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#### OCPWGN"NGQPKFCU"FWTCP"QTVGIC." Rgvkvkqpgt0"

**X**0"

#### LGHHGTUQP"D0"UGUUKQPU"KKK."" Wpkvgf"Uvcvgu"Cvvqtpg{"Igpgtcn."" Tgurqpfgpv0"

Qp"Crrgcn"htqo"vjg"Gzgewvkxg"Qhhkeg"qh"Kookitcvkqp"Tgxkgy" Dqctf"qh"Kookitcvkqp"Crrgcnu" Hkng"Pq0" "

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Okejgnng"T0"Ncrqkpvg" Mtkuvk"N0" I tcwpmg" UQWV J GTP"RQXGTV [ "NC Y "EGPVGT"

Attorneys for Petitioner"

### <u>EGTVKHKECVG"QH"KPVGTGUVGF"RGTUQPU"CPF"EQTRQTCVG</u>" <u>FKUENQUWTG"UVCVGOGPV</u>"

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Vjg"Jqpqtcdng"Ueqvv"F0"Etkuu."Wpkvgf"Uvcvgu"Fgrctvogpv"qh"Lwuvkeg."Gzgewvkxg""

Qhhkeg"hqt"Kookitcvkqp"Tgxkgy"

Vjg"Jqpqtcdng"Fgg"Ftgnn."Wpkvgf"Uvcvgu"Fkuvtkev"Eqwtv"hqt"vjg"Yguvgtp"Fkuvtkev"qh""Eqwtv"hqt"vjg"Yguvgtp"Fkuvtkev"qh""Eqwtv"hqt"vjg"Yguvgtp"Fkuvtkev"qh""Eqwtv"hqt"vjg"Yguvgtp"Fkuvtkev"qh""Eqwtv"hqt"vjg"Yguvgtp"Fkuvtkev"qh""Eqwtv"hqt"vjg"Yguvgtp"Fkuvtkev"qh""Eqwtv"hqt"vjg"Yguvgtp"Fkuvtkev"qh"

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Fwtcp"Qtvgic."Ocpwgn"(Petitioner)""

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Lqpi."Lgtgo {"(Counsel for Petitioner)

 $Lqugrj."Fcxkf"E0."Wpkvgf"Uvcvgu"Cvvqtpg{"hqt"vjg"Yguvgtp"Fkuvtkev"qh"Nqwkukcpc""}$ 

Ncrqkpvg."Okejgnng"T0"(Counsel for Petitioner)"

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Case: 18-14563 Date Filed: 10/30/2018 Page: 3 of 37 RESTRICTED Ccpwgn"Fwtcp"Qtvgic"x0"Lghhgtuqp"D0"Uguukqpu" E/kk"qh"kkk"

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Uqwvjgtp"Rqxgtv{"Ncy"Egpvgt"

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Yknnku." I tcekg"(Counsel for Petitioner)

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## VCDNG"QH"EQPVGPVU"

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#### VCDNG"QH"CWVJQTKVKGU"

#### Ecugu"

Bennett v. Hendrix."

Gitimu v. Holder."

LabMD, Inc. v. Fed. Trade Comm'n."

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### NWDC v. ICE."

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j cu"tgrqtvgf"qp"eqpvtqxgtukcn"kuuwgu"kpxqnxkpi"vjg"ORF"cpf"k o okitcvkqp" cwvjqtkvkgu0"Gz0"4"Ê"9."*see, e.g.,*"Gzu0"32/350" J ku"tgegpv"tgrqtvkpi"qp" eqnncdqtcvkqp"dgv y ggp"KEG"cpf"vjg"ORF"eqpvtcfkevgf"ORFøu"rwdnke"uvcvg o gpvu" vjcv"kv"fqgu"pqv"eqqrgtcvg" y kvj"KEG0"Gzu0"32/330"ORF"cuc f"q" cE O

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ejcpigf="cpf"\*5+"*sua sponte*"tgqrgpkpi" y cu"wpy cttcpvgf0"*Id*0"Qp"Qevqdgt"52."423:." Fwtcp/Qtvgic"hkngf"c"rgvkvkqp"kp"vjku"Eqwtv"uggmkpi"tgxkgy"qh" j ku"tg o qxcn"qtfgt"cpf" vjg"DKC" fgekukqp"chhkt o kpi"vjg" fgpkcn"qh" j ku" o qvkqp"vq"tgqrgp0"

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#### K0 <u>FWTCP/QTVG I C"KU"NKMGN [ "VQ"UWEEGGF"QP"V J G" OGTKVU"QH</u>" <u>J KU" OQVKQP"VQ"TGQRGP0</u>"

#### C0" <u>Fwtcp/Qtvgic"Ku"Gnkikdng"hqt"Cu{nwo"Dcugf"qp"Ejcpigf</u>" <u>Ektewouvcpegu0</u>Á

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Hktuv."vjg"DKC"gttqpgqwun{"wrjgnf"vjg"KLøu"fgvgtokpcvkqp"vjcv"õkv"ku"oquv" ukipkhkecpv"vq"eqorctgö"vjg"Uvcvg"Fgrctvogpvøu"4239"Gn"Ucnxcfqt"Jwocp"Tkijvu" Tgrqtv"\*õ4239"Tgrqtvö+" y kv j "v j g"4229"Tgrqtv."vtgcvkp i "v j g"4239"Tgrqtv"cu" fkurqukvkxg"cv"vjg"gzrgpug"qh"c"hwm"tgxkgy"qh"vjg"tgeqtf0"Gz0"3"cv"60"Nkokvkpi" cpcn{uku"qh"eqwpvt{"eqpfkvkqpu"vq"c"eqorctkuqp"qh"Uvcvg"Fgrctvogpv"tgrqtvu."yjkng" gzenwfkpi"gzvgpukxg"gxkfgpeg"kp"vjg"tgeqtf"qh"c" o cvgtkcnn{" o qtg" fcpigtqwu"enk o cvg" hqt"lqwtpcnkuvu"kp"Gn"Ucnxcfqt"ukpeg"4229."eqpvtcxgpgu"tgngxcpv"ecugncy0"See *Mazvrishvili v. U.S. Att'y Gen.*."689"H05f"34;4."34;7"\*33vj"Ekt0"4228+"\*DKC" o wuv" pqvgf"Fwtcp/Qtvgicøu"gxkfgpeg."kv"hckngf"vq"cevwcm{"eqpukfgt"kv0"See"Gz0"3"cv"6/7=" Imelda v. U.S. Atty. Gen., 833"H05f"946."94; "\*33vj"Ekt0"4232+"\*õ]w\_ug"qh"eqwpvt{" tgrqtvu"ecppqv"uwduvkvwvg"hqt"cp"cpcn{uku"qh"vjg"wpkswg"hcevu"qh"gcej"crrnkecpvøu" ecugö+"\*swqvkpi"*Gitimu v. Holder*."7:3"H05f"98;."995"\*:vj"Ekt0422;++="*Jiang v. U.S. Atty. Gen.*."78: "H05f"3474."347: "\*33vj"Ekt0"422; +"\*xcecvkpi"DKC" fgekukqp" y jgtg"kv"  $\tilde{o} qxgtnqqmgf"qt"kpgzrnkecdn{"fkueqwpvgfö"chhkfcxkvu"uwrrqtvkpi"ejcpig"kp"eqwpvt{"}$ eqpfkvkqpu"cpf"õytqpin{"hqewugfö"qp"c"dtqcf"rqnke{"tcvjgt"vjcp"vjg"urgekhke" ejcpigu"kfgpvkhkgf"d{"vjg"rgvkvkqpgt+0"

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kp"ceeqtfcpegö" y kv j "ugevkqp"344; \*c+\*3+0"*See* : "W0U0E0"È"344; c\*d+\*7+\*E+"\**in absentia* qtfgt" o c { "dg"tguekpfgf"kh"pqpekvk | gp" fg o qpuvtcvgu"v j cv" jg" õfk f"pqv" tgegkxg" pqvkeg" kp"ceeqtfcpeg" y kv jö"È"344; \*c+\*3++0"Kp"v jg" cnvgtpcvkxg."v jg" hcwnv { "PVC" hckng f"vq" xguv" v jg"k o o k i tcvkqp" eqwtv" y kv j "lwtku fkevkqp"vq" jgct" jku" ecug" cpf"v jg" tg o qxcn" qt fgt"ku" kpxcnk f"qp"v j cv" dcuku" cu" y gm0"*See Virgen-Ponce*."542"H0"Uwr r0"5 f" cv" 33880<sup>6</sup>"

Vjg"DKC"cvvg o rvu"vq"guecrg"vjg"engct"k o rqtv"qh"*Pereira*"d{"ekvkp i "kvu" fgekukqp" kp"*Matter of Bermudez-Cota*."49"K (P"Fge0"663"\*DKC"423:+."*appeal filed*."Pq0"3:/ 94/795"\*;vj"Ekt0"Ugrv0"42."423:+0<sup>7</sup>"*Bermudez-Cota* jgnf"vjcv"c"fghgevkxg"PVC"xguvu" lwtku fkevkqp"hqt"vjg"rwt rqugu"qh": "W0U0E0"È"344;\*c+."cu"nqp i "cu"kv"ku"hqnnq ygf"d{"c" rtqrgtn{"ugtxgf"Pqvkeg"qh"Jgctkp i "\*õPQJö+0"Vjcv" fgekukqp"ku"tgcfkn{" fkuvkp i wku j cdng"htq o "vjg"kpuvcpv"ecug0"Hktuv."wpnkmg"vjg"pqpekvk |gp"kp"*Bermudez-Cota*."Fwtcp/Qtvg i c"pgxgt"tgegkxgf"pqvkeg"qh" jku" jgctkp i 0"Nkmg"vjg"PQJ"ugpv"vq"vjg" pqpekvk |gp"kp"*Pereira*."vjg"PQJ "ugpv"vq"Fwtcp/Qtvg i c" y cu"tgvwtpgf"cu" wp fgnkxgtcdng0"*See Pereira*."35: "U0"Ev0"cv"4329="Gz0"70"

/"37"/"

<sup>&</sup>lt;sup>6</sup>"Vjku"Eqwtv"pggf"pqv"tgcej"vjg"lwtkufkevkqpcn"kuuwg"jgtg."dgecwug"vjg"ncem"qh"c" uvcvwvqtkn{/eq o rnkcpv"PVC"ku"uwh O O fgt"Ugevkqp" O 344;c\*D+\*7+\*E+0"

<sup>&</sup>lt;sup>7</sup>"Vjg"ncy"kp"vjku"ctgc"jcu"dggp"tcrkfn{"fgxgnqrkpi"fwtkpi"vjg"eqwtug"qh"Fwtcp/ Qtvgicøu"crrgcn0"Vjg"*Pereira*"fgekukqp"ecog"fqyp"chvgt"vjg"KLøu"Crtkn"46"qtfgt."cpf" vjg"*Bermudez-Cota*"fgekukqp" y cu"kuuwgf" y jkng"vjg"crrgcn" y cu"rgpfkpi"cv"vjg"DKC0"

 $Ugeqpf."vjg"DKC"kp"Bermudez-Cota kortqrgtn{"cvvgorvgf"vq"nkokv"vjg"$   $jqnfkpi"kp"Pereira"vq"vjg"õuvqr/vkogö"twng"hqt"rwtrqugu"qh"vjg"tgogf{"qh"}$  ecpegnncvkqp"qh"tgoqxcn0" Y jkng"kv"ku"vtwg"vjcv"Pereira"ctqug"kp"vjg"ecpegnncvkqp"  $eqpvgzv."vjg"Uwrtgog"Eqwtv"ocfg"engct"vjcv"È"344;*c+"õurgcm]u_"kp" fghkpkvkqpcn"$  vgtou0ö"Pereira."35: "U0"Ev0"cv"43380" Y jgtg"c"uvcvwvg"ku" fghkpkvkqpcn"hqt"qpg" uwdugevkqp"\*i.e.."hqt"vjg"rwtrqugu"qh"vjg"uvqr/vkog"twng"kp": "W0U0E0"È"344;d+."kv"ku"  $fghkpkvkqpcn"hqt"rwtrqugu"qh"qvjgt"uwdugevkqpu"*i.e.."hqt"vjg"gpvt{"qh"cp"$ *in absentia* $"}$ 

 $Vjktf."crrn{kpi"Bermudez-Cota"vq"Fwtcp/Qtvgicøu"hcevu" y qwnf"hn{"kp"vjg"} hceg"qh"vjg"rnckp"uvcvwvqt{"ncpiwcig"wpfgt" y jkej" jg"ku"uggmkpi"vq"tgqrgp" jku"ecug0" See : "W0U0E0"È"344; c*d+*7+*E+"*kh"pqpekvk | gp" fg o qpuvtcvgu"vjcv" jg"õfkf"pqv"tgegkxg" pqvkeg"kp"ceeqtfcpeg" y kv jö"È"344; *c+*3+="i.e."c"pqvkeg"eqpvckpkpi"vjg" fcvg"cpf"vk o g" qh"c" jgctkpi."in absentia qtfgt" o c{"dg"tguekpfgf+0"Dgecwug"vjg"rwvcvkxg" PVC"$ 

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<sup>&</sup>lt;sup>8</sup>"Ugxgtcn" fkuvtkev"eqwtvu" j cxg"tglgevg f"v j g"pcttq y "kpvgtrtgvcvkqp"qh"

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Fwtcp/Qtvgicøu"PQJ"ycu"tgvwtpgf"ykvj"vjg"pqvcvkqp"qh"õkpuwhhkekgpv"cfftguu.ö" engctn{"kpfkecvkpi"vjcv"jg"jcf"pqv"tgegkxgf"vjg"pqvkeg0"Gz0"70"*Cf. Carrera v. U.S. Att'y Gen.*."644"Hgf0"Crrøz0"977."978" ("p05"\*33vj"Ekt0"4233+"\*pqvkeg"ycu"uwhhkekgpv" yjgtg"õvjg"tgeqtf"ncemu"cp{"gxkfgpeg"vjcv"vjg"pqvkeg"ycu"tgvwtpgf"cu"wpfgnkxgtgfö" cpf"õpgkvjgt"vjg"Eqwtv"pqt"KPU"jcf"cp{"kpfkecvkqp"vjcv"]vjg"rgvkvkqpgt\_"jcf"pqv" tgegkxgf"vjg"pqvkeg"qh"jgctkpi0ö+0""

Dgecwug"F J U"pgkvjgt"eq o rnkgf" y kvj"uvcvwvqt {"tgswktg o gpvu"kp"ugtxkpi"vjg" kpkvkcn"PVC."pqt"fkf"kv"fg o qpuvtcvg"rtqrgt"ugtxkeg."kv"hckngf"vq" o ggv"kvu"dwtfgp"vq" ujqy "d {"õengct."wpgswkxqecn."cpf"eqpxkpekpi"gxkfgpegö"vjcv"kv"eq o rnkgf" y kvj" uvcvwvqt {"pqvkeg"tgswktg o gpvu"dghqtg"Fwtcp/Qtvgic" y cu"tg o qxgf"*in absentia*0"" Vjwu."vjg"wuwcn"; 2"fc {"fgcfnkpg"hqt"c" o qvkqp"vq"tgqrgp"fqgu"pqv"dct"Fwtcp/Qtvgic" htq o "tgnkgh."cpf" j ku"*in absentia* tg o qxcn"qtfgt"ujqwnf"dg"tguekpfgf0"*See* : "W0U0E0" È"344; c\*d+\*7+\*E+\*kk+="*Matter of M-R-A-*."46"K ( P"Fge0"887"\*DKC"422:+0""

### KKØ <u>TGOQXCN" Y KNN"ECWUG"KTTGRCTCDNG" J CT O</u>Ø"

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### C0 Fwtcp/Qtvgic" Y knn"Uwhhgt"Rgtugewvkqp"Wrqp"Tg o qxcn" Y kvj"Pq" I wctcpvgg"qh"Tgvwtp"vq"vjg"Wpkvgf"Uvcvgu"

Fwtcp/Qtvgicøu"tgoqxcn"rgpfkpi"jku"crrgcn"yqwnf"ecwug"kttgrctcdng"jcto" dgecwug"kv"eqwnf"uvtkr"jko"qh"cp{"cdknkv{"vq"rtgugpv"jku"cu{nwo"enckou"cpf"hqteg"jko" vq"tgvwtp"vq"c"eqwpvt{"yjgtg"jg"jcu"c"ygnn/hqwpfgf"hgct"qh"rgtugewvkqp0"Fwtcp/ Qtvgic"jcu"c"*prima facie*"ecug"hqt"cu{nwo"cpf"ykvjjqnfkpi"qh"tgoqxcn"dcugf"qp" ejcpigf"ektew ouvcpegu"kp"Gn"Ucnxcfqt0"Vjg"KPC"tgswktgu"vjcv" Fwtcp/Qtvgic"dg" õr j {ukecnn {"rtgugpvö"kp"vjg"Wpkvgf"Uvcvgu"vq"enck o "cu {nw o 0"*See* : "W0U0E0" È"337 : \*c+\*3+0"Kh" jg"ku"tg o qxgf"dghqtg" jg"ku"cdng"vq" rwtuwg"vjgug"enck o u." jg" o c {"dg" dcttgf"htq o "ghhgevkxg"tgnkgh0"*See Sadhvani v. Holder*."7 ; 8"H05 f"3 : 2."3 : 5"\*6vj "Ekt0" 422 ; +"\* y jgtg"cu {nw o "crrnkecpv" y cu"tg o qxgf"dghqtg" vjg"DKC"eqwn f"twng"qp" jku" o qvkqp"vq"tgqrgp."õvjg"DKC" fkf"pqv"cdwug"kvu" fkuetgvkqp"kp" fgp {kpi "tgnkgh"dcugf"qp" vjg"uvcvwvqt {"tgswktg o gpv"vjcv"qpg" o wuv"dg" rtgugpv"kp"vjg"Wpkvgf"Uvcvgu"vq"dg" gnk ikdng"hqt"cu {nw o 0ö+0"V j ku"Eqwtv" jcu"pqv" fktgevn {"urqmgp"qp"vjg"r j {ukecn" rtgugpeg" kuuwg."cpf" Fwtcp/Qtvgic" fqgu"pqv"eqpeg fg"vjcv"tg o qxcn" y qwn f"dct" jk o "htq o " gnk ikdnkv {"hqt"cu {nw o 0"Dwv"vjg"tkum"qh" jku"tgvwtp"vq"c"eqwpvt {" y jgtg" jg"bgtu" rgtugewvkqp." y kvjqwv"cp {" i wctcpvgg"vjcv" F J U" y qwn f"tgvwtp" jk o "vq"vjg"Wpkvg f"Uvcvgu" hqt"hwnn"eqpuk fgtcvkqp"qh" jku"crrgcn." y qwn f"ecwug"kttgrctcdng" jct 00"

Kh"tg o qxgf."Fwtcp/Qtvg i c"hcegu"rtqdcdng"vj tgcvu"vq" j ku"rj {ukecn" y gnhctg" ikxgp" j ku"tgrwvcvkqp"cu"c"lqwtpcnkuv"kp"vjg"Wpkvgf"Uvcvgu"cpf" j ku"gzrtguugf"kpvgpv"vq" eqpvkpwg" y qtmkp i "cu"cp"kpxguvk i cvkxg."cpvk/eqttwrvkqp"lqwtpcnkuv0"V j gug" eqpukfgtcvkqpu" y gk i j "uvtqp in { "kp"hcxqt"qh"c"uvc {0"*See, e.g., Leiva-Perez v. Holder.*" 862"H05f" ; 84." ; 8 ; "\* ; v j "Ekt0"4233+"\*õ]V\_j g"nkmgnk j qqf"qh"]r j {ukecn" fcp i gt\_." fgvgt o kpgf"crctv"htq o " o gtkvu"kuuwgu"0"0"0"uj qwnf"dg"rctv"qh"v j g"kttgrctcdng" j ct o " kpswkt {0ö+0"""

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# D0 <u>Fwtcp/Qtvgicøu"Tgoqxcn" Yqwnf"Xkqncvg"vjg"Eqpuvkvwvkqp"cpf</u>" <u>Ejknn"Hktuv"Cogpfogpv"Tkijvu0"</u>

 $Rwtuwcpv"vq": "W0U0E0" \dot{E}"3474*c+*4+*F+."vjku"Eqwtv"jcu"lwtkufkevkqp"vq"tgxkgy"$ 

Fwtcp/Qtvgicøu"enckou"vjcv" jku"tgoqxcn" yqwnf"xkqncvg"vjg"Eqpuvkvwvkqp0"Bing Quan

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Richp@v"cp"kpfkxkfwcn"kp"tgurqpug"vq"vjgkt" # O # cn ž

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#### EGTVKHKECVG"QH"EQORNKCPEG" Y KV J "V [ RG/XQNWOG"NKOKV." V [ RGHCEG"TGSWKTGOGPVU."CPF"V [ RG/UV [ NG"TGSWKTGOGPVU"

### $30^{""}$ V{rg/Xqnw o g"

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 $Vjku"fqew o gpv"eq o rnkgu" y kvj "vjg" y qtf"nk o kv"qh"Hgf0"T0"Crr0"R0"49*f+*4+" dgecwug"vjku"fqew o gpv"eqpvckpu"7.348" y qtfu."gzenw fkpi "vjg" rctvu"qh"vjg" fqew o gpv"gzg o rvgf"d{"Hgf0"T0"Crr0"R0"54*h+0""}$ 

### 40"" **V{rghceg**"**cpf**"**V**{**rg/Uv**{ng"

 $Vjku"fqew o gpv"eq o rnkgu" y kvj "vjg"v { rghceg"tgswktg o gpvu"qh"Hgf0"T0"Crr0"R0" 54*c+*7+"cpf"vjg"v { rg/uv { ng"tgswktg o gpvu"qh"Hgf0"T0"Crr0"R0"54*c+*8+"dgecwug" vjku"fqew o gpv"jcu"dggp"rtgrctgf"kp"c"rtqrqtvkqpcm { "urcegf"v { rghceg"wukp i " Oketquqhv" Y qtf"4232"kp"36"rqkpv"Vk o gu"Pg y "Tq o cp0"$ 

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FCVGF<"Qevqdgt"52."423:" "

ul"Okejgnng"T0"Ncrqkpvg""

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### EGTVKHKECVG"QH"UGTXKEG"

K" J GTGD [ "EGTVKH [ "vj cv"qp"Qevqdgt"52."423:."K"ecwugf"Rgvkvkqpgtøu"

rctvkgu"qt"vjgkt"eqwpugn"qh"tgeqtf"d{"ugtxkpi"c"vtwg"cpf"eqttgev"eqr{"d{"Hgfgtcn"

Gzrtguu"cv"vjg"cfftguugu"nkuvgf"dgnqy<"

Lghhgtuqp"D0"Uguukqpu"KKK" Cvvqtpg{"Igpgtcn" W0U0"Fgrctvogpv"qh"Lwuvkeg" ;72"Rgppu{nxcpkc"Cxgpwg."PY" Ycujkpivqp."FE"42752/2223"

Fcxkf"OeEqppgnn" Fktgevqt."Qhhkeg"qh"Kookitcvkqp"Nkvkicvkqp" Ekxkn"Fkxkukqp" W0U0"Fgrctvogpv"qh"Lwuvkeg" R0Q0"Dqz":9:."Dgp"Htcpmnkp"Uvcvkqp" Ycujkpivqp."F0E0"42266"

Ugcp" I cnnc i jgt" Hkgn f"Qhhkeg" Fktgevqt" Cvncpvc"Hkgn f"Qhhkeg" W0U0"K o ok i tcvkqp"cpf"Ewuvq ou"Gphqteg ogpv" 3:2"Vgf"Vwtpgt" Ftkxg."U Y "Uwkvg"744" Cvncpvc." I C"52525"

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"	"	"	"	"	"	"	Okejgnng"T0"Ncrqkpvg" "