] 18:15,19</p> <p>support [1] 27:18</p> <p>supporting [3] 2:8 3:11 47:17</p> <p>supposed [1] 12:21</p> <p>supposedly [1] 28:19</p> <p>SUPREME [4] 1:1,17 16:</p>	<p>21 23:12</p> <p>surfaces [1] 41:2</p> <p>suspended [2] 12:8 38:15</p> <p>sympathetic [1] 36:15</p> <p>system [1] 57:23</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table [1] 23:7</p> <p>talked [1] 36:13</p> <p>tells [2] 4:24 6:22</p> <p>Tenth [1] 13:3</p> <p>term [1] 7:16</p> <p>terminal [1] 50:20</p> <p>TEXAS [12] 1:7 2:4 8:21 13:24 14:22 24:1 29:10 30:18 39:8 48:24 49:6 50:6</p> <p>text [2] 5:2 42:20</p> <p>textual [1] 54:22</p> <p>textually [1] 56:20</p> <p>theory [2] 29:9 35:16</p> <p>there's [19] 4:14 7:6 8:14 22:3,11,12 24:2,17 26:11 27:24 28:18 33:15 39:17 40:12,24 46:25 52:23 55:9 58:22</p> <p>therefore [2] 28:5,12</p> <p>they'll [1] 30:20</p> <p>They've [1] 26:8</p> <p>thinks [1] 27:2</p> <p>Third [5] 31:10,14,23 32:24 55:11</p> <p>THOMAS [8] 6:6,9,11 7:9, 12 8:16 31:5 38:5</p> <p>three [4] 32:21 43:4 44:10 46:25</p> <p>three-page [1] 26:17</p> <p>threshold [6] 6:1 22:19 54:20 55:6 56:10 59:1</p> <p>tide [1] 14:1</p> <p>timely [2] 25:16 26:2</p> <p>timing [2] 29:9,16</p> <p>tiny [2] 8:3,9</p> <p>today [5] 7:17 12:17 27:8, 23 57:11</p> <p>took [1] 20:19</p> <p>totally [1] 39:20</p> <p>transferred [1] 52:17</p> <p>treat [4] 12:22 13:9 14:17 15:17</p> <p>treated [3] 8:19 51:14 53:18</p> <p>treating [1] 52:14</p> <p>treatise [1] 14:4</p> <p>trend [2] 13:7,18</p> <p>tried [1] 33:23</p> <p>tries [1] 45:24</p> <p>trouble [1] 26:18</p> <p>truly [1] 21:25</p> <p>try [1] 43:5</p> <p>trying [6] 9:12 11:1,11 14:5 15:20 38:22</p> <p>turn [2] 8:15 14:1</p> <p>two [13] 11:8 13:15 16:18, 25 18:23 25:3 26:12,16 33:</p>
---	---	---	---	---

15 43:17 45:2 47:22 51:12	53:6
twofold ^[1] 20:4	week ^[1] 26:22
typewritten ^[1] 22:4	welcome ^[3] 6:5 38:4 48:19
U	Western ^[1] 25:24
U.S.C ^[1] 51:6	whatever ^[5] 21:10 29:25 30:12 39:1 58:3
unclear ^[1] 41:12	whatnot ^[1] 12:10
under ^[24] 5:5,11 12:13 19:2,3,8 21:1 22:10 23:10 28:5 32:18 35:7,9 37:17 41:9,25 51:4,5,15 52:8 53:17,21,22,23	whereas ^[1] 44:12
underlying ^[1] 50:4	Whereupon ^[1] 59:11
undermine ^[1] 24:11	whether ^[5] 11:3 23:19 49:25 50:25 59:3
undermining ^[1] 11:6	who's ^[1] 26:24
understand ^[15] 9:13 11:2,25 32:17 36:14 38:22 39:8,11,20,24 41:1 46:6 49:20 55:14 56:24	whole ^[4] 45:8 54:17 57:23 58:4
UNITED ^[12] 1:1,18 2:8 3:10 29:3,6 37:25 47:16 48:21 49:2,5,24	will ^[13] 5:4,22 20:5 26:10 30:18,18 36:7 40:4 45:4 46:9,13,22 58:15
universe ^[2] 5:18,19	willy-nilly ^[1] 15:12
unless ^[3] 22:14 43:25 48:17	within ^[3] 29:11 41:19 42:16
unmoored ^[1] 5:1	without ^[2] 4:21 48:8
until ^[2] 26:9 32:13	word ^[5] 4:21 9:2 24:22 57:14,15
untoward ^[1] 21:25	words ^[2] 30:12 57:6
up ^[24] 8:17 10:8 11:21 13:4 14:7,12 16:10 20:19 22:6 24:21 25:21,24 33:4 38:25 40:12 41:11 43:12,13,13 46:2 52:7 55:22 56:25 57:2	work ^[5] 7:3,4 10:2 11:2 12:11
urge ^[4] 36:1,5 44:18 57:16	workability ^[2] 42:21 57:6
urged ^[1] 49:22	workable ^[2] 42:23 58:13
V	worked ^[2] 42:24 43:1
vacate ^[9] 19:9 21:6 22:8 32:14 39:1 51:5 52:22 55:19,23	works ^[3] 40:3 45:12 53:9
vacated ^[5] 22:1 38:22 39:17 41:12 52:1	world ^[2] 39:15 41:1
vacates ^[5] 22:15 31:19 51:19,19 53:25	worried ^[2] 29:8 39:15
vacatur ^[6] 22:12 39:19 40:8,9 53:7,14	Wright ^[1] 40:16
Vannoy ^[1] 30:4	writ ^[2] 30:16 32:9
vehicles ^[1] 51:9	write ^[1] 46:23
venue ^[2] 26:21 57:9	wrote ^[1] 15:2
versus ^[2] 4:4 24:7	Y
vested ^[1] 53:22	year ^[2] 10:7 26:12
Viable ^[1] 5:3	years ^[10] 13:7 26:7,13 35:5,19 44:10 45:2 47:23 57:18,18
view ^[5] 14:8 16:23 38:10 53:9 58:17	
vu ^[1] 14:20	
W	
wait ^[1] 32:6	
warrant ^[1] 5:25	
warranted ^[1] 5:4	
Washington ^[3] 1:13 2:2,7	
way ^[14] 11:16 14:10,10 20:16 22:13 26:8,23 38:3 40:2 43:13 44:16 48:21 52:3	