

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP,)
)
) Petitioner,)
)
) v.) No. 23-939
)
) UNITED STATES,)
)
) Respondent.)
)

Pages: 1 through 178
Place: Washington, D.C.
Date: April 25, 2024

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

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	D. JOHN SAUER, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	MICHAEL R. DREEBEN, ESQ.	
7	On behalf of the Respondent	68
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 23-939, Trump versus United States.

Mr. Sauer.

ORAL ARGUMENT OF D. JOHN SAUER

ON BEHALF OF THE PETITIONER

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

Without presidential immunity from criminal prosecution, there can be no presidency as we know it. For 234 years of American history, no president was ever prosecuted for his official acts. The Framers of our Constitution viewed an energetic executive as essential to securing liberty.

If a president can be charged, put on trial, and imprisoned for his most controversial decisions as soon as he leaves office, that looming threat will distort the president's decision-making precisely when bold and fearless action is most needed. Every current president will face de facto blackmail and extortion by his political rivals while he is still in

1 office.

2 The implications of the Court's
3 decision here extend far beyond the facts of
4 this case. Could President George W. Bush have
5 been sent to prison for obstructing an official
6 proceeding or allegedly lying to Congress to
7 induce war in Iraq? Could President Obama be
8 charged with murder for killing U.S. citizens
9 abroad by drone strike? Could President Biden
10 someday be charged with unlawfully inducing
11 immigrants to enter the country illegally for
12 his border policies?

13 The answer to all these questions is
14 no. Prosecuting the president for his official
15 acts is an innovation with no foothold in
16 history or tradition and incompatible with our
17 constitutional structure. The original meaning
18 of the Executive Vesting Clause, the Framers'
19 understanding and intent, an unbroken historical
20 tradition spanning 200 years, and policy
21 considerations rooted in the separation of
22 powers all counsel against it.

23 I welcome the Court's questions.

24 JUSTICE THOMAS: Mr. Sauer, to -- to
25 your last point, could you be more precise as to

1 the source of this immunity?

2 MR. SAUER: The source of the immunity
3 is principally rooted in the Executive Vesting
4 Clause of Article II, Section 1.

5 JUSTICE THOMAS: And how does that
6 happen?

7 MR. SAUER: That -- that it -- the
8 source of it, Justice Thomas, I think is, as you
9 described in your separate opinion in
10 Zivotofsky, for example, that the Executive
11 Vesting Clause does not include only executive
12 powers laid out explicitly therein but
13 encompasses all the powers that were originally
14 understood to be included therein.

15 And Marbury against Madison itself
16 provides strong evidence of this kind of
17 immunity, a broad principle of immunity that
18 protects the president's official acts from
19 scrutiny, direct -- sitting in judgment, so to
20 speak, of the Article III courts, it -- that
21 that matches the original understanding of the
22 Executive --

23 JUSTICE THOMAS: So how --

24 MR. SAUER: -- Vesting Clause.

25 JUSTICE THOMAS: -- how exactly would

1 we determine what the -- what an official act
2 is?

3 MR. SAUER: I'd say -- I'd point the
4 Court to two cases for that. Obviously,
5 Fitzgerald against Nixon is the best guidance
6 that the Court gives where it -- of course, the
7 Court adopted the outer perimeter test, and this
8 Court engaged in analysis -- analysis there
9 that's very instructive here, where it looked at
10 the level of specificity at which the acts are
11 described, in -- in -- in that case, a civil
12 case. Here, it would be the indictment. And --

13 CHIEF JUSTICE ROBERTS: Well, what if
14 you have -- let's say the official act is
15 appointing ambassadors, and the president
16 appoints a particular individual to a country,
17 but it's in exchange for a bribe. Somebody
18 says, I'll give you a million dollars if I'm
19 made the ambassador to whatever.

20 How do you analyze that?

21 MR. SAUER: That, I think, would fall
22 under this Court's discussion in Brewster, where
23 the Court held with respect to legislative acts
24 that bribery is not an official act, which also
25 matches the court -- common law background.

1 So I -- the way that this Court in
2 Brewster kind of sliced at the joint was to say
3 accepting the bribe and the agreement to accept
4 the bribe are not official acts. That's private
5 conduct --

6 CHIEF JUSTICE ROBERTS: Okay. It's
7 not --

8 MR. SAUER: -- where a subsequent
9 appointment would not be -- would be essentially
10 an unrestrictable power of this Court that
11 Congress couldn't directly regulate.

12 CHIEF JUSTICE ROBERTS: It's not --
13 accepting a bribe isn't an official act, but
14 appointing an ambassador is certainly within the
15 official responsibilities of the president.

16 So how -- how could you -- how -- how
17 does your official acts or the official acts
18 border, boundary come into play when it's going
19 to be official, assuming that the president is
20 innocent, but the whole question is whether he's
21 going to be found innocent or guilty?

22 MR. SAUER: Again, it -- I -- I think
23 Brewster and Johnson do address that or very
24 persuasively at least in a slightly different
25 context. Brewster and Johnson say the

1 indictment has to be expunged of all the immune
2 official acts, so there has to be a
3 determination what's official, what's not
4 official, and --

5 CHIEF JUSTICE ROBERTS: Well, you
6 expunge the official. You say, okay, we're
7 prosecuting you because you accepted a million
8 dollars. They're supposed to say -- not say
9 what it's for because the what's for part is
10 within the president's official duties?

11 MR. SAUER: There -- there has to be,
12 we would say, an independent source of evidence
13 for that. And keep in mind that this indictment
14 charges what this Court has described as
15 unrestrictable powers of the president. So the
16 premise, the logical premise, of this indictment
17 is that Congress, by passing vague and general
18 criminal statutes, has purported to directly
19 regulate the president's exercise of things like
20 the exercise of the employment and removal
21 power, things like his ability to speak directly
22 to the American public, core exercises of his
23 authority under the Recommendations Clause to
24 recommend to Congress, members of Congress, the
25 measures he thinks necessary and expedient.

1 So you have a indictment in this case
2 that goes right to the heartland of the
3 president's powers, that alleges a whole series
4 of official acts and tries to tie them together
5 by saying, well, there's a private aim or a
6 private purpose in that case. And that's a
7 situation which, of course, could be alleged in
8 virtually any indictment.

9 JUSTICE SOTOMAYOR: Counsel, it can be
10 alleged, but it has to be proven. Malum in se
11 is a concept long viewed as appropriate in law,
12 that there are some things that are so
13 fundamentally evil that they have to be
14 protected against.

15 Now I think -- and -- and your answer
16 below, I'm going to give you a chance to say if
17 you stay by it. If the president decides that
18 his rival is a corrupt person and he orders the
19 military or orders someone to assassinate him,
20 is that within his official acts that -- for
21 which he can get immunity?

22 MR. SAUER: It would depend on the
23 hypothetical. But we can see that could well be
24 an official act.

25 JUSTICE SOTOMAYOR: It could, and why?

1 Because he's doing it for personal reasons.
2 He's not doing it, at -- like President Obama is
3 alleged to have done it, to protect the country
4 from a terrorist. He's doing it for personal
5 gain. And isn't that the nature of the
6 allegations here, that he's not doing them --
7 doing these acts in furtherance of an official
8 responsibility; he's doing it for personal gain?

9 MR. SAUER: I -- I agree with that
10 characterization of the indictment. And that
11 confirms immunity because the characterization
12 is that there's a series of official acts that
13 were done for an unlawful or improper --

14 JUSTICE SOTOMAYOR: No, because --

15 MR. SAUER: -- purpose.

16 JUSTICE SOTOMAYOR: -- immunity says,
17 even if you did it for personal gain, we won't
18 hold you responsible. What do you -- how could
19 that be?

20 MR. SAUER: That's an extremely strong
21 doctrine in this Court's case law in cases like
22 Fitzgerald, the heartland, Johnson and supports
23 --

24 JUSTICE SOTOMAYOR: Well, we go back
25 to Justice Thomas's question, which was, where

1 does that come from?

2 There are amici here who tell us that
3 the Founders actually talked about whether to
4 grant immunity to the president. And, in fact,
5 they -- had state constitutions that granted
6 some criminal immunity to governors.

7 And yet they didn't take it up.
8 Instead, they find -- they pass an impeachment
9 clause that basically says you can't remove the
10 president from -- from office except by a trial
11 in the Senate, but you can impeach him after.
12 So -- or you can impose criminal liability.

13 We would be creating a situation in
14 which we would be saying is -- this is what
15 you're asking us to say -- which is that a
16 president is entitled not to make a mistake but
17 more than that. A president is entitled for
18 total personal gain to use the trappings of his
19 office -- that's what you're trying to get us to
20 hold -- without facing criminal liability.

21 MR. SAUER: Your Honor, I -- I would
22 say three things in response to that.

23 First, the doctrine that immunity does
24 not turn on the allegedly improper motivation or
25 purpose is something that this Court has

1 reaffirmed in at least nine or ten cases.

2 JUSTICE SOTOMAYOR: That's absolute
3 immunity. But qualified immunity does say that
4 whatever act you take has to be within what a
5 reasonable person would do. I'm having a hard
6 time thinking that creating false documents,
7 that submitting false documents, that ordering
8 the assassination of a rival, that accepting a
9 bribe, and countless other laws that could be
10 broken for personal gain, that anyone would say
11 that it would be reasonable for a president or
12 any public official to do that.

13 MR. SAUER: Your Honor, as this Court
14 said very persuasively in Fitzgerald, that the
15 allegation that this particular act would be
16 done for an unlawful purpose or was unlawful
17 could be made in every case, and, therefore, if
18 that were the doctrine, that the allegation of
19 improper purpose is what deprives the objective
20 acts of their immunity, then the immunity would
21 have no purchase. And that's reflected in many
22 of the other Court's cases.

23 JUSTICE SOTOMAYOR: So --

24 JUSTICE JACKSON: Isn't -- isn't the
25 work, though, of the improper motive at least in

1 the absolute immunity context to tell us what
2 are official acts and what are not? I mean, I
3 had understood that even in the -- first of all,
4 your ask is absolute immunity, isn't it? I
5 mean, that's --

6 MR. SAUER: That's our principal
7 position, yes.

8 JUSTICE JACKSON: -- that's your --
9 your position is you want the same kind of
10 doctrine that we've applied in other contexts
11 when we say an official has absolute immunity.

12 And my understanding is that when we
13 say that, we mean for their official acts. Is
14 that right?

15 MR. SAUER: Yes.

16 JUSTICE JACKSON: Okay. So any
17 official acts. But then, in that world, the
18 real decision-making from the Court's standpoint
19 is whether or not something is an official act
20 or not, correct?

21 MR. SAUER: That is an important
22 determination by all means.

23 JUSTICE JACKSON: I mean, that's the
24 determination in the absolute immunity world
25 because, if you determine that it's an official

1 act, then the principle is that you get immunity
2 for it, correct?

3 MR. SAUER: That is correct.

4 JUSTICE JACKSON: All right. So my
5 question -- and I think the Chief Justice may
6 have asked this at the beginning -- is how do
7 you determine what -- or maybe Justice Thomas --
8 how do you determine what is an official act?

9 And when we're talking about the kinds
10 of scenarios that Justice Sotomayor brought up,
11 one could say that when the president is using
12 the trappings of his office to achieve a
13 personal gain, then he's actually not acting
14 officially, even if the doctrine was absolute
15 immunity. So what do you say about that?

16 MR. SAUER: Two things in response to
17 that.

18 First, to the last point, that
19 allegation that this was really motivated by an
20 improper private purpose could be made in every
21 single case.

22 JUSTICE JACKSON: No, I understand
23 that, but -- but -- but it would have to be made
24 -- I'm -- I'm just trying to assess. Even if we
25 had the Doctrine of Absolute Immunity, that same

1 allegation and the facts related to it would
2 come in because the person would be arguing that
3 he was not acting in his official capacity. He
4 wasn't doing something official. He was doing
5 it personal, correct?

6 MR. SAUER: If he -- I agree, the --
7 the objective -- or I'm not sure I agree, but --
8 but the point I would make in response to that
9 is, in Fitzgerald against Nixon, this Court
10 emphasized that that would result in an
11 intrusive discussion or determination of the
12 president's personal motives for every official
13 act. And, again, this is not just in the case
14 of the presidency. It's for virtually every --

15 JUSTICE JACKSON: All right. Can I
16 just ask you another -- another quick question
17 before my colleagues take it over here?

18 At the beginning of your analysis,
19 when you were giving your opening statements,
20 you were talking about, you know -- the -- you
21 suggested that the lack of immunity and the
22 possibility of prosecution in the presidential
23 context is like an innovation.

24 And I understood it to be the status
25 quo. I mean, I -- I understood that every

1 president from the beginning of time essentially
2 has understood that there was a threat of
3 prosecution if for no other reason than the --
4 the Constitution suggests that they can be
5 prosecuted after impeachment, that, you know,
6 the Office of Legal Counsel has said forever
7 that presidents are amenable to a threat of
8 prosecution and they have continued to function
9 and do their jobs and do all the things that
10 presidents do.

11 So it seems to me that you are asking
12 now for a change in what the law is related to
13 immunity.

14 MR. SAUER: I would quote from what
15 Benjamin Franklin said at the Constitutional
16 Convention, which I think reflects best the
17 Founders' original understanding and intent
18 here, which is, at the Constitutional
19 Convention, Benjamin Franklin said: History
20 provides one example only of a chief magistrate
21 who is subject to public justice, criminal
22 prosecution. And everybody cried out against
23 that as a --

24 JUSTICE JACKSON: No, I understand.
25 But, since Benjamin Franklin, everybody has

1 thought, including the presidents who have held
2 the office, that they were taking this office
3 subject to potential criminal prosecution, no?

4 MR. SAUER: I don't -- I see the
5 opposite. I see all the evidence going the
6 other way. Marbury against Madison, Mississippi
7 against Johnson discussed this broad immunity
8 principle that naturally extends to the --

9 JUSTICE JACKSON: So what -- what was
10 up with the pardon -- what was up with the
11 pardon for President Nixon?

12 MR. SAUER: I think that --

13 JUSTICE JACKSON: I mean, if everybody
14 thought that presidents couldn't be prosecuted,
15 then what -- what was that about?

16 MR. SAUER: Well, he was under
17 investigation for both private and public
18 conduct at the time, official acts and private
19 conduct.

20 And I think everyone has properly
21 understood that the president -- since, like,
22 President Grant's carriage-riding incident,
23 everyone has understood that the president could
24 be prosecuted at least for things like private
25 conduct.

1 JUSTICE GORSUCH: Counsel, on -- on --
2 on that score, you -- there does seem to be some
3 common ground between the -- you and your
4 colleague on the other side that no man's above
5 the law and that the president can be prosecuted
6 after he leaves office for his private conduct.

7 Is that right?

8 MR. SAUER: We agree with that.

9 JUSTICE GORSUCH: And then the
10 question becomes, as we've been exploring here
11 today a little bit, about how to segregate
12 private from official conduct that may or may
13 not enjoy some immunity, and we -- I'm sure
14 we're going to spend a lot of time exploring
15 that.

16 But the D.C. Circuit in *Blassingame*,
17 the chief judge there, joined by the panel,
18 expressed some views about how to segregate
19 private conduct for which no man is above the
20 law from official acts.

21 Do you have any thoughts about the
22 test that they came up with there?

23 MR. SAUER: Yes. We think, in the
24 main, that test, especially if it's understood
25 through the lens of Judge Katsas' separate

1 opinion, is a very persuasive test. It would be
2 a great source for this Court to rely on in
3 drawing this line. And it emphasizes the
4 breadth of that test.

5 It talks about how actions that are,
6 you know, plausibly connected to the president's
7 official duties are official acts. And it also
8 emphasizes that if it's a close case or it
9 appears there's considerations on the other
10 side, that also should be treated as immune.

11 Those are the -- the aspects of that
12 that we'd emphasize as potentially guiding the
13 Court's discretion.

14 JUSTICE GORSUCH: And that left open
15 in that case the possibility of further
16 proceedings and trial.

17 MR. SAUER: Exactly right. And -- and
18 that would be a very natural course for this
19 Court to take. In this place, the Court can and
20 should reverse the categorical holding of the
21 D.C. Circuit that there's no such thing as
22 official acts, especially when it comes to --

23 JUSTICE GORSUCH: But you'd agree
24 further proceedings would be required?

25 MR. SAUER: That is correct. There

1 would have to be -- and -- and I would point the
2 Court to Anderson against Creighton, where the
3 Court said there would be kind of two stages of
4 these further proceedings. There's looking at
5 the indictment itself or, in that case, it was
6 a -- you -- you know, a complaint, but look at
7 the charging document itself and see whether on
8 the face of it this is alleging official acts.
9 And if not or it can't be determined, then there
10 would be a factual proceeding.

11 And all of that under Mitchell against
12 Forsyth and so forth would have to occur before
13 any other proceedings in the District.

14 JUSTICE KAVANAUGH: Can you --

15 JUSTICE BARRETT: Counsel, speaking of
16 --

17 JUSTICE KAVANAUGH: -- you tell us --

18 JUSTICE ALITO: Mr. Sauer, you --

19 JUSTICE KAVANAUGH: -- what the -- go
20 ahead.

21 JUSTICE ALITO: Mr. Sauer, you began
22 by explaining why you believe that immunity from
23 criminal prosecution is essential for the proper
24 functioning of the presidency.

25 But my question is whether the very

1 robust form of immunity that you're advocating
2 is really necessary in order to achieve that
3 result. So just to take one possible
4 alternative, suppose the rule were that a former
5 president cannot be prosecuted for official acts
6 unless no plausible justification could be
7 imagined for what the president did, taking into
8 account history and legal precedent and the
9 information that was provided to the president
10 at the time when the act was taken.

11 Would that be sufficient? Or, if it
12 is insufficient, why would it be insufficient?

13 MR. SAUER: That might be a much
14 better rule than what emerged in the lower
15 courts here. We think it would be insufficient
16 because, again, that long line of cases talking
17 about using the president's motives and the
18 intrusive sort of consideration of the
19 president's motives as transforming acts to
20 official and unofficial would be -- would come
21 into play.

22 And, of course, once you can make that
23 allegation, all of a sudden you've opened the
24 door. You no longer have a per se clear
25 bright-line rule. You have a -- a determination

1 in every single case, a case by case.

2 JUSTICE ALITO: But what if it were
3 not -- what if it did not involve any subjective
4 element, it was purely objective? You would
5 look objectively at the various relevant
6 factors?

7 MR. SAUER: That sounds to me a lot
8 like Blassingame and especially viewed through
9 the lens of Judge Katsas' separate opinion, and
10 that may not be different than what we're
11 proposing to the Court today.

12 JUSTICE ALITO: Well, Blassingame had
13 to do with the difference between official
14 conduct and private conduct, right?

15 MR. SAUER: That's correct. I --
16 sorry -- I understood the Court to be asking
17 that.

18 JUSTICE ALITO: No. This -- this
19 would apply -- and it's just a possibility. I
20 don't know whether it's a good idea or a bad
21 idea or whether it can be derived from the
22 structure of the Constitution or the Vesting
23 Clause or any other source. But this would be
24 applied in a purely objective -- on -- on purely
25 objective grounds when the president invokes an

1 official power in taking the action that is at
2 issue?

3 MR. SAUER: Yes, I believe -- the
4 reason I think of Blassingame is because it
5 talks about an objective context-specific
6 determination to winnow out what's official and
7 what is purely private conduct, and, again, in a
8 -- with -- with a strong degree of deference to
9 what --

10 JUSTICE SOTOMAYOR: I -- I'm sorry. I
11 -- if I understood Justice Alito, he's
12 suggesting not that. He's suggesting whether --
13 even if it is an official act, whether you still
14 grant immunity if that act is not plausibly
15 viewed as within the realm of law, of -- he can
16 correct me if I'm wrong. He's not --

17 JUSTICE ALITO: No, that's -- that --
18 that was the question.

19 MR. SAUER: That, I think, would be a
20 superior rule than what -- than the categorical
21 denial that emerged in the trial court here. I
22 do think it would kind of be --

23 JUSTICE SOTOMAYOR: I -- I'm not --
24 I'm not quite sure why he used the word
25 "plausible," because that seems to negate --

1 might as well give absolute if you're saying
2 plausible because anybody could argue
3 plausibility. We don't even require plausible.
4 We require reasonable in qualified immunity. So
5 --

6 JUSTICE ALITO: Well, I mean, one
7 might argue that it isn't plausibly legal to
8 order SEAL Team 6 -- and I -- I -- I -- I don't
9 want to slander SEAL Team 6 --

10 (Laughter.)

11 JUSTICE ALITO: -- because they're --
12 no, seriously, they're honorable. They're
13 honorable officers, and they are bound by the
14 Uniform Code of Military Justice not to obey
15 unlawful orders.

16 But no one -- I think one could say
17 it's not plausible that that is legal, that that
18 action would be legal. And -- and I'm sure
19 you've thought -- I've thought of lots of
20 hypotheticals, I'm sure you've thought of lots
21 of hypotheticals, where a president could say,
22 I'm using an official power, and yet the
23 president uses it in an absolutely outrageous
24 manner.

25 MR. SAUER: That, if it were an

1 objective determination, may well be a -- an
2 interesting approach to take in this case.

3 JUSTICE SOTOMAYOR: So apply it to the
4 allegations here. What is plausible about the
5 president insisting in creating a -- a
6 fraudulent slate of electoral candidates?
7 Assuming you accept the facts of the complaint
8 on their face, is that plausible that that would
9 be within his right to do?

10 MR. SAUER: Absolutely, Your Honor.
11 The -- we have the historical precedent we cite
12 in the lower courts of President Grant sending
13 federal troops to Louisiana and Mississippi in
14 1876 to make sure that the Republican electors
15 got certified in those two cases, which
16 delivered the election to Rutherford B. Hayes.
17 The notion that it's completely implausible I
18 think just can't be supported based on the face
19 of this indictment or even really --

20 JUSTICE SOTOMAYOR: Knowing that the
21 slate is fake? Knowing that the slate is fake,
22 that they weren't actually elected, that they
23 weren't certified by the state, he knows all
24 those things?

25 MR. SAUER: The indictment itself

1 alleges -- I dispute that characterization. The
2 -- the indictment affixes the word -- label to
3 the so-called fraudulent electors -- it affixes
4 the word "fraudulent." But that's a complete
5 mischaracterization. On the face of the
6 indictment, it appears that there was no deceit
7 about who had emerged from the relevant state
8 conventions, and this was being done as an
9 alternative basis.

10 But I want to address a more
11 higher-level point, a fundamental point, which
12 is that, as Justice Alito's question indicated,
13 there's a whole series of structural checks
14 other than criminal prosecution that are
15 designed to deter these kind of, you know,
16 outlandish scenarios or extraordinarily
17 obviously illegal things, and that's been viewed
18 in this Court's opinions going all the way back
19 to at least Martin against Mott.

20 JUSTICE KAVANAUGH: Where -- where do
21 you think the D.C. Circuit went wrong in how it
22 determined what was official versus what's
23 personal?

24 MR. SAUER: Well, I read -- I read the
25 -- the opinion below in this particular case as

1 adopting a categorical view. It does not
2 matter, is the -- the logic of their -- their
3 opinion because there is no immunity for
4 official acts and, therefore, you know, that's
5 the end of the story.

6 I don't really think they went wrong
7 in Blassingame in the civil context when they
8 engaged in the same determination with respect
9 to what's official and what isn't official.
10 There, we agree with most of what that opinion
11 said.

12 JUSTICE KAVANAUGH: And for some
13 official acts that are not within the Article II
14 exclusive power, okay, so official acts but not
15 within the Article II exclusive power, even for
16 those, I assume you would think that a clear
17 statement has to be required, a clear statement
18 in the statute covering the president, if the
19 president's official acts are going to be
20 criminalized?

21 MR. SAUER: Absolutely. Obviously,
22 the issue is, you know, at the highest possible
23 level when it comes to the unrestrictable powers
24 like, as in this indictment, the allegation
25 about the performance clause.

1 JUSTICE KAVANAUGH: Well, I'm assuming
2 the exclusive powers are walled off and can't be
3 prosecuted before -- there's a lot of official
4 powers that are not exclusive to the president
5 under his Article II authority, but for those, I
6 understood you to be saying, at a minimum, there
7 would need to be a clear statement in the
8 statute referencing the president so that the
9 president's on notice and can conduct himself or
10 herself accordingly.

11 MR. SAUER: That's absolutely correct,
12 and that would be consistent both with Franklin
13 and Public Citizen and cases -- a long series of
14 other clear statement rule cases.

15 JUSTICE JACKSON: Can I follow up on
16 that because I --

17 JUSTICE BARRETT: Can I ask you -- go
18 ahead.

19 JUSTICE JACKSON: Go ahead.

20 JUSTICE BARRETT: So you concede that
21 private acts don't get immunity?

22 MR. SAUER: We do.

23 JUSTICE BARRETT: Okay. So, in the
24 Special Counsel's brief on pages 46 and 47, he
25 urges us, even if we assume that there was --

1 even if we were to decide or assume that there
2 was some sort of immunity for official acts,
3 that there were sufficient private acts in the
4 indictment for the trial to go -- for the case
5 to go back and the trial to begin immediately.

6 And I want to know if you agree or
7 disagree about the characterization of these
8 acts as private. "Petitioner turned to a
9 private attorney who 'was willing to spread
10 knowingly false claims' of election fraud to
11 spearhead his challenges to the election
12 results." Private?

13 MR. SAUER: As alleged. I mean, we
14 dispute the allegation, but --

15 JUSTICE BARRETT: Of course.

16 MR. SAUER: -- that sounds private to
17 me.

18 JUSTICE BARRETT: Sounds private?

19 "Petitioner conspired with another
20 private attorney who caused the filing in court
21 of a 'verification' signed by Petitioner that
22 contained false allegations to support a
23 challenge." Private?

24 MR. SAUER: That also sounds private.

25 JUSTICE BARRETT: "Three private

1 actors, two attorneys, including [those]
2 mentioned above, and a political consultant --
3 helped implement a plan to submit fraudulent
4 slates of presidential electors to obstruct the
5 certification proceeding, and Petitioner and a
6 co-conspirator attorney directed that effort."

7 MR. SAUER: You read it quickly. I
8 believe --

9 JUSTICE BARRETT: Yeah.

10 MR. SAUER: -- that's private. I
11 don't want to --

12 JUSTICE BARRETT: So those acts, you
13 would not dispute those were private, and you
14 wouldn't raise a claim that they were official?

15 MR. SAUER: As characterized. We
16 would say -- Your Honor, if I may?

17 CHIEF JUSTICE ROBERTS: Sure.

18 MR. SAUER: What we would say is
19 official is things like meeting with the
20 Department of Justice to deliberate about who's
21 going to be the acting attorney general of the
22 United States.

23 JUSTICE BARRETT: Sure.

24 MR. SAUER: Communicating with the
25 American public, communicating with Congress

1 about matters of enormous federal concern.

2 JUSTICE BARRETT: Thank you. Thank
3 you.

4 CHIEF JUSTICE ROBERTS: Thank you,
5 counsel.

6 And what is the consequence in terms
7 of going forward with your acknowledgment that
8 those are private acts as opposed to official
9 acts?

10 MR. SAUER: If you look at the -- if
11 you look at the -- the indictment here, there's
12 a bunch of acts that we think are just clearly
13 official. There may be allegations that mostly
14 relate to what the government has described here
15 as private aim or private end. And the Court
16 should remand or -- or address itself but remand
17 for a Brewster-like determination, which is
18 what's official and what's private. The
19 official stuff has to be expunged completely
20 from the indictment before the case can go
21 forward, and there has to be a determination at
22 least on remand of what's official -- a
23 two-stage determination of what's official and
24 what's private.

25 CHIEF JUSTICE ROBERTS: Well, if you

1 expunge the official part from the indictment,
2 how do you -- I mean, that's like a -- a -- a
3 one-legged stool, right? I mean, giving
4 somebody money isn't bribery unless you get
5 something in exchange, and if what you get in
6 exchange is to become the ambassador to a
7 particular country, that is official, the
8 appointment. It's within the president's
9 prerogatives. The unofficial part is I'm going
10 to get a million dollars for it.

11 So, if you say you have to expunge the
12 official part, how does that go forward?

13 MR. SAUER: In this particular
14 indictment, where we say virtually all the overt
15 conduct is official, we don't believe it would
16 be able to go forward. I mean, there could be a
17 case where it would, but if you look at -- even
18 the government's brief in this case divides up
19 the indictment into things that, other than the
20 electors allegations, don't really -- are --
21 they haven't disputed that they are official
22 acts. But what they do is say, well, we tie it
23 all together by characterizing it as done -- and
24 these are the allegations that the Court just
25 referred to -- by an improper private aim or

1 private end. Again, that's their words.

2 And that just runs loggerheads, you
3 know, dead-set against this Court's case law
4 saying you don't look at, what immunity
5 determinations, the -- the -- the motive --
6 improper motivation or purpose.

7 CHIEF JUSTICE ROBERTS: Thank you.

8 Justice Thomas?

9 JUSTICE THOMAS: Mr. Sauer, in
10 assessing the official acts of a president, do
11 you differentiate between the president acting
12 as president and the president acting as
13 candidate?

14 MR. SAUER: Yes, we do. And -- and we
15 don't dispute essentially the Blassingame
16 discussion of that.

17 JUSTICE THOMAS: Okay. Now --

18 MR. SAUER: But, of course, that has
19 to be done by objective determinations, not by
20 looking at what was the purpose of what you did
21 this, and that's the most important point there.

22 JUSTICE THOMAS: Did you, in this
23 litigation, challenge the appointment of special
24 counsel?

25 MR. SAUER: Not directly. We have

1 done so in the Southern District of Florida
2 case, and we totally agree with the analysis
3 provided by Attorney General Meese and Attorney
4 General Mukasey. And -- and it points to a very
5 important issue here because one of their
6 arguments is, of course, that, you know, we
7 should have this presumption of regularity.
8 That runs into the reality that we have here an
9 extraordinary prosecutorial power being
10 exercised by someone who was never nominated by
11 the president or -- or -- or confirmed by the
12 Senate at any time.

13 So we agree with that position. We --
14 we hadn't raised it yet in this case when this
15 case went up on appeal.

16 CHIEF JUSTICE ROBERTS: Justice Alito?

17 JUSTICE ALITO: When you say that the
18 official acts should be expunged from the
19 indictment, that in itself would not achieve
20 very much unless evidence of those official acts
21 were precluded at trial.

22 So is that what you're saying, that
23 the prosecution should not be permitted at trial
24 to prove the official acts as part of the
25 conspiracies that are alleged?

1 MR. SAUER: Absolutely. And we think
2 that's just the clear implications of Brewster
3 and Johnson and their discussion of this in a
4 very analogous context.

5 JUSTICE ALITO: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor?

8 JUSTICE SOTOMAYOR: I -- I'm a little
9 bit confused by that. If you have a scheme to
10 defraud or a scheme to accept bribery, there's
11 evidence from which you can infer that scheme,
12 and one of it is that the appointment actually
13 happened. It's an official act.

14 You wouldn't expunge that as evidence.
15 You would instruct the jury that there's no
16 liability for the actual appointment, that the
17 liability is for accepting the bribe.

18 Similarly here, I don't think the
19 indictment is charging that the obstruction
20 occurred solely because of conversations with
21 the Justice Department. They're saying you look
22 at all of the private acts and you look in the
23 context of some of the public acts and you can
24 infer the intent, the private intent, from them.

25 So I'm not sure that I understand why

1 your problems couldn't be taken care of at trial
2 with an instruction if we believe -- if the
3 Court were to find -- I'm not even sure how they
4 could -- but if it were to find that some public
5 acts could not be the basis of criminal
6 liability.

7 MR. SAUER: I -- I think the best
8 thing I can say to that is -- and I think this
9 ties into the Chief Justice's question about a
10 one-legged stool. Brewster and Johnson and
11 subsequent cases like Helstoski versus Meanor
12 essentially say that, that this is a one-legged
13 stool problem. It will be difficult for some of
14 these prosecutions to proceed. And that is the
15 implications of official immunity, which is
16 dictated in the Constitution here by the
17 Executive Vesting Clause.

18 CHIEF JUSTICE ROBERTS: Justice Kagan?

19 JUSTICE KAGAN: Can I continue on
20 in -- in Justice Barrett's vein a little bit and
21 ask you about some of the allegations of the
22 indictment and whether they're official acts or
23 not in your view.

24 So the defendant signed a verification
25 affirming false election fraud allegations made

1 on his behalf and a lawsuit filed in his name
2 against the Georgia government -- governor.

3 MR. SAUER: I don't think we've
4 disputed that that's official. I -- I'm sorry,
5 that that is unofficial.

6 JUSTICE KAGAN: That that's
7 unofficial.

8 Same for the defendant called the
9 chairwoman of the Republican National Committee,
10 asked her to gather electors, and targeted
11 states falsely represented to her that such
12 electors' votes would be used only if ongoing
13 litigation in one of the states changed the
14 results in the defendant's favor.

15 MR. SAUER: We have taken the position
16 that that is official.

17 JUSTICE KAGAN: That's official?

18 MR. SAUER: Yes.

19 JUSTICE KAGAN: Why would that be
20 official?

21 MR. SAUER: Because the organization
22 of alternate slates of electors is for -- based
23 on, for example, the historical example of
24 President Grant as something that was done
25 pursuant to and ancillary and preparatory to the

1 exercise of the core Recommendation Clause
2 power.

3 So, when President Trump was --

4 JUSTICE KAGAN: Couldn't -- couldn't
5 he have taken this action just in the status of
6 a candidate?

7 MR. SAUER: The fact that he could
8 have done so doesn't demonstrate that he did do
9 so in this case. And based on the allegations,
10 we think it's clear he did not, that this was
11 done in an official capacity.

12 JUSTICE KAGAN: The defendant asked
13 the Arizona house speaker to call the
14 legislature into session to hold a hearing based
15 on their claims of election fraud.

16 MR. SAUER: Absolutely an official act
17 for the president to communicate with state
18 officials on a matter of enormous federal
19 interest and concern, attempting to defend the
20 -- the integrity of a federal election, to
21 communicate with state officials and urge them
22 to view what he views as their job, under state
23 law and federal law, that's an official act.

24 JUSTICE KAGAN: Well, attempting to
25 defend the integrity of the election, I mean,

1 that's the defense. The allegation is that he
2 was attempting to overthrow a -- an election.

3 MR. SAUER: Essentially exactly right.
4 And neither allegation of what the purpose is
5 should make a determination -- should make a
6 difference as to whether it's immune. That is
7 extremely strong precedent from this Court.

8 JUSTICE KAGAN: Does it -- does it
9 strike you as odd that your understanding of
10 immunity goes way beyond what OLC has ever
11 claimed for the -- a former president?

12 MR. SAUER: I -- I view the OLC
13 opinions here as strongly supporting us because
14 anytime a congressional statute basically got
15 anywhere near touching the president's
16 prerogatives, they've said, oh, we're going to
17 interpret the statute narrowly to avoid that.
18 So we have --

19 JUSTICE KAGAN: Well, that's a
20 different question. I mean, what OLC has always
21 said is that sitting presidents get immunity,
22 but former presidents? No.

23 Now there might be a different
24 argument made about whether a statute or whether
25 a statute as applied to particular conduct is --

1 is -- is properly available against the
2 president, but that's a very different argument
3 than the immunity claim that you're making here,
4 which OLC has definitively not supported.

5 MR. SAUER: I don't -- I don't know if
6 I'd put it that way. I don't recall an opinion
7 directly addressing it, but more fundamental to
8 us, Your Honor, is, in fact, the language of
9 cases like Marbury and statements like made by
10 Benjamin Franklin at the Constitutional
11 Convention, statements of George Washington
12 talking about the massive risk of factional
13 strife and how that could destroy the Republic
14 and erect a new government on the ruins of
15 public liberty.

16 That's what we rely on principally
17 here. I cite the OLC opinions -- because, of
18 course, what you see there is a very strong
19 trend that if there's any statute that might
20 trench in any way on the president's
21 prerogatives, which they -- they adopt -- they
22 interpret it to avoid that.

23 JUSTICE KAGAN: If a president sells
24 nuclear secrets to a foreign adversary, is that
25 immune?

1 MR. SAUER: That sounds like, similar
2 to the bribery example, likely not immune. Now,
3 if it's structured as an official act, he would
4 have to be impeached and convicted first
5 before --

6 JUSTICE KAGAN: What does that mean,
7 if it's structured as an official act?

8 MR. SAUER: Well, I don't know in the
9 hypothetical whether or not that would be an
10 official act. You'd probably have to have more
11 details to apply the Blasingame analysis or
12 even the Fitzgerald analysis that we've been
13 talking about.

14 JUSTICE KAGAN: How about if a
15 president orders the military to stage a coup?

16 MR. SAUER: I -- I think that, as the
17 Chief Justice pointed out earlier, where there's
18 a whole series of, you know, sort of guidelines
19 against that, so to speak, like the UCMJ --
20 prohibits the military from following a
21 plainfully unlawful act, if one adopted Justice
22 Alito's test, that would fall outside.

23 Now, if one adopts, for example, the
24 Fitzgerald test that we advance, that might well
25 be an official act and he would have to be, as

1 I'll say in response to all these kinds of
2 hypotheticals, has to be impeached and convicted
3 before he can be criminally prosecuted.

4 But I emphasize to the Court that --

5 JUSTICE KAGAN: Well, he's gone.

6 Let's say this president who ordered the
7 military to stage a coup, he's no longer
8 president, he wasn't impeached, he couldn't be
9 impeached. But -- but he ordered the military
10 to stage a coup. And you're saying that's an
11 official act?

12 MR. SAUER: I think it would depend on

13 --

14 JUSTICE KAGAN: That's immune?

15 MR. SAUER: I think it would depend on
16 the circumstances whether it was an official
17 act. If it were an official act, again, he
18 would have to be impeached and convicted.

19 JUSTICE KAGAN: Well, what does that
20 mean, depend on the circumstances? He was the
21 president. He is the commander in chief. He
22 talks to his generals all the time. And he told
23 the generals: I don't feel like leaving office,
24 I want to stage a coup.

25 Is -- is -- is that immune?

1 MR. SAUER: If -- if it's an official
2 act, there needs to be impeachment and
3 conviction beforehand because the Framers viewed
4 the risk -- that -- that kind of very low risk
5 --

6 JUSTICE KAGAN: If it's an official
7 act, is it an official act?

8 MR. SAUER: If it's an official act,
9 it's impeaching --

10 JUSTICE KAGAN: Is it an official act?

11 MR. SAUER: On -- on the way you've
12 described that hypothetical, it could well be.
13 I -- I just don't know. You'd have to -- again,
14 it's a fact-specific, context-specific
15 determination that it's contemplating.

16 JUSTICE KAGAN: That answer sounds to
17 me as though it's like, yeah, under my test,
18 it's an official act, but that sure sounds bad,
19 doesn't it?

20 MR. SAUER: Well, it certainly sounds
21 very bad, and that's why the Framers have -- and
22 that's why the Framers have a whole series of
23 structural checks that have successfully for the
24 last 234 years prevented that very kind of
25 extreme hypothetical.

1 And that is the wisdom of the Framers.
2 What they viewed as the risk that needed to be
3 guarded against was not the fact -- the notion
4 that the president might escape, you know,
5 criminal prosecution for something, you know,
6 sort of very, very unlikely in these unlikely
7 scenarios. They viewed much more likely and
8 much more destructive to the Republic the risk
9 of factional strife discussed by George
10 Washington --

11 JUSTICE KAGAN: The Framers did not
12 put an immunity clause into the Constitution.
13 They knew how to. There were immunity clauses
14 in some state constitutions. They knew how to
15 give legislative immunity. They didn't provide
16 immunity to the president.

17 And, you know, not so surprising, they
18 were reacting against a monarch who claimed to
19 be above the law. Wasn't the whole point that
20 the president was not a monarch and the
21 president was not supposed to be above the law?

22 MR. SAUER: I would say two things in
23 response to that. Immunity -- they did put an
24 immunity clause in in a sense. They put in the
25 Executive Vesting Clause, which was originally

1 understood to -- to adopt a broad immunity
2 principle that's set forth in the very broad
3 language of Marbury against Madison.

4 And also, they did discuss and
5 consider what would be the checks on the
6 presidency. And they did not say, oh, we need
7 to have criminal prosecution. Right there at
8 the Constitutional Convention, Benjamin Franklin
9 says, we don't have that. That's not an option.
10 Everybody cried out against that as
11 unconstitutional. The structural check we're
12 adopting is impeachment. And they're very clear
13 on that in pages 64 to 69 of the second volume
14 of Farent.

15 JUSTICE KAGAN: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Gorsuch?

18 JUSTICE GORSUCH: Just returning to
19 the Chief Justice's hypothetical about the
20 ambassador sale and bribery, Congress has a
21 statute that specifically names the president
22 and says he can be criminally prosecuted for
23 bribery, presumably after he leaves office.

24 Outside the core areas that -- that
25 Justice Kavanaugh was talking about, when

1 Congress speaks clearly, couldn't a statute like
2 that -- Congress provide a statute like that
3 that would allow all manner of evidence to come
4 in to prove the case?

5 MR. SAUER: I think our position is
6 that would have to be an unofficial act, purely
7 private conduct, for that prosecution to go
8 forward.

9 JUSTICE GORSUCH: All right. But --
10 but outside the core areas of executive power,
11 if there is a clear statement from Congress that
12 something is unlawful and it applies to the
13 president, I -- I'm struggling to see why in
14 that case perhaps the evidence could come in.

15 MR. SAUER: Yeah. The strongest
16 possible case in our view is what you've
17 described as kind of the core executive powers,
18 the unrestrictable powers within the meaning of
19 Seila Law. But, again, the holding of, for
20 example, Brewster and Johnson that we've relied
21 on doesn't turn on how central it is of -- of a
22 legislative act. It just says, if it's an
23 official act, which, here, we would say is --
24 applies basically the outer perimeter test of
25 Fitzgerald against Nixon. That doesn't come in.

1 JUSTICE GORSUCH: What -- what would
2 happen if presidents were under fear -- fear
3 that their successors would criminally prosecute
4 them for their acts in office, whether it's --
5 whether they've engaged in drone strikes -- all
6 the hypotheticals. I'm not going to go through
7 them. It seems to me like one of the incentives
8 that might be created is for presidents to try
9 to pardon themselves.

10 Do you have any thoughts about that?

11 MR. SAUER: That is -- I didn't think
12 of that until Your Honor asked it. That is
13 certainly one incentive that might be created.
14 What we think is most important is --

15 JUSTICE GORSUCH: I mean, we've never
16 answered whether a president can do that.
17 Happily --

18 MR. SAUER: And the --

19 JUSTICE GORSUCH: Happily, it's never
20 been presented to us.

21 MR. SAUER: And if -- if the doctrine
22 of immunity remains in place, that's likely to
23 remain the case for those very issues. As
24 Fitzgerald, I think, very powerfully emphasized,
25 the real concern here is, is there going to be

1 bold and fearless action? Is the president
2 going to have to make a controversial decision
3 where his political opponents are going to come
4 after him the minute he leaves office? Is that
5 going to unduly deter, is that going to dampen
6 the ardor of that president to do what our
7 constitutional structure demands of him or her,
8 which is bold and fearless action in the face of
9 controversy?

10 JUSTICE GORSUCH: And perhaps, if he
11 feels he has to, he'll pardon himself every --
12 every -- every four years from now on.

13 MR. SAUER: But that, as the Court
14 pointed out, wouldn't provide the security
15 because the legality of that is something that's
16 never been addressed.

17 JUSTICE GORSUCH: Now one of the
18 checks and balances in addition to impeachment
19 that you've discussed is subordinate liability.

20 You don't contest that everybody
21 following an unlawful order beneath the
22 president of the United States can be
23 immediately prosecuted, do you?

24 MR. SAUER: I'm sorry. If -- if the
25 Court is asking whether they could be --

1 JUSTICE GORSUCH: If the president
2 gives an unlawful order, call in the troops,
3 what -- all the examples we've heard, it --
4 every subordinate beneath him faces criminal
5 prosecution, don't they?

6 MR. SAUER: That is what Gouverneur
7 Morris said explicitly at the Constitutional
8 Convention, that his co-agitators could be
9 prosecuted. There is an important caveat
10 because, of course, there would have to be a --
11 a statute that would govern that for them to be
12 prosecuted to that extent.

13 JUSTICE GORSUCH: Oh, we've got lots
14 of statutes. The criminal law books are -- are
15 replete. But -- I mean, do you agree, is that
16 one check that's available?

17 MR. SAUER: Absolutely. And, again,
18 the only caveat that I was making is, if that
19 statute was doing what Marbury says you can't
20 do, which is going after the subordinates to
21 restrict, for example, a core executive
22 function, the Franklin clear statement rule
23 might be triggered, and -- you might not be able
24 to go after that president.

25 So I don't think Congress can say,

1 well, we can't go after the president directly,
2 but we're going to criminalize the way that the
3 president speaks to Congress under the exercise
4 of the Recommendations Clause, and, therefore,
5 we're going to put in a criminal statute that
6 says, if you provide false information to
7 Congress in -- in carrying out the president's
8 recommendation powers, you -- you can be
9 immediately prosecuted. That would at least be
10 a very difficult question.

11 But the fundamental point of drawing
12 that distinction between the president himself
13 and his co-agitators, in the word of Gouverneur
14 Morris at the Constitutional Convention, is an
15 excellent distinction.

16 CHIEF JUSTICE ROBERTS: Justice
17 Kavanaugh?

18 JUSTICE KAVANAUGH: Just to follow up
19 on the OLC opinions question, as you read them
20 and I think I read them, they articulate a clear
21 statement rule, as do this Court's cases for
22 covering official acts. And your point, I
23 think, but I just want to underscore this, is
24 that none of the statutes alleged here or cited
25 here have a clear statement covering the

1 president, therefore, meaning that the president
2 can't be charged for any official acts under
3 this -- under these statutes.

4 MR. SAUER: That's absolutely correct.
5 They're extended way beyond. I mean, this is --

6 JUSTICE KAVANAUGH: Now that's
7 separate from the question of what's official
8 versus what's personal. But, for that bucket
9 that is official, there's no clear statement,
10 period?

11 MR. SAUER: That's right. And as to
12 purely private conduct, we don't think the clear
13 statement rule would be invoked. But, as to
14 official acts, these statutes, the ones charged
15 in the indictment, are just way far afield from
16 purporting to criminalize in clear terms the
17 president's official acts.

18 JUSTICE KAVANAUGH: And then your --
19 just to clarify this, the -- the president's not
20 above the law, the president's not a king, the
21 Founders thought that. I think your point in
22 response to that is the president is subject to
23 prosecution for all personal acts, just like
24 every other American for personal acts. The
25 question is acts taken in an official capacity.

1 MR. SAUER: That's correct. And even
2 those, of course, if there was impeachment and
3 conviction, could be prosecuted on our view.
4 And we'd emphasize the whole series of
5 structural checks in addition to that which
6 deter those kind -- and have successfully
7 deterred presidential misfeasance for 234 years.

8 JUSTICE KAVANAUGH: Then, on the
9 source of immunity, it's not explicit in the
10 Constitution, but also executive privilege is
11 not explicit in the Constitution, yet in United
12 States versus Nixon, the Court unanimously said
13 that the Article II executive power in the
14 Constitution encompassed executive privilege.
15 And the same principle presumably would apply to
16 executive immunity being encompassed within that
17 executive power as historically understood.

18 MR. SAUER: That's absolutely correct.
19 And there's a very telling passage in Free
20 Enterprise Fund where this Court talked about
21 how there's a letter from James Madison to
22 Thomas Jefferson at the time of the founding
23 where Madison said, hey, the -- as to the
24 removal power, they did not expressly take this
25 away, so the 1789 Congress understood that it

1 was left in place.

2 So, if the original understanding of
3 the Executive Vesting Clause is broad enough to
4 encompass that, it would have to be expressly
5 taken away, which is the opposite of the
6 presumption that they're advancing here.

7 JUSTICE KAVANAUGH: And then, lastly,
8 I think you've acknowledged in response to
9 others' questions that some of the acts in the
10 indictment are private and your view is that
11 some are official. Is it your position then
12 that that analysis of which is which should be
13 undertaken in the first instance by the D.C.
14 Circuit or the district court?

15 MR. SAUER: Most likely the district
16 court under the logic of Anderson.

17 JUSTICE KAVANAUGH: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Barrett?

20 JUSTICE BARRETT: So, Mr. Sauer,
21 you've argued that the Impeachment Clause
22 suggests or requires impeachment to be a gateway
23 to criminal prosecution, right?

24 MR. SAUER: Yes. I think that's the
25 plain meaning of that second phrase in the

1 clause.

2 JUSTICE BARRETT: Okay. So there are
3 many other people who are subject to
4 impeachment, including the nine sitting on this
5 bench, and I don't think anyone has ever
6 suggested that impeachment would have to be the
7 gateway to criminal prosecution for any of the
8 many other officers subject to impeachment.

9 So why is the president different when
10 the Impeachment Clause doesn't say so?

11 MR. SAUER: Someone very important has
12 made the opposite suggestion as to the president
13 himself, which is Solicitor General Bork, which
14 is reaffirmed in the OLC opinions on this, where
15 the -- where Solicitor General Bork, in 1973, as
16 to the issue of the vice president, reviewed the
17 historical materials, and he said the sequence
18 is mandatory only as to the president.

19 That is DOJ's view of the original
20 understanding of the Impeachment Judgment
21 Clause, which is exactly our position. The
22 sequence is mandatory only as to the president.
23 Keep in mind that the criminal prosecution of a
24 president -- president prior to impeachment
25 contradicts, in our view, the plain language of

1 the Constitution but also hundreds of years of
2 history and what DOJ admits is the Framers'
3 intent.

4 And so we say that that practice,
5 whatever its validity, should not be extended to
6 this novel context, where it clashes with the
7 constitutional structure.

8 JUSTICE BARRETT: What if the criminal
9 conduct isn't discovered until after the
10 president is out of office, so there was no
11 opportunity for impeachment?

12 MR. SAUER: We say the Framers assumed
13 the risk that -- of under-enforcement by
14 adopting these very structural checks. As
15 Justice Scalia said in Morrison against Olson,
16 the separation of powers prevents us from
17 righting every wrong, but it does so that we do
18 not lose liberty.

19 JUSTICE BARRETT: Okay. And -- and
20 the Special Counsel makes a point that I think
21 is a pretty compelling one. You admit that if
22 the president were successfully impeached that
23 he could be criminally prosecuted after
24 impeachment, right?

25 MR. SAUER: Assuming the prosecution

1 was for the same conduct of which he was
2 convicted, not impeached. He must be convicted.
3 That word "conviction" is right there in the
4 clause.

5 JUSTICE BARRETT: Okay. Okay.
6 Granted. But you also say that these criminal
7 statutes, unless they explicitly mention the
8 president, don't apply to him. So how can you
9 say that he would be subject to prosecution
10 after impeachment while at the same time saying
11 that he's exempt from these criminal statutes?

12 MR. SAUER: Well, there are statutes,
13 as they concede, where a president -- Congress
14 has purported to do so.

15 JUSTICE BARRETT: A few. Two or
16 three.

17 MR. SAUER: They haven't done a
18 comprehensive review. I think it -- this looks
19 like all they did was text search for
20 "president" in 18 U.S. Code. Again, under
21 Franklin, that's a very telling indication that
22 the word "president" is not in the statute isn't
23 necessarily a -- a -- a magic word requirement,
24 so to speak.

25 But more fundamentally than that --

1 more fundamentally than that, they concede there
2 are statutes that exist. In addition to that,
3 much impeachment could occur as a result of
4 private conduct.

5 So the Impeachment Judgment Clause
6 does do significant work by authorizing the
7 subsequent prosecution of a president there
8 because of what the Framers, if you look at what
9 they're discussing in the thing, is -- or in the
10 Constitutional Convention, is principally
11 concerns about private conduct, which, of
12 course, we concede are not immune.

13 JUSTICE BARRETT: Okay. So just to
14 pick up Justice Kagan's example of a president
15 who orders a coup, let's imagine that he is
16 impeached and convicted for ordering that coup.
17 And let's just accept for the sake of argument
18 your position that that was official conduct.

19 You're saying that he couldn't be
20 prosecuted for that, even after a conviction and
21 an impeachment proceeding, if there was not a
22 statute that expressly referenced the president
23 and made it criminal for the president?

24 MR. SAUER: There would have to be
25 a -- a statute that made a clear statement that

1 Congress purported to regulate the president's
2 conduct.

3 JUSTICE BARRETT: Okay. Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Jackson?

6 JUSTICE JACKSON: So I think I now
7 understand better your position. In -- in your
8 discussions with Justice Kavanaugh, it became
9 clear that you are saying that for the private
10 acts of a president, there's no immunity, but
11 for the official acts of the president, there is
12 immunity.

13 Is that your position?

14 MR. SAUER: I agree with that.

15 JUSTICE JACKSON: All right. So one
16 thing that occurs to me is that this sort of
17 difficult line-drawing problem that we're having
18 with all of these hypotheticals, is this a
19 private act or a public act, is being
20 necessitated by that assumption, because, of
21 course, if official acts didn't get absolute
22 immunity, then it wouldn't matter. We wouldn't
23 have to identify which are private and which are
24 public, correct?

25 MR. SAUER: That, in fact, is the

1 approach of the D.C. Circuit. There's no
2 determination that needs to be made --

3 JUSTICE JACKSON: Right. But I'm
4 just -- I'm just making -- so, to the extent
5 we're worried about, like, how do we figure out
6 whether it's private or public, we have to -- we
7 have to understand that we're only doing that
8 because of an underlying assumption that the
9 public acts get immunity. So let me explore
10 that assumption.

11 Why is it as a matter of theory -- and
12 I'm hoping you can sort of zoom way out here --
13 that the president would not be required to
14 follow the law when he is performing his
15 official acts?

16 Everyone else -- everyone else, there
17 are lots of folks who have very high-powered
18 jobs, who make a lot of consequential decisions,
19 and they do so against the backdrop of potential
20 criminal prosecution if they should break the
21 law in that capacity.

22 And we understand and we know as a
23 matter of fact that the president of the United
24 States has the best lawyers in the world. When
25 he's making a decision, he can consult with

1 pretty much anybody as to whether or not this
2 thing is criminal or not.

3 So why would we have a situation in
4 which we would say that the president should be
5 making official acts without any responsibility
6 for following the law?

7 MR. SAUER: I respectfully disagree
8 with that characterization. The president
9 absolutely does have responsibility. He
10 absolutely is required to follow the law in all
11 of his official acts, but the remedy for that is
12 the question, could he be subject to personal
13 vulnerability, sent to prison --

14 JUSTICE JACKSON: But --

15 MR. SAUER: -- for making a bad
16 decision after he leaves office.

17 JUSTICE JACKSON: But -- but other
18 people who have consequential jobs and who are
19 required to follow the law make those
20 determinations against the backdrop of that same
21 kind of risk. So what is it about the president
22 -- I mean, I've heard you say it's because the
23 president has to be able to act boldly, do --
24 you know, make kind of consequential decisions.

25 I mean, sure, but, again, there are

1 lots of people who have to make life-and-death
2 kinds of decisions and yet they still have to
3 follow the law, and if they don't, they could be
4 sent to prison, et cetera, et cetera. So --

5 MR. SAUER: I'd say two things in
6 response to that --

7 JUSTICE JACKSON: Yes.

8 MR. SAUER: -- both from Fitzgerald.
9 That's the very sort of inference or reasoning
10 that this Court rejected in Fitzgerald.

11 JUSTICE JACKSON: No, but let me just
12 -- Fitzgerald was a civil situation in which the
13 president actually was in a different position
14 than other people because of the nature of his
15 job, the high-profile nature and the fact that
16 he touches so many different things, when you're
17 talking about private civil liability, you know,
18 anybody on the street can sue him, we could see
19 that the president was sort of different than
20 the ordinary person when you say should he be
21 immune from civil liability from anybody who
22 wants to sue him.

23 But, when we're talking about criminal
24 liability, I don't understand how the president
25 stands in any different position with respect to

1 the need to follow the law as he is doing his
2 job than anyone else.

3 MR. SAUER: He -- he is required to
4 follow the law. And what Fitzgerald said is
5 that the --

6 JUSTICE JACKSON: But he's not if
7 there's no criminal -- if there's no threat of
8 criminal prosecution, what prevents the
9 president from just doing whatever he wants?

10 MR. SAUER: All the structural checks
11 that are identified in Fitzgerald and a whole
12 series of this Court's cases that go back to
13 Martin against Mott, for example, impeachment,
14 oversight by Congress, public oversight.
15 There's a long series.

16 And Fitzgerald directly addresses this
17 in the civil context, and we think --

18 JUSTICE JACKSON: Well, I'm not sure
19 --

20 MR. SAUER: -- that language naturally
21 imports to the criminal context.

22 JUSTICE JACKSON: -- I'm not sure
23 that's -- that that's much of a backstop. And
24 what I'm, I guess, more worried about, you seem
25 to be worried about the president being chilled.

1 I think that we would have a really
2 significant opposite problem if the president
3 wasn't chilled. If someone with those kinds of
4 powers, the most powerful person in the world
5 with the greatest amount of authority could go
6 into office knowing that there would be no
7 potential penalty for committing crimes, I'm
8 trying to understand what the disincentive is
9 from turning the Oval Office into, you know, the
10 -- the -- the -- the seat of criminal activity
11 in this country.

12 MR. SAUER: I don't think there's any
13 allegation of that in this case. And what
14 George Washington said is -- what Benjamin
15 Franklin said is we view the prosecution of a
16 chief executive as something that everybody
17 cried out against as unconstitutional.

18 And what George Washington said is
19 we're worried about factional strife which
20 will bring the Republic --

21 JUSTICE JACKSON: No. I'm -- so let
22 me -- let me -- let me put this worry on the
23 table. If the potential for criminal liability
24 is taken off the table, wouldn't there be a
25 significant risk that future presidents would be

1 emboldened to commit crimes with abandon while
2 they're in office?

3 It's right now the fact that we're
4 having this debate because OLC has said that
5 presidents might be prosecuted. Presidents from
6 the beginning of time have understood that
7 that's a possibility. That might be what has
8 kept this office from turning into the kind of
9 crime center that I'm envisioning.

10 But, once we say no criminal
11 liability, Mr. President, you can do whatever
12 you want, I'm worried that we would have a worse
13 problem than the problem of the president
14 feeling constrained to follow the law while he's
15 in office.

16 MR. SAUER: I respectfully disagree
17 with that because it -- the -- the regime you've
18 described is the regime we've operated under for
19 234 years. There has not been an expectation
20 based on 234 years of unbroken political --

21 JUSTICE JACKSON: All right. Let me
22 ask you another question that --

23 MR. SAUER: -- or legal tradition that
24 that might occur.

25 JUSTICE JACKSON: -- let me ask you

1 another question about this clear statement line
2 of questioning.

3 First of all, I -- I didn't see you
4 argue that below. I don't know -- I -- I
5 understand that you had that set of in your
6 briefs here, but did you argue before the D.C.
7 Circuit something about a clear statement with
8 respect to the statutes?

9 MR. SAUER: Yes. In our separately
10 filed motion for -- motion to dismiss based on
11 statutory grounds, we extensively argued not
12 just this clear statement rule but a whole
13 panoply of clear statement rules --

14 JUSTICE JACKSON: Right. But that's
15 not -- that's not the question presented in this
16 case. The question presented in this case comes
17 out of your motion for immunity. So, to bring
18 in now an argument that you didn't raise below,
19 it seems to me you forfeited it, no?

20 MR. SAUER: I -- I believe it's fairly
21 included within the question presented,
22 especially --

23 JUSTICE JACKSON: Why?

24 MR. SAUER: Especially because the
25 Court expanded the question presented from what

1 either of the parties submitted to discuss here.

2 JUSTICE JACKSON: But not to statutory
3 interpretation.

4 MR. SAUER: I think --

5 JUSTICE JACKSON: I mean, that -- that
6 argument goes to statutory avoidance, you know,
7 constitutional avoidance, statutory
8 interpretation. You asked for immunity, which
9 is a totally different thing.

10 MR. SAUER: I think they're very
11 closely related logically. The question is --
12 is does immunity exist and to what extent does
13 it. And the argument is immunity at least
14 exists to the extent that it raises a grave
15 constitutional question, and that triggers the
16 clear statement rule. That's a really tight
17 logical relationship.

18 JUSTICE JACKSON: But that's totally
19 circular. You're -- you -- you -- you use that
20 argument to avoid constitutional questions. You
21 are asking us a constitutional question here.
22 So it doesn't even make sense to talk about
23 clear statement in -- rule the way that it's
24 come up in the context of an immunity question.

25 But let me just -- let me ask you this

1 about it. I had one more question. Yeah. So
2 what -- what is the argument that the president
3 of the United States, who you say is bound by
4 the law, is not on notice that he has to do his
5 job consistent with the law?

6 I mean, to the extent that the clear
7 statement rule comes in at all, it's about the
8 person not being on notice. So I -- I guess I
9 don't understand why Congress in every criminal
10 statute would have to say and the president is
11 included. I thought that was the sort of
12 background understanding that if they're
13 enacting a generally applicable criminal
14 statute, it applies to the president just like
15 everyone else.

16 So -- so what is the clear statement
17 that would have to be made in this context?

18 MR. SAUER: Under Franklin and under
19 Public Citizen, Congress has to speak clearly
20 before it interferes with the president's
21 powers, and we have here an indictment that
22 seeks to criminalize objective conduct that
23 falls within the heartland of core executive
24 authority.

25 JUSTICE JACKSON: Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 Mr. Dreeben.

4 ORAL ARGUMENT OF MICHAEL R. DREEBEN
5 ON BEHALF OF THE RESPONDENT

6 MR. DREEBEN: Mr. Chief Justice, and
7 may it please the Court:

8 This Court has never recognized
9 absolute criminal immunity for any public
10 official. Petitioner, however, claims that a
11 former president has permanent criminal immunity
12 for his official acts, unless he was first
13 impeached and convicted. His novel theory would
14 immunize former presidents from criminal
15 liability for bribery, treason, sedition,
16 murder, and, here, conspiring to use fraud to
17 overturn the results of an election and
18 perpetuate himself in power.

19 Such presidential immunity has no
20 foundation in the Constitution. The Framers
21 knew too well the dangers of a king who could do
22 no wrong. They therefore devised a system to
23 check abuses of power, especially the use of
24 official power for private gain.

25 Here, the executive branch is

1 enforcing congressional statutes and seeking
2 accountability for Petitioner's alleged misuse
3 of official power to subvert democracy. That is
4 a compelling public interest.

5 In response, Petitioner raises
6 concerns about potential abuses. But
7 established legal safeguards provide layers of
8 protections, with the Article III courts
9 providing the ultimate check. The existing
10 system is a carefully balanced framework. It
11 protects the president but not at the high
12 constitutional cost of blanket criminal
13 immunity.

14 That has been the understanding of
15 every president from the framing through
16 Watergate and up to today. This Court should
17 preserve it.

18 I welcome the Court's questions.

19 JUSTICE THOMAS: Mr. Dreeben, does the
20 president have immunity, or are you saying that
21 there's no immunity, presidential immunity, even
22 for official acts?

23 MR. DREEBEN: Yes, Justice Thomas, but
24 I think that it's important to put in
25 perspective the position that we are offering

1 the Court today. The president, as the head of
2 the Article II branch, can assert as-applied
3 Article II objections to criminal laws that
4 interfere with an exclusive power possessed by
5 the president or that prevent the president from
6 accomplishing his constitutionally assigned
7 functions.

8 That is the constitutional doctrine
9 that currently governs the separation of powers.
10 What Petitioner is asking for is a broad blanket
11 immunity that would protect the president, a
12 former president, from any criminal exposure
13 absent impeachment and conviction, which has
14 never happened in our history.

15 And we submit that is not necessary in
16 order to assure that the president can perform
17 all of the important tasks that the Constitution
18 reposes in him.

19 JUSTICE THOMAS: Over -- over in the
20 not so distant past, the presidents or certain
21 presidents have engaged in various activity,
22 coups or operations like Operation Mongoose when
23 I was a teenager, and yet there were no
24 prosecutions.

25 MR. DREEBEN: Yeah.

1 JUSTICE THOMAS: Why? If you -- if
2 what you're saying is right, it -- it would seem
3 that that would have been ripe for criminal
4 prosecution of someone.

5 MR. DREEBEN: So, Justice Thomas, I
6 think this is a central question. The reason
7 why there have not been prior criminal
8 prosecutions is that there were not crimes. And
9 I want to explain why there are layers of
10 safeguards that assure that former presidents do
11 not have to lightly assume criminal liability
12 for any of their official acts.

13 At the outset, there is a statutory
14 construction principle that is applicable here.
15 It arises when there is a serious constitutional
16 question about applying a criminal statute to
17 the president's acts. It is not -- and I'm sure
18 that we will discuss this -- that no statute can
19 apply to the president in his official capacity
20 absent a designation of the president in it.
21 But there is a principle that if there is a
22 serious constitutional question, courts will
23 strive to construe the statute so that it does
24 not apply to the president.

25 In addition to that, the president, I

1 think has been mentioned earlier, has access to
2 advice from the attorney general. And it would
3 be a due process problem to prosecute a
4 president who received advice from the attorney
5 general that his actions were lawful absent the
6 kind of collusion or conspiracy that itself
7 represented a criminal violation, which I don't
8 really see as being a --

9 JUSTICE THOMAS: Well --

10 MR. DREEBEN: -- realistic option.

11 And then, if I could say one more
12 thing, because you raised the question about
13 potential overseas taking of life, and the
14 Office of Legal Counsel has addressed this quite
15 specifically.

16 There is a background principle of
17 criminal law called the public authority
18 exception to liability, and it is read into
19 federal law unless Congress takes specific
20 action to oust it, which it never has done as
21 far as I am aware.

22 And in a case in which the president
23 sought to engage in overseas activity that would
24 result in the taking of life, OLC did not say
25 the federal murder statute doesn't apply. That

1 would be the -- the thrust of my friend's
2 argument on clear statement.

3 Instead, OLC went through an extensive
4 analysis on why the public authority defense
5 would prevent it from being considered a
6 violation of law to go after a terrorist, for
7 example.

8 CHIEF JUSTICE ROBERTS: Counsel --
9 JUSTICE ALITO: Well, Mr. -- I'm
10 sorry.

11 CHIEF JUSTICE ROBERTS: -- the court
12 of appeals below, whose decision we're
13 reviewing, said: "A former president can be
14 prosecuted for his official acts because the
15 fact of the prosecution means that the former
16 president has allegedly acted in defiance of the
17 laws."

18 It -- do you agree with that
19 statement?

20 MR. DREEBEN: Well, I think it sounds
21 tautologically true, but I -- I want to
22 underscore that the obligation of a president is
23 to take care that the laws are faithfully
24 executed.

25 CHIEF JUSTICE ROBERTS: Well, I -- the

1 -- I think it sounds tautologically true as
2 well, and that, I think, is the clearest
3 statement of the court's holding, which is why
4 it concerns me.

5 It -- It -- as I read it, it says
6 simply a former president can be prosecuted
7 because he's being prosecuted.

8 MR. DREEBEN: Well, I -- I would not
9 suggest that that's either the proper approach
10 in this case or certainly not the government's
11 approach. A prosecution does, of course, invoke
12 federal criminal law. The allegations have to
13 be presented to a grand jury, which votes upon
14 the indictment.

15 CHIEF JUSTICE ROBERTS: Well, that's
16 what I -- I mean, shortly after that statement
17 in the court, that -- court's opinion, that's
18 what they said, but there's no reason to worry
19 because the prosecutor will act in good faith
20 and there's no reason to worry because a grand
21 jury will have returned the indictment.

22 Now you know how easy it is in many
23 cases for a prosecutor to get a grand jury to
24 bring an indictment, and reliance on the faith
25 -- good faith of the prosecutor may not be

1 enough in the -- some cases. I'm not suggesting
2 here.

3 So, if it's tautological and those are
4 the only protections that the court of appeals
5 below gave and that is no longer your position,
6 you're not defending that position, why
7 shouldn't we either send it back to the court of
8 appeals or issue an opinion making clear that
9 that's not the law?

10 MR. DREEBEN: Well, I -- I am
11 defending the court of appeals' judgment. And I
12 do think that there are layered safeguards that
13 the Court can take into account that will
14 ameliorate concerns about unduly chilling
15 presidential conduct.

16 That concerns us. We are not
17 endorsing a regime that we think would expose
18 former presidents to criminal prosecution in bad
19 faith, for political animus, without adequate
20 evidence. A politically driven prosecution
21 would violate the Constitution under *Wayte*
22 versus United States.

23 It's not something within the arsenal
24 of prosecutors to do. Prosecutors take an oath.
25 The attorney general takes an oath. So --

1 CHIEF JUSTICE ROBERTS: Well --

2 MR. DREEBEN: -- I -- I don't want to
3 overstate the -- Your Honor's concern with
4 potentially relying solely on good faith, but
5 that's an ingredient. And then the courts stand
6 ready to adjudicate motions based on selective
7 prosecution, political animus. This Court
8 relied on those very protections in --

9 CHIEF JUSTICE ROBERTS: Right.

10 MR. DREEBEN: -- the Vance case just
11 two years ago.

12 JUSTICE KAVANAUGH: What's the test --

13 CHIEF JUSTICE ROBERTS: But -- but
14 what -- what concerns me is, as you know, the
15 court of appeals did not get into a focused
16 consideration of what acts we're talking about
17 --

18 MR. DREEBEN: Mm-hmm.

19 CHIEF JUSTICE ROBERTS: -- or what
20 documents we're talking about because of its
21 adoption of what you termed, and I agreed quite
22 correctly, as a tautological statement. Because
23 the fact of prosecution was enough, enough to
24 take away any official immunity, the fact of
25 prosecution, they had no need to look at what

1 courts normally look at when you're talking
2 about a privilege or immunity question.

3 MR. DREEBEN: Well, I -- I think I
4 would take issue, Mr. Chief Justice, with the
5 idea of taking away immunity. There is no
6 immunity that is in the Constitution, unless
7 this Court creates it today. There certainly is
8 no textual immunity. We do not submit that
9 that's the end of the story. United States
10 versus Nixon wasn't a textually-based case.
11 Neither was Nixon versus Fitzgerald. We endorse
12 both of those holdings.

13 But what is important is that no
14 public official has ever had the kind of
15 absolute criminal immunity that my friend speaks
16 of, even with respect to the Speech or Debate
17 Clause. It's very narrow. It's focused on
18 legislative acts. It's not focused on
19 everything that a Congressman does.

20 And it responds to a very specific
21 historical circumstance that basically involved
22 the two other branches potentially harassing
23 legislators and preventing them from doing their
24 jobs. That's why it ended up in the
25 Constitution.

1 Nothing like that ended up in -- in
2 the Constitution for the presidents, and that's
3 because one of the chief concerns of the Framers
4 was the risk of presidential misconduct. They
5 labored over this. They adopted an impeachment
6 structure that separated removal from office as
7 a political remedy from criminal prosecution.

8 This departed from the British model.
9 The British model was you get impeached and
10 criminally prosecuted and convicted in the same
11 proceeding. The Framers did not want that.
12 They wanted a political remedy in case a
13 president was engaging in conduct that
14 endangered the nation. He could be removed.

15 He can't be prosecuted while he's a
16 sitting president. That's been the longstanding
17 Justice Department position.

18 JUSTICE ALITO: Mr. Dreeben, you
19 dispute the proposition that a former president
20 has some form of immunity.

21 MR. DREEBEN: Mm-hmm.

22 JUSTICE ALITO: But, as I understand
23 your argument, you do recognize that a former
24 president has a form of special protection,
25 namely, that statutes that are applicable to

1 everybody must be interpreted differently under
2 some circumstances when they are applied to a
3 former president.

4 Isn't that true?

5 MR. DREEBEN: It -- it is true
6 because, Justice Alito, of the general principle
7 that courts construe statutes to avoid serious
8 constitutional questions. And that has been the
9 longstanding practice of the Office of Legal
10 Counsel in the Department of Justice.

11 JUSTICE ALITO: All right. So this is
12 more, I think, than just a -- a quarrel about
13 terminology, whether what the former president
14 gets is some form of immunity or some form of
15 special protection, because it involves this
16 difference which I'm sure you're very well aware
17 of.

18 That if it's just a form of special
19 protection, in other words, statutes will be
20 interpreted differently as applied to a former
21 president, then that is something that has to be
22 litigated at trial. The -- the former president
23 can make a motion to dismiss and may cite OLC
24 opinions, and the district court may say: Well,
25 that's fine, I'm not bound by OLC and I

1 interpret it differently, so let's go to trial.

2 And then there has to be a trial, and
3 that may involve great expense and it may take
4 up a lot of time, and during the trial, the --
5 the former president may be unable to engage in
6 other activities that the former president would
7 want to engage in. And then the outcome is
8 dependent on the jury, the instructions to the
9 jury and how the jury returns a verdict, and
10 then it has to be taken up on appeal.

11 So the protection is greatly diluted
12 if you take the form -- if it takes the form
13 that you have proposed. Now why is that better?

14 MR. DREEBEN: It -- it's better
15 because it's more balanced. The -- the blanket
16 immunity that Petitioner is arguing for just
17 means that criminal prosecution is off the
18 table, unless he says that impeachment and
19 conviction have occurred.

20 Those are political remedies that are
21 extremely difficult to achieve. In a case where
22 the conduct, misconduct, occurs close to the end
23 of a president's term, Congress is unlikely to
24 crank up the machinery to do it, and if the
25 impeachment trial has to occur after the

1 president has left office, there's an open
2 question about whether that can happen at all.

3 So --

4 JUSTICE ALITO: Well it -- you're
5 arguing against the most far-reaching --

6 MR. DREEBEN: Correct.

7 JUSTICE ALITO: -- aspects of -- of
8 Mr. Sauer's argument, right?

9 MR. DREEBEN: That -- that is -- that
10 is correct. And -- and let me turn then to why
11 we --

12 JUSTICE KAVANAUGH: Well -- well, what
13 about, to unpack it a little more, do you agree
14 that there's some aspects of Article II
15 presidential power that are exclusive and that
16 Congress cannot regulate and therefore cannot
17 criminalize?

18 MR. DREEBEN: Absolutely.

19 JUSTICE KAVANAUGH: Okay. For other
20 official acts that the president may take that
21 are not within that exclusive power, assume for
22 the sake of argument this question that there's
23 not blanket immunity for those --

24 MR. DREEBEN: Mm-hmm.

25 JUSTICE KAVANAUGH: -- official acts

1 but that to preserve the separation of powers,
2 to provide fair notice, to make sure Congress
3 has thought about this, that Congress has to
4 speak clearly to criminalize official acts of
5 the president by a specific reference.

6 That seems to be what the OLC opinions
7 suggest -- I know you have a little bit of a
8 disagreement with that -- and what this Court's
9 cases also suggest.

10 MR. DREEBEN: So, Justice Kavanaugh,
11 I'd like -- like to take all of those in turn
12 because I don't think this Court's cases speak
13 that broadly. I definitely don't think that the
14 Office of Legal Counsel opinions stand for this
15 broad proposition that unless the president is
16 specifically named, he's not in -- in the
17 statute. And I don't think that that's
18 necessary in order to afford adequate protection
19 for the president's valid Article II functions.

20 JUSTICE KAVANAUGH: Well, you said
21 unless -- I'm sorry to interrupt, but I want to
22 just get this out and you can incorporate it in
23 the answer. You said unless there's a serious
24 constitutional question.

25 MR. DREEBEN: Correct.

1 JUSTICE KAVANAUGH: Well, it's --
2 isn't -- it's a serious constitutional question
3 whether a statute can be applied to the
4 president's official acts. So wouldn't you
5 always interpret the statute not to apply to the
6 president, even under your formulation, unless
7 Congress had spoken with some clarity?

8 MR. DREEBEN: I -- I don't think -- I
9 don't think across the board that a serious
10 constitutional question exists on applying any
11 criminal statute to the president.

12 JUSTICE KAVANAUGH: The problem is the
13 vague stat, you know, obstruction and 371,
14 conspiracy to defraud the United States, can be
15 used against a lot of presidential activities
16 historically with a -- a creative prosecutor who
17 wants to go after a president.

18 MR. DREEBEN: Well, let me try to
19 backtrack a little bit to the --

20 JUSTICE KAVANAUGH: That's the --
21 that's the -- that's what we're talking about
22 historically, is the risk that -- and -- and
23 going forward the -- the risk. So you can take
24 all of that.

25 MR. DREEBEN: I -- I think that the --

1 the question about the risk is very serious,
2 and, obviously, it is a question that this Court
3 has to evaluate.

4 For the executive branch, our view is
5 that there is a -- a balanced protection that
6 better serves the interests of the Constitution
7 that incorporates both accountability and
8 protection for the president. And I want to go
9 through the protections that do exist, but
10 perhaps it's worth returning at the outset to
11 the statutory construction question that you
12 raised.

13 The Office of Legal Counsel has said
14 the offense of bribery, of course, applies to
15 the president. It does not name the president,
16 Justice Gorsuch. Section 201 does not
17 specifically name the president.

18 JUSTICE KAVANAUGH: Right. Well,
19 assume that's personal. So that's --

20 MR. DREEBEN: Well, I think that
21 it's -- it's --

22 JUSTICE KAVANAUGH: -- that's what
23 Brewster said.

24 MR. DREEBEN: It --

25 JUSTICE GORSUCH: The bribe -- bribery

1 statute in 607 says the president. I've got it
2 in front of me. And so there is -- there is
3 that.

4 MR. DREEBEN: Well, Section --

5 JUSTICE GORSUCH: Let -- let -- let me
6 just back up, though, just --

7 MR. DREEBEN: Okay.

8 JUSTICE GORSUCH: -- a second to what
9 was a quick exchange with Justice Kavanaugh that
10 I just want to make sure I understand.

11 MR. DREEBEN: Yeah.

12 JUSTICE GORSUCH: Did you agree that
13 there are some core functions of the executive
14 that a president conduct that Congress cannot
15 criminalize?

16 MR. DREEBEN: Yes. We --

17 JUSTICE GORSUCH: So is -- is that a
18 form -- I mean, we can call it immunity or you
19 can call it they can't do it. But what's the
20 difference?

21 MR. DREEBEN: We call it an as-applied
22 Article II challenge that we think --

23 JUSTICE GORSUCH: Okay, okay.

24 MR. DREEBEN: -- fits within --

25 JUSTICE GORSUCH: Can we call it

1 immunity just for shorthand's sake so we -- so I
2 think we are kind of narrowing the ground of
3 dispute here. It seems to me there is some --
4 some area you -- you concede that on official
5 acts that Congress cannot criminalize, and now
6 we're just talking about the scope.

7 MR. DREEBEN: Well, I don't think it's
8 a "just," but I -- I think it's a very
9 significant gap between any official act and the
10 small core of exclusive official acts.

11 JUSTICE GORSUCH: No, I -- I -- I got
12 that, but I -- I want to explore that, okay?

13 MR. DREEBEN: Okay.

14 JUSTICE GORSUCH: So, for example,
15 let's say a president leads a mostly peaceful
16 protest sit-in in front of Congress because he
17 objects to a -- a piece of legislation that's
18 going through.

19 MR. DREEBEN: Mm-hmm.

20 JUSTICE GORSUCH: And it, in fact,
21 delays the proceedings in Congress.

22 Now, under 1512(c)(2), that might be
23 corruptly impeding a proceeding, an official
24 proceeding. Could -- is that core and therefore
25 immunized or whatever word, euphemism you want

1 to use for that?

2 MR. DREEBEN: So --

3 JUSTICE GORSUCH: Or is that not core
4 and therefore prosecutable --

5 MR. DREEBEN: Well, it -- it's --

6 JUSTICE GORSUCH: -- without a clear
7 statement that applies to the president?

8 MR. DREEBEN: It's not -- it's not
9 core. The core kinds of activities that the
10 Court has acknowledged are the things that I
11 would run through the Youngstown analysis. And
12 it's a pretty small set, but things like the
13 pardon power, the power to recognize foreign
14 nations, the power to veto legislation, the
15 power to make appointments, these are things
16 that the Constitution specifically allocates to
17 the president.

18 Once you get out --

19 JUSTICE GORSUCH: So a president then
20 could be prosecuted for the conduct I described
21 after he leaves office?

22 MR. DREEBEN: Probably not, but I want
23 to explain the framework --

24 JUSTICE GORSUCH: Why -- why?

25 MR. DREEBEN: -- of -- of why I don't

1 think that that would be prosecution that would
2 be valid.

3 First, I think you need to run through
4 all of the sort of normal categories of
5 analysis. Is there a serious constitutional
6 question that's posed by applying that statute
7 to the president? If so, then you may well
8 default to it does not apply at least on that
9 fact pattern.

10 JUSTICE GORSUCH: Well, I thought you
11 said it -- that -- that was my question.

12 MR. DREEBEN: Yes. I understand.

13 JUSTICE GORSUCH: And you said it --
14 it fell outside that core, we'll call it
15 immunity for simplicity's sake.

16 MR. DREEBEN: Yes, I understand. But
17 --

18 JUSTICE GORSUCH: But --

19 MR. DREEBEN: There's a -- there's a
20 separate --

21 JUSTICE GORSUCH: So they couldn't --

22 MR. DREEBEN: -- category of --

23 JUSTICE GORSUCH: Okay. So why
24 couldn't he be prosecuted for leading a civil
25 rights protest in front of the Capitol that --

1 that delays a vote on a piece of important
2 legislation?

3 MR. DREEBEN: So I think what you need
4 to do is run through all of the very
5 president-specific protective layers of
6 analysis. So one of them is whether the statute
7 would be construed not to apply to his conduct,
8 even if it's not part of that small core of
9 things that Congress can't regulate at all.

10 If it operates to prevent the
11 president from fulfilling his Article II --

12 JUSTICE GORSUCH: Well, he -- he could
13 have given speeches against it. He did.

14 MR. DREEBEN: Yes.

15 JUSTICE GORSUCH: But he left -- he --
16 he -- he did something more, and it -- and it
17 corruptly impeded and sought to influence an
18 official proceeding.

19 MR. DREEBEN: Well, so I -- I don't
20 know -- we're -- we're starting with the layers,
21 I think, of protection. And we're now down
22 through whether the statute would be construed
23 to apply to him. Then there would be a question
24 of whether --

25 JUSTICE GORSUCH: Assume it does.

1 MR. DREEBEN: I will assume it. Then
2 -- then there's the question of whether he has
3 the state of mind necessarily --
4 JUSTICE GORSUCH: Assume he does.
5 MR. DREEBEN: -- to violate it.
6 JUSTICE GORSUCH: Corrupt --
7 MR. DREEBEN: Okay.
8 JUSTICE GORSUCH: Nobody knows what
9 corrupt intent means? We've been around that
10 tree --
11 MR. DREEBEN: I think we will probably
12 --
13 JUSTICE GORSUCH: -- twice already.
14 MR. DREEBEN: -- find out.
15 JUSTICE GORSUCH: And -- and maybe it
16 means that he knows that he was doing wrong, is
17 what --
18 MR. DREEBEN: Perhaps.
19 JUSTICE GORSUCH: -- the government
20 told us.
21 MR. DREEBEN: Right.
22 JUSTICE GORSUCH: He knows he's doing
23 wrong. He knows he shouldn't be out there
24 blocking congressmen from going to vote.
25 MR. DREEBEN: Well, let me get to the

1 next layer then, which is that the president
2 does have access to the attorney general to
3 provide legal advice and regularly gets legal
4 advice from the -- the attorney general on the
5 lawful scope of the president's activities.

6 We could go down two tracks here. One
7 is that the attorney general advises him that,
8 as an incident of his Article II authority and
9 in carrying out the functions of the presidency,
10 he can lawfully participate in that protest.
11 It's kind of the First Amendment analogue to the
12 president's official powers, which the Court is
13 exploring in other cases.

14 Alternatively, the attorney general
15 could advise him, I'm sorry, Mr. President,
16 there's nothing in the language of this statute
17 that carves you out. I don't see a serious
18 constitutional question in it --

19 JUSTICE GORSUCH: I got it.

20 MR. DREEBEN: -- because you don't
21 have to do that, and I would advise you not to
22 --

23 JUSTICE GORSUCH: And then --

24 JUSTICE SOTOMAYOR: Mr. Dreeben --

25 MR. DREEBEN: -- violate criminal law.

1 JUSTICE GORSUCH: -- and then he could
2 be prosecuted?

3 MR. DREEBEN: No.

4 JUSTICE GORSUCH: No? If -- if he
5 gets a negative opinion from the attorney
6 general, he still couldn't be prosecuted?

7 MR. DREEBEN: I'm going to assume that
8 most presidents are not going to take in a --

9 JUSTICE GORSUCH: Well, but if he gets
10 one and does it anyway, then he could be
11 prosecuted?

12 MR. DREEBEN: Well, so then, if we are
13 down at that level, I think what we are really
14 asking is whether the president is subject to
15 the criminal law.

16 JUSTICE GORSUCH: And your answer?

17 MR. DREEBEN: And our answer is yes --

18 JUSTICE GORSUCH: Yeah. Okay.

19 MR. DREEBEN: -- he is subject to the
20 criminal law, but --

21 JUSTICE SOTOMAYOR: Mr. Dreeben, can
22 we go back to the bribery statute? I, like you,
23 understand that the only thing that is covered
24 by that is the president is barred from
25 soliciting or receiving funds in any room or

1 building in the United States.

2 MR. DREEBEN: That is -- that is
3 correct. And it's an extremely --

4 JUSTICE SOTOMAYOR: Official building.
5 It's a very limited --

6 MR. DREEBEN: Yes.

7 JUSTICE SOTOMAYOR: -- mention of the
8 president.

9 MR. DREEBEN: And -- and, really, I
10 think others --

11 JUSTICE SOTOMAYOR: Can -- can -- so,
12 as I understand this, there's two very limited
13 provisions mentioning the president as included.

14 MR. DREEBEN: That's right.

15 JUSTICE SOTOMAYOR: There's a whole
16 number of provisions that exclude the president,
17 many, many, many more that exclude the
18 president, correct?

19 MR. DREEBEN: It's a kind of small
20 number on both --

21 JUSTICE SOTOMAYOR: All right. Now --

22 MR. DREEBEN: -- sides of the fence,
23 Justice Sotomayor.

24 JUSTICE SOTOMAYOR: -- Justice Barrett
25 made the point that if we say a president can't

1 be included in a criminal law unless explicitly
2 named, then that would bar the Senate from
3 impeaching him for high crimes or misdemeanor
4 because that means that he's not subject to the
5 law at all. Correct?

6 MR. DREEBEN: So I -- I think, it --
7 Justice --

8 JUSTICE SOTOMAYOR: That's a tautology
9 you can't escape.

10 MR. DREEBEN: Justice Sotomayor, what
11 I -- I think that Justice Barrett was saying --
12 and we would agree with it -- is that under my
13 friend's position, after impeachment, he could
14 be prosecuted, but under his statutory
15 construction approach, there would be nothing to
16 prosecute him for.

17 JUSTICE SOTOMAYOR: Exactly. That's
18 the point.

19 MR. DREEBEN: Exactly.

20 JUSTICE SOTOMAYOR: Which is, if he's
21 not covered by the criminal law, he can't be
22 impeached for it.

23 MR. DREEBEN: Yes.

24 JUSTICE SOTOMAYOR: For violating it.
25 All right. Now could we go further on this

1 clear statement rule? The situations -- and you
2 mentioned it earlier -- in which we have looked
3 to see if the president is covered is
4 contextual, correct?

5 MR. DREEBEN: Correct.

6 JUSTICE SOTOMAYOR: And what are the
7 factors that generally we'll look at? I -- I'm
8 thinking specifically about whether the APA
9 covers the president.

10 MR. DREEBEN: Correct.

11 JUSTICE SOTOMAYOR: And what we did
12 there was analyze what powers were being given
13 to -- in the lawsuit and -- et cetera. We
14 looked at words. We looked at structure. We
15 looked at separation-of-powers issues relating
16 to our case law that said you can't direct the
17 president to do anything and this would have
18 been a subterfuge for that, correct?

19 MR. DREEBEN: All correct.

20 JUSTICE SOTOMAYOR: All right. So I
21 don't know why, two of my colleagues, how they
22 would fashion a clear statement rule that would
23 say when a law says any person can't accept a
24 bribe, that that permits the president to do it.

25 MR. DREEBEN: So I agree, Justice

1 Sotomayor, that -- that -- that the way that
2 this Court has interpreted statutes that do
3 carve out the president -- Justice Kavanaugh
4 asked about this -- was very context-specific.
5 The Franklin case basically involved a holding
6 that we are highly unlikely to say that the
7 president is an agency, something that the
8 government said would be a peculiar
9 understanding of agency, when the effect of it
10 would be that we would review the president's
11 decisions under statutes for abuse of
12 discretion, which is a very extraordinary thing
13 to do.

14 I think even going back to Marbury --
15 this is perhaps a point on which I agree with my
16 friend. Marbury says discretionary acts of the
17 president are not the kind of thing that the
18 Court reviews.

19 JUSTICE SOTOMAYOR: All right. Could
20 I go back to your brief and -- and -- and going
21 back to what some of my colleagues have asked
22 you. There appears to be some narrowing
23 principles to the concept that the president is
24 subject to all criminal laws in all situations.

25 MR. DREEBEN: Correct.

1 JUSTICE SOTOMAYOR: You agree that if
2 it affects core powers, then the -- he would not
3 be subject to any laws that attempted to limit
4 those core powers, correct?

5 MR. DREEBEN: That is right.

6 JUSTICE SOTOMAYOR: You're defining
7 core powers as those specified by Article II?

8 MR. DREEBEN: That is essentially
9 correct, yes.

10 JUSTICE SOTOMAYOR: All right. And
11 the only words in the Constitution is -- that --
12 that have to do with the president and law is
13 that he shall "take care that the law be
14 faithfully executed," correct?

15 MR. DREEBEN: That is right.

16 JUSTICE SOTOMAYOR: Hard to imagine
17 that a president who breaks the law is
18 faithfully executing the law, correct?

19 MR. DREEBEN: He has to execute all of
20 the laws.

21 JUSTICE SOTOMAYOR: All right.

22 JUSTICE BARRETT: Counsel --

23 JUSTICE ALITO: Well, Mr. Dreeben --

24 JUSTICE BARRETT: Oh.

25 JUSTICE ALITO: -- do you really -- I

1 mean, presidents have to make a lot of tough
2 decisions about enforcing the law, and they have
3 to make decisions about questions that are
4 unsettled, and they have to make decisions based
5 on the information that's available. Do you
6 really -- did -- did I understand you to say,
7 well, you know, if he makes a mistake, he makes
8 a mistake; he's subject to the criminal laws
9 just like anybody else?

10 MR. DREEBEN: Well, I --

11 JUSTICE ALITO: You don't think he's
12 in a special -- a peculiarly precarious
13 position?

14 MR. DREEBEN: He's in a special
15 position for a number of reasons. One is that
16 he has access to legal advice about everything
17 that he does. He's under a constitutional
18 obligation to -- he's supposed to be faithful to
19 the laws of the United States and the
20 Constitution of the United States.

21 And making a mistake is not what lands
22 you in a criminal prosecution. There's been
23 some talk about the statutes that are issue in
24 this case. I think they are fairly described as
25 malum in se statutes, engaging in conspiracies

1 to defraud the United States with respect to one
2 of the most important functions, namely, the
3 certification of the next president.

4 JUSTICE ALITO: Well, I -- I don't
5 want to dispute the particular application of --
6 of that, of 371, conspiracy to defraud the
7 United States, to the particular facts here, but
8 would you not agree that that is a peculiarly
9 open-ended statutory prohibition in that -- that
10 fraud under that provision, unlike under most
11 other fraud provisions, does not have to do --
12 doesn't require any impairment of a property
13 interest?

14 MR. DREEBEN: It's designed to protect
15 the functions of the United States Government.
16 And it's difficult to think of a more critical
17 function than the certification of who won the
18 election.

19 JUSTICE ALITO: Yeah, I -- I'm not --
20 as I said, I'm not discussing the particular
21 facts of this case, but it applies to any fraud
22 that interferes seriously with any government
23 operation, right?

24 MR. DREEBEN: So what -- what the
25 government needs to show is an intent to impede,

1 interfere, or defeat a lawful government
2 function by deception, and it has to be done
3 with scienter.

4 These are not the kinds of activities
5 that I think any of us would think a president
6 needs to engage in in order to fulfill his
7 Article II duties and particularly in a case
8 like this one.

9 I -- I want to pick up on something
10 that the Court said earlier about the
11 distinction between a public official acting to
12 achieve public ends and a public official acting
13 to achieve private ends.

14 As applied to this case, the president
15 has no functions with respect to the
16 certification of the winner of the presidential
17 election. It seems likely that the Framers
18 designed the Constitution that way because, at
19 the time of the founding, presidents had no
20 two-term limit. They could run again and again
21 and were expected potentially to want to do
22 that.

23 So the potential for self-interest
24 would explain why the states -- conduct the
25 elections. They send electors to certify who

1 won those elections and to provide votes. And
2 then Congress in a joint -- extraordinary joint
3 session certifies the vote.

4 And the president doesn't have an
5 official role in that proceeding. So it's
6 difficult for me to understand how there could
7 be a serious constitutional question about
8 saying you can't use fraud to defeat that
9 function. You can't obstruct it through
10 deception. You can't deprive millions of voters
11 of their right to have their vote counted for
12 the candidate who they chose.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Justice Thomas?

16 Justice Alito?

17 JUSTICE ALITO: Could we just briefly
18 review the layers of protection that you think
19 exists? And I'm going to start with what the
20 D.C. Circuit said.

21 So the first layer of protection is
22 that attorneys general and other Justice
23 Department attorneys can be trusted to act in a
24 professional and ethical manner, right?

25 MR. DREEBEN: Yes.

1 JUSTICE ALITO: How robust is that
2 protection? I mean, most of the -- the vast
3 majority of attorneys general and Justice
4 Department attorneys -- and we both served in
5 the Justice Department for a long time -- are
6 honorable people and they take their
7 professional ethical responsibilities seriously,
8 but there have been exceptions, right, both
9 among attorneys general and among federal
10 prosecutors?

11 MR. DREEBEN: There have been rare
12 exceptions, Justice Alito, but when we're
13 talking about layers of protection, I do think
14 this is the -- the starting point. And if the
15 Court has concerns about the robustness of it,
16 I -- I would suggest looking at the charges in
17 this case. They involve --

18 JUSTICE ALITO: Well, I want to talk
19 about this in -- in the abstract because what is
20 before us, of course, does involve this
21 particular case, which is immensely important,
22 but whatever we decide is going to apply to all
23 future presidents.

24 So, as for attorneys general, there
25 have been two who were convicted of criminal

1 offenses while in office. There were others, A.
2 Mitchell Palmer is one that comes to mind, who
3 is widely regarded as having abused the power of
4 his office.

5 Would you agree with that?

6 MR. DREEBEN: I would, but they are
7 two officials in a long line of attorneys
8 generals who did not and in Departments of
9 Justice that are staffed by multiple people who
10 do adhere to their office. And, Justice Alito,
11 if I could just -- the point that I wanted to
12 make about this case does go to the general
13 proposition.

14 The allegations about the misuse of
15 the Department of Justice to perpetuate election
16 fraud show exactly how the Department of Justice
17 functions in the way that it is supposed to.
18 Petitioner is alleged to have tried to get the
19 Department of Justice to send fraudulent letters
20 to the states to get them to reverse electoral
21 results. The Department of --

22 JUSTICE ALITO: Yeah, I --

23 MR. DREEBEN: -- Justice pushed back
24 --

25 JUSTICE ALITO: -- I -- I understand

1 -- I understand -- I understand that, Mr.
2 Dreeben, but as I said, this case will have
3 effects that go far beyond this particular
4 prosecution.

5 So moving on to the second level of
6 protection that the D.C. Circuit cited, federal
7 grand juries will shield former presidents from
8 unwarranted indictments.

9 How much protection is that?

10 MR. DREEBEN: Well, it -- it affords
11 two levels of protection. One is the probable
12 cause finding requires evidence. I think some
13 of the fears about groundless prosecutions
14 aren't supported by evidence, and they're not
15 going to get out of the starting gate.

16 JUSTICE ALITO: I mean, there --
17 there's the old saw about indicting a ham
18 sandwich.

19 MR. DREEBEN: Yes, but I think,
20 Justice Alito we --

21 JUSTICE ALITO: I mean, you -- you
22 have a lot of experience in the Justice
23 Department. Do you come across a lot of cases
24 where the -- the -- the U.S. attorney or another
25 federal prosecutor really wanted to indict a

1 case and the grand jury refused to do so?

2 MR. DREEBEN: There are such cases.

3 JUSTICE ALITO: Are there? Yeah?

4 MR. DREEBEN: Yes. But I think that
5 the other --

6 JUSTICE ALITO: Every once in a while
7 there's an eclipse too.

8 (Laughter.)

9 MR. DREEBEN: Well, I think that
10 that's for the most reason is prosecutors have
11 no incentive to bring a case to a grand jury and
12 secure an indictment when they don't have
13 evidence to prove guilt beyond a reasonable
14 doubt. It's self-defeating.

15 JUSTICE ALITO: All right. Then the
16 third level is that former presidents enjoy all
17 the protections afforded all criminal
18 defendants, right?

19 I mean, we've discussed that. And
20 that may be true at the end of the day, but a
21 lot can happen between the time when an
22 indictment is returned and the time when the
23 former president finally gets vindication
24 perhaps on appeal.

25 Isn't that correct?

1 MR. DREEBEN: It -- it is correct,
2 Justice Alito, but I think that we should also
3 consider the history of this country. As -- as
4 members of the Court have observed, it's baked
5 into the Constitution that any president knows
6 that they are exposed to potential criminal
7 prosecution. My friend says after impeachment
8 and conviction. We don't read the Impeachment
9 Judgment Clause that way, but we are -- it's
10 common ground that all former presidents have
11 known that they could be indicted and convicted.

12 And Watergate cemented that
13 understanding. The Watergate smoking gun tape
14 involved President Nixon and H.R. Haldeman
15 talking about and then deciding to use the CIA
16 to give a bogus story to the FBI to shut down a
17 criminal investigation.

18 JUSTICE ALITO: I mean, Mr. Sauer and
19 others have identified events in the past where
20 presidents have engaged in conduct that might
21 have been charged as a federal crime, and you --
22 you say, well, no, that's not really true. This
23 is page 42 of your brief.

24 So what about President Franklin
25 D. Roosevelt's decision to intern Japanese

1 Americans during World War II? Couldn't that
2 have been charged under 18 U.S.C. 241,
3 conspiracy against civil rights?

4 MR. DREEBEN: Today, yes. Given this
5 Court's decision in Trump versus United States
6 in which the -- you know, Trump versus Hawaii,
7 excuse me, where the Court said Korematsu is
8 overruled. I mean, President Roosevelt made
9 that decision with the advice of his attorney
10 general. That's a layer of safeguard.

11 JUSTICE ALITO: Is that really true?
12 I thought -- I thought Attorney General Biddle
13 thought that there was really no threat of
14 sabotage, as did J. Edgar Hoover.

15 MR. DREEBEN: So I think that there is
16 a lot of historical controversy, but it
17 underscores that that occurred during wartime.
18 It implicates potential commander in chief
19 concerns, concerns about the exigencies of
20 national defense that might provide an
21 as-applied Article II challenge at the time.
22 I'm not suggesting today.

23 But the idea that a decision that was
24 made and ultimately endorsed by this Court,
25 perhaps wrongly in the Korematsu case, would

1 support criminal prosecution under 241, which
2 requires under United States versus Lanier that
3 the right had been made specific so that there
4 is notice to the president, I don't think that
5 would have been satisfied.

6 JUSTICE ALITO: All right. Well, we
7 could go through other historical examples. I
8 won't do that. Let me just touch briefly on a
9 couple of other things.

10 One is the relevance of advice of
11 counsel, and I wasn't clear what your answer is.
12 So, if the president gets advice from the
13 attorney general that something is lawful, is
14 that an absolute defense?

15 MR. DREEBEN: Yes, I -- I think that
16 it is. Under the principle of entrapment by
17 estoppel, this is a due process doctrine that we
18 referred to in our brief or reply brief in
19 Garland versus Cargill this term at page 19
20 where we cited authority of this Court that if a
21 authorized government representative tells you
22 that what you are about to do is lawful, it
23 would be a -- a root violation of due process to
24 prosecute you for that.

25 JUSTICE ALITO: Well, will that --

1 won't that give presidents an incentive to be
2 sure to pick an attorney general who can -- will
3 -- who will reliably tell the president that it
4 is lawful to do whatever the president wants to
5 do if there's any possibly conceivable argument
6 in favor of it?

7 MR. DREEBEN: So I think the
8 constitutional structure protects against that
9 risk. The president nominates the attorney
10 general and the Senate provides advice and
11 consent. And these are the sort of structural
12 checks that have operated for 200 years to
13 prevent the kind of abuses that my friend fears
14 going forward as a result of this
15 once-in-history prosecution.

16 JUSTICE ALITO: On the question of
17 whether a president has the authority to pardon
18 himself, which came up earlier in the argument
19 --

20 MR. DREEBEN: Mm-hmm.

21 JUSTICE ALITO: -- what's the answer
22 to that question?

23 MR. DREEBEN: I don't believe the
24 Department of Justice has taken a position. The
25 -- the only authority that I'm aware of is a

1 member of the Office of Legal Counsel wrote on a
2 memorandum that there is no self-pardon
3 authority. As far as I know, the Department has
4 not addressed it further. And, of course, this
5 Court had not addressed it either.

6 JUSTICE ALITO: Well, when you
7 addressed that question before us, are you
8 speaking in your capacity solely as a member of
9 the Special Counsel's team, or -- or are you
10 speaking on behalf of the Justice Department,
11 which has special institutional
12 responsibilities?

13 MR. DREEBEN: I am speaking on behalf
14 of the Justice Department, representing the
15 United States.

16 JUSTICE ALITO: Now how -- don't you
17 think we need to know the answer to -- at least
18 to the Justice Department's position on that
19 issue in order to decide this case?

20 Because, if a president has the
21 authority to pardon himself before leaving
22 office and the D.C. Circuit is right that there
23 is no immunity from prosecution, won't the --
24 the predictable result be that presidents on the
25 last couple of days of office are going to

1 pardon themselves from anything that they might
2 have been conceivably charged with committing?

3 MR. DREEBEN: I -- I really doubt
4 that, Justice Alito. I mean, it sort of
5 presupposes a regime that we have never had
6 except for President Nixon and as alleged in the
7 indictment here, presidents who are conscious of
8 having engaged in wrongdoing and seeking to
9 shield themselves.

10 I think the political consequences of
11 a president who asserted a right of self-pardon
12 that has never been recognized, that seems to
13 contradict a bedrock principle of our law that
14 no person shall be the judge in their own case.
15 Those are adequate deterrents, I think, so that
16 this kind of dystopian regime is not going to
17 evolve.

18 JUSTICE ALITO: All right. Let me end
19 -- end with just a question about what is
20 required for the functioning of a stable
21 democratic society, which is something that we
22 all want. I'm sure you would agree with me that
23 a stable democratic society requires that a
24 candidate who loses an election, even a close
25 one, even a hotly contested one, leave office

1 peacefully if that candidate is -- is the
2 incumbent.

3 MR. DREEBEN: Of course.

4 JUSTICE ALITO: All right. Now, if a
5 -- an incumbent who loses a very close, hotly
6 contested election knows that a real possibility
7 after leaving office is not that the president
8 is going to be able to go off into a peaceful
9 retirement but that the president may be
10 criminally prosecuted by a bitter political
11 opponent, will that not lead us into a cycle
12 that destabilizes the functioning of our country
13 as a democracy?

14 And we can look around the world and
15 find countries where we have seen this process,
16 where the loser gets thrown in jail.

17 MR. DREEBEN: So I think it's exactly
18 the opposite, Justice Alito. There are lawful
19 mechanisms to contest the results in an
20 election. And outside the record but I think of
21 public knowledge, Petitioner and his allies
22 filed dozens of electoral challenges and, in my
23 understanding, has lost all but one that was not
24 outcome determinative in any respect. There
25 were judges the -- that said, in order to

1 sustain substantial claims of fraud that would
2 overturn an election result that's certified by
3 a state, you need evidence, you need proof. And
4 none of those things were manifested.

5 So there is an appropriate way to
6 challenge things through the courts with
7 evidence. If you lose, you accept the results.
8 That has been the nation's experience. I think
9 the Court is well familiar with that.

10 JUSTICE ALITO: All right. Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Sotomayor?

13 JUSTICE SOTOMAYOR: A stable
14 democratic society needs the good faith of its
15 public officials, correct?

16 MR. DREEBEN: Absolutely.

17 JUSTICE SOTOMAYOR: And that good
18 faith assumes that they will follow the law?

19 MR. DREEBEN: Correct.

20 JUSTICE SOTOMAYOR: Now, putting that
21 aside, there is no fail-safe system of
22 government, meaning we have a judicial system
23 that has layers and layers and layers of
24 protection for accused defendants in the hopes
25 that the innocent will go free. We fail

1 routinely, but we succeed more often than not.
2 In the vast majority of cases, the innocent do
3 go free. Sometimes they don't, and we have some
4 post-conviction remedies for that. But we still
5 fail. We've executed innocent people.

6 Having said that, Justice Alito went
7 through step by step all of the mechanisms that
8 could potentially fail. In the end, if it fails
9 completely, it's because we've destroyed our
10 democracy on our own, isn't it?

11 MR. DREEBEN: It -- it is, Justice
12 Sotomayor, and I also think that -- that there
13 are additional checks in the system. Of course,
14 the constitutional Framers designed a separated
15 powers system in order to limit abuses. I think
16 one of the ways in which abuses are limited is
17 accountability under the criminal law for
18 criminal violations. But the ultimate check is
19 the goodwill and faith in democracy.

20 And crimes that are alleged in this
21 case that are the antithesis of democracy, that
22 subvert it --

23 JUSTICE SOTOMAYOR: An encouragement
24 --

25 MR. DREEBEN: -- undermine that.

1 JUSTICE SOTOMAYOR: An encouragement
2 to believe words have been somewhat put into
3 suspicion here, that no man is above the law
4 either in his official or private acts?

5 MR. DREEBEN: Yes -- yes. I think
6 that is an assumption of the Constitution.

7 CHIEF JUSTICE ROBERTS: Justice Kagan?

8 JUSTICE KAGAN: Mr. Dreeben, I want to
9 go through your framework and make sure I
10 understand it.

11 So, first, on the small category of
12 things that you say have absolute protection --

13 MR. DREEBEN: Yes.

14 JUSTICE KAGAN: -- that they are core
15 executive functions --

16 MR. DREEBEN: Yes.

17 JUSTICE KAGAN: -- what are those
18 small categories?

19 MR. DREEBEN: Pardon power.

20 JUSTICE KAGAN: Pardon. Veto?

21 MR. DREEBEN: Veto, foreign
22 recognition, appointments. Congress cannot say
23 you can't appoint a federal judge who hasn't
24 received, you know, a certain diploma, hasn't
25 achieved a certain age. There are a few other

1 powers in the Constitution.

2 JUSTICE KAGAN: Is commander in chief?

3 MR. DREEBEN: Commander in chief is --
4 is on the list, but I want to add to my answer
5 on that that Congress has substantial authority
6 in the national security realm. Congress
7 declares war. It raises armies. It has power
8 over the purse. That's more of a --

9 JUSTICE KAGAN: So that may be viewed
10 as not really in that core set of functions
11 which nobody has any power but the president
12 over?

13 MR. DREEBEN: Yes. I think that there
14 may be some aspects like directing troops on the
15 field in which the president's power is
16 completely unreviewable.

17 JUSTICE KAGAN: Okay. Now, in -- in
18 -- in -- in the next category, where you --
19 where -- where we've left the core set behind --

20 MR. DREEBEN: Yes.

21 JUSTICE KAGAN: -- but we're still in
22 the world of official actions --

23 MR. DREEBEN: Mm-hmm.

24 JUSTICE KAGAN: -- and that's where
25 you say there are various statutory construction

1 rules that might come into play.

2 MR. DREEBEN: Correct.

3 JUSTICE KAGAN: But you have
4 characterized those as something different from
5 just saying, oh, look, the statute doesn't say
6 the president; therefore, it doesn't apply to
7 the president.

8 MR. DREEBEN: That is right.

9 JUSTICE KAGAN: So I wanted to give
10 you an opportunity to say, you know, how that
11 would look, how that analysis would look in a
12 given case. And -- and in the course of
13 responding to that, you know, I'm sort of
14 thinking of something like the OLC opinion --

15 MR. DREEBEN: Mm-hmm.

16 JUSTICE KAGAN: -- which says
17 bribery --

18 MR. DREEBEN: Mm-hmm.

19 JUSTICE KAGAN: -- the president can
20 be tried and convicted of bribery, even in the
21 part of the bribery statutes that do not say the
22 president.

23 MR. DREEBEN: Mm-hmm.

24 JUSTICE KAGAN: Why is that true?

25 MR. DREEBEN: That is true because

1 there is no serious constitutional question that
2 the president needs to engage in bribery in
3 order to carry out his constitutional functions,
4 and the Office of Legal Counsel pointed out that
5 bribery is enumerated in the Impeachment Clause.
6 So it falls outside of anything that could be
7 viewed as inherent in the need of Article II to
8 function.

9 JUSTICE KAGAN: Do you think the
10 premise of that OLC opinion was that the bribery
11 was simply not official?

12 MR. DREEBEN: No.

13 JUSTICE KAGAN: Or is the premise that
14 the bribery was official and -- and still the
15 president could be prosecuted for it?

16 MR. DREEBEN: I think that bribery is
17 -- is the kind of hybrid that illustrates the
18 abuse of public office for private gain that we
19 think is paradigmatic of the kinds of things
20 that should be not held to be immune.

21 In a bribery case, the public official
22 cannot extract the bribe without the official
23 power to offer as the quid or the pro. I guess
24 the quo actually. So it -- it really is a crime
25 that can only be committed by public officials

1 who misuse their power, and it was one of the
2 things that was most mistrusted.

3 Many of the acts that are charged in
4 this indictment or that would violate federal
5 criminal law similarly involve the misuse of
6 official power for private gain.

7 JUSTICE KAGAN: So, if you were to
8 say, like, what the line is in this category,
9 like, when it is that the statute should be
10 understood as precluding presidential
11 prosecution and when it is that the statute
12 should be understood as allowing it, what
13 general principles should guide?

14 MR. DREEBEN: So the -- the -- the
15 general principles, I think, kind of emerge from
16 looking at what the Office of Legal Counsel has
17 done. So, for example, with respect to a
18 federal statute that prohibited appointments to
19 courts of people within certain degrees of
20 consanguinity, the Office of Legal Counsel said
21 this infringes on a very important appointment
22 power of the president, the power to appoint
23 federal judges. It cannot be presumed that
24 Congress intended to do that because it would
25 raise a very serious constitutional question.

1 The president is out.

2 Then there are categories of statutes
3 where the president is in, like, for example,
4 the grassroots lobbying statute. The Office of
5 Legal Counsel wrote an opinion about that, and
6 it said for the president or other public
7 officials to go out into the world and to
8 promote their programs, that can't be what
9 Congress intended to prohibit.

10 What it did intend to prohibit is
11 using federal funds to gin up -- gin up an
12 artificial grassroots campaign that gave the
13 appearance of emerging from the people, but it
14 was really top-down. And the Office of Legal
15 Counsel said the president and officials who
16 carry out the president's mandates are subject
17 to that statute. So that's a more nuanced one.

18 And then the third example that I will
19 give you is the statute that would permit
20 prosecution for contempt of Congress. The
21 Office of Legal Counsel concluded that a
22 good-faith assertion of executive privilege as a
23 reason for not providing information to Congress
24 would preclude prosecution because Congress
25 cannot be deemed to have altered the separation

1 of powers in such a manner.

2 I think OLC probably would have gone
3 on to say, if Congress tried to do it, it would
4 be deemed unconstitutional. But, again, this
5 was a statute that did not specifically name the
6 president. There are only two that do that.

7 So the entire corpus of federal
8 criminal law, including bribery offenses,
9 sedition, murder, would all be off limits if it
10 were taken to the -- to the -- to the extent
11 that some of the questions have suggested and
12 for the general principle, does it raise a
13 serious constitutional question, and, if so, to
14 what extent? Can it be carved out individually?

15 And there may be some instances where
16 the statutes here could be carved out and a
17 particular act could be found to be protected.
18 Or does the statute across the board, in such a
19 wide range of applications, somewhat analogous
20 to overbreadth analysis, infringe on the
21 president's power so that we're going to say
22 that -- that the president is just out?

23 JUSTICE KAGAN: Now that set of
24 issues, they seem important and may occasionally
25 be difficult.

1 MR. DREEBEN: Mm-hmm.

2 JUSTICE KAGAN: They -- they also seem
3 not really before us in the way Justice Jackson
4 suggested earlier.

5 MR. DREEBEN: Mm-hmm.

6 JUSTICE KAGAN: What do you -- I mean,
7 do you think they are before us, we should just
8 clear it up, here it is, we have a case?
9 What -- what else could we do? How should we
10 deal with this, that there are these --

11 MR. DREEBEN: Yes. Yes.

12 JUSTICE KAGAN: -- lingering issues
13 that go beyond the question of whether there's
14 the kind of absolute immunity that the former
15 president is invoking?

16 MR. DREEBEN: So I think the Court has
17 discretion to reach that issue even though
18 Justice Jackson is totally right, it was not
19 raised in the district court and it was not
20 raised in the court of appeals.

21 And the -- the analysis that I would
22 use to get there is a fusion of a couple of
23 principles. One is the Court has often resolved
24 threshold questions that are a prerequisite to
25 an intelligent resolution of the question

1 presented.

2 So, in a case like United States
3 versus Grubbs, for example, the Court reached
4 out to decide what -- whether anticipatory
5 warrants are valid under the Fourth Amendment
6 before turning to the question whether the
7 triggering condition for an anticipatory warrant
8 had to be in the warrant. So that's one
9 principle.

10 And then a -- a precedent that bears
11 some analogy to this is Vermont Natural
12 Resources Agency versus United States ex rel
13 Stevens. It was a qui tam case, and the first
14 question was whether a state agency was a person
15 within the meaning of the False Claims Act, and
16 the second question was whether, if the state
17 agency was, Eleventh Amendment immunity kicked
18 in.

19 And the Court wrote an analysis of why
20 it could reach both questions. The reaching the
21 person question didn't expand the Court's
22 jurisdiction, and it made sense as a matter of
23 constitutional avoidance to do that.

24 There are some considerations that cut
25 against this. And I -- I want to be clear that

1 for overall government equities, we are not wild
2 about parties who raise a -- an immunity case
3 that can be presented to a court on an
4 interlocutory appeal and then smuggling in other
5 issues. So we would want to guide the Court not
6 to have an expansive approach to that issue.

7 But the final thing that I would say
8 about this is part of our submission to this
9 Court is that the Article I branch and the
10 Article II branches are aligned in believing
11 that this prosecution is an appropriate way to
12 enforce the law, Congress by making the law, the
13 current executive by deciding to bring it.

14 And since a building block of that
15 submission is that Congress actually did apply
16 these criminal laws to official conduct, the
17 Court may wish to exercise its discretion to
18 resolve that issue.

19 JUSTICE KAGAN: Okay. I have one last
20 set of questions, which has to do with the
21 official/unofficial line.

22 MR. DREEBEN: Yes.

23 JUSTICE KAGAN: And you heard Mr.
24 Sauer's responses to both Justice Barrett's
25 questions and my questions about what he thinks

1 counts as official here and what he thinks
2 counts as unofficial here.

3 And I'm just wondering what you took
4 from his responses and also how you would
5 characterize what is official and what is not
6 official in this indictment.

7 MR. DREEBEN: So I -- I think
8 Petitioner conceded that there are acts that are
9 not official that are alleged in the indictment.
10 And we agree with him on all of that.

11 I think I disagree with him on
12 everything else that he said about what is
13 official and what is not. Organizing fraudulent
14 slates of electors, creating false documentation
15 that says I'm an elector, I was appointed
16 properly, I'm going to send a -- a vote off to
17 Congress that reflects that Petitioner won
18 rather than the candidate that actually got the
19 most votes and who was ascertained by the
20 governor and whose electors were appointed to
21 cast votes, that is not official conduct. That
22 is campaign conduct.

23 And I think that the D.C. Circuit in
24 the Blassingame case did draw an appropriate
25 distinction. A first-term president who's

1 running for re-election can act in the capacity
2 as office-seeker or office-holder.

3 And when working with private lawyers
4 and a private public relations advisor to gin up
5 fraudulent slates of electors, that is not any
6 part of a president's job. So --

7 JUSTICE KAGAN: There's -- I'm sorry,
8 there's an allegation in the indictment that has
9 to do with the removal of a Justice Department
10 official. Would -- would -- is that core
11 protected conduct?

12 MR. DREEBEN: We don't think that
13 that's core protected conduct. I don't think
14 that -- that I would characterize that episode
15 quite that way.

16 We do agree that the Department of
17 Justice allegations were a use of the
18 president's official power. In many ways, we
19 think that aggravates the nature of this
20 offense.

21 Seeking as a candidate to oust the
22 lawful winner of the election and have oneself
23 certified with private actors is a private
24 scheme to achieve a private end, and many of the
25 co-conspirators alleged in the indictment are

1 private.

2 But for an incumbent president to then
3 use his presidential powers to try to enhance
4 the likelihood that it succeeds makes the crime
5 in our view worse --

6 JUSTICE KAGAN: And --

7 MR. DREEBEN: So -- in the Department
8 of Justice episode occurs very late in the
9 election cycle, after many other schemes had
10 failed.

11 And at that point, the -- the
12 Petitioner is alleged to have tried to pressure
13 the Department of Justice to send false letters
14 to the states claiming that there were serious
15 election irregularities and that they should
16 investigate who they certified as the president.
17 None of this was true.

18 The Department of Justice officials
19 all said this is not true. We are not going to
20 do that. And at that point, Petitioner is
21 alleged to have threatened to remove the
22 Department of Justice officials who were
23 standing by their oath and replace them with
24 another person who would carry it out.

25 We're not seeking to impose criminal

1 liability on the president for exercising or
2 talking about exercising the appointment and
3 removal power. No. What we're seeking to
4 impose criminal liability for is a conspiracy to
5 use fraud to subvert the election, one means of
6 which was to try to get the Justice Department
7 to be complicit in this.

8 The case would have been no different
9 if Petitioner were successful and he had
10 actually exercised the appointment and removal
11 power and it had gone through and those
12 fraudulent letters were sent. It would have
13 made the scheme more dangerous, but it would not
14 have changed the crime.

15 JUSTICE KAGAN: And how do we think
16 about things like conversations with the vice
17 president? In other words, things that if you
18 say it that way, it's clear that they would fall
19 under executive privilege.

20 MR. DREEBEN: Mm-hmm.

21 JUSTICE KAGAN: But how does that
22 relate to the question that we're asking here?

23 MR. DREEBEN: So this is one of the
24 most difficult questions for the Department of
25 Justice, and I -- I want to explain why that is.

1 If we are operating under a Fitzgerald
2 versus Nixon lens and looking at this the way
3 that we look at things when there is a private
4 lawsuit filed against the president, we take a
5 very broad view of what the outer perimeter of
6 official presidential action is in order to be
7 as protective of the president against private
8 lawsuits that, as this Court explained in Nixon
9 versus Fitzgerald, can be very deleterious to
10 the president's conduct of business.

11 So, if we were putting this under a
12 Fitzgerald lens, we would then have to answer to
13 the question: Was he acting in -- in the
14 capacity as office-seeker, or was he acting in
15 the capacity as office-holder?

16 And if you run through the indictment,
17 you can find support for those two
18 characterizations, and the Department of Justice
19 has not yet had to come to grips with how we
20 would analyze that set of interactions.

21 JUSTICE KAGAN: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice
23 Gorsuch?

24 JUSTICE GORSUCH: If you did, though,
25 you -- I just wanted to confirm, I thought I

1 heard you thought that the Blassingame framework
2 was the appropriate one.

3 Is that right?

4 MR. DREEBEN: Largely -- largely yes,
5 Justice Gorsuch. We -- we agree with the idea
6 of the distinction between office-holder and
7 office-seeker.

8 We also agree that if it's objectively
9 reasonable to view the activities as those of
10 office-holder, then the Fitzgerald immunity
11 kicks in. I think we would look more at the
12 content of the actual interaction in order to
13 make that determination than Blassingame
14 suggested at least on the facts of that case
15 might be appropriate.

16 JUSTICE GORSUCH: Can you give me an
17 example of what you have in mind? I'm just
18 trying to understand what nuance you're
19 suggesting.

20 MR. DREEBEN: So -- so -- so
21 Blassingame adopted a, you know, generally very
22 favorable, pro-government framework that -- we
23 endorse in tried civil cases.

24 JUSTICE GORSUCH: I would have
25 thought, yeah.

1 MR. DREEBEN: Okay. Not here, because
2 we don't think that Fitzgerald applies in the
3 criminal context.

4 JUSTICE GORSUCH: Well, I understand
5 that.

6 MR. DREEBEN: Okay.

7 JUSTICE GORSUCH: But -- but -- but --
8 but -- but putting that aside, the distinction
9 between official act and private
10 office-seeker --

11 MR. DREEBEN: Yes.

12 JUSTICE GORSUCH: -- their test is,
13 you think, good enough for government work?

14 MR. DREEBEN: I -- I -- on -- on this
15 one, the Department hasn't taken a next step
16 since the Blassingame decision, but let me offer
17 a few thoughts that, Justice Gorsuch, I think
18 might clarify it.

19 The Blassingame decision focused on
20 objective contextual indications to try to see
21 whether the president was acting as a campaigner
22 as opposed to --

23 JUSTICE GORSUCH: Yeah.

24 MR. DREEBEN: -- a -- a you know, an
25 office-holder.

1 JUSTICE GORSUCH: President, yeah.

2 MR. DREEBEN: I think that -- that
3 that decision can also be made by looking at
4 what the president actually said. And let me
5 illustrate that with an allegation that I think
6 my friend --

7 JUSTICE GORSUCH: Briefly.

8 MR. DREEBEN: -- talked -- briefly.
9 That it -- in one of the interactions between
10 Petitioner and a state official, Petitioner is
11 alleged to have said: All I need you -- you to
12 do is to find me 11,000 votes and change.

13 I think, if you look at that -- that
14 content, it's pretty clear that Petitioner is
15 acting in the capacity as office-seeker, not as
16 president. And we would look at that content.

17 JUSTICE GORSUCH: Okay. Okay. But
18 the test -- I'm just focused on the legal test.

19 MR. DREEBEN: Right.

20 JUSTICE GORSUCH: I'm not hearing any
21 objections to it.

22 MR. DREEBEN: Other than I think that
23 the D.C. Circuit placed more content
24 consideration off limits than I would.

25 JUSTICE GORSUCH: Okay. All right.

1 And then I wanted to understand, on the core
2 immunity or whatever word we use, that -- that
3 it seems to me that we're narrowing the ground
4 of dispute here considerably, do -- do we look
5 at motives, the president's motives for his
6 actions?

7 I mean, the -- for example, he has
8 lots of war powers, as we discussed, but he
9 might use them in order to enhance his election,
10 his personal interests. Is that a relevant
11 consideration when we're looking at core powers?

12 MR. DREEBEN: So I -- I -- I am
13 thinking of this more as looking at the
14 objective of the activity as opposed to the kind
15 of subjective motive in the sense that Your
16 Honor is talking about. I think that there is a
17 lot of concern about saying an electoral motive
18 to be reelected as such --

19 JUSTICE GORSUCH: Right.

20 MR. DREEBEN: -- is problematic --

21 JUSTICE GORSUCH: I mean, every
22 first-term president --

23 MR. DREEBEN: Yes.

24 JUSTICE GORSUCH: -- everything he
25 does can be seen through the prism, by critics

1 at least, of his personal interest in
2 re-election.

3 MR. DREEBEN: Yes.

4 JUSTICE GORSUCH: And so you wouldn't
5 want that -- I -- I think you would say personal
6 motivations off limits with respect to the core
7 powers.

8 MR. DREEBEN: Probably -- well, with
9 respect to the core powers, we think those are
10 just things that can't be regulated at all, like
11 the pardon power and veto.

12 JUSTICE GORSUCH: Right.

13 MR. DREEBEN: Can't --

14 JUSTICE GORSUCH: Regardless of
15 motive?

16 MR. DREEBEN: Correct.

17 JUSTICE GORSUCH: Regardless of
18 motive?

19 MR. DREEBEN: That is right.

20 JUSTICE GORSUCH: Okay.

21 MR. DREEBEN: That is right.

22 JUSTICE GORSUCH: All right. So then
23 we're in the non-core powers --

24 MR. DREEBEN: Right.

25 JUSTICE GORSUCH: -- where we're

1 fighting over. What role do motives play there?
2 I mean, it -- one could remove an -- an
3 appointee that -- well, first of all, is --
4 maybe ask this first -- is removing an
5 appointee, a presidential appointee, a core
6 power or a non-core power in your world?

7 MR. DREEBEN: So, here -- here, I
8 might need to differentiate between the
9 principal officers that this Court in cases like
10 Myers and Seila Law has regarded as having
11 constitutional status of being removable at will
12 from inferior officers, where Congress does have
13 some regulatory latitude to impose restrictions
14 on removal.

15 JUSTICE GORSUCH: Sure.

16 MR. DREEBEN: And -- and a restriction
17 --

18 JUSTICE GORSUCH: Put -- put that
19 aside. Yeah, I -- I understand that.

20 MR. DREEBEN: All right. Putting --
21 putting that aside, yes, appointing a principal
22 officer is a core power. I am not prepared to
23 say that there is no potential criminal
24 regulation to say you can't do it for corrupt
25 purposes, to enrich yourself, for example.

1 JUSTICE GORSUCH: Well, bribery, all
2 right.

3 MR. DREEBEN: Yes.

4 JUSTICE GORSUCH: But -- but that's
5 what I was wondering. Do motives come into the
6 core power analysis or not? And now I'm hearing
7 -- I thought I heard no, and now I'm hearing
8 maybe.

9 MR. DREEBEN: I think "maybe" might be
10 a little bit more appropriate because it's not
11 involved in this case. The Department has not
12 had to take a position on exactly how these core
13 powers would be resolved under an as-applied
14 constitutional analysis. None is involved in
15 this case.

16 JUSTICE GORSUCH: And I guess I'm
17 wondering -- and I'm not concerned about this
18 case so much as future ones too --

19 MR. DREEBEN: Yes.

20 JUSTICE GORSUCH: -- but these
21 non-core powers, and maybe --

22 MR. DREEBEN: Yes.

23 JUSTICE GORSUCH: -- core powers where
24 a president is acting with, at least in part, a
25 personal interest in getting re-elected.

1 Everything he does --

2 MR. DREEBEN: Yeah.

3 JUSTICE GORSUCH: -- he wants to get
4 reelected. And if you're -- if you're allowing
5 in motive to color that, I -- I -- I'm wondering
6 how much is left of -- of either the core or
7 non-core powers under your view?

8 MR. DREEBEN: So I -- I -- I would be
9 fine with carving that out and deeming that to
10 be something that's intrinsic in our electoral
11 system. We're not talking about applying
12 criminal law to somebody who makes an
13 announcement that this program will be good for
14 the United States, and somebody could come along
15 and say, well, you really did it to get
16 re-elected.

17 Leaving aside whether any of that
18 violates a criminal law -- I know that the next
19 question is assume that it does -- I'm doubtful
20 that it, in fact, does because I don't think
21 criminal laws generally operate on motives as
22 opposed to objectives and purposes. But --

23 JUSTICE GORSUCH: Well, all right --

24 MR. DREEBEN: -- that -- that's --

25 JUSTICE GORSUCH: -- intentions. I

1 mean, you --

2 MR. DREEBEN: Yeah.

3 JUSTICE GORSUCH: -- you can frame a
4 motive as an intention and an intention as a
5 motive, as you well know, every day of the week.

6 MR. DREEBEN: Yes.

7 JUSTICE GORSUCH: So let's put that
8 aside too.

9 MR. DREEBEN: I understand. Well,
10 putting -- putting that aside, that really to me
11 falls in a very different category. And it is
12 also possible --

13 JUSTICE GORSUCH: So there are some
14 motives or intents that -- that are cognizable
15 and others that aren't? I mean, it's -- it's
16 awkward, right, when we look at back at, like,
17 the injunction, back to Marbury and the early
18 cases, you can't enjoin a president.

19 MR. DREEBEN: Yeah.

20 JUSTICE GORSUCH: Also meant --

21 MR. DREEBEN: A sitting president.

22 JUSTICE GORSUCH: -- you couldn't hold
23 him in contempt, right?

24 MR. DREEBEN: A sitting -- a sitting
25 president.

1 JUSTICE GORSUCH: For sure. For sure.

2 MR. DREEBEN: Justice Gorsuch, could I
3 try one more time --

4 JUSTICE GORSUCH: Well, let me just --

5 MR. DREEBEN: -- to clarify?

6 JUSTICE GORSUCH: -- spin this -- spin
7 this out just a second, right?

8 MR. DREEBEN: Okay.

9 JUSTICE GORSUCH: And -- and -- and it
10 didn't matter what the president's motives were.
11 We're not going to look behind it.

12 MR. DREEBEN: Right. Right.

13 JUSTICE GORSUCH: And -- and same
14 thing in Nixon. We said, gosh, in Nixon versus
15 Fitzgerald, that's something courts shouldn't
16 get engaged in because presidents have all
17 manner of motives. And, again, I'm not
18 concerned about this case, but I am concerned
19 about future uses of the criminal law to target
20 political opponents based on accusations about
21 their motives.

22 MR. DREEBEN: Mm-hmm.

23 JUSTICE GORSUCH: Whether it's
24 re-election or who knows what "corrupt" means in
25 1512, right? We -- we don't know what that

1 means. Maybe we'll find out sometime soon.

2 But the -- the dangerousness of
3 accusing your political opponent of having bad
4 motives.

5 MR. DREEBEN: Mm-hmm.

6 JUSTICE GORSUCH: And -- and if that's
7 enough to overcome your core powers or any other
8 limits. I -- reactions, thoughts?

9 MR. DREEBEN: Yeah. So -- so I -- I
10 think that you're raising a very difficult
11 question about --

12 JUSTICE GORSUCH: That's the idea,
13 right? I mean --

14 MR. DREEBEN: That is the idea. And
15 --

16 JUSTICE GORSUCH: -- testing --
17 testing the limits of both sides' arguments.

18 MR. DREEBEN: And -- and I'm going to
19 say something that I don't normally say, which
20 is that's really not involved in this case. We
21 don't have --

22 (Laughter.)

23 MR. DREEBEN: We don't have bad
24 political motive in that sense. I would start
25 --

1 JUSTICE GORSUCH: I -- I -- I
2 understand that. I appreciate that, but you
3 also appreciate that we're --

4 MR. DREEBEN: Yes.

5 JUSTICE GORSUCH: -- writing a rule
6 for --

7 MR. DREEBEN: Yes.

8 JUSTICE GORSUCH: -- for the ages.

9 MR. DREEBEN: Yes. And -- and I think
10 I would start by looking at the statutes and --
11 and seeing what restrictions they do place on
12 the president's conduct.

13 And, for example, the statute that
14 prohibits fraud to defeat the lawful functions
15 of the United States, the statute defines what
16 the purpose is that the defendant has to have in
17 mind. It has to be to defeat something that the
18 United States is doing and it has to be by
19 deception.

20 I don't think that that gets us into
21 the realm of motive hunting in the area where we
22 are as concerned, I think, as the Court would
23 be, about doing something that would undermine
24 the presidency and the executive branch.

25 And 1512(c)(2), we may have different

1 views on the clarity and the scope of that
2 statute. I think, if the Court does interpret
3 "corruptly" as involving a consciousness of
4 wrongdoing and elevates that to consciousness of
5 illegality, then we're in a different realm.
6 Wanting to get re-elected is not a -- an illegal
7 motive, and you don't have to worry about
8 prosecuting presidents for that.

9 JUSTICE GORSUCH: Yeah. Okay. Thank
10 you, Mr. Dreeben.

11 CHIEF JUSTICE ROBERTS: Justice
12 Kavanaugh?

13 JUSTICE KAVANAUGH: As you've
14 indicated, this case has huge implications for
15 the presidency, for the future of the
16 presidency, for the future of the country in my
17 view.

18 You've referred to the Department a
19 few times as having supported the position. Who
20 in the Department? Is it the president, the
21 attorney general?

22 MR. DREEBEN: The Solicitor General of
23 the United States. Part of the way in which the
24 special counsel functions is as a component of
25 the Department of Justice. The regulations

1 envision that we reach out and consult. And on
2 a question of this magnitude, that involves
3 equities that are far beyond this prosecution,
4 as the questions of the Court have --

5 JUSTICE KAVANAUGH: So it's the
6 solicitor general?

7 MR. DREEBEN: Yes.

8 JUSTICE KAVANAUGH: Okay. Second,
9 like Justice Gorsuch, I'm not focused on the
10 here and now of this case. I'm very concerned
11 about the future. And I think one of the
12 Court's biggest mistakes was Morrison versus
13 Olson.

14 MR. DREEBEN: Mm-hmm.

15 JUSTICE KAVANAUGH: I think that was a
16 terrible decision for the presidency and for the
17 country and not because there were bad people
18 who were independent counsels, but President
19 Reagan's administration, President Bush's
20 administration, President Clinton's
21 administration were really hampered --

22 MR. DREEBEN: Yes.

23 JUSTICE KAVANAUGH: -- in their
24 view --

25 MR. DREEBEN: Mm-hmm.

1 JUSTICE KAVANAUGH: -- all three, by
2 the independent counsel structure. And -- and
3 what I'm worried about here is that that was
4 kind of let's relax Article II a bit for the
5 needs of the moment. And I'm worried about the
6 similar kind of situation applying here.

7 That was a prosecutor investigating a
8 president in each of those circumstances and
9 someone picked from the opposite party, the
10 current president, and -- usually --

11 MR. DREEBEN: Mm-hmm.

12 JUSTICE KAVANAUGH: -- was how it
13 worked. And -- and Justice Scalia wrote that
14 "the -- the fairness of a process must be
15 adjudged on the basis of what it permits to
16 happen --

17 MR. DREEBEN: Mm-hmm.

18 JUSTICE KAVANAUGH: -- not what it
19 produced in a particular case." You've
20 emphasized many times regularity, the Department
21 of Justice.

22 And he said -- and I think this
23 applied to the independent counsel system, and
24 it could apply if presidents are routinely
25 subject to investigation going forward. "One

1 thing is certain, however: it involves
2 investigating and perhaps prosecuting a
3 particular individual. Can one imagine a less
4 equitable manner of fulfilling the Executive
5 responsibility to investigate and prosecute?
6 What would the reaction be if, in an area not
7 covered by this statute, the Justice Department
8 posted a public notice inviting applicants to
9 assist in an investigation and possible
10 prosecution of a certain prominent person? Does
11 this not invite what Justice Jackson described
12 as 'picking the man and then searching the law
13 books or putting investigators to work to pin
14 some offense on him?' To be sure, the
15 investigation must relate to the area of
16 criminal offense" specified by the statute, but
17 that has often been and nothing prevents it from
18 being very broad. I paraphrased at the end
19 because it was referring to the judges.

20 MR. DREEBEN: Mm-hmm. Yes.

21 JUSTICE KAVANAUGH: That's the concern
22 going forward, is that the -- the system will --
23 when -- when former presidents are subject to
24 prosecution and the history of Morrison versus
25 Olson tells us it's not going to stop, it's

1 going to -- it's going to cycle back and be used
2 against the current president or the next
3 president or -- and the next president and the
4 next president after that.

5 All that, I want you to try to allay
6 that concern. Why is this not Morrison v. Olson
7 redux if we agree with you?

8 MR. DREEBEN: Well, first of all, the
9 -- the independent counsel regime did have many
10 structural features that emphasized independence
11 at the expense of accountability. We don't have
12 that regime now. But, even under that regime,
13 Justice Kavanaugh, I think, if you look at
14 Lawrence Walsh's report on Iran/Contra, I think
15 this goes to a very fundamental point for the
16 Court to consider.

17 Judge Walsh said: I investigated
18 these matters. The proof did not nearly come
19 close to establishing criminal violations. So
20 we've lived from Watergate through the present,
21 through the independent counsel era with all of
22 its flaws, without these prosecutions having
23 gone off on a runaway train. We --

24 JUSTICE KAVANAUGH: Well, I think
25 President Reagan, President Bush, and President

1 Clinton, whether rightly or wrongly, thought
2 opposite, thought contrary to what you just
3 said.

4 MR. DREEBEN: I think nobody likes
5 being investigated for a crime, but it didn't
6 result in the kind of vindictive prosecutions
7 that I think Your Honor is -- is raising as a
8 possibility.

9 JUSTICE KAVANAUGH: Yeah.

10 MR. DREEBEN: We -- we have a
11 different system now. I think there was a
12 consensus throughout Washington that there were
13 flaws in the independent counsel system. It
14 lapsed.

15 We now are inside the Justice
16 Department with full accountability resting with
17 the attorney general, so the special counsel
18 regulations now don't operate the way that the
19 independent counsel regulations do.

20 And this Court would have something to
21 say about it, I think, if the independent
22 counsel statute were revived. I'm not sure that
23 anybody is in favor of that.

24 JUSTICE KAVANAUGH: Right. No, I was
25 just saying this is kind of the mirror image of

1 that, is one way someone could perceive it, but
2 I take your point about the different structural
3 protections internally.

4 And like Justice Scalia said, let me
5 -- I do not mean to suggest anything of the sort
6 in the present case. I'm not talking about the
7 present case. So I'm talking about the future.

8 Second, another point, you said talked
9 about the criminal statutes, it's very easy to
10 characterize presidential actions as false or
11 misleading under vague statutes. So President
12 Lyndon Johnson, statements about the Vietnam War
13 --

14 MR. DREEBEN: Mm-hmm.

15 JUSTICE KAVANAUGH: -- say something's
16 false, turns out to be false that he says about
17 the Vietnam War, 371 prosecution --

18 MR. DREEBEN: So --

19 JUSTICE KAVANAUGH: -- after he leaves
20 office?

21 MR. DREEBEN: -- I think not, but I --
22 when you -- this is an area that I do think that
23 merits some serious and nuanced consideration.
24 Statements that are made by a president to the
25 public are not really coming within the realm of

1 criminal statutes. They've never been
2 prosecuted.

3 I realize that the Court can say:
4 Well, what if they were? And -- and then I
5 think you get to what I would regard as a hard
6 constitutional question that I would probably
7 guide the Court away from trying to resolve
8 today, although I do think it's very different
9 from our case and distinguishable in important
10 ways, but you're dealing here with two branches
11 of government that have a paramount interest in
12 the integrity and freedom of their interactions
13 with each other.

14 On the one hand, the president, of
15 course, should be very free to send, usually,
16 his cabinet officials and sub-cabinet officials
17 to testify to Congress to provide them with the
18 information needed to enact legislation and to
19 make national policy. And we're very concerned
20 about anything that would trammel that.

21 On the other side of the equation,
22 Congress has a compelling interest in receiving
23 accurate information and at the very least --

24 JUSTICE KAVANAUGH: I -- I agree.

25 MR. DREEBEN: -- not information that

1 is intentionally and knowingly false.

2 JUSTICE KAVANAUGH: Right.

3 MR. DREEBEN: That would pollute the
4 legislative process.

5 JUSTICE KAVANAUGH: How about, I think
6 it came up before, President Ford's pardon?

7 MR. DREEBEN: Mm-hmm.

8 JUSTICE KAVANAUGH: Very controversial
9 in the moment.

10 MR. DREEBEN: Yes.

11 JUSTICE KAVANAUGH: Hugely unpopular,
12 probably why he lost in '76.

13 MR. DREEBEN: Yes.

14 JUSTICE KAVANAUGH: Now looked upon as
15 one of the better decisions in presidential
16 history, I think, by most people. If he's
17 thinking about, well, if I grant this pardon to
18 Richard Nixon, could I be investigated myself
19 for obstruction of justice on the theory that
20 I'm interfering with the investigation of
21 Richard Nixon?

22 MR. DREEBEN: So this would fall into
23 that small core area that I mentioned to Justice
24 Kagan and Justice Gorsuch of presidential
25 responsibilities that Congress cannot regulate.

1 JUSTICE KAVANAUGH: How about
2 President Obama's drone strikes?

3 MR. DREEBEN: So the -- the Office of
4 Legal Counsel looked at this very carefully and
5 determined that, number one, the federal murder
6 statute does apply to the executive branch. The
7 president wasn't personally carrying out the
8 strike, but the aiding and abetting laws are
9 broad, and it determined that a public authority
10 exception that's built into statutes and that
11 applied particularly to the murder statute,
12 because it talks about unlawful killing, did not
13 apply to the drone strike.

14 So this is actually the way that the
15 system should function. The Department of
16 Justice takes criminal law very seriously. It
17 runs it through the analysis very carefully with
18 established principles. It documents them. It
19 explains them. And then the president can go
20 forward in accordance with it. And there is no
21 risk of prosecution for that course of activity.

22 JUSTICE KAVANAUGH: Thank you for your
23 answers.

24 CHIEF JUSTICE ROBERTS: Justice
25 Barrett?

1 JUSTICE BARRETT: Mr. Dreeben, I want
2 to pick up with that public authority defense.
3 So I'm looking at the OLC memo that David Barron
4 wrote that you cited in your briefs, and in --
5 he describes the public authority defense citing
6 the model penal code. There are a few different
7 definitions, but I'll just highlight this one:
8 Justifying conduct which is required or
9 authorized by the law defining the duties or
10 functions of a public officer, the law governing
11 the armed services or lawful conduct of war, or
12 any other provision of law imposing a public
13 duty.

14 That sounds a lot like dividing a line
15 between official and private conduct. It -- it
16 -- I think it's narrower, and I recognize it's a
17 defense, not an immunity, but when we look at --
18 when you look at the definition of it, are you
19 acting within the scope of authority conferred
20 by law or discharging a duty conferred by law?

21 I think it's narrower than
22 Blassingame, narrower than Nixon versus
23 Fitzgerald.

24 MR. DREEBEN: Mm-hmm.

25 JUSTICE BARRETT: But that's what it

1 sounds like to me. Do you agree or disagree?

2 MR. DREEBEN: You -- you know, Justice
3 Barrett, I certainly understand the intuition
4 that when you act outside of your lawful
5 authority, you've kind of gone on a frolic and
6 detour, you're no longer carrying it out. I
7 don't really think that that quite works for
8 presidential activity.

9 The only way that he could have
10 implemented the orders is by exercising his
11 commander-in-chief authority over the armed
12 forces or his authority to supervise the
13 executive branch. Those seem like core
14 executive acts to me. There is such a
15 possibility as an unlawful executive act.

16 JUSTICE BARRETT: I'm not sure that I
17 understand your answer. I mean, I was thinking,
18 it -- it seemed to me that in your briefs and
19 today, when you referred to the public authority
20 defense --

21 MR. DREEBEN: Yes.

22 JUSTICE BARRETT: -- you said that's
23 one of the built-in protections and --

24 MR. DREEBEN: Yes.

25 JUSTICE BARRETT: -- why immunity is

1 not necessary --

2 MR. DREEBEN: Yes.

3 JUSTICE BARRETT: -- because, in some
4 of these instances, when the president takes
5 such actions that, you know, the courts have
6 been asking you might this result in criminal
7 prosecution, you say: Well, he could raise this
8 public authority defense.

9 And so I'm saying isn't this public
10 authority defense, if raised, doesn't it sound
11 like a defense that says: Well, I had -- I was
12 authorized by law to discharge this function?

13 MR. DREEBEN: And, therefore, I acted
14 lawfully?

15 JUSTICE BARRETT: Therefore, I acted
16 lawfully --

17 MR. DREEBEN: Yes.

18 JUSTICE BARRETT: -- and am not
19 criminally liable?

20 MR. DREEBEN: Correct.

21 JUSTICE BARRETT: Does that involve a
22 look into motives? Kind of this is -- gets to
23 what Justice Gorsuch was asking you. Could you
24 say I was acting within the scope of my
25 authority by granting a pardon, removing a

1 cabinet officer, but then the public authority
2 defense might not apply because you had a bad
3 motive in doing so?

4 MR. DREEBEN: No, I -- I -- I don't
5 think so, Justice Barrett. I think that it
6 operates based on objective facts disclosed to
7 counsel. Counsel then provides the advice, in
8 this case the Department of Justice, and it --
9 it's an objectively valid defense. It's a
10 complete defense to prosecution.

11 JUSTICE BARRETT: So what would be so
12 bad -- I mean, one thing that strikes me as
13 different -- well, one thing that's obviously
14 different between a public authority defense and
15 immunity is an interlocutory appeal and having
16 it resolved at the outset.

17 MR. DREEBEN: Mm-hmm. Mm-hmm.

18 JUSTICE BARRETT: What would be so bad
19 about having a question like that resolved at
20 the threshold, having it be an immunity, the
21 same kind of question that could be brought up
22 as a defense later, but have it be brought up at
23 the threshold as an immunity, and then an
24 interlocutory appeal would be available --

25 MR. DREEBEN: Mm-hmm.

1 JUSTICE BARRETT: -- and it would be a
2 freedom from standing trial but not a -- a jet
3 -- not a get-out-of-jail-free card?

4 MR. DREEBEN: Yes, I -- I understand
5 that, and I think that if the Court believed
6 that that was the appropriate way to craft
7 presidential protections, it has the authority
8 to craft procedural rules that implement its
9 Article II concerns.

10 That said, public authority is --
11 we're calling it a defense, but under many
12 statutes, it's actually an exception to
13 liability itself. And what you're really
14 talking about is trying the general issue.

15 And, generally, in criminal cases,
16 even cases that involve First Amendment issues,
17 like threat statutes, the jury is the
18 determinant of the facts. And I have a little
19 bit of difficulty with the idea of trying the
20 whole public authority issue separately to the
21 judge and having that go up on interlocutory
22 appeal with review of facts before you could
23 ever get it forward into a criminal case.

24 That said, if -- I would prefer a
25 regime in which the Court altered some of the

1 procedural rules surrounding the president than
2 a total absolute blanket immunity that takes
3 away the -- the possibility of criminal
4 prosecution, even if it was a core violation of
5 the statute in the teeth of attorney general
6 advice and has no overriding public purpose.

7 JUSTICE BARRETT: You think it has to
8 be a jury question? And, I -- I mean, I --
9 let's see. I wasn't necessarily proposing
10 actually treating it as a defense that was done
11 at the outset --

12 MR. DREEBEN: Mm-hmm.

13 JUSTICE BARRETT: -- and then subject
14 to interlocutory appeal. I was proposing what
15 about an immunity doctrine that drew from the
16 public authority defense that the Department of
17 Justice thinks would otherwise apply. So just
18 -- just go with me on that for a minute.

19 MR. DREEBEN: Okay.

20 JUSTICE BARRETT: Why would it be so
21 bad for it not to be a jury question? I mean,
22 it seems to me that some of these Article II
23 concerns would be exacerbated by having it go to
24 a jury rather than a judge.

25 MR. DREEBEN: So I -- I think some of

1 them are judge questions that could be resolved
2 on the face of the indictment. If the
3 Department of Justice ever returned an
4 indictment that said the issuance of this pardon
5 or this series of pardons constituted
6 obstruction of justice, I have a little
7 difficulty hypothesizing it, but a motion could
8 be made on the face of the indictment that says
9 Article II precludes Congress from regulating
10 these activities; the indictment needs to be
11 dismissed.

12 And if the Court wished to attach to
13 that kind of a rule interlocutory appeal, then
14 that -- that would be a -- a lesser safeguard
15 than the -- the one that my friend is proposing
16 here.

17 Other kinds of defenses, though,
18 really do intersect with the general issue. And
19 for those, I have a much greater time seeing how
20 the Court could implement that. And would there
21 be costs in going to trial? Yes. There is no
22 perfect system here. We are trying to design a
23 system that preserves the effective functioning
24 of the presidency and the accountability of a
25 former president under the rule of law.

1 And the perfect system that calibrates
2 all of those values probably has not been
3 devised. I think that the system that we have
4 works pretty well. Maybe it needs a few
5 ancillary rules. It is different from the
6 radical proposal of my friend.

7 JUSTICE BARRETT: Oh, I -- I agree.
8 Let -- let me ask you about state
9 prosecutions --

10 MR. DREEBEN: Mm-hmm.

11 JUSTICE BARRETT: -- because, if the
12 president has some kind of immunity that's
13 implicit in Article II --

14 MR. DREEBEN: Mm-hmm.

15 JUSTICE BARRETT: -- then that
16 immunity would protect him in -- from state
17 prosecutions --

18 MR. DREEBEN: Of course.

19 JUSTICE BARRETT: -- as well. A lot
20 of the protections that you're talking about are
21 internal protections that the federal government
22 has, protections in the Department of Justice,
23 which obviously are not applicable at the many,
24 many, many, many state and local jurisdictions
25 across the country.

1 What do you have to say to that?

2 MR. DREEBEN: So that raises a
3 Supremacy Clause issue, and the Court would run
4 a Supremacy Clause analysis that would probably
5 start with basic principles like McCulloch
6 versus Maryland. The states do not have the
7 authority to burden federal functions and would
8 then kind of move through In re Neagle, where
9 the Court said that a state murder prosecution
10 of a federal official guarding a Supreme Court
11 Justice and who fired a shot was not
12 permissible.

13 If the Court thought that you needed a
14 more categorical rule for the states, I think
15 the Supremacy Clause certainly leaves it within
16 the Court's prerogative to determine that the
17 president, unlike all other officials, deserves
18 more of a robust federal defense than what I
19 have just described.

20 JUSTICE BARRETT: But it would still
21 be a defense in -- in the states? It wouldn't
22 be -- I mean --

23 MR. DREEBEN: Well, any --

24 JUSTICE BARRETT: -- because that --
25 that's my point. Like, you know, it's one thing

1 to say, well, the president -- there are not
2 going to be these prosecutions that are
3 politically motivated, the things that Justice
4 Kavanaugh was referring to that might be the
5 danger of -- of this system, one thing that we
6 have to worry about, that might not carry the
7 day, but, you know, that's a concern.

8 It's totally different when you take
9 it outside of the Department of Justice and its
10 structures and then you throw it out elsewhere,
11 the idea across -- across the states, the idea
12 of an immunity, I think, has a lot more purchase
13 if you're talking about something that protects
14 the former president from standing trial and the
15 stake in state and local level.

16 MR. DREEBEN: So I -- I -- I don't
17 know that you would have to design a system in
18 which the president would have to stand trial at
19 the state and local level. It's certainly
20 within the Court's authority as a matter of
21 Supremacy Clause law to find an immunity. But
22 we -- we have been talking here about -- at some
23 length on the distinction between official acts
24 and private acts.

25 JUSTICE BARRETT: Yeah.

1 MR. DREEBEN: That will have to be
2 determined by some sort of a process. Any
3 immunity defense that the Court announces can
4 still be met by a state assertion that we're
5 prosecuting private conduct. You're going to
6 have to have some process.

7 I think having some legal process is
8 not a reason to cast aside a nuanced system that
9 actually looks at what protections are necessary
10 as opposed to what would provide the absolute
11 maximum insulation for former presidents even if
12 we acknowledge that it's highly prophylactic.

13 JUSTICE BARRETT: Totally agree, and I
14 wasn't actually contrasting the absolute
15 immunity rule. I was saying that --

16 MR. DREEBEN: Yes.

17 JUSTICE BARRETT: -- if there was some
18 sort of official private -- there are
19 consequences --

20 MR. DREEBEN: Yes.

21 JUSTICE BARRETT: -- towards -- about
22 making immunity. Okay.

23 And since you bring up the private
24 acts, this is my last question. So I -- I had
25 asked Mr. Sauer about, on page 46 and 47 of your

1 brief --

2 MR. DREEBEN: Yes.

3 JUSTICE BARRETT: -- you say, "Even if
4 the Court were inclined to recognize some
5 immunity for a former president's official acts,
6 it should remand for trial because the
7 indictment alleges substantial private conduct."

8 MR. DREEBEN: Yes.

9 JUSTICE BARRETT: And you said that
10 the private conduct would be sufficient.

11 MR. DREEBEN: Yes.

12 JUSTICE BARRETT: The Special Counsel
13 has expressed some concern for speed and wanting
14 to move forward. So, you know, the normal
15 process, what -- what Mr. Sauer asked, would be
16 for us to remand if we decided that there were
17 --

18 MR. DREEBEN: Mm-hmm.

19 JUSTICE BARRETT: -- some official
20 acts immunity and to let that be sorted out
21 below.

22 It is another option for the Special
23 Counsel to just proceed based on the private
24 conduct and drop the official conduct?

25 MR. DREEBEN: Well -- well, two things

1 on that, Justice Barrett.

2 First -- first of all, there's really
3 an integrated conspiracy here that had different
4 components as alleged in the indictment, working
5 with -- with private lawyers to achieve the
6 goals of the fraud and, as I said before, the --
7 the Petitioner reaching for his official powers
8 to try to make the conspiracies more likely to
9 succeed. We would like to present that as an
10 integrated picture to the jury so that it sees
11 the sequence and the gravity of the conduct and
12 why each step occurred.

13 That said, if the Court were to say
14 that the fraudulent elector scheme is private,
15 reaching out to state officials as a candidate
16 is private, trying to exploit the violence after
17 January 6th by calling senators and saying
18 please delay the certification proceeding, is
19 private campaign activity, we still think,
20 contrary to what my friend said, that we could
21 introduce the interactions with the Justice
22 Department, the efforts to pressure the vice
23 president, for their evidentiary value as
24 showing the defendant's knowledge and intent.
25 And we would take a jury instruction that would

1 say you may not impose criminal culpability for
2 the actions that he took. However, you may
3 consider it insofar as it bears on knowledge and
4 intent.

5 That's the usual rule with protected
6 speech, for example, under Wisconsin versus
7 Mitchell. My friend analogizes this to the
8 Speech or Debate Clause, but we don't think the
9 Speech or Debate Clause has any applicability
10 here. It's a very explicit constitutional
11 protection that says senators and
12 representatives shall not be questioned in any
13 other place. So it carries an evidentiary
14 component that's above and beyond whatever
15 official act immunity he is seeking.

16 And the last thing I would say on this
17 is we think that the concerns about the use of
18 evidence of presidential conduct that might
19 otherwise be official and subject to executive
20 privilege is already taken care of by United
21 States versus Nixon. That balances the
22 president's interests in confidentiality against
23 the need of the judicial system for all
24 available facts to get to the truth.

25 And once that has been overcome, we

1 submit that evidence can be used even if
2 culpability can't rest on it.

3 JUSTICE BARRETT: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Jackson?

6 JUSTICE JACKSON: Just to pick up
7 where Justice Barrett left off, I -- I think I
8 heard you say that it -- even if we decide here
9 something a -- a rule that's not the rule that
10 you prefer that is somehow separating out
11 private from official acts and saying that that
12 should apply here, there's sufficient
13 allegations in the indictment in the
14 government's view that fall into the private
15 acts bucket that the case should be allowed to
16 proceed?

17 MR. DREEBEN: Correct.

18 JUSTICE JACKSON: Because, in an
19 ordinary case, it wouldn't be stopped just
20 because some of the acts are allegedly
21 immunized, even if people agree that some are
22 immunized, if there are other acts that aren't,
23 the case would go forward?

24 MR. DREEBEN: That is right.

25 JUSTICE JACKSON: All right. Going

1 back to the clear statement argument, I -- I --
2 I'm struggling with that argument because my
3 understanding was that when a charged criminal
4 statute is read narrowly in the presidential
5 context to not apply to the president, a
6 constitutional question is being avoided, so
7 that you're doing that to avoid having to deal
8 with the constitutional question.

9 So what is the constitutional question
10 that is being avoided in those kinds of
11 situations?

12 MR. DREEBEN: A serious one. This is
13 just an application of this Court's ordinary
14 construction of criminal statutes that if there
15 is an available interpretation that would avoid
16 a serious constitutional question, the Court's
17 preference is to --

18 JUSTICE JACKSON: Right.

19 MR. DREEBEN: -- go in that way.

20 JUSTICE JACKSON: And the nature -- I
21 guess I'm going at what is -- what is -- my
22 understanding is that what is being avoided in
23 that situation is the question of whether a
24 former president or, you know, can be held
25 criminally liable for doing the alleged act that

1 is being asserted in that statute, consistent
2 with the Constitution.

3 So we look at the statute. It's got
4 some elements in it. And we are saying, well,
5 geez, if this statute and those elements apply
6 to the president's conduct in this situation,
7 we'd have to answer the question can the
8 president be held liable, consistent with the
9 Constitution, for that behavior, is that right?

10 MR. DREEBEN: So the first step in
11 that analysis, I just want to --

12 JUSTICE JACKSON: Yes, please.

13 MR. DREEBEN: Yes, but the first step
14 is, is there ambiguity.

15 JUSTICE JACKSON: Okay. Right.

16 MR. DREEBEN: And these statutes apply
17 to any person. They apply to whoever. There's
18 no ambiguity in those phrases. This Court in
19 Nardone versus United States concluded that
20 similar words, "any person" --

21 JUSTICE JACKSON: Yes.

22 MR. DREEBEN: -- apply to government
23 officials.

24 JUSTICE JACKSON: All right. Well,
25 assume -- let's just assume that we -- I -- I

1 guess I'm just trying to get at we're avoiding a
2 constitutional question if we do that in -- in
3 the ordinary case, and -- and what's confusing
4 to me about this case is that we're not being
5 asked to avoid the constitutional question.

6 In fact, the question of whether or
7 not the president can be held liable consistent
8 with the Constitution or does he have immunity
9 is the question that's being presented to us.

10 So I don't understand how the clear
11 statement kind of analysis even works. It seems
12 completely tautological to me for us to hold
13 that presidents cannot be prosecuted under any
14 criminal statute without a clear statement from
15 Congress to avoid the question of whether or not
16 the Constitution allows them to be prosecuted.

17 We'd have to have a reason, right? I
18 mean, we'd have -- we'd have to have a rationale
19 for applying the -- clear statement rule.

20 MR. DREEBEN: I -- I think the Court
21 would have to have some rationale that's not
22 evident in either the existing doctrine or the
23 text. And just one data point for the Court in
24 thinking about how the clear statement rule
25 works.

1 In United States versus Sun-Diamond, a
2 case about gratuities that the Court is probably
3 familiar with, Justice Scalia wrote an opinion
4 for a unanimous Court in which he used a
5 hypothetical about what would happen if the
6 president received a sports replica jersey at a
7 typical White House event. Would that violate
8 Section 201(c)? And the Court offered a
9 construction that it had to be for or because an
10 official act to avoid that problem.

11 I think, if there was such a
12 well-received understanding that presidents are
13 not included in general federal criminal law
14 unless the president is specifically named,
15 which he is not in Section 201, Justice Scalia
16 would have thought of that and some member of
17 the Court would have reacted, and none did.

18 JUSTICE JACKSON: All right. Let me
19 go on to ask about what you take the
20 Petitioner's position to be in this case because
21 we've had a lot of talk about drawing the lines.
22 Justice Kavanaugh, Justice Gorsuch suggested
23 that we should be thinking about Blassingame and
24 that within the -- first, we have private versus
25 official and then within official now we have

1 something about core acts versus other acts as
2 we try to figure out, you know, at what level
3 the president is going to have immunity.

4 But I took the Petitioner's argument
5 in this case not to be inviting us to engage in
6 that kind of analysis. I thought he was arguing
7 that all official acts get immunity -- of? And
8 so I didn't understand us to be having to drill
9 down on which official acts do.

10 And so my question is, why isn't it
11 enough for the purposes of this case, given what
12 the Petitioner has argued, to just answer the
13 question of whether all official acts get
14 immunity?

15 MR. DREEBEN: That -- that is enough.
16 And if the Court -- answers that question the
17 way that the government has submitted, that
18 resolves the case.

19 I -- I want to make a clarification
20 that I may have left the Court with some
21 uncertainty about. The official act analysis
22 that my friend is talking about is the
23 Fitzgerald versus Nixon outer perimeter test,
24 which is extremely protective of the president.
25 It's not looking at core versus ancillary. It's

1 saying everything the president does is a target
2 for private civil lawsuits. That is not a great
3 thing. And, therefore, they are all cut off.

4 JUSTICE JACKSON: That's an absolute
5 immunity kind of concept, right?

6 MR. DREEBEN: Correct. That's right.

7 JUSTICE JACKSON: Anything that's
8 official in the outer perimeter is not subject
9 to liability.

10 MR. DREEBEN: That is right.

11 JUSTICE JACKSON: And so we don't have
12 to then go, well, okay, we have the bucket of
13 official, now let's figure out which within that
14 might be subject to liability. Not on the
15 theory of absolute immunity, correct?

16 MR. DREEBEN: Neither on the theory of
17 absolute immunity or on our theory. On -- on
18 his theory, everything's protected. On our
19 theory, there is no immunity, but this is where
20 I would draw the distinction.

21 There are as-applied constitutional
22 challenges that you run through the Youngstown
23 framework and this Court's customary method of
24 analysis, and you determine whether there's a
25 infringement of Article II.

1 JUSTICE JACKSON: So what you're
2 saying is, even if we reject the absolute
3 immunity theory, it's not as though the
4 president is -- you know, doesn't have the
5 opportunity to make the kinds of arguments that
6 arise as -- at the level of, you know, this
7 particular act or this particular statute has a
8 problem in retrospect.

9 I think I hear you saying we should
10 not be trying to, in the abstract, set up those
11 boundaries ahead of time. As a function of sort
12 of blanket immunity, allow each allegation to be
13 brought and then we would decide in that
14 context.

15 MR. DREEBEN: Yes, with -- with the
16 additional note that Petitioner has never made
17 that argument. And I think it would be up to a
18 district court to decide whether to go that
19 route. At this point in the litigation, he's
20 put all -- all of his eggs in the absolute
21 immunity basket.

22 JUSTICE JACKSON: All right. And if
23 we -- if we invite -- you know, if we see the
24 question presented as broader than that and we
25 do say let's engage in the core official versus

1 not core and try to figure out the line, is --
2 is this the right vehicle to hammer out that
3 test?

4 I mean, I -- I had understood that the
5 -- most, if not all, but most of the allegations
6 here, there's really no plausible argument that
7 they would fall into core versus not such that
8 they are immune.

9 MR. DREEBEN: We don't think there are
10 any core acts that have been alleged in the
11 indictments that would be off limits as a matter
12 of Article II.

13 JUSTICE JACKSON: So, if we were going
14 to do this kind of analysis, try to figure out
15 what the line is, we should probably wait for a
16 vehicle that actually presents it in a way that
17 allows us to test the different sides of the --
18 the standard that we'd be creating, right?

19 MR. DREEBEN: I don't see any need in
20 this case for the Court to embark on that
21 analysis.

22 JUSTICE JACKSON: All right. The
23 final sort of set of questions that I have have
24 to do with what I do take as a very legitimate
25 concern about prosecutorial abuse, about future

1 presidents being targeted for things that they
2 have done in office.

3 I -- I -- I take that concern. I
4 think it's a real thing. But I wonder whether
5 some of it might also be mitigated by the fact
6 that existing administrations have a
7 self-interest in protecting the presidency, that
8 they understand that if they go after the former
9 guy, soon they're going to be the former guy and
10 they will have created precedent that will be
11 problematic.

12 So I wonder if you might comment on
13 whether some of the caution from the Justice
14 Department and the prosecutors and whatnot comes
15 from an understanding that they will soon be
16 former presidents as well.

17 MR. DREEBEN: I -- I think,
18 absolutely. And -- and I would locate this as a
19 structural argument that's built into the
20 Constitution itself. The executive branch, I
21 think, as this Court knows, has executive branch
22 interests that it at times asserts in opposition
23 to Congress so that the proper functioning of
24 the president is protected. And I believe that
25 that value would be operative and is operative

1 in anything as momentous as charging a former
2 president with a crime.

3 JUSTICE JACKSON: And I would also
4 say, I think, and ask you to comment on, you
5 know, presidents are concerned about being
6 investigated and prosecuted, and it chills to
7 some extent their, you know, ability to do what
8 they want in office.

9 And that's a concern on one side. But
10 can -- can you comment on the concern about
11 having a president unbounded while in office, a
12 president who knows that he does not have to
13 ultimately follow the law because there is
14 really nothing more than, say, political
15 accountability in terms of -- of impeachment?

16 I mean, we have amicus briefs here
17 from Professor Lederman, for example, who says,
18 you know, a president would not be prohibited by
19 statute from perjuring himself under oath about
20 official matters, from corruptly altering,
21 destroying, or concealing documents to prevent
22 them from being used in an official proceeding,
23 from suborning others to commit perjury, from
24 bribing witnesses or public officials. And he
25 goes on and on and on about the things that a

1 president in office with the knowledge that they
2 have no criminal accountability would do.

3 I see that as a concern that is at
4 least equal to the president being worried -- so
5 worried about criminal prosecution that he, you
6 know, is a little bit limited in his ability to
7 function.

8 So can you talk about those competing
9 concerns?

10 MR. DREEBEN: So, Justice Jackson, I
11 think it would be a sea change to announce a
12 sweeping rule of immunity that no president has
13 had or has needed. I think we have also had a
14 perfectly functioning system that has seen
15 occasional episodes of presidential misconduct.
16 The Nixon era is the paradigmatic one. The
17 indictment in this case alleges another.

18 For the most part, I believe that the
19 legal regime and the constitutional regime that
20 we have works, and to alter it poses more risks.

21 JUSTICE JACKSON: Thank you.

22 MR. DREEBEN: Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Rebuttal, Mr. Sauer?

1 MR. SAUER: I have nothing further,
2 Your Honor.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Counsel.

6 The case is submitted.

7 (Whereupon, at 12:40 p.m., the case
8 was submitted.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official

<p style="text-align: center;">1</p> <p>1 ^[1] 5:4 10:00 ^[2] 1:15 3:2 11,000 ^[1] 132:12 12:40 ^[1] 178:7 1512 ^[1] 139:25 1512(c)(2) ^[2] 86:22 141:25 1789 ^[1] 52:25 18 ^[2] 56:20 107:2 1876 ^[1] 25:14 19 ^[1] 108:19 1973 ^[1] 54:15</p>	<p>81:18 113:16 175:18 abstract ^[2] 102:19 173:10 abuse ^[3] 96:11 118:18 174:25 abused ^[1] 103:3 abuses ^[5] 68:23 69:6 109: 13 114:15,16 accept ^[6] 7:3 25:7 35:10 57:17 95:23 113:7 accepted ^[1] 8:7 accepting ^[4] 7:3,13 12:8 35:17 access ^[3] 72:1 91:2 98:16 accomplishing ^[1] 70:6 accordance ^[1] 151:20 accordingly ^[1] 28:10 account ^[2] 21:8 75:13 accountability ^[8] 69:2 84: 7 114:17 146:11 147:16 158:24 176:15 177:2 accurate ^[1] 149:23 accusations ^[1] 139:20 accused ^[1] 113:24 accusing ^[1] 140:3 achieve ^[8] 14:12 21:2 34: 19 80:21 100:12,13 126:24 164:5</p>	<p>17:18 18:20 19:7,22 20:8 21:5,19 27:4,13,14,19 28: 21 29:2,3,8 30:12 31:8,9, 12 32:22 33:10 34:18,20, 24 35:22,23 36:5,22 47:4 50:22 51:2,14,17,23,24,25 53:9 58:10,11,21 59:9,15 60:5,11 68:12 69:22 71:12, 17 73:14 76:16 77:18 81: 20,25 82:4 83:4 86:5,10 96:16 115:4 119:3 125:8 153:14 161:23,24 162:24 163:5,20 166:11,15,20,22 171:1,1,7,9,13 174:10 actual ^[2] 35:16 130:12 actually ^[16] 11:3 14:13 25: 22 35:12 61:13 118:24 124:15 125:18 128:10 132: 4 151:14 156:12 157:10 162:9,14 174:16 add ^[1] 116:4 addition ^[4] 48:18 52:5 57: 2 71:25 additional ^[2] 114:13 173: 16 address ^[3] 7:23 26:10 31: 16 addressed ^[5] 48:16 72:14 110:4,5,7 addresses ^[1] 62:16 addressing ^[1] 40:7 adequate ^[3] 75:19 82:18 111:15</p>	<p>afield ^[1] 51:15 age ^[1] 115:25 agency ^[5] 96:7,9 123:12, 14,17 ages ^[1] 141:8 aggravates ^[1] 126:19 ago ^[1] 76:11 agree ^[3] 10:9 15:6,7 18:8 19:23 27:10 29:6 34:2,13 49:15 58:14 73:18 81:13 85:12 94:12 95:25 96:15 97:1 99:8 103:5 111:22 125:10 126:16 130:5,8 146:7 149:24 153:1 159:7 162:13 166:21 agreed ^[1] 76:21 agreement ^[1] 7:3 ahead ^[4] 20:20 28:18,19 173:11 aiding ^[1] 151:8 aim ^[3] 9:5 31:15 32:25 aligned ^[1] 124:10 ALITO ^[53] 20:18,21 22:2, 12,18 23:11,17 24:6,11 34: 16,17 35:5 73:9 78:18,22 79:6,11 81:4,7 97:23,25 98:11 99:4,19 101:16,17 102:1,12,18 103:10,22,25 104:16,20,21 105:3,6,15 106:2,18 107:11 108:6,25 109:16,21 110:6,16 111:4, 18 112:4,18 113:10 114:6 115:15 Alito's ^[2] 26:12 41:22 allay ^[1] 146:5 allegation ^[13] 12:15,18 14: 19 15:1 21:23 27:24 29:14 39:1,4 63:13 126:8 132:5 173:12 allegations ^[14] 10:6 25:4 29:22 31:13 32:20,24 36: 21,25 38:9 74:12 103:14 126:17 166:13 174:5 alleged ^[18] 9:7,10 10:3 29: 13 34:25 50:24 69:2 103: 18 111:6 114:20 125:9 126:25 127:12,21 132:11 164:4 167:25 174:10 allegedly ^[4] 4:6 11:24 73: 16 166:20 alleges ^[4] 9:3 26:1 163:7 177:17 alleging ^[1] 20:8 allies ^[1] 112:21 allocates ^[1] 87:16 allow ^[2] 46:3 173:12 allowed ^[1] 166:15 allowing ^[2] 119:12 137:4 allows ^[2] 169:16 174:17 already ^[2] 90:13 165:20 alter ^[1] 177:20 altered ^[2] 120:25 156:25 altering ^[1] 176:20 alternate ^[1] 37:22 alternative ^[2] 21:4 26:9</p>	<p>Alternatively ^[1] 91:14 although ^[1] 149:8 ambassador ^[4] 6:19 7:14 32:6 45:20 ambassadors ^[1] 6:15 ambiguity ^[2] 168:14,18 ameliorate ^[1] 75:14 amenable ^[1] 16:7 Amendment ^[4] 91:11 123: 5,17 156:16 American ^[4] 3:13 8:22 30: 25 51:24 Americans ^[1] 107:1 amici ^[1] 11:2 amicus ^[1] 176:16 among ^[2] 102:9,9 amount ^[1] 63:5 analogizes ^[1] 165:7 analogous ^[2] 35:4 121:19 analogue ^[1] 91:11 analogy ^[1] 123:11 analysis ^[26] 6:8,8 15:18 34:2 41:11,12 53:12 73:4 87:11 88:5 89:6 117:11 121:20 122:21 123:19 136: 6,14 151:17 160:4 168:11 169:11 171:6,21 172:24 174:14,21 analyze ^[3] 6:20 95:12 129: 20 ancillary ^[3] 37:25 159:5 171:25 Anderson ^[2] 20:2 53:16 animus ^[2] 75:19 76:7 announce ^[1] 177:11 announcement ^[1] 137:13 announces ^[1] 162:3 another ^[10] 15:16,16 29: 19 64:22 65:1 104:24 127: 24 148:8 163:22 177:17 answer ^[14] 4:13 9:15 43: 16 82:23 92:16,17 108:11 109:21 110:17 116:4 129: 12 153:17 168:7 171:12 answered ^[1] 47:16 answers ^[2] 151:23 171:16 anticipatory ^[2] 123:4,7 antithesis ^[1] 114:21 anybody ^[6] 24:2 60:1 61: 18,21 98:9 147:23 anytime ^[1] 39:14 anyway ^[1] 92:10 APA ^[1] 95:8 appeal ^[9] 34:15 80:10 105: 24 124:4 155:15,24 156:22 157:14 158:13 appeals ^[5] 73:12 75:4,8 76:15 122:20 appeals' ^[1] 75:11 appearance ^[1] 120:13 APPEARANCES ^[1] 1:17 appears ^[3] 19:9 26:6 96: 22 applicability ^[1] 165:9</p>
<p style="text-align: center;">2</p> <p>200 ^[2] 4:20 109:12 201 ^[2] 84:16 170:15 201(c) ^[1] 170:8 2024 ^[1] 1:11 23-939 ^[1] 3:4 234 ^[5] 3:13 43:24 52:7 64: 19,20 241 ^[2] 107:2 108:1 25 ^[1] 1:11</p>	<p>access ^[3] 72:1 91:2 98:16 accomplishing ^[1] 70:6 accordance ^[1] 151:20 accordingly ^[1] 28:10 account ^[2] 21:8 75:13 accountability ^[8] 69:2 84: 7 114:17 146:11 147:16 158:24 176:15 177:2 accurate ^[1] 149:23 accusations ^[1] 139:20 accused ^[1] 113:24 accusing ^[1] 140:3 achieve ^[8] 14:12 21:2 34: 19 80:21 100:12,13 126:24 164:5 achieved ^[1] 115:25 acknowledge ^[1] 162:12 acknowledged ^[2] 53:8 87:10 acknowledgment ^[1] 31: 7 across ^[6] 83:9 104:23 121: 18 159:25 161:11,11 act ^[5] 6:1,14,24 7:13 9:24 12:4,15 13:19 14:1,8 15: 13 21:10 23:13,14 35:13 38:16,23 41:3,7,10,21,25 42:11,17,17 43:2,7,7,8,10, 18 46:6,22,23 58:19,19 60: 23 74:19 86:9 101:23 121: 17 123:15 126:1 131:9 153:4,15 165:15 167:25 170:10 171:21 173:7 acted ^[3] 73:16 154:13,15 acting ^[14] 14:13 15:3 30: 21 33:11,12 100:11,12 129: 13,14 131:21 132:15 136: 24 152:19 154:24 action ^[8] 3:23 23:1 24:18 38:5 48:1,8 72:20 129:6 actions ^[7] 19:5 72:5 116: 22 133:6 148:10 154:5 165:2 activities ^[7] 80:6 83:15 87: 9 91:5 100:4 130:9 158:10 activity ^[7] 63:10 70:21 72: 23 133:14 151:21 153:8 164:19 actors ^[2] 30:1 126:23 acts ^[94] 3:15 4:15 5:18 6: 10,23 7:4,17,17 8:2 9:4,20 10:7,12 12:20 13:2,13,17</p>	<p>add ^[1] 116:4 addition ^[4] 48:18 52:5 57: 2 71:25 additional ^[2] 114:13 173: 16 address ^[3] 7:23 26:10 31: 16 addressed ^[5] 48:16 72:14 110:4,5,7 addresses ^[1] 62:16 addressing ^[1] 40:7 adequate ^[3] 75:19 82:18 111:15 adhere ^[1] 103:10 adjudged ^[1] 144:15 adjudicate ^[1] 76:6 administration ^[3] 143:19, 20,21 administrations ^[1] 175:6 admit ^[1] 55:21 admits ^[1] 55:2 adopt ^[2] 40:21 45:1 adopted ^[4] 6:7 41:21 78:5 130:21 adopting ^[3] 27:1 45:12 55: 14 adoption ^[1] 76:21 adopts ^[1] 41:23 advance ^[1] 41:24 advancing ^[1] 53:6 adversary ^[1] 40:24 advice ^[11] 72:2,4 91:3,4 98:16 107:9 108:10,12 109:10 155:7 157:6 advise ^[2] 91:15,21 advises ^[1] 91:7 advisor ^[1] 126:4 advocating ^[1] 21:1 affects ^[1] 97:2 affirming ^[1] 36:25 affixes ^[2] 26:2,3 afford ^[1] 82:18 afforded ^[1] 105:17 affords ^[1] 104:10</p>	<p>aim ^[3] 9:5 31:15 32:25 aligned ^[1] 124:10 ALITO ^[53] 20:18,21 22:2, 12,18 23:11,17 24:6,11 34: 16,17 35:5 73:9 78:18,22 79:6,11 81:4,7 97:23,25 98:11 99:4,19 101:16,17 102:1,12,18 103:10,22,25 104:16,20,21 105:3,6,15 106:2,18 107:11 108:6,25 109:16,21 110:6,16 111:4, 18 112:4,18 113:10 114:6 115:15 Alito's ^[2] 26:12 41:22 allay ^[1] 146:5 allegation ^[13] 12:15,18 14: 19 15:1 21:23 27:24 29:14 39:1,4 63:13 126:8 132:5 173:12 allegations ^[14] 10:6 25:4 29:22 31:13 32:20,24 36: 21,25 38:9 74:12 103:14 126:17 166:13 174:5 alleged ^[18] 9:7,10 10:3 29: 13 34:25 50:24 69:2 103: 18 111:6 114:20 125:9 126:25 127:12,21 132:11 164:4 167:25 174:10 allegedly ^[4] 4:6 11:24 73: 16 166:20 alleges ^[4] 9:3 26:1 163:7 177:17 alleging ^[1] 20:8 allies ^[1] 112:21 allocates ^[1] 87:16 allow ^[2] 46:3 173:12 allowed ^[1] 166:15 allowing ^[2] 119:12 137:4 allows ^[2] 169:16 174:17 already ^[2] 90:13 165:20 alter ^[1] 177:20 altered ^[2] 120:25 156:25 altering ^[1] 176:20 alternate ^[1] 37:22 alternative ^[2] 21:4 26:9</p>	<p>alternatively ^[1] 91:14 although ^[1] 149:8 ambassador ^[4] 6:19 7:14 32:6 45:20 ambassadors ^[1] 6:15 ambiguity ^[2] 168:14,18 ameliorate ^[1] 75:14 amenable ^[1] 16:7 Amendment ^[4] 91:11 123: 5,17 156:16 American ^[4] 3:13 8:22 30: 25 51:24 Americans ^[1] 107:1 amici ^[1] 11:2 amicus ^[1] 176:16 among ^[2] 102:9,9 amount ^[1] 63:5 analogizes ^[1] 165:7 analogous ^[2] 35:4 121:19 analogue ^[1] 91:11 analogy ^[1] 123:11 analysis ^[26] 6:8,8 15:18 34:2 41:11,12 53:12 73:4 87:11 88:5 89:6 117:11 121:20 122:21 123:19 136: 6,14 151:17 160:4 168:11 169:11 171:6,21 172:24 174:14,21 analyze ^[3] 6:20 95:12 129: 20 ancillary ^[3] 37:25 159:5 171:25 Anderson ^[2] 20:2 53:16 animus ^[2] 75:19 76:7 announce ^[1] 177:11 announcement ^[1] 137:13 announces ^[1] 162:3 another ^[10] 15:16,16 29: 19 64:22 65:1 104:24 127: 24 148:8 163:22 177:17 answer ^[14] 4:13 9:15 43: 16 82:23 92:16,17 108:11 109:21 110:17 116:4 129: 12 153:17 168:7 171:12 answered ^[1] 47:16 answers ^[2] 151:23 171:16 anticipatory ^[2] 123:4,7 antithesis ^[1] 114:21 anybody ^[6] 24:2 60:1 61: 18,21 98:9 147:23 anytime ^[1] 39:14 anyway ^[1] 92:10 APA ^[1] 95:8 appeal ^[9] 34:15 80:10 105: 24 124:4 155:15,24 156:22 157:14 158:13 appeals ^[5] 73:12 75:4,8 76:15 122:20 appeals' ^[1] 75:11 appearance ^[1] 120:13 APPEARANCES ^[1] 1:17 appears ^[3] 19:9 26:6 96: 22 applicability ^[1] 165:9</p>
<p style="text-align: center;">3</p> <p>3 ^[1] 2:4 371 ^[3] 83:13 99:6 148:17</p>	<p>act ^[5] 6:1,14,24 7:13 9:24 12:4,15 13:19 14:1,8 15: 13 21:10 23:13,14 35:13 38:16,23 41:3,7,10,21,25 42:11,17,17 43:2,7,7,8,10, 18 46:6,22,23 58:19,19 60: 23 74:19 86:9 101:23 121: 17 123:15 126:1 131:9 153:4,15 165:15 167:25 170:10 171:21 173:7 acted ^[3] 73:16 154:13,15 acting ^[14] 14:13 15:3 30: 21 33:11,12 100:11,12 129: 13,14 131:21 132:15 136: 24 152:19 154:24 action ^[8] 3:23 23:1 24:18 38:5 48:1,8 72:20 129:6 actions ^[7] 19:5 72:5 116: 22 133:6 148:10 154:5 165:2 activities ^[7] 80:6 83:15 87: 9 91:5 100:4 130:9 158:10 activity ^[7] 63:10 70:21 72: 23 133:14 151:21 153:8 164:19 actors ^[2] 30:1 126:23 acts ^[94] 3:15 4:15 5:18 6: 10,23 7:4,17,17 8:2 9:4,20 10:7,12 12:20 13:2,13,17</p>	<p>adhere ^[1] 103:10 adjudged ^[1] 144:15 adjudicate ^[1] 76:6 administration ^[3] 143:19, 20,21 administrations ^[1] 175:6 admit ^[1] 55:21 admits ^[1] 55:2 adopt ^[2] 40:21 45:1 adopted ^[4] 6:7 41:21 78:5 130:21 adopting ^[3] 27:1 45:12 55: 14 adoption ^[1] 76:21 adopts ^[1] 41:23 advance ^[1] 41:24 advancing ^[1] 53:6 adversary ^[1] 40:24 advice ^[11] 72:2,4 91:3,4 98:16 107:9 108:10,12 109:10 155:7 157:6 advise ^[2] 91:15,21 advises ^[1] 91:7 advisor ^[1] 126:4 advocating ^[1] 21:1 affects ^[1] 97:2 affirming ^[1] 36:25 affixes ^[2] 26:2,3 afford ^[1] 82:18 afforded ^[1] 105:17 affords ^[1] 104:10</p>	<p>aim ^[3] 9:5 31:15 32:25 aligned ^[1] 124:10 ALITO ^[53] 20:18,21 22:2, 12,18 23:11,17 24:6,11 34: 16,17 35:5 73:9 78:18,22 79:6,11 81:4,7 97:23,25 98:11 99:4,19 101:16,17 102:1,12,18 103:10,22,25 104:16,20,21 105:3,6,15 106:2,18 107:11 108:6,25 109:1</p>	

Official

<p>applicable [4] 67:13 71:14 78:25 159:23</p> <p>applicants [1] 145:8</p> <p>application [2] 99:5 167:13</p> <p>applications [1] 121:19</p> <p>applied [9] 13:10 22:24 39:25 79:2,20 83:3 100:14 144:23 151:11</p> <p>applies [7] 46:12,24 67:14 84:14 87:7 99:21 131:2</p> <p>apply [26] 22:19 25:3 41:11 52:15 56:8 71:19,24 72:25 83:5 88:8 89:7,23 102:22 117:6 124:15 144:24 151:6,13 155:2 157:17 166:12 167:5 168:5,16,17,22</p> <p>applying [6] 71:16 83:10 88:6 137:11 144:6 169:19</p> <p>appoint [2] 115:23 119:22</p> <p>appointed [2] 125:15,20</p> <p>appointee [3] 135:3,5,5</p> <p>appointing [3] 6:15 7:14 135:21</p> <p>appointment [8] 7:9 32:8 33:23 35:12,16 119:21 128:2,10</p> <p>appointments [3] 87:15 115:22 119:18</p> <p>appoints [1] 6:16</p> <p>appreciate [2] 141:2,3</p> <p>approach [6] 25:2 59:1 74:9,11 94:15 124:6</p> <p>appropriate [8] 9:11 113:5 124:11 125:24 130:2,15 136:10 156:6</p> <p>April [1] 1:11</p> <p>ardor [1] 48:6</p> <p>area [6] 86:4 141:21 145:6,15 148:22 150:23</p> <p>areas [2] 45:24 46:10</p> <p>aren't [3] 104:14 138:15 166:22</p> <p>argue [4] 24:2,7 65:4,6</p> <p>argued [3] 53:21 65:11 171:12</p> <p>arguing [4] 15:2 80:16 81:5 171:6</p> <p>argument [26] 1:14 2:2,5 3:4,7 39:24 40:2 57:17 65:18 66:6,13,20 67:2 68:4 73:2 78:23 81:8,22 109:5,18 167:1,2 171:4 173:17 174:6 175:19</p> <p>arguments [3] 34:6 140:17 173:5</p> <p>arise [1] 173:6</p> <p>arises [1] 71:15</p> <p>Arizona [1] 38:13</p> <p>armed [2] 152:11 153:11</p> <p>armies [1] 116:7</p> <p>around [2] 90:9 112:14</p> <p>arsenal [1] 75:23</p> <p>Article [27] 5:4,20 27:13,15</p>	<p>28:5 52:13 69:8 70:2,3 81:14 82:19 85:22 89:11 91:8 97:7 100:7 107:21 118:7 124:9,10 144:4 156:9 157:22 158:9 159:13 172:25 174:12</p> <p>articulate [1] 50:20</p> <p>artificial [1] 120:12</p> <p>as-applied [5] 70:2 85:21 107:21 136:13 172:21</p> <p>ascertained [1] 125:19</p> <p>aside [8] 113:21 131:8 135:19,21 137:17 138:8,10 162:8</p> <p>aspects [4] 19:11 81:7,14 116:14</p> <p>assassinate [1] 9:19</p> <p>assassination [1] 12:8</p> <p>assert [1] 70:2</p> <p>asserted [2] 111:11 168:1</p> <p>assertion [2] 120:22 162:4</p> <p>asserts [1] 175:22</p> <p>assess [1] 14:24</p> <p>assessing [1] 33:10</p> <p>assigned [1] 70:6</p> <p>assist [1] 145:9</p> <p>assume [13] 27:16 28:25 29:1 71:11 81:21 84:19 89:25 90:1,4 92:7 137:19 168:25,25</p> <p>assumed [1] 55:12</p> <p>assumes [1] 113:18</p> <p>assuming [4] 7:19 25:7 28:1 55:25</p> <p>assumption [4] 58:20 59:8,10 115:6</p> <p>assure [2] 70:16 71:10</p> <p>attach [1] 158:12</p> <p>attempted [1] 97:3</p> <p>attempting [3] 38:19,24 39:2</p> <p>attorney [23] 29:9,20 30:6,21 34:3,3 72:2,4 75:25 91:2,4,7,14 92:5 104:24 107:9,12 108:13 109:2,9 142:21 147:17 157:5</p> <p>attorneys [8] 30:1 101:22,23 102:3,4,9,24 103:7</p> <p>authority [32] 8:23 28:5 63:5 67:24 72:17 73:4 91:8 108:20 109:17,25 110:3,21 116:5 151:9 152:2,5,19 153:5,11,12,19 154:8,10,25 155:1,14 156:7,10,20 157:16 160:7 161:20</p> <p>authorized [3] 108:21 152:9 154:12</p> <p>authorizing [1] 57:6</p> <p>available [6] 40:1 49:16 98:5 155:24 165:24 167:15</p> <p>avoid [9] 39:17 40:22 66:20 79:7 167:7,15 169:5,15 170:10</p> <p>avoidance [3] 66:6,7 123:</p>	<p>23</p> <p>avoided [3] 167:6,10,22</p> <p>avoiding [1] 169:1</p> <p>aware [3] 72:21 79:16 109:25</p> <p>away [6] 52:25 53:5 76:24 77:5 149:7 157:3</p> <p>awkward [1] 138:16</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back [15] 10:24 26:18 29:5 62:12 75:7 85:6 92:22 96:14,20,21 103:23 138:16,17 146:1 167:1</p> <p>backdrop [2] 59:19 60:20</p> <p>background [3] 6:25 67:12 72:16</p> <p>backstop [1] 62:23</p> <p>backtrack [1] 83:19</p> <p>bad [12] 22:20 43:18,21 60:15 75:18 140:3,23 143:17 155:2,12,18 157:21</p> <p>baked [1] 106:4</p> <p>balanced [3] 69:10 80:15 84:5</p> <p>balances [2] 48:18 165:21</p> <p>bar [1] 94:2</p> <p>barred [1] 92:24</p> <p>BARRETT [59] 20:15 28:17,20,23 29:15,18,25 30:9,12,23 31:2 53:19,20 54:2 55:8,19 56:5,15 57:13 58:3 93:24 94:11 97:22,24 151:25 152:1,25 153:3,16,22,25 154:3,15,18,21 155:5,11,18 156:1 157:7,13,20 159:7,11,15,19 160:20,24 161:25 162:13,17,21 163:3,9,12,19 164:1 166:3,7</p> <p>Barrett's [2] 36:20 124:24</p> <p>Barron [1] 152:3</p> <p>based [11] 25:18 37:22 38:9,14 64:20 65:10 76:6 98:4 139:20 155:6 163:23</p> <p>basic [1] 160:5</p> <p>basically [5] 11:9 39:14 46:24 77:21 96:5</p> <p>basis [3] 26:9 36:5 144:15</p> <p>basket [1] 173:21</p> <p>bears [2] 123:10 165:3</p> <p>became [1] 58:8</p> <p>become [1] 32:6</p> <p>becomes [1] 18:10</p> <p>bedrock [1] 111:13</p> <p>beforehand [1] 43:3</p> <p>began [1] 20:21</p> <p>begin [1] 29:5</p> <p>beginning [4] 14:6 15:18 16:1 64:6</p> <p>behalf [9] 1:18,21 2:4,7 3:8 37:1 68:5 110:10,13</p> <p>behavior [1] 168:9</p> <p>behind [2] 116:19 139:11</p> <p>believe [10] 20:22 23:3 30:</p>	<p>8 32:15 36:2 65:20 109:23 115:2 175:24 177:18</p> <p>believed [1] 156:5</p> <p>believing [1] 124:10</p> <p>below [7] 9:16 26:25 65:4,18 73:12 75:5 163:21</p> <p>bench [1] 54:5</p> <p>beneath [2] 48:21 49:4</p> <p>Benjamin [6] 16:15,19,25 40:10 45:8 63:14</p> <p>best [4] 6:5 16:16 36:7 59:24</p> <p>better [6] 21:14 58:7 80:13,14 84:6 150:15</p> <p>between [14] 18:3 22:13 33:11 50:12 86:9 100:11 105:21 130:6 131:9 132:9 135:8 152:15 155:14 161:23</p> <p>beyond [8] 4:3 39:10 51:5 104:3 105:13 122:13 143:3 165:14</p> <p>Biddle [1] 107:12</p> <p>Biden [1] 4:9</p> <p>biggest [1] 143:12</p> <p>bit [9] 18:11 35:9 36:20 82:7 83:19 136:10 144:4 156:19 177:6</p> <p>bitter [1] 112:10</p> <p>blackmail [1] 3:24</p> <p>blanket [6] 69:12 70:10 80:15 81:23 157:2 173:12</p> <p>Blassingame [15] 18:16 22:8,12 23:4 27:7 33:15 41:11 125:24 130:1,13,21 131:16,19 152:22 170:23</p> <p>block [1] 124:14</p> <p>blocking [1] 90:24</p> <p>board [2] 83:9 121:18</p> <p>bogus [1] 106:16</p> <p>bold [3] 3:22 48:1,8</p> <p>boldly [1] 60:23</p> <p>books [2] 49:14 145:13</p> <p>border [2] 4:12 7:18</p> <p>Bork [2] 54:13,15</p> <p>both [11] 17:17 28:12 61:8 77:12 84:7 93:20 102:4,8 123:20 124:24 140:17</p> <p>bound [3] 24:13 67:3 79:25</p> <p>boundaries [1] 173:11</p> <p>boundary [1] 7:18</p> <p>branch [9] 68:25 70:2 84:4 124:9 141:24 151:6 153:13 175:20,21</p> <p>branches [3] 77:22 124:10 149:10</p> <p>breadth [1] 19:4</p> <p>break [1] 59:20</p> <p>breaks [1] 97:17</p> <p>Brewster [8] 6:22 7:2,23,25 35:2 36:10 46:20 84:23</p> <p>Brewster-like [1] 31:17</p> <p>bribe [9] 6:17 7:3,4,13 12:9 35:17 84:25 95:24 118:22</p>	<p>bribery [21] 6:24 32:4 35:10 41:2 45:20,23 68:15 84:14,25 92:22 117:17,20,21 118:2,5,10,14,16,21 121:8 136:1</p> <p>bribing [1] 176:24</p> <p>brief [7] 28:24 32:18 96:20 106:23 108:18,18 163:1</p> <p>briefly [4] 101:17 108:8 132:7,8</p> <p>briefs [4] 65:6 152:4 153:18 176:16</p> <p>bright-line [1] 21:25</p> <p>bring [6] 63:20 65:17 74:24 105:11 124:13 162:23</p> <p>Briefing [2] 78:8,9</p> <p>broad [10] 5:17 17:7 45:1,2 53:3 70:10 82:15 129:5 145:18 151:9</p> <p>broader [1] 173:24</p> <p>broadly [1] 82:13</p> <p>broken [1] 12:10</p> <p>brought [4] 14:10 155:21,22 173:13</p> <p>bucket [3] 51:8 166:15 172:12</p> <p>building [3] 93:1,4 124:14</p> <p>built [2] 151:10 175:19</p> <p>built-in [1] 153:23</p> <p>bunch [1] 31:12</p> <p>burden [1] 160:7</p> <p>Bush [2] 4:4 146:25</p> <p>Bush's [1] 143:19</p> <p>business [1] 129:10</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>cabinet [2] 149:16 155:1</p> <p>calibrates [1] 159:1</p> <p>call [7] 38:13 49:2 85:18,19,21,25 88:14</p> <p>called [2] 37:8 72:17</p> <p>calling [2] 156:11 164:17</p> <p>came [4] 1:13 18:22 109:18 150:6</p> <p>campaign [3] 120:12 125:22 164:19</p> <p>campaigner [1] 131:21</p> <p>candidate [8] 33:13 38:6 101:12 111:24 112:1 125:18 126:21 164:15</p> <p>candidates [1] 25:6</p> <p>cannot [11] 21:5 81:16,16 85:14 86:5 115:22 118:22 119:23 120:25 150:25 169:13</p> <p>capacity [10] 15:3 38:11 51:25 59:21 71:19 110:8 126:1 129:14,15 132:15</p> <p>Capitol [1] 88:25</p> <p>card [1] 156:3</p> <p>care [4] 36:1 73:23 97:13 165:20</p> <p>carefully [3] 69:10 151:4,17</p>
--	---	---	--	---

Official

<p>Cargill ^[1] 108:19</p> <p>carriage-riding ^[1] 17:22</p> <p>carries ^[1] 165:13</p> <p>carry ^[4] 118:3 120:16 127:24 161:6</p> <p>carrying ^[4] 50:7 91:9 151:7 153:6</p> <p>carve ^[1] 96:3</p> <p>carved ^[2] 121:14,16</p> <p>carves ^[1] 91:17</p> <p>carving ^[1] 137:9</p> <p>Case ^[92] 3:4 4:4 6:11,12 9:1,6 10:21 12:17 14:21 15:13 19:8,15 20:5 22:1,1,1 25:2 26:25 29:4 31:20 32:17,18 33:3 34:2,14,15 38:9 46:4,14,16 47:23 63:13 65:16,16 72:22 74:10 76:10 77:10 78:12 80:21 95:16 96:5 98:24 99:21 100:7,14 102:17,21 103:12 104:2 105:1,11 107:25 110:19 111:14 114:21 117:12 118:21 122:8 123:2,13 124:2 125:24 128:8 130:14 136:11,15,18 139:18 140:20 142:14 143:10 144:19 148:6,7 149:9 155:8 156:23 166:15,19,23 169:3,4 170:2,20 171:5,11,18 174:20 177:17 178:6,7</p> <p>cases ^[25] 6:4 10:21 12:1,22 21:16 25:15 28:13,14 36:11 40:9 50:21 62:12 74:23 75:1 82:9,12 91:13 104:23 105:2 114:2 130:23 135:9 138:18 156:15,16</p> <p>cast ^[2] 125:21 162:8</p> <p>categorical ^[4] 19:20 23:20 27:1 160:14</p> <p>categories ^[3] 88:4 115:18 120:2</p> <p>category ^[5] 88:22 115:11 116:18 119:8 138:11</p> <p>cause ^[1] 104:12</p> <p>caused ^[1] 29:20</p> <p>caution ^[1] 175:13</p> <p>caveat ^[2] 49:9,18</p> <p>cemented ^[1] 106:12</p> <p>center ^[1] 64:9</p> <p>central ^[2] 46:21 71:6</p> <p>certain ^[6] 70:20 115:24,25 119:19 145:1,10</p> <p>certainly ^[8] 7:14 43:20 47:13 74:10 77:7 153:3 160:15 161:19</p> <p>certification ^[5] 30:5 99:3,17 100:16 164:18</p> <p>certified ^[5] 25:15,23 113:2 126:23 127:16</p> <p>certifies ^[1] 101:3</p> <p>certify ^[1] 100:25</p> <p>cetera ^[3] 61:4,4 95:13</p> <p>chairwoman ^[1] 37:9</p>	<p>challenge ^[5] 29:23 33:23 85:22 107:21 113:6</p> <p>challenges ^[3] 29:11 112:22 172:22</p> <p>chance ^[1] 9:16</p> <p>change ^[3] 16:12 132:12 177:11</p> <p>changed ^[2] 37:13 128:14</p> <p>characterization ^[5] 10:10,11 26:1 29:7 60:8</p> <p>characterizations ^[1] 129:18</p> <p>characterize ^[3] 125:5 126:14 148:10</p> <p>characterized ^[2] 30:15 117:4</p> <p>characterizing ^[1] 32:23</p> <p>charged ^[10] 3:18 4:8,10 51:2,14 106:21 107:2 111:2 119:3 167:3</p> <p>charges ^[2] 8:14 102:16</p> <p>charging ^[3] 20:7 35:19 176:1</p> <p>check ^[5] 45:11 49:16 68:23 69:9 114:18</p> <p>checks ^[9] 26:13 43:23 45:5 48:18 52:5 55:14 62:10 109:12 114:13</p> <p>CHIEF ^[49] 3:3,9 6:13 7:6,12 8:5 14:5 16:20 18:17 30:17 31:4,25 33:7 34:16 35:6 36:9,18 41:17 42:21 45:16,19 50:16 53:18 58:4 63:16 68:1,6 73:8,11,25 74:15 76:1,9,13,19 77:4 78:3 101:13 107:18 113:11 115:7 116:2,3 129:22 142:11 151:24 166:4 177:23 178:3</p> <p>chilled ^[2] 62:25 63:3</p> <p>chilling ^[1] 75:14</p> <p>chills ^[1] 176:6</p> <p>chose ^[1] 101:12</p> <p>CIA ^[1] 106:15</p> <p>Circuit ^[11] 18:16 19:21 26:21 53:14 59:1 65:7 101:20 104:6 110:22 125:23 132:23</p> <p>circular ^[1] 66:19</p> <p>circumstance ^[1] 77:21</p> <p>circumstances ^[4] 42:16,20 79:2 144:8</p> <p>cite ^[3] 25:11 40:17 79:23</p> <p>cited ^[4] 50:24 104:6 108:20 152:4</p> <p>citing ^[1] 152:5</p> <p>Citizen ^[2] 28:13 67:19</p> <p>citizens ^[1] 4:8</p> <p>civil ^[10] 6:11 27:7 61:12,17,21 62:17 88:24 107:3 130:23 172:2</p> <p>claim ^[2] 30:14 40:3</p> <p>claimed ^[2] 39:11 44:18</p> <p>claiming ^[1] 127:14</p>	<p>claims ^[4] 38:15 68:10 113:1 123:15</p> <p>claims' ^[1] 29:10</p> <p>clarification ^[1] 171:19</p> <p>clarify ^[3] 51:19 131:18 139:5</p> <p>clarity ^[2] 83:7 142:1</p> <p>clashes ^[1] 55:6</p> <p>Clause ^[30] 4:18 5:4,11,24 8:23 11:9 22:23 27:25 36:17 38:1 44:12,24,25 50:4 53:3,21 54:1,10,21 56:4 57:5 77:17 106:9 118:5 160:3,4,15 161:21 165:8,9</p> <p>clauses ^[1] 44:13</p> <p>clear ^[40] 21:24 27:16,17 28:7,14 35:2 38:10 45:12 46:11 49:22 50:20,25 51:9,12,16 57:25 58:9 65:1,7,12,13 66:16,23 67:6,16 73:2 75:8 87:6 95:1,22 108:11 122:8 123:25 128:18 132:14 167:1 169:10,14,19,24</p> <p>clearest ^[1] 74:2</p> <p>clearly ^[4] 31:12 46:1 67:19 82:4</p> <p>Clinton ^[1] 147:1</p> <p>Clinton's ^[1] 143:20</p> <p>close ^[5] 19:8 80:22 111:24 112:5 146:19</p> <p>closely ^[1] 66:11</p> <p>co-agitators ^[2] 49:8 50:13</p> <p>co-conspirator ^[1] 30:6</p> <p>co-conspirators ^[1] 126:25</p> <p>Code ^[3] 24:14 56:20 152:6</p> <p>cognizable ^[1] 138:14</p> <p>colleague ^[1] 18:4</p> <p>colleagues ^[3] 15:17 95:12 96:21</p> <p>collusion ^[1] 72:6</p> <p>color ^[1] 137:5</p> <p>come ^[15] 7:18 11:1 15:2 21:20 46:3,14,25 48:3 66:24 104:23 117:1 129:19 136:5 137:14 146:18</p> <p>comes ^[6] 19:22 27:23 65:16 67:7 103:2 175:14</p> <p>coming ^[1] 148:25</p> <p>commander ^[4] 42:21 107:18 116:2,3</p> <p>commander-in-chief ^[1] 153:11</p> <p>comment ^[3] 175:12 176:4,10</p> <p>commit ^[2] 64:1 176:23</p> <p>committed ^[1] 118:25</p> <p>Committee ^[1] 37:9</p> <p>committing ^[2] 63:7 111:2</p> <p>common ^[3] 6:25 18:3 106:10</p> <p>communicate ^[2] 38:17,21</p>	<p>Communicating ^[2] 30:24,25</p> <p>compelling ^[3] 55:21 69:4 149:22</p> <p>competing ^[1] 177:8</p> <p>complaint ^[2] 20:6 25:7</p> <p>complete ^[2] 26:4 155:10</p> <p>completely ^[5] 25:17 31:19 114:9 116:16 169:12</p> <p>complicit ^[1] 128:7</p> <p>component ^[2] 142:24 165:14</p> <p>components ^[1] 164:4</p> <p>comprehensive ^[1] 56:18</p> <p>concealing ^[1] 176:21</p> <p>concede ^[5] 28:20 56:13 57:1,12 86:4</p> <p>conceded ^[1] 125:8</p> <p>conceivable ^[1] 109:5</p> <p>conceivably ^[1] 111:2</p> <p>concept ^[3] 9:11 96:23 172:5</p> <p>concern ^[14] 31:1 38:19 47:25 76:3 133:17 145:21 146:6 161:7 163:13 174:25 175:3 176:9,10 177:3</p> <p>concerned ^[7] 136:17 139:18,18 141:22 143:10 149:19 176:5</p> <p>concerns ^[14] 57:11 69:6 74:4 75:14,16 76:14 78:3 102:15 107:19,19 156:9 157:23 165:17 177:9</p> <p>concluded ^[2] 120:21 168:19</p> <p>condition ^[1] 123:7</p> <p>conduct ^[48] 7:5 17:18,19,25 18:6,12,19 22:14,14 23:7 28:9 32:15 39:25 46:7 51:12 55:9 56:1 57:4,11,18 58:2 67:22 75:15 78:13 80:22 85:14 87:20 89:7 100:24 106:20 124:16 125:21,22 126:11,13 129:10 141:12 152:8,11,15 162:5 163:7,10,24,24 164:11 165:18 168:6</p> <p>conferred ^[2] 152:19,20</p> <p>confidentiality ^[1] 165:22</p> <p>confirm ^[1] 129:25</p> <p>confirmed ^[1] 34:11</p> <p>confirms ^[1] 10:11</p> <p>confused ^[1] 35:9</p> <p>confusing ^[1] 169:3</p> <p>Congress ^[50] 4:6 7:11 8:17,24,24 30:25 45:20 46:1,2,11 49:25 50:3,7 52:25 56:13 58:1 62:14 67:9,19 72:19 80:23 81:16 82:2,3 83:7 85:14 86:5,16,21 89:9 101:2 115:22 116:5,6 119:24 120:9,20,23,24 121:3 124:12,15 125:17 135:12 149:17,22 150:25 158:9</p>	<p>169:15 175:23</p> <p>congressional ^[2] 39:14 69:1</p> <p>Congressman ^[1] 77:19</p> <p>congressmen ^[1] 90:24</p> <p>connected ^[1] 19:6</p> <p>consanguinity ^[1] 119:20</p> <p>conscious ^[1] 111:7</p> <p>consciousness ^[2] 142:3,4</p> <p>consensus ^[1] 147:12</p> <p>consent ^[1] 109:11</p> <p>consequence ^[1] 31:6</p> <p>consequences ^[2] 111:10 162:19</p> <p>consequential ^[3] 59:18 60:18,24</p> <p>consider ^[4] 45:5 106:3 146:16 165:3</p> <p>considerably ^[1] 133:4</p> <p>consideration ^[5] 21:18 76:16 132:24 133:11 148:23</p> <p>considerations ^[3] 4:21 19:9 123:24</p> <p>considered ^[1] 73:5</p> <p>consistent ^[5] 28:12 67:5 168:1,8 169:7</p> <p>conspiracies ^[3] 34:25 98:25 164:8</p> <p>conspiracy ^[6] 72:6 83:14 99:6 107:3 128:4 164:3</p> <p>conspired ^[1] 29:19</p> <p>conspiring ^[1] 68:16</p> <p>constituted ^[1] 158:5</p> <p>Constitution ^[28] 3:16 16:4 22:22 36:16 44:12 52:10,11,14 55:1 68:20 70:17 75:21 77:6,25 78:2 84:6 87:16 97:11 98:20 100:18 106:5 115:6 116:1 168:2,9 169:8,16 175:20</p> <p>constitutional ^[45] 4:17 16:15,18 40:10 45:8 48:7 49:7 50:14 55:7 57:10 66:7,15,20,21 69:12 70:8 71:15,22 79:8 82:24 83:2,10 88:5 91:18 98:17 101:7 109:8 114:14 118:1,3 119:25 121:13 123:23 135:11 136:14 149:6 165:10 167:6,8,9,16 169:2,5 172:21 177:19</p> <p>constitutionally ^[1] 70:6</p> <p>constitutions ^[2] 11:5 44:14</p> <p>constrained ^[1] 64:14</p> <p>construction ^[6] 71:14 84:11 94:15 116:25 167:14 170:9</p> <p>construe ^[2] 71:23 79:7</p> <p>construed ^[2] 89:7,22</p> <p>consult ^[2] 59:25 143:1</p> <p>consultant ^[1] 30:2</p>
---	---	---	--	---

Official

<p>contained ^[1] 29:22</p> <p>contemplating ^[1] 43:15</p> <p>contempt ^[2] 120:20 138:23</p> <p>content ^[4] 130:12 132:14, 16,23</p> <p>contest ^[2] 48:20 112:19</p> <p>contested ^[2] 111:25 112:6</p> <p>context ^[14] 7:25 13:1 15:23 27:7 35:4,23 55:6 62:17,21 66:24 67:17 131:3 167:5 173:14</p> <p>context-specific ^[3] 23:5 43:14 96:4</p> <p>contexts ^[1] 13:10</p> <p>contextual ^[2] 95:4 131:20</p> <p>continue ^[1] 36:19</p> <p>continued ^[1] 16:8</p> <p>contradict ^[1] 111:13</p> <p>contradicts ^[1] 54:25</p> <p>contrary ^[2] 147:2 164:20</p> <p>contrasting ^[1] 162:14</p> <p>controversial ^[3] 3:19 48:2 150:8</p> <p>controversy ^[2] 48:9 107:16</p> <p>Convention ^[7] 16:16,19 40:11 45:8 49:8 50:14 57:10</p> <p>conventions ^[1] 26:8</p> <p>conversations ^[2] 35:20 128:16</p> <p>convicted ^[11] 41:4 42:2, 18 56:2,2 57:16 68:13 78:10 102:25 106:11 117:20</p> <p>conviction ^[7] 43:3 52:3 56:3 57:20 70:13 80:19 106:8</p> <p>core ^[43] 8:22 38:1 45:24 46:10,17 49:21 67:23 85:13 86:10,24 87:3,9,9 88:14 89:8 97:2,4,7 115:14 116:10,19 126:10,13 133:1,11 134:6,9 135:5,22 136:6,12, 23 137:6 140:7 150:23 153:13 157:4 171:1,25 173:25 174:1,7,10</p> <p>corpus ^[1] 121:7</p> <p>correct ^[38] 13:20 14:2,3 15:5 19:25 22:15 23:16 28:11 51:4 52:1,18 58:24 81:6,10 82:25 93:3,18 94:5 95:4,5,10,18,19 96:25 97:4, 9,14,18 105:25 106:1 113:15,19 117:2 134:16 154:20 166:17 172:6,15</p> <p>correctly ^[1] 76:22</p> <p>corrupt ^[5] 9:18 90:6,9 135:24 139:24</p> <p>corruptly ^[4] 86:23 89:17 142:3 176:20</p> <p>cost ^[1] 69:12</p> <p>costs ^[1] 158:21</p>	<p>couldn't ^[13] 7:11 17:14 36:1 38:4,4 42:8 46:1 57:19 88:21,24 92:6 107:1 138:22</p> <p>Counsel ^[42] 1:20 4:22 9:9 16:6 18:1 20:15 31:5 33:24 55:20 68:2 72:14 73:8 79:10 82:14 84:13 97:22 101:14 108:11 110:1 118:4 119:16,20 120:5,15,21 142:24 144:2,23 146:9,21 147:13,17,19,22 151:4 155:7,7 163:12,23 177:24 178:4,5</p> <p>Counsel's ^[2] 28:24 110:9</p> <p>Counselor ^[1] 1:20</p> <p>counselors ^[1] 143:18</p> <p>counted ^[1] 101:11</p> <p>countless ^[1] 12:9</p> <p>countries ^[1] 112:15</p> <p>country ^[10] 4:11 6:16 10:3 32:7 63:11 106:3 112:12 142:16 143:17 159:25</p> <p>counts ^[2] 125:1,2</p> <p>count ^[6] 41:15 42:7,10,24 57:15,16</p> <p>couple ^[3] 108:9 110:25 122:22</p> <p>coups ^[1] 70:22</p> <p>course ^[22] 6:6 9:7 19:18 21:22 29:15 33:18 34:6 40:18 49:10 52:2 57:12 58:21 74:11 84:14 102:20 110:4 112:3 114:13 117:12 149:15 151:21 159:18</p> <p>COURT ^[106] 1:1,14 3:10 6:4,6,7,8,23,25 7:1,10 8:14 11:25 12:13 15:9 19:2,19, 19 20:2,3 22:11,16 23:21 29:20 31:15 32:24 36:3 39:7 42:4 48:13,25 52:12,20, 53:14,16 61:10 65:25 68:7, 8 69:16 70:1 73:11 74:17 75:4,7,11,13 76:7,15 77:7 79:24 84:2 87:10 91:12 96:2,18 100:10 102:15 106:4 107:7,24 108:20 110:5 113:9 122:16,19,20,23 123:3,19 124:3,5,9,17 129:8 135:9 141:22 142:2 143:4 146:16 147:20 149:3,7 156:5,25 158:12,20 160:3, 9,10,13 162:3 163:4 164:13 168:18 169:20,23 170:2, 4,8,17 171:16,20 173:18 174:20 175:21</p> <p>Court's ^[24] 4:2,23 6:22 10:21 12:22 13:18 19:13 26:18 33:3 50:21 62:12 69:18 74:3,17 82:8,12 107:5 123:21 143:12 160:16 161:20 167:13,16 172:23</p> <p>courts ^[12] 5:20 21:15 25:12 69:8 71:22 76:5 77:1</p>	<p>79:7 113:6 119:19 139:15 154:5</p> <p>covered ^[4] 92:23 94:21 95:3 145:7</p> <p>covering ^[3] 27:18 50:22, 25</p> <p>covers ^[1] 95:9</p> <p>craft ^[2] 156:6,8</p> <p>crank ^[1] 80:24</p> <p>created ^[3] 47:8,13 175:10</p> <p>creates ^[1] 77:7</p> <p>creating ^[5] 11:13 12:6 25:5 125:14 174:18</p> <p>creative ^[1] 83:16</p> <p>Creighton ^[1] 20:2</p> <p>cried ^[3] 16:22 45:10 63:17</p> <p>crime ^[7] 64:9 106:21 118:24 127:4 128:14 147:5 176:2</p> <p>crimes ^[5] 63:7 64:1 71:8 94:3 114:20</p> <p>criminal ^[93] 3:12 8:18 11:6,12,20 16:21 17:3 20:23 26:14 36:5 44:5 45:7 49:4, 14 50:5 53:23 54:7,23 55:8 56:6,11 57:23 59:20 60:2 61:23 62:7,8,21 63:10,23 64:10 67:9,13 68:9,11,14 69:12 70:3,12 71:3,7,11,16 72:7,17 74:12 75:18 77:15 78:7 80:17 83:11 91:25 92:15,20 94:1,21 96:24 98:8, 22 102:25 105:17 106:6,17 108:1 114:17,18 119:5 121:8 124:16 127:25 128:4 131:3 135:23 137:12,18, 21 139:19 145:16 146:19 148:9 149:1 151:16 154:6 156:15,23 157:3 165:1 167:3,14 169:14 170:13 177:2,5</p> <p>criminalize ^[7] 50:2 51:16 67:22 81:17 82:4 85:15 86:5</p> <p>criminalized ^[1] 27:20</p> <p>criminally ^[8] 42:3 45:22 47:3 55:23 78:10 112:10 154:19 167:25</p> <p>critical ^[1] 99:16</p> <p>critics ^[1] 133:25</p> <p>culpability ^[2] 165:1 166:2</p> <p>current ^[4] 3:23 124:13 144:10 146:2</p> <p>currently ^[1] 70:9</p> <p>customary ^[1] 172:23</p> <p>cut ^[2] 123:24 172:3</p> <p>cycle ^[3] 112:11 127:9 146:1</p>	<p>dampen ^[1] 48:5</p> <p>danger ^[1] 161:5</p> <p>dangerous ^[1] 128:13</p> <p>dangerousness ^[1] 140:2</p> <p>dangers ^[1] 68:21</p> <p>data ^[1] 169:23</p> <p>David ^[1] 152:3</p> <p>day ^[3] 105:20 138:5 161:7</p> <p>days ^[1] 110:25</p> <p>de ^[1] 3:24</p> <p>dead-set ^[1] 33:3</p> <p>deal ^[2] 122:10 167:7</p> <p>dealing ^[1] 149:10</p> <p>debate ^[4] 64:4 77:16 165:8,9</p> <p>deceit ^[1] 26:6</p> <p>deception ^[3] 100:2 101:10 141:19</p> <p>decide ^[7] 29:1 102:22 110:19 123:4 166:8 173:13,18</p> <p>decided ^[1] 163:16</p> <p>decides ^[1] 9:17</p> <p>deciding ^[2] 106:15 124:13</p> <p>decision ^[13] 4:3 48:2 59:25 60:16 73:12 106:25 107:5,9,23 131:16,19 132:3 143:16</p> <p>decision-making ^[2] 3:22 13:18</p> <p>decisions ^[9] 3:20 59:18 60:24 61:2 96:11 98:2,3,4 150:15</p> <p>declares ^[1] 116:7</p> <p>deemed ^[2] 120:25 121:4</p> <p>deeming ^[1] 137:9</p> <p>default ^[1] 88:8</p> <p>defeat ^[4] 100:1 101:8 141:14,17</p> <p>defend ^[2] 38:19,25</p> <p>defendant ^[4] 36:24 37:8 38:12 141:16</p> <p>defendant's ^[2] 37:14 164:24</p> <p>defendants ^[2] 105:18 113:24</p> <p>defending ^[2] 75:6,11</p> <p>defense ^[22] 39:1 73:4 107:20 108:14 152:2,5,17 153:20 154:8,10,11 155:2,9,10, 14,22 156:11 157:10,16 160:18,21 162:3</p> <p>defenses ^[1] 158:17</p> <p>deference ^[1] 23:8</p> <p>defiance ^[1] 73:16</p> <p>defines ^[1] 141:15</p> <p>defining ^[2] 97:6 152:9</p> <p>definitely ^[1] 82:13</p> <p>definition ^[1] 152:18</p> <p>definitions ^[1] 152:7</p> <p>definitively ^[1] 40:4</p> <p>defraud ^[4] 35:10 83:14 99:1,6</p> <p>degree ^[1] 23:8</p> <p>degrees ^[1] 119:19</p>	<p>delay ^[1] 164:18</p> <p>delays ^[2] 86:21 89:1</p> <p>deleterious ^[1] 129:9</p> <p>deliberate ^[1] 30:20</p> <p>delivered ^[1] 25:16</p> <p>demands ^[1] 48:7</p> <p>democracy ^[5] 69:3 112:13 114:10,19,21</p> <p>democratic ^[3] 111:21,23 113:14</p> <p>demonstrate ^[1] 38:8</p> <p>denial ^[1] 23:21</p> <p>departed ^[1] 78:8</p> <p>Department ^[42] 1:21 30:20 35:21 78:17 79:10 101:23 102:4,5 103:15,16,19, 21 104:23 109:24 110:3,10, 14 126:9,16 127:7,13,18, 22 128:6,24 129:18 131:15 136:11 142:18,20,25 144:20 145:7 147:16 151:15 155:8 157:16 158:3 159:22 161:9 164:22 175:14</p> <p>Department's ^[1] 110:18</p> <p>Departments ^[1] 103:8</p> <p>depend ^[4] 9:22 42:12,15, 20</p> <p>dependent ^[1] 80:8</p> <p>deprive ^[1] 101:10</p> <p>deprives ^[1] 12:19</p> <p>derived ^[1] 22:21</p> <p>described ^[11] 5:9 6:11 8:14 31:14 43:12 46:17 64:18 87:20 98:24 145:11 160:19</p> <p>describes ^[1] 152:5</p> <p>deserves ^[1] 160:17</p> <p>design ^[2] 158:22 161:17</p> <p>designation ^[1] 71:20</p> <p>designed ^[4] 26:15 99:14 100:18 114:14</p> <p>destabilizes ^[1] 112:12</p> <p>destroy ^[1] 40:13</p> <p>destroyed ^[1] 114:9</p> <p>destroying ^[1] 176:21</p> <p>destructive ^[1] 44:8</p> <p>details ^[1] 41:11</p> <p>deter ^[3] 26:15 48:5 52:6</p> <p>determinant ^[1] 156:18</p> <p>determination ^[15] 8:3 13:22,24 15:11 21:25 23:6 25:1 27:8 31:17,21,23 39:5 43:15 59:2 130:13</p> <p>determinations ^[3] 33:5, 19 60:20</p> <p>determinative ^[1] 112:24</p> <p>determine ^[6] 6:1 13:25 14:7,8 160:16 172:24</p> <p>determined ^[5] 20:9 26:22 151:5,9 162:2</p> <p>deterred ^[1] 52:7</p> <p>deterrents ^[1] 111:15</p> <p>detour ^[1] 153:6</p> <p>devised ^[2] 68:22 159:3</p>
--	--	--	--	--

D

D.C. ^[13] 1:10,21 18:16 19:21 26:21 53:13 59:1 65:6 101:20 104:6 110:22 125:23 132:23

Official

dictated ^[1] 36:16	documentation ^[1] 125:14	163:2,8,11,18,25 166:17,24 167:12,19 168:10,13,16,22 169:20 171:15 172:6,10,16 173:15 174:9,19 175:17 177:10,22	emphasizes ^[2] 19:3,8	et ^[3] 61:4,4 95:13
difference ^[4] 22:13 39:6 79:16 85:20	documents ^[5] 12:6,7 76:20 151:18 176:21	177:10,22	employment ^[1] 8:20	ethical ^[2] 101:24 102:7
different ^[26] 7:24 22:10 39:20,23 40:2 54:9 61:13,16,19,25 66:9 117:4 128:8 138:11 141:25 142:5 147:11 148:2 149:8 152:6 155:13,14 159:5 161:8 164:3 174:17	doing ^[20] 10:1,2,4,6,7,8 15:4,4 49:19 59:7 62:1,9 77:23 90:16,22 141:18,23 155:3 167:7,25	drew ^[1] 157:15	enact ^[1] 149:18	euphemism ^[1] 86:25
differentiate ^[2] 33:11 135:8	DOJ ^[1] 55:2	drill ^[1] 171:8	enacting ^[1] 67:13	evaluate ^[1] 84:3
differently ^[3] 79:1,20 80:1	DOJ's ^[1] 54:19	driven ^[1] 75:20	encompass ^[1] 53:4	even ^[35] 10:17 13:3 14:14,24 23:13 24:3 25:19 27:15 28:25 29:1 32:17 36:3 41:12 52:1 57:20 66:22 69:21 77:16 83:6 89:8 96:14 111:24,25 117:20 122:17 146:12 156:16 157:4 162:11 163:3 166:1,8,21 169:11 173:2
difficult ^[9] 36:13 50:10 58:17 80:21 99:16 101:6 121:25 128:24 140:10	dollars ^[3] 6:18 8:8 32:10	drone ^[4] 4:9 47:5 151:2,13	encompassed ^[2] 52:14,16	event ^[1] 170:7
difficulty ^[2] 156:19 158:7	DONALD ^[1] 1:3	drop ^[1] 163:24	encompasses ^[1] 5:13	events ^[1] 106:19
diluted ^[1] 80:11	done ^[16] 10:3,13 12:16 26:8 32:23 33:19 34:1 37:24 38:8,11 56:17 72:20 100:2 119:17 157:10 175:2	due ^[3] 72:3 108:17,23	encouragement ^[2] 114:23 115:1	everybody ^[7] 16:22,25 17:13 45:10 48:20 63:16 79:1
diploma ^[1] 115:24	door ^[1] 21:24	during ^[3] 80:4 107:1,17	ended ^[11] 27:5 31:15 33:1 77:9 80:22 105:20 111:18,19 114:8 126:24 145:18	everyone ^[5] 17:20,23 59:16,16 67:15
direct ^[2] 5:19 95:16	doubt ^[2] 105:14 111:3	duties ^[4] 8:10 19:7 100:7 152:9	endangered ^[1] 78:14	everything ^[6] 77:19 98:16 125:12 133:24 137:1 172:1
directed ^[1] 30:6	doubtful ^[1] 137:19	duty ^[2] 152:13,20	ended ^[2] 77:24 78:1	everything's ^[1] 172:18
directing ^[1] 116:14	down ^[5] 89:21 91:6 92:13 106:16 171:9	dystopian ^[1] 111:16	endorse ^[2] 77:11 130:23	evidence ^[16] 5:16 8:12 17:5 34:20 35:11,14 46:3,14 75:20 104:12,14 105:13 113:3,7 165:18 166:1
directly ^[7] 7:11 8:18,21 33:25 40:7 50:1 62:16	dozens ^[1] 112:22	E	endorsed ^[1] 107:24	evident ^[1] 169:22
disagree ^[5] 29:7 60:7 64:16 125:11 153:1	draw ^[2] 125:24 172:20	each ^[4] 144:8 149:13 164:12 173:12	endorsing ^[1] 75:17	evidentiary ^[2] 164:23 165:13
disagreement ^[1] 82:8	drawing ^[3] 19:3 50:11 170:21	earlier ^[6] 41:17 72:1 95:2 100:10 109:18 122:4	ends ^[2] 100:12,13	evil ^[1] 9:13
discharge ^[1] 154:12	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152:1,24 153:2,21,24 154:2,13,17,20 155:4,17,25 156:4 157:12,19,25 159:10,14,18 160:2,23 161:16 162:1,16,20	engage ^[7] 72:23 80:5,7 100:6 118:2 171:5 173:25	evolve ^[1] 111:17	
disagreed ^[5] 29:7 60:7 64:16 125:11 153:1	drawn ^[3] 19:3 50:11 170:21	earlier ^[6] 41:17 72:1 95:2 100:10 109:18 122:4	engaged ^[7] 6:8 27:8 47:5 70:21 106:20 111:8 139:16	ex ^[1] 123:12
disagreement ^[1] 82:8	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152:1,24 153:2,21,24 154:2,13,17,20 155:4,17,25 156:4 157:12,19,25 159:10,14,18 160:2,23 161:16 162:1,16,20	engage ^[7] 72:23 80:5,7 100:6 118:2 171:5 173:25	enforce ^[1] 124:12	exacerbated ^[1] 157:23
disagree ^[5] 29:7 60:7 64:16 125:11 153:1	drawn ^[3] 19:3 50:11 170:21	early ^[1] 138:17	enforcing ^[2] 69:1 98:2	exactly ^[9] 5:25 19:17 39:3 54:21 94:17,19 103:16 112:17 136:12
disagreement ^[1] 82:8	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152:1,24 153:2,21,24 154:2,13,17,20 155:4,17,25 156:4 157:12,19,25 159:10,14,18 160:2,23 161:16 162:1,16,20	easy ^[2] 74:22 148:9	enormous ^[2] 31:1 38:18	example ^[22] 5:10 16:20 37:23,23 41:2,23 46:20 49:21 57:14 62:13 73:7 86:14 119:17 120:3,18 123:3 130:17 133:7 135:25 141:13 165:6 176:17
disagreement ^[1] 82:8	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152:1,24 153:2,21,24 154:2,13,17,20 155:4,17,25 156:4 157:12,19,25 159:10,14,18 160:2,23 161:16 162:1,16,20	eclipse ^[1] 105:7	enough ^[8] 53:3 75:1 76:23,23 131:13 140:7 171:11,15	examples ^[2] 49:3 108:7
disagree ^[5] 29:7 60:7 64:16 125:11 153:1	drawn ^[3] 19:3 50:11 170:21	Edgar ^[1] 107:14	enrich ^[1] 135:25	excellent ^[1] 50:15
disagreement ^[1] 82:8	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152:1,24 153:2,21,24 154:2,13,17,20 155:4,17,25 156:4 157:12,19,25 159:10,14,18 160:2,23 161:16 162:1,16,20	effect ^[1] 96:9	enterprise ^[1] 52:20	except ^[2] 11:10 111:6
disagreement ^[1] 82:8	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152:1,24 153:2,21,24 154:2,13,17,20 155:4,17,25 156:4 157:12,19,25 159:10,14,18 160:2,23 161:16 162:1,16,20	effective ^[1] 158:23	entire ^[1] 121:7	exception ^[3] 72:18 151:10 156:12
disagree ^[5] 29:7 60:7 64:16 125:11 153:1	drawn ^[3] 19:3 50:11 170:21	effects ^[1] 104:3	entitled ^[2] 11:16,17	exceptions ^[2] 102:8,12
disagreement ^[1] 82:8	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152:1,24 153:2,21,24 154:2,13,17,20 155:4,17,25 156:4 157:12,19,25 159:10,14,18 160:2,23 161:16 162:1,16,20	effort ^[1] 30:6	entire ^[1] 121:7	exchange ^[4] 6:17 32:5,6 85:9
disagreement ^[1] 82:8	DREEBEN ^[269] 1:20 2:6 68:3,4,6 69:19,23 70:25 71:5 72:10 73:20 74:8 75:10 76:2,10,18 77:3 78:18,21 79:5 80:14 81:6,9,18,24 82:10,25 83:8,18,25 84:20,24 85:4,7,11,16,21,24 86:7,13,19 87:2,5,8,22,25 88:12,16,19,22 89:3,14,19 90:1,5,7,11,14,18,21,25 91:20,24,25 92:3,7,12,17,19,21 93:2,6,9,14,19,22 94:6,10,19,23 95:5,10,19,25 96:25 97:5,8,15,19,23 98:10,14 99:14,24 101:25 102:11 103:6,23 104:2,10,19 105:2,4,9 106:1 107:4,15 108:15 109:7,20,23 110:13 111:3 112:3,17 113:16,19 114:11,25 115:5,8,13,16,19,21 116:3,13,20,23 117:2,8,15,18,23,25 118:12,16 119:14 122:1,5,11,16 124:22 125:7 126:12 127:7 128:20,23 130:4,20 131:1,6,11,14,24 132:2,8,19,22 133:12,20,23 134:3,8,13,16,19,21,24 135:7,16,20 136:3,9,19,22 137:2,8,24 138:2,6,9,19,21,24 139:2,5,8,12,22 140:5,9,14,18,23 141:4,7,9 142:10,22 143:7,14,22,25 144:11,17 145:20 146:8 147:4,10 148:14,18,21 149:25 150:3,7,10,13,22 151:3 152			

Official

22 124:13 128:19 141:24 145:4 151:6 153:13,14,15 165:19 175:20,21 exempt [1] 56:11 exercise [5] 8:19,20 38:1 50:3 124:17 exercised [2] 34:10 128: 10 exercises [1] 8:22 exercising [3] 128:1,2 153: 10 exigencies [1] 107:19 exist [3] 57:2 66:12 84:9 existing [3] 69:9 169:22 175:6 exists [3] 66:14 83:10 101: 19 expand [1] 123:21 expanded [1] 65:25 expansive [1] 124:6 expectation [1] 64:19 expected [1] 100:21 expedient [1] 8:25 expense [2] 80:3 146:11 experience [2] 104:22 113: 8 explain [4] 71:9 87:23 100: 24 128:25 explained [1] 129:8 explaining [1] 20:22 explains [1] 151:19 explicit [3] 52:9,11 165:10 explicitly [4] 5:12 49:7 56: 7 94:1 exploit [1] 164:16 explore [2] 59:9 86:12 exploring [3] 18:10,14 91: 13 expose [1] 75:17 exposed [1] 106:6 exposure [1] 70:12 expressed [2] 18:18 163: 13 expressly [3] 52:24 53:4 57:22 expunge [4] 8:6 32:1,11 35:14 expunged [3] 8:1 31:19 34: 18 extend [1] 4:3 extended [2] 51:5 55:5 extends [1] 17:8 extensive [1] 73:3 extensively [1] 65:11 extent [8] 49:12 59:4 66:12, 14 67:6 121:10,14 176:7 extortion [1] 3:24 extract [1] 118:22 extraordinarily [1] 26:16 extraordinary [3] 34:9 96: 12 101:2 extreme [1] 43:25 extremely [5] 10:20 39:7 80:21 93:3 171:24	F	face [8] 3:24 20:8 25:8,18 26:5 48:8 158:2,8 faces [1] 49:4 facing [1] 11:20 fact [16] 11:4 38:7 40:8 44: 3 58:25 59:23 61:15 64:3 73:15 76:23,24 86:20 88:9 137:20 169:6 175:5 fact-specific [1] 43:14 factional [3] 40:12 44:9 63: 19 facto [1] 3:24 factors [2] 22:6 95:7 facts [10] 4:3 15:1 25:7 99: 7,21 130:14 155:6 156:18, 22 165:24 factual [1] 20:10 fail [3] 113:25 114:5,8 fail-safe [1] 113:21 failed [1] 127:10 fails [1] 114:8 fair [1] 82:2 fairly [2] 65:20 98:24 fairness [1] 144:14 faith [8] 74:19,24,25 75:19 76:4 113:14,18 114:19 faithful [1] 98:18 faithfully [3] 73:23 97:14, 18 fake [2] 25:21,21 fall [6] 6:21 41:22 128:18 150:22 166:14 174:7 falls [3] 67:23 118:6 138:11 false [13] 12:6,7 29:10,22 36:25 50:6 123:15 125:14 127:13 148:10,16,16 150:1 falsely [1] 37:11 familiar [2] 113:9 170:3 far [6] 4:3 51:15 72:21 104: 3 110:3 143:3 far-reaching [1] 81:5 Farent [1] 45:14 fashion [1] 95:22 favor [3] 37:14 109:6 147: 23 favorable [1] 130:22 FBI [1] 106:16 fear [2] 47:2,2 fearless [3] 3:22 48:1,8 fears [2] 104:13 109:13 features [1] 146:10 federal [24] 25:13 31:1 38: 18,20,23 72:19,25 74:12 102:9 104:6,25 106:21 115:23 119:4,18,23 120:11 121:7 151:5 159:21 160:7, 10,18 170:13 feel [1] 42:23 feeling [1] 64:14 feels [1] 48:11 fell [1] 88:14 fence [1] 93:22	few [6] 56:15 115:25 131: 17 142:19 152:6 159:4 field [1] 116:15 fighting [1] 135:1 figure [5] 59:5 171:2 172: 13 174:1,14 filed [4] 37:1 65:10 112:22 129:4 filing [1] 29:20 final [2] 124:7 174:23 finally [1] 105:23 find [9] 11:8 36:3,4 90:14 112:15 129:17 132:12 140: 1 161:21 finding [1] 104:12 fine [2] 79:25 137:9 fired [1] 160:11 First [21] 11:23 13:3 14:18 41:4 53:13 65:3 68:12 88: 3 91:11 101:21 115:11 123:13 135:3,4 146:8 156: 16 164:2,2 168:10,13 170: 24 first-term [2] 125:25 133: 22 fits [1] 85:24 Fitzgerald [23] 6:5 10:22 12:14 15:9 41:12,24 46:25 47:24 61:8,10,12 62:4,11, 16 77:11 129:1,9,12 130: 10 131:2 139:15 152:23 171:23 flaws [2] 146:22 147:13 Florida [1] 34:1 focused [6] 76:15 77:17,18 131:19 132:18 143:9 folks [1] 59:17 follow [11] 28:15 50:18 59: 14 60:10,19 61:3 62:1,4 64:14 113:18 176:13 following [3] 41:20 48:21 60:6 foothold [1] 4:15 forces [1] 153:12 Ford's [1] 150:6 foreign [3] 40:24 87:13 115:21 forever [1] 16:6 forfeited [1] 65:19 form [9] 21:1 78:20,24 79: 14,14,18 80:12,12 85:18 former [34] 21:4 39:11,22 68:11,14 70:12 71:10 73: 13,15 74:6 75:18 78:19,23 79:3,13,20,22 80:5,6 104:7 105:16,23 106:10 122:14 145:23 158:25 161:14 162: 11 163:5 167:24 175:8,9, 16 176:1 formulation [1] 83:6 Forsyth [1] 20:12 forth [2] 20:12 45:2 forward [13] 31:7,21 32:12, 16 46:8 83:23 109:14 144:	25 145:22 151:20 156:23 163:14 166:23 found [2] 7:21 121:17 foundation [1] 68:20 Founders [2] 11:3 51:21 Founders' [1] 16:17 founding [2] 52:22 100:19 four [1] 48:12 Fourth [1] 123:5 frame [1] 138:3 Framers [13] 3:15 43:3,21, 22 44:1,11 55:12 57:8 68: 20 78:3,11 100:17 114:14 Framers' [2] 4:18 55:2 framework [6] 69:10 87:23 115:9 130:1,22 172:23 framing [1] 69:15 Franklin [12] 16:15,19,25 28:12 40:10 45:8 49:22 56: 21 63:15 67:18 96:5 106: 24 fraud [13] 29:10 36:25 38: 15 68:16 99:10,11,21 101: 8 103:16 113:1 128:5 141: 14 164:6 fraudulent [9] 25:6 26:3,4 30:3 103:19 125:13 126:5 128:12 164:14 Free [4] 52:19 113:25 114: 3 149:15 freedom [2] 149:12 156:2 friend [10] 77:15 96:16 106: 7 109:13 132:6 158:15 159:6 164:20 165:7 171: 22 friend's [2] 73:1 94:13 frolic [1] 153:5 front [3] 85:2 86:16 88:25 fulfill [1] 100:6 fulfilling [2] 89:11 145:4 full [1] 147:16 function [10] 16:8 49:22 99:17 100:2 101:9 118:8 151:15 154:12 173:11 177: 7 functioning [6] 20:24 111: 20 112:12 158:23 175:23 177:14 functions [15] 70:7 82:19 85:13 91:9 99:2,15 100:15 103:17 115:15 116:10 118: 3 141:14 142:24 152:10 160:7 Fund [1] 52:20 fundamental [4] 26:11 40: 7 50:11 146:15 fundamentally [3] 9:13 56: 25 57:1 funds [2] 92:25 120:11 further [6] 19:15,24 20:4 94:25 110:4 178:1 furtherance [1] 10:7 fusion [1] 122:22 future [9] 63:25 102:23 136:	18 139:19 142:15,16 143: 11 148:7 174:25
	G	gain [9] 10:5,8,17 11:18 12: 10 14:13 68:24 118:18 119:6 gap [1] 86:9 Garland [1] 108:19 gate [1] 104:15 gateway [2] 53:22 54:7 gather [1] 37:10 gave [2] 75:5 120:12 geez [1] 168:5 general [36] 8:17 30:21 34: 3,4 54:13,15 72:2,5 75:25 79:6 91:2,4,7,14 92:6 101: 22 102:3,9,24 103:12 107: 10,12 108:13 109:2,10 119: 13,15 121:12 142:21,22 143:6 147:17 156:14 157: 5 158:18 170:13 generally [5] 67:13 95:7 130:21 137:21 156:15 generals [3] 42:22,23 103: 8 George [5] 4:4 40:11 44:9 63:14,18 Georgia [1] 37:2 get-out-of-jail-free [1] 156:3 gets [9] 79:14 91:3 92:5,9 105:23 108:12 112:16 141: 20 154:22 getting [1] 136:25 gin [3] 120:11,11 126:4 give [9] 6:18 9:16 24:1 44: 15 106:16 109:1 117:9 120:19 130:16 given [5] 89:13 95:12 107: 4 117:12 171:11 gives [2] 6:6 49:2 giving [2] 15:19 32:3 goals [1] 164:6 good-faith [1] 120:22 goodwill [1] 114:19 GORSUCH [109] 18:1,9 19: 14,23 45:17,18 46:9 47:1, 15,19 48:10,17 49:1,13 84: 16,25 85:5,8,12,17,23,25 86:11,14,20 87:3,6,19,24 88:10,13,18,21,23 89:12, 15,25 90:4,6,8,13,15,19,22 91:19,23 92:1,4,9,16,18 129:23,24 130:5,16,24 131: 4,7,12,17,23 132:1,7,17,20, 25 133:19,21,24 134:4,12, 14,17,20,22,25 135:15,18 136:1,4,16,20,23 137:3,23, 25 138:3,7,13,20,22 139:1, 2,4,6,9,13,23 140:6,12,16 141:1,5,8 142:9 143:9 150: 24 154:23 170:22 gosh [1] 139:14			

Official

<p>got ^[8] 25:15 39:14 49:13 85:1 86:11 91:19 125:18 168:3</p> <p>Gouverneur ^[2] 49:6 50:13</p> <p>govern ^[1] 49:11</p> <p>governing ^[1] 152:10</p> <p>government ^[17] 31:14 37:2 40:14 90:19 96:8 99:15, 22,25 100:1 108:21 113:22 124:1 131:13 149:11 159:21 168:22 171:17</p> <p>government's ^[3] 32:18 74:10 166:14</p> <p>governor ^[2] 37:2 125:20</p> <p>governors ^[1] 11:6</p> <p>governs ^[1] 70:9</p> <p>grand ^[6] 74:13,20,23 104:7 105:1,11</p> <p>grant ^[5] 11:4 23:14 25:12 37:24 150:17</p> <p>Grant's ^[1] 17:22</p> <p>granted ^[2] 11:5 56:6</p> <p>granting ^[1] 154:25</p> <p>grassroots ^[2] 120:4,12</p> <p>gratuities ^[1] 170:2</p> <p>grave ^[1] 66:14</p> <p>gravity ^[1] 164:11</p> <p>great ^[3] 19:2 80:3 172:2</p> <p>greater ^[1] 158:19</p> <p>greatest ^[1] 63:5</p> <p>greatly ^[1] 80:11</p> <p>grips ^[1] 129:19</p> <p>ground ^[4] 18:3 86:2 106:10 133:3</p> <p>groundless ^[1] 104:13</p> <p>grounds ^[2] 22:25 65:11</p> <p>Grubbs ^[1] 123:3</p> <p>guarded ^[1] 44:3</p> <p>guarding ^[1] 160:10</p> <p>guess ^[6] 62:24 67:8 118:23 136:16 167:21 169:1</p> <p>guidance ^[1] 6:5</p> <p>guide ^[3] 119:13 124:5 149:7</p> <p>guidelines ^[1] 41:18</p> <p>guiding ^[1] 19:12</p> <p>guilt ^[1] 105:13</p> <p>guilty ^[1] 7:21</p> <p>gun ^[1] 106:13</p> <p>guy ^[2] 175:9,9</p>	<p>hard ^[3] 12:5 97:16 149:5</p> <p>Hawaii ^[1] 107:6</p> <p>Hayes ^[1] 25:16</p> <p>he'll ^[1] 48:11</p> <p>head ^[1] 70:1</p> <p>hear ^[2] 3:3 173:9</p> <p>heard ^[6] 49:3 60:22 124:23 130:1 136:7 166:8</p> <p>hearing ^[4] 38:14 132:20 136:6,7</p> <p>heartland ^[3] 9:2 10:22 67:23</p> <p>held ^[6] 6:23 17:1 118:20 167:24 168:8 169:7</p> <p>helped ^[1] 30:3</p> <p>Helstoski ^[1] 36:11</p> <p>herself ^[1] 28:10</p> <p>high ^[2] 69:11 94:3</p> <p>high-powered ^[1] 59:17</p> <p>high-profile ^[1] 61:15</p> <p>higher-level ^[1] 26:11</p> <p>highest ^[1] 27:22</p> <p>highlight ^[1] 152:7</p> <p>highly ^[2] 96:6 162:12</p> <p>him?' ^[1] 145:14</p> <p>himself ^[8] 28:9 48:11 50:12 54:13 68:18 109:18 110:21 176:19</p> <p>historical ^[7] 4:19 25:11 37:23 54:17 77:21 107:16 108:7</p> <p>historically ^[3] 52:17 83:16,22</p> <p>history ^[9] 3:14 4:16 16:19 21:8 55:2 70:14 106:3 145:24 150:16</p> <p>hold ^[5] 10:18 11:20 38:14 138:22 169:12</p> <p>holding ^[4] 19:20 46:19 74:3 96:5</p> <p>holdings ^[1] 77:12</p> <p>Honor ^[9] 11:21 12:13 25:10 30:16 40:8 47:12 133:16 147:7 178:2</p> <p>Honor's ^[1] 76:3</p> <p>honorable ^[3] 24:12,13 102:6</p> <p>Hoover ^[1] 107:14</p> <p>hopes ^[1] 113:24</p> <p>hoping ^[1] 59:12</p> <p>hotly ^[2] 111:25 112:5</p> <p>house ^[2] 38:13 170:7</p> <p>however ^[3] 68:10 145:1 165:2</p> <p>huge ^[1] 142:14</p> <p>Hugely ^[1] 150:11</p> <p>hundreds ^[1] 55:1</p> <p>hunting ^[1] 141:21</p> <p>hybrid ^[1] 118:17</p> <p>hypothesizing ^[1] 158:7</p> <p>hypothetical ^[6] 9:23 41:9 43:12,25 45:19 170:5</p> <p>hypotheticals ^[5] 24:20, 21 42:2 47:6 58:18</p>	<p style="text-align: center;">I</p> <p>idea ^[10] 22:20,21 77:5 107:23 130:5 140:12,14 156:19 161:11,11</p> <p>identified ^[2] 62:11 106:19</p> <p>identify ^[1] 58:23</p> <p>Il ^[25] 5:4 27:13,15 28:5 52:13 70:2,3 81:14 82:19 85:22 89:11 91:8 97:7 100:7 107:1,21 118:7 124:10 144:4 156:9 157:22 158:9 159:13 172:25 174:12</p> <p>Ill ^[2] 5:20 69:8</p> <p>illegal ^[2] 26:17 142:6</p> <p>illegality ^[1] 142:5</p> <p>illegally ^[1] 4:11</p> <p>illustrate ^[1] 132:5</p> <p>illustrates ^[1] 118:17</p> <p>image ^[1] 147:25</p> <p>imagine ^[3] 57:15 97:16 145:3</p> <p>imagined ^[1] 21:7</p> <p>immediately ^[3] 29:5 48:23 50:9</p> <p>immensely ^[1] 102:21</p> <p>immigrants ^[1] 4:11</p> <p>immune ^[11] 8:1 19:10 39:6 40:25 41:2 42:14,25 57:12 61:21 118:20 174:8</p> <p>immunity ^[113] 3:11 5:1,2, 17,17 9:21 10:11,16 11:4,6, 23 12:3,3,20,20 13:1,4,11, 24 14:1,15,25 15:21 16:13 17:7 18:13 20:22 21:1 23:14 24:4 27:3 28:21 29:2 33:4 36:15 39:10,21 40:3 44:12,13,15,16,23,24 45:1 47:22 52:9,16 58:10,12,22 59:9 65:17 66:8,12,13,24 68:9,11,19 69:13,20,21,21 70:11 76:24 77:2,5,6,8,15 78:20 79:14 80:16 81:23 85:18 86:1 88:15 110:23 122:14 123:17 124:2 130:10 133:2 152:17 153:25 155:15,20,23 157:2,15 159:12,16 161:12,21 162:3,15, 22 163:5,20 165:15 169:8 171:3,7,14 172:5,15,17,19 173:3,12,21 177:12</p> <p>immunize ^[1] 68:14</p> <p>immunized ^[3] 86:25 166:21,22</p> <p>impairment ^[1] 99:12</p> <p>impeach ^[1] 11:11</p> <p>impeached ^[11] 41:4 42:2, 8,9,18 55:22 56:2 57:16 68:13 78:9 94:22</p> <p>impeaching ^[2] 43:9 94:3</p> <p>impeachment ^[30] 11:8 16:5 43:2 45:12 48:18 52:2 53:21,22 54:4,6,8,10,20,24 55:11,24 56:10 57:3,5,21</p>	<p>62:13 70:13 78:5 80:18,25 94:13 106:7,8 118:5 176:15</p> <p>impede ^[1] 99:25</p> <p>impeded ^[1] 89:17</p> <p>impeding ^[1] 86:23</p> <p>implausible ^[1] 25:17</p> <p>implement ^[3] 30:3 156:8 158:20</p> <p>implemented ^[1] 153:10</p> <p>implicates ^[1] 107:18</p> <p>implications ^[4] 4:2 35:2 36:15 142:14</p> <p>implicit ^[1] 159:13</p> <p>important ^[15] 13:21 33:21 34:5 47:14 49:9 54:11 69:24 70:17 77:13 89:1 99:2 102:21 119:21 121:24 149:9</p> <p>imports ^[1] 62:21</p> <p>impose ^[5] 11:12 127:25 128:4 135:13 165:1</p> <p>imposing ^[1] 152:12</p> <p>imprisoned ^[1] 3:19</p> <p>improper ^[7] 10:13 11:24 12:19,25 14:20 32:25 33:6</p> <p>incentive ^[3] 47:13 105:11 109:1</p> <p>incentives ^[1] 47:7</p> <p>incident ^[2] 17:22 91:8</p> <p>inclined ^[1] 163:4</p> <p>include ^[1] 5:11</p> <p>included ^[6] 5:14 65:21 67:11 93:13 94:1 170:13</p> <p>including ^[4] 17:1 30:1 54:4 121:8</p> <p>incompatible ^[1] 4:16</p> <p>incorporate ^[1] 82:22</p> <p>incorporates ^[1] 84:7</p> <p>incumbent ^[3] 112:2,5 127:2</p> <p>independence ^[1] 146:10</p> <p>independent ^[9] 8:12 143:18 144:2,23 146:9,21 147:13,19,21</p> <p>indicated ^[2] 26:12 142:14</p> <p>indication ^[1] 56:21</p> <p>indications ^[1] 131:20</p> <p>indict ^[1] 104:25</p> <p>indicted ^[1] 106:11</p> <p>indicting ^[1] 104:17</p> <p>indictment ^[45] 6:12 8:1, 13,16 9:1,8 10:10 20:5 25:19,25 26:2,6 27:24 29:4 31:11,20 32:1,14,19 34:19 35:19 36:22 51:15 53:10 67:21 74:14,21,24 105:12, 22 111:7 119:4 125:6,9 126:8,25 129:16 158:2,4,8, 10 163:7 164:4 166:13 177:17</p> <p>indictments ^[2] 104:8 174:11</p> <p>individual ^[2] 6:16 145:3</p>	<p>individually ^[1] 121:14</p> <p>induce ^[1] 4:7</p> <p>inducing ^[1] 4:10</p> <p>infer ^[2] 35:11,24</p> <p>inference ^[1] 61:9</p> <p>inferior ^[1] 135:12</p> <p>influence ^[1] 89:17</p> <p>information ^[7] 21:9 50:6 98:5 120:23 149:18,23,25</p> <p>infringe ^[1] 121:20</p> <p>infringement ^[1] 172:25</p> <p>infringes ^[1] 119:21</p> <p>ingredient ^[1] 76:5</p> <p>inherent ^[1] 118:7</p> <p>injunction ^[1] 138:17</p> <p>innocent ^[5] 7:20,21 113:25 114:2,5</p> <p>innovation ^[2] 4:15 15:23</p> <p>inside ^[1] 147:15</p> <p>insisting ^[1] 25:5</p> <p>insofar ^[1] 165:3</p> <p>instance ^[1] 53:13</p> <p>instances ^[2] 121:15 154:4</p> <p>Instead ^[2] 11:8 73:3</p> <p>institutional ^[1] 110:11</p> <p>instruct ^[1] 35:15</p> <p>instruction ^[2] 36:2 164:25</p> <p>instructions ^[1] 80:8</p> <p>instructive ^[1] 6:9</p> <p>insufficient ^[3] 21:12,12, 15</p> <p>insulation ^[1] 162:11</p> <p>integrated ^[2] 164:3,10</p> <p>integrity ^[3] 38:20,25 149:12</p> <p>intelligent ^[1] 122:25</p> <p>intend ^[1] 120:10</p> <p>intended ^[2] 119:24 120:9</p> <p>intent ^[9] 4:19 16:17 35:24, 24 55:3 90:9 99:25 164:24 165:4</p> <p>intention ^[2] 138:4,4</p> <p>intentionally ^[1] 150:1</p> <p>intentions ^[1] 137:25</p> <p>intents ^[1] 138:14</p> <p>interaction ^[1] 130:12</p> <p>interactions ^[4] 129:20 132:9 149:12 164:21</p> <p>interest ^[7] 38:19 69:4 99:13 134:1 136:25 149:11,22</p> <p>interesting ^[1] 25:2</p> <p>interests ^[4] 84:6 133:10 165:22 175:22</p> <p>interfere ^[2] 70:4 100:1</p> <p>interferes ^[2] 67:20 99:22</p> <p>interfering ^[1] 150:20</p> <p>interlocutory ^[6] 124:4 155:15,24 156:21 157:14 158:13</p> <p>intern ^[1] 106:25</p> <p>internal ^[1] 159:21</p> <p>internally ^[1] 148:3</p>
--	--	---	---	--

Official

<p>interpret [5] 39:17 40:22 80:1 83:5 142:2</p> <p>interpretation [3] 66:3,8 167:15</p> <p>interpreted [3] 79:1,20 96:2</p> <p>interrupt [1] 82:21</p> <p>intersect [1] 158:18</p> <p>intrinsic [1] 137:10</p> <p>introduce [1] 164:21</p> <p>intrusive [2] 15:11 21:18</p> <p>intuition [1] 153:3</p> <p>investigate [2] 127:16 145:5</p> <p>investigated [4] 146:17 147:5 150:18 176:6</p> <p>investigating [2] 144:7 145:2</p> <p>investigation [6] 17:17 106:17 144:25 145:9,15 150:20</p> <p>investigators [1] 145:13</p> <p>invite [2] 145:11 173:23</p> <p>inviting [2] 145:8 171:5</p> <p>invoke [1] 74:11</p> <p>invoked [1] 51:13</p> <p>invokes [1] 22:25</p> <p>invoking [1] 122:15</p> <p>involve [7] 22:3 80:3 102:17,20 119:5 154:21 156:16</p> <p>involved [6] 77:21 96:5 106:14 136:11,14 140:20</p> <p>involves [3] 79:15 143:2 145:1</p> <p>involving [1] 142:3</p> <p>Iran/Contra [1] 146:14</p> <p>Iraq [1] 4:7</p> <p>irregularities [1] 127:15</p> <p>isn't [16] 7:13 10:5 12:24, 24 13:4 24:7 27:9 32:4 55:9 56:22 79:4 83:2 105:25 114:10 154:9 171:10</p> <p>issuance [1] 158:4</p> <p>issue [15] 23:2 27:22 34:5 54:16 75:8 77:4 98:23 110:19 122:17 124:6,18 156:14,20 158:18 160:3</p> <p>issues [6] 47:23 95:15 121:24 122:12 124:5 156:16</p> <p>itself [9] 5:15 20:5,7 25:25 31:16 34:19 72:6 156:13 175:20</p> <hr/> <p style="text-align: center;">J</p> <p>JACKSON [56] 12:24 13:8,16,23 14:4,22 15:15 16:24 17:9,13 28:15,19 58:5,6,15 59:3 60:14,17 61:7,11 62:6,18,22 63:21 64:21,25 65:14,23 66:2,5,18 67:25 122:3,18 145:11 166:5,6,18,25 167:18,20 168:12,15,21,24 170:18 172:4,7,11 173:1,22 174:13,22 176:3 177:10,</p>	<p>21</p> <p>jail [1] 112:16</p> <p>James [1] 52:21</p> <p>January [1] 164:17</p> <p>Japanese [1] 106:25</p> <p>Jefferson [1] 52:22</p> <p>jersey [1] 170:6</p> <p>jet [1] 156:2</p> <p>job [5] 38:22 61:15 62:2 67:5 126:6</p> <p>jobs [4] 16:9 59:18 60:18 77:24</p> <p>JOHN [3] 1:18 2:3 3:7</p> <p>Johnson [8] 7:23,25 10:22 17:7 35:3 36:10 46:20 148:12</p> <p>joined [1] 18:17</p> <p>joint [3] 7:2 101:2,2</p> <p>judge [9] 18:17,25 22:9 111:14 115:23 146:17 156:21 157:24 158:1</p> <p>judges [3] 112:25 119:23 145:19</p> <p>judgment [5] 5:19 54:20 57:5 75:11 106:9</p> <p>judicial [2] 113:22 165:23</p> <p>juries [1] 104:7</p> <p>jurisdiction [1] 123:22</p> <p>jurisdictions [1] 159:24</p> <p>jury [15] 35:15 74:13,21,23 80:8,9,9 105:1,11 156:17 157:8,21,24 164:10,25</p> <p>Justice [539] 1:21 3:3,9 4:24 5:5,8,23,25 6:13 7:6,12 8:5 9:9,25 10:14,16,24,25 12:2,23,24 13:8,16,23 14:4,5,7,10,22 15:15 16:21,24 17:9,13 18:1,9 19:14,23 20:14,15,17,18,19,21 22:2,12,18 23:10,11,17,23 24:6,11,14 25:3,20 26:12,20 27:12 28:1,15,17,19,20,23 29:15,18,25 30:9,12,17,20,23 31:2,4,25 33:7,8,9,17,22 34:16,16,17 35:5,6,6,8,21 36:18,18,19,20 37:6,17,19 38:4,12,24 39:8,19 40:23 41:6,14,17,21 42:5,14,19 43:6,10,16 44:11 45:15,16,16,18,25 46:9 47:1,15,19 48:10,17 49:1,13 50:16,16,18 51:6,18 52:8 53:7,17,18,18,20 54:2 55:8,15,19 56:5,15 57:13,14 58:3,4,4,6,8,15 59:3 60:14,17 61:7,11 62:6,18,22 63:21 64:21,25 65:14,23 66:2,5,18 67:25 68:1,6 69:19,23 70:19 71:1,5 72:9 73:8,9,11,25 74:15 76:1,9,12,13,19 77:4 78:17,18,22 79:6,10,11 81:4,7,12,19,25 82:10,20 83:1,12,20 84:16,18,22,25 85:5,8,9,12,17,23,25 86:11,14,20</p>	<p>87:3,6,19,24 88:10,13,18,21,23 89:12,15,25 90:4,6,8,13,15,19,22 91:19,23,24 92:1,4,9,16,18,21 93:4,7,11,15,21,23,24,24 94:7,8,10,11,17,20,24 95:6,11,20,25 96:3,19 97:1,6,10,16,21,22,23,24,25 98:11 99:4,19 101:13,15,16,17,22 102:1,3,5,12,18 103:9,10,15,16,19,22,23,25 104:16,20,21,22 105:3,6,15 106:2,18 107:11 108:6,25 109:16,21,24 110:6,10,14,16,18 111:4,18 112:4,18 113:10,11,11,13,17,20 114:6,11,23 115:1,7,7,8,14,17,20 116:2,9,17,21,24 117:3,9,16,19,24 118:9,13 119:7 121:23 122:2,3,6,12,18 124:19,23,24 126:7,9,17 127:6,8,13,18,22 128:6,15,21,25 129:18,21,22,22,24 130:5,16,24 131:4,7,12,17,23 132:1,7,17,20,25 133:19,21,24 134:4,12,14,17,20,22,25 135:15,18 136:1,4,16,20,23 137:3,23,25 138:3,7,13,20,22 139:1,2,4,6,9,13,23 140:6,12,16 141:1,5,8 142:9,11,11,13,25 143:5,8,9,15,23 144:1,12,13,18,21 145:7,11,21 146:13,24 147:9,15,24 148:4,15,19 149:24 150:2,5,8,11,14,19,23,24 151:1,16,22,24,24 152:1,25 153:2,16,22,25 154:3,15,18,21,23 155:5,8,11,18 156:1 157:7,13,17,20 158:3,6 159:7,11,15,19,22 160:11,20,24 161:3,9,25 162:13,17,21 163:3,9,12,19 164:1,21 166:3,4,4,6,7,18,25 167:18,20 168:12,15,21,24 170:3,15,18,22,22 172:4,7,11 173:1,22 174:13,22 175:13 176:3 177:10,21,23 178:3</p> <p>Justice's [2] 36:9 45:19</p> <p>justification [1] 21:6</p> <p>Justifying [1] 152:8</p> <hr/> <p style="text-align: center;">K</p> <p>Kagan [51] 36:18,19 37:6,17,19 38:4,12,24 39:8,19 40:23 41:6,14 42:5,14,19 43:6,10,16 44:11 45:15 115:7,8,14,17,20 116:2,9,17,21,24 117:3,9,16,19,24 118:9,13 119:7 121:23 122:2,6,12 124:19,23 126:7 127:6 128:15,21 129:21 150:24</p> <p>Kagan's [1] 57:14</p>	<p>Katsas' [2] 18:25 22:9</p> <p>KAVANAUGH [54] 20:14,17,19 26:20 27:12 28:1 45:25 50:17,18 51:6,18 52:8 53:7,17 58:8 76:12 81:12,19,25 82:10,20 83:1,12,20,84:18,22 85:9 96:3 142:12,13 143:5,8,15,23 144:1,12,18 145:21 146:13,24 147:9,24 148:15,19 149:24 150:2,5,8,11,14 151:1,22 161:4 170:22</p> <p>keep [2] 8:13 54:23</p> <p>kept [1] 64:8</p> <p>kicked [1] 123:17</p> <p>kicks [1] 130:11</p> <p>killing [2] 4:8 151:12</p> <p>kind [99] 5:16 7:2 13:9 20:3 23:22 26:15 43:4,24 46:17 52:6 60:21,24 64:8 72:6 77:14 86:2 91:11 93:19 96:17 109:13 111:16 118:17 119:15 122:14 133:14 144:4,6 147:6,25 153:5 154:22 155:21 158:13 159:12 160:8 169:11 171:6 172:5 174:14</p> <p>kinds [10] 14:9 42:1 61:2 63:3 87:9 100:4 118:19 158:17 167:10 173:5</p> <p>king [2] 51:20 68:21</p> <p>Knowing [3] 25:20,21 63:6</p> <p>knowingly [2] 29:10 150:1</p> <p>knowledge [4] 112:21 164:24 165:3 177:1</p> <p>known [1] 106:11</p> <p>knows [10] 25:23 90:8,16,22,23 106:5 112:6 139:24 175:21 176:12</p> <p>Korematsu [2] 107:7,25</p> <hr/> <p style="text-align: center;">L</p> <p>label [1] 26:2</p> <p>labored [1] 78:5</p> <p>lack [1] 15:21</p> <p>laid [1] 5:12</p> <p>lands [1] 98:21</p> <p>language [5] 40:8 45:3 54:25 62:20 91:16</p> <p>Lanier [1] 108:2</p> <p>lapsed [1] 147:14</p> <p>Largely [2] 130:4,4</p> <p>last [7] 4:25 14:18 43:24 110:25 124:19 162:24 165:16</p> <p>lastly [1] 53:7</p> <p>late [1] 127:8</p> <p>later [1] 155:22</p> <p>latitude [1] 135:13</p> <p>Laughter [3] 24:10 105:8 140:22</p> <p>law [68] 6:25 9:11 10:21 16:12 18:5,20 23:15 33:3 38:23,23 44:19,21 46:19 49:</p>	<p>14 51:20 59:14,21 60:6,10,19 61:3 62:1,4 64:14 67:4,5 72:17,19 73:6 74:12 75:9 91:25 92:15,20 94:1,5,21 95:16,23 97:12,13,17,18 98:2 111:13 113:18 114:17 115:3 119:5 121:8 124:12,12 135:10 137:12,18 139:19 145:12 151:16 152:9,10,12,20,20 154:12 158:25 161:21 170:13 176:13</p> <p>lawful [11] 72:5 91:5 100:1 108:13,22 109:4 112:18 126:22 141:14 152:11 153:4</p> <p>lawfully [3] 91:10 154:14,16</p> <p>Lawrence [1] 146:14</p> <p>laws [12] 12:9 70:3 73:17,23 96:24 97:3,20 98:8,19 124:16 137:21 151:8</p> <p>lawsuit [3] 37:1 95:13 129:4</p> <p>lawsuits [2] 129:8 172:2</p> <p>lawyers [3] 59:24 126:3 164:5</p> <p>layer [3] 91:1 101:21 107:10</p> <p>layered [1] 75:12</p> <p>layers [9] 69:7 71:9 89:5,20 101:18 102:13 113:23,23,23</p> <p>lead [1] 112:11</p> <p>leading [1] 88:24</p> <p>leads [1] 86:15</p> <p>least [15] 7:24 12:1,25 17:24 26:19 31:22 50:9 66:13 88:8 110:17 130:14 134:1 136:24 149:23 177:4</p> <p>leave [1] 111:25</p> <p>leaves [8] 3:20 18:6 45:23 48:4 60:16 87:21 148:19 160:15</p> <p>leaving [4] 42:23 110:21 112:7 137:17</p> <p>Lederman [1] 176:17</p> <p>left [8] 19:14 53:1 81:1 89:15 116:19 137:6 166:7 171:20</p> <p>Legal [25] 16:6 21:8 24:7,17,18 64:23 69:7 72:14 79:9 82:14 84:13 91:3,3 98:16 110:1 118:4 119:16,20 120:5,14,21 132:18 151:4 162:7 177:19</p> <p>legality [1] 48:15</p> <p>legislation [4] 86:17 87:14 89:2 149:18</p> <p>legislative [5] 6:23 44:15 46:22 77:18 150:4</p> <p>legislators [1] 77:23</p> <p>legislature [1] 38:14</p> <p>legitimate [1] 174:24</p> <p>length [1] 161:23</p>
---	---	---	---	---

Official

<p>lens [4] 18:25 22:9 129:2, 12</p> <p>less [1] 145:3</p> <p>lesser [1] 158:14</p> <p>letter [1] 52:21</p> <p>letters [3] 103:19 127:13 128:12</p> <p>level [9] 6:10 27:23 92:13 104:5 105:16 161:15,19 171:2 173:6</p> <p>levels [1] 104:11</p> <p>liability [19] 11:12,20 35:16, 17 36:6 48:19 61:17,21,24 63:23 64:11 68:15 71:11 72:18 128:1,4 156:13 172:9,14</p> <p>liable [4] 154:19 167:25 168:8 169:7</p> <p>liberty [3] 3:17 40:15 55:18</p> <p>life [2] 72:13,24</p> <p>life-and-death [1] 61:1</p> <p>lightly [1] 71:11</p> <p>likelihood [1] 127:4</p> <p>likely [6] 41:2 44:7 47:22 53:15 100:17 164:8</p> <p>likes [1] 147:4</p> <p>limit [3] 97:3 100:20 114:15</p> <p>limited [4] 93:5,12 114:16 177:6</p> <p>limits [6] 121:9 132:24 134:6 140:8,17 174:11</p> <p>line [9] 19:3 21:16 65:1 103:7 119:8 124:21 152:14 174:1,15</p> <p>line-drawing [1] 58:17</p> <p>lines [1] 170:21</p> <p>lingering [1] 122:12</p> <p>list [1] 116:4</p> <p>litigated [1] 79:22</p> <p>litigation [3] 33:23 37:13 173:19</p> <p>little [10] 18:11 35:8 36:20 81:13 82:7 83:19 136:10 156:18 158:6 177:6</p> <p>lived [1] 146:20</p> <p>lobbying [1] 120:4</p> <p>local [3] 159:24 161:15,19</p> <p>locate [1] 175:18</p> <p>loggerheads [1] 33:2</p> <p>logic [2] 27:2 53:16</p> <p>logical [2] 8:16 66:17</p> <p>logically [1] 66:11</p> <p>long [6] 9:11 21:16 28:13 62:15 102:5 103:7</p> <p>longer [4] 21:24 42:7 75:5 153:6</p> <p>longstanding [2] 78:16 79:9</p> <p>look [28] 20:6 22:5 31:10, 11 32:17 33:4 35:21,22 57:8 76:25 77:1 95:7 112:14 117:5,11,11 129:3 130:11 132:13,16 133:4 138:16 139:11 146:13 152:17,18</p>	<p>154:22 168:3</p> <p>looked [7] 6:9 95:2,14,14, 15 150:14 151:4</p> <p>looking [11] 20:4 33:20 102:16 119:16 129:2 132:3 133:11,13 141:10 152:3 171:25</p> <p>looks [2] 56:18 162:9</p> <p>looming [1] 3:21</p> <p>lose [2] 55:18 113:7</p> <p>loser [1] 112:16</p> <p>loses [2] 111:24 112:5</p> <p>lost [2] 112:23 150:12</p> <p>lot [16] 18:14 22:7 28:3 59:18 80:4 83:15 98:1 104:22, 23 105:21 107:16 133:17 152:14 159:19 161:12 170:21</p> <p>lots [6] 24:19,20 49:13 59:17 61:1 133:8</p> <p>Louis [1] 1:18</p> <p>Louisiana [1] 25:13</p> <p>low [1] 43:4</p> <p>lower [2] 21:14 25:12</p> <p>lying [1] 4:6</p> <p>Lyndon [1] 148:12</p>	<p>58:22 59:11,23 123:22 139:10 161:20 174:11</p> <p>matters [3] 31:1 146:18 176:20</p> <p>maximum [1] 162:11</p> <p>McCulloch [1] 160:5</p> <p>mean [48] 13:2,5,13,23 15:25 17:13 24:6 29:13 32:2, 3,16 38:25 39:20 41:6 42:20 47:15 49:15 51:5 60:22, 25 66:5 67:6 74:16 85:18 98:1 102:2 104:16,21 105:19 106:18 107:8 111:4 122:6 133:7,21 135:2 138:1,15 140:13 148:5 153:17 155:12 157:8,21 160:22 169:18 174:4 176:16</p> <p>meaning [6] 4:17 46:18 51:1 53:25 113:22 123:15</p> <p>Meanor [1] 36:11</p> <p>means [9] 13:22 73:15 80:17 90:9,16 94:4 128:5 139:24 140:1</p> <p>meant [1] 138:20</p> <p>measures [1] 8:25</p> <p>mechanisms [2] 112:19 114:7</p> <p>Meese [1] 34:3</p> <p>meeting [1] 30:19</p> <p>member [3] 110:1,8 170:16</p> <p>members [2] 8:24 106:4</p> <p>memo [1] 152:3</p> <p>memorandum [1] 110:2</p> <p>mention [2] 56:7 93:7</p> <p>mentioned [4] 30:2 72:1 95:2 150:23</p> <p>mentioning [1] 93:13</p> <p>merits [1] 148:23</p> <p>met [1] 162:4</p> <p>method [1] 172:23</p> <p>MICHAEL [1] 1:20 2:6 68:4</p> <p>might [32] 21:13 24:1,7 39:23 40:19 41:24 44:4 47:8, 13 49:23,23 64:5,7,24 86:22 106:20 107:20 111:1 117:1 130:15 131:18 133:9 135:8 136:9 154:6 155:2 161:4,6 165:18 172:14 175:5,12</p> <p>military [6] 9:19 24:14 41:15,20 42:7,9</p> <p>million [3] 6:18 8:7 32:10</p> <p>millions [1] 101:10</p> <p>mind [6] 8:13 54:23 90:3 103:2 130:17 141:17</p> <p>minimum [1] 28:6</p> <p>minute [2] 48:4 157:18</p> <p>mirror [1] 147:25</p> <p>mischaracterization [1] 26:5</p> <p>misconduct [3] 78:4 80:22 177:15</p> <p>misdemeanor [1] 94:3</p>	<p>misfeasance [1] 52:7</p> <p>misleading [1] 148:11</p> <p>Mississippi [2] 17:6 25:13</p> <p>Missouri [1] 1:18</p> <p>mistake [4] 11:16 98:7,8, 21</p> <p>mistakes [1] 143:12</p> <p>mistrusted [1] 119:2</p> <p>misuse [4] 69:2 103:14 119:1,5</p> <p>Mitchell [3] 20:11 103:2 165:7</p> <p>mitigated [1] 175:5</p> <p>Mm-hmm [29] 76:18 78:21 81:24 86:19 109:20 116:23 117:15,18,23 122:1,5 128:20 139:22 140:5 143:14,25 144:11,17 145:20 148:14 150:7 152:24 155:17,17,25 157:12 159:10,14 163:18</p> <p>model [3] 78:8,9 152:6</p> <p>moment [2] 144:5 150:9</p> <p>momentous [1] 176:1</p> <p>monarch [2] 44:18,20</p> <p>money [1] 32:4</p> <p>Mongoose [1] 70:22</p> <p>morning [1] 3:4</p> <p>Morris [2] 49:7 50:14</p> <p>Morrison [4] 55:15 143:12 145:24 146:6</p> <p>most [20] 3:19,23 27:10 33:21 47:14 53:15 63:4 81:5 92:8 99:2,10 102:2 105:10 119:2 125:19 128:24 150:16 174:5,5 177:18</p> <p>mostly [2] 31:13 86:15</p> <p>motion [5] 65:10,10,17 79:23 158:7</p> <p>motions [1] 76:6</p> <p>motivated [2] 14:19 161:3</p> <p>motivation [2] 11:24 33:6</p> <p>motivations [1] 134:6</p> <p>motive [13] 12:25 33:5 133:15,17 134:15,18 137:5 138:4,5 140:24 141:21 142:7 155:3</p> <p>motives [14] 15:12 21:17, 19 133:5,5 135:1 136:5 137:21 138:14 139:10,17, 21 140:4 154:22</p> <p>Mott [2] 26:19 62:13</p> <p>move [2] 160:8 163:14</p> <p>moving [1] 104:5</p> <p>much [11] 21:13 34:20 44:7, 8 57:3 60:1 62:23 104:9 136:18 137:6 158:19</p> <p>Mukasey [1] 34:4</p> <p>multiple [1] 103:9</p> <p>murder [7] 4:8 68:16 72:25 121:9 151:5,11 160:9</p> <p>must [4] 56:2 79:1 144:14 145:15</p> <p>Myers [1] 135:10</p>	<p>myself [1] 150:18</p>
N				
<p>name [4] 37:1 84:15,17 121:5</p> <p>named [3] 82:16 94:2 170:14</p> <p>namely [2] 78:25 99:2</p> <p>names [1] 45:21</p> <p>Nardone [1] 168:19</p> <p>narrow [1] 77:17</p> <p>narrower [3] 152:16,21,22</p> <p>narrowing [3] 86:2 96:22 133:3</p> <p>narrowly [2] 39:17 167:4</p> <p>nation [1] 78:14</p> <p>nation's [1] 113:8</p> <p>National [4] 37:9 107:20 116:6 149:19</p> <p>nations [1] 87:14</p> <p>natural [2] 19:18 123:11</p> <p>naturally [2] 17:8 62:20</p> <p>nature [5] 10:5 61:14,15 126:19 167:20</p> <p>Neagle [1] 160:8</p> <p>near [1] 39:15</p> <p>nearly [1] 146:18</p> <p>necessarily [3] 56:23 90:3 157:9</p> <p>necessary [6] 8:25 21:2 70:15 82:18 154:1 162:9</p> <p>necessitated [1] 58:20</p> <p>need [14] 28:7 45:6 62:1 76:25 88:3 89:3 110:17 113:3, 3 118:7 132:11 135:8 165:23 174:19</p> <p>needed [5] 3:23 44:2 149:18 160:13 177:13</p> <p>needs [9] 43:2 59:2 99:25 100:6 113:14 118:2 144:5 158:10 159:4</p> <p>negate [1] 23:25</p> <p>negative [1] 92:5</p> <p>neither [3] 39:4 77:11 172:16</p> <p>never [11] 34:10 47:15,19 48:16 68:8 70:14 72:20 111:5,12 149:1 173:16</p> <p>new [1] 40:14</p> <p>next [8] 91:1 99:3 116:18 131:15 137:18 146:2,3,4</p> <p>nine [2] 12:1 54:4</p> <p>Nixon [19] 6:5 15:9 17:11 46:25 52:12 77:10,11 106:14 111:6 129:2,8 139:14, 14 150:18,21 152:22 165:21 171:23 177:16</p> <p>Nobody [3] 90:8 116:11 147:4</p> <p>nominated [1] 34:10</p> <p>nominates [1] 109:9</p> <p>non-core [4] 134:23 135:6 136:21 137:7</p> <p>none [5] 50:24 113:4 127:</p>				

Official

<p>17 136:14 170:17 normal [2] 88:4 163:14 normally [2] 77:1 140:19 note [1] 173:16 Nothing [6] 78:1 91:16 94:15 145:17 176:14 178:1 notice [6] 28:9 67:4,8 82:2 108:4 145:8 notion [2] 25:17 44:3 novel [2] 55:6 68:13 nuance [1] 130:18 nuanced [3] 120:17 148:23 162:8 nuclear [1] 40:24 number [4] 93:16,20 98:15 151:5</p> <hr/> <p style="text-align: center;">O</p> <p>oath [4] 75:24,25 127:23 176:19 Obama [2] 4:7 10:2 Obama's [1] 151:2 obey [1] 24:14 objections [2] 70:3 132:21 objective [12] 12:19 15:7 22:4,24,25 23:5 25:1 33:19 67:22 131:20 133:14 155:6 objectively [3] 22:5 130:8 155:9 objectives [1] 137:22 objects [1] 86:17 obligation [2] 73:22 98:18 observed [1] 106:4 obstruct [2] 30:4 101:9 obstructing [1] 4:5 obstruction [4] 35:19 83:13 150:19 158:6 Obviously [6] 6:4 26:17 27:21 84:2 155:13 159:23 occasional [1] 177:15 occasionally [1] 121:24 occur [4] 20:12 57:3 64:24 80:25 occurred [4] 35:20 80:19 107:17 164:12 occurs [3] 58:16 80:22 127:8 odd [1] 39:9 offense [4] 84:14 126:20 145:14,16 offenses [2] 103:1 121:8 offer [2] 118:23 131:16 offered [1] 170:8 offering [1] 69:25 office [48] 3:20 4:1 11:10,19 14:12 16:6 17:2,2 18:6 42:23 45:23 47:4 48:4 55:10 60:16 63:6,9 64:2,8,15 72:14 78:6 79:9 81:1 82:14 84:13 87:21 103:1,4,10 110:1,22,25 111:25 112:7 118:4,18 119:16,20 120:4,14,21 148:20 151:3 175:2</p>	<p>176:8,11 177:1 office-holder [5] 126:2 129:15 130:6,10 131:25 office-seeker [5] 126:2 129:14 130:7 131:10 132:15 officer [3] 135:22 152:10 155:1 officers [4] 24:13 54:8 135:9,12 official [178] 3:15 4:5,14 5:18 6:1,14,24 7:4,13,15,17,17,19 8:2,3,4,6,10 9:4,20,24 10:7,12 12:12 13:2,11,13,17,19,25 14:8 15:3,4,12 17:18 18:12,20 19:7,7,22 20:8 21:5,20 22:13 23:1,6,13 24:22 26:22 27:4,9,9,13,14,19 28:3 29:2 30:14,19 31:8,13,18,19,22,23 32:1,7,12,15,21 33:10 34:18,20,24 35:13 36:15,22 37:4,16,17,20 38:11,16,23 41:3,7,10,25 42:11,16,17 43:1,6,7,8,10,18 46:23 50:22 51:2,7,9,14,17,25 53:11 57:18 58:11,21 59:15 60:5,11 68:10,12,24 69:3,22 71:12,19 73:14 76:24 77:14 81:20,25 82:4 83:4 86:4,9,10,23 89:18 91:12 93:4 100:11,12 101:5 115:4 116:22 118:11,14,21,22 119:6 124:16 125:1,5,6,9,13,21 126:10,18 129:6 131:9 132:10 152:15 160:10 161:23 162:18 163:5,19,24 164:7 165:15,19 166:11 170:10,25,25 171:7,9,13,21 172:8,13 173:25 176:20,22 official/unofficial [1] 124:21 officially [1] 14:14 officials [15] 38:18,21 103:7 113:15 118:25 120:7,15 127:18,22 149:16,16 160:17 164:15 168:23 176:24 often [3] 114:1 122:23 145:17 Okay [36] 7:6 8:6 13:16 27:14 28:23 33:17 54:2 55:19 56:5,5 57:13 58:3 81:19 85:7,23,23 86:12,13 88:23 90:7 92:18 116:17 124:19 131:1,6 132:17,17,25 134:20 139:8 142:9 143:8 157:19 162:22 168:15 172:12 OLC [17] 39:10,12,20 40:4,17 50:19 54:14 64:4 72:24 73:3 79:23,25 82:6 117:14 118:10 121:2 152:3 old [1] 104:17 Olson [4] 55:15 143:13 145:25 146:6</p>	<p>once [5] 21:22 64:10 87:18 105:6 165:25 once-in-history [1] 109:15 one [63] 14:11 16:20 21:3 24:6,16,16 34:5 35:12 37:13 41:21,23 47:7,13 48:17 49:16 55:21 58:15 67:1 72:11 78:3 89:6 91:6 92:10 98:15 99:1 100:8 103:2 104:11 108:10 111:25,25 112:23 114:16 119:1 120:17 122:23 123:8 124:19 128:5,23 130:2 131:15 132:9 135:2 139:3 143:11 144:25 145:3 148:1 149:14 150:15 151:5 152:7 153:23 155:12,13 158:15 160:25 161:5 167:12 169:23 176:9 177:16 one-legged [3] 32:3 36:10,12 ones [2] 51:14 136:18 oneself [1] 126:22 ongoing [1] 37:12 only [14] 5:11 16:20 37:12 49:18 54:18,22 59:7 75:4 92:23 97:11 109:25 118:25 121:6 153:9 open [2] 19:14 81:1 open-ended [1] 99:9 opened [1] 21:23 opening [1] 15:19 operate [2] 137:21 147:18 operated [2] 64:18 109:12 operates [2] 89:10 155:6 operating [1] 129:1 Operation [2] 70:22 99:23 operations [1] 70:22 operative [2] 175:25,25 opinion [14] 5:9 19:1 22:9 26:25 27:3,10 40:6 74:17 75:8 92:5 117:14 118:10 120:5 170:3 opinions [8] 26:18 39:13 40:17 50:19 54:14 79:24 82:6,14 opponent [2] 112:11 140:3 opponents [2] 48:3 139:20 opportunity [3] 55:11 117:10 173:5 opposed [5] 31:8 131:22 133:14 137:22 162:10 opposite [7] 17:5 53:5 54:12 63:2 112:18 144:9 147:2 opposition [1] 175:22 option [3] 45:9 72:10 163:22 oral [5] 1:14 2:2,5 3:7 68:4 order [14] 21:2 24:8 48:21 49:2 70:16 82:18 100:6 110:19 112:25 114:15 118:</p>	<p>3 129:6 130:12 133:9 ordered [2] 42:6,9 ordering [2] 12:7 57:16 orders [6] 9:18,19 24:15 41:15 57:15 153:10 ordinary [4] 61:20 166:19 167:13 169:3 organization [1] 37:21 Organizing [1] 125:13 original [5] 4:17 5:21 16:17 53:2 54:19 originally [2] 5:13 44:25 other [42] 12:9,22 13:10 16:3 17:6 18:4 19:9 20:13 22:23 26:14 28:14 32:19 51:24 54:3,8 60:17 61:14 77:22 79:19 80:6 81:19 91:13 99:11 101:22 105:5 108:7,9 115:25 120:6 124:4 127:9 128:17 132:22 140:7 149:13,21 152:12 158:17 160:17 165:13 166:22 171:1 others [5] 93:10 103:1 106:19 138:15 176:23 others' [1] 53:9 otherwise [2] 157:17 165:19 oust [2] 72:20 126:21 out [46] 5:12 16:22 23:6 41:17 45:10 48:14 50:7 55:10 59:5,12 63:17 65:17 82:22 87:18 90:14,23 91:9,17 96:3 104:15 118:3,4 120:1,7,16 121:14,16,22 123:4 127:24 137:9 139:7 140:1 143:1 148:16 151:7 153:6 161:10 163:20 164:15 166:10 171:2 172:13 174:1,2,14 outcome [2] 80:7 112:24 outer [5] 6:7 46:24 129:5 171:23 172:8 outlandish [1] 26:16 outrageous [1] 24:23 outset [4] 71:13 84:10 155:16 157:11 outside [8] 41:22 45:24 46:10 88:14 112:20 118:6 153:4 161:9 Oval [1] 63:9 over [8] 15:17 70:19,19 78:5 116:8,12 135:1 153:11 overall [1] 124:1 overbreadth [1] 121:20 overcome [2] 140:7 165:25 overriding [1] 157:6 overruled [1] 107:8 overseas [2] 72:13,23 oversight [2] 62:14,14 overstate [1] 76:3 overt [1] 32:14 overthrow [1] 39:2 overturn [2] 68:17 113:2</p>	<p>own [2] 111:14 114:10</p> <hr/> <p style="text-align: center;">P</p> <p>p.m [1] 178:7 PAGE [4] 2:2 106:23 108:19 162:25 pages [2] 28:24 45:13 Palmer [1] 103:2 panel [1] 18:17 panoply [1] 65:13 paradigmatic [2] 118:19 177:16 paramount [1] 149:11 paraphrased [1] 145:18 pardon [15] 17:10,11 47:9 48:11 87:13 109:17 110:21 111:1 115:19,20 134:11 150:6,17 154:25 158:4 pardons [1] 158:5 part [12] 8:9 32:1,9,12 34:24 89:8 117:21 124:8 126:6 136:24 142:23 177:18 participate [1] 91:10 particular [16] 6:16 12:15 26:25 32:7,13 39:25 99:5,7,20 102:21 104:3 121:17 144:19 145:3 173:7,7 particularly [2] 100:7 151:11 parties [2] 66:1 124:2 party [1] 144:9 pass [1] 11:8 passage [1] 52:19 passing [1] 8:17 past [2] 70:20 106:19 pattern [1] 88:9 peaceful [2] 86:15 112:8 peacefully [1] 112:1 peculiar [1] 96:8 peculiarly [2] 98:12 99:8 penal [1] 152:6 penalty [1] 63:7 people [12] 54:3 60:18 61:1,14 102:6 103:9 114:5 119:19 120:13 143:17 150:16 166:21 per [1] 21:24 perceive [1] 148:1 perfect [2] 158:22 159:1 perfectly [1] 177:14 perform [1] 70:16 performance [1] 27:25 performing [1] 59:14 perhaps [8] 46:14 48:10 84:10 90:18 96:15 105:24 107:25 145:2 perimeter [5] 6:7 46:24 129:5 171:23 172:8 period [1] 51:10 perjuring [1] 176:19 perjury [1] 176:23 permanent [1] 68:11 permissible [1] 160:12 permit [1] 120:19</p>
--	--	--	--	--

Official

<p>permits [2] 95:24 144:15</p> <p>permitted [1] 34:23</p> <p>perpetuate [2] 68:18 103:15</p> <p>person [14] 9:18 12:5 15:2 61:20 63:4 67:8 95:23 111:14 123:14,21 127:24 145:10 168:17,20</p> <p>personal [19] 10:1,4,8,17 11:18 12:10 14:13 15:5,12 26:23 51:8,23,24 60:12 84:19 133:10 134:1,5 136:25</p> <p>personally [1] 151:7</p> <p>perspective [1] 69:25</p> <p>persuasive [1] 19:1</p> <p>persuasively [2] 7:24 12:14</p> <p>Petitioner [24] 1:19 2:4 3:8 29:8,19,21 30:5 68:10 69:5 70:10 80:16 103:18 112:21 125:8,17 127:12,20 128:9 132:10,10,14 164:7 171:12 173:16</p> <p>Petitioner's [3] 69:2 170:20 171:4</p> <p>phrase [1] 53:25</p> <p>phrases [1] 168:18</p> <p>pick [5] 57:14 100:9 109:2 152:2 166:6</p> <p>picked [1] 144:9</p> <p>picking [1] 145:12</p> <p>picture [1] 164:10</p> <p>piece [2] 86:17 89:1</p> <p>pin [1] 145:13</p> <p>place [5] 19:19 47:22 53:1 141:11 165:13</p> <p>placed [1] 132:23</p> <p>plain [2] 53:25 54:25</p> <p>plainfully [1] 41:21</p> <p>plan [1] 30:3</p> <p>plausibility [1] 24:3</p> <p>plausible [8] 21:6 23:25 24:2,3,17 25:4,8 174:6</p> <p>plausibly [3] 19:6 23:14 24:7</p> <p>play [4] 7:18 21:21 117:1 135:1</p> <p>please [4] 3:10 68:7 164:18 168:12</p> <p>point [26] 4:25 6:3 14:18 15:8 20:1 26:11,11 33:21 44:19 50:11,22 51:21 55:20 93:25 94:18 96:15 102:14 103:11 127:11,20 146:15 148:2,8 160:25 169:23 173:19</p> <p>pointed [3] 41:17 48:14 118:4</p> <p>points [1] 34:4</p> <p>policies [1] 4:12</p> <p>policy [2] 4:20 149:19</p> <p>political [15] 3:25 30:2 48:3 64:20 75:19 76:7 78:7,12 80:20 111:10 112:10</p>	<p>139:20 140:3,24 176:14</p> <p>politically [2] 75:20 161:3</p> <p>pollute [1] 150:3</p> <p>posed [1] 88:6</p> <p>poses [1] 177:20</p> <p>position [24] 13:7,9 34:13 37:15 46:5 53:11 54:21 57:18 58:7,13 61:13,25 69:25 75:5,6 78:17 94:13 98:13,15 109:24 110:18 136:12 142:19 170:20</p> <p>possessed [1] 70:4</p> <p>possibility [8] 15:22 19:15 22:19 64:7 112:6 147:8 153:15 157:3</p> <p>possible [5] 21:3 27:22 46:16 138:12 145:9</p> <p>possibly [1] 109:5</p> <p>post-conviction [1] 114:4</p> <p>posted [1] 145:8</p> <p>potential [10] 17:3 59:19 63:7,23 69:6 72:13 100:23 106:6 107:18 135:23</p> <p>potentially [5] 19:12 76:4 77:22 100:21 114:8</p> <p>power [42] 7:10 8:21 23:1 24:22 27:14,15 34:9 38:2 46:10 52:13,17,24 68:18,23,24 69:3 70:4 81:15,21 87:13,13,14,15 103:3 115:19 116:7,11,15 118:23 119:1,6,22,22 121:21 126:18 128:3,11 134:11 135:6,6,22 136:6</p> <p>powerful [1] 63:4</p> <p>powerfully [1] 47:24</p> <p>powers [36] 4:22 5:12,13 8:15 9:3 27:23 28:2,4 46:17,18 50:8 55:16 63:4 67:21 70:9 82:1 91:12 95:12 97:2,4,7 114:15 116:1 121:1 127:3 133:8,11 134:7,9,23 136:13,21,23 137:7 140:7 164:7</p> <p>practice [2] 55:4 79:9</p> <p>precarious [1] 98:12</p> <p>precedent [5] 21:8 25:11 39:7 123:10 175:10</p> <p>precise [1] 4:25</p> <p>precisely [1] 3:22</p> <p>preclude [1] 120:24</p> <p>precluded [1] 34:21</p> <p>precludes [1] 158:9</p> <p>precluding [1] 119:10</p> <p>predictable [1] 110:24</p> <p>prefer [2] 156:24 166:10</p> <p>preference [1] 167:17</p> <p>premise [4] 8:16,16 118:10,13</p> <p>preparatory [1] 37:25</p> <p>prepared [1] 135:22</p> <p>prerequisite [1] 122:24</p> <p>prerogative [1] 160:16</p> <p>prerogatives [3] 32:9 39:</p>	<p>16 40:21</p> <p>present [4] 146:20 148:6,7 164:9</p> <p>presented [10] 47:20 65:15,16,21,25 74:13 123:1 124:3 169:9 173:24</p> <p>presents [1] 174:16</p> <p>preserve [2] 69:17 82:1</p> <p>preserves [1] 158:23</p> <p>presidency [11] 3:12 15:14 20:24 45:6 91:9 141:24 142:15,16 143:16 158:24 175:7</p> <p>president [271] 3:14,18,23 4:4,7,9,14 6:15 7:15,19 8:15 9:17 10:2 11:4,10,16,17 12:11 14:11 16:1 17:11,21,22,23 18:5 21:5,7,9 22:25 24:21,23 25:5,12 27:18 28:4,8 33:10,11,12,12 34:11 37:24 38:3,17 39:11 40:2,23 41:15 42:6,8,21 44:4,16,20,21 45:21 46:13 47:16 48:1,6,22 49:1,24 50:1,3,12 51:1,1,22 54:9,12,16,18,22,24,24 55:10,22 56:8,13,20,22 57:7,14,22,23 58:10,11 59:13,23 60:4,8,21,23 61:13,19,24 62:9,25 63:2 64:11,13 67:2,10,14 68:11 69:11,15,20 70:1,5,5,11,12,16 71:19,20,24,25 72:4,22 73:13,16,22 74:6 78:13,16,19,24 79:3,13,21,22 80:5,6 81:1,20 82:5,15 83:6,11,17 84:8,15,15,17 85:1,14 86:15 87:7,17,19 88:7 89:11 91:1,15 92:14,24 93:8,13,16,18,25 95:3,9,17,24 96:3,7,17,23 97:12,17 99:3 100:5,14 101:4 105:23 106:5,14,24 107:8 108:4,12 109:3,4,9,17 110:20 111:6,11 112:7,9 116:11 117:6,7,19,22 118:2,15 119:22 120:1,3,6,15 121:6,22 122:15 125:25 127:2,16 128:1,17 129:4,7 131:21 132:1,4,16 133:22 136:24 138:18,21,25 142:20 143:18,19,20 144:8,10 146:2,3,3,4,25,25,25 148:11,24 149:14 150:6 151:2,7,19 154:4 157:1 158:25 159:12 160:17 161:1,14,18 164:23 167:5,24 168:8 169:7 170:6,14 171:3,24 172:1 173:4 175:24 176:2,11,12,18 177:1,4,12</p> <p>president's [39] 3:21 5:18 8:10,19 9:3 15:12 19:6 21:17,19 27:19 28:9 32:8 39:15 40:20 50:7 51:17,19,20 58:1 67:20 71:17 80:23 82:19 83:4 91:5,12 96:10 116:</p>	<p>15 120:16 121:21 126:6,18 129:10 133:5 139:10 141:12 163:5 165:22 168:6</p> <p>president-specific [1] 89:5</p> <p>presidential [23] 3:11 15:22 30:4 52:7 68:19 69:21 75:15 78:4 81:15 83:15 100:16 119:10 127:3 129:6 135:5 148:10 150:15,24 153:8 156:7 165:18 167:4 177:15</p> <p>presidents [38] 16:7,10 17:1,14 39:21,22 47:2,8 63:25 64:5,5 68:14 70:20,21 71:10 75:18 78:2 92:8 98:1 100:19 102:23 104:7 105:16 106:10,20 109:1 110:24 111:7 139:16 142:8 144:24 145:23 162:11 169:13 170:12 175:1,16 176:5</p> <p>pressure [2] 127:12 164:22</p> <p>presumably [2] 45:23 52:15</p> <p>presumed [1] 119:23</p> <p>presumption [2] 34:7 53:6</p> <p>presupposes [1] 111:5</p> <p>pretty [5] 55:21 60:1 87:12 132:14 159:4</p> <p>prevent [5] 70:5 73:5 89:10 109:13 176:21</p> <p>prevented [1] 43:24</p> <p>preventing [1] 77:23</p> <p>prevents [3] 55:16 62:8 145:17</p> <p>principal [3] 13:6 135:9,21</p> <p>principally [3] 5:3 40:16 57:10</p> <p>principle [13] 5:17 14:1 17:8 45:2 52:15 71:14,21 72:16 79:6 108:16 111:13 121:12 123:9</p> <p>principles [6] 96:23 119:13,15 122:23 151:18 160:5</p> <p>prior [2] 54:24 71:7</p> <p>prism [1] 133:25</p> <p>prison [3] 4:5 60:13 61:4</p> <p>private [74] 7:4 9:5,6 14:20 17:17,18,24 18:6,12,19 22:14 23:7 28:21 29:3,8,9,12,16,18,20,23,24,25 30:10,13 31:8,15,15,18,24 32:25 33:1 35:22,24 46:7 51:12 53:10 57:4,11 58:9,19,23 59:6 61:17 68:24 100:13 115:4 118:18 119:6 126:3,4,23,23,24 127:1 129:3,7 131:9 152:15 161:24 162:5,18,23 163:7,10,23 164:5,14,16,19 166:11,14 170:24 172:2</p> <p>privilege [6] 52:10,14 77:2 120:22 128:19 165:20</p>	<p>pro [1] 118:23</p> <p>pro-government [1] 130:22</p> <p>probable [1] 104:11</p> <p>probably [11] 41:10 87:22 90:11 121:2 134:8 149:6 150:12 159:2 160:4 170:2 174:15</p> <p>problem [9] 36:13 58:17 63:2 64:13,13 72:3 83:12 170:10 173:8</p> <p>problematic [2] 133:20 175:11</p> <p>problems [1] 36:1</p> <p>procedural [2] 156:8 157:1</p> <p>proceed [3] 36:14 163:23 166:16</p> <p>proceeding [11] 4:6 20:10 30:5 57:21 78:11 86:23,24 89:18 101:5 164:18 176:22</p> <p>proceedings [5] 19:16,24 20:4,13 86:21</p> <p>process [10] 72:3 108:17,23 112:15 144:14 150:4 162:2,6,7 163:15</p> <p>produced [1] 144:19</p> <p>professional [2] 101:24 102:7</p> <p>Professor [1] 176:17</p> <p>program [1] 137:13</p> <p>programs [1] 120:8</p> <p>prohibit [2] 120:9,10</p> <p>prohibited [2] 119:18 176:18</p> <p>prohibition [1] 99:9</p> <p>prohibits [2] 41:20 141:14</p> <p>prominent [1] 145:10</p> <p>promote [1] 120:8</p> <p>proof [2] 113:3 146:18</p> <p>proper [3] 20:23 74:9 175:23</p> <p>properly [3] 17:20 40:1 125:16</p> <p>property [1] 99:12</p> <p>prophylactic [1] 162:12</p> <p>proposal [1] 159:6</p> <p>proposed [1] 80:13</p> <p>proposing [4] 22:11 157:9,14 158:15</p> <p>proposition [3] 78:19 82:15 103:13</p> <p>prosecutable [1] 87:4</p> <p>prosecute [5] 47:3 72:3 94:16 108:24 145:5</p> <p>prosecuted [34] 3:14 16:5 17:14,24 18:5 21:5 28:3 42:3 45:22 48:23 49:9,12 50:9 52:3 55:23 57:20 64:5 73:14 74:6,7 78:10,15 87:20 88:24 92:2,6,11 94:14 112:10 118:15 149:2 169:13,16 176:6</p>
--	--	---	---	--

Official

<p>Prosecuting [5] 4:14 8:7 142:8 145:2 162:5 prosecution [54] 3:12 15: 22 16:3,8,22 17:3 20:23 26:14 34:23 44:5 45:7 46: 7 49:5 51:23 53:23 54:7, 23 55:25 56:9 57:7 59:20 62:8 63:15 71:4 73:15 74: 11 75:18,20 76:7,23,25 78: 7 80:17 88:1 98:22 104:4 106:7 108:1 109:15 110: 23 119:11 120:20,24 124: 11 143:3 145:10,24 148:17 151:21 154:7 155:10 157: 4 160:9 177:5 prosecutions [9] 36:14 70: 24 71:8 104:13 146:22 147:6 159:9,17 161:2 prosecutor [6] 74:19,23, 25 83:16 104:25 144:7 prosecutorial [2] 34:9 174: 25 prosecutors [5] 75:24,24 102:10 105:10 175:14 protect [4] 10:3 70:11 99: 14 159:16 protected [7] 9:14 121:17 126:11,13 165:5 172:18 175:24 protecting [1] 175:7 protection [18] 78:24 79: 15,19 80:11 82:18 84:5,8 89:21 101:18,21 102:2,13 104:6,9,11 113:24 115:12 165:11 protections [12] 69:8 75:4 76:8 84:9 105:17 148:3 153:23 156:7 159:20,21,22 162:9 protective [3] 89:5 129:7 171:24 protects [4] 5:18 69:11 109:8 161:13 protest [3] 86:16 88:25 91: 10 prove [3] 34:24 46:4 105: 13 proven [1] 9:10 provide [11] 44:15 46:2 48: 14 50:6 69:7 82:2 91:3 101:1 107:20 149:17 162: 10 provided [2] 21:9 34:3 provides [4] 5:16 16:20 109:10 155:7 providing [2] 69:9 120:23 provision [2] 99:10 152:12 provisions [3] 93:13,16 99: 11 public [47] 8:22 12:12 16: 21 17:17 28:13 30:25 35: 23 36:4 40:15 58:19,24 59: 6,9 62:14 67:19 68:9 69:4 72:17 73:4 77:14 100:11,</p>	<p>12,12 112:21 113:15 118: 18,21,25 120:6 126:4 145: 8 148:25 151:9 152:2,5,10, 12 153:19 154:8,9 155:1, 14 156:10,20 157:6,16 176: 24 purchase [2] 12:21 161:12 purely [6] 22:4,24,24 23:7 46:6 51:12 purported [3] 8:18 56:14 58:1 purporting [1] 51:16 purpose [11] 9:6 10:15 11: 25 12:16,19 14:20 33:6,20 39:4 141:16 157:6 purposes [3] 135:25 137: 22 171:11 purse [1] 116:8 pursuant [1] 37:25 pushed [1] 103:23 put [13] 3:18 40:6 44:12,23, 24 50:5 63:22 69:24 115:2 135:18,18 138:7 173:20 putting [8] 113:20 129:11 131:8 135:20,21 138:10,10 145:13</p> <p style="text-align: center;">Q</p> <p>qualified [2] 12:3 24:4 quarrel [1] 79:12 question [84] 7:20 10:25 14:5 15:16 18:10 20:25 23: 18 26:12 36:9 39:20 50:10, 19 51:7,25 60:12 64:22 65: 1,15,16,21,25 66:11,15,21, 24 67:1 71:6,16,22 72:12 77:2 81:2,22 82:24 83:2, 10 84:1,2,11 88:6,11 89:23 90:2 91:18 101:7 109:16, 22 110:7 111:19 118:1 119:25 121:13 122:13,25 123:6,14,16,21 128:22 129: 13 137:19 140:11 143:2 149:6 155:19,21 157:8,21 162:24 167:6,8,9,16,23 168:7 169:2,5,6,9,15 171: 10,13,16 173:24 questioned [1] 165:12 questioning [1] 65:2 questions [17] 4:13,23 53: 9 66:20 69:18 79:8 98:3 121:11 122:24 123:20 124: 20,25,25 128:24 143:4 158: 1 174:23 qui [1] 123:13 quick [2] 15:16 85:9 quickly [1] 30:7 quid [1] 118:23 quite [5] 23:24 72:14 76:21 126:15 153:7 quo [2] 15:25 118:24 quote [1] 16:14</p> <p style="text-align: center;">R</p>	<p>radical [1] 159:6 raise [6] 30:14 65:18 119: 25 121:12 124:2 154:7 raised [6] 34:14 72:12 84: 12 122:19,20 154:10 raises [4] 66:14 69:5 116:7 160:2 raising [2] 140:10 147:7 range [1] 121:19 rare [1] 102:11 rather [2] 125:18 157:24 rationale [2] 169:18,21 re [1] 160:8 re-elected [3] 136:25 137: 16 142:6 re-election [3] 126:1 134:2 139:24 reach [3] 122:17 123:20 143:1 reached [1] 123:3 reaching [3] 123:20 164:7, 15 reacted [1] 170:17 reacting [1] 44:18 reaction [1] 145:6 reactions [1] 140:8 read [9] 26:24,24 30:7 50: 19,20 72:18 74:5 106:8 167:4 ready [1] 76:6 reaffirmed [2] 12:1 54:14 Reagan [1] 146:25 Reagan's [1] 143:19 real [4] 13:18 47:25 112:6 175:4 realistic [1] 72:10 reality [1] 34:8 realize [1] 149:3 really [32] 14:19 21:2 25:19 27:6 32:20 63:1 66:16 72: 8 92:13 93:9 97:25 98:6 104:25 106:22 107:11,13 111:3 116:10 118:24 120: 14 122:3 137:15 138:10 140:20 143:21 148:25 153: 7 156:13 158:18 164:2 174:6 176:14 realm [5] 23:15 116:6 141: 21 142:5 148:25 reason [9] 16:3 23:4 71:6 74:18,20 105:10 120:23 162:8 169:17 reasonable [5] 12:5,11 24: 4 105:13 130:9 reasoning [1] 61:9 reasons [2] 10:1 98:15 Rebuttal [1] 177:25 recall [1] 40:6 received [3] 72:4 115:24 170:6 receiving [2] 92:25 149:22 recognition [1] 115:22 recognize [4] 78:23 87:13 152:16 163:4</p>	<p>recognized [2] 68:8 111: 12 recommend [1] 8:24 Recommendation [2] 38: 1 50:8 Recommendations [2] 8: 23 50:4 record [1] 112:20 redux [1] 146:7 reelected [2] 133:18 137:4 reference [1] 82:5 referenced [1] 57:22 referencing [1] 28:8 referred [4] 32:25 108:18 142:18 153:19 referring [2] 145:19 161:4 reflected [1] 12:21 reflects [2] 16:16 125:17 refused [1] 105:1 regard [1] 149:5 regarded [2] 103:3 135:10 Regardless [2] 134:14,17 regime [11] 64:17,18 75:17 111:5,16 146:9,12,12 156: 25 177:19,19 regularity [2] 34:7 144:20 regularly [1] 91:3 regulate [6] 7:11 8:19 58:1 81:16 89:9 150:25 regulated [1] 134:10 regulating [1] 158:9 regulation [1] 135:24 regulations [3] 142:25 147:18,19 regulatory [1] 135:13 reject [1] 173:2 rejected [1] 61:10 rel [1] 123:12 relate [3] 31:14 128:22 145: 15 related [3] 15:1 16:12 66: 11 relating [1] 95:15 relations [1] 126:4 relationship [1] 66:17 relax [1] 144:4 relevance [1] 108:10 relevant [3] 22:5 26:7 133: 10 reliably [1] 109:3 reliance [1] 74:24 relied [2] 46:20 76:8 rely [2] 19:2 40:16 relying [1] 76:4 remain [1] 47:23 remains [1] 47:22 remand [5] 31:16,16,22 163:6,16 remedies [2] 80:20 114:4 remedy [3] 60:11 78:7,12 removable [1] 135:11 removal [7] 8:20 52:24 78: 6 126:9 128:3,10 135:14 remove [3] 11:9 127:21</p>	<p>135:2 removed [1] 78:14 removing [2] 135:4 154:25 replace [1] 127:23 replete [1] 49:15 replica [1] 170:6 reply [1] 108:18 report [1] 146:14 reports [1] 70:18 representative [1] 108:21 representatives [1] 165: 12 represented [2] 37:11 72: 7 representing [1] 110:14 Republic [3] 40:13 44:8 63: 20 Republican [2] 25:14 37:9 require [3] 24:3,4 99:12 required [8] 19:24 27:17 59:13 60:10,19 62:3 111: 20 152:8 requirement [1] 56:23 requires [4] 53:22 104:12 108:2 111:23 resolution [1] 122:25 resolve [2] 124:18 149:7 resolved [5] 122:23 136:13 155:16,19 158:1 resolves [1] 171:18 Resources [1] 123:12 respect [11] 6:23 27:8 61: 25 65:8 77:16 99:1 100:15 112:24 119:17 134:6,9 respectfully [2] 60:7 64:16 Respondent [4] 1:7,22 2:7 68:5 responding [1] 117:13 responds [1] 77:20 response [9] 11:22 14:16 15:8 62:1 44:23 51:22 53: 8 61:6 69:5 responses [2] 124:24 125: 4 responsibilities [4] 7:15 102:7 110:12 150:25 responsibility [4] 10:8 60: 5,9 145:5 responsible [1] 10:18 rest [1] 166:2 resting [1] 147:16 restrict [1] 49:21 restriction [1] 135:16 restrictions [2] 135:13 141:11 result [9] 15:10 21:3 57:3 72:24 109:14 110:24 113: 2 147:6 154:6 results [6] 29:12 37:14 68: 17 103:21 112:19 113:7 retirement [1] 112:9 retrospect [1] 173:8 returned [3] 74:21 105:22 158:3</p>
---	---	--	---	--

Official

<p> returning [2] 45:18 84:10 returns [1] 80:9 reverse [2] 19:20 103:20 review [4] 56:18 96:10 101:18 156:22 reviewed [1] 54:16 reviewing [1] 73:13 reviews [1] 96:18 revived [1] 147:22 Richard [2] 150:18,21 righting [1] 55:17 rightly [1] 147:1 rights [2] 88:25 107:3 ripe [1] 71:3 risk [14] 40:12 43:4,4 44:2,8 55:13 60:21 63:25 78:4 83:22,23 84:1 109:9 151:21 risks [1] 177:20 rival [2] 9:18 12:8 rivals [1] 3:25 ROBERTS [34] 3:3 6:13 7:6 12 8:5 30:17 31:4,25 33:7 34:16 35:6 36:18 45:16 50:16 53:18 58:4 68:1 73:8,11,25 74:15 76:1,9,13,19 101:13 113:11 115:7 129:22 142:11 151:24 166:4 177:23 178:3 robust [3] 21:1 102:1 160:18 robustness [1] 102:15 role [2] 101:5 135:1 room [1] 92:25 Roosevelt [1] 107:8 Roosevelt's [1] 106:25 root [1] 108:23 rooted [2] 4:21 5:3 route [1] 173:19 routinely [2] 114:1 144:24 ruins [1] 40:14 rule [25] 21:4,14,25 23:20 28:14 49:22 50:21 51:13 65:12 66:16,23 67:7 95:1,22 141:5 158:13,25 160:14 162:15 165:5 166:9,9 169:19,24 177:12 rules [5] 65:13 117:1 156:8 157:1 159:5 run [7] 87:11 88:3 89:4 100:20 129:16 160:3 172:22 runaway [1] 146:23 running [1] 126:1 runs [3] 33:2 34:8 151:17 Rutherford [1] 25:16 </p>	<p> sale [1] 45:20 same [11] 13:9 14:25 27:8 37:8 52:15 56:1,10 60:20 78:10 139:13 155:21 sandwich [1] 104:18 satisfied [1] 108:5 SAUER [128] 1:18 2:3 3:6,7,9 4:24 5:2,7,24 6:3,21 7:8,22 8:11 9:22 10:9,15,20 11:21 12:13 13:6,15,21 14:3,16 15:6 16:14 17:4,12,16 18:8,23 19:17,25 20:18,21 21:13 22:7,15 23:3,19 24:25 25:10,25 26:24 27:21 28:11,22 29:13,16,24 30:7,10,15,18,24 31:10 32:13 33:9,14,18,25 35:1 36:7 37:3,15,18,21 38:7,16 39:3,12 40:5 41:1,8,16 42:12,15 43:1,8,11,20 44:22 46:5,15 47:11,18,21 48:13,24 49:6,17 51:4,11 52:1,18 53:15,20,24 54:11 55:12,25 56:12,17 57:24 58:14,25 60:7,15 61:5,8 62:3,10,20 63:12 64:16,23 65:9,20,24 66:4,10 67:18 106:18 162:25 163:15 177:25 178:1 Sauer's [2] 81:8 124:24 saw [1] 104:17 saying [26] 9:5 11:14 24:1 28:6 33:4 34:22 35:21 42:10 56:10 57:19 58:9 69:20 71:2 94:11 101:8 117:5 133:17 147:25 154:9 162:15 164:17 166:11 168:4 172:1 173:2,9 says [21] 6:18 10:16 11:9 45:9,22 46:22 49:19 50:6 74:5 80:18 85:1 95:23 96:16 106:7 117:16 125:15 148:16 154:11 158:8 165:11 176:17 Scalia [5] 55:15 144:13 148:4 170:3,15 scenarios [3] 14:10 26:16 44:7 scheme [6] 35:9,10,11 126:24 128:13 164:14 schemes [1] 127:9 scienter [1] 100:3 scope [5] 86:6 91:5 142:1 152:19 154:24 score [1] 18:2 scrutiny [1] 5:19 se [3] 9:10 21:24 98:25 sea [1] 177:11 SEAL [2] 24:8,9 search [1] 56:19 searching [1] 145:12 seat [1] 63:10 second [8] 45:13 53:25 85:8 104:5 123:16 139:7 143:8 148:8 </p>	<p> secrets [1] 40:24 Section [5] 5:4 84:16 85:4 170:8,15 secure [1] 105:12 securing [1] 3:17 security [2] 48:14 116:6 sedition [2] 68:15 121:9 see [16] 9:23 17:4,5 20:7 40:18 46:13 61:18 65:3 72:8 91:17 95:3 131:20 157:9 173:23 174:19 177:3 seeing [2] 141:11 158:19 seeking [6] 69:1 111:8 126:21 127:25 128:3 165:15 seeks [1] 67:22 seem [6] 18:2 62:24 71:2 121:24 122:2 153:13 seemed [1] 153:18 seems [11] 16:11 23:25 47:7 65:19 82:6 86:3 100:17 111:12 133:3 157:22 169:11 seen [3] 112:15 133:25 177:14 sees [1] 164:10 segregate [2] 18:11,18 Seila [2] 46:19 135:10 selective [1] 76:6 self-defeating [1] 105:14 self-interest [2] 100:23 175:7 self-pardon [2] 110:2 111:11 sells [1] 40:23 Senate [4] 11:11 34:12 94:2 109:10 senators [2] 164:17 165:11 send [6] 75:7 100:25 103:19 125:16 127:13 149:15 sending [1] 25:12 sense [5] 44:24 66:22 123:22 133:15 140:24 sent [4] 4:5 60:13 61:4 128:12 separate [5] 5:9 18:25 22:9 51:7 88:20 separated [2] 78:6 114:14 separately [2] 65:9 156:20 separating [1] 166:10 separation [5] 4:21 55:16 70:9 82:1 120:25 separation-of-powers [1] 95:15 sequence [3] 54:17,22 164:11 series [10] 9:3 10:12 26:13 28:13 41:18 43:22 52:4 62:12,15 158:5 serious [17] 71:15,22 79:7 82:23 83:2,9 84:1 88:5 91:17 101:7 118:1 119:25 121:13 127:14 148:23 167:12,16 </p>	<p> seriously [4] 24:12 99:22 102:7 151:16 served [1] 102:4 serves [1] 84:6 services [1] 152:11 session [2] 38:14 101:3 set [10] 45:2 65:5 87:12 116:10,19 121:23 124:20 129:20 173:10 174:23 shall [3] 97:13 111:14 165:12 shield [2] 104:7 111:9 shorthand's [1] 86:1 shortly [1] 74:16 shot [1] 160:11 shouldn't [3] 75:7 90:23 139:15 show [2] 99:25 103:16 showing [1] 164:24 shut [1] 106:16 side [4] 18:4 19:10 149:21 176:9 sides [2] 93:22 174:17 sides' [1] 140:17 signed [2] 29:21 36:24 significant [4] 57:6 63:2,25 86:9 similar [3] 41:1 144:6 168:20 Similarly [2] 35:18 119:5 simplicity's [1] 88:15 simply [2] 74:6 118:11 since [5] 16:25 17:21 124:14 131:16 162:23 single [2] 14:21 22:1 sit-in [1] 86:16 sitting [7] 5:19 39:21 54:4 78:16 138:21,24,24 situation [7] 9:7 11:13 60:3 61:12 144:6 167:23 168:6 situations [3] 95:1 96:24 167:11 slander [1] 24:9 slate [3] 25:6,21,21 slates [4] 30:4 37:22 125:14 126:5 sliced [1] 7:2 slightly [1] 7:24 small [7] 86:10 87:12 89:8 93:19 115:11,18 150:23 smoking [1] 106:13 smuggling [1] 124:4 so-called [1] 26:3 society [3] 111:21,23 113:14 solely [3] 35:20 76:4 110:8 soliciting [1] 92:25 Solicitor [4] 54:13,15 142:22 143:6 Somebody [4] 6:17 32:4 137:12,14 someday [1] 4:10 somehow [1] 166:10 </p>	<p> someone [7] 9:19 34:10 54:11 63:3 71:4 144:9 148:1 something's [1] 148:15 sometime [1] 140:1 Sometimes [1] 114:3 somewhat [2] 115:2 121:19 soon [4] 3:20 140:1 175:9,15 sorry [8] 22:16 23:10 37:4 48:24 73:10 82:21 91:15 126:7 sort [18] 21:18 29:2 41:18 44:6 58:16 59:12 61:9,19 67:11 88:4 109:11 111:4 117:13 148:5 162:2,18 173:11 174:23 sorted [1] 163:20 SOTOMAYOR [45] 9:9,25 10:14,16,24 12:2,23 14:10 23:10,23 25:3,20 35:7,8 91:24 92:21 93:4,7,11,15,21,23,24 94:8,10,17,20,24 95:6,11,20 96:1,19 97:1,6,10,16,21 113:12,13,17,20 114:12,23 115:1 sought [2] 72:23 89:17 sound [1] 154:10 sounds [12] 22:7 29:16,18,24 41:1 43:16,18,20 73:20 74:1 152:14 153:1 source [7] 5:1,2,8 8:12 19:2 22:23 52:9 Southern [1] 34:1 spanning [1] 4:20 speaker [1] 38:13 speaking [4] 20:15 110:8,10,13 speaks [3] 46:1 50:3 77:15 spearhead [1] 29:11 Special [15] 1:20 28:24 33:23 55:20 78:24 79:15,18 98:12,14 110:9,11 142:24 147:17 163:12,22 specific [4] 72:19 77:20 82:5 108:3 specifically [8] 45:21 72:15 82:16 84:17 87:16 95:8 121:5 170:14 specificity [1] 6:10 specified [2] 97:7 145:16 Speech [4] 77:16 165:6,8,9 speeches [1] 89:13 speed [1] 163:13 spend [1] 18:14 spin [2] 139:6,6 spoken [1] 83:7 sports [1] 170:6 spread [1] 29:9 St [1] 1:18 stable [3] 111:20,23 113:13 staffed [1] 103:9 </p>
S				
<p> sabotage [1] 107:14 safeguard [2] 107:10 158:14 safeguards [3] 69:7 71:10 75:12 sake [4] 57:17 81:22 86:1 88:15 </p>	<p> sale [1] 45:20 same [11] 13:9 14:25 27:8 37:8 52:15 56:1,10 60:20 78:10 139:13 155:21 sandwich [1] 104:18 satisfied [1] 108:5 SAUER [128] 1:18 2:3 3:6,7,9 4:24 5:2,7,24 6:3,21 7:8,22 8:11 9:22 10:9,15,20 11:21 12:13 13:6,15,21 14:3,16 15:6 16:14 17:4,12,16 18:8,23 19:17,25 20:18,21 21:13 22:7,15 23:3,19 24:25 25:10,25 26:24 27:21 28:11,22 29:13,16,24 30:7,10,15,18,24 31:10 32:13 33:9,14,18,25 35:1 36:7 37:3,15,18,21 38:7,16 39:3,12 40:5 41:1,8,16 42:12,15 43:1,8,11,20 44:22 46:5,15 47:11,18,21 48:13,24 49:6,17 51:4,11 52:1,18 53:15,20,24 54:11 55:12,25 56:12,17 57:24 58:14,25 60:7,15 61:5,8 62:3,10,20 63:12 64:16,23 65:9,20,24 66:4,10 67:18 106:18 162:25 163:15 177:25 178:1 Sauer's [2] 81:8 124:24 saw [1] 104:17 saying [26] 9:5 11:14 24:1 28:6 33:4 34:22 35:21 42:10 56:10 57:19 58:9 69:20 71:2 94:11 101:8 117:5 133:17 147:25 154:9 162:15 164:17 166:11 168:4 172:1 173:2,9 says [21] 6:18 10:16 11:9 45:9,22 46:22 49:19 50:6 74:5 80:18 85:1 95:23 96:16 106:7 117:16 125:15 148:16 154:11 158:8 165:11 176:17 Scalia [5] 55:15 144:13 148:4 170:3,15 scenarios [3] 14:10 26:16 44:7 scheme [6] 35:9,10,11 126:24 128:13 164:14 schemes [1] 127:9 scienter [1] 100:3 scope [5] 86:6 91:5 142:1 152:19 154:24 score [1] 18:2 scrutiny [1] 5:19 se [3] 9:10 21:24 98:25 sea [1] 177:11 SEAL [2] 24:8,9 search [1] 56:19 searching [1] 145:12 seat [1] 63:10 second [8] 45:13 53:25 85:8 104:5 123:16 139:7 143:8 148:8 </p>	<p> secrets [1] 40:24 Section [5] 5:4 84:16 85:4 170:8,15 secure [1] 105:12 securing [1] 3:17 security [2] 48:14 116:6 sedition [2] 68:15 121:9 see [16] 9:23 17:4,5 20:7 40:18 46:13 61:18 65:3 72:8 91:17 95:3 131:20 157:9 173:23 174:19 177:3 seeing [2] 141:11 158:19 seeking [6] 69:1 111:8 126:21 127:25 128:3 165:15 seeks [1] 67:22 seem [6] 18:2 62:24 71:2 121:24 122:2 153:13 seemed [1] 153:18 seems [11] 16:11 23:25 47:7 65:19 82:6 86:3 100:17 111:12 133:3 157:22 169:11 seen [3] 112:15 133:25 177:14 sees [1] 164:10 segregate [2] 18:11,18 Seila [2] 46:19 135:10 selective [1] 76:6 self-defeating [1] 105:14 self-interest [2] 100:23 175:7 self-pardon [2] 110:2 111:11 sells [1] 40:23 Senate [4] 11:11 34:12 94:2 109:10 senators [2] 164:17 165:11 send [6] 75:7 100:25 103:19 125:16 127:13 149:15 sending [1] 25:12 sense [5] 44:24 66:22 123:22 133:15 140:24 sent [4] 4:5 60:13 61:4 128:12 separate [5] 5:9 18:25 22:9 51:7 88:20 separated [2] 78:6 114:14 separately [2] 65:9 156:20 separating [1] 166:10 separation [5] 4:21 55:16 70:9 82:1 120:25 separation-of-powers [1] 95:15 sequence [3] 54:17,22 164:11 series [10] 9:3 10:12 26:13 28:13 41:18 43:22 52:4 62:12,15 158:5 serious [17] 71:15,22 79:7 82:23 83:2,9 84:1 88:5 91:17 101:7 118:1 119:25 121:13 127:14 148:23 167:12,16 </p>	<p> seriously [4] 24:12 99:22 102:7 151:16 served [1] 102:4 serves [1] 84:6 services [1] 152:11 session [2] 38:14 101:3 set [10] 45:2 65:5 87:12 116:10,19 121:23 124:20 129:20 173:10 174:23 shall [3] 97:13 111:14 165:12 shield [2] 104:7 111:9 shorthand's [1] 86:1 shortly [1] 74:16 shot [1] 160:11 shouldn't [3] 75:7 90:23 139:15 show [2] 99:25 103:16 showing [1] 164:24 shut [1] 106:16 side [4] 18:4 19:10 149:21 176:9 sides [2] 93:22 174:17 sides' [1] 140:17 signed [2] 29:21 36:24 significant [4] 57:6 63:2,25 86:9 similar [3] 41:1 144:6 168:20 Similarly [2] 35:18 119:5 simplicity's [1] 88:15 simply [2] 74:6 118:11 since [5] 16:25 17:21 124:14 131:16 162:23 single [2] 14:21 22:1 sit-in [1] 86:16 sitting [7] 5:19 39:21 54:4 78:16 138:21,24,24 situation [7] 9:7 11:13 60:3 61:12 144:6 167:23 168:6 situations [3] 95:1 96:24 167:11 slander [1] 24:9 slate [3] 25:6,21,21 slates [4] 30:4 37:22 125:14 126:5 sliced [1] 7:2 slightly [1] 7:24 small [7] 86:10 87:12 89:8 93:19 115:11,18 150:23 smoking [1] 106:13 smuggling [1] 124:4 so-called [1] 26:3 society [3] 111:21,23 113:14 solely [3] 35:20 76:4 110:8 soliciting [1] 92:25 Solicitor [4] 54:13,15 142:22 143:6 Somebody [4] 6:17 32:4 137:12,14 someday [1] 4:10 somehow [1] 166:10 </p>	<p> someone [7] 9:19 34:10 54:11 63:3 71:4 144:9 148:1 something's [1] 148:15 sometime [1] 140:1 Sometimes [1] 114:3 somewhat [2] 115:2 121:19 soon [4] 3:20 140:1 175:9,15 sorry [8] 22:16 23:10 37:4 48:24 73:10 82:21 91:15 126:7 sort [18] 21:18 29:2 41:18 44:6 58:16 59:12 61:9,19 67:11 88:4 109:11 111:4 117:13 148:5 162:2,18 173:11 174:23 sorted [1] 163:20 SOTOMAYOR [45] 9:9,25 10:14,16,24 12:2,23 14:10 23:10,23 25:3,20 35:7,8 91:24 92:21 93:4,7,11,15,21,23,24 94:8,10,17,20,24 95:6,11,20 96:1,19 97:1,6,10,16,21 113:12,13,17,20 114:12,23 115:1 sought [2] 72:23 89:17 sound [1] 154:10 sounds [12] 22:7 29:16,18,24 41:1 43:16,18,20 73:20 74:1 152:14 153:1 source [7] 5:1,2,8 8:12 19:2 22:23 52:9 Southern [1] 34:1 spanning [1] 4:20 speaker [1] 38:13 speaking [4] 20:15 110:8,10,13 speaks [3] 46:1 50:3 77:15 spearhead [1] 29:11 Special [15] 1:20 28:24 33:23 55:20 78:24 79:15,18 98:12,14 110:9,11 142:24 147:17 163:12,22 specific [4] 72:19 77:20 82:5 108:3 specifically [8] 45:21 72:15 82:16 84:17 87:16 95:8 121:5 170:14 specificity [1] 6:10 specified [2] 97:7 145:16 Speech [4] 77:16 165:6,8,9 speeches [1] 89:13 speed [1] 163:13 spend [1] 18:14 spin [2] 139:6,6 spoken [1] 83:7 sports [1] 170:6 spread [1] 29:9 St [1] 1:18 stable [3] 111:20,23 113:13 staffed [1] 103:9 </p>

Official

<p>stage ^[4] 41:15 42:7,10,24 stages ^[1] 20:3 stake ^[1] 161:15 stand ^[3] 76:5 82:14 161:18 standard ^[1] 174:18 standing ^[3] 127:23 156:2 161:14 standpoint ^[1] 13:18 stands ^[1] 61:25 start ^[4] 101:19 140:24 141:10 160:5 starting ^[3] 89:20 102:14 104:15 stat ^[1] 83:13 state ^[20] 11:5 25:23 26:7 38:17,21,22 44:14 90:3 113:3 123:14,16 132:10 159:8,16,24 160:9 161:15,19 162:4 164:15 statement ^[32] 27:17,17 28:7,14 46:11 49:22 50:21,25 51:9,13 57:25 65:1,7,12,13 66:16,23 67:7,16 73:2,19 74:3,16 76:22 87:7 95:1,22 167:1 169:11,14,19,24 statements ^[5] 15:19 40:9,11 148:12,24 STATES ^[39] 1:1,6,15 3:5 30:22 37:11,13 48:22 52:12 59:24 67:3 75:22 77:9 83:14 93:1 98:19,20 99:1,7,15 100:24 103:20 107:5 108:2 110:15 123:2,12 127:14 137:14 141:15,18 142:23 160:6,14,21 161:11 165:21 168:19 170:1 status ^[3] 15:24 38:5 135:11 statute ^[57] 27:18 28:8 39:14,17,24,25 40:19 45:21 46:1,2 49:11,19 50:5 56:22 57:22,25 67:10,14 71:16,18,23 72:25 82:17 83:3,5,11 85:1 88:6 89:6,22 91:16 92:22 117:5 119:9,11,18 120:4,17,19 121:5,18 141:13,15 142:2 145:7,16 147:22 151:6,11 157:5 167:4 168:1,3,5 169:14 173:7 176:19 statutes ^[30] 8:18 49:14 50:24 51:3,14 56:7,11,12 57:2 65:8 69:1 78:25 79:7,19 96:2,11 98:23,25 117:21 120:2 121:16 141:10 148:9,11 149:1 151:10 156:12,17 167:14 168:16 statutory ^[9] 65:11 66:2,6,7 71:13 84:11 94:14 99:9 116:25 stay ^[1] 9:17 step ^[6] 114:7,7 131:15 164:12 168:10,13</p>	<p>Stevens ^[1] 123:13 still ^[10] 3:25 23:13 61:2 92:6 114:4 116:21 118:14 160:20 162:4 164:19 stool ^[3] 32:3 36:10,13 stop ^[1] 145:25 stopped ^[1] 166:19 story ^[3] 27:5 77:9 106:16 street ^[1] 61:18 strife ^[3] 40:13 44:9 63:19 strike ^[4] 4:9 39:9 151:8,13 strikes ^[3] 47:5 151:2 155:12 strive ^[1] 71:23 strong ^[5] 5:16 10:20 23:8 39:7 40:18 strongest ^[1] 46:15 strongly ^[1] 39:13 structural ^[10] 26:13 43:23 45:11 52:5 55:14 62:10 109:11 146:10 148:2 175:19 structure ^[8] 4:17 22:22 48:7 55:7 78:6 95:14 109:8 144:2 structured ^[2] 41:3,7 structures ^[1] 161:10 struggling ^[2] 46:13 167:2 stuff ^[1] 31:19 sub-cabinet ^[1] 149:16 subject ^[20] 16:21 17:3 51:22 54:3,8 56:9 60:12 92:14,19 94:4 96:24 97:3 98:8 120:16 144:25 145:23 157:13 165:19 172:8,14 subjective ^[2] 22:3 133:15 submission ^[2] 124:8,15 submit ^[4] 30:3 70:15 77:8 166:1 submitted ^[4] 66:1 171:17 178:6,8 submitting ^[1] 12:7 subordinate ^[2] 48:19 49:4 subordinates ^[1] 49:20 suborning ^[1] 176:23 subsequent ^[3] 7:8 36:11 57:7 substantial ^[3] 113:1 116:5 163:7 subterfuge ^[1] 95:18 subvert ^[3] 69:3 114:22 128:5 succeed ^[2] 114:1 164:9 succeeds ^[1] 127:4 successful ^[1] 128:9 successfully ^[3] 43:23 52:6 55:22 successors ^[1] 47:3 sudden ^[1] 21:23 sue ^[2] 61:18,22 sufficient ^[4] 21:11 29:3 163:10 166:12 suggest ^[5] 74:9 82:7,9</p>	<p>102:16 148:5 suggested ^[6] 15:21 54:6 121:11 122:4 130:14 170:22 suggesting ^[5] 23:12,12 75:1 107:22 130:19 suggestion ^[1] 54:12 suggests ^[2] 16:4 53:22 Sun-Diamond ^[1] 170:1 superior ^[1] 23:20 supervise ^[1] 153:12 support ^[3] 29:22 108:1 129:17 supported ^[4] 25:18 40:4 104:14 142:19 supporting ^[1] 39:13 supports ^[1] 10:22 suppose ^[1] 21:4 supposed ^[4] 8:8 44:21 98:18 103:17 Supremacy ^[4] 160:3,4,15 161:21 SUPREME ^[3] 1:1,14 160:10 surprising ^[1] 44:17 surrounding ^[1] 157:1 suspicion ^[1] 115:3 sustain ^[1] 113:1 sweeping ^[1] 177:12 system ^[21] 68:22 69:10 113:21,22 114:13,15 137:11 144:23 145:22 147:11,13 151:15 158:22,23 159:1,3 161:5,17 162:8 165:23 177:14</p>	<p>test ^[16] 6:7 18:22,24 19:1,4 41:22,24 43:17 46:24 76:12 131:12 132:18,18 171:23 174:3,17 testify ^[1] 149:17 testing ^[2] 140:16,17 text ^[2] 56:19 169:23 textual ^[1] 77:8 textually-based ^[1] 77:10 themselves ^[3] 47:9 111:1,9 theory ^[9] 59:11 68:13 150:19 172:15,16,17,18,19 173:3 there's ^[46] 9:5 10:12 19:9,21 20:4 26:13 28:3 31:11 35:10,15 40:19 41:17 51:9 52:19,21 58:10 59:1 62:7,7,15 63:12 69:21 74:18,20 81:1,14,22 82:23 88:19,19 90:2 91:16 93:12,15 98:22 104:17 105:7 109:5 122:13 126:7,8 164:2 166:12 168:17 172:24 174:6 therefore ^[12] 12:17 27:4 50:4 51:1 68:22 81:16 86:24 87:4 117:6 154:13,15 172:3 therein ^[2] 5:12,14 they've ^[3] 39:16 47:5 149:1 thinking ^[8] 12:6 95:8 117:14 133:13 150:17 153:17 169:24 170:23 thinks ^[4] 8:25 124:25 125:1 157:17 third ^[2] 105:16 120:18 THOMAS ^[18] 4:24 5:5,8,23,25 14:7 33:8,9,17,22 52:22 69:19,23 70:19 71:1,5 72:9 101:15 Thomas's ^[1] 10:25 though ^[7] 12:25 43:17 85:6 122:17 129:24 158:17 173:3 thoughts ^[4] 18:21 47:10 131:17 140:8 threat ^[6] 3:21 16:2,7 62:7 107:13 156:17 threatened ^[1] 127:21 three ^[4] 11:22 29:25 56:16 144:1 threshold ^[3] 122:24 155:20,23 throughout ^[1] 147:12 throw ^[1] 161:10 thrown ^[1] 112:16 thrust ^[1] 73:1 Thursday ^[1] 1:11 tie ^[2] 9:4 32:22 ties ^[1] 36:9 tight ^[1] 66:16 today ^[9] 18:11 22:11 69:16 70:1 77:7 107:4,22 149:</p>	<p>8 153:19 together ^[2] 9:4 32:23 took ^[3] 125:3 165:2 171:4 top-down ^[1] 120:14 total ^[2] 11:18 157:2 totally ^[6] 34:2 66:9,18 122:18 161:8 162:13 touch ^[1] 108:8 touches ^[1] 61:16 touching ^[1] 39:15 tough ^[1] 98:1 towards ^[1] 162:21 tracks ^[1] 91:6 tradition ^[3] 4:16,20 64:23 train ^[1] 146:23 trammel ^[1] 149:20 transforming ^[1] 21:19 trappings ^[2] 11:18 14:12 treason ^[1] 68:15 treated ^[1] 19:10 treating ^[1] 157:10 tree ^[1] 90:10 trench ^[1] 40:20 trend ^[1] 40:19 trial ^[19] 3:19 11:10 19:16 23:21 29:4,5 34:21,23 36:1 79:22 80:1,2,4,25 156:2 158:21 161:14,18 163:6 tried ^[5] 103:18 117:20 121:3 127:12 130:23 tries ^[1] 9:4 triggered ^[1] 49:23 triggering ^[1] 123:7 triggers ^[1] 66:15 troops ^[3] 25:13 49:2 116:14 true ^[11] 73:21 74:1 79:4,5 105:20 106:22 107:11 117:24,25 127:17,19 TRUMP ^[5] 1:3 3:4 38:3 107:5,6 trusted ^[1] 101:23 truth ^[1] 165:24 try ^[11] 47:8 83:18 127:3 128:6 131:20 139:3 146:5 164:8 171:2 174:1,14 trying ^[11] 11:19 14:24 63:8 130:18 149:7 156:14,19 158:22 164:16 169:1 173:10 turn ^[4] 11:24 46:21 81:10 82:11 turned ^[1] 29:8 turning ^[3] 63:9 64:8 123:6 turns ^[1] 148:16 twice ^[1] 90:13 two ^[20] 6:4 14:16 20:3 25:15 30:1 44:22 56:15 61:5 76:11 77:22 91:6 93:12 95:21 102:25 103:7 104:11 121:6 129:17 149:10 163:25 two-stage ^[1] 31:23 two-term ^[1] 100:20</p>
---	---	---	---	---

T

table ^[3] 63:23,24 80:18
talked ^[4] 11:3 52:20 132:8 148:8
talks ^[4] 19:5 23:5 42:22 151:12
tam ^[1] 123:13
tape ^[1] 106:13
target ^[2] 139:19 172:1
targeted ^[2] 37:10 175:1
tasks ^[1] 70:17
tautological ^[3] 75:3 76:22 169:12
tautologically ^[2] 73:21 74:1
tautology ^[1] 94:8
Team ^[3] 24:8,9 110:9
teenager ^[1] 70:23
teeth ^[1] 157:5
tells ^[2] 108:21 145:25
ten ^[1] 12:1
term ^[2] 80:23 108:19
termed ^[1] 76:21
terminology ^[1] 79:13
terms ^[3] 31:6 51:16 176:15
terrible ^[1] 143:16
terrorist ^[2] 10:4 73:6

Official

<p>typical ^[1] 170:7</p> <hr/> <p style="text-align: center;">U</p> <p>U.S. ^[3] 4:8 56:20 104:24 U.S.C. ^[1] 107:2 UCMJ ^[1] 41:19 ultimate ^[2] 69:9 114:18 ultimately ^[2] 107:24 176:13 unable ^[1] 80:5 unanimous ^[1] 170:4 unanimously ^[1] 52:12 unbounded ^[1] 176:11 unbroken ^[2] 4:19 64:20 uncertainty ^[1] 171:21 unconstitutional ^[3] 45:11 63:17 121:4 under ^[44] 6:22 8:23 17:16 20:11 28:5 38:22 43:17 47:2 50:3 51:2,3 53:16 56:20 64:18 67:18,18 75:21 79:1 83:6 86:22 94:12,14 96:11 98:17 99:10,10 107:2 108:1,2,16 114:17 123:5 128:19 129:1,11 136:13 137:7 146:12 148:11 156:11 158:25 165:6 169:13 176:19 under-enforcement ^[1] 55:13 underlying ^[1] 59:8 undermine ^[2] 114:25 141:23 underscore ^[2] 50:23 73:22 underscores ^[1] 107:17 understand ^[34] 14:22 16:24 35:25 58:7 59:7,22 61:24 63:8 65:5 67:9 78:22 85:10 88:12,16 92:23 93:12 98:6 101:6 103:25 104:1,1 115:10 130:18 131:4 133:1 135:19 138:9 141:2 153:3,17 156:4 169:10 171:8 175:8 understanding ^[16] 4:19 5:21 13:12 16:17 39:9 53:2 54:20 67:12 69:14 96:9 106:13 112:23 167:3,22 170:12 175:15 understood ^[18] 5:14 13:3 15:24,25 16:2 17:21,23 18:24 22:16 23:11 28:6 45:1 52:17,25 64:6 119:10,12 174:4 undertaken ^[1] 53:13 unduly ^[2] 48:5 75:14 Uniform ^[1] 24:14 UNITED ^[30] 1:1,6,15 3:5 30:22 48:22 52:11 59:23 67:3 75:22 77:9 83:14 93:1 98:19,20 99:1,7,15 107:5 108:2 110:15 123:2,12 137:14 141:15,18 142:23 165:20 168:19 170:1</p>	<p>unlawful ^[10] 10:13 12:16,16 24:15 41:21 46:12 48:21 49:2 151:12 153:15 unlawfully ^[1] 4:10 unless ^[14] 21:6 32:4 34:20 56:7 68:12 72:19 77:6 80:18 82:15,21,23 83:6 94:1 170:14 unlike ^[2] 99:10 160:17 unlikely ^[4] 44:6,6 80:23 96:6 unofficial ^[6] 21:20 32:9 37:5,7 46:6 125:2 unpack ^[1] 81:13 unpopular ^[1] 150:11 unrestrictable ^[4] 7:10 8:15 27:23 46:18 unreviewable ^[1] 116:16 unsettled ^[1] 98:4 until ^[2] 47:12 55:9 unwarranted ^[1] 104:8 up ^[33] 11:7 14:10 17:10,10 18:22 28:15 32:18 34:15 50:18 57:14 66:24 69:16 77:24 78:1 80:4,10,24 85:6 100:9 109:18 120:11,11 122:8 126:4 150:6 152:2 155:21,22 156:21 162:23 166:6 173:10,17 urge ^[1] 38:21 urges ^[1] 28:25 uses ^[2] 24:23 139:19 using ^[4] 14:11 21:17 24:22 120:11 usual ^[1] 165:5</p> <hr/> <p style="text-align: center;">V</p> <p>vague ^[3] 8:17 83:13 148:11 valid ^[4] 82:19 88:2 123:5 155:9 validity ^[1] 55:5 value ^[2] 164:23 175:25 values ^[1] 159:2 Vance ^[1] 76:10 various ^[3] 22:5 70:21 116:25 vast ^[2] 102:2 114:2 vehicle ^[2] 174:2,16 vein ^[1] 36:20 verdict ^[1] 80:9 verification ^[1] 36:24 verification' ^[1] 29:21 Vermont ^[1] 123:11 versus ^[31] 3:5 26:22 36:11 51:8 52:12 75:22 77:10,11 107:5,6 108:2,19 123:3,12 129:2,9 139:14 143:12 145:24 152:22 160:6 165:6,21 168:19 170:1,24 171:1,23,25 173:25 174:7 Vesting ^[8] 4:18 5:3,11,24 22:22 36:17 44:25 53:3 veto ^[4] 87:14 115:20,21</p>	<p>134:11 vice ^[3] 54:16 128:16 164:22 Vietnam ^[2] 148:12,17 view ^[18] 27:1 36:23 38:22 39:12 46:16 52:3 53:10 54:19,25 63:15 84:4 127:5 129:5 130:9 137:7 142:17 143:24 166:14 viewed ^[10] 3:16 9:11 22:8 23:15 26:17 43:3 44:2,7 116:9 118:7 views ^[3] 18:18 38:22 142:1 vindication ^[1] 105:23 vindictive ^[1] 147:6 violate ^[5] 75:21 90:5 91:25 119:4 170:7 violates ^[1] 137:18 violating ^[1] 94:24 violation ^[4] 72:7 73:6 108:23 157:4 violations ^[2] 114:18 146:19 violence ^[1] 164:16 virtually ^[3] 9:8 15:14 32:14 volume ^[1] 45:13 vote ^[5] 89:1 90:24 101:3,11 125:16 voters ^[1] 101:10 votes ^[6] 37:12 74:13 101:1 125:19,21 132:12 vulnerability ^[1] 60:13</p> <hr/> <p style="text-align: center;">W</p> <p>wait ^[1] 174:15 walled ^[1] 28:2 Walsh ^[1] 146:17 Walsh's ^[1] 146:14 wanted ^[6] 78:12 103:11 104:25 117:9 129:25 133:1 Wanting ^[2] 142:6 163:13 wants ^[5] 61:22 62:9 83:17 109:4 137:3 war ^[7] 4:7 107:1 116:7 133:8 148:12,17 152:11 warrant ^[2] 123:7,8 warrants ^[1] 123:5 wartime ^[1] 107:17 Washington ^[7] 1:10,21 40:11 44:10 63:14,18 147:12 Watergate ^[4] 69:16 106:12,13 146:20 way ^[31] 7:1 17:6 26:18 39:10 40:6,20 43:11 50:2 51:5,15 59:12 66:23 96:1 100:18 103:17 106:9 113:5 122:3 124:11 126:15 128:18 129:2 142:23 147:18 148:1 151:14 153:9 156:6 167:19 171:17 174:16</p>	<p>ways ^[3] 114:16 126:18 149:10 Wayte ^[1] 75:21 week ^[1] 138:5 welcome ^[2] 4:23 69:18 well-received ^[1] 170:12 whatever ^[10] 6:19 12:4 55:5 62:9 64:11 86:25 102:22 109:4 133:2 165:14 whatnot ^[1] 175:14 Whereupon ^[1] 178:7 whether ^[48] 7:20 11:3 13:19 20:7,25 22:20,21 23:12,13 36:22 39:6,24,24 41:9 42:16 47:4,5,16 48:25 59:6 60:1 79:13 81:2 83:3 89:6,22,24 90:2 92:14 95:8 109:17 122:13 123:4,6,14,16 131:21 137:17 139:23 147:1 167:23 169:6,15 171:13 172:24 173:18 175:4,13 White ^[1] 170:7 who's ^[2] 30:20 125:25 whoever ^[1] 168:17 whole ^[11] 7:20 9:3 26:13 41:18 43:22 44:19 52:4 62:11 65:12 93:15 156:20 wide ^[1] 121:19 widely ^[1] 103:3 wild ^[1] 124:1 will ^[29] 3:3,21,24 36:13 63:20 71:18,22 74:19,21 75:13 79:19 90:1,11 104:2,7 108:25 109:2,3 112:11 113:18,25 120:18 135:11 137:13 145:22 162:1 175:10,10,15 willing ^[1] 29:9 winner ^[2] 100:16 126:22 winnow ^[1] 23:6 Wisconsin ^[1] 165:6 wisdom ^[1] 44:1 wish ^[1] 124:17 wished ^[1] 158:12 within ^[26] 7:14 8:10 9:20 12:4 23:15 25:9 27:13,15 32:8 46:18 52:16 65:21 67:23 75:23 81:21 85:24 119:19 123:15 148:25 152:19 154:24 160:15 161:20 170:24,25 172:13 Without ^[8] 3:11 11:20 60:5 75:19 87:6 118:22 146:22 169:14 witnesses ^[1] 176:24 won ^[3] 99:17 101:1 125:17 wonder ^[2] 175:4,12 wondering ^[4] 125:3 136:5,17 137:5 word ^[9] 23:24 26:2,4 50:13 56:3,22,23 86:25 133:2 words ^[7] 33:1 79:19 95:14 97:11 115:2 128:17 168:</p>	<p>20 work ^[4] 12:25 57:6 131:13 145:13 worked ^[1] 144:13 working ^[2] 126:3 164:4 works ^[5] 153:7 159:4 169:11,25 177:20 world ^[9] 13:17,24 59:24 63:4 107:1 112:14 116:22 120:7 135:6 worried ^[9] 59:5 62:24,25 63:19 64:12 144:3,5 177:4,5 worry ^[5] 63:22 74:18,20 142:7 161:6 worse ^[2] 64:12 127:5 worth ^[1] 84:10 writing ^[1] 141:5 wrongdoing ^[2] 111:8 142:4 wrongly ^[2] 107:25 147:1 wrote ^[6] 110:1 120:5 123:19 144:13 152:4 170:3</p> <hr/> <p style="text-align: center;">Y</p> <p>years ^[10] 3:13 4:20 43:24 48:12 52:7 55:1 64:19,20 76:11 109:12 Youngstown ^[2] 87:11 172:22 yourself ^[1] 135:25</p> <hr/> <p style="text-align: center;">Z</p> <p>Zivotofsky ^[1] 5:10 zoom ^[1] 59:12</p>
---	---	--	---	---