



1 APPEARANCES CONTINUED:

2 On Behalf of the Respondents:

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P R O C E E D I N G S

(Court called to order.)

**DEPUTY CLERK:** Good afternoon. Is this the judge?  
Good afternoon. May I ask who just joined us?

Good afternoon. Is this the judge?

**THE COURT:** Good afternoon, this is the judge. Are we ready?

**DEPUTY CLERK:** We are, Your Honor. The matter now pending before the Court is Civil Action Number PX25-2780, Kilmar Armando Abrego Garcia v. Secretary Kristi Noem, et al.

**THE COURT:** Brian?

**DEPUTY CLERK:** Yes, Your Honor. I'm hearing --

**THE COURT:** I'm going to have to stop -- I'm going to stop you. There is a terrible echo on my end.

**DEPUTY CLERK:** I am hearing it as well in the courtroom, Your Honor.

**THE COURT:** Are you hearing it now?

**DEPUTY CLERK:** Let me test out real quick.

I am not hearing an echo as of this point.

**THE COURT:** Yeah, neither am I, so maybe we can take it from the top.

**DEPUTY CLERK:** Yes, Your Honor.

The matter now pending before the Court is Civil Action Number PX25-2780, Kilmar Armando Abrego Garcia v. Secretary Kristi Noem, et al. The matter comes before this Court for a

1 telephone conference.

2 Counsel, please identify yourselves for the record.

3 **MR. SANDOVAL-MOSHENBERG:** Good morning, Your Honor.  
4 Simon Sandoval-Moshenberg for petitioner.

5 **MR. RAND:** Sascha Rand for petitioner.

6 **MR. COOPER:** Jonathan Cooper for the petitioner.

7 **MS. HORTON:** Olivia Horton for petitioner.

8 **MS. PATHALAM:** Nithya Pathalam for petitioner.

9 **MR. GUYNN:** This is Jonathan Guynn for respondents.

10 **MR. MOLINA:** Your Honor, Ernesto Molina for the  
11 respondents.

12 **THE COURT:** Is there anyone else for the respondents  
13 on the line?

14 **MR. GUYNN:** No, Your Honor. This is Jonathan Guynn.  
15 No, Your Honor, it's just going to be me, Mr. Guynn, and  
16 Mr. Molina.

17 **THE COURT:** I'm sorry, is that you, Mr. Ensign?

18 **MR. GUYNN:** No, I apologize, Your Honor. This is  
19 Jonathan Guynn. It's just going to be me and Mr. Molina today.

20 **THE COURT:** Oh, I'm sorry. That's what I thought,  
21 but then I thought I heard you identify three people. So,  
22 okay, Mr. Guynn, thank you.

23 There is a public access line. Let me remind anyone who  
24 is on the public access line, the same rules as being in court  
25 apply, which is that you are more than free to listen, you are

1 more than welcome to be with us, but there shall be no  
2 interruptions.

3 Okay. Counsel, the reason why I've called this status is  
4 because at ECF 81, the petitioner has asked me to either strike  
5 the affidavit of Mr. Cantú, which is at 75-6, or turn Thursday  
6 into an evidentiary hearing.

7 I've read ECF 81, and I understand the arguments.

8 Mr. Guynn, I have to tell you, it has some force with me,  
9 because the affidavit, frankly, is pretty thin in terms of what  
10 exactly it's trying to say and why. And it references unnamed  
11 and unidentified individuals.

12 So I guess I'll put it to you to answer, you know, which  
13 would you prefer? Would you prefer I strike the affidavit or  
14 turn Thursday into an evidentiary hearing where you can bring  
15 the affiant and others who may be able to tell us the factual  
16 predicate of what you wish to have in the record?

17 **MR. GUYNN:** Well, Your Honor, I appreciate that it  
18 sounds like I have an uphill battle here, but I think that  
19 neither of the options that you've presented, those aren't all  
20 the options. I think that the declaration should not be  
21 stricken, and I also think that we should not have an  
22 evidentiary hearing on Thursday. And I'm happy to explain the  
23 reasons why.

24 **THE COURT:** Well, the problem that I have largely  
25 with that, before I turn to you as to why you think, you put in

1 an affidavit, and you want me to rely on it for the prong of  
2 basically that I can take the Executive words for it -- word  
3 for it that Costa Rica is no longer a reasonable option, that  
4 the third country that Mr. Abrego has chosen is not  
5 acceptable -- either to Costa Rica or to the government, I'm  
6 not really sure which one, but the affiant itself -- I mean,  
7 the affiant is not -- is not the firsthand -- the person.

8 That's number one.

9 And number two, in light of the fact that at the last  
10 hearing, I specifically ordered the government to bring a  
11 person with knowledge about this very issue, and that was in  
12 October, October 10, and despite my very clear directive, you  
13 put a witness on who had no knowledge, which is, you know -- I  
14 don't think there's any other way to sugarcoat it. It was in  
15 defiance of my order.

16 So now you want me to credit information about Costa Rica  
17 without putting it to the test of an evidentiary hearing. In  
18 light of the prior conduct, I'm not inclined to do that.

19 So you tell me why I should neither strike the affidavit  
20 or have an evidentiary hearing.

21 **MR. GUYNN:** Thank you, Your Honor.

22 So I've got at least four reasons why you should not do  
23 either of those things.

24 The first is, that there's numerous threshold legal issues  
25 and jurisdictional barriers, Your Honor, that would prevent the

1 Court from even reaching facts related to Mr. Cantú's testimony  
2 about Costa Rica.

3 Actually, Your Honor, I'm going to back up real quick.

4 There's a number of statements and exhibits, including  
5 Mr. Cantú's, and others that are sealed, that I won't be able  
6 to discuss right now in open court, Your Honor, given, I think,  
7 the public access line has joined.

8 In addition to that, the United States is under an order  
9 from Judge Waverly Crenshaw to -- that precludes us from making  
10 certain statements related to Mr. Abrego Garcia's history and  
11 his current charges.

12 If you want more detail about some of the statements I'm  
13 going to make, I can provide some, but I'm not going to be able  
14 to provide that while this is open to the public, Your Honor.

15 **THE COURT:** So then let me ask you, before we go on.

16 **MR. GUYNN:** Sure.

17 **THE COURT:** Maybe what makes sense is that you have  
18 the witnesses available, and I hear you, if you're concerned --  
19 well, first of all, you didn't respond in writing to 81; is  
20 that right?

21 **MR. GUYNN:** Well, I apologize, Your Honor. I'm  
22 actually referring to right now, what I've described to you as  
23 the four reasons why we don't need to strike the declaration or  
24 have another evidentiary hearing, there's things that I can't  
25 say right now on the record, Your Honor.

1           **THE COURT:** Right, I know. But I'm saying that that  
2 is relatively useless to me if I can't have them right now  
3 right now. If I can't understand the full context of your  
4 argument, then I'm not going to be able to take them into  
5 consideration.

6           So I want to make sure the record is clear, ECF 81 was  
7 filed but there isn't a response on the record. I'm not  
8 faulting you for it, I just want to make sure I'm clear.

9           You have not responded in writing to ECF 81, right?

10          **MR. GYNN:** That's correct, Your Honor. And --  
11 sorry.

12          **THE COURT:** Yeah. I was about to say, I can allow to  
13 you do that, where you can give me what you think I need under  
14 seal, and I can consider it. And then if I don't find that  
15 sealing has been met, I can unseal at a later date, but I can  
16 allow to you respond in writing.

17          But that begs the question as to what do we do on  
18 Thursday? And the only alternative I can think of, if you want  
19 to move expeditiously on this, is bring your witnesses and I  
20 can consider it. And I say witnesses, because I think it's  
21 both Mr. Cantú, and whoever he is talking about at the State  
22 Department, because you make the point to the petitioners that  
23 the State Department is not a party, and, therefore, you  
24 don't -- it seems to me you're suggesting you don't have an  
25 obligation to give more, and I disagree with that.

1 But my point would be, you have the witnesses on call or  
2 available, and if I agree with you, then you don't need to put  
3 them on. If I disagree with you, then they are available for  
4 testimony.

5 **MR. GYNN:** I understand all of that, Your Honor.  
6 And let me address each of those points.

7 So firstly, with respect to any potential hearing on  
8 Thursday, whether it's evidentiary or just a motions hearing  
9 that had been previously set, again, Your Honor, I just -- I  
10 think it's very unlikely that the Court would even reach any  
11 legal issues or facts related to Mr. Cantú's testimony about  
12 Costa Rica given the myriad threshold of legal and  
13 jurisdictional barriers that the Court would have to clear  
14 before even getting there, and those are detailed in --

15 **THE COURT:** Let me ask you, something. Wait,  
16 Mr. Guynn, let me just stop you for a second.

17 You all want me to move with speed. And if at the hearing  
18 I reject, say, like, basically, I'm inclined to reject all of  
19 your jurisdictional argument, let's say I'm there, then we're  
20 going to have to reschedule, perhaps, another date for evidence  
21 to be taken. And if you're okay with that, if you're saying,  
22 no, Judge, reach -- like let's have a hearing where we reach  
23 legal and other questions, and if you're inclined to grant the  
24 petition or deny the motion to dissolve, then we can have the  
25 evidence later.

1 If you're -- if you're okay with that, then perhaps we can  
2 go that way. I want to hear from the petitioner. But I  
3 thought that you all were the ones that were saying dissolve  
4 this quickly.

5 **MR. GYNN:** Well, I think we are saying that, Your  
6 Honor. I think we're very confident that Your Honor will  
7 conclude that petitioner is a member of the *D.V.D.* non-opt-out  
8 class and that whether or not he can litigate these habeas  
9 claims is a question that's already been answered. It's being  
10 litigated right now in *D.V.D.* And he doesn't have the ability  
11 to claim split in this court. So that's --

12 **THE COURT:** So I'll stop you, Mr. Guynn. I'm going  
13 to stop you because this is basically the arguments that I'll  
14 hear on Thursday.

15 I'll tell you right now, I'm disinclined to agree with you  
16 on *D.V.D.*, and I'm not the only judge. And I disagree with you  
17 on the claim-splitting issue. So that's why I'm saying, I  
18 think it -- I think we need to focus on the fact that you  
19 thought it worth it for me to know as a matter of fact where  
20 Costa Rica stands, and that's why you put in the affidavit.  
21 But the affidavit is very nonspecific, very hard to understand  
22 what you're really trying to say.

23 In light of the government's choices up to this date, I'm  
24 inclined to say you either get it stricken or you bring a  
25 witness and witnesses.

1 I hear you that you think your threshold arguments are  
2 going to win. I'm not there, frankly. I'll hear you. I will  
3 hear you fully on Thursday. But I'm trying to conserve  
4 resources and not have what we've done in the past, which is we  
5 have a legal argument, a factual issue is raised, and then we  
6 set it in for an evidentiary hearing, and then we have more  
7 argument. I would rather today just say who do we need  
8 witness-wise? Let's get them there and let's do everything on  
9 one day.

10 **MR. GUYNN:** Sure. Okay. Then I've got two more, I  
11 think, challenges then with having an evidentiary hearing on  
12 Thursday.

13 **THE COURT:** Okay. Okay.

14 **MR. GUYNN:** You know, look, I hear what Your Honor  
15 just said about how you're unhappy with, you know, the content  
16 of Mr. Schultz's testimony, and perhaps Mr. Giles' testimony.  
17 You know, respectfully, Your Honor, I disagree that those  
18 witnesses --

19 **THE COURT:** Okay. Mr. Guynn, I'm not unhappy --

20 **MR. GUYNN:** I'm --

21 **THE COURT:** Hold on. No. Stop.

22 I'm not unhappy with what the witnesses testified to.  
23 What I'm unhappy with is the attorneys not being able to follow  
24 my order and bring a witness who is prepared. And there is no  
25 dispute in that regard. Go back and read my prior order.

1 Did you have a witness prepared to talk about Costa Rica?  
2 Absolutely not.

3 Did you make any argument that it was somehow legally  
4 barred or prohibited? You didn't.

5 You just chose to bring a witness who got on the stand and  
6 said Costa Rica, where? Had nothing for me.

7 So I'm not going to engage with you as to whether it is  
8 the witness's fault, because I --

9 **MR. GUYNN:** Well --

10 **THE COURT:** I see it as a strategy on your part, on  
11 behalf of your client, that has been present since day one, and  
12 it is a problem.

13 In fairness to you, I'm giving you the option now of  
14 telling me in advance whether this affidavit is important  
15 enough to you to bring a witness to shore it up. So can you  
16 answer that question, since you say you have two more arguments  
17 for me?

18 **MR. GUYNN:** Okay. I -- yeah, well, this is the first  
19 of those two.

20 So I think that one of the things that's difficult here is  
21 that Mr. Giles and Schultz, I think, provided pretty clear  
22 testimony about the nature of DHS's knowledge and their  
23 interactions with the State Department and what the division of  
24 tasks is as the government seeks to identify a removal country,  
25 and that DHS works with the State Department to effectuate

1 removal to that particular country.

2 And I think that Mr. Cantú will be able to share  
3 information, all of the information that is in that procedure  
4 that Mr. Schultz and, I think, Mr. Giles testified about in  
5 great detail, he'll be able to only share information that DHS  
6 will tell. That's essentially what is in the declaration.

7 Now, what I'm hearing is, is that you would like a State  
8 Department witness there as well.

9 Now, as you know, the State Department is not a party, nor  
10 could it be, because this is the habeas action. And the only  
11 proper defendant is the immediate custodian.

12 So Mr. Cantú will not be able to bind the State  
13 Department.

14 I'm not saying that we're unwilling to provide a State  
15 Department witness. What I am saying, though, is that if  
16 petitioner wants a State Department witness, they are going to  
17 need to follow the Federal Rules of Civil Procedure and  
18 subpoena the State Department, and then we can go through the  
19 *Touhy* process, which I don't believe can be completed by  
20 Thursday, but which we will --

21 **THE COURT:** Okay. Well, then I suppose -- let's take  
22 it one step a time. I mean, without Mr. Cantú, we don't even  
23 know what the underlying information is.

24 So assuming -- I don't want anything, I want to resolve  
25 81. And 81 has made the request, from Mr. Cantú, to bind the

1 defendants, who are the parties now, or to strike the  
2 affidavit.

3 It sounds like what you're saying is Mr. Cantú, because he  
4 is a DHS official, cannot bind the State Department. That may  
5 be. And if the petitioner believes that there's something  
6 else, after Mr. Cantú testifies, that they need, then they can  
7 seek whatever process they seek, and I'll decide it. I don't  
8 have really that before me.

9 Yeah, I suppose, putting it back to the government, if the  
10 government thinks that it would be more efficient to simply  
11 produce the evidence that forms the basis of Mr. Cantú's  
12 testimony, whether under seal or in open court, then you can do  
13 that, and you can do that on Thursday.

14 I'm trying not to get over my skis here. 81 is before me.  
15 So far, I haven't heard anything that suggests I should relieve  
16 the government of its obligation to either bring the witness or  
17 I'll strike the affidavit.

18 You said you had another argument, though?

19 **MR. GUYNN:** Well, so, I think for -- I apologize if  
20 it was in my doing, Your Honor, but I think we've collapsed the  
21 two arguments. One is that Mr. Cantú, I can prepare him to say  
22 everything that the Department of Homeland Security knows.

23 And, Your Honor, I'm not here today representing, you  
24 know, quote, unquote, the government. I'm representing the  
25 respondents, not the State Department today. And so --

1           **THE COURT:** Right.

2           **MR. GUYNN:** And, you know, if -- when I bring my  
3 clients as witnesses to the hearing on Thursday, they will be  
4 able to testify on behalf of my clients, not on behalf of  
5 nonparties, the State Department.

6           The second argument was that he can't bind the State  
7 Department and we'll have to go through the *Touhy* process.

8           And, again, I'm not saying that we won't -- we can't do  
9 that, and I guess I'm also not saying that we are not willing  
10 to have him, Mr. Cantú, come on Thursday and say things to bind  
11 DHS. I'm just concerned that there will be frustration with  
12 how I have prepared Mr. Cantú if he's only prepared to bind DHS  
13 and not the State Department.

14           **THE COURT:** Well, that -- we'll see. But, you know,  
15 Mr. Cantú has basically said he has knowledge that he derived  
16 from the State Department about Costa Rica, and so the witness  
17 should be able to come in and testify as to what that knowledge  
18 is. And if you think that there's anything which deserves  
19 sealing protection, you make that motion and we'll deal with  
20 it.

21           But unlike the last witness, in contravention of my order,  
22 who said, "I know nothing about Costa Rica, I didn't even know  
23 it was on the table." And I think that was the same hearing in  
24 which you said we stipulate that Costa Rica is still on the  
25 table if Eswatini falls through, this will be a different

1 kettle of fish because you put in an affidavit that things have  
2 changed.

3 And so I think the petitioner just wants to know what has  
4 changed. And I don't know, maybe there has been some  
5 communication, since 81 was filed, where you shared that with  
6 petitioner, which might moot this, but it doesn't sound like  
7 that.

8 So I --

9 **MR. GUYNN:** Well --

10 **THE COURT:** Was that Mr. Molina?

11 **MR. GUYNN:** Sorry, Your Honor, that was me. That was  
12 Mr. Guynn.

13 Go ahead, Your Honor.

14 **THE COURT:** I suppose what I was about to say, is I  
15 hear you that the State Department is not a party, and when --  
16 in the past, I've asked for witnesses to bind the defendants,  
17 it's obviously the parties. I hear you that you say I might be  
18 frustrated, but what really frustrates me is contravention of  
19 my orders not because the witness may not be able to bind the  
20 State Department.

21 The witness clearly got the information from individuals  
22 not within DHS. That's the whole purpose, I suppose, of the  
23 affidavit.

24 And you're right, that to the extent the petitioner  
25 believes more is relevant, they will have to show that. That's

1 not what's before me, though, I don't think.

2 **MR. GUYNN:** So, again, this is Mr. Guynn, Your Honor.

3 Yeah, look, I think consistent with Mr. Schultz's and  
4 Giles' testimony, there is -- again, there's the division of  
5 labor between DHS and the State Department when we're  
6 effectuating third-country removals. There is communication  
7 between DHS and the State Department at that point. But DHS  
8 doesn't know the content of everything the State Department is  
9 doing, and vice versa.

10 And so while Mr. Cantú will be able to tell you what --  
11 what the content of what are some of his communications with  
12 the State Department, and what the basis is for his  
13 understanding, I can't -- I am confident that that will not be  
14 the sum total of everything the State Department could have  
15 said.

16 And so, yes, we -- I don't think -- again, for all the  
17 reasons I said earlier, I don't think that this is something  
18 the Court even needs to reach. I don't think it's a good use  
19 of the Court's time. But if the Court wishes to do this and  
20 it's either strike the declaration or we can have Mr. Cantú be  
21 cross-examined on Thursday, we're happy to go with the latter.

22 **THE COURT:** Okay. And, you know, just so that we're  
23 clear, whenever DHS has testified before, it's been the same  
24 situation. And often, the government does put in, whether it's  
25 underlying documents or other information, and I have, I think,

1 been liberal in protecting, you know, what you have asked me to  
2 seal as sealed. And, again, I'll remind you, if you need the  
3 sealing requirements, the same will apply here.

4 Let me turn to petitioner to make sure I've gotten the --  
5 I've gotten the gist of 81 right, and that there isn't any ask  
6 for any other witnesses beyond Mr. Cantú.

7 **MR. RAND:** Good afternoon. It's Mr. Rand, Your  
8 Honor, for petitioner.

9 Yes. No, Your Honor has correctly described our view of  
10 the issue. We obviously agree with points Your Honor made in  
11 having Mr. Cantú come, or alternatively have the declaration  
12 stricken. We look forward to examining Mr. Cantú on Thursday.  
13 And at this time, we have no further ask.

14 I will just make the observation that given the issues  
15 before the Court, the government has certain burdens of proof,  
16 and they will decide how they wish to address that, but we'll  
17 take that up with Your Honor after examining Mr. Cantú.

18 **THE COURT:** Okay. All right. Then -- then let's  
19 prepare to have Mr. Cantú testify first. I don't expect it's  
20 going to be terribly lengthy. I'll keep, you know, everyone  
21 moving in that regard, then we'll go right into oral argument.  
22 And I expect the parties to be prepared to argue the petition  
23 itself, all counts of the petition, as well as the motion to  
24 dissolve. I'll see you all on Thursday.

25 I'll issue an order to this effect, is there anything that

1 just grants 81 and expects Mr. Cantú to testify in a manner  
2 that binds the defendants, which is not the State Department,  
3 and we'll take it from there.

4 Anything else?

5 **MR. GYNN:** No, Your Honor. Thank you. Nothing  
6 further from respondents, Your Honor.

7 **THE COURT:** All right. Thank you all. I'll see you  
8 on Thursday.

9 (Proceedings were concluded at 1:02 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Paula J. Leeper, Federal Official Court Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 18th day of November 2025.

*/S/ Paula J. Leeper*

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Paula J. Leeper, RMR, CRR  
Federal Official Reporter

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 MR. GUYNN: [21]  
 MR. MOLINA: [1] 4/10  
 MR. RAND: [2] 4/5 18/7  
 MR. SANDOVAL-MOSHENBERG: [1] 4/3  
 MS. HORTON: [1] 4/7  
 MS. PATHALAM: [1] 4/8  
 THE COURT: [27]

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 anything [5] 13/2 14/15 15/18 16/25 19/4  
 apologize [3] 4/18 7/21 14/19  
 APPEARANCES [2] 1/12 2/1  
 apply [2] 4/25 18/3  
 appreciate [1] 5/17  
 aren't [1] 5/19  
 argue [1] 18/22  
 argument [8] 8/4 9/19 11/5 11/7 12/3 14/18 15/6  
 18/21  
 arguments [5] 5/7 10/13 11/1 12/16 14/21  
 ARMANDO [3] 1/3 3/10 3/24  
 ask [5] 3/4 7/15 9/15 18/5 18/13  
 asked [3] 5/4 16/16 18/1  
 ASSISTANT [1] 2/3  
 assuming [1] 13/24  
 ATTORNEY [1] 2/3  
 attorneys [1] 11/23  
 available [3] 7/18 9/2 9/3  
 Avenue [2] 1/15 2/4

---

B

back [3] 7/3 11/25 14/9  
 barred [1] 12/4  
 barriers [2] 6/25 9/13  
 basically [4] 6/2 9/18 10/13 15/15  
 basis [2] 14/11 17/12  
 battle [1] 5/18  
 because [10] 5/4 5/9 8/20 8/22 10/13 12/8 13/10  
 14/3 16/1 16/19  
 before [12] 1/10 3/9 3/23 3/25 5/25 7/15 9/14 14/8  
 14/14 17/1 17/23 18/15  
 begs [1] 8/17  
 behalf [5] 1/13 2/2 12/11 15/4 15/4  
 being [3] 4/24 10/9 11/23  
 believe [1] 13/19  
 believes [2] 14/5 16/25  
 Ben [1] 2/8  
 between [2] 17/5 17/7  
 beyond [1] 18/6  
 bind [8] 13/12 13/25 14/4 15/6 15/10 15/12 16/16  
 16/19  
 binds [1] 19/2  
 both [1] 8/21  
 Box [1] 2/8  
 Brian [1] 3/11  
 Bridge [1] 1/22  
 bring [9] 5/14 6/10 8/19 10/24 11/24 12/5 12/15  
 14/16 15/2  
 burdens [1] 18/15

---

C

call [1] 9/1  
 called [2] 3/2 5/3  
 can't [6] 7/24 8/2 8/3 15/6 15/8 17/13  
 cannot [1] 14/4  
 Cantú [20] 5/5 8/21 13/2 13/12 13/22 13/25 14/3  
 14/6 14/21 15/10 15/12 15/15 17/10 17/20 18/6  
 18/11 18/12 18/17 18/19 19/1  
 Cantú's [4] 7/1 7/5 9/11 14/11  
 Case [1] 1/5  
 certain [2] 7/10 18/15  
 CERTIFICATE [1] 19/10  
 certify [1] 20/6  
 Chain [1] 1/22  
 challenges [1] 11/11  
 changed [2] 16/2 16/4  
 charges [1] 7/11  
 choices [1] 10/23  
 chose [1] 12/5  
 chosen [1] 6/4  
 chosen is [1] 6/4  
 Civil [5] 1/5 2/4 3/9 3/23 13/17  
 claim [2] 10/11 10/17  
 claim-splitting [1] 10/17  
 claims [1] 10/9  
 class [1] 10/8  
 clear [6] 6/12 8/6 8/8 9/13 12/21 17/23  
 clearly [1] 16/21  
 client [1] 12/11  
 clients [2] 15/3 15/4  
 collapsed [1] 14/20  
 come [3] 15/10 15/17 18/11  
 comes [1] 3/25  
 communication [2] 16/5 17/6  
 communications [1] 17/11  
 completed [1] 13/19  
 COMPUTER [1] 1/25  
 COMPUTER-AIDED [1] 1/25  
 concerned [2] 7/18 15/11  
 conclude [1] 10/7  
 concluded [1] 19/9  
 conduct [1] 6/18  
 conference [2] 4/1 20/10  
 confident [2] 10/6 17/13  
 conformance [1] 20/10  
 conserve [1] 11/3  
 consider [2] 8/14 8/20  
 consideration [1] 8/5  
 consistent [1] 17/3  
 content [3] 11/15 17/8 17/11  
 context [1] 8/3  
 CONTINUED [1] 2/1  
 contravention [2] 15/21 16/18  
 COOPER [2] 1/17 4/6  
 correct [2] 8/10 20/7  
 correctly [1] 18/9  
 Costa [11] 6/3 6/5 6/16 7/2 9/12 10/20 12/1 12/6  
 15/16 15/22 15/24  
 Counsel [2] 4/2 5/3  
 country [4] 6/4 12/24 13/1 17/6

counts [1] 18/23  
 court [18] 1/1 1/10 3/2 3/9 3/23 3/25 4/24 7/1 7/6  
 9/10 9/13 10/1 14/16 17/18 17/19 18/15 20/4 20/5  
 Court's [1] 17/19  
 courtroom [1] 3/16  
 credit [1] 6/16  
 Crenshaw [1] 7/9  
 cross [1] 17/21  
 cross-examined [1] 17/21  
 CRR [1] 20/16  
 current [1] 7/11  
 custodian [1] 13/11  
 cv [1] 1/5

---

D

D.V.D [3] 10/7 10/10 10/16  
 date [3] 8/15 9/20 10/23  
 Dated [1] 20/12  
 day [3] 11/9 12/11 20/12  
 DC [3] 1/20 2/5 2/9  
 deal [1] 15/19  
 decide [2] 14/7 18/16  
 declaration [5] 5/20 7/23 13/6 17/20 18/11  
 defendant [1] 13/11  
 defendants [3] 14/1 16/16 19/2  
 defiance [1] 6/15  
 deny [1] 9/24  
 DEPARTMENT [26]  
 DEPUTY [1] 2/3  
 derived [1] 15/15  
 described [2] 7/22 18/9  
 deserves [1] 15/18  
 despite [1] 6/12  
 detail [2] 7/12 13/5  
 detailed [1] 9/14  
 DHS [10] 12/25 13/5 14/4 15/11 15/12 16/22 17/5  
 17/7 17/7 17/23  
 DHS's [1] 12/22  
 different [1] 15/25  
 difficult [1] 12/20  
 directive [1] 6/12  
 disagree [4] 8/25 9/3 10/16 11/17  
 discuss [1] 7/6  
 disinclined [1] 10/15  
 dispute [1] 11/25  
 dissolve [3] 9/24 10/3 18/24  
 DISTRICT [5] 1/1 1/1 1/10 20/5 20/5  
 division [4] 1/2 2/4 12/23 17/4  
 do [12] 6/18 6/22 8/13 8/17 8/17 11/7 11/8 14/12  
 14/13 15/8 17/19 20/6  
 documents [1] 17/25  
 doing [2] 14/20 17/9

---

E

each [1] 9/6  
 earlier [1] 17/17  
 ECF [4] 5/4 5/7 8/6 8/9  
 echo [2] 3/14 3/19  
 effect [1] 18/25  
 effectuate [1] 12/25  
 effectuating [1] 17/6  
 efficient [1] 14/10  
 either [6] 5/4 6/5 6/23 10/24 14/16 17/20  
 else [3] 4/12 14/6 19/4  
 EMANUEL [2] 1/14 1/18  
 end [1] 3/14  
 engage [1] 12/7  
 enough [1] 12/15  
 Ensign [1] 4/17  
 entitled [1] 20/9  
 ERNESTO [2] 2/7 4/10  
 ESQUIRE [7] 1/14 1/17 1/17 1/18 1/21 2/3 2/7  
 essentially [1] 13/6  
 Eswatini [1] 15/25  
 et [3] 1/6 3/10 3/25  
 even [6] 7/1 9/10 9/14 13/22 15/22 17/18  
 everyone [1] 18/20  
 everything [4] 11/8 14/22 17/8 17/14  
 evidence [3] 9/20 9/25 14/11  
 evidentiary [9] 5/6 5/14 5/22 6/17 6/20 7/24 9/8  
 11/6 11/11  
 exactly [1] 5/10  
 examined [1] 17/21  
 examining [2] 18/12 18/17  
 Executive [1] 6/2  
 exhibits [1] 7/4  
 expect [2] 18/19 18/22  
 expects [1] 19/1  
 expeditiously [1] 8/19  
 explain [1] 5/22  
 extent [1] 16/24

---

F

fact [3] 6/9 10/18 10/19  
 facts [2] 7/1 9/11  
 factual [2] 5/15 11/5  
 Fairfax [1] 1/23  
 fairness [1] 12/13  
 falls [1] 15/25  
 far [1] 14/15  
 fault [1] 12/8  
 faulting [1] 8/8  
 Federal [3] 13/17 20/4 20/17  
 filed [2] 8/7 16/5  
 find [1] 8/14  
 first [4] 6/24 7/19 12/18 18/19  
 firsthand [1] 6/7  
 firstly [1] 9/7  
 fish [1] 16/1  
 focus [1] 10/18  
 follow [2] 11/23 13/17  
 force [1] 5/8

**F**  
foregoing [1] 20/7  
format [1] 20/9  
forms [1] 14/11  
forward [1] 18/12  
four [2] 6/22 7/23  
Franklin [1] 2/8  
frankly [2] 5/9 11/2  
free [1] 4/25  
frustrated [1] 16/18  
frustrates [1] 16/18  
frustration [1] 15/11  
full [1] 8/3  
fully [1] 11/3  
further [2] 18/13 19/6

**G**  
GARCIA [3] 1/3 3/10 3/24  
Garcia's [1] 7/10  
GENERAL [1] 2/3  
getting [1] 9/14  
Giles [2] 12/21 13/4  
Giles' [2] 11/16 17/4  
gist [1] 18/5  
give [2] 8/13 8/25  
given [3] 7/6 9/12 18/14  
giving [1] 12/13  
go [8] 7/15 10/2 11/25 13/18 15/7 16/13 17/21  
18/21  
going [14] 3/13 3/13 4/15 4/19 7/3 7/13 7/13 8/4  
9/20 10/12 11/2 12/7 13/16 18/20  
good [7] 3/3 3/4 3/5 3/6 4/3 17/18 18/7  
got [4] 6/22 11/10 12/5 16/21  
gotten [2] 18/4 18/5  
government [9] 6/5 6/10 12/24 14/9 14/10 14/16  
14/24 17/24 18/15  
government's [1] 10/23  
grant [1] 9/23  
grants [1] 19/1  
great [1] 13/5  
GREENBELT [1] 1/2  
guess [2] 5/12 15/9  
GUYNN [12] 2/3 4/9 4/14 4/15 4/19 4/22 5/8 9/16  
10/12 11/19 16/12 17/2

**H**  
habeas [2] 10/8 13/10  
happy [2] 5/22 17/21  
hard [1] 10/21  
having [2] 11/11 18/11  
he'll [1] 13/5  
hear [9] 7/18 10/2 10/14 11/1 11/2 11/3 11/14  
16/15 16/17  
heard [2] 4/21 14/15  
hearing [21]  
held [1] 20/8  
hereby [1] 20/6  
him [2] 14/21 15/10  
his [3] 7/11 17/11 17/12  
history [1] 7/10  
Hold [1] 11/21  
Homeland [1] 14/22  
Honor [35]  
HONORABLE [1] 1/10  
HORTON [2] 1/17 4/7

**I**  
I'll [12] 5/12 10/12 10/13 10/15 11/2 14/7 14/17  
18/2 18/20 18/24 18/25 19/7  
I'm [39]  
I'm hearing [1] 3/12  
I've [8] 5/3 5/7 6/22 7/22 11/10 16/16 18/4 18/5  
identify [3] 4/2 4/21 12/24  
immediate [1] 13/11  
IMMIGRATION [1] 2/7  
important [1] 12/14  
inclined [4] 6/18 9/18 9/23 10/24  
including [1] 7/4  
individuals [2] 5/11 16/21  
information [7] 6/16 13/3 13/3 13/5 13/23 16/21  
17/25  
interactions [1] 12/23  
interruptions [1] 5/2  
is [76]  
isn't [2] 8/7 18/5  
issue [5] 6/11 10/17 11/5 18/10 18/25  
issues [3] 6/24 9/11 18/14  
itself [2] 6/6 18/23

**J**  
joined [2] 3/4 7/7  
JONATHAN [6] 1/17 2/3 4/6 4/9 4/14 4/19  
JR [1] 2/7  
judge [7] 1/10 3/3 3/5 3/6 7/9 9/22 10/16  
Judicial [1] 20/10  
jurisdictional [3] 6/25 9/13 9/19  
JUSTICE [1] 2/4

**K**  
keep [1] 18/20  
kettle [1] 16/1  
KILMAR [3] 1/3 3/10 3/24  
knowledge [5] 6/11 6/13 12/22 15/15 15/17  
knows [1] 14/22  
KRISTI [3] 1/6 3/10 3/25

**L**  
labor [1] 17/5  
largely [1] 5/24  
last [2] 6/9 15/21

latter [2] 8/15 9/25  
latter [1] 17/21  
least [1] 6/23  
leaper [1] 10/4 12/15 16/16  
legal [5] 6/24 9/11 9/12 9/23 11/5  
legally [1] 12/3  
lengthy [1] 18/20  
liberal [1] 18/1  
light [3] 6/9 6/18 10/23  
line [4] 4/13 4/23 4/24 7/7  
listen [1] 4/25  
litigate [1] 10/8  
litigated [1] 10/10  
LITIGATION [1] 2/7  
LLC [1] 1/18  
LLP [1] 1/14  
longer [1] 6/3  
look [3] 11/14 17/3 18/12

**M**  
made [2] 13/25 18/10  
make [8] 7/13 8/6 8/8 8/22 12/3 15/19 18/4 18/14  
makes [1] 7/17  
making [1] 7/9  
manner [1] 19/1  
MARYLAND [2] 1/1 20/6  
matter [5] 3/8 3/23 3/25 10/19 20/9  
may [4] 3/4 5/15 14/4 16/19  
maybe [3] 3/20 7/17 16/4  
mean [2] 6/6 13/22  
member [1] 10/7  
met [1] 8/15  
might [2] 16/6 16/17  
MOLINA [5] 2/7 4/10 4/16 4/19 16/10  
MONDAY [1] 1/11  
moot [1] 16/6  
more [9] 4/25 5/1 7/12 8/25 11/6 11/10 12/16 14/10  
16/25  
morning [1] 4/3  
MOSHENBERG [2] 1/21 4/4  
motion [3] 9/24 15/19 18/23  
motions [1] 9/8  
move [2] 8/19 9/17  
moving [1] 18/21  
Mr. [45]  
Mr. Abrego [2] 6/4 7/10  
Mr. Cantú [20] 5/5 8/21 13/2 13/12 13/22 13/25  
14/3 14/6 14/21 15/10 15/12 15/15 17/10 17/20 18/6  
18/11 18/12 18/17 18/19 19/1  
Mr. Cantú's [4] 7/1 7/5 9/11 14/11  
Mr. Ensign [1] 4/17  
Mr. Giles [2] 12/21 13/4  
Mr. Giles' [1] 11/16  
Mr. Guynn [8] 4/15 4/22 5/8 9/16 10/12 11/19 16/12  
17/2  
Mr. Molina [3] 4/16 4/19 16/10  
Mr. Rand [1] 18/7  
Mr. Schultz [1] 13/4  
Mr. Schultz's [2] 11/16 17/3  
MURRAY [1] 1/22  
myriad [1] 9/12

**N**  
nature [1] 12/22  
need [8] 7/23 8/13 9/2 10/18 11/7 13/17 14/6 18/2  
needs [1] 17/18  
neither [3] 3/20 5/19 6/19  
New [1] 1/15  
NITHYA [2] 1/18 4/8  
no [12] 4/14 4/15 4/18 5/1 6/3 6/13 9/22 11/21  
11/24 18/9 18/13 19/5  
NOEM [3] 1/6 3/10 3/25  
non [1] 10/7  
non-opt-out [1] 10/7  
nonparties [1] 15/5  
nonspecific [1] 10/21  
not [41]  
not unhappy [1] 11/19  
NOTES [1] 1/25  
nothing [3] 12/6 15/22 19/5  
NOVEMBER [2] 1/11 20/12  
number [6] 1/5 3/9 3/24 6/8 6/9 7/4  
numerous [1] 6/24  
NW [2] 1/19 2/4  
NY [1] 1/15

**O**  
obligation [2] 8/25 14/16  
observation [1] 18/14  
obviously [2] 16/17 18/10  
October [2] 6/12 6/12  
October 10 [1] 6/12  
OFFICE [1] 2/7  
official [4] 14/4 20/1 20/4 20/17  
often [1] 17/24  
Oh [1] 4/20  
okay [12] 4/22 5/3 9/21 10/1 11/10 11/13 11/13  
11/19 12/18 13/21 17/22 18/18  
OLIVIA [2] 1/17 4/7  
one [7] 6/6 6/8 11/9 12/11 12/20 13/22 14/21  
ones [1] 10/3  
only [5] 8/18 10/16 13/5 13/10 15/12  
open [3] 7/6 7/14 14/12  
opt [1] 10/7  
option [2] 6/3 12/13  
options [2] 5/19 5/20  
oral [1] 18/21  
order [7] 3/2 6/15 7/8 11/24 11/25 15/21 18/25  
ordered [1] 6/10  
orders [1] 16/19  
OSORIO [1] 1/22  
other [4] 6/14 9/23 17/25 18/6

others [2] 5/15 7/5  
out [2] 3/18 10/7  
over [1] 14/11  
**P**  
p.m [2] 1/11 19/9  
P.O [1] 2/8  
page [1] 20/9  
part [1] 12/10  
particular [1] 13/1  
parties [3] 14/1 16/17 18/22  
party [3] 8/23 13/9 16/15  
past [2] 11/4 16/16  
PATHALAM [2] 1/18 4/8  
PAULA [4] 1/10 20/4 20/15 20/16  
pending [2] 3/9 3/23  
Pennsylvania [1] 2/4  
people [1] 4/21  
perhaps [3] 9/20 10/1 11/16  
person [2] 6/7 6/11  
petition [3] 9/24 18/22 18/23  
petitioner [17] 1/4 1/13 4/4 4/5 4/6 4/7 4/8 5/4  
10/2 10/7 13/16 14/5 16/3 16/6 16/24 18/4 18/8  
petitioners [1] 8/22  
please [1] 4/2  
point [4] 3/19 8/22 9/1 17/7  
points [2] 9/6 18/10  
potential [1] 9/7  
precludes [1] 7/9  
predicate [1] 5/16  
prefer [2] 5/13 5/13  
prepare [2] 14/21 18/19  
prepared [5] 11/24 12/1 15/12 15/12 18/22  
present [1] 12/11  
presented [1] 5/19  
pretty [2] 5/9 12/21  
prevent [1] 6/25  
previously [1] 9/9  
prior [2] 6/18 11/25  
problem [2] 5/24 12/12  
procedure [2] 13/3 13/17  
PROCEEDING [1] 1/9  
proceedings [2] 19/9 20/8  
process [3] 13/19 14/7 15/7  
produce [1] 14/11  
prohibited [1] 12/4  
prong [1] 6/1  
proof [1] 18/15  
proper [1] 13/11  
protecting [1] 18/1  
protection [1] 15/19  
provide [3] 7/13 7/14 13/14  
provided [1] 12/21  
public [4] 4/23 4/24 7/7 7/14  
purpose [1] 16/22  
pursuant [1] 20/6  
put [7] 5/12 5/25 6/13 9/2 10/20 16/1 17/24  
putting [2] 6/17 14/9  
PX [1] 1/5  
PX25 [2] 3/9 3/24  
PX25-2780 [2] 3/9 3/24

**Q**  
question [3] 8/17 10/9 12/16  
questions [1] 9/23  
quick [2] 3/18 7/3  
quickly [1] 10/4  
QUINN [2] 1/14 1/18  
quote [1] 14/24

**R**  
raised [1] 11/5  
RAND [3] 1/14 4/5 18/7  
rather [1] 11/7  
reach [4] 9/10 9/22 9/22 17/18  
reaching [1] 7/1  
read [2] 5/7 11/25  
ready [1] 3/7  
real [2] 3/18 7/3  
really [4] 6/6 10/22 14/8 16/18  
reason [1] 5/3  
reasonable [1] 6/3  
reasons [4] 5/23 6/22 7/23 17/17  
record [5] 4/2 5/16 7/25 8/6 8/7  
references [1] 5/10  
referring [1] 7/22  
regard [2] 11/25 18/21  
regulations [1] 20/10  
reject [2] 9/18 9/18  
related [3] 7/1 7/10 9/11  
relatively [1] 8/2  
relevant [1] 16/25  
relieve [1] 14/15  
rely [1] 6/1  
remind [2] 4/23 18/2  
removal [2] 12/24 13/1  
removals [1] 7/6  
reported [1] 20/8  
REPORTER [3] 20/1 20/4 20/17  
representing [2] 14/23 14/24  
request [1] 13/25  
requirements [1] 18/3  
reschedule [1] 9/20  
resolve [1] 13/24  
resources [1] 11/4  
respect [1] 9/7  
respectfully [1] 11/17  
respond [2] 7/19 8/16  
responded [1] 8/9  
respondents [7] 1/7 2/2 4/9 4/11 4/12 14/25 19/6  
response [1] 8/7  
Rica [11] 6/3 6/5 6/16 7/2 9/12 10/20 12/1 12/6

R  
Rica... [3] 15/16 15/22 15/24  
right [16] 7/6 7/20 7/22 7/23 7/25 7/26 7/27 7/28  
10/10 10/15 15/1 16/24 18/5 18/18 18/21 19/7  
RMR [1] 20/16  
Road [1] 1/22  
rules [2] 4/24 13/17

S  
same [4] 4/24 15/23 17/23 18/3  
SANDOVAL [2] 1/21 4/4  
SANDOVAL-MOSHENBERG [2] 1/21 4/4  
SASCHA [2] 1/14 4/5  
saying [10] 8/1 9/21 10/3 10/5 10/17 13/14 13/15  
14/3 15/8 15/9  
Schultz [2] 12/21 13/4  
Schultz's [2] 11/16 17/3  
seal [3] 8/14 14/12 18/2  
sealed [2] 7/5 18/2  
sealing [3] 8/15 15/19 18/3  
second [2] 9/16 15/6  
Secretary [2] 3/10 3/24  
Security [1] 14/22  
see [4] 12/10 15/14 18/24 19/7  
seek [2] 14/7 14/7  
seeks [1] 12/24  
seems [1] 8/24  
sense [1] 7/17  
set [2] 9/9 11/6  
shall [1] 5/1  
share [2] 13/2 13/5  
shared [1] 16/5  
shore [1] 12/15  
show [1] 16/25  
SIMON [2] 1/21 4/4  
simply [1] 14/10  
since [3] 12/11 12/16 16/5  
situation [1] 17/24  
skis [1] 14/14  
so [27]  
somehow [1] 12/3  
something [3] 9/15 14/5 17/17  
sorry [4] 4/17 4/20 8/11 16/11  
sound [1] 16/6  
sounds [2] 5/18 14/3  
specifically [1] 6/10  
speed [1] 9/17  
split [1] 10/11  
splitting [1] 10/17  
stand [1] 12/5  
stands [1] 10/20  
State [24]  
statements [3] 7/4 7/10 7/12  
STATES [5] 1/1 1/10 7/8 20/5 20/11  
Station [1] 2/8  
status [2] 1/9 5/3  
stenographically [1] 20/8  
stenographically-reported [1] 20/8  
STENOTYPED [1] 1/25  
step [1] 13/22  
still [1] 15/24  
stipulate [1] 15/24  
stop [6] 3/13 3/14 9/16 10/12 10/13 11/21  
strategy [1] 12/10  
Street [1] 1/19  
stricken [3] 5/21 10/24 18/12  
strike [7] 5/4 5/13 6/19 7/23 14/1 14/17 17/20  
subpoena [1] 13/18  
sugarcoat [1] 6/14  
suggesting [1] 8/24  
suggests [1] 14/15  
Suite [2] 1/19 1/22  
SULLIVAN [2] 1/14 1/18  
sum [1] 17/14  
suppose [4] 13/21 14/9 16/14 16/22

T  
table [2] 15/23 15/25  
taken [1] 9/21  
talk [1] 12/1  
talking [1] 8/21  
tasks [1] 12/24  
telephone [1] 4/1  
TELEPHONIC [1] 1/9  
tell [6] 5/8 5/15 6/19 10/15 13/6 17/10  
telling [1] 12/14  
terms [1] 5/9  
terrible [1] 3/14  
terribly [1] 18/20  
test [2] 3/18 6/17  
testified [3] 11/22 13/4 17/23  
testifies [1] 14/6  
testify [4] 15/4 15/17 18/19 19/1  
testimony [8] 7/1 9/4 9/11 11/16 11/16 12/22 14/12  
17/4  
therefore [1] 8/23  
thin [1] 5/9  
things [5] 6/23 7/24 12/20 15/10 16/1  
think [31]  
thinks [1] 14/10  
third [2] 6/4 17/6  
third-country [1] 17/6  
though [3] 13/15 14/18 17/1  
thought [4] 4/20 4/21 10/3 10/19  
three [1] 4/21  
threshold [3] 6/24 9/12 11/1  
through [3] 13/18 15/7 15/25  
Thursday [16] 5/5 5/14 5/22 8/18 9/8 10/14 11/3  
11/12 13/20 14/13 15/3 15/10 17/21 18/12 18/24  
19/8  
time [3] 13/22 17/19 18/13  
today [4] 4/19 11/7 14/23 14/25

top [1] 3/21  
total [1] 17/14  
Touhy [1] 13/19 15/7  
transcript [9] 1/7 1/20 20/9  
TRANSCRIPTION [1] 1/25  
true [1] 20/7  
trying [4] 5/10 10/22 11/3 14/14  
turn [4] 5/5 5/14 5/25 18/4  
two [5] 6/9 11/10 12/16 12/19 14/21

U  
U.S.C [1] 20/6  
under [3] 7/8 8/13 14/12  
underlying [2] 13/23 17/25  
understand [4] 5/7 8/3 9/5 10/21  
understanding [1] 17/13  
unhappy [4] 11/15 11/19 11/22 11/23  
unidentified [1] 5/11  
UNITED [5] 1/1 1/10 7/8 20/5 20/11  
unlike [1] 15/21  
unlikely [1] 9/10  
unnamed [1] 5/10  
unquote [1] 14/24  
unseal [1] 8/15  
unwilling [1] 13/14  
up [4] 7/3 10/23 12/15 18/17  
uphill [1] 5/18  
URQUHART [2] 1/14 1/18  
use [1] 17/18  
useless [1] 8/2

V  
VA [1] 1/23  
versa [1] 17/9  
very [6] 6/11 6/12 9/10 10/6 10/21 10/21  
vice [1] 17/9  
view [1] 18/9  
vs [1] 1/5

W  
Wait [1] 9/15  
want [10] 6/1 6/16 7/12 8/6 8/8 8/18 9/17 10/2  
13/24 13/24  
wants [2] 13/16 16/3  
was [14] 6/11 6/14 8/6 8/12 12/3 14/20 15/6 15/23  
15/23 16/5 16/10 16/11 16/11 16/14  
Washington [3] 1/20 2/5 2/9  
Waverly [1] 7/9  
way [2] 6/14 10/2  
we'll [6] 15/7 15/14 15/19 18/16 18/21 19/3  
welcome [1] 5/1  
well [14] 3/15 5/17 5/24 7/19 7/21 10/5 12/9 12/18  
13/8 13/21 14/19 15/14 16/9 18/23  
whatever [1] 14/7  
whenever [1] 17/23  
whether [6] 9/8 10/8 12/7 12/14 14/12 17/24  
while [2] 7/14 17/10  
whoever [1] 8/21  
whole [1] 16/22  
willing [1] 15/9  
win [1] 11/2  
wise [1] 11/8  
wish [2] 5/16 18/16  
wishes [1] 17/19  
within [1] 16/22  
without [2] 6/17 13/22  
witness [15] 6/13 10/25 11/8 11/24 12/1 12/5 12/15  
13/8 13/15 13/16 14/16 15/16 15/21 16/19 16/21  
witness's [1] 12/8  
witness-wise [1] 11/8  
witnesses [10] 7/18 8/19 8/20 9/1 10/25 11/18  
11/22 15/3 16/16 18/6  
won't [2] 7/5 15/8  
word [1] 6/2  
words [1] 6/2  
works [1] 12/25  
worth [1] 10/19  
writing [3] 7/19 8/9 8/16

X  
XINIS [1] 1/10

Y  
yeah [5] 3/20 8/12 12/18 14/9 17/3  
yes [4] 3/12 3/22 17/16 18/9  
York [1] 1/15  
yourselves [1] 4/2