

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

IN THE SUPREME COURT OF THE UNITED STATES
- - - - -
PANKAJKUMAR S. PATEL, ET AL.,)
Petitioners,)
v.) No. 20-979
MERRICK B. GARLAND,)
ATTORNEY GENERAL,)
Respondent.)
- - - - -

Washington, D.C.
Monday, December 6, 2021

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

1 APPEARANCES:
2 MARK C. FLEMING, ESQUIRE, Boston, Massachusetts; on
3 behalf of the Petitioners.
4 AUSTIN L. RAYNOR, Assistant to the Solicitor General,
5 Department of Justice, Washington, D.C.; on behalf
6 of the Respondent in support.
7 TAYLOR A.R. MEEHAN, ESQUIRE, Chicago, Illinois;
8 Court-appointed amicus curiae in support of the
9 judgment below.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	MARK C. FLEMING, ESQ.	
4	On behalf of the Petitioners	4
5	ORAL ARGUMENT OF:	
6	AUSTIN L. RAYNOR, ESQ.	
7	On behalf of the Respondent	31
8	in support	
9	ORAL ARGUMENT OF:	
10	TAYLOR A.R. MEEHAN, ESQ.	
11	Court-appointed amicus curiae	
12	in support of the judgment below	60
13	REBUTTAL ARGUMENT OF:	
14	MARK C. FLEMING, ESQ.	
15	On behalf of the Petitioners	98
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'll hear argument first this morning in Case 20-979, Patel versus Garland.

Mr. Fleming.

ORAL ARGUMENT OF MARK C. FLEMING

ON BEHALF OF THE PETITIONERS

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

As the government agrees, section 1252(a)(2)(B)(i) does not bar review of the agency's threshold determination that Mr. Patel is ineligible for adjustment of status. That understanding is consistent with the statutory text, context, and history, and it's also consistent with this Court's explanation in *Kucana* that the (B)(i) bar is limited to decisions made discretionary by legislation.

Congress could have written (B)(i) differently. It could have barred review of any individual determination, as it did in subsection (A)(1), or of the final order of removal, as it did in subsection (C).

But Congress didn't use those words.

1 It used "judgment" and specifically "any
2 judgment regarding the granting of relief." And
3 nobody has identified any instance in which the
4 INA uses "judgment" in the sweeping way
5 suggested by the Eleventh Circuit.

6 To the extent there's any doubt,
7 though, it is resolved by the strong presumption
8 of reviewability of agency action, and that's
9 especially so because the Eleventh Circuit's
10 position, undisputedly, bars all judicial
11 review, even for errors of law, of the numerous
12 adjustment-of-status decisions that are made
13 outside of removal proceedings by U.S.
14 Citizenship and Immigration Services. The
15 Court-appointed amicus does not deny that or
16 attempt to justify it.

17 That's enough to resolve this case.
18 The Court does not need to resolve the slight
19 difference between our reading and the
20 government's. We all agree it does not affect
21 Mr. Patel's situation. And to the -- to the
22 extent that this Court does reach it, we believe
23 our reading is preferable, both because it gives
24 full meaning to the phrase "regarding the
25 granting of relief" -- the government does not,

1 but rather treats it as though it weren't even
2 in the statute -- and also because our reading
3 is easily administrable.

4 Jurisdictional lines should be clear,
5 and our line is clear. Threshold decisions
6 regarding eligibility are not subject to (B)(i);
7 the discretionary decision to grant relief to an
8 eligible non-citizen is. And, again, if there's
9 any doubt, the strong presumption of
10 reviewability breaks the tie in our favor.

11 And I'd welcome the Court's questions.

12 JUSTICE THOMAS: Counsel, normally we
13 review judgments or orders and not reasoning.
14 It seems as though you're asking us to review
15 reasoning as opposed to the order itself.

16 MR. FLEMING: So, Justice Thomas, the
17 review in an immigration case is of a final
18 order of removal. And as this Court said in
19 Chadha, the final order of removal subsumes
20 everything that goes before.

21 The question for purposes of
22 interpreting the jurisdictional bar is what
23 Congress meant by the phrase "any judgment
24 regarding the granting of relief."

25 JUSTICE THOMAS: Well, that seems

1 pretty broad.

2 MR. FLEMING: Well, it -- it --
3 Congress in immediately neighboring sections
4 used far broader terms. In the preamble to (B),
5 it says "judgment, decision, or action," but
6 then (B)(i) only catches "judgment," whereas
7 (B)(ii) uses "decision or action," which are
8 broader terms. Subsection (A)(i) talks about
9 "any individual determination," which is much
10 broader.

11 Had Congress wished to bar any
12 possible determination that goes into evaluating
13 an application for adjustment of status, it
14 could have said any individual determination,
15 any decision or action, or the final order of
16 removal, which is, in administrative law and
17 certainly in immigration law, the final decision
18 of the agency that includes everything that has
19 gone before.

20 JUSTICE THOMAS: So, if you wanted --

21 MR. FLEMING: Congress didn't do that.

22 JUSTICE THOMAS: -- to accomplish what
23 amicus argues, how would you have written it?

24 MR. FLEMING: "Any decision or action
25 under sections," and then the five types of

1 removal, which is the language that Congress
2 used in (B)(ii). It simply qualified it by
3 saying the decision or action has to be
4 specified by statute as in the Attorney
5 General's discretion, and that is -- and there
6 are other additional contextual clues, but I
7 think those are the main ones --

8 JUSTICE THOMAS: But I don't --

9 MR. FLEMING: -- Congress --

10 JUSTICE THOMAS: -- I don't see any
11 real difference between what you're -- you
12 suggest would do the job versus what's already
13 there.

14 MR. FLEMING: So there -- there are
15 two differences, Justice Thomas.

16 One is the word "judgment" in
17 administrative law and immigration law is used
18 in a narrow way to mean a discretionary
19 determination or discretionary decision.

20 No one in this case -- not the
21 Eleventh Circuit, not the amicus, not the
22 parties -- have come up with any use of
23 "judgment" in the INA that refers to factual
24 findings or refers to judgment in the broad
25 sense we would think of it under the Federal

1 Rules of Civil Procedure. It's just not used
2 that way in administrative law and certainly not
3 in -- in immigration law.

4 Moreover, we have additional
5 contextual cues. Most importantly, it's the
6 reasoning that this Court employed in *Kucana*
7 because (B)(ii) uses "any other decision or
8 action," which links (B)(i) and (B)(ii) together
9 in a way that this Court said shows that both
10 sections were directed to decisions made
11 discretionary by statute. There is no way to
12 reconcile the Eleventh Circuit's view with that
13 language in *Kucana*.

14 With respect to the five forms of
15 relief that are enumerated, what is it that is
16 specified as discretionary by legislation? It's
17 not the eligibility factors. It's not whether
18 someone like Mr. Patel is admissible to the
19 United States. That is a factual issue or an
20 issue of mixed law and fact that is frequently
21 reviewable and, in fact, is reviewed because it
22 is a basis for holding someone removable from
23 the country.

24 And if the government in this case had
25 charged Mr. Patel with being removable because

1 he misrepresented U.S. citizenship, it would
2 have been reviewable. That very issue would
3 have been reviewed on an appeal of the final
4 order of removal.

5 But, because it was not charged as a
6 removability ground but simply as a bar to
7 discretionary relief of adjustment of status,
8 under the Eleventh Circuit's view, that very
9 same issue was not removable. That, we think,
10 must be incorrect because Congress does not
11 typically allow the jurisdiction of the federal
12 courts to turn on the charging decisions of the
13 executive. This Court said that much in *Kucana*.

14 JUSTICE KAGAN: Mr. Fleming, just on
15 -- on this same line, I mean, are you saying
16 that "judgment regarding the granting of relief"
17 means what you say it means as a matter of just
18 ordinary meaning, or are you saying that it's a
19 term of art in the immigration statutes? And,
20 if so, which portion -- you know, is -- is it
21 the whole phrase "judgment regarding the
22 granting of relief"? Is it just the word
23 "judgment"? I mean, what -- what are you saying
24 we should read your way and why?

25 MR. FLEMING: Well, so I -- there --

1 there are a couple of answers to that, Justice
2 Kagan.

3 First of all, I think we would all
4 agree, and the Eleventh Circuit agreed,
5 "judgment" by itself, in isolation, can have
6 several meanings, and so one needs to look at it
7 in the context in which it is used.

8 "Regarding the granting of relief," we
9 believe, calls in the traditional distinction
10 which this Court has noted several times, going
11 back to Foti versus INS and St. Cyr, that
12 there's -- that these discretionary grants of
13 relief happen in two stages.

14 First, there's a determination whether
15 the non-citizen is eligible for relief, and
16 those are not discretionary. Those are issues
17 of fact, except to the extent Congress has
18 specified them as discretionary, in which case
19 they're not reviewable under (B)(ii).

20 But then, once someone is found to be
21 eligible, then the agency looks at whether to
22 grant relief, and the "granting of relief" --
23 this Court used that very phrase in St. Cyr --
24 refers to the second-stage decision --

25 JUSTICE KAGAN: And -- and --

1 MR. FLEMING: -- whether to grant
2 relief.

3 JUSTICE KAGAN: -- do you have places,
4 other places in the statute or in regulations
5 where that phrase means what you're saying it
6 means, which is, in other words, that it refers
7 only to the stage 2 discretionary determination
8 as opposed to the stage 1 eligibility
9 determination?

10 MR. FLEMING: I --

11 JUSTICE KAGAN: And, again, I'm
12 talking about this, you know, "judgment
13 regarding the granting of relief" or "the
14 granting of relief," whether that phrase is
15 specifically used to invoke the step 2
16 determination as opposed to the step 1
17 determination?

18 MR. FLEMING: So I think the best
19 example for that, Justice Kagan, is the asylum
20 carveout in (B)(ii), which does use the phrase
21 "the granting of relief," and it carves out of
22 the jurisdictional bar of (B)(ii) the granting
23 of relief under the asylum statute, and that
24 must refer to the second-stage discretionary
25 decision whether to grant asylum to someone who

1 is eligible for asylum.

2 Why? Because the eligibility
3 requirements for asylum are not specified as
4 discretionary. So it would not make sense to
5 carve them out of (B)(ii) because they don't
6 fall within (B)(ii) by their own terms.

7 The only thing that would otherwise
8 fall under (B)(ii) and, therefore, needs a
9 carveout is the second-stage discretionary
10 decision by the executive to grant asylum to
11 someone who is eligible for it, and that's why
12 "the granting of relief" is used in (B)(ii).

13 I think this -- this Court in St. Cyr
14 uses the words "the actual granting of relief"
15 on pages 307 and 308 of the opinion, which, of
16 course, is not statutory, but it does show how
17 that -- how that language has been used to
18 distinguish the second-stage granting of relief
19 in the exercise of discretion as opposed to
20 eligibility.

21 There's also a provision that
22 distinguishes the two with respect to the
23 non-citizens' burdens of proof, and that's
24 1229a, subparagraph (c)(4)(A), which talks about
25 how the non-citizen has the burden to prove

1 eligibility in the first place but then
2 separately also whether they're entitled to
3 relief in the exercise of discretion.

4 JUSTICE BARRETT: Mr. --

5 MR. FLEMING: And --

6 JUSTICE BARRETT: Sorry, you can
7 finish.

8 MR. FLEMING: I -- I was simply going
9 to conclude if I may that, at the very least,
10 even if -- even if the Court believes that
11 there's a -- that there are reasonable
12 interpretations on both sides, we're talking
13 about a situation that's governed by the
14 presumption of reviewability.

15 And so, you know, we -- we think this
16 is -- we think that we're right in terms of the
17 best reading of the statute. But, at the very
18 least, under the presumption which this Court
19 just as recently as last year called well
20 settled and strong, that, we think, breaks the
21 tie in our favor.

22 JUSTICE BARRETT: Mr. Fleming, I'm
23 just wondering, you know, amicus says of both
24 your interpretation and the government's that if
25 you make all of the preliminary determinations

1 reviewable, that the jurisdictional bar doesn't
2 -- or that the bar to judicial review doesn't
3 have that much work to do.

4 How do you respond to that?

5 MR. FLEMING: So we think that's
6 incorrect, Justice Barrett, and that's because,
7 before IIRIRA, before 1996, the -- the courts
8 were reviewing the second-stage determination
9 whether to grant relief in the exercise of
10 discretion, and we cite a number of those cases
11 in Footnote 6 of our reply that, you know,
12 reversed the BIA or the immigration judge on an
13 exercise of discretion.

14 And that is what Congress through
15 (B)(i) was trying to get rid of, was trying to
16 say you can review, we believe, the -- the
17 eligibility factors.

18 But, once someone is found to be
19 eligible, if the -- if the agency says,
20 nonetheless, we are going to deny relief in the
21 exercise of discretion, that is not reviewable,
22 except, you know, for purposes of -- of
23 subsection (d), it restored the possibility of
24 review for errors of law or constitutional
25 errors.

1 JUSTICE ALITO: Well, then I don't
2 understand --

3 MR. FLEMING: But that is the work
4 that's being done.

5 JUSTICE ALITO: -- then I -- I -- I
6 don't understand where your argument is going
7 if the -- ultimately, what you want is
8 adjustment of status, right?

9 MR. FLEMING: Yes, Your Honor.

10 JUSTICE ALITO: And that's a
11 discretionary determination?

12 MR. FLEMING: Yes.

13 JUSTICE ALITO: And you want that
14 reviewed -- you want that overturned?

15 MR. FLEMING: Well --

16 JUSTICE ALITO: Isn't that right?

17 MR. FLEMING: -- at the moment, what
18 we want is the Eleventh Circuit to review our
19 argument that the agency made an error in
20 finding Mr. Patel ineligible.

21 JUSTICE ALITO: Yeah.

22 MR. FLEMING: And then, if that is
23 reversed, it would go back to the agency that
24 would then have to determine whether to grant
25 relief in -- in the exercise of discretion,

1 which is a determination that hasn't been made
2 yet.

3 JUSTICE SOTOMAYOR: Do you know how
4 many people apply for adjustment of status that
5 are found eligible but for whom the agency
6 exercises or the agent exercises discretion not
7 to grant adjustment of status?

8 MR. FLEMING: I'm afraid I don't have
9 those numbers, Justice Sotomayor. I'm not sure
10 they're reported in that level of detail. I
11 think you can find numbers as to the number that
12 are granted and denied, but I'm not sure of any
13 statistics. The -- the government may be better
14 able to answer this question that -- that parsed
15 it out.

16 JUSTICE SOTOMAYOR: Could you tell me
17 what the state of the law was in 2005 with
18 respect to (B)(i)? How had the circuits ruled
19 up to that point?

20 MR. FLEMING: Before 2005, my
21 understanding is most of the circuits had said
22 that review was possible of factual
23 determinations to do with eligibility, which is
24 part of the acquiescence argument we make.

25 Again, we don't think that's

1 necessary, however, because, again, the focus
2 would have been on -- on 1996 and what it is
3 Congress was trying to accomplish then.

4 It's certainly true that Congress
5 could have changed things in 2005 if it wasn't
6 pleased with them.

7 CHIEF JUSTICE ROBERTS: Mr. Fleming, I
8 understand about the presumption of
9 reviewability, but this area, the exercise of
10 discretion by the Attorney General with respect
11 to immigration and refugee matters, there's --
12 there is a presumption also that the discretion
13 is broad and in, to an unusual extent compared
14 to other areas, unreviewable.

15 Don't those two presumptions kind of
16 cancel each other out, and we're left with just
17 reading the statute as it -- as it's written?

18 MR. FLEMING: I -- I don't think so,
19 Mr. Chief Justice, because we're talking about a
20 situation where -- I mean, we're not saying that
21 the discretion -- the discretionary decision
22 whether to grant relief is reviewable. We
23 didn't even get to that stage in Mr. Patel's
24 case.

25 We're talking about the application of

1 statutory factors that Congress has created, one
2 of them being inadmissibility to the United
3 States, which is the one that's at issue here.
4 That's reviewable all the time because it is a
5 ground of removal.

6 And the mere fact that it was charged
7 in this case as a bar to adjustment of status
8 rather than as a ground of removal doesn't
9 change the leeway that the BIA has to adjudicate
10 it. It's still taking Congress's --

11 CHIEF JUSTICE ROBERTS: Well, I
12 wonder, I mean, I think that's a argument based
13 on the statute itself. I'm just suggesting that
14 presumptions don't seem to me to give too much
15 weight in this case because they do -- do cancel
16 out.

17 MR. FLEMING: Well --

18 CHIEF JUSTICE ROBERTS: You don't --
19 you don't dispute that there's a presumption in
20 -- in favor of discretion in the exercise of
21 admission, removal, that -- that breadth of
22 discretion to the Executive Branch here is quite
23 broad.

24 MR. FLEMING: I -- I -- I -- I don't
25 know that I would agree with that, Mr. Chief

1 Justice, certainly not when it comes to applying
2 standards, factors, that are either factual or
3 legal that Congress has determined.

4 I mean, the -- the -- this Court
5 applied the presumption of reviewability in
6 *Kucana*, just last year in *Guerrero-Lasprilla*.
7 Those were interpreting these very same
8 provisions, and there was no suggestion that the
9 presumption had any less force in those cases or
10 that it should have any less force here because
11 the presumption implements the important
12 separation-of-powers consideration that we don't
13 assume that Congress is allowing the Executive
14 Branch to have the last word on whether it's
15 complying with congressional mandates --

16 CHIEF JUSTICE ROBERTS: Thank --

17 MR. FLEMING: -- unless there's very
18 clear language.

19 CHIEF JUSTICE ROBERTS: -- thank you,
20 counsel.

21 Justice Thomas, anything further?

22 JUSTICE THOMAS: Nothing for me,
23 Chief.

24 CHIEF JUSTICE ROBERTS: Justice
25 Breyer?

1 JUSTICE ALITO: Why isn't the most
2 relevant context here the review by a court of a
3 decision by a lower-level tribunal?

4 In that context, "judgment" has a
5 pretty clear meaning. There are judgments of
6 the district court it's -- that defined by the
7 federal rules of procedure, civil and criminal.
8 There are judgments of the courts of appeals.
9 There are judgments of this Court.

10 Why isn't that the most relevant
11 context?

12 MR. FLEMING: Because that's not how
13 the -- the word is used in the context of
14 administrative law. The APA, 5 U.S.C. 551(6),
15 calls the order the final disposition of -- of
16 an agency in a matter other than rulemaking.

17 This Court in INS versus Chadha said
18 the term "final orders" includes all matters on
19 which the validity of the final order is
20 contingent. The statute itself talks about
21 review of the final order.

22 Your Honor is quite right. If we were
23 talking about review of a district court, the
24 Federal Rules of Civil Procedure and the
25 judiciary code use "judgment" in that way.

1 In administrative law and especially
2 in immigration law, "judgment" is not used that
3 way.

4 JUSTICE ALITO: Well, what is your
5 strongest point to show that this APA definition
6 applies under the INA?

7 MR. FLEMING: Oh. Well, if one looks
8 at 1252(a)(1): Judicial review of a final order
9 of removal is governed only by Chapter 158 of
10 Title 28, except as provided.

11 And that's -- that's the general grant
12 of review in immigration cases, is review of a
13 final order of removal. And this Court -- and
14 -- and I -- I don't know of any other court that
15 has taken the view that --

16 JUSTICE ALITO: But that's not what's
17 being reviewed here.

18 MR. FLEMING: Yes, it is, a final
19 order of removal --

20 JUSTICE ALITO: Well, the adjustment
21 of status is the part of -- that you -- that
22 you're contesting.

23 MR. FLEMING: Well, that's the --
24 that's the issue we have appealed because there
25 was a concession of removability, but the

1 immigration judge still entered a final order of
2 removal.

3 JUSTICE ALITO: In -- in this con- --
4 in this particular case, but the two things
5 don't always go together.

6 MR. FLEMING: They generally do
7 because, under the zipper clause, 1252(b)(9),
8 appeal of all issues that are -- that come up in
9 a removal proceeding are channeled into the
10 petition for review.

11 JUSTICE ALITO: They generally do.
12 They don't always.

13 MR. FLEMING: I -- the only situation
14 I can think of where adjustment of status would
15 come up without a removal order would be in a
16 situation where someone has, for instance, a --
17 is here lawfully, is not subject to being
18 removed, they're on a temporary visa, student
19 visa, employment visa, they marry a U.S.
20 citizen, and then they seek adjustment of status
21 by filing an application with U.S. CIS.

22 And if that's denied, normally you
23 would expect, again, under the presumption of
24 reviewability and also under the APA, that you
25 would file an action in district court to

1 challenge the legality of U.S. CIS's
2 determination.

3 This is a major flaw in the Eleventh
4 Circuit's approach because the Eleventh Circuit
5 would say you can't challenge that at all, even
6 for an issue of law, because, in their view,
7 that is a judgment that is barred by (B)(i).

8 And the -- the notion that Congress
9 would have prevented any form of judicial
10 review, even for legal error, in a vast quantity
11 of cases where adjustment of status is sought
12 from is simply not plausible and would require
13 much clearer language than we have here.

14 CHIEF JUSTICE ROBERTS: Justice
15 Sotomayor, anything further?

16 JUSTICE SOTOMAYOR: No.

17 CHIEF JUSTICE ROBERTS: Justice Kagan?

18 JUSTICE KAGAN: Mr. Fleming, I -- I
19 think, in response to Justice Alito's question,
20 I'm -- I'm not sure why it matters to your
21 position very much what the word "judgment"
22 means, whether it means the final determination,
23 the official order, or something else.

24 I mean, I understand why it matters to
25 the government, but why does it matter to you?

1 As I understood your position, your position is
2 just that the entire phrase "judgment regarding
3 the granting of relief" refers to the step 2
4 determination rather than the step 1
5 determination, and whatever "judgment" means,
6 whether it refers to the official order or some
7 kind of discretionary decision-making along the
8 way or both, your position would still stand,
9 wouldn't it?

10 MR. FLEMING: I -- I think that's
11 right, Justice Kagan. I was just trying to give
12 Justice Alito's question a fulsome answer and
13 also to make sure that there was no confusion,
14 that -- that we didn't -- to make sure that the
15 Court recognizes that we don't think "judgment"
16 as used here subsumes everything. We don't
17 think that's a correct reading of how the word
18 is used in immigration law.

19 But it's certainly true that even if
20 "judgment" means the ultimate final order, the
21 -- the thing that is made not reviewable by
22 (B)(i) is the judgment regarding the granting of
23 relief. And we think that is the second-stage
24 determination whether to grant relief in the
25 exercise of discretion to someone who has been

1 found to be eligible for it.

2 JUSTICE KAGAN: As opposed to the step
3 1 eligibility determination?

4 MR. FLEMING: Step 1 eligibility
5 determinations are reviewable. There -- there
6 could be a situation. If Congress in the future
7 wanted to say this one -- we're specifying this
8 as being in the discretion of the Attorney
9 General, then it would be unreviewable under
10 (B)(ii). But (B)(i) has nothing to say about
11 that.

12 CHIEF JUSTICE ROBERTS: Justice
13 Gorsuch, anything?

14 JUSTICE KAVANAUGH: In -- in the
15 removal context, where this arises, I just want
16 to make sure I understand the difference in the
17 two positions. Everything related to the
18 removal would be reviewable, and with respect to
19 the denial of discretionary relief, legal
20 questions and mixed questions, everyone in the
21 room, I think, agrees would be reviewable,
22 correct?

23 MR. FLEMING: I believe that's right,
24 yes.

25 JUSTICE KAVANAUGH: So only questions

1 of historical fact or questions of fact -- I
2 don't have to add the word "historical" -- is
3 the -- is the dispute here, review of those, is
4 that correct?

5 MR. FLEMING: Well, so as to -- as to
6 the --

7 JUSTICE KAVANAUGH: In the removal
8 context.

9 MR. FLEMING: So, as to the -- so not
10 talking about denials of discretionary --
11 denials of discretionary relief? I don't think
12 there's a dispute as to what is reviewable in
13 terms of removability. So, if someone has
14 actually contested removability -- and let's
15 leave out the cases of criminal --

16 JUSTICE KAVANAUGH: Right. On --

17 MR. FLEMING: -- criminal convictions.

18 JUSTICE KAVANAUGH: Sorry to
19 interrupt. On removability, I agree. On the
20 denial -- the denial of discretionary relief,
21 we're just talking about fact questions,
22 correct?

23 MR. FLEMING: Yes.

24 JUSTICE KAVANAUGH: That's the dispute
25 here?

1 MR. FLEMING: If any --

2 JUSTICE KAVANAUGH: It's solely about
3 fact questions, because everyone agrees, I
4 think, that legal questions and mixed questions
5 will get judicial review.

6 MR. FLEMING: Yes, that's right, and
7 only fact questions at the -- at the first --
8 what I'm calling the first stage with respect to
9 eligibility requirements --

10 JUSTICE KAVANAUGH: And on the fact --

11 MR. FLEMING: -- that's what the
12 definition is.

13 JUSTICE KAVANAUGH: -- questions, how
14 could an appellate court -- and this question
15 cuts both ways, so -- but how can an appellate
16 court look at a cold record and determine a
17 factual error when it relates to credibility,
18 for example, or something like that? Just give
19 me some examples where this will matter, I
20 guess.

21 MR. FLEMING: Well, there -- as the
22 amici, the American Immigration Lawyers
23 Association and the EOIR judges, point out, it
24 -- it's not uncommon. I mean, the standard is
25 still substantial evidence. So most cases do

1 fail on the merits.

2 But it is not uncommon for courts of
3 appeals to find serious problems with how the
4 agency determines credibility. Credibility is,
5 of course, a question of fact. This Court said
6 this in -- in Nasrallah. It's a factual issue
7 that is reviewable on appeal deferentially. We
8 don't dispute that.

9 But, you know, in this case, for
10 example, we think that the credibility
11 determination against Mr. Patel was solely
12 informed by the judge's misunderstanding of what
13 was required in order to get a license in
14 Georgia. And, you know, we -- that -- that is
15 an issue that we fully briefed to the Eleventh
16 Circuit. It didn't reach it because it believed
17 it lacked jurisdiction.

18 But I think this will matter in not
19 very many cases, but in the cases where it does
20 matter, that is a very desirable result because
21 we do not want the agency to be making such
22 serious decisions on the basis of anything less
23 than substantial evidence.

24 JUSTICE KAVANAUGH: Thank you.

25 MR. FLEMING: Thank you, Your Honor.

1 CHIEF JUSTICE ROBERTS: Justice
2 Barrett?

3 Thank you, counsel.

4 JUSTICE SOTOMAYOR: If I might, Chief?
5 I'm sorry.

6 CHIEF JUSTICE ROBERTS: Sure.

7 JUSTICE SOTOMAYOR: If they're going
8 to get review in the remove -- removability
9 context, why isn't that enough?

10 MR. FLEMING: Because -- because of
11 what happened in this case, Justice Sotomayor.
12 In this case, for reasons that the government
13 trial attorney could not explain when asked by
14 the immigration judge, the government did not
15 charge this inadmissibility issue, the
16 misrepresentation of citizenship, as a ground of
17 removability. That was only raised as a defense
18 to adjustment of status.

19 Had they charged it as -- as a
20 removability ground, we wouldn't be here because
21 it would have gotten reviewed in that context.
22 But it was --

23 JUSTICE SOTOMAYOR: So why does that
24 matter? Meaning is it because no one now will
25 decide this issue?

1 MR. FLEMING: Unless this Court
2 reverses, no one other than the agency is going
3 to decide it. The agency will have been the
4 last word on an issue of inadmissibility, which
5 is an issue frequently reviewed by the courts as
6 either a fact question or a mixed question.

7 JUSTICE SOTOMAYOR: Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 MR. FLEMING: Thank you, Your Honor.

11 CHIEF JUSTICE ROBERTS: Mr. Raynor.

12 ORAL ARGUMENT OF AUSTIN L. RAYNOR
13 ON BEHALF OF THE RESPONDENT IN SUPPORT

14 MR. RAYNOR: Mr. Chief Justice, and
15 may it please the Court:

16 Section 1252(a)(2)(B) precludes review
17 of any judgment regarding the granting of relief
18 under five enumerated provisions, as well as any
19 other decision or action of the Secretary or the
20 Attorney General, the authority for which is
21 specified to be in their discretion. By its
22 terms, that provision bars review of
23 discretionary determinations, not
24 non-discretionary determinations like the
25 question of fact at issue here.

1 Petitioners now largely agree with
2 that reading as a practical matter, conceding
3 that even discretionary eligibility criteria
4 will be reviewable under the second clause, if
5 not the first.

6 Amicus's principal counterargument is
7 that questions of fact are unreviewable because
8 they fall outside the scope of subparagraph (D),
9 which preserves review over questions of law.
10 That argument fails because this case involves a
11 scope of a different provision, subparagraph
12 (B)(i). This Court should reverse the judgment
13 below and remand for further proceedings.

14 JUSTICE THOMAS: Mr. Raynor, could you
15 tell me what -- how would the outcome -- or in
16 which cases would the outcome be different under
17 your analysis as opposed to Petitioners'
18 analysis or approach?

19 MR. RAYNOR: Justice Thomas, I think
20 the main difference is analytical at this point.
21 They concede, as my friend suggested this
22 morning and in Note 2 of their reply brief, that
23 eligibility criteria, if they're specified to be
24 in the Attorney General's discretion, will be
25 unreviewable under the second clause.

1 We would put those under the first
2 clause. We think the first clause, with its
3 phrase "judgment regarding the granting of
4 relief," is more naturally read to pick up those
5 discretionary eligibility criteria. But there
6 is an analytical difference.

7 JUSTICE THOMAS: One --

8 MR. RAYNOR: I don't want to put words
9 in my friend's mouth, but it may also be that
10 they think there's a higher level of
11 explicitness required for what counts as being
12 in the -- specified in the discretion of the
13 Attorney General.

14 JUSTICE THOMAS: One final question.
15 We agree that if you asked Mr. Patel whether he
16 checked the box in the -- for his app -- in his
17 application for a license in Georgia, we agree
18 that's just looking at the application and
19 determine a fact, right? You checked that
20 you're a citizen?

21 MR. RAYNOR: That's correct. Whether
22 he checked the incorrect box is a question of
23 historical fact.

24 JUSTICE THOMAS: Okay. Now, whether
25 or not he lied in checking the box, I want you

1 to tell me why that is also a fact --

2 MR. RAYNOR: It's a fact --

3 JUSTICE THOMAS: -- as opposed to a --
4 a determination that includes some discretion.

5 MR. RAYNOR: I don't think findings of
6 historical fact like that include any measure of
7 discretion. There's a right answer and a wrong
8 answer to this particular question, did he tell
9 a lie, or did he not tell a lie?

10 JUSTICE THOMAS: So how is that a
11 fact?

12 MR. RAYNOR: It's a fact because it's
13 something about the state of the world at the
14 time that he acted, and it can be determined
15 either correctly or incorrectly.

16 JUSTICE THOMAS: So it's exactly like
17 checking the box?

18 MR. RAYNOR: Yes. In our view,
19 questions of subjective intent at the time an
20 action was taken are the same as did he check
21 the box or did he not check the box.

22 JUSTICE BARRETT: But how can that be?
23 Because it seems like credibility
24 determinations -- and Justice Kavanaugh alluded
25 to this -- require -- in contrast to when you

1 look at them in a cold record, require some
2 element of judgment, right? Like looking at
3 him, listening to his testimony, and drawing a
4 conclusion, you know, which requires the
5 exercise of some discretion about whether or not
6 Mr. Patel was telling the truth.

7 It just seems hard for -- it's hard
8 for me to see why that's exactly the same as
9 checking the box or not.

10 MR. RAYNOR: I agree it may be a
11 little more complicated of a factual inquiry. I
12 don't think it's fair to say that it involves
13 discretion, though. If -- if the judge --
14 immigration judge were to determine I think the
15 evidence shows that this person lied, but I'm
16 going to exercise my discretion to find that he
17 told the truth, everyone would agree that that's
18 impermissible.

19 Questions of credibility are
20 traditionally treated as questions of fact. If
21 you look at Section 1229a, it specifies the
22 different criteria that a court should consider
23 in assessing credibility, and they're all
24 factual considerations, although I -- I
25 acknowledge that it's a slightly more

1 complicated one than the question did he check
2 the box or not.

3 JUSTICE SOTOMAYOR: Didn't you just
4 give the answer in part by saying, generally, a
5 judge doesn't say I just think he lied. A judge
6 gives reasons for why he thinks the person lies,
7 and those reasons are supported by the record or
8 not, correct?

9 MR. RAYNOR: Correct. Yes. But I
10 don't --

11 JUSTICE SOTOMAYOR: That's why we
12 think of them as facts, as every judgment
13 doesn't necessarily mean discretion.

14 MR. RAYNOR: Yes. Agreed. There are
15 multiple meanings to the word "judgment." Here,
16 the statute uses the term "judgment" to include
17 a discretionary component, and that's evident
18 not just from the dictionary definitions that
19 were contemporaneous with the time, although
20 those did include a discretionary component.
21 They define "judgment" as notion, estimate,
22 opinion.

23 But the statutory context also
24 indicates that the term "judgment" here includes
25 a discretionary component. The title says

1 Denials of Discretionary Relief. Even more
2 critically, the second clause refers to "any
3 other decision or action specified to be in the
4 discretion of the Attorney General or" -- "or
5 the Secretary."

6 JUSTICE ALITO: But isn't your
7 argument that findings of fact never constitute
8 discretionary -- never constitute a judgment?

9 MR. RAYNOR: Our position is that
10 objective findings of historical fact will not
11 constitute a judgment within the meaning of this
12 particular provision. I'm not disputing that
13 colloquially it -- it might be used to refer to
14 findings of fact, but the contextual cues here
15 indicate that that's not the case.

16 JUSTICE ALITO: So you -- you are not
17 making the argument that simply looking at the
18 -- the dictionary definition of the term
19 "judgment" is sufficient to support your
20 position?

21 MR. RAYNOR: No, Justice Alito. The
22 dictionary definitions support our position.
23 They do define this to have a subjective
24 component, but they're not alone enough. And I
25 think the -- the most important contextual --

1 JUSTICE ALITO: Why do they support
2 your position at all? Because any factual
3 determination involves some exercise of
4 judgment, doesn't it? Some are -- some involve
5 questions about which no reasonable person could
6 disagree, but many, like determination of
7 credibility, involves consideration of a number
8 of factors, and -- and it's very natural to say,
9 in my judgment, this person was telling the
10 truth or, in my judgment, this person was not
11 telling the truth, right?

12 MR. RAYNOR: It -- it is possible to
13 speak in that way. The dictionary definition --

14 JUSTICE ALITO: Is there anything odd
15 about speaking in that way?

16 MR. RAYNOR: Well, the dictionary
17 definitions at the time tend to have a little
18 more nuance to the meaning of the term
19 "judgment." They define it in terms of
20 subjectivity, discerning competing factors,
21 weighing competing factors.

22 And the INA similarly consistently
23 uses the term "judgment" in this way. The INA
24 uses the term "judgment" 12 times outside of
25 this provision. Eight of those times it's

1 referring to a court judgment, which wouldn't
2 apply here, and then two of those times it's
3 referring to a discretionary judgment, and it
4 uses --

5 JUSTICE ALITO: What is your
6 definition of a "discretionary judgment"?

7 MR. RAYNOR: I think there it's just a
8 bootstrapping example. Congress is just making
9 absolutely clear that judgment has the
10 discretionary component.

11 JUSTICE ALITO: But what -- all right.
12 What is a "discretionary decision"? What is
13 your definition of a "discretionary decision"?

14 MR. RAYNOR: A discretionary decision
15 in terms of identifying one for purposes of this
16 statute would be something that is value-laden,
17 requires weighing of competing factors. There
18 may often be a history of non-reviewability, as
19 there is with the hardship criterion. It may be
20 traditionally have been reviewed for abuse of
21 discretion under *Pierce v. Underwood*, looking at
22 those kind of factors.

23 And sometimes there will be an express
24 textual indicator that it's discretionary, for
25 example, if the statute says "in the opinion of

1 the Attorney General" or "in the opinion of the
2 Secretary."

3 CHIEF JUSTICE ROBERTS: Well, we treat
4 a credibility determination as a question of
5 fact. You don't have discretion, right? That
6 -- that's your position?

7 MR. RAYNOR: Correct, Mr. Chief
8 Justice.

9 CHIEF JUSTICE ROBERTS: But -- but
10 can't you have people who, when they're making a
11 judgment about whether an applicant is lying or
12 not, somebody could say: I place a lot of
13 weight on demeanor. I mean, if a person looks
14 nervous or something, I -- I tend to think she's
15 -- she's -- she's more likely lying.

16 And somebody else says: No, I don't
17 do that. I don't regard it at all because I
18 think people applying for, you -- you know, this
19 type of relief, they're going to be nervous.
20 They're facing a lot of things.

21 Now isn't it an exercise of discretion
22 what type of criteria you apply in determining a
23 -- what you say is a -- ultimately a factual
24 question?

25 MR. RAYNOR: I don't think so, Mr.

1 Chief Justice, and I don't -- I don't think
2 there's any dispute that credibility
3 determinations would be non-discretionary fact
4 questions.

5 I don't want to get hung up too much
6 on the colloquial meaning, though, because the
7 statutory context here is very important. And
8 the second clause this Court interpreted in
9 *Kucana* to cover "the same genre" of decisions as
10 the first clause, in other words, decisions made
11 discretionary by legislation.

12 And the only way to read those two
13 clauses together, as *Kucana* did, in this case,
14 is our interpretation. We read the first clause
15 to be limited to discretionary determinations
16 and to cover all discretionary determinations
17 underlying the listed forms of relief.

18 CHIEF JUSTICE ROBERTS: So I guess I
19 don't understand whether you've answered my
20 question, is what would you call it if somebody
21 says, I put a lot of weight on -- on personal
22 demeanor, and somebody else says, well, I don't
23 put any weight on demeanor? Isn't that an
24 exercise of discretion in determining a factual
25 issue?

1 MR. RAYNOR: No, Your Honor. I think
2 that would require a searching inquiry. They --
3 they would have to be paying close attention,
4 sorting what they find more persuasive or not,
5 but I don't think that we would say that they
6 have the discretion to choose what the right
7 answer is to this factual question.

8 JUSTICE KAGAN: Mr. Raynor --

9 CHIEF JUSTICE ROBERTS: But they have
10 the discretion to determine, I take it, that
11 they're going to regard nervousness or they're
12 not going to regard nervousness.

13 MR. RAYNOR: That's not typically how
14 this Court talks about credibility
15 determinations. When it talks about complex
16 factual questions like this, it will review them
17 for clear error or substantial evidence. It
18 won't typically review them for abuse of
19 discretion. And I think the same approach is
20 appropriate here.

21 JUSTICE KAGAN: Mr. Raynor, I think
22 I'm a bit confused. The factual issue here is
23 not the ordinary kind of was he lying in the
24 legal proceeding, right, in which we usually
25 say, oh, it's a credibility determination as to

1 whether he was lying on the stand.

2 The factual issue here, if I
3 understand correctly, is whether he was -- what
4 his intent was when he checked the box. So it's
5 a question of historical intent. It's not a
6 question of his credibility in the particular
7 legal proceeding. Is that right?

8 MR. RAYNOR: I agree with that,
9 Justice Kagan. I don't want to run from the
10 fact that the immigration judge did find his
11 testimony to be non-credible. The judge did say
12 that. But I agree with you it is an objective
13 question of historical fact.

14 JUSTICE KAGAN: But the -- the factual
15 issue at issue here is not that. It's what --
16 what was his intent when he checked the box.

17 MR. RAYNOR: Correct. Did he tell a
18 lie or not.

19 CHIEF JUSTICE ROBERTS: Well, but he's
20 asked questions about what his intent was,
21 right, and that can -- credibility comes into
22 that, right?

23 MR. RAYNOR: In terms of assessing the
24 answer to this historical question, the
25 immigration judge did consider his credibility

1 on the stand.

2 JUSTICE KAGAN: But he's -- he's
3 always -- he's -- he's asked questions about a
4 lot of factual issues, right?

5 MR. RAYNOR: Yes.

6 JUSTICE KAGAN: That doesn't make them
7 any less factual.

8 MR. RAYNOR: I agree.

9 JUSTICE KAGAN: You know, did you
10 check the box with a pen or a pencil or did, you
11 know, I mean, and, I mean, the fact that he's
12 later asked questions and his credibility is --
13 is at issue doesn't make the underlying factual
14 issue less factual.

15 MR. RAYNOR: I agree, Justice Kagan.
16 And nobody is suggesting that the -- the -- the
17 --

18 CHIEF JUSTICE ROBERTS: Well, what are
19 you agreeing to? I mean, I don't understand.
20 Is it -- is it an exercise? You -- you think no
21 discretion is involved in examining credibility,
22 which is a predicate determination in
23 determining what you think the historical fact
24 is, right?

25 MR. RAYNOR: Credibility was important

1 here in determining the historical fact. That
2 won't always be the case. But I agree that it
3 was here.

4 CHIEF JUSTICE ROBERTS: Well, I know,
5 but it'll be an exercise of discretion, for
6 example, if you think it is, the extent to which
7 you think it is pertinent.

8 MR. RAYNOR: Mr. Chief Justice, I
9 don't think this Court has traditionally
10 described credibility determinations as
11 discretionary determinations.

12 However, if -- if the Court were
13 inclined to go this way, to agree with us that
14 this is limited to discretionary determinations
15 but to be unsure about whether credibility fell
16 within that bucket, I think a remand would
17 probably be appropriate here.

18 That would be a second-order analysis,
19 because the first-line question is -- is does
20 this cover discretionary determinations.

21 JUSTICE BREYER: Yeah, yeah, all
22 right. But look -- look at the -- this -- the
23 discussion you've just been having.

24 What I don't really see is the virtue,
25 legal virtue, of taking the government's

1 position as compared with Mr. Fleming's.

2 I mean, if those were the choices,
3 what you seem to have done, think about this,
4 step 1/step 2 is at least comprehensible to an
5 ordinary person and even to a judge. Okay? I
6 got that.

7 And now what we're doing, we're going
8 to have, like we have in the code here, about
9 eight pages of tiny print in some of these
10 things about what goes before "the Attorney
11 General may." I'll grant you the "may" could be
12 discretionary.

13 And you want to throw in the box
14 called discretionary things like good character,
15 extremely unusual hardship, et cetera. And who
16 knows what else. We just have an example here.

17 So all we're going to do is introduce,
18 if we take yours, a new issue, and this new
19 issue is going to be whether any of these words
20 -- and there are loads of them -- fit within the
21 government's idea of special discretion or not.

22 And at that point, I foresee lots of
23 arguments of this kind. But all we need to say
24 is: Wait a minute. B has to do with the step 2
25 kind of discretion. And if you look through all

1 five, you find in the first sentence of each of
2 those five either the word "discretion" or at
3 least the word "may."

4 Do you see my question? How did the
5 government get to this point? I don't get it.

6 MR. RAYNOR: Justice Breyer,
7 respectfully, I don't think Petitioners'
8 position allows you to avoid this issue. They
9 concede that certain eligibility criteria will
10 be unreviewable under the second clause. So
11 you're going to have to do precisely the same
12 analysis, simply under the second clause.

13 JUSTICE KAGAN: I don't think that
14 that's what they concede. They concede that
15 under the second clause there may be overlapping
16 judgments. But they would say the initial
17 eligibility criteria are always reviewable.

18 Now, if -- if in the second -- if --
19 if in the second stage the Attorney General or
20 the Secretary or whoever makes this decision,
21 you know, talks about overlapping issues, that's
22 what they've conceded. But their -- theirs is a
23 very simple line: Step 1, eligibility,
24 reviewable. Step 2, discretionary, not
25 reviewable.

1 MR. RAYNOR: Justice Kagan, with
2 respect, their footnote says subsection (B)(i)
3 does not strip review of first-step eligibility
4 determinations. Review of such a determination
5 may be barred if it satisfied subsection
6 (B)(ii)'s requirement. And I think that's --

7 JUSTICE KAGAN: Well, I -- I think I
8 read that differently than you. I just read
9 them as saying, once you get to the step 2
10 stage, everything is not reviewable any longer,
11 but the step 1 stage, everything is reviewable.

12 MR. RAYNOR: I just don't think
13 there's -- it's inconceivable that that's their
14 actual position because certain eligibility
15 criteria are expressly in the Attorney General's
16 discretion. To take inadmissibility as an
17 example, some -- in some cases, the non-citizen
18 will seek waiver of inadmissibility at the
19 eligibility stage, and that's in the Attorney
20 General's discretion. The statute expressly
21 says that.

22 And if all step 1 questions are
23 reviewable, that means courts would be able to
24 review even waiver decisions. And I just don't
25 think there's any way to read the statute that

1 that kind of thing is reviewable simply because
2 it happens to fall under step 1.

3 JUSTICE BREYER: Okay. Got it.

4 CHIEF JUSTICE ROBERTS: Justice
5 Thomas, anything?

6 JUSTICE THOMAS: No.

7 CHIEF JUSTICE ROBERTS: Justice
8 Breyer?

9 JUSTICE BREYER: No, thank you.

10 JUSTICE ALITO: What is the mens rea
11 requirement, if any, for the inadmissibility
12 determination here? I don't have the statutory
13 language in front of me, but my recollection is
14 that it says someone is inadmissible if the
15 person represents -- falsely represents being a
16 U.S. citizen. Isn't that what it says?

17 MR. RAYNOR: It does say that, Justice
18 Alito, but it also says for a purpose or a
19 benefit. And the Board of Immigration Appeals
20 has read that to mean that you have to make the
21 representation for the sake of obtaining the
22 benefit. So a mere mistake in checking the box
23 we wouldn't call --

24 JUSTICE ALITO: So the -- the BIA has
25 read in a mens rea requirement?

1 MR. RAYNOR: That's correct. And we

2 --

3 JUSTICE ALITO: Okay.

4 MR. RAYNOR: -- we didn't challenge
5 that below.

6 JUSTICE SOTOMAYOR: I do want to make
7 clear the difference between you and the
8 Petitioner is irrelevant to this case, correct?

9 MR. RAYNOR: That's correct. We both
10 agree that this particular fact question is
11 reviewable.

12 JUSTICE SOTOMAYOR: So the
13 conversation we've been having is more on a
14 theoretical level?

15 MR. RAYNOR: I don't know that it's
16 theoretical, Justice Sotomayor. I -- I do
17 think, if this Court's going to draw a line
18 between discretionary --

19 JUSTICE SOTOMAYOR: But we don't have
20 to? That's what you're telling us. On the
21 facts of this case, we don't have to?

22 MR. RAYNOR: I don't know that there's
23 any way that this Court could hold that fact
24 questions are reviewable without drawing some
25 kind of a line based on the text of the statute,

1 and the only one --

2 JUSTICE SOTOMAYOR: Well, but you're
3 conceding here that these are facts.

4 MR. RAYNOR: Yes, Justice Sotomayor.
5 But the -- the reason we think fact questions
6 are reviewable is because the term "judgment
7 regarding the granting of relief" only applies
8 to discretionary determinations.

9 CHIEF JUSTICE ROBERTS: Justice Kagan,
10 anything further?

11 JUSTICE KAGAN: Much of Ms. Meehan's
12 article rests on the meaning of 1252(a)(2)(D),
13 and, essentially, she says that ought to be read
14 back into the provision that we're interpreting.
15 It says that law questions, constitutional
16 questions, are reviewable. The natural
17 implication of that is that factual questions
18 are not. What is your answer to that?

19 MR. RAYNOR: Justice Kagan,
20 structurally, that's not how the statute works.
21 The statute establishes review bars, including
22 this one, and then it carves out an exception in
23 subparagraph (D). And if a determination
24 doesn't fall within the review bar in the first
25 place, you never need to reference subparagraph

1 (D).

2 So this was -- this was at issue in
3 Nasrallah, for example. The determination there
4 simply didn't fall within the review bar in the
5 first place, so whether it fell within
6 subparagraph (D) was irrelevant. Sub --

7 JUSTICE KAGAN: If -- if Congress had
8 thought that there was review of these sorts of
9 factual issues, wouldn't it have been concerned
10 in adding that provision that the implication
11 was to the opposite effect?

12 MR. RAYNOR: I don't think so because
13 the provision actually says "shall not be
14 construed." So, if anything, it's confirmatory
15 of the existing circuit consensus. Eight
16 circuits had held that this was limited to
17 discretionary determinations. The REAL ID Act
18 was what enacted subparagraph (D), and that was
19 nine years after IIRIRA enacted this (B)(i).
20 And there's just no indication that in the REAL
21 ID Act Congress meant to constrict or expand the
22 scope of the review bar in (B)(i).

23 CHIEF JUSTICE ROBERTS: Justice
24 Gorsuch?

25 JUSTICE KAVANAUGH: Has this been the

1 government's position since 1996 consistently?

2 MR. RAYNOR: No, Justice Kavanaugh.
3 This was our position starting in 2001. I
4 acknowledge that before 2001 the government took
5 the court of appeals' position. After St. Cyr,
6 when it became clear there might be
7 constitutional issues with that position, the
8 government flipped, acknowledged its flip in
9 light of St. Cyr, and argued for the position
10 that we have now held since that time.

11 JUSTICE KAVANAUGH: And I guess one of
12 the questions that comes up -- and this follows
13 on Justice Kagan's question -- is I think
14 there's a little bit of a mismatch between the
15 government's position starting in 2001 and the
16 statutory language of the provisions that
17 include the subsequent REAL ID Act.

18 So I understand why the government in
19 2001 would have said St. Cyr, we need to do
20 something different. And the courts of appeals
21 cases were out there, as some of them were out
22 there at that time as well.

23 But then what St. Cyr said was
24 questions of law. It didn't say discretionary.
25 So the government's position seems to be a

1 little bit of a mismatch, which then becomes
2 more of a problem once you have the REAL ID Act,
3 the mismatch. Tell me how to work my way
4 through that.

5 MR. RAYNOR: Our constitutional
6 avoidance reading in 2001, you're correct, was
7 slightly overbroad with respect to the concerns
8 that St. Cyr identified, but that's because that
9 was the plausible way to read the text. There
10 really wasn't any way to read the text to just
11 exclude questions of law and precisely track the
12 concerns identified in St. Cyr. So we took the
13 position in 2001 this is the best reading of the
14 text, and it takes care of the concerns in St.
15 Cyr.

16 Now, once that was justified as a
17 constitutional avoidance reading, the addition
18 of subparagraph (D) ameliorating the
19 constitutional concerns doesn't retroactively
20 change what the best reading of the text is.
21 Clark v. Martinez says whether constitutional
22 concerns come or go, we're not going to change
23 our reading of the text.

24 And in the REAL ID Act, Congress left
25 intact the operative language here.

1 JUSTICE KAVANAUGH: I guess the REAL
2 -- if the REAL ID Act had been present as of
3 '01, maybe the government would have adopted a
4 different position, but that's speculative, I
5 suppose.

6 Let me ask two -- sorry to prolong
7 this -- but two questions. What are the
8 problems if we adopt the Petitioners' position
9 and what are the problems if we adopt the
10 amicus's position from the perspective of the
11 government, which has had a consistent position
12 on this since 2001?

13 MR. RAYNOR: Yes. With respect to
14 Petitioners, again, I think their position is
15 largely aligned with ours, except for perhaps an
16 analytical distinction in they would put
17 discretionary eligibility criteria under (B)(ii)
18 rather than (B)(i).

19 So, if an inadmissibility waiver comes
20 up at the eligibility stage, for example, I
21 think they would acknowledge that's unreviewable
22 under the second clause but not the first.
23 That's purely an analytical difference.

24 With respect to amicus, obviously,
25 there are large practical differences. As my

1 friend pointed out this morning, the starkest
2 practical difference is at the district court
3 level. When DHS makes these adjudications
4 outside of removal proceedings, there's going to
5 be no review whatsoever.

6 But then, of course, there's also a
7 practical difference at the court of appeals
8 stage in that we think factual questions are
9 reviewable --

10 JUSTICE KAVANAUGH: On the --

11 MR. RAYNOR: -- albeit under a very
12 deferential standard of review.

13 JUSTICE KAVANAUGH: -- on the district
14 court point, what's the volume there?

15 MR. RAYNOR: Unfortunately and
16 somewhat surprisingly, there's not a lot of
17 clear data that is -- precisely tracks this
18 question. Based on some internal calculations,
19 it appears that there were probably north of a
20 thousand challenges in district court to DHS
21 determinations in the past year.

22 Petitioners' reply brief at Note 8
23 cites some additional statistics, but those
24 don't precisely map onto 1255 adjudications. It
25 includes a slightly broader set of adjustment

1 applications.

2 So I think it's fair to say that U.S.
3 CIS likely adjudicates or receives more
4 applications than does the Executive Office for
5 Immigration Review, but, unfortunately, I don't
6 have very good data on that question.

7 JUSTICE KAVANAUGH: Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Barrett?

10 JUSTICE BARRETT: Just have one
11 question, Mr. Raynor, and this is following up
12 on Justice Breyer's point.

13 I mean, the -- the virtue of both the
14 amicus's position and the Petitioners' position,
15 both positions are easily administrable, and
16 they both draw a bright line. I find the
17 treating the discretionary part -- as Justice
18 Breyer pointed out, it introduces complications
19 for courts, then have to figure out which bucket
20 something falls into.

21 And so, given that the bar also
22 applies to judgments regarding cancellation of
23 removal, can you just explain, you know, how the
24 court is supposed to decide whether the -- the
25 quality -- the -- the factor whether the removal

1 would result in exceptional and extremely
2 unusual hardship to spouse or child or parent,
3 how do -- how does a court decide
4 discretionary/non-discretionary?

5 MR. RAYNOR: There's --

6 JUSTICE BARRETT: Isn't that also
7 mixed fact and -- but it also has some
8 discretion mixed in?

9 MR. RAYNOR: Your Honor, we would not
10 agree that it's a mixed question of law and fact
11 under Guerrero, but there is some question about
12 that in the lower courts right now.

13 In terms of identifying discretionary
14 determinations, you would look to several
15 factors. One is, does it include express
16 discretionary language, like "in the opinion of
17 the Attorney General"? The example you gave
18 doesn't happen to include that language, but
19 some hardship criteria, as, for example, under
20 1255, do include such language.

21 Then you would look at whether it
22 requires value-laden decision-making, and you
23 would also look at whether there was a history
24 of non-reviewability.

25 For example, there was a fair amount

1 of pre-IIRIRA case law treating hardship
2 determinations as discretionary, and we think it
3 would be appropriate for the Court to look at
4 that in making that -- that determination.

5 I would just note, in terms of the
6 practical concerns here, the courts of appeals
7 have been doing this for 20 years. The
8 executive has stood behind this interpretation
9 for 20 years. And we obviously have a strong
10 interest in a practical line.

11 And, regardless of what you hold about
12 (B)(i), this type of parsing is indisputably
13 required under (B)(ii). (B)(ii) requires you to
14 identify precise criterion -- criteria and then
15 determine whether discretionary or not.

16 So courts are going to be doing this
17 under one of the two provisions.

18 JUSTICE BARRETT: Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 MR. RAYNOR: Thank you.

22

23

24

25

1 CHIEF JUSTICE ROBERTS: Ms. Meehan.
2 ORAL ARGUMENT OF TAYLOR A.R. MEEHAN,
3 COURT-APPOINTED AMICUS CURIAE IN SUPPORT
4 OF THE JUDGMENT BELOW

5 MS. MEEHAN: Mr. Chief Justice, and
6 may it please the Court:

7 I'd like to come back to some of the
8 questions about an alternative meaning of
9 "judgment" and why that will still bar review
10 here. But, before I do that, I'd like to start
11 with what I think is the only correct meaning of
12 "judgment" as used by Congress here in the
13 jurisdictional bar.

14 "Judgment" here means any decision
15 with a connotation of formality or
16 authoritativeness. That formal decision or
17 judgment is the overall denial of discretionary
18 relief. Like all judgments, it subsumes any
19 discretion -- subsidiary determination made
20 along the way to denying relief. So whatever
21 the reasons leading to the denial of relief, the
22 resulting judgment is barred.

23 The only exceptions to that
24 jurisdictional bar are in subparagraph (d)'s
25 exceptions clause, precluding review of

1 constitutional claims and questions of law.

2 Congress left no doubt in 2005 that
3 these are the only exceptions. How? By also
4 adding to the text of the jurisdictional bar.

5 In the jurisdictional bar itself,
6 Congress added, except as provided in
7 subparagraph (d), meaning except for
8 constitutional claims or questions of law, no
9 court shall have jurisdiction to review any
10 judgment regarding the granting of relief.

11 There is not a lurking third exception
12 for some findings of fact un-enumerated in
13 either the jurisdictional bar or the exceptions
14 clause. To say that there is would be contrary
15 to the text of the statute, contrary to the
16 structure of the statute, and contrary to one of
17 IIRIRA's overarching purposes, to streamline
18 judicial review, here, leaving fact-finding in
19 the hands of the Executive Branch, consistent
20 with historical practice.

21 Mr. Patel's factual claim is
22 concededly not a question of law or a
23 constitutional claim. The Eleventh Circuit was
24 right to reject it on jurisdictional grounds.

25 I welcome the Court's questions.

1 JUSTICE THOMAS: Ms. Meehan, you seem
2 to rely quite a bit on the clause "regarding the
3 granting of relief" as having a broadening
4 effect on judgment.

5 How would you interpret the statute if
6 that -- if that clause did not exist?

7 MS. MEEHAN: I -- I think I would
8 still interpret it the same, but -- but here is
9 why it needs to exist, especially for the
10 statute as written in -- in 1996.

11 The statute in 1996 was directed at
12 appeals from removal proceedings, and so that
13 phrase, "regarding the granting of relief,"
14 under those five subsections, at its most basic
15 level is serving an identifying function,
16 because, in the removal proceeding, you will
17 have judgments regarding the granting of relief
18 under these five statutes.

19 You'll also have a removability
20 decision, and perhaps you'll also have, say, the
21 denial of asylum. And what that phrase
22 "regarding" is doing is telling you the set of
23 decisions, the discretionary relief denial, that
24 is what is barred by the jurisdictional bar, but
25 the removability decision is still appealable.

1 And that's one of the -- the larger
2 problems with Petitioners' alternative reading,
3 that Congress should have just said final order.
4 Mr. Patel has every right to appeal the
5 removability decision. And if you say that he
6 can't appeal the final order of removal, that
7 brings along with it that removability decision.

8 Now "regarding" also has a broadening
9 function. I think it's Congress's way of
10 explaining that a -- a judgment denying relief
11 for eligibility reasons stands on the same
12 footing as a judgment denying relief for
13 discretionary reasons or perhaps a judgment
14 denying relief for a mix of reasons falling into
15 either category.

16 It -- one way to think about it is
17 "regarding" was Congress's way of rejecting
18 Petitioners' interpretation here.

19 And -- and to Petitioners' argument
20 that -- that -- that "regarding" is -- is -- is
21 a term of art or is a way of thinking about
22 targeting those second-step decisions, I think
23 that's just wrong, and -- and Section 1252 shows
24 us why.

25 So, in the next subparagraph, in

1 1252(b)(4)(D), Congress did exactly what
2 Petitioners said it should have done here.

3 In (b)(4)(D), regarding asylum,
4 Congress refers to the Attorney General's
5 discretionary decision whether to grant asylum
6 relief. And that comparison between
7 1252(b)(4)(D) and the much more categorical
8 language here in the jurisdictional bar, I
9 think, is the end of Petitioners' argument.

10 We don't assume that the language
11 Congress used in (b)(4)(D) is that same
12 "regarding" language we here -- we see here in
13 the jurisdictional bar.

14 JUSTICE SOTOMAYOR: Counsel, I -- I
15 don't understand your answer at all because I
16 don't see how your interpretation in the various
17 subdivisions you gave us give any meaning to
18 "regarding the granting of relief" whatsoever.

19 Congress need not have specified any
20 judgment in (B)(i) as distinct from a decision
21 or action in (B)(ii). Why didn't it just say
22 any decision or action? If -- it used different
23 words, "judgment regarding," and it seems to me
24 that if "decision or action" is as broad as you
25 claim it is, then "judgment regarding the

1 granting of relief" has to be more narrow. You
2 can't make it broad at the same time because,
3 otherwise, they would have used identical
4 language.

5 Second, I'm not sure how we ignore
6 neighboring subsections (a) and (c) that show
7 when Congress wanted to strip jurisdiction
8 broadly in the way that you want it to -- you
9 want it to strip both factual and legal
10 jurisdiction -- Congress knew how to do that in
11 (a) and (c), and it could have just copied that
12 language. Yet it used distinctive language
13 altogether.

14 Then add to all of this, I think all
15 of this means that, at best, the statute is
16 ambiguous. It's not clear. And if it's
17 ambiguous, I don't know what to do with the
18 presumption favoring judicial review. That's so
19 well embedded in our jurisprudence. It's what
20 made us decide *Kucana* last year.

21 This makes no sense to me. So give me
22 a reason why Congress would do something
23 different in (B)(i) and (B)(ii) --

24 MS. MEEHAN: Well, to your first
25 question --

1 JUSTICE SOTOMAYOR: -- that would give
2 -- that would give meaning to all of the words.

3 MS. MEEHAN: To your first question,
4 Justice, I actually think looking at the full --
5 the context, I agree with you we should look at
6 the surrounding provisions and the differences
7 in language Congress used here. I think,
8 actually, once you do that, it all points in the
9 direction that the jurisdictional bar means the
10 overall denial of relief.

11 Second, with respect to (a) and (c),
12 those are -- those are helpful examples of
13 having to use different language for different
14 things.

15 So I -- I read (a)(2)(A) actually as a
16 bit narrower. I think it's interesting that
17 Congress in that -- in that provision says "any
18 individual determination" and doesn't say "any
19 judgment." And -- and when Congress says that,
20 they're reserving the right to -- to have a
21 legal challenge or whatever else about expedited
22 removal proceedings.

23 With respect to (c), the real problem
24 is what I mentioned earlier with Justice Thomas.
25 You can't speak categorically like a final order

1 of removal in subparagraph (b) in the
2 jurisdictional bar here because, if you did
3 that, you'd be precluding Mr. Patel from
4 appealing anything related to the removability
5 decision.

6 And -- and he's not -- he's not
7 subject to the criminal alien bar. He has every
8 right to appeal the criminal alien -- pardon,
9 the removability decision. And so what's left
10 is Congress's choice of words to bar instead
11 just the denial of discretionary relief.

12 And -- and -- and, again, "any
13 judgment" is much different here than any --
14 "the Attorney General's discretionary judgment,"
15 for example, in 1252(b)(4)(D) or "the Attorney
16 General's discretionary judgment" in 1226(e) or
17 the other examples that Petitioner and the
18 government point to, where "judgment" is being
19 used as the object of the preposition, "in the
20 judgment of someone."

21 I would agree if the state -- if -- if
22 the provision here said something about "a
23 determination in the judgment of the Attorney
24 General," it's a closer case.

25 JUSTICE SOTOMAYOR: So give me a

1 reason why Congress would want to separate out
2 judicial review regarding factual matters on
3 removability, which it sort of -- it has
4 permitted, from those that have to do with the
5 decisions of agents like this.

6 MS. MEEHAN: Before 2005, I think,
7 arguably, what Congress was doing here was
8 prohibiting review of the entire denial of
9 discretionary relief. I think that's the
10 easiest way to make sense of the jurisdictional
11 bar then amended by the exceptions clause.

12 But even if that's not what Congress
13 was doing and it was just making fact review
14 different for removability or discretionary
15 relief, one reason Congress might have wanted to
16 do that is the removability decision itself has
17 higher stakes. There are greater due process
18 concerns. And so we would want to afford a
19 non-citizen the ability to appeal that in a way
20 that discretionary relief is but a matter of
21 grace. And so, in streamlining judicial review,
22 as one -- as was one of IIRIRA's overarching
23 purposes, Congress took off the table that fact
24 review.

25 JUSTICE SOTOMAYOR: Thank you.

1 JUSTICE KAGAN: Ms. -- Ms. --

2 JUSTICE BREYER: Well, there's a part
3 you left out. I mean, I think Justice Sotomayor
4 brought up a set of relevant factors. Where --
5 where I am at the moment, I -- I think it would
6 be very -- if you really ask the congressman
7 have you ever thought about this, he -- he
8 probably would say before St. Cyr we wanted no
9 review. At least I didn't. But that isn't what
10 they said.

11 And so then what we have now, we have
12 (D) and we have the St. Cyr, anti-St. Cyr review
13 or whatever. Then we go and you look at (A),
14 (B), and (C). Okay. When I read it, the music
15 of those words, look, the -- "any individual
16 determination or to entertain any other cause or
17 claim." God, it sounds like we really mean it.

18 And, of course, that makes sense
19 because, in my mind, those are people standing
20 up in line at Ellis Island or in the -- the --
21 and we don't -- the courts don't look at visas
22 from -- given in Paris and we're not going to
23 have them look at the people in line in Ellis
24 Island either. We really mean it. Okay?

25 And then you look at (C), and these

1 are criminals. I mean, get rid of them. Okay?

2 And then we look at (B), and (B) uses
3 softer language. "Any judgment regarding the"
4 is softer language. Moreover, we look at the
5 title, and the first one in effect says the Line
6 at Ellis Island, and the third one says
7 Criminals, and the second one says Discretionary
8 Relief. Oh.

9 And then we have awfully good reasons,
10 which Justice Sotomayor brought up, to say, hey,
11 the Attorney General is supposed to decide this
12 discretionary deal. I mean, keep the courts out
13 of that.

14 But that reason doesn't quite apply to
15 all the subsidiary fact things. So now we stick
16 in (D) and maybe they carry along with it. I
17 don't know how to do that, but it just looks
18 different to me.

19 So, once it looks different, well,
20 then you call in the presumption of review, you
21 see, and -- and I -- and once we get the
22 presumption in review, that sort of pushes
23 against what was a good brief. I mean, that
24 pushes the other way. Hmm.

25 And so I'm slightly stuck and I -- and

1 I'm slightly stuck on this presumption of
2 review. And I can see how to deal with the
3 government. You say, discretion, you know,
4 discretionary decision, which is that last
5 decision, stay here, my friend. And anything in
6 the 19,000 words in 1182(B) or wherever, that's
7 the same, and we don't have to decide what's the
8 same in this case.

9 So -- so I can see it both ways, but I
10 think that presumption is tough for you.

11 MS. MEEHAN: I'll take your questions
12 in reverse order, Justice, which I -- I'd like
13 to say something about the presumption of review
14 first. It hangs together a bit with the text,
15 right? So the -- the starting point here for
16 the presumption is this is a jurisdictional bar.
17 Right out of the gate, Congress has indicated
18 with clear language that it anticipates some set
19 of decisions will be beyond -- will be beyond
20 review.

21 And then, when you combine that --
22 that observation that we have a juris- --

23 JUSTICE KAGAN: Well, still, Ms.
24 Meehan, wouldn't the presumption apply in terms
25 of deciding what the scope of that provision is?

1 I mean, it doesn't just disappear because we're
2 dealing with a review bar.

3 MS. MEEHAN: I -- I agree. I agree.
4 But this is unlike a case like Bowen, for
5 example, where the statute doesn't say one way
6 or another. It's silent. But -- but I agree.
7 So you combine that jurisdictional bar --

8 JUSTICE KAGAN: I mean, not to press
9 the point if you agree, but, I mean, you might
10 think that Congress acts with the presumption in
11 mind, especially when it's doing a review bar,
12 as opposed to when it's silent.

13 MS. MEEHAN: You might and in which
14 case you go to the next order of analysis, which
15 is you exhaust every canon of construction.
16 That includes grappling with what subparagraph
17 (D) can possibly mean if subparagraph (B) means
18 what the government says it means in particular.

19 And you're left with a clear -- you're
20 left with a clear implication -- or, pardon,
21 you're left with a clear conclusion that the
22 jurisdictional bar must mean the overall denial
23 of relief. And if that is clear, there's no
24 reason to apply a presumption of review. It is
25 only a tiebreaker only if once you --

1 JUSTICE KAGAN: I didn't mean to take
2 you off of Justice Breyer's main point.

3 MS. MEEHAN: So the -- well, to
4 Justice Breyer's question, the -- the main
5 reason I would -- I would not apply the
6 presumption of reviewability here is because,
7 once you exhaust the canons of construction, I
8 do think the only correct way to read the
9 statute is as the Eleventh Circuit read it.

10 But even if you disagree with me on
11 that, this would be an awfully strange case to
12 apply the presumption of reviewability if you
13 consider the origins for the presumption of
14 reviewability, how it's ordinarily applied, and
15 then historic reviewability of immigration
16 decisions more broadly.

17 The presumption of reviewability
18 largely originated with the APA. The -- the
19 purpose of it was to review questions of law
20 about whether agencies were following their own
21 rules, whether they were following Congress's
22 rules. No one disputes here that Mr. Patel
23 could -- could appeal a question of law of that
24 order.

25 But I am not aware of any of this

1 Court -- Court's cases in an immigration case
2 where the Court has applied the presumption of
3 review to allow a petitioner to relitigate a
4 question of fact.

5 JUSTICE BREYER: Yeah, but, I mean,
6 we're going to -- if we take that view, we're in
7 the same mess as the other because, you know,
8 the APA has them all in the same place,
9 substantial evidence, on the record as a whole,
10 and that's in review law, fact. It's all in the
11 same place in the statute. And we start making
12 these distinctions, at least if we don't have
13 to, between a review for substantial evidence
14 and a review for -- that's a question of law
15 and -- and -- really. I mean, it really is.
16 You call it a question of fact, but -- but, God,
17 I -- I can think we'll get into a mess or the
18 courts will get into a mess. Is this -- I've
19 not seen it distinguished, in other words, and I
20 don't see why it should be.

21 MS. MEEHAN: The best example of that
22 distinction is in McNary, which is helpfully an
23 immigration case where the presumption of review
24 was at issue. In McNary, the Court reviewed
25 what it called a generic question of statutory

1 interpretation about visas for these special
2 agricultural workers.

3 The Court went out of its way in
4 McNary to say, to be clear, we are not
5 reviewing, no one has asked us to review, the
6 merit of the individual applicants' applications
7 here. We are only reviewing the -- the more
8 abstract, the more generic question of what the
9 statute means, and then we're leaving it to the
10 agency to determine how to apply that in this
11 case.

12 And that is consistent with decades of
13 this Court's case law and other federal courts'
14 case law acknowledging that they take executive
15 officials' facts as found. And the courts' only
16 role is to answer the questions of law that
17 would arise --

18 JUSTICE BREYER: We actually say facts
19 as found, even if not supported by substantial
20 evidence?

21 MS. MEEHAN: St. Cyr is -- St. Cyr is
22 the best --

23 JUSTICE BREYER: No, St. Cyr didn't
24 deal with that. It dealt with the law, and it
25 dealt with what you have to have in habeas and

1 --

2 MS. MEEHAN: On -- on page 306 of St.
3 Cyr, the Court actually distinguishes between
4 fact review and these historical habeas
5 decisions and questions of law. And I actually
6 take that passage of St. Cyr to mean that if Mr.
7 St. Cyr had come to this Court with a factual
8 dispute, the case would not come out the same.

9 JUSTICE BREYER: Yeah, but that's
10 habeas.

11 MS. MEEHAN: It -- it is habeas. And
12 -- and that -- that is only more helpful here.
13 So, if it is true that this Court was reluctant
14 or unwilling or -- to -- to review factual
15 questions in a habeas case about an alien
16 detained pending removal, then it must
17 necessarily follow that it would be odd to apply
18 the presumption of judicial review here for a
19 denial of discretionary relief, a fact question
20 about the denial of discretionary relief.

21 JUSTICE BARRETT: Ms. Meehan, I want
22 to clarify the scope of your position. So isn't
23 it true that your position does lead to the
24 conclusion that, in district court, even legal
25 questions are not reviewable?

1 MS. MEEHAN: I -- I think that is --
2 that is the -- the right way to interpret the
3 statute as amended in 2005. So, before 2005, I
4 -- I actually don't think that was true.

5 In 2005, one of the REAL ID Act
6 amendments was to -- if you look at pages 10 and
7 11 of my brief, Congress adds the phrase
8 "regardless of whether the judgment, decision,
9 or action occurs during a removal proceeding."
10 And the courts of appeals are relatively uniform
11 that that means a petitioner must wait until
12 they're placed into removal proceedings to
13 dispute a -- a denial of discretionary relief.

14 Now I -- I -- I think that is an issue
15 of Congress's own making and could be something
16 that Congress could -- could solve. There's a
17 good reason why Congress wants that to be the
18 case, which is exhaustion. But, before I say
19 more about that, I would like to address some of
20 the statistics questions and put it all in
21 perspective.

22 So, first off, this concern about U.S.
23 CIS denials being -- not being immediately
24 reviewable affects only one of the four
25 categories of discretionary relief in the

1 jurisdictional bar. As best I can tell, it
2 affects only adjustment of status. It doesn't
3 affect cancellation or some of the
4 inadmissibility waivers, including because
5 something like cancellation or voluntary removal
6 is only happening in the context of a removal
7 proceeding.

8 Second off, even for that set of
9 adjustment-of-status applicants, the vast
10 majority are unaffected by this. I think we're
11 only dealing with a very small percentage. This
12 year alone, the average approval rate for one of
13 these U.S. CIS adjustment-of-status applications
14 has hovered around 87 percent. Two hundred and
15 thirteen thousand adjustment-of-status
16 applications have been granted this year.

17 And of those 10 to 15 percent of cases
18 of adjustment-of-status applications that are
19 denied, again, there's good reason. Congress
20 expected those individuals to exhaust their
21 administrative remedies before involving the
22 courts of appeals, as Mr. Patel did here. He
23 applied for adjustment of status with U.S. CIS
24 in 2007, 2008. Then he had a hearing before the
25 immigration court. Then he had an appeal before

1 the BIA. He has an opportunity to file a
2 reopening motion within a certain amount of
3 time, and only then does the Eleventh Circuit
4 get involved. And -- and, again, this is, I --
5 I think, what Congress anticipated by that
6 amended text in 2005.

7 There are additional issues with
8 Petitioners' and the government's interpretation
9 that are not what Congress -- that were not
10 problems of Congress's own making.

11 JUSTICE KAGAN: Ms. -- Ms. -- can I
12 stop you there and just can I take you back to
13 the basic question here, which is "judgment
14 regarding the granting of relief" and what that
15 phrase means.

16 And -- and I think, you know, you come
17 into this with a kind of good, ordinary meaning
18 argument. And I -- I take Mr. Patel to be
19 saying it's really not the ordinary meaning
20 here. This is a kind of term of art that refers
21 to the step 2 determination as opposed to the
22 step 1 eligibility functions.

23 And I -- I'm just going to give you a
24 bunch of places in which that language is -- it
25 -- it sort of supports his argument and -- and

1 ask you for your response to it.

2 So 1229a, which is the overarching
3 statute governing how removal proceedings work,
4 that statute basically breaks it down into two
5 steps, in just the way that Mr. Patel does, and
6 says the non-citizen has to prove that she
7 satisfies the initial eligibility requirements.

8 And then -- this is number 2 -- with
9 respect to any form of relief that is granted in
10 the exercise of discretion, that she merits a
11 favorable exercise of discretion. So the
12 granting of relief is in that part.

13 Then, similarly, there's a regulation
14 that breaks the relief down into two steps and
15 in that second step says it should be "granted
16 in the exercise of discretion," a phrase that
17 does not appear in the first step, which is
18 eligibility.

19 And then Mr. Fleming, I think, cited
20 1252(b)(4)(D), whether to grant relief under
21 1158(a) of the -- the asylum title, which pretty
22 clearly has to be about the -- the -- the -- the
23 -- the second-stage inquiry rather than any
24 first-step factual issues.

25 Then -- I'm -- I'm sorry to do this to

1 you -- but we several times, we in St. Cyr, in
2 Bagamasbad, in Pereida very, very recently,
3 cases spanning nearly 50 years of immigration
4 law, all of them distinguish between eligibility
5 and the step 2 discretionary determination, and
6 all of them talk about the discretionary
7 determination as being about whether relief
8 should be granted.

9 So using that exact same language,
10 basically coming from the statute and appearing
11 in all of our cases. So that's my question to
12 you. Sorry.

13 MS. MEEHAN: I'll try to hit each of
14 them, and then please tell me if I don't.

15 So I -- I agree with you as a general
16 matter. Certainly, the Court has observed and
17 then the statutes seem to observe that there are
18 eligibility questions or issues and there are
19 discretionary issues. I agree with that.

20 Often, the reason that is so is the
21 Court here has had -- has had to make clear that
22 those eligibility considerations are a floor and
23 that the Attorney General doesn't have
24 discretion always to -- to go beneath that
25 floor. You can't grant cancellation, for

1 example, to someone who has committed an
2 aggravated felony, and that floor remains.

3 I don't think those observations about
4 the two-step mean anything for the -- the
5 jurisdictional bar because Congress didn't, in
6 -- in codifying the jurisdictional bar, say
7 eligibility or say discretion.

8 JUSTICE KAGAN: It's -- it's true, but
9 it keeps on using the word "granted." And --
10 and, you know -- excuse me, it -- it says, you
11 know, "granting relief," which is the phrase
12 that appears in the two-step -- in the
13 second-step part of all these provisions and our
14 cases rather than in the first step part. But
15 we just don't talk about granting relief with
16 respect to making these eligibility
17 determinations.

18 MS. MEEHAN: I -- I agree with you
19 there, and I think this would be a much harder
20 case if the -- the word "regarding" and if the
21 word "any" were not involved.

22 But -- but I don't think the word
23 "granting" can carry that amount of weight, and
24 the -- the -- the reason for that is -- is how
25 Congress used "granting" in Section

1 1252(b)(4)(D), whether to grant relief, or,
2 here, a harder statute would be the granting of
3 relief in the discretion of the Attorney -- of
4 the Attorney General.

5 I -- I -- I don't think the granting
6 of relief is necessarily limited to the second
7 step. If it were, the statute would be phrased
8 as the asylum statute is phrased in (b)(4)(D).

9 With respect to 1229a in particular,
10 it's setting out a two-step for the immigration
11 courts. That is a provision that governs the
12 immigration proceedings.

13 But, even as this Court said in
14 Bagamasbad, the immigration court doesn't
15 necessarily need to do step 1. They can go
16 straight to step 2 and deny relief for
17 discretionary reasons, which would -- which
18 would be unreviewable.

19 JUSTICE KAGAN: Well, they could do
20 that and that would be unreviewable. I guess
21 the -- the -- the point that Mr. Patel is making
22 is that, when you're doing step 1, step 1 is not
23 about the granting of relief, and so it is
24 reviewable.

25 MS. MEEHAN: One way -- one way to

1 think about the difference between "the granting
2 of relief" and "granting of relief," which I
3 think is the main textual problem with
4 Petitioners' argument, they're reading them the
5 same.

6 You -- if I told you we're making
7 decisions about -- we're making decisions
8 regarding the sending of astronauts to Mars, you
9 would know that means something different than
10 decisions regarding sending astronauts to Mars,
11 right? At least the latter feels a little bit
12 narrower. "The granting of relief" naturally
13 encompasses decisions based both on eligibility
14 grounds and on discretionary grounds.

15 JUSTICE KAGAN: So I take that
16 argument, you know, the/of as a different sort
17 of formulation, but -- but in a context in which
18 there's a review -- presumption of
19 reviewability, that starts looking like, whoa,
20 that's a little bit fine for, you know, this
21 context.

22 MS. MEEHAN: As -- as this Court has
23 said, it -- there is both the presumption of
24 reviewability and there is an expectation with
25 jurisdictional bars that the Court will construe

1 the jurisdictional bar with strict fidelity to
2 its terms.

3 Just as much as the Court has to
4 preserve its power of review, Congress has its
5 power to restrict review. And, here, Congress
6 did so.

7 And think about "regarding the
8 granting of relief" as a way of eliminating that
9 ambiguity. "Regarding the granting of relief"
10 has that broadening effect, and it shouldn't be
11 read in isolation.

12 I -- I agree this might have been a
13 harder case before 2005. But there's no way to
14 understand the exceptions clause or there's no
15 great way to understand the exceptions clause if
16 altogether any judgment regarding the granting
17 of relief under these five discretionary forms
18 doesn't mean the overall denial so that when
19 Congress, in the exceptions clause, restores
20 jurisdiction for constitutional claims and
21 questions of law, there's something to restore.

22 In the -- in the government's view,
23 the -- the judgment has always excluded
24 questions of law and constitutional claims, and
25 that makes very little sense then why Congress

1 would cross-reference the jurisdictional bar in
2 the exceptions clause in 2005.

3 The presumption of reviewability
4 doesn't hang only on the phrase "regarding the
5 granting of relief." It requires interpretation
6 of the whole statute. And once --

7 JUSTICE KAVANAUGH: Sorry. Keep
8 going.

9 MS. MEEHAN: And -- and once you do
10 that, I think there's more than a clear
11 statement that review here for this -- for
12 fact-finding is barred.

13 JUSTICE KAVANAUGH: Can I pick up on
14 your reference there to the government's
15 argument and just get your reaction to what I
16 think is the music of their argument?

17 So you have the '96 act and they agree
18 with your position for the first five years.
19 Then St. Cyr comes along, 2001, and the Bush
20 Administration decides we need to interpret this
21 statute in a way to avoid the constitutional
22 problem, and they come up then, the government
23 comes up with its current position, the
24 discretionary position relying on the title and
25 other things.

1 Then 2005, the REAL ID Act comes in,
2 really talks again, like St. Cyr, about
3 questions of law and constitutional questions.

4 So a little bit of a mismatch with the
5 government's position. But I think what the
6 government's saying is we've now done it this
7 way through four administrations, for 20 years,
8 and the courts have interpreted it that way, and
9 at least after St. Cyr, we found enough
10 ambiguity in this, the title provision, other
11 things, of how they fit together, that our
12 interpretation should be good enough.

13 I think that's something. I don't
14 want to put words in their mouths, what they're
15 saying. Why -- why do you think that isn't good
16 enough in this instance? We don't usually have
17 the government coming in in an immigration case
18 through four administrations and saying, we want
19 courts to review issues.

20 MS. MEEHAN: I -- I don't think it's
21 good enough for two reasons. First, it doesn't
22 abide by the text, and, second, there are
23 serious workability issues.

24 So, first, even if the statute was
25 unclear before 2005, the exceptions make it

1 clearer. And the way I -- I have made sense of
2 the government's mismatch, Justice Kavanaugh, is
3 the government is saying that Congress did
4 something along the following lines: In 1996,
5 Congress told everyone you can't eat junk food.
6 And then, in 2005, Congress said: Except you
7 can eat peas and carrots.

8 And if I told you you can't eat junk
9 food, except you can eat peas and carrots, that
10 doesn't make a whole lot of sense. You know
11 what does make sense? You can't eat junk food,
12 but you can eat burgers and fries. And so junk
13 food is the larger category. Burgers and fries
14 are in that category. They're the exception.
15 And, by implication, everything else is still
16 unreviewable.

17 Now the workability problem: I think
18 there's an alternative meaning of "judgment"
19 somewhere between -- there's obviously an
20 alternative meaning of "judgment" in the
21 dictionary definitions, something about forming
22 -- forming an opinion, a judgment call,
23 exercising judgment.

24 That's not the right use of "judgment"
25 here. I think, on the outcome, it fairly

1 encompasses reviewability -- it fairly
2 encompasses credibility. But the government
3 will have this Court walking into a circuit
4 split if it -- if it adopts that meaning.

5 A judgment call. Again, not the right
6 usage, completely unworkable. The Court would
7 have to be creating a federal common law of what
8 is too discretionary or not discretionary
9 enough.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Justice Thomas?

13 JUSTICE THOMAS: Nothing further.

14 CHIEF JUSTICE ROBERTS: Justice
15 Breyer, anything further? No?

16 Justice Sotomayor?

17 JUSTICE SOTOMAYOR: I'm assuming your
18 answer to Justice Barrett was, yes, you admit
19 that your reading bars review by the district
20 court of questions of law, but we shouldn't care
21 too much because it's a very small number of
22 people that are affected by that?

23 MS. MEEHAN: It bars immediate review
24 of questions of law in the same way this Court
25 in *Reno versus AADC* and *Reno versus Catholic*

1 Social Services barred immediate review, but
2 there will be some --

3 JUSTICE SOTOMAYOR: But I did think
4 that there are immediate consequences to this
5 failure to adjust. I thought the government
6 moves very slowly, and removal proceedings,
7 actual removal notices, take ages. But a
8 decision like this can affect a person's work
9 authorization, sponsoring of family members to
10 come here. It affects the pathway to
11 citizenships after three to five years. There's
12 a lot of consequences to not having immediate
13 review.

14 MS. MEEHAN: I -- I agree there are
15 consequences. Those are consequences, I think,
16 Congress anticipated in amending the statute in
17 2005. It could correct those. And I think the
18 Court's decision in Reno versus AADC is exactly
19 on point here, where there were immediate
20 constitutional claims, First Amendment claims
21 and Fifth Amendment claims, about the
22 government's selective prosecution, and the
23 Court here held that those claims would have to
24 wait. There couldn't be immediate review. It
25 would have to wait until the end of removal

1 proceedings.

2 JUSTICE SOTOMAYOR: Tell me something
3 in the history of this statute or in the logic
4 of St. Cyr, which made very clear that on the
5 habeas statute at least, suspending review of
6 questions of law provides a constitutional
7 problem, and what the government's basically
8 saying to us, once they got St. Cyr, a reading
9 that precludes judicial review is not the best
10 reading one should give to a statute. You
11 should go back to the first principles and look
12 at the ambiguity and figure out what the best
13 reading not to do that is.

14 And that's what they've come up with.
15 But your reading does exactly what the
16 government says we shouldn't do.

17 MS. MEEHAN: Do -- do you mean with
18 respect to the U.S. CIS denial and any question
19 of law?

20 JUSTICE SOTOMAYOR: Yes.

21 MS. MEEHAN: So, again, I -- I think
22 the statute is relatively clear that the review
23 of that question has to wait until it has been
24 exhausted through the agency process and it's
25 before the court of appeals and it --

1 JUSTICE SOTOMAYOR: Well, this has
2 nothing to do -- well, I'm sorry. Go ahead.

3 MS. MEEHAN: And it -- and it's in a
4 petition for review. And it also has nothing to
5 do with the case here. Mr. Patel, again,
6 exhausted his administrative remedies. He got
7 review of his question of law in the Eleventh
8 Circuit. The only question here is whether fact
9 findings are beyond review. With respect to the
10 history, that's fully consistent with the
11 history.

12 JUSTICE SOTOMAYOR: Thank you.

13 JUSTICE KAGAN: So the -- the
14 fast-food one is -- it's -- it's good, but isn't
15 -- isn't really the government or -- or Mr.
16 Patel saying, you can't eat fast food at lunch,
17 but you can eat burgers and fries at dinner?

18 MS. MEEHAN: That's possible --
19 possibly that is what they're saying. I -- I --
20 I -- as with any hypothetical, it is imperfect,
21 and so then I just go right back to the text.
22 And the text speaks in a categorical way, in the
23 way that Congress didn't otherwise speak
24 categorically when referring to judgments,
25 discretionary judgments.

1 And if there were any doubt about
2 that, you've got to look at the transitional
3 rules. In the transitional rules, Congress took
4 a more modest approach, discretionary decisions.
5 The discretionary comes out in the permanent
6 rules, and we get "any judgment."

7 You can't read those two the same. So
8 even if we're having fast food sometimes and not
9 always, the transitional rules, I think, give us
10 an important key to that -- to the -- to the
11 text here.

12 JUSTICE KAGAN: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Gorsuch?

15 JUSTICE GORSUCH: You're not going to
16 like this question. Assume for the moment the
17 Court were to disagree with you. As between the
18 two other options, there's slight variations
19 between the Petitioner and the government's
20 theories. But you -- you've -- you've raised
21 good metrics for us to measure any
22 interpretation on, the text and the workability.

23 Would -- would you care to grade the
24 two alternatives comparatively?

25 MS. MEEHAN: I -- I think that

1 Petitioners' -- the Petitioners' interpretation
2 doesn't abide by the text and has arbitrariness
3 problems. The government's interpretation
4 doesn't abide by the text and has workability
5 problems. There's actually an interpretation, a
6 fourth interpretation, lurking out there that
7 uses the government's definitions but doesn't
8 have the same workability problems.

9 So, if you'll permit me, I'll tell you
10 what the government-adjacent position is, which
11 is, if you look at pages 16 and 17 of their
12 brief and if you look at that more informal
13 meaning of "judgment," the formation of a -- the
14 formation of an opinion exercising discernment,
15 that clearly encompasses fact findings. The
16 fact-finding here is the best example of that.

17 The -- the immigration judge heard the
18 direct testimony of Mr. Patel, watched the
19 cross-examination, compared it to the record
20 evidence, and then, in his judgment, deemed him
21 not to be credible.

22 You could adopt that more informal
23 interpretation. It's -- it's close to the
24 government's, but it's not unworkable so long as
25 you agree that a credibility determination is a

1 judgment and not a non-judgment, as -- as the
2 Court says.

3 Now, in context, considering
4 everything else, I think that's a really
5 difficult interpretation after 2005, but it's
6 the second best alternative.

7 JUSTICE GORSUCH: That's the second
8 best. What's the third and the fourth?

9 MS. MEEHAN: I don't know if I would
10 take arbitrariness versus workability. I mean,
11 the arbitrariness problem in the Petitioners'
12 interpretation is real. The -- the Petitioners
13 explain there are fact findings all along the
14 way to denying discretionary relief. And the
15 government says half of them are reviewable and
16 the other half aren't reviewable.

17 I -- I think that's a -- that's a
18 difficult rule to adopt. I'm not sure which
19 other one I would take. I -- and perhaps --
20 perhaps Petitioners' despite the arbitrariness
21 because it's -- it's administrable, but, again,
22 I think the text leaves us -- I'm having trouble
23 with your question because I --

24 JUSTICE GORSUCH: I -- I -- I --

25 MS. MEEHAN: -- find the text so

1 unambiguous.

2 JUSTICE GORSUCH: -- I told you
3 weren't going to like it. So thank you very
4 much, counsel. I appreciate it.

5 JUSTICE KAVANAUGH: Can I just pick up
6 on your answer to the government's position,
7 which were -- as I described, the overall
8 situation was, one, text and, two, workability.

9 So, on text, if -- you gave a forceful
10 answer there. I think your argument is even
11 after St. Cyr, they're scrambling, they do a new
12 interpretation, maybe they get some leeway on
13 constitutional avoidance, but once Congress
14 responds to St. Cyr in 2005, the text is
15 sufficiently clear that they no longer have the
16 ambiguity hook to continue with that
17 interpretation. Is that --

18 MS. MEEHAN: I think that's exactly
19 right. And one of the ways to think about the
20 -- the circuit courts before St. Cyr is they
21 were grappling with exactly what the government
22 says.

23 And what's nice about the 2005
24 amendment is Congress solves the problem for
25 everyone. Congress says no

1 discretionary/non-discretionary. There's -- you
2 know, there's no mention of it. But Congress
3 says we're going to give you a line between
4 constitutional claims and questions of law and
5 everything else going forward. And -- and,
6 importantly, courts -- other courts of appeal
7 since then have abided by that line.

8 I think that's a way to understand
9 some of the confusion in 2001 that is no longer
10 with us today after 2005.

11 JUSTICE KAVANAUGH: And then your
12 other answer to the -- to the government's kind
13 of overarching position was workability. I
14 think they would respond, well, it's been 20
15 years now, it's out there, and a lot of courts
16 were -- were getting along okay.

17 You want to respond to that?

18 MS. MEEHAN: I don't think the courts
19 are getting along okay. And if you look at the
20 Trejo decision from the Fifth Circuit that's
21 cited, I think, in all the briefs here, that's
22 the existing circuit split, it's the best
23 illustration of the unworkability of the
24 government's approach, where some circuits have
25 said some eligibility determination is too

1 discretionary; other circuits have said no, it's
2 not discretionary. And then, as I take Footnote
3 5 of the government's brief, they think there's
4 also somewhere in the middle where we can review
5 some parts because they're not discretionary but
6 not other parts, and I think that itself
7 illustrates the unworkability.

8 JUSTICE KAVANAUGH: Thank you very
9 much.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Rebuttal, Mr. Fleming.

13 REBUTTAL ARGUMENT OF MARK C. FLEMING
14 ON BEHALF OF THE PETITIONERS

15 MR. FLEMING: Thank you, Your Honor.

16 Ms. Meehan said that exhaustion would
17 have to be required, I think, in response to
18 Justice Barrett's question. For people who are
19 not removable, there is no further exhaustion.

20 The American Immigration Lawyers
21 Association brief gives the example of Dr. Abu
22 Zaid, whose case is stayed in the D.C. Circuit
23 right now awaiting the decision in this case.
24 He has an H-1B visa. He's working as a doctor
25 at Augusta University Medical Hospital in

1 Georgia.

2 He's not going to go into removal
3 proceedings. He's here lawfully. He's trying
4 to get a green card so that he can have
5 permanent status here as opposed to temporary
6 status.

7 There is no further exhaustion he can
8 do. He has a final order of U.S. CIS denying
9 his application. The only way for him to get
10 review of that is not under the Eleventh
11 Circuit's vision of the statute but under ours.

12 Credibility is an issue of fact. In
13 this Court's decision in Nasrallah, on page
14 1693, the Court says those factual issues,
15 regarding a Convention Against Torture order,
16 may range from the non-citizen's past
17 experiences in the designated country of
18 removal, to the non-citizen's credibility, to
19 the political or other current conditions of the
20 country. And the BIA in this very case referred
21 to the issues as factual reviewed for clear
22 error. That's on page 106 of the Petition
23 Appendix.

24 Justice Kavanaugh raised the issue of
25 the REAL ID Act. I think what's important there

1 is that the REAL ID Act was reacting to the fact
2 that St. Cyr had taken legal issues that were
3 being pressed by people covered by (c), who had
4 qualifying criminal convictions, and put them
5 into habeas instead of into petitions for
6 review. REAL ID fixed that, moved them back
7 into petitions for review.

8 But it did not change the situation of
9 people like Mr. Patel, who are not subject to
10 (c) because they do not have criminal
11 convictions. Those people have always been able
12 to appeal factual matters, before IIRIRA and
13 after. REAL ID didn't change that. IIRIRA
14 didn't change that.

15 Finally, to clear up any confusion
16 about the difference between our position and
17 the government's, and I -- I don't think our
18 position is arbitrary, with all respect to Ms.
19 Meehan. Our position, I think, is pretty clear,
20 which is that (B)(i) doesn't bar review of any
21 first step decision.

22 Now I -- I -- I think -- we admit
23 because I think we have to that under the
24 language of (B)(ii), Congress could, if it
25 wished, pluck out an individual eligibility

1 requirement and specify in the statute that that
2 is in the discretion of the Attorney General.
3 And, if it were to do that, then there would be
4 no review under (B)(ii).

5 And now I think we -- I think Kucana
6 supports this. However, that is not just a
7 theoretical distinction from what the government
8 is doing. There is a real practical distinction
9 there, and that is because the government seems
10 to think, as the colloquy has demonstrated, that
11 some of the factors where the statute doesn't
12 specify the Attorney General's discretion are
13 somehow, in -- according to some nebulous
14 multifactor test, sufficiently discretionary
15 that they should fall under (B)(i).

16 But the question then becomes a sharp
17 one of administrability, how do you determine
18 whether something is discretionary under their
19 view of (B)(i). We think our line is clear.
20 Theirs is not.

21 But, as everyone recognizes, for Mr.
22 Patel, that issue does not have to be resolved.
23 Everyone agrees that his appeal is of a
24 non-discretionary factor.

25 We would respectfully submit the

1 decision of the Eleventh Circuit should be
2 reversed.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Ms. Meehan, this Court appointed you
6 to brief and argue this case as an amicus curiae
7 in support of the judgment below. You have ably
8 discharged that responsibility, for which we are
9 grateful.

10 The case is submitted.

11 (Whereupon, at 11:32 a.m., the case
12 was submitted.)

13

14

15

16

17

18

19

20

21

22

23

24

25

Official

0	50 [1] 81:3 551(6) [1] 21:14	20 23:14,20 24 :11 30 :18 56 :25 78 :2,23 adjustment-of-status [5] 5 :12 78 :9,13,15,18 administrability [1] 101 : 17 administrable [3] 6 :3 57 : 15 95 :21 Administration [1] 86 :20 administrations [2] 87 :7, 18 administrative [7] 7 :16 8 : 17 9 :2 21 :14 22 :1 78 :21 92 :6 admissible [1] 9 :18 admission [1] 19 :21 admit [2] 89 :18 100 :22 adopt [4] 55 :8,9 94 :22 95 : 18 adopted [1] 55 :3 adopts [1] 89 :4 affect [3] 5 :20 78 :3 90 :8 affected [1] 89 :22 affects [3] 77 :24 78 :2 90 : 10 afford [1] 68 :18 afraid [1] 17 :8 agencies [1] 73 :20 agency [14] 5 :8 7 :18 11 :21 15 :19 16 :19,23 17 :5 21 :16 29 :4,21 31 :2,3 75 :10 91 : 24 agency's [1] 4 :13 agent [1] 17 :6 agents [1] 68 :5 ages [1] 90 :7 aggravated [1] 82 :2 agree [30] 5 :20 11 :4 19 :25 27 :19 32 :1 33 :15,17 35 :10, 17 43 :8,12 44 :8,15 45 :2,13 50 :10 58 :10 66 :5 67 :21 72 : 3,3,6,9 81 :15,19 82 :18 85 : 12 86 :17 90 :14 94 :25 agreed [2] 11 :4 36 :14 agreeing [1] 44 :19 agrees [4] 4 :11 26 :21 28 :3 101 :23 agricultural [1] 75 :2 ahead [1] 92 :2 AL [1] 1:3 albeit [1] 56 :11 alien [3] 67 :7,8 76 :15 aligned [1] 55 :15 ALITO [23] 16 :1,5,10,13,16, 21 21 :1 22 :4,16,20 23 :3,11 37 :6,16,21 38 :1,14 39 :5,11 49 :10,18,24 50 :3 Alito's [2] 24 :19 25 :12 allow [2] 10 :11 74 :3 allowing [1] 20 :13 allows [1] 47 :8 alluded [1] 34 :24 alone [2] 37 :24 78 :12 already [1] 8 :12	alternative [5] 60 :8 63 :2 88 :18,20 95 :6 alternatives [1] 93 :24 although [2] 35 :24 36 :19 altogether [2] 65 :13 85 :16 ambiguity [4] 85 :9 87 :10 91 :12 96 :16 ambiguous [2] 65 :16,17 ameliorating [1] 54 :18 amended [3] 68 :11 77 :3 79 :6 amending [1] 90 :16 Amendment [3] 90 :20,21 96 :24 amendments [1] 77 :6 American [2] 28 :22 98 :20 amici [1] 28 :22 amicus [9] 2 :8 3 :11 5 :15 7 : 23 8 :21 14 :23 55 :24 60 :3 102 :6 Amicus's [3] 32 :6 55 :10 57 :14 amount [3] 58 :25 79 :2 82 : 23 analysis [5] 32 :17,18 45 : 18 47 :12 72 :14 analytical [4] 32 :20 33 :6 55 :16,23 another [1] 72 :6 answer [14] 17 :14 25 :12 34 :7,8 36 :4 42 :7 43 :24 51 : 18 64 :15 75 :16 89 :18 96 :6, 10 97 :12 answered [1] 41 :19 answers [1] 11 :1 anti-St [1] 69 :12 anticipated [2] 79 :5 90 :16 anticipates [1] 71 :18 APA [5] 21 :14 22 :5 23 :24 73 :18 74 :8 app [1] 33 :16 appeal [12] 10 :3 23 :8 29 :7 63 :4,6 67 :8 68 :19 73 :23 78 :25 97 :6 100 :12 101 :23 appealable [1] 62 :25 appealed [1] 22 :24 appealing [1] 67 :4 appeals [10] 21 :8 29 :3 49 : 19 53 :20 56 :7 59 :6 62 :12 77 :10 78 :22 91 :25 appeals' [1] 53 :5 appear [1] 80 :17 APPEARANCES [1] 2 :1 appearing [1] 81 :10 appears [2] 56 :19 82 :12 appellate [2] 28 :14,15 Appendix [1] 99 :23 applicant [1] 40 :11 applicants [1] 78 :9 applicants' [1] 75 :6 application [6] 7 :13 18 :25 23 :21 33 :17,18 99 :9 applications [6] 57 :1,4 75 : 6 78 :13,16,18	applied [4] 20 :5 73 :14 74 :2 78 :23 applies [3] 22 :6 51 :7 57 :22 apply [10] 17 :4 39 :2 40 :22 70 :14 71 :24 72 :24 73 :5,12 75 :10 76 :17 applying [2] 20 :1 40 :18 appointed [1] 102 :5 appreciate [1] 96 :4 approach [5] 24 :4 32 :18 42 :19 93 :4 97 :24 appropriate [3] 42 :20 45 : 17 59 :3 approval [1] 78 :12 arbitrariness [4] 94 :2 95 : 10,11,20 arbitrary [1] 100 :18 area [1] 18 :9 areas [1] 18 :14 aren't [1] 95 :16 arguably [1] 68 :7 argue [1] 102 :6 argued [1] 53 :9 argues [1] 7 :23 argument [26] 1 :15 3 :2,5,9, 13 4 :4,7 16 :6,19 17 :24 19 : 12 31 :12 32 :10 37 :7,17 60 : 2 63 :19 64 :9 79 :18,25 84 : 4 ,16 86 :15,16 96 :10 98 :13 arguments [1] 46 :23 arise [1] 75 :17 arises [1] 26 :15 around [1] 78 :14 art [3] 10 :19 63 :21 79 :20 article [1] 51 :12 assessing [2] 35 :23 43 :23 Assistant [1] 2 :4 Association [2] 28 :23 98 : 21 assume [3] 20 :13 64 :10 93 : 16 assuming [1] 89 :17 astronauts [2] 84 :8,10 asylum [11] 12 :19,23,25 13 : 1,3,10 62 :21 64 :3,5 80 :21 83 :8 attempt [1] 5 :16 attention [1] 42 :3 ATTORNEY [25] 1 :7 8 :4 18 :10 26 :8 30 :13 31 :20 32 : 24 33 :13 37 :4 40 :1 46 :10 47 :19 48 :15,19 58 :17 64 :4 67 :14,15,23 70 :11 81 :23 83 :3,4 101 :2,12 Augusta [1] 98 :25 AUSTIN [3] 2 :4 3 :6 31 :12 authoritativeness [1] 60 : 16 authority [1] 31 :20 authorization [1] 90 :9 average [1] 78 :12 avoid [2] 47 :8 86 :21 avoidance [3] 54 :6,17 96 : 13								
1	6 [2] 1:12 15 :11 60 [1] 3:12	20 23:14,20 24 :11 30 :18 56 :25 78 :2,23 adjustment-of-status [5] 5 :12 78 :9,13,15,18 administrability [1] 101 : 17 administrable [3] 6 :3 57 : 15 95 :21 Administration [1] 86 :20 administrations [2] 87 :7, 18 administrative [7] 7 :16 8 : 17 9 :2 21 :14 22 :1 78 :21 92 :6 admissible [1] 9 :18 admission [1] 19 :21 admit [2] 89 :18 100 :22 adopt [4] 55 :8,9 94 :22 95 : 18 adopted [1] 55 :3 adopts [1] 89 :4 affect [3] 5 :20 78 :3 90 :8 affected [1] 89 :22 affects [3] 77 :24 78 :2 90 : 10 afford [1] 68 :18 afraid [1] 17 :8 agencies [1] 73 :20 agency [14] 5 :8 7 :18 11 :21 15 :19 16 :19,23 17 :5 21 :16 29 :4,21 31 :2,3 75 :10 91 : 24 agency's [1] 4 :13 agent [1] 17 :6 agents [1] 68 :5 ages [1] 90 :7 aggravated [1] 82 :2 agree [30] 5 :20 11 :4 19 :25 27 :19 32 :1 33 :15,17 35 :10, 17 43 :8,12 44 :8,15 45 :2,13 50 :10 58 :10 66 :5 67 :21 72 : 3,3,6,9 81 :15,19 82 :18 85 : 12 86 :17 90 :14 94 :25 agreed [2] 11 :4 36 :14 agreeing [1] 44 :19 agrees [4] 4 :11 26 :21 28 :3 101 :23 agricultural [1] 75 :2 ahead [1] 92 :2 AL [1] 1:3 albeit [1] 56 :11 alien [3] 67 :7,8 76 :15 aligned [1] 55 :15 ALITO [23] 16 :1,5,10,13,16, 21 21 :1 22 :4,16,20 23 :3,11 37 :6,16,21 38 :1,14 39 :5,11 49 :10,18,24 50 :3 Alito's [2] 24 :19 25 :12 allow [2] 10 :11 74 :3 allowing [1] 20 :13 allows [1] 47 :8 alluded [1] 34 :24 alone [2] 37 :24 78 :12 already [1] 8 :12	8 [1] 56:22 87 [1] 78:14	50 [1] 81:3 551(6) [1] 21:14	6	6 [2] 1:12 15 :11 60 [1] 3:12	8	8 [1] 56:22 87 [1] 78:14	9	96 [1] 86:17 98 [1] 3:15	A	A (1) [1] 4:23 a (2)(A) [1] 66:15 A (i) [1] 7:8 a.m [3] 1:16 4:2 102 :11 A.R [3] 2:7 3:10 60 :2 AADC [2] 89 :25 90 :18 abide [3] 87 :22 94 :2,4 abided [1] 97 :7 ability [1] 68 :19 able [3] 17 :14 48 :23 100 :11 ably [1] 102 :7 above-entitled [1] 1:14 absolutely [1] 39 :9 abstract [1] 75 :8 Abu [1] 98 :21 abuse [2] 39 :20 42 :18 accomplish [2] 7 :22 18 :3 according [1] 101 :13 acknowledge [3] 35 :25 53 : 4 55 :21 acknowledged [1] 53 :8 acknowledging [1] 75 :14 acquiescence [1] 17 :24 Act [11] 52 :17,21 53 :17 54 : 2,24 55 :2 77 :5 86 :17 87 :1 99 :25 100 :1 acted [1] 34 :14 action [15] 5 :8 7 :5,7,15,24 8 :3 9 :8 23 :25 31 :19 34 :20 37 :3 64 :21,22,24 77 :9 acts [1] 72 :10 actual [3] 13 :14 48 :14 90 :7 actually [10] 27 :14 52 :13 66 :4,8,15 75 :18 76 :3,5 77 : 4 94 :5 add [2] 27 :2 65 :14 added [1] 61 :6 adding [2] 52 :10 61 :4 addition [1] 54 :17 additional [4] 8 :6 9 :4 56 : 23 79 :7 address [1] 77 :19 adds [1] 77 :7 adjudicate [1] 19 :9 adjudicates [1] 57 :3 adjudications [2] 56 :3,24 adjust [1] 90 :5 adjustment [15] 4 :14 7 :13 10 :7 16 :8 17 :4,7 19 :7 22 :
2	2 [12] 12 :7,15 25 :3 32 :22 46 : 4,24 47 :24 48 :9 79 :21 80 : 8 81 :5 83 :16 20 [4] 59 :7,9 87 :7 97 :14 20-979 [1] 4:4 2001 [9] 53 :3,4,15,19 54 :6, 13 55 :12 86 :19 97 :9 2005 [19] 17 :17,20 18 :5 61 : 2 68 :6 77 :3,3,5 79 :6 85 :13 86 :2 87 :1,25 88 :6 90 :17 95 :5 96 :14,23 97 :10 2007 [1] 78 :24 2008 [1] 78 :24 2021 [1] 1:12 28 [1] 22 :10	20 23:14,20 24 :11 30 :18 56 :25 78 :2,23 adjustment-of-status [5] 5 :12 78 :9,13,15,18 administrability [1] 101 : 17 administrable [3] 6 :3 57 : 15 95 :21 Administration [1] 86 :20 administrations [2] 87 :7, 18 administrative [7] 7 :16 8 : 17 9 :2 21 :14 22 :1 78 :21 92 :6 admissible [1] 9 :18 admission [1] 19 :21 admit [2] 89 :18 100 :22 adopt [4] 55 :8,9 94 :22 95 : 18 adopted [1] 55 :3 adopts [1] 89 :4 affect [3] 5 :20 78 :3 90 :8 affected [1] 89 :22 affects [3] 77 :24 78 :2 90 : 10 afford [1] 68 :18 afraid [1] 17 :8 agencies [1] 73 :20 agency [14] 5 :8 7 :18 11 :21 15 :19 16 :19,23 17 :5 21 :16 29 :4,21 31 :2,3 75 :10 91 : 24 agency's [1] 4 :13 agent [1] 17 :6 agents [1] 68 :5 ages [1] 90 :7 aggravated [1] 82 :2 agree [30] 5 :20 11 :4 19 :25 27 :19 32 :1 33 :15,17 35 :10, 17 43 :8,12 44 :8,15 45 :2,13 50 :10 58 :10 66 :5 67 :21 72 : 3,3,6,9 81 :15,19 82 :18 85 : 12 86 :17 90 :14 94 :25 agreed [2] 11 :4 36 :14 agreeing [1] 44 :19 agrees [4] 4 :11 26 :21 28 :3 101 :23 agricultural [1] 75 :2 ahead [1] 92 :2 AL [1] 1:3 albeit [1] 56 :11 alien [3] 67 :7,8 76 :15 aligned [1] 55 :15 ALITO [23] 16 :1,5,10,13,16, 21 21 :1 22 :4,16,20 23 :3,11 37 :6,16,21 38 :1,14 39 :5,11 49 :10,18,24 50 :3 Alito's [2] 24 :19 25 :12 allow [2] 10 :11 74 :3 allowing [1] 20 :13 allows [1] 47 :8 alluded [1] 34 :24 alone [2] 37 :24 78 :12 already [1] 8 :12	50 [1] 81:3 551(6) [1] 21:14	6	6 [2] 1:12 15 :11 60 [1] 3:12	8	8 [1] 56:22 87 [1] 78:14	9	96 [1] 86:17 98 [1] 3:15	A	A (1) [1] 4:23 a (2)(A) [1] 66:15 A (i) [1] 7:8 a.m [3] 1:16 4:2 102 :11 A.R [3] 2:7 3:10 60 :2 AADC [2] 89 :25 90 :18 abide [3] 87 :22 94 :2,4 abided [1] 97 :7 ability [1] 68 :19 able [3] 17 :14 48 :23 100 :11 ably [1] 102 :7 above-entitled [1] 1:14 absolutely [1] 39 :9 abstract [1] 75 :8 Abu [1] 98 :21 abuse [2] 39 :20 42 :18 accomplish [2] 7 :22 18 :3 according [1] 101 :13 acknowledge [3] 35 :25 53 : 4 55 :21 acknowledged [1] 53 :8 acknowledging [1] 75 :14 acquiescence [1] 17 :24 Act [11] 52 :17,21 53 :17 54 : 2,24 55 :2 77 :5 86 :17 87 :1 99 :25 100 :1 acted [1] 34 :14 action [15] 5 :8 7 :5,7,15,24 8 :3 9 :8 23 :25 31 :19 34 :20 37 :3 64 :21,22,24 77 :9 acts [1] 72 :10 actual [3] 13 :14 48 :14 90 :7 actually [10] 27 :14 52 :13 66 :4,8,15 75 :18 76 :3,5 77 : 4 94 :5 add [2] 27 :2 65 :14 added [1] 61 :6 adding [2] 52 :10 61 :4 addition [1] 54 :17 additional [4] 8 :6 9 :4 56 : 23 79 :7 address [1] 77 :19 adds [1] 77 :7 adjudicate [1] 19 :9 adjudicates [1] 57 :3 adjudications [2] 56 :3,24 adjust [1] 90 :5 adjustment [15] 4 :14 7 :13 10 :7 16 :8 17 :	

Official

awaiting [1] 98:23 aware [1] 73:25 awfully [2] 70:9 73:11	beyond [3] 71:19,19 92:9 BIA [5] 15:12 19:9 49:24 79: 1 99:20 bit [9] 42:22 53:14 54:1 62: 2 66:16 71:14 84:11,20 87: 4 Board [1] 49:19 bootstrapping [1] 39:8 Boston [1] 2:2 both [14] 5:23 9:9 14:12,23 25:8 28:15 50:9 57:13,15, 16 65:9 71:9 84:13,23 Bowen [1] 72:4 box [13] 33:16,22,25 34:17, 21,21 35:9 36:2 43:4,16 44:10 46:13 49:22 Branch [3] 19:22 20:14 61: 19 breadth [1] 19:21 breaks [4] 6:10 14:20 80:4, 14 Breyer [13] 20:25 45:21 47: 6 49:3,8,9 57:18 69:2 74:5 75:18,23 76:9 89:15 Breyer's [3] 57:12 73:2,4 brief [8] 32:22 56:22 70:23 77:7 94:12 98:3,21 102:6 briefed [1] 29:15 briefs [1] 97:21 bright [1] 57:16 brings [1] 63:7 broad [6] 7:1 8:24 18:13 19:23 64:24 65:2 broadening [3] 62:3 63:8 85:10 broader [4] 7:4,8,10 56:25 broadly [2] 65:8 73:16 brought [2] 69:4 70:10 bucket [2] 45:16 57:19 bunch [1] 79:24 burden [1] 13:25 burdens [1] 13:23 burgers [3] 88:12,13 92:17 Bush [1] 86:19	carve [1] 13:5 carveout [2] 12:20 13:9 carves [2] 12:21 51:22 Case [43] 4:4 5:17 6:17 8: 20 9:24 11:18 18:24 19:7, 15 23:4 29:9 30:11,12 32: 10 37:15 41:13 45:2 50:8, 21 59:1 67:24 71:8 72:4, 14 73:11 74:1,23 75:11,13, 14 76:8,15 77:18 82:20 85: 13 87:17 92:5 98:22,23 99: 20 102:6,10,11 cases [16] 15:10 20:9 22: 12 24:11 27:15 28:25 29: 19,19 32:16 48:17 53:21 74:1 78:17 81:3,11 82:14 catches [1] 7:6 categorical [2] 64:7 92:22 categorically [2] 66:25 92: 24 categories [1] 77:25 category [3] 63:15 88:13, 14 Catholic [1] 89:25 cause [1] 69:16 certain [3] 47:9 48:14 79:2 certainly [6] 7:17 9:2 18:4 20:1 25:19 81:16 cetera [1] 46:15 Chadha [2] 6:19 21:17 challenge [4] 24:1,5 50:4 66:21 challenges [1] 56:20 change [6] 19:9 54:20,22 100:8,13,14 changed [1] 18:5 channeled [1] 23:9 Chapter [1] 22:9 character [1] 46:14 charge [1] 30:15 charged [4] 9:25 10:5 19:6 30:19 charging [1] 10:12 check [4] 34:20,21 36:1 44: 10 checked [5] 33:16,19,22 43:4,16 checking [4] 33:25 34:17 35:9 49:22 Chicago [1] 2:7 CHIEF [43] 4:3,9 18:7,19 19:11,18,25 20:16,19,23, 24 24:14,17 26:12 30:1,4,6 31:8,11,14 40:3,7,9 41:1, 18 42:9 43:19 44:18 45:4, 8 49:4,7 51:9 52:23 57:8 59:19 60:1,5 89:10,14 93: 13 98:10 102:3 child [1] 58:2 choice [1] 67:10 choices [1] 46:2 choose [1] 42:6 Circuit [17] 5:5 8:21 11:4 16:18 24:4 29:16 52:15 61:	23 73:9 79:3 89:3 92:8 96: 20 97:20,22 98:22 102:1 Circuit's [5] 5:9 9:12 10:8 24:4 99:11 circuits [5] 17:18,21 52:16 97:24 98:1 CIS [7] 23:21 57:3 77:23 78: 13,23 91:18 99:8 CIS's [1] 24:1 cite [1] 15:10 cited [2] 80:19 97:21 cites [1] 56:23 citizen [3] 23:20 33:20 49: 16 Citizenship [3] 5:14 10:1 30:16 citizenships [1] 90:11 Civil [9] 9:1 21:7,24 claim [4] 61:21,23 64:25 69: 17 claims [9] 61:1,8 85:20,24 90:20,20,21,23 97:4 clarify [1] 76:22 Clark [1] 54:21 clause [22] 23:7 32:4,25 33: 2,2 37:2 41:8,10,14 47:10, 12,15 55:22 60:25 61:14 62:2,6 68:11 85:14,15,19 86:2 clauses [1] 41:13 clear [25] 6:4,5 20:18 21:5 39:9 42:17 50:7 53:6 56: 17 65:16 71:18 72:19,20, 21,23 75:4 81:21 86:10 91: 4,22 96:15 99:21 100:15, 19 101:19 clearer [2] 24:13 88:1 clearly [2] 80:22 94:15 close [2] 42:3 94:23 closer [1] 67:24 clues [1] 8:6 code [2] 21:25 46:8 codifying [1] 82:6 cold [2] 28:16 35:1 colloquial [1] 41:6 colloquially [1] 37:13 colloquy [1] 101:10 combine [2] 71:21 72:7 come [11] 8:22 23:8,15 54: 22 60:7 76:7,8 79:16 86: 22 90:10 91:14 comes [8] 20:1 43:21 53: 12 55:19 86:19,23 87:1 93: 5 coming [2] 81:10 87:17 committed [1] 82:1 common [1] 89:7 comparatively [1] 93:24 compared [3] 18:13 46:1 94:19 comparison [1] 64:6 competing [3] 38:20,21 39: 17 completely [1] 89:6	complex [1] 42:15 complicated [2] 35:11 36: 1 complications [1] 57:18 complying [1] 20:15 component [5] 36:17,20, 25 37:24 39:10 comprehensible [1] 46:4 con [1] 23:3 concede [4] 32:21 47:9,14, 14 conceded [1] 47:22 concededly [1] 61:22 conceding [2] 32:2 51:3 concern [1] 77:22 concerned [1] 52:9 concerns [7] 54:7,12,14, 19,22 59:6 68:18 concession [1] 22:25 conclude [1] 14:9 conclusion [3] 35:4 72:21 76:24 conditions [1] 99:19 confirmatory [1] 52:14 confused [1] 42:22 confusion [3] 25:13 97:9 100:15 Congress [66] 4:20,25 6: 23 7:3,11,21 8:1,9 10:10 11:17 15:14 18:3,4 19:1 20:3,13 24:8 26:6 39:8 52: 7,21 54:24 60:12 61:2,6 63:3 64:1,4,11,19 65:7,10, 22 66:7,17,19 68:1,7,12,15, 23 71:17 72:10 77:7,16,17 78:19 79:5,9 82:5,25 85:4, 5,19,25 88:3,5,6 90:16 92: 23 93:3 96:13,24,25 97:2 100:24 Congress's [7] 19:10 63:9, 17 67:10 73:21 77:15 79: 10 congressional [1] 20:15 congressman [1] 69:6 connotation [1] 60:15 consensus [1] 52:15 consequences [4] 90:4, 12,15,15 consider [3] 35:22 43:25 73:13 consideration [2] 20:12 38:7 considerations [2] 35:24 81:22 considering [1] 95:3 consistent [6] 4:15,17 55: 11 61:19 75:12 92:10 consistently [2] 38:22 53: 1 constitute [3] 37:7,8,11 constitutional [18] 15:24 51:15 53:7 54:5,17,19,21 61:1,8,23 85:20,24 86:21 87:3 90:20 91:6 96:13 97:
	c(4)(A) [1] 13:24 calculations [1] 56:18 call [6] 41:20 49:23 70:20 74:16 88:22 89:5 called [3] 14:19 46:14 74: 25 calling [1] 28:8 calls [2] 11:9 21:15 came [1] 1:14 cancel [2] 18:16 19:15 cancellation [4] 57:22 78: 3,5 81:25 canon [1] 72:15 canons [1] 73:7 card [1] 99:4 care [3] 54:14 89:20 93:23 carrots [2] 88:7,9 carry [2] 70:16 82:23			

Official

<p>4 constrict [1] 52:21 construction [2] 72:15 73:7 construe [1] 84:25 construed [1] 52:14 contemporaneous [1] 36:19 contested [1] 27:14 contesting [1] 22:22 context [17] 4:16 11:7 21:2, 4,11,13 26:15 27:8 30:9,21 36:23 41:7 66:5 78:6 84:17,21 95:3 contextual [4] 8:6 9:5 37:14,25 contingent [1] 21:20 continue [1] 96:16 contrary [3] 61:14,15,16 contrast [1] 34:25 Convention [1] 99:15 conversation [1] 50:13 convictions [3] 27:17 100:4,11 copied [1] 65:11 correct [16] 25:17 26:22 27:4,22 33:21 36:8,9 40:7 43:17 50:1,8,9 54:6 60:11 73:8 90:17 correctly [2] 34:15 43:3 couldn't [1] 90:24 Counsel [10] 6:12 20:20 30:3 31:9 59:20 64:14 89:11 96:4 98:11 102:4 counterargument [1] 32:6 country [3] 9:23 99:17,20 counts [1] 33:11 couple [1] 11:1 course [4] 13:16 29:5 56:6 69:18 COURT [73] 1:1,15 4:10 5:18,22 6:18 9:6,9 10:13 11:10,23 13:13 14:10,18 20:4 21:2,6,9,17,23 22:13,14 23:25 25:15 28:14,16 29:5 31:1,15 32:12 35:22 39:1 41:8 42:14 45:9,12 50:23 53:5 56:2,7,14,20 57:24 58:3 59:3 60:6 61:9 74:1,2,24 75:3 76:3,7,13,24 78:25 81:16,21 83:13,14 84:22, 25 85:3 89:3,6,20,24 90:23 91:25 93:17 95:2 99:14 102:5 Court's [8] 4:17 6:11 50:17 61:25 74:1 75:13 90:18 99:13 Court-appointed [4] 2:8 3:11 5:15 60:3 courts [24] 10:12 15:7 21:8 29:2 31:5 48:23 53:20 57:19 58:12 59:6,16 69:21 70:12 74:18 77:10 78:22 83:</p>	<p>11 87:8,19 96:20 97:6,6,15, 18 courts' [2] 75:13,15 cover [3] 41:9,16 45:20 covered [1] 100:3 created [1] 19:1 creating [1] 89:7 credibility [24] 28:17 29:4, 4,10 34:23 35:19,23 38:7 40:4 41:2 42:14,25 43:6, 21,25 44:12,21,25 45:10, 15 89:2 94:25 99:12,18 credible [1] 94:21 criminal [7] 21:7 27:15,17 67:7,8 100:4,10 criminals [2] 70:1,7 criteria [11] 32:3,23 33:5 35:22 40:22 47:9,17 48:15 55:17 58:19 59:14 criterion [2] 39:19 59:14 critically [1] 37:2 cross-examination [1] 94:19 cross-reference [1] 86:1 cues [2] 9:5 37:14 curiae [4] 2:8 3:11 60:3 102:6 current [2] 86:23 99:19 cuts [1] 28:15 Cyr [29] 11:11,23 13:13 53:5,9,19,23 54:8,12,15 69:8, 12,12 75:21,21,23 76:3,6,7 81:1 86:19 87:2,9 91:4,8 96:11,14,20 100:2</p>	<p>defense [1] 30:17 deferential [1] 56:12 deferentially [1] 29:7 define [3] 36:21 37:23 38:19 defined [1] 21:6 definition [6] 22:5 28:12 37:18 38:13 39:6,13 definitions [5] 36:18 37:22 38:17 88:21 94:7 demeanor [3] 40:13 41:22, 23 demonstrated [1] 101:10 denial [16] 26:19 27:20,20 60:17,21 62:21,23 66:10 67:11 68:8 92:22 76:19,20 77:13 85:18 91:18 denials [4] 27:10,11 37:1 77:23 denied [3] 17:12 23:22 78:19 deny [3] 5:15 15:20 83:16 denying [6] 60:20 63:10,12, 14 95:14 99:8 Department [1] 2:5 described [2] 45:10 96:7 designated [1] 99:17 desirable [1] 29:20 despite [1] 95:20 detail [1] 17:10 detained [1] 76:16 determination [4] 4:13, 22 7:9,12,14 8:19 11:14 12:7,9,16,17 15:8 16:11 17:1 24:2,22 25:4,5,24 26:3 29:11 34:4 38:3,6 40:4 42:25 44:22 48:4 49:12 51:23 52:3 59:4 60:19 66:18 67:23 69:16 79:21 81:5,7 94:25 97:25 determinations [2] 14:25 17:23 26:5 31:23,24 34:24 41:3,15,16 42:15 45:10,11, 14,20 48:4 51:8 52:17 56:21 58:14 59:2 82:17 determine [8] 16:24 28:16 33:19 35:14 42:10 59:15 75:10 101:17 determined [2] 20:3 34:14 determines [1] 29:4 determining [4] 40:22 41:24 44:23 45:1 DHS [2] 56:3,20 dictionary [6] 36:18 37:18, 22 38:13,16 88:21 difference [11] 5:19 8:11 26:16 32:20 33:6 50:7 55:23 56:2,7 84:1 100:16 differences [3] 8:15 55:25 66:6 different [15] 32:11,16 35:22 53:20 55:4 64:22 65:23 66:13,13 67:13 68:14 70:18,19 84:9,16</p>	<p>differently [2] 4:21 48:8 difficult [2] 95:5,18 dinner [1] 92:17 direct [1] 94:18 directed [2] 9:10 62:11 direction [1] 66:9 disagree [3] 38:6 73:10 93:17 disappear [1] 72:1 discerning [1] 38:20 discernment [1] 94:14 discharged [1] 102:8 discretion [50] 8:5 13:19 14:3 15:10,13,21 16:25 17:6 18:10,12,21 19:20,22 25:25 26:8 31:21 32:24 33:12 34:4,7 35:5,13,16 36:13 37:4 39:21 40:5,21 41:24 42:6,10,19 44:21 45:5 46:21,25 47:2 48:16,20 58:8 60:19 71:3 80:10,11,16 81:24 82:7 83:3 101:2,12 discretionary [90] 4:19 6:7 8:18,19 9:11,16 10:7 11:12,16,18 12:7,24 13:4,9 16:11 18:21 25:7 26:19 27:10, 11,20 31:23 32:3 33:5 36:17,20,25 37:1,8 39:3,6,10, 12,13,14,24 41:11,15,16 45:11,14,20 46:12,14 47:24 50:18 51:8 52:17 53:24 55:17 57:17 58:13,16 59:2, 15 60:17 62:23 63:13 64:5 67:11,14,16 68:9,14,20 70:7,12 71:4 76:19,20 77:13, 25 81:5,6,19 83:17 84:14 85:17 86:24 89:8,8 92:25 93:4,5 95:14 98:1,2,5 101:14,18 discretionary/non-discretionary [2] 58:4 97:1 discussion [1] 45:23 disposition [1] 21:15 dispute [8] 19:19 27:3,12, 24 29:8 41:2 76:8 77:13 disputes [1] 73:22 disputing [1] 37:12 distinct [1] 64:20 distinction [5] 11:9 55:16 74:22 101:7,8 distinctions [1] 74:12 distinctive [1] 65:12 distinguish [2] 13:18 81:4 distinguished [1] 74:19 distinguishes [2] 13:22 76:3 district [8] 21:6,23 23:25 56:2,13,20 76:24 89:19 doctor [1] 98:24 doing [9] 46:7 59:7,16 62:22 68:7,13 72:11 83:22 101:8 done [4] 16:4 46:3 64:2 87:6</p>	<p>doubt [4] 5:6 6:9 61:2 93:1 down [2] 80:4,14 draw [2] 50:17 57:16 drawing [2] 35:3 50:24 due [1] 68:17 during [1] 77:9</p>
E				
			<p>each [3] 18:16 47:1 81:13 earlier [1] 66:24 easiest [1] 68:10 easily [2] 6:3 57:15 eat [8] 88:5,7,8,9,11,12 92:16,17 effect [4] 52:11 62:4 70:5 85:10 Eight [3] 38:25 46:9 52:15 either [7] 20:2 31:6 34:15 47:2 61:13 63:15 69:24 element [1] 35:2 Eleventh [16] 5:5,9 8:21 9:12 10:8 11:4 16:18 24:3,4 29:15 61:23 73:9 79:3 92:7 99:10 102:1 eligibility [34] 6:6 9:17 12:8 13:2,20 14:1 15:17 17:23 26:3,4 28:9 32:3,23 33:5 47:9,17,23 48:3,14,19 55:17,20 63:11 79:22 80:7,18 81:4,18,22 82:7,16 84:13 97:25 100:25 eligible [8] 6:8 11:15,21 13:1,11 15:19 17:5 26:1 eliminating [1] 85:8 Ellis [3] 69:20,23 70:6 embedded [1] 65:19 employed [1] 9:6 employment [1] 23:19 enacted [2] 52:18,19 encompasses [4] 84:13 89:1,2 94:15 end [2] 64:9 90:25 enough [8] 5:17 30:9 37:24 87:9,12,16,21 89:9 entered [1] 23:1 entertain [1] 69:16 entire [2] 25:2 68:8 entitled [1] 14:2 enumerated [2] 9:15 31:18 EOIR [1] 28:23 error [5] 16:19 24:10 28:17 42:17 99:22 errors [3] 5:11 15:24,25 especially [4] 5:9 22:1 62:9 72:11 ESQ [4] 3:3,6,10,14 ESQUIRE [2] 2:2,7 essentially [1] 51:13 establishes [1] 51:21 estimate [1] 36:21 ET [2] 1:3 46:15 evaluating [1] 7:12 even [21] 5:11 6:1 14:10,10</p>	

Official

<p>18:23 24:5,10 25:19 32:3 37:1 46:5 48:24 68:12 73: 10 75:19 76:24 78:8 83:13 87:24 93:8 96:10 everyone [7] 26:20 28:3 35:17 88:5 96:25 101:21, 23 everything [9] 6:20 7:18 25:16 26:17 48:10,11 88: 15 95:4 97:5 evidence [8] 28:25 29:23 35:15 42:17 74:9,13 75:20 94:20 evident [1] 36:17 exact [1] 81:9 exactly [7] 34:16 35:8 64:1 90:18 91:15 96:18,21 examining [1] 44:21 example [19] 12:19 28:18 29:10 39:8,25 45:6 46:16 48:17 52:3 55:20 58:17,19, 25 67:15 72:5 74:21 82:1 94:16 98:21 examples [3] 28:19 66:12 67:17 except [8] 11:17 15:22 22: 10 55:15 61:6,7 88:6,9 exception [3] 51:22 61:11 88:14 exceptional [1] 58:1 exceptions [10] 60:23,25 61:3,13 68:11 85:14,15,19 86:2 87:25 exclude [1] 54:11 excluded [1] 85:23 excuse [1] 82:10 executive [8] 10:13 13:10 19:22 20:13 57:4 59:8 61: 19 75:14 exercise [19] 13:19 14:3 15:9,13,21 16:25 18:9 19: 20 25:25 35:5,16 38:3 40: 21 41:24 44:20 45:5 80:10, 11,16 exercises [2] 17:6,6 exercising [2] 88:23 94:14 exhaust [3] 72:15 73:7 78: 20 exhausted [2] 91:24 92:6 exhaustion [4] 77:18 98: 16,19 99:7 exist [2] 62:6,9 existing [2] 52:15 97:22 expand [1] 52:21 expect [1] 23:23 expectation [1] 84:24 expected [1] 78:20 expedited [1] 66:21 experiences [1] 99:17 explain [3] 30:13 57:23 95: 13 explaining [1] 63:10 explanation [1] 4:17 explicitness [1] 33:11</p>	<p>express [2] 39:23 58:15 expressly [2] 48:15,20 extent [5] 5:6,22 11:17 18: 13 45:6 extremely [2] 46:15 58:1</p> <hr/> <p style="text-align: center;">F</p> <p>facing [1] 40:20 fact [5] 9:20,21 11:17 19:6 27:1,1,21 28:3,7,10 29:5 31:6,25 32:7 33:19,23 34: 1,2,6,11,12 35:20 37:7,10, 14 40:5 41:3 43:10,13 44: 11,23 45:1 50:10,23 51:5 58:7,10 61:12 68:13,23 70: 15 74:4,10,16 76:4,19 92:8 94:15 95:13 99:12 100:1 fact-finding [3] 61:18 86: 12 94:16 factor [2] 57:25 101:24 factors [12] 9:17 15:17 19: 1 20:2 38:8,20,21 39:17,22 58:15 69:4 101:11 facts [5] 36:12 50:21 51:3 75:15,18 factual [32] 8:23 9:19 17: 22 20:2 28:17 29:6 35:11, 24 38:2 40:23 41:24 42:7, 16,22 43:2,14 44:4,7,13,14 51:17 52:9 56:8 61:21 65: 9 68:2 76:7,14 80:24 99: 14,21 100:12 fail [1] 29:1 fails [1] 32:10 failure [1] 90:5 fair [3] 35:12 57:2 58:25 fairly [2] 88:25 89:1 fall [7] 13:6,8 32:8 49:2 51: 24 52:4 101:15 falling [1] 63:14 falls [1] 57:20 falsely [1] 49:15 family [1] 90:9 far [1] 7:4 fast [2] 92:16 93:8 fast-food [1] 92:14 favor [3] 6:10 14:21 19:20 favorable [1] 80:11 favoring [1] 65:18 Federal [6] 8:25 10:11 21:7, 24 75:13 89:7 feels [1] 84:11 fell [2] 45:15 52:5 felony [1] 82:2 fidelity [1] 85:1 Fifth [2] 90:21 97:20 figure [2] 57:19 91:12 file [2] 23:25 79:1 filing [1] 23:21 final [2] 4:23 6:17,19 7:15, 17 10:3 21:15,18,19,21 22: 8,13,18 23:1 24:22 25:20 33:14 63:3,6 66:25 99:8 Finally [1] 100:15</p>	<p>find [8] 17:11 29:3 35:16 42:4 43:10 47:1 57:16 95: 25 finding [1] 16:20 findings [9] 8:24 34:5 37:7, 10,14 61:12 92:9 94:15 95: 13 fine [1] 84:20 finish [1] 14:7 first [28] 4:4 11:3,14 14:1 28:7,8 32:5 33:1,2 41:10, 14 47:1 51:24 52:5 55:22 65:24 66:3 70:5 71:14 77: 22 80:17 82:14 86:18 87: 21,24 90:20 91:11 100:21 first-line [1] 45:19 first-step [2] 48:3 80:24 fit [2] 46:20 87:11 five [10] 7:25 9:14 31:18 47: 1,2 62:14,18 85:17 86:18 90:11 fixed [1] 100:6 flaw [1] 24:3 FLEMING [60] 2:2 3:3,14 4: 6,7,9 6:16 7:2,21,24 8:9, 14 10:14,25 12:1,10,18 14: 5,8,22 15:5 16:3,9,12,15, 17,22 17:8,20 18:7,18 19: 17,24 20:17 21:12 22:7,18, 23 23:6,13 24:18 25:10 26: 4,23 27:5,9,17,23 28:1,6, 11,21 29:25 30:10 31:1,10 80:19 98:12,13,15 Fleming's [1] 46:1 flip [1] 53:8 flipped [1] 53:8 floor [3] 81:22,25 82:2 focus [1] 18:1 follow [1] 76:17 following [4] 57:11 73:20, 21 88:4 follows [1] 53:12 food [6] 88:5,9,11,13 92:16 93:8 footing [1] 63:12 Footnote [3] 15:11 48:2 98: 2 force [2] 20:9,10 forceful [1] 96:9 foresee [1] 46:22 form [2] 24:9 80:9 formal [1] 60:16 formality [1] 60:15 formation [2] 94:13,14 forming [2] 88:21,22 forms [3] 9:14 41:17 85:17 formulation [1] 84:17 forward [1] 97:5 Foti [1] 11:11 found [7] 11:20 15:18 17:5 26:1 75:15,19 87:9 four [3] 77:24 87:7,18 fourth [2] 94:6 95:8 frequently [2] 9:20 31:5</p>	<p>friend [3] 32:21 56:1 71:5 friend's [1] 33:9 fries [3] 88:12,13 92:17 front [1] 49:13 full [2] 5:24 66:4 fully [2] 29:15 92:10 fulsome [1] 25:12 function [2] 62:15 63:9 functions [1] 79:22 further [8] 20:21 24:15 32: 13 51:10 89:13,15 98:19 99:7 future [1] 26:6</p> <hr/> <p style="text-align: center;">G</p> <p>GARLAND [2] 1:6 4:5 gate [1] 71:17 gave [3] 58:17 64:17 96:9 GENERAL [18] 1:7 2:4 18: 10 22:11 26:9 31:20 33:13 37:4 40:1 46:11 47:19 58: 17 67:24 70:11 81:15,23 83:4 101:2 General's [8] 8:5 32:24 48: 15,20 64:4 67:14,16 101: 12 generally [3] 23:6,11 36:4 generic [2] 74:25 75:8 genre [1] 41:9 Georgia [3] 29:14 33:17 99: 1 getting [2] 97:16,19 give [13] 19:14 25:11 28:18 36:4 64:17 65:21 66:1,2 67:25 79:23 91:10 93:9 97: 3 given [2] 57:21 69:22 gives [3] 5:23 36:6 98:21 God [2] 69:17 74:16 Gorsuch [7] 26:13 52:24 93:14,15 95:7,24 96:2 got [5] 46:6 49:3 91:8 92:6 93:2 gotten [1] 30:21 governed [2] 14:13 22:9 governing [1] 80:3 government [27] 4:11 5:25 9:24 17:13 24:25 30:12,14 47:5 53:4,8,18 55:3,11 67: 18 71:3 72:18 86:22 87:17 88:3 89:2 90:5 91:16 92: 15 95:15 96:21 101:7,9 government's [24] 5:20 14:24 45:25 46:21 53:1,15, 25 79:8 85:22 86:14 87:5, 6 88:2 90:22 91:7 93:19 94:3,7,24 96:6 97:12,24 98:3 100:17 government-adjacent [1] 94:10 governs [1] 83:11 grace [1] 68:21 grade [1] 93:23 grant [16] 6:7 11:22 12:1, 25 13:10 15:9 16:24 17:7 18:22 22:11 25:24 46:11 64:5 80:20 81:25 83:1 granted [6] 17:12 78:16 80: 9,15 81:8 82:9 granting [4] 5:2,25 6:24 10:16,22 11:8,22 12:13,14, 21,22 13:12,14,18 25:3,22 31:17 33:3 51:7 61:10 62: 3,13,17 64:18 65:1 79:14 80:12 82:11,15,23,25 83:2, 5,23 84:1,2,12 85:8,9,16 86:5 grants [1] 11:12 grappling [2] 72:16 96:21 grateful [1] 102:9 great [1] 85:15 greater [1] 68:17 green [1] 99:4 ground [5] 10:6 19:5,8 30: 16,20 grounds [3] 61:24 84:14, 14 Guerrero [1] 58:11 Guerrero-Lasprilla [1] 20: 6 guess [5] 28:20 41:18 53: 11 55:1 83:20</p> <hr/> <p style="text-align: center;">H</p> <p>H-1B [1] 98:24 habeas [7] 75:25 76:4,10, 11,15 91:5 100:5 half [2] 95:15,16 hands [1] 61:19 hang [1] 86:4 hangs [1] 71:14 happen [2] 11:13 58:18 happened [1] 30:11 happening [1] 78:6 happens [1] 49:2 hard [2] 35:7,7 harder [3] 82:19 83:2 85: 13 hardship [5] 39:19 46:15 58:2,19 59:1 hear [1] 4:3 heard [1] 94:17 hearing [1] 78:24 held [3] 52:16 53:10 90:23 helpful [2] 66:12 76:12 helpfully [1] 74:22 higher [2] 33:10 68:17 historic [1] 73:15 historical [12] 27:1,2 33:23 34:6 37:10 43:5,13,24 44: 23 45:1 61:20 76:4 history [6] 4:16 39:18 58: 23 91:3 92:10,11 hit [1] 81:13 Hmm [1] 70:24 hold [2] 50:23 59:11 holding [1] 9:22 Honor [7] 16:9 21:22 29:25</p>
---	---	--	---

Official

<p>31:10 42:1 58:9 98:15 hook [1] 96:16 Hospital [1] 98:25 hovered [1] 78:14 however [3] 18:1 45:12 101:6 hundred [1] 78:14 hung [1] 41:5 hypothetical [1] 92:20</p> <hr/> <p style="text-align: center;">I</p> <p>ID [12] 52:17,21 53:17 54:2, 24 55:2 77:5 87:1 99:25 100:1,6,13 idea [1] 46:21 identical [1] 65:3 identified [3] 5:3 54:8,12 identify [1] 59:14 identifying [3] 39:15 58:13 62:15 ignore [1] 65:5 IIRIRA [4] 15:7 52:19 100:12,13 IIRIRA's [2] 61:17 68:22 Illinois [1] 2:7 illustrates [1] 98:7 illustration [1] 97:23 immediate [6] 89:23 90:1, 4,12,19,24 immediately [2] 7:3 77:23 Immigration [30] 5:14 6:17 7:17 8:17 9:3 10:19 15:12 18:11 22:2,12 23:1 25:18 28:22 30:14 35:14 43:10,25 49:19 57:5 73:15 74:1,23 78:25 81:3 83:10,12, 14 87:17 94:17 98:20 imperfect [1] 92:20 impermissible [1] 35:18 implements [1] 20:11 implication [4] 51:17 52:10 72:20 88:15 important [6] 20:11 37:25 41:7 44:25 93:10 99:25 importantly [2] 9:5 97:6 INA [5] 5:4 8:23 22:6 38:22, 23 inadmissibility [8] 19:2 30:15 31:4 48:16,18 49:11 55:19 78:4 inadmissible [1] 49:14 inclined [1] 45:13 include [7] 34:6 36:16,20 53:17 58:15,18,20 includes [6] 7:18 21:18 34:4 36:24 56:25 72:16 including [2] 51:21 78:4 inconceivable [1] 48:13 incorrect [3] 10:10 15:6 33:22 incorrectly [1] 34:15 indicate [1] 37:15 indicated [1] 71:17 indicates [1] 36:24</p>	<p>indication [1] 52:20 indicator [1] 39:24 indisputably [1] 59:12 individual [7] 4:22 7:9,14 66:18 69:15 75:6 100:25 individuals [1] 78:20 ineligible [2] 4:14 16:20 informal [2] 94:12,22 informed [1] 29:12 initial [2] 47:16 80:7 inquiry [3] 35:11 42:2 80:23 INS [2] 11:11 21:17 instance [3] 5:3 23:16 87:16 instead [2] 67:10 100:5 intact [1] 54:25 intent [5] 34:19 43:4,5,16, 20 interest [1] 59:10 interesting [1] 66:16 internal [1] 56:18 interpret [4] 62:5,8 77:2 86:20 interpretation [19] 14:24 41:14 59:8 63:18 64:16 75:1 79:8 86:5 87:12 93:22 94:1,3,5,6,23 95:5,12 96:12,17 interpretations [1] 14:12 interpreted [2] 41:8 87:8 interpreting [3] 6:22 20:7 51:14 interrupt [1] 27:19 introduce [1] 46:17 introduces [1] 57:18 invoke [1] 12:15 involve [1] 38:4 involved [3] 44:21 79:4 82:21 involves [4] 32:10 35:12 38:3,7 involving [1] 78:21 irrelevant [2] 50:8 52:6 Island [3] 69:20,24 70:6 Isn't [14] 16:16 21:1,10 30:9 37:6 40:21 41:23 49:16 58:6 69:9 76:22 87:15 92:14,15 isolation [2] 11:5 85:11 issue [30] 9:19,20 10:2,9 19:3 22:24 24:6 29:6,15 30:15,25 31:4,5,25 41:25 42:22 43:2,15,15 44:13,14 46:18,19 47:8 52:2 74:24 77:14 99:12,24 101:22 issues [15] 11:16 23:8 44:4 47:21 52:9 53:7 79:7 80:24 81:18,19 87:19,23 99:14,21 100:2 it'll [1] 45:5 itself [7] 6:15 11:5 19:13 21:20 61:5 68:16 98:6</p>	<p style="text-align: center;">J</p> <p>job [1] 8:12 judge [12] 15:12 23:1 30:14 35:13,14 36:5,5 43:10,11, 25 46:5 94:17 judge's [1] 29:12 judges [1] 28:23 judgment [87] 2:9 3:12 5:1, 2,4 6:23 7:5,6 8:16,23,24 10:16,21,23 11:5 12:12 21:4,25 22:2 24:7,21 25:2,5, 15,20,22 31:17 32:12 33:3 35:2 36:12,15,16,21,24 37:8,11,19 38:4,9,10,19,23,24 39:1,3,6,9 40:11 51:6 60:4, 9,12,14,17,22 61:10 62:4 63:10,12,13 64:20,23,25 66:19 67:13,14,16,18,20, 23 70:3 77:8 79:13 85:16, 23 88:18,20,22,23,24 89:5 93:6 94:13,20 95:1 102:7 judgments [10] 6:13 21:5, 8,9 47:16 57:22 60:18 62:17 92:24,25 judicial [11] 5:10 15:2 22:8 24:9 28:5 61:18 65:18 68:2,21 76:18 91:9 judiciary [1] 21:25 junk [4] 88:5,8,11,12 juris [1] 71:22 jurisdiction [6] 10:11 29:17 61:9 65:7,10 85:20 Jurisdictional [25] 6:4,22 12:22 15:1 60:13,24 61:4, 5,13,24 62:24 64:8,13 66:9 67:2 68:10 71:16 72:7,22 78:1 82:5,6 84:25 85:1 86:1 jurisprudence [1] 65:19 Justice [221] 2:5 4:3,9 6:12, 16,25 7:20,22 8:8,10,15 10:14 11:1,25 12:3,11,19 14:4, 6,22 15:6 16:1,5,10,13,16, 21 17:3,9,16 18:7,19 19:11, 18 20:1,16,19,21,22,24,24 21:1 22:4,16,20 23:3,11 24:14,14,16,17,17,18,19 25:11,12 26:2,12,12,14,25 27:7,16,18,24 28:2,10,13 29:24 30:1,1,4,6,7,11,23 31:7,8,11,14 32:14,19 33:7, 14,24 34:3,10,16,22,24 36:3,11 37:6,16,21 38:1,14 39:5,11 40:3,8,9 41:1,18 42:8, 9,21 43:9,14,19 44:2,6,9, 15,18 45:4,8,21 47:6,13 48:1,7 49:3,4,4,6,7,7,9,10,17, 24 50:3,6,12,16,19 51:2,4, 9,9,11,19 52:7,23,23,25 53:2,11,13 55:1 56:10,13 57:7, 8,8,10,12,17 58:6 59:18,19 60:1,5 62:1 64:14 66:1,4, 24 67:25 68:25 69:1,2,3</p>	<p>70:10 71:12,23 72:8 73:1, 2,4 74:5 75:18,23 76:9,21 79:11 82:8 83:19 84:15 86:7,13 88:2 89:10,12,13,14, 14,16,17,18 90:3 91:2,20 92:1,12,13 93:12,13,13,15 95:7,24 96:2,5 97:11 98:8, 10,18 99:24 102:3 justified [1] 54:16 justify [1] 5:16</p> <hr/> <p style="text-align: center;">K</p> <p>KAGAN [35] 10:14 11:2,25 12:3,11,19 24:17,18 25:11 26:2 42:8,21 43:9,14 44:2, 6,9,15 47:13 48:1,7 51:9, 11,19 52:7 69:1 71:23 72:8 73:1 79:11 82:8 83:19 84:15 92:13 93:12 Kagan's [1] 53:13 KAVANAUGH [25] 26:14, 25 27:7,16,18,24 28:2,10, 13 29:24 34:24 52:25 53:2, 11 55:1 56:10,13 57:7 86:7,13 88:2 96:5 97:11 98:8 99:24 keep [2] 70:12 86:7 keeps [1] 82:9 key [1] 93:10 kind [11] 18:15 25:7 39:22 42:23 46:23,25 49:1 50:25 79:17,20 97:12 knows [1] 46:16 Kucana [9] 4:18 9:6,13 10:13 20:6 41:9,13 65:20 101:5</p> <hr/> <p style="text-align: center;">L</p> <p>lacked [1] 29:17 language [25] 8:1 9:13 13:17 20:18 24:13 49:13 53:16 54:25 58:16,18,20 64:8, 10,12 65:4,12,12 66:7,13 70:3,4 71:18 79:24 81:9 100:24 large [1] 55:25 largely [3] 32:1 55:15 73:18 larger [2] 63:1 88:13 last [6] 14:19 20:6,14 31:4 65:20 71:4 later [1] 44:12 latter [1] 84:11 law [44] 5:11 7:16,17 8:17, 17 9:2,3,20 15:24 17:17 21:14 22:1,2 24:6 25:18 32:9 51:15 53:24 54:11 58:10 59:1 61:1,8,22 73:19,23 74:10,14 75:13,14,16,24 76:5 81:4 85:21,24 87:3 89:7,20,24 91:6,19 92:7 97:4 lawfully [2] 23:17 99:3 Lawyers [2] 28:22 98:20</p>	<p>lead [1] 76:23 leading [1] 60:21 least [9] 14:9,18 46:4 47:3 69:9 74:12 84:11 87:9 91:5 leave [1] 27:15 leaves [1] 95:22 leaving [2] 61:18 75:9 leeway [2] 19:9 96:12 left [8] 18:16 54:24 61:2 67:9 69:3 72:19,20,21 legal [11] 20:3 24:10 26:19 28:4 42:24 43:7 45:25 65:9 66:21 76:24 100:2 legality [1] 24:1 legislation [3] 4:19 9:16 41:11 less [5] 20:9,10 29:22 44:7, 14 level [5] 17:10 33:10 50:14 56:3 62:15 license [2] 29:13 33:17 lie [3] 34:9,9 43:18 lies [3] 33:25 35:15 36:5 38:1 36:6 light [1] 53:9 likely [2] 40:15 57:3 limited [5] 4:18 41:15 45:14 52:16 83:6 line [13] 6:5 10:15 47:23 50:17,25 57:16 59:10 69:20, 23 70:5 97:3,7 101:19 lines [2] 6:4 88:4 links [1] 9:8 listed [1] 41:17 listening [1] 35:3 little [8] 35:11 38:17 53:14 54:1 84:11,20 85:25 87:4 loads [1] 46:20 logic [1] 91:3 long [1] 94:24 longer [3] 48:10 96:15 97:9 look [25] 11:6 28:16 35:1, 21 45:22,22 46:25 58:14, 21,23 59:3 66:5 69:13,15, 21,23,25 70:2,4 77:6 91:11 93:2 94:11,12 97:19 looking [6] 33:18 35:2 37:17 39:21 66:4 84:19 looks [5] 11:21 22:7 40:13 70:17,19 lot [8] 40:12,20 41:21 44:4 56:16 88:10 90:12 97:15 lots [1] 46:22 lower [1] 58:12 lower-level [1] 21:3 lunch [1] 92:16 lurking [2] 61:11 94:6 lying [4] 40:11,15 42:23 43:1</p> <hr/> <p style="text-align: center;">M</p> <p>made [11] 4:19 5:12 9:10 16:19 17:1 25:21 41:10 60:</p>
--	--	--	--	--

Official

19 65:20 88:1 91:4 main [5] 8:7 32:20 73:2,4 84:3 major [1] 24:3 majority [1] 78:10 mandates [1] 20:15 many [3] 17:4 29:19 38:6 map [1] 56:24 MARK [5] 2:2 3:3,14 4:7 98:13 marry [1] 23:19 Mars [2] 84:8,10 Martinez [1] 54:21 Massachusetts [1] 2:2 matter [11] 1:14 10:17 21:16 24:25 28:19 29:18,20 30:24 32:2 68:20 81:16 matters [6] 18:11 21:18 24:20,24 68:2 100:12 McNary [3] 74:22,24 75:4 mean [35] 8:18 10:15,23 18:20 19:12 20:4 24:24 28:24 36:13 40:13 44:11,11,19 46:2 49:20 57:13 69:3,17,24 70:1,12,23 72:1,8,9,17,22 73:1 74:5,15 76:6 82:4 85:18 91:17 95:10 meaning [19] 5:24 10:18 21:5 30:24 37:11 38:18 41:6 51:12 60:8,11 61:7 64:17 66:2 79:17,19 88:18,20 89:4 94:13 meanings [2] 11:6 36:15 means [18] 10:17,17 12:5,6 24:22,22 25:5,20 48:23 60:14 65:15 66:9 72:17,18 75:9 77:11 79:15 84:9 meant [2] 6:23 52:21 measure [2] 34:6 93:21 Medical [1] 98:25 MEEHAN [41] 2:7 3:10 60:1,2,5 62:1,7 65:24 66:3 68:6 71:11,24 72:3,13 73:3 74:21 75:21 76:2,11,21 77:1 81:13 82:18 83:25 84:22 86:9 87:20 89:23 90:14 91:17,21 92:3,18 93:25 95:9,25 96:18 97:18 98:16 100:19 102:5 Meehan's [1] 51:11 members [1] 90:9 mens [2] 49:10,25 mention [1] 97:2 mentioned [1] 66:24 mere [2] 19:6 49:22 merit [1] 75:6 merits [2] 29:1 80:10 MERRICK [1] 1:6 mess [3] 74:7,17,18 metrics [1] 93:21 middle [1] 98:4 might [7] 30:4 37:13 53:6 68:15 72:9,13 85:12 mind [2] 69:19 72:11	minute [1] 46:24 mismatch [5] 53:14 54:1,3 87:4 88:2 misrepresentation [1] 30:16 misrepresented [1] 10:1 mistake [1] 49:22 misunderstanding [1] 29:12 mix [1] 63:14 mixed [7] 9:20 26:20 28:4 31:6 58:7,8,10 modest [1] 93:4 moment [3] 16:17 69:5 93:16 Monday [1] 1:12 Moreover [2] 9:4 70:4 morning [3] 4:4 32:22 56:1 Most [7] 9:5 17:21 21:1,10 28:25 37:25 62:14 motion [1] 79:2 mouth [1] 33:9 mouths [1] 87:14 moved [1] 100:6 moves [1] 90:6 Ms [43] 51:11 60:1,5 62:1,7 65:24 66:3 68:6 69:1,1 71:11,23 72:3,13 73:3 74:21 75:21 76:2,11,21 77:1 79:11,11 81:13 82:18 83:25 84:22 86:9 87:20 89:23 90:14 91:17,21 92:3,18 93:25 95:9,25 96:18 97:18 98:16 100:18 102:5 much [15] 7:9 10:13 15:3 19:14 24:13,21 41:5 51:11 64:7 67:13 82:19 85:3 89:21 96:4 98:9 multifactor [1] 101:14 multiple [1] 36:15 music [2] 69:14 86:16 must [5] 10:10 12:24 72:22 76:16 77:11	next [2] 63:25 72:14 nice [1] 96:23 nine [1] 52:19 nobody [2] 5:3 44:16 non-citizen [6] 6:8 11:15 13:25 48:17 68:19 80:6 non-citizen's [2] 99:16,18 non-citizens' [1] 13:23 non-credible [1] 43:11 non-discretionary [3] 31:24 41:3 101:24 non-judgment [1] 95:1 non-reviewability [2] 39:18 58:24 nonetheless [1] 15:20 normally [2] 6:12 23:22 north [1] 56:19 Note [3] 32:22 56:22 59:5 noted [1] 11:10 Nothing [5] 20:22 26:10 89:13 92:2,4 notices [1] 90:7 notion [2] 24:8 36:21 nuance [1] 38:18 number [5] 15:10 17:11 38:7 80:8 89:21 numbers [2] 17:9,11 numerous [1] 5:11	72:25,25 73:8 75:7,15 76:12 77:24 78:2,6,11 79:3 86:4 92:8 99:9 operative [1] 54:25 opinion [7] 13:15 36:22 39:25 40:1 58:16 88:22 94:14 opportunity [1] 79:1 opposed [10] 6:15 12:8,16 13:19 26:2 32:17 34:3 72:12 79:21 99:5 opposite [1] 52:11 options [1] 93:18 oral [7] 1:15 3:2,5,9 4:7 31:12 60:2 order [26] 4:23 6:15,18,19 7:15 10:4 21:15,19,21 22:8,13,19 23:1,15 24:23 25:6,20 29:13 63:3,6 66:25 71:12 72:14 73:24 99:8,15 orders [2] 6:13 21:18 ordinarily [1] 73:14 ordinary [5] 10:18 42:23 46:5 79:17,19 originated [1] 73:18 origins [1] 73:13 other [28] 8:6 9:7 12:4,6 18:14,16 21:16 22:14 31:2,19 37:3 41:10 67:17 69:16 70:24 74:7,19 75:13 86:25 87:10 93:18 95:16,19 97:6,12 98:1,6 99:19 otherwise [3] 13:7 65:3 92:23 ought [1] 51:13 out [25] 12:21 13:5 17:15 18:16 19:16 27:15 28:23 51:22 53:21,21 56:1 57:18,19 68:1 69:3 70:12 71:17 75:3 76:8 83:10 91:12 93:5 94:6 97:15 100:25 outcome [3] 32:15,16 88:25 outside [4] 5:13 32:8 38:24 56:4 over [1] 32:9 overall [5] 60:17 66:10 72:22 85:18 96:7 overarching [4] 61:17 68:22 80:2 97:13 overbroad [1] 54:7 overlapping [2] 47:15,21 overturned [1] 16:14 own [4] 13:6 73:20 77:15 79:10	parsing [1] 59:12 part [8] 17:24 22:21 36:4 57:17 69:2 80:12 82:13,14 particular [7] 23:4 34:8 37:12 43:6 50:10 72:18 83:9 parties [1] 8:22 parts [2] 98:5,6 passage [1] 76:6 past [2] 56:21 99:16 PATEL [21] 1:3 4:5,13 9:18,25 16:20 29:11 33:15 35:6 63:4 67:3 73:22 78:22 79:18 80:5 83:21 92:5,16 94:18 100:9 101:22 Patel's [3] 5:21 18:23 61:21 pathway [1] 90:10 paying [1] 42:3 peas [2] 88:7,9 pen [1] 44:10 pencil [1] 44:10 pending [1] 76:16 people [10] 17:4 40:10,18 69:19,23 89:22 98:18 100:3,9,11 percent [2] 78:14,17 percentage [1] 78:11 Pereida [1] 81:2 perhaps [5] 55:15 62:20 63:13 95:19,20 permanent [2] 93:5 99:5 permit [1] 94:9 permitted [1] 68:4 person [8] 35:15 36:6 38:5,9,10 40:13 46:5 49:15 person's [1] 90:8 personal [1] 41:21 perspective [2] 55:10 77:21 persuasive [1] 42:4 pertinent [1] 45:7 petition [3] 23:10 92:4 99:22 Petitioner [5] 50:8 67:17 74:3 77:11 93:19 Petitioners [10] 1:4 2:3 3:4,15 4:8 32:1 55:14 64:2 95:12 98:14 Petitioners' [15] 32:17 47:7 55:8 56:22 57:14 63:2,18,19 64:9 79:8 84:4 94:1,1 95:11,20 petitions [2] 100:5,7 phrase [16] 5:24 6:23 10:21 11:23 12:5,14,20 25:2 33:3 62:13,21 77:7 79:15 80:16 82:11 86:4 phrased [2] 83:7,8 pick [3] 33:4 86:13 96:5 Pierce [1] 39:21 place [6] 14:1 40:12 51:25 52:5 74:8,11 placed [1] 77:12 places [3] 12:3,4 79:24
O				
object [1] 67:19 objective [2] 37:10 43:12 observation [1] 71:22 observations [1] 82:3 observe [1] 81:17 observed [1] 81:16 obtaining [1] 49:21 obviously [3] 55:24 59:9 88:19 occurs [1] 77:9 odd [2] 38:14 76:17 Office [1] 57:4 official [2] 24:23 25:6 officials' [1] 75:15 often [2] 39:18 81:20 Okay [9] 33:24 46:5 49:3 50:3 69:14,24 70:1 97:16,19 once [14] 11:20 15:18 48:9 54:2,16 66:8 70:19,21 72:25 73:7 86:6,9 91:8 96:13 One [42] 8:16,20 11:6 19:1,3 22:7 26:7 30:24 31:2 33:7,14 36:1 39:15 51:1,22 53:11 57:10 58:15 59:17 61:16 63:1,16 68:15,22,22 70:5,6,7 72:5 73:22 75:5 77:5,24 78:12 83:25,25 91:10 92:14 95:19 96:8,19 101:17 ones [1] 8:7 only [28] 7:6 12:7 13:7 22:9 23:13 26:25 28:7 30:17 41:12 51:1,7 60:11,23 61:3				
N				
narrow [2] 8:18 65:1 narrower [2] 66:16 84:12 Nasrallah [3] 29:6 52:3 99:13 natural [2] 38:8 51:16 naturally [2] 33:4 84:12 nearly [1] 81:3 nebulous [1] 101:13 necessarily [4] 36:13 76:17 83:6,15 necessary [1] 18:1 need [7] 5:18 46:23 51:25 53:19 64:19 83:15 86:20 needs [3] 11:6 13:8 62:9 neighboring [2] 7:3 65:6 nervous [2] 40:14,19 nervousness [2] 42:11,12 never [3] 37:7,8 51:25 new [3] 46:18,18 96:11				
P				
PAGE [4] 3:2 76:2 99:13,22 pages [4] 13:15 46:9 77:6 94:11 PANKAJKUMAR [1] 1:3 pardon [2] 67:8 72:20 parent [1] 58:2 Paris [1] 69:22 parsed [1] 17:14				

Official

<p>plausible [2] 24:12 54:9 please [4] 4:10 31:15 60:6 81:14 pleased [1] 18:6 pluck [1] 100:25 point [14] 17:19 22:5 28:23 32:20 46:22 47:5 56:14 57:12 67:18 71:15 72:9 73:2 83:21 90:19 pointed [2] 56:1 57:18 points [1] 66:8 political [1] 99:19 portion [1] 10:20 position [40] 5:10 24:21 25:1,1,8 37:9,20,22 38:2 40:6 46:1 47:8 48:14 53:1,3,5,7,9,15,25 54:13 55:4,8,10,11,14 57:14,14 76:22,23 86:18,23,24 87:5 94:10 96:6 97:13 100:16,18,19 positions [2] 26:17 57:15 possibility [1] 15:23 possible [4] 7:12 17:22 38:12 92:18 possibly [2] 72:17 92:19 power [2] 85:4,5 practical [7] 32:2 55:25 56:2,7 59:6,10 101:8 practice [1] 61:20 pre-IRIRA [1] 59:1 preamble [1] 7:4 precise [1] 59:14 precisely [4] 47:11 54:11 56:17,24 precludes [2] 31:16 91:9 precluding [2] 60:25 67:3 predicate [1] 44:22 preferable [1] 5:23 preliminary [1] 14:25 preposition [1] 67:19 present [1] 55:2 preserve [1] 85:4 preserves [1] 32:9 press [1] 72:8 pressed [1] 100:3 presumption [31] 5:7 6:9 14:14,18 18:8,12 19:19 20:5,9,11 23:23 65:18 70:20,22 71:1,10,13,16,24 72:10,24 73:6,12,13,17 74:2,23 76:18 84:18,23 86:3 presumptions [2] 18:15 19:14 pretty [4] 7:1 21:5 80:21 100:19 prevented [1] 24:9 principal [1] 32:6 principles [1] 91:11 print [1] 46:9 probably [3] 45:17 56:19 69:8 problem [8] 54:2 66:23 84:3 86:22 88:17 91:7 95:11 96:24</p>	<p>problems [8] 29:3 55:8,9 63:2 79:10 94:3,5,8 Procedure [3] 9:1 21:7,24 proceeding [6] 23:9 42:24 43:7 62:16 77:9 78:7 proceedings [11] 5:13 32:13 56:4 62:12 66:22 77:12 80:3 83:12 90:6 91:1 99:3 process [2] 68:17 91:24 prohibiting [1] 68:8 prolong [1] 55:6 proof [1] 13:23 prosecution [1] 90:22 prove [2] 13:25 80:6 provided [2] 22:10 61:6 provides [1] 91:6 provision [13] 13:21 31:22 32:11 37:12 38:25 51:14 52:10,13 66:17 67:22 71:25 83:11 87:10 provisions [6] 20:8 31:18 53:16 59:17 66:6 82:13 purely [1] 55:23 purpose [2] 49:18 73:19 purposes [5] 6:21 15:22 39:15 61:17 68:23 pushes [2] 70:22,24 put [8] 33:1,8 41:21,23 55:16 77:20 87:14 100:4</p> <p style="text-align:center">Q</p> <p>qualified [1] 8:2 qualifying [1] 100:4 quality [1] 57:25 quantity [1] 24:10 question [51] 6:21 17:14 24:19 25:12 28:14 29:5 31:6,6,25 33:14,22 34:8 36:1 40:4,24 41:20 42:7 43:5,6,13,24 45:19 47:4 50:10 53:13 56:18 57:6,11 58:10,11 61:22 65:25 66:3 73:4,23 74:4,14,16,25 75:8 76:19 79:13 81:11 91:18,23 92:7,8 93:16 95:23 98:18 101:16 questions [53] 6:11 26:20,20,25 27:1,21 28:3,4,4,7,13 32:7,9 34:19 35:19,20 38:5 41:4 42:16 43:20 44:3,12 48:22 50:24 51:5,15,16,17 53:12,24 54:11 55:7 56:8 60:8 61:1,8,25 71:11 73:19 75:16 76:5,15,25 77:20 81:18 85:21,24 87:3,3 89:20,24 91:6 97:4 quite [4] 19:22 21:22 62:2 70:14</p> <p style="text-align:center">R</p> <p>raised [3] 30:17 93:20 99:24 range [1] 99:16 rate [1] 78:12</p>	<p>rather [6] 6:1 19:8 25:4 55:18 80:23 82:14 RAYNOR [57] 2:4 3:6 31:11,12,14 32:14,19 33:8,21 34:2,5,12,18 35:10 36:9,14 37:9,21 38:12,16 39:7,14 40:7,25 42:1,8,13,21 43:8,17,23 44:5,8,15,25 45:8 47:6 48:1,12 49:17 50:1,4,9,15,22 51:4,19 52:12 53:2 54:5 55:13 56:11,15 57:11 58:5,9 59:21 rea [2] 49:10,25 reach [2] 5:22 29:16 reacting [1] 100:1 reaction [1] 86:15 read [18] 10:24 33:4 41:12,14 48:8,8,25 49:20,25 51:13 54:9,10 66:15 69:14 73:8,9 85:11 93:7 reading [19] 5:19,23 6:2 14:17 18:17 25:17 32:2 54:6,13,17,20,23 63:2 84:4 89:19 91:8,10,13,15 real [17] 8:11 52:17,20 53:17 54:2,24 55:1,2 66:23 77:5 87:1 95:12 99:25 100:1,6,13 101:8 really [11] 45:24 54:10 69:6,17,24 74:15,15 79:19 87:2 92:15 95:4 reason [11] 51:5 65:22 68:1,15 70:14 72:24 73:5 77:17 78:19 81:20 82:24 reasonable [2] 14:11 38:5 reasoning [3] 6:13,15 9:6 reasons [10] 30:12 36:6,7 60:21 63:11,13,14 70:9 83:17 87:21 REBUTTAL [3] 3:13 98:12,13 receives [1] 57:3 recently [2] 14:19 81:2 recognizes [2] 25:15 101:21 recollection [1] 49:13 reconcile [1] 9:12 record [5] 28:16 35:1 36:7 74:9 94:19 refer [2] 12:24 37:13 reference [2] 51:25 86:14 referred [1] 99:20 referring [3] 39:1,3 92:24 refers [9] 8:23,24 11:24 12:6 25:3,6 37:2 64:4 79:20 refugee [1] 18:11 regard [3] 40:17 42:11,12 regarding [38] 5:2,24 6:6,24 10:16,21 11:8 12:13 25:2,22 31:17 33:3 51:7 57:22 61:10 62:2,13,17,22 63:8,17,20 64:3,12,18,23,25 68:2 70:3 79:14 82:20 84:8,10 85:7,9,16 86:4 99:15</p>	<p>regardless [2] 59:11 77:8 regulation [1] 80:13 regulations [1] 12:4 reject [1] 61:24 rejecting [1] 63:17 related [2] 26:17 67:4 relates [1] 28:17 relatively [2] 77:10 91:22 relevant [3] 21:2,10 69:4 relief [84] 5:2,25 6:7,24 9:15 10:7,16,22 11:8,13,15,22,22 12:2,13,14,21,23 13:12,14,18 14:3 15:9,20 16:25 18:22 25:3,23,24 26:19 27:11,20 31:17 33:4 37:1 40:19 41:17 51:7 60:18,20,21 61:10 62:3,13,17,23 63:10,12,14 64:6,18 65:1 66:10 67:11 68:9,15,20 70:8 72:23 76:19,20 77:13,25 79:14 80:9,12,14,20 81:7 82:11,15 83:1,3,6,16,23 84:2,2,12 85:8,9,17 86:5 95:14 relitigate [1] 74:3 reluctant [1] 76:13 rely [1] 62:2 relying [1] 86:24 remains [1] 82:2 remand [2] 32:13 45:16 remedies [2] 78:21 92:6 removability [17] 10:6 22:25 27:13,14,19 30:8,17,20 62:19,25 63:5,7 67:4,9 68:3,14,16 removable [4] 9:22,25 10:9 98:19 removal [38] 4:24 5:13 6:18,19 7:16 8:1 10:4 19:5,8,21 22:9,13,19 23:2,9,15 26:15,18 27:7 56:4 57:23,25 62:12,16 63:6 66:22 67:1 76:16 77:9,12 78:5,6 80:3 90:6,7,25 99:2,18 remove [1] 30:8 removed [1] 23:18 Reno [3] 89:25,25 90:18 reopening [1] 79:2 reply [3] 15:11 32:22 56:22 reported [1] 17:10 representation [1] 49:21 represents [2] 49:15,15 require [4] 24:12 34:25 35:1 42:2 required [4] 29:13 33:11 59:13 98:17 requirement [4] 48:6 49:11,25 101:1 requirements [3] 13:3 28:9 80:7 requires [5] 35:4 39:17 58:22 59:13 86:5 reserving [1] 66:20 resolve [2] 5:17,18</p>	<p>resolved [2] 5:7 101:22 respect [18] 9:14 13:22 17:18 18:10 26:18 28:8 48:2 54:7 55:13,24 66:11,23 80:9 82:16 83:9 91:18 92:9 100:18 respectfully [2] 47:7 101:25 respond [3] 15:4 97:14,17 Respondent [4] 1:8 2:6 3:7 31:13 responds [1] 96:14 response [3] 24:19 80:1 98:17 responsibility [1] 102:8 restore [1] 85:21 restored [1] 15:23 restores [1] 85:19 restrict [1] 85:5 rests [1] 51:12 result [2] 29:20 58:1 resulting [1] 60:22 retroactively [1] 54:19 reverse [2] 32:12 71:12 reversed [3] 15:12 16:23 102:2 reverses [1] 31:2 review [90] 4:12,21 5:11 6:13,14,17 15:2,16,24 16:18 17:22 21:2,21,23 22:8,12,12 23:10 24:10 27:3 28:5 30:8 31:16,22 32:9 42:16,18 48:3,4,24 51:21,24 52:4,8,22 56:5,12 57:5 60:9,25 61:9,18 65:18 68:2,8,13,21,24 69:9,12 70:20,22 71:2,13,20 72:2,11,24 73:19 74:3,10,13,14,23 75:5 76:4,14,18 84:18 85:4,5 86:11 87:19 89:19,23 90:1,13,24 91:5,9,22 92:4,7,9 98:4 99:10 100:6,7,20 101:4 reviewability [15] 5:8 6:10 14:14 18:9 20:5 23:24 73:6,12,14,15,17 84:19,24 86:3 89:1 reviewable [31] 9:21 10:2 11:19 15:1,21 18:22 19:4 25:21 26:5,18,21 27:12 29:7 32:4 47:17,24,25 48:10,11,23 49:1 50:11,24 51:6,16 56:9 76:25 77:24 83:24 95:15,16 reviewed [9] 9:21 10:3 16:14 22:17 30:21 31:5 39:20 74:24 99:21 reviewing [3] 15:8 75:5,7 rid [2] 15:15 70:1 ROBERTS [33] 4:3 18:7 19:11,18 20:16,19,24 24:14,17 26:12 30:1,6 31:8,11 40:3,9 41:18 42:9 43:19 44:18 45:4 49:4,7 51:9 52:23 57:8 59:19 60:1 89:10,</p>
--	--	--	--	--

Official

14 93:13 98:10 102:3 role [1] 75:16 room [1] 26:21 rule [1] 95:18 ruled [1] 17:18 rulemaking [1] 21:16 Rules [9] 9:1 21:7,24 73:21, 22 93:3,3,6,9 run [1] 43:9	separate [1] 68:1 separately [1] 14:2 separation-of-powers [1] 20:12 serious [3] 29:3,22 87:23 Services [2] 5:14 90:1 servicing [1] 62:15 set [5] 56:25 62:22 69:4 71: 18 78:8 setting [1] 83:10 settled [1] 14:20 several [4] 11:6,10 58:14 81:1 shall [2] 52:13 61:9 sharp [1] 101:16 she's [3] 40:14,15,15 shouldn't [3] 85:10 89:20 91:16 show [3] 13:16 22:5 65:6 shows [3] 9:9 35:15 63:23 sides [1] 14:12 silent [2] 72:6,12 similarly [2] 38:22 80:13 simple [1] 47:23 simply [8] 8:2 10:6 14:8 24: 12 37:17 47:12 49:1 52:4 since [4] 53:1,10 55:12 97: 7 situation [8] 5:21 14:13 18: 20 23:13,16 26:6 96:8 100: 8 slight [2] 5:18 93:18 slightly [5] 35:25 54:7 56: 25 70:25 71:1 slowly [1] 90:6 small [2] 78:11 89:21 Social [1] 90:1 softer [2] 70:3,4 solely [1] 28:2 Solicitor [1] 2:4 solve [1] 77:16 solves [1] 96:24 somebody [4] 40:12,16 41: 20,22 somehow [1] 101:13 someone [12] 9:18,22 11: 20 12:25 13:11 15:18 23: 16 25:25 27:13 49:14 67: 20 82:1 sometimes [2] 39:23 93:8 somewhat [1] 56:16 somewhere [2] 88:19 98:4 sorely [1] 29:11 Sorry [8] 14:6 27:18 30:5 55:6 80:25 81:12 86:7 92: 2 sort [4] 68:3 70:22 79:25 84:16 sorting [1] 42:4 sorts [1] 52:8 SOTOMAYOR [31] 17:3,9, 16 24:15,16 30:4,7,11,23 31:7 36:3,11 50:6,12,16,19 51:2,4 64:14 66:1 67:25	68:25 69:3 70:10 89:16,17 90:3 91:2,20 92:1,12 sought [1] 24:11 sounds [1] 69:17 spanning [1] 81:3 speaking [1] 38:15 speaks [1] 92:22 special [2] 46:21 75:1 specifically [2] 5:1 12:15 specified [9] 8:4 9:16 11: 18 13:3 31:21 32:23 33:12 37:3 64:19 specifies [1] 35:21 specify [2] 101:1,12 specifying [1] 26:7 speculative [1] 55:4 split [2] 89:4 97:22 sponsoring [1] 90:9 spouse [1] 58:2 St [28] 11:11,23 13:13 53:5, 9,19,23 54:8,12,14 69:8,12 75:21,21,23 76:2,6,7 81:1 86:19 87:2,9 91:4,8 96:11, 14,20 100:2 stage [10] 12:7,8 18:23 28: 8 47:19 48:10,11,19 55:20 56:8 stages [1] 11:13 stakes [1] 68:17 stand [3] 25:8 43:1 44:1 standard [2] 28:24 56:12 standards [1] 20:2 standing [1] 69:19 stands [1] 63:11 starkest [1] 56:1 start [2] 60:10 74:11 starting [3] 53:3,15 71:15 starts [1] 84:19 state [3] 17:17 34:13 67:21 statement [1] 86:11 STATES [4] 1:1,16 9:19 19: 3 statistics [3] 17:13 56:23 77:20 status [16] 4:14 7:13 10:7 16:8 17:4,7 19:7 22:21 23: 14,20 24:11 30:18 78:2,23 99:5,6 statute [45] 6:2 8:4 9:11 12: 4,23 14:17 18:17 19:13 21: 20 36:16 39:16,25 48:20, 25 50:25 51:20,21 61:15, 16 62:5,10,11 65:15 72:5 73:9 74:11 75:9 77:3 80:3, 4 81:10 83:2,7,8 86:6,21 87:24 90:16 91:3,5,10,22 99:11 101:1,11 statutes [3] 10:19 62:18 81:17 statutory [8] 4:15 13:16 19: 1 36:23 41:7 49:12 53:16 74:25 stay [1] 71:5 stayed [1] 98:22	step [26] 12:15,16 25:3,4 26:2,4 46:4,24 47:23,24 48:9,11,22 49:2 79:21,22 80:15,17 81:5 82:14 83:7, 15,16,22,22 100:21 steps [2] 80:5,14 stick [1] 70:15 still [9] 19:10 23:1 25:8 28: 25 60:9 62:8,25 71:23 88: 15 stood [1] 59:8 stop [1] 79:12 straight [1] 83:16 strange [1] 73:11 streamline [1] 61:17 streamlining [1] 68:21 strict [1] 85:1 strip [3] 48:3 65:7,9 strong [4] 5:7 6:9 14:20 59: 9 strongest [1] 22:5 structurally [1] 51:20 structure [1] 61:16 stuck [2] 70:25 71:1 student [1] 23:18 Sub [1] 52:6 subdivisions [1] 64:17 subject [4] 6:6 23:17 67:7 100:9 subjective [2] 34:19 37:23 subjectivity [1] 38:20 submit [1] 101:25 submitted [2] 102:10,12 subparagraph [14] 13:24 32:8,11 51:23,25 52:6,18 54:18 60:24 61:7 63:25 67: 1 72:16,17 subsection [6] 4:23,24 7:8 15:23 48:2,5 subsections [2] 62:14 65: 6 subsequent [1] 53:17 subsidiary [2] 60:19 70:15 substantial [6] 28:25 29: 23 42:17 74:9,13 75:19 subsumes [3] 6:19 25:16 60:18 sufficient [1] 37:19 sufficiently [2] 96:15 101: 14 suggest [1] 8:12 suggested [2] 5:5 32:21 suggesting [2] 19:13 44: 16 suggestion [1] 20:8 support [10] 2:6,8 3:8,12 31:13 37:19,22 38:1 60:3 102:7 supported [2] 36:7 75:19 supports [2] 79:25 101:6 suppose [1] 55:5 supposed [2] 57:24 70:11 SUPREME [2] 1:1,15 surprisingly [1] 56:16	surrounding [1] 66:6 suspending [1] 91:5 sweeping [1] 5:4
T				
sake [1] 49:21 same [23] 10:9,15 20:7 34: 20 35:8 41:9 42:19 47:11 62:8 63:11 64:11 65:2 71: 7,8 74:7,8,11 76:8 81:9 84: 5 89:24 93:7 94:8 satisfied [1] 48:5 satisfies [1] 80:7 saying [16] 8:3 10:15,18,23 12:5 18:20 36:4 48:9 79: 19 87:6,15,18 88:3 91:8 92:16,19 says [33] 7:5 14:23 15:19 36:25 39:25 40:16 41:21, 22 48:2,21 49:14,16,18 51: 13,15 52:13 54:21 66:17, 19 70:5,6,7 72:18 80:6,15 82:10 91:16 95:2,15 96:22, 25 97:3 99:14 scope [5] 32:8,11 52:22 71: 25 76:22 scrambling [1] 96:11 searching [1] 42:2 second [19] 32:4,25 37:2 41:8 47:10,12,15,18,19 55: 22 65:5 66:11 70:7 78:8 80:15 83:6 87:22 95:6,7 second-order [1] 45:18 second-stage [7] 11:24 12:24 13:9,18 15:8 25:23 80:23 second-step [2] 63:22 82: 13 Secretary [4] 31:19 37:5 40:2 47:20 section [5] 4:11 31:16 35: 21 63:23 82:25 sections [3] 7:3,25 9:10 see [10] 8:10 35:8 45:24 47: 4 64:12,16 70:21 71:2,9 74:20 seek [2] 23:20 48:18 seem [4] 19:14 46:3 62:1 81:17 seems [7] 6:14,25 34:23 35:7 53:25 64:23 101:9 seen [1] 74:19 selective [1] 90:22 sending [2] 84:8,10 sense [9] 8:25 13:4 65:21 68:10 69:18 85:25 88:1,10, 11 sentence [1] 47:1	table [1] 68:23 talks [7] 7:8 13:24 21:20 42:14,15 47:21 87:2 targeting [1] 63:22 TAYLOR [3] 2:7 3:10 60:2 temporary [2] 23:18 99:5 tend [2] 38:17 40:14 term [11] 10:19 21:18 36:16, 24 37:18 38:18,23,24 51:6 63:21 79:20 terms [13] 7:4,8 13:6 14:16 27:13 31:22 38:19 39:15 43:23 58:13 59:5 71:24 85: 2 test [1] 101:14 testimony [3] 35:3 43:11 94:18 text [23] 4:16 50:25 54:9,10, 14,20,23 61:4,15 71:14 79: 6 87:22 92:21,22 93:11,22 94:2,4 95:22,25 96:8,9,14 textual [2] 39:24 84:3 the/of [1] 84:16 theirs [2] 47:22 101:20 theoretical [3] 50:14,16 101:7 theories [1] 93:20 there's [40] 5:6 6:8 11:12, 14 13:21 14:11 18:11 19: 19 20:17 27:12 33:10 34:7 41:2 48:13,25 50:22 52:20 53:14 56:4,6,16 58:5 69:2 72:23 77:16 78:19 80:13 84:18 85:13,14,21 86:10 88:18,19 90:11 93:18 94:5 97:1,2 98:3 therefore [1] 13:8 they've [2] 47:22 91:14 thinking [1] 63:21 thinks [1] 36:6 third [3] 61:11 70:6 95:8 thirteen [1] 78:15 THOMAS [24] 6:12,16,25 7: 20,22 8:8,10,15 20:21,22 32:14,19 33:7,14,24 34:3, 10,16 49:5,6 62:1 66:24 89:12,13 though [5] 5:7 6:1,14 35: 13 41:6 thousand [2] 56:20 78:15 three [1] 90:11 threshold [2] 4:13 6:5 throw [1] 46:13 tie [2] 6:10 14:21 tiebreaker [1] 72:25 tiny [1] 46:9 Title [6] 22:10 36:25 70:5 80:21 86:24 87:10 today [1] 97:10			

Official

<p>together ^[5] 9:8 23:5 41:13 71:14 87:11</p> <p>took ^[4] 53:4 54:12 68:23 93:3</p> <p>Torture ^[1] 99:15</p> <p>tough ^[1] 71:10</p> <p>track ^[1] 54:11</p> <p>tracks ^[1] 56:17</p> <p>traditional ^[1] 11:9</p> <p>traditionally ^[3] 35:20 39:20 45:9</p> <p>transitional ^[3] 93:2,3,9</p> <p>treat ^[1] 40:3</p> <p>treated ^[1] 35:20</p> <p>treating ^[2] 57:17 59:1</p> <p>treats ^[1] 6:1</p> <p>Trejo ^[1] 97:20</p> <p>trial ^[1] 30:13</p> <p>tribunal ^[1] 21:3</p> <p>trouble ^[1] 95:22</p> <p>true ^[6] 18:4 25:19 76:13, 23 77:4 82:8</p> <p>truth ^[4] 35:6,17 38:10,11</p> <p>try ^[1] 81:13</p> <p>trying ^[5] 15:15,15 18:3 25:11 99:3</p> <p>turn ^[1] 10:12</p> <p>two ^[19] 8:15 11:13 13:22 18:15 23:4 26:17 39:2 41:12 55:6,7 59:17 78:14 80:4,14 87:21 93:7,18,24 96:8</p> <p>two-step ^[3] 82:4,12 83:10</p> <p>type ^[3] 40:19,22 59:12</p> <p>types ^[1] 7:25</p> <p>typically ^[3] 10:11 42:13, 18</p> <hr/> <p style="text-align: center;">U</p> <p>U.S ^[12] 5:13 10:1 23:19,21 24:1 49:16 57:2 77:22 78:13,23 91:18 99:8</p> <p>U.S.C ^[1] 21:14</p> <p>ultimate ^[1] 25:20</p> <p>ultimately ^[2] 16:7 40:23</p> <p>un-enumerated ^[1] 61:12</p> <p>unaffected ^[1] 78:10</p> <p>unambiguous ^[1] 96:1</p> <p>unclear ^[1] 87:25</p> <p>uncommon ^[2] 28:24 29:2</p> <p>under ^[39] 7:25 8:25 10:8 11:19 12:23 13:8 14:18 22:6 23:7,23,24 26:9 31:18 32:4,16,25 33:1 39:21 47:10,12,15 49:2 55:17,22 56:11 58:11,19 59:13,17 62:14,18 80:20 85:17 99:10,11 100:23 101:4,15,18</p> <p>underlying ^[2] 41:17 44:13</p> <p>understand ^[13] 16:2,6 18:8 24:24 26:16 41:19 43:3 44:19 53:18 64:15 85:14,15 97:8</p> <p>understanding ^[2] 4:15 17:21</p>	<p>understood ^[1] 25:1</p> <p>Underwood ^[1] 39:21</p> <p>undisputedly ^[1] 5:10</p> <p>Unfortunately ^[2] 56:15 57:5</p> <p>uniform ^[1] 77:10</p> <p>UNITED ^[4] 1:1,16 9:19 19:2</p> <p>University ^[1] 98:25</p> <p>unless ^[2] 20:17 31:1</p> <p>unlike ^[1] 72:4</p> <p>unreviewable ^[9] 18:14 26:9 32:7,25 47:10 55:21 83:18,20 88:16</p> <p>unsure ^[1] 45:15</p> <p>until ^[3] 77:11 90:25 91:23</p> <p>unusual ^[3] 18:13 46:15 58:2</p> <p>unwilling ^[1] 76:14</p> <p>unworkability ^[2] 97:23 98:7</p> <p>unworkable ^[2] 89:6 94:24</p> <p>up ^[18] 8:22 17:19 23:8,15 33:4 41:5 53:12 55:20 57:11 69:4,20 70:10 86:13,22, 23 91:14 96:5 100:15</p> <p>usage ^[1] 89:6</p> <p>uses ^[10] 5:4 7:7 9:7 13:14 36:16 38:23,24 39:4 70:2 94:7</p> <p>using ^[2] 81:9 82:9</p> <hr/> <p style="text-align: center;">V</p> <p>validity ^[1] 21:19</p> <p>value-laden ^[2] 39:16 58:22</p> <p>variations ^[1] 93:18</p> <p>various ^[1] 64:16</p> <p>vast ^[2] 24:10 78:9</p> <p>versus ^[8] 4:5 8:12 11:11 21:17 89:25,25 90:18 95:10</p> <p>view ^[8] 9:12 10:8 22:15 24:6 34:18 74:6 85:22 101:19</p> <p>virtue ^[3] 45:24,25 57:13</p> <p>visa ^[4] 23:18,19,19 98:24</p> <p>visas ^[2] 69:21 75:1</p> <p>vision ^[1] 99:11</p> <p>volume ^[1] 56:14</p> <p>voluntary ^[1] 78:5</p> <hr/> <p style="text-align: center;">W</p> <p>Wait ^[5] 46:24 77:11 90:24, 25 91:23</p> <p>waiver ^[3] 48:18,24 55:19</p> <p>waivers ^[1] 78:4</p> <p>walking ^[1] 89:3</p> <p>wanted ^[5] 7:20 26:7 65:7 68:15 69:8</p> <p>wants ^[1] 77:17</p> <p>Washington ^[2] 1:11 2:5</p> <p>watched ^[1] 94:18</p> <p>way ^[48] 5:4 8:18 9:2,9,11 10:24 21:25 22:3 25:8 38:</p>	<p>13,15,23 41:12 45:13 48:25 50:23 54:3,9,10 60:20 63:9,16,17,21 65:8 68:10, 19 70:24 72:5 73:8 75:3 77:2 80:5 83:25,25 85:8, 13,15 86:21 87:7,8 88:1 89:24 92:22,23 95:14 97:8 99:9</p> <p>ways ^[3] 28:15 71:9 96:19</p> <p>weighing ^[2] 38:21 39:17</p> <p>weight ^[5] 19:15 40:13 41:21,23 82:23</p> <p>welcome ^[2] 6:11 61:25</p> <p>whatever ^[4] 25:5 60:20 66:21 69:13</p> <p>whatsoever ^[2] 56:5 64:18</p> <p>whereas ^[1] 7:6</p> <p>Whereupon ^[1] 102:11</p> <p>wherever ^[1] 71:6</p> <p>whether ^[40] 9:17 11:14,21 12:1,14,25 14:2 15:9 16:24 18:22 20:14 24:22 25:6, 24 33:15,21,24 35:5 40:11 41:19 43:1,3 45:15 46:19 52:5 54:21 57:24,25 58:21, 23 59:15 64:5 73:20,21 77:8 80:20 81:7 83:1 92:8 101:18</p> <p>whoa ^[1] 84:19</p> <p>whoever ^[1] 47:20</p> <p>whole ^[4] 10:21 74:9 86:6 88:10</p> <p>whom ^[1] 17:5</p> <p>will ^[20] 28:5,19 29:18 30:24 31:3 32:4,24 37:10 39:23 42:16 47:9 48:18 60:9 62:16 71:19,19 74:18 84:25 89:3 90:2</p> <p>wished ^[2] 7:11 100:25</p> <p>within ^[8] 13:6 37:11 45:16 46:20 51:24 52:4,5 79:2</p> <p>without ^[2] 23:15 50:24</p> <p>wonder ^[1] 19:12</p> <p>wondering ^[1] 14:23</p> <p>word ^[15] 8:16 10:22 20:14 21:13 24:21 25:17 27:2 31:4 36:15 47:2,3 82:9,20,21, 22</p> <p>words ^[13] 4:25 12:6 13:14 33:8 41:10 46:19 64:23 66:2 67:10 69:15 71:6 74:19 87:14</p> <p>work ^[5] 15:3 16:3 54:3 80:3 90:8</p> <p>workability ^[8] 87:23 88:17 93:22 94:4,8 95:10 96:8 97:13</p> <p>workers ^[1] 75:2</p> <p>working ^[1] 98:24</p> <p>works ^[1] 51:20</p> <p>world ^[1] 34:13</p> <p>written ^[4] 4:20 7:23 18:17 62:10</p>	<p style="text-align: center;">Y</p> <hr/> <p>year ^[6] 14:19 20:6 56:21 65:20 78:12,16</p> <p>years ^[8] 52:19 59:7,9 81:3 86:18 87:7 90:11 97:15</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zaid ^[1] 98:22</p> <p>zipper ^[1] 23:7</p>
---	---	--	--