SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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CITY OF CHICAGO, ILLINOIS,   )

          Petitioner,   )

            v.   ) No. 19-357

ROBBIN L. FULTON, ET AL.,   )

          Respondents.   )

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Pages: 1 through 81

Place: Washington, D.C.

Date: October 13, 2020

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10   Washington, D.C.

11   Tuesday, October 13, 2020

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13   The above-entitled matter came on for

14   oral argument before the Supreme Court of the

15   United States at 11:04 a.m.

16

17   APPEARANCES:

18   CRAIG GOLDBLATT, ESQUIRE, Washington, D.C.;

19   on behalf of the Petitioner.

20   COLLEEN E. R. SINZDAK, Assistant to the Solicitor

21   General, Department of Justice, Washington, D.C.;

22   for the United States, as amicus curiae,

23   supporting the Petitioner.

24   EUGENE R. WEDOFF, ESQUIRE, Oak Park, Illinois;

25   on behalf of the Respondents.

1   C O N T E N T S

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

 2                                  (11:04 a.m.)

 3              CHIEF JUSTICE ROBERTS:  We'll hear

 4  argument next in Case 19-357, City of Chicago

 5  versus Fulton.

 6              Mr. Goldblatt.

 7            ORAL ARGUMENT OF CRAIG GOLDBLATT

 8              ON BEHALF OF THE PETITIONER

 9          MR. GOLDBLATT:  Mr. Chief Justice, and

10  may it please the Court:

11              This case presents the question

12  whether the Bankruptcy Code's automatic stay

13  requires a creditor in lawful possession of

14  estate property when a bankruptcy petition is

15  filed to return that property to the debtor

16  immediately or else pay damages.

17              It does not.  The automatic stay

18  freezes the state of affairs as of the

19  bankruptcy filing by enjoining creditors from

20  taking post-petition acts to improve their

21  position vis-a-vis the debtor.  As this Court

22  has repeatedly observed, the automatic stay's

23  purpose is to preserve the status quo.  It does

24  not require creditors to turn over property

25  lawfully in their possession.
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1   An entirely separate provision of the

2   code, the turnover provision, addresses that

3   situation. But, unlike the automatic stay, the

4   turnover provision does not operate as an

5   injunction or mandate the payment of damages if

6   property is not immediately turned over.

7   The turnover provision contains a

8   number of statutory exceptions and defenses.

9   For example, a creditor is not required to turn

10   over an asset if the debtor cannot provide

11   adequate protection for the creditor's interest

12   in the asset.

13   A creditor that contends in good faith

14   that an asset is not subject to turnover is

15   entitled to judicial process to resolve that

16   dispute without owing damages if the debtor

17   ultimately repairs.

18   Respondents' contrary argument fails

19   for multiple reasons.

20   First, reading the automatic stay to

21   require turnover contravenes the ordinary

22   meaning of the term "stay," which is status quo

23   preserving.

24   Second, it would render the actual

25   turnover provision superfluous and would nullify

1　　the statutory exceptions and defenses to

2　　turnover.

3　　　　　　　Finally, no one contends that the

4　　automatic stay imposed a turnover duty before

5　　the 1984 amendment that added the words

6　　"exercise control." Reading that amendment to

7　　the automatic stay to effect a sea change in

8　　turnover practice violates this Court's repeated

9　　admonition that changes to the Bankruptcy Code

10　　should not be read to disrupt established

11　　practice absent an indication that Congress so

12　　intended.

13　　　　　　　CHIEF JUSTICE ROBERTS: Counsel, you

14　　agree that you're exercising control over the

15　　car. Your argument is simply that exercising

16　　control is not an action, right?

17　　　　　　　MR. GOLDBLATT: Mr. Chief Justice, we

18　　don't -- we don't intend to -- our position

19　　doesn't turn on a fine distinction between

20　　action and inaction. Our fundamental position

21　　is that the entire statutory phrase "acts to

22　　exercise control" is a prohibition on actions

23　　that change the status quo. And because what we

24　　did preserved the status quo, it is not

25　　inconsistent with the command of the automatic

1   stay.

2   CHIEF JUSTICE ROBERTS: So we should

3   understand that -- I understood your brief to

4   put a different emphasis on it. We should

5   understand that you're covered by subsection (3)

6   because you're in -- are engaged in an action?

7   MR. GOLDBLATT: Your -- Your Honor, we

8   think that the question here about whether or

9   not this is or isn't an act recalls the

10   discussion in Your Honor's opinion in NFIB, in

11   which you correctly observe that drawing the

12   distinction between action and inaction at the

13   extremes devolves into the work of -- of

14   metaphysical philosophy.

15   And just like you observed the

16   Commerce Clause does not require a court to

17   engage in such an analysis, we think the same is

18   true of the Bankruptcy Code.

19   We think that -- that as long as

20   nothing is happening --

21   CHIEF JUSTICE ROBERTS: Well -- well,

22   just --

23   MR. GOLDBLATT: -- that's altered --

24   CHIEF JUSTICE ROBERTS: -- if I could

25   -- could just interrupt. Once the debtor asks

1   you to give back the car, that resolves this

2   metaphysical debate, right? You make the action

3   at that point to decide either to return it or

4   not, correct?

5   MR. GOLDBLATT: Your Honor, we -- we

6   -- we -- our -- our fundamental position is that

7   the work of the automatic stay, as long as we're

8   preserving the status quo, is not violated.

9   Now it is true that the debtor --

10   there is a mechanism in the Bankruptcy Code by

11   which the debtor can get back the car. That's

12   the turnover provision. And the debtor can

13   immediately --

14   CHIEF JUSTICE ROBERTS: Thank you,

15   counsel.

16   Justice Thomas.

17   JUSTICE THOMAS: You do agree, though,

18   counsel, that -- that the code would prevent you

19   from -- even though you do have control, it

20   would prevent you from, for example, disposing

21   of the cars?

22   MR. GOLDBLATT: That -- that's --

23   that's correct, Justice Thomas. Our disposal of

24   the cars, our sale of the cars, anything that

25   would alter the status quo as between the debtor

1   and creditor would violate the automatic stay.

2   That's the construction of the

3   automatic stay that this Court has given in

4   cases going back to Continental Illinois in 1935

5   and running through Ritzen and Taggart in the

6   last few terms. So that's --

7   JUSTICE THOMAS: So --

8   MR. GOLDBLATT: -- that's entirely

9   correct. And that is the work of the automatic

10   stay in bankruptcy.

11   JUSTICE THOMAS: So, in his opinion in

12   Whiting Pools, Justice Blackmun makes a -- a

13   distinction between the possessory interest and

14   other interests in the property.

15   Do you think that Whiting Pool has an

16   effect on this case, on your case?

17   MR. GOLDBLATT: Justice Thomas, yes,

18   Whiting Pools is entirely correct and consistent

19   with our view. What Justice Blackmun said for

20   this Court, what Judge Friendly said for the

21   Second Circuit in the case that this Court

22   affirmed said that, A, the entire asset becomes

23   property of the estate, so it rejected the

24   government's argument there that the possessory

25   interest stayed out of the estate and was not

1 subject to turnover; but, B, turnover could

2 proceed subject to the creditor's ability to

3 seek adequate protection.

4   In -- in that regard, Whiting Pools

5 simply set out what was the understanding of how

6 turnover worked prior to the 1984 amendment to

7 the automatic stay, and nothing in the amendment

8 to the automatic stay changes the operation of

9 turnover in that regard.

10   JUSTICE THOMAS: Thank you.

11   CHIEF JUSTICE ROBERTS: Justice

12 Breyer.

13   JUSTICE BREYER: I just am having a

14 hard time understanding the following: If I

15 look at 542, it basically says that a creditor,

16 like you, your client, who has some property

17 belonging to the debtor -- that's a car -- shall

18 deliver to the trustee the property.

19   You're supposed to deliver it to the

20 trustee, unless it falls within the exceptions.

21 I don't think you're a life insurance company.

22 I don't -- I don't know what the exception would

23 be. And now you said: Oh, that's right.

24   So -- but then the question here is

25 whether the section before that, which says it's

1   a stay, without saying what you do with it, says

2   that you -- you exercise control over the car,

3   and stay means you ought to turn it over.

4   What difference does it make?

5   MR. GOLDBLATT: Justice --

6   JUSTICE BREYER: In either case you

7   have to turn it over.

8   MR. GOLDBLATT: Justice Breyer, if I

9   may, two -- two responses, if I may.

10   First, on the question what is the

11   defense, Section 542 says expressly that the

12   turnover power -- the turnover obligation

13   applies to property that is -- it -- it says it

14   is subject to Section 363(e), a section subject

15   to Section 363, and subsection 363(e) provides

16   that the -- the court -- that it is -- the

17   property is not subject to the trustee's use if

18   the credit -- if the debtor cannot provide

19   adequate protection to the creditor.

20   So, here, there was a good-faith

21   dispute about whether this -- this was subject

22   to turnover. In this case, there was a -- there

23   was a real dispute about the way in which the

24   city's possessory liens operated.

25   And the position that we took, which

1   had prevailed in district court until the very

2   decision below, said this property was not

3   subject to turnover.

4   JUSTICE BREYER: Okay. So your point

5   is --

6   MR. GOLDBLATT: Now, Justice Breyer --

7   JUSTICE BREYER: -- your point is --

8   is this right, that -- that your -- your point

9   is, if we have to use 542, we have a -- we have

10   these people's cars, they never pay their

11   parking tickets, we give it back to them, that's

12   the last we'll see of them, we'll never get our

13   parking ticket money, unless they put up a bond

14   or something, which is a little complicated.

15   MR. GOLDBLATT: So, Justice Breyer --

16   JUSTICE BREYER: If 362 applies, hey,

17   we just have to give them back the car and

18   that's the last we'll ever see of them.

19   MR. GOLDBLATT: So, Justice Breyer,

20   this -- this is -- the question of turnover is

21   the sub --

22   JUSTICE BREYER: Am I wrong?

23   MR. GOLDBLATT: I -- I -- I think the

24   answer to your question, Justice Breyer, with

25   respect, is that the question of turnover is a

1   subject of Section 542, and while that is a

2   "shall" command, that provision doesn't contain

3   injunctive language.

4   And, Justice Breyer, as you wrote for

5   a unanimous court just 16 months ago in the

6   Taggart case, where there is a -- even -- even

7   in the discharge injunction context, where the

8   statute does use injunctive language, where

9   there is fair ground of doubt, a -- a court will

10   not resort to contempt to punish a party that

11   exercises its rights in a position where --

12   where it's taking positions in good faith.

13   JUSTICE BREYER: And that's exactly --

14   CHIEF JUSTICE ROBERTS: Thank you,

15   counsel.

16   JUSTICE BREYER: -- what I'm trying to

17   find out.

18   CHIEF JUSTICE ROBERTS: Justice --

19   Justice Alito.

20   JUSTICE ALITO: What's the --

21   CHIEF JUSTICE ROBERTS: Justice Alito.

22   JUSTICE ALITO: Yes. You say that the

23   key is whether the status quo is being preserved

24   or altered. So suppose that a city's general

25   practice is to keep cars like the cars at issue

 1   here in a basically unguarded lot in a remote

 2   location so that there isn't very much

 3   preventing somebody who -- whose car is there

 4   from entering and driving off with it.

 5   But, when the City hears about a

 6   particular case and thinks that it's a -- let's

 7   say it's a particularly valuable car and thinks

 8   that there's a real danger that the owner is

 9   going to do just that, going to go -- go there

10   and drive off with the car, the City relocates

11   that car to a different location where it's

12   subject to 24-hour guard.

13   Would that be an alteration of the

14   status quo?

15   MR. GOLDBLATT: Not the relevant

16   status quo, Justice Alito. In the bankruptcy

17   context, the automatic stay does a particular

18   thing. It freezes the relationship between the

19   debtor and its creditors as of the moment the

20   petition was filed.

21   At the moment the petition was filed,

22   there are a set of assets and liabilities, a --

23   a -- a balance sheet, so to speak, and that

24   balance sheet is frozen. No one can engage in

25   self-help during the bankruptcy case to change

 1   that.

 2   Instead, that's addressed through the

 3   bankruptcy process under the supervision of the

 4   bankruptcy judge. And if anyone --

 5   JUSTICE ALITO: Right.

 6   MR. GOLDBLATT: -- takes any action to

 7   improve their position, that would violate the

 8   stay.

 9   Here, the -- the -- the act -- in your

10   hypothetical, the -- the car was held by the

11   City as of the time of the bankruptcy, and as

12   long as that remained the case, what the City

13   was doing to preserve the status quo does not

14   violate the automatic stay.

15   JUSTICE ALITO: Well, what work did

16   the addition of the "exercise control" language

17   do with respect to tangible objects?

18   MR. GOLDBLATT: So, as I said in

19   response to Justice Thomas's question, with

20   respect to tangible property, if here the City

21   had disposed of the car or had sold the car,

22   those would be actions that would alter the

23   status quo and violate the automatic stay.

24   JUSTICE ALITO: Okay. What does that

25   do --

1   MR. GOLDBLATT: We think that both --

2   JUSTICE ALITO: -- can you -- can you

3   give me examples of what Congress might have had

4   in mind with respect to intangible property when

5   it added this language?

6   MR. GOLDBLATT: Sure. The -- the --

7   the -- again, so the paradigmatic example, for

8   example, would be a derivative action, if -- if

9   a party wanted to take over an estate cause of

10   action and go to state court and say the estate

11   ought to be pursuing the cause of action that

12   it's not, and try to take over that claim,

13   bringing that derivative action would be an act

14   to exercise control over intangible -- over

15   estate property.

16   There are cases involving the

17   termination of a lease agreement, for example,

18   another piece of property that arguably isn't

19   subject to possession, but those actions would

20   violate the automatic stay after the words

21   "exercise control" were added in 1984.

22   JUSTICE ALITO: Thank you.

23   CHIEF JUSTICE ROBERTS: Justice

24   Sotomayor.

25   JUSTICE SOTOMAYOR: Counsel, would

1   permitting a car to sit out in weather, in bad

2   weather, or to be broken into or bumped into

3   while in the City's possession -- does that

4   change the status quo?

5   MR. GOLDBLATT: So, Justice Sotomayor,

6   I don't believe those actions or -- or what --

7   what -- or violations of duties or -- or -- or

8   what have you violate the automatic stay.

9   I do believe that non-bankruptcy law,

10   and in this context, the UCC, imposes duties on

11   secured creditors to exercise appropriate care

12   over property that -- that they have

13   repossessed, and so it --

14   JUSTICE SOTOMAYOR: All right. May I

15   stop you a moment? Because I'm limited in time.

16   MR. GOLDBLATT: Certainly.

17   JUSTICE SOTOMAYOR: By your theory

18   right now, the plaintiff must start an adversary

19   proceeding, which has a huge amount of costs

20   associated with them.

21   As I understand it, adversary

22   proceedings take several months. And to what

23   end? Meaning you would go to court and say, I

24   have a lien. They should give me security.

25   You could do that now even if you had

1   to turn over the car immediately.

2   How can we ensure that these processes

3   would go fast enough to save the debtor from not

4   being able to rehabilitate? Because, for many

5   of these people, the cars are the only means

6   they have to get to work.

7   MR. GOLDBLATT: So, Justice Sotomayor,

8   bankruptcy judges have ample discretion and, in

9   my experience, exercise it quite wisely to set

10   schedules --

11   JUSTICE SOTOMAYOR: Well, they didn't

12   in -- counsel, I want to point out that it took

13   weeks, if not -- weeks after bankruptcy orders

14   in these cases to turn over the cars for the

15   City to respond.

16   MR. GOLDBLATT: So, Justice Sotomayor,

17   with respect, in this case, there was never even

18   a turnover action brought, only an action for

19   violation of the stay.

20   In most cases, these -- these matters

21   are worked out pretty simply and consensually.

22   But, in response to your sort of analytic

23   question of does the system work, it's a fair

24   question, but the answer is yes. Bankruptcy

25   courts have plenty of ability to move these

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 1    things quickly, to set response dates promptly,

 2    and to ensure that, to the extent there's a

 3    dispute about adequate protection, that gets

 4    worked out and then the cars are turned over.

 5            But the City is entitled -- a secured

 6    creditor is entitled to, for example, make sure

 7    that there's insurance so that, if the car is

 8    destroyed while the debtor has possession of it,

 9    its security interest isn't lost.  That's how

10    this normally works, and it normally works quite

11    well.

12            CHIEF JUSTICE ROBERTS:  Thank you,

13    counsel.

14            Justice Kagan.

15            JUSTICE KAGAN:  Mr. Goldblatt, it

16    seems as though most of your argument this

17    morning is about the function of the automatic

18    stay and the fact that, in your view, what it's

19    supposed to do is to keep the status quo in

20    place, and that's what you think decides this

21    case.

22            But I'm really wondering about the

23    premise here.  I mean, keeping the status quo in

24    place, that's not in the statutory language.  It

25    is something that the Court has said multiple
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 1   times, and mostly it makes complete sense.

 2   But I -- I -- I wonder whether you're

 3   confusing a means and an end, that the real

 4   function of an automatic stay is to consolidate

 5   the estate so that it can be redistributed.

 6   Now, in most cases, consolidating of

 7   the estate is going to mean keeping the status

 8   quo in place. But, in this unusual

 9   circumstance, consolidating the estate means

10   changing the status quo, and -- and -- and we

11   should understand the Bankruptcy Code to accept

12   that where that change is necessary to

13   consolidate the estate.

14   MR. GOLDBLATT: So, Justice Kagan,

15   with respect, I think that analysis sort of

16   jumbles different provisions of the Bankruptcy

17   Code. We think that the analysis is that what

18   Section 362, the automatic stay, does is

19   preserve the status quo.

20   Now, to be sure, the consolidation or

21   marshaling of assets of the estate is work to be

22   done in a bankruptcy case. We think that the --

23   that Section 542, the turnover provision, is

24   where that work is done. And Section 542 has

25   specific exceptions and defenses, and there is

1   an established way in which it works.

2   After all, no one here contended that

3   before 1984, when the words "exercise control"

4   were added to the automatic stay, that the

5   automatic stay did any of this work, but this

6   was always, since the dawn of time, the work of

7   a trustee in bankruptcy to marshal the assets of

8   the estate for the benefit of its creditors.

9   And the way it worked is that the

10   turnover provision gives one the authority to

11   come into court and say, you're holding my

12   thing, may I have it, please? And if the answer

13   is, I've got no defense, it should be turned

14   over. And if there are disputes to be worked

15   out, those are addressed by the bankruptcy

16   court. The bankruptcy court resolves it and

17   then issues an order directing turnover, which,

18   if a creditor fails to comply, is punishable

19   with contempt.

20   And so that's how that work is done.

21   But it's respectfully incorrect --

22   JUSTICE KAGAN: Thank you,

23   Mr. Goldblatt.

24   MR. GOLDBLATT: Thank you. Thank you,

25   Justice Kagan.

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 1                CHIEF JUSTICE ROBERTS:  Justice
 2    Gorsuch.
 3                JUSTICE GORSUCH:  Good morning,
 4    counsel.  I -- I -- I know your client's
 5    practice of holding onto cars is well
 6    established and highly controversial.  But
 7    looking to the Bankruptcy Code, I guess my
 8    question for you is, assume we agree with you
 9    about the scope of 362, is there anything that
10    would prohibit a debtor from seeking exactly the
11    same sort of relief under 542 and 105?
12                MR. GOLDBLATT:  So, Justice Gorsuch,
13    we think that the answer to that question is
14    provided by the unanimous opinion of this Court
15    in Taggart just -- just 16 months ago, where the
16    Court said that the -- the -- the discharge
17    injunction, which is a statutory provision of
18    the Bankruptcy Code that has injunctive
19    language, unlike 542, that where there is fair
20    ground of doubt about whether the action was a
21    violation, that contempt authority is not
22    available.
23                We think it follows a fortiori, if a
24    statute that -- that has injunctive language
25    can't be punished with contempt or damages where
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1   there's fair ground of doubt, then it must

2   follow that 542 also isn't -- isn't punishable

3   by contempt where there is fair ground of doubt.

4   Now, if there's not fair ground of

5   doubt, if there's just bad-faith conduct where

6   someone says, I know 542 requires me to turn

7   this over to you, I just don't feel like it,

8   come and get me, whether sanctions could be

9   awarded in that case raises a different and

10   harder question not presented here.

11   But there is no question that that is

12   all about the scope of 542. And the question

13   presented by this case is whether Section 362,

14   the automatic stay, essentially allows an end

15   run around all of that, avoiding those

16   questions, skipping over the defenses, and

17   providing an automatic claim for damages,

18   attorneys' fees, and, in some cases, punitive

19   damages.

20   JUSTICE GORSUCH: Counsel, I'm sorry

21   to interrupt. Our time is very short, and I --

22   I would appreciate maybe a shorter -- maybe even

23   possibly a yes-or-no answer.

24   Is there anything that would prohibit

25   a court, bankruptcy court, from ordering the

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 1      turnover of a car from the City of Chicago -- I

 2      know it loves to hold onto these things -- but

 3      there's an order under 542 saying discharge it.

 4      Is there anything that would prohibit that?

 5                  MR. GOLDBLATT:  No.  That's -- the

 6      answer --

 7                  JUSTICE GORSUCH:  Thank you.

 8                  MR. GOLDBLATT:  -- the reliable answer

 9      is no.

10                  JUSTICE GORSUCH:  Thank you.

11                  MR. GOLDBLATT:  I mean, the sideboard

12      answer is --

13                  JUSTICE GORSUCH:  Thank you, counsel.

14                  MR. GOLDBLATT:  -- that's exactly why

15      542 actions are brought.

16                  CHIEF JUSTICE ROBERTS:  Justice

17      Kavanaugh.

18                  JUSTICE KAVANAUGH:  Thank you.

19                  And good morning, Mr. Goldblatt.  Just

20      to focus on the text, again, if you're holding

21      property of the estate, aren't you acting to

22      exercise control over the property?

23                  MR. GOLDBLATT:  Justice Kavanaugh, our

24      view is consistent with this Court's long line

25      of jurisprudence that that isn't the type of
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 1   exercise control that is prohibited by the

 2   automatic stay. The automatic stay is -- and

 3   one way of thinking about it --

 4   JUSTICE KAVANAUGH: Just -- just in

 5   ordinary language, though, if you're holding the

 6   property, you're acting to exercise control.

 7   Just ordinary language.

 8   MR. GOLDBLATT: You're exercising

 9   control, but it's -- but the stay -- the -- the

10   -- the -- the language "stay," which stays acts

11   to exercise control, isn't violated.

12   JUSTICE KAVANAUGH: Okay. Second, you

13   said, I think, that the system is working well

14   here the way -- under your interpretation, but

15   the ACLU brief and -- amicus brief and others

16   suggest that at least what Chicago's doing is

17   seizing cars, people have to declare bankruptcy

18   to get their cars back, they can't get their

19   cars back to get on their feet to get to work,

20   which they need, to work, to enable their debt

21   repayment.

22   If the goal of bankruptcy is fresh

23   start, according to this brief, Chicago's system

24   is -- is thwarting that, making the Northern

25   District of Illinois a leader in the country in

      1   non-business Chapter 13 bankruptcy filings

      2   because of what Chicago's doing.

      3   I just wanted to give you a chance to

      4   respond to that.

      5   MR. GOLDBLATT: Sure. So -- so two

      6   points if I may, Justice Kavanaugh.

      7   We understand that the ACLU disagrees

      8   with the City's policy judgments regarding how

      9   to enforce its parking laws. For what it's

     10   worth, since the -- the time of the events at

     11   issue, there have been some changes to that --

     12   those policies made by the City Council, which

     13   we respect as the proper body to make policy

     14   with respect to parking enforcement. With

     15   respect -- and traffic enforcement.

     16   With respect to the way Chapter 13

     17   works, what actually happens in many of these

     18   cases, Chapter 13 is designed to permit a debtor

     19   to maintain their property while coming up with

     20   a plan to repay their creditors. In light of

     21   the June -- the Seventh Circuit's rulings here,

     22   the practice has grown up in Chicago where

     23   people file for bankruptcy not with any intent

     24   to complete a five-year plan to repay their

     25   creditors but simply as a device to get their

1   car back, get sanctions against the City, and

2   thereafter dismiss their cases.

3   And so our --

4   CHIEF JUSTICE ROBERTS: Thank you,

5   counsel. Counsel, you have about --

6   MR. GOLDBLATT: -- our position is

7   that --

8   CHIEF JUSTICE ROBERTS: -- you have

9   about a minute to wrap up.

10   MR. GOLDBLATT: Thank you, Mr. Chief

11   Justice.

12   We think the clearest answer to the

13   questions this Court has raised are likely set

14   out in the D.C. Circuit's decision in Inslaw.

15   The critical language is there on page 1473 of

16   Volume 932 of F.2d. There, Judge Stephen

17   Williams made three points.

18   First, the automatic stay operates to

19   preserve the status quo "to make sure that

20   creditors do not destroy the bankruptcy estate

21   in their scram -- scramble for relief."

22   Second, because willful violations of

23   the stay subject creditors to compensatory

24   damages, costs, and attorneys' fees, it is

25   "difficult to believe that Congress intended a

1   violation whenever someone already in possession

2   of property mistakenly refuses to capitulate" to

3   a debtor's contention that the property is

4   subject to turnover.

5   And, third, the statutory defenses to

6   turnover "underscore the improbability" that

7   Congress would have intended the automatic stay

8   to impose its own turnover obligation since that

9   would create a "kind of universal end run around

10   the limits of turnover."

11   He had that exactly right. And for

12   those reasons, the judgment below should be

13   reversed.

14   CHIEF JUSTICE ROBERTS: Thank you,

15   counsel.

16   Ms. Sinzdak.

17   ORAL ARGUMENT OF COLLEEN E. R. SINZDAK

18   FOR THE UNITED STATES, AS AMICUS CURIAE,

19   SUPPORTING THE PETITIONER

20   MS. SINZDAK: Mr. Chief Justice, and

21   may it please the Court:

22   Section 362(a)(3) is most naturally

23   read to preclude acts to gain possession or

24   control over estate property. Accordingly, a

25   creditor may not repossess a debtor's vehicle

 1   herself, nor may she ask to exercise control

 2   over the vehicle by directing a tow company to

 3   take the vehicle to the company's lot.

 4   Respondents assert that

 5   Section 362(a)(3) should also be read to compel

 6   turnover, but that reading is foreclosed for at

 7   least two major reasons.

 8   First, Section 362 imposes a stay, and

 9   the term "stay" denotes a command to preserve

10   the status quo. Section 362(a)(3), therefore,

11   cannot be read to compel a creditor to alter the

12   status quo.

13   Second, if Section 362(a)(3) is read

14   to require a creditor to deliver property to the

15   debtor, it will effectively override the

16   exceptions to turnover in Section 542. This

17   Court rejected such a reading of the automatic

18   stay provision in Strumpf, and it should do the

19   same here.

20   CHIEF JUSTICE ROBERTS: Counsel, I

21   want to try to get a better handle at least for

22   myself on what's at stake here. The -- the

23   creditor is not going to be liable for any

24   sanctions if he doesn't know about the

25   bankruptcy. And if he does, at that point, he's

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 1      under obligations to -- to turn over the

 2      property.  He's got protections, as you just

 3      said, under 542.  But the Respondent says that

 4      he can also get protections under -- I guess

 5      it's 363.

 6              So what difference does it make as a

 7      practical matter whether you proceed under the

 8      stay provision or under 542?

 9              MS. SINZDAK:  One difference is that

10      Section 542 has exceptions to turnover.  For

11      example, a creditor does not have to turn over

12      property that is of inconsequential value or

13      benefit to the estate.  So, if, for example, the

14      IRS has repossessed property and its tax lien on

15      the property greatly exceeds the value of the

16      property itself, it may be permitted to keep

17      that.

18              But, under Section 362(a)(3), it

19      refers only to property of the estate.  So the

20      IRS would be required -- would be required to

21      relinquish possession of that -- of that

22      property.

23              CHIEF JUSTICE ROBERTS:  But aren't the

24      --

25              MS. SINZDAK:  And I'd note --
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1   CHIEF JUSTICE ROBERTS: Go ahead.

2   MS. SINZDAK: I would note that they

3 -- Respondents say you can use the -- the -- the

4 -- the specific trumps the general canon to --

5 to sort of import the exceptions from 542 into

6 362. But that's not the way the canon works.

7   In RadLAX, Justice Scalia explained

8 that where you have a specific provision in a

9 statutory scheme that governs a particular

10 matter, the Court will not read another more

11 general provision that could be read to cover

12 something to cover the matter that is

13 specifically controlled by the other provision.

14   So Section 542 covers turnover, and,

15 therefore, Section 362 does not.

16   CHIEF JUSTICE ROBERTS: Thank you,

17 counsel.

18   Justice Thomas.

19   JUSTICE THOMAS: Yes, thank you, Chief

20 Justice.

21   Counsel, I'm -- I know others have

22 sort of dismissed this as somewhat metaphysical,

23 but I'm not so sure that's right.

24   Having control of something or having

25 possession of the car sitting on a lot, how is

         1   that exercising control, as opposed to, I see if

         2   you disposed of it or you sold it, you auctioned

         3   it, that would be exercising control over it,

         4   but just having it sitting on your lot, how is

         5   that exercising control?

         6   MS. SINZDAK: I think that's exactly

         7   right, Justice Thomas. I think that when

         8   Congress used the term, the phrase "an act to

         9   exercise control," it was contemplating some

        10   affirmative act, I think most naturally an act

        11   to seize control of something. It could also be

        12   an act such as selling the property or

        13   reallocating the property. But I do think that

        14   merely passively retaining property doesn't --

        15   doesn't quite fit as an act to exercise control.

        16   We've offered other arguments that --

        17   such as the fact that this is a stay and the --

        18   the fact that the -- reading it as Respondents

        19   would would override exceptions.

        20   Those reinforce, I think, what -- what

        21   you're getting at, which is the intuitive

        22   reaction that your simply leaving a car on a lot

        23   is not undertaking an act to exercise control.

        24   JUSTICE THOMAS: If we accepted that

        25   -- Petitioner's view under -- with respect to

1   362, what would be left of 541?

2   MS. SINZDAK: Of 541 or 542? I mean,

3   I -- I --

4   JUSTICE THOMAS: I'm sorry, 5 --

5   MS. SINZDAK: -- 541 establishes -- so

6   I think very little would be left --

7   JUSTICE THOMAS: I'm sorry, 542

8   turnover, yes, yes.

9   MS. SINZDAK: That's exact -- that's

10   exactly right, Justice Thomas. So very little

11   would be left of Section 542.

12   As noted, Petitioner's interpretation

13   would essentially follow 542. And that simply

14   isn't permitted. Again, the -- the canon of --

15   of specific trumps the general, which Petition

16   -- which Respondents themselves try to cite,

17   dictates that you should interpret Section 542

18   as a more specific provision to govern turnover.

19   JUSTICE THOMAS: Thank you.

20   CHIEF JUSTICE ROBERTS: Justice

21   Breyer.

22   JUSTICE BREYER: No, go ahead. I'll

23   pass. Thank you.

24   CHIEF JUSTICE ROBERTS: Justice Alito.

25   JUSTICE ALITO: A big part of your

 1   argument and Petitioner's argument is based on

 2   542. Can we decide this case without saying

 3   anything about how 542 works? Would the

 4   decision amount to anything if we did that?

 5   MS. SINZDAK: Yeah, because it would

 6   establish that Section 362(a)(3) cannot be read

 7   to broadly compel turnover of all property of

 8   the estate at the moment the bankruptcy petition

 9   is filed.

10   And I think that the Court could reach

11   that conclusion based on the text of

12   Section 362(a)(3) alone by pointing to the fact

13   that it imposes a stay, which commands the

14   preservation of the status quo, by pointing to

15   the fact that it uses the term "an act to

16   exercise control," which suggests an affirmative

17   act, and, frankly, by pointing to the fact that

18   every other provision in Section 362(a)(3) is --

19   describes some act that, if the creditor took

20   it, it would alter the status quo with respect

21   to the debtor/creditor relationship.

22   JUSTICE ALITO: Well, a -- a potential

23   difference that might matter between the two

24   provisions is that 362 is automatic, and it's

25   disputed whether 552 -- 542 is automatic.

1   Is that an issue we can avoid

2   discussing?

3   MS. SINZDAK: I -- I think so in --

4   insofar as you can say that the automatic

5   sanctions provision of 362 does not attach to

6   542.

7   I think Respondents seem to believe

8   that 362 is the only way to get automatic

9   sanctions, and that, presumably, is why they're

10 advancing this case. But -- but that's not a

11 reason to sort of start distorting Section 362

12 to read it in different ways.

13   And I think you can just say that:

14 Respondents' belief that Section 362 is

15 necessary to obtain sanctions is not an

16 appropriate basis to distort the plain meaning

17 of 362.

18   JUSTICE ALITO: Thank you.

19   CHIEF JUSTICE ROBERTS: Justice

20 Sotomayor.

21   JUSTICE SOTOMAYOR: Counsel, there are

22 some courts that require automatic turnover of a

23 student's transcript if -- if a bankruptcy is

24 filed by the student and the university refuses

25 to release the transcript upon request. Those

1   courts come to the conclusion that the decision

2   to retain control of the transcript and not

3   release it when demanded is a -- is a violation

4   of the code and of the automatic stay.

5   It seems to me that your position

6   would be that that's -- those cases are wrong.

7   Am I right?

8   MS. SINZDAK: No, Justice Sotomayor.

9   JUSTICE SOTOMAYOR: That there is no

10   act -- that your refusal to do an act that the

11   code requires to turn over property of the

12   estate -- forget about the sanctions. I'm

13   talking about --

14   MS. SINZDAK: No.

15   JUSTICE SOTOMAYOR: -- just the

16   refusal to turn over something that's requested,

17   without taking the act the code requires, for

18   you to go to the bankruptcy court and ask for

19   security or take some other action to protect

20   yourself, you're taking the position that that's

21   not exercising control sufficient to violate the

22   automatic stay?

23   MS. SINZDAK: Justice Sotomayor, the

24   transcript question -- the transcript cases are

25   decided under Section 362(a)(6), not 362(a)(3).

             1   And in the transcript cases, some courts have

             2   decided that when a university refuses to turn

             3   over the transcript, they are essentially trying

             4   to collect on a debt.

             5   And Section 362(a)(6) --

             6   JUSTICE SOTOMAYOR: All right,

             7   counsel, I'm going to interrupt because there's

             8   one last question. You note that some turnover

             9   provisions are done by way of motion and not

            10   adversary proceedings.

            11   Are you taking a position on whether

            12   that's permissible under the Bankruptcy Code, to

            13   go --

            14   MS. SINZDAK: I think --

            15   JUSTICE SOTOMAYOR: -- by motion?

            16   MS. SINZDAK: -- adversary proceedings

            17   are dictated actually by the rules of -- of --

            18   of bankruptcy, and those could obviously be

            19   changed. It's not in the code itself. So we

            20   don't think that that's required by the code

            21   itself. But it is in -- required under

            22   Section 7001, I believe, of the bankruptcy

            23   rules.

            24   JUSTICE SOTOMAYOR: So that would have

            25   to be changed to permit a more expedited

 1   proceeding?

 2   MS. SINZDAK: That could be changed.

 3   I would also say that bankruptcy courts have the

 4   ability, so if they're getting -- somebody

 5   initiates an adversary proceeding and the

 6   creditor has only completely frivolous defenses

 7   to turnover, that adversary proceeding could be

 8   decided very, very quickly, and, in fact, the --

 9   the creditor who has put forward frivolous

10   defenses could be subject to sanctions, for

11   example, fee-shifting.

12   So I think that even the existing

13   system is the petition to cope with -- with --

14   with the circumstances.

15   JUSTICE SOTOMAYOR: Thank you.

16   CHIEF JUSTICE ROBERTS: Justice Kagan.

17   JUSTICE KAGAN: Ms. Sinzdak, I'm

18   wondering whether you would respond to a

19   different set of intuitions about what this text

20   means, so two of them.

21   The first is that a stay just really

22   means stop. Stay your hand means stop doing

23   something. And the second, on the question of

24   exercise and control, is that when I retain

25   property that is the debtor's and that the

     1   debtor wants back, I am exercising control over

     2   that property.

     3   So why doesn't -- why doesn't the

     4   text, in fact, lean the other way?

     5   MS. SINZDAK: I think there are -- are

     6   -- are -- those two questions are actually

     7   interrelated. So the term "stay" is, of course,

     8   part of the operative text of 362, and I do

     9   think there's a meaningful distinction between

    10   Congress using the very specific language that

    11   filing a bankruptcy petition will operate as a

    12   stay and Congress merely barring a particular

    13   act.

    14   And I -- I think that's significant

    15   because, as this Court said in McCann, a stay is

    16   something that prevents the authority to alter

    17   the status quo. So I do think stay has to be --

    18   has to be doing some work there.

    19   As to exercise control, I think part

    20   of that answer goes back to my stay response

    21   because I think, even if you thought that

    22   exercising control might plausibly include

    23   merely passive retention, I don't think that

    24   that's consistent with the use of the word

    25   "stay."

1   I would also say that I think what --

2   what -- what Respondents, I think, now are

3   pointing to as the act is simply refusing to

4   surrender when they make a request. I think

5   that's what -- the import of Footnote 3 of their

6   brief.

7   And I think that that really doesn't

8   seem like an act to exercise control. That

9   seems like a refusal to undo a pre-bankruptcy

10   act to exercise control. They want to undo the

11   pre-bankruptcy feature.

12   JUSTICE KAGAN: Well, look -- looking

13   to sort of more underlying principles, why isn't

14   holding onto a debtor's property until they pay

15   you a debt from prior to the bankruptcy sound

16   like just the kind of conduct that the automatic

17   stay provision should police?

18   MS. SINZDAK: I think that if you are

19   hanging onto the property to use it as leverage

20   to encourage debt collection, then you might be

21   violating Section 362(a)(6). But I don't think

22   that the automatic stay provision is designed in

23   any way to increase -- to -- to improve the

24   status of the debtor. It's merely designed to

25   preserve the status quo.

1   Now there are other provisions that do

2   improve the status of the debtor, like 542, like

3   the avoidance provision. And I think, in

4   Whiting Pools, the Court sort of looked at all

5   of those grouped together as things that do give

6   the debtor -- give the debtor a slightly

7   better -- put the debtor in a slightly better

8   position post-bankruptcy. But the --

9   JUSTICE KAGAN: Thank you, Ms.

10   Sinzdak.

11   MS. SINZDAK: -- automatic stay

12   preserves the status quo. Thank you.

13   CHIEF JUSTICE ROBERTS: Justice

14   Gorsuch.

15   JUSTICE GORSUCH: Good morning,

16   counsel. We discussed 542, and we danced a

17   little bit around 362(a)(6), but I'd like to

18   just -- if I could get an answer to this

19   question, I'd be grateful.

20   Why isn't Chicago's conduct a

21   violation of 362(a)(6)? We don't need to engage

22   in the metaphysics of (a)(3). There's -- estate

23   means stop any act to collect a claim against

24   the debtor that arose before the case, the --

25   the bankruptcy case.

 1   Why isn't holding onto someone's car

 2   at least that?

 3   MS. SINZDAK: The -- the Seventh

 4   Circuit held that it didn't need to reach that

 5   question. I would just -- and we, the

 6   government, isn't taking a position on the

 7   specific facts, but I would note that merely

 8   retaining property is not always an act taken to

 9   collect a debt.

10   For example, in Whiting Pools, the IRS

11   had seized property, and they weren't trying to

12   get the debtor to pay them back. They actually

13   just wanted to sell the property and get

14   whatever money they could.

15   So I do not think that every time that

16   a creditor retains property, they're going to

17   necessarily be violating Section 362(a)(6).

18   JUSTICE GORSUCH: Why -- why isn't

19   what you just described an act to collect on a

20   debt, to seize a car --

21   MS. SINZDAK: Merely --

22   JUSTICE GORSUCH: -- to seize the

23   property and either get payment from the debtor

24   or -- or to use the property to collect on the

25   debt by selling it?

 1   MS. SINZDAK: Well, so, in -- in -- in

 2   Whiting Pools, if you actually wanted to sell

 3   the property in order to get money, so in order

 4   to collect on the debt, you do have to make a

 5   motion to lift stay. And in Whiting Pools,

 6   that's what the IRS was in the process of doing.

 7   They knew that merely possessing the

 8   property didn't put them in violation of the

 9   automatic stay, but then they wanted to actually

10   sell it, and they worried that would, in fact,

11   you know, collect on a debt or perhaps realize a

12   lien, and so they -- they were making the motion

13   to lift stay. And it's at that point that all

14   of the questions kicked in about whether

15   actually they were compelled to turn it over.

16   JUSTICE GORSUCH: Why isn't just

17   possessing it -- I guess we're still dancing

18   around it -- but why isn't merely possessing it

19   with the intent to do one of those two things

20   that we just talked about, any act to collect

21   the debt, that is, any act?

22   MS. SINZDAK: I think reading it that

23   broadly, again, would -- would -- would come in

24   conflict with the meaning of "stay," which is a

25   term that connect -- that denotes the command to

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 1    preserve the status quo.

 2              Reading it that broadly would also

 3    fall afoul of the -- of what this Court said in

 4    Strumpf, which is that it will not read the

 5    automatic stay to override the exceptions in

 6    542(a).  So even if you thought --

 7              JUSTICE GORSUCH:  Thank you, counsel.

 8              CHIEF JUSTICE ROBERTS:  Justice

 9    Kavanaugh.

10              JUSTICE KAVANAUGH:  Thank you.

11              And good morning, Ms. Sinzdak.  In

12    isolation, as I understand your position, but

13    correct me if I'm wrong, you're saying, in

14    isolation, holding property might be exercising

15    control over the property, perhaps, but -- for

16    purposes of 362, but, when you look at 362

17    together with 542, the turnover provision, then

18    you realize that holding property cannot be

19    exercising control over the property.

20              Is that -- or at least an act to

21    exercise control.  Is that an accurate summary

22    of your position, or what nuance would you add?

23              MS. SINZDAK:  I think that's a fair

24    description.  I would say that I think you can

25    get our understanding from Section 362(a)(3)
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1   alone because of the use of the term "stay,"

2   because of the general statutory interpretive

3   principle that says to read acts in a list in

4   the same way, all of the other acts are clearly

5   those that would alter the status quo. And an

6   act to exercise control should be interpreted

7   the same way.

8   But, otherwise, yes. We're sort of

9   saying, as this Court said in Timbers of Inwood

10   Forest, maybe you could look at that provision

11   in isolation, but you can't look at the

12   Bankruptcy Code, snippets of Bankruptcy Code

13   text, and just ask what they mean in isolation.

14   You have to look at the context of the statute

15   as a whole.

16   JUSTICE KAVANAUGH: If your position

17   were to lose here, how would that affect

18   day-to-day bankruptcy practice?

19   MS. SINZDAK: It would put a lot more

20   pressure on creditors to surrender property

21   where they believe that they have fair defenses

22   to turnover under Section 542.

23   So, again, the IRS, if it has to fear

24   automatic sanctions under Section 362(a)(3),

25   might feel more pressure to surrender property

1   even when it believes that it is clearly covered

2   by the exception for in -- property of

3   inconsequential value or benefit.

4   So I think it essentially gives

5   debtors a sort of cudgel to -- to -- to force

6   creditors to surrender property they might be

7   very well entitled to hold onto.

8   JUSTICE KAVANAUGH: Thank you.

9   CHIEF JUSTICE ROBERTS: A minute to

10   wrap up, counsel.

11   MS. SINZDAK: Thank you, Mr. Chief

12   Justice.

13   I would just reiterate that read in

14   full, Section 362(a)(3) is best interpreted to

15   prevent acts that would alter the status quo

16   with respect to the possession or control of

17   estate property.

18   Reading the automatic stay as

19   Respondents propose would ignore the plain

20   meaning of the term "stay," it would override

21   the express exceptions to turnover in Section

22   542(a), and it would be at odds with the

23   well-established role of the automatic stay

24   provision in the bankruptcy scene. Thank you.

25   CHIEF JUSTICE ROBERTS: Thank you,

           1   counsel.

           2   Mr. Wedoff.

           3   ORAL ARGUMENT OF EUGENE R. WEDOFF

           4   ON BEHALF OF THE RESPONDENTS

           5   MR. WEDOFF: Thank you, Mr. Chief

           6   Justice, and may it please the Court:

           7   These cases present a single question:

           8   May a creditor stop a Chapter 13 debtor from

           9   recovering property that the creditor seized

          10   before the bankruptcy filing if the debtor does

          11   not have a court order directing the return?

          12   For three reasons, reflected in the

          13   Court's questions today, the creditor may not

          14   prevent recovery of the property.

          15   First, the automatic stay in

          16   Section 362(a)(3) of the Bankruptcy Code

          17   provides that a creditor may not act to exercise

          18   control over a debtor's property. The critical

          19   language is "exercise control." Unlike action

          20   to obtain possession of property, a future event

          21   that the stay also prohibits, exercising control

          22   over property is ongoing action, and the stay

          23   expressly stops it.

          24   Second, the automatic stay works

          25   together with the turnover provision in Section

1   542(a) of the code, which commands that any

2   party holding estate property shall deliver it

3   to the trustee or debtor. This provision

4   operates automatically, with no requirement that

5   the debtor obtain a court order mandating

6   compliance.

7   Third, the automatic stay and the

8   turnover provision support a major purpose of

9   the Bankruptcy Code: to place all estate

10   property under the court's jurisdiction and

11   allow the trustee or debtor to control the

12   property from the outset of the case.

13   This Court recognized in Whiting Pools

14   that an effective reorganization of a business

15   or individual will not likely succeed if

16   creditors can withhold estate property to get

17   better treatment for themselves.

18   The automatic stay protects

19   reorganization. It allows greater payments to

20   all creditors by preventing any one creditor

21   from withholding the debtor's property.

22   Until 2016, the City of Chicago

23   complied with the code, returning seized cars

24   when debtors requested. When the City changed

25   its policy and refused to return my clients'

1   cars, it acted to exercise control over them, a

2   direct violation of the automatic stay, as the

3   Seventh Circuit correctly held.

4   CHIEF JUSTICE ROBERTS: Counsel, the

5   basic question here is when an entity exercising

6   control over the property of a debtor has to

7   turn over the property to the estate. Now why

8   wouldn't we look to the section of the code

9   entitled "turnover of property to the estate" to

10   figure out the answer to that question?

11   MR. WEDOFF: I think that that

12   section, Section 542(a), works hand in hand with

13   the automatic stay in Section 362(a)(3). So,

14   yes, we do look at 542(a), which tells us that,

15   as of the outset of the case, there's a duty to

16   turn over, but 362(a)(3) enforces that

17   obligation. And what we have argued is that it

18   arises when the debtor requests the return of

19   the property.

20   CHIEF JUSTICE ROBERTS: Well, but they

21   lose the protections under 542(a) unless you

22   incorporate them by reference under 363(a). And

23   I'm just wondering, well, why don't you assume

24   those protections apply directly under 542

25   rather than indirectly under 363?

1   MR. WEDOFF: The important thing about

2   Section 363(e) is that it arises on request of

3   the creditor. If a creditor has not requested

4   adequate protection, there is no automatic

5   allowance and no obligation on the debtor's part

6   to provide it.

7   CHIEF JUSTICE ROBERTS: Well, what if

8   -- if you get the protections under 363(a) that

9   you would get under 542, and, presumably, a

10   creditor would not be subject to any kind of

11   sanctions before it learns of the bankruptcy,

12   what -- what is the -- the practical difference

13   between the two provisions?

14   MR. WEDOFF: The practical difference

15   is one of timing, and I think that's been

16   reflected in some of the questions that the

17   Court has asked. If the debtor has to wait for

18   what could be several weeks before the Court

19   rules on the return of seized property, the

20   debtor's ability to fore -- to reorganize is

21   likely to be lost.

22   CHIEF JUSTICE ROBERTS: By a -- by a

23   period of a couple weeks?

24   MR. WEDOFF: Yes, because the debtor

25   needs the car to get to work, it needs the car

 1   to have the income to support a family, and if

 2   that is lost, the debtor is going to be unable

 3   to make the payments that would be required to

 4   keep the case going.

 5   CHIEF JUSTICE ROBERTS: Your friend on

 6   the other side, Mr. Goldblatt, says on page 15

 7   of his brief that the parties agree that

 8   long-settled bankruptcy law permitted a creditor

 9   to retain possession of repossessed or impounded

10   property pending the outcome of a turnover

11   proceeding.

12   Is -- is he right that you agree with

13   that?

14   MR. WEDOFF: No, he -- he is not

15   correct about that. We cited the Larimer case,

16   a bankruptcy case from Idaho, for the

17   proposition that Section 542(a) applies when the

18   case is filed. And if there's a request to have

19   the property turned over, 542(a) itself requires

20   that that be done and without a court order.

21   But the important thing is that when

22   the automatic stay was amended in 1984, it

23   provided a more effective enforcement mechanism

24   than what existed before in 1984.

25   CHIEF JUSTICE ROBERTS: Thank you,

    1   counsel.

    2   Justice Thomas.

    3   JUSTICE THOMAS: Counsel, if -- if the

    4   two provisions work together, wouldn't you

    5   expect that -- that there'd be a

    6   cross-reference?

    7   MR. WEDOFF: It's really not

    8   necessary, Justice Thomas, because they so

    9   clearly deal with precisely the same issue,

    10   control and possession of estate property.

    11   So they treat the same issue. And

    12   when we have two provisions of the code that

    13   treat the same issue, we read them as harmonious

    14   if that's possible. And it's certainly possible

    15   here.

    16   JUSTICE THOMAS: And on that score, it

    17   -- it would seem to me that you would actually

    18   make 542 somewhat superfluous.

    19   MR. WEDOFF: No, there -- there's an

    20   overlap, as frequently happens in the Bankruptcy

    21   Code, but 542(a) does considerably more than 362

    22   does.

    23   542(a) directs the party to whom

    24   property of the estate ought to be delivered,

    25   and it imposes a requirement of accounting for

 1   any loss in the value of the property.

 2   So 542(a), even with the enforcement

 3   mechanism of 362, is entirely viable.

 4   JUSTICE THOMAS: So you said that or

 5   at least that's -- I think I heard that you say

 6   that the -- the -- the difference between

 7   proceeding under 542 versus 362 is a matter of a

 8   couple of weeks.

 9   MR. WEDOFF: Well, it could be more

10   than that. It could be much more than that. If

11   the creditor said you have to demonstrate

12   adequate protection, and there was a question

13   about whether the value of the property was

14   sufficient to provide adequate protection to a

15   creditor, it could involve expert witnesses,

16   discovery, and a proceeding that went on for

17   many weeks.

18   JUSTICE THOMAS: The -- I'm still

19   interested, and I know this is -- as I've said

20   before, this is deemed to be somewhat

21   metaphysical, but I'm still having a problem

22   seeing that merely having a car on an

23   impoundment lot is exercising control over it.

24   I understand if the City wanted to

25   dispose of it, to auction it off, that would be

1   exercising control over it. But merely

2   passively holding it, would you explain to me

3   again why that is exercising control?

4   MR. WEDOFF: Yes, Your Honor. The

5   question arises when the debtor asks for return

6   of the property. At that moment, the creditor

7   has a choice: either the creditor turns the

8   property over or the creditor continues to hold

9   that property against the ability of the debtor

10   to obtain it. And that holding of the property

11   against the debtor's wish to have it turned over

12   is an exercise of control in the ordinary

13   meaning of the words.

14   JUSTICE THOMAS: I see that it would

15   be exercising control if the debtor -- I mean if

16   the creditor or the City actually delivered the

17   property. But, if the City passively said,

18   look, no, it's -- we have it, we're not going to

19   go to the effort of delivering it to you, I

20   don't see how that is anything more than

21   passively holding property rather than acting to

22   exercise control.

23   MR. WEDOFF: Your Honor, if you

24   imagine the debtor with a key to the car coming

25   to the gate of the impound lot and trying to get

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 1      in so that the debtor can drive the car away, I
 2      think it would be clearer that there's plainly
 3      an act to exercise control as the debtor is
 4      prevented from gaining access.
 5                  JUSTICE THOMAS:  Thank you.
 6                  CHIEF JUSTICE ROBERTS:  Justice
 7      Breyer.
 8                  JUSTICE BREYER:  Thank you.
 9                  I'm trying -- I think it would be --
10      to see my questions as trying to clarify what
11      the Chief Justice asked, where I tended to have
12      the same questions.
13                  I'm having a hard time figuring out
14      what the difference is between the two sections.
15      If you're right and a creditor has some property
16      like a car, you say 362 says turn it over
17      immediately, and if you don't, you're going to
18      be in trouble.
19                  And 542 says just the same thing.  542
20      says shall turn it over.  And then there's some
21      exceptions in 542.
22                  But, for the most part, you -- you --
23      you read those into 363, except I don't know
24      what happens to life insurance, but -- and in
25      both cases, I guess, if -- if -- if you're right
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         1   and the City needs protection, it can say:

         2   Judge, we're ready to give him the car, but

         3   please give us protection. And he could do that

         4   whether you're right or wrong.

         5   So I can't get the difference in my

         6   mind.

         7   MR. WEDOFF: Your Honor, the

         8   difference, again, is a question of timing. If

         9   the debtor needs to seek an order from the court

        10   to have the property turned over, there could be

        11   a very long delay between the time that the car

        12   is seized and the bankruptcy's filed and the

        13   time that the debtor ultimately gets that court

        14   order.

        15   On the other hand, if there's a

        16   violation of the automatic stay, if the

        17   automatic stay applies, there's an immediate

        18   obligation --

        19   JUSTICE BREYER: All right, I see

        20   that. I see that. But I also say, isn't that

        21   counterbalanced in the fact that there's no

        22   other security? If a debtor -- if the creditor

        23   has to turn it over immediately, he may lose the

        24   car because of time, when he shouldn't.

        25   MR. WEDOFF: The creditor --

1   JUSTICE BREYER: But -- and so I -- I
2   find that a kind of balance, six of one, half
3   dozen of the other.
4   MR. WEDOFF: The difference is in the
5   speed with which the creditor can get relief
6   from the automatic stay. Section 363(e) allows
7   even ex parte relief from the automatic stay on
8   an immediate basis. So, if the creditor turned
9   over the car and immediately sought relief from
10   the stay, within a matter of hours, the court
11   could order that return.
12   But -- and -- and I -- let me go even
13   further. The automatic stay can be annulled if
14   the ruling were --
15   JUSTICE BREYER: Yeah, but he still
16   has to deal with 542. On your theory, he has to
17   deal with both.
18   MR. WEDOFF: That's -- that's
19   completely true, but the point is that if there
20   is any redundancy between the two statutes, the
21   redundancy should be resolved, as the Busic case
22   said, by harmonizing them. And, here, there's
23   no difficulty in harmonizing.
24   But, to get back to your point, the
25   difference in the balance of harms is

         1   extraordinary. The debtor can get relief under

         2   Section 542 only after a proceeding that could

         3   take a very long time to result in help for the

         4   debtor. The creditor, on the other hand, can

         5   get relief from the automatic stay almost

         6   immediately and, in the case of annulment,

         7   immediately.

         8   So that really looking at that just

         9   gives another reason why the congressional

        10   approach to bankruptcy put all of the property

        11   in the hands of the debtor or the trustee at the

        12   outset of the case is appropriate to enforce.

        13   JUSTICE BREYER: Thank you.

        14   CHIEF JUSTICE ROBERTS: Justice Alito.

        15   JUSTICE ALITO: Well, to follow up on

        16   Justice Breyer's question, if you are correct

        17   that 542 is self-executing, then I don't really

        18   understand your answers to his questions. Could

        19   you just take a minute to clarify that?

        20   MR. WEDOFF: When we say

        21   self-executing, I think there's a -- a need to

        22   look at that a little bit more. It's certainly

        23   true, as we understand it, Section 542 requires

        24   the turnover of property to a debtor at the

        25   outset of the debtor's request for that

1   property.

2   But it's not self-enforcing in the

3   sense that the debtor would not have to take

4   action to enforce the -- the claim if it's being

5   violated. If the creditor does not turn over

6   property under 542, the debtor would have to go

7   into court with the creditor still holding the

8   property, and the creditor would quite possibly

9   argue there's no adequate protection for our

10   claim, and the matter could drag on for a

11   considerable length of time, whereas, with the

12   automatic stay, the property must be turned over

13   and then the creditor seeks relief, and, again,

14   that can be done quickly.

15   But the long and -- the short answer

16   to your question is --

17   JUSTICE ALITO: Well, the creditor

18   seeks relief after the car is turned over, the

19   -- the -- the City would have to turn over the

20   car and then ask for adequate -- adequate

21   protection?

22   MR. WEDOFF: Correct.

23   JUSTICE ALITO: It could not condition

24   the turning over of the car on the provision of

25   adequate protection?

           1   MR. WEDOFF: No, because that, again,

           2   invites long negotiation, with the creditor

           3   having all of the leverage to achieve more than

           4   it would get otherwise.

           5   JUSTICE ALITO: All right. Let me ask

           6   you -- let me ask you a different question.

           7   Before 1984, would a creditor's refusal to turn

           8   over property have violated 362(a)(3)?

           9   MR. WEDOFF: No.

          10   JUSTICE ALITO: So your argument has

          11   to be that Congress made this very substantial

          12   change in the way the situation is to be treated

          13   under the Bankruptcy Act simply by adding,

          14   without any cross-reference or other

          15   clarification, the word "exercise control," the

          16   phrase "exercise control"?

          17   MR. WEDOFF: It certainly made a

          18   change, but it was not a particularly

          19   significant change. 542(a) already required the

          20   property to be turned over. All that 362(a)(3)

          21   added was a more efficient enforcement

          22   mechanism, and one --

          23   JUSTICE ALITO: Well, I thought you

          24   just told me that -- I thought you just told me

          25   that it makes a big difference --

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1              MR. WEDOFF:  It makes a difference --
2              JUSTICE ALITO:   -- whether Congress --
3              MR. WEDOFF:   -- in the -- excuse me.
4              JUSTICE ALITO:  I thought you just
5     said it makes a big difference whether it's
6     under 362 or 542.  And then you told me, well,
7     Congress didn't need to do more than just add
8     the words "exercise control" because it was no
9     big deal.
10             MR. WEDOFF:  It makes a big difference
11    in the effectiveness of the enforcement
12    mechanism, but it doesn't make a big difference
13    in the substantive obligation to turn over the
14    seized property.  The enforcement --
15             JUSTICE ALITO:  It makes a difference
16    -- according to your argument, it makes a
17    difference in the relative rights of creditors
18    and debtors, and I don't know which is better as
19    a policy argument, but your -- I don't see how
20    you can have it both ways.
21             Either it's important or it's not
22    important, and, if it's important, then you have
23    to explain why Congress would have chosen to do
24    it in this very oblique fashion.
25             MR. WEDOFF:  The difference in the
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1   enforcement mechanism is important, but the

2   underlying substantive obligation was not

3   changed. And the language in 362(a)(3), as we

4   argued from the beginning, could not be clearer.

5   There is an obligation to cease

6   exercising control over the estate property, and

7   that requirement to cease exercising control

8   necessarily means turning over the property to

9   the party entitled to possess it.

10   JUSTICE ALITO: Thank you.

11   CHIEF JUSTICE ROBERTS: Justice

12   Sotomayor.

13   JUSTICE SOTOMAYOR: Counsel, where in

14   362(a)(3) do you see a requirement that the

15   debtor has to turn it over only upon request?

16   I thought, under the terms of the

17   automatic stay, the minute the Bankruptcy Code

18   is filed -- the bankruptcy proceeding is filed,

19   the automatic stay requires immediate turnover

20   in other situations without demand.

21   Where do you get demand?

22   MR. WEDOFF: Your Honor, this is a

23   necessity of interpreting a particular provision

24   of the code in context. It may very well be

25   that a trustee or a debtor-in-possession does

 1   not want to have possession of the property.

 2   Trustees and debtors-in-possession are

 3   given the option of abandoning property that is

 4   burdensome to them. And, of course, the

 5   provisions of 542(a) are consistent with not

 6   turning over property of inconsequential value.

 7   Moreover, a debtor in Chapter 13 has

 8   the ability to allow the creditor to keep the

 9   property as satisfaction of the creditor's claim

10   under Section 1325 --

11   JUSTICE SOTOMAYOR: Counsel --

12   MR. WEDOFF: -- (a)(5).

13   JUSTICE SOTOMAYOR: -- counsel, if I

14   might interrupt, you're reading something into

15   the provision. Why isn't it more natural to

16   read 542 as controlling when there's been no

17   active exercise of control and that makes a

18   debtor's request the acting principle?

19   Under 542(a), the trustee has to ask

20   for the property. We don't have to make

21   anything up. It's right there.

22   MR. WEDOFF: There's -- there's

23   nothing in Section 542(a) that requires any

24   action by the debtor or trustee in order for

25   that provision to go into effect.

1   The question is what is the mechanism

2   for enforcing it, and that, of course, would

3   require some action by the trustee or debtor.

4   JUSTICE SOTOMAYOR: Counsel, getting

5   outside the legal arguments, on a practical

6   level, what would have to be done -- and I know

7   we wouldn't do it, Congress would or whatever

8   appropriate bankruptcy committee would -- what

9   would have to be done to expedite this

10   proceeding for things like cars in a way that

11   doesn't give you everything you want but

12   provides a reasonable opportunity for a

13   debtor -- for a creditor like the City to come

14   in and ask for adequate assurances of

15   protection?

16   MR. WEDOFF: Well, Your Honor, of

17   course, I believe that they have that right now

18   and that there's no need for the --

19   JUSTICE SOTOMAYOR: Counsel, I just

20   asked you to go outside this. Assume I ruled

21   against you.

22   MR. WEDOFF: Okay. Well, but --

23   JUSTICE SOTOMAYOR: All right. Not

24   me, but the Court. But you've lost your legal

25   argument.

1   MR. WEDOFF: All right.

2   JUSTICE SOTOMAYOR: What would be your

3   then next step in Congress or wherever is

4   appropriate and what kind of legislation to

5   ensure the purpose I spoke about?

6   MR. WEDOFF: Well, there could be

7   language added to Section 542 or there could be

8   language added to Section 362(a)(3) that made it

9   abundantly clear that the interpretation that

10   we're proposing right now is the correct one.

11   JUSTICE SOTOMAYOR: All right. You're

12   not helping. Okay. Thank you, counsel.

13   CHIEF JUSTICE ROBERTS: Justice Kagan.

14   JUSTICE KAGAN: Mr. Wedoff, the City

15   of Chicago here and the SG, too, argues that the

16   only thing that the automatic stay provision is

17   about is maintaining the status quo.

18   So I just thought I'd ask, is there --

19   is there any other circumstance in which the

20   automatic stay provision compels an action that

21   alters the status quo, or is -- is -- is -- is

22   this one the only one in your view?

23   MR. WEDOFF: No, to some extent,

24   Justice Kagan, that's already been discussed.

25   The Solicitor General acknowledged that, under

     1   Section 362(a)(6), a creditor may very well need

     2   to turn over to the debtor a transcript of their

     3   grades, that requires action to prevent the

     4   ongoing collection effort that was maintaining

     5   that transcript.

     6   But, similarly, in Section 362(a)(1),

     7   a creditor is required to stop any collection

     8   action in a judicial or administrative

     9   proceeding from going forward, and that requires

    10   that creditor to take action to stop things like

    11   garnishments.

    12   It's not enough for them to say: We

    13   don't need to do anything for the garnishment to

    14   go forward. We just allow that to take place,

    15   maintaining the status quo.

    16   No. They have to take action to stop

    17   the garnishment. And I think the underlying

    18   issue here is that the automatic stay is

    19   intended to prevent collection activity from

    20   going forward. Most of the time, that can be

    21   done by stopping any new action from taking

    22   place. But sometimes, as in this case, it -- it

    23   requires the stopping of continuing action.

    24   JUSTICE KAGAN: And -- and how about

    25   this? I -- I take it that your argument is

 1   essentially that 362(a)(3) becomes the

 2   enforcement mechanism for the 542 provisions.

 3   But is there another example like that

 4   where the automatic stay enforces an obligation

 5   that's imposed by another different provision of

 6   the Bankruptcy Code?

 7   MR. WEDOFF: Yes, there is. Section

 8   521 imposes many obligations on the debtor,

 9   including the obligation to turn over property

10   to the trustee. But the automatic stay enforces

11   that obligation, and so it puts teeth into the

12   521 obligation.

13   JUSTICE KAGAN: And if it -- if -- if

14   -- if you are right that the automatic stay is

15   an enforcement mechanism, wouldn't we expect the

16   two provisions, 362 and 542, to be completely

17   the same in scope? But, as Ms. Sinzdak pointed

18   out, they're -- they're really not. There's the

19   exception for things of minimal value in 542.

20   There are some other exceptions. So they're not

21   coterminous. If one were really enforcing the

22   other, shouldn't they be?

23   MR. WEDOFF: The general rule that was

24   announced by this Court in Germaine is one that

25   requires consideration of both statutes and

1   harmonizing them to the extent possible. And,

2   here, the differences between the two are almost

3   insignificant.

4   A debtor is not going to be asking for

5   the return of property of in -- inconsequential

6   value to the debtor. There's not an insurance

7   issue here. And there's not a situation where

8   the property has already been transferred by the

9   creditor. And those are the only exceptions in

10   542(a). So 362(a)(3) and 542(a) line up almost

11   perfectly.

12   JUSTICE KAGAN: My -- my final

13   question is, you know, there's a lot of

14   difference between you and your friends on the

15   other side about how 542 operates and what it

16   requires. And Justice Alito, I think, asked

17   before, you know, do we have to decide those

18   questions?

19   So a similar question to you: Does

20   your argument really depend on a particular view

21   of what 542 says and how it operates, or could

22   we, for example, take Chicago's view and you

23   would still win?

24   MR. WEDOFF: 542(a) is not essential

25   to our argument. 362(a)(3) on its own clearly

 1   says that the creditor may not continue to

 2   exercise control over the property.

 3   542(a) is helpful, though, as I

 4   indicated before, in indicating who should get

 5   possession of the property and what should be

 6   done if there's a decline in the value of the

 7   property while it's being held by the creditor.

 8   JUSTICE KAGAN: Thank you, Mr. Wedoff.

 9   CHIEF JUSTICE ROBERTS: Justice

10   Gorsuch.

11   JUSTICE GORSUCH: Good morning. I'd

12   like to start with the 1984 amendments. Before

13   1984, the statute prohibited obtaining

14   possession.

15   MR. WEDOFF: Yes.

16   JUSTICE GORSUCH: In '84, they added

17   the "or exercise control" provision. And isn't

18   there some linguistic gap in there? For better

19   or worse, Congress never talked about just

20   retaining possession, it didn't speak about

21   keeping possession, it didn't speak about

22   anything else about possession. It went on to

23   add new and different language about exercising

24   control. What do we do about that?

25   MR. WEDOFF: Well, I think the -- the

1   best thing to do is to look at what would have

2   happened if the interpretation posed by the City

3   were put into effect really, and that is it

4   would have used the same language that was

5   already in Section 362(a), prohibiting any

6   action to obtain control of property of the

7   estate by talking about --

8   JUSTICE GORSUCH: Isn't the simplest

9   thing in the world and the most natural, though,

10   if Congress wanted to get at retaining

11   possession, just to say obtain or -- obtain or

12   retain possession, something like that?

13   MR. WEDOFF: That certainly would have

14   been another way to do it, but I think that

15   exercising control is that same kind of

16   continuous action.

17   JUSTICE GORSUCH: Okay. I'd also like

18   you to address the point that nobody seems to

19   think that it -- it would be acceptable for the

20   City to just simply abandon these cars and that,

21   in fact, as I understand it, your position is

22   that on request or at least on request, maybe

23   automatically, the City must hand over the car

24   to the trustee.

25   But where do we get that in 362?

 1   Nothing speaks to handing anything over. It

 2   just is a stay, as -- as Judge McKay put it on

 3   the Tenth Circuit. It's a stay, not a go

 4   provision. What do we do about that?

 5   MR. WEDOFF: Well, I -- I -- I'm not

 6   sure that I understand the question entirely,

 7   but, certainly, the --

 8   JUSTICE GORSUCH: Well, I -- I -- I

 9   think you -- I -- I'm -- I'm sure you do,

10   friend. The point is you want to use this as --

11   as a self-executing requirement to hand things

12   over, not merely abandon the property. And

13   there's nothing in the -- in -- in -- in this

14   provision, unlike 542, that speaks to that.

15   MR. WEDOFF: That's correct. And so

16   it would not be a violation of the automatic

17   stay if the City were to leave the car unlocked

18   in front of its impound lot and invite the

19   debtor, or anyone else who had a key, to drive

20   it away. That would not be a violation of

21   Section 362(a)(3).

22   However, it would subject the creditor

23   to violation of 541 or at least an obligation to

24   have to account for any loss of value. So they

25   really do work together.

1   JUSTICE GORSUCH: What -- what do we

2   do about the fact that (a)(6) seems to be the

3   much more natural provision for your argument

4   than (a)(3)?

5   MR. WEDOFF: That's to reflect the

6   reality of the automatic stay, which has any

7   number of overlapping provisions. 543 --

8   362(a)(6), for example, talks about any action

9   to collect. Well, that would include putting

10   liens on the property, enforcing an obligation

11   by sale, all sorts of things that are separately

12   prohibited by the automatic stay would be

13   incorporated under 362(a)(6), but that doesn't

14   prevent each of them from being applied. The --

15   JUSTICE GORSUCH: Let -- let's --

16   let's say that we thought your argument under

17   (a)(3) was unsuccessful. Have you preserved an

18   (a)(6) argument? Is it something that could be

19   remanded for consideration?

20   MR. WEDOFF: Absolutely. In fact, one

21   of the cases that was decided, the Shannon

22   decision, has express findings by the bankruptcy

23   court that (a)(6) was violated by the City.

24   So, in the event that the (a)(3)

25   ground of violation of the stay were not

 1   accepted by the Court, (a)(6) would certainly

 2   have to be something considered.

 3   JUSTICE GORSUCH: Thank you.

 4   CHIEF JUSTICE ROBERTS: Justice

 5   Kavanaugh.

 6   JUSTICE KAVANAUGH: Thank you, Chief

 7   Justice.

 8   And good afternoon, Mr. Wedoff. Just

 9   to follow up on Justice Gorsuch's questions at

10   the beginning of the colloquy with him, the 1984

11   amendment, he made the point, and I think you

12   agree, that, obviously, it would have been

13   simple enough to put "retain possession" in

14   there or "keep possession," as Justice Gorsuch

15   said.

16   Is your point that "exercise control"

17   covers that and covers other things? Is that

18   the nature of your response to him? I just want

19   to make sure I have that nailed down textually.

20   MR. WEDOFF: Exactly. That is

21   precisely our position.

22   JUSTICE KAVANAUGH: And what -- what

23   does -- can you give a universe of things or at

24   least a sample of things that are encompassed

25   within "exercise control"?

 1   MR. WEDOFF: Well, among the things

 2   that would be encompassed is the exercise of

 3   control over intangible property, which is one

 4   of the things that the City has argued. And

 5   that's one of the things that's covered, but

 6   also the exercise of control over tangible

 7   property.

 8   JUSTICE KAVANAUGH: And I'm going to

 9   ask you the same question I asked the Assistant

10   to the Solicitor General in thinking about

11   debtors and creditors and also the dedicated

12   bankruptcy judges around the United States.

13   If you were to lose this case, what

14   would be the effect in your view on day-to-day

15   bankruptcy practice in bankruptcy courts?

16   MR. WEDOFF: It would make Chapter 13

17   much less effective potentially because it would

18   put debtors in the position of not being able to

19   recover property that's essential to their

20   livelihood. And so Chapter 13 filings would

21   decrease.

22   But also, interestingly enough, I

23   believe payments to creditors would decrease,

24   payments to the other creditors who would be

25   benefitted by a Chapter 13, and even payments to

1   the City of Chicago itself, because, in Chapter

2   13, they would probably get more money in

3   payment of their claim than they would get by

4   having that car liquidated in their impound lot.

5   JUSTICE KAVANAUGH: Thank you very

6   much.

7   CHIEF JUSTICE ROBERTS: Thank you.

8   Mr. Wedoff, you can take up to 10

9   additional minutes.

10   And during that time, if any of my

11   colleagues have questions they did not have an

12   opportunity to ask, they can ask them during

13   that time.

14   MR. WEDOFF: Thank you, Mr. Chief

15   Justice.

16   I believe that the questions from the

17   Court today have spotlighted the underlying

18   basic bankruptcy policy, which is that

19   bankruptcy trustees and debtors-in-possession

20   must be given prompt access to estate property.

21   The automatic stay advances this

22   policy by preventing creditors from acting

23   against property of the estate. It prevents

24   creditors who hold the debtor's property before

25   the bankruptcy filing from acting to control

 1   that property while the case is pending.

 2   If the creditor were able to continue

 3   to exercise control over the property, the

 4   creditor would have leverage over the debtor.

 5   The debtor, who needs the seized property, would

 6   be willing to give the creditor better treatment

 7   in a Chapter 13 plan or make additional payments

 8   at the outset to avoid the delay that otherwise

 9   would occur.

10   That kind of leverage in support of

11   one creditor over the body of creditors as a

12   whole is something that the automatic stay is

13   directed to preventing.

14   JUSTICE SOTOMAYOR: Counsel, I'm

15   sorry, this is Justice Sotomayor. I don't

16   understand that last point. If a turnover

17   provision under 542 is -- would result in the

18   debtor coming in and saying, I need the property

19   to earn a living, under 542, you can come in and

20   say: I need security or raise any other sorts

21   of defenses that would delay the proceedings.

22   You get to keep the property and

23   deprive the other creditors of any possibility

24   of recovery. So isn't the gamesmanship the

25   problem here? Who's going to suffer the loss?

1   MR. WEDOFF: To some extent, but I

2   think the statute --

3   JUSTICE SOTOMAYOR: But it's always

4   the estate who suffers the loss under your

5   theory, because the estate is not getting back

6   an instrument for the livelihood of the debtor.

7   MR. WEDOFF: Well, the estate is

8   getting that back under the interpretation we've

9   given, but, again, the question really is what

10   does the statute say.

11   And I -- I want to raise the approach

12   that was taken by Whiting Pools again, and

13   Whiting Pools said -- and I'm quoting now --

14   Section 542(a) simply requires the creditor to

15   seek protection of its interests according to

16   the congressionally-established bankruptcy

17   procedures rather than by withholding seized

18   property of the debtor's efforts to reorganize.

19   So Whiting Pools itself recognizes

20   that this balance between the debtor's need to

21   reorganize and the -- and the creditor's need to

22   have the property is balanced in favor of the

23   debtor while the matter is being resolved by the

24   bankruptcy court.

25   And, again, the creditor can get very

1   prompt relief from the bankruptcy court upon an

2   appropriate --

3   JUSTICE SOTOMAYOR: And you believe a

4   motion for the -- a motion instead of an

5   adversary -- adversarial proceeding would be

6   adequate to get the property back by the debtor?

7   MR. WEDOFF: To get -- no, I -- I -- I

8   -- well, yes, because the -- the motion can be

9   brought to enforce the automatic stay. So,

10   absolutely.

11   JUSTICE SOTOMAYOR: No, I'm not -- I'm

12   not talking about the automatic stay. I'm

13   talking about under 542.

14   MR. WEDOFF: Oh, under 542.

15   JUSTICE SOTOMAYOR: Could the debtor

16   make a motion?

17   MR. WEDOFF: The debtor could make a

18   motion under 105(a) to enforce Section 362(a)(3)

19   and Section 542(a), yes.

20   JUSTICE SOTOMAYOR: And 542(a), okay.

21   Thank you, counsel.

22   MR. WEDOFF: What I wanted to conclude

23   then is by saying that the rights of the

24   creditor holding the property are protected by

25   the automatic stay, but the creditor has to take

```
 1    the action to enforce those rights, and it can
 2    do it very quickly.  The delay that the City
 3    would impose on the debtors and trustees would
 4    be fatal to accomplish the reorganizational
 5    purposes of the Bankruptcy Code.
 6              The Seventh Circuit's interpretation
 7    of the statutory language is not only correct
 8    according to its plain meaning but correct
 9    according to that underlying Bankruptcy Code
10    policy of encouraging reorganization.
11              And so, for all of those reasons, we
12    believe the Seventh Circuit's interpretation is
13    correct and that the judgment ought to be
14    affirmed.
15              Thank you.
16              CHIEF JUSTICE ROBERTS:  Mr. Goldblatt,
17    three minutes for rebuttal.
18              REBUTTAL ARGUMENT OF CRAIG GOLDBLATT
19                  ON BEHALF OF THE PETITIONER
20              MR. GOLDBLATT:  Thank you, Mr. Chief
21    Justice.  Just a few quick points.
22              First, Justice Gorsuch asked both of
23    my friends about the role of 362(a)(6) and
24    whether any of these actions are prohibited as
25    prohibited debt collection activity.
```

1   I think it's important to bear in

2   mind, as this Court's opinion in Whiting Pools

3   explains, that the Bankruptcy Code strikes a

4   careful balance between the rights of secured

5   creditors on the one hand and the rights of

6   debtors to marshal the assets of the estate on

7   the other and provides specific rights and

8   protections to secured creditors.

9   And where a secured creditor is

10   seeking to vindicate those rights by holding the

11   property in order to maximize its recovery as a

12   secured creditor, whether that's through

13   adequate protection or the treatment of its

14   claim under a plan, while, in ordinary English,

15   one might call that debt collection activity,

16   that isn't prohibited by (a)(6). That's simply

17   acting to vindicate the rights that the code

18   provides.

19   The Chief Justice asked my friend

20   about whether we agreed about the pre-1984

21   conduct. I'd refer there to my friend's 2018

22   article in which he says that before the 1984

23   expansion of Section 362(a)(3), if a creditor

24   was unwilling to return collateral, the debtor

25   would have to seek an order for turnover under

 1   Section 542.

 2   I'd also like to address the various

 3   textual indications that the other side's

 4   reading of this statute can't be correct. It

 5   requires a host of sort of atextual turn --

 6   work-arounds.

 7   For example, Footnote 3 of the red

 8   brief says that although the text says that the

 9   automatic stay goes into effect upon the filing

10   of the case, the obligation to turn over estate

11   property is not triggered until the debtor calls

12   you up and asks you for it.

13   They have similar trouble with the

14   exceptions to turnover. On page 47, they say

15   that no one is likely to seek turnover of

16   property of inconsequential value, but then, on

17   page 48, they acknowledge that if someone were

18   to do that, the court could invent an exception

19   to 362(a) that mirrors the exceptions set out in

20   Section 542(a).

21   None of that has any home in the

22   actual text of the statute and makes clear that

23   their reading of Section 362 can't be correct.

24   Finally, in response to -- to Justice

25   Sotomayor's question about the requirement of an

         1   adversary proceeding as opposed to a motion, the

         2   principal difference is that an adversary

         3   proceeding provides more elaborate notice. And

         4   this is just a practical point about what

         5   bankruptcy judges do in actual bankruptcy

         6   courts. In most bankruptcy courts, if a

         7   creditor responds to a motion by saying, I

         8   should have gotten an adversary, a bankruptcy

         9   judge will say, did you get actual notice? And

        10   if you did, why do you care that much about the

        11   caption on the paper?

        12   So, while it is true that Rule 7001

        13   says what it does and that the Rules Committee

        14   could address that if it thinks appropriate, in

        15   the real world, this isn't a problem that is

        16   plaguing bankruptcy courts in actual practice.

        17   CHIEF JUSTICE ROBERTS: Thank you,

        18   counsel. The case is submitted.

        19   (Whereupon, at 12:25 p.m., the case

        20   was submitted.)

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1

10 [1] **74**:8
105 [1] **21**:11
105(a [1] **77**:18
11:04 [2] **1**:15 **3**:2
12:25 [1] **81**:19
13 [11] **1**:11 **25**:1,16,18 **46**:8 **62**:7
  73:16,20,25 **74**:2 **75**:7
1325 [1] **62**:10
1473 [1] **26**:15
15 [1] **50**:6
16 [2] **12**:5 **21**:15
19-357 [1] **3**:4
1935 [1] **8**:4
1984 [11] **5**:5 **9**:6 **15**:21 **20**:3 **50**:22,
  24 **59**:7 **68**:12,13 **72**:10 **79**:22

2

2016 [1] **47**:22
2018 [1] **79**:21
2020 [1] **1**:11
24-hour [1] **13**:12
27 [1] **2**:8

3

3 [4] **2**:4 **6**:5 **39**:5 **80**:7
362 [25] **11**:16 **19**:18 **21**:9 **22**:13 **28**:
  8 **30**:6,15 **32**:1 **33**:24 **34**:5,8,11,14,
  17 **38**:8 **43**:16,16 **51**:21 **52**:3,7 **54**:
  16 **60**:6 **66**:16 **69**:25 **80**:23
362(a [2] **69**:5 **80**:19
362(a)(1 [1] **65**:6
362(a)(3 [26] **27**:22 **28**:5,10,13 **29**:
  18 **33**:6,12,18 **35**:25 **43**:25 **44**:24
  45:14 **46**:16 **48**:13,16 **59**:8,20 **61**:
  3,14 **64**:8 **66**:1 **67**:10,25 **70**:21 **77**:
  18 **79**:23
362(a)(6 [10] **35**:25 **36**:5 **39**:21 **40**:
  17,21 **41**:17 **65**:1 **71**:8,13 **78**:23
363 [4] **10**:15 **29**:5 **48**:25 **54**:23
363(a [2] **48**:22 **49**:8
363(e [4] **10**:14,15 **49**:2 **56**:6

4

46 [1] **2**:11
47 [1] **80**:14
48 [1] **80**:17

5

5 [1] **32**:4
521 [2] **66**:8,12
541 [4] **32**:1,2,5 **70**:23
542 [58] **9**:15 **10**:11 **11**:9 **12**:1 **19**:
  23,24 **21**:11,19 **22**:2,6,12 **23**:3,15
  28:16 **29**:3,8,10 **30**:5,14 **32**:2,7,11,
  13,17 **33**:2,3,25 **34**:6 **40**:2,16 **43**:
  17 **44**:22 **48**:24 **49**:9 **51**:18 **52**:7
  54:19,19,21 **56**:16 **57**:2,17,23 **58**:
  6 **60**:6 **62**:16 **64**:7 **66**:2,16,19 **67**:
  15,21 **70**:14 **75**:17,19 **77**:13,14 **80**:
  1
542(a [23] **43**:6 **45**:22 **47**:1 **48**:12,
  14,21 **50**:17,19 **51**:21,23 **52**:2 **59**:
  19 **62**:5,19,23 **67**:10,10,24 **68**:3

76:14 **77**:19,20 **80**:20
543 [1] **71**:7
552 [1] **33**:25

7

7001 [2] **36**:22 **81**:12
78 [1] **2**:14

8

84 [1] **68**:16

9

932 [1] **26**:16

A

a)(3 [4] **40**:22 **71**:4,17,24
a)(5 [1] **62**:12
a)(6 [5] **71**:2,18,23 **72**:1 **79**:16
a.m [2] **1**:15 **3**:2
abandon [2] **69**:20 **70**:12
abandoning [1] **62**:3
ability [6] **9**:2 **17**:25 **37**:4 **49**:20 **53**:
  9 **62**:8
able [3] **17**:4 **73**:18 **75**:2
above-entitled [1] **1**:13
absent [1] **5**:11
Absolutely [2] **71**:20 **77**:10
abundantly [1] **64**:9
accept [1] **19**:11
acceptable [1] **69**:19
accepted [2] **31**:24 **72**:1
access [2] **54**:4 **74**:20
accomplish [1] **78**:4
according [5] **24**:23 **60**:16 **76**:15
  78:8,9
Accordingly [1] **27**:24
account [1] **70**:24
accounting [1] **51**:25
accurate [1] **43**:21
achieve [1] **59**:3
acknowledge [1] **80**:17
acknowledged [1] **64**:25
ACLU [2] **24**:15 **25**:7
act [29] **6**:9 **14**:9 **15**:13 **31**:8,10,10,
  12,15,23 **33**:15,17,19 **35**:10,10,17
  38:13 **39**:3,8,10 **40**:23 **41**:8,19 **42**:
  20,21 **43**:20 **44**:6 **46**:17 **54**:3 **59**:
  13
acted [1] **48**:1
acting [7] **23**:21 **24**:6 **53**:21 **62**:18
  74:22,25 **79**:17
action [30] **5**:16,20 **6**:6,12 **7**:2 **14**:6
  15:8,10,11,13 **17**:18,18 **21**:20 **35**:
  19 **46**:19,22 **58**:4 **62**:24 **63**:3 **64**:
  20 **65**:3,8,10,16,21,23 **69**:6,16 **71**:
  8 **78**:1
actions [6] **5**:22 **14**:22 **15**:19 **16**:6
  23:15 **78**:24
active [1] **62**:17
activity [3] **65**:19 **78**:25 **79**:15
acts [7] **3**:20 **5**:21 **24**:10 **27**:23 **44**:
  3,4 **45**:15
actual [5] **4**:24 **80**:22 **81**:5,9,16
actually [9] **25**:17 **36**:17 **38**:6 **41**:
  12 **42**:2,9,15 **51**:17 **53**:16

add [3] **43**:22 **60**:7 **68**:23
added [8] **5**:5 **15**:5,21 **20**:4 **59**:21
  64:7,8 **68**:16
adding [1] **59**:13
addition [1] **14**:16
additional [2] **74**:9 **75**:7
address [3] **69**:18 **80**:2 **81**:14
addressed [2] **14**:2 **20**:15
addresses [1] **4**:2
adequate [14] **4**:11 **9**:3 **10**:19 **18**:3
  49:4 **52**:12,14 **58**:9,20,20,25 **63**:
  14 **77**:6 **79**:13
administrative [1] **65**:8
admonition [1] **5**:9
advances [1] **74**:21
advancing [1] **34**:10
adversarial [1] **77**:5
adversary [10] **16**:18,21 **36**:10,16
  37:5,7 **77**:5 **81**:1,2,8
affairs [1] **3**:18
affect [1] **44**:17
affirmative [2] **31**:10 **33**:16
affirmed [2] **8**:22 **78**:14
afoul [1] **43**:3
afternoon [1] **72**:8
ago [2] **12**:5 **21**:15
agree [6] **5**:14 **7**:17 **21**:8 **50**:7,12
  72:12
agreed [1] **79**:20
agreement [1] **15**:17
ahead [2] **30**:1 **32**:22
AL [1] **1**:6
Alito [26] **12**:19,20,21,22 **13**:16 **14**:
  5,15,24 **15**:2,22 **32**:24,25 **33**:22
  34:18 **57**:14,15 **58**:17,23 **59**:5,10,
  23 **60**:2,4,15 **61**:10 **67**:16
allow [3] **47**:11 **62**:8 **65**:14
allowance [1] **49**:5
allows [3] **22**:14 **47**:19 **56**:6
almost [3] **57**:5 **67**:2,10
alone [2] **33**:12 **44**:1
already [5] **27**:1 **59**:19 **64**:24 **67**:8
  69:5
alter [7] **7**:25 **14**:22 **28**:11 **33**:20 **38**:
  16 **44**:5 **45**:15
alteration [1] **13**:13
altered [2] **6**:23 **12**:24
alters [1] **64**:21
although [1] **80**:8
amended [1] **50**:22
amendment [5] **5**:5,6 **9**:6,7 **72**:11
amendments [1] **68**:12
amicus [4] **1**:22 **2**:7 **24**:15 **27**:18
among [1] **73**:1
amount [2] **16**:19 **33**:4
ample [1] **17**:8
analysis [3] **6**:17 **19**:15,17
analytic [1] **17**:22
announced [1] **66**:24
annulled [1] **56**:13
annulment [1] **57**:6
another [6] **15**:18 **30**:10 **57**:9 **66**:3,
  5 **69**:14
answer [13] **11**:24 **17**:24 **20**:12 **21**:

13 **22**:23 **23**:6,8,12 **26**:12 **38**:20
  40:18 **48**:10 **58**:15
answers [1] **57**:18
APPEARANCES [1] **1**:17
applied [1] **71**:14
applies [4] **10**:13 **11**:16 **50**:17 **55**:
  17
apply [1] **48**:24
appreciate [1] **22**:22
approach [2] **57**:10 **76**:11
appropriate [7] **16**:11 **34**:16 **57**:12
  63:8 **64**:4 **77**:2 **81**:14
aren't [2] **23**:21 **29**:23
arguably [1] **15**:18
argue [1] **58**:9
argued [3] **48**:17 **61**:4 **73**:4
argues [1] **64**:15
argument [26] **1**:14 **2**:2,5,9,12 **3**:4,
  7 **4**:18 **5**:15 **8**:24 **18**:16 **27**:17 **33**:1,
  1 **46**:3 **59**:10 **60**:16,19 **63**:25 **65**:
  25 **67**:20,25 **71**:3,16,18 **78**:18
arguments [2] **31**:16 **63**:5
arises [3] **48**:18 **49**:2 **53**:5
arose [1] **40**:24
around [5] **22**:15 **27**:9 **40**:17 **42**:18
  73:12
article [1] **79**:22
asks [3] **6**:25 **53**:5 **80**:12
assert [1] **28**:4
asset [4] **4**:10,12,14 **8**:22
assets [4] **13**:22 **19**:21 **20**:7 **79**:6
Assistant [2] **1**:20 **73**:9
associated [1] **16**:20
assume [3] **21**:8 **48**:23 **63**:20
assurances [1] **63**:14
atextual [1] **80**:5
attach [1] **34**:5
attorneys' [2] **22**:18 **26**:24
auction [1] **52**:25
auctioned [1] **31**:2
authority [3] **20**:10 **21**:21 **38**:16
automatic [78] **3**:12,17,22 **4**:3,20
  5:4,7,25 **7**:7 **8**:1,3,9 **9**:7,8 **13**:17
  14:14,23 **15**:20 **16**:8 **18**:17 **19**:4,
  18 **20**:4,5 **22**:14,17 **24**:2,2 **26**:18
  27:7 **28**:17 **33**:24,25 **34**:4,8,22 **35**:
  4,22 **39**:16,22 **40**:11 **42**:9 **43**:5 **44**:
  24 **45**:18,23 **46**:15,24 **47**:7,18 **48**:
  2,13 **49**:4 **50**:22 **55**:16,17 **56**:6,7,
  13 **57**:5 **58**:12 **61**:17,19 **64**:16,20
  65:18 **66**:4,10,14 **70**:16 **71**:6,12
  74:21 **75**:12 **77**:9,12,25 **80**:9
automatically [2] **47**:4 **69**:23
available [1] **21**:22
avoid [2] **34**:1 **75**:8
avoidance [1] **40**:3
avoiding [1] **22**:15
awarded [1] **22**:9
away [2] **54**:1 **70**:20

B

back [15] **7**:1,11 **8**:4 **11**:11,17 **24**:
  18,19 **26**:1 **38**:1,20 **41**:12 **56**:24
  76:5,8 **77**:6

bad [1] **16:**1
bad-faith [1] **22:**5
balance [6] **13:**23,24 **56:**2,25 **76:**20 **79:**4
balanced [1] **76:**22
Bankruptcy [75] **3:**12,14,19 **5:**9 **6:**18 **7:**10 **8:**10 **13:**16,25 **14:**3,4,11 **17:**8,13,24 **19:**11,16,22 **20:**7,15,16 **21:**7,18 **22:**25 **24:**17,22 **25:**1,23 **26:**20 **28:**25 **33:**8 **34:**23 **35:**18 **36:**12,18,22 **37:**3 **38:**11 **39:**15 **40:**25 **44:**12,12,18 **45:**24 **46:**10,16 **47:**9 **49:**11 **50:**8,16 **51:**20 **57:**10 **59:**13 **61:**17,18 **63:**8 **66:**6 **71:**22 **73:**12,15,15 **74:**18,19,25 **76:**16,24 **77:**1 **78:**5,9 **79:**3 **81:**5,5,6,8,16
bankruptcy's [1] **55:**12
barring [1] **38:**12
based [2] **33:**1,11
basic [2] **48:**5 **74:**18
basically [2] **9:**15 **13:**1
basis [2] **34:**16 **56:**8
bear [1] **79:**1
becomes [2] **8:**22 **66:**1
beginning [2] **61:**4 **72:**10
behalf [8] **1:**19,25 **2:**4,11,14 **3:**8 **46:**4 **78:**19
belief [1] **34:**14
believe [11] **16:**6,9 **26:**25 **34:**7 **36:**22 **44:**21 **63:**17 **73:**23 **74:**16 **77:**3 **78:**12
believes [1] **45:**1
belonging [1] **9:**17
below [2] **11:**2 **27:**12
benefit [3] **20:**8 **29:**13 **45:**3
benefitted [1] **73:**25
best [2] **45:**14 **69:**1
better [7] **28:**21 **40:**7,7 **47:**17 **60:**18 **68:**18 **75:**6
between [16] **5:**19 **6:**12 **7:**25 **8:**13 **13:**18 **33:**23 **38:**9 **49:**13 **52:**6 **54:**14 **55:**11 **56:**20 **67:**2,14 **76:**20 **79:**4
big [6] **32:**25 **59:**25 **60:**5,9,10,12
bit [2] **40:**17 **57:**22
Blackmun [2] **8:**12,19
body [2] **25:**13 **75:**11
bond [1] **11:**13
both [6] **15:**1 **54:**25 **56:**17 **60:**20 **66:**25 **78:**22
Breyer [23] **9:**12,13 **10:**6,8 **11:**4,6,7,15,16,19,22,24 **12:**4,13,16 **32:**21,22 **54:**7,8 **55:**19 **56:**1,15 **57:**13
Breyer's [1] **57:**16
brief [7] **6:**3 **24:**15,15,23 **39:**6 **50:**7 **80:**8
bringing [1] **15:**13
broadly [3] **33:**7 **42:**23 **43:**2
broken [1] **16:**2
brought [3] **17:**18 **23:**15 **77:**9
bumped [1] **16:**2
burdensome [1] **62:**4
Busic [1] **56:**21
business [1] **47:**14

C

call [1] **79:**15
calls [1] **80:**11
came [1] **1:**13
cannot [5] **4:**10 **10:**18 **28:**11 **33:**6 **43:**18
canon [3] **30:**4,6 **32:**14
capitulate [1] **27:**2
caption [1] **81:**11
car [38] **5:**15 **7:**1,11 **9:**17 **10:**2 **11:**17 **13:**3,7,10,11 **14:**10,21,21 **16:**1 **17:**1 **18:**7 **23:**1 **26:**1 **30:**25 **31:**22 **41:**1,20 **49:**25,25 **52:**22 **53:**24 **54:**1,16 **55:**2,11,24 **56:**9 **58:**18,20,24 **69:**23 **70:**17 **74:**4
care [2] **16:**11 **81:**10
careful [1] **79:**4
cars [17] **7:**21,24,24 **11:**10 **12:**25,25 **17:**5,14 **18:**4 **21:**5 **24:**17,18,19 **47:**23 **48:**1 **63:**10 **69:**20
Case [35] **3:**4,11 **8:**16,16,21 **10:**6,22 **12:**6 **13:**6,25 **14:**12 **17:**17 **18:**21 **19:**22 **22:**9,13 **33:**2 **34:**10 **40:**24,25 **47:**12 **48:**15 **50:**4,15,16,18 **56:**21 **57:**6,12 **65:**22 **73:**13 **75:**1 **80:**10 **81:**18,19
cases [14] **8:**4 **15:**16 **17:**14,20 **19:**6 **22:**18 **25:**18 **26:**2 **35:**6,24 **36:**1 **46:**7 **54:**25 **71:**21
cause [2] **15:**9,11
cease [2] **61:**5,7
Certainly [7] **16:**16 **51:**14 **57:**22 **59:**17 **69:**13 **70:**7 **72:**1
chance [1] **25:**3
change [8] **5:**7,23 **13:**25 **16:**4 **19:**12 **59:**12,18,19
changed [5] **36:**19,25 **37:**2 **47:**24 **61:**3
changes [3] **5:**9 **9:**8 **25:**11
changing [1] **19:**10
Chapter [10] **25:**1,16,18 **46:**8 **62:**7 **73:**16,20,25 **74:**1 **75:**7
CHICAGO [7] **1:**3 **3:**4 **23:**1 **25:**22 **47:**22 **64:**15 **74:**1
Chicago's [5] **24:**16,23 **25:**2 **40:**20 **67:**22
CHIEF [56] **3:**3,9 **5:**13,17 **6:**2,21,24 **7:**14 **9:**11 **12:**14,18,21 **15:**23 **18:**12 **21:**1 **23:**16 **26:**4,8,10 **27:**14,20 **28:**20 **29:**23 **30:**1,16,19 **32:**20,24 **34:**19 **37:**16 **40:**13 **43:**8 **45:**9,11,25 **46:**5 **48:**4,20 **49:**7,22 **50:**5,25 **54:**6,11 **57:**14 **61:**11 **64:**13 **68:**9 **72:**4,6 **74:**7,14 **78:**16,20 **79:**19 **81:**17
choice [1] **53:**7
chosen [1] **60:**23
Circuit [4] **8:**21 **41:**4 **48:**3 **70:**3
Circuit's [4] **25:**21 **26:**14 **78:**6,12
circumstance [2] **19:**9 **64:**19
circumstances [1] **37:**14
cite [1] **32:**16
cited [1] **50:**15

CITY [29] **1:**3 **3:**4 **13:**5,10 **14:**11,12,20 **17:**15 **18:**5 **23:**1 **25:**12 **26:**1 **47:**22,24 **52:**24 **53:**16,17 **55:**1 **58:**19 **63:**13 **64:**14 **69:**2,20,23 **70:**17 **71:**23 **73:**4 **74:**1 **78:**2
city's [4] **10:**24 **12:**24 **16:**3 **25:**8
claim [8] **15:**12 **22:**17 **40:**23 **58:**4,10 **62:**9 **74:**3 **79:**14
clarification [1] **59:**15
clarify [2] **54:**10 **57:**19
Clause [1] **6:**16
clear [2] **64:**9 **80:**22
clearer [2] **54:**2 **61:**4
clearest [1] **26:**12
clearly [4] **44:**4 **45:**1 **51:**9 **67:**25
client [1] **9:**16
client's [1] **21:**4
clients' [1] **47:**25
code [31] **4:**2 **5:**9 **6:**18 **7:**10,18 **19:**11,17 **21:**7,18 **35:**4,11,17 **36:**12,19,20 **44:**12,12 **46:**16 **47:**1,9,23 **48:**8 **51:**12,21 **61:**17,24 **66:**6 **78:**5,9 **79:**3,17
Code's [1] **3:**12
collateral [1] **79:**24
colleagues [1] **74:**11
collect [9] **36:**4 **40:**23 **41:**9,19,24 **42:**4,11,20 **71:**9
collection [6] **39:**20 **65:**4,7,19 **78:**25 **79:**15
COLLEEN [3] **1:**20 **2:**6 **27:**17
colloquy [1] **72:**10
come [6] **20:**11 **22:**8 **35:**1 **42:**23 **63:**13 **75:**19
coming [3] **25:**19 **53:**24 **75:**18
command [4] **5:**25 **12:**2 **28:**9 **42:**25
commands [2] **33:**13 **47:**1
Commerce [1] **6:**16
committee [2] **63:**8 **81:**13
company [2] **9:**21 **28:**2
company's [1] **28:**3
compel [3] **28:**5,11 **33:**7
compelled [1] **42:**15
compels [1] **64:**20
compensatory [1] **26:**23
complete [2] **19:**1 **25:**24
completely [3] **37:**6 **56:**19 **66:**16
compliance [1] **47:**6
complicated [1] **11:**14
complied [1] **47:**23
comply [1] **20:**18
conclude [1] **77:**22
conclusion [2] **33:**11 **35:**1
condition [1] **58:**23
conduct [4] **22:**5 **39:**16 **40:**20 **79:**21
conflict [1] **42:**24
confusing [1] **19:**3
Congress [15] **5:**11 **15:**3 **26:**25 **27:**7 **31:**8 **38:**10,12 **59:**11 **60:**2,7,23 **63:**7 **64:**3 **68:**19 **69:**10
congressional [1] **57:**9
congressionally-established [1] **76:**16

connect [1] **42:**25
consensually [1] **17:**21
considerable [1] **58:**11
considerably [1] **51:**21
consideration [2] **66:**25 **71:**19
considered [1] **72:**2
consistent [4] **8:**18 **23:**24 **38:**24 **62:**5
consolidate [2] **19:**4,13
consolidating [2] **19:**6,9
consolidation [1] **19:**20
construction [1] **8:**2
contain [1] **12:**2
contains [1] **4:**7
contemplating [1] **31:**9
contempt [5] **12:**10 **20:**19 **21:**21,25 **22:**3
contended [1] **20:**2
contends [2] **4:**13 **5:**3
contention [1] **27:**3
context [5] **12:**7 **13:**17 **16:**10 **44:**14 **61:**24
Continental [1] **8:**4
continue [2] **68:**1 **75:**2
continues [1] **53:**8
continuing [1] **65:**23
continuous [1] **69:**16
contrary [1] **4:**18
contravenes [1] **4:**21
control [70] **5:**6,14,16,22 **7:**19 **10:**2 **14:**16 **15:**14,21 **20:**3 **23:**22 **24:**1,6,9,11 **27:**24 **28:**1 **30:**24 **31:**1,3,5,9,11,15,23 **33:**16 **35:**2,21 **37:**24 **38:**1,19,22 **39:**8,10 **43:**15,19,21 **44:**6 **45:**16 **46:**18,19,21 **47:**11 **48:**1,6 **51:**10 **52:**23 **53:**1,3,12,15,22 **54:**3 **59:**15,16 **60:**8 **61:**6,7 **62:**17 **68:**2,17,24 **69:**6,15 **72:**16,25 **73:**3,6 **74:**25 **75:**3
controlled [1] **30:**13
controlling [1] **62:**16
controversial [1] **21:**6
cope [1] **37:**13
correct [15] **7:**4,23 **8:**9,18 **43:**13 **50:**15 **57:**16 **58:**22 **64:**10 **70:**15 **78:**7,8,13 **80:**4,23
correctly [2] **6:**11 **48:**3
costs [2] **16:**19 **26:**24
coterminous [1] **66:**21
Council [1] **25:**12
Counsel [34] **5:**13 **7:**15,18 **12:**15,15,25 **17:**12 **18:**13 **21:**4 **22:**20 **23:**13 **26:**5,5 **27:**15 **28:**20 **30:**17,21 **34:**21 **36:**7 **40:**16 **43:**7 **45:**10 **46:**1 **48:**4 **51:**1,3 **61:**13 **62:**11,13 **63:**4,19 **64:**12 **75:**14 **77:**21 **81:**18
counterbalanced [1] **55:**21
country [1] **24:**25
couple [2] **49:**23 **52:**8
course [4] **38:**7 **62:**4 **63:**2,17
COURT [51] **1:**1,14 **3:**10,21 **6:**16 **8:**3,20,21 **10:**16 **11:**1 **12:**5,9 **15:**10 **16:**23 **18:**25 **20:**11,16,16 **21:**14,16

22:25,25 **26**:13 **27**:21 **28**:17 **30**:10 **33**:10 **35**:18 **38**:15 **40**:4 **43**:3 **44**:9 **46**:6,11 **47**:5,13 **49**:17,18 **50**:20 **55**:9,13 **56**:10 **58**:7 **63**:24 **66**:24 **71**:23 **72**:1 **74**:17 **76**:24 **77**:1 **80**:18

Court's [5] **5**:8 **23**:24 **46**:13 **47**:10 **79**:2

courts [9] **17**:25 **34**:22 **35**:1 **36**:1 **37**:3 **73**:15 **81**:6,6,16

cover [2] **30**:11,12

covered [3] **6**:5 **45**:1 **73**:5

covers [3] **30**:14 **72**:17,17

CRAIG [5] **1**:18 **2**:3,13 **3**:7 **78**:18

create [1] **27**:9

credit [1] **10**:18

creditor [65] **3**:13 **4**:9,13 **8**:1 **9**:15 **10**:19 **18**:6 **20**:18 **27**:25 **28**:11,14, 23 **29**:11 **33**:19 **37**:6,9 **41**:16 **46**:8, 9,13,17 **47**:20 **49**:3,3,10 **50**:8 **52**: 11,15 **53**:6,7,8,16 **54**:15 **55**:22,25 **56**:5,8 **57**:4 **58**:5,7,8,13,17 **59**:2 **62**:8 **63**:13 **65**:1,7,10 **67**:9 **68**:1,7 **70**:22 **75**:2,4,6,11 **76**:14,25 **77**:24, 25 **79**:9,12,23 **81**:7

creditor's [5] **4**:11 **9**:2 **59**:7 **62**:9 **76**:21

creditors [23] **3**:19,24 **13**:19 **16**:11 **20**:8 **25**:20,25 **26**:20,23 **44**:20 **45**: 6 **47**:16,20 **60**:17 **73**:11,23,24 **74**: 22,24 **75**:11,23 **79**:5,8

critical [2] **26**:15 **46**:18

cross-reference [2] **51**:6 **59**:14

cudgel [1] **45**:5

curiae [3] **1**:22 **2**:8 **27**:18

D

D.C [4] **1**:10,18,21 **26**:14

damages [7] **3**:16 **4**:5,16 **21**:25 **22**: 17,19 **26**:24

danced [1] **40**:16

dancing [1] **42**:17

danger [1] **13**:8

dates [1] **18**:1

dawn [1] **20**:6

day-to-day [2] **44**:18 **73**:14

deal [4] **51**:9 **56**:16,17 **60**:9

debate [1] **7**:2

debt [12] **24**:20 **36**:4 **39**:15,20 **41**:9, 20,25 **42**:4,11,21 **78**:25 **79**:15

debtor [71] **3**:15,21 **4**:10,16 **6**:25 **7**: 9,11,12,25 **9**:17 **10**:18 **13**:19 **17**:3 **18**:8 **21**:10 **25**:18 **28**:15 **38**:1 **39**: 24 **40**:2,6,6,7,24 **41**:12,23 **46**:8,10 **47**:3,5,11 **48**:6,18 **49**:17,24 **50**:2 **53**:5,9,15,24 **54**:1,3 **55**:9,13,22 **57**: 1,4,11,24 **58**:3,6 **61**:15 **62**:7,24 **63**: 3,13 **65**:2 **66**:8 **67**:4,6 **70**:19 **75**:4, 5,18 **76**:6,23 **77**:6,15,17 **79**:24 **80**: 11

debtor's [14] **27**:3,25 **37**:25 **39**:14 **46**:18 **47**:21 **49**:5,20 **53**:11 **57**:25 **62**:18 **74**:24 **76**:18,20

debtor-in-possession [1] **61**:25

debtor/creditor [1] **33**:21

debtors [7] **45**:5 **47**:24 **60**:18 **73**: 11,18 **78**:3 **79**:6

debtors-in-possession [2] **62**:2 **74**:19

decide [3] **7**:3 **33**:2 **67**:17

decided [4] **35**:25 **36**:2 **37**:8 **71**:21

decides [1] **18**:20

decision [5] **11**:2 **26**:14 **33**:4 **35**:1 **71**:22

declare [1] **24**:17

decline [1] **68**:6

decrease [2] **73**:21,23

dedicated [1] **73**:11

deemed [1] **52**:20

defense [2] **10**:11 **20**:13

defenses [9] **4**:8 **5**:1 **19**:25 **22**:16 **27**:5 **37**:6,10 **44**:21 **75**:21

delay [4] **55**:11 **75**:8,21 **78**:2

deliver [4] **9**:18,19 **28**:14 **47**:2

delivered [2] **51**:24 **53**:16

delivering [1] **53**:19

demand [2] **61**:20,21

demanded [1] **35**:3

demonstrate [1] **52**:11

denotes [2] **28**:9 **42**:25

Department [1] **1**:21

depend [1] **67**:20

deprive [1] **75**:23

derivative [2] **15**:8,13

described [1] **41**:19

describes [1] **33**:19

description [1] **43**:24

designed [3] **25**:18 **39**:22,24

destroy [1] **26**:20

destroyed [1] **18**:8

device [1] **25**:25

devolves [1] **6**:13

dictated [1] **36**:17

dictates [1] **32**:17

difference [22] **10**:4 **29**:6,9 **33**:23 **49**:12,14 **52**:6 **54**:14 **55**:5,8 **56**:4, 25 **59**:25 **60**:1,5,10,12,15,17,25 **67**: 14 **81**:2

differences [1] **67**:2

different [9] **6**:4 **13**:11 **19**:16 **22**:9 **34**:12 **37**:19 **59**:6 **66**:5 **68**:23

difficult [1] **26**:25

difficulty [1] **56**:23

direct [1] **48**:2

directed [1] **75**:13

directing [3] **20**:17 **28**:2 **46**:11

directly [1] **48**:24

directs [1] **51**:23

disagrees [1] **25**:7

discharge [3] **12**:7 **21**:16 **23**:3

discovery [1] **52**:16

discretion [1] **17**:8

discussed [2] **40**:16 **64**:24

discussing [1] **34**:2

discussion [1] **6**:10

dismiss [1] **26**:2

dismissed [1] **30**:22

disposal [1] **7**:23

dispose [1] **52**:25

disposed [2] **14**:21 **31**:2

disposing [1] **7**:20

dispute [4] **4**:16 **10**:21,23 **18**:3

disputed [1] **33**:25

disputes [1] **20**:14

disrupt [1] **5**:10

distinction [4] **5**:19 **6**:12 **8**:13 **38**:9

distort [1] **34**:16

distorting [1] **34**:11

district [2] **11**:1 **24**:25

doing [6] **14**:13 **24**:16 **25**:2 **37**:22 **38**:18 **42**:6

done [10] **19**:22,24 **20**:20 **36**:9 **50**: 20 **58**:14 **63**:6,9 **65**:21 **68**:6

doubt [5] **12**:9 **21**:20 **22**:1,3,5

down [1] **72**:19

dozen [1] **56**:3

drag [1] **58**:10

drawing [1] **6**:11

drive [3] **13**:10 **54**:1 **70**:19

driving [1] **13**:4

during [3] **13**:25 **74**:10,12

duties [2] **16**:7,10

duty [2] **5**:4 **48**:15

E

each [1] **71**:14

earn [1] **75**:19

effect [6] **5**:7 **8**:16 **62**:25 **69**:3 **73**: 14 **80**:9

effective [3] **47**:14 **50**:23 **73**:17

effectively [1] **28**:15

effectiveness [1] **60**:11

efficient [1] **59**:21

effort [2] **53**:19 **65**:4

efforts [1] **76**:18

either [5] **7**:3 **10**:6 **41**:23 **53**:7 **60**: 21

elaborate [1] **81**:3

emphasis [1] **6**:4

enable [1] **24**:20

encompassed [2] **72**:24 **73**:2

encourage [1] **39**:20

encouraging [1] **78**:10

end [4] **16**:23 **19**:3 **22**:14 **27**:9

enforce [6] **25**:9 **57**:12 **58**:4 **77**:9, 18 **78**:1

enforcement [10] **25**:14,15 **50**:23 **52**:2 **59**:21 **60**:11,14 **61**:1 **66**:2,15

enforces [3] **48**:16 **66**:4,10

enforcing [3] **63**:2 **66**:21 **71**:10

engage [3] **6**:17 **13**:24 **40**:21

engaged [1] **6**:6

English [1] **79**:14

enjoining [1] **3**:19

enough [4] **17**:3 **65**:12 **72**:13 **73**: 22

ensure [3] **17**:2 **18**:2 **64**:5

entering [1] **13**:4

entire [2] **5**:21 **8**:22

entirely [5] **4**:1 **8**:8,18 **52**:3 **70**:6

entitled [6] **4**:15 **18**:5,6 **45**:7 **48**:9

61:9

entity [1] **48**:5

ESQ [4] **2**:3,6,10,13

ESQUIRE [2] **1**:18,24

essential [2] **67**:24 **73**:19

essentially [5] **22**:14 **32**:13 **36**:3 **45**:4 **66**:1

establish [1] **33**:6

established [3] **5**:10 **20**:1 **21**:6

establishes [1] **32**:5

estate [37] **3**:14 **8**:23,25 **15**:9,10,15 **19**:5,7,9,13,21 **20**:8 **23**:21 **26**:20 **27**:24 **29**:13,19 **33**:8 **35**:12 **40**:22 **45**:17 **47**:2,9,16 **48**:7,9 **51**:10,24 **61**:6 **69**:7 **74**:20,23 **76**:4,5,7 **79**:6 **80**:10

ET [1] **1**:6

EUGENE [3] **1**:24 **2**:10 **46**:3

even [14] **7**:19 **12**:6,6 **16**:25 **17**:17 **22**:22 **37**:12 **38**:21 **43**:6 **45**:1 **52**:2 **56**:7,12 **73**:25

event [2] **46**:20 **71**:24

events [1] **25**:10

everything [1] **63**:11

ex [1] **56**:7

exact [1] **32**:9

exactly [7] **12**:13 **21**:10 **23**:14 **27**: 11 **31**:6 **32**:10 **72**:20

example [14] **4**:9 **7**:20 **15**:7,8,17 **18**:6 **29**:11,13 **37**:11 **41**:10 **66**:3 **67**:22 **71**:8 **80**:7

examples [1] **15**:3

exceeds [1] **29**:15

except [1] **54**:23

exception [4] **9**:22 **45**:2 **66**:19 **80**: 18

exceptions [15] **4**:8 **5**:1 **9**:20 **19**: 25 **28**:16 **29**:10 **30**:5 **31**:19 **43**:5 **45**:21 **54**:21 **66**:20 **67**:9 **80**:14,19

excuse [1] **60**:3

exercise [41] **5**:6,22 **10**:2 **14**:16 **15**: 14,21 **16**:11 **17**:9 **20**:3 **23**:22 **24**:1, 6,11 **28**:1 **31**:9,15,23 **33**:16 **37**:24 **38**:19 **39**:8,10 **43**:21 **44**:6 **46**:17, 19 **48**:1 **53**:12,22 **54**:3 **59**:15,16 **60**:8 **62**:17 **68**:2,17 **72**:16,25 **73**:2, 6 **75**:3

exercises [1] **12**:11

exercising [21] **5**:14,15 **24**:8 **31**:1, 3,5 **35**:21 **38**:1,22 **43**:14,19 **46**:21 **48**:5 **52**:23 **53**:1,3,15 **61**:6,7 **68**:23 **69**:15

existed [1] **50**:24

existing [1] **37**:12

expansion [1] **79**:23

expect [2] **51**:5 **66**:15

expedite [1] **63**:9

expedited [1] **36**:25

experience [1] **17**:9

expert [1] **52**:15

explain [2] **53**:2 **60**:23

explained [1] **30**:7

explains [1] **79**:3

express [2] **45**:21 **71**:22

expressly [2] **10:**11 **46:**23
extent [4] **18:**2 **64:**23 **67:**1 **76:**1
extraordinary [1] **57:**1
extremes [1] **6:**13

F

F.2d [1] **26:**16
fact [13] **18:**18 **31:**17,18 **33:**12,15,
17 **37:**8 **38:**4 **42:**10 **55:**21 **69:**21
71:2,20
facts [1] **41:**7
fails [2] **4:**18 **20:**18
fair [8] **12:**9 **17:**23 **21:**19 **22:**1,3,4
43:23 **44:**21
faith [2] **4:**13 **12:**12
fall [1] **43:**3
falls [1] **9:**20
family [1] **50:**1
fashion [1] **60:**24
fast [1] **17:**3
fatal [1] **78:**4
favor [1] **76:**22
fear [1] **44:**23
feature [1] **39:**11
fee-shifting [1] **37:**11
feel [2] **22:**7 **44:**25
fees [2] **22:**18 **26:**24
feet [1] **24:**19
few [2] **8:**6 **78:**21
figure [1] **48:**10
figuring [1] **54:**13
file [1] **25:**23
filed [9] **3:**15 **13:**20,21 **33:**9 **34:**24
50:18 **55:**12 **61:**18,18
filing [5] **3:**19 **38:**11 **46:**10 **74:**25
80:9
filings [2] **25:**1 **73:**20
final [1] **67:**12
Finally [2] **5:**3 **80:**24
find [2] **12:**17 **56:**2
findings [1] **71:**22
fine [1] **5:**19
First [7] **4:**20 **10:**10 **26:**18 **28:**8 **37:**
21 **46:**15 **78:**22
fit [1] **31:**15
five-year [1] **25:**24
focus [1] **23:**20
follow [4] **22:**2 **32:**13 **57:**15 **72:**9
following [1] **9:**14
follows [1] **21:**23
Footnote [2] **39:**5 **80:**7
force [1] **45:**5
fore [1] **49:**20
foreclosed [1] **28:**6
Forest [1] **44:**10
forget [1] **35:**12
fortiori [1] **21:**23
forward [4] **37:**9 **65:**9,14,20
frankly [1] **33:**17
freezes [2] **3:**18 **13:**18
frequently [1] **51:**20
fresh [1] **24:**22
friend [3] **50:**5 **70:**10 **79:**19
friend's [1] **79:**21

Friendly [1] **8:**20
friends [2] **67:**14 **78:**23
frivolous [2] **37:**6,9
front [1] **70:**18
frozen [1] **13:**24
full [1] **45:**14
FULTON [2] **1:**6 **3:**5
function [2] **18:**17 **19:**4
fundamental [2] **5:**20 **7:**6
further [1] **56:**13
future [1] **46:**20

G

gain [1] **27:**23
gaining [1] **54:**4
gamesmanship [1] **75:**24
gap [1] **68:**18
garnishment [2] **65:**13,17
garnishments [1] **65:**11
gate [1] **53:**25
General [9] **1:**21 **12:**24 **30:**4,11 **32:**
15 **44:**2 **64:**25 **66:**23 **73:**10
Germaine [1] **66:**24
gets [2] **18:**3 **55:**13
getting [5] **31:**21 **37:**4 **63:**4 **76:**5,8
give [13] **7:**1 **11:**11,17 **15:**3 **16:**24
25:3 **40:**5,6 **55:**2,3 **63:**11 **72:**23 **75:**
6
given [4] **8:**3 **62:**3 **74:**20 **76:**9
gives [3] **20:**10 **45:**4 **57:**9
goal [1] **24:**22
GOLDBLATT [47] **1:**18 **2:**3,13 **3:**6,
7,9 **5:**17 **6:**7,23 **7:**5,22 **8:**8,17 **10:**5,
8 **11:**6,15,19,23 **13:**15 **14:**6,18 **15:**
1,6 **16:**5,16 **17:**7,16 **18:**15 **19:**14
20:23,24 **21:**12 **23:**5,8,11,14,19,23
24:8 **25:**5 **26:**6,10 **50:**6 **78:**16,18,
20
good-faith [1] **10:**20
Gorsuch [24] **21:**2,3,12 **22:**20 **23:**7,
10,13 **40:**14,15 **41:**18,22 **42:**16 **43:**
7 **68:**10,11,16 **69:**8,17 **70:**8 **71:**1,
15 **72:**3,14 **78:**22
Gorsuch's [1] **72:**9
got [2] **20:**13 **29:**2
gotten [1] **81:**8
govern [1] **32:**18
government [1] **41:**6
government's [1] **8:**24
governs [1] **30:**9
grades [1] **65:**3
grateful [1] **40:**19
greater [1] **47:**19
greatly [1] **29:**15
ground [6] **12:**9 **21:**20 **22:**1,3,4 **71:**
25
grouped [1] **40:**5
grown [1] **25:**22
guard [1] **13:**12
guess [4] **21:**7 **29:**4 **42:**17 **54:**25

H

half [1] **56:**2
hand [8] **37:**22 **48:**12,12 **55:**15 **57:**

4 **69:**23 **70:**11 **79:**5
handing [1] **70:**1
handle [1] **28:**21
hands [1] **57:**11
hanging [1] **39:**19
happened [1] **69:**2
happening [1] **6:**20
happens [3] **25:**17 **51:**20 **54:**24
hard [2] **9:**14 **54:**13
harder [1] **22:**10
harmonious [1] **51:**13
harmonizing [3] **56:**22,23 **67:**1
harms [1] **56:**25
hear [1] **3:**3
heard [1] **52:**5
hears [1] **13:**5
held [4] **14:**10 **41:**4 **48:**3 **68:**7
help [1] **57:**3
helpful [1] **68:**3
helping [1] **64:**12
herself [1] **28:**1
highly [1] **21:**6
hold [4] **23:**2 **45:**7 **53:**8 **74:**24
holding [15] **20:**11 **21:**5 **23:**20 **24:**5
39:14 **41:**1 **43:**14,18 **47:**2 **53:**2,10,
21 **58:**7 **77:**24 **79:**10
home [1] **80:**21
Honor [7] **6:**7 **7:**5 **53:**4,23 **55:**7 **61:**
22 **63:**16
Honor's [1] **6:**10
host [1] **80:**5
hours [1] **56:**10
However [1] **70:**22
huge [1] **16:**19
hypothetical [1] **14:**10

I

Idaho [1] **50:**16
ignore [1] **45:**19
ILLINOIS [4] **1:**3,24 **8:**4 **24:**25
imagine [1] **53:**24
immediate [3] **55:**17 **56:**8 **61:**19
immediately [9] **3:**16 **4:**6 **7:**13 **17:**
1 **54:**17 **55:**23 **56:**9 **57:**6,7
import [2] **30:**5 **39:**5
important [7] **49:**1 **50:**21 **60:**21,22,
22 **61:**1 **79:**1
impose [2] **27:**8 **78:**3
imposed [2] **5:**4 **66:**5
imposes [5] **16:**10 **28:**8 **33:**13 **51:**
25 **66:**8
impound [3] **53:**25 **70:**18 **74:**4
impounded [1] **50:**9
impoundment [1] **52:**23
improbability [1] **27:**6
improve [4] **3:**20 **14:**7 **39:**23 **40:**2
inaction [2] **5:**20 **6:**12
include [2] **38:**22 **71:**9
including [1] **66:**9
income [1] **50:**1
inconsequential [5] **29:**12 **45:**3
62:6 **67:**5 **80:**16
inconsistent [1] **5:**25
incorporate [1] **48:**22

incorporated [1] **71:**13
incorrect [1] **20:**21
increase [1] **39:**23
indicated [1] **68:**4
indicating [1] **68:**4
indication [1] **5:**11
indications [1] **80:**3
indirectly [1] **48:**25
individual [1] **47:**15
initiates [1] **37:**5
injunction [3] **4:**5 **12:**7 **21:**17
injunctive [4] **12:**3,8 **21:**18,24
insignificant [1] **67:**3
Inslaw [1] **26:**14
insofar [1] **34:**4
Instead [2] **14:**2 **77:**4
instrument [1] **76:**6
insurance [4] **9:**21 **18:**7 **54:**24 **67:**
6
intangible [3] **15:**4,14 **73:**3
intend [1] **5:**18
intended [4] **5:**12 **26:**25 **27:**7 **65:**
19
intent [2] **25:**23 **42:**19
interest [4] **4:**11 **8:**13,25 **18:**9
interested [1] **52:**19
interestingly [1] **73:**22
interests [2] **8:**14 **76:**15
interpret [1] **32:**17
interpretation [7] **24:**14 **32:**12 **64:**
9 **69:**2 **76:**8 **78:**6,12
interpreted [2] **44:**6 **45:**14
interpreting [1] **61:**23
interpretive [1] **44:**2
interrelated [1] **38:**7
interrupt [4] **6:**25 **22:**21 **36:**7 **62:**
14
intuitions [1] **37:**19
intuitive [1] **31:**21
invent [1] **80:**18
invite [1] **70:**18
invites [1] **59:**2
involve [1] **52:**15
involving [1] **15:**16
Inwood [1] **44:**9
IRS [5] **29:**14,20 **41:**10 **42:**6 **44:**23
isn't [23] **6:**9 **13:**2 **15:**18 **18:**9 **22:**2,
2 **23:**25 **24:**11 **32:**14 **39:**13 **40:**20
41:1,6,18 **42:**16,18 **55:**20 **62:**15
68:17 **69:**8 **75:**24 **79:**16 **81:**15
isolation [4] **43:**12,14 **44:**11,13
issue [8] **12:**25 **25:**11 **34:**1 **51:**9,11,
13 **65:**18 **67:**7
issues [1] **20:**17
itself [6] **29:**16 **36:**19,21 **50:**19 **74:**
1 **76:**19

J

Judge [6] **8:**20 **14:**4 **26:**16 **55:**2 **70:**
2 **81:**9
judges [3] **17:**8 **73:**12 **81:**5
judgment [2] **27:**12 **78:**13
judgments [1] **25:**8
judicial [2] **4:**15 **65:**8

jumbles [1] 19:16
June [1] 25:21
jurisdiction [1] 47:10
jurisprudence [1] 23:25
Justice [227] 1:21 3:3,9 5:13,17 6: 2,21,24 7:14,16,17,23 8:7,11,12, 17,19 9:10,11,11,13 10:5,6,8 11:4, 6,7,15,16,19,22,24 12:4,13,14,16, 18,18,19,20,21,21,22 13:16 14:5, 15,19,24 15:2,22,23,23,25 16:5,14, 17 17:7,11,16 18:12,14,15 19:14 20:22,25 21:1,1,3,12 22:20 23:7, 10,13,16,16,18,23 24:4,12 25:6 26: 4,8,11 27:14,20 28:20 29:23 30:1, 7,16,18,19,20 31:7,24 32:4,7,10, 19,20,20,22,24,24,25 33:22 34:18, 19,19,21 35:8,9,15,23 36:6,15,24 37:15,16,16,17 39:12 40:9,13,13, 15 41:18,22 42:16 43:7,8,8,10 44: 16 45:8,9,12,25 46:6 48:4,20 49:7, 22 50:5,25 51:2,3,8,16 52:4,18 53: 14 54:5,6,6,8,11 55:19 56:1,15 57: 13,14,14,15,16 58:17,23 59:5,10, 23 60:2,4,15 61:10,11,11,13 62:11, 13 63:4,19,23 64:2,11,13,13,14,24 65:24 66:13 67:12,16 68:8,9,9,11, 16 69:8,17 70:8 71:1,15 72:3,4,4, 6,7,9,14,22 73:8 74:5,7,15 75:14, 15 76:3 77:3,11,15,20 78:16,21,22 79:19 80:24 81:17

K

Kagan [16] 18:14,15 19:14 20:22, 25 37:16,17 39:12 40:9 64:13,14, 24 65:24 66:13 67:12 68:8
Kavanaugh [15] 23:17,18,23 24:4, 12 25:6 43:9,10 44:16 45:8 72:5,6, 22 73:8 74:5
keep [7] 12:25 18:19 29:16 50:4 62:8 72:14 75:22
keeping [3] 18:23 19:7 68:21
key [3] 12:23 53:24 70:19
kicked [1] 42:14
kind [7] 27:9 39:16 49:10 56:2 64: 4 69:15 75:10

L

language [19] 12:3,8 14:16 15:5 18:24 21:19,24 24:5,7,10 26:15 38:10 46:19 61:3 64:7,8 68:23 69: 4 78:7
Larimer [1] 50:15
last [5] 8:6 11:12,18 36:8 75:16
law [2] 16:9 50:8
lawful [1] 3:13
lawfully [1] 3:25
laws [1] 25:9
leader [1] 24:25
lean [1] 38:4
learns [1] 49:11
lease [1] 15:17
least [9] 24:16 28:7,21 41:2 43:20 52:5 69:22 70:23 72:24
leave [1] 70:17

leaving [1] 31:22
left [3] 32:1,6,11
legal [2] 63:5,24
legislation [1] 64:4
length [1] 58:11
less [1] 73:17
level [1] 63:6
leverage [4] 39:19 59:3 75:4,10
liabilities [1] 13:22
liable [1] 28:23
lien [3] 16:24 29:14 42:12
liens [2] 10:24 71:10
life [2] 9:21 54:24
lift [2] 42:5,13
light [1] 25:20
likely [4] 26:13 47:15 49:21 80:15
limited [1] 16:15
limits [1] 27:10
line [2] 23:24 67:10
linguistic [1] 68:18
liquidated [1] 74:4
list [1] 44:3
little [5] 11:14 32:6,10 40:17 57:22
livelihood [2] 73:20 76:6
living [1] 75:19
location [2] 13:2,11
long [8] 6:19 7:7 14:12 23:24 55: 11 57:3 58:15 59:2
long-settled [1] 50:8
look [11] 9:15 39:12 43:16 44:10, 11,14 48:8,14 53:18 57:22 69:1
looked [1] 40:4
looking [3] 21:7 39:12 57:8
lose [4] 44:17 48:21 55:23 73:13
loss [4] 52:1 70:24 75:25 76:4
lost [4] 18:9 49:21 50:2 63:24
lot [11] 13:1 28:3 30:25 31:4,22 44: 19 52:23 53:25 67:13 70:18 74:4
loves [1] 23:2

M

made [6] 25:12 26:17 59:11,17 64: 8 72:11
maintain [1] 25:19
maintaining [3] 64:17 65:4,15
major [2] 28:7 47:8
mandate [1] 4:5
mandating [1] 47:5
many [4] 17:4 25:17 52:17 66:8
marshal [2] 20:7 79:6
marshaling [1] 19:21
matter [9] 1:13 29:7 30:10,12 33: 23 52:7 56:10 58:10 76:23
matters [1] 17:20
maximize [1] 79:11
McCann [1] 38:15
McKay [1] 70:2
mean [6] 18:23 19:7 23:11 32:2 44: 13 53:15
meaning [7] 4:22 16:23 34:16 42: 24 45:20 53:13 78:8
meaningful [1] 38:9
means [9] 10:3 17:5 19:3,9 37:20, 22,22 40:23 61:8

mechanism [9] 7:10 50:23 52:3 59:22 60:12 61:1 63:1 66:2,15
merely [11] 31:14 38:12,23 39:24 41:7,21 42:7,18 52:22 53:1 70:12
metaphysical [4] 6:14 7:2 30:22 52:21
metaphysics [1] 40:22
might [9] 15:3 33:23 38:22 39:20 43:14 44:25 45:6 62:14 79:15
mind [3] 15:4 55:6 79:2
minimal [1] 66:19
minute [4] 26:9 45:9 57:19 61:17
minutes [2] 74:9 78:17
mirrors [1] 80:19
mistakenly [1] 27:2
moment [5] 13:19,21 16:15 33:8 53:6
money [4] 11:13 41:14 42:3 74:2
months [3] 12:5 16:22 21:15
Moreover [1] 62:7
morning [6] 18:17 21:3 23:19 40: 15 43:11 68:11
most [9] 17:20 18:16 19:6 27:22 31:10 54:22 65:20 69:9 81:6
mostly [1] 19:1
motion [11] 36:9,15 42:5,12 77:4,4, 8,16,18 81:1,7
move [1] 17:25
Ms [31] 27:16,20 29:9,25 30:2 31:6 32:2,5,9 33:5 34:3 35:8,14,23 36: 14,16 37:2,17 38:5 39:18 40:9,11 41:3,21 42:1,22 43:11,23 44:19 45:11 66:17
much [6] 13:2 52:10 71:3 73:17 74: 6 81:10
multiple [2] 4:19 18:25
must [5] 16:18 22:1 58:12 69:23 74:20
myself [1] 28:22

N

nailed [1] 72:19
natural [3] 62:15 69:9 71:3
naturally [2] 27:22 31:10
nature [1] 72:18
necessarily [2] 41:17 61:8
necessary [3] 19:12 34:15 51:8
necessity [1] 61:23
need [12] 24:20 40:21 41:4 57:21 60:7 63:18 65:1,13 75:18,20 76: 20,21
needs [5] 49:25,25 55:1,9 75:5
negotiation [1] 59:2
never [4] 11:10,12 17:17 68:19
new [2] 65:21 68:23
next [2] 3:4 64:3
NFIB [1] 6:10
nobody [1] 69:18
non-bankruptcy [1] 16:9
non-business [1] 25:1
None [1] 80:21
nor [1] 28:1
normally [2] 18:10,10
Northern [1] 24:24

note [4] 29:25 30:2 36:8 41:7
noted [1] 32:12
nothing [5] 6:20 9:7 62:23 70:1,13
notice [2] 81:3,9
nuance [1] 43:22
nullify [1] 4:25
number [2] 4:8 71:7

O

Oak [1] 1:24
objects [1] 14:17
obligation [15] 10:12 27:8 48:17 49:5 55:18 60:13 61:2,5 66:4,9,11, 12 70:23 71:10 80:10
obligations [2] 29:1 66:8
oblique [1] 60:24
observe [1] 6:11
observed [2] 3:22 6:15
obtain [7] 34:15 46:20 47:5 53:10 69:6,11,11
obtaining [1] 68:13
obviously [2] 36:18 72:12
occur [1] 75:9
October [1] 1:11
odds [1] 45:22
offered [1] 31:16
Okay [7] 11:4 14:24 24:12 63:22 64:12 69:17 77:20
Once [1] 6:25
one [24] 5:3 13:24 20:2,10 24:3 29: 9 36:8 42:19 47:20 49:15 56:2 59: 22 64:10,22,22 66:21,24 71:20 73: 3,5 75:11 79:5,15 80:15
ongoing [2] 46:22 65:4
only [11] 17:5,18 29:19 34:8 37:6 57:2 61:15 64:16,22 67:9 78:7
operate [2] 4:4 38:11
operated [1] 10:24
operates [4] 26:18 47:4 67:15,21
operation [1] 9:8
operative [1] 38:8
opinion [4] 6:10 8:11 21:14 79:2
opportunity [2] 63:12 74:12
opposed [2] 31:1 81:1
option [1] 62:3
oral [7] 1:14 2:2,5,9 3:7 27:17 46:3
order [13] 20:17 23:3 42:3,3 46:11 47:5 50:20 55:9,14 56:11 62:24 79:11,25
ordering [1] 22:25
orders [1] 17:13
ordinary [5] 4:21 24:5,7 53:12 79: 14
other [25] 8:14 30:13 31:16 33:18 35:19 38:4 40:1 44:4 50:6 55:15, 22 56:3 57:4 59:14 61:20 64:19 66:20,22 67:15 72:17 73:24 75:20, 23 79:7 80:3
others [2] 24:15 30:21
otherwise [3] 44:8 59:4 75:8
ought [4] 10:3 15:11 51:24 78:13
out [13] 8:25 9:5 12:17 16:1 17:12, 21 18:4 20:15 26:14 48:10 54:13 66:18 80:19

outcome [1] **50**:10
outset [5] **47**:12 **48**:15 **57**:12,25 **75**:8
outside [2] **63**:5,20
over [71] **3**:24 **4**:6,10 **5**:14 **10**:2,3,7 **15**:9,12,14,14 **16**:12 **17**:1,14 **18**:4 **20**:14 **22**:7,16 **23**:22 **27**:24 **28**:2 **29**:1,11 **31**:3 **35**:11,16 **36**:3 **38**:1 **42**:15 **43**:15,19 **46**:18,22 **48**:1,6,7, 16 **50**:19 **52**:23 **53**:1,8,11 **54**:16, 20 **55**:10,23 **56**:9 **58**:5,12,18,19,24 **59**:8,20 **60**:13 **61**:6,8,15 **62**:6 **65**:2 **66**:9 **68**:2 **69**:23 **70**:1,12 **73**:3,6 **75**:3,4,11 **80**:10
overlap [1] **51**:20
overlapping [1] **71**:7
override [4] **28**:15 **31**:19 **43**:5 **45**:20
owing [1] **4**:16
own [2] **27**:8 **67**:25
owner [1] **13**:8

P

p.m [1] **81**:19
PAGE [5] **2**:2 **26**:15 **50**:6 **80**:14,17
paper [1] **81**:11
paradigmatic [1] **15**:7
Park [1] **1**:24
parking [4] **11**:11,13 **25**:9,14
part [5] **32**:25 **38**:8,19 **49**:5 **54**:22
parte [1] **56**:7
particular [6] **13**:6,17 **30**:9 **38**:12 **61**:23 **67**:20
particularly [2] **13**:7 **59**:18
parties [1] **50**:7
party [5] **12**:10 **15**:9 **47**:2 **51**:23 **61**:9
pass [1] **32**:23
passive [1] **38**:23
passively [4] **31**:14 **53**:2,17,21
pay [4] **3**:16 **11**:10 **39**:14 **41**:12
payment [3] **4**:5 **41**:23 **74**:3
payments [6] **47**:19 **50**:3 **73**:23,24, 25 **75**:7
pending [2] **50**:10 **75**:1
people [3] **17**:5 **24**:17 **25**:23
people's [1] **11**:10
perfectly [1] **67**:11
perhaps [2] **42**:11 **43**:15
period [1] **49**:23
permissible [1] **36**:12
permit [2] **25**:18 **36**:25
permitted [3] **29**:16 **32**:14 **50**:8
permitting [1] **16**:1
petition [7] **3**:14 **13**:20,21 **32**:15 **33**:8 **37**:13 **38**:11
Petitioner [9] **1**:4,19,23 **2**:4,8,14 **3**:8 **27**:19 **78**:19
Petitioner's [3] **31**:25 **32**:12 **33**:1
philosophy [1] **6**:14
phrase [3] **5**:21 **31**:8 **59**:16
piece [1] **15**:18
place [6] **18**:20,24 **19**:8 **47**:9 **65**:14, 22

plaguing [1] **81**:16
plain [3] **34**:16 **45**:19 **78**:8
plainly [1] **54**:2
plaintiff [1] **16**:18
plan [4] **25**:20,24 **75**:7 **79**:14
plausibly [1] **38**:22
please [5] **3**:10 **20**:12 **27**:21 **46**:6 **55**:3
plenty [1] **17**:25
point [15] **7**:3 **11**:4,7,8 **17**:12 **28**:25 **42**:13 **56**:19,24 **69**:18 **70**:10 **72**:11, 16 **75**:16 **81**:4
pointed [1] **66**:17
pointing [4] **33**:12,14,17 **39**:3
points [3] **25**:6 **26**:17 **78**:21
police [1] **39**:17
policies [1] **25**:12
policy [7] **25**:8,13 **47**:25 **60**:19 **74**:18,22 **78**:10
Pool [1] **8**:15
Pools [12] **8**:12,18 **9**:4 **40**:4 **41**:10 **42**:2,5 **47**:13 **76**:12,13,19 **79**:2
posed [1] **69**:2
position [19] **3**:21 **5**:18,20 **7**:6 **10**:25 **12**:11 **14**:7 **26**:6 **35**:5,20 **36**:11 **40**:8 **41**:6 **43**:12,22 **44**:16 **69**:21 **72**:21 **73**:18
positions [1] **12**:12
possess [1] **61**:9
possessing [3] **42**:7,17,18
possession [23] **3**:13,25 **15**:19 **16**:3 **18**:8 **27**:1,23 **29**:21 **30**:25 **45**:16 **46**:20 **50**:9 **51**:10 **62**:1 **68**:5,14,20, 21,22 **69**:11,12 **72**:13,14
possessory [3] **8**:13,24 **10**:24
possibility [1] **75**:23
possible [3] **51**:14,14 **67**:1
possibly [2] **22**:23 **58**:8
post-bankruptcy [1] **40**:8
post-petition [1] **3**:20
potential [1] **33**:22
potentially [1] **73**:17
power [1] **10**:12
practical [5] **29**:7 **49**:12,14 **63**:5 **81**:4
practice [8] **5**:8,11 **12**:25 **21**:5 **25**:22 **44**:18 **73**:15 **81**:16
pre-1984 [1] **79**:20
pre-bankruptcy [2] **39**:9,11
precisely [2] **51**:9 **72**:21
preclude [1] **27**:23
premise [1] **18**:23
present [1] **46**:7
presented [2] **22**:10,13
presents [1] **3**:11
preservation [1] **33**:14
preserve [7] **3**:23 **14**:13 **19**:19 **26**:19 **28**:9 **39**:25 **43**:1
preserved [3] **5**:24 **12**:23 **71**:17
preserves [1] **40**:12
preserving [2] **4**:23 **7**:8
pressure [2] **44**:20,25
presumably [2] **34**:9 **49**:9
pretty [1] **17**:21

prevailed [1] **11**:1
prevent [7] **7**:18,20 **45**:15 **46**:14 **65**:3,19 **71**:14
prevented [1] **54**:4
preventing [4] **13**:3 **47**:20 **74**:22 **75**:13
prevents [2] **38**:16 **74**:23
principal [1] **81**:2
principle [2] **44**:3 **62**:18
principles [1] **39**:13
prior [2] **9**:6 **39**:15
probably [1] **74**:2
problem [3] **52**:21 **75**:25 **81**:15
procedures [1] **76**:17
proceed [2] **9**:2 **29**:7
proceeding [14] **16**:19 **37**:1,5,7 **50**:11 **52**:7,16 **57**:2 **61**:18 **63**:10 **65**:9 **77**:5 **81**:1,3
proceedings [4] **16**:22 **36**:10,16 **75**:21
process [3] **4**:15 **14**:3 **42**:6
processes [1] **17**:2
prohibit [3] **21**:10 **22**:24 **23**:4
prohibited [6] **24**:1 **68**:13 **71**:12 **78**:24,25 **79**:16
prohibiting [1] **69**:5
prohibition [1] **5**:22
prohibits [1] **46**:21
prompt [2] **74**:20 **77**:1
promptly [1] **18**:1
proper [1] **25**:13
property [129] **3**:14,15,24 **4**:6 **8**:14, 23 **9**:16,18 **10**:13,17 **11**:2 **14**:20 **15**:4,15,18 **16**:12 **23**:21,22 **24**:6 **25**:19 **27**:2,3,24 **28**:14 **29**:2,12,14, 15,16,19,22 **31**:12,13,14 **33**:7 **35**:11 **37**:25 **38**:2 **39**:14,19 **41**:8,11, 13,16,23,24 **42**:3,8 **43**:14,15,18,19 **44**:20,25 **45**:2,6,17 **46**:9,14,18,20, 22 **47**:2,10,12,16,21 **48**:6,7,9,19 **49**:19 **50**:10,19 **51**:10,24 **52**:1,13 **53**:6,8,9,10,17,21 **54**:15 **55**:10 **57**:10,24 **58**:1,6,8,12 **59**:8,20 **60**:14 **61**:6,8 **62**:1,3,6,9,20 **66**:9 **67**:5,8 **68**:2,5,7 **69**:6 **70**:12 **71**:10 **73**:3,7, 19 **74**:20,23,24 **75**:1,3,5,18,22 **76**:18,22 **77**:6,24 **79**:11 **80**:11,16
propose [1] **45**:19
proposing [1] **64**:10
proposition [1] **50**:17
protect [1] **35**:19
protected [1] **77**:24
protection [15] **4**:11 **9**:3 **10**:19 **18**:3 **49**:4 **52**:12,14 **55**:1,3 **58**:9,21,25 **63**:15 **76**:15 **79**:13
protections [6] **29**:2,4 **48**:21,24 **49**:8 **79**:8
protects [1] **47**:18
provide [4] **4**:10 **10**:18 **49**:6 **52**:14
provided [2] **21**:14 **50**:23
provides [6] **10**:15 **46**:17 **63**:12 **79**:7,18 **81**:3
providing [1] **22**:17
provision [39] **4**:1,2,4,7,25 **7**:12

12:2 **19**:23 **20**:10 **21**:17 **28**:18 **29**:8 **30**:8,11,13 **32**:18 **33**:18 **34**:5 **39**:17,22 **40**:3 **43**:17 **44**:10 **45**:24 **46**:25 **47**:3,8 **58**:24 **61**:23 **62**:15,25 **64**:16,20 **66**:5 **68**:17 **70**:4,14 **71**:3 **75**:17
provisions [11] **19**:16 **33**:24 **36**:9 **40**:1 **49**:13 **51**:4,12 **62**:5 **66**:2,16 **71**:7
punish [1] **12**:10
punishable [2] **20**:18 **22**:2
punished [1] **21**:25
punitive [1] **22**:18
purpose [3] **3**:23 **47**:8 **64**:5
purposes [2] **43**:16 **78**:5
pursuing [1] **15**:11
put [11] **6**:4 **11**:13 **37**:9 **40**:7 **42**:8 **44**:19 **57**:10 **69**:3 **70**:2 **72**:13 **73**:18
puts [1] **66**:11
putting [1] **71**:9

Q

question [36] **3**:11 **6**:8 **9**:24 **10**:10 **11**:20,24,25 **14**:19 **17**:23,24 **21**:8, 13 **22**:10,11,12 **35**:24 **36**:8 **37**:23 **40**:19 **41**:5 **46**:7 **48**:5,10 **52**:12 **53**:5 **55**:8 **57**:16 **58**:16 **59**:6 **63**:1 **67**:13,19 **70**:6 **73**:9 **76**:9 **80**:25
questions [13] **22**:16 **26**:13 **38**:6 **42**:14 **46**:13 **49**:16 **54**:10,12 **57**:18 **67**:18 **72**:9 **74**:11,16
quick [1] **78**:21
quickly [4] **18**:1 **37**:8 **58**:14 **78**:2
quite [4] **17**:9 **18**:10 **31**:15 **58**:8
quo [31] **3**:23 **4**:22 **5**:23,24 **7**:8,25 **12**:23 **13**:14,16 **14**:13,23 **16**:4 **18**:19,23 **19**:8,10,19 **26**:19 **28**:10,12 **33**:14,20 **38**:17 **39**:25 **40**:12 **43**:1 **44**:5 **45**:15 **64**:17,21 **65**:15
quoting [1] **76**:13

R

RadLAX [1] **30**:7
raise [2] **75**:20 **76**:11
raised [1] **26**:13
raises [1] **22**:9
rather [3] **48**:25 **53**:21 **76**:17
reach [2] **33**:10 **41**:4
reaction [1] **31**:22
read [15] **5**:10 **27**:23 **28**:5,11,13 **30**:10,11 **33**:6 **34**:12 **43**:4 **44**:3 **45**:13 **51**:13 **54**:23 **62**:16
reading [11] **4**:20 **5**:6 **28**:6,17 **31**:18 **42**:22 **43**:2 **45**:18 **62**:14 **80**:4, 23
ready [1] **55**:2
real [4] **10**:23 **13**:8 **19**:3 **81**:15
reality [1] **71**:6
realize [2] **42**:11 **43**:18
reallocating [1] **31**:13
really [12] **18**:22 **37**:21 **39**:7 **51**:7 **57**:8,17 **66**:18,21 **67**:20 **69**:3 **70**:25 **76**:9

reason [2] **34**:11 **57**:9
reasonable [1] **63**:12
reasons [5] **4**:19 **27**:12 **28**:7 **46**:12 **78**:11
REBUTTAL [3] **2**:12 **78**:17,18
recalls [1] **6**:9
recognized [1] **47**:13
recognizes [1] **76**:19
recover [1] **73**:19
recovering [1] **46**:9
recovery [3] **46**:14 **75**:24 **79**:11
red [1] **80**:7
redistributed [1] **19**:5
redundancy [2] **56**:20,21
refer [1] **79**:21
reference [1] **48**:22
refers [1] **29**:19
reflect [1] **71**:5
reflected [2] **46**:12 **49**:16
refusal [4] **35**:10,16 **39**:9 **59**:7
refused [1] **47**:25
refuses [3] **27**:2 **34**:24 **36**:2
refusing [1] **39**:3
regard [2] **9**:4,9
regarding [1] **25**:8
rehabilitate [1] **17**:4
reinforce [1] **31**:20
reiterate [1] **45**:13
rejected [2] **8**:23 **28**:17
relationship [2] **13**:18 **33**:21
relative [1] **60**:17
release [2] **34**:25 **35**:3
relevant [1] **13**:15
reliable [1] **23**:8
relief [10] **21**:11 **26**:21 **56**:5,7,9 **57**:1,5 **58**:13,18 **77**:1
relinquish [1] **29**:21
relocates [1] **13**:10
remained [1] **14**:12
remanded [1] **71**:19
remote [1] **13**:1
render [1] **4**:24
reorganization [3] **47**:14,19 **78**:10
reorganizational [1] **78**:4
reorganize [3] **49**:20 **76**:18,21
repairs [1] **4**:17
repay [2] **25**:20,24
repayment [1] **24**:21
repeated [1] **5**:8
repeatedly [1] **3**:22
repossess [1] **27**:25
repossessed [3] **16**:13 **29**:14 **50**:9
request [9] **34**:25 **39**:4 **49**:2 **50**:18 **57**:25 **61**:15 **62**:18 **69**:22,22
requested [3] **35**:16 **47**:24 **49**:3
requests [1] **48**:18
require [6] **3**:24 **4**:21 **6**:16 **28**:14 **34**:22 **63**:3
required [8] **4**:9 **29**:20,20 **36**:20,21 **50**:3 **59**:19 **65**:7
requirement [6] **47**:4 **51**:25 **61**:7,14 **70**:11 **80**:25

requires [15] **3**:13 **22**:6 **35**:11,17 **50**:19 **57**:23 **61**:19 **62**:23 **65**:3,9,23 **66**:25 **67**:16 **76**:14 **80**:5
resolve [1] **4**:15
resolved [2] **56**:21 **76**:23
resolves [2] **7**:1 **20**:16
resort [1] **12**:10
respect [13] **11**:25 **14**:17,20 **15**:4 **17**:17 **19**:15 **25**:13,14,15,16 **31**:25 **33**:20 **45**:16
respectfully [1] **20**:21
respond [3] **17**:15 **25**:4 **37**:18
Respondent [1] **29**:3
Respondents [11] **1**:7,25 **2**:11 **28**:4 **30**:3 **31**:18 **32**:16 **34**:7 **39**:2 **45**:19 **46**:4
Respondents' [2] **4**:18 **34**:14
responds [1] **81**:7
response [6] **14**:19 **17**:22 **18**:1 **38**:20 **72**:18 **80**:24
responses [1] **10**:9
result [2] **57**:3 **75**:17
retain [5] **35**:2 **37**:24 **50**:9 **69**:12 **72**:13
retaining [4] **31**:14 **41**:8 **68**:20 **69**:10
retains [1] **41**:16
retention [1] **38**:23
return [10] **3**:15 **7**:3 **46**:11 **47**:25 **48**:18 **49**:19 **53**:5 **56**:11 **67**:5 **79**:24
returning [1] **47**:23
reversed [1] **27**:13
rights [9] **12**:11 **60**:17 **77**:23 **78**:1 **79**:4,5,7,10,17
Ritzen [1] **8**:5
ROBBIN [1] **1**:6
ROBERTS [44] **3**:3 **5**:13 **6**:2,21,24 **7**:14 **9**:11 **12**:14,18,21 **15**:23 **18**:12 **21**:1 **23**:16 **26**:4,8 **27**:14 **28**:20 **29**:23 **30**:1,16 **32**:20,24 **34**:19 **37**:16 **40**:13 **43**:8 **45**:9,25 **48**:4,20 **49**:7,22 **50**:5,25 **54**:6 **57**:14 **61**:11 **64**:13 **68**:9 **72**:4 **74**:7 **78**:16 **81**:17
role [2] **45**:23 **78**:23
rule [2] **66**:23 **81**:12
ruled [1] **63**:20
rules [4] **36**:17,23 **49**:19 **81**:13
ruling [1] **56**:14
rulings [1] **25**:21
run [2] **22**:15 **27**:9
running [1] **8**:5

S

sale [2] **7**:24 **71**:11
same [14] **6**:17 **21**:11 **28**:19 **44**:4,7 **51**:9,11,13 **54**:12,19 **66**:17 **69**:4,15 **73**:9
sample [1] **72**:24
sanctions [10] **22**:8 **26**:1 **28**:24 **34**:5,9,15 **35**:12 **37**:10 **44**:24 **49**:11
satisfaction [1] **62**:9
save [1] **17**:3
saying [8] **10**:1 **23**:3 **33**:2 **43**:13 **44**:

9 **75**:18 **77**:23 **81**:7
says [18] **9**:15,25 **10**:1,11,13 **22**:6 **29**:3 **44**:3 **50**:6 **54**:16,19,20 **67**:21 **68**:1 **79**:22 **80**:8,8 **81**:13
Scalia [1] **30**:7
scene [1] **45**:24
schedules [1] **17**:10
scheme [1] **30**:9
scope [3] **21**:9 **22**:12 **66**:17
score [1] **51**:16
scram [1] **26**:21
scramble [1] **26**:21
sea [1] **5**:7
Second [7] **4**:24 **8**:21 **24**:12 **26**:22 **28**:13 **37**:23 **46**:24
section [64] **9**:25 **10**:11,14,14,15 **12**:1 **19**:18,23,24 **22**:13 **27**:22 **28**:5,8,10,13,16 **29**:10,18 **30**:14,15 **32**:11,17 **33**:6,12,18 **34**:11,14 **35**:25 **36**:5,22 **39**:21 **41**:17 **43**:25 **44**:22,24 **45**:14,21 **46**:16,25 **48**:8,12,12,13 **49**:2 **50**:17 **56**:6 **57**:2,23 **62**:10,23 **64**:7,8 **65**:1,6 **66**:7 **69**:5 **70**:21 **76**:14 **77**:18,19 **79**:23 **80**:1,20,23
sections [1] **54**:14
secured [6] **16**:11 **18**:5 **79**:4,8,9,12
security [5] **16**:24 **18**:9 **35**:19 **55**:22 **75**:20
see [10] **11**:12,18 **31**:1 **53**:14,20 **54**:10 **55**:19,20 **60**:19 **61**:14
seeing [1] **52**:22
seek [5] **9**:3 **55**:9 **76**:15 **79**:25 **80**:15
seeking [2] **21**:10 **79**:10
seeks [2] **58**:13,18
seem [3] **34**:7 **39**:8 **51**:17
seems [5] **18**:16 **35**:5 **39**:9 **69**:18 **71**:2
seize [3] **31**:11 **41**:20,22
seized [8] **41**:11 **46**:9 **47**:23 **49**:19 **55**:12 **60**:14 **75**:5 **76**:17
seizing [1] **24**:17
self-enforcing [1] **58**:2
self-executing [3] **57**:17,21 **70**:11
self-help [1] **13**:25
sell [3] **41**:13 **42**:2,10
selling [2] **31**:12 **41**:25
sense [2] **19**:1 **58**:3
separate [1] **4**:1
separately [1] **71**:11
set [7] **9**:5 **13**:22 **17**:9 **18**:1 **26**:13 **37**:19 **80**:19
Seventh [5] **25**:21 **41**:3 **48**:3 **78**:6,12
several [2] **16**:22 **49**:18
SG [1] **64**:15
shall [4] **9**:17 **12**:2 **47**:2 **54**:20
Shannon [1] **71**:21
sheet [2] **13**:23,24
short [2] **22**:21 **58**:15
shorter [1] **22**:22
shouldn't [2] **55**:24 **66**:22
side [2] **50**:6 **67**:15

side's [1] **80**:3
sideboard [1] **23**:11
significant [2] **38**:14 **59**:19
similar [2] **67**:19 **80**:13
similarly [1] **65**:6
simple [1] **72**:13
simplest [1] **69**:8
simply [11] **5**:15 **9**:5 **17**:21 **25**:25 **31**:22 **32**:13 **39**:3 **59**:13 **69**:20 **76**:14 **79**:16
since [3] **20**:6 **25**:10 **27**:8
single [1] **46**:7
SINZDAK [34] **1**:20 **2**:6 **27**:16,17,20 **29**:9,25 **30**:2 **31**:6 **32**:2,5,9 **33**:5 **34**:3 **35**:8,14,23 **36**:14,16 **37**:2,17 **38**:5 **39**:18 **40**:10,11 **41**:3,21 **42**:1,22 **43**:11,23 **44**:19 **45**:11 **66**:17
sit [1] **16**:1
sitting [2] **30**:25 **31**:4
situation [3] **4**:3 **59**:12 **67**:7
situations [1] **61**:20
six [1] **56**:2
skipping [1] **22**:16
slightly [2] **40**:6,7
snippets [1] **44**:12
sold [2] **14**:21 **31**:2
Solicitor [3] **1**:20 **64**:25 **73**:10
somebody [2] **13**:3 **37**:4
someone [3] **22**:6 **27**:1 **80**:17
someone's [1] **41**:1
sometimes [1] **65**:22
somewhat [3] **30**:22 **51**:18 **52**:20
sorry [4] **22**:20 **32**:4,7 **75**:15
sort [11] **17**:22 **19**:15 **21**:11 **30**:5,22 **34**:11 **39**:13 **40**:4 **44**:8 **45**:5 **80**:5
sorts [2] **71**:11 **75**:20
Sotomayor [34] **15**:24,25 **16**:5,14,17 **17**:7,11,16 **34**:20,21 **35**:8,9,15,23 **36**:6,15,24 **37**:15 **61**:12,13 **62**:11,13 **63**:4,19,23 **64**:2,11 **75**:14,15 **76**:3 **77**:3,11,15,20
Sotomayor's [1] **80**:25
sought [1] **56**:9
sound [1] **39**:15
speaks [2] **70**:1,14
specific [8] **19**:25 **30**:4,8 **32**:15,18 **38**:10 **41**:7 **79**:7
specifically [1] **30**:13
speed [1] **56**:5
spoke [1] **64**:5
spotlighted [1] **74**:17
stake [1] **28**:22
start [4] **16**:18 **24**:23 **34**:11 **68**:12
state [2] **3**:18 **15**:10
STATES [6] **1**:1,15,22 **2**:7 **27**:18 **73**:12
status [33] **3**:23 **4**:22 **5**:23,24 **7**:8,25 **12**:23 **13**:14,16 **14**:13,23 **16**:4,18 **18**:19,23 **19**:7,10,19 **26**:19 **28**:10,12 **33**:14,20 **38**:17 **39**:24,25 **40**:2,12 **43**:1 **44**:5 **45**:15 **64**:17,21 **65**:15
statute [8] **12**:8 **21**:24 **44**:14 **68**:13

withhold [1] **47**:16
withholding [2] **47**:21 **76**:17
within [3] **9**:20 **56**:10 **72**:25
without [7] **4**:16 **10**:1 **33**:2 **35**:17
50:20 **59**:14 **61**:20
witnesses [1] **52**:15
wonder [1] **19**:2
wondering [3] **18**:22 **37**:18 **48**:23
word [2] **38**:24 **59**:15
words [5] **5**:5 **15**:20 **20**:3 **53**:13 **60**:
8
work [17] **6**:13 **7**:7 **8**:9 **14**:15 **17**:6,
23 **19**:21,24 **20**:5,6,20 **24**:19,20
38:18 **49**:25 **51**:4 **70**:25
work-arounds [1] **80**:6
worked [5] **9**:6 **17**:21 **18**:4 **20**:9,14
working [1] **24**:13
works [8] **18**:10,10 **20**:1 **25**:17 **30**:
6 **33**:3 **46**:24 **48**:12
world [2] **69**:9 **81**:15
worried [1] **42**:10
worse [1] **68**:19
worth [1] **25**:10
wrap [2] **26**:9 **45**:10
wrote [1] **12**:4

Y

yes-or-no [1] **22**:23
yourself [1] **35**:20