

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

FNU TANZIN, ET AL.,)

Petitioners,)

v.) No. 19-71

MUHAMMED TANVIR, ET AL.,)

Respondents.)

- - - - -

Washington, D.C.

Tuesday, October 6, 2020

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:15 a.m.

APPEARANCES:

EDWIN S. KNEEDLER, Deputy Solicitor General,
Department of Justice, Washington, D.C.;
on behalf of the Petitioners.

RAMZI KASSEM, ESQUIRE, Long Island City, New York;
on behalf of the Respondents.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	EDWIN S. KNEEDLER, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	RAMZI KASSEM, ESQ.	
7	On behalf of the Respondents	30
8	REBUTTAL ARGUMENT OF:	
9	EDWIN S. KNEEDLER, ESQ.	
10	On behalf of the Petitioners	57
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:15 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 19-71, *Tanzin versus Tanvir*.

Mr. Kneedler.

ORAL ARGUMENT OF EDWIN S. KNEEDLER
ON BEHALF OF THE PETITIONERS

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

In enacting RFRA, Congress did not subject federal employees throughout the government to a new cause of action for damages in their personal capacity.

RFRA's remedy section provides only for appropriate relief against the government. Damages against an individual employee in his personal capacity are not relief against the government.

At the same time, where a suit is brought against the federal government, including against a federal official in his official capacity, as RFRA provides for, money damages are not appropriate relief.

Prior to this Court's decision in

1 Smith and the passage of RFRA, injunctive relief
2 against a federal agency or official was the
3 only appropriate relief for an asserted free
4 exercise violation. This Court had not
5 recognized a personal damages action under
6 Bivens for a violation of the Free Exercise
7 Clause, and it has not done so since.

8 Moreover, prior to RFRA, Congress had
9 enacted the Westfall Act, which adopted a broad
10 bar to tort suits against federal employees to
11 prevent the chilling effects for the executive
12 branch from the prospect of personal liability
13 and protracted litigation for its employees.
14 Congress has only very rarely departed from that
15 general rule and subjected federal employees to
16 personal damage suits. When it has, it has done
17 so expressly, which it did not do in RFRA.

18 When Congress enacted RFRA to restore
19 the substantive standard for free exercise
20 claims to what it was prior to Smith, it did not
21 at the same time significantly depart from the
22 established remedial scheme.

23 This Court should not now read into
24 the text of RFRA, which provides only for relief
25 against the government, a sweeping new

1 Bivens-style cause of action against federal
2 employees in their personal capacity for
3 damages.

4 CHIEF JUSTICE ROBERTS: Mr. Kneedler,
5 you rely in your -- in your brief on a -- a
6 clear statement rule about the liability that's
7 at issue here. But what -- what is your best
8 case for the proposition that a clear statement
9 rule applies when the question is whether
10 individuals can be liable in their personal
11 capacity rather than in an official capacity?

12 MR. KNEEDLER: I -- I think the -- I
13 -- I think the principle derives from the point
14 I just made about the Westfall Act and what --
15 and, more generally, Congress's practice with
16 respect to establishing private damage remedies
17 against federal employees.

18 The general rule is that -- statutory
19 rule is that there is not, and when Congress has
20 departed, it has done so expressly in the few
21 examples cited in the brief. So I think it --
22 it derives from what Congress itself had done.

23 And -- and because of respect for the
24 executive branch, Congress should not lightly be
25 taken to have intruded upon the executive branch

1 by creating damage remedies against federal
2 employees who are charged with executing the
3 laws. And I think that's specifically or
4 especially so under RFRA, which is principally
5 designed to create exemptions from generally
6 applicable laws, and a damage action doesn't --
7 isn't well suited to that sort of situation
8 because an employee is in the position of having
9 decide, maybe on the spot, whether to create an
10 exemption from the generally applicable rule or
11 statute he's charged with implementing.

12 CHIEF JUSTICE ROBERTS: I think, or I
13 meant to anyway, if I didn't, ask for a
14 precedent, and I didn't hear a case name in your
15 answer.

16 MR. KNEEDLER: I'm sorry. No, I -- I
17 don't think the Court has specifically addressed
18 it, but it -- it has done something analogous
19 with respect to statutes affecting state
20 administration. And the -- the Court's Sossamon
21 decision, I think, is instructive on that -- in
22 that regard with respect to whether the parallel
23 language in RLUIPA waives sovereign immunity of
24 a state.

25 And the Court, out of deference to the

1 state and under our federalism, concluded that
2 that language is ambiguous and doesn't
3 sufficiently establish a cause of action against
4 a state. And the lower courts have uniformly
5 not applied -- not allowed damage actions
6 against state employees under RLUIPA as well.

7 And we think the respect for the
8 executive branch that is reflected in the
9 statutes Congress has passed calls for a
10 parallel rule of deference, parallel to that of
11 the -- of the federalism deference in Sossamon.

12 CHIEF JUSTICE ROBERTS: Thank you.

13 Justice Thomas.

14 JUSTICE THOMAS: Thank you, Chief
15 Justice.

16 Mr. Kneedler, let's assume you take
17 this out of the context of the government and
18 you simply have a private cause of action that
19 provides for appropriate relief.

20 Would money damages be available then?

21 MR. KNEEDLER: I don't think it's
22 possible to give an across-the-board answer to
23 that question. In -- in Franklin, the Court was
24 dealing with a situation where the cause of
25 action itself was implied by the Court at a time

1 when the courts were allowed to create causes of
2 action under their -- their general
3 jurisdictional power. And in that situation, it
4 was part of the package that the courts could
5 develop whatever remedies they wanted.

6 But, in a -- in a statute, context
7 matters. You start -- you don't start with a
8 presumption that damages are available; you
9 start with the text that Congress has enacted,
10 and the text has to be interpreted in context.

11 So it would depend on the particular
12 statute in which that language may appear. And,
13 here, of course, the context is suits against
14 federal employees in the federal government.

15 JUSTICE THOMAS: Let's take this
16 statute and instead of having appropriate --
17 merely appropriate relief, we say -- we include
18 -- we -- the statute authorizes money damages,
19 with all the other language remaining the same.

20 Would that be enough?

21 MR. KNEEDLER: It -- it might be. I
22 mean, I -- I guess it would because, if the --
23 damages were available against the government
24 and the statute refers to damages or relief
25 against the government, if Congress provided for

1 damages against the government, there would be,
2 I think, a pretty good argument that it would be
3 applicable to employees who were included in the
4 government.

5 But, here, we -- here, we have the
6 opposite, no clear statement imposing damages
7 against the government, and -- and government
8 officials are covered only to the extent they're
9 included within the government, to the extent
10 they're part of the government.

11 JUSTICE THOMAS: So, historically --
12 and I'm just curious -- have suits against
13 postmasters or custom agents, have those --
14 has -- have -- has the relief there been limited
15 by the -- the availability of relief against the
16 government?

17 MR. KNEEDLER: Well, initially,
18 damages actions used to be brought against
19 custom officers, as I recall, but Congress
20 really substituted suits against the government
21 like for tax refunds, rather than suits against
22 the collector, in order to make the government
23 the responsible one and not the -- not the
24 individual.

25 And I think the Westfall Act clears

1 out a lot of that by saying, as a general
2 matter, ordinary tort suits can't be brought
3 against the government because Congress was
4 concerned about -- about the effect on employee
5 morale and chilling their conduct.

6 So I -- I -- I think the statutory
7 pattern especially in recent times has been
8 suits -- suits against the government itself.
9 And, again, that's especially appropriate under
10 RFRA.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel.

13 Justice Breyer.

14 JUSTICE BREYER: I have one question.
15 What is your best argument, in your opinion,
16 against what I think is the other side's
17 argument, we're looking at the statute, the
18 relevant words since government is a defined
19 term, the statute authorizes appropriate relief
20 against any official or other person acting
21 under color of law, all right? That's the
22 relevant words.

23 And there's lots of cases that say --
24 many cases that appropriate relief can, in
25 appropriate cases, include monetary relief. Of

1 course, if the person has sovereign immunity of
2 some kind, then you can't sue them. That's
3 Sossamon. But there's no sovereign immunity
4 here, end of case, all right.

5 Now what's your best answer to that,
6 in your opinion?

7 MR. KNEEDLER: This -- the operative
8 term in RFRA is government, and that's not just
9 in the remedial provision, that's in the
10 substantive provision, which says the government
11 shall not substantially burden a person's
12 exercise, and then the exception to that is, if
13 government demonstrates the application of the
14 burden to the person, it furthers a compelling
15 interest. All the way through, the statute
16 speaks to the government.

17 Government is the operative word.
18 It's true that government is defined to include
19 official, but it -- it includes official after a
20 whole series of entities that are undoubtedly
21 people acting and would be sued in their
22 official capacity, a department or an agency.

23 And so reading the -- the term
24 official consistent with that in the definition,
25 we think that official is official capacity.

1 And, again, officials are -- are included only
2 because they're included as part of the
3 government, and so they can violate RFRA and be
4 sued under RFRA only insofar as they are
5 included within the government in their official
6 capacity.

7 And there is no money damages against
8 the government or its constituent parts for
9 money damages.

10 JUSTICE BREYER: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice Alito.

12 JUSTICE ALITO: Let me pick up on what
13 you just said. The term "government" is defined
14 to include an official but also "other person
15 acting under color of law."

16 And you say that a person who is
17 exercising -- a private entity or a private
18 person exercising government authority would
19 constitute a person acting under color of law,
20 such as the operator of a -- a private company
21 operating a -- a prison.

22 So, if a person acting under -- a
23 person acting under color of law who is not a
24 government official can only be sued in a
25 personal capacity, and if that person can be

1 sued in a personal capacity, why should we infer
2 that an official can only be sued in an official
3 capacity and not a personal capacity?

4 MR. KNEEDLER: Well, I think the basic
5 point is that the statute calls for injunctive
6 relief, not damages. And when you have a
7 private person, for example, not all operators
8 of private prisons are government actors, but
9 let's take one who is, the substantive provision
10 of -- of RFRA refers to what government can do.
11 Government shall not substantially burden.

12 And that is -- that -- that means that
13 this private person would be acting in a
14 governmentally-conferred capacity, in that
15 sense, an official capacity or -- or the
16 functional equivalent of an official capacity
17 for a -- a government officer.

18 And then, if such entity is sued, we
19 think that it is like -- likewise sued in the
20 parallel official capacity that such a private
21 person would have by virtue of having the
22 governmental power bestowed upon it.

23 So we think reading -- that is, after
24 all, in a -- in a residual parenthetical phrase.
25 It is not the principal operative provision in

1 the definition, which traces back to agency,
2 department, et cetera.

3 But we think reading that clause as a
4 whole and how it plugs into the statute, that's
5 referring to the sort of capacity for which
6 injunctive relief is the only proper relief
7 against the government.

8 JUSTICE ALITO: And one -- one other
9 question. Respondent emphasizes the fact that
10 if it -- if it prevails, federal officials who
11 are sued in a personal capacity would be able to
12 assert a defense of qualified immunity.

13 Now, if -- if -- if that is right, if
14 we say that in the opinion, how will the federal
15 government be harmed?

16 MR. KNEEDLER: Well, qualified
17 immunity is not automatic. And the -- and the
18 -- what -- what Congress has determined, again,
19 in the Westfall Act and -- and this Court's
20 hesitation in recognizing new Bivens causes of
21 action, there is qualified immunity as in --
22 under statutory causes of action, where they do
23 exist, and under Bivens, where it does exist,
24 and yet the Court has cut off the cause of
25 action at the outset because the very prospect

1 of being subject to suit and the protracted
2 litigation that can ensue, even with qualified
3 immunity, is thought to create the potential for
4 chilling federal employees in their work.

5 JUSTICE ALITO: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor.

8 JUSTICE SOTOMAYOR: As I read the
9 briefs on both sides, each of you rely on
10 legislative history to some extent. And I know
11 some of my colleagues don't believe in doing
12 that. But assume -- humor me, please. You
13 don't have to make a disclaimer about its use.

14 One of the things that concerns me
15 greatly is that RFRA was very concerned, at
16 least Congress was, with the many families whose
17 loved ones were being subjected to autopsies, in
18 violation of their religious beliefs, and, in
19 fact, there was a lot of testimony before
20 Congress about the fact that injunctive relief
21 would not help those families.

22 So, if that was one of the concerns of
23 this legislation, as is many other actions by
24 government officials that might violate
25 religious beliefs, why do you think Congress

1 would have intended to preclude money damages
2 against individual actions that violated
3 religious belief?

4 MR. KNEEDLER: Several things. I -- I
5 think the focus on the autopsy situation, for
6 example, was primarily in the substantive rule
7 and it -- I mean, it arose in the context of a
8 -- of a damage action.

9 But Congress was focused on not the
10 individual situation but lifting burdens imposed
11 by generally applicable rules. That is the --
12 that is the overall thrust of RFRA, as reflected
13 in the text of RFRA.

14 JUSTICE SOTOMAYOR: Mr. Kneedler,
15 isn't the overall thrust to give a cause of
16 action a claim and a remedy? That's the stated
17 purpose of the Act under the terms of the Act.

18 Why would Congress take away from
19 appropriate relief the only relief that could
20 help some people for the --

21 MR. KNEEDLER: Well --

22 JUSTICE SOTOMAYOR: -- violation of
23 their rights?

24 MR. KNEEDLER: -- I don't think it --
25 I don't think it's a matter of taking away. If

1 there was some remedy available under some other
2 scheme, under 1983 for a statute or if the -- if
3 the Court might have come to recognizing a
4 Bivens cause of action under the Constitution
5 for a free exercise claim, those would -- those
6 would be -- those would still be available.

7 Now, of course, this Court has not
8 done that under the Free Exercise Clause. The
9 question is what Congress intended to do in RFRA
10 itself. And with that, we have a textual answer
11 where it refers to relief against -- against the
12 government. And, again, equitable relief --

13 JUSTICE SOTOMAYOR: By the way --

14 MR. KNEEDLER: -- is appropriate --

15 JUSTICE SOTOMAYOR: -- Mr. Kneedler,
16 by the way, is it your argument that if a court
17 orders injunctive relief against a private
18 government contractor, that that relief runs
19 against the United States Government itself?

20 MR. KNEEDLER: No. It runs -- it runs
21 against the named entity. It -- it runs against
22 that person acting under -- under color of law.

23 My point is -- is -- is -- is really
24 that -- the substantive one, if you will, that
25 entity has violated the substance of -- of RFRA,

1 and the remedy should be the same as with all
2 others who are part of the government for these
3 purposes.

4 An injunction -- an injunction against
5 that operator, that's who would be -- that's who
6 would be named.

7 JUSTICE SOTOMAYOR: Thank you.

8 CHIEF JUSTICE ROBERTS: Justice Kagan.

9 JUSTICE KAGAN: Mr. Kneedler, when
10 Congress passed RFRA, the legislation applied to
11 states and localities, as well as to the federal
12 government. We changed that, this Court did, in
13 -- in Boerne. But it was clear in the original
14 legislation that Congress meant it to apply to
15 states and localities.

16 And I think nobody disputes that prior
17 to Smith, private citizens could seek damages
18 under 1983 against state and local officials in
19 their personal capacity for violating the Free
20 Exercise Clause.

21 So, under the law as originally
22 enacted, do you think that plaintiffs could sue
23 state and local officials in their personal
24 capacities for damages?

25 MR. KNEEDLER: Not under -- not under

1 RFRA. RFRA would not have displaced a
2 constitutional remedy under 1983 that might have
3 existed before RFRA was enacted, but we think
4 the application to the state would -- state and
5 state employees or officials would -- would be
6 the same for the federal government.

7 Again, the -- the definition was --
8 was sustained. The operative term is the
9 government, not -- not -- not official or
10 employee or person acting under color of law.
11 So we think that a parallel answer would follow.

12 JUSTICE KAGAN: So doesn't that seem
13 odd to you, Mr. Kneedler? Because now you're
14 saying that Congress passed this law that
15 actually contained fewer remedies against state
16 and local officials than the pre-Smith law did.
17 And I thought that the whole point of RFRA was
18 essentially to expand protection for religious
19 liberty. Now you're saying that, in this
20 provision, it effectively contracted it.

21 MR. KNEEDLER: No, I -- what -- what
22 -- what -- Congress's focus was expanding and
23 restoring to prior law the pre-Smith substantive
24 standard, but the text of RFRA gives no
25 indication that Congress intended to greatly

1 expand relief, appropriate relief, to make
2 personal damages available under RFRA, again,
3 not under 1983, under RFRA, for individual
4 government employees.

5 And as -- as I said before, the
6 context of RFRA, which is lifting burdens from
7 generally applicable laws, I think, further
8 weighs against Congress having done so because
9 the individual employee is in the position of
10 deciding whether to create an exemption, maybe
11 on the spot, from generally applicable law, and
12 damage actions could put the -- could put the
13 employee in a difficult -- in a difficult bind.

14 So, with respect to the self-contained
15 system of -- of RFRA, we think it -- we think
16 there's no reason to think that Congress would
17 have wanted to do that.

18 JUSTICE KAGAN: Thank you,
19 Mr. Kneedler.

20 CHIEF JUSTICE ROBERTS: Justice
21 Gorsuch.

22 JUSTICE GORSUCH: Good morning,
23 Mr. Kneedler. I am --

24 MR. KNEEDLER: Good morning.

25 JUSTICE GORSUCH: -- struggling with

1 the language of -- of the definitional provision
2 that's most immediately before us. As I
3 understand it, the government has agreed, albeit
4 on page 41-42 in Footnotes 6 and 7 of its brief,
5 that the phrase "other person acting under color
6 of law" does permit suits for damages against
7 private persons, like the government contractor.
8 Is that right?

9 MR. KNEEDLER: Yes.

10 JUSTICE GORSUCH: Okay. And if that's
11 the case, why wouldn't the same be true of
12 officials, the -- the last antecedent that that
13 parenthetical clause appears to modify?

14 I understand the government's argument
15 that "department, agencies, and
16 instrumentalities" are before -- earlier in --
17 in -- in the line. But, of course, none of
18 those involves an individual who could even
19 possibly be sued in an individual capacity. The
20 only one that might is "official." And -- and
21 that's the one that's right before the modifying
22 clause in the parenthetical. Help me with that.

23 MR. KNEEDLER: Now, when I said that
24 the prison operator or private contractor could
25 be subject to suit, if one uses the phrase

1 "personal capacity" that's often understood to
2 be synonymous with damages, that was not what I
3 meant to say, and I don't think that's the sense
4 of the statute.

5 The -- the private person could be
6 sued because the statute deems him to be part of
7 the government for purposes of this statute.
8 But the sort of relief that is available, that
9 would be available against the government is
10 only injunctive relief.

11 And because an official, just like an
12 agency, and also a contractor is included in the
13 definition of "government" with the operative
14 term in the statute, then the sort of relief
15 available against the government is --

16 JUSTICE GORSUCH: But, Mr. Kneedler,
17 I'm sorry, I wish to redirect you back to the
18 question, which is, as I understood it, the
19 government agrees that a private contractor can
20 be sued for damages, right?

21 MR. KNEEDLER: No. Oh, no. No, we do
22 not.

23 JUSTICE GORSUCH: Oh, you don't agree
24 with that? Okay.

25 MR. KNEEDLER: No.

1 JUSTICE GORSUCH: Nobody can -- nobody
2 can be sued for damages in -- in your view?

3 MR. KNEEDLER: Right. That's what I
4 -- that's what I meant to be saying, yes, that
5 the --

6 JUSTICE GORSUCH: Okay.

7 MR. KNEEDLER: -- that the -- the
8 operative relief is injunctive relief.

9 JUSTICE GORSUCH: And that's because
10 -- so that -- that has nothing to do with the
11 definitional phrase. That argument, as I
12 understand it, must hinge on -- on the word
13 "appropriate," is that right?

14 MR. KNEEDLER: Well, I think both --
15 both inform that, but I -- but I -- it does --
16 it does tie to the definition in this way. The
17 operative term is "government." And then the
18 definition is what's included in government.

19 JUSTICE GORSUCH: Yeah, but -- but --
20 but that definitional section doesn't speak to
21 the nature of relief at all. You'd agree with
22 that?

23 MR. KNEEDLER: No, I think it -- I
24 think it does because the --

25 JUSTICE GORSUCH: Where?

1 MR. KNEEDLER: Well, I mean, not in so
2 many words, but -- but --

3 JUSTICE GORSUCH: Okay, all right. So
4 we're back to "appropriate." And for there, I
5 guess I just want to follow up quickly on -- on
6 Justice Breyer's question, which is I understand
7 that back in the day when there were forms of
8 action that came with limited kinds of relief,
9 but with the merger of law and equity sometime
10 ago, courts have been allowed to provide any
11 kind of relief available, appropriate to the
12 circumstances.

13 And I don't think the government's
14 arguing that Congress meant to ever allow or
15 might allow inappropriate relief to the
16 circumstances. So how does that word carry all
17 the weight you want it to?

18 MR. KNEEDLER: Well, "appropriate" --
19 may I finish?

20 CHIEF JUSTICE ROBERTS: Yes.

21 MR. KNEEDLER: "Appropriate" in this
22 context has to take account of context, which is
23 a suit against federal employees, and Congress
24 has only rarely ever provided for suits against
25 federal employees for -- for money damages.

1 I also want to say that our point is
2 not just limited to "appropriate;" it's also
3 limited to "government." This Court has said
4 that the meaning of a definitional phrase can
5 take -- can be informed by the term that's being
6 defined. And, here, the term that's being
7 defined is "government," which we think lends
8 support to the conclusion that "official" means
9 official capacity person in the relief section.

10 JUSTICE GORSUCH: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Kavanaugh.

13 JUSTICE KAVANAUGH: Thank you, Mr.
14 Chief Justice.

15 Good morning, Mr. Kneedler.

16 In thinking about what the text means
17 here, I look at the words but also look at the
18 words that aren't there. And this is a
19 relatively short and heavily-focused-upon
20 statute by Congress at the time. And when it
21 says "appropriate relief," it does not, of
22 course, say appropriate injunctive relief. And
23 it's hard to imagine that that didn't escape the
24 attention of the members of Congress who were
25 focused on this.

1 What -- what do you say in response to
2 that argument about the missing words after
3 "appropriate" that would have limited it in the
4 way that Justice Gorsuch was just asking about
5 as well?

6 MR. KNEEDLER: Well, I -- I -- I think
7 the -- the missing words, money damages, are --
8 are -- are really critical because the statute
9 reads "appropriate relief against the
10 government."

11 And I think Congress would have
12 understood, because it's a -- it's a clearly
13 established principle, that appropriate relief
14 against the government does not include money
15 damages unless something expressly so provides.
16 And -- and nothing here expressly so provides.

17 And, again, officials are included
18 only as part of the government for purposes of
19 this statute, both the substantive provision and
20 the remedial provision, and also, tellingly, the
21 provision that requires the government to
22 demonstrate a compelling interest if there's a
23 substantial burden.

24 And that doesn't fit very well with a
25 personal damages action against an individual

1 employee because he may not have the information
2 about what informs what's a compelling interest.
3 He may not have information about the
4 government's broader operations plan.

5 And so that it's the government that
6 should be coming forward with a compelling
7 interest, for example, and the government that
8 violates the statute and, therefore, the
9 government and the relief appropriate to the
10 government that RFRA has now provided.

11 JUSTICE KAVANAUGH: Okay. How do the
12 FBI special agents in cases like this -- how
13 will they pay for the damages?

14 MR. KNEEDLER: Well, it oftentimes --
15 I mean, if they were held liable, the -- the
16 government might indemnify them. There's no --
17 certainly no guarantee of indemnification.

18 And that -- that, of course, will come
19 at the end of a -- of a -- a litigation that may
20 be protracted, and in the meantime, the employee
21 would have been exposed to, in fact, a judgment
22 of -- of liability under your hypo --

23 JUSTICE KAVANAUGH: Is there anything
24 --

25 MR. KNEEDLER: -- and if they're --

1 JUSTICE KAVANAUGH: -- in the record
2 or -- or is anything in the record or in any
3 public documents that would suggest how
4 regularly FBI special agents are indemnified in
5 circumstances like this?

6 MR. KNEEDLER: I -- I don't -- I don't
7 think the government has produced any statistics
8 that I -- that I know of on that. I -- I would
9 point out that you mentioned the FBI in this
10 context.

11 Personal damage actions are especially
12 concerning in the national security context,
13 where the -- the President and the Executive
14 have special responsibilities under -- under
15 Article II and have sensitivities within those
16 by lists, and litigation like this can present
17 special problems beyond simply the ERISA --
18 excuse me, RFRA -- the normal problem of suits
19 against the government.

20 JUSTICE KAVANAUGH: Thank you.

21 CHIEF JUSTICE ROBERTS: Mr. Kneedler,
22 take a minute to wrap up.

23 MR. KNEEDLER: Thank you, Mr. Chief
24 Justice.

25 We think all the pertinent factors to

1 look at here strongly indicate that personal
2 damages actions are not available. The text is
3 clear, providing for relief only against the
4 government, which doesn't include monetary
5 damages.

6 The context, we think, is significant
7 because suits against the government for --
8 government employees for personal damages have
9 only rarely been permitted. The only time that
10 they would have been permitted were under --
11 would have been under Bivens, and this Court has
12 never recognized a cause of action under Bivens
13 under the Free Exercise Clause.

14 And in terms of precedent, this Court
15 in Sossamon held that appropriate relief did not
16 include damages against a state. We think a
17 comparable principle of deference to the
18 operation of the Executive Branch and not
19 chilling federal employees, as reflected in the
20 Westfall Act, leads to a similar conclusion
21 here, where there is no express authorization of
22 personal damages actions.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Mr. Kassem.

1 ORAL ARGUMENT OF RAMZI KASSEM
2 ON BEHALF OF THE RESPONDENTS

3 MR. KASSEM: Thank you, Mr. Chief
4 Justice, and may it please the Court:

5 This Court noted in City of Boerne
6 that leading up to RFRA, Congress focused on
7 autopsies performed on Hmong and Jewish people
8 in violation of their religious beliefs. Those
9 were consummated injuries that only damages
10 could remedy. Yet Petitioner's interpretation
11 of RFRA would leave those families with no
12 claim.

13 And there are other situations where
14 damages are the only appropriate relief. A
15 Jewish student in a D.C. school who is compelled
16 by a gym teacher to wear immodest clothing or a
17 federal inmate whose hand-annotated Bible is
18 destroyed by a guard. Injunctions would be
19 useless against these one-time harms, leaving
20 damages as the only remedy.

21 To be sure, such cases are hard to
22 win. Qualified immunity will shield all but
23 those who defy clearly established law. But
24 there is no basis for categorically excluding
25 damages where they are warranted and essential

1 to providing meaningful relief to victims.

2 There was no clear statement rule in 1993.

3 And, here, federal agents put my
4 clients on the No Fly List because they refused
5 to spy on innocent co-religionists, in violation
6 of their Islamic beliefs. My clients lost
7 precious years with loved ones, plus jobs and
8 educational opportunities.

9 It was only days before oral argument
10 on Petitioner's motion to dismiss that the
11 government confirmed my clients could fly,
12 mooted out any injunctive claim. Without
13 damages as a deterrent, Petitioners and other
14 agents remain free to repeat what they did here,
15 flout RFRA until challenged in court and then
16 back off.

17 The Justice Department's Office of
18 Legal Counsel concluded shortly after RFRA's
19 passage that damages are available in personal
20 capacity suits. But, under the Department's
21 current interpretation, this Court would have to
22 read appropriate relief to mean appropriate
23 equitable relief, although Congress did not
24 include that modifier as it did in ERISA, for
25 example.

1 And the Court would have to hold that
2 both the term "official" and the phrase "other
3 person acting under color of law" exclude
4 personal capacity suits, although Congress
5 enacted no such limitation and although there is
6 no such thing as an official capacity suit
7 against a private person.

8 The Court should not diminish RFRA by
9 taking away a -- a claim that Congress provided.
10 I welcome your questions.

11 CHIEF JUSTICE ROBERTS: Well, Counsel,
12 would you still have a argument under the
13 definition provision here if the parenthetical
14 language wasn't in there?

15 MR. KASSEM: Your Honor, if -- if --
16 if the definitional provision in RFRA only
17 stated "official" without including "or other
18 person acting under color of law," then, yes, we
19 would still have a claim because the term
20 "official," using no fewer than three modes of
21 statutory interpretation that the Court has
22 employed, the ordinary meaning of the term
23 "official" embraces both personal capacity suits
24 as well as -- as official capacity suits
25 because, of course, an official is a person and

1 a person can be sued personally. And when that
2 person happens to be an official, they can be
3 sued in an official capacity as well.

4 CHIEF JUSTICE ROBERTS: Well, just to
5 -- just to interrupt you briefly there, I think
6 the argument against that, again, putting the
7 parenthetical to one side, is that the term
8 being defined is "the government," and the list
9 of entities you have there leading up to
10 "official" are all governmental entities,
11 branch, department, agency, instrumentality.

12 So I think, again, without the
13 parenthetical, it's almost -- there's a very
14 compelling case for the idea that the official
15 there is subject to suit in his official
16 capacity.

17 MR. KASSEM: Well, Your Honor,
18 respectfully, the real defining trait shared by
19 all the words in the list is that these are all
20 the ways in which government exercises power and
21 might violate RFRA.

22 So, you know, it includes collective
23 entities as well as individual officials. The
24 common denominator here is not that they're all
25 only capable of being sued for injunctive

1 relief, no more than it is that they are all
2 collective entities. An official, under its
3 ordinary dictionary meaning, is an individual, a
4 person who holds an office. And as a person
5 that can be sued personally because they happen
6 to be an official, they can also be sued in an
7 official capacity.

8 That statutory term embraces both
9 possibilities, and Congress, even though it
10 knows how to exclude personal capacity suits, it
11 did that in the Oil Pollution Act, it did that
12 in the Mandamus and Venue Act. It said, you
13 know, you can only go after officials in an
14 official capacity. But it did not do so here in
15 RFRA.

16 And if there's any doubt, then the
17 parenthetical which is in the statute clarifies
18 and dispels --

19 CHIEF JUSTICE ROBERTS: I -- I --

20 MR. KASSEM: -- any doubt.

21 CHIEF JUSTICE ROBERTS: -- I -- I

22 think that the two statutory examples you gave
23 are pretty obscure, if that's the strong basis
24 you have for Congress knowing how to make that
25 distinction across the board. What -- what were

1 they again? The Oil --

2 MR. KASSEM: Your Honor, the Mandamus
3 and Venue Act refers to a civil action in which
4 a defendant is an official acting in an official
5 capacity and so it excludes personal capacity
6 suits. The Oil Pollution Act -- and these
7 are -- these are only two examples -- also says,
8 you know, it does not authorize a cause of
9 action in a federal officer's personal capacity.

10 So Congress knows how to do this.
11 And, here, emphatically, it did not, Your Honor.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 Justice Thomas.

15 JUSTICE THOMAS: Thank you, Mr. Chief
16 Justice.

17 Counsel, I'm curious whether or not
18 there's any sort of mens rea requirement in
19 these cases and whether or not the official has
20 to intend to burden someone's free exercise
21 rights.

22 MR. KASSEM: Your Honor, RFRA only
23 requires that a burden on religious exercise be
24 substantial, not intentional. And, of course,
25 in this case, however, we believe that the

1 agents -- and we've alleged in our allegation
2 have to be taken as true -- that the agents knew
3 or should have known of the substantial burden.

4 This is a clear prohibition in the
5 Islamic faith. These agents are tasked with
6 recruiting informants to spy in the Islamic
7 faith in the Islamic community. And so we
8 believe the agents knew or should have known,
9 and we've said as much.

10 But, again, under RFRA, the burden
11 need only be substantial and not intentional.

12 JUSTICE THOMAS: How would a person
13 know whether or not the -- that the burden
14 they're imposing is the least restrictive means
15 of furthering a governmental interest?

16 MR. KASSEM: Well, Your Honor, that
17 is, of course, an argument among the very many
18 arguments that Petitioners could have presented
19 in the motion to dismiss qualified immunity --
20 the qualified immunity defense that they made at
21 the motion to dismiss stage, as Justice Alito
22 said.

23 They actually did present that
24 defense. And they would be able to argue not
25 only that there was no burden, that the burden

1 was insubstantial, they'd be able to argue that
2 there was a compelling government interest, and
3 they'd be able to say that whatever they did was
4 the least restrictive means, and had Petitioners
5 accepted remand from the Second Circuit to the
6 district court, those are precisely the
7 questions that would have been adjudicated on
8 remand.

9 Instead, of course, they sought cert,
10 and -- and -- and here we are. But those are
11 all questions that would come up immediately on
12 remand because there was a motion to dismiss
13 based on qualified immunity that was brought in
14 this case. It just wasn't taken up on appeal.

15 JUSTICE THOMAS: Thank you.

16 MR. KASSEM: Wasn't ruled upon by the
17 district court. I'm sorry, Your Honor.

18 JUSTICE THOMAS: Thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Breyer.

21 JUSTICE BREYER: I -- I have one
22 question about one of your opponent's arguments.
23 Look at the phrase "person acting under color of
24 law."

25 Now that's the key phrase for you,

1 certainly. That suggests, particularly if you
2 look back to similar language in 1983, that a
3 personal action lies. But this whole statute,
4 RFRA, is really an effort to put into statutory
5 form a certain kind of constitutional
6 interpretation that Smith, in fact, rejected.
7 And there was a lot of concern in Congress.
8 There would have been no personal action if they
9 had maintained the older interpretation of the
10 First Amendment.

11 So why would Congress want to have the
12 personal action here when they never could have
13 had it if what Congress would have thought was
14 the right view of the -- of the religious Free
15 Exercise Clause had been maintained in -- in the
16 Constitution?

17 In other words, this is like a
18 constitutional statute. No Bivens action then.
19 Why should there be one now?

20 MR. KASSEM: Well, Your Honor, simply
21 for the -- for the reasons that this Court has
22 restated numerous times in -- in City of Boerne
23 in '97 and again in Hobby Lobby, that Congress,
24 with RFRA, went beyond the constitutional
25 baseline. It did something more than merely

1 restore free exercise claims as they existed
2 under jurisprudence pre-Smith. The Court said
3 that clearly in -- in Hobby Lobby, that Congress
4 knows how to -- how to tether congressional
5 statutes to specific jurisprudence. It did not
6 do that here.

7 It -- it -- it -- it not only restored
8 but provided a claim, and -- and the net result
9 is a very broad protection for religious freedom
10 that goes beyond the constitutional baseline.
11 If there's any doubt about that, one need only
12 look to the amendments that RLUIPA brought to
13 RFRA, further untethering RFRA from that
14 constitutional baseline, protecting any exercise
15 of religion and not merely the exercise of
16 religion under First Amendment jurisprudence,
17 which was in the text when RFRA was originally
18 enacted.

19 JUSTICE BREYER: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice Alito.

21 JUSTICE ALITO: Suppose that this key
22 provision of RFRA did not include the term
23 "appropriate." Would -- would anything change?
24 So the statute would authorize -- would -- would
25 say that a person may assert that a -- a claim

1 or a defense in a judicial proceeding and obtain
2 relief against the government. Wouldn't talk
3 about appropriate relief. Would that make a
4 difference?

5 MR. KASSEM: Well -- well, Your Honor,
6 it might make a difference because, of course,
7 the phrase "appropriate relief" bespeaks
8 discretion, and, in fact, it bespeaks a very
9 familiar type of judicial discretion. That
10 phrase comes up very frequently in free exercise
11 jurisprudence under Section 1983, including
12 cases that have awarded damages. I think we
13 cited a couple of those cases for illustrative
14 purposes on page 37 of our brief, where, you
15 know, the courts of appeal acknowledge that
16 damages are available and remand for a
17 determination of appropriate relief, including
18 damages.

19 So I think, you know, without the
20 phrase "appropriate," which bespeaks the sort of
21 wide discretion in that familiar judicial
22 exercise of determining which species or
23 combination of declaratory, injunctive, and
24 monetary relief might be appropriate in any
25 particular case, so the -- so the word

1 "appropriate" --

2 JUSTICE ALITO: Well, who's exercising
3 -- who is to exercise this discretion? Could
4 the district court in -- in your case or in any
5 other case say, in the exercise of my
6 discretion, I think that damages should not be
7 available in a case like this, and, therefore,
8 I'm not going to allow the jury -- I'm not going
9 to submit that question to the jury?

10 MR. KASSEM: Well, Your Honor, a
11 district court judge would be, of course, free
12 on the facts of a given case to make a
13 determination that damages are not particularly
14 suitable, which is the meaning of "appropriate,"
15 or to decide that compensatory damages but not
16 punitive damages would be appropriate. But that
17 would be on a case-by-case and not a categorical
18 basis.

19 There is no categorical basis to
20 judicially exclude damages under this statute.
21 It allows for appropriate relief without
22 limitation. It allows for that relief against
23 officials or other persons without limitation to
24 official capacity suits only.

25 And so this Court and other courts

1 should honor the statute that Congress actually
2 enacted. And, of course, you know, the
3 defendants here, the Petitioners, they are
4 individuals, but they come to court armed with a
5 powerful shield of qualified immunity, which
6 protects all but the plainly incompetent or
7 those who flout clearly established law.

8 JUSTICE ALITO: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Sotomayor.

11 JUSTICE SOTOMAYOR: Counsel,
12 Petitioners argue that you haven't identified
13 any statute in which the phrase "appropriate
14 relief" was interpreted to include a damages
15 remedy against federal officials, absent some
16 extra text making the availability of damages
17 explicit. Is that right?

18 And if it is, can you theorize for me
19 why that's so? Is it because courts have held
20 the opposite, because courts haven't considered
21 the question, or because there just aren't that
22 many statutes that authorize appropriate relief
23 against federal government -- officials?

24 MR. KASSEM: Your Honor, ordinarily,
25 Congress -- you know, we've cited statutes where

1 Congress has expressly included damages against
2 federal officials, and we've cited statutes
3 where Congress has expressly excluded damages
4 against federal officials. And, of course, it
5 did neither here.

6 But RFRA is no ordinary law. This
7 Court, as recently as *Bostock*, described it as a
8 super-statute. RFRA reflected a very ambitious
9 goal that Congress had to regulate the number of
10 federal, state, and local actors, and it did so
11 with the most practical language it could think
12 of.

13 If -- if, for example, Congress had
14 said something along the lines of appropriate
15 relief including money damages, well, that could
16 have been mistaken for an intention to pierce
17 the sovereign immunity of the states and the
18 federal government against damages. And no one
19 contends that that was Congress's goal with
20 RFRA.

21 And so, with appropriate relief
22 against the government as defined in the
23 statute, Congress chose the most practical terms
24 to achieve its ambitious purpose.

25 JUSTICE SOTOMAYOR: I'm sorry. Are

1 you taking the position that Congress didn't
2 intend, by using appropriate relief, to include
3 -- before Sossamon -- to include states and
4 their -- their -- their officials? I mean,
5 there were private causes of action under 1983
6 for damages against the state government and its
7 officials. Why would Congress not have wanted
8 to pierce sovereign immunity with respect to
9 states and their officials back then?

10 MR. KASSEM: Forgive me, Justice
11 Sotomayor. Let me clarify my -- my answer.

12 Congress, of course, intended to
13 pierce and pierce sovereign immunity with
14 respect to injunctive relief. What happened in
15 Sossamon was that the plaintiffs were suing the
16 State of Texas and officials, prison officials,
17 of the State of Texas in their official
18 capacity, not in their personal capacity. So
19 the plaintiffs in Sossamon sued officials in an
20 official capacity for damages, which is
21 basically a suit for damages against the state
22 itself.

23 And that was barred by sovereign
24 immunity. Had they -- had they sued those state
25 prison officials in their personal capacity for

1 damages, there would not have been a sovereign
2 immunity bar, just like there is no sovereign
3 immunity bar here in this case against these
4 individual capacity Petitioners.

5 JUSTICE SOTOMAYOR: Thank you,
6 counsel.

7 CHIEF JUSTICE ROBERTS: Justice Kagan.

8 JUSTICE KAGAN: Mr. Kassem, if I could
9 just follow up on Justice Sotomayor's first
10 question. As I understood your answer, you said
11 well, RFRA is a very special statute, a
12 super-statute.

13 But assume that I don't think that for
14 the moment. Assume that I don't think that RFRA
15 has any special interpretive rules attached to
16 it, that I think it should be interpreted the
17 same way other statutes are.

18 And then I come back to what Justice
19 Sotomayor said, which is that we don't see any
20 statutes, and, certainly, we haven't interpreted
21 any statutes, with this little specificity to
22 permit damages against federal employees
23 personally.

24 So the question is, why shouldn't we
25 take that as -- as signaling what we should do

1 here, that we should say, you know, Congress
2 really has to be clear to do this, and Congress
3 hasn't been so clear?

4 MR. KASSEM: Well, Justice Kagan,
5 there are a few reasons. First, when Congress
6 acted in 1993, it acted against the backdrop
7 where the sort of relief at issue in this case
8 was not foreclosed.

9 As was noted earlier, there were free
10 exercise cases under Section 1983 allowing
11 damages. There were Bivens cases assuming the
12 availability of free exercise damages at that
13 time. And there was even a case, *Dellums v.*
14 *Powell* in 1977 out of the D.C. Circuit, awarding
15 damages against a federal officer, the chief of
16 the U.S. Capitol Police, on a First Amendment
17 Bivens theory, although that was a speech and
18 assembly theory, not a free exercise theory.

19 And the last and most important part
20 of the backdrop against which Congress acted was
21 the Franklin decision. Franklin came down in
22 1992, and it spelled out a traditional -- it
23 restated, really, a traditional rule that
24 presumes that where there is a cause of action,
25 whether it's express or implied, all damages --

1 all -- all appropriate relief is available,
2 including damages, and it spells out a
3 methodology for, you know, figuring out whether
4 -- what remedies are available if a statute is
5 silent as to remedies or if it's ambiguous as to
6 remedies.

7 JUSTICE KAGAN: Well, if I could
8 interrupt you on that point. I mean -- I --
9 I -- definitely the first, but I thought the
10 Franklin was really limited to where Congress
11 was silent on the question of remedies.

12 Congress is not silent on the question
13 of remedies here. We have a question about how
14 to interpret what it said about remedies, but it
15 specifically spoke to remedies.

16 So why is Franklin at all applicable?

17 MR. KASSEM: Well, Your Honor, I --
18 I'd like to try to clarify that. You know, the
19 question under the rule -- so the presumption is
20 agreed, all appropriate remedies unless Congress
21 expressly states otherwise.

22 The question under Franklin is always
23 whether Congress intended to limit application
24 of this general principle. Where you have an
25 implied cause of action, the usual recourse to

1 text and history is not possible, and so
2 Congress -- sorry, the Court looks to the state
3 of the law.

4 But the -- the principle holds even if
5 the cause of action or the remedy is expressed,
6 but it's ambiguous. And you need only look to
7 Franklin itself for that explanation and for an
8 illustration, in fact, of that methodology
9 because Franklin looked at the 1986
10 Rehabilitation Act amendment, which had an
11 explicit provision of remedy, and then it
12 applied the usual recourse, the usual way of
13 reading that text, which is absent any contrary
14 indication in the text or the history of that
15 statute, Franklin presumed that Congress acted
16 with a traditional rule in mind, affording
17 damages.

18 And so --

19 JUSTICE KAGAN: Thank you, Mr. Kassem.

20 MR. KASSEM: Thank you, Your Honor.

21 CHIEF JUSTICE ROBERTS: Justice
22 Gorsuch.

23 JUSTICE GORSUCH: Good morning. I --
24 I'd like to follow up on Justice Kagan's line of
25 questioning.

1 I guess I'm -- I'm equally befuddled
2 by the reliance on Franklin and a lot of the
3 Bivens line of cases involving implications and
4 presumptions.

5 Here Congress expressly stated that
6 appropriate relief may be awarded, spoke
7 directly to remedies. And I -- I would have
8 thought there might have been an argument along
9 the lines of that -- that language refers courts
10 to the law of remedies.

11 And since the merger of law and
12 equity, we don't have causes of action that are
13 limited in the nature of their remedies to
14 specific forms of relief.

15 Could you comment on that?

16 MR. KASSEM: Your Honor, our position,
17 of course, is that the text is clear and that
18 the statute on its own gets us to the outcome
19 that my clients seek.

20 Franklin is not necessary to that
21 outcome. Franklin, of course, formed a backdrop
22 to congressional action in 1993, but Congress
23 acted very clearly in the -- in the text of the
24 statute itself for the reasons that we -- we've
25 been discussing.

1 And to the extent there's any concerns
2 or Bivens-type concerns here, I would like to
3 emphasize that we are simply not in a Bivens
4 universe. You know, this is not a judicially
5 implied cause of action to enforce a
6 constitutional provision that's silent, nor even
7 a statutory provision that's silent.

8 Here we have an express right. We
9 have a -- an explicit right of action. We have
10 a provision for appropriate relief with no
11 limitation against officials or other persons,
12 with no limitations in the text.

13 And -- and when we're in that realm,
14 Franklin actually noted that there is no
15 expansion of judicial power here where the Court
16 is simply determining what remedies are
17 available.

18 And, again, on a categorical basis,
19 there is no reason to judicially at this point
20 limit or exclude damages. Justice Scalia's
21 conurrence in Franklin said as much. It's too
22 late in the day once Congress has acted for the
23 judiciary to cabin remedies and exclude -- or
24 apply an exclusion of damages.

25 JUSTICE GORSUCH: So it would be

1 sufficient for your purposes to -- if we wrote
2 an opinion simply saying we're not relying on
3 any presumptions of any kind anywhere. We're
4 looking at the text, the text refers us to law
5 of remedies, the law of remedies today is a
6 distinct area of transsubstantive law, and it's
7 unhinged from any particular form or cause of
8 action the way it used to be, and it allows the
9 courts discretion to form sufficient relief to
10 make a person whole.

11 MR. KASSEM: Justice Gorsuch, as long
12 as that opinion concludes with "and we affirm,"
13 absolutely.

14 (Laughter.)

15 JUSTICE GORSUCH: Naturally. I -- I
16 would assume no less. Thank you, counsel. I'm
17 finished.

18 CHIEF JUSTICE ROBERTS: Justice
19 Kavanaugh.

20 JUSTICE KAVANAUGH: Thank you, Mr.
21 Chief Justice. And good morning, Mr. Kassem.

22 MR. KASSEM: Good morning.

23 JUSTICE KAVANAUGH: The first problem
24 I have here, a concern, is just the mismatch
25 between RFRA and the kind of suits we're talking

1 about.

2 You're suing, I think, still up around
3 15 special agents of the FBI. There's no mens
4 rea requirement as you indicated to Justice
5 Thomas. And they can be subject to liability
6 under RFRA under your theory for enforcing a
7 generally applicable law and subjects to
8 damages, liability in their individual
9 capacities.

10 That seems an -- just an odd mismatch,
11 no mens rea, generally applicable law, damages
12 in their individual capacities and we're talking
13 about FBI special -- special agents here.

14 What's your response to that concern?

15 MR. KASSEM: Well, Justice Kavanaugh,
16 I -- I begin with the statute itself. The
17 statute states -- prohibits the government from
18 substantially burdening religious exercise, even
19 if the burden results from a -- a -- a rule of
20 general applicability.

21 The statute does not say only if the
22 burden results from a -- a rule of general
23 applicability. And it does not even say merely
24 if it results from a general rule. And quite
25 frankly --

1 JUSTICE KAVANAUGH: But they'd be
2 covered -- we're trying to figure out what the
3 term "appropriate" means. And thinking about
4 appropriate, I think we think about what are the
5 circumstances here. And it's very odd, I think,
6 without a mens rea that it encompasses generally
7 applicable and subjects, you know, career FBI
8 agents to life-altering damages remedies.

9 And there -- and just to be clear, I
10 know there's strong interests on both sides
11 here. I'm just trying to make sure we cover
12 what will happen to the special agents as well.

13 MR. KASSEM: Yes, Your Honor. And
14 Justice Kavanaugh, the law already accounts for
15 the difference that you're highlighting, that
16 these are not ordinary individuals defendants,
17 they are officials, they're FBI agents.

18 And the law accounts for that
19 difference due to well-established and robust
20 doctrine of qualified immunity. And this Court
21 actually held as much in 1991 in *Hafer v. Melo*
22 where the exact same arguments were presented by
23 the state official capacity defendants in that
24 case without chilling of governmental function
25 and whatnot.

1 And -- and the Court --

2 JUSTICE KAVANAUGH: I -- yeah -- I'm
3 sorry to interrupt. I think that's a -- I mean,
4 that's a good answer about qualified immunity.
5 I want to ask one other question, which is going
6 to the text.

7 It's not clear, the text, on what's
8 encompassed within appropriate relief. The
9 question's whether does that include damages or
10 not include damages. It doesn't say appropriate
11 injunctive relief. It doesn't refer
12 specifically to damages.

13 So we have to figure out what the
14 silence means. And on -- in thinking about
15 that, and not only do I think about the
16 circumstances I just mentioned, but every
17 statute authorizing damages actions against
18 federal employees or officers in their personal
19 capacities does so expressly and mentions
20 damages.

21 I think this would be a first or among
22 a very small handful where damages were awarded
23 against federal officers in their individual
24 capacities without the statute explicitly saying
25 so.

1 MR. KASSEM: Justice Kavanaugh, you're
2 correct, that ordinarily, you know, Congress
3 includes or excludes personal capacity damages
4 of this sort.

5 The only reason or one of the main
6 reasons I can think of why Congress might not
7 have wanted to do that here, again, is that if
8 it had said appropriate relief including money
9 damages, that could have been mistaken for an
10 intention to pierce the sovereign immunity of
11 the federal government itself, the federal
12 treasury or -- or a -- state governments at the
13 time, pre-Boerne.

14 And so it -- you know, there's no
15 contention that Congress wanted to allow that.
16 And that's -- that may be why they left out an
17 explicit mention of -- of money damages.

18 And of course at the time there was no
19 magic words requirement. And so these were the
20 most practical terms that Congress could find to
21 affect the broad protection for religious
22 freedom that it intended to effect through RFRA.

23 JUSTICE KAVANAUGH: Thank you.

24 CHIEF JUSTICE ROBERTS: Mr. Kassem,
25 you have three minutes remaining.

1 MR. KASSEM: Thank you, Mr. Chief
2 Justice.

3 I guess -- I guess -- I'll just
4 conclude by saying, Your Honor, that there --
5 and -- and maybe this is where you started, Mr.
6 Chief Justice, there was no magic words
7 requirement in 1993 when it came to imposing
8 damages on non-sovereign parties.

9 RFRA's text does that clearly by
10 providing for appropriate relief against
11 officials or other persons acting under color of
12 law, without limiting either the remedy or the
13 capacity in which these defendants can be sued.

14 The result my clients seek would not
15 give the statutory text two meanings. Clark v.
16 Martinez itself explains that sovereign immunity
17 barring relief in one circumstance does not
18 remotely establish that a statute has two
19 meanings. It just indicates that the single and
20 unchanging meaning of the statute does not apply
21 against sovereigns.

22 And Petitioner's concerns about
23 damages potentially chilling executive function
24 are identical to those raised in Hafer v. Melo.
25 And what the Court held there is true here.

1 Qualified immunity properly addresses those
2 concerns.

3 As for the separation of powers, Your
4 Honor, that would only arise in this case if
5 this Court were to exclude damages where
6 Congress provided them. If instead, this Court
7 allows executive officials to be held to
8 legislative command, then that would be the
9 separation of powers at work fulfilling the
10 constitutional design.

11 The Court should affirm the decision
12 below and remand for adjudication of the
13 qualified immunity defense.

14 Thank you.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Mr. Kneedler, three minutes for
18 rebuttal.

19 REBUTTAL ARGUMENT OF EDWIN S. KNEEDLER
20 ON BEHALF OF THE PETITIONERS

21 MR. KNEEDLER: Thank you, Mr. Chief
22 Justice.

23 First, we think the text of the -- of
24 RFRA's remedies provision answers this question
25 by providing for appropriate relief against the

1 government. And money damages are not
2 appropriate relief against the government, at
3 least in the absence of something expressly so
4 providing. And we don't have it here.

5 Justice Gorsuch raised the question of
6 whether the phrase "appropriate relief" refers
7 to the general law of remedies. That's -- the
8 -- the Court in Franklin invoked that when the
9 Court was completely free to -- to devise
10 remedies for a cause of action that it had
11 itself created.

12 In this context, the law of remedies,
13 though, includes important other limitations,
14 including the sovereign immunity of the
15 sovereign, which is what renders money damages
16 not appropriate relief against the government,
17 and individual government officials are included
18 only insofar as they are part of the government
19 under the RFRA's definition.

20 In addition, as Justice Kagan pointed
21 out, there -- there are reasons beyond that to
22 expect Congress to be especially clear if it was
23 subjecting federal employees to personal money
24 damages under a statute, after all, that applies
25 throughout the government, any time there is a

1 statute of general applicability, for example,
2 that an employee is charged with administering.

3 And, in fact, we know that Congress
4 rarely provides or allows private damages
5 actions against the federal government. That's
6 the background principle of -- of the -- the
7 Westfall Act. And when Congress has allowed
8 personal damage actions, it has done so
9 expressly. And we have nothing express here.

10 And that's further supported by, I
11 think, the point that Justice Kavanaugh was
12 making, which is that there's an odd fit here
13 beyond the general concern about chilling
14 government employees, especially in this
15 national security context, that RFRA is directed
16 at statutes and rules of general applicability,
17 and yet -- and is designed to allow exemptions
18 from that.

19 But this is putting a government
20 employee in the position, perhaps on the spot,
21 of deciding whether to create an exemption to a
22 particular governmental interest. And beyond
23 that, RFRA, itself, provides that it's the
24 government that must provide or furnish --
25 establish that there is a compelling interest,

1 and these are the least restrictive means for
2 doing it.

3 And often the individual government
4 employee wouldn't have access even to the
5 information necessary to -- to make that defense
6 and would need to -- discovery against --
7 against the government.

8 So even looking at what the
9 appropriate remedies are, they aren't available.
10 And RFRA contains nothing like the action at law
11 under 1983, which is what gives rise to damages
12 there, to the extent RFRA was patterned after
13 1983.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 General Kneedler.

16 The case is submitted.

17 (Whereupon, at 12:16 p.m., the case
18 was submitted.)

19
20
21
22
23
24
25

Official - Subject to Final Review

1	actors [2] 13:8 43:10 actually [5] 19:15 36:23 42:1 50:14 53:21 addition [1] 58:20 addressed [1] 6:17 addresses [1] 57:1 adjudicated [1] 37:7 adjudication [1] 57:12 administering [1] 59:2 administration [1] 6:20 adopted [1] 4:9 affect [1] 55:21 affecting [1] 6:19 affirm [2] 51:12 57:11 affording [1] 48:16 agencies [1] 21:15 agency [5] 4:2 11:22 14:1 22:12 33:11 agents [14] 9:13 27:12 28:4 31:3, 14 36:1,2,5,8 52:3,13 53:8,12,17 ago [1] 24:10 agree [2] 22:23 23:21 agreed [2] 21:3 47:20 agrees [1] 22:19 AL [2] 1:3,6 albeit [1] 21:3 Alito [9] 12:11,12 14:8 15:5 36:21 39:20,21 41:2 42:8 allegation [1] 36:1 alleged [1] 36:1 allow [5] 24:14,15 41:8 55:15 59:17 allowed [4] 7:5 8:1 24:10 59:7 allowing [1] 46:10 allows [5] 41:21,22 51:8 57:7 59:4 almost [1] 33:13 already [1] 53:14 although [4] 31:23 32:4,5 46:17 ambiguous [3] 7:2 47:5 48:6 ambitious [2] 43:8,24 Amendment [4] 38:10 39:16 46:16 48:10 amendments [1] 39:12 among [2] 36:17 54:21 analogous [1] 6:18 answer [8] 6:15 7:22 11:5 17:10 19:11 44:11 45:10 54:4 answers [1] 57:24 antecedent [1] 21:12 anyway [1] 6:13 appeal [2] 37:14 40:15 appear [1] 8:12 APPEARANCES [1] 1:16 appears [1] 21:13 applicability [4] 52:20,23 59:1,16 applicable [10] 6:6,10 9:3 16:11 20:7,11 47:16 52:7,11 53:7 application [3] 11:13 19:4 47:23 applied [3] 7:5 18:10 48:12 applies [2] 5:9 58:24 apply [3] 18:14 50:24 56:20 appropriate [59] 3:16,24 4:3 7:19 8:16,17 10:9,19,24,25 16:19 17:14 20:1 23:13 24:4,11,18,21 25:2,	21,22 26:3,9,13 27:9 29:15 30:14 31:22,22 39:23 40:3,7,17,20,24 41:1,14,16,21 42:13,22 43:14,21 44:2 47:1,20 49:6 50:10 53:3,4 54:8,10 55:8 56:10 57:25 58:2,6,16 60:9 area [1] 51:6 aren't [3] 25:18 42:21 60:9 argue [3] 36:24 37:1 42:12 arguing [1] 24:14 argument [20] 1:13 2:2,5,8 3:4,7 9:2 10:15,17 17:16 21:14 23:11 26:2 30:1 31:9 32:12 33:6 36:17 49:8 57:19 arguments [3] 36:18 37:22 53:22 arise [1] 57:4 armed [1] 42:4 arose [1] 16:7 around [1] 52:2 Article [1] 28:15 assembly [1] 46:18 assert [2] 14:12 39:25 asserted [1] 4:3 assume [5] 7:16 15:12 45:13,14 51:16 assuming [1] 46:11 attached [1] 45:15 attention [1] 25:24 authority [1] 12:18 authorization [1] 29:21 authorize [3] 35:8 39:24 42:22 authorizes [2] 8:18 10:19 authorizing [1] 54:17 automatic [1] 14:17 autopsies [2] 15:17 30:7 autopsy [1] 16:5 availability [3] 9:15 42:16 46:12 available [18] 7:20 8:8,23 17:1,6 20:2 22:8,9,15 24:11 29:2 31:19 40:16 41:7 47:1,4 50:17 60:9 awarded [3] 40:12 49:6 54:22 awarding [1] 46:14 away [3] 16:18,25 32:9	believe [3] 15:11 35:25 36:8 below [1] 57:12 bespeaks [3] 40:7,8,20 best [3] 5:7 10:15 11:5 bestowed [1] 13:22 between [1] 51:25 beyond [6] 28:17 38:24 39:10 58:21 59:13,22 Bible [1] 30:17 bind [1] 20:13 Bivens [11] 4:6 14:20,23 17:4 29:11,12 38:18 46:11,17 49:3 50:3 Bivens-style [1] 5:1 Bivens-type [1] 50:2 board [1] 34:25 Boerne [3] 18:13 30:5 38:22 Bostock [1] 43:7 both [8] 15:9 23:14,15 26:19 32:2, 23 34:8 53:10 branch [6] 4:12 5:24,25 7:8 29:18 33:11 Breyer [6] 10:13,14 12:10 37:20, 21 39:19 Breyer's [1] 24:6 brief [4] 5:5,21 21:4 40:14 briefly [1] 33:5 briefs [1] 15:9 broad [3] 4:9 39:9 55:21 broader [1] 27:4 brought [5] 3:21 9:18 10:2 37:13 39:12 burden [13] 11:11,14 13:11 26:23 35:20,23 36:3,10,13,25,25 52:19, 22 burdening [1] 52:18 burdens [2] 16:10 20:6
2	2020 [1] 1:10	C	
3	3 [1] 2:4 30 [1] 2:7 37 [1] 40:14	cabin [1] 50:23 calls [2] 7:9 13:5 came [4] 1:12 24:8 46:21 56:7 capable [1] 33:25 capacities [5] 18:24 52:9,12 54:19,24 capacity [45] 3:14,18,23 5:2,11,11 11:22,25 12:6,25 13:1,3,3,14,15, 16,20 14:5,11 18:19 21:19 22:1 25:9 31:20 32:4,6,23,24 33:3,16 34:7,10,14 35:5,5,9 41:24 44:18, 18,20,25 45:4 53:23 55:3 56:13 Capitol [1] 46:16 career [1] 53:7 carry [1] 24:16 Case [20] 3:4 5:8 6:14 11:4 21:11 33:14 35:25 37:14 40:25 41:4,5,7, 12 45:3 46:7,13 53:24 57:4 60:16, 17 case-by-case [1] 41:17 cases [11] 10:23,24,25 27:12 30:21 35:19 40:12,13 46:10,11 49:3 categorical [3] 41:17,19 50:18 categorically [1] 30:24 cause [16] 3:13 5:1 7:3,18,24 14:24 16:15 17:4 29:12 35:8 46:24	
4	41-42 [1] 21:4		
5	57 [1] 2:10		
6	6 [2] 1:10 21:4		
7	7 [1] 21:4		
9	97 [1] 38:23		
A	a.m [2] 1:14 3:2 able [4] 14:11 36:24 37:1,3 above-entitled [1] 1:12 absence [1] 58:3 absent [2] 42:15 48:13 absolutely [1] 51:13 accepted [1] 37:5 access [1] 60:4 account [1] 24:22 accounts [2] 53:14,18 achieve [1] 43:24 acknowledge [1] 40:15 across [1] 34:25 across-the-board [1] 7:22 Act [13] 4:9 5:14 9:25 14:19 16:17, 17 29:20 34:11,12 35:3,6 48:10 59:7 acted [6] 46:6,6,20 48:15 49:23 50:22 acting [15] 10:20 11:21 12:15,19, 22,23 13:13 17:22 19:10 21:5 32:3,18 35:4 37:23 56:11 action [34] 3:13 4:5 5:1 6:6 7:3,18, 25 8:2 14:21,22,25 16:8,16 17:4 24:8 26:25 29:12 35:3,9 38:3,8,12, 18 44:5 46:24 47:25 48:5 49:12, 22 50:5,9 51:8 58:10 60:10 actions [11] 7:5 9:18 15:23 16:2 20:12 28:11 29:2,22 54:17 59:5,8		
	B		
	back [8] 14:1 22:17 24:4,7 31:16 38:2 44:9 45:18 backdrop [3] 46:6,20 49:21 background [1] 59:6 bar [3] 4:10 45:2,3 barred [1] 44:23 barring [1] 56:17 based [1] 37:13 baseline [3] 38:25 39:10,14 basic [1] 13:4 basically [1] 44:21 basis [5] 30:24 34:23 41:18,19 50:18 befuddled [1] 49:1 begin [1] 52:16 behalf [8] 1:19,21 2:4,7,10 3:8 30:2 57:20 belief [1] 16:3 beliefs [4] 15:18,25 30:8 31:6		

Official - Subject to Final Review

<p>47:25 48:5 50:5 51:7 58:10 causes [5] 8:1 14:20,22 44:5 49:12 cert [1] 37:9 certain [1] 38:5 certainly [3] 27:17 38:1 45:20 cetera [1] 14:2 challenged [1] 31:15 change [1] 39:23 changed [1] 18:12 charged [3] 6:2,11 59:2 CHIEF [38] 3:3,9 5:4 6:12 7:12,14 10:11 12:11 15:6 18:8 20:20 24:20 25:11,14 28:21,23 29:23 30:3 32:11 33:4 34:19,21 35:12,15 37:19 39:20 42:9 45:7 46:15 48:21 51:18,21 55:24 56:1,6 57:15,21 60:14 chilling [7] 4:11 10:5 15:4 29:19 53:24 56:23 59:13 chose [1] 43:23 Circuit [2] 37:5 46:14 circumstance [1] 56:17 circumstances [5] 24:12,16 28:5 53:5 54:16 cited [4] 5:21 40:13 42:25 43:2 citizens [1] 18:17 City [3] 1:20 30:5 38:22 civil [1] 35:3 claim [8] 16:16 17:5 30:12 31:12 32:9,19 39:8,25 claims [2] 4:20 39:1 clarifies [1] 34:17 clarify [2] 44:11 47:18 Clark [1] 56:15 Clause [8] 4:7 14:3 17:8 18:20 21:13,22 29:13 38:15 clear [13] 5:6,8 9:6 18:13 29:3 31:2 36:4 46:2,3 49:17 53:9 54:7 58:22 clearly [6] 26:12 30:23 39:3 42:7 49:23 56:9 clears [1] 9:25 clients [5] 31:4,6,11 49:19 56:14 clothing [1] 30:16 co-religionists [1] 31:5 colleagues [1] 15:11 collective [2] 33:22 34:2 collector [1] 9:22 color [11] 10:21 12:15,19,23 17:22 19:10 21:5 32:3,18 37:23 56:11 combination [1] 40:23 come [5] 17:3 27:18 37:11 42:4 45:18 comes [1] 40:10 coming [1] 27:6 command [1] 57:8 comment [1] 49:15 common [1] 33:24 community [1] 36:7 company [1] 12:20 comparable [1] 29:17 compelled [1] 30:15 compelling [7] 11:14 26:22 27:2,6 33:14 37:2 59:25</p>	<p>compensatory [1] 41:15 completely [1] 58:9 concern [4] 38:7 51:24 52:14 59:13 concerned [2] 10:4 15:15 concerning [1] 28:12 concerns [6] 15:14,22 50:1,2 56:22 57:2 conclude [1] 56:4 concluded [2] 7:1 31:18 concludes [1] 51:12 conclusion [2] 25:8 29:20 concurrence [1] 50:21 conduct [1] 10:5 confirmed [1] 31:11 Congress [73] 3:11 4:8,14,18 5:19,22,24 7:9 8:9,25 9:19 10:3 14:18 15:16,20,25 16:9,18 17:9 18:10,14 19:14,25 20:8,16 24:14,23 25:20,24 26:11 30:6 31:23 32:4,9 34:9,24 35:10 38:7,11,13,23 39:3 42:1,25 43:1,3,9,13,23 44:1,7,12 46:1,2,5,20 47:10,12,20,23 48:2,15 49:5,22 50:22 55:2,6,15,20 57:6 58:22 59:3,7 Congress's [3] 5:15 19:22 43:19 congressional [2] 39:4 49:22 considered [1] 42:20 consistent [1] 11:24 constituent [1] 12:8 constitute [1] 12:19 Constitution [2] 17:4 38:16 constitutional [9] 19:2 38:5,18,24 39:10,14 50:6 57:10 consummated [1] 30:9 contained [1] 19:15 contains [1] 60:10 contends [1] 43:19 contention [1] 55:15 context [13] 7:17 8:6,10,13 16:7 20:6 24:22,22 28:10,12 29:6 58:12 59:15 contracted [1] 19:20 contractor [5] 17:18 21:7,24 22:12,19 contrary [1] 48:13 correct [1] 55:2 counsel [10] 10:12 29:24 31:18 32:11 35:13,17 42:11 45:6 51:16 57:16 couple [1] 40:13 course [18] 8:13 11:1 17:7 21:17 25:22 27:18 32:25 35:24 36:17 37:9 40:6 41:11 42:2 43:4 44:12 49:17,21 55:18 COURT [43] 1:1,13 3:10 4:4,23 6:17,25 7:23,25 14:24 17:3,7,16 18:12 25:3 29:11,14 30:4,5 31:15,21 32:1,8,21 37:6,17 38:21 39:2 41:4,11,25 42:4 43:7 48:2 50:15 53:20 54:1 56:25 57:5,6,11 58:8,9 Court's [3] 3:25 6:20 14:19 courts [10] 7:4 8:1,4 24:10 40:15 41:25 42:19,20 49:9 51:9</p>	<p>cover [1] 53:11 covered [2] 9:8 53:2 create [6] 6:5,9 8:1 15:3 20:10 59:21 created [1] 58:11 creating [1] 6:1 critical [1] 26:8 curious [2] 9:12 35:17 current [1] 31:21 custom [2] 9:13,19 cut [1] 14:24</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C [4] 1:9,18 30:15 46:14 damage [9] 4:16 5:16 6:1,6 7:5 16:8 20:12 28:11 59:8 damages [87] 3:13,17,24 4:5 5:3 7:20 8:8,18,23,24 9:1,6,18 12:7,9 13:6 16:1 18:17,24 20:2 21:6 22:2,20 23:2 24:25 26:7,15,25 27:13 29:2,5,8,16,22 30:9,14,20,25 31:13,19 40:12,16,18 41:6,13,15,16,20 42:14,16 43:1,3,15,18 44:6,20,21 45:1,22 46:11,12,15,25 47:2 48:17 50:20,24 52:8,11 53:8 54:9,10,12,17,20,22 55:3,9,17 56:8,23 57:5 58:1,15,24 59:4 60:11 day [2] 24:7 50:22 days [1] 31:9 dealing [1] 7:24 decide [2] 6:9 41:15 deciding [2] 20:10 59:21 decision [4] 3:25 6:21 46:21 57:11 declaratory [1] 40:23 deems [1] 22:6 defendant [1] 35:4 defendants [4] 42:3 53:16,23 56:13 defense [6] 14:12 36:20,24 40:1 57:13 60:5 deference [4] 6:25 7:10,11 29:17 defined [7] 10:18 11:18 12:13 25:6,7 33:8 43:22 defining [1] 33:18 definitely [1] 47:9 definition [8] 11:24 14:1 19:7 22:13 23:16,18 32:13 58:19 definitional [5] 21:1 23:11,20 25:4 32:16 defy [1] 30:23 Dellums [1] 46:13 demonstrate [1] 26:22 demonstrates [1] 11:13 denominator [1] 33:24 depart [1] 4:21 departed [2] 4:14 5:20 Department [5] 1:18 11:22 14:2 21:15 33:11 Department's [2] 31:17,20 depend [1] 8:11 Deputy [1] 1:17 derives [2] 5:13,22 described [1] 43:7</p>	<p>design [1] 57:10 designed [2] 6:5 59:17 destroyed [1] 30:18 determination [2] 40:17 41:13 determined [1] 14:18 determining [2] 40:22 50:16 deterrent [1] 31:13 develop [1] 8:5 devise [1] 58:9 dictionary [1] 34:3 difference [4] 40:4,6 53:15,19 difficult [2] 20:13,13 diminish [1] 32:8 directed [1] 59:15 directly [1] 49:7 disclaimer [1] 15:13 discovery [1] 60:6 discretion [6] 40:8,9,21 41:3,6 51:9 discussing [1] 49:25 dismiss [4] 31:10 36:19,21 37:12 dispels [1] 34:18 displaced [1] 19:1 disputes [1] 18:16 distinct [1] 51:6 distinction [1] 34:25 district [4] 37:6,17 41:4,11 doctrine [1] 53:20 documents [1] 28:3 doing [2] 15:11 60:2 done [8] 4:7,16 5:20,22 6:18 17:8 20:8 59:8 doubt [3] 34:16,20 39:11 down [1] 46:21 due [1] 53:19</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each [1] 15:9 earlier [2] 21:16 46:9 educational [1] 31:8 EDWIN [5] 1:17 2:3,9 3:7 57:19 effect [2] 10:4 55:22 effectively [1] 19:20 effects [1] 4:11 effort [1] 38:4 either [1] 56:12 embraces [2] 32:23 34:8 emphasize [1] 50:3 emphasizes [1] 14:9 emphatically [1] 35:11 employed [1] 32:22 employee [11] 3:17 6:8 10:4 19:10 20:9,13 27:1,20 59:2,20 60:4 employees [21] 3:12 4:10,13,15 5:2,17 6:2 7:6 8:14 9:3 15:4 19:5 20:4 24:23,25 29:8,19 45:22 54:18 58:23 59:14 enacted [8] 4:9,18 8:9 18:22 19:3 32:5 39:18 42:2 enacting [1] 3:11 encompassed [1] 54:8 encompasses [1] 53:6 end [2] 11:4 27:19 enforce [1] 50:5</p>
---	--	---	--

Official - Subject to Final Review

<p>enforcing ^[1] 52:6 enough ^[1] 8:20 ensue ^[1] 15:2 entities ^[5] 11:20 33:9,10,23 34:2 entity ^[4] 12:17 13:18 17:21,25 equally ^[1] 49:1 equitable ^[2] 17:12 31:23 equity ^[2] 24:9 49:12 equivalent ^[1] 13:16 ERISA ^[2] 28:17 31:24 escape ^[1] 25:23 especially ^[6] 6:4 10:7,9 28:11 58:22 59:14 ESQ ^[3] 2:3,6,9 ESQUIRE ^[1] 1:20 essential ^[1] 30:25 essentially ^[1] 19:18 establish ^[3] 7:3 56:18 59:25 established ^[4] 4:22 26:13 30:23 42:7 establishing ^[1] 5:16 ET ^[3] 1:3,6 14:2 even ^[10] 15:2 21:18 34:9 46:13 48:4 50:6 52:18,23 60:4,8 exact ^[1] 53:22 example ^[6] 13:7 16:6 27:7 31:25 43:13 59:1 examples ^[3] 5:21 34:22 35:7 exception ^[1] 11:12 exclude ^[6] 32:3 34:10 41:20 50:20,23 57:5 excluded ^[1] 43:3 excludes ^[2] 35:5 55:3 excluding ^[1] 30:24 exclusion ^[1] 50:24 excuse ^[1] 28:18 executing ^[1] 6:2 executive ^[8] 4:11 5:24,25 7:8 28:13 29:18 56:23 57:7 exemption ^[3] 6:10 20:10 59:21 exemptions ^[2] 6:5 59:17 exercise ^[22] 4:4,6,19 11:12 17:5,8 18:20 29:13 35:20,23 38:15 39:1,14,15 40:10,22 41:3,5 46:10,12,18 52:18 exercises ^[1] 33:20 exercising ^[3] 12:17,18 41:2 exist ^[2] 14:23,23 existed ^[2] 19:3 39:1 expand ^[2] 19:18 20:1 expanding ^[1] 19:22 expansion ^[1] 50:15 expect ^[1] 58:22 explains ^[1] 56:16 explanation ^[1] 48:7 explicit ^[4] 42:17 48:11 50:9 55:17 explicitly ^[1] 54:24 exposed ^[1] 27:21 express ^[4] 29:21 46:25 50:8 59:9 expressed ^[1] 48:5 expressly ^[11] 4:17 5:20 26:15,16 43:1,3 47:21 49:5 54:19 58:3 59:9 extent ^[9] 9:8,9 15:10 50:1 60:12 extra ^[1] 42:16</p>	<p style="text-align: center;">F</p> <p>fact ^[8] 14:9 15:19,20 27:21 38:6 40:8 48:8 59:3 factors ^[1] 28:25 facts ^[1] 41:12 faith ^[2] 36:5,7 familiar ^[2] 40:9,21 families ^[3] 15:16,21 30:11 FBI ^[7] 27:12 28:4,9 52:3,13 53:7,17 federal ^[36] 3:12,21,22 4:2,10,15 5:1,17 6:1 8:14,14 14:10,14 15:4 18:11 19:6 24:23,25 29:19 30:17 31:3 35:9 42:15,23 43:2,4,10,18 45:22 46:15 54:18,23 55:11,11 58:23 59:5 federalism ^[2] 7:1,11 few ^[2] 5:20 46:5 fewer ^[2] 19:15 32:20 figure ^[2] 53:2 54:13 figuring ^[1] 47:3 find ^[1] 55:20 finish ^[1] 24:19 finished ^[1] 51:17 First ^[9] 38:10 39:16 45:9 46:5,16 47:9 51:23 54:21 57:23 fit ^[2] 26:24 59:12 flout ^[2] 31:15 42:7 Fly ^[2] 31:4,11 FNU ^[1] 1:3 focus ^[2] 16:5 19:22 focused ^[3] 16:9 25:25 30:6 follow ^[4] 19:11 24:5 45:9 48:24 Footnotes ^[1] 21:4 foreclosed ^[1] 46:8 Forgive ^[1] 44:10 form ^[3] 38:5 51:7,9 formed ^[1] 49:21 forms ^[2] 24:7 49:14 forward ^[1] 27:6 Franklin ^[15] 7:23 46:21,21 47:10,16,22 48:7,9,15 49:2,20,21 50:14,21 58:8 frankly ^[1] 52:25 free ^[17] 4:3,6,19 17:5,8 18:19 29:13 31:14 35:20 38:14 39:1 40:10 41:11 46:9,12,18 58:9 freedom ^[2] 39:9 55:22 frequently ^[1] 40:10 fulfilling ^[1] 57:9 function ^[2] 53:24 56:23 functional ^[1] 13:16 furnish ^[1] 59:24 further ^[3] 20:7 39:13 59:10 furthering ^[1] 36:15 furtherers ^[1] 11:14</p> <p style="text-align: center;">G</p> <p>gave ^[1] 34:22 General ^[14] 1:17 4:15 5:18 8:2 10:1 47:24 52:20,22,24 58:7 59:1,13,16 60:15 generally ^[9] 5:15 6:5,10 16:11 20:</p>	<p>7,11 52:7,11 53:6 gets ^[1] 49:18 give ^[3] 7:22 16:15 56:15 given ^[1] 41:12 gives ^[2] 19:24 60:11 goal ^[2] 43:9,19 Gorsuch ^[20] 20:21,22,25 21:10 22:16,23 23:1,6,9,19,25 24:3 25:10 26:4 48:22,23 50:25 51:11,15 58:5 government ^[96] 3:13,16,19,21 4:25 7:17 8:14,23,25 9:1,4,7,7,9,10,16,20,22 10:3,8,18 11:8,10,13,16,17,18 12:3,5,8,13,18,24 13:8,10,11,17 14:7,15 15:24 17:12,18,19 18:2,12 19:6,9 20:4 21:3,7 22:7,9,13,15,19 23:17,18 25:3,7 26:10,14,18,21 27:5,7,9,10,16 28:7,19 29:4,7,8 31:11 33:8,20 37:2 40:2 42:23 43:18,22 44:6 52:17 55:11 58:1,2,16,17,18,25 59:5,14,19,24 60:3,7 government's ^[3] 21:14 24:13 27:4 governmental ^[5] 13:22 33:10 36:15 53:24 59:22 governmentally-conferred ^[1] 13:14 governments ^[1] 55:12 greatly ^[2] 15:15 19:25 guarantee ^[1] 27:17 guard ^[1] 30:18 guess ^[5] 8:22 24:5 49:1 56:3,3 gym ^[1] 30:16</p> <p style="text-align: center;">H</p> <p>Hafer ^[2] 53:21 56:24 hand-annotated ^[1] 30:17 handful ^[1] 54:22 happen ^[2] 34:5 53:12 happened ^[1] 44:14 happens ^[1] 33:2 hard ^[2] 25:23 30:21 harmed ^[1] 14:15 harms ^[1] 30:19 hear ^[2] 3:3 6:14 heavily-focused-upon ^[1] 25:19 held ^[6] 27:15 29:15 42:19 53:21 56:25 57:7 help ^[3] 15:21 16:20 21:22 hesitation ^[1] 14:20 highlighting ^[1] 53:15 hinge ^[1] 23:12 historically ^[1] 9:11 history ^[3] 15:10 48:1,14 Hmong ^[1] 30:7 Hobby ^[2] 38:23 39:3 hold ^[1] 32:1 holds ^[2] 34:4 48:4 Honor ^[18] 32:15 33:17 35:2,11,22 36:16 37:17 38:20 40:5 41:10 42:1,24 47:17 48:20 49:16 53:13 56:4 57:4 however ^[1] 35:25 humor ^[1] 15:12</p>	<p>hypo ^[1] 27:22</p> <p style="text-align: center;">I</p> <p>idea ^[1] 33:14 identical ^[1] 56:24 identified ^[1] 42:12 II ^[1] 28:15 illustration ^[1] 48:8 illustrative ^[1] 40:13 imagine ^[1] 25:23 immediately ^[2] 21:2 37:11 immodest ^[1] 30:16 immunity ^[25] 6:23 11:1,3 14:12,17,21 15:3 30:22 36:19,20 37:13 42:5 43:17 44:8,13,24 45:2,3 53:20 54:4 55:10 56:16 57:1,13 58:14 implementing ^[1] 6:11 implications ^[1] 49:3 implied ^[4] 7:25 46:25 47:25 50:5 important ^[2] 46:19 58:13 imposed ^[1] 16:10 imposing ^[3] 9:6 36:14 56:7 inappropriate ^[1] 24:15 include ^[14] 8:17 10:25 11:18 12:14 26:14 29:4,16 31:24 39:22 42:14 44:2,3 54:9,10 included ^[10] 9:3,9 12:1,2,5 22:12 23:18 26:17 43:1 58:17 includes ^[4] 11:19 33:22 55:3 58:13 including ^[8] 3:22 32:17 40:11,17 43:15 47:2 55:8 58:14 incompetent ^[1] 42:6 indemnification ^[1] 27:17 indemnified ^[1] 28:4 indemnify ^[1] 27:16 indicate ^[1] 29:1 indicated ^[1] 52:4 indicates ^[1] 56:19 indication ^[2] 19:25 48:14 individual ^[17] 3:17 9:24 16:2,10 20:3,9 21:18,19 26:25 33:23 34:3 45:4 52:8,12 54:23 58:17 60:3 individuals ^[3] 5:10 42:4 53:16 infer ^[1] 13:1 inform ^[1] 23:15 informants ^[1] 36:6 information ^[3] 27:1,3 60:5 informed ^[1] 25:5 informs ^[1] 27:2 initially ^[1] 9:17 injunction ^[2] 18:4,4 Injunctions ^[1] 30:18 injunctive ^[13] 4:1 13:5 14:6 15:20 17:17 22:10 23:8 25:22 31:12 33:25 40:23 44:14 54:11 injuries ^[1] 30:9 inmate ^[1] 30:17 innocent ^[1] 31:5 insofar ^[2] 12:4 58:18 instead ^[3] 8:16 37:9 57:6 instructive ^[1] 6:21 instrumentalities ^[1] 21:16</p>
---	---	--	--

Official - Subject to Final Review

<p>instrumentality ^[1] 33:11 insubstantial ^[1] 37:1 intend ^[2] 35:20 44:2 intended ^[6] 16:1 17:9 19:25 44:12 47:23 55:22 intention ^[2] 43:16 55:10 intentional ^[2] 35:24 36:11 interest ^[8] 11:15 26:22 27:2,7 36:15 37:2 59:22,25 interests ^[1] 53:10 interpret ^[1] 47:14 interpretation ^[5] 30:10 31:21 32:21 38:6,9 interpreted ^[4] 8:10 42:14 45:16, 20 interpretive ^[1] 45:15 interrupt ^[3] 33:5 47:8 54:3 intruded ^[1] 5:25 invoked ^[1] 58:8 involves ^[1] 21:18 involving ^[1] 49:3 Islamic ^[4] 31:6 36:5,6,7 Island ^[1] 1:20 isn't ^[2] 6:7 16:15 issue ^[2] 5:7 46:7 itself ^[13] 5:22 7:25 10:8 17:10,19 44:22 48:7 49:24 52:16 55:11 56:16 58:11 59:23</p>	<p>16 37:16 38:20 40:5 41:10 42:24 44:10 45:8 46:4 47:17 48:19,20 49:16 51:11,21,22 52:15 53:13 55:1,24 56:1 Kavanaugh ^[16] 25:12,13 27:11, 23 28:1,20 51:19,20,23 52:15 53:1,14 54:2 55:1,23 59:11 key ^[2] 37:25 39:21 kind ^[5] 11:2 24:11 38:5 51:3,25 kinds ^[1] 24:8 KNEEDLER ^[53] 1:17 2:3,9 3:6,7, 9 5:4,12 6:16 7:16,21 8:21 9:17 11:7 13:4 14:16 16:4,14,21,24 17:14,15,20 18:9,25 19:13,21 20:19, 23,24 21:9,23 22:16,21,25 23:3,7, 14,23 24:1,18,21 25:15 26:6 27:14,25 28:6,21,23 57:17,19,21 60:15 knowing ^[1] 34:24 known ^[2] 36:3,8 knows ^[3] 34:10 35:10 39:4</p>	<p>litigation ^[4] 4:13 15:2 27:19 28:16 little ^[1] 45:21 Lobby ^[2] 38:23 39:3 local ^[4] 18:18,23 19:16 43:10 localities ^[2] 18:11,15 Long ^[2] 1:20 51:11 look ^[7] 25:17,17 29:1 37:23 38:2 39:12 48:6 looked ^[1] 48:9 looking ^[3] 10:17 51:4 60:8 looks ^[1] 48:2 lost ^[1] 31:6 lot ^[4] 10:1 15:19 38:7 49:2 lots ^[1] 10:23 loved ^[2] 15:17 31:7 lower ^[1] 7:4</p>	<p>money ^[15] 3:23 7:20 8:18 12:7,9 16:1 24:25 26:7,14 43:15 55:8,17 58:1,15,23 mooting ^[1] 31:12 morale ^[1] 10:5 Moreover ^[1] 4:8 morning ^[6] 20:22,24 25:15 48:23 51:21,22 most ^[5] 21:2 43:11,23 46:19 55:20 motion ^[4] 31:10 36:19,21 37:12 much ^[3] 36:9 50:21 53:21 MUHAMMED ^[1] 1:6 must ^[2] 23:12 59:24</p>
J			
<p>Jewish ^[2] 30:7,15 jobs ^[1] 31:7 judge ^[1] 41:11 judgment ^[1] 27:21 judicial ^[4] 40:1,9,21 50:15 judicially ^[3] 41:20 50:4,19 judiciary ^[1] 50:23 jurisdictional ^[1] 8:3 jurisprudence ^[4] 39:2,5,16 40:11 jury ^[2] 41:8,9 Justice ^[127] 1:18 3:3,9 5:4 6:12 7:12,13,14,15 8:15 9:11 10:11,13,14 12:10,11,11,12 14:8 15:5,6,6,8 16:14,22 17:13,15 18:7,8,8,9 19:12 20:18,20,20,22,25 21:10 22:16,23 23:1,6,9,19,25 24:3,6,20 25:10,11, 11,13,14 26:4 27:11,23 28:1,20,21, 24 29:23 30:4 31:17 32:11 33:4 34:19,21 35:12,14,15,16 36:12,21 37:15,18,19,19,21 39:19,20,20,21 41:2 42:8,9,9,11 43:25 44:10 45:5, 7,7,8,9,18 46:4 47:7 48:19,21,21, 23,24 50:20,25 51:11,15,18,18,20, 21,23 52:4,15 53:1,14 54:2 55:1, 23,24 56:2,6 57:15,22 58:5,20 59:11 60:14</p>	<p>L language ^[9] 6:23 7:2 8:12,19 21:1 32:14 38:2 43:11 49:9 last ^[2] 21:12 46:19 late ^[1] 50:22 Laughter ^[1] 51:14 law ^[33] 10:21 12:15,19,23 17:22 18:21 19:10,14,16,23 20:11 21:6 24:9 30:23 32:3,18 37:24 42:7 43:6 48:3 49:10,11 51:4,5,6 52:7,11 53:14,18 56:12 58:7,12 60:10 laws ^[3] 6:3,6 20:7 leading ^[2] 30:6 33:9 leads ^[1] 29:20 least ^[5] 15:16 36:14 37:4 58:3 60:1 leave ^[1] 30:11 leaving ^[1] 30:19 left ^[1] 55:16 Legal ^[1] 31:18 legislation ^[3] 15:23 18:10,14 legislative ^[2] 15:10 57:8 lends ^[1] 25:7 less ^[1] 51:16 liability ^[5] 4:12 5:6 27:22 52:5,8 liable ^[2] 5:10 27:15 liberty ^[1] 19:19 lies ^[1] 38:3 life-altering ^[1] 53:8 lifting ^[2] 16:10 20:6 lightly ^[1] 5:24 likewise ^[1] 13:19 limit ^[2] 47:23 50:20 limitation ^[4] 32:5 41:22,23 50:11 limitations ^[2] 50:12 58:13 limited ^[7] 9:14 24:8 25:2,3 26:3 47:10 49:13 limiting ^[1] 56:12 line ^[3] 21:17 48:24 49:3 lines ^[2] 43:14 49:9 List ^[3] 31:4 33:8,19 lists ^[1] 28:16</p>	<p>M made ^[2] 5:14 36:20 magic ^[2] 55:19 56:6 main ^[1] 55:5 maintained ^[2] 38:9,15 Mandamus ^[2] 34:12 35:2 many ^[6] 10:24 15:16,23 24:2 36:17 42:22 Martinez ^[1] 56:16 matter ^[3] 1:12 10:2 16:25 matters ^[1] 8:7 mean ^[8] 8:22 16:7 24:1 27:15 31:22 44:4 47:8 54:3 meaning ^[5] 25:4 32:22 34:3 41:14 56:20 meaningful ^[1] 31:1 meanings ^[2] 56:15,19 means ^[8] 13:12 25:8,16 36:14 37:4 53:3 54:14 60:1 meant ^[5] 6:13 18:14 22:3 23:4 24:14 meantime ^[1] 27:20 Melo ^[2] 53:21 56:24 members ^[1] 25:24 mens ^[4] 35:18 52:3,11 53:6 mention ^[1] 55:17 mentioned ^[2] 28:9 54:16 mentions ^[1] 54:19 merely ^[4] 8:17 38:25 39:15 52:23 merger ^[2] 24:9 49:11 methodology ^[2] 47:3 48:8 might ^[12] 8:21 15:24 17:3 19:2 21:20 24:15 27:16 33:21 40:6,24 49:8 55:6 mind ^[1] 48:16 minute ^[1] 28:22 minutes ^[2] 55:25 57:17 mismatch ^[2] 51:24 52:10 missing ^[2] 26:2,7 mistaken ^[2] 43:16 55:9 modes ^[1] 32:20 modifier ^[1] 31:24 modify ^[1] 21:13 modifying ^[1] 21:21 moment ^[1] 45:14 monetary ^[3] 10:25 29:4 40:24</p>	<p>N name ^[1] 6:14 named ^[2] 17:21 18:6 national ^[2] 28:12 59:15 Naturally ^[1] 51:15 nature ^[2] 23:21 49:13 necessary ^[2] 49:20 60:5 need ^[4] 36:11 39:11 48:6 60:6 neither ^[1] 43:5 net ^[1] 39:8 never ^[2] 29:12 38:12 New ^[4] 1:20 3:13 4:25 14:20 next ^[1] 3:4 nobody ^[3] 18:16 23:1,1 non-sovereign ^[1] 56:8 none ^[1] 21:17 nor ^[1] 50:6 normal ^[1] 28:18 noted ^[3] 30:5 46:9 50:14 nothing ^[4] 23:10 26:16 59:9 60:10 number ^[1] 43:9 numerous ^[1] 38:22</p> <p>O obscure ^[1] 34:23 obtain ^[1] 40:1 October ^[1] 1:10 odd ^[4] 19:13 52:10 53:5 59:12 Office ^[2] 31:17 34:4 officer ^[2] 13:17 46:15 officer's ^[1] 35:9 officers ^[3] 9:19 54:18,23 official ^[47] 3:22,23 4:2 5:11 10:20 11:19,19,22,24,25,25 12:5,14,24 13:2,2,15,16,20 19:9 21:20 22:11 25:8,9 32:2,6,17,20,23,24,25 33:2, 3,10,14,15 34:2,6,7,14 35:4,4,19 41:24 44:17,20 53:23 officials ^[29] 9:8 12:1 14:10 15:24 18:18,23 19:5,16 21:12 26:17 33:23 34:13 41:23 42:15,23 43:2,4 44:4,7,9,16,16,19,25 50:11 53:17 56:11 57:7 58:17 often ^[2] 22:1 60:3 oftentimes ^[1] 27:14 Oil ^[3] 34:11 35:1,6 Okay ^[5] 21:10 22:24 23:6 24:3 27:11</p>
K			
<p>Kagan ^[10] 18:8,9 19:12 20:18 45:7,8 46:4 47:7 48:19 58:20 Kagan's ^[1] 48:24 KASSEM ^[31] 1:20 2:6 29:25 30:1, 3 32:15 33:17 34:20 35:2,22 36:</p>			

Official - Subject to Final Review

<p>older ^[1] 38:9 once ^[1] 50:22 one ^[20] 9:23 10:14 13:9 14:8,8 15:14,22 17:24 21:20,21,25 33:7 37:21,22 38:19 39:11 43:18 54:5 55:5 56:17 one-time ^[1] 30:19 ones ^[2] 15:17 31:7 only ^[38] 3:15 4:3,14,24 9:8 12:1,4,24 13:2 14:6 16:19 21:20 22:10 24:24 26:18 29:3,9,9 30:9,14,20 31:9 32:16 33:25 34:13 35:7,22 36:11,25 39:7,11 41:24 48:6 52:21 54:15 55:5 57:4 58:18 operating ^[1] 12:21 operation ^[1] 29:18 operations ^[1] 27:4 operative ^[7] 11:7,17 13:25 19:8 22:13 23:8,17 operator ^[3] 12:20 18:5 21:24 operators ^[1] 13:7 opinion ^[5] 10:15 11:6 14:14 51:2,12 opponent's ^[1] 37:22 opportunities ^[1] 31:8 opposite ^[2] 9:6 42:20 oral ^[6] 1:13 2:2,5 3:7 30:1 31:9 order ^[1] 9:22 orders ^[1] 17:17 ordinarily ^[2] 42:24 55:2 ordinary ^[5] 10:2 32:22 34:3 43:6 53:16 original ^[1] 18:13 originally ^[2] 18:21 39:17 other ^[21] 8:19 10:16,20 12:14 14:8 15:23 17:1 21:5 30:13 31:13 32:2,17 38:17 41:5,23,25 45:17 50:11 54:5 56:11 58:13 others ^[1] 18:2 otherwise ^[1] 47:21 out ^[13] 6:25 7:17 10:1 28:9 31:12 46:14,22 47:2,3 53:2 54:13 55:16 58:21 outcome ^[2] 49:18,21 outset ^[1] 14:25 overall ^[2] 16:12,15 own ^[1] 49:18</p>	<p>passed ^[3] 7:9 18:10 19:14 pattern ^[1] 10:7 patterned ^[1] 60:12 pay ^[1] 27:13 people ^[3] 11:21 16:20 30:7 performed ^[1] 30:7 perhaps ^[1] 59:20 permit ^[2] 21:6 45:22 permitted ^[2] 29:9,10 person ^[30] 10:20 11:1,14 12:14,16,18,19,22,23,25 13:7,13,21 17:22 19:10 21:5 22:5 25:9 32:3,7,18,25 33:1,2 34:4,4 36:12 37:23 39:25 51:10 person's ^[1] 11:11 personal ^[35] 3:14,18 4:5,12,16 5:2,10 12:25 13:1,3 14:11 18:19,23 20:2 22:1 26:25 28:11 29:1,8,22 31:19 32:4,23 34:10 35:5,9 38:3,8,12 44:18,25 54:18 55:3 58:23 59:8 personally ^[3] 33:1 34:5 45:23 persons ^[4] 21:7 41:23 50:11 56:11 pertinent ^[1] 28:25 Petitioner's ^[3] 30:10 31:10 56:22 Petitioners ^[12] 1:4,19 2:4,10 3:8 31:13 36:18 37:4 42:3,12 45:4 57:20 phrase ^[13] 13:24 21:5,25 23:11 25:4 32:2 37:23,25 40:7,10,20 42:13 58:6 pick ^[1] 12:12 pierce ^[5] 43:16 44:8,13,13 55:10 plainly ^[1] 42:6 plaintiffs ^[3] 18:22 44:15,19 plan ^[1] 27:4 please ^[3] 3:10 15:12 30:4 plugs ^[1] 14:4 plus ^[1] 31:7 point ^[9] 5:13 13:5 17:23 19:17 25:1 28:9 47:8 50:19 59:11 pointed ^[1] 58:20 Police ^[1] 46:16 Pollution ^[2] 34:11 35:6 position ^[5] 6:8 20:9 44:1 49:16 59:20 possibilities ^[1] 34:9 possible ^[2] 7:22 48:1 possibly ^[1] 21:19 postmasters ^[1] 9:13 potential ^[1] 15:3 potentially ^[1] 56:23 Powell ^[1] 46:14 power ^[4] 8:3 13:22 33:20 50:15 powerful ^[1] 42:5 powers ^[2] 57:3,9 practical ^[3] 43:11,23 55:20 practice ^[1] 5:15 pre-Boerne ^[1] 55:13 pre-Smith ^[3] 19:16,23 39:2 precedent ^[2] 6:14 29:14 precious ^[1] 31:7 precisely ^[1] 37:6</p>	<p>preclude ^[1] 16:1 present ^[2] 28:16 36:23 presented ^[2] 36:18 53:22 President ^[1] 28:13 presumed ^[1] 48:15 presumes ^[1] 46:24 presumption ^[2] 8:8 47:19 presumptions ^[2] 49:4 51:3 pretty ^[2] 9:2 34:23 prevails ^[1] 14:10 prevent ^[1] 4:11 primarily ^[1] 16:6 principal ^[1] 13:25 principally ^[1] 6:4 principle ^[6] 5:13 26:13 29:17 47:24 48:4 59:6 Prior ^[5] 3:25 4:8,20 18:16 19:23 prison ^[4] 12:21 21:24 44:16,25 prisons ^[1] 13:8 private ^[18] 5:16 7:18 12:17,17,20 13:7,8,13,20 17:17 18:17 21:7,24 22:5,19 32:7 44:5 59:4 problem ^[2] 28:18 51:23 problems ^[1] 28:17 proceeding ^[1] 40:1 produced ^[1] 28:7 prohibition ^[1] 36:4 prohibits ^[1] 52:17 proper ^[1] 14:6 properly ^[1] 57:1 proposition ^[1] 5:8 prospect ^[2] 4:12 14:25 protecting ^[1] 39:14 protection ^[3] 19:18 39:9 55:21 protects ^[1] 42:6 protracted ^[3] 4:13 15:1 27:20 provide ^[2] 24:10 59:24 provided ^[6] 8:25 24:24 27:10 32:9 39:8 57:6 provides ^[8] 3:15,23 4:24 7:19 26:15,16 59:4,23 providing ^[5] 29:3 31:1 56:10 57:25 58:4 provision ^[17] 11:9,10 13:9,25 19:20 21:1 26:19,20,21 32:13,16 39:22 48:11 50:6,7,10 57:24 public ^[1] 28:3 punitive ^[1] 41:16 purpose ^[2] 16:17 43:24 purposes ^[5] 18:3 22:7 26:18 40:14 51:1 put ^[4] 20:12,12 31:3 38:4 putting ^[2] 33:6 59:19</p>	<p>questions ^[3] 32:10 37:7,11 quickly ^[1] 24:5 quite ^[1] 52:24</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raised ^[2] 56:24 58:5 RAMZI ^[3] 1:20 2:6 30:1 rarely ^[4] 4:14 24:24 29:9 59:4 rather ^[2] 5:11 9:21 rea ^[4] 35:18 52:4,11 53:6 read ^[3] 4:23 15:8 31:22 reading ^[4] 11:23 13:23 14:3 48:13 reads ^[1] 26:9 real ^[1] 33:18 really ^[7] 9:20 17:23 26:8 38:4 46:2,23 47:10 realm ^[1] 50:13 reason ^[3] 20:16 50:19 55:5 reasons ^[5] 38:21 46:5 49:24 55:6 58:21 REBUTTAL ^[3] 2:8 57:18,19 recall ^[1] 9:19 recent ^[1] 10:7 recently ^[1] 43:7 recognized ^[2] 4:5 29:12 recognizing ^[2] 14:20 17:3 record ^[2] 28:1,2 recourse ^[2] 47:25 48:12 recruiting ^[1] 36:6 redirect ^[1] 22:17 refer ^[1] 54:11 referring ^[1] 14:5 refers ^[7] 8:24 13:10 17:11 35:3 49:9 51:4 58:6 reflected ^[4] 7:8 16:12 29:19 43:8 refunds ^[1] 9:21 refused ^[1] 31:4 regard ^[1] 6:22 regularly ^[1] 28:4 regulate ^[1] 43:9 Rehabilitation ^[1] 48:10 rejected ^[1] 38:6 relatively ^[1] 25:19 relevant ^[2] 10:18,22 reliance ^[1] 49:2 relief ^[76] 3:16,18,24 4:1,3,24 7:19 8:17,24 9:14,15 10:19,24,25 13:6 14:6,6 15:20 16:19,19 17:11,12,17,18 20:1,1 22:8,10,14 23:8,8,21 24:8,11,15 25:9,21,22 26:9,13 27:9 29:3,15 30:14 31:1,22,23 34:1 40:2,3,7,17,24 41:21,22 42:14,22 43:15,21 44:2,14 46:7 47:1 49:6,14 50:10 51:9 54:8,11 55:8 56:10,17 57:25 58:2,6,16 religion ^[2] 39:15,16 religious ^[10] 15:18,25 16:3 19:18 30:8 35:23 38:14 39:9 52:18 55:21 rely ^[2] 5:5 15:9 relying ^[1] 51:2 remain ^[1] 31:14 remaining ^[2] 8:19 55:25</p>
---	--	---	---

P

Q

Official - Subject to Final Review

<p>remand ^[5] 37:5,8,12 40:16 57:12 remedial ^[3] 4:22 11:9 26:20 remedies ^[25] 5:16 6:1 8:5 19:15 47:4,5,6,11,13,14,15,20 49:7,10, 13 50:16,23 51:5,5 53:8 57:24 58: 7,10,12 60:9 remedy ^[11] 3:15 16:16 17:1 18:1 19:2 30:10,20 42:15 48:5,11 56: 12 remotely ^[1] 56:18 renders ^[1] 58:15 repeat ^[1] 31:14 requirement ^[4] 35:18 52:4 55:19 56:7 requires ^[2] 26:21 35:23 residual ^[1] 13:24 respect ^[8] 5:16,23 6:19,22 7:7 20: 14 44:8,14 respectfully ^[1] 33:18 Respondent ^[1] 14:9 Respondents ^[4] 1:7,21 2:7 30:2 response ^[2] 26:1 52:14 responsibilities ^[1] 28:14 responsible ^[1] 9:23 restated ^[2] 38:22 46:23 restore ^[2] 4:18 39:1 restored ^[1] 39:7 restoring ^[1] 19:23 restrictive ^[3] 36:14 37:4 60:1 result ^[2] 39:8 56:14 results ^[3] 52:19,22,24 RFRA ^[57] 3:11,23 4:1,8,17,18,24 6:4 10:10 11:8 12:3,4 13:10 15:15 16:12,13 17:9,25 18:10 19:1,1,3, 17,24 20:2,3,6,15 27:10 28:18 30: 6,11 31:15 32:8,16 33:21 34:15 35:22 36:10 38:4,24 39:13,13,17, 22 43:6,8,20 45:11,14 51:25 52:6 55:22 59:15,23 60:10,12 RFRA's ^[5] 3:15 31:18 56:9 57:24 58:19 rights ^[2] 16:23 35:21 rise ^[1] 60:11 RLUIPA ^[3] 6:23 7:6 39:12 ROBERTS ^[27] 3:3 5:4 6:12 7:12 10:11 12:11 15:6 18:8 20:20 24: 20 25:11 28:21 29:23 32:11 33:4 34:19,21 35:12 37:19 39:20 42:9 45:7 48:21 51:18 55:24 57:15 60: 14 robust ^[1] 53:19 rule ^[15] 4:15 5:6,9,18,19 6:10 7:10 16:6 31:2 46:23 47:19 48:16 52: 19,22,24 ruled ^[1] 37:16 rules ^[3] 16:11 45:15 59:16 runs ^[4] 17:18,20,20,21</p> <hr/> <p style="text-align: center;">S</p> <p>same ^[8] 3:20 4:21 8:19 18:1 19:6 21:11 45:17 53:22 saying ^[7] 10:1 19:14,19 23:4 51:2 54:24 56:4 says ^[3] 11:10 25:21 35:7</p>	<p>Scalia's ^[1] 50:20 scheme ^[2] 4:22 17:2 school ^[1] 30:15 Second ^[1] 37:5 section ^[5] 3:15 23:20 25:9 40:11 46:10 security ^[2] 28:12 59:15 see ^[1] 45:19 seek ^[3] 18:17 49:19 56:14 seem ^[1] 19:12 seems ^[1] 52:10 self-contained ^[1] 20:14 sense ^[2] 13:15 22:3 sensitivities ^[1] 28:15 separation ^[2] 57:3,9 series ^[1] 11:20 Several ^[1] 16:4 shall ^[2] 11:11 13:11 shared ^[1] 33:18 shield ^[2] 30:22 42:5 short ^[1] 25:19 shortly ^[1] 31:18 shouldn't ^[1] 45:24 side ^[1] 33:7 side's ^[1] 10:16 sides ^[2] 15:9 53:10 signaling ^[1] 45:25 significant ^[1] 29:6 significantly ^[1] 4:21 silence ^[1] 54:14 silent ^[5] 47:5,11,12 50:6,7 similar ^[2] 29:20 38:2 simply ^[6] 7:18 28:17 38:20 50:3, 16 51:2 since ^[3] 4:7 10:18 49:11 single ^[1] 56:19 situation ^[5] 6:7 7:24 8:3 16:5,10 situations ^[1] 30:13 small ^[1] 54:22 Smith ^[4] 4:1,20 18:17 38:6 Solicitor ^[1] 1:17 someone's ^[1] 35:20 sometime ^[1] 24:9 sorry ^[6] 6:16 22:17 37:17 43:25 48:2 54:3 sort ^[8] 6:7 14:5 22:8,14 35:18 40: 20 46:7 55:4 Sossamon ^[7] 6:20 7:11 11:3 29: 15 44:3,15,19 Sotomayor ^[13] 15:7,8 16:14,22 17:13,15 18:7 42:10,11 43:25 44: 11 45:5,19 Sotomayor's ^[1] 45:9 sought ^[1] 37:9 sovereign ^[13] 6:23 11:1,3 43:17 44:8,13,23 45:1,2 55:10 56:16 58: 14,15 sovereigns ^[1] 56:21 speaks ^[1] 11:16 special ^[10] 27:12 28:4,14,17 45: 11,15 52:3,13,13 53:12 species ^[1] 40:22 specific ^[2] 39:5 49:14 specifically ^[4] 6:3,17 47:15 54: 12</p>	<p>specificity ^[1] 45:21 speech ^[1] 46:17 spelled ^[1] 46:22 spells ^[1] 47:2 spoke ^[2] 47:15 49:6 spot ^[3] 6:9 20:11 59:20 spy ^[2] 31:5 36:6 stage ^[1] 36:21 standard ^[2] 4:19 19:24 start ^[3] 8:7,7,9 started ^[1] 56:5 state ^[21] 6:19,24 7:1,4,6 18:18,23 19:4,4,5,15 29:16 43:10 44:6,16, 17,21,24 48:2 53:23 55:12 stated ^[3] 16:16 32:17 49:5 statement ^[4] 5:6,8 9:6 31:2 STATES ^[10] 1:1,14 17:19 18:11, 15 43:17 44:3,9 47:21 52:17 statistics ^[1] 28:7 statute ^[42] 6:11 8:6,12,16,18,24 10:17,19 11:15 13:5 14:4 17:2 22: 4,6,7,14 25:20 26:8,19 27:8 34:17 38:3,18 39:24 41:20 42:1,13 43: 23 45:11 47:4 48:15 49:18,24 52: 16,17,21 54:17,24 56:18,20 58:24 59:1 statutes ^[10] 6:19 7:9 39:5 42:22, 25 43:2 45:17,20,21 59:16 statutory ^[9] 5:18 10:6 14:22 32: 21 34:8,22 38:4 50:7 56:15 still ^[4] 17:6 32:12,19 52:2 strong ^[2] 34:23 53:10 strongly ^[1] 29:1 struggling ^[1] 20:25 student ^[1] 30:15 subject ^[5] 3:12 15:1 21:25 33:15 52:5 subjected ^[2] 4:15 15:17 subjecting ^[1] 58:23 subjects ^[2] 52:7 53:7 submit ^[1] 41:9 submitted ^[2] 60:16,18 substance ^[1] 17:25 substantial ^[4] 26:23 35:24 36:3, 11 substantially ^[3] 11:11 13:11 52: 18 substantive ^[7] 4:19 11:10 13:9 16:6 17:24 19:23 26:19 substituted ^[1] 9:20 sue ^[2] 11:2 18:22 sued ^[20] 11:21 12:4,24 13:1,2,18, 19 14:11 21:19 22:6,20 23:2 33:1, 3,25 34:5,6 44:19,24 56:13 sufficient ^[2] 51:1,9 sufficiently ^[1] 7:3 suggest ^[1] 28:3 suggests ^[1] 38:1 suing ^[2] 44:15 52:2 suit ^[7] 3:20 15:1 21:25 24:23 32:6 33:15 44:21 suitable ^[1] 41:14 suited ^[1] 6:7</p>	<p>suits ^[21] 4:10,16 8:13 9:12,20,21 10:2,8,8 21:6 24:24 28:18 29:7 31: 20 32:4,23,24 34:10 35:6 41:24 51:25 super-statute ^[2] 43:8 45:12 support ^[1] 25:8 supported ^[1] 59:10 Suppose ^[1] 39:21 SUPREME ^[2] 1:1,1,13 sustained ^[1] 19:8 sweeping ^[1] 4:25 synonymous ^[1] 22:2 system ^[1] 20:15</p> <hr/> <p style="text-align: center;">T</p> <p>TANVIR ^[2] 1:6 3:5 TANZIN ^[2] 1:3 3:4 tasked ^[1] 36:5 tax ^[1] 9:21 teacher ^[1] 30:16 tellingly ^[1] 26:20 term ^[16] 10:19 11:8,23 12:13 19:8 22:14 23:17 25:5,6 32:2,19,22 33: 7 34:8 39:22 53:3 terms ^[4] 16:17 29:14 43:23 55:20 testimony ^[1] 15:19 tether ^[1] 39:4 Texas ^[2] 44:16,17 text ^[22] 4:24 8:9,10 16:13 19:24 25:16 29:2 39:17 42:16 48:1,13, 14 49:17,23 50:12 51:4,4 54:6,7 56:9,15 57:23 textual ^[1] 17:10 theorize ^[1] 42:18 theory ^[4] 46:17,18,18 52:6 there's ^[14] 10:23 11:3 20:16 26: 22 27:16 33:13 34:16 35:18 39:11 50:1 52:3 53:10 55:14 59:12 therefore ^[2] 27:8 41:7 thinking ^[3] 25:16 53:3 54:14 Thomas ^[10] 7:13,14 8:15 9:11 35: 14,15 36:12 37:15,18 52:5 though ^[2] 34:9 58:13 three ^[3] 32:20 55:25 57:17 throughout ^[2] 3:12 58:25 thrust ^[2] 16:12,15 tie ^[1] 23:16 today ^[1] 51:5 tort ^[2] 4:10 10:2 traces ^[1] 14:1 traditional ^[3] 46:22,23 48:16 trait ^[1] 33:18 transsubstantive ^[1] 51:6 treasury ^[1] 55:12 true ^[4] 11:18 21:11 36:2 56:25 try ^[1] 47:18 trying ^[2] 53:2,11 Tuesday ^[1] 1:10 two ^[4] 34:22 35:7 56:15,18 type ^[1] 40:9</p> <hr/> <p style="text-align: center;">U</p> <p>U.S ^[1] 46:16 unchanging ^[1] 56:20</p>
---	--	---	---

Official - Subject to Final Review

<p>under ^[59] 4:5 6:4 7:1,6 8:2 10:9, 21 12:4,15,19,22,23 14:22,23 16:17 17:1,2,4,8,22,22 18:18,21,25, 25 19:2,10 20:2,3,3 21:5 27:22 28:14,14 29:10,11,12,13 31:20 32:3, 12,18 34:2 36:10 37:23 39:2,16 40:11 41:20 44:5 46:10 47:19,22 52:6,6 56:11 58:19,24 60:11</p> <p>understand ^[4] 21:3,14 23:12 24:6</p> <p>understood ^[4] 22:1,18 26:12 45:10</p> <p>undoubtedly ^[1] 11:20</p> <p>unhinged ^[1] 51:7</p> <p>uniformly ^[1] 7:4</p> <p>UNITED ^[3] 1:1,14 17:19</p> <p>universe ^[1] 50:4</p> <p>unless ^[2] 26:15 47:20</p> <p>untethering ^[1] 39:13</p> <p>until ^[1] 31:15</p> <p>up ^[11] 12:12 24:5 28:22 30:6 33:9 37:11,14 40:10 45:9 48:24 52:2</p> <p>useless ^[1] 30:19</p> <p>uses ^[1] 21:25</p> <p>using ^[2] 32:20 44:2</p> <p>usual ^[3] 47:25 48:12,12</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>Venue ^[2] 34:12 35:3</p> <p>versus ^[1] 3:4</p> <p>victims ^[1] 31:1</p> <p>view ^[2] 23:2 38:14</p> <p>violate ^[3] 12:3 15:24 33:21</p> <p>violated ^[2] 16:2 17:25</p> <p>violates ^[1] 27:8</p> <p>violating ^[1] 18:19</p> <p>violation ^[6] 4:4,6 15:18 16:22 30:8 31:5</p> <p>virtue ^[1] 13:21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waives ^[1] 6:23</p> <p>wanted ^[5] 8:5 20:17 44:7 55:7,15</p> <p>warranted ^[1] 30:25</p> <p>Washington ^[2] 1:9,18</p> <p>way ^[8] 11:15 17:13,16 23:16 26:4 45:17 48:12 51:8</p> <p>ways ^[1] 33:20</p> <p>wear ^[1] 30:16</p> <p>weighs ^[1] 20:8</p> <p>weight ^[1] 24:17</p> <p>welcome ^[1] 32:10</p> <p>well-established ^[1] 53:19</p> <p>Westfall ^[6] 4:9 5:14 9:25 14:19 29:20 59:7</p> <p>whatever ^[2] 8:5 37:3</p> <p>whatnot ^[1] 53:25</p> <p>Whereupon ^[1] 60:17</p> <p>whether ^[13] 5:9 6:9,22 20:10 35:17,19 36:13 46:25 47:3,23 54:9 58:6 59:21</p> <p>who's ^[1] 41:2</p> <p>whole ^[5] 11:20 14:4 19:17 38:3 51:10</p>	<p>wide ^[1] 40:21</p> <p>will ^[6] 14:14 17:24 27:13,18 30:22 53:12</p> <p>win ^[1] 30:22</p> <p>wish ^[1] 22:17</p> <p>within ^[4] 9:9 12:5 28:15 54:8</p> <p>Without ^[10] 31:12 32:17 33:12 40:19 41:21,23 53:6,24 54:24 56:12</p> <p>word ^[4] 11:17 23:12 24:16 40:25</p> <p>words ^[11] 10:18,22 24:2 25:17,18 26:2,7 33:19 38:17 55:19 56:6</p> <p>work ^[2] 15:4 57:9</p> <p>wrap ^[1] 28:22</p> <p>wrote ^[1] 51:1</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years ^[1] 31:7</p> <p>York ^[1] 1:20</p>
--	--