

IN THE SUPREME COURT OF THE UNITED STATES

Pages: 1 through 77
Place: Washington, D.C.
Date: January 19, 2021

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Washington, D.C. 20005
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1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	KANNON K. SHANMUGAM, ESQ.	
4	On behalf of the Petitioners	4
5	ORAL ARGUMENT OF:	
6	BRINTON LUCAS, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioners	26
9	ORAL ARGUMENT OF:	
10	VICTOR M. SHER, ESQ.	
11	On behalf of the Respondents	43
12	REBUTTAL ARGUMENT OF:	
13	KANNON K. SHANMUGAM, ESQ.	
14	On behalf of the Petitioners	74
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (11:24 a.m.)

3 CHIEF JUSTICE ROBERTS: We will now
4 hear argument in Case 19-1189, BP P.L.C. versus
5 the Mayor and City Council of Baltimore.

6 Mr. Shanmugam.

7 ORAL ARGUMENT OF KANNON K. SHANMUGAM
8 ON BEHALF OF THE PETITIONERS

9 MR. SHANMUGAM: Thank you, Mr. Chief
10 Justice, and may it please the Court:

11 This case presents a question of
12 statutory interpretation involving the provision
13 authorizing appellate review of certain remand
14 orders. The relevant provision of
15 Section 1447(d) authorizes appellate review of a
16 remand order where a ground for removal was the
17 federal officer or civil rights removal statute.

18 By its plain terms, the statute
19 permits review of the entire order, not
20 particular issues. The court of appeals'
21 contrary interpretation is invalid.

22 Respondent offers virtually no textual
23 defense of that interpretation, relying instead
24 on case law, policy, and an alternative
25 interpretation. But those arguments cannot

1 trump the statutory text and, in any event, lack
2 merit.

3 As to case law, this Court and the
4 courts of appeals have consistently interpreted
5 statutes permitting appellate review of an order
6 to authorize plenary review, and Respondent's
7 two contrary examples involve unique
8 considerations.

9 As to policy, the plain text
10 interpretation is consistent with Congress's
11 special solicitude for cases involving civil
12 rights and federal officers. That
13 interpretation accords with the background
14 principle of plenary review, would lead, at
15 most, to marginal additional delay, and could
16 actually expedite resolution of the appeal.

17 And as to Respondent's alternative
18 interpretation, a defendant removes a case
19 pursuant to the federal officer removal statute
20 when it invokes the statute in its notice of
21 removal, regardless of the merits of that
22 ground.

23 The sole remaining question is how
24 best to dispose of this case. The Court should
25 reverse the judgment below because Respondent's

1 claims necessarily arise under federal law.

2 This Court's precedents dictate the
3 commonsense conclusion that federal law governs
4 claims alleging injury caused by worldwide
5 greenhouse gas emissions. The court of appeals
6 should have reached that ground for removal, and
7 it should have held that the case was removable
8 on that basis. The court of appeals' judgment
9 should therefore be reversed.

10 I welcome the Court's questions.

11 CHIEF JUSTICE ROBERTS: Counsel, you
12 just said that the -- your theory applies
13 regardless of the merits of the federal officer
14 or the federal civil rights basis for removal.
15 But what if the -- those bases are frivolous,
16 that everybody who wants to keep their case in
17 federal court will put in as many grounds for
18 removal as they can, and they have to -- all
19 they have to do is tack on one of these federal
20 officer or federal civil rights grounds? Is
21 that right?

22 MR. SHANMUGAM: In that circumstance,
23 sanctions and fee awards would be available, as
24 they always are, whenever a litigant makes
25 frivolous argument, and a party could be subject

1 to sanctions up to dismissal.

2 Mr. Chief Justice, I don't think
3 there's any evidence that parties engage in that
4 conduct. In the circuit that most clearly has
5 adopted our rule, the Seventh Circuit, there's
6 simply no evidence of that. And I would --

7 CHIEF JUSTICE ROBERTS: Well, what if
8 it's --

9 MR. SHANMUGAM: -- point the Court --

10 CHIEF JUSTICE ROBERTS: -- what if
11 it's beyond frivolous? What if the court of
12 appeals just says, you know, I think we ought to
13 look at this, and if they're -- it turns out
14 they're wrong about the federal officer basis,
15 we'll just send it back and we don't have to
16 consider all these other possible grounds?

17 MR. SHANMUGAM: Well, I don't think
18 that a court can do that because the statute
19 obligates an appellate court to consider all of
20 the grounds for removal. And it contemplates a
21 situation like this, where the federal officer
22 or civil rights ground may not have merit. That
23 is why the use of the word "order" is so
24 significant.

25 And to adopt Respondent's

1 interpretation, Congress would have had to make
2 clear that the question or issue of federal
3 officer or civil rights removal was all that was
4 available on appeal. And Congress obviously did
5 not do that.

6 CHIEF JUSTICE ROBERTS: Justice
7 Thomas.

8 JUSTICE THOMAS: Thank you, Mr. Chief
9 Justice.

10 Mr. Shanmugam, the -- I'd like to -- I
11 may have missed your last point. Did you say
12 that even if the order or the bases offered by
13 the moving party is frivolous, that it would
14 still have to be considered?

15 MR. SHANMUGAM: No. I think, in that
16 circumstance, the court of appeals would have
17 the power to impose sanctions, and those
18 sanctions would include dismissal of the appeal.

19 I was addressing only --

20 JUSTICE THOMAS: I think that's --
21 that's -- again, I heard you say that to the
22 Chief Justice, but why would that even be a
23 basis for review? I think that's what we're
24 getting at, as opposed to the sanctions.

25 MR. SHANMUGAM: So I think that an

1 alternative option that would be available to
2 the Court would be to say, on a ground much like
3 that that the Court adopted in Bell versus Hood,
4 that where the federal officer or civil rights
5 ground is frivolous, there is no appellate
6 jurisdiction.

7 But I think our principal submission
8 would be that sanctions and fee awards are
9 available where that ground is frivolous. My
10 last point to the Chief Justice, Justice Thomas,
11 was simply that where the ground is not
12 frivolous but simply is found to have lacked
13 merit, as, indeed, the court of appeals did in
14 this case, the court of appeals nevertheless has
15 to address the other grounds, and that is
16 because the order that is under review
17 necessarily encompasses all of the grounds for
18 removal that were asserted in the notice of
19 removal.

20 JUSTICE THOMAS: Just so -- just that
21 I -- just so that I'm clear, you're saying that
22 the courts -- once the order is appealed, that
23 the appellate courts have no discretion to
24 consider grounds that were not the basis for the
25 removal -- for the appeal?

1 MR. SHANMUGAM: Well, the court would
2 have the power to consider all of the grounds
3 asserted in the notice of removal, and that is
4 because what is before the court is the order,
5 that is, the command remanding the case to state
6 court.

7 And one benefit of our interpretation
8 is that it gives the court of appeals
9 flexibility in the other direction. If the
10 court of appeals concludes that there is an
11 easier ground than federal officer removal on
12 which to reverse, it can do so.

13 JUSTICE THOMAS: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Breyer.

16 JUSTICE BREYER: Well, one concern
17 would be that if you are right, that in
18 considering removal, a defendant will add
19 grounds, federal officer or civil rights. There
20 are -- there's a big difference between
21 frivolous and meritorious. It's called
22 uncertainty and possible and who knows. So
23 they'll add, on those grounds, it will get over
24 to the federal court. The federal court will
25 say that it -- it's not frivolous, but it's

1 wrong, and, therefore, they will appeal on
2 everything. And that means added time, added
3 delay, in a statute, the point of which, no
4 appeal, is to cut down on the time and delay
5 caused by appeal.

6 MR. SHANMUGAM: Just --

7 JUSTICE BREYER: So what?

8 MR. SHANMUGAM: Justice Breyer, I
9 would say two things in response to that.

10 First, in response to the specific
11 concern about abuse, I do think it's important
12 to keep in mind that the federal officer and
13 civil rights removal statutes are relatively
14 narrow. It is certainly not going to be every
15 civil defendant who is going to be able
16 plausibly to invoke those statutes.

17 And, again, there's no evidence of
18 gamesmanship or abuse in the circuit that --

19 JUSTICE BREYER: No, I'm not saying --

20 MR. SHANMUGAM: -- has most clearly
21 adopted --

22 JUSTICE BREYER: -- I'm only saying,
23 is there -- the evidence point I've got, that's
24 a good point. The -- the -- is there anything
25 else to say in -- in the ground where you're a

1 lawyer in your office and you say, ah, this
2 isn't really much, ah, blah blah blah, but we
3 better stick it in in case we want an appeal.
4 You're not saying it's nothing.

5 MR. SHANMUGAM: Well, I think --

6 JUSTICE BREYER: It's not something
7 either.

8 MR. SHANMUGAM: -- Justice Breyer, I
9 think that would take me to my second point,
10 which is, would it have been reasonable for
11 Congress to have made this policy determination?
12 And I would respectfully submit that it would
13 have been.

14 And, again, we have no legislative
15 history that even speaks to this issue. Our
16 primary submission is that the text is clear,
17 but I think that Congress could well have
18 concluded that in light of the significant
19 federal interests that are often in play in
20 these cases, that even in circumstances in which
21 the civil rights or federal officer ground is
22 ultimately found not to have been meritorious,
23 that Congress, balancing the risk of erroneous
24 remand against the risk of incremental delay,
25 could have struck the balance to permit plenary

1 review, consistent with the ordinary way that
2 appellate review operates.

3 CHIEF JUSTICE ROBERTS: Justice
4 Sotomayor.

5 JUSTICE SOTOMAYOR: Counsel, you're
6 talking about what Congress -- balance Congress
7 could have chosen. But I go to the fact that
8 when Congress added 1443 to this statute, every
9 circuit court who had addressed this issue had
10 already ruled that the only thing that was
11 subject to review was a -- a decision based on
12 1442 and had rejected your argument.

13 Don't you think that if I'm trying to
14 figure out what Congress intended that I would
15 look to what was before Congress's understand --
16 under -- in front of Congress in its
17 understanding, number one?

18 Number two, that when it told me that
19 it didn't want appellate review of all issues
20 and that it only wanted appellate review of 1442
21 and 1443 issues, that our review should be
22 limited to what it wanted? I mean, I do --

23 MR. SHANMUGAM: Justice Sotomayor --

24 JUSTICE SOTOMAYOR: -- I do know that
25 we have some of my colleagues who believe that

1 exceptions should not be read narrowly. I don't
2 happen to be one of them, but even if I read
3 "order" -- you know, "order" the way you want, I
4 don't think I can read it in isolation. And I
5 think those two other factors make me believe
6 that what Congress intended is not what you say.

7 MR. SHANMUGAM: Justice Sotomayor,
8 with regard to ratification, first, the law was
9 hardly settled at the time of the 2011
10 amendment. It is certainly true that several
11 circuits had adopted Respondent's
12 interpretation, but they did so with conclusory
13 reasoning, and most of them predated this
14 Court's decision in Yamaha, where the Court
15 construed a statute using materially identical
16 language in the opposite direction.

17 JUSTICE SOTOMAYOR: Except that --

18 MR. SHANMUGAM: Second --

19 JUSTICE SOTOMAYOR: -- Yamaha had
20 already been decided, counsel, and despite that,
21 those circuit courts were ruling against you.

22 MR. SHANMUGAM: Well, I think most of
23 the circuit decisions that Respondent invokes
24 predated Yamaha. There were a few that
25 postdated it. But our submission is simply that

1 Yamaha ought to be taken into account.

2 In addition, Congress merely added two
3 words. It did not reenact the entire provision.
4 It didn't make comprehensive amendments. And
5 it's hard to say with any confidence that
6 Congress's failure to speak more clearly
7 reflects approval of those preexisting circuit
8 decisions.

9 CHIEF JUSTICE ROBERTS: Justice Kagan.

10 JUSTICE KAGAN: Mr. Shanmugam, when
11 you were talking with the Chief Justice and
12 Justice Thomas about frivolous cases, you seemed
13 to want to rely on sanctions rather than a -- a
14 kind of Bell v. Hood rule.

15 And I'm -- I'm -- I'm wondering, why
16 isn't a Bell v. Hood rule that says that the
17 Court has no jurisdiction with respect to
18 frivolous assertions of that kind -- why isn't
19 that the better way to go?

20 MR. SHANMUGAM: I think that option is
21 available to the Court, Justice Kagan, as we
22 said in our brief. And if the Court thinks that
23 sanctions and fee awards would be insufficient
24 in this context, knowing that that is what the
25 Court ordinarily relies on to deter improper

1 conduct by litigants, I think that the Court
2 could adopt a Bell versus Hood-like rule.

3 And, again, if there were more
4 evidence that this was a problem -- and
5 Respondent does not cite a single example of the
6 sort of gamesmanship that it posits -- then
7 perhaps the Court should take that further step.

8 But, again, as this Court recognized,
9 for instance, in Arthur Andersen in the context
10 of appeals in the arbitration context, sanctions
11 and fee awards paradigmatically would apply in a
12 situation like this where a party is advancing a
13 frivolous argument and doing that for an
14 improper purpose, namely, for the purpose of
15 establishing appellate jurisdiction where there
16 otherwise would not be any.

17 And whether that's a matter of
18 statutory fee-shifting or sanctions, Rule 11
19 sanctions, or even the use of a court's inherent
20 authority, again, the sanction of dismissal
21 would be available, dismissal of the appeal, and
22 I think that that would suffice to deal with
23 those situations.

24 JUSTICE KAGAN: Thank you very much.

25 CHIEF JUSTICE ROBERTS: Justice

1 Gorsuch.

2 JUSTICE GORSUCH: I -- I -- I'd like
3 to press on the Bell versus Hood argument a
4 little bit from the other direction. Isn't it a
5 little bit odd to police jurisdiction based on
6 whether an argument is frivolous or not?
7 Wouldn't that seem to be more of a merits
8 determination in the first instance?

9 And for -- for a party arguing that we
10 need to follow the strict language of the
11 statute with respect to our jurisdiction of
12 orders, I'm -- I'm -- I'm -- I'm not sure I
13 understand where -- where this authority to
14 dismiss for lack of jurisdiction, frivolous
15 arguments, might -- might emanate, what penumbra
16 it emanates from?

17 MR. SHANMUGAM: Justice Gorsuch, as
18 I'm sure you're aware, the Bell versus Hood rule
19 has been criticized, including, I believe, by
20 Chief Justice Rehnquist, on precisely that
21 ground, and I think it's really a matter for the
22 Court to decide whether it --

23 JUSTICE GORSUCH: Well, counsel, I
24 wouldn't --

25 MR. SHANMUGAM: -- can slide in there.

1 JUSTICE GORSUCH: -- I mean, you know,
2 you're -- you're as familiar with those
3 criticisms as I am and yet you press the point.
4 So I don't think you can press the point and
5 then say: Well, I don't know, the Court can do
6 whatever it wants. I mean, you -- you surely
7 have to take a position here.

8 MR. SHANMUGAM: Well, I -- I -- my
9 submission is simply that the Court may wish to
10 consider that, but its decision on whether or
11 not to consider that obviously depends on the
12 Court's view on the underpinnings of the Bell
13 versus Hood case.

14 JUSTICE GORSUCH: Oh, okay. So here's
15 this crazy rule that -- that, you know, you guys
16 made up, and you can continue to make it up if
17 you want, and I -- I express no views.

18 Is that -- is that --

19 MR. SHANMUGAM: Well, the Court can --

20 JUSTICE GORSUCH: -- is that where we
21 are?

22 MR. SHANMUGAM: I -- I just want to be
23 clear. The Court has repeatedly reaffirmed that
24 rule. It would require an extension of that
25 rule, which applies in the context of a federal

1 district court's jurisdiction, to this different
2 context.

3 And so were the Court to do that, it
4 would have to first conclude that it is
5 comfortable with the underpinnings of the rule
6 and, second, I think, conclude that sanctions
7 and fees would be insufficient.

8 And our front-line submission, Justice
9 Gorsuch, is there's no reason to think that
10 those would not be sufficient in this context.

11 CHIEF JUSTICE ROBERTS: Justice
12 Kavanaugh.

13 JUSTICE KAVANAUGH: Thank you, Chief
14 Justice.

15 Good morning, Mr. Shanmugam. I think
16 a problem for you here is the ratification
17 doctrine that Justice Sotomayor raised, and best
18 I can tell, all the courts of appeals had not
19 adopted this reading as of 2011, that no court
20 had deviated from that interpretation.

21 You know, what are -- what are we to
22 do with that? Is it -- are we to say that the
23 ratification doctrine really doesn't have that
24 much force, which, you know, I think it
25 sometimes is overused, just speaking for myself,

1 or how are we to get around that here if --
2 from -- from your perspective of trying to
3 convince us to adopt your position?

4 MR. SHANMUGAM: I -- I -- I think,
5 Justice Kavanaugh, that this Court can apply its
6 existing precedents on the ratification doctrine
7 and comfortably still rule in our favor.

8 And I made two points in response to
9 Justice Sotomayor, the first, that the law was
10 hardly settled and that at a minimum, in
11 considering the --

12 JUSTICE KAVANAUGH: It was --

13 MR. SHANMUGAM: -- state of the law --

14 JUSTICE KAVANAUGH: -- it was settled.
15 It was settled. There were a lot of court of
16 appeals. No one had gone the other way.

17 MR. SHANMUGAM: But I think that is
18 only true if you take a very narrow view of the
19 relevant question for ratification purposes.
20 And, again, I think, at a minimum, you have to
21 take Yamaha into account because it was this
22 Court's most recent pronouncement involving
23 materially identical statutory language.

24 JUSTICE KAVANAUGH: So -- so --

25 MR. SHANMUGAM: And this Court has

1 made --

2 JUSTICE KAVANAUGH: Go ahead.

3 MR. SHANMUGAM: I was just going to
4 say, and this Court has made clear that where
5 decisions have only conclusory reasoning, they
6 are not entitled to significant weight in the
7 ratification analysis --

8 JUSTICE KAVANAUGH: Well, I have a
9 second question --

10 MR. SHANMUGAM: -- and it was really
11 holding --

12 JUSTICE KAVANAUGH: Sorry, I have to
13 jump in to get a second question, which is why
14 do you want to be in federal court rather than
15 state court?

16 MR. SHANMUGAM: Well, I think simply
17 because we believe that the claims here arise
18 under federal law, and the easiest basis for
19 that is the federal common law ground that the
20 court of appeals did not reach because of its
21 resolution of the question presented.

22 We believe the answer on that question
23 is dictated by this Court's precedents and that
24 federal jurisdiction is therefore mandated here.

25 JUSTICE KAVANAUGH: Thank you.

1 CHIEF JUSTICE ROBERTS: Justice
2 Barrett.

3 JUSTICE BARRETT: Well, Mr. Shanmugam,
4 let me pick up where you just left off. Don't
5 you think it would be fairly aggressive for us
6 to resolve the federal common law question here,
7 assuming that we agreed with you on the
8 antecedent removal point?

9 MR. SHANMUGAM: I don't think so,
10 Justice Barrett, because that issue really goes
11 to the appropriate disposition in this Court,
12 whether the Court should simply vacate and
13 remand or reverse outright. And that issue is
14 fully briefed here. And we believe that the
15 answer is clear under this Court's long-standing
16 precedents.

17 And there's also, I think, a very
18 significant prudential reason for the Court to
19 reach that issue because, as you are aware,
20 there are some 20 of these cases pending
21 nationwide in courts around the country, and,
22 indeed, there are a number of cert petitions in
23 follow-on cases that are currently pending
24 before this Court.

25 And I think, in light of all of those

1 considerations, it would be appropriate for the
2 Court to resolve that question. And the answer
3 to that question is clear, because this Court,
4 for more than a century, has applied federal
5 common law to claims seeking redress for
6 interstate pollution, including most notably in
7 AEP with regard to very similar nuisance claims
8 alleging injury from global climate change.

9 JUSTICE BARRETT: Mr. Shanmugam --

10 MR. SHANMUGAM: And as a matter --

11 JUSTICE BARRETT: -- let me -- let me
12 interrupt you there and circle back to the
13 congressional ratification point. You know, as
14 Justice Kavanaugh pointed out, the circuits were
15 against you. They had adopted the opposite
16 position. You pointed out in your brief that
17 the leading treatise, Wright and Miller, had
18 criticized that rule.

19 Should we factor that in at all into
20 our analysis, that there was some criticism of
21 the rule even though it didn't come from courts?

22 MR. SHANMUGAM: I think that's a
23 relevant factor. And I think the government
24 agrees -- and Mr. Lucas can speak to that as
25 well -- but, ultimately, of course, it's the

1 case law that drives the analysis.

2 And when you have a unanimous, clear
3 decision from this Court construing materially
4 identical language in court of appeals decisions
5 that really had very conclusory, if any,
6 reasoning, I think that the law was unclear.

7 And when you add onto that that all
8 that Congress did here was merely to add two
9 words, "1442 or," I don't think that you can
10 conclude that there is ratification,
11 particularly when you go back to the original
12 version of 1447(d) in the Civil Rights Act,
13 where Congress was plainly very concerned about
14 the risk of local prejudice.

15 I think that the Court should not
16 blind itself to that context in making this
17 interpretive decision.

18 JUSTICE BARRETT: Thank you.

19 CHIEF JUSTICE ROBERTS: A minute to
20 wrap up, Mr. Shanmugam.

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

23 So, as we've been discussing, we
24 believe that the plain language of
25 Section 1447(d) resolves the question permitted

1 -- presented and -- and really does permit an
2 appellate court to review the entirety of a
3 remand order where a ground for removal was the
4 federal officer removal statute.

5 But we do also respectfully submit
6 that the Court should proceed to ensure that
7 this case and the many others like it proceed in
8 federal court. There is something profoundly
9 counterintuitive about the notion that these
10 cases which seek relief for injuries caused by
11 worldwide greenhouse gas emissions should be
12 litigated in state courts under the laws of
13 different states.

14 This Court has long made clear that,
15 as a matter of constitutional structure, such
16 claims necessarily arise under federal law. The
17 United States has agreed with that proposition.
18 And resolving that issue now will preserve the
19 resources of the judiciary and the parties and
20 ensure the orderly resolution of these cases.

21 And, accordingly, this Court should
22 not simply vacate but reverse the court of
23 appeals' judgment.

24 Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Mr. Lucas.

3 ORAL ARGUMENT OF BRINTON LUCAS

4 FOR THE UNITED STATES, AS AMICUS CURIAE,

5 SUPPORTING THE PETITIONERS

6 MR. LUCAS: Thank you, Mr. Chief

7 Justice, and may it please the Court:

8 This Court should hold that

9 Section 1447(d) means what it says. There is
10 simply no natural way to read the phrase "an
11 order remanding a case" as part of an order
12 remanding a case. Therefore, once Section
13 1447(d) authorizes an appeal of a remand order,
14 there's no basis for artificially limiting the
15 scope of that appeal to a particular question.

16 Respondent resists that
17 straightforward reading but never denies that
18 its approach would give the phrase "an order
19 remanding a case" different meanings in two
20 back-to-back clauses of the same sentence.
21 Instead, Respondent pivots to a novel textual
22 theory in its merits brief based on the phrase
23 "removed pursuant to."

24 But that argument can't be squared
25 with how removal actually works. At the end of

1 the day, Respondent's arguments are really about
2 policy, namely, a legislative desire to prevent
3 delay. But, when Congress has already
4 authorized an appeal of a remand order,
5 considering multiple issues is unlikely to
6 prolong litigation much further and may, in
7 fact, expedite it.

8 I welcome the Court's questions.

9 CHIEF JUSTICE ROBERTS: Counsel, I
10 would like to get back to the question I asked
11 your friend previously. Is the appellate court
12 required to consider those additional grounds
13 for removal or simply permitted to do so?

14 Not with respect to whether the
15 federal officer ground is -- is frivolous, but
16 let's say they just look at that first and they
17 determine it wasn't frivolous, but it just
18 happens to be wrong, and, therefore, we don't
19 have to look at the other bases.

20 MR. LUCAS: I don't think in that
21 context, Your Honor, whether this was not a
22 frivolous or a bad-faith assertion of federal
23 officer removal, that an appellate court could
24 simply close its eyes to questions that were
25 presented and that a defendant had the right to

1 appeal.

2 So, no, I don't think in that context
3 they could. But, in cases where there is
4 actually abuse, I think, as Petitioner
5 explained, one of the remedies available for
6 such abuse of appellate process would be a
7 dismissal of the entire appeal.

8 CHIEF JUSTICE ROBERTS: Are there any
9 grounds on which your position differs from that
10 of the Petitioner?

11 MR. LUCAS: With respect to the
12 question presented, I don't think so, Your
13 Honor. I think we think that the statute here
14 means what it says and that it's just
15 implausible to read the words "order remanding a
16 case" to mean a portion of that order remanding
17 a case.

18 CHIEF JUSTICE ROBERTS: What about --

19 MR. LUCAS: And I --

20 CHIEF JUSTICE ROBERTS: -- what about
21 on the remedy?

22 MR. LUCAS: On the remedy, we haven't
23 taken a position. We think the Court could
24 address the issue in this case, and we think
25 that's important, the federal common law issue.

1 We think it's an important question that the
2 Court will need to resolve at some point or
3 another, but we haven't taken a position on
4 whether the Court should use its discretion to
5 decide it here.

6 But whatever this Court decides to do
7 with that issue, we do think that it should
8 confirm that Section 1447(d) permits appellate
9 review of orders rather than issues.

10 CHIEF JUSTICE ROBERTS: Justice
11 Thomas.

12 JUSTICE THOMAS: Thank you, Mr. Chief
13 Justice.

14 Mr. Lucas, the -- you may be right,
15 may or may not be right, on the statutory
16 reading of this, but there seems -- there's an
17 odd -- I can't avoid the odd sense that it seems
18 as though we are smuggling in -- smuggling into
19 review, appellate review, of other issues that
20 are not necessarily the issues that are front
21 and center like federal officer.

22 Could you somehow help me to eliminate
23 that sense of awkwardness?

24 MR. LUCAS: Certainly, Justice Thomas.
25 I would point you to the fact that this really

1 isn't that unusual. I think, in other contexts,
2 the baseline is really what triggers appellate
3 review doesn't necessarily define the scope of
4 that review.

5 And I think Yamaha is a good example.
6 So, there, this Court declined to answer the
7 question that was certified in the interlocutory
8 order because it was based on an incorrect
9 premise. And had this Court taken an approach
10 similar to the one Respondent advocates here, it
11 would be left with essentially adjudicating a
12 question that didn't really matter because it
13 rested on the wrong foundation.

14 And I think you can see this in other
15 contexts, such as with respect to the review of
16 interlocutory orders concerning injunctions or
17 even with this Court's direct review over
18 three-judge district court injunctions.

19 JUSTICE THOMAS: And I know you said
20 that you're not going to take a position or the
21 government is not taking a position on whether
22 or not we should get to the -- the federal
23 common law issue, but do you have an opinion on
24 where -- whether or not such a -- there is a
25 federal common law principle on climate change

1 injuries?

2 MR. LUCAS: Yes, Your Honor, we do
3 think that Respondent's claims are inherently
4 federal in nature. And although Respondent,
5 like the plaintiffs in the Ninth Circuit Oakland
6 case, has tried to plead around this Court's
7 decision in AEP, its case still depends on
8 alleged injuries to the City of Baltimore caused
9 by emissions from all over the world, and those
10 emissions just can't be subjected to potentially
11 conflicting regulations by every state and city
12 affected by global warming.

13 JUSTICE THOMAS: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Breyer.

16 JUSTICE BREYER: No, you may go ahead.
17 I pass on this.

18 CHIEF JUSTICE ROBERTS: Justice
19 Sotomayor.

20 JUSTICE SOTOMAYOR: Counsel, this case
21 is proof of how long a case could be extended if
22 we permit review of every other argument than
23 that raised initially in the complaint.

24 You know, the focus of the cert
25 petition was on the federal officer question and

1 whether other issues could be resolved.

2 But the sub -- the -- the grounds for
3 removal was 442, and that was what was at issue.
4 So I'm not sure I agree with you that there
5 isn't inherent delay, but let me ask you a
6 couple of things.

7 Yamaha was decided in 1996. Congress
8 amended the statute in 2011. In that period gap
9 of 15 years, Wright and Miller had questioned
10 the majority rule but suggested that it needed
11 Congress to change it because it read the
12 limitation the way that Respondents do.

13 So I'm not sure how you get around
14 ratification and that it has to have some
15 meaning, especially when we're talking an
16 exception that could open the floodgates of
17 litigation -- of appellate litigation in the
18 federal system.

19 MR. LUCAS: Respectfully, Justice
20 Sotomayor, I disagree with that reading of
21 Wright and Miller. I think the treatise there
22 from 1992 was clearly making a textual argument
23 based on the word "order." Indeed, it
24 anticipated this Court's decision in Yamaha,
25 which came four years later.

1 But I think, with respect --

2 JUSTICE SOTOMAYOR: What do we do with

3 --

4 MR. LUCAS: -- to ratification --

5 JUSTICE SOTOMAYOR: -- what do we do

6 with the two authors who have submitted briefs

7 saying that they think the natural reading is

8 what the circuits have made it to be?

9 MR. LUCAS: You can certainly take
10 them into account, Your Honor, but I do think
11 that when we're looking at the weight of
12 authority for ratification purposes, it's
13 important to focus on quality, not just
14 quantity.

15 And I do think that if you look at all
16 the court of appeals decisions that Respondent
17 cites in its brief, all of them are very
18 conclusory and they're not really engaged with
19 the text at all. To the extent there's any
20 analysis at all in these court of appeals
21 decisions, they're really rooted in purpose.

22 And I think a good example is the
23 earliest decision that I'm aware of on this
24 subject in the Sixth Circuit in the Appalachian
25 Volunteers case.

1 And on the other side of the ledger,
2 not only do you have Wright and Miller making
3 the textual argument, you also have this Court's
4 decision not only in Yamaha but also in cases in
5 other contexts going back to the Iron Works case
6 from 1897 construing "order" as it's plainly
7 understood.

8 CHIEF JUSTICE ROBERTS: Justice Kagan.

9 MR. LUCAS: So we do think that the
10 question wasn't settled in 2011.

11 CHIEF JUSTICE ROBERTS: Justice Kagan.

12 JUSTICE KAGAN: Mr. Lucas, I'd like to
13 give you a hypothetical. Suppose that there is
14 a removal on multiple grounds, including 1442.
15 Then there is a remand. And then the defendant
16 decides that he wants to appeal, but he decides
17 that he doesn't really feel like appealing
18 anymore the 1442 ground, he just wants to focus
19 on the other grounds for removal. He abandons
20 the 1442 ground.

21 Would the court of appeals still have
22 jurisdiction to decide the other removal issues?

23 MR. LUCAS: I think, in that context,
24 that may well be a situation for a remedy along
25 the lines of Bell v. Hood or a dismissal or some

1 other form of sanctions if it's an indication
2 that this was really a ground asserted solely to
3 get jurisdiction.

4 JUSTICE KAGAN: Well, I mean,
5 actually, it's -- it's not a frivolous argument.
6 He just doesn't think it's as strong as other
7 arguments. Does -- and he abandons it. Does --
8 is there still jurisdiction?

9 MR. LUCAS: I think, in that context,
10 you could still apply a sort of Bell v.
11 Hood-type situation and I think it would be
12 analogous to the three-judge district court
13 context, where this Court in recent cases, such
14 as Shapiro, has reaffirmed that if a party seeks
15 to get a three-judge court jurisdiction and then
16 this Court's direct review under 1253 and the
17 constitutional claim is an insubstantial one,
18 then it can -- the entire case being --

19 JUSTICE KAGAN: I guess I --

20 MR. LUCAS: -- can be dismissed.

21 JUSTICE KAGAN: -- I guess I don't
22 understand your argument. I mean, I can
23 understand your hesitation in -- in answering
24 the hypothetical the opposite way, but, once you
25 answer me in that way, it seems as though you're

1 not really -- you know, "order" doesn't really
2 mean "order" in the way that you insist that it
3 does.

4 MR. LUCAS: To clarify, Justice Kagan,
5 I think, in that context, these are simply
6 remedies that the Court could use. We're not
7 saying that the meaning of the word "order"
8 changes in that context, simply that if this
9 Court is concerned about those hypotheticals and
10 they do arise, remedies would be available.

11 And I would note that this --

12 JUSTICE KAGAN: So there is
13 jurisdiction, but the Court has discretionary
14 remedies available to it?

15 MR. LUCAS: Yes, Your Honor.

16 JUSTICE KAGAN: I mean, if that's the
17 case, I'm going to ask, like, what sense that
18 that makes? Do you think that that's really
19 the -- the -- the -- the statute that Congress
20 wrote here, which is a statute that talked about
21 1442 but allows the Court to exercise
22 jurisdiction in a case in which 1442 is long
23 gone?

24 MR. LUCAS: I think, Your Honor, the
25 purpose, to the extent we're trying to define

1 one, is that once a case is on appeal under
2 Section 1447(d), there's no good reason for a
3 court of appeals to artificially limit the scope
4 of appellate review.

5 And going back to my colloquy with
6 Justice Thomas, I would underscore that this
7 isn't an unusual situation. It happens in
8 reviews of all sorts of interlocutory orders --

9 JUSTICE KAGAN: Thank you, Mr. Lucas.

10 MR. LUCAS: -- including in Yamaha.

11 CHIEF JUSTICE ROBERTS: Justice
12 Gorsuch.

13 JUSTICE GORSUCH: I'll pass. Thank
14 you.

15 CHIEF JUSTICE ROBERTS: Justice
16 Kavanaugh.

17 JUSTICE KAVANAUGH: Thank you, Chief
18 Justice.

19 And good morning, Mr. Lucas. I think
20 this is a close call in this case. You have the
21 text that you assert, your reading of the text
22 in -- in Yamaha obviously helps you, but there
23 are also problems.

24 One is the inequity between
25 defendants, one of whom tacks on 1442 and

1 therefore gets appellate review, the other of
2 whom doesn't have the ability to tack on 1442
3 and doesn't get appellate review even though
4 they have the same other attempted federal
5 question ground.

6 So that -- that's one problem, which
7 makes it seem -- seem doubtful that Congress
8 really intended this. There's also the
9 gamesmanship problem. And then there's the
10 ratification, which I want to zero in on with
11 you.

12 What exactly would you say about the
13 ratification doctrine? Because, if you just
14 read the Black Letter description of the
15 ratification doctrine and lay it down here, it
16 would seem to apply. So what -- why doesn't it
17 apply?

18 MR. LUCAS: First off, Justice
19 Kavanaugh, we don't -- we don't think that
20 "order remanding a case" is -- can really be
21 susceptible to any ambiguity here, but even if
22 you think that it is ambiguous and you want to
23 rely on the ratification doctrine, I would just
24 underscore that the circuit cases you have here
25 really don't engage with any sort of text.

1 And to the extent there's any
2 reasoning at all rather than just citations to
3 other circuit court cases, they're really just
4 about purpose, and even at that, it's quite
5 conclusory.

6 And on the other side, I would note
7 that you do have this Court's cases in other
8 contexts but certainly similar ones, as well as
9 the leading treatise anticipating this Court's
10 decision in Yamaha based on the text of the
11 statute. And so --

12 JUSTICE KAVANAUGH: So you -- you
13 think a --

14 MR. LUCAS: -- in that context --

15 JUSTICE KAVANAUGH: -- I'm sorry, you
16 think a prerequisite to applying that doctrine
17 is a conclusion of ambiguity? I don't think all
18 the -- all of our cases have said that, but
19 that's your view of how the doctrine should
20 apply?

21 MR. LUCAS: I -- I think so, Your
22 Honor, and that's at least how I understand
23 cases such as Milner versus Department of Navy
24 and the like. But even if you disagree with me,
25 Justice Kavanaugh, I still think, in this

1 context, it's hard to say that Congress thought
2 this question was settled in 2011, which I think
3 everybody agrees is the sort of touchstone of
4 the ratification analysis, when you have on the
5 one side, yes, a number of circuit cases, but
6 they're poorly reasoned ones, and on the other
7 side, you do have this Court's precedents in
8 other areas and the leading treatise.

9 So I think, in that context, it's just
10 hard to say that Congress would look at this
11 landscape and say that, yes, this issue is
12 firmly and conclusively settled.

13 CHIEF JUSTICE ROBERTS: Justice --

14 JUSTICE KAVANAUGH: Thank you.

15 CHIEF JUSTICE ROBERTS: -- Justice
16 Barrett.

17 JUSTICE BARRETT: Counsel, I want to
18 go back to Justice Kagan's question because I
19 had the same one, the one about multiple grounds
20 for removal, there's a remand order, you decide
21 to appeal it, but you decide not to include the
22 1442 or 1443 ground in the appeal.

23 And when Justice Kagan asked you if
24 there would be jurisdiction, you kind of hedged
25 a little bit and said maybe that was a -- an

1 instance in which Bell v. Hood could be used or
2 sanctions could be used. But I don't see why so
3 long as the 1442 or 1443 ground wasn't
4 insubstantial or frivolous. So could you say a
5 little bit more about that?

6 MR. LUCAS: So, if -- if no such
7 remedy applies and you -- in terms of a sanction
8 here, that it's not, you know, susceptible to a
9 Bell v. Hood-type construction or to a sanction
10 available, then I think the text of the statute
11 would control, but I do think that's going to be
12 rare when you get a context like that because I
13 think, in those cases, it's quite likely that
14 those can be fairly characterized as evidence of
15 bad faith.

16 If a party seeks to gain appellate
17 jurisdiction using one of these grounds and then
18 abandons that argument on appeal, that would
19 seem to me to be a pretty good candidate for an
20 instance of a Bell v. Hood-type remedy or any
21 number of sanctions available in this --

22 JUSTICE BARRETT: Well, I'm not sure
23 about that, because if it wasn't -- if it was a
24 decent argument, but they just decided not to
25 press it on appeal, I'm not sure that's a

1 candidate for sanction or Bell v. Hood even if,
2 as Justice Gorsuch was pointing out, we wanted
3 to continue the life of Bell v. Hood any
4 further.

5 But I don't have any other questions.
6 Thanks, counsel.

7 CHIEF JUSTICE ROBERTS: Mr. Lucas, a
8 minute to wrap up.

9 MR. LUCAS: Thank you, Mr. Chief
10 Justice. A few quick points.

11 On gamesmanship, I just want to
12 underscore that Respondent has neither
13 identified any evidence of abuse in the circuits
14 that review the entire remand order, nor really
15 offered any compelling reason to expect that
16 situation to change.

17 And if problems ever do arise in the
18 limited set of cases where a defendant can
19 plausibly invoke Section 1447(d)'s exception, at
20 the end of the day, they can always be addressed
21 by Congress.

22 In the meantime, the theoretical
23 possibility of undesirable consequences is no
24 reason to carve up undeniably appealable remand
25 orders into reviewable and unreviewable

1 portions.

2 Rather, appellate courts should be
3 able to figure out whether a remand order
4 resulted from a legal error, even if that error
5 doesn't involve federal officers or civil
6 rights. That's how this Court has approached
7 other types of orders, and there's no good
8 reason for treating remand orders any
9 differently.

10 Once Congress has authorized an appeal
11 under Section 1447(d), it doesn't serve anyone
12 for appellate courts to artificially limit the
13 scope of their review.

14 Thank you.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Mr. Sher.

18 ORAL ARGUMENT OF VICTOR M. SHER

19 ON BEHALF OF THE RESPONDENT

20 MR. SHER: Thank you, Mr. Chief
21 Justice, and may it please the Court:

22 According to Petitioners, merely
23 referring to Section 1442 in a removal notice
24 guarantees a defendant an appeal as of right of
25 every ground rejected by the district court,

1 even if the 1442 ground is meritless and even if
2 the defendant drops it on appeal.

3 That is not a permissible reading of
4 1447(d). That section, a general prohibition
5 subject to a narrow exception, tethers appellate
6 review to two designated grounds, 1442 and 43,
7 and to those grounds only.

8 This Court has never held that review
9 of an order necessarily encompasses every issue
10 addressed in an order. Its interpretation of
11 similarly worded statutes proves this.
12 Moreover, the exception clause limits review to
13 removals pursuant to 1442 or 43, meaning where
14 the removal was in compliance with or in
15 accordance with those statutes.

16 The court of appeals must decide if
17 federal officer jurisdiction exists, not merely
18 whether a defendant asserted it perhaps as a
19 bootstrap to obtain review of grounds otherwise
20 absolutely barred.

21 This case was not removed pursuant to
22 1442 because, as the courts below held,
23 Petitioners do not qualify for federal officer
24 removal. Petitioners' interpretation thus runs
25 counter to the language and structure of

1 1447(d), and even if the language were not
2 clear, their view violates basic principles of
3 statutory interpretation.

4 Finally, Petitioners' construction
5 ignores that in 2011 Congress ratified 50 years
6 of unanimous circuit court authority that
7 limited review of remand orders to the exception
8 clause's enumerated grounds and only to those
9 grounds. And the courts in those cases held
10 that the language was clear, and that was what
11 supported their jurisdictional analysis.

12 I welcome your questions.

13 CHIEF JUSTICE ROBERTS: Counsel, you
14 just said that your -- the Petitioners' reading
15 of 1447(d) is contrary to the language of the
16 statute.

17 I will give you an uninterrupted three
18 minutes to explain to me how the language "an
19 order remanding a case shall be reviewable by
20 appeal or otherwise" should be read to say a
21 portion of an order remanding a case shall be
22 reviewable by appeal or otherwise, solely with
23 respect to the text of that.

24 I know you have arguments outside the
25 text, but, with respect to the actual text,

1 what's -- what's -- what's your best argument?

2 MR. SHER: Sure, Your Honor. The
3 first thing we have to keep in mind is that you
4 have to look at the sentence as a whole,
5 including the first clause, which is a general
6 and absolute bar on appellate review of remand
7 orders.

8 So then, when we look at the second
9 clause, we have to look at the words not in
10 isolation but as in -- in relation to their
11 neighbors. And, there, we see that an order is
12 reviewable but only if it is an order that -- in
13 which the removal was pursuant to Section 1442
14 or 1443.

15 Petitioners assert that "pursuant to"
16 is merely a label in the removal notice. But we
17 know that can't be right because, for example,
18 in an earlier section, in 1446, which is
19 actually the procedure for removal of civil
20 actions, the removing party has to -- the
21 attorney has to file pursuant to Rule 11.

22 And Rule 11 has both a procedural
23 signature component and substantive, that is,
24 that the grounds have to be done not for delay
25 and with substantial basis in the evidence, et

1 cetera.

2 Now the key point is that the issue
3 isn't whether the order is reviewable but what
4 the scope of that review is. And both the
5 structure of the sentence, that is, the
6 tethering to 1442 and 1443, and this Court's
7 treatment of similar language in other statutes,
8 like 1257, the Criminal Appeals Act, and
9 Section 1291, review -- review of single orders
10 is limited to certain issues within those
11 orders, even though the language of the statute
12 itself doesn't distinguish among those issues.

13 So, for all those reasons, the use of
14 the word "order" and the use of the word
15 "reviewable" have never meant to this Court that
16 that necessarily means a reviewing court has to
17 address every single issue raised within an
18 order.

19 To the contrary, this Court has -- has
20 frequently disentangled issues and made clear in
21 cases like Swint and Abney and Behrens, all of
22 which Petitioners ignore, that you cannot use an
23 -- an appealable issue as a ticket for
24 multi-issue appeals that are not allowed.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Thomas.

3 JUSTICE THOMAS: Thank you, Mr. Chief
4 Justice.

5 Counsel, I -- I don't want to belabor
6 the point, but I think it's an important point.
7 Could you give us -- you mentioned some cases
8 that support your point. Could you give us
9 further details about those cases and why they
10 support your point?

11 MR. SHER: Sure, Your Honor. And let
12 me -- let me point to one other structural thing
13 in Section 1447 itself that supports this
14 analysis. Section 1447(c) says that an order
15 remanding the case may require payment of just
16 costs and expenses incurred as a result of the
17 removal. So it requires the award of fees to be
18 part of the order.

19 The circuits that have looked at
20 this -- and it's 12 of them; only the Federal
21 Circuit has not -- have held that the award of
22 fees is reviewable even if the rest of the order
23 falls within the bar of the general
24 non-reviewability clause.

25 As to your -- as to your specific

1 question about cases, in Swint, a case involving
2 Section 1983 claims, there was a single order
3 denying motions for summary -- summary judgment.
4 This Court said that the portion of the order
5 denying qualified immunity was reviewable but
6 the -- not an order whether specific defendants
7 were policymakers. That portion of the order
8 was not reviewable.

9 In Abney, there was a single order,
10 and it was okay for the appellate court to -- to
11 review the order denying the motion to dismiss
12 with respect to double jeopardy but not with
13 respect to the same order denying a challenge to
14 the sufficiency of an indictment.

15 And, in Behrens, a wrongful discharge
16 -- discharge case, Justice Scalia explained that
17 a single order could be reviewed with respect to
18 the issue of denying qualified immunity but not
19 with respect to determinations of evidentiary
20 sufficiency.

21 And in our brief, we discuss the cases
22 under the Criminal Appeals Act and as well as
23 under Section 1257. You cannot allow a party
24 that has a non-meritorious issue, as defendants
25 -- sorry, as Petitioners have here, to use that

1 issue as a hook to open up issues that this
2 Court and the statute have plainly barred.

3 JUSTICE THOMAS: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Breyer.

6 JUSTICE BREYER: Good morning. I -- I
7 -- I see the linguistic argument, which is tough
8 for you, but I see the argument from -- that's
9 order, and the argument from Yamaha, you have to
10 overcome those. I'm not focusing on those.

11 I want to focus on a problem that
12 occurred to me. It's in every legal system.
13 It's important to have an appeal. It's -- it's
14 unfair not to give people appeals. But, if you
15 give them appeals in the middle of the case, too
16 often you will really muck up the system, take
17 too long. And so we allow some things to go
18 ahead even though there was no appeal and it
19 might be unfair and wrong because we don't want
20 to muck up the system. That's what I see
21 underlying this statute since 1887. You know?

22 No, no appeal. But now they have an
23 appeal on some things. So you're not going to
24 waste a lot of time; it's in the court of
25 appeals anyway. You'll waste some time if you

1 let them have other things. But the big waste,
2 the big time-consuming thing, is getting the
3 appeal in the first place.

4 Now it's here. So we've undercut the
5 main reason for not giving people an appeal.
6 We've undercut it, not destroyed it.

7 Now, if that's correct policy, then
8 that's on the other side that you're trying to
9 argue. So I want you to see what you think.

10 MR. SHER: I don't -- I don't think it
11 is, Your Honor. These grounds for appeal, as
12 this Court explained in the Ruiz case talking
13 about why that provision was jurisdictional and
14 limited to a single issue, diversity
15 jurisdiction is a good example, Your Honor.

16 You don't obtain diversity
17 jurisdiction by having a colorable argument that
18 there's diversity jurisdiction. You either have
19 it or you do not. The same is true for federal
20 officer jurisdiction. It either exists or it
21 does not. And if it does not, then the plain
22 language of the -- we think the plain language
23 of the statute limits and tethers the appellate
24 court's scope of review and that's the end of
25 the issue.

1 The notion that there's a -- an
2 efficiency that requires a court -- is based on
3 two assumptions, both of which are wrong, by the
4 Petitioners. The first is that there's a link
5 somehow between asserted grounds for removal.
6 But the fact that a party has asserted federal
7 officer jurisdiction, which it does not have and
8 which, in -- in this Court, it doesn't
9 challenge, does not mean that it's entitled to
10 bankruptcy jurisdiction or admiralty
11 jurisdiction or federal enclave jurisdiction or
12 any of the other jurisdictional assertions that
13 have been made by the Petitioners in this case.
14 There's no link. There's no reason to open up
15 the other issues.

16 And, second, just as a matter of
17 statutory construction, you don't have to read
18 the second clause narrowly to understand that
19 it -- that it confines the broad language of the
20 first language. How does it confine it? Well,
21 it restricts it to Sections 1442 and 1443.

22 And 50 years --

23 JUSTICE BREYER: Oh. Well, the
24 argument on policy is, look, the case is here
25 anyway, big deal, let's decide the issues. They

1 take a little --

2 MR. SHER: No, Your Honor.

3 JUSTICE BREYER: -- but not a lot of
4 time. That's the mouse. And the elephant is no
5 longer there. The elephant is it takes a lot of
6 time to appeal, so let's not give him any.

7 MR. SHER: Your Honor, and this --
8 this case is a good example of the reason that
9 we should be concerned about this. We've been
10 three years in limbo between the federal and
11 state courts.

12 And the -- the record below, the -- if
13 you look at -- the only thing Your Honors have
14 in -- from the record is the notice of removal,
15 but there were 43 exhibits comprising 1100 --
16 more than 1100 pages that were part of that.

17 And to foist on the courts of appeals
18 records of that extent and issues, it does not
19 take a lot of extrapolation to understand how
20 that would burden the courts of appeals.

21 JUSTICE BREYER: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice
23 Sotomayor.

24 JUSTICE SOTOMAYOR: Counsel, would you
25 address the ratification points the SG spoke

1 about, the counters that he mentioned, to why
2 ratification --

3 MR. SHER: Well, I --

4 JUSTICE SOTOMAYOR: -- doesn't assist
5 you in this case?

6 MR. SHER: Yes, Your Honor. Thank
7 you. Two -- two points.

8 The first is that it's factually
9 incorrect that the nine circuits that addressed
10 this issue prior to 2011 contain no analysis.
11 They all found the language clear, the -- the --
12 the commonsense reading of the statute clear,
13 and many of them pointed that -- that out in
14 particular.

15 But, with respect to the body of case
16 law, Petitioners and the United States ignore,
17 and I think it's significant, a couple of
18 important cases from this Court. The first is
19 Helsinn from 2019, a unanimous opinion in which
20 the Court was confronted with a line of cases
21 from the Federal Circuit involving
22 interpretation of patent law, and the -- the --
23 the Federal Circuit, of course, had -- was the
24 only one with jurisdiction over these issues.

25 The Court relied on that land -- that

1 line of cases out of the Federal Circuit and the
2 fact that Congress reenacted not just the same
3 language but added only a new catch-all phrase.
4 And as the Court and the United States' amicus
5 in that case said, that would be an -- an -- a
6 very oblique way of attempting to overturn the
7 settled body of law.

8 The settled body of law comes from
9 what a practitioner looking at nine unanimous
10 circuits over 50 years would think at the time,
11 and that is that where there is a federal
12 officer or civil rights assertion and other
13 issues, the only issue that the court of appeals
14 has jurisdiction to review are those issues, and
15 that's what Congress ratified by reenacting the
16 language and only adding "1442 or."

17 There was also -- and -- and -- and we
18 cite to the House report, which -- which points
19 out that the reason for this addition was
20 specifically to protect federal officers from
21 removal, as civil rights cases do because,
22 otherwise, there is no way to get the issue into
23 the court of appeals.

24 So Congress put its thumb on the
25 scales for two issues, federal officer and --

1 and civil rights, because there were important
2 public policy reasons to protect those kinds of
3 defendants against district court error.

4 In all other cases, Congress has made
5 clear and the courts have consistently held, as
6 has this Court, that the -- if it's a -- if it's
7 a subject matter jurisdiction issue or another
8 ground barred by 1447(c), there is no right to
9 appellate review. And it's jurisdictional, not
10 just -- as Justice Scalia said, it's not just
11 hortatory.

12 JUSTICE SOTOMAYOR: Thank you,
13 counsel.

14 CHIEF JUSTICE ROBERTS: Justice Kagan.

15 JUSTICE KAGAN: Mr. Sher, on your
16 gamesmanship point, why isn't a -- a Bell v.
17 Hood rule or even the possibility of sanctions
18 sufficient to remove that as a concern?

19 MR. SHER: Because the burden comes
20 from -- from that large gray area between
21 frivolity and meritless, ultimately meritless.
22 And that's where, as the Tenth Circuit put it,
23 no competent lawyer would -- would -- if the
24 rule changes this way, every competent lawyer
25 will look for a way to assert federal officer

1 simply so that other grounds can be -- can --
2 can be brought up on appeal.

3 And, again, the statistics from the
4 Seventh Circuit are actually ambiguous because,
5 as the local government associations' amici
6 point out, while, in Lu Junhong, the Seventh
7 Circuit said that following our opinion it would
8 be frivolous to assert federal officer removal
9 as a basis for removal in future cases, in fact,
10 there have been future cases in other -- albeit
11 in other circuits, raising exactly the same
12 issue.

13 JUSTICE KAGAN: Would --

14 MR. SHER: So I -- I -- yes?

15 JUSTICE KAGAN: I'm sorry, go ahead.

16 MR. SHER: Sorry.

17 JUSTICE KAGAN: I mean, you said --

18 MR. SHER: Well, I was just going to
19 --

20 JUSTICE KAGAN: -- you said every
21 competent lawyer, Mr. Sher, but -- but 1442 and
22 1443 are pretty specific grounds for removal.
23 It's not like everybody's going to have a
24 plausible 1442 ground, is it?

25 MR. SHER: Well, Your Honor, the

1 assertion of federal officer jurisdiction in
2 this case, which was rejected by now four
3 circuits, including the Fourth Circuit below,
4 was really based on doctrines that have been
5 soundly disapproved and rejected by this Court,
6 ranging from government regulation and
7 supervision to a -- a lack of connection between
8 the conduct that's the basis of the tort, which
9 is misrepresentation and a campaign of deception
10 and denial, and any relationship to the
11 government, much less any appropriate federal
12 interest in promoting those kinds of lies and
13 deceit.

14 But we see them asserted continually.
15 And -- and, again, as the same amicus as well as
16 the New York State amici point out, that removal
17 has become a tactic of defendants in a wide
18 range of cases, including environmental
19 regulation, opioids, sub-prime lending in
20 financial institutions and others. And in every
21 one of those instances, there -- these involve
22 national industries heavily regulated by the
23 federal government and you -- you could have
24 colorable assertions.

25 And -- and -- and a rule that broadly

1 opened the gates to other issues and appellate
2 rights would not only result in longer delays
3 but would burden the -- the records of the
4 courts.

5 There's a -- these are not just -- not
6 just our cases, Your Honor, but big cases
7 involving large companies and important
8 interests frequently bump up against federal
9 interests, and the issue here is whether there's
10 a federal officer connection, which there is
11 not.

12 JUSTICE KAGAN: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Gorsuch.

15 JUSTICE GORSUCH: Good morning,
16 counsel.

17 MR. SHER: Good morning, Your Honor.

18 JUSTICE GORSUCH: I'd like to return
19 to the text where the Chief started us, and it
20 seems to me that everyone would agree that the
21 first clause of 1447's reference to "an order
22 remanding a case to the state court from which
23 it's removed" is not reviewable.

24 That first portion, everybody agreed
25 that's the whole order. It's not like a court

1 can review some of it. And, normally, we -- the
2 question is what happens to the term "order" as
3 it appears in the second clause.

4 And, normally, we -- we read a statute
5 that uses a single term to employ the same
6 definition throughout. The government charges
7 that that's one defect in your statutory
8 interpretation. I didn't hear you address that
9 concern with -- in your discussion with the
10 Chief, and I was hoping you might now.

11 MR. SHER: Yes. Thank you, Justice
12 Gorsuch. So two points. First of all, the
13 first clause of subsection (d) has to relate to
14 -- to subsection (c), which includes "an order
15 remanding the case may require payment of just
16 costs and any actual expenses incurred as a
17 result of the removal."

18 And every circuit, 12 circuits have
19 looked at that, and they have all concluded that
20 regardless of whether the ground for the removal
21 is -- is reviewable under the first clause of
22 subsection (d), they can address that issue.
23 And under Petitioners' view, they could not,
24 unless it was a case involving 1442 or 1443. So
25 that's -- that -- that's the first point.

1 The second point is --

2 JUSTICE GORSUCH: Let's put aside
3 1447(c). There's a whole list of arguments we
4 could go down that rabbit hole. I'm --

5 MR. SHER: Okay.

6 JUSTICE GORSUCH: -- I'm really just
7 focused on (d) at the moment.

8 MR. SHER: Okay. So (d) is an
9 exception clause and -- and has to be led in
10 right -- sorry, has to be read in light of the
11 first clause, which is a general bar. And it
12 says "removed pursuant to Section 142" -- "1442
13 or 1443."

14 Now that cannot be procedural because
15 1442 and 1443 are exclusively substantive. They
16 set forth standards for 14 -- for federal
17 officer and civil rights qualifications for
18 removal, respectively.

19 So "pursuant to Section 1442 or 1443"
20 must mean something other than simply that the
21 notice of removal referenced them, and this is
22 why that language acts both as a tether as a
23 matter of -- of -- of commonsense interpretation
24 of the statute, focusing the court of appeals'
25 attention on those issues and those issues

1 alone, and as a substantive bar because
2 "pursuant to," as this Court has interpreted it
3 in other contexts and as the Constitution uses
4 the -- the phrase "in pursuance to" for
5 legislation, means not just procedural
6 compliance but substantive compliance.

7 JUSTICE GORSUCH: And what do you do
8 about Yamaha? I understand that the question
9 there was when, and it's which order is the
10 question here, what part of it. So the
11 questions are different, I get that, but I'm not
12 sure I understand why the different -- that
13 difference makes -- makes a difference given the
14 scope of our reasoning in Yamaha.

15 Do you want to address that for me?

16 MR. SHER: It -- yes, thank you, Your
17 Honor. It -- it is because the key point in
18 both Yamaha and here is not the use of the term
19 "order" but answering the question, what is the
20 scope of review on appeal?

21 And in Yamaha, looking at the language
22 of -- of what the district court can certify as
23 involving a controlling question of law and
24 looking at the appellate court's discretion to
25 either accept the -- the appeal, the

1 interlocutory appeal, at all or move on to other
2 issues within the scope of the order, it means
3 that's the -- the Court said the scope of review
4 under those conditions in that context made
5 sense. But, here --

6 CHIEF JUSTICE ROBERTS: Justice
7 Kavanaugh -- oh, I'm sorry. Finish your answer,
8 please.

9 MR. SHER: Oh, thank you, Your Honor.
10 I'll be brief.

11 The --- in -- in -- in 1447(d), which
12 is a jurisdictional statute, the -- the -- the
13 language is limiting, not discretionary. It's
14 mandatory, and -- and it can only -- it should
15 only be read, we submit, to focus attention on
16 the 1442 or 43 grounds.

17 CHIEF JUSTICE ROBERTS: Justice
18 Kavanaugh.

19 JUSTICE KAVANAUGH: Thank you, Chief
20 Justice.

21 Good afternoon, Mr. Sher.

22 MR. SHER: Good afternoon.

23 JUSTICE KAVANAUGH: Let's start --
24 let's start with an atmospheric question. I
25 know the Maryland state court system is very

1 strong and has an excellent reputation. I know
2 the Maryland federal judiciary, similarly, is
3 filled with excellent judges.

4 I asked Mr. Shanmugam why he wanted to
5 be in federal court. He gave me a legal answer.
6 He didn't really go beyond that.

7 You really want to be in state court.
8 Why?

9 MR. SHER: We don't believe federal
10 court jurisdiction exists and the cases -- there
11 is no federal claim to assert here, Your Honor.
12 The -- the tort that is concerned -- that is --
13 that we're concerned with -- and the Fourth
14 Circuit addressed this in detail in its opinion,
15 as did Judge Hollander in the district court;
16 it's on pages 21a and 22a of the -- of the
17 circuit court's opinion in the -- in the record
18 -- pointed out that the -- that the conduct
19 complained of is fraud, deception, denial, and
20 disinformation --

21 JUSTICE KAVANAUGH: Okay. I -- I --

22 MR. SHER: -- and that those are
23 traditional state foci and traditional state
24 remedies --

25 JUSTICE KAVANAUGH: I get that.

1 MR. SHER: -- for which, frankly, at
2 this point, there is no federal analog.

3 JUSTICE KAVANAUGH: Right. Okay. So
4 that's -- that's your legal answer. That's
5 fine.

6 Moving on to a different question, as
7 Justice Gorsuch said, I think, the text in
8 isolation is a problem for you, and that means
9 the text is a problem for you.

10 You also, I think, have a problem with
11 Yamaha. And, you know, it's never good to be on
12 the wrong side of a Justice Ginsburg opinion,
13 but particularly on a jurisdictional issue, and
14 what she wrote for the Court there is, "As the
15 text of Section 1292(b) indicates, appellate
16 jurisdiction applies to the order certified to
17 the court of appeals and is not tied to the
18 particular question formulated by the district
19 court."

20 And that language, as you know well,
21 is -- is similar. What do we do with Yamaha?
22 Justice Gorsuch was touching on this as well,
23 but that sentence in particular seems
24 problematic.

25 MR. SHER: Well, I think you start

1 with this Court's interpretations of Section
2 1291 in which the Court has said that, despite
3 virtually identical language about what is
4 appealable from the district courts, that --
5 that only certain issues within an order are
6 appealable and -- or reviewable and others are
7 not, and -- and the other two statutes that --
8 that we discuss at length in our brief.

9 And Yamaha's reference to "order" was
10 in the context of a particular statute, who --
11 setting aside congressional intent and purpose,
12 which I'm not -- which I think also cut in our
13 favor here, but simply looking at the language
14 of Section 1292(b), it is not similar in its
15 commonsense reading to the commonsense reading
16 of 1447(d).

17 JUSTICE KAVANAUGH: Okay. One last
18 question --

19 MR. SHER: Again --

20 JUSTICE KAVANAUGH: -- Mr. Sher --

21 MR. SHER: Sure.

22 JUSTICE KAVANAUGH: -- which is on the
23 reenactment canon, which Justice Sotomayor and I
24 have been asking about.

25 MR. SHER: Sure.

1 JUSTICE KAVANAUGH: Just looking at
2 our cases, it looks like it's often used, to
3 borrow a phrase in a different context from
4 Justice Kagan, like icing on a cake already
5 frosted when we use the doctrine. You cited
6 Helsinn, and that was -- that's a good case for
7 you to cite, I -- I agree, but that -- that was
8 relying mostly on the fact that our precedent --
9 we were sticking with our precedent.

10 And it did mention the reenactment.
11 But Professor Eskridge, in his treatises, has
12 pointed out that the presumed intent
13 justification behind that doctrine is, in his
14 words, "unusually weak." And I just wonder how
15 much work it can do here given that it -- it's
16 really not clear, we don't have any indication,
17 that Congress actually -- or members actually
18 focused on this and intended in any way to
19 ratify the interpretation.

20 Can you respond to that?

21 MR. SHER: Yes, Your Honor. First of
22 all, in Helsinn, the point was there was not
23 controlling authority from this case -- I'm
24 sorry, from this Court, but, rather, there was
25 from a circuit court, the federal court -- the

1 Federal Circuit.

2 And, second, in his treatise, Scalia
3 and -- shoot, I'm going to -- I'm -- I'm -- I'm
4 spacing whether it's Garner or Warner, but what
5 they --

6 JUSTICE KAVANAUGH: It's Garner.

7 MR. SHER: Garner, thank you. The --
8 the -- the issue is whether a practitioner at
9 the time would view the -- the issue as settled.
10 And, here, a practitioner in 2011 would look at
11 the unanimous 50 years of precedent from nine
12 circuits that had all held that if the issue
13 goes up to a court of appeals and it's among
14 several, that only the 1442 or 43 -- actually,
15 to that point, it was only 1443 ground could be
16 reviewed --

17 CHIEF JUSTICE ROBERTS: Justice
18 Barrett.

19 MR. SHER: -- and would conclude --

20 JUSTICE BARRETT: Counsel, I want to
21 walk you through a procedural question that I
22 have about your interpretation. So I want to
23 talk about your "pursuant to" argument, in which
24 you say that a case hasn't been removed pursuant
25 to 1442 or 1443 unless it has been correctly

1 removed pursuant to those cases.

2 So, in other words, in this case,
3 because the officer removal ground was flawed,
4 we couldn't say that this case had been removed
5 pursuant to the officer removal ground.

6 Has any court of appeals ever adopted
7 that argument?

8 MR. SHER: For 1442 and 43? As -- as
9 it turns out, the answer is --

10 JUSTICE BARRETT: For your reading of
11 14 -- I'm -- I'm sorry, your reading of 1447(d),
12 which you say that "pursuant to" -- you -- you
13 -- you lean on "pursuant to" as one of the
14 reasons to construe the statute your way.

15 MR. SHER: Correct. And the answer is
16 yes. In fact, it was the Fourth Circuit in a
17 1969 opinion called House v. Dorsey, 408 F.2d
18 1008, it was a 1443 removal solely. The court
19 of appeals looked at it and held that the
20 removing party did not qualify under 1443 and
21 dismissed for lack of jurisdiction.

22 JUSTICE BARRETT: Well, the court
23 didn't do that here, right? Because, I mean, if
24 you're right, it seems like on appeal, if the
25 Fourth Circuit in this case concluded as it did

1 that the remand order was proper, that it had
2 not been properly removed under the federal
3 officer removal statute, they should have
4 dismissed for lack of jurisdiction, not affirm
5 the remand order, correct?

6 MR. SHER: Yeah, correct, Your Honor.
7 The -- the general practice, though, in fact,
8 the universal practice in the courts that have
9 applied a commonsense language interpretation to
10 the statute, has been to dismiss the other
11 grounds asserted for lack of jurisdiction and
12 then either affirm or reverse on --

13 JUSTICE BARRETT: But that's
14 inconsistent -- that's --

15 MR. SHER: -- on the merits of this
16 particular case.

17 JUSTICE BARRETT: But, counsel, that's
18 inconsistent with your reading of the statute
19 because, if the Court doesn't have jurisdiction
20 unless the case has been properly removed
21 pursuant to, say, the federal officer removal
22 statute, there's no jurisdiction. It can't
23 affirm. It would have to dismiss even on that
24 ground. So if courts were implicitly --

25 MR. SHER: Not quite, Your Honor.

1 JUSTICE BARRETT: -- seeing it your
2 way, they wouldn't procedurally be disposing of
3 these cases this way.

4 MR. SHER: So -- so there -- there are
5 two -- two things. One is we offer two
6 different ways of reaching the same result. One
7 is under a commonsense language reading of the
8 statute in which the words "pursuant to" qualify
9 the exception and tether the -- the appellate
10 court's review to those issues, but it's not
11 necessarily -- as Your Honor points out, it's
12 not necessarily a jurisdictional analysis. It
13 just means that the appeal has to be limited and
14 focused on those grounds.

15 The other reading is the
16 jurisdictional analysis, which we think flows
17 from the use of terms that this Court has
18 consistently held have substantive
19 jurisdictional meaning, for instance, in
20 Helmerich and in Ruiz, but --

21 JUSTICE BARRETT: So, counsel, I just
22 want to ask a clarifying question. When you say
23 the jurisdictional analysis, is that the
24 analysis that I just asked you about? Is that
25 what you're calling a jurisdictional analysis of

1 "pursuant to"?

2 MR. SHER: Yes, Your Honor, "pursuant
3 to" -- "pursuant to" establishes a
4 jurisdictional threshold and that a -- a -- a --
5 a case must substantively comply with the
6 requirements of 1442 in order for the case to
7 have been removed pursuant to that provision.
8 And that is --

9 JUSTICE BARRETT: Well, counsel --

10 MR. SHER: -- a jurisdictional --

11 JUSTICE BARRETT: -- let me turn you
12 back to your other "pursuant to" argument,
13 which, as I understand it, kind of implicitly
14 means pursuant exclusively to.

15 Does that make sense? Because then
16 someone who had a basis for removing under, say,
17 the civil rights removal statute would be
18 discouraged from including any other grounds.

19 MR. SHER: No, Your Honor. The -- the
20 --

21 JUSTICE BARRETT: Unless, of course,
22 they appeal.

23 MR. SHER: No, Your Honor. The --
24 the -- the -- the point is that on appeal,
25 having been remanded, the error that can be

1 corrected by the court of appeals is limited to
2 the specified ground. And that's what the
3 commonsense reading is. Nothing is allowed
4 except it is allowed to look at orders remanding
5 pursuant to specific provisions. And that's --
6 that's --

7 CHIEF JUSTICE ROBERTS: A minute to
8 wrap up, Mr. Sher.

9 MR. SHER: Yes. Thank you, Your
10 Honor.

11 The best commonsense reading,
12 following up on this colloquy, of the exception
13 clause is that it creates a limited exception to
14 1447(d)'s general bar on appellate review for
15 federal officer and civil rights grounds and
16 only for those grounds.

17 Petitioners' reading would create an
18 exception that swallows that rule, an exception
19 that would apply to one group and one group
20 alone, defendants who make meritless claims to
21 removal on either of them. The text does not
22 compel this reading, and it is implausible to
23 think that is what Congress intended.

24 The interpretation also runs contrary
25 to the principles and purposes that animate

1 Section 1447(d). Consistent with nearly
2 unanimous view of the lower courts, including
3 the four circuit courts to decide this issue in
4 the last year, and consistent with the view
5 ratified by Congress in 2011, this Court should
6 affirm.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Mr. Shanmugam, rebuttal?

10 REBUTTAL ARGUMENT OF KANNON K. SHANMUGAM
11 ON BEHALF OF THE PETITIONERS

12 MR. SHANMUGAM: Thank you, Mr. Chief
13 Justice.

14 There is one fundamental problem with
15 Respondents' argument today. It finds no home
16 in the actual language of Section 1447(d).

17 There's simply no way as a matter of
18 ordinary English to construe "order" to mean
19 merely a portion of an order. In Yamaha,
20 Justice Ginsburg, writing for a unanimous court,
21 relied on that plain meaning to reach the same
22 conclusion.

23 And Respondents' interpretation would
24 have the added consequence of giving the phrase
25 "order remanding a case" different meanings in

1 different clauses of the very same statutory
2 sentence.

3 Respondents' only colorable textual
4 argument here is its ratification argument, but,
5 Justice Kavanaugh, this is anything but a
6 classic case for ratification, especially in the
7 absence of any relevant legislative history.

8 As Justice Scalia explained in his
9 opinion for the Court in *Alexander versus*
10 *Sandoval*, the relevant inquiry is whether one
11 can "assert with any degree of assurance that
12 congressional failure to act represents
13 affirmative congressional approval of the
14 court's statutory interpretation."

15 Here, there is simply no reason to
16 believe that Congress was preferring the
17 unreasoned decisions of some courts of appeals
18 construing this statute over the reasoned
19 decisions of this Court construing materially
20 identical ones, particularly given the technical
21 nature of the 2011 amendment.

22 Congress could well have concluded
23 that it wanted plenary review in these cases and
24 that the value of correcting erroneous remands
25 in these specific contexts outweigh the cost of

1 any incremental delay.

2 Justice Thomas, you expressed concern
3 that this could lead to the smuggling in of
4 additional issues on appeal.

5 Of course, under Section 1291, plenary
6 review is the default, not the exception, in our
7 appellate system, but there's no reason to
8 believe that there are going to be a lot of
9 these cases.

10 As the DRI amicus brief notes, in the
11 five years since the Seventh Circuit adopted our
12 interpretation, there have only been six notices
13 of removal citing either of these statutes and
14 only three appeals in those cases.

15 And, again, sanctions and fees are
16 available to deter any abuse. Indeed, the very
17 provisions at issue here specifically state that
18 notices of removal are subject to the
19 requirements of Rule 11.

20 And, finally, delay is not a
21 significant concern here. Justice Sotomayor,
22 the reason there has been delay in this case has
23 not been because of the other grounds for
24 removal, which, because of its erroneously
25 narrow view of its own jurisdiction, the court

1 of appeals after all did not reach.

2 Our rule would enable courts of
3 appeals to resolve these appeals more
4 efficiently where a court concludes that there
5 is an easier ground for removal than the often
6 fact-intensive federal officer ground, and there
7 would be delay only in a case in which a federal
8 court stays the state court proceedings on
9 remand, which would occur only when the court
10 determined that a defendant is likely to succeed
11 on its appeal.

12 There's, therefore, no good policy
13 reason to override the plain text of
14 Section 1447(d), and because there is plainly
15 federal jurisdiction over these claims, this
16 Court should therefore reverse the court of
17 appeals' judgment.

18 Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel. The case is submitted.

21 (Whereupon, at 12:39 p.m., the case
22 was submitted.)

23

24

25

1 1008 ^[1] 69:18 11 ^[4] 16:18 46:21,22 76:19 11:24 ^[2] 1:17 4:2 1100 ^[2] 53:15,16 12 ^[2] 48:20 60:18 12:39 ^[1] 77:21 1253 ^[1] 35:16 1257 ^[2] 47:8 49:23 1291 ^[3] 47:9 66:2 76:5 1292(b) ^[2] 65:15 66:14 14 ^[2] 61:16 69:11 142 ^[1] 61:12 1442 ^[32] 13:12,20 24:9 34:14,18,20 36:21,22 37:25 38:2 40:22 41:3 43:23 44:1,6,13,22 46:13 47:6 52:21 55:16 57:21,24 60:24 61:12,15,19 63:16 68:14,25 69:8 72:6 1443 ^[16] 13:8,21 40:22 41:3 46:14 47:6 52:21 57:22 60:24 61:13,15,19 68:15,25 69:18,20 1446 ^[1] 46:18 1447 ^[1] 48:13 1447's ^[1] 59:21 1447(c) ^[3] 48:14 56:8 61:3 1447(d) ^[17] 4:15 24:12,25 26:9,13 29:8 37:2 43:11 44:4 45:1,15 63:11 66:16 69:11 74:1,16 77:14 1447(d)'s ^[2] 42:19 73:14 15 ^[1] 32:9 1887 ^[1] 50:21 1897 ^[1] 34:6 19 ^[1] 1:13 19-1189 ^[1] 4:4 1969 ^[1] 69:17 1983 ^[1] 49:2 1992 ^[1] 32:22 1996 ^[1] 32:7	7 74 ^[1] 3:14 A a.m. ^[2] 1:17 4:2 abandons ^[3] 34:19 35:7 41:18 ability ^[1] 38:2 able ^[2] 11:15 43:3 Abney ^[2] 47:21 49:9 above-entitled ^[1] 1:15 absence ^[1] 75:7 absolute ^[1] 46:6 absolutely ^[1] 44:20 abuse ^[6] 11:11,18 28:4,6 42:13 76:16 accept ^[1] 62:25 accordance ^[1] 44:15 According ^[1] 43:22 accordingly ^[1] 25:21 accords ^[1] 5:13 account ^[3] 15:1 20:21 33:10 Act ^[4] 24:12 47:8 49:22 75:12 actions ^[1] 46:20 acts ^[1] 61:22 actual ^[3] 45:25 60:16 74:16 actually ^[9] 5:16 26:25 28:4 35:5 46:19 57:4 67:17,17 68:14 add ^[4] 10:18,23 24:7,8 added ^[6] 11:2,2 13:8 15:2 55:3 74:24 adding ^[1] 55:16 addition ^[2] 15:2 55:19 additional ^[3] 5:15 27:12 76:4 address ^[7] 9:15 28:24 47:17 53:25 60:8,22 62:15 addressed ^[5] 13:9 42:20 44:10 54:9 64:14 addressing ^[1] 8:19 adjudicating ^[1] 30:11 admiralty ^[1] 52:10 adopt ^[3] 7:25 16:2 20:3 adopted ^[8] 7:5 9:3 11:21 14:11 19:19 23:15 69:6 76:11 advancing ^[1] 16:12 advocates ^[1] 30:10 AEP ^[2] 23:7 31:7 affected ^[1] 31:12 affirm ^[4] 70:4,12,23 74:6 affirmative ^[1] 75:13 afternoon ^[2] 63:21,22 aggressive ^[1] 22:5 agree ^[3] 32:4 59:20 67:7 agreed ^[3] 22:7 25:17 59:24 agrees ^[2] 23:24 40:3 ah ^[2] 12:1,2	ahead ^[4] 21:2 31:16 50:18 57:15 AL ^[1] 1:3 albeit ^[1] 57:10 Alexander ^[1] 75:9 alleged ^[1] 31:8 alleging ^[2] 6:4 23:8 allow ^[2] 49:23 50:17 allowed ^[3] 47:24 73:3,4 allows ^[1] 36:21 alone ^[2] 62:1 73:20 already ^[4] 13:10 14:20 27:3 67:4 alternative ^[3] 4:24 5:17 9:1 although ^[1] 31:4 ambiguity ^[2] 38:21 39:17 ambiguous ^[2] 38:22 57:4 amended ^[1] 32:8 amendment ^[2] 14:10 75:21 amendments ^[1] 15:4 amici ^[2] 57:5 58:16 amicus ^[6] 2:6 3:7 26:4 55:4 58:15 76:10 among ^[2] 47:12 68:13 analog ^[1] 65:2 analogous ^[1] 35:12 analysis ^[13] 21:7 23:20 24:1 33:20 40:4 45:11 48:14 54:10 71:12,16,23,24,25 Andersen ^[1] 16:9 animate ^[1] 73:25 another ^[2] 29:3 56:7 answer ^[10] 21:22 22:15 23:2 30:6 35:25 63:7 64:5 65:4 69:9,15 answering ^[2] 35:23 62:19 antecedent ^[1] 22:8 anticipated ^[1] 32:24 anticipating ^[1] 39:9 anyway ^[2] 50:25 52:25 Appalachian ^[1] 33:24 appeal ^[43] 5:16 8:4,18 9:25 11:1,4,5 12:3 16:21 26:13,15 27:4 28:1,7 34:16 37:1 40:21,22 41:18,25 43:10,24 44:2 45:20,22 50:13,18,22,23 51:3,5,11 53:6 57:2 62:20,25 63:1 69:24 71:13 72:22,24 76:4 77:11 appealable ^[4] 42:24 47:23 66:4,6 appealed ^[1] 9:22 appealing ^[1] 34:17 appeals ^[38] 5:4 6:5 7:12 8:16 9:13,14 10:8,10 16:10 19:18 20:16 21:20 24:4 33:16,20 34:21 37:3 44:16 47:8,24 49:22 50:14,15,25 53:17,20 55:13,23 65:17 68:13 69:6,19 73:1 75:17 76:14 77:1,3,3 appeals' ^[5] 4:20 6:8 25:23	61:24 77:17 APPEARANCES ^[1] 2:1 appears ^[1] 60:3 appellate ^[35] 4:13,15 5:5 7:19 9:5,23 13:2,19,20 16:15 25:2 27:11,23 28:6 29:8,19 30:2 32:17 37:4 38:1,3 41:16 43:2,12 44:5 46:6 49:10 51:23 56:9 59:1 62:24 65:15 71:9 73:14 76:7 applied ^[2] 23:4 70:9 applies ^[4] 6:12 18:25 41:7 65:16 apply ^[7] 16:11 20:5 35:10 38:16,17 39:20 73:19 applying ^[1] 39:16 approach ^[2] 26:18 30:9 approached ^[1] 43:6 appropriate ^[3] 22:11 23:1 58:11 approval ^[2] 15:7 75:13 arbitration ^[1] 16:10 area ^[1] 56:20 areas ^[1] 40:8 argue ^[1] 51:9 arguing ^[1] 17:9 argument ^[35] 1:16 3:2,5,9,12 4:4,7 6:25 13:12 16:13 17:3,6 26:3,24 31:22 32:22 34:3 35:5,22 41:18,24 43:18 46:1 50:7,8,9 51:17 52:24 68:23 69:7 72:12 74:10,15 75:4,4 arguments ^[6] 4:25 17:15 27:1 35:7 45:24 61:3 arise ^[5] 6:1 21:17 25:16 36:10 42:17 around ^[4] 20:1 22:21 31:6 32:13 Arthur ^[1] 16:9 artificially ^[3] 26:14 37:3 43:12 aside ^[2] 61:2 66:11 assert ^[6] 37:21 46:15 56:25 57:8 64:11 75:11 asserted ^[8] 9:18 10:3 35:2 44:18 52:5,6 58:14 70:11 assertion ^[3] 27:22 55:12 58:1 assertions ^[3] 15:18 52:12 58:24 assist ^[1] 54:4 Assistant ^[1] 2:4 associations' ^[1] 57:5 assuming ^[1] 22:7 assumptions ^[1] 52:3 assurance ^[1] 75:11 atmospheric ^[1] 63:24 attempted ^[1] 38:4 attempting ^[1] 55:6 attention ^[2] 61:25 63:15 attorney ^[1] 46:21 authority ^[5] 16:20 17:13	33:12 45:6 67:23 authorize ^[1] 5:6 authorized ^[2] 27:4 43:10 authorizes ^[2] 4:15 26:13 authorizing ^[1] 4:13 authors ^[1] 33:6 available ^[12] 6:23 8:4 9:1,9 15:21 16:21 28:5 36:10,14 41:10,21 76:16 avoid ^[1] 29:17 award ^[2] 48:17,21 awards ^[4] 6:23 9:8 15:23 16:11 aware ^[3] 17:18 22:19 33:23 awkwardness ^[1] 29:23 B back ^[8] 7:15 23:12 24:11 27:10 34:5 37:5 40:18 72:12 back-to-back ^[1] 26:20 background ^[1] 5:13 bad ^[1] 41:15 bad-faith ^[1] 27:22 balance ^[2] 12:25 13:6 balancing ^[1] 12:23 BALTIMORE ^[3] 1:7 4:5 31:8 bankruptcy ^[1] 52:10 bar ^[5] 46:6 48:23 61:11 62:1 73:14 barred ^[3] 44:20 50:2 56:8 Barrett ^[20] 22:2,3,10 23:9,11 24:18 40:16,17 41:22 68:18,20 69:10,22 70:13,17 71:1,21 72:9,11,21 based ^[8] 13:11 17:5 26:22 30:8 32:23 39:10 52:2 58:4 baseline ^[1] 30:2 bases ^[3] 6:15 8:12 27:19 basic ^[1] 45:2 basis ^[11] 6:8,14 7:14 8:23 9:24 21:18 26:14 46:25 57:9 58:8 72:16 become ^[1] 58:17 behalf ^[8] 2:3,9 3:4,11,14 4:8 43:19 74:11 behind ^[1] 67:13 Behrens ^[2] 47:21 49:15 belabor ^[1] 48:5 believe ^[10] 13:25 14:5 17:19 21:17,22 22:14 24:24 64:9 75:16 76:8 Bell ^[15] 9:3 15:14,16 16:2 17:3,18 18:12 34:25 35:10 41:1,9,20 42:1,3 56:16 below ^[4] 5:25 44:22 53:12 58:3 benefit ^[1] 10:7 best ^[4] 5:24 19:17 46:1 73:11 better ^[2] 12:3 15:19
--	--	---	--	---

Official - Subject to Final Review

between [6] 10:20 37:24 52:5 53:10 56:20 58:7 beyond [2] 7:11 64:6 big [5] 10:20 51:1,2 52:25 59:6 bit [4] 17:4,5 40:25 41:5 Black [1] 38:14 blah [3] 12:2,2,2 blind [1] 24:16 body [3] 54:15 55:7,8 bootstrap [1] 44:19 borrow [1] 67:3 both [5] 46:22 47:4 52:3 61:22 62:18 BP [2] 1:3 4:4 Breyer [15] 10:15,16 11:7,8,19,22 12:6,8 31:15,16 50:5,6 52:23 53:3,21 brief [8] 15:22 23:16 26:22 33:17 49:21 63:10 66:8 76:10 briefed [1] 22:14 briefs [1] 33:6 BRINTON [3] 2:4 3:6 26:3 broad [1] 52:19 broadly [1] 58:25 brought [1] 57:2 bump [1] 59:8 burden [3] 53:20 56:19 59:3 C cake [1] 67:4 California [1] 2:8 call [1] 37:20 called [2] 10:21 69:17 calling [1] 71:25 came [2] 1:15 32:25 campaign [1] 58:9 candidate [2] 41:19 42:1 cannot [4] 4:25 47:22 49:23 61:14 canon [1] 66:23 carve [1] 42:24 Case [66] 4:4,11,24 5:3,18,24 6:7,16 9:14 10:5 12:3 18:13 24:1 25:7 26:11,12,19 28:16,17,24 31:6,7,20,21 33:25 34:5 35:18 36:17,22 37:1,20 38:20 44:21 45:19,21 48:15 49:1,16 50:15 51:12 52:13,24 53:8 54:5,15 55:5 58:2 59:22 60:15,24 67:6,23 68:24 69:2,4,25 70:16,20 72:5,6 74:25 75:6 76:22 77:7,20,21 cases [41] 5:11 12:20 15:12 22:20,23 25:10,20 28:3 34:4 35:13 38:24 39:3,7,18,23 40:5 41:13 42:18 45:9 47:21 48:7,9 49:1,21 54:18,20 55:1,21 56:4 57:9,10 58:18 59:6,6 64:10 67:2 69:1 71:3 75:23 76:9,14	catch-all [1] 55:3 caused [4] 6:4 11:5 25:10 31:8 center [1] 29:21 century [1] 23:4 cert [2] 22:22 31:24 certain [3] 4:13 47:10 66:5 certainly [5] 11:14 14:10 29:24 33:9 39:8 certified [2] 30:7 65:16 certify [1] 62:22 cetera [1] 47:1 challenge [2] 49:13 52:9 change [4] 23:8 30:25 32:11 42:16 changes [2] 36:8 56:24 characterized [1] 41:14 charges [1] 60:6 CHIEF [59] 4:3,9 6:11 7:2,7,10 8:6,8,22 9:10 10:14 13:3 15:9,11 16:25 17:20 19:11,13 22:1 24:19,21 25:25 26:6 27:9 28:8,18,20 29:10,12 31:14,18 34:8,11 37:11,15,17 40:13,15 42:7,9 43:15,20 45:13 47:25 48:3 50:4 53:22 56:14 59:13,19 60:10 63:6,17,19 68:17 73:7 74:7,12 77:19 chosen [1] 13:7 circle [1] 23:12 circuit [30] 7:4,5 11:18 13:9 14:21,23 15:7 31:5 33:24 38:24 39:3 40:5 45:6 48:21 54:21,23 55:1 56:22 57:4,7 58:3 60:18 64:14,17 67:25 68:1 69:16,25 74:3 76:11 circuits [11] 14:11 23:14 33:8 42:13 48:19 54:9 55:10 57:11 58:3 60:18 68:12 circumstance [2] 6:22 8:16 circumstances [1] 12:20 citations [1] 39:2 cite [3] 16:5 55:18 67:7 cited [1] 67:5 cites [1] 33:17 citing [1] 76:13 CITY [4] 1:6 4:5 31:8,11 civil [20] 4:17 5:11 6:14,20 7:22 8:3 9:4 10:19 11:13,15 12:21 24:12 43:5 46:19 55:12,21 56:1 61:17 72:17 73:15 claim [2] 35:17 64:11 claims [10] 6:1,4 21:17 23:5,7 25:16 31:3 49:2 73:20 77:15 clarify [1] 36:4 clarifying [1] 71:22 classic [1] 75:6 clause [12] 44:12 46:5,9 48:24 52:18 59:21 60:3,13,21	61:9,11 73:13 clause's [1] 45:8 clauses [2] 26:20 75:1 clear [16] 8:2 9:21 12:16 18:23 21:4 22:15 23:3 24:2 25:14 45:2,10 47:20 54:11,12 56:5 67:16 clearly [4] 7:4 11:20 15:6 32:22 climate [2] 23:8 30:25 close [2] 27:24 37:20 colleagues [1] 13:25 colloquy [2] 37:5 73:12 colorable [3] 51:17 58:24 75:3 come [1] 23:21 comes [2] 55:8 56:19 comfortable [1] 19:5 comfortably [1] 20:7 command [1] 10:5 common [6] 21:19 22:6 23:5 28:25 30:23,25 commonsense [9] 6:3 54:12 61:23 66:15,15 70:9 71:7 73:3,11 companies [1] 59:7 compel [1] 73:22 compelling [1] 42:15 competent [3] 56:23,24 57:21 complained [1] 64:19 complaint [1] 31:23 compliance [3] 44:14 62:6,6 comply [1] 72:5 component [1] 46:23 comprehensive [1] 15:4 comprising [1] 53:15 concern [6] 10:16 11:11 56:18 60:9 76:2,21 concerned [5] 24:13 36:9 53:9 64:12,13 concerning [1] 30:16 conclude [4] 19:4,6 24:10 68:19 concluded [4] 12:18 60:19 69:25 75:22 concludes [2] 10:10 77:4 conclusion [3] 6:3 39:17 74:22 conclusively [1] 40:12 conclusory [5] 14:12 21:5 24:5 33:18 39:5 conditions [1] 63:4 conduct [4] 7:4 16:1 58:8 64:18 confidence [1] 15:5 confine [1] 52:20 confines [1] 52:19 confirm [1] 29:8 conflicting [1] 31:11 confronted [1] 54:20 Congress [33] 8:1,4 12:11,17,23 13:6,6,8,14,16 14:6	15:2 24:8,13 27:3 32:7,11 36:19 38:7 40:1,10 42:21 43:10 45:5 55:2,15,24 56:4 67:17 73:23 74:5 75:16,22 Congress's [3] 5:10 13:15 15:6 congressional [4] 23:13 66:11 75:12,13 connection [2] 58:7 59:10 consequence [1] 74:24 consequences [1] 42:23 consider [7] 7:16,19 9:24 10:2 18:10,11 27:12 considerations [2] 5:8 23:1 considered [1] 8:14 considering [3] 10:18 20:11 27:5 consistent [4] 5:10 13:1 74:1,4 consistently [3] 5:4 56:5 71:18 Constitution [1] 62:3 constitutional [2] 25:15 35:17 construction [3] 41:9 45:4 52:17 construe [2] 69:14 74:18 construed [1] 14:15 construing [4] 24:3 34:6 75:18,19 contain [1] 54:10 contemplates [1] 7:20 context [21] 15:24 16:9,10 18:25 19:2,10 24:16 27:21 28:2 34:23 35:9,13 36:5,8 39:14 40:1,9 41:12 63:4 66:10 67:3 contexts [6] 30:1,15 34:5 39:8 62:3 75:25 continually [1] 58:14 continue [2] 18:16 42:3 contrary [5] 4:21 5:7 45:15 47:19 73:24 control [1] 41:11 controlling [2] 62:23 67:23 convince [1] 20:3 correct [4] 51:7 69:15 70:5,6 corrected [1] 73:1 correcting [1] 75:24 correctly [1] 68:25 cost [1] 75:25 costs [2] 48:16 60:16 couldn't [1] 69:4 COUNCIL [2] 1:6 4:5 Counsel [22] 6:11 13:5 14:20 17:23 26:1 27:9 31:20 40:17 42:6 43:16 45:13 48:1,5 53:24 56:13 59:16 68:20 70:17 71:21 72:9 74:8 77:20	counter [1] 44:25 counterintuitive [1] 25:9 counters [1] 54:1 country [1] 22:21 couple [2] 32:6 54:17 course [4] 23:25 54:23 72:21 76:5 COURT [147] 1:1,16 4:10,20 5:3,24 6:5,8,17 7:9,11,18,19 8:16 9:2,3,13,14 10:1,4,6,8,10,24,24 13:9 14:14 15:17,21,22,25 16:1,7,8 17:22 18:5,9,19,23 19:3,19 20:5,15,25 21:4,14,15,20 22:11,12,18,24 23:2,3 24:3,4,15 25:2,6,8,14,21,22 26:7,8 27:11,23 28:23 29:2,4,6 30:6,9,18 33:16,20 34:21 35:12,13,15 36:6,9,13,21 37:3 39:3 43:6,21,25 44:8,16 45:6 47:15,16,19 49:4,10 50:2,24 51:12 52:2,8 54:18,20,25 55:4,13,23 56:3,6 58:5 59:22,25 61:24 62:2,22 63:3,25 64:5,7,10,15 65:14,17,19 66:2 67:24,25,25 68:13 69:6,18,22 70:19 71:17 73:1 74:5,20 75:9,19 76:25 77:4,8,8,9,16,16 Court's [25] 6:2,10 14:14 16:19 18:12 19:1 20:22 21:23 22:15 27:8 30:17 31:6 32:24 34:3 35:16 39:7,9 40:7 47:6 51:24 62:24 64:17 66:1 71:10 75:14 courts [24] 5:4 9:22,23 14:21 19:18 22:21 23:21 25:12 43:2,12 44:22 45:9 53:11,17,20 56:5 59:4 66:4 70:8,24 74:2,3 75:17 77:2 crazy [1] 18:15 create [1] 73:17 creates [1] 73:13 Criminal [2] 47:8 49:22 criticism [1] 23:20 criticisms [1] 18:3 criticized [2] 17:19 23:18 curiae [3] 2:6 3:8 26:4 currently [1] 22:23 cut [2] 11:4 66:12 D D.C [3] 1:12 2:2,5 day [2] 27:1 42:20 deal [2] 16:22 52:25 deceit [1] 58:13 decent [1] 41:24 deception [2] 58:9 64:19 decide [8] 17:22 29:5 34:22 40:20,21 44:16 52:25 74:3 decided [3] 14:20 32:7 41:24
---	--	--	---	--

decides [3] 29:6 34:16,16 decision [10] 13:11 14:14 18:10 24:3,17 31:7 32:24 33:23 34:4 39:10 decisions [8] 14:23 15:8 21:5 24:4 33:16,21 75:17, 19 declined [1] 30:6 default [1] 76:6 defect [1] 60:7 defendant [10] 5:18 10:18 11:15 27:25 34:15 42:18 43:24 44:2,18 77:10 defendants [6] 37:25 49:6, 24 56:3 58:17 73:20 defense [1] 4:23 define [2] 30:3 36:25 definition [1] 60:6 degree [1] 75:11 delay [11] 5:15 11:3,4 12: 24 27:3 32:5 46:24 76:1, 20,22 77:7 delays [1] 59:2 denial [2] 58:10 64:19 denies [1] 26:17 denying [5] 49:3,5,11,13, 18 Department [2] 2:5 39:23 depends [2] 18:11 31:7 description [1] 38:14 designated [1] 44:6 desire [1] 27:2 despite [2] 14:20 66:2 destroyed [1] 51:6 detail [1] 64:14 details [1] 48:9 deter [2] 15:25 76:16 determination [2] 12:11 17:8 determinations [1] 49:19 determine [1] 27:17 determined [1] 77:10 deviated [1] 19:20 dictate [1] 6:2 dictated [1] 21:23 difference [3] 10:20 62:13, 13 different [10] 19:1 25:13 26:19 62:11,12 65:6 67:3 71:6 74:25 75:1 differently [1] 43:9 differs [1] 28:9 direct [2] 30:17 35:16 direction [3] 10:9 14:16 17: 4 disagree [2] 32:20 39:24 disapproved [1] 58:5 discharge [2] 49:15,16 discouraged [1] 72:18 discretion [3] 9:23 29:4 62: 24 discretionary [2] 36:13 63: 13 discuss [2] 49:21 66:8	discussing [1] 24:23 discussion [1] 60:9 disentangled [1] 47:20 disinformation [1] 64:20 dismiss [4] 17:14 49:11 70: 10,23 dismissal [6] 7:1 8:18 16: 20,21 28:7 34:25 dismissed [3] 35:20 69:21 70:4 dispose [1] 5:24 disposing [1] 71:2 disposition [1] 22:11 distinguish [1] 47:12 district [9] 19:1 30:18 35: 12 43:25 56:3 62:22 64:15 65:18 66:4 diversity [3] 51:14,16,18 doctrine [10] 19:17,23 20:6 38:13,15,23 39:16,19 67:5, 13 doctrines [1] 58:4 doing [1] 16:13 done [1] 46:24 Dorsey [1] 69:17 double [1] 49:12 doubtful [1] 38:7 down [3] 11:4 38:15 61:4 DRI [1] 76:10 drives [1] 24:1 drops [1] 44:2 E earlier [1] 46:18 earliest [1] 33:23 easier [2] 10:11 77:5 easiest [1] 21:18 efficiency [1] 52:2 efficiently [1] 77:4 either [7] 12:7 51:18,20 62: 25 70:12 73:21 76:13 elephant [2] 53:4,5 eliminate [1] 29:22 emanate [1] 17:15 emanates [1] 17:16 emissions [4] 6:5 25:11 31:9,10 employ [1] 60:5 enable [1] 77:2 enclave [1] 52:11 encompasses [2] 9:17 44: 9 end [3] 26:25 42:20 51:24 engage [2] 7:3 38:25 engaged [1] 33:18 English [1] 74:18 ensure [2] 25:6,20 entire [5] 4:19 15:3 28:7 35: 18 42:14 entirety [1] 25:2 entitled [2] 21:6 52:9 enumerated [1] 45:8 environmental [1] 58:18 erroneous [2] 12:23 75:24	erroneously [1] 76:24 error [4] 43:4,4 56:3 72:25 Eskridge [1] 67:11 especially [2] 32:15 75:6 ESQ [4] 3:3,6,10,13 ESQUIRE [2] 2:2,8 essentially [1] 30:11 establishes [1] 72:3 establishing [1] 16:15 ET [2] 1:3 46:25 even [22] 8:12,22 12:15,20 14:2 16:19 23:21 30:17 38: 3,21 39:4,24 42:1 43:4 44: 1,1 45:1 47:11 48:22 50: 18 56:17 70:23 event [1] 5:1 everybody [3] 6:16 40:3 59:24 everybody's [1] 57:23 everyone [1] 59:20 everything [1] 11:2 evidence [8] 7:3,6 11:17, 23 16:4 41:14 42:13 46:25 evidentiary [1] 49:19 exactly [2] 38:12 57:11 example [6] 16:5 30:5 33: 22 46:17 51:15 53:8 examples [1] 5:7 excellent [2] 64:1,3 Except [2] 14:17 73:4 exception [12] 32:16 42:19 44:5,12 45:7 61:9 71:9 73: 12,13,18,18 76:6 exceptions [1] 14:1 exclusively [2] 61:15 72: 14 exercise [1] 36:21 exhibits [1] 53:15 existing [1] 20:6 exists [3] 44:17 51:20 64: 10 expect [1] 42:15 expedite [2] 5:16 27:7 expenses [2] 48:16 60:16 explain [1] 45:18 explained [4] 28:5 49:16 51:12 75:8 express [1] 18:17 expressed [1] 76:2 extended [1] 31:21 extension [1] 18:24 extent [4] 33:19 36:25 39:1 53:18 extrapolation [1] 53:19 eyes [1] 27:24 F F.2d [1] 69:17 fact [9] 13:7 27:7 29:25 52: 6 55:2 57:9 67:8 69:16 70: 7 fact-intensive [1] 77:6 factor [2] 23:19,23 factors [1] 14:5	factually [1] 54:8 failure [2] 15:6 75:12 fairly [2] 22:5 41:14 faith [1] 41:15 falls [1] 48:23 familiar [1] 18:2 favor [2] 20:7 66:13 federal [76] 4:17 5:12,19 6: 1,3,13,14,17,19,20 7:14,21 8:2 9:4 10:11,19,24,24 11: 12 12:19,21 18:25 21:14, 18,19,24 22:6 23:4 25:4,8, 16 27:15,22 28:25 29:21 30:22,25 31:4,25 32:18 38: 4 43:5 44:17,23 48:20 51: 19 52:6,11 53:10 54:21,23 55:1,11,20,25 56:25 57:8 58:1,11,23 59:8,10 61:16 64:2,5,9,11 65:2 67:25 68: 1 70:2,21 73:15 77:6,7,15 fee [4] 6:23 9:8 15:23 16:11 fee-shifting [1] 16:18 feel [1] 34:17 fees [4] 19:7 48:17,22 76: 15 few [2] 14:24 42:10 figure [2] 13:14 43:3 file [1] 46:21 filled [1] 64:3 Finally [2] 45:4 76:20 financial [1] 58:20 finds [1] 74:15 fine [1] 65:5 Finish [1] 63:7 firmly [1] 40:12 First [22] 11:10 14:8 17:8 19:4 20:9 27:16 38:18 46: 3,5 51:3 52:4,20 54:8,18 59:21,24 60:12,13,21,25 61:11 67:21 five [1] 76:11 flawed [1] 69:3 flexibility [1] 10:9 floodgates [1] 32:16 flows [1] 71:16 foci [1] 64:23 focus [5] 31:24 33:13 34: 18 50:11 63:15 focused [3] 61:7 67:18 71: 14 focusing [2] 50:10 61:24 foist [1] 53:17 follow [1] 17:10 follow-on [1] 22:23 following [2] 57:7 73:12 force [1] 19:24 form [1] 35:1 formulated [1] 65:18 forth [1] 61:16 found [3] 9:12 12:22 54:11 foundation [1] 30:13 four [3] 32:25 58:2 74:3 Fourth [4] 58:3 64:13 69: 16,25	Francisco [1] 2:8 frankly [1] 65:1 fraud [1] 64:19 frequently [2] 47:20 59:8 friend [1] 27:11 frivolity [1] 56:21 frivolous [20] 6:15,25 7:11 8:13 9:5,9,12 10:21,25 15: 12,18 16:13 17:6,14 27:15, 17,22 35:5 41:4 57:8 front [2] 13:16 29:20 front-line [1] 19:8 frosted [1] 67:5 fully [1] 22:14 fundamental [1] 74:14 further [4] 16:7 27:6 42:4 48:9 future [2] 57:9,10 G gain [1] 41:16 gamesmanship [5] 11:18 16:6 38:9 42:11 56:16 gap [1] 32:8 Garner [3] 68:4,6,7 gas [2] 6:5 25:11 gates [1] 59:1 gave [1] 64:5 General [7] 2:4 44:4 46:5 48:23 61:11 70:7 73:14 gets [1] 38:1 getting [2] 8:24 51:2 Ginsburg [2] 65:12 74:20 give [8] 26:18 34:13 45:17 48:7,8 50:14,15 53:6 given [3] 62:13 67:15 75: 20 gives [1] 10:8 giving [2] 51:5 74:24 global [2] 23:8 31:12 Gorsuch [20] 17:1,2,17,23 18:1,14,20 19:9 37:12,13 42:2 59:14,15,18 60:12 61: 2,6 62:7 65:7,22 got [1] 11:23 government [7] 23:23 30: 21 57:5 58:6,11,23 60:6 governs [1] 6:3 gray [1] 56:20 greenhouse [2] 6:5 25:11 ground [33] 4:16 5:22 6:6 7:22 9:2,5,9,11 10:11 11: 25 12:21 17:21 21:19 25:3 27:15 34:18,20 35:2 38:5 40:22 41:3 43:25 44:1 56: 8 57:24 60:20 68:15 69:3, 5 70:24 73:2 77:5,6 grounds [34] 6:17,20 7:16, 20 9:15,17,24 10:2,19,23 27:12 28:9 32:2 34:14,19 40:19 41:17 44:6,7,19 45: 8,9 46:24 51:11 52:5 57:1, 22 63:16 70:11 71:14 72: 18 73:15,16 76:23
--	---	--	---	--

group [2] 73:19,19 guarantees [1] 43:24 guess [2] 35:19,21 guys [1] 18:15 H happen [1] 14:2 happens [3] 27:18 37:7 60:2 hard [3] 15:5 40:1,10 hardly [2] 14:9 20:10 hear [2] 4:4 60:8 heard [1] 8:21 heavily [1] 58:22 hedged [1] 40:24 held [9] 6:7 44:8,22 45:9 48:21 56:5 68:12 69:19 71:18 Helmerich [1] 71:20 help [1] 29:22 helps [1] 37:22 Helsinn [3] 54:19 67:6,22 hesitation [1] 35:23 history [2] 12:15 75:7 hold [1] 26:8 holding [1] 21:11 hole [1] 61:4 Hollander [1] 64:15 home [1] 74:15 Honor [28] 27:21 28:13 31:2 33:10 36:15,24 39:22 46:2 48:11 51:11,15 53:2,7 54:6 57:25 59:6,17 62:17 63:9 64:11 67:21 70:6,25 71:11 72:2,19,23 73:10 Honors [1] 53:13 Hood [11] 9:3 15:14,16 17:3,18 18:13 34:25 41:1 42:1,3 56:17 Hood-like [1] 16:2 Hood-type [3] 35:11 41:9,20 hook [1] 50:1 hoping [1] 60:10 hortatory [1] 56:11 House [2] 55:18 69:17 hypothetical [2] 34:13 35:24 hypotheticals [1] 36:9 I icing [1] 67:4 identical [5] 14:15 20:23 24:4 66:3 75:20 identified [1] 42:13 ignore [2] 47:22 54:16 ignores [1] 45:5 immunity [2] 49:5,18 implausible [2] 28:15 73:22 implicitly [2] 70:24 72:13 important [9] 11:11 28:25 29:1 33:13 48:6 50:13 54:18 56:1 59:7	impose [1] 8:17 improper [2] 15:25 16:14 include [2] 8:18 40:21 includes [1] 60:14 including [9] 17:19 23:6 34:14 37:10 46:5 58:3,18 72:18 74:2 inconsistent [2] 70:14,18 incorrect [2] 30:8 54:9 incremental [2] 12:24 76:1 incurred [2] 48:16 60:16 indeed [4] 9:13 22:22 32:23 76:16 indicates [1] 65:15 indication [2] 35:1 67:16 indictment [1] 49:14 industries [1] 58:22 inequity [1] 37:24 inherent [2] 16:19 32:5 inherently [1] 31:3 initially [1] 31:23 injunctions [2] 30:16,18 injuries [3] 25:10 31:1,8 injury [2] 6:4 23:8 inquiry [1] 75:10 insist [1] 36:2 instance [5] 16:9 17:8 41:1,20 71:19 instances [1] 58:21 instead [2] 4:23 26:21 institutions [1] 58:20 insubstantial [2] 35:17 41:4 insufficient [2] 15:23 19:7 intended [5] 13:14 14:6 38:8 67:18 73:23 intent [2] 66:11 67:12 interest [1] 58:12 interests [3] 12:19 59:8,9 interlocutory [4] 30:7,16 37:8 63:1 interpretation [24] 4:12,21,23,25 5:10,13,18 8:1 10:7 14:12 19:20 44:10,24 45:3 54:22 60:8 61:23 67:19 68:22 70:9 73:24 74:23 75:14 76:12 interpretations [1] 66:1 interpreted [2] 5:4 62:2 interpretive [1] 24:17 interrupt [1] 23:12 interstate [1] 23:6 invalid [1] 4:21 invoke [2] 11:16 42:19 invokes [2] 5:20 14:23 involve [3] 5:7 43:5 58:21 involving [8] 4:12 5:11 20:22 49:1 54:21 59:7 60:24 62:23 Iron [1] 34:5 isn't [9] 12:2 15:16,18 17:4 30:1 32:5 37:7 47:3 56:16 isolation [3] 14:4 46:10 65:	8 issue [35] 8:2 12:15 13:9 22:10,13,19 25:18 28:24,25 29:7 30:23 32:3 40:11 44:9 47:2,17,23 49:18,24 50:1 51:14,25 54:10 55:13,22 56:7 57:12 59:9 60:22 65:13 68:8,9,12 74:3 76:17 issues [27] 4:20 13:19,21 27:5 29:9,19,20 32:1 34:22 47:10,12,20 50:1 52:15,25 53:18 54:24 55:13,14,25 59:1 61:25,25 63:2 66:5 71:10 76:4 itself [3] 24:16 47:12 48:13 J January [1] 1:13 jeopardy [1] 49:12 Judge [1] 64:15 judges [1] 64:3 judgment [5] 5:25 6:8 25:23 49:3 77:17 judiciary [2] 25:19 64:2 jump [1] 21:13 Junhong [1] 57:6 jurisdiction [38] 9:6 15:17 16:15 17:5,11,14 19:1 21:24 34:22 35:3,8,15 36:13,22 40:24 41:17 44:17 51:15,17,18,20 52:7,10,11,11 54:24 55:14 56:7 58:1 64:10 65:16 69:21 70:4,11,19,22 76:25 77:15 jurisdictional [13] 45:11 51:13 52:12 56:9 63:12 65:13 71:12,16,19,23,25 72:4,10 Justice [211] 2:5 4:3,10 6:11 7:2,7,10 8:6,6,8,9,20,22 9:10,10,20 10:13,14,14,16 11:7,8,19,22 12:6,8 13:3,3,5,23,24 14:7,17,19 15:9,9,10,11,12,21 16:24,25,25 17:2,17,20,23 18:1,14,20 19:8,11,11,13,14,17 20:5,9,12,14,24 21:2,8,12,25 22:1,1,3,10 23:9,11,14 24:18,19,22 25:25 26:7 27:9 28:8,18,20 29:10,10,12,13,24 30:19 31:13,14,14,16,18,18,20 32:19 33:2,5 34:8,8,11,11,12 35:4,19,21 36:4,12,16 37:6,9,11,11,13,15,15,17,18 38:18 39:12,15,25 40:13,13,14,15,15,17,18,23 41:22 42:2,7,10 43:15,21 45:13 47:25 48:2,3,4 49:16 50:3,4,4,6 52:23 53:3,21,22,22,24 54:4 56:10,12,14,14,15 57:13,15,17,20 59:12,13,13,15,18 60:11 61:2,6 62:7 63:6,6,17,	17,19,20,23 64:21,25 65:3,7,12,22 66:17,20,22,23 67:1,4 68:6,17,17,20 69:10,22 70:13,17 71:1,21 72:9,11,21 73:7 74:7,13,20 75:5,8 76:2,21 77:19 justification [1] 67:13 K Kagan [23] 15:9,10,21 16:24 34:8,11,12 35:4,19,21 36:4,12,16 37:9 40:23 56:14,15 57:13,15,17,20 59:12 67:4 Kagan's [1] 40:18 KANNON [5] 2:2 3:3,13 4:7 74:10 Kavanaugh [31] 19:12,13 20:5,12,14,24 21:2,8,12,25 23:14 37:16,17 38:19 39:12,15,25 40:14 63:7,18,19,23 64:21,25 65:3 66:17,20,22 67:1 68:6 75:5 keep [3] 6:16 11:12 46:3 key [2] 47:2 62:17 kind [4] 15:14,18 40:24 72:13 kinds [2] 56:2 58:12 knowing [1] 15:24 knows [1] 10:22 L label [1] 46:16 lack [6] 5:1 17:14 58:7 69:21 70:4,11 lacked [1] 9:12 land [1] 54:25 landscape [1] 40:11 language [28] 14:16 17:10 20:23 24:4,24 44:25 45:1,10,15,18 47:7,11 51:22,22 52:19,20 54:11 55:3,16 61:22 62:21 63:13 65:20 66:3,13 70:9 71:7 74:16 large [2] 56:20 59:7 last [4] 8:11 9:10 66:17 74:4 later [1] 32:25 law [22] 4:24 5:3 6:1,3 14:8 20:9,13 21:18,19 22:6 23:5 24:1,6 25:16 28:25 30:23,25 54:16,22 55:7,8 62:23 laws [1] 25:12 lawyer [4] 12:1 56:23,24 57:21 lay [1] 38:15 lead [2] 5:14 76:3 leading [3] 23:17 39:9 40:8 lean [1] 69:13 least [1] 39:22 led [1] 61:9 ledger [1] 34:1 left [2] 22:4 30:11	legal [4] 43:4 50:12 64:5 65:4 legislation [1] 62:5 legislative [3] 12:14 27:2 75:7 lending [1] 58:19 length [1] 66:8 less [1] 58:11 Letter [1] 38:14 lies [1] 58:12 life [1] 42:3 light [3] 12:18 22:25 61:10 likely [2] 41:13 77:10 limbo [1] 53:10 limit [2] 37:3 43:12 limitation [1] 32:12 limited [8] 13:22 42:18 45:7 47:10 51:14 71:13 73:1,13 limiting [2] 26:14 63:13 limits [2] 44:12 51:23 line [2] 54:20 55:1 lines [1] 34:25 linguistic [1] 50:7 link [2] 52:4,14 list [1] 61:3 litigant [1] 6:24 litigants [1] 16:1 litigated [1] 25:12 litigation [3] 27:6 32:17,17 little [5] 17:4,5 40:25 41:5 53:1 local [2] 24:14 57:5 long [5] 25:14 31:21 36:22 41:3 50:17 long-standing [1] 22:15 longer [2] 53:5 59:2 look [14] 7:13 13:15 27:16,19 33:15 40:10 46:4,8,9 52:24 53:13 56:25 68:10 73:4 looked [3] 48:19 60:19 69:19 looking [6] 33:11 55:9 62:21,24 66:13 67:1 looks [1] 67:2 lot [6] 20:15 50:24 53:3,5,19 76:8 lower [1] 74:2 Lu [1] 57:6 LUCAS [33] 2:4 3:6 23:24 26:2,3,6 27:20 28:11,19,22 29:14,24 31:2 32:19 33:4,9 34:9,12,23 35:9,20 36:4,15,24 37:9,10,19 38:18 39:14,21 41:6 42:7,9 M made [11] 12:11 18:16 20:8 21:1,4 25:14 33:8 47:20 52:13 56:4 63:4 main [1] 51:5 majority [1] 32:10 mandated [1] 21:24
---	--	---	--	--

Official - Subject to Final Review

mandatory ^[1] 63:14 many ^[3] 6:17 25:7 54:13 marginal ^[1] 5:15 Maryland ^[2] 63:25 64:2 materially ^[4] 14:15 20:23 24:3 75:19 matter ^[10] 1:15 16:17 17:21 23:10 25:15 30:12 52:16 56:7 61:23 74:17 MAYOR ^[2] 1:6 4:5 mean ^[13] 13:22 18:1,6 28:16 35:4,22 36:2,16 52:9 57:17 61:20 69:23 74:18 meaning ^[5] 32:15 36:7 44:13 71:19 74:21 meanings ^[2] 26:19 74:25 means ^[9] 11:2 26:9 28:14 47:16 62:5 63:2 65:8 71:13 72:14 meant ^[1] 47:15 meantime ^[1] 42:22 members ^[1] 67:17 mention ^[1] 67:10 mentioned ^[2] 48:7 54:1 merely ^[6] 15:2 24:8 43:22 44:17 46:16 74:19 merit ^[3] 5:2 7:22 9:13 meritless ^[4] 44:1 56:21, 21 73:20 meritorious ^[2] 10:21 12:22 merits ^[5] 5:21 6:13 17:7 26:22 70:15 middle ^[1] 50:15 might ^[4] 17:15,15 50:19 60:10 Miller ^[4] 23:17 32:9,21 34:2 Milner ^[1] 39:23 mind ^[2] 11:12 46:3 minimum ^[2] 20:10,20 minute ^[3] 24:19 42:8 73:7 minutes ^[1] 45:18 misrepresentation ^[1] 58:9 missed ^[1] 8:11 moment ^[1] 61:7 Moreover ^[1] 44:12 morning ^[5] 19:15 37:19 50:6 59:15,17 most ^[7] 5:15 7:4 11:20 14:13,22 20:22 23:6 mostly ^[1] 67:8 motion ^[1] 49:11 motions ^[1] 49:3 mouse ^[1] 53:4 move ^[1] 63:1 moving ^[2] 8:13 65:6 much ^[7] 9:2 12:2 16:24 19:24 27:6 58:11 67:15 muck ^[2] 50:16,20 multi-issue ^[1] 47:24 multiple ^[3] 27:5 34:14 40:19	must ^[3] 44:16 61:20 72:5 myself ^[1] 19:25 N namely ^[2] 16:14 27:2 narrow ^[4] 11:14 20:18 44:5 76:25 narrowly ^[2] 14:1 52:18 national ^[1] 58:22 nationwide ^[1] 22:21 natural ^[2] 26:10 33:7 nature ^[2] 31:4 75:21 Navy ^[1] 39:23 nearly ^[1] 74:1 necessarily ^[9] 6:1 9:17 25:16 29:20 30:3 44:9 47:16 71:11,12 need ^[2] 17:10 29:2 needed ^[1] 32:10 neighbors ^[1] 46:11 neither ^[1] 42:12 never ^[4] 26:17 44:8 47:15 65:11 nevertheless ^[1] 9:14 new ^[2] 55:3 58:16 nine ^[3] 54:9 55:9 68:11 Ninth ^[1] 31:5 non-meritorious ^[1] 49:24 non-reviewability ^[1] 48:24 nor ^[1] 42:14 normally ^[2] 60:1,4 notably ^[1] 23:6 note ^[2] 36:11 39:6 notes ^[1] 76:10 nothing ^[2] 12:4 73:3 notice ^[7] 5:20 9:18 10:3 43:23 46:16 53:14 61:21 notices ^[2] 76:12,18 notion ^[2] 25:9 52:1 novel ^[1] 26:21 nuisance ^[1] 23:7 number ^[5] 13:17,18 22:22 40:5 41:21 O Oakland ^[1] 31:5 obligates ^[1] 7:19 oblique ^[1] 55:6 obtain ^[2] 44:19 51:16 obviously ^[3] 8:4 18:11 37:22 occur ^[1] 77:9 occurred ^[1] 50:12 odd ^[3] 17:5 29:17,17 offer ^[1] 71:5 offered ^[2] 8:12 42:15 offers ^[1] 4:22 office ^[1] 12:1 officer ^[34] 4:17 5:19 6:13, 20 7:14,21 8:3 9:4 10:11, 19 11:12 12:21 25:4 27:15, 23 29:21 31:25 44:17,23	51:20 52:7 55:12,25 56:25 57:8 58:1 59:10 61:17 69:3,5 70:3,21 73:15 77:6 officers ^[3] 5:12 43:5 55:20 often ^[4] 12:19 50:16 67:2 77:5 okay ^[7] 18:14 49:10 61:5,8 64:21 65:3 66:17 once ^[5] 9:22 26:12 35:24 37:1 43:10 one ^[29] 6:19 10:7,16 13:17 14:2 20:16 28:5 30:10 35:17 37:1,24,25 38:6 40:5,19, 19 41:17 48:12 54:24 58:21 60:7 66:17 69:13 71:5, 6 73:19,19 74:14 75:10 ones ^[3] 39:8 40:6 75:20 only ^[29] 8:19 11:22 13:10, 20 20:18 21:5 34:2,4 44:7 45:8 46:12 48:20 53:13 54:24 55:3,13,16 59:2 63:14, 15 66:5 68:14,15 73:16 75:3 76:12,14 77:7,9 open ^[3] 32:16 50:1 52:14 opened ^[1] 59:1 operates ^[1] 13:2 opinion ^[8] 30:23 54:19 57:7 64:14,17 65:12 69:17 75:9 opioids ^[1] 58:19 opposed ^[1] 8:24 opposite ^[3] 14:16 23:15 35:24 option ^[2] 9:1 15:20 oral ^[7] 1:16 3:2,5,9 4:7 26:3 43:18 order ^[65] 4:16,19 5:5 7:23 8:12 9:16,22 10:4 14:3,3 25:3 26:11,11,13,18 27:4 28:15,16 30:8 32:23 34:6 36:1,2,7 38:20 40:20 42:14 43:3 44:9,10 45:19,21 46:11,12 47:3,14,18 48:14, 18,22 49:2,4,6,7,9,11,13, 17 50:9 59:21,25 60:2,14 62:9,19 63:2 65:16 66:5,9 70:1,5 72:6 74:18,19,25 orderly ^[1] 25:20 orders ^[13] 4:14 17:12 29:9 30:16 37:8 42:25 43:7,8 45:7 46:7 47:9,11 73:4 ordinarily ^[1] 15:25 ordinary ^[2] 13:1 74:18 original ^[1] 24:11 other ^[49] 7:16 9:15 10:9 14:5 17:4 20:16 27:19 29:19 30:1,14 31:22 32:1 34:1,5,19,22 35:1,6 38:1,4 39:3,6,7 40:6,8 42:5 43:7 47:7 48:12 51:1,8 52:12,15 55:12 56:4 57:1,10,11 59:1 61:20 62:3 63:1 66:7 69:2 70:10 71:15 72:12,18 76:	23 others ^[3] 25:7 58:20 66:6 otherwise ^[5] 16:16 44:19 45:20,22 55:22 ought ^[2] 7:12 15:1 out ^[15] 7:13 13:14 23:14, 16 42:2 43:3 54:13 55:1, 19 57:6 58:16 64:18 67:12 69:9 71:11 outright ^[1] 22:13 outside ^[1] 45:24 outweigh ^[1] 75:25 over ^[7] 10:23 30:17 31:9 54:24 55:10 75:18 77:15 overcome ^[1] 50:10 override ^[1] 77:13 overturn ^[1] 55:6 overused ^[1] 19:25 own ^[1] 76:25 P P.L.C ^[2] 1:3 4:4 p.m ^[1] 77:21 PAGE ^[1] 3:2 pages ^[2] 53:16 64:16 paradigmatically ^[1] 16:11 part ^[4] 26:11 48:18 53:16 62:10 particular ^[7] 4:20 26:15 54:14 65:18,23 66:10 70:16 particularly ^[3] 24:11 65:13 75:20 parties ^[2] 7:3 25:19 party ^[10] 6:25 8:13 16:12 17:9 35:14 41:16 46:20 49:23 52:6 69:20 pass ^[2] 31:17 37:13 patent ^[1] 54:22 payment ^[2] 48:15 60:15 pending ^[2] 22:20,23 penumbra ^[1] 17:15 people ^[2] 50:14 51:5 perhaps ^[2] 16:7 44:18 period ^[1] 32:8 permissible ^[1] 44:3 permit ^[3] 12:25 25:1 31:22 permits ^[2] 4:19 29:8 permitted ^[2] 24:25 27:13 permitting ^[1] 5:5 perspective ^[1] 20:2 petition ^[1] 31:25 Petitioner ^[2] 28:4,10 Petitioners ^[17] 1:4 2:3,7 3:4,8,14 4:8 26:5 43:22 44:23 46:15 47:22 49:25 52:4, 13 54:16 74:11 Petitioners' ^[5] 44:24 45:4, 14 60:23 73:17 petitions ^[1] 22:22 phrase ^[7] 26:10,18,22 55:3 62:4 67:3 74:24 pick ^[1] 22:4	pivots ^[1] 26:21 place ^[1] 51:3 plain ^[7] 4:18 5:9 24:24 51:21,22 74:21 77:13 plainly ^[4] 24:13 34:6 50:2 77:14 plaintiffs ^[1] 31:5 plausible ^[1] 57:24 plausibly ^[2] 11:16 42:19 play ^[1] 12:19 plead ^[1] 31:6 please ^[4] 4:10 26:7 43:21 63:8 plenary ^[5] 5:6,14 12:25 75:23 76:5 point ^[29] 7:9 8:11 9:10 11:3,23,24 12:9 18:3,4 22:8 23:13 29:2,25 47:2 48:6,6, 8,10,12 56:16 57:6 58:16 60:25 61:1 62:17 65:2 67:22 68:15 72:24 pointed ^[5] 23:14,16 54:13 64:18 67:12 pointing ^[1] 42:2 points ^[7] 20:8 42:10 53:25 54:7 55:18 60:12 71:11 police ^[1] 17:5 policy ^[8] 4:24 5:9 12:11 27:2 51:7 52:24 56:2 77:12 policymakers ^[1] 49:7 pollution ^[1] 23:6 poorly ^[1] 40:6 portion ^[6] 28:16 45:21 49:4,7 59:24 74:19 portions ^[1] 43:1 position ^[8] 18:7 20:3 23:16 28:9,23 29:3 30:20,21 posits ^[1] 16:6 possibility ^[2] 42:23 56:17 possible ^[2] 7:16 10:22 postdated ^[1] 14:25 potentially ^[1] 31:10 power ^[2] 8:17 10:2 practice ^[2] 70:7,8 practitioner ^[3] 55:9 68:8, 10 precedent ^[3] 67:8,9 68:11 precedents ^[5] 6:2 20:6 21:23 22:16 40:7 precisely ^[1] 17:20 predated ^[2] 14:13,24 preexisting ^[1] 15:7 preferring ^[1] 75:16 prejudice ^[1] 24:14 premise ^[1] 30:9 prerequisite ^[1] 39:16 presented ^[4] 21:21 25:1 27:25 28:12 presents ^[1] 4:11 preserve ^[1] 25:18 press ^[4] 17:3 18:3,4 41:25 presumed ^[1] 67:12 pretty ^[2] 41:19 57:22
---	---	--	---	---

prevent ^[1] 27:2 previously ^[1] 27:11 primary ^[1] 12:16 principal ^[1] 9:7 principle ^[2] 5:14 30:25 principles ^[2] 45:2 73:25 prior ^[1] 54:10 problem ^[9] 16:4 19:16 38:6,9 50:11 65:8,9,10 74:14 problematic ^[1] 65:24 problems ^[2] 37:23 42:17 procedural ^[4] 46:22 61:14 62:5 68:21 procedurally ^[1] 71:2 procedure ^[1] 46:19 proceed ^[2] 25:6,7 proceedings ^[1] 77:8 process ^[1] 28:6 Professor ^[1] 67:11 profoundly ^[1] 25:8 prohibition ^[1] 44:4 prolong ^[1] 27:6 promoting ^[1] 58:12 pronouncement ^[1] 20:22 proof ^[1] 31:21 proper ^[1] 70:1 properly ^[2] 70:2,20 proposition ^[1] 25:17 protect ^[2] 55:20 56:2 proves ^[1] 44:11 provision ^[5] 4:12,14 15:3 51:13 72:7 provisions ^[2] 73:5 76:17 prudential ^[1] 22:18 public ^[1] 56:2 purpose ^[6] 16:14,14 33:21 36:25 39:4 66:11 purposes ^[3] 20:19 33:12 73:25 pursuance ^[1] 62:4 pursuant ^[25] 5:19 26:23 44:13,21 46:13,15,21 61:12,19 62:2 68:23,24 69:1,5,12,13 70:21 71:8 72:1,2,3,7,12,14 73:5 put ^[4] 6:17 55:24 56:22 61:2	42:5 45:12 62:11 quick ^[1] 42:10 quite ^[3] 39:4 41:13 70:25 R rabbit ^[1] 61:4 raised ^[3] 19:17 31:23 47:17 raising ^[1] 57:11 range ^[1] 58:18 ranging ^[1] 58:6 rare ^[1] 41:12 rather ^[6] 15:13 21:14 29:9 39:2 43:2 67:24 ratification ^[20] 14:8 19:16,23 20:6,19 21:7 23:13 24:10 32:14 33:4,12 38:10,13,15,23 40:4 53:25 54:2 75:4,6 ratified ^[3] 45:5 55:15 74:5 ratify ^[1] 67:19 reach ^[4] 21:20 22:19 74:21 77:1 reached ^[1] 6:6 reaching ^[1] 71:6 read ^[12] 14:1,2,4 26:10 28:15 32:11 38:14 45:20 52:17 60:4 61:10 63:15 reading ^[20] 19:19 26:17 29:16 32:20 33:7 37:21 44:3 45:14 54:12 66:15,15 69:10,11 70:18 71:7,15 73:3,11,17,22 reaffirmed ^[2] 18:23 35:14 really ^[29] 12:2 17:21 19:23 21:10 22:10 24:5 25:1 27:1 29:25 30:2,12 33:18,21 34:17 35:2 36:1,1,18 38:8,20,25 39:3 42:14 50:16 58:4 61:6 64:6,7 67:16 reason ^[14] 19:9 22:18 37:2 42:15,24 43:8 51:5 52:14 53:8 55:19 75:15 76:7,22 77:13 reasonable ^[1] 12:10 reasoned ^[2] 40:6 75:18 reasoning ^[5] 14:13 21:5 24:6 39:2 62:14 reasons ^[3] 47:13 56:2 69:14 REBUTTAL ^[3] 3:12 74:9,10 recent ^[2] 20:22 35:13 recognized ^[1] 16:8 record ^[3] 53:12,14 64:17 records ^[2] 53:18 59:3 redress ^[1] 23:5 reenact ^[1] 15:3 reenacted ^[1] 55:2 reenacting ^[1] 55:15 reenactment ^[2] 66:23 67:10 reference ^[2] 59:21 66:9 referenced ^[1] 61:21	referring ^[1] 43:23 reflects ^[1] 15:7 regard ^[2] 14:8 23:7 regardless ^[3] 5:21 6:13 60:20 regulated ^[1] 58:22 regulation ^[2] 58:6,19 regulations ^[1] 31:11 Rehnquist ^[1] 17:20 rejected ^[4] 13:12 43:25 58:2,5 relate ^[1] 60:13 relation ^[1] 46:10 relationship ^[1] 58:10 relatively ^[1] 11:13 relevant ^[5] 4:14 20:19 23:23 75:7,10 relied ^[2] 54:25 74:21 relief ^[1] 25:10 relies ^[1] 15:25 rely ^[2] 15:13 38:23 relying ^[2] 4:23 67:8 remaining ^[1] 5:23 remand ^[18] 4:13,16 12:24 22:13 25:3 26:13 27:4 34:15 40:20 42:14,24 43:3,8 45:7 46:6 70:1,5 77:9 remanded ^[1] 72:25 remanding ^[14] 10:5 26:11,12,19 28:15,16 38:20 45:19,21 48:15 59:22 60:15 73:4 74:25 remands ^[1] 75:24 remedies ^[5] 28:5 36:6,10,14 64:24 remedy ^[5] 28:21,22 34:24 41:7,20 removable ^[1] 6:7 removal ^[56] 4:16,17 5:19,21 6:6,14,18 7:20 8:3 9:18,19,25 10:3,11,18 11:13 22:8 25:3,4 26:25 27:13,23 32:3 34:14,19,22 40:20 43:23 44:14,24 46:13,16,19 48:17 52:5 53:14 55:21 57:8,9,22 58:16 60:17,20 61:18,21 69:3,5,18 70:3,21 72:17 73:21 76:13,18,24 77:5 removals ^[1] 44:13 remove ^[1] 56:18 removed ^[10] 26:23 44:21 59:23 61:12 68:24 69:1,4 70:2,20 72:7 removes ^[1] 5:18 removing ^[3] 46:20 69:20 72:16 repeatedly ^[1] 18:23 report ^[1] 55:18 represents ^[1] 75:12 reputation ^[1] 64:1 require ^[3] 18:24 48:15 60:15 required ^[1] 27:12 requirements ^[2] 72:6 76:	19 requires ^[2] 48:17 52:2 resists ^[1] 26:16 resolution ^[3] 5:16 21:21 25:20 resolve ^[4] 22:6 23:2 29:2 77:3 resolved ^[1] 32:1 resolves ^[1] 24:25 resolving ^[1] 25:18 resources ^[1] 25:19 respect ^[13] 15:17 17:11 27:14 28:11 30:15 33:1 45:23,25 49:12,13,17,19 54:15 respectfully ^[3] 12:12 25:5 32:19 respectively ^[1] 61:18 respond ^[1] 67:20 Respondent ^[11] 1:8 4:22 14:23 16:5 26:16,21 30:10 31:4 33:16 42:12 43:19 Respondent's ^[7] 5:6,17,25 7:25 14:11 27:1 31:3 Respondents ^[3] 2:9 3:11 32:12 Respondents' ^[3] 74:15,23 75:3 response ^[3] 11:9,10 20:8 rest ^[1] 48:22 rested ^[1] 30:13 restricts ^[1] 52:21 result ^[4] 48:16 59:2 60:17 71:6 resulted ^[1] 43:4 return ^[1] 59:18 reverse ^[6] 5:25 10:12 22:13 25:22 70:12 77:16 reversed ^[1] 6:9 review ^[49] 4:13,15,19 5:5,6,14 8:23 9:16 13:1,2,11,19,20,21 25:2 29:9,19,19 30:3,4,15,17 31:22 35:16 37:4 38:1,3 42:14 43:13 44:6,8,12,19 45:7 46:6 47:4,9,9 49:11 51:24 55:14 56:9 60:1 62:20 63:3 71:10 73:14 75:23 76:6 reviewable ^[12] 42:25 45:19,22 46:12 47:3,15 48:22 49:5,8 59:23 60:21 66:6 reviewed ^[2] 49:17 68:16 reviewing ^[1] 47:16 reviews ^[1] 37:8 rights ^[19] 4:17 5:12 6:14,20 7:22 8:3 9:4 10:19 11:13 12:21 24:12 43:6 55:12,21 56:1 59:2 61:17 72:17 73:15 risk ^[3] 12:23,24 24:14 ROBERTS ^[40] 4:3 6:11 7:7,10 8:6 10:14 13:3 15:9 16:25 19:11 22:1 24:19 25:25 27:9 28:8,18,20 29:10	31:14,18 34:8,11 37:11,15 40:13,15 42:7 43:15 45:13 47:25 50:4 53:22 56:14 59:13 63:6,17 68:17 73:7 74:7 77:19 rooted ^[1] 33:21 Ruiz ^[2] 51:12 71:20 rule ^[22] 7:5 15:14,16 16:2,18 17:18 18:15,24,25 19:5 20:7 23:18,21 32:10 46:21,22 56:17,24 58:25 73:18 76:19 77:2 ruled ^[1] 13:10 ruling ^[1] 14:21 runs ^[2] 44:24 73:24 S same ^[12] 26:20 38:4 40:19 49:13 51:19 55:2 57:11 58:15 60:5 71:6 74:21 75:1 San ^[1] 2:8 sanction ^[4] 16:20 41:7,9 42:1 sanctions ^[17] 6:23 7:1 8:17,18,24 9:8 15:13,23 16:10,18,19 19:6 35:1 41:2,21 56:17 76:15 Sandoval ^[1] 75:10 saying ^[6] 9:21 11:19,22 12:4 33:7 36:7 says ^[6] 7:12 15:16 26:9 28:14 48:14 61:12 scales ^[1] 55:25 Scalia ^[4] 49:16 56:10 68:2 75:8 scope ^[10] 26:15 30:3 37:3 43:13 47:4 51:24 62:14,20 63:2,3 second ^[11] 12:9 14:18 19:6 21:9,13 46:8 52:16,18 60:3 61:1 68:2 Section ^[26] 4:15 24:25 26:9,12 29:8 37:2 42:19 43:11,23 44:4 46:13,18 47:9 48:13,14 49:2,23 61:12,19 65:15 66:1,14 74:1,16 76:5 77:14 Sections ^[1] 52:21 see ^[8] 30:14 41:2 46:11 50:7,8,20 51:9 58:14 seeing ^[1] 71:1 seek ^[1] 25:10 seeking ^[1] 23:5 seeks ^[2] 35:14 41:16 seem ^[5] 17:7 38:7,7,16 41:19 seemed ^[1] 15:12 seems ^[6] 29:16,17 35:25 59:20 65:23 69:24 send ^[1] 7:15 sense ^[5] 29:17,23 36:17 63:5 72:15 sentence ^[5] 26:20 46:4 47:5 65:23 75:2
--	---	--	--	---

Official - Subject to Final Review

serve ^[1] 43:11 set ^[2] 42:18 61:16 setting ^[1] 66:11 settled ^[10] 14:9 20:10,14, 15 34:10 40:2,12 55:7,8 68:9 Seventh ^[4] 7:5 57:4,6 76:11 several ^[2] 14:10 68:14 SG ^[1] 53:25 shall ^[2] 45:19,21 SHANMUGAM ^[48] 2:2 3:3, 13 4:6,7,9 6:22 7:9,17 8:10,15,25 10:1 11:6,8,20 12:5,8 13:23 14:7,18,22 15:10, 20 17:17,25 18:8,19,22 19:15 20:4,13,17,25 21:3,10, 16 22:3,9 23:9,10,22 24:20, 21 64:4 74:9,10,12 Shapiro ^[1] 35:14 SHER ^[50] 2:8 3:10 43:17, 18,20 46:2 48:11 51:10 53:2,7 54:3,6 56:15,19 57:14, 16,18,21,25 59:17 60:11 61:5,8 62:16 63:9,21,22 64:9,22 65:1,25 66:19,20, 21,25 67:21 68:7,19 69:8, 15 70:6,15,25 71:4 72:2,10, 19,23 73:8,9 shoot ^[1] 68:3 side ^[6] 34:1 39:6 40:5,7 51:8 65:12 signature ^[1] 46:23 significant ^[6] 7:24 12:18 21:6 22:18 54:17 76:21 similar ^[6] 23:7 30:10 39:8 47:7 65:21 66:14 similarly ^[2] 44:11 64:2 simply ^[18] 7:6 9:11,12 14:25 18:9 21:16 22:12 25:22 26:10 27:13,24 36:5,8 57:1 61:20 66:13 74:17 75:15 since ^[2] 50:21 76:11 single ^[8] 16:5 47:9,17 49:2,9,17 51:14 60:5 situation ^[6] 7:21 16:12 34:24 35:11 37:7 42:16 situations ^[1] 16:23 six ^[1] 76:12 Sixth ^[1] 33:24 slide ^[1] 17:25 smuggling ^[3] 29:18,18 76:3 sole ^[1] 5:23 solely ^[3] 35:2 45:22 69:18 Solicitor ^[1] 2:4 solicitude ^[1] 5:11 somehow ^[2] 29:22 52:5 someone ^[1] 72:16 sometimes ^[1] 19:25 Sorry ^[9] 21:12 39:15 49:25 57:15,16 61:10 63:7 67:24 69:11 sort ^[4] 16:6 35:10 38:25	40:3 sorts ^[1] 37:8 Sotomayor ^[20] 13:4,5,23, 24 14:7,17,19 19:17 20:9 31:19,20 32:20 33:2,5 53:23,24 54:4 56:12 66:23 76:21 soundly ^[1] 58:5 spacing ^[1] 68:4 speaking ^[1] 19:25 speaks ^[1] 12:15 special ^[1] 5:11 specific ^[6] 11:10 48:25 49:6 57:22 73:5 75:25 specifically ^[2] 55:20 76:17 specified ^[1] 73:2 spoke ^[1] 53:25 squared ^[1] 26:24 standards ^[1] 61:16 start ^[3] 63:23,24 65:25 started ^[1] 59:19 state ^[14] 10:5 20:13 21:15 25:12 31:11 53:11 58:16 59:22 63:25 64:7,23,23 76:17 77:8 STATES ^[8] 1:1,17 2:6 3:7 25:13,17 26:4 54:16 States' ^[1] 55:4 statistics ^[1] 57:3 statute ^[34] 4:17,18 5:19, 20 7:18 11:3 13:8 14:15 17:11 25:4 28:13 32:8 36:19,20 39:11 41:10 45:16 47:11 50:2,21 51:23 54:12 60:4 61:24 63:12 66:10 69:14 70:3,10,18,22 71:8 72:17 75:18 statutes ^[8] 5:5 11:13,16 44:11,15 47:7 66:7 76:13 statutory ^[10] 4:12 5:1 16:18 20:23 29:15 45:3 52:17 60:7 75:1,14 stays ^[1] 77:8 step ^[1] 16:7 stick ^[1] 12:3 sticking ^[1] 67:9 still ^[7] 8:14 20:7 31:7 34:21 35:8,10 39:25 straightforward ^[1] 26:17 strict ^[1] 17:10 strong ^[2] 35:6 64:1 struck ^[1] 12:25 structural ^[1] 48:12 structure ^[3] 25:15 44:25 47:5 sub ^[1] 32:2 sub-prime ^[1] 58:19 subject ^[6] 6:25 13:11 33:24 44:5 56:7 76:18 subjected ^[1] 31:10 submission ^[5] 9:7 12:16 14:25 18:9 19:8 submit ^[3] 12:12 25:5 63:	15 submitted ^[3] 33:6 77:20, 22 subsection ^[3] 60:13,14, 22 substantial ^[1] 46:25 substantive ^[5] 46:23 61:15 62:1,6 71:18 substantively ^[1] 72:5 succeed ^[1] 77:10 suffice ^[1] 16:22 sufficiency ^[2] 49:14,20 sufficient ^[2] 19:10 56:18 suggested ^[1] 32:10 summary ^[2] 49:3,3 supervision ^[1] 58:7 support ^[2] 48:8,10 supported ^[1] 45:11 supporting ^[3] 2:7 3:8 26:5 supports ^[1] 48:13 Suppose ^[1] 34:13 SUPREME ^[2] 1:1,16 surely ^[1] 18:6 susceptible ^[2] 38:21 41:8 swallows ^[1] 73:18 Swint ^[2] 47:21 49:1 system ^[6] 32:18 50:12,16, 20 63:25 76:7 T tack ^[2] 6:19 38:2 tacks ^[1] 37:25 tactic ^[1] 58:17 talked ^[1] 36:20 technical ^[1] 75:20 Tenth ^[1] 56:22 term ^[3] 60:2,5 62:18 terms ^[3] 4:18 41:7 71:17 tether ^[2] 61:22 71:9 tethering ^[1] 47:6 tethers ^[2] 44:5 51:23 text ^[18] 5:1,9 12:16 33:19 37:21,21 38:25 39:10 41:10 45:23,25,25 59:19 65:7, 9,15 73:21 77:13 textual ^[5] 4:22 26:21 32:22 34:3 75:3 Thanks ^[1] 42:6 theoretical ^[1] 42:22 theory ^[2] 6:12 26:22 there's ^[27] 7:3,5 10:20 11:17 19:9 22:17 26:14 29:16 33:19 37:2 38:8,9 39:1 40:20 43:7 51:18 52:1,4,14,14 59:5,9 61:3 70:22 74:17 76:7 77:12 therefore ^[8] 6:9 11:1 21:24 26:12 27:18 38:1 77:12, 16 they'll ^[1] 10:23 thinks ^[1] 15:22 Thomas ^[17] 8:7,8,20 9:10, 20 10:13 15:12 29:11,12,	24 30:19 31:13 37:6 48:2, 3 50:3 76:2 though ^[7] 23:21 29:18 35:25 38:3 47:11 50:18 70:7 three ^[3] 45:17 53:10 76:14 three-judge ^[3] 30:18 35:12,15 threshold ^[1] 72:4 throughout ^[1] 60:6 thumb ^[1] 55:24 ticket ^[1] 47:23 tied ^[1] 65:17 time-consuming ^[1] 51:2 today ^[1] 74:15 tort ^[2] 58:8 64:12 touching ^[1] 65:22 touchstone ^[1] 40:3 tough ^[1] 50:7 traditional ^[2] 64:23,23 treating ^[1] 43:8 treatise ^[5] 23:17 32:21 39:9 40:8 68:2 treatises ^[1] 67:11 treatment ^[1] 47:7 tried ^[1] 31:6 triggers ^[1] 30:2 true ^[3] 14:10 20:18 51:19 trump ^[1] 5:1 trying ^[4] 13:13 20:2 36:25 51:8 Tuesday ^[1] 1:13 turn ^[1] 72:11 turns ^[2] 7:13 69:9 two ^[19] 5:7 11:9 13:18 14:5 15:2 20:8 24:8 26:19 33:6 44:6 52:3 54:7,7 55:25 60:12 66:7 71:5,5,5 types ^[1] 43:7 U ultimately ^[3] 12:22 23:25 56:21 unanimous ^[7] 24:2 45:6 54:19 55:9 68:11 74:2,20 uncertainty ^[1] 10:22 unclear ^[1] 24:6 undeniably ^[1] 42:24 under ^[20] 6:1 9:16 13:16 21:18 22:15 25:12,16 35:16 37:1 43:11 49:22,23 60:21,23 63:4 69:20 70:2 71:7 72:16 76:5 undercut ^[2] 51:4,6 underlying ^[1] 50:21 underpinnings ^[2] 18:12 19:5 underscore ^[3] 37:6 38:24 42:12 understand ^[10] 13:15 17:13 35:22,23 39:22 52:18 53:19 62:8,12 72:13 understanding ^[1] 13:17 understood ^[1] 34:7 undesirable ^[1] 42:23	unfair ^[2] 50:14,19 uninterrupted ^[1] 45:17 unique ^[1] 5:7 UNITED ^[8] 1:1,17 2:6 3:7 25:17 26:4 54:16 55:4 universal ^[1] 70:8 unless ^[4] 60:24 68:25 70:20 72:21 unlikely ^[1] 27:5 unreasoned ^[1] 75:17 unreviewable ^[1] 42:25 unusual ^[2] 30:1 37:7 unusually ^[1] 67:14 up ^[16] 7:1 18:16,16 22:4 24:20 42:8,24 50:1,16,20 52:14 57:2 59:8 68:13 73:8,12 uses ^[2] 60:5 62:3 using ^[2] 14:15 41:17 V vacate ^[2] 22:12 25:22 value ^[1] 75:24 version ^[1] 24:12 versus ^[8] 4:4 9:3 16:2 17:3,18 18:13 39:23 75:9 VICTOR ^[3] 2:8 3:10 43:18 view ^[9] 18:12 20:18 39:19 45:2 60:23 68:9 74:2,4 76:25 views ^[1] 18:17 violates ^[1] 45:2 virtually ^[2] 4:22 66:3 Volunteers ^[1] 33:25 W walk ^[1] 68:21 wanted ^[5] 13:20,22 42:2 64:4 75:23 wants ^[4] 6:16 18:6 34:16, 18 warming ^[1] 31:12 Warner ^[1] 68:4 Washington ^[3] 1:12 2:2,5 waste ^[3] 50:24,25 51:1 way ^[18] 13:1 14:3 15:19 20:16 26:10 32:12 35:24,25 36:2 55:6,22 56:24,25 67:18 69:14 71:2,3 74:17 ways ^[1] 71:6 weak ^[1] 67:14 weight ^[2] 21:6 33:11 welcome ^[3] 6:10 27:8 45:12 whatever ^[2] 18:6 29:6 whenever ^[1] 6:24 Whereupon ^[1] 77:21 whether ^[20] 16:17 17:6,22 18:10 22:12 27:14,21 29:4 30:21,24 32:1 43:3 44:18 47:3 49:6 59:9 60:20 68:4, 8 75:10 whole ^[3] 46:4 59:25 61:3 whom ^[2] 37:25 38:2
--	--	---	---	--

wide ^[1] 58:17
will ^[11] 4:3 6:17 10:18,23,
 24 11:1 25:18 29:2 45:17
 50:16 56:25
wish ^[1] 18:9
within ^[5] 47:10,17 48:23
 63:2 66:5
wonder ^[1] 67:14
wondering ^[1] 15:15
word ^[5] 7:23 32:23 36:7
 47:14,14
worded ^[1] 44:11
words ^[7] 15:3 24:9 28:15
 46:9 67:14 69:2 71:8
work ^[1] 67:15
works ^[2] 26:25 34:5
world ^[1] 31:9
worldwide ^[2] 6:4 25:11
wrap ^[3] 24:20 42:8 73:8
Wright ^[4] 23:17 32:9,21
 34:2
writing ^[1] 74:20
wrongful ^[1] 49:15
wrote ^[2] 36:20 65:14

Y

Yamaha ^[20] 14:14,19,24
 15:1 20:21 30:5 32:7,24
 34:4 37:10,22 39:10 50:9
 62:8,14,18,21 65:11,21 74:
 19
Yamaha's ^[1] 66:9
year ^[1] 74:4
years ^[8] 32:9,25 45:5 52:
 22 53:10 55:10 68:11 76:
 11
York ^[1] 58:16

Z

zero ^[1] 38:10