

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 NICHOLAS BRADY HEIEN, :

4 Petitioner : No. 13-604

5 v. :

6 NORTH CAROLINA. :

7 - - - - - x

8 Washington, D.C.

9 Monday, October 6, 2014

10

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 10:03 a.m.

14 APPEARANCES:

15 JEFFREY L. FISHER, ESQ., Stanford, Cal.; on
16 behalf of Petitioner.

17 ROBERT C. MONTGOMERY, ESQ., Senior Deputy Attorney
18 General, Raleigh, N.C.; on behalf of Respondent.

19 RACHEL P. KOVNER, ESQ., Assistant to the Solicitor
20 General, Department of Justice, Washington, D.C.; on
21 behalf of United States, as amicus curiae, supporting
22 the Respondent.

23

24

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	JEFFREY L. FISHER, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	ROBERT C. MONTGOMERY, ESQ.	
7	On behalf of the Respondent	28
8	ORAL ARGUMENT OF	
9	RACHEL P. KOVNER, ESQ.	
10	On behalf of United States,	45
11	as amicus curiae, supporting the Respondent	
12	REBUTTAL ARGUMENT OF	
13	JEFFREY L. FISHER, ESQ.	
14	On behalf of the Petitioner	54
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: Our first case this
4 morning is Heien v. North Carolina.

5 Mr. Fisher.

6 ORAL ARGUMENT OF JEFFREY L. FISHER

7 ON BEHALF OF THE PETITIONER

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

10 In a country dedicated to the rule of law,
11 governmental officers should be presumed to know the law
12 at least as well as the citizens are. That being so,
13 when questions about individualized suspicion arise
14 under the Fourth Amendment, they should be addressed
15 against the backdrop of the correct interpretation of
16 the law, not simply any plausible reading an officer
17 might have.

18 JUSTICE KENNEDY: So suppose that this
19 State, North Carolina, did have a good-faith exception
20 to the exclusionary rule. What would you be arguing
21 today?

22 MR. FISHER: We would be -- still be
23 arguing, if that were the case, that not only the Fourth
24 Amendment was violated, but that the good-faith
25 exception didn't apply. But you wouldn't have to reach

1 that question in this case, and I -- and I would concede
2 to you, Justice Kennedy, that would be a debatable
3 argument under this particular --

4 JUSTICE KENNEDY: Well, why would it be any
5 more debatable than the argument you're making here?
6 I -- I -- I've more or less anticipated your -- your --
7 your answer. I think that has to be -- I -- I think you
8 have to tell us even if the good-faith exclusionary rule
9 applies, a mistake of law just doesn't count.

10 MR. FISHER: Well, that's not exactly what
11 this Court's jurisprudence holds, of course. In Krull
12 and Davis, the Court has held that reasonableness of
13 mistakes of law can be taken into account at the remedy
14 stage, and I think that would be --

15 JUSTICE KENNEDY: Then -- and then -- but
16 then that question is why isn't that a problem for you
17 when you say there cannot be a reasonable mistake of
18 law? We know there can be.

19 MR. FISHER: Well, there's a difference,
20 Justice Kennedy, between rights and remedies in the
21 Court's jurisprudence. When you ask the question about
22 what is reasonable as to whether or not the Fourth
23 Amendment was violated, both in its Fourth Amendment
24 jurisprudence in criminal cases and in qualified
25 immunity cases, you would do that assessment against the

1 correct interpretation of the law.

2 Now, in Leon --

3 JUSTICE KENNEDY: Well, in connection --
4 we're talking about whether as a -- as a categorical
5 matter, as a jurisprudential matter, we can have this
6 dichotomy known as a reasonable mistake of law, a
7 difficult and interesting question. But it seems to me
8 that you have to make the same argument here or in --
9 in -- in the case where they have a good-faith
10 exception, as you're making here, and that you have a
11 problem with Davis and Krull. And if you don't have
12 a -- if you have a problem with Davis and Krull, then
13 that undermines your categorical argument.

14 MR. FISHER: No, I really don't think so,
15 Justice Kennedy. If -- I think the best exposition of
16 this problem in the course of jurisprudence is actually
17 in the Anderson against Creighton case, the qualified
18 immunity case, where the Court wrestled with this notion
19 that how can something be reasonable in one sense and
20 unreasonable in another.

21 And the answer the Court gave is that when
22 we ask whether the Fourth Amendment was violated, we do
23 not take mistakes of law into account, but the
24 reasonableness of a mistake of law can go to the remedy
25 question. This is the premise from which Leon, Krull,

1 and Davis all derive, which is that there was a Fourth
2 Amendment --

3 JUSTICE ALITO: Would you just submit that
4 the --

5 JUSTICE GINSBURG: Mr. Fisher, I have a
6 preliminary question.

7 Even if you -- you're right about mistake of
8 law, isn't it a moot question in this case because, as I
9 understand it, the traffic stop ended with a warning
10 citation. So the traffic stop was over. And at that
11 point, the police officer asked if he can inspect the
12 car, and the answer is yes. Why isn't the consent to
13 the search the end of this case?

14 MR. FISHER: Because it would be the fruit
15 of the poisonous tree, Justice Ginsburg, if the stop was
16 illegal. There would have never been an opportunity to
17 ask for consent. And I think that's why the State and
18 Solicitor General haven't made any argument
19 that the consent wipes away the Fourth Amendment
20 question here.

21 JUSTICE ALITO: Well, suppose the officer
22 had said, all right, I'm giving you a warning. You're
23 free to leave now. But by the way, may we -- may I
24 search your car?

25 MR. FISHER: I -- I think that's more or

1 less what the officer did say here, Justice Alito.

2 JUSTICE ALITO: And you would say then, even
3 in that situation, that that would be the fruit of the
4 poisonous tree?

5 MR. FISHER: Yes. Because the stop wouldn't
6 have taken place. The -- the Court's cases, Prouse and
7 all the rest, say that a traffic stop is a seizure. And
8 so upon pulling Mr. Heien over, the officer needed to
9 have reasonable suspicion to do so. And the only
10 argument for reasonable suspicion is the mistake of
11 North Carolina law as to the brake light in this case.

12 CHIEF JUSTICE ROBERTS: I understood you to
13 say earlier that you don't take -- distinguishing the
14 exclusionary rule in qualified immunity, you don't take
15 reasonableness into account when it comes to a mistake
16 of law?

17 MR. FISHER: What -- what I -- I'm sorry,
18 Mr. Chief Justice. What I -- I think I said is that
19 you -- you don't take the reasonableness of mistake of
20 law into account when you ask whether the Fourth
21 Amendment was violated.

22 CHIEF JUSTICE ROBERTS: Well, but the Fourth
23 Amendment --

24 MR. FISHER: You do sometimes --

25 CHIEF JUSTICE ROBERTS: I'm sorry, go ahead.

1 MR. FISHER: Forgive me.

2 You do sometimes when you ask about the
3 remedy, and that's what he did.

4 CHIEF JUSTICE ROBERTS: But the -- but the
5 Fourth Amendment itself protects only against
6 unreasonable searches and seizures by its term. I don't
7 understand. It would seem to me that there's a stronger
8 argument for taking the reasonableness of the officer's
9 actions into account when you're talking about a mistake
10 of law, because that's what the Fourth Amendment says,
11 as opposed to remedies and qualified immunity.

12 MR. FISHER: Mr. Chief Justice, the Court
13 rejected that precise argument in Anderson, that textual
14 argument that the word "reasonableness" means that the
15 Fourth Amendment incorporates mistakes of law, and
16 because of a deep common law rule, which is that when we
17 ask --

18 CHIEF JUSTICE ROBERTS: If I could just
19 pause.

20 MR. FISHER: Yeah.

21 CHIEF JUSTICE ROBERTS: I thought we said
22 exactly that in Herring, though, where we said that even
23 though we're going to look at it in terms of remedy,
24 that was not to say that the reasonableness didn't go to
25 whether there was a substantive violation of the Fourth

1 Amendment.

2 MR. FISHER: My understanding of Herring
3 would be that would be a mistake of fact case, whether
4 or not there was a warrant outstanding for
5 Mr. Herant's -- Mr. Herring's arrest would have been a
6 factual question, not necessarily a legal question.

7 In Anderson and Krull and Leon -- in Leon,
8 Mr. Chief Justice, the Court said the officer in that
9 case acted exactly as a reasonable officer could and
10 should have acted. And time and again in the Court's
11 exclusionary rule cases, they've said the officer acted
12 reasonably because at the reasonableness stage, you can
13 take into account whether the officer reasonably
14 misunderstood the law.

15 CHIEF JUSTICE ROBERTS: Well, if you put
16 aside --

17 MR. FISHER: But at the right stage --
18 forgive me.

19 CHIEF JUSTICE ROBERTS: I was just saying,
20 putting aside our discussion of Prouse and -- and
21 Herring, why does it make sense to say that you don't
22 take reasonableness into account when the Fourth
23 Amendment only protects against unreasonable searches
24 and seizures?

25 MR. FISHER: I think for three reasons,

1 Mr. Chief Justice. There's a practical reason, a
2 theoretical reason, and a jurisprudential reason.

3 Now, I'll start with the theory because
4 that's where I was just describing. The deep common law
5 heritage in this country that we have always followed,
6 and the best exposition of that is in the Court's Cheek
7 case, is that the criminal law is presumed to be
8 definite and knowable.

9 So in all kinds of settings, whether it be
10 punishing somebody for violating the law or any other
11 actions citizens or the government engages in, we always
12 assume a correct understanding of the law, even if it's
13 later construed by a court in a way that wasn't exactly
14 predictable or foreseeable.

15 JUSTICE ALITO: Isn't it strange that you're
16 citing Cheek for that proposition? Didn't the Court
17 hold in Cheek that under the -- in that -- in the
18 circumstances there, ignorance of the law would be a
19 defense?

20 MR. FISHER: Because of a special statutory
21 exception that Congress had written. The beginning of
22 part two of Cheek is what I'm relying on, Justice Alito,
23 where there is a paragraph or two that sets out with
24 numerous citations this principle Justice Holmes
25 described, and many others, that the criminal law is

1 presumed to be definite and knowable.

2 And once you take that presumption and put
3 it into the police officer's mind, in this case or any
4 other governmental actor who acts on a mistake of law,
5 then there is no reasonable suspicion because we
6 presumed them to have known the law when they acted.

7 JUSTICE KENNEDY: Suppose the officer
8 stopped the driver here and said, you know, I've been
9 going to night law school and we don't know about this
10 one light/two light thing. There's an intermediate
11 court of appeals that's hearing a case, it sounds like
12 they're going so say only one light is necessary, but I
13 don't know what the law is. You better get this fixed.

14 MR. FISHER: Well, I think there's two
15 questions in there.

16 JUSTICE KENNEDY: And then -- and then he
17 sees the contraband.

18 MR. FISHER: Pardon me?

19 JUSTICE ALITO: And -- and then he sees
20 the -- in the course of this conversation, he sees the
21 contraband.

22 MR. FISHER: Well, I think there's two
23 questions embedded in there. One is whether the officer
24 can look to court decisions or other third party sources
25 to help him do his job. Now, again, that is what the

1 Court has said in the Krull and Davis cases, that you
2 take into account things like police manuals, court
3 decisions, and the rest. The Court has embraced that in
4 its remedy jurisprudence, but in Whren has said that is
5 off limits as to the Fourth Amendment.

6 Now, I think there's also an element of your
7 question asking about what if -- all that the officer
8 was worried about was the safety on the roadway. That
9 would be a very different case. Again, I'm going to
10 turn the Court to Whren, where the Court said that if
11 there's a stop done for reasons aside from probable
12 cause, then the purpose of that stop, such as the
13 community caretaking function, might kick in. But of
14 course the State hasn't made any argument in that
15 respect in this case because the record is quite clear
16 the officer was performing a criminal investigation.

17 JUSTICE SCALIA: But Mr. Fisher, we -- we
18 don't review opinions. We review judgments, we review
19 results. What you're complaining about here is the
20 admission of what was discovered in the search of the
21 car, right?

22 Now, what difference does it make whether
23 that was lawfully admitted because it was a
24 constitutional search or it was lawfully admitted
25 because the remedy of excluding it would not be applied

1 if there was a mistake of law, a reasonable mistake of
2 law?

3 I mean, the constitutional problem is the
4 admission of this evidence. And it seems to me whether
5 it's properly admitted because the Fourth Amendment
6 wasn't violated or whether it's properly admitted
7 because the remedy for that violation is not -- is not
8 exclusion of the evidence, you lose either way, don't
9 you?

10 MR. FISHER: Well, Justice Scalia, nobody
11 has addressed the question of remedy in this case
12 because nobody needs to address the good-faith --

13 JUSTICE SCALIA: Well, we need to if we
14 find, as you urge us to find, that it violates the
15 Fourth Amendment to make the search. We would then have
16 to -- in order to decide whether this judgment is
17 lawful, we would have to decide whether the remedy of
18 excluding that evidence has to be applied. And you know
19 the answer to that --

20 MR. FISHER: Well, with -- forgive me. With
21 respect, Justice Scalia, I'm not sure the Court needs to
22 do that. Of course, I think the Court can vacate and
23 remand the judgment just as it does innumerable other
24 times where it finds a problem with the lower court
25 decision and therefore sends it back. Even if this were

1 purely a Federal case, Justice Scalia, I think I'd be
2 saying the same thing, which is nobody has briefed or
3 argued the good-faith exception in this case. So you
4 would need --

5 JUSTICE SCALIA: Well, you have. I mean,
6 you have and you acknowledge that it applies to
7 remedies.

8 MR. FISHER: No. No. No. Here's what I've
9 acknowledged, Justice Scalia. And I guess this is
10 important. We've acknowledged that the question of
11 whether the mistake was reasonable would be relevant, if
12 at all, at the remedy stage.

13 So what you would do is you'd ask the
14 question, if this were a Federal case where you had to
15 reach the question, you'd ask whether the officer's
16 mistake of law in this case renders suppression
17 inappropriate.

18 Now, I would -- I would add that holding
19 that it did render suppression inappropriate would be an
20 extension of the Court's current good-faith
21 jurisprudence, which thus far has held that good-faith
22 doctrine applies only when an officer relies on binding
23 law from a third -- from a legislature or a court.

24 JUSTICE SCALIA: So the most you can get
25 from us is a remand?

1 MR. FISHER: That's right. But I do think
2 it's just like any other --

3 JUSTICE SCALIA: Just let the North Carolina
4 law -- court decide whether -- whether the remedy of
5 exclusion should have been --

6 MR. FISHER: That's right. For example,
7 Justice Scalia, I'm not sure it's any different if I
8 said it was a constitutional violation that I may or may
9 not be entitled to a remedy for under Chapman because
10 the error was harmless or not. Those are the kinds of
11 situations where the Court would always resolve the
12 constitutional question that the lower court addressed
13 and then send it back down for the question of remedy.
14 And that's all I --

15 JUSTICE SOTOMAYOR: I don't know why,
16 following up on what Justice Scalia is saying, he's
17 saying we don't give you a remedy unless we believe that
18 one is warranted under the Fourth Amendment. And since
19 we apply -- it doesn't matter what North Carolina
20 applies, good faith or not -- what we apply in terms of
21 determining whether a Federal violation or a
22 constitutional violation is subject to any type of
23 remedy for you is the good-faith exception. So why do
24 we have to remand? I think that's Justice Scalia's
25 question and I'm not quite sure you've answered it.

1 MR. FISHER: The reason to remand is because
2 the lower court hasn't addressed any question of remedy.
3 And so in the first instance, you should send it back to
4 the lower court for a full adversarial briefing subject
5 to waiver and --

6 JUSTICE GINSBURG: But North Carolina has a
7 rule, I thought, that if you violate the Fourth
8 Amendment, that's it. We don't -- we don't have a
9 good-faith exception.

10 MR. FISHER: That will be our position on
11 remand, Justice Ginsburg. But The State may try to
12 persuade the Court of something else.

13 JUSTICE GINSBURG: But isn't that -- isn't
14 that -- isn't that what the North Carolina law is now?
15 So it would be futile to send it back for them to answer
16 the good-faith exception since they have none.

17 MR. FISHER: It wouldn't be futile, Justice
18 Ginsburg. I think -- I think the analogy that I gave
19 earlier about Chapman is more or less on point. The
20 Court has held that if the Constitution is violated,
21 that the defendant in a criminal case doesn't get a
22 remedy unless he satisfies that test.

23 Now, all of the time in criminal cases you
24 would just decide the constitutional issue and then send
25 it back for remedy analysis if the lower court hadn't

1 addressed it.

2 JUSTICE SCALIA: That's because -- that's
3 because they would be applying Federal law. They would
4 be answering the question that you want us to leave
5 unanswered; namely, whether the Constitution requires
6 that this evidence be -- be stricken from the case.

7 MR. FISHER: Well, let me say --

8 JUSTICE SCALIA: But if indeed they're not
9 going to ask that question when we send it back, it
10 seems to me we have to answer that question here before
11 we are able to reverse or affirm the North Carolina
12 court. It's a Federal question.

13 They are not going to -- they are not going
14 to get to that, but you're asking us to invalidate this
15 conviction on the basis of Federal law. And it seems to
16 me we cannot do that unless there has -- even if there
17 has been a violation of the Fourth Amendment, the remedy
18 must be exclusion of -- of the evidence. That's a
19 Federal question. I think we're going to have to decide
20 it. If we send it back to North Carolina, they're not
21 going to decide it. Are they?

22 MR. FISHER: No, I don't believe they would
23 or should. But I -- but just if a State had adopted a
24 rule saying we're going to have a more favorable
25 jurisprudence of constitutional error and give automatic

1 new trials, the Court wouldn't be prohibited from
2 deciding a constitutional issue and sending it back down
3 to the State.

4 In the retroactivity sphere, *Danforth v.*
5 *Minnesota* is another case where the Court has said that
6 States can choose for themselves to have more favorable
7 remedies and the Court simply deals with the Federal
8 question.

9 JUSTICE ALITO: Well, there's no question
10 that if -- if North Carolina applied a State
11 constitutional analog to the Fourth Amendment, they
12 could have a more extensive remedy than is recognized
13 under our Fourth Amendment cases. But your argument is
14 they can adopt a State law rule for Fourth Amendment
15 violations that is more protective of defendants than --
16 than Federal case law provides. That would be your
17 argument, right?

18 MR. FISHER: I don't need to make that
19 argument. I think that would be an interesting question
20 and I think the State may be able to do that. But what
21 the Carter decision in North Carolina says is that
22 violations of the State Constitution cannot be
23 overlooked on good-faith doctrine.

24 JUSTICE ALITO: Well, was this decision
25 based on the State constitution?

1 MR. FISHER: No. It was based on the
2 Federal Constitution, so we would send it back down.
3 And we have preserved an argument that under State law,
4 the violation of the Fourth Amendment also violates the
5 North Carolina Constitution.

6 JUSTICE SCALIA: But you're asking us to
7 reverse it on the basis of Federal law and you're asking
8 us to send it back to a State court which is not going
9 to -- to inquire any further into Federal law, even
10 though Federal law, arguably, you will concede says that
11 even if there is a Fourth Amendment violation, if
12 there's a good-faith reasonable belief that the law was
13 violated, the remedy of exclusion will not be imposed.

14 That's what the Constitution requires. And
15 you're asking us to say, oh, no, there's -- there's been
16 a violation of the Constitution and we're going to
17 reverse this judgment, even though we haven't inquired
18 into whether the remedy that -- that you want is
19 required. And it seems to me -- I don't see how we can
20 do that.

21 MR. FISHER: Well, I don't want to keep
22 saying the same thing. I'll try and say it one more
23 time. I think it's fully customary for this Court to
24 have a case from State courts where a State court issues
25 a ruling on Federal law. There may be many other issues

1 in the case, Federal, State, whatever, but if the
2 question of Federal law the State court decided is
3 incorrect, this Court can reverse that judgment, say you
4 got Federal law wrong, we're going to send it back down.

5 JUSTICE KENNEDY: But it -- but it chooses
6 to decide based on only half of the Federal law or
7 three-quarters of the Federal law. Can North Carolina
8 more or less set us up this way?

9 MR. FISHER: There is -- there is a
10 Federalism element --

11 JUSTICE KENNEDY: This is consistent with
12 Justice Scalia's concern --

13 MR. FISHER: Forgive me.

14 JUSTICE KENNEDY: -- which is a follow-on to
15 Justice Scalia's question.

16 JUSTICE SCALIA: Yeah, they didn't get Federal
17 law wrong. Their opinion got Federal law wrong, but their
18 judgment did not get Federal law wrong if indeed a good
19 faith mistake of law does not require the exclusion of
20 the evidence from the trial. The judgment did not get
21 Federal law wrong if that's the case.

22 MR. FISHER: Well, I think that their
23 analysis got Federal law wrong for the reasons we've
24 described.

25 JUSTICE SCALIA: We don't review analyses.

1 We review judgments. You're -- you're urging that this
2 conviction has to be set aside. That's what we're
3 reviewing, the conviction, not the opinion.

4 MR. FISHER: Well, Justice Scalia, if you
5 want to decide the good-faith question that has not been
6 briefed by any party, I -- I suggest you might want to
7 tread carefully.

8 Now, we've given you -- maybe what I need to
9 do at this point before I sit down and reserve my time
10 for rebuttal, is explain to you why, even if you did
11 feel like you needed to get to that question, which I
12 don't think you need to, but if you did need to get to
13 that question, why you should say that the good-faith
14 doctrine doesn't apply.

15 JUSTICE ALITO: Well, I don't want to take
16 up your rebuttal time, but your argument this morning
17 has confused me on something I thought I understood. I
18 thought that your -- I thought the reason why you've
19 argued this case the way you have, trying to convince us
20 to draw a very sharp distinction between right and
21 remedy is because you believe that North Carolina has
22 the right under State law to devise its own version of
23 the exclusionary rule. If you're not -- if that's not
24 your argument, then I'm really puzzled by what you're
25 doing.

1 MR. FISHER: Functionally, that's the way
2 things work in North Carolina, Justice Alito. I think
3 the only thing that -- that maybe I need to make more
4 clear is that the reason why it works that way in North
5 Carolina is because the State has held that violations
6 of our State constitution cannot be subject to a good
7 faith exception. The States have also held --

8 JUSTICE ALITO: The State constitution is
9 irrelevant because you're arguing about whether there is
10 -- whether there can be mistake of law in determining
11 whether a search is reasonable under the Fourth
12 Amendment to the Constitution of the United States.
13 Whatever we hold on that, North Carolina can do whatever
14 it wants on the same question with respect to the State
15 constitution.

16 MR. FISHER: That's the next thing I was
17 going to say, is in theory you're right, Justice Alito,
18 but what North Carolina has said is that we construe
19 article 1, section 20, which is the State counterpart,
20 to be coterminous with the Fourth Amendment. So that's
21 not the way the Court goes about its business. So
22 functionally in the State of North Carolina where you
23 are is that Fourth Amendment questions run exactly
24 parallel to State substantive constitutional law
25 questions, and if there's a violation, you -- you

1 suppress.

2 JUSTICE KAGAN: Mr. -- Mr. Fisher, suppose
3 this were a Federal case and we had available to us, it
4 had all been briefed, two alternative holdings in order
5 to support the conviction. And one holding was this is
6 not a violation of Fourth Amendment law in the first
7 instance, and the other holding was this is a violation
8 of Fourth Amendment law, but the exclusionary rule
9 operates and so the -- the good-faith exception to the
10 exclusionary rule operates and so the evidence comes in.
11 Is there any difference between those two holdings?

12 MR. FISHER: I think the difference between
13 those two holdings, if the Court remanded, may well play
14 out differently in North Carolina.

15 JUSTICE KAGAN: No, no, no. But I mean, if
16 it were a Federal case --

17 MR. FISHER: Oh, if it were. I'm sorry, I
18 missed that.

19 JUSTICE KAGAN: Is there any difference?

20 MR. FISHER: If it were a Federal case, it
21 would be functionally the same holding as to the outcome
22 of that case. But I think -- if I could.

23 JUSTICE KAGAN: Yes, please.

24 MR. FISHER: But there would be important
25 reasons nonetheless, even though that would be a

1 functionally identical holding for the parties in the
2 case, there'd be very important reasons nonetheless to
3 make sure that you render that holding as to remedy
4 jurisprudence, not as to the Fourth Amendment itself.

5 And one reason is what I opened with and
6 I've tried to say a couple times, that the government
7 should be presumed to know the laws. It would undercut
8 public confidence in law enforcement and the common law
9 rule upon which the criminal law is built to say the
10 government doesn't have to be presumed to know the law
11 when it acted.

12 JUSTICE KAGAN: Well, you say that, but some
13 people say that the existence of a rule-remedy gap
14 undermines public confidence in the law. So why should
15 we take that argument any more seriously than the --
16 than the rule-remedy gap problem in law?

17 MR. FISHER: Because that argument comes
18 from academic literature and my argument comes from the
19 Court's jurisprudence, where people have argued that you
20 shouldn't suspend remedy and the Court has rejected and
21 said, no, as Judge Wilkinson wrote in the law review
22 piece that I cited in the brief, there's an important
23 reason to announce the right even if you're not going to
24 give a remedy.

25 Now, there are practical reasons for this as

1 well. Even in the Court's good-faith jurisprudence, the
2 Court has given leeway to officers only to the extent
3 the officers are relying on a clear directive from a
4 third party, like a legislature or a court. This is
5 very different. This is like the Johnson case from
6 1982, where the Court held that if the officer acts on
7 his own view of a, quote, "unsettled" rule of law, that
8 we not only find a Fourth Amendment violation, we
9 suppress. Even if I have to argue this case --

10 JUSTICE ALITO: Do you dispute that this was
11 a reasonable interpretation of State law?

12 MR. FISHER: I -- I would dispute if you
13 were asking in sort of a Chevron sense, that -- that the
14 statute was sufficiently ambiguous that it could have
15 been read this way. But I don't think it should be
16 viewed as a reasonable mistake under the good-faith
17 doctrine, because the good-faith doctrine deals with
18 directives from third parties and officers relying on
19 third parties. Johnson that I was just citing to you
20 says that unsettled questions of law --

21 JUSTICE ALITO: Well, I don't mean to -- I
22 don't mean to ask this in the context of any other body
23 of the Court's case law, just in the common sense
24 understanding of the term. Was it reasonable if a --
25 even an attorney sat down and read the -- the relevant

1 North Carolina statutes, do you think it would be
2 reasonable for that attorney to conclude that you have
3 to have two functioning brake lights and not just one?

4 MR. FISHER: I think in the common sense
5 way, I could concede that that would be reasonable. But
6 there's a legal way of asking what is reasonable and
7 what is not, Justice Alito. Let me say two things about
8 that. One is to just remind you that the Court has
9 never taken into account ambiguity or -- or the
10 possibility for error in asking whether a governmental
11 officer gets the law right.

12 And secondly, you have to define the concept
13 of reasonable. So even if you look at the facts of this
14 case and you think, well, this mistake was reasonable,
15 the other side hasn't given a definition of what it
16 would say would be a reasonable mistake of law. There's
17 a reference to qualified immunity jurisprudence in the
18 State's brief, and the Solicitor General describes --
19 uses language to say a foothold in the statutory text.

20 I'm not sure what definition actually would
21 apply here, but one thing I do know from the Court's
22 good -- qualified immunity and EDPA jurisprudence, you'd
23 have to define that concept, and the definitions that
24 exist in the law right now are very, very broad. And I
25 think that goes to the practical reason that I was going

1 to describe to the Court why you shouldn't hold that the
2 Fourth Amendment was satisfied here. Because if you say
3 that anything that's reasonable, as the Court has
4 defined it in other cases, susceptible to debate, you
5 vastly expand police officer discretion to conduct
6 traffic stops.

7 As the Court has noted already, officers
8 have enormous discretion both by the nature of the
9 traffic laws and under the Whren decision. If --

10 JUSTICE SCALIA: Mr. Fisher, let me -- let
11 me try my problem just one last time before your time.
12 You -- you assert that -- that we -- we should not
13 decide the remedy question because it hasn't been
14 argued. But wasn't it your responsibility to argue it?
15 You're asking us to set aside a judgment of the North --
16 North Carolina court. That judgment can be set aside
17 only if, number one, the Fourth Amendment was not
18 violated or, number two, it was violated, but the remedy
19 does not have to be exclusion of the evidence.

20 It's -- it seems to me it's your burden to
21 establish not just that the Fourth Amendment was
22 violated, but also that -- that exclusion was necessary
23 under the Constitution. And it is no answer to say,
24 well, that hasn't been argued. You haven't argued it.
25 That's the problem.

1 MR. FISHER: Well, if I need to argue it, I
2 would refer you to the part three arguments in our
3 opening brief, which explain why even if you move good
4 faith into the right -- those -- those would be my
5 arguments, Justice Scalia.

6 The only other case that comes to mind is
7 the Court's Ayolta case several years ago, where there
8 was a takings question brought to the Court, and the
9 Court divided that Federal law question into two pieces.
10 And when the lower court had only addressed the first
11 piece of the case, the Court reversed on that first
12 piece of the case and sent it back down. So I think
13 what I'm asking for isn't terribly different.

14 JUSTICE SCALIA: Sent it back down for that
15 court to decide the other piece. But this Court will
16 not decide the other piece, as you acknowledge.

17 MR. FISHER: If a State makes that choice
18 that it's going to give a more favorable remedy, then
19 federalism should respect that choice, Justice Scalia.

20 And so I'd like to reserve the rest of my
21 time.

22 CHIEF JUSTICE ROBERTS: Thank you, Mr.
23 Fisher.

24 Mr. Montgomery.

25 ORAL ARGUMENT OF ROBERT C. MONTGOMERY.

1 ON BEHALF OF THE RESPONDENT

2 MR. MONTGOMERY: Mr. Chief Justice, and may it please
3 the Court:

4 The Fourth Amendment prohibits unreasonable searches and
5 seizures, but it does not require that police officers
6 be perfect. Because the touchstone of the Fourth
7 Amendment is reasonableness, all that is required is
8 that a police officer have a reasonable view of the
9 facts and apply those facts to a reasonable
10 understanding of the law.

11 JUSTICE SOTOMAYOR: When will we ever get an
12 understanding, the right understanding of the law?
13 Meaning as I read the North Carolina Supreme Court
14 decision, it still hasn't told me whether it's one or
15 two brake lights, and the next police officer who wants
16 to stop someone won't know that either.

17 MR. MONTGOMERY: In North Carolina -- excuse
18 me.

19 JUSTICE SOTOMAYOR: Now, he may be bound by
20 the appellate court decision, but that won't help
21 clarify the state of the law.

22 Isn't what you're doing going to leave the
23 criminal law unclear? It's one thing to say that you
24 want to not subject officers to civil liability. It's
25 another to say you want to leave the law unclear in a

1 criminal prosecution.

2 MR. MONTGOMERY: Well, Your Honor in North
3 Carolina, controlling precedent does come from the
4 intermediate court of appeals. That's not to say that
5 our supreme court might not reach a different decision
6 some day. But for now, police officers would be bound
7 by what the North Carolina court of appeals decided.

8 So the law has been decided. An officer who
9 goes out and makes a stop tomorrow because one brake
10 light is out would be acting unreasonably under that
11 decision, so it doesn't leave criminal law uncertain.
12 It --

13 JUSTICE SOTOMAYOR: Well, it will for the
14 appellate decision if it's now taking your view that it
15 can just find out whether the reading, the officer's
16 reading of the law is reasonable. It basically means
17 that any open question, police officers will rule in
18 favor of their right to search.

19 MR. MONTGOMERY: It depends on whether the
20 question is an open question and whether that
21 interpretation by the officer is reasonable. It
22 certainly may be an unreasonable interpretation. It
23 would have --

24 JUSTICE SOTOMAYOR: Define what would make
25 it unreasonable?

1 MR. MONTGOMERY: Well, it would be
2 unreasonable if there was plain language of the statute
3 that no one could reach a different interpretation about
4 at all if it was plain, or if there was a definite
5 decision by an appellate court it would be unreasonable
6 for officer to interpret it in his own way.

7 And the whole standard would be a reasonable
8 person standard. Would a reasonable person be able to
9 take this view of the statute?

10 CHIEF JUSTICE ROBERTS: That's a very broad
11 definition of reasonable. I understand the idea that
12 when, you know, 99 people out of a hundred think you
13 have to have two brake lights, like you do everywhere
14 else in the country, that it's reasonable for the police
15 officer to think that.

16 But it sounds to me like you're adopting the
17 same standard that we apply in qualified immunity, which
18 gives the officers quite -- quite broad scope, and
19 that -- that's troubling.

20 MR. MONTGOMERY: It's not -- it's not the
21 same as qualified immunity in that qualified immunity
22 looks also -- it looks -- it protects the plainly
23 incompetent. We're not saying that is the standard
24 here, that --

25 JUSTICE KAGAN: No, I think it doesn't

1 protect the --

2 MR. MONTGOMERY: I'm sorry. It doesn't
3 protect the plainly incompetent.

4 JUSTICE KAGAN: Yes. So I think what the
5 Chief Justice is asking you is to describe a case for us
6 where the officer would receive qualified immunity but
7 it would not count as reasonable for these purposes.

8 MR. MONTGOMERY: One of the things that this
9 Court has said in *Wilson v. Layne* is that this Court and
10 courts can look beyond just the officer's interpretation
11 like this. It can look to other matters. There could
12 be an officer who -- who had an unreasonable
13 interpretation of the statute, and yet he may still have
14 qualified immunity, for instance, because he was told by
15 a judge or by the attorney general or by someone that
16 this was correct, and that was a complete
17 misunderstanding of the statute.

18 It may be that that officer would still be
19 protected by qualified immunity, but for the -- for
20 Fourth Amendment purposes, that would not be a
21 reasonable interpretation of the statute.

22 CHIEF JUSTICE ROBERTS: You would not give a
23 pass -- I mean, let's say the case is flipped here and
24 the most reasonable reading of the statute is that you
25 only need one brake light.

1 And so someone's driving around with one
2 brake light. You pull him over. He's going to say: I
3 reasonably thought that, you know, I -- I only -- I only
4 needed one. And the Court comes out and says, I needed
5 two.

6 In that case, ignorance of the law would not
7 save him, would it?

8 MR. MONTGOMERY: No, it would not. But the
9 flip side of that is that an officer's belief that you
10 needed all of your brake lights, and that is not
11 actually the law, does not mean that that person is
12 guilty.

13 In other words, in this instance, this --
14 this driver -- excuse me, the defendant here or driver,
15 actually, could not be held liable for the brake light
16 violation. So it's not that the fact that an officer
17 thinks reasonably that the law is something. That
18 doesn't make it the law, just like if a citizen does not
19 think that's the law, that does not mean that he can
20 escape liability.

21 JUSTICE SOTOMAYOR: There is a problem,
22 however -- I'm sorry. The police officer wasn't
23 stopping him because of the brake light. The police
24 officer was involved in criminal interdictions and
25 admitted that this was a pretext, a lawful pretext, he

1 thought.

2 So he wasn't there just to tell him -- if he
3 had just stopped him and said, you know, fix your brake
4 light, and drove away, there would never be a lawsuit,
5 correct?

6 MR. MONTGOMERY: That's correct.

7 JUSTICE SOTOMAYOR: So how many citizens
8 have been stopped for one brake light who are asked to
9 have their car searched? And is that something that we
10 as a society should be encouraging?

11 MR. MONTGOMERY: Well, there -- wholly
12 innocent people are stopped quite often because of
13 mistakes of fact, for instance. That's part of the
14 whole Terry -- how Terry works and those types of brief
15 stops. There turns out times that citizens have not
16 committed any kind of offense, and yet they are stopped.

17 This is just another example of that, in
18 which an officer acted reasonably, just as with a
19 reasonable mistake of fact, and it turned out that this
20 was not actually a violation.

21 CHIEF JUSTICE ROBERTS: I'd like to focus
22 again on your definition of reasonableness. Let's say
23 you have two court of appeals decisions. One says you
24 need two brake lights; the other says you need one.

25 Is it reasonable for the officer to pull

1 somebody over when one of their two brake lights is
2 burned out?

3 MR. MONTGOMERY: If you have conflicting
4 rulings from the court of appeals, it would be
5 reasonable then for the officer to decide which he
6 thought was the better rule, if there were two different
7 decisions from the court of appeals, which is not
8 supposed to happen in our system.

9 But if that did happen, then it would be
10 reasonable for the officer to rely on either one of
11 those.

12 JUSTICE KAGAN: Mr. Montgomery, I take it
13 that one of Mr. Fisher's arguments, maybe his primary
14 argument, is that this just looks like a remedies
15 question, it does not look like a rights question, it
16 focuses on the culpability of the officer in the way we
17 do when we think about immunity or when we think about
18 the exclusionary rule.

19 So why isn't that exactly right, that to the
20 extent that this conviction ought to be upheld, it ought
21 to be upheld on remedies reasons rather than rights
22 reasons to fit in with our basic understanding of what
23 remedies and rights do and do differently in our law?

24 MR. MONTGOMERY: Well, certainly this court
25 looks at different things when it looks at the right

1 versus the remedy. Reasonableness is important in the
2 rights stage. In the remedies stage, that may be
3 considered, but also the culpability of -- of the
4 officer, whether he was deliberately disregarding the
5 law, those types of things.

6 This Court has addressed mistakes of law
7 both in the rights and the remedy stage. And so it
8 would be important to address it in the rights stage
9 here in this particular case because then we don't get
10 into the sorts of things that wouldn't be necessary in
11 the remedy stage, if that answers your question.

12 JUSTICE GINSBURG: What about -- what about
13 the dissenter in the North Carolina court of appeals who
14 said North Carolina has no good-faith exception, and so
15 all that this decision does is it allows the police to
16 get around the absence of a good-faith exception?

17 Wasn't that the position of the dissenter,
18 that allowing for a reasonable mistake of law to support
19 a warrantless stop is the functional equivalent of a
20 good-faith exception?

21 MR. MONTGOMERY: That was the position of
22 the dissenting justices at the North Carolina Supreme
23 Court, one of the things that they said.

24 But again, this again gets back to
25 reasonableness as the standard for the Fourth Amendment.

1 And that is what this Court has said is important at
2 that stage, is whether an officer is acting reasonably.

3 There are other considerations that take
4 place at the remedy stage. So the State was asking for
5 nothing more than simply whether this violated the
6 Fourth Amendment, and not about remedy. And --

7 JUSTICE SCALIA: Counsel, maybe you have the
8 answer to all the questions I was asking of -- of
9 Mr. Fisher. And -- and I guess the answer is you
10 haven't argued that point, right?

11 MR. MONTGOMERY: The remedy?

12 JUSTICE SCALIA: You did not -- you did not
13 assert in your -- in your brief or you haven't asserted
14 it in oral argument, thus far, anyway, that even if it
15 did constitute a violation of the Fourth Amendment, the
16 remedy did not have to be exclusion of the evidence, and
17 that remedy is indeed subject to reasonable mistake of
18 law, and therefore, the decision has to be affirmed.

19 But you didn't make that argument. You want
20 to put all your eggs in the basket of whether it's a
21 violation of Fourth Amendment. Am I right about this?

22 MR. MONTGOMERY: That's correct, Your Honor.

23 JUSTICE SCALIA: Okay. I'm sorry to waste
24 so much of our time.

25 MR. MONTGOMERY: Well, we did not make that

1 argument below in the North Carolina Supreme Court. And
2 Mr. Fisher is correct in that it is our State
3 constitution that says that there's no good-faith
4 exception.

5 If a defendant had only raised a Fourth
6 Amendment question in our courts, the good-faith
7 exception would still be available if that defendant did
8 not make a claim under the State constitution.

9 JUSTICE KENNEDY: Well, I'm not so sure it
10 makes good prudential sense to allow the North Carolina
11 Supreme Court to put to us what is basically an abstract
12 question.

13 MR. MONTGOMERY: The question of --

14 JUSTICE KENNEDY: To -- to give an answer
15 without reference to the fact that, as Justice Scalia
16 indicates, part of the Fourth Amendment is the
17 good-faith exception. It bears on reasonableness.

18 MR. MONTGOMERY: That's correct. And -- and
19 this -- this Court has, in cases like Rodriguez dealt
20 with mistake of law just in the rights stage rather than
21 the remedies stage, and that's all that it -- has been
22 briefed in this instance. That's correct.

23 And one of the things that is different
24 about this from Krull and Davis is that we're not
25 talking about --

1 JUSTICE SCALIA: Excuse me. I mean, that
2 just doesn't wash. Yes, in other cases we just decide
3 the -- the right and -- and don't have to decide the
4 remedy, but this is a case in which, unless -- unless
5 the remedy is exclusion, there's no basis for us to set
6 aside the judgment of the North Carolina Supreme Court.
7 Unless -- unless the remedy is exclusion. It seems to
8 me that's part of the case to reverse. If -- if we
9 can't say that, we have no business reversing. But if
10 it hasn't been argued, I guess we can do that. I guess.

11 MR. MONTGOMERY: That -- that has not been
12 argued here or below, that's correct. A difference
13 between this case and Krull and Davis is that this case
14 does not -- this involves a mistake of law as to a
15 substantive statute rather than a mistake of law as to
16 the Fourth Amendment itself. And the difference in that
17 is that a reasonable violation of the Fourth Amendment
18 is still a violation of the Fourth Amendment.

19 There -- if there's a statute that gives an
20 officer the opportunity to make a seizure on less than
21 what is required by the Constitution, less than probable
22 cause or less than reasonable suspicion, even if the
23 officer is reasonable, that is still a Fourth Amendment
24 violation, which is why this Court would have to go to
25 the remedy portion to decide whether the exclusionary

1 rule applied.

2 In this instance, this case, it was a
3 mistake as to a substantive statute that was used by the
4 officer to -- as part of the facts and circumstances of
5 this case. As part of the totality of the circumstances
6 of this case, the officer considered what he thought was
7 the correct law.

8 JUSTICE GINSBURG: Why does it -- why should
9 you draw the line between if he gets the Fourth
10 Amendment wrong, the Fourth Amendment is violated, but
11 if he gets the statute wrong, then the Fourth Amendment
12 is not violated?

13 MR. MONTGOMERY: Because the officer only
14 needs to act reasonably and the fact that he gets the
15 statute wrong does not mean that he acted necessarily
16 unreasonably.

17 JUSTICE GINSBURG: Well, the fact that he
18 made a mistake about what the Fourth Amendment requires
19 could also be reasonable.

20 MR. MONTGOMERY: It could be, and that would
21 be proper to consider, as this Court has, in the
22 remedies stage rather than in the rights stage. In the
23 DeFillippo case that this Court decided, there was a
24 situation in which a statute, a substantive statute was
25 found unconstitutional and void for vagueness, and yet

1 this Court found that there was probable cause in that
2 case for the officer to make an arrest based upon that
3 statute.

4 So that was one case in which this Court
5 looked at it at the rights stage as a mistake of law
6 rather than at the remedy stage.

7 JUSTICE KAGAN: Well, do you think if
8 DeFillippo came up again today, with all the cases that
9 have been decided since then, that we would decide it
10 the same way or do you think we would conceptualize it
11 now as a remedies question?

12 MR. MONTGOMERY: I think the Court would
13 decide it the same way. And this Court in Arizona v.
14 Evans said that if the case is even decided before the
15 good-faith exception are still viable in terms of the
16 Fourth Amendment analysis.

17 JUSTICE SOTOMAYOR: What kind of mistake of
18 law did the police officer make in DeFillippo? The law
19 said exactly what he thought it said.

20 MR. MONTGOMERY: That's correct, Your Honor.

21 JUSTICE SOTOMAYOR: Why do you classify this
22 as a mistake of law question?

23 MR. MONTGOMERY: I believe the --

24 JUSTICE SOTOMAYOR: We said it was
25 presumptively valid and he acted according to a statute.

1 MR. MONTGOMERY: That's correct.

2 JUSTICE SOTOMAYOR: You don't ask police
3 officers to ignore the law.

4 MR. MONTGOMERY: That is correct that it's
5 different from this case, but there was still --

6 JUSTICE SOTOMAYOR: No, no, no. This is a
7 mistake of law; he wasn't following the law, presumably,
8 according to the appellate decision.

9 MR. MONTGOMERY: That's right. The
10 DeFillippo case is important because you had someone who
11 was acting wholly innocently; he was not committing an
12 offense at all, as -- as in this case you had someone
13 who was acting wholly innocently and was not committing
14 a violation of the law. So in DeFillippo, this Court
15 said that even though the conduct was wholly innocent,
16 there still was probable cause despite the mistake of
17 law, and that's all that we're saying in this case.

18 JUSTICE KAGAN: Isn't there another
19 difference between DeFillippo and this case? The court
20 in DeFillippo talks a lot about how there's a
21 presumption of constitutionality for any statute and we
22 don't want officers to go around questioning the
23 constitutionality of statutes. But here, that's not the
24 case. Here, there's a statute and an officer is not
25 supposed to read it as broadly as possible. An officer

1 is supposed to read it fairly.

2 So there's no presumption that goes into
3 effect and there's no -- there's no way in which we
4 could say the same thing about DeFillippo, is that we
5 don't want officers to question -- to inquire into this
6 area.

7 MR. MONTGOMERY: It is different, but we do
8 want officers to enforce the law. We don't want them to
9 just sit back and not enforce --

10 JUSTICE KAGAN: We want them to enforce the
11 law fairly and as written and -- and not to push every
12 statute to its -- you know, to the furthest, furthest,
13 furthest it could go without being found, you know,
14 utterly unreasonable.

15 MR. MONTGOMERY: That's correct, Your Honor.
16 But we do want them to act reasonably and still enforce
17 the law, not to turn a blind eye to what may be a
18 violation.

19 JUSTICE SCALIA: How -- how does the statute
20 read here? What are the exact words from the statute.

21 MR. MONTGOMERY: The statute has two parts.
22 It has a subsection (d).

23 JUSTICE KENNEDY: Where -- where do we find
24 it?

25 MR. MONTGOMERY: This would be in the

1 appendix to the Respondent's brief, appendix pages 1 --
2 appendix pages 1 through -- actually through 5, has all
3 of the relevant portions of the statute.

4 Subsection (d) involves rear lamps and says
5 that, "every motor vehicle shall have all originally
6 equipped rear lamps or the equivalent in good working
7 order." That's the relevant portion of subsection (d).
8 Subsection (g), which is on page 3 of the appendix says,
9 "No person shall sell or operate on the highways of the
10 State any motor vehicle manufactured after December
11 31st, 1955 unless it shall be equipped with a stop lamp
12 on the rear of the vehicle." That is the language that
13 the North Carolina Court of Appeals said when it said "a
14 stop lamp," that meant that only one was required.

15 JUSTICE SCALIA: That -- that seems to be
16 what it says.

17 MR. MONTGOMERY: The confusion comes in --
18 the confusion comes in, Justice Scalia, in the last
19 sentence of subsection (g) on appendix page 3, which
20 says, "The stop lamp may be incorporated into a unit
21 with one or more other rear lamps." Where the confusion
22 comes in is that sentence would seem to imply that the
23 stop lamp is a rear lamp, that it can be incorporated
24 into a unit with one or more other rear lamps.

25 And if you go back to subsection (d), that's

1 the section that says that "all originally equipped rear
2 lamps must be in good working order." So there --
3 there's some conflicts in --

4 JUSTICE SCALIA: Well, I mean, that applies
5 to all rear lamps, the stop lamp and all the other
6 lamps.

7 MR. MONTGOMERY: That's correct. All the
8 other lamps we know --

9 JUSTICE SCALIA: So -- so it has to be
10 plural. If it's going to apply to the stop lamp and all
11 the other lamps, of course, it would say lamps.

12 MR. MONTGOMERY: Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you, counsel.
14 Ms. Kovner.

15 ORAL ARGUMENT OF RACHEL P. KOVNER

16 ON BEHALF OF THE UNITED STATES

17 AS AMICUS CURIAE, SUPPORTING RESPONDENT

18 MS. KOVNER: Mr. Chief Justice, and may it
19 please the Court:

20 Since the founding, the probable cause
21 standard had allowed -- has allowed police officers to
22 make stops when there are reasonable grounds to believe
23 that a person committed a crime even if the officer
24 later turns out to have been mistaken about either the
25 facts or the law. And as Justice Kennedy observed at

1 the start of this argument, given that this Court's
2 cases recognize that there can be a reasonable mistake
3 of law, an officer who makes a reasonable mistake of law
4 may have a reasonable grounds to believe that a person
5 committed a crime.

6 If I can go to a question that Justice Kagan
7 asked about why this question is more appropriately
8 addressed at the rights stage than the remedies stage,
9 we think there are three main reasons. The first has to
10 do with history. Since the founding, this Court has
11 treated the probable cause standard as allowing for
12 reasonable mistakes of law.

13 JUSTICE SOTOMAYOR: Are all the cases that
14 you cite, including Riddle, all in the context of a
15 customs statute that didn't permit customs officers to
16 suffer damages --

17 MS. KOVNER: Yes, Your Honor.

18 JUSTICE SOTOMAYOR: -- for purposes of an
19 error of law, correct?

20 MS. KOVNER: That's correct. The reason --

21 JUSTICE SOTOMAYOR: None of those cases
22 involved a violation of the Fourth Amendment.

23 MS. KOVNER: That's correct. The reason
24 those cases are relevant here is because those cases are
25 interpretations of the probable cause standard.

1 JUSTICE SOTOMAYOR: But how is that
2 different in terms of its analysis, those cases, from
3 what we've ultimately applied as a qualified immunity
4 standard with respect to civil damages today?

5 MS. KOVNER: So --

6 JUSTICE SOTOMAYOR: Doesn't it follow --
7 don't they follow exactly the same reason?

8 MS. KOVNER: I don't think so, Your Honor.
9 Those cases, the probable cause reasoning that the Court
10 has followed in those cases is what the Court has done
11 at the merits stage of the Fourth Amendment analysis.
12 So this Court has routinely cited cases under those
13 customs statutes as illuminating the meaning of the
14 probable cause standard, and is therefore illuminating --

15 JUSTICE SOTOMAYOR: So you disagree with
16 Justice Story when he looked at those cases and made the
17 point I just made.

18 MS. KOVNER: No --

19 JUSTICE SOTOMAYOR: Do you think he was
20 wrong?

21 MS. KOVNER: There's no doubt that in those
22 cases the question, the question the court was
23 ultimately answering is, are those customs officers
24 liable. But the way that it was answering that question
25 was by determining whether those officers had probable

1 cause. And probable cause is the constitutional
2 standard. And that's why this Court has subsequently
3 relied on those cases in illuminating the --

4 JUSTICE BREYER: Can I ask you a question?
5 I'd just like you to address for a minute -- assume for
6 the sake of argument that I agree with you that a
7 reasonable mistake of law that I -- is an excuse. But
8 what is a reasonable mistake?

9 Now, that's what I'd like you to address.
10 And in particular, would you have objection to: It has
11 to be, one, exceedingly rare; two, objective; three, it
12 is -- has to be that a reasonable lawyer would think
13 that the policeman was right on the law, and only if
14 after, to quote you brief, a careful scrutiny and
15 serious difficulty in construing the law, does it turn
16 out that he is wrong.

17 Now, what do you think about that or some
18 other standard?

19 MS. KOVNER: I think we agree with each of
20 those descriptions of a reasonable --

21 JUSTICE BREYER: All right. If you agree
22 with those then what about this case? Because after
23 all, it does say a stamp light -- a stop light. What's
24 the difficulty of construing that to mean a stop light?

25 MS. KOVNER: So we think that the North

1 Carolina Supreme Court and the court of appeals were
2 right that an officer could reasonably interpret the
3 statute to require --

4 JUSTICE BREYER: Only after a careful
5 scrutiny and serious difficulty in construing the law
6 does it turn out that the officer was wrong. What's the
7 difficulty?

8 MS. KOVNER: Here --

9 JUSTICE BREYER: It stays a stamp -- a stop
10 light.

11 MS. KOVNER: Here, the difficulty is in the
12 other provision, which requires all originally equipped
13 rear lamps to be working. And --

14 JUSTICE SCALIA: But that includes the stop
15 light and any other lights. Okay. A stop light, the
16 turn lights, the back-up lights.

17 So you had to use the plural for those other
18 provisions.

19 MS. KOVNER: Agreed. It's not the plural.
20 It's the fact that all originally equipped rear lamps
21 need to be working, which means that if a car was
22 originally equipped with multiple stop lamps, as cars
23 now are, then when one of them is broken, one of the
24 originally equipped rear lamps is not working.

25 So that's the difficulty. And that's why

1 none of the courts that considered this question thought
2 this was anything other than a very hard question of
3 statutory interpretation.

4 CHIEF JUSTICE ROBERTS: So where do you come
5 out in my hypothetical of the two court of appeals
6 decisions? Is that reasonable for the officer to say,
7 "Well, I'm going to pick this one and follow that?"

8 MS. KOVNER: So if the officer is in a
9 jurisdiction whose court of appeals has decided the
10 question, we think the officer is bound by that
11 interpretation, even if other courts of appeals come out
12 differently. But if the officer is in a jurisdiction
13 where the question is undecided and different courts
14 have come out differently in other jurisdictions, then
15 we don't think the fact that one court has decided it in
16 one way is dispositive. We think then the court looks
17 to this question of is it a really difficult --

18 JUSTICE BREYER: Well, now I forgot one
19 thing, which may be obvious to me. We're not talking
20 about a difficulty in construing the Fourth Amendment
21 itself? We're talking only about a difficulty in
22 construing a criminal statute, where, in fact, the
23 reason for the stop or seizure is based on a violation
24 of criminal law.

25 MS. KOVNER: That's right. I think the

1 probable cause standard allows for an officer to act
2 when he has reasonable grounds to --

3 JUSTICE SOTOMAYOR: How is your standard
4 differed from qualified immunity standard of
5 reasonableness?

6 MS. KOVNER: Sure. We think that an
7 officer, in order to have reasonable grounds for a stop,
8 needs to be able to point to something in the statute
9 that affirmatively supports his view, whereas the
10 qualified immunity standard seems to require essentially
11 the opposite. It seems to require that there's a
12 precedent that forecloses what the officer does in order
13 to protect only those who were acting -- to protect
14 everybody except for those who are clearly incompetent.

15 JUSTICE GINSBURG: The one argument that is
16 in your brief that I didn't follow is that the
17 importance of holding the way you recommend is so that
18 when you get this question solved, you tee up the
19 question, what is the rule, one light or two lights.

20 But yet in this case, it was consent. The
21 evidence that came in had nothing at all to do with the
22 traffic violation, so we wouldn't need to -- the Court
23 wouldn't need to decide the traffic violation, say -- it
24 was consent. I think the North Carolina Immediate
25 Appellate Court said it was a legitimate consent. It

1 was consent, and this evidence comes in, and we never
2 had to deal with what the traffic regulation was.

3 MS. KOVNER: That's correct, Your Honor.

4 And this question comes up in two contexts. Sometimes
5 it would be litigated in the suppression context, and
6 sometimes it would be litigated because the officer
7 actually issues a citation. And our concern expressed
8 in that portion of the brief is that if the Court takes
9 the position that whenever an officer is wrong about the
10 law, he has violated the Fourth Amendment, it's going to
11 deter officers from making stops where there are
12 arguments on both sides.

13 JUSTICE KENNEDY: Do you -- do you agree
14 that if there is an illegal stop, that this consent is
15 the fruit of the poison tree?

16 MS. KOVNER: We think that would be a
17 difficult question. We don't necessarily agree with
18 that. This Court has said it's not simply a but-for
19 test. So even if the stop was a but-for cause, that
20 doesn't necessarily mean that the evidence was fruit of
21 the poisonous tree. But the question wasn't argued
22 below by the State and it hasn't been briefed here. So
23 we've addressed simply the question of --

24 JUSTICE KAGAN: Ms. Kovner, you started your
25 argument by saying you were going to give us three

1 reasons why this should be a rights question rather than
2 a remedies question. You said history, which frankly,
3 you know, I think your history probably doesn't say as
4 much as you think it says. So I want to know what is
5 number two and number three are.

6 MS. KOVNER: Sure. The second is an
7 administrability reason. We think that this is the
8 simplest standard. You simply ask officers to decide
9 whether -- you simply ask courts to decide whether an
10 officer could reasonably think that a person had
11 committed a crime, and you don't separate was this a
12 question of law or a question of fact and treat one in
13 the rights section and one in the remedies section.

14 And the third is that we don't think there's
15 a normative reason to treat mistakes of law and mistakes
16 of fact differently. When an officer makes a stop in
17 this situation, he can just as reasonably be confused as
18 to what the -- the law is under these statutes, as
19 confused as to what the facts are. And if we're going
20 to treat mistakes of fact as part of the rights
21 analysis, it makes sense to treat reasonable mistakes of
22 law in the same way.

23 If the Court has no further questions, thank
24 you.

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

1 Mr. Fisher, you have three minutes left.

2 REBUTTAL ARGUMENT OF JEFFREY L. FISHER

3 ON BEHALF OF PETITIONER

4 MR. FISHER: Thank you. I'd like to make
5 four points if I could. To start with the
6 administrability question of what would reasonableness
7 mean, Mr. Chief Justice, I think your hypothetical of
8 two differing court of appeals opinions in a State,
9 I think under the analysis that I just described, would
10 mean that it would violate the Fourth Amendment and half
11 the State to conduct the stop and not in the other half
12 of the State, because each would be binding in its own
13 component of the State.
14 And that shows why in Whren, and many other cases, this
15 Court has rejected that kind of analysis at the rights
16 stage and cabined it only to the remedies stage. If you
17 want to ask --

18 JUSTICE ALITO: Well, in this -- in this
19 case, didn't the dissenters in the North Carolina
20 Supreme Court say that the interpretation adopted by the
21 court of appeals was surprising? So all we would have
22 to say on reasonableness is that if it's not -- if it's
23 surprising, if the correct interpretation is surprising,
24 then the contrary interpretation is reasonable. Would
25 we have to go further than that?

1 MR. FISHER: I think you do because you have
2 to just give a little more teeth to it. What the
3 Solicitor General said is that it would have to have
4 foothold in the statute. And I think that's more or
5 less what was recited today, there was a recent D.C. Court
6 of Appeals opinion that holds that a police officer
7 could -- could argue from a foothold in the statute that
8 all license plate frames are illegal.

9 Now, they rejected that under their code,
10 but it's just one of innumerable arguments that a law
11 enforcement officer might make and that this
12 reasonableness test would give grave --

13 JUSTICE BREYER: No, no. I mean, it would
14 be one way, one way. One court one way, one way the
15 other way. The officer loses because, you know, it ties
16 -- it has to be unusual. It has to be -- you heard
17 what --

18 MR. FISHER: Well, I think, Justice Breyer,
19 the problem with that is that it's the core presumption
20 that the officer needs to understand the law as it
21 existed, as it was later construed.

22 And Mr. Chief Justice, you asked, I think,
23 about the ignorance canon. The State's response was,
24 well, if somebody is reasonably mistaken about the law,
25 we would convict him.

1 And the reason why is because we would
2 assume he knew the law. We would assume that somebody
3 at the court of appeals split and this Court divided
4 5-4, the person is still convicted because we assume
5 they knew the law when they acted.

6 And all we are asking for today is for the
7 exact same assumption to apply to police officers. And
8 with due respect to the Solicitor General, the founding
9 -- the cases they describe don't help them. They're
10 only remedy cases, and they reinforce our point. And
11 even when the Court has cited these cases, they're all
12 in the pre-Leon context where this Court didn't
13 distinguish rights from remedies.

14 If you want to look at the founding, the
15 controlling rule would be the common law rule. And as
16 we said in our brief, with no -- with no disagreement
17 from the other side, the common law rule dating back
18 centuries was that ignorance of the law on the police
19 officer's part, even if it was perfectly reasonable,
20 didn't justify the stop.

21 And if I could say one last thing to Justice
22 Scalia about the colloquies we were having before, with
23 all due respect, I really do think there is nothing
24 unusual about a party litigating a case up through the
25 courts. It may arise in Federal court or it may arise

1 in State court, but they can choose the arguments they
2 choose to raise.

3 And when we got a judgment in our favor from
4 the North Carolina court of appeals, it was up to the
5 State at that point to choose what arguments it wanted
6 to pursue further in this case. So just like a State
7 may -- a party may ride the First Amendment instead of
8 the Second or a rights question instead of remedy, we
9 think that's all that's happened here.

10 CHIEF JUSTICE ROBERTS: Thank you, Counsel.

11 The case is submitted.

12 Whereupon, at 11:02 a.m., the case in the
13 above-entitled matter was submitted.)
14
15
16
17
18
19
20
21
22
23
24
25

<p>A</p> <p>able 17:11 18:20 31:8 51:8</p> <p>aboveentitled 1:11 57:13</p> <p>absence 36:16</p> <p>abstract 38:11</p> <p>academic 24:18</p> <p>account 4:13 5:23 7:15,20 8:9 9:13 9:22 12:2 26:9</p> <p>acknowledge 14:6 28:16</p> <p>acknowledged 14:9 14:10</p> <p>act 40:14 43:16 51:1</p> <p>acted 9:9,10,11 11:6 24:11 34:18 40:15 41:25 56:5</p> <p>acting 30:10 37:2 42:11,13 51:13</p> <p>actions 8:9 10:11</p> <p>actor 11:4</p> <p>acts 11:4 25:6</p> <p>add 14:18</p> <p>address 13:12 36:8 48:5,9</p> <p>addressed 3:14 13:11 15:12 16:2 17:1 28:10 36:6 46:8 52:23</p> <p>administrability 53:7 54:6</p> <p>admission 12:20 13:4</p> <p>admitted 12:23,24 13:5,6 33:25</p> <p>adopt 18:14</p> <p>adopted 17:23 54:20</p> <p>adopting 31:16</p> <p>adversarial 16:4</p> <p>affirm 17:11</p> <p>affirmatively 51:9</p> <p>affirmed 37:18</p>	<p>ago 28:7</p> <p>agree 48:6,19,21 52:13,17</p> <p>agreed 49:19</p> <p>ahead 7:25</p> <p>alito 6:3,21 7:1,2 10:15,22 11:19 18:9,24 21:15 22:2,8,17 25:10 25:21 26:7 54:18</p> <p>allow 38:10</p> <p>allowed 45:21,21</p> <p>allowing 36:18 46:11</p> <p>allows 36:15 51:1</p> <p>alternative 23:4</p> <p>ambiguity 26:9</p> <p>ambiguous 25:14</p> <p>amendment 3:14 3:24 4:23,23 5:22 6:2,19 7:21,23 8:5 8:10,15 9:1,23 12:5 13:5,15 15:18 16:8 17:17 18:11,13,14 19:4 19:11 22:12,20,23 23:6,8 24:4 25:8 27:2,17,21 29:4,7 32:20 36:25 37:6 37:15,21 38:6,16 39:16,17,18,23 40:10,10,11,18 41:16 46:22 47:11 50:20 52:10 54:10 57:7</p> <p>amicus 1:21 2:11 45:17</p> <p>analog 18:11</p> <p>analogy 16:18</p> <p>analyses 20:25</p> <p>analysis 16:25 20:23 41:16 47:2 47:11 53:21 54:9 54:15</p> <p>anderson 5:17 8:13 9:7</p>	<p>announce 24:23</p> <p>answer 4:7 5:21 6:12 13:19 16:15 17:10 27:23 37:8 37:9 38:14</p> <p>answered 15:25</p> <p>answering 17:4 47:23,24</p> <p>answers 36:11</p> <p>anticipated 4:6</p> <p>anyway 37:14</p> <p>appeals 11:11 30:4 30:7 34:23 35:4,7 36:13 44:13 49:1 50:5,9,11 54:8,21 55:6 56:3 57:4</p> <p>appearances 1:14</p> <p>appellate 29:20 30:14 31:5 42:8 51:25</p> <p>appendix 44:1,1,2 44:8,19</p> <p>applied 12:25 13:18 18:10 40:1 47:3</p> <p>applies 4:9 14:6,22 15:20 45:4</p> <p>apply 3:25 15:19 15:20 21:14 26:21 29:9 31:17 45:10 56:7</p> <p>applying 17:3</p> <p>appropriately 46:7</p> <p>area 43:6</p> <p>arguably 19:10</p> <p>argue 25:9 27:14 28:1 55:7</p> <p>argued 14:3 21:19 24:19 27:14,24,24 37:10 39:10,12 52:21</p> <p>arguing 3:20,23 22:9</p> <p>argument 1:12 2:2 2:5,8,12 3:6 4:3,5 5:8,13 6:18 7:10</p>	<p>8:8,13,14 12:14 18:13,17,19 19:3 21:16,24 24:15,17 24:18 28:25 35:14 37:14,19 38:1 45:15 46:1 48:6 51:15 52:25 54:2</p> <p>arguments 28:2,5 35:13 52:12 55:10 57:1,5</p> <p>arizona 41:13</p> <p>arrest 9:5 41:2</p> <p>article 22:19</p> <p>aside 9:16,20 12:11 21:2 27:15,16 39:6</p> <p>asked 6:11 34:8 46:7 55:22</p> <p>asking 12:7 17:14 19:6,7,15 25:13 26:6,10 27:15 28:13 32:5 37:4,8 56:6</p> <p>assert 27:12 37:13</p> <p>asserted 37:13</p> <p>assessment 4:25</p> <p>assistant 1:19</p> <p>assume 10:12 48:5 56:2,2,4</p> <p>assumption 56:7</p> <p>attorney 1:17 25:25 26:2 32:15</p> <p>automatic 17:25</p> <p>available 23:3 38:7</p> <p>ayolta 28:7</p>	<p>20:6 41:2 50:23</p> <p>basic 35:22</p> <p>basically 30:16 38:11</p> <p>basis 17:15 19:7 39:5</p> <p>basket 37:20</p> <p>bears 38:17</p> <p>beginning 10:21</p> <p>behalf 1:16,18,21 2:4,7,10,14 3:7 29:1 45:16 54:3</p> <p>belief 19:12 33:9</p> <p>believe 15:17 17:22 21:21 41:23 45:22 46:4</p> <p>best 5:15 10:6</p> <p>better 11:13 35:6</p> <p>beyond 32:10</p> <p>binding 14:22 54:12</p> <p>blind 43:17</p> <p>body 25:22</p> <p>bound 29:19 30:6 50:10</p> <p>brady 1:3</p> <p>brake 7:11 26:3 29:15 30:9 31:13 32:25 33:2,10,15 33:23 34:3,8,24 35:1</p> <p>breyer 48:4,21 49:4 49:9 50:18 55:13 55:18</p> <p>brief 24:22 26:18 28:3 34:14 37:13 44:1 48:14 51:16 52:8 56:16</p> <p>briefed 14:2 21:6 23:4 38:22 52:22</p> <p>briefing 16:4</p> <p>broad 26:24 31:10 31:18</p> <p>broadly 42:25</p> <p>broken 49:23</p> <p>brought 28:8</p>
<p>B</p> <p>back 13:25 15:13 16:3,15,25 17:9 17:20 18:2 19:2,8 20:4 28:12,14 36:24 43:9 44:25 56:17</p> <p>backdrop 3:15</p> <p>backup 49:16</p> <p>based 18:25 19:1</p>				

built 24:9	40:23 41:2,4,14	citizen 33:18	connection 5:3	34:6 37:22 38:2
burden 27:20	42:5,10,12,17,19	citizens 3:12 10:11	consent 6:12,17,19	38:18,22 39:12
burned 35:2	42:24 48:22 51:20	34:7,15	51:20,24,25 52:1	40:7 41:20 42:1,4
business 22:21 39:9	54:19 56:24 57:6	civil 29:24 47:4	52:14	43:15 45:7 46:19
butfor 52:18,19	57:11,12	claim 38:8	consider 40:21	46:20,23 52:3
C	cases 4:24,25 7:6	clarify 29:21	considerations	54:23
c 1:8,17,18,20 2:1,6	9:11 12:1 16:23	classify 41:21	37:3	coterminous 22:20
3:1 28:25 55:5	18:13 27:4 38:19	clear 12:15 22:4	considered 36:3	counsel 37:7 45:13
cabined 54:16	39:2 41:8 46:2,13	25:3	40:6 50:1	53:25 57:10
cal 1:15	46:21,24,24 47:2	clearly 51:14	consistent 20:11	count 4:9 32:7
canon 55:23	47:9,10,12,16,22	code 55:9	constitute 37:15	counterpart 22:19
cant 39:9	48:3 54:14 56:9	colloquies 56:22	constitution 16:20	country 3:10 10:5
car 6:12,24 12:21	56:10,11	come 30:3 50:4,11	17:5 18:22,25	31:14
34:9 49:21	categorical 5:4,13	50:14	19:2,5,14,16 22:6	couple 24:6
careful 48:14 49:4	cause 12:12 39:22	comes 7:15 23:10	22:8,12,15 27:23	course 4:11 5:16
carefully 21:7	41:1 42:16 45:20	24:17,18 28:6	38:3,8 39:21	11:20 12:14 13:22
caretaking 12:13	46:11,25 47:9,14	33:4 44:17,18,22	constitutional	45:11
carolina 1:6 3:4,19	48:1,1 51:1 52:19	52:1,4	12:24 13:3 15:8	court 1:1,12 3:9
7:11 15:3,19 16:6	centuries 56:18	committed 34:16	15:12,22 16:24	4:12 5:18,21 8:12
16:14 17:11,20	certainly 30:22	45:23 46:5 53:11	17:25 18:2,11	9:8 10:13,16
18:10,21 19:5	35:24	committing 42:11	22:24 48:1	11:11,24 12:1,2,3
20:7 21:21 22:2,5	chapman 15:9	42:13	constitutionality	12:10,10 13:21,22
22:13,18,22 23:14	16:19	common 8:16 10:4	42:21,23	13:24 14:23 15:4
26:1 27:16 29:13	cheek 10:6,16,17	24:8 25:23 26:4	construe 22:18	15:11,12 16:2,4
29:17 30:3,7	10:22	56:15,17	construed 10:13	16:12,20,25 17:12
36:13,14,22 38:1	chevron 25:13	community 12:13	55:21	18:1,5,7 19:8,23
38:10 39:6 44:13	chief 3:3,8 7:12,18	complaining 12:19	construing 48:15	19:24 20:2,3
49:1 51:24 54:19	7:22,25 8:4,12,18	complete 32:16	48:24 49:5 50:20	22:21 23:13 24:20
57:4	8:21 9:8,15,19	component 54:13	50:22	25:2,4,6 26:8 27:1
cars 49:22	10:1 28:22 29:2	concede 4:1 19:10	context 25:22 46:14	27:3,7,16 28:8,9
carter 18:21	31:10 32:5,22	26:5	52:5 56:12	28:10,11,15,15
case 3:3,23 4:1 5:9	34:21 45:13,18	concept 26:12,23	contexts 52:4	29:3,13,20 30:4,5
5:17,18 6:8,13	50:4 53:25 54:7	conceptualize	contraband 11:17	30:7 31:5 32:9,9
7:11 9:3,9 10:7	55:22 57:10	41:10	11:21	33:4 34:23 35:4,7
11:3,11 12:9,15	choice 28:17,19	concern 20:12 52:7	contrary 54:24	35:24 36:6,13,23
13:11 14:1,3,14	choose 18:6 57:1,2	conclude 26:2	controlling 30:3	37:1 38:1,11,19
14:16 16:21 17:6	57:5	conduct 27:5 42:15	56:15	39:6,24 40:21,23
18:5,16 19:24	chooses 20:5	54:11	conversation 11:20	41:1,4,12,13
20:1,21 21:19	circumstances	confidence 24:8,14	convict 55:25	42:14,19 44:13
23:3,16,20,22	10:18 40:4,5	conflicting 35:3	convicted 56:4	45:19 46:10 47:9
24:2 25:5,9,23	citation 6:10 52:7	conflicts 45:3	conviction 17:15	47:10,12,22 48:2
26:14 28:6,7,11	citations 10:24	confused 21:17	21:2,3 23:5 35:20	49:1,1 50:5,9,15
28:12 32:5,23	cite 46:14	53:17,19	convince 21:19	50:16 51:22,25
33:6 36:9 39:4,8	cited 24:22 47:12	confusion 44:17,18	core 55:19	52:8,18 53:23
39:13,13 40:2,5,6	56:11	44:21	correct 3:15 5:1	54:8,15,20,21
	citing 10:16 25:19	congress 10:21	10:12 32:16 34:5	55:5,14 56:3,3,11

<p>56:12,25 57:1,4 courts 4:11,21 7:6 9:10 10:6 14:20 19:24 24:19 25:1 25:23 26:21 28:7 32:10 38:6 46:1 50:1,11,13 53:9 56:25 creighton 5:17 crime 45:23 46:5 53:11 criminal 4:24 10:7 10:25 12:16 16:21 16:23 24:9 29:23 30:1,11 33:24 50:22,24 culpability 35:16 36:3 curiae 1:21 2:11 45:17 current 14:20 customary 19:23 customs 46:15,15 47:13,23</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d 1:8,20 3:1 43:22 44:4,7,25 55:5 damages 46:16 47:4 danforth 18:4 dating 56:17 davis 4:12 5:11,12 6:1 12:1 38:24 39:13 day 30:6 deal 52:2 deals 18:7 25:17 dealt 38:19 debatable 4:2,5 debate 27:4 december 44:10 decide 13:16,17 15:4 16:24 17:19 17:21 20:6 21:5 27:13 28:15,16</p>	<p>35:5 39:2,3,25 41:9,13 51:23 53:8,9 decided 20:2 30:7,8 40:23 41:9,14 50:9,15 deciding 18:2 decision 13:25 18:21,24 27:9 29:14,20 30:5,11 30:14 31:5 36:15 37:18 42:8 decisions 11:24 12:3 34:23 35:7 50:6 dedicated 3:10 deep 8:16 10:4 defendant 16:21 33:14 38:5,7 defendants 18:15 defense 10:19 defillippo 40:23 41:8,18 42:10,14 42:19,20 43:4 define 26:12,23 30:24 defined 27:4 definite 10:8 11:1 31:4 definition 26:15,20 31:11 34:22 definitions 26:23 deliberately 36:4 department 1:20 depends 30:19 deputy 1:17 derive 6:1 describe 27:1 32:5 56:9 described 10:25 20:24 54:9 describes 26:18 describing 10:4 descriptions 48:20 despite 42:16 deter 52:11</p>	<p>determining 15:21 22:10 47:25 devise 21:22 dichotomy 5:6 didnt 3:25 8:24 10:16 20:16 37:19 46:15 51:16 54:19 56:12,20 differed 51:4 difference 4:19 12:22 23:11,12,19 39:12,16 42:19 different 12:9 15:7 25:5 28:13 30:5 31:3 35:6,25 38:23 42:5 43:7 47:2 50:13 differently 23:14 35:23 50:12,14 53:16 differing 54:8 difficult 5:7 50:17 52:17 difficulty 48:15,24 49:5,7,11,25 50:20,21 directive 25:3 directives 25:18 disagree 47:15 disagreement 56:16 discovered 12:20 discretion 27:5,8 discussion 9:20 dispositive 50:16 dispute 25:10,12 disregarding 36:4 dissenter 36:13,17 dissenters 54:19 dissenting 36:22 distinction 21:20 distinguish 56:13 distinguishing 7:13 divided 28:9 56:3 doctrine 14:22 18:23 21:14 25:17</p>	<p>25:17 doesnt 4:9 15:19 16:21 21:14 24:10 30:11 31:25 32:2 33:18 39:2 47:6 52:20 53:3 doing 21:25 29:22 dont 5:11,14 7:13 7:14,19 8:6 9:21 11:9,13 12:18 13:8 15:15,17 16:8,8 17:22 18:18 19:19,21 20:25 21:12,15 25:15,21,22 36:9 39:3 42:2,22 43:5 43:8 47:7,8 50:15 52:17 53:11,14 56:9 doubt 47:21 draw 21:20 40:9 driver 11:8 33:14 33:14 driving 33:1 drove 34:4 due 56:8,23</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e 2:1 3:1,1 earlier 7:13 16:19 edpa 26:22 effect 43:3 eggs 37:20 either 13:8 29:16 35:10 45:24 element 12:6 20:10 embedded 11:23 embraced 12:3 encouraging 34:10 ended 6:9 enforce 43:8,9,10 43:16 enforcement 24:8 55:11 engages 10:11 enormous 27:8</p>	<p>entitled 15:9 equipped 44:6,11 45:1 49:12,20,22 49:24 equivalent 36:19 44:6 error 15:10 17:25 26:10 46:19 escape 33:20 esq 1:15,17,19 2:3 2:6,9,13 essentially 51:10 establish 27:21 evans 41:14 everybody 51:14 evidence 13:4,8,18 17:6,18 20:20 23:10 27:19 37:16 51:21 52:1,20 exact 43:20 56:7 exactly 4:10 8:22 9:9 10:13 22:23 35:19 41:19 47:7 example 15:6 34:17 exceedingly 48:11 exception 3:19,25 5:10 10:21 14:3 15:23 16:9,16 22:7 23:9 36:14 36:16,20 38:4,7 38:17 41:15 excluding 12:25 13:18 exclusion 13:8 15:5 17:18 19:13 20:19 27:19,22 37:16 39:5,7 exclusionary 3:20 4:8 7:14 9:11 21:23 23:8,10 35:18 39:25 excuse 29:17 33:14 39:1 48:7 exist 26:24 existed 55:21 existence 24:13</p>
--	---	---	---	--

expand 27:5
explain 21:10 28:3
exposition 5:15
 10:6
expressed 52:7
extension 14:20
extensive 18:12
extent 25:2 35:20
eye 43:17

F

fact 9:3 33:16
 34:13,19 38:15
 40:14,17 49:20
 50:15,22 53:12,16
 53:20
facts 26:13 29:9,9
 40:4 45:25 53:19
factual 9:6
fairly 43:1,11
faith 15:20 20:19
 22:7 28:4
far 14:21 37:14
favor 30:18 57:3
favorable 17:24
 18:6 28:18
federal 14:1,14
 15:21 17:3,12,15
 17:19 18:7,16
 19:2,7,9,10,25
 20:1,2,4,6,7,16,17
 20:18,21,23 23:3
 23:16,20 28:9
 56:25
federalism 20:10
 28:19
feel 21:11
find 13:14,14 25:8
 30:15 43:23
finds 13:24
first 3:3 16:3 23:6
 28:10,11 46:9
 57:7
fisher 1:15 2:3,13
 3:5,6,8,22 4:10,19
 5:14 6:5,14,25 7:5

7:17,24 8:1,12,20
 9:2,17,25 10:20
 11:14,18,22 12:17
 13:10,20 14:8
 15:1,6 16:1,10,17
 17:7,22 18:18
 19:1,21 20:9,13
 20:22 21:4 22:1
 22:16 23:2,12,17
 23:20,24 24:17
 25:12 26:4 27:10
 28:1,17,23 37:9
 38:2 54:1,2,4 55:1
 55:18

fishers 35:13
fit 35:22
fix 34:3
fixed 11:13
flip 33:9
flipped 32:23
focus 34:21
focuses 35:16
follow 47:6,7 50:7
 51:16
followed 10:5
 47:10
following 15:16
 42:7
followon 20:14
foothold 26:19 55:4
 55:7
forecloses 51:12
foreseeable 10:14
forgive 8:1 9:18
 13:20 20:13
forgot 50:18
found 40:25 41:1
 43:13
founding 45:20
 46:10 56:8,14
four 54:5
fourth 3:14,23 4:22
 4:23 5:22 6:1,19
 7:20,22 8:5,10,15
 8:25 9:22 12:5
 13:5,15 15:18

16:7 17:17 18:11
 18:13,14 19:4,11
 22:11,20,23 23:6
 23:8 24:4 25:8
 27:2,17,21 29:4,6
 32:20 36:25 37:6
 37:15,21 38:5,16
 39:16,17,18,23
 40:9,10,11,18
 41:16 46:22 47:11
 50:20 52:10 54:10

frames 55:8
frankly 53:2
free 6:23
fruit 6:14 7:3 52:15
 52:20
full 16:4
fully 19:23
function 12:13
functional 36:19
functionally 22:1
 22:22 23:21 24:1
functioning 26:3
further 19:9 53:23
 54:25 57:6
furthest 43:12,12
 43:13
futile 16:15,17

G

g 3:1 44:8,19
gap 24:13,16
general 1:18,20
 6:18 26:18 32:15
 55:3 56:8
ginsburg 6:5,15
 16:6,11,13,18
 36:12 40:8,17
 51:15
give 15:17 17:25
 24:24 28:18 32:22
 38:14 52:25 55:2
 55:12
given 21:8 25:2
 26:15 46:1
gives 31:18 39:19

giving 6:22
go 5:24 7:25 8:24
 39:24 42:22 43:13
 44:25 46:6 54:25
goes 22:21 26:25
 30:9 43:2
going 8:23 11:9,12
 12:9 17:9,13,13
 17:19,21,24 19:8
 19:16 20:4 22:17
 24:23 26:25 28:18
 29:22 33:2 45:10
 50:7 52:10,25
 53:19

good 15:20 20:18
 22:6 26:22 28:3
 38:10 44:6 45:2
goodfaith 3:19,24
 4:8 5:9 13:12
 14:3,20,21 15:23
 16:9,16 18:23
 19:12 21:5,13
 23:9 25:1,16,17
 36:14,16,20 38:3
 38:6,17 41:15
government 10:11
 24:6,10
governmental 3:11
 11:4 26:10
grave 55:12
grounds 45:22 46:4
 51:2,7
guess 14:9 37:9
 39:10,10
guilty 33:12

H

hadnt 16:25
half 20:6 54:10,11
happen 35:8,9
happened 57:9
hard 50:2
harmless 15:10
hasnt 12:14 16:2
 26:15 27:13,24
 29:14 39:10 52:22

havent 6:18 19:17
 27:24 37:10,13
heard 55:16
hearing 11:11
heien 1:3 3:4 7:8
held 4:12 14:21
 16:20 22:5,7 25:6
 33:15
help 11:25 29:20
 56:9
herants 9:5
heres 14:8
heritage 10:5
herring 8:22 9:2,21
herrings 9:5
hes 15:16 33:2
highways 44:9
history 46:10 53:2
 53:3
hold 10:17 22:13
 27:1
holding 14:18 23:5
 23:7,21 24:1,3
 51:17
holdings 23:4,11,13
holds 4:11 55:6
holmes 10:24
honor 30:2 37:22
 41:20 43:15 46:17
 47:8 52:3
hundred 31:12
hypothetical 50:5
 54:7

I

id 14:1 28:20 34:21
 48:5,9 54:4
idea 31:11
identical 24:1
ignorance 10:18
 33:6 55:23 56:18
ignore 42:3
ill 10:3 19:22
illegal 6:16 52:14
 55:8
illuminating 47:13

47:14 48:3 im 6:22 7:17,25 10:22 12:9 13:21 15:7,25 21:24 23:17 26:20 28:13 32:2 33:22 37:23 38:9 50:7 immediate 51:24 immunity 4:25 5:18 7:14 8:11 26:17,22 31:17,21 31:21 32:6,14,19 35:17 47:3 51:4 51:10 imply 44:22 importance 51:17 important 14:10 23:24 24:2,22 36:1,8 37:1 42:10 imposed 19:13 inappropriate 14:17,19 includes 49:14 including 46:14 incompetent 31:23 32:3 51:14 incorporated 44:20 44:23 incorporates 8:15 incorrect 20:3 indicates 38:16 individualized 3:13 innocent 34:12 42:15 innocently 42:11 42:13 innumerable 13:23 55:10 inquire 19:9 43:5 inquired 19:17 inspect 6:11 instance 16:3 23:7 32:14 33:13 34:13 38:22 40:2 interdictions 33:24 interesting 5:7	18:19 intermediate 11:10 30:4 interpret 31:6 49:2 interpretation 3:15 5:1 25:11 30:21 30:22 31:3 32:10 32:13,21 50:3,11 54:20,23,24 interpretations 46:25 invalidate 17:14 investigation 12:16 involved 33:24 46:22 involves 39:14 44:4 irrelevant 22:9 isnt 4:16 6:8,12 10:15 16:13,13,14 28:13 29:22 35:19 42:18 issue 16:24 18:2 issues 19:24,25 52:7 ive 4:6 11:8 14:8 24:6 <hr/> J <hr/> jeffrey 1:15 2:3,13 3:6 54:2 job 11:25 johnson 25:5,19 judge 24:21 32:15 judgment 13:16,23 19:17 20:3,18,20 27:15,16 39:6 57:3 judgments 12:18 21:1 jurisdiction 50:9 50:12 jurisdictions 50:14 jurisprudence 4:11 4:21,24 5:16 12:4 14:21 17:25 24:4 24:19 25:1 26:17	26:22 jurisprudential 5:5 10:2 justice 1:20 3:3,8 3:18 4:2,4,15,20 5:3,15 6:3,5,15,21 7:1,2,12,18,22,25 8:4,12,18,21 9:8 9:15,19 10:1,15 10:22,24 11:7,16 11:19 12:17 13:10 13:13,21 14:1,5,9 14:24 15:3,7,15 15:16,24 16:6,11 16:13,17 17:2,8 18:9,24 19:6 20:5 20:11,12,14,15,16 20:25 21:4,15 22:2,8,17 23:2,15 23:19,23 24:12 25:10,21 26:7 27:10 28:5,14,19 28:22 29:2,11,19 30:13,24 31:10,25 32:4,5,22 33:21 34:7,21 35:12 36:12 37:7,12,23 38:9,14,15 39:1 40:8,17 41:7,17 41:21,24 42:2,6 42:18 43:10,19,23 44:15,18 45:4,9 45:13,18,25 46:6 46:13,18,21 47:1 47:6,15,16,19 48:4,21 49:4,9,14 50:4,18 51:3,15 52:13,24 53:25 54:7,18 55:13,18 55:22 56:21 57:10 justices 36:22 justify 56:20 <hr/> K <hr/> kagan 23:2,15,19 23:23 24:12 31:25	32:4 35:12 41:7 42:18 43:10 46:6 52:24 keep 19:21 kennedy 3:18 4:2,4 4:15,20 5:3,15 11:7,16 20:5,11 20:14 38:9,14 43:23 45:25 52:13 kick 12:13 kind 34:16 41:17 54:15 kinds 10:9 15:10 knew 56:2,5 know 3:11 4:18 11:8,9,13 13:18 15:15 24:7,10 26:21 29:16 31:12 33:3 34:3 43:12 43:13 45:8 53:3,4 55:15 knowable 10:8 11:1 known 5:6 11:6 kovner 1:19 2:9 45:14,15,18 46:17 46:20,23 47:5,8 47:18,21 48:19,25 49:8,11,19 50:8 50:25 51:6 52:3 52:16,24 53:6 krull 4:11 5:11,12 5:25 9:7 12:1 38:24 39:13 <hr/> L <hr/> l 1:15 2:3,13 3:6 54:2 lamp 44:11,14,20 44:23,23 45:5,10 lamps 44:4,6,21,24 45:2,5,6,8,11,11 49:13,20,22,24 language 26:19 31:2 44:12 law 3:10,11,16 4:9	4:13,18 5:1,6,23 5:24 6:8 7:11,16 7:20 8:10,15,16 9:14 10:4,7,10,12 10:18,25 11:4,6,9 11:13 13:1,2 14:16,23 15:4 16:14 17:3,15 18:14,16 19:3,7,9 19:10,12,25 20:2 20:4,6,7,17,17,18 20:19,21,23 21:22 22:10,24 23:6,8 24:8,8,9,10,14,16 24:21 25:7,11,20 25:23 26:11,16,24 28:9 29:10,12,21 29:23,25 30:8,11 30:16 33:6,11,17 33:18,19 35:23 36:5,6,18 37:18 38:20 39:14,15 40:7 41:5,18,18 41:22 42:3,7,7,14 42:17 43:8,11,17 45:25 46:3,3,12 46:19 48:7,13,15 49:5 50:24 52:10 53:12,15,18,22 55:10,20,24 56:2 56:5,15,17,18 lawful 13:17 33:25 lawfully 12:23,24 laws 24:7 27:9 lawsuit 34:4 lawyer 48:12 layne 32:9 leave 6:23 17:4 29:22,25 30:11 leeway 25:2 left 54:1 legal 9:6 26:6 legislature 14:23 25:4 legitimate 51:25 leon 5:2,25 9:7,7
--	--	---	---	---

liability 29:24 33:20 liable 33:15 47:24 license 55:8 light 7:11 11:10,10 11:12 30:10 32:25 33:2,15,23 34:4,8 48:23,23,24 49:10 49:15,15 51:19 lights 26:3 29:15 31:13 33:10 34:24 35:1 49:15,16,16 51:19 limits 12:5 line 40:9 literature 24:18 litigated 52:5,6 litigating 56:24 little 55:2 look 8:23 11:24 26:13 32:10,11 35:15 56:14 looked 41:5 47:16 looks 31:22,22 35:14,25,25 50:16 lose 13:8 loses 55:15 lot 42:20 lower 13:24 15:12 16:2,4,25 28:10	48:24 52:20 54:7 54:10 55:13 meaning 29:13 47:13 means 8:14 30:16 49:21 meant 44:14 merits 47:11 mind 11:3 28:6 minnesota 18:5 minute 48:5 minutes 54:1 missed 23:18 mistake 4:9,17 5:6 5:24 6:7 7:10,15 7:19 8:9 9:3 11:4 13:1,1 14:11,16 20:19 22:10 25:16 26:14,16 34:19 36:18 37:17 38:20 39:14,15 40:3,18 41:5,17,22 42:7 42:16 46:2,3 48:7 48:8 mistaken 45:24 55:24 mistakes 4:13 5:23 8:15 34:13 36:6 46:12 53:15,15,20 53:21 misunderstanding 32:17 misunderstood 9:14 monday 1:9 montgomery 1:17 2:6 28:24,25 29:2 29:17 30:2,19 31:1,20 32:2,8 33:8 34:6,11 35:3 35:12,24 36:21 37:11,22,25 38:13 38:18 39:11 40:13 40:20 41:12,20,23 42:1,4,9 43:7,15 43:21,25 44:17	45:7,12 moot 6:8 morning 3:4 21:16 motor 44:5,10 move 28:3 multiple 49:22	<hr/> O <hr/> o 2:1 3:1 objection 48:10 objective 48:11 observed 45:25 obvious 50:19 october 1:9 offense 34:16 42:12 officer 3:16 6:11,21 7:1,8 9:8,9,11,13 11:7,23 12:7,16 14:22 25:6 26:11 27:5 29:8,15 30:8 30:21 31:6,15 32:6,12,18 33:16 33:22,24 34:18,25 35:5,10,16 36:4 37:2 39:20,23 40:4,6,13 41:2,18 42:24,25 45:23 46:3 49:2,6 50:6,8 50:10,12 51:1,7 51:12 52:6,9 53:10,16 55:6,11 55:15,20 officers 3:11 8:8 11:3 14:15 25:2,3 25:18 27:7 29:5 29:24 30:6,15,17 31:18 32:10 33:9 42:3,22 43:5,8 45:21 46:15 47:23 47:25 52:11 53:8 56:7,19 oh 19:15 23:17 okay 37:23 49:15 once 11:2 open 30:17,20 opened 24:5 opening 28:3 operate 44:9 operates 23:9,10 opinion 20:17 21:3 55:6 opinions 12:18 54:8	opportunity 6:16 39:20 opposed 8:11 opposite 51:11 oral 1:11 2:2,5,8 3:6 28:25 37:14 45:15 order 13:16 23:4 44:7 45:2 51:7,12 originally 44:5 45:1 49:12,20,22,24 ought 35:20,20 outcome 23:21 outstanding 9:4 overlooked 18:23
<hr/> M <hr/> m 1:13 3:2 57:12 main 46:9 making 4:5 5:10 52:11 manuals 12:2 manufactured 44:10 matter 1:11 5:5,5 15:19 57:13 matters 32:11 mean 13:3 14:5 23:15 25:21,22 32:23 33:11,19 39:1 40:15 45:4				<hr/> P <hr/> p 1:19 2:9 3:1 45:15 page 2:2 44:8,19 pages 44:1,2 paragraph 10:23 parallel 22:24 pardon 11:18 part 10:22 28:2 34:13 38:16 39:8 40:4,5 53:20 56:19 particular 4:3 36:9 48:10 parties 24:1 25:18 25:19 parts 43:21 party 11:24 21:6 25:4 56:24 57:7 pass 32:23 pause 8:19 people 24:13,19 31:12 34:12 perfect 29:6 perfectly 56:19 performing 12:16 permit 46:15 person 31:8,8 33:11 44:9 45:23 46:4 53:10 56:4 persuade 16:12

<p>petitioner 1:4,16 2:4,14 3:7 54:3 pick 50:7 piece 24:22 28:11 28:12,15,16 pieces 28:9 place 7:6 37:4 plain 31:2,4 plainly 31:22 32:3 plate 55:8 plausible 3:16 play 23:13 please 3:9 23:23 29:2 45:19 plural 45:10 49:17 49:19 point 6:11 16:19 21:9 37:10 47:17 51:8 56:10 57:5 points 54:5 poison 52:15 poisonous 6:15 7:4 52:21 police 6:11 11:3 12:2 27:5 29:5,8 29:15 30:6,17 31:14 33:22,23 36:15 41:18 42:2 45:21 55:6 56:7 56:18 policeman 48:13 portion 39:25 44:7 52:8 portions 44:3 position 16:10 36:17,21 52:9 possibility 26:10 possible 42:25 practical 10:1 24:25 26:25 precedent 30:3 51:12 precise 8:13 predictable 10:14 preleon 56:12 preliminary 6:6</p>	<p>premise 5:25 preserved 19:3 presumably 42:7 presumed 3:11 10:7 11:1,6 24:7 24:10 presumption 11:2 42:21 43:2 55:19 presumptively 41:25 pretext 33:25,25 primary 35:13 principle 10:24 probable 12:11 39:21 41:1 42:16 45:20 46:11,25 47:9,14,25 48:1 51:1 probably 53:3 problem 4:16 5:11 5:12,16 13:3,24 24:16 27:11,25 33:21 55:19 prohibited 18:1 prohibits 29:4 proper 40:21 properly 13:5,6 proposition 10:16 prosecution 30:1 protect 32:1,3 51:13,13 protected 32:19 protective 18:15 protects 8:5 9:23 31:22 prouse 7:6 9:20 provides 18:16 provision 49:12 provisions 49:18 prudential 38:10 public 24:8,14 pull 33:2 34:25 pulling 7:8 punishing 10:10 purely 14:1 purpose 12:12</p>	<p>purposes 32:7,20 46:18 pursue 57:6 push 43:11 put 9:15 11:2 37:20 38:11 putting 9:20 puzzled 21:24</p> <hr/> <p style="text-align: center;">Q</p> <p>qualified 4:24 5:17 7:14 8:11 26:17 26:22 31:17,21,21 32:6,14,19 47:3 51:4,10 question 4:1,16,21 5:7,25 6:6,8,20 9:6,6 12:7 13:11 14:10,14,15 15:12 15:13,25 16:2 17:4,9,10,12,19 18:8,9,19 20:2,15 21:5,11,13 22:14 27:13 28:8,9 30:17,20,20 35:15 35:15 36:11 38:6 38:12,13 41:11,22 43:5 46:6,7 47:22 47:22,24 48:4 50:1,2,10,13,17 51:18,19 52:4,17 52:21,23 53:1,2 53:12,12 54:6 57:8 questioning 42:22 questions 3:13 11:15,23 22:23,25 25:20 37:8 53:23 quite 12:15 15:25 31:18,18 34:12 quote 25:7 48:14</p> <hr/> <p style="text-align: center;">R</p> <p>r 3:1 rachel 1:19 2:9 45:15</p>	<p>raise 57:2 raised 38:5 raleigh 1:18 rare 48:11 reach 3:25 14:15 30:5 31:3 read 25:15,25 29:13 42:25 43:1 43:20 reading 3:16 30:15 30:16 32:24 really 5:14 21:24 50:17 56:23 rear 44:4,6,12,21 44:23,24 45:1,5 49:13,20,24 reason 10:1,2,2 16:1 21:18 22:4 24:5,23 26:25 46:20,23 47:7 50:23 53:7,15 56:1 reasonable 4:17,22 5:6,19 7:9,10 9:9 11:5 13:1 14:11 19:12 22:11 25:11 25:16,24 26:2,5,6 26:13,14,16 27:3 29:8,9 30:16,21 31:7,8,11,14 32:7 32:21,24 34:19,25 35:5,10 36:18 37:17 39:17,22,23 40:19 45:22 46:2 46:3,4,12 48:7,8 48:12,20 50:6 51:2,7 53:21 54:24 56:19 reasonableness 4:12 5:24 7:15,19 8:8,14,24 9:12,22 29:7 34:22 36:1 36:25 38:17 51:5 54:6,22 55:12 reasonably 9:12,13 33:3,17 34:18</p>	<p>37:2 40:14 43:16 49:2 53:10,17 55:24 reasoning 47:9 reasons 9:25 12:11 20:23 23:25 24:2 24:25 35:21,22 46:9 53:1 rebuttal 2:12 21:10 21:16 54:2 receive 32:6 recited 55:5 recognize 46:2 recognized 18:12 recommend 51:17 record 12:15 refer 28:2 reference 26:17 38:15 regulation 52:2 reinforce 56:10 rejected 8:13 24:20 54:15 55:9 relevant 14:11 25:25 44:3,7 46:24 relied 48:3 relies 14:22 rely 35:10 relying 10:22 25:3 25:18 remand 13:23 14:25 15:24 16:1 16:11 remanded 23:13 remedies 4:20 8:11 14:7 18:7 35:14 35:21,23 36:2 38:21 40:22 41:11 46:8 53:2,13 54:16 56:13 remedy 4:13 5:24 8:3,23 12:4,25 13:7,11,17 14:12 15:4,9,13,17,23 16:2,22,25 17:17</p>
---	--	--	--	--

18:12 19:13,18 21:21 24:3,20,24 27:13,18 28:18 36:1,7,11 37:4,6 37:11,16,17 39:4 39:5,7,25 41:6 56:10 57:8 remind 26:8 render 14:19 24:3 renders 14:16 require 20:19 29:5 49:3 51:10,11 required 19:19 29:7 39:21 44:14 requires 17:5 19:14 40:18 49:12 reserve 21:9 28:20 resolve 15:11 respect 12:15 13:21 22:14 28:19 47:4 56:8,23 respondent 1:18,22 2:7,11 29:1 45:17 respondents 44:1 response 55:23 responsibility 27:14 rest 7:7 12:3 28:20 results 12:19 retroactivity 18:4 reverse 17:11 19:7 19:17 20:3 39:8 reversed 28:11 reversing 39:9 review 12:18,18,18 20:25 21:1 24:21 reviewing 21:3 riddle 46:14 ride 57:7 right 6:7,22 9:17 12:21 15:1,6 18:17 21:20,22 22:17 24:23 26:11 26:24 28:4 29:12 30:18 35:19,25 37:10,21 39:3	42:9 48:13,21 49:2 50:25 rights 4:20 35:15 35:21,23 36:2,7,8 38:20 40:22 41:5 46:8 53:1,13,20 54:15 56:13 57:8 roadway 12:8 robert 1:17 2:6 28:25 roberts 3:3 7:12,22 7:25 8:4,18,21 9:15,19 28:22 31:10 32:22 34:21 45:13 50:4 53:25 57:10 rodriguez 38:19 routinely 47:12 rule 3:10,20 4:8 7:14 8:16 9:11 16:7 17:24 18:14 21:23 23:8,10 24:9 25:7 30:17 35:6,18 40:1 51:19 56:15,15,17 rulerremedy 24:13 24:16 ruling 19:25 rulings 35:4 run 22:23 <hr/> S <hr/> s 2:1 3:1 safety 12:8 sake 48:6 sat 25:25 satisfied 27:2 satisfies 16:22 save 33:7 saying 9:19 14:2 15:16,17 17:24 19:22 31:23 42:17 52:25 says 8:10 18:21 19:10 25:20 33:4 34:23,24 38:3	44:4,8,16,20 45:1 53:4 scalia 12:17 13:10 13:13,21 14:1,5,9 14:24 15:3,7,16 17:2,8 19:6 20:16 20:25 21:4 27:10 28:5,14,19 37:7 37:12,23 38:15 39:1 43:19 44:15 44:18 45:4,9 49:14 56:22 scalias 15:24 20:12 20:15 school 11:9 scope 31:18 scrutiny 48:14 49:5 search 6:13,24 12:20,24 13:15 22:11 30:18 searched 34:9 searches 8:6 9:23 29:4 second 53:6 57:8 secondly 26:12 section 22:19 45:1 53:13,13 see 19:19 sees 11:17,19,20 seizure 7:7 39:20 50:23 seizures 8:6 9:24 29:5 sell 44:9 send 15:13 16:3,15 16:24 17:9,20 19:2,8 20:4 sending 18:2 sends 13:25 senior 1:17 sense 5:19 9:21 25:13,23 26:4 38:10 53:21 sent 28:12,14 sentence 44:19,22 separate 53:11	serious 48:15 49:5 seriously 24:15 set 20:8 21:2 27:15 27:16 39:5 sets 10:23 settings 10:9 sharp 21:20 shouldnt 24:20 27:1 shows 54:14 side 26:15 33:9 56:17 sides 52:12 simplest 53:8 simply 3:16 18:7 37:5 52:18,23 53:8,9 sit 21:9 43:9 situation 7:3 40:24 53:17 situations 15:11 society 34:10 solicitor 1:19 6:18 26:18 55:3 56:8 solved 51:18 somebody 10:10 35:1 55:24 56:2 someones 33:1 sorry 7:17,25 23:17 32:2 33:22 37:23 sort 25:13 sorts 36:10 sotomayor 15:15 29:11,19 30:13,24 33:21 34:7 41:17 41:21,24 42:2,6 46:13,18,21 47:1 47:6,15,19 51:3 sounds 11:11 31:16 sources 11:24 special 10:20 sphere 18:4 split 56:3 stage 4:14 9:12,17 14:12 36:2,2,7,8 36:11 37:2,4	38:20,21 40:22,22 41:5,6 46:8,8 47:11 54:16,16 stamp 48:23 49:9 standard 31:7,8,17 31:23 36:25 45:21 46:11,25 47:4,14 48:2,18 51:1,3,4 51:10 53:8 stanford 1:15 start 10:3 46:1 54:5 started 52:24 state 3:19 6:17 12:14 16:11 17:23 18:3,10,14,20,22 18:25 19:3,8,24 19:24 20:1,2 21:22 22:5,6,8,14 22:19,22,24 25:11 28:17 29:21 37:4 38:2,8 44:10 52:22 54:8,11,12 54:13 57:1,5,6 states 1:1,12,21 2:10 18:6 22:7,12 26:18 45:16 55:23 statute 25:14 31:2 31:9 32:13,17,21 32:24 39:15,19 40:3,11,15,24,24 41:3,25 42:21,24 43:12,19,20,21 44:3 46:15 49:3 50:22 51:8 55:4,7 statutes 26:1 42:23 47:13 53:18 statutory 10:20 26:19 50:3 stays 49:9 stop 6:9,10,15 7:5,7 12:11,12 29:16 30:9 36:19 44:11 44:14,20,23 45:5 45:10 48:23,24 49:9,14,15,22 50:23 51:7 52:14
--	---	--	---	--

52:19 53:16 54:11 56:20 stopped 11:8 34:3,8 34:12,16 stopping 33:23 stops 27:6 34:15 45:22 52:11 story 47:16 strange 10:15 stricken 17:6 stronger 8:7 subject 15:22 16:4 22:6 29:24 37:17 submit 6:3 submitted 57:11,13 subsection 43:22 44:4,7,8,19,25 subsequently 48:2 substantive 8:25 22:24 39:15 40:3 40:24 suffer 46:16 sufficiently 25:14 suggest 21:6 support 23:5 36:18 supporting 1:21 2:11 45:17 supports 51:9 suppose 3:18 6:21 11:7 23:2 supposed 35:8 42:25 43:1 suppress 23:1 25:9 suppression 14:16 14:19 52:5 supreme 1:1,12 29:13 30:5 36:22 38:1,11 39:6 49:1 54:20 sure 13:21 15:7,25 24:3 26:20 38:9 51:6 53:6 surprising 54:21,23 54:23 susceptible 27:4 suspend 24:20	suspicion 3:13 7:9 7:10 11:5 39:22 system 35:8 <hr/> T <hr/> t 2:1,1 take 5:23 7:13,14 7:19 9:13,22 11:2 12:2 21:15 24:15 31:9 35:12 37:3 taken 4:13 7:6 26:9 takes 52:8 takings 28:8 talking 5:4 8:9 38:25 50:19,21 talks 42:20 tee 51:18 teeth 55:2 tell 4:8 34:2 term 8:6 25:24 terms 8:23 15:20 41:15 47:2 terribly 28:13 terry 34:14,14 test 16:22 52:19 55:12 text 26:19 textual 8:13 thank 28:22 45:12 45:13 53:23,25 54:4 57:10 thats 4:10 6:17,25 8:3,10 10:4 11:11 15:1,6,14,24 16:8 17:2,2,18 19:14 20:21 21:2,23 22:1,16,20 27:3 27:25 30:4 31:10 31:19 33:19 34:6 34:13 37:22 38:18 38:21,22 39:8,12 41:20 42:1,9,17 42:23 43:15 44:7 44:25 45:7 46:20 46:23 48:2,9 49:25,25 50:25	52:3 55:4 57:9,9 theoretical 10:2 theory 10:3 22:17 thered 24:2 theres 4:19 8:7 10:1 11:10,14,22 12:6,11 18:9 19:12,15,15 22:25 24:22 26:6,16 38:3 39:5,19 42:20,24 43:2,3,3 45:3 47:21 51:11 53:14 theyre 11:12 17:8 17:20 56:9,11 theyve 9:11 thing 11:10 14:2 19:22 22:3,16 26:21 29:23 43:4 50:19 56:21 things 12:2 22:2 26:7 32:8 35:25 36:5,10,23 38:23 think 4:7,7,14 5:14 5:15 6:17,25 7:18 9:25 11:14,22 12:6 13:22 14:1 15:1,24 16:18,18 17:19 18:19,20 19:23 20:22 21:12 22:2 23:12,22 25:15 26:1,4,14 26:25 28:12 31:12 31:15,25 32:4 33:19 35:17,17 41:7,10,12 46:9 47:8,19 48:12,17 48:19,25 50:10,15 50:16,25 51:6,24 52:16 53:3,4,7,10 53:14 54:7,9 55:1 55:4,18,22 56:23 57:9 thinks 33:17 third 11:24 14:23 25:4,18,19 53:14	thought 8:21 16:7 21:17,18,18 33:3 34:1 35:6 40:6 41:19 50:1 three 9:25 28:2 46:9 48:11 52:25 53:5 54:1 threequarters 20:7 ties 55:15 time 9:10 16:23 19:23 21:9,16 27:11,11 28:21 37:24 times 13:24 24:6 34:15 today 3:21 41:8 47:4 55:5 56:6 told 29:14 32:14 tomorrow 30:9 totality 40:5 touchstone 29:6 traffic 6:9,10 7:7 27:6,9 51:22,23 52:2 tread 21:7 treat 53:12,15,20 53:21 treated 46:11 tree 6:15 7:4 52:15 52:21 trial 20:20 trials 18:1 tried 24:6 troubling 31:19 try 16:11 19:22 27:11 trying 21:19 turn 12:10 43:17 48:15 49:6,16 turned 34:19 turns 34:15 45:24 two 10:22,23 11:10 11:14,22 23:4,11 23:13 26:3,7 27:18 28:9 29:15 31:13 33:5 34:23	34:24 35:1,6 43:21 48:11 50:5 51:19 52:4 53:5 54:8 type 15:22 types 34:14 36:5 <hr/> U <hr/> ultimately 47:3,23 unanswered 17:5 uncertain 30:11 unclear 29:23,25 unconstitutional 40:25 undecided 50:13 undercut 24:7 undermines 5:13 24:14 understand 6:9 8:7 31:11 55:20 understanding 9:2 10:12 25:24 29:10 29:12,12 35:22 understood 7:12 21:17 unit 44:20,24 united 1:1,12,21 2:10 22:12 45:16 unreasonable 5:20 8:6 9:23 29:4 30:22,25 31:2,5 32:12 43:14 unreasonably 30:10 40:16 unsettled 25:7,20 unusual 55:16 56:24 upheld 35:20,21 urge 13:14 urging 21:1 use 49:17 uses 26:19 utterly 43:14 <hr/> V <hr/> v 1:5 3:4 18:4 32:9
--	--	--	--	---

41:13	washington 1:8,20	yeah 8:20 20:16	8	
vacate 13:22	wasnt 10:13 13:6	years 28:7		
vagueness 40:25	27:14 33:22 34:2	youd 14:13,15	9	
valid 41:25	36:17 42:7 52:21	26:22	99 31:12	
vastly 27:5	waste 37:23	youre 4:5 5:10 6:7		
vehicle 44:5,10,12	way 6:23 10:13	6:22 8:9 10:15		
version 21:22	13:8 20:8 21:19	12:19 17:14 19:6		
versus 36:1	22:1,4,21 25:15	19:7,15 21:1,1,23		
viable 41:15	26:5,6 31:6 35:16	21:24 22:9,17		
view 25:7 29:8	41:10,13 43:3	24:23 27:15 29:22		
30:14 31:9 51:9	47:24 50:16 51:17	31:16		
viewed 25:16	53:22 55:14,14,14	youve 15:25 21:18		
violate 16:7 54:10	55:14,15			
violated 3:24 4:23	weve 14:10 20:23	Z		
5:22 7:21 13:6	21:8 47:3 52:23	0		
16:20 19:13 27:18	whats 48:23 49:6	02 57:12		
27:18,22 37:5	wholly 34:11 42:11	03 1:13 3:2		
40:10,12 52:10	42:13,15			
violates 13:14 19:4	whren 12:4,10 27:9	1		
violating 10:10	54:14	1 22:19 44:1,2		
violation 8:25 13:7	wilkinson 24:21	10 1:13 3:2		
15:8,21,22 17:17	wilson 32:9	11 57:12		
19:4,11,16 22:25	wipes 6:19	13604 1:4		
23:6,7 25:8 33:16	wont 29:16,20	1955 44:11		
34:20 37:15,21	word 8:14	1982 25:6		
39:17,18,24 42:14	words 33:13 43:20			
43:18 46:22 50:23	work 22:2	2		
51:22,23	working 44:6 45:2	20 22:19		
violations 18:15,22	49:13,21,24	2014 1:9		
22:5	works 22:4 34:14	28 2:7		
void 40:25	worried 12:8			
	wouldnt 3:25 7:5	3		
W	16:17 18:1 36:10	3 2:4 44:8,19		
waiver 16:5	51:22,23	31st 44:11		
want 17:4 19:18,21	wrestled 5:18			
21:5,6,15 29:24	written 10:21 43:11	4		
29:25 37:19 42:22	wrong 20:4,17,17	45 2:10		
43:5,8,8,10,16	20:18,21,23 40:10			
53:4 54:17 56:14	40:11,15 47:20	5		
wanted 57:5	48:16 49:6 52:9	5 44:2		
wants 22:14 29:15	wrote 24:21	54 2:14 56:4		
warning 6:9,22				
warrant 9:4	X	6		
warranted 15:18	x 1:2,7	6 1:9		
warrantless 36:19				
wash 39:2	Y	7		