

## **Muted Justice**

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The Chief Justice of the United States possesses significant power. His position as the senior most Justice on the U.S. Supreme Court allows him to assign opinions to other Justices and to coordinate scheduling the Court's cases for argument.<sup>1</sup> And after Justice Kennedy retired in June 2018, Chief Justice Roberts is now the median Justice on the Court, and his vote will often determine how a case will come out.<sup>2</sup>

Recent scholarship has identified another source of the Chief Justice's power—moderating oral arguments.<sup>3</sup> Oral arguments at the Court are typically something of a free for all, where each Justice can ask a question at any time. Because multiple Justices try to speak at the same time, and because Justices often interrupt one another and the advocates, the Chief Justice will determine which Justice will speak when multiple Justices want to do so.<sup>4</sup> A pathmarking study by Tonya Jacobi and Dylan Schweers determined that female Justices were more likely to be interrupted than male Justices and also less likely to be allowed to speak when interrupted.<sup>5</sup> (The same study found that conservative Justices are also more likely to interrupt than liberal Justices.<sup>6</sup>) Some Court

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<sup>1</sup> G. Edward White, *The Internal Powers Of the Chief: The Ninteenth-Century Legacy*, 154 U. Penn. L. Rev. 1463, 1464-65 (2006); Walter F. Murphy, *Marshaling the Court: Leadership, Bargaining, and the Judicial Process*, 29 U. Chi. L. Rev. 640, 642 (1962); David J. Danelski, *The Influence of the Chief Justice in the Decisional Process of the Supreme Court*, in *American Court Systems* 486, 487 (Sheldon Goldman & Austin Sarat eds., 2d ed. 1989).

<sup>2</sup> Mark Walsh, *Chief Justice Roberts slides into the high court's ideological middle with the retirement of Justice Kennedy*, ABA Journal (Sept. 1, 2018).

<sup>3</sup> Tonja Jacobi & Dylan Schweers, *Justice, Interrupted: The Effect of Gender, Ideology, And Seniority At Supreme Court Oral Arguments*, 103 Va. L. Rev. 1379 (2017). For additional studies on oral arguments at the Court, see Tonja Jacobi & Matthew Sag, *The New Oral Argument: Justices As Advocates*, 94 Notre Dame L. Rev. 1161 (2019), and Tonja Jacobi & Matthew Sag, *Taking Laughter Seriously At The Supreme Court*, 72 Vand. L. Rev. 1423 (2019).

<sup>4</sup> Jacobi & Schweers, *supra* note TK at 1484-85.

<sup>5</sup> Jacobi & Schweers, *supra* note TK, at 1382-89.

<sup>6</sup> Jacobi & Schweers, *supra* note TK, at 1382-89.

observers believe that, after their study and findings came out, the Chief Justice tried to adjust his practices to minimize these gender disparities.<sup>7</sup>

For the last arguments of October Term 2019, however, the Court used a different model for oral argument. The coronavirus forced the Court to postpone its in-person arguments from the March and April sittings. The Court rescheduled some of the cases for telephone arguments over the first two weeks of May.<sup>8</sup> But the format of the telephone arguments was not the Court's typical free for all. Rather, the Court instructed the advocates that each Justice would be allowed to ask questions for an allotted period of time, with each Justice asking questions in order of seniority.<sup>9</sup> This system eliminated the Justices' ability to interrupt one another, but it forced the Chief Justice to singlehandedly police each Justice's time limits.

Studying what happened at these May arguments is helpful for several reasons. It is possible that the Court may have to continue remote arguments into October Term 2020 since we will not have returned to full normalcy by October 2020. This data might be helpful if the Court chooses to retain this format but make minor modifications. It may, in particular, help the Chief Justice better enforce the stated rules for the different Justices. Having a picture of what happened at the telephonic arguments may also be useful to the advocates. And the data might also inform the Court's decision about whether to continue the seriatim format from the May sitting or instead revert to a more unstructured argument system, even if arguments continue to happen remotely.

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<sup>7</sup> Press Release Regarding Postponement of March Oral Arguments (March 16, 2020), [https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_03-16-20](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_03-16-20)

; Press Release Regarding Postponement of April Oral Arguments (April 3, 2020), [https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_04-03-20](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-03-20).

<sup>8</sup> Supreme Court Of the United States October Term 2019 Oral Argument Calendar For the Session Beginning May 4, 2020, [https://www.supremecourt.gov/oral\\_arguments/argument\\_calendars/MonthlyArgumentCalMay2020.pdf](https://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentCalMay2020.pdf).

<sup>9</sup> Supreme Court Press Release, April 28, 2020, [https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_04-28-20](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_04-28-20).

Additionally, the data provide some very limited insight into the behind the scene dynamics at the Court and among the different Justices. Some Justices spoke more than others, and some Justices were allowed to speak more than others. The Chief Justice's decisions about when to cut off which Justices in which arguments might also provide some clues about where the median Justice on the new Court is leaning in particular cases.

The data also run counter to several common tropes about the Court. In particular, Justice Breyer, despite his reputation as a somewhat lengthy questioner,<sup>10</sup> spoke relatively little compared to his colleagues. Justice Breyer was also the only Justice to pass asking questions to a particular advocate. And although Justice Sotomayor had her questioning sessions ended the most by the Chief Justice, she had none of the nine longest questioning periods (she had only one of the fourteen longest questioning periods—a tie for the tenth longest).

Perhaps unsurprisingly, all three of the longest questioning periods were from male Justices. Seventy-five percent of the twelve longest questioning periods were from male Justices (who make up 67% of the Court), all of them conservative. Similarly, all three of the shortest questioning periods that were ended by the Chief Justice were from women Justices; indeed, they had 8 of the 12 shortest questioning periods that were ended by the Chief Justice.

This small snapshot, however, can only tell us so much. There were a mere ten arguments over a two week period, and this format was new to everyone. But it is still interesting to see how the Court and the various Justices adapted to the new format, and quantifying how they did may help them to adapt further.

## I. Method

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<sup>10</sup> *Empirical SCOTUS: Is oral-argument talking time all it's cut out to be?*, SCOTUSBlog (Oct. 21, 2019), <https://www.scotusblog.com/2019/10/empirical-scotus-is-oral-argument-talking-time-all-its-cut-out-to-be/>.

Before laying out the results, a word about method. I listened to the Court’s arguments on *Audio Arguendo*—a podcast that plays unfiltered and unedited Court arguments. I timed the amount of time each Justice received to ask questions and have them answered. I refer to this as the “questioning period,” and I’ve listed my time stamps in an appendix.

There were a few times during arguments when a Justice apparently did not unmute themselves when it was their turn to speak, and so the Chief Justice would call their name multiple times before proceeding on to the next Justice. I did not count that time toward any Justice’s questions and answers, but I have identified when that occurred.<sup>11</sup> There were also a few times where the Chief Justice had to call out a Justice’s name multiple times before the Justice started asking questions.<sup>12</sup> Here too, I did not count that time toward the Justice’s questioning period. Rather, I started the Justice’s questioning period at the last point in time where the Chief Justice said a Justice’s name before that Justice started asking questions.

I concluded the time counted toward each Justice’s questioning period when the first of three things occurred: (1) the Chief Justice said “thank you,” signaling a move to the next Justice; (2) the Justice questioning the advocate said “thank you,” signaling a move to the next Justice; or (3) the Chief Justice said the name of the next Justice in the questioning order, signaling a move to the next Justice. There were a handful of times when these events did not end a Justice’s time asking questions or having them answered. I have noted when that occurred below and I ended those questioning periods when one of the

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<sup>11</sup> In *Little Sisters Of the Poor*, the Chief Justice called on Justice Thomas from 3:50-4:09 before going to Justice Ginsburg then. In *Barr v. AAPC*, the Chief Justice called on Justice Breyer from 47:03-47:18 before going to Justice Alito and then Justice Sotomayor. In *McGirt v. Oklahoma*, the Chief Justice called on Justice Alito from 32:39-32:55 before going to Justice Sotomayor. In *Trump v. Mazars*, the Chief Justice called on Justice Thomas from 4:36-4:51 before going to Justice Ginsburg.

<sup>12</sup> In *Booking.com*, The Chief Justice started calling Justice Sotomayor’s name at 19:54 and she began asking questions at 20:06. In *USAID*, the Chief Justice started calling Justice Sotomayor’s name around 19:44 and she started talking at 19:54. In *Chiafalo v. Washington*, the Chief Justice started calling Justice Alito’s name at 16:07 and he began asking questions at 16:16.

preceding events occurred and that event marked the end of the Justice's question/answer period.

Two Justices were recused from two cases during the May sitting. Justice Sotomayor was recused from *Colorado v. Baca*, and Justice Kagan was recused from *United States Agency for International Development v. Alliance for Open Society*. Because their recusals meant that they had fewer opportunities to ask questions, their total number of seconds for questioning may appear artificially low. However, I have included the average times per questioning rounds used, which adjusts for their recusals.

Additionally, some of the Justices elected to pass on asking questions. Those passes were counted as zero for purposes of the total amount of time the Justices had for asking questions and for calculating averages. But because those opportunities did not allow me to measure or compare the amount of time the Chief Justice allowed the various Justices to speak, I have also included averages for questioning periods that exclude the times when a Justice passed, which I believe reflects the best assessment of how much the Chief allowed the different Justices to speak. I have also included a projected total time that would have been allowed for those Justices to speak if they had used their questioning periods. (I projected that the Justices would receive the average of the other Justices' questioning periods during that particular round of questioning.)

Two of the arguments (the presidential immunity cases) involved "second" rounds of questioning where the Justices were given the opportunity to question a particular advocate for a second time. These second rounds were comparatively shorter than other rounds of questioning. The second rounds were also when both Justice Ginsburg and Justice Gorsuch elected to pass on asking questions (Justice Breyer also passed on one of the rounds, in addition to another argument).

## II. Findings

A. Numbers And Charts

With those caveats, here are a bunch of charts displaying various findings from the oral arguments.

**The total time (in seconds) each Justice was allowed to speak:**

Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
4293	4663	4397	4495	5362	5023	4771	4990	5097

That translates into the following amount of time in minutes:

Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
71.5	78	73	75	89	84	79.5	83	85

**The average number of seconds each Justice was allowed to speak for total questioning periods (27 for all Justices, even those who were recused or passed):**

Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
159	173	152	155	199	186	177	185	189

**The average number of seconds each Justice was allowed for each questioning period they used (i.e., excluding questioning periods they passed or questioning periods in which they were recused):**

Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
159	173	176	180	199	200	191	200	189

Ranked by average time allowed to speak per questioning period they used, the Justices are:

Gorsuch/Sotomayor (tie)	200
Alito	199

Kagan	191
Kavanaugh	189
Breyer	180
Ginsburg	176
Thomas	173
Chief	159

Ranked by average time allowed to speak over all questioning periods (including when they passed or were recused), the Justices are:

Alito	199
Kavanaugh	189
Sotomayor	186
Gorsuch	185
Breyer	180
Kagan	177
Ginsburg	176
Thomas	173
Chief	159

Here are projected totals that estimate the total amount of time a Justice would have had to speak if the Justice had not passed (as Justice Gorsuch and Justice Ginsburg did in the second round of questioning in the presidential immunity cases, which was relatively shorter than other questioning rounds, and Justice Breyer did in *McGirt* and *Vance*) and if a Justice was not recused (as Justice Sotomayor was in *Baca* and Justice Kagan was in *USAID*). The total time (in seconds) each Justice would be as follows:

Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
4293	4663	4626	4752	5326	5420	5215	5219	5097



I projected that each Justice would have been given an additional amount of time that represented the average of their colleagues' questioning times during rounds that they missed. These projections would have slightly changed the rankings—Justice Sotomayor would have spoken the most followed closely by Justice Alito; Justice Gorsuch would have spoken the third most followed closely by Justice Kagan.

I have also included a breakdown of questioning time per argument.

**United States Patent & Trademark Office v. Booking.com**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	447	465	448	394	418	413	483	475	361

**United States Agency for International Development v. Alliance for an Open Society**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	359	435	498	385	464	532	0 (recused)	532	338

**Little Sisters of the Poor v. HHS/Trump v. Pennsylvania**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	396	638	644	464	784	620	688	586	562

**Barr v. AAFC**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	418	403	400	342	427	430	424	479	487

**McGirt v. Oklahoma**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	263	405	410	264	419	438	422	432	443

**Our Lady of Guadalupe**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	349	461	649	642	626	679	694	665	563

**Trump v. Mazars**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	481	465	364	641	716	625	663	462	765

Without a second round of questioning for Douglas Letter:

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	333	483	364	488	598	564	540	462	613

**Trump v. Vance**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	670	563	500	481	710	734	570	569	762

Without a second round of questioning for Carey Dunne:

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	535	469	500	481	634	617	497	569	615

**Chiafalo v. Washington**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	437	456	201	478	505	527	438	378	469

### **Colorado v. Baca**

	Chief	CT	RBG	SGB	SAA	SS	EK	NG	BK
	473	372	283	404	504	0 (recused)	389	412	347

#### B. Analysis

Judged by the metric of average time per questioning period used, the Chief appears to have done a somewhat evenhanded job of moderating the questions, at least ideologically. Justice Gorsuch, one of the Court’s conservatives, and Justice Sotomayor, one of the Court’s liberals, spoke the most. Justice Alito, one of the Court’s conservatives, spoke the third most, followed by Justice Kagan, one of the Court’s liberals. But there are additional complications explained below that raise questions about how evenhanded the questioning periods were.

Comparing average time across all questioning periods, however, the balance is somewhat less evenhanded – Justice Alito spoke much more than other Justices (ten seconds more every questioning period), and Justice Kavanaugh spoke the second most.

The ideological balance in questioning appeared to break down somewhat in the presidential immunity cases. In the congressional subpoena case (*Trump v. Mazars*) in particular, Justice Alito and Justice Kavanaugh were both allowed significantly more time than their colleagues. Justice Kavanaugh spoke a minute and a half more than Justice Kagan, the Justice who spoke the third most, and Justice Alito spoke almost a minute longer than Justice Kagan. The Chief also spoke relatively more in these cases than in others, where he consistently had the shortest questioning periods.

### **Trump v. Mazars**

Kavanaugh	765
Alito	716

Kagan	663
Breyer	641
Sotomayor	625
Chief	481
Thomas	465
Gorsuch	462
Ginsburg	364

In the grand jury subpoena case, *Trump v. Vance*, three of the four Justices speaking the longest were conservative Justices (though in that case, the Chief Justice in particular seemed receptive to New York’s position). But the disparities between the length of time they spoke and the length of time their liberal colleagues spoke is striking. Justice Kavanaugh spoke for 30 seconds longer than Justice Sotomayor, who spoke the second most (and was the most active liberal Justice). Justice Kavanaugh also spoke a full three minutes longer than the next most liberal Justice, Justice Kagan. Both Justice Alito and the Chief Justice, who spoke the third and fourth most, spoke more than two minutes and one minute (respectively) longer than Justice Kagan, the Justice who spoke the fifth most, and the liberal Justice who spoke the second most in the argument.

**Trump v. Vance**

Kavanaugh	762
Sotomayor	734
Alito	710
Chief	670
Kagan	570
Gorsuch	569
Thomas	563
Ginsburg	500
Breyer	481

Justice Kavanaugh, President Trump’s most recent appointee to the Supreme Court, also spoke a lot more in the presidential immunity cases than he did in any others. Whereas he often had or received questioning periods that were shorter than a majority of his colleagues, he spoke the most in the congressional subpoena case and in the grand jury subpoena case.

The other major cases from this sitting were either slightly more balanced ideologically in some respects or slightly reversed in that the liberal Justices spoke relatively more.

The contraceptive mandate case, *Little Sisters of the Poor*, was slightly more ideologically balanced in the sense that a conservative Justice, Justice Alito, spoke the most and more liberal Justices spoke the second and third most. But it was not particularly well balanced given that the conservative Justice who spoke the most, Justice Alito, was allowed to speak more than a minute and a half longer than the Justice who spoke the second most (Justice Kagan), and two minutes longer than the Justice who spoke the third most (Justice Ginsburg).

**Little Sisters of the Poor v. HHS/Trump v. Pennsylvania**

Alito	784
Kagan	688
Ginsburg	644
Thomas	640
Sotomayor	620
Gorsuch	586
Kavanaugh	562
Breyer	464
Chief	396

The religious exemption case involved the liberal Justices speaking relatively more – Justice Kagan and Justice Sotomayor spoke the most, and Justice Ginsburg and Justice

Breyer spoke the fourth and fifth most. But the differences between these Justices and the conservative Justice who spoke the third most (Justice Gorsuch) and fifth most (Justice Thomas) is relatively small. Justice Kagan and Justice Sotomayor spoke for 15-30 seconds more than Justice Gorsuch. And Justice Ginsburg and Justice Breyer spoke for 15-25 seconds more than Justice Thomas.

**Our Lady of Guadalupe**

Kagan	694
Sotomayor	679
Gorsuch	665
Ginsburg	649
Breyer	642
Alito	626
Kavanaugh	563
Thomas	461
Chief	349

The non-ideological cases, unsurprisingly, reflected more ideological balance. Justice Sotomayor also tended to talk more—and was allowed to talk more—in these cases.

**United States Patent & Trademark Office v. Booking.com**

Kagan	483
Gorsuch	475
Thomas	465
Ginsburg	448
Chief	447
Sotomayor	438
Alito	418
Breyer	394
Kavanaugh	361

**United States Agency for International Development v. Alliance for an Open Society**

Sotomayor/Gorsuch (tie)	532
Ginsburg	498
Alito	464
Thomas	435
Breyer	385
Chief	359
Kavanaugh	338
Kagan (recused)	0

**Barr v. AFC**

Kavanaugh	487
Gorsuch	479
Sotomayor	430
Alito	427
Kagan	424
Chief	418
Thomas	403
Ginsburg	400
Breyer	342

**McGirt v. Oklahoma**

Sotomayor	438
Gorsuch	432
Kagan	422
Alito	419
Thomas/Ginsburg (tie)	410
Kavanaugh	409
Breyer	264

Chief	263
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### **Chiafalao v. Washington**

Sotomayor	527
Alito	505
Breyer	478
Kavanaugh	469
Thomas	456
Kagan	438
Chief	437
Gorsuch	378
Ginsburg	201

### **Colorado v. Baca**

Alito	504
Chief	473
Gorsuch	412
Breyer	404
Kagan	389
Thomas	372
Kavanaugh	347
Ginsburg	283
Sotomayor (recused)	0

There are other interesting aspects to these statistics. For one thing, the Chief Justice spoke, by far, less than any other Justice. He spoke for a total of 4293 seconds; the Justice closest to him, Justice Ginsburg, spoke for 4397 seconds.

On the other end, Justice Alito spoke the most of any Justice. He spoke for a total of 5362 seconds; the Justice who spoke the second most, Justice Kavanaugh, spoke for 5063 seconds, and the Justice who spoke the third most, Justice Sotomayor, spoke for 5023



seconds. (Justice Gorsuch spoke the fourth most for 4990 seconds.) However, both Justice Sotomayor and Justice Kagan were recused from an argument. If they were not recused, I projected that Justice Sotomayor would have spoken the most, and Justice Kagan the fourth most. But those are just projections; and it's important to note that Justice Gorsuch, who spoke the fourth most in absolute numbers, passed on two rounds of questioning. So he could have spoken more had he wanted to and Justice Kagan's projection might overstate how much she spoke relative to other Justices.

Justice Alito, Justice Gorsuch, and Justice Sotomayor spoke for roughly the same amount of time per questioning period that they used. Justice Gorsuch and Justice Sotomayor spoke the longest per questioning period (an average of 200 seconds per questioning period they used), and Justice Alito spoke the next longest (199 seconds per questioning period). The Chief Justice, by contrast, spoke for 159 seconds per questioning period. And in between those poles were Justice Kagan at 191 seconds, Justice Kavanaugh at 189 seconds, Justice Breyer at 180 seconds, Justice Ginsburg at 176 seconds, and Justice Thomas at 173 seconds.

I want to resist what might be an impulse to say that these differences of mere seconds are insignificant. Justice Gorsuch spoke, on average, 20 seconds more per questioning period than Justice Breyer and almost 25 seconds more per questioning period than Justice Ginsburg and almost 10 seconds more per questioning period than Justice Kagan. At Supreme Court arguments, these small differences matter. Justice Alito did as well, together with Justice Sotomayor. Ten seconds is more than enough time to rattle off a possible distinction with a case that an advocate has raised (think "that case involved executive privilege") or to suggest that the principle an advocate is articulating is inconsistent with a case (think "how about the Paula Jones case"?). And those points can end up making the difference in how persuasive an exchange has been. All of those differences are more than enough time to get off at least one additional question, even if it is a short one.

Moreover, while Justice Gorsuch, Justice Alito, and Justice Sotomayor's averages are relatively close to one another, in other respects their numbers are less comparable. In

particular, the averages do not account for the number of times a Justice ended their own questioning periods. Justice Gorsuch ended his own questioning periods seven times, whereas Justice Sotomayor ended her own questioning period only once. But they spoke, on average, the same amount of time per questioning period although the Chief Justice ended Justice Sotomayor’s questioning periods six more times. Justice Alito ended his own questioning period twice—more similar to the numbers for Justice Sotomayor.

Similarly, Justice Kavanaugh ended ten of his own questioning periods, but Justice Kagan ended six of her own questioning periods (she was also recused from two questioning periods), even though they spoke for roughly the same amount of time per questioning period. And Justice Thomas ended ten of his own questioning periods, while Justice Ginsburg ended five of her own questioning periods, but they still spoke for a similar amount of time per questioning period than she did.

Justice Alito also had the single longest questioning period by over a minute. He had a 450-second questioning period during *Little Sisters of the Poor*. Below are the top 12 longest discrete questioning periods.

Justice Alito (Little Sisters)	450
Justice Gorsuch (Little Sisters)*	367
Justice Alito (Our Lady)	359
Justice Kagan (Little Sisters)*	353
Justice Alito (Vance)	341
Justice Gorsuch (Our Lady)*	329
Justice Breyer (Our Lady)	324
Justice Thomas (Little Sisters)	319
Justice Kavanaugh (Vance)*	318
Justice Ginsburg (Little Sisters) & Justice Sotomayor (Little Sisters)	315
Justice Kavanaugh (Mazars) & Justice Kagan (Our Lady) (tie)	310

Justice Alito (Mazars)	306
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The three longest questioning periods were all male Justices (and two were from Justice Alito). Justice Alito had four of the fourteen longest questioning periods, and three of the five longest questioning periods. Justice Sotomayor had only one of the longest questioning periods (a tie for the tenth longest questioning period), even though she ended the fewest of her own questioning periods (one). Perhaps unsurprisingly, the longest questioning periods happened during the cases involving contraception, presidential immunity, and religious exemptions from antidiscrimination statutes.

The asterisks represent times when the Justices ended their own questioning periods. This, too, colors the statistics. Justice Gorsuch ended his own questioning period during *Little Sisters*, so he had an uninterrupted 367-second period for questioning that was the second-longest questioning period in any of the arguments. Justice Gorsuch's 329-second period in *Our Lady* was similarly uninterrupted. Justice Kagan's 353-second questioning period in *Little Sisters* was also uninterrupted, as was Justice Kavanaugh's 318-second questioning period in *Vance*. But for reasons I explain below, I discount somewhat the fact that Justice Kagan and Justice Gorsuch's questioning periods in *Little Sisters* were not interrupted, since both questioning periods happened after Justice Alito's incredibly lengthy questioning period. The Chief might have been giving Justices who followed Justice Alito more latitude (although he does not appear to have done so evenly, as I explain below).

I have also included, below, a rank order of the twelve shortest questioning periods that were ended by the Chief Justice (rather than the questioning Justice themselves):

Justice Ginsburg (McGirt)	63
Justice Ginsburg (Mazars)	91
Justice Kagan (Vance)	108
Justice Gorsuch (Mazars)	109
Justice Kagan (McGirt)	119
Justice Alito (Vance)	121

Justice Thomas (Mazars)	123
Justice Breyer (McGirt)	124
Justice Ginsburg (Mazars)	129
Justice Sotomayor (McGirt)	130
Justice Ginsburg (Little Sisters) & Justice Alito (McGirt) (tie)	131

Again, perhaps unsurprisingly, the three shortest questioning periods the Chief allowed were for his female colleagues. Indeed, half of the shortest questioning periods the Chief allowed were for his female colleagues even though they make up only one third of the Court. And two thirds of the shortest questioning periods were given to the Chief's more liberal colleagues even though they make up less than half of the Court.

Justice Alito also had the longest total questioning period for an argument. He had 784 seconds for questions and answers during *Little Sisters Of the Poor*. Justice Kavanaugh had the second longest period during *Trump v. Mazars* (765 seconds) and third longest period during *Trump v. Vance* (762 seconds). Below are the 13 longest total time periods that Justices had during a single case.

Justice Alito (Little Sisters)	784
Justice Kavanaugh (Mazars)	765
Justice Kavanaugh (Vance)*	762
Justice Sotomayor (Mazars)	734
Justice Alito (Mazars)	716
Justice Alito (Vance)	710
Justice Kagan (Our Lady)*	694
Chief Justice (Vance)	670
Justice Kagan (Little Sisters)*	688
Justice Sotomayor (Our Lady)	679
Justice Gorsuch (Our Lady)*	665
Justice Kagan (Mazars)*	663

Of the 13 longest total questioning times in a single case, Justice Alito had three and Justice Kagan had three (all of which included some questioning periods that she ended on her own); Justice Kavanaugh had two (one of which included questioning periods he ended on his own); and Justice Sotomayor had two. The three longest total time periods were, again, all male Justices. Justice Alito had three of the six longest questioning periods and Justice Kavanaugh had two of the three longest questioning periods.

Some of the variation between the longer individual questioning periods and the total amount of time that the Justices had in a particular argument is due to the fact that some of the arguments involved more than two advocates. In particular, in many of the more ideologically salient cases, including the presidential immunity cases, the religious exemption cases, and the contraception cases, the Trump administration participated in the arguments, arguing in favor of what would be the “conservative” position (against contraception access, in favor of exemptions from antidiscrimination statutes, and in favor of presidential immunity). The argument time for the conservative positions was therefore divided between two advocates, while all of the argument time for the more liberal position was given to one advocate. If each side gets 30 minutes, then each advocate for the conservative position might get 10-20 minutes while the advocate for the more liberal position got 30.

That argument structure may be some of what is driving the lengthier questioning periods. Justices tend to give more questions to the side with which they disagree. If the Chief sought to divide the argument time allotted to an advocate by the number of Justices, then each Justice might have 1-2 minutes to question each of the advocates arguing for the conservative position, and 3-4 minutes to question the advocate arguing for the more liberal position. And so conservative Justices, who were more likely to question advocates arguing for more liberal Justices, had longer uninterrupted blocks to question the advocates with whom they disagreed.

It does not follow, however, that total argument time is more relevant to assessing the fairness of these arguments than longer or shorter individual questioning periods. Even if liberal Justices received as much total time for questioning in the immunity cases – which they did not – their time would have been divided between two advocates, which limited their ability to continue pressing on a line of inquiry. That issue came up repeatedly in the presidential immunity cases, when Justice Ginsburg, Justice Breyer, and Justice Sotomayor all sought to push on positions that were being pressed by the President’s personal lawyers or the Department of justice. Conservative Justices, by contrast, had longer uninterrupted blocks to question advocates with whom they will likely disagree.

Only three Justices passed on asking question when it was there turn to do so – Justice Ginsburg, Justice Gorsuch, and Justice Breyer. Both Justice Ginsburg and Justice Gorsuch passed on both of the second rounds of questioning of advocates (Doug Letter and Carey Dunne) in the presidential immunity cases. Justice Breyer passed on one of those second rounds (Carey Dunne in *Vance*). Only Justice Breyer passed on asking any questions of a particular advocate (the state in *McGirt v. Oklahoma*).

There was also some notable variations in which Justices ended their own questioning periods and which Justices had their questioning times ended by the Chief Justice. Justice Breyer ended at least one round of his own questioning periods in every single argument with the exception of *McGirt v. Oklahoma*, when he passed on a round of questioning. Justice Breyer ended his own questioning periods a total of twelve times, more than any other Justice. Justice Thomas and Justice Kavanaugh ended ten of their own questioning periods. Justice Gorsuch ended seven of his own questioning periods. Justice Kagan ended six of her own questioning periods. Justice Ginsburg ended five of her own questioning periods. Justice Alito ended two of his questioning periods. Justice Sotomayor ended one of her own questioning periods.

The data about who ended their own questioning periods is interesting because it complicates, to some extent, the rankings of which Justices spoke the most (either as a total amount of time or as averages). Justice Alito spoke the most of any Justice by

absolute time and second most (by one second) per questioning period, so it is unsurprising that he ended relatively few of his own questioning periods. Justice Sotomayor and Justice Gorsuch spoke the most per questioning period. But Justice Sotomayor ended relatively few of her questioning periods (one), whereas Justice Gorsuch ended seven of his own questioning periods. Justice Gorsuch and Justice Kavanaugh ended their own questioning periods more than Justice Ginsburg but still spoke longer than she did, both as absolute numbers and as averages. Justice Thomas and Justice Ginsburg spoke, on average, about the same length of time per questioning period but he ended his questioning periods twice as many times as she did.

There were also some striking disparities in how the Chief Justice ended the questioning periods when he did so. The Chief Justice ended questioning periods a total of 158 times, either by interrupting someone or saying “thank you” after an advocate paused. By and large, the interruptions happened overwhelming when an advocate was speaking—there were only 11 interruptions of other Justices. (I counted something as an interruption if the Chief Justice interrupted another Justice’s remarks or ended their questioning period before an advocate had a chance to respond to the question.)

The Justices who were interrupted or cut off were overwhelmingly women. Of the 11 interruptions of other Justices, nine interruptions were of women. Justice Breyer was the only male Justice who the Chief interrupted (twice).<sup>13</sup> All 11 interruptions were of liberal Justices—Justice Ginsburg, Justice Sotomayor, and Justice Breyer were the only Justices who were interrupted by the Chief Justice. The Chief Justice interrupted Justice Sotomayor twice in *Little Sisters*, and ended Justice Ginsburg questioning period as she attempted to continue speaking. He interrupted Justice Sotomayor again in *McGirt*. In *Mazars*, the Chief Justice cut off Justice Sotomayor twice and Justice Ginsburg and Justice Breyer once. In *Vance*, the Chief Justice ended a questioning period as both

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<sup>13</sup> The Chief Justice cut off Justice Breyer’s follow up question/correction in *Mazars v. Trump*. I also erred on the side of counting the ending of one of Justice Breyer’s questioning periods in *Our Lady of Guadalupe* as an interruption. Justice Breyer interjected a statement that may have been a question or correction in response to counsel, and the Chief moved on from questioning before there was any response.

Justice Sotomayor and the advocate were talking; he also allowed Jay Sekulow, on Sekulow's request, to answer a question that Justice Ginsburg had asked immediately before the Chief Justice ended her questioning period. And in *Chiafalo*, the Chief Justice interrupted Justice Sotomayor.

The interruptions are interesting in part because the Chief Justice interrupted Justice Sotomayor the most even though she had only one of the longest 14 questioning periods (the 10<sup>th</sup> longest). While she did speak, per questioning period, the most of any Justice (tied with Justice Gorsuch), the Chief Justice never interrupted Justice Gorsuch even though he had, with Justice Sotomayor, the longest average questioning period. And while Justice Gorsuch was never interrupted, Justice Ginsburg was interrupted multiple times even though she had the third shortest average questioning period and the second shortest total time speaking over the sitting. The Chief Justice also gave her two of the three shortest questioning periods (Justice Kagan had the other). Like Justice Gorsuch, Justice Kavanaugh was never interrupted even though he had the longest total talking times, by far, in two of the cases where the Chief Justice interrupted other Justices – *Trump v. Mazars* and *Trump v. Vance*. Those two questioning periods were also two of the three longest questioning periods in any case.

The disparities are also striking because the Chief Justice made various accommodations for other Justices who asked questions as the Chief attempted to end a questioning period. On two occasions, the Chief Justice allowed an advocate to respond to a question near the end of the questioning period: In *Booking.com*, he instructed an advocate that they had time for a brief response to Justice Kagan's question, and in *McGirt*, the Chief Justice instructed an advocate that they had time for a brief response to Justice Kavanaugh's question. Also in *McGirt*, there was some ambiguity about whether Justice Gorsuch had wanted to continue talking after the Chief Justice said "thank you, counsel." After the Chief Justice apologized and said "Justice Gorsuch," Justice Gorsuch indicated he had finished talking.

There were also a few notable differences in which Justices continued to talk after they were initially interrupted and which Justices attempted to carve out additional time for



themselves. For example, Justice Alito's long questioning period in *Little Sisters* included him saying, four minutes into the questioning period, "if I could ask one other question..." That remark bought him an additional three minutes before the Chief Justice ended his questioning period. Justice Alito did something similar in *Trump v. Mazars* three minutes into his questioning period, saying he had "one more thing if I have time," which bought him an additional 90 seconds in his questioning period. Similarly, in *Colorado v. Baca*, Justice Alito said, three minutes into his questioning time, that he had one more question. But his questioning period lasted an additional two minutes with several questions in it. Yet when Justice Sotomayor in *Mazars* said, three minutes into her questioning period, that she had one last question, she received only an additional 19 seconds.

Finally, in *Trump v. Vance*, the Chief Justice called on Justice Sotomayor over five minutes into Justice Alito's questioning period, but Justice Alito continued on for an additional 20 seconds. None of the other Justices attempted to extend their own questioning periods even when the Chief Justice interrupted them mid question (and occasionally, mid important question). For example, the Chief Justice ended Justice Sotomayor's questioning period mid question in *McGirt v. Oklahoma*. He similarly cut off Justice Ginsburg's retort to Assistant Solicitor General Wall in *Trump v. Mazars*, when Justice Ginsburg asked the Solicitor General about the Paula Jones case (*Clinton v. Jones*) and he also interrupted Justice Breyer's rejoinder to the President's lawyer, Patrick Strawbridge, in *Trump v. Mazars*, about the lawfulness of the Watergate subpoenas.

Additionally, in *Trump v. Vance*, the Chief Justice interrupted Justice Ginsburg midway through her response to Trump's attorney Jay Sekulow, again about the Paula Jones case (*Clinton v. Jones*). But it was Sekulow who asked the Chief for the opportunity to respond, which the Chief allowed Sekulow to do (and Justice Ginsburg did not have the opportunity to respond once more). Soon after that, also in *Vance*, Justice Alito continued his questioning period after the Chief Justice called on Justice Sotomayor. And the Chief Justice allowed Justice Alito to continue, three minutes into his questioning of Douglas Letter, with nearly two additional minutes of a questioning period after Justice Alito said he had one more question.

### III. Observations

All in all, the Supreme Court's telephonic arguments were a success. The Court broadcast live audio, and the sky did not fall. There were very few hiccups but they were all minor (mostly Justices forgetting to unmute themselves). And the Chief Justice appeared to try to moderate arguments evenhandedly, and he accomplished that in many respects.

Part of the Chief Justice's efforts were evident when one Justice (often Justice Alito) pushed the limits of questioning periods. When that happened, the Chief generally allowed the Justices who followed Justice Alito (Justice Sotomayor, Justice Kagan, Justice Gorsuch, and Justice Kavanaugh) more time for their questioning periods— but not quite as much time as Justice Alito received. For example, after Justice Alito's 450-second questioning period in *Little Sisters*, all of the later Justices spoke for over 300 seconds.

But that did not always happen. In *Mazars*, for example, after Justice Alito spoke for 306 seconds questioning Doug Letter on the first round of questions for the House, both Justice Sotomayor and Justice Kagan spoke for under 200 seconds (although Justice Kagan ended her own questioning time, so she might have been allowed to speak for more time). Justice Gorsuch spoke for 206 seconds, while Justice Kavanaugh was allowed to speak for 310 seconds. (The Chief ended both of their questioning periods.) Likewise, in *Vance*, after Justice Alito spoke for 341 seconds when questioning Carey Dunne even though no other Justice, until that point, had spoken for more than 250 seconds. Both Justice Sotomayor and Justice Kagan had over a minute less than he did in their subsequent questioning periods (although Justice Kagan once again ended her own questioning time, so the Chief might have allowed her to speak for more time)—268 and 224 seconds. But Justice Kavanaugh was allowed to speak for 318 seconds, and Justice Kavanaugh ended his own questioning period, which was almost a minute longer than Justice Sotomayor's and over a minute longer than Justice Kagan's.

The Chief Justice's new role put him in a difficult position. Moderating the arguments likely detracted from his ability to ask his own questions when he is often an active participant in in-person oral arguments. And even though the Chief probably tried to moderate the arguments evenhandedly, there were notable disparities – Justice Alito spoke and was allowed to speak much more than the other Justices, and the conservative male Justices had the longest total questioning periods and the longest individual questioning periods. Their female colleagues, by contrast, received the shortest questioning periods. The Chief Justice did not reliably adjust later Justices' questioning times after Justice Alito spoke for a considerably longer period than the preceding Justices. The conservative Justices were allowed to dominate the presidential immunity cases by total time, and Justice Alito appeared willing to push through the Chief Justice's attempt to end questioning periods.

There were also some not entirely surprising gender disparities. The men on the Court had almost all of the longest questioning periods. This is not surprising given that the Court is 2/3 men, but the men had 3/4 of the longest questioning periods and the longest three questioning periods. The conservatives on the Court also had most of the longest individual questioning periods (9 of the top 12, although they make up only slightly more than half of the Court). The disparities were slightly less pronounced when the total amount of time per case was measured: Women had half of longest periods in a case, even though they make up only 1/3 of the Court, but men still had the three longest total amounts of time in particular cases. Women also received the three shortest questioning periods – and half of the twelve shortest questioning periods – even though they make up only a third of the court. Two-thirds of the twelve shortest questioning periods went to more liberal Justices.

The interruptions were markedly gendered and ideological. The Chief Justice only interrupted liberal Justices, and nine of the 11 interruptions were of women Justices.

It is a common trope that the Chief Justice is “first among equals” at the Court.<sup>14</sup> The new oral argument format gave the Chief a new and important power among the Justices – the power to decide how long each Justice had to speak. By some metrics, the Chief Justice succeeded in attempting to make the arguments and the various Justices’ participation evenhanded. In other respects, he probably fell short of what the ideal might look like. But this was the Court’s first attempt at this new format, and a limited sample of only ten arguments. And it is possible that if the format continues, the Court will get better at it.

In his 2005 Senate confirmation hearings, the Chief Justice analogized the role of a Supreme Court Justice to the job of an umpire: “The role of an umpire and a judge is critical. They make sure everybody plays by the rules .... My job is to call balls and strikes and not to pitch or bat.”<sup>15</sup> The Chief may have tried to carry out that role in telephonic arguments, but he probably could have done so more consistently to ensure that his “conservative male” colleagues, particularly Justice Alito, “play by the rules”<sup>16</sup> and to ensure that he treated his more liberal female colleagues the same as his conservative male colleagues.

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<sup>14</sup> Henry J. Abraham, *The Judicial Process* 206 (4th ed. 1980); Letter from Salmon P. Chase to John D. Van Buren (Mar. 25, 1868), quoted in Alpheus Thomas Mason, *The Chief Justice of the United States: Primus Inter Pares*, 17 *J. Pub. L.* 20, 22 (1968).

<sup>15</sup> Confirmation Hearing on the Nomination of John G. Roberts, Jr., to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 55 (2005) (statement of John G. Roberts, Jr.), cited in Jacobi & Schweers, *supra* note TK at 1485.

<sup>16</sup> Jacobi & Schweers, *supra* note TK at 1485.

## **Muted Justice Appendix**

These are time stamps for oral argument periods/questioning periods on the telephonic arguments on the *Audio Arguendo* podcast. Unless noted, the Chief Justice ended the argument period either by interrupting an advocate or saying “thank you” when an advocate paused and another Justice was not talking.

As I explained in the paper, I began the questioning period when the Chief Justice said a Justice’s name and the Justice then started talking. I ended the questioning period when the Chief Justice said thank you or the subsequent Justice’s name and the questioning Justice stopped talking.

**USPTO v. Booking.com**<sup>17</sup>

- Chief Justice 2:33-6:00, 37:34-41:34
- Justice Thomas 6:03-9:52, 41:36-45:32
- Justice Ginsburg 9:54-13:32, 45:34-49:24
- Justice Breyer 13:36-16:12 (Justice Breyer ended), 49:26-53:24
- Justice Alito 16:16-19:52, 53:26-56:55
- Justice Sotomayor 20:06-23:34, 56:57-1:00:47
- Justice Kagan 23:36-28:07, 1:00:49-1:04:21
- Justice Gorsuch 28:09-31:38, 1:04:22-1:08:48
- Justice Kavanaugh 31:40-34:29 (Justice Kavanaugh ended this questioning period), 1:08:51-1:12:03

**USAID v. Alliance for an Open Society**<sup>18</sup>

- Chief Justice 2:30-5:56, 33:23-35:56
- Justice Thomas 5:58-8:56 (Justice Thomas ended), 35:57-40:14
- Justice Ginsburg 8:57-12:44, 40:16-44:47
- Justice Breyer 12:45-16:11, 44:48-47:47 (Justice Breyer ended)
- Justice Alito 16:12-19:44, 47:50-52:02
- Justice Sotomayor 19:54-24:04, 52:04-46:46
- Justice Gorsuch 24:06-27:14, 56:49-1:02:33
- Justice Kavanaugh 27:17-30:28, 1:02:35-1:05:02 (Justice Kavanaugh ended)

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<sup>17</sup> The time from 19:54-20:06 was when the Chief Justice called Justice Sotomayor's name before she unmuted her microphone.

<sup>18</sup> The time from 19:44-19:45 was when the Chief Justice called Justice Sotomayor's name before she unmuted her microphone.

**Little Sisters of the Poor v. Pennsylvania/Trump v. Pennsylvania**<sup>19</sup>

- Chief Justice 2:19-3:50, 26:50-29:22, 52:54-55:27
- Justice Thomas 9:26-12:08, 29:27-32:04, 55:29-1:00:48
- Justice Ginsburg 4:09-9:24, 32:06-34:17 (Chief Justice interrupted/cut off Justice Ginsburg); 1:00:50-1:04:08
- Justice Breyer 12:10-13:26 (Justice Breyer ended), 34:19-36:51, 1:04:10-1:08:06 (Justice Breyer ends)
- Justice Alito 13:27-15:53 (Justice Alito ended), 36:53-40:01, 1:08:07-1:15:37
- Justice Sotomayor 15:56-18:39 (Chief Justice interrupted/cut off Justice Sotomayor and counsel), 40:02-42:24, 1:15:38-1:20:53 (Chief Justice interrupted/cut off Justice Sotomayor)
- Justice Kagan 18:41-21:46, 42:26-44:45, 1:20:55-1:26:48 (Justice Kagan ended)
- Justice Gorsuch 21:48-23:05 (Justice Gorsuch ended), 45:01-47:23, 1:26:50-1:32:57 (Justice Gorsuch ended)
- Justice Kavanaugh 23:07-24:21 (Justice Kavanaugh ended), 47:25-50:23, 1:32:59-1:38:09 (Justice Kavanaugh ended)

**Barr v. AAPC**<sup>20</sup>

- Chief Justice 2:31-6:06, 36:41-40:04
- Justice Thomas 6:07-9:28, 40:06-43:28
- Justice Ginsburg 9:31-12:38, 43:30-47:03
- Justice Breyer 12:40-15:08 (Justice Breyer ended), 54:29-57:43 (Justice Breyer ended)
- Justice Alito 15:09-18:24, 47:18-51:10
- Justice Sotomayor 18:25-22:19, 51:11-54:27
- Justice Kagan 22:21-25:39, 57:47-1:01:33
- Justice Gorsuch 25:41-30:10, 1:01:35-1:05:05
- Justice Kavanaugh 30:11-34:23 (counsel ended), 1:05:15-1:09:10

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<sup>19</sup> The time from 3:50-4:09 was when the Chief Justice called Justice Thomas's name before he moved on to call on Justice Ginsburg.

<sup>20</sup> The time from 47:03-47:18 was when the Chief Justice called Justice Breyer's name before he moved on to call on Justice Alito.

### **McGirt v. Oklahoma**<sup>21</sup>

- Chief Justice 2:15-3:47, 24:58-26:42, 44:41-45:48
- Justice Thomas 3:48-6:36, 26:44-28:29 (Justice Thomas ended), 45:49-48:01
- Justice Ginsburg 6:38-9:45, 29:31-30:34, 48:02-50:42
- Justice Breyer 9:48-12:08, 30:35-32:39; passed on third round of questioning
- Justice Alito 12:10-14:36, 35:17-37:28, 50:49-53:11
- Justice Sotomayor 14:41-16:51, 32:55-35:35 (Chief Justice interrupted/cut off Justice Sotomayor), 53:13-56:01
- Justice Kagan 16:52-18:51, 37:30-39:44, 56:03-58:52
- Justice Gorsuch 18:53-21:07, 39:45-40:04 (Justice Gorsuch ended), 58:54-1:02:33
- Justice Kavanaugh 21:09-23:46, 41:06-43:28 (Chief Justice and Justice Kavanaugh ended), 1:02:35-1:04:59

### **Our Lady of Guadalupe**

- Chief Justice 2:09-4:02, 26:20-28:03, 53:05-55:18
- Justice Thomas 4:04-5:25, 28:04-29:59 (Justice Thomas ended), 55:18-59:42
- Justice Ginsburg 5:27-8:09, 30:00-33:33, 53:43-1:04:17 (Justice Ginsburg ended)
- Justice Breyer 8:09-10:32 (unclear if Chief Justice interrupted/cut off Justice Breyer), 33:34-36:29 (Justice Breyer ended), 1:04:18-1:09:42
- Justice Alito 10:32-12:46 (Justice Alito ended), 36:33-38:46, 1:09:42-1:15:41
- Justice Kagan 16:02-19:34, 41:54-44:46, 1:20:42-1:25:52 (Justice Kagan ended)
- Justice Gorsuch 19:34-21:56, 44:48-48:02, 1:25:53-1:31:22 (Justice Gorsuch ended)
- Justice Kavanaugh 21:56-25:04, 48:02-50:27, 1:31:24-1:35:14 (Justice Kavanaugh ended)

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<sup>21</sup> The time from 32:39-32:55 was when the Chief Justice called Justice Alito's name before moving on to call on Justice Sotomayor.



### **Trump v. Mazars**<sup>22</sup>

- Chief Justice 2:22-4:36, 27:04-28:26, 49:00-50:57, 1:18:34-1:21:02
- Justice Thomas 7:17-9:20, 28:26-29:56 (Justice Thomas ended), 50:57-53:24 (Justice Thomas ended), 1:20:05-1:22:50
- Justice Ginsburg 4:52-7:16, 29:58-32:07 (Chief Justice interrupted/cut off Justice Ginsburg), 53:28-54:59 (Justice Ginsburg ended); pass on fourth round of questioning
- Justice Breyer 9:20-11:53 (Chief Justice interrupted/cut off Justice Breyer), 32:10-34:35, 55:02-58:12 (Justice Breyer ended), 1:23:01-1:25:34
- Justice Alito 11:53-14:19, 34:35-37:01, 58:14-1:03:20, 1:25:35-1:27:33
- Justice Sotomayor 14:19-17:50, 37:02-39:44, 1:03:20-1:06:31 (Chief Justice interrupted/cut off Justice Sotomayor and counsel), 1:27:34-1:28:35 (Chief Justice interrupted/cut off Justice Sotomayor)
- Justice Kagan 17:50-21:05, 39:46-42:21, 1:06:32-1:09:42 (Justice Kagan ended), 1:28:36-1:30:39
- Justice Gorsuch 21:05-23:32, 42:21-44:10, 1:09:44-1:13:10, pass on fourth round of questioning
- Justice Kavanaugh 23:32-26:06, 44:12-46:41, 1:13:10-1:18:20, 1:30:45-1:33:17

### **Trump v. Vance**

- Chief Justice 2:13-4:42, 25:45-28:08, 51:43-55:36, 1:28:14-1:30:39
- Justice Thomas 4:43-6:23 (Justice Thomas ends), 28:10-30:26, 55:37-59:30 (Justice Thomas ends), 1:30:40-1:32:14
- Justice Ginsburg 6:26-8:30, 30:27-33:39, 59:31-1:02:14 (Justice Ginsburg ends); pass on fourth round of questioning
- Justice Breyer 8:52-11:45, 33:39-36:20, 1:02:17-1:04:44 (Justice Breyer ends); pass on fourth round of questioning
- Justice Alito 11:45-13:46 (Justice Alito and Chief Justice end), 36:20-39:12, 1:04:45-1:10:26, 1:32:24-1:33:40
- Justice Sotomayor 13:48-16:53, 39:13-41:57 (Chief Justice interrupts/cuts off Justice Sotomayor and counsel), 1:10:26-1:14:54, 1:33:44-1:35:41
- Justice Kagan 16:54-18:42, 42:00-44:45, 1:14:54-1:18:38 (Justice Kagan ends), 1:35:43-1:36:56
- Justice Gorsuch 18:43-21:23, 44:47-47:31, 1:18:39-1:22:44 (Justice Gorsuch ends), pass on fourth round of questioning
- Justice Kavanaugh 21:24-24:30, 47:33-49:24, 1:22:46-1:28:04 (Justice Kavanaugh ends), 1:37:01-1:39:28

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<sup>22</sup> The time from 4:36-4:51 was when the Chief Justice called Justice Thomas's name before moving on to call on Justice Ginsburg.

### **Chiafalo v. Washington**<sup>23</sup>

- Chief Justice 2:17-5:30, 38:21-42:25
- Justice Thomas 5:32-10:02, 42:27-45:33
- Justice Ginsburg 10:04-12:31 (Justice Ginsburg ends), 45:34-46:28 (Justice Ginsburg ends)
- Justice Breyer 12:33-16:07, 46:30-50:54 (Justice Breyer ends)
- Justice Alito 16:16-20:22, 50:56-55:15
- Justice Sotomayor 20:29-24:32, 55:16-1:00:00 (Chief Justice interrupts/cuts off Justice Sotomayor)
- Justice Kagan 24:33-27:50, 1:00:01-1:04:02 (Justice Kagan ends)
- Justice Gorsuch 27:51-31:31, 1:04:04-1:06:42 (Justice Gorsuch ends)
- Justice Kavanaugh 31:33-35:04, 1:06:45-1:11:03

### **Colorado v. Baca**

- Chief Justice 2:14-6:46, 32:14-35:35
- Justice Thomas 6:47-9:44 (Justice Thomas ends), 35:36-38:51 (Justice Thomas ends)
- Justice Ginsburg 9:46-11:57 (Justice Ginsburg ends), 38:53-41:25 (Justice Ginsburg ends)
- Justice Breyer 12:00-15:27 (Justice Breyer ends), 41:28-44:45 (Justice Breyer and the Chief Justice end)
- Justice Alito 15:29-19:00, 44:46-49:39
- Justice Kagan 19:01-22:24, 49:42-52:27 (Justice Kagan and the Chief Justice end)
- Justice Gorsuch 22:46-26:42, 52:31-55:27 (Justice Gorsuch ends)
- Justice Kavanaugh 26:43-30:10, 55:30-57:50 (Justice Kavanaugh ends)

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<sup>23</sup> The time from 16:07-16:16 was when the Chief Justice called Justice Alito's name before Justice Alito started speaking.