

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -  
DAVID SHINN, DIRECTOR, ARIZONA            )  
DEPARTMENT OF CORRECTIONS,            )  
REHABILITATION AND REENTRY,            )  
  Petitioner,            )  
  v.                            ) No. 20-1009  
DAVID MARTINEZ RAMIREZ,                )  
  Respondent.            )  
- - - - -

Pages: 1 through 60  
Place: Washington, D.C.  
Date: December 8, 2021

---

**HERITAGE REPORTING CORPORATION**  
*Official Reporters*  
1220 L Street, N.W., Suite 206  
Washington, D.C. 20005  
(202) 628-4888  
[www.hrccourtreporters.com](http://www.hrccourtreporters.com)

1           IN THE SUPREME COURT OF THE UNITED STATES  
2   - - - - -  
3   DAVID SHINN, DIRECTOR, ARIZONA           )  
4   DEPARTMENT OF CORRECTIONS,            )  
5   REHABILITATION AND REENTRY,            )  
6                                    Petitioner,            )  
7                                    v.                            ) No. 20-1009  
8   DAVID MARTINEZ RAMIREZ,                )  
9                                    Respondent.            )  
10  - - - - -

11  
12                                    Washington, D.C.  
13                                    Wednesday, December 8, 2021

14  
15                                    The above-entitled matter came on for  
16   oral argument before the Supreme Court of the  
17   United States at 11:59 a.m.

18  
19   APPEARANCES:  
20   BRUNN W. ROYSDEN, III, Solicitor General,  
21        Phoenix, Arizona; on behalf of the Petitioner.  
22   ROBERT M. LOEB, ESQUIRE, Washington, D.C.; on behalf  
23        of the Respondent.

24  
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	BRUNN W. ROYSDEN, III, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	ROBERT M. LOEB, ESQ.	
7	On behalf of the Respondent	30
8	REBUTTAL ARGUMENT OF:	
9	BRUNN W. ROYSDEN, III, ESQ.	
10	On behalf of the Petitioner	57
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:59 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 20-1009, Shinn versus Ramirez.

Mr. Roysden.

ORAL ARGUMENT OF BRUNN W. ROYSDEN, III,  
ON BEHALF OF THE PETITIONER

MR. ROYSDEN: Mr. Chief Justice, and may it please the Court:

The issue presented in this case is fundamentally a question of statutory interpretation. When Congress enacted 2254(e)(2) as part of AEDPA, it created a high bar for federal evidentiary hearings on habeas claims involving state convictions.

It codified the first part of the Keeney test in the opening part of (e)(2) by echoing the words "failure to develop" from Keeney. And this Court, in Williams and Holland, has already held that attorney negligence counts as failure to develop under (e)(2) based on agency principles.

If a failure to develop has occurred, Congress did not merely repeat Keeney and

1 Coleman's cause and prejudice test for excusing  
2 it but, rather, supplanted it by specifying in  
3 subsections (A) and (B) of (e)(2) the cause and  
4 prejudice required.

5 Congress thus spoke clearly, and the  
6 courts' role is to apply the statutory language.  
7 That no fact-finder could have found the  
8 prisoner guilty is not enough. The prisoner  
9 must also satisfy (e)(2)(A) by showing either a  
10 new rule of constitutional law or that the  
11 factual predicate could not have been previously  
12 discovered through the exercise of due  
13 diligence.

14 This is an intentionally high bar.  
15 Respondents rely on Martinez to create an  
16 additional exception to (e)(2) beyond (A) and  
17 (B). That proposition fails. Martinez was  
18 addressing cause for the cause and prejudice  
19 test for excusing a procedural default.  
20 Congress did not codify the procedural default  
21 or the excuses for overcoming it in AEDPA.

22 In contrast, Congress did  
23 affirmatively codify the circumstances under  
24 which cause and prejudice is established to  
25 permit an evidentiary hearing following a

1 failure to develop under (e)(2).

2 Martinez's judge-made rule cannot  
3 rewrite Congress's statutory questions --  
4 standard.

5 I invite questions from the Court.

6 JUSTICE THOMAS: Counsel, the -- it  
7 seems rather odd that you would -- we would  
8 allow a -- we will excuse a default under  
9 Martinez but not allow the prisoner to make his  
10 underlying claim or develop his evidence --  
11 evidentiary basis for his underlying claim.

12 MR. ROYSDEN: Well, Your Honor,  
13 Martinez did not consider this question.  
14 Martinez --

15 JUSTICE THOMAS: Yeah, I understand  
16 that. But it's not -- it seems pretty worthless  
17 to have -- to say, well, you have -- we'll  
18 excuse the procedural default. To what end?

19 MR. ROYSDEN: In some cases, there may  
20 already be evidence in the state court record.

21 JUSTICE THOMAS: Okay. Let's take  
22 this case. To what end if you're not allowed to  
23 develop the underlying claim?

24 MR. ROYSDEN: Well, on this case, our  
25 position is that there -- the court -- the

1 district court should not have gone into a  
2 Martinez hearing in Jones without looking  
3 whether there was enough state court -- state  
4 record evidence to establish ineffective  
5 assistance of trial counsel in the first place.  
6 It's a -- it's a fruitless exercise. But that  
7 doesn't mean that Martinez can overcome the  
8 statutory language. The court should simply cut  
9 it off at the beginning. In the Ramirez case,  
10 the evidence just wasn't there either way.

11 And so -- so the short answer is  
12 Martinez can be accommodated. The district  
13 court just shouldn't go down the path of -- of  
14 having a Martinez hearing if there's not going  
15 to be state court evidence to establish the  
16 ultimate claim.

17 CHIEF JUSTICE ROBERTS: But it's a  
18 basic syllogism. The idea is, if you do get the  
19 right to raise the claim for the first time,  
20 because your counsel was incompetent before,  
21 surely you have the right to get the evidence  
22 that's necessary to support your claim. I mean,  
23 the whole reason some states say you shouldn't  
24 raise your incompetence claim until after the  
25 direct proceedings is that it's much more

1 efficient and natural to have an evidentiary  
2 hearing at that time, rather when you're halfway  
3 up the chain between the trial court and the  
4 court of appeals.

5 MR. ROYSDEN: I -- I think Judge  
6 Collins in his dissent pointed out the flaw in  
7 that logic, which is there's asymmetric  
8 intervention here. Congress did specify in  
9 (e)(2) when you can have a hearing. So the --  
10 the problem is the major premise of that  
11 syllogism is faulty. There's not a --

12 CHIEF JUSTICE ROBERTS: Well, they  
13 specified that before our decision in Martinez,  
14 right?

15 MR. ROYSDEN: Could you -- sorry.  
16 Could you --

17 CHIEF JUSTICE ROBERTS: I'm sorry,  
18 they specified that before our decision in  
19 Martinez?

20 MR. ROYSDEN: I -- I'm talking about  
21 Judge Collins's dissent from denial en banc in  
22 this case.

23 CHIEF JUSTICE ROBERTS: Yeah. But I  
24 thought the point you were making is that he had  
25 an explanation for why the language in (e)(2)



1 trumped the theory that Martinez gave you the  
2 hearing and so then implicitly gave you the  
3 right to present evidence.

4 MR. ROYSDEN: I -- I think it's --  
5 it's incorrect to say that Martinez implicitly  
6 gave you the right to present evidence. That's  
7 just not in Martinez.

8 The -- the Court was presented with a  
9 constitutional question, you know, when a state  
10 breaks out ineffective assistance --

11 CHIEF JUSTICE ROBERTS: You're --  
12 you're certainly right about that.

13 MR. ROYSDEN: Right.

14 CHIEF JUSTICE ROBERTS: It's not in --  
15 not in Martinez. I mean, if it were, we  
16 wouldn't be here. But in what sense -- in other  
17 words, if your claim of incompetence has to do  
18 with some factual evidence, by saying to the  
19 prisoners, look, don't raise it on direct  
20 appeal, raise it collaterally, you use -- you  
21 lose the ability to press what is your central  
22 claim of incompetence.

23 MR. ROYSDEN: Correct, but I think  
24 Congress envisioned that in subsection (i) where  
25 Congress expressly said incompetence of

1 post-conviction counsel is not a basis for  
2 habeas relief.

3 CHIEF JUSTICE ROBERTS: But when --  
4 was that also before Martinez?

5 MR. ROYSDEN: Yes. That's in the  
6 AEDPA --

7 CHIEF JUSTICE ROBERTS: Well, then I  
8 don't think you can say Congress envisioned the  
9 problem. It only came up when we decided  
10 Martinez.

11 MR. ROYSDEN: Well, but I'm saying,  
12 even if Martinez had answered the question  
13 presented, which is there a constitutional right  
14 to effective post-conviction counsel when that's  
15 the first chance to raise ineffectiveness of  
16 trial counsel, that would not be a claim that  
17 could be brought in federal habeas in district  
18 court because Congress has stripped the district  
19 courts of jurisdiction, just -- just as district  
20 courts don't grant habeas relief on Fourth  
21 Amendment grounds.

22 JUSTICE KAVANAUGH: The --

23 MR. ROYSDEN: That would be a claim  
24 that would --

25 JUSTICE KAVANAUGH: Keep going.

1 Sorry.

2 MR. ROYSDEN: -- have to be brought in  
3 state court because of subsection (i). That's  
4 my point.

5 JUSTICE KAVANAUGH: I guess picking up  
6 on Justice Thomas's and the Chief Justice's  
7 question, though, doesn't it really gut Martinez  
8 in a huge number of cases and then what --  
9 what's the -- what's the point of Martinez? The  
10 Court obviously carefully crafted an opinion to  
11 give you the right to raise an ineffective  
12 assistance claim, to make sure it's considered  
13 at least once, and this would really gut that in  
14 a lot of cases. So I -- I need -- need a good  
15 explanation for how to do that or why to do that  
16 given what Martinez says.

17 MR. ROYSDEN: I think, to the extent  
18 that Martinez cannot be -- is reconciled with  
19 (e)(2), then, at the end of the day, Martinez  
20 should be overruled. I mean, Martinez offered a  
21 equitable exception to excusing a procedural  
22 default.

23 JUSTICE KAVANAUGH: Assuming we don't  
24 do that, what -- what's your next answer?

25 MR. ROYSDEN: Then Martinez can be --

1 can be kept to what was expressly a very narrow  
2 question, which is when is there cause to excuse  
3 a procedural default.

4 JUSTICE KAVANAUGH: But it was a  
5 narrow question on a -- on an important issue.  
6 And I don't -- I mean, you have to assume that  
7 the Court majority was unaware somehow of how  
8 this would play out and -- and was articulating  
9 this important right about when you could raise  
10 something but didn't realize, oh, actually,  
11 you're never really going to be able to pursue  
12 it because of this other provision.

13 I mean, that's -- it's hard to  
14 envision the Court thinking that that would make  
15 any sense.

16 MR. ROYSDEN: Congress's purpose in  
17 AEDPA and in the bar and evidentiary hearings in  
18 particular specifically imagined the -- the  
19 worst-case scenario, which is a prisoner is  
20 actually innocent. And that's (e)(2)(B). But  
21 that wasn't enough to permit a hearing.

22 It said you still have to meet A. And  
23 A says either it has to be a new rule of  
24 constitutional law or that the evidence could  
25 not have been developed even with diligence. So

1 I think the -- the fundamental question is, what  
2 was Congress's intent? And --

3 JUSTICE KAGAN: But --

4 MR. ROYSDEN: -- here, Congress spoke  
5 clearly, I think, in (e)(2)(B) that innocence  
6 isn't enough here.

7 JUSTICE KAGAN: -- why is it -- I  
8 mean, (e)(2) has a fault standard in it. It  
9 says if the applicant has failed to develop the  
10 factual basis of a claim.

11 And I thought, in these various cases,  
12 you know, it's the usual rule that the attorneys  
13 fault gets attributed to the client, but that's  
14 not always the rule. And what Martinez  
15 essentially is saying is it's not the rule when  
16 that happens.

17 It's not the rule when the state has  
18 directed a person into a post-conviction  
19 proceeding that, at that point, we're going to  
20 ascribe the -- the failure to the state in the  
21 same way that we do when there's a  
22 constitutional claim of ineffective assistance.  
23 We say it's -- it's not your fault. We're going  
24 to ascribe the error to the state.

25 So why isn't Martinez just essentially

1 piggybacking on the -- the Coleman rationale  
2 that this is not your error, and so (e)(2)  
3 doesn't apply?

4 MR. ROYSDEN: So I don't think  
5 Martinez can be understood as -- as  
6 reinterpreting general agency principles. And  
7 in this Court's decision in Davila, which is  
8 from 2017, where it said ineffectiveness  
9 assistance -- ineffective assistance on direct  
10 appeal, you cannot use the Martinez exception.

11 So I don't think you can understand  
12 Martinez as a general agency case. It -- it --  
13 it didn't purport to be that. It cannot  
14 logically be thought of as that because there's  
15 no limiting principle. I don't understand how  
16 the Court can say in Davila the -- the -- the  
17 post-conviction counsel is your agent for  
18 raising an ineffective assistance on direct --  
19 of direct appellate counsel but not your agent  
20 for raising ineffective assistance of trial  
21 counsel. Why -- why are they your agent in one  
22 but not the other?

23 That's not what Martinez did.  
24 Martinez said we're going to create a narrow  
25 equitable exception to the procedural default

1 rule, and when you have a judge-made exception  
2 to a judge-made rule compared to a statute that  
3 has its own exception that is very high, the  
4 statute ultimately has to trump. And -- and  
5 that's why this is ultimately a case of  
6 statutory interpretation.

7 JUSTICE SOTOMAYOR: Counsel, the  
8 problem is that the statute doesn't define what  
9 "at fault" means. It just says as long as you  
10 fail to develop. So, by definition, what  
11 constitutes fault is defined by us, correct?

12 MR. ROYSDEN: Correct. And in --

13 JUSTICE SOTOMAYOR: So stop. One  
14 second, please. Okay? So, in Williams, we said  
15 the question under AEDPA is whether the  
16 Respondents were at fault for not developing the  
17 facts of their claim. So that's the AEDPA  
18 question, okay?

19 We have said in Maples that, if your  
20 attorney abandons you, you are not at fault.  
21 And in Martinez, we said, if your attorney errs  
22 in exactly the situation here by failing to  
23 develop the record on appeal, which was the only  
24 opportunity you had to do it, you are not at  
25 fault.

1                   So I don't understand why you argue  
2                   that the statute, because it doesn't say  
3                   anything about what "at fault" means, why the  
4                   statute forces us to conclude that the  
5                   Respondents are not at fault?

6                   MR. ROYSDEN: Well, because the -- the  
7                   first part of (e)(2) is -- is echoing Keeney,  
8                   was there a procedural default in the first  
9                   place. Martinez is the second step, is there  
10                  cause to excuse that. And then the third step,  
11                  prejudice.

12                  If -- if the correct way to read  
13                  Martinez was that you're not at fault in the  
14                  first place, there should not be a prejudice  
15                  element to excuse the default. So, obviously,  
16                  what Martinez is focused on is, is there cause  
17                  to excuse a default that has occurred? And  
18                  Williams and Holland --

19                  JUSTICE SOTOMAYOR: But how is that --

20                  MR. ROYSDEN: -- both said that  
21                  attorney error is imputed.

22                  JUSTICE SOTOMAYOR: -- how -- how  
23                  different is that from abandonment?

24                  MR. ROYSDEN: It's different because  
25                  general -- Maples was talking about general



1 agency principles. It said, under general first  
2 principles of agency law, if your agent abandons  
3 you by taking a job where they are a law clerk  
4 or they work for an international tribunal that  
5 they cannot even represent you, then they have  
6 abandoned you under general agency principles.

7 That's not what's happened here. The  
8 trial counsel may have been incompetent and  
9 ineffective, but he did not abandon and she did  
10 not abandon her client under agency principles.  
11 And that's the distinction. That's the  
12 fundamental distinction.

13 I think what's important to remember  
14 --

15 JUSTICE SOTOMAYOR: Thank you,  
16 counsel.

17 MR. ROYSDEN: -- is even in Coleman  
18 the attorney, I think he filed his notice of  
19 appeal of the post-conviction, like, 33 days  
20 late. So, I mean, how could the prisoner, if  
21 you just think of it from a -- how is he at  
22 fault for that? Or in, you know, Keeney, the --  
23 the post-conviction counsel failed to bring in  
24 evidence that the interpreter, you know, didn't  
25 properly interpret what nolo contendere meant.

1           In all those cases, it's hard to think  
2 of the -- the prisoner as being at fault in the  
3 sense that we say what he did was wrong.

4           But the point is, under agency  
5 principles, the counsel is the agent and,  
6 therefore, the negligence of the agent is  
7 imputed to the prisoner. And that's what this  
8 Court --

9           JUSTICE KAGAN: Well, except that I  
10 think that Martinez pretty explicitly rejected  
11 that. And I'm just going to quote from a bunch  
12 of different places.

13           MR. ROYSDEN: Okay.

14           JUSTICE KAGAN: But the Court says it  
15 was the state's deliberate choice to move trial  
16 ineffectiveness claims outside the direct appeal  
17 process, and it was that choice that  
18 significantly diminished the prisoner's ability  
19 to assert trial ineffectiveness claims.

20           And so too the Court says it was the  
21 state's procedural framework that made  
22 ineffectiveness qualify as cause for a  
23 procedural default. I mean, that -- all that  
24 language is clearly sort of saying that the  
25 blame here for post-conviction ineffectiveness

1 is ascribed to the state.

2 Now, you know, I mean, this is an  
3 ascription and we can argue whether it really is  
4 the state's fault or, you know, we can argue in  
5 all these contexts about, like, really?

6 But -- but -- but -- but, essentially,  
7 this is the theory of Martinez, that the state  
8 has set up a system in which it's proper to  
9 ascribe the fault to the state, not to the  
10 defendant.

11 MR. ROYSDEN: I think Martinez is not  
12 the last word in Davila we're dealing with.  
13 Imagine that the state -- Arizona said you raise  
14 ineffectiveness of trial counsel on direct  
15 appeal, and your direct appeal attorney was  
16 negligent, they didn't do a good job.

17 You go then to state post-conviction,  
18 and that post-conviction attorney doesn't even  
19 bother to raise that. You're now procedurally  
20 defaulted. And there -- and under Davila, I  
21 don't think you can go to federal habeas.

22 So I don't think the Martinez  
23 discussion about whether the state chose to put  
24 it in post-conviction versus direct appeal  
25 answers the question of, you know, in federal

1 habeas, can you have an evidentiary hearing  
2 under (e)(2). I think that question is a  
3 question Congress answered by using the first  
4 part of the Keeney test, and in Holland and  
5 Williams, this Court has already said attorney  
6 error is attributable to -- to the prisoner.

7 So whether the -- the -- you have to  
8 raise ineffective assistance of trial counsel on  
9 direct appeal or on post-conviction, if the  
10 post-conviction attorney is negligent, that's  
11 going to be attributed to the prisoner for  
12 purposes of federal habeas.

13 JUSTICE ALITO: If the court in  
14 Martinez had accepted the prisoner's argument  
15 that there is a constitutional right, a Sixth  
16 Amendment right to the effective assistance of  
17 counsel in the first post-conviction proceeding  
18 when the state says you can't raise ineffective  
19 assistance of counsel until the first  
20 post-conviction proceeding, then it would  
21 follow, would it not, that the -- the fault of  
22 the ineffective attorney would not be attributed  
23 to the prisoner?

24 MR. ROYSDEN: I -- I -- I think what  
25 would follow is that you would have a claim,

1 potentially a claim for ineffective assistance  
2 of post-conviction counsel. I think it would be  
3 a different question. But then I think (i)  
4 would prevent you from raising that in federal  
5 habeas. You would probably have to raise that  
6 through direct appeal of the state  
7 post-conviction to this Court or through a  
8 subsequent --

9 JUSTICE ALITO: But the court did not  
10 accept that constitutional argument made by the  
11 Petitioner --

12 MR. ROYSDEN: Correct, Your Honor.

13 JUSTICE ALITO: -- which would  
14 potentially have changed the meaning of fault  
15 that was adopted by the Court in Williams, where  
16 it said that the -- that the fault -- that --  
17 that the failure to -- to raise language in  
18 2254(e)(2) imposes a negligence standard. But  
19 the Court didn't do that.

20 MR. ROYSDEN: Correct, Your Honor.

21 JUSTICE ALITO: And so what do you  
22 deduce from that?

23 MR. ROYSDEN: I think what I deduce is  
24 that Martinez was addressing a very narrow  
25 question, which is after there has been a

1 procedural default, can the ineffectiveness of  
2 post-conviction counsel set -- provide cause.  
3 In this one narrow circumstance, the answer is  
4 yes, and then you have to move on to the second  
5 step, which is prejudice.

6 But it's a very -- it's a three-step,  
7 you know, is there procedural default? Yes.  
8 Okay. Do we have cause and prejudice to excuse  
9 it? Martinez expressly said we are very  
10 narrowly saying as an equitable matter the  
11 ineffectiveness of post-conviction counsel can  
12 provide cause to excuse an existing procedural  
13 default.

14 JUSTICE KAGAN: But just to go back to  
15 where the Chief Justice started, over and over  
16 in Martinez, when the Court is saying why this  
17 is important, the Court talks about the role of  
18 the attorney in developing evidence, I mean, you  
19 know, three, four, five times. Martinez was not  
20 under any, you know, misperception that this was  
21 not an evidentiary question essentially.

22 And, you know, as -- as the Chief  
23 Justice said, this is why states do it this way,  
24 put it here, because everybody knows that in the  
25 vast majority of cases it's an evidentiary

1 question, and Martinez talked about it in  
2 exactly those terms. This is what the counsel  
3 is supposed to be doing, is to develop evidence.

4 MR. ROYSDEN: That's correct, Your  
5 Honor. I mean, these are important questions,  
6 and they're often going to require the  
7 development of evidence. But -- but Congress  
8 has answered the question in (e)(2). And from  
9 Congress's point of view, even innocence is not  
10 enough because that only satisfies (B). You  
11 still have to meet (A).

12 This is -- this is a situation unlike,  
13 for example, the one-year statute of limitations  
14 for a claim of actual innocence, where this  
15 Court, I think in McQuiggin, said that gets  
16 around it. This is not a question that was not  
17 on Congress's mind. I mean, Congress was --

18 JUSTICE KAGAN: But -- but --

19 MR. ROYSDEN: -- very specific.

20 JUSTICE KAGAN: -- Congress has only  
21 answered the question if we decide that the  
22 fault standard is met, and that's the entire  
23 question here, is -- is the fault standard met?

24 It wouldn't be met if this were a  
25 constitutional ineffectiveness claim, as Justice

1 Alito pointed out. So -- so is it met here?  
2 And as I said, I -- I do think that Martinez,  
3 although it didn't say that there was a  
4 constitutional right, that the whole theory of  
5 Martinez is about, you know what, this is --  
6 this is the state's responsibility to take  
7 ownership of this and to make sure it doesn't go  
8 south.

9 MR. ROYSDEN: I think to say the fault  
10 standard would be met if this were itself a  
11 constitutional claim is not -- is not  
12 necessarily correct because that's for the  
13 claim. The Martinez question is kind of a  
14 predicate question. Can you -- can you have an  
15 evidentiary hearing on the claim in the first  
16 place?

17 So, if it was made a constitutional  
18 right, then maybe it would support a claim,  
19 except for the fact that subsection (i) says you  
20 can't do it.

21 But put aside (i), it might be a  
22 claim. That doesn't mean it's not a procedural  
23 default. And I don't think this Court in  
24 Martinez was purporting to set forth general  
25 agency principles because, if that were true, in



1 Davila, the -- there's no way to distinguish  
2 that position from Davila, where you said, well,  
3 the post-conviction counsel was negligent in  
4 raising ineffectiveness of direct appeal  
5 counsel.

6           How could the post-conviction counsel  
7 be an agent for one specific purpose -- or not a  
8 -- I should say not an agent for one specific  
9 purpose, which is to factually develop and raise  
10 the issue of ineffectiveness of trial counsel,  
11 but an agent for every other claim that could be  
12 raised on habeas?

13           JUSTICE KAVANAUGH: But you have --  
14 you have a forceful argument on the statutory  
15 language, and I think this case is close for  
16 that reason. But going back to Martinez -- you  
17 went to Davila -- but Martinez did contemplate,  
18 it seems, that ineffective assistance of trial  
19 counsel, that claim and that claim alone, I  
20 think, could be raised in federal habeas, even  
21 if otherwise defaulted, because it wouldn't be  
22 attributed to the client.

23           And then the question becomes, well,  
24 did they really contemplate that it could be  
25 raised but not actually pursued? Which seems

1 like a very odd way to attribute what the Court  
2 -- you know, what the Court did in Martinez.  
3 That's what I'm trying to figure out. There's  
4 obvious tension here, and that's what I'm trying  
5 to figure out.

6 MR. ROYSDEN: Right. And, again, our  
7 position is, to the extent that one has to give,  
8 Martinez should give because it's judge-made.  
9 But I think that the fundamental purpose of --

10 JUSTICE KAVANAUGH: Well, what's wrong  
11 --

12 MR. ROYSDEN: -- AEDPA --

13 JUSTICE KAVANAUGH: Sorry to  
14 interrupt, but what's wrong -- I think this is  
15 really the heart of it for me -- is what's wrong  
16 with saying that Martinez said that you're not  
17 at fault in this one specific area? In other  
18 words, the fault's not going to be attributed to  
19 the client in this one very particular specific  
20 area, and then that applies to the "fail to  
21 develop" language here.

22 MR. ROYSDEN: Well, this is certainly  
23 not my position, but if that's what Martinez  
24 meant, then I don't understand why you have to  
25 show prejudice because, if there was no default

1 in the first place, then there's no reason to  
2 get to cause and prejudice. You would just move  
3 right on to the ineffective assistance of trial  
4 claim.

5 But I think Pinholster, to me, is  
6 really a case that's critical to understanding  
7 this, and in Pinholster, this Court spoke about  
8 Williams, and it basically said Congress has set  
9 up two independent bars to really restrict  
10 habeas. I think the Court said this was a  
11 watershed change in habeas.

12 And it said you have (d)(1), which if  
13 the -- if it reached the merits, the court has  
14 to defer to the state court, and if (e)(2), a  
15 really high bar to evidentiary hearings.  
16 Congress was very clear. I mean, I think the --  
17 the answer consistent with AEDPA is, if somebody  
18 has a -- a good claim, then they need to go to  
19 state court and file a second or successive  
20 habeas petition.

21 Most states -- or, pardon,  
22 post-conviction petition. Most states allow  
23 actual innocence as a ground. In Arizona, we  
24 allow that. So you could go to court, you could  
25 develop, you know, your record in state court.

1 And I think that's the answer given the  
2 statutory requirements of AEDPA, which are very  
3 strict in this context.

4 CHIEF JUSTICE ROBERTS: Thank you,  
5 counsel.

6 Justice Thomas?

7 Justice Breyer, anything further?

8 JUSTICE SOTOMAYOR: I have one  
9 question, counsel.

10 You devote just one paragraph to  
11 Ramirez's waiver claim. You admit that you did  
12 not raise the -- this statutory argument that  
13 you're making today until your petition for  
14 rehearing. Normally, that's waiver.

15 I don't know how you can claim that  
16 you didn't know that this was at issue when  
17 Mr. Ramirez, in his appellate brief -- I'm  
18 quoting pages 48 -- 46 to 48 -- he specifically  
19 says the equitable remedy developed in Martinez  
20 would be pointless without an opportunity for  
21 federal fact development.

22 Federal court is Ramirez's opportunity  
23 to present the evidence that should have been  
24 presented years ago but was not due to prior  
25 counsel's failure. That's a direct request to

1 say I was entitled to my hearing. And yet you  
2 don't raise this argument.

3 MR. ROYSDEN: Well --

4 JUSTICE SOTOMAYOR: Why shouldn't we  
5 DIG?

6 MR. ROYSDEN: -- you should not DIG  
7 because, in Ramirez, it was even more egregious,  
8 because even taking all the evidence from the  
9 Martinez proffer, the court -- the Ninth Circuit  
10 said yet -- we're going to have yet another  
11 hearing on the merits, on the claim. So  
12 Martinez -- or, pardon me, Ramirez is directly  
13 contrary to the language of (e)(2). And that's  
14 an issue that we raised.

15 JUSTICE SOTOMAYOR: I'm sorry,  
16 counsel, that -- that just gets to the point.  
17 You didn't raise this argument until your  
18 petition for rehearing.

19 MR. ROYSDEN: Our -- our position up  
20 to that point was, even if you look at his  
21 evidence, it's not enough to establish --

22 JUSTICE SOTOMAYOR: That was your --

23 MR. ROYSDEN: -- ineffectiveness.

24 JUSTICE SOTOMAYOR: -- that was your  
25 entire argument. It wasn't that he wasn't

1 entitled to rely on that evidence.

2 MR. ROYSDEN: I wouldn't say it was  
3 our entire argument, but that was our position.  
4 When the Ninth Circuit said you've met Martinez  
5 and now we're going to have a no -- a new  
6 hearing on the claim, go back and do that, and  
7 we said no, that violates (e)(2). That's what  
8 we preserved. This was an alternative basis for  
9 affirmance. I don't think we had to raise it  
10 pre-petition for rehearing to preserve it.

11 JUSTICE SOTOMAYOR: Thank you,  
12 counsel.

13 MR. ROYSDEN: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice Kagan,  
15 anything further?

16 Justice Gorsuch?

17 JUSTICE KAVANAUGH: Just one question.  
18 I'm just going to ask a question that  
19 Respondent's brief asked and have you answer it  
20 before -- before they stand up.

21 They say on page 2, if you're not at  
22 fault for failing to raise a claim, how can you  
23 be at fault for failing to develop that claim?

24 So just give you a chance to answer  
25 their question before they stand up.

1                   MR. ROYSDEN: My answer is you are at  
2                   fault. Martinez said you have cause to excuse  
3                   it. And you do -- you have to map that onto  
4                   (e)(2). You've now satisfied the first part of  
5                   (e)(2), so now you have to satisfy (A) and (B).  
6                   Unfortunately for them, they cannot satisfy (A)  
7                   and (B). They need to go to state court.

8                   CHIEF JUSTICE ROBERTS: Justice  
9                   Barrett?

10                   Thank you, counsel.

11                   MR. ROYSDEN: Thank you, Your Honor.

12                   CHIEF JUSTICE ROBERTS: Mr. Loeb.

13                   ORAL ARGUMENT OF ROBERT M. LOEB  
14                   ON BEHALF OF THE RESPONDENT

15                   MR. LOEB: Mr. Chief Justice, and may  
16                   it please the Court:

17                   The limits imposed by section  
18                   2254(e)(2) only apply where, in the words of the  
19                   statute, "the applicant failed to develop the  
20                   factual basis of a claim." And the statute  
21                   doesn't define "applicant failed to develop,"  
22                   but, in Michael Williams, this Court held that  
23                   the phrase requires a finding of fault. So, in  
24                   arguing that Mr. Jones and Mr. Ramirez should be  
25                   held at fault here, the state relies on Michael

1 Williams' recitation of the general rule that an  
2 attorney's acts are generally to be attributable  
3 to a client.

4 But this Court has long recognized  
5 that attribution rule is not categorical in  
6 nature. Indeed, the state agrees that the  
7 failures of counsel are not to be attributed to  
8 the applicant when the attorney's  
9 ineffectiveness is at the Strickland level and  
10 when it occurs either at a criminal trial or on  
11 the direct criminal appeal.

12 This Court in Coleman left open the  
13 question of the fault -- the attribution where  
14 here -- like here, the state labels the first  
15 review, instead of an appeal, instead calls it  
16 post-conviction review.

17 This Court nine years ago squarely  
18 addressed that open question, and this Court  
19 examined the very same Arizona system at issue  
20 here, where the only review of -- provided for  
21 ineffective counsel claims is on post-conviction  
22 review. And where that post-conviction review  
23 was not collateral or civil but is, under  
24 Arizona rule, part of the original criminal  
25 action, in that specific context, this Court



1 held that the labels used by the state do not  
2 matter and that the fault attribution is not to  
3 the claimant for the counsel's failures, just  
4 like in a direct appeal situation.

5 This Court held that the Arizona  
6 post-conviction review for such ineffective  
7 trial counsel claims is in many ways the  
8 equivalent of a direct appeal and that in both  
9 contexts, the failures of counsel when it meets  
10 the Strickland levels are not to be attributed  
11 to the claimant. That same fault calculus  
12 applies under (e)(2) and fully supports holding  
13 that (e)(2)'s restrictions do not apply to Mr.  
14 Jones or Mr. Ramirez.

15 I welcome your questions.

16 JUSTICE THOMAS: Counsel, if we --  
17 well, first of all, I thought, in Martinez, we  
18 said that that was strictly procedural default?

19 MR. LOEB: It was addressing the --  
20 the situation of procedural default and cause  
21 and prejudice, correct, Your Honor.

22 JUSTICE THOMAS: Yes. And it  
23 emphasized that it was a -- in effect, a first  
24 appeal?

25 MR. LOEB: Correct. It was saying

1 that it is the first opportunity of review, just  
2 like the situation of an appeal.

3 JUSTICE THOMAS: So I thought that it  
4 sort of -- the suggestion was it was sui  
5 generis, but I -- I'll let that go.

6 If we -- if -- if -- if it's going to  
7 be the practice to use Martinez to eventually  
8 require a full evidentiary hearing, why don't we  
9 just apply AEDPA, 2254(e)(2) up front to the  
10 Martinez hearing?

11 MR. LOEB: Your Honor, the first  
12 question under (e)(2) is whether you're at  
13 fault. And so the question is are you going to  
14 be at fault under Martinez, the first stage is  
15 for cause and prejudice, you defaulted your  
16 claim, you didn't raise it in state court, you  
17 need an inquiry as to whether you're to be held  
18 at fault for failing to raise that claim.

19 So counsel here suggests that there's  
20 some -- some separation between -- that because  
21 cause was found, that there was no fault. But,  
22 here, there was the raised -- the claim wasn't  
23 raised, and under Martinez --

24 JUSTICE THOMAS: Do you -- don't you  
25 think it's a bit odd, though, that you can use

1 that to basically eviscerate the restrictions of  
2 AEDPA?

3 MR. LOEB: It doesn't eviscerate the  
4 restrictions of AEDPA. What it's doing is  
5 recognizing that where you're -- you're not at  
6 fault for not raising a claim, you're not going  
7 to be held ordinarily, just as a matter of logic  
8 and precedent, aren't going to be held at fault  
9 for failing to develop that same claim.

10 Indeed, Congress recognized that.  
11 This Court has long recognized it. In Keeney,  
12 this Court said that those two inquiries of  
13 whether you're at fault for not raising it and  
14 not developing it, that there's little to be  
15 said for applying different standards.

16 And in Michael Williams, at page 444,  
17 this Court said a ruling on one will be  
18 sufficient for the other. And when Congress  
19 adopted the Keeney standard, it understood that  
20 under Keeney, there was no delta, as a matter of  
21 logic and force, between those two inquiries of  
22 whether you're at fault for failing to raise the  
23 claim and failing to develop the claim.

24 And that's why, in Martinez and  
25 Trevino, this Court clearly anticipated that

1 those -- these important substantial ineffective  
2 trial counsel claims would be developed once  
3 cause was -- was found and that a person was  
4 found not to be at fault for failing to raise  
5 it.

6 And the rationale that this Court  
7 applied in Martinez for why you weren't at fault  
8 for not bringing the claim in the first instance  
9 applies squarely to (e)(2) as well.

10 So Martinez says the post-conviction  
11 review, it provided, it said, in many ways, the  
12 equivalent of a prisoner's direct appeal. And  
13 all agree that if these errors occurred in a  
14 state where you could raise post -- you could  
15 raise ineffectiveness of trial counsel on  
16 appeal, everyone agree you would not be  
17 attributing fault here to Mr. Jones and Mr.  
18 Ramirez.

19 So the fact that these are -- that in  
20 -- in Arizona, the way they've structured their  
21 system, the fact that the post-conviction review  
22 is meaningfully -- in every meaningful way  
23 serving the exact same role as the appeal and  
24 functionally the same, can't be overlooked.

25 So, in both instances, in a direct

1 appeal and here, in Arizona, the way they've  
2 constructed post-conviction review, this is your  
3 first and only right of review of an ineffective  
4 trial counsel claim.

5 JUSTICE ALITO: Well, this is a --  
6 this is really a tough case. You have a strong  
7 argument that accepting the state's  
8 interpretation of 2254(e) and Martinez would --  
9 of 2254(e) would drastically reduce what a lot  
10 of the lower courts have thought Martinez means.

11 And I certainly understand why the  
12 courts of appeals have interpreted Martinez the  
13 way they did. But the fact remains that we have  
14 to follow the federal habeas statute. We have  
15 to follow AEDPA, unless it's unconstitutional.

16 And 2254(e) was interpreted in Michael  
17 Williams, the Court interpreted what it means to  
18 failure -- for there to be a failure to develop  
19 the facts of a claim, and it said that that  
20 occurs when there is lack of diligence or some  
21 greater fault attributable to the prisoner or to  
22 the prisoner's counsel. That's where things  
23 stood at the time when we decided Martinez.

24 Now, you know, it's nice to attribute  
25 omniscience to the Court. The fact of the

1 matter is that this whole 2254(e) issue was not  
2 briefed by anybody in Martinez, and the Court  
3 didn't address it.

4           So I think what you have to explain is  
5 how Martinez, which didn't purport to interpret  
6 2254(e) and certainly didn't purport to overrule  
7 Michael Williams, which is the case you have to  
8 rely on to -- in -- in support of your  
9 interpretation of failure to -- to -- to --  
10 failure to raise, how Martinez could be  
11 interpreted now to have changed what that  
12 statutory phrase means?

13           MR. LOEB: Yeah, we're not arguing  
14 that Martinez changed the statutory phrase and  
15 we're not arguing that Michael Williams needs to  
16 be overruled. And we're not disagreeing with  
17 the general rule that ordinary counsel's  
18 failures will be attributed to the client.

19           But it's always been understood and  
20 there's no disagreement that in some instances,  
21 in limited instances, that attorneys' failures  
22 are not attributed to the client. Everyone  
23 agrees that if they're -- these same errors had  
24 occurred in a state on a direct appeal  
25 situation, that they would not be -- the same

1 failures at a Strickland level would not be  
2 attributed to the client. And so Martinez --

3 JUSTICE ALITO: That's true, but that  
4 -- that's because there would be a Sixth  
5 Amendment violation there.

6 MR. LOEB: And Martinez --

7 JUSTICE ALITO: And that's exactly  
8 what the Court did not adopt in Michael  
9 Williams.

10 MR. LOEB: It didn't address. It  
11 didn't address. It didn't -- it didn't reject  
12 it. It just said we don't need to get there.

13 JUSTICE ALITO: Well, it didn't adopt  
14 it. So is that what you want us to do? You  
15 want us to say extend the application of the  
16 Sixth Amendment?

17 MR. LOEB: No, Your Honor. Just like  
18 Martinez, you don't need to reach the issue.  
19 You just need to look at that all the attributes  
20 for fault, that animate for not attributing  
21 fault in the situation in Coleman and for a  
22 direct appeal situation equally apply here.

23 So Martinez, there's two major --  
24 major elements you need to recognize. One is  
25 the equivalency, that it's just like a direct

1 appeal in this circumstance because you have a  
2 sort of first right of appeal. It's a part of  
3 the criminal action. It's not a separate civil  
4 action. It's not a collateral attack.

5 This is just like an appeal. It walks  
6 like a duck, quacks like a duck. It's not  
7 discretionary. It is a mandatory review just  
8 like an appeal.

9 That just -- because the fact that  
10 Arizona has slapped a different label on it is  
11 not a reason to have a different fault  
12 attribution to the client from a different -- if  
13 this arose in a different state, where these  
14 very same errors occurred on a direct appeal.

15 And this Court's cases involving  
16 post-conviction review and habeas review saying  
17 they're materially different from appeal, they  
18 have no application here.

19 Look at Pennsylvania versus Finley.  
20 They say, well, you don't -- post-conviction  
21 review is different because it's civil, it's  
22 discretionary, but, under the Arizona system, it  
23 is by rule, look at Rule 32.3 of the Arizona  
24 Criminal Rules, it says it's part of the  
25 criminal action. It is not a separate action.



1 And it is not discretionary. It's mandatory.

2 This Court in Douglas versus  
3 California and Coleman said you should treat  
4 post-conviction review differently because  
5 you've already had your one bite at the apple.  
6 This is an additional review, layer of review.  
7 You've already had your appeal with  
8 constitutionally effective counsel.

9 That's not true here. Arizona has  
10 shunted this into post-conviction review,  
11 circumventing the right to appeal.

12 JUSTICE BARRETT: So --

13 MR. LOEB: So just like in Martinez,  
14 you don't need to reach the constitutional  
15 issue, but you can see, because it's the  
16 substantial equivalent, you should be treating  
17 them the same, and Congress would have expected  
18 that.

19 And the second major element of  
20 Martinez is one that Justice Kagan mentioned, is  
21 one that under ordinary understanding at the  
22 time of Michael Williams and at the time of  
23 (e)(2), is that when there's an external force  
24 that impairs or obstructs the ability of the  
25 applicant to assert and to vindicate a

1 constitutional right, you don't treat that as  
2 being attributed to the applicant.

3 And it's very important that Martinez  
4 addressed that very same subject in this very  
5 context and said that the applicant of this  
6 situation is to be deemed obstructed and impeded  
7 by the acts of the state.

8 And the Court explained why at page 13  
9 of the decision. It said: By deliberately  
10 choosing to move the trial ineffective counsel  
11 claims outside the direct appeal process, where  
12 counsel is constitutionally guaranteed, the  
13 state has significantly diminished the  
14 prisoner's ability to file and to, of course,  
15 vindicate such ineffective trial counsel claims.

16 So just nine years ago, a 7-2 majority  
17 here said what the state has done in  
18 constructing this system as it has impedes, in  
19 the words of the Court, and obstructs the  
20 vindication of these bedrock right to effective  
21 trial counsel.

22 CHIEF JUSTICE ROBERTS: Mr. Loeb, what  
23 is -- do you have any general authority for what  
24 you do when you have a situation like this,  
25 where the plain language of the statute seems to

1 require one result, the result your friend  
2 argues for, and the plainly logical meaning of a  
3 subsequent precedent would seem to require the  
4 result that you argue for? Like, what -- do you  
5 have a case that says how we're supposed to  
6 reconcile those two things?

7 MR. LOEB: Well, Your Honor, there --  
8 there isn't a conflict between the text. The  
9 language "failed to develop" was taken from  
10 Keeney and that --

11 CHIEF JUSTICE ROBERTS: Well, I -- I  
12 meant -- I'm once again asking you if you have a  
13 case that talks about my hypothetical, which  
14 suggests that there is a conflict between the  
15 statute and be -- and between the logical  
16 reading of -- of the -- of the precedent.

17 MR. LOEB: I think you have -- I don't  
18 have a case that's going to -- going to satisfy  
19 you on that, Your Honor, but you have to look at  
20 the statute in light of what Congress understood  
21 when they enacted it, and, certainly, at the  
22 time they enacted it, they understood every time  
23 a court had found cause, there was always  
24 development of the facts.

25 So Congress would have understood that

1 whatever "failed to develop" meant and how it  
2 was applied, that if you were going to find  
3 cause that you weren't at fault for failing to  
4 raise the claim, you -- logically and as a  
5 matter of logic and -- and -- and under Keeney  
6 case law, which Congress was aware of, you  
7 likewise would not be considered at fault for  
8 failing to develop the very same claim.

9           So Martinez, in finding that there was  
10 cause here and the person was at fault, Congress  
11 would have anticipated that if you weren't going  
12 to be held at fault for failing to bring the  
13 claim, you weren't going to be held at fault for  
14 failing to develop the claim. So there really  
15 isn't --

16           CHIEF JUSTICE ROBERTS: That's a lot  
17 of prescience to ascribe to Congress.

18           MR. LOEB: Well -- well --

19           CHIEF JUSTICE ROBERTS: Instead of you  
20 should -- they would have anticipated the fact  
21 pattern that developed in Martinez, and that's  
22 how you should therefore read the statute that  
23 they drafted however many years before that.

24           MR. LOEB: No, Your Honor. I mean,  
25 Coleman preceded (e)(2)'s enactment in AEDPA.

1 And at that time, Coleman left open the question  
2 of this particular context, of where, instead of  
3 calling it an appeal, you call it a  
4 post-conviction review, and that's your first  
5 opportunity to raise the constitutional claim.  
6 Coleman said we don't need to address that here.  
7 In Coleman, it's not the facts of this case.

8 And then this Court then squarely  
9 dealt with that open issue in Martinez and held  
10 you're not to be held at fault, and it's -- it's  
11 going to be treated just like where the  
12 attorney's ineffectiveness in raising the  
13 ineffective trial counsel claim occurred on a  
14 direct appeal. So Congress --

15 JUSTICE ALITO: Well, what did -- what  
16 did Cole --

17 MR. LOEB: -- would have been aware --

18 JUSTICE ALITO: -- what --

19 MR. LOEB: -- this was an open issue  
20 and would have expected the courts to address  
21 that open issue applying the general principles  
22 of the time, and one of those principles are, if  
23 there's an external force that obstructs or  
24 impedes you, you're not going to -- you're not  
25 going to be attributing fault to the -- to the

1 claimant.

2           And, here, we have this Court  
3 expressly finding that the way Arizona set up  
4 its system -- it's allowed set it up however it  
5 wants, but the way it does significantly  
6 diminishes the ability to vindicate this  
7 important constitutional right.

8           JUSTICE ALITO: But what does -- what  
9 issue specifically do you think the Court left  
10 open in Coleman? Was it the question whether  
11 the Sixth Amendment would apply in the first  
12 post-conviction proceeding, or was it the  
13 question whether there could be a  
14 non-constitutional basis for finding that the  
15 fault of the attorney is not attributable to the  
16 client?

17           MR. LOEB: It -- it's more the former,  
18 Your Honor, but it's in the context of cause and  
19 prejudice as to whether you're going to  
20 attribute fault to the applicant in that  
21 particular context for failing to raise the  
22 claim. They left that open. And it was  
23 squarely then addressed by this Court in  
24 Martinez.

25           And the rationale -- you know, we're

1 not saying Martinez controls the statute, but  
2 the rationale behind Martinez applies with full  
3 force here and in saying that fail to develop  
4 likewise shouldn't be --

5 JUSTICE KAVANAUGH: To pick up --

6 MR. LOEB: -- attributing fault to --

7 JUSTICE KAVANAUGH: To pick up on the  
8 Chief Justice's question and Justice Alito's,  
9 though, I think the other side says, well, the  
10 way you can square Martinez with the statute is  
11 to just read Martinez to do what it did and only  
12 what it did, and subsequent cases like Davila --  
13 Davila support that, they say. And you can then  
14 hold the statute to say what it means. It means  
15 what it says in the ordinary meaning, failure to  
16 develop, and you can -- Martinez still stands  
17 for what it stands for, without getting into the  
18 logical implications of Martinez.

19 I think that's a characterization of  
20 the other side, and we have to -- we can't  
21 ignore the statute. So what's your best  
22 response to that?

23 MR. LOEB: I mean, our best response  
24 is we're not ignoring the statute. We agree  
25 that you need to construe the statute here and

1 that "fail to develop" here needs to be read in  
2 this particular context, a context that this  
3 Court said is substantially equivalent to a  
4 direct appeal where you would not be attributing  
5 fault. It's a situation where this Court says  
6 that, because of the acts and the way that  
7 Arizona has constructed its system, it's  
8 significantly diminishing the ability to  
9 vindicate that right.

10           You're not going to attribute the  
11 fault to the applicant for failing to raise the  
12 claim. And then as a matter of logic and  
13 precedent, you would apply that very same  
14 rationale at the (e)(2) in deciding whether you  
15 were to be held at fault for failing to develop  
16 that claim that your counsel did not raise.

17           So we're not asking to avoid the  
18 statute or to -- or to -- for equitable  
19 exception to the statute. It has to be read in  
20 light of this particular context. And we're  
21 fortunate enough that this Court, applying like  
22 principles, has already looked at this very  
23 context in Arizona and said, look, it's really  
24 just like a direct appeal. There's no reason  
25 for treating fault differently in this situation



1 than it is a direct appeal, and has looked at  
2 the situation and said the way Arizona has  
3 constructed its system, it's -- there's an  
4 external force here that obstructs and impedes  
5 the -- the vindication of this right, that  
6 significantly diminishes the ability of the --  
7 of the applicant, and we're not going to treat  
8 him as at fault.

9           So if you -- all that rationale is  
10 correct as to why they shouldn't be held at  
11 fault for failing to bring the claim, and we're  
12 just -- our argument is, yes, and for the very  
13 same reasons, you're not at fault for failing to  
14 develop it.

15           And you don't get to the other aspects  
16 of -- of -- of (e)(2) because there's that  
17 threshold standard, did you fail to develop it,  
18 which Michael Williams says requires a finding  
19 of fault.

20           JUSTICE KAVANAUGH: What about, to  
21 pick up on Justice Thomas's question, that this  
22 would inevitably lead to extensive delays and  
23 AEDPA was enacted to try to eliminate some of  
24 those delays in some of the litigation,  
25 particularly capital litigation? Do you want to

1 respond to that?

2 MR. LOEB: No, it doesn't add any  
3 additional delays. I mean -- again, if these  
4 very same attorney errors had happened on a  
5 direct appeal, we -- and there was no additional  
6 state forum to hear the ineffective trial  
7 counsel claims, you would be in federal court  
8 just like we are.

9 We're not asking for anything beyond  
10 what is -- would be applied in the ordinary  
11 context, where these very same kind of errors  
12 happen on a direct appeal. So we're not adding  
13 to anything. We're just trying to get these  
14 same equivalents of what would happen in a state  
15 where you can raise these things on a direct  
16 appeal.

17 And, indeed -- and to avoid the  
18 fortuity that -- that you -- you can -- that  
19 would exist under the Arizona argument here,  
20 that, well, if this arose in a state where you  
21 can raise on appeal, then you get to proceed in  
22 federal court, but if it arose in Arizona, where  
23 they've labeled -- the exact same thing but have  
24 just labeled it post-conviction review, now you  
25 don't have a forum that'll ever meaningfully

1 hear your ineffective trial counsel claims?

2           There's no reason to ascribe that  
3 intent to Congress here. The language does not  
4 -- does not abide by that extreme reading, that  
5 just because of how the state here has labeled  
6 that first right of review, as post-conviction  
7 review as opposed to labeling it appeal, that --  
8 that substantial claims regarding ineffective  
9 trial counsel, one of the most meaningful  
10 rights, a bedrock right this Court said to  
11 having a fair justice system, will never be  
12 heard because these claims, like you -- as -- as  
13 you said in Martinez and said in Trevino,  
14 inherently require factual development.

15           There's a second material misreading  
16 of -- the state has of -- of (e)(2), is that  
17 they're saying that the -- it bars all  
18 consideration of evidence beyond the state court  
19 record. However, it only bars consideration of  
20 -- of -- it bars having an evidentiary hearing  
21 on the claim.

22           So, when you have evidence that's  
23 already been accepted by a federal court on the  
24 pause -- cause and prejudice stage, that is not  
25 covered by the plain language of (e)(2). That

1 is not an evidentiary hearing. The claim just  
2 is considering evidence that you already have in  
3 your hand.

4 And Arizona's contrary argument would  
5 mean that a federal court has in its hands  
6 strong evidence, like you have for Mr. Jones  
7 here that he did not commit the murder that he  
8 was charged with. And -- and the federal court  
9 has it in its hands, and -- and the district  
10 court here ordered his release, given the  
11 strength of that evidence, or his retrial. And  
12 Arizona's argument is that -- that a federal  
13 court should just turn a blind eye to that  
14 evidence.

15 A construction of the statute that  
16 would require that, as the amicus brief from the  
17 former DOJ and bipartisan prosecutors says, that  
18 would really taint the federal judicial system.  
19 For the federal courts to have this evidence  
20 that he didn't commit the crime in its hand and  
21 to do nothing is really going to make them  
22 complicit in a -- in a -- in an improper  
23 effecting of the death penalty here.

24 JUSTICE SOTOMAYOR: Counsel --

25 JUSTICE KAVANAUGH: One of -- one of

1 their response --

2 JUSTICE SOTOMAYOR: Oh, sorry.

3 JUSTICE KAVANAUGH: Go ahead.

4 JUSTICE SOTOMAYOR: Counsel, I guess,  
5 given the predictions of the dissent in  
6 Martinez, I was surprised that one of the  
7 statistics I read is that there's only two cases  
8 a year that present a Martinez hearing, where a  
9 has court found that a prisoner's eligible for a  
10 Martinez hearing.

11 MR. LOEB: I -- I -- I think the --  
12 the amicus briefs went through, like, all the  
13 times Martinez has been -- has been raised in --  
14 in the primary states where it's at issue, and  
15 it's found in the nine years, there were  
16 several -- I think two to three dozen cases over  
17 nine years. I don't think it was two or three.  
18 I think one or two cases that ultimately have  
19 been people vindicated and got release orders,  
20 et cetera.

21 But the number of hearings we're  
22 talking about over a nine-year period, over  
23 several states is -- the fact it's several dozen  
24 of them just is not a substantial burden. But,  
25 of course, this is a statutory construction

1 question and not a question of -- of -- of -- of  
2 whether it's an over -- you know, overly  
3 burdening the courts. But there -- this Court  
4 in Martinez adopted a very narrow rule to a very  
5 narrow context --

6 JUSTICE SOTOMAYOR: Okay, counsel.

7 MR. LOEB: -- anticipating it wouldn't  
8 be a significant burden.

9 JUSTICE SOTOMAYOR: The -- the -- you  
10 have no reason to think amici was right that  
11 this happens rarely?

12 MR. LOEB: Correct, Your Honor.

13 JUSTICE SOTOMAYOR: Okay.

14 MR. LOEB: And -- and the record has  
15 borne -- borne that out. What this Court  
16 particularly in Martinez says this would not be  
17 a significant burden, but it would be an  
18 important, necessary way to vindicate one of the  
19 most important rights in the Constitution, and  
20 that has been borne out over the last --

21 JUSTICE SOTOMAYOR: That's because  
22 this is a completely unusual situation, as you  
23 pointed out.

24 MR. LOEB: We're talking about --

25 JUSTICE SOTOMAYOR: No court would

1 have reviewed this evidence to see if someone  
2 was guilty as charged, correct?

3 MR. LOEB: There'd be no court which  
4 could meaningfully review the ineffective trial  
5 counsel claim here.

6 JUSTICE SOTOMAYOR: That would be --  
7 that was Martinez's point, correct?

8 MR. LOEB: And the -- and the kind of  
9 evidence that was adduced from Mr. Jones showing  
10 that the murder charges against him were  
11 baseless, and the kind of evidence adduced as to  
12 Mr. Ramirez showing that there is substantial  
13 mitigation evidence that he should not be given  
14 the death penalty, would have never seen the  
15 light of day but for the appointment of  
16 competent counsel who then were given a chance  
17 to develop the record and to present that  
18 evidence to federal court.

19 JUSTICE KAVANAUGH: One of the things  
20 that your friend on the other side says in  
21 response to what you just said, and I have no  
22 idea whether this is efficient but I just want  
23 you to respond to it, is they say Arizona has a  
24 forum for raising actual innocence claims.

25 Can you respond to their raising of

1 that point?

2 MR. LOEB: To say that you have a -- a  
3 forum for hearing, and -- and -- and one where  
4 no one has ever succeeded in to raise an actual  
5 innocence claim is not giving you a forum to  
6 vindicate the most -- one of the most vital  
7 rights, the right to effective trial counsel.

8 You know, whether you are innocent or  
9 guilty you have a right to a fair hearing. You  
10 have a right to an effective trial counsel. And  
11 that -- you have a right to have that  
12 vindicated.

13 So it's -- it's like them saying if --  
14 if you're coaching a basketball game and your --  
15 one team gets five players and one team gets one  
16 player and we're going to play the game, but at  
17 the end of the game we're going to give you a  
18 shot from half court, and that's going to make  
19 the game fair, that does not make the game fair,  
20 Your Honor.

21 There is a right to have trial counsel  
22 here and there was never a fair trial for Mr.  
23 Ramirez or for Mr. Jones. Right?

24 And -- and the fact that they give a  
25 -- a -- a Hail Mary opportunity for relief at



1 the end of the day or can give a pardon to Mr.  
2 Jones, that -- that does not mean that the right  
3 to effective trial counsel is being vindicated  
4 here.

5 And as Justice Sotomayor pointed out,  
6 as a -- a third argument, which pertains only to  
7 Mr. Ramirez, which there was no real meaningful  
8 response here, because Ramirez in the appeal  
9 before the panel in the Ninth Circuit clearly  
10 was relying on materials beyond that which was  
11 presented to the state court.

12 And that was not rejected by the state  
13 before the panel. It was not objected to. They  
14 didn't say well, (e)(2) bars consideration of  
15 that evidence. They told the panel to consider  
16 that evidence.

17 And the panel then went on to render a  
18 decision based on the arguments that they made  
19 without even them raising (e)(2). And, of  
20 course, then they have the, I think, the  
21 audacity in their cert position, it's like to  
22 say, well, (e)(2) is not even mentioned in the  
23 Ninth Circuit decision. Well, it's not  
24 mentioned because they didn't raise it.

25 So there -- it's completely sandbagged

1 the Ninth Circuit panel here by only raising  
2 this in the en banc petition and then their cert  
3 petition and blaming the panel for never  
4 reaching the issue that they didn't raise. They  
5 made a decision not to raise (e)(2) before the  
6 panel. That's a waiver. It was not fair to the  
7 panel. It's certainly not fair to Mr. Ramirez.  
8 He would have responded to the (e)(2) argument  
9 if it was raised before the panel.

10 So for -- for Mr. Ramirez you should  
11 affirm on the additional basis that the claims  
12 against him were waived.

13 CHIEF JUSTICE ROBERTS: Justice  
14 Thomas?

15 JUSTICE THOMAS: No questions.

16 CHIEF JUSTICE ROBERTS: Justice  
17 Breyer?

18 Thank you, counsel.

19 Rebuttal, Mr. Roysden.

20 REBUTTAL ARGUMENT OF BRUNN W. ROYSDEN, III  
21 ON BEHALF OF THE PETITIONER

22 MR. ROYSDEN: Thank you, Your Honor.  
23 If I can make three brief points.

24 First, as to the question of is there  
25 a case that deals with this paradox of a judge

1 -- implications of a judge-made versus statute,  
2 the dissent at the Ninth Circuit, page 373 of  
3 the Joint Appendix, cited *Ross v. Blake*.

4 Congress sets the rules and courts  
5 have a role in creating exceptions only if  
6 Congress wants them to, and I think that's the  
7 fundamental question, here Congress through A  
8 and B by setting such a high bar for having an  
9 evidentiary hearing, even actual in a sense is  
10 not enough. As made clear, it does not want the  
11 Court to create additional exceptions.

12 And the building block is *Williams*.  
13 As -- as to the agency principles, *Williams*  
14 clearly holds at headnote 6 that attributable to  
15 the prisoner or the prisoner's counsel.

16 So I think the -- the answer is  
17 already been decided.

18 The second point, I think there's a  
19 faulty assumption that *Martinez* somehow  
20 guarantees the right to have the claim heard in  
21 federal habeas in district court. That's wrong.

22 Even in a state where ineffective  
23 assistance of trial counsel is brought in direct  
24 appeal, if there's one level of post-conviction  
25 review and that post-conviction review counsel

1 does not pursue those claims, then as a matter  
2 of independent and adequate state law the  
3 federal court can't hear it.

4 So I don't think Martinez was doing  
5 anything more than what it purported to do,  
6 which was to narrowly create an equitable basis  
7 for cause following a procedural default.

8 As to the waiver on Ramirez, just to  
9 be clear, the state's position up to the panel  
10 hearing was, even if you look at that evidence,  
11 it's not going to establish ineffective  
12 assistance of trial counsel. This is the  
13 classic death penalty claim that I needed more  
14 mitigation than what I got. That's the  
15 run-of-the-mill case.

16 The state won at the district court on  
17 it. It didn't present it as an alternative  
18 basis for affirmance. But once the Ninth  
19 Circuit said, no, we're going to have yet  
20 another hearing on the claim, the state timely  
21 objected through a petition for rehearing and  
22 rehearing en banc.

23 With that I respectfully ask that the  
24 Court reverse both judgments of the Ninth  
25 Circuit. Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you,  
2 counsel. The case is submitted.  
3 (Whereupon, at 12:53 p.m., the case  
4 was submitted.)  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## Official - Subject to Final Review

<p><b>1</b></p> <p>11:59 [2] 1:17 3:2 12:53 [1] 60:3 13 [1] 41:8</p> <p><b>2</b></p> <p>2 [1] 29:21 20-1009 [1] 3:4 2017 [1] 13:8 2021 [1] 1:13 2254(e) [5] 36:8,9,16 37:1,6 2254(e)(2) [4] 3:14 20:18 30:18 33:9</p> <p><b>3</b></p> <p>3 [1] 2:4 30 [1] 2:7 32.3 [1] 39:23 33 [1] 16:19 373 [1] 58:2</p> <p><b>4</b></p> <p>444 [1] 34:16 46 [1] 27:18 48 [2] 27:18,18</p> <p><b>5</b></p> <p>57 [1] 2:10</p> <p><b>6</b></p> <p>6 [1] 58:14</p> <p><b>7</b></p> <p>7-2 [1] 41:16</p> <p><b>8</b></p> <p>8 [1] 1:13</p> <p><b>A</b></p> <p>a.m [2] 1:17 3:2 abandon [2] 16:9,10 abandoned [1] 16:6 abandonment [1] 15:23 abandons [2] 14:20 16:2 abide [1] 50:4 ability [7] 8:21 17:18 40:24 41:14 45:6 47:8 48:6 able [1] 11:11 above-entitled [1] 1:15 accept [1] 20:10 accepted [2] 19:14 50:23 accepting [1] 36:7 accommodated [1] 6:12 action [5] 31:25 39:3,4,25, 25 acts [3] 31:2 41:7 47:6 actual [5] 22:14 26:23 54: 24 55:4 58:9 actually [3] 11:10,20 24:25 add [1] 49:2 adding [1] 49:12 additional [6] 4:16 40:6 49: 3,5 57:11 58:11 address [5] 37:3 38:10,11 44:6,20 addressed [3] 31:18 41:4</p>	<p>45:23 addressing [3] 4:18 20:24 32:19 adduced [2] 54:9,11 adequate [1] 59:2 admit [1] 27:11 adopt [2] 38:8,13 adopted [3] 20:15 34:19 53:4 AEDPA [15] 3:14 4:21 9:6 11:17 14:15,17 25:12 26: 17 27:2 33:9 34:2,4 36:15 43:25 48:23 affirm [1] 57:11 affirmance [2] 29:9 59:18 affirmatively [1] 4:23 agency [10] 3:23 13:6,12 16:1,2,6,10 17:4 23:25 58: 13 agent [9] 13:17,19,21 16:2 17:5,6 24:7,8,11 ago [3] 27:24 31:17 41:16 agree [3] 35:13,16 46:24 agrees [2] 31:6 37:23 ahead [1] 52:3 ALITO [12] 19:13 20:9,13, 21 23:1 36:5 38:3,7,13 44: 15,18 45:8 Alito's [1] 46:8 allow [4] 5:8,9 26:22,24 allowed [2] 5:22 45:4 alone [1] 24:19 already [9] 3:21 5:20 19:5 40:5,7 47:22 50:23 51:2 58:17 alternative [2] 29:8 59:17 although [1] 23:3 Amendment [5] 9:21 19: 16 38:5,16 45:11 amici [1] 53:10 amicus [2] 51:16 52:12 animate [1] 38:20 another [2] 28:10 59:20 answer [9] 6:11 10:24 21:3 26:17 27:1 29:19,24 30:1 58:16 answered [4] 9:12 19:3 22: 8,21 answers [1] 18:25 anticipated [3] 34:25 43: 11,20 anticipating [1] 53:7 anybody [1] 37:2 appeal [44] 8:20 13:10 14: 23 16:19 17:16 18:15,15, 24 19:9 20:6 24:4 31:11, 15 32:4,8,24 33:2 35:12,16, 23 36:1 37:24 38:22 39:1, 2,5,8,14,17 40:7,11 41:11 44:3,14 47:4,24 48:1 49:5, 12,16,21 50:7 56:8 58:24 appeals [2] 7:4 36:12 APPEARANCES [1] 1:19 appellate [2] 13:19 27:17</p>	<p>Appendix [1] 58:3 apple [1] 40:5 applicant [10] 12:9 30:19, 21 31:8 40:25 41:2,5 45: 20 47:11 48:7 application [2] 38:15 39: 18 applied [3] 35:7 43:2 49:10 applies [4] 25:20 32:12 35: 9 46:2 apply [8] 4:6 13:3 30:18 32: 13 33:9 38:22 45:11 47:13 applying [3] 34:15 44:21 47:21 appointment [1] 54:15 area [2] 25:17,20 aren't [1] 34:8 argue [4] 15:1 18:3,4 42:4 argues [1] 42:2 arguing [3] 30:24 37:13,15 argument [23] 1:16 2:2,5,8 3:4,7 19:14 20:10 24:14 27:12 28:2,17,25 29:3 30: 13 36:7 48:12 49:19 51:4, 12 56:6 57:8,20 arguments [1] 56:18 ARIZONA [20] 1:3,21 18: 13 26:23 31:19,24 32:5 35: 20 36:1 39:10,22,23 40:9 45:3 47:7,23 48:2 49:19, 22 54:23 Arizona's [2] 51:4,12 arose [3] 39:13 49:20,22 around [1] 22:16 articulating [1] 11:8 ascribe [5] 12:20,24 18:9 43:17 50:2 ascribed [1] 18:1 ascription [1] 18:3 aside [1] 23:21 aspects [1] 48:15 assert [2] 17:19 40:25 assistance [16] 6:5 8:10 10:12 12:22 13:9,9,18,20 19:8,16,19 20:1 24:18 26: 3 58:23 59:12 assume [1] 11:6 Assuming [1] 10:23 assumption [1] 58:19 asymmetric [1] 7:7 attack [1] 39:4 attorney [13] 3:21 14:20,21 15:21 16:18 18:15,18 19:5, 10,22 21:18 45:15 49:4 attorney's [3] 31:2,8 44:12 attorneys [1] 12:12 attorneys' [1] 37:21 attributable [5] 19:6 31:2 36:21 45:15 58:14 attribute [4] 25:1 36:24 45: 20 47:10 attributed [1] 12:13 19:11, 22 24:22 25:18 31:7 32:10 37:18,22 38:2 41:2</p>	<p>attributes [1] 38:19 attributing [5] 35:17 38:20 44:25 46:6 47:4 attribution [4] 31:5,13 32: 2 39:12 audacity [1] 56:21 authority [1] 41:23 avoid [2] 47:17 49:17 aware [2] 43:6 44:17</p> <p><b>B</b></p> <p>back [3] 21:14 24:16 29:6 banc [3] 7:21 57:2 59:22 bar [5] 3:15 4:14 11:17 26: 15 58:8 Barrett [2] 30:9 40:12 bars [5] 26:9 50:17,19,20 56:14 based [2] 3:23 56:18 baseless [1] 54:11 basic [1] 6:18 basically [2] 26:8 34:1 basis [9] 5:11 9:1 12:10 29: 8 30:20 45:14 57:11 59:6, 18 basketball [1] 55:14 becomes [1] 24:23 bedrock [2] 41:20 50:10 beginning [1] 6:9 behalf [6] 1:21,22 2:4,7,10 3:8 30:14 57:21 behind [1] 46:2 best [2] 46:21,23 between [6] 7:3 33:20 34: 21 42:8,14,15 beyond [4] 4:16 49:9 50:18 56:10 bipartisan [1] 51:17 bit [1] 33:25 bite [1] 40:5 Blake [1] 58:3 blame [1] 17:25 blaming [1] 57:3 blind [1] 51:13 block [1] 58:12 borne [3] 53:15,15,20 both [4] 15:20 32:8 35:25 59:24 bother [1] 18:19 breaks [1] 8:10 Breyer [2] 27:7 57:17 brief [4] 27:17 29:19 51:16 57:23 briefed [1] 37:2 briefs [1] 52:12 bring [3] 16:23 43:12 48:11 bringing [1] 35:8 brought [3] 9:17 10:2 58: 23 BRUNN [5] 1:20 2:3,9 3:7 57:20 building [1] 58:12 bunch [1] 17:11 burden [3] 52:24 53:8,17</p>	<p><b>C</b></p> <p>calculus [1] 32:11 California [1] 40:3 call [1] 44:3 calling [1] 44:3 calls [1] 31:15 came [2] 1:15 9:9 cannot [6] 5:2 10:18 13:10, 13 16:5 30:6 capital [1] 48:25 carefully [1] 10:10 Case [2] 3:4,11 5:22,24 6: 9 7:22 13:12 14:5 24:15 26:6 36:6 37:7 42:5,13,18 43:6 44:7 57:25 59:15 60: 2,3 cases [11] 5:19 10:8,14 12: 11 17:1 21:25 39:15 46:12 52:7,16,18 categorical [1] 31:5 cause [24] 4:1,3,18,18,24 11:2 15:10,16 17:22 21:2, 8,12 26:2 30:2 32:20 33: 15,21 35:3 42:23 43:3,10 45:18 50:24 59:7 central [1] 8:21 cert [2] 56:21 57:2 certainly [6] 8:12 25:22 36: 11 37:6 42:21 57:7 cetera [1] 52:20 chain [1] 7:3 chance [3] 9:15 29:24 54: 16 change [1] 26:11 changed [3] 20:14 37:11, 14 characterization [1] 46: 19 charged [2] 51:8 54:2 charges [1] 54:10 CHIEF [26] 3:3,9 6:17 7:12, 17,23 8:11,14 9:3,7 10:6 21:15,22 27:4 29:14 30:8, 12,15 41:22 42:11 43:16, 19 46:8 57:13,16 60:1 choice [2] 17:15,17 choosing [1] 41:10 chose [1] 18:23 Circuit [8] 28:9 29:4 56:9, 23 57:1 58:2 59:19,25 circumstance [2] 21:3 39: 1 circumstances [1] 4:23 circumventing [1] 40:11 cited [1] 58:3 civil [3] 31:23 39:3,21 claim [63] 5:10,11,23 6:16, 19,22,24 8:17,22 9:16,23 10:12 12:10,22 14:17 19: 25 20:1 22:14,25 23:11,13, 15,18,22 24:11,19,19 26:4, 18 27:11,15 28:11 29:6,22,</p>
--	--	--	---	---

## Official - Subject to Final Review

23 30:20 33:16,18,22 34:6, 9,23,23 35:8 36:4,19 43:4, 8,13,14 44:5,13 45:22 47: 12,16 48:11 50:21 51:1 54: 5 55:5 58:20 59:13,20 <b>claimant</b> [3] 32:3,11 45:1 <b>claims</b> [15] 3:16 17:16,19 31:21 32:7 35:2 41:11,15 49:7 50:1,8,12 54:24 57: 11 59:1 <b>classic</b> [1] 59:13 <b>clear</b> [3] 26:16 58:10 59:9 <b>clearly</b> [6] 4:5 12:5 17:24 34:25 56:9 58:14 <b>clerk</b> [1] 16:3 <b>client</b> [10] 12:13 16:10 24: 22 25:19 31:3 37:18,22 38: 2 39:12 45:16 <b>close</b> [1] 24:15 <b>coaching</b> [1] 55:14 <b>codified</b> [1] 3:17 <b>codify</b> [2] 4:20,23 <b>Cole</b> [1] 44:16 <b>Coleman</b> [10] 13:1 16:17 31:12 38:21 40:3 43:25 44: 1,6,7 45:10 <b>Coleman's</b> [1] 4:1 <b>collateral</b> [2] 31:23 39:4 <b>collaterally</b> [1] 8:20 <b>Collins</b> [1] 7:6 <b>Collins's</b> [1] 7:21 <b>commit</b> [2] 51:7,20 <b>compared</b> [1] 14:2 <b>competent</b> [1] 54:16 <b>completely</b> [2] 53:22 56: 25 <b>complicit</b> [1] 51:22 <b>conclude</b> [1] 15:4 <b>conflict</b> [2] 42:8,14 <b>Congress</b> [30] 3:13,25 4:5, 20,22 7:8 8:24,25 9:8,18 12:4 19:3 22:7,17,20 26:8, 16 34:10,18 40:17 42:20, 25 43:6,10,17 44:14 50:3 58:4,6,7 <b>Congress's</b> [5] 5:3 11:16 12:2 22:9,17 <b>consider</b> [2] 5:13 56:15 <b>consideration</b> [3] 50:18, 19 56:14 <b>considered</b> [2] 10:12 43:7 <b>considering</b> [1] 51:2 <b>consistent</b> [1] 26:17 <b>constitutes</b> [1] 14:11 <b>Constitution</b> [1] 53:19 <b>constitutional</b> [15] 4:10 8: 9 9:13 11:24 12:22 19:15 20:10 22:25 23:4,11,17 40: 14 41:1 44:5 45:7 <b>constitutionally</b> [2] 40:8 41:12 <b>constructed</b> [3] 36:2 47:7 48:3 <b>constructing</b> [1] 41:18	<b>construction</b> [2] 51:15 52: 25 <b>construe</b> [1] 46:25 <b>contemplate</b> [2] 24:17,24 <b>contendere</b> [1] 16:25 <b>context</b> [12] 27:3 31:25 41: 5 44:2 45:18,21 47:2,2,20, 23 49:11 53:5 <b>contexts</b> [2] 18:5 32:9 <b>contrary</b> [2] 28:13 51:4 <b>contrast</b> [1] 4:22 <b>controls</b> [1] 46:1 <b>convictions</b> [1] 3:16 <b>Correct</b> [14] 8:23 14:11,12 15:12 20:12,20 22:4 23:12 32:21,25 48:10 53:12 54:2, 7 <b>CORRECTIONS</b> [1] 1:4 <b>Counsel</b> [67] 5:6 6:5,20 9: 1,14,16 13:17,19,21 14:7 16:8,16,23 17:5 18:14 19: 8,17,19 20:2 21:2,11 22:2 24:3,5,6,10,19 27:5,9 28: 16 29:12 30:10 31:7,21 32: 7,9,16 33:19 35:2,15 36:4, 22 40:8 41:10,12,15,21 44: 13 47:16 49:7 50:1,9 51: 24 52:4 53:6 54:5,16 55:7, 10,21 56:3 57:18 58:15,23, 25 59:12 60:2 <b>counsel's</b> [3] 27:25 32:3 37:17 <b>counts</b> [1] 3:22 <b>course</b> [3] 41:14 52:25 56: 20 <b>COURT</b> [97] 1:1,16 3:10,20 5:5,20,25 6:1,3,8,13,15 7: 3,4 8:8 9:18 10:3,10 11:7, 14 13:16 17:8,14,20 19:5, 13 20:7,9,15,19 21:16,17 22:15 23:23 25:1,2 26:7, 10,13,14,19,24,25 27:22 28:9 30:7,16,22 31:4,12,17, 18,25 32:5 33:16 34:11,12, 17,25 35:6 36:17,25 37:2 38:8 40:2 41:8,19 42:23 44:8 45:2,9,23 47:3,5,21 49:7,22 50:10,18,23 51:5,8, 10,13 52:9 53:3,15,25 54:3, 18 55:18 56:11 58:11,21 59:3,16,24 <b>Court's</b> [2] 13:7 39:15 <b>courts</b> [8] 9:19,20 36:10,12 44:20 51:19 53:3 58:4 <b>courts'</b> [1] 4:6 <b>covered</b> [1] 50:25 <b>crafted</b> [1] 10:10 <b>create</b> [4] 4:15 13:24 58:11 59:6 <b>created</b> [1] 3:14 <b>creating</b> [1] 58:5 <b>crime</b> [1] 51:20 <b>criminal</b> [6] 31:10,11,24 39: 3,24,25	<b>critical</b> [1] 26:6 <b>cut</b> [1] 6:8 <hr/> <b>D</b> <hr/> <b>d)(1)</b> [1] 26:12 <b>D.C</b> [2] 1:12,22 <b>DAVID</b> [2] 1:3,8 <b>Davila</b> [9] 13:7,16 18:12,20 24:1,2,17 46:12,13 <b>day</b> [3] 10:19 54:15 56:1 <b>days</b> [1] 16:19 <b>dealing</b> [1] 18:12 <b>deals</b> [1] 57:25 <b>dealt</b> [1] 44:9 <b>death</b> [3] 51:23 54:14 59: 13 <b>December</b> [1] 1:13 <b>decide</b> [1] 22:21 <b>decided</b> [3] 9:9 36:23 58: 17 <b>deciding</b> [1] 47:14 <b>decision</b> [7] 7:13,18 13:7 41:9 56:18,23 57:5 <b>deduce</b> [2] 20:22,23 <b>deemed</b> [1] 41:6 <b>default</b> [19] 4:19,20 5:8,18 10:22 11:3 13:25 15:8,15, 17 17:23 21:1,7,13 23:23 25:25 32:18,20 59:7 <b>defaulted</b> [3] 18:20 24:21 33:15 <b>defendant</b> [1] 18:10 <b>defer</b> [1] 26:14 <b>define</b> [2] 14:8 30:21 <b>defined</b> [1] 14:11 <b>definition</b> [1] 14:10 <b>delays</b> [3] 48:22,24 49:3 <b>deliberate</b> [1] 17:15 <b>deliberately</b> [1] 41:9 <b>delta</b> [1] 34:20 <b>denial</b> [1] 7:21 <b>DEPARTMENT</b> [1] 1:4 <b>develop</b> [30] 3:19,22,24 5: 1,10,23 12:9 14:10,23 22:3 24:9 25:21 26:25 29:23 30: 19,21 34:9,23 36:18 42:9 43:1,8,14 46:3,16 47:1,15 48:14,17 54:17 <b>developed</b> [4] 11:25 27:19 35:2 43:21 <b>developing</b> [3] 14:16 21: 18 34:14 <b>development</b> [4] 22:7 27: 21 42:24 50:14 <b>devote</b> [1] 27:10 <b>different</b> [1] 15:23,24 17: 12 20:3 34:15 39:10,11,12, 13,17,21 <b>differently</b> [2] 40:4 47:25 <b>DIG</b> [2] 28:5,6 <b>diligence</b> [3] 4:13 11:25 36:20 <b>diminished</b> [2] 17:18 41: 13	<b>diminishes</b> [2] 45:6 48:6 <b>diminishing</b> [1] 47:8 <b>direct</b> [31] 6:25 8:19 13:9, 18,19 17:16 18:14,15,24 19:9 20:6 24:4 27:25 31: 11 32:4,8 35:12,25 37:24 38:22,25 39:14 41:11 44: 14 47:4,24 48:1 49:5,12,15 58:23 <b>directed</b> [1] 12:18 <b>directly</b> [1] 28:12 <b>DIRECTOR</b> [1] 1:3 <b>disagreeing</b> [1] 37:16 <b>disagreement</b> [1] 37:20 <b>discovered</b> [1] 4:12 <b>discretionary</b> [3] 39:7,22 40:1 <b>discussion</b> [1] 18:23 <b>dissent</b> [4] 7:6,21 52:5 58: 2 <b>distinction</b> [2] 16:11,12 <b>distinguish</b> [1] 24:1 <b>district</b> [6] 1:1,12 9:17,18, 19 51:9 58:21 59:16 <b>doing</b> [3] 22:3 34:4 59:4 <b>DOJ</b> [1] 51:17 <b>done</b> [1] 41:17 <b>Douglas</b> [1] 40:2 <b>down</b> [1] 6:13 <b>dozen</b> [2] 52:16,23 <b>drafted</b> [1] 43:23 <b>drastically</b> [1] 36:9 <b>duck</b> [2] 39:6,6 <b>due</b> [2] 4:12 27:24 <hr/> <b>E</b> <hr/> <b>e)(2)</b> [3] 3:18,23 4:3,16 5:1 7:9,25 10:19 12:8 13:2 15: 7 19:2 22:8 26:14 28:13 29:7 30:4,5 32:12 33:12 35:9 40:23 47:14 48:16 50: 16,25 56:14,19,22 57:5,8 <b>e)(2)'s</b> [2] 32:13 43:25 <b>e)(2)(A)</b> [1] 4:9 <b>e)(2)(B)</b> [2] 11:20 12:5 <b>echoing</b> [2] 3:19 15:7 <b>effect</b> [1] 32:23 <b>effecting</b> [1] 51:23 <b>effective</b> [7] 9:14 19:16 40: 8 41:20 55:7,10 56:3 <b>efficient</b> [2] 7:1 54:22 <b>egregious</b> [1] 28:7 <b>either</b> [4] 4:9 6:10 11:23 31: 10 <b>element</b> [2] 15:15 40:19 <b>elements</b> [1] 38:24 <b>eligible</b> [1] 52:9 <b>eliminate</b> [1] 48:23 <b>emphasized</b> [1] 32:23 <b>en</b> [3] 7:21 57:2 59:22 <b>enacted</b> [4] 3:13 42:21,22 48:23 <b>enactment</b> [1] 43:25 <b>end</b> [5] 5:18,22 10:19 55:17	<b>56:1</b> <b>enough</b> [8] 4:8 6:3 11:21 12:6 22:10 28:21 47:21 58: 10 <b>entire</b> [3] 22:22 28:25 29:3 <b>entitled</b> [2] 28:1 29:1 <b>envision</b> [1] 11:14 <b>envisioned</b> [2] 8:24 9:8 <b>equally</b> [1] 38:22 <b>equitable</b> [6] 10:21 13:25 21:10 27:19 47:18 59:6 <b>equivalency</b> [1] 38:25 <b>equivalent</b> [4] 32:8 35:12 40:16 47:3 <b>equivalents</b> [1] 49:14 <b>error</b> [4] 12:24 13:2 15:21 19:6 <b>errors</b> [5] 35:13 37:23 39: 14 49:4,11 <b>errs</b> [1] 14:21 <b>ESQ</b> [3] 2:3,6,9 <b>ESQUIRE</b> [1] 1:22 <b>essentially</b> [4] 12:15,25 18: 6 21:21 <b>establish</b> [4] 6:4,15 28:21 59:11 <b>established</b> [1] 4:24 <b>et</b> [1] 52:20 <b>even</b> [15] 9:12 11:25 16:5, 17 18:18 22:9 24:20 28:7, 8,20 56:19,22 58:9,22 59: 10 <b>eventually</b> [1] 33:7 <b>everybody</b> [1] 21:24 <b>everyone</b> [2] 35:16 37:22 <b>evidence</b> [33] 5:10,20 6:4, 10,15,21 8:3,6,18 11:24 16: 24 21:18 22:3,7 27:23 28: 8,21 29:1 50:18,22 51:2,6, 11,14,19 54:1,9,11,13,18 56:15,16 59:10 <b>evidentiary</b> [14] 3:15 4:25 5:11 7:1 11:17 19:1 21:21, 25 23:15 26:15 33:8 50:20 51:1 58:9 <b>eviscerate</b> [2] 34:1,3 <b>exact</b> [2] 35:23 49:23 <b>exactly</b> [3] 14:22 22:2 38:7 <b>examined</b> [1] 31:19 <b>example</b> [1] 22:13 <b>except</b> [2] 17:9 23:19 <b>exception</b> [7] 4:16 10:21 13:10,25 14:1,3 47:19 <b>exceptions</b> [2] 58:5,11 <b>excuse</b> [9] 5:8,18 11:2 15: 10,15,17 21:8,12 30:2 <b>excuses</b> [1] 4:21 <b>excusing</b> [3] 4:1,19 10:21 <b>exercise</b> [2] 4:12 6:6 <b>exist</b> [1] 49:19 <b>existing</b> [1] 21:12 <b>expected</b> [2] 40:17 44:20 <b>explain</b> [1] 37:4 <b>explained</b> [1] 41:8
---	---	--	---	--

## Official - Subject to Final Review

<p><b>explanation</b> [2] 7:25 10:15  <b>explicitly</b> [1] 17:10  <b>expressly</b> [4] 8:25 11:1 21:9 45:3  <b>extend</b> [1] 38:15  <b>extensive</b> [1] 48:22  <b>extent</b> [2] 10:17 25:7  <b>external</b> [3] 40:23 44:23 48:4  <b>extreme</b> [1] 50:4  <b>eye</b> [1] 51:13</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>fact</b> [10] 23:19 27:21 35:19, 21 36:13,25 39:9 43:20 52:23 55:24  <b>fact-finder</b> [1] 4:7  <b>facts</b> [4] 14:17 36:19 42:24 44:7  <b>factual</b> [5] 4:11 8:18 12:10 30:20 50:14  <b>factually</b> [1] 24:9  <b>fail</b> [5] 14:10 25:20 46:3 47:1 48:17  <b>failed</b> [6] 12:9 16:23 30:19, 21 42:9 43:1  <b>failing</b> [17] 14:22 29:22,23 33:18 34:9,22,23 35:4 43:3,8,12,14 45:21 47:11,15 48:11,13  <b>fails</b> [1] 4:17  <b>failure</b> [12] 3:19,22,24 5:1 12:20 20:17 27:25 36:18, 18 37:9,10 46:15  <b>failures</b> [6] 31:7 32:3,9 37:18,21 38:1  <b>fair</b> [7] 50:11 55:9,19,19,22 57:6,7  <b>fault</b> [63] 12:8,13,23 14:9, 11,16,20,25 15:3,5,13 16:22 17:2 18:4,9 19:21 20:14,16 22:22,23 23:9 25:17 29:22,23 30:2,23,25 31:13 32:2,11 33:13,14,18,21 34:6,8,13,22 35:4,7,17 36:21 38:20,21 39:11 43:3,7,10, 12,13 44:10,25 45:15,20 46:6 47:5,11,15,25 48:8,11, 13,19  <b>fault's</b> [1] 25:18  <b>faulty</b> [2] 7:11 58:19  <b>federal</b> [21] 3:15 9:17 18:21,25 19:12 20:4 24:20 27:21,22 36:14 49:7,22 50:23 51:5,8,12,18,19 54:18 58:21 59:3  <b>figure</b> [2] 25:3,5  <b>file</b> [2] 26:19 41:14  <b>filed</b> [1] 16:18  <b>find</b> [1] 43:2  <b>finding</b> [5] 30:23 43:9 45:3, 14 48:18  <b>Finley</b> [1] 39:19  <b>first</b> [27] 3:17 6:5,19 9:15</p>	<p>15:7,8,14 16:1 19:3,17,19 23:15 26:1 30:4 31:14 32:17,23 33:1,11,14 35:8 36:3 39:2 44:4 45:11 50:6 57:24  <b>five</b> [2] 21:19 55:15  <b>flaw</b> [1] 7:6  <b>focused</b> [1] 15:16  <b>follow</b> [4] 19:21,25 36:14, 15  <b>following</b> [2] 4:25 59:7  <b>force</b> [5] 34:21 40:23 44:23 46:3 48:4  <b>forceful</b> [1] 24:14  <b>forces</b> [1] 15:4  <b>former</b> [2] 45:17 51:17  <b>forth</b> [1] 23:24  <b>fortuity</b> [1] 49:18  <b>fortunate</b> [1] 47:21  <b>forum</b> [5] 49:6,25 54:24 55:3,5  <b>found</b> [7] 4:7 33:21 35:3,4 42:23 52:9,15  <b>four</b> [1] 21:19  <b>Fourth</b> [1] 9:20  <b>framework</b> [1] 17:21  <b>friend</b> [2] 42:1 54:20  <b>front</b> [1] 33:9  <b>fruitless</b> [1] 6:6  <b>full</b> [2] 33:8 46:2  <b>fully</b> [1] 32:12  <b>functionally</b> [1] 35:24  <b>fundamental</b> [4] 12:1 16:12 25:9 58:7  <b>fundamentally</b> [1] 3:12  <b>further</b> [2] 27:7 29:15</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>game</b> [5] 55:14,16,17,19,19  <b>gave</b> [3] 8:1,2,6  <b>General</b> [12] 1:20 13:6,12 15:25,25 16:1,6 23:24 31:1 37:17 41:23 44:21  <b>generally</b> [1] 31:2  <b>generis</b> [1] 33:5  <b>gets</b> [5] 12:13 22:15 28:16 55:15,15  <b>getting</b> [1] 46:17  <b>give</b> [7] 10:11 25:7,8 29:24 55:17,24 56:1  <b>given</b> [6] 10:16 27:1 51:10 52:5 54:13,16  <b>giving</b> [1] 55:5  <b>Gorsuch</b> [1] 29:16  <b>got</b> [2] 52:19 59:14  <b>grant</b> [1] 9:20  <b>greater</b> [1] 36:21  <b>ground</b> [1] 26:23  <b>grounds</b> [1] 9:21  <b>guaranteed</b> [1] 41:12  <b>guarantees</b> [1] 58:20  <b>guess</b> [2] 10:5 52:4  <b>guilty</b> [3] 4:8 54:2 55:9  <b>gut</b> [2] 10:7,13</p>	<p style="text-align: center;"><b>H</b></p> <p><b>habeas</b> [16] 3:15 9:2,17,20 18:21 19:1,12 20:5 24:12, 20 26:10,11,20 36:14 39:16 58:21  <b>Hail</b> [1] 55:25  <b>half</b> [1] 55:18  <b>halfway</b> [1] 7:2  <b>hand</b> [2] 51:3,20  <b>hands</b> [2] 51:5,9  <b>happen</b> [2] 49:12,14  <b>happened</b> [2] 16:7 49:4  <b>happens</b> [2] 12:16 53:11  <b>hard</b> [2] 11:13 17:1  <b>headnote</b> [1] 58:14  <b>hear</b> [4] 3:3 49:6 50:1 59:3  <b>heard</b> [2] 50:12 58:20  <b>hearing</b> [23] 4:25 6:2,14 7:2,9 8:2 11:21 19:1 23:15 28:1,11 29:6 33:8,10 50:20 51:1 52:8,10 55:3,9 58:9 59:10,20  <b>hearings</b> [4] 3:15 11:17 26:15 52:21  <b>heart</b> [1] 25:15  <b>held</b> [14] 3:21 30:22,25 32:1,5 33:17 34:7,8 43:12,13 44:9,10 47:15 48:10  <b>high</b> [5] 3:14 4:14 14:3 26:15 58:8  <b>hold</b> [1] 46:14  <b>holding</b> [1] 32:12  <b>holds</b> [1] 58:14  <b>Holland</b> [3] 3:21 15:18 19:4  <b>Honor</b> [15] 5:12 20:12,20 22:5 30:11 32:21 33:11 38:17 42:7,19 43:24 45:18 53:12 55:20 57:22  <b>however</b> [3] 43:23 45:4 50:19  <b>huge</b> [1] 10:8  <b>hypothetical</b> [1] 42:13</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [2] 6:18 54:22  <b>ignore</b> [1] 46:21  <b>ignoring</b> [1] 46:24  <b>Ill</b> [5] 1:20 2:3,9 3:7 57:20  <b>Imagine</b> [1] 18:13  <b>imagined</b> [1] 11:18  <b>impairs</b> [1] 40:24  <b>impeded</b> [1] 41:6  <b>impedes</b> [3] 41:18 44:24 48:4  <b>implications</b> [2] 46:18 58:1  <b>implicitly</b> [2] 8:2,5  <b>important</b> [10] 11:5,9 16:13 21:17 22:5 35:1 41:3 45:7 53:18,19  <b>imposed</b> [1] 30:17  <b>imposes</b> [1] 20:18</p>	<p><b>improper</b> [1] 51:22  <b>imputed</b> [2] 15:21 17:7  <b>incompetence</b> [4] 6:24 8:17,22,25  <b>incompetent</b> [2] 6:20 16:8  <b>incorrect</b> [1] 8:5  <b>Indeed</b> [3] 31:6 34:10 49:17  <b>independent</b> [2] 26:9 59:2  <b>ineffective</b> [27] 6:4 8:10 10:11 12:22 13:9,18,20 16:9 19:8,18,22 20:1 24:18 26:3 31:21 32:6 35:1 36:3 41:10,15 44:13 49:6 50:1, 8 54:4 58:22 59:11  <b>ineffectiveness</b> [16] 9:15 13:8 17:16,19,22,25 18:14 21:1,11 22:25 24:4,10 28:23 31:9 35:15 44:12  <b>inevitably</b> [1] 48:22  <b>inherently</b> [1] 50:14  <b>innocence</b> [6] 12:5 22:9, 14 26:23 54:24 55:5  <b>innocent</b> [2] 11:20 55:8  <b>inquiries</b> [2] 34:12,21  <b>inquiry</b> [1] 33:17  <b>instance</b> [1] 35:8  <b>instances</b> [3] 35:25 37:20, 21  <b>instead</b> [4] 31:15,15 43:19 44:2  <b>intent</b> [2] 12:2 50:3  <b>intentionally</b> [1] 4:14  <b>international</b> [1] 16:4  <b>interpret</b> [2] 16:25 37:5  <b>interpretation</b> [4] 3:13 14:6 36:8 37:9  <b>interpreted</b> [4] 36:12,16, 17 37:11  <b>interpreter</b> [1] 16:24  <b>interrupt</b> [1] 25:14  <b>intervention</b> [1] 7:8  <b>invite</b> [1] 5:5  <b>involving</b> [2] 3:16 39:15  <b>isn't</b> [4] 12:6,25 42:8 43:15  <b>issue</b> [15] 3:11 11:5 24:10 27:16 28:14 31:19 37:1 38:18 40:15 44:9,19,21 45:9 52:14 57:4  <b>itself</b> [1] 23:10</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>job</b> [2] 16:3 18:16  <b>Joint</b> [1] 58:3  <b>Jones</b> [8] 6:2 30:24 32:14 35:17 51:6 54:9 55:23 56:2  <b>Judge</b> [3] 7:5,21 57:25  <b>judge-made</b> [5] 5:2 14:1,2 25:8 58:1  <b>judgments</b> [1] 59:24  <b>judicial</b> [1] 51:18  <b>jurisdiction</b> [1] 9:19  <b>JUSTICE</b> [100] 3:3,9 5:6,15,</p>	<p>21 6:17 7:12,17,23 8:11,14 9:3,7,22,25 10:5,6,23 11:4 12:3,7 14:7,13 15:19,22 16:15 17:9,14 19:13 20:9, 13,21 21:14,15,23 22:18, 20,25 24:13 25:10,13 27:4, 6,7,8 28:4,15,22,24 29:11, 14,14,16,17 30:8,8,12,15 32:16,22 33:3,24 36:5 38:3,7,13 40:12,20 41:22 42:11 43:16,19 44:15,18 45:8 46:5,7,8 48:20,21 50:11 51:24,25 52:2,3,4 53:6,9, 13,21,25 54:6,19 56:5 57:13,13,15,16,16 60:1  <b>Justice's</b> [2] 10:6 46:8</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> [9] 12:3,7 17:9,14 21:14 22:18,20 29:14 40:20  <b>KAVANAUGH</b> [15] 9:22,25 10:5,23 11:4 24:13 25:10, 13 29:17 46:5,7 48:20 51:25 52:3 54:19  <b>Keeney</b> [11] 3:18,20,25 15:7 16:22 19:4 34:11,19,20 42:10 43:5  <b>Keep</b> [1] 9:25  <b>kept</b> [1] 11:1  <b>kind</b> [4] 23:13 49:11 54:8, 11  <b>knows</b> [1] 21:24</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>label</b> [1] 39:10  <b>labeled</b> [3] 49:23,24 50:5  <b>labeling</b> [1] 50:7  <b>labels</b> [2] 31:14 32:1  <b>lack</b> [1] 36:20  <b>language</b> [12] 4:6 6:8 7:25 17:24 20:17 24:15 25:21 28:13 41:25 42:9 50:3,25  <b>last</b> [2] 18:12 53:20  <b>late</b> [1] 16:20  <b>law</b> [6] 4:10 11:24 16:2,3 43:6 59:2  <b>layer</b> [1] 40:6  <b>lead</b> [1] 48:22  <b>least</b> [1] 10:13  <b>left</b> [4] 31:12 44:1 45:9,22  <b>level</b> [3] 31:9 38:1 58:24  <b>levels</b> [1] 32:10  <b>light</b> [3] 42:20 47:20 54:15  <b>likewise</b> [2] 43:7 46:4  <b>limitations</b> [1] 22:13  <b>limited</b> [1] 37:21  <b>limiting</b> [1] 13:15  <b>limits</b> [1] 30:17  <b>litigation</b> [2] 48:24,25  <b>little</b> [1] 34:14  <b>LOEB</b> [33] 1:22 2:6 30:12, 13,15 32:19,25 33:11 34:3 37:13 38:6,10,17 40:13 41:</p>
---	---	---	---	--



## Official - Subject to Final Review

22 42:7,17 43:18,24 44:17,19 45:17 46:6,23 49:2 52:11 53:7,12,14,24 54:3,8 55:2 <b>logic</b> [5] 7:7 34:7,21 43:5 47:12 <b>logical</b> [3] 42:2,15 46:18 <b>logically</b> [2] 13:14 43:4 <b>long</b> [3] 14:9 31:4 34:11 <b>look</b> [8] 8:19 28:20 38:19 39:19,23 42:19 47:23 59:10 <b>looked</b> [2] 47:22 48:1 <b>looking</b> [1] 6:2 <b>lose</b> [1] 8:21 <b>lot</b> [3] 10:14 36:9 43:16 <b>lower</b> [1] 36:10	25 54:4 <b>means</b> [7] 14:9 15:3 36:10,17 37:12 46:14,14 <b>meant</b> [4] 16:25 25:24 42:12 43:1 <b>meet</b> [2] 11:22 22:11 <b>meets</b> [1] 32:9 <b>mentioned</b> [3] 40:20 56:22,24 <b>merely</b> [1] 3:25 <b>merits</b> [2] 26:13 28:11 <b>met</b> [6] 22:22,23,24 23:1,10 29:4 <b>Michael</b> [9] 30:22,25 34:16 36:16 37:7,15 38:8 40:22 48:18 <b>might</b> [1] 23:21 <b>mind</b> [1] 22:17 <b>misperception</b> [1] 21:20 <b>misreading</b> [1] 50:15 <b>mitigation</b> [2] 54:13 59:14 <b>Most</b> [6] 26:21,22 50:9 53:19 55:6,6 <b>move</b> [4] 17:15 21:4 26:2 41:10 <b>much</b> [1] 6:25 <b>murder</b> [2] 51:7 54:10 <b>must</b> [1] 4:9	<b>O</b>	<b>PAGE</b> [5] 2:2 29:21 34:16 41:8 58:2 <b>pages</b> [1] 27:18 <b>panel</b> [10] 56:9,13,15,17 57:1,3,6,7,9 59:9 <b>paradox</b> [1] 57:25 <b>paragraph</b> [1] 27:10 <b>pardon</b> [3] 26:21 28:12 56:1 <b>part</b> [9] 3:14,17,18 15:7 19:4 30:4 31:24 39:2,24 <b>particular</b> [6] 11:18 25:19 44:2 45:21 47:2,20 <b>particularly</b> [2] 48:25 53:16 <b>path</b> [1] 6:13 <b>pattern</b> [1] 43:21 <b>pause</b> [1] 50:24 <b>penalty</b> [3] 51:23 54:14 59:13 <b>Pennsylvania</b> [1] 39:19 <b>people</b> [1] 52:19 <b>period</b> [1] 52:22 <b>permit</b> [2] 4:25 11:21 <b>person</b> [3] 12:18 35:3 43:10 <b>pertains</b> [1] 56:6 <b>petition</b> [7] 26:20,22 27:13 28:18 57:2,3 59:21 <b>Petitioner</b> [7] 1:6,21 2:4,10 3:8 20:11 57:21 <b>Phoenix</b> [1] 1:21 <b>phrase</b> [3] 30:23 37:12,14 <b>pick</b> [3] 46:5,7 48:21 <b>picking</b> [1] 10:5 <b>piggybacking</b> [1] 13:1 <b>Pinholster</b> [2] 26:5,7 <b>place</b> [5] 6:5 15:9,14 23:16 26:1 <b>places</b> [1] 17:12 <b>plain</b> [2] 41:25 50:25 <b>plainly</b> [1] 42:2 <b>play</b> [2] 11:8 55:16 <b>player</b> [1] 55:16 <b>players</b> [1] 55:15 <b>please</b> [3] 3:10 14:14 30:16 <b>point</b> [11] 7:24 10:4,9 12:19 17:4 22:9 28:16,20 54:7 55:1 58:18 <b>pointed</b> [4] 7:6 23:1 53:23 56:5 <b>pointless</b> [1] 27:20 <b>points</b> [1] 57:23 <b>position</b> [8] 5:25 24:2 25:7,23 28:19 29:3 56:21 59:9 <b>post</b> [1] 35:14 <b>post-conviction</b> [38] 9:1,14 12:18 13:17 16:19,23 17:25 18:17,18,24 19:9,10,17,20 20:2,7 21:2,11 24:3,6 26:22 31:16,21,22 32:6 35:10,21 36:2 39:16,20 40:4,10 44:4 45:12 49:24 50:	6 58:24,25 <b>potentially</b> [2] 20:1,14 <b>practice</b> [1] 33:7 <b>pre-petition</b> [1] 29:10 <b>preceded</b> [1] 43:25 <b>precedent</b> [4] 34:8 42:3,16 47:13 <b>predicate</b> [2] 4:11 23:14 <b>predictions</b> [1] 52:5 <b>prejudice</b> [14] 4:1,4,18,24 15:11,14 21:5,8 25:25 26:2 32:21 33:15 45:19 50:24 <b>premise</b> [1] 7:10 <b>prescience</b> [1] 43:17 <b>present</b> [6] 8:3,6 27:23 52:8 54:17 59:17 <b>presented</b> [5] 3:11 8:8 9:13 27:24 56:11 <b>preserve</b> [1] 29:10 <b>preserved</b> [1] 29:8 <b>press</b> [1] 8:21 <b>pretty</b> [2] 5:16 17:10 <b>prevent</b> [1] 20:4 <b>previously</b> [1] 4:11 <b>primary</b> [1] 52:14 <b>principle</b> [1] 13:15 <b>principles</b> [12] 3:23 13:6 16:1,2,6,10 17:5 23:25 44:21,22 47:22 58:13 <b>prior</b> [1] 27:24 <b>prisoner</b> [12] 4:8,8 5:9 11:19 16:20 17:2,7 19:6,11,23 36:21 58:15 <b>prisoner's</b> [7] 17:18 19:14 35:12 36:22 41:14 52:9 58:15 <b>prisoners</b> [1] 8:19 <b>probably</b> [1] 20:5 <b>problem</b> [3] 7:10 9:9 14:8 <b>procedural</b> [16] 4:19,20 5:18 10:21 11:3 13:25 15:8 17:21,23 21:1,7,12 23:22 32:18,20 59:7 <b>procedurally</b> [1] 18:19 <b>proceed</b> [1] 49:21 <b>proceeding</b> [4] 12:19 19:17,20 45:12 <b>proceedings</b> [1] 6:25 <b>process</b> [2] 17:17 41:11 <b>proffer</b> [1] 28:9 <b>proper</b> [1] 18:8 <b>properly</b> [1] 16:25 <b>proposition</b> [1] 4:17 <b>prosecutors</b> [1] 51:17 <b>provide</b> [2] 21:2,12 <b>provided</b> [2] 31:20 35:11 <b>provision</b> [1] 11:12 <b>purport</b> [3] 13:13 37:5,6 <b>purported</b> [1] 59:5 <b>purporting</b> [1] 23:24 <b>purpose</b> [4] 11:16 24:7,9 25:9 <b>purposes</b> [1] 19:12 <b>pursue</b> [2] 11:11 59:1	
<b>M</b>	<b>narrow</b> [7] 11:1,5 13:24 20:24 21:3 53:4,5 <b>narrowly</b> [2] 21:10 59:6 <b>natural</b> [1] 7:1 <b>nature</b> [1] 31:6 <b>necessarily</b> [1] 23:12 <b>necessary</b> [2] 6:22 53:18 <b>need</b> [12] 10:14,14 26:18 30:7 33:17 38:12,18,19,24 40:14 44:6 46:25 <b>needed</b> [1] 59:13 <b>needs</b> [2] 37:15 47:1 <b>negligence</b> [3] 3:22 17:6 20:18 <b>negligent</b> [3] 18:16 19:10 24:3 <b>never</b> [5] 11:11 50:11 54:14 55:22 57:3 <b>new</b> [3] 4:10 11:23 29:5 <b>next</b> [2] 3:4 10:24 <b>nice</b> [1] 36:24 <b>nine</b> [4] 31:17 41:16 52:15,17 <b>nine-year</b> [1] 52:22 <b>Ninth</b> [8] 28:9 29:4 56:9,23 57:1 58:2 59:18,24 <b>nolo</b> [1] 16:25 <b>non-constitutional</b> [1] 45:14 <b>Normally</b> [1] 27:14 <b>nothing</b> [1] 51:21 <b>notice</b> [1] 16:18 <b>number</b> [2] 10:8 52:21	<b>N</b>	<b>objected</b> [2] 56:13 59:21 <b>obstructed</b> [1] 41:6 <b>obstructs</b> [4] 40:24 41:19 44:23 48:4 <b>obvious</b> [1] 25:4 <b>obviously</b> [2] 10:10 15:15 <b>occurred</b> [6] 3:24 15:17 35:13 37:24 39:14 44:13 <b>occurs</b> [2] 31:10 36:20 <b>odd</b> [3] 5:7 25:1 33:25 <b>offered</b> [1] 10:20 <b>offer</b> [1] 22:6 <b>Okay</b> [7] 5:21 14:14,18 17:13 21:8 53:6,13 <b>omniscience</b> [1] 36:25 <b>once</b> [4] 10:13 35:2 42:12 59:18 <b>one</b> [32] 13:21 14:13 21:3 24:7,8 25:7,17,19 27:8,10 29:17 34:17 38:24 40:5,20,21 42:1 44:22 50:9 51:25,25 52:6,18 53:18 54:19 55:3,4,6,15,15,15 58:24 <b>one-year</b> [1] 22:13 <b>only</b> [13] 9:9 14:23 22:10,20 30:18 31:20 36:3 46:11 50:19 52:7 56:6 57:1 58:5 <b>open</b> [8] 31:12,18 44:1,9,19,21 45:10,22 <b>opening</b> [1] 3:18 <b>opinion</b> [1] 10:10 <b>opportunity</b> [6] 14:24 27:20,22 33:1 44:5 55:25 <b>opposed</b> [1] 50:7 <b>oral</b> [5] 1:16 2:2,5 3:7 30:13 <b>ordered</b> [1] 51:10 <b>orders</b> [1] 52:19 <b>ordinarily</b> [1] 34:7 <b>ordinary</b> [4] 37:17 40:21 46:15 49:10 <b>original</b> [1] 31:24 <b>other</b> [10] 8:16 11:12 13:22 24:11 25:17 34:18 46:9,20 48:15 54:20 <b>otherwise</b> [1] 24:21 <b>out</b> [10] 7:6 8:10 11:8 23:1 25:3,5 53:15,20,23 56:5 <b>outside</b> [2] 17:16 41:11 <b>over</b> [7] 21:15,15 52:16,22,22 53:2,20 <b>overcome</b> [1] 6:7 <b>overcoming</b> [1] 4:21 <b>overlooked</b> [1] 35:24 <b>overly</b> [1] 53:2 <b>overrule</b> [1] 37:6 <b>overruled</b> [2] 10:20 37:16 <b>own</b> [1] 14:3 <b>ownership</b> [1] 23:7	<b>P</b>	<b>p.m</b> [1] 60:3
<b>made</b> [6] 17:21 20:10 23:17 56:18 57:5 58:10 <b>major</b> [4] 7:10 38:23,24 40:19 <b>majority</b> [3] 11:7 21:25 41:16 <b>mandatory</b> [2] 39:7 40:1 <b>many</b> [3] 32:7 35:11 43:23 <b>map</b> [1] 30:3 <b>Maples</b> [2] 14:19 15:25 <b>MARTINEZ</b> [104] 1:8 4:15,17 5:9,13,14 6:2,7,12,14 7:13,19 8:1,5,7,15 9:4,10,12 10:7,9,16,18,19,20,25 12:14,25 13:5,10,12,23,24 14:21 15:9,13,16 17:10 18:7,11,22 19:14 20:24 21:9,16,19 22:1 23:2,5,13,24 24:16,17 25:2,8,16,23 27:19 28:9,12 29:4 30:2 32:17 33:7,10,14,23 34:24 35:7,10 36:8,10,12,23 37:2,5,10,14 38:2,6,18,23 40:13,20 41:3 43:9,21 44:9 45:24 46:1,2,10,11,16,18 50:13 52:6,8,10,13 53:4,16 58:19 59:4 <b>Martinez's</b> [2] 5:2 54:7 <b>Mary</b> [1] 55:25 <b>material</b> [1] 50:15 <b>materially</b> [1] 39:17 <b>materials</b> [1] 56:10 <b>matter</b> [9] 1:15 21:10 32:2 34:7,20 37:1 43:5 47:12 59:1 <b>McQuiggin</b> [1] 22:15 <b>mean</b> [20] 6:7,22 8:15 10:20 11:6,13 12:8 16:20 17:23 18:2 21:18 22:5,17 23:22 26:16 43:24 46:23 49:3 51:5 56:2 <b>meaning</b> [3] 20:14 42:2 46:15 <b>meaningful</b> [3] 35:22 50:9 56:7 <b>meaningfully</b> [3] 35:22 49:					

## Official - Subject to Final Review

<p><b>pursued</b> <sup>[1]</sup> 24:25  <b>put</b> <sup>[3]</sup> 18:23 21:24 23:21</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>quacks</b> <sup>[1]</sup> 39:6  <b>qualify</b> <sup>[1]</sup> 17:22  <b>question</b> <sup>[4]</sup> 3:12 5:13 8:9  9:12 10:7 11:2,5 12:1 14:  15,18 18:25 19:2,3 20:3,25  21:21 22:1,8,16,21,23 23:  13,14 24:23 27:9 29:17,18,  25 31:13,18 33:12,13 44:1  45:10,13 46:8 48:21 53:1,  1 57:24 58:7  <b>questions</b> <sup>[5]</sup> 5:3,5 22:5  32:15 57:15  <b>quote</b> <sup>[1]</sup> 17:11  <b>quoting</b> <sup>[1]</sup> 27:18</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>raise</b> <sup>[37]</sup> 6:19,24 8:19,20 9:  15 10:11 11:9 18:13,19 19:  8,18 20:5,17 24:9 27:12  28:2,17 29:9,22 33:16,18  34:22 35:4,14,15 37:10 43:  4 44:5 45:21 47:11,16 49:  15,21 55:4 56:24 57:4,5  <b>raised</b> <sup>[8]</sup> 24:12,20,25 28:  14 33:22,23 52:13 57:9  <b>raising</b> <sup>[11]</sup> 13:18,20 20:4  24:4 34:6,13 44:12 54:24,  25 56:19 57:1  <b>RAMIREZ</b> <sup>[16]</sup> 1:8 3:5 6:9  27:17 28:7,12 30:24 32:14  35:18 54:12 55:23 56:7,8  57:7,10 59:8  <b>Ramirez's</b> <sup>[2]</sup> 27:11,22  <b>rarely</b> <sup>[1]</sup> 53:11  <b>rather</b> <sup>[3]</sup> 4:2 5:7 7:2  <b>rationale</b> <sup>[6]</sup> 13:1 35:6 45:  25 46:2 47:14 48:9  <b>reach</b> <sup>[2]</sup> 38:18 40:14  <b>reached</b> <sup>[1]</sup> 26:13  <b>reaching</b> <sup>[1]</sup> 57:4  <b>read</b> <sup>[6]</sup> 15:12 43:22 46:11  47:1,19 52:7  <b>reading</b> <sup>[2]</sup> 42:16 50:4  <b>real</b> <sup>[1]</sup> 56:7  <b>realize</b> <sup>[1]</sup> 11:10  <b>really</b> <sup>[15]</sup> 10:7,13 11:11 18:  3,5 24:24 25:15 26:6,9,15  36:6 43:14 47:23 51:18,21  <b>reason</b> <sup>[7]</sup> 6:23 24:16 26:1  39:11 47:24 50:2 53:10  <b>reasons</b> <sup>[1]</sup> 48:13  <b>REBUTTAL</b> <sup>[3]</sup> 2:8 57:19,  20  <b>recitation</b> <sup>[1]</sup> 31:1  <b>recognize</b> <sup>[1]</sup> 38:24  <b>recognized</b> <sup>[3]</sup> 31:4 34:10,  11  <b>recognizing</b> <sup>[1]</sup> 34:5  <b>reconcile</b> <sup>[1]</sup> 42:6  <b>reconciled</b> <sup>[1]</sup> 10:18</p>	<p><b>record</b> <sup>[7]</sup> 5:20 6:4 14:23  26:25 50:19 53:14 54:17  <b>reduce</b> <sup>[1]</sup> 36:9  <b>REENTRY</b> <sup>[1]</sup> 1:5  <b>regarding</b> <sup>[1]</sup> 50:8  <b>REHABILITATION</b> <sup>[1]</sup> 1:5  <b>rehearing</b> <sup>[5]</sup> 27:14 28:18  29:10 59:21,22  <b>reinterpreting</b> <sup>[1]</sup> 13:6  <b>reject</b> <sup>[1]</sup> 38:11  <b>rejected</b> <sup>[2]</sup> 17:10 56:12  <b>release</b> <sup>[2]</sup> 51:10 52:19  <b>relief</b> <sup>[3]</sup> 9:2,20 55:25  <b>relies</b> <sup>[1]</sup> 30:25  <b>rely</b> <sup>[3]</sup> 4:15 29:1 37:8  <b>relying</b> <sup>[1]</sup> 56:10  <b>remains</b> <sup>[1]</sup> 36:13  <b>remedy</b> <sup>[1]</sup> 27:19  <b>remember</b> <sup>[1]</sup> 16:13  <b>render</b> <sup>[1]</sup> 56:17  <b>repeat</b> <sup>[1]</sup> 3:25  <b>represent</b> <sup>[1]</sup> 16:5  <b>request</b> <sup>[1]</sup> 27:25  <b>require</b> <sup>[6]</sup> 22:6 33:8 42:1,  3 50:14 51:16  <b>required</b> <sup>[1]</sup> 4:4  <b>requirements</b> <sup>[1]</sup> 27:2  <b>requires</b> <sup>[2]</sup> 30:23 48:18  <b>respectfully</b> <sup>[1]</sup> 59:23  <b>respond</b> <sup>[3]</sup> 49:1 54:23,25  <b>responded</b> <sup>[1]</sup> 57:8  <b>Respondent</b> <sup>[4]</sup> 1:9,23 2:7  30:14  <b>Respondent's</b> <sup>[1]</sup> 29:19  <b>Respondents</b> <sup>[3]</sup> 4:15 14:  16 15:5  <b>response</b> <sup>[5]</sup> 46:22,23 52:  1 54:21 56:8  <b>responsibility</b> <sup>[1]</sup> 23:6  <b>restrict</b> <sup>[1]</sup> 26:9  <b>restrictions</b> <sup>[3]</sup> 32:13 34:1,  4  <b>result</b> <sup>[3]</sup> 42:1,1,4  <b>retial</b> <sup>[1]</sup> 51:11  <b>reverse</b> <sup>[1]</sup> 59:24  <b>review</b> <sup>[26]</sup> 31:15,16,20,22,  22 32:6 33:1 35:11,21 36:  2,3 39:7,16,16,21 40:4,6,6,  10 44:4 49:24 50:6,7 54:4  58:25,25  <b>reviewed</b> <sup>[1]</sup> 54:1  <b>rewrite</b> <sup>[1]</sup> 5:3  <b>rights</b> <sup>[3]</sup> 50:10 53:19 55:7  <b>ROBERT</b> <sup>[3]</sup> 1:22 2:6 30:  13  <b>ROBERTS</b> <sup>[20]</sup> 3:3 6:17 7:  12,17,23 8:11,14 9:3,7 27:  4 29:14 30:8,12 41:22 42:  11 43:16,19 57:13,16 60:1  <b>role</b> <sup>[4]</sup> 4:6 21:17 35:23 58:  5  <b>Ross</b> <sup>[1]</sup> 58:3  <b>ROYSDEN</b> <sup>[52]</sup> 1:20 2:3,9  3:6,7,9 5:12,19,24 7:5,15,</p>	<p>20 8:4,13,23 9:5,11,23 10:  2,17,25 11:16 12:4 13:4  14:12 15:6,20,24 16:17 17:  13 18:11 19:24 20:12,20,  23 22:4,19 23:9 25:6,12,22  28:3,6,19,23 29:2,13 30:1,  11 57:19,20,22  <b>rule</b> <sup>[16]</sup> 4:10 5:2 11:23 12:  12,14,15,17 14:1,2 31:1,5,  24 37:17 39:23,23 53:4  <b>Rules</b> <sup>[2]</sup> 39:24 58:4  <b>ruling</b> <sup>[1]</sup> 34:17  <b>run-of-the-mill</b> <sup>[1]</sup> 59:15</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>same</b> <sup>[18]</sup> 12:21 31:19 32:  11 34:9 35:23,24 37:23,25  39:14 40:17 41:4 43:8 47:  13 48:13 49:4,11,14,23  <b>sandbagged</b> <sup>[1]</sup> 56:25  <b>satisfied</b> <sup>[1]</sup> 30:4  <b>satisfies</b> <sup>[1]</sup> 22:10  <b>satisfy</b> <sup>[4]</sup> 4:9 30:5,6 42:18  <b>saying</b> <sup>[13]</sup> 8:18 9:11 12:15  17:24 21:10,16 25:16 32:  25 39:16 46:1,3 50:17 55:  13  <b>says</b> <sup>[19]</sup> 10:16 11:23 12:9  14:9 17:14,20 19:18 23:19  27:19 35:10 39:24 42:5 46:  9,15 47:5 48:18 51:17 53:  16 54:20  <b>scenario</b> <sup>[1]</sup> 11:19  <b>second</b> <sup>[7]</sup> 14:14 15:9 21:4  26:19 40:19 50:15 58:18  <b>section</b> <sup>[1]</sup> 30:17  <b>see</b> <sup>[2]</sup> 40:15 54:1  <b>seem</b> <sup>[1]</sup> 42:3  <b>seems</b> <sup>[5]</sup> 5:7,16 24:18,25  41:25  <b>seen</b> <sup>[1]</sup> 54:14  <b>sense</b> <sup>[4]</sup> 8:16 11:15 17:3  58:9  <b>separate</b> <sup>[2]</sup> 39:3,25  <b>separation</b> <sup>[1]</sup> 33:20  <b>servng</b> <sup>[1]</sup> 35:23  <b>set</b> <sup>[6]</sup> 18:8 21:2 23:24 26:8  45:3,4  <b>sets</b> <sup>[1]</sup> 58:4  <b>setting</b> <sup>[1]</sup> 58:8  <b>several</b> <sup>[3]</sup> 52:16,23,23  <b>SHINN</b> <sup>[2]</sup> 1:3 3:4  <b>short</b> <sup>[1]</sup> 6:11  <b>shot</b> <sup>[1]</sup> 55:18  <b>shouldn't</b> <sup>[5]</sup> 6:13,23 28:4  46:4 48:10  <b>show</b> <sup>[1]</sup> 25:25  <b>showing</b> <sup>[3]</sup> 4:9 54:9,12  <b>shunted</b> <sup>[1]</sup> 40:10  <b>side</b> <sup>[3]</sup> 46:9,20 54:20  <b>significant</b> <sup>[2]</sup> 53:8,17  <b>significantly</b> <sup>[5]</sup> 17:18 41:  13 45:5 47:8 48:6  <b>simply</b> <sup>[1]</sup> 6:8</p>	<p><b>situation</b> <sup>[14]</sup> 14:22 22:12  32:4,20 33:2 37:25 38:21,  22 41:6,24 47:5,25 48:2  53:22  <b>Sixth</b> <sup>[4]</sup> 19:15 38:4,16 45:  11  <b>slapped</b> <sup>[1]</sup> 39:10  <b>Solicitor</b> <sup>[1]</sup> 1:20  <b>somebody</b> <sup>[1]</sup> 26:17  <b>somehow</b> <sup>[2]</sup> 11:7 58:19  <b>someone</b> <sup>[1]</sup> 54:1  <b>sorry</b> <sup>[6]</sup> 7:15,17 10:1 25:  13 28:15 52:2  <b>sort</b> <sup>[3]</sup> 17:24 33:4 39:2  <b>SOTOMAYOR</b> <sup>[21]</sup> 14:7,13  15:19,22 16:15 27:8 28:4,  15,22,24 29:11 51:24 52:2,  4 53:6,9,13,21,25 54:6 56:  5  <b>south</b> <sup>[1]</sup> 23:8  <b>specific</b> <sup>[6]</sup> 22:19 24:7,8  25:17,19 31:25  <b>specifically</b> <sup>[3]</sup> 11:18 27:  18 45:9  <b>specified</b> <sup>[2]</sup> 7:13,18  <b>specify</b> <sup>[1]</sup> 7:8  <b>specifying</b> <sup>[1]</sup> 4:2  <b>spoke</b> <sup>[3]</sup> 4:5 12:4 26:7  <b>square</b> <sup>[1]</sup> 46:10  <b>squarely</b> <sup>[4]</sup> 31:17 35:9 44:  8 45:23  <b>stage</b> <sup>[2]</sup> 33:14 50:24  <b>stand</b> <sup>[2]</sup> 29:20,25  <b>standard</b> <sup>[8]</sup> 5:4 12:8 20:  18 22:22,23 23:10 34:19  48:17  <b>standards</b> <sup>[1]</sup> 34:15  <b>stands</b> <sup>[2]</sup> 46:16,17  <b>started</b> <sup>[1]</sup> 21:15  <b>state</b> <sup>[45]</sup> 3:16 5:20 6:3,3,  15 8:9 10:3 12:17,20,24  18:1,7,9,13,17,23 19:18 20:  6 26:14,19,25 30:7,25 31:6,  14 32:1 33:16 35:14 37:24  39:13 41:7,13,17 49:6,14,  20 50:5,16,18 56:11,12 58:  22 59:2,16,20  <b>state's</b> <sup>[6]</sup> 17:15,21 18:4  23:6 36:7 59:9  <b>STATES</b> <sup>[8]</sup> 1:1,17 6:23 21:  23 26:21,22 52:14,23  <b>statistics</b> <sup>[1]</sup> 52:7  <b>statute</b> <sup>[23]</sup> 14:2,4,8 15:2,4  22:13 30:19,20 36:14 41:  25 42:15,20 43:22 46:1,10,  14,21,24,25 47:18,19 51:  15 58:1  <b>statutory</b> <sup>[11]</sup> 3:12 4:6 5:3  6:8 14:6 24:14 27:2,12 37:  12,14 52:25  <b>step</b> <sup>[3]</sup> 15:9,10 21:5  <b>still</b> <sup>[3]</sup> 11:22 22:11 46:16  <b>stood</b> <sup>[1]</sup> 36:23  <b>stop</b> <sup>[1]</sup> 14:13</p>	<p><b>strength</b> <sup>[1]</sup> 51:11  <b>Strickland</b> <sup>[3]</sup> 31:9 32:10  38:1  <b>strict</b> <sup>[1]</sup> 27:3  <b>strictly</b> <sup>[1]</sup> 32:18  <b>stripped</b> <sup>[1]</sup> 9:18  <b>strong</b> <sup>[2]</sup> 36:6 51:6  <b>structured</b> <sup>[1]</sup> 35:20  <b>subject</b> <sup>[1]</sup> 41:4  <b>submitted</b> <sup>[2]</sup> 60:2,4  <b>subsection</b> <sup>[3]</sup> 8:24 10:3  23:19  <b>subsections</b> <sup>[1]</sup> 4:3  <b>subsequent</b> <sup>[3]</sup> 20:8 42:3  46:12  <b>substantial</b> <sup>[5]</sup> 35:1 40:16  50:8 52:24 54:12  <b>substantially</b> <sup>[1]</sup> 47:3  <b>succeeded</b> <sup>[1]</sup> 55:4  <b>successive</b> <sup>[1]</sup> 26:19  <b>sufficient</b> <sup>[1]</sup> 34:18  <b>suggestion</b> <sup>[1]</sup> 33:4  <b>suggests</b> <sup>[2]</sup> 33:19 42:14  <b>sui</b> <sup>[1]</sup> 33:4  <b>specified</b> <sup>[1]</sup> 4:2  <b>supported</b> <sup>[4]</sup> 6:22 23:18 37:  8 46:13  <b>supports</b> <sup>[1]</sup> 32:12  <b>supposed</b> <sup>[2]</sup> 22:3 42:5  <b>SUPREME</b> <sup>[2]</sup> 1:1,16  <b>surely</b> <sup>[1]</sup> 6:21  <b>surprised</b> <sup>[1]</sup> 52:6  <b>sylllogism</b> <sup>[6]</sup> 6:18 7:11  <b>system</b> <sup>[10]</sup> 18:8 31:19 35:  21 39:22 41:18 45:4 47:7  48:3 50:11 51:18</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p><b>taint</b> <sup>[1]</sup> 51:18  <b>talked</b> <sup>[1]</sup> 22:1  <b>talks</b> <sup>[2]</sup> 21:17 42:13  <b>team</b> <sup>[2]</sup> 55:15,15  <b>tension</b> <sup>[1]</sup> 25:4  <b>terms</b> <sup>[1]</sup> 22:2  <b>test</b> <sup>[4]</sup> 3:18 4:1,19 19:4  <b>text</b> <sup>[1]</sup> 42:8  <b>that'll</b> <sup>[1]</sup> 49:25  <b>theory</b> <sup>[3]</sup> 8:1 18:7 23:4  <b>There'd</b> <sup>[1]</sup> 54:3  <b>there's</b> <sup>[22]</sup> 6:14 7:7,11 12:  21 13:14 24:1 25:3 26:1  33:19 34:14 37:20 38:23  40:23 44:23 47:24 48:3,16  50:2,15 52:7 58:18,24  <b>therefore</b> <sup>[2]</sup> 17:6 43:22  <b>they've</b> <sup>[3]</sup> 35:20 36:1 49:  23  <b>thinking</b> <sup>[1]</sup> 11:14  <b>third</b> <sup>[2]</sup> 15:10 56:6  <b>THOMAS</b> <sup>[10]</sup> 5:6,15,21 27:  6 32:16,22 33:3,24 57:14,  15  <b>Thomas's</b> <sup>[2]</sup> 10:6 48:21  <b>though</b> <sup>[3]</sup> 10:7 33:25 46:9</p>
--	--	---	--	---

<p><b>three</b> <sup>[4]</sup> 21:19 52:16,17 57:23</p> <p><b>three-step</b> <sup>[1]</sup> 21:6</p> <p><b>threshold</b> <sup>[1]</sup> 48:17</p> <p><b>timely</b> <sup>[1]</sup> 59:20</p> <p><b>today</b> <sup>[1]</sup> 27:13</p> <p><b>tough</b> <sup>[1]</sup> 36:6</p> <p><b>treat</b> <sup>[3]</sup> 40:3 41:1 48:7</p> <p><b>treated</b> <sup>[1]</sup> 44:11</p> <p><b>treating</b> <sup>[2]</sup> 40:16 47:25</p> <p><b>Trevino</b> <sup>[2]</sup> 34:25 50:13</p> <p><b>trial</b> <sup>[32]</sup> 6:5 7:3 9:16 13:20 16:8 17:15,19 18:14 19:8 24:10,18 26:3 31:10 32:7 35:2,15 36:4 41:10,15,21 44:13 49:6 50:1,9 54:4 55:7,10,21,22 56:3 58:23 59:12</p> <p><b>tribunal</b> <sup>[1]</sup> 16:4</p> <p><b>true</b> <sup>[3]</sup> 23:25 38:3 40:9</p> <p><b>trump</b> <sup>[1]</sup> 14:4</p> <p><b>trumped</b> <sup>[1]</sup> 8:1</p> <p><b>try</b> <sup>[1]</sup> 48:23</p> <p><b>trying</b> <sup>[3]</sup> 25:3,4 49:13</p> <p><b>turn</b> <sup>[1]</sup> 51:13</p> <p><b>two</b> <sup>[9]</sup> 26:9 34:12,21 38:23 42:6 52:7,16,17,18</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimate</b> <sup>[1]</sup> 6:16</p> <p><b>ultimately</b> <sup>[3]</sup> 14:4,5 52:18</p> <p><b>unaware</b> <sup>[1]</sup> 11:7</p> <p><b>unconstitutional</b> <sup>[1]</sup> 36:15</p> <p><b>under</b> <sup>[22]</sup> 3:22 4:23 5:1,8 14:15 16:1,6,10 17:4 18:20 19:2 21:20 31:23 32:12 33:12,14,23 34:20 39:22 40:21 43:5 49:19</p> <p><b>underlying</b> <sup>[3]</sup> 5:10,11,23</p> <p><b>understand</b> <sup>[6]</sup> 5:15 13:11,15 15:1 25:24 36:11</p> <p><b>understanding</b> <sup>[2]</sup> 26:6 40:21</p> <p><b>understood</b> <sup>[6]</sup> 13:5 34:19 37:19 42:20,22,25</p> <p><b>Unfortunately</b> <sup>[1]</sup> 30:6</p> <p><b>UNITED</b> <sup>[2]</sup> 1:1,17</p> <p><b>unless</b> <sup>[1]</sup> 36:15</p> <p><b>unlike</b> <sup>[1]</sup> 22:12</p> <p><b>until</b> <sup>[4]</sup> 6:24 19:19 27:13 28:17</p> <p><b>unusual</b> <sup>[1]</sup> 53:22</p> <p><b>up</b> <sup>[15]</sup> 7:3 9:9 10:5 18:8 26:9 28:19 29:20,25 33:9 45:3,4 46:5,7 48:21 59:9</p> <p><b>using</b> <sup>[1]</sup> 19:3</p> <p><b>usual</b> <sup>[1]</sup> 12:12</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>various</b> <sup>[1]</sup> 12:11</p> <p><b>vast</b> <sup>[1]</sup> 21:25</p> <p><b>versus</b> <sup>[5]</sup> 3:4 18:24 39:19 40:2 58:1</p>	<p><b>view</b> <sup>[1]</sup> 22:9</p> <p><b>vindicate</b> <sup>[6]</sup> 40:25 41:15 45:6 47:9 53:18 55:6</p> <p><b>vindicated</b> <sup>[3]</sup> 52:19 55:12 56:3</p> <p><b>vindication</b> <sup>[2]</sup> 41:20 48:5</p> <p><b>violates</b> <sup>[1]</sup> 29:7</p> <p><b>violation</b> <sup>[1]</sup> 38:5</p> <p><b>vital</b> <sup>[1]</sup> 55:6</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waived</b> <sup>[1]</sup> 57:12</p> <p><b>waiver</b> <sup>[4]</sup> 27:11,14 57:6 59:8</p> <p><b>walks</b> <sup>[1]</sup> 39:5</p> <p><b>wants</b> <sup>[2]</sup> 45:5 58:6</p> <p><b>Washington</b> <sup>[2]</sup> 1:12,22</p> <p><b>watershed</b> <sup>[1]</sup> 26:11</p> <p><b>way</b> <sup>[16]</sup> 6:10 12:21 15:12 21:23 24:1 25:1 35:20,22 36:1,13 45:3,5 46:10 47:6 48:2 53:18</p> <p><b>ways</b> <sup>[2]</sup> 32:7 35:11</p> <p><b>Wednesday</b> <sup>[1]</sup> 1:13</p> <p><b>welcome</b> <sup>[1]</sup> 32:15</p> <p><b>whatever</b> <sup>[1]</sup> 43:1</p> <p><b>Whereupon</b> <sup>[1]</sup> 60:3</p> <p><b>whether</b> <sup>[16]</sup> 6:3 14:15 18:3,23 19:7 33:12,17 34:13,22 45:10,13,19 47:14 53:2 54:22 55:8</p> <p><b>whole</b> <sup>[3]</sup> 6:23 23:4 37:1</p> <p><b>will</b> <sup>[4]</sup> 5:8 34:17 37:18 50:11</p> <p><b>Williams</b> <sup>[16]</sup> 3:20 14:14 15:18 19:5 20:15 26:8 30:22 34:16 36:17 37:7,15 38:9 40:22 48:18 58:12,13</p> <p><b>Williams'</b> <sup>[1]</sup> 31:1</p> <p><b>without</b> <sup>[4]</sup> 6:2 27:20 46:17 56:19</p> <p><b>won</b> <sup>[1]</sup> 59:16</p> <p><b>word</b> <sup>[1]</sup> 18:12</p> <p><b>words</b> <sup>[5]</sup> 3:19 8:17 25:18 30:18 41:19</p> <p><b>work</b> <sup>[1]</sup> 16:4</p> <p><b>worst-case</b> <sup>[1]</sup> 11:19</p> <p><b>worthless</b> <sup>[1]</sup> 5:16</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> <sup>[1]</sup> 52:8</p> <p><b>years</b> <sup>[6]</sup> 27:24 31:17 41:16 43:23 52:15,17</p>
---	---