

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS VEGA,)
)
) Petitioner,)
)
) v.) No. 21-499
)
TERENCE B. TEKOH,)
)
) Respondent.)

Pages: 1 through 82
Place: Washington, D.C.
Date: April 20, 2022

HERITAGE REPORTING CORPORATION

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

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -
3 CARLOS VEGA,)
4 Petitioner,)
5 v.) No. 21-499
6 TERENCE B. TEKOH,)
7 Respondent.)
8 - - - - -

9
10 Washington, D.C.

11 Wednesday, April 20, 2022
12

13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:00 a.m.
16

17 APPEARANCES:

18 ROMAN MARTINEZ, ESQUIRE, Washington, D.C.; on behalf
19 of the Petitioner.

20 VIVEK SURI, Assistant to the Solicitor General,
21 Department of Justice, Washington, D.C.; for the
22 United States, as amicus curiae, supporting the
23 Petitioner.

24 PAUL L. HOFFMAN, ESQUIRE, Hermosa Beach, California;
25 on behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	ROMAN MARTINEZ, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	VIVEK SURI, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioner	37
9	ORAL ARGUMENT OF:	
10	PAUL L. HOFFMAN, ESQ.	
11	On behalf of the Respondent	52
12	REBUTTAL ARGUMENT OF:	
13	ROMAN MARTINEZ, ESQ.	
14	On behalf of the Petitioner	80
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 21-499, Vega versus Tekoh.

Mr. Martinez.

ORAL ARGUMENT OF ROMAN MARTINEZ

ON BEHALF OF THE PETITIONER

MR. MARTINEZ: Mr. Chief Justice, and may it please the Court:

The Ninth Circuit's extension of Miranda into 1983 litigation is inconsistent with settled precedent and sound policy. For two reasons, you should reverse.

First, Miranda is a judicially crafted prophylactic rule, and the violation of such a rule doesn't violate the constitutional rights of any person. That's what the Chavez plurality said, reiterating pre-Dickerson holdings that Miranda violations result in no constitutional deprivation, that's Payne, and no identifiable constitutional harm, that's Elstad.

Tekoh and the Ninth Circuit say that Dickerson abandoned these cases. But, in fact, Dickerson reaffirmed their limits on Miranda's

1 scope. The cases show that Miranda's
2 presumption of coercion applies only when courts
3 assess whether a statement is admissible in the
4 prosecution's case-in-chief at trial. In that
5 context, when a defendant's liberty is at stake,
6 Miranda creates a protective fence around the
7 Fifth Amendment. It gives defendants a windfall
8 benefit by excluding statements that are
9 completely voluntary. A trial court's Miranda
10 violation taking away that windfall is
11 reversible error, but it doesn't violate the
12 defendant's actual Fifth Amendment rights, and
13 it doesn't trigger a right to money damages.

14 Second, as Tekoh now concedes, the
15 Ninth Circuit's proximate causation holding is
16 wrong. That concession provides a complete
17 basis for reversal here. Officers can't be held
18 liable when the mistakes are made by prosecutors
19 and judges.

20 Tekoh tries to rescue his case with a
21 brand-new causation theory based on alleged
22 lies. But that theory can't work for him here.
23 It's inconsistent with his jury instruction. It
24 was forfeited below. Its factual premise was
25 rejected by the jury. And it's legally baseless

1 in any event.

2 Sergeant Vega's conduct has been
3 exonerated from every angle by four different
4 fact finders. Two judges said Miranda warnings
5 weren't required. A jury said there was no
6 fabrication of evidence. Both juries said there
7 was no coercion. This case should end.

8 Unless the Court has questions, I'll
9 start with our view of what --

10 JUSTICE THOMAS: Mr. Martinez, the --
11 in -- in Dickerson, we held -- the Court held
12 that Miranda could not be displaced by a federal
13 statute by Congress.

14 If that's the case, then why is it not
15 a constitutional -- a -- a right secured by the
16 Constitution and, hence, actionable under 1983?

17 MR. MARTINEZ: Your Honor, we -- we
18 read Dickerson as saying that -- that -- that
19 Miranda has constitutional status,
20 constitutional underpinnings, and we agree with
21 the other side --

22 JUSTICE THOMAS: What does that mean?

23 MR. MARTINEZ: I think what that means
24 is that it can't be -- it can't be overturned by
25 statute. But I think Dickerson was very clear

1 that it was not -- you know, there was a dispute
2 in Dickerson between the majority opinion and
3 Justice Scalia, where Justice Scalia was saying
4 the majority's theory here is basically that
5 Miranda violates -- that a Miranda violation is
6 a violation of Fifth Amendment rights. And the
7 Court very clearly didn't -- was not willing to
8 say that.

9 I think the dispute between us here on
10 what Dickerson does is whether Dickerson
11 essentially changes the status quo and overturns
12 the line of pre-Dickerson cases, the cases that
13 came between Miranda and Dickerson, which
14 repeatedly said that a violation of Miranda
15 doesn't violate anyone's constitutional rights.

16 And the Chavez plurality, I think,
17 addresses this issue head on, and it says that
18 because Miranda's a judicially created
19 prophylactic rule, the violation of that rule
20 doesn't violate anyone's constitutional rights.
21 And that's consistent, as I was saying earlier,
22 with what the Court had previously said in cases
23 like Payne and Elstad.

24 JUSTICE THOMAS: Yeah, but I couldn't
25 get a majority in Chavez, so the -- that -- I

1 don't know how much that does for you.

2 Would you tell me, what is the -- how
3 could something be both -- a rule be both
4 prophylactic and constitutional?

5 MR. MARTINEZ: I think it can be
6 prophylactic and constitutional because the
7 whole purpose of the rule is to protect the
8 underlying constitutional right against
9 compelled self-incrimination.

10 So what this Court has said repeatedly
11 in the cases between Miranda and Dickerson but
12 also in -- in the Chavez plurality is that,
13 essentially, the -- the rule is prophylactic in
14 the sense that it sweeps more broadly than the
15 Fifth Amendment itself. It excludes statements
16 that are voluntary and therefore themselves
17 would not violate the Fifth Amendment.

18 And the Court has said in Dickerson
19 that this extra measure of protection is needed
20 for a reason, because it's hard to know what
21 goes on inside the interrogation room, and when
22 a defendant's liberty is at stake in a criminal
23 trial and when the prosecution's trying to use a
24 statement as part of its case-in-chief at trial,
25 we're essentially going to presume coercion.

1 We're going to presume a Fifth Amendment
2 violation in that context.

3 So what the cases do essentially is
4 create a presumption of coercion in that one
5 context. But the presumption of coercion is
6 very different from actual coercion, and we know
7 that from all of the pre-Dickerson cases, which
8 essentially say that statements that would be
9 excludable under Miranda because they are
10 presumed to have been coerced can nonetheless be
11 used in other ways that would be impermissible
12 if they were actually coerced.

13 CHIEF JUSTICE ROBERTS: Mr. Martinez,
14 if I could focus just for a minute on the
15 language of the cause of action here, 1983. It
16 gives individuals a right against the
17 "deprivation of any rights, privileges, or
18 immunities secured by the Constitution and
19 laws."

20 Now, under Miranda, you have a right
21 not to have unwarned confessions admitted into
22 evidence. You wouldn't have that right if it
23 weren't for the Constitution. So why isn't that
24 right one secured by the Constitution?

25 MR. MARTINEZ: Well, I think for a

1 couple reasons, Your Honor.

2 I think, first of all, you have a
3 precedential reason, which is that both before
4 and after Dickerson, the Court has made clear or
5 at least a majority before Dickerson and then
6 the plurality in Chavez, I think, interpreting
7 the whole line of cases, including Dickerson --

8 CHIEF JUSTICE ROBERTS: Right. Well,
9 let's focus on the -- on the text.

10 MR. MARTINEZ: Okay.

11 CHIEF JUSTICE ROBERTS: It seems to me
12 that you -- you wouldn't have a Miranda right if
13 it weren't for the Constitution.

14 MR. MARTINEZ: Well, we don't --

15 CHIEF JUSTICE ROBERTS: The right is
16 secured by the Constitution.

17 MR. MARTINEZ: -- we don't think that
18 Miranda creates a Fifth Amendment right in the
19 sense that's relevant here in the 1983 context.

20 And I think one way to think about
21 this is we -- there are all sorts of evidentiary
22 rules that are out there that a defendant can
23 invoke at a criminal trial or a party can invoke
24 in litigation. There are all sorts of
25 evidentiary rules that can be invoked, but no

1 one thinks that the -- that those evidentiary
2 rules create rights that are enforceable in
3 1983.

4 I think the two examples that I'll
5 give you, the exclusionary rule under the Fourth
6 Amendment is a -- is a rule of law that can be
7 invoked by the defendant, but in Calandra, this
8 Court recognized that it doesn't create a
9 personal constitutional right in the relevant
10 sense.

11 Federal Rules of Evidence is another
12 example. If I sue a state government under
13 Title VII on an employment discrimination claim
14 and the opposing counsel for the state
15 introduces a statement that was in violation of
16 the hearsay rule or in violation of the rule
17 against character evidence, that violates a rule
18 of evidence that -- that's a law of the United
19 States.

20 CHIEF JUSTICE ROBERTS: Right. A
21 right -- a right --

22 MR. MARTINEZ: But it's not a right
23 under 1983. You can't get damages for that.

24 CHIEF JUSTICE ROBERTS: It's a right
25 secured by the Federal Rules of Evidence. What

1 is the comparable provision that secures the
2 Miranda right? Under your example, it's the
3 Federal Rule of Evidence that secures the right.

4 What's comparable in your --

5 MR. MARTINEZ: We just don't think
6 it's -- it -- we think -- we think the
7 Constitution secures the ability to block the
8 statement. We don't dispute that. What we're
9 saying is that the Constitution doesn't -- in
10 here, the claim that's being brought is that
11 it's the Fifth Amendment and that's the only
12 argument that the other side has made.

13 We just don't think that the Fifth
14 Amendment creates that -- that -- creates a
15 right that is, you know, enforceable or that --
16 that is violated when Miranda -- an unwarned
17 statement is admitted.

18 And, again, that's consistent with how
19 the Chavez plurality, I think, correctly read
20 Dickerson and the pre-Dickerson cases to -- to
21 kind of come up with a -- a coherent
22 harmonization of this Court's cases starting
23 with Miranda, taking the intervening cases
24 between Miranda and Dickerson, and then
25 Dickerson itself. All those cases, I think, are

1 best read the way that the Chavez plurality read
2 them to essentially say, yeah, Miranda is
3 important and it's constitutionalized, you can't
4 overturn it, but, at the same time, a
5 deprivatation of a judicially created prophylactic
6 rule like the one in Miranda doesn't violate the
7 constitutional rights of any person.

8 JUSTICE KAGAN: I mean, it does strike
9 me, Mr. Martinez, that you -- you keep on
10 saying, like, both before and after Dickerson.
11 Now, after Dickerson, you're relying mostly on a
12 plurality, which, as Justice Thomas said, is a
13 plurality. And before Dickerson, you know, you
14 definitely have some good cases on your side.

15 But then there's Dickerson, and
16 Dickerson says something that's quite different
17 from the before Dickerson cases, where, you
18 know, even though Chief Justice Rehnquist didn't
19 do exactly -- you know, state in exactly so many
20 words, as -- as you suggested, that there was,
21 you know, a right to -- of -- that Miranda gave
22 rise to, he -- he said all but that in exactly
23 the way Justice Thomas suggested.

24 MR. MARTINEZ: Justice Kagan, I
25 respectfully would disagree with that, but I

1 think you have put your finger on the kind of
2 issue, which is what exactly does Dickerson do.
3 And just to frame this issue, if you look at
4 what the Ninth Circuit said, this is at page 20a
5 of the petition appendix.

6 The Ninth Circuit says that "the
7 Supreme Court in no way maintained the status
8 quo" and "it affirmatively backed away from" the
9 prior cases. So it reads Dickerson as a -- as a
10 decision that -- that creates this evulsive
11 change, rejects the earlier cases, comes up with
12 something new.

13 If you look at the language of
14 Dickerson itself, it's exactly the opposite, and
15 I would refer the Court to page 443 of
16 Dickerson. When Dickerson is talking about this
17 alleged discrepancy between the Miranda rule and
18 the post-Miranda cases, Justice Scalia had --
19 and others had argued that Miranda should be
20 overturned because there's the -- the case law
21 is incoherent. And the -- the -- the Court in
22 Dickerson says no. The theoretical
23 underpinnings of Miranda are perfectly
24 consistent with the post-Miranda cases that
25 we're relying on, and it says that -- that these

1 are all consistent, it's one harmonious --

2 JUSTICE KAGAN: But, in fact, what --

3 MR. MARTINEZ: -- you don't see a --

4 JUSTICE KAGAN: -- Dickerson does is
5 Dickerson says there's a constitutional baseline
6 here, and, you know, it might be that Congress
7 could come up with something that's just as
8 effective as Miranda or more so, but that's what
9 Congress would have to do. If Congress wants to
10 intervene in this area, there is a
11 constitutional baseline of procedures that are
12 constitutionally necessary to secure the
13 constitutional Fifth Amendment right.

14 MR. MARTINEZ: That's exactly right,
15 Your Honor, but -- but the justification
16 Dickerson gave was not that this is do -- we're
17 now -- we're doing something new. In fact, it
18 was the opposite. It said that we've always
19 done this. It looked back and it said Miranda
20 was always a constitutional decision --

21 JUSTICE KAGAN: To the extent it does
22 that, it essentially recasts the precedent in
23 its own light. But it's the relevant precedent
24 here.

25 MR. MARTINEZ: I -- I agree with that,

1 but I just think that you need to read the -- or
2 focus on the part of the precedent where it says
3 that the post-Miranda cases that clarify the
4 rule and -- and what it means, the post-Miranda
5 cases that we're relying on, that those are
6 perfectly consistent with the theoretical
7 underpinnings of Miranda itself.

8 And so I think Dickerson very
9 consciously is saying -- you know, it's not
10 saying, hey, we zigzagged a couple times and
11 we've got to zigzag back. It's saying, no, this
12 is actually a consistent, common-sense, coherent
13 line of cases.

14 I think it's really driven by Justice
15 Rehnquist's and Chief Justice Rehnquist's votes
16 and opinions throughout this entire line of
17 doctrine, including Dickerson and Chavez and in
18 the earlier cases as well, and it
19 basically says, yeah, Miranda is
20 constitutionalized, it's very important.
21 It's -- you know, you can't overturn it by
22 statute, but that doesn't mean that it creates a
23 kind of presumption of coercion that applies in
24 every single context.

25 JUSTICE SOTOMAYOR: Counsel, if that's

1 the case, then what do we do with Dickerson's
2 observation that if we don't view it as
3 having -- as being constitutionally required,
4 that -- I'm using the language of Dickerson, all
5 right -- what do we do with calling it a
6 prophylactic rule, which Dickerson rejected
7 expressly?

8 It said that language is loosely used
9 and doesn't suggest that it's not
10 constitutionally required. If it's
11 constitutionally required, why does it bind
12 state courts? Why do we have habeas review?

13 MR. MARTINEZ: We --

14 JUSTICE SOTOMAYOR: If we do what
15 you're suggesting and go back to the
16 prophylactic language, we are suggesting that
17 you want us to overturn --

18 MR. MARTINEZ: Your Honor --

19 JUSTICE SOTOMAYOR: -- the essence of
20 Dickerson and Miranda.

21 MR. MARTINEZ: No. We -- we have no
22 quarrel with those cases. We have no objection
23 to any of those cases at all. We think -- we
24 don't think that Dickerson rejected the
25 prophylactic rule language, and we know that

1 because Dickerson said it was consistent with
2 the -- the pre-Dickerson cases.

3 JUSTICE SOTOMAYOR: No, it said --

4 MR. MARTINEZ: We know that as --

5 JUSTICE SOTOMAYOR: I -- I'll quote
6 Dickerson. Conceded that there is language in
7 some of our opinions that supports the view
8 taken by the court of appeals suggesting that
9 the court's earlier statement suggesting that
10 Miranda was merely prophylactic and its
11 conclusion that Miranda protections were not
12 constitutionally required, and it rejected the
13 prophylactic description.

14 MR. MARTINEZ: No, Your Honor, I think
15 it rejected the conclusion that the Constitution
16 doesn't require it.

17 JUSTICE SOTOMAYOR: All right.

18 MR. MARTINEZ: And -- and just --

19 JUSTICE SOTOMAYOR: Well, then we go
20 back to the Chief's question.

21 MR. MARTINEZ: Sure.

22 JUSTICE SOTOMAYOR: But I -- if we say
23 the Constitution doesn't require it --

24 MR. MARTINEZ: We're -- we're not
25 arguing that.

1 JUSTICE SOTOMAYOR: -- how do we have
2 habeas review and how do we get to tell state
3 courts that they have to follow a rule that's
4 not constitutionally required?

5 MR. MARTINEZ: Your -- Your Honor,
6 just to be very clear, we are not asking you to
7 overturn Dickerson. We think that -- that
8 Dickerson is -- is what it is. We think it's
9 perfectly good law. In fact, I think we said
10 some nice things about it --

11 JUSTICE SOTOMAYOR: Just answer --

12 MR. MARTINEZ: -- in our brief.

13 JUSTICE SOTOMAYOR: -- my question.

14 MR. MARTINEZ: But I'm -- I --

15 JUSTICE SOTOMAYOR: If it's a
16 prophylactic rule --

17 MR. MARTINEZ: Sure.

18 JUSTICE SOTOMAYOR: -- not required by
19 the Constitution, is it required by the
20 Constitution or not?

21 MR. MARTINEZ: I think Dickerson says
22 that it -- that it has to --

23 JUSTICE SOTOMAYOR: If it's required,
24 then we go back to the Chief's reading of the
25 language of 1983, but I still don't understand

1 how using the word "prophylactic" gets you out
2 of 1983.

3 MR. MARTINEZ: So I think what
4 "prophylactic" means is that -- what the Court
5 has said is that we need this prophylactic rule.
6 We need to go broader than the Constitution
7 itself. We need to presume coercion in this
8 context in order to protect the underlying right
9 against compelled self-incrimination.

10 And so it's kind of an adjunct.
11 It's -- but that's different from saying that it
12 violates the actual constitutional rights of
13 someone if a statement is admitted.

14 And that's why the Court said that
15 repeatedly in Payne and Elstad, and that's why I
16 think the Chavez plurality correctly harmonized
17 the case law and recognized that that was true
18 even after Dickerson.

19 JUSTICE SOTOMAYOR: Can you tell me
20 why we're here? You have two -- I don't want
21 you to stop before you get to the second, the
22 proximate cause, okay?

23 You are right that the other side
24 never gave the trial courts below an instruction
25 consistent with its position today that the only

1 statements that it could rely upon are -- as
2 giving it a cause of action are statements that
3 were falsely made by the police. So there's
4 some sort of estoppel going on here. So I'm not
5 sure how they can win no matter what we find.

6 MR. MARTINEZ: We agree with that,
7 Your Honor.

8 JUSTICE SOTOMAYOR: All right. And so
9 assuming that we don't touch Miranda or
10 Dickerson and take it at its face and we go to
11 your second point, proximate causation, you win
12 because there's some sort of estoppel here?

13 MR. MARTINEZ: So I -- I think just to
14 be very clear because I want to make sure that
15 analytically we're -- we're all set, on the
16 first issue, we agree, we don't have to touch
17 Miranda or Dickerson. You don't have to
18 overturn those decisions, but we can still win
19 based on the understanding of Miranda and
20 Dickerson that was put forth in the Chavez
21 plurality and that we think is right.

22 If you agree with us on that, you can
23 stop there, we win the case. If you want to
24 then turn to proximate causation, I think the
25 most straightforward way to resolve the case is

1 to say that the Ninth Circuit decided this case
2 based on the instruction that was proposed and
3 the theory that was put forward that the Ninth
4 Circuit's analysis of that is wrong for the --
5 for the reasons that we argued in our brief and
6 that they essentially concede. And I think you
7 could just end it right there if you wanted to
8 reach a holding on proximate causation.

9 But just to be clear, we do think we
10 have an independent basis to win on our first
11 argument. If you want to go beyond that on
12 proximate causation, I'm happy to talk about why
13 we think that theory both was not preserved
14 below, not preserved at the cert stage here,
15 inconsistent with their jury instructions --

16 JUSTICE SOTOMAYOR: If --

17 MR. MARTINEZ: -- factually --

18 JUSTICE SOTOMAYOR: If --

19 MR. MARTINEZ: -- unsupported. We can
20 talk about all that too.

21 JUSTICE SOTOMAYOR: Two prosecutors
22 below and a judge at trial permitted the
23 statement to come in. But, in my experience,
24 the prosecutor offers a statement based on what
25 the police officer says, and it's not until a

1 hearing or the trial that the defense puts on
2 his or her side of the story. And then it's the
3 jury who decides whether or not that confession
4 was, in fact, coerced. If there's a conviction,
5 clearly, the defense's story has not been
6 believed. If there's an acquittal, like there
7 was here, it's an open question as to whether or
8 not the police officer was believed or not.

9 But I don't understand how you can say
10 that there's an intervening cause by a judge or
11 a prosecutor in introducing a statement if
12 they're not the ultimate arbiter of who's
13 telling the truth.

14 MR. MARTINEZ: Well, I -- I think two
15 points on that if I can answer, Mr. Chief
16 Justice.

17 CHIEF JUSTICE ROBERTS: Certainly.

18 MR. MARTINEZ: I think two points on
19 that.

20 First of all, here, there was a
21 suppression hearing. There was a full-blown
22 adversarial suppressing hearing. Both sides --
23 that was the -- that's the point in time in the
24 case in which both sides have to come forward
25 with their best evidence to argue about the

1 admissibility of the statement. And twice in
2 front of both criminal trial judges, because
3 this was done twice, twice the trial judge
4 agreed with us that there was no Miranda warning
5 that was required here.

6 And so I think that in and of itself
7 is significant, and I think, you know, this
8 Section 1983 litigation really is an attempt to
9 relitigate that sort of fundamental point.

10 And so I -- I guess I'll -- I'll leave
11 it there, but I'm happy to come back to it in
12 the seriatim questioning.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Justice Thomas, anything?

16 Justice Breyer?

17 Justice Sotomayor?

18 JUSTICE KAGAN: Mr. Martinez, you
19 mentioned before Chief Justice Rehnquist's
20 journey in these cases. I just want to talk a
21 little bit about that. I appreciate that you
22 think that your position does not undermine or
23 isn't consistent with Dickerson, but I kind of
24 want to assume that that's not true or at least
25 have you assume that people could think that it

1 was not true. And -- and --

2 MR. MARTINEZ: Sorry. To -- to assume
3 that -- that it -- that --

4 JUSTICE KAGAN: That it does --

5 MR. MARTINEZ: -- there was
6 zigzagging?

7 JUSTICE KAGAN: That -- that if we
8 come out your way, it will undermine Dickerson,
9 it will be understood as inconsistent with
10 Dickerson. I mean, that's what I think, and I
11 know you don't think it, but I want to put that
12 aside and -- and -- and to have you at least
13 acknowledge that there are many people who will
14 think of this as utterly inconsistent with
15 Dickerson.

16 And I just wonder how -- your reaction
17 to what Dickerson was all about and what it said
18 about the Court as an institution, in part
19 through the lens of Chief Justice Rehnquist's
20 progress through these cases, because, you know,
21 I think what people think about Dickerson is
22 that, essentially, the Chief Justice understood
23 that Miranda had come to mean something
24 extremely important in the way people understood
25 the law and the way people understood the

1 Constitution and that whatever he might have
2 thought about the original bases of Miranda,
3 that it, you know, was sort of central to
4 people's understanding of the law and that if
5 you overturned it or undermined it or denigrated
6 it, it would be -- you know, it had -- would
7 have a kind of unsettling effect not only on
8 people's understanding of the criminal justice
9 system but on people's understanding of the
10 Court itself and the legitimacy of the Court and
11 the way the Court operates and the way the Court
12 sticks to what it says, you know, not just in a
13 kind of technical stare decisis sense but in a
14 more profound -- in a -- in a more profound
15 sense about the Court as an institution and the
16 role it plays in society.

17 So I -- I guess I just -- that might
18 be above your pay grade, and I'm sorry if it is,
19 but if you would just react to that.

20 MR. MARTINEZ: Your Honor, I think
21 those are important points, and I think that the
22 best way to write an opinion that's consistent
23 with those points and -- and takes proper
24 account of them is to say very clearly that --
25 that Dickerson remains good law. It stays on

1 the books. Miranda and Dickerson are important
2 constitutional decisions of this Court but that
3 those decisions do not go so far as to require a
4 -- the recognition of -- that -- of some -- a
5 Fifth Amendment right has been violated in such
6 a way as to trigger 1983 liability.

7 So I think it's perfectly consistent
8 and is perfectly consistent with what Chief
9 Justice Rehnquist himself voted to do a couple
10 years later in Chavez, perfectly consistent with
11 Dickerson to say both of those things
12 simultaneously.

13 And to the people out there who might
14 be confused about this line of case law,
15 obviously, it's been a very controversial line
16 of case law. All these cases have dissents
17 going back. The dissents are always saying that
18 the majority's opinion is inconsistent with the
19 prior cases. But the through line that runs
20 through them is a consistent common-sense
21 approach by Chief Justice Rehnquist to recognize
22 the importance of Miranda but also to recognize
23 its important limits.

24 And I think you can write an opinion
25 that says both of those things, that doesn't do

1 any harm to Dickerson, but does say that -- that
2 the presumption of coercion that was recognized
3 in those cases doesn't mean that you have to
4 presume a Fifth Amendment violation when it
5 comes to 1983.

6 JUSTICE KAGAN: Thank you.

7 CHIEF JUSTICE ROBERTS: Justice
8 Gorsuch?

9 JUSTICE GORSUCH: Yeah, counsel, I --
10 I'd just like to get your reaction to some of
11 the scholarship that we received in the amicus
12 briefs from a variety of historians suggesting
13 that whether or not Miranda intended to or aimed
14 at the original meaning of the Constitution,
15 there is a fair amount of evidence that by the
16 time of the founding, warnings were considered
17 an important prophylactic rule to protect the
18 right against self-incrimination.

19 MR. MARTINEZ: Right. Your Honor, I
20 think those are important points to consider. I
21 think that this is not the case in which to
22 consider them, mainly --

23 JUSTICE GORSUCH: All right.

24 MR. MARTINEZ: But -- but --

25 JUSTICE GORSUCH: If you'd just spot

1 me that, all right?

2 MR. MARTINEZ: Sure.

3 JUSTICE GORSUCH: Address it on the
4 merits.

5 MR. MARTINEZ: On the merits, I think
6 the historians' brief helps us. I think what
7 the historians' brief says is that it -- it has
8 exhaustively looked at a whole bunch of evidence
9 that hadn't been considered before. And if you
10 read closely at what it says that evidence
11 shows, I think what it says is that in a lot of
12 cases people were encouraged to give warnings
13 because it would help protect the admissibility
14 of statements under a totality-of-circumstances
15 analysis.

16 What the cases don't show -- or what
17 the examples don't show, what the historical
18 evidence does not show is that there is a
19 mandatory rule of exclusion, which is what
20 Miranda recognized. And it certainly doesn't
21 show that there's a mandatory rule of exclusion
22 that somehow gives right to a private cause of
23 action for money damages.

24 So I think that the evidence is
25 actually telling in what it doesn't show, and

1 what it doesn't show is the key point of Miranda
2 and Dickerson, which is that there has to be as
3 an original matter at least this underlying, you
4 know, exclusionary rule. It doesn't say that
5 there's a -- the evidence doesn't support an
6 exclusionary rule.

7 I think the final thing I'd say on
8 this, though, Your Honor, is that if the Court
9 were inclined to take a serious originalist look
10 at this -- at this language, I think, again, you
11 should do it in a case where it's more properly
12 presented, but I also think you would have to
13 grapple with, of course, the actual text of the
14 Fifth Amendment, which does require compulsion
15 and only bars compelled statements.

16 CHIEF JUSTICE ROBERTS: Justice
17 Kavanaugh?

18 JUSTICE KAVANAUGH: What would you say
19 about Withrow, where a lot of the arguments that
20 you're advancing today were similarly --

21 MR. MARTINEZ: Yeah.

22 JUSTICE KAVANAUGH: -- advanced as a
23 basis for saying that Miranda claims should not
24 be cognizable in habeas?

25 MR. MARTINEZ: I think the best way to

1 understand Withrow is that it's essentially
2 treating -- Withrow is the habeas case, of
3 course, and it's essentially -- the issue in
4 that case is whether the statement was properly
5 admitted at trial, whether the trial judge made
6 a mistake by -- by not excluding the statement.
7 And I think it's very similar to the direct
8 appeal context, and I think it's consistent with
9 the underlying purposes of Miranda and
10 Dickerson, which basically limit the presumption
11 of coercion to the admissibility decision by the
12 trial judge at the criminal trial.

13 And I think Withrow says, essentially,
14 recognizing that -- that that's where liberty
15 matters most, we're going to apply the
16 presumption of coercion in that circumstance and
17 we're -- we're going to allow habeas relief.

18 The text of the -- of the habeas
19 statute is different from the text of 1983. We
20 don't think that simply because something is
21 cognizable in habeas it's necessarily cognizable
22 in 1983.

23 If you agree with us and our position
24 based on the Chavez plurality and Justice
25 Rehnquist, you can conclude that there's no

1 Fifth Amendment right that's been violated by a
2 Miranda violation, and, therefore, there's no
3 1983 liability even if there is a habeas -- a
4 violation that's cognizable in habeas.

5 JUSTICE KAVANAUGH: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Barrett?

8 JUSTICE BARRETT: Mr. Martinez, I want
9 to present something to you and see if it's
10 consistent with your understanding. I think
11 Justice Kagan makes some good points, and, you
12 know, there are points made by your friend on
13 the other side about your position being
14 inconsistent with Dickerson. But I wonder
15 whether this is a way that you would agree with
16 characterizing it.

17 So Dickerson didn't ever use the word
18 "constitutional right." It seemed very
19 carefully worded to say "constitutional rule" or
20 "constitutionally required." And I've always
21 taken one of the reasons why Dickerson was
22 controversial was that it asserted a right
23 vis-à-vis state courts and vis-à-vis Congress
24 for the court to announce constitutional
25 prophylactic rules that it could impose on state

1 courts and that it could assert as against
2 Congress so Congress couldn't overrule it by
3 statute but that it didn't think were
4 constitutionally required.

5 So there was inherent tension in
6 Dickerson, and Chief Justice Rehnquist said
7 we're not overruling Miranda and we're living
8 with that tension but never characterized it as
9 a right. And that's an important power, it
10 seems to me, that Dickerson recognized and
11 asserted and that you're not asking us to -- to
12 overturn, right?

13 MR. MARTINEZ: Correct.

14 JUSTICE BARRETT: And so would that
15 description of Dickerson be consistent with your
16 view that Dickerson acknowledged a power on the
17 Court that you want us to leave undisturbed,
18 that it could implement the Fifth Amendment
19 right or that it could prophylactically protect
20 it in a powerful way against the states and
21 Congress but that isn't a definition of the
22 right itself?

23 MR. MARTINEZ: Yes, I think that's
24 exactly right, Justice Barrett. And I think the
25 only additional point I would make is that

1 although this power has been recognized not just
2 in the Miranda line of cases but in a couple
3 others as well, the -- the power to create a
4 kind of prophylactic rule to protect a
5 constitutional guarantee, I think it -- the
6 Court has always recognized that it's doing
7 something very unusual when it creates these
8 rules and that it needs to be very careful and
9 limited and focused on what are -- what is the
10 core underlying real-life constitutional right
11 that you're protecting.

12 And so whether it's Patane saying --
13 the Patane plurality saying that there needs to
14 be a close-as-possible fit between the -- the --
15 the application of the Miranda rule and the
16 underlying right against compelled
17 incrimination -- self-incrimination at trial or
18 Tucker saying the same thing, you really need to
19 do a very rigorous cost/benefit analysis and
20 show that expand -- expanding or creating a
21 prophylactic rule is really necessary.

22 Here, we think it's necessary or the
23 Court has said it's necessary when you're
24 introducing evidence in the prosecution's
25 case-in-chief at trial, but the Court has

1 repeatedly refused to go beyond that, and we
2 respectfully would submit that you shouldn't go
3 beyond it in this case.

4 JUSTICE BARRETT: Thank you.

5 JUSTICE BREYER: I'd like to ask you
6 if there is any analogy you've come across that
7 would have these characteristics: One -- A,
8 there is a constitutional rule; B, there is a
9 prophylactic rule to enforce the constitutional
10 rule; C, Congress does not have the power under
11 the Constitution to change the prophylactic
12 rule; and, D, you can enforce the prophylactic
13 rule in habeas but not in 1983.

14 MR. MARTINEZ: I -- Your Honor, that's
15 a great question. I don't have a specific
16 example that -- that I know for certain sort of
17 checks all four of those boxes.

18 I do think, though, I will point you
19 to the context, I think the Stovall case and the
20 Manson case recognized a prophylactic
21 evidentiary rule of exclusion that allows
22 people -- allows defendants to -- to exclude
23 overly suggestive police lineups, and that
24 was -- has been understood by the lower courts
25 correctly as a prophylactic constitutional rule

1 and the lower -- although I don't think that
2 that could be overturned by Congress -- I don't
3 think that Congress could overturn the
4 Supreme Court's -- this Court's decision, I
5 think the lower courts have correctly recognized
6 that's a prophylactic rule that doesn't give
7 right to a -- rise to a right that can be
8 enforced in 1983.

9 JUSTICE BREYER: Maybe you could add
10 one other thing because, if it's so skimpy, the
11 analogies, I don't know where I'm going if I
12 adopt your position.

13 That is to say, I don't know what
14 other rules there are which may or may not fall
15 within -- I don't know what the distinctions
16 would be, I don't know where we're going, I
17 don't know how many prophylactic rules there
18 are, I don't know how many have fallen within
19 1983, I don't know what the courts have said
20 about prophylactic.

21 I mean, we could stay here a long
22 time, which we won't, listing things I don't
23 know.

24 MR. MARTINEZ: Right.

25 JUSTICE BREYER: All right. So what

1 do you think?

2 MR. MARTINEZ: Well, I think, on that,
3 I think -- like I was suggesting earlier, I
4 think you can write an opinion that makes very
5 clear that you're talking about this particular
6 prophylactic rule and that you're not talking
7 about other -- other circumstances.

8 I think, in this -- with respect to
9 this particular rule --

10 JUSTICE BREYER: All right. If we
11 take that approach, we have to have --
12 unfortunately, we cannot write -- we can say the
13 words, this statute -- this -- rather, this
14 opinion applies only to, now fill in the blank.

15 MR. MARTINEZ: But -- but there --

16 JUSTICE BREYER: Today's case, not
17 tomorrow's. It just doesn't work --

18 MR. MARTINEZ: It doesn't work --

19 JUSTICE BREYER: -- because the law
20 doesn't work that way.

21 MR. MARTINEZ: -- it doesn't work if
22 you stop there, but I think you would say, and
23 here's the two reasons why. Number one, in this
24 unique context, we have a lot of precedent that
25 has repeatedly made clear that constitutional

1 rights aren't violated when Miranda's violated,
2 and number two, even if you didn't have that
3 precedent, we have to do -- we would have to do
4 a kind of cost/benefit analysis that is specific
5 to this particular right.

6 And, here, the cost/benefit analysis
7 supports excluding it from the prosecution's
8 case-in-chief at trial, but it doesn't support
9 treating the -- the completely voluntary
10 statement as coerced in -- in other contexts.
11 And I think that would distinguish other cases
12 that you could then decide when they come up.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Mr. Suri.

16 ORAL ARGUMENT OF VIVEK SURI
17 FOR THE UNITED STATES, AS AMICUS CURIAE,
18 SUPPORTING THE PETITIONER

19 MR. SURI: Mr. Chief Justice, and may
20 it please the Court:

21 Miranda recognized a constitutional
22 right, but it's a trial right concerning the
23 exclusion of evidence at a criminal trial. It
24 isn't a substantive right to receive the Miranda
25 warnings themselves.

1 A police officer who fails to provide
2 the Miranda warnings accordingly doesn't himself
3 violate the constitutional right, and he also
4 isn't legally responsible for any violation that
5 might occur later at the trial. The Ninth
6 Circuit's contrary decision should be reversed.

7 JUSTICE THOMAS: What if the police
8 officer purposely lies in order to convince the
9 prosecutor to use the statement?

10 MR. SURI: We would still say that
11 there is no Miranda claim, but I have to be
12 clear that that issue is not properly presented
13 in this case.

14 Taking that as a hypothetical,
15 however, we would say that there is no Miranda
16 liability because we don't see how the causation
17 problem can be solved without creating a witness
18 immunity problem in its place.

19 There are two actors that lie between
20 the police officer and any Miranda violation:
21 the prosecutor who offers the statement into
22 evidence and the judge who admits it at the
23 suppression hearing.

24 And in order to show that the judge
25 has been misled into admitting the evidence, you

1 have to presumably argue that the police officer
2 lied on the witness stand and thereby convinced
3 the judge to introduce the evidence. But, under
4 absolute witness immunity, that can't be a
5 predicate for liability.

6 JUSTICE KAGAN: I mean, take an
7 outlandish example, and -- and it is outlandish,
8 but, you know, suppose the police officer, you
9 know, bribed the prosecutor and the judge. What
10 then?

11 I mean, at that point, I'll tell you
12 what it seems to me, is your causation problem
13 disappears but that there must be some way of
14 saying that that's such an unusual case that
15 we're not going to bend or -- or change the rule
16 for it. But I don't exactly quite know how that
17 argument works legally, so I guess I'm asking
18 you to provide the missing pieces.

19 MR. SURI: Okay. This Court has said
20 that in applying causation principles or other
21 common law principles, it isn't tied exactly to
22 the old common law rules. It can adjust those
23 approaches as necessary in light of the nature
24 of the right at issue.

25 In addition, the Court sometimes

1 adopts categorical rules that may fit
2 imperfectly in some extreme cases, but it
3 acknowledges that those cases are so unlikely to
4 arise that it's not worth trying to deal with
5 them.

6 And the two best examples I can think
7 of are the retaliatory inducement to prosecute
8 case, Hartman against Moore, and Nieves against
9 Bartlett, which is retaliatory arrest.

10 In both of those cases, the Court said
11 that because of causation problems, we're going
12 to adopt a categorical rule requiring the
13 plaintiff to show the absence of proximate -- of
14 probable cause in order to allow that case to
15 come forward.

16 Now it's true, theoretically, you can
17 think of some outlandish hypotheticals where
18 there is probable cause, yet there should be a
19 retaliatory arrest or prosecution claim, and the
20 Court still said, we -- we're going to adopt a
21 categorical rule.

22 And we suggest that the Court could
23 adopt a similar categorical rule here because,
24 as you say, the only circumstances that we can
25 think of where there's no causation problem are

1 so outlandish, it's not worth trying to preserve
2 those.

3 JUSTICE SOTOMAYOR: Counsel, I -- I'm
4 not sure what witness immunity has to do with
5 this issue. Yes, you're immune from prosecution
6 for any testimony you give at a trial. But, if
7 you're testifying falsely and that's what
8 induces a judge or a prosecutor to use your
9 statement, I -- I don't understand why that
10 should be immune from 1983.

11 MR. SURI: Your Honor, that view is
12 contrary to this Court's previous decision in
13 *Briscoe against LaHue*. In that case, the Court
14 held that witnesses enjoy absolute immunity from
15 1983 claims for their testimony and it
16 specifically held that that extends even to
17 perjured testimony.

18 The reasoning of the decision is that
19 the appropriate remedy for perjury is a criminal
20 prosecution for perjury, but we don't want to
21 discourage witnesses by exposing them to the
22 specter of civil liability.

23 JUSTICE GORSUCH: Counsel, you -- your
24 -- your argument for a -- a firm proximate cause
25 rule has some appeal, obviously, the clarity of

1 it, but I wonder have you thought about -- and
2 I'm sure you have and you can help us think
3 about -- how it would apply outside the Miranda
4 context and how it might bleed into other
5 constitutional rights and make them more
6 difficult to assert under 1983. An involuntary
7 confession under -- forget about Miranda. You
8 know, a tortured confession being admitted.

9 Are you concerned, is the government
10 concerned, that its rule would -- would place
11 the onus on the prosecutor to deal with that and
12 not allow recovery against a police officer who
13 conducted the -- the -- the torture confession?

14 MR. SURI: Justice Gorsuch, let me
15 first explain why the logic of our position
16 would indeed affect some other constitutional
17 rights and then turn to, if you're uncomfortable
18 with that, how you can cabin the logic so that
19 it applies only to this particular right.

20 So, to take the first part first, yes,
21 it's true our logic does apply, for example, to
22 self-incrimination claims, but that shouldn't
23 trouble you because this Court has recognized an
24 independent substantive due process limit on
25 what the police can do in the interrogation

1 itself. If the police torture an individual or
2 even beat him, that's a substantive due process
3 violation that is actionable under Section 1983.

4 JUSTICE GORSUCH: I get that argument.
5 But there's an additional quantum of harm surely
6 associated with its introduction at trial and a
7 potential conviction wrongfully. And your rule,
8 I think, would take that out of play, and maybe
9 it won't, but I'd like to hear your thoughts.

10 MR. SURI: No, it would take that out
11 of play, Justice Gorsuch. And the reason the
12 Court shouldn't be troubled by that is that the
13 appropriate forum for redressing harms that
14 occur in the trial itself is the appeal process
15 in habeas corpus, not a collateral civil suit
16 attacking the trial ruling. But let's say --

17 JUSTICE GORSUCH: One might say that
18 about almost anything that happens at trial, but
19 we have 1983 actions all the time about things
20 that happen at trial.

21 MR. SURI: I -- I don't think that's
22 right, Justice Gorsuch. You have 1983 thing --
23 actions about things that happen outside trial,
24 like unreasonable searches and seizures. But
25 you don't have 1983 claims about things that

1 happen in the trial itself, like ineffective
2 assistance of counsel or denial of a jury trial
3 right. Those are traditionally enforced through
4 the appellate process.

5 And if I can offer an analogy --

6 JUSTICE GORSUCH: Sure.

7 MR. SURI: -- to show why this makes
8 sense. Think of this Court's Confrontation
9 Clause jurisprudence. The Court has held that
10 the introduction of a forensic analyst's report
11 at trial can be a confrontation violation if the
12 analyst isn't put on the stand.

13 Now we would say that you can't sue
14 the analyst under Section 1983 on the theory
15 that he proximately caused the prosecutor's
16 violation of the Confrontation Clause. Your
17 remedy would be an appeal, not a 1983 claim.

18 So, yes, that is one consequence of
19 our theory, but that's a perfectly reasonable
20 consequence. We don't think it makes sense to
21 allow collateral Confrontation Clause
22 challenges.

23 JUSTICE GORSUCH: Let's say I'm a
24 little worried about that. You said you had a
25 narrower approach.

1 MR. SURI: Yeah.

2 JUSTICE GORSUCH: What -- what's that?

3 MR. SURI: This Court has said most
4 recently in the Thompson opinion that Justice
5 Kavanaugh wrote earlier this term that common
6 law principles must be applied in light of the
7 "values and purposes of the right at issue."

8 And the right at issue here, the
9 Miranda right, has always been based on an
10 analysis of what is necessary in practice to
11 enforce the self-incrimination right. And the
12 Court has enforced it as far as it is necessary,
13 but it hasn't taken it any further.

14 It said that Miranda applies, for
15 example, only in the case-in-chief in a criminal
16 prosecution. It doesn't apply to impeachment.
17 It doesn't apply to the fruits of the evidence.
18 It doesn't apply in public safety cases. And
19 the Court could say similarly that it's not
20 necessary to apply in -- in a civil trial.

21 JUSTICE GORSUCH: Thank you.

22 JUSTICE BARRETT: You just said -- you
23 just talked about enforcing the right. But the
24 government, as I understand it, has taken the
25 position that this is a Fifth Amendment right,

1 although, in your brief, you kind of -- which
2 strikes me as probably careful language --
3 characterize it as a federal right. You don't
4 actually say Fifth Amendment right that I saw.

5 Could you elaborate on the
6 government's position there?

7 MR. SURI: Yes. We think Miranda is a
8 constitutional right. To use the language of
9 Section 1983, it is any right, privilege, or
10 immunity secured by the Constitution. And if I
11 could divide that into two parts, secured by the
12 Constitution because Dickerson says it is a
13 constitutional rule, and right, privilege, or
14 immunity is drawing a distinction between rights
15 and structural provisions, like separation of
16 powers or federalism provisions. But Miranda is
17 pretty clearly a right rather than a structural
18 provision.

19 In addition, if you look at this
20 Court's past 1983 cases, the Court has defined
21 the term "right" in the constitutional context
22 extremely broadly. For example, in Dennis
23 against Higgins, the Court held that the
24 negative Commerce Clause gives rise to rights
25 enforceable under Section 1983 even though one

1 might think of the Commerce Clause as a
2 structural provision rather than a rights
3 provision.

4 So, if -- if that's a right, then,
5 surely, we think Miranda is a right. And, of
6 course, it's constitutional because Dickerson
7 says so.

8 JUSTICE KAVANAUGH: Can you address
9 Justice Kagan's question to Mr. Martinez about
10 the precedent and how we should think about the
11 precedent?

12 MR. SURI: Yes. I -- I think one of
13 the reasons we have not relied on the theory
14 that Miranda is not a constitutional right is
15 precisely the concern that Justice Kagan has
16 raised that would seem to undermine the -- what
17 the Court has said all these years, especially
18 in Dickerson. But even apart from that, we just
19 don't think that that theory is correct as an
20 original matter, and we don't think it's
21 necessary in order for the Court to foreclose
22 Miranda claims from Section 1983.

23 JUSTICE GORSUCH: Would you care to
24 comment on the historians' briefs and the
25 suggestion that Miranda might have a better

1 original provenance than had previously been
2 thought?

3 MR. SURI: I -- I wish, Justice
4 Gorsuch, I could say that Miranda in its
5 totality is supported by the original meaning of
6 the Constitution. I -- I -- I -- I'm afraid I
7 cannot in all candor go quite that far.

8 The historians' brief supports one
9 aspect of Miranda, which is the warning
10 requirement. Miranda, of course, goes beyond
11 warnings. It also talks about having counsel
12 present at the interrogation. And in all
13 candor, I have to concede that the historians'
14 brief doesn't provide support for that aspect of
15 the Miranda decision, that, instead, we think
16 it's still correct because it's -- it's been
17 found necessary to implement the
18 self-incrimination right as a practical matter.

19 But, with respect to the warnings, it
20 -- it's certainly the case that warnings were
21 much more commonplace than one might have
22 imagined. If you look at Chief Justice White's
23 opinion in *Bram* against United States, he talks
24 about these warning requirements. So it isn't
25 just the original meaning at the time of the

1 founding. It's also the 19th Century case law
2 that recognizes that warnings are an important
3 part of implementing the Fifth Amendment.

4 Nevertheless, that doesn't affect our
5 argument in this case because the issue in this
6 case, of course, is whether Miranda is civilly
7 enforceable. And if you look back to
8 founding-era sources, I've seen no evidence that
9 you would bring collateral civil actions saying
10 that an involuntary confession or other type of
11 improper evidence was introduced at a criminal
12 trial. The appropriate remedy would have been
13 the exclusion of that evidence at the trial
14 itself, not some collateral civil proceeding.

15 In contrast, we have lots of history
16 of civil suits about the equivalent of the
17 Fourth Amendment. Unreasonable searches were at
18 issue in Entick against Carrington, Wilkes
19 against Wood, cases like that. The absence of
20 any comparable history here should give you some
21 comfort that this is indeed not the kind of
22 thing that is meant to be civilly enforceable.

23 JUSTICE ALITO: If you have the
24 situation where a police officer does something
25 that violates a constitutional right but that

1 later a prosecutor makes an independent decision
2 about whether the prosecution will attempt to
3 obtain any advantage at trial as a result of the
4 conduct of the police officer, that, I take it,
5 is what you think is the situation here.

6 Could you state in general terms the
7 rule that you think applies as to the creation
8 of a categorical rule regarding the absence of
9 proximate cause?

10 MR. SURI: I'm sorry, Justice Alito, I
11 think I have to take issue with the premise of
12 the question, which is we don't accept that the
13 police officer has done anything unlawful. Our
14 theory is that the unlawful act is committed
15 entirely at the trial itself.

16 But our rule is that when a police
17 officer --

18 JUSTICE ALITO: All right. Well, so
19 we're getting back to the issue of -- of the
20 nature of the Miranda violation. When something
21 is done by the police officer, but the
22 prosecution seeks to obtain some advantage at
23 trial as a result of something that was done or
24 was not done and should have been done by the
25 police officer, what is your general -- how

1 would you state in general terms the rule about
2 cutting off proximate cause?

3 MR. SURI: The rule is that when a
4 police officer does not himself engage in any
5 legal violation, then, in the absence of some
6 special circumstance I can't think of right now,
7 the prosecutors' and the judges' independent
8 decision about the action constitute superseding
9 causes that cut off liability.

10 CHIEF JUSTICE ROBERTS: Justice
11 Thomas?

12 JUSTICE THOMAS: No.

13 CHIEF JUSTICE ROBERTS: All right.
14 Justice Kavanaugh?

15 JUSTICE KAVANAUGH: Just the same
16 question that I asked Mr. Martinez about Withrow
17 and how you would deal with that.

18 MR. SURI: Withrow supports our
19 position. Withrow described the Fifth Amendment
20 right and Miranda as trial-focused rights. That
21 suggests that Miranda is about what happens at
22 the trial, whether the evidence is admitted or
23 not admitted. It's not about what the police
24 officer himself does.

25 And, indeed, Withrow contrasted the

1 Miranda right with the Fourth Amendment right on
2 precisely that reasoning. It said the Fourth
3 Amendment is about what happens outside the
4 trial and that's why it isn't enforceable in
5 habeas corpus.

6 JUSTICE KAVANAUGH: Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Mr. Hoffman.

10 ORAL ARGUMENT OF PAUL L. HOFFMAN

11 ON BEHALF OF THE RESPONDENT

12 MR. HOFFMAN: Mr. Chief Justice, and
13 may it please the Court:

14 Petitioner asked this Court to find
15 that a police officer can never be found liable
16 under Section 1983 for a Miranda violation.
17 This is so even where an officer elicits an
18 unwarned custodial statement, lies about the
19 circumstances, and the statement is introduced
20 in the prosecution's case-in-chief. That
21 categorical approach is counter to precedent,
22 the text of Section 1983, and common sense.

23 This case presents two distinct
24 issues. On the first issue, the introduction of
25 an unwarned custodial statement is a violation

1 of a defendant's Fifth Amendment rights and,
2 therefore, the basis for Section 1983 liability.

3 If Miranda violations lead to habeas
4 relief based on a violation of the Constitution
5 or to the reversal of state criminal convictions
6 on the same basis, the same violations fall
7 within the broad remedial sweep of Section 1983.

8 On the second issue, police officers,
9 like any other state actor, can be sued under
10 Section 1983 if their acts proximately cause a
11 violation of constitutional rights. At a
12 minimum, when an officer takes an unwarned
13 custodial statement and deceives the prosecutor
14 about the circumstances of the interrogation, a
15 jury can find that proximate cause exists.

16 Mr. Tekoh has always argued that
17 Deputy Vega gave a false account of the
18 circumstances of the interrogation in this case.
19 The court of appeals correctly found that
20 Mr. Tekoh has a Section 1983 claim based on the
21 Miranda violation and that a reasonable jury, if
22 they believe Mr. Tekoh's testimony, could find
23 that Deputy Vega was the proximate cause of this
24 violation.

25 I welcome the Court's questions.

1 JUSTICE THOMAS: In the trials that
2 we've had in this so far, have there been any
3 findings by the jury that the officer lied?

4 MR. HOFFMAN: The -- there -- no,
5 there's no -- there hasn't been a finding that
6 the officer lied. That issue hasn't really been
7 presented to the jury. And the -- there were no
8 find -- there were no -- there was never a
9 finding in this case about whether Mr. Tekoh was
10 in custody or not. None of the -- none of the
11 juries were required to find that.

12 And, in fact, the -- from the
13 beginning of this case, it was argued that the
14 claim was that a violation of -- a core Miranda
15 violation, the introduction of the statement at
16 trial, gave rise to a 1983 violation.

17 And the judge -- the district judge
18 refused to give that instruction on that theory
19 of liability because he thought that the Chavez
20 case overturned -- made -- made that claim
21 unviable.

22 And so the -- the appeal to the Ninth
23 Circuit that we made was to allow us to go
24 forward with that claim. That's the -- that's
25 the -- the issue that we raised in addition to

1 an issue about an expert.

2 But there's never been a finding one
3 way or the other about whether the officer lied
4 about the circumstances of the -- of the
5 interrogation, which is at the heart of the
6 case. That's always been the dispute --

7 JUSTICE SOTOMAYOR: So can you --

8 MR. HOFFMAN: -- in this case.

9 JUSTICE SOTOMAYOR: -- so you -- can
10 you point me to somewhere in the record on
11 either trial before the district courts where
12 you presented that theory of your case? I've
13 looked in vain, number one.

14 And, number two, in the first trial,
15 it was a fabrication of evidence case.

16 MR. HOFFMAN: That's right.

17 JUSTICE SOTOMAYOR: So tell me if they
18 found against you on the fabrication of the
19 evidence. Isn't that a finding that Mr. Vega
20 didn't fabricate?

21 MR. HOFFMAN: No. I mean, what --
22 what it was -- what -- what the -- what the jury
23 was asked to find under standards that are much
24 higher than the standards that would apply to a
25 Fifth Amendment claim, it was a Fourteenth

1 Amendment substantive due process claim.

2 But, at most, and what the district
3 court found, was that there was a finding that
4 the -- that the officer did not fabricate the
5 report and that a different officer didn't
6 fabricate certain statements attributable to Mr.
7 Tekoh in one of his supplemental reports.
8 That's all they found.

9 They didn't find -- they weren't asked
10 to find anything about custody. They weren't
11 asked to determine the difference between
12 Mister --

13 JUSTICE SOTOMAYOR: It doesn't -- it
14 doesn't matter, does it? If they found that he
15 didn't fabricate the statements by your client,
16 that was the whole basis of the decision about
17 there, A, not being coercion or, B, that he
18 wasn't in custody.

19 MR. HOFFMAN: Well, no. I mean, the
20 -- the custody part it wasn't a part of, and --
21 and the district court properly found that we
22 were able to go forward with a Fifth Amendment
23 trial after the fabrication case and said --
24 that argument was made to the judge, and they
25 said -- said no, the -- the -- the jury hasn't

1 made that finding.

2 And -- and -- and the -- whether the
3 report was fabricated or not doesn't affect the
4 Miranda violation. It could be a true
5 statement.

6 JUSTICE BARRETT: But doesn't it
7 affect -- I'm -- I'm just confused because I had
8 the same understanding as Justice Sotomayor.

9 I understood your causation argument
10 that you're pressing here, which is, as I
11 understand it, narrower than the jury
12 instruction that your client asked for below, to
13 depend on this falsification of evidence claim
14 --

15 MR. HOFFMAN: Well --

16 JUSTICE BARRETT: -- and that that was
17 important to your proximate cause argument, but,
18 as Justice Sotomayor said, it was my
19 understanding that you lost on a fabrication of
20 evidence claim.

21 MR. HOFFMAN: No. No, our -- our --
22 what -- and -- and -- and it may be useful, it
23 seems to me, to clear up how the proximate cause
24 issue happened here. There -- there's a
25 separate causation instruction that was a joint

1 instruction from the Defendant and the
2 Plaintiff. That's found on page 118a of the
3 Petitioner's appendix, and it's a moving force
4 causation instruction and it requires the
5 Plaintiff to show that the Defendants were so
6 closely related to the deprivation of the
7 Plaintiff's rights as to be the moving force
8 that caused the ultimate injury. That was the
9 agreed-upon instruction.

10 And -- and we never got to that point
11 on the Miranda claim because the Miranda claim
12 was never presented to the jury. So there
13 wasn't any issue about proximate cause because
14 it wasn't -- it didn't ever get to the jury.

15 That was the agreed-upon instruction
16 for the Fifth Amendment claim that the judge
17 actually allowed to go forward. There's
18 never -- the -- the Defendant never asked for a
19 superseding cause instruction. The Defendant
20 never raised any of the issues that have been
21 raised in this Court in the district court.

22 There was an agreed-upon instruction.
23 The Defendant never made any claim in the Ninth
24 Circuit about proximate cause. You can read all
25 of the briefs. There's not a word about

1 causation. In --

2 JUSTICE BREYER: Well, but still, what
3 is your -- I mean, suppose I think
4 hypothetically that when a improperly obtained
5 confession is introduced into the trial, the
6 person who does it is the prosecutor and he has
7 immunity and he is the superseding cause of
8 however this bad thing happened to occur, unless
9 the policeman's there, and then he has immunity
10 because there's a witness.

11 MR. HOFFMAN: Well, yeah.

12 JUSTICE BREYER: But there might be a
13 case where that policeman outside of court said
14 to the prosecutor, this is what happened, I gave
15 him 92 Miranda warnings, and he is deliberately
16 lying, that policeman, in which case maybe --
17 maybe you can bring a case against him.

18 Now suppose I start from that and say
19 what did you say here to say this falls into the
20 latter category in the lower courts.

21 MR. HOFFMAN: Well, what -- well, in
22 the lower court, what our -- what our -- and --
23 and let me back up. The -- our --

24 JUSTICE BREYER: No, no. Or here. I
25 mean, I haven't seen anything even here that

1 says that.

2 MR. HOFFMAN: Well, our -- our
3 argument is in response to the Petitioner's
4 argument that there can never be proximate
5 cause, which is a completely different argument.

6 JUSTICE BREYER: No, no, but if that
7 were -- that's his -- they say never, okay?

8 MR. HOFFMAN: They say never.

9 JUSTICE BREYER: I'd say -- suppose I
10 said hypothetically hardly ever.

11 MR. HOFFMAN: Well --

12 JUSTICE BREYER: But there could be a
13 situation where the policeman is lying through
14 his teeth to the prosecutor, dot, dot, dot, fill
15 in the blanks. But there is no indication that
16 that is what happened in this case.

17 MR. HOFFMAN: That's exact --

18 JUSTICE BREYER: Now that last part is
19 what you think is wrong.

20 MR. HOFFMAN: That's --

21 JUSTICE BREYER: So I'm asking you
22 what to look at to show that you are right and
23 that last part's wrong.

24 MR. HOFFMAN: We've -- both sides have
25 pointed to the testimony at trial. The

1 testimony at trial was Mr. -- Deputy Vega said
2 this was a -- this was a statement that was
3 utterly voluntary, that it -- that he came --
4 you know, that Mr. Tekoh came and said, I made a
5 mistake. I wrote down the confession. Mr.
6 Tekoh's testimony --

7 JUSTICE BREYER: All right. At trial,
8 you have the witness immunity problem.

9 MR. HOFFMAN: Well, no, that was --

10 JUSTICE BREYER: So was there anything
11 other than that out -- outside of trial?

12 MR. HOFFMAN: Well, the -- well, first
13 of all --

14 JUSTICE BREYER: I'm not saying you
15 lose on the witness immunity thing. I'm just
16 boxing it in my mind.

17 MR. HOFFMAN: Well, right. What I'm
18 saying -- there -- the question about the -- the
19 steps at -- the first thing, you asked me where
20 this was in the trial. In the trial, there has
21 always been this complete dispute between what
22 happened in that room. Mr. Tekoh says he's put
23 in a -- in a closed room for an hour. He has
24 berated and basically threatened with
25 deportation with -- with an officer with a --

1 with a -- with his hand on a gun.

2 JUSTICE BARRETT: But didn't you lose
3 that claim? Didn't --

4 MR. HOFFMAN: No.

5 JUSTICE BARRETT: -- wasn't that part
6 of -- because you lost -- didn't you bring a
7 claim, another Fifth Amendment claim, for
8 coercion that you lost and another fabrication
9 of evidence --

10 MR. HOFFMAN: Well --

11 JUSTICE BARRETT: -- claim that you
12 lost, which would preclude --

13 MR. HOFFMAN: Well, we -- we lost the
14 fabrication of evidence claim, but that's a
15 claim that -- that the evidence was false --
16 deliberately falsified by the officer with --
17 meaning the report -- the argument that -- that
18 the -- that the officer actually did the report
19 or falsified it, which is different from this
20 claim.

21 And -- and on the coercion claim, it
22 is true that the second jury found no coercion,
23 and we had an argument that the expert was
24 wrongfully excluded that the Ninth Circuit
25 didn't deal with. But the Ninth Circuit also

1 vacated that -- that -- that judgment. And so
2 it's not clear what that status is.

3 And -- and -- and our argument is that
4 if -- if the district judge had -- had -- had
5 instructed the jury on the Miranda theory, we
6 wouldn't have to have gone through any of these.
7 We'd be done by now. But either -- either --

8 JUSTICE SOTOMAYOR: I'm still --

9 MR. HOFFMAN: -- either it's a
10 custodial interrogation or not, and either
11 Deputy Vega lied or he didn't.

12 JUSTICE SOTOMAYOR: Counsel, I guess
13 my problem has been your brief says, if the
14 police officer told the truth and the government
15 and the prosecutor admitted the statement based
16 on truthful information, there's no liability
17 under 1983.

18 MR. HOFFMAN: Correct.

19 JUSTICE SOTOMAYOR: Correct?

20 MR. HOFFMAN: Yes, we agree.

21 JUSTICE SOTOMAYOR: If the police
22 officer, however, was the inducing cause by
23 lying for an admission of the evidence that
24 should otherwise not have been admitted, then I
25 win. I don't see anywhere in the record below

1 before either judge in the two trials you had
2 where you made that statement in that way.

3 MR. HOFFMAN: We didn't make that
4 statement in that way because both sides were
5 operating under Ninth Circuit precedent, which
6 didn't require you to make that statement. We
7 didn't elevate the standard for proximate cause
8 on our own.

9 What -- what -- what we've responded
10 to in this Court is their argument that it
11 should be a categorical exclusion. And what
12 we're saying is, when there's officer
13 misconduct, as we claim happened here, that that
14 should be the -- the basis for proximate cause.

15 In the -- in the -- in the -- in the
16 court below, both sides argued on that causation
17 instruction, which doesn't include that. We
18 didn't ask to have an elevated causation
19 instruction that would make it harder for us to
20 prove our case. We accepted the Defendant's
21 instruction.

22 You know, and I -- I'm -- I'm sure
23 the -- you know, what's confusing about all this
24 is that the procedural history with respect to
25 proximate causation is that no one really

1 thought this was a serious issue in the district
2 court. I don't think the defense even made a
3 serious contention that --

4 JUSTICE BREYER: Well, what about now?
5 Can you say to us right now that you have some
6 evidence you would like to introduce that the
7 policeman did mislead the prosecutor about what
8 happened, other than the policeman speaking as a
9 witness?

10 MR. HOFFMAN: Well, the -- the -- the
11 evidence that -- that I would submit to the
12 Court would be, first of all, the reports. The
13 reports omit the true circumstances of the
14 interrogation, make it seem like a completely
15 voluntary statement and that he confessed
16 willingly, and don't say anything about the fact
17 that there's an hour-long interrogation in a
18 closed room with threats and -- and all the rest
19 that would make it clearly a custodial
20 interrogation.

21 There's some evidence -- and -- and
22 the record is spotty on this because the -- none
23 of the parties focused on it -- that the
24 prosecutor got the information about the
25 statements from Deputy Vega, and Deputy Vega

1 then testified about this other story throughout
2 the proceedings.

3 Whether or not that's covered by
4 witness immunity is nothing -- that's never been
5 argued before. At no point did the defense ever
6 say, well, you -- it can't be proximate cause
7 because your evidence is barred by witness
8 immunity. And that issue never got litigated as
9 to whether each of the steps in which Deputy
10 Vega gave the same false account throughout the
11 proceedings.

12 And so what would happen -- I mean,
13 under the -- the question I guess is, if the
14 Court is inclined to believe that the Ninth
15 Circuit's view of proximate cause, which seems
16 to be based on Monroe natural, unforeseeable
17 consequences and -- and common law principles of
18 proximate cause, if that sweeps too broadly,
19 what we're saying is that in this case at least,
20 it's really a binary choice.

21 If -- if Deputy Vega is believed,
22 there's no violation. So we don't even get to
23 proximate cause. If our client's believed, then
24 we believe that should be the basis for
25 proximate cause because you can't allow officer

1 misconduct that deceives the circuit breakers in
2 the system. The prosecutor and the judge --
3 judge are the circuit breakers, right? They're
4 the ones supposed to exercise independent
5 judgment to make sure that constitutionally
6 impermissible evidence is not introduced in
7 violation of the Fifth Amendment. If the
8 officer actually causes -- causes the person to
9 be subjected to the violation, which is the
10 language of Section 1983, by deceiving the
11 prosecutor, then that should be at least one of
12 the circumstances in which this could happen.

13 Now what would happen, I think, if --
14 if the Court agrees with our first position,
15 that a Miranda violation isn't the violation of
16 a right secured by the Constitution for 1983
17 purposes, the case would go back for further
18 proceedings with respect to proximate cause, and
19 I assume that the defense would raise a lot of
20 the issues that they're now raising here that
21 they've never raised before.

22 CHIEF JUSTICE ROBERTS: Counsel, this
23 was a huge issue in the late '70s, early '80s.
24 This was a -- a staple of panel discussions in
25 criminal law, partly because Miranda was a

1 little more controversial back then than it may
2 be now. And Assistant Attorney General
3 Rehnquist, Justice Rehnquist, he would have been
4 very aware of the debate we're having today.

5 And when it came to Dickerson, he was
6 also somebody careful with his words, he didn't
7 say Miranda is in the Constitution. He talked
8 about constitutional underpinnings,
9 constitutional basis.

10 And I'm -- I don't know, of course,
11 but it would surprise me if that -- those
12 particular formulations were just happenstance.
13 And I doubt that he'd be surprised that we were
14 having this debate now, 20 years later, after
15 Dickerson. Don't you think that if, in fact,
16 Dickerson said what you say it said, you could
17 point to something in that opinion that said
18 expressly that and did not have a particular
19 nuance like basis underpinning all that?

20 MR. HOFFMAN: Well, I am not sure why
21 Chief Justice Rehnquist wrote in the nuanced way
22 that he did. Our position is that the -- the
23 consequence of his analysis is that Miranda is a
24 constitutional decision and that Miranda defines
25 the circumstances in which custodial statements

1 can be introduced in -- in a criminal trial and
2 that if Miranda's violated, the violation has to
3 be of the Fifth Amendment.

4 And I think this goes to Justice
5 Barrett's question, which is what is the -- what
6 is the power that the Court has, right? Is --
7 is this a power that the Court has that even
8 goes beyond specific constitutional rights, that
9 there's a -- an ability that the Court has to
10 create any rules that it wants independent of a
11 -- of a violation?

12 I think the -- the narrower and I
13 think better constitutionally based argument
14 would be that that's what Dickerson has to mean,
15 that -- that the violation of the Miranda --
16 core Miranda rule -- which is what we're talking
17 about here. We're not talking about any of the
18 periphery. We're talking about the core Miranda
19 rule, that that -- that that -- what -- what
20 Miranda meant was that they're defining the
21 circumstances where there's a Fifth Amendment
22 violation.

23 If you violate these -- Miranda and
24 you introduce that statement in a case-in-chief,
25 a Fifth Amendment violation has occurred. And

1 if --

2 JUSTICE KAVANAUGH: In thinking about

3 --

4 MR. HOFFMAN: Sorry.

5 JUSTICE KAVANAUGH: Keep going, sorry.

6 MR. HOFFMAN: No, sorry, Justice --

7 JUSTICE KAVANAUGH: In thinking about
8 the status of Miranda and Dickerson, it seems
9 that the other side's position is accept it, but
10 don't extend it, if I could boil it down.

11 Accept it, but don't extend it. And we've done
12 that with other precedents of that era even,
13 like Bivens, we accept it. We haven't declined
14 to extend it. We've declined to extend it.

15 And then that -- then they argue, I
16 think, that this seems like an extension of
17 Miranda and Dickerson to a new context, 1983
18 suits, that it has not previously extended to.

19 So why isn't that the right way to
20 think about that case? Where -- where would you
21 get off --

22 MR. HOFFMAN: Well --

23 JUSTICE KAVANAUGH: -- on -- on that
24 analysis?

25 MR. HOFFMAN: Well, what we would say

1 is that, to be sure, the Court has considered
2 the circumstances in which the Miranda rule
3 applies in a variety of ways.

4 And I think Chief Justice Rehnquist
5 dealt with that issue in Dickerson and said,
6 yeah, I mean, the fact that there are exceptions
7 and -- and changes to the Miranda rule is just
8 the natural evolution of a constitutional rule.

9 We're not talking about an extension
10 of the Miranda rule. We're talking about the
11 core principle of the Miranda rule, the
12 introduction of a custodial statement in the
13 prosecution's case-in-chief.

14 Now, with respect to Section 1983, our
15 position is that 1983 provides the authority for
16 a -- a -- a cause of action for the violation of
17 that right. In other words, once the -- the
18 core Miranda right is violated and the Fifth
19 Amendment right is violated, Section 1983
20 applies to give someone a remedy for the
21 deprivation of a right secured by the
22 Constitution which is that violation.

23 And so Congress has done that.
24 Congress could decide not to do that. Congress
25 could decide to limit it. And, to be sure, I

1 know my colleague talked about the -- the
2 Thompson case, for example.

3 Well, the Thompson case was about the
4 elements of that cause of action, right? I
5 mean, it was about whether you had to prove
6 innocence or not for that. And -- and the Court
7 has always gone back to common law principles
8 and, if necessary, adjusted them and dealt with
9 them.

10 JUSTICE KAVANAUGH: I think the --

11 MR. HOFFMAN: But it hasn't excluded
12 an entire right like -- I mean, the Fifth
13 Amendment right is one of the fundamental rights
14 in the Constitution and Bill of Rights. Why
15 would you exclude this if a police officer
16 causes someone to be subjected to it?

17 JUSTICE KAVANAUGH: But I think their
18 response and the Solicitor General's office said
19 this as well, which is that the right is fully
20 remedied -- a violation of the right is fully
21 remedied by the exclusion of the evidence at
22 trial, and this would be some -- some extension
23 of that, something new that would go beyond the
24 way the right has ordinarily been characterized.

25 MR. HOFFMAN: But -- but -- but,

1 clearly, that isn't a complete remedy. I'm
2 standing here on behalf of -- of Mr. Tekoh, who
3 was acquitted and has absolutely no other remedy
4 than a Section 1983 violation.

5 His life was destroyed by these
6 actions. He gets acquitted. When the full
7 story comes out, he is contending that the
8 officer set him up for this and basically set up
9 the prosecutor and the -- and the court too.

10 What remedy does he have? That's what
11 Section 1983 is for. There may not be a lot of
12 these cases. There haven't been a lot of these
13 cases since Sornberger, which was one of the
14 first cases in the Seventh Circuit to agree to
15 this proposition. There are a handful of cases.

16 So the other side's contention that
17 all of a sudden there's going to be a ground
18 swell of people filing these cases, that's not
19 going to happen. But, in this -- in the cases
20 where there is officer misconduct, claims of
21 officer misconduct, it doesn't make any sense to
22 withdraw that -- that Section 1983 remedy
23 because policing that kind of conduct guarantees
24 the integrity of the entire system that
25 Miranda's based on.

1 I mean, officers are always going to
2 be involved in the interrogation process.
3 They're the ones that get the statements.
4 Nobody else gets them. And so, if they're not
5 completely honest, then the system breaks down.

6 But, when they are completely honest,
7 I mean, you can look at the Fifth Circuit's
8 decision in Murray versus Earle, where the court
9 in Murray versus Earle says, when an officer
10 gives a completely honest account to an
11 independent neutral intermediary, like a judge,
12 then proximate cause is cut off.

13 They could have asked for a -- a -- a
14 superseding cause instruction. They could have
15 made arguments about proximate causation. They
16 never did. So that's why we're making it here,
17 which doesn't make any sense, but, you know, the
18 Court granted cert, so we're here.

19 (Laughter.)

20 MR. HOFFMAN: We -- we -- we -- we
21 tried to say that you shouldn't do it, but what
22 can we say? I don't know if there are other
23 questions. I'm just -- just have a second.

24 I -- I think that the -- the Solicitor
25 General's position is important in the sense

1 that I think, although the Solicitor General
2 tries to limit Section 1983 liability to trial
3 rights, I think the Solicitor General of the
4 United States understands what Dickerson means
5 and that it is a constitutional rule. If
6 there's a constitutional violation, Section 1983
7 provides remedies in that situation.

8 And I think, as Justice Scalia said in
9 Hudson versus Michigan, Section 1983 plays a
10 very important remedial -- a remedial role and a
11 deterrent role, and that we think that for --
12 for the violation of fundamental rights like
13 this, if our client is believed, there should be
14 a remedy.

15 And -- and I'm sorry for the confusion
16 about the fabrication and the way that the
17 procedure happened, but it's been a -- it was
18 a -- the procedural history is obviously very
19 complex in this. But it would have been a lot
20 simpler if Judge Wu had just agreed that
21 Dickerson gave us the right to make this claim,
22 which is what the Ninth Circuit said that we
23 had.

24 CHIEF JUSTICE ROBERTS: Doesn't your
25 argument that the officer can be liable for the

1 decision of the prosecutor, or involved in that,
2 present difficult factual questions about who's
3 going to examine the people involved?

4 MR. HOFFMAN: I don't think it
5 presents any more difficult factual or discovery
6 issues than many other cases.

7 CHIEF JUSTICE ROBERTS: Well, I mean,
8 you say that, okay, you're -- you're -- the
9 officer, you're subject to liability because you
10 prevailed upon the prosecutor to put the
11 evidence in, to put the statement in. You
12 misrepresented the circumstances of the
13 statement, you know, and the officer or the
14 prosecutor, are you going to ask him, well, why
15 did you put this evidence in? You're going to
16 ask -- ask the officer what did you tell the
17 prosecutor?

18 MR. HOFFMAN: I mean, in fact, there
19 was -- there was evidence from the prosecutor in
20 the case, in the trial. The prosecutor
21 testified about --

22 CHIEF JUSTICE ROBERTS: Is that -- I
23 mean, I guess I'm asking whether that's a good
24 thing, to be able to go back and examine the
25 prosecutor about his conduct of the -- of the

1 litigation.

2 MR. HOFFMAN: Yeah, I think that when
3 you have a claim like this of -- of misconduct
4 that leads to this kind of fundamental violation
5 that -- that it is a good thing to -- to give
6 someone in Mr. Tekoh's position a chance to
7 vindicate his rights. I think that's what
8 Congress meant in Section 1983.

9 There are a lot of cases where there
10 are difficulties of discovery or immunity or --
11 or those issues, and we understand that. I
12 mean, it could be that we can't prove our case
13 because of those issues. I mean, that's
14 possible. We think we can, but it's possible
15 that we can't. And, you know, we accept the
16 fact that there are -- there are constitutional
17 rules or rules of immunity in Section 1983 that
18 could create difficulties.

19 But those are the kinds of
20 difficulties that civil rights lawyers deal with
21 every day and -- and defense lawyers deal with
22 every day, and I don't think they were any more
23 unusual in this case than many cases that I've
24 been a part of.

25 CHIEF JUSTICE ROBERTS: Well, if you

1 can ask the prosecutor, did you get discovery
2 into his notes, because they might say, you
3 know, this is what Joe says -- we ought -- we
4 ought to use this, or Joe says, look, I beat --
5 beat the confession out of the guy, but I'm not
6 going to testify to that effect or --

7 MR. HOFFMAN: Well, I -- I don't know
8 whether you could get the prosecutor's notes, I
9 mean, whether there would be a -- there
10 obviously would be a discovery dispute about
11 that, I assume, since that happens in most of
12 these cases.

13 I think that -- it seems to me that
14 there are tools in the discovery process that
15 are handled every day across the country in
16 district courts dealing with civil rights cases
17 that are adequate to handle any of those issues.

18 I think there's also issues relating
19 to -- I mean, the -- Heck versus Humphrey will
20 make these kind of cases, you know, less
21 numerous because, if you are convicted, then you
22 have to go through the whole appellate process.
23 Qualified immunity may apply in some
24 circumstances to limit the circumstances in
25 which officers can be found liable.

1 If officers come forward, as they
2 should do, to give an honest and complete
3 account of their -- the circumstances of an
4 interrogation and the prosecutor decides to go
5 forward and the error is in the court accepting
6 something that it shouldn't have accepted, I
7 don't think the officer is responsible there.
8 So we're not saying that.

9 You know, our -- our position is that,
10 at least in the context of this case, there's a
11 stark choice between a -- a deputy who, from our
12 standpoint, told a completely false story to get
13 this statement in versus our client, who tells a
14 completely different story supported by
15 co-workers, you know, to also contradict the --
16 the officer.

17 And in that kind of situation, what
18 we're suggesting is that the rules of proximate
19 cause should at least allow for that. And --
20 and we think that if the Court remands the case,
21 accepts our first principle so that we can
22 actually go forward with that claim, the Ninth
23 Circuit could obviously consider whatever rules
24 this Court deems necessary for proximate cause
25 or ask the Ninth Circuit to start all over and

1 -- and do another analysis.

2 But we think we can meet any principle
3 of proximate cause other than the categorical
4 "you can't show proximate cause" principle.

5 CHIEF JUSTICE ROBERTS: Okay, counsel.
6 Justice -- anything?

7 Okay. Thank you, counsel.

8 MR. HOFFMAN: Thank you.

9 CHIEF JUSTICE ROBERTS: Rebuttal,
10 Mr. Martinez?

11 REBUTTAL ARGUMENT OF ROMAN MARTINEZ
12 ON BEHALF OF THE PETITIONER

13 MR. MARTINEZ: My friend on the other
14 side is trying to preserve Dickerson by
15 interpreting it in a way that was rejected by
16 Dickerson's own author and is inconsistent with
17 decisions of this Court both predating Dickerson
18 and postdating Dickerson.

19 Dickerson gives Miranda constitutional
20 status, but it doesn't say that Miranda creates
21 a Fifth Amendment right. Our reading of
22 Dickerson and the case law as a whole harmonizes
23 the doctrine, and it's consistent with the
24 language of Dickerson itself; the prior cases,
25 Harris, Quarles, Tucker, Elstad, Payne; the

1 Chavez plurality; and five justices in their
2 votes in the Patane case, where five justices
3 agreed that Dickerson did not undermine the
4 pre-Dickerson post-Miranda cases.

5 We think you should adopt Chief
6 Justice Rehnquist's consistent, common-sense,
7 middle-ground approach to Miranda. You should
8 preserve Dickerson, but you should hold there's
9 no Fifth Amendment right here giving rise to
10 1983.

11 As to causation, they've raised a
12 totally new theory here. It wasn't raised
13 below. They described their own jury
14 instruction, the one at issue here, at the
15 charge conference as -- in causation terms.
16 That's at JA 296. Everyone has always
17 understood their causation theory not to require
18 a lie. That's how the Ninth Circuit understood
19 it. That's why the Ninth Circuit addressed this
20 issue this way.

21 Their new theory, even if it weren't
22 forfeited, it would be factually untenable
23 because there's no evidence of any lies that --
24 that is actionable here. Their brief points
25 repeatedly to lies that were allegedly told at

1 the suppression hearing, but the testimony at
2 the suppression hearing is immunized.

3 They also point to the statement of
4 possible -- proximate cause and to the incident
5 report. But the alleged lies there don't bear
6 on the custody issue that is at the core --
7 that's at the core of this Miranda case. And,
8 in any event, you have a jury that said that
9 there weren't lies there. A jury rejected the
10 fabrication of evidence claim based on those
11 exact same reports.

12 Ultimately, Your Honors, their --
13 their claim here is that they need a remedy,
14 they need a chance to get relief for this
15 alleged misconduct. They had two chances to do
16 that. They brought a Fourteenth Amendment due
17 process theory. They brought a coercion theory.
18 The jury agreed with us on both theories. This
19 case should end.

20 We respectfully ask you to reverse.

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

23 (Whereupon, at 11:21 a.m., the case
24 was submitted.)

25

Official

1	acquitted [2] 73:3,6 across [2] 34:6 78:15 act [1] 50:14 action [6] 8:15 20:2 28:23 51:8 71:16 72:4 actionable [3] 5:16 43:3 81:24 actions [4] 43:19,23 49:9 73:6 actor [1] 53:9 actors [1] 38:19 acts [1] 53:10 actual [4] 4:12 8:6 19:12 29:13 actually [8] 8:12 15:12 28:25 46:4 58:17 62:18 67:8 79:22 add [1] 35:9 addition [3] 39:25 46:19 54:25 additional [2] 32:25 43:5 Address [2] 28:3 47:8 addressed [1] 81:19 addresses [1] 6:17 adequate [1] 78:17 adjunct [1] 19:10 adjust [1] 39:22 adjusted [1] 72:8 admissibility [3] 23:1 28:13 30:11 admissible [1] 4:3 admission [1] 63:23 admits [1] 38:22 admitted [9] 8:21 11:17 19:13 30:5 42:8 51:22,23 63:15,24 admitting [1] 38:25 adopt [5] 35:12 40:12,20, 23 81:5 adopts [1] 40:1 advanced [1] 29:22 advancing [1] 29:20 advantage [2] 50:3,22 adversarial [1] 22:22 affect [4] 42:16 49:4 57:3,7 affirmatively [1] 13:8 afraid [1] 48:6 agree [9] 5:20 14:25 20:6, 16,22 30:23 31:15 63:20 73:14 agreed [4] 23:4 75:20 81:3 82:18 agreed-upon [3] 58:9,15, 22 agrees [1] 67:14 aimed [1] 27:13 ALITO [3] 49:23 50:10,18 alleged [4] 4:21 13:17 82:5, 15 allegedly [1] 81:25 allow [7] 30:17 40:14 42:12 44:21 54:23 66:25 79:19 allowed [1] 58:17 allows [2] 34:21,22	almost [1] 43:18 although [4] 33:1 35:1 46:1 75:1 Amendment [38] 4:7, 12 6:6 7:15, 17 8:1 9:18 10:6 11:11, 14 14:13 26:5 27:4 29:14 31:1 32:18 45:25 46:4 49:3, 17 51:19 52:1, 3 53:1 55:25 56:1, 22 58:16 62:7 67:7 69:3, 21, 25 71:19 72:13 80:21 81:9 82:16 amicus [4] 1:22 2:7 27:11 37:17 amount [1] 27:15 analogies [1] 35:11 analogy [2] 34:6 44:5 analysis [9] 21:4 28:15 33:19 37:4, 6 45:10 68:23 70:24 80:1 analyst [2] 44:12, 14 analyst's [1] 44:10 analytically [1] 20:15 angle [1] 5:3 announce [1] 31:24 another [4] 10:11 62:7, 8 80:1 answer [2] 18:11 22:15 anyone's [2] 6:15, 20 apart [1] 47:18 appeal [5] 30:8 41:25 43:14 44:17 54:22 appeals [2] 17:8 53:19 APPEARANCES [1] 1:17 appellate [2] 44:4 78:22 appendix [2] 13:5 58:3 application [1] 33:15 applied [1] 45:6 applies [8] 4:2 15:23 36:14 42:19 45:14 50:7 71:3, 20 apply [9] 30:15 42:3, 21 45:16, 17, 18, 20 55:24 78:23 applying [1] 39:20 appreciate [1] 23:21 approach [5] 26:21 36:11 44:25 52:21 81:7 approaches [1] 39:23 appropriate [3] 41:19 43:13 49:12 April [1] 1:11 arbiter [1] 22:12 area [1] 14:10 aren't [1] 37:1 argue [3] 22:25 39:1 70:15 argued [6] 13:19 21:5 53:16 54:13 64:16 66:5 arguing [1] 17:25 argument [28] 1:14 2:2, 5, 9, 12 3:4, 7 11:12 21:11 37:16 39:17 41:24 43:4 49:5 52:10 56:24 57:9, 17 60:3, 4, 5 62:17, 23 63:3 64:10 69:13 75:25 80:11 arguments [2] 29:19 74:15	arise [1] 40:4 around [1] 4:6 arrest [2] 40:9, 19 aside [1] 24:12 aspect [2] 48:9, 14 assert [2] 32:1 42:6 asserted [2] 31:22 32:11 assess [1] 4:3 assistance [1] 44:2 Assistant [2] 1:20 68:2 associated [1] 43:6 assume [5] 23:24, 25 24:2 67:19 78:11 assuming [1] 20:9 attacking [1] 43:16 attempt [2] 23:8 50:2 Attorney [1] 68:2 attributable [1] 56:6 author [1] 80:16 authority [1] 71:15 aware [1] 68:4 away [2] 4:10 13:8	best [5] 12:1 22:25 25:22 29:25 40:6 better [2] 47:25 69:13 between [12] 6:2, 9, 13 7:11 11:24 13:17 33:14 38:19 46:14 56:11 61:21 79:11 beyond [6] 21:11 34:1, 3 48:10 69:8 72:23 Bill [1] 72:14 binary [1] 66:20 bind [1] 16:11 bit [1] 23:21 Bivens [1] 70:13 blank [1] 36:14 blanks [1] 60:15 bleed [1] 42:4 block [1] 11:7 boil [1] 70:10 books [1] 26:1 Both [17] 5:6 7:3, 3 9:3 12:10 21:13 22:22, 24 23:2 26:11, 25 40:10 60:24 64:4, 16 80:17 82:18 boxes [1] 34:17 boxing [1] 61:16 Bram [1] 48:23 brand-new [1] 4:21 breakers [2] 67:1, 3 breaks [1] 74:5 Breyer [19] 23:16 34:5 35:9, 25 36:10, 16, 19 59:2, 12, 24 60:6, 9, 12, 18, 21 61:7, 10, 14 65:4 bribed [1] 39:9 brief [9] 18:12 21:5 28:6, 7 46:1 48:8, 14 63:13 81:24 briefs [3] 27:12 47:24 58:25 bring [3] 49:9 59:17 62:6 Briscoe [1] 41:13 broad [1] 53:7 broadier [1] 19:6 broadly [3] 7:14 46:22 66:18 brought [3] 11:10 82:16, 17 bunch [1] 28:8
2	20 [2] 1:11 68:14 2022 [1] 1:11 20a [1] 13:4 21-499 [1] 3:4 296 [1] 81:16	amount [1] 27:15 analogies [1] 35:11 analogy [2] 34:6 44:5 analysis [9] 21:4 28:15 33:19 37:4, 6 45:10 68:23 70:24 80:1 analyst [2] 44:12, 14 analyst's [1] 44:10 analytically [1] 20:15 angle [1] 5:3 announce [1] 31:24 another [4] 10:11 62:7, 8 80:1 answer [2] 18:11 22:15 anyone's [2] 6:15, 20 apart [1] 47:18 appeal [5] 30:8 41:25 43:14 44:17 54:22 appeals [2] 17:8 53:19 APPEARANCES [1] 1:17 appellate [2] 44:4 78:22 appendix [2] 13:5 58:3 application [1] 33:15 applied [1] 45:6 applies [8] 4:2 15:23 36:14 42:19 45:14 50:7 71:3, 20 apply [9] 30:15 42:3, 21 45:16, 17, 18, 20 55:24 78:23 applying [1] 39:20 appreciate [1] 23:21 approach [5] 26:21 36:11 44:25 52:21 81:7 approaches [1] 39:23 appropriate [3] 41:19 43:13 49:12 April [1] 1:11 arbiter [1] 22:12 area [1] 14:10 aren't [1] 37:1 argue [3] 22:25 39:1 70:15 argued [6] 13:19 21:5 53:16 54:13 64:16 66:5 arguing [1] 17:25 argument [28] 1:14 2:2, 5, 9, 12 3:4, 7 11:12 21:11 37:16 39:17 41:24 43:4 49:5 52:10 56:24 57:9, 17 60:3, 4, 5 62:17, 23 63:3 64:10 69:13 75:25 80:11 arguments [2] 29:19 74:15	back [14] 14:19 15:11 16:15 17:20 18:24 23:11 26:17 49:7 50:19 59:23 67:17 68:1 72:7 76:24 backed [1] 13:8 bad [1] 59:8 barred [1] 66:7 Barrett [11] 31:7, 8 32:14, 24 34:4 45:22 57:6, 16 62:2, 5, 11 Barrett's [1] 69:5 bars [1] 29:15 Bartlett [1] 40:9 based [13] 4:21 20:19 21:2, 24 30:24 45:9 53:4, 20 63:15 66:16 69:13 73:25 82:10 baseless [1] 4:25 baseline [2] 14:5, 11 bases [1] 25:2 basically [5] 6:4 15:19 30:10 61:24 73:8 basis [10] 4:17 21:10 29:23 53:2, 6 56:16 64:14 66:24 68:9, 19 Beach [1] 1:24 bear [1] 82:5 beat [3] 43:2 78:4, 5 beginning [1] 54:13 behalf [9] 1:18, 25 2:4, 11, 14 3:8 52:11 73:2 80:12 believe [3] 53:22 66:14, 24 believed [5] 22:6, 8 66:21, 23 75:13 below [8] 4:24 19:24 21:14, 22 57:12 63:25 64:16 81:13 bend [1] 39:15 benefit [1] 4:8 berated [1] 61:24	best [5] 12:1 22:25 25:22 29:25 40:6 better [2] 47:25 69:13 between [12] 6:2, 9, 13 7:11 11:24 13:17 33:14 38:19 46:14 56:11 61:21 79:11 beyond [6] 21:11 34:1, 3 48:10 69:8 72:23 Bill [1] 72:14 binary [1] 66:20 bind [1] 16:11 bit [1] 23:21 Bivens [1] 70:13 blank [1] 36:14 blanks [1] 60:15 bleed [1] 42:4 block [1] 11:7 boil [1] 70:10 books [1] 26:1 Both [17] 5:6 7:3, 3 9:3 12:10 21:13 22:22, 24 23:2 26:11, 25 40:10 60:24 64:4, 16 80:17 82:18 boxes [1] 34:17 boxing [1] 61:16 Bram [1] 48:23 brand-new [1] 4:21 breakers [2] 67:1, 3 breaks [1] 74:5 Breyer [19] 23:16 34:5 35:9, 25 36:10, 16, 19 59:2, 12, 24 60:6, 9, 12, 18, 21 61:7, 10, 14 65:4 bribed [1] 39:9 brief [9] 18:12 21:5 28:6, 7 46:1 48:8, 14 63:13 81:24 briefs [3] 27:12 47:24 58:25 bring [3] 49:9 59:17 62:6 Briscoe [1] 41:13 broad [1] 53:7 broadier [1] 19:6 broadly [3] 7:14 46:22 66:18 brought [3] 11:10 82:16, 17 bunch [1] 28:8
3	3 [1] 2:4 37 [1] 2:8	back [14] 14:19 15:11 16:15 17:20 18:24 23:11 26:17 49:7 50:19 59:23 67:17 68:1 72:7 76:24 backed [1] 13:8 bad [1] 59:8 barred [1] 66:7 Barrett [11] 31:7, 8 32:14, 24 34:4 45:22 57:6, 16 62:2, 5, 11 Barrett's [1] 69:5 bars [1] 29:15 Bartlett [1] 40:9 based [13] 4:21 20:19 21:2, 24 30:24 45:9 53:4, 20 63:15 66:16 69:13 73:25 82:10 baseless [1] 4:25 baseline [2] 14:5, 11 bases [1] 25:2 basically [5] 6:4 15:19 30:10 61:24 73:8 basis [10] 4:17 21:10 29:23 53:2, 6 56:16 64:14 66:24 68:9, 19 Beach [1] 1:24 bear [1] 82:5 beat [3] 43:2 78:4, 5 beginning [1] 54:13 behalf [9] 1:18, 25 2:4, 11, 14 3:8 52:11 73:2 80:12 believe [3] 53:22 66:14, 24 believed [5] 22:6, 8 66:21, 23 75:13 below [8] 4:24 19:24 21:14, 22 57:12 63:25 64:16 81:13 bend [1] 39:15 benefit [1] 4:8 berated [1] 61:24	best [5] 12:1 22:25 25:22 29:25 40:6 better [2] 47:25 69:13 between [12] 6:2, 9, 13 7:11 11:24 13:17 33:14 38:19 46:14 56:11 61:21 79:11 beyond [6] 21:11 34:1, 3 48:10 69:8 72:23 Bill [1] 72:14 binary [1] 66:20 bind [1] 16:11 bit [1] 23:21 Bivens [1] 70:13 blank [1] 36:14 blanks [1] 60:15 bleed [1] 42:4 block [1] 11:7 boil [1] 70:10 books [1] 26:1 Both [17] 5:6 7:3, 3 9:3 12:10 21:13 22:22, 24 23:2 26:11, 25 40:10 60:24 64:4, 16 80:17 82:18 boxes [1] 34:17 boxing [1] 61:16 Bram [1] 48:23 brand-new [1] 4:21 breakers [2] 67:1, 3 breaks [1] 74:5 Breyer [19] 23:16 34:5 35:9, 25 36:10, 16, 19 59:2, 12, 24 60:6, 9, 12, 18, 21 61:7, 10, 14 65:4 bribed [1] 39:9 brief [9] 18:12 21:5 28:6, 7 46:1 48:8, 14 63:13 81:24 briefs [3] 27:12 47:24 58:25 bring [3] 49:9 59:17 62:6 Briscoe [1] 41:13 broad [1] 53:7 broadier [1] 19:6 broadly [3] 7:14 46:22 66:18 brought [3] 11:10 82:16, 17 bunch [1] 28:8	
4	443 [1] 13:15	back [14] 14:19 15:11 16:15 17:20 18:24 23:11 26:17 49:7 50:19 59:23 67:17 68:1 72:7 76:24 backed [1] 13:8 bad [1] 59:8 barred [1] 66:7 Barrett [11] 31:7, 8 32:14, 24 34:4 45:22 57:6, 16 62:2, 5, 11 Barrett's [1] 69:5 bars [1] 29:15 Bartlett [1] 40:9 based [13] 4:21 20:19 21:2, 24 30:24 45:9 53:4, 20 63:15 66:16 69:13 73:25 82:10 baseless [1] 4:25 baseline [2] 14:5, 11 bases [1] 25:2 basically [5] 6:4 15:19 30:10 61:24 73:8 basis [10] 4:17 21:10 29:23 53:2, 6 56:16 64:14 66:24 68:9, 19 Beach [1] 1:24 bear [1] 82:5 beat [3] 43:2 78:4, 5 beginning [1] 54:13 behalf [9] 1:18, 25 2:4, 11, 14 3:8 52:11 73:2 80:12 believe [3] 53:22 66:14, 24 believed [5] 22:6, 8 66:21, 23 75:13 below [8] 4:24 19:24 21:14, 22 57:12 63:25 64:16 81:13 bend [1] 39:15 benefit [1] 4:8 berated [1] 61:24	best [5] 12:1 22:25 25:22 29:25 40:6 better [2] 47:25 69:13 between [12] 6:2, 9, 13 7:11 11:24 13:17 33:14 38:19 46:14 56:11 61:21 79:11 beyond [6] 21:11 34:1, 3 48:10 69:8 72:23 Bill [1] 72:14 binary [1] 66:20 bind [1] 16:11 bit [1] 23:21 Bivens [1] 70:13 blank [1] 36:14 blanks [1] 60:15 bleed [1] 42:4 block [1] 11:7 boil [1] 70:10 books [1] 26:1 Both [17] 5:6 7:3, 3 9:3 12:10 21:13 22:22, 24 23:2 26:11, 25 40:10 60:24 64:4, 16 80:17 82:18 boxes [1] 34:17 boxing [1] 61:16 Bram [1] 48:23 brand-new [1] 4:21 breakers [2] 67:1, 3 breaks [1] 74:5 Breyer [19] 23:16 34:5 35:9, 25 36:10, 16, 19 59:2, 12, 24 60:6, 9, 12, 18, 21 61:7, 10, 14 65:4 bribed [1] 39:9 brief [9] 18:12 21:5 28:6, 7 46:1 48:8, 14 63:13 81:24 briefs [3] 27:12 47:24 58:25 bring [3] 49:9 59:17 62:6 Briscoe [1] 41:13 broad [1] 53:7 broadier [1] 19:6 broadly [3] 7:14 46:22 66:18 brought [3] 11:10 82:16, 17 bunch [1] 28:8	
5	52 [1] 2:11	back [14] 14:19 15:11 16:15 17:20 18:24 23:11 26:17 49:7 50:19 59:23 67:17 68:1 72:7 76:24 backed [1] 13:8 bad [1] 59:8 barred [1] 66:7 Barrett [11] 31:7, 8 32:14, 24 34:4 45:22 57:6, 16 62:2, 5, 11 Barrett's [1] 69:5 bars [1] 29:15 Bartlett [1] 40:9 based [13] 4:21 20:19 21:2, 24 30:24 45:9 53:4, 20 63:15 66:16 69:13 73:25 82:10 baseless [1] 4:25 baseline [2] 14:5, 11 bases [1] 25:2 basically [5] 6:4 15:19 30:10 61:24 73:8 basis [10] 4:17 21:10 29:23 53:2, 6 56:16 64:14 66:24 68:9, 19 Beach [1] 1:24 bear [1] 82:5 beat [3] 43:2 78:4, 5 beginning [1] 54:13 behalf [9] 1:18, 25 2:4, 11, 14 3:8 52:11 73:2 80:12 believe [3] 53:22 66:14, 24 believed [5] 22:6, 8 66:21, 23 75:13 below [8] 4:24 19:24 21:14, 22 57:12 63:25 64:16 81:13 bend [1] 39:15 benefit [1] 4:8 berated [1] 61:24	best [5] 12:1 22:25 25:22 29:25 40:6 better [2] 47:25 69:13 between [12] 6:2, 9, 13 7:11 11:24 13:17 33:14 38:19 46:14 56:11 61:21 79:11 beyond [6] 21:11 34:1, 3 48:10 69:8 72:23 Bill [1] 72:14 binary [1] 66:20 bind [1] 16:11 bit [1] 23:21 Bivens [1] 70:13 blank [1] 36:14 blanks [1] 60:15 bleed [1] 42:4 block [1] 11:7 boil [1] 70:10 books [1] 26:1 Both [17] 5:6 7:3, 3 9:3 12:10 21:13 22:22, 24 23:2 26:11, 25 40:10 60:24 64:4, 16 80:17 82:18 boxes [1] 34:17 boxing [1] 61:16 Bram [1] 48:23 brand-new [1] 4:21 breakers [2] 67:1, 3 breaks [1] 74:5 Breyer [19] 23:16 34:5 35:9, 25 36:10, 16, 19 59:2, 12, 24 60:6, 9, 12, 18, 21 61:7, 10, 14 65:4 bribed [1] 39:9 brief [9] 18:12 21:5 28:6, 7 46:1 48:8, 14 63:13 81:24 briefs [3] 27:12 47:24 58:25 bring [3] 49:9 59:17 62:6 Briscoe [1] 41:13 broad [1] 53:7 broadier [1] 19:6 broadly [3] 7:14 46:22 66:18 brought [3] 11:10 82:16, 17 bunch [1] 28:8	
7	70s [1] 67:23	back [14] 14:19 15:11 16:15 17:20 18:24 23:11 26:17 49:7 50:19 59:23 67:17 68:1 72:7 76:24 backed [1] 13:8 bad [1] 59:8 barred [1] 66:7 Barrett [11] 31:7, 8 32:14, 24 34:4 45:22 57		

Official

<p>29:11 30:2,4 34:3,19,20 36:16 38:13 39:14 40:8,14 41:13 48:20 49:1,5,6 52: 23 53:18 54:9,13,20 55:6,8, 12,15 56:23 59:13,16,17 60:16 64:20 66:19 67:17 70:20 72:2,3 76:20 77:12, 23 79:10,20 80:22 81:2 82: 7,19,22,23 case-in-chief [8] 4:4 7:24 33:25 37:8 45:15 52:20 69: 24 71:13 cases [55] 3:24 4:1 6:12,12, 22 7:11 8:3,7 9:7 11:20,22, 23,25 12:14,17 13:9,11,18, 24 15:3,5,13,18 16:22,23 17:2 23:20 24:20 26:16,19 27:3 28:12,16 33:2 37:11 40:2,3,10 45:18 46:20 49: 19 73:12,13,14,15,18,19 76:6 77:9,23 78:12,16,20 80:24 81:4 categorical [8] 40:1,12,21, 23 50:8 52:21 64:11 80:3 causation [1] 59:20 causation [22] 4:15,21 20: 11,24 21:8,12 38:16 39:12, 20 40:11,25 57:9,25 58:4 59:1 64:16,18,25 74:15 81: 11,15,17 cause [38] 8:15 19:22 20:2 22:10 28:22 40:14,18 41: 24 50:9 51:2 53:10,15,23 57:17,23 58:13,19,24 59:7 60:5 63:22 64:7,14 66:6, 15,18,23,25 67:18 71:16 72:4 74:12,14 79:19,24 80: 3,4 82:4 caused [2] 44:15 58:8 causes [4] 51:9 67:8,8 72: 16 central [1] 25:3 Century [1] 49:1 cert [2] 21:14 74:18 certain [2] 34:16 56:6 Certainly [3] 22:17 28:20 48:20 challenges [1] 44:22 chance [2] 77:6 82:14 chances [1] 82:15 change [3] 13:11 34:11 39: 15 changes [2] 6:11 71:7 character [1] 10:17 characteristics [1] 34:7 characterize [1] 46:3 characterized [2] 32:8 72: 24 characterizing [1] 31:16 charge [1] 81:15 Chavez [14] 3:18 6:16,25 7: 12 9:6 11:19 12:1 15:17 19:16 20:20 26:10 30:24 54:19 81:1</p>	<p>checks [1] 34:17 CHIEF [40] 3:3,9 8:13 9:8, 11,15 10:20,24 12:18 15: 15 22:15,17 23:13,19 24: 19,22 26:8,21 27:7 29:16 31:6 32:6 37:13,19 48:22 51:10,13 52:7,12 67:22 68: 21 71:4 75:24 76:7,22 77: 25 80:5,9 81:5 82:21 Chief's [2] 17:20 18:24 choice [2] 66:20 79:11 Circuit [17] 3:23 13:4,6 21: 1 54:23 58:24 62:24,25 64: 5 67:1,3 73:14 75:22 79: 23,25 81:18,19 Circuit's [6] 3:11 4:15 21:4 38:6 66:15 74:7 circumstance [2] 30:16 51:6 circumstances [15] 36:7 40:24 52:19 53:14,18 55:4 65:13 67:12 68:25 69:21 71:2 76:12 78:24,24 79:3 civil [8] 41:22 43:15 45:20 49:9,14,16 77:20 78:16 civilly [2] 49:6,22 claim [31] 10:13 11:10 38: 11 40:19 44:17 53:20 54: 14,20,24 55:25 56:1 57:13, 20 58:11,11,16,23 62:3,7,7, 11,14,15,20,21 64:13 75: 21 77:3 79:22 82:10,13 claims [6] 29:23 41:15 42: 22 43:25 47:22 73:20 clarify [1] 15:3 clarity [1] 41:25 Clause [5] 44:9,16,21 46: 24 47:1 clear [10] 5:25 9:4 18:6 20: 14 21:9 36:5,25 38:12 57: 23 63:2 clearly [6] 6:7 22:5 25:24 46:17 65:19 73:1 client [4] 56:15 57:12 75: 13 79:13 client's [1] 66:23 close-as-possible [1] 33: 14 closed [2] 61:23 65:18 closely [2] 28:10 58:6 co-workers [1] 79:15 coerced [4] 8:10,12 22:4 37:10 coercion [16] 4:2 5:7 7:25 8:4,5,6 15:23 19:7 27:2 30: 11,16 56:17 62:8,21,22 82: 17 cognizable [4] 29:24 30: 21,21 31:4 coherent [2] 11:21 15:12 collateral [4] 43:15 44:21 49:9,14 colleague [1] 72:1 come [11] 11:21 14:7 21:23</p>	<p>22:24 23:11 24:8,23 34:6 37:12 40:15 79:1 comes [3] 13:11 27:5 73:7 comfort [1] 49:21 comment [1] 47:24 Commerce [2] 46:24 47:1 committed [1] 50:14 common [6] 39:21,22 45:5 52:22 66:17 72:7 common-sense [3] 15:12 26:20 81:6 commonplace [1] 48:21 comparable [3] 11:1,4 49: 20 compelled [4] 7:9 19:9 29: 15 33:16 complete [4] 4:16 61:21 73:1 79:2 completely [9] 4:9 37:9 60: 5 65:14 74:5,6,10 79:12,14 complex [1] 75:19 compulsion [1] 29:14 concede [2] 21:6 48:13 Conceded [1] 17:6 concedes [1] 4:14 concern [1] 47:15 concerned [2] 42:9,10 concerning [1] 37:22 concession [1] 4:16 conclude [1] 30:25 conclusion [2] 17:11,15 conduct [4] 5:2 50:4 73:23 76:25 conducted [1] 42:13 conference [1] 81:15 confessed [1] 65:15 confession [8] 22:3 42:7,8, 13 49:10 59:5 61:5 78:5 confessions [1] 8:21 Confrontation [4] 44:8,11, 16,21 confused [2] 26:14 57:7 confusing [1] 64:23 confusion [1] 75:15 Congress [15] 5:13 14:6,9, 9 31:23 32:2,2,21 34:10 35:2,3 71:23,24,24 77:8 consciously [1] 15:9 consequence [3] 44:18, 20 68:23 consequences [1] 66:17 consider [3] 27:20,22 79: 23 considered [3] 27:16 28:9 71:1 consistent [19] 6:21 11:18 13:24 14:1 15:6,12 17:1 19:25 23:23 25:22 26:7,8, 10,20 30:8 31:10 32:15 80: 23 81:6 constitute [1] 51:8 Constitution [24] 5:16 8: 18,23,24 9:13,16 11:7,9 17: 15,23 18:19,20 19:6 25:1</p>	<p>27:14 34:11 46:10,12 48:6 53:4 67:16 68:7 71:22 72: 14 constitutional [48] 3:17, 20,22 5:15,19,20 6:15,20 7: 4,6,8 10:9 12:7 14:5,11,13, 20 19:12 26:2 31:18,19,24 33:5,10 34:8,9,25 36:25 37:21 38:3 42:5,16 46:8, 13,21 47:6,14 49:25 53:11 68:8,9,24 69:8 71:8 75:5,6 77:16 80:19 constitutionalized [2] 12: 3 15:20 constitutionally [10] 14: 12 16:3,10,11 17:12 18:4 31:20 32:4 67:5 69:13 contending [1] 73:7 contention [2] 65:3 73:16 context [13] 4:5 8:2,5 9:19 15:24 19:8 30:8 34:19 36: 24 42:4 46:21 70:17 79:10 contexts [1] 37:10 contradict [1] 79:15 contrary [2] 38:6 41:12 contrast [1] 49:15 contrasted [1] 51:25 controversial [3] 26:15 31: 22 68:1 convicted [1] 78:21 conviction [2] 22:4 43:7 convictions [1] 53:5 convince [1] 38:8 convinced [1] 39:2 core [8] 33:10 54:14 69:16, 18 71:11,18 82:6,7 corpus [2] 43:15 52:5 Correct [5] 32:13 47:19 48: 16 63:18,19 correctly [5] 11:19 19:16 34:25 35:5 53:19 cost/benefit [3] 33:19 37: 4,6 couldn't [2] 6:24 32:2 counsel [15] 10:14 15:25 23:14 27:9 37:14 41:3,23 44:2 48:11 52:8 63:12 67: 22 80:5,7 82:22 counter [1] 52:21 country [1] 78:15 couple [4] 9:1 15:10 26:9 33:2 course [6] 29:13 30:3 47:6 48:10 49:6 68:10 COURT [74] 1:1,14 3:10 5: 8,11 6:7,22 7:10,18 9:4 10: 8 13:7,15,21 17:8 19:4,14 24:18 25:10,10,11,11,15, 26:2 29:8 31:24 32:17 33: 6,23,25 37:20 39:19,25 40: 10,20,22 41:13 42:23 43: 12 44:9 45:3,12,19 46:20, 23 47:17,21 52:13,14 53: 19 56:3,21 58:21,21 59:13,</p>	<p>22 64:10,16 65:2,12 66:14 67:14 69:6,7,9 71:1 72:6 73:9 74:8,18 79:5,20,24 80:17 court's [9] 4:9 11:22 17:9 35:4,4 41:12 44:8 46:20 53:25 courts [12] 4:2 16:12 18:3 19:24 31:23 32:1 34:24 35: 5,19 55:11 59:20 78:16 covered [1] 66:3 crafted [1] 3:15 create [6] 8:4 10:2,8 33:3 69:10 77:18 created [2] 6:18 12:5 creates [8] 4:6 9:18 11:14, 14 13:10 15:22 33:7 80:20 creating [2] 33:20 38:17 creation [1] 50:7 criminal [12] 7:22 9:23 23: 2 25:8 30:12 37:23 41:19 45:15 49:11 53:5 67:25 69: 1 curiae [3] 1:22 2:8 37:17 custodial [7] 52:18,25 53: 13 63:10 65:19 68:25 71: 12 custody [5] 54:10 56:10,18, 20 82:6 cut [2] 51:9 74:12 cutting [1] 51:2</p>
D				
<p>D.C [3] 1:10,18,21 damages [3] 4:13 10:23 28:23 day [3] 77:21,22 78:15 deal [6] 40:4 42:11 51:17 62:25 77:20,21 dealing [1] 78:16 dealt [2] 71:5 72:8 debate [2] 68:4,14 deceives [2] 53:13 67:1 deceiving [1] 67:10 decide [3] 37:12 71:24,25 decided [1] 21:1 decides [2] 22:3 79:4 decision [14] 13:10 14:20 30:11 35:4 38:6 41:12,18 48:15 50:1 51:8 56:16 68: 24 74:8 76:1 decisions [4] 20:18 26:2,3 80:17 decisive [1] 25:13 declined [2] 70:13,14 deems [1] 79:24 defendant [6] 9:22 10:7 58: 1,18,19,23 defendant's [5] 4:5,12 7: 22 53:1 64:20 defendants [3] 4:7 34:22 58:5 defense [5] 22:1 65:2 66:5 67:19 77:21</p>				

Official

<p>defense's [1] 22:5 defined [1] 46:20 defines [1] 68:24 defining [1] 69:20 definitely [1] 12:14 definition [1] 32:21 deliberately [2] 59:15 62:16 denial [1] 44:2 denigrated [1] 25:5 Dennis [1] 46:22 Department [1] 1:21 depend [1] 57:13 deportation [1] 61:25 deprivation [2] 12:5 58:6 deprivation [3] 3:21 8:17 71:21 Deputy [9] 53:17,23 61:1 63:11 65:25,25 66:9,21 79:11 described [2] 51:19 81:13 description [2] 17:13 32:15 destroyed [1] 73:5 determine [1] 56:11 deterrent [1] 75:11 Dickerson [86] 3:24,25 5:11,18,25 6:2,10,10,13 7:11,18 9:4,5,7 11:20,24,25 12:10,11,13,15,16,17 13:2,9,14,16,16,22 14:4,5,16 15:8,17 16:4,6,20,24 17:1,6 18:7,8,21 19:18 20:10,17,20 23:23 24:8,10,15,17,21 25:25 26:1,11 27:1 29:2 30:10 31:14,17,21 32:6,10,15,16 46:12 47:6,18 68:5,15,16 69:14 70:8,17 71:5 75:4,21 80:14,17,18,19,22,24 81:3,8 Dickerson's [2] 16:1 80:16 difference [1] 56:11 different [9] 5:3 8:6 12:16 19:11 30:19 56:5 60:5 62:19 79:14 difficult [3] 42:6 76:2,5 difficulties [3] 77:10,18,20 direct [1] 30:7 disagree [1] 12:25 disappears [1] 39:13 discourage [1] 41:21 discovery [5] 76:5 77:10 78:1,10,14 discrepancy [1] 13:17 discrimination [1] 10:13 discussions [1] 67:24 displaced [1] 5:12 dispute [9] 6:1,9 11:8 55:6 61:21 78:10 dissents [2] 26:16,17 distinct [1] 52:23 distinction [1] 46:14 distinctions [1] 35:15</p>	<p>distinguish [1] 37:11 district [8] 54:17 55:11 56:2,21 58:21 63:4 65:1 78:16 divide [1] 46:11 doctrine [2] 15:17 80:23 doing [2] 14:17 33:6 done [10] 14:19 23:3 50:13,21,23,24,24 63:7 70:11 71:23 dot [3] 60:14,14,14 doubt [1] 68:13 down [3] 61:5 70:10 74:5 drawing [1] 46:14 driven [1] 15:14 due [4] 42:24 43:2 56:1 82:16</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each [1] 66:9 Earle [2] 74:8,9 earlier [6] 6:21 13:11 15:18 17:9 36:3 45:5 early [1] 67:23 effect [2] 25:7 78:6 effective [1] 14:8 either [6] 55:11 63:7,7,9,10 64:1 elaborate [1] 46:5 elements [1] 72:4 elevate [1] 64:7 elevated [1] 64:18 elicits [1] 52:17 Elstad [4] 3:22 6:23 19:15 80:25 employment [1] 10:13 encouraged [1] 28:12 end [3] 5:7 21:7 82:19 enforce [3] 34:9,12 45:11 enforceable [6] 10:2 11:15 46:25 49:7,22 52:4 enforced [3] 35:8 44:3 45:12 enforcing [1] 45:23 engage [1] 51:4 enjoy [1] 41:14 Entick [1] 49:18 entire [3] 15:16 72:12 73:24 entirely [1] 50:15 equivalent [1] 49:16 era [1] 70:12 error [2] 4:11 79:5 especially [1] 47:17 ESQ [4] 2:3,6,10,13 ESQUIRE [2] 1:18,24 essence [1] 16:19 essentially [12] 6:11 7:13,25 8:3,8 12:2 14:22 21:6 24:22 30:1,3,13 estoppel [2] 20:4,12 even [15] 12:18 19:18 31:3 37:2 41:16 43:2 46:25 47:18 52:17 59:25 65:2 66:22</p>	<p>69:7 70:12 81:21 event [2] 5:1 82:8 Everyone [1] 81:16 evidence [43] 5:6 8:22 10:11,17,18,25 11:3 22:25 27:15 28:8,10,18,24 29:5 33:24 37:23 38:22,25 39:3 45:17 49:8,11,13 51:22 55:15,19 57:13,20 62:9,14,15 63:23 65:6,11,21 66:7 67:6 72:21 76:11,15,19 81:23 82:10 evidentiary [4] 9:21,25 10:1 34:21 evolution [1] 71:8 evulsive [1] 13:10 exact [2] 60:17 82:11 exactly [9] 12:19,19,22 13:2,14 14:14 32:24 39:16,21 examine [2] 76:3,24 example [8] 10:12 11:2 34:16 39:7 42:21 45:15 46:22 72:2 examples [3] 10:4 28:17 40:6 exceptions [1] 71:6 excludable [1] 8:9 exclude [2] 34:22 72:15 excluded [2] 62:24 72:11 excludes [1] 7:15 excluding [3] 4:8 30:6 37:7 exclusion [7] 28:19,21 34:21 37:23 49:13 64:11 72:21 exclusionary [3] 10:5 29:4,6 exercise [1] 67:4 exhaustively [1] 28:8 exists [1] 53:15 exonerated [1] 5:3 expand [1] 33:20 expanding [1] 33:20 experience [1] 21:23 expert [2] 55:1 62:23 explain [1] 42:15 exposing [1] 41:21 expressly [2] 16:7 68:18 extend [4] 70:10,11,14,14 extended [1] 70:18 extends [1] 41:16 extension [4] 3:11 70:16 71:9 72:22 extent [1] 14:21 extra [1] 7:19 extreme [1] 40:2 extremely [2] 24:24 46:22</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabricate [4] 55:20 56:4,6,15 fabricated [1] 57:3 fabrication [9] 5:6 55:15,18 56:23 57:19 62:8,14 75:</p>	<p>16 82:10 face [1] 20:10 fact [12] 3:24 5:4 14:2,17 18:9 22:4 54:12 65:16 68:15 71:6 76:18 77:16 factual [3] 4:24 76:2,5 factually [2] 21:17 81:22 fails [1] 38:1 fair [1] 27:15 fall [2] 35:14 53:6 fallen [1] 35:18 falls [1] 59:19 false [4] 53:17 62:15 66:10 79:12 falsely [2] 20:3 41:7 falsification [1] 57:13 falsified [2] 62:16,19 far [4] 26:3 45:12 48:7 54:2 federal [5] 5:12 10:11,25 11:3 46:3 federalism [1] 46:16 fence [1] 4:6 Fifth [33] 4:7,12 6:6 7:15,17 8:1 9:18 11:11,13 14:13 26:5 27:4 29:14 31:1 32:18 45:25 46:4 49:3 51:19 53:1 55:25 56:22 58:16 62:7 67:7 69:3,21,25 71:18 72:12 74:7 80:21 81:9 filing [1] 73:18 fill [2] 36:14 60:14 final [1] 29:7 find [9] 20:5 52:14 53:15,22 54:8,11 55:23 56:9,10 finders [1] 5:4 finding [6] 54:5,9 55:2,19 56:3 57:1 findings [1] 54:3 finger [1] 13:1 firm [1] 41:24 First [16] 3:15 9:2 20:16 21:10 22:20 42:15,20,20 52:24 55:14 61:12,19 65:12 67:14 73:14 79:21 fit [2] 33:14 40:1 five [2] 81:1,2 focus [3] 8:14 9:9 15:2 focused [2] 33:9 65:23 follow [1] 18:3 force [2] 58:3,7 foreclose [1] 47:21 forensic [1] 44:10 forfeited [2] 4:24 81:22 forget [1] 42:7 formulations [1] 68:12 forth [1] 20:20 forum [1] 43:13 forward [9] 21:3 22:24 40:15 54:24 56:22 58:17 79:1,5,22 found [11] 48:17 52:15 53:19 55:18 56:3,8,14,21 58:2 62:22 78:25 founding [2] 27:16 49:1</p>	<p>founding-era [1] 49:8 four [2] 5:3 34:17 Fourteenth [2] 55:25 82:16 Fourth [4] 10:5 49:17 52:1,2 frame [1] 13:3 friend [2] 31:12 80:13 front [1] 23:2 fruits [1] 45:17 full [1] 73:6 full-blown [1] 22:21 fully [2] 72:19,20 fundamental [4] 23:9 72:13 75:12 77:4 further [2] 45:13 67:17</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gave [8] 12:21 14:16 19:24 53:17 54:16 59:14 66:10 75:21 General [7] 1:20 50:6,25 51:1 68:2 75:1,3 General's [2] 72:18 74:25 gets [3] 19:1 73:6 74:4 getting [1] 50:19 give [9] 10:5 28:12 35:6 41:6 49:20 54:18 71:20 77:5 79:2 gives [6] 4:7 8:16 28:22 46:24 74:10 80:19 giving [2] 20:2 81:9 Gorsuch [17] 27:8,9,23,25 28:3 41:23 42:14 43:4,11,17,22 44:6,23 45:2,21 47:23 48:4 got [4] 15:11 58:10 65:24 66:8 government [4] 10:12 42:9 45:24 63:14 government's [1] 46:6 grade [1] 25:18 granted [1] 74:18 grapple [1] 29:13 great [1] 34:15 ground [1] 73:17 guarantee [1] 33:5 guarantees [1] 73:23 guess [6] 23:10 25:17 39:17 63:12 66:13 76:23 gun [1] 62:1 guy [1] 78:5</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habeas [13] 16:12 18:2 29:24 30:2,17,18,21 31:3,4 34:13 43:15 52:5 53:3 hand [1] 62:1 handful [1] 73:15 handle [1] 78:17 handled [1] 78:15 happen [7] 43:20,23 44:1 66:12 67:12,13 73:19 happened [8] 57:24 59:8,</p>
---	--	---	--	---

14 60:16 61:22 64:13 65:8 75:17 happens [4] 43:18 51:21 52:3 78:11 happenstance [1] 68:12 happy [2] 21:12 23:11 hard [1] 7:20 harder [1] 64:19 hardly [1] 60:10 harm [3] 3:22 27:1 43:5 harmonious [1] 14:1 harmonization [1] 11:22 harmonized [1] 19:16 harmonizes [1] 80:22 harms [1] 43:13 Harris [1] 80:25 Hartman [1] 40:8 head [1] 6:17 hear [2] 3:3 43:9 hearing [6] 22:1,21,22 38: 23 82:1,2 hearsay [1] 10:16 heart [1] 55:5 Heck [1] 78:19 held [7] 4:17 5:11,11 41:14, 16 44:9 46:23 help [2] 28:13 42:2 helps [1] 28:6 hence [1] 5:16 Hermosa [1] 1:24 Higgins [1] 46:23 higher [1] 55:24 himself [4] 26:9 38:2 51:4, 24 historians [1] 27:12 historians' [5] 28:6,7 47: 24 48:8,13 historical [1] 28:17 history [4] 49:15,20 64:24 75:18 HOFFMAN [44] 1:24 2:10 52:9,10,12 54:4 55:8,16,21 56:19 57:15,21 59:11,21 60:2,8,11,17,20,24 61:9,12, 17 62:4,10,13 63:9,18,20 64:3 65:10 68:20 70:4,6, 22,25 72:11,25 74:20 76:4, 18 77:2 78:7 80:8 hold [1] 81:8 holding [2] 4:15 21:8 holdings [1] 3:19 honest [4] 74:5,6,10 79:2 Honor [12] 5:17 9:1 14:15 16:18 17:14 18:5 20:7 25: 20 27:19 29:8 34:14 41:11 Honors [1] 82:12 hour [1] 61:23 hour-long [1] 65:17 however [3] 38:15 59:8 63: 22 Hudson [1] 75:9 huge [1] 67:23 Humphrey [1] 78:19 hypothetical [1] 38:14	hypothetically [2] 59:4 60: 10 hypotheticals [1] 40:17 <hr/> I identifiable [1] 3:21 imagined [1] 48:22 immune [2] 41:5,10 immunities [1] 8:18 immunity [15] 38:18 39:4 41:4,14 46:10,14 59:7,9 61:8,15 66:4,8 77:10,17 78:23 immunized [1] 82:2 impeachment [1] 45:16 imperfectly [1] 40:2 impermissible [2] 8:11 67: 6 implement [2] 32:18 48:17 implementing [1] 49:3 importance [1] 26:22 important [13] 12:3 15:20 24:24 25:21 26:1,23 27:17, 20 32:9 49:2 57:17 74:25 75:10 impose [1] 31:25 improper [1] 49:11 improperly [1] 59:4 incident [1] 82:4 inclined [2] 29:9 66:14 include [1] 64:17 including [2] 9:7 15:17 incoherent [1] 13:21 inconsistent [8] 3:12 4:23 21:15 24:9,14 26:18 31:14 80:16 incrimination [1] 33:17 indeed [3] 42:16 49:21 51: 25 independent [7] 21:10 42: 24 50:1 51:7 67:4 69:10 74:11 indication [1] 60:15 individual [1] 43:1 individuals [1] 8:16 inducement [1] 40:7 induces [1] 41:8 inducing [1] 63:22 ineffective [1] 44:1 information [2] 63:16 65: 24 inherent [1] 32:5 injury [1] 58:8 innocence [1] 72:6 inside [1] 7:21 instead [1] 48:15 institution [2] 24:18 25:15 instructed [1] 63:5 instruction [17] 4:23 19:24 21:2 54:18 57:12,25 58:1, 4,9,15,19,22 64:17,19,21 74:14 81:14 instructions [1] 21:15 integrity [1] 73:24	intended [1] 27:13 intermediary [1] 74:11 interpreting [2] 9:6 80:15 interrogation [12] 7:21 42: 25 48:12 53:14,18 55:5 63: 10 65:14,17,20 74:2 79:4 intervene [1] 14:10 intervening [2] 11:23 22: 10 introduce [3] 39:3 65:6 69: 24 introduced [5] 49:11 52: 19 59:5 67:6 69:1 introduces [1] 10:15 introducing [2] 22:11 33: 24 introduction [5] 43:6 44: 10 52:24 54:15 71:12 invoke [2] 9:23,23 invoked [2] 9:25 10:7 involuntary [2] 42:6 49:10 involved [3] 74:2 76:1,3 isn't [13] 8:23 23:23 32:21 37:24 38:4 39:21 44:12 48: 24 52:4 55:19 67:15 70:19 73:1 issue [28] 6:17 13:2,3 20: 16 30:3 38:12 39:24 41:5 45:7,8 49:5,18 50:11,19 52:24 53:8 54:6,25 55:1 57:24 58:13 65:1 66:8 67: 23 71:5 81:14,20 82:6 issues [8] 52:24 58:20 67: 20 76:6 77:11,13 78:17,18 itself [14] 7:15 11:25 13:14 15:7 19:7 23:6 25:10 32: 22 43:1,14 44:1 49:14 50: 15 80:24 <hr/> J JA [1] 81:16 Joe [2] 78:3,4 joint [1] 57:25 journey [1] 23:20 judge [20] 21:22 22:10 23:3 30:5,12 38:22,24 39:3,9 41:8 54:17,17 56:24 58:16 63:4 64:1 67:2,3 74:11 75: 20 judges [3] 4:19 5:4 23:2 judges' [1] 51:7 judgment [2] 63:1 67:5 judicially [3] 3:15 6:18 12: 5 juries [2] 5:6 54:11 jurisprudence [1] 44:9 jury [21] 4:23,25 5:5 21:15 22:3 44:2 53:15,21 54:3,7 55:22 56:25 57:11 58:12, 14 62:22 63:5 81:13 82:8, 9,18 Justice [17] 1:21 3:3,9 5: 10,22 6:3,3,24 8:13 9:8,11, 15 10:20,24 12:8,12,18,23,	24 13:18 14:2,4,21 15:14, 15,25 16:14,19 17:3,5,17, 19,22 18:1,11,13,15,18,23 19:19 20:8 21:16,18,21 22: 16,17 23:13,15,16,17,18, 19 24:4,7,19,22 25:8 26:9, 21 27:6,7,7,9,23,25 28:3 29:16,16,18,22 30:24 31:5, 6,6,8,11 32:6,14,24 34:4,5 35:9,25 36:10,16,19 37:13, 19 38:7 39:6 41:3,23 42: 14 43:4,11,17,22 44:6,23 45:2,4,21,22 47:8,9,15,23 48:3,22 49:23 50:10,18 51: 10,10,12,13,14,15 52:6,7, 12 54:1 55:7,9,17 56:13 57:6,8,16,18 59:2,12,24 60: 6,9,12,18,21 61:7,10,14 62: 2,5,11 63:8,12,19,21 65:4 67:22 68:3,21 69:4 70:2,5, 6,7,23 71:4 72:10,17 75:8, 24 76:7,22 77:25 80:5,6,9 81:6 82:21 justices [2] 81:1,2 justification [1] 14:15 <hr/> K KAGAN [12] 12:8,24 14:2,4, 21 23:18 24:4,7 27:6 31: 11 39:6 47:15 Kagan's [1] 47:9 Kavanaugh [15] 29:17,18, 22 31:5 45:5 47:8 51:14, 15 52:6 70:2,5,7,23 72:10, 17 keep [2] 12:9 70:5 key [1] 29:1 kind [15] 11:21 13:1 15:23 19:10 23:23 25:7,13 33:4 37:4 46:1 49:21 73:23 77: 4 78:20 79:17 kinds [1] 77:19 <hr/> L LaHue [1] 41:13 language [13] 8:15 13:13 16:4,8,16,25 17:6 18:25 29:10 46:2,8 67:10 80:24 last [2] 60:18,23 late [1] 67:23 later [4] 26:10 38:5 50:1 68: 14 latter [1] 59:20 Laughter [1] 74:19 law [19] 10:6,18 13:20 18:9 19:17 24:25 25:4,25 26:14, 16 36:19 39:21,22 45:6 49: 1 66:17 67:25 72:7 80:22 laws [1] 8:19 lawyers [2] 77:20,21 lead [1] 53:3 leads [1] 77:4 least [8] 9:5 23:24 24:12 29:3 66:19 67:11 79:10,19	leave [2] 23:10 32:17 legal [1] 51:5 legally [3] 4:25 38:4 39:17 legitimacy [1] 25:10 lens [1] 24:19 less [1] 78:20 liability [11] 26:6 31:3 38: 16 39:5 41:22 51:9 53:2 54:19 63:16 75:2 76:9 liable [4] 4:18 52:15 75:25 78:25 liberty [3] 4:5 7:22 30:14 lie [2] 38:19 81:18 lied [5] 39:2 54:3,6 55:3 63: 11 lies [7] 4:22 38:8 52:18 81: 23,25 82:5,9 life [1] 73:5 light [3] 14:23 39:23 45:6 limit [5] 30:10 42:24 71:25 75:2 78:24 limited [1] 33:9 limits [2] 3:25 26:23 line [8] 16:12 9:7 15:13,16 26:14,15,19 33:2 lineups [1] 34:23 listing [1] 35:22 litigated [1] 66:8 litigation [4] 3:12 9:24 23: 8 77:1 little [3] 23:21 44:24 68:1 living [1] 32:7 logic [3] 42:15,18,21 long [1] 35:21 look [9] 13:3,13 29:9 46:19 48:22 49:7 60:22 74:7 78: 4 looked [3] 14:19 28:8 55: 13 loosely [1] 16:8 lose [2] 61:15 62:2 lost [5] 57:19 62:6,8,12,13 lot [8] 28:11 29:19 36:24 67: 19 73:11,12 75:19 77:9 lots [1] 49:15 lower [5] 34:24 35:1,5 59: 20,22 lying [3] 59:16 60:13 63:23 <hr/> M made [17] 4:18 9:4 11:12 20:3 30:5 31:12 36:25 54: 20,20,23 56:24 57:1 58:23 61:4 64:2 65:2 74:15 mainly [1] 27:22 maintained [1] 13:7 majority [3] 6:2,25 9:5 majority's [2] 6:4 26:18 mandatory [2] 28:19,21 Manson [1] 34:20 many [6] 12:19 24:13 35:17, 18 76:6 77:23 MARTINEZ [66] 1:18 2:3, 13 3:6,7,9 5:10,17,23 7:5
--	--	--	---	--

Official

8:13,25 9:10,14,17 10:22 11:5 12:9,24 14:3,14,25 16:13,18,21 17:4,14,18,21, 24 18:5,12,14,17,21 19:3 20:6,13 21:17,19 22:14,18 23:18 24:2,5 25:20 27:19, 24 28:2,5 29:21,25 31:8 32:13,23 34:14 35:24 36:2, 15,18,21 47:9 51:16 80:10, 11,13 matter [6] 1:13 20:5 29:3 47:20 48:18 56:14 matters [1] 30:15 mean [27] 5:22 12:8 15:22 24:10,23 27:3 35:21 39:6, 11 55:21 56:19 59:3,25 66: 12 69:14 71:6 72:5,12 74: 1,7 76:7,18,23 77:12,13 78: 9,19 meaning [4] 27:14 48:5,25 62:17 means [4] 5:23 15:4 19:4 75:4 meant [3] 49:22 69:20 77:8 measure [1] 7:19 meet [1] 80:2 mentioned [1] 23:19 merely [1] 17:10 merits [2] 28:4,5 Michigan [1] 75:9 middle-ground [1] 81:7 might [12] 14:6 25:1,17 26: 13 38:5 42:4 43:17 47:1, 25 48:21 59:12 78:2 mind [1] 61:16 minimum [1] 53:12 minute [1] 8:14 Miranda [106] 3:12,15,20 4: 6,9 5:4,12,19 6:5,5,13,14 7:11 8:9,20 9:12,18 11:2, 16,23,24 12:2,6,21 13:17, 19,23 14:8,19 15:7,19 16: 20 17:10,11 20:9,17,19 23: 4 24:23 25:2 26:1,22 27: 13 28:20 29:1,23 30:9 31: 2 32:7 33:2,15 37:21,24 38:2,11,15,20 42:3,7 45:9, 14 46:7,16 47:5,14,22,25 48:4,9,10,15 49:6 50:20 51:20,21 52:1,16 53:3,21 54:14 57:4 58:11,11 59:15 63:5 67:15,25 68:7,23,24 69:15,16,18,20,23 70:8,17 71:2,7,10,11,18 80:19,20 81:7 82:7 Miranda's [6] 3:25 4:1 6: 18 37:1 69:2 73:25 misconduct [6] 64:13 67: 1 73:20,21 77:3 82:15 mislead [1] 65:7 misled [1] 38:25 misrepresented [1] 76:12 missing [1] 39:18 mistake [2] 30:6 61:5	mistakes [1] 4:18 Mister [1] 56:12 money [2] 4:13 28:23 Monroe [1] 66:16 Moore [1] 40:8 morning [1] 3:4 most [5] 20:25 30:15 45:3 56:2 78:11 mostly [1] 12:11 moving [2] 58:3,7 much [3] 7:1 48:21 55:23 Murray [2] 74:8,9 must [2] 39:13 45:6 <hr/> N <hr/> narrower [3] 44:25 57:11 69:12 natural [2] 66:16 71:8 nature [2] 39:23 50:20 necessarily [1] 30:21 necessary [12] 14:12 33: 21,22,23 39:23 45:10,12, 20 47:21 48:17 72:8 79:24 need [7] 15:1 19:5,6,7 33: 18 82:13,14 needed [1] 7:19 needs [2] 33:8,13 negative [1] 46:24 neutral [1] 74:11 never [18] 19:24 32:8 52:15 54:8 55:2 58:10,12,18,18, 20,23 60:4,7,8 66:4,8 67: 21 74:16 Nevertheless [1] 49:4 new [6] 13:12 14:17 70:17 72:23 81:12,21 nice [1] 18:10 Nieves [1] 40:8 Ninth [19] 3:11,23 4:15 13: 4,6 21:1,3 38:5 54:22 58: 23 62:24,25 64:5 66:14 75: 22 79:22,25 81:18,19 Nobody [1] 74:4 None [3] 54:10,10 65:22 nonetheless [1] 8:10 notes [2] 78:2,8 nothing [1] 66:4 nuance [1] 68:19 nuanced [1] 68:21 Number [4] 36:23 37:2 55: 13,14 numerous [1] 78:21 <hr/> O <hr/> objection [1] 16:22 observation [1] 16:2 obtain [2] 50:3,22 obtained [1] 59:4 obviously [5] 26:15 41:25 75:18 78:10 79:23 occur [3] 38:5 43:14 59:8 occurred [1] 69:25 offer [1] 44:5 offers [2] 21:24 38:21	office [1] 72:18 officer [43] 21:25 22:8 38:1, 8,20 39:1,8 42:12 49:24 50:4,13,17,21,25 51:4,24 52:15,17 53:12 54:3,6 55: 3 56:4,5 61:25 62:16,18 63:14,22 64:12 66:25 67:8 72:15 73:8,20,21 74:9 75: 25 76:9,13,16 79:7,16 Officers [5] 4:17 53:8 74:1 78:25 79:1 Okay [7] 9:10 19:22 39:19 60:7 76:8 80:5,7 old [1] 39:22 omit [1] 65:13 once [1] 71:17 one [24] 8:4,24 9:20 10:1 12:6 14:1 31:21 34:7 35: 10 36:23 43:17 44:18 46: 25 47:12 48:8,21 55:2,13 56:7 64:25 67:11 72:13 73: 13 81:14 ones [2] 67:4 74:3 only [10] 4:2 11:11 19:25 25:7 29:15 32:25 36:14 40: 24 42:19 45:15 onus [1] 42:11 open [1] 22:7 operates [1] 25:11 operating [1] 64:5 opinion [9] 6:2 25:22 26: 18,24 36:4,14 45:4 48:23 68:17 opinions [2] 15:16 17:7 opposing [1] 10:14 opposite [2] 13:14 14:18 oral [7] 1:14 2:2,5,9 3:7 37: 16 52:10 order [5] 19:8 38:8,24 40: 14 47:21 ordinarily [1] 72:24 original [7] 25:2 27:14 29: 3 47:20 48:1,5,25 originalist [1] 29:9 other [29] 5:21 8:11 11:12 19:23 31:13 35:10,14 36:7, 7 37:10,11 39:20 42:4,16 49:10 53:9 55:3 61:11 65: 8 66:1 70:9,12 71:17 73:3, 16 74:22 76:6 80:3,13 others [2] 13:19 33:3 otherwise [1] 63:24 ought [2] 78:3,4 out [9] 9:22 19:1 24:8 26: 13 43:8,10 61:11 73:7 78: 5 outlandish [4] 39:7,7 40: 17 41:1 outside [5] 42:3 43:23 52:3 59:13 61:11 over [1] 79:25 overly [1] 34:23 overrule [1] 32:2 overruling [1] 32:7	overturn [7] 12:4 15:21 16: 17 18:7 20:18 32:12 35:3 overturned [5] 5:24 13:20 25:5 35:2 54:20 overturns [1] 6:11 own [4] 14:23 64:8 80:16 81:13 <hr/> P <hr/> PAGE [4] 2:2 13:4,15 58:2 panel [1] 67:24 part [10] 7:24 15:2 24:18 42: 20 49:3 56:20,20 60:18 62: 5 77:24 part's [1] 60:23 particular [6] 36:5,9 37:5 42:19 68:12,18 parties [1] 65:23 partly [1] 67:25 parts [1] 46:11 party [1] 9:23 past [1] 46:20 Patane [3] 33:12,13 81:2 PAUL [3] 1:24 2:10 52:10 pay [1] 25:18 Payne [4] 3:21 6:23 19:15 80:25 people [10] 23:25 24:13,21, 24,25 26:13 28:12 34:22 73:18 76:3 people's [3] 25:4,8,9 perfectly [7] 13:23 15:6 18: 9 26:7,8,10 44:19 periphery [1] 69:18 perjured [1] 41:17 perjury [2] 41:19,20 permitted [1] 21:22 person [4] 3:18 12:7 59:6 67:8 personal [1] 10:9 petition [1] 13:5 Petitioner [10] 1:4,19,23 2: 4,8,14 3:8 37:18 52:14 80: 12 Petitioner's [2] 58:3 60:3 pieces [1] 39:18 place [2] 38:18 42:10 plaintiff [3] 40:13 58:2,5 Plaintiff's [1] 58:7 play [2] 43:8,11 plays [2] 25:16 75:9 please [3] 3:10 37:20 52: 13 plurality [13] 3:18 6:16 7: 12 9:6 11:19 12:1,12,13 19:16 20:21 30:24 33:13 81:1 point [12] 20:11 22:23 23:9 29:1 32:25 34:18 39:11 55: 10 58:10 66:5 68:17 82:3 pointed [1] 60:25 points [8] 22:15,18 25:21, 23 27:20 31:11,12 81:24 police [25] 20:3 21:25 22:8	34:23 38:1,7,20 39:1,8 42: 12,25 43:1 49:24 50:4,13, 16,21,25 51:4,23 52:15 53: 8 63:14,21 72:15 policeman [5] 59:13,16 60: 13 65:7,8 policeman's [1] 59:9 policing [1] 73:23 policy [1] 3:13 position [16] 19:25 23:22 30:23 31:13 35:12 42:15 45:25 46:6 51:19 67:14 68: 22 70:9 71:15 74:25 77:6 79:9 possible [3] 77:14,14 82:4 post-Miranda [5] 13:18,24 15:3,4 81:4 postdating [1] 80:18 potential [1] 43:7 power [7] 32:9,16 33:1,3 34:10 69:6,7 powerful [1] 32:20 powers [1] 46:16 practical [1] 48:18 practice [1] 45:10 pre-Dickerson [6] 3:19 6: 12 8:7 11:20 17:2 81:4 precedent [10] 3:13 14:22, 23 15:2 36:24 37:3 47:10, 11 52:21 64:5 precedential [1] 9:3 precedents [1] 70:12 precisely [2] 47:15 52:2 preclude [1] 62:12 predating [1] 80:17 predicate [1] 39:5 premise [2] 4:24 50:11 present [3] 31:9 48:12 76: 2 presented [5] 29:12 38:12 54:7 55:12 58:12 presents [2] 52:23 76:5 preserve [3] 41:1 80:14 81: 8 preserved [2] 21:13,14 pressing [1] 57:10 presumably [1] 39:1 presume [4] 7:25 8:1 19:7 27:4 presumed [1] 8:10 presumption [7] 4:2 8:4,5 15:23 27:2 30:10,16 pretty [1] 46:17 prevailed [1] 76:10 previous [1] 41:12 previously [3] 6:22 48:1 70:18 principle [4] 71:11 79:21 80:2,4 principles [5] 39:20,21 45: 6 66:17 72:7 prior [3] 13:9 26:19 80:24 private [1] 28:22 privilege [2] 46:9,13
--	---	---	--	--

Official

<p>privileges [1] 8:17 probable [2] 40:14,18 probably [1] 46:2 problem [6] 38:17,18 39:12 40:25 61:8 63:13 problems [1] 40:11 procedural [2] 64:24 75:18 procedure [1] 75:17 procedures [1] 14:11 proceeding [1] 49:14 proceedings [3] 66:2,11 67:18 process [9] 42:24 43:2,14 44:4 56:1 74:2 78:14,22 82:17 profound [2] 25:14,14 progress [1] 24:20 proper [1] 25:23 properly [4] 29:11 30:4 38:12 56:21 prophylactic [28] 3:16 6:19 7:4,6,13 12:5 16:6,16,25 17:10,13 18:16 19:1,4,5 27:17 31:25 33:4,21 34:9,11,12,20,25 35:6,17,20 36:6 prophylactically [1] 32:19 proposed [1] 21:2 proposition [1] 73:15 prosecute [1] 40:7 prosecution [6] 40:19 41:5,20 45:16 50:2,22 prosecution's [6] 4:4 7:23 33:24 37:7 52:20 71:13 prosecutor [27] 21:24 22:11 38:9,21 39:9 41:8 42:11 50:1 53:13 59:6,14 60:14 63:15 65:7,24 67:2,11 73:9 76:1,10,14,17,19,20,25 78:1 79:4 prosecutor's [2] 44:15 78:8 prosecutors [2] 4:18 21:21 prosecutors' [1] 51:7 protect [6] 7:7 19:8 27:17 28:13 32:19 33:4 protecting [1] 33:11 protection [1] 7:19 protections [1] 17:11 protective [1] 4:6 prove [3] 64:20 72:5 77:12 provenance [1] 48:1 provide [3] 38:1 39:18 48:14 provides [3] 4:16 71:15 75:7 provision [4] 11:1 46:18 47:2,3 provisions [2] 46:15,16 proximate [33] 4:15 19:22 20:11,24 21:8,12 40:13 41:24 50:9 51:2 53:15,23 57:</p>	<p>17,23 58:13,24 60:4 64:7,14,25 66:6,15,18,23,25 67:18 74:12,15 79:18,24 80:3,4 82:4 proximately [2] 44:15 53:10 public [1] 45:18 purpose [1] 7:7 purposely [1] 38:8 purposes [3] 30:9 45:7 67:17 put [9] 13:1 20:20 21:3 24:11 44:12 61:22 76:10,11,15 puts [1] 22:1</p> <p style="text-align:center">Q</p> <p>Qualified [1] 78:23 quantum [1] 43:5 Quarles [1] 80:25 quarrel [1] 16:22 question [10] 17:20 18:13 22:7 34:15 47:9 50:12 51:16 61:18 66:13 69:5 questioning [1] 23:12 questions [4] 5:8 53:25 74:23 76:2 quite [3] 12:16 39:16 48:7 quo [2] 6:11 13:8 quote [1] 17:5</p> <p style="text-align:center">R</p> <p>raise [1] 67:19 raised [7] 47:16 54:25 58:20,21 67:21 81:11,12 raising [1] 67:20 rather [3] 36:13 46:17 47:2 reach [1] 21:8 react [1] 25:19 reaction [2] 24:16 27:10 read [7] 5:18 11:19 12:1,15 15:1 28:10 58:24 reading [2] 18:24 80:21 reads [1] 13:9 reaffirmed [1] 3:25 real-life [1] 33:10 really [7] 15:14 23:8 33:18,21 54:6 64:25 66:20 reason [3] 7:20 9:3 43:11 reasonable [2] 44:19 53:21 reasoning [2] 41:18 52:2 reasons [6] 3:14 9:1 21:5 31:21 36:23 47:13 REBUTTAL [3] 2:12 80:9,11 recasts [1] 14:22 receive [1] 37:24 received [1] 27:11 recently [1] 45:4 recognition [1] 26:4 recognize [2] 26:21,22 recognized [11] 10:8 19:17 27:2 28:20 32:10 33:1,</p>	<p>6 34:20 35:5 37:21 42:23 recognizes [1] 49:2 recognizing [1] 30:14 record [3] 55:10 63:25 65:22 recovery [1] 42:12 redressing [1] 43:13 refer [1] 13:15 refused [2] 34:1 54:18 regarding [1] 50:8 Rehnquist [9] 12:18 26:9,21 30:25 32:6 68:3,3,21 71:4 Rehnquist's [5] 15:15,15 23:19 24:19 81:6 reiterating [1] 3:19 rejected [7] 4:25 16:6,24 17:12,15 80:15 82:9 rejects [1] 13:11 related [1] 58:6 relating [1] 78:18 relevant [3] 9:19 10:9 14:23 relied [1] 47:13 relief [3] 30:17 53:4 82:14 relitigate [1] 23:9 rely [1] 20:1 relying [3] 12:11 13:25 15:5 remains [1] 25:25 remands [1] 79:20 remedial [3] 53:7 75:10,10 remedied [2] 72:20,21 remedies [1] 75:7 remedy [10] 41:19 44:17 49:12 71:20 73:1,3,10,22 75:14 82:13 repeatedly [6] 6:14 7:10 19:15 34:1 36:25 81:25 report [6] 44:10 56:5 57:3 62:17,18 82:5 reports [4] 56:7 65:12,13 82:11 require [6] 17:16,23 26:3 29:14 64:6 81:17 required [13] 5:5 16:3,10,11 17:12 18:4,18,19,23 23:5 31:20 32:4 54:11 requirements [1] 48:10 requires [1] 48:24 requires [1] 58:4 requiring [1] 40:12 rescue [1] 4:20 resolve [1] 20:25 respect [5] 36:8 48:19 64:24 67:18 71:14 respectfully [3] 12:25 34:2 82:20 responded [1] 64:9 Respondent [4] 1:7,25 2:11 52:11 response [2] 60:3 72:18 responsible [2] 38:4 79:7 rest [1] 65:18</p>	<p>11 53:8 62:22 74:23 Section [23] 23:8 43:3 44:14 46:9,25 47:22 52:16,22 53:2,7,10,20 67:10 71:14,19 73:4,11,22 75:2,6,9 77:8,17 secure [1] 14:12 secured [9] 5:15 8:18,24 9:16 10:25 46:10,11 67:16 71:21 secures [3] 11:1,3,7 see [4] 14:3 31:9 38:16 63:25 seeks [1] 50:22 seem [2] 47:16 65:14 seemed [1] 31:18 seems [8] 9:11 32:10 39:12 57:23 66:15 70:8,16 78:13 seen [2] 49:8 59:25 seizures [1] 43:24 self-incrimination [7] 7:9 19:9 27:18 33:17 42:22 45:11 48:18 sense [11] 7:14 9:19 10:10 25:13,15 44:8,20 52:22 73:21 74:17,25 separate [1] 57:25 separation [1] 46:15 Sergeant [1] 5:2 seriatim [1] 23:12 serious [3] 29:9 65:1,3 set [3] 20:15 73:8,8 settled [1] 3:13 Seventh [1] 73:14 shouldn't [5] 34:2 42:22 43:12 74:21 79:6 show [14] 4:1 28:16,17,18,21,25 29:1 33:20 38:24 40:13 44:7 58:5 60:22 80:4 shows [1] 28:11 side [7] 5:21 11:12 12:14 19:23 22:2 31:13 80:14 side's [2] 70:9 73:16 sides [5] 22:22,24 60:24 64:4,16 significant [1] 23:7 similar [2] 30:7 40:23 similarly [2] 29:20 45:19 simpler [1] 75:20 simply [1] 30:20 simultaneously [1] 26:12 since [2] 73:13 78:11 single [1] 15:24 situation [5] 49:24 50:5 60:13 75:7 79:17 skimpy [1] 35:10 society [1] 25:16 Solicitor [5] 1:20 72:18 74:24 75:1,3 solved [1] 38:17 somebody [1] 68:6 somehow [1] 28:22 someone [4] 19:13 71:20</p>
			<p style="text-align:center">S</p> <p>safety [1] 45:18 same [8] 12:4 33:18 51:15 53:6,6 57:8 66:10 82:11 saw [1] 46:4 saying [21] 5:18 6:3,21 11:9 12:10 15:9,10,11 19:11 26:17 29:23 33:12,13,18 39:14 49:9 61:14,18 64:12 66:19 79:8 says [24] 6:17 12:16 13:6,22,25 14:5 15:2,19 18:21 21:25 25:12 26:25 28:7,10,11 30:13 46:12 47:7 60:1 61:22 63:13 74:9 78:3,4 Scalia [4] 6:3,3 13:18 75:8 scholarship [1] 27:11 scope [1] 4:1 searches [2] 43:24 49:17 Second [6] 4:14 19:21 20:</p>

Official

<p>72:16 77:6 sometimes [1] 39:25 somewhere [1] 55:10 Sornberger [1] 73:13 Sorry [7] 24:2 25:18 50:10 70:4,5,6 75:15 sort [5] 20:4,12 23:9 25:3 34:16 sorts [2] 9:21,24 SOTOMAYOR [3] 15:25 16:14,19 17:3,5,17,19,22 18:1,11,13,15,18,23 19:19 20:8 21:16,18,21 23:17 41: 3 55:7,9,17 56:13 57:8,18 63:8,12,19,21 sound [1] 3:13 sources [1] 49:8 speaking [1] 65:8 special [1] 51:6 specific [3] 34:15 37:4 69: 8 specifically [1] 41:16 specter [1] 41:22 spot [1] 27:25 spotty [1] 65:22 stage [1] 21:14 stake [2] 4:5 7:22 stand [2] 39:2 44:12 standard [1] 64:7 standards [2] 55:23,24 standing [1] 73:2 standpoint [1] 79:12 staple [1] 67:24 stare [1] 25:13 stark [1] 79:11 start [3] 5:9 59:18 79:25 starting [1] 11:22 state [11] 10:12,14 12:19 16:12 18:2 31:23,25 50:6 51:1 53:5,9 statement [35] 4:3 7:24 10: 15 11:8,17 17:9 19:13 21: 23,24 22:11 23:1 30:4,6 37:10 38:9,21 41:9 52:18, 19,25 53:13 54:15 57:5 61: 2 63:15 64:2,4,6 65:15 69: 24 71:12 76:11,13 79:13 82:3 statements [12] 4:8 7:15 8: 8 20:1,2 28:14 29:15 56:6, 15 65:25 68:25 74:3 STATES [9] 1:1,15,22 2:7 10:19 32:20 37:17 48:23 75:4 status [6] 5:19 6:11 13:7 63:2 70:8 80:20 statute [6] 5:13,25 15:22 30:19 32:3 36:13 stay [1] 35:21 stays [1] 25:25 steps [2] 61:19 66:9 sticks [1] 25:12 still [7] 18:25 20:18 38:10 40:20 48:16 59:2 63:8</p>	<p>stop [3] 19:21 20:23 36:22 story [6] 22:2,5 66:1 73:7 79:12,14 Stovall [1] 34:19 straightforward [1] 20:25 strike [1] 12:8 strikes [1] 46:2 structural [3] 46:15,17 47: 2 subject [1] 76:9 subjected [2] 67:9 72:16 submit [2] 34:2 65:11 submitted [2] 82:22,24 substantive [4] 37:24 42: 24 43:2 56:1 sudden [1] 73:17 sue [2] 10:12 44:13 sued [1] 53:9 suggest [2] 16:9 40:22 suggested [2] 12:20,23 suggesting [7] 16:15,16 17:8,9 27:12 36:3 79:18 suggestion [1] 47:25 suggestive [1] 34:23 suggests [1] 51:21 suit [1] 43:15 suits [2] 49:16 70:18 superseding [4] 51:8 58: 19 59:7 74:14 supplemental [1] 56:7 support [3] 29:5 37:8 48: 14 supported [2] 48:5 79:14 supporting [3] 1:22 2:8 37: 18 supports [4] 17:7 37:7 48: 8 51:18 suppose [4] 39:8 59:3,18 60:9 supposed [1] 67:4 suppressing [1] 22:22 suppression [4] 22:21 38: 23 82:1,2 SUPREME [4] 1:1,14 13:7 35:4 surely [2] 43:5 47:5 SURI [20] 1:20 2:6 37:15,16, 19 38:10 39:19 41:11 42: 14 43:10,21 44:7 45:1,3 46:7 47:12 48:3 50:10 51: 3,18 surprise [1] 68:11 surprised [1] 68:13 sweep [1] 53:7 sweeps [2] 7:14 66:18 swell [1] 73:18 system [4] 25:9 67:2 73:24 74:5</p> <p style="text-align:center">T</p> <p>talked [3] 45:23 68:7 72:1 talks [2] 48:11,23 technical [1] 25:13 teeth [1] 60:14</p>	<p>TEKOH [12] 1:6 3:5,23 4: 14,20 53:16,20 54:9 56:7 61:4,22 73:2 Tekoh's [3] 53:22 61:6 77: 6 tells [1] 79:13 tension [2] 32:5,8 TERENCE [1] 1:6 term [2] 45:5 46:21 terms [3] 50:6 51:1 81:15 testified [2] 66:1 76:21 testify [1] 78:6 testifying [1] 41:7 testimony [8] 41:6,15,17 53:22 60:25 61:1,6 82:1 text [5] 9:9 29:13 30:18,19 52:22 themselves [2] 7:16 37:25 theoretical [2] 13:22 15:6 theoretically [1] 40:16 theories [1] 82:18 theory [18] 4:21,22 6:4 21: 3,13 44:14,19 47:13,19 50: 14 54:18 55:12 63:5 81:12, 17,21 82:17,17 there's [33] 12:15 13:20 14: 5 20:3,12 22:4,6,10 28:21 29:5 30:25 31:2 40:25 43: 5 54:5 55:2 57:24 58:17, 25 59:10 63:16 64:12 65: 17,21 66:22 69:9,21 73:17 75:6 78:18 79:10 81:8,23 thereby [1] 39:2 therefore [3] 7:16 31:2 53: 2 they've [2] 67:21 81:11 thinking [2] 70:2,7 thinks [1] 10:1 THOMAS [10] 5:10,22 6:24 12:12,23 23:15 38:7 51:11, 12 54:1 Thompson [3] 45:4 72:2,3 though [4] 12:18 29:8 34: 18 46:25 thoughts [1] 43:9 threatened [1] 61:24 threats [1] 65:18 throughout [3] 15:16 66:1, 10 tied [1] 39:21 Title [1] 10:13 today [3] 19:25 29:20 68:4 Today's [1] 36:16 tomorrow's [1] 36:17 tools [1] 78:14 torture [2] 42:13 43:1 tortured [1] 42:8 totality [1] 48:5 totality-of-circumstance s [1] 28:14 totally [1] 81:12 touch [2] 20:9,16 traditionally [1] 44:3 treating [2] 30:2 37:9</p>	<p>trial [53] 4:4,9 7:23,24 9:23 19:24 21:22 22:1 23:2,3 30:5,5,12,12 33:17,25 37:8, 22,23 38:5 41:6 43:6,14,16, 18,20,23 44:1,2,11 45:20 49:12,13 50:3,15,23 51:22 52:4 54:16 55:11,14 56:23 59:5 60:25 61:1,7,11,20,20 69:1 72:22 75:2 76:20 trial-focused [1] 51:20 trials [2] 54:1 64:1 tried [1] 74:21 tries [2] 4:20 75:2 trigger [2] 4:13 26:6 trouble [1] 42:23 troubled [1] 43:12 true [8] 19:17 23:24 24:1 40:16 42:21 57:4 62:22 65: 13 truth [2] 22:13 63:14 truthful [1] 63:16 trying [4] 7:23 40:4 41:1 80: 14 Tucker [2] 33:18 80:25 turn [2] 20:24 42:17 twice [3] 23:1,3,3 two [16] 3:14 5:4 10:4 19: 20 21:21 22:14,18 36:23 37:2 38:19 40:6 46:11 52: 23 55:14 64:1 82:15 type [1] 49:10</p> <p style="text-align:center">U</p> <p>ultimate [2] 22:12 58:8 Ultimately [1] 82:12 uncomfortable [1] 42:17 under [21] 5:16 8:9,20 10:5, 12,23 11:2 28:14 34:10 39: 3 42:6,7 43:3 44:14 46:25 52:16 53:9 55:23 63:17 64: 5 66:13 underlying [6] 7:8 19:8 29: 3 30:9 33:10,16 undermine [4] 23:22 24:8 47:16 81:3 undermined [1] 25:5 underpinning [1] 68:19 underpinnings [4] 5:20 13:23 15:7 68:8 understand [7] 18:25 22:9 30:1 41:9 45:24 57:11 77: 11 understanding [7] 20:19 25:4,8,9 31:10 57:8,19 understands [1] 75:4 understood [8] 24:9,22,24, 25 34:24 57:9 81:17,18 undisturbed [1] 32:17 unforeseeable [1] 66:16 unfortunately [1] 36:12 unique [1] 36:24 UNITED [8] 1:1,15,22 2:7 10:18 37:17 48:23 75:4 unlawful [2] 50:13,14</p>	<p>Unless [2] 5:8 59:8 unlikely [1] 40:3 unreasonable [2] 43:24 49:17 unsettling [1] 25:7 unsupported [1] 21:19 untenable [1] 81:22 until [1] 21:25 unusual [3] 33:7 39:14 77: 23 unviable [1] 54:21 unwarned [5] 8:21 11:16 52:18,25 53:12 up [8] 11:21 13:11 14:7 37: 12 57:23 59:23 73:8,8 useful [1] 57:22 using [2] 16:4 19:1 utterly [2] 24:14 61:3</p> <p style="text-align:center">V</p> <p>vacated [1] 63:1 vain [1] 55:13 values [1] 45:7 variety [2] 27:12 71:3 VEGA [11] 1:3 3:4 53:17,23 55:19 61:1 63:11 65:25,25 66:10,21 Vega's [1] 5:2 versus [6] 3:5 74:8,9 75:9 78:19 79:13 view [6] 5:9 16:2 17:7 32: 16 41:11 66:15 VII [1] 10:13 vindicate [1] 77:7 violate [8] 3:17 4:11 6:15, 20 7:17 12:6 38:3 69:23 violated [8] 11:16 26:5 31: 1 37:1,1 69:2 71:18,19 violates [4] 6:5 10:17 19: 12 49:25 violation [46] 3:16 4:10 6:5, 6,14,19 8:2 10:15,16 27:4 31:2,4 38:4,20 43:3 44:11, 16 50:20 51:5 52:16,25 53: 4,11,21,24 54:14,15,16 57: 4 66:22 67:7,9,15,15 69:2, 11,15,22,25 71:16,22 72: 20 73:4 75:6,12 77:4 violations [3] 3:20 53:3,6 vis-à-vis [2] 31:23,23 VIVEK [3] 1:20 2:6 37:16 voluntary [5] 4:9 7:16 37:9 61:3 65:15 voted [1] 26:9 votes [2] 15:15 81:2</p> <p style="text-align:center">W</p> <p>wanted [1] 21:7 wants [2] 14:9 69:10 warning [3] 23:4 48:9,24 warnings [10] 5:4 27:16 28: 12 37:25 38:2 48:11,19,20 49:2 59:15 Washington [3] 1:10,18,</p>
--	--	--	--	---

21

way ^[26] 9:20 12:1,23 13:7
 20:25 24:8,24,25 25:11,11,
 22 26:6 29:25 31:15 32:20
 36:20 39:13 55:3 64:2,4
 68:21 70:19 72:24 75:16
 80:15 81:20
ways ^[2] 8:11 71:3
Wednesday ^[1] 1:11
welcome ^[1] 53:25
whatever ^[2] 25:1 79:23
Whereupon ^[1] 82:23
whether ^[21] 4:3 6:10 22:3,
 7 27:13 30:4,5 31:15 33:
 12 49:6 50:2 51:22 54:9
 55:3 57:2 66:3,9 72:5 76:
 23 78:8,9
White's ^[1] 48:22
who's ^[2] 22:12 76:2
whole ^[6] 7:7 9:7 28:8 56:
 16 78:22 80:22
Wilkes ^[1] 49:18
will ^[7] 3:3 24:8,9,13 34:18
 50:2 78:19
willing ^[1] 6:7
willingly ^[1] 65:16
win ^[6] 20:5,11,18,23 21:10
 63:25
windfall ^[2] 4:7,10
wish ^[1] 48:3
withdraw ^[1] 73:22
within ^[3] 35:15,18 53:7
without ^[1] 38:17
Withrow ^[8] 29:19 30:1,2,
 13 51:16,18,19,25
witness ^[10] 38:17 39:2,4
 41:4 59:10 61:8,15 65:9
 66:4,7
witnesses ^[2] 41:14,21
wonder ^[3] 24:16 31:14 42:
 1
Wood ^[1] 49:19
word ^[3] 19:1 31:17 58:25
worded ^[1] 31:19
words ^[4] 12:20 36:13 68:6
 71:17
work ^[5] 4:22 36:17,18,20,
 21
works ^[1] 39:17
worried ^[1] 44:24
worth ^[2] 40:4 41:1
write ^[4] 25:22 26:24 36:4,
 12
wrongfully ^[2] 43:7 62:24
wrote ^[3] 45:5 61:5 68:21
Wu ^[1] 75:20

Y

years ^[3] 26:10 47:17 68:14

Z

zigzag ^[1] 15:11
zigzagged ^[1] 15:10
zigzagging ^[1] 24:6