

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: FLORIDA, Petitioner, v. KEVIN DEWAYNE POWELL.
CASE NO: No. 08-1175
PLACE: Washington, D.C.
DATE: Monday, December 7, 2009
PAGES: 1-60

ALDERSON REPORTING COMPANY
1155 CONNECTICUT AVE., NW
WASHINGTON, D.C. 20036
(202) 289-2260

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	JOSEPH W. JACQUOT, ESQ.	
4	On behalf of the Petitioner	3
5	DAVID O'NEIL, ESQ.	
6	On behalf of the United States, as amicus	
7	curiae, supporting the Petitioner	20
8	DEBORAH K. BRUECKHEIMER, ESQ.	
9	On behalf of the Respondent	32
10	REBUTTAL ARGUMENT OF	
11	JOSEPH W. JACQUOT, ESQ.	
12	On behalf of the Petitioner	58
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (11:15 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next today in Case 08-1175, Florida v. Powell.

5 Mr. Jacquot.

6 ORAL ARGUMENT OF JOSEPH W. JACQUOT

7 ON BEHALF OF THE PETITIONER

8 MR. JACQUOT: Mr. Chief Justice, and may it
9 please the Court:

10 As courts have recognized, Miranda warnings
11 protect Fifth Amendment rights and promote voluntary
12 confessions, confessions important to seeking truth,
13 solving crimes, and securing justice. Yet the Florida
14 Supreme Court erred in two ways to suppress a voluntary
15 confession relied upon for Kevin Powell's conviction.

16 First, the Florida court misapplied the
17 analysis. Rather than evaluating the warning under a
18 reasonably conveyed standard for the right to an
19 attorney, the court strictly parsed the warning, seeking
20 certain words in a certain order.

21 Second, the court incorrectly found the
22 warning to be misleading. The court ignored the
23 totality of the warning. The court overemphasized the
24 order in which the rights were given, and furthermore,
25 the court applied a hypertechnical analysis of the

1 warning's language.

2 JUSTICE GINSBURG: But you agree that it --
3 suppose we accept your position and the case is
4 remanded. The Florida Supreme Court could say: Well,
5 that's very nice, but we have a Florida Constitution
6 with a counterpart to the Fifth Amendment, so we're just
7 going to have the same opinion, but we are putting it
8 under -- squarely under the Florida Constitution.

9 They could do that?

10 MR. JACQUOT: Your Honor, the Florida court
11 theoretically could, but the Florida court would have to
12 do that on State grounds, and in this case, they relied
13 on Federal grounds to reach this decision.

14 JUSTICE GINSBURG: Yes, that's what I meant.
15 They could do it on State grounds.

16 MR. JACQUOT: Theoretically. But this Court
17 found in *Evans v. Arizona* that just because of the
18 theoretical possibility that a court could write its
19 opinion differently on State grounds, this Court still
20 had jurisdiction because the original opinion rested on
21 Federal grounds.

22 JUSTICE SCALIA: Are the Florida Supreme
23 Court elected? Are they elected judges?

24 MR. JACQUOT: Your Honor --

25 JUSTICE SCALIA: Are they elected judges,

1 the Florida Supreme Court?

2 MR. JACQUOT: Your Honor, the Florida
3 Supreme Court members are first appointed, and then they
4 are subsequently elected.

5 JUSTICE SCALIA: How -- how long is their
6 term? There's a retention election when?

7 MR. JACQUOT: Correct. There is a retention
8 election every 4 years.

9 JUSTICE SCALIA: Every 4 years. And they'd
10 have to run for their retention election on the ticket
11 that "We've expanded Miranda for Florida purposes,"
12 right?

13 MR. JACQUOT: Well, Your Honor, they are
14 elected.

15 JUSTICE KENNEDY: Has the -- has the Florida
16 Supreme Court ever explicitly interpreted -- what is it?
17 Article I, section 8, of the Florida Constitution more
18 expansively than -- and explicitly so -- and explicitly
19 so, than Miranda?

20 MR. JACQUOT: No, Your Honor. The Florida
21 Supreme Court has said that the possibility is there,
22 but in its decisions it has found -- particularly in
23 the case before you --

24 JUSTICE STEVENS: Well, they did it in this
25 case, didn't they? Under your view, they -- their

1 ruling goes beyond Miranda, and they said that the
2 Florida Constitution requires this result.

3 MR. JACQUOT: No, Justice --

4 JUSTICE STEVENS: So they did do it in this
5 very case.

6 MR. JACQUOT: No, Justice Stevens. The
7 court specifically relied on Federal law. It just got
8 it wrong.

9 JUSTICE STEVENS: But it also cited the --
10 the Florida Constitution, did it not?

11 MR. JACQUOT: It cited the Florida
12 Constitution --

13 JUSTICE STEVENS: And did it not also say
14 that this was a violation of the Federal -- I mean, of
15 the Florida Constitution?

16 MR. JACQUOT: Yes, Your Honor, it mentioned
17 the Florida Constitution. However, in those same
18 sentences, it interwove Federal law. It would say:
19 Under the Florida Constitution and according to Miranda.
20 And this Court in Michigan v. Long has found that
21 opinions that interweave State and Federal law are
22 appropriate for this Court's jurisdiction.

23 JUSTICE SOTOMAYOR: One of your amici -- one
24 of the amici suggested that the Florida courts cannot
25 read the Florida Constitution more expansively than the

1 Federal requirements. Are you rejecting that
2 proposition?

3 MR. JACQUOT: We do indeed, Your Honor. The
4 Florida court in Powell read the warning to -- in line
5 with Miranda.

6 JUSTICE SOTOMAYOR: And it's a different
7 question. One of the amici suggests that the Florida
8 Constitution and Florida case law says that they can't
9 read the Florida Constitution more broadly than it is
10 read under Federal law.

11 MR. JACQUOT: Well, Your Honor, the past
12 cases have said that the Florida court could, but they
13 haven't. And in this case they particularly did not.

14 JUSTICE SOTOMAYOR: So this could be a
15 first, if we were to start from the proposition that
16 Justice Ginsburg did?

17 MR. JACQUOT: Well, Your Honor, under
18 Michigan v. Long the test is to look at the clear face
19 of the opinion, to look for a plain statement that this
20 case relied on adequate -- adequate and independent
21 State grounds, and that is not there.

22 JUSTICE SOTOMAYOR: Do -- do you see a
23 conflict between the language of our decisions where we
24 often say that Miranda rights have to be clear and those
25 decisions that say that whatever is said has to

1 reasonably convey the essence of the Miranda warnings?

2 Is there a difference between those two
3 statements, and which of our cases or statements would
4 control?

5 MR. JACQUOT: Your Honor, in Miranda the
6 Court did use the terms "clearly inform." However, this
7 Court has gone on in Prysock to use the term "adequately
8 inform" and Duckworth uses the word "reasonably convey."
9 So, yes, although the rights are consistent from Miranda
10 on --

11 JUSTICE SOTOMAYOR: So you would suggest
12 that if something is not clear and it's ambiguous, that
13 that's enough? Or -- or is there a difference between
14 reasonable and clarity? That has to be read in a
15 certain way; otherwise an ambiguous warning --

16 MR. JACQUOT: No, Your Honor, I would say
17 that this Court has said that clarity is judged by
18 whether the warnings reasonably convey the rights under
19 Miranda; that's the standard.

20 JUSTICE GINSBURG: Did Miranda itself -- I
21 mean, it set out the four requirements, but there was a
22 charge -- I mean there was a warning involved, am I not
23 right? Well, didn't they cite the then-FBI warning? It
24 has been improved considerably, but there was an FBI
25 warning cited in Miranda itself, was there not?

1 MR. JACQUOT: Yes, Justice Ginsburg, and
2 that warning conveyed only the right to attorney. It
3 did not have the specific --

4 JUSTICE GINSBURG: It also said you have a
5 right to keep silent.

6 MR. JACQUOT: Correct. But on the right to
7 attorney warning at issue here, it said only that the
8 suspect has the ability to consult counsel. It did not
9 go into the specific -- detail, the explicit nature of
10 spelling out the terms "present" and the terms "during"
11 that the Florida Supreme Court required. And that's the
12 real issue here before the Court, is whether the Florida
13 Supreme Court applied a standard that is significantly
14 different than the standard that this Court has
15 required.

16 JUSTICE SCALIA: It told them: You are
17 entitled to confer with counsel before answering
18 questions, right?

19 MR. JACQUOT: What warning, Justice Scalia?

20 JUSTICE SCALIA: Wasn't that -- wasn't that
21 the warning given -- given in this case? You are
22 entitled to consult counsel before answering questions?

23 MR. JACQUOT: Yes, the warning in this case
24 said you have the right to talk to a lawyer before
25 answering any of our questions. And, furthermore --

1 CHIEF JUSTICE ROBERTS: Now, "any" -- just
2 to make sure; you've said two different things. It says
3 "any of our questions," right?

4 MR. JACQUOT: Well, Mr. Chief Justice, the
5 warning said, "You have the right to talk to a lawyer
6 before answering any of our questions." And then the
7 warning went on to say, "You have the right to use this
8 right at any time during this interview."

9 We would argue that this expresses all the
10 rights required under Miranda.

11 JUSTICE BREYER: What about the right in
12 Miranda that says -- in Miranda -- "We hold an
13 individual held for interrogation must be clearly
14 informed that he has the right to consult with the
15 lawyer and to have the lawyer with him during
16 interrogation." Okay?

17 Where does it say that? Interpret it any
18 way you want. You know, we are used to grand juries.
19 In a grand jury, he can go consult with a lawyer, but he
20 doesn't have the lawyer with him. So, where does it
21 tell him that?

22 MR. JACQUOT: Well, Your Honor, the standard
23 being "reasonably convey" --

24 JUSTICE BREYER: Yes.

25 MR. JACQUOT: -- the warning lays out that

1 you have the right --

2 JUSTICE BREYER: I'm just asking you to
3 point to the words that tell him that.

4 MR. JACQUOT: The right to talk to a lawyer.

5 JUSTICE BREYER: Don't have you a right to
6 talk to a lawyer at a grand jury?

7 MR. JACQUOT: Yes, but a -- Your Honor, a
8 grand jury operates very differently than a criminal
9 interrogation.

10 JUSTICE BREYER: Yes, correct. And so
11 aren't you supposed to tell this person, that unlike a
12 grand jury, you have a right to have the lawyer with you
13 during interrogation? I mean, it isn't as if that was
14 said in passing in Miranda. They wrote eight paragraphs
15 about it. And I just wonder, where does it say in this
16 warning you have the right to have the lawyer with you
17 during the interrogation?

18 MR. JACQUOT: Well, Justice Breyer, I would
19 have three responses to that. First, under Miranda the
20 FBI warning did not use the terms "present," did not use
21 the terms "with you," and --

22 JUSTICE BREYER: It doesn't use the word
23 "present," Miranda? It says right here: "We hold" --
24 it says -- "not just prior to questioning, but also to
25 have counsel present during any questioning." That's

1 what Miranda says. And then Miranda, after discussing
2 it for five pages, goes on to use the words I just said.
3 You have to tell him he has the right to have counsel
4 with him. So it does use the word "present."

5 JUSTICE GINSBURG: It -- it used it in
6 determining -- in -- in stating the obligation of the
7 State, but it didn't use those words in setting out the
8 warning that the FBI then gave.

9 MR. JACQUOT: Correct.

10 JUSTICE GINSBURG: It said, this is what --
11 States, this is what your obligation is, what you must
12 say to the defendant is. And I think the Florida court
13 is the same way. It said: You are entitled to the help
14 of a lawyer. Then it spells it out in that opinion, but
15 -- but what it said had to be communicated was not the
16 -- the full range. Just you're entitled, I think it
17 was, to the help of a lawyer.

18 So there's -- there's a confusion, I
19 think, between what Miranda spells out and many other
20 cases spell out as the State's obligation, what the
21 State must do, and the statement that must be made to
22 the defendant to communicate that.

23 MR. JACQUOT: Justice Ginsburg, let me be
24 very clear and answer Justice Breyer with the three
25 points I began. Miranda requires that law enforcement

1 effectively communicate the fact that you can access
2 your right to an attorney present and during an
3 interrogation. However, in the Miranda opinion they
4 approvingly cited the FBI warning that only had the
5 terms -- the generalized warning: Consult with counsel.

6 Furthermore, the ability to talk to your
7 lawyer, which is at issue in this warning, is the first
8 natural step to getting your attorney.

9 And, third, as this Court has held in
10 Minnick, that it's the representation that matters in
11 custodial interrogations --

12 JUSTICE BREYER: Well, what FBI are we
13 talking about? Because the FBI advice of rights says:
14 "You have the right to have a lawyer with you during
15 questioning." Were they -- and -- and I was taken by
16 the fact, "We hold that an individual must be clearly
17 informed."

18 And so, is there some other case that
19 says -- or some other FBI statement that they give
20 people that doesn't use the words "with you," that says
21 you don't have to say "with you during," or doesn't have
22 to say "present during"? Was there some other case that
23 said that?

24 MR. JACQUOT: Your Honor, the current FBI
25 warning does have that. However, there have been

1 several cases in the circuits that have held generalized
2 warnings to be sufficient, warnings that say only the
3 right to an attorney. And one of the issues --

4 JUSTICE GINSBURG: The -- the warning that
5 Justice Breyer has just referred to -- that's long after
6 Miranda itself, and it was not the warning that the FBI
7 gave at the time of Miranda.

8 MR. JACQUOT: Correct, Your Honor. And --
9 and that is the issue, is what is, first, the standard
10 that courts must currently apply in terms of whether a
11 warning reasonably conveys. That is not the standard of
12 analysis that the Florida court applied.

13 And secondly, when evaluating that warning,
14 the -- the Florida court incorrectly finds that this
15 warning was misleading. Now --

16 JUSTICE SOTOMAYOR: I have a difficulty in
17 terms of this argument about burdening law enforcement.
18 This is a preprinted form that the police made up,
19 correct?

20 MR. JACQUOT: Correct.

21 JUSTICE SOTOMAYOR: So what's the added
22 burden by making the form absolutely and abundantly
23 clear or conforming the form to the statements in
24 Miranda? What's the cost to the State? They're going
25 to print the form anyway. They are telling their

1 officers to read from the form anyway. What's the added
2 cost?

3 MR. JACQUOT: Your Honor, there are three
4 reasons why the Florida Supreme Court's explicit
5 standard is problematic. First, the same standard
6 applies to written warnings as to verbal warnings. So
7 you've had situations where you have a law enforcement
8 officer who doesn't have his card in the field; there's
9 a verbal error; there's an inconsistency in
10 translations. If a suspect is asking questions trying
11 to get clarity, the law enforcement officer is going
12 outside of the card to provide that clarity. Those are
13 situations that may not meet the explicit express advice
14 standard of the Court.

15 JUSTICE SOTOMAYOR: Well, there is a
16 question about how much the subjective intent of the
17 questioner should be involved in this process or not.
18 There are cases where it appears the plurality of
19 our Court has said it should always be an objective
20 standard, and others where certain members have
21 expressed a question about subjective.

22 But if we are dealing with a printed form,
23 why wouldn't the intent of the entity at issue be placed
24 in question? Meaning, you could have -- the police here
25 could have chosen to be explicit, but instead they chose

1 to be -- to obfuscate a little bit and be less explicit.
2 Shouldn't we assume that that's an intent to deceive or
3 perhaps to confuse?

4 MR. JACQUOT: Absolutely not, Your Honor.
5 The Tampa Police, in having this warning drafted, is
6 attempting to reasonably convey the warning, and there
7 is good public policy reasons why.

8 JUSTICE SOTOMAYOR: But why? The -- the
9 easy solution is to do what 90 percent of the
10 jurisdictions are doing: Copy Miranda.

11 MR. JACQUOT: Well, Your Honor, we would
12 claim that this warning falls within the 97 percent
13 cited by amici because it has the word "during" in the
14 warning. The Florida court ignored the totality of the
15 warning. It chose to place the order of the warning's
16 rights in a way that this Court in Prysock and Duckworth
17 has found is not the proper analysis.

18 Furthermore, this court used a
19 hypertechnical approach. It took the words "before
20 answering any of our questions," turned that into an
21 exclusive statement to say, "only before questioning"
22 and then, as a result of that, attempted to discount the
23 last sentence of the warning. That's the kind of
24 parsing, that's the kind of precise formulation, that's
25 the kind of construing warnings like a will or defining

1 terms like an easement that this Court has rejected.

2 JUSTICE GINSBURG: What about the danger
3 that Tampa, if you should prevail, will go back to the
4 old way? Now, it has a clearer form -- whether this
5 form was adequate is one thing. But now, it has the
6 form that the -- like the one the FBI currently uses.
7 If you prevail, then Tampa can go back to what it had
8 before?

9 MR. JACQUOT: Your Honor, you are correct,
10 in that Tampa has a new form now that does have the
11 words "present" and "during" in a different formulation.

12 However, there's no indication that they
13 would go back to the other form, for several reasons.
14 One, law enforcement has an incentive to have Miranda
15 rights properly given because they desire there to be
16 confessions and for those confessions to be admissible.

17 JUSTICE SCALIA: Well, once we say this is
18 properly given, my goodness, here's -- here's an
19 instruction approved specifically by this Court. I
20 mean, I think they should use that, don't you?

21 I mean, the other one they are going to have
22 to guess about, but this one is approved in a case
23 involving Florida by this Court. So you -- it's pretty
24 attractive to use that one.

25 MR. JACQUOT: Well, Your Honor, law

1 enforcement agencies will look to courts for approval of
2 this -- of their warnings. The warning at issue in
3 Powell --

4 JUSTICE SCALIA: Well, you have to say it's
5 okay. You are arguing that it's perfectly okay, so why
6 do you hesitate when you are asked, you know, could the
7 State go back to doing it? You should say, yes, of
8 course, they -- they might; we don't think it's likely,
9 but they might, and if they did, it's perfectly okay.

10 Isn't that your position?

11 MR. JACQUOT: Well, Justice Scalia, as a --

12 JUSTICE SCALIA: It's not your position?

13 MR. JACQUOT: Justice Scalia, they
14 theoretically could, because the warning was reasonably
15 conveyed. It was sufficient. However, it's unlikely
16 they would. Law enforcement agencies modify their
17 warnings when they become issue. So when a litigation
18 begins on a warning, they often modify it at that point.

19 JUSTICE STEVENS: Let me -- let me ask you
20 one question. Isn't it the case that this particular
21 warning is used in one judicial district, and the
22 warning that was approved in Traylor was used in the
23 rest of the State? And so there is an interest -- the
24 Florida
25 Supreme Court has, in effect, required the same warning

1 throughout the State. And if you prevail, there may be
2 one standard warning in one judicial district, and the
3 other districts may continue to use the one they have
4 used in the past. Isn't that right?

5 MR. JACQUOT: Well, Justice Stevens, it is
6 not true that every jurisdiction in Florida uses this
7 same warning. There are varieties of warnings.

8 JUSTICE STEVENS: That's true, but if you --
9 if they all followed the Florida Supreme Court in this
10 case, then they all would use the same warning?

11 MR. JACQUOT: Well, Justice Stevens, if they
12 were all following the Florida Supreme Court here, they
13 would have to explicitly state certain terms in their
14 warning.

15 JUSTICE STEVENS: Which most of them do
16 already.

17 MR. JACQUOT: Well, not necessarily. In --

18 JUSTICE STEVENS: Not all, but some.

19 MR. JACQUOT: Some -- some do, some do not,
20 and one of the fears in having an express advice
21 standard is that you will have continuing terms that are
22 required. For instance, the term "before" is lacking in
23 30 of 90 jurisdictions in Florida.

24 There is nothing to stop the Florida Supreme
25 Court, if this Court was to allow an express advice

1 Standard, from then requiring the term "before
2 questioning" in addition. That's the kind of danger in
3 having an analysis that is much stricter, that
4 essentially looks at words that should be in a warning,
5 rather than looking at whether the right to attorney is
6 reasonably conveyed to the suspect.

7 Mr. Chief Justice, if there are no more
8 questions, I'd like to save the balance of my time.

9 CHIEF JUSTICE ROBERTS: Thank you, counsel.

10 Mr. O'Neil.

11 ORAL ARGUMENT OF DAVID O'NEIL

12 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

13 SUPPORTING THE PETITIONER

14 MR. O'NEIL: Thank you, Mr. Chief Justice,
15 and may it please the Court:

16 I'd like to go directly to Justice
17 Ginsburg's question about what would happen if this
18 Court affirmed the warnings in this case, and I think
19 Respondent's amici make the argument that it will
20 somehow promote a race to the bottom.

21 And I think that history and experience are
22 the best answer to that question. Respondent's amici,
23 who have carefully studied this issue, have found that
24 some police officers have attempted to evade Miranda by
25 interrogation techniques, but there is no indication

1 that police have tried to accomplish that purpose by
2 changing the language of the warnings, and that is not
3 because they couldn't do so. For the last 20 years,
4 Duckworth and Prysock have been on the books, and have
5 made clear that no standard formulation of the warnings
6 is necessary and that variant warnings will be upheld.
7 And if it were true --

8 JUSTICE SOTOMAYOR: Except that Justice
9 Scalia just pointed out, if we approve the language of
10 this, then -- of this particular warning, it becomes the
11 new sort of floor.

12 And if we make it the new floor, it --
13 doesn't it provide an incentive for police departments
14 to move away from the explicit warnings that say "during
15 and" -- "before and during" interrogations; now we're
16 saying -- you know, generalize them more.

17 MR. O'NEIL: Well, Justice --

18 JUSTICE SOTOMAYOR: Aren't we encouraging
19 that?

20 MR. O'NEIL: Justice Sotomayor, I have two
21 responses to that: The first is that this Court upheld
22 the warning in Duckworth, which said, we have no way of
23 providing you an attorney, but one will be provided if
24 and when you go to court.

25 Now, if you -- if it were true that police

1 were looking for every way to get around the warnings
2 and if changing the warnings were an effective way to do
3 that, we should have seen every jurisdiction adopt those
4 warnings.

5 In fact, of the 900 warnings that are
6 included in the survey that Respondent relies heavily
7 on, only 5 have that formulation. Second, four
8 circuit courts have held --

9 JUSTICE SOTOMAYOR: How many after
10 Duckworth? Do you know?

11 MR. O'NEIL: I don't -- it doesn't indicate
12 when they were adopted, but I think it's fair to say
13 that, if police did have that incentive, that we would
14 have seen at least some jurisdictions adopt that
15 warning.

16 JUSTICE SOTOMAYOR: So we don't know how
17 many --

18 JUSTICE KENNEDY: But your case has to be
19 that, if we adopt the Petitioner's petition, it's
20 perfectly fine for every jurisdiction in the country to
21 use this warning, right?

22 MR. O'NEIL: We agree that this warning is
23 adequate, and our position is --

24 JUSTICE KENNEDY: And every jurisdiction in
25 the country can use it, so we can -- we can talk about

1 whether or not it's adequate.

2 MR. O'NEIL: They can, and we think that's
3 unlikely, and if the concern here is that it will
4 destroy the uniformity that the Federal government
5 thinks is a good thing as a matter of policy, we think
6 that that concern is simply not warranted. But, yes, we
7 do agree that these warnings adequately convey the
8 substance --

9 JUSTICE KENNEDY: Excuse me. You think lack
10 of uniformity is a good idea?

11 MR. O'NEIL: No, we think that affirming
12 these warnings will not disrupt the uniformity that
13 seems to be in place around the country, and -- for
14 exactly the reason that I said, Justice Kennedy, because
15 Justice Sotomayor mentioned general right to counsel
16 warnings, that if we upheld a general right to counsel
17 warning, that jurisdictions would begin to drop the more
18 specific language that's contained, for example, in the
19 FBI form. Well --

20 CHIEF JUSTICE ROBERTS: Where -- where is
21 that? Is that set forth in the -- in the briefs? The
22 FBI form? Where -- where is that set forth?

23 MR. O'NEIL: I don't believe the FBI form is
24 set out in full. It's on pages 383 and 384 of Miranda,
25 and the description of the court's discussion is on page

1 29 of our brief.

2 And I think, Justice Sotomayor, it's
3 significant that four circuit courts have upheld general
4 right to counsel warnings of the kind that were in the
5 FBI warnings in 1966. But the police departments in
6 those jurisdictions have not abandoned the more specific
7 language that is contained in the FBI formulation. In
8 New York City, the Second Circuit has held in Lamia --

9 JUSTICE SOTOMAYOR: What -- how do we deal
10 with the fact that, if the purpose of Miranda is to give
11 clear warnings, and your adversary says -- not your
12 adversary -- your co-counsel -- Petitioner's counsel
13 says that means -- "clear" means does it reasonably
14 convey?

15 We've got a split of circuit courts and
16 State courts on whether this reasonably conveys or not.
17 Shouldn't that be enough of an ambiguity for us to
18 conclude it can't reasonably convey, if there's this
19 many courts holding that it doesn't?

20 MR. O'NEIL: No, Justice Sotomayor. This is
21 not like a qualified immunity inquiry, where grounds for
22 debate among reasonable jurists would invalidate the
23 warning.

24 JUSTICE SOTOMAYOR: Are you calling the
25 Florida State Supreme Court majority unreasonable

1 jurists?

2 MR. O'NEIL: No, I think -- I think the
3 problem with a standard that permits of no ambiguity is
4 that, as Florida just said, this standard will apply,
5 not just to printed forms -- and it is easy enough to
6 create a printed form in advance that includes more
7 specific language -- but it will also apply to
8 inadvertent departures from the standard forms as a
9 result of mistake.

10 JUSTICE SOTOMAYOR: What happens now is that
11 we are dealing with the exception rather than the rule,
12 and -- but this was the rule, meaning this was the form
13 that they were reading. And if it has some significant
14 ambiguity in it, sufficient for at least one court to
15 say it wasn't sufficiently clear, it wasn't explicit
16 enough, should we worry about the exception as an
17 exception?

18 MR. O'NEIL: Well, I think -- I think the
19 exception is -- needs to be captured within the rule
20 that this Court adopts as -- as the standard.

21 I -- I also think that it -- it is -- it's
22 simply not the case that if this Court, as I said,
23 adopts a standard that permits a less explicit, less
24 precise warning than the FBI wants --

25 JUSTICE STEVENS: Mr. O'Neil, isn't one of

1 the problems here that Florida had two different printed
2 forms before this case arose, and that Florida Supreme
3 Court has said they'll all have the same one
4 hereafter?

5 MR. O'NEIL: Justice Stevens, I'm not aware
6 that Florida had two printed forms. I mean, each
7 jurisdiction used its own form, and this was the form
8 that was in place --

9 JUSTICE STEVENS: So at least two of them?

10 MR. O'NEIL: Well, every jurisdiction
11 adopts a slightly--

12 JUSTICE STEVENS: And isn't it -- isn't it
13 wiser generally to have the same form used throughout
14 the State?

15 MR. O'NEIL: It is. The government believes
16 it is wiser to do that, and the Federal law enforcement
17 agencies do that because it avoids --

18 JUSTICE SCALIA: And the Constitution
19 requires it, right?

20 MR. O'NEIL: Well, no, the Constitution does
21 not require the precise words of Miranda.

22 JUSTICE SCALIA: Well, Miranda supposedly
23 says the Constitution requires this warning, and if the
24 warning must be in a standard form that everybody uses,
25 the Constitution must require a standard form that

1 everybody uses.

2 MR. O'NEIL: Nowhere in Miranda does it say
3 that a -- a standard form is necessary, and this Court
4 summarily rejected exactly that argument.

5 JUSTICE BREYER: Excuse me. Can you just
6 devote one minute before you finish --

7 MR. O'NEIL: Yes.

8 JUSTICE BREYER: -- to the question of why
9 these are adequate? If you remember my question, I
10 tried to explain why I thought they might not be
11 adequate.

12 MR. O'NEIL: Justice Breyer, these warnings
13 state three rights: The right --

14 JUSTICE BREYER: But there were four.
15 One is to have during, in the presence of, the right to
16 have a lawyer during the interrogation, in the presence
17 of, with him at the time.

18 MR. O'NEIL: Absolutely.

19 JUSTICE BREYER: Now, that's one of
20 the four. That's one of the things they devote two
21 pages to Miranda, and they repeat it when they summarize
22 what you have to say. I just want to know where in this
23 statement does it say that?

24 MR. O'NEIL: Justice Breyer, there is no
25 reason to think that a suspect who hears that he can

1 talk to an attorney before answering any questions and
2 during this interview would infer the unstated
3 restriction that he can talk to an attorney but only by
4 phone or only remotely --

5 JUSTICE BREYER: Really? I guess anybody
6 who has had prior experience with the law, as this man
7 might have done, might be familiar with a grand jury
8 proceeding.

9 MR. O'NEIL: But for the same reason we
10 don't ask whether the suspect has sufficient knowledge
11 to supplement the information he needs.

12 JUSTICE BREYER: No, no, no. But I tell
13 you: Here's your right to talk to a lawyer before
14 questioning.

15 MR. O'NEIL: Well, it --

16 JUSTICE BREYER: Now, you then repeat, you
17 can assert that right whenever you want, to talk to him
18 before questioning.

19 MR. O'NEIL: Well --

20 JUSTICE BREYER: And my question is, how
21 does that tell him he has a right to have a lawyer with
22 him during questioning, that the questioning he has a
23 right to have take place from beginning to end in the
24 presence of a lawyer, a matter that the Miranda Court
25 repeated three times in the summary and wrote eight

1 full paragraphs about why that was important?

2 MR. O'NEIL: Well, first, as Justice
3 Ginsburg noted, Miranda went out of its way to -- to
4 specifically approve an FBI warning that said, quote --

5 JUSTICE BREYER: Where does it say it
6 approves that?

7 MR. O'NEIL: It said this pattern of
8 warnings is consistent with the decision that we
9 announced today. And I think --

10 JUSTICE BREYER: It wasn't though, actually.

11 MR. O'NEIL: -- it couldn't have been
12 clearer.

13 JUSTICE BREYER: It isn't -- it isn't
14 consistent with it. That's interesting.

15 MR. O'NEIL: Well, that argument was made by
16 Justice Clark in dissent, and the Court did not agree
17 with that. And I think it is clear that the Court
18 thought that --

19 JUSTICE BREYER: They didn't say anything
20 about during.

21 MR. O'NEIL: Well, no, they didn't.

22 JUSTICE BREYER: So anyway -- then they
23 don't need to mention "during" at all because if that's
24 right, the FBI warning at that time, J. Edgar Hoover's
25 letter or whatever it was, just talked about telling

1 you, you have a right to counsel. It doesn't say
2 anything about "during."

3 MR. O'NEIL: Well, I think that's exactly
4 the point, that you don't assume that a suspect is only
5 capable of understanding --

6 JUSTICE BREYER: So then you think that, in
7 fact, going by that warning, that there is no
8 constitutional right to have them say a word about
9 during. This would be okay if they said nothing at all
10 about it.

11 MR. O'NEIL: I think a -- a -- advice of the
12 right to counsel or, as the Court put it in a different
13 place in the Miranda opinion, the right to obtain the
14 services of an attorney of his choice, that would be
15 constitutionally adequate. The Federal Government does
16 not use those warnings because they create a list -- a
17 risk of litigation.

18 We think that's the correct reading of
19 Miranda, but that, of course, is not guarantee that
20 other courts would read it that way. And, indeed, 2
21 years after Miranda, the Fifth Circuit had gone the
22 other way and decided that, in fact, a right to counsel
23 warning is not sufficient.

24 But, Justice Breyer, I think that the answer
25 to how these warnings convey presence is that a suspect

1 is not going to draw the highly counterintuitive
2 assumption that if he is told that he can have an
3 attorney not only before answering any questions but
4 during this interview, that he is going to need to walk
5 in and out of the room each time he wants to talk to an
6 attorney. It may --

7 JUSTICE SOTOMAYOR: Just so I get the
8 bottom line -- if all this warning had said was, you
9 have a right to a lawyer before questioning --

10 MR. O'NEIL: I'm sorry.

11 JUSTICE SOTOMAYOR: You have a right to a
12 lawyer before questioning --

13 MR. O'NEIL: Well, we think that --

14 JUSTICE SOTOMAYOR: -- it would be your
15 position that standing alone that would be enough?

16 MR. O'NEIL: We think that -- that -- that
17 was the warning that this Court confronted in *Bridgers*,
18 and we think that would be a much closer and more
19 difficult case, but we think that, yes, we -- we agree
20 with the decision cited in our brief that a suspect
21 would not assume that that attorney will become
22 unavailable the minute the first question is asked. We
23 think that --

24 CHIEF JUSTICE ROBERTS: Thank you, counsel.

25 MR. O'NEIL: Thank you.

1 CHIEF JUSTICE ROBERTS: Ms. Brueckheimer.

2 ORAL ARGUMENT OF DEBORAH K. BRUECKHEIMER

3 ON BEHALF OF THE RESPONDENT

4 MS. BRUECKHEIMER: Mr. Chief Justice, and
5 may it please the Court:

6 Clearly, Miranda could not have been more
7 specific when it said an individual held for
8 interrogation must be clearly informed that he has the
9 right to consult with a lawyer and to have the lawyer
10 with him during interrogation. That's --

11 CHIEF JUSTICE ROBERTS: So the --

12 MS. BRUECKHEIMER: -- at 471.

13 CHIEF JUSTICE ROBERTS: So the FBI
14 warning that was specifically approved in Miranda was
15 inconsistent with Miranda?

16 MS. BRUECKHEIMER: I disagree with that
17 representation that it was approved of. What this Court
18 said --

19 CHIEF JUSTICE ROBERTS: It says consistent
20 -- consistent with the procedure which we delineate
21 today.

22 MS. BRUECKHEIMER: Consistent with is not
23 the same. At -- in the few pages beforehand, the Court
24 specifically set forth these Miranda warnings in what it
25 required, including the presence of counsel.

1 JUSTICE KENNEDY: Could you tell us where
2 that is? I think you mean page 479, but I'm not sure.

3 MS. BRUECKHEIMER: Right. Correct, at page
4 479, this Court set forth the warnings that it wants to
5 have read to every --

6 JUSTICE SCALIA: It set forth the substance
7 of what had to be conveyed --

8 MS. BRUECKHEIMER: Right.

9 JUSTICE SCALIA: -- but it set forth, on
10 page 484, its belief that the FBI warning adequately
11 conveyed that substance. It said this warning is
12 consistent with our opinion today. And -- and that
13 warning said --

14 MS. BRUECKHEIMER: Yes, I have the warning.
15 Yes.

16 JUSTICE SCALIA: You want to read it?

17 MS. BRUECKHEIMER: Yes, I can read it.

18 JUSTICE SCALIA: Good.

19 MS. BRUECKHEIMER: The -- the warning says
20 that -- let's see -- at the -- at the outset of the
21 interview that he is not required to make a statement,
22 that any statement may be used against him in court, and
23 that the individual may obtain the services of an
24 attorney of his own choice. And, more recently, that he
25 has the right to free counsel.

1 However, the purpose --

2 JUSTICE SCALIA: Well, I mean, that's so
3 much worse than -- than --

4 MS. BRUECKHEIMER: Yes, and the purpose
5 of --

6 JUSTICE SCALIA: -- what you have here.

7 MS. BRUECKHEIMER: -- of saying this was
8 because the question was, is this going to be burdensome
9 to the government, to the police to issue these
10 warden -- these warnings? And the very beginning of
11 that sentence, right before they said it, was they --
12 that the FBI has compiled --

13 JUSTICE KENNEDY: What page are you on now?

14 MS. BRUECKHEIMER: We are still on 483. We
15 are in the sentence right above it. Over the years the
16 FBI has compiled an exemplary record of effective law
17 enforcement while advising any suspect or arrested
18 person at the outset of the interview that he is not
19 required to make a statement -- and then I just read it.

20 So, the -- that was to counteract whether it
21 was too burdensome. Not that they were approving --

22 CHIEF JUSTICE ROBERTS: Well, maybe, but it
23 says -- it says the -- what the FBI -- the pattern
24 of warning -- well, let me make sure I get it exact.
25 "The present pattern of warnings and respect for the

1 rights of the individual followed as a practice by the
2 FBI is consistent with the procedure we delineate
3 today."

4 And the FBI warning says nothing about
5 presence or with -- or with counsel with him.

6 MS. BRUECKHEIMER: Consistent with but not
7 identical.

8 CHIEF JUSTICE ROBERTS: Well, okay. I'll
9 take "consistent with." That means that it complies
10 with the rule in Miranda.

11 MS. BRUECKHEIMER: No, I -- in all due
12 respect, Mr. Chief Justice, I believe that this Court
13 went a little further and required the presence of
14 counsel. And then --

15 CHIEF JUSTICE ROBERTS: Then how is the FBI
16 warning consistent with the procedure the Court
17 delineated in Miranda?

18 MS. BRUECKHEIMER: It doesn't say that
19 the -- the attorney has to be present with --

20 CHIEF JUSTICE ROBERTS: No, I said how is
21 it --

22 MS. BRUECKHEIMER: How is it consistent?

23 CHIEF JUSTICE ROBERTS: Yes.

24 MS. BRUECKHEIMER: It -- because it -- it
25 gave three of the basic -- you know, you have the right

1 to remain silent, you have the right to an attorney, the
2 services of an attorney; and that you have the right
3 to -- or any -- any statement you make will be used
4 against you. So they just didn't go far enough in the
5 FBI warnings.

6 CHIEF JUSTICE ROBERTS: So I would say that
7 it's not consistent with Miranda.

8 MS. BRUECKHEIMER: It's -- it's consistent
9 to a point, but it --

10 CHIEF JUSTICE ROBERTS: Okay.

11 MS. BRUECKHEIMER: And just as if -- and --
12 and they have added in, more recently, the right to free
13 counsel.

14 JUSTICE STEVENS: Well, while you're
15 looking at whether it would be an undue burden on law
16 enforcement, it was -- it has a burden that's consistent
17 with the ones that Miranda required expressly.

18 MS. BRUECKHEIMER: I'm sorry. The --

19 JUSTICE STEVENS: I say when you were
20 inquiring, as you were at that part of the opinion, into
21 how burdensome it would be on law enforcement to give
22 these warnings --

23 MS. BRUECKHEIMER: Right.

24 JUSTICE STEVENS: -- you are saying the
25 burden would be consistent under the new warnings with

1 those previously given by the FBI.

2 MS. BRUECKHEIMER: Correct. It's -- it's
3 not any more burdensome by adding in the -- an
4 additional requirement.

5 CHIEF JUSTICE ROBERTS: What it says is that
6 the respect for the rights of the individual followed
7 in the FBI is consistent with.

8 MS. BRUECKHEIMER: Uh-huh. The rights of
9 the individual, right.

10 And the -- the Miranda Court just made sure
11 that they've added in the additional requirement, and
12 the FBI did change their warnings, and has continued to
13 modify and change their warnings to be consistent with
14 Miranda.

15 JUSTICE SOTOMAYOR: The bottom line in my
16 mind -- the question is, whether these warnings are
17 substantively or otherwise different than the FBI
18 warnings that some believe were approved in Miranda.
19 Are these equivalent?

20 MS. BRUECKHEIMER: I don't -- I believe
21 that -- that requiring the presence of counsel during
22 the interrogation goes a little bit -- a lot further.
23 And it -- it is not equivalent to the FBI.

24 JUSTICE SOTOMAYOR: I don't disagree with
25 you, but that wasn't my question. My question was, did

1 the FBI warning at issue or --

2 MS. BRUECKHEIMER: At issue in Miranda?

3 JUSTICE SOTOMAYOR: Not at issue because it
4 wasn't at issue.

5 MS. BRUECKHEIMER: It wasn't.

6 JUSTICE SOTOMAYOR: But that was reviewed
7 and approved in Miranda, did it give that --

8 MS. BRUECKHEIMER: No, it did not. And that
9 why -- and that's why I don't believe the Court in
10 Miranda ever said we -- it's consistent with, but they
11 never said, we approve. They never said, we are
12 adopting that language.

13 JUSTICE BREYER: Is -- is there since
14 then -- I mean, as I read it now I see that, as I said,
15 it seems very clear that they intend you to have to say
16 that the counsel has to be -- is present with you.
17 Present, okay? Now the FBI warnings, which they did say
18 is consistent, don't say that.

19 MS. BRUECKHEIMER: No, they don't.

20 JUSTICE BREYER: They don't.

21 MS. BRUECKHEIMER: They do not.

22 JUSTICE BREYER: Okay. Now, since the time
23 of Miranda, has this Court ever talked about that? Has
24 there been any lower court or have there been -- has the
25 practice of the departments to any great extent been

1 such that they stopped talking, or did not talk, or
2 never spoke about a right to have a counsel with you
3 during -- during -- "during" just dropped out. They
4 just said forget about "during." It wasn't --

5 MS. BRUECKHEIMER: No, the case law has
6 always referred to both, both by this Court and then --
7 and then the circuit courts. And the --

8 JUSTICE SCALIA: This Court said in Miranda
9 --

10 JUSTICE BREYER: This Court has referred
11 to "during."

12 JUSTICE SCALIA: Yes.

13 MS. BRUECKHEIMER: Has -- has -- in many
14 opinions, it talked about before interrogation and
15 during interrogation the right to have counsel present.

16 JUSTICE SCALIA: But I must say I -- this is
17 -- this is angels dancing on the head of a pin. You
18 want us to believe that your client, who decided to
19 talk, even though he was told he could consult an
20 attorney before any question was asked, and he could
21 consult an attorney at any time during the interview,
22 and he went ahead and -- and confessed -- you are
23 saying, oh, if he had only known. Oh, if I knew that I
24 could have an attorney present during the interview,
25 well, that would have been a different kettle of fish

1 and I would never have confessed.

2 I mean, doesn't that seem to you quite
3 fantastic?

4 MS. BRUECKHEIMER: No, Your Honor,
5 especially not with a reasonable suspect that's being
6 questioned.

7 There -- there -- we are not talking
8 about reasonable lawyers or reasonable justices; we are
9 talking about --

10 JUSTICE GINSBURG: Well, how about the
11 reasonable defendant in this very case? Powell's lawyer
12 questioned him and asked him: "You waived the right to
13 have an attorney present during your questioning by the
14 detectives?"

15 Answer: "Yes."

16 This is at appendix page 80. So,
17 apparently, counsel understood the warning to have
18 conveyed the right to have an attorney present during
19 questioning by the -- by the detectives. Counsel
20 understood that?

21 MS. BRUECKHEIMER: No, counsel --

22 JUSTICE GINSBURG: Did she ever --

23 MS. BRUECKHEIMER: -- never -- never asked
24 him did you knowingly waive; did you intelligently
25 waive? She was trying to set up the fact that the

1 client had waived his rights before he made a statement
2 in order to get to his -- his argument that his
3 statements were coerced.

4 But she was never giving up the argument
5 that she had made previously to that -- that testimony
6 that -- that the waiver was knowing and intelligent.
7 She just had already lost that argument in front of the
8 judge, and now she was addressing the jury.

9 JUSTICE GINSBURG: Was she asking her client
10 a legal question? You waived the right to have an
11 attorney present during your questioning by detectives,
12 is that what you are telling the jury?

13 MS. BRUECKHEIMER: Yes. Well, he did waive
14 his rights, but he didn't knowingly and intelligently
15 waive his rights, and he did sign the form. Because
16 that was the next question: Did you sign the form?

17 JUSTICE ALITO: Do you think that the
18 average person hearing this warning would envision the
19 sort of procedure that occurs before a grand jury?

20 MS. BRUECKHEIMER: I don't --

21 JUSTICE ALITO: That's what it would be
22 taken to mean?

23 MS. BRUECKHEIMER: I -- I don't think most
24 -- most people have been in front of a grand jury, so I
25 don't envision that they would have that kind

1 of reaction.

2 JUSTICE GINSBURG: But do --

3 MS. BRUECKHEIMER: I think they would focus
4 on the "before."

5 JUSTICE GINSBURG: Do you think that a
6 suspect would think, now, I'm in this custodial room,
7 they want me to stay put, that they're going to have me
8 hopping in and out of the room to talk to my lawyer?
9 Wouldn't the assumption be, I'm stuck in this room, they
10 are holding me here, and if I have a right to talk to a
11 lawyer, it's got to be there and not my walking in and
12 out of the holding room.

13 MS. BRUECKHEIMER: And a right -- but they
14 never told him that he'd have the ability to talk to a
15 lawyer during the interrogation.

16 CHIEF JUSTICE ROBERTS: Is there -- is there
17 any -- I'm not sure this is pertinent -- but is there
18 any malevolent reason Tampa police would adopt this
19 warning? I mean, someone says, well, here's what the
20 FBI uses. And they say, well, I tell you what, if we
21 just say you have a right to an attorney before
22 answering any questions and then later say you can
23 exercise this right any time, maybe we'll be able to
24 trick some people who don't think they can actually have
25 the lawyer there. In other words was this just --

1 MS. BRUECKHEIMER: It's -- it's hard for us
2 to be able to delve into the minds of the Tampa Police
3 Department and the people who create these forms.
4 However, in the Thompson case, which is before you in
5 the briefs, in 1984, they had it right. They said you
6 have the right to talk to an attorney beforehand and to
7 the presence of an attorney during interrogation. This
8 was in a death case, and there was something wrong with
9 the right to free counsel. They either didn't give it
10 to them or not.

11 So why they went and changed the part to the
12 right to an attorney before -- before the questioning,
13 and then during questioning, we don't know.

14 CHIEF JUSTICE ROBERTS: So -- and you can't
15 think of any bad reason they might have done it.

16 MS. BRUECKHEIMER: Well, Professor Leo
17 could, and there is a memo he attaches at the end of his
18 appendix in the amicus brief, but I -- I would just say
19 that it doesn't really matter what the motives are, and
20 that it all depends on how the defendant or the person
21 in custody is -- is perceiving these warnings and
22 whether he's getting the information he or she needs to
23 be --

24 JUSTICE GINSBURG: What do you do with the
25 -- the Court's decisions in Prysock and Duckworth that

1 dealt with the right to appointed counsel and the
2 suspect was not explicitly told that he had a right to
3 appointed counsel at the pre-arraignment stage. It said
4 something about a court would give you --

5 MS. BRUECKHEIMER: Right. The -- the
6 language in those cases had something to do with -- you
7 know, the idea being that, it was almost
8 informational -- too much information, additional
9 information as to when you're going to get your
10 counsel. But the four core --

11 JUSTICE GINSBURG: You wouldn't have to have
12 any additional information; you just tell them, you have
13 a right to have a -- have counsel now. That would be
14 fewer words.

15 MS. BRUECKHEIMER: Well, they -- in Prysock
16 it was a matter of the order, but in Duckworth it was,
17 we can't get one for you at this moment kind of thing.
18 And no State is obligated -- or agency -- to provide
19 counsel on demand.

20 JUSTICE GINSBURG: Didn't one of them say
21 "court," and the suspect was not in court at the time?

22 MS. BRUECKHEIMER: Was not in court?

23 JUSTICE GINSBURG: Yes. That the court will
24 appoint counsel for you.

25 MS. BRUECKHEIMER: Right. And that would be

1 sometime in the future. But -- but they did -- but they
2 did tell them that if you're going -- if you're going to
3 be questioned, you have the right to counsel with you at
4 that time. And that was the important thing. Even if
5 we had to wait, they couldn't question him until he had
6 his attorney with him.

7 JUSTICE ALITO: If this warning is read the
8 way we might -- lawyers might read a statute or a
9 contract or something like that, then I don't know why
10 saying, "You have the right to remain silent," isn't
11 potentially misleading. It says you have the right to
12 remain silent. But once you break your silence, there
13 is nothing in there that says you have the right to
14 resume your silence.

15 MS. BRUECKHEIMER: No.

16 JUSTICE ALITO: Would you agree with that?

17 MS. BRUECKHEIMER: Except for that -- that
18 catch-all phrase that they used at the bottom, which is
19 you have the right to use any of these at any time.

20 JUSTICE ALITO: Do you think that is
21 defective, too?

22 MS. BRUECKHEIMER: Well, I think that it --
23 it's probably okay as far as reinforcing the right to
24 remain silent and informing him that any of your answers
25 can be used against you, but I don't think it salvages a

1 right that's not there, which is the right to presence
2 during interrogation.

3 JUSTICE ALITO: So once you break your --
4 you have the right to remain silent, but once you break
5 that right, the fact that you have that right to use
6 that right to remain silent in the future doesn't mean
7 you can stop answering questions.

8 MS. BRUECKHEIMER: Well, the -- the
9 catch-all phrase might inform them that they could stop,
10 but, clearly, if they had the right to presence of
11 counsel with them, that might --

12 JUSTICE KENNEDY: We could write that down.
13 It could be the next case.

14 (Laughter.)

15 MS. BRUECKHEIMER: Right. And I do -- I
16 also contest the language that the opposing counsel uses
17 that says that we have somehow locked in everybody with
18 -- with what the -- what the decision below said.

19 The decision below held that, and I quote at
20 541, "We hold that Powell should have been clearly
21 informed of his right to the presence of counsel during
22 the custodial interrogation." It's not magic language.
23 It's not so -- so written in stone that -- it's not
24 explicit language.

25 There's -- there's -- this language follows

1 what this -- this Court has said. The reasonable
2 language, the clearly informed language. It isn't
3 locking everyone into these exact words down the line.
4 And there are hundreds of ways that this could be said.
5 So -- and then the court noted that the catch-all phrase
6 did not effectively convey to Mr. Powell his rights to
7 presence before and during and that the last sentence
8 could not effectively convey a right that he was never
9 told he had.

10 As far as whether or not this case should
11 even be here, even though the Florida Constitution and
12 the Florida court has gone along the same road, traveled
13 a parallel road with this Court, and it hasn't seen a
14 need to deviate, they -- they may see a need to deviate
15 here, should this Court disagree with what --

16 JUSTICE GINSBURG: Well, they are -- they
17 are free to do that. I mean, politically, they might
18 consider it risky, but if we say that the charge was
19 good enough, the Florida court could say, but it's not
20 good enough under our Constitution.

21 MS. BRUECKHEIMER: Correct. And -- and I
22 believe they would.

23 JUSTICE KENNEDY: Well, I'm -- I'm not sure
24 that's the case. The remand in Long was only to address
25 another issue. The Long Court took its determination as

1 being binding on the issue that was before the Court in
2 Long --

3 MS. BRUECKHEIMER: Well --

4 JUSTICE KENNEDY: -- in that case.

5 MS. BRUECKHEIMER: -- the Florida Supreme
6 Court must have referred to its constitutional
7 provision, Article I, section 9, at least five times.

8 JUSTICE KENNEDY: And in each time, it said
9 that it was by extension from Miranda. It always linked
10 it, and that was the question that was presented in the
11 State court --

12 MS. BRUECKHEIMER: Right. And the --

13 JUSTICE KENNEDY: -- that it certified.

14 MS. BRUECKHEIMER: It's almost like Miranda
15 is being used as a generic concept for warnings -- you
16 know, we're complying with Miranda --

17 JUSTICE KENNEDY: That's the whole reason we
18 have jurisdiction, so that Miranda will not be confused,
19 and so that it won't be a hazard on the landscape when
20 people say "Miranda" and they mean something else.

21 MS. BRUECKHEIMER: Right, but -- you know --

22 JUSTICE KENNEDY: And it's not at all clear
23 that the Washington -- that the Florida Supreme Court
24 could in this case go back to the Constitution. That's
25 -- you can't get that out of Long.

1 MS. BRUECKHEIMER: You can't go lower than
2 the Federal Constitution, but they can give more rights.

3 JUSTICE KENNEDY: It's -- maybe in some
4 other case. Not necessarily in this one, because Long
5 leads to -- to the contrary.

6 MS. BRUECKHEIMER: Well, in -- in Traylor,
7 which is the court that -- it's the case that the -- the
8 Florida Supreme Court and the decision below relied
9 heavily upon, they said that we are the ceiling and the
10 court is the bottom, and --

11 JUSTICE KENNEDY: But you have no case in
12 which the Florida Supreme Court has explicitly said that
13 we have a warning that is more strict, more rigorous
14 than what Miranda requires? You have no case?

15 MS. BRUECKHEIMER: No, and they -- they
16 didn't feel like they had to -- to deviate, because they
17 felt like their definition of presence of counsel, which
18 was the right to consult with an attorney before and the
19 right to have counsel present during the interrogation,
20 was consistent with the holdings in Miranda. So they
21 didn't feel the need to deviate.

22 But they did say that that is our definition
23 as we set forth in -- in Traylor, and that is --

24 JUSTICE SCALIA: I'm curious: When this
25 goes back to them, do you think they can deviate? They

1 were answering a certified question, which was simply
2 whether this -- this warning complied with Miranda.
3 That was the only certified question.

4 So when it goes back, I assume they, having
5 said no, will now have to say yes. Can they go on and
6 say: Oh, and by the way, even though it doesn't violate
7 Miranda, we think it violates the State Constitution?

8 MS. BRUECKHEIMER: I believe they can,
9 because as long as they are not going below what this
10 Court mandates --

11 JUSTICE SCALIA: Well, but that --

12 MS. BRUECKHEIMER: -- if they provide more
13 protections.

14 JUSTICE SCALIA: But that wasn't the
15 question asked of them. The only question asked of them
16 was whether it complied with Miranda.

17 MS. BRUECKHEIMER: Right. And they --

18 JUSTICE STEVENS: That's really not --
19 that's really not quite accurate, because they used the
20 term "Miranda warnings" generically --

21 MS. BRUECKHEIMER: Generically, and --

22 JUSTICE STEVENS: -- as opposed to a
23 category of warnings which are required by both the
24 Federal Constitution and the State constitution, and
25 they said it violated the State constitution.

1 MS. BRUECKHEIMER: Yes, they did. And they
2 did -- they did say we have our standard under Traylor,
3 that we defined the right to the presence of counsel or
4 to the help of counsel as requiring presence during, as
5 --

6 JUSTICE KENNEDY: Well, except the words
7 that it quoted from the lower court opinion -- that is,
8 we are talking about the -- the Fifth Amendment, and by
9 extension, Article I, section 9.

10 MS. BRUECKHEIMER: Right.

11 JUSTICE KENNEDY: So that seems to me to
12 indicate that it's incorporating, not going further.

13 MS. BRUECKHEIMER: Well, if -- if --

14 JUSTICE STEVENS: That's not in the question
15 they -- they took.

16 MS. BRUECKHEIMER: No. No, that's not in
17 the question.

18 But there is a way to -- you know, they
19 repeated all along the way, Article I, section 9. They
20 kept repeating it. They didn't have to. If they were
21 just going to say, oh, by the way, our Constitution
22 goes along with this, they could have said it in
23 passing. They could have also said that we -- we
24 choose not to interpret this other right.

25 JUSTICE KENNEDY: I think the opposite. I

1 think the repeated linkage shows that they think they
2 are the same.

3 MS. BRUECKHEIMER: Well -- and, again, I
4 would say that they -- they agree that we are traveling
5 along the same road, but they have -- they have -- they
6 are stressing the fact that they have set a line in the
7 sand as far as what they're interpreting the right to
8 presence --

9 JUSTICE GINSBURG: I think --

10 JUSTICE SCALIA: Well, the question asked:
11 Does the failure to provide express advice of the right
12 to the presence of counsel during questioning vitiate
13 Miranda warnings?

14 Okay? That's the question. They have a
15 footnote after Miranda, which reads, "Miranda v.
16 Arizona, 384 U.S. 436." I take that to mean that the
17 question is whether this warning violated Miranda.

18 MS. BRUECKHEIMER: And, of course, if they
19 did violate the baseline, the minimum standard set forth
20 in Miranda --

21 JUSTICE SCALIA: Right.

22 MS. BRUECKHEIMER: -- then it would be
23 unconstitutional.

24 JUSTICE SCALIA: Absolutely.

25 MS. BRUECKHEIMER: So -- which is why

1 Traylor and the Florida constitution kept making --
2 because they didn't have to really get to what the
3 bottom or the baseline or the minimum standard was, as
4 long as Florida had set forth a standard.

5 JUSTICE SCALIA: Well, that's true, but --
6 but if they -- if they felt the authority to go beyond
7 Miranda, wouldn't they have had to say no to this
8 question, if we find that way, and then go on to say:
9 But it does violate our own? And that's beyond the
10 question that they -- that they -- that was certified to
11 them.

12 MS. BRUECKHEIMER: And I believe the idea
13 that they didn't think it was deviating from the Miranda
14 case.

15 JUSTICE SCALIA: Right. I --

16 MS. BRUECKHEIMER: But if this Court finds
17 that it does, then they -- they will probably -- and I
18 feel confident that they would fall back on the
19 constitution -- of the Florida constitution.

20 JUSTICE GINSBURG: But they did say over and
21 over again -- one was the certified question; another
22 was the issue before the court is whether the failure
23 to provide express advice of the right to the presence
24 of counsel during custodial interrogation violates the
25 principles espoused in Miranda, with the citation.

1 I mean, they said many, many times that the
2 question was -- what did Miranda mean was the issue, not
3 what -- what did Florida's extension of Miranda.

4 MS. BRUECKHEIMER: Well, they do have a
5 section in looking at, you know, other circuit courts in
6 the Federal system, and all -- what our Florida courts
7 are doing, and -- which is when they get into the
8 concept of -- well, they start out talking about Traylor
9 and our constitution at the beginning, and they -- they
10 repeat it at the end because they believe it is
11 consistent with. They believe it is following along.

12 But they never say that -- that our
13 constitution isn't insignificant or that it's not
14 important. If they did, they wouldn't have felt the
15 need to cite Traylor.

16 JUSTICE GINSBURG: I think you would have
17 had a much weightier argument if it hadn't been for
18 Michigan v. Long. If you could have said --

19 MS. BRUECKHEIMER: It -- it would have been
20 nice.

21 (Laughter.)

22 JUSTICE GINSBURG: We could have then
23 remanded to ask the Florida Supreme Court: Was it
24 independently ruling under its constitution?

25 MS. BRUECKHEIMER: I -- I will keep that in

1 mind.

2 (Laughter.)

3 MS. BRUECKHEIMER: The -- the idea of clear,
4 reasonably clear -- whichever the standard is,
5 Justice Sotomayor, I believe the Florida Supreme Court
6 used the correct standard and used the one by saying
7 that it was clear -- you know, whether or not Mr. Powell
8 was clearly informed.

9 So no matter which standard you use, as far
10 as functionally equivalent or whatever, I believe that
11 this falls within the four corners of that.

12 The obligation -- let's see, I'm looking to
13 see what other cases -- general cases.

14 They -- the opposition cites to the
15 fact that there's this great conflict going on among the
16 circuits. I don't believe that such a conflict is --
17 whatever those cases were deciding, I don't believe they
18 would have approved of this language.

19 This language, because of the "before"
20 limiting language and excluding the "presence during"
21 language, became misleading. And the -- the general
22 cases that like -- just the plain language, you have the
23 right to the presence of counsel, they -- they are not
24 inconsistent with -- with what Florida has required.
25 They -- they would not disagree that there --

1 JUSTICE ALITO: Well, you said that the
2 average person wouldn't take this warning to mean --
3 to -- wouldn't envision a procedure like the grand jury
4 procedure. What does it mislead the average person to
5 think?

6 MS. BRUECKHEIMER: That he -- that once
7 questioning starts, that he -- he has no right to
8 consult with a lawyer anymore, and it certainly
9 doesn't -- and tell him that he has the right to the
10 presence of an attorney with him in an interrogation
11 room, where the coercion takes on a highly new meaning.

12 I mean the coercive practices that are --
13 that are --

14 JUSTICE ALITO: But the latter part of that
15 is the grand jury question. You have a right to consult
16 an attorney, but you don't have the right to have an
17 attorney present.

18 MS. BRUECKHEIMER: I don't -- I don't
19 believe -- any -- any of the normal reasonable suspects
20 are -- would probably be even aware of what the grand
21 jury proceeding was about.

22 JUSTICE ALITO: Okay. So then your argument
23 is that this -- that what -- what a normal -- an average
24 person would take this to mean is that you -- you can
25 talk an -- to an attorney before starting to answer

1 questions, but not once the questioning begins. That's
2 what you take it to mean?

3 MS. BRUECKHEIMER: Correct, and I'm not the
4 only one. There were five supreme court justices, a
5 majority on the second -- the majority of the second
6 district judges in Powell and seven judges on the second
7 district level, who all found that to be the case, and
8 we're talking someone who doesn't have that level of
9 intelligence.

10 And he may have had a prior record -- he did
11 have a prior record, but that doesn't mean --

12 JUSTICE ALITO: Well, all of those people
13 are lawyers, and lawyers are known to read legal
14 documents very precisely. The average person may read
15 them very differently.

16 MS. BRUECKHEIMER: Correct, and in this
17 case --

18 JUSTICE SCALIA: Sometimes, a little
19 knowledge is a dangerous thing.

20 (Laughter.)

21 MS. BRUECKHEIMER: Yes.

22 And I do believe that, if this Court were to
23 reverse, that would set a new floor for these forms and
24 that there would be the danger of the fact that -- I
25 mean, if -- if the Tampa public -- police department is

1 always changing its forms -- which they have shown to be
2 the case -- they have changed these forms in the past --
3 why wouldn't other agencies decide to change their forms
4 and make things more --

5 CHIEF JUSTICE ROBERTS: You -- you think
6 it's a good thing, though, that they changed their forms
7 to track the FBI form after -- after this litigation
8 started.

9 MS. BRUECKHEIMER: I -- I -- yes. I do
10 believe that, when they changed the form to comply with
11 the decision below and with what's going on in 97
12 percent -- or 96 percent of the jurisdictions -- it
13 doesn't have to be exact language; it just has to be
14 there. Then -- then the -- then the system runs
15 beautifully.

16 I can't tell you the last time I had a
17 Miranda warning case, and I have been doing this for
18 almost 30 years.

19 There is no litigation when it's done
20 correctly, and it's mostly done correctly.

21 Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you, counsel.

23 Counsel, you have a minute remaining.

24 REBUTTAL ARGUMENT OF JOSEPH W. JACQUOT

25 ON BEHALF OF THE PETITIONER

1 MR. JACQUOT: Mr. Chief Justice, let me make
2 three brief points, after responding to a question that
3 Justice Stevens asked.

4 In terms of independent and adequate State
5 grounds, in our brief, we relied on the Florida court
6 citing Miranda, the case, not Miranda, as the
7 phraseology, that the Florida Supreme Court interwove
8 the Federal law based on Miranda, the case itself, and
9 there is no plain statement to the otherwise.

10 Three quick points: There is no
11 manipulation behind this warning. This warning is the
12 result of litigation in Thompson v. State. That was a
13 1991 decision by the Florida Supreme Court.

14 The -- the Tampa police had changed its
15 warning. The previous warning had 148 words. This
16 warning is simpler, with 79 words. The previous warning
17 had arcane and redundant language. This language is
18 more straightforward.

19 Those are the reasons behind the change in
20 the warning, not any kind of inference, as amici makes,
21 towards manipulation.

22 Second, what Respondent is asking for is
23 exactly what this Court chose not to do in Prysock.

24 It told the --

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

1 The case is submitted.

2 (Whereupon, at 12:15 p.m., the case in the
3 above-entitled matter was submitted.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

A	53:23	15:1 29:22	asked 18:6	53:18
abandoned 24:6	advising 34:17	apparently	31:22 39:20	bad 43:15
ability 9:8 13:6	affirmed 20:18	40:17	40:12,23 50:15	balance 20:8
42:14	affirming 23:11	APPEARAN...	50:15 52:10	Bartow 1:23
able 42:23 43:2	agencies 18:1,16	1:14	59:3	based 59:8
above-entitled	26:17 58:3	appears 15:18	asking 11:2	baseline 52:19
1:11 60:3	agency 44:18	appendix 40:16	15:10 41:9	53:3
absolutely 14:22	agree 4:2 22:22	43:18	59:22	basic 35:25
16:4 27:18	23:7 29:16	applied 3:25	assert 28:17	beautifully
52:24	31:19 45:16	9:13 14:12	Assistant 1:18	58:15
abundantly	52:4	applies 15:6	1:22	began 12:25
14:22	ahead 39:22	apply 14:10 25:4	assume 16:2	beginning 28:23
accept 4:3	ALITO 41:17	25:7	30:4 31:21	34:10 54:9
access 13:1	41:21 45:7,16	appoint 44:24	50:4	begins 18:18
accomplish 21:1	45:20 46:3	appointed 5:3	assumption 31:2	57:1
accurate 50:19	56:1,14,22	44:1,3	42:9	behalf 1:16,19
added 14:21	57:12	approach 16:19	attaches 43:17	1:23 2:4,6,9,12
15:1 36:12	allow 19:25	appropriate	attempted 16:22	3:7 20:12 32:3
37:11	ambiguity 24:17	6:22	20:24	58:25
adding 37:3	25:3,14	approval 18:1	attempting 16:6	belief 33:10
addition 20:2	ambiguous 8:12	approve 21:9	attorney 1:15	believe 23:23
additional 37:4	8:15	29:4 38:11	3:19 9:2,7 13:2	35:12 37:18,20
37:11 44:8,12	Amendment	approved 17:19	13:8 14:3 20:5	38:9 39:18
address 47:24	3:11 4:6 51:8	17:22 18:22	21:23 28:1,3	47:22 50:8
addressing 41:8	amici 6:23,24	32:14,17 37:18	30:14 31:3,6	53:12 54:10,11
adequate 7:20	7:7 16:13	38:7 55:18	31:21 33:24	55:5,10,16,17
7:20 17:5	20:19,22 59:20	approves 29:6	35:19 36:1,2	56:19 57:22
22:23 23:1	amicus 1:20 2:6	approving 34:21	39:20,21,24	58:10
27:9,11 30:15	20:12 43:18	approvingly	40:13,18 41:11	believes 26:15
59:4	analysis 3:17,25	13:4	42:21 43:6,7	best 20:22
adequately 8:7	14:12 16:17	arcane 59:17	43:12 45:6	beyond 6:1 53:6
23:7 33:10	20:3	argue 10:9	49:18 56:10,16	53:9
admissible	angels 39:17	arguing 18:5	56:17,25	binding 48:1
17:16	announced 29:9	argument 1:12	attractive 17:24	bit 16:1 37:22
adopt 22:3,14,19	answer 12:24	2:2,10 3:4,6	authority 53:6	books 21:4
42:18	20:22 30:24	14:17 20:11,19	average 41:18	bottom 20:20
adopted 22:12	40:15 56:25	27:4 29:15	56:2,4,23	31:8 37:15
adopting 38:12	answering 9:17	32:2 41:2,4,7	57:14	45:18 49:10
adopts 25:20,23	9:22,25 10:6	54:17 56:22	avoids 26:17	53:3
26:11	16:20 28:1	58:24	aware 26:5	break 45:12
advance 25:6	31:3 42:22	Arizona 4:17	56:20	46:3,4
adversary 24:11	46:7 50:1	52:16	a.m 1:13 3:2	Breyer 10:11,24
24:12	answers 45:24	arose 26:2	B	11:2,5,10,18
advice 13:13	anybody 28:5	arrested 34:17	back 17:3,7,13	11:22 12:24
15:13 19:20,25	anymore 56:8	Article 5:17	18:7 48:24	13:12 14:5
30:11 52:11	anyway 14:25	48:7 51:9,19	49:25 50:4	27:5,8,12,14

27:19,24 28:5 28:12,16,20 29:5,10,13,19 29:22 30:6,24 38:13,20,22 39:10 Bridgers 31:17 brief 24:1 31:20 43:18 59:2,5 briefs 23:21 43:5 broadly 7:9 Brueckheimer 1:22 2:8 32:1,2 32:4,12,16,22 33:3,8,14,17 33:19 34:4,7 34:14 35:6,11 35:18,22,24 36:8,11,18,23 37:2,8,20 38:2 38:5,8,19,21 39:5,13 40:4 40:21,23 41:13 41:20,23 42:3 42:13 43:1,16 44:5,15,22,25 45:15,17,22 46:8,15 47:21 48:3,5,12,14 48:21 49:1,6 49:15 50:8,12 50:17,21 51:1 51:10,13,16 52:3,18,22,25 53:12,16 54:4 54:19,25 55:3 56:6,18 57:3 57:16,21 58:9 burden 14:22 36:15,16,25 burdening 14:17 burdensome 34:8,21 36:21 37:3	C C 2:1 3:1 calling 24:24 capable 30:5 captured 25:19 card 15:8,12 carefully 20:23 case 3:4 4:3,12 5:23,25 6:5 7:8 7:13,20 9:21 9:23 13:18,22 17:22 18:20 19:10 20:18 22:18 25:22 26:2 31:19 39:5 40:11 43:4,8 46:13 47:10,24 48:4 48:24 49:4,7 49:11,14 53:14 57:7,17 58:2 58:17 59:6,8 60:1,2 cases 7:12 8:3 12:20 14:1 15:18 44:6 55:13,13,17,22 catch-all 45:18 46:9 47:5 category 50:23 ceiling 49:9 certain 3:20,20 8:15 15:20 19:13 certainly 56:8 certified 48:13 50:1,3 53:10 53:21 change 37:12,13 58:3 59:19 changed 43:11 58:2,6,10 59:14 changing 21:2 22:2 58:1 charge 8:22	47:18 Chief 3:3,8 10:1 10:4 20:7,9,14 23:20 31:24 32:1,4,11,13 32:19 34:22 35:8,12,15,20 35:23 36:6,10 37:5 42:16 43:14 58:5,22 59:1,25 choice 30:14 33:24 choose 51:24 chose 15:25 16:15 59:23 chosen 15:25 circuit 22:8 24:3 24:8,15 30:21 39:7 54:5 circuits 14:1 55:16 citation 53:25 cite 8:23 54:15 cited 6:9,11 8:25 13:4 16:13 31:20 cites 55:14 citing 59:6 City 24:8 claim 16:12 clarity 8:14,17 15:11,12 Clark 29:16 clear 7:18,24 8:12 12:24 14:23 21:5 24:11,13 25:15 29:17 38:15 48:22 55:3,4,7 clearer 17:4 29:12 clearly 8:6 10:13 13:16 32:6,8 46:10,20 47:2 55:8	client 39:18 41:1 41:9 closer 31:18 coerced 41:3 coercion 56:11 coercive 56:12 communicate 12:22 13:1 communicated 12:15 compiled 34:12 34:16 complied 50:2 50:16 complies 35:9 comply 58:10 complying 48:16 concept 48:15 54:8 concern 23:3,6 conclude 24:18 confer 9:17 confessed 39:22 40:1 confession 3:15 confessions 3:12 3:12 17:16,16 confident 53:18 conflict 7:23 55:15,16 conforming 14:23 confronted 31:17 confuse 16:3 confused 48:18 confusion 12:18 consider 47:18 considerably 8:24 consistent 8:9 29:8,14 32:19 32:20,22 33:12 35:2,6,9,16,22 36:7,8,16,25 37:7,13 38:10	38:18 49:20 54:11 constitution 4:5 4:8 5:17 6:2,10 6:12,15,17,19 6:25 7:8,9 26:18,20,23,25 47:11,20 48:24 49:2 50:7,24 50:24,25 51:21 53:1,19,19 54:9,13,24 constitutional 30:8 48:6 constitutionally 30:15 construing 16:25 consult 9:8,22 10:14,19 13:5 32:9 39:19,21 49:18 56:8,15 contained 23:18 24:7 contest 46:16 continue 19:3 continued 37:12 continuing 19:21 contract 45:9 contrary 49:5 control 8:4 convey 8:1,8,18 10:23 16:6 23:7 24:14,18 30:25 47:6,8 conveyed 3:18 9:2 18:15 20:6 33:7,11 40:18 conveys 14:11 24:16 conviction 3:15 Copy 16:10 core 44:10 corners 55:11 correct 5:7 9:6
--	---	--	---	--

11:10 12:9 14:8,19,20 17:9 30:18 33:3 37:2 47:21 55:6 57:3,16 correctly 58:20 58:20 cost 14:24 15:2 couldn't 29:11 counsel 9:8,17 9:22 11:25 12:3 13:5 20:9 23:15,16 24:4 24:12 30:1,12 30:22 31:24 32:25 33:25 35:5,14 36:13 37:21 38:16 39:2,15 40:17 40:19,21 43:9 44:1,3,10,13 44:19,24 45:3 46:11,16,21 49:17,19 51:3 51:4 52:12 53:24 55:23 58:22,23 59:25 counteract 34:20 counterintuitive 31:1 counterpart 4:6 country 22:20 22:25 23:13 course 18:8 30:19 52:18 court 1:1,12 3:9 3:14,16,19,21 3:22,23,25 4:4 4:10,11,16,18 4:19,23 5:1,3 5:16,21 6:7,20 7:4,12 8:6,7,17 9:11,12,13,14 12:12 13:9	14:12,14 15:14 15:19 16:14,16 16:18 17:1,19 17:23 18:25 19:9,12,25,25 20:15,18 21:21 21:24 24:25 25:14,20,22 26:3 27:3 28:24 29:16,17 30:12 31:17 32:5,17,23 33:4,22 35:12 35:16 37:10 38:9,23,24 39:6,8,10 44:4 44:21,21,22,23 47:1,5,12,13 47:15,19,25 48:1,6,11,23 49:7,8,10,12 50:10 51:7 53:16,22 54:23 55:5 57:4,22 59:5,7,13,23 courts 3:10 6:24 14:10 18:1 22:8 24:3,15 24:16,19 30:20 39:7 54:5,6 court's 6:22 15:4 23:25 Court's 43:25 co-counsel 24:12 create 25:6 30:16 43:3 crimes 3:13 criminal 11:8 curiae 1:20 2:7 20:12 curious 49:24 current 13:24 currently 14:10 17:6 custodial 13:11 42:6 46:22	53:24 custody 43:21 <hr/> D D 3:1 dancing 39:17 danger 17:2 20:2 57:24 dangerous 57:19 DAVID 1:18 2:5 20:11 deal 24:9 dealing 15:22 25:11 dealt 44:1 death 43:8 debate 24:22 DEBORAH 1:22 2:8 32:2 deceive 16:2 December 1:9 decide 58:3 decided 30:22 39:18 deciding 55:17 decision 4:13 29:8 31:20 46:18,19 49:8 58:11 59:13 decisions 5:22 7:23,25 43:25 defective 45:21 defendant 12:12 12:22 40:11 43:20 Defender 1:23 defined 51:3 defining 16:25 definition 49:17 49:22 delineate 32:20 35:2 delineated 35:17 delve 43:2 demand 44:19 department 1:19 43:3	57:25 departments 21:13 24:5 38:25 departures 25:8 depends 43:20 Deputy 1:15 description 23:25 desire 17:15 destroy 23:4 detail 9:9 detectives 40:14 40:19 41:11 determination 47:25 determining 12:6 deviate 47:14,14 49:16,21,25 deviating 53:13 devote 27:6,20 DEWAYNE 1:6 difference 8:2 8:13 different 7:6 9:14 10:2 17:11 26:1 30:12 37:17 39:25 differently 4:19 11:8 57:15 difficult 31:19 difficulty 14:16 directly 20:16 disagree 32:16 37:24 47:15 55:25 discount 16:22 discussing 12:1 discussion 23:25 disrupt 23:12 dissent 29:16 district 18:21 19:2 57:6,7 districts 19:3	documents 57:14 doing 16:10 18:7 54:7 58:17 drafted 16:5 draw 31:1 drop 23:17 dropped 39:3 Duckworth 8:8 16:16 21:4,22 22:10 43:25 44:16 due 35:11 D.C 1:8,19 <hr/> E E 2:1 3:1,1 easement 17:1 easy 16:9 25:5 Edgar 29:24 effect 18:25 effective 22:2 34:16 effectively 13:1 47:6,8 eight 11:14 28:25 either 43:9 elected 4:23,23 4:25 5:4,14 election 5:6,8,10 encouraging 21:18 enforcement 12:25 14:17 15:7,11 17:14 18:1,16 26:16 34:17 36:16,21 entitled 9:17,22 12:13,16 entity 15:23 envision 41:18 41:25 56:3 equivalent 37:19 37:23 55:10 erred 3:14 error 15:9
--	---	---	---	---

especially 40:5	extension 48:9	Fifth 3:11 4:6	forget 39:4	generalize 21:16
espoused 53:25	51:9 54:3	30:21 51:8	form 14:18,22	generalized 13:5
ESQ 1:15,18,22	extent 38:25	find 53:8	14:23,25 15:1	14:1
2:3,5,8,11		finds 14:14	15:22 17:4,5,6	generally 26:13
essence 8:1	F	53:16	17:10,13 23:19	generic 48:15
essentially 20:4	face 7:18	fine 22:20	23:22,23 25:6	generically
evade 20:24	fact 13:1,16 22:5	finish 27:6	25:12 26:7,7	50:20,21
evaluating 3:17	24:10 30:7,22	first 3:16 5:3	26:13,24,25	getting 13:8
14:13	40:25 46:5	7:15 11:19	27:3 41:15,16	43:22
Evans 4:17	52:6 55:15	13:7 14:9 15:5	58:7,10	Ginsburg 4:2,14
everybody 26:24	57:24	21:21 29:2	forms 25:5,8	7:16 8:20 9:1,4
27:1 46:17	failure 52:11	31:22	26:2,6 43:3	12:5,10,23
exact 34:24 47:3	53:22	fish 39:25	57:23 58:1,2,3	14:4 17:2 29:3
58:13	fair 22:12	five 12:2 48:7	58:6	40:10,22 41:9
exactly 23:14	fall 53:18	57:4	formulation	42:2,5 43:24
27:4 30:3	falls 16:12 55:11	Fla 1:16,23	16:24 17:11	44:11,20,23
59:23	familiar 28:7	floor 21:11,12	21:5 22:7 24:7	47:16 52:9
example 23:18	fantastic 40:3	57:23	forth 23:21,22	53:20 54:16,22
exception 25:11	far 36:4 45:23	Florida 1:3 3:4	32:24 33:4,6,9	Ginsburg's
25:16,17,19	47:10 52:7	3:13,16 4:4,5,8	49:23 52:19	20:17
excluding 55:20	55:9	4:10,11,22 5:1	53:4	give 13:19 24:10
exclusive 16:21	FBI 8:24 11:20	5:2,11,15,17	found 3:21 4:17	36:21 38:7
Excuse 23:9	12:8 13:4,12	5:20 6:2,10,11	5:22 6:20	43:9 44:4 49:2
27:5	13:13,19,24	6:15,17,19,24	16:17 20:23	given 3:24 9:21
exemplary	14:6 17:6	6:25 7:4,7,8,9	57:7	9:21 17:15,18
34:16	23:19,22,23	7:12 9:11,12	four 8:21 22:7	37:1
exercise 42:23	24:5,7 25:24	12:12 14:12,14	24:3 27:14,20	giving 41:4
expanded 5:11	29:4,24 32:13	15:4 16:14	44:10 55:11	go 9:9 10:19
expansively 5:18	33:10 34:12,16	17:23 18:24	free 33:25 36:12	17:3,7,13 18:7
6:25	34:23 35:2,4	19:6,9,12,23	43:9 47:17	20:16 21:24
experience	35:15 36:5	19:24 24:25	front 41:7,24	36:4 48:24
20:21 28:6	37:1,7,12,17	25:4 26:1,2,6	full 12:16 23:24	49:1 50:5 53:6
explain 27:10	37:23 38:1,17	47:11,12,19	29:1	53:8
explicit 9:9 15:4	42:20 58:7	48:5,23 49:8	functionally	goes 6:1 12:2
15:13,25 16:1	fears 19:20	49:12 53:1,4	55:10	37:22 49:25
21:14 25:15,23	Federal 4:13,21	53:19 54:6,23	further 35:13	50:4 51:22
46:24	6:7,14,18,21	55:5,24 59:5,7	37:22 51:12	going 4:7 14:24
explicitly 5:16	7:1,10 23:4	59:13	furthermore	15:11 17:21
5:18,18 19:13	26:16 30:15	Florida's 54:3	3:24 9:25 13:6	30:7 31:1,4
44:2 49:12	49:2 50:24	focus 42:3	16:18	34:8 42:7 44:9
express 15:13	54:6 59:8	followed 19:9	future 45:1 46:6	45:2,2 50:9
19:20,25 52:11	feel 49:16,21	35:1 37:6		51:12,21 55:15
53:23	53:18	following 19:12	G	58:11
expressed 15:21	felt 49:17 53:6	54:11	G 3:1	good 16:7 23:5
expresses 10:9	54:14	follows 46:25	general 1:16,18	23:10 33:18
expressly 36:17	fewer 44:14	footnote 52:15	23:15,16 24:3	47:19,20 58:6
	field 15:8		55:13,21	

goodness 17:18	11:7 13:24	infer 28:2	13:11 21:15	judges 4:23,25
government	14:8 15:3 16:4	inference 59:20	interview 10:8	57:6,6
23:4 26:15	16:11 17:9,25	inform 8:6,8	28:2 31:4	judicial 18:21
30:15 34:9	40:4	46:9	33:21 34:18	19:2
grand 10:18,19	Hoover's 29:24	information	39:21,24	juries 10:18
11:6,8,12 28:7	hopping 42:8	28:11 43:22	interweave 6:21	jurisdiction 4:20
41:19,24 56:3	hundreds 47:4	44:8,9,12	interwove 6:18	6:22 19:6 22:3
56:15,20	hypertechnical	informational	59:7	22:20,24 26:7
great 38:25	3:25 16:19	44:8	invalidate 24:22	26:10 48:18
55:15		informed 10:14	involved 8:22	jurisdictions
grounds 4:12,13	I	13:17 32:8	15:17	16:10 19:23
4:15,19,21	idea 23:10 44:7	46:21 47:2	involving 17:23	22:14 23:17
7:21 24:21	53:12 55:3	55:8	issue 9:7,12 13:7	24:6 58:12
59:5	identical 35:7	informing 45:24	14:9 15:23	jurists 24:22
guarantee 30:19	ignored 3:22	inquiring 36:20	18:2,17 20:23	25:1
guess 17:22 28:5	16:14	inquiry 24:21	34:9 38:1,2,3,4	jury 10:19 11:6
	immunity 24:21	insignificant	47:25 48:1	11:8,12 28:7
H	important 3:12	54:13	53:22 54:2	41:8,12,19,24
happen 20:17	29:1 45:4	instance 19:22	issues 14:3	56:3,15,21
happens 25:10	54:14	instruction	it's 13:10 18:15	justices 40:8
hard 43:1	improved 8:24	17:19	23:1 24:2 37:2	57:4
hazard 48:19	inadvertent 25:8	intelligence 57:9	49:7 51:12	
head 39:17	incentive 17:14	intelligent 41:6	I'd 20:8,16	K
hear 3:3	21:13 22:13	intelligently	I'll 35:8	K 1:22 2:8 32:2
hearing 41:18	included 22:6	40:24 41:14		keep 9:5 54:25
hears 27:25	includes 25:6	intend 38:15	J	Kennedy 5:15
heavily 22:6	including 32:25	intent 15:16,23	J 29:24	22:18,24 23:9
49:9	inconsistency	16:2	Jacquot 1:15 2:3	23:14 33:1
held 10:13 13:9	15:9	interest 18:23	2:11 3:5,6,8	34:13 46:12
14:1 22:8 24:8	inconsistent	interesting	4:10,16,24 5:2	47:23 48:4,8
32:7 46:19	32:15 55:24	29:14	5:7,13,20 6:3,6	48:13,17,22
help 12:13,17	incorporating	interpret 10:17	6:11,16 7:3,11	49:3,11 51:6
51:4	51:12	51:24	7:17 8:5,16 9:1	51:11,25
hesitate 18:6	incorrectly 3:21	interpreted 5:16	9:6,19,23 10:4	kept 51:20 53:1
he'd 42:14	14:14	interpreting	10:22,25 11:4	kettle 39:25
highly 31:1	independent	52:7	11:7,18 12:9	Kevin 1:6 3:15
56:11	7:20 59:4	interrogation	12:23 13:24	kind 16:23,24
history 20:21	independently	10:13,16 11:9	14:8,20 15:3	16:25 20:2
hold 10:12 11:23	54:24	11:13,17 13:3	16:4,11 17:9	24:4 41:25
13:16 46:20	indicate 22:11	20:25 27:16	17:25 18:11,13	44:17 59:20
holding 24:19	51:12	32:8,10 37:22	19:5,11,17,19	knew 39:23
42:10,12	indication 17:12	39:14,15 42:15	58:24 59:1	know 10:18 18:6
holdings 49:20	20:25	43:7 46:2,22	JOSEPH 1:15	21:16 22:10,16
Honor 4:10,24	individual 10:13	49:19 53:24	2:3,11 3:6	27:22 35:25
5:2,13,20 6:16	13:16 32:7	56:10	58:24	43:13 44:7
7:3,11,17 8:5	33:23 35:1	interrogations	judge 41:8	45:9 48:16,21
8:16 10:22	37:6,9		judged 8:17	51:18 54:5

55:7 knowing 41:6 knowingly 40:24 41:14 knowledge 28:10 57:19 known 39:23 57:13	57:13 Leo 43:16 letter 29:25 let's 33:20 55:12 level 57:7,8 limiting 55:20 line 7:4 31:8 37:15 47:3 52:6 linkage 52:1 linked 48:9 list 30:16 litigation 18:17 30:17 58:7,19 59:12 little 16:1 35:13 37:22 57:18 locked 46:17 locking 47:3 long 5:5 6:20 7:18 14:5 47:24,25 48:2 48:25 49:4 50:9 53:4 54:18 look 7:18,19 18:1 looking 20:5 22:1 36:15 54:5 55:12 looks 20:4 lost 41:7 lot 37:22 lower 38:24 49:1 51:7	59:11,21 matter 1:11 23:5 28:24 43:19 44:16 55:9 60:3 matters 13:10 mean 6:14 8:21 8:22 11:13 17:20,21 26:6 33:2 34:2 38:14 40:2 41:22 42:19 46:6 47:17 48:20 52:16 54:1,2 56:2,12 56:24 57:2,11 57:25 meaning 15:24 25:12 56:11 means 24:13,13 35:9 meant 4:14 meet 15:13 members 5:3 15:20 memo 43:17 mention 29:23 mentioned 6:16 23:15 Michigan 6:20 7:18 54:18 mind 37:16 55:1 minds 43:2 minimum 52:19 53:3 Minnick 13:10 minute 27:6 31:22 58:23 Miranda 3:10 5:11,19 6:1,19 7:5,24 8:1,5,9 8:19,20,25 10:10,12,12 11:14,19,23 12:1,1,19,25 13:3 14:6,7,24	16:10 17:14 20:24 23:24 24:10 26:21,22 27:2,21 28:24 29:3 30:13,19 30:21 32:6,14 32:15,24 35:10 35:17 36:7,17 37:10,14,18 38:2,7,10,23 39:8 48:9,14 48:16,18,20 49:14,20 50:2 50:7,16,20 52:13,15,15,17 52:20 53:7,13 53:25 54:2,3 58:17 59:6,6,8 misapplied 3:16 mislead 56:4 misleading 3:22 14:15 45:11 55:21 mistake 25:9 modify 18:16,18 37:13 moment 44:17 Monday 1:9 motives 43:19 move 21:14	42:14 47:8 54:12 new 17:10 21:11 21:12 24:8 36:25 56:11 57:23 nice 4:5 54:20 normal 56:19,23 noted 29:3 47:5
L			N	O
lack 23:9 lacking 19:22 Lamia 24:8 landscape 48:19 language 4:1 7:23 21:2,9 23:18 24:7 25:7 38:12 44:6 46:16,22 46:24,25 47:2 47:2 55:18,19 55:20,21,22 58:13 59:17,17 Laughter 46:14 54:21 55:2 57:20 law 6:7,18,21 7:8,10 12:25 14:17 15:7,11 17:14,25 18:16 26:16 28:6 34:16 36:15,21 39:5 59:8 lawyer 9:24 10:5 10:15,15,19,20 11:4,6,12,16 12:14,17 13:7 13:14 27:16 28:13,21,24 31:9,12 32:9,9 40:11 42:8,11 42:15,25 56:8 lawyers 40:8 45:8 57:13,13 lays 10:25 leads 49:5 legal 41:10	M magic 46:22 majority 24:25 57:5,5 making 14:22 53:1 malevolent 42:18 man 28:6 mandates 50:10 manipulation		N N 2:1,1 3:1 natural 13:8 nature 9:9 necessarily 19:17 49:4 necessary 21:6 27:3 need 29:23 31:4 47:14,14 49:21 54:15 needs 25:19 28:11 43:22 never 38:11,11 39:2 40:1,23 40:23 41:4	O O 2:1 3:1 obfuscate 16:1 objective 15:19 obligated 44:18 obligation 12:6 12:11,20 55:12 obtain 30:13 33:23 occurs 41:19 officer 15:8,11 officers 15:1 20:24 oh 39:23,23 50:6 51:21 okay 10:16 18:5 18:5,9 30:9 35:8 36:10 38:17,22 45:23 52:14 56:22 old 17:4 once 17:17 45:12 46:3,4 56:6 57:1 ones 36:17 operates 11:8 opinion 4:7,19 4:20 7:19 12:14 13:3 30:13 33:12 36:20 51:7 opinions 6:21 39:14 opposed 50:22 opposing 46:16 opposite 51:25 opposition

55:14 oral 1:11 2:2 3:6 20:11 32:2 order 3:20,24 16:15 41:2 44:16 original 4:20 outset 33:20 34:18 outside 15:12 overemphasized 3:23 O'Neil 1:18 2:5 20:10,11,14 21:17,20 22:11 22:22 23:2,11 23:23 24:20 25:2,18,25 26:5,10,15,20 27:2,7,12,18 27:24 28:9,15 28:19 29:2,7 29:15,21 30:3 30:11 31:10,13 31:16,25 O'NEIL 29:11	pattern 29:7 34:23,25 people 13:20 41:24 42:24 43:3 48:20 57:12 perceiving 43:21 percent 16:9,12 58:12,12 perfectly 18:5,9 22:20 permits 25:3,23 person 11:11 34:18 41:18 43:20 56:2,4 56:24 57:14 pertinent 42:17 petition 22:19 Petitioner 1:4,17 1:21 2:4,7,12 3:7 20:13 58:25 Petitioner's 22:19 24:12 phone 28:4 phrase 45:18 46:9 47:5 phraseology 59:7 pin 39:17 place 16:15 23:13 26:8 28:23 30:13 placed 15:23 plain 7:19 55:22 59:9 please 3:9 20:15 32:5 plurality 15:18 point 11:3 18:18 30:4 36:9 pointed 21:9 points 12:25 59:2,10 police 14:18 15:24 16:5	20:24 21:1,13 21:25 22:13 24:5 34:9 42:18 43:2 57:25 59:14 policy 16:7 23:5 politically 47:17 position 4:3 18:10,12 22:23 31:15 possibility 4:18 5:21 potentially 45:11 Powell 1:6 3:4 7:4 18:3 46:20 47:6 55:7 57:6 Powell's 3:15 40:11 practice 35:1 38:25 practices 56:12 precise 16:24 25:24 26:21 precisely 57:14 preprinted 14:18 presence 27:15 27:16 28:24 30:25 32:25 35:5,13 37:21 43:7 46:1,10 46:21 47:7 49:17 51:3,4 52:8,12 53:23 55:20,23 56:10 present 9:10 11:20,23,25 12:4 13:2,22 17:11 34:25 35:19 38:16,17 39:15,24 40:13 40:18 41:11 49:19 56:17 presented 48:10 pretty 17:23	prevail 17:3,7 19:1 previous 59:15 59:16 previously 37:1 41:5 pre-arraignm... 44:3 principles 53:25 print 14:25 printed 15:22 25:5,6 26:1,6 prior 11:24 28:6 57:10,11 probably 45:23 53:17 56:20 problem 25:3 problematic 15:5 problems 26:1 procedure 32:20 35:2,16 41:19 56:3,4 proceeding 28:8 56:21 process 15:17 Professor 43:16 promote 3:11 20:20 proper 16:17 properly 17:15 17:18 proposition 7:2 7:15 protect 3:11 protections 50:13 provide 15:12 21:13 44:18 50:12 52:11 53:23 provided 21:23 providing 21:23 provision 48:7 Prysock 8:7 16:16 21:4	43:25 44:15 59:23 public 1:22 16:7 57:25 purpose 21:1 24:10 34:1,4 purposes 5:11 put 30:12 42:7 putting 4:7 p.m 60:2
Q				
				qualified 24:21 question 7:7 15:16,21,24 18:20 20:17,22 27:8,9 28:20 31:22 34:8 37:16,25,25 39:20 41:10,16 45:5 48:10 50:1,3,15,15 51:14,17 52:10 52:14,17 53:8 53:10,21 54:2 56:15 59:2 questioned 40:6 40:12 45:3 questioner 15:17 questioning 11:24,25 13:15 16:21 20:2 28:14,18,22,22 31:9,12 40:13 40:19 41:11 43:12,13 52:12 56:7 57:1 questions 9:18 9:22,25 10:3,6 15:10 16:20 20:8 28:1 31:3 42:22 46:7 57:1 quick 59:10 quite 40:2 50:19 quote 29:4 46:19

quoted 51:7	reinforcing 45:23	32:3 59:22	52:7,11,21	32:19 33:19
R	rejected 17:1	Respondent's 20:19,22	53:15,23 55:23	34:23,23 35:4
R 3:1	27:4	responding 59:2	56:7,9,15,16	37:5 42:19
race 20:20	rejecting 7:1	responses 11:19	rights 3:11,24	45:11,13 46:17
range 12:16	relied 3:15 4:12	21:21	7:24 8:9,18	Scalia 4:22,25
reach 4:13	6:7 7:20 49:8	rest 18:23	10:10 13:13	5:5,9 9:16,19
reaction 42:1	59:5	rested 4:20	16:16 17:15	9:20 17:17
read 6:25 7:4,9	relies 22:6	restriction 28:3	27:13 35:1	18:4,11,12,13
7:10 8:14 15:1	remain 36:1	result 6:2 16:22	37:6,8 41:1,14	21:9 26:18,22
30:20 33:5,16	45:10,12,24	25:9 59:12	41:15 47:6	33:6,9,16,18
33:17 34:19	46:4,6	resume 45:14	49:2	34:2,6 39:8,12
38:14 45:7,8	remaining 58:23	retention 5:6,7	rigorous 49:13	39:16 49:24
57:13,14	remand 47:24	5:10	risk 30:17	50:11,14 52:10
reading 25:13	remanded 4:4	reverse 57:23	risky 47:18	52:21,24 53:5
30:18	54:23	reviewed 38:6	road 47:12,13	53:15 57:18
reads 52:15	remember 27:9	right 3:18 5:12	52:5	second 3:21 22:7
real 9:12	remotely 28:4	8:23 9:2,5,6,18	ROBERTS 3:3	24:8 57:5,5,6
really 28:5	repeat 27:21	9:24 10:3,5,7,8	10:1 20:9	59:22
43:19 50:18,19	28:16 54:10	10:11,14 11:1	23:20 31:24	secondly 14:13
53:2	repeated 28:25	11:4,5,12,16	32:1,11,13,19	section 5:17
reason 23:14	51:19 52:1	11:23 12:3	34:22 35:8,15	48:7 51:9,19
27:25 28:9	repeating 51:20	13:2,14 14:3	35:20,23 36:6	54:5
42:18 43:15	representation	19:4 20:5	36:10 37:5	securing 3:13
48:17	13:10 32:17	22:21 23:15,16	42:16 43:14	see 7:22 33:20
reasonable 8:14	require 26:21,25	24:4 26:19	58:5,22 59:25	38:14 47:14
24:22 40:5,8,8	required 9:11	27:13,15 28:13	room 31:5 42:6	55:12,13
40:11 47:1	9:15 10:10	28:17,21,23	42:8,9,12	seeking 3:12,19
56:19	18:25 19:22	29:24 30:1,8	56:11	seen 22:3,14
reasonably 3:18	32:25 33:21	30:12,13,22	rule 25:11,12,19	47:13
8:1,8,18 10:23	34:19 35:13	31:9,11 32:9	35:10	sentence 16:23
14:11 16:6	36:17 50:23	33:3,8,25	ruling 6:1 54:24	34:11,15 47:7
18:14 20:6	55:24	34:11,15 35:25	run 5:10	sentences 6:18
24:13,16,18	requirement	36:1,2,12,23	runs 58:14	services 30:14
55:4	37:4,11	37:9 39:2,15	S	33:23 36:2
reasons 15:4	requirements	40:12,18 41:10	S 2:1 3:1	set 8:21 23:21,22
16:7 17:13	7:1 8:21	42:10,13,21,23	salvages 45:25	23:24 32:24
59:19	requires 6:2	43:5,6,9,12	sand 52:7	33:4,6,9 40:25
REBUTTAL	12:25 26:19,23	44:1,2,5,13,25	save 20:8	49:23 52:6,19
2:10 58:24	49:14	45:3,10,11,13	saying 21:16	53:4 57:23
recognized 3:10	requiring 20:1	45:19,23 46:1	34:7 36:24	setting 12:7
record 34:16	37:21 51:4	46:1,4,5,5,6,10	39:23 45:10	seven 57:6
57:10,11	respect 34:25	46:15,21 47:8	55:6	shown 58:1
redundant	35:12 37:6	48:12,21 49:18	says 7:8 10:2,12	shows 52:1
59:17	Respondent	49:19 50:17	11:23,24 12:1	sign 41:15,16
referred 14:5	1:23 2:9 22:6	51:3,10,24	13:13,19,20	significant 24:3
39:6,10 48:6			24:11,13 26:23	25:13

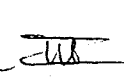
significantly 9:13	21:5 25:3,4,8	straightforward 59:18	49:8,12 54:23	42:20 44:12
silence 45:12,14	25:20,23 26:24	stressing 52:6	55:5 57:4 59:7	45:2 56:9
silent 9:5 36:1	26:25 27:3	strict 49:13	59:13	58:16
45:10,12,24	51:2 52:19	stricter 20:3	sure 10:2 33:2	telling 14:25
46:4,6	53:3,4 55:4,6,9	strictly 3:19	34:24 37:10	29:25 41:12
simpler 59:16	standing 31:15	stuck 42:9	42:17 47:23	term 5:6 8:7
simply 23:6	start 7:15 54:8	studied 20:23	survey 22:6	19:22 20:1
25:22 50:1	started 58:8	subjective 15:16	suspect 9:8	50:20
situations 15:7	starting 56:25	15:21	15:10 20:6	terms 8:6 9:10
15:13	starts 56:7	submitted 60:1	27:25 28:10	9:10 11:20,21
slightly 26:11	state 4:12,15,19	60:3	30:4,25 31:20	13:5 14:10,17
Solicitor 1:18	6:21 7:21 12:7	subsequently	34:17 40:5	17:1 19:13,21
solution 16:9	12:21 14:24	5:4	42:6 44:2,21	59:4
solving 3:13	18:7,23 19:1	substance 23:8	suspects 56:19	test 7:18
sorry 31:10	19:13 24:16,25	33:6,11	system 54:6	testimony 41:5
36:18	26:14 27:13	substantively	58:14	Thank 20:9,14
sort 21:11 41:19	44:18 48:11	37:17	T	31:24,25 58:21
Sotomayor 6:23	50:7,24,25	sufficient 14:2	T 2:1,1	58:22 59:25
7:6,14,22 8:11	59:4,12	18:15 25:14	take 28:23 35:9	that's 14:5 16:2
14:16,21 15:15	statement 7:19	28:10 30:23	52:16 56:2,24	23:2,18 32:10
16:8 21:8,18	12:21 13:19	sufficiently	57:2	34:2 36:16
21:20 22:9,16	16:21 27:23	25:15	taken 13:15	then-FBI 8:23
23:15 24:2,9	33:21,22 34:19	suggest 8:11	41:22	theoretical 4:18
24:20,24 25:10	36:3 41:1 59:9	suggested 6:24	takes 56:11	theoretically
31:7,11,14	statements 8:3,3	suggests 7:7	talk 9:24 10:5	4:11,16 18:14
37:15,24 38:3	14:23 41:3	summarily 27:4	11:4,6 13:6	there's 5:6
38:6 55:5	States 1:1,12,20	summarize	22:25 28:1,3	12:18,18 15:8
specific 9:3,9	2:6 12:11	27:21	28:13,17 31:5	15:9 17:12
23:18 24:6	20:12	summary 28:25	39:1,19 42:8	46:25,25 55:15
25:7 32:7	State's 12:20	supplement	42:10,14 43:6	they'd 5:9
specifically 6:7	stating 12:6	28:11	56:25	they'll 26:3
17:19 29:4	statute 45:8	supporting 1:20	talked 29:25	they're 14:24
32:14,24	stay 42:7	2:7 20:13	38:23 39:14	42:7
spell 12:20	step 13:8	suppose 4:3	talking 13:13	they've 37:11
spelling 9:10	Stevens 5:24 6:4	supposed 11:11	39:1 40:7,9	thing 17:5 23:5
spells 12:14,19	6:6,9,13 18:19	supposedly	51:8 54:8 57:8	44:17 45:4
split 24:15	19:5,8,11,15	26:22	Tallahassee 1:16	57:19 58:6
spoke 39:2	19:18 25:25	suppress 3:14	Tampa 16:5	things 10:2
squarely 4:8	26:5,9,12	supreme 1:1,12	17:3,7,10	27:20 58:4
stage 44:3	36:14,19,24	3:14 4:4,22 5:1	42:18 43:2	think 12:12,16
standard 3:18	50:18,22 51:14	5:3,16,21 9:11	57:25 59:14	12:19 17:20
8:19 9:13,14	59:3	9:13 15:4	techniques	18:8 20:18,21
10:22 14:9,11	stone 46:23	18:25 19:9,12	20:25	22:12 23:2,5,9
15:5,5,14,20	stop 19:24 46:7	19:24 24:25	tell 10:21 11:3	23:11 24:2
19:2,21 20:1	46:9	26:2 48:5,23	11:11 12:3	25:2,2,18,18
	stopped 39:1		28:12,21 33:1	25:21 27:25

29:9,17 30:3,6 30:11,18,24 31:13,16,18,19 31:23 33:2 41:17,23 42:3 42:5,6,24 43:15 45:20,22 45:25 49:25 50:7 51:25 52:1,1,9 53:13 54:16 56:5 58:5 thinks 23:5 third 13:9 Thompson 43:4 59:12 thought 27:10 29:18 three 11:19 12:24 15:3 27:13 28:25 35:25 59:2,10 ticket 5:10 time 10:8 14:7 20:8 27:17 29:24 31:5 38:22 39:21 42:23 44:21 45:4,19 48:8 58:16 times 28:25 48:7 54:1 today 3:4 29:9 32:21 33:12 35:3 told 9:16 31:2 39:19 42:14 44:2 47:9 59:24 totality 3:23 16:14 track 58:7 translations 15:10 traveled 47:12 traveling 52:4	Traylor 18:22 49:6,23 51:2 53:1 54:8,15 trick 42:24 tried 21:1 27:10 true 19:6,8 21:7 21:25 53:5 truth 3:12 trying 15:10 40:25 turned 16:20 two 3:14 8:2 10:2 21:20 26:1,6,9 27:20	<hr/> V <hr/> v 1:5 3:4 4:17 6:20 7:18 52:15 54:18 59:12 variant 21:6 varieties 19:7 verbal 15:6,9 view 5:25 violate 50:6 52:19 53:9 violated 50:25 52:17 violates 50:7 53:24 violation 6:14 vitiate 52:12 voluntary 3:11 3:14	14:15 16:5,6 16:12,14,15,23 18:2,14,18,21 18:22,25 19:2 19:7,10,14 20:4 21:10,22 22:15,21,22 23:17 24:23 25:24 26:23,24 29:4,24 30:7 30:23 31:8,17 32:14 33:10,11 33:13,14,19 34:24 35:4,16 38:1 40:17 41:18 42:19 45:7 49:13 50:2 52:17 56:2 58:17 59:11,11,15,15 59:16,16,20 warnings 3:10 8:1,18 14:2,2 15:6,6 16:25 18:2,17 19:7 20:18 21:2,5,6 21:14 22:1,2,4 22:5 23:7,12 23:16 24:4,5 24:11 27:12 29:8 30:16,25 32:24 33:4 34:10,25 36:5 36:22,25 37:12 37:13,16,18 38:17 43:21 48:15 50:20,23 52:13 warning's 4:1 16:15 warranted 23:6 Washington 1:8 1:19 48:23 wasn't 9:20,20 25:15,15 29:10 37:25 38:4,5	39:4 50:14 way 8:15 10:18 12:13 16:16 17:4 21:22 22:1,2 29:3 30:20,22 45:8 50:6 51:18,19 51:21 53:8 ways 3:14 47:4 weightier 54:17 went 10:7 29:3 35:13 39:22 43:11 we'll 42:23 we're 4:6 21:15 We've 5:11 24:15 we're 48:16 57:8 whichever 55:4 wiser 26:13,16 wonder 11:15 word 8:8 11:22 12:4 16:13 30:8 words 3:20 11:3 12:2,7 13:20 16:19 17:11 20:4 26:21 42:25 44:14 47:3 51:6 59:15,16 worry 25:16 worse 34:3 wouldn't 15:23 42:9 44:11 53:7 54:14 56:2,3 58:3 write 4:18 46:12 written 15:6 46:23 wrong 6:8 43:8 wrote 11:14 28:25
	<hr/> U <hr/> Uh-huh 37:8 unavailable 31:22 unconstitutio... 52:23 understanding 30:5 understood 40:17,20 undue 36:15 uniformity 23:4 23:10,12 United 1:1,12,20 2:6 20:12 unreasonable 24:25 unstated 28:2 upheld 21:6,21 23:16 24:3 use 8:6,7 10:7 11:20,20,22 12:2,4,7 13:20 17:20,24 19:3 19:10 22:21,25 30:16 45:19 46:5 55:9 uses 8:8 17:6 19:6 26:24 27:1 42:20 46:16 U.S 52:16	<hr/> W <hr/> W 1:15 2:3,11 3:6 58:24 wait 45:5 waive 40:24,25 41:13,15 waived 40:12 41:1,10 waiver 41:6 walk 31:4 walking 42:11 want 10:18 27:22 28:17 33:16 39:18 42:7 wants 25:24 31:5 33:4 warden 34:10 warning 3:17,19 3:22,23 7:4 8:15,22,23,25 9:2,7,19,21,23 10:5,7,25 11:16,20 12:8 13:4,5,7,25 14:4,6,11,13	<hr/> X <hr/> x 1:2,7	

Y	7 1:9			
years 5:8,9 21:3	79 59:16			
30:21 34:15	8			
58:18	8 5:17			
York 24:8	80 40:16			
you're 36:14	9			
44:9 45:2,2	9 48:7 51:9,19			
you've 15:7	90 16:9 19:23			
0	900 22:5			
08-1175 1:5 3:4	96 58:12			
1	97 16:12 58:11			
11:15 1:13 3:2				
12:15 60:2				
148 59:15				
1966 24:5				
1984 43:5				
1991 59:13				
2				
2 30:20				
20 2:7 21:3				
2009 1:9				
29 24:1				
3				
3 2:4				
30 19:23 58:18				
32 2:9				
383 23:24				
384 23:24 52:16				
4				
4 5:8,9				
436 52:16				
471 32:12				
479 33:2,4				
483 34:14				
484 33:10				
5				
5 22:7				
541 46:20				
58 2:12				
7				

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of: FLORIDA, Petitioner, v. KEVIN DEWAYNE POWELL; and that these attached pages constitute the original transcript of the proceedings for the records of the Court.

Raymond R. Heer 

REPORTER