

**SUPREME COURT
OF THE UNITED STATES**

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
DOUGLAS HUMBERTO URIAS-ORELLANA,)
ET AL.,)
 Petitioners,)
 v.) No. 24-777
PAMELA BONDI, ATTORNEY GENERAL,)
 Respondent.)

- - - - -

Pages: 1 through 70
Place: Washington, D.C.
Date: December 1, 2025

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

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -
3 DOUGLAS HUMBERTO URIAS-ORELLANA,)
4 ET AL.,)
5 Petitioners,)
6 v.) No. 24-777
7 PAMELA BONDI, ATTORNEY GENERAL,)
8 Respondent.)
9 - - - - -

10
11 Washington, D.C.
12 Monday, December 1, 2025
13

14 The above-entitled matter came on for
15 Oral argument before the Supreme Court of the
16 United States at 11:48 a.m.
17

18 APPEARANCES:
19 NICHOLAS ROSELLINI, ESQUIRE, San Francisco,
20 California; on behalf of the Petitioners.
21 JOSHUA DOS SANTOS, Assistant to the Solicitor General,
22 Department of Justice, Washington, D.C.; on behalf
23 of the Respondent.
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	NICHOLAS ROSELLINI, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	JOSHUA DOS SANTOS, ESQ.	
7	On behalf of the Respondent	42
8	REBUTTAL ARGUMENT OF:	
9	NICHOLAS ROSELLINI, ESQ.	
10	On behalf of the Petitioners	65
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (11:48 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument next in Case 24-777, Urias-Orellana
5 versus Bondi.

6 ORAL ARGUMENT OF NICHOLAS ROSELLINI
7 ON BEHALF OF THE PETITIONERS

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

10 Deciding whether undisputed facts
11 qualify as persecution under the law involves
12 legal interpretation, not fact finding. Even
13 the BIA agrees. It treats the issue as a
14 question of law subject to de novo review.
15 That should not change when a case reaches
16 federal court.

17 Indeed, the government concedes that
18 courts must exercise independent judgment when
19 establishing auxiliary legal principles for use
20 in future cases. They concede that courts owe
21 no deference in interpreting the INA's
22 persecution standard. And courts have
23 repeatedly established auxiliary legal
24 principles on things like sexual violence,
25 religious persecution, economic deprivation,

1 and beyond.

2 But courts did not establish those
3 principles by pondering the term "persecution"
4 in the abstract. They interpreted the law by
5 applying the persecution standard to particular
6 sets of undisputed facts.

7 The government wants you to hold that
8 de novo review applies anytime a case
9 supposedly would make new law in some sense but
10 substantial evidence review when it wouldn't.
11 There's no principled way to draw that line,
12 and this Court has never tried in similar
13 circumstances.

14 For instance, de novo review applies
15 to all fair use determinations made on
16 undisputed facts and all antitrust
17 determinations made on undisputed facts, not
18 just some special subset. The government's
19 contrary rule here would invite further
20 confusion and collateral litigation.

21 Better instead to just require de novo
22 review and let judges get to judging. The
23 courts of appeals are well equipped for the
24 job. Several of them already have experience
25 reviewing de novo the B -- the BIA's

1 persecution determinations, and they generally
2 review the analogous question whether
3 undisputed facts demonstrate torture --
4 demonstrate torture under the Convention
5 Against Torture. The sky has not fallen.

6 Under both the INA's text and U.S.
7 Bank, courts should decide for themselves
8 whether undisputed facts establish persecution
9 under the law. Section 1252(b) explicitly
10 provides for legal deference on closely related
11 issues but not this one. And decades of
12 experience confirms that courts perform crucial
13 legal work in applying the INA's persecution
14 standard. Deference to the BIA is unwarranted.

15 I welcome the Court's questions.

16 JUSTICE THOMAS: Elias-Zacarias was
17 also a persecution case, and that was reviewed
18 deferentially. How is this different?

19 MR. ROSELLINI: Because Elias-Zacarias
20 concerned a different element of the asylum
21 eligibility analysis. The -- Elias-Zacarias,
22 the disputed issue there was about
23 the persecutor's subjective motive, their
24 intent. That is a classic pure question of
25 fact. And so Elias-Zacarias was absolutely

1 right to review that factual determination for
2 substantial evidence.

3 The statute before the Court in
4 Elias-Zacarias, which was the predecessor to
5 Section 1252(b)(4), also -- it didn't say the
6 asylum eligibility determination across the
7 board. It applied only to findings of fact.
8 And that's what this statute says as well. So
9 we think the government is just over-reading
10 that decision. And the government doesn't
11 really --

12 JUSTICE SOTOMAYOR: I think you may be
13 under-reading it. There was no factual dispute
14 in that case. Everyone agreed on what the
15 guerrillas said to the petitioner. There was
16 no dispute about what was said or what
17 happened. Instead, the question was whether
18 those undisputed facts met the standard of
19 persecution "because of" political opinion. So
20 I don't see how that's not a mixed question of
21 law and fact and mostly a factual question.

22 MR. ROSELLINI: No, Justice Sotomayor.
23 The -- the dispute in that case was about
24 whether the -- as you said, was whether the
25 persecution was done on account of the

1 non-citizen's political opinion or something
2 else. That is a question about what was in --

3 JUSTICE SOTOMAYOR: But there was no
4 dispute about the facts. What was said was
5 undisputed. And so the question was, did that
6 meet the level of "because of"?

7 MR. ROSELLINI: No, Justice Sotomayor.
8 The -- the facts of the case, what was said,
9 what was done, as Justice Gorsuch pointed out
10 in the earlier argument, subjective intent is
11 something that you infer from facts on the
12 ground. So, in a murder case, you might know
13 exactly what happened, who showed up when, who
14 fired first. But I don't think anyone would
15 say that the facts are undisputed in that
16 murder case if we haven't figured out whether
17 the defendant had the intent to kill or not.
18 And that was the same issue in Elias-Zacarias.

19 JUSTICE SOTOMAYOR: So what's
20 different between what was said or done is
21 undisputed in this case, what he was told, and
22 the question is, did he have a fear for his
23 life? How is that any different from what
24 happened in Elias-Zacarias?

25 MR. ROSELLINI: Because that's

1 actually not the question in this case. This
2 is a -- this is a past persecution case.
3 The -- under the INA, a non-citizen is
4 presumptively eligible for asylum if they have
5 suffered persecution in the past. It's not
6 this forward-looking inquiry about whether they
7 have a well-founded fear of persecution going
8 forward. That's a -- that's a different kind
9 of inquiry. And I agree with Your Honor that
10 it goes to -- it goes to their state of mind.
11 It involves the calculation of a future
12 probability.

13 And so the case for substantial
14 evidence review would be much stronger there.
15 But, here, where -- where -- the facts of what
16 happened to my client are undisputed. The --
17 the immigration judge took his testimony as
18 credible and true and found that the -- that
19 the death threats he experienced were -- were
20 indeed credible and menacing but nevertheless
21 held that, under the law, they did not rise to
22 the level of persecution.

23 CHIEF JUSTICE ROBERTS: Well, but you
24 just said they involve credibility findings. I
25 mean, they're the sort of findings that we

1 typically leave to a district court or another
2 fact finder involving credibility, weighing of
3 facts, and all that sort of thing, to -- to
4 reach a particular determination. It seems to
5 me a prototypical case for the BIA.

6 MR. ROSELLINI: No, Your Honor. First
7 of all, the BIA doesn't view it that way. If
8 this were all about, you know, determining
9 whose -- whose testimony to believe or not,
10 figuring out what happened, deference would be
11 owed to the immigration judge, and the BIA
12 would do the same. That's not how the BIA
13 views this issue.

14 And the reason for that is credibility
15 is not in dispute here. My client was found
16 credible. Whenever you have a set of
17 undisputed facts, credibility has been resolved
18 one way or the other. So we know exactly what
19 happened to my client, and the sole dispute in
20 this case is what is the legal effect of those
21 events. Did it qualify as -- as "persecution"
22 within the meaning of Section 1101(a)(42), or
23 did it not? That boils down to a legal
24 inquiry.

25 JUSTICE JACKSON: So, if I agree with

1 you that we're talking about a question of law
2 to the extent that what is at issue here is the
3 application of the persecution standard to a
4 known set of facts, all right, I guess what I
5 don't understand about your argument is why the
6 statute doesn't prescribe the standard of
7 review in this situation.

8 I appreciate that you say in your
9 brief that you read (c), which definitely
10 requires deference to certain legal
11 determinations, you say, but this is not one of
12 them. And I guess I don't understand that.

13 The -- the language of (c) says a
14 decision that an alien is not eligible for
15 admission to the United States is conclusive
16 unless manifestly contrary to the law. And in
17 this case, I understood the agency to have
18 determined that your client was not eligible
19 for admission because he had not satisfied the
20 requirements for asylum. So it seems to me to
21 be heartland (c), and, therefore, the statute
22 tells us what the standard of review is
23 supposed to be.

24 MR. ROSELLINI: No, Your Honor, (c) is
25 about eligibility for admission. That's a

1 distinct inquiry for eligibility for asylum.

2 JUSTICE JACKSON: I don't think so.

3 Help me to understand that. I mean, it seems
4 to me that there are different grounds for
5 admission, and one of them would be because you
6 satisfied the asylum criteria, and that was
7 what your client was trying to do.

8 So what Congress, I think, is covering
9 here by this broader scope of review or
10 standard of review paragraph is all the kinds
11 of determinations that the agency would need to
12 make related to the eligibility for admission.
13 This is a subset of that.

14 MR. ROSELLINI: No, Justice Jackson.
15 I mean, number one, the government has not made
16 this argument. They've conceded that (c) and
17 (d) do not apply. They do not capture this
18 case --

19 JUSTICE JACKSON: I understand. But
20 I'm not the government. I'm reading the
21 statute.

22 MR. ROSELLINI: Fair -- fair enough,
23 Justice Jackson.

24 JUSTICE JACKSON: And my question is
25 why does (c) -- it seems to me that when you

1 look at this provision 4, it seems as though
2 Congress was really trying to cover the
3 waterfront of determinations that the agency
4 makes regarding admissibility.

5 I mean, it says, in terms of telling
6 the courts what you're supposed to do relative
7 to what the agency has determined, it says look
8 at the administrative record, only the record
9 that was before the agency.

10 It says all of their findings of fact
11 are conclusive, which I agree with you this --
12 there's no finding of fact at issue here. It
13 says their determinations about whether or not
14 this person is eligible for admission is also
15 conclusive as -- unless it violates the law.
16 That's the matter-of-law provision.

17 They even go so far as to instruct the
18 courts about the agency's determination with
19 respect to the availability of corroborating
20 evidence. I mean, Congress was really trying
21 to nail it down in terms of what courts are
22 supposed to do.

23 So I guess I'm -- I'm worried about
24 looking at (c) and treating it so narrowly that
25 we're suggesting that Congress somehow carved

1 out asylum determinations and did not mean for
2 everything the agency is saying regarding the
3 determination of eligibility for admission to
4 be included.

5 MR. ROSELLINI: Yeah. So I'll -- I'll
6 start with what I agree with in what Your Honor
7 just said, that we do think Section 1252
8 establishes a reticulated scheme for judicial
9 review that was meant to be comprehensive or --
10 or close to it.

11 Where I disagree respectfully with
12 Your Honor is that admission somehow
13 encompasses asylum. It does not.

14 JUSTICE JACKSON: But don't you have
15 then the burden if you agree with me with the
16 first part of establishing that Congress
17 intended to carve out asylum and not have it be
18 covered by this?

19 MR. ROSELLINI: Yes, I do, but I think
20 we've shown that because, again, in (D), in
21 1252(b)(4)(D), it carves out entitlement to
22 asylum, the second step of the asylum
23 determination, but it doesn't say anything
24 about -- about the first step.

25 And, again, (c) -- and -- and perhaps

1 we just -- we just disagree on this, but
2 admission is a distinct inquiry from -- from
3 asylum.

4 JUSTICE JACKSON: I understand. Isn't
5 that the first step? That's the first step,
6 and then they go to the second step in (D).

7 MR. ROSELLINI: No, Your Honor,
8 that's -- that's incorrect. You do not need to
9 be admissible to be eligible for asylum. Those
10 are -- those are distinct statuses. My clients
11 have conceded removability, they've conceded
12 they were not admissible, but they are claiming
13 nevertheless that they are eligible for and
14 ultimately entitled to asylum.

15 Those are distinct inquiries, and,
16 again, I understand Your Honor is not the
17 government, but I think that is why the
18 government to their credit did not make this
19 argument because that -- that's well
20 established in this Court's cases.

21 JUSTICE GORSUCH: To be fair -- to be
22 fair, neither side made that argument, right, I
23 mean, that -- that that's applicable. You
24 instead appealed to the background rule that
25 questions of law are for the court to decide de

1 novo, right?

2 MR. ROSELLINI: That -- that's
3 correct. But we think the inference --

4 JUSTICE GORSUCH: Okay. All right.
5 Okay. Good enough.

6 MR. ROSELLINI: Fair enough.

7 JUSTICE GORSUCH: I wonder why you
8 didn't make more of Elias-Zacarias. The Court
9 there said -- and I -- I -- I take your point
10 that the Court there said the finding of
11 causation could not be reviewed except for --
12 except as a finding of fact.

13 But the Court also said on page 481 it
14 can be reversed only if the evidence presented
15 by Elias-Zacarias was such that a reasonable
16 fact finder would have to conclude that the
17 requisite fear of persecution existed. That's
18 kind of the traditional standard we apply when
19 reviewing jury verdicts.

20 We take the light -- the facts in the
21 light most favorable to the victor and we
22 assess whether, as a matter of law, any
23 reasonable fact finder could make the
24 conclusion that the jury made.

25 Elias-Zacarias seems to suggest the

1 same standard -- at least in this sentence,
2 seems to suggest the same standard applies
3 under the INA.

4 Is that your position?

5 MR. ROSELLINI: No. We -- we disagree
6 with that, Your Honor, because, again, that --
7 that sentence you just read from Elias-Zacarias
8 is correct as to what that case was -- was
9 about, this inquiry into causation and to the
10 subjective state of mind of the persecutor and
11 whether the non-citizen feared --

12 JUSTICE GORSUCH: Why wouldn't -- why
13 wouldn't we apply that same standard under the
14 INA? So we take the facts. Here, they're
15 undisputed. We take them as given. And we ask
16 whether any reasonable fact finder could
17 conclude that that was persecution as a matter
18 of law.

19 MR. ROSELLINI: Be --

20 JUSTICE GORSUCH: Why wouldn't that be
21 the -- why wouldn't -- if we're going to do de
22 novo legal review, as we -- why wouldn't that
23 be the standard we would apply?

24 MR. ROSELLINI: Because, for example,
25 I'll analogize this case to -- to fair use or

1 antitrust conspiracies, the -- which often go
2 to jury verdicts like it did in -- in Google
3 versus Oracle, in that instance, Your Honor is
4 correct the -- the reviewing court would
5 construe the record in favor of the verdict.

6 But it would not then ask whether any
7 reasonable fact finder could have reached the
8 result rendered by the jury. It would review
9 the determination de novo, and that's because
10 the inquiry involved in those instances,
11 despite being record-intensive, you have to
12 look at, you know, the particular facts of the
13 case, as this Court did at length in Google
14 versus Oracle, for example, it's still a
15 fundamentally legal inquiry or at least a
16 primarily legal inquiry under U.S. Bank.
17 And -- and we know that because, as, again,
18 decades of judicial experience --

19 JUSTICE GORSUCH: Well, but the -- the
20 legal inquiry again with juries, it is a legal
21 inquiry, but the inquiry is as I've described
22 it. It isn't do we think this amounts to on
23 our own. That's usurping the fact finding
24 function we say of the jury.

25 So we take all the evidence in the

1 light most favorable and we say could any
2 reasonable jury conclude those facts are
3 enough?

4 MR. ROSELLINI: Respectfully, Your
5 Honor, no, you do not do that in the fair use
6 context, in the antitrust context in Icicle
7 Seafoods, where the question was whether the
8 particular activities of a group of workers
9 qualified them as seamen under the Fair Labor
10 Standards Act.

11 JUSTICE GORSUCH: I'm pretty familiar
12 with the antitrust context, and that's exactly
13 how you review jury verdicts in antitrust
14 cases.

15 MR. ROSELLINI: The -- the -- the --
16 the ultimate question of whether an antitrust
17 conspiracy existed, whether there was
18 anticompetitive conduct, that is ultimately
19 reviewed de novo.

20 JUSTICE GORSUCH: Viewed in the light
21 most favorable to the jury verdict, could
22 someone conclude this violates Section 2, could
23 this violate Section 1, that's exactly how we
24 proceed.

25 MR. ROSELLINI: I -- I don't believe

1 so, Your Honor. In Google -- Google versus
2 Oracle, I mean, that one, that's a decision
3 from this Court held the exact opposite. It
4 said we do not ask whether any reasonable jury
5 could find that there was fair use. We
6 determine -- we're -- we're construing all of
7 the subsidiary facts in favor of the verdict,
8 but as to the ultimate question of whether
9 those facts demonstrate fair use under the law,
10 the Court did not ask whether any reasonable
11 jury could have found fair use. It asked do
12 we, exercising independent judgment, find fair
13 use.

14 JUSTICE GORSUCH: Why didn't you make
15 that as a backup argument?

16 MR. ROSELLINI: Because I think that's
17 what the First Circuit essentially did in this
18 case. It said we're taking the facts as given
19 and we're reviewing the BIA's interpretation of
20 the law for reasonableness. That's -- and
21 that's the inquiry that we are asserting in
22 this context is incorrect because the
23 underlying question is a primarily legal one
24 that should be reviewed de novo by a reviewing
25 court.

1 That's why the BIA -- the BIA itself
2 under -- I think under that reasoning should be
3 deferring to -- to the IJ on -- on this
4 question. The IJ is the one who sat through
5 the evidence, they've heard the testimony in
6 the record, they're closest to the facts.
7 That's an inquiry that, you know, under U.S.
8 Bank, would normally -- would say, if this is a
9 factual inquiry or -- or a primarily factual
10 inquiry, we should defer to the -- to the fact
11 finder.

12 The BIA does not do that. It
13 recognizes that the inquiry is primarily legal
14 and it warrants exercise of independent
15 judgment by the BIA as the appellate body and
16 the --

17 JUSTICE KAVANAUGH: It's primarily --
18 oh, go ahead.

19 JUSTICE KAGAN: Putting aside what the
20 BIA thinks, why is this primarily legal? If I
21 understand the question here, we have this word
22 "persecution," and the question is how do we
23 apply it to certain threats. And there's a
24 legal rule that says, well, it can -- a threat
25 can be persecution but only if it's menacing

1 enough to cause actual harm. And that's the
2 legal rule. A threat can be persecution but
3 only if it's menacing enough to cause actual
4 harm.

5 Now what's going to happen in this
6 case is we're going to have to look at all this
7 evidence, all these facts, and decide whether
8 these threats were indeed that level of
9 menacing, and that sounds like really weighing
10 evidence to me. That sounds really factual.

11 MR. ROSELLINI: So we -- we disagree
12 with that, Your Honor, and I -- I think for --
13 for two primary reasons. I think the
14 persecution inquiry in itself, persecution,
15 that's not a commonplace word like are two
16 people acting as strangers like in U.S. Bank or
17 are people going to have a hardship like
18 they -- like in Wilkinson. It's -- it's --
19 it's a term of art, it's the product of a
20 treaty that this country has signed.

21 JUSTICE KAGAN: We're not -- we're
22 not, though, going straight from the word
23 "persecution." We, in fact, do have what U.S.
24 Bank might have thought of as a auxiliary legal
25 principle, and that auxiliary legal principle

1 is it counts as persecution if the threat is
2 sufficiently menacing to cause actual harm.

3 Now the question in this case doesn't
4 actually have to do with whether that legal
5 principle is right or wrong, should be changed
6 or not. The question in this case is just were
7 these threats that level of menacing, and
8 that's really factual.

9 MR. ROSELLINI: So I think just one --
10 one quibble with the -- with the question, Your
11 Honor. We actually do dispute the propriety
12 of -- of that legal rule. It's not current --
13 it's not presently before the Court.

14 But, when we were stuck --

15 JUSTICE KAGAN: Okay. But, as -- as
16 this case comes to us, that legal rule is that
17 legal rule.

18 MR. ROSELLINI: To an -- to an
19 extent --

20 JUSTICE KAGAN: And then I'm -- I'm
21 just sort of thinking then you're --

22 MR. ROSELLINI: Yeah.

23 JUSTICE KAGAN: -- saying we have all
24 these masses of evidence of what the threats
25 were and who made them and, you know, how

1 serious they were. I don't mean to belittle
2 that. That's an important question. But it's
3 a factual question.

4 MR. ROSELLINI: We disagree with that,
5 Your Honor, because --

6 JUSTICE KAGAN: I mean, it's a
7 primarily factual question. You're obviously
8 applying law to a set of facts, but what you're
9 going to be doing in the way that the U.S. Bank
10 opinion lays it out is really getting into the
11 nitty-gritty of what the testimony is about
12 what happened.

13 MR. ROSELLINI: That -- I don't --
14 that's true to an extent, but I think the same
15 thing is true in the fair use case. I mean,
16 this Court's opinion in Google versus Oracle
17 was looking at the nature of declaring code.
18 It got extremely in the weeds, credit to
19 Justice Breyer for doing that, but it -- it
20 still involved like any mixed question is going
21 to involve a close look at the factual record.

22 But I think what the inquiry in U.S.
23 Bank calls for is asking, number one, is this
24 standard something people have a -- have an
25 ordinary common understanding of? I think the

1 answer to that is no.

2 And in addition to that, in applying
3 this standard, is the stock judicial job just
4 to say, oh, persecution, let's look at the
5 facts and determine whether it's persecution?
6 That's not what's happened in the lower courts.
7 And the government doesn't dispute this. Lower
8 courts have developed a slew of auxiliary legal
9 principles related to threats, as Your Honor
10 pointed out, but in a whole bunch of different
11 areas, religious persecution, sexual violence.
12 I -- I -- I -- I could go on.

13 And what U.S. Bank says is that when
14 that is the case, you don't necessarily look at
15 any given case that comes before -- before the
16 court and say, look, is this -- is this a
17 boring case that's kind of, you know, run of
18 the mill, or is this a case that raises some
19 really interesting new issue? No, when it --
20 when the U.S. -- when courts are developing
21 auxiliary legal principles, all decisions about
22 that mixed question are reviewed de novo. We
23 don't look at a fair use case and say, oh, is
24 this a -- is this a boring one or is this a
25 really interesting one presenting novel issues?

1 And I think that's the -- the problem with the
2 government's position.

3 I do want to say one thing, to the
4 government's credit, they've made, I think, a
5 significant concession here that departs from
6 the status quo in a lot of circuits, is that
7 they have at least acknowledged that courts owe
8 no deference to the BIA in interpreting, you
9 know, the law at least in some kind of purely
10 legal sense and in developing these auxiliary
11 legal principles.

12 And I think were the Court to announce
13 that and reaffirm it, you know, with -- with a
14 megaphone, I think that would do a lot of good
15 and it would change how a lot of circuits
16 address these cases. And we think, in our
17 case, it would warrant a remand to assess
18 whether this requirement of --

19 JUSTICE ALITO: Mr. Rosellini, do you
20 think that in every instance in which a legal
21 standard, no matter how -- no matter the -- the
22 degree of concreteness of the legal standard is
23 applied to a set of facts, that the ultimate
24 determination is a legal question?

25 MR. ROSELLINI: No, Justice Alito, we

1 don't think that. We think that under this
2 particular statute, when -- when that inquiry
3 looks a lot like an admission eligibility
4 decision or an asylum entitlement decision but
5 isn't one of those like we have here, that's a
6 situation where, yes, the -- the application of
7 law to fact would be de novo.

8 JUSTICE ALITO: My -- my question is
9 similar to Justice Kagan's. So the definition
10 of persecution that was applied by the IJ here
11 is -- based on First Circuit precedent, is that
12 it must add up to more than ordinary
13 harassment, mistreatment, or suffering.

14 You may have a set of historical facts
15 that are undisputed, but determining whether
16 they add up, whether the totality of those
17 facts satisfies that standard sure looks to me
18 like primarily a factual question. Why is it
19 not?

20 MR. ROSELLINI: Because, when courts
21 make that decision, they are building out a
22 decision -- a body of decisional law that
23 guides future cases. If you look at the First
24 Circuit's decision in this case, the IJ's
25 decision in this case, they are analogizing to

1 cases that came before.

2 JUSTICE ALITO: But that would be true
3 in a vast majority of situations. Do you think
4 the determination of whether -- of negligence
5 is -- is a -- is a legal standard?

6 MR. ROSELLINI: No, Your Honor. We --
7 we would agree that negligence would be
8 something that's reviewed deferentially. But
9 I -- I think there's actually a helpful --

10 JUSTICE ALITO: Yeah, but every case
11 where negligence is found or not found
12 builds -- could be said to build out a body of
13 precedent about whether negligence was -- was
14 shown. Why isn't this similar to that?

15 MR. ROSELLINI: Because I think
16 negligence, number one, the inquiry there is
17 basically what should a person have done given
18 the circumstances. The light was red. Should
19 they have braked or accelerated? People have
20 an ordinary sense of that. I think the
21 negligence example is a helpful one because you
22 can contrast it with the duty-of-care inquiry,
23 which -- and as -- you know, as this Court well
24 knows, duty is traditionally for the judge;
25 negligence is for the jury. And in the duty

1 context, you do have to get immersed into the
2 record to establish whether there was a duty of
3 care. But, if you ask someone on the street,
4 hey, was there a duty of care in this
5 circumstance or that, it's a -- they're not
6 going to be able to answer that as readily.

7 And courts build out, again, a host of
8 legal principles for different kinds of
9 situations in the duty-of-care context. And
10 that's what happens when courts apply the
11 persecution standard. They're taking a term of
12 art that's not commonly understood. They're
13 building out these legal principles that courts
14 can then apply and flesh out. Yes, at this
15 kind of, you know, medium-high level of
16 establishing auxiliary legal principles, as
17 Justice Kagan was explaining, but then also
18 refining what those auxiliary principles
19 actually mean on the ground. What does it mean
20 for a death threat to be sufficiently menacing
21 to qualify as persecution or not?

22 And, again, that is why the decisions
23 in this case, like in so many others, are
24 looking to these prior decisions to figure out
25 what is the mode of analysis that is applicable

1 to these facts. And if you -- if you go to --
2 many circuits, in fact, to help their staff
3 attorneys and law clerks, have these very
4 detailed outlines explaining prior -- decisions
5 that came before so that it's -- it helps them
6 assist their judges in making correct and
7 efficient decisions that are -- can be squared
8 with the cases that came before them.

9 But the irony in this context is that
10 a lot of those decisions, the ones that are at
11 least denying relief, they're not holding that
12 the BIA's decision was correct as a matter of
13 law. They're just saying that it was
14 reasonable.

15 So you have courts, you have the
16 agency, they're all looking for guidance on
17 this question. They're looking for prior --
18 they're looking for precedent to -- to -- to
19 use in making their determination. But they
20 don't have a clean set of precedent to do that.
21 They don't have precedent where courts have
22 come in and said this is, in fact, the correct
23 interpretation of -- of persecution as a matter
24 of law. And that is really the problem here.

25 And, again, courts are already doing

1 the -- the kind of inquiry that we're
2 suggesting here under the Convention Against
3 Torture. What -- in most court of appeals, if
4 the facts are undisputed and the sole remaining
5 question is whether those facts demonstrate
6 mistreatment rising to the level of torture
7 within the meaning of CAT, they review that
8 determination de novo and they're doing just
9 fine. And that's correct because it builds out
10 a body of precedent that courts can use
11 effectively for future cases. And that is the
12 kind of judicial work that, under U.S. Bank, we
13 think would counsel in favor of de novo review.
14 And it's the kind of judicial work that makes
15 clear that this inquiry is not a finding of
16 fact within the meaning of Section 1252(b)(4).

17 JUSTICE KAVANAUGH: Can I ask you a
18 question about how the BIA reviews the IJ?
19 Because that's a good point for you, but the
20 government responds that the agency's decisions
21 about how to structure internal review do not
22 determine the standard of the review that
23 courts of appeals should apply, which is
24 determined by statute, constrained by the role
25 of appellate courts that -- they go on, but I

1 want to get your clear response to the
2 government on that point.

3 MR. ROSELLINI: Certainly, Justice
4 Kavanaugh. And, again, we're not here telling
5 you that the -- the BIA's interpretations of
6 these -- of these regulations dictate the
7 meaning of the statute. But what's telling is
8 that the regulation on which the BIA relies
9 uses the exact same words as Section
10 1252(b)(4). It says findings of fact. And the
11 BIA has said that this exact inquiry is not a
12 finding of fact.

13 And on top of that, the BIA, despite
14 recognizing that immigration judges are in the
15 room, they're hearing the witnesses' testimony,
16 they found the evidence, the BIA is still
17 viewing that as something that it is
18 institutionally better positioned to resolve,
19 just like a court is.

20 JUSTICE KAVANAUGH: Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Justice Thomas?

24 Justice Alito?

25 Justice Sotomayor?

1 JUSTICE SOTOMAYOR: Counsel, you did
2 not challenge below the legal standard that the
3 First Circuit uses, right?

4 MR. ROSELLINI: Not explicitly, Your
5 Honor. We've obviously resisted the finding of
6 persecution here. We think that argument --

7 JUSTICE SOTOMAYOR: But you -- you
8 didn't say that they've used a wrong
9 definition. I actually don't understand why a
10 credible death threat would not always cause
11 suffering or harm. And the other side will
12 respond to that. But you didn't say that.

13 MR. ROSELLINI: Our -- our briefs --

14 JUSTICE SOTOMAYOR: You've been
15 arguing something quite different.

16 MR. ROSELLINI: We did not make that
17 argument explicitly before the First Circuit.
18 I think it's fairly subsumed in the question of
19 whether do these facts as they are demonstrate
20 persecution. And, again, on remand, we would
21 make that argument.

22 JUSTICE SOTOMAYOR: As far as I
23 understand the government's position, if you
24 had challenged the standard, they would say
25 that's a legal question that the court would

1 have looked at.

2 MR. ROSELLINI: I -- yes, I think --

3 JUSTICE SOTOMAYOR: But, because you
4 didn't, you were actually arguing the facts,
5 that these facts showed enough suffering or
6 harm. I think that's their position.

7 MR. ROSELLINI: I -- I do think that
8 is the government's position, but, again, below
9 we were up against a substantial --

10 JUSTICE SOTOMAYOR: Do you lose if I
11 accept what the government says?

12 MR. ROSELLINI: No, Your Honor,
13 because, in the First Circuit, they were --
14 they cabined their review entirely to -- to
15 deference to the BIA. And, like many other
16 courts of appeals, they have not taken the same
17 position as the government that a question like
18 that --

19 JUSTICE SOTOMAYOR: I see.

20 MR. ROSELLINI: -- would be reviewed
21 de novo.

22 JUSTICE SOTOMAYOR: So we -- you're
23 saying we have to look at that question.

24 MR. ROSELLINI: Correct.

25 JUSTICE SOTOMAYOR: We have to decide

1 that?

2 MR. ROSELLINI: Not in the first
3 instance, but remand so that we can -- we can
4 advance it. Maybe the government has a waiver
5 argument. Maybe they -- they argue that we
6 didn't waive it because there was First Circuit
7 precedent on point, but we need to go en banc.
8 You know, we'll have that fight on remand.

9 JUSTICE SOTOMAYOR: Okay.

10 MR. ROSELLINI: But it's not something
11 this Court should resolve in the first
12 instance.

13 JUSTICE SOTOMAYOR: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice Kagan?

15 JUSTICE KAGAN: Could I make sure I
16 understand your argument about Elias-Zacarias?
17 Because I think that that's -- I -- I came in
18 thinking this is a strong argument on the
19 government's side, so I want to understand why
20 you don't think it is.

21 But, if I look at Elias, if I look at
22 that footnote, the Court is clearly saying that
23 we're going to provide deference here because,
24 you know, Elias -- you know the footnote I'm
25 talking about, right?

1 MR. ROSELLINI: Yes.

2 JUSTICE KAGAN: Which I can't find.

3 And -- and then the question that they're
4 providing all the substantial deference on is
5 this: It's whether a guerrilla organization's
6 attempt to coerce a person into performing
7 military service necessarily constitutes
8 persecution.

9 So I -- I don't get it. That seems
10 like at least -- that -- that seems like a very
11 similar question to this one, and they're
12 providing substantial deference.

13 MR. ROSELLINI: Well, two points
14 there. I think the question that Your Honor
15 finished with of whether there's, like, a
16 categorical rule that something would qualify
17 as being on account of persecution, I don't
18 actually think that the -- the court deferred
19 to the BIA in that regard. It analyzed that --
20 that issue -- that legal issue for itself.

21 But the underlying question of what
22 was in the persecutors' heads, why were they
23 doing this, that is a classic finding of fact.
24 And, again, the statute that Elias-Zacarias was
25 analyzing, like this one, did not say --

1 JUSTICE KAGAN: You're saying that the
2 only thing that Elias-Zacarias deferred to was
3 an underlying finding of fact as opposed to the
4 application of a legal standard to those facts?

5 MR. ROSELLINI: I think that's right,
6 Your Honor, because, again, the -- what
7 Elias-Zacarias was analyzing, and the opinion
8 says -- makes this clear, is that the statute
9 makes motive central. And the -- what the
10 non-citizen had failed to do in that case was
11 come forward with sufficient evidence to compel
12 the conclusion that the motive of his alleged
13 persecutors was on the basis of political
14 opinion.

15 That was the core -- that was the
16 molten core of the dispute. And the court
17 correctly viewed that as a factual issue going
18 to state of mind and it reviewed that
19 deferentially.

20 JUSTICE KAGAN: Okay.

21 CHIEF JUSTICE ROBERTS: Justice
22 Gorsuch?

23 Justice Kavanaugh?

24 JUSTICE KAVANAUGH: So I think you're
25 saying Elias-Zacarias was written more broadly

1 than it needed to be because, as written, it is
2 broader than that.

3 MR. ROSELLINI: I think there are a
4 few lines that are a little bit more broad,
5 but, again, I think that's exactly why this
6 Court has cautioned multiple times we do not
7 read judicial opinions like statutes. We take
8 them in context. We look at what was the
9 actual question presented.

10 JUSTICE KAVANAUGH: But if we read
11 those lines as written, that's a problem for
12 you.

13 MR. ROSELLINI: I think it would be a
14 problem for us.

15 JUSTICE KAVANAUGH: Right.

16 MR. ROSELLINI: But, again, we would
17 encourage the Court not to read its opinion
18 like a statute but read the statute here like a
19 statute. And that's where the government poses
20 problems.

21 JUSTICE KAVANAUGH: Second different
22 point. On pages 4 and 40 of the government's
23 brief, as you point out in your reply, they
24 make this, you call it, concession about legal
25 arguments. Do you have a -- I'm going to ask

1 them this, but do you have a sense of how
2 that's going to apply?

3 MR. ROSELLINI: I think it's going to
4 be tricky. I mean, again, I do want to commend
5 the government for making that concession
6 because that is not how courts -- many courts
7 of appeals are viewing this issue. They are
8 deferring to the BIA on those kinds of
9 questions.

10 We have cited some cases in our reply
11 brief doing just that. So this Court again --

12 JUSTICE KAVANAUGH: Your -- your point
13 is the government's brief is asking for
14 something new as well?

15 MR. ROSELLINI: That's correct.
16 That's correct.

17 JUSTICE KAVANAUGH: Well, we'll ask
18 them about that.

19 MR. ROSELLINI: Okay.

20 JUSTICE KAVANAUGH: Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Barrett?

23 Justice Jackson?

24 JUSTICE JACKSON: So as I understand
25 the history of this (b)(4), Congress added it

1 to the INA when it enacted IIRIRA in 1996. And
2 prior to that, I understood that courts were
3 applying deference, substantial evidence review
4 to this asylum eligibility question.

5 So if you're right that Congress was
6 silent as to what is supposed to happen with
7 asylum eligibility, I guess I'm trying to
8 wonder whether we shouldn't believe that
9 Congress wanted the preexisting practice to
10 continue.

11 MR. ROSELLINI: No, Your Honor. That
12 preexisting practice was not, with respect, as
13 Your Honor described. It's true that some
14 aspects, like motive, as was at issue in
15 Elias-Zacarias, were reviewed deferentially as
16 they should be, as they still are today, but if
17 you look at the actual component of the
18 asylum-eligibility inquiry that is at issue in
19 this case, what rises to the level of
20 persecution, that inquiry, the government --
21 the government has an extended string cite on
22 -- on page -- footnote 2 of its brief, and
23 those cases are not, by and large, not
24 addressing that issue. They are addressing
25 other issues. They are just referring to --

1 JUSTICE JACKSON: All right. Do you
2 have a corresponding string cite of cases pre
3 this provision where --

4 MR. ROSELLINI: Yes. In our reply
5 brief -- forgive me -- the -- the -- the page
6 number is escaping me, but we have cited a
7 couple of cases that go the opposite direction.

8 And the point here is that the
9 government asked you to grant cert in this case
10 because they agreed with us that the courts
11 were so confused about the appropriate standard
12 of review as to this narrow subcomponent of the
13 asylum-eligibility determination.

14 I think it's -- with respect to my
15 friends, it's a little bit rich to say that
16 that confusion that is so entrenched and
17 significant that they supported cert in this
18 case can somehow be resolved on a snapshot
19 consensus at a given point in time. That's
20 just -- that consensus did not exist.

21 JUSTICE JACKSON: All right. One more
22 question. Going -- going to the kind of
23 overall thrust of your argument, it would be to
24 enable courts to consider this de novo and
25 particularly, and -- and possibly override the

1 BIA's determinations, and I guess I'm wondering
2 how that's consistent with what we understand
3 the general thrust of Congress's amendments and
4 the thrust of IIRIRA to be, which was really to
5 limit the court's ability to override the
6 agency in this context.

7 So it seems like this would be a
8 little discordant with what Congress was trying
9 to do here, right?

10 MR. ROSELLINI: No, Your Honor. Point
11 number 1, asylum has actually been kind of like
12 singled out for special treatment by Congress.
13 If you look at Section 1252(a), even the
14 discretionary determination about whether to
15 grant asylum, that's -- judicial review of that
16 determination has been preserved, even as
17 Congress stripped away judicial review of most
18 other discretionary determinations.

19 And I -- I think what that tells you
20 is that even as Congress is -- of course, was
21 limiting judicial review in many respects, it
22 viewed asylum as different and something that
23 needed to be preserved in significant part.

24 And I would also just come back to the
25 fact that we're not vouching for a change here.

1 We're saying that Congress crystallized in
2 Section 1252(b)(4) what had already been the
3 case, is that a determination about whether
4 undisputed facts legally qualifies as
5 persecution is not a finding of fact. The --
6 those words, they were in place before IIRIRA.
7 They are in place now. And the plain meaning
8 of those words does not encompass this
9 determination.

10 JUSTICE JACKSON: Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel. Mr. Dos Santos.

13 ORAL ARGUMENT OF JOSHUA DOS SANTOS

14 ON BEHALF OF THE RESPONDENT

15 MR. DOS SANTOS: Thank you, Mr. Chief
16 Justice and may it please the Court:

17 Let me just start by picking up on the
18 questions about, like, what the inquiry is that
19 the BA -- BIA is making here and what our
20 position is on what the standard is here. So
21 the courts of appeals -- appeals have broadly
22 agreed that persecution means really extreme
23 suffering. So you've got to plug that in, kind
24 of like the court did in U.S. Bank.

25 So what the agency is asking here is

1 looking at the evidence that the Petitioner has
2 provided, is this extreme suffering? How much
3 suffering has there been? And that is one, a
4 question that requires lots of weighing of
5 facts and drawing of inferences.

6 So in this particular case, just look
7 at the facts here.

8 So on the one hand, Petitioners have
9 half-brothers were shot because of a dispute
10 between their father and the half-brother's
11 father and the sicario. But then on the other
12 hand his mother and his stepsister and his
13 stepfather never threatened or harm. The
14 half-brothers appear to have been fine when
15 they moved away from the hometown.

16 Petitioner appears to have been fine
17 when he moved away from the hometown. And he
18 lived in peace in other parts of El Salvador.
19 Then -- then Petitioner talks about the
20 threats, but on the other hand, the threats
21 demanded money. So whether you infer from that
22 it was just intimidation or were they even
23 connected with the sicario, I mean, those are
24 all questions of the kind that go to juries.
25 The juries draw inferences. They can cut in

1 different questions. You have to weigh the
2 facts and inferences.

3 What we're saying here is Congress
4 wanted substantial evidence review to apply so
5 that there is deferential review of that
6 weighing of facts and inferences by the agency.

7 And we think it's very clear for
8 several reasons. Let me just do three quick
9 points. One, we think the text and the history
10 point exactly in that direction. So, one,
11 Congress in Section 1158 talked about the
12 question as one that is factual for the
13 trier-of-fact.

14 Two, this Court in Elias-Zacarias
15 beforehand had said that that was a factual
16 question and applied substantial evidence
17 review. The courts of appeals had all done
18 that.

19 And then the substantial evidence
20 provision at issue here codified language from
21 Elias-Zacarias. So clearly Congress was aware
22 of it.

23 And there's no way, no realistic
24 chance that when Congress was overhauling
25 standards of review in IIRIRA and affirmatively

1 overturning what courts of appeals were doing
2 in certain respects and then codifying
3 Elias-Zacarias, that it was either unaware of
4 that practice or silently departing from it.
5 It's just not realistically possible.

6 And the second point, I will do it
7 even more quickly. This Court's standard
8 approach, even if you thought that the statute
9 were less clear, the standard approach that the
10 court uses across a variety of contexts points
11 in exactly the same way. The work being done
12 here is primarily factual.

13 And just last year in Wilkinson, this
14 Court applied that approach to the INA and said
15 that application of extraordinary hardship is
16 going to be a primarily factual inquiry that is
17 subject to deferential review.

18 And the last thing I'll say is
19 Petitioner's contrary arguments, they really
20 all kind of boil down to the idea that every
21 mixed question in the INA is going to be
22 subject to de novo review. I think this Court
23 both in Guerrero-Lasprilla and -- and Wilkinson
24 said that wasn't going to be the consequence.
25 And -- and I think that would be a sea change

1 and irreconcilable with IIRIRA.

2 I welcome the Court's questions.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel. You're -- I'm sorry.

5 JUSTICE THOMAS: No.

6 CHIEF JUSTICE ROBERTS: Your friend
7 began the argument by saying they were not, in
8 fact, factual determinations. What precise
9 facts do you think are -- would be necessary to
10 resolve?

11 MR. DOS SANTOS: So I think here the
12 ultimate fact is -- is the one that's at issue,
13 is how much suffering was there? So, for
14 example, I will point the Court to like the
15 decision in TSC Industries about materiality.
16 There are all kinds of situations in which
17 juries get a question like was the statement
18 material or pain and suffering or negligence?
19 And you have historical facts that -- that
20 could be undisputed, like here there were these
21 threats, and we know what was said.

22 But then what do you infer from that?
23 How much suffering was there? How do you
24 balance the fact that he was fine when he moved
25 away from his hometown versus the fact that he

1 was threatened several times and the -- the
2 threateners asked for money?

3 And that -- that kind of weighing is
4 one for the BIA. Now, if Petitioner succeeds
5 in saying -- in the argument that no reasonable
6 fact finder, no matter how you weigh the
7 evidence against him, no matter what inferences
8 you draw against him, no reasonable fact finder
9 could have found that there was no persecution,
10 then he would win under substantial evidence --

11 JUSTICE GORSUCH: Isn't that a legal
12 question?

13 MR. DOS SANTOS: That -- the
14 substantial -- that question, when you draw all
15 of the inferences --

16 JUSTICE GORSUCH: Yeah.

17 MR. DOS SANTOS: -- yeah.

18 JUSTICE GORSUCH: Yeah.

19 MR. DOS SANTOS: And that's what we
20 say should be done.

21 JUSTICE GORSUCH: So that's a legal
22 question that judges can review under that
23 preexisting standard that Elias-Zacarias speaks
24 of.

25 MR. DOS SANTOS: That's correct, and

1 that is our position.

2 JUSTICE GORSUCH: And also, you
3 concede on page 40, as Justice Kavanaugh
4 pointed out, that if there's some dispute about
5 what the term "persecution" means as a matter
6 of law, that a court can resolve that de novo?

7 MR. DOS SANTOS: Yes, that -- that's
8 right.

9 JUSTICE GORSUCH: Yeah. All right.

10 MR. DOS SANTOS: And -- and just to
11 pick up on Justice Kavanaugh's earlier question
12 about how that would work, I think this is very
13 similar to what courts of appeals do in all
14 kinds of contexts and, in fact, what they are
15 doing under the INA. So think of the -- the
16 example of a district court. There are all
17 kinds of decisions that district courts make
18 that are subject to abuse of discretion review
19 or clear error, and all the time litigants come
20 and they say, okay, so here are my arguments on
21 abuse of discretion and clear error, but
22 setting aside the way that the district court
23 cashed out my particular facts, the district
24 court used the wrong standard, and that is a
25 legal question and you have to correct the

1 legal standard de novo.

2 And the courts of appeals distinguish
3 these things all the time.

4 JUSTICE KAGAN: Would I be right,
5 Mr. Dos Santos, to say that I could say the
6 same of your position that you just said to
7 Mr. Rosellini? You said he would have every
8 mixed question turn -- turn into a -- a de novo
9 question. But would you have every mixed
10 question be given substantial review,
11 substantial evidence review?

12 MR. DOS SANTOS: No, Your Honor. I
13 think you -- you could look at the way that
14 this Court talked about it in U.S. Bank, not
15 all mixed questions are alike.

16 JUSTICE KAGAN: So what kinds of mixed
17 questions would not get substantial evidence
18 review with respect to these matters?

19 MR. DOS SANTOS: With respect to what?
20 I'm sorry.

21 JUSTICE KAGAN: These matters.

22 MR. DOS SANTOS: So I don't -- I don't
23 have any examples to give you in that respect.
24 I think a lot of what is done is going to be
25 factual in the immigration space. If there

1 are -- you know, if there are legal questions
2 that turn on interpretation of a particular
3 definition like a reticulated definition and
4 the -- the primary work being done is
5 interpreting, looking at a statute, looking at
6 structure, looking at legislative history, and
7 so on, which is not what's at issue here, I
8 mean, then it looks more primarily factual.

9 The other thing I'll say is one of our
10 arguments is that Congress treated this as
11 factual. So, if there were evidence that
12 Congress treated something else as -- as more
13 legal, then that would cut the other way. But,
14 I mean, here, if you look at Section 1158,
15 Congress said --

16 JUSTICE KAGAN: Wait, I don't get that
17 argument, I have to say, Mr. Dos Santos,
18 because it seems -- you have some good
19 arguments in this case, but, honestly, none of
20 them come from the text. You have good history
21 arguments. You have arguments about the
22 Elias-Zacarias case. But 1158, just because we
23 call an IJ a trier of fact, you're going to
24 read that to determine what the standard of --
25 of -- of review is?

1 MR. DOS SANTOS: So several --

2 JUSTICE KAGAN: I mean, you just said
3 that we don't give substantial evidence review
4 to legal questions. If we took your textual
5 argument seriously, we'd have to give
6 substantial evidence review to legal questions
7 too because, after all, 1158 calls the IJ a
8 trier of fact.

9 MR. DOS SANTOS: So I -- I think what
10 we're saying about 1158 is the thrust of the
11 way Congress thought about the refugee
12 question, is someone a refugee, is that it's --
13 it's primarily factual. And so the way that it
14 described the way that an applicant sustains
15 the burden -- that's the title of the
16 provision -- to show that they're a refugee was
17 by saying that they have to satisfy the trier
18 of fact not only that their evidence is
19 credible, not only that it's persuasive, but
20 that it's sufficient to show that and then goes
21 on to say: And the way that the trier of fact
22 does that is by weighing the testimony,
23 weighing the other evidence.

24 And that, combined with Congress's
25 codification of Elias-Zacarias taking that same

1 language and plugging it into the substantial
2 evidence review provision, combined with the
3 history before that, I mean, I think it all
4 just makes clear that the way Congress was
5 thinking about it is these are primarily
6 factual inquiries that the IJ is going to make,
7 that we want to have the -- the attorney
8 general take care of.

9 And then --

10 JUSTICE KAVANAUGH: Did you --

11 JUSTICE KAGAN: Okay.

12 JUSTICE KAVANAUGH: -- did you say at
13 the beginning that extreme suffering is the
14 essential standard here?

15 MR. DOS SANTOS: Yes. I think most --
16 every court of appeals essentially has said
17 persecution --

18 JUSTICE KAVANAUGH: And is that a
19 legal question, what extreme suffering means?

20 MR. DOS SANTOS: No. I think
21 that's -- that's the kind of inquiry that's
22 going to just -- you look at the totality of
23 the circumstances. I think it's kind of a -- a
24 concept that most people can grasp, and you're
25 going to have to in each case just look at all

1 the facts and say, was this extreme enough?

2 How much suffering was there here?

3 JUSTICE JACKSON: But I think that
4 suggests that you really can never have cases
5 that serve as precedents for others or that the
6 court is not actually developing law in the
7 area, and that's my concern.

8 I mean, I -- I understand questions of
9 fact that arise out of disputes over what
10 happened. So, if we had a situation, not this
11 case, but if in this case there was some
12 question about whether he was actually
13 threatened, the government had some evidence
14 that showed that what this -- this person who
15 was seeking asylum said happened to him wasn't
16 true, all of those things would be questions of
17 fact that the trier of fact would be charged
18 with determining.

19 But then, once we have the established
20 body of facts, you move to another stage, which
21 is determining whether or not -- whether or not
22 this body of facts meets a certain legal
23 standard, whether it's persecution or some
24 other standard in this area of the law. There
25 are many legal standards in immigration law.

1 And I guess I'm just concerned about
2 the suggestion that in the second stage, where
3 we have settled on the facts and we're deciding
4 whether or not -- or the -- the agency has
5 decided whether or not the legal standard is
6 met, that we're somehow now in a world that is
7 not a question of law.

8 MR. DOS SANTOS: So that's because,
9 like this Court has said several times, when
10 there's a mixed question, it's not just the
11 historical facts. It's what inferences you
12 draw from them and how you weigh them. And
13 that's traditionally the province of the jury,
14 like this Court said in TSC Industries, where
15 the Court said it's not proper to do summary
16 judgment for the materiality question when,
17 even if you take the historical facts, there's
18 going to have to be inferences drawn and
19 weighing.

20 And the other thing I'll say is that
21 it's not the case that the legal principles go
22 totally undeveloped. I think that's totally
23 belied by experience over decades. There --
24 there are lots of times when courts of appeals
25 in the course of applying substantial evidence

1 review will either say, one, petitioner wins,
2 so, as a matter of law, no matter how you weigh
3 this, you know, then you have this rule of law,
4 but also, in the course of saying that, they'll
5 provide broad guideposts, like, for example, in
6 general, mere threats are usually not going to
7 be enough or --

8 JUSTICE GORSUCH: Well, couldn't we
9 develop the law too as we do with jury verdicts
10 and say some set of facts cannot be
11 reasonably -- by any fact finder reach the
12 conclusion of persecution?

13 MR. DOS SANTOS: That's -- that's
14 right. So that -- that is the -- it's exactly
15 in the same way that you would review a jury
16 verdict.

17 JUSTICE GORSUCH: Then we'll develop
18 the law that way.

19 MR. DOS SANTOS: That's right.

20 JUSTICE GORSUCH: But what about the
21 very limited circumstances that our friends on
22 the other side point out, like fair use
23 doctrine under the copyright statute, that we
24 will review de novo without that kind of gloss?

25 MR. DOS SANTOS: Yeah, I think the

1 Court has said that when the background -- I
2 should say just to back up to sort of make
3 clear what the inquiry is here, in the U.S.
4 Bank, sort of how do we decide which bucket of
5 standard of review to put something in, there
6 are a couple of different important
7 considerations.

8 The lodestar is what kind of work is
9 there, primarily factual or legal. But then
10 there's also you consider the background,
11 what's the tradition been here and whether it's
12 constitutional or not. With those kinds of
13 questions, the ones you're referring to, I
14 think the -- the Court has looked to the
15 history of this is that it developed de novo
16 in -- in, like, a common law sort of way.

17 JUSTICE GORSUCH: Fair -- fair use was
18 usually done by judges.

19 MR. DOS SANTOS: Right. It developed
20 that way. And so, if -- if Congress has then
21 talked about it, we presume that, you know,
22 Congress was treating it that way. That's not
23 the case with these kinds of determinations.
24 The tradition cuts exactly the opposite way.

25 JUSTICE SOTOMAYOR: I'm a little

1 confused by your answer to Justice Gorsuch.
2 You said what -- a definition of persecution
3 could be a legal error if that's what they were
4 challenging, correct?

5 MR. DOS SANTOS: That's right.

6 JUSTICE SOTOMAYOR: All right. So,
7 here, if they had said why do you need to show
8 suffering at all, if it's a death threat, why
9 isn't that, standing on its own, suffering?
10 The threat itself doesn't cause you suffering
11 or harm. You see your mother or your father
12 killed in front of you, you suffer from their
13 death, but you're not suffering from the
14 threat.

15 MR. DOS SANTOS: So, as Petitioner I
16 think admitted, they didn't make that argument
17 about the legal standard. So the only question
18 was applying the First Circuit's own
19 precedent --

20 JUSTICE SOTOMAYOR: All right. So, in
21 answer to Justice Gorsuch, you then said that
22 it was a legal question of whether any
23 reasonable fact finder would have said this was
24 not prosecution, and you said that's a legal
25 question, correct?

1 MR. DOS SANTOS: Applying the standard
2 that the circuit had already announced, yes.

3 JUSTICE SOTOMAYOR: Yes. So I think
4 what the other side is saying is the First
5 Circuit -- I'm not sure what they're saying,
6 whether they're saying the First Circuit didn't
7 apply that standard at all.

8 MR. DOS SANTOS: No, the First Circuit
9 definitely applied the standard. Everybody
10 applied that standard from First Circuit cases,
11 the B -- the IJ, the BIA, and the First Circuit
12 itself.

13 JUSTICE SOTOMAYOR: No, no, the
14 standard being that no reasonable fact finder
15 could not find this -- every reasonable fact
16 finder would find this persecution. It's a
17 little easier to put it in the positive, rather
18 than the negative.

19 MR. DOS SANTOS: I -- I think
20 Petitioner agrees that the First Circuit
21 applied that rule, which is substantial
22 evidence, which is Elias-Zacarias.

23 JUSTICE SOTOMAYOR: All right. Thank
24 you.

25 JUSTICE KAVANAUGH: Why does the BIA

1 review these kinds of questions de novo?

2 MR. DOS SANTOS: Yeah. So I -- I
3 think understanding what the regulation
4 actually says, which is different from what my
5 --

6 JUSTICE KAVANAUGH: I'm just curious
7 why.

8 MR. DOS SANTOS: So if I could give
9 you a --

10 JUSTICE KAVANAUGH: What the --

11 MR. DOS SANTOS: -- little background
12 it would make more sense.

13 JUSTICE KAVANAUGH: -- what the
14 underlying rationale is for them.

15 MR. DOS SANTOS: Yes. I think the
16 history is very helpful here. So before 2002,
17 the BIA was reviewing everything de novo,
18 including facts.

19 JUSTICE KAVANAUGH: I -- I got the
20 history. I'm just though like what is the
21 reason --

22 MR. DOS SANTOS: Oh, okay.

23 JUSTICE KAVANAUGH: -- that makes
24 sense --

25 MR. DOS SANTOS: So --

1 JUSTICE KAVANAUGH: -- why, like Judge
2 Collins said, why something that's treated as a
3 question of law transforms into a question of
4 fact?

5 MR. DOS SANTOS: So here's where I was
6 going. It's not that it's a question of law.
7 What the regulation says is we're going to stop
8 the de novo thing, we're going to do clear
9 error for facts but we don't want that to mean
10 that judgments and questions of discretion are
11 not subject to de novo review and it said
12 judgments include decisions about whether the
13 applicant has shown past persecution.

14 JUSTICE KAVANAUGH: That's telling me
15 what the regulation is. I'm still trying to
16 get at what -- what --

17 MR. DOS SANTOS: Well, my answer is
18 because it's a question of judgment and both
19 the BIA and the IJ share the responsibility to
20 exercise --

21 JUSTICE KAVANAUGH: What's the
22 difference between a question of judgment and a
23 question of law --

24 MR. DOS SANTOS: Because judgment --
25 the question about weighing --

1 JUSTICE KAVANAUGH: -- in this
2 context?

3 MR. DOS SANTOS: So the question about
4 weighing facts and determining whether it's
5 persecution is going to evolve judgment. And
6 both the BIA and the IJ have expertise in
7 looking at recurring fact patterns and seeing
8 all kinds of -- of -- of different versions of
9 these cases far more cases than any court of
10 appeals is ever going to see. And as this
11 Court recognized in *Ming Dai* and *Orlando*
12 *Ventura*, in many cases the agency has expertise
13 here to apply to -- to deciding those
14 questions.

15 So the AG decided, you know, we'll do
16 clear error but -- but I'm going to reserve
17 more review for these judgment questions. That
18 doesn't mean that Congress wanted courts of
19 appeals engaging in that kind of judgment in
20 the first instance and -- and as was already
21 said and admitted, the way that the BIA engages
22 in review, the way that the AG designs internal
23 review has -- has no bearing on that.

24 For example, the BIA reviews questions
25 of discretion de novo. No one thinks the court

1 of appeals should do that. It reviewed facts
2 de novo before 2002. No one thinks the court
3 of appeals should be doing that either.

4 JUSTICE KAVANAUGH: If we repeat what
5 you write in your brief on page 40, do you
6 think the lower courts are already doing that?
7 Mainly the --

8 MR. DOS SANTOS: Yes, I do. I think
9 they were doing that before IIRIRA. I think
10 they're doing that now. I think it's standard
11 practice for if a petitioner says, look,
12 regardless of the way my facts cash out, BIA
13 stated the wrong standard and it used -- it
14 used a standard that's incorrect. That is of
15 course reviewed de novo.

16 JUSTICE KAVANAUGH: And to show that
17 the standard is incorrect again on extreme
18 suffering, what would you have to say? We
19 think extreme suffering is too high a bar?

20 MR. DOS SANTOS: So -- so there --
21 there have been questions that have come up.
22 So like one that -- that happened earlier was
23 is evidence that there's lots of crime in my
24 country and I'm very likely to be a victim of
25 crime, is that relevant to persecution? And

1 the court said no, that's -- that's not
2 relevant to persecution.

3 JUSTICE KAVANAUGH: That's legal?
4 What you just said?

5 MR. DOS SANTOS: So like is it ever
6 relevant, right? Is it ever going to be
7 relevant to persecution? Legal questions, it's
8 not like look at the facts of my case, it's
9 like this is the standard.

10 And there are -- there are other
11 questions like that where questions about
12 whether the standard should be lower in certain
13 circumstances and -- and so on.

14 So the other thing I just want to
15 emphasize is that this Court in Wilkinson
16 really already talked about this some and cited
17 the U.S. Bank sort of formulation and said --
18 and applied it there and said application of
19 the term extreme hardship, which is kind of
20 very analogous to the question of extreme
21 suffering, that that is going to be something
22 that is primarily factual and reviewed
23 deferentially.

24 I think the Petitioner's contrary
25 arguments are really saying the thing this

1 Court was resisting in both Guerrero-Lasprilla
2 and in -- in Wilkinson which is that every
3 mixed question or matter how factual it is in
4 the INA is going to be subject to de novo
5 review. I mean, that really would be a sea
6 change. And is really irreconcilable with
7 IIRIRA.

8 The other thing that I'll note as
9 Justice Jackson, you pointed out, I mean, the
10 thrust of IIRIRA was Congress was coming in and
11 then overturning things that courts of appeals
12 were doing.

13 I don't think there's -- there's any
14 realistic chance that you could look at IIRIRA
15 and think that Congress was silently departing
16 from the substantial evidence review consensus
17 for persecution questions and asylum
18 eligibility generally in -- in adopting IIRIRA.

19 Unless there are any further
20 questions?

21 CHIEF JUSTICE ROBERTS: Justice
22 Thomas?

23 Justice Sotomayor?

24 Justice Kagan?

25 Justice Kavanaugh?

1 Thank you, counsel.

2 Mr. Rosellini, rebuttal.

3 ORAL ARGUMENT OF NICHOLAS ROSELLINI

4 ON BEHALF OF THE PETITIONERS

5 MR. ROSELLINI: Thank you, Mr. Chief
6 Justice. Just a few points.

7 The first one is our position is not
8 that every mixed question in immigration
9 context would be reviewed de novo. Under the
10 text of the statute, our argument is only that
11 mixed questions that are -- that resemble the
12 determinations at issue in (c) and (d)
13 admission eligibility and entitlement to asylum
14 would get de novo review because if the -- the
15 language Congress could have used is right
16 there, they didn't use it.

17 We think that inference is strong as
18 to this particular question but other things
19 such as equitable tolling in
20 Guerrero-Lasprilla, other kind of docket
21 management determine -- determinations for
22 example, those would be reviewed for abuse of
23 discretion. Of course, if the government came
24 in and tried to say that those were findings of
25 fact, we would again disagree but we wouldn't

1 dispute that they are entitled to deference,
2 just a different kind.

3 And then if you are looking beyond the
4 text just to U.S. Bank, that -- that analysis
5 is really limited to just this particular mixed
6 question at issue here.

7 And as U.S. Bank, you know, makes
8 clear, the court has to look at each particular
9 mixed question that comes before it and makes
10 the call. So that -- that -- a -- a decision
11 on those grounds would be even narrower.

12 I -- I think it's telling that the
13 government couldn't come up in response to I
14 believe it was Justice Kagan asked what
15 about -- would any mixed question in this
16 context get de novo review and they couldn't
17 name one.

18 I think that's because if this one
19 doesn't get it, it's hard to think of an
20 example. Persecution, again, is a term of art.
21 It's not something that ordinary people
22 understand right off the bat. It's the product
23 of -- of -- of a major international treaty and
24 we have decades of experience where courts are
25 coming up with the exact kind of auxiliary

1 legal principles that U.S. Bank talked about as
2 a -- as a -- as a marker of a mixed question
3 that deserves de novo review, even though it
4 can -- yes, some aspects of the decision can
5 be -- can be fact intensive. They involve a
6 close look at the record, but courts are also
7 doing what courts do when they analyze this
8 mixed question and that's what separates this
9 particular mixed question from others.

10 Second, Justice Kavanaugh, to your --
11 your question about the -- the BIA regulations,
12 the government is trying to couch this
13 determination as a question of judgment versus
14 law. They don't cite anything for that. We
15 have BIA decisions calling it a question of
16 law. But it really doesn't matter because the
17 fundamental point is that the BIA agrees that
18 it's not a finding of fact, which is the exact
19 language we have in this statute.

20 And the BIA agrees that the IJ's
21 institutional advantages of being closer to the
22 evidence don't justify deference to the IJ on
23 this particular question. So this debate on
24 judgment versus question of law, it's just --
25 it's just immaterial.

1 The fourth, on Elias-Zacarias and the
2 history, Justice Jackson, your question if you
3 look at page 12 of our reply and note 2, we
4 cite examples of cases analyzing this exact
5 mixed question that predate IIRIRA that were
6 reviewed de novo.

7 The case law as it is now is a muddle
8 so I'm not going to pretend that there is some
9 consensus going in our favor but we don't need
10 to show that. The government is trying to tell
11 you that there was a consensus that was somehow
12 overruled by Congress. That's not the case.

13 And on -- on Elias-Zacarias more
14 broadly, we would just reiterate that the
15 actual dispute in that case was about motive,
16 it was about a subjective state of mind and the
17 decision needs to be read in that context.

18 And if it's read as the government
19 says it is, Number 1, the government concession
20 doesn't make sense because Elias-Zacarias, you
21 take a couple lines at face value, says the
22 entire asylum eligibility determination must be
23 reviewed deferentially but they are admitting
24 even legal questions or even some amount of
25 mixed questions about these auxiliary --

1 auxiliary legal principles are reviewed de
2 novo. So that just can't be right.

3 And we think trying to draw that line
4 about where do interesting cases that are
5 creating auxiliary legal principles, where do
6 those end and where do the fact intensive ones
7 start, you just can't draw that principal line
8 and this Court has never tried to do that when
9 it's analyzed other mixed questions like in --
10 like in U.S. Bank, like in Google versus Oracle
11 and other cases.

12 But finally, even if the -- if -- if
13 the Court does try -- try to draw that line and
14 accept the government's position, it's not the
15 case that courts of appeals are doing what the
16 government says is correct. Some are but some
17 are not.

18 If you look at page 3 of our reply
19 brief, we cite a Tenth Circuit decision and a
20 Fourth Circuit decision that said, look, we
21 know that the BIA has created this legal
22 rule but the Tenth Circuit said we can't
23 disagree with that legal rule unless, you know,
24 we could overcome the substantial evidence
25 review.

1 And the Fourth Circuit dis- --
2 ultimately disagreed with the BIA but only
3 because it found that this requirement of
4 showing significant actual harm was manifestly
5 contrary to law. So it too was deferring on
6 what even the government admits is a legal
7 question that should be reviewed de novo.

8 So if the Court, even if it sides with
9 the government here, we believe that is a --
10 that is an important change. It's clarified
11 the standard of -- of review. That will matter
12 going forward and it should matter in this case
13 and we should be entitled to vacatur of the
14 judgment below at least on those narrow
15 grounds.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 Counsel. The case is submitted.

18 (Whereupon, at 12:46 p.m., the case
19 was submitted.)

20
21
22
23
24
25

Official - Subject to Final Review

1 1 [3] 18:23 41:11 68:19 1101(a)(42) [1] 9:22 1158 [5] 44:11 50:14,22 51:7,10 12 [1] 68:3 1252 [1] 13:7 1252(a) [1] 41:13 1252(b)(4) [3] 30:16 31:10 42:2 1252(b)(4)(d) [1] 13:21 1996 [1] 39:1 2 2 [3] 18:22 39:22 68:3 2002 [2] 59:16 62:2 4 4 [2] 12:1 37:22 40 [3] 37:22 48:3 62:5 481 [1] 15:13 A ability [1] 41:5 able [1] 28:6 abuse [3] 48:18,21 65:22 accelerated [1] 27:19 accept [1] 33:11 account [1] 35:17 acknowledged [1] 25:7 across [1] 45:10 act [1] 18:10 acting [1] 21:16 activities [1] 18:8 actual [6] 21:1,3 22:2 37:9 39:17 68:15 actually [12] 8:1 22:4,11 27:9 28:19 32:9 33:4 35:18 41:11 53:6,12 59:4 add [2] 26:12,16 added [1] 38:25 addition [1] 24:2 address [1] 25:16 addressing [2] 39:24,24 administrative [1] 12:8 admissibility [1] 12:4 admissible [2] 14:9,12	admission [11] 10:15,19, 25 11:5,12 12:14 13:3,12 14:2 26:3 65:13 admitted [2] 57:16 61:21 admitting [1] 68:23 adopting [1] 64:18 advance [1] 34:4 advantages [1] 67:21 affirmatively [1] 44:25 ag [2] 61:15,22 agency [12] 10:17 11:11 12:3,7,9 13:2 29:16 41:6 42:25 44:6 54:4 61:12 agency's [2] 12:18 30:20 agree [6] 8:9 9:25 12:11 13:6,15 27:7 agreed [2] 40:10 42:22 agrees [3] 58:20 67:17,20 ahead [1] 20:18 alien [1] 10:14 alike [1] 49:15 alito [6] 25:19,25 26:8 27:2, 10 31:24 alleged [1] 36:12 already [6] 29:25 42:2 58:2 61:20 62:6 63:16 amendments [1] 41:3 amount [1] 68:24 amounts [1] 17:22 analogize [1] 16:25 analogizing [1] 26:25 analogous [1] 63:20 analysis [2] 28:25 66:4 analyze [1] 67:7 analyzed [1] 35:19 analyzing [3] 35:25 36:7 68:4 announce [1] 25:12 announced [1] 58:2 another [2] 9:1 53:20 answer [5] 24:1 28:6 57:1, 21 60:17 anticompetitive [1] 18:18 antitrust [5] 17:1 18:6,12, 13,16 appealed [1] 14:24	appeals [17] 30:3,23 33:16 38:7 42:21,21 44:17 45:1 48:13 49:2 52:16 54:24 61:10,19 62:1,3 64:11 appear [1] 43:14 appears [1] 43:16 appellate [2] 20:15 30:25 applicable [2] 14:23 28:25 applicant [2] 51:14 60:13 application [5] 10:3 26:6 36:4 45:15 63:18 applied [8] 25:23 26:10 44:16 45:14 58:9,10,21 63:18 applies [1] 16:2 apply [12] 11:17 15:18 16:13,23 20:23 28:10,14 30:23 38:2 44:4 58:7 61:13 applying [6] 23:8 24:2 39:3 54:25 57:18 58:1 appreciate [1] 10:8 approach [3] 45:8,9,14 appropriate [1] 40:11 area [2] 53:7,24 areas [1] 24:11 argue [1] 34:5 arguing [2] 32:15 33:4 argument [20] 10:5 11:16 14:19,22 19:15 32:6,17,21 34:5,16,18 40:23 42:13 46:7 47:5 50:17 51:5 57:16 65:3,10 arguments [8] 37:25 45:19 48:20 50:10,19,21,21 63:25 arise [1] 53:9 art [3] 21:19 28:12 66:20 aside [2] 20:19 48:22 aspects [2] 39:14 67:4 asserting [1] 19:21 assess [2] 15:22 25:17 assist [1] 29:6 asylum [22] 8:4 10:20 11:1, 6 13:1,13,17,22,22 14:3,9, 14 26:4 39:4,7 41:11,15,22 53:15 64:17 65:13 68:22 asylum-eligibility [2] 39:	18 40:13 attempt [1] 35:6 attorney [1] 52:7 attorneys [1] 29:3 auxiliary [9] 21:24,25 24:8, 21 25:10 28:16,18 66:25 68:25 availability [1] 12:19 aware [1] 44:21 away [4] 41:17 43:15,17 46:25 B b)(4) [1] 38:25 ba [1] 42:19 back [2] 41:24 56:2 background [4] 14:24 56:1,10 59:11 backup [1] 19:15 balance [1] 46:24 banc [1] 34:7 bank [15] 17:16 20:8 21:16, 24 23:9,23 24:13 30:12 42:24 49:14 56:4 63:17 66:4,7 67:1 bar [1] 62:19 barrett [1] 38:22 based [1] 26:11 basically [1] 27:17 basis [1] 36:13 bat [1] 66:22 bearing [1] 61:23 beforehand [1] 44:15 began [1] 46:7 beginning [1] 52:13 behalf [2] 42:14 65:4 belied [1] 54:23 believe [4] 9:9 18:25 39:8 66:14 belittle [1] 23:1 below [2] 32:2 33:8 better [1] 31:18 between [2] 43:10 60:22 beyond [1] 66:3 bia [32] 9:5,7,11,12 20:1,1, 12,15,20 25:8 30:18 31:8, 11,13,16 33:15 35:19 38:8
---	--	--	--

Official - Subject to Final Review

42:19 47:4 58:11,25 59:17 60:19 61:6,21,24 62:12 67: 11,15,17,20 bia's [4] 19:19 29:12 31:5 41:1 bit [2] 37:4 40:15 body [6] 20:15 26:22 27:12 30:10 53:20,22 boil [1] 45:20 boils [1] 9:23 boring [2] 24:17,24 both [4] 45:23 60:18 61:6 64:1 braked [1] 27:19 breyer [1] 23:19 brief [7] 10:9 37:23 38:11, 13 39:22 40:5 62:5 briefs [1] 32:13 broad [2] 37:4 55:5 broader [2] 11:9 37:2 broadly [3] 36:25 42:21 68: 14 bucket [1] 56:4 build [2] 27:12 28:7 building [2] 26:21 28:13 builds [2] 27:12 30:9 bunch [1] 24:10 burden [2] 13:15 51:15 C cabined [1] 33:14 calculation [1] 8:11 call [3] 37:24 50:23 66:10 calling [1] 67:15 calls [2] 23:23 51:7 came [5] 27:1 29:5,8 34:17 65:23 cannot [1] 55:10 capture [1] 11:17 care [3] 28:3,4 52:8 carve [1] 13:17 carved [1] 12:25 carves [1] 13:21 case [43] 8:1,2,13 9:5,20 10:17 11:18 16:8,25 17:13 19:18 21:6 22:3,6,16 23:15 24:14,15,17,18,23 25:17	26:24,25 27:10 28:23 36: 10 39:19 40:9,18 42:3 43:6 50:19,22 52:25 53:11,11 54:21 56:23 63:8 68:7,12, 15 cases [17] 14:20 18:14 25: 16 26:23 27:1 29:8 30:11 38:10 39:23 40:2,7 53:4 58: 10 61:9,9,12 68:4 cash [1] 62:12 cashied [1] 48:23 cat [1] 30:7 categorical [1] 35:16 causation [2] 15:11 16:9 cause [5] 21:1,3 22:2 32: 10 57:10 cautioned [1] 37:6 central [1] 36:9 cert [2] 40:9,17 certain [5] 10:10 20:23 45: 2 53:22 63:12 certainly [1] 31:3 challenge [1] 32:2 challenged [1] 32:24 challenging [1] 57:4 chance [2] 44:24 64:14 change [4] 25:15 41:25 45: 25 64:6 changed [1] 22:5 charged [1] 53:17 chief [11] 8:23 31:21 34:14 36:21 38:21 42:11,15 46:3, 6 64:21 65:5 circuit [13] 19:17 26:11 32: 3,17 33:13 34:6 58:2,5,6,8, 10,11,20 circuits [3] 25:6,15 29:2 circuit's [2] 26:24 57:18 circumstance [1] 28:5 circumstances [4] 27:18 52:23 55:21 63:13 cite [4] 39:21 40:2 67:14 68: 4 cited [3] 38:10 40:6 63:16 claiming [1] 14:12 classic [1] 35:23 clean [1] 29:20	clear [12] 30:15 31:1 36:8 44:7 45:9 48:19,21 52:4 56: 3 60:8 61:16 66:8 clearly [2] 34:22 44:21 clerks [1] 29:3 client [5] 8:16 9:15,19 10: 18 11:7 clients [1] 14:10 close [3] 13:10 23:21 67:6 closer [1] 67:21 closest [1] 20:6 code [1] 23:17 codification [1] 51:25 codified [1] 44:20 codifying [1] 45:2 coerce [1] 35:6 collins [1] 60:2 combined [2] 51:24 52:2 come [7] 29:22 36:11 41: 24 48:19 50:20 62:21 66: 13 comes [3] 22:16 24:15 66: 9 coming [2] 64:10 66:25 commend [1] 38:4 common [2] 23:25 56:16 commonly [1] 28:12 commonplace [1] 21:15 compel [1] 36:11 component [1] 39:17 comprehensive [1] 13:9 concede [1] 48:3 conceded [3] 11:16 14:11, 11 concept [1] 52:24 concern [1] 53:7 concerned [1] 54:1 concession [4] 25:5 37: 24 38:5 68:19 conclude [4] 15:16 16:17 18:2,22 conclusion [3] 15:24 36: 12 55:12 conclusive [3] 10:15 12: 11,15 concreteness [1] 25:22 conduct [1] 18:18	confused [2] 40:11 57:1 confusion [1] 40:16 congress [29] 11:8 12:2, 20,25 13:16 38:25 39:5,9 41:8,12,17,20 42:1 44:3,11, 21,24 50:10,12,15 51:11 52:4 56:20,22 61:18 64:10, 15 65:15 68:12 congress's [2] 41:3 51:24 connected [1] 43:23 consensus [5] 40:19,20 64:16 68:9,11 consequence [1] 45:24 consider [2] 40:24 56:10 considerations [1] 56:7 consistent [1] 41:2 conspiracies [1] 17:1 conspiracy [1] 18:17 constitutes [1] 35:7 constitutional [1] 56:12 constrained [1] 30:24 construe [1] 17:5 construing [1] 19:6 context [13] 18:6,6,12 19: 22 28:1,9 29:9 37:8 41:6 61:2 65:9 66:16 68:17 contexts [2] 45:10 48:14 continue [1] 39:10 contrary [3] 10:16 45:19 63:24 contrast [1] 27:22 convention [1] 30:2 copyright [1] 55:23 core [2] 36:15,16 correct [14] 15:3 16:8 17:4 29:6,12,22 30:9 33:24 38: 15,16 47:25 48:25 57:4,25 correctly [1] 36:17 corresponding [1] 40:2 corroborating [1] 12:19 couch [1] 67:12 couldn't [3] 55:8 66:13,16 counsel [6] 30:13 31:22 32:1 42:12 46:4 65:1 country [2] 21:20 62:24 counts [1] 22:1 couple [3] 40:7 56:6 68:21
--	---	--	---

course [5] 41:20 54:25 55:4 62:15 65:23 court [51] 9:1 14:25 15:8, 10,13 17:4,13 19:3,10,25 22:13 24:16 25:12 27:23 30:3 31:19 32:25 34:11,22 35:18 36:16 37:6,17 38:11 42:16,24 44:14 45:10,14, 22 46:14 48:6,16,22,24 49:14 52:16 53:6 54:9,14,15 56:1,14 61:9,11,25 62:2 63:1,15 64:1 66:8 courts [36] 12:6,18,21 24:6, 8,20 25:7 26:20 28:7,10,13 29:15,21,25 30:10,23,25 33:16 38:6,6 39:2 40:10,24 42:21 44:17 45:1 48:13,17 49:2 54:24 61:18 62:6 64:11 66:24 67:6,7 court's [5] 14:20 23:16 41:5 45:7 46:2 cover [1] 12:2 covered [1] 13:18 covering [1] 11:8 credibility [4] 8:24 9:2,14, 17 credible [5] 8:18,20 9:16 32:10 51:19 credit [3] 14:18 23:18 25:4 crime [2] 62:23,25 criteria [1] 11:6 crystallized [1] 42:1 curious [1] 59:6 current [1] 22:12 cut [2] 43:25 50:13 cuts [1] 56:24 D dai [1] 61:11 de [30] 14:25 16:21 17:9 18:19 19:24 24:22 26:7 30:8, 13 33:21 40:24 45:22 48:6 49:1,8 55:24 56:15 59:1,17 60:8,11 61:25 62:2,15 64:4 65:9,14 66:16 67:3 68:6 death [5] 8:19 28:20 32:10 57:8,13	debate [1] 67:23 decades [3] 17:18 54:23 66:24 decide [4] 14:25 21:7 33:25 56:4 decided [2] 54:5 61:15 deciding [2] 54:3 61:13 decision [13] 10:14 19:2 26:4,4,21,22,24,25 29:12 46:15 66:10 67:4 68:17 decisional [1] 26:22 decisions [10] 24:21 28:22,24 29:4,7,10 30:20 48:17 60:12 67:15 declaring [1] 23:17 defer [1] 20:10 deference [10] 9:10 10:10 25:8 33:15 34:23 35:4,12 39:3 66:1 67:22 deferential [2] 44:5 45:17 deferentially [5] 27:8 36:19 39:15 63:23 68:23 deferred [2] 35:18 36:2 deferring [2] 20:3 38:8 definitely [2] 10:9 58:9 definition [5] 26:9 32:9 50:3,3 57:2 degree [1] 25:22 demand [1] 43:21 demonstrate [3] 19:9 30:5 32:19 denying [1] 29:11 departing [2] 45:4 64:15 departs [1] 25:5 described [3] 17:21 39:13 51:14 deserves [1] 67:3 designs [1] 61:22 despite [2] 17:11 31:13 detailed [1] 29:4 determination [16] 9:4 12:18 13:3,23 17:9 25:24 27:4 29:19 30:8 40:13 41:14,16 42:3,9 67:13 68:22 determinations [11] 10:11 11:11 12:3,13 13:1 41:1, 18 46:8 56:23 65:12,21	determine [5] 19:6 24:5 30:22 50:24 65:21 determined [3] 10:18 12:7 30:24 determining [5] 9:8 26:15 53:18,21 61:4 develop [2] 55:9,17 developed [3] 24:8 56:15, 19 developing [3] 24:20 25:10 53:6 dictate [1] 31:6 difference [1] 60:22 different [12] 8:8 11:4 24:10 28:8 32:15 37:21 41:22 44:1 56:6 59:4 61:8 66:2 direction [2] 40:7 44:10 disagree [6] 13:11 14:1 16:5 21:11 23:4 65:25 discordant [1] 41:8 discretion [5] 48:18,21 60:10 61:25 65:23 discretionary [2] 41:14, 18 dispute [9] 9:15,19 22:11 24:7 36:16 43:9 48:4 66:1 68:15 disputes [1] 53:9 distinct [4] 11:1 14:2,10, 15 distinguish [1] 49:2 district [5] 9:1 48:16,17,22, 23 docket [1] 65:20 doctrine [1] 55:23 doing [14] 23:9,19 29:25 30:8 35:23 38:11 45:1 48:15 62:3,6,9,10 64:12 67:7 done [7] 27:17 44:17 45:11 47:20 49:24 50:4 56:18 dos [42] 42:12,13,15 46:11 47:13,17,19,25 48:7,10 49:5,12,19,22 50:17 51:1,9 52:15,20 54:8 55:13,19,25 56:19 57:5,15 58:1,8,19 59:2, 8,11,15,22,25 60:5,17,24 61:3 62:8,20 63:5	down [3] 9:23 12:21 45:20 draw [4] 43:25 47:8,14 54:12 drawing [1] 43:5 drawn [1] 54:18 duty [4] 27:24,25 28:2,4 duty-of-care [2] 27:22 28:9 E each [2] 52:25 66:8 earlier [2] 48:11 62:22 easier [1] 58:17 effect [1] 9:20 effectively [1] 30:11 efficient [1] 29:7 either [3] 45:3 55:1 62:3 el [1] 43:18 elias [2] 34:21,24 elias-zacarias [20] 15:8, 15,25 16:7 34:16 35:24 36:2,7,25 39:15 44:14,21 45:3 47:23 50:22 51:25 58:22 68:1,13,20 eligibility [10] 10:25 11:1, 12 13:3 26:3 39:4,7 64:18 65:13 68:22 eligible [6] 8:4 10:14,18 12:14 14:9,13 emphasize [1] 63:15 en [1] 34:7 enable [1] 40:24 enacted [1] 39:1 encompass [1] 42:8 encompasses [1] 13:13 encourage [1] 37:17 engages [1] 61:21 engaging [1] 61:19 enough [9] 11:22 15:5,6 18:3 21:1,3 33:5 53:1 55:7 entire [1] 68:22 entirely [1] 33:14 entitled [2] 14:14 66:1 entitlement [3] 13:21 26:4 65:13 entrenched [1] 40:16 equitable [1] 65:19
---	---	---	--

Official - Subject to Final Review

error ^[5] 48:19,21 57:3 60:9 61:16 escaping ^[1] 40:6 essential ^[1] 52:14 essentially ^[2] 19:17 52:16 establish ^[1] 28:2 established ^[2] 14:20 53:19 establishes ^[1] 13:8 establishing ^[2] 13:16 28:16 even ^[12] 12:17 41:13,16,20 43:22 45:7,8 54:17 66:11 67:3 68:24,24 events ^[1] 9:21 everybody ^[1] 58:9 everything ^[2] 13:2 59:17 evidence ^[31] 8:14 12:20 15:14 17:25 20:5 21:7,10 22:24 31:16 36:11 39:3 43:1 44:4,16,19 47:7,10 49:11,17 50:11 51:3,6,18,23 52:2 53:13 54:25 58:22 62:23 64:16 67:22 evolve ^[1] 61:5 exact ^[6] 19:3 31:9,11 66:25 67:18 68:4 exactly ^[8] 9:18 18:12,23 37:5 44:10 45:11 55:14 56:24 example ^[9] 16:24 17:14 27:21 46:14 48:16 55:5 61:24 65:22 66:20 examples ^[2] 49:23 68:4 except ^[2] 15:11,12 exercise ^[2] 20:14 60:20 exercising ^[1] 19:12 exist ^[1] 40:20 existed ^[2] 15:17 18:17 experience ^[3] 17:18 54:23 66:24 experienced ^[1] 8:19 expertise ^[2] 61:6,12 explaining ^[2] 28:17 29:4 explicitly ^[2] 32:4,17 extended ^[1] 39:21	extent ^[3] 10:2 22:19 23:14 extraordinary ^[1] 45:15 extreme ^[9] 42:22 43:2 52:13,19 53:1 62:17,19 63:19,20 extremely ^[1] 23:18 F face ^[1] 68:21 fact ^[44] 9:2 12:10,12 15:12,16,23 16:16 17:7,23 20:10 21:23 26:7 29:2,22 30:16 31:10,12 35:23 36:3 41:25 42:5 46:8,12,24,25 47:6,8 48:14 50:23 51:8,18,21 53:9,17,17 55:11 57:23 58:14,15 60:4 61:7 65:25 67:5,18 facts ^[46] 8:15 9:3,17 10:4 15:20 16:14 17:12 18:2 19:7,9,18 20:6 21:7 23:8 24:5 25:23 26:14,17 29:1 30:4,5 32:19 33:4,5 36:4 42:4 43:5,7 44:2,6 46:9,19 48:23 53:1,20,22 54:3,11,17 55:10 59:18 60:9 61:4 62:1,12 63:8 factual ^[22] 20:9,9 21:10 22:8 23:3,7,21 26:18 36:17 44:12,15 45:12,16 46:8 49:25 50:8,11 51:13 52:6 56:9 63:22 64:3 failed ^[1] 36:10 fair ^[17] 11:22,22 14:21,22 15:6 16:25 18:5,9 19:5,9,11,12 23:15 24:23 55:22 56:17,17 fairly ^[1] 32:18 familiar ^[1] 18:11 far ^[3] 12:17 32:22 61:9 father ^[3] 43:10,11 57:11 favor ^[4] 17:5 19:7 30:13 68:9 favorable ^[3] 15:21 18:1,21 fear ^[2] 8:7 15:17 feared ^[1] 16:11 few ^[2] 37:4 65:6	fight ^[1] 34:8 figure ^[1] 28:24 figuring ^[1] 9:10 find ^[5] 19:5,12 35:2 58:15,16 finder ^[12] 9:2 15:16,23 16:16 17:7 20:11 47:6,8 55:11 57:23 58:14,16 finding ^[11] 12:12 15:10,12 17:23 30:15 31:12 32:5 35:23 36:3 42:5 67:18 findings ^[5] 8:24,25 12:10 31:10 65:24 fine ^[4] 30:9 43:14,16 46:24 finished ^[1] 35:15 first ^[23] 9:6 13:16,24 14:5,5 19:17 26:11,23 32:3,17 33:13 34:2,6,11 57:18 58:4,6,8,10,11,20 61:20 65:7 flesh ^[1] 28:14 footnote ^[3] 34:22,24 39:22 forgive ^[1] 40:5 formulation ^[1] 63:17 forward ^[2] 8:8 36:11 forward-looking ^[1] 8:6 found ^[7] 8:18 9:15 19:11 27:11,11 31:16 47:9 fourth ^[1] 68:1 friend ^[1] 46:6 friends ^[2] 40:15 55:21 front ^[1] 57:12 function ^[1] 17:24 fundamental ^[1] 67:17 fundamentally ^[1] 17:15 further ^[1] 64:19 future ^[3] 8:11 26:23 30:11 G general ^[3] 41:3 52:8 55:6 generally ^[1] 64:18 getting ^[1] 23:10 give ^[4] 49:23 51:3,5 59:8 given ^[6] 16:15 19:18 24:15 27:17 40:19 49:10 gloss ^[1] 55:24 google ^[5] 17:2,13 19:1,1	23:16 gorsuch ^[22] 14:21 15:4,7 16:12,20 17:19 18:11,20 19:14 36:22 47:11,16,18,21 48:2,9 55:8,17,20 56:17 57:1,21 got ^[3] 23:18 42:23 59:19 government ^[22] 11:15,20 14:17,18 24:7 30:20 31:2 33:11,17 34:4 37:19 38:5 39:20,21 40:9 53:13 65:23 66:13 67:12 68:10,18,19 government's ^[7] 25:2,4 32:23 33:8 34:19 37:22 38:13 grant ^[2] 40:9 41:15 grasp ^[1] 52:24 ground ^[1] 28:19 grounds ^[2] 11:4 66:11 group ^[1] 18:8 guerrero-lasprilla ^[3] 45:23 64:1 65:20 guerrilla ^[1] 35:5 guess ^[6] 10:4,12 12:23 39:7 41:1 54:1 guidance ^[1] 29:16 guideposts ^[1] 55:5 guides ^[1] 26:23 H half-brothers ^[2] 43:9,14 half-brother's ^[1] 43:10 hand ^[3] 43:8,12,20 happen ^[2] 21:5 39:6 happened ^[8] 8:16 9:10,19 23:12 24:6 53:10,15 62:22 happens ^[1] 28:10 harassment ^[1] 26:13 hard ^[1] 66:19 hardship ^[3] 21:17 45:15 63:19 harm ^[7] 21:1,4 22:2 32:11 33:6 43:13 57:11 heads ^[1] 35:22 heard ^[1] 20:5 hearing ^[1] 31:15
--	---	--	---

Official - Subject to Final Review

heartland ^[1] 10:21 held ^[2] 8:21 19:3 help ^[2] 11:3 29:2 helpful ^[3] 27:9,21 59:16 helps ^[1] 29:5 high ^[1] 62:19 historical ^[4] 26:14 46:19 54:11,17 history ^[9] 38:25 44:9 50:6, 20 52:3 56:15 59:16,20 68:2 holding ^[1] 29:11 hometown ^[3] 43:15,17 46:25 honestly ^[1] 50:19 honor ^[24] 8:9 9:6 10:24 13:6,12 14:7,16 16:6 17:3 18:5 19:1 21:12 22:11 23:5 24:9 27:6 32:5 33:12 35:14 36:6 39:11,13 41:10 49:12 host ^[1] 28:7 I icicle ^[1] 18:6 idea ^[1] 45:20 iirira ^[11] 39:1 41:4 42:6 44:25 46:1 62:9 64:7,10,14,18 68:5 ij ^[11] 20:3,4 26:10 30:18 50:23 51:7 52:6 58:11 60:19 61:6 67:22 ij's ^[2] 26:24 67:20 immaterial ^[1] 67:25 immersed ^[1] 28:1 immigration ^[6] 8:17 9:11 31:14 49:25 53:25 65:8 important ^[2] 23:2 56:6 ina ^[8] 8:3 16:3,14 39:1 45:14,21 48:15 64:4 include ^[1] 60:12 included ^[1] 13:4 including ^[1] 59:18 incorrect ^[4] 14:8 19:22 62:14,17 indeed ^[2] 8:20 21:8 independent ^[2] 19:12 20:14	industries ^[2] 46:15 54:14 infer ^[2] 43:21 46:22 inference ^[2] 15:3 65:17 inferences ^[8] 43:5,25 44:2,6 47:7,15 54:11,18 inquiries ^[2] 14:15 52:6 inquiry ^[31] 8:6,9 9:24 11:1 14:2 16:9 17:10,15,16,20, 21,21 19:21 20:7,9,10,13 21:14 23:22 26:2 27:16,22 30:1,15 31:11 39:18,20 42:18 45:16 52:21 56:3 instance ^[5] 17:3 25:20 34:3,12 61:20 instances ^[1] 17:10 instead ^[1] 14:24 institutional ^[1] 67:21 institutionally ^[1] 31:18 instruct ^[1] 12:17 intended ^[1] 13:17 intensive ^[1] 67:5 interesting ^[2] 24:19,25 internal ^[2] 30:21 61:22 international ^[1] 66:23 interpretation ^[3] 19:19 29:23 50:2 interpretations ^[1] 31:5 interpreting ^[2] 25:8 50:5 intimidation ^[1] 43:22 involve ^[3] 8:24 23:21 67:5 involved ^[2] 17:10 23:20 involves ^[1] 8:11 involving ^[1] 9:2 irony ^[1] 29:9 irreconcilable ^[1] 64:6 irreconcilable ^[1] 46:1 isn't ^[6] 14:4 17:22 26:5 27:14 47:11 57:9 issue ^[16] 9:13 10:2 12:12 24:19 35:20,20 36:17 38:7 39:14,18,24 44:20 46:12 50:7 65:12 66:6 issues ^[2] 24:25 39:25 itself ^[5] 20:1 21:14 35:20 57:10 58:12 J	jackson ^[16] 9:25 11:2,14, 19,23,24 13:14 14:4 38:23, 24 40:1,21 42:10 53:3 64:9 68:2 job ^[1] 24:3 joshua ^[1] 42:13 judge ^[4] 8:17 9:11 27:24 60:1 judges ^[4] 29:6 31:14 47:22 56:18 judgment ^[11] 19:12 20:15 54:16 60:18,22,24 61:5,17, 19 67:13,24 judgments ^[2] 60:10,12 judicial ^[9] 13:8 17:18 24:3 30:12,14 37:7 41:15,17, 21 juries ^[4] 17:20 43:24,25 46:17 jury ^[14] 15:19,24 17:2,8,24 18:2,13,21 19:4,11 27:25 54:13 55:9,15 justify ^[1] 67:22 K kagan ^[20] 20:19 21:21 22:15,20,23 23:6 28:17 34:14, 15 35:2 36:1,20 49:4,16,21 50:16 51:2 52:11 64:24 66:14 kagan's ^[1] 26:9 kavanaugh ^[31] 20:17 30:17 31:4,20 36:23,24 37:10, 15,21 38:12,17,20 48:3 52:10,12,18 58:25 59:6,10,13, 19,23 60:1,14,21 61:1 62:4, 16 63:3 64:25 67:10 kavanaugh's ^[1] 48:11 killed ^[1] 57:12 kind ^[23] 8:8 15:18 24:17 25:9 28:15 30:1,12,14 40:22 41:11 42:23 43:24 45:20 47:3 52:21,23 55:24 56:8 61:19 63:19 65:20 66:2, 25 kinds ^[11] 11:10 28:8 38:8 46:16 48:14,17 49:16 56:	12,23 59:1 61:8 known ^[1] 10:4 knows ^[1] 27:24 L labor ^[1] 18:9 language ^[5] 10:13 44:20 52:1 65:15 67:19 large ^[1] 39:23 last ^[2] 45:13,18 law ^[33] 8:21 10:1,16 12:15 14:25 15:22 16:18 19:9,20 23:8 25:9 26:7,22 29:3,13, 24 48:6 53:6,24,25 54:7 55:2,3,9,18 56:16 60:3,6,23 67:14,16,24 68:7 lays ^[1] 23:10 least ^[6] 16:1 17:15 25:7,9 29:11 35:10 leave ^[1] 9:1 legal ^[57] 9:20,23 10:10 16:22 17:15,16,20,20 19:23 20:13,20,24 21:2,24,25 22:4,12,16,17 24:8,21 25:10, 11,20,22,24 27:5 28:8,13, 16 32:2,25 35:20 36:4 37:24 47:11,21 48:25 49:1 50:1,13 51:4,6 52:19 53:22,25 54:5,21 56:9 57:3,17,22,24 63:3,7 67:1 68:24 legally ^[1] 42:4 legislative ^[1] 50:6 length ^[1] 17:13 less ^[1] 45:9 level ^[6] 8:22 21:8 22:7 28:15 30:6 39:19 light ^[5] 15:20,21 18:1,20 27:18 likely ^[1] 62:24 limit ^[1] 41:5 limited ^[2] 55:21 66:5 limiting ^[1] 41:21 lines ^[3] 37:4,11 68:21 litigants ^[1] 48:19 little ^[6] 37:4 40:15 41:8 56:25 58:17 59:11 lived ^[1] 43:18
---	--	---	--

Official - Subject to Final Review

lodestar ^[1] 56:8 look ^[27] 12:1,7 17:12 21:6 23:21 24:4,14,16,23 26:23 33:23 34:21,21 37:8 39:17 41:13 43:6 49:13 50:14 52: 22,25 62:11 63:8 64:14 66: 8 67:6 68:3 looked ^[2] 33:1 56:14 looking ^[12] 12:24 23:17 28:24 29:16,17,18 43:1 50: 5,5,6 61:7 66:3 looks ^[3] 26:3,17 50:8 lose ^[1] 33:10 lot ^[6] 25:6,14,15 26:3 29: 10 49:24 lots ^[3] 43:4 54:24 62:23 lower ^[4] 24:6,7 62:6 63:12 M made ^[5] 11:15 14:22 15: 24 22:25 25:4 mainly ^[1] 62:7 major ^[1] 66:23 majority ^[1] 27:3 management ^[1] 65:21 manifestly ^[1] 10:16 many ^[7] 28:23 29:2 33:15 38:6 41:21 53:25 61:12 marker ^[1] 67:2 masses ^[1] 22:24 material ^[1] 46:18 materiality ^[2] 46:15 54: 16 matter ^[13] 15:22 16:17 25: 21,21 29:12,23 47:6,7 48:5 55:2,2 64:3 67:16 matter-of-law ^[1] 12:16 matters ^[2] 49:18,21 mean ^[24] 8:25 11:3,15 12: 5,20 13:1 14:23 19:2 23:1, 6,15 28:19,19 38:4 43:23 50:8,14 51:2 52:3 53:8 60: 9 61:18 64:5,9 meaning ^[5] 9:22 30:7,16 31:7 42:7 means ^[3] 42:22 48:5 52: 19	meant ^[1] 13:9 medium-high ^[1] 28:15 meets ^[1] 53:22 megaphone ^[1] 25:14 menacing ^[7] 8:20 20:25 21:3,9 22:2,7 28:20 mere ^[1] 55:6 met ^[1] 54:6 might ^[1] 21:24 military ^[1] 35:7 mill ^[1] 24:18 mind ^[4] 8:10 16:10 36:18 68:16 ming ^[1] 61:11 mistreatment ^[2] 26:13 30:6 mixed ^[19] 23:20 24:22 45: 21 49:8,9,15,16 54:10 64:3 65:8,11 66:5,9,15 67:2,8,9 68:5,25 mode ^[1] 28:25 molten ^[1] 36:16 money ^[2] 43:21 47:2 most ^[7] 15:21 18:1,21 30: 3 41:17 52:15,24 mother ^[2] 43:12 57:11 motive ^[4] 36:9,12 39:14 68:15 move ^[1] 53:20 moved ^[3] 43:15,17 46:24 much ^[5] 8:14 43:2 46:13, 23 53:2 muddle ^[1] 68:7 multiple ^[1] 37:6 must ^[2] 26:12 68:22 N nail ^[1] 12:21 name ^[1] 66:17 narrow ^[1] 40:12 narrower ^[1] 66:11 narrowly ^[1] 12:24 nature ^[1] 23:17 necessarily ^[2] 24:14 35: 7 necessary ^[1] 46:9 need ^[5] 11:11 14:8 34:7	57:7 68:9 needed ^[2] 37:1 41:23 needs ^[1] 68:17 negative ^[1] 58:18 negligence ^[8] 27:4,7,11, 13,16,21,25 46:18 neither ^[1] 14:22 never ^[2] 43:13 53:4 nevertheless ^[2] 8:20 14: 13 new ^[2] 24:19 38:14 nicholas ^[1] 65:3 nitty-gritty ^[1] 23:11 non-citizen ^[3] 8:3 16:11 36:10 none ^[1] 50:19 normally ^[1] 20:8 note ^[2] 64:8 68:3 novel ^[1] 24:25 novo ^[30] 15:1 16:22 17:9 18:19 19:24 24:22 26:7 30: 8,13 33:21 40:24 45:22 48: 6 49:1,8 55:24 56:15 59:1, 17 60:8,11 61:25 62:2,15 64:4 65:9,14 66:16 67:3 68: 6 number ^[6] 11:15 23:23 27: 16 40:6 41:11 68:19 O obviously ^[2] 23:7 32:5 often ^[1] 17:1 okay ^[9] 15:4,5 22:15 34:9 36:20 38:19 48:20 52:11 59:22 once ^[1] 53:19 one ^[34] 9:18 10:11 11:5,15 19:2,23 20:4 22:9,10 23:23 24:24,25 25:3 26:5 27:16, 21 35:11,25 40:21 43:3,8 44:9,10,12 46:12 47:4 50:9 55:1 61:25 62:2,22 65:7 66: 17,18 ones ^[2] 29:10 56:13 only ^[9] 12:8 15:14 20:25 21:3 36:2 51:18,19 57:17 65:10	opinion ^[5] 23:10,16 36:7, 14 37:17 opinions ^[1] 37:7 opposed ^[1] 36:3 opposite ^[3] 19:3 40:7 56: 24 oracle ^[4] 17:3,14 19:2 23: 16 oral ^[2] 42:13 65:3 ordinary ^[4] 23:25 26:12 27:20 66:21 organization's ^[1] 35:5 orlando ^[1] 61:11 other ^[20] 9:18 32:11 33:15 39:25 41:18 43:11,18,20 50:9,13 51:23 53:24 54:20 55:22 58:4 63:10,14 64:8 65:18,20 others ^[3] 28:23 53:5 67:9 out ^[21] 9:10 13:1,17,21 23: 10 24:10 26:21 27:12 28:7, 13,14,24 30:9 37:23 41:12 48:4,23 53:9 55:22 62:12 64:9 outlines ^[1] 29:4 over ^[2] 53:9 54:23 overall ^[1] 40:23 overhauling ^[1] 44:24 override ^[2] 40:25 41:5 overruled ^[1] 68:12 overturning ^[2] 45:1 64: 11 owe ^[1] 25:7 owed ^[1] 9:11 own ^[3] 17:23 57:9,18 P page ^[6] 15:13 39:22 40:5 48:3 62:5 68:3 pages ^[1] 37:22 pain ^[1] 46:18 paragraph ^[1] 11:10 part ^[2] 13:16 41:23 particular ^[12] 9:4 17:12 18:8 26:2 43:6 48:23 50:2 65:18 66:5,8 67:9,23 particularly ^[1] 40:25
---	--	--	---

parts ^[1] 43:18 past ^[3] 8:2,5 60:13 patterns ^[1] 61:7 peace ^[1] 43:18 people ^[6] 21:16,17 23:24 27:19 52:24 66:21 performing ^[1] 35:6 perhaps ^[1] 13:25 persecution ^[43] 8:2,5,7, 22 9:21 10:3 15:17 16:17 20:22,25 21:2,14,14,23 22:1 24:4,5,11 26:10 28:11,21 29:23 32:6,20 35:8,17 39:20 42:5,22 47:9 48:5 52:17 53:23 55:12 57:2 58:16 60:13 61:5 62:25 63:2,7 64:17 66:20 persecutor ^[1] 16:10 persecutors ^[1] 36:13 persecutors' ^[1] 35:22 person ^[4] 12:14 27:17 35:6 53:14 persuasive ^[1] 51:19 petitioner ^[8] 43:1,16,19 47:4 55:1 57:15 58:20 62:11 petitioners ^[2] 43:8 65:4 petitioner's ^[2] 45:19 63:24 pick ^[1] 48:11 picking ^[1] 42:17 place ^[2] 42:6,7 plain ^[1] 42:7 please ^[1] 42:16 plug ^[1] 42:23 plugging ^[1] 52:1 point ^[15] 15:9 30:19 31:2 34:7 37:22,23 38:12 40:8, 19 41:10 44:10 45:6 46:14 55:22 67:17 pointed ^[3] 24:10 48:4 64:9 points ^[4] 35:13 44:9 45:10 65:6 political ^[1] 36:13 poses ^[1] 37:19 position ^[10] 16:4 25:2 32:23 33:6,8,17 42:20 48:1 49:6 65:7 positioned ^[1] 31:18 positive ^[1] 58:17 possible ^[1] 45:5 possibly ^[1] 40:25 practice ^[4] 39:9,12 45:4 62:11 pre ^[1] 40:2 precedent ^[8] 26:11 27:13 29:18,20,21 30:10 34:7 57:19 precedents ^[1] 53:5 precise ^[1] 46:8 predate ^[1] 68:5 preexisting ^[3] 39:9,12 47:23 prescribe ^[1] 10:6 presented ^[2] 15:14 37:9 presenting ^[1] 24:25 presently ^[1] 22:13 preserved ^[2] 41:16,23 presume ^[1] 56:21 presumptively ^[1] 8:4 pretend ^[1] 68:8 pretty ^[1] 18:11 primarily ^[15] 17:16 19:23 20:9,13,17,20 23:7 26:18 45:12,16 50:8 51:13 52:5 56:9 63:22 primary ^[2] 21:13 50:4 principle ^[3] 21:25,25 22:5 principles ^[9] 24:9,21 25:11 28:8,13,16,18 54:21 67:1 prior ^[4] 28:24 29:4,17 39:2 probability ^[1] 8:12 problem ^[4] 25:1 29:24 37:11,14 problems ^[1] 37:20 proceed ^[1] 18:24 product ^[2] 21:19 66:22 proper ^[1] 54:15 propriety ^[1] 22:11 prosecution ^[1] 57:24	prototypical ^[1] 9:5 provide ^[2] 34:23 55:5 provided ^[1] 43:2 providing ^[2] 35:4,12 province ^[1] 54:13 provision ^[6] 12:1,16 40:3 44:20 51:16 52:2 purely ^[1] 25:9 put ^[2] 56:5 58:17 putting ^[1] 20:19 Q qualified ^[1] 18:9 qualifies ^[1] 42:4 qualify ^[3] 9:21 28:21 35:16 question ^[82] 8:1 10:1 11:24 18:7,16 19:8,23 20:4,21, 22 22:3,6,10 23:2,3,7,20 24:22 25:24 26:8,18 29:17 30:5,18 32:18,25 33:17,23 35:3,11,14,21 37:9 39:4 40:22 43:4 44:12,16 45:21 46:17 47:12,14,22 48:11,25 49:8,9,10 51:12 52:19 53:12 54:7,10,16 57:17,22,25 60:3,3,6,18,22,23,25 61:3 63:20 64:3 65:8,18 66:6,9, 15 67:2,8,9,11,13,15,23,24 68:2,5 questions ^[28] 14:25 38:9 42:18 43:24 44:1 46:2 49:15,17 50:1 51:4,6 53:8,16 56:13 59:1 60:10 61:14,17, 24 62:21 63:7,11,11 64:17, 20 65:11 68:24,25 quibble ^[1] 22:10 quick ^[1] 44:8 quickly ^[1] 45:7 quite ^[1] 32:15 quo ^[1] 25:6 R raises ^[1] 24:18 rather ^[1] 58:17 rationale ^[1] 59:14 reach ^[2] 9:4 55:11 reached ^[1] 17:7	read ^[9] 10:9 16:7 37:7,10, 17,18 50:24 68:17,18 readily ^[1] 28:6 reading ^[1] 11:20 reaffirm ^[1] 25:13 realistic ^[2] 44:23 64:14 realistically ^[1] 45:5 really ^[19] 12:2,20 21:9,10 22:8 23:10 24:19,25 29:24 41:4 42:22 45:19 53:4 63:16,25 64:5,6 66:5 67:16 reason ^[2] 9:14 59:21 reasonable ^[13] 15:15,23 16:16 17:7 18:2 19:4,10 29:14 47:5,8 57:23 58:14,15 reasonableness ^[1] 19:20 reasonably ^[1] 55:11 reasoning ^[1] 20:2 reasons ^[2] 21:13 44:8 rebuttal ^[1] 65:2 recognized ^[1] 61:11 recognizes ^[1] 20:13 recognizing ^[1] 31:14 record ^[7] 12:8,8 17:5 20:6 23:21 28:2 67:6 record-intensive ^[1] 17:11 recurring ^[1] 61:7 red ^[1] 27:18 referring ^[2] 39:25 56:13 refining ^[1] 28:18 refugee ^[3] 51:11,12,16 regard ^[1] 35:19 regarding ^[2] 12:4 13:2 regardless ^[1] 62:12 regulation ^[4] 31:8 59:3 60:7,15 regulations ^[2] 31:6 67:11 reiterate ^[1] 68:14 related ^[2] 11:12 24:9 relative ^[1] 12:6 relevant ^[4] 62:25 63:2,6,7 relief ^[1] 29:11 relies ^[1] 31:8 religious ^[1] 24:11
---	---	--

Official - Subject to Final Review

remaining ^[1] 30:4 remand ^[4] 25:17 32:20 34:3,8 removability ^[1] 14:11 rendered ^[1] 17:8 repeat ^[1] 62:4 reply ^[4] 37:23 38:10 40:4 68:3 requirement ^[1] 25:18 requirements ^[1] 10:20 requires ^[2] 10:10 43:4 requisite ^[1] 15:17 resemble ^[1] 65:11 reserve ^[1] 61:16 resisted ^[1] 32:5 resisting ^[1] 64:1 resolve ^[4] 31:18 34:11 46:10 48:6 resolved ^[2] 9:17 40:18 respect ^[6] 12:19 39:12 40:14 49:18,19,23 respectfully ^[2] 13:11 18:4 respects ^[2] 41:21 45:2 respond ^[1] 32:12 respondent ^[1] 42:14 responds ^[1] 30:20 response ^[2] 31:1 66:13 responsibility ^[1] 60:19 result ^[1] 17:8 reticulated ^[2] 13:8 50:3 reversed ^[1] 15:14 review ^[48] 8:14 10:7,22 11:9,10 13:9 16:22 17:8 18:13 30:7,13,21,22 33:14 39:3 40:12 41:15,17,21 44:4,5,17,25 45:17,22 47:22 48:18 49:10,11,18 50:25 51:3,6 52:2 55:1,15,24 56:5 59:1 60:11 61:17,22,23 64:5,16 65:14 66:16 67:3 reviewed ^[15] 15:11 18:19 19:24 24:22 27:8 33:20 36:18 39:15 62:1,15 63:22 65:9,22 68:6,23 reviewing ^[5] 15:19 17:4 19:19,24 59:17	reviews ^[2] 30:18 61:24 rich ^[1] 40:15 rise ^[1] 8:21 rises ^[1] 39:19 rising ^[1] 30:6 roberts ^[9] 8:23 31:21 34:14 36:21 38:21 42:11 46:3,6 64:21 role ^[1] 30:24 room ^[1] 31:15 rosellini ^[54] 9:6 10:24 11:14,22 13:5,19 14:7 15:2,6 16:5,19,24 18:4,15,25 19:16 21:11 22:9,18,22 23:4,13 25:19,25 26:20 27:6,15 31:3 32:4,13,16 33:2,7,12,20,24 34:2,10 35:1,13 36:5 37:3,13,16 38:3,15,19 39:11 40:4 41:10 49:7 65:2,3,5 rule ^[9] 14:24 20:24 21:2 22:12,16,17 35:16 55:3 58:21 run ^[1] 24:17	13 20:24 24:13 31:10 33:11 36:8 59:4 60:7 62:11 68:19,21 scheme ^[1] 13:8 scope ^[1] 11:9 sea ^[2] 45:25 64:5 seafoods ^[1] 18:7 seamen ^[1] 18:9 second ^[6] 13:22 14:6 37:21 45:6 54:2 67:10 section ^[10] 9:22 13:7 18:22,23 30:16 31:9 41:13 42:2 44:11 50:14 see ^[3] 33:19 57:11 61:10 seeing ^[1] 61:7 seeking ^[1] 53:15 seems ^[11] 9:4 10:20 11:3,25 12:1 15:25 16:2 35:9,10 41:7 50:18 sense ^[6] 25:10 27:20 38:1 59:12,24 68:20 sentence ^[2] 16:1,7 separates ^[1] 67:8 serious ^[1] 23:1 seriously ^[1] 51:5 serve ^[1] 53:5 service ^[1] 35:7 set ^[7] 9:16 10:4 23:8 25:23 26:14 29:20 55:10 setting ^[1] 48:22 settled ^[1] 54:3 several ^[4] 44:8 47:1 51:1 54:9 sexual ^[1] 24:11 share ^[1] 60:19 shot ^[1] 43:9 shouldn't ^[1] 39:8 show ^[5] 51:16,20 57:7 62:16 68:10 showed ^[2] 33:5 53:14 shown ^[3] 13:20 27:14 60:13 sicario ^[2] 43:11,23 side ^[5] 14:22 32:11 34:19 55:22 58:4 signed ^[1] 21:20 significant ^[3] 25:5 40:17	41:23 silent ^[1] 39:6 silently ^[2] 45:4 64:15 similar ^[4] 26:9 27:14 35:11 48:13 singled ^[1] 41:12 situation ^[3] 10:7 26:6 53:10 situations ^[3] 27:3 28:9 46:16 slew ^[1] 24:8 snapshot ^[1] 40:18 sole ^[2] 9:19 30:4 somehow ^[5] 12:25 13:12 40:18 54:6 68:11 someone ^[3] 18:22 28:3 51:12 sorry ^[2] 46:4 49:20 sort ^[7] 8:25 9:3 22:21 56:2,4,16 63:17 sotomayor ^[19] 31:25 32:1,7,14,22 33:3,10,19,22,25 34:9,13 56:25 57:6,20 58:3,13,23 64:23 sounds ^[2] 21:9,10 space ^[1] 49:25 speaks ^[1] 47:23 special ^[1] 41:12 squared ^[1] 29:7 staff ^[1] 29:2 stage ^[2] 53:20 54:2 standard ^[45] 10:3,6,22 11:10 15:18 16:1,2,13,23 23:24 24:3 25:21,22 26:17 27:5 28:11 30:22 32:2,24 36:4 40:11 42:20 45:7,9 47:23 48:24 49:1 50:24 52:14 53:23,24 54:5 56:5 57:17 58:1,7,9,10,14 62:10,13,14,17 63:9,12 standards ^[3] 18:10 44:25 53:25 standing ^[1] 57:9 start ^[2] 13:6 42:17 state ^[4] 8:10 16:10 36:18 68:16 stated ^[1] 62:13
---	---	--	---

Official - Subject to Final Review

statement ^[1] 46:17 states ^[1] 10:15 status ^[1] 25:6 statutes ^[1] 14:10 statute ^[16] 10:6,21 11:21 26:2 30:24 31:7 35:24 36:8 37:18,18,19 45:8 50:5 55:23 65:10 67:19 statutes ^[1] 37:7 step ^[5] 13:22,24 14:5,5,6 stepfather ^[1] 43:13 stepsister ^[1] 43:12 still ^[5] 17:14 23:20 31:16 39:16 60:15 stock ^[1] 24:3 stop ^[1] 60:7 straight ^[1] 21:22 strangers ^[1] 21:16 street ^[1] 28:3 string ^[2] 39:21 40:2 stripped ^[1] 41:17 strong ^[2] 34:18 65:17 stronger ^[1] 8:14 structure ^[2] 30:21 50:6 stuck ^[1] 22:14 subcomponent ^[1] 40:12 subject ^[5] 45:17,22 48:18 60:11 64:4 subjective ^[2] 16:10 68:16 subset ^[1] 11:13 subsidiary ^[1] 19:7 substantial ^[19] 8:13 33:9 35:4,12 39:3 44:4,16,19 47:10,14 49:10,11,17 51:3,6 52:1 54:25 58:21 64:16 subsumed ^[1] 32:18 succeeds ^[1] 47:4 suffer ^[1] 57:12 suffered ^[1] 8:5 suffering ^[19] 26:13 32:11 33:5 42:23 43:2,3 46:13,18,23 52:13,19 53:2 57:8,9,10,13 62:18,19 63:21 sufficient ^[2] 36:11 51:20 sufficiently ^[2] 22:2 28:20 suggest ^[2] 15:25 16:2	suggesting ^[2] 12:25 30:2 suggestion ^[1] 54:2 suggests ^[1] 53:4 summary ^[1] 54:15 supported ^[1] 40:17 supposed ^[4] 10:23 12:6,22 39:6 sustains ^[1] 51:14 T talked ^[5] 44:11 49:14 56:21 63:16 67:1 talks ^[1] 43:19 tells ^[2] 10:22 41:19 term ^[5] 21:19 28:11 48:5 63:19 66:20 terms ^[2] 12:5,21 testimony ^[6] 8:17 9:9 20:5 23:11 31:15 51:22 text ^[4] 44:9 50:20 65:10 66:4 textual ^[1] 51:4 therefore ^[1] 10:21 there's ^[12] 12:12 20:23 27:9 35:15 44:23 48:4 54:10,17 56:10 62:23 64:13,13 they'll ^[1] 55:4 they've ^[5] 11:16 14:11 20:5 25:4 32:8 thinking ^[3] 22:21 34:18 52:5 thinks ^[3] 20:20 61:25 62:2 thomas ^[3] 31:23 46:5 64:22 though ^[4] 12:1 21:22 59:20 67:3 threat ^[8] 20:24 21:2 22:1 28:20 32:10 57:8,10,14 threatened ^[3] 43:13 47:1 53:13 threateners ^[1] 47:2 threats ^[10] 8:19 20:23 21:8 22:7,24 24:9 43:20,20 46:21 55:6 three ^[1] 44:8 thrust ^[5] 40:23 41:3,4 51:10 64:10	title ^[1] 51:15 today ^[1] 39:16 tolling ^[1] 65:19 took ^[2] 8:17 51:4 top ^[1] 31:13 torture ^[2] 30:3,6 totality ^[2] 26:16 52:22 totally ^[2] 54:22,22 tradition ^[2] 56:11,24 traditional ^[1] 15:18 traditionally ^[2] 27:24 54:13 transforms ^[1] 60:3 treated ^[3] 50:10,12 60:2 treating ^[2] 12:24 56:22 treatment ^[1] 41:12 treaty ^[2] 21:20 66:23 tricky ^[1] 38:4 tried ^[1] 65:24 trier ^[5] 50:23 51:8,17,21 53:17 trier-of-fact ^[1] 44:13 true ^[6] 8:18 23:14,15 27:2 39:13 53:16 trying ^[8] 11:7 12:2,20 39:7 41:8 60:15 67:12 68:10 tsc ^[2] 46:15 54:14 turn ^[3] 49:8,8 50:2 two ^[4] 21:13,15 35:13 44:14 typically ^[1] 9:1 U u.s ^[16] 17:16 20:7 21:16,23 23:9,22 24:13,20 30:12 42:24 49:14 56:3 63:17 66:4,7 67:1 ultimate ^[4] 18:16 19:8 25:23 46:12 ultimately ^[2] 14:14 18:18 unaware ^[1] 45:3 under ^[18] 8:3,21 16:3,13 17:16 18:9 19:9 20:2,2,7 26:1 30:2,12 47:10,22 48:15 55:23 65:9 underlying ^[4] 19:23 35:10 64:10	21 36:3 59:14 understand ^[15] 10:5,12 11:3,19 14:4,16 20:21 32:9,23 34:16,19 38:24 41:2 53:8 66:22 understanding ^[2] 23:25 59:3 understood ^[3] 10:17 28:12 39:2 undeveloped ^[1] 54:22 undisputed ^[7] 8:16 9:17 16:15 26:15 30:4 42:4 46:20 united ^[1] 10:15 unless ^[3] 10:16 12:15 64:19 up ^[9] 26:12,16 33:9 42:17 48:11 56:2 62:21 66:13,25 uses ^[3] 31:9 32:3 45:10 usurping ^[1] 17:23 V value ^[1] 68:21 variety ^[1] 45:10 vast ^[1] 27:3 ventura ^[1] 61:12 verdict ^[4] 17:5 18:21 19:7 55:16 verdicts ^[4] 15:19 17:2 18:13 55:9 versions ^[1] 61:8 versus ^[7] 17:3,14 19:1 23:16 46:25 67:13,24 victim ^[1] 62:24 victor ^[1] 15:21 view ^[1] 9:7 viewed ^[3] 18:20 36:17 41:22 viewing ^[2] 31:17 38:7 views ^[1] 9:13 violate ^[1] 18:23 violates ^[2] 12:15 18:22 violence ^[1] 24:11 vouching ^[1] 41:25 W wait ^[1] 50:16 waive ^[1] 34:6
---	---	---	---

waiver ^[1] 34:4 wanted ^[3] 39:9 44:4 61:18 warrant ^[1] 25:17 warrants ^[1] 20:14 waterfront ^[1] 12:3 way ^[22] 9:7,18 23:9 44:23 45:11 48:22 49:13 50:13 51:11,13,14,21 52:4 55:15,18 56:16,20,22,24 61:21,22 62:12 weeds ^[1] 23:18 weigh ^[4] 44:1 47:6 54:12 55:2 weighing ^[10] 9:2 21:9 43:4 44:6 47:3 51:22,23 54:19 60:25 61:4 welcome ^[1] 46:2 well-founded ^[1] 8:7 whenever ^[1] 9:16 whether ^[41] 8:6 12:13 15:22 16:11,16 17:6 18:7,16,17 19:4,8,10 21:7 22:4 24:5 25:18 26:15,16 27:4,13 28:2 30:5 32:19 35:5,15 39:8 41:14 42:3 43:21 53:12,21,21,23 54:4,5 56:11 57:22 58:6 60:12 61:4 63:12 whole ^[1] 24:10 wilkinson ^[5] 21:18 45:13,23 63:15 64:2 will ^[5] 32:11 45:6 46:14 55:1,24 win ^[1] 47:10 wins ^[1] 55:1 within ^[3] 9:22 30:7,16 without ^[1] 55:24 witnesses' ^[1] 31:15 wonder ^[2] 15:7 39:8 wondering ^[1] 41:1 word ^[3] 20:21 21:15,22 words ^[3] 31:9 42:6,8 work ^[6] 30:12,14 45:11 48:12 50:4 56:8 workers ^[1] 18:8 world ^[1] 54:6 worried ^[1] 12:23	write ^[1] 62:5 written ^[3] 36:25 37:1,11 Y year ^[1] 45:13
---	---