



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

IN THE SUPREME COURT OF THE UNITED STATES  
- - - - -  
RAYMOND J. LUCIA, ET AL., )  
Petitioners, )  
v. ) No. 17-130  
SECURITIES AND EXCHANGE COMMISSION,) )  
Respondent. )

Washington, D.C.

Monday, April 23, 2018

The above-entitled matter came on for oral  
argument before the Supreme Court of the United  
States at 10:03 a.m.

APPEARANCES:

MARK PERRY, ESQ., Washington, D.C.; on behalf of the  
Petitioners.

JEFFREY B. WALL, Deputy Solicitor General, Department  
of Justice, Washington, D.C.; on behalf of the  
Respondent, in support of the Petitioners.

ANTON METLITSKY, ESQ., New York, New York; on behalf  
of the Court-appointed amicus curiae in support of  
the judgment below.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	MARK PERRY, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	JEFFREY B. WALL, ESQ.	
7	On behalf of the Respondent	
8	in support of the Petitioners	15
9	ORAL ARGUMENT OF:	
10	ANTON METLITSKY, ESQ.	
11	On behalf of the Court-appointed	
12	amicus curiae in support of the	
13	judgment below	34
14	REBUTTAL ARGUMENT OF:	
15	MARK PERRY, ESQ.	
16	On behalf of the Petitioners	64
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear  
4 argument first this morning in Case 17-130,  
5 Lucia versus the Securities and Exchange  
6 Commission.

7 Mr. Perry.

8 ORAL ARGUMENT OF MARK PERRY  
9 ON BEHALF OF THE PETITIONERS

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

12 SEC ALJs have been invested with the  
13 sovereign power to preside over formal  
14 adjudications. They are officers under all of  
15 this Court's precedents, particularly Freytag  
16 and Edmond, and any textually and historically  
17 accurate construction of the Appointments  
18 Clause, which --

19 JUSTICE GINSBURG: Inferior  
20 officers -- you're not contesting that -- that  
21 they are more than inferior officers?

22 MR. PERRY: Justice Ginsburg, we are  
23 contesting they are inferior officers, not  
24 principal officers, correct, in part because  
25 their work is supervised by principal officers,

1 the commissioners of the SEC, and that  
2 relationship of director and then supervision  
3 is what marks them as inferior but not as  
4 employees.

5 And that's important to note that, in  
6 exercising those duties under the direction of  
7 the SEC, they have independence in their  
8 decisional functions, their hearing functions,  
9 and their evidentiary functions. These are all  
10 sovereign powers that we give to judges, that  
11 governments give to judges. The *puissance de*  
12 *juger*, as Montesquieu put it. And that is --  
13 those are powers that ordinary citizens,  
14 private citizens, simply do not have, absent  
15 agreement of the parties, and that governments  
16 when they delegate them must do to officers.  
17 All of those powers together makes one an  
18 officer, as this Court quite firmly and clearly  
19 recognized in *Freytag*.

20 CHIEF JUSTICE ROBERTS: Well, of  
21 course, the decisions of the ALJs in every case  
22 aren't operative until the Commission issues an  
23 order of finality, right?

24 MR. PERRY: Well, Your Honor, the  
25 Commission by regulation does issue a finality

1 order. The -- by statute, the decisions of the  
2 ALJs are deemed the decision of the Commission  
3 if not reviewed, and the review period by  
4 regulation expires after 42 days.

5 And Congress, importantly, gave the --  
6 the ALJs the power to make final decisions.  
7 That's in the APA Section 557(b). And -- and  
8 the right of review in the statute, in the  
9 Exchange Act, is discretionary.

10 So that when Congress says here is an  
11 office of the ALJ that can make a final  
12 decision on behalf of the agency, unless the  
13 agency chooses to review it, that officer must  
14 be invested with the power to enter a final  
15 decision, whether or not the -- the agency  
16 actually allows that officer to exercise it.

17 There's two levels of authority here,  
18 and the one that Congress gave -- because  
19 tomorrow the Commission could adopt a new  
20 regulation that says: We're not going to --  
21 we're not going to review any initial decisions  
22 in investment adviser cases under our  
23 discretion. Every this -- such decision would  
24 become final. And we know as a matter of fact  
25 that 90 percent of ALJ decisions do become

1 final with no review by the Commission. So  
2 this -- these -- these judgments --

3 JUSTICE SOTOMAYOR: I'm sorry, that --  
4 that figure is somewhat misleading. Every  
5 petition for review that has been filed has  
6 been accepted for review. The only cases --  
7 that 90 percent encompasses default petitions.

8 If people don't show up and nobody  
9 contests what's going on, why don't we take the  
10 SEC at its word that it's looking at the  
11 default judgment? On its face, don't see  
12 anything wrong with it. Nobody's pointing out  
13 that there's anything wrong with it, and  
14 they're the ones who submit or adopt it as  
15 final.

16 It doesn't become final except by the  
17 actions of the SEC officers.

18 MR. PERRY: Two answers, Justice  
19 Sotomayor: First, those defaults it -- itself  
20 recognize an exercise of sovereign power. The  
21 ALJ issues a notice, a hearing notice, that  
22 says: Appear at this time and this place or  
23 you will suffer the consequences.

24 And if the person --

25 JUSTICE SOTOMAYOR: Now, most of the

1 time, I don't know of many judges -- well,  
2 judges sign order to show causes. But it's  
3 usually prepared by a function -- functionary  
4 in the court. Why is merely issuing the order  
5 to show cause a sovereign enough power to  
6 designate someone a -- a officer rather than an  
7 employee, when it's being done on behalf of,  
8 not in the name of, on behalf of the SEC?

9 MR. PERRY: Well, first, Your Honor,  
10 the -- the hearing -- the note -- the hearing  
11 notice, which is different than an order to  
12 show cause, is issued in the name of the ALJ  
13 and goes out under the name of the ALJ, if that  
14 matters, as does the subpoena, as does all the  
15 document requirements, as does everything  
16 related to the hearing.

17 After the order instituting  
18 proceedings is issued and it is delegated to an  
19 ALJ, the ALJ issues every order in the case.  
20 It -- it -- it oversees -- he oversees or she  
21 oversees the gathering of the evidence, the  
22 admission or exclusion of the evidence, the  
23 hearing -- the taking of the depositions, the  
24 hearing of the testimony, the convening of the  
25 hearing, compulsory settlement, if the



1 settlement conference -- if the ALJ chooses,  
2 and the preparation of a decision. And --

3 JUSTICE GINSBURG: If -- if the  
4 provision had been that the bottom line is the  
5 ALJ recommends -- everything else is the same,  
6 they conduct the hearing, decide what evidence  
7 will be admitted, all that. The only change  
8 would be that their bottom line is: We  
9 recommend that the Commission do so and so.

10 MR. PERRY: Yes, Your Honor.

11 JUSTICE GINSBURG: If -- if that were  
12 -- if that were so, then -- then they would be  
13 employees?

14 MR. PERRY: No, Your Honor. That's  
15 the FDIC scenario. That's not permitted by  
16 statute in the SEC, but there are agencies that  
17 have that model. 557(b) of the APA provides  
18 for two modes of ALJ decision-making: Initial  
19 decisions and recommended decisions.

20 Both have to be functioned by 3105  
21 officers because of all the hearing-related and  
22 evidentiary-related powers in 556(c). Those  
23 decisions, whether recommended or initial, are  
24 the agency's decision. And the decisional  
25 process, of course, is the capstone of the

1 adjudication, but it is not the adjudication  
2 itself. And the -- the package of powers, the  
3 evidentiary powers, the hearing powers, the  
4 regulation of the parties' powers, which is  
5 very important in all formal proceedings, also  
6 are exercised by ALJs even in purely  
7 recommendatory cases.

8 But in SEC cases, the only choice by  
9 statute is an initial decision, which by  
10 statute becomes the decision of the agency  
11 absent discretionary review.

12 JUSTICE KENNEDY: If -- if we follow  
13 your theory of the case and -- and you prevail,  
14 what effect, if any, will that have on ALJs in  
15 other agencies, Social Security ALJs?

16 MR. PERRY: Justice Kennedy, our  
17 submission is limited to ALJs who decide  
18 adversarial proceedings subject to Sections 556  
19 and 557 of the APA. There are approximately  
20 150 ALJs who fit that definition, which is not  
21 Social Security ALJs, by the way, in the  
22 federal government, in 25 agencies.

23 Some of those may well have already  
24 been appointed. One of the interesting things  
25 about this case is, as we have all dug into it,

1 it's very obscure how these ALJs are appointed,  
2 when we have a constitutional clause that is  
3 designed to promote transparency and  
4 accountability, not obscurity and opacity.

5 But 150 is the answer to your  
6 question, and some of those may already have  
7 been properly appointed, and those are the ones  
8 who perform the judge-like characters that  
9 Congress specified in the APA. And the  
10 Exchange Act, Section 78d-1(a), explicitly  
11 adopts Section 556 of the APA for the judges.

12 And I think it's important in the APA,  
13 Congress said that a formal adjudication, an  
14 on-the-record adjudication under the APA, can  
15 be done by three people only: The agency, a  
16 member of the agency, or an ALJ. And words are  
17 known by the company they keep. These are all  
18 officers.

19 We know the agency and its members are  
20 officers and -- and -- and they didn't say the  
21 agency -- a member of the agency or some random  
22 person you find on the street. They said an  
23 ALJ and defined that office by the duties in  
24 556(c).

25 JUSTICE GINSBURG: Who --

1 JUSTICE KAGAN: Other --

2 JUSTICE GINSBURG: Who is left out?  
3 You said 150 ALJs. What -- what about Social  
4 Security ALJs?

5 MR. PERRY: Our understanding, Your  
6 Honor, is Social Security ALJs do not conduct  
7 adversarial hearings. They are not subject to  
8 556(c) and 557 of the APA. They are outside  
9 that under the organic statute of the Social  
10 Security Administration.

11 These questions involve the  
12 intersection of two statutes: The APA and the  
13 organic statute of the agency. In the SEC --

14 JUSTICE SOTOMAYOR: I'm sorry, could  
15 you define adversarial for me?

16 MR. PERRY: Yes, Your Honor.

17 JUSTICE SOTOMAYOR: And let's go  
18 through the various agencies. Virtually all of  
19 them -- the SEC have -- it's adversarial  
20 because it's the government versus the  
21 individual, correct?

22 MR. PERRY: Yes, Your Honor.

23 JUSTICE SOTOMAYOR: So why isn't  
24 Social Security and the Veterans  
25 Administration, the Veterans' Board, and some

1 of the others are all investigations by the  
2 government or benefits that the government's  
3 going to give -- but they are investigating.  
4 Social Security can issue subpoenas for -- for  
5 documents. It can call witnesses. It could do  
6 just about everything that happens in a -- in  
7 -- in a hearing. So what's the difference  
8 again?

9 MR. PERRY: Justice Sotomayor, the way  
10 we are using the term is adversarial -- by  
11 adversarial, I mean those cases -- enforcement  
12 cases are a good example -- where a private  
13 citizen is brought against his or her will  
14 before a government body to have his or her  
15 fate decided.

16 The Social Security Administration --  
17 the vast majority of ALJ determinations are  
18 when a citizen voluntarily goes to the agency  
19 and seeks benefits from the government.

20 They are applicants and --

21 JUSTICE KAGAN: So, Mr. Perry, if I  
22 asked you why is it important for purposes of  
23 deciding who's an officer that the person  
24 conduct an adversarial hearing, is that what  
25 you would say, that the stakes are very high,

1 that a person has liberty on the line?

2 MR. PERRY: I think the stakes,  
3 Justice Kagan, are important, but I would go to  
4 the statute actually as the definition. I  
5 think 556(c) gives us those characteristics,  
6 those sovereign powers that can only be  
7 exercised by an officer.

8 So that a statutory officer appointed  
9 under 3105, whose organic statute permits him  
10 or her to conduct a formal hearing, an  
11 on-the-record adjudication, which this Court  
12 has said has collateral estoppel effect, right,  
13 in -- in other proceedings, those are due  
14 process related. Those are sovereign --

15 JUSTICE KAGAN: See, there's something  
16 that strikes me as -- as a little bit odd about  
17 this argument because, if you -- if you -- we  
18 just take a step back a little bit. I mean,  
19 you have some real complaints about this  
20 process and how it happened and the bias that  
21 you think the ALJ showed.

22 And if that's a problem, it's a hard  
23 context in which to think that the solution to  
24 the problem is greater -- the greater political  
25 accountability that comes from the Appointments

1 Clause. In other words, this is a situation  
2 where we have adjudications, where we typically  
3 think we want the decision-maker to be  
4 insulated from political pressures.

5 So wouldn't putting those  
6 decision-makers even closer to the political  
7 body only exacerbate the problem that you're  
8 complaining of?

9 MR. PERRY: Justice Kagan, there's a  
10 difference between decisional independence,  
11 which is guaranteed by 554(b) of the APA and  
12 the Due Process Clause, and structural  
13 independence, which the Appointments Clause is  
14 designed to ensure responsibility,  
15 accountability, transparency, and ultimately  
16 liberty, freedom. So that we know --

17 JUSTICE KENNEDY: So then you're  
18 saying assume, as Justice Kagan's question  
19 indicates, that it's important to the  
20 perception of justice that the adjudicator be  
21 independent. Which way does that cut as to  
22 your argument? I think that's --

23 MR. PERRY: Your Honor, as to  
24 structural independence, it's important for  
25 regulated entities, the Commission, the judges,

1 and the courts that review their decisions to  
2 know that they are not structurally  
3 independent, that they are structurally  
4 dependent even if they have statutory  
5 decisional independence.

6 So that we believe tying them together  
7 as the Appointments Clause requires shows the  
8 lines of authority so that reviewing courts and  
9 all those stakeholders in the process can  
10 participate.

11 If I may reserve the remainder of my  
12 time, Your Honor.

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 counsel.

15 General Wall.

16 ORAL ARGUMENT OF JEFFREY B. WALL

17 ON BEHALF OF THE RESPONDENT

18 IN SUPPORT OF THE PETITIONERS

19 MR. WALL: Mr. Chief Justice, and may  
20 it please the Court:

21 If I could just start with the  
22 government's test, the one that we hope the  
23 Court will adopt.

24 Under Buckley and Freytag, a  
25 constitutional officer occupies a continuing



1 position that's been vested by law with  
2 significant discretion to do one of two things:  
3 Either to bind to the government or  
4 third-parties on important matters or to  
5 undertake other important sovereign functions.

6 Here, the Commission's ALJs have been  
7 vested by statute with both powers. They  
8 adjudicate disputes that impose liability and  
9 sanctions on private individuals, and they can  
10 and do issue binding decisions. There is,  
11 thus, no meaningful difference between this  
12 case and Freytag.

13 CHIEF JUSTICE ROBERTS: How many --

14 JUSTICE BREYER: There are a lot of --  
15 a lot of civil servants who have -- fit within  
16 that definition. I -- I -- I won't give a  
17 list, but I think there are.

18 And I think, frankly, I don't know how  
19 to decide this case for the following reason:  
20 I don't think it would make much difference but  
21 for the decision in the PCAOB case, Free  
22 Enterprise. When I read that decision and  
23 combine it with this, then I think, if I adopt  
24 your approach, goodbye to the merit civil  
25 service at the higher levels and good-bye to

1 independence of ALJs.

2 But it requires both. And you propose  
3 a test as to when we can get rid of the ALJs  
4 on, I think it's Point 17 of your reply brief,  
5 that seems to me does not guarantee them the  
6 independence that the APA hoped for.

7 So how do I decide this case? If I'm  
8 going to decide the PCAOB application first, I  
9 would say, as I dissented, no, and at that  
10 point, it doesn't matter very much and I can go  
11 into the totally contradictory mess of what our  
12 precedent is on this, I think.

13 But if the answer is yes, then I think  
14 I have to look for new approaches as to who is  
15 a civil servant and who is an officer of the  
16 United States, in which Congress might play a  
17 great role.

18 Now I've been very honest in  
19 describing what I'm thinking at the moment,  
20 which doesn't help you or hurt you.

21 (Laughter.)

22 JUSTICE BREYER: And I'm looking to  
23 you for advice.

24 MR. WALL: I -- so two -- I -- two  
25 things, Justice Breyer. You said in dissent in

1 Free Enterprise Fund that all ALJs are  
2 executive officers.

3 JUSTICE BREYER: I know that, but I  
4 was taking the SG's test and I was going back  
5 to --

6 MR. WALL: Yes.

7 JUSTICE BREYER: -- the -- the Freytag  
8 and -- and --

9 MR. WALL: Right.

10 JUSTICE BREYER: -- and it was not in  
11 front of us, and I was looking for the  
12 horribles and listed about, you know, 4,000  
13 horribles as a result of a decision that I  
14 disagreed with.

15 (Laughter.)

16 JUSTICE BREYER: So I -- I don't feel  
17 that those words are absolutely written in  
18 stone. But maybe you're right, provide that I  
19 have to know first about PCAOB before I can say  
20 whether I really want to say it does not appear  
21 to me now as it appears to have appeared to me  
22 then.

23 (Laughter.)

24 MR. WALL: Well, I -- here's why I  
25 don't think it's a horrible. And we obviously

1 have urged the Court to address the removal  
2 issue and what we've tried to say in our brief  
3 is we think there's a way to read the statute  
4 that avoids the constitutional concerns from  
5 the PCAOB case.

6 JUSTICE BREYER: Yes, the way to read  
7 the statute that you think is that you can  
8 dismiss the ALJ for failing to follow policy  
9 that may not be written into a rule that  
10 they're legally applied, required, or -- and  
11 once -- once there is a basis in the record,  
12 facts, the MS -- the -- the Systems Protection  
13 Board can't even look at it.

14 Well, they're looking -- now that to  
15 me is not the kind of protection that the  
16 people who wrote the APA intended.

17 MR. WALL: Justice Breyer --

18 JUSTICE BREYER: That's why I say I  
19 need to know about that before I can decide  
20 this.

21 MR. WALL: With all respect, we -- I  
22 think the Court has got to distinguish what the  
23 -- what the -- the drafters of the APA were  
24 worried about, and Mr. Perry got at this a  
25 little bit, was decisional independence in

1 Section 554 of the APA. And we've been very  
2 clear in -- in both of our briefs that we don't  
3 think the agencies can impinge on the  
4 decisional independence of ALJs. But Congress,  
5 of course, in 3105 said the agency can appoint  
6 the ALJ. So we know Congress didn't mean to --

7 JUSTICE BREYER: All right. So maybe  
8 that's what you mean.

9 MR. WALL: -- limit it beyond the  
10 department head.

11 JUSTICE BREYER: Maybe that's -- but  
12 what it says is you can remove an ALJ for  
13 failure to follow agency policies -- and I take  
14 it that that isn't something embodied in a  
15 rule, it's no problem if it's embodied in a  
16 rule, but it could be beyond the rule -- and to  
17 confine the Board's role to -- the Board,  
18 that's the MSPB -- to determining whether a  
19 factual basis exists for the agency's preferred  
20 grounds. Now try that on an Article III judge.

21 I mean, you know, these -- these are  
22 -- these are people with an adjudicative  
23 function. Now you may be right on that, and my  
24 only problem is I don't know how to decide this  
25 case until I decide that one.

1 MR. WALL: Well, Justice Breyer, I  
2 think the way to decide this case, if you  
3 wanted to do it without getting to removal, and  
4 we've urged the Court not to do that because,  
5 unlike the appointments side, what we're  
6 dealing with is largely executive practice, the  
7 restrictions on removal are statutory, we're  
8 limited in our ability to get our own house in  
9 order there.

10 But if you wanted to sever the two, I  
11 think what you'd say is Freytag sets up a  
12 two-part test for when you're an officer of the  
13 United States. ALJs satisfy both. So you  
14 don't even need to decide whether one or the  
15 other is sufficient or necessary.

16 JUSTICE BREYER: We can do that.

17 MR. WALL: And then --

18 JUSTICE BREYER: But -- but, again,  
19 last point. One thing I'm certain of, or  
20 fairly certain, moderately certain --

21 (Laughter.)

22 JUSTICE BREYER: -- that the  
23 Constitution does not inhibit the creation of a  
24 merit-based civil service and an adjudicatorily  
25 merit -- merit-based system of hearing

1 examiners, ALJs.

2 If I start with that premise and then  
3 don't know quite what that sentence on page 17  
4 means and don't know how PCAOB applies, you  
5 see?

6 MR. WALL: I do, Justice Breyer. But,  
7 one, we haven't said a word about the civil  
8 service. We're talking only about ALJs who are  
9 front-line adjudicators capable of imposing  
10 private liability -- liability and sanctions on  
11 private individuals.

12 Two, we have been very careful not to  
13 touch pay or compensation or directing of  
14 decisions or any of the rest. All we are  
15 talking about is saying, look, 3105 says the  
16 agency can appoint.

17 JUSTICE SOTOMAYOR: Mr. Wall, may I --

18 MR. WALL: That should be the  
19 department head under the Appointments Clause.  
20 And then --

21 JUSTICE SOTOMAYOR: May I break --

22 MR. WALL: -- the removal should  
23 follow on that.

24 JUSTICE SOTOMAYOR: May I break down  
25 your answer, because there -- there's -- or --

1 or following up on what Justice Breyer said,  
2 significant authority. I'm having a great deal  
3 of trouble understanding what significant  
4 authority means outside of the ALJ context.

5 How will I then apply that test to  
6 executive officers who are not serving  
7 executive ALJ functions but other functions?  
8 That -- that word -- it seems to me that the  
9 test that you're -- the amici has proposed  
10 makes sense. Do they bind the government in  
11 any situation? And, secondly, are they -- are  
12 they acting independently in -- in -- in any  
13 situation? And that test seems to be a fairly  
14 straightforward way of defining significant  
15 authority.

16 But you're suggesting something more.  
17 You're suggesting that that test is not  
18 adequate for ALJs in some way.

19 MR. WALL: No. I -- I think the ALJs  
20 issue binding decisions. They satisfy that  
21 test. My problem with the test is it is --

22 JUSTICE SOTOMAYOR: Do you --

23 MR. WALL: -- it is, on the one hand,  
24 under-inclusive and it is, on the other,  
25 manipulable. I don't think it picks up this --



1 JUSTICE SOTOMAYOR: Everything is  
2 manipulable. But -- but our -- our founding  
3 fathers designated some people employees and  
4 others not, serving somewhat similar functions  
5 or not, so that we can't really go by the  
6 founding fathers' practices because they were  
7 rather mixed.

8 You know, a U.S. marshal was -- deputy  
9 wasn't an officer but a -- and customs  
10 inspectors weren't officers, but shipmasters  
11 were. All of this seems a little bit difficult  
12 to quantify, but tell me what your -- the  
13 difference between -- not with ALJs but with  
14 other executive officers.

15 MR. WALL: Right. So we have tried to  
16 come up with a test that I think really  
17 harmonizes the Court's cases and the historical  
18 practice, and it focuses on a handful of  
19 things. Do you have a continuing office?  
20 Everyone agrees that that -- that's present  
21 here.

22 JUSTICE SOTOMAYOR: But every office  
23 is continuous.

24 MR. WALL: Exactly. So then you've  
25 got to look --

1 JUSTICE SOTOMAYOR: Almost anybody who  
2 works for the government works for the  
3 government under some statute.

4 MR. WALL: That's right. And then  
5 you've got to look at what are the powers that  
6 have been vested by law in that office, and  
7 you've got to ask, okay, do those powers  
8 involve significant discretion over one of two  
9 things: The power to bind on important matters  
10 or other really important sovereign functions  
11 of the kind that historically, even absent the  
12 power to bind, were performed only by the  
13 executive branch, generally only by  
14 high-ranking members of the executive branch,  
15 and that really do require the exercise of  
16 significant discretion. And I --

17 JUSTICE ALITO: But when -- when you  
18 say --

19 JUSTICE GINSBURG: Can I ask you about  
20 thorough examination of this subject by the  
21 Office of Legal Counsel? What is the  
22 government's current position about the line  
23 that's drawn between employees and officers in  
24 that OLC study?

25 MR. WALL: Oh, we understand our

1 current line here to be a refinement of what  
2 OLC said in its 2007 OLC opinion. What it said  
3 was you can be an officer because you have the  
4 power to bind on important matters, but you  
5 historically have been an officer in other ways  
6 that isn't a complete test, it's  
7 under-inclusive, and there isn't any support, I  
8 think, for the own name requirement, which is  
9 the manipulable part I was trying to get at  
10 earlier.

11 So we understand what we've been doing  
12 here to try to boil down that very lengthy memo  
13 and the other OLC opinions and to try to come  
14 up with a test that we really do think moves  
15 the ball forward from significant governmental  
16 authority in Buckley.

17 JUSTICE KAGAN: Does power to bind  
18 mean power to bind that can't be reversed by  
19 somebody who's your boss?

20 MR. WALL: No. I mean, you can have  
21 discretionary review. You had discretionary  
22 review in Edmond and -- and Weiss, and you have  
23 discretionary review here by the Commission.  
24 The point is that the ALJs issue decisions.

25 The -- the Commission can review them

1 if it wishes. And it certainly, as the Chief  
2 Justice said earlier, adopted a policy that it  
3 will review virtually every one in which anyone  
4 asks.

5 JUSTICE ALITO: I mean, I don't -- I  
6 --

7 MR. WALL: There's one instance in  
8 which it didn't, but --

9 JUSTICE ALITO: -- don't understand  
10 this -- how this test applies. Is an FBI agent  
11 an officer --

12 MR. WALL: I --

13 JUSTICE ALITO: -- or an employee?

14 MR. WALL: The Court said in Steele  
15 that deputy marshals are not. I think  
16 historically we have not understood line  
17 attorneys, line law enforcement agents to be  
18 officers of the United States because of the  
19 way in which their discretion is constrained  
20 and because the powers really are vested in  
21 their superiors. They're vested in the  
22 marshal. They're vested in the U.S. Attorney.  
23 They're vested in the Solicitor General.

24 JUSTICE ALITO: But they can all make  
25 decisions that -- that bind the United States.

1 MR. WALL: I --

2 JUSTICE ALITO: Can they -- right?

3 MR. WALL: But that's why you have to  
4 focus on the vesting, I think, Justice Alito --

5 JUSTICE ALITO: Well, vesting how?

6 MR. WALL: -- and that's about the  
7 office.

8 JUSTICE ALITO: Vesting by statute, by  
9 regulation, by -- by some internal rules, by  
10 practice?

11 MR. WALL: So that's a very hard  
12 question. Here, it's statutory. So I don't  
13 really think it's presented.

14 The Court has a case, *Mouat*, from the  
15 1880s, where it suggested it could be  
16 regulations. The Office of Legal Counsel, and  
17 we agree, thinks the better view is that it can  
18 be more than just a statute. If you have a  
19 statute that gives all the authority to the  
20 Attorney General and the Attorney General by  
21 regulation delegates all -- oversight over all  
22 criminal prosecutions to the deputy Attorney  
23 General, I think it would be difficult to say  
24 the DAG is not an officer --

25 JUSTICE GORSUCH: Mr. Wall, let --

1           MR. WALL: -- but, again, here it's  
2 all statutory.

3           JUSTICE ALITO: Well, our deputy  
4 clerks can grant certain extensions of time.  
5 Are they officers?

6           MR. WALL: I think it's unlikely that  
7 they are, because I think they are really just  
8 exercising power on behalf of the Clerk, who is  
9 vested with that power by the -- by the Court.

10           And, certainly, at least in the  
11 executive branch, that is typically the way it  
12 works. The statutes vest the power in the U.S.  
13 Attorney or in the Attorney General or in the  
14 Deputy Attorney General, not in the line agents  
15 themselves. And that's why the office and the  
16 vesting concept is very important, not just  
17 what does somebody do on a day-to-day basis.  
18 What has been established by law, in the words  
19 of the Appointments Clause? What has been  
20 vested in the office? And if the office is  
21 vested with the power to bind or some other  
22 sovereign function that historically could only  
23 be performed by the executive branch, like the  
24 adjudication of a dispute in which you impose  
25 liability on a private individual, that renders

1 you an officer of the United States.

2 JUSTICE GORSUCH: Mr. Wall --

3 JUSTICE KENNEDY: Could you address  
4 the question that Justice Kagan and I asked  
5 Mr. Perry? Assume that the perception and fact  
6 of fairness and -- and impartiality are  
7 enhanced by independence. How does that factor  
8 into what you're arguing, and is it a proper  
9 consideration for us in this case?

10 MR. WALL: We -- I do think it's a  
11 proper consideration. It was certainly a  
12 consideration of the drafters of the APA, who  
13 were moving from the hearing examiner model and  
14 who were concerned about allegations of bias.  
15 And we've tried to be very careful to say that  
16 what the ALJ does in the performance of his  
17 duties, the -- the decision itself, the  
18 decisional process, pay, compensation, those  
19 things are not on the table.

20 The question is, will you be appointed  
21 by the department head or by the chief ALJ?

22 JUSTICE KAGAN: But all of these  
23 things --

24 MR. WALL. I don't think that's a  
25 meaningful --

1 JUSTICE KAGAN: Mr. Wall, all of these  
2 things go to the same thing. You know, you --  
3 you want to keep decisional independence as  
4 something that you're not interfering with.

5 There are different ways to interfere  
6 with decisional independence. One is by  
7 docking somebody's pay. One is by having a  
8 removal power that you hang over your head.  
9 And another is by being the person who gets to  
10 decide who gets the job or not.

11 And so all of these things, in some  
12 manner, tie the adjudicator more closely to the  
13 political system. And the APA came up with  
14 this foundational compromise which had as a  
15 very significant part of it that the hearing  
16 examiners, the adjudicators, would have some  
17 detachment, would have some insulation from the  
18 political system. Not the way an Article III  
19 judge does, but still something.

20 And you want to ratchet that down.  
21 And the question is, isn't that interfering  
22 with decisional independence?

23 MR. WALL: I -- Justice Kagan, what I  
24 want to do is I want to take the foundational  
25 compromise that is the APA and square it with



1 the foundational compromise that is the  
2 Appointments Clause, which says, look, if you  
3 exercise important functions on behalf of the  
4 United States, you have to be appointed by the  
5 department head, because it's not sufficient  
6 for the Commission to say: Well, look, the  
7 ALJ's decision went out the door. We didn't  
8 review it, but he wasn't our guy. We didn't  
9 pick him.

10 The idea behind the Appointments  
11 Clause is you've got to have a clear line of  
12 accountability. And this Court said in Freytag  
13 and Free Enterprise, when you diffuse the  
14 appointment power, you diffuse accountability.

15 JUSTICE SOTOMAYOR: So, I'm sorry,  
16 doesn't the SEC have full power to overturn  
17 anything the ALJ does? This is not where, by  
18 statute or regulation, the ALJ's findings are  
19 given conclusive effect. They're reviewed de  
20 novo. So why isn't that the line? Whether the  
21 ALJ's word is final or not?

22 MR. WALL: It is certainly the -- the  
23 fact, Justice Sotomayor, that the Commission  
24 can review everything the ALJ does and agree  
25 with it or disagree with it.

1           But when you appear before the ALJ --  
2           and -- and the ALJ shapes the record of that  
3           proceeding -- and that's not a recommendatory  
4           process, you can waive arguments, you are  
5           bound, and that is the record that goes up to  
6           the Commission. And the Commission can review  
7           or not review, but the ALJ's decision at the  
8           end of the day, if not reviewed, is what binds  
9           the parties and it is what creates their  
10          obligations. That makes them officers of the  
11          United States, as Freytag said.

12                 CHIEF JUSTICE ROBERTS: I think  
13          Justice Gorsuch has been trying to get a  
14          question in.

15                 JUSTICE GORSUCH: Thank you, Chief.

16                 Mr. Wall, suppose for the moment we  
17          accept your position. What is the effect of  
18          the SEC's remedial order purporting to ratify  
19          the appointment of the -- of the ALJs?

20                 If your argument is that the ALJs need  
21          to be appointed by the SEC, does that remedial  
22          order satisfy that concern, or does it just  
23          repeat the problem?

24                 MR. WALL: Petitioners think it  
25          repeats the problem. We disagree. I think the

1 problem that Petitioners have, they don't  
2 engage with any of the authorities. The  
3 circuit court cases we cited in our reply, like  
4 Gordon and Legi-tech, both of the restatements  
5 on agency, the Mechem treatise, all of them  
6 say, and the courts have uniformly held, if the  
7 agent does a thing that is not authorized at  
8 the time, but the principal is capable of doing  
9 it, though here the Commission didn't, and it's  
10 capable at the time it ratifies, it can ratify.

11 And we do think that solves the  
12 problem, which is one of the reasons -- to get  
13 back to a couple of the questions earlier -- I  
14 don't think that the kind of sky is falling  
15 arguments here are very persuasive. Thank you.

16 JUSTICE GORSUCH: Thank you.

17 CHIEF JUSTICE ROBERTS: Thank you,  
18 counsel.

19 Mr. Metlitsky.

20 ORAL ARGUMENT OF ANTON METLITSKY ON  
21 BEHALF OF THE COURT-APPOINTED AMICUS CURIAE  
22 IN SUPPORT OF THE JUDGMENT BELOW

23 MR. METLITSKY: Mr. Chief Justice, and  
24 may it please the Court:

25 Other than a narrow

1 historically-grounded exception concerning  
2 diplomatic offices, an officer of the United  
3 States is someone with power to bind the  
4 government or private parties in the name of  
5 his own office.

6 In contrast, someone whose acts have  
7 no binding effect without the sanction of an  
8 officer is not himself an officer of the United  
9 States.

10 CHIEF JUSTICE ROBERTS: If I were  
11 trying to figure out who an officer is, I think  
12 I might have started with Freytag. And your  
13 test that you just proposed doesn't seem  
14 similar to what Freytag talked about, which was  
15 a laundry list -- not that long perhaps -- of  
16 particular -- particular authorities. And I  
17 don't see, other than the contempt power, I  
18 suppose, what's different here than in Freytag.

19 MR. METLITSKY: Well, the contempt  
20 power, I think, is crucial. So in -- in  
21 Freytag -- there are two alternative holdings  
22 in Freytag. The second one is clearly  
23 consistent with our rule that's about the fact  
24 that special trial judges can enter final  
25 decisions.

1           The first alternative holding is that  
2 special trial judges are officers of the United  
3 States because they can preside over trials,  
4 rule on the admissibility of evidence, take  
5 testimony, and enforce their own discovery  
6 orders through contempt.

7           Now contempt clearly is a power that  
8 can only be exercised by an officer of the  
9 United States. It's a coercive power that  
10 binds the parties.

11           This Court never considered a position  
12 that only included one or all or some of the  
13 first three authorities. But the Office of  
14 Legal Counsel, the Attorney General, and  
15 Congress have, for more than a century, all  
16 concluded that, for example, commissions that  
17 are set up to investigate but that don't have  
18 any binding authority at the end of the  
19 investigation do not set up offices of the  
20 United States --

21           JUSTICE KAGAN: It's hard --

22           MR. METLITSKY: -- even though they  
23 have the same --

24           JUSTICE KAGAN: It's hard to think,  
25 Mr. Metlitsky, that Freytag really thought that

1 that was all important. You know, they don't  
2 talk about the power of contempt until the  
3 second half of the opinion.

4 In the first half of the opinion,  
5 they're just talking about we can respond to  
6 discovery violations without necessarily  
7 suggesting that they're talking about the  
8 contempt power.

9 So, if you just read that first part  
10 of Freytag, you'd get no sense that it's  
11 crucial to the decision that there exists this  
12 contempt power.

13 MR. METLITSKY: So, as we acknowledged  
14 in our brief, you could read Freytag broadly,  
15 obviously, much more broadly than the rule  
16 we're proposing, but you don't have to read it  
17 that way. I'm not making a claim about what  
18 was in the Court's mind. But the Court doesn't  
19 just talk about issuing discovery orders, it's  
20 talking about enforcing discovery orders.

21 Discovery orders are normally enforced  
22 through contempt, and special trial judges, in  
23 particular, did enforce discovery orders  
24 through contempt --

25 JUSTICE KAGAN: I guess what strikes

1 me --

2 MR. METLITSKY: -- and that was --

3 JUSTICE KAGAN: -- Mr. Metlitsky, is  
4 that if you had a list and you said top 10  
5 attributes of the judges that were involved in  
6 Freytag and the judges that are involved here,  
7 you'd pretty much say that nine of them are the  
8 same and maybe one is different.

9 And -- but it's just so hard to get  
10 around this -- the commonalities of these  
11 judges and the judges in Freytag.

12 MR. METLITSKY: It's true that ALJs  
13 and the judges in Freytag share a lot of the  
14 same functions. But what the judges in Freytag  
15 had that the judges here do not have is the  
16 thing that's always been understood to be  
17 crucial for officer status, which is the power  
18 to bind.

19 As I said, these commissions that have  
20 been around, investigatory commissions that  
21 have been around for more than a century, all  
22 have -- this is the Warren Commission, for  
23 example, but they're mostly similar. The  
24 Warren Commission had the power to issue  
25 subpoenas requiring the attendance and

1 testimony of witnesses and the production of  
2 any evidence that relates to any matter under  
3 investigation. They had the power to  
4 administer oaths and affirmations. They had  
5 the power to examine witnesses. They had the  
6 power to receive evidence.

7 CHIEF JUSTICE ROBERTS: Does that make  
8 --

9 MR. METLITSKY: And the --

10 CHIEF JUSTICE ROBERTS: Does that make  
11 Chief Justice Warren an executive officer in  
12 that situation?

13 MR. METLITSKY: No. No. The Warren  
14 Commission did not create an office, and it  
15 couldn't have created an office because the  
16 Commission included four congressmen, which  
17 would have been barred by the incompatibility  
18 clause, if it did create an office.

19 The reason it didn't is because all of  
20 those powers are understood to be non-binding  
21 powers but powers internal to a hearing that  
22 allow the person that's presiding over the  
23 hearing to figure out what happened --

24 JUSTICE KAGAN: But why isn't it --

25 MR. METLITSKY: -- and what's



1 important for officer --

2 JUSTICE KAGAN: -- different for that  
3 exact reason, that these are essentially  
4 investigatory bodies who are supposed to report  
5 the findings of an investigation to somebody  
6 else who's actually supposed to do something  
7 with them.

8 But the adjudicators here are not  
9 investigators. They are deciders. That seems  
10 a big difference and, again --

11 MR. METLITSKY: Well, so --

12 JUSTICE KAGAN: -- seems to separate  
13 the Warren Commission type bodies from both the  
14 judges here and the judges in Freytag.

15 MR. METLITSKY: I -- I completely  
16 agree with that, but that would exclude, I  
17 think, the second -- the second part of the  
18 government's test, which is somebody can be an  
19 officer even if they don't have the power to  
20 bind.

21 So the question in this case, I think,  
22 really is whether ALJs have the power to bind  
23 and whether that power is vested in their  
24 office. That's the -- that's the, sort of,  
25 import --

1 JUSTICE BREYER: The problem I have --

2 MR. METLITSKY: -- of the -- in your  
3 own name.

4 JUSTICE BREYER: The problem I have  
5 with this, the whole thing, is I have no idea  
6 of what the nature of jobs are throughout the  
7 civil service, I mean, in terms of importance.  
8 There are probably people in the civil service  
9 who can order inspections of nuclear power  
10 plants. There are probably people at OSHA who  
11 can order that the company be open at 14 -- at  
12 -- at 2:00 in the afternoon so we can come in  
13 and see if there's a dangerous situation.

14 There are probably people in the EPA  
15 who can go out and say your, whatever it is,  
16 violates this or that. And in certain  
17 respects, they have to have the door open.  
18 They have to do this or that. But there might  
19 not be.

20 But I don't -- I don't know that  
21 anyone in this case has methodically gone  
22 through civil service positions to tell me  
23 whether or not, if we decide one way or the  
24 other and on the theory, we are driving wedges  
25 of dependence into what was to be since Chester

1 Alan Arthur a merit-based civil service.

2 MR. METLITSKY: I -- I --

3 JUSTICE BREYER: That's my concern,  
4 and I do not know what to do next.

5 MR. METLITSKY: I -- I completely  
6 agree with you, Justice Breyer, that that is a  
7 concern, which is why our test doesn't turn on  
8 importance.

9 I think theirs does. And then you're  
10 going to have lots of problems like you just  
11 identified. Our test doesn't turn on  
12 importance -- importance at all. It turns on a  
13 legal authority to either bind the government,  
14 make the government do particular things, or  
15 bind private parties. And --

16 JUSTICE ALITO: But I -- I think -- it  
17 seems to me your test, maybe I don't understand  
18 it, but it -- it seems to me potentially very  
19 broad and also quite vague.

20 Now, the power to bind, an enormous  
21 number of executive branch officials have the  
22 power to bind the government in one way or  
23 another. Would you disagree with that?

24 MR. METLITSKY: I don't disagree with  
25 the de facto power to bind, but I agree with

1 Mr. Wall that the relevant question is whether  
2 the -- where the power has been vested, which  
3 is the import of our second precondition.

4 JUSTICE ALITO: Okay. So, I mean,  
5 anybody -- any attorney who tries a case on  
6 behalf of the government has the power to bind,  
7 makes decisions during the course of the trial  
8 that are not reviewed by anybody else, I won't  
9 call this witness, I won't ask this question.  
10 Okay. So the power to -- the -- the -- the  
11 power to bind is enormous.

12 Vested by what -- and you say it has  
13 to be in the name of that -- of the office.  
14 How do we find out whether it's in the name of  
15 the office?

16 MR. METLITSKY: Well, it's whether the  
17 person -- so take your example, an AUSA at a  
18 trial makes a binding concession or an  
19 Assistant to the Solicitor General makes a  
20 binding concession in this Court.

21 The reason that person doesn't have to  
22 be appointed by the president with the advice  
23 and consent of the Senate is because he is  
24 exercising the authority of the Office of the  
25 Solicitor General or of the U.S. Attorney.

1 He's acting in the name of that office.

2 JUSTICE ALITO: Okay. Let's take an  
3 Assistant Attorney General. I assume that that  
4 person is an officer of the United States,  
5 right?

6 MR. METLITSKY: An Assistant Attorney  
7 General, yes.

8 JUSTICE ALITO: Yeah, and so, if the  
9 Assistant Attorney General for the Civil  
10 Division or the Antitrust Division does  
11 something, is -- is that person exercising the  
12 authority of the Civil Division or the  
13 Antitrust Division or the authority of the  
14 Department of Justice?

15 MR. METLITSKY: It's the -- well, if  
16 he's exercising authority that has been  
17 delegating -- delegated to him, he's exercising  
18 the power of his own office. The -- the reason  
19 you know, for example, that precise example,  
20 the head of the, say, Civil Division is at the  
21 top of the brief.

22 So, when the government makes a  
23 decision, a litigation decision, which is a  
24 decision that binds the government, the person  
25 at the top of the brief is always the

1 responsible officer.

2 JUSTICE ALITO: But is that what it  
3 turns on, whether -- who's listed at the top of  
4 the brief? Do -- do we look at a statute to  
5 find out whether it's vested in the office? Do  
6 we look at a regulation? Do we look at  
7 practice?

8 MR. METLITSKY: So it -- it doesn't  
9 turn on who's at the top of the brief, but  
10 who's at the top of the brief derives from the  
11 existing legal authority.

12 In the Justice Department, I think  
13 it's entirely -- almost all of the authority is  
14 delegated from the Attorney General.

15 So one statute vests all of the powers  
16 in the Justice Department to the Attorney  
17 General, another statute allows the Attorney  
18 General to delegate those powers, and so he'll  
19 delegate --

20 JUSTICE KAGAN: Does it strike you as  
21 a little bit odd that, essentially, that would  
22 mean that the executive branch gets to decide  
23 who's an officer and who's not an officer?  
24 Right? Take the Attorney General, most of the  
25 statutes just vest this in the Attorney

1 General. It's then the Attorney General that  
2 delegates his power out to other people.

3 He can decide to, he can decide not  
4 to, he can decide where it goes. And -- and  
5 based on those decisions, it seems, you would  
6 be saying whether a particular person is an  
7 officer or not.

8 MR. METLITSKY: No. So -- so the  
9 question is whether a -- a particular  
10 delegation to a particular person is lawful.  
11 So, if Congress has created an office -- so  
12 Congress has created the Office of the Deputy  
13 Attorney General, who is appointed by the  
14 president with the advice and consent of the  
15 Senate. That means the Attorney General is  
16 authorized to delegate to that person the  
17 authority to bind.

18 And so that person uses that  
19 authority, for example, in the oversight of the  
20 U.S. Attorneys to direct U.S. Attorneys about  
21 how to prosecute corporations, right? That's  
22 the Thompson memo. It's the McNulty memo.  
23 They're issued in the name of the Office of the  
24 Deputy Attorney General.

25 If the Attorney General tried to

1 delegate that authority to somebody that's not  
2 an officer, then that person would be --  
3 couldn't exercise the power.

4 JUSTICE KAGAN: I feel -- I feel as  
5 though I'm missing something, because what you  
6 just said to me seems to make everything  
7 dependent on whether Congress has created an  
8 office. And that can't be the only  
9 requirement, can it?

10 MR. METLITSKY: No. The question is  
11 just somebody's been delegated authority. If  
12 they're an officer -- is it -- the first  
13 question is, is it an officer function, right?  
14 If it is, then somebody that has -- only  
15 somebody that's been appointed under the  
16 Appointments Clause can exercise it.

17 JUSTICE ALITO: But if it's -- if it's  
18 a question of -- so the -- an Assistant  
19 Attorney General is an officer because that --  
20 certain powers are delegated by the Attorney  
21 General?

22 MR. METLITSKY: Right.

23 JUSTICE ALITO: And the U.S. Attorney,  
24 the same thing, right?

25 MR. METLITSKY: I think the U.S.



1 Attorney might have statutory authorities too,  
2 but --

3 JUSTICE KAGAN: But -- but that's what  
4 I was suggesting.

5 JUSTICE ALITO: Well --

6 JUSTICE KAGAN: But then everything  
7 depends on whether the Attorney General in fact  
8 makes a delegation or does not make delegation.

9 MR. METLITSKY: Well, that's true.  
10 That's how Congress set up the scheme. So the  
11 -- the Attorney General gets to decide which  
12 officers exercise what authority.

13 JUSTICE ALITO: Well, suppose then the  
14 -- the U.S. attorney or -- or the head of one  
15 of the litigating divisions delegates certain  
16 authorities to somebody within that office.  
17 Does that make that person a -- a -- an  
18 officer?

19 MR. METLITSKY: No, because the --

20 JUSTICE ALITO: Why?

21 MR. METLITSKY: Because the authority  
22 rests with the -- the U.S. Attorney. That's --  
23 that's the relevant office. The U.S. Attorney  
24 can delegate de facto authority, but the U.S.  
25 attorney is always going to be held accountable

1 for every decision.

2 So, I mean, that happens as a matter  
3 of fact in U.S. Attorneys offices. As you  
4 said, the assistants -- Assistant United States  
5 Attorneys have a tremendous amount of  
6 discretion. But everybody understands that  
7 when they exercise that discretion, the person  
8 that's going to be held accountable for -- for  
9 that -- for the exercise of that discretion is  
10 the U.S. Attorney, which means that it doesn't  
11 -- since the U.S. Attorney is already  
12 100 percent accountable for the decision, it  
13 doesn't matter who appointed the assistant.  
14 You don't have to hold the U.S. Attorney or  
15 anybody else accountable for the appointment.

16 JUSTICE SOTOMAYOR: I'm sorry, I --

17 CHIEF JUSTICE ROBERTS: Counsel, you  
18 said on -- your -- your friend, Mr. Perry, said  
19 in his reply brief, "This Court has never held  
20 that an adjudicatory official is not an  
21 officer."

22 Do you agree with that?

23 MR. METLITSKY: Yes, but an  
24 adjudicatory official is somebody that gets to  
25 decide a case, to -- to bind the parties at the

1 end of the day. That's why, for example, in  
2 Stern against Marshall, what this Court was  
3 concerned about, about non-Article III judges  
4 adjudicating private rights, was that they  
5 could issue final judgments of the United  
6 States.

7 CHIEF JUSTICE ROBERTS: So -- so --

8 MR. METLITSKY: That's what Justice  
9 Alito's --

10 CHIEF JUSTICE ROBERTS: I'm sorry, go  
11 ahead.

12 MR. METLITSKY: Justice Alito's  
13 concurrence -- your concurrence in the -- in  
14 the Amtrak case identified a -- an Appointments  
15 Clause problem with binding arbitration,  
16 binding.

17 CHIEF JUSTICE ROBERTS: So if -- if  
18 the statute said the ALJ decision -- there you  
19 can seek review within 90 days; if after 90  
20 days review hasn't been granted, that decision  
21 is final. Would that be a different case for  
22 you, or would the mere possibility of  
23 discretionary review mean that the adjudicatory  
24 official did not have binding authority?

25 MR. METLITSKY: So I think that's a

1 harder case than this case. So, in this case,  
2 the -- the finality order grants affirmative  
3 sanction to the decision. And the rule since  
4 at least 1822 --

5 CHIEF JUSTICE ROBERTS: But your  
6 friend says that's really just a notice, that  
7 we're not going to review it.

8 MR. METLITSKY: Well, it's -- they say  
9 that, but what -- what the finality orders all  
10 actually say is that the orders contained in  
11 the initial decision are hereby declared  
12 effective.

13 It's -- it's affirmative sanction  
14 granted to the decision. And since at least  
15 the main Supreme Court's or Supreme Judicial  
16 Court's opinion in 1822, somebody who doesn't  
17 act, that can't take effect without the  
18 sanction of an officer is not an officer of the  
19 United States, which is precisely what's going  
20 on here.

21 Now, in your hypo, there's -- there's  
22 a distinction between a decision that becomes  
23 effective by itself but that then can be  
24 reviewed. That's like what happens in the  
25 courts of appeals and, you know, petitions for

1 cert in this Court. And I don't think anybody  
2 is reasonably going to say that this Court is  
3 fully responsible for every court of appeals  
4 decision.

5 There's a different kind of order that  
6 cannot take effect at all without the act of a  
7 superior. The act might be plenary review or  
8 it might just be denying review. Like I said,  
9 I think that's a harder case, and I think the  
10 question would turn on whether you could  
11 reasonably hold the superior accountable for  
12 the decision by virtue of the fact that he  
13 decided not to engage in plenary review and  
14 instead denied review.

15 CHIEF JUSTICE ROBERTS: One of the  
16 principles that caused the drafters to give the  
17 authority to appoint officers to the president  
18 was the important one of accountability.

19 MR. METLITSKY: Exactly.

20 CHIEF JUSTICE ROBERTS: And in this  
21 case, if -- if the individual were an officer,  
22 he would have to be appointed by the  
23 Commission, and people would know who was  
24 responsible for whatever conduct or misconduct  
25 or decisions he would -- he would take.

1           But in this case, you don't have that  
2           accountability. The Commission can say: Don't  
3           blame us. We didn't do it. The President can  
4           say: Don't blame me. I didn't appoint them.  
5           And, instead, it's something in the  
6           administrative bureaucracy which operates as  
7           insulation from the political accountability  
8           that the drafters of the Constitution intended.

9           MR. METLITSKY: Right. So -- so I  
10          think that is the fundamental question in the  
11          case. And I -- I respectfully disagree,  
12          Mr. Chief Justice, for two reasons.

13          I think the Commission is going to be  
14          held 100 percent accountable for every single  
15          decision, whether it's initially made by an ALJ  
16          or not, for two reasons: First, they  
17          affirmatively sanction it. That's why the  
18          long-standing rule that if an act requires  
19          affirmative section -- sanction, that the  
20          person that did that act is not an officer.  
21          That's why that rule exists.

22          Second, even if you disagree that the  
23          ALJ's decisions -- if you think they're  
24          binding, the way that Congress set up the  
25          structure here makes clear that the decision is

1 always the decision of the Commission.

2           The Commission is allowed to delegate  
3 authority to an ALJ or to other delegees under  
4 78d-1(a). Congress gives the Commission  
5 authority under subsection (b) to engage in  
6 plenary review. But Congress does not allow  
7 the Commission to escape responsibility if it  
8 doesn't engage in plenary review, because  
9 subsection (c) says that every decision is  
10 going to be deemed the decision of the  
11 Commission.

12           So, if somebody comes to the  
13 Commission and says that decision was -- you  
14 know, was bad, was wrong, the Commission cannot  
15 say, oh, I don't know, that was my ALJ. That  
16 would be like me saying I don't know, that was  
17 my associate, like a judge saying I don't know,  
18 that was my law clerk.

19           JUSTICE SOTOMAYOR: So what's the line  
20 that makes somebody an agent or not? Can we  
21 speak about ALJs in this context being agents  
22 of the SEC commissioners when the SEC  
23 commissioners didn't pick them, don't supervise  
24 them, essentially don't have anything to do  
25 with their work other than reviewing it?

1                   So what defines someone acting as an  
2 agent of an office?

3                   MR. METLITSKY: So I don't think  
4 common law agency is exactly the right frame.  
5 I think I agree, again, with Mr. Wall, the --  
6 the initial question is where the authority,  
7 the legal authority, to act is -- is vested.

8                   I think that's -- the first example of  
9 that is the deputy marshals that were mentioned  
10 before, right? So -- so the Congress  
11 establishes in Section 27 of the first  
12 Judiciary Act the office of a marshal, who's an  
13 inferior officer, and allows the marshal to  
14 appoint deputies, who are non-officers because  
15 they're not appointed by somebody who's allowed  
16 to make an appointment under the Appointments  
17 Clause.

18                   They have all the same duties as the  
19 marshal, but they're understood to be acting in  
20 the name of the marshal's office. That's so  
21 even though district courts, under Section 27,  
22 had authority to remove the -- the deputies,  
23 right?

24                   So -- so I don't -- again, I don't  
25 think the -- the elements of common law agency



1 need to be satisfied. I do think that when  
2 Congress demonstrates that it's vesting  
3 authority in a particular office, as it did  
4 here, making clear that any decision is going  
5 to be deemed the decision of the Commission, I  
6 think the agency has to have at least some  
7 ability to affect the decision. But here, of  
8 course, the agency has plenary ability to  
9 affect the decision as to facts, as to law, as  
10 -- as to everything. So the fact that they  
11 can't --

12 CHIEF JUSTICE ROBERTS: So are you  
13 saying that anybody whose decisions are subject  
14 to review can never be an officer?

15 MR. METLITSKY: No, no, not at all.  
16 But --

17 CHIEF JUSTICE ROBERTS: Well, I  
18 thought you were suggesting that the reason  
19 that the ALJs are not officers is that the  
20 Commission has the discretionary power to  
21 review their decisions?

22 MR. METLITSKY: No. So --

23 CHIEF JUSTICE ROBERTS: And you -- and  
24 you seem to be putting a lot of -- I'm sorry,  
25 go ahead.

1 MR. METLITSKY: No. So -- so they are  
2 not officers for -- for two reasons: One is  
3 that they don't have, in our view, decisions to  
4 make binding -- the authority to make binding  
5 decisions in the first place.

6 And, second, because all the authority  
7 -- if they had authority to make binding  
8 decisions, that authority would be to make  
9 binding decisions that are actually decisions  
10 of the Commission --

11 JUSTICE KAGAN: And -- and --

12 MR. METLITSKY: -- not the decisions  
13 of the --

14 JUSTICE KAGAN: -- they don't have  
15 authority to make binding decisions because?

16 MR. METLITSKY: Because the -- the  
17 question -- so the statute applicable here,  
18 78d-1, is an authorization of delegation.  
19 Right? The Commission is allowed to delegate  
20 authority to the ALJ.

21 And so the question is, what authority  
22 did the Commission delegate to the ALJ? So  
23 first you can look at 17 CFR 201.111(i), which  
24 is on 16A of our green brief. It authorizes  
25 ALJs to prepare an initial decision as provided

1 in Section 201.360.

2 So, if you go to 201.360(d), which is  
3 on 23A of the green brief, (d)(1) says that the  
4 Commission can engage in plenary review either  
5 on petition or, you know, on its own  
6 initiative; (d)(2) says that an order won't  
7 become final and effective without the issuance  
8 of a finality order.

9 So, in other words, the --

10 JUSTICE KAGAN: So everything in the  
11 end depends on that?

12 MR. METLITSKY: No. We -- so there  
13 are two preconditions for our test. The first  
14 one depends on that. The second one is the --  
15 the -- whatever the ALJ --

16 JUSTICE KAGAN: Right. But as to the  
17 first one --

18 MR. METLITSKY: Yes.

19 JUSTICE KAGAN: -- as to whether they  
20 have binding authority, it all comes down to  
21 this finality order?

22 MR. METLITSKY: Yes. They don't have  
23 bind -- well, that's why they don't have  
24 binding authority, because the Commission has  
25 to --

1 JUSTICE KAGAN: Even --

2 CHIEF JUSTICE ROBERTS: And it seems  
3 to me, I mean, we've heard about the  
4 independence of the adjudicator. You seem to  
5 be suggesting that he is not an officer because  
6 he doesn't have the kind of independence that  
7 it's been suggested the APA and other things  
8 were designed to promote.

9 MR. METLITSKY: Well, no. So the APA  
10 was -- was a compromise. It granted ALJs  
11 structural independence: Tenure, salary,  
12 various ex parte rules and the like, but the  
13 one thing they explicitly did not grant ALJs  
14 was decision-making authority, policy-making  
15 authority; in other words, the authority to  
16 make binding decisions.

17 That power always rests with the  
18 agency, which is the crucial question for  
19 whether somebody is an officer of the United  
20 States.

21 JUSTICE BREYER: If you -- did you  
22 come across in your research anywhere anything  
23 like this that -- because it does say an  
24 officer of the United States whose appointment  
25 shall be established by law. That suggests

1 Congress has a role.

2 And so, in the set of statutes that  
3 doesn't say, there would be some criteria where  
4 Congress, if they establish it like this, say  
5 major policy-making authority, independently,  
6 and maybe some instances adjudicatory authority  
7 to make binding decisions, they're officers.

8 In other cases, clearly not. They're  
9 agents. But there'd be a middle range where  
10 you'd look to the statute itself and you'd see  
11 if in that statute Congress has written  
12 significant parts that are not consistent with  
13 appointment by the department itself and/or not  
14 subject to two levels of for cause removal.

15 MR. METLITSKY: Well, so I --

16 JUSTICE BREYER: Did anything -- have  
17 you come across anything like that?

18 MR. METLITSKY: There -- there are  
19 lots of statutes dealing with how people are  
20 appointed in various agencies. Sometimes it's  
21 very clear that Congress did not intend people  
22 to be officers of the United States. One  
23 example is that there's a statute in the  
24 organic -- the organic statute of the Federal  
25 Aviation Administration grants the

1 administrator authority to -- to appoint  
2 everyone in the agency, essentially other than  
3 the deputy, and the administrator is not the  
4 head of a department. The head of the  
5 department is the Secretary of Transportation.  
6 So anybody the administrator is appointing  
7 under that statute is not going to be an  
8 officer.

9           That doesn't apply here because 3105  
10 actually does grant agencies the authority to  
11 appoint ALJs. You know that Congress doesn't  
12 think they're officers because, in 1966,  
13 Congress, when it codified Title V, wrote a  
14 definition of officer, wrote a definition of  
15 employee. Hearing examiners before that date  
16 were referred to as officers. And that 1966  
17 statute switched all those references to make  
18 them refer to employees.

19           CHIEF JUSTICE ROBERTS: You said --

20           JUSTICE KAGAN: Mr. Metlitsky, as --  
21 as I listen to you, and especially as I compare  
22 your test to some of the others on offer, you  
23 know, there seems to be a good deal to be said  
24 for yours, except I don't know where it's  
25 coming from, honestly.

1           So you spent a lot of time in your  
2 brief talking like this is a historical test,  
3 this is a traditional test.

4           MR. METLITSKY: Right.

5           JUSTICE KAGAN: And I guess it seems  
6 to me like the test actually, it's sort of the  
7 opposite, the test you would make up if you  
8 were doing everything on a blank slate. But I  
9 don't really see what the source of this test  
10 is. So tell me what it is.

11           MR. METLITSKY: So -- so the source  
12 for the first part of the test that you need to  
13 have binding authority, I really -- I think is  
14 -- has been accepted at least since 1822 when  
15 the main supreme judicial court explained that  
16 an officer of the United States is somebody who  
17 has been delegated a portion of the sovereign  
18 authority of the United States, meaning the  
19 authority to bind, and that somebody whose acts  
20 don't take effect without the sanction of an  
21 officer is not an officer.

22           That's what that opinion held and it's  
23 been understood to be authoritative since then.  
24 That -- that's essentially the Office of Legal  
25 Counsel test from 2007.

1           The second part of the test is really  
2 I think exactly what Mr. -- Mr. Wall said.  
3 There's always going to be a question of where  
4 the legal authority to act is, because  
5 otherwise every person with discretion like  
6 every AUSA is going to be considered an  
7 officer, even though the U.S. Attorney is going  
8 to be held 100 percent accountable for every  
9 decision in his or her office.

10           I think the -- the first place where  
11 you can see that -- that relationship of, you  
12 know, basically agent to officer is Section 27  
13 and 28 of the First Judiciary Act with the  
14 marshal and the deputy marshal.

15           One of the things that under Section  
16 28 the deputy marshal was authorized to do was,  
17 when the marshal died, to execute writs in the  
18 name of the deceased marshal until a new  
19 marshal was chosen.

20           So the -- sort of the second part of  
21 our test, which asks whether somebody's  
22 authorized to act in the name of their own  
23 office or only in the name of somebody else's  
24 office, just reflects that principle, which I  
25 think is, as we've talked about, ubiquitous in



1 actual government practice.

2 It's why Assistants to the Solicitor  
3 General don't need to be appointed by the  
4 president with the advice and consent of the  
5 Senate since I don't think there's a statute  
6 that actually authorizes the Attorney General  
7 to appoint them himself.

8 If the Court has no further questions.

9 CHIEF JUSTICE ROBERTS: Thank you,  
10 counsel.

11 Three minutes, Mr. Perry.

12 REBUTTAL ARGUMENT OF MARK PERRY ON  
13 BEHALF OF THE PETITIONERS

14 MR. PERRY: Thank you, Mr. Chief  
15 Justice.

16 Three brief points, if I may:

17 First, every official who satisfied my  
18 friend Mr. Metlitsky's test would be a  
19 principal officer of the United States.

20 If you can bind the government or  
21 private parties in your own name with no  
22 supervision, that's a principal officer. This  
23 Court rejected that as a test for inferior  
24 officers in Edmond, which involved judges who  
25 could never make final decisions unless their

1 superiors allowed it.

2           And the Weiss case, which involved  
3 trial judges in the military whose opinions  
4 were never final, which my friend never  
5 mentions and never cites in his briefs, because  
6 he -- they cannot meet the finality test.

7           In any event, SEC ALJs do meet the  
8 finality test. 78d-1 gives the Commission a  
9 discretionary right of review, which means it  
10 has the discretion not to review, which means  
11 they're statutorily authorized to enter final  
12 decisions of the Commission.

13           The finality order, Your Honor, in a  
14 discretionary review scenario, it's like a cert  
15 denied order from this Court. It says that the  
16 Commission is not reviewing, but the actual  
17 decision that stands in his own name, by the  
18 way, Petition Appendix 237A, is Cameron  
19 Elliot's signature on the decision he issued in  
20 his own name that to this day is on the  
21 Commission's website.

22           Second, Justice Breyer and others have  
23 required about the expansion to the civil  
24 service. It is a real issue. Of course, it's  
25 a real issue. But, here, we have adjudicators.

1           We have, unlike the civil service, a  
2 tower of cases from this Court, Freytag, Ryder,  
3 Edmond, Weiss, all dealing with adjudicators.  
4 Ten out of 10, Justice Kagan, powers that they  
5 have map over perfectly. And we have a  
6 direction from Congress, Justice Breyer, as to  
7 the limitation. It is 556(c), which specifies  
8 those officials that can conduct on the record  
9 adjudications that have binding effect under  
10 the APA. And there are three: Agencies,  
11 members, and ALJs.

12           And while the civil service is out  
13 there, Congress has dealt specifically with  
14 ALJs. And 3105, of course, specifically  
15 designates the office of APA ALJs and it says  
16 appoint.

17           Finally, Justice Gorsuch, you asked  
18 about the remedy. My client had an  
19 unconstitutional proceeding. Mr. Wall says I  
20 ignore the authorities. I don't.

21           The authorities are from this Court.  
22 In Ryder, this Court said the Constitution  
23 requires a new proceeding in front of a  
24 constitutional officer, with no validity given  
25 to the prior acts.

1           In L.A. Tucker Truck Lines, this Court  
2           said the acts of an unconstitutional officer  
3           are a nullity. And then, in Ryder, the Court  
4           went on and said you're entitled to whatever  
5           relief may be appropriate. And this Court --  
6           this is an APA case. This Court has never  
7           actually had an APA Appointments Clause  
8           violation. Section 706 of the APA says that  
9           upon a finding of constitutional violation, the  
10          reviewing court shall set aside all actions,  
11          findings, and conclusions of the agency, which  
12          means they all have to be wiped out because  
13          there was a constitutional violation here,  
14          start from scratch, or, as we suggest, dismiss  
15          the OIP.

16                 This Court said in FTC versus Standard  
17          Oil that where there's an APA -- in the APA  
18          review, where there's a violation, you can go  
19          all the way back to the complaint, dismiss the  
20          whole thing, which we submit --

21                 JUSTICE SOTOMAYOR: Just so I  
22          understand, what would this do with already  
23          completed cases --

24                 MR. PERRY: Your Honor, our --

25                 JUSTICE SOTOMAYOR: -- where the

1 period of appeal has ended both before the SEC  
2 and before the courts?

3 MR. PERRY: Presumably -- may I?

4 CHIEF JUSTICE ROBERTS: Please.

5 MR. PERRY: Presumably, Your Honor,  
6 general principles of preservation waiver,  
7 forfeiture and so forth, would kick in,  
8 although, of course, in -- in Freytag and CFTC  
9 versus Schor, the Court put some gloss on that  
10 in the context of constitutional challenges to  
11 agency actions.

12 This case, of course, is here on  
13 direct review. It has never gone final. And  
14 there are -- we -- we put the numbers in our  
15 brief -- there are 13 other similarly-situated  
16 cases in the entire federal system.

17 JUSTICE SOTOMAYOR: But there are  
18 hundreds where the ALJs were ratified or  
19 appointed after decision-making or in the midst  
20 of it, et cetera.

21 MR. PERRY: Appendix A to the  
22 ratification order lists about 106 cases that  
23 the agency thinks is affected. I haven't  
24 looked at that.

25 JUSTICE SOTOMAYOR: Well, if we're

1 talking just about your agency. But if we're  
2 talking about all the other agencies, we're --  
3 we're talking in the thousands.

4 MR. PERRY: I don't know, Your Honor.  
5 We know this case, however, we know the answer.

6 CHIEF JUSTICE ROBERTS: Thank you,  
7 counsel.

8 Mr. Metlitsky, this Court appointed  
9 you to brief and argue this case as amicus  
10 curiae in support of the judgment -- judgment  
11 below. You have ably discharged that  
12 responsibility, for which we are grateful.  
13 Thank you.

14 The case is submitted.

15 (Whereupon, at 11:03 a.m., the case  
16 was submitted.)

17

18

19

20

21

22

23

24

25

<p style="text-align: center;"><b>1</b></p> <p><b>10</b> [2] 38:4 66:4  <b>10:03</b> [2] 1:13 3:2  <b>100</b> [3] 49:12 53:14 63:8  <b>106</b> [1] 68:22  <b>11:03</b> [1] 69:15  <b>13</b> [1] 68:15  <b>14</b> [1] 41:11  <b>15</b> [1] 2:8  <b>150</b> [3] 9:20 10:5 11:3  <b>16A</b> [1] 57:24  <b>17</b> [3] 17:4 22:3 57:23  <b>17-130</b> [1] 3:4  <b>1822</b> [3] 51:4, 16 62:14  <b>1880s</b> [1] 28:15  <b>1966</b> [2] 61:12, 16</p>	<p><b>absent</b> [3] 4:14 9:11 25:11  <b>absolutely</b> [1] 18:17  <b>accept</b> [1] 33:17  <b>accepted</b> [2] 6:6 62:14  <b>accountability</b> [8] 10:4 13:25 14:15 32:12, 14 52:18 53:2, 7  <b>accountable</b> [7] 48:25 49:8, 12, 15 52:11 53:14 63:8  <b>accurate</b> [1] 3:17  <b>acknowledged</b> [1] 37:13  <b>across</b> [2] 59:22 60:17  <b>Act</b> [12] 5:9 10:10 51:17 52:6, 7 53:18, 20 55:7, 12 63:4, 13, 22  <b>acting</b> [4] 23:12 44:1 55:1, 19  <b>actions</b> [3] 6:17 67:10 68:11  <b>acts</b> [4] 35:6 62:19 66:25 67:2  <b>actual</b> [2] 64:1 65:16</p>	<p><b>agree</b> [7] 28:17 32:24 40:16 42:6, 25 49:22 55:5  <b>agreement</b> [1] 4:15  <b>agrees</b> [1] 24:20  <b>ahead</b> [2] 50:11 56:25  <b>AL</b> [1] 1:3  <b>Alan</b> [1] 42:1  <b>ALITO</b> [20] 25:17 27:5, 9, 13, 24 28:2, 4, 5, 8 29:3 42:16 43:4 44:2, 8 45:2 47:17, 23 48:5, 13, 20  <b>Alito's</b> [2] 50:9, 12  <b>ALJ</b> [32] 5:11, 25 6:21 7:12, 13, 19, 19 8:1, 5, 18 10:16, 23 12:17 13:21 19:8 20:6, 12 23:4, 7 30:16, 21 32:17, 24 33:1, 2 50:18 53:15 54:3, 15 57:20, 22 58:15  <b>ALJ's</b> [5] 32:7, 18, 21 33:7 53:23  <b>ALJs</b> [4] 3:12 4:21 5:2, 6 9:6, 14, 15, 17, 20, 21 10:1 11:3, 4, 6 16:6 17:1, 3 18:1 20:4 21:13 22:1, 8 23:18, 19 24:13 26:24 33:19, 20 38:12 40:22 54:21 56:19 57:25 59:10, 13 61:11 65:7 66:11, 14, 15 68:18  <b>allegations</b> [1] 30:14  <b>allow</b> [2] 39:22 54:6  <b>allowed</b> [4] 54:2 55:15 57:19 65:1  <b>allows</b> [3] 5:16 45:17 55:13  <b>Almost</b> [2] 25:1 45:13  <b>already</b> [4] 9:23 10:6 49:11 67:22  <b>alternative</b> [2] 35:21 36:1  <b>although</b> [1] 68:8  <b>amici</b> [1] 23:9  <b>amicus</b> [1] 2:22 12 34:21 69:9  <b>amount</b> [1] 49:5  <b>Amtrak</b> [1] 50:14  <b>and/or</b> [1] 60:13  <b>another</b> [3] 31:9 42:23 45:17  <b>answer</b> [4] 10:5 17:13 22:25 69:5  <b>answers</b> [1] 6:18  <b>Antitrust</b> [2] 44:10, 13  <b>ANTON</b> [3] 1:21 2:10 34:20  <b>anybody</b> [7] 25:1 43:5, 8 49:15 52:1 56:13 61:6  <b>APA</b> [26] 5:7 8:17 9:19 10:9, 11, 12, 14 11:8, 12 14:11 17:6 19:16, 23 20:1 30:12 31:13, 25 59:7, 9 66:10, 15 67:6, 7, 8, 17, 17  <b>appeal</b> [1] 68:1  <b>appeals</b> [2] 51:25 52:3  <b>Appear</b> [3] 6:22 18:20 33:1  <b>APPEARANCES</b> [1] 1:15  <b>appeared</b> [1] 18:21  <b>appears</b> [1] 18:21  <b>Appendix</b> [2] 65:18 68:21  <b>applicable</b> [1] 57:17  <b>applicants</b> [1] 12:20  <b>application</b> [1] 17:8  <b>applied</b> [1] 19:10  <b>applies</b> [2] 22:4 27:10  <b>apply</b> [2] 23:5 61:9  <b>appoint</b> [9] 20:5 22:16 52:17 53:4 55:14 61:1, 11 64:7 66:16  <b>appointed</b> [17] 9:24 10:1, 7 13:8 30:20 32:4 33:21 43:22 46:13 47:</p>	<p>15 49:13 52:22 55:15 60:20 64:3 68:19 69:8  <b>appointing</b> [1] 61:6  <b>appointment</b> [6] 32:14 33:19 49:15 55:16 59:24 60:13  <b>Appointments</b> [13] 3:17 13:25 14:13 15:7 21:5 22:19 29:19 32:2, 10 47:16 50:14 55:16 67:7  <b>approach</b> [1] 16:24  <b>approaches</b> [1] 17:14  <b>appropriate</b> [1] 67:5  <b>approximately</b> [1] 9:19  <b>April</b> [1] 1:10  <b>arbitration</b> [1] 50:15  <b>aren't</b> [1] 4:22  <b>argue</b> [1] 69:9  <b>arguing</b> [1] 30:8  <b>argument</b> [13] 1:12 2:2, 5, 9, 14 3:4, 8 13:17 14:22 15:16 33:20 34:20 64:12  <b>arguments</b> [2] 33:4 34:15  <b>around</b> [3] 38:10, 20, 21  <b>Arthur</b> [1] 42:1  <b>Article</b> [2] 20:20 31:18  <b>aside</b> [1] 67:10  <b>asks</b> [2] 27:4 63:21  <b>Assistant</b> [7] 43:19 44:3, 6, 9 47:18 49:4, 13  <b>assistants</b> [2] 49:4 64:2  <b>associate</b> [1] 54:17  <b>assume</b> [3] 14:18 30:5 44:3  <b>attendance</b> [1] 38:25  <b>Attorney</b> [38] 27:22 28:20, 20, 22 29:13, 13, 14 36:14 43:5, 25 44:3, 6, 9 45:14, 16, 17, 24, 25 46:1, 13, 15, 24, 25 47:19, 20, 23 48:1, 7, 11, 14, 22, 23, 25 49:10, 11, 14 63:7 64:6  <b>attorneys</b> [5] 27:17 46:20, 20 49:3, 5  <b>attributes</b> [1] 38:5  <b>AUSA</b> [2] 43:17 63:6  <b>authoritative</b> [1] 62:23  <b>authorities</b> [7] 34:2 35:16 36:13 48:1, 16 66:20, 21  <b>authority</b> [50] 5:17 15:8 23:2, 4, 15 26:16 28:19 36:18 42:13 43:24 44:12, 13, 16 45:11, 13 46:17, 19 47:1, 11 48:12, 21, 24 50:24 52:17 54:3, 5 55:6, 7, 22 56:3 57:4, 6, 7, 8, 15, 20, 21 58:20, 24 59:14, 15, 15 60:5, 6 61:1, 10 62:13, 18, 19 63:4  <b>authorization</b> [1] 57:18  <b>authorized</b> [5] 34:7 46:16 63:16, 22 65:11  <b>authorizes</b> [2] 57:24 64:6  <b>Aviation</b> [1] 60:25  <b>avoids</b> [1] 19:4</p>
<p style="text-align: center;"><b>2</b></p> <p><b>2:00</b> [1] 41:12  <b>2007</b> [2] 26:2 62:25  <b>201.111(i)</b> [1] 57:23  <b>201.360</b> [1] 58:1  <b>201.360(d)</b> [1] 58:2  <b>2018</b> [1] 1:10  <b>23</b> [1] 1:10  <b>237A</b> [1] 65:18  <b>23A</b> [1] 58:3  <b>25</b> [1] 9:22  <b>27</b> [3] 55:11, 21 63:12  <b>28</b> [2] 63:13, 16</p>	<p><b>actually</b> [9] 5:16 13:4 40:6 51:10 57:9 61:10 62:6 64:6 67:7  <b>address</b> [2] 19:1 30:3  <b>adequate</b> [1] 23:18  <b>adjudicate</b> [1] 16:8  <b>adjudicating</b> [1] 50:4  <b>adjudication</b> [6] 9:1, 1 10:13, 14 13:11 29:24  <b>adjudications</b> [3] 3:14 14:2 66:9  <b>adjudicative</b> [1] 20:22  <b>adjudicator</b> [3] 14:20 31:12 59:4  <b>adjudicatorily</b> [1] 21:24  <b>adjudicators</b> [5] 22:9 31:16 40:8 65:25 66:3  <b>adjudicatory</b> [4] 49:20, 24 50:23 60:6  <b>administer</b> [1] 39:4  <b>Administration</b> [4] 11:10, 25 12:16 60:25  <b>administrative</b> [1] 53:6  <b>administrator</b> [3] 61:1, 3, 6  <b>admissibility</b> [1] 36:4  <b>admission</b> [1] 7:22  <b>admitted</b> [1] 8:7  <b>adopt</b> [4] 5:19 6:14 15:23 16:23  <b>adopted</b> [1] 27:2  <b>adopts</b> [1] 10:11  <b>adversarial</b> [7] 9:18 11:7, 15, 19 12:10, 11, 24  <b>advice</b> [4] 17:23 43:22 46:14 64:4  <b>adviser</b> [1] 5:22  <b>affect</b> [2] 56:7, 9  <b>affected</b> [1] 68:23  <b>affirmations</b> [1] 39:4  <b>affirmative</b> [3] 51:2, 13 53:19  <b>affirmatively</b> [1] 53:17  <b>afternoon</b> [1] 41:12  <b>agencies</b> [9] 8:16 9:15, 22 11:18 20:3 60:20 61:10 66:10 69:2  <b>agency</b> [25] 5:12, 13, 15 9:10 10:15, 16, 19, 21, 21 11:13 12:18 20:5, 13 22:16 34:5 55:4, 25 56:6, 8 59:18 61:2 67:11 68:11, 23 69:1  <b>agency's</b> [2] 8:24 20:19  <b>agent</b> [5] 27:10 34:7 54:20 55:2 63:12  <b>agents</b> [4] 27:17 29:14 54:21 60:9</p>	<p><b>15</b> 49:13 52:22 55:15 60:20 64:3 68:19 69:8  <b>appointing</b> [1] 61:6  <b>appointment</b> [6] 32:14 33:19 49:15 55:16 59:24 60:13  <b>Appointments</b> [13] 3:17 13:25 14:13 15:7 21:5 22:19 29:19 32:2, 10 47:16 50:14 55:16 67:7  <b>approach</b> [1] 16:24  <b>approaches</b> [1] 17:14  <b>appropriate</b> [1] 67:5  <b>approximately</b> [1] 9:19  <b>April</b> [1] 1:10  <b>arbitration</b> [1] 50:15  <b>aren't</b> [1] 4:22  <b>argue</b> [1] 69:9  <b>arguing</b> [1] 30:8  <b>argument</b> [13] 1:12 2:2, 5, 9, 14 3:4, 8 13:17 14:22 15:16 33:20 34:20 64:12  <b>arguments</b> [2] 33:4 34:15  <b>around</b> [3] 38:10, 20, 21  <b>Arthur</b> [1] 42:1  <b>Article</b> [2] 20:20 31:18  <b>aside</b> [1] 67:10  <b>asks</b> [2] 27:4 63:21  <b>Assistant</b> [7] 43:19 44:3, 6, 9 47:18 49:4, 13  <b>assistants</b> [2] 49:4 64:2  <b>associate</b> [1] 54:17  <b>assume</b> [3] 14:18 30:5 44:3  <b>attendance</b> [1] 38:25  <b>Attorney</b> [38] 27:22 28:20, 20, 22 29:13, 13, 14 36:14 43:5, 25 44:3, 6, 9 45:14, 16, 17, 24, 25 46:1, 13, 15, 24, 25 47:19, 20, 23 48:1, 7, 11, 14, 22, 23, 25 49:10, 11, 14 63:7 64:6  <b>attorneys</b> [5] 27:17 46:20, 20 49:3, 5  <b>attributes</b> [1] 38:5  <b>AUSA</b> [2] 43:17 63:6  <b>authoritative</b> [1] 62:23  <b>authorities</b> [7] 34:2 35:16 36:13 48:1, 16 66:20, 21  <b>authority</b> [50] 5:17 15:8 23:2, 4, 15 26:16 28:19 36:18 42:13 43:24 44:12, 13, 16 45:11, 13 46:17, 19 47:1, 11 48:12, 21, 24 50:24 52:17 54:3, 5 55:6, 7, 22 56:3 57:4, 6, 7, 8, 15, 20, 21 58:20, 24 59:14, 15, 15 60:5, 6 61:1, 10 62:13, 18, 19 63:4  <b>authorization</b> [1] 57:18  <b>authorized</b> [5] 34:7 46:16 63:16, 22 65:11  <b>authorizes</b> [2] 57:24 64:6  <b>Aviation</b> [1] 60:25  <b>avoids</b> [1] 19:4</p>	
<p style="text-align: center;"><b>3</b></p> <p><b>3</b> [1] 2:4  <b>3105</b> [6] 8:20 13:9 20:5 22:15 61:9 66:14  <b>34</b> [1] 2:13</p>	<p><b>adjudicatorily</b> [1] 21:24  <b>adjudicators</b> [5] 22:9 31:16 40:8 65:25 66:3  <b>adjudicatory</b> [4] 49:20, 24 50:23 60:6  <b>administer</b> [1] 39:4  <b>Administration</b> [4] 11:10, 25 12:16 60:25  <b>administrative</b> [1] 53:6  <b>administrator</b> [3] 61:1, 3, 6  <b>admissibility</b> [1] 36:4  <b>admission</b> [1] 7:22  <b>admitted</b> [1] 8:7  <b>adopt</b> [4] 5:19 6:14 15:23 16:23  <b>adopted</b> [1] 27:2  <b>adopts</b> [1] 10:11  <b>adversarial</b> [7] 9:18 11:7, 15, 19 12:10, 11, 24  <b>advice</b> [4] 17:23 43:22 46:14 64:4  <b>adviser</b> [1] 5:22  <b>affect</b> [2] 56:7, 9  <b>affected</b> [1] 68:23  <b>affirmations</b> [1] 39:4  <b>affirmative</b> [3] 51:2, 13 53:19  <b>affirmatively</b> [1] 53:17  <b>afternoon</b> [1] 41:12  <b>agencies</b> [9] 8:16 9:15, 22 11:18 20:3 60:20 61:10 66:10 69:2  <b>agency</b> [25] 5:12, 13, 15 9:10 10:15, 16, 19, 21, 21 11:13 12:18 20:5, 13 22:16 34:5 55:4, 25 56:6, 8 59:18 61:2 67:11 68:11, 23 69:1  <b>agency's</b> [2] 8:24 20:19  <b>agent</b> [5] 27:10 34:7 54:20 55:2 63:12  <b>agents</b> [4] 27:17 29:14 54:21 60:9</p>	<p><b>15</b> 49:13 52:22 55:15 60:20 64:3 68:19 69:8  <b>appointing</b> [1] 61:6  <b>appointment</b> [6] 32:14 33:19 49:15 55:16 59:24 60:13  <b>Appointments</b> [13] 3:17 13:25 14:13 15:7 21:5 22:19 29:19 32:2, 10 47:16 50:14 55:16 67:7  <b>approach</b> [1] 16:24  <b>approaches</b> [1] 17:14  <b>appropriate</b> [1] 67:5  <b>approximately</b> [1] 9:19  <b>April</b> [1] 1:10  <b>arbitration</b> [1] 50:15  <b>aren't</b> [1] 4:22  <b>argue</b> [1] 69:9  <b>arguing</b> [1] 30:8  <b>argument</b> [13] 1:12 2:2, 5, 9, 14 3:4, 8 13:17 14:22 15:16 33:20 34:20 64:12  <b>arguments</b> [2] 33:4 34:15  <b>around</b> [3] 38:10, 20, 21  <b>Arthur</b> [1] 42:1  <b>Article</b> [2] 20:20 31:18  <b>aside</b> [1] 67:10  <b>asks</b> [2] 27:4 63:21  <b>Assistant</b> [7] 43:19 44:3, 6, 9 47:18 49:4, 13  <b>assistants</b> [2] 49:4 64:2  <b>associate</b> [1] 54:17  <b>assume</b> [3] 14:18 30:5 44:3  <b>attendance</b> [1] 38:25  <b>Attorney</b> [38] 27:22 28:20, 20, 22 29:13, 13, 14 36:14 43:5, 25 44:3, 6, 9 45:14, 16, 17, 24, 25 46:1, 13, 15, 24, 25 47:19, 20, 23 48:1, 7, 11, 14, 22, 23, 25 49:10, 11, 14 63:7 64:6  <b>attorneys</b> [5] 27:17 46:20, 20 49:3, 5  <b>attributes</b> [1] 38:5  <b>AUSA</b> [2] 43:17 63:6  <b>authoritative</b> [1] 62:23  <b>authorities</b> [7] 34:2 35:16 36:13 48:1, 16 66:20, 21  <b>authority</b> [50] 5:17 15:8 23:2, 4, 15 26:16 28:19 36:18 42:13 43:24 44:12, 13, 16 45:11, 13 46:17, 19 47:1, 11 48:12, 21, 24 50:24 52:17 54:3, 5 55:6, 7, 22 56:3 57:4, 6, 7, 8, 15, 20, 21 58:20, 24 59:14, 15, 15 60:5, 6 61:1, 10 62:13, 18, 19 63:4  <b>authorization</b> [1] 57:18  <b>authorized</b> [5] 34:7 46:16 63:16, 22 65:11  <b>authorizes</b> [2] 57:24 64:6  <b>Aviation</b> [1] 60:25  <b>avoids</b> [1] 19:4</p>	
<p style="text-align: center;"><b>4</b></p> <p><b>4,000</b> [1] 18:12  <b>42</b> [1] 5:4</p>	<p><b>admission</b> [1] 7:22  <b>admitted</b> [1] 8:7  <b>adopt</b> [4] 5:19 6:14 15:23 16:23  <b>adopted</b> [1] 27:2  <b>adopts</b> [1] 10:11  <b>adversarial</b> [7] 9:18 11:7, 15, 19 12:10, 11, 24  <b>advice</b> [4] 17:23 43:22 46:14 64:4  <b>adviser</b> [1] 5:22  <b>affect</b> [2] 56:7, 9  <b>affected</b> [1] 68:23  <b>affirmations</b> [1] 39:4  <b>affirmative</b> [3] 51:2, 13 53:19  <b>affirmatively</b> [1] 53:17  <b>afternoon</b> [1] 41:12  <b>agencies</b> [9] 8:16 9:15, 22 11:18 20:3 60:20 61:10 66:10 69:2  <b>agency</b> [25] 5:12, 13, 15 9:10 10:15, 16, 19, 21, 21 11:13 12:18 20:5, 13 22:16 34:5 55:4, 25 56:6, 8 59:18 61:2 67:11 68:11, 23 69:1  <b>agency's</b> [2] 8:24 20:19  <b>agent</b> [5] 27:10 34:7 54:20 55:2 63:12  <b>agents</b> [4] 27:17 29:14 54:21 60:9</p>	<p><b>15</b> 49:13 52:22 55:15 60:20 64:3 68:19 69:8  <b>appointing</b> [1] 61:6  <b>appointment</b> [6] 32:14 33:19 49:15 55:16 59:24 60:13  <b>Appointments</b> [13] 3:17 13:25 14:13 15:7 21:5 22:19 29:19 32:2, 10 47:16 50:14 55:16 67:7  <b>approach</b> [1] 16:24  <b>approaches</b> [1] 17:14  <b>appropriate</b> [1] 67:5  <b>approximately</b> [1] 9:19  <b>April</b> [1] 1:10  <b>arbitration</b> [1] 50:15  <b>aren't</b> [1] 4:22  <b>argue</b> [1] 69:9  <b>arguing</b> [1] 30:8  <b>argument</b> [13] 1:12 2:2, 5, 9, 14 3:4, 8 13:17 14:22 15:16 33:20 34:20 64:12  <b>arguments</b> [2] 33:4 34:15  <b>around</b> [3] 38:10, 20, 21  <b>Arthur</b> [1] 42:1  <b>Article</b> [2] 20:20 31:18  <b>aside</b> [1] 67:10  <b>asks</b> [2] 27:4 63:21  <b>Assistant</b> [7] 43:19 44:3, 6, 9 47:18 49:4, 13  <b>assistants</b> [2] 49:4 64:2  <b>associate</b> [1] 54:17  <b>assume</b> [3] 14:18 30:5 44:3  <b>attendance</b> [1] 38:25  <b>Attorney</b> [38] 27:22 28:20, 20, 22 29:13, 13, 14 36:14 43:5, 25 44:3, 6, 9 45:14, 16, 17, 24, 25 46:1, 13, 15, 24, 25 47:19, 20, 23 48:1, 7, 11, 14, 22, 23, 25 49:10, 11, 14 63:7 64:6  <b>attorneys</b> [5] 27:17 46:20, 20 49:3, 5  <b>attributes</b> [1] 38:5  <b>AUSA</b> [2] 43:17 63:6  <b>authoritative</b> [1] 62:23  <b>authorities</b> [7] 34:2 35:16 36:13 48:1, 16 66:20, 21  <b>authority</b> [50] 5:17 15:8 23:2, 4, 15 26:16 28:19 36:18 42:13 43:24 44:12, 13, 16 45:11, 13 46:17, 19 47:1, 11 48:12, 21, 24 50:24 52:17 54:3, 5 55:6, 7, 22 56:3 57:4, 6, 7, 8, 15, 20, 21 58:20, 24 59:14, 15, 15 60:5, 6 61:1, 10 62:13, 18, 19 63:4  <b>authorization</b> [1] 57:18  <b>authorized</b> [5] 34:7 46:16 63:16, 22 65:11  <b>authorizes</b> [2] 57:24 64:6  <b>Aviation</b> [1] 60:25  <b>avoids</b> [1] 19:4</p>	
<p style="text-align: center;"><b>5</b></p> <p><b>554</b> [1] 20:1  <b>554(b)</b> [1] 14:11  <b>556</b> [2] 9:18 10:11  <b>556(c)</b> [5] 8:22 10:24 11:8 13:5 66:7  <b>557</b> [2] 9:19 11:8  <b>557(b)</b> [2] 5:7 8:17</p>	<p><b>admission</b> [1] 7:22  <b>admitted</b> [1] 8:7  <b>adopt</b> [4] 5:19 6:14 15:23 16:23  <b>adopted</b> [1] 27:2  <b>adopts</b> [1] 10:11  <b>adversarial</b> [7] 9:18 11:7, 15, 19 12:10, 11, 24  <b>advice</b> [4] 17:23 43:22 46:14 64:4  <b>adviser</b> [1] 5:22  <b>affect</b> [2] 56:7, 9  <b>affected</b> [1] 68:23  <b>affirmations</b> [1] 39:4  <b>affirmative</b> [3] 51:2, 13 53:19  <b>affirmatively</b> [1] 53:17  <b>afternoon</b> [1] 41:12  <b>agencies</b> [9] 8:16 9:15, 22 11:18 20:3 60:20 61:10 66:10 69:2  <b>agency</b> [25] 5:12, 13, 15 9:10 10:15, 16, 19, 21, 21 11:13 12:18 20:5, 13 22:16 34:5 55:4, 25 56:6, 8 59:18 61:2 67:11 68:11, 23 69:1  <b>agency's</b> [2] 8:24 20:19  <b>agent</b> [5] 27:10 34:7 54:20 55:2 63:12  </p>		

## Official

<p><b>basically</b> <sup>[1]</sup> 63:12  <b>basis</b> <sup>[3]</sup> 19:11 20:19 29:17  <b>become</b> <sup>[4]</sup> 5:24,25 6:16 58:7  <b>becomes</b> <sup>[2]</sup> 9:10 51:22  <b>behalf</b> <sup>[17]</sup> 1:16,19,21 2:4,7,11,16  3:9 5:12 7:7,8 15:17 29:8 32:3 34:  21 43:6 64:13  <b>behind</b> <sup>[1]</sup> 32:10  <b>believe</b> <sup>[1]</sup> 15:6  <b>below</b> <sup>[4]</sup> 1:23 2:13 34:22 69:11  <b>benefits</b> <sup>[2]</sup> 12:2,19  <b>better</b> <sup>[1]</sup> 28:17  <b>between</b> <sup>[5]</sup> 14:10 16:11 24:13 25:  23 51:22  <b>beyond</b> <sup>[2]</sup> 20:9,16  <b>bias</b> <sup>[2]</sup> 13:20 30:14  <b>big</b> <sup>[1]</sup> 40:10  <b>bind</b> <sup>[25]</sup> 16:3 23:10 25:9,12 26:4,  17,18 27:25 29:21 35:3 38:18 40:  20,22 42:13,15,20,22,25 43:6,11  46:17 49:25 58:23 62:19 64:20  <b>binding</b> <sup>[21]</sup> 16:10 23:20 35:7 36:  18 43:18,20 50:15,16,24 53:24 57:  4,4,7,9,15 58:20,24 59:16 60:7 62:  13 66:9  <b>binds</b> <sup>[3]</sup> 33:8 36:10 44:24  <b>bit</b> <sup>[5]</sup> 13:16,18 19:25 24:11 45:21  <b>blame</b> <sup>[2]</sup> 53:3,4  <b>blank</b> <sup>[1]</sup> 62:8  <b>Board</b> <sup>[3]</sup> 11:25 19:13 20:17  <b>Board's</b> <sup>[1]</sup> 20:17  <b>bodies</b> <sup>[2]</sup> 40:4,13  <b>body</b> <sup>[2]</sup> 12:14 14:7  <b>boil</b> <sup>[1]</sup> 26:12  <b>boss</b> <sup>[1]</sup> 26:19  <b>Both</b> <sup>[8]</sup> 8:20 16:7 17:2 20:2 21:13  34:4 40:13 68:1  <b>bottom</b> <sup>[2]</sup> 8:4,8  <b>bound</b> <sup>[1]</sup> 33:5  <b>branch</b> <sup>[6]</sup> 25:13,14 29:11,23 42:  21 45:22  <b>break</b> <sup>[2]</sup> 22:21,24  <b>BREYER</b> <sup>[26]</sup> 16:14 17:22,25 18:3,  7,10,16 19:6,17,18 20:7,11 21:1,  16,18,22 22:6 23:1 41:1,4 42:3,6  59:21 60:16 65:22 66:6  <b>brief</b> <sup>[15]</sup> 17:4 19:2 37:14 44:21,25  45:4,9,10 49:19 57:24 58:3 62:2  64:16 68:15 69:9  <b>briefs</b> <sup>[2]</sup> 20:2 65:5  <b>broad</b> <sup>[1]</sup> 42:19  <b>broadly</b> <sup>[2]</sup> 37:14,15  <b>brought</b> <sup>[1]</sup> 12:13  <b>Buckley</b> <sup>[2]</sup> 15:24 26:16  <b>bureaucracy</b> <sup>[1]</sup> 53:6</p>	<p><b>Case</b> <sup>[34]</sup> 3:4 4:21 7:19 9:13,25 16:  12,19,21 17:7 19:5 20:25 21:2 28:  14 30:9 40:21 41:21 43:5 49:25  50:14,21 51:1,1,1 52:9,21 53:1,11  65:2 67:6 68:12 69:5,9,14,15  <b>cases</b> <sup>[13]</sup> 5:22 6:6 9:7,8 12:11,12  24:17 34:3 60:8 66:2 67:23 68:16,  22  <b>cause</b> <sup>[3]</sup> 7:5,12 60:14  <b>caused</b> <sup>[1]</sup> 52:16  <b>causes</b> <sup>[1]</sup> 7:2  <b>century</b> <sup>[2]</sup> 36:15 38:21  <b>cert</b> <sup>[2]</sup> 52:1 65:14  <b>certain</b> <sup>[7]</sup> 21:19,20,20 29:4 41:16  47:20 48:15  <b>certainly</b> <sup>[4]</sup> 27:1 29:10 30:11 32:  22  <b>cetera</b> <sup>[1]</sup> 68:20  <b>CFR</b> <sup>[1]</sup> 57:23  <b>CFTC</b> <sup>[1]</sup> 68:8  <b>challenges</b> <sup>[1]</sup> 68:10  <b>change</b> <sup>[1]</sup> 8:7  <b>characteristics</b> <sup>[1]</sup> 13:5  <b>characters</b> <sup>[1]</sup> 10:8  <b>Chester</b> <sup>[1]</sup> 41:25  <b>CHIEF</b> <sup>[33]</sup> 3:3,10 4:20 15:13,19  16:13 27:1 30:21 33:12,15 34:17,  23 35:10 39:7,10,11 49:17 50:7,  10,17 51:5 52:15,20 53:12 56:12,  17,23 59:2 61:19 64:9,14 68:4 69:  6  <b>choice</b> <sup>[1]</sup> 9:8  <b>chooses</b> <sup>[2]</sup> 5:13 8:1  <b>chosen</b> <sup>[1]</sup> 63:19  <b>circuit</b> <sup>[1]</sup> 34:3  <b>cited</b> <sup>[1]</sup> 34:3  <b>cites</b> <sup>[1]</sup> 65:5  <b>citizen</b> <sup>[2]</sup> 12:13,18  <b>citizens</b> <sup>[2]</sup> 4:13,14  <b>civil</b> <sup>[15]</sup> 16:15,24 17:15 21:24 22:  7 41:7,8,22 42:1 44:9,12,20 65:23  66:1,12  <b>claim</b> <sup>[1]</sup> 37:17  <b>Clause</b> <sup>[15]</sup> 3:18 10:2 14:1,12,13  15:7 22:19 29:19 32:2,11 39:18  47:16 50:15 55:17 67:7  <b>clear</b> <sup>[5]</sup> 20:2 32:11 53:25 56:4 60:  21  <b>clearly</b> <sup>[4]</sup> 4:18 35:22 36:7 60:8  <b>Clerk</b> <sup>[2]</sup> 29:8 54:18  <b>clerks</b> <sup>[1]</sup> 29:4  <b>client</b> <sup>[1]</sup> 66:18  <b>closely</b> <sup>[1]</sup> 31:12  <b>closer</b> <sup>[1]</sup> 14:6  <b>codified</b> <sup>[1]</sup> 61:13  <b>coercive</b> <sup>[1]</sup> 36:9  <b>collateral</b> <sup>[1]</sup> 13:12  <b>combine</b> <sup>[1]</sup> 16:23  <b>come</b> <sup>[5]</sup> 24:16 26:13 41:12 59:22  60:17  <b>comes</b> <sup>[3]</sup> 13:25 54:12 58:20  <b>coming</b> <sup>[1]</sup> 61:25  <b>COMMISSION</b> <sup>[41]</sup> 1:6 3:6 4:22,  25 5:2,19 6:1 8:9 14:25 26:23,25</p>	<p>32:6,23 33:6,6 34:9 38:22,24 39:  14,16 40:13 52:23 53:2,13 54:1,2,  4,7,11,13,14 56:5,20 57:10,19,22  58:4,24 65:8,12,16  <b>Commission's</b> <sup>[2]</sup> 16:6 65:21  <b>commissioners</b> <sup>[3]</sup> 4:1 54:22,23  <b>commissions</b> <sup>[3]</sup> 36:16 38:19,20  <b>common</b> <sup>[2]</sup> 55:4,25  <b>commonalities</b> <sup>[1]</sup> 38:10  <b>company</b> <sup>[2]</sup> 10:17 41:11  <b>compare</b> <sup>[1]</sup> 61:21  <b>compensation</b> <sup>[2]</sup> 22:13 30:18  <b>complaining</b> <sup>[1]</sup> 14:8  <b>complaint</b> <sup>[1]</sup> 67:19  <b>complaints</b> <sup>[1]</sup> 13:19  <b>complete</b> <sup>[1]</sup> 26:6  <b>completed</b> <sup>[1]</sup> 67:23  <b>completely</b> <sup>[2]</sup> 40:15 42:5  <b>compromise</b> <sup>[4]</sup> 31:14,25 32:1 59:  10  <b>compulsory</b> <sup>[1]</sup> 7:25  <b>concept</b> <sup>[1]</sup> 29:16  <b>concern</b> <sup>[3]</sup> 33:22 42:3,7  <b>concerned</b> <sup>[2]</sup> 30:14 50:3  <b>concerning</b> <sup>[1]</sup> 35:1  <b>concerns</b> <sup>[1]</sup> 19:4  <b>concession</b> <sup>[2]</sup> 43:18,20  <b>concluded</b> <sup>[1]</sup> 36:16  <b>conclusions</b> <sup>[1]</sup> 67:11  <b>conclusive</b> <sup>[1]</sup> 32:19  <b>concurrence</b> <sup>[2]</sup> 50:13,13  <b>conduct</b> <sup>[6]</sup> 8:6 11:6 12:24 13:10  52:24 66:8  <b>conference</b> <sup>[1]</sup> 8:1  <b>confine</b> <sup>[1]</sup> 20:17  <b>Congress</b> <sup>[26]</sup> 5:5,10,18 10:9,13  17:16 20:4,6 36:15 46:11,12 47:7  48:10 53:24 54:4,6 55:10 56:2 60:  1,4,11,21 61:11,13 66:6,13  <b>congressmen</b> <sup>[1]</sup> 39:16  <b>consent</b> <sup>[3]</sup> 43:23 46:14 64:4  <b>consequences</b> <sup>[1]</sup> 6:23  <b>consideration</b> <sup>[3]</sup> 30:9,11,12  <b>considered</b> <sup>[2]</sup> 36:11 63:6  <b>consistent</b> <sup>[2]</sup> 35:23 60:12  <b>Constitution</b> <sup>[3]</sup> 21:23 53:8 66:22  <b>constitutional</b> <sup>[7]</sup> 10:2 15:25 19:  4 66:24 67:9,13 68:10  <b>constrained</b> <sup>[1]</sup> 27:19  <b>construction</b> <sup>[1]</sup> 3:17  <b>contained</b> <sup>[1]</sup> 51:10  <b>contempt</b> <sup>[9]</sup> 35:17,19 36:6,7 37:2,  8,12,22,24  <b>contesting</b> <sup>[2]</sup> 3:20,23  <b>contests</b> <sup>[1]</sup> 6:9  <b>context</b> <sup>[4]</sup> 13:23 23:4 54:21 68:  10  <b>continuing</b> <sup>[2]</sup> 15:25 24:19  <b>continuous</b> <sup>[1]</sup> 24:23  <b>contradictory</b> <sup>[1]</sup> 17:11  <b>contrast</b> <sup>[1]</sup> 35:6  <b>convening</b> <sup>[1]</sup> 7:24  <b>corporations</b> <sup>[1]</sup> 46:21  <b>correct</b> <sup>[2]</sup> 3:24 11:21</p>	<p><b>couldn't</b> <sup>[2]</sup> 39:15 47:3  <b>counsel</b> <sup>[9]</sup> 15:14 25:21 28:16 34:  18 36:14 49:17 62:25 64:10 69:7  <b>couple</b> <sup>[1]</sup> 34:13  <b>course</b> <sup>[9]</sup> 4:21 8:25 20:5 43:7 56:  8 65:24 66:14 68:8,12  <b>COURT</b> <sup>[40]</sup> 1:1,12 3:11 4:18 7:4  13:11 15:20,23 19:1,22 21:4 27:  14 28:14 29:9 32:12 34:3,24 36:  11 37:18 43:20 49:19 50:2 52:1,2,  3 62:15 64:8,23 65:15 66:2,21,22  67:1,3,5,6,10,16 68:9 69:8  <b>Court's</b> <sup>[3]</sup> 3:15 24:17 37:18 51:15,  16  <b>Court-appointed</b> <sup>[3]</sup> 1:22 2:11 34:  21  <b>courts</b> <sup>[6]</sup> 15:1,8 34:6 51:25 55:21  68:2  <b>create</b> <sup>[2]</sup> 39:14,18  <b>created</b> <sup>[4]</sup> 39:15 46:11,12 47:7  <b>creates</b> <sup>[1]</sup> 33:9  <b>creation</b> <sup>[1]</sup> 21:23  <b>criminal</b> <sup>[1]</sup> 28:22  <b>criteria</b> <sup>[1]</sup> 60:3  <b>crucial</b> <sup>[4]</sup> 35:20 37:11 38:17 59:  18  <b>curiae</b> <sup>[4]</sup> 1:22 2:12 34:21 69:10  <b>current</b> <sup>[2]</sup> 25:22 26:1  <b>customs</b> <sup>[1]</sup> 24:9  <b>cut</b> <sup>[1]</sup> 14:21</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>d)(1)</b> <sup>[1]</sup> 58:3  <b>d)(2)</b> <sup>[1]</sup> 58:6  <b>D.C.</b> <sup>[3]</sup> 1:9,16,19  <b>DAG</b> <sup>[1]</sup> 28:24  <b>dangerous</b> <sup>[1]</sup> 41:13  <b>date</b> <sup>[1]</sup> 61:15  <b>day</b> <sup>[3]</sup> 33:8 50:1 65:20  <b>day-to-day</b> <sup>[1]</sup> 29:17  <b>days</b> <sup>[3]</sup> 5:4 50:19,20  <b>de</b> <sup>[4]</sup> 4:11 32:19 42:25 48:24  <b>deal</b> <sup>[2]</sup> 23:2 61:23  <b>dealing</b> <sup>[3]</sup> 21:6 60:19 66:3  <b>dealt</b> <sup>[1]</sup> 66:13  <b>deceased</b> <sup>[1]</sup> 63:18  <b>decide</b> <sup>[18]</sup> 8:6 9:17 16:19 17:7,8  19:19 20:24,25 21:2,14 31:10 41:  23 45:22 46:3,3,4 48:11 49:25  <b>decided</b> <sup>[2]</sup> 12:15 52:13  <b>deciders</b> <sup>[1]</sup> 40:9  <b>deciding</b> <sup>[1]</sup> 12:23  <b>decision</b> <sup>[42]</sup> 5:2,12,15,23 8:2,24  9:9,10 16:21,22 18:13 30:17 32:7  33:7 37:11 44:23,23,24 49:1,12  50:18,20 51:3,11,14,22 52:4,12  53:15,25 54:1,9,10,13 56:4,5,7,9  57:25 63:9 65:17,19  <b>decision-maker</b> <sup>[1]</sup> 14:3  <b>decision-makers</b> <sup>[1]</sup> 14:6  <b>decision-making</b> <sup>[3]</sup> 8:18 59:14  68:19  <b>decisional</b> <sup>[10]</sup> 4:8 8:24 14:10 15:  5 19:25 20:4 30:18 31:3,6,22</p>
<p style="text-align: center;"><b>C</b></p> <p><b>call</b> <sup>[2]</sup> 12:5 43:9  <b>came</b> <sup>[2]</sup> 1:11 31:13  <b>Cameron</b> <sup>[1]</sup> 65:18  <b>cannot</b> <sup>[3]</sup> 52:6 54:14 65:6  <b>capable</b> <sup>[3]</sup> 22:9 34:8,10  <b>capstone</b> <sup>[1]</sup> 8:25  <b>careful</b> <sup>[2]</sup> 22:12 30:15</p>			



<p><b>decisions</b> <sup>[32]</sup> 4:21 5:1,6,21,25 8:19,19,23 15:1 16:10 22:14 23:20 26:24 27:25 35:25 43:7 46:5 52:25 53:23 56:13,21 57:3,5,8,9,9,12,15 59:16 60:7 64:25 65:12</p> <p><b>declared</b> <sup>[1]</sup> 51:11</p> <p><b>deemed</b> <sup>[3]</sup> 5:2 54:10 56:5</p> <p><b>default</b> <sup>[2]</sup> 6:7,11</p> <p><b>defaults</b> <sup>[1]</sup> 6:19</p> <p><b>define</b> <sup>[1]</sup> 11:15</p> <p><b>defined</b> <sup>[1]</sup> 10:23</p> <p><b>defines</b> <sup>[1]</sup> 55:1</p> <p><b>defining</b> <sup>[1]</sup> 23:14</p> <p><b>definition</b> <sup>[5]</sup> 9:20 13:4 16:16 61:14,14</p> <p><b>delegate</b> <sup>[9]</sup> 4:16 45:18,19 46:16 47:1 48:24 54:2 57:19,22</p> <p><b>delegated</b> <sup>[6]</sup> 7:18 44:17 45:14 47:11,20 62:17</p> <p><b>delegates</b> <sup>[3]</sup> 28:21 46:2 48:15</p> <p><b>delegating</b> <sup>[1]</sup> 44:17</p> <p><b>delegation</b> <sup>[4]</sup> 46:10 48:8,8 57:18</p> <p><b>delees</b> <sup>[1]</sup> 54:3</p> <p><b>demonstrates</b> <sup>[1]</sup> 56:2</p> <p><b>denied</b> <sup>[2]</sup> 52:14 65:15</p> <p><b>denying</b> <sup>[1]</sup> 52:8</p> <p><b>Department</b> <sup>[11]</sup> 1:18 20:10 22:19 30:21 32:5 44:14 45:12,16 60:13 61:4,5</p> <p><b>dependence</b> <sup>[1]</sup> 41:25</p> <p><b>dependent</b> <sup>[2]</sup> 15:4 47:7</p> <p><b>depends</b> <sup>[3]</sup> 48:7 58:11,14</p> <p><b>depositions</b> <sup>[1]</sup> 7:23</p> <p><b>deputies</b> <sup>[2]</sup> 55:14,22</p> <p><b>Deputy</b> <sup>[12]</sup> 1:18 24:8 27:15 28:22 29:3,14 46:12,24 55:9 61:3 63:14,16</p> <p><b>derives</b> <sup>[1]</sup> 45:10</p> <p><b>describing</b> <sup>[1]</sup> 17:19</p> <p><b>designate</b> <sup>[1]</sup> 7:6</p> <p><b>designated</b> <sup>[1]</sup> 24:3</p> <p><b>designates</b> <sup>[1]</sup> 66:15</p> <p><b>designed</b> <sup>[3]</sup> 10:3 14:14 59:8</p> <p><b>detachment</b> <sup>[1]</sup> 31:17</p> <p><b>determinations</b> <sup>[1]</sup> 12:17</p> <p><b>determining</b> <sup>[1]</sup> 20:18</p> <p><b>died</b> <sup>[1]</sup> 63:17</p> <p><b>difference</b> <sup>[6]</sup> 12:7 14:10 16:11,20 24:13 40:10</p> <p><b>different</b> <sup>[7]</sup> 7:11 31:5 35:18 38:8 40:2 50:21 52:5</p> <p><b>difficult</b> <sup>[2]</sup> 24:11 28:23</p> <p><b>diffuse</b> <sup>[2]</sup> 32:13,14</p> <p><b>diplomatic</b> <sup>[1]</sup> 35:2</p> <p><b>direct</b> <sup>[2]</sup> 46:20 68:13</p> <p><b>directing</b> <sup>[1]</sup> 22:13</p> <p><b>direction</b> <sup>[2]</sup> 4:6 66:6</p> <p><b>director</b> <sup>[1]</sup> 4:2</p> <p><b>disagree</b> <sup>[6]</sup> 32:25 33:25 42:23,24 53:11,22</p> <p><b>disagreed</b> <sup>[1]</sup> 18:14</p> <p><b>discharged</b> <sup>[1]</sup> 69:11</p> <p><b>discovery</b> <sup>[6]</sup> 36:5 37:6,19,20,21,23</p>	<p><b>discretion</b> <sup>[10]</sup> 5:23 16:2 25:8,16 27:19 49:6,7,9 63:5 65:10</p> <p><b>discretionary</b> <sup>[9]</sup> 5:9 9:11 26:21,21,23 50:23 56:20 65:9,14</p> <p><b>dismiss</b> <sup>[3]</sup> 19:8 67:14,19</p> <p><b>dispute</b> <sup>[1]</sup> 29:24</p> <p><b>disputes</b> <sup>[1]</sup> 16:8</p> <p><b>dissent</b> <sup>[1]</sup> 17:25</p> <p><b>dissented</b> <sup>[1]</sup> 17:9</p> <p><b>distinction</b> <sup>[1]</sup> 51:22</p> <p><b>distinguish</b> <sup>[1]</sup> 19:22</p> <p><b>district</b> <sup>[1]</sup> 55:21</p> <p><b>Division</b> <sup>[5]</sup> 44:10,10,12,13,20</p> <p><b>divisions</b> <sup>[1]</sup> 48:15</p> <p><b>docking</b> <sup>[1]</sup> 31:7</p> <p><b>document</b> <sup>[1]</sup> 7:15</p> <p><b>documents</b> <sup>[1]</sup> 12:5</p> <p><b>doing</b> <sup>[3]</sup> 26:11 34:8 62:8</p> <p><b>done</b> <sup>[2]</sup> 7:7 10:15</p> <p><b>door</b> <sup>[2]</sup> 32:7 41:17</p> <p><b>down</b> <sup>[4]</sup> 22:24 26:12 31:20 58:20</p> <p><b>drafters</b> <sup>[4]</sup> 19:23 30:12 52:16 53:8</p> <p><b>drawn</b> <sup>[1]</sup> 25:23</p> <p><b>driving</b> <sup>[1]</sup> 41:24</p> <p><b>due</b> <sup>[2]</sup> 13:13 14:12</p> <p><b>dug</b> <sup>[1]</sup> 9:25</p> <p><b>during</b> <sup>[1]</sup> 43:7</p> <p><b>duties</b> <sup>[4]</sup> 4:6 10:23 30:17 55:18</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>earlier</b> <sup>[3]</sup> 26:10 27:2 34:13</p> <p><b>Edmond</b> <sup>[4]</sup> 3:16 26:22 64:24 66:3</p> <p><b>effect</b> <sup>[9]</sup> 9:14 13:12 32:19 33:17 35:7 51:17 52:6 62:20 66:9</p> <p><b>effective</b> <sup>[3]</sup> 51:12,23 58:7</p> <p><b>Either</b> <sup>[3]</sup> 16:3 42:13 58:4</p> <p><b>elements</b> <sup>[1]</sup> 55:25</p> <p><b>Elliot's</b> <sup>[1]</sup> 65:19</p> <p><b>else's</b> <sup>[1]</sup> 63:23</p> <p><b>embodied</b> <sup>[2]</sup> 20:14,15</p> <p><b>employee</b> <sup>[3]</sup> 7:7 27:13 61:15</p> <p><b>employees</b> <sup>[5]</sup> 4:4 8:13 24:3 25:23 61:18</p> <p><b>encompasses</b> <sup>[1]</sup> 6:7</p> <p><b>end</b> <sup>[4]</sup> 33:8 36:18 50:1 58:11</p> <p><b>ended</b> <sup>[1]</sup> 68:1</p> <p><b>enforce</b> <sup>[2]</sup> 36:5 37:23</p> <p><b>enforced</b> <sup>[1]</sup> 37:21</p> <p><b>enforcement</b> <sup>[2]</sup> 12:11 27:17</p> <p><b>enforcing</b> <sup>[1]</sup> 37:20</p> <p><b>engage</b> <sup>[5]</sup> 34:2 52:13 54:5,8 58:4</p> <p><b>enhanced</b> <sup>[1]</sup> 30:7</p> <p><b>enormous</b> <sup>[2]</sup> 42:20 43:11</p> <p><b>enough</b> <sup>[1]</sup> 7:5</p> <p><b>ensure</b> <sup>[1]</sup> 14:14</p> <p><b>enter</b> <sup>[3]</sup> 5:14 35:24 65:11</p> <p><b>Enterprise</b> <sup>[3]</sup> 16:22 18:1 32:13</p> <p><b>entire</b> <sup>[1]</sup> 68:16</p> <p><b>entirely</b> <sup>[1]</sup> 45:13</p> <p><b>entities</b> <sup>[1]</sup> 14:25</p> <p><b>entitled</b> <sup>[1]</sup> 67:4</p> <p><b>EPA</b> <sup>[1]</sup> 41:14</p> <p><b>escape</b> <sup>[1]</sup> 54:7</p>	<p><b>especially</b> <sup>[1]</sup> 61:21</p> <p><b>ESQ</b> <sup>[6]</sup> 1:16,21 2:3,6,10,15</p> <p><b>essentially</b> <sup>[5]</sup> 40:3 45:21 54:24 61:2 62:24</p> <p><b>establish</b> <sup>[1]</sup> 60:4</p> <p><b>established</b> <sup>[2]</sup> 29:18 59:25</p> <p><b>establishes</b> <sup>[1]</sup> 55:11</p> <p><b>estoppel</b> <sup>[1]</sup> 13:12</p> <p><b>ET</b> <sup>[2]</sup> 1:3 68:20</p> <p><b>even</b> <sup>[12]</sup> 9:6 14:6 15:4 19:13 21:14 25:11 36:22 40:19 53:22 55:21 59:1 63:7</p> <p><b>event</b> <sup>[1]</sup> 65:7</p> <p><b>everybody</b> <sup>[1]</sup> 49:6</p> <p><b>Everyone</b> <sup>[2]</sup> 24:20 61:2</p> <p><b>everything</b> <sup>[10]</sup> 7:15 8:5 12:6 24:1 32:24 47:6 48:6 56:10 58:10 62:8</p> <p><b>evidence</b> <sup>[6]</sup> 7:21,22 8:6 36:4 39:2,6</p> <p><b>evidentiary</b> <sup>[2]</sup> 4:9 9:3</p> <p><b>evidentiary-related</b> <sup>[1]</sup> 8:22</p> <p><b>ex</b> <sup>[1]</sup> 59:12</p> <p><b>exacerbate</b> <sup>[1]</sup> 14:7</p> <p><b>exact</b> <sup>[1]</sup> 40:3</p> <p><b>Exactly</b> <sup>[4]</sup> 24:24 52:19 55:4 63:2</p> <p><b>examination</b> <sup>[1]</sup> 25:20</p> <p><b>examine</b> <sup>[1]</sup> 39:5</p> <p><b>examiner</b> <sup>[1]</sup> 30:13</p> <p><b>examiners</b> <sup>[3]</sup> 22:1 31:16 61:15</p> <p><b>example</b> <sup>[10]</sup> 12:12 36:16 38:23 43:17 44:19,19 46:19 50:1 55:8 60:23</p> <p><b>except</b> <sup>[2]</sup> 6:16 61:24</p> <p><b>exception</b> <sup>[1]</sup> 35:1</p> <p><b>EXCHANGE</b> <sup>[4]</sup> 1:6 3:5 5:9 10:10</p> <p><b>exclude</b> <sup>[1]</sup> 40:16</p> <p><b>exclusion</b> <sup>[1]</sup> 7:22</p> <p><b>execute</b> <sup>[1]</sup> 63:17</p> <p><b>executive</b> <sup>[12]</sup> 18:2 21:6 23:6,7 24:14 25:13,14 29:11,23 39:11 42:21 45:22</p> <p><b>exercise</b> <sup>[9]</sup> 5:16 6:20 25:15 32:3 47:3,16 48:12 49:7,9</p> <p><b>exercised</b> <sup>[3]</sup> 9:6 13:7 36:8</p> <p><b>exercising</b> <sup>[6]</sup> 4:6 29:8 43:24 44:11,16,17</p> <p><b>existing</b> <sup>[1]</sup> 45:11</p> <p><b>exists</b> <sup>[3]</sup> 20:19 37:11 53:21</p> <p><b>expansion</b> <sup>[1]</sup> 65:23</p> <p><b>expires</b> <sup>[1]</sup> 5:4</p> <p><b>explained</b> <sup>[1]</sup> 62:15</p> <p><b>explicitly</b> <sup>[2]</sup> 10:10 59:13</p> <p><b>extensions</b> <sup>[1]</sup> 29:4</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> <sup>[1]</sup> 6:11</p> <p><b>fact</b> <sup>[8]</sup> 5:24 30:5 32:23 35:23 48:7 49:3 52:12 56:10</p> <p><b>factful</b> <sup>[1]</sup> 20:19</p> <p><b>facto</b> <sup>[2]</sup> 42:25 48:24</p> <p><b>factor</b> <sup>[1]</sup> 30:7</p> <p><b>facts</b> <sup>[2]</sup> 19:12 56:9</p> <p><b>failing</b> <sup>[1]</sup> 19:8</p> <p><b>failure</b> <sup>[1]</sup> 20:13</p>	<p><b>fairly</b> <sup>[2]</sup> 21:20 23:13</p> <p><b>fairness</b> <sup>[1]</sup> 30:6</p> <p><b>falling</b> <sup>[1]</sup> 34:14</p> <p><b>fate</b> <sup>[1]</sup> 12:15</p> <p><b>fathers</b> <sup>[1]</sup> 24:3</p> <p><b>fathers'</b> <sup>[1]</sup> 24:6</p> <p><b>FBI</b> <sup>[1]</sup> 27:10</p> <p><b>FDIC</b> <sup>[1]</sup> 8:15</p> <p><b>federal</b> <sup>[3]</sup> 9:22 60:24 68:16</p> <p><b>feel</b> <sup>[3]</sup> 18:16 47:4,4</p> <p><b>figure</b> <sup>[3]</sup> 6:4 35:11 39:23</p> <p><b>filed</b> <sup>[1]</sup> 6:5</p> <p><b>final</b> <sup>[16]</sup> 5:6,11,14,24 6:1,15,16 32:21 35:24 50:5,21 58:7 64:25 65:4,11 68:13</p> <p><b>finality</b> <sup>[9]</sup> 4:23,25 51:2,9 58:8,21 65:6,8,13</p> <p><b>Finally</b> <sup>[1]</sup> 66:17</p> <p><b>find</b> <sup>[3]</sup> 10:22 43:14 45:5</p> <p><b>finding</b> <sup>[1]</sup> 67:9</p> <p><b>findings</b> <sup>[3]</sup> 32:18 40:5 67:11</p> <p><b>firmly</b> <sup>[1]</sup> 4:18</p> <p><b>first</b> <sup>[21]</sup> 3:4 6:19 7:9 17:8 18:19 36:1,13 37:4,9 47:12 53:16 55:8,11 57:5,23 58:13,17 62:12 63:10,13 64:17</p> <p><b>fit</b> <sup>[2]</sup> 9:20 16:15</p> <p><b>focus</b> <sup>[1]</sup> 28:4</p> <p><b>focuses</b> <sup>[1]</sup> 24:18</p> <p><b>follow</b> <sup>[4]</sup> 9:12 19:8 20:13 22:23</p> <p><b>following</b> <sup>[2]</sup> 16:19 23:1</p> <p><b>forfeiture</b> <sup>[1]</sup> 68:7</p> <p><b>formal</b> <sup>[4]</sup> 3:13 9:5 10:13 13:10</p> <p><b>forth</b> <sup>[1]</sup> 68:7</p> <p><b>forward</b> <sup>[1]</sup> 26:15</p> <p><b>foundational</b> <sup>[3]</sup> 31:14,24 32:1</p> <p><b>founding</b> <sup>[2]</sup> 24:2,6</p> <p><b>four</b> <sup>[1]</sup> 39:16</p> <p><b>frame</b> <sup>[1]</sup> 55:4</p> <p><b>frankly</b> <sup>[1]</sup> 16:18</p> <p><b>Free</b> <sup>[3]</sup> 16:21 18:1 32:13</p> <p><b>freedom</b> <sup>[1]</sup> 14:16</p> <p><b>Freytag</b> <sup>[23]</sup> 3:15 4:19 15:24 16:12 18:7 21:11 32:12 33:11 35:12,14,18,21,22 36:25 37:10,14 38:6,11,13,14 40:14 66:2 68:8</p> <p><b>friend</b> <sup>[4]</sup> 49:18 51:6 64:18 65:4</p> <p><b>front</b> <sup>[2]</sup> 18:11 66:23</p> <p><b>front-line</b> <sup>[1]</sup> 22:9</p> <p><b>FTC</b> <sup>[1]</sup> 67:16</p> <p><b>full</b> <sup>[1]</sup> 32:16</p> <p><b>fully</b> <sup>[1]</sup> 52:3</p> <p><b>function</b> <sup>[4]</sup> 7:3 20:23 29:22 47:13</p> <p><b>functionary</b> <sup>[1]</sup> 7:3</p> <p><b>functioned</b> <sup>[1]</sup> 8:20</p> <p><b>functions</b> <sup>[10]</sup> 4:8,8,9 16:5 23:7,7 24:4 25:10 32:3 38:14</p> <p><b>Fund</b> <sup>[1]</sup> 18:1</p> <p><b>fundamental</b> <sup>[1]</sup> 53:10</p> <p><b>further</b> <sup>[1]</sup> 64:8</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gathering</b> <sup>[1]</sup> 7:21</p> <p><b>gave</b> <sup>[2]</sup> 5:5,18</p>
--	--	--	--

<p><b>General</b> <sup>[3]</sup> 1:18 15:15 27:23 28:20,20,23 29:13,14 36:14 43:19,25 44:3,7,9 45:14,17,18,24 46:1,1,13,15,24,25 47:19,21 48:7,11 64:3,6 68:6</p> <p><b>generally</b> <sup>[1]</sup> 25:13</p> <p><b>gets</b> <sup>[5]</sup> 31:9,10 45:22 48:11 49:24</p> <p><b>getting</b> <sup>[1]</sup> 21:3</p> <p><b>GINSBURG</b> <sup>[7]</sup> 3:19,22 8:3,11 10:25 11:2 25:19</p> <p><b>give</b> <sup>[5]</sup> 4:10,11 12:3 16:16 52:16</p> <p><b>given</b> <sup>[2]</sup> 32:19 66:24</p> <p><b>gives</b> <sup>[4]</sup> 13:5 28:19 54:4 65:8</p> <p><b>gloss</b> <sup>[1]</sup> 68:9</p> <p><b>good-bye</b> <sup>[1]</sup> 16:25</p> <p><b>goodbye</b> <sup>[1]</sup> 16:24</p> <p><b>Gordon</b> <sup>[1]</sup> 34:4</p> <p><b>GORSUCH</b> <sup>[6]</sup> 28:25 30:2 33:13,15 34:16 66:17</p> <p><b>got</b> <sup>[6]</sup> 19:22,24 24:25 25:5,7 32:11</p> <p><b>government</b> <sup>[18]</sup> 9:22 11:20 12:2,14,19 16:3 23:10 25:2,3 35:4 42:13,14,22 43:6 44:22,24 64:1,20</p> <p><b>government's</b> <sup>[4]</sup> 12:2 15:22 25:22 40:18</p> <p><b>governmental</b> <sup>[1]</sup> 26:15</p> <p><b>governments</b> <sup>[2]</sup> 4:11,15</p> <p><b>grant</b> <sup>[3]</sup> 29:4 59:13 61:10</p> <p><b>granted</b> <sup>[3]</sup> 50:20 51:14 59:10</p> <p><b>grants</b> <sup>[2]</sup> 51:2 60:25</p> <p><b>grateful</b> <sup>[1]</sup> 69:12</p> <p><b>great</b> <sup>[2]</sup> 17:17 23:2</p> <p><b>greater</b> <sup>[2]</sup> 13:24,24</p> <p><b>green</b> <sup>[2]</sup> 57:24 58:3</p> <p><b>grounds</b> <sup>[1]</sup> 20:20</p> <p><b>guarantee</b> <sup>[1]</sup> 17:5</p> <p><b>guaranteed</b> <sup>[1]</sup> 14:11</p> <p><b>guess</b> <sup>[2]</sup> 37:25 62:5</p> <p><b>guy</b> <sup>[1]</sup> 32:8</p>	<p><b>hereby</b> <sup>[1]</sup> 51:11</p> <p><b>high</b> <sup>[1]</sup> 12:25</p> <p><b>high-ranking</b> <sup>[1]</sup> 25:14</p> <p><b>higher</b> <sup>[1]</sup> 16:25</p> <p><b>himself</b> <sup>[2]</sup> 35:8 64:7</p> <p><b>historical</b> <sup>[2]</sup> 24:17 62:2</p> <p><b>historically</b> <sup>[5]</sup> 3:16 25:11 26:5 27:16 29:22</p> <p><b>historically-grounded</b> <sup>[1]</sup> 35:1</p> <p><b>hold</b> <sup>[2]</sup> 49:14 52:11</p> <p><b>holding</b> <sup>[1]</sup> 36:1</p> <p><b>holdings</b> <sup>[1]</sup> 35:21</p> <p><b>honest</b> <sup>[1]</sup> 17:18</p> <p><b>honestly</b> <sup>[1]</sup> 61:25</p> <p><b>Honor</b> <sup>[13]</sup> 4:24 7:9 8:10,14 11:6,16,22 14:23 15:12 65:13 67:24 68:5 69:4</p> <p><b>hope</b> <sup>[1]</sup> 15:22</p> <p><b>hoped</b> <sup>[1]</sup> 17:6</p> <p><b>horrible</b> <sup>[1]</sup> 18:25</p> <p><b>horribles</b> <sup>[2]</sup> 18:12,13</p> <p><b>house</b> <sup>[1]</sup> 21:8</p> <p><b>however</b> <sup>[1]</sup> 69:5</p> <p><b>hundreds</b> <sup>[1]</sup> 68:18</p> <p><b>hurt</b> <sup>[1]</sup> 17:20</p> <p><b>hypo</b> <sup>[1]</sup> 51:21</p>	<p><b>instituting</b> <sup>[1]</sup> 7:17</p> <p><b>insulated</b> <sup>[1]</sup> 14:4</p> <p><b>insulation</b> <sup>[2]</sup> 31:17 53:7</p> <p><b>intend</b> <sup>[1]</sup> 60:21</p> <p><b>intended</b> <sup>[2]</sup> 19:16 53:8</p> <p><b>interesting</b> <sup>[1]</sup> 9:24</p> <p><b>interfere</b> <sup>[1]</sup> 31:5</p> <p><b>interfering</b> <sup>[2]</sup> 31:4,21</p> <p><b>internal</b> <sup>[2]</sup> 28:9 39:21</p> <p><b>intersection</b> <sup>[1]</sup> 11:12</p> <p><b>invested</b> <sup>[2]</sup> 3:12 5:14</p> <p><b>investigate</b> <sup>[1]</sup> 36:17</p> <p><b>investigating</b> <sup>[1]</sup> 12:3</p> <p><b>investigation</b> <sup>[3]</sup> 36:19 39:3 40:5</p> <p><b>investigations</b> <sup>[1]</sup> 12:1</p> <p><b>investigators</b> <sup>[1]</sup> 40:9</p> <p><b>investigatory</b> <sup>[2]</sup> 38:20 40:4</p> <p><b>investment</b> <sup>[1]</sup> 5:22</p> <p><b>involve</b> <sup>[2]</sup> 11:11 25:8</p> <p><b>involved</b> <sup>[4]</sup> 38:5,6 64:24 65:2</p> <p><b>isn't</b> <sup>[7]</sup> 11:23 20:14 26:6,7 31:21 32:20 39:24</p> <p><b>issuance</b> <sup>[1]</sup> 58:7</p> <p><b>issue</b> <sup>[10]</sup> 4:25 12:4 16:10 19:2 23:20 26:24 38:24 50:5 65:24,25</p> <p><b>issued</b> <sup>[4]</sup> 7:12,18 46:23 65:19</p> <p><b>issues</b> <sup>[3]</sup> 4:22 6:21 7:19</p> <p><b>issuing</b> <sup>[2]</sup> 7:4 37:19</p> <p><b>itself</b> <sup>[6]</sup> 6:19 9:2 30:17 51:23 60:10,13</p>	<p>15 65:22 66:4,6,17 67:21,25 68:4,17,25 69:6</p> <p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> <sup>[30]</sup> 11:1 12:21 13:3,15 14:9 26:17 30:4,22 31:1,23 36:21,24 37:25 38:3 39:24 40:2,12 45:20 47:4 48:3,6 57:11,14 58:10,16,19 59:1 61:20 62:5 66:4</p> <p><b>Kagan's</b> <sup>[1]</sup> 14:18</p> <p><b>keep</b> <sup>[2]</sup> 10:17 31:3</p> <p><b>KENNEDY</b> <sup>[4]</sup> 9:12,16 14:17 30:3</p> <p><b>kick</b> <sup>[1]</sup> 68:7</p> <p><b>kind</b> <sup>[5]</sup> 19:15 25:11 34:14 52:5 59:6</p> <p><b>known</b> <sup>[1]</sup> 10:17</p>
<p style="text-align: center;"><b>H</b></p> <p><b>half</b> <sup>[2]</sup> 37:3,4</p> <p><b>hand</b> <sup>[1]</sup> 23:23</p> <p><b>handful</b> <sup>[1]</sup> 24:18</p> <p><b>hang</b> <sup>[1]</sup> 31:8</p> <p><b>happened</b> <sup>[2]</sup> 13:20 39:23</p> <p><b>happens</b> <sup>[3]</sup> 12:6 49:2 51:24</p> <p><b>hard</b> <sup>[5]</sup> 13:22 28:11 36:21,24 38:9</p> <p><b>harder</b> <sup>[2]</sup> 51:1 52:9</p> <p><b>harmonizes</b> <sup>[1]</sup> 24:17</p> <p><b>he'll</b> <sup>[1]</sup> 45:18</p> <p><b>head</b> <sup>[9]</sup> 20:10 22:19 30:21 31:8 32:5 44:20 48:14 61:4,4</p> <p><b>hear</b> <sup>[1]</sup> 3:3</p> <p><b>heard</b> <sup>[1]</sup> 59:3</p> <p><b>hearing</b> <sup>[19]</sup> 4:8 6:21 7:10,10,16,23,24,25 8:6 9:3 12:7,24 13:10 21:25 30:13 31:15 39:21,23 61:15</p> <p><b>hearing-related</b> <sup>[1]</sup> 8:21</p> <p><b>hearings</b> <sup>[1]</sup> 11:7</p> <p><b>held</b> <sup>[7]</sup> 34:6 48:25 49:8,19 53:14 62:22 63:8</p> <p><b>help</b> <sup>[1]</sup> 17:20</p>	<p style="text-align: center;"><b>I</b></p> <p><b>idea</b> <sup>[2]</sup> 32:10 41:5</p> <p><b>identified</b> <sup>[2]</sup> 42:11 50:14</p> <p><b>ignore</b> <sup>[1]</sup> 66:20</p> <p><b>Ill</b> <sup>[3]</sup> 20:20 31:18 50:3</p> <p><b>impartiality</b> <sup>[1]</sup> 30:6</p> <p><b>impinge</b> <sup>[1]</sup> 20:3</p> <p><b>import</b> <sup>[2]</sup> 40:25 43:3</p> <p><b>importance</b> <sup>[4]</sup> 41:7 42:8,12,12</p> <p><b>important</b> <sup>[17]</sup> 4:5 9:5 10:12 12:22 13:3 14:19,24 16:4,5 25:9,10 26:4 29:16 32:3 37:1 40:1 52:18</p> <p><b>importantly</b> <sup>[1]</sup> 5:5</p> <p><b>impose</b> <sup>[2]</sup> 16:8 29:24</p> <p><b>imposing</b> <sup>[1]</sup> 22:9</p> <p><b>included</b> <sup>[2]</sup> 36:12 39:16</p> <p><b>incompatibility</b> <sup>[1]</sup> 39:17</p> <p><b>independence</b> <sup>[16]</sup> 4:7 14:10,13,24 15:5 17:1,6 19:25 20:4 30:7 31:3,6,22 59:4,6,11</p> <p><b>independent</b> <sup>[2]</sup> 14:21 15:3</p> <p><b>independently</b> <sup>[2]</sup> 23:12 60:5</p> <p><b>indicates</b> <sup>[1]</sup> 14:19</p> <p><b>individual</b> <sup>[3]</sup> 11:21 29:25 52:21</p> <p><b>individuals</b> <sup>[2]</sup> 16:9 22:11</p> <p><b>Inferior</b> <sup>[6]</sup> 3:19,21,23 4:3 55:13 64:23</p> <p><b>inhibit</b> <sup>[1]</sup> 21:23</p> <p><b>initial</b> <sup>[7]</sup> 5:21 8:18,23 9:9 51:11 55:6 57:25</p> <p><b>initially</b> <sup>[1]</sup> 53:15</p> <p><b>initiative</b> <sup>[1]</sup> 58:6</p> <p><b>inspections</b> <sup>[1]</sup> 41:9</p> <p><b>inspectors</b> <sup>[1]</sup> 24:10</p> <p><b>instance</b> <sup>[1]</sup> 27:7</p> <p><b>instances</b> <sup>[1]</sup> 60:6</p> <p><b>instead</b> <sup>[2]</sup> 52:14 53:5</p>	<p style="text-align: center;"><b>J</b></p> <p><b>JEFFREY</b> <sup>[3]</sup> 1:18 2:6 15:16</p> <p><b>job</b> <sup>[1]</sup> 31:10</p> <p><b>jobs</b> <sup>[1]</sup> 41:6</p> <p><b>judge</b> <sup>[3]</sup> 20:20 31:19 54:17</p> <p><b>judge-like</b> <sup>[1]</sup> 10:8</p> <p><b>judges</b> <sup>[2]</sup> 4:10,11 7:1,2 10:11 14:25 35:24 36:2 37:22 38:5,6,11,11,13,14,15 40:14,14 50:3 64:24 65:3</p> <p><b>judgment</b> <sup>[6]</sup> 1:23 2:13 6:11 34:22 69:10,10</p> <p><b>judgments</b> <sup>[2]</sup> 6:2 50:5</p> <p><b>Judicial</b> <sup>[2]</sup> 51:15 62:15</p> <p><b>Judiciary</b> <sup>[2]</sup> 55:12 63:13</p> <p><b>juger</b> <sup>[1]</sup> 4:12</p> <p><b>Justice</b> <sup>[154]</sup> 1:19 3:3,11,19,22 4:20 6:3,18,25 8:3,11 9:12,16 10:25 11:1,2,14,17,23 12:9,21 13:3,15 14:9,17,18,20 15:13,19 16:13,14 17:22,25 18:3,7,10,16 19:6,17,18 20:7,11 21:1,16,18,22 22:6,17,21,24 23:1,22 24:1,22 25:1,17,19 26:17 27:2,5,9,13,24 28:2,4,5,8,25 29:3 30:2,3,4,22 31:1,23 32:15,23 33:12,13,15 34:16,17,23 35:10 36:21,24 37:25 38:3 39:7,10,11,24 40:2,12 41:1,4 42:3,6,16 43:4 44:2,8,14 45:2,12,16,20 47:4,17,23 48:3,5,6,13,20 49:16,17 50:7,8,10,12,17 51:5 52:15,20 53:12 54:19 56:12,17,23 57:11,14 58:10,16,19 59:1,2,21 60:16 61:19,20 62:5 64:9,</p>	<p style="text-align: center;"><b>L</b></p> <p><b>L.A</b> <sup>[1]</sup> 67:1</p> <p><b>largely</b> <sup>[1]</sup> 21:6</p> <p><b>last</b> <sup>[1]</sup> 21:19</p> <p><b>Laughter</b> <sup>[4]</sup> 17:21 18:15,23 21:21</p> <p><b>laundry</b> <sup>[1]</sup> 35:15</p> <p><b>law</b> <sup>[9]</sup> 16:1 25:6 27:17 29:18 54:18 55:4,25 56:9 59:25</p> <p><b>lawful</b> <sup>[1]</sup> 46:10</p> <p><b>least</b> <sup>[5]</sup> 29:10 51:4,14 56:6 62:14</p> <p><b>left</b> <sup>[1]</sup> 11:2</p> <p><b>Legal</b> <sup>[8]</sup> 25:21 28:16 36:14 42:13 45:11 55:7 62:24 63:4</p> <p><b>legally</b> <sup>[1]</sup> 19:10</p> <p><b>Legi-tech</b> <sup>[1]</sup> 34:4</p> <p><b>lengthy</b> <sup>[1]</sup> 26:12</p> <p><b>levels</b> <sup>[3]</sup> 5:17 16:25 60:14</p> <p><b>liability</b> <sup>[4]</sup> 16:8 22:10,10 29:25</p> <p><b>liberty</b> <sup>[2]</sup> 13:1 14:16</p> <p><b>limit</b> <sup>[1]</sup> 20:9</p> <p><b>limitation</b> <sup>[1]</sup> 66:7</p> <p><b>limited</b> <sup>[2]</sup> 9:17 21:8</p> <p><b>line</b> <sup>[11]</sup> 8:4,8 13:1 25:22 26:1 27:16,17 29:14 32:11,20 54:19</p> <p><b>lines</b> <sup>[2]</sup> 15:8 67:1</p> <p><b>list</b> <sup>[3]</sup> 16:17 35:15 38:4</p> <p><b>listed</b> <sup>[2]</sup> 18:12 45:3</p> <p><b>listen</b> <sup>[1]</sup> 61:21</p> <p><b>lists</b> <sup>[1]</sup> 68:22</p> <p><b>litigating</b> <sup>[1]</sup> 48:15</p> <p><b>litigation</b> <sup>[1]</sup> 44:23</p> <p><b>little</b> <sup>[5]</sup> 13:16,18 19:25 24:11 45:21</p> <p><b>long</b> <sup>[1]</sup> 35:15</p> <p><b>long-standing</b> <sup>[1]</sup> 53:18</p> <p><b>look</b> <sup>[12]</sup> 17:14 19:13 22:15 24:25 25:5 32:2,6 45:4,6,6 57:23 60:10</p> <p><b>looked</b> <sup>[1]</sup> 68:24</p> <p><b>looking</b> <sup>[4]</sup> 6:10 17:22 18:11 19:14</p> <p><b>lot</b> <sup>[5]</sup> 16:14,15 38:13 56:24 62:1</p> <p><b>lots</b> <sup>[2]</sup> 42:10 60:19</p> <p><b>LUCIA</b> <sup>[2]</sup> 1:3 3:5</p> <p style="text-align: center;"><b>M</b></p> <p><b>made</b> <sup>[1]</sup> 53:15</p> <p><b>main</b> <sup>[2]</sup> 51:15 62:15</p> <p><b>major</b> <sup>[1]</sup> 60:5</p>

## Official

<p><b>majority</b> <sup>[1]</sup> 12:17  <b>manipulable</b> <sup>[3]</sup> 23:25 24:2 26:9  <b>manner</b> <sup>[1]</sup> 31:12  <b>many</b> <sup>[2]</sup> 7:1 16:13  <b>map</b> <sup>[1]</sup> 66:5  <b>MARK</b> <sup>[5]</sup> 1:16 2:3,15 3:8 64:12  <b>marks</b> <sup>[1]</sup> 4:3  <b>marshal</b> <sup>[1]</sup> 24:8 27:22 55:12,13, 19 63:14,14,16,17,18,19  <b>marshal's</b> <sup>[1]</sup> 55:20  <b>Marshall</b> <sup>[1]</sup> 50:2  <b>marshals</b> <sup>[2]</sup> 27:15 55:9  <b>matter</b> <sup>[6]</sup> 1:11 5:24 17:10 39:2 49:2,13  <b>matters</b> <sup>[4]</sup> 7:14 16:4 25:9 26:4  <b>McNulty</b> <sup>[1]</sup> 46:22  <b>mean</b> <sup>[14]</sup> 12:11 13:18 20:6,8,21 26:18,20 27:5 41:7 43:4 45:22 49:2 50:23 59:3  <b>meaning</b> <sup>[1]</sup> 62:18  <b>meaningful</b> <sup>[2]</sup> 16:11 30:25  <b>means</b> <sup>[7]</sup> 22:4 23:4 46:15 49:10 65:9,10 67:12  <b>Mechem</b> <sup>[1]</sup> 34:5  <b>meet</b> <sup>[2]</sup> 65:6,7  <b>member</b> <sup>[2]</sup> 10:16,21  <b>members</b> <sup>[3]</sup> 10:19 25:14 66:11  <b>memo</b> <sup>[3]</sup> 26:12 46:22,22  <b>mentioned</b> <sup>[1]</sup> 55:9  <b>mentions</b> <sup>[1]</sup> 65:5  <b>mere</b> <sup>[1]</sup> 50:22  <b>merely</b> <sup>[1]</sup> 7:4  <b>merit</b> <sup>[2]</sup> 16:24 21:25  <b>merit-based</b> <sup>[3]</sup> 21:24,25 42:1  <b>mess</b> <sup>[1]</sup> 17:11  <b>methodically</b> <sup>[1]</sup> 41:21  <b>METLISTSKY</b> <sup>[1]</sup> 57:12  <b>METLITSKY</b> <sup>[54]</sup> 1:21 2:10 34:19, 20,23 35:19 36:22,25 37:13 38:2, 3,12 39:9,13,25 40:11,15 41:2 42:2,5,24 43:16 44:6,15 45:8 46:8 47:10,22,25 48:9,19,21 49:23 50:8,12, 25 51:8 52:19 53:9 55:3 56:15,22 57:1,16 58:12,18,22 59:9 60:15, 18 61:20 62:4,11 69:8  <b>Metlitsky's</b> <sup>[1]</sup> 64:18  <b>middle</b> <sup>[1]</sup> 60:9  <b>midst</b> <sup>[1]</sup> 68:19  <b>might</b> <sup>[6]</sup> 17:16 35:12 41:18 48:1 52:7,8  <b>military</b> <sup>[1]</sup> 65:3  <b>mind</b> <sup>[1]</sup> 37:18  <b>minutes</b> <sup>[1]</sup> 64:11  <b>misconduct</b> <sup>[1]</sup> 52:24  <b>misleading</b> <sup>[1]</sup> 6:4  <b>missing</b> <sup>[1]</sup> 47:5  <b>mixed</b> <sup>[1]</sup> 24:7  <b>model</b> <sup>[2]</sup> 8:17 30:13  <b>moderately</b> <sup>[1]</sup> 21:20  <b>modes</b> <sup>[1]</sup> 8:18  <b>moment</b> <sup>[2]</sup> 17:19 33:16  <b>Monday</b> <sup>[1]</sup> 1:10  <b>Montesquieu</b> <sup>[1]</sup> 4:12  <b>morning</b> <sup>[1]</sup> 3:4</p>	<p><b>most</b> <sup>[2]</sup> 6:25 45:24  <b>mostly</b> <sup>[1]</sup> 38:23  <b>Mouat</b> <sup>[1]</sup> 28:14  <b>moves</b> <sup>[1]</sup> 26:14  <b>moving</b> <sup>[1]</sup> 30:13  <b>MS</b> <sup>[1]</sup> 19:12  <b>MSPB</b> <sup>[1]</sup> 20:18  <b>much</b> <sup>[4]</sup> 16:20 17:10 37:15 38:7  <b>must</b> <sup>[2]</sup> 4:16 5:13</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>name</b> <sup>[17]</sup> 7:8,12,13 26:8 35:4 41:3 43:13,14 44:1 46:23 55:20 63:18, 22,23 64:21 65:17,20  <b>narrow</b> <sup>[1]</sup> 34:25  <b>nature</b> <sup>[1]</sup> 41:6  <b>necessarily</b> <sup>[1]</sup> 37:6  <b>necessary</b> <sup>[1]</sup> 21:15  <b>need</b> <sup>[6]</sup> 19:19 21:14 33:20 56:1 62:12 64:3  <b>never</b> <sup>[9]</sup> 36:11 49:19 56:14 64:25 65:4,4,5 67:6 68:13  <b>New</b> <sup>[6]</sup> 1:21,21 5:19 17:14 63:18 66:23  <b>next</b> <sup>[1]</sup> 42:4  <b>nine</b> <sup>[1]</sup> 38:7  <b>nobody</b> <sup>[1]</sup> 6:8  <b>Nobody's</b> <sup>[1]</sup> 6:12  <b>non-Article</b> <sup>[1]</sup> 50:3  <b>non-binding</b> <sup>[1]</sup> 39:20  <b>non-officers</b> <sup>[1]</sup> 55:14  <b>normally</b> <sup>[1]</sup> 37:21  <b>note</b> <sup>[2]</sup> 4:5 7:10  <b>notice</b> <sup>[4]</sup> 6:21,21 7:11 51:6  <b>novo</b> <sup>[1]</sup> 32:20  <b>nuclear</b> <sup>[1]</sup> 41:9  <b>nullity</b> <sup>[1]</sup> 67:3  <b>number</b> <sup>[1]</sup> 42:21  <b>numbers</b> <sup>[1]</sup> 68:14</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>oaths</b> <sup>[1]</sup> 39:4  <b>obligations</b> <sup>[1]</sup> 33:10  <b>obscure</b> <sup>[1]</sup> 10:1  <b>obscurity</b> <sup>[1]</sup> 10:4  <b>obviously</b> <sup>[2]</sup> 18:25 37:15  <b>occupies</b> <sup>[1]</sup> 15:25  <b>odd</b> <sup>[2]</sup> 13:16 45:21  <b>offer</b> <sup>[1]</sup> 61:22  <b>office</b> <sup>[38]</sup> 5:11 10:23 24:19,22 25:6,21 28:7,16 29:15,20,20 35:5 36:13 39:14,15,18 40:24 43:13,15,24 44:1,18 45:5 46:11,12,23 47:8 48:16,23 55:2,12,20 56:3 62:24 63:9, 23,24 66:15  <b>officer</b> <sup>[56]</sup> 4:18 5:13,16 7:6 12:23 13:7,8 15:25 17:15 21:12 24:9 26:3,5 27:11 28:24 30:1 35:2,8,8,11 36:8 38:17 39:11 40:1,19 44:4 45:1,23,23 46:7 47:2,12,13,19 48:18 49:21 51:18,18 52:21 53:20 55:13 56:14 59:5,19,24 61:8,14 62:16, 21,21 63:7,12 64:19,22 66:24 67:2</p>	<p><b>officers</b> <sup>[29]</sup> 3:14,20,21,23,24,25 4:16 6:17 8:21 10:18,20 18:2 23:6 24:10,14 25:23 27:18 29:5 33:10 36:2 48:12 52:17 56:19 57:2 60:7, 22 61:12,16 64:24  <b>offices</b> <sup>[3]</sup> 35:2 36:19 49:3  <b>official</b> <sup>[4]</sup> 49:20,24 50:24 64:17  <b>officials</b> <sup>[2]</sup> 42:21 66:8  <b>Oil</b> <sup>[1]</sup> 67:17  <b>OIP</b> <sup>[1]</sup> 67:15  <b>okay</b> <sup>[4]</sup> 25:7 43:4,10 44:2  <b>OLC</b> <sup>[4]</sup> 25:24 26:2,2,13  <b>on-the-record</b> <sup>[2]</sup> 10:14 13:11  <b>once</b> <sup>[2]</sup> 19:11,11  <b>one</b> <sup>[32]</sup> 4:17 5:18 9:24 15:22 16:2 20:25 21:14,19 22:7 23:23 25:8 27:3,7 31:6,7 34:12 35:22 36:12 38:8 41:23 42:22 45:15 48:14 52:15,18 57:2 58:14,14,17 59:13 60:22 63:15  <b>ones</b> <sup>[2]</sup> 6:14 10:7  <b>only</b> <sup>[16]</sup> 6:6 8:7 9:8 10:15 13:6 14:7 20:24 22:8 25:12,13 29:22 36:8, 12 47:8,14 63:23  <b>opacity</b> <sup>[1]</sup> 10:4  <b>open</b> <sup>[2]</sup> 41:11,17  <b>operates</b> <sup>[1]</sup> 53:6  <b>operative</b> <sup>[1]</sup> 4:22  <b>opinion</b> <sup>[5]</sup> 26:2 37:3,4 51:16 62:22  <b>opinions</b> <sup>[2]</sup> 26:13 65:3  <b>opposite</b> <sup>[1]</sup> 62:7  <b>oral</b> <sup>[7]</sup> 1:11 2:2,5,9 3:8 15:16 34:20  <b>order</b> <sup>[20]</sup> 4:23 5:1 7:2,4,11,17,19 21:9 33:18,22 41:9,11 51:2 52:5 58:6,8,21 65:13,15 68:22  <b>orders</b> <sup>[7]</sup> 36:6 37:19,20,21,23 51:9,10  <b>ordinary</b> <sup>[1]</sup> 4:13  <b>organic</b> <sup>[5]</sup> 11:9,13 13:9 60:24,24  <b>OSHA</b> <sup>[1]</sup> 41:10  <b>other</b> <sup>[26]</sup> 9:15 11:1 13:13 14:1 16:5 21:15 23:7,24 24:14 25:10 26:5, 13 29:21 34:25 35:17 41:24 46:2 54:3,25 58:9 59:7,15 60:8 61:2 68:15 69:2  <b>others</b> <sup>[4]</sup> 12:1 24:4 61:22 65:22  <b>otherwise</b> <sup>[1]</sup> 63:5  <b>out</b> <sup>[13]</sup> 6:12 7:13 11:2 32:7 35:11 39:23 41:15 43:14 45:5 46:2 66:4, 12 67:12  <b>outside</b> <sup>[2]</sup> 11:8 23:4  <b>over</b> <sup>[7]</sup> 3:13 25:8 28:21 31:8 36:3 39:22 66:5  <b>oversees</b> <sup>[3]</sup> 7:20,20,21  <b>oversight</b> <sup>[2]</sup> 28:21 46:19  <b>overtun</b> <sup>[1]</sup> 32:16  <b>own</b> <sup>[11]</sup> 21:8 26:8 35:5 36:5 41:3 44:18 58:5 63:22 64:21 65:17,20</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>package</b> <sup>[1]</sup> 9:2  <b>PAGE</b> <sup>[2]</sup> 2:2 22:3</p>	<p><b>part</b> <sup>[8]</sup> 3:24 26:9 31:15 37:9 40:17 62:12 63:1,20  <b>parte</b> <sup>[1]</sup> 59:12  <b>participate</b> <sup>[1]</sup> 15:10  <b>particular</b> <sup>[8]</sup> 35:16,16 37:23 42:14 46:6,9,10 56:3  <b>particularly</b> <sup>[1]</sup> 3:15  <b>parties</b> <sup>[7]</sup> 4:15 33:9 35:4 36:10 42:15 49:25 64:21  <b>parties'</b> <sup>[1]</sup> 9:4  <b>parts</b> <sup>[1]</sup> 60:12  <b>pay</b> <sup>[3]</sup> 22:13 30:18 31:7  <b>PCAOB</b> <sup>[5]</sup> 16:21 17:8 18:19 19:5 22:4  <b>people</b> <sup>[12]</sup> 6:8 10:15 19:16 20:22 24:3 41:8,10,14 46:2 52:23 60:19, 21  <b>percent</b> <sup>[5]</sup> 5:25 6:7 49:12 53:14 63:8  <b>perception</b> <sup>[2]</sup> 14:20 30:5  <b>perfectly</b> <sup>[1]</sup> 66:5  <b>perform</b> <sup>[1]</sup> 10:8  <b>performance</b> <sup>[1]</sup> 30:16  <b>performed</b> <sup>[2]</sup> 25:12 29:23  <b>perhaps</b> <sup>[1]</sup> 35:15  <b>period</b> <sup>[2]</sup> 5:3 68:1  <b>permits</b> <sup>[1]</sup> 13:9  <b>permitted</b> <sup>[1]</sup> 8:15  <b>PERRY</b> <sup>[32]</sup> 1:16 2:3,15 3:7,8,10, 22 4:24 6:18 7:9 8:10,14 9:16 11:5,16,22 12:9,21 13:2 14:9,23 19:24 30:5 49:18 64:11,12,14 67:24 68:3,5,21 69:4  <b>person</b> <sup>[20]</sup> 6:24 10:22 12:23 13:1 31:9 39:22 43:17,21 44:4,11,24 46:6,10,16,18 47:2 48:17 49:7 53:20 63:5  <b>persuasive</b> <sup>[1]</sup> 34:15  <b>petition</b> <sup>[3]</sup> 6:5 58:5 65:18  <b>Petitioners</b> <sup>[11]</sup> 1:4,17,20 2:4,8,16 3:9 15:18 33:24 34:1 64:13  <b>petitions</b> <sup>[2]</sup> 6:7 51:25  <b>pick</b> <sup>[2]</sup> 32:9 54:23  <b>picks</b> <sup>[1]</sup> 23:25  <b>place</b> <sup>[3]</sup> 6:22 57:5 63:10  <b>plants</b> <sup>[1]</sup> 41:10  <b>play</b> <sup>[1]</sup> 17:16  <b>please</b> <sup>[4]</sup> 3:11 15:20 34:24 68:4  <b>penary</b> <sup>[6]</sup> 52:7,13 54:6,8 56:8 58:4  <b>Point</b> <sup>[4]</sup> 17:4,10 21:19 26:24  <b>pointing</b> <sup>[1]</sup> 6:12  <b>points</b> <sup>[1]</sup> 64:16  <b>policies</b> <sup>[1]</sup> 20:13  <b>policy</b> <sup>[2]</sup> 19:8 27:2  <b>policy-making</b> <sup>[2]</sup> 59:14 60:5  <b>political</b> <sup>[6]</sup> 13:24 14:4,6 31:13,18 53:7  <b>portion</b> <sup>[1]</sup> 62:17  <b>position</b> <sup>[4]</sup> 16:1 25:22 33:17 36:11  <b>positions</b> <sup>[1]</sup> 41:22  <b>possibility</b> <sup>[1]</sup> 50:22  <b>potentially</b> <sup>[1]</sup> 42:18</p>
---	---	---	--

<p><b>power</b> <sup>[46]</sup> 3:13 5:6,14 6:20 7:5 25:9,12 26:4,17,18 29:8,9,12,21 31:8 32:14,16 35:3,17,20 36:7,9 37:2,8,12 38:17,24 39:3,5,6 40:19,22,23 41:9 42:20,22,25 43:2,6,10,11 44:18 46:2 47:3 56:20 59:17</p> <p><b>powers</b> <sup>[20]</sup> 4:10,13,17 8:22 9:2,3,3,4 13:6 16:7 25:5,7 27:20 39:20,21,21 45:15,18 47:20 66:4</p> <p><b>practice</b> <sup>[5]</sup> 21:6 24:18 28:10 45:7 64:1</p> <p><b>practices</b> <sup>[1]</sup> 24:6</p> <p><b>precedent</b> <sup>[1]</sup> 17:12</p> <p><b>precedents</b> <sup>[1]</sup> 3:15</p> <p><b>precise</b> <sup>[1]</sup> 44:19</p> <p><b>precisely</b> <sup>[1]</sup> 51:19</p> <p><b>precondition</b> <sup>[1]</sup> 43:3</p> <p><b>preconditions</b> <sup>[1]</sup> 58:13</p> <p><b>preferred</b> <sup>[1]</sup> 20:19</p> <p><b>premise</b> <sup>[1]</sup> 22:2</p> <p><b>preparation</b> <sup>[1]</sup> 8:2</p> <p><b>prepare</b> <sup>[1]</sup> 57:25</p> <p><b>prepared</b> <sup>[1]</sup> 7:3</p> <p><b>present</b> <sup>[1]</sup> 24:20</p> <p><b>presented</b> <sup>[1]</sup> 28:13</p> <p><b>preservation</b> <sup>[1]</sup> 68:6</p> <p><b>preside</b> <sup>[2]</sup> 3:13 36:3</p> <p><b>president</b> <sup>[5]</sup> 43:22 46:14 52:17 53:3 64:4</p> <p><b>presiding</b> <sup>[1]</sup> 39:22</p> <p><b>pressures</b> <sup>[1]</sup> 14:4</p> <p><b>Presumably</b> <sup>[2]</sup> 68:3,5</p> <p><b>pretty</b> <sup>[1]</sup> 38:7</p> <p><b>prevail</b> <sup>[1]</sup> 9:13</p> <p><b>principal</b> <sup>[5]</sup> 3:24,25 34:8 64:19,22</p> <p><b>principle</b> <sup>[1]</sup> 63:24</p> <p><b>principles</b> <sup>[2]</sup> 52:16 68:6</p> <p><b>prior</b> <sup>[1]</sup> 66:25</p> <p><b>private</b> <sup>[10]</sup> 4:14 12:12 16:9 22:10,11 29:25 35:4 42:15 50:4 64:21</p> <p><b>probably</b> <sup>[3]</sup> 41:8,10,14</p> <p><b>problem</b> <sup>[13]</sup> 13:22,24 14:7 20:15,24 23:21 33:23,25 34:1,12 41:1,4 50:15</p> <p><b>problems</b> <sup>[1]</sup> 42:10</p> <p><b>proceeding</b> <sup>[3]</sup> 33:3 66:19,23</p> <p><b>proceedings</b> <sup>[4]</sup> 7:18 9:5,18 13:13</p> <p><b>process</b> <sup>[7]</sup> 8:25 13:14,20 14:12 15:9 30:18 33:4</p> <p><b>production</b> <sup>[1]</sup> 39:1</p> <p><b>promote</b> <sup>[2]</sup> 10:3 59:8</p> <p><b>proper</b> <sup>[2]</sup> 30:8,11</p> <p><b>properly</b> <sup>[1]</sup> 10:7</p> <p><b>propose</b> <sup>[1]</sup> 17:2</p> <p><b>proposed</b> <sup>[2]</sup> 23:9 35:13</p> <p><b>proposing</b> <sup>[1]</sup> 37:16</p> <p><b>prosecute</b> <sup>[1]</sup> 46:21</p> <p><b>prosecutions</b> <sup>[1]</sup> 28:22</p> <p><b>Protection</b> <sup>[2]</sup> 19:12,15</p> <p><b>provide</b> <sup>[1]</sup> 18:18</p> <p><b>provided</b> <sup>[1]</sup> 57:25</p> <p><b>provides</b> <sup>[1]</sup> 8:17</p>	<p><b>provision</b> <sup>[1]</sup> 8:4</p> <p><b>puissance</b> <sup>[1]</sup> 4:11</p> <p><b>purely</b> <sup>[1]</sup> 9:6</p> <p><b>purporting</b> <sup>[1]</sup> 33:18</p> <p><b>purposes</b> <sup>[1]</sup> 12:22</p> <p><b>put</b> <sup>[3]</sup> 4:12 68:9,14</p> <p><b>putting</b> <sup>[2]</sup> 14:5 56:24</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>quantify</b> <sup>[1]</sup> 24:12</p> <p><b>question</b> <sup>[21]</sup> 10:6 14:18 28:12 30:4,20 31:21 33:14 40:21 43:1,9 46:9 47:10,13,18 52:10 53:10 55:6 57:17,21 59:18 63:3</p> <p><b>questions</b> <sup>[3]</sup> 11:11 34:13 64:8</p> <p><b>quite</b> <sup>[3]</sup> 4:18 22:3 42:19</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>random</b> <sup>[1]</sup> 10:21</p> <p><b>range</b> <sup>[1]</sup> 60:9</p> <p><b>ratchet</b> <sup>[1]</sup> 31:20</p> <p><b>rather</b> <sup>[2]</sup> 7:6 24:7</p> <p><b>ratification</b> <sup>[1]</sup> 68:22</p> <p><b>ratified</b> <sup>[1]</sup> 68:18</p> <p><b>ratifies</b> <sup>[1]</sup> 34:10</p> <p><b>ratify</b> <sup>[2]</sup> 33:18 34:10</p> <p><b>RAYMOND</b> <sup>[1]</sup> 1:3</p> <p><b>read</b> <sup>[6]</sup> 16:22 19:3,6 37:9,14,16</p> <p><b>real</b> <sup>[3]</sup> 13:19 65:24,25</p> <p><b>really</b> <sup>[15]</sup> 18:20 24:5,16 25:10,15 26:14 27:20 28:13 29:7 36:25 40:22 51:6 62:9,13 63:1</p> <p><b>reason</b> <sup>[6]</sup> 16:19 39:19 40:3 43:21 44:18 56:18</p> <p><b>reasonably</b> <sup>[2]</sup> 52:2,11</p> <p><b>reasons</b> <sup>[4]</sup> 34:12 53:12,16 57:2</p> <p><b>REBUTTAL</b> <sup>[2]</sup> 2:14 64:12</p> <p><b>receive</b> <sup>[1]</sup> 39:6</p> <p><b>recognize</b> <sup>[1]</sup> 6:20</p> <p><b>recognized</b> <sup>[1]</sup> 4:19</p> <p><b>recommend</b> <sup>[1]</sup> 8:9</p> <p><b>recommendatory</b> <sup>[2]</sup> 9:7 33:3</p> <p><b>recommended</b> <sup>[2]</sup> 8:19,23</p> <p><b>recommends</b> <sup>[1]</sup> 8:5</p> <p><b>record</b> <sup>[4]</sup> 19:11 33:2,5 66:8</p> <p><b>refer</b> <sup>[1]</sup> 61:18</p> <p><b>references</b> <sup>[1]</sup> 61:17</p> <p><b>referred</b> <sup>[1]</sup> 61:16</p> <p><b>refinement</b> <sup>[1]</sup> 26:1</p> <p><b>reflects</b> <sup>[1]</sup> 63:24</p> <p><b>regulated</b> <sup>[1]</sup> 14:25</p> <p><b>regulation</b> <sup>[8]</sup> 4:25 5:4,20 9:4 28:9,21 32:18 45:6</p> <p><b>regulations</b> <sup>[1]</sup> 28:16</p> <p><b>rejected</b> <sup>[1]</sup> 64:23</p> <p><b>related</b> <sup>[2]</sup> 7:16 13:14</p> <p><b>relates</b> <sup>[1]</sup> 39:2</p> <p><b>relationship</b> <sup>[2]</sup> 4:2 63:11</p> <p><b>relevant</b> <sup>[2]</sup> 43:1 48:23</p> <p><b>relief</b> <sup>[1]</sup> 67:5</p> <p><b>remainder</b> <sup>[1]</sup> 15:11</p> <p><b>remedial</b> <sup>[2]</sup> 33:18,21</p> <p><b>remedy</b> <sup>[1]</sup> 66:18</p> <p><b>removal</b> <sup>[6]</sup> 19:1 21:3,7 22:22 31:8 60:14</p> <p><b>remove</b> <sup>[2]</sup> 20:12 55:22</p> <p><b>renders</b> <sup>[1]</sup> 29:25</p> <p><b>repeat</b> <sup>[1]</sup> 33:23</p> <p><b>repeats</b> <sup>[1]</sup> 33:25</p> <p><b>reply</b> <sup>[3]</sup> 17:4 34:3 49:19</p> <p><b>report</b> <sup>[1]</sup> 40:4</p> <p><b>require</b> <sup>[1]</sup> 25:15</p> <p><b>required</b> <sup>[2]</sup> 19:10 65:23</p> <p><b>requirement</b> <sup>[2]</sup> 26:8 47:9</p> <p><b>requirements</b> <sup>[1]</sup> 7:15</p> <p><b>requires</b> <sup>[4]</sup> 15:7 17:2 53:18 66:23</p> <p><b>requiring</b> <sup>[1]</sup> 38:25</p> <p><b>research</b> <sup>[1]</sup> 59:22</p> <p><b>reserve</b> <sup>[1]</sup> 15:11</p> <p><b>respect</b> <sup>[1]</sup> 19:21</p> <p><b>respectfully</b> <sup>[1]</sup> 53:11</p> <p><b>respects</b> <sup>[1]</sup> 41:17</p> <p><b>respond</b> <sup>[1]</sup> 37:5</p> <p><b>Respondent</b> <sup>[4]</sup> 1:7,20 2:7 15:17</p> <p><b>responsibility</b> <sup>[3]</sup> 14:14 54:7 69:12</p> <p><b>responsible</b> <sup>[3]</sup> 45:1 52:3,24</p> <p><b>rest</b> <sup>[1]</sup> 22:14</p> <p><b>restatements</b> <sup>[1]</sup> 34:4</p> <p><b>restrictions</b> <sup>[1]</sup> 21:7</p> <p><b>rests</b> <sup>[2]</sup> 48:22 59:17</p> <p><b>result</b> <sup>[1]</sup> 18:13</p> <p><b>reversed</b> <sup>[1]</sup> 26:18</p> <p><b>review</b> <sup>[36]</sup> 5:3,8,13,21 6:1,5,6 9:11 15:1 26:21,22,23,25 27:3 32:8,24 33:6,7 50:19,20,23 51:7 52:7,8,13,14 54:6,8 56:14,21 58:4 65:9,10,14 67:18 68:13</p> <p><b>reviewed</b> <sup>[5]</sup> 5:3 32:19 33:8 43:8 51:24</p> <p><b>reviewing</b> <sup>[4]</sup> 15:8 54:25 65:16 67:10</p> <p><b>rid</b> <sup>[1]</sup> 17:3</p> <p><b>rights</b> <sup>[1]</sup> 50:4</p> <p><b>ROBERTS</b> <sup>[24]</sup> 3:3 4:20 15:13 16:13 33:12 34:17 35:10 39:7,10 49:17 50:7,10,17 51:5 52:15,20 56:12,17,23 59:2 61:19 64:9 68:4 69:6</p> <p><b>role</b> <sup>[3]</sup> 17:17 20:17 60:1</p> <p><b>rule</b> <sup>[10]</sup> 19:9 20:15,16,16 35:23 36:4 37:15 51:3 53:18,21</p> <p><b>rules</b> <sup>[2]</sup> 28:9 59:12</p> <p><b>Ryder</b> <sup>[3]</sup> 66:2,22 67:3</p>	<p>15,19 67:8</p> <p><b>scenario</b> <sup>[2]</sup> 8:15 65:14</p> <p><b>scheme</b> <sup>[1]</sup> 48:10</p> <p><b>Schor</b> <sup>[1]</sup> 68:9</p> <p><b>scratch</b> <sup>[1]</sup> 67:14</p> <p><b>SEC</b> <sup>[16]</sup> 3:12 4:1,7 6:10,17 7:8 8:16 9:8 11:13,19 32:16 33:21 54:22,22 65:7 68:1</p> <p><b>SEC's</b> <sup>[1]</sup> 33:18</p> <p><b>second</b> <sup>[11]</sup> 35:22 37:3 40:17,17 43:3 53:22 57:6 58:14 63:1,20 65:22</p> <p><b>secondly</b> <sup>[1]</sup> 23:11</p> <p><b>Secretary</b> <sup>[1]</sup> 61:5</p> <p><b>Section</b> <sup>[11]</sup> 5:7 10:10,11 20:1 53:19 55:11,21 58:1 63:12,15 67:8</p> <p><b>Sections</b> <sup>[1]</sup> 9:18</p> <p><b>SECURITIES</b> <sup>[2]</sup> 1:6 3:5</p> <p><b>Security</b> <sup>[8]</sup> 9:15,21 11:4,6,10,24 12:4,16</p> <p><b>see</b> <sup>[8]</sup> 6:11 13:15 22:5 35:17 41:13 60:10 62:9 63:11</p> <p><b>seek</b> <sup>[1]</sup> 50:19</p> <p><b>seeks</b> <sup>[1]</sup> 12:19</p> <p><b>seem</b> <sup>[3]</sup> 35:13 56:24 59:4</p> <p><b>seems</b> <sup>[13]</sup> 17:5 23:8,13 24:11 40:9,12 42:17,18 46:5 47:6 59:2 61:23 62:5</p> <p><b>Senate</b> <sup>[3]</sup> 43:23 46:15 64:5</p> <p><b>sense</b> <sup>[2]</sup> 23:10 37:10</p> <p><b>sentence</b> <sup>[1]</sup> 22:3</p> <p><b>separate</b> <sup>[1]</sup> 40:12</p> <p><b>servant</b> <sup>[1]</sup> 17:15</p> <p><b>servants</b> <sup>[1]</sup> 16:15</p> <p><b>service</b> <sup>[10]</sup> 16:25 21:24 22:8 41:7,8,22 42:1 65:24 66:1,12</p> <p><b>serving</b> <sup>[2]</sup> 23:6 24:4</p> <p><b>set</b> <sup>[8]</sup> 36:17,19 48:10 53:24 60:2 67:10</p> <p><b>sets</b> <sup>[1]</sup> 21:11</p> <p><b>settlement</b> <sup>[2]</sup> 7:25 8:1</p> <p><b>sever</b> <sup>[1]</sup> 21:10</p> <p><b>SG's</b> <sup>[1]</sup> 18:4</p> <p><b>shall</b> <sup>[2]</sup> 59:25 67:10</p> <p><b>shapes</b> <sup>[1]</sup> 33:2</p> <p><b>share</b> <sup>[1]</sup> 38:13</p> <p><b>shipmasters</b> <sup>[1]</sup> 24:10</p> <p><b>show</b> <sup>[4]</sup> 6:8 7:2,5,12</p> <p><b>showed</b> <sup>[1]</sup> 13:21</p> <p><b>shows</b> <sup>[1]</sup> 15:7</p> <p><b>side</b> <sup>[1]</sup> 21:5</p> <p><b>sign</b> <sup>[1]</sup> 7:2</p> <p><b>signature</b> <sup>[1]</sup> 65:19</p> <p><b>significant</b> <sup>[9]</sup> 16:2 23:2,3,14 25:8,16 26:15 31:15 60:12</p> <p><b>similar</b> <sup>[3]</sup> 24:4 35:14 38:23</p> <p><b>similarly-situated</b> <sup>[1]</sup> 68:15</p> <p><b>simply</b> <sup>[1]</sup> 4:14</p> <p><b>since</b> <sup>[7]</sup> 41:25 49:11 51:3,14 62:14,23 64:5</p> <p><b>single</b> <sup>[1]</sup> 53:14</p> <p><b>situation</b> <sup>[5]</sup> 14:1 23:11,13 39:12 41:13</p> <p><b>sky</b> <sup>[1]</sup> 34:14</p>
	<hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>salary</b> <sup>[1]</sup> 59:11</p> <p><b>same</b> <sup>[7]</sup> 8:5 31:2 36:23 38:8,14 47:24 55:18</p> <p><b>sanction</b> <sup>[7]</sup> 35:7 51:3,13,18 53:17,19 62:20</p> <p><b>sanctions</b> <sup>[2]</sup> 16:9 22:10</p> <p><b>satisfied</b> <sup>[2]</sup> 56:1 64:17</p> <p><b>satisfy</b> <sup>[3]</sup> 21:13 23:20 33:22</p> <p><b>saying</b> <sup>[6]</sup> 14:18 22:15 46:6 54:16,17 56:13</p> <p><b>says</b> <sup>[15]</sup> 5:10,20 6:22 20:12 22:15 32:2 51:6 54:9,13 58:3,6 65:15 66:</p>	

## Official

<p><b>slate</b> <sup>[1]</sup> 62:8</p> <p><b>Social</b> <sup>[8]</sup> 9:15,21 11:3,6,9,24 12:4, 16</p> <p><b>Solicitor</b> <sup>[5]</sup> 1:18 27:23 43:19,25 64:2</p> <p><b>solution</b> <sup>[1]</sup> 13:23</p> <p><b>solves</b> <sup>[1]</sup> 34:11</p> <p><b>somebody</b> <sup>[17]</sup> 26:19 29:17 40:5, 18 47:1,14,15 48:16 49:24 51:16 54:12,20 55:15 59:19 62:16,19 63: 23</p> <p><b>somebody's</b> <sup>[3]</sup> 31:7 47:11 63:21</p> <p><b>someone</b> <sup>[4]</sup> 7:6 35:3,6 55:1</p> <p><b>Sometimes</b> <sup>[1]</sup> 60:20</p> <p><b>somewhat</b> <sup>[2]</sup> 6:4 24:4</p> <p><b>sorry</b> <sup>[6]</sup> 6:3 11:14 32:15 49:16 50: 10 56:24</p> <p><b>sort</b> <sup>[3]</sup> 40:24 62:6 63:20</p> <p><b>SOTOMAYOR</b> <sup>[22]</sup> 6:3,19,25 11: 14,17,23 12:9 22:17,21,24 23:22 24:1,22 25:1 32:15,23 49:16 54: 19 67:21,25 68:17,25</p> <p><b>source</b> <sup>[2]</sup> 62:9,11</p> <p><b>sovereign</b> <sup>[10]</sup> 3:13 4:10 6:20 7:5 13:6,14 16:5 25:10 29:22 62:17</p> <p><b>special</b> <sup>[3]</sup> 35:24 36:2 37:22</p> <p><b>specifically</b> <sup>[2]</sup> 66:13,14</p> <p><b>specified</b> <sup>[1]</sup> 10:9</p> <p><b>specifies</b> <sup>[1]</sup> 66:7</p> <p><b>spent</b> <sup>[1]</sup> 62:1</p> <p><b>square</b> <sup>[1]</sup> 31:25</p> <p><b>stakeholders</b> <sup>[1]</sup> 15:9</p> <p><b>stakes</b> <sup>[2]</sup> 12:25 13:2</p> <p><b>Standard</b> <sup>[1]</sup> 67:16</p> <p><b>stands</b> <sup>[1]</sup> 65:17</p> <p><b>start</b> <sup>[3]</sup> 15:21 22:2 67:14</p> <p><b>started</b> <sup>[1]</sup> 35:12</p> <p><b>STATES</b> <sup>[24]</sup> 1:1,13 17:16 21:13 27:18,25 30:1 32:4 33:11 35:3,9 36:3,9,20 44:4 49:4 50:6 51:19 59: 20,24 60:22 62:16,18 64:19</p> <p><b>status</b> <sup>[1]</sup> 38:17</p> <p><b>statute</b> <sup>[29]</sup> 5:1,8 8:16 9:9,10 11:9, 13 13:4,9 16:7 19:3,7 25:3 28:8, 18,19 32:18 45:4,15,17 50:18 57: 17 60:10,11,23,24 61:7,17 64:5</p> <p><b>statutes</b> <sup>[5]</sup> 11:12 29:12 45:25 60: 2,19</p> <p><b>statutorily</b> <sup>[1]</sup> 65:11</p> <p><b>statutory</b> <sup>[6]</sup> 13:8 15:4 21:7 28:12 29:2 48:1</p> <p><b>Steele</b> <sup>[1]</sup> 27:14</p> <p><b>step</b> <sup>[1]</sup> 13:18</p> <p><b>Stern</b> <sup>[1]</sup> 50:2</p> <p><b>still</b> <sup>[1]</sup> 31:19</p> <p><b>stone</b> <sup>[1]</sup> 18:18</p> <p><b>straightforward</b> <sup>[1]</sup> 23:14</p> <p><b>street</b> <sup>[1]</sup> 10:22</p> <p><b>strike</b> <sup>[1]</sup> 45:20</p> <p><b>strikes</b> <sup>[2]</sup> 13:16 37:25</p> <p><b>structural</b> <sup>[3]</sup> 14:12,24 59:11</p> <p><b>structurally</b> <sup>[2]</sup> 15:2,3</p> <p><b>structure</b> <sup>[1]</sup> 53:25</p> <p><b>study</b> <sup>[1]</sup> 25:24</p>	<p><b>subject</b> <sup>[5]</sup> 9:18 11:7 25:20 56:13 60:14</p> <p><b>submission</b> <sup>[1]</sup> 9:17</p> <p><b>submit</b> <sup>[2]</sup> 6:14 67:20</p> <p><b>submitted</b> <sup>[2]</sup> 69:14,16</p> <p><b>subpoena</b> <sup>[1]</sup> 7:14</p> <p><b>subpoenas</b> <sup>[2]</sup> 12:4 38:25</p> <p><b>subsection</b> <sup>[2]</sup> 54:5,9</p> <p><b>suffer</b> <sup>[1]</sup> 6:23</p> <p><b>sufficient</b> <sup>[2]</sup> 21:15 32:5</p> <p><b>suggest</b> <sup>[1]</sup> 67:14</p> <p><b>suggested</b> <sup>[2]</sup> 28:15 59:7</p> <p><b>suggesting</b> <sup>[6]</sup> 23:16,17 37:7 48: 4 56:18 59:5</p> <p><b>suggests</b> <sup>[1]</sup> 59:25</p> <p><b>superior</b> <sup>[2]</sup> 52:7,11</p> <p><b>superiors</b> <sup>[2]</sup> 27:21 65:1</p> <p><b>supervise</b> <sup>[1]</sup> 54:23</p> <p><b>supervised</b> <sup>[1]</sup> 3:25</p> <p><b>supervision</b> <sup>[2]</sup> 4:2 64:22</p> <p><b>support</b> <sup>[8]</sup> 1:20,22 2:8,12 15:18 26:7 34:22 69:10</p> <p><b>suppose</b> <sup>[3]</sup> 33:16 35:18 48:13</p> <p><b>supposed</b> <sup>[2]</sup> 40:4,6</p> <p><b>SUPREME</b> <sup>[5]</sup> 1:1,12 51:15,15 62: 15</p> <p><b>switched</b> <sup>[1]</sup> 61:17</p> <p><b>system</b> <sup>[4]</sup> 21:25 31:13,18 68:16</p> <p><b>Systems</b> <sup>[1]</sup> 19:12</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> <sup>[1]</sup> 30:19</p> <p><b>talked</b> <sup>[2]</sup> 35:14 63:25</p> <p><b>Ten</b> <sup>[1]</sup> 66:4</p> <p><b>Tenure</b> <sup>[1]</sup> 59:11</p> <p><b>term</b> <sup>[1]</sup> 12:10</p> <p><b>terms</b> <sup>[1]</sup> 41:7</p> <p><b>test</b> <sup>[34]</sup> 15:22 17:3 18:4 21:12 23: 5,9,13,17,21,21 24:16 26:6,14 27: 10 35:13 40:18 42:7,11,17 58:13 61:22 62:2,3,6,7,9,12,25 63:1,21 64:18,23 65:6,8</p> <p><b>testimony</b> <sup>[3]</sup> 7:24 36:5 39:1</p> <p><b>textually</b> <sup>[1]</sup> 3:16</p> <p><b>theirs</b> <sup>[1]</sup> 42:9</p> <p><b>themselves</b> <sup>[1]</sup> 29:15</p> <p><b>theory</b> <sup>[2]</sup> 9:13 41:24</p> <p><b>there'd</b> <sup>[1]</sup> 60:9</p> <p><b>There's</b> <sup>[16]</sup> 5:17 6:13 13:15 14:9 19:3 22:25 27:7 41:13 51:21,21 52:5 60:23 63:3 64:5 67:17,18</p> <p><b>thinking</b> <sup>[1]</sup> 17:19</p> <p><b>thinks</b> <sup>[2]</sup> 28:17 68:23</p> <p><b>third-parties</b> <sup>[1]</sup> 16:4</p> <p><b>Thompson</b> <sup>[1]</sup> 46:22</p> <p><b>through</b> <sup>[1]</sup> 25:20</p> <p><b>though</b> <sup>[5]</sup> 34:9 36:22 47:5 55:21 63:7</p> <p><b>thousands</b> <sup>[1]</sup> 69:3</p> <p><b>three</b> <sup>[5]</sup> 10:15 36:13 64:11,16 66: 10</p> <p><b>throughout</b> <sup>[1]</sup> 41:6</p> <p><b>tie</b> <sup>[1]</sup> 31:12</p> <p><b>Title</b> <sup>[1]</sup> 61:13</p>	<p><b>together</b> <sup>[2]</sup> 4:17 15:6</p> <p><b>tomorrow</b> <sup>[1]</sup> 5:19</p> <p><b>top</b> <sup>[6]</sup> 38:4 44:21,25 45:3,9,10</p> <p><b>totally</b> <sup>[1]</sup> 17:11</p> <p><b>touch</b> <sup>[1]</sup> 22:13</p> <p><b>tower</b> <sup>[1]</sup> 66:2</p> <p><b>traditional</b> <sup>[1]</sup> 62:3</p> <p><b>transparency</b> <sup>[2]</sup> 10:3 14:15</p> <p><b>Transportation</b> <sup>[1]</sup> 61:5</p> <p><b>treatise</b> <sup>[1]</sup> 34:5</p> <p><b>tremendous</b> <sup>[1]</sup> 49:5</p> <p><b>trial</b> <sup>[6]</sup> 35:24 36:2 37:22 43:7,18 65:3</p> <p><b>trials</b> <sup>[1]</sup> 36:3</p> <p><b>tried</b> <sup>[4]</sup> 19:2 24:15 30:15 46:25</p> <p><b>tries</b> <sup>[1]</sup> 43:5</p> <p><b>trouble</b> <sup>[1]</sup> 23:3</p> <p><b>Truck</b> <sup>[1]</sup> 67:1</p> <p><b>true</b> <sup>[2]</sup> 38:12 48:9</p> <p><b>try</b> <sup>[3]</sup> 20:20 26:12,13</p> <p><b>trying</b> <sup>[3]</sup> 26:9 33:13 35:11</p> <p><b>Tucker</b> <sup>[1]</sup> 67:1</p> <p><b>turn</b> <sup>[4]</sup> 42:7,11 45:9 52:10</p> <p><b>turns</b> <sup>[2]</sup> 42:12 45:3</p> <p><b>two</b> <sup>[16]</sup> 5:17 6:18 8:18 11:12 16:2 17:24,24 21:10 22:12 25:8 35:21 53:12,16 57:2 58:13 60:14</p> <p><b>two-part</b> <sup>[1]</sup> 21:12</p> <p><b>tying</b> <sup>[1]</sup> 15:6</p> <p><b>type</b> <sup>[1]</sup> 40:13</p> <p><b>typically</b> <sup>[2]</sup> 14:2 29:11</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U.S</b> <sup>[17]</sup> 24:8 27:22 29:12 43:25 46: 20,20 47:23,25 48:14,22,23,24 49: 3,10,11,14 63:7</p> <p><b>ubiquitous</b> <sup>[1]</sup> 63:25</p> <p><b>ultimately</b> <sup>[1]</sup> 14:15</p> <p><b>unconstitutional</b> <sup>[2]</sup> 66:19 67:2</p> <p><b>under</b> <sup>[19]</sup> 3:14 4:6 5:22 7:13 10: 14 11:9 13:9 15:24 22:19 25:3 39: 2 47:15 54:3,5 55:16,21 61:7 63: 15 66:9</p> <p><b>under-inclusive</b> <sup>[2]</sup> 23:24 26:7</p> <p><b>understand</b> <sup>[5]</sup> 25:25 26:11 27:9 42:17 67:22</p> <p><b>understanding</b> <sup>[2]</sup> 11:5 23:3</p> <p><b>understands</b> <sup>[1]</sup> 49:6</p> <p><b>understood</b> <sup>[5]</sup> 27:16 38:16 39:20 55:19 62:23</p> <p><b>undertake</b> <sup>[1]</sup> 16:5</p> <p><b>uniformly</b> <sup>[1]</sup> 34:6</p> <p><b>UNITED</b> <sup>[24]</sup> 1:1,12 17:16 21:13 27:18,25 30:1 32:4 33:11 35:2,8 36:2,9,20 44:4 49:4 50:5 51:19 59: 19,24 60:22 62:16,18 64:19</p> <p><b>unless</b> <sup>[2]</sup> 5:12 64:25</p> <p><b>unlike</b> <sup>[2]</sup> 21:5 66:1</p> <p><b>unlikely</b> <sup>[1]</sup> 29:6</p> <p><b>until</b> <sup>[4]</sup> 4:22 20:25 37:2 63:18</p> <p><b>up</b> <sup>[13]</sup> 6:8 21:11 23:1,25 24:16 26: 14 31:13 33:5 36:17,19 48:10 53: 24 62:7</p> <p><b>urged</b> <sup>[2]</sup> 19:1 21:4</p>	<p><b>uses</b> <sup>[1]</sup> 46:18</p> <p><b>using</b> <sup>[1]</sup> 12:10</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>vague</b> <sup>[1]</sup> 42:19</p> <p><b>validity</b> <sup>[1]</sup> 66:24</p> <p><b>various</b> <sup>[3]</sup> 11:18 59:12 60:20</p> <p><b>vast</b> <sup>[1]</sup> 12:17</p> <p><b>versus</b> <sup>[4]</sup> 3:5 11:20 67:16 68:9</p> <p><b>vest</b> <sup>[2]</sup> 29:12 45:25</p> <p><b>vested</b> <sup>[15]</sup> 16:1,7 25:6 27:20,21, 22,23 29:9,20,21 40:23 43:2,12 45:5 55:7</p> <p><b>vesting</b> <sup>[5]</sup> 28:4,5,8 29:16 56:2</p> <p><b>vests</b> <sup>[1]</sup> 45:15</p> <p><b>Veterans</b> <sup>[1]</sup> 11:24</p> <p><b>Veterans'</b> <sup>[1]</sup> 11:25</p> <p><b>view</b> <sup>[2]</sup> 28:17 57:3</p> <p><b>violates</b> <sup>[1]</sup> 41:16</p> <p><b>violation</b> <sup>[4]</sup> 67:8,9,13,18</p> <p><b>violations</b> <sup>[1]</sup> 37:6</p> <p><b>Virtually</b> <sup>[2]</sup> 11:18 27:3</p> <p><b>virtue</b> <sup>[1]</sup> 52:12</p> <p><b>voluntarily</b> <sup>[1]</sup> 12:18</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waive</b> <sup>[1]</sup> 33:4</p> <p><b>waiver</b> <sup>[1]</sup> 68:6</p> <p><b>WALL</b> <sup>[47]</sup> 1:18 2:6 15:15,16,19 17: 24 18:6,9,24 19:17,21 20:9 21:1, 17 22:6,17,18,22 23:19,23 24:15, 24 25:4,25 26:20 27:7,12,14 28:1, 3,6,11,25 29:1,6 30:2,10,24 31:1, 23 32:22 33:16,24 43:1 55:5 63:2 66:19</p> <p><b>wanted</b> <sup>[2]</sup> 21:3,10</p> <p><b>Warren</b> <sup>[5]</sup> 38:22,24 39:11,13 40: 13</p> <p><b>Washington</b> <sup>[3]</sup> 1:9,16,19</p> <p><b>way</b> <sup>[17]</sup> 9:21 12:9 14:21 19:3,6 21: 2 23:14,18 27:19 29:11 31:18 37: 17 41:23 42:22 53:24 65:18 67:19</p> <p><b>ways</b> <sup>[2]</sup> 26:5 31:5</p> <p><b>website</b> <sup>[1]</sup> 65:21</p> <p><b>wedges</b> <sup>[1]</sup> 41:24</p> <p><b>Weiss</b> <sup>[3]</sup> 26:22 65:2 66:3</p> <p><b>whatever</b> <sup>[4]</sup> 41:15 52:24 58:15 67:4</p> <p><b>Whereupon</b> <sup>[1]</sup> 69:15</p> <p><b>whether</b> <sup>[23]</sup> 5:15 8:23 18:20 20: 18 21:14 32:20 40:22,23 41:23 43: 1,14,16 45:3,5 46:6,9 47:7 48:7 52:10 53:15 58:19 59:19 63:21</p> <p><b>who's</b> <sup>[10]</sup> 12:23 26:19 40:6 45:3,9, 10,23,23 55:12,15</p> <p><b>whole</b> <sup>[2]</sup> 41:5 67:20</p> <p><b>will</b> <sup>[8]</sup> 6:23 8:7 9:14 12:13 15:23 23:5 27:3 30:20</p> <p><b>wiped</b> <sup>[1]</sup> 67:12</p> <p><b>wishes</b> <sup>[1]</sup> 27:1</p> <p><b>within</b> <sup>[3]</sup> 16:15 48:16 50:19</p> <p><b>without</b> <sup>[7]</sup> 21:3 35:7 37:6 51:17 52:6 58:7 62:20</p> <p><b>witness</b> <sup>[1]</sup> 43:9</p>
---	---	---	--

## Official

**witnesses** <sup>[3]</sup> 12:5 39:1,5  
**word** <sup>[4]</sup> 6:10 22:7 23:8 32:21  
**words** <sup>[6]</sup> 10:16 14:1 18:17 29:18  
58:9 59:15  
**work** <sup>[2]</sup> 3:25 54:25  
**works** <sup>[3]</sup> 25:2,2 29:12  
**worried** <sup>[1]</sup> 19:24  
**writs** <sup>[1]</sup> 63:17  
**written** <sup>[3]</sup> 18:17 19:9 60:11  
**wrote** <sup>[3]</sup> 19:16 61:13,14

---

**Y**

---

**York** <sup>[2]</sup> 1:21,21