SUPREME COURT OF THE UNITED STATES

]	IN THE SUPREME COURT OF THE	UNITED STATES
		-
PEDRO PA	ABLO GUERRERO-LASPRILLA,)
	Petitioner,)
	v.) No. 18-776
WILLIAM	P. BARR, ATTORNEY GENERAL,)
	Respondent.)
		_
RUBEN O	VALLES,)
	Petitioner,)
	v.) No. 18-1015
WILLIAM	P. BARR, ATTORNEY GENERAL,)
	Respondent.)
		_
_		
Pages:	1 through 65	
Place:	Washington, D.C.	
Date:	December 9, 2019	

HERITAGE REPORTING CORPORATION

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

1	IN THE SUPREME COURT OF THE UNITED STATES
2	
3	PEDRO PABLO GUERRERO-LASPRILLA,)
4	Petitioner,)
5	v.) No. 18-776
6	WILLIAM P. BARR, ATTORNEY GENERAL,)
7	Respondent.)
8	
9	RUBEN OVALLES,)
10	Petitioner,)
11	v.) No. 18-1015
12	WILLIAM P. BARR, ATTORNEY GENERAL,)
13	Respondent.)
14	
15	Washington, D.C.
16	Monday, December 9, 2019
17	
18	The above-entitled matter came on
19	for oral argument before the Supreme Court of
20	the United States at 10:05 a.m.
21	
22	
23	
24	
25	

1	APPEARANCES:
2	PAUL W. HUGHES, ESQ., Washington, D.C.;
3	on behalf of the Petitioners.
4	FREDERICK LIU, Assistant to the Solicitor
5	General, Department of Justice, Washington, D.C.
6	on behalf of the Respondent.
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1	CONTENTS	
2	ORAL ARGUMENT OF:	PAGE:
3	PAUL W. HUGHES, ESQ.	
4	On behalf of the Petitioners	4
5	ORAL ARGUMENT OF:	
6	FREDERICK LIU, ESQ.	
7	On behalf of the Respondent	31
8	REBUTTAL ARGUMENT OF:	
9	PAUL W. HUGHES, ESQ.	
10	On behalf of the Petitioners	62
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	PROCEEDINGS
2	(10:05 a.m.)
3	CHIEF JUSTICE ROBERTS: We'll hear
4	argument first this morning in Case 18-776,
5	Guerrero-Lasprilla versus Ovalles and Attorney
6	General Barr.
7	ORAL ARGUMENT OF PAUL W. HUGHES
8	ON BEHALF OF THE PETITIONERS
9	MR. HUGHES: Mr. Chief Justice, and
10	may it please the Court:
11	Section (2)(D) provides for review of
12	questions of law decided by the Board of
13	Immigration Appeals. I'll start with where we
14	and the government agree. At minimum, courts
15	may review whether the Board identified the
16	proper legal standard. The government agrees.
17	For this review to be meaningful and
18	not just a requirement of correct boilerplate,
19	courts must determine whether the government
20	used the proper standard. Again, the government
21	agrees. Review extends to whether "the Board
22	actually used the wrong standard."
23	Despite acknowledging this, the
24	government fails to distinguish how reviewing
25	whather the Board actually used the correct

- 1 standard is different than reviewing whether the
- 2 Board correctly applied that standard. In our
- 3 view, these inquiries are effectively the same.
- 4 They use the same tool, applying the correct
- 5 legal standard to the facts.
- To the extent there is a difference,
- 7 the government does not provide a test for
- 8 telling them apart. Jurisdictional rules need
- 9 to be clear, but the government does not explain
- 10 how courts decide whether the Board actually
- 11 used the correct standard.
- 12 Our rule is clear. There is no
- judicial review over historical facts, but there
- is review over their legal significance. The
- 15 Court should adopt this construction for three
- 16 reasons.
- 17 First, it accords with the essential
- 18 premise of judicial review which the statutory
- 19 text has unmistakably established. Second, it
- 20 is necessary for Congress to have fully
- 21 responded to St. Cyr. And, third, it is a clear
- 22 rule which is crucial to establish the
- 23 boundaries of jurisdiction.
- 24 Turning to what Congress needed to do
- 25 in order to fully respond to St. Cyr, there are

- 1 at least four separate points that illustrate
 2 Congress had to create jurisdiction for the
- 3 application of law to fact.
- 4 JUSTICE ALITO: Well, before you get
- 5 to that, I wonder if you have not read too much
- 6 into the government's statement that a -- that
- 7 under their theory, it would be permissible for
- 8 a court to review not just whether the -- the --
- 9 the Board articulated the right theory but
- 10 whether it actually used the right theory.
- 11 When I read that, I thought what they
- were saying was that review would extend to
- 13 those perhaps rare situations where, although it
- 14 was in response to your argument that if the --
- if the -- if the right standard was merely
- 16 mentioned, that would be sufficient. And I
- 17 thought they were just saying that if it was
- 18 clear that even though the right standard was
- 19 mentioned, you could see that that was not at
- 20 all what was being done, that there would be
- 21 review there.
- 22 So I thought that was a very narrow
- 23 exception. So the -- the difference between
- 24 what I understood them to be arguing and your
- 25 position was considerably larger than what you

```
1 suggested to start out.
```

- 2 MR. HUGHES: Well, as Your Honor
- 3 suggests, I think the government does agree that
- 4 if the -- the decision of the Board on the face
- 5 invokes the correct standard, but a reasonable
- 6 reader of that decision would appreciate that
- 7 that standard was not used to actually decide
- 8 the case, that there would be judicial review
- 9 over that.
- 10 Once the government agrees with that,
- 11 which I think they must, otherwise it's judicial
- 12 review in substance -- or not in substance at
- all, only in form, once the government agrees
- 14 with that, they haven't actually articulated how
- that test differs from applying law to fact.
- 16 And our point is that --
- 17 JUSTICE ALITO: Well, I think it's
- 18 like a sham. It's a sham exception. So, if
- that's really not what's going on, they're not
- 20 really applying the right theory, the theory
- 21 that they claim to apply, there would be review
- in that situation. That's how I read it. Now
- 23 --
- MR. HUGHES: Oh, well, Your Honor,
- 25 I --

1	JUSTICE ALITO: Mr. Liu can correct
2	that.
3	MR. HUGHES: I think a few things
4	about that. First, I think it's very difficult
5	to distinguish what makes for a sham
6	articulation of the standard versus not actually
7	looking to determine whether it was properly
8	applied.
9	How do we determine if it was a sham?
10	You consider what the right standard is. You
11	consider the facts. And if the facts turn out
12	to be a textbook application of that standard,
13	but the Board reached the opposite conclusion,
14	you would find that it was a sham.
15	JUSTICE ALITO: But there's a big
16	difference between your two positions, and it
17	has to do with the application of of the
18	legal standard to the facts where the the
19	legal standard requires a considerable exercise
20	of judgment, as it does with equitable tolling,
21	where you have to determine whether there's due
22	diligence or exceptional circumstances. You
23	would say all of that can be reviewed.
24	MR. HUGHES: Well, Your Honor, yes,
25	but I think to the extent there's a difference,

- 1 if there is a difference, it's a difference in
- degree, but the government doesn't provide a way
- 3 to distinguish between when the degree is
- 4 sufficiently enough to say that the standard
- 5 wasn't actually used.
- 6 But the other problem with this is, if
- 7 that is the test that the government advances,
- 8 it has the effect of merging the underlying
- 9 merits of the inquiry with the jurisdictional
- 10 analysis.
- 11 The end result would be there would be
- 12 jurisdiction if the decision of the Board was
- really, really wrong, but not if it was a little
- 14 bit wrong. And so that result would be that
- 15 you'd -- you'd have to do the merits inquiry to
- 16 figure out even if you have jurisdiction over
- 17 the case.
- JUSTICE ALITO: Well, suppose we -- we
- 19 take their principal argument, which is that
- 20 this applies -- the only thing that can be
- 21 reviewed is a pure question of law, all right?
- 22 That's a clear rule. Is it not?
- MR. HUGHES: Yes, and I don't think
- 24 they actually stick with that, but that would be
- 25 a clear -- a clear rule. Yes, Your Honor.

1	JUSTICE ALITO: Okay. And under your
2	interpretation, what is the difference between
3	the degree of review that is permitted in the
4	case of a criminal alien and the degree of
5	review that's permitted in the case of a
6	non-criminal alien?
7	MR. HUGHES: So there
8	JUSTICE ALITO: It's very, very
9	it's very slight, right?
10	MR. HUGHES: I don't think so, Your
11	Honor. There's a very substantial difference,
12	and that's that there's no review over all of
13	the factual determinations that are made. And
14	there are very substantial factual
15	determinations that are often dispositive of
16	removal cases that are made throughout these
17	proceedings, and those would not be subject to
18	judicial review.
19	JUSTICE ALITO: Yeah. Well
20	JUSTICE KAGAN: But those are all made
21	under a substantial evidence standard. It's a
22	highly deferential standard. So I take your
23	point that there might be a few cases that would
24	come out differently, but it would be rare,
25	wouldn't it?

1 MR. HUGHES: I don't think it would 2 necessarily be rare, Your Honor. I think there are many cases where courts of appeals, under 3 substantial evidence review, still reverse the 4 5 -- the factual findings. But what we have here is we have a 6 statute, (2)(D), that was written far after 7 8 (2)(C), and the reason that (2)(D) was -- was 9 written on top of (2)(C) was as a response to 10 what this Court held in St. Cyr. So I think, to 11 understand what Congress was trying to 12 accomplish in (2)(D), it's important to 13 understand what Congress needed to do in order 14 to respond to what this Court --15 JUSTICE KAGAN: Could I take you off 16 17 MR. HUGHES: -- held in St. Cyr. 18 JUSTICE KAGAN: I'm sorry. You keep 19 on wanting to talk about St. Cyr and we keep 20 wanting to talk about other things. 21 But, before you get to that, 22 throughout your brief, there's this idea that 23 really mixed questions of law are pure questions 24 of law. I mean, that, you know, if we have to 25 put them in one bucket or another, they should

- 1 go in the legal bucket because they're all
- 2 matters of interpretation, you say; they're all
- 3 essentially law-like.
- 4 But, you know, I started looking
- 5 around to -- to think about some of the other
- 6 questions that your view might suggest is a law
- 7 question, and so here are just a few that I came
- 8 up with: whether a non-citizen's removal would
- 9 result in exceptional and extremely unusual
- 10 hardship, whether a non-citizen has been
- 11 subjected to extreme cruelty, whether changed
- 12 country conditions are present.
- I could go on, but all of these -- you
- 14 know, if you just sort of look at them and say
- what is it mostly going to involve, it seems as
- 16 though most of those questions are going to
- 17 mostly involve fact-finding.
- 18 MR. HUGHES: So, Your Honor, a few
- 19 responses to that. First, some of the examples
- 20 that you gave are ultimately issues that are
- 21 discretionary. And when we have a discretionary
- 22 question, of course, there's a different
- 23 framework under (2)(B) which would -- there
- 24 would be review over the eliqibility for the
- 25 discretionary determination; for example,

- whether or not there's a changed country
- 2 condition is likely a discretionary
- 3 determination by the Board.
- But to -- but to get to Your Honor's
- 5 principal question about how we disentangle the
- 6 -- the facts and the law here, and I think the
- 7 question goes to whether or not the Lakeridge
- 8 style analysis, where we characterize mixed
- 9 questions as more principally legal or more
- 10 principally factual, should be used in this
- 11 context.
- 12 And I think that, of course, the Court
- has established that sort of framework for use
- in other parts of the law.
- JUSTICE KAGAN: Well, I wasn't even
- 16 talking about using the Lakeridge framework
- 17 here. I was just sort of talking about the
- assumption that your briefs make that, if you
- 19 were to put these in one bucket, just one
- 20 bucket, it should be the legal bucket, that
- 21 these are really law questions.
- 22 And I guess I'm saying that when I
- look at the range of these questions, quite a
- lot of them seemed to me to be really fact
- 25 questions, you know, cases where it's not only

- 1 the finding of facts, but it's the weighing of
- 2 facts, the making credibility judgments, the
- weighing, you know, the balancing of different
- 4 facts against each other, that sort of thing.
- 5 MR. HUGHES: So, Your Honor, I -- I
- 6 agree insofar as what the Board is doing is
- 7 finding historic facts or finding credibility or
- 8 adding historic facts to make other judgments
- 9 about historic facts or predictions about future
- 10 facts. Those sorts of factual determinations
- are things that there would not be jurisdiction
- 12 under 2(D).
- What our point is, is once those
- 14 historic facts have been found and then a legal
- standard is applied to those facts, that aspect
- of the mixed question is legal. So -- and let
- 17 me try to clarify our briefs.
- We think in every mixed question, by
- its definition, there is a legal element and
- there's a factual element. And so sometimes
- 21 it's true the factual element will be far
- 22 greater than the legal element.
- 23 But our point is that 1252 creates a
- 24 structure where there is judicial review insofar
- 25 as there is the legal element of the mixed

- 1 question, and that, unlike what happens in other
- 2 contexts where those two are put together and
- 3 there is a single standard of review provided,
- 4 the structure that 1252 creates is the courts
- 5 disaggregate the -- the -- the legal findings
- 6 from the factual findings and they have to set
- 7 those aside.
- 8 So all of the examples Your Honor
- 9 provided about the factual findings we agree are
- 10 not reviewable. But, to the extent there's the
- 11 application of a legal standard or considering
- the legal significance of those historic facts,
- 13 that is where the -- the Board is doing
- 14 legal work and there is judicial review over
- 15 that, as a question of law --
- JUSTICE SOTOMAYOR: I was thinking --
- 17 MR. HUGHES: -- under Section 2(D).
- JUSTICE SOTOMAYOR: -- about this in
- 19 similar terms to Justice Kagan, but what I
- 20 realize gave me some clarity was a statement
- 21 that my colleague made in a case involving the
- 22 exceptional circumstances of diligence and where
- 23 he said it's a question of law, because let's
- 24 take the cruel -- cruelty issue.
- Whether a punch is cruel or a knife

- 1 wound is or a threat to family is, all of those
- 2 are facts that can be found by the BIA or a
- 3 finder of fact. But whether it constitutes or
- 4 rises to the level of the legal standard is a
- 5 question of law, correct?
- 6 MR. HUGHES: I think that's right,
- 7 Your Honor. And one example in this case is --
- 8 is the issue of whether or not the Fifth
- 9 Circuit's decision in Lugo-Resendez qualifies as
- 10 an extraordinary circumstance. Either that
- 11 change in the law qualifies as an extraordinary
- 12 circumstance, which has substantial effects for
- equitable tolling, or it doesn't.
- 14 But whatever the answer to that
- question is, that's the sort of legal issue that
- should be decided the same.
- 17 CHIEF JUSTICE ROBERTS: Well, but, I
- 18 -- I mean, you know, is a punch cruel? I mean,
- obviously, in the -- in the abstract, it could
- 20 be anything to -- however soft it is, to the
- 21 extent it's an offense to dignity or, you know,
- 22 I mean, isn't -- wouldn't one thing to do if
- you're trying to figure that out to be look at
- 24 the range of legal decisions, determinations,
- 25 that said this conduct is cruel, this conduct is

- 1 not, this conduct is cruel, and I don't know
- 2 that that makes it any easier to characterize.
- 3 MR. HUGHES: Well, I -- I think, Your
- 4 Honor, the Court has found that it is relatively
- 5 easy, although there is always line drawing, but
- 6 the courts are well equipped to be able to
- 7 distinguish between where historic fact ends and
- 8 legal conclusions begin. That's something the
- 9 courts have to do every day of the week when
- they resolve 12(b)(6) motions, for example,
- 11 where Iqbal and Twombly instruct the courts to
- 12 set aside legal conclusions that are within a
- 13 complaint.
- 14 So I --
- JUSTICE GINSBURG: But don't -- we do
- 16 --
- MR. HUGHES: -- agree those --
- 18 JUSTICE GINSBURG: -- we do know that
- 19 Congress meant to restrict the court of appeals'
- 20 review of orders of removal of criminal aliens,
- 21 so that was Congress's purpose when it wanted
- 22 the limited -- limited review in -- in the case
- 23 of removal of criminal aliens.
- 24 And you -- you -- your position is
- only fact disputes are reviewable, no law,

- 1 application of law to undisputed facts, only
- 2 straight out fact disputes.
- 3 And how often do straight out fact
- 4 disputes come to court of appeals? Because
- 5 usually facts are decided in the first instance.
- 6 MR. HUGHES: Well, Your Honor, I can
- 7 say that factual disputes are very often
- 8 entirely dispositive of removal proceedings.
- 9 It's true that those cases may be less often
- 10 appealed because of the substantial or the
- 11 standard of review that courts of appeals apply,
- but I can just provide a few examples of factual
- issues that are often dispositive.
- 14 For example, an individual might claim
- 15 that they were born in the United States, so, in
- 16 fact, a U.S. citizen. They might claim that
- 17 examples of past persecution occurred, so
- they're entitled to asylum, but the Board might
- 19 disagree.
- That can include, if they had forced
- 21 sterilization or forced abortions, the Board
- 22 will have to decide whether or not those things
- 23 occurred.
- 24 Did the individual testify credibly?
- 25 That will often be dispositive of the removal

- 1 proceeding. And I can go on with a list of
- 2 different issues. For example, was the
- 3 individual convicted of the particular crime or
- 4 was it somebody else with the same name?
- 5 Those are factual disputes that the
- 6 Boards are resolving or that the immigration
- 7 judges in the first instance and then the Boards
- 8 are resolving on a daily basis.
- 9 JUSTICE GORSUCH: Mr. Hughes, along
- 10 similar lines, the question we have here is
- 11 reasonable diligence. That -- that's the big
- 12 question. And when that's reviewed under 1252,
- where it can be reviewed, my understanding is
- 14 the courts of appeals review that for abuse of
- 15 discretion. And that would typically be the
- 16 case in a lot of questions where diligence is --
- is the issue. The courts of appeals will review
- 18 that for -- for abuse of discretion.
- 19 If that's right -- and just suppose
- 20 for a moment that's right, all right? Let's not
- 21 argue about that. Let's suppose that's the
- 22 right standard of review. What does that teach
- us about the -- the question before us?
- 24 MR. HUGHES: As Your Honor suggests, I
- 25 -- I -- our principal argument is to resist the

- 1 premise. We do think that the weight of the
- 2 laws in this Court's precedent is treating
- 3 diligence not as -- as a question of law that is
- 4 reviewed de novo.
- 5 But if the Court -- accepting the
- 6 premise and the Court disagrees with us, which I
- 7 don't think it should, but if the Court does
- 8 disagree with us, what this Court still holds
- 9 is, to the extent that there is deference or --
- or -- a discretion that lies with the Board,
- 11 still the proper way to approach Section 2(D) in
- 12 these contexts is to determine whether or not
- 13 the individual has shown their legal
- 14 eligibility, that 2(D) provides review over that
- 15 eligibility for the ultimate exercise of
- 16 discretion.
- 17 So even if reasonable diligence is
- 18 discretionary, and we don't think it is, but
- 19 there would still be the question if they've
- shown the threshold step of being eligible.
- 21 And Your Honor's decision in Iliev in
- the Tenth Circuit, I think, clearly established
- 23 how, even when there is an underlying
- 24 discretionary determination, there is --
- 25 JUSTICE GORSUCH: I think I did

- 1 everything I could to avoid this question in
- 2 that case, and I think you know that.
- 3 But I -- I -- I guess I'm just
- 4 trying to disentangle what would be available
- 5 for us to review legally versus what would then
- 6 be left to the Board, the discretionary
- 7 decision, if, in fact, we review the case for
- 8 abuse of discretion in our legal review.
- 9 MR. HUGHES: Well, Your Honor, where I
- 10 think abuse of discretion comes in is not at the
- 11 question of -- of diligence. It comes in with
- whether or not the Board chooses to reopen the
- 13 case.
- 14 The Board -- that is a decision that
- 15 we agree the Board has discretion as to whether
- or not to reopen the case. I think diligence,
- 17 as this Court has said in Bank of Columbia, and
- 18 I can cite five more cases, that is a pure
- 19 question of law.
- 20 But, when the Board decides a case in
- 21 a different way and says we're deciding this as
- 22 a matter of discretion, we're issuing what the
- 23 Board calls a discretionary denial, that is the
- 24 sort of issue that is not subject to judicial
- 25 review.

1	And when the Board does a
2	discretionary denial, that is very clear on the
3	face of it. And let me just provide an example.
4	We we just went and found a recent
5	BIA decision from November 1, 2019. This is
6	Matter of CASD. And the Board said "we conclude
7	that Respondent does not merit a favorable
8	exercise of discretion because 'the equities in
9	his case are insufficient to outweigh his
LO	history of very serious and violent criminal
L1	conduct.'"
L2	When the Board is exercising its
L3	discretion to make a discretionary denial, it
L 4	says so expressly on the face of the opinion.
L5	We agree that none of that exercise of
L6	discretion when appropriate is reviewable, and
L7	that could be the case with a motion to reopen,
L8	where the Board does have discretion.
L9	But the Board did not exercise that
20	discretion in this case. It found that he was
21	ineligible for
22	JUSTICE KAGAN: Mr. Hughes, I mean, I
23	think the question that Justice Gorsuch asked is
24	a very broad one, and it's it's with respect
25	not just to the diligence but to all these other

- 1 questions that you think should end up being
- 2 reviewable, like the ones that I mentioned,
- 3 which sound awfully factual, you know, extreme
- 4 cruelty, whether there is unusual hardship,
- 5 whether there's changed country conditions.
- 6 All of those are reviewed generally
- 7 with a highly deferential standard.
- 8 And -- and that suggests that -- that
- 9 -- that -- that everybody's aware that most of
- 10 the work is being done at the factual level and
- 11 the application of the legal standard at the end
- is -- is -- is not where the action is. And
- 13 given what Justice Ginsburg was saying about
- 14 Congress's intent here, which was pretty clearly
- to withdraw review power from large categories
- 16 of cases, except the ones that were principally
- 17 legal in quality, you know, why -- why doesn't
- 18 that suggest that you're putting too much in
- 19 this reviewable basket?
- 20 MR. HUGHES: Well, Your Honor, to the
- 21 extent those questions, as you say, are driven
- 22 principally by the facts and the legal work is
- only doing a little tail at the end, then that
- 24 would be true on appeal as well. The legal work
- 25 would not be doing a whole lot, and the

- decisions might be established by the facts that
- 2 would be found by the Board and would not be
- 3 reviewable.
- But let me provide an example where I
- 5 think it is heavily factual, but I think we
- 6 would say that review would be a question of
- 7 law. Assume for a moment in an asylum case
- 8 there's a question of past persecution, which is
- 9 very important in asylum cases. Persecution is
- 10 generally defined as a threat to one's life or
- 11 freedom, and past persecution creates a
- 12 presumption of future persecution.
- The Board takes a case. They properly
- 14 state that standard. Then they find these
- 15 facts: An individual was imprisoned in a
- 16 particular country for a decade because of their
- 17 membership in a political party. That is a
- 18 classic case of persecution. But then the Board
- 19 concludes: This individual was not subject to
- 20 past persecution.
- 21 Well, what do you do with that case?
- 22 The Board said that they properly -- they
- 23 identified the proper standard, they found the
- facts, and usually the facts are going to be
- 25 dispositive, but there at the end where that --

- 1 the -- the law issue came in was only a very
- 2 small part of the case but turned out to be
- 3 dispositive.
- 4 I think the government even agrees
- 5 that, in circumstances like that, for judicial
- 6 review to actually be substantive judicial
- 7 review, there would have to be review in that
- 8 case. And we think that is critical for the
- 9 Court to recognize that in cases like that,
- 10 there is judicial review.
- 11 JUSTICE KAVANAUGH: On the statutory
- 12 history point that Justice Kagan raised, St. Cyr
- involves what the Court characterized as pure
- 14 questions of law. Congress, we know, then comes
- in, and there are a variety of statutes, as
- 16 you're aware, that refer to mixed questions, but
- 17 Congress in this statute does not refer
- 18 specifically to mixed questions.
- 19 So, if you put those two things
- 20 together, you would lean toward reading this
- 21 statute to refer to what one might call pure
- 22 questions of law. That's the government's
- 23 argument. How do you respond to that statutory
- 24 history?
- MR. HUGHES: A few reasons, Your

- 1 Honor. First, I think this is the government's
- 2 three-part topology, that Congress speaks of
- 3 mixed questions. And I think that's disproven
- 4 by a section of the REAL ID Act that is just a
- 5 couple sections after where (2)(D) was created,
- 6 and that amended (b)(9), the zipper clause, in a
- 7 way to deal with all of the issues that arise in
- 8 immigration, and there it speaks of law or fact.
- 9 So we know that Congress often speaks of law or
- 10 fact to be inclusive of the whole universe.
- But the second point is, in order to
- 12 respond to St. Cyr, what Congress knew or was
- 13 attempting to do -- and this is shared ground
- 14 with the government -- was take the scope of
- then existing habeas jurisdiction that was
- 16 occurring in the district courts, keep that
- scope of jurisdiction the same, and move that
- 18 jurisdiction into the courts of appeals for
- 19 petitions for review under Section 1252.
- The evidence there is unanimous that
- 21 four courts of appeals following St. Cyr had
- 22 looked at the -- that decision and addressed the
- 23 scope of jurisdiction. All four courts had
- 24 found that there was decidedly jurisdiction to
- 25 resolve the application of law to fact. If

- 1 Congress had not had (2)(D)'s sweep to include
- 2 applications of law to fact, that habeas
- 3 jurisdiction that had been recognized in four
- 4 separate circuits would have been retained.
- 5 And then a final point on the history
- 6 there, Your Honor, is that earlier drafts had
- 7 included the -- the term "pure questions of
- 8 law." That drew a specific objection from
- 9 commentators during the markup process. And
- 10 after that objection to the word "pure" was
- 11 lodged, Congress then struck that limitation and
- 12 this Court --
- JUSTICE KAVANAUGH: But they said that
- 14 was because it was redundant.
- MR. HUGHES: Well, that was in the
- 16 conference report, Your Honor, and if this Court
- is going to look to the conference report, where
- 18 I think this is an area to be skeptical because
- 19 what Congress actually did is far more
- 20 probative, but if the Court looks to the
- 21 conference report, I think you look a couple
- 22 sentences later where the Court -- where the
- 23 conference report says what happens with mixed
- 24 questions, you review to the extent there are
- 25 legal elements. We think that sweeps in our

- 1 rule.
- But, again, I think when the language
- actually appeared, there was an objection and it
- 4 was withdrawn. That's a little bit more
- 5 probative than what the conference report says
- 6 on the --
- 7 JUSTICE SOTOMAYOR: Can you succinctly
- 8 tell me what the questions of law are in your
- 9 two cases?
- 10 MR. HUGHES: Yes, Your Honor. First,
- 11 with Mr. Guerrero-Lasprilla, the question is
- does Lugo-Resendez qualify as an extraordinary
- 13 circumstance that would then have the effect of
- 14 affecting his -- his period of reasonable
- 15 diligence.
- 16 For Mr. --
- 17 JUSTICE SOTOMAYOR: I -- I phrased it
- 18 differently in my own head, whether the
- 19 existence of adverse circuit precedent serves as
- an obstacle to filing a timely motion to reopen.
- 21 MR. HUGHES: That's -- I think that's
- just a broader way of saying the same question,
- 23 yes, Your Honor. I think that is a --
- JUSTICE SOTOMAYOR: All right.
- MR. HUGHES: That is yes.

1	JUSTICE SOTOMAYOR: And Mr. Ovalles?
2	MR. HUGHES: There, I think one
3	there are a few questions. The principal one
4	is, is an asserted period of delay alone a basis
5	in order to find that an individual was not
6	reasonably diligent? Is that creation of a
7	per se rule? The Sixth Circuit in the Gordillo
8	case, pointing to earlier Seventh Circuit
9	precedent in the Pervaiz case, said expressly
LO	that looking just to the passage of time without
L1	considering other factors that suggest a
L2	person's diligence in the circumstances is not
L3	an appropriate way to undertake the diligence
L4	inquiry.
L5	So I think that that that case is
L6	is focused on whether or not the Board's
L7	application of an eight-month per se rule
L8	violated the underlying principles of reasonable
L9	diligence.
20	JUSTICE KAGAN: Mr. Hughes, you
21	haven't spoken much about the presumption of
22	reviewability. I just have a question about the
23	nature of that presumption, and I I guess I
24	would like Mr. Liu to answer the same question.
25	Do you think that that presumption is

1	a presumption about congressional intent, or do
2	you think that that presumption is a presumption
3	that's meant to reflect other values?
4	MR. HUGHES: I think it's it's
5	both, Your Honor. I think it's a presumption of
6	congressional intent, but I think it's also a
7	presumption that's meant to reflect the
8	appropriate balance between judicial power and
9	the administrative power because, of course,
10	here, if the Court finds that questions are
11	are factual lean factual and therefore assign
12	legal work to the administrative agency, the
13	effect that that has is ceding authority from
14	the Article III courts to the administrative
15	courts to have more authority to be able to
16	decide whatever tail legal aspect there is
17	there.
18	So I think the presumption of
19	reviewability goes to not just a congressional
20	presumption but also a separation of powers
21	principle.
22	CHIEF JUSTICE ROBERTS: Thank you,
23	counsel.
24	Mr. Liu.

1	ORAL ARGUMENT OF FREDERICK LIU
2	ON BEHALF OF THE RESPONDENT
3	MR. LIU: Thank you, Mr. Chief
4	Justice, and may it please the Court:
5	When Congress used the words
6	"questions of law" in Section 1252(a)(2)(D), it
7	meant questions of law only, not questions of
8	fact and not mixed questions of law and fact.
9	We know that from the text of the provision
LO	itself, which doesn't mention questions of fact
L1	or mixed questions. But we also know it from
L2	the context in which Congress enacted the
L3	provision.
L4	In St. Cyr, this Court held that
L5	denying criminal aliens a judicial forum for
L6	pure questions of law would raise constitutional
L7	doubts. When Congress enacted this provision
L8	following St. Cyr, it wanted to provide criminal
L9	aliens enough judicial review to avoid those
20	doubts but no more. Questions of law thus
21	refers to the same questions identified in this
22	Court's decision in St. Cyr, pure questions of
23	law.
24	Now Petitioners would read "questions
25	of law" to extend far beyond purely legal

- 1 questions to encompass every mixed question of
- 2 law and fact. But mixed questions aren't
- mentioned in the text of Section 1252(a)(2)(D),
- 4 they're not mentioned anywhere in St. Cyr
- 5 either, and construing questions of law to
- 6 encompass every mixed question would all but
- 7 undo Congress's efforts to limit the scope of
- 8 judicial review in cases involving criminal
- 9 aliens.
- 10 Remember it's been Congress's goal
- 11 since 1996 to streamline and expedite the
- 12 removal of criminal aliens. And yet, under
- 13 Petitioners' reading, criminal and non-criminal
- 14 aliens alike would get judicial review of all
- 15 constitutional claims, of all questions of law,
- 16 and of all mixed questions.
- 17 The only difference in the judicial
- 18 review that they would get would be limited to
- 19 the category of questions of fact, as some of
- 20 the justices this morning have already noted.
- 21 That difference would be this: whereas in
- 22 criminal -- cases involving criminal aliens, the
- 23 Board's factual findings would be conclusive;
- 24 whereas in cases involving non-criminal aliens,
- 25 the Board's factual findings would be conclusive

- 1 unless not supported by substantial evidence.
- Now that's a pretty subtle difference,
- 3 given that courts don't often overturn factual
- 4 findings for lack of substantial evidence, and
- 5 if that's the narrow difference that Congress
- 6 really sought to achieve, one would have thought
- 7 they would have written these --
- 8 JUSTICE KAVANAUGH: But the --
- 9 MR. LIU: -- provisions differently.
- 10 JUSTICE KAVANAUGH: -- the original
- 11 version of the statute had "pure questions of
- 12 law." And to pick up on your point on the
- 13 statutory history, then that's deleted, and
- 14 Deputy Assistant Attorney General Cohn testifies
- 15 and says a mixed question of law is in effect a
- 16 question with two parts, the legal part and the
- 17 factual part. The legal part, of course, is
- 18 reviewable. That's what the Justice Department
- 19 said in response to the ACLU's objection to the
- 20 draft.
- 21 MR. LIU: Right.
- JUSTICE KAVANAUGH: Was that correct?
- MR. LIU: We do think the legal part
- is reviewable, but I think it's important to
- 25 understand what we think that legal part to be.

- 1 That legal part is the same part this Court
- 2 identified in Lakeridge. It is the legal test
- 3 or standard that the Board used in deciding the
- 4 case.
- 5 I -- I think Congress was pretty
- 6 justified in thinking the word "pure" was
- 7 superfluous. I mean, just as a matter of
- 8 ordinary English, you know, a question is a
- 9 mixed question because it involves both law and
- 10 fact. If you leave off the words "and fact" and
- 11 refer only to a question of law, then it's an
- 12 unmixed question.
- JUSTICE GORSUCH: Mr. Liu, I -- I --
- 14 I'd like to poke at that just a little bit and
- 15 -- and return to Justice Alito's question at the
- 16 beginning of argument.
- 17 MR. LTU: Sure.
- JUSTICE GORSUCH: Is it the
- 19 government's position that only pure questions
- 20 of law are reviewable, or is it also the
- 21 government's position that there can be some
- 22 applications that are so egregious that they
- 23 would rise to the level of being questions of
- 24 law?
- MR. LIU: It's the former position.

- 1 So our view is that only pure questions.
- 2 JUSTICE GORSUCH: Okay. If that's the
- 3 case, is there any judicial review here
- 4 meaningfully at all? Because all the BIA has to
- 5 do is recite the legal standard and we become a
- 6 rubber stamp --
- 7 MR. LIU: Right.
- JUSTICE GORSUCH: -- and say, yes,
- 9 they have recited the correct legal standard.
- 10 And no matter how unreasonable, no matter how
- 11 crazy the application is, we have to provide a
- 12 judicial imprimatur to that decision.
- Does that -- does that cause any
- 14 concerns for you, for the government, and what
- 15 about the clear statement rule and the idea of
- the presumption of reviewability here and the
- 17 separation of powers concerns that Justice Kagan
- 18 pointed out that undergird it?
- 19 MR. LIU: I guess I would just make
- 20 maybe three points. First is it's not -- it's
- 21 not the -- the case that every case is going to
- involve an already-settled legal principle.
- 23 There are actually issues of -- of first
- 24 impression out there, and when the Board decides
- 25 those legal questions, those are reviewable in

- 1 the courts of appeals.
- Now there are going to be cases where
- 3 the -- the legal standard has been settled, like
- 4 it is in the -- in the case of reasonable
- 5 diligence. It's very easy for the Board to know
- 6 what the applicable standard is.
- 7 In those cases, when the Board does
- 8 state the applicable legal standard, that is,
- 9 except in the very rare instance that I think
- 10 Justice Alito alluded to, that's going to be the
- 11 end of the matter.
- 12 JUSTICE GORSUCH: Well, hold on. Now
- 13 -- now -- now you're backtracking, I think, a
- 14 little bit. Is -- is it just, if they recite
- the legal standard, the pure question of law
- 16 correctly, we're done, or is there some further
- 17 review by the -- by the court available for
- 18 completely crazy applications? And I -- I -- I
- 19 think I've heard you go both ways on that and
- 20 I'm just trying to --
- 21 MR. LIU: No, I --
- JUSTICE GORSUCH: -- nail you down on
- 23 that.
- MR. LIU: -- I want to give you --
- 25 maybe I can illustrate this with an example. I

- 1 mean, if --
- 2 JUSTICE GORSUCH: No, no. Just before
- 3 -- before we get in -- into examples, if you
- 4 could just firmly answer the question.
- 5 MR. LIU: The -- the -- in our view,
- 6 the Court can never review an application of law
- 7 to fact.
- JUSTICE GORSUCH: Okay. All right.
- 9 MR. LIU: Never review that. What it
- 10 can do is make sure the Board used the correct
- 11 legal standard.
- So, if the Board says the -- the
- 13 standard for equitable tolling is reasonable
- 14 diligence, but then it goes on to cite cases
- from a bygone era where the standard was maximum
- 16 feasible diligence and says, oh, we're -- we're
- going to apply this case there, apply this case
- 18 there, the -- the Court doesn't need to review
- 19 any part of the application of law to fact --
- 20 JUSTICE GORSUCH: I understand.
- 21 MR. LIU: -- to know that the Board
- 22 has used the wrong standard.
- 23 JUSTICE ALITO: Suppose the -- the
- issue is whether there were exceptional
- 25 circumstances that might justify equitable

- 1 tolling, and let's say the -- the alien in
- 2 question was in a coma.
- What would happen there? No judicial
- 4 -- and they say, well, that's not an exceptional
- 5 circumstance.
- 6 MR. LIU: Well, I -- I -- I think to
- 7 the extent the question is, as a categorical
- 8 matter, is being in a coma an exceptional
- 9 circumstance, that could be a question of law.
- 10 I mean, take -- take this -- this Court's
- 11 decision in Helton versus Florida. I think the
- 12 question there was --
- JUSTICE GORSUCH: Mr. Liu, if you --
- if you -- if you accept that, haven't you given
- up the ghost? Then we're just into deciding
- whether the application given these facts is or
- isn't reasonable diligence as a matter of law.
- 18 MR. LIU: I -- I don't think so.
- 19 I mean, I think in the -- in the --
- JUSTICE GORSUCH: Why are comas
- 21 special?
- MR. LIU: Well, they -- they very well
- 23 might not be. But I think it would be a
- 24 declaration of a legal principle to say they
- 25 weren't special.

1 Just like in -- in Helton versus Florida when this Court said, you know, the 2 Eleventh Circuit had applied an overly rigid 3 rule regarding attorney misconduct, I understand 4 5 that to be a legal principle. 6 JUSTICE SOTOMAYOR: So how is --JUSTICE KAVANAUGH: So when --7 JUSTICE SOTOMAYOR: -- that different 8 9 from the case here, where at least one of the 10 plaintiffs says binding circuit precedent made 11 it unreasonable for me to file a motion to 12 reopen and the Fifth Circuit said, no, you could have filed it earlier. 13 14 That seems to me to be a pure legal 15 question --MR. LIU: And -- and --16 17 JUSTICE SOTOMAYOR: -- under your 18 definition. MR. LIU: -- and we don't understand 19 the -- the Fifth Circuit to have even reached 20 21 that issue. That issue throughout this case has 22 been teed up as an issue under the extraordinary 23 circumstances prong. 24 JUSTICE SOTOMAYOR: Well --25 JUSTICE BREYER: Then -- then, look,

- 1 what I think everyone is trying to ask you, is
- 2 Hurricane Katrina blows the courthouse away,
- 3 okay, the standard is you have to file within 15
- 4 days. But there is no courthouse. It's blown
- 5 to Florida.
- And so, question, was that, the
- 7 standard says, an unusual circumstance?
- 8 Writing, the court says, if it's an unusual
- 9 circumstance, well, then it's extended. All
- 10 right?
- 11 We agree Katrina blew the courthouse
- 12 away. But that isn't an unusual circumstance.
- Now, no review? Isn't that -- I mean,
- that's -- that's what we're trying to find out.
- 15 MR. LIU: There's no review. And I --
- 16 JUSTICE BREYER: No review, but, my
- goodness, if we look at the cases, I mean, then
- 18 you've taken from the attorneys for the person
- who's trying to get review any kind of check
- 20 through appeal on the action of a district
- 21 judge.
- Now that's a -- I think it's pretty
- 23 hard to find statutes that do that in a country
- 24 that has a presumption of judicial review. I
- 25 think it's pretty difficult to read St. Cyr as

- 1 saying that, when Congress made statutory what
- 2 it thought was the standard of St. Cyr and
- 3 included review of mixed questions of fact and
- 4 law.
- 5 So, I mean, if that's actually your
- 6 position, it's unbounded, and -- and I -- I -- I
- 7 don't get that.
- 8 MR. LIU: I think to determine what is
- 9 reviewable and what is not under our position,
- 10 you look at the type of analysis that's required
- 11 to evaluate that claim. So there are going to
- be certain claims that entail only a purely
- 13 legal analysis.
- 14 You look at the statute. You
- 15 interpret it. There's no need to -- to have
- 16 recourse to --
- 17 JUSTICE KAVANAUGH: How is the --
- 18 MR. LIU: -- a particular --
- 19 JUSTICE KAVANAUGH: -- how is the
- 20 Katrina hypo different from the coma
- 21 hypothetical? You said one's reviewable and
- one's not reviewable, I think, if I heard you
- 23 correctly.
- 24 MR. LIU: Well, I -- I think it's
- because, to answer the Katrina hypo, we would

- 1 need to know more about the circumstances
- 2 surrounding the storm and the particular
- 3 circumstances of the litigant in trying to
- 4 overcome --
- 5 JUSTICE BREYER: What would you like
- 6 to know? I'll tell you the courthouse is in
- 7 Florida.
- 8 (Laughter.)
- 9 MR. LIU: Well, but this is --
- 10 JUSTICE BREYER: And the litigant, by
- 11 the way, has never been able to walk more than
- one mile and his car has been blown up.
- MR. LIU: Right. But this is exactly
- 14 my point. I think those -- those facts are
- 15 extremely helpful to answering the question.
- 16 JUSTICE BREYER: Oh --
- 17 MR. LIU: And -- and it's
- 18 because I need those facts to answer the
- 19 question.
- JUSTICE BREYER: You do?
- 21 CHIEF JUSTICE ROBERTS: I thought that
- 22 your -- your answer was that at some point the
- 23 factual mistake becomes so egregious that it
- 24 reflects a misunderstanding of what exceptional
- 25 means, rather than a misapplication of fact,

- 1 which, correct me if I'm wrong, because that
- 2 does lead into Justice Gorsuch's concern that,
- 3 you know, you've kind of given up the game
- 4 because then it's just a question of how
- 5 exceptional is the fact.
- 6 MR. LIU: Right. Now --
- 7 CHIEF JUSTICE ROBERTS: Which begins
- 8 to look, once you say that, it begins to look
- 9 like your standard application of law to fact.
- 10 MR. LIU: Right. And I -- I -- Mr.
- 11 Chief Justice, I wouldn't draw the line in terms
- of how egregious the error is. I think that
- does invite the sort of review of the
- 14 application of law to fact in order to determine
- whether there's been an error of law. I think
- that's sort of a reverse-engineering end run
- 17 around the statute.
- 18 What I really mean to say is, if the
- 19 question can be answered through purely legal
- 20 analysis, then it is a pure question of law --
- 21 JUSTICE BREYER: Well, all right, here
- 22 is the difficulty. That, I think, is really a
- 23 difficult question. I didn't think the other
- 24 that I asked was so difficult. But this one, I
- 25 think, is.

1 I mean, I learned years ago that you 2 can absolutely distinguish the factual part of a missed -- of a mixed question from the legal 3 part, and I also learned that no class is able 4 5 to grasp my clear understanding of that. I also learned that there are many lawyers, and probably even more judges, that 7 8 find that difficult. And there are many cases that are mixed up in that respect. 9 Is it a 10 coerced confession? Was there, in fact -- you know, there are loads of them. 11 12 Okay. Now the difficulty is that 13 sometimes it's important and sometimes it isn't, 14 and sometimes it's easy to separate out and 15 sometimes it isn't. And so, rather than produce just a 16 17 confusion in the lower courts and in the bar by 18 saying the legal part is, but the factual part 19 isn't, why not read this as saying, when they say questions of law, they mean to include mixed 20 21 questions of fact and law and leave it at that, 22 just as St. Cyr did, just as those statutes you 23 quoted did, and that's the end of it. Everyone 24 can understand it. 25 And, of course, if the district judge

- 1 has discretion, well, then the right question of
- 2 law will be did he abuse his discretion.
- 3 MR. LIU: Right. Justice Breyer, we
- 4 just don't think that's consistent with the
- 5 text, the history of --
- 6 JUSTICE BREYER: The text says
- 7 questions of law. And I can find statutes that
- 8 use those words, and they clearly mean both, as
- 9 they say.
- 10 MR. LIU: I -- I -- I think -- I
- 11 think that the best reference point for what
- 12 questions of law means is 1254(2), which --
- which this Court itself has applied in a pretty
- 14 principled way to distinguish pure questions of
- 15 law from mixed questions. I mean, identifying
- 16 pure questions of law is something appellate
- 17 courts are quite used to doing.
- 18 JUSTICE ALITO: Now the phrase
- 19 "questions of law" is like the term
- 20 "jurisdiction." It's used -- it means lots of
- 21 different things. It's used sometimes rather
- 22 sloppily, and it's asked for different purposes.
- So I -- I don't get anything out of
- the arguments on either side about what is meant
- 25 by "questions of law" in general. The question

```
1 is what Congress meant here.
```

- 2 MR. LIU: I think --
- JUSTICE ALITO: Anyway, that's just
- 4 a --
- 5 MR. LIU: -- I -- I think it's fair to
- 6 look at the context in which Congress looked --
- 7 wrote this statute. As I said at the outset, I
- 8 think the context here points in a very clear
- 9 direction. I mean, this was a Congress whose
- 10 primary policy preference was to give criminal
- 11 aliens no judicial review at all.
- 12 JUSTICE ALITO: Yeah. And I think you
- 13 have to bite the bullet on the -- the issue of
- 14 the -- the hypotheticals about the comatose
- 15 alien or the -- the alien who can't file because
- 16 the courthouse has been blown away by a
- 17 hurricane. If -- if you posit a lower-level
- 18 decision-maker who's either a monster or an
- idiot, then, of course, you're always going to
- think that there's a case for judicial review.
- 21 Whenever judicial review is cut off,
- 22 you open up the possibility that there's going
- 23 to be a decision that would otherwise be
- reviewed that seems really, really wrong. So
- 25 you have to -- you have to make the argument

- 1 that this is what Congress wanted. And why
- 2 would they have wanted that in this situation?
- 3 MR. LIU: And I think they would have
- 4 wanted that because their goal all along, since
- 5 1996, is to -- is to expedite the removal of
- 6 criminal aliens. I think it's exactly --
- 7 JUSTICE SOTOMAYOR: But why did this
- 8 --
- 9 JUSTICE KAVANAUGH: But they expedite
- 10 it, though, by -- by moving it to the court of
- 11 appeals and taking the district court out, so
- 12 that -- that --
- 13 MR. LIU: Well, I think -- I think
- 14 that's half the equation. I think part of the
- 15 expediting --
- JUSTICE KAVANAUGH: I mean, that's a
- 17 year or more, you know, in many cases that's cut
- 18 out by doing that. So that's a significant
- 19 saving of time.
- 20 MR. LIU: But I think -- I think
- 21 that's only half -- half the equation. The
- 22 other half is in the types of decisions --
- JUSTICE KAVANAUGH: Right.
- MR. LIU: -- that the courts of
- 25 appeals would have to engage in. And under my

1 friend's --2 JUSTICE KAVANAUGH: On that -- on that 3 -- on the context point that you were just referencing to, what about 1252(b)(9)? That 4 5 seems important. That's amended in the REAL ID 6 Act, and that refers to a universe where you just have questions of law and questions of fact 7 8 in this statute. And if you look at that, it 9 doesn't refer to mixed questions separately. 10 The only thing excluded, arguably, the 11 argument goes, is questions of fact. MR. LIU: Well, I --12 13 JUSTICE KAVANAUGH: Everything else is 14 a question of law and thus reviewable when you combine your stat -- this statute with (b)(9). 15 MR. LIU: I think (b)(9), which refers 16 17 to all questions of law and fact, is just a 18 natural way of referring to all three 19 categories. I mean, we -- we are talking about 20 questions of law, mixed questions of law and 21 fact, and questions of fact. And so, to refer 22 to all three at once, I think it's quite natural 23 to say all questions of law and fact. 24 JUSTICE KAGAN: Mr. Liu --

MR. LIU: I think that's --

	OUDITED MADAN. I III BOILY.
2	MR. LIU: I was just going to say I
3	think that's that's all the zipper clause is
4	doing, and I think the language there fits
5	naturally with our argument.
6	JUSTICE SOTOMAYOR: Mr. Liu, there is
7	no question that we have a presumption in favor
8	of judicial review, correct?
9	MR. LIU: Yes.
LO	JUSTICE SOTOMAYOR: Now you said
L1	that's a way of divining congressional intent.
L2	I don't actually think that because I think it's
L3	much broader than that. It has to be a
L 4	presumption that we will avoid what St. Cyr
L5	pointed to as a constitutional problem or a
L6	statutory problem because St. Cyr was saying
L7	very clearly the issuance of the writ was not
L8	limited to challenges to the jurisdiction of the
L9	custodian but encompassed the tensions based on
20	errors of law, including the erroneous
21	application or interpretation of the statute.
22	And so, if we take that statement with
23	the presumption, we know that Congress wasn't
24	intending to remove judicial review altogether.
5	It put this in the court of appeals as Justice

- 1 Kavanaugh pointed. I'm not sure where I get the
- 2 presumption that it was going to cut St. Cyr's
- 3 concern in half by not including the application
- 4 of -- of -- of law to settled facts.
- 5 MR. LIU: We don't -- we don't read
- 6 that line in St. Cyr to be referring to the
- 7 application of law to fact. Rather, we read
- 8 that line to be about the scope of a statute's
- 9 coverage, in other words, its application.
- 10 JUSTICE SOTOMAYOR: It begs -- it begs
- 11 the question, doesn't it?
- MR. LIU: Well, I -- I don't think --
- JUSTICE SOTOMAYOR: Because you don't
- 14 --
- 15 MR. LIU: -- I don't think so. I
- 16 mean, if you -- if you use the Court's opinion
- in St. Cyr as its own dictionary, you'll see on
- 18 page 293, the Court itself uses "application" to
- describe the pure question of law in that case.
- 20 And then, in Part III, where the Court actually
- 21 addresses that question, it uses the word
- 22 "apply" or "applied" or "application" no fewer
- than 18 times to describe the retroactive
- 24 application --
- JUSTICE SOTOMAYOR: Except --

1 CHIEF JUSTICE ROBERTS: Mr. Liu, I 2 think Justice Kagan had a question on the table. 3 JUSTICE KAGAN: Have you finished? 4 MR. LIU: Yep. Sure. 5 JUSTICE KAGAN: Here's one way to look at this case: The text gets neither side all 6 the way home; can't possibly. The analogy is --7 8 this is similar to Justice Alito -- they're 9 really different contexts on both sides. The 10 legislative history is basically you can't -you don't have a clue what it means. 11 St. Cyr 12 can be read multiple ways. 13 So all of those -- I mean, you have 14 arguments and Mr. Hughes has arguments, and --15 but none of them really seem to carry the day. 16 And that suggests to me that the presumption of 17 reviewability should carry the day. Why isn't this the classic case in which -- it's like it's 18 19 just not clear, and so the presumption does the 20 work and you would lose. 21 MR. LIU: Well, to -- to answer your 22 question directly, we do think it's -- it's a 23 presumption of congressional intent. We think 24 that's reflected in the Block Nutrition case, 25 but I -- I guess I -- maybe I'm just going to

- 1 fight the premise. I mean, we don't think
- 2 Congress's intent is at all ambiguous here, that
- 3 -- that we get to a point where you need to put
- 4 a thumb on the scales in favor of judicial
- 5 review.
- 6 JUSTICE KAGAN: Well, I take that
- 7 point. I mean, that's why I asked about what's
- 8 the nature of this presumption, because, if this
- 9 presumption is only about congressional intent,
- it has to fight against a pretty strong sense
- 11 that Congress wanted to do something significant
- 12 here about cutting off review for criminal
- 13 aliens.
- But, if this presumption is about more
- than that, if it's a presumption that sort of
- stands in for important separation of powers
- 17 principles, then that response isn't quite good
- 18 enough.
- 19 MR. LIU: Well, I -- I think at the
- 20 end of the day, the presumption, if we know
- 21 anything about it, it's -- it's not a -- a sort
- 22 of magic words requirement. And I -- I think
- 23 this is a case where we know exactly what
- 24 Congress was responding to. We know the goal it
- 25 ultimately wanted to achieve, and we know it

1 wanted to achieve that goal as far as possible. 2 And I -- I think there are good structural reasons to think my friend's reading 3 is wrong. The one is what I said at the outset, 4 5 that -- that under my friend's reading, there really would be no meaningful difference between 6 review in cases involving criminal aliens and 7 8 review involving non-criminal aliens. And if --9 JUSTICE BREYER: But suppose that you 10 take that presumption, very interesting and deep question that I have, and maybe you have a view 11 12 on this. I have always thought that it is 13 really basic. It is the presumption that 14 assures every person in the United States of 15 America that this government will not harm that 16 person in ways that are unlawful, unfair, 17 arbitrary, capricious, unconstitutional, or an 18 abuse of discretion, and that if you want to 19 have a country that has a government that is under control, there is no better way. 20 21 I'm not saying judges are perfect, but 22 that separation of powers is designed to provide 23 a check. Do you see how basic I say it is? 24 MR. LIU: And I think the separation

25

of --

JUSTICE BREYER: And what do you 1 2 think? MR. LIU: I don't think the separation 3 of powers is -- is a concern for us. I mean, 4 5 what Congress has done in this provision is 6 preserve judicial review over the most important questions. 7 8 JUSTICE GORSUCH: Well, I -- I don't 9 think that quite gets to Justice Breyer's 10 question, in fairness. Forget about the 11 statute. Isn't the presumption pretty ancient 12 really? I mean, it goes back to the common law that the king can't act arbitrarily without some 13 14 check, some review, some opportunity to be heard 15 by citizens. 16 Isn't that where the presumption 17 really comes from? And isn't that pretty 18 fundamental to the separation of powers and due 19 process and those considerations? 20 MR. LIU: I don't dispute any of that. 21 What -- what I would say is St. Cyr cashed out 22 all those concerns in its constitutional 23 avoidance holding --24 JUSTICE GORSUCH: Okay. But -- but --25 but you'd agree, though, that the presumption

- 1 itself has those roots?
- 2 MR. LIU: That's -- that's fair
- 3 enough, Justice Gorsuch, absolutely. But I -- I
- 4 would -- I would think that when Congress makes
- 5 its intent clear that it wants to foreclose
- 6 judicial review in those circumstances and go up
- 7 to the limits that this Court identified, the
- 8 constitutional doubts that this Court identified
- 9 in St. Cyr, that Congress is able to do so.
- 10 JUSTICE KAVANAUGH: But Congress knew
- 11 about this. We know that from the ACLU
- 12 objection and the back and forth and the
- deletion of "pure." And Congress could have
- 14 easily written a statute that said review of
- 15 questions of law, no review of facts or
- 16 application of law to fact. And it has used
- 17 that kind of phrasing in other statutes. That
- 18 would have been the clear language that I think
- 19 you're looking for.
- 20 MR. LIU: Well, I mean, I -- I think
- 21 that -- that language would have been equally
- 22 clear. But I think Congress thought all it was
- doing was tracking this Court's concerns in St.
- 24 Cyr, which were focused on the availability of
- 25 judicial review for constitutional claims and

- 1 pure questions of law.
- Now I -- I think the problem with my
- 3 friend's position is it would -- it would reduce
- 4 this difference. And his only safety valve is
- 5 to say: Well, some of these mixed application
- 6 decisions would be discretionary and, therefore,
- 7 not reviewable.
- Well, that -- that's just not how this
- 9 statute works. I mean, I think he's relying on
- 10 1252(a)(2)(B), which does say that discretionary
- 11 denials are unreviewable. But the questions of
- 12 law, preservation, the saving clause here
- applies equally to 1252(a)(2)(B).
- 14 And so I don't -- I don't think that's
- a solution to the problem. You see this play
- out in the Ninth Circuit where they've read
- 17 questions of law to include every mixed question
- 18 of law and fact. And what that's done is that
- 19 it's gutted the application of the discretionary
- 20 denial bar, because virtually everything that
- 21 you can call an exercise of discretion you can
- 22 also describe as involving the application of
- 23 law to fact.
- 24 And if questions of law are an
- 25 exception to that bar, then you're -- you're not

- 1 really left with -- with much that's -- that's
- 2 protected from review. So I -- I don't think
- 3 that's a solution to -- to -- to trying to make
- 4 this meaningful.
- I did want to mention, too, the -- the
- 6 administrative -- administrability issue with
- 7 Petitioners' position. They would have this
- 8 Court tell -- have courts of appeals start
- 9 trying to distinguish questions of historical
- 10 fact from mixed questions of law. You know, of
- 11 course, this Court has experience with that.
- I mean, pre-AEDPA, this was the regime
- 13 because factual questions got a -- a lot of
- 14 deference and mixed questions and legal
- 15 questions didn't. And there was a whole line of
- 16 cases that this Court decided trying to put
- 17 questions on one side of the line or the other.
- The line we're proposing, which is a
- 19 -- a -- indeed, a pure questions line, I think
- 20 my friend acknowledges is a clear line to
- 21 administer, and it's one that appellate courts
- are well suited to administer and they have been
- 23 doing in -- in -- in many other contexts.
- I -- I think -- Justice Gorsuch
- 25 mentioned the -- the lay of the land in the

- 1 courts of appeals. It -- it's absolutely the
- 2 case that all 10 courts of appeals that have
- 3 addressed the standard of review that applies to
- 4 the very issue here, that is, reasonable
- 5 diligence for purposes of equitable tolling, for
- 6 purposes of seeking to reopen removal
- 7 proceedings, that determination is reviewed for
- 8 abuse of discretion when this bar doesn't apply.
- 9 And so Petitioners' reading would
- 10 create a mismatch in one of two ways: Either we
- would be labeling as a question of law something
- 12 that would otherwise be reviewed for abuse of
- discretion, or we would be reviewing de novo
- something that would otherwise be reviewed under
- 15 a highly deferential standard.
- I -- I -- I don't think that that's
- 17 really a tenable position. I think what the --
- 18 what those cases teach us is that the issue here
- is at the very least a primarily factual mixed
- 20 question.
- JUSTICE GORSUCH: Mr. Liu, on that,
- 22 the way I -- I worked my way through it, and I
- 23 want to give you a shot at it, is to say that
- 24 when we have the abuse of discretion standard
- 25 review, we often mean really two things. One

- 1 can abuse the discretion by a clear error of
- 2 fact finding, and one can abuse one's discretion
- 3 by misapplying the law.
- 4 And both of those can be abuses of
- 5 discretion. I -- I see it breaking down into --
- 6 into those two camps. And when I'm applying the
- 7 abuse of discretion -- when I used to apply the
- 8 abuse of discretion standard review, and the
- 9 facts were agreed upon, it then became in my
- 10 mind a legal question much as it would at
- summary judgment or 12(b)(6), whether these
- 12 facts, as given, rise to the level that the law
- 13 requires.
- Now I -- I know you don't agree with
- 15 that, so have your shot at it.
- MR. LIU: Well, I think that inquiry
- is still -- requires a -- a great deal of
- 18 exercise of judgment on behalf of whoever is
- 19 conducting the inquiry. You are taking in all
- 20 the historical facts. You're looking at them as
- 21 a whole. You're balancing one against the
- 22 other. There are judgments made throughout the
- 23 process.
- So, you know, you might -- you might
- label it one thing or the other. But I think

- 1 when you get down to what the actual nature of
- the inquiry is, it is one that's bound up with
- 3 the facts of the case.
- 4 And I think the teaching of this
- 5 Court's opinion in Lakeridge is that there is a
- 6 part of a mixed question where you can't unwind
- 7 the factual and the legal parts, that is, there
- 8 is a part where they are so intertwined that the
- 9 best you can say is, well, this is either
- 10 primarily factual or primarily legal.
- It's those mixed questions that I
- don't think Congress was trying to give judicial
- 13 review of because, if that were the case, there
- 14 really wouldn't be any -- any difference between
- 15 the review that the criminal aliens got and the
- 16 review that the non-criminal --
- 17 JUSTICE KAVANAUGH: You've mentioned
- 18 --
- 19 MR. LIU: -- aliens got.
- 20 JUSTICE KAVANAUGH: -- St. Cyr and
- 21 Congress was just responding to that. But isn't
- it true that the courts of appeals, in the wake
- 23 of that decision, reviewed mixed questions
- 24 before -- so after St. Cyr, before the Real ID
- 25 Act?

- 1 MR. LIU: Well, only -- only four 2 courts of appeals did. I don't think that's a
- 3 broad enough consensus for this Court to apply
- 4 any sort of --
- 5 JUSTICE KAVANAUGH: But Congress
- 6 indicated it was -- at least a committee
- 7 indicated awareness of those decisions.
- 8 MR. LIU: I don't think that's right.
- 9 If you look at the passage of -- of the
- 10 conference report on which Petitioners rely --
- 11 JUSTICE KAVANAUGH: Well, put aside
- 12 that. Put aside that. Is it -- go back to the
- 13 courts of appeals decisions. They had reviewed
- 14 mixed questions --
- MR. LIU: Yeah.
- 16 JUSTICE KAVANAUGH: -- in that
- 17 interim.
- 18 MR. LIU: Four of them had. That's --
- 19 that's -- that's far from the sort of consensus,
- I think, Congress was focused on. There's no
- 21 indication Congress was aware of those
- 22 decisions.
- 23 And all those decisions rested on a
- 24 reading of one line of St. Cyr, which, as I
- 25 said, is mistaken. I mean, if -- even if you

- 1 look at the -- at the decision cited in that
- line, it's Footnote 18, you'll see that each of
- 3 the sources cited involves a pure question of
- 4 law that is a question of statutory
- 5 construction.
- 6 So I don't think the word
- 7 "application" can -- can bear all that weight.
- 8 CHIEF JUSTICE ROBERTS: Thank you,
- 9 counsel.
- 10 Five minutes, Mr. Hughes.
- 11 REBUTTAL ARGUMENT OF PAUL W. HUGHES
- 12 ON BEHALF OF THE PETITIONERS
- MR. HUGHES: Thank you, Your Honor.
- 14 I'll -- I'll be brief.
- 15 Our -- our first point is that because
- 16 Congress created judicial review, that review
- must, in fact, be substantive. It is not just
- 18 review over whether or not the Board wrote down
- 19 the right boilerplate. We think that's an
- 20 important starting point. And when Congress
- 21 created Section 2(D), it must have meant for
- 22 more than just whether or not the Board used the
- 23 right statement of the standard. It must
- include whether or not that standard's used.
- The second point is jurisdictional

- 1 rules, particularly rules like this that are
- 2 often implied -- applied, have to be clear.
- 3 There needs to be clear direction to the courts
- 4 of appeals as to, at the outset of a case, when
- 5 they have jurisdiction and when they don't have
- 6 jurisdiction.
- 7 The rule we've offered provides the
- 8 Court a clear test.
- 9 The government, by contrast, if we set
- 10 aside its extreme position, the position that
- would be you look at the boilerplate only, there
- is no test the government has offered as to
- meaningfully distinguish between whether or not
- 14 a standard was actually used and whether or not
- 15 the standard was correctly applied.
- Because the courts need clarity, we
- 17 think the rule that we offer is by far the most
- 18 suitable and -- and appropriate rule that will
- 19 allow courts to adjudicate these cases as they
- 20 arise.
- 21 Third and finally, if there is any
- doubt here, I think the presumption of judicial
- 23 review is quite important. This does bear not
- 24 just on underlying congressional intent but core
- 25 separation of powers principles.

1	The view of, if there's going to be
2	any delegation of lawmaking authority to the
3	agencies, that certainly needs to be clearly
4	stated by Congress. So any doubt as to how the
5	various statutory interpretation factors and the
6	history in St. Cyr all apply, to the extent that
7	that is a wash, we don't think it is, we think
8	it strongly favors our position, but that would
9	strongly favor applying the presumption and
10	ultimately concluding that there is judicial
11	review over the application of of lots of
12	facts.
13	So, ultimately, our rule is necessary
14	to fulfill the promise of judicial review and
15	the premise of judicial review that's undeniably
16	created in the statutory text. It's also
17	required to be a fulsome response to St. Cyr, as
18	the the cases in the wake of St. Cyr, as well
19	as the pre-1789 cases that we identify in our
20	briefs make clear. There would be substantial
21	Suspension Clause problems if the Court if
22	Congress had not in the Real ID Act included the
23	application of law to fact.
24	But then, finally and ultimately, our
25	rule is the one that is clear, that is

_	manageable, that gives a workable test for the
2	lower courts that will be applying this hundreds
3	of times each year to know where jurisdiction
4	starts and stops.
5	And it's the one that's ultimately
6	true to the presumption in favor of judicial
7	review in the event of any ambiguity.
8	Thank you, Your Honor.
9	CHIEF JUSTICE ROBERTS: Thank you,
10	counsel. The case is submitted.
11	(Whereupon, at 11:04 a.m., the case
12	was submitted.)
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

addressed [2] 26:22 58:3 applications [3] 27:2 34:22 36:18 basis [2] 19:8 29:4 1 addresses [1] 50:21 applied [8] 5:2 8:8 14:15 39:3 45: basket [1] 23:19 1 [1] 22:5 adjudicate [1] 63:19 13 50:22 63:2,15 bear [2] 62:7 63:23 10 [1] 58:2 administer [2] 57:21,22 applies [3] 9:20 56:13 58:3 became [1] 59:9 10:05 [2] 1:20 4:2 administrability [1] 57:6 apply [9] 7:21 18:11 37:17,17 50: become [1] 35:5 11:04 [1] 65:11 administrative [4] 30:9,12,14 57: 22 58:8 59:7 61:3 64:6 becomes [1] 42:23 12(b)(6 [2] 17:10 59:11 applying [6] 5:4 7:15,20 59:6 64:9 begin [1] 17:8 **1252** [4] **14**:23 **15**:4 **19**:12 **26**:19 adopt [1] 5:15 65:2 beginning [1] 34:16 1252(a)(2)(B [2] 56:10,13 advances [1] 9:7 appreciate [1] 7:6 begins [2] 43:7,8 1252(a)(2)(D [2] 31:6 32:3 adverse [1] 28:19 approach [1] 20:11 beas [2] 50:10.10 1252(b)(9 [1] 48:4 appropriate [4] 22:16 29:13 30:8 affecting [1] 28:14 behalf [9] 2:3.6 3:4.7.10 4:8 31:2 **1254(2** [1] **45**:12 agencies [1] 64:3 **63**:18 **59:**18 **62:**12 15 [1] 40:3 arbitrarily [1] **54:**13 agency [1] 30:12 best [2] 45:11 60:9 **18** [2] **50**:23 **62**:2 arbitrary [1] 53:17 ago [1] 44:1 better [1] 53:20 18-776 [1] 4:4 agree [10] 4:14 7:3 14:6 15:9 17: area [1] 27:18 between [9] 6:23 8:16 9:3 10:2 17: 1996 [2] 32:11 47:5 17 **21**:15 **22**:15 **40**:11 **54**:25 **59**:14 aren't [1] 32:2 7 30:8 53:6 60:14 63:13 agreed [1] 59:9 arguably [1] 48:10 beyond [1] 31:25 agrees [5] 4:16,21 7:10,13 25:4 arque [1] 19:21 BIA [3] 16:2 22:5 35:4 2(D 5 14:12 15:17 20:11,14 62:21 alien [5] 10:4,6 38:1 46:15,15 arguing [1] 6:24 biq [2] 8:15 19:11 2)(B [1] 12:23 aliens [16] 17:20.23 31:15.19 32:9. argument [16] 1:19 3:2,5,8 4:4,7 6 binding [1] 39:10 2)(C [2] 11:8,9 bit [4] 9:14 28:4 34:14 36:14 12.14.22.24 **46**:11 **47**:6 **52**:13 **53**: 14 9:19 19:25 25:23 31:1 34:16 2)(D [5] 4:11 11:7,8,12 26:5 7 8 60:15 19 46:25 48:11 49:5 62:11 bite [1] 46:13 2)(D)'s [1] 27:1 alike [1] 32:14 arguments [3] 45:24 51:14.14 blew [1] 40:11 2019 [2] 1:16 22:5 Block [1] 51:24 ALITO [14] 6:4 7:17 8:1.15 9:18 10: arise [2] 26:7 63:20 293 [1] 50:18 around [2] 12:5 43:17 blown [3] 40:4 42:12 46:16 1,8,19 **36**:10 **37**:23 **45**:18 **46**:3,12 3 Article [1] 30:14 blows [1] 40:2 **51:**8 31 [1] 3:7 Alito's [1] 34:15 articulated [2] 6:9 7:14 Board [40] 4:12,15,21,25 5:2,10 6: allow [1] 63:19 articulation [1] 8:6 9 7:4 8:13 9:12 13:3 14:6 15:13 4 alluded [1] 36:10 aside [5] 15:7 17:12 61:11,12 63: **18**:18,21 **20**:10 **21**:6,12,14,15,20, 4 [1] 3:4 alone [1] 29:4 23 22:1,6,12,18,19 24:2,13,18,22 already [1] 32:20 aspect [2] 14:15 30:16 **34**:3 **35**:24 **36**:5,7 **37**:10,12,21 **62**: 6 already-settled [1] 35:22 asserted [1] 29:4 18.22 62 [1] 3:10 although [2] 6:13 17:5 assign [1] 30:11 Board's [3] 29:16 32:23.25 9 altogether [1] 49:24 Assistant [2] 2:4 33:14 Boards [2] 19:6 7 ambiguity [1] 65:7 Assume [1] 24:7 boilerplate [3] 4:18 62:19 63:11 **9** [1] **1:**16 ambiguous [1] 52:2 assumption [1] 13:18 born [1] 18:15 Α amended [2] 26:6 48:5 both [6] 30:5 34:9 36:19 45:8 51:9 assures [1] 53:14 a.m [3] 1:20 4:2 65:11 America [1] 53:15 asylum [3] 18:18 24:7,9 59.4 able [5] 17:6 30:15 42:11 44:4 55: analogy [1] 51:7 attempting [1] 26:13 bound [1] 60:2 ATTORNEY [5] 1:6,12 4:5 33:14 analysis 5 9:10 13:8 41:10,13 43: boundaries [1] 5:23 abortions [1] 18:21 breaking [1] 59:5 above-entitled [1] 1:18 ancient [1] 54:11 attorneys [1] 40:18 BREYER [11] 39:25 40:16 42:5,10, absolutely [3] 44:2 55:3 58:1 another [1] 11:25 authority [3] 30:13,15 64:2 16,20 43:21 45:3,6 53:9 54:1 abstract [1] 16:19 answer [7] 16:14 29:24 37:4 41:25 availability [1] 55:24 Brever's [1] 54:9 abuse [13] 19:14,18 21:8,10 45:2 42:18.22 51:21 available [2] 21:4 36:17 brief [2] 11:22 62:14 **53**:18 **58**:8,12,24 **59**:1,2,7,8 answered [1] 43:19 avoid [3] 21:1 31:19 49:14 briefs [3] 13:18 14:17 64:20 abuses [1] 59:4 answering [1] 42:15 avoidance [1] 54:23 broad [2] 22:24 61:3 accept [1] 38:14 Anyway [1] 46:3 aware [3] 23:9 25:16 61:21 broader [2] 28:22 49:13 accepting [1] 20:5 apart [1] 5:8 awareness [1] 61:7 bucket [5] 11:25 12:1 13:19.20.20 accomplish [1] 11:12 appeal [2] 23:24 40:20 away [3] 40:2,12 46:16 bullet [1] 46:13 accords [1] 5:17 awfully [1] 23:3 appealed [1] 18:10 bygone [1] 37:15 achieve [3] 33:6 52:25 53:1 Appeals [19] 4:13 11:3 18:4,11 19: В acknowledges [1] 57:20 14,17 **26**:18,21 **36**:1 **47**:11,25 **49**: b)(9 [3] 26:6 48:15.16 call [2] 25:21 56:21 acknowledging [1] 4:23 25 57:8 58:1,2 60:22 61:2,13 63:4 back [3] 54:12 55:12 61:12 calls [1] 21:23 ACLU [1] 55:11 appeals' [1] 17:19 backtracking [1] 36:13 came [3] 1:18 12:7 25:1 ACLU's [1] 33:19 APPEARANCES [1] 2:1 balance [1] 30:8 camps [1] 59:6 Act [5] 26:4 48:6 54:13 60:25 64: appeared [1] 28:3 balancing [2] 14:3 59:21 capricious [1] 53:17 appellate [2] 45:16 57:21 Bank [1] 21:17 car [1] 42:12 action [2] 23:12 40:20 applicable [2] 36:6.8 bar [4] 44:17 56:20,25 58:8 carry [2] 51:15,17 actual [1] 60:1 application [28] 6:3 8:12.17 15:11 BARR [3] 1:6,12 4:6 CASD [1] 22:6 actually [17] 4:22,25 5:10 6:10 7:7. **18**:1 **23**:11 **26**:25 **29**:17 **35**:11 **37**: based [1] 49:19 Case [47] 4:4 7:8 9:17 10:4.5 15: 14 8:6 9:5,24 25:6 27:19 28:3 35: 6.19 **38:**16 **43:**9.14 **49:**21 **50:**3.7.9. basic [2] 53:13.23 21 16:7 17:22 19:16 21:2.7.13.16. 23 41:5 49:12 50:20 63:14 18,22,24 55:16 56:5,19,22 62:7 basically [1] 51:10 adding [1] 14:8 20 22:9,17,20 24:7,13,18,21 25:2, 64:11.23

C

8 29:8.9.15 34:4 35:3.21.21 36:4 **37**:17,17 **39**:9,21 **46**:20 **50**:19 **51**: 6,18,24 52:23 58:2 60:3,13 63:4 **65**:10.11 cases [25] 10:16,23 11:3 13:25 18: 9 21:18 23:16 24:9 25:9 28:9 32:8 22.24 36:2.7 37:14 40:17 44:8 47: 17 **53**:7 **57**:16 **58**:18 **63**:19 **64**:18, cashed [1] 54:21 categorical [1] 38:7 categories [2] 23:15 48:19 category [1] 32:19 cause [1] 35:13 ceding [1] 30:13 certain [1] 41:12 certainly [1] 64:3 challenges [1] 49:18 change [1] 16:11 changed [3] 12:11 13:1 23:5 characterize [2] 13:8 17:2 characterized [1] 25:13 check [3] 40:19 53:23 54:14 CHIEF [11] 4:3.9 16:17 30:22 31:3 42:21 43:7.11 51:1 62:8 65:9 chooses [1] 21:12 Circuit [9] 20:22 28:19 29:7,8 39:3, 10,12,20 56:16 Circuit's [1] 16:9 circuits [1] 27:4 circumstance [8] 16:10,12 28:13 38:5,9 40:7,9,12 circumstances [9] 8:22 15:22 25: 5 **29**:12 **37**:25 **39**:23 **42**:1.3 **55**:6 cite [2] 21:18 37:14 cited [2] 62:1.3 citizen [1] 18:16 citizens [1] 54:15 claim [4] 7:21 18:14.16 41:11 claims [3] 32:15 41:12 55:25 clarify [1] 14:17 clarity [2] 15:20 63:16 class [1] 44:4 classic [2] 24:18 51:18 clause [4] 26:6 49:3 56:12 64:21 clear [22] 5:9.12.21 6:18 9:22.25. 25 **22**:2 **35**:15 **44**:5 **46**:8 **51**:19 **55**: 5.18.22 **57**:20 **59**:1 **63**:2.3.8 **64**:20. clearly [5] 20:22 23:14 45:8 49:17 **64:**3 clue [1] 51:11 coerced [1] 44:10 Cohn [1] 33:14 colleague [1] 15:21 Columbia [1] 21:17 coma [3] 38:2,8 41:20 comas [1] 38:20 comatose [1] 46:14 combine [1] 48:15 come [2] 10:24 18:4 comes [4] 21:10.11 25:14 54:17 commentators [1] 27:9 committee [1] 61:6

common [1] 54:12 complaint [1] 17:13 completely [1] 36:18 concern [3] 43:2 50:3 54:4 concerns [4] 35:14,17 54:22 55: conclude [1] 22:6 concludes [1] 24:19 concluding [1] **64**:10 conclusion [1] 8:13 conclusions [2] 17:8.12 conclusive [2] 32:23.25 condition [1] 13:2 conditions [2] 12:12 23:5 conduct [3] 16:25,25 17:1 conduct.' [1] 22:11 conducting [1] 59:19 conference [6] 27:16,17,21,23 28: 5 **61**:10 confession [1] 44:10 confusion [1] 44:17 Congress [42] 5:20,24 6:2 11:11, 13 **17**:19 **25**:14.17 **26**:2.9.12 **27**:1. 11.19 31:5.12.17 33:5 34:5 41:1 **46**:1.6.9 **47**:1 **49**:23 **52**:11.24 **54**:5 **55**:4,9,10,13,22 **60**:12,21 **61**:5,20, 21 62:16,20 64:4,22 Congress's [5] 17:21 23:14 32:7, 10 52:2 congressional [7] 30:1,6,19 49: 11 **51**:23 **52**:9 **63**:24 consensus [2] 61:3.19 consider [2] 8:10 11 considerable [1] 8:19 considerably [1] 6:25 considerations [1] 54:19 considering [2] 15:11 29:11 consistent [1] 45:4 constitutes [1] 16:3 constitutional [6] 31:16 32:15 49: 15 **54**:22 **55**:8.25 construction [2] 5:15 62:5 construing [1] 32:5 context [5] 13:11 31:12 46:6,8 48: contexts [4] 15:2 20:12 51:9 57: contrast [1] 63:9 control [1] 53:20 convicted [1] 19:3 core [1] 63:24 correct [12] 4:18,25 5:4,11 7:5 8:1 16:5 33:22 35:9 37:10 43:1 49:8 correctly [4] 5:2 36:16 41:23 63: counsel [3] 30:23 62:9 65:10 country [6] 12:12 13:1 23:5 24:16 40:23 53:19 couple [2] 26:5 27:21 course [7] 12:22 13:12 30:9 33:17 **44:**25 **46:**19 **57:**11 COURT [45] 1:1.19 4:10 5:15 6:8

22 30:10 31:4.14 34:1 36:17 37:6. 18 **39**:2 **40**:8 **45**:13 **47**:10,11 **49**: 25 **50**:18,20 **55**:7,8 **57**:8,11,16 **61**: 3 63:8 64:21 Court's [6] 20:2 31:22 38:10 50:16 **55**:23 **60**:5 courthouse [5] 40:2,4,11 42:6 46: courts [33] 4:14.19 5:10 11:3 15:4 17:6.9.11 18:11 19:14.17 26:16. 18.21.23 30:14.15 33:3 36:1 44: 17 45:17 47:24 57:8.21 58:1.2 60: 22 61:2,13 63:3,16,19 65:2 coverage [1] 50:9 crazy [2] 35:11 36:18 create [2] 6:2 58:10 created [4] 26:5 62:16,21 64:16 creates [3] 14:23 15:4 24:11 creation [1] 29:6 credibility [2] 14:2,7 credibly [1] 18:24 crime [1] 19:3 criminal [16] 10:4 17:20 23 22:10 31:15.18 32:8.12.13.22.22 46:10 **47**:6 **52**:12 **53**:7 **60**:15 critical [1] 25:8 crucial [1] 5:22 cruel [5] 15:24,25 16:18,25 17:1 cruelty [3] 12:11 15:24 23:4 custodian [1] 49:19 cut [3] 46:21 47:17 50:2 cutting [1] 52:12 Cyr [29] 5:21,25 11:10,17,19 25:12 **26**:12.21 **31**:14.18.22 **32**:4 **40**:25 **41**:2 **44**:22 **49**:14.16 **50**:6.17 **51**: 11 **54**:21 **55**:9.24 **60**:20.24 **61**:24 64:6.17.18 Cyr's [1] 50:2 D D.C [3] 1:15 2:2.5

dailv [1] 19:8 day [4] 17:9 51:15,17 52:20 days [1] 40:4 de [2] 20:4 58:13 deal [2] 26:7 59:17 decade [1] 24:16 **December** [1] 1:16 decide [4] 5:10 7:7 18:22 30:16 decided [4] 4:12 16:16 18:5 57:16 decidedly [1] 26:24 decides [2] 21:20 35:24 deciding [3] 21:21 34:3 38:15 decision [15] 7:4.6 9:12 16:9 20: 21 21:7,14 22:5 26:22 31:22 35: 12 38:11 46:23 60:23 62:1 decision-maker [1] 46:18 decisions [8] 16:24 24:1 47:22 56: 6 61:7,13,22,23 declaration [1] 38:24 deep [1] 53:10 deference [2] 20:9 57:14 deferential [3] 10:22 23:7 58:15 defined [1] 24:10

definition [2] 14:19 39:18 degree [4] 9:2,3 10:3,4 delay [1] 29:4 delegation [1] 64:2 deleted [1] 33:13 deletion [1] 55:13 denial [4] 21:23 22:2,13 56:20 denials [1] 56:11 denvina [1] 31:15 Department [2] 2:5 33:18 Deputy [1] 33:14 describe [3] 50:19,23 56:22 designed [1] 53:22 Despite [1] 4:23 determination [4] 12:25 13:3 20: 24 58:7 determinations [4] 10:13,15 14: 10 16:24 determine [7] 4:19 8:7,9,21 20:12 41:8 43:14 dictionary [1] 50:17 difference [15] 5:6 6:23 8:16.25 9: 1.1 **10:**2.11 **32:**17.21 **33:**2.5 **53:**6 56:4 60:14 different [10] 5:1 12:22 14:3 19:2 **21**:21 **39**:8 **41**:20 **45**:21.22 **51**:9 differently [3] 10:24 28:18 33:9 differs [1] 7:15 difficult [5] 8:4 40:25 43:23,24 44: difficulty [2] 43:22 44:12 dignity [1] 16:21 diligence [18] 8:22 15:22 19:11,16 20:3.17 21:11.16 22:25 28:15 29: 12,13,19 36:5 37:14,16 38:17 58: diliaent [1] 29:6 direction [2] 46:9 63:3 directly [1] 51:22 disaggregate [1] 15:5 disagree [2] 18:19 20:8 disagrees [1] 20:6 discretion [25] 19:15,18 20:10,16 21:8,10,15,22 22:8,13,16,18,20 45: 1,2 53:18 56:21 58:8,13,24 59:1,2, 5.7.8 discretionary [13] 12:21,21,25 13: 2 20:18,24 21:6,23 22:2,13 56:6, 10.19 disentangle [2] 13:5 21:4 dispositive [6] 10:15 18:8.13.25 **24**:25 **25**:3 disproven [1] 26:3 dispute [1] 54:20 disputes [5] 17:25 18:2,4,7 19:5 distinguish [8] 4:24 8:5 9:3 17:7 44:2 45:14 57:9 63:13 district [4] 26:16 40:20 44:25 47: divining [1] 49:11 doing [9] 14:6 15:13 23:23,25 45: 17 **47**:18 **49**:4 **55**:23 **57**:23 done [5] 6:20 23:10 36:16 54:5 56:

11:10.14 **13**:12 **17**:4.19 **18**:4 **20**:5.

6,7,8 **21:**17 **25:**9,13 **27:**12,16,20,

doubt [2] 63:22 64:4 doubts [3] 31:17,20 55:8 down [4] 36:22 59:5 60:1 62:18 draft [1] 33:20 drafts [1] 27:6 draw [1] 43:11 drawing [1] 17:5 drew [1] 27:8 driven [1] 23:21 due [2] 8:21 54:18 during [1] 27:9

each [3] 14:4 62:2 65:3 earlier [3] 27:6 29:8 39:13 easier [1] 17:2 easilv [1] 55:14 easy [3] 17:5 36:5 44:14 effect [4] 9:8 28:13 30:13 33:15 effectively [1] 5:3 effects [1] 16:12 efforts [1] 32:7 egregious [3] 34:22 42:23 43:12 eight-month [1] 29:17 Either [6] 16:10 32:5 45:24 46:18 **58:10 60:9** element [5] 14:19.20.21.22.25 elements [1] 27:25 Eleventh [1] 39:3 eligibility [3] 12:24 20:14,15 eligible [1] 20:20 enacted [2] 31:12,17 encompass [2] 32:1,6 encompassed [1] 49:19 end [9] 9:11 23:1,11,23 24:25 36: 11 **43**:16 **44**:23 **52**:20 ends [1] 17:7 engage [1] 47:25 English [1] 34:8 enough [5] 9:4 31:19 52:18 55:3 61:3 entail [1] 41:12 entirely [1] 18:8 entitled [1] 18:18 equally [2] 55:21 56:13 equation [2] 47:14,21 equipped [1] 17:6 equitable 5 8:20 16:13 37:13,25 **58:**5 eauities [1] 22:8 era [1] 37:15 erroneous [1] 49:20 error [3] 43:12.15 59:1 errors [1] 49:20 ESQ [4] 2:2 3:3,6,9 essential [1] 5:17 essentially [1] 12:3 establish [1] 5:22 established [4] 5:19 13:13 20:22 24.1 evaluate [1] 41:11 even [9] 6:18 9:16 13:15 20:17.23 25:4 39:20 44:7 61:25

everybody's [1] 23:9 everyone [2] 40:1 44:23 everything [3] 21:1 48:13 56:20 evidence [5] 10:21 11:4 26:20 33: exactly [3] 42:13 47:6 52:23 example [8] 12:25 16:7 17:10 18: 14 19:2 22:3 24:4 36:25 examples [5] 12:19 15:8 18:12.17 **37:**3 except [3] 23:16 36:9 50:25 exception [3] 6:23 7:18 56:25 exceptional [8] 8:22 12:9 15:22 37:24 38:4.8 42:24 43:5 excluded [1] 48:10 exercise [7] 8:19 20:15 22:8,15,19 **56**:21 **59**:18 exercising [1] 22:12 existence [1] 28:19 existing [1] 26:15 expedite [3] 32:11 47:5,9 expediting [1] 47:15 experience [1] 57:11 explain [1] 5:9 expressly [2] 22:14 29:9 extend [2] 6:12 31:25 extended [1] 40:9 extends [1] 4:21 extent [9] 5:6 8:25 15:10 16:21 20: 9 23:21 27:24 38:7 64:6 extraordinary [4] 16:10,11 28:12 39:22 extreme [3] 12:11 23:3 63:10 extremely [2] 12:9 42:15

face [3] 7:4 22:3.14 fact [44] 6:3 7:15 13:24 16:3 17:7. 25 **18**:2.3.16 **21**:7 **26**:8.10.25 **27**:2 **31**:8.8.10 **32**:2.19 **34**:10.10 **37**:7. 19 41:3 42:25 43:5.9.14 44:10.21 48:7.11.17.21.21.23 50:7 55:16 56:18,23 57:10 59:2 62:17 64:23 fact-finding [1] 12:17 factors [2] 29:11 64:5 facts [34] 5:5,13 8:11,11,18 13:6 **14**:1,2,4,7,8,9,10,14,15 **15**:12 **16**:2 18:1,5 23:22 24:1,15,24,24 38:16 **42**:14,18 **50**:4 **55**:15 **59**:9,12,20 60:3 64:12 factual [28] 10:13.14 11:5 13:10 **14**:10.20.21 **15**:6.9 **18**:7.12 **19**:5 **23:**3.10 **24:**5 **30:**11.11 **32:**23.25 33:3.17 42:23 44:2.18 57:13 58: 19 60:7.10 fails [1] 4:24 fair [2] 46:5 55:2 fairness [1] 54:10 family [1] 16:1 far [7] 11:7 14:21 27:19 31:25 53:1 61:19 63:17 favor [4] 49:7 52:4 64:9 65:6 favorable [1] 22:7

favors [1] 64:8

feasible [1] 37:16 few [7] 8:3 10:23 12:7,18 18:12 25: 25 29:3 fewer [1] 50:22 Fifth [3] 16:8 39:12,20 fight [2] 52:1,10 figure [2] 9:16 16:23 file [3] 39:11 40:3 46:15 filed [1] 39:13 filina [1] 28:20 final [1] 27:5 finally [2] 63:21 64:24 find [7] 8:14 24:14 29:5 40:14,23 **44**:8 **45**:7 finder [1] 16:3 finding [4] 14:1,7,7 59:2 findings [7] 11:5 15:5,6,9 32:23, 25 33:4 finds [1] 30:10 finished [1] 51:3 firmly [1] 37:4 first [11] 4:4 5:17 8:4 12:19 18:5 19:7 26:1 28:10 35:20.23 62:15 fits [1] 49:4 five [2] 21:18 62:10 Florida [4] 38:11 39:2 40:5 42:7 focused [3] 29:16 55:24 61:20 following [2] 26:21 31:18 Footnote [1] 62:2 forced [2] 18:20.21 foreclose [1] 55:5 Forget [1] 54:10 form [1] 7:13 former [1] 34:25 forth [1] 55:12

forum [1] 31:15 found [8] 14:14 16:2 17:4 22:4.20 24:2.23 26:24 four [6] 6:1 26:21.23 27:3 61:1.18 framework [3] 12:23 13:13.16 FREDERICK [3] 2:4 3:6 31:1 freedom [1] 24:11 friend [1] 57:20 friend's [4] 48:1 53:3,5 56:3 fulfill [1] 64:14 fully [2] 5:20.25 fulsome [1] 64:17 fundamental [1] 54:18 further [1] 36:16 future [2] 14:9 24:12

game [1] 43:3 gave [2] 12:20 15:20 GENERAL [6] 1:6,12 2:5 4:6 33: 14 **45**:25 generally [2] 23:6 24:10 gets [2] 51:6 54:9 ghost [1] 38:15 GINSBURG [3] 17:15,18 23:13 qive [4] 36:24 46:10 58:23 60:12 given [6] 23:13 33:3 38:14,16 43:3 **59**:12 gives [1] 65:1

goodness [1] 40:17 Gordillo [1] 29:7 GORSUCH [19] 19:9 20:25 22:23 **34**:13,18 **35**:2,8 **36**:12,22 **37**:2,8, 20 38:13,20 54:8,24 55:3 57:24 58:21 Gorsuch's [1] 43:2 aot [3] 57:13 60:15.19 government [19] 4:14,16,19,20,24 5:7.9 7:3.10.13 9:2.7 25:4 26:14 **35**:14 **53**:15.19 **63**:9.12 government's [5] 6:6 25:22 26:1 34:19.21 grasp [1] 44:5 great [1] 59:17 greater [1] 14:22 ground [1] 26:13 **GUERRERO-LASPRILLA** [3] 1: 3 4:5 28:11 quess [5] 13:22 21:3 29:23 35:19 **51**:25 autted [1] 56:19

goal [4] 32:10 47:4 52:24 53:1

Н

habeas [2] 26:15 27:2 half [5] 47:14.21.21.22 50:3 happen [1] 38:3 happens [2] 15:1 27:23 hard [1] 40:23 hardship [2] 12:10 23:4 harm [1] 53:15 head [1] 28:18 hear [1] 4:3 heard [3] 36:19 41:22 54:14 heavily [1] 24:5 held [3] 11:10.17 31:14 helpful [1] 42:15 Helton [2] 38:11 39:1 highly [3] 10:22 23:7 58:15 historic [6] 14:7.8.9.14 15:12 17:7 historical [3] 5:13 57:9 59:20 history [8] 22:10 25:12,24 27:5 33: 13 **45**:5 **51**:10 **64**:6 hold [1] 36:12 holding [1] 54:23 holds [1] 20:8 home [1] 51:7 Honor [23] 7:2,24 8:24 9:25 10:11 11:2 12:18 14:5 15:8 16:7 17:4 18: 6 **19**:24 **21**:9 **23**:20 **26**:1 **27**:6.16 28:10.23 30:5 62:13 65:8 Honor's [2] 13:4 20:21 however [1] 16:20 HUGHES [38] 2:2 3:3,9 4:7,9 7:2, 24 8:3,24 9:23 10:7,10 11:1,17 12: 18 **14**:5 **15**:17 **16**:6 **17**:3,17 **18**:6 19:9,24 21:9 22:22 23:20 25:25 27:15 28:10,21,25 29:2,20 30:4 **51:**14 **62:**10,11,13 hundreds [1] 65:2 Hurricane [2] 40:2 46:17 hypo [2] 41:20,25

event [1] 65:7

hypothetical [1] 41:21

hypotheticals [1] 46:14

ID [4] 26:4 48:5 60:24 64:22 idea [2] 11:22 35:15

identified [6] 4:15 24:23 31:21 34: 2 55:7,8

identify [1] 64:19 identifying [1] 45:15

idiot [1] 46:19 III [2] 30:14 50:20

lliev [1] 20:21

illustrate [2] 6:1 36:25

Immigration [3] 4:13 19:6 26:8

implied [1] 63:2

important [9] 11:12 24:9 33:24 44: 13 **48**:5 **52**:16 **54**:6 **62**:20 **63**:23

impression [1] 35:24 imprimatur [1] **35**:12

imprisoned [1] 24:15 include [5] 18:20 27:1 44:20 56:17

included [3] 27:7 41:3 64:22

including [2] 49:20 50:3

inclusive [1] 26:10

indeed [1] 57:19

indicated [2] 61:6.7 indication [1] 61:21

individual [7] 18:14.24 19:3 20:13

24:15,19 29:5

ineligible [1] 22:21

inquiries [1] 5:3

inquiry [6] 9:9,15 29:14 59:16,19

60:2

insofar [2] 14:6,24

instance [3] 18:5 19:7 36:9

instruct [1] 17:11

insufficient [1] 22:9

intendina [1] 49:24

intent [9] 23:14 30:1.6 49:11 51:23

52:2.9 **55**:5 **63**:24 interestina [1] 53:10

interim [1] 61:17

interpret [1] 41:15

interpretation [4] 10:2 12:2 49:21

64:5

intertwined [1] 60:8

invite [1] 43:13

invokes [1] 7:5

involve [3] 12:15.17 35:22

involves [3] 25:13 34:9 62:3

involving [7] 15:21 32:8,22,24 53: 7.8 56:22

labal [1] 17:11

isn't [13] 16:22 38:17 40:12,13 44:

13,15,19 51:17 52:17 54:11,16,17

issuance [1] 49:17

issue [14] 15:24 16:8,15 19:17 21: 24 25:1 37:24 39:21,21,22 46:13

57:6 **58:**4,18

issues [5] 12:20 18:13 19:2 26:7

35:23

Sheet 4

issuing [1] 21:22

itself [4] 31:10 45:13 50:18 55:1

iudae [2] 40:21 44:25 judges [3] 19:7 44:7 53:21 judgment [3] 8:20 59:11,18 judgments [3] 14:2,8 59:22 judicial [37] 5:13,18 7:8,11 10:18 **14**:24 **15**:14 **21**:24 **25**:5,6,10 **30**:8 **31**:15,19 **32**:8,14,17 **35**:3,12 **38**:3 **40**:24 **46**:11,20,21 **49**:8,24 **52**:4 **54**:6 **55**:6.25 **60**:12 **62**:16 **63**:22 **64:**10.14.15 **65:**6

jurisdiction [16] 5:23 6:2 9:12,16 **14**:11 **26**:15,17,18,23,24 **27**:3 **45**: 20 49:18 63:5.6 65:3

Jurisdictional [3] 5:8 9:9 62:25 Justice [114] 2:5 4:3,9 6:4 7:17 8: 1,15 **9**:18 **10**:1,8,19,20 **11**:15,18 13:15 15:16,18,19 16:17 17:15,18 19:9 20:25 22:22,23 23:13 25:11, 12 **27**:13 **28**:7,17,24 **29**:1,20 **30**: 22 31:4 33:8,10,18,22 34:13,15,18 **35**:2,8,17 **36**:10,12,22 **37**:2,8,20, 23 38:13.20 39:6.7.8.17.24.25 40: 16 **41**:17,19 **42**:5,10,16,20,21 **43**:2 7.11.21 **45**:3.6.18 **46**:3.12 **47**:7.9. 16.23 **48:**2.13.24 **49:**1.6.10.25 **50:**

10.13.25 **51**:1.2.3.5.8 **52**:6 **53**:9 **54**:1,8,9,24 **55**:3,10 **57**:24 **58**:21

60:17,20 **61**:5,11,16 **62**:8 **65**:9

justices [1] 32:20 justified [1] 34:6

justify [1] 37:25

K

KAGAN [15] 10:20 11:15,18 13:15 15:19 22:22 25:12 29:20 35:17 48:

24 49:1 51:2,3,5 52:6

Katrina [4] 40:2,11 41:20,25

KAVANAUGH [20] 25:11 27:13 33: 8,10,22 **39**:7 **41**:17,19 **47**:9,16,23 48:2,13 50:1 55:10 60:17,20 61:5,

keep [3] 11:18,19 26:16 kind [3] 40:19 43:3 55:17

kina [1] 54:13

knife [1] 15:25

label [1] 59:25 labeling [1] 58:11 lack [1] 33:4

Lakeridge [4] 13:7,16 34:2 60:5

land [1] 57:25

language [4] 28:2 49:4 55:18,21

large [1] 23:15

larger [1] 6:25

later [1] 27:22

Laughter [1] 42:8 law [88] 4:12 6:3 7:15 9:21 11:23, 24 12:6 13:6,14,21 15:15,23 16:5,

11 **17**:25 **18**:1 **20**:3 **21**:19 **24**:7 **25**: 1,14,22 **26**:8,9,25 **27**:2,8 **28**:8 **31**: 6,7,8,16,20,23,25 **32:**2,5,15 **33:**12,

15 34:9,11,20,24 36:15 37:6,19 38:9,17 41:4 43:9,14,15,20 44:20, 21 45:2,7,12,15,16,19,25 48:7,14, 17,20,20,23 49:20 50:4,7,19 54:12

55:15,16 **56**:1,12,17,18,23,24 **57**: 10 58:11 59:3,12 62:4 64:23

law-like [1] 12:3

lawmaking [1] 64:2 laws [1] 20:2

lawyers [1] 44:7

lav [1] 57:25

lead [1] 43:2

lean [2] 25:20 30:11

learned [3] 44:1.4.6

least [4] 6:1 39:9 58:19 61:6

leave [2] 34:10 44:21 left [2] 21:6 57:1

legal [57] 4:16 5:5,14 8:18,19 12:1 13:9,20 14:14,16,19,22,25 15:5,11

12,14 16:4,15,24 17:8,12 20:13 21:8 23:11,17,22,24 27:25 30:12,

16 **31:**25 **33:**16,17,23,25 **34:**1,2 **35**:5.9.22.25 **36**:3.8.15 **37**:11 **38**: 24 39:5.14 41:13 43:19 44:3.18

57:14 59:10 60:7.10

legally [1] 21:5 legislative [1] 51:10

less [1] 18:9

level [4] 16:4 23:10 34:23 59:12

lies [1] 20:10

life [1] 24:10

likely [1] 13:2

limit [1] 32:7 limitation [1] 27:11

limited [4] 17:22.22 32:18 49:18

limits [1] 55:7 line [11] 17:5 43:11 50:6.8 57:15.

17.18.19.20 **61:**24 **62:**2 lines [1] 19:10

list [1] 19:1

litigant [2] 42:3,10

little 5 9:13 23:23 28:4 34:14 36:

LIU [69] 2:4 3:6 8:1 29:24 30:24 31: 1,3 **33**:9,21,23 **34**:13,17,25 **35**:7, 19 **36**:21,24 **37**:5,9,21 **38**:6,13,18, 22 **39**:16,19 **40**:15 **41**:8,18,24 **42**: 9.13.17 43:6.10 45:3.10 46:2.5 47: 3.13.20.24 48:12.16.24.25 49:2.6. 9 **50**:5,12,15 **51**:1,4,21 **52**:19 **53**: 24 54:3,20 55:2,20 58:21 59:16

60:19 61:1,8,15,18 loads [1] 44:11

lodged [1] 27:11 look [17] 12:14 13:23 16:23 27:17,

21 39:25 40:17 41:10,14 43:8,8 46:6 48:8 51:5 61:9 62:1 63:11

looked [2] 26:22 46:6 looking 5 8:7 12:4 29:10 55:19

59:20 looks [1] 27:20 lose [1] 51:20

lot [4] 13:24 19:16 23:25 57:13

lots [2] 45:20 64:11

lower [2] 44:17 65:2 lower-level [1] 46:17 Lugo-Resendez [2] 16:9 28:12

M

made [7] 10:13,16,20 15:21 39:10 41:1 59:22

magic [1] 52:22 manageable [1] 65:1

many [5] 11:3 44:6,8 47:17 57:23

markup [1] 27:9

matter [9] 1:18 21:22 22:6 34:7 35:

10.10 36:11 38:8.17 matters [1] 12:2

maximum [1] 37:15

mean [31] 11:24 16:18.18.22 22:22 34:7 37:1 38:10.19 40:13.17 41:5 43:18 44:1,20 45:8,15 46:9 47:16 **48**:19 **50**:16 **51**:13 **52**:1,7 **54**:4,12

55:20 56:9 57:12 58:25 61:25 meaningful [3] 4:17 53:6 57:4

meaningfully [2] 35:4 63:13 means [4] 42:25 45:12,20 51:11 meant [7] 17:19 30:3,7 31:7 45:24

46:1 62:21

membership [1] 24:17 mention [2] 31:10 57:5

mentioned [7] 6:16.19 23:2 32:3.

4 57:25 60:17

merely [1] 6:15 merging [1] 9:8

merit [1] 22:7

merits [2] 9:9,15

might [11] 10:23 12:6 18:14,16,18 24:1 25:21 37:25 38:23 59:24,24

mile [1] 42:12 mind [1] 59:10 minimum [1] 4:14

minutes [1] 62:10 misapplication [1] 42:25

misapplying [1] 59:3

misconduct [1] 39:4 mismatch [1] 58:10

missed [1] 44:3

mistake [1] 42:23 mistaken [1] 61:25

misunderstanding [1] 42:24 mixed [33] 11:23 13:8 14:16,18,25

25:16,18 26:3 27:23 31:8,11 32:1, 2.6.16 33:15 34:9 41:3 44:3.9.20

45:15 **48**:9.20 **56**:5.17 **57**:10.14 58:19 60:6.11.23 61:14

moment [2] 19:20 24:7 Monday [1] 1:16

monster [1] 46:18 morning [2] 4:4 32:20

most [4] 12:16 23:9 54:6 63:17

mostly [2] 12:15,17 motion [3] 22:17 28:20 39:11

motions [1] 17:10 move [1] 26:17 moving [1] 47:10

much [6] 6:5 23:18 29:21 49:13 57: 1 59:10

multiple [1] 51:12 must [5] 4:19 7:11 62:17,21,23

nail [1] 36:22 name [1] 19:4 narrow [2] 6:22 33:5 natural [2] 48:18,22 naturally [1] 49:5 nature [3] 29:23 52:8 60:1 necessarily [1] 11:2 necessary [2] 5:20 64:13 need [7] 5:8 37:18 41:15 42:1,18 52:3 63:16 needed [2] 5:24 11:13 needs [2] 63:3 64:3 neither [1] 51:6 never [3] 37:6,9 42:11 Ninth [1] 56:16 non-citizen [1] 12:10 non-citizen's [1] 12:8 non-criminal [5] 10:6 32:13,24 53 8 60:16 none [2] 22:15 51:15 noted [1] 32:20 November [1] 22:5 novo [2] 20:4 58:13

Nutrition [1] 51:24

objection [5] 27:8,10 28:3 33:19 **55**:12 obstacle [1] 28:20 **obviously** [1] **16**:19 occurred [2] 18:17,23 occurring [1] 26:16 offense [1] 16:21 offer [1] 63:17 offered [2] 63:7,12 often [10] 10:15 18:3,7,9,13,25 26: 9 33:3 58:25 63:2 Okay [6] 10:1 35:2 37:8 40:3 44:12 **54**:24 Once [5] 7:10.13 14:13 43:8 48:22 one [26] 11:25 13:19.19 16:7.22 22: 24 25:21 29:2.3 33:6 39:9 42:12 **43**:24 **51**:5 **53**:4 **57**:17.21 **58**:10. 25 59:2,21,25 60:2 61:24 64:25 **65:**5 one's [4] 24:10 41:21,22 59:2 ones [2] 23:2,16 only [20] 7:13 9:20 13:25 17:25 18: 1 23:23 25:1 31:7 32:17 34:11,19 35:1 41:12 47:21 48:10 52:9 56:4 61:1.1 63:11 open [1] 46:22 opinion [3] 22:14 50:16 60:5 opportunity [1] **54**:14 opposite [1] 8:13 oral [5] 1:19 3:2,5 4:7 31:1 order [5] 5:25 11:13 26:11 29:5 43: orders [1] 17:20

original [1] 33:10 other [18] 9:6 11:20 12:5 13:14 14: 4,8 **15**:1 **22**:25 **29**:11 **30**:3 **43**:23 **47**:22 **50**:9 **55**:17 **57**:17,23 **59**:22, otherwise [4] 7:11 46:23 58:12.14 out [17] 7:1 8:11 9:16 10:24 16:23 **18**:2.3 **25**:2 **35**:18.24 **40**:14 **44**:14 **45**:23 **47**:11.18 **54**:21 **56**:16 outset [3] 46:7 53:4 63:4 outweigh [1] 22:9 OVALLES [3] 1:9 4:5 29:1 over [11] 5:13.14 7:9 9:16 10:12 12: 24 15:14 20:14 54:6 62:18 64:11 overcome [1] 42:4 overly [1] 39:3 overturn [1] 33:3

own [2] 28:18 50:17

PABLO [1] 1:3 PAGE [2] 3:2 50:18 part [17] 25:2 33:16,17,17,23,25 34: 1,1 37:19 44:2,4,18,18 47:14 50: particular [4] 19:3 24:16 41:18 42: particularly [1] 63:1 parts [3] 13:14 33:16 60:7 party [1] 24:17 passage [2] 29:10 61:9 past [4] 18:17 24:8,11,20 PAUL [5] 2:2 3:3,9 4:7 62:11 PEDRO [1] 1:3 per [2] 29:7,17 perfect [1] 53:21 perhaps [1] 6:13 period [2] 28:14 29:4 permissible [1] 6:7 permitted [2] 10:3.5 persecution [7] 18:17 24:8.9.11. 12.18.20 person [3] 40:18 53:14,16 person's [1] 29:12 Pervaiz [1] 29:9 Petitioner [2] 1:4,10 Petitioners [7] 2:3 3:4,10 4:8 31: 24 **61**:10 **62**:12 Petitioners' [3] 32:13 57:7 58:9 petitions [1] 26:19 phrase [1] 45:18 phrased [1] 28:17 phrasing [1] 55:17 pick [1] 33:12 plaintiffs [1] 39:10 play [1] 56:15 please [2] 4:10 31:4 point [17] 7:16 10:23 14:13,23 25: 12 26:11 27:5 33:12 42:14,22 45: 11 **48:**3 **52:**3,7 **62:**15,20,25 pointed [3] 35:18 49:15 50:1 pointing [1] 29:8

points [3] 6:1 35:20 46:8

poke [1] 34:14

policy [1] 46:10 political [1] 24:17 posit [1] 46:17 position [13] 6:25 17:24 34:19,21, 25 **41**:6,9 **56**:3 **57**:7 **58**:17 **63**:10, 10 64:8 positions [1] 8:16 possibility [1] 46:22 possible [1] 53:1 possibly [1] 51:7 power [3] 23:15 30:8.9 powers [7] 30:20 35:17 52:16 53: 22 54:4.18 63:25 pre-1789 [1] 64:19 pre-AEDPA [1] 57:12 precedent [4] 20:2 28:19 29:9 39: predictions [1] 14:9 preference [1] 46:10 premise [5] 5:18 20:1,6 52:1 64: present [1] 12:12 preservation [1] 56:12 preserve [1] 54:6 presumption [33] 24:12 29:21,23, 25 30:1,2,2,5,7,18,20 35:16 40:24 **49**:7,14,23 **50**:2 **51**:16,19,23 **52**:8, 9,14,15,20 **53**:10,13 **54**:11,16,25 63:22 64:9 65:6 pretty [9] 23:14 33:2 34:5 40:22,25 **45**:13 **52**:10 **54**:11,17 primarily [3] 58:19 60:10,10 primary [1] 46:10 principal [4] 9:19 13:5 19:25 29:3 principally [4] 13:9,10 23:16,22 principle [4] 30:21 35:22 38:24 39: principled [1] 45:14 principles 3 29:18 52:17 63:25 probably [1] 44:7 probative [2] 27:20 28:5 problem [5] 9:6 49:15,16 56:2,15 problems [1] 64:21 proceeding [1] 19:1 proceedings [3] 10:17 18:8 58:7 process [3] 27:9 54:19 59:23 produce [1] 44:16 promise [1] 64:14 prona [1] 39:23 proper [4] 4:16,20 20:11 24:23 properly [3] 8:7 24:13,22 proposing [1] 57:18 protected [1] 57:2 provide [8] 5:7 9:2 18:12 22:3 24: 4 **31**:18 **35**:11 **53**:22 provided [2] 15:3,9 provides [3] 4:11 20:14 63:7 provision [4] 31:9.13.17 54:5 provisions [1] 33:9 punch [2] 15:25 16:18 pure [23] 9:21 11:23 21:18 25:13. 21 27:7.10 31:16.22 33:11 34:6. 19 **35**:1 **36**:15 **39**:14 **43**:20 **45**:14.

purely [3] 31:25 41:12 43:19 purpose [1] 17:21 purposes [3] 45:22 58:5,6 put [9] 11:25 13:19 15:2 25:19 49: 25 52:3 57:16 61:11,12 putting [1] 23:18

O

qualifies [2] 16:9,11 qualify [1] 28:12 quality [1] 23:17 question [69] 9:21 12:7,22 13:5,7 **14**:16,18 **15**:1,15,23 **16**:5,15 **19**: 10.12.23 20:3.19 21:1.11.19 22:23 **24**:6.8 **28**:11.22 **29**:22.24 **32**:1.6 33:15.16 34:8.9.11.12.15 36:15 37:4 38:2.7.9.12 39:15 40:6 42:15. 19 **43**:4,19,20,23 **44**:3 **45**:1,25 **48**: 14 **49**:7 **50**:11,19,21 **51**:2,22 **53**: 11 **54**:10 **56**:17 **58**:11,20 **59**:10 **60**: 6 62:3,4 questions [79] 4:12 11:23,23 12:6, 16 **13**:9,21,23,25 **19**:16 **23**:1,21 25:14,16,18,22 26:3 27:7,24 28:8 29:3 30:10 31:6.7.7.8.10.11.16.20. 21,22,24 32:1,2,5,15,16,19 33:11 34:19.23 35:1.25 41:3 44:20.21 **45**:7.12.14.15.16.19.25 **48**:7.7.9. 11.17.20.20.21.23 **54:**7 **55:**15 **56:**1. 11,17,24 **57**:9,10,13,14,15,17,19 **60**:11,23 **61**:14 quite [6] 13:23 45:17 48:22 52:17 **54**:9 **63**:23 quoted [1] 44:23

raise [1] 31:16 raised [1] 25:12 range [2] 13:23 16:24 rare [4] 6:13 10:24 11:2 36:9 rather [4] 42:25 44:16 45:21 50:7 reached [2] 8:13 39:20 read [10] 6:5,11 7:22 31:24 40:25 44:19 50:5.7 51:12 56:16 reader [1] 7:6 reading [6] 25:20 32:13 53:3,5 58: 9 61:24 REAL [4] 26:4 48:5 60:24 64:22 realize [1] 15:20 really [22] 7:19,20 9:13,13 11:23 **13**:21,24 **33**:6 **43**:18,22 **46**:24,24 **51**:9,15 **53**:6,13 **54**:12,17 **57**:1 **58**: 17,25 60:14 reason [1] 11:8 reasonable [9] 7:5 19:11 20:17 **28**:14 **29**:18 **36**:4 **37**:13 **38**:17 **58**: reasonably [1] 29:6 reasons [3] 5:16 25:25 53:3 **REBUTTAL** [2] 3:8 62:11 recent [1] 22:4 recite [2] 35:5 36:14 recited [1] 35:9

recognize [1] 25:9

16 **50**:19 **55**:13 **56**:1 **57**:19 **62**:3

ordinary [1] 34:8

recognized [1] 27:3 recourse [1] 41:16 reduce [1] 56:3 redundant [1] 27:14 refer [6] 25:16,17,21 34:11 48:9,21 reference [1] 45:11 referencing [1] 48:4 referring [2] 48:18 50:6 refers [3] 31:21 48:6.16 reflect [2] 30:3 7 reflected [1] 51:24 reflects [1] 42:24 regarding [1] 39:4 regime [1] 57:12 relatively [1] 17:4 rely [1] 61:10 relying [1] 56:9 Remember [1] 32:10 removal [9] 10:16 12:8 17:20.23 18:8.25 32:12 47:5 58:6 remove [1] 49:24 reopen [6] 21:12,16 22:17 28:20 39:12 58:6 report [6] 27:16,17,21,23 28:5 61: required [2] 41:10 64:17 requirement [2] 4:18 52:22 requires [3] 8:19 59:13,17 resist [1] 19:25 resolve [2] 17:10 26:25 resolving [2] 19:6,8 respect [2] 22:24 44:9 respond [4] 5:25 11:14 25:23 26: 12 responded [1] 5:21 Respondent [6] 1:7,13 2:6 3:7 22: responding [2] 52:24 60:21 response [5] 6:14 11:9 33:19 52: 17 64:17 responses [1] 12:19 rested [1] 61:23 restrict [1] 17:19 result [3] 9:11.14 12:9 retained [1] 27:4 retroactive [1] 50:23 return [1] 34:15 reverse [1] 11:4 reverse-engineering [1] 43:16 review [87] 4:11,15,17,21 5:13,14, 18 **6**:8,12,21 **7**:8,12,21 **10**:3,5,12, 18 **11**:4 **12**:24 **14**:24 **15**:3,14 **17**: 20,22 18:11 19:14,17,22 20:14 21: 5,7,8,25 **23**:15 **24**:6 **25**:6,7,7,10 **26**:19 **27**:24 **31**:19 **32**:8,14,18 **35**: 3 36:17 37:6,9,18 40:13,15,16,19, 24 41:3 43:13 46:11,20,21 49:8,

24 52:5,12 53:7,8 54:6,14 55:6,14,

15.25 **57:**2 **58:**3.25 **59:**8 **60:**13.15.

16 62:16,16,18 63:23 64:11,14,15

reviewability [4] 29:22 30:19 35:

reviewable [15] 15:10 17:25 22:16

23:2,19 **24**:3 **33**:18,24 **34**:20 **35**: 25 41:9,21,22 48:14 56:7 reviewed [12] 8:23 9:21 19:12,13 20:4 23:6 46:24 58:7,12,14 60:23 **61**:13 reviewing [3] 4:24 5:1 58:13 rigid [1] 39:3 rise [2] 34:23 59:12 rises [1] 16:4 ROBERTS [8] 4:3 16:17 30:22 42: 21 43:7 51:1 62:8 65:9 roots [1] 55:1 rubber [1] 35:6 **RUBEN** [1] 1:9 rule [14] 5:12,22 9:22,25 28:1 29:7, 17 **35**:15 **39**:4 **63**:7,17,18 **64**:13, rules [3] 5:8 63:1,1 run [1] 43:16 S safety [1] 56:4 same [9] 5:3,4 16:16 19:4 26:17 28:22 29:24 31:21 34:1 saving [2] 47:19 56:12 saying [10] 6:12,17 13:22 23:13 28:

Safety [1] 56:4
same [9] 5:3,4 16:16 19:4 26:17
28:22 29:24 31:21 34:1
saving [2] 47:19 56:12
saying [10] 6:12,17 13:22 23:13 28
22 41:1 44:18,19 49:16 53:21
says [11] 21:21 22:14 27:23 28:5
33:15 37:12,16 39:10 40:7,8 45:6
scales [1] 52:4
scope [5] 26:14,17,23 32:7 50:8
se [2] 29:7,17
Second [3] 5:19 26:11 62:25
Section [8] 4:11 15:17 20:11 26:4,
19 31:6 32:3 62:21
sections [1] 26:5
see [6] 6:19 50:17 53:23 56:15 59:
5 62:2
seeking [1] 58:6
seem [1] 51:15
seemed [1] 13:24
seems [4] 12:15 39:14 46:24 48:5
sense [1] 52:10
sentences [1] 27:22

seemed [1] 13:24 sense [1] 52:10 sentences [1] 27:22 separate [3] 6:1 27:4 44:14 separately [1] 48:9 separation [8] 30:20 35:17 52:16 **53**:22,24 **54**:3,18 **63**:25 serious [1] 22:10 serves [1] 28:19 set [3] 15:6 17:12 63:9 settled [2] 36:3 50:4 Seventh [1] 29:8 sham [5] 7:18.18 8:5.9.14 shared [1] 26:13 shot [2] 58:23 59:15 shown [2] 20:13,20 side [3] 45:24 51:6 57:17 sides [1] 51:9 significance [2] 5:14 15:12 significant [2] 47:18 52:11 similar [3] 15:19 19:10 51:8 since [2] 32:11 47:4 single [1] 15:3

situation [2] 7:22 47:2 situations [1] 6:13 Sixth [1] 29:7 skeptical [1] 27:18 slight [1] 10:9 sloppily [1] 45:22 small [1] 25:2 soft [1] 16:20 Solicitor [1] 2:4 solution [2] 56:15 57:3 somebody [1] 19:4 sometimes [6] 14:20 44:13.13.14. sorry [2] 11:18 49:1 sort [12] 12:14 13:13,17 14:4 16:15 **21:**24 **43:**13,16 **52:**15,21 **61:**4,19 sorts [1] 14:10 SOTOMAYOR [16] 15:16,18 28:7, 17,24 29:1 39:6,8,17,24 47:7 49:6, 10 50:10,13,25 sought [1] 33:6 sound [1] 23:3 sources [1] 62:3 speaks [3] 26:2.8.9 special [2] 38:21,25 specific [1] 27:8 specifically [1] 25:18 spoken [1] 29:21 **St** [30] **5**:21,25 **11**:10,17,19 **25**:12 **26**:12,21 **31**:14,18,22 **32**:4 **40**:25 41:2 44:22 49:14,16 50:2,6,17 51: 11 **54**:21 **55**:9,23 **60**:20,24 **61**:24 64.6 17 18 stamp [1] 35:6 standard [51] 4:16.20.22 5:1.2.5. 11 **6:**15.18 **7:**5.7 **8:**6.10.12.18.19 9:4 10:21.22 14:15 15:3.11 16:4 **18**:11 **19**:22 **23**:7,11 **24**:14,23 **34**: 3 35:5,9 36:3,6,8,15 37:11,13,15, 22 40:3,7 41:2 43:9 58:3,15,24 59: 8 62:23 63:14.15 standard's [1] 62:24 stands [1] 52:16 start [3] 4:13 7:1 57:8 started [1] 12:4 starting [1] 62:20 starts [1] 65:4 stat [1] 48:15 state [2] 24:14 36:8 stated [1] 64:4 statement [5] 6:6 15:20 35:15 49: 22 62:23 **STATES** [4] **1**:1,20 **18**:15 **53**:14 statute [13] 11:7 25:17,21 33:11 41:14 43:17 46:7 48:8,15 49:21 **54**:11 **55**:14 **56**:9 statute's [1] 50:8 statutes [5] 25:15 40:23 44:22 45:

statutory [9] 5:18 25:11,23 33:13

41:1 49:16 62:4 64:5.16

sterilization [1] 18:21

step [1] 20:20

stick [1] 9:24

still [5] 11:4 20:8,11,19 59:17 stops [1] 65:4 storm [1] 42:2 straight [2] 18:2,3 streamline [1] 32:11 strong [1] 52:10 strongly [2] 64:8,9 struck [1] 27:11 structural [1] 53:3 structure [2] 14:24 15:4 stvle [1] 13:8 subject [3] 10:17 21:24 24:19 subjected [1] 12:11 submitted [2] 65:10.12 substance [2] 7:12.12 substantial [9] 10:11.14.21 11:4 **16:**12 **18:**10 **33:**1,4 **64:**20 substantive [2] 25:6 62:17 subtle [1] 33:2 succinctly [1] 28:7 sufficient [1] 6:16 sufficiently [1] 9:4 suggest [3] 12:6 23:18 29:11 suggested [1] 7:1 suggests [4] 7:3 19:24 23:8 51:16 suitable [1] 63:18 suited [1] 57:22 summary [1] 59:11 superfluous [1] 34:7 supported [1] 33:1 suppose [5] 9:18 19:19,21 37:23 53.9 **SUPREME** [2] **1:**1,19 surrounding [1] 42:2 Suspension [1] 64:21 sweep [1] 27:1 sweeps [1] 27:25

table [1] 51:2 tail [2] 23:23 30:16 teach [2] 19:22 58:18 teaching [1] 60:4 teed [1] 39:22 tenable [1] 58:17 tensions [1] 49:19 Tenth [1] 20:22 term [2] 27:7 45:19 terms [2] 15:19 43:11 test [7] 5:7 7:15 9:7 34:2 63:8.12 testifies [1] 33:14 testify [1] 18:24 text [7] 5:19 31:9 32:3 45:5.6 51:6 **64**:16 textbook [1] 8:12 theory [5] 6:7,9,10 7:20,20 there's [19] 8:15,21,25 10:11,12 **11**:22 **12**:22 **13**:1 **14**:20 **15**:10 **23**: 5 **24**:8 **40**:15 **41**:15 **43**:15 **46**:20, 22 61:20 64:1 therefore [2] 30:11 56:6 they've [2] 20:19 56:16 thinking [2] 15:16 34:6

third [2] 5:21 63:21 though [4] 6:18 12:16 47:10 54:25 threat [2] 16:1 24:10 three [4] 5:15 35:20 48:18,22 three-part [1] 26:2 threshold [1] 20:20 throughout [4] 10:16 11:22 39:21 59:22 thumb [1] 52:4 timely [1] 28:20 together [2] 15:2 25:20 tolling [5] 8:20 16:13 37:13 38:1 58:5 tool [1] 5:4 top [1] 11:9 topology [1] 26:2 toward [1] 25:20 tracking [1] 55:23 treating [1] 20:2

try [1] 14:17 trying [12] 11:11 16:23 21:4 36:20 40:1,14,19 42:3 57:3,9,16 60:12

true [5] 14:21 18:9 23:24 60:22 65:

turn [1] 8:11 turned [1] 25:2 Turning [1] 5:24

two [8] 8:16 15:2 25:19 28:9 33:16

58:10,25 59:6 Twombly [1] 17:11 type [1] 41:10 types [1] 47:22 typically [1] 19:15

U

U.S [1] 18:16 ultimate [1] 20:15 ultimately [6] 12:20 52:25 64:10, 13.24 65:5 unanimous [1] 26:20 unbounded [1] 41:6 unconstitutional [1] 53:17 undeniably [1] 64:15 under [17] 6:7 10:1,21 11:3 12:23 14:12 15:17 19:12 26:19 32:12 39: 17,22 **41**:9 **47**:25 **53**:5,20 **58**:14 undergird [1] 35:18 underlying [4] 9:8 20:23 29:18 63: understand [7] 11:11.13 33:25 37: 20 39:4.19 44:24 understanding [2] 19:13 44:5 understood [1] 6:24 undertake [1] 29:13 undisputed [1] 18:1 undo [1] 32:7 unfair [1] 53:16 UNITED [4] 1:1,20 18:15 53:14 universe [2] 26:10 48:6 unlawful [1] 53:16 unless [1] 33:1 unlike [1] 15:1

unreasonable [2] 35:10 39:11 unreviewable [1] 56:11 unusual [5] 12:9 23:4 40:7,8,12 unwind [1] 60:6 up [11] 12:8 23:1 33:12 38:15 39: 22 42:12 43:3 44:9 46:22 55:6 60: 2 uses [2] 50:18.21

V

using [1] 13:16

virtually [1] 56:20

wake [2] 60:22 64:18

walk [1] 42:11

values [1] 30:3 valve [1] 56:4 variety [1] 25:15 various [1] 64:5 version [1] 33:11 versus [5] 4:5 8:6 21:5 38:11 39:1 view [6] 5:3 12:6 35:1 37:5 53:11 64:1 violated [1] 29:18 violent [1] 22:10

W

wanted [8] 17:21 31:18 47:1,2,4

52:11,25 **53**:1 wanting [2] 11:19,20 wants [1] 55:5 wash [1] 64:7 Washington [3] 1:15 2:2,5 way [15] 9:2 20:11 21:21 26:7 28: 22 29:13 42:11 45:14 48:18 49:11 **51:**5,7 **53:**20 **58:**22,22 ways [4] 36:19 51:12 53:16 58:10 week [1] 17:9 weighing [2] 14:1,3 weight [2] 20:1 62:7 whatever [2] 16:14 30:16 Whenever [1] 46:21 whereas [2] 32:21,24 Whereupon [1] 65:11 whether [35] 4:15,19,21,25 5:1,10 **6**:8,10 **8**:7,21 **12**:8,10,11 **13**:1,7 15:25 16:3.8 18:22 20:12 21:12. 15 **23**:4,5 **28**:18 **29**:16 **37**:24 **38**: 16 **43**:15 **59**:11 **62**:18,22,24 **63**:13, 14 who's [2] 40:19 46:18

16 43:15 59:11 62:18,22,24 63:13, 14

who's [2] 40:19 46:18

whoever [1] 59:18

whole [4] 23:25 26:10 57:15 59:21

will [9] 14:21 18:22,25 19:17 45:2

49:14 53:15 63:18 65:2

WILLIAM [2] 1:6,12

withdraw [1] 23:15

withdrawn [1] 28:4

within [2] 17:12 40:3

without [2] 29:10 54:13

wonder [1] 6:5

word [4] 27:10 34:6 50:21 62:6

words [5] 31:5 34:10 45:8 50:9 52:

work [6] 15:14 23:10,22,24 30:12

workable [1] 65:1 worked [1] 58:22 works [1] 56:9 wound [1] 16:1 writ [1] 49:17 Writing [1] 40:8 written [4] 11:7,9 33:7 55:14 wrote [2] 46:7 62:18

•

year [2] 47:17 65:3 years [1] 44:1 Yep [1] 51:4

Ζ

zipper [2] 26:6 49:3

unmistakably [1] 5:19

unmixed [1] 34:12