

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 JOSE ANTONIO LOPEZ, :

4 Petitioner :

5 v. : No. 05-547

6 ALBERTO R. GONZALES, :

7 ATTORNEY GENERAL; :

8 and :

9 REYMUNDO TOLEDO-FLORES, :

10 Petitioner :

11 v. : No. 05-7664

12 UNITED STATES. :

13 - - - - - x

14

15 Washington, D.C.

16 Tuesday, October 3, 2006

17

18 The above-entitled matter came on for oral
19 argument before the Supreme Court of the United States at
20 10:00 a.m.

21 APPEARANCES:

22 ROBERT A. LONG, JR., ESQ., Washington, DC; on behalf of
23 the Petitioner Lopez.

24 TIMOTHY CROOKS, ESQ., Assistant Federal Public Defender
25 Houston, Texas; on behalf of the Petitioner

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

Toledo-Flores.
EDWIN S. KNEEDLER, ESQ., Deputy Solicitor General,
Department of Justice, Washington, DC; on
behalf of the Respondents.

	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	ROBERT A. LONG, JR., ESQ.	
4	On behalf of the Petitioner Lopez	4
5	ORAL ARGUMENT OF	
6	TIMOTHY CROOKS, ESQ.	
7	on behalf of the Petitioner Toledo-Flores	14
8	ORAL ARGUMENT OF	
9	EDWIN S. KNEEDLER, ESQ.	
10	on behalf of the Respondents.	22
11	REBUTTAL ARGUMENT OF	
12	ROBERT A. LONG, JR., ESQ.	44
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'll hear argument first this morning in Lopez vs. Gonzales and Toledo-Flores vs. United States. Mr. Long.

ORAL ARGUMENT OF ROBERT A. LONG, JR.

ON BEHALF OF PETITIONER LOPEZ

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

A drug trafficking crime is defined in 18 U.S. Code Section 924(C) as any felony punishable under the Controlled Substances Act, or two other federal statutes. Punishable is a key term. If that word is omitted, if the remaining phrase, any felony under the Controlled Substances Act clearly refers to felony violations of the Controlled Substances Act, the parties agree that punishable means subject to criminal sanctions.

So drug trafficking crimes, under 924(C), is conduct that is subject to being punished under the Controlled Substances Act. State felonies are not themselves punishable under the Controlled Substances Act. It is not a federal crime to violate state law. The defendant's conduct may be punishable under both federal and state law, but a state felony is not a felony punishable under the Controlled Substances Act.

JUSTICE KENNEDY: Do you agree that if there were a state conviction for an offense that would have been punishable under the federal law, there both being felonies, that enhancement can

1 apply in that instance, and if that does meet the definition.

2 MR. LONG: Yes, Justice Kennedy. Our position is, if the
3 conduct would violate a felony provision of the Controlled
4 Substances Act or one of the other two federal statutes, it then
5 is a drug trafficking crime under 18 U.S. Code Section 924(C),
6 and therefore, it is an aggravated felony.

7 But there are three additional textual indications, in
8 addition to simply the felony punishable language that
9 misdemeanor offenses under the Controlled Substances Act are not
10 drug trafficking crimes under Section 924(C).

11 The first one is there are other provisions of Section
12 924-E, G, and K, where Congress actually used very similar
13 language. It referred to conduct punishable under the
14 Controlled Substances Act or the two other statutes or offenses
15 under the Controlled Substances Act, or the two other federal
16 statutes. But then it added an express reference to state
17 offenses, so the implication is that when Congress meant to
18 include state offenses, it said so.

19 JUSTICE SCALIA: Where are those sections?

20 MR. LONG: You can find them, they are in the appendix to
21 Lopez's blue brief, Justice Scalia, and the provisions are E, G
22 and K. 924 begins on page 3A of the appendix, and E begins on
23 , and you can pick up G is on 6A, K is on 7A.

24 JUSTICE SCALIA: What are the sections? V?

25 MR. LONG: They are subsections E, G and K.

1 JUSTICE SCALIA: All right.

2 CHIEF JUSTICE ROBERTS: That doesn't carry too much weight,
3 though, because the provision that -- I'm looking at G3,
4 violates any state law relating to any controlled substance can
5 be broader than what's punishable under the federal Controlled
6 Substances Act.

7 MR. LONG: It is a bit broader, Mr. Chief Justice, but if
8 you look at all of these provisions, the implication is clearly
9 that Congress was referring to state law when it meant to
10 include state law. I mean, if you looked at E, for example,
11 there it's a parallel construction. It's not broader.

12 I think perhaps the government would say, well, we are
13 talking about offenses. That's a little different from a
14 felony, but offenses is actually a broader term.

15 I'll mention an additional statute which was not in the
16 appendix, 18 U.S. Code Section 3559(C)(2)(h). This provision,
17 it's a similar provision. It defines a serious drug offense as
18 an offense that is punishable under the specific sections of the
19 Controlled Substances Act, or an offense under state law that
20 had the offense been prosecuted in a court of the United States
21 would have been punishable under the CSA.

22 An additional textual indication is it's agreed, and this
23 Court has already said in *Gonzales* against the United States,
24 that a drug trafficking crime under 924(C), under the criminal
25 statute, must be a federal crime. 924(C)(1)(a) refers to a

1 crime that may be prosecuted in a court of the United States.

2 And that clearly refers to a federal crime. The definition
3 of drug trafficking crime by its term says it is for purposes of
4 924(C), so there is no reason why Congress would have wanted to
5 include state felonies in a definition that applies to a federal
6 criminal provision that all concede applies only to federal
7 predicate offenses. And the government's interpretation would
8 significantly broaden Section 924(C) to include federal
9 misdemeanors.

10 JUSTICE ALITO: In 8 U.S.C. 1101(A)(43)(B), what in your
11 view does the first phrase, illicit trafficking in a controlled
12 substance add to the reference to a drug trafficking crime
13 defined by 924(C)?

14 MR. LONG: Justice Alito, in our view, illicit trafficking
15 means any offense that has a trafficking element, that is,
16 distribution, possession with intent to distribute.

17 JUSTICE ALITO: Are there any trafficking offenses that
18 would not fall within 924(C) if you define a trafficking offense
19 that way?

20 MR. LONG: Yes. Most offenses under the Controlled
21 Substances Act are trafficking offenses. There are a few that
22 are simple possession. There is a date rape drug that I will
23 not try to pronounce but it's listed in 21 U.S.C. Section --

24 JUSTICE ALITO: There are mere possession offenses that are
25 outlined by 924(C) but is it not the case that any, if you

1 interpret trafficking to mean trafficking in the way the word
2 would be used in ordinary speech that any state trafficking
3 offense you can think of would have a corresponding felony
4 violation under the Controlled Substances Act, so that if you
5 read the statute that way, the initial phrase is superfluous.

6 MR. LONG: I believe the government has a footnote in their
7 brief where they suggest there are some state trafficking
8 offenses that actually do not have a parallel in federal law,
9 soliciting I think may be one of them so I think there are in
10 fact some. And our position, of course, is that by adding
11 illicit trafficking, any trafficking offense state or federal
12 whether or not it is punishable under the Controlled Substances
13 Act is an aggravated felony.

14 JUSTICE ALITO: Let me ask the same question a different
15 way. If, since 924(C) includes some mere possession offenses
16 and illicit trafficking of a controlled substance included all
17 violations of 924(C), doesn't that show that the way Congress is
18 used illicit trafficking in a controlled substance is not in the
19 sense in which the term is used in ordinary speech but it's much
20 broader, so that it can include mere possession offenses.

21 MR. LONG: Justice Alito, there is an argument that's
22 developed in the brief of the American Bar Association that
23 because illicit trafficking is the general category, that all
24 the aggravated felonies in this category should have a
25 trafficking component and therefore, the felonies punishable

1 under the Controlled Substances Act that are simple possession
2 offenses should not in fact be included. That is not an
3 argument that we have pressed in our brief. We read the phrase
4 to say illicit trafficking including any felony punishable under
5 the Controlled Substances Act, so I would agree with you to the
6 extent that if it is a felony punishable under the Controlled
7 Substances Act, Congress has said by definition that it is
8 included in the category of illicit trafficking.

9 JUSTICE BREYER: That's ambiguous. That's perfectly
10 ambiguous. Because as the case as defined, it is a felony and
11 is punishable under the Controlled Substances Act.

12 MR. LONG: Well, Justice Breyer, it is a misdemeanor
13 under --

14 Justice Breyer: No, that's right. But it is a felony
15 under South Dakota law. And what the statute says, and that's
16 the Government's argument, they say any felony punishable under
17 the Controlled Substances Act. They don't mean necessarily any
18 felony punishable as a felony under the Controlled Substances
19 Act.

20 MR. LONG: But --

21 JUSTICE BREYER: It might mean anything that is a felony
22 and it is also punishable; in which case you lose. But in the
23 first case you win. So what am I supposed to look to to decide?

24 MR. LONG: Well, you could look to the case of Jerome vs.
25 United States which was a unanimous decision of this Court in

1 which the Court held that just the phrase any felony in the
2 federal bankruptcy statute should be interpreted to mean any
3 federal felony.

4 JUSTICE BREYER: Ah, but you don't mean that, because
5 you're prepared to concede -- at least I thought you were until
6 your last argument -- you're prepared to concede that if a
7 person engages in a crime that is punishable as a felony under
8 South Dakota law and it is also punishable as a felony under
9 Federal law under 801, et seq, well, that counts.

10 MR. LONG: Well, but I mean, the government --

11 JUSTICE BREYER: Do you concede that or not?

12 MR. LONG: The government accuses us of making that
13 concession --

14 Justice Breyer: Your answer is that you don't make the
15 concession?

16 MR. LONG: We really don't. We concede that if the
17 Congress, I mean, 924 C, a criminal statute says nothing about
18 state law. It says nothing about any conviction under federal
19 or state law. It is simply a question of whether the conduct is
20 punishable, capable of being punished under the Controlled
21 Substances Act.

22 JUSTICE KENNEDY: But I thought that was the concession you
23 made in response to my question.

24 MR. LONG: Well, yes, but I just want to be careful about
25 the language in which we make --

1 JUSTICE STEVENS: But you make the concession as I
2 understand it because it's a federal felony, not because it's a
3 state felony, isn't that right?

4 MR. LONG: Right.

5 JUSTICE BREYER: Precisely.

6 JUSTICE GINSBURG: Is it, if this is an ambiguous statute,
7 what mileage do you get from Barrett? There is certainly an
8 argument that what Congress was trying to do was to codify that
9 practice of saying if there is analogous felony, if there is
10 analogous crime under state law, that should be included, and
11 that made good sense.

12 MR. LONG: Yes. If it's ambiguous and you look to the
13 legislative history, I think we get considerable mileage from
14 Barrett. The Congress was pretty clear that what it was doing
15 was codifying Barrett. The Barrett approach which was then
16 followed by the BIA for more than a decade was that they would
17 count state drug crimes but only if they were felonies under the
18 federal statutes, under the Controlled Substances Act. So I
19 think we get considerable mileage out of that.

20 JUSTICE KENNEDY: You've answered Justice Breyer by citing
21 the Jerome case. After Jerome, we decided United States vs.
22 Gonzales having to do with the consecutive or concurrent
23 sentencing terms. And are those two cases in some tension?
24 Gonzales didn't mention Jerome, I noticed that none of the
25 briefs mentioned it either. Is there some tension in the cases

1 and if so, is this a case where when we write the opinion,
2 whatever the outcome, we should talk about that? And if that's
3 so, what should we say?

4 MR. LONG: I don't see any tension. Gonzales was just
5 about consecutive versus concurrent sentences under state versus
6 federal law. I mean the Court has applied that principle --

7 JUSTICE KENNEDY: But it does, it does seem to limit the
8 broad statement in Jerome without mentioning Jerome.

9 MR. LONG: Well, but I mean, with respect, Justice Kennedy,
10 I don't see how it limits it. There have other cases, Taylor is
11 an example, where the court adopted a single definition of
12 burglary for purposes of 924 E. That applies the Jerome
13 principle; I mean it's a principle that's has been applied in a
14 number of this Court's cases.

15 CHIEF JUSTICE ROBERTS: But has it ever been applied to a
16 statute that specifically says that the term aggravated felony
17 applies to an offense described in this paragraph, whether in
18 violation of federal or state law? It would seem to me to be a
19 very express legislative repudiation of the Jerome principle.

20 MR. LONG: Well, when we get to that language, Mr. Chief
21 Justice, and I do think it helps the analysis to first decide
22 what is the definition of a drug trafficking crime under 924 C,
23 the criminal statute. Once you've decided that, now when you
24 move back to the INA, there is this language, the term
25 aggravated felony applies to an offense described in 101 A 43

1 whether in violation of federal or state law or the law of a
2 foreign country.

3 Now, we think that's pretty straightforward. It has to be
4 an offense described. So the simple example is money
5 laundering. The offense described in 18 USC Section 1956, Money
6 Laundering, is an aggravated felony. So a violation of state
7 law or the foreign law can be an aggravated felony but only if
8 it is the offense described in 1956. If states or a foreign
9 government has a broader definition of money laundering, that
10 can't count because it's not the offense described. And when
11 you turn to a drug trafficking crime, the way that offense is
12 described in 101 A 43 is Congress picked up in its entirety and
13 without any modification the definition of drug trafficking
14 crime in 924 C, a felony punishable under the Controlled
15 Substances Act. So if you agree that in the criminal statute
16 that means a felony violation of the Controlled Substances Act,
17 the offense described is the felonies in the Controlled
18 Substances Act, not the felonies in the misdemeanors. And if
19 state and state law wants to call a something that's a
20 misdemeanor under federal law a felony they can do that, but
21 they can't expand the offense described. The offense described,
22 the way Congress did that.

23 JUSTICE KENNEDY: Are you saying it would also include
24 state trafficking offense, because it's described in the word
25 trafficking?

1 MR. LONG: Yes. I'm focusing on the definition of drug
2 trafficking crime. Also there is the illicit trafficking piece
3 of this and I should add any state offense that is illicit
4 trafficking is going to be an aggravated felony. We recognize
5 that. If there are no further questions I would like to reserve
6 the balance of my time.

7 CHIEF JUSTICE ROBERTS: Thank you, Mr. Long. Mr. Crooks,
8 we'll hear now from you.

9 ORAL ARGUMENT OF TIMOTHY CROOKS
10 ON BEHALF OF PETITIONER TOLEDO-FLORES

11 MR. CROOKS: Mr. Chief Justice and may it please the
12 court. I would first like to address the government's
13 contention that Mr. Toledo-Flores' appeal is moot. His appeal
14 of his sentence is not moot primarily because he is still
15 subject to the sentence that is the subject of that appeal.
16 Even though Mr. Toledo-Flores was released from prison on April
17 21st of this year, and deported to Mexico, he is still subject
18 to the supervised release portion of his sentence because
19 supervised release is not automatically extinguished by
20 deportation.

21 CHIEF JUSTICE ROBERTS: But there is no supervised release
22 of people outside the United States.

23 MR. CROOKS: There is no supervision of people outside the
24 United States, Mr. Chief Justice, but he is still subject to the
25 jurisdiction of the District Court and still subject to the

1 conditions of supervised release that are not dependent upon
2 supervision.

3 CHIEF JUSTICE ROBERTS: Like what?

4 MR. CROOKS: For example, he should not use alcohol, he
5 should not associate with persons.

6 CHIEF JUSTICE ROBERTS: What's going to happen to him if he
7 does that?

8 MR. CROOKS: If the District Court learns about that he
9 could be violated and he could face up to a year more in prison.

10 CHIEF JUSTICE ROBERTS: Has anything like that ever
11 happened before to people subject to supervised release who have
12 then been deported? It would be the first time if the District
13 Court did that, right?

14 MR. CROOKS: There have been instances in the case law
15 where people on supervised release have been extradited back
16 from foreign countries based on violations of their supervised
17 release. But the point is under the statutory scheme
18 Mr. Toledo-Flores is still subject to the District Court's
19 jurisdiction. The District Court refused jurisdiction to
20 modify his supervised release to change conditions or to cut the
21 supervised release. If the District Court learns of a violation
22 and a violation warrant is filed within the supervised release
23 period then the supervised release period is effectively tolled
24 and the district court --

25 JUSTICE GINSBURG: And that has how many months to run?

1 MR. CROOKS: Until April 20th of next year, Your Honor.

2 JUSTICE GINSBURG: You said you relied primarily on that
3 argument. Do you have another argument?

4 MR. CROOKS: Yes, we do, Your Honor. After April 20th, of
5 course, in accordance with this Court's decisions in Spencer V.
6 Kenya and Wayne V. Williams, the Court has to look for a
7 collateral consequence of a then-expired sentence. And in this
8 case we point to the possibility that a retrospective reduction
9 in the term of imprisonment, which of course will not give
10 excess prison time back to Mr. Toledo-Flores, but even to reduce
11 the number of the sentence on paper could be a favorable factor
12 to him to get a waiver of inadmissibility, should he ever want
13 to get a nonimmigrant visa in the future to come visit his U.S.
14 citizen children.

15 JUSTICE SCALIA: We have a case involving standing which
16 says that -- you know, the doctrine of standing is more than an
17 exercise in the conceivable. And this seem to me an exercise in
18 the conceivable. Nobody thinks your client is really, you know,
19 abstaining from tequila down in Mexico because he is on
20 supervised release in the United States, or is going -- is going
21 to apply having been deported from the country for criminal
22 offenses, he is going to apply to come back -- and look, these
23 are ingenious exercises in the conceivable. This is just not
24 the real world.

25 MR. CROOKS: My answer to that, Justice Scalia, is that

1 this Court has never said that an appeal of a sentence may
2 become moot before that sentence is expired. And in cases like
3 Lane v. Williams and Spencer v. Kemna, the sentences were
4 completely expired and therefore the Court had to look for
5 collateral consequences of the now expired sentence. Here in
6 contrast, Mr. Toledo-Flores is still under the sentence, which
7 is a direct consequence --

8 JUSTICE SCALIA: That depends on whether you consider the
9 sentence to be effectively expired once he leaves the country,
10 if the sentence is one of supervised release, which is
11 impossible once he leaves the country. Supervision being
12 impossible, supervised release is not a realistic consequence
13 of -- of the prior conviction.

14 MR. CROOKS: That argument could be made with respect to a
15 person who is in the United States, who is subject to a term of
16 probation where the only condition is that he not further
17 violate the law. In that instance --

18 CHIEF JUSTICE ROBERTS: In that instance, action can be
19 taken against him if he does further violate the law under the
20 terms of probation. The point is that the jurisdiction of the
21 probation office or the district court doesn't extend to Mexico.

22 MR. CROOKS: That's true. But if we are talking about
23 future violations of the law, it is very often the case that
24 persons who are deported to Mexico do come back and do have
25 their supervised release --

1 CHIEF JUSTICE ROBERTS: Well, you don't want to say that
2 your case is not moot because your client is going to violate
3 the law again in the future.

4 MR. CROOKS: No. Not at all, Your Honor, but I'm saying
5 that in the respect that you just talked about for the U.S.
6 citizen, it's not any different, that the court retains
7 jurisdiction to violate the supervised release, and to revoke it
8 and to send him back to prison.

9 JUSTICE BREYER: No, but it is different in the respect
10 that he would first have to violate the law by entering the
11 United States.

12 MR. CROOKS: That is true. But in most cases, that is the
13 only violation of supervised release for which they are later
14 revoked. In that respect, it would be no different than a
15 person who violates his probation by driving while intoxicated
16 or committing some other legal violation.

17 JUSTICE GINSBURG: On collateral consequences, do you
18 have -- what is your best authority to say that it would keep
19 this case from being moot?

20 MR. CROOKS: We cited in our reply brief at page 4, Your
21 Honor, the Hamdi case, United States v. Hamdi, from the Second
22 Circuit, where the Second Circuit found that the possibility of
23 reducing the term of imprisonment even retrospectively could
24 have an impact on the ability to get a waiver of inadmissibility
25 in the future.

1 JUSTICE GINSBURG: Because the length of the sentence
2 counts heavily in the Attorney General's assessment, is that
3 correct?

4 MR. CROOKS: That's correct, Your Honor. In Hamdi, they
5 pointed out that the length of the sentence goes to two of the
6 three factors that are evaluated by Immigration officials under
7 a decision called Matter of Heronka that are used in evaluating
8 whether a person should be granted a waiver of inadmissibility
9 in the discretion of the Attorney General.

10 JUSTICE SCALIA: Do you think there is a realistic
11 possibility that this person is going to be readmitted? A
12 realistic possibility?

13 MR. CROOKS: I do not know, Your Honor, he's --

14 JUSTICE SCALIA: Do you think there's a realistic
15 possibility that he's going to try to get readmitted, so that he
16 can be subjected to really enforced supervised release?

17 MR. CROOKS: Well, I think that there is a possibility that
18 he could qualify for a nonimmigrant visa at some point.

19 JUSTICE SCALIA: Has he applied for such a visa? Has he
20 expressed any intention to apply?

21 MR. CROOKS: He has not, Your Honor, but he does have U.S.
22 citizenship --

23 JUSTICE SCALIA: Then it's an exercise in the conceivable,
24 it seems to me.

25 MR. CROOKS: But this Court has never held that -- it would

1 be unfair to hold that an appeal of a sentence can be moot while
2 that sentence is still in effect, and when it can still have
3 consequences for Mr. Toledo-Flores. And that's what
4 distinguishes this case from all the other cases decided by this
5 Court is that the sentence itself is the concrete and continuing
6 injury that defeats --

7 JUSTICE STEVENS: May I ask this question? Supposing we
8 say it's not moot, and you prevail, could he be resentenced
9 without being present in court?

10 MR. CROOKS: Yes, he could, Your Honor. We do resentencing
11 in abstention all the time in the Southern District effective --
12 in circumstances that are similar.

13 JUSTICE BREYER: Have you ever heard of or had a client, or
14 heard of a person from Mexico who has been deported because he
15 has been involved in drugs, so the government wants to bring him
16 back, because he may be a witness, maybe something develops,
17 they would like his information.

18 MR. CROOKS: That does happen occasionally. People are
19 paroled in to testify in court proceedings or to cooperate with
20 federal or state.

21 JUSTICE BREYER: In other words, they pick up some friends
22 of his who are engaged in drugs, the government might decide to
23 try to get him back.

24 MR. CROOKS: That's correct, Your Honor.

25 JUSTICE SCALIA: Is there any indication that that's in the

1 works or is this just another conceivable thing?

2 MR. CROOKS: There is no indication in the record that that
3 is in the works. I do want to point out that --

4 JUSTICE BREYER: It's conceivable, I guess, that people
5 will break their parole. Often it doesn't happen. Sometimes it
6 does. Sometimes they want to get him back. Sometimes they
7 don't.

8 MR. CROOKS: That's all very true, Justice Breyer. I
9 wanted to point out that in Campo Serrano, which we've cited in
10 our brief, this Court held that a deported alien's probation
11 term was a continuing criminal sentence that saved the case from
12 mootness. And the Court pointed to the fact that the deported
13 alien in Campo Serrano could, just like Mr. Toledo-Flores, have
14 his conditional release revoked, and he could be reimprisoned
15 upon a finding that he had violated his conditions.

16 And we believe that Campo Serrano points very strongly in
17 the direction that this case is not moot. On the merits, I
18 would just like to point out that the interpretation that is
19 advanced by the petitioners here promotes the very sort of
20 uniformity that this Court has found desirable in cases like
21 Jerome v. United States and its progeny, including Taylor v.
22 United States, in that the same conduct of conviction will have
23 the same immigration and same federal sentencing consequences,
24 irrespective of the labels or maximum prison terms affixed by
25 the particular states that set out that conduct. And --

1 CHIEF JUSTICE ROBERTS: Thank you, Counsel.

2 MR. CROOKS: Thank you.

3 CHIEF JUSTICE ROBERTS: Mr. Kneedler.

4 ORAL ARGUMENT OF EDWIN S. KNEEDLER

5 ON BEHALF OF RESPONDENTS

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

8 In order for a state drug offense to be an aggravated
9 felony under Section 1101(A)(43)(b) of the INA, there are two
10 requirements. The underlying conduct must be punishable under
11 the Controlled Substances Act or one of the other specified
12 federal statutes, and it must be a felony.

13 Because the petitioner's underlying conduct here was
14 punishable under the Controlled Substances Act, and was a felony
15 under state law, they were properly found to have committed
16 aggravated felonies. That conclusion follows not just from
17 Section 924 C but more important by the fact that what is
18 relevant here is what is the meaning of 1101 A 43 which is the
19 operative provision which just happens to incorporate the
20 definition of drug trafficking crime from 924 C, and there are
21 three features of 1101 A 34.

22 JUSTICE KENNEDY: You say it just happens.

23 MR. KNEEDLER: No. No.

24 JUSTICE KENNEDY: It's a statute.

25 MR. KNEEDLER: No. No. No. The statute incorporates it

1 in INA, and there are three features of that that we think
2 reinforce this conclusion. The first is that the consequences
3 of aggravated felony status under the INA determine whether one
4 is convicted, not whether they have committed the crime, and
5 that's true both with respect to the enhancement of sentences
6 under 1326 and the immigration consequences and we think it
7 makes particular sense when you are talking about a conviction
8 to look at how, to look at how the crime is treated under the
9 jurisdiction of conviction.

10 **JUSTICE SCALIA: I thought the government has taken the
11 position and as far as I know all courts of appeals have bought
12 the government's argument that there, you do not need a
13 conviction.

14 MR. KNEEDLER: You do not need a conviction under Section
15 924 if you're bringing a prosecution under Section 924 C.

16 JUSTICE SCALIA: Yes.

17 MR. KNEEDLER: You do not need a conviction but in order,
18 the immigration consequences --

19 JUSTICE SCALIA: Yes, but 924 C is incorporated in 1101 A
20 43.

21 MR. KNEEDLER: Right.

22 JUSTICE SCALIA: It's incorporated. So, you
23 want us to interpret 924(c) one way for criminal
24 convictions -- a criminal sentence -- that is, you don't
25 need a conviction in order to get the enhancement -- but

1 another way for --

2 MR. KNEEDLER: No.

3 JUSTICE SCALIA: -- for the INA?

4 MR. KNEEDLER: Our point is not that 924(c)
5 requires a conviction when it's in the Immigration Act,
6 it's that the immigration consequences of that
7 incorporation turn on whether someone was convicted of an
8 aggravated felony.

9 JUSTICE SCALIA: Why is --

10 MR. KNEEDLER: So --

11 JUSTICE SCALIA: -- that?

12 MR. KNEEDLER: Well, the ground that deportation
13 -- that refers to "aggravated felony," refers to someone
14 who has been convicted of an aggravated felony. The
15 ineligibility for cancellation of removal turns on whether
16 someone has been convicted of an aggravated felony, and
17 the enhanced penalties under Section 1326, for someone
18 whose illegal reentry following aggravated felony, is for
19 a conviction for an aggravated felony. So, my point is
20 that, under the INA, the consequences turn on conviction,
21 and it makes sense to look at the jurisdiction of
22 conviction -- here, State law -- to see whether it -- to
23 look at the -- to determine the status of the crime. And
24 since State law determines it to be a felony, that's the
25 --

1 JUSTICE GINSBURG: Mr. Kneedler --

2 MR. KNEEDLER: -- proper place to look.

3 JUSTICE GINSBURG: -- if there is room for more
4 than one construction of this statute, it seems to me
5 unseemly, in the immigration context, to say that two
6 people who have committed the identical act, one of them
7 is barred from ever coming back, it doesn't -- it doesn't
8 have any of the dispensations, and other does, because of
9 the happenstance of the States in which they were
10 convicted. That kind of disuniformity in an area where
11 the Constitution expressly charges Congress with authority
12 to make uniform laws, doesn't that uniform law, -- in the
13 Constitution, come in the direction of the interpretation
14 that Mr. Long was --

15 MR. KNEEDLER: No, we think it does, for several
16 reasons. First, with respect to the constitutional
17 requirement, the uniformity provision applies to uniform
18 rules of naturalization -- that is, citizenship. This --
19 we're not talking about citizenship here, we're talking --
20 we're talking about the eligibility of aliens to remain in
21 the country. Beyond that, even where the Uniformity
22 Clause applies -- and there's, for example, a parallel
23 Uniformity Clause for bankruptcy -- that's never been
24 interpreted to mean that consequences of certain conduct
25 under State law can have no impact on bankruptcy law, and

1 that there can't a variation. The State-law homestead
2 exemption under the -- under the bankruptcy laws is a good
3 example of that.

4 But, going beyond that with respect to the issue
5 of uniformity generally, Congress has established uniform
6 standards in Section 1101, either in terms of identifying
7 the conduct in certain instances; in other instances, by
8 identifying the minimum sentence that was actually
9 imposed. In this case, we think, with respect to drug-
10 trafficking crimes, it -- it's imposed a uniform standard,
11 in terms of the length of the sentence; it has to be a
12 felony. That's -- that is uniformity.

13 But the -- to answer your point more directly,
14 it is a principle throughout 1101(a)(43) that one looks to
15 State law, not to -- not to a -- some supposed uniform
16 standard of Federal law. And, for example, if you --
17 several subparagraphs -- and if you'll -- 1101(a)(43) is
18 set out at page 12(a) of the appendix to our brief --
19 three subparagraphs -- (j), (q), and (t) -- refer to the
20 sentence that may be imposed for a violation. Well, when
21 you're talking about a State conviction, that's clearly
22 referring to the sentence that may be imposed under State
23 law for a conviction. Four other subparagraphs -- (f),
24 (g), (r), and (s) -- turn on the sentence that was
25 actually imposed. That means that, in the case of a State

1 crime, as we have here, that State law has to authorize
2 the sentence, and that the State Court, applying State
3 sentencing principles, has actually imposed a crime of --
4 for -- of at least 1 year. So, it is -- it is infused in
5 Section 1101(a)(43) that, in fact, you do look to the
6 consequences of an offense under State law.

7 JUSTICE BREYER: I'm prepared to accept perfect
8 ambiguity here, linguistically. And I thought of an
9 empirical question, that you may know the answer to, that
10 might shed some light.

11 Now, going along the way -- and maybe I'm making
12 a mistake to point it out, if I am -- but I go to the key
13 thing here, which is the word, from 924(c) -- What is a
14 "drug-trafficking crime"? A "drug-trafficking crime" is a
15 crime, "any felony punishable under the Controlled
16 Substances Act." That could mean an act, physically, that
17 is a felony under some law, and is also punishable under
18 the Controlled Substances Act as a misdemeanor. Felony
19 under -- it could pick that up. And it also could mean
20 any conduct which is punishable as a felony under the
21 Controlled Substances Act. And I could look at those
22 words a thousand times and not have a clue which it means.

23 So, I thought of an empirical test. This
24 statute, 924(c), happens to be a statute that, if you
25 engage in a drug-trafficking crime, as defined, and you

1 have a gun with you, you get mandatory 5 years. That's
2 the point of it. And the Government does all the
3 prosecuting. So, in how many cases where a person
4 committed a misdemeanor offense, simple possession, and
5 had a gun, did the Government insist that they get the 5-
6 years minimum? Now, if you're prepared to tell me "a lot
7 of 'em," I'm prepared to tell you, the Government has
8 consistently interpreted the statute the way you are now.
9 But if you're prepared to tell me "zero," I would say I
10 would be suspicious of an interpretation that comes along
11 now for the first time. And my mind is open on it. I'm
12 quite interested in the answer.

13 MR. KNEEDLER: To my knowledge, we have not
14 brought crime -- prosecutions under 924(c)(1), based on
15 the circumstances you posit, but that's --

16 JUSTICE BREYER: But if --

17 MR. KNEEDLER: -- but I don't think that that
18 goes very far with respect to answering this question.
19 For one thing, as this Court pointed out in the Gonzales
20 decision, the requirement that there be a Federal crime,
21 and, therefore, a Federal felony under 924(c)(2), comes
22 from the language in 924(c)(1) that says that the crime
23 must be subject to prosecution in a court of the United
24 States. And this Court, in Gonzales, said it's that
25 language that renders the -- renders it a requirement that

1 it be a Federal crime. The definition of --

2 JUSTICE BREYER: No, no. We both agree. All --
3 everybody agrees here. It doesn't have to be a Federal
4 crime.

5 MR. KNEEDLER: It doesn't have to be --

6 JUSTICE BREYER: And --

7 MR. KNEEDLER: -- under 1101 --

8 JUSTICE BREYER: Correct, it doesn't have --

9 MR. KNEEDLER: Right.

10 JUSTICE BREYER: -- to be. It could be conduct
11 that violates the State law, but -- and punish it under
12 the State law, but the conduct involved would have to
13 constitute what is a felony under the Controlled Substance
14 --

15 MR. KNEEDLER: Would have to -- in our view, it
16 would have to constitute --

17 JUSTICE BREYER: A felony or a misdemeanor.

18 MR. KNEEDLER: It would have to be punishable
19 under the Controlled Substances --

20 JUSTICE BREYER: Yes.

21 MR. KNEEDLER: -- Act. But the important point
22 here is --

23 JUSTICE BREYER: All right. So, I say it's
24 suspicious.

25 MR. KNEEDLER: But the question is not what

1 924(c)(2) means, standing alone or in the abstract; it's
2 what it means, as incorporated into 1101(a)(43). And --

3 CHIEF JUSTICE ROBERTS: And so --

4 MR. KNEEDLER: -- there --

5 CHIEF JUSTICE ROBERTS: -- when you get to that,
6 it must give you pause that your analysis is of a term,
7 "drug-trafficking crime" or "illicit trafficking," and
8 your theory leads to the conclusion that simple possession
9 equates with drug trafficking.

10 MR. KNEEDLER: Well, the Petitioner has
11 conceded, as I understand it -- I heard Mr. Long, I think,
12 concede -- that possession offenses can constitute
13 aggravated felonies under this provision, that there is a
14 recidivist possession, there is the possession of the date rape
15 drug, there is possession of five grams or more of cocaine. All
16 of those are specified as being, of being felonies under 940 --
17 or 844. But beyond that, it's important to take into account
18 that a lot of state statutes dealing with drugs do not, are not
19 patterned directly after the federal statute and there is no
20 reason why Congress would have insisted that they do so in order
21 for this statute to operate sensibly. And one notable example
22 for instance is when it comes to possession of a substantial
23 amount of drugs that that certainly would create a strong
24 implication that the defendant was engaged in trafficking
25 activities or intended to.

1 The federal statute deals with that by making it a felony
2 to possess with intent to distribute the drug. A number of
3 states don't do that. They instead have graduated possession
4 offenses based on the quantity of drugs that the defendant is
5 possessing, that above a certain quantity of drugs it would be a
6 felony. They are getting at the same problem but they have come
7 at it in a different way.

8 JUSTICE GINSBURG: And in those cases you can say the
9 conduct would constitute a felony under the federal statutes.
10 But here if I recall correctly, the amount involved would not
11 have qualified for possession with intent to distribute under
12 federal law.

13 MR. KNEEDLER: Well, it would always be up to the jury to
14 decide that. Now, in Mr. Lopez's case, he was initially charged
15 with a series of offenses that went beyond the aiding and
16 abetting of possession that he ultimately pleaded guilty to, but
17 as he testified in his, in his immigration hearing, his aiding
18 and abetting of possession was assisting someone in purchasing
19 drugs which was itself a trafficking element. And so this shows
20 that the way the state crimes are defined or applied are often
21 getting at, at what federal law --

22 JUSTICE STEVENS: Yes. But we have a case we are assuming
23 for our purposes we just have possession. I understand the
24 facts of this case. And I wanted to ask, I have two questions,
25 Mr. Kneedler. Now one of them, the second one I ask is you were

1 going to mention three different points, one about conviction.
2 You had two other points you didn't get to on, what those were.
3 But before that it seems to me that when you put the whole
4 statute, all the different statutory provisions together, you
5 really boil down and focus on 924 C 2 and the words for purpose
6 of this subsection the term trafficking crime means any felony
7 punishable under the Controlled Substances Act. And if the word
8 federal had been inserted before the word felony in the statute,
9 would that not make the statute perfectly clear.

10 MR. KNEEDLER: It probably would, but I think it's
11 interesting that the version of 924 C that was in effect prior
12 to 1988 said exactly that. It said felony violation of federal
13 law.

14 JUSTICE STEVENS: So it was, the intention of the change
15 was -- merely --

16 MR. KNEEDLER: But Congress did change it in the 1988 act.
17 But it did it, and this is significant, it did it in connection
18 with two changes in the immigration law. One is the enactment
19 of the definition of aggravated felony, which as I have
20 explained the definition of aggravated felony looks to state law
21 in a number of respects in terms of the severity of the offense
22 or the punishment actually imposed. That was one change.

23 The other change that was made in the 1988 act was to amend
24 Section 1326 with respect to illegal reentries and it did that
25 by enhancing the penalty for conviction of any felony other than

1 an aggravated felony and an aggravated felony. And certainly
2 the conviction of any felony includes state law offenses in
3 this --

4 JUSTICE STEVENS: Again, Mr. Kneedler, focusing again on
5 that specific language, you're saying that in effect that that
6 phrase means any state or federal felony punishable under the
7 federal statutes.

8 MR. KNEEDLER: Yes. It says any felony and that is our --
9 what --

10 JUSTICE STEVENS: And is it ever true that a state felony
11 is punishable under federal statute?

12 MR. KNEEDLER: The conduct is punishable.

13 JUSTICE STEVENS: Do you have any instances where we have
14 said a state felony is punishable under a federal statute?

15 MR. KNEEDLER: I think not used in that sense but I think
16 it's important, it's important to look at the language as a
17 whole. It does not say punishable as a felony under.

18 JUSTICE KENNEDY: The key to the case is how we read that
19 one sentence.

20 MR. KNEEDLER: Well, no, I agree that it might be the key
21 to the case is in 1101 A 43, because if you look at the
22 structure of 1102 A 43 and this gets to the question you said,
23 you mentioned that I had three reasons. One is that under the
24 INA, the conviction consequences turn on the conviction of an
25 aggravated felony. That only makes sense to look at the

1 jurisdiction of conviction to determine the nature of the crime
2 whether it's a felony.

3 JUSTICE SCALIA: Well, but you don't look to the
4 jurisdiction. You're telling me require a conviction? I
5 thought you told me you don't require a conviction.

6 MR. KNEEDLER: No, under 924 C you don't. But under the,
7 if your bringing a federal prosecution under 924 C the term
8 aggravated felony has no role in that determination. It is a
9 separate federal crime. We are talking about here the
10 consequences of, the consequences of being an aggravated felon
11 under 1101 A 43 are, where does the definition of aggravated
12 felony apply? It applies under the INA if someone has been
13 convicted of an aggravated felony. It only, you're only subject
14 to deportation for aggravated felony if you've been convicted,
15 you're ineligible for cancellation or removal or you're subject
16 to sentence enhancement. All those things follow on conviction
17 and we think it only makes sense to look to the jurisdiction of
18 conviction.

19 JUSTICE SOUTER: All right, Mr. Kneedler, assuming that as
20 I understand it, the answer you just gave, your second point, as
21 well as the point that you and Justice Stevens were debating,
22 turns in your view on a definition or a reading of the statute
23 that would work this way: that if under state law the act were
24 a felony, but under federal law, the action was merely a
25 misdemeanor, it would still for purposes of this definition be

1 an aggravated felony.

2 MR. KNEEDLER: That's correct.

3 JUSTICE SOUTER: That, isn't that very strange that
4 Congress would have wanted a reading of the statute that would
5 turn its definition of a misdemeanor crime into an aggravated
6 felony for purposes of the immigration laws?

7 MR. KNEEDLER: I don't think so at all. Well, for one
8 thing, as I've mentioned the structure of the act as a whole, of
9 1101 A 43 and the numerous subsections, look to how the crime,
10 what the authorized punishment was or look to how the person was
11 actually sentenced under state law, not under federal law.

12 JUSTICE SOUTER: And I also -- go ahead.

13 MR. KNEEDLER: I also haven't mentioned the explicit
14 provision that one of the other justices mentioned earlier, I
15 think the Chief Justice, that the penultimate sentence of 1101 A
16 43 says that something, an offense constitutes an aggravated
17 felony whether in violation of federal or state law.

18 JUSTICE SOUTER: Well, I know it says that. But that
19 doesn't necessarily take you any further that saying that if the
20 words of the statute refer to something that could be a state
21 law felony under the penultimate sentence it will count. It
22 does not necessarily answer the question that we have and that
23 is whether a particular reference in the statute is a reference
24 to a federal felony or a state felony. So the penultimate
25 sentence has work to do and in fact we can see the work being

1 done in the very definition of drug trafficking but it doesn't
2 necessarily lead to the conclusion that you draw from it.

3 MR. KNEEDLER: Well, we think, we think it's quite, we
4 think it's a strong confirmation of the pattern in 1101 A 43
5 that the statute looks to what happened in state court and the
6 state punishment that was authorized there and the express
7 mention of that --

8 JUSTICE SOUTER: Even when the consequence in effect is to
9 turn for, or turn the gravity of the federal misdemeanor into
10 the gravity of felony that --

11 MR. KNEEDLER: But the federal Controlled Substance --

12 JUSTICE SOUTER: -- happens to be a state felony.

13 MR. KNEEDLER: The federal Controlled Substances Act does
14 not occupy the field of drug control in the country other than
15 any other federal crime occupies that field.

16 JUSTICE SOUTER: No I realize that. But of we are asking
17 what is important in the mind of Congress for purposes of the
18 immigration law, one would suppose that the most obvious
19 touchstone of importance is the way federal law deals with it.
20 I.e., in the case of a crime whether the federal law calls it a
21 felony or federal law calls it a misdemeanor. And on your
22 reading when federal law calls it a misdemeanor if state law
23 calls it a felony it becomes a federal felony for the
24 immigration law. And that's what seems to me very odd given the
25 tension between the --

1 MR. KNEEDLER: Right. And this is not the only place where
2 that consequence can rise. There are cases involving what's a
3 crime of violence which under subparagraph G is another
4 aggravated felony that the crime of violence is defined in 18
5 U.S.C. Section 16, subsection B of that, this court considered
6 that statute in Macau requires that the offense be a felony
7 which creates a serious risk of physical harm. The courts have
8 looked to the state law of conviction to determine whether
9 something is a felony.

10 JUSTICE SOUTER: May I just ask one more.

11 JUSTICE SCALIA: Sure.

12 JUSTICE SOUTER: Where there is no other answer the problem
13 here is that state law and federal law are at odds in
14 determining the gravity of the offense. The federal law on my
15 hypothesis would say it is minor. It's just a misdemeanor. The
16 state says no, it is a felony. It seems to me very odd given
17 the tension between the state and federal classifications to say
18 that for federal purposes the state classification is going to
19 trump the federal classification and that's a different
20 situation from the one you posit.

21 MR. KNEEDLER: Well, if I could just mention one other
22 example under the theft offense category in subsection, I think
23 it's F, where a theft offense is deemed to be an aggravated
24 felony of a sentence of at least one year was imposed, there are
25 misdemeanor offenses there that as a matter of federal law can

1 be a misdemeanor for certain types of theft offenses and yet
2 there are other as aggravated felonies.

3 JUSTICE SCALIA: Mr. Kneedler, can I ask you about your
4 assertion that you looked to the state of conviction. What do
5 you mean by that for purposes of 1101? Does that mean if you're
6 convicted in state court of a misdemeanor and even though that
7 action would be a federal felony, it's not an aggravated felony?

8 MR. KNEEDLER: That is our position, yes. Because the
9 requirement --

10 JUSTICE SCALIA: So it's a double inconsistency, not only
11 do you treat state, state actions that are, that are minimal --
12 I'm sorry, where the state treats it more seriously than the
13 Federal Government, not only do you follow the state, but where
14 the state treats it less leniently than the Federal Government,
15 you also follow the state; is that right?

16 MR. KNEEDLER: Well, yes.

17 JUSTICE SCALIA: So to look to the state of conviction,
18 who? That's the purposes of the immigration law.

19 MR. KNEEDLER: Of the immigration law --

20 JUSTICE SCALIA: Do you do the same for purposes of the
21 felony enhancement provision?

22 MR. KNEEDLER: 924 C, no you don't because the aggravated
23 felony question has no, has no, the aggravated felony term has
24 no operative significance under 924.

25 JUSTICE SCALIA: That seems to me very strange. You would

1 look to the, you would look to the state law for purposes of the
2 immigration section but for purposes of 924 C what would you
3 look to, either one? Either one?

4 MR. KNEEDLER: 924 --

5 JUSTICE SCALIA: For 924 whichever one would make it a
6 felony.

7 MR. KNEEDLER: No, under 924(C)(1), this Court in the
8 Gonzalez case said it that it has to be a federal crime, but not
9 because of the definition in 924(C)(2).

10 JUSTICE SCALIA: If it's a felony under either one for
11 purposes of 924(C), you lose, right?

12 MR. KNEEDLER: I don't think I --

13 JUSTICE SCALIA: If the act is either a state felony or a
14 federal felony, you lose? I mean, the defendant gets the
15 enhanced sentence, right, under 924(C)?

16 MR. KNEEDLER: No.

17 JUSTICE SCALIA: No.

18 MR. KNEEDLER: Under 924(C), the cases that have been
19 brought have all been situations where it is a federal offense.
20 But because -- not because of the language in 924(C)(2), but
21 because of the language in 924(C)(1).

22 JUSTICE SCALIA: My question is a simple one. If -- it
23 seems to me what you're saying is, if it is either a felony
24 under federal law or a felony under state law, you get the
25 enhanced sentence under 924(C), isn't that right?

1 MR. KNEEDLER: My understanding, the way 924(C)(1) has
2 operated is that if it is a misdemeanor under federal law, but
3 maybe it would be a federal felony, it would not be -- it would
4 not give rise to the enhancement because it's not --

5 JUSTICE SCALIA: That's what the whole argument is about,
6 whether it has to be a felony under federal law. You're telling
7 me if it's a misdemeanor under federal law that you don't get
8 the enhanced sentence?

9 MR. KNEEDLER: But not under 924(C)(2), the definitional --

10 JUSTICE SCALIA: You thoroughly confused me.

11 JUSTICE BREYER: 924(C) says that if you have a gun and you
12 have a drug trafficking crime, five years. Okay, now we go to
13 two, what's a drug trafficking crime. It means any felony
14 punishable under the Controlled Substances Act.

15 Now, in your definition, we first look to see whether
16 simple possession is punishable under the Controlled Substances
17 Act. It sure is. It sure it, it's punishable as a misdemeanor.
18 So it meets that. Under your definition, is it a felony, yep,
19 it's a felony in South Dakota. Okay, so now we have a
20 prosecution in federal court in South Dakota and your reading of
21 the statute, that guy should get a bump up of five years.

22 MR. KNEEDLER: No. That is not our reading of the statute.
23 The only thing that is incorporated into 1101(A)(43) is the
24 definition in (C)(2), not (C)(1), the definition in (C)(2) which
25 says felony punishable under the Controlled Substances Act.

1 That is what that's plugged into 1101(A)(43), along with all of
2 the other provisions in 1101(A)(43) you look to state law in the
3 case of a state offense, the state of conviction, the
4 jurisdiction of conviction, to determine the nature of the
5 crime.

6 JUSTICE BREYER: But you still have to know whether that
7 word felony in (2) means any felony punishable as a felony under
8 the Controlled Substances Act.

9 MR. KNEEDLER: Right. And -- and a number --

10 JUSTICE BREYER: You have to know the answer to that.

11 MR. KNEEDLER: And a number of courts of appeals that have
12 looked at this in the sentencing context over the years have
13 concluded that the absence of that language is very significant
14 and the presence of the language that says any felony is also
15 significant.

16 JUSTICE SCALIA: Never mind sentencing. Let's get back to
17 the immigration. If I understand what you're now saying, if
18 you're convicted in state court of an action that is a federal
19 felony, but it's just a state misdemeanor, right, you look to
20 the state of conviction. And it would be a misdemeanor and the
21 immigration provisions would not take effect, is that right?

22 MR. KNEEDLER: Yes. That's not true.

23 JUSTICE SCALIA: It would be --

24 MR. KNEEDLER: That's not --- only true under this
25 provision of 1101(A)(43). The other -- the other provisions, F

1 and G and J and Q and T, that I mentioned that looked to the
2 sentence that may be imposed under state law or that was
3 actually imposed would likewise render someone in that situation
4 that was convicted of only a misdemeanor in state court, even
5 though it might be a felony under federal law, they would not
6 be, they would not be convicted of an aggravated felony because
7 of the way Congress chose to write 1101(A)(43).

8 JUSTICE KENNEDY: Is that a reasonable -- let's say the
9 statute is ambiguous, and you have convinced us there is no
10 constitutional requirement of uniformity, is it reasonable to
11 assume that Congress would want the different consequences to
12 depend on the state of conviction.

13 MR. KNEEDLER: I think it is.

14 JUSTICE KENNEDY: Is there anything in the legislative
15 history SUGGESTING that?

16 MR. KNEEDLER: As I say, I think it's on face of the
17 statute.

18 JUSTICE GINSBURG: Otherwise, if what Congress was trying
19 to do was to codify that practice of looking for an analogous
20 crime under state law, that's -- that seems to me at least what
21 Congress is trying do.

22 MR. KNEEDLER: The legislative history of the amendment in
23 1990 does not discuss the aspect of Barrett that went to the
24 comparison to decide what -- in what circumstances there would
25 be an analogous federal crime. It was clear that it wanted to

1 ratify the result that state crimes are covered.

2 But we think that that was evident from the 1988 amendments
3 to -- that both enacted the definition of aggravated felony,
4 revised the definition of drug trafficking crimes to delete the
5 requirement that it be a federal felony. That was deleted in
6 1988 and enhanced sentences under 1326 clearly by reference to
7 whether someone was convicted of a state felony without any
8 general federal --

9 JUSTICE GINSBURG: May I just switch gears for a moment
10 because your time is almost up, and we do have to address the
11 mootness problem in Toledo-Flores.

12 MR. KNEEDLER: In Toledo-Flores.

13 JUSTICE GINSBURG: Is the sentencing wrong in U.S. v. Hamdi
14 because it seems to me that U.S. v. Hamdi is on all fours with
15 respect to mootness.

16 MR. KNEEDLER: Yes. I think it's wrong under the Court's
17 decision in Spencer V. Kemna. Discretionary judgment that may
18 be made by someone else there is too speculative to constitute a
19 real case or controversy. And that's what I understand
20 Toledo-Flores to be arguing, is if you applied for discretionary
21 relief in the future it might, it might not because the sentence
22 might be reduced slightly.

23 I should point out that in the district court,
24 Toledo-Flores conceded if you didn't get eight level sentence
25 enhancement, he would go four level sentencing enhancement,

1 because this is a felony in the guidelines that would mean 24 to
2 30 months.

3 He would then have gotten 24 months under that sentencing
4 guideline which at the very -- he did here. And the term of
5 supervised release was mandatory. And a one-year term of
6 supervised release was standard. You would have gotten the same
7 time of supervised relief if you got four-level enhancement
8 rather than the eight-level enhancement.

9 I also think that it's far-fetched, given the fact that
10 Toledo-Flores had more than 12 entries in the United States and
11 various state offenses, that the determination whether the
12 Attorney General would actually grant the special release would
13 turn in marginal discretion on the sentence of that particular
14 case.

15 CHIEF JUSTICE ROBERTS: Thank you, Mr. Kneedler. Mr. Long,
16 you have four minutes remaining.

17 REBUTTAL ARGUMENT OF ROBERT A. LONG, JR.

18 ON BEHALF OF PETITIONER LOPEZ

19 MR. LONG: Thank you, Mr. Chief Justice.

20 In answer to Justice Breyer's question, Mr. Kneedler said
21 that a federal misdemeanor is a federal drug trafficking crime
22 under Section 924(C) if the state punishes it as a felony. He
23 said, well, the federal government never prosecutes federal
24 misdemeanors under Section 924(C). He said the reason is
25 because of 924(C) (1) (a), and the language there is it has to be

1 an offense for which the person may be prosecuted in a court of
2 the United States, but that language could be posited in the
3 court of the United States for a misdemeanor.

4 So the government is making an argument that to my
5 knowledge has never been accepted by any court, has not ever
6 been advanced by any government in a criminal context, and it
7 would significantly expand Section 924(C) and numerous other
8 criminal statutes that we cited in our brief that used the same
9 definition of drug trafficking crime.

10 Mr. Kneedler also said that the related felony provisions
11 in Section 1101(A)(43) referred to state law, but I think it's
12 just the opposite. There are two kinds. There are 21 of them.
13 Many of them say an offense described in 18 U.S. Code. That's
14 really what we are doing with one of those here, so it really
15 goes to federal law to include an offense of aggravated felony.

16 But clearly federal law is defining the offense. There are
17 other categories such as murder and theft that are defined in
18 general terms, but the government's position, as I understand
19 it, is, again, you use a generic uniform definition. You don't
20 pick any definition that the states may have, but the court just
21 granted --

22 CHIEF JUSTICE ROBERTS: I thought you just conceded that a
23 state offense could constitute illicit trafficking.

24 MR. LONG: Yes, Mr. Chief Justice, and I think this would
25 be clear. And I think this is consistent with the government's

1 -- in other cases illicit trafficking, it would be some
2 commercial element would probably be the definition the court
3 hasn't decided. States can define it more broadly. But the
4 actual definition just gives the definition of burglary.

5 JUSTICE SOUTER: You think a federal definition of a theft
6 offense.

7 MR. LONG: In the Taylor case for burglary the court has a
8 case you sort of pick a generic position. It may not come from
9 a federal statute.

10 JUSTICE ALITO: There is no revisions that would fall
11 within that, that theft offense.

12 MR. LONG: Well again the provision we are dealing with
13 looks to federal law the Controlled Substances Act and two other
14 statutes. My understanding of the government's position and
15 it's consistent with this court's cases in Taylor is that even
16 when it's a generic offense you would still have a uniform
17 definition and that is certainly consistent with the principle
18 of uniformity that applies both in criminal law and in
19 immigration law. And if there is any ambiguity at the end of
20 the day, ambiguities are supposed to be resolved in favor of
21 uniformity, uniform federal law, uniform federal criminal law
22 and uniform immigration law, effectively what the government is
23 arguing is that states can banish noncitizens and can do so by
24 enacting drug laws deciding to make a simple possession offense
25 a felony. That's a decision that a state would make almost

1 certainly for reasons that have little or nothing to do with
2 immigration and it's highly unlikely that Congress would have
3 left that determination to states. Our uniformity of aggravated
4 felonies is a condition for citizenship. If you're convicted of
5 an aggravated felony you may not become a U.S. citizen. You are
6 foreclosed from establishing good moral character so in fact
7 citizenship is at stake here in the uniformity clause is in
8 play. If there are no further questions, thank you.

9 CHIEF JUSTICE ROBERTS: Thank you, Mr. Long, the case is
10 submitted.

11 [Whereupon, at 11:04 a.m., the case in the
12 above-entitled matter was submitted.]

13
14
15
16
17
18
19
20
21
22
23
24
25

A	<p>advanced 21:19 45:6</p> <p>affixed 21:24</p> <p>aggravated 5:6 8:13,24 12:16 12:25 13:6,7 14:4 22:8,16 23:3 24:8,13 24:14,16,18,19 30:13 32:19,20 33:1,1,25 34:8 34:10,11,13,14 35:1,5,16 37:4 37:23 38:2,7 38:22,23 42:6 43:3 45:15 47:3,5</p> <p>agree 4:14,23 9:5 13:15 29:2 33:20</p> <p>agreed 6:22</p> <p>agrees 29:3</p> <p>Ah 10:4</p> <p>ahead 35:12</p> <p>aiding 31:15,17</p> <p>ALBERTO 1:6</p> <p>alcohol 15:4</p> <p>alien 21:13</p> <p>aliens 25:20</p> <p>alien's 21:10</p> <p>Alito 7:10,14,17 7:24 8:14,21 46:10</p> <p>ambiguities 46:20</p> <p>ambiguity 27:8 46:19</p> <p>ambiguous 9:9 9:10 11:6,12 42:9</p> <p>amend 32:23</p> <p>amendment 42:22</p> <p>amendments 43:2</p> <p>American 8:22</p> <p>amount 30:23</p>	<p>31:10</p> <p>analogous 11:9 11:10 42:19,25</p> <p>analysis 12:21 30:6</p> <p>answer 10:14 16:25 26:13 27:9 28:12 34:20 35:22 37:12 41:10 44:20</p> <p>answered 11:20</p> <p>answering 28:18</p> <p>ANTONIO 1:3</p> <p>appeal 14:13,13 14:15 17:1 20:1</p> <p>appeals 23:11 41:11</p> <p>APPEARAN... 1:21</p> <p>appendix 5:20 5:22 6:16 26:18</p> <p>applied 12:6,13 12:15 19:19 31:20 43:20</p> <p>applies 7:5,6 12:12,17,25 25:17,22 34:12 46:18</p> <p>apply 5:1 16:21 16:22 19:20 34:12</p> <p>applying 27:2</p> <p>approach 11:15</p> <p>April 14:16 16:1 16:4</p> <p>area 25:10</p> <p>arguing 43:20 46:23</p> <p>argument 1:19 3:2,5,8,11 4:3 4:6 8:21 9:3,16 10:6 11:8 14:9 16:3,3 17:14 22:4 23:12</p>	<p>40:5 44:17 45:4</p> <p>asking 36:16</p> <p>aspect 42:23</p> <p>assertion 38:4</p> <p>assessment 19:2</p> <p>Assistant 1:24</p> <p>assisting 31:18</p> <p>associate 15:5</p> <p>Association 8:22</p> <p>assume 42:11</p> <p>assuming 31:22 34:19</p> <p>Attorney 1:7 19:2,9 44:12</p> <p>authority 18:18 25:11</p> <p>authorize 27:1</p> <p>authorized 35:10 36:6</p> <p>automatically 14:19</p> <p>a.m 1:20 4:2 47:11</p>	<p>4:7 14:10 22:5 44:18</p> <p>believe 8:6 21:16</p> <p>best 18:18</p> <p>beyond 25:21 26:4 30:17 31:15</p> <p>BIA 11:16</p> <p>bit 6:7</p> <p>blue 5:21</p> <p>boil 32:5</p> <p>bought 23:11</p> <p>break 21:5</p> <p>Breyer 9:9,12 9:14,21 10:4 10:11,14 11:5 11:20 18:9 20:13,21 21:4 21:8 27:7 28:16 29:2,6,8 29:10,17,20,23 40:11 41:6,10</p> <p>Breyer's 44:20</p> <p>brief 5:21 8:7,22 9:3 18:20 21:10 26:18 45:8</p> <p>briefs 11:25</p> <p>bring 20:15</p> <p>bringing 23:15 34:7</p> <p>broad 12:8</p> <p>broaden 7:8</p> <p>broader 6:5,7 6:11,14 8:20 13:9</p> <p>broadly 46:3</p> <p>brought 28:14 39:19</p> <p>bump 40:21</p> <p>burglary 12:12 46:4,7</p>
		B		
		<p>B 37:5</p> <p>back 12:24 15:15 16:10,22 17:24 18:8 20:16,23 21:6 25:7 41:16</p> <p>balance 14:6</p> <p>banish 46:23</p> <p>bankruptcy 10:2 25:23,25 26:2</p> <p>Bar 8:22</p> <p>barred 25:7</p> <p>Barrett 11:7,14 11:15,15 42:23</p> <p>based 15:16 28:14 31:4</p> <p>beem 15:12</p> <p>begins 5:22,22</p> <p>behalf 1:22,25 2:4 3:4,7,10</p>		
			C	
			<p>C 3:1 4:1 10:17 12:22 13:14</p>	

22:17,20 23:15 23:19 32:5,11 34:6,7 38:22 39:2 40:24,24 40:24 call 13:19 called 19:7 calls 36:20,21,22 36:23 Campo 21:9,13 21:16 cancellation 24:15 34:15 capable 10:20 careful 10:24 carry 6:2 case 7:25 9:10 9:22,23,24 11:21 12:1 15:14 16:8,15 17:23 18:2,19 18:21 20:4 21:11,17 26:9 26:25 31:14,22 31:24 33:18,21 36:20 39:8 41:3 43:19 44:14 46:7,8 47:9,11 cases 11:23,25 12:10,14 17:2 18:12 20:4 21:20 28:3 31:8 37:2 39:18 46:1,15 categories 45:17 category 8:23,24 9:8 37:22 certain 25:24 26:7 31:5 38:1 certainly 11:7 30:23 33:1 46:17 47:1 change 15:20 32:14,16,22,23 changes 32:18 character 47:6	charged 31:14 charges 25:11 Chief 4:3,8 6:2,7 12:15,20 14:7 14:11,21,24 15:3,6,10 17:18 18:1 22:1,3,6 30:3,5 35:15 44:15,19 45:22,24 47:9 children 16:14 chose 42:7 Circuit 18:22,22 circumstances 20:12 28:15 42:24 cited 18:20 21:9 45:8 citing 11:20 citizen 16:14 18:6 47:5 citizenship 19:22 25:18,19 47:4,7 classification 37:18,19 classifications 37:17 clause 25:22,23 47:7 clear 11:14 32:9 42:25 45:25 clearly 4:13 6:8 7:2 26:21 43:6 45:16 client 16:18 18:2 20:13 clue 27:22 cocaine 30:15 Code 4:9 5:5 6:16 45:13 codify 11:8 42:19 codifying 11:15 collateral 16:7 17:5 18:17 come 16:13,22	17:24 25:13 31:6 46:8 comes 28:10,21 30:22 coming 25:7 commercial 46:2 committed 22:15 23:4 25:6 28:4 committing 18:16 comparison 42:24 completely 17:4 component 8:25 concede 7:6 10:5 10:6,11,16 30:12 conceded 30:11 43:24 45:22 conceivable 16:17,18,23 19:23 21:1,4 concession 10:13,15,22 11:1 concluded 41:13 conclusion 22:16 23:2 30:8 36:2 concrete 20:5 concurrent 11:22 12:5 condition 17:16 47:4 conditional 21:14 conditions 15:1 15:20 21:15 conduct 4:16,20 5:3,13 10:19 21:22,25 22:10 22:13 25:24 26:7 27:20 29:10,12 31:9 33:12	confirmation 36:4 confused 40:10 Congress 5:12 5:17 6:9 7:4 8:17 9:7 10:17 11:8,14 13:12 13:22 25:11 26:5 30:20 32:16 35:4 36:17 42:7,11 42:18,21 47:2 connection 32:17 consecutive 11:22 12:5 consequence 16:7 17:7,12 36:8 37:2 consequences 17:5 18:17 20:3 21:23 23:2,6,18 24:6 24:20 25:24 27:6 33:24 34:10,10 42:11 consider 17:8 considerable 11:13,19 considered 37:5 consistent 45:25 46:15,17 consistently 28:8 constitute 29:13 29:16 30:12 31:9 43:18 45:23 constitutes 35:16 Constitution 25:11,13 constitutional 25:16 42:10 construction 6:11 25:4 contention	14:13 context 25:5 41:12 45:6 continuing 20:5 21:11 contrast 17:6 control 36:14 controlled 4:10 4:13,14,17,19 4:22 5:3,9,14 5:15 6:4,5,19 7:11,20 8:4,12 8:16,18 9:1,5,6 9:11,17,18 10:20 11:18 13:14,16,17 22:11,14 27:15 27:18,21 29:13 29:19 32:7 36:11,13 40:14 40:16,25 41:8 46:13 controversy 43:19 convicted 23:4 24:7,14,16 25:10 34:13,14 38:6 41:18 42:4,6 43:7 47:4 conviction 4:24 10:18 17:13 21:22 23:7,9 23:13,14,17,25 24:5,19,20,22 26:21,23 32:1 32:25 33:2,24 33:24 34:1,4,5 34:16,18 37:8 38:4,17 41:3,4 41:20 42:12 convictions 23:24 convinced 42:9 cooperate 20:19 correct 19:3,4 20:24 29:8
---	---	--	--	---

35:2	28:14,20,22	deciding 46:24	13:10,12,17,21	draw 36:2
correctly 31:10	29:1,4 30:7	decision 9:25	13:21,24 45:13	driving 18:15
corresponding	32:6 34:1,9	19:7 28:20	desirable 21:20	drug 4:9,16 5:5
8:3	35:5,9 36:15	43:17 46:25	determination	5:10 6:17,24
Counsel 22:1	36:20 37:3,4	decisions 16:5	34:8 44:11	7:3,12,22
count 11:17	39:8 40:12,13	deemed 37:23	47:3	11:17 12:22
13:10 35:21	41:5 42:20,25	defeats 20:6	determine 23:3	13:11,13 14:1
countries 15:16	44:21 45:9	defendant 30:24	24:23 34:1	22:8,20 26:9
country 13:2	crimes 4:16 5:10	31:4 39:14	37:8 41:4	30:9,15 31:2
16:21 17:9,11	11:17 26:10	defendant's	determines	36:1,14 40:12
25:21 36:14	31:20 43:1,4	4:20	24:24	40:13 43:4
counts 10:9 19:2	criminal 4:15	Defender 1:24	determining	44:21 45:9
course 8:10 16:5	6:24 7:6 10:17	define 7:18 46:3	37:14	46:24
16:9	12:23 13:15	defined 4:9 7:13	developed 8:22	drugs 20:15,22
court 1:1,19 4:8	16:21 21:11	9:10 27:25	develops 20:16	30:18,23 31:4
6:20,23 7:1	23:23,24 45:6	31:20 37:4	different 6:13	31:5,19
9:25 10:1 12:6	45:8 46:18,21	45:17	8:14 18:6,9,14	drug-trafficki...
12:11 14:12,25	Crooks 1:24 3:6	defines 6:17	31:7 32:1,4	27:14,14,25
15:8,13,19,21	14:7,9,11,23	defining 45:16	37:19 42:11	30:7
15:24 16:6	15:4,8,14 16:1	definition 5:1	direct 17:7	D.C 1:15
17:1,4,21 18:6	16:4,25 17:14	7:2,5 9:7 12:11	direction 21:17	
19:25 20:5,9	17:22 18:4,12	12:22 13:9,13	25:13	E
20:19 21:10,12	18:20 19:4,13	14:1 22:20	directly 26:13	E 3:1 4:1,1 5:21
21:20 22:7	19:17,21,25	29:1 32:19,20	30:19	5:22,25 6:10
27:2 28:19,23	20:10,18,24	34:11,22,25	discretion 19:9	12:12
28:24 36:5	21:2,8 22:2	35:5 36:1 39:9	44:13	earlier 35:14
37:5 38:6 39:7	CSA 6:21	40:15,18,24,24	discretionary	EDWIN 2:2 3:9
40:20 41:18	cut 15:20	43:3,4 45:9,19	43:17,20	22:4
42:4 43:23	D	45:20 46:2,4,4	discuss 42:23	effect 20:2 32:11
45:1,3,5,20		46:5,17	dispensations	33:5 36:8
46:2,7	D 4:1	definitional 40:9	25:8	41:21
courts 23:11	Dakota 9:15	delete 43:4	distinguishes	effective 20:11
37:7 41:11	10:8 40:19,20	deleted 43:5	20:4	effectively 15:23
court's 12:14	date 7:22 30:14	Department 2:3	distribute 7:16	17:9 46:22
15:18 16:5	day 46:20	depend 42:12	31:2,11	eight 43:24
43:16 46:15	DC 1:22 2:3	dependent 15:1	distribution	eight-level 44:8
covered 43:1	dealing 30:18	depends 17:8	7:16	either 11:25
create 30:23	46:12	deportation	district 14:25	26:6 39:3,3,10
creates 37:7	deals 31:1 36:19	14:20 24:12	15:8,12,18,19	39:13,23
crime 4:9,19 5:5	debating 34:21	34:14	15:21,24 17:21	element 7:15
6:24,25 7:1,2,3	decade 11:16	deported 14:17	20:11 43:23	31:19 46:2
7:12 10:7	decide 9:23	15:12 16:21	disuniformity	eligibility 25:20
11:10 12:22	12:21 20:22	17:24 20:14	25:10	em 28:7
13:11,14 14:2	31:14 42:24	21:10,12	doctrine 16:16	empirical 27:9
22:20 23:4,8	decided 11:21	Deputy 2:2	doing 11:14	27:23
24:23 27:1,3	12:23 20:4	described 12:17	45:14	enacted 43:3
27:14,14,15,25	46:3	12:25 13:4,5,8	double 38:10	enacting 46:24

<p>enactment 32:18 enforced 19:16 engage 27:25 engaged 20:22 30:24 engages 10:7 enhanced 24:17 39:15,25 40:8 43:6 enhancement 4:25 23:5,25 34:16 38:21 40:4 43:25,25 44:7,8 enhancing 32:25 entering 18:10 entirety 13:12 entries 44:10 equates 30:9 ESQ 1:22,24 2:2 3:3,6,9,12 established 26:5 establishing 47:6 et 10:9 evaluated 19:6 evaluating 19:7 everybody 29:3 evident 43:2 exactly 32:12 example 6:10 12:11 13:4 15:4 25:22 26:3,16 30:21 37:22 excess 16:10 exemption 26:2 exercise 16:17 16:17 19:23 exercises 16:23 expand 13:21 45:7 expired 17:2,4,5 17:9 explained 32:20 explicit 35:13</p>	<p>express 5:16 12:19 36:6 expressed 19:20 expressly 25:11 extend 17:21 extent 9:6 extinguished 14:19 extradited 15:15</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>f 26:23 37:23 41:25 face 15:9 42:16 fact 8:10 9:2 21:12 22:17 27:5 35:25 44:9 47:6 factor 16:11 factors 19:6 facts 31:24 fall 7:18 46:10 far 23:11 28:18 far-fetched 44:9 favor 46:20 favorable 16:11 features 22:21 23:1 federal 1:24 4:11,19,21,25 5:4,15 6:5,25 7:2,5,6,8 8:8 8:11 10:2,3,9 10:18 11:2,18 12:6,18 13:1 13:20 20:20 21:23 22:12 26:16 28:20,21 29:1,3 30:19 31:1,9,12,21 32:8,12 33:6,7 33:11,14 34:7 34:9,24 35:11 35:17,24 36:9 36:11,13,15,19 36:20,21,22,23 37:13,14,17,18</p>	<p>37:19,25 38:7 38:13,14 39:8 39:14,19,24 40:2,3,6,7,20 41:18 42:5,25 43:5,8 44:21 44:21,23,23 45:15,16 46:5 46:9,13,21,21 felon 34:10 felonies 4:18,25 7:5 8:24,25 11:17 13:17,18 22:16 30:13,16 38:2 47:4 felony 4:10,12 4:13,21,21 5:3 5:6,8 6:14 8:3 8:13 9:4,6,10 9:14,16,18,18 9:21 10:1,3,7,8 11:2,3,9 12:16 12:25 13:6,7 13:14,16,20 14:4 22:9,12 22:14 23:3 24:8,13,14,16 24:18,19,24 26:12 27:15,17 27:18,20 28:21 29:13,17 31:1 31:6,9 32:6,8 32:12,19,20,25 33:1,1,2,6,8,10 33:14,17,25 34:2,8,12,13 34:14,24 35:1 35:6,17,21,24 35:24 36:10,12 36:21,23,23 37:4,6,9,16,24 38:7,7,21,23 38:23 39:6,10 39:13,14,23,24 40:3,6,13,18 40:19,25 41:7 41:7,7,14,19</p>	<p>42:5,6 43:3,5,7 44:1,22 45:10 45:15 46:25 47:5 field 36:14,15 filed 15:22 find 5:20 finding 21:15 first 4:3 5:11 7:11 9:23 12:21 14:12 15:12 18:10 23:2 25:16 28:11 40:15 five 30:15 40:12 40:21 focus 32:5 focusing 14:1 33:4 follow 34:16 38:13,15 followed 11:16 following 24:18 follows 22:16 footnote 8:6 foreclosed 47:6 foreign 13:2,7,8 15:16 found 18:22 21:20 22:15 four 26:23 43:25 44:16 fours 43:14 four-level 44:7 friends 20:21 further 14:5 17:16,19 35:19 47:8 future 16:13 17:23 18:3,25 43:21</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>g 4:1 5:12,21,23 5:25 26:24 37:3 42:1 gears 43:9</p>	<p>general 1:7 2:2 8:23 19:9 43:8 44:12 45:18 generally 26:5 General's 19:2 generic 45:19 46:8,16 getting 31:6,21 GINSBURG 11:6 15:25 16:2 18:17 19:1 25:1,3 31:8 42:18 43:9,13 give 16:9 30:6 40:4 given 36:24 37:16 44:9 gives 46:4 go 27:12 35:12 40:12 43:25 goes 19:5 28:18 45:15 going 14:4 15:6 16:20,20,22 18:2 19:11,15 26:4 27:11 32:1 37:18 Gonzales 1:6 4:4 6:23 11:22,24 12:4 28:19,24 Gonzalez 39:8 good 11:11 26:2 47:6 gotten 44:3,6 government 6:12 8:6 10:10 10:12 13:9 20:15,22 23:10 28:2,5,7 38:13 38:14 44:23 45:4,6 46:22 government's 7:7 9:16 14:12 23:12 45:18,25 46:14 graduated 31:3</p>
--	--	--	---	---

grams 30:15	Houston 1:25	include 5:18	32:11	16:2,15,25
grant 44:12	hypothesis	6:10 7:5,8 8:20	interpret 8:1	17:8,18 18:1,9
granted 19:8	37:15	13:23 45:15	23:23	18:17 19:1,10
45:21	<hr/> I <hr/>	included 8:16	interpretation	19:14,19,23
gravity 36:9,10	identical 25:6	9:2,8 11:10	7:7 21:18	20:7,13,21,25
37:14	identifying 26:6	includes 8:15	25:13 28:10	21:4,8 22:1,3,6
ground 24:12	26:8	33:2	interpreted 10:2	22:22,24 23:10
guess 21:4	illegal 24:18	including 9:4	25:24 28:8	23:16,19,22
guideline 44:4	32:24	21:21	intoxicated	24:3,9,11 25:1
guidelines 44:1	illicit 7:11,14	inconsistency	18:15	25:3 27:7
guilty 31:16	8:11,16,18,23	38:10	involved 20:15	28:16 29:2,6,8
gun 28:1,5 40:11	9:4,8 14:2,3	incorporate	29:12 31:10	29:10,17,20,23
guy 40:21	30:7 45:23	22:19	involving 16:15	30:3,5 31:8,22
G3 6:3	46:1	incorporated	37:2	32:14 33:4,10
<hr/> H <hr/>	immigration	23:19,22 30:2	irrespective	33:13,18 34:3
Hamdi 18:21,21	19:6 21:23	40:23	21:24	34:19,21 35:3
19:4 43:13,14	23:6,18 24:5,6	incorporates	issue 26:4	35:12,15,18
happen 15:6	25:5 31:17	22:25	I.e 36:20	36:8,12,16
20:18 21:5	32:18 35:6	incorporation	<hr/> J <hr/>	37:10,11,12
happened 15:11	36:18,24 38:18	24:7	j 26:19 42:1	38:3,10,17,20
36:5	38:19 39:2	indication 6:22	Jerome 9:24	38:25 39:5,10
happens 22:19	41:17,21 46:19	20:25 21:2	11:21,21,24	39:13,17,22
22:22 27:24	46:22 47:2	indications 5:7	12:8,8,12,19	40:5,10,11
36:12	impact 18:24	ineligibility	21:21	41:6,10,16,23
happenstance	25:25	24:15	JOSE 1:3	42:8,14,18
25:9	implication 5:17	ineligible 34:15	JR 1:22 3:3,12	43:9,13 44:15
harm 37:7	6:8 30:24	information	4:6 44:17	44:19,20 45:22
hear 4:3 14:8	importance	20:17	judgment 43:17	45:24 46:5,10
21:19	36:19	infused 27:4	jurisdiction	47:9
heard 20:13,14	important 22:17	ingenious 16:23	14:25 15:19,19	justices 35:14
30:11	29:21 30:17	initial 8:5	17:20 18:7	<hr/> K <hr/>
hearing 31:17	33:16,16 36:17	initially 31:14	23:9 24:21	K 5:12,22,23,25
heavily 19:2	imposed 26:9,10	injury 20:6	34:1,4,17 41:4	keep 18:18
held 10:1 19:25	26:20,22,25	inserted 32:8	jury 31:13	Kemna 17:3
21:10	27:3 32:22	insist 28:5	Justice 2:3 4:3,8	43:17
helps 12:21	37:24 42:2,3	insisted 30:20	4:23 5:2,19,21	Kennedy 4:23
Heronka 19:7	impossible	17:17,18 30:22	5:24 6:1,2,7	5:2 10:22
highly 47:2	17:11,12	instances 15:14	7:10,14,17,24	11:20 12:7,9
history 11:13	imprisonment	26:7,7 33:13	8:14,21 9:9,12	13:23 22:22,24
42:15,22	16:9 18:23	intended 30:25	9:14,21 10:4	33:18 42:8,14
hold 20:1	INA 12:24 22:9	intent 7:16 31:2	10:11,14,22	Kenya 16:6
homestead 26:1	23:1,3 24:3,20	31:11	11:1,5,6,20,20	key 4:11 27:12
Honor 16:1,4	33:24 34:12	intention 19:20	12:7,9,15,21	33:18,20
18:4,21 19:4	inadmissibility	32:14	13:23 14:7,11	kind 25:10
19:13,21 20:10	16:12 18:24	interested 28:12	14:21,24 15:3	kinds 45:12
20:24	19:8	interesting	15:6,10,25	Kneedler 2:2

3:9 22:3,4,6,23 22:25 23:14,17 23:21 24:2,4 24:10,12 25:1 25:2,15 28:13 28:17 29:5,7,9 29:15,18,21,25 30:4,10 31:13 31:25 32:10,16 33:4,8,12,15 33:20 34:6,19 35:2,7,13 36:3 36:11,13 37:1 37:21 38:3,8 38:16,19,22 39:4,7,12,16 39:18 40:1,9 40:22 41:9,11 41:22,24 42:13 42:16,22 43:12 43:16 44:15,20 45:10 know 16:16,18 19:13 23:11 27:9 35:18 41:6,10 knowledge 28:13 45:5	17:23 18:3,10 22:15 24:22,24 25:12,25,25 26:15,16,23 27:1,6,17 29:11,12 31:12 31:21 32:13,18 32:20 33:2 34:23,24 35:11 35:11,17,21 36:18,19,20,21 36:22,22,24 37:8,13,13,14 37:25 38:18,19 39:1,24,24 40:2,6,7 41:2 42:2,5,20 45:11,15,16 46:13,18,19,21 46:21,22 laws 25:12 26:2 35:6 46:24 lead 36:2 leads 30:8 learns 15:8,21 leaves 17:9,11 left 47:3 legal 18:16 legislative 11:13 12:19 42:14,22 length 19:1,5 26:11 leniently 38:14 let's 41:16 42:8 level 43:24,25 light 27:10 likewise 42:3 limit 12:7 limits 12:10 linguistically 27:8 listed 7:23 little 6:13 47:1 Long 1:22 3:3 3:12 4:5,6,8 5:2,20,25 6:7 7:14,20 8:6,21	9:12,20,24 10:10,12,16,24 11:4,12 12:4,9 12:20 14:1,7 25:14 30:11 44:15,17,19 45:24 46:7,12 47:9 look 6:8 9:23,24 11:12 16:6,22 17:4 23:8,8 24:21,23 25:2 27:5,21 33:16 33:21,25 34:3 34:17 35:9,10 38:17 39:1,1,3 40:15 41:2,19 looked 6:10 37:8 38:4 41:12 42:1 looking 6:3 42:19 looks 26:14 32:20 36:5 46:13 Lopez 1:3,23 3:4 4:4,7 44:18 Lopez's 5:21 31:14 lose 9:22 39:11 39:14 lot 28:6 30:18	12:9,13 25:24 27:16,19 38:5 38:5 39:14 44:1 meaning 22:18 means 4:15 7:15 13:16 26:25 27:22 30:1,2 32:6 33:6 40:13 41:7 meant 5:17 6:9 meet 5:1 meets 40:18 mention 6:15 11:24 32:1 36:7 37:21 mentioned 11:25 33:23 35:8,13,14 42:1 mentioning 12:8 mere 7:24 8:15 8:20 merely 32:15 34:24 merits 21:17 Mexico 14:17 16:19 17:21,24 20:14 mileage 11:7,13 11:19 mind 28:11 36:17 41:16 minimal 38:11 minimum 26:8 28:6 minor 37:15 minutes 44:16 misdemeanor 5:9 9:12 13:20 27:18 28:4 29:17 34:25 35:5 36:9,21 36:22 37:15,25 38:1,6 40:2,7 40:17 41:19,20 42:4 44:21	45:3 misdemeanors 7:9 13:18 44:24 mistake 27:12 modification 13:13 modify 15:20 moment 43:9 money 13:4,5,9 months 15:25 44:2,3 moot 14:13,14 17:2 18:2,19 20:1,8 21:17 mootness 21:12 43:11,15 moral 47:6 morning 4:4 move 12:24 murder 45:17
<hr/> L <hr/>				<hr/> N <hr/>
labels 21:24 Lane 17:3 language 5:8,13 10:25 12:20,24 28:22,25 33:5 33:16 39:20,21 41:13,14 44:25 45:2 laundering 13:5 13:6,9 law 4:20,21,25 6:4,9,10,19 8:8 9:15 10:8,9,18 10:19 11:10 12:6,18 13:1,1 13:7,7,19,20 15:14 17:17,19				N 3:1,1 4:1 naturalization 25:18 nature 34:1 41:4 necessarily 9:17 35:19,22 36:2 need 23:12,14 23:17,25 never 17:1 19:25 25:23 41:16 44:23 45:5 noncitizens 46:23 nonimmigrant 16:13 19:18 notable 30:21 noticed 11:24 number 12:14 16:11 31:2 32:21 41:9,11 numerous 35:9 45:7
		<hr/> M <hr/>		<hr/> O <hr/>
		Macau 37:6 making 10:12 27:11 31:1 45:4 mandatory 28:1 44:5 marginal 44:13 matter 1:18 19:7 37:25 47:12 maximum 21:24 mean 6:10 8:1 9:17,21 10:2,4 10:10,17 12:6		

<p>O 3:1 4:1 obvious 36:18 occasionally 20:18 occupies 36:15 occupy 36:14 October 1:16 odd 36:24 37:16 odds 37:13 offense 4:24 6:17,18,19,20 7:15,18 8:3,11 12:17,25 13:4 13:5,8,10,11 13:17,21,21,24 14:3 22:8 27:6 28:4 32:21 35:16 37:6,14 37:22,23 39:19 41:3 45:1,13 45:15,16,23 46:6,11,16,24 offenses 5:9,14 5:17,18 6:13 6:14 7:7,17,20 7:21,24 8:8,15 8:20 9:2 16:22 30:12 31:4,15 33:2 37:25 38:1 44:11 office 17:21 officials 19:6 Okay 40:12,19 omitted 4:12 once 12:23 17:9 17:11 one-year 44:5 open 28:11 operate 30:21 operated 40:2 operative 22:19 38:24 opinion 12:1 opposite 45:12 oral 1:18 3:2,5,8 4:6 14:9 22:4 order 22:8 23:17</p>	<p>23:25 30:20 ordinary 8:2,19 outcome 12:2 outlined 7:25 outside 14:22,23</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 4:1 page 3:2 5:22 18:20 26:18 paper 16:11 paragraph 12:17 parallel 6:11 8:8 25:22 parole 21:5 paroled 20:19 particular 21:25 23:7 35:23 44:13 parties 4:14 pattern 36:4 patterned 30:19 pause 30:6 penalties 24:17 penalty 32:25 penultimate 35:15,21,24 people 14:22,23 15:11,15 20:18 21:4 25:6 perfect 27:7 perfectly 9:9 32:9 period 15:23,23 person 10:7 17:15 18:15 19:8,11 20:14 28:3 35:10 45:1 persons 15:5 17:24 Petitioner 1:4 1:10,23,25 3:4 3:7 4:7 14:10 30:10 44:18 petitioners</p>	<p>21:19 petitioner's 22:13 phrase 4:12 7:11 8:5 9:3 10:1 33:6 physical 37:7 physically 27:16 pick 5:23 20:21 27:19 45:20 46:8 picked 13:12 piece 14:2 place 25:2 37:1 play 47:8 pleaded 31:16 please 4:8 14:11 22:6 plugged 41:1 point 15:17 16:8 17:20 19:18 21:3,9,18 24:4 24:19 26:13 27:12 28:2 29:21 34:20,21 43:23 pointed 19:5 21:12 28:19 points 21:16 32:1,2 portion 14:18 posit 28:15 37:20 posited 45:2 position 5:2 8:10 23:11 38:8 45:18 46:8,14 possess 31:2 possessing 31:5 possession 7:16 7:22,24 8:15 8:20 9:1 28:4 30:8,12,14,14 30:15,22 31:3 31:11,16,18,23 40:16 46:24 possibility 16:8</p>	<p>18:22 19:11,12 19:15,17 practice 11:9 42:19 Precisely 11:5 predicate 7:7 prepared 10:5,6 27:7 28:6,7,9 presence 41:14 present 20:9 pressed 9:3 pretty 11:14 13:3 prevail 20:8 primarily 14:14 16:2 principle 12:6 12:13,13,19 26:14 46:17 principles 27:3 prior 17:13 32:11 prison 14:16 15:9 16:10 18:8 21:24 probably 32:10 46:2 probation 17:16 17:20,21 18:15 21:10 problem 31:6 37:12 43:11 proceedings 20:19 progeny 21:21 promotes 21:19 pronounce 7:23 proper 25:2 properly 22:15 prosecuted 6:20 7:1 45:1 prosecutes 44:23 prosecuting 28:3 prosecution 23:15 28:23</p>	<p>34:7 40:20 prosecutions 28:14 provision 5:3 6:3,16,17 7:6 22:19 25:17 30:13 35:14 38:21 41:25 46:12 provisions 5:11 5:21 6:8 32:4 41:2,21,25 45:10 Public 1:24 punish 29:11 punishable 4:10 4:11,15,18,20 4:22,24 5:8,13 6:5,18,21 8:12 8:25 9:4,6,11 9:16,18,22 10:7,8,20 13:14 22:10,14 27:15,17,20 29:18 32:7 33:6,11,12,14 33:17 40:14,16 40:17,25 41:7 punished 4:17 10:20 punishes 44:22 punishment 32:22 35:10 36:6 purchasing 31:18 purpose 32:5 purposes 7:3 12:12 31:23 34:25 35:6 36:17 37:18 38:5,18,20 39:1,2,11 put 32:3</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 31:11</p>
--	--	---	--	---

<p>qualify 19:18 quantity 31:4,5 question 8:14 10:19,23 20:7 27:9 28:18 29:25 33:22 35:22 38:23 39:22 44:20 questions 14:5 31:24 47:8 quite 28:12 36:3</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>r 1:6 4:1 26:24 rape 7:22 30:14 ratify 43:1 read 8:5 9:3 33:18 reading 34:22 35:4 36:22 40:20,22 readmitted 19:11,15 real 16:24 43:19 realistic 17:12 19:10,12,14 realize 36:16 really 10:16 16:18 19:16 32:5 45:14,14 reason 7:4 30:20 44:24 reasonable 42:8 42:10 reasons 25:16 33:23 47:1 REBUTTAL 3:11 44:17 recall 31:10 recidivist 30:14 recognize 14:4 record 21:2 reduce 16:10 reduced 43:22 reducing 18:23 reduction 16:8 reentries 32:24</p>	<p>reentry 24:18 refer 26:19 35:20 reference 5:16 7:12 35:23,23 43:6 referred 5:13 45:11 referring 6:9 26:22 refers 4:13 6:25 7:2 24:13,13 refused 15:19 reimprisoned 21:14 reinforce 23:2 related 45:10 relating 6:4 release 14:18,19 14:21 15:1,11 15:15,17,20,21 15:22,23 16:20 17:10,12,25 18:7,13 19:16 21:14 44:5,6 44:12 released 14:16 relevant 22:18 relied 16:2 relief 43:21 44:7 remain 25:20 remaining 4:12 44:16 removal 24:15 34:15 render 42:3 renders 28:25 28:25 reply 18:20 repudiation 12:19 require 34:4,5 requirement 25:17 28:20,25 38:9 42:10 43:5 requirements</p>	<p>22:10 requires 24:5 37:6 resentenced 20:8 resentencing 20:10 reserve 14:5 resolved 46:20 respect 12:9 17:14 18:5,9 18:14 23:5 25:16 26:4,9 28:18 32:24 43:15 respects 32:21 Respondents 2:4 3:10 RESPONDO... 22:5 response 10:23 result 43:1 retains 18:6 retrospective 16:8 retrospectively 18:23 revised 43:4 revisions 46:10 revoke 18:7 revoked 18:14 21:14 REYMUNDO 1:9 right 6:1 9:14 11:3,4 15:13 23:21 29:9,23 34:19 37:1 38:15 39:11,15 39:25 41:9,19 41:21 rise 37:2 40:4 risk 37:7 ROBERT 1:22 3:3,12 4:6 44:17 ROBERTS 4:3</p>	<p>6:2 12:15 14:7 14:21 15:3,6 15:10 17:18 18:1 22:1,3 30:3,5 44:15 45:22 47:9 role 34:8 room 25:3 rules 25:18 run 15:25</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>s 2:2 3:1,9 4:1 22:4 26:24 sanctions 4:15 saved 21:11 saying 11:9 13:23 18:4 33:5 35:19 39:23 41:17 says 7:3 9:15 10:17,18 12:16 16:16 28:22 33:8 35:16,18 37:16 40:11,25 41:14 Scalia 5:19,21 5:24 6:1 16:15 16:25 17:8 19:10,14,19,23 20:25 23:10,16 23:19,22 24:3 24:9,11 34:3 37:11 38:3,10 38:17,20,25 39:5,10,13,17 39:22 40:5,10 41:16,23 scheme 15:17 second 18:21,22 31:25 34:20 section 4:9 5:5 5:10,11 6:16 7:8,23 13:5 22:9,17 23:14 23:15 24:17 26:6 27:5</p>	<p>32:24 37:5 39:2 44:22,24 45:7,11 sections 5:19,24 6:18 see 12:4,10 24:22 35:25 40:15 send 18:8 sense 8:19 11:11 23:7 24:21 33:15,25 34:17 sensibly 30:21 sentence 14:14 14:15,18 16:7 16:11 17:1,2,5 17:6,9,10 19:1 19:5 20:1,2,5 21:11 23:24 26:8,11,20,22 26:24 27:2 33:19 34:16 35:15,21,25 37:24 39:15,25 40:8 42:2 43:21,24 44:13 sentenced 35:11 sentences 12:5 17:3 23:5 43:6 sentencing 11:23 21:23 27:3 41:12,16 43:13,25 44:3 separate 34:9 seq 10:9 series 31:15 serious 6:17 37:7 seriously 38:12 Serrano 21:9,13 21:16 set 21:25 26:18 severity 32:21 shed 27:10 show 8:17 shows 31:19 significance</p>
---	--	---	--	--

<p>38:24 significant 32:17 41:13,15 significantly 7:8 45:7 similar 5:12 6:17 20:12 simple 7:22 9:1 13:4 28:4 30:8 39:22 40:16 46:24 simply 5:8 10:19 single 12:11 situation 37:20 42:3 situations 39:19 slightly 43:22 soliciting 8:9 Solicitor 2:2 sorry 38:12 sort 21:19 46:8 SOUTER 34:19 35:3,12,18 36:8,12,16 37:10,12 46:5 South 9:15 10:8 40:19,20 Southern 20:11 special 44:12 specific 6:18 33:5 specifically 12:16 specified 22:11 30:16 speculative 43:18 speech 8:2,19 Spencer 16:5 17:3 43:17 stake 47:7 standard 26:10 26:16 44:6 standards 26:6 standing 16:15 16:16 30:1 state 4:18,20,21</p>	<p>4:21,23 5:16 5:18 6:4,9,10 6:19 7:5 8:2,7 8:11 10:18,19 11:3,10,17 12:5,18 13:1,6 13:19,19,24 14:3 20:20 22:8,15 24:22 24:24 25:25 26:15,21,22,25 27:1,2,2,6 29:11,12 30:18 31:20 32:20 33:2,6,10,14 34:23 35:11,17 35:20,24 36:5 36:6,12,22 37:8,13,16,17 37:18 38:4,6 38:11,11,12,13 38:14,15,17 39:1,13,24 41:2,3,3,18,19 41:20 42:2,4 42:12,20 43:1 43:7 44:11,22 45:11,23 46:25 statement 12:8 states 1:1,12,19 4:5 6:20,23 7:1 9:25 11:21 13:8 14:22,24 16:20 17:15 18:11,21 21:21 21:22,25 25:9 28:24 31:3 44:10 45:2,3 45:20 46:3,23 47:3 State-law 26:1 status 23:3 24:23 statute 6:15,25 8:5 9:15 10:2 10:17 11:6 12:16,23 13:15</p>	<p>22:24,25 25:4 27:24,24 28:8 30:19,21 31:1 32:4,8,9 33:11 33:14 34:22 35:4,20,23 36:5 37:6 40:21,22 42:9 42:17 46:9 statutes 4:11 5:4 5:14,16 11:18 22:12 30:18 31:9 33:7 45:8 46:14 statutory 15:17 32:4 Stevens 11:1 20:7 31:22 32:14 33:4,10 33:13 34:21 straightforward 13:3 strange 35:3 38:25 strong 30:23 36:4 strongly 21:16 structure 33:22 35:8 subject 4:15,17 14:15,15,17,24 14:25 15:11,18 17:15 28:23 34:13,15 subjected 19:16 submitted 47:10 47:12 subparagraph 37:3 subparagraphs 26:17,19,23 subsection 32:6 37:5,22 subsections 5:25 35:9 substance 6:4 7:12 8:16,18</p>	<p>29:13 36:11 Substances 4:10 4:13,14,17,19 4:22 5:4,9,14 5:15 6:6,19 7:21 8:4,12 9:1 9:5,7,11,17,18 10:21 11:18 13:15,16,18 22:11,14 27:16 27:18,21 29:19 32:7 36:13 40:14,16,25 41:8 46:13 substantial 30:22 suggest 8:7 SUGGESTING 42:15 superfluous 8:5 supervised 14:18,19,21 15:1,11,15,16 15:20,21,22,23 16:20 17:10,12 17:25 18:7,13 19:16 44:5,6,7 supervision 14:23 15:2 17:11 suppose 36:18 supposed 9:23 26:15 46:20 Supposing 20:7 Supreme 1:1,19 sure 37:11 40:17 40:17 suspicious 28:10 29:24 switch 43:9</p>	<p>23:10 talk 12:2 talked 18:5 talking 6:13 17:22 23:7 25:19,19,20 26:21 34:9 Taylor 12:10 21:21 46:7,15 tell 28:6,7,9 telling 34:4 40:6 tension 11:23,25 12:4 36:25 37:17 tequila 16:19 term 4:11 6:14 7:3 8:19 12:16 12:24 16:9 17:15 18:23 21:11 30:6 32:6 34:7 38:23 44:4,5 terms 11:23 17:20 21:24 26:6,11 32:21 45:18 test 27:23 testified 31:17 testify 20:19 Texas 1:25 textual 5:7 6:22 thank 14:7 22:1 22:2 44:15,19 47:8,9 theft 37:22,23 38:1 45:17 46:5,11 then-expired 16:7 theory 30:8 thing 21:1 27:13 28:19 35:8 40:23 things 34:16 think 6:12 8:3,9 8:9 11:13,19 12:21 13:3</p>
---	--	---	--	---

<p>23:1,6 25:15 26:9 28:17 30:11 32:10 33:15,15 34:17 35:7,15 36:3,3 36:4 37:22 39:12 42:13,16 43:2,16 44:9 45:11,24,25 46:5 thinks 16:18 thoroughly 40:10 thought 10:5,22 23:10 27:8,23 34:5 45:22 thousand 27:22 three 5:7 19:6 22:21 23:1 26:19 32:1 33:23 time 14:6 15:12 16:10 20:11 28:11 43:10 44:7 times 27:22 TIMOTHY 1:24 3:6 14:9 told 34:5 Toledo-Flores 1:9 2:1 3:7 4:4 14:10,13,16 15:18 16:10 17:6 20:3 21:13 43:11,12 43:20,24 44:10 tolled 15:23 touchstone 36:19 trafficking 4:9 4:16 5:5,10 6:24 7:3,11,12 7:14,15,17,18 7:21 8:1,1,2,7 8:11,11,16,18 8:23,25 9:4,8 12:22 13:11,13</p>	<p>13:24,25 14:2 14:2,4 22:20 26:10 30:7,9 30:24 31:19 32:6 36:1 40:12,13 43:4 44:21 45:9,23 46:1 treat 38:11 treated 23:8 treats 38:12,14 true 17:22 18:12 21:8 23:5 33:10 41:22,24 trump 37:19 try 7:23 19:15 20:23 trying 11:8 42:18,21 Tuesday 1:16 turn 13:11 24:7 24:20 26:24 33:24 35:5 36:9,9 44:13 turns 24:15 34:22 two 4:11 5:4,14 5:15 11:23 19:5 22:9 25:5 31:24 32:2,18 40:13 45:12 46:13 types 38:1</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 31:16 unanimous 9:25 underlying 22:10,13 understand 11:2 30:11 31:23 34:20 41:17 43:19 45:18 understanding 40:1 46:14 unfair 20:1 uniform 25:12</p>	<p>25:12,17 26:5 26:10,15 45:19 46:16,21,21,22 uniformity 21:20 25:17,21 25:23 26:5,12 42:10 46:18,21 47:3,7 United 1:1,12,19 4:4 6:20,23 7:1 9:25 11:21 14:22,24 16:20 17:15 18:11,21 21:21,22 28:23 44:10 45:2,3 unseemly 25:5 USC 13:5 use 15:4 45:19 U.S 4:9 5:5 6:16 16:13 18:5 19:21 43:13,14 45:13 47:5 U.S.C 7:10,23 37:5</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 1:5,11 5:24 16:5,6 17:3,3 18:21 21:21,21 43:13,14,17 variation 26:1 various 44:11 version 32:11 versus 12:5,5 view 7:11,14 29:15 34:22 violate 4:19 5:3 17:17,19 18:2 18:7,10 violated 15:9 21:15 violates 6:4 18:15 29:11 violation 8:4 12:18 13:1,6 13:16 15:21,22 18:13,16 26:20</p>	<p>32:12 35:17 violations 4:14 8:17 15:16 17:23 violence 37:3,4 visa 16:13 19:18 19:19 visit 16:13 vs 4:4,4 9:24 11:21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waiver 16:12 18:24 19:8 want 10:24 16:12 18:1 21:3,6 23:23 42:11 wanted 7:4 21:9 31:24 35:4 42:25 wants 13:19 20:15 warrant 15:22 Washington 1:15,22 2:3 way 7:19 8:1,5 8:15,17 13:11 13:22 23:23 24:1 27:11 28:8 31:7,20 34:23 36:19 40:1 42:7 Wayne 16:6 weight 6:2 went 31:15 42:23 we'll 4:3 14:8 we're 25:19,19 25:20 we've 21:9 whichever 39:5 Williams 16:6 17:3 win 9:23 witness 20:16 word 4:12 8:1</p>	<p>13:24 27:13 32:7,8 41:7 words 20:21 27:22 32:5 35:20 work 34:23 35:25,25 works 21:1,3 world 16:24 write 12:1 42:7 wrong 43:13,16</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>x 1:2,13</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 14:17 15:9 16:1 27:4 37:24 years 28:1,6 40:12,21 41:12 yep 40:18</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 28:9</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>05-547 1:5 05-7664 1:11</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 27:4 40:24 10:00 1:20 4:2 101 12:25 13:12 11:04 47:11 1101 22:18,21 23:19 26:6 29:7 33:21 34:11 35:9,15 36:4 38:5 1101(a)(43) 26:14,17 27:5 30:2 40:23 41:1,2,25 42:7 45:11 1101(A)(43)(b) 7:10 22:9 1102 33:22</p>
--	---	---	---	--

12 44:10	8			
12(a) 26:18	8 7:10			
1326 23:6 24:17 32:24 43:6	801 10:9 844 30:17			
14 3:7				
16 37:5	9			
18 4:9 5:5 6:16 13:5 37:4 45:13	924 5:22 10:17 12:12,22 13:14 22:17,20 23:15 23:15,19 32:5 32:11 34:6,7 38:22,24 39:2 39:4,5			
1956 13:5,8	924(c) 4:10,16			
1988 32:12,16 32:23 43:2,6	5:5,10 6:24 7:4 7:8,13,18,25 8:15,17 23:23 24:4 27:13,24 39:11,15,18,25 40:11 44:22,24 45:7			
1990 42:23	924(c)(1) 28:14 28:22 39:7,21 40:1			
2	924(C)(1)(a) 6:25 44:25			
2 1:16 32:5 40:24,24 41:7	924(c)(2) 28:21 30:1 39:9,20 40:9			
20th 16:1,4	924-E 5:12			
2006 1:16	940 30:16			
21 7:23 45:12				
21st 14:17				
22 3:10				
24 44:1,3				
3				
3A 5:22				
30 44:2				
34 22:21				
3559(C)(2)(h) 6:16				
4				
4 3:4 18:20				
43 12:25 13:12 22:18 23:20 33:21,22 34:11 35:9,16 36:4				
44 3:12				
5				
5 28:1,5				
6				
6A 5:23				
7				
7A 5:23				