

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	ANDRE BELANGER, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	ELIZABETH MURRILL, ESQ.	
7	On behalf of the Respondent	34
8	ORAL ARGUMENT OF:	
9	CHRISTOPHER G. MICHEL, ESQ.	
10	For the United States, as amicus	
11	curiae, supporting the	60
12	REBUTTAL ARGUMENT OF:	
13	ANDRE BELANGER, ESQ.	
14	On behalf of the Petitioner	80
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument this morning in Case 19-5807, Edwards
5 versus Vannoy.

6 Mr. Belanger.

7 ORAL ARGUMENT OF ANDRE BELANGER

8 ON BEHALF OF THE PETITIONER

9 MR. BELANGER: Mr. Chief Justice, and
10 may it please the Court:

11 "A verdict by 11 is no verdict at all"
12 is a line from the Court earlier this year that
13 ended Louisiana's nonunanimous jury scheme. On
14 paper, it restored the full breadth of the Sixth
15 Amendment's jury trial right to Louisianans.

16 But we need to place the effect of
17 this ruling into perspective. This laudable
18 ruling would only apply to cases then pending or
19 recently adjudicated. It meant nothing to
20 Mr. Edwards, who is serving a life sentence at
21 Angola for a verdict that would be illegal
22 everywhere else, as Louisiana is the only place
23 that would jail you for natural life on a
24 nonunanimous verdict.

25 Ultimately, the question before the

1 Court is, why should the Sixth Amendment mean
2 something less to Mr. Edwards? Members of the
3 Ramos Court were divided on how to reconcile the
4 fractured decision in Apodaca with then existing
5 precedents. This division cleared two paths to
6 holding that Ramos applies retroactively under
7 Teague, two paths for providing a remedy to
8 those jailed by a jury scheme we know was
9 morally wrong at its inception and is
10 unconstitutional.

11 For some justices, Apodaca was dead on
12 arrival since its deciding votes rationale was
13 foreclosed by precedent. For these justices,
14 Apodaca provided no precedential value and Ramos
15 is an old rule dictated by precedent --
16 precedents that simply restored the Sixth
17 Amendment's full measure either through the Due
18 Process Clause or the Privileges or Immunities
19 Clause of the Fourteenth Amendment.

20 For other justices, Apodaca was such a
21 wrongly decided decision that it needed to be
22 explicitly overruled. For these members of the
23 Court, Ramos should be a watershed rule
24 requiring retroactivity as this restores
25 fairness and accuracy to jury trials in

1 Louisiana.

2 Both paths remedy something we all
3 know to be wrong. Both paths will provide the
4 promise of a fair trial to all Louisianans.

5 Mr. Chief Justice, I'm ready to
6 entertain questions from the Court.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel. I -- I think your biggest hurdle is
9 the Court's decision in DeStefano, where we held
10 that the jury trial right itself should not be
11 applied retroactively. What -- what we're
12 talking about here is a subordinate right to a
13 unanimous verdict, a lesser included right. How
14 do -- how do you get around DeStefano?

15 MR. BELANGER: There's two
16 considerations I would like to bring to the
17 Court's attention. DeStefano itself was just
18 dealing with the judge's ability to make a
19 decision, and as this Court noted in Duncan, you
20 cannot say whether or not necessarily that a
21 judge-rendered decision is more or less accurate
22 than a jury-rendered decision. Our case here
23 deals with the in -- intricacies of what goes on
24 in the jury room.

25 I will also note that I think the more

1 analogous case, Mr. Chief Justice, is the Brown
2 decision. It too provided the same
3 retroactivity standard that was incorporated in
4 DeStefano which relied heavily on state
5 interest, and that decided to apply the Burch
6 decision retroactively, which prevented
7 Louisiana from having nonunanimous petit juries.

8 CHIEF JUSTICE ROBERTS: You know, in
9 Ramos, five of us thought that Apodaca was a
10 precedent that was being overruled and therefore
11 was the most compelling evidence that it was a
12 new rule. Were those five justices
13 unreasonable?

14 MR. BELANGER: Well, when we get to
15 the reasonableness standard of -- of -- of the
16 jurists, it's on objective criterion. I think
17 that we can all agree that the Sixth Amendment
18 requires a unanimous jury and that we can all
19 agree that the Bill of Rights are fully
20 incorporated to the states at this point.

21 Normally, the reasonable jurist
22 standard goes hand in hand with being dictated
23 by precedent, but Apodaca was such a bizarre
24 decision that it broke those two hands apart,
25 and that's why it is in a unique universe of

1 one, Mr. Chief Justice.

2 CHIEF JUSTICE ROBERTS: I think,
3 particularly given your answer on DeStefano,
4 that -- that you have something of a burden of
5 establishing that the unanimous jury is -- is
6 necessary to avoid an impermissibly large risk
7 of an inaccurate conviction.

8 What -- what is your best empirical
9 evidence for that?

10 MR. BELANGER: Well, I have two.

11 First is we have amici have provided
12 some statistics on the actual exonerations
13 coming out of Louisiana. Of the 65 or so cases
14 that they've identified, half of those cases
15 were eligible for a nonunanimous verdict, and
16 from that population of half, half of those, or
17 one quarter of the 65, were actual exonerations
18 of nonunanimous jury verdicts.

19 I would also turn the Court's
20 attention to a law review article published in
21 Notre Dame after Gideon versus Wainwright was
22 decided written by Abe Krash. It's the Right to
23 a Lawyer: The Implications of Gideon versus
24 Wainwright.

25 Krash was one of the brief authors in

1 Gideon, and he reported data in that that
2 Florida at that time had about 8,000 people in
3 jail and 4500 of those were jailed without a
4 lawyer. And -- and -- and so the system
5 accounted for that. If Gideon's going to be our
6 watershed rule, we -- we can look to see just
7 the numbers there, and they're radically
8 different from what we have here.

9 And -- and so you -- you have a system
10 where we look to see whether or not the system
11 itself was fair, and a nonunanimous jury is not
12 fair because it flies in the historical
13 tradition of this country.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Justice Thomas.

17 JUSTICE THOMAS: Thank you, Mr. Chief
18 Justice.

19 Counsel, we agree this is a -- unlike
20 Montgomery, this is a procedural rule. So can
21 you -- other than Gideon, can you think of
22 another case where we have said that a
23 procedural rule was retroactive?

24 MR. BELANGER: Well, not since Teague.
25 But, when we go back to the Brown decision, that

1 was applied -- that was applying Burch
2 retroactively, and it dealt with the same issue
3 of unanimity in a Louisiana jury trial.

4 JUSTICE THOMAS: The -- on your
5 statistics that you -- or the data that you just
6 suggested about unanimous versus nonunanimous
7 juries, how do you respond to the arguments on
8 the other side that the statistics and the
9 studies are a mixed bag and really doesn't move
10 the dial very much one way or the other?

11 MR. BELANGER: Well, we have to look
12 at whether or not the process seems fair. Our
13 tradition puts together the reasonable doubt and
14 the unanimous jury together. We want people to
15 come together as a community to be convinced
16 beyond a reasonable doubt that this person needs
17 to be deprived of their liberty.

18 And -- and -- and so there -- there
19 are studies that suggest that the effectiveness
20 of deliberation is simply cut short when you
21 don't have to have a unanimous jury, and that
22 systemically leads to the possibility of an
23 inaccurate conviction.

24 When we go back to those Gideon
25 numbers out of Florida I just mentioned, I mean,

1 certainly, not all of the 4500 people would have
2 been convicted, but we're talking about more
3 than half the population in the jail at that
4 time. It leaves room for the premise that the
5 system can be inaccurate and unfair even though
6 it may in -- in -- in many instances lead --
7 lead to conceivably the right decision.

8 JUSTICE THOMAS: But I don't know how
9 you can -- how it translates a right to counsel
10 versus a unanimous jury. What has the Court
11 said -- what have we said in our cases about
12 nonunanimous juries?

13 MR. BELANGER: Well, going back to the
14 Brown decision, it was required, that, you know,
15 Burch and Brown both required unanimous juries.
16 And --

17 JUSTICE THOMAS: We've had Apodaca on
18 the book for -- books for quite some time. I
19 think the cases we have actually, if not
20 endorsed it, certainly saw it sitting
21 comfortably, if not awkwardly, with our case
22 law.

23 MR. BELANGER: I would respectfully
24 disagree with that. While this Court has
25 acknowledged Apodaca for quite some time, I do

1 not believe that Apodaca was used for what it's
2 being argued to stand for and thus we're going
3 to have a watered-down Bill of Rights. You
4 know, it --

5 JUSTICE THOMAS: Let me ask you -- let
6 me change a bit and go a little bit different
7 direction. Let's assume that the Court finds
8 that this is retroactive. How do you get around
9 the relitigation bar in 2254(d)(1) of AEDPA?

10 MR. BELANGER: Sure. I -- I have two
11 points to make on that.

12 First, if the Court were just simply
13 to decide retroactivity and save for another day
14 any procedural objections, this case will go
15 back down to the Louisiana courts, where we will
16 have a -- a viable claim to make on state
17 post-conviction.

18 Secondly, when we go down to a --
19 well, first of all, I don't necessarily agree
20 that there was a decision on the merits for
21 starters for purposes of (d)(1), but even if the
22 Court were inclined to think there was, when we
23 go to (e)(2)(A), subsection 1, new rules made
24 retroactively by the United States Supreme Court
25 would allow petitions like Mr. Edwards' to get

1 in under a different portion of AEDPA.

2 So, you know, I don't think we can
3 read those two statutes together that they
4 should -- it -- it really necessarily poses a
5 problem.

6 JUSTICE THOMAS: Thank you.

7 CHIEF JUSTICE ROBERTS: Justice
8 Breyer.

9 JUSTICE BREYER: Thank you.

10 How -- how many approximate -- what's
11 your rough estimate of -- if you win, how many
12 new trials in Louisiana will be called for?

13 MR. BELANGER: At -- at this point, we
14 believe the maximum population is 1600 people.
15 I do not believe that all of those 1600 people
16 will be able to establish that they had a
17 nonunanimous jury. I think amici did a good job
18 breaking down the statistics. And it's probably
19 closer to a thousand.

20 And from that, there's different
21 subsets. Some of these people will either be
22 eligible for parole soon, or they will benefit
23 from a change on the habitual offender law, or
24 they are also in jail for a very significant
25 unanimous jury conviction.

1 JUSTICE BREYER: And can the Louisiana
2 system handle that?

3 MR. BELANGER: Oh, yes, sir. I mean,
4 we're --

5 JUSTICE BREYER: How --

6 MR. BELANGER: -- only talking
7 about --

8 JUSTICE BREYER: -- about how many
9 trials are there in a year in -- in Louisiana?

10 MR. BELANGER: I don't know the --

11 JUSTICE BREYER: Or how --

12 MR. BELANGER: -- I do not know the
13 exact number. It varies by jurisdiction, but I
14 believe there's 145,000 cases filed per year,
15 and we're really looking at our estimates of
16 maybe two to three cases per prosecutor. So
17 the -- the system is more than capable of
18 accommodating this type of caseload.

19 JUSTICE BREYER: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice Alito.

21 JUSTICE ALITO: This whole quest for
22 watershed rules is rather strange. We keep
23 saying there were some in the past that were
24 discovered, but it's not clear that there are
25 any new -- any new ones that haven't yet been

1 discovered, but, you know, maybe, just maybe
2 there might be a watershed rule out there that
3 hasn't been discovered.

4 It -- I mean, it sort of reminds me of
5 something you see on some TV shows about the --
6 the quest for an animal that was thought to have
7 become extinct, like the Tasmanian tiger, which
8 was thought to have died out in a zoo in 1936,
9 but every once in a while, deep in the forests
10 of Tasmania, somebody sees a footprint in the
11 mud or a howl in the night or some fleeting
12 thing running by, and they say, a-ha, there
13 still is one that exists.

14 So, I mean, all of that is a wind-up
15 to getting back to the question that Justice
16 Thomas asked. Why should we decide whether this
17 Teague exception applies to a habeas petition
18 brought by a state prisoner without first
19 deciding whether it's barred by AEDPA?

20 MR. BELANGER: Well, the retroactivity
21 issue, as -- as I said earlier, new rules made
22 retroactive by the United States Supreme Court
23 can be litigated by another portion of AEDPA.

24 Secondly, I do believe that there is a
25 legit -- legitimate disagreement as to whether

1 or not this case was actually decided on the
2 merits in state post-conviction. My
3 recollection of what we had happen on the record
4 below is that we were summarily dismissed for no
5 legal or -- or -- or factual basis. So I don't
6 believe the -- the merits were fully addressed.

7 JUSTICE ALITO: Another oddity about
8 applying the -- the watershed rule inquiry in
9 this particular case is that the test for a
10 watershed rule depends pretty heavily on Justice
11 Harlan's decision, his opinion in the Mackey
12 case, which -- where he relied on exactly the
13 rationale, the concept of ordered liberty, Palko
14 versus Connecticut rationale, that the lead
15 opinion in Ramos excoriated. So is -- would it
16 be consistent to apply it here?

17 MR. BELANGER: Well, I -- I -- I do
18 think this is a -- a watershed rule. There are
19 so many parallels between this case and Gideon.
20 Both recognized fundamental bedrock principles,
21 and both had to deal with cases that were
22 inconsistent with those principles and restore
23 the -- the fundamental rights at issue. For
24 Gideon, it was the right to appointed counsel,
25 and, here, it's the unanimous jury requirement.

1 JUSTICE ALITO: Well, isn't part of a
2 watershed rule inquiry whether it's consistent
3 with ordered liberty?

4 MR. BELANGER: Well, it -- it is, and
5 I don't know how we can say that a nonunanimous
6 --

7 JUSTICE ALITO: Yeah, but didn't --

8 MR. BELANGER: -- jury is --

9 JUSTICE ALITO: -- didn't Justice --
10 didn't Justice Gorsuch's opinion repudiate that,
11 ridicule that approach?

12 MR. BELANGER: Well, I read Justice
13 Gorsuch's opinion as not finding precedential
14 force with Apodaca.

15 JUSTICE ALITO: Yeah, and Justice
16 Powell's opinion in Apodaca was based on what?

17 MR. BELANGER: Well, Justice Powell
18 thought that the Sixth Amendment wasn't fully
19 incorporated to the states, and we know that to
20 be wrong.

21 JUSTICE BREYER: And he thought it
22 wasn't incorporated for what reason?

23 MR. BELANGER: He didn't believe that
24 the Sixth Amendment was -- was fully
25 incorporated through the Due Process Clause of

1 the Fourteenth Amendment.

2 JUSTICE ALITO: All right. Thank you.

3 CHIEF JUSTICE ROBERTS: Justice
4 Sotomayor.

5 JUSTICE SOTOMAYOR: Counsel, can you
6 explain that 1600 number? Is that all prisoners
7 that are in jail currently, whether it's a year
8 old or not or post- -- past their AEDPA time?
9 Is that the total prison population?

10 MR. BELANGER: That -- those -- when
11 you mean by prison population -- if you mean
12 that -- are those the people that are in jail,
13 yes, Justice Sotomayor.

14 JUSTICE SOTOMAYOR: All right. And so
15 your statistic is based -- you're saying some of
16 them may not be able to prove that they were
17 convicted by a -- a nonunanimous verdict, is
18 that correct?

19 MR. BELANGER: That's correct. Some
20 of that 16 -- some of those 1600 may not be able
21 to do that, Your Honor.

22 JUSTICE SOTOMAYOR: Why are you
23 guessing a thousand?

24 MR. BELANGER: Based on amici's
25 efforts to pull the court records on those 1600

1 people. They haven't been able to establish
2 that yet. But, even for purposes of just
3 assuming that all 1600 could prove it, it is
4 still the burden on the petitioner to show that
5 they had a nonunanimous jury. And -- and -- and
6 there are many instances we may find that
7 lawyers didn't simply ask for the polling. We
8 -- that would just be on a case-by-case basis.

9 JUSTICE SOTOMAYOR: All right. Thank
10 you, counsel.

11 MR. BELANGER: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice Kagan.

13 JUSTICE KAGAN: Mr. Belanger, as you
14 know, I thought that Apodaca was a precedent, so
15 you would have a very steep climb to get me to
16 think that Ramos was anything other than a new
17 rule. So I want to focus on the watershed
18 inquiry, and in that inquiry, we've talked a lot
19 about accuracy. And I think somebody previously
20 asked you about your empirical evidence, and
21 I'll just give you sort of my sense that the
22 empirics here are sparse, maybe surprisingly
23 sparse, as to how this unanimity requirement
24 works with respect to what I take to be the
25 ordinary meaning of "accuracy," which is simply

1 a reduction in the error rate in trials.

2 And -- and so too it seems like one's
3 intuition is not necessarily in your corner,
4 that it might be that the unanimity rule allows
5 more guilty people to go free than it -- than it
6 stops innocent people from being convicted, or
7 at least it's just not certain.

8 So I -- I guess what I -- I'd like to
9 ask you is whether your -- well, I mean, number
10 one, do you just contest all of everything that
11 I just said? But, number two, are -- are you
12 talking about accuracy in some different sense?
13 Your first sentence to us was, "A verdict by a
14 nonunanimous jury is no verdict at all." And
15 then you talked about a verdict can be
16 inaccurate and unfair even though it leads to
17 the right decision.

18 And I guess what I'm asking is, are
19 you talking about and do you think in our cases
20 we've been talking about accuracy in some
21 different sense than simply the reduction of
22 errors in whatever direction?

23 MR. BELANGER: I -- I do not think
24 that accuracy needs to necessarily be
25 statistics-driven. I've just provided the

1 statistics that were available for illustrative
2 purposes. "A verdict by 11 is no verdict at
3 all" is an accurate statement the way -- the --
4 the way the framers intended the Sixth Amendment
5 jury trial right to be.

6 I go back again to Gideon, which this
7 Court has recognized as the exemplar for the
8 watershed rule. If the figures in that Notre
9 Dame article were accurate, we're talking about
10 three times as many more people as we have
11 affected in Louisiana, and we're also talking
12 about half of that prison population, where,
13 here, we may be talking about 5 percent.

14 I -- I do believe it is a -- a
15 systemic approach to say whether or not a trial
16 that's deprived someone of his liberty with not
17 a unanimous verdict is fair.

18 JUSTICE KAGAN: Could I ask you about
19 your argument which hasn't come up so far today
20 but featured prominently in your briefs about
21 the racial aspect of -- of -- of this rule,
22 picking up on Justice Gorsuch's opinion and
23 Justice Kavanaugh's opinion about how this rule
24 started as a -- the nonunanimity rule started as
25 a racially discriminatory one.

1 How does that play into the Teague
2 analysis and how can it play given that we've
3 held Batson non- -- nonretroactive?

4 MR. BELANGER: Well, I -- I think this
5 is a case that is different than Batson. A -- a
6 Batson case is something where you're looking at
7 the particular actions of an individual
8 prosecutor in an individual case. And Batson
9 requires speculation. We don't know if there
10 would have been a unanimous verdict or not with
11 a Batson-compliant jury.

12 Here, we know. We can -- we can show
13 that this was not a unanimous verdict. We had
14 at least one juror and sometimes two jurors vote
15 not guilty. And the types of cases that we'll
16 be talking about moving forward, the burden will
17 be on the petitioner to show I actually had a
18 nonunanimous jury. And -- and so it is
19 measurable, whereas Batson was not.

20 I do think that the racial origins of
21 the -- the -- the nonunanimous jury is something
22 to consider. It shows that this type of system
23 was set up for the purpose of not being
24 accurate, for the purpose of not being fair.
25 And even though the state has tried to cleanse

1 itself, it still has a negative racially
2 disproportionate impact today.

3 CHIEF JUSTICE ROBERTS: Justice
4 Gorsuch.

5 JUSTICE KAGAN: Thank you.

6 JUSTICE GORSUCH: Good morning,
7 counsel. I'd like to start with your first
8 argument, that Ramos did not announce a new
9 rule. I -- I'm certainly sympathetic to that
10 point of view. I believe the Court had, for
11 well over 100 years, spoken about the unanimity
12 requirement, as you know.

13 But only a plurality agreed with me on
14 that, and -- and there were a couple of joiners
15 who thought that Apodaca was a precedent of the
16 Court. A single justice speaking for himself
17 defined existing precedent was
18 nonetheless itself a precedent that we had to
19 abide. And, of course, the dissenters took that
20 point of view.

21 How -- how -- how can we get to where
22 you want us to go in that light? Do we account
23 for the dissenters' position? Should we
24 discount the dissenters' position? Even if we
25 do discount that, what about the fact that the

1 -- the majority itself had different views?

2 MR. BELANGER: I would have two
3 responses.

4 First, I believe you all's opinion in
5 -- in Ramos did set up two paths for the Court
6 to decide retroactivity.

7 Secondly, I don't -- while I respect
8 the dissenters' viewpoint and realize that may
9 be how they feel today, I do not necessarily
10 count the votes in dissent to say explicitly
11 we've overruled Ramos -- Apodaca, rather. I
12 apologize.

13 JUSTICE GORSUCH: So I'm -- I'm
14 just -- just flesh that out for me a little bit
15 more as to how you see this as not a rule, not a
16 new rule. You know, certainly, Justice Ginsburg
17 and -- and -- and Justice Breyer and I thought
18 that's correct, but some of the other joiners
19 even in the majority did not. What about them,
20 if you -- if you have us discount the dissents?

21 MR. BELANGER: Yeah. So, you know,
22 the Sixth Amendment has always required
23 unanimity, and then going back to the Malloy
24 versus Hogan decision, we have said that we do
25 not have a watered down Bill of Rights so that

1 the two lines of precedent there, Sixth
2 Amendment requires unanimity and that the Sixth
3 Amendment is fully incorporated to the states,
4 leads to one logical conclusion and that is that
5 Louisiana had to apply a unanimous jury scheme.

6 And -- and -- and, you know, Justice
7 Powell's decision is just a -- a unique opinion.
8 It is one that requires us, if we -- if we are
9 to follow it, to go -- to take a -- what's
10 considered a -- a fundamental Bill of Right and
11 marry it up to something that was foreclosed as
12 at the time the opinion was given, and I just
13 don't think that is something you'll ever see
14 ever again.

15 I -- I think, when we sit down people
16 to explain that these are the two lines of
17 precedent, Louisiana has a 10-2 system, do you
18 think that would hold water, I think people
19 would say no if they did not know about the
20 Apodaca decision.

21 JUSTICE GORSUCH: I surely hope you're
22 right.

23 With respect to the watershed route,
24 your alternative route, you -- you -- you've
25 gotten different variations of the question,

1 but I -- I guess the way I'd -- I'd put it is
2 Teague holds out this promise that there's going
3 to be some watershed rule in the hands of Gideon
4 as an example, which predates Teague, of course.

5 But then, ever since, we haven't -- we
6 haven't found a single one. Is -- is this a
7 false promise? If it is, should we just admit
8 it's a false promise? If it isn't a false
9 promise, then what counts, what principle counts
10 if DeStoff -- DeStefano doesn't count, Ring
11 doesn't count, Batson doesn't count, Crawford
12 doesn't count? Are we -- are we just -- who are
13 we kidding and -- and what should we do about
14 it?

15 MR. BELANGER: Your -- Your Honor,
16 I -- I -- I -- I couldn't frame it better.
17 It's -- for Teague to mean anything, there has
18 to be something that counts, and that's why I
19 think that Ramos is more analogous to Gideon
20 than any of these other cases that we have
21 decided in the past.

22 Both decisions restored our
23 understanding of fundamental bedrock principles.
24 Both of these decisions took away a -- a -- a
25 case that deviated from those prior precedents.

1 And because you'll never see an opinion like
2 Apodaca again, we can all rest assured that this
3 is not going to open any type of floodgate.
4 This has to be a watershed rule if you find that
5 Apodaca was explicitly overruled by Ramos.

6 JUSTICE GORSUCH: Thank you, Counsel.

7 CHIEF JUSTICE ROBERTS: Justice
8 Kavanaugh?

9 JUSTICE KAVANAUGH: Thank you, Chief
10 Justice.

11 And good morning, counsel. I had been
12 concerned that your approach would require us to
13 chart a new path on retroactivity. As Justice
14 Thomas and Justice Alito pointed out, we have a
15 long line of cases, and you were just discussing
16 with Justice Gorsuch post-Teague cases, such as
17 Whorton about the Crawford rule and -- and many
18 others where we have declined to apply a new
19 rule retroactively on collateral.

20 I'm also, though, concerned about
21 the -- some of the pre-Teague cases which I
22 think are on point here. The Chief Justice
23 brought up DeStefano. You've -- you've equated
24 Ramos to Gideon. The dissenters in DeStefano
25 equated the jury trial right itself to Gideon,

1 Justice Douglas and Justice Black, in their
2 dissents, and I just want to give you an
3 opportunity. The -- the -- the jury trial right
4 not applying retroactively but the unanimous
5 jury right applying retroactively on collateral
6 review seems like an asymmetry.

7 MR. BELANGER: Sure. Two -- two
8 responses to that.

9 First of all, I think we have to
10 remember that DeStefano was decided by a
11 different standard of retroactivity than Teague.
12 And the three factors in existence at that time,
13 two of them were heavily relate -- weighted
14 towards the state's reliance interest that
15 was reliance about law enforcement and the
16 overall effect on the administrative --
17 administration of justice with the retroactive
18 application. Those two enumerated factors are
19 removed from Teague analysis. We just have to
20 focus on fairness and accuracy.

21 And -- and -- and the second point is
22 that that issue would -- would -- would have
23 required the Court to say that a judge-made
24 decision is somehow so inconsistent in accuracy
25 and fairness than with a -- a jury decision.

1 And -- and that has not been the position of
2 this Court, so it is a bit different.

3 JUSTICE KAVANAUGH: Okay. On the
4 Batson angle, as you know, in Ramos, I thought
5 the Batson precedent was an important --
6 important one in thinking about how the
7 nonunanimous jury actually operated in practice,
8 and I think Batson is a -- a landmark opinion
9 and one of the more important opinions in this
10 Court's history in terms of ensuring that trials
11 occur without racial discrimination.

12 Yet, in Allen v. Hardy, we did not
13 apply Batson retroactively. I know Justice
14 Kagan referenced this with you. And that's, I
15 guess, another asymmetry I'm concerned about
16 here in -- in this case. And your distinction
17 of -- of Allen v. Hardy would be?

18 MR. BELANGER: Well, it -- I'm sorry,
19 my distinction, Your Honor, would be that Allen
20 versus Hardy was also using the pre-Teague
21 standards that heavily relied upon the reliance
22 factors of the state.

23 And, secondly, with -- again, with
24 Batson challenges, they're hard to measure.
25 You -- you just do not know if a

1 Batson-compliant jury would or would not have
2 found guilt beyond a reasonable doubt --

3 JUSTICE KAVANAUGH: Well, I think
4 that's --

5 MR. BELANGER: -- whereas, here, I can
6 measure it.

7 JUSTICE KAVANAUGH: Yeah, that's -- I
8 -- I think that's a fair point.

9 Lastly, I wanted to mention, you've
10 several times cited Brown versus Louisiana. And
11 I agree with you the plurality there is
12 supportive of you, but the opinion that -- that
13 was decisive was the concurring opinion of
14 Justice Powell and Justice Stevens, and they
15 would have applied Burch retroactively only on
16 direct cases, pending on direct, not on
17 collateral. Any response to that?

18 MR. BELANGER: Yes. You know, with
19 the -- the Teague analysis now, we do really
20 make that distinction between direct and
21 collateral review, but Brown was illustrative of
22 the fact that the standard at that time applied
23 the same standards on direct and on collateral
24 review. I -- I think the -- the premise that
25 unanimity was required and under a standard of

1 review applicable at the time, it was.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Justice Barrett?

5 JUSTICE BARRETT: Mr. Belanger, I want
6 to press you a little bit more on Justice
7 Kagan's questions to you about what accuracy
8 means, because when I heard your answers to
9 Justice Kagan, it was hard for me to distinguish
10 between your view of the accuracy prong and your
11 view of the bedrock procedural element prong,
12 the fairness of the proceeding, because you kept
13 saying, well, it's possible for a nonunanimous
14 jury verdict to have reached the right result,
15 i.e., maybe convicting someone who actually, in
16 fact, had committed the crime, while still being
17 unfair.

18 Can you -- can you help me understand
19 a -- a little bit more how your two prongs are
20 distinct of what "accuracy" means?

21 MR. BELANGER: Yeah. Well, the -- the
22 accuracy component is we're looking to see
23 whether or not the -- the -- the system of how
24 the trial took place was fair.

25 And in -- in Gideon versus Wainwright,

1 we have said that all of these cases where
2 people were not represented by counsel was not
3 fair. But I can't tell you today how many of
4 those people would have been exonerated.

5 JUSTICE BARRETT: Well -- well, right.

6 MR. BELANGER: But this is --

7 JUSTICE BARRETT: You may not be able
8 to identify a specific number, but, I mean, I
9 think what Gideon was saying is that there is a
10 significant chance that someone may have been
11 convicted when he otherwise would not have been
12 or when it was -- it reached the wrong result.

13 I -- I guess I don't understand -- you
14 know, you've got statistics saying that in
15 Louisiana, as many unanimous verdict defendants
16 have been exonerated or even more than those who
17 had been convicted by nonunanimous juries, or
18 that Oregon has a lower rate per capita of
19 exonerations than those states that do have
20 unanimous rights.

21 So -- so what does it mean? Are we
22 trying to ask whether juries wrongfully
23 convicted someone because the majority saw the
24 case in the wrong way and the -- and the one
25 dissenter in the jury or the two dissenters in

1 the jury were right? Can you just -- I'm just
2 having trouble understanding what we're
3 measuring.

4 MR. BELANGER: Well, this type of
5 verdict would not be a verdict anywhere else but
6 Oregon. So, fundamentally, at its premise, it
7 is not a conviction.

8 The -- trying to look at -- at
9 fairness in -- in dealing with how this can --
10 how this jury verdict can -- can stand, I have
11 to go back to why it was created in the first
12 place. This jury scheme was created so it would
13 not be accurate, so it could disproportionately
14 impact a segment of the population. And it is
15 true that it still has those negative effects
16 even today.

17 JUSTICE BARRETT: Well, in cases like
18 Crawford or -- or even Batson, you pointed out
19 that, you know, it -- you called it speculative
20 in Batson as to whether a juror that had been
21 struck would have voted differently, but, here,
22 we know that someone would have voted
23 differently. I mean, Batson is an egregious
24 example of racial contamination and
25 discrimination in a jury that may well have

1 affected the verdict.

2 It seems to me that it would be
3 speculation here too to think that the case
4 would have come out differently with a unanimous
5 jury.

6 MR. BELANGER: Well, I don't think we
7 have to speculate here. In our particular case,
8 I have one juror on -- on every count that voted
9 not guilty, and I have another juror on some
10 counts that voted not guilty. People that want
11 to raise Ramos retroactively will have to come
12 into court and show that they had a nonunanimous
13 jury. And so there is no speculation as to
14 whether or not we have a proper unanimous
15 verdict in these types of cases.

16 JUSTICE BARRETT: Okay. Thank you,
17 counsel.

18 CHIEF JUSTICE ROBERTS: Counsel, a
19 minute to wrap up.

20 MR. BELANGER: Ramos is retroactive in
21 either of two ways. For members of this Court
22 who viewed Apodaca as an anomaly that did not
23 alter prevailing constitutional standards, Ramos
24 was logically dictated by precedent and set out
25 an old rule. For members of this Court who

1 viewed Ramos as announcing a new rule, it is a
2 watershed rule of criminal procedure akin to
3 Gideon.

4 Jury unanimity predates the founding
5 and ranks amongst our most indispensable rights.
6 It significantly improves the accuracy and
7 fairness because a verdict taken from 11 is no
8 verdict at all.

9 The state has no legitimate interests
10 in avoiding retroactivity. Louisiana's
11 nonunanimous jury scheme was thoroughly racist
12 and discriminatory in its origin. As members of
13 this Court said in Ramos, we should not
14 perpetuate something we all know to be wrong
15 only because we fear the consequences of being
16 right.

17 Thank you, Mr. Chief Justice.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 General Murrill.

21 ORAL ARGUMENT OF ELIZABETH MURRILL

22 ON BEHALF OF THE RESPONDENT

23 MS. MURRILL: Thank you, Mr. Chief
24 Justice, and may it please the Court:

25 Louisiana adopted its 10-2 jury

1 verdict rule in 1974 after a new constitutional
2 convention where delegates expressly relied on
3 Apodaca v. Oregon and Johnson v. Louisiana when
4 revising its criminal procedures.

5 Petitioner minimizes Louisiana and
6 Oregon's reliance interests and dismisses Puerto
7 Rico's entirely. But there can be no doubt that
8 declaring the Ramos rule retroactive unsettles
9 thousands of cases that involve terrible crimes
10 in all three jurisdictions. Requiring new
11 trials in long-final criminal cases would be
12 impossible in sum and particularly unfair to the
13 victims of these crimes.

14 Ramos is unquestionably a new rule.
15 This Court has held on numerous occasions that a
16 discarded precedent is the clearest sign of a
17 new rule. Six justices in Ramos agreed that
18 Apodaca was a binding precedent. And virtually
19 every jurist, state and federal, addressing the
20 issue before Ramos viewed it that way as well
21 for almost 50 years.

22 Petitioner concedes that Ramos
23 announced a procedural rule so Ramos only
24 applies retroactively if it's a watershed rule.

25 While undoubtedly important, Ramos

1 isn't a watershed rule. A supermajority verdict
2 does not render a trial fundamentally unfair,
3 nor does it seriously undermine factual accuracy
4 of the verdict. In some cases, unanimity might
5 improve accuracy, but in others, it might
6 diminish it.

7 Here, Edwards confessed to rape and
8 armed robbery and was identified by one of his
9 victims. Because Ramos was decided long after
10 Edwards' conviction became final, the Teague
11 retroactivity bar should prevent him and others
12 like him from benefiting from Ramos's holding.

13 This Court should affirm the Fifth
14 Circuit's denial of a Certificate of
15 Appealability.

16 CHIEF JUSTICE ROBERTS: General, you
17 talk about Ramos's overruling Apodaca, but it's
18 questionable exactly what it overruled. It -- I
19 think it's more accurate to say it overruled the
20 decision rather than the opinion because it's
21 not really clear what the -- what the opinion
22 was. So that -- doesn't that discount the
23 conclusion that it's a new decision if it's --
24 it's not the same as overruling a typical
25 precedent?

1 MS. MURRILL: No, Mr. Chief Justice.
2 I think that -- so for -- so, for one thing, I
3 think that the question is what -- how lower
4 courts would have perceived it when they were
5 applying the rule at the time. And this Court
6 even in Ramos recognized that the Court itself
7 has been studiously ambiguous and even
8 inconsistent about what Apodaca might mean.

9 But there's no question that its
10 result was binding. I think its result was
11 always binding on lower courts. And this Court
12 has also very carefully guarded its right to
13 overrule its own precedent. Even where it was
14 the result that was binding, it's not the
15 reasoning.

16 CHIEF JUSTICE ROBERTS: Your friend
17 tells us that over -- making Ramos retroactive
18 is not going to have a very significant impact
19 on the criminal justice system in Louisiana. It
20 -- do you agree with his math, I guess, that
21 it's going to be simply two or three additional
22 cases per prosecutor in the state?

23 MS. MURRILL: So we absolutely
24 disagree with that math, and I think that it
25 is -- it's certainly not fair to suggest that we

1 can just distribute all serious felony, 2,000 --
2 nearly, by their end number, 1600 or more new
3 appeals and new trials for people that might be
4 retroactively impacted by this. You can't just
5 hand out cases to anybody who happens to be an
6 assistant district attorney. I mean, some of
7 those people actually enforce laws in city court
8 and -- or do -- you know, they collect money
9 for -- they do civil cases. I mean --

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 MS. MURRILL: -- it's just not fair to
13 spread them out that way.

14 CHIEF JUSTICE ROBERTS: Justice
15 Thomas.

16 JUSTICE THOMAS: Thank you, Mr. Chief
17 Justice.

18 Counsel, there's been some discussion
19 about what we thought on this Court about
20 Apodaca and the decision, et cetera, and there
21 has been some confusion, but in the lower
22 courts, do you know of any court that did not
23 think that Apodaca permitted or perhaps allowed
24 the use of nonunanimous juries or did not -- or
25 actually did not think that Apodaca held that

1 unanimous juries were permissible, nonunanimous
2 juries were permissible?

3 MS. MURRILL: No, Justice Thomas, not
4 a single one. State and federal judges to --
5 100 percent of them believed that it was settled
6 precedent. And, in fact, the petitioner even in
7 his habeas petition acknowledged that it would
8 settle the petition, as -- as he did at the time
9 that he brought this issue up in front of the
10 commissioner at the state trial level.

11 JUSTICE THOMAS: So what role should
12 that play in our analysis of whether or not this
13 is a new rule?

14 MS. MURRILL: Well, I mean, I think it
15 plays a -- a significant role because, both
16 under Teague and under AEDPA, the -- the Court
17 asks what was clearly established law at the
18 time that the state adjudicated the claim.

19 And I would also disagree with my
20 friend's position that the state -- that he
21 claims that this wasn't adjudicated on the
22 merits. It clearly was raised on and
23 adjudicated on the merits by the commissioner
24 and the state district court in post-conviction
25 relief.

1 JUSTICE THOMAS: One quick question.
2 What's your view of what the term "accuracy"
3 means? Does it mean scientifically accurate
4 both in acquittal and convictions, or is it
5 loading -- or a thumb on the scale one way or
6 the other to prevent inaccurate convictions?

7 MS. MURRILL: Well, I think this Court
8 has -- has treated the accuracy question as a
9 question of factual accuracy. And -- and under
10 Teague, the -- the analysis asks an even -- even
11 harder question, I think. It's not enough to
12 say that it's aimed at improving the accuracy or
13 that it's directed toward enhancing reliability
14 or accuracy in some way.

15 The question is whether the new rule
16 remedied an impermissibly large risk of an
17 inaccurate conviction, and I don't think you can
18 say that about a -- a supermajority verdict
19 rule.

20 JUSTICE THOMAS: Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Breyer.

23 JUSTICE BREYER: I have two questions.
24 The first is, do you know any numbers about new
25 trials that will be required in Puerto Rico or

1 Oregon, as well as yours? And the reason I
2 think that's important is I -- I have always
3 seen Teague as a kind of compromise here that,
4 because of the Fourteenth Amendment applying to
5 the states, our Court, this Court, the Supreme
6 Court, was insisting upon somewhat fairer
7 constitutional procedures, but they didn't want
8 to let everyone out of prison, so they
9 compromised.

10 Now, if that's so, I'd like to know
11 the total impact. Do you know anything about
12 California -- about Puerto Rico and Oregon, or
13 do you know where --

14 MS. MURRILL: Just --

15 JUSTICE BREYER: -- I could find out?

16 MS. MURRILL: Justice Breyer, I don't
17 have exact numbers. Puerto Rico and Oregon both
18 filed amicus briefs emphasizing the -- their --
19 their belief that this would have a -- a very
20 significant impact in their states. And Oregon
21 cites to two cases that are currently
22 challenging plea agreements, and -- and we
23 have -- we -- we also have concerns about that.

24 We know that -- that the issue in --
25 in our state has been raised to challenge a plea

1 agreement as well. So it doesn't just affect
2 those that were nonunanimous jury verdicts. It
3 also has been raised as a -- a claim for a
4 plea -- to undermine and attack plea agreements,
5 and those are even larger in number.

6 But just in our state, we -- we would
7 take the Promise of Justice Initiative's numbers
8 at face value and think 1600 is an awful lot of
9 new trials.

10 JUSTICE BREYER: Well, and most of
11 what my totally separate question is, what do
12 you do about Brown versus Louisiana? It says
13 that it's retroactive because you have -- a
14 six-man -- six-person jury has to be unanimous.
15 It can't be 5 to 1. So, if a six-person --
16 person jury can't be 5 to 1 -- a 12-person can't
17 be 10 to 2, and if the first was fundamental,
18 why isn't the second?

19 MS. MURRILL: Well, I think Brown
20 is -- is -- is distinguishable in a couple of
21 ways, but I -- I think to the -- the -- the kind
22 of question of accuracy, I think that Brown
23 specifically related to the number of jurors and
24 it held that it was retroactively -- retroactive
25 in part because I think it found that five was

1 simply not enough, and it was looking at Ballew
2 and Burch collectively and -- and finding that
3 even where you had a six-man jury, you
4 ultimately only had a five-person verdict, and
5 in Ballew, the Court had said five wasn't enough
6 to have a -- have a significant -- for the jury
7 to actually do its job --

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 MS. MURRILL: -- and also finding --

11 CHIEF JUSTICE ROBERTS: Justice Alito.

12 JUSTICE ALITO: Gideon versus
13 Wainwright, which recognized the Sixth Amendment
14 right to appointed counsel if the defendant is
15 indigent, was a watershed rule, wasn't it?

16 MS. MURRILL: Well, this Court has
17 always pointed to Gideon as the -- the -- the
18 one example that would be considered a watershed
19 rule, so yes.

20 JUSTICE ALITO: But that was not based
21 on the original meaning or understanding of the
22 Sixth Amendment right to counsel, isn't that
23 right?

24 MS. MURRILL: That's right. I think
25 it -- it -- it -- the -- the discussions in all

1 of the Court's cases about Gideon and why it was
2 watershed points to the primacy and centrality
3 of the rule throughout the process of a criminal
4 prosecution from start to -- to finish.

5 JUSTICE ALITO: Well, maybe that's
6 your answer to the next question I was going to
7 ask, but if -- if the Gideon rule, which was not
8 the original meaning of the Sixth Amendment, is
9 a watershed rule, how could we find that a --
10 the -- the unanimity rule, which the Court held
11 in Ramos was dictated by the original meaning of
12 the Sixth Amendment, does not rise to the level
13 of a waterhead -- A watershed rule?

14 MS. MURRILL: Well, Justice Alito, I
15 don't think that the historical roots of the
16 rule is what determines whether or not it is a
17 watershed rule. I mean, that's -- that's
18 certainly not how the Court examined it in
19 Schriro v. Suther -- Summerlin.

20 I -- I -- I think the Court has
21 actually just looked at two questions, and --
22 and that is whether it alters the Court's
23 understanding of a bedrock procedural element
24 that is essential to fairness of a proceeding.

25 And it -- it can't be met -- the

1 standard can't be met simply by showing the rule
2 is based on a red -- bedrock right, and I would
3 submit that Ramos is a rule that may be built on
4 other bedrock rules, but it didn't establish a
5 bedrock rule.

6 JUSTICE ALITO: Well, those who
7 insisted on including the Bill of Rights as a
8 condition for ratifying the Constitution
9 certainly thought that the rules protected by
10 the Bill of Rights were bedrock rules or, if
11 they thought of this rather strange term,
12 watershed rules, so isn't there something rather
13 odd about our saying, well, that's what they
14 thought, but we know better now, and some of the
15 rules that they thought were bedrock rules
16 really are not so bedrock or watershed, but
17 there are some others, like the Gideon rule,
18 which we now think are more important, so those
19 would be retroactive on collateral review.

20 MS. MURRILL: Well, I -- I think,
21 Justice Alito, that that's changing the nature
22 of the Teague analysis. Teague -- Teague
23 doesn't focus and none of this Court's
24 precedents have -- in -- in conducting the
25 Teague retroactivity analysis have focused

1 necessarily on the historical roots of the rule
2 in deciding whether it was or should be held
3 retroactive under Teague. And -- and AEDPA asks
4 an even more limited question.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Justice Sotomayor.

8 JUSTICE SOTOMAYOR: Counsel, could you
9 tell me -- and I'm going to ask the Solicitor
10 General the same question -- if this is not
11 watershed, give me what you think might be. And
12 it harkens back to the questions of some of my
13 colleagues earlier of the other side, which is,
14 since Teague, we haven't found anything
15 watershed. Are we claiming an exception that
16 is -- we're never going to utilize?

17 MS. MURRILL: No, Justice Kagan, I
18 don't think so. I mean, I think it's fair --

19 JUSTICE SOTOMAYOR: This is Justice --
20 this is --

21 MS. MURRILL: -- to leave open the
22 possibility.

23 JUSTICE SOTOMAYOR: Counsel, this is
24 Justice Sotomayor.

25 MS. MURRILL: Oh, I'm sorry.

1 JUSTICE SOTOMAYOR: But why don't you
2 start again.

3 MS. MURRILL: I'm sorry. I'm sorry,
4 Justice --

5 JUSTICE SOTOMAYOR: You're saying
6 that -- give me hypothetical -- give me
7 hypotheticals of what you think might qualify.

8 MS. MURRILL: Okay. I mean, I think,
9 Justice Sotomayor, that -- that I would look
10 potentially back at the -- the purpose of the
11 scope of the writ. I mean, for -- for one
12 thing, I think you're applying -- you -- you are
13 in the context of habeas corpus, so I think
14 that's important.

15 And -- and I don't -- you know, this
16 Court has never applied anything as watershed
17 other than Gideon, but I think, when you talk
18 about the -- the original context of habeas
19 corpus, the Court has pointed to things like a
20 trial that was tainted by mob violence or -- or,
21 you know, something of that nature. I mean,
22 that -- that is one potential answer, I think,
23 to that question.

24 JUSTICE SOTOMAYOR: How about a trial
25 that was held by a special master without

1 consent?

2 MS. MURRILL: Well, I think a trial
3 held by a special master without consent
4 potentially goes to jurisdiction. I mean, that
5 the Court has also addressed the scope of the
6 writ in the con -- the historical scope of the
7 writ in the context of whether a court had
8 actual jurisdiction to entertain the case.

9 And if it wasn't a court of competent
10 jurisdiction where -- a special master without
11 consent would arguably not be a court of
12 competent jurisdiction.

13 JUSTICE SOTOMAYOR: All right. I am a
14 little troubled by the empirical studies but for
15 a different reason than you are. You haven't
16 put anything to the contrary. You really
17 haven't put any evidence that the -- that there
18 aren't a significant number of people who have
19 been wrongfully convicted because of the lack of
20 unanimity. You say there some people benefitted
21 and some people didn't.

22 But what does it matter? Meaning, if
23 some people didn't benefit from the rule and may
24 have been not guilty, doesn't that answer the
25 watershed question on its own?

1 MS. MURRILL: No, I don't -- I don't
2 think that it does because I think the focus of
3 the question -- the question focuses on whether
4 it is a procedural element that is essential to
5 the proceeding and so seriously undermines
6 the -- the -- the process that we can't have any
7 confidence in -- in -- in the verdict at all. I
8 -- I think that's what the question is. And --

9 CHIEF JUSTICE ROBERTS: Thank you.

10 MS. MURRILL: -- that simply cannot be
11 said --

12 CHIEF JUSTICE ROBERTS: Thank you.

13 MS. MURRILL: -- about --

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Justice Kagan.

17 JUSTICE KAGAN: General, in In re
18 Winship, this Court held that a reasonable doubt
19 standard was -- had to be used by any criminal
20 jury. That was before Teague, but if you -- but
21 if Teague had applied, do you think that that
22 would have been held to be a retroactive rule?

23 MS. MURRILL: I mean, it's -- it's --
24 I think it's possible. I mean, I -- you know,
25 the Court has not declared Cage to be

1 retroactive. I -- I don't -- I think that --

2 JUSTICE KAGAN: Just answer, you know,
3 just what I asked. I mean, it's possible, yes
4 or no?

5 MS. MURRILL: It -- it's -- it's hard
6 to say. I mean, I think the -- the beyond a
7 reasonable doubt standard goes to the -- the --
8 the proof that's put on throughout the course of
9 the trial, so it's possible, yeah.

10 JUSTICE KAGAN: Let me tell you,
11 General, that I think you're having trouble with
12 the question, it's hard to say, because two
13 things are true. We cannot imagine that rule
14 being viewed as anything less than fundamental
15 to our entire system. That's number one.

16 But, number two, if you're only
17 talking about accuracy as, like, a reduction of
18 error rate across the board, we wouldn't have
19 that rule. We would have a preponderance
20 standard. So, I mean, that's what makes it
21 hard. And -- and -- and I guess I think it's
22 inconceivable that it wouldn't be held to be
23 retroactive.

24 MS. MURRILL: Well, Justice Kagan, I
25 think the Court did examine that -- the -- the

1 -- the context of the beyond a reasonable doubt
2 standard in the context of a nonunanimity rule
3 in Johnson, and -- and it -- it really did look
4 at the question of each individual juror
5 carrying -- and I don't think we can assume that
6 11 -- 10 or 11 jurors are not doing their duty
7 and following their jury instructions.

8 And that was, I think, part of the
9 premise of Johnson. When you look at a
10 nonunanimity rule, you're looking at each
11 individual juror's -- whether each individual
12 juror would carry their -- carry their burden
13 and -- and take their instructions seriously --

14 JUSTICE KAGAN: Thank you, counsel.

15 MS. MURRILL: -- and the Court found
16 there's no reason to assume they won't.

17 JUSTICE KAGAN: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Gorsuch.

20 JUSTICE GORSUCH: Good morning,
21 counsel. As I heard you in response to the
22 Chief Justice, you said you absolutely did
23 dispute the estimates of about 1600 cases. But
24 I haven't actually seen or heard anything where
25 you do dispute that that is the appropriate

1 number. Am I missing something?

2 MS. MURRILL: Justice Gorsuch, we
3 don't dispute the 1600 number in -- I mean, we
4 have no basis to dispute it. We -- but I
5 would -- what we disputed was the premise that
6 you could simply grant new trials and distribute
7 all of those cases across the board to any
8 prosecutor who happens to be an assistant
9 district attorney.

10 JUSTICE GORSUCH: I understand that --

11 MS. MURRILL: That's what we dispute.

12 JUSTICE GORSUCH: -- but the number --
13 the universe is agreed, it seems, then?

14 MS. MURRILL: We have no -- we have no
15 reason to dispute that number. The -- the amici
16 who filed that has been in the system trying to
17 generate data about how many convictions there
18 might be --

19 JUSTICE GORSUCH: All right. And
20 what --

21 MS. MURRILL: -- but it is all based
22 on records that are --

23 JUSTICE GORSUCH: -- what relevance
24 does this have anyway? As I understand your
25 argument, it is, okay, it's 1600, but it's

1 really difficult. Wouldn't we expect it to be
2 difficult if, in fact, it were a watershed rule?
3 If this really were a significant change and an
4 important one, wouldn't we expect there to be
5 some burden for the state, and -- and where does
6 Teague tell us that that matters?

7 MS. MURRILL: Well, I think every
8 retroactivity question assumes or -- or takes
9 into account that there will be some burden, and
10 I think that it's built into the Teague analysis
11 in -- in terms of our reliance interests. And
12 that was -- the pre-Teague Linkletter balancing
13 test --

14 JUSTICE GORSUCH: But you'd -- you'd
15 -- you'd agree with me, though --

16 MS. MURRILL: -- expressly took that
17 into account that --

18 JUSTICE GORSUCH: -- I think you'd
19 agree that if it is watershed, it's retroactive
20 regardless of the burdens on the state. And, in
21 fact, we'd expect some burdens on the state in
22 such a case, right?

23 MS. MURRILL: I think that Teague --
24 that Teague -- if it's watershed, Teague -- that
25 is the question in the Teague analysis, is

1 whether it's retroactive. I'm not sure it
2 answers the question of whether it's still
3 precluded under AEDPA.

4 JUSTICE GORSUCH: I understand that,
5 counsel. I'm not asking about AEDPA. You told
6 me not to even think about AEDPA in your brief.
7 Fine. So I'm talking about under Teague. Once
8 we answer the Teague question that it's
9 watershed, it doesn't matter how many cases
10 there are. And, in fact, if it really were
11 watershed, we'd expect there to be a
12 considerable number, right?

13 MS. MURRILL: Yes.

14 JUSTICE GORSUCH: Thank you.

15 MS. MURRILL: I mean, I think Teague
16 is calibrated to account for reliance interests.
17 That's the presumption against retroactivity.

18 CHIEF JUSTICE ROBERTS: Justice
19 Kavanaugh.

20 JUSTICE KAVANAUGH: Thank you, Chief
21 Justice.

22 And good morning, General Murrill. In
23 Ramos, Justice Gorsuch's opinion and -- and mine
24 as well talked about the history of nonunanimous
25 juries, the linkage to racist origins. I know

1 your point about the 1974 adoption.

2 But I also looked at the -- how it was
3 linked to the history of race-based peremptory
4 strikes in Batson and how those two things had
5 come from a -- from a similar place, a similar
6 unfortunate place in our history, in the court
7 -- in the country's history.

8 And in this case, you know, there's a
9 black defendant. The state uses its peremptory
10 strikes to strike all but one black juror --
11 uses four of its six peremptories against black
12 venire persons -- strikes five blacks for cause
13 because several of them -- in part, for several
14 of them -- had a family history of
15 incarceration. And you're left with one black
16 juror with a black defendant.

17 Then you get a 11-to-1 verdict on the
18 armed robbery count, the two kidnapping
19 counts -- one of the armed robbery counts, two
20 kidnapping counts, and the rape count. And the
21 one juror is the black -- black woman, the black
22 juror.

23 This case seems like a classic example
24 of what we were concerned about with the
25 combination of peremptory challenges being used

1 on the basis of race, maybe not to strike every
2 juror but to strike all but one, and then the
3 nonunanimous jury system complementing the --
4 the peremptory challenges.

5 I know there wasn't a Batson --
6 successful Batson challenge in this case, but
7 the facts of this case certainly seem troubling
8 on how it all played out. I'll just give you an
9 opportunity to react to that if you want.

10 MS. MURRILL: Justice Kavanaugh, I
11 mean, the -- the Batson claim was rejected
12 because there was absolutely no basis for Batson
13 challenges in this case. And -- and, I mean,
14 you can -- you can read the voir dire in the
15 record and see that there were non-race-based --
16 there were neutral reasons for striking the
17 jurors that were struck. And in some of these
18 cases, Sydney -- Sydney Eatman is one example,
19 there was a white male juror and a black male
20 juror struck at the exact same time for the
21 exact same reason.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 MS. MURRILL: So --

25 CHIEF JUSTICE ROBERTS: Justice

1 Barrett.

2 JUSTICE BARRETT: General Murrill, I'd
3 like to ask you about 2254(d). So Justices
4 Thomas and Gorsuch asked Mr. Belanger whether
5 2254(d) erected an independent bar, you know,
6 regardless of what we say about Teague. We have
7 an amicus brief saying that 24 -- 2254(d)(1)
8 supersedes Teague, so there are no exceptions,
9 there is no watershed exception, and that's
10 because 2254(d)(1) precludes a federal court
11 from granting relief if the claim resulted -- if
12 the state court adjudication resulted in a
13 decision that was contrary to or involved an
14 unreasonable application of -- sorry, permits
15 granting relief only in that circumstance.

16 And 2254(d)(1) makes no mention of
17 watershed rules, perhaps reflecting Justice
18 Alito's view that, you know, these are Tasmanian
19 tigers and there are none left. And so, under
20 2254(d)(1), federal courts ought not be engaging
21 in the Teague exception analysis.

22 Do you have a position on that?

23 MS. MURRILL: Yes. Yes, Justice
24 Barrett. Our position is that Edwards can't
25 surmount AEDPA's relitigation bar and that it

1 asks a very narrow question and it's a
2 backward-looking question about what was clearly
3 established law at the time the state
4 adjudicated the claim. And that was Apodaca.

5 So I think, you know, we do have a --
6 that is our position on it. We -- we answered
7 the question the Court posed with regard to
8 Teague, and the Court has treated Teague as a
9 separate threshold inquiry.

10 JUSTICE BARRETT: So you think we're
11 wrong to do that --

12 MS. MURRILL: But our position is that
13 it's barred either way.

14 JUSTICE BARRETT: So you think we're
15 wrong to do that; however, you think that
16 2254(d)(1) does supersede Teague so that there
17 should not be --

18 MS. MURRILL: No, I think --

19 JUSTICE BARRETT: -- an independent
20 Teague inquiry?

21 MS. MURRILL: -- that that -- I don't
22 think that's been entirely briefed. We simply
23 argued in our -- our brief that he is precluded
24 under both.

25 JUSTICE BARRETT: So you don't have a

1 position on the amicus brief?

2 MS. MURRILL: I -- I -- I think we
3 would join the United States in saying that --
4 that that might need to be litigated further if
5 you got to that point.

6 But, I mean, our position is that --
7 that he is precluded under both, that even if it
8 was a watershed ruling, he's still precluded
9 under that statute. So, I mean, I -- I guess we
10 do believe --

11 JUSTICE BARRETT: Thank you.

12 MS. MURRILL: -- that it was
13 overridden.

14 JUSTICE BARRETT: Thank you.

15 CHIEF JUSTICE ROBERTS: A minute to
16 wrap up, General.

17 MS. MURRILL: Thank you, Mr. Chief
18 Justice.

19 While the Ramos decision is no doubt
20 an important one, Ramos's rule incorporating the
21 unanimity rule against the states isn't a
22 watershed rule. Permitting a supermajority rule
23 was not a fundamentally unfair procedure, nor
24 does the absence of unanimity seriously
25 undermine the accuracy of the verdict. This

1 Court should affirm the Fifth Circuit denial of
2 COA.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Mr. Michel.

6 ORAL ARGUMENT OF CHRISTOPHER G. MICHEL
7 FOR THE UNITED STATES, AS AMICUS CURIAE,
8 SUPPORTING THE RESPONDENT

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

11 The rule announced by this Court in
12 Ramos applies prospectively and to convictions
13 on direct appeal, but it does not apply to final
14 convictions on federal collateral review. That
15 result follows from a straightforward
16 application of Teague.

17 The Ramos rule is new because whatever
18 disputes might exist about the precedential
19 weight of Apodaca in this Court, it was at least
20 reasonable for lower courts to rely on it when
21 petitioner's conviction became final in 2011.

22 And the rule is not watershed because
23 it is not essential to accuracy or a fair trial.
24 After all, as the Chief Justice suggested at the
25 outset of the argument, the right to a jury

1 trial itself is not watershed, so subsidiary
2 rights like that of a unanimous jury cannot be
3 either.

4 That result also reflects the purposes
5 of federal collateral review. As Teague
6 emphasized, habeas is not a substitute for
7 direct appeal. When a criminal judgment
8 obtained under the law at the time becomes
9 final, it should stay final outside the very
10 narrow -- narrow exceptions that are not
11 satisfied here.

12 CHIEF JUSTICE ROBERTS: Counsel, I'm
13 not sure that your reliance on DeStefano is
14 really right. Isn't the right to a unanimous
15 jury more important as a matter of factual
16 accuracy than the right to a jury itself?

17 I mean, you would expect a judge to be
18 at least as accurate and presumably even more
19 than a -- a jury. So I'm not sure that the fact
20 that DeStefano is not retroactive really makes
21 the case that this right shouldn't be.

22 MR. MICHEL: Mr. Chief Justice, a
23 couple of responses.

24 I think the Court in Summerlin, for
25 example, said that it's -- it's just hard to

1 tell whether a judge or a jury is going to be
2 more accurate. And I think that that alone is
3 enough to -- to show that petitioner can't meet
4 the high standard here.

5 But I take your point, even if you
6 don't think DeStefano gets you all the way, the
7 Court has repeatedly declined to find watershed
8 other subsidiary jury rights, including in
9 Teague itself, which both -- which both
10 reaffirmed the Court's decision in Allen versus
11 Hardy that Batson is not retroactive on
12 collateral review and also rejected the fair
13 cross-section requirement.

14 So I think all of those subsidiary
15 jury rights, including the unanimity right at
16 issue here, simply don't meet the watershed
17 test.

18 CHIEF JUSTICE ROBERTS: Counsel, very
19 briefly, does the federal government have any
20 light to shed on the statistics that we've been
21 talking about?

22 MR. MICHEL: Mr. Chief Justice, the --
23 the one we know the best is the federal interest
24 here. As we mentioned in our brief, there is a
25 sort of ripple effect from the vacator of these

1 convictions on. Federal recidivist sentences,
2 you know, we think the number is somewhere
3 around a couple hundred. It's hard to pin down
4 the -- the exact number, but there would be an
5 impact on the federal system.

6 CHIEF JUSTICE ROBERTS: Justice
7 Thomas.

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

10 Counsel, would you just briefly
11 discuss the term "accuracy" and what you think
12 it means in this context.

13 MR. MICHEL: Yes, Justice Thomas.
14 I -- I think the Court has not always spoken
15 with one voice on that, but there are certainly
16 a number of opinions in which "accuracy" I think
17 is understood just to mean factual accuracy.

18 The Court in Whorton, for example,
19 when discussing Crawford, made the point that
20 confrontation could sometimes actually make --
21 make a -- a trial less accurate. And the Court
22 in Butler versus McKellar, when discussing the
23 Fourth Amendment right at issue there, made the
24 same point.

25 So I think the Court has focused on

1 factual accuracy. But even if you were to adopt
2 a more generous understanding of it and look to
3 sort of the risk of wrongful convictions, I
4 still think the right here doesn't -- doesn't
5 come close, especially under this Court's
6 decision in Johnson versus Louisiana, which
7 expressly held that a nonunanimous jury verdict
8 does not impugn the fairness or accuracy of the
9 conviction.

10 JUSTICE THOMAS: And what role do you
11 think that the sordid roots of the nonunanimous
12 jury rule in Louisiana should play in our
13 analysis?

14 MR. MICHEL: Well, I think the Court
15 -- at least some members of the Court took that
16 into account in the decision last time, the
17 decision in Ramos. But I think, as -- as both
18 Justice Gorsuch and Justice Kavanaugh's opinions
19 recognize, that there's simply a separate
20 question here.

21 I think Justice Gorsuch said you
22 shouldn't double-count the reliance interest
23 between stare decisis and retroactivity, and
24 Justice Kavanaugh, of course, while recognizing
25 those racial issues, seemed to suggest that this

1 right shouldn't apply retroactively. So I -- I
2 think it -- it can't be dispositive here.

3 JUSTICE THOMAS: So, in your -- just
4 briefly, where do you think this -- the
5 authority of this Court to apply rules
6 retroactively comes from?

7 MR. MICHEL: So I think this -- this
8 Court has said in Danforth, for example, that --
9 that Teague ultimately reflects an
10 interpretation of the habeas statute. I think
11 the -- the Court, you know, has -- has over
12 centuries exercised the right to control the
13 finality of its judgments through rules of res
14 judicata and preclusion, and I think there's a
15 similar source of authority here.

16 JUSTICE THOMAS: Thank you.

17 CHIEF JUSTICE ROBERTS: Justice
18 Breyer.

19 JUSTICE BREYER: Well, maybe this will
20 just be repetitive, but the -- we're talking
21 about the Anglo American system and that's in
22 the Seventh Amendment, jury trial, so forth.

23 Now, within the confines of that
24 system, why isn't unanimity basic, and if it's
25 basic, aren't these just words, the accuracy and

1 so forth, and you're really trying to think of
2 how basic is this and then compare it to
3 everybody who's going to be released from jail.
4 That was the old system. Maybe Teague changed
5 that a lot. I don't know. What do you think?
6 Why isn't it basic?

7 MR. MICHEL: Well, Justice Breyer, I
8 suppose I could start with the Anglo -- part of
9 the Anglo American system. I do think it's
10 notable that England, for example, you know,
11 continues to use nonunanimous jury verdicts.
12 And as the Court pointed out in Johnson versus
13 Louisiana, you know, respected institutions in
14 the Anglo American system, like the ABA and the
15 ALI and respected professors, have all endorsed
16 nonunanimous jury verdicts on legitimate
17 grounds, such as avoiding hung juries.

18 So I -- I do think, although the --
19 the Court, of course, concluded in Ramos that
20 the text and history of the Sixth Amendment
21 require unanimity, I don't think that's the same
22 thing as saying that it is essential to accuracy
23 and fairness under the inquiry the Court has
24 outlined in Teague.

25 JUSTICE BREYER: Okay. I see. Thank

1 you.

2 CHIEF JUSTICE ROBERTS: Justice Alito.

3 JUSTICE ALITO: Where does the
4 authority to impose the Teague rule on the
5 states come from? If it's an interpretation of
6 the -- of the habeas statute, then don't we have
7 to deal with 2254(d)?

8 If it's not an interpretation of the
9 statute, it would have to come from a provision
10 of the Constitution, such as the suspension
11 clause. Is that where you think it comes from?

12 MR. MICHEL: Well, Justice Alito, I --
13 I want to distinguish between the -- the general
14 retroactivity bar of Teague, which is what I --
15 I meant to refer to earlier by saying that's an
16 interpretation of the habeas statute informed by
17 equity and the historical scope of the writ.

18 Separately, I think your question is
19 getting to what's the authority for the
20 exceptions to Teague. The Court -- majority of
21 the Court in *Montgomery versus Louisiana*
22 suggested that the substantive rule exception is
23 rooted in the Constitution.

24 The Court has not reached a similar
25 determination with respect to the watershed rule

1 exception, I think, in part, because it's never
2 been applied, but if forced to confront that, I
3 think we would say that's -- that's not
4 constitutionally required and -- and it's
5 supported by, at best, you know, an equitable
6 determination similar to that that informs the
7 retroactivity bar.

8 JUSTICE ALITO: Well, why should we
9 decide this case under the Teague exception if
10 there's a possibility that the Teague exception
11 doesn't matter as a result of AEDPA? What kind
12 of a decision would that be?

13 MR. MICHEL: Well, to be candid,
14 Justice Alito, we were trying to follow the
15 Court's lead with the question presented here,
16 which refers to retroactivity. Of course, the
17 opinions in Ramos referred repeatedly to -- to
18 Teague, and I do think that with respect, this
19 is a straightforward case under Teague. I
20 think that that's plenty to -- to resolve it.
21 And it's a separate and independent basis
22 from -- from AEDPA and it would be enough to
23 resolve the case this time around.

24 JUSTICE ALITO: Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Sotomayor.

2 JUSTICE SOTOMAYOR: Counsel, do you
3 think the Teague exception is an ill -- an ill
4 fit? If not, can you think of any example of a
5 potential watershed rule that is not Gideon?

6 And, second, you dispute -- I'd like
7 you to answer both, so I'm going to give you
8 your remaining time for that. You dispute that
9 unanimity is necessary to increase accuracy in
10 jury verdicts. But I can't think of any
11 justification other than that for the unanimity
12 requirement that the Constitution seeks -- has
13 set. Our founders must have thought that that
14 process enabled accuracy. So I don't know why I
15 should second-guess them or on what basis we
16 would second-guess them.

17 MR. MICHEL: If it's okay, Justice
18 Sotomayor, I might start with the second
19 question first. I think the -- the -- the --
20 the plurality opinion in Ramos importantly
21 didn't rely on functional considerations like
22 fairness and accuracy in -- in reaching its
23 interpretation of the Sixth Amendment. It said,
24 you know, the unanimity requirement may serve
25 purposes that evade our current notice. And I

1 think, you know, the most extensive discussion
2 of that issue is found in Footnote 2 of Justice
3 White's opinion in *Apodaca*, and, of course, that
4 opinion is no longer governing.

5 But it -- but the history is still
6 valid, and it suggests a number of different
7 historical bases for the unanimity requirement,
8 including the medieval notion that, you know,
9 one juror who disagreed would be committing
10 perjury, which would have the consequence of
11 damnation, and the medieval notion of consent,
12 which, among other things, was manifested in the
13 requirement that Parliament itself pass laws by
14 unanimity. So, you know, I -- I -- I do think
15 there are some medieval origins of this that
16 don't necessarily go to -- to accuracy or -- or
17 fairness as we would think of it today.

18 On -- on your first question, I do
19 want to make the point, of course, that, you
20 know, the substantive rule exception to -- to --
21 to *Teague* is alive and well, and the Court has
22 found substantive rules recently.

23 As -- as to the watershed rule
24 exception, it's true that the Court has said
25 *Gideon* is the only one in -- in recent memory.

1 But, you know, I -- I think that reflects more
2 that the things we would think of as watershed,
3 you know, simply have been recognized earlier.

4 I --

5 CHIEF JUSTICE ROBERTS: Justice Kagan.

6 JUSTICE KAGAN: Mr. Michel, you told
7 Justice Breyer that the unanimity requirement
8 wasn't basic. But, when I read the opinions on
9 the majority side in Ramos, I think they say it
10 absolutely is, you know, that it's basic in the
11 exact same way that a beyond a reasonable doubt
12 standard is basic, that it goes to the inherent
13 characteristics of what in our system a jury has
14 to do to find a defendant guilty.

15 I mean, Ramos says that if you haven't
16 been convicted by a unanimous jury, you really
17 haven't been convicted at all. And so how could
18 it be that a rule like that does not have
19 retroactive effect?

20 MR. MICHEL: Well, Justice Kagan, I --
21 I -- I take all your points about, you know, the
22 merits decision in -- in Ramos, but -- but I
23 think, as Whorton, for example, explains, the
24 fact that a constitutional rule is compelled by
25 the text and history of -- of the Constitution

1 itself doesn't mean that it's retroactive on
2 collateral review. There's --

3 JUSTICE KAGAN: I'm not just talking
4 about the origins of the rule and whether it
5 goes back to founding times. There's more in
6 Ramos. There's -- there's -- there's an idea
7 that in those founding times, it was thought --
8 this rule was thought of as inherent in what it
9 meant to have a fair trial by jury, and a -- and
10 an accurate trial by jury, so that whatever came
11 out of that process, if unanimity wasn't a part
12 of it, there wasn't a true conviction.

13 MR. MICHEL: Well, I --

14 JUSTICE KAGAN: That's what Ramos
15 says. I'm just trying to take what Ramos says
16 seriously here, which I think you ought to do
17 too.

18 MR. MICHEL: Absolutely, although I --
19 I do think, with respect, you could say the same
20 thing about Duncan and Apprendi and other cases
21 in which, you know, the Court has found that a
22 -- a determination by -- by a jury beyond a
23 reasonable doubt is -- is required on the merits
24 and yet is not retroactive on collateral review
25 because there's simply a different -- a

1 different inquiry there.

2 And, again, I guess I would -- I would
3 return to the Court's holding in Johnson versus
4 Louisiana that a nonunanimous jury verdict does
5 not impugn the fairness or accuracy of the
6 majority verdict of guilty. I -- I --

7 JUSTICE KAGAN: Thank you, Mr. Michel.

8 CHIEF JUSTICE ROBERTS: Justice
9 Gorsuch.

10 JUSTICE GORSUCH: Good morning,
11 counsel. Just to pick up there and -- and with
12 Justice Sotomayor's line of questioning, I mean,
13 I understand your argument to us today, the
14 watershed rule exception in Teague might have
15 served a purpose at some point, but it doesn't
16 any longer because we captured all watershed
17 rules of criminal procedure. None are likely to
18 come forward, and it -- it is hard to see if --
19 if this doesn't qualify, which the founders
20 thought was an essential component of the jury
21 trial right, then it's pretty hard to see what
22 might emerge that would qualify. Is that a
23 fair statement of the government's position?

24 MR. MICHEL: I -- I think yes. I
25 mean, we're not -- except I would qualify it to

1 say we're not saying that it's impossible that
2 -- that such a right could emerge, but I agree
3 with the Court's repeated statement that it's
4 very unlikely that one will emerge at this
5 point.

6 JUSTICE GORSUCH: Does the government
7 have any -- any one in mind that might emerge?
8 I mean, any -- any possible hypothetical that
9 you can imagine?

10 MR. MICHEL: It -- there -- there's
11 nothing that -- that we're thinking of. You
12 know, I -- I guess I would also note that, of
13 course, when Teague made that statement which
14 has been repeated for many decades, you know,
15 the Court was well aware of the nonunanimous
16 jury issue. And so, if -- if the Court thought
17 that that was something that could arise in the
18 future, it seems unlikely it would have said
19 that, you know, no -- no -- no watershed rules
20 are likely to arise in the future.

21 JUSTICE GORSUCH: You're giving a lot
22 of credit to the Teague Court for thinking about
23 all these eventualities, and I appreciate that.
24 But is -- does all this point out or maybe
25 suggest that -- that post-conviction review here

1 has been overextended and that while Teague was
2 once an attempt to rein in considerable efforts,
3 and I think of Brown versus Allen, to -- to
4 apply the Constitution post-conviction, that
5 maybe this -- this whole area is -- that Teague
6 itself is a little outmoded and that it may be
7 better just to give up the ghost? Is that the
8 government's essential point of view?

9 MR. MICHEL: You know, I'm not sure I
10 would go all the way there, but I -- I do think
11 there's a lot of merit to what you're saying. I
12 do think, actually, if you look back at Justice
13 Harlan's opinions that gave rise to Teague and
14 Judge Friendly's article that was relied on, it
15 was saying something pretty similar to that,
16 that, you know, the exceptions really have to be
17 narrow, the substantive exception when something
18 is not a crime, and the watershed rule exception
19 has to be similarly high, something so serious
20 that you're really not sure a crime was
21 committed.

22 And so I think, if you keep the
23 exceptions that narrow, Teague is -- is serving
24 a good purpose. But I agree that they could be
25 over-read and they would -- they would do real

1 damage.

2 CHIEF JUSTICE ROBERTS: Justice
3 Kavanaugh.

4 JUSTICE KAVANAUGH: Thank you.

5 And good morning, Mr. Michel. I
6 wanted to follow up on something Justice Gorsuch
7 was asking the Solicitor General of Louisiana
8 about, which is do you think the number of cases
9 that would be affected has any bearing on
10 whether something is watershed?

11 MR. MICHEL: I -- I think it does. I
12 think it goes to the reasons for having a high
13 bar, you know, for -- for both the new rule and
14 the watershed rule inquiries. You know, I think
15 the -- as I was just discussing with Justice
16 Gorsuch, you know, the Court in Teague very
17 consciously broke from its past retroactivity
18 jurisprudence, which it found had been too lax,
19 and emphasized finality and federalism in
20 adopting the new Teague rule. And I think the
21 reason it did that is it was worried about
22 large-scale disruptions of the state criminal
23 justice system like that would be, you know,
24 worked here.

25 JUSTICE KAVANAUGH: Thank you.

1 CHIEF JUSTICE ROBERTS: Justice
2 Barrett.

3 JUSTICE BARRETT: Good morning,
4 Mr. Michel. I want to talk to you about
5 accuracy, and the first thing I'd like to ask is
6 a follow-up to your dialogue with Justice
7 Thomas. And -- and this is, I think, a point of
8 clarification for me.

9 You were distinguishing between
10 factual accuracy and what I understood you to
11 say would have been the more generous standard
12 of considering the likelihood of wrongful
13 conviction. What is the difference between the
14 two of those, and how is the latter more
15 generous than the former, if I understood you
16 correctly?

17 MR. MICHEL: Well, I -- I -- I think
18 that's a -- it's a tricky question. I had
19 understood some of the -- the questions earlier
20 in the argument to -- to reflect a view that,
21 you know, there should be a sort of thumb on the
22 scale in favor of the defendant. And so, you
23 know, if -- you know, if there's twice as likely
24 a risk of -- of convicting wrong -- wrongfully
25 convicting, that should, you know, have outsized

1 risk as compared to not convicting. And, you
2 know, I -- I do think it's a sort of a difficult
3 abstract question, but, as I said to Justice
4 Thomas, I -- I don't think that, however you
5 resolve that abstract question, it's -- it's
6 going to matter here.

7 JUSTICE BARRETT: Well, what then is
8 factual accuracy? Because, as you were pointing
9 out, our decisions haven't spoken necessarily
10 with one voice about what the accuracy prong
11 means. So what is factual accuracy as
12 distinguished from the risk of wrongful
13 conviction?

14 MR. MICHEL: Sure. I -- what I --
15 Butler versus McKellar, I think, is a good
16 example, and that was a -- a case about
17 excluding a -- a -- a confession or a
18 defendant's statements after he had requested a
19 lawyer. And the Court said, you know, it
20 actually might contribute to factual accuracy to
21 have the statements in because we would know
22 more about what actually happened.

23 Of course, if you were worried about
24 wrongful convictions, then I think you might
25 have a different view of that. But, certainly,

1 no matter how you -- you cash out that somewhat
2 theoretical distinction, I -- I don't think this
3 rises to the level of -- of a serious accuracy
4 problem.

5 JUSTICE BARRETT: Thank you.

6 CHIEF JUSTICE ROBERTS: A minute to
7 wrap -- wrap up, counsel.

8 MR. MICHEL: Thank you, Mr. Chief
9 Justice.

10 I guess I'd just close by saying, you
11 know, this Court's decision in Ramos will have
12 great significance going forward, but the
13 question before the Court today is a different
14 one.

15 As -- as the Ramos plurality noted,
16 it's the Teague doctrine that frees the Court to
17 reconsider its constitutional decisions without
18 having the risk of seriously disrupting wrong
19 final judgments. And we think that's the right
20 result here.

21 This petitioner was convicted of
22 serious crimes after a full and fair trial. His
23 conviction became final almost a decade ago. To
24 retry him now would require, at minimum, making
25 his victims relive their trauma, and in many

1 other cases, a retrial might not be possible,
2 causing disruptive effects in both the federal
3 and the state systems.

4 We think this is a heartland case for
5 the application of the Teague bar. Petitioner's
6 final conviction should remain final.

7 Thank you.

8 CHIEF JUSTICE ROBERTS: Mr. Belanger,
9 rebuttal.

10 REBUTTAL ARGUMENT OF ANDRE BELANGER

11 ON BEHALF OF PETITIONER

12 MR. BELANGER: Unanimity and
13 reasonable doubt are two doctrines that work
14 hand-in-hand to assure that we have a fair and
15 accurate judicial system. Gideon, Winship, and
16 Ramos all point us to the realization that it is
17 the legitimate risk of inaccuracy within the
18 system that matters.

19 As this Court said in Ballew, the risk
20 of sending 10 innocent people to jail is greater
21 than the risk of sending one guilty person free.

22 Apodaca was an opinion that was dead
23 on arrival because it predicated its decisive
24 vote on analysis that was foreclosed by
25 precedent at the time it was decided.

1 Ramos removed this uncomfortable thorn
2 from the side of our legal system, and, as such,
3 it became a unique case which falls on a line
4 that checks the boxes as being both an old rule
5 and a new rule.

6 First, Ramos is an old rule. It
7 ignores -- it -- it has followed preexisting
8 precedent that was logically dictated by the
9 case law that preceded it. Ultimately, the
10 state fails to dispute that jury unanimity and
11 incorporation of the jury trial right are deeply
12 rooted in American jurisprudence.

13 Let's be clear, Ramos did not break
14 any new ground under Teague.

15 Second, for members of this Court who
16 viewed Apodaca as precedent, Ramos announced a
17 watershed rule of criminal procedure. The state
18 does not meaningfully address the parallels
19 between Ramos and Gideon. Both decisions
20 restored bedrock Sixth Amendment principles, and
21 both decisions compelled outlier states to apply
22 rights they previously refused to recognize.

23 A conviction can only be legally
24 accurate if the state proves its case beyond a
25 reasonable doubt of all jurors.

1 The expressly racist origin of
2 nonunanimous juries also contravene any state
3 interest in finality and repose. Since Ramos,
4 members of this Court have recognized that the
5 original motivation for the laws mattered,
6 notwithstanding any subsequent re-ratification.

7 The same is true here. In the end,
8 the state has no legitimate interest in avoiding
9 retroactivity but for its desire to let
10 Mr. Edwards languish in Angola for the rest of
11 his life.

12 On what grounds can we let this happen
13 when we know his conviction is unconstitutional?
14 The answer to that question is none.

15 Thank you, Mr. Chief Justice.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel. The case is submitted.

18 (Whereupon, at 11:26 a.m., the case
19 was submitted.)

20
21
22
23
24
25

Official - Subject to Final Review

1	20,24 27:20,24 30:7,10,20,22 34:6 36:3,5 40:2,8,9,12,14 42:22 50:17 59:25 60:23 61:16 63:11,16,17 64: 1,8 65:25 66:22 69:9,14,22 70:16 73:5 77:5,10 78:8,10,11,20 79:3 accurate [13] 5:21 20:3,9 21:24 32: 13 36:19 40:3 61:18 62:2 63:21 72:10 80:15 81:24 acknowledged [2] 10:25 39:7 acquittal [1] 40:4 across [2] 50:18 52:7 actions [1] 21:7 actual [3] 7:12,17 48:8 actually [14] 10:19 15:1 21:17 28: 7 30:15 38:7,25 43:7 44:21 51:24 63:20 75:12 78:20,22 additional [1] 37:21 address [1] 81:18 addressed [2] 15:6 48:5 addressing [1] 35:19 adjudicated [5] 3:19 39:18,21,23 58:4 adjudication [1] 57:12 administration [1] 27:17 administrative [1] 27:16 admit [1] 25:7 adopt [1] 64:1 adopted [1] 34:25 adopting [1] 76:20 adoption [1] 55:1 AEDPA [12] 11:9 12:1 14:19,23 17: 8 39:16 46:3 54:3,5,6 68:11,22 AEDPA's [1] 57:25 affect [1] 42:1 affected [3] 20:11 33:1 76:9 affirm [2] 36:13 60:1 ago [1] 79:23 agree [10] 6:17,19 8:19 11:19 29: 11 37:20 53:15,19 74:2 75:24 agreed [3] 22:13 35:17 52:13 agreement [1] 42:1 agreements [2] 41:22 42:4 aimed [1] 40:12 akin [1] 34:2 ALI [1] 66:15 Alito [22] 13:20,21 15:7 16:1,7,9,15 17:2 26:14 43:11,12,20 44:5,14 45:6,21 67:2,3,12 68:8,14,24 Alito's [1] 57:18 alive [1] 70:21 all's [1] 23:4 Allen [5] 28:12,17,19 62:10 75:3 allow [1] 11:25 allowed [1] 38:23 allows [1] 19:4 almost [2] 35:21 79:23 alone [1] 62:2 alter [1] 33:23 alternative [1] 24:24 alters [1] 44:22 although [2] 66:18 72:18 ambiguous [1] 37:7 Amendment [20] 4:1,19 6:17 16: 18,24 17:1 20:4 23:22 24:2,3 41:4	43:13,22 44:8,12 63:23 65:22 66: 20 69:23 81:20 Amendment's [2] 3:15 4:17 American [4] 65:21 66:9,14 81:12 amici [3] 7:11 12:17 52:15 amici's [1] 17:24 amicus [6] 1:24 2:10 41:18 57:7 59:1 60:7 among [1] 70:12 amongst [1] 34:5 analogous [2] 6:1 25:19 analysis [12] 21:2 27:19 29:19 39: 12 40:10 45:22,25 53:10,25 57:21 64:13 80:24 ANDRE [5] 1:18 2:3,13 3:7 80:10 angle [1] 28:4 Anglo [4] 65:21 66:8,9,14 Angola [2] 3:21 82:10 animal [1] 14:6 announce [1] 22:8 announced [3] 35:23 60:11 81:16 announcing [1] 34:1 anomaly [1] 33:22 another [6] 8:22 11:13 14:23 15:7 28:15 33:9 answer [8] 7:3 44:6 47:22 48:24 50:2 54:8 69:7 82:14 answered [1] 58:6 answers [2] 30:8 54:2 anybody [1] 38:5 anyway [1] 52:24 apart [1] 6:24 Apodaca [30] 4:4,11,14,20 6:9,23 10:17,25 11:1 16:14,16 18:14 22: 15 23:11 24:20 26:2,5 33:22 35:3, 18 36:17 37:8 38:20,23,25 58:4 60:19 70:3 80:22 81:16 apologize [1] 23:12 appeal [2] 60:13 61:7 Appealability [1] 36:15 appeals [1] 38:3 APPEARANCES [1] 1:17 applicable [1] 30:1 application [4] 27:18 57:14 60:16 80:5 applied [7] 5:11 9:1 29:15,22 47: 16 49:21 68:2 applies [4] 4:6 14:17 35:24 60:12 apply [11] 3:18 6:5 15:16 24:5 26: 18 28:13 60:13 65:1,5 75:4 81:21 applying [7] 9:1 15:8 27:4,5 37:5 41:4 47:12 appointed [2] 15:24 43:14 appreciate [1] 74:23 Apprendi [1] 72:20 approach [3] 16:11 20:15 26:12 appropriate [1] 51:25 approximate [1] 12:10 area [1] 75:5 aren't [2] 48:18 65:25 arguably [1] 48:11 argued [2] 11:2 58:23 argument [16] 1:14 2:2,5,8,12 3:4, 7 20:19 22:8 34:21 52:25 60:6,25	73:13 77:20 80:10 arguments [1] 9:7 arise [2] 74:17,20 armed [3] 36:8 55:18,19 around [4] 5:14 11:8 63:3 68:23 arrival [2] 4:12 80:23 article [3] 7:20 20:9 75:14 asks [4] 39:17 40:10 46:3 58:1 aspect [1] 20:21 Assistant [3] 1:22 38:6 52:8 assume [3] 11:7 51:5,16 assumes [1] 53:8 assuming [1] 18:3 assure [1] 80:14 assured [1] 26:2 asymmetry [2] 27:6 28:15 attack [1] 42:4 attempt [1] 75:2 attention [2] 5:17 7:20 attorney [2] 38:6 52:9 authority [4] 65:5,15 67:4,19 authors [1] 7:25 available [1] 20:1 avoid [1] 7:6 avoiding [3] 34:10 66:17 82:8 aware [1] 74:15 away [1] 25:24 awful [1] 42:8 awkwardly [1] 10:21
2	2 [3] 1:11 42:17 70:2 2,000 [1] 38:1 2011 [1] 60:21 2020 [1] 1:11 2254(d) [3] 57:3,5 67:7 2254(d)(1) [6] 11:9 57:7,10,16,20 58:16 24 [1] 57:7	20,24 27:20,24 30:7,10,20,22 34:6 36:3,5 40:2,8,9,12,14 42:22 50:17 59:25 60:23 61:16 63:11,16,17 64: 1,8 65:25 66:22 69:9,14,22 70:16 73:5 77:5,10 78:8,10,11,20 79:3 accurate [13] 5:21 20:3,9 21:24 32: 13 36:19 40:3 61:18 62:2 63:21 72:10 80:15 81:24 acknowledged [2] 10:25 39:7 acquittal [1] 40:4 across [2] 50:18 52:7 actions [1] 21:7 actual [3] 7:12,17 48:8 actually [14] 10:19 15:1 21:17 28: 7 30:15 38:7,25 43:7 44:21 51:24 63:20 75:12 78:20,22 additional [1] 37:21 address [1] 81:18 addressed [2] 15:6 48:5 addressing [1] 35:19 adjudicated [5] 3:19 39:18,21,23 58:4 adjudication [1] 57:12 administration [1] 27:17 administrative [1] 27:16 admit [1] 25:7 adopt [1] 64:1 adopted [1] 34:25 adopting [1] 76:20 adoption [1] 55:1 AEDPA [12] 11:9 12:1 14:19,23 17: 8 39:16 46:3 54:3,5,6 68:11,22 AEDPA's [1] 57:25 affect [1] 42:1 affected [3] 20:11 33:1 76:9 affirm [2] 36:13 60:1 ago [1] 79:23 agree [10] 6:17,19 8:19 11:19 29: 11 37:20 53:15,19 74:2 75:24 agreed [3] 22:13 35:17 52:13 agreement [1] 42:1 agreements [2] 41:22 42:4 aimed [1] 40:12 akin [1] 34:2 ALI [1] 66:15 Alito [22] 13:20,21 15:7 16:1,7,9,15 17:2 26:14 43:11,12,20 44:5,14 45:6,21 67:2,3,12 68:8,14,24 Alito's [1] 57:18 alive [1] 70:21 all's [1] 23:4 Allen [5] 28:12,17,19 62:10 75:3 allow [1] 11:25 allowed [1] 38:23 allows [1] 19:4 almost [2] 35:21 79:23 alone [1] 62:2 alter [1] 33:23 alternative [1] 24:24 alters [1] 44:22 although [2] 66:18 72:18 ambiguous [1] 37:7 Amendment [20] 4:1,19 6:17 16: 18,24 17:1 20:4 23:22 24:2,3 41:4	73:13 77:20 80:10 arguments [1] 9:7 arise [2] 74:17,20 armed [3] 36:8 55:18,19 around [4] 5:14 11:8 63:3 68:23 arrival [2] 4:12 80:23 article [3] 7:20 20:9 75:14 asks [4] 39:17 40:10 46:3 58:1 aspect [1] 20:21 Assistant [3] 1:22 38:6 52:8 assume [3] 11:7 51:5,16 assumes [1] 53:8 assuming [1] 18:3 assure [1] 80:14 assured [1] 26:2 asymmetry [2] 27:6 28:15 attack [1] 42:4 attempt [1] 75:2 attention [2] 5:17 7:20 attorney [2] 38:6 52:9 authority [4] 65:5,15 67:4,19 authors [1] 7:25 available [1] 20:1 avoid [1] 7:6 avoiding [3] 34:10 66:17 82:8 aware [1] 74:15 away [1] 25:24 awful [1] 42:8 awkwardly [1] 10:21
3	3 [1] 2:4 34 [1] 2:7	43:13,22 44:8,12 63:23 65:22 66: 20 69:23 81:20 Amendment's [2] 3:15 4:17 American [4] 65:21 66:9,14 81:12 amici [3] 7:11 12:17 52:15 amici's [1] 17:24 amicus [6] 1:24 2:10 41:18 57:7 59:1 60:7 among [1] 70:12 amongst [1] 34:5 analogous [2] 6:1 25:19 analysis [12] 21:2 27:19 29:19 39: 12 40:10 45:22,25 53:10,25 57:21 64:13 80:24 ANDRE [5] 1:18 2:3,13 3:7 80:10 angle [1] 28:4 Anglo [4] 65:21 66:8,9,14 Angola [2] 3:21 82:10 animal [1] 14:6 announce [1] 22:8 announced [3] 35:23 60:11 81:16 announcing [1] 34:1 anomaly [1] 33:22 another [6] 8:22 11:13 14:23 15:7 28:15 33:9 answer [8] 7:3 44:6 47:22 48:24 50:2 54:8 69:7 82:14 answered [1] 58:6 answers [2] 30:8 54:2 anybody [1] 38:5 anyway [1] 52:24 apart [1] 6:24 Apodaca [30] 4:4,11,14,20 6:9,23 10:17,25 11:1 16:14,16 18:14 22: 15 23:11 24:20 26:2,5 33:22 35:3, 18 36:17 37:8 38:20,23,25 58:4 60:19 70:3 80:22 81:16 apologize [1] 23:12 appeal [2] 60:13 61:7 Appealability [1] 36:15 appeals [1] 38:3 APPEARANCES [1] 1:17 applicable [1] 30:1 application [4] 27:18 57:14 60:16 80:5 applied [7] 5:11 9:1 29:15,22 47: 16 49:21 68:2 applies [4] 4:6 14:17 35:24 60:12 apply [11] 3:18 6:5 15:16 24:5 26: 18 28:13 60:13 65:1,5 75:4 81:21 applying [7] 9:1 15:8 27:4,5 37:5 41:4 47:12 appointed [2] 15:24 43:14 appreciate [1] 74:23 Apprendi [1] 72:20 approach [3] 16:11 20:15 26:12 appropriate [1] 51:25 approximate [1] 12:10 area [1] 75:5 aren't [2] 48:18 65:25 arguably [1] 48:11 argued [2] 11:2 58:23 argument [16] 1:14 2:2,5,8,12 3:4, 7 20:19 22:8 34:21 52:25 60:6,25	
4	4500 [2] 8:3 10:1	73:13 77:20 80:10 arguments [1] 9:7 arise [2] 74:17,20 armed [3] 36:8 55:18,19 around [4] 5:14 11:8 63:3 68:23 arrival [2] 4:12 80:23 article [3] 7:20 20:9 75:14 asks [4] 39:17 40:10 46:3 58:1 aspect [1] 20:21 Assistant [3] 1:22 38:6 52:8 assume [3] 11:7 51:5,16 assumes [1] 53:8 assuming [1] 18:3 assure [1] 80:14 assured [1] 26:2 asymmetry [2] 27:6 28:15 attack [1] 42:4 attempt [1] 75:2 attention [2] 5:17 7:20 attorney [2] 38:6 52:9 authority [4] 65:5,15 67:4,19 authors [1] 7:25 available [1] 20:1 avoid [1] 7:6 avoiding [3] 34:10 66:17 82:8 aware [1] 74:15 away [1] 25:24 awful [1] 42:8 awkwardly [1] 10:21	
5	5 [3] 20:13 42:15,16 50 [1] 35:21	73:13 77:20 80:10 arguments [1] 9:7 arise [2] 74:17,20 armed [3] 36:8 55:18,19 around [4] 5:14 11:8 63:3 68:23 arrival [2] 4:12 80:23 article [3] 7:20 20:9 75:14 asks [4] 39:17 40:10 46:3 58:1 aspect [1] 20:21 Assistant [3] 1:22 38:6 52:8 assume [3] 11:7 51:5,16 assumes [1] 53:8 assuming [1] 18:3 assure [1] 80:14 assured [1] 26:2 asymmetry [2] 27:6 28:15 attack [1] 42:4 attempt [1] 75:2 attention [2] 5:17 7:20 attorney [2] 38:6 52:9 authority [4] 65:5,15 67:4,19 authors [1] 7:25 available [1] 20:1 avoid [1] 7:6 avoiding [3] 34:10 66:17 82:8 aware [1] 74:15 away [1] 25:24 awful [1] 42:8 awkwardly [1] 10:21	
6	60 [1] 2:11 65 [2] 7:13,17	73:13 77:20 80:10 arguments [1] 9:7 arise [2] 74:17,20 armed [3] 36:8 55:18,19 around [4] 5:14 11:8 63:3 68:23 arrival [2] 4:12 80:23 article [3] 7:20 20:9 75:14 asks [4] 39:17 40:10 46:3 58:1 aspect [1] 20:21 Assistant [3] 1:22 38:6 52:8 assume [3] 11:7 51:5,16 assumes [1] 53:8 assuming [1] 18:3 assure [1] 80:14 assured [1] 26:2 asymmetry [2] 27:6 28:15 attack [1] 42:4 attempt [1] 75:2 attention [2] 5:17 7:20 attorney [2] 38:6 52:9 authority [4] 65:5,15 67:4,19 authors [1] 7:25 available [1] 20:1 avoid [1] 7:6 avoiding [3] 34:10 66:17 82:8 aware [1] 74:15 away [1] 25:24 awful [1] 42:8 awkwardly [1] 10:21	
8	8,000 [1] 8:2 80 [1] 2:14	73:13 77:20 80:10 arguments [1] 9:7 arise [2] 74:17,20 armed [3] 36:8 55:18,19 around [4] 5:14 11:8 63:3 68:23 arrival [2] 4:12 80:23 article [3] 7:20 20:9 75:14 asks [4] 39:17 40:10 46:3 58:1 aspect [1] 20:21 Assistant [3] 1:22 38:6 52:8 assume [3] 11:7 51:5,16 assumes [1] 53:8 assuming [1] 18:3 assure [1] 80:14 assured [1] 26:2 asymmetry [2] 27:6 28:15 attack [1] 42:4 attempt [1] 75:2 attention [2] 5:17 7:20 attorney [2] 38:6 52:9 authority [4] 65:5,15 67:4,19 authors [1] 7:25 available [1] 20:1 avoid [1] 7:6 avoiding [3] 34:10 66:17 82:8 aware [1] 74:15 away [1] 25:24 awful [1] 42:8 awkwardly [1] 10:21	
A	a-ha [1] 14:12 a.m [3] 1:15 3:2 82:18 ABA [1] 66:14 Abe [1] 7:22 abide [1] 22:19 ability [1] 5:18 able [5] 12:16 17:16,20 18:1 31:7 above-entitled [1] 1:13 absence [1] 59:24 absolutely [5] 37:23 51:22 56:12 71:10 72:18 abstract [2] 78:3,5 accommodating [1] 13:18 account [5] 22:22 53:9,17 54:16 64:16 accounted [1] 8:5 accuracy [44] 4:25 18:19,25 19:12,	43:13,22 44:8,12 63:23 65:22 66: 20 69:23 81:20 Amendment's [2] 3:15 4:17 American [4] 65:21 66:9,14 81:12 amici [3] 7:11 12:17 52:15 amici's [1] 17:24 amicus [6] 1:24 2:10 41:18 57:7 59:1 60:7 among [1] 70:12 amongst [1] 34:5 analogous [2] 6:1 25:19 analysis [12] 21:2 27:19 29:19 39: 12 40:10 45:22,25 53:10,25 57:21 64:13 80:24 ANDRE [5] 1:18 2:3,13 3:7 80:10 angle [1] 28:4 Anglo [4] 65:21 66:8,9,14 Angola [2] 3:21 82:10 animal [1] 14:6 announce [1] 22:8 announced [3] 35:23 60:11 81:16 announcing [1] 34:1 anomaly [1] 33:22 another [6] 8:22 11:13 14:23 15:7 28:15 33:9 answer [8] 7:3 44:6 47:22 48:24 50:2 54:8 69:7 82:14 answered [1] 58:6 answers [2] 30:8 54:2 anybody [1] 38:5 anyway [1] 52:24 apart [1] 6:24 Apodaca [30] 4:4,11,14,20 6:9,23 10:17,25 11:1 16:14,16 18:14 22: 15 23:11 24:20 26:2,5 33:22 35:3, 18 36:17 37:8 38:20,23,25 58:4 60:19 70:3 80:22 81:16 apologize [1] 23:12 appeal [2] 60:13 61:7 Appealability [1] 36:15 appeals [1] 38:3 APPEARANCES [1] 1:17 applicable [1] 30:1 application [4] 27:18 57:14 60:16 80:5 applied [7] 5:11 9:1 29:15,22 47: 16 49:21 68:2 applies [4] 4:6 14:17 35:24 60:12 apply [11] 3:18 6:5 15:16 24:5 26: 18 28:13 60:13 65:1,5 75:4 81:21 applying [7] 9:1 15:8 27:4,5 37:5 41:4 47:12 appointed [2] 15:24 43:14 appreciate [1] 74:23 Apprendi [1] 72:20 approach [3] 16:11 20:15 26:12 appropriate [1] 51:25 approximate [1] 12:10 area [1] 75:5 aren't [2] 48:18 65:25 arguably [1] 48:11 argued [2] 11:2 58:23 argument [16] 1:14 2:2,5,8,12 3:4, 7 20:19 22:8 34:21 52:25 60:6,25	
	B	73:13 77:20 80:10 arguments [1] 9:7 arise [2] 74:17,20 armed [3] 36:8 55:18,19 around [4] 5:14 11:8 63:3 68:23 arrival [2] 4:12 80:23 article [3] 7:20 20:9 75:14 asks [4] 39:17 40:10 46:3 58:1 aspect [1] 20:21 Assistant [3] 1:22 38:6 52:8 assume [3] 11:7 51:5,16 assumes [1] 53:8 assuming [1] 18:3 assure [1] 80:14 assured [1] 26:2 asymmetry [2] 27:6 28:15 attack [1] 42:4 attempt [1] 75:2 attention [2] 5:17 7:20 attorney [2] 38:6 52:9 authority [4] 65:5,15 67:4,19 authors [1] 7:25 available [1] 20:1 avoid [1] 7:6 avoiding [3] 34:10 66:17 82:8 aware [1] 74:15 away [1] 25:24 awful [1] 42:8 awkwardly [1] 10:21	
	back [12] 8:25 9:24 10:13 11:15 14: 15 20:6 23:23 32:11 46:12 47:10 72:5 75:12 backward-looking [1] 58:2 bag [1] 9:9 balancing [1] 53:12 Ballew [3] 43:1,5 80:19 bar [8] 11:9 36:11 57:5,25 67:14 68:7 76:13 80:5 barred [2] 14:19 58:13 Barrett [19] 30:4,5 31:5,7 32:17 33: 16 57:1,2,24 58:10,14,19,25 59:11, 14 77:2,3 78:7 79:5 based [6] 16:16 17:15,24 43:20 45: 2 52:21 bases [1] 70:7 basic [7] 65:24,25 66:2,6 71:8,10, 12 basis [7] 15:5 18:8 52:4 56:1,12 68:21 69:15 Baton [2] 1:18,20 Batson [20] 21:3,5,6,8,19 25:11 28: 4,5,8,13,24 32:18,20,23 55:4 56:5, 6,11,12 62:11 Batson-compliant [2] 21:11 29:1 bearing [1] 76:9 became [4] 36:10 60:21 79:23 81: 3 become [1] 14:7 becomes [1] 61:8 bedrock [11] 15:20 25:23 30:11 44: 23 45:2,4,5,10,15,16 81:20 behalf [8] 1:19,21 2:4,7,14 3:8 34:		

Official - Subject to Final Review

<p>22 80:11 BELANGER ^[50] 1:18 2:3,13 3:6,7, 9 5:15 6:14 7:10 8:24 9:11 10:13, 23 11:10 12:13 13:3,6,10,12 14: 20 15:17 16:4,8,12,17,23 17:10,19, 24 18:11,13 19:23 21:4 23:2,21 25:15 27:7 28:18 29:5,18 30:5,21 31:6 32:4 33:6,20 57:4 80:8,10,12 belief ^[1] 41:19 believe ^[11] 11:1 12:14,15 13:14 14:24 15:6 16:23 20:14 22:10 23: 4 59:10 believed ^[1] 39:5 below ^[1] 15:4 benefit ^[2] 12:22 48:23 benefiting ^[1] 36:12 benefitted ^[1] 48:20 best ^[3] 7:8 62:23 68:5 better ^[3] 25:16 45:14 75:7 between ^[8] 15:19 29:20 30:10 64: 23 67:13 77:9,13 81:19 beyond ^[7] 9:16 29:2 50:6 51:1 71: 11 72:22 81:24 biggest ^[1] 5:8 Bill ^[6] 6:19 11:3 23:25 24:10 45:7, 10 binding ^[4] 35:18 37:10,11,14 bit ^[6] 11:6,6 23:14 28:2 30:6,19 bizarre ^[1] 6:23 Black ^[10] 27:1 55:9,10,11,15,16, 21,21,21 56:19 blacks ^[1] 55:12 board ^[2] 50:18 52:7 book ^[1] 10:18 books ^[1] 10:18 Both ^[21] 5:2,3 10:15 15:20,21 25: 22,24 39:15 40:4 41:17 58:24 59: 7 62:9,9 64:17 69:7 76:13 80:2 81: 4,19,21 boxes ^[1] 81:4 breadth ^[1] 3:14 break ^[1] 81:13 breaking ^[1] 12:18 Breyer ^[19] 12:8,9 13:1,5,8,11,19 16:21 23:17 40:22,23 41:15,16 42: 10 65:18,19 66:7,25 71:7 brief ^[6] 7:25 54:6 57:7 58:23 59:1 62:24 briefed ^[1] 58:22 briefly ^[3] 62:19 63:10 65:4 briefs ^[2] 20:20 41:18 bring ^[1] 5:16 broke ^[2] 6:24 76:17 brought ^[3] 14:18 26:23 39:9 Brown ^[10] 6:1 8:25 10:14,15 29: 10,21 42:12,19,22 75:3 built ^[2] 45:3 53:10 Burden ^[5] 6:5 9:1 10:15 29:15 43:2 burden ^[6] 7:4 18:4 21:16 51:12 53:5,9 burdens ^[2] 53:20,21 Butler ^[2] 63:22 78:15</p>	<p>Cage ^[1] 49:25 calibrated ^[1] 54:16 California ^[1] 41:12 called ^[2] 12:12 32:19 came ^[2] 1:13 72:10 candid ^[1] 68:13 cannot ^[4] 5:20 49:10 50:13 61:2 capable ^[1] 13:17 capita ^[1] 31:18 captured ^[1] 73:16 carefully ^[1] 37:12 carry ^[2] 51:12,12 carrying ^[1] 51:5 Case ^[36] 3:4 5:22 6:1 8:22 10:21 11:14 15:1,9,12,19 21:5,6,8 25:25 28:16 31:24 33:3,7 48:8 53:22 55: 8,23 56:6,7,13 61:21 68:9,19,23 78:16 80:4 81:3,9,24 82:17,18 case-by-case ^[1] 18:8 caseload ^[1] 13:18 cases ^[33] 3:18 7:13,14 10:11,19 13:14,16 15:21 19:19 21:15 25:20 26:15,16,21 29:16 31:1 32:17 33: 15 35:9,11 36:4 37:22 38:5,9 41: 21 44:1 51:23 52:7 54:9 56:18 72: 20 76:8 80:1 cash ^[1] 79:1 cause ^[1] 55:12 causing ^[1] 80:2 centrality ^[1] 44:2 centuries ^[1] 65:12 certain ^[1] 19:7 certainly ^[10] 10:1,20 22:9 23:16 37:25 44:18 45:9 56:7 63:15 78: 25 Certificate ^[1] 36:14 cetera ^[1] 38:20 challenge ^[2] 41:25 56:6 challenges ^[4] 28:24 55:25 56:4, 13 challenging ^[1] 41:22 chance ^[1] 31:10 change ^[3] 11:6 12:23 53:3 changed ^[1] 66:4 changing ^[1] 45:21 characteristics ^[1] 71:13 chart ^[1] 26:13 checks ^[1] 81:4 CHIEF ^[65] 3:3,9 5:5,7 6:1,8 7:1,2 8:14,17 12:7 13:20 17:3 18:12 22: 3 26:7,9,22 30:2 33:18 34:17,18, 23 36:16 37:1,16 38:10,14,16 40: 21 43:8,11 46:5 49:9,12,14 51:18, 22 54:18,20 56:22,25 59:15,17 60: 3,9,24 61:12,22 62:18,22 63:6,9 65:17 67:2 68:25 71:5 73:8 76:2 77:1 79:6,8 80:8 82:15,16 CHRISTOPHER ^[3] 1:22 2:9 60:6 Circuit ^[1] 60:1 Circuit's ^[1] 36:14 circumstance ^[1] 57:15 cited ^[1] 29:10 cites ^[1] 41:21 city ^[1] 38:7</p>	<p>civil ^[1] 38:9 claim ^[6] 11:16 39:18 42:3 56:11 57:11 58:4 claiming ^[1] 46:15 claims ^[1] 39:21 clarification ^[1] 77:8 classic ^[1] 55:23 Clause ^[4] 4:18,19 16:25 67:11 cleanse ^[1] 21:25 clear ^[3] 13:24 36:21 81:13 cleared ^[1] 4:5 clearest ^[1] 35:16 clearly ^[3] 39:17,22 58:2 climb ^[1] 18:15 close ^[2] 64:5 79:10 closer ^[1] 12:19 COA ^[1] 60:2 collateral ^[11] 26:19 27:5 29:17,21, 23 45:19 60:14 61:5 62:12 72:2, 24 colleagues ^[1] 46:13 collect ^[1] 38:8 collectively ^[1] 43:2 combination ^[1] 55:25 come ^[9] 9:15 20:19 33:4,11 55:5 64:5 67:5,9 73:18 comes ^[2] 65:6 67:11 comfortably ^[1] 10:21 coming ^[1] 7:13 commissioner ^[2] 39:10,23 committed ^[2] 30:16 75:21 committing ^[1] 70:9 community ^[1] 9:15 compare ^[1] 66:2 compared ^[1] 78:1 compelled ^[2] 71:24 81:21 compelling ^[1] 6:11 competent ^[2] 48:9,12 complementing ^[1] 56:3 component ^[2] 30:22 73:20 compromise ^[1] 41:3 compromised ^[1] 41:9 con ^[1] 48:6 concedes ^[1] 35:22 conceivably ^[1] 10:7 concept ^[1] 15:13 concerned ^[4] 26:12,20 28:15 55: 24 concerns ^[1] 41:23 concluded ^[1] 66:19 conclusion ^[2] 24:4 36:23 concurring ^[1] 29:13 condition ^[1] 45:8 conducting ^[1] 45:24 confessed ^[1] 36:7 confession ^[1] 78:17 confidence ^[1] 49:7 confines ^[1] 65:23 confront ^[1] 68:2 confrontation ^[1] 63:20 confusion ^[1] 38:21 Connecticut ^[1] 15:14 consciously ^[1] 76:17 consent ^[4] 48:1,3,11 70:11</p>	<p>consequence ^[1] 70:10 consequences ^[1] 34:15 consider ^[1] 21:22 considerable ^[2] 54:12 75:2 considerations ^[2] 5:16 69:21 considered ^[2] 24:10 43:18 considing ^[1] 77:12 consistent ^[2] 15:16 16:2 Constitution ^[6] 45:8 67:10,23 69: 12 71:25 75:4 constitutional ^[5] 33:23 35:1 41: 7 71:24 79:17 constitutionally ^[1] 68:4 contamination ^[1] 32:24 contest ^[1] 19:10 context ^[6] 47:13,18 48:7 51:1,2 63:12 continues ^[1] 66:11 contrary ^[2] 48:16 57:13 contravene ^[1] 82:2 contribute ^[1] 78:20 control ^[1] 65:12 convention ^[1] 35:2 convicted ^[10] 10:2 17:17 19:6 31: 11,17,23 48:19 71:16,17 79:21 convicting ^[4] 30:15 77:24,25 78: 1 conviction ^[15] 7:7 9:23 12:25 32: 7 36:10 40:17 60:21 64:9 72:12 77:13 78:13 79:23 80:6 81:23 82: 13 convictions ^[8] 40:4,6 52:17 60: 12,14 63:1 64:3 78:24 convinced ^[1] 9:15 corner ^[1] 19:3 corpus ^[2] 47:13,19 correct ^[3] 17:18,19 23:18 correctly ^[1] 77:16 couldn't ^[1] 25:16 counsel ^[36] 5:8 8:15,19 10:9 15: 24 17:5 18:10 22:7 26:6,11 30:3 31:2 33:17,18 34:19 38:11,18 43: 9,14,22 46:6,8,23 49:15 51:14,21 54:5 56:23 60:4 61:12 62:18 63: 10 69:2 73:11 79:7 82:17 count ^[8] 23:10 25:10,11,11,12 33: 8 55:18,20 country ^[1] 8:13 country's ^[1] 55:7 counts ^[7] 25:9,9,18 33:10 55:19, 19,20 couple ^[4] 22:14 42:20 61:23 63:3 course ^[10] 22:19 25:4 50:8 64:24 66:19 68:16 70:3,19 74:13 78:23 COURT ^[96] 1:1,14 3:10,12 4:1,3, 23 5:6,19 10:10,24 11:7,12,22,24 14:22 17:25 20:7 22:10,16 23:5 27:23 28:2 33:12,21,25 34:13,24 35:15 36:13 37:5,6,11 38:7,19,22 39:16,24 40:7 41:5,5,6 43:5,16 44: 10,18,20 47:16,19 48:5,7,9,11 49: 18,25 50:25 51:15 55:6 57:10,12 58:7,8 60:1,10,11,19 61:24 62:7 63:14,18,21,25 64:14,15 65:5,8,11</p>
--	--	---	---

C

Official - Subject to Final Review

<p>66:12,19,23 67:20,21,24 70:21,24 72:21 74:15,16,22 76:16 78:19 79:13,16 80:19 81:15 82:4</p> <p>Court's [13] 5:9,17 7:19 28:10 44:1,22 45:23 62:10 64:5 68:15 73:3 74:3 79:11</p> <p>courts [6] 11:15 37:4,11 38:22 57:20 60:20</p> <p>Crawford [4] 25:11 26:17 32:18 63:19</p> <p>created [2] 32:11,12</p> <p>credit [1] 74:22</p> <p>crime [3] 30:16 75:18,20</p> <p>crimes [3] 35:9,13 79:22</p> <p>criminal [10] 34:2 35:4,11 37:19 44:3 49:19 61:7 73:17 76:22 81:17</p> <p>criterion [1] 6:16</p> <p>cross-section [1] 62:13</p> <p>curiae [3] 1:24 2:11 60:7</p> <p>current [1] 69:25</p> <p>currently [2] 17:7 41:21</p> <p>cut [1] 9:20</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d)(1 [1] 11:21</p> <p>D.C [2] 1:10,23</p> <p>damage [1] 76:1</p> <p>Dame [2] 7:21 20:9</p> <p>damnation [1] 70:11</p> <p>Danforth [1] 65:8</p> <p>DARREL [1] 1:6</p> <p>data [3] 8:1 9:5 52:17</p> <p>day [1] 11:13</p> <p>dead [2] 4:11 80:22</p> <p>deal [2] 15:21 67:7</p> <p>dealing [2] 5:18 32:9</p> <p>deals [1] 5:23</p> <p>dealt [1] 9:2</p> <p>decade [1] 79:23</p> <p>decades [1] 74:14</p> <p>December [1] 1:11</p> <p>decide [4] 11:13 14:16 23:6 68:9</p> <p>decided [8] 4:21 6:5 7:22 15:1 25:21 27:10 36:9 80:25</p> <p>deciding [3] 4:12 14:19 46:2</p> <p>decision [32] 4:4,21 5:9,19,21,22 6:2,6,24 8:25 10:7,14 11:20 15:11 19:17 23:24 24:7,20 27:24,25 36:20,23 38:20 57:13 59:19 62:10 64:6,16,17 68:12 71:22 79:11</p> <p>decisions [6] 25:22,24 78:9 79:17 81:19,21</p> <p>decisive [1] 64:23</p> <p>decisive [2] 29:13 80:23</p> <p>declared [1] 49:25</p> <p>declaring [1] 35:8</p> <p>declined [2] 26:18 62:7</p> <p>deep [1] 14:9</p> <p>deeply [1] 81:11</p> <p>defendant [5] 43:14 55:9,16 71:14 77:22</p> <p>defendant's [1] 78:18</p> <p>defendants [1] 31:15</p>	<p>defined [1] 22:17</p> <p>delegates [1] 35:2</p> <p>deliberation [1] 9:20</p> <p>denial [2] 36:14 60:1</p> <p>Department [1] 1:23</p> <p>depends [1] 15:10</p> <p>deprived [2] 9:17 20:16</p> <p>desire [1] 82:9</p> <p>DeStefano [12] 5:9,14,17 6:4 7:3 25:10 26:23,24 27:10 61:13,20 62:6</p> <p>DeStoff [1] 25:10</p> <p>determination [3] 67:25 68:6 72:22</p> <p>determines [1] 44:16</p> <p>deviated [1] 25:25</p> <p>dial [1] 9:10</p> <p>dialogue [1] 77:6</p> <p>dictated [5] 4:15 6:22 33:24 44:11 81:8</p> <p>died [1] 14:8</p> <p>difference [1] 77:13</p> <p>different [17] 8:8 11:6 12:1,20 19:12,21 21:5 23:1 24:25 27:11 28:2 48:15 70:6 72:25 73:1 78:25 79:13</p> <p>differently [3] 32:21,23 33:4</p> <p>difficult [3] 53:1,2 78:2</p> <p>diminish [1] 36:6</p> <p>dire [1] 56:14</p> <p>direct [6] 29:16,16,20,23 60:13 61:7</p> <p>directed [1] 40:13</p> <p>direction [2] 11:7 19:22</p> <p>disagree [3] 10:24 37:24 39:19</p> <p>disagreed [1] 70:9</p> <p>disagreement [1] 14:25</p> <p>discarded [1] 35:16</p> <p>discount [4] 22:24,25 23:20 36:22</p> <p>discovered [3] 13:24 14:1,3</p> <p>discrimination [2] 28:11 32:25</p> <p>discriminatory [2] 20:25 34:12</p> <p>discuss [1] 63:11</p> <p>discussing [4] 26:15 63:19,22 76:15</p> <p>discussion [2] 38:18 70:1</p> <p>discussions [1] 43:25</p> <p>dismissed [1] 15:4</p> <p>dismisses [1] 35:6</p> <p>dispositive [1] 65:2</p> <p>disproportionate [1] 22:2</p> <p>disproportionately [1] 32:13</p> <p>dispute [9] 51:23,25 52:3,4,11,15 69:6,8 81:10</p> <p>disputed [1] 52:5</p> <p>disputes [1] 60:18</p> <p>disrupting [1] 79:18</p> <p>disruptions [1] 76:22</p> <p>disruptive [1] 80:2</p> <p>dissent [1] 23:10</p> <p>dissenter [1] 31:25</p> <p>dissenters [3] 22:19 26:24 31:25</p> <p>dissenters' [3] 22:23,24 23:8</p> <p>dissents [2] 23:20 27:2</p>	<p>distinct [1] 30:20</p> <p>distinction [4] 28:16,19 29:20 79:2</p> <p>distinguish [2] 30:9 67:13</p> <p>distinguishable [1] 42:20</p> <p>distinguished [1] 78:12</p> <p>distinguishing [1] 77:9</p> <p>distribute [2] 38:1 52:6</p> <p>district [3] 38:6 39:24 52:9</p> <p>divided [1] 4:3</p> <p>division [1] 4:5</p> <p>doctrine [1] 79:16</p> <p>doctrines [1] 80:13</p> <p>doing [1] 51:6</p> <p>double-count [1] 64:22</p> <p>doubt [12] 9:13,16 29:2 35:7 49:18 50:7 51:1 59:19 71:11 72:23 80:13 81:25</p> <p>Douglas [1] 27:1</p> <p>down [6] 11:15,18 12:18 23:25 24:15 63:3</p> <p>Due [2] 4:17 16:25</p> <p>Duncan [2] 5:19 72:20</p> <p>duty [1] 51:6</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e)(2)(A [1] 11:23</p> <p>each [3] 51:4,10,11</p> <p>earlier [6] 3:12 14:21 46:13 67:15 71:3 77:19</p> <p>Eatman [1] 56:18</p> <p>EDWARDS [7] 1:3 3:4,20 4:2 36:7 57:24 82:10</p> <p>Edwards' [2] 11:25 36:10</p> <p>effect [4] 3:16 27:16 62:25 71:19</p> <p>effectiveness [1] 9:19</p> <p>effects [2] 32:15 80:2</p> <p>efforts [2] 17:25 75:2</p> <p>egregious [1] 32:23</p> <p>either [5] 4:17 12:21 33:21 58:13 61:3</p> <p>element [3] 30:11 44:23 49:4</p> <p>eligible [2] 7:15 12:22</p> <p>ELIZABETH [3] 1:20 2:6 34:21</p> <p>emerge [4] 73:22 74:2,4,7</p> <p>emphasized [2] 61:6 76:19</p> <p>emphasizing [1] 41:18</p> <p>empirical [3] 7:8 18:20 48:14</p> <p>empirics [1] 18:22</p> <p>enabled [1] 69:14</p> <p>end [2] 38:2 82:7</p> <p>ended [1] 3:13</p> <p>endorsed [2] 10:20 66:15</p> <p>enforce [1] 38:7</p> <p>enforcement [1] 27:15</p> <p>engaging [1] 57:20</p> <p>England [1] 66:10</p> <p>enhancing [1] 40:13</p> <p>enough [5] 40:11 43:1,5 62:3 68:22</p> <p>ensuring [1] 28:10</p> <p>entertain [2] 5:6 48:8</p> <p>entire [1] 50:15</p> <p>entirely [2] 35:7 58:22</p>	<p>enumerated [1] 27:18</p> <p>equated [2] 26:23,25</p> <p>equitable [1] 68:5</p> <p>equity [1] 67:17</p> <p>erected [1] 57:5</p> <p>error [2] 19:1 50:18</p> <p>errors [1] 19:22</p> <p>especially [1] 64:5</p> <p>ESQ [4] 2:3,6,9,13</p> <p>ESQUIRE [1] 1:18</p> <p>essential [6] 44:24 49:4 60:23 66:22 73:20 75:8</p> <p>establish [3] 12:16 18:1 45:4</p> <p>established [2] 39:17 58:3</p> <p>establishing [1] 7:5</p> <p>estimate [1] 12:11</p> <p>estimates [2] 13:15 51:23</p> <p>et [1] 38:20</p> <p>evade [1] 69:25</p> <p>even [24] 10:5 11:21 18:2 19:16 21:25 22:24 23:19 31:16 32:16,18 37:6,7,13 39:6 40:10,10 42:5 43:3 46:4 54:6 59:7 61:18 62:5 64:1</p> <p>eventualities [1] 74:23</p> <p>everybody [1] 66:3</p> <p>everyone [1] 41:8</p> <p>everything [1] 19:10</p> <p>everywhere [1] 3:22</p> <p>evidence [4] 6:11 7:9 18:20 48:17</p> <p>exact [6] 13:13 41:17 56:20,21 63:4 71:11</p> <p>exactly [2] 15:12 36:18</p> <p>examine [1] 50:25</p> <p>examined [1] 44:18</p> <p>example [12] 25:4 32:24 43:18 55:23 56:18 61:25 63:18 65:8 66:10 69:4 71:23 78:16</p> <p>except [1] 73:25</p> <p>exception [14] 14:17 46:15 57:9,21 67:22 68:1,9,10 69:3 70:20,24 73:14 75:17,18</p> <p>exceptions [5] 57:8 61:10 67:20 75:16,23</p> <p>excluding [1] 78:17</p> <p>excoriated [1] 15:15</p> <p>exemplar [1] 20:7</p> <p>exercised [1] 65:12</p> <p>exist [1] 60:18</p> <p>existence [1] 27:12</p> <p>existing [2] 4:4 22:17</p> <p>exists [1] 14:13</p> <p>exonerated [2] 31:4,16</p> <p>exonerations [3] 7:12,17 31:19</p> <p>expect [5] 53:1,4,21 54:11 61:17</p> <p>explain [2] 17:6 24:16</p> <p>explains [1] 71:23</p> <p>explicitly [3] 4:22 23:10 26:5</p> <p>expressly [4] 35:2 53:16 64:7 82:1</p> <p>extensive [1] 70:1</p> <p>extinct [1] 14:7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face [1] 42:8</p>
---	---	--	---

Official - Subject to Final Review

<p>fact ^[9] 22:25 29:22 30:16 39:6 53:2,21 54:10 61:19 71:24</p> <p>factors ^[3] 27:12,18 28:22</p> <p>facts ^[1] 56:7</p> <p>factual ^[10] 15:5 36:3 40:9 61:15 63:17 64:1 77:10 78:8,11,20</p> <p>fails ^[1] 81:10</p> <p>fair ^[18] 5:4 8:11,12 9:12 20:17 21:24 29:8 30:24 31:3 37:25 38:12 46:18 60:23 62:12 72:9 73:23 79:22 80:14</p> <p>fairer ^[1] 41:6</p> <p>fairness ^[12] 4:25 27:20,25 30:12 32:9 34:7 44:24 64:8 66:23 69:22 70:17 73:5</p> <p>falls ^[1] 81:3</p> <p>false ^[3] 25:7,8,8</p> <p>family ^[1] 55:14</p> <p>far ^[1] 20:19</p> <p>favor ^[1] 77:22</p> <p>fear ^[1] 34:15</p> <p>featured ^[1] 20:20</p> <p>federal ^[11] 35:19 39:4 57:10,20 60:14 61:5 62:19,23 63:1,5 80:2</p> <p>federalism ^[1] 76:19</p> <p>feel ^[1] 23:9</p> <p>felony ^[1] 38:1</p> <p>Fifth ^[2] 36:13 60:1</p> <p>figures ^[1] 20:8</p> <p>filed ^[3] 13:14 41:18 52:16</p> <p>final ^[9] 36:10 60:13,21 61:9,9 79:19,23 80:6,6</p> <p>finality ^[3] 65:13 76:19 82:3</p> <p>find ^[6] 18:6 26:4 41:15 44:9 62:7 71:14</p> <p>finding ^[3] 16:13 43:2,10</p> <p>finds ^[1] 11:7</p> <p>Fine ^[1] 54:7</p> <p>finish ^[1] 44:4</p> <p>First ^[15] 7:11 11:12,19 14:18 19:13 22:7 23:4 27:9 32:11 40:24 42:17 69:19 70:18 77:5 81:6</p> <p>fit ^[1] 69:4</p> <p>five ^[5] 6:9,12 42:25 43:5 55:12</p> <p>five-person ^[1] 43:4</p> <p>fleeting ^[1] 14:11</p> <p>flesh ^[1] 23:14</p> <p>flies ^[1] 8:12</p> <p>floodgate ^[1] 26:3</p> <p>Florida ^[2] 8:2 9:25</p> <p>focus ^[4] 18:17 27:20 45:23 49:2</p> <p>focused ^[2] 45:25 63:25</p> <p>focuses ^[1] 49:3</p> <p>follow ^[3] 24:9 68:14 76:6</p> <p>follow-up ^[1] 77:6</p> <p>followed ^[1] 81:7</p> <p>following ^[1] 51:7</p> <p>follows ^[1] 60:15</p> <p>Footnote ^[1] 70:2</p> <p>footprint ^[1] 14:10</p> <p>force ^[1] 16:14</p> <p>forced ^[1] 68:2</p> <p>foreclosed ^[3] 4:13 24:11 80:24</p> <p>forests ^[1] 14:9</p>	<p>former ^[1] 77:15</p> <p>forth ^[2] 65:22 66:1</p> <p>forward ^[3] 21:16 73:18 79:12</p> <p>found ^[9] 25:6 29:2 42:25 46:14 51:15 70:2,22 72:21 76:18</p> <p>founders ^[2] 69:13 73:19</p> <p>founding ^[3] 34:4 72:5,7</p> <p>four ^[1] 55:11</p> <p>Fourteenth ^[3] 4:19 17:1 41:4</p> <p>Fourth ^[1] 63:23</p> <p>fractured ^[1] 4:4</p> <p>frame ^[1] 25:16</p> <p>framers ^[1] 20:4</p> <p>free ^[2] 19:5 80:21</p> <p>frees ^[1] 79:16</p> <p>friend ^[1] 37:16</p> <p>friend's ^[1] 39:20</p> <p>Friendly's ^[1] 75:14</p> <p>front ^[1] 39:9</p> <p>full ^[3] 3:14 4:17 79:22</p> <p>fully ^[5] 6:19 15:6 16:18,24 24:3</p> <p>functional ^[1] 69:21</p> <p>fundamental ^[6] 15:20,23 24:10 25:23 42:17 50:14</p> <p>fundamentally ^[3] 32:6 36:2 59:23</p> <p>further ^[1] 59:4</p> <p>future ^[2] 74:18,20</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gave ^[1] 75:13</p> <p>General ^[12] 1:20,23 34:20 36:16 46:10 49:17 50:11 54:22 57:2 59:16 67:13 76:7</p> <p>generate ^[1] 52:17</p> <p>generous ^[3] 64:2 77:11,15</p> <p>gets ^[1] 62:6</p> <p>getting ^[2] 14:15 67:19</p> <p>ghost ^[1] 75:7</p> <p>Gideon ^[25] 7:21,23 8:1,21 9:24 15:19,24 20:6 25:3,19 26:24,25 30:25 31:9 34:3 43:12,17 44:1,7 45:17 47:17 69:5 70:25 80:15 81:19</p> <p>Gideon's ^[1] 8:5</p> <p>Ginsburg ^[1] 23:16</p> <p>give ^[8] 18:21 27:2 46:11 47:6,6 56:8 69:7 75:7</p> <p>given ^[3] 7:3 21:2 24:12</p> <p>giving ^[1] 74:21</p> <p>Gorsuch ^[26] 22:4,6 23:13 24:21 26:6,16 51:19,20 52:2,10,12,19,23 53:14,18 54:4,14 57:4 64:18,21 73:9,10 74:6,21 76:6,16</p> <p>Gorsuch's ^[4] 16:10,13 20:22 54:23</p> <p>got ^[2] 31:14 59:5</p> <p>gotten ^[1] 24:25</p> <p>governing ^[1] 70:4</p> <p>government ^[2] 62:19 74:6</p> <p>government's ^[2] 73:23 75:8</p> <p>grant ^[1] 52:6</p> <p>granting ^[2] 57:11,15</p> <p>great ^[1] 79:12</p>	<p>greater ^[1] 80:20</p> <p>ground ^[1] 81:14</p> <p>grounds ^[2] 66:17 82:12</p> <p>guarded ^[1] 37:12</p> <p>guess ^[11] 19:8,18 25:1 28:15 31:13 37:20 50:21 59:9 73:2 74:12 79:10</p> <p>guessing ^[1] 17:23</p> <p>guilt ^[1] 29:2</p> <p>guilty ^[8] 19:5 21:15 33:9,10 48:24 71:14 73:6 80:21</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>habeas ^[8] 14:17 39:7 47:13,18 61:6 65:10 67:6,16</p> <p>habitual ^[1] 12:23</p> <p>half ^[5] 7:14,16,16 10:3 20:12</p> <p>hand ^[3] 6:22,22 38:5</p> <p>hand-in-hand ^[1] 80:14</p> <p>handle ^[1] 13:2</p> <p>hands ^[2] 6:24 25:3</p> <p>happen ^[2] 15:3 82:12</p> <p>happened ^[1] 78:22</p> <p>happens ^[2] 38:5 52:8</p> <p>hard ^[9] 28:24 30:9 50:5,12,21 61:25 63:3 73:18,21</p> <p>harder ^[1] 40:11</p> <p>Hardy ^[4] 28:12,17,20 62:11</p> <p>harkens ^[1] 46:12</p> <p>Harlan's ^[2] 15:11 75:13</p> <p>hear ^[1] 3:3</p> <p>heard ^[3] 30:8 51:21,24</p> <p>heartland ^[1] 80:4</p> <p>heavily ^[4] 6:4 15:10 27:13 28:21</p> <p>held ^[13] 5:9 21:3 35:15 38:25 42:24 44:10 46:2 47:25 48:3 49:18,22 50:22 64:7</p> <p>help ^[1] 30:18</p> <p>help ^[3] 62:4 75:19 76:12</p> <p>himself ^[1] 22:16</p> <p>historical ^[6] 8:12 44:15 46:1 48:6 67:17 70:7</p> <p>history ^[9] 28:10 54:24 55:3,6,7,14 66:20 70:5 71:25</p> <p>Hogan ^[1] 23:24</p> <p>hold ^[1] 24:18</p> <p>holding ^[3] 4:6 36:12 73:3</p> <p>holds ^[1] 25:2</p> <p>Honor ^[3] 17:21 25:15 28:19</p> <p>hope ^[1] 24:21</p> <p>however ^[2] 58:15 78:4</p> <p>howl ^[1] 14:11</p> <p>hundred ^[1] 63:3</p> <p>hung ^[1] 66:17</p> <p>hurdle ^[1] 5:8</p> <p>hypothetical ^[2] 47:6 74:8</p> <p>hypotheticals ^[1] 47:7</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>i.e ^[1] 30:15</p> <p>idea ^[1] 72:6</p> <p>identified ^[2] 7:14 36:8</p> <p>identify ^[1] 31:8</p> <p>ignores ^[1] 81:7</p>	<p>ill ^[2] 69:3,3</p> <p>illegal ^[1] 3:21</p> <p>illustrative ^[2] 20:1 29:21</p> <p>imagine ^[2] 50:13 74:9</p> <p>Immunities ^[1] 4:18</p> <p>impact ^[6] 22:2 32:14 37:18 41:11,20 63:5</p> <p>impacted ^[1] 38:4</p> <p>impermissibly ^[2] 7:6 40:16</p> <p>Implications ^[1] 7:23</p> <p>important ^[10] 28:5,6,9 35:25 41:2 45:18 47:14 53:4 59:20 61:15</p> <p>importantly ^[1] 69:20</p> <p>impose ^[1] 67:4</p> <p>impossible ^[2] 35:12 74:1</p> <p>improve ^[1] 36:5</p> <p>improves ^[1] 34:6</p> <p>improving ^[1] 40:12</p> <p>impugn ^[2] 64:8 73:5</p> <p>inaccuracy ^[1] 80:17</p> <p>inaccurate ^[6] 7:7 9:23 10:5 19:16 40:6,17</p> <p>incarceration ^[1] 55:15</p> <p>inception ^[1] 4:9</p> <p>inclined ^[1] 11:22</p> <p>included ^[1] 5:13</p> <p>including ^[4] 45:7 62:8,15 70:8</p> <p>inconceivable ^[1] 50:22</p> <p>inconsistent ^[3] 15:22 27:24 37:8</p> <p>incorporated ^[6] 6:3,20 16:19,22,25 24:3</p> <p>incorporating ^[1] 59:20</p> <p>incorporation ^[1] 81:11</p> <p>increase ^[1] 69:9</p> <p>independent ^[3] 57:5 58:19 68:21</p> <p>indigent ^[1] 43:15</p> <p>indispensable ^[1] 34:5</p> <p>individual ^[5] 21:7,8 51:4,11,11</p> <p>informed ^[1] 67:16</p> <p>informs ^[1] 68:6</p> <p>inherent ^[2] 71:12 72:8</p> <p>Initiative's ^[1] 42:7</p> <p>innocent ^[2] 19:6 80:20</p> <p>inquiries ^[1] 76:14</p> <p>inquiry ^[8] 15:8 16:2 18:18,18 58:9,20 66:23 73:1</p> <p>insisted ^[1] 45:7</p> <p>insisting ^[1] 41:6</p> <p>instances ^[2] 10:6 18:6</p> <p>institutions ^[1] 66:13</p> <p>instructions ^[2] 51:7,13</p> <p>intended ^[1] 20:4</p> <p>interest ^[6] 6:5 27:14 62:23 64:22 82:3,8</p> <p>interests ^[4] 34:9 35:6 53:11 54:16</p> <p>interpretation ^[5] 65:10 67:5,8,16 69:23</p> <p>intricacies ^[1] 5:23</p> <p>intuition ^[1] 19:3</p> <p>involve ^[1] 35:9</p> <p>involved ^[1] 57:13</p> <p>isn't ^[10] 16:1 25:8 36:1 42:18 43:22 45:12 59:21 61:14 65:24 66:6</p>
---	---	--	--

Official - Subject to Final Review

<p>issue ^[1] 9:2 14:21 15:23 27:22 35:20 39:9 41:24 62:16 63:23 70:2 74:16 issues ^[1] 64:25 itself ^[14] 5:10,17 8:11 22:1,18 23:1 26:25 37:6 61:1,16 62:9 70:13 72:1 75:6</p>	<p>24 47:1,4,5,9,24 48:13 49:9,12,14,16,17 50:2,10,24 51:14,17,18,18,20,22 52:2,10,12,19,23 53:14,18 54:4,14,18,18,20,21,23 56:10,22,25,25 57:2,17,23 58:10,14,19,25 59:11,14,15,18 60:3,10,24 61:12,22 62:18,22 63:6,6,8,9,13 64:10,18,18,21,24 65:3,16,17,17,19 66:7,25 67:2,2,3,12 68:8,14,24,25,25 69:2,17 70:2 71:5,5,6,7,20 72:3,14 73:7,8,8,10,12 74:6,21 75:12 76:2,2,4,6,15,23,25 77:1,1,3,6 78:3,7 79:5,6,9 80:8 82:15,16</p>	<p>level ^[3] 39:10 44:12 79:3 liberty ^[4] 9:17 15:13 16:3 20:16 life ^[3] 3:20,23 82:11 light ^[2] 22:22 62:20 likelihood ^[1] 77:12 likely ^[3] 73:17 74:20 77:23 limited ^[1] 46:4 line ^[4] 3:12 26:15 73:12 81:3 lines ^[2] 24:1,16 linkage ^[1] 54:25 linked ^[1] 55:3 Linkletter ^[1] 53:12 litigated ^[2] 14:23 59:4 little ^[6] 11:6 23:14 30:6,19 48:14 75:6 loading ^[1] 40:5 logical ^[1] 24:4 logically ^[2] 33:24 81:8 long ^[2] 26:15 36:9 long-final ^[1] 35:11 longer ^[2] 70:4 73:16 look ^[9] 8:6,10 9:11 32:8 47:9 51:3,9 64:2 75:12 looked ^[2] 44:21 55:2 looking ^[5] 13:15 21:6 30:22 43:1 51:10 lot ^[5] 18:18 42:8 66:5 74:21 75:11 Louisiana ^[27] 1:18,21 3:22 5:1 6:7 7:13 9:3 11:15 12:12 13:1,9 20:11 24:5,17 29:10 31:15 34:25 35:3,5 37:19 42:12 64:6,12 66:13 67:21 73:4 76:7</p>	<p>25 74:8 meaning ^[5] 18:25 43:21 44:8,11 48:22 meaningfully ^[1] 81:18 means ^[5] 30:8,20 40:3 63:12 78:11 meant ^[3] 3:19 67:15 72:9 measurable ^[1] 21:19 measure ^[3] 4:17 28:24 29:6 measuring ^[1] 32:3 medieval ^[3] 70:8,11,15 meet ^[2] 62:3,16 Members ^[8] 4:2,22 33:21,25 34:12 64:15 81:15 82:4 memory ^[1] 70:25 mention ^[2] 29:9 57:16 mentioned ^[2] 9:25 62:24 merit ^[1] 75:11 merits ^[7] 11:20 15:2,6 39:22,23 71:22 72:23 met ^[2] 44:25 45:1 MICHEL ^[28] 1:22 2:9 60:5,6,9 61:22 62:22 63:13 64:14 65:7 66:7 67:12 68:13 69:17 71:6,20 72:13,18 73:7,24 74:10 75:9 76:5,11 77:4,17 78:14 79:8 might ^[17] 14:2 19:4 36:4,5 37:8 38:3 46:11 47:7 52:18 59:4 60:18 69:18 73:14 74:7 78:20,24 80:1 mighty ^[1] 73:22 mind ^[1] 74:7 mine ^[1] 54:23 minimizes ^[1] 35:5 minimum ^[1] 79:24 minute ^[3] 33:19 59:15 79:6 missing ^[1] 52:1 mixed ^[1] 9:9 mob ^[1] 47:20 money ^[1] 38:8 Montgomery ^[2] 8:20 67:21 morally ^[1] 4:9 morning ^[8] 3:4 22:6 26:11 51:20 54:22 73:10 76:5 77:3 most ^[4] 6:11 34:5 42:10 70:1 motivation ^[1] 82:5 move ^[1] 9:9 moving ^[1] 21:16 MS ^[46] 34:23 37:1,23 38:12 39:3,14 40:7 41:14,16 42:19 43:10,16,24 44:14 45:20 46:17,21,25 47:3,8 48:2 49:1,10,13,23 50:5,24 51:15 52:2,11,14,21 53:7,16,23 54:13,15 56:10,24 57:23 58:12,18,21 59:2,12,17</p>
<p style="text-align: center;">J</p> <p>jail ^[8] 3:23 8:3 10:3 12:24 17:7,12 66:3 80:20 jailed ^[2] 4:8 8:3 job ^[2] 12:17 43:7 Johnson ^[6] 35:3 51:3,9 64:6 66:12 73:3 join ^[1] 59:3 joiners ^[2] 22:14 23:18 judge ^[3] 61:17 62:1 75:14 judge's ^[1] 5:18 judge-made ^[1] 27:23 judge-rendered ^[1] 5:21 judges ^[1] 39:4 judgment ^[1] 61:7 judgments ^[2] 65:13 79:19 judicata ^[1] 65:14 judicial ^[1] 80:15 juries ^[12] 6:7 9:7 10:12,15 31:17,22 38:24 39:1,2 54:25 66:17 82:2 jurisdiction ^[5] 13:13 48:4,8,10,12 jurisdictions ^[1] 35:10 jurisprudence ^[2] 76:18 81:12 jurist ^[2] 6:21 35:19 jurists ^[1] 6:16 juror ^[14] 21:14 32:20 33:8,9 51:4,12 55:10,16,21,22 56:2,19,20 70:9 juror's ^[1] 51:11 jurors ^[5] 21:14 42:23 51:6 56:17 81:25 jury ^[74] 3:13,15 4:8,25 5:10,24 6:18 7:5,18 8:11 9:3,14,21 10:10 12:17,25 15:25 16:8 18:5 19:14 20:5 21:11,18,21 24:5 26:25 27:3,5,25 28:7 29:1 30:14 31:25 32:1,10,12,25 33:5,13 34:4,11,25 42:2,14,16 43:3,6 49:20 51:7 56:3 60:25 61:2,15,16,19 62:1,8,15 64:7,12 65:22 66:11,16 69:10 71:13,16 72:9,10,22 73:4,20 74:16 81:10,11 jury-rendered ^[1] 5:22 Justice ^[253] 1:23 3:3,9 5:5,7 6:1,8 7:1,2 8:14,16,17,18 9:4 10:8,17 11:5 12:6,7,7,9 13:1,5,8,11,19,20,20,21 14:15 15:7,10 16:1,7,9,9,10,12,15,15,17,21 17:2,3,3,5,13,14,22 18:9,12,12,13 20:18,22,23 22:3,3,5,6,16 23:13,16,17 24:6,21 26:6,7,7,9,10,13,14,16,22 27:1,1,17 28:3,13 29:3,7,14,14 30:2,4,5,6,9 31:5,7 32:17 33:16,18 34:17,18,24 36:16 37:1,16,19 38:10,14,14,16,17 39:3,11 40:1,20,21,21,23 41:15,16 42:7,10 43:8,11,11,12,20 44:5,14 45:6,21 46:5,7,8,17,19,19,23,</p>	<p>24 47:1,4,5,9,24 48:13 49:9,12,14,16,17 50:2,10,24 51:14,17,18,18,20,22 52:2,10,12,19,23 53:14,18 54:4,14,18,18,20,21,23 56:10,22,25,25 57:2,17,23 58:10,14,19,25 59:11,14,15,18 60:3,10,24 61:12,22 62:18,22 63:6,6,8,9,13 64:10,18,18,21,24 65:3,16,17,17,19 66:7,25 67:2,2,3,12 68:8,14,24,25,25 69:2,17 70:2 71:5,5,6,7,20 72:3,14 73:7,8,8,10,12 74:6,21 75:12 76:2,2,4,6,15,23,25 77:1,1,3,6 78:3,7 79:5,6,9 80:8 82:15,16 justices ^[6] 4:11,13,20 6:12 35:17 57:3 justification ^[1] 69:11</p>	<p>level ^[3] 39:10 44:12 79:3 liberty ^[4] 9:17 15:13 16:3 20:16 life ^[3] 3:20,23 82:11 light ^[2] 22:22 62:20 likelihood ^[1] 77:12 likely ^[3] 73:17 74:20 77:23 limited ^[1] 46:4 line ^[4] 3:12 26:15 73:12 81:3 lines ^[2] 24:1,16 linkage ^[1] 54:25 linked ^[1] 55:3 Linkletter ^[1] 53:12 litigated ^[2] 14:23 59:4 little ^[6] 11:6 23:14 30:6,19 48:14 75:6 loading ^[1] 40:5 logical ^[1] 24:4 logically ^[2] 33:24 81:8 long ^[2] 26:15 36:9 long-final ^[1] 35:11 longer ^[2] 70:4 73:16 look ^[9] 8:6,10 9:11 32:8 47:9 51:3,9 64:2 75:12 looked ^[2] 44:21 55:2 looking ^[5] 13:15 21:6 30:22 43:1 51:10 lot ^[5] 18:18 42:8 66:5 74:21 75:11 Louisiana ^[27] 1:18,21 3:22 5:1 6:7 7:13 9:3 11:15 12:12 13:1,9 20:11 24:5,17 29:10 31:15 34:25 35:3,5 37:19 42:12 64:6,12 66:13 67:21 73:4 76:7 Louisiana's ^[2] 3:13 34:10 Louisianans ^[2] 3:15 5:4 lower ^[5] 31:18 37:3,11 38:21 60:20</p>	<p>25 74:8 meaning ^[5] 18:25 43:21 44:8,11 48:22 meaningfully ^[1] 81:18 means ^[5] 30:8,20 40:3 63:12 78:11 meant ^[3] 3:19 67:15 72:9 measurable ^[1] 21:19 measure ^[3] 4:17 28:24 29:6 measuring ^[1] 32:3 medieval ^[3] 70:8,11,15 meet ^[2] 62:3,16 Members ^[8] 4:2,22 33:21,25 34:12 64:15 81:15 82:4 memory ^[1] 70:25 mention ^[2] 29:9 57:16 mentioned ^[2] 9:25 62:24 merit ^[1] 75:11 merits ^[7] 11:20 15:2,6 39:22,23 71:22 72:23 met ^[2] 44:25 45:1 MICHEL ^[28] 1:22 2:9 60:5,6,9 61:22 62:22 63:13 64:14 65:7 66:7 67:12 68:13 69:17 71:6,20 72:13,18 73:7,24 74:10 75:9 76:5,11 77:4,17 78:14 79:8 might ^[17] 14:2 19:4 36:4,5 37:8 38:3 46:11 47:7 52:18 59:4 60:18 69:18 73:14 74:7 78:20,24 80:1 mighty ^[1] 73:22 mind ^[1] 74:7 mine ^[1] 54:23 minimizes ^[1] 35:5 minimum ^[1] 79:24 minute ^[3] 33:19 59:15 79:6 missing ^[1] 52:1 mixed ^[1] 9:9 mob ^[1] 47:20 money ^[1] 38:8 Montgomery ^[2] 8:20 67:21 morally ^[1] 4:9 morning ^[8] 3:4 22:6 26:11 51:20 54:22 73:10 76:5 77:3 most ^[4] 6:11 34:5 42:10 70:1 motivation ^[1] 82:5 move ^[1] 9:9 moving ^[1] 21:16 MS ^[46] 34:23 37:1,23 38:12 39:3,14 40:7 41:14,16 42:19 43:10,16,24 44:14 45:20 46:17,21,25 47:3,8 48:2 49:1,10,13,23 50:5,24 51:15 52:2,11,14,21 53:7,16,23 54:13,15 56:10,24 57:23 58:12,18,21 59:2,12,17</p>
<p style="text-align: center;">J</p> <p>jail ^[8] 3:23 8:3 10:3 12:24 17:7,12 66:3 80:20 jailed ^[2] 4:8 8:3 job ^[2] 12:17 43:7 Johnson ^[6] 35:3 51:3,9 64:6 66:12 73:3 join ^[1] 59:3 joiners ^[2] 22:14 23:18 judge ^[3] 61:17 62:1 75:14 judge's ^[1] 5:18 judge-made ^[1] 27:23 judge-rendered ^[1] 5:21 judges ^[1] 39:4 judgment ^[1] 61:7 judgments ^[2] 65:13 79:19 judicata ^[1] 65:14 judicial ^[1] 80:15 juries ^[12] 6:7 9:7 10:12,15 31:17,22 38:24 39:1,2 54:25 66:17 82:2 jurisdiction ^[5] 13:13 48:4,8,10,12 jurisdictions ^[1] 35:10 jurisprudence ^[2] 76:18 81:12 jurist ^[2] 6:21 35:19 jurists ^[1] 6:16 juror ^[14] 21:14 32:20 33:8,9 51:4,12 55:10,16,21,22 56:2,19,20 70:9 juror's ^[1] 51:11 jurors ^[5] 21:14 42:23 51:6 56:17 81:25 jury ^[74] 3:13,15 4:8,25 5:10,24 6:18 7:5,18 8:11 9:3,14,21 10:10 12:17,25 15:25 16:8 18:5 19:14 20:5 21:11,18,21 24:5 26:25 27:3,5,25 28:7 29:1 30:14 31:25 32:1,10,12,25 33:5,13 34:4,11,25 42:2,14,16 43:3,6 49:20 51:7 56:3 60:25 61:2,15,16,19 62:1,8,15 64:7,12 65:22 66:11,16 69:10 71:13,16 72:9,10,22 73:4,20 74:16 81:10,11 jury-rendered ^[1] 5:22 Justice ^[253] 1:23 3:3,9 5:5,7 6:1,8 7:1,2 8:14,16,17,18 9:4 10:8,17 11:5 12:6,7,7,9 13:1,5,8,11,19,20,20,21 14:15 15:7,10 16:1,7,9,9,10,12,15,15,17,21 17:2,3,3,5,13,14,22 18:9,12,12,13 20:18,22,23 22:3,3,5,6,16 23:13,16,17 24:6,21 26:6,7,7,9,10,13,14,16,22 27:1,1,17 28:3,13 29:3,7,14,14 30:2,4,5,6,9 31:5,7 32:17 33:16,18 34:17,18,24 36:16 37:1,16,19 38:10,14,14,16,17 39:3,11 40:1,20,21,21,23 41:15,16 42:7,10 43:8,11,11,12,20 44:5,14 45:6,21 46:5,7,8,17,19,19,23,</p>	<p>24 47:1,4,5,9,24 48:13 49:9,12,14,16,17 50:2,10,24 51:14,17,18,18,20,22 52:2,10,12,19,23 53:14,18 54:4,14,18,18,20,21,23 56:10,22,25,25 57:2,17,23 58:10,14,19,25 59:11,14,15,18 60:3,10,24 61:12,22 62:18,22 63:6,6,8,9,13 64:10,18,18,21,24 65:3,16,17,17,19 66:7,25 67:2,2,3,12 68:8,14,24,25,25 69:2,17 70:2 71:5,5,6,7,20 72:3,14 73:7,8,8,10,12 74:6,21 75:12 76:2,2,4,6,15,23,25 77:1,1,3,6 78:3,7 79:5,6,9 80:8 82:15,16 justices ^[6] 4:11,13,20 6:12 35:17 57:3 justification ^[1] 69:11</p>	<p>level ^[3] 39:10 44:12 79:3 liberty ^[4] 9:17 15:13 16:3 20:16 life ^[3] 3:20,23 82:11 light ^[2] 22:22 62:20 likelihood ^[1] 77:12 likely ^[3] 73:17 74:20 77:23 limited ^[1] 46:4 line ^[4] 3:12 26:15 73:12 81:3 lines ^[2] 24:1,16 linkage ^[1] 54:25 linked ^[1] 55:3 Linkletter ^[1] 53:12 litigated ^[2] 14:23 59:4 little ^[6] 11:6 23:14 30:6,19 48:14 75:6 loading ^[1] 40:5 logical ^[1] 24:4 logically ^[2] 33:24 81:8 long ^[2] 26:15 36:9 long-final ^[1] 35:11 longer ^[2] 70:4 73:16 look ^[9] 8:6,10 9:11 32:8 47:9 51:3,9 64:2 75:12 looked ^[2] 44:21 55:2 looking ^[5] 13:15 21:6 30:22 43:1 51:10 lot ^[5] 18:18 42:8 66:5 74:21 75:11 Louisiana ^[27] 1:18,21 3:22 5:1 6:7 7:13 9:3 11:15 12:12 13:1,9 20:11 24:5,17 29:10 31:15 34:25 35:3,5 37:19 42:12 64:6,12 66:13 67:21 73:4 76:7 Louisiana's ^[2] 3:13 34:10 Louisianans ^[2] 3:15 5:4 lower ^[5] 31:18 37:3,11 38:21 60:20</p>	<p>25 74:8 meaning ^[5] 18:25 43:21 44:8,11 48:22 meaningfully ^[1] 81:18 means ^[5] 30:8,20 40:3 63:12 78:11 meant ^[3] 3:19 67:15 72:9 measurable ^[1] 21:19 measure ^[3] 4:17 28:24 29:6 measuring ^[1] 32:3 medieval ^[3] 70:8,11,15 meet ^[2] 62:3,16 Members ^[8] 4:2,22 33:21,25 34:12 64:15 81:15 82:4 memory ^[1] 70:25 mention ^[2] 29:9 57:16 mentioned ^[2] 9:25 62:24 merit ^[1] 75:11 merits ^[7] 11:20 15:2,6 39:22,23 71:22 72:23 met ^[2] 44:25 45:1 MICHEL ^[28] 1:22 2:9 60:5,6,9 61:22 62:22 63:13 64:14 65:7 66:7 67:12 68:13 69:17 71:6,20 72:13,18 73:7,24 74:10 75:9 76:5,11 77:4,17 78:14 79:8 might ^[17] 14:2 19:4 36:4,5 37:8 38:3 46:11 47:7 52:18 59:4 60:18 69:18 73:14 74:7 78:20,24 80:1 mighty ^[1] 73:22 mind ^[1] 74:7 mine ^[1] 54:23 minimizes ^[1] 35:5 minimum ^[1] 79:24 minute ^[3] 33:19 59:15 79:6 missing ^[1] 52:1 mixed ^[1] 9:9 mob ^[1] 47:20 money ^[1] 38:8 Montgomery ^[2] 8:20 67:21 morally ^[1] 4:9 morning ^[8] 3:4 22:6 26:11 51:20 54:22 73:10 76:5 77:3 most ^[4] 6:11 34:5 42:10 70:1 motivation ^[1] 82:5 move ^[1] 9:9 moving ^[1] 21:16 MS ^[46] 34:23 37:1,23 38:12 39:3,14 40:7 41:14,16 42:19 43:10,16,24 44:14 45:20 46:17,21,25 47:3,8 48:2 49:1,10,13,23 50:5,24 51:15 52:2,11,14,21 53:7,16,23 54:13,15 56:10,24 57:23 58:12,18,21 59:2,12,17</p>
<p style="text-align: center;">J</p> <p>jail ^[8] 3:23 8:3 10:3 12:24 17:7,12 66:3 80:20 jailed ^[2] 4:8 8:3 job ^[2] 12:17 43:7 Johnson ^[6] 35:3 51:3,9 64:6 66:12 73:3 join ^[1] 59:3 joiners ^[2] 22:14 23:18 judge ^[3] 61:17 62:1 75</p>			

Official - Subject to Final Review

<p style="text-align: center;">N</p> <p>narrow [5] 58:1 61:10,10 75:17,23 natural [1] 3:23 nature [2] 45:21 47:21 nearly [1] 38:2 necessarily [9] 5:20 11:19 12:4 19:3,24 23:9 46:1 70:16 78:9 necessary [2] 7:6 69:9 need [2] 3:16 59:4 needed [1] 4:21 needs [2] 9:16 19:24 negative [2] 22:1 32:15 neutral [1] 56:16 never [4] 26:1 46:16 47:16 68:1 new [29] 6:12 11:23 12:12 13:25, 25 14:21 18:16 22:8 23:16 26:13, 18 34:1 35:1,10,14,17 36:23 38:2, 3 39:13 40:15,24 42:9 52:6 60:17 76:13,20 81:5,14 next [1] 44:6 night [1] 14:11 non [1] 21:3 non-race-based [1] 56:15 none [4] 45:23 57:19 73:17 82:14 nonetheless [1] 22:18 nonretroactive [1] 21:3 nonunanimity [3] 20:24 51:2,10 nonunanimous [32] 3:13,24 6:7 7:15,18 8:11 9:6 10:12 12:17 16:5 17:17 18:5 19:14 21:18,21 28:7 30:13 31:17 33:12 34:11 38:24 39: 1 42:2 54:24 56:3 64:7,11 66:11, 16 73:4 74:15 82:2 nor [2] 36:3 59:23 Normally [1] 6:21 notable [1] 66:10 note [2] 5:25 74:12 noted [2] 5:19 79:15 nothing [2] 3:19 74:11 notice [1] 69:25 notion [2] 70:8,11 Notre [2] 7:21 20:8 notwithstanding [1] 82:6 number [21] 13:13 17:6 19:9,11 31:8 38:2 42:5,23 48:18 50:15,16 52:1,3,12,15 54:12 63:2,4,16 70:6 76:8 numbers [5] 8:7 9:25 40:24 41:17 42:7 numerous [1] 35:15</p>	<p>once [3] 14:9 54:7 75:2 one [41] 7:1,17,25 9:10 14:13 19: 10 20:25 21:14 24:4,8 25:6 28:6,9 31:24 33:8 36:8 37:2 39:4 40:1,5 43:18 47:11,22 50:15 53:4 55:10, 15,19,21 56:2,18 59:20 62:23 63: 15 70:9,25 74:4,7 78:10 79:14 80: 21 one's [1] 19:2 ones [1] 13:25 only [12] 3:18,22 13:6 22:13 29:15 34:15 35:23 43:4 50:16 57:15 70: 25 81:23 open [2] 26:3 46:21 operated [1] 28:7 opinion [21] 15:11,15 16:10,13,16 20:22,23 23:4 24:7,12 26:1 28:8 29:12,13 36:20,21 54:23 69:20 70: 3,4 80:22 opinions [6] 28:9 63:16 64:18 68: 17 71:8 75:13 opportunity [2] 27:3 56:9 oral [7] 1:14 2:2,5,8 3:7 34:21 60:6 ordered [2] 15:13 16:3 ordinary [1] 18:25 Oregon [7] 31:18 32:6 35:3 41:1, 12,17,20 Oregon's [1] 35:6 origin [2] 34:12 82:1 original [5] 43:21 44:8,11 47:18 82:5 origins [4] 21:20 54:25 70:15 72:4 other [16] 4:20 8:21 9:8,10 18:16 23:18 25:20 40:6 45:4 46:13 47: 17 62:8 69:11 70:12 72:20 80:1 others [4] 26:18 36:5,11 45:17 otherwise [1] 31:11 ought [2] 57:20 72:16 out [20] 7:13 9:25 14:2,8 23:14 25: 2 26:14 32:18 33:4,24 38:5,13 41: 8,15 56:8 66:12 72:11 74:24 78:9 79:1 outlier [1] 81:21 outlined [1] 66:24 outmoded [1] 75:6 outset [1] 60:25 outside [1] 61:9 outsized [1] 77:25 over [3] 22:11 37:17 65:11 over-read [1] 75:25 overall [1] 27:16 overextended [1] 75:1 overridden [1] 59:13 overrule [1] 37:13 overruled [6] 4:22 6:10 23:11 26: 5 36:18,19 overruling [2] 36:17,24 own [2] 37:13 48:25</p>	<p>Parliament [1] 70:13 parole [1] 12:22 part [7] 16:1 42:25 51:8 55:13 66:8 68:1 72:11 particular [3] 15:9 21:7 33:7 particularly [2] 7:3 35:12 pass [1] 70:13 past [4] 13:23 17:8 25:21 76:17 path [1] 26:13 paths [5] 4:5,7 5:2,3 23:5 pending [2] 3:18 29:16 people [23] 8:2 9:14 10:1 12:14,15, 21 17:12 18:1 19:5,6 20:10 24:15, 18 31:2,4 33:10 38:3,7 48:18,20, 21,23 80:20 per [4] 13:14,16 31:18 37:22 perceived [1] 37:4 percent [2] 20:13 39:5 peremptories [1] 55:11 peremptory [4] 55:3,9,25 56:4 perhaps [2] 38:23 57:17 perjury [1] 70:10 permissible [2] 39:1,2 permits [1] 57:14 permitted [1] 38:23 Permitting [1] 59:22 perpetuate [1] 34:14 person [3] 9:16 42:16 80:21 persons [1] 55:12 perspective [1] 3:17 petit [1] 6:7 petition [3] 14:17 39:7,8 Petitioner [13] 1:4,19 2:4,14 3:8 18:4 21:17 35:5,22 39:6 62:3 79: 21 80:11 petitioner's [2] 60:21 80:5 petitions [1] 11:25 pick [1] 73:11 picking [1] 20:22 pin [1] 63:3 place [6] 3:16,22 30:24 32:12 55:5, 6 play [4] 21:1,2 39:12 64:12 played [1] 56:8 plays [1] 39:15 plea [4] 41:22,25 42:4,4 please [3] 3:10 34:24 60:10 plenty [1] 68:20 plurality [4] 22:13 29:11 69:20 79: 15 point [19] 6:20 12:13 22:10,20 26: 22 27:21 29:8 55:1 59:5 62:5 63: 19,24 70:19 73:15 74:5,24 75:8 77:7 80:16 pointed [5] 26:14 32:18 43:17 47: 19 66:12 pointing [1] 78:8 points [3] 11:11 44:2 71:21 polling [1] 18:7 population [7] 7:16 10:3 12:14 17: 9,11 20:12 32:14 portion [2] 12:1 14:23 posed [1] 58:7 poses [1] 12:4</p>	<p>position [11] 22:23,24 28:1 39:20 57:22,24 58:6,12 59:1,6 73:23 possibility [3] 9:22 46:22 68:10 possible [6] 30:13 49:24 50:3,9 74:8 80:1 post [1] 17:8 post-conviction [5] 11:17 15:2 39:24 74:25 75:4 post-Teague [1] 26:16 potential [2] 47:22 69:5 potentially [2] 47:10 48:4 Powell [2] 16:17 29:14 Powell's [2] 16:16 24:7 practice [1] 28:7 pre-Teague [3] 26:21 28:20 53:12 preceded [1] 81:9 precedent [20] 4:13,15 6:10,23 18: 14 22:15,17,18 24:1,17 28:5 33: 24 35:16,18 36:25 37:13 39:6 80: 25 81:8,16 precedential [3] 4:14 16:13 60:18 precedents [4] 4:5,16 25:25 45: 24 precluded [4] 54:3 58:23 59:7,8 precludes [1] 57:10 preclusion [1] 65:14 predates [2] 25:4 34:4 predicated [1] 80:23 preexisting [1] 81:7 premise [5] 10:4 29:24 32:6 51:9 52:5 preponderance [1] 50:19 presented [1] 68:15 press [1] 30:6 presumably [1] 61:18 presumption [1] 54:17 pretty [3] 15:10 73:21 75:15 prevailing [1] 33:23 prevent [2] 36:11 40:6 prevented [1] 6:6 previously [1] 18:19 81:22 primacy [1] 44:2 principle [1] 25:9 principles [4] 15:20,22 25:23 81: 20 prior [1] 25:25 prison [4] 17:9,11 20:12 41:8 prisoner [1] 14:18 prisoners [1] 17:6 Privileges [1] 4:18 probably [1] 12:18 problem [2] 12:5 79:4 procedural [7] 8:20,23 11:14 30: 11 35:23 44:23 49:4 procedure [4] 34:2 59:23 73:17 81:17 procedures [2] 35:4 41:7 proceeding [3] 30:12 44:24 49:5 Process [7] 4:18 9:12 16:25 44:3 49:6 69:14 72:11 professors [1] 66:15 prominently [1] 20:20 promise [6] 5:4 25:2,7,8,9 42:7 prong [3] 30:10,11 78:10</p>
<p style="text-align: center;">O</p> <p>objections [1] 11:14 objective [1] 6:16 obtained [1] 61:8 occasions [1] 35:15 occur [1] 28:11 odd [1] 45:13 oddity [1] 15:7 offender [1] 12:23 Okay [6] 28:3 33:16 47:8 52:25 66: 25 69:17 old [6] 4:15 17:8 33:25 66:4 81:4,6</p>	<p style="text-align: center;">P</p> <p>PAGE [1] 2:2 Palko [1] 15:13 paper [1] 3:14 parallels [2] 15:19 81:18</p>		

Official - Subject to Final Review

<p>prongs ^[1] 30:19 proof ^[1] 50:8 proper ^[1] 33:14 prosecution ^[1] 44:4 prosecutor ^[4] 13:16 21:8 37:22 52:8 prospectively ^[1] 60:12 protected ^[1] 45:9 prove ^[2] 17:16 18:3 proves ^[1] 81:24 provide ^[1] 5:3 provided ^[4] 4:14 6:2 7:11 19:25 providing ^[1] 4:7 provision ^[1] 67:9 published ^[1] 7:20 Puerto ^[4] 35:6 40:25 41:12,17 pull ^[1] 17:25 purpose ^[5] 21:23,24 47:10 73:15 75:24 purposes ^[5] 11:21 18:2 20:2 61:4 69:25 put ^[4] 25:1 48:16,17 50:8 puts ^[1] 9:13</p>	<p>12 ratifying ^[1] 45:8 rationale ^[3] 4:12 15:13,14 re ^[1] 49:17 re-ratification ^[1] 82:6 reached ^[3] 30:14 31:12 67:24 reaching ^[1] 69:22 react ^[1] 56:9 read ^[4] 12:3 16:12 56:14 71:8 ready ^[1] 5:5 reaffirmed ^[1] 62:10 real ^[1] 75:25 realization ^[1] 80:16 realize ^[1] 23:8 really ^[17] 9:9 12:4 13:15 29:19 36:21 45:16 48:16 51:3 53:1,3 54:10 61:14,20 66:1 71:16 75:16,20 reason ^[7] 16:22 41:1 48:15 51:16 52:15 56:21 76:21 reasonable ^[12] 6:21 9:13,16 29:2 49:18 50:7 51:1 60:20 71:11 72:23 80:13 81:25 reasonableness ^[1] 6:15 reasoning ^[1] 37:15 reasons ^[2] 56:16 76:12 REBUTTAL ^[3] 2:12 80:9,10 recent ^[1] 70:25 recently ^[2] 3:19 70:22 recidivist ^[1] 63:1 recognize ^[2] 64:19 81:22 recognized ^[6] 15:20 20:7 37:6 43:13 71:3 82:4 recognizing ^[1] 64:24 recollection ^[1] 15:3 reconcile ^[1] 4:3 reconsider ^[1] 79:17 record ^[2] 15:3 56:15 records ^[2] 17:25 52:22 red ^[1] 45:2 reduction ^[3] 19:1,21 50:17 refer ^[1] 67:15 referenced ^[1] 28:14 referred ^[1] 68:17 refers ^[1] 68:16 reflect ^[1] 77:20 reflecting ^[1] 57:17 reflects ^[3] 61:4 65:9 71:1 refused ^[1] 81:22 regard ^[1] 58:7 regardless ^[2] 53:20 57:6 rein ^[1] 75:2 rejected ^[2] 56:11 62:12 relate ^[1] 27:13 related ^[1] 42:23 released ^[1] 66:3 relevance ^[1] 52:23 reliability ^[1] 40:13 reliance ^[8] 27:14,15 28:21 35:6 53:11 54:16 61:13 64:22 relied ^[5] 6:4 15:12 28:21 35:2 75:14 relief ^[3] 39:25 57:11,15 relitigation ^[2] 11:9 57:25 relive ^[1] 79:25</p>	<p>rely ^[2] 60:20 69:21 remain ^[1] 80:6 remaining ^[1] 69:8 remedied ^[1] 40:16 remedy ^[2] 4:7 5:2 remember ^[1] 27:10 reminds ^[1] 14:4 removed ^[2] 27:19 81:1 render ^[1] 36:2 repeated ^[2] 74:3,14 repeatedly ^[2] 62:7 68:17 repetitive ^[1] 65:20 reported ^[1] 8:1 repose ^[1] 82:3 represented ^[1] 31:2 repudiate ^[1] 16:10 requested ^[1] 78:18 require ^[3] 26:12 66:21 79:24 required ^[8] 10:14,15 23:22 27:23 29:25 40:25 68:4 72:23 requirement ^[9] 15:25 18:23 22:12 62:13 69:12,24 70:7,13 71:7 requires ^[4] 6:18 21:9 24:2,8 requiring ^[2] 4:24 35:10 res ^[1] 65:13 resolve ^[3] 68:20,23 78:5 respect ^[6] 18:24 23:7 24:23 67:25 68:18 72:19 respected ^[2] 66:13,15 respectfully ^[1] 10:23 respond ^[1] 9:7 Respondent ^[6] 1:7,21,25 2:7 34:22 60:8 response ^[2] 29:17 51:21 responses ^[3] 23:3 27:8 61:23 rest ^[2] 26:2 82:10 restore ^[1] 15:22 restored ^[4] 3:14 4:16 25:22 81:20 restores ^[1] 4:24 result ^[9] 30:14 31:12 37:10,10,14 60:15 61:4 68:11 79:20 resulted ^[2] 57:11,12 retrial ^[1] 80:1 retroactive ^[21] 8:23 11:8 14:22 27:17 33:20 35:8 37:17 42:13,24 45:19 46:3 49:22 50:1,23 53:19 54:1 61:20 62:11 71:19 72:1,24 retroactively ^[16] 4:6 5:11 6:6 9:2 11:24 26:19 27:4,5 28:13 29:15 33:11 35:24 38:4 42:24 65:1,6 retroactivity ^[18] 4:24 6:3 11:13 14:20 23:6 26:13 27:11 34:10 36:11 45:25 53:8 54:17 64:23 67:14 68:7,16 76:17 82:9 retry ^[1] 79:24 return ^[1] 73:3 review ^[12] 7:20 27:6 29:21,24 30:1 45:19 60:14 61:5 62:12 72:2,24 74:25 revising ^[1] 35:4 Rico ^[3] 40:25 41:12,17 Rico's ^[1] 35:7 ridicule ^[1] 16:11 Rights ^[12] 6:19 11:3 15:23 23:25</p>	<p>31:20 34:5 45:7,10 61:2 62:8,15 81:22 Ring ^[1] 25:10 ripple ^[1] 62:25 rise ^[2] 44:12 75:13 rises ^[1] 79:3 risk ^[10] 7:6 40:16 64:3 77:24 78:1, 12 79:18 80:17,19,21 robbery ^[3] 36:8 55:18,19 ROBERTS ^[44] 3:3 5:7 6:8 7:2 8:14 12:7 13:20 17:3 18:12 22:3 26:7 30:2 33:18 34:18 36:16 37:16 38:10,14 40:21 43:8,11 46:5 49:9, 12,14 51:18 54:18 56:22,25 59:15 60:3 61:12 62:18 63:6 65:17 67:2 68:25 71:5 73:8 76:2 77:1 79:6 80:8 82:16 role ^[3] 39:11,15 64:10 room ^[2] 5:24 10:4 rooted ^[2] 67:23 81:12 roots ^[3] 44:15 46:1 64:11 Rouge ^[2] 1:18,20 rough ^[1] 12:11 route ^[2] 24:23,24 rule ^[86] 4:15,23 6:12 8:6,20,23 14:2 15:8,10,18 16:2 18:17 19:4 20:8, 21,23,24 22:9 23:15,16 25:3 26:4, 17,19 33:25 34:1,2 35:1,8,14,17, 23,24 36:1 37:5 39:13 40:15,19 43:15,19 44:3,7,9,10,13,16,17 45:1,3,5,17 46:1 48:23 49:22 50:13, 19 51:1,10 53:2 59:20,21,22,22 60:11,17,22 64:12 67:4,22,25 69:5 70:20,23 71:18,24 72:4,8 73:14 75:18 76:13,14,20 81:4,5,6,17 rules ^[15] 11:23 13:22 14:21 45:4,9, 10,12,15,15 57:17 65:5,13 70:22 73:17 74:19 ruling ^[3] 3:17,18 59:8 running ^[1] 14:12</p>
<p style="text-align: center;">Q</p> <p>qualify ^[4] 47:7 73:19,22,25 quarter ^[1] 7:17 quest ^[2] 13:21 14:6 question ^[39] 3:25 14:15 24:25 37:3,9 40:1,8,9,11,15 42:11,22 44:6 46:4,10 47:23 48:25 49:3,3,8 50:12 51:4 53:8,25 54:2,8 58:1,2,7 64:20 67:18 68:15 69:19 70:18 77:18 78:3,5 79:13 82:14 questionable ^[1] 36:18 questioning ^[1] 73:12 questions ^[6] 5:6 30:7 40:23 44:21 46:12 77:19 quick ^[1] 40:1 quite ^[2] 10:18,25</p>	<p style="text-align: center;">R</p> <p>race ^[1] 56:1 race-based ^[1] 55:3 racial ^[5] 20:21 21:20 28:11 32:24 64:25 racially ^[2] 20:25 22:1 racist ^[3] 34:11 54:25 82:1 radically ^[1] 8:7 raise ^[1] 33:11 raised ^[3] 39:22 41:25 42:3 Ramos ^[54] 4:3,6,14,23 6:9 15:15 18:16 22:8 23:5,11 25:19 26:5,24 28:4 33:11,20,23 34:1,13 35:8,14, 17,20,22,23,25 36:9 37:6,17 44:11 45:3 54:23 59:19 60:12,17 64:17 66:19 68:17 69:20 71:9,15,22 72:6,14,15 79:11,15 80:16 81:1,6,13, 16,19 82:3 Ramos's ^[3] 36:12,17 59:20 ranks ^[1] 34:5 rape ^[2] 36:7 55:20 rate ^[3] 19:1 31:18 50:18 rather ^[5] 13:22 23:11 36:20 45:11,</p>	<p>rely ^[2] 60:20 69:21 remain ^[1] 80:6 remaining ^[1] 69:8 remedied ^[1] 40:16 remedy ^[2] 4:7 5:2 remember ^[1] 27:10 reminds ^[1] 14:4 removed ^[2] 27:19 81:1 render ^[1] 36:2 repeated ^[2] 74:3,14 repeatedly ^[2] 62:7 68:17 repetitive ^[1] 65:20 reported ^[1] 8:1 repose ^[1] 82:3 represented ^[1] 31:2 repudiate ^[1] 16:10 requested ^[1] 78:18 require ^[3] 26:12 66:21 79:24 required ^[8] 10:14,15 23:22 27:23 29:25 40:25 68:4 72:23 requirement ^[9] 15:25 18:23 22:12 62:13 69:12,24 70:7,13 71:7 requires ^[4] 6:18 21:9 24:2,8 requiring ^[2] 4:24 35:10 res ^[1] 65:13 resolve ^[3] 68:20,23 78:5 respect ^[6] 18:24 23:7 24:23 67:25 68:18 72:19 respected ^[2] 66:13,15 respectfully ^[1] 10:23 respond ^[1] 9:7 Respondent ^[6] 1:7,21,25 2:7 34:22 60:8 response ^[2] 29:17 51:21 responses ^[3] 23:3 27:8 61:23 rest ^[2] 26:2 82:10 restore ^[1] 15:22 restored ^[4] 3:14 4:16 25:22 81:20 restores ^[1] 4:24 result ^[9] 30:14 31:12 37:10,10,14 60:15 61:4 68:11 79:20 resulted ^[2] 57:11,12 retrial ^[1] 80:1 retroactive ^[21] 8:23 11:8 14:22 27:17 33:20 35:8 37:17 42:13,24 45:19 46:3 49:22 50:1,23 53:19 54:1 61:20 62:11 71:19 72:1,24 retroactively ^[16] 4:6 5:11 6:6 9:2 11:24 26:19 27:4,5 28:13 29:15 33:11 35:24 38:4 42:24 65:1,6 retroactivity ^[18] 4:24 6:3 11:13 14:20 23:6 26:13 27:11 34:10 36:11 45:25 53:8 54:17 64:23 67:14 68:7,16 76:17 82:9 retry ^[1] 79:24 return ^[1] 73:3 review ^[12] 7:20 27:6 29:21,24 30:1 45:19 60:14 61:5 62:12 72:2,24 74:25 revising ^[1] 35:4 Rico ^[3] 40:25 41:12,17 Rico's ^[1] 35:7 ridicule ^[1] 16:11 Rights ^[12] 6:19 11:3 15:23 23:25</p>	<p style="text-align: center;">S</p> <p>same ^[12] 6:2 9:2 29:23 36:24 46:10 56:20,21 63:24 66:21 71:11 72:19 82:7 satisfied ^[1] 61:11 save ^[1] 11:13 saw ^[2] 10:20 31:23 saying ^[15] 13:23 17:15 30:13 31:9, 14 45:13 47:5 57:7 59:3 66:22 67:15 74:1 75:11,15 79:10 says ^[4] 42:12 71:15 72:15,15 scale ^[2] 40:5 77:22 scheme ^[5] 3:13 4:8 24:5 32:12 34:11 Schriro ^[1] 44:19 scientifically ^[1] 40:3 scope ^[4] 47:11 48:5,6 67:17 second ^[5] 27:21 42:18 69:6,18 81:15 second-guess ^[2] 69:15,16 Secondly ^[4] 11:18 14:24 23:7 28:23 see ^[11] 8:6,10 14:5 23:15 24:13</p>

Official - Subject to Final Review

<p>26:1 30:22 56:15 66:25 73:18,21 seeks [1] 69:12 seem [1] 56:7 seemed [1] 64:25 seems [7] 9:12 19:2 27:6 33:2 52:13 55:23 74:18 seen [2] 41:3 51:24 sees [1] 14:10 segment [1] 32:14 sending [2] 80:20,21 sense [3] 18:21 19:12,21 sentence [2] 3:20 19:13 sentences [1] 63:1 separate [4] 42:11 58:9 64:19 68:21 Separately [1] 67:18 serious [4] 38:1 75:19 79:3,22 seriously [6] 36:3 49:5 51:13 59:24 72:16 79:18 serve [1] 69:24 served [1] 73:15 serving [2] 3:20 75:23 set [4] 21:23 23:5 33:24 69:13 settle [1] 39:8 settled [1] 39:5 Seventh [1] 65:22 several [3] 29:10 55:13,13 shed [1] 62:20 short [1] 9:20 shouldn't [3] 61:21 64:22 65:1 show [5] 18:4 21:12,17 33:12 62:3 showing [1] 45:1 shows [2] 14:5 21:22 side [4] 9:8 46:13 71:9 81:2 sign [1] 35:16 significance [1] 79:12 significant [8] 12:24 31:10 37:18 39:15 41:20 43:6 48:18 53:3 significantly [1] 34:6 similar [6] 55:5,5 65:15 67:24 68:6 75:15 similarly [1] 75:19 simply [16] 4:16 9:20 11:12 18:7, 25 19:21 37:21 43:1 45:1 49:10 52:6 58:22 62:16 64:19 71:3 72:25 since [5] 4:12 8:24 25:5 46:14 82:3 single [3] 22:16 25:6 39:4 sir [1] 13:3 sit [1] 24:15 sitting [1] 10:20 Six [2] 35:17 55:11 six-man [2] 42:14 43:3 six-person [2] 42:14,15 Sixth [17] 3:14 4:1,16 6:17 16:18, 24 20:4 23:22 24:1,2 43:13,22 44:8,12 66:20 69:23 81:20 Solicitor [4] 1:20,22 46:9 76:7 somebody [2] 14:10 18:19 somehow [1] 27:24 someone [5] 20:16 30:15 31:10, 23 32:22 sometimes [2] 21:14 63:20</p>	<p>somewhat [2] 41:6 79:1 somewhere [1] 63:2 soon [1] 12:22 sordid [1] 64:11 sorry [5] 28:18 46:25 47:3,3 57:14 sort [6] 14:4 18:21 62:25 64:3 77:21 78:2 Sotomayor [19] 17:4,5,13,14,22 18:9 46:7,8,19,23,24 47:1,5,9,24 48:13 69:1,2,18 Sotomayor's [1] 73:12 source [1] 65:15 sparse [2] 18:22,23 speaking [1] 22:16 special [3] 47:25 48:3,10 specific [1] 31:8 specifically [1] 42:23 speculate [1] 33:7 speculation [3] 21:9 33:3,13 speculative [1] 32:19 spoken [3] 22:11 63:14 78:9 spread [1] 38:13 stand [2] 11:2 32:10 standard [14] 6:3,15,22 27:11 29:22,25 45:1 49:19 50:7,20 51:2 62:4 71:12 77:11 standards [3] 28:21 29:23 33:23 stare [1] 64:23 start [5] 22:7 44:4 47:2 66:8 69:18 started [2] 20:24,24 starters [1] 11:21 state [29] 6:4 11:16 14:18 15:2 21:25 28:22 34:9 35:19 37:22 39:4, 10,18,20,24 41:25 42:6 53:5,20,21 55:9 57:12 58:3 76:22 80:3 81:10, 17,24 82:2,8 state's [1] 27:14 statement [4] 20:3 73:23 74:3,13 statements [2] 78:18,21 STATES [17] 1:1,15,24 2:10 6:20 11:24 14:22 16:19 24:3 31:19 41:5,20 59:3,21 60:7 67:5 81:21 statistic [1] 17:15 statistics [7] 7:12 9:5,8 12:18 20:1 31:14 62:20 statistics-driven [1] 19:25 statute [5] 59:9 65:10 67:6,9,16 statutes [1] 12:3 stay [1] 61:9 steep [1] 18:15 Stevens [1] 29:14 still [9] 14:13 18:4 22:1 30:16 32:15 54:2 59:8 64:4 70:5 stops [1] 19:6 straightforward [2] 60:15 68:19 strange [2] 13:22 45:11 strike [3] 55:10 56:1,2 strikes [3] 55:4,10,12 striking [1] 56:16 struck [3] 32:21 56:17,20 studies [3] 9:9,19 48:14 studiously [1] 37:7 submit [1] 45:3 submitted [2] 82:17,19</p>	<p>subordinate [1] 5:12 subsection [1] 11:23 subsequent [1] 82:6 subsets [1] 12:21 subsidiary [3] 61:1 62:8,14 substantive [4] 67:22 70:20,22 75:17 substitute [1] 61:6 successful [1] 56:6 suggest [4] 9:19 37:25 64:25 74:25 suggested [3] 9:6 60:24 67:22 suggests [1] 70:6 sum [1] 35:12 summarily [1] 15:4 Summerlin [2] 44:19 61:24 supermajority [3] 36:1 40:18 59:22 supersede [1] 58:16 supersedes [1] 57:8 supported [1] 68:5 supporting [3] 1:25 2:11 60:8 supportive [1] 29:12 suppose [1] 66:8 SUPREME [5] 1:1,14 11:24 14:22 41:5 surely [1] 24:21 surmount [1] 57:25 surprisingly [1] 18:22 suspension [1] 67:10 Suther [1] 44:19 Sydney [2] 56:18,18 sympathetic [1] 22:9 system [24] 8:4,9,10 10:5 13:2,17 21:22 24:17 30:23 37:19 50:15 52:16 56:3 63:5 65:21,24 66:4,9,14 71:13 76:23 80:15,18 81:2 systemic [1] 20:15 systemically [1] 9:22 systems [1] 80:3</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tainted [1] 47:20 talked [3] 18:18 19:15 54:24 Tasmania [1] 14:10 Tasmanian [2] 14:7 57:18 Teague [65] 4:7 8:24 14:17 21:1 25:2,4,17 27:11,19 29:19 36:10 39:16 40:10 41:3 45:22,22,22,25 46:3,14 49:20,21 53:6,10,23,24,24, 25 54:7,8,15 57:6,8,21 58:8,8,16, 20 60:16 61:5 62:9 65:9 66:4,24 67:4,14,20 68:9,10,18,19 69:3 70:21 73:14 74:13,22 75:1,5,13,23 76:16,20 79:16 80:5 81:14 tells [1] 37:17 term [3] 40:2 45:11 63:11 terms [2] 28:10 53:11 terrible [1] 35:9 test [3] 15:9 53:13 62:17 text [2] 66:20 71:25 THEDRICK [1] 1:3 theoretical [1] 79:2 There's [20] 5:15 12:20 13:14 25:2</p>	<p>37:9 38:18 51:16 55:8 64:19 65:14 68:10 72:2,5,6,6,6,25 74:10 75:11 77:23 therefore [1] 6:10 they've [1] 7:14 thinking [3] 28:6 74:11,22 Thomas [24] 8:16,17 9:4 10:8,17 11:5 12:6 14:16 26:14 38:15,16 39:3,11 40:1,20 57:4 63:7,8,13 64:10 65:3,16 77:7 78:4 thorn [1] 81:1 thoroughly [1] 34:11 though [5] 10:5 19:16 21:25 26:20 53:15 thousand [2] 12:19 17:23 thousands [1] 35:9 three [5] 13:16 20:10 27:12 35:10 37:21 threshold [1] 58:9 throughout [2] 44:3 50:8 thumb [2] 40:5 77:21 tiger [1] 14:7 tigers [1] 57:19 today [8] 20:19 22:2 23:9 31:3 32:16 70:17 73:13 79:13 together [4] 9:13,14,15 12:3 took [5] 22:19 25:24 30:24 53:16 64:15 total [2] 17:9 41:11 totally [1] 42:11 toward [1] 40:13 towards [1] 27:14 tradition [2] 8:13 9:13 translates [1] 10:9 trauma [1] 79:25 treated [2] 40:8 58:8 trial [24] 3:15 5:4,10 9:3 20:5,15 26:25 27:3 30:24 36:2 39:10 47:20, 24 48:2 50:9 60:23 61:1 63:21 65:22 72:9,10 73:21 79:22 81:11 trials [10] 4:25 12:12 13:9 19:1 28:10 35:11 38:3 40:25 42:9 52:6 tricky [1] 77:18 tried [1] 21:25 trouble [2] 32:2 50:11 troubled [1] 48:14 troubling [1] 56:7 true [5] 32:15 50:13 70:24 72:12 82:7 trying [6] 31:22 32:8 52:16 66:1 68:14 72:15 turn [1] 7:19 TV [1] 14:5 twice [1] 77:23 two [32] 4:5,7 5:15 6:24 7:10 11:10 12:3 13:16 19:11 21:14 23:2,5 24:1,16 27:7,7,13,18 30:19 31:25 33:21 37:21 40:23 41:21 44:21 50:12, 16 55:4,18,19 77:14 80:13 type [4] 13:18 21:22 26:3 32:4 types [2] 21:15 33:15 typical [1] 36:24</p> <hr/> <p style="text-align: center;">U</p> <hr/>
---	--	--	---

Official - Subject to Final Review

<p>Ultimately ^[4] 3:25 43:4 65:9 81:9 unanimity ^[25] 9:3 18:23 19:4 22:11 23:23 24:2 29:25 34:4 36:4 44:10 48:20 59:21,24 62:15 65:24 66:21 69:9,11,24 70:7,14 71:7 72:11 80:12 81:10 unanimous ^[24] 5:13 6:18 7:5 9:6,14,21 10:10,15 12:25 15:25 20:17 21:10,13 24:5 27:4 31:15,20 33:4,14 39:1 42:14 61:2,14 71:16 uncomfortable ^[1] 81:1 unconstitutional ^[2] 4:10 82:13 under ^[19] 4:6 12:1 29:25 39:16,16 40:9 46:3 54:3,7 57:19 58:24 59:7,9 61:8 64:5 66:23 68:9,19 81:14 undermine ^[3] 36:3 42:4 59:25 undermines ^[1] 49:5 understand ^[6] 30:18 31:13 52:10,24 54:4 73:13 understanding ^[5] 25:23 32:2 43:21 44:23 64:2 understood ^[4] 63:17 77:10,15,19 undoubtedly ^[1] 35:25 unfair ^[6] 10:5 19:16 30:17 35:12 36:2 59:23 unfortunate ^[1] 55:6 unique ^[3] 6:25 24:7 81:3 UNITED ^[8] 1:1,15,24 2:10 11:24 14:22 59:3 60:7 universe ^[2] 6:25 52:13 unlike ^[1] 8:19 unlikely ^[2] 74:4,18 unquestionably ^[1] 35:14 unreasonable ^[2] 6:13 57:14 unsettles ^[1] 35:8 up ^[13] 20:19,22 21:23 23:5 24:11 26:23 33:19 39:9 59:16 73:11 75:7 76:6 79:7 uses ^[2] 55:9,11 using ^[1] 28:20 utilize ^[1] 46:16</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacator ^[1] 62:25 valid ^[1] 70:6 value ^[2] 4:14 42:8 VANNOY ^[2] 1:6 3:5 variations ^[1] 24:25 varies ^[1] 13:13 venire ^[1] 55:12 verdict ^[35] 3:11,11,21,24 5:13 7:15 17:17 19:13,14,15 20:2,2,17 21:10,13 30:14 31:15 32:5,5,10 33:1,15 34:7,8 35:1 36:1,4 40:18 43:4 49:7 55:17 59:25 64:7 73:4,6 verdicts ^[5] 7:18 42:2 66:11,16 69:10 versus ^[20] 3:5 7:21,23 9:6 10:10 15:14 23:24 28:20 29:10 30:25 42:12 43:12 62:10 63:22 64:6 66:12 67:21 73:3 75:3 78:15 viable ^[1] 11:16 victims ^[3] 35:13 36:9 79:25 view ^[9] 22:10,20 30:10,11 40:2 57:</p>	<p>18 75:8 77:20 78:25 viewed ^[5] 33:22 34:1 35:20 50:14 81:16 viewpoint ^[1] 23:8 views ^[1] 23:1 violence ^[1] 47:20 virtually ^[1] 35:18 voice ^[2] 63:15 78:10 voir ^[1] 56:14 vote ^[2] 21:14 80:24 voted ^[4] 32:21,22 33:8,10 votes ^[2] 4:12 23:10</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wainwright ^[4] 7:21,24 30:25 43:13 wanted ^[2] 29:9 76:6 WARDEN ^[1] 1:6 Washington ^[2] 1:10,23 water ^[1] 24:18 watered ^[1] 23:25 watered-down ^[1] 11:3 waterhead ^[1] 44:13 watershed ^[52] 4:23 8:6 13:22 14:2 15:8,10,18 16:2 18:17 20:8 24:23 25:3 26:4 34:2 35:24 36:1 43:15,18 44:2,9,13,17 45:12,16 46:11,15 47:16 48:25 53:2,19,24 54:9,11 57:9,17 59:8,22 60:22 61:1 62:7,16 67:25 69:5 70:23 71:2 73:14,16 74:19 75:18 76:10,14 81:17 way ^[13] 9:10 20:3,4 25:1 31:24 35:20 38:13 40:5,14 58:13 62:6 71:11 75:10 ways ^[2] 33:21 42:21 Wednesday ^[1] 1:11 weight ^[1] 60:19 weighted ^[1] 27:13 whatever ^[3] 19:22 60:17 72:10 whereas ^[2] 21:19 29:5 Whereupon ^[1] 82:18 whether ^[28] 5:20 8:10 9:12 14:16,19,25 16:2 17:7 19:9 20:15 30:23 31:22 32:20 33:14 39:12 40:15 44:16,22 46:2 48:7 49:3 51:11 54:1,2 57:4 62:1 72:4 76:10 white ^[1] 56:19 White's ^[1] 70:3 who's ^[1] 66:3 whole ^[2] 13:21 75:5 Whorton ^[3] 26:17 63:18 71:23 will ^[16] 3:3 5:3,25 11:14,15 12:12,16,21,22 21:16 33:11 40:25 53:9 65:19 74:4 79:11 win ^[1] 12:11 wind-up ^[1] 14:14 Winship ^[2] 49:18 80:15 within ^[2] 65:23 80:17 without ^[7] 8:3 14:18 28:11 47:25 48:3,10 79:17 woman ^[1] 55:21 words ^[1] 65:25 work ^[1] 80:13 worked ^[1] 76:24</p>	<p>works ^[1] 18:24 worried ^[2] 76:21 78:23 wrap ^[4] 33:19 59:16 79:7,7 writ ^[4] 47:11 48:6,7 67:17 written ^[1] 7:22 wrongful ^[4] 64:3 77:12 78:12,24 wrongfully ^[3] 31:22 48:19 77:24 wrongly ^[1] 4:21</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year ^[4] 3:12 13:9,14 17:7 years ^[2] 22:11 35:21</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zoo ^[1] 14:8</p>
---	---	--