

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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YSLETA DEL SUR PUEBLO, ET AL.,           )  
  ) Petitioners,  
  ) v.   ) No. 20-493  
TEXAS,    )  
  ) Respondent.  
- - - - -

Pages: 1 through 98  
Place: Washington, D.C.  
Date: February 22, 2022

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7                                   Respondent.           )

8   - - - - -

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10   Washington, D.C.

11   Tuesday, February 22, 2022

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13                           The above-entitled matter came on for  
14 oral argument before the Supreme Court of the  
15 United States at 10:00 a.m.

16

17 APPEARANCES:

18 BRANT C. MARTIN, Fort Worth, Texas; on behalf of the  
19                   Petitioners.

20 ANTHONY A. YANG, Assistant to the Solicitor General,  
21                   Department of Justice, Washington, D.C.; for the  
22                   United States, as amicus curiae, supporting the  
23                   Petitioners.

24 LANORA C. PETTIT, Principal Deputy Solicitor General,  
25                   Austin, Texas; on behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	BRANT C. MARTIN, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	ANTHONY A. YANG, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioners	36
9	ORAL ARGUMENT OF:	
10	LANORA C. PETTIT, ESQ.	
11	On behalf of the Respondent	65
12	REBUTTAL ARGUMENT OF:	
13	BRANT C. MARTIN, ESQ.	
14	On behalf of the Petitioners	95
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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3  
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P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Ysleta del Sur Pueblo versus Texas.

Mr. Martin.

ORAL ARGUMENT OF BRANT C. MARTIN

ON BEHALF OF THE PETITIONERS

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

The question this case presents is whether the Restoration Act subjects the Pueblo to Texas's time, place, and manner restrictions as it relates to games that Texas does not flatly prohibit.

It does not. In the Restoration Act, Congress codified the Cabazon Band framework and specifically foreclosed Texas's regulatory authority over the tribes' gaming activities.

The plain language of the Act provides us with clear support for this interpretation. On the heels of this Court's decision in Cabazon, Congress changed the language of the Restoration Act to replicate the prohibitory/regulatory dichotomy struck in Cabazon. Section

1 107(a) incorporates the Cabazon framework. It  
2 federalize Texas law but only as to prohibited  
3 games. And bingo, in the state of Texas, is not  
4 a prohibited game.

5 Section 107(b) clearly forecloses any  
6 interpretation of Section 107 in its entirety  
7 where Texas would have regulatory jurisdiction  
8 over tribal gaming. And Section 107(b) must  
9 have meaning in the Act.

10 The problem with the State of Texas's  
11 interpretation and the Fifth Circuit's  
12 interpretation in *Ysleta I* is that it reads  
13 107(b) out of the Act entirely.

14 This interpretation is also consistent  
15 with Congress's extension of the Cabazon  
16 framework to IGRA. The two statutes are not in  
17 conflict, and you don't have to choose one over  
18 the other. And even if that were the case, and  
19 we don't think it is, the plain language of the  
20 Restoration Act allows my client to engage in  
21 non-prohibited gaming activities.

22 In Sections 107(a) and 107(b),  
23 Congress was sending the clear signal that it  
24 was incorporating the prohibitory/regulatory  
25 construct from Cabazon into a test applicable to

1 these tribes. The final text of the Restoration  
2 Act reflects the bargain that Congress struck.  
3 Each side got something but not everything.

4 Texas was allowed to prevent  
5 prohibited games from being played by these  
6 tribes. Meanwhile, the tribe was allowed to  
7 retain its sovereignty and its freedom from  
8 regulation as it related to gaming activities.

9 And with, I'd be pleased to answer any  
10 questions from the Court.

11 JUSTICE THOMAS: Yes, counsel, the --  
12 in the -- Cabazon was a grant of jurisdiction,  
13 right?

14 MR. MARTIN: Yes, Your Honor.

15 JUSTICE THOMAS: Is there any  
16 difference -- where -- is there a grant of  
17 jurisdiction in 107(a)?

18 MR. MARTIN: Your Honor, looking at  
19 the text of 107(a), it's specifically dealing  
20 with the tribal gaming activities. There's not  
21 a specific reference to the grant of the  
22 jurisdiction.

23 JUSTICE THOMAS: So what -- the --  
24 just standing alone, what do you think it's  
25 doing?

1                   MR. MARTIN: Your Honor, I think it's  
2 dictating -- it's showing that Congress was  
3 extending the Cabazon framework to this fact  
4 pattern where Congress was federalizing state  
5 law as to prohibited gaming activities.

6                   JUSTICE THOMAS: So --

7                   MR. MARTIN: It's taking the Public  
8 Law 280 structure that was explicated in Cabazon  
9 and extending it to this fact pattern.

10                  JUSTICE THOMAS: So exactly how does  
11 it -- how is it doing that?

12                  MR. MARTIN: Your Honor, in the text  
13 itself, the first sentence: "All gaming  
14 activities which are prohibited by the laws of  
15 the State of Texas are hereby prohibited on the  
16 reservation and on the lands of the tribes."

17                  JUSTICE THOMAS: That seems almost as  
18 though it's adopting it as federal law.

19                  MR. MARTIN: It's adopting Texas's  
20 prohibitory laws as to prohibited gaming  
21 activities. It's -- one of the things that's  
22 interesting, Your Honor, is that, compared to  
23 previous versions of this Act, this final -- one  
24 of the final changes in Section 108 was changing  
25 it from "gaming" and "gambling" and those

1 broader terms to the concept of "gaming  
2 activities" and specifying prohibited gaming  
3 activities.

4 JUSTICE THOMAS: Thank you.

5 CHIEF JUSTICE ROBERTS: Well, I mean,  
6 you say that 107 was enacted in light of  
7 Cabazon. But it was directly enacted in light  
8 of the tribal resolution, which said that the  
9 tribe was willing at this point, after all the  
10 back and forth, they obviously weren't happy  
11 about it, but they were willing to provide that  
12 all gaming, gambling, lottery, bingo shall be  
13 prohibited. All, regardless of whether there's  
14 some that's permitted and some that's -- that's  
15 not according to the laws of -- of Texas.

16 So, I mean, this is an odd case. I  
17 haven't seen in decades briefs that were so full  
18 of legislative history and, you know,  
19 pre-enactment this or post-enactment that, but,  
20 I mean, if that's what we're going to -- if  
21 that's the game that's on, it looks to me like  
22 the tribal resolution had a much more direct  
23 connection to the legislation that was actually  
24 passed.

25 MR. MARTIN: Your Honor, if I may, I



1 think the tribal resolution had a much more  
2 direct connection to previous versions of it.  
3 And I would agree with you there's a lot of  
4 legislative history in here, and some of it's  
5 legislative history and some of it is almost  
6 textual evolution on what was actually enacted.

7           And one of the things that I would  
8 point out to Your Honor is the tribal  
9 resolution, which, again, was dated March 16th  
10 of 1986, that total ban or what the State of  
11 Texas calls the "operative request" -- and --  
12 and that would have been a total ban. There's  
13 no way to deny that.

14           However, that part of the text was  
15 incorporated into the Restoration Act into a  
16 version that never actually passed. And that  
17 was a version that was set forth in its -- this  
18 is in our brief on page 9, Your Honor -- that  
19 version was September 23rd of 1986. Now, that's  
20 interesting because Cabazon comes down and  
21 Cabazon is handed down on February 25th, 1987,  
22 so well after that version which reflected the  
23 tribal resolution was handed down. After --

24           CHIEF JUSTICE ROBERTS: Do you think  
25 the law would have been passed without the

1 tribal resolution, regardless of the particular  
2 form that it was enacted?

3 MR. MARTIN: Your Honor, I think I'm  
4 focused on the law that was actually passed and  
5 the changes that were made by Congress. I -- I  
6 don't know that I want to speculate on what  
7 would have happened or would not have happened.  
8 All I know is I have the text that -- we have  
9 the text that we have.

10 And -- and the point that I was going  
11 to make was the final version of it is the one  
12 that no one here thinks that the final version  
13 in 107(a) is a total ban. There's no way you  
14 can construct it to where it reflects a total  
15 ban.

16 So it can't reflect what Texas calls  
17 the "operative request." It has to mean  
18 something else. And the final changes that were  
19 made to 107(a) talk about the prohibited gaming  
20 activities, and that's a different story than  
21 the prohibited gaming.

22 And, Your Honor, if I may --

23 JUSTICE ALITO: Well --

24 CHIEF JUSTICE ROBERTS: I don't know  
25 --

1 JUSTICE ALITO: Go ahead.

2 CHIEF JUSTICE ROBERTS: I was just  
3 going to say I don't know who you're including  
4 in everybody here, but it says prohibited. And  
5 just -- I mean, if you had -- under Texas law,  
6 you can have bingo games sort of up to \$100 at  
7 stake, okay, and then what -- what's happening  
8 is the tribe is having bingo games up to \$1,000.

9 Now, if you told somebody that, that  
10 they have games up to \$1,000, it would be  
11 perfectly natural for that person to say, well,  
12 that's prohibited because there's a \$100 cap.

13 MR. MARTIN: Your Honor --

14 CHIEF JUSTICE ROBERTS: And you would  
15 tell me that, no, you would say they would be  
16 able to, you know, gam- -- have the bingo games  
17 up to \$1,000.

18 MR. MARTIN: Your Honor, those are the  
19 exact type of restrictions that this Court  
20 analyzed in Cabazon and determined to be  
21 regulatory. And we believe that that's the  
22 exact same application that Congress was --

23 JUSTICE KAGAN: Well, suppose that  
24 that's right, Mr. Martin, but I think what the  
25 Chief Justice is suggesting is that it's not the

1 normal term -- use of the term "prohibited."  
2 What you're really relying on is the idea that  
3 Cabazon turns this language into a kind of term  
4 of art and that Congress was aware of that and  
5 that when Congress used the word "prohibited" it  
6 was incorporating this distinction that had been  
7 made in Cabazon. And let's say that your  
8 argument really does depend on that. It's not  
9 the normal use of the word "prohibited." It's a  
10 Cabazon use of the word "prohibited."

11 So then the question is what's your  
12 best evidence that this Court -- that the --  
13 that Congress, when it passed this statute,  
14 really did have Cabazon in mind rather than was  
15 using the normal use of the word "prohibited"?

16 MR. MARTIN: Your Honor, first of all,  
17 I -- I think that under Williams versus Taylor,  
18 we certainly can assume that Congress was taking  
19 language from one of this Court's opinions and  
20 incorporating it, especially in the exact same  
21 context of Indian gaming, and that they knew  
22 what it meant.

23 The second aspect on how I would  
24 answer your question, Your Honor, is that under  
25 107(a), we set up the prohibited structure and

1 then, in 107(b), we set up the restriction on  
2 Texas's regulation. And I think that that  
3 clearly evidences --

4 JUSTICE KAGAN: I don't really see  
5 107(b) as doing that. I mean, if I look at  
6 107(b), it seems to me like much more of kind of  
7 the mirror image or flip side of 107(c) that  
8 says, you know, the federal courts have  
9 jurisdiction in -- in 107(c), and in 107(b), it  
10 says the state courts don't have jurisdiction.

11 Why shouldn't -- so, on -- on that  
12 reading, 107(b) doesn't really help you, does  
13 it?

14 MR. MARTIN: I -- I think 107(b) helps  
15 us greatly, Your Honor, and I think that's the  
16 issue that we had with the Fifth Circuit's  
17 opinion.

18 Regulatory jurisdiction within 107(b)  
19 is hearkening back to the -- the broader term of  
20 the state's inability to tax, regulate, license.  
21 It's the Bryan versus Itasca County test. They  
22 don't have that regulatory authority.

23 Whereas, in 107(c), in the title  
24 alone, it says jurisdiction over enforcement. I  
25 don't think that you can combine -- and this is

1 where I -- I respectfully disagree with -- with  
2 my friends from the State of Texas, I don't  
3 think you can combine 107(b) to say that's  
4 enforcement. I think that's confusing  
5 jurisdiction with the --

6 JUSTICE KAGAN: Could -- could we go  
7 back to the first way you answered the question?  
8 Because your first sentence was something like,  
9 you know, we presume that Congress knows about  
10 the law. And, you know, sometimes we do, and  
11 then again, sometimes we don't.

12 Do -- do you have a view of -- of --  
13 of when we should make that presumption and why  
14 this case fits within that sphere?

15 MR. MARTIN: My view, Your Honor,  
16 would be that if Congress is using the exact  
17 same language, such as the use of the word  
18 "prohibit," you can then dictate that, whether  
19 you call it a term of art or using the same term  
20 in the exact same context --

21 JUSTICE BARRETT: Counsel, "prohibit,"  
22 though, how many times does "prohibit" appear in  
23 the code, and -- and, you know, one of the  
24 briefs counted how many times. I mean, it's not  
25 a term of art in that sense, right?

1           MR. MARTIN: It is a term of art, Your  
2 Honor, when it's six months after Cabazon and  
3 you're talking about Indian gaming. That --  
4 that would be the distinction I would make.

5           I believe that the cite that they gave  
6 you, and that was the State of Texas's brief, it  
7 talked about it appearing 8,800 times.

8           JUSTICE ALITO: But what would they  
9 have -- if you were in Congress and you were  
10 aware of Cabazon and you wanted to use  
11 "prohibited" in the normal sense of the word and  
12 you said, well, I'm afraid that if I use this  
13 word "prohibited," people are going to think it  
14 has the Cabazon meaning, what would you have --  
15 how would you have written this?

16           MR. MARTIN: Well, Your Honor, I -- if  
17 I -- I would answer it by saying I think that  
18 we're talking just about "prohibited" and the  
19 use of the word "prohibited." We also need to  
20 see what it modifies, which is prohibited gaming  
21 activities, because that was another change --

22           JUSTICE ALITO: Well, maybe what --

23           MR. MARTIN: -- that affected Cabazon.

24           JUSTICE ALITO: -- what synonym would  
25 you have used? All gaming activities which are

1 what? I better say forbidden, I shouldn't say  
2 prohibited? Is that the argument?

3 MR. MARTIN: I -- Your Honor, my  
4 submission would be that by using the word  
5 "prohibited" in 107(a) and then using no  
6 regulatory jurisdiction in 107(b), that it was  
7 clear that they were intending to implicate  
8 Cabazon.

9 JUSTICE BARRETT: So do you lose  
10 without Cabazon?

11 MR. MARTIN: No, Your Honor, I don't  
12 think you lose without Cabazon.

13 JUSTICE BARRETT: So, if you take  
14 Cabazon out and were just looking at the  
15 ordinary meanings of these words, "prohibited"  
16 and "regulatory jurisdiction," you think you  
17 still win?

18 MR. MARTIN: Your Honor, to prohibit  
19 under the ordinary meaning is to bid. Bingo is  
20 not forbidden --

21 JUSTICE SOTOMAYOR: Counsel --

22 MR. MARTIN: -- in the State of Texas.

23 JUSTICE SOTOMAYOR: -- counsel, why  
24 are you relying just on Cabazon? Bryan in 1976  
25 used the dichotomy of prohibited versus



1 regulatory, correct --

2 MR. MARTIN: Yes, Your Honor.

3 JUSTICE SOTOMAYOR: -- and said in the  
4 Indian context, regulatory doesn't mean  
5 prohibited, correct?

6 MR. MARTIN: Absolutely. Yes, Your  
7 Honor.

8 JUSTICE SOTOMAYOR: So you're not  
9 talking about six months before. You're talking  
10 about 10 years before.

11 MR. MARTIN: Yes, Your Honor. Certain  
12 --

13 JUSTICE SOTOMAYOR: And, secondly, why  
14 are you not pointing to the examples of  
15 legislation passed on the same day as the  
16 Restoration Act?

17 The Winnepaug passed the very same day  
18 and it used regulations, those laws and  
19 regulations which prohibit or regulate. The  
20 Seminole, also passed in 1987, also talked about  
21 prohibiting and regulating. Correct?

22 MR. MARTIN: Yes. Yes, Your Honor.  
23 When Congress wants to use the word  
24 "regulations" in this context, it certainly can  
25 -- it certainly knows how to.

1 JUSTICE ALITO: Mr. Martin --

2 MR. MARTIN: It was the quinte- --

3 JUSTICE SOTOMAYOR: It showed you it  
4 did.

5 MR. MARTIN: Yes, Your Honor.

6 JUSTICE GORSUCH: Counsel, could I  
7 just ask, if you were to prevail, would Indian  
8 gaming be completely free for all, or would  
9 there still be -- would the Pueblos still be  
10 subject to IGRA?

11 MR. MARTIN: We believe that the  
12 proper reading of the Restoration Act is that  
13 the Pueblo would still be subject to IGRA. It's  
14 one of the other issues we have with --

15 JUSTICE GORSUCH: And so what --

16 MR. MARTIN: -- the official --

17 JUSTICE GORSUCH: -- what's the upshot  
18 of that? As I -- as I understand it, bingo may  
19 be allowed, for example, but blackjack wouldn't.  
20 Is that -- is that -- is that about right?  
21 Class 3 gaming would still be forbidden?

22 MR. MARTIN: In a general sense, yes,  
23 Your Honor, Class 3 would still be subject to  
24 either a negotiation of a compact with the state  
25 or they would only be allowed to engage in Class

1 2 gaming under IGRA supervised by the NIGC.

2 JUSTICE GORSUCH: Okay. And then one  
3 more quick question for you. I -- I -- I  
4 understand that there's an Ex Parte Young  
5 possibility of -- of jurisdiction here against  
6 the governor of the tribe. But is the tribe  
7 itself waiving sovereign immunity? Is it before  
8 us?

9 MR. MARTIN: I don't believe that that  
10 issue is before you, Your Honor, and I'm  
11 hesitant to waive sovereign immunity when that  
12 issue hasn't been briefed.

13 JUSTICE GORSUCH: Well, I'm not asking  
14 you to waive sovereign immunity at -- at -- at  
15 the podium. That would be a bit much.

16 (Laughter.)

17 JUSTICE GORSUCH: So it's safe to say  
18 we're here proceeding just against the  
19 governors, is -- is that -- is that right?

20 MR. MARTIN: I believe that's right,  
21 Your Honor.

22 JUSTICE GORSUCH: Thank you.  
23 Appreciate it.

24 JUSTICE SOTOMAYOR: Can I go to that  
25 question, follow up on it? There seems to be a

1 dispute whether this type of bingo by machine is  
2 the same as the bingo we know, people in a room  
3 calling out numbers.

4           You dispute that. You say it's the  
5 same. But assuming that there's -- and I do --  
6 that there's a genuine dispute on that issue,  
7 that still would be subject to federal  
8 jurisdiction, a court would then decide below  
9 whether this type of slot machine is actually  
10 bingo, correct?

11           MR. MARTIN: Well, Your Honor, first,  
12 you know, we would obviously dispute that it's a  
13 slot machine. But if Texas continued -- if this  
14 Court remands it back down to the trial court  
15 for a finding, Texas brought -- continued its  
16 action under 107(c) for an injunction, the  
17 federal trial court would determine whether or  
18 not it was a prohibited gaming activity under  
19 section 107(a).

20           And I'm trying to be very careful and  
21 precise with my words here. Whether or not  
22 that's bingo, whether or not that's not bingo, I  
23 think that there's a number of factors that  
24 would factor into the consideration by the trial  
25 court, but that would be under the federal

1 court's jurisdiction.

2 JUSTICE KAGAN: Mr. Martin, could I  
3 take you back to Justice Gorsuch's question  
4 about IGRA? If -- if you prevail, the tribe is  
5 regulated under IGRA.

6 I take it 107(c) would still separate  
7 out Texas from other states, is that correct --

8 MR. MARTIN: To a certain extent --

9 JUSTICE KAGAN: -- in your view?

10 MR. MARTIN: -- yes, Your Honor. The  
11 third sentence of 107(c), it -- it has a very  
12 interesting construction. It is not -- you  
13 can't read it as an affirmative grant of an  
14 injunctive relief.

15 It says "nothing herein shall preclude  
16 the State of Texas from bringing an injunction,"  
17 almost suggesting if there was a preexisting  
18 right from the State of Texas to have that  
19 injunction, that they would still have it. I am  
20 not opining on that but I'm saying that that  
21 would still exist.

22 And to the extent that it was read as  
23 an affirmative grant or an additional remedy,  
24 that the State of Texas would still have that  
25 under the Restoration Act.

1 JUSTICE KAGAN: But I guess what I was  
2 asking about is it would still be true that  
3 Texas -- or is this wrong, that -- that -- that  
4 the -- when 107(c) gives jurisdiction to the  
5 federal courts, is that different from the  
6 scheme that prevails in IGRA?

7 MR. MARTIN: No, Your Honor.

8 JUSTICE KAGAN: That's the same?

9 MR. MARTIN: Yes, Your Honor.

10 JUSTICE KAGAN: So really it's  
11 entirely IGRA. I mean, there's no sense in  
12 which Texas comes out worse.

13 MR. MARTIN: We certainly believe  
14 there is no sense in which Texas comes out  
15 worse, Your Honor.

16 CHIEF JUSTICE ROBERTS: Counsel, just  
17 one last question from me, and I'm sure it's not  
18 relevant, but I -- like Justice Sotomayor, I'm  
19 pretty curious. You walk in, this thing looks  
20 like a slot machine, right?

21 MR. MARTIN: No, Your Honor. I mean  
22 --

23 CHIEF JUSTICE ROBERTS: No?

24 MR. MARTIN: I would actually dispute.  
25 I think the State of Texas thinks it looks like

1 a slot machine. And I certainly -- there's been  
2 testimony that they think it looks like a slot  
3 machine. I could -- I could tell you --

4 CHIEF JUSTICE ROBERTS: What would --  
5 what -- what would you say it looks like?

6 MR. MARTIN: I would say it looks like  
7 an electronic bingo machine that has a bingo --

8 CHIEF JUSTICE ROBERTS: What makes it  
9 look like a bingo machine?

10 (Laughter.)

11 MR. MARTIN: Well, there's a -- let me  
12 --

13 CHIEF JUSTICE ROBERTS: There's a name  
14 on it that says bingo?

15 MR. MARTIN: Well, there's actually a  
16 card and you can switch the cards by pushing a  
17 button to change the cards that you're playing.  
18 Now, are there reels and lights that look --  
19 that would characterize --

20 CHIEF JUSTICE ROBERTS: Are there  
21 people --

22 MR. MARTIN: -- people would  
23 characterize it -- yes.

24 CHIEF JUSTICE ROBERTS: -- calling out  
25 numbers and -- people, somebody saying, you

1 know, B-12 or --

2 MR. MARTIN: There -- there in fact is  
3 part of our operations, Your Honor. My tribe's  
4 operations is live-called bingo and it's also  
5 one of the things the State of Texas --

6 CHIEF JUSTICE ROBERTS: But that's  
7 something different than the slot -- slot  
8 machine bingo, right?

9 MR. MARTIN: It is different than the  
10 electronic machines, Your Honor, but they've  
11 complained about all of it.

12 CHIEF JUSTICE ROBERTS: Okay, thank  
13 you. I'm sorry.

14 Justice Thomas?

15 JUSTICE THOMAS: Just one  
16 clarification. Who can operate -- under Texas's  
17 law, who can conduct the bingo game legally?

18 MR. MARTIN: The Texas Bingo Enabling  
19 Act as you're referencing, it's specific  
20 charitable organizations, Your Honor, that are  
21 -- that are set forth in that regulatory scheme.

22 JUSTICE THOMAS: So why is this not  
23 prohibited if it's not a charitable  
24 organization?

25 MR. MARTIN: Because if the games



1 under -- under not just the Restoration Act but  
2 also under IGRA and under the cases that come  
3 out of IGRA, if it's allowed to anyone for any  
4 purpose, then it's not a prohibited gaming  
5 activity.

6 And that's specifically under IGRA,  
7 Your Honor.

8 JUSTICE ALITO: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice  
10 Breyer?

11 JUSTICE BREYER: I'm curious about the  
12 bingo machines. But if -- suppose that IGRA  
13 applied. And suppose that Texas had a law which  
14 said you can play bingo up to -- the one the  
15 Chief gave, up to \$1,000, but not for more than  
16 1,000. That's a crime.

17 Well, IGRA says, seems like the same  
18 problem. It -- it -- it -- it says you have to  
19 have, I guess, gaming activity on Indian lands  
20 is okay if -- if you have a compact or under 3,  
21 I guess, or something.

22 If the gaming activity is conducted  
23 within a state, which does not as a matter of  
24 criminal law and public policy prohibit the  
25 gaming activity. All right, so isn't it the

1 same problem?

2 I mean, because they do prohibit it  
3 over \$1,000 but they don't prohibit it under  
4 \$1,000, but that you want to call regulation,  
5 but IGRA doesn't seem to use the word  
6 regulation.

7 MR. MARTIN: Well, Your Honor, it's --  
8 it's not the same problem.

9 JUSTICE BREYER: It's not?

10 MR. MARTIN: It's not. Because IGRA  
11 actually incorporates that Cabazon prohibited  
12 regulatory juris- -- distinction.

13 JUSTICE BREYER: Yes.

14 MR. MARTIN: And that distinction is  
15 critical to the hypothetical.

16 JUSTICE BREYER: Right, right, right.  
17 I understand that. So I didn't understand that  
18 IGRA incorporated it, but I guess it doesn't  
19 incorporate it in the language I just read you.

20 So where does it incorporate it?

21 MR. MARTIN: IGRA would be  
22 incorporated -- or, I'm sorry, Cabazon would be  
23 incorporated into IGRA under 2701(5) and  
24 2710(b)(1)(A).

25 JUSTICE BREYER: 2710(b)(1)(A), okay.

1 MR. MARTIN: And 2701(5), Your Honor.

2 JUSTICE BREYER: That -- that's what I  
3 read you, 2701(5).

4 MR. MARTIN: Right. And there's --

5 JUSTICE BREYER: It didn't say  
6 regulatory. It said prohibited.

7 MR. MARTIN: Well, I think if you read  
8 those statutes, our submission would be that  
9 that's where IGRA specifically incorporates the  
10 Cabazon prohibited framework.

11 JUSTICE BREYER: Okay.

12 CHIEF JUSTICE ROBERTS: Justice Alito?

13 JUSTICE ALITO: Well, I'm puzzled by  
14 both your argument and by Cabazon. And, in  
15 particular, by how a court is going to decide  
16 whether these machines, which I don't have a  
17 very clear picture of in my mind, are bingo or  
18 not bingo.

19 If they are not bingo, they're  
20 something else. Let's say they're dingo.

21 (Laughter.)

22 JUSTICE ALITO: And Texas prohibits  
23 dingo, then you can't have them, right?

24 MR. MARTIN: If Texas prohibits --

25 JUSTICE ALITO: Under no --

1 MR. MARTIN: -- dingo --

2 JUSTICE ALITO: -- circumstances can  
3 you have a dingo machine.

4 MR. MARTIN: If it was a criminal  
5 prohibition against dingo, you would be correct,  
6 Your Honor.

7 JUSTICE ALITO: Okay. And how do you  
8 decide whether this thing is bingo. I mean,  
9 just like the platonic ideal of bingo?

10 MR. MARTIN: I -- Your Honor, I -- I  
11 think that you don't have to decide this -- this  
12 Court --

13 JUSTICE ALITO: No, we don't have to  
14 --

15 MR. MARTIN: -- does not have to --

16 JUSTICE ALITO: -- but somebody does.

17 MR. MARTIN: -- decide the platonic --

18 JUSTICE ALITO: How is the person who  
19 has to decide this going to decide whether this  
20 thing that's not exactly -- it's not the kind of  
21 bingo, you know, that you expect people to be  
22 playing in church, or at the Elks. It's  
23 something different.

24 How do you decide whether that's  
25 bingo?

1                   MR. MARTIN: Understood, Your Honor.  
2 I think let's -- and let's take the hypothetical  
3 that this gets remanded down through to the  
4 trial court to make that factual determination.

5                   I think that court would take into  
6 account a number of things. It would take into  
7 account the definition of bingo that Texas has  
8 under the Texas Bingo Enabling Act which  
9 actually helps us.

10                  It would take into account what IGRA  
11 considers to be bingo under 2701 and 2710. It  
12 would take into account the expert testimony,  
13 much like it did in the contempt hearing below.

14                  And I would point out to Your Honor,  
15 this is -- what --

16                  JUSTICE ALITO: There are experts who  
17 -- they -- they are experts on -- on the  
18 identification of you put something before these  
19 experts and they can say that's bingo, no,  
20 that's not bingo? There are people who can be  
21 qualified as experts on that?

22                  MR. MARTIN: The answer to the  
23 question, that question is yes, Your Honor,  
24 there are.

25                  JUSTICE BREYER: Can we ask my

1 grandmother?

2 (Laughter.)

3 MR. MARTIN: My -- my own mother has  
4 asked me questions about those very issues, Your  
5 Honor. But there are experts, in fact, that  
6 talk about whether or not something has a random  
7 number generator or not, whether or not the math  
8 makes it bingo, whether or not the evidence of  
9 the pattern makes it bingo. All of those things  
10 are taken into account.

11 All of those same things, Your Honor,  
12 are taken into account by the NIGC. You know,  
13 the Kickapoo Tribe, which is the only other out  
14 of the three federally recognized tribes in the  
15 State of Texas, one of them gets to engage under  
16 the NIGC under IGRA and then the two that are  
17 controlled by the Restoration Act don't because  
18 Ysleta I misread the statute and read 107(b) out  
19 of it and talked about it being a surrogate  
20 federal law and that all of Texas's laws and  
21 regulations are surrogate federal law.

22 We would submit, Your Honor, you can't  
23 read the Restoration Act that way. It's not the  
24 proper way to read --

25 JUSTICE ALITO: Can I ask you one

1 final question? Because I am -- this is -- the  
2 Cabazon Band is more subtle than my mind is able  
3 to grasp.

4 Do you think that the sale of opioids  
5 without a prescription is prohibited or is it  
6 merely regulated?

7 MR. MARTIN: Your Honor, I -- when I  
8 would reference Cabazon Band for Restoration  
9 Act -- I don't have an opinion on your question.  
10 And I want to be very honest with you about that  
11 because I want to be responsive, but when you're  
12 talking about the Indian gaming context, that is  
13 where Cabazon lies. That's where this gauntlet  
14 is thrown.

15 And that's what Congress was  
16 responding to in 1986 when it drafted the  
17 Restoration Act.

18 CHIEF JUSTICE ROBERTS: Justice  
19 Sotomayor?

20 Justice Kagan?

21 JUSTICE KAGAN: You know, Mr. Martin,  
22 I guess just following up on what Justice Alito  
23 talked about, this Cabazon distinction presents  
24 a wealth of sort of complicated and, quite  
25 frankly, weird questions.

1           And the slot machine would just be one  
2           of like a thousand of them. I mean, it just --  
3           Cabazon tells us to make a distinction about --  
4           between prohibition and regulation, when most of  
5           regulation prohibits certain things.

6           And then you're stuck in the middle of  
7           trying to figure out what's a prohibition and  
8           what's a regulation. But I guess as I -- well,  
9           Cabazon is there, it's not unique to the  
10          question of slot machines.

11          I mean, how should we figure in any --  
12          any discomfort about Cabazon and the distinction  
13          that it makes itself?

14          MR. MARTIN: I think the distinction  
15          --

16          JUSTICE KAGAN: Because I guess I  
17          would have thought that your answer to Justice  
18          Alito was like: Welcome to the world of  
19          Cabazon. Sorry. You know? And that's it.

20          And it wouldn't really depend on at  
21          all on whether there were experts about slot  
22          machines. So -- so that's sort of random  
23          thoughts, but, I mean, this is just the world of  
24          Cabazon and how do we take that into account?

25          MR. MARTIN: Well, if I may, Your



1 Honor --

2 (Laughter.)

3 MR. MARTIN: -- I think the  
4 distinction here and the difference between the  
5 --

6 JUSTICE KAGAN: It wasn't that funny.

7 (Laughter.)

8 MR. MARTIN: The opioid questions or  
9 other questions that you could ask along those  
10 same lines, which are fair questions, but the  
11 difference is the sovereignty aspect of it.

12 You're talking about sovereign tribes  
13 and Congress being the only one that has the  
14 plenary power to decide certain aspects of it.  
15 If you're remembering Cabazon, it talked about  
16 the fact Congress made the decision to help --  
17 have the tribes do this in terms of their  
18 self-sufficiency.

19 So I think the sovereignty aspect of  
20 it shouldn't be and can't be overlooked because  
21 that's where 107(b) comes in. That's where the  
22 resolution is answered, right? The tribe was  
23 willing to give up a certain amount of gaming  
24 activities in order to not have Texas state law  
25 apply directly and not be subject to its

1 regulation. Congress ultimately decided not to  
2 accept their offer and to give them less  
3 restrictions than they could have in response to  
4 Cabazon.

5 So I think all of those fits as a  
6 piece, and it is also why, you know, you could  
7 talk about the opioid hypothetical, you could  
8 talk about other hypotheticals along those same  
9 lines, but this concept of the sovereignty and  
10 the tribe's ability to engage in gaming  
11 activities I do think is a different story.

12 It's not just here's Cabazon, live  
13 with it, right? As you put it, Your Honor, and  
14 much more succinctly than I have in a month of  
15 prepping for this, it's not just that. It's  
16 more there are questions of the sovereignty  
17 aspects of it and the regulatory aspects of it,  
18 the Public Law 280 aspects of it that I think  
19 Congress was answering when it wrote the  
20 Restoration Act in response to Cabazon.

21 CHIEF JUSTICE ROBERTS: Justice  
22 Gorsuch?

23 Justice Kavanaugh?

24 Justice Barrett?

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 JUSTICE BARRETT: Oh, oh, sorry, I did  
3 have a question.

4 CHIEF JUSTICE ROBERTS: Oh, I'm sorry.

5 JUSTICE BARRETT: That's okay.

6 CHIEF JUSTICE ROBERTS: You're far  
7 away.

8 JUSTICE BARRETT: I'd like to give you  
9 a chance, counsel, to respond to the argument  
10 that 105(f) -- I mean, we're talking a lot about  
11 Cabazon, and 105(f) essentially imports the  
12 Cabazon framework itself into the Restoration  
13 Act. So if this isn't surrogate law, surrogate  
14 federal law under the Restoration Act, and we  
15 have 105(f) importing the Cabazon framework  
16 directly in, why isn't it then redundant to  
17 interpret the Restoration Act as you do?

18 MR. MARTIN: The -- 105(f) certainly  
19 incorporates the Public Law 280 construct. And  
20 -- and there's, I don't think, any way to  
21 dispute that. Nor would we want to. 107(a) and  
22 what it does differently, Your Honor, than what  
23 105(f) does is it federalizes Texas law as to  
24 prohibited games.

25 I think where the Fifth Circuit went

1 wrong in talking about surrogate federal law was  
2 it extended it out to the laws and regulations  
3 of the state of Texas over all gaming  
4 activities. That's not what 107 says.

5 So I think that's one of the  
6 differences between 105(f) and 107. The second  
7 difference that I would point out to Your Honor  
8 is 107(c), which sets up a different enforcement  
9 mechanism than what would have existed had just  
10 105(f) been imported and 107 didn't exist.

11 JUSTICE BARRETT: So you agree that --  
12 sorry. You agree that the Restoration Act  
13 establishes Texas law as surrogate federal law;  
14 you're saying it only does that, however, with  
15 respect to prohibitions?

16 MR. MARTIN: To -- I'm actually saying  
17 that it does that with respect to prohibited  
18 gaming activity.

19 JUSTICE BARRETT: Right. Those that  
20 are prohibited --

21 MR. MARTIN: That's what Justice --

22 JUSTICE BARRETT: -- not those that  
23 are regulated.

24 MR. MARTIN: Yes, Your Honor.

25 JUSTICE BARRETT: So the only

1 difference between Cabazon under Section 280 and  
2 -- or Public Law 280 and the Restoration Act is  
3 simply this enforcement mechanism?

4 MR. MARTIN: It's the enforcement  
5 mechanism and then it is -- it is stating what  
6 laws are federal -- what state laws are  
7 federalized for the Restoration Act.

8 JUSTICE BARRETT: Okay.

9 CHIEF JUSTICE ROBERTS: Thank you,  
10 counsel.

11 Mr. Yang.

12 ORAL ARGUMENT OF ANTHONY A. YANG  
13 FOR THE UNITED STATES, AS AMICUS CURIAE,  
14 SUPPORTING THE PETITIONERS

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

17 Just six months after this Court drew  
18 the distinction in Cabazon under Public Law 280  
19 between gaming activity that is prohibited  
20 versus gaming activity that is regulated by  
21 state law, Congress enacted Section 107,  
22 mirroring that language to draw the same  
23 distinction in the exact same Indian gaming  
24 context.

25 Section 107(a) forbids the tribe from

1 engaging in gaming activities that are  
2 prohibited under Texas law, and Section 107(b)  
3 further provides that Section 107(a) does not  
4 grant the state civil or criminal regulatory  
5 jurisdiction.

6 Texas has conceded in this Court that  
7 Section 107(b) restates the limits of Public Law  
8 280. Those limits draw directly from Cabazon,  
9 they limit state regulatory jurisdiction, and  
10 they make clear that Section 107 adopts the  
11 Cabazon framework.

12 The Fifth Circuit's contrary view  
13 erroneously relies on legislative history and  
14 text that Congress once excluded but then  
15 removed from the legislation. This Court should  
16 correct that error.

17 JUSTICE THOMAS: Mr. Yang, what's the  
18 difference between prohibited and regulated?

19 MR. YANG: Something that is  
20 prohibited is prohibited outright. And the  
21 focus, again --

22 JUSTICE THOMAS: Okay. So a statute  
23 or a rule or regulation says all patrons under  
24 the age of 21 are prohibited.

25 MR. YANG: Right. That --

1 JUSTICE THOMAS: Is that a regulation  
2 or is that a prohibition?

3 MR. YANG: That could be a  
4 prohibition, but -- but here not in this  
5 context. The statute focuses on gaming  
6 activities that are prohibited. The gaming  
7 activity would not be prohibited in that  
8 context. That is a method of conducting the  
9 gaming activity with people under the age of 21.

10 This is exactly the distinction that  
11 Congress -- that this Court in Cabazon drew.  
12 And I would remind -- I would point to Williams  
13 versus Taylor, which -- a unanimous decision of  
14 this Court which said that when a later statute  
15 on the same subject matter uses words of a prior  
16 Supreme Court opinion, those words are given the  
17 same meaning unless there's a specific --  
18 specific direction to the contrary.

19 And the word there was "failed." It  
20 wasn't -- "failed" can have a lot of different  
21 meanings in a lot of different contexts.

22 JUSTICE THOMAS: But -- but let me --  
23 you know, the -- I understand. But going back  
24 to what you just said, that if the activity is  
25 regulated -- basically what I'm hearing you say

1 is that if it's permitted in any context, then  
2 it's permitted.

3 MR. YANG: That's --

4 JUSTICE THOMAS: So the -- the mere  
5 fact that bingo is permitted to -- for the  
6 churches and the military -- the veterans  
7 organizations means it is not prohibited?

8 MR. YANG: That's right, and when  
9 Congress took up IGRA shortly thereafter, the  
10 same Congress, Congress adopted the same Cabazon  
11 distinction that is embodied in the -- the  
12 provisions you were -- you were just discussing  
13 with my friend.

14 The state -- and it does use the term  
15 "regulation." It allows Indians -- tribes to  
16 regulate games that the state does not, as a  
17 matter of criminal law and public policy,  
18 prohibit, such gaming activity, again, drawing  
19 on the prohibitory/regulatory distinction in  
20 Cabazon.

21 And it brings -- it operationalizes it  
22 in 2710(b) and (d) if the state permits such  
23 gaming by any person for any purpose.

24 CHIEF JUSTICE ROBERTS: Mr. --

25 MR. YANG: That -- that's the whole



1 standard that it governs the entire United  
2 States with respect to activities on tribal  
3 lands, except these two tribes under the Fifth  
4 Circuit's reading.

5 CHIEF JUSTICE ROBERTS: Mr. Yang, I  
6 think your office is going to be very busy over  
7 the next ten years explaining why the word  
8 "prohibited," in 18 U.S.C. whatever, still  
9 covers, you know, activities, possession of  
10 whatever, even though it's permitted at some  
11 level, right?

12 I mean, it's prohibited to possess a  
13 certain amount of whatever, but, you know, at --  
14 at a level of personal use or medical whatever,  
15 it's okay, then you can't prohibit it at all.

16 MR. YANG: We -- we aren't concerned  
17 about that because with respect to this  
18 distinction -- let me take a step back. This  
19 distinction exists in Public Law 280. It's done  
20 so for a long time. Cabazon was 35 years ago.

21 Public -- Cabazon applied a  
22 distinction in Bryan. Bryan understood that  
23 there's an important principle at stake here.  
24 You need to preserve tribal sovereignty and  
25 tribal government and that if you allow state

1 regulatory power on tribal lands, you would  
2 destroy tribal sovereignty. That principle in  
3 Bryan was extended in Cabazon specifically to  
4 the gaming context, where the Court drew this  
5 prohibitory/regulatory distinction.

6           We don't think this is a problem with  
7 respect to all of 18 U.S. Code -- C. Because  
8 when you're interpreting a -- a statute like  
9 this, particularly a statute enacted directly on  
10 the heels of a Supreme Court decision on the  
11 same subject matter using the same language,  
12 what you look to is not some general  
13 understanding of the word "prohibit"; you look  
14 to the way that this Court has used the term  
15 "prohibit."

16           JUSTICE GORSUCH: Mr. Yang, just to  
17 follow up on the Chief Justice's point, I -- I  
18 -- I take your argument that this is a unique  
19 context and -- and we have to read the language  
20 in that context.

21           But Texas -- Texas argues even in this  
22 context, the difference between prohibition and  
23 regulation is just unworkable. It's almost an  
24 argument perhaps for overruling Cabazon.

25           I'd -- I'd like your thoughts about

1 whether this distinction remains workable in  
2 this context. Forget about the others.

3 MR. YANG: We think it works in this  
4 context because it is working under IGRA. This  
5 is exactly what goes on under IGRA.

6 If the Court were to agree with our  
7 submission and that of the tribe, then the NIGC  
8 would get to determine whether this is a bingo  
9 activity or -- and, in addition, whether it is  
10 class II bingo or potentially class III bingo,  
11 which would require a compact with the state.

12 JUSTICE GORSUCH: And what would be  
13 the negative consequences, in the government's  
14 view, if any, if we were to elide this  
15 distinction, ignore it, and overrule Cabazon?

16 MR. YANG: Wow. If the Court -- first  
17 of all, I don't think that's before the Court.  
18 This has been a fundamental distinction that's  
19 existed in the law of -- of tribal sovereignty  
20 and tribal lands for decades upon decades.  
21 Again, it goes back before Cabazon. So that's  
22 the Public Law 280 context.

23 And then you -- you know, I'm not sure  
24 what the Court would do if it was just limited  
25 to this specific context because Congress has

1 already spoken in IGRA. IGRA exactly parallels  
2 this distinction. It's beyond the stage of  
3 rethinking now Cabazon.

4 JUSTICE BARRETT: Are --

5 MR. YANG: Cabazon is embedded in the  
6 law in all kinds of areas.

7 JUSTICE BARRETT: -- are there  
8 problems under IGRA or Public Law 280 in drawing  
9 the lines that we've been pressing between  
10 "prohibit" and "regulate"?

11 MR. YANG: You know, there may be some  
12 close cases, but as in the mine run of cases,  
13 we've not seen a -- a huge wellspring of  
14 problems. Again, this has existed since Bryan  
15 and since Cabazon 35 years ago, and, again, IGRA  
16 has existed for a long time. There are similar  
17 --

18 JUSTICE BREYER: But is it --

19 JUSTICE GORSUCH: So -- so, if I --

20 JUSTICE BREYER: -- because they --

21 JUSTICE GORSUCH: -- if I understand  
22 correctly -- I'm -- I just want to -- I --  
23 please go ahead.

24 JUSTICE BREYER: No, you're fine.

25 JUSTICE GORSUCH: I just wanted to

1 follow up real quick. So, in the government's  
2 view, if we were to eliminate the distinction  
3 between "regulate" and "prohibit" in -- in -- in  
4 the Restoration Act, we would all -- also wind  
5 up inevitably doing so in IGRA and that that  
6 would have more negative consequences than  
7 positive ones. Is -- is that -- is that  
8 summarizing your view?

9 MR. YANG: I'm not sure how the Court  
10 -- I mean, there's -- there's statutory text in  
11 IGRA. I'm not sure what the Court's decision  
12 would mean for IGRA. It certainly would mean a  
13 huge change in the law in terms of governing  
14 Public Law 280, which is one of the fundamental  
15 statutes governing Indian lands.

16 So I would caution the Court not to be  
17 overly ambitious here. This case does not  
18 involve a question of rethinking Cabazon. The  
19 ultimate question presented is whether Congress,  
20 in enacting the -- the Restoration Act, was  
21 adopting the Cabazon framework or instead was  
22 applying all of Texas law governing gaming.

23 JUSTICE GORSUCH: Thank you.

24 I'm sorry, Justice Breyer.

25 JUSTICE BREYER: Is the reason that

1 this is not a problem that when it comes up,  
2 it's normally a question of where or when or  
3 under what circumstances can you play this game?  
4 But it's not normally a question of how do you  
5 play because, if it were how do you play, you  
6 would have trouble saying, you know, is it bingo  
7 or is it, you know, craps or something? I mean  
8 --

9 MR. YANG: Well --

10 JUSTICE BREYER: -- is it -- is it --  
11 but -- but it's the first three which are  
12 usually fairly easy to decide.

13 MR. YANG: No.

14 JUSTICE BREYER: Am I right or wrong?

15 MR. YANG: No, actually, I think --

16 JUSTICE BREYER: Wrong?

17 MR. YANG: -- there is the question of  
18 whether things do constitute bingo and it arises  
19 not infrequently in the context of IGRA.

20 You know, this is not in the QP in  
21 terms of is this bingo and we've not briefed it  
22 and so I can give you a thumbnail sketch, but it  
23 would be difficult, I think, to give you the  
24 whole lay of the land here.

25 JUSTICE GORSUCH: I'd love to hear

1 what the difference between bingo and dingo is,  
2 so please?

3 MR. YANG: Well, I'd not heard of  
4 dingo, but I can tell you that bingo has three  
5 primary characteristics. These are actually  
6 codified in IGRA. Congress has recognized that  
7 these are the three primary characteristics.  
8 One, you have a card bearing numbers or  
9 designators. Two, you cover those numbers when  
10 they are drawn or somehow identified. And you  
11 win by covering an arrangement of numbers.

12 This is in 2703(7)(A)(i). This is a  
13 kind of understanding of what bingo is. And you  
14 would ask, is this bingo or is it a method of  
15 conducting bingo when you use a computer?

16 Even Texas, by the way, allows card  
17 mining devices, which are these devices where  
18 you can, instead of tracking five cards, you can  
19 track up to 66 cards under state law at one  
20 time. The problem that the district court found  
21 was not that this wasn't bingo; it was that  
22 Texas law requires that you not submit -- put  
23 the money in the device or get paid out by the  
24 device. That was the problem under Texas law.

25 There's a legitimate question whether

1 this would be Class 2 or Class 3 bingo under  
2 IGRA, but, you know, that's not presented here.

3 JUSTICE KAVANAUGH: Mr. Yang, can I  
4 ask to follow up on Justice Gorsuch's and  
5 Justice Barrett's questions, assume we don't  
6 overrule Cabazon, but if we were to rule for the  
7 State of Texas in this case on this statute,  
8 would there be any follow-on implications for  
9 other statutes, or is it possible to rule for  
10 the State of Texas narrowly in this case without  
11 such follow-on implications in your view?

12 MR. YANG: You know, I think it would  
13 depend on how the Court wrote the opinion. This  
14 is a Texas-specific statute, so it might be  
15 possible.

16 But I would -- you know, so there are  
17 some questions that I'd like to still address.  
18 One was about the meaning of 20 -- 107(b). I  
19 think 107(b) has to be read in conjunction with  
20 105(f). 105(f) is a grant of civil and criminal  
21 jurisdiction to the state under Public Law 280.

22 When they use jurisdiction there,  
23 Justice Kagan, it's not with respect to courts.  
24 It's with respect to authority, and the use of  
25 that term is generally used, you know,



1 post-Arbaugh. We're trying to get away from  
2 using jurisdiction when we don't mean court  
3 jurisdiction, but this is before Arbaugh and  
4 it's quite common both in legislation and in the  
5 Court's decisions.

6           Then, if you look at 107(b), it uses  
7 that same phrase "civil and criminal  
8 jurisdiction" but inserts "regulatory." And  
9 that was the exact distinction that Cabazon  
10 drew.

11           Remember Cabazon was already writing  
12 on top of Bryan, which said there's no crim- --  
13 civil regulatory jurisdiction, and it said just  
14 because you add a criminal sanction doesn't  
15 convert it to a criminal law that you can  
16 enforce under Public Law 280. 107(b) directly  
17 draws on that same Cabazon distinction, and it  
18 says nothing in Section 107 shall be interpreted  
19 to grant that authority, which means 107(a),  
20 when it says gaming activities prohibited by  
21 state law, does not grant regulatory authority,  
22 and that is the second half of the Cabazon  
23 framework, prohibited, not regulated.

24           The -- I think also, you know, IGRA is  
25 worth considering here because Congress enacted

1 IGRA, same Congress, and as the Court -- Justice  
2 Scalia explained in Branch versus Smith, when  
3 you have a similar statute and the same body of  
4 law, you can look at that to clarify the meaning  
5 of another statute because it's within the same  
6 body of law. You read it in pari materia.

7 And I don't think there's really any  
8 dispute that by using the same regulated and  
9 prohibit language and the provisions that we've  
10 talked about, which are at page 9 of our brief,  
11 that Congress in IGRA was adopting Cabazon,  
12 Congress was doing the same thing here. And  
13 there's no reason to distinctly disadvantage  
14 these tribes where Congress used the same  
15 language and establishes --

16 JUSTICE GORSUCH: Well, but, Mr. Yang,  
17 doesn't that -- doesn't that answer Justice  
18 Kavanaugh's question? If -- if we were to  
19 ignore Cabazon here in 107, on what basis could  
20 you continue to recognize that distinction under  
21 IGRA? Wouldn't that be pretty hard?

22 MR. YANG: You know, it's a different  
23 statute. I think it --

24 JUSTICE GORSUCH: That's the best you  
25 got?

1 MR. YANG: -- I think it would be  
2 difficult to draw that distinction. It really  
3 would. These are the same context in the, you  
4 know, same Indian gaming context, written by the  
5 same Congress in the same general legal world  
6 post-Cabazon, I think it's hard.

7 You know, this -- our view is you  
8 should read Public Law 2 -- excuse me,  
9 Section 107, the same way that you read IGRA.  
10 And I would like to talk about the tribal  
11 resolution.

12 JUSTICE BARRETT: Can I just ask one  
13 follow-up to Justice Gorsuch's question?

14 MR. YANG: Sure.

15 JUSTICE BARRETT: But, I mean, the  
16 common thread in all of these is Cabazon. So,  
17 without Cabazon, it sounds like you're taking a  
18 slightly different position than your friend.  
19 It sounds to me like you're saying Cabazon  
20 drives this. Without Cabazon, if we're talking  
21 about just the ordinary meaning, then it's a lot  
22 harder to make the case for this distinction  
23 between prohibit --

24 MR. YANG: Oh, it -- it's much harder  
25 to make the -- the case. You know, you could

1 make the case. It would be a much higher hurdle  
2 to cross.

3 I'd like to talk about --

4 JUSTICE KAGAN: But I take your view  
5 to be saying Cabazon is all over this statute.  
6 In other words, it's not just saying, oh, look,  
7 prohibit, six months ago, Cabazon said something  
8 about prohibit. But you're making the case that  
9 if you just look at this entire statute, Cabazon  
10 is pretty much all over it?

11 MR. YANG: And Cabazon was always in  
12 this, well, once it existed. Section 105(f) has  
13 always existed in every piece of legislation  
14 going back to 1984. 105(f) existed. Congress  
15 knew when it was adopting 105(f) which would  
16 then incorporate the Public Law 280 framework  
17 that that comes with Cabazon, and then, with  
18 respect specifically to gaming, it's the  
19 specific provision rather than the general  
20 provision in 105(f). It again uses Cabazon's  
21 language five minutes later.

22 I'd like to talk about the tribal  
23 resolution, but --

24 CHIEF JUSTICE ROBERTS: I'll give you  
25 a minute.

1           MR. YANG: Okay. So the tribal  
2 resolution, you know, when -- in 107(a),  
3 Congress's reference there respects the tribe's  
4 strong opposition to the direct application of  
5 state law. And the text, you know, there's been  
6 dispute -- debate about the resolution. The  
7 text of the statute cannot be read as applying  
8 the -- the final request in the resolution  
9 because no one thinks and the text does not  
10 allow you to read 107(a) to prohibit all gaming  
11 prohibited under Texas law. It's just not what  
12 happened.

13           There was also a significant textual  
14 change. When Congress first adopted the  
15 reference to the tribal resolution, it said  
16 pursuant to the tribal resolution -- this is on  
17 page 4 of our brief -- all gaming is prohibited  
18 if it's as defined under Texas law. Cabazon  
19 came, Congress retooled 107, and then it said --  
20 instead of said pursuant to the resolution, it  
21 said this is enacted in accordance with the  
22 resolution. We think that has some more  
23 flexibility, and what it really reflects  
24 primarily is the tribe's strong opposition to  
25 the direct application of state law. That's why

1 section 107 is federal law and that's why  
2 federal enforcement generally prevails, with the  
3 exception of state enforcement, if the state has  
4 a preexisting cause of action that it can assert  
5 for an injunction against a tribal officer.

6 CHIEF JUSTICE ROBERTS: Thank you.

7 Justice Thomas?

8 JUSTICE THOMAS: No questions.

9 CHIEF JUSTICE ROBERTS: Justice  
10 Breyer, anything further?

11 Justice Alito?

12 JUSTICE ALITO: Didn't the tribal  
13 resolution ask that the statute include  
14 "language which would provide that all gambling"  
15 -- "gaming, gambling, lottery, or bingo, as  
16 defined by the laws and administrative  
17 regulations of the State of Texas, shall be  
18 prohibited on the tribe's reservation or on  
19 tribal land"? Didn't it say that?

20 MR. YANG: It did, and Congress in  
21 response adopted verbatim that language. This  
22 is on page 4 of our brief. That was in 1986.  
23 And then, when HR 318 was introduced in 1987,  
24 again, on page 4 of our brief, that exact  
25 language was in the bill.

1 JUSTICE ALITO: But that's -- that's

2 --

3 MR. YANG: But then Cabazon came.

4 JUSTICE ALITO: -- in 1-0 -- that is  
5 referenced in 107(a), is it not?

6 MR. YANG: Which is?

7 JUSTICE ALITO: The language I just  
8 read.

9 MR. YANG: 107(a) does not have that  
10 language. It reference -- it says that 107(a)  
11 is enacted in accordance with the tribal  
12 resolution.

13 JUSTICE ALITO: Yeah. Okay.

14 MR. YANG: But the tribal resolution  
15 had more -- many things in it, and this is a --

16 JUSTICE ALITO: So -- all right. I  
17 understand. I understand.

18 MR. YANG: Right. And so --

19 JUSTICE ALITO: I understand your  
20 point.

21 MR. YANG: Okay.

22 JUSTICE ALITO: I understand your  
23 point.

24 One other question. You refer to the  
25 Indian canon, those who favor the interpretation

1 of statutes to mean what the words of the  
2 statute are generally understood to mean, have  
3 some question about some of these substantive  
4 canons.

5 Now some of them, like the Rule of  
6 Lenity, have a long history. What do you think  
7 is the basis for this Indian canon?

8 MR. YANG: Well, it has a long history  
9 in this Court's jurisprudence, and I think it  
10 recognizes the special role that -- and our  
11 relationship historically with the Indian  
12 tribes.

13 Now I don't think you actually need  
14 the Indian canon. We didn't make a big deal out  
15 of it in our brief. It's certainly part of the  
16 Court's jurisprudence that if there -- if you  
17 find this ambiguous, that you should tip the  
18 scale.

19 But we think this is pretty -- a  
20 pretty clear-cut case of Congress six months  
21 after Cabazon adopting the language of Cabazon  
22 to apply Cabazon's distinction in the same  
23 gaming context.

24 JUSTICE ALITO: That doesn't really  
25 answer my question. What is the origin of this?



1 Is it your -- is it your argument that  
2 throughout history Congress has always framed  
3 statutes in a way that are favorable to Indian  
4 tribes?

5 MR. YANG: Not -- my research for this  
6 case, unfortunately, has not gone that far back.  
7 I don't have the original -- no one has  
8 challenged the Indian canon's existence here,  
9 and we've not gone back to -- to form an  
10 argument for it, Your Honor.

11 CHIEF JUSTICE ROBERTS: Justice  
12 Sotomayor?

13 JUSTICE SOTOMAYOR: Counsel, the  
14 tribal -- 1986 tribal resolution, in my mind,  
15 seems to serve a variety of different functions.  
16 The first, I think, is that you need Indian  
17 approval to have any state law apply on a  
18 reservation, correct?

19 MR. YANG: Yeah, I think that's --  
20 that's part.

21 JUSTICE SOTOMAYOR: Generally true.

22 MR. YANG: Yes, but, significantly,  
23 you know, the tribe didn't want the state to  
24 impose its laws directly on the tribe. That was  
25 --

1 JUSTICE SOTOMAYOR: Exactly.

2 MR. YANG: -- that was a very  
3 significant issue.

4 JUSTICE SOTOMAYOR: So that's where  
5 107(c) is in accordance with the resolution,  
6 because they didn't want the state to be able to  
7 regulate or have its laws --

8 MR. YANG: Well --

9 JUSTICE SOTOMAYOR: -- applied  
10 directly, correct?

11 MR. YANG: -- I agree with that, but I  
12 also think 107(a) is because 107(a) applies as  
13 federal law certain -- a limited set of state  
14 laws that prohibit, and -- and what that does is  
15 significant. It makes a federal criminal  
16 offense to conduct prohibited gaming activities.

17 JUSTICE SOTOMAYOR: If we read this  
18 the way the state wants, presume that they are  
19 running a bingo game exactly the way the  
20 churches do, okay, is it your view that then the  
21 federal court would be open to seeing whether or  
22 not they have all the signs that are required by  
23 the state, whether they have --

24 MR. YANG: Yeah, that's exactly how  
25 things have played out since Ysleta I. And as

1 the district court has -- you know, we -- we --  
2 we cite these cases in our brief, this has not  
3 been a good way of providing a regulatory  
4 framework through injunctive actions in federal  
5 courts where a federal court has to talk about,  
6 you know, how many cards can you play and what  
7 hours can you play and what's the -- that's not  
8 what Congress would have intended, we think.

9 Congress would have intended to put a  
10 pretty high bar of prohibition and then, when it  
11 enacted IGRA, it goes straight to the NIGC and  
12 the NIGC, the expert agency, gets to decide  
13 these questions.

14 JUSTICE SOTOMAYOR: I guess Texas  
15 would say we only permit not-for-profits to  
16 play. This is not for profit, so they shouldn't  
17 be playing at all. Isn't that their argument?

18 MR. YANG: That's, I think, part of  
19 their argument. And I would say that Cabazon  
20 directly addressed that. Cabazon was a  
21 provision in California law that only allowed  
22 charities to operate bingo and that set a limit  
23 of \$250, and the Court said, you know what, that  
24 is regulating bingo, it is not prohibiting  
25 bingo.

1 JUSTICE SOTOMAYOR: Thank you,  
2 counsel.

3 CHIEF JUSTICE ROBERTS: Justice Kagan?

4 JUSTICE KAGAN: I'm about to take you  
5 outside the scope of this case, so I apologize  
6 beforehand. But Justice Alito raised what to me  
7 is an interesting question that I've been  
8 thinking about a good deal about what these  
9 substantive canons of interpretation are and  
10 when they exist and when they don't exist.

11 They're all over the place, of course.  
12 It's not just the Indian canon. Next week,  
13 we're going to be thinking about the supposed  
14 major questions canon. There are other canons.

15 I mean, if you go through Justice  
16 Scalia's book, you'll find a wealth of canons of  
17 this kind, these sort of substantive canons.  
18 Some of them help the government. Some of them  
19 hurt the government.

20 Is there any way that the government  
21 has of coming in and saying, like, how do we  
22 reconcile our views of all these different kinds  
23 of canons? Maybe we should just toss them all  
24 out, you know.

25 MR. YANG: Well --

1 JUSTICE KAGAN: I mean, I think kind  
2 of we should, honestly. Like, what are we doing  
3 here? But is there -- do you have a view of,  
4 like, when these canons are the kind that you're  
5 going to talk about in your briefs and when  
6 these canons are not the kind that you're going  
7 to talk about in your briefs?

8 MR. YANG: Well, I think our briefs  
9 generally grapple first with the text, right, as  
10 we've done here. And canons, I think, can play  
11 an important role in certain contexts. I think,  
12 for instance, Bryan recognized that in the  
13 Indian tribal sovereignty context, there is a  
14 very important principle that kind of underlays  
15 the body of the law there.

16 You do not want to read statutes to  
17 grant state regulatory authority on tribal lands  
18 without kind of a clear expression of that. And  
19 I think that those types of principles reflect a  
20 background body of law that one brings when  
21 reading statutes.

22 So it's true, you know, I think I've  
23 seen the Court's decision that, you know,  
24 sometimes you get canons that conflict, right,  
25 that run in contrary directions. These are aids

1 in interpretation, but you always start with the  
2 text.

3 CHIEF JUSTICE ROBERTS: Justice  
4 Gorsuch?

5 JUSTICE GORSUCH: The government  
6 doesn't waive sovereign immunity lightly.  
7 That's one of our canons, right?

8 MR. YANG: That -- that's exactly  
9 right.

10 JUSTICE GORSUCH: And -- and isn't the  
11 Indian canon very similar in its function in  
12 saying that we don't lightly assume that  
13 Congress is allowed state authorities to  
14 regulate an independent sovereign?

15 MR. YANG: I think it's similar.  
16 There are different underlying principles behind  
17 them, but I think there is a similar spirit to  
18 that thought.

19 CHIEF JUSTICE ROBERTS: Justice  
20 Kavanaugh?

21 JUSTICE KAVANAUGH: Just to follow up  
22 on Justice Kagan's question because I think  
23 that's important, and Justice Alito's as well,  
24 on -- on the Indian canon, I just want to  
25 isolate what kind of canon it is, because it

1 seems like our substantive canons fall into two  
2 buckets. One bucket are in ambiguity-dependent  
3 canons; if a statute's ambiguous, do this.

4 Another bucket of canons are plain statement  
5 canons for mens rea, extraterritoriality --

6 MR. YANG: Right.

7 JUSTICE KAVANAUGH: -- and the like.

8 The former category, the ambiguity-dependent,  
9 like our deference, Rule of Lenity, and I want  
10 to confirm that you think the Indian canon is an  
11 ambiguity-dependent canon as it's been  
12 traditionally applied.

13 MR. YANG: I think that's generally  
14 true, but there's something else going on here  
15 too, which is the -- the principle that Bryan  
16 recognized. In the specific context when you're  
17 talking about the application of -- of state  
18 regulatory authority in -- on Indian lands, you  
19 know, you need to be more cautious.

20 Now, admittedly, this is a federal  
21 statute that implied -- that applies federal  
22 law, but I think some of the caution that Bryan  
23 reflects, I think, should -- should guide the  
24 Court.

25 JUSTICE KAVANAUGH: So that suggests

1 you need more of a clear statement, and those  
2 usually -- those clear statement rules usually  
3 reflect some constitutional or  
4 quasi-constitutional value, due process,  
5 extraterritorial structure, the structure of the  
6 country. What would that reflect here, that  
7 principle you just described?

8 MR. YANG: Well, I think it -- it  
9 reflects that Indian tribes are sovereign  
10 nations, that they have before the founding of  
11 this country. And, you know, the Court's  
12 opinion in Bay Mills tracks some of this.

13 So, you know, whatever you think about  
14 the -- canons in general and whether that should  
15 be, you know, plain statement, just, you know,  
16 tip the balance in ambiguity, the Indian canon,  
17 at least when we're talking about tribal  
18 sovereignty and the application of state law on  
19 tribal lands, that does have a strong pedigree  
20 and I think ultimately it traces to the fact  
21 these are sovereign nations.

22 JUSTICE KAVANAUGH: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice  
24 Barrett?

25 JUSTICE BARRETT: I want to follow up



1 on this canon line of questioning. And I'm  
2 sorry, I know you said that you weren't thinking  
3 about the canons when you came in here today.

4 It was actually my understanding, and  
5 Justice Kavanaugh pointed out that our  
6 substantive canons fall into these clear  
7 statement and ambiguity buckets.

8 It was my understanding that the  
9 Indian canon was in the ambiguity bucket.

10 MR. YANG: That -- that -- that is  
11 generally true and that's the way we used it in  
12 our -- our brief. But in this case, because of  
13 Cabazon, Cabazon was built on Bryan.

14 Bryan applied a stronger version of  
15 the -- it's actually kind of a -- a brother  
16 doctrine, I guess, or sister doctrine.

17 JUSTICE BARRETT: Was its debut in  
18 Bryan?

19 MR. YANG: No, no. This goes back  
20 quite a long ways. This goes to, you know,  
21 infringements on tribal sovereignty and the  
22 recognition that it's generally only the United  
23 States that -- that governs dependent sovereigns  
24 like tribes.

25 JUSTICE BARRETT: So it's like a

1 sub-Indian canon canon?

2 MR. YANG: I'm not sure that I'm  
3 prepared to put a proper label on it, but I can  
4 say that it exists in Bryan, which came through  
5 Cabazon. And Bryan itself was -- this is cited  
6 actually on pages 16 to 17 of our brief.

7 We discuss Bryan and some of the  
8 principles underlying Bryan.

9 JUSTICE BARRETT: Thank you.

10 CHIEF JUSTICE ROBERTS: Thank you,  
11 counsel.

12 MR. YANG: Thank you.

13 CHIEF JUSTICE ROBERTS: Ms. Pettit.

14 ORAL ARGUMENT OF LANORA C. PETTIT  
15 ON BEHALF OF THE RESPONDENT

16 MS. PETTIT: Thank you, Mr. Chief  
17 Justice, and may it please the Court:

18 In the 1980s, everybody in this case  
19 wanted something. The tribe wanted federal  
20 recognition and was willing to cede some of its  
21 sovereignty. Texas wanted to avoid high stakes  
22 gambling, which it saw as an invitation to  
23 organized crime and was willing to cede some of  
24 its jurisdiction.

25 The federal government was split about

1     how to balance these sovereign interests.  So --  
2     so every -- so everyone made concessions, which  
3     are embodied in the Restoration Act.  The tribe  
4     got its recognition and may offer gambling to  
5     the same extent as other Texans, but further  
6     gambling is banned under federal law.

7             The tribe asks to rewrite this  
8     legislative bargain based on Cabazon Band, but  
9     it's admitted that Cabazon Band did not address  
10    how to interpret a statute that federalizes  
11    state law.  Its effort to extend Cabazon Band  
12    suffers from three primary faults.

13            First, it ignores that when it comes  
14    to gambling, the Restoration Act departs from  
15    the Cabazon Band framework by treating both  
16    civil and criminal penalties and civil and  
17    criminal regulatory jurisdiction the same way.

18            Second, it overlooks that the Cabazon  
19    Band test was written to avoid a form of state  
20    encroachment into tribal affairs that isn't  
21    possible when a federal court is applying  
22    federal law.

23            And, third, it depends on a definition  
24    of jurisdiction that disregards the close tie  
25    between that term in the 1980s and an

1 adjudicators ability to decide a case. That's  
2 how it's used in Public Law 280, and  
3 Section 105(f), and as Justice Kagan noted, in  
4 Section 107(c).

5 Applying that same definition to  
6 107(b), regulatory jurisdiction encompasses a  
7 state-administrative agency's ability to  
8 exercise oversight through, among other things,  
9 reporting requirements, inspections, and  
10 ultimately enforcement actions, not the state's  
11 larger ability to set substantive limits on  
12 gambling.

13 I welcome this Court's questions.

14 JUSTICE THOMAS: Counsel, could you  
15 give me an example of a regulatory law or rule  
16 that applies -- a gaming -- a -- a regulation of  
17 gaming laws that applies to tribes that do not  
18 fall under 107(a)?

19 MS. PETTIT: I'm not --

20 JUSTICE THOMAS: I'm sorry, that would  
21 be covered -- would not count as a prohibition  
22 under 107(a)?

23 MS. PETTIT: To the extent -- so 107  
24 -- the prohibition, as it's generally  
25 understood, means it's unlawful. There is a

1 regulation that would apply to somebody who's  
2 not the tribe that wouldn't be a prohibition,  
3 would, for example, be that the Texas Lottery  
4 Commission can typically get access to passwords  
5 so that people -- they can -- would have an  
6 ongoing oversight into the way that software  
7 functions.

8           That's a regulation that wouldn't  
9 apply to the tribe because it's not a  
10 prohibition relating to gaming activity.

11           JUSTICE THOMAS: Now, we -- there's  
12 been some discussion as to the -- the difference  
13 between prohibition and regulation.

14           Would you comment on that? I mean,  
15 you've heard all the arguments.

16           MS. PETTIT: So prohibition in this  
17 context and as generally understood can include  
18 a regulation except for, as Justice Barrett  
19 noted a couple of times, Cabazon Band.

20           So the regulation distinction made in  
21 Cabazon Band was specific to Public Law 280,  
22 which was trying to decide the difference  
23 between criminal and civil laws, which is a  
24 question not presented by the Restoration Act.

25           JUSTICE THOMAS: So there seems to be

1 by counsel on the suggestion that the mere fact  
2 that any group could participate in bingo, for  
3 example, the veterans organization or the  
4 churches, that even if it's outlawed, as to  
5 other organizations or for profit, that that is  
6 not a prohibition.

7 MS. PETTIT: Under their view, that's  
8 my understanding. But it's still a prohibition  
9 under Texas law because it goes to a fundamental  
10 problem with the public policy shorthand for the  
11 criminal/civil jurisdiction distinction that  
12 Cabazon Band was trying to make because, as  
13 Justice Alito pointed out, a -- a prohibition is  
14 still a matter of public policy, even if it  
15 includes the exceptions when it's not -- when  
16 the activity is not prohibited.

17 JUSTICE SOTOMAYOR: I'm sorry,  
18 counsel. Could you explain that more clearly to  
19 me?

20 Just earlier you said to Justice  
21 Thomas that a regulation that wouldn't apply to  
22 the Indians would be one that required their  
23 passwords to play the game, correct?

24 MS. PETTIT: Yes, Your Honor.

25 JUSTICE SOTOMAYOR: And I assume

1 that's because you recognize that the  
2 prohibition is on -- on playing bingo, not on  
3 how you play bingo, correct?

4 MS. PETTIT: On the gaming activity,  
5 yes, Your Honor.

6 JUSTICE SOTOMAYOR: All right. So how  
7 is that different than what you just said?  
8 Meaning --

9 MS. PETTIT: So --

10 JUSTICE SOTOMAYOR: -- a financial  
11 requirement, the password requirement, I don't  
12 know how you can read that into gaming  
13 activities which are prohibited by, because  
14 bingo is not prohibited by. What does it matter  
15 whether it's a not-for-profit or not?

16 MS. PETTIT: So the bingo outside of  
17 the limited affirmative jurisdiction -- sorry.  
18 The offense to prosecution is what the Bingo  
19 Enabling Act is. So any bingo that is not --  
20 that is not conducted pursuant to the Bingo  
21 Enabling Act is prohibited as a matter of Texas  
22 criminal law.

23 JUSTICE SOTOMAYOR: You can't play  
24 bingo unless you give the password?

25 MS. PETTIT: No, Your Honor.

1 JUSTICE SOTOMAYOR: You can't play  
2 bingo unless you meet certain financial  
3 requirements. You can't play bingo because  
4 you're not a not-for-profit.

5 MS. PETTIT: No, Your Honor.

6 JUSTICE SOTOMAYOR: I don't know where  
7 I draw those lines.

8 MS. PETTIT: So the password example  
9 that I gave was a regulation applicable to the  
10 bingo -- to the -- in the larger bingo  
11 regulatory framework of Texas law that does not  
12 apply to the tribe because it doesn't go to the  
13 gaming activity. The gaming activity could  
14 for -- take the Chief Justice's example, be a  
15 distinction between low stakes bingo under \$100  
16 or the distinction in Texas of over 750.

17 The state's regulatory interests or  
18 the state's prohibitory interest, however you  
19 want to frame it, is different between low  
20 stakes and high stakes gambling. So the use of  
21 the term "law" is another -- is another focus  
22 under 107(a).

23 And both the tribe and the United  
24 States focused on an earlier version of the bill  
25 that ultimately became the statute that included



1 the terms "laws" and "regulations".

2 But under this Court's precedent, the  
3 term "laws" typically includes regulation, so  
4 you can't really interpret anything by the  
5 deletion of redundant language in a draft bill.

6 JUSTICE BARRETT: Counsel, what about  
7 the other laws that were passed  
8 contemporaneously with this one for other tribes  
9 that used broader language like "prohibit" or  
10 "regulate"? Why shouldn't we look at the  
11 contrast between this more precise or narrower  
12 language and those?

13 MS. PETTIT: By looking at the context  
14 of each of the statutes, each of the statutes  
15 they cite is a settlement act that is enabling a  
16 preexisting agreement between the parties to  
17 litigation.

18 So those -- the language that Your  
19 Honor is citing is maybe the language that the  
20 parties determined was necessary, but it doesn't  
21 give much of an indication if any about what  
22 Congress would have determined was necessary, if  
23 it was on its own.

24 And this also goes to the larger  
25 context of the Restoration Act because the term

1 "prohibit" and the term "regulate" were in the  
2 Restoration Act before Cabazon Band. After  
3 Cabazon Band, in the Senate, there was two --  
4 there were two distinct changes to both 107(a)  
5 and 107(b) that show a departure from Cabazon  
6 Band, which expressly linked the concept of  
7 civil and regulatory and criminal and  
8 prohibitory, that is, the insertion of civil and  
9 criminal penalties in respect to prohibitions in  
10 107(a) and the phrase -- and the insertion of  
11 "and criminal" into a preexisting statute that  
12 said civil regulatory jurisdiction.

13 JUSTICE BREYER: So, if I -- I take it  
14 the difference is you think the words prohibit  
15 -- "prohibited by the laws" refers to all the  
16 prohibitions by the criminal laws. And they  
17 think it refers to the -- there is a distinction  
18 between regulatory and prohibiting it outright.  
19 Okay.

20 MS. PETTIT: Yeah.

21 JUSTICE BREYER: And the whole key  
22 here is are they referring to Cabazon, as they  
23 think, or are they thinking back to -- back to  
24 the resolution, where they said we don't even  
25 want Texas, you know. That's the big

1 difference.

2           And everybody is looking at different  
3 other statutes which may or may not cast some  
4 light. Okay. I think I know the answer, but,  
5 look, I'm in an odd position. I'm like the  
6 light brigade. I have cannons to the left of me  
7 and cannons to the right of me, and I'm going  
8 into the valley of death, charged the 400, but,  
9 I mean, there used to be ways of finding these  
10 things out.

11           You went and you read the report of  
12 the Senate committee or the House committee or  
13 the conference committee, and you read the  
14 testimony before the committees, and you read  
15 what the Justice Department told them or the  
16 Department of the Interior, and you read what  
17 other people said on the floor perhaps, and  
18 sometimes but not always that, in fact, shed  
19 some light on the proper answer.

20           So my question is, if, pursuing my odd  
21 single path perhaps, I did that here, would I  
22 find anything?

23           MS. PETTIT: You would find the Senate  
24 report, which is the only report that deals with  
25 the final version of the statute, and the Senate

1 report said that the addition of civil and  
2 criminal penalties, what I just mentioned, was  
3 designed to build upon what the House was making  
4 -- what the House had originally amended to say  
5 just prohibit to make clear that civil penalties  
6 were also applicable, which we respectfully  
7 suggest supports our cause.

8 CHIEF JUSTICE ROBERTS: Well, I -- I  
9 -- I pressed your friend, Mr. Martin, a little  
10 bit on the tribal resolution, which I think is  
11 very strong evidence for you. On the other  
12 hand, his answer that, well, that wasn't  
13 addressed in the final bill, that was a  
14 predecessor bill, also seemed pretty good.

15 Do you have an answer to that?

16 MS. PETTIT: Your Honor, the  
17 resolution may have been passed in response to  
18 the -- to a prior bill, but it is incorporated  
19 into the text or it's at least referenced in the  
20 text of the actual bill that was passed and  
21 became law, so that has to be given some  
22 meaning. And the fact that it was aimed at a  
23 different bill is not dispositive one way or the  
24 other.

25 JUSTICE KAGAN: Ms. Pettit, if -- if,

1 you know, this just said "prohibit" and we were  
2 in a world where we didn't have any context on  
3 the page or otherwise, I think you would win.

4 The question is, do we have so much  
5 context about "prohibit" being used in a  
6 specialized way that you lose? And I -- I guess  
7 I would just point you to a few things and ask  
8 you to address them one by one.

9 So the first is 105(f), which I take  
10 it you acknowledge incorporates Public Law 280,  
11 and Public Law 280 had just been interpreted in  
12 Cabazon as having this prohibitory/regulatory  
13 distinction.

14 MS. PETTIT: Yes, Your Honor.

15 JUSTICE KAGAN: The second is 107(b),  
16 which specifically talks about criminal  
17 regulatory jurisdiction. Now there's a question  
18 as to what kinds of -- what kind of jurisdiction  
19 it's talking about here because jurisdiction is  
20 used in two different senses in this statute,  
21 but I think that Mr. Yang has an awfully good  
22 argument that when they're talking about  
23 regulatory jurisdiction, they're not talking  
24 about it in the which court sense, they're  
25 talking about it in the Cabazon sense.

1           So -- so it says, you know, we don't  
2     want to give the state regulatory jurisdiction,  
3     meaning the state doesn't have any regulatory  
4     power here.

5           Then the third thing would be what  
6     Justice Barrett said, I think you've responded  
7     to that, the other statutes passed around the  
8     same time, actually, on the same day, right,  
9     that clearly understand the Cabazon  
10    prohibitory/regulatory distinction.

11           So you take all of those together, and  
12    this is what I meant when I said to Mr. Yang  
13    Cabazon is, like, written all over this statute.  
14    It's not just like we have a world in which we  
15    say: Oh, didn't they know about Cabazon? Would  
16    that have affected what they were doing? I  
17    mean, Cabazon is in this statute in multiple  
18    places. So why isn't it in this statute in a  
19    way that defeats your claim here?

20           MS. PETTIT: So, in Cabazon, this  
21    Court used the phrase "regulatory authority,"  
22    not "regulatory jurisdiction." When referring  
23    to the power to set laws, this Court has  
24    typically used the term "legislative  
25    jurisdiction," which is tellingly not the word

1 that Congress had selected.

2           Moreover, the -- and I would point --  
3 he made a comment post-Arbaugh that you try to  
4 be more careful about jurisdiction. I think  
5 that in the 1980s there was a very clear tie  
6 between jurisdiction and an adjudicative  
7 officer, not necessarily a court. And I would  
8 point you to the Fifth Edition of Black's Law  
9 Dictionary, which was published in about 1983,  
10 which specifically discusses jurisdiction in  
11 those terms.

12           So it may not be a court-specific  
13 term, but absent the phrase "legislative  
14 jurisdiction," it does tend to have an  
15 adjudicative meaning. So that is where -- and  
16 it's used consistently in 105(f), which Your  
17 Honor referenced, in that -- in that sense. And  
18 it's used in 107(c) in that sense. And so it  
19 would make sense to use it in 107(b) in that  
20 sense to avoid the charge of the light brigade  
21 with various cannons.

22           So, in that -- in reading it in the  
23 larger context of how that term was used in the  
24 '80s, as opposed to, for example, in the  
25 mid-2000s, after this Court's case of City of

1 Arlington against FCC, where you equated  
2 authority and jurisdiction, helps to clarify any  
3 ambiguities.

4 So that's all I have. I'm happy to  
5 answer any --

6 JUSTICE KAVANAUGH: Given -- given  
7 Cabazon -- sorry to interrupt. Given Cabazon,  
8 why wouldn't it have been obvious to members of  
9 Congress to say something like the following:  
10 If you wanted to do this, like all Texas law  
11 regulating gaming activities applied to gaming  
12 activities on the reservation and lands of the  
13 tribe? Why --

14 MS. PETTIT: So --

15 JUSTICE KAVANAUGH: I mean, in other  
16 words, boy, there's this case, we better be  
17 careful. And we're in the world where we're  
18 assuming Congress is responding to the case.

19 So why wouldn't the people who wanted  
20 this broader authority to extend have been -- we  
21 need to -- we need to be careful about this and  
22 doesn't the -- then the absence of that suggest  
23 something that -- that hurts your case here?

24 MS. PETTIT: Two responses.

25 First, I heard a lot from both the



1 United States and from the tribe that said that  
2 Cabazon Band was -- was especially informative  
3 because of the context. But Cabazon Band  
4 addressed -- may have the facts of Cabazon Band,  
5 may have been relating to gambling, but it  
6 addressed a statute that applied across the  
7 board equally to Texas and to regulation of  
8 pharmaceuticals or a number of the other  
9 hypotheticals we've had today.

10 So why Congress would have necessarily  
11 said: Well, Cabazon Band defines exactly what  
12 term we have for gambling, it -- it's not nearly  
13 as close as that.

14 And I believe Justice Alito asked a  
15 few minutes ago how you determine whether you  
16 are going to apply a canon about assuming  
17 Congress -- or it might have been Justice Kagan  
18 -- I apologize -- about when you assume Congress  
19 was understanding the particular context.

20 Normally, this Court does that when  
21 you have a well-established term that's been  
22 used a number of times, whereas, here, you have  
23 just the term "prohibit," which is a commonly  
24 used statutory term, it's been interpreted once  
25 in a case that respectfully is not the most

1 precise case this course -- Court has ever  
2 issued.

3 And so assuming that Congress enter --  
4 intended to enact and make permanent for all  
5 tribes for all uses of "prohibit" based on this  
6 one case would be taking that canon too far.

7 And the best way I think I can point  
8 this to is differences between the language of  
9 IGRA, which, for example, does track Cabazon  
10 Band in that it says prohibits as a matter of  
11 criminal law or public policy in 2701(5).

12 That's not the phrase that we have in  
13 -- in the Restoration Act. That is -- what we  
14 have simply is the use of the common term  
15 "prohibit." You see that again in 2710 when  
16 you're talking about when -- when Congress is  
17 talking about when the state can or the tribe  
18 can engage in activity which is whether the  
19 state prohibit -- permits it for any purpose,  
20 for any person, entity, or organization.

21 Again, that tracks the Cabazon Band  
22 prohibition -- prohibition language much more  
23 closely than here, where we just have that term  
24 "prohibit."

25 JUSTICE KAVANAUGH: Was -- wasn't it

1 obvious or wouldn't it have been obvious that  
2 what happens when a state allows an activity but  
3 regulates it heavily, can those regulations  
4 apply to the tribes? Wasn't that an obvious  
5 question and wouldn't that have been addressed  
6 in a different way, I guess, again, if we're in  
7 this world where we're trying to speculate what  
8 Congress was thinking?

9 MS. PETTIT: This is why it's always  
10 dangerous to speculate what Congress was  
11 thinking.

12 JUSTICE KAVANAUGH: Yeah, that's a  
13 good answer.

14 MS. PETTIT: But laws -- laws  
15 typically does include -- does -- do -- the term  
16 "laws" typically does include regulations,  
17 unless Congress specifies otherwise, which it  
18 didn't do here.

19 And this goes back to a number of the  
20 questions we've had today about the signage that  
21 is at -- at casinos and whether that would apply  
22 to the tribe. And it doesn't because it doesn't  
23 go to the gaming activity as this Court defined  
24 that in Bay Mills, where it was the -- the -- I  
25 think the words of the Court were the throw of

1 the dice or the turn of the wheel, the actual  
2 game that's being place played and not the  
3 offsite administrative or regulatory body, so --

4 JUSTICE BARRETT: But, Ms. Pettit, why  
5 would it make sense? You know, here in 107(c),  
6 the federal court is given jurisdiction if the  
7 state wants to bring an action for an injunction  
8 to stop, in your view, regulatory violations on  
9 the gaming activity.

10 Why would it make sense to enlist  
11 federal district courts to police all these  
12 aspects of gaming? It -- it just seems to me  
13 like that would be an odd system.

14 MS. PETTIT: So the -- we are only  
15 entitled to bring a -- an injunctive action for  
16 violations of the substantive limitations on  
17 gambling, not the regulations that don't go to  
18 the gaming activities, but it does make sense  
19 because, as the United States pointed out, the  
20 tribe was very against the direct application of  
21 state laws in state courts, which was the issue  
22 in Cabazon Band.

23 So there isn't the direct application  
24 of state law here. There's this third party, a  
25 federal judge that is a -- neutral might be a

1 loaded term for this context, but I'll use it  
2 anyway -- a neutral arbiter to apply the issue  
3 rather than having to, for example, go into the  
4 state's home court.

5 JUSTICE KAGAN: But it's a huge --

6 JUSTICE BARRETT: Let me clarify. I  
7 think I misspoke. I didn't mean -- I mean, I  
8 know that you concede that you don't have  
9 regulatory jurisdiction in the sense of an  
10 agency oversight and all these other aspects,  
11 but I'm talking about the disputed number of  
12 things, once bingo is allowed, is it, you know,  
13 allowed by non-charitable organizations? Is it  
14 allowed for profit? Is it allowed above this  
15 amount, those kinds of things?

16 I mean, the district courts in Texas  
17 have complained about all of these things  
18 heading to the district court.

19 MS. PETTIT: So the district courts  
20 have said that a version of the -- a previous  
21 injunction issued in 2002 had turned them into a  
22 sort of pre-clearance type of regime that hadn't  
23 been contemplated by the Restoration Act. We  
24 agree that wasn't contemplated by the  
25 Restoration Act, but it was necessitated by the

1     tribe's actions, who had not attempted to comply  
2     with the Restoration Act.

3             But, fortunately, we're no longer in  
4     that regime. We have brought a separate  
5     complaint, and most of the issues that are  
6     covered in the current injunction before the  
7     Court are statutory ones, not regulations.

8             JUSTICE KAGAN: Right. But your  
9     position requires you to accept the idea that,  
10    for example, if Texas has a statute that says  
11    bingo has to end at 1 a.m. and instead it goes  
12    to 1:10, that all of a sudden that's a federal  
13    crime adjudicable in federal court.

14            I mean, that's your position. It's  
15    not -- you know, the other person -- side's  
16    position is essentially no, the federal courts  
17    are there when Texas has a statute that says no  
18    table games, and all of a sudden a casino opens  
19    up with craps, but your position is like  
20    everything, you know, the -- the -- the -- the  
21    amount of the betting, the hours, the -- the --  
22    the -- I mean, everything that relates to the  
23    turn of the wheel or whatever, and that's a lot  
24    of stuff.

25            MS. PETTIT: But it does create a

1 blight -- a bright-line rule, Your Honor, which  
2 gets the federal court out of the second  
3 question that would be necessitated by applying  
4 Cabazon Band, namely whether one particular  
5 restriction or another is a matter of  
6 fundamental state public policy, and there are  
7 law and order concerns that sometimes drive  
8 issues like closing down gambling halls at  
9 midnight or limiting the amount of money that is  
10 at stake because there is a -- there -- it's a  
11 different regulatory and a different public  
12 policy and a different just risk involved in  
13 some term -- in some forms of gaming.

14 JUSTICE GORSUCH: Counsel, you argue  
15 at some length that the Cabazon distinction  
16 between "prohibition" and "regulation" is  
17 unworkable. Are you asking us to overturn  
18 Cabazon?

19 MS. PETTIT: No, Your Honor, that's  
20 not necessary in this case because, as my  
21 opposing counsel has conceded, this is about  
22 federalizing state law, and Cabazon doesn't --  
23 specifically declined to address that question.

24 JUSTICE GORSUCH: But that -- but that  
25 -- that -- that -- that's not -- that's not

1 quite what I'm getting at. You -- you say the  
2 distinction between "prohibition" and  
3 "regulation" just generally is not workable.

4 MS. PETTIT: Yes, Your Honor. So --

5 JUSTICE GORSUCH: Wouldn't that logic  
6 seem to suggest, if that's true, then -- then --  
7 then Cabazon, we should just get rid of it and  
8 scrap it and -- and the consequences for IGRA be  
9 damned?

10 MS. PETTIT: So the consequences for  
11 IGRA, I respectfully disagree with the United  
12 States, would not be significant because IGRA  
13 incorporated the pieces of Cabazon Band that it  
14 thought were necessary in the language that I  
15 previously quoted. But the Court doesn't need  
16 to revoke the or repeal -- overturn the Cabazon  
17 Band distinction for the -- for the  
18 circumstances to which it applies.

19 JUSTICE GORSUCH: So you're not asking  
20 us to overturn Cabazon?

21 MS. PETTIT: No, Your Honor.

22 JUSTICE GORSUCH: And you're asking us  
23 to continue to apply that in the IGRA context?

24 MS. PETTIT: I'm asking you to  
25 continue to apply IGRA in the IGRA context,



1 which incorporates pieces.

2 JUSTICE GORSUCH: Which incorporates  
3 Cabazon?

4 MS. PETTIT: Pieces of Cabazon but not  
5 necessarily all of it.

6 JUSTICE GORSUCH: Okay. But just this  
7 is the one area where we're not going to apply  
8 Cabazon? That's -- that's your view?

9 MS. PETTIT: Yes, because the language  
10 of the statute itself departs from Cabazon Band  
11 and in response to Justice Kavanaugh's --

12 JUSTICE GORSUCH: And that -- that  
13 hinges on whether we -- we -- we agree with your  
14 reading of the statute and the enactment the  
15 same day involving the tribe in Massachusetts,  
16 right?

17 MS. PETTIT: It involves -- it  
18 definitely depends on your agreement that by  
19 slicing and dicing up civil and criminal  
20 regulatory and prohibitory, that Congress  
21 intended to depart from Cabazon Band, yes.

22 JUSTICE BARRETT: But, Ms. Pettit, why  
23 is it uniquely unworkable in this context? Mr.  
24 Yang said, look, that has been humming along,  
25 everybody has been living with Cabazon Band and

1 this distinction between "prohibit" and  
2 "regulate" in Public Law 280 and in IGRA, so why  
3 is it so uniquely unworkable in this context?

4 MS. PETTIT: So the lower courts have  
5 suggested that Mr. Yang is incorrect on that  
6 point, that, in fact, it's difficult to derive a  
7 single rule between what is prohibitory and what  
8 is regulatory precisely because many of the  
9 things that are nominally prohibitory are very  
10 close -- very close concerns of state public  
11 policy, so they just don't track. And to --

12 JUSTICE GORSUCH: Well, isn't that an  
13 argument for overturning it in IGRA too and just  
14 getting rid of it?

15 MS. PETTIT: So IGRA incorporated a  
16 specific part of Cabazon Band that allows the  
17 tribe in 2710 to engage in Class 2 gaming, which  
18 permits them to -- if the state permits it under  
19 any person, any purpose, any organization.

20 So that is a different term than  
21 prohibitory or regulatory and trying to combine  
22 --

23 JUSTICE GORSUCH: I understand that.  
24 But -- but -- but if you're -- you're -- you're  
25 saying it doesn't work well under IGRA. You're

1 disputing Mr. Yang on that.

2 MS. PETTIT: So I'm --

3 JUSTICE GORSUCH: But you're saying  
4 this is somehow unique, and I guess I'm  
5 struggling, like -- like -- like my colleague,  
6 to understand how -- how it's uniquely  
7 problematic here but -- but less problematic, I  
8 guess, under IGRA?

9 MS. PETTIT: Maybe I misspoke earlier.  
10 IGRA -- the Public Law 280  
11 prohibitory/regulatory distinction itself is  
12 problematic outside of IGRA because it doesn't  
13 have that any purpose, any person, any language.  
14 That creates a bright-line rule, whereas this  
15 Court recognized in Cabazon Band itself that the  
16 distinction based on what is or is not a matter  
17 of fundamental state public policy does not  
18 create a blight -- bright-line rule.

19 JUSTICE GORSUCH: Right. So just back  
20 to Justice Barrett's question, does it work well  
21 under IGRA or not?

22 MS. PETTIT: Texas doesn't have that  
23 much experience under IGRA, so I'm not able to  
24 answer that question.

25 JUSTICE SOTOMAYOR: It has some

1 experience. It has the Kickapoo Tribe that's  
2 operating under Class 2 gaming pursuant to IGRA.  
3 So right now what you have is one tribe under  
4 IGARA, another tribe completely out of IGRA, and  
5 even worse, you're saying it wasn't even  
6 intended to be run like the regulatory  
7 prohibition line that Cabazon approved, correct?

8 MS. PETTIT: Correct.

9 JUSTICE SOTOMAYOR: So you want a  
10 system that's unique to everything, to Cabazon,  
11 to Bryan, to every other tribe, and you want to  
12 create a totally different system now?

13 MS. PETTIT: Congress created a  
14 bespoke legislative solution here.

15 JUSTICE SOTOMAYOR: That's assuming we  
16 accept your argument --

17 MS. PETTIT: Yes, Your Honor.

18 JUSTICE SOTOMAYOR: -- that that was  
19 Congress's intent.

20 MS. PETTIT: Yes, Your Honor. That,  
21 and the Kickapoo -- the -- my response earlier  
22 was that we do not regulate the Kickapoo, so we  
23 do not have much insight into what they're doing  
24 inside their casino, so it's very difficult for  
25 me to say whether it's been a problem.

1 JUSTICE SOTOMAYOR: Well, anybody can  
2 walk in and play.

3 MS. PETTIT: Yes, Your Honor. But  
4 that one --

5 JUSTICE SOTOMAYOR: So you can see  
6 what they're doing, whether it -- what it's  
7 violating, if you chose.

8 MS. PETTIT: I suspect the tribe would  
9 object if we were to send a peace officer in  
10 without permission to inspect.

11 JUSTICE SOTOMAYOR: Who said a peace  
12 officer? Anybody could walk in. You could send  
13 a peace officer, but --

14 MS. PETTIT: A -- a state employee  
15 could go in without authority and examine it in  
16 their personal capacity, but that's not  
17 typically how laws are enforced.

18 CHIEF JUSTICE ROBERTS: Thank you,  
19 counsel.

20 Justice Thomas?

21 Justice Breyer? Anything further?

22 Justice Alito?

23 JUSTICE ALITO: Suppose you scrapped  
24 your laws about bingo and you enacted a statute  
25 that says that under specified circumstances, a

1 type of gambling called Texas Traditional Board  
2 Game is allowed, and you defined that involving  
3 a board and et cetera, et cetera.

4 But this is not bingo. This is the  
5 Traditional Texas Board Game. Then would bingo  
6 be prohibited or would it be regulated?

7 MS. PETTIT: If we scrapped the Texas  
8 Bingo Enabling Act it would fall within the cons  
9 constitutional prohibitions on lottery and it  
10 would be prohibited. It's still prohibited  
11 outside the Bingo Enabling Act but it would be  
12 flatly prohibited under state law.

13 JUSTICE ALITO: This all turns on the  
14 fact that you have used the term "bingo" and the  
15 -- there is the form of bingo up there and so  
16 the next court is going to decide whether this  
17 is bingo or not?

18 MS. PETTIT: No, Your Honor. This  
19 depends on -- that -- the word "bingo" is not  
20 the relevant question here. And it may be  
21 useful to answer your question to distinguish  
22 this from the facts in California's instance in  
23 Cabazon Band where they generally permitted  
24 gambling except that which we prohibited.

25 Texas has the exact opposite

1 presumption. We have a strong public policy and  
2 all gambling is banned under the constitution  
3 unless specifically authorized. The Bingo  
4 Enabling Act specifically authorizes small  
5 stakes bingo under very limited circumstances,  
6 as a defense to prosecution.

7 But if we were to scrap that Bingo  
8 Enabling Act, it would -- the conduct of the  
9 tribe in this instance would fall within the  
10 State's constitutional ban on lotteries.

11 CHIEF JUSTICE ROBERTS: Justice  
12 Sotomayor? Anything further?

13 Justice Gorsuch?

14 Justice Barrett?

15 JUSTICE BARRETT: I just have one  
16 question. If you lost and we vacated and  
17 remanded and so then the district court has to  
18 face the question of whether these electronic  
19 bingo games count as bingo, you just revert to  
20 the Texas definition and I gather it's Texas's  
21 position that these electronic machines would  
22 not count as bingo?

23 MS. PETTIT: Yes, Your Honor, because  
24 they are slot machines. They -- they do not  
25 have the competitive aspect of bingo, because

1 what I believe somebody referred to their  
2 grandmother earlier, that is a -- you are  
3 matching numbers and the first person to reach a  
4 particular pattern wins. And here you have one  
5 card and it is an instant game that is drawn  
6 against historic -- historic bingo draw, and  
7 that is just not bingo.

8 JUSTICE BARRETT: And you would make  
9 that argument based on Texas law?

10 MS. PETTIT: Under the Restoration Act  
11 we would. It is the same issue under IGRA,  
12 which is why the United States was very careful  
13 to say that the question of whether or not this  
14 is actually bingo under IGRA is a very close  
15 one.

16 JUSTICE BARRETT: Thank you.

17 CHIEF JUSTICE ROBERTS: Thank you,  
18 counsel.

19 Mr. Martin, rebuttal?

20 REBUTTAL ARGUMENT OF BRANT C. MARTIN  
21 ON BEHALF OF THE PETITIONERS

22 MR. MARTIN: Mr. Chief Justice and  
23 may it please the Court:

24 Four quick points. First of all, in  
25 response to a question from the bench, I -- I



1 think that the Justices -- you certainly  
2 understand the distinctions and the difficulty  
3 that the State of Texas has with making the  
4 distinction as to where the regulatory line  
5 starts and where the regulatory line stops.

6           If they wanted the passwords they had  
7 to get the passwords. When is that not  
8 regulation and when is it, if they can, in fact,  
9 regulate? And the problem is that their  
10 position requires them to take the position that  
11 the entirety of the regulatory construct of  
12 Texas law, and this is the same thing the Fifth  
13 Circuit said in *Ysleta I*, is that the entirety  
14 of the regulatory construct applies to the  
15 tribes. That's not what 107(b) says.

16           And in response to some of the  
17 jurisdictional questions, Section 105(f) grants  
18 civil and criminal jurisdiction to grant the  
19 Public Law 280 authority. Jurisdiction there  
20 means the substantive authority, it's not  
21 limited to Court jurisdiction.

22           Section 107(b)'s use of the  
23 jurisdiction is the same. Section 107(c) is  
24 different. And it specifically says  
25 jurisdiction over enforcement.

1                   And there is one other aspect of -- of  
2 what the State of Texas has argued, just now in  
3 this case, that I think is -- deserves to be  
4 said. There is a lot of discussion about  
5 whether or not Cabazon applies, you know, are we  
6 stuck in the Cabazon context, et cetera?

7                   Two things that I would point out.  
8 Justice Breyer, I would point out that  
9 Representative Udall, who was the chairman of  
10 the applicable subcommittee, stated on the House  
11 floor this is intended to incorporate Cabazon.

12                   That's important. The Senate report  
13 that was cited by the State of Texas references  
14 the old language that Congress excised. And  
15 that should be taken into account.

16                   Finally, Your Honor, I would point out  
17 I can't remember exactly how the State of Texas  
18 just put it, but they were talking about  
19 Section 107 and they said that it applies to  
20 everything, not just gaming. Section 107 is  
21 entitled "Indian Gaming." It is entitled -- it  
22 is intended to govern that exact situation in  
23 response to Cabazon.

24                   And if there is no further questions.

25                   CHIEF JUSTICE ROBERTS: Thank you,

1 counsel. The case is submitted.

2 (Whereupon, at 11:33 a.m., the case  
3 was submitted.)

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## Official - Subject to Final Review

<p style="text-align: center;"><b>\$</b></p> <p><b>\$1,000</b> [6] 10:8,10,17 24:15 25:3,4 <b>\$100</b> [3] 10:6,12 71:15 <b>\$250</b> [1] 58:23</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p><b>1</b> [1] 85:11 <b>1,000</b> [1] 24:16 <b>1-0</b> [1] 54:4 <b>1:10</b> [1] 85:12 <b>10</b> [1] 16:10 <b>10:00</b> [2] 1:15 3:2 <b>105(f)</b> [17] 34:10,11,15,18, 23 35:6,10 47:20,20 51:12, 14,15,20 67:3 76:9 78:16 96:17 <b>107</b> [15] 4:6 7:6 35:4,6,10 36:21 37:10 48:18 49:19 50:9 52:19 53:1 67:23 97: 19,20 <b>107(a)</b> [25] 4:1,22 5:17,19 9: 13,19 11:25 15:5 19:19 34: 21 36:25 37:3 48:19 52:2, 10 54:5,9,10 57:12,12 67: 18,22 71:22 73:4,10 <b>107(b)</b> [26] 4:5,8,13,22 12:1, 5,6,9,12,14,18 13:3 15:6 29:18 32:21 37:2,7 47:18, 19 48:6,16 67:6 73:5 76: 15 78:19 96:15 <b>107(b)'s</b> [1] 96:22 <b>107(c)</b> [13] 12:7,9,23 19:16 20:6,11 21:4 35:8 57:5 67: 4 78:18 83:5 96:23 <b>108</b> [1] 6:24 <b>11:33</b> [1] 98:2 <b>16</b> [1] 65:6 <b>16th</b> [1] 8:9 <b>17</b> [1] 65:6 <b>18</b> [2] 40:8 41:7 <b>1976</b> [1] 15:24 <b>1980s</b> [3] 65:18 66:25 78:5 <b>1983</b> [1] 78:9 <b>1984</b> [1] 51:14 <b>1986</b> [5] 8:10,19 30:16 53: 22 56:14 <b>1987</b> [3] 8:21 16:20 53:23</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p><b>2</b> [5] 18:1 47:1 50:8 89:17 91:2 <b>20</b> [1] 47:18 <b>2002</b> [1] 84:21 <b>2022</b> [1] 1:11 <b>21</b> [2] 37:24 38:9 <b>22</b> [1] 1:11 <b>23rd</b> [1] 8:19 <b>25th</b> [1] 8:21 <b>2701</b> [1] 28:11 <b>2701(5)</b> [4] 25:23 26:1,3 81: 11 <b>2703(7)(A)(i)</b> [1] 46:12 <b>2710</b> [3] 28:11 81:15 89:17</p>	<p><b>2710(b)</b> [1] 39:22 <b>2710(b)(1)(A)</b> [2] 25:24,25 <b>280</b> [21] 6:8 33:18 34:19 36: 1,2,18 37:8 40:19 42:22 43:8 44:14 47:21 48:16 51: 16 67:2 68:21 76:10,11 89: 2 90:10 96:19</p> <hr/> <p style="text-align: center;"><b>3</b></p> <p><b>3</b> [5] 2:4 17:21,23 24:20 47: 1 <b>318</b> [1] 53:23 <b>35</b> [2] 40:20 43:15 <b>36</b> [1] 2:8</p> <hr/> <p style="text-align: center;"><b>4</b></p> <p><b>4</b> [3] 52:17 53:22,24 <b>400</b> [1] 74:8</p> <hr/> <p style="text-align: center;"><b>6</b></p> <p><b>65</b> [1] 2:11 <b>66</b> [1] 46:19</p> <hr/> <p style="text-align: center;"><b>7</b></p> <p><b>750</b> [1] 71:16</p> <hr/> <p style="text-align: center;"><b>8</b></p> <p><b>8,800</b> [1] 14:7 <b>80s</b> [1] 78:24</p> <hr/> <p style="text-align: center;"><b>9</b></p> <p><b>9</b> [2] 8:18 49:10 <b>95</b> [1] 2:14</p> <hr/> <p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> [4] 1:15 3:2 85:11 98:2 <b>ability</b> [4] 33:10 67:1,7,11 <b>able</b> [4] 10:16 30:2 57:6 90: 23 <b>above</b> [1] 84:14 <b>above-entitled</b> [1] 1:13 <b>absence</b> [1] 79:22 <b>absent</b> [1] 78:13 <b>Absolutely</b> [1] 16:6 <b>accept</b> [3] 33:2 85:9 91:16 <b>access</b> [1] 68:4 <b>accordance</b> [3] 52:21 54: 11 57:5 <b>according</b> [1] 7:15 <b>account</b> [8] 28:6,7,10,12 29:10,12 31:24 97:15 <b>acknowledge</b> [1] 76:10 <b>across</b> [1] 80:6 <b>Act</b> [46] 3:12,16,20,24 4:9, 13,20 5:2 6:23 8:15 16:16 17:12 20:25 23:19 24:1 28: 8 29:17,23 30:9,17 33:20 34:13,14,17 35:12 36:2,7 44:4,20 66:3,14 68:24 70: 19,21 72:15,25 73:2 81:13 84:23,25 85:2 93:8,11 94: 4,8 95:10 <b>action</b> [4] 19:16 53:4 83:7, 15 <b>actions</b> [3] 58:4 67:10 85:1 <b>activities</b> [25] 3:19 4:21 5:</p>	<p>8,20 6:5,14,21 7:2,3 9:20 14:21,25 32:24 33:11 35:4 37:1 38:6 40:2,9 48:20 57: 16 70:13 79:11,12 83:18 <b>activity</b> [22] 19:18 24:5,19, 22,25 35:18 36:19,20 38:7, 9,24 39:18 42:9 68:10 69: 16 70:4 71:13,13 81:18 82: 2,23 83:9 <b>actual</b> [2] 75:20 83:1 <b>actually</b> [18] 7:23 8:6,16 9: 4 19:9 21:24 22:15 25:11 28:9 35:16 45:15 46:5 55: 13 64:4,15 65:6 77:8 95: 14 <b>add</b> [1] 48:14 <b>addition</b> [2] 42:9 75:1 <b>additional</b> [1] 20:23 <b>address</b> [4] 47:17 66:9 76: 8 86:23 <b>addressed</b> [5] 58:20 75:13 80:4,6 82:5 <b>adjudicable</b> [1] 85:13 <b>adjudicable</b> [2] 78:6,15 <b>adjudicators</b> [1] 67:1 <b>administrative</b> [2] 53:16 83:3 <b>admitted</b> [1] 66:9 <b>admittedly</b> [1] 62:20 <b>adopted</b> [3] 39:10 52:14 53:21 <b>adopting</b> [6] 6:18,19 44:21 49:11 51:15 55:21 <b>adopts</b> [1] 37:10 <b>affairs</b> [1] 66:20 <b>affected</b> [2] 14:23 77:16 <b>affirmative</b> [3] 20:13,23 70: 17 <b>afraid</b> [1] 14:12 <b>age</b> [2] 37:24 38:9 <b>agency</b> [2] 58:12 84:10 <b>agency's</b> [1] 67:7 <b>ago</b> [4] 40:20 43:15 51:7 80: 15 <b>agree</b> [7] 8:3 35:11,12 42:6 57:11 84:24 88:13 <b>agreement</b> [2] 72:16 88:18 <b>ahead</b> [2] 10:1 43:23 <b>aids</b> [1] 60:25 <b>aimed</b> [1] 75:22 <b>AL</b> [1] 1:3 <b>ALITO</b> [36] 9:23 10:1 14:8, 22,24 17:1 24:8 26:12,13, 22,25 27:2,7,13,16,18 28: 16 29:25 30:22 31:18 53: 11,12 54:1,4,7,13,16,19,22 55:24 59:6 69:13 80:14 92: 22,23 93:13 <b>Alito's</b> [1] 61:23 <b>allow</b> [2] 40:25 52:10 <b>allowed</b> [12] 5:4,6 17:19,25 24:3 58:21 61:13 84:12,13, 14,14 93:2 <b>allows</b> [5] 4:20 39:15 46:</p>	<p>16 82:2 89:16 <b>almost</b> [4] 6:17 8:5 20:17 41:23 <b>alone</b> [2] 5:24 12:24 <b>already</b> [2] 43:1 48:11 <b>ambiguities</b> [1] 79:3 <b>ambiguity</b> [3] 63:16 64:7,9 <b>ambiguity-dependent</b> [3] 62:2,8,11 <b>ambiguous</b> [2] 55:17 62:3 <b>ambitious</b> [1] 44:17 <b>amended</b> [1] 75:4 <b>amicus</b> [3] 1:22 2:7 36:13 <b>among</b> [1] 67:8 <b>amount</b> [5] 32:23 40:13 84: 15 85:21 86:9 <b>analyzed</b> [1] 10:20 <b>another</b> [7] 14:21 49:5 62: 4 71:21,21 86:5 91:4 <b>answer</b> [15] 5:9 11:24 14: 17 28:22 31:17 49:17 55: 25 74:4,19 75:12,15 79:5 82:13 90:24 93:21 <b>answered</b> [2] 13:7 32:22 <b>answering</b> [1] 33:19 <b>ANTHONY</b> [3] 1:20 2:6 36: 12 <b>anybody</b> [2] 92:1,12 <b>anyway</b> [1] 84:2 <b>apologize</b> [2] 59:5 80:18 <b>appear</b> [1] 13:22 <b>APPEARANCES</b> [1] 1:17 <b>appearing</b> [1] 14:7 <b>applicable</b> [4] 4:25 71:9 75:6 97:10 <b>application</b> [7] 10:22 52:4, 25 62:17 63:18 83:20,23 <b>applied</b> [7] 24:13 40:21 57: 9 62:12 64:14 79:11 80:6 <b>applies</b> [8] 57:12 62:21 67: 16,17 87:18 96:14 97:5,19 <b>apply</b> [14] 32:25 55:22 56: 17 68:1,9 69:21 71:12 80: 16 82:4,21 84:2 87:23,25 88:7 <b>applying</b> [5] 44:22 52:7 66: 21 67:5 86:3 <b>Appreciate</b> [1] 18:23 <b>approval</b> [1] 56:17 <b>approved</b> [1] 91:7 <b>Arbaugh</b> [1] 48:3 <b>arbiter</b> [1] 84:2 <b>area</b> [1] 88:7 <b>areas</b> [1] 43:6 <b>aren't</b> [1] 40:16 <b>argue</b> [1] 86:14 <b>argued</b> [1] 97:2 <b>argues</b> [1] 41:21 <b>argument</b> [24] 1:14 2:2,5,9, 12 3:4,7 11:8 15:2 26:14 34:9 36:12 41:18,24 56:1, 10 58:17,19 65:14 76:22 89:13 91:16 95:9,20 <b>arguments</b> [1] 68:15</p>	<p><b>arises</b> [1] 45:18 <b>Arlington</b> [1] 79:1 <b>around</b> [1] 77:7 <b>arrangement</b> [1] 46:11 <b>art</b> [4] 11:4 13:19,25 14:1 <b>asks</b> [1] 66:7 <b>aspect</b> [5] 11:23 32:11,19 94:25 97:1 <b>aspects</b> [6] 32:14 33:17,17, 18 83:12 84:10 <b>assert</b> [1] 53:4 <b>Assistant</b> [1] 1:20 <b>assume</b> [5] 11:18 47:5 61: 12 69:25 80:18 <b>assuming</b> [5] 19:5 79:18 80:16 81:3 91:15 <b>attempted</b> [1] 85:1 <b>Austin</b> [1] 1:25 <b>authorities</b> [1] 61:13 <b>authority</b> [13] 3:19 12:22 47:24 48:19,21 60:17 62: 18 77:21 79:2,20 92:15 96: 19,20 <b>authorized</b> [1] 94:3 <b>authorizes</b> [1] 94:4 <b>avoid</b> [3] 65:21 66:19 78: 20 <b>aware</b> [2] 11:4 14:10 <b>away</b> [2] 34:7 48:1 <b>awfully</b> [1] 76:21</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B-12</b> [1] 23:1 <b>back</b> [16] 7:10 12:19 13:7 19:14 20:3 38:23 40:18 42: 21 51:14 56:6,9 64:19 73: 23,23 82:19 90:19 <b>background</b> [1] 60:20 <b>balance</b> [2] 63:16 66:1 <b>ban</b> [5] 8:10,12 9:13,15 94: 10 <b>Band</b> [30] 3:17 30:2,8 66:8, 9,11,15,19 68:19,21 69:12 73:2,3,6 80:2,3,4,11 81:10, 21 83:22 86:4 87:13,17 88: 10,21,25 89:16 90:15 93: 23 <b>banned</b> [2] 66:6 94:2 <b>bar</b> [1] 58:10 <b>bargain</b> [2] 5:2 66:8 <b>BARRETT</b> [31] 13:21 15:9, 13 33:24 34:2,5,8 35:11,19, 22,25 36:8 43:4,7 50:12,15 63:24,25 64:17,25 65:9 68: 18 72:6 77:6 83:4 84:6 88: 22 94:14,15 95:8,16 <b>Barrett's</b> [2] 47:5 90:20 <b>based</b> [4] 66:8 81:5 90:16 95:9 <b>basically</b> [1] 38:25 <b>basis</b> [2] 49:19 55:7 <b>Bay</b> [2] 63:12 82:24 <b>bearing</b> [1] 46:8 <b>became</b> [2] 71:25 75:21</p>
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## Official - Subject to Final Review

<p><b>beforehand</b> <sup>[1]</sup> 59:6  <b>behalf</b> <sup>[8]</sup> 1:18,25 2:4,11, 14 3:8 65:15 95:21  <b>behind</b> <sup>[1]</sup> 61:16  <b>believe</b> <sup>[8]</sup> 10:21 14:5 17: 11 18:9,20 21:13 80:14 95: 1  <b>below</b> <sup>[2]</sup> 19:8 28:13  <b>bench</b> <sup>[1]</sup> 95:25  <b>bespoke</b> <sup>[1]</sup> 91:14  <b>best</b> <sup>[3]</sup> 11:12 49:24 81:7  <b>better</b> <sup>[2]</sup> 15:1 79:16  <b>betting</b> <sup>[1]</sup> 85:21  <b>between</b> <sup>[25]</sup> 31:4 32:4 35: 6 36:1,19 37:18 41:22 43: 9 44:3 46:1 50:23 66:25 68:13,23 71:15,19 72:11, 16 73:18 78:6 81:8 86:16 87:2 89:1,7  <b>beyond</b> <sup>[1]</sup> 43:2  <b>bid</b> <sup>[1]</sup> 15:19  <b>big</b> <sup>[2]</sup> 55:14 73:25  <b>bill</b> <sup>[8]</sup> 53:25 71:24 72:5 75: 13,14,18,20,23  <b>bingo</b> <sup>[90]</sup> 4:3 7:12 10:6,8, 16 15:19 17:18 19:1,2,10, 22,22 22:7,7,9,14 23:4,8, 17,18 24:12,14 26:17,18, 19 27:8,9,21,25 28:7,8,11, 19,20 29:8,9 39:5 42:8,10, 10 45:6,18,21 46:1,4,13,14, 22,21 47:1 53:15 57:19 58: 15,24,25 69:2 70:2,3,14,16, 18,19,20,24 71:2,3,10,10, 15 84:12 85:11 92:24 93:4, 5,8,11,14,15,17,19 94:3,5, 7,19,19,22,25 95:6,7,14  <b>bit</b> <sup>[2]</sup> 18:15 75:10  <b>Black's</b> <sup>[1]</sup> 78:8  <b>blackjack</b> <sup>[1]</sup> 17:19  <b>blight</b> <sup>[2]</sup> 86:1 90:18  <b>board</b> <sup>[4]</sup> 80:7 93:1,3,5  <b>body</b> <sup>[5]</sup> 49:3,6 60:15,20 83:3  <b>book</b> <sup>[1]</sup> 59:16  <b>both</b> <sup>[6]</sup> 26:14 48:4 66:15 71:23 73:4 79:25  <b>boy</b> <sup>[1]</sup> 79:16  <b>Branch</b> <sup>[1]</sup> 49:2  <b>BRANT</b> <sup>[5]</sup> 1:18 2:3,13 3:7 95:20  <b>Breyer</b> <sup>[23]</sup> 24:10,11 25:9, 13,16,25 26:2,5,11 28:25 43:18,20,24 44:24,25 45: 10,14,16 53:10 73:13,21 92:21 97:8  <b>brief</b> <sup>[10]</sup> 8:18 14:6 49:10 52:17 53:22,24 55:15 58:2 64:12 65:6  <b>briefed</b> <sup>[2]</sup> 18:12 45:21  <b>briefs</b> <sup>[5]</sup> 7:17 13:24 60:5,7, 8  <b>brigade</b> <sup>[2]</sup> 74:6 78:20  <b>bright-line</b> <sup>[3]</sup> 86:1 90:14,</p>	<p>18  <b>bring</b> <sup>[2]</sup> 83:7,15  <b>bringing</b> <sup>[1]</sup> 20:16  <b>brings</b> <sup>[2]</sup> 39:21 60:20  <b>broader</b> <sup>[4]</sup> 7:1 12:19 72:9 79:20  <b>brother</b> <sup>[1]</sup> 64:15  <b>brought</b> <sup>[2]</sup> 19:15 85:4  <b>Bryan</b> <sup>[18]</sup> 12:21 15:24 40: 22,22 41:3 43:14 48:12 60: 12 62:15,22 64:13,14,18 65:4,5,7,8 91:11  <b>bucket</b> <sup>[3]</sup> 62:2,4 64:9  <b>buckets</b> <sup>[2]</sup> 62:2 64:7  <b>build</b> <sup>[1]</sup> 75:3  <b>built</b> <sup>[1]</sup> 64:13  <b>busy</b> <sup>[1]</sup> 40:6  <b>button</b> <sup>[1]</sup> 22:17</p> <p style="text-align: center;"><b>C</b></p> <p><b>Cabazon</b> <sup>[140]</sup> 3:17,23,25 4:1,15,25 5:12 6:3,8 7:7 8: 20,21 10:20 11:3,7,10,14 14:2,10,14,23 15:8,10,12, 14,24 25:11,22 26:10,14 30:2,8,13,23 31:3,9,12,19, 24 32:15 33:4,12,20 34:11, 12,15 36:1,18 37:8,11 38: 11 39:10,20 40:20,21 41:3, 24 42:15,21 43:3,5,15 44: 18,21 47:6 48:9,11,17,22 49:11,19 50:16,17,19,20 51:5,7,9,11,17 52:18 54:3 55:21,21 58:19,20 64:13, 13 65:5 66:8,9,11,15,18 68: 19,21 69:12 73:2,3,5,22 76: 12,25 77:9,13,15,17,20 79: 7,7 80:2,3,4,11 81:9,21 83: 22 86:4,15,18,22 87:7,13, 16,20 88:3,4,8,10,21,25 89: 16 90:15 91:7,10 93:23 97: 5,6,11,23  <b>Cabazon's</b> <sup>[2]</sup> 51:20 55:22  <b>California</b> <sup>[1]</sup> 58:21  <b>California's</b> <sup>[1]</sup> 93:22  <b>call</b> <sup>[2]</sup> 13:19 25:4  <b>called</b> <sup>[1]</sup> 93:1  <b>calling</b> <sup>[2]</sup> 19:3 22:24  <b>calls</b> <sup>[2]</sup> 8:11 9:16  <b>came</b> <sup>[5]</sup> 1:13 52:19 54:3 64:3 65:4  <b>cannons</b> <sup>[3]</sup> 74:6,7 78:21  <b>cannot</b> <sup>[1]</sup> 52:7  <b>canon</b> <sup>[17]</sup> 54:25 55:7,14 59:12,14 61:11,24,25 62: 10,11 63:16 64:1,9 65:1,1 80:16 81:6  <b>canon's</b> <sup>[1]</sup> 56:8  <b>canons</b> <sup>[18]</sup> 55:4 59:9,14, 16,17,23 60:4,6,10,24 61:7 62:1,3,4,5 63:14 64:3,6  <b>cap</b> <sup>[1]</sup> 10:12  <b>capacity</b> <sup>[1]</sup> 92:16  <b>card</b> <sup>[4]</sup> 22:16 46:8,16 95:5</p>	<p><b>cards</b> <sup>[5]</sup> 22:16,17 46:18, 19 58:6  <b>careful</b> <sup>[5]</sup> 19:20 78:4 79: 17,21 95:12  <b>case</b> <sup>[28]</sup> 3:11 4:18 7:16 13: 14 44:17 47:7,10 50:22,25 51:1,8 55:20 56:6 59:5 64: 12 65:18 67:1 78:25 79:16, 18,23 80:25 81:1,6 86:20 97:3 98:1,2  <b>cases</b> <sup>[4]</sup> 24:2 43:12,12 58: 2  <b>casino</b> <sup>[2]</sup> 85:18 91:24  <b>casinos</b> <sup>[1]</sup> 82:21  <b>cast</b> <sup>[1]</sup> 74:3  <b>category</b> <sup>[1]</sup> 62:8  <b>cause</b> <sup>[2]</sup> 53:4 75:7  <b>caution</b> <sup>[2]</sup> 44:16 62:22  <b>cautious</b> <sup>[1]</sup> 62:19  <b>cede</b> <sup>[2]</sup> 65:20,23  <b>Certain</b> <sup>[9]</sup> 16:11 20:8 31:5 32:14,23 40:13 57:13 60: 11 71:2  <b>certainly</b> <sup>[9]</sup> 11:18 16:24, 25 21:13 22:1 34:18 44:12 55:15 96:1  <b>cetera</b> <sup>[3]</sup> 93:3,3 97:6  <b>chairman</b> <sup>[1]</sup> 97:9  <b>challenged</b> <sup>[1]</sup> 56:8  <b>chance</b> <sup>[1]</sup> 34:9  <b>change</b> <sup>[4]</sup> 14:21 22:17 44: 13 52:14  <b>changed</b> <sup>[1]</sup> 3:23  <b>changes</b> <sup>[4]</sup> 6:24 9:5,18 73:4  <b>changing</b> <sup>[1]</sup> 6:24  <b>characteristics</b> <sup>[2]</sup> 46:5,7  <b>characterize</b> <sup>[2]</sup> 22:19,23  <b>charge</b> <sup>[1]</sup> 78:20  <b>charged</b> <sup>[1]</sup> 74:8  <b>charitable</b> <sup>[2]</sup> 23:20,23  <b>charities</b> <sup>[1]</sup> 58:22  <b>CHIEF</b> <sup>[48]</sup> 3:3,9 7:5 8:24 9: 24 10:2,14,25 21:16,23 22: 4,8,13,20,24 23:6,12 24:9, 15 26:12 30:18 33:21,25 34:4,6 36:9,15 39:24 40:5 41:17 51:24 53:6,9 56:11 59:3 61:3,19 63:23 65:10, 13,16 71:14 75:8 92:18 94: 11 95:17,22 97:25  <b>choose</b> <sup>[1]</sup> 4:17  <b>chose</b> <sup>[1]</sup> 92:7  <b>church</b> <sup>[1]</sup> 27:22  <b>churches</b> <sup>[3]</sup> 39:6 57:20 69:4  <b>Circuit</b> <sup>[2]</sup> 34:25 96:13  <b>Circuit's</b> <sup>[4]</sup> 4:11 12:16 37: 12 40:4  <b>circumstances</b> <sup>[5]</sup> 27:2 45:3 87:18 92:25 94:5  <b>cite</b> <sup>[3]</sup> 14:5 58:2 72:15  <b>cited</b> <sup>[2]</sup> 65:5 97:13  <b>citing</b> <sup>[1]</sup> 72:19</p>	<p><b>City</b> <sup>[1]</sup> 78:25  <b>civil</b> <sup>[14]</sup> 37:4 47:20 48:7,13 66:16,16 68:23 73:7,8,12 75:1,5 88:19 96:18  <b>claim</b> <sup>[1]</sup> 77:19  <b>clarification</b> <sup>[1]</sup> 23:16  <b>clarify</b> <sup>[3]</sup> 49:4 79:2 84:6  <b>Class</b> <sup>[9]</sup> 17:21,23,25 42: 10,10 47:1,1 89:17 91:2  <b>clear</b> <sup>[11]</sup> 3:21 4:23 15:7 26: 17 37:10 60:18 63:1,2 64: 6 75:5 78:5  <b>clear-cut</b> <sup>[1]</sup> 55:20  <b>clearly</b> <sup>[4]</sup> 4:5 12:3 69:18 77:9  <b>client</b> <sup>[1]</sup> 4:20  <b>close</b> <sup>[6]</sup> 43:12 66:24 80:13 89:10,10 95:14  <b>closely</b> <sup>[1]</sup> 81:23  <b>closing</b> <sup>[1]</sup> 86:8  <b>code</b> <sup>[2]</sup> 13:23 41:7  <b>codified</b> <sup>[2]</sup> 3:17 46:6  <b>colleague</b> <sup>[1]</sup> 90:5  <b>combine</b> <sup>[3]</sup> 12:25 13:3 89: 21  <b>come</b> <sup>[1]</sup> 24:2  <b>comes</b> <sup>[7]</sup> 8:20 21:12,14 32:21 45:1 51:17 66:13  <b>coming</b> <sup>[1]</sup> 59:21  <b>comment</b> <sup>[2]</sup> 68:14 78:3  <b>Commission</b> <sup>[1]</sup> 68:4  <b>committee</b> <sup>[3]</sup> 74:12,12,13  <b>committees</b> <sup>[1]</sup> 74:14  <b>common</b> <sup>[3]</sup> 48:4 50:16 81: 14  <b>commonly</b> <sup>[1]</sup> 80:23  <b>compact</b> <sup>[3]</sup> 17:24 24:20 42:11  <b>compared</b> <sup>[1]</sup> 6:22  <b>competitive</b> <sup>[1]</sup> 94:25  <b>complained</b> <sup>[2]</sup> 23:11 84: 17  <b>complaint</b> <sup>[1]</sup> 85:5  <b>completely</b> <sup>[2]</sup> 17:8 91:4  <b>complicated</b> <sup>[1]</sup> 30:24  <b>comply</b> <sup>[1]</sup> 85:1  <b>computer</b> <sup>[1]</sup> 46:15  <b>concede</b> <sup>[1]</sup> 84:8  <b>conceded</b> <sup>[2]</sup> 37:6 86:21  <b>concept</b> <sup>[3]</sup> 7:1 33:9 73:6  <b>concerned</b> <sup>[1]</sup> 40:16  <b>concerns</b> <sup>[2]</sup> 86:7 89:10  <b>concessions</b> <sup>[1]</sup> 66:2  <b>conduct</b> <sup>[3]</sup> 23:17 57:16 94:8  <b>conducted</b> <sup>[2]</sup> 24:22 70:20  <b>conducting</b> <sup>[2]</sup> 38:8 46:15  <b>conference</b> <sup>[1]</sup> 74:13  <b>confirm</b> <sup>[1]</sup> 62:10  <b>conflict</b> <sup>[2]</sup> 4:17 60:24  <b>confusing</b> <sup>[1]</sup> 13:4  <b>Congress</b> <sup>[60]</sup> 3:17,23 4: 23 5:2 6:2,4 9:5 10:22 11: 4,5,13,18 13:9,16 14:9 16:</p>	<p>23 30:15 32:13,16 33:1,19 36:21 37:14 38:11 39:9,10, 10 42:25 44:19 46:6 48:25 49:1,11,12,14 50:5 51:14 52:14,19 53:20 55:20 56:2 58:8,9 61:13 72:22 78:1 79:9,18 80:10,17,18 81:3, 16 82:8,10,17 88:20 91:13 97:14  <b>Congress's</b> <sup>[3]</sup> 4:15 52:3 91:19  <b>conjunction</b> <sup>[1]</sup> 47:19  <b>connection</b> <sup>[2]</sup> 7:23 8:2  <b>cons</b> <sup>[1]</sup> 93:8  <b>consequences</b> <sup>[4]</sup> 42:13 44:6 87:8,10  <b>consideration</b> <sup>[1]</sup> 19:24  <b>considering</b> <sup>[1]</sup> 48:25  <b>considers</b> <sup>[1]</sup> 28:11  <b>consistent</b> <sup>[1]</sup> 4:14  <b>consistently</b> <sup>[1]</sup> 78:16  <b>constitute</b> <sup>[1]</sup> 45:18  <b>constitution</b> <sup>[1]</sup> 94:2  <b>constitutional</b> <sup>[3]</sup> 63:3 93: 9 94:10  <b>construct</b> <sup>[5]</sup> 4:25 9:14 34: 19 96:11,14  <b>construction</b> <sup>[1]</sup> 20:12  <b>contemplated</b> <sup>[2]</sup> 84:23, 24  <b>contemporaneously</b> <sup>[1]</sup> 72:8  <b>contempt</b> <sup>[1]</sup> 28:13  <b>context</b> <sup>[37]</sup> 11:21 13:20 16:4,24 30:12 36:24 38:5, 8 39:1 41:4,19,20,22 42:2, 4,22,25 45:19 50:3,4 55:23 60:13 62:16 68:17 72:13, 25 76:2,5 78:23 80:3,19 84:1 87:23,25 88:23 89:3 97:6  <b>contexts</b> <sup>[2]</sup> 38:21 60:11  <b>continue</b> <sup>[3]</sup> 49:20 87:23, 25  <b>continued</b> <sup>[2]</sup> 19:13,15  <b>contrary</b> <sup>[3]</sup> 37:12 38:18 60:25  <b>contrast</b> <sup>[1]</sup> 72:11  <b>controlled</b> <sup>[1]</sup> 29:17  <b>convert</b> <sup>[1]</sup> 48:15  <b>correct</b> <sup>[13]</sup> 16:1,5,21 19: 10 20:7 27:5 37:16 56:18 57:10 69:23 70:3 91:7,8  <b>correctly</b> <sup>[1]</sup> 43:22  <b>counsel</b> <sup>[2]</sup> 5:11 13:21 15: 21,23 17:6 21:16 34:1,9 36:10 56:13 59:2 65:11 67: 14 69:1,18 72:6 86:14,21 92:19 95:18 98:1  <b>count</b> <sup>[3]</sup> 67:21 94:19,22  <b>counted</b> <sup>[1]</sup> 13:24  <b>country</b> <sup>[2]</sup> 63:6,11  <b>County</b> <sup>[1]</sup> 12:21  <b>couple</b> <sup>[1]</sup> 68:19</p>
--	---	---	---	--

## Official - Subject to Final Review

<p><b>course</b> [2] 59:11 81:1  <b>COURT</b> [62] 1:1,14 3:10 5:10 10:19 11:12 19:8,14,14,17,25 26:15 27:12 28:4,5 36:16,17 37:6,15 38:11,14,16 41:4,10,14 42:6,16,17,24 44:9,16 46:20 47:13 48:2 49:1 57:21 58:1,5,23 62:24 65:17 66:21 76:24 77:21,23 78:7 80:20 81:1 82:23,25 83:6 84:4,18 85:7,13 86:2 87:15 90:15 93:16 94:17 95:23 96:21  <b>Court's</b> [12] 3:22 11:19 20:1 44:11 48:5 55:9,16 60:23 63:11 67:13 72:2 78:25  <b>court-specific</b> [1] 78:12  <b>courts</b> [11] 12:8,10 21:5 47:23 58:5 83:11,21 84:16,19 85:16 89:4  <b>cover</b> [1] 46:9  <b>covered</b> [2] 67:21 85:6  <b>covering</b> [1] 46:11  <b>covers</b> [1] 40:9  <b>craps</b> [2] 45:7 85:19  <b>create</b> [3] 85:25 90:18 91:12  <b>created</b> [1] 91:13  <b>creates</b> [1] 90:14  <b>crim</b> [1] 48:12  <b>crime</b> [3] 24:16 65:23 85:13  <b>criminal</b> [22] 24:24 27:4 37:4 39:17 47:20 48:7,14,15 57:15 66:16,17 68:23 70:22 73:7,9,11,16 75:2 76:16 81:11 88:19 96:18  <b>criminal/civil</b> [1] 69:11  <b>critical</b> [1] 25:15  <b>cross</b> [1] 51:2  <b>curiae</b> [3] 1:22 2:8 36:13  <b>curious</b> [2] 21:19 24:11  <b>current</b> [1] 85:6</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D.C</b> [2] 1:10,21  <b>damned</b> [1] 87:9  <b>dangerous</b> [1] 82:10  <b>dated</b> [1] 8:9  <b>day</b> [4] 16:15,17 77:8 88:15  <b>deal</b> [2] 55:14 59:8  <b>dealing</b> [1] 5:19  <b>deals</b> [1] 74:24  <b>death</b> [1] 74:8  <b>debate</b> [1] 52:6  <b>debut</b> [1] 64:17  <b>decades</b> [3] 7:17 42:20,20  <b>decide</b> [14] 19:8 26:15 27:8,11,17,19,19,24 32:14 45:12 58:12 67:1 68:22 93:16  <b>decided</b> [1] 33:1  <b>decision</b> [6] 3:22 32:16 38:13 41:10 44:11 60:23  <b>decisions</b> [1] 48:5</p>	<p><b>declined</b> [1] 86:23  <b>defeats</b> [1] 77:19  <b>defense</b> [1] 94:6  <b>deference</b> [1] 62:9  <b>defined</b> [4] 52:18 53:16 82:23 93:2  <b>defines</b> [1] 80:11  <b>definitely</b> [1] 88:18  <b>definition</b> [4] 28:7 66:23 67:5 94:20  <b>DEL</b> [2] 1:3 3:4  <b>deletion</b> [1] 72:5  <b>deny</b> [1] 8:13  <b>depart</b> [1] 88:21  <b>Department</b> [3] 1:21 74:15,16  <b>departs</b> [2] 66:14 88:10  <b>departure</b> [1] 73:5  <b>depend</b> [3] 11:8 31:20 47:13  <b>dependent</b> [1] 64:23  <b>depends</b> [3] 66:23 88:18 93:19  <b>Deputy</b> [1] 1:24  <b>derive</b> [1] 89:6  <b>described</b> [1] 63:7  <b>deserves</b> [1] 97:3  <b>designators</b> [1] 46:9  <b>designed</b> [1] 75:3  <b>destroy</b> [1] 41:2  <b>determination</b> [1] 28:4  <b>determine</b> [3] 19:17 42:8 80:15  <b>determined</b> [3] 10:20 72:20,22  <b>device</b> [2] 46:23,24  <b>devices</b> [2] 46:17,17  <b>dice</b> [1] 83:1  <b>dichotomy</b> [2] 3:25 15:25  <b>dicing</b> [1] 88:19  <b>dictate</b> [1] 13:18  <b>dictating</b> [1] 6:2  <b>Dictionary</b> [1] 78:9  <b>difference</b> [12] 5:16 32:4,11 35:7 36:1 37:18 41:22 46:1 68:12,22 73:14 74:1  <b>differences</b> [2] 35:6 81:8  <b>different</b> [26] 9:20 21:5 23:7,9 27:23 33:11 35:8 38:20,21 49:22 50:18 56:15 59:22 61:16 70:7 71:19 74:2 75:23 76:20 82:6 86:11,11,12 89:20 91:12 96:24  <b>differently</b> [1] 34:22  <b>difficult</b> [4] 45:23 50:2 89:6 91:24  <b>difficulty</b> [1] 96:2  <b>dingo</b> [7] 26:20,23 27:1,3,5 46:1,4  <b>direct</b> [6] 7:22 8:2 52:4,25 83:20,23  <b>direction</b> [1] 38:18  <b>directions</b> [1] 60:25  <b>directly</b> [9] 7:7 32:25 34:16</p>	<p>37:8 41:9 48:16 56:24 57:10 58:20  <b>disadvantage</b> [1] 49:13  <b>disagree</b> [2] 13:1 87:11  <b>discomfort</b> [1] 31:12  <b>discuss</b> [1] 65:7  <b>discusses</b> [1] 78:10  <b>discussing</b> [1] 39:12  <b>discussion</b> [2] 68:12 97:4  <b>dispute</b> [1] 52:6  <b>dispositive</b> [1] 75:23  <b>dispute</b> [7] 19:1,4,6,12 21:24 34:21 49:8  <b>disputed</b> [1] 84:11  <b>disputing</b> [1] 90:1  <b>disregards</b> [1] 73:4  <b>distinct</b> [1] 73:4  <b>distinction</b> [43] 11:6 14:4 25:12,14 30:23 31:3,12,14 32:4 36:18,23 38:10 39:11,19 40:18,19,22 41:5 42:1,15,18 43:2 44:2 48:9,17 49:20 50:2,22 55:22 68:20 69:11 71:15,16 73:17 76:13 77:10 86:15 87:2,17 89:1 90:11,16 96:4  <b>distinctions</b> [1] 96:2  <b>distinctly</b> [1] 49:13  <b>distinguish</b> [1] 93:21  <b>district</b> [7] 46:20 58:1 83:11 84:16,18,19 94:17  <b>doctrine</b> [2] 64:16,16  <b>doing</b> [5] 5:25 6:11 12:5 44:5 49:12 60:2 77:16 91:23 92:6  <b>done</b> [2] 40:19 60:10  <b>down</b> [6] 8:20,21,23 19:14 28:3 86:8  <b>draft</b> [1] 72:5  <b>drafted</b> [1] 30:16  <b>draw</b> [5] 36:22 37:8 50:2 71:7 95:6  <b>drawing</b> [2] 39:18 43:8  <b>drawn</b> [2] 46:10 95:5  <b>draws</b> [1] 48:17  <b>drew</b> [4] 36:17 38:11 41:4 48:10  <b>drive</b> [1] 86:7  <b>drives</b> [1] 50:20  <b>due</b> [1] 63:4</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>Each</b> [3] 5:3 72:14,14  <b>earlier</b> [5] 69:20 71:24 90:9 91:21 95:2  <b>easy</b> [1] 45:12  <b>Edition</b> [1] 78:8  <b>effort</b> [1] 66:11  <b>either</b> [1] 17:24  <b>electronic</b> [4] 22:7 23:10 94:18,21  <b>elide</b> [1] 42:14  <b>eliminate</b> [1] 44:2  <b>Elks</b> [1] 27:22</p>	<p><b>embedded</b> [1] 43:5  <b>embodied</b> [2] 39:11 66:3  <b>employee</b> [1] 92:14  <b>Enabling</b> [9] 23:18 28:8 70:19,21 72:15 93:8,11 94:4,8  <b>enact</b> [1] 81:4  <b>enacted</b> [11] 7:6,7 8:6 9:2 36:21 41:9 48:25 52:21 54:11 58:11 92:24  <b>enacting</b> [1] 44:20  <b>enactment</b> [1] 88:14  <b>encompasses</b> [1] 67:6  <b>encroachment</b> [1] 66:20  <b>end</b> [1] 85:11  <b>enforce</b> [1] 48:16  <b>enforced</b> [1] 92:17  <b>enforcement</b> [9] 12:24 13:4 35:8 36:3,4 53:2,3 67:10 96:25  <b>engage</b> [6] 4:20 17:25 29:15 33:10 81:18 89:17  <b>engaging</b> [1] 37:1  <b>enlist</b> [1] 83:10  <b>enter</b> [1] 81:3  <b>entire</b> [2] 40:1 51:9  <b>entirely</b> [2] 4:13 21:11  <b>entirety</b> [3] 4:6 96:11,13  <b>entitled</b> [3] 83:15 97:21,21  <b>entity</b> [1] 81:20  <b>equally</b> [1] 80:7  <b>equated</b> [1] 79:1  <b>erroneously</b> [1] 37:13  <b>error</b> [1] 37:16  <b>especially</b> [2] 11:20 80:2  <b>ESQ</b> [4] 2:3,6,10,13  <b>essentially</b> [2] 34:11 85:16  <b>establishes</b> [2] 35:13 49:15  <b>ET</b> [4] 1:3 93:3,3 97:6  <b>even</b> [9] 4:18 40:10 41:21 46:16 69:4,14 73:24 91:5,5  <b>everybody</b> [4] 10:4 65:18 74:2 88:25  <b>everyone</b> [1] 66:2  <b>everything</b> [5] 5:3 85:20,22 91:10 97:20  <b>evidence</b> [3] 11:12 29:8 75:11  <b>evidences</b> [1] 12:3  <b>evolution</b> [1] 8:6  <b>Ex</b> [1] 18:4  <b>exact</b> [10] 10:19,22 11:20 13:16,20 36:23 48:9 53:24 93:25 97:22  <b>exactly</b> [11] 6:10 27:20 38:10 42:5 43:1 57:1,19,24 61:8 80:11 97:17  <b>examine</b> [1] 92:15  <b>example</b> [10] 17:19 67:15 68:3 69:3 71:8,14 78:24 81:9 84:3 85:10  <b>examples</b> [1] 16:14  <b>except</b> [3] 40:3 68:18 93:</p>	<p>24  <b>exception</b> [1] 53:3  <b>exceptions</b> [1] 69:15  <b>excised</b> [1] 97:14  <b>excluded</b> [1] 37:14  <b>excuse</b> [1] 50:8  <b>exercise</b> [1] 67:8  <b>exist</b> [4] 20:21 35:10 59:10,10  <b>existed</b> [7] 35:9 42:19 43:14,16 51:12,13,14  <b>existence</b> [1] 56:8  <b>exists</b> [2] 40:19 65:4  <b>expect</b> [1] 27:21  <b>experience</b> [2] 90:23 91:1  <b>expert</b> [2] 28:12 58:12  <b>experts</b> [6] 28:16,17,19,21 29:5 31:21  <b>explain</b> [1] 69:18  <b>explained</b> [1] 49:2  <b>explaining</b> [1] 40:7  <b>explicated</b> [1] 6:8  <b>expression</b> [1] 60:18  <b>expressly</b> [1] 73:6  <b>extend</b> [2] 66:11 79:20  <b>extended</b> [2] 35:2 41:3  <b>extending</b> [2] 6:3,9  <b>extension</b> [1] 4:15  <b>extent</b> [4] 20:8,22 66:5 67:23  <b>extraterritorial</b> [1] 63:5  <b>extraterritoriality</b> [1] 62:5</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> [1] 94:18  <b>fact</b> [13] 6:3,9 23:2 29:5 32:16 39:5 63:20 69:1 74:18 75:22 89:6 93:14 96:8  <b>factor</b> [1] 19:24  <b>factors</b> [1] 19:23  <b>facts</b> [2] 80:4 93:22  <b>factual</b> [1] 28:4  <b>failed</b> [2] 38:19,20  <b>fair</b> [1] 32:10  <b>fairly</b> [1] 45:12  <b>fall</b> [5] 62:1 64:6 67:18 93:8 94:9  <b>far</b> [3] 34:6 56:6 81:6  <b>faults</b> [1] 66:12  <b>favor</b> [1] 54:25  <b>favorable</b> [1] 56:3  <b>FCC</b> [1] 79:1  <b>February</b> [2] 1:11 8:21  <b>federal</b> [33] 6:18 12:8 19:7,17,25 21:5 29:20,21 34:14 35:1,13 36:6 53:1,2 57:13,15,21 58:4,5 62:20,21 65:19,25 66:6,21,22 83:6,11,25 85:12,13,16 86:2  <b>federalize</b> [1] 4:2  <b>federalized</b> [1] 36:7  <b>federalizes</b> [2] 34:23 66:10  <b>federalizing</b> [2] 6:4 86:22</p>
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## Official - Subject to Final Review

<p><b>federally</b> [1] 29:14  <b>few</b> [2] 76:7 80:15  <b>Fifth</b> [7] 4:11 12:16 34:25  37:12 40:3 78:8 96:12  <b>figure</b> [2] 31:7,11  <b>final</b> [10] 5:1 6:23,24 9:11,  12,18 30:1 52:8 74:25 75:  13  <b>Finally</b> [1] 97:16  <b>financial</b> [2] 70:10 71:2  <b>find</b> [4] 55:17 59:16 74:22,  23  <b>finding</b> [2] 19:15 74:9  <b>fine</b> [1] 43:24  <b>first</b> [16] 3:4 6:13 11:16 13:  7,8 19:11 42:16 45:11 52:  14 56:16 60:9 66:13 76:9  79:25 95:3,24  <b>fits</b> [2] 13:14 33:5  <b>five</b> [2] 46:18 51:21  <b>flatly</b> [2] 3:15 93:12  <b>flexibility</b> [1] 52:23  <b>flip</b> [1] 12:7  <b>floor</b> [2] 74:17 97:11  <b>focus</b> [2] 37:21 71:21  <b>focused</b> [2] 9:4 71:24  <b>focuses</b> [1] 38:5  <b>follow</b> [6] 18:25 41:17 44:1  47:4 61:21 63:25  <b>follow-on</b> [2] 47:8,11  <b>follow-up</b> [1] 50:13  <b>following</b> [2] 30:22 79:9  <b>forbidden</b> [3] 15:1,20 17:  21  <b>forbids</b> [1] 36:25  <b>foreclosed</b> [1] 3:18  <b>forecloses</b> [1] 4:5  <b>Forget</b> [1] 42:2  <b>form</b> [4] 9:2 56:9 66:19 93:  15  <b>former</b> [1] 62:8  <b>forms</b> [1] 86:13  <b>Fort</b> [1] 1:18  <b>forth</b> [3] 7:10 8:17 23:21  <b>fortunately</b> [1] 85:3  <b>found</b> [1] 46:20  <b>founding</b> [1] 63:10  <b>Four</b> [1] 95:24  <b>frame</b> [1] 71:19  <b>framed</b> [1] 56:2  <b>framework</b> [14] 3:17 4:1,  16 6:3 26:10 34:12,15 37:  11 44:21 48:23 51:16 58:4  66:15 71:11  <b>frankly</b> [1] 30:25  <b>free</b> [1] 17:8  <b>freedom</b> [1] 5:7  <b>friend</b> [3] 39:13 50:18 75:9  <b>friends</b> [1] 13:2  <b>full</b> [1] 7:17  <b>function</b> [1] 61:11  <b>functions</b> [2] 56:15 68:7  <b>fundamental</b> [5] 42:18 44:  14 69:9 86:6 90:17</p>	<p><b>funny</b> [1] 32:6  <b>further</b> [6] 37:3 53:10 66:5  92:21 94:12 97:24</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gam</b> [1] 10:16  <b>gambling</b> [17] 6:25 7:12  53:14,15 65:22 66:4,6,14  67:12 71:20 80:5,12 83:17  86:8 93:1,24 94:2  <b>game</b> [10] 4:4 7:21 23:17  45:3 57:19 69:23 83:2 93:  2,5 95:5  <b>games</b> [12] 3:14 4:3 5:5 10:  6,8,10,16 23:25 34:24 39:  16 85:18 94:19  <b>gaming</b> [68] 3:19 4:8,21 5:  8,20 6:5,13,20,25 7:1,2,12  9:19,21 11:21 14:3,20,25  17:8,21 18:1 19:18 24:4,  19,22,25 30:12 32:23 33:  10 35:3,18 36:19,20,23 37:  1 38:5,6,9 39:18,23 41:4  44:22 48:20 50:4 51:18 52:  10,17 53:15 55:23 57:16  67:16,17 68:10 70:4,12 71:  13,13 79:11,11 82:23 83:9,  12,18 86:13 89:17 91:2 97:  20,21  <b>gather</b> [1] 94:20  <b>gauntlet</b> [1] 30:13  <b>gave</b> [3] 14:5 24:15 71:9  <b>General</b> [7] 1:20,24 17:22  41:12 50:5 51:19 63:14  <b>generally</b> [12] 47:25 53:2  55:2 56:21 60:9 62:13 64:  11,22 67:24 68:17 87:3 93:  23  <b>generator</b> [1] 29:7  <b>genuine</b> [1] 19:6  <b>gets</b> [4] 28:3 29:15 58:12  86:2  <b>getting</b> [2] 87:1 89:14  <b>give</b> [10] 32:23 33:2 34:8  45:22,23 51:24 67:15 70:  24 72:21 77:2  <b>given</b> [38] 18:16 75:21 79:6,  6,7 83:6  <b>gives</b> [1] 21:4  <b>GORSUCH</b> [33] 17:6,15,17  18:2,13,17,22 33:22 41:16  42:12 43:19,21,25 44:23  45:25 49:16,24 61:4,5,10  86:14,24 87:5,19,22 88:2,6,  12 89:12,23 90:3,19 94:13  <b>Gorsuch's</b> [3] 20:3 47:4  50:13  <b>got</b> [3] 5:3 49:25 66:4  <b>govern</b> [1] 97:22  <b>governing</b> [3] 44:13,15,22  <b>government</b> [6] 40:25 59:  18,19,20 61:5 65:25  <b>government's</b> [2] 42:13  44:1</p>	<p><b>governor</b> [1] 18:6  <b>governors</b> [1] 18:19  <b>governs</b> [2] 40:1 64:23  <b>grandmother</b> [2] 29:1 95:  2  <b>grant</b> [11] 5:12,16,21 20:13,  23 37:4 47:20 48:19,21 60:  17 96:18  <b>grants</b> [1] 96:17  <b>grapple</b> [1] 60:9  <b>grasp</b> [1] 30:3  <b>greatly</b> [1] 12:15  <b>group</b> [1] 69:2  <b>guess</b> [13] 21:1 24:19,21  25:18 30:22 31:8,16 58:14  64:16 76:6 82:6 90:4,8  <b>guide</b> [1] 62:23</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>half</b> [1] 48:22  <b>halls</b> [1] 86:8  <b>hand</b> [1] 75:12  <b>handed</b> [2] 8:21,23  <b>happened</b> [3] 9:7,7 52:12  <b>happening</b> [1] 10:7  <b>happens</b> [1] 82:2  <b>happy</b> [2] 7:10 79:4  <b>hard</b> [2] 49:21 50:6  <b>harder</b> [2] 50:22,24  <b>heading</b> [1] 84:18  <b>hear</b> [2] 3:3 45:25  <b>heard</b> [3] 46:3 68:15 79:25  <b>hearing</b> [2] 28:13 38:25  <b>hearkening</b> [1] 12:19  <b>heavily</b> [1] 82:3  <b>heels</b> [2] 3:22 41:10  <b>help</b> [3] 12:12 32:16 59:18  <b>helps</b> [3] 12:14 28:9 79:2  <b>hereby</b> [1] 6:15  <b>herein</b> [1] 20:15  <b>hesitant</b> [1] 18:11  <b>high</b> [3] 58:10 65:21 71:20  <b>higher</b> [1] 51:1  <b>hinges</b> [1] 88:13  <b>historic</b> [2] 95:6,6  <b>historically</b> [1] 55:11  <b>history</b> [7] 7:18 8:4,5 37:13  55:6,8 56:2  <b>home</b> [1] 84:4  <b>honest</b> [1] 30:10  <b>honestly</b> [1] 60:2  <b>Honor</b> [74] 5:14,18 6:1,12,  22 7:25 8:8,18 9:3,22 10:  13,18 11:16,24 12:15 13:  15 14:2,16 15:3,11,18 16:2,  7,11,22 17:5,23 18:10,21  19:11 20:10 21:7,9,15,21  23:3,10,20 24:7 25:7 26:1  27:6,10 28:1,14,23 29:5,11,  22 30:7 32:1 33:13 34:22  35:7,24 56:10 69:24 70:5,  25 71:5 72:19 75:16 76:14  78:17 86:1,19 87:4,21 91:  17,20 92:3 93:18 94:23 97:  16</p>	<p><b>hours</b> [2] 58:7 85:21  <b>House</b> [4] 74:12 75:3,4 97:  10  <b>However</b> [3] 8:14 35:14 71:  18  <b>HR</b> [1] 53:23  <b>huge</b> [3] 43:13 44:13 84:5  <b>humming</b> [1] 88:24  <b>hurdle</b> [1] 51:1  <b>hurt</b> [1] 59:19  <b>hurts</b> [1] 79:23  <b>hypothetical</b> [3] 25:15 28:  2 33:7  <b>hypotheticals</b> [2] 33:8 80:  9</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> [2] 11:2 85:9  <b>ideal</b> [1] 27:9  <b>identification</b> [1] 28:18  <b>identified</b> [1] 46:10  <b>IGARA</b> [1] 91:4  <b>ignore</b> [2] 42:15 49:19  <b>ignores</b> [1] 66:13  <b>IGRA</b> [60] 4:16 17:10,13 18:  1 20:4,5 21:6,11 24:2,3,6,  12,17 25:5,10,18,21,23 26:  9 28:10 29:16 39:9 42:4,5  43:1,1,8,15 44:5,11,12 45:  19 46:6 47:2 48:24 49:1,  11,21 50:9 58:11 81:9 87:  8,11,12,23,25,25 89:2,13,  15,25 90:8,10,12,21,23 91:  2,4 95:11,14  <b>II</b> [1] 42:10  <b>III</b> [1] 42:10  <b>image</b> [1] 12:7  <b>immunity</b> [4] 18:7,11,14  61:6  <b>implicate</b> [1] 15:7  <b>implications</b> [2] 47:8,11  <b>implied</b> [1] 62:21  <b>important</b> [5] 40:23 60:11,  14 61:23 97:12  <b>imported</b> [1] 35:10  <b>importing</b> [1] 34:15  <b>imports</b> [1] 34:11  <b>impose</b> [1] 56:24  <b>inability</b> [1] 12:20  <b>include</b> [4] 53:13 68:17 82:  15,16  <b>included</b> [1] 71:25  <b>includes</b> [2] 69:15 72:3  <b>including</b> [1] 10:3  <b>incorporate</b> [4] 25:19,20  51:16 97:11  <b>incorporated</b> [7] 8:15 25:  18,22,23 75:18 87:13 89:  15  <b>incorporates</b> [7] 4:1 25:11  26:9 34:19 76:10 88:1,2  <b>incorporating</b> [3] 4:24 11:  6,20</p>	<p><b>incorrect</b> [1] 89:5  <b>independent</b> [1] 61:14  <b>Indian</b> [26] 11:21 14:3 16:4  17:7 24:19 30:12 36:23 44:  15 50:4 54:25 55:7,11,14  56:3,8,16 59:12 60:13 61:  11,24 62:10,18 63:9,16 64:  9 97:21  <b>Indians</b> [2] 39:15 69:22  <b>indication</b> [1] 72:21  <b>inevitably</b> [1] 44:5  <b>informative</b> [1] 80:2  <b>infrequently</b> [1] 45:19  <b>infringements</b> [1] 64:21  <b>injunction</b> [7] 19:16 20:16,  19 53:5 83:7 84:21 85:6  <b>injunctive</b> [3] 20:14 58:4  83:15  <b>insertion</b> [2] 73:8,10  <b>inserts</b> [1] 48:8  <b>inside</b> [1] 91:24  <b>insight</b> [1] 91:23  <b>inspect</b> [1] 92:10  <b>inspections</b> [1] 67:9  <b>instance</b> [3] 60:12 93:22  94:9  <b>instant</b> [1] 95:5  <b>instead</b> [4] 44:21 46:18 52:  20 85:11  <b>intended</b> [7] 58:8,9 81:4  88:21 91:6 97:11,22  <b>intending</b> [1] 15:7  <b>intent</b> [1] 91:19  <b>interest</b> [1] 71:18  <b>interesting</b> [4] 6:22 8:20  20:12 59:7  <b>interests</b> [2] 66:1 71:17  <b>Interior</b> [1] 74:16  <b>interpret</b> [3] 34:17 66:10  72:4  <b>interpretation</b> [8] 3:21 4:6,  11,12,14 54:25 59:9 61:1  <b>interpreted</b> [3] 48:18 76:  11 80:24  <b>interpreting</b> [1] 41:8  <b>interrupt</b> [1] 79:7  <b>introduced</b> [1] 53:23  <b>invitation</b> [1] 65:22  <b>involve</b> [1] 44:18  <b>involved</b> [1] 86:12  <b>involves</b> [1] 88:17  <b>involving</b> [2] 88:15 93:2  <b>isn't</b> [9] 24:25 34:13,16 58:  17 61:10 66:20 77:18 83:  23 89:12  <b>isolate</b> [1] 61:25  <b>issue</b> [8] 12:16 18:10,12 19:  6 57:3 83:21 84:2 95:11  <b>issued</b> [2] 81:2 84:21  <b>issues</b> [4] 17:14 29:4 85:5  86:8  <b>Itasca</b> [1] 12:21  <b>itself</b> [8] 6:13 18:7 31:13  34:12 65:5 88:10 90:11,15</p>
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## Official - Subject to Final Review

<p style="text-align: center;"><b>J</b></p> <p><b>judge</b> [1] 83:25  <b>juris</b> [1] 25:12  <b>jurisdiction</b> [49] 4:7 5:12, 17,22 12:9,10,18,24 13:5 15:6,16 18:5 19:8 20:1 21:4 37:5,9 47:21,22 48:2,3,8, 13 65:24 66:17,24 67:6 69:11 70:17 73:12 76:17,18, 19,23 77:2,22,25 78:4,6,10, 14 79:2 83:6 84:9 96:18, 19,21,23,25  <b>jurisdictional</b> [1] 96:17  <b>jurisprudence</b> [2] 55:9,16  <b>Justice</b> [273] 1:21 3:3,9 5:11,15,23 6:6,10,17 7:4,5 8:24 9:23,24 10:1,2,14,23,25 12:4 13:6,21 14:8,22,24 15:9,13,21,23 16:3,8,13 17:1,3,6,15,17 18:2,13,17,22, 24 20:2,3,9 21:1,8,10,16, 18,23 22:4,8,13,20,24 23:6, 12,14,15,22 24:8,9,9,11 25:9,13,16,25 26:2,5,11,12,12, 13,22,25 27:2,7,13,16,18 28:16,25 29:25 30:18,18, 20,21,22 31:16,17 32:6 33:21,21,23,24,25 34:2,4,5,6, 8 35:11,19,21,22,25 36:8,9, 15 37:17,22 38:1,22 39:4, 24 40:5 41:16 42:12 43:4, 7,18,19,20,21,24,25 44:23, 24,25 45:10,14,16,25 47:3, 4,5,23 49:1,16,17,24 50:12, 13,15 51:4,24 53:6,7,8,9,9, 11,12 54:1,4,7,13,16,19,22 55:24 56:11,11,13,21 57:1, 4,9,17 58:14 59:1,3,3,4,6, 15 60:1 61:3,3,5,10,19,19, 21,22,23 62:7,25 63:22,23, 23,25 64:5,17,25 65:9,10, 13,17 67:3,14,20 68:11,18, 25 69:13,17,20,25 70:6,10, 23 71:1,6 72:6 73:13,21 74:15 75:8,25 76:15 77:6 79:6,15 80:14,17 81:25 82:12 83:4 84:5,6 85:8 86:14, 24 87:5,19,22 88:2,6,11,12, 22 89:12,23 90:3,19,20,25 91:9,15,18 92:1,5,11,18,20, 21,22,23 93:13 94:11,11, 13,14,15 95:8,16,17,22 97:8,25  <b>Justice's</b> [2] 41:17 71:14  <b>Justices</b> [1] 96:1</p>	<p><b>Kavanaugh</b> [12] 33:23 47:3 61:20,21 62:7,25 63:22 64:5 79:6,15 81:25 82:12  <b>Kavanaugh's</b> [2] 49:18 88:11  <b>key</b> [1] 73:21  <b>Kickapoo</b> [4] 29:13 91:1, 21,22  <b>kind</b> [13] 11:3 12:6 27:20 46:13 59:17 60:1,4,6,14,18 61:25 64:15 76:18  <b>kinds</b> [4] 43:6 59:22 76:18 84:15  <b>knows</b> [2] 13:9 16:25</p>	<p><b>legislative</b> [8] 7:18 8:4,5 37:13 66:8 77:24 78:13 91:14  <b>legitimate</b> [1] 46:25  <b>length</b> [1] 86:15  <b>Lenity</b> [2] 55:6 62:9  <b>less</b> [2] 33:2 90:7  <b>level</b> [2] 40:11,14  <b>license</b> [1] 12:20  <b>lies</b> [1] 30:13  <b>light</b> [6] 7:6,7 74:4,6,19 78:20  <b>lightly</b> [2] 61:6,12  <b>lights</b> [1] 22:18  <b>limit</b> [2] 37:9 58:22  <b>limitations</b> [1] 83:16  <b>limited</b> [6] 42:24 57:13 70:17 94:5 96:21  <b>limiting</b> [1] 86:9  <b>limits</b> [3] 37:7,8 67:11  <b>line</b> [4] 64:1 91:7 96:4,5  <b>lines</b> [4] 32:10 33:9 43:9 71:7  <b>linked</b> [1] 73:6  <b>litigation</b> [1] 72:17  <b>little</b> [1] 75:9  <b>live</b> [1] 33:12  <b>live-called</b> [1] 23:4  <b>living</b> [1] 88:25  <b>loaded</b> [1] 84:1  <b>logic</b> [1] 87:5  <b>long</b> [5] 40:20 43:16 55:6,8 64:20  <b>longer</b> [1] 85:3  <b>look</b> [12] 12:5 22:9,18 41:12,13 48:6 49:4 51:6,9 72:10 74:5 88:24  <b>looking</b> [4] 5:18 15:14 72:13 74:2  <b>looks</b> [6] 7:21 21:19,25 22:2,5,6  <b>lose</b> [3] 15:9,12 76:6  <b>lost</b> [1] 94:16  <b>lot</b> [8] 8:3 34:10 38:20,21 50:21 79:25 85:23 97:4  <b>lotteries</b> [1] 94:10  <b>lottery</b> [4] 7:12 53:15 68:3 93:9  <b>love</b> [1] 45:25  <b>low</b> [2] 71:15,19  <b>lower</b> [1] 89:4</p>	<p><b>March</b> [1] 8:9  <b>MARTIN</b> [87] 1:18 2:3,13 3:6,7,9 5:14,18 6:1,7,12,19 7:25 9:3 10:13,18,24 11:16 12:14 13:15 14:1,16,23 15:3,11,18,22 16:2,6,11,22 17:1,2,5,11,16,22 18:9,20 19:11 20:2,8,10 21:7,9,13, 21,24 22:6,11,15,22 23:2,9, 18,25 25:7,10,14,21 26:1,4, 7,24 27:1,4,10,15,17 28:1, 22 29:3 30:7,21 31:14,25 32:3,8 34:18 35:16,21,24 36:4 75:9 95:19,20,22  <b>Massachusetts</b> [1] 88:15  <b>matching</b> [1] 95:3  <b>materia</b> [1] 49:6  <b>math</b> [1] 29:7  <b>matter</b> [11] 1:13 24:23 38:15 39:17 41:11 69:14 70:14,21 81:10 86:5 90:16  <b>mean</b> [36] 7:5,16,20 9:17 10:5 12:5 13:24 16:4 21:11,21 25:2 27:8 31:2,11,23 34:10 40:12 44:10,12,12 45:7 48:2 50:15 55:1,2 59:15 60:1 68:14 74:9 77:17 79:15 84:7,7,16 85:14,22  <b>meaning</b> [11] 4:9 14:14 15:19 38:17 47:18 49:4 50:21 70:8 75:22 77:3 78:15  <b>meanings</b> [2] 15:15 38:21  <b>means</b> [4] 39:7 48:19 67:25 96:20  <b>meant</b> [2] 11:22 77:12  <b>Meanwhile</b> [1] 5:6  <b>mechanism</b> [3] 35:9 36:3, 5  <b>medical</b> [1] 40:14  <b>meet</b> [1] 71:2  <b>members</b> [1] 79:8  <b>mens</b> [1] 62:5  <b>mentioned</b> [1] 75:2  <b>mere</b> [2] 39:4 69:1  <b>merely</b> [1] 30:6  <b>method</b> [2] 38:8 46:14  <b>mid-2000s</b> [1] 78:25  <b>middle</b> [1] 31:6  <b>midnight</b> [1] 86:9  <b>might</b> [3] 47:14 80:17 83:25  <b>military</b> [1] 39:6  <b>Mills</b> [2] 63:12 82:24  <b>mind</b> [4] 11:14 26:17 30:2 56:14  <b>mine</b> [1] 43:12  <b>mining</b> [1] 46:17  <b>minute</b> [1] 51:25  <b>minutes</b> [2] 51:21 80:15  <b>mirror</b> [1] 12:7  <b>mirroring</b> [1] 36:22  <b>misread</b> [1] 29:18  <b>misspoke</b> [2] 84:7 90:9  <b>modifies</b> [1] 14:20</p>	<p><b>money</b> [2] 46:23 86:9  <b>month</b> [1] 33:14  <b>months</b> [5] 14:2 16:9 36:17 51:7 55:20  <b>Moreover</b> [1] 78:2  <b>morning</b> [1] 3:4  <b>most</b> [3] 31:4 80:25 85:5  <b>mother</b> [1] 29:3  <b>Ms</b> [53] 65:13,16 67:19,23 68:16 69:7,24 70:4,9,16,25 71:5,8 72:13 73:20 74:23 75:16,25 76:14 77:20 79:14,24 82:9,14 83:4,14 84:19 85:25 86:19 87:4,10,21, 24 88:4,9,17,22 89:4,15 90:2,9,22 91:8,13,17,20 92:3, 8,14 93:7,18 94:23 95:10  <b>much</b> [14] 7:22 8:1 12:6 18:15 28:13 33:14 50:24 51:1, 10 72:21 76:4 81:22 90:23 91:23  <b>multiple</b> [1] 77:17  <b>must</b> [1] 4:8</p> <p style="text-align: center;"><b>N</b></p> <p><b>name</b> [1] 22:13  <b>namely</b> [1] 86:4  <b>narrower</b> [1] 72:11  <b>narrowly</b> [1] 47:10  <b>nations</b> [2] 63:10,21  <b>natural</b> [1] 10:11  <b>nearly</b> [1] 80:12  <b>necessarily</b> [3] 78:7 80:10 88:5  <b>necessary</b> [4] 72:20,22 86:20 87:14  <b>necessitated</b> [2] 84:25 86:3  <b>need</b> [9] 14:19 40:24 55:13 56:16 62:19 63:1 79:21,21 87:15  <b>negative</b> [2] 42:13 44:6  <b>negotiation</b> [1] 17:24  <b>neutral</b> [2] 83:25 84:2  <b>never</b> [1] 8:16  <b>next</b> [3] 40:7 59:12 93:16  <b>NIGC</b> [6] 18:1 29:12,16 42:7 58:11,12  <b>nominally</b> [1] 89:9  <b>non-charitable</b> [1] 84:13  <b>non-prohibited</b> [1] 4:21  <b>Nor</b> [1] 34:21  <b>normal</b> [4] 11:1,9,15 14:11  <b>normally</b> [3] 45:2,4 80:20  <b>not-for-profit</b> [2] 70:15 71:4  <b>not-for-profits</b> [1] 58:15  <b>noted</b> [2] 67:3 68:19  <b>nothing</b> [2] 20:15 48:18  <b>number</b> [7] 19:23 28:6 29:7 80:8,22 82:19 84:11  <b>numbers</b> [6] 19:3 22:25 46:8,9,11 95:3</p>
<p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> [23] 10:23 12:4 13:6 20:2,9 21:1,8,10 30:20, 21 31:16 32:6 47:23 51:4 59:3,4 60:1 67:3 75:25 76:15 80:17 84:5 85:8  <b>Kagan's</b> [1] 61:22</p>	<p style="text-align: center;"><b>L</b></p> <p><b>label</b> [1] 65:3  <b>land</b> [2] 45:24 53:19  <b>lands</b> [10] 6:16 24:19 40:3 41:1 42:20 44:15 60:17 62:18 63:19 79:12  <b>language</b> [30] 3:20,23 4:19 11:3,19 13:17 25:19 36:22 41:11,19 49:9,15 51:21 53:14,21,25 54:7,10 55:21 72:5,9,12,18,19 81:8,22 87:14 88:9 90:13 97:14  <b>LANORA</b> [3] 1:24 2:10 65:14  <b>larger</b> [4] 67:11 71:10 72:24 78:23  <b>last</b> [1] 21:17  <b>later</b> [2] 38:14 51:21  <b>Laughter</b> [6] 18:16 22:10 26:21 29:2 32:2,7  <b>law</b> [84] 4:2 6:5,8,18 8:25 9:4 10:5 13:10 23:17 24:13, 24 29:20,21 32:24 33:18 34:13,14,19,23 35:1,13,13 36:2,18,21 37:2,7 39:17 40:19 42:19,22 43:6,8 44:13,14,22 46:19,22,24 47:21 48:15,16,21 49:4,6 50:8 51:16 52:5,11,18,25 53:1 56:17 57:13 58:21 60:15, 20 62:22 63:18 66:6,11,22 67:2,15 68:21 69:9 70:22 71:11,21 75:21 76:10,11 78:8 79:10 81:11 83:24 86:7,22 89:2 90:10 93:12 95:9 96:12,19  <b>laws</b> [26] 6:14,20 7:15 16:18 29:20 35:2 36:6,6 53:16 56:24 57:7,14 67:17 68:23 72:1,3,7 73:15,16 77:23 82:14,14,16 83:21 92:17, 24  <b>lay</b> [1] 45:24  <b>least</b> [2] 63:17 75:19  <b>left</b> [1] 74:6  <b>legal</b> [1] 50:5  <b>legally</b> [1] 23:17  <b>legislation</b> [5] 7:23 16:15 37:15 48:4 51:13</p>	<p style="text-align: center;"><b>M</b></p> <p><b>machine</b> [11] 19:1,9,13 21:20 22:1,3,7,9 23:8 27:3 31:1 1  <b>machines</b> [7] 23:10 24:12 26:16 31:10,22 94:21,24  <b>made</b> [7] 9:5,19 11:7 32:16 66:2 68:20 78:3  <b>major</b> [1] 59:14  <b>manner</b> [1] 3:13  <b>many</b> [5] 13:22,24 54:15 58:6 89:8</p>		



## Official - Subject to Final Review

<p><b>O</b></p> <p><b>object</b> [1] 92:9</p> <p><b>obvious</b> [4] 79:8 82:1,1,4</p> <p><b>obviously</b> [2] 7:10 19:12</p> <p><b>odd</b> [4] 7:16 74:5,20 83:13</p> <p><b>offense</b> [2] 57:16 70:18</p> <p><b>offer</b> [2] 33:2 66:4</p> <p><b>office</b> [1] 40:6</p> <p><b>officer</b> [5] 53:5 78:7 92:9, 12,13</p> <p><b>official</b> [1] 17:16</p> <p><b>offsite</b> [1] 83:3</p> <p><b>okay</b> [18] 10:7 18:2 23:12 24:20 25:25 26:11 27:7 34:5 36:8 37:22 40:15 52:1 54:13,21 57:20 73:19 74:4 88:6</p> <p><b>old</b> [1] 97:14</p> <p><b>once</b> [4] 37:14 51:12 80:24 84:12</p> <p><b>one</b> [44] 4:17 6:21,23 8:7 9:11,12 11:19 13:23 17:14 18:2 21:17 23:5,15 24:14 29:15,25 31:1 32:13 35:5 44:14 46:8,19 47:18 50:12 52:9 54:24 56:7 60:20 61:7 62:2 69:22 72:8 75:23 76:8,8 81:6 86:4 88:7 91:3 92:4 94:15 95:4,15 97:1</p> <p><b>ones</b> [2] 44:7 85:7</p> <p><b>ongoing</b> [1] 68:6</p> <p><b>only</b> [11] 4:2 17:25 29:13 32:13 35:14,25 58:15,21 64:22 74:24 83:14</p> <p><b>open</b> [1] 57:21</p> <p><b>opens</b> [1] 85:18</p> <p><b>operate</b> [2] 23:16 58:22</p> <p><b>operating</b> [1] 91:2</p> <p><b>operationalizes</b> [1] 39:21</p> <p><b>operations</b> [2] 23:3,4</p> <p><b>operative</b> [2] 8:11 9:17</p> <p><b>opining</b> [1] 20:20</p> <p><b>opinion</b> [5] 12:17 30:9 38:16 47:13 63:12</p> <p><b>opinions</b> [1] 11:19</p> <p><b>opioid</b> [2] 32:8 33:7</p> <p><b>opioids</b> [1] 30:4</p> <p><b>opposed</b> [1] 78:24</p> <p><b>opposing</b> [1] 86:21</p> <p><b>opposite</b> [1] 93:25</p> <p><b>opposition</b> [2] 52:4,24</p> <p><b>oral</b> [7] 1:14 2:2,5,9 3:7 36:12 65:14</p> <p><b>order</b> [2] 32:24 86:7</p> <p><b>ordinary</b> [3] 15:15,19 50:21</p> <p><b>organization</b> [4] 23:24 69:3 81:20 89:19</p> <p><b>organizations</b> [4] 23:20 39:7 69:5 84:13</p> <p><b>organized</b> [1] 65:23</p> <p><b>origin</b> [1] 55:25</p> <p><b>original</b> [1] 56:7</p>	<p><b>originally</b> [1] 75:4</p> <p><b>other</b> [26] 4:18 17:14 20:7 29:13 32:9 33:8 47:9 51:6 54:24 59:14 66:5 67:8 69:5 72:7,8 74:3,17 75:11,24 77:7 79:15 80:8 84:10 85:15 91:11 97:1</p> <p><b>others</b> [1] 42:2</p> <p><b>otherwise</b> [2] 76:3 82:17</p> <p><b>out</b> [28] 4:13 8:8 15:14 19:3 20:7 21:12,14 22:24 24:3 28:14 29:13,18 31:7 35:2, 7 46:23 55:14 57:25 59:24 64:5 69:13 74:10 83:19 86:2 91:4 97:7,8,16</p> <p><b>outlawed</b> [1] 69:4</p> <p><b>outright</b> [2] 37:20 73:18</p> <p><b>outside</b> [4] 59:5 70:16 90:12 93:11</p> <p><b>over</b> [13] 3:19 4:8,17 12:24 25:3 35:3 40:6 51:5,10 59:11 71:16 77:13 96:25</p> <p><b>overlooked</b> [1] 32:20</p> <p><b>overlooks</b> [1] 66:18</p> <p><b>overly</b> [1] 44:17</p> <p><b>overrule</b> [2] 42:15 47:6</p> <p><b>overruling</b> [1] 41:24</p> <p><b>oversight</b> [3] 67:8 68:6 84:10</p> <p><b>overturn</b> [3] 86:17 87:16, 20</p> <p><b>overturning</b> [1] 89:13</p> <p><b>own</b> [2] 29:3 72:23</p> <hr/> <p><b>P</b></p> <p><b>PAGE</b> [7] 2:2 8:18 49:10 52:17 53:22,24 76:3</p> <p><b>pages</b> [1] 65:6</p> <p><b>paid</b> [1] 46:23</p> <p><b>parallels</b> [1] 43:1</p> <p><b>pari</b> [1] 49:6</p> <p><b>part</b> [6] 8:14 23:3 55:15 56:20 58:18 89:16</p> <p><b>Parte</b> [1] 18:4</p> <p><b>participate</b> [1] 69:2</p> <p><b>particular</b> [5] 9:1 26:15 80:19 86:4 95:4</p> <p><b>particularly</b> [1] 41:9</p> <p><b>parties</b> [2] 72:16,20</p> <p><b>party</b> [1] 83:24</p> <p><b>passed</b> [12] 7:24 8:16,25 9:4 11:13 16:15,17,20 72:7 75:17,20 77:7</p> <p><b>password</b> [3] 70:11,24 71:8</p> <p><b>passwords</b> [4] 68:4 69:23 96:6,7</p> <p><b>path</b> [1] 74:21</p> <p><b>patrons</b> [1] 37:23</p> <p><b>pattern</b> [4] 6:4,9 29:9 95:4</p> <p><b>peace</b> [3] 92:9,11,13</p> <p><b>pedigree</b> [1] 63:19</p> <p><b>penalties</b> [4] 66:16 73:9 75:2,5</p>	<p><b>people</b> [11] 14:13 19:2 22:21,22,25 27:21 28:20 38:9 68:5 74:17 79:19</p> <p><b>perfectly</b> [1] 10:11</p> <p><b>perhaps</b> [3] 41:24 74:17, 21</p> <p><b>permanent</b> [1] 81:4</p> <p><b>permission</b> [1] 92:10</p> <p><b>permit</b> [1] 58:15</p> <p><b>permits</b> [4] 39:22 81:19 89:18,18</p> <p><b>permitted</b> [6] 7:14 39:1,2,5 40:10 93:23</p> <p><b>person</b> [8] 10:11 27:18 39:23 81:20 85:15 89:19 90:13 95:3</p> <p><b>personal</b> [2] 40:14 92:16</p> <p><b>Petitioners</b> [9] 1:4,19,23 2:4,8,14 3:8 36:14 95:21</p> <p><b>PETTIT</b> [56] 1:24 2:10 65:13,14,16 67:19,23 68:16 69:7,24 70:4,9,16,25 71:5, 8 72:13 73:20 74:23 75:16, 25 76:14 77:20 79:14,24 82:9,14 83:4,14 84:19 85:25 86:19 87:4,10,21,24 88:4,9,17,22 89:4,15 90:2,9, 22 91:8,13,17,20 92:3,8,14 93:7,18 94:23 95:10</p> <p><b>pharmaceuticals</b> [1] 80:8</p> <p><b>phrase</b> [5] 48:7 73:10 77:21 78:13 81:12</p> <p><b>picture</b> [1] 26:17</p> <p><b>piece</b> [2] 33:6 51:13</p> <p><b>pieces</b> [3] 87:13 88:1,4</p> <p><b>place</b> [3] 3:13 59:11 83:2</p> <p><b>places</b> [1] 77:18</p> <p><b>plain</b> [4] 3:20 4:19 62:4 63:15</p> <p><b>platonic</b> [2] 27:9,17</p> <p><b>play</b> [14] 24:14 45:3,5,5 58:6,7,16 60:10 69:23 70:3,23 71:1,3 92:2</p> <p><b>played</b> [3] 5:5 57:25 83:2</p> <p><b>playing</b> [4] 22:17 27:22 58:17 70:2</p> <p><b>please</b> [6] 3:10 36:16 43:23 46:2 65:17 95:23</p> <p><b>pleased</b> [1] 5:9</p> <p><b>plenary</b> [1] 32:14</p> <p><b>podium</b> [1] 18:15</p> <p><b>point</b> [17] 7:9 8:8 9:10 28:14 35:7 38:12 41:17 54:20, 23 76:7 78:2,8 81:7 89:6 97:7,8,16</p> <p><b>pointed</b> [3] 64:5 69:13 83:19</p> <p><b>pointing</b> [1] 16:14</p> <p><b>points</b> [1] 95:24</p> <p><b>police</b> [1] 83:11</p> <p><b>policy</b> [10] 24:24 39:17 69:10,14 81:11 86:6,12 89:11 90:17 94:1</p> <p><b>position</b> [9] 50:18 74:5 85:9,14,16,19 94:21 96:10,10</p>	<p><b>positive</b> [1] 44:7</p> <p><b>possess</b> [1] 40:12</p> <p><b>possession</b> [1] 40:9</p> <p><b>possibility</b> [1] 18:5</p> <p><b>possible</b> [3] 47:9,15 66:21</p> <p><b>post-Arbaugh</b> [2] 48:1 78:3</p> <p><b>post-Cabazon</b> [1] 50:6</p> <p><b>post-enactment</b> [1] 7:19</p> <p><b>potentially</b> [1] 42:10</p> <p><b>power</b> [4] 32:14 41:1 77:4, 23</p> <p><b>pre-clearance</b> [1] 84:22</p> <p><b>pre-enactment</b> [1] 7:19</p> <p><b>precedent</b> [1] 72:2</p> <p><b>precise</b> [3] 19:21 72:11 81:1</p> <p><b>precisely</b> [1] 89:8</p> <p><b>preclude</b> [1] 20:15</p> <p><b>predecessor</b> [1] 75:14</p> <p><b>preexisting</b> [4] 20:17 53:4 72:16 73:11</p> <p><b>prepared</b> [1] 65:3</p> <p><b>prepping</b> [1] 33:15</p> <p><b>prescription</b> [1] 30:5</p> <p><b>presented</b> [3] 44:19 47:2 68:24</p> <p><b>presents</b> [2] 3:11 30:23</p> <p><b>preserve</b> [1] 40:24</p> <p><b>pressed</b> [1] 75:9</p> <p><b>pressing</b> [1] 43:9</p> <p><b>presume</b> [2] 13:9 57:18</p> <p><b>presumption</b> [2] 13:13 94:1</p> <p><b>pretty</b> [7] 21:19 49:21 51:10 55:19,20 58:10 75:14</p> <p><b>prevail</b> [2] 17:7 20:4</p> <p><b>prevails</b> [2] 21:6 53:2</p> <p><b>prevent</b> [1] 5:4</p> <p><b>previous</b> [3] 6:23 8:2 84:20</p> <p><b>previously</b> [1] 87:15</p> <p><b>primarily</b> [1] 52:24</p> <p><b>primary</b> [3] 46:5,7 66:12</p> <p><b>Principal</b> [1] 1:24</p> <p><b>principle</b> [5] 40:23 41:2 60:14 62:15 63:7</p> <p><b>principles</b> [3] 60:19 61:16 65:8</p> <p><b>prior</b> [2] 38:15 75:18</p> <p><b>problem</b> [11] 4:10 24:18 25:1,8 41:6 45:1 46:20,24 69:10 91:25 96:9</p> <p><b>problematic</b> [3] 90:7,7,12</p> <p><b>problems</b> [2] 43:8,14</p> <p><b>proceeding</b> [1] 18:18</p> <p><b>process</b> [1] 63:4</p> <p><b>profit</b> [3] 58:16 69:5 84:14</p> <p><b>prohibit</b> [33] 3:15 13:18,21, 22 15:18 16:19 24:24 25:2, 3 39:18 40:15 41:13,15 43:10 44:3 49:9 50:23 51:7,8 52:10 57:14 72:9 73:1,14</p>	<p><b>75:5 76:1,5 80:23 81:5,15, 19,24 89:1</b></p> <p><b>prohibited</b> [66] 4:2,4 5:5 6:5,14,15,20 7:2,13 9:19,21 10:4,12 11:1,5,9,10,15,25 14:11,13,18,19,20 15:2,5, 15,25 16:5 19:18 23:23 24:4 25:11 26:6,10 30:5 34:24 35:17,20 36:19 37:2,18, 20,20,24 38:6,7 39:7 40:8, 12 48:20,23 52:11,17 53:18 57:16 69:16 70:13,14, 21 73:15 93:6,10,10,12,24</p> <p><b>prohibiting</b> [3] 16:21 58:24 73:18</p> <p><b>prohibition</b> [22] 27:5 31:4, 7 38:2,4 41:22 58:10 67:21,24 68:2,10,13,16 69:6,8, 13 70:2 81:22,22 86:16 87:2 91:7</p> <p><b>prohibitions</b> [4] 35:15 73:9,16 93:9</p> <p><b>prohibitory</b> [7] 6:20 71:18 73:8 88:20 89:7,9,21</p> <p><b>prohibitory/regulatory</b> [6] 4:24 39:19 41:5 76:12 77:10 90:11</p> <p><b>prohibits</b> [4] 26:22,24 31:5 81:10</p> <p><b>proper</b> [4] 17:12 29:24 65:3 74:19</p> <p><b>prosecution</b> [2] 70:18 94:6</p> <p><b>provide</b> [2] 7:11 53:14</p> <p><b>provides</b> [2] 3:20 37:3</p> <p><b>providing</b> [1] 58:3</p> <p><b>provision</b> [3] 51:19,20 58:21</p> <p><b>provisions</b> [2] 39:12 49:9</p> <p><b>Public</b> [32] 6:7 24:24 33:18 34:19 36:2,18 37:7 39:17 40:19,21 42:22 43:8 44:14 47:21 48:16 50:8 51:16 67:2 68:21 69:10,14 76:10,11 81:11 86:6,11 89:2,10 90:10,17 94:1 96:19</p> <p><b>published</b> [1] 78:9</p> <p><b>PUEBLO</b> [4] 1:3 3:5,12 17:13</p> <p><b>Pueblos</b> [1] 17:9</p> <p><b>purpose</b> [5] 24:4 39:23 81:19 89:19 90:13</p> <p><b>pursuant</b> [4] 52:16,20 70:20 91:2</p> <p><b>pursuing</b> [1] 74:20</p> <p><b>pushing</b> [1] 22:16</p> <p><b>put</b> [6] 28:18 33:13 46:22 58:9 65:3 97:18</p> <p><b>puzzled</b> [1] 26:13</p> <hr/> <p><b>Q</b></p> <p><b>QP</b> [1] 45:20</p> <p><b>qualified</b> [1] 28:21</p>
--	--	--	---	--

<p><b>quasi-constitutional</b> <sup>[1]</sup> 63:4</p> <p><b>question</b> <sup>[42]</sup> 3:11 11:11, 24 13:7 18:3,25 20:3 21:17 28:23,23 30:1,9 31:10 34:3 44:18,19 45:2,4,17 46:25 49:18 50:13 54:24 55:3,25 59:7 61:22 68:24 74:20 76:4,17 82:5 86:3, 23 90:20,24 93:20,21 94:16,18 95:13,25</p> <p><b>questioning</b> <sup>[1]</sup> 64:1</p> <p><b>questions</b> <sup>[16]</sup> 5:10 29:4 30:25 32:8,9,10 33:16 47:5,17 53:8 58:13 59:14 67:13 82:20 96:17 97:24</p> <p><b>quick</b> <sup>[3]</sup> 18:3 44:1 95:24</p> <p><b>quinte</b> <sup>[1]</sup> 17:2</p> <p><b>quite</b> <sup>[4]</sup> 30:24 48:4 64:20 87:1</p> <p><b>quoted</b> <sup>[1]</sup> 87:15</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>raised</b> <sup>[1]</sup> 59:6</p> <p><b>random</b> <sup>[2]</sup> 29:6 31:22</p> <p><b>rather</b> <sup>[3]</sup> 11:14 51:19 84:3</p> <p><b>rea</b> <sup>[1]</sup> 62:5</p> <p><b>reach</b> <sup>[1]</sup> 95:3</p> <p><b>read</b> <sup>[23]</sup> 20:13,22 25:19 26:3,7 29:18,23,24 41:19 47:19 49:6 50:8,9 52:7,10 54:8 57:17 60:16 70:12 74:11, 13,14,16</p> <p><b>reading</b> <sup>[6]</sup> 12:12 17:12 40:4 60:21 78:22 88:14</p> <p><b>reads</b> <sup>[1]</sup> 4:12</p> <p><b>real</b> <sup>[1]</sup> 44:1</p> <p><b>really</b> <sup>[12]</sup> 11:2,8,14 12:4, 12 21:10 31:20 49:7 50:2 52:23 55:24 72:4</p> <p><b>reason</b> <sup>[2]</sup> 44:25 49:13</p> <p><b>REBUTTAL</b> <sup>[3]</sup> 2:12 95:19, 20</p> <p><b>recognition</b> <sup>[3]</sup> 64:22 65:20 66:4</p> <p><b>recognize</b> <sup>[2]</sup> 49:20 70:1</p> <p><b>recognized</b> <sup>[5]</sup> 29:14 46:6 60:12 62:16 90:15</p> <p><b>recognizes</b> <sup>[1]</sup> 55:10</p> <p><b>reconcile</b> <sup>[1]</sup> 59:22</p> <p><b>redundant</b> <sup>[2]</sup> 34:16 72:5</p> <p><b>reels</b> <sup>[1]</sup> 22:18</p> <p><b>refer</b> <sup>[1]</sup> 54:24</p> <p><b>reference</b> <sup>[5]</sup> 5:21 30:8 52:3,15 54:10</p> <p><b>referred</b> <sup>[3]</sup> 54:5 75:19 78:17</p> <p><b>references</b> <sup>[1]</sup> 97:13</p> <p><b>referencing</b> <sup>[1]</sup> 23:19</p> <p><b>referred</b> <sup>[1]</sup> 95:1</p> <p><b>referring</b> <sup>[2]</sup> 73:22 77:22</p> <p><b>refers</b> <sup>[2]</sup> 73:15,17</p> <p><b>reflect</b> <sup>[4]</sup> 9:16 60:19 63:3, 6</p>	<p><b>reflected</b> <sup>[1]</sup> 8:22</p> <p><b>reflects</b> <sup>[5]</sup> 5:2 9:14 52:23 62:23 63:9</p> <p><b>regardless</b> <sup>[2]</sup> 7:13 9:1</p> <p><b>regime</b> <sup>[2]</sup> 84:22 85:4</p> <p><b>regulate</b> <sup>[12]</sup> 12:20 16:19 39:16 43:10 44:3 57:7 61:14 72:10 73:1 89:2 91:22 96:9</p> <p><b>regulated</b> <sup>[9]</sup> 20:5 30:6 35:23 36:20 37:18 38:25 48:23 49:8 93:6</p> <p><b>regulates</b> <sup>[1]</sup> 82:3</p> <p><b>regulating</b> <sup>[3]</sup> 16:21 58:24 79:11</p> <p><b>regulation</b> <sup>[25]</sup> 5:8 12:2 25:4,6 31:4,5,8 33:1 37:23 38:1 39:15 41:23 67:16 68:1, 8,13,18,20 69:21 71:9 72:3 80:7 86:16 87:3 96:8</p> <p><b>regulations</b> <sup>[11]</sup> 16:18,19, 24 29:21 35:2 53:17 72:1 82:3,16 83:17 85:7</p> <p><b>regulatory</b> <sup>[49]</sup> 3:18,25 4:7 10:21 12:18,22 15:6,16 16:1,4 23:21 25:12 26:6 33:17 37:4,9 41:1 48:8,13,21 58:3 60:17 62:18 66:17 67:6,15 71:11,17 73:7,12,18 76:17,23 77:2,3,21,22 83:3, 8 84:9 86:11 88:20 89:8, 21 91:6 96:4,5,11,14</p> <p><b>related</b> <sup>[1]</sup> 5:8</p> <p><b>relates</b> <sup>[2]</sup> 3:14 85:22</p> <p><b>relating</b> <sup>[2]</sup> 68:10 80:5</p> <p><b>relationship</b> <sup>[1]</sup> 55:11</p> <p><b>relevant</b> <sup>[2]</sup> 21:18 93:20</p> <p><b>relief</b> <sup>[1]</sup> 20:14</p> <p><b>relies</b> <sup>[1]</sup> 37:13</p> <p><b>relying</b> <sup>[2]</sup> 11:2 15:24</p> <p><b>remains</b> <sup>[1]</sup> 42:1</p> <p><b>remanded</b> <sup>[2]</sup> 28:3 94:17</p> <p><b>remands</b> <sup>[1]</sup> 19:14</p> <p><b>remedy</b> <sup>[1]</sup> 20:23</p> <p><b>Remember</b> <sup>[2]</sup> 48:11 97:17</p> <p><b>remembering</b> <sup>[1]</sup> 32:15</p> <p><b>remind</b> <sup>[1]</sup> 38:12</p> <p><b>removed</b> <sup>[1]</sup> 37:15</p> <p><b>repeal</b> <sup>[1]</sup> 87:16</p> <p><b>replicate</b> <sup>[1]</sup> 3:24</p> <p><b>report</b> <sup>[5]</sup> 74:11,24,24 75:1 97:12</p> <p><b>reporting</b> <sup>[1]</sup> 67:9</p> <p><b>Representative</b> <sup>[1]</sup> 97:9</p> <p><b>request</b> <sup>[3]</sup> 8:11 9:17 52:8</p> <p><b>require</b> <sup>[1]</sup> 42:11</p> <p><b>required</b> <sup>[2]</sup> 57:22 69:22</p> <p><b>requirement</b> <sup>[2]</sup> 70:11,11</p> <p><b>requirements</b> <sup>[2]</sup> 67:9 71:3</p> <p><b>requires</b> <sup>[3]</sup> 46:22 85:9 96:10</p> <p><b>research</b> <sup>[1]</sup> 56:5</p>	<p><b>reservation</b> <sup>[4]</sup> 6:16 53:18 56:18 79:12</p> <p><b>resolution</b> <sup>[24]</sup> 7:8,22 8:1, 9,23 9:1 32:22 50:11 51:23 52:2,6,8,15,16,20,22 53:13 54:12,14 56:14 57:5 73:24 75:10,17</p> <p><b>respect</b> <sup>[9]</sup> 35:15,17 40:2, 17 41:7 47:23,24 51:18 73:9</p> <p><b>respectfully</b> <sup>[4]</sup> 13:1 75:6 80:25 87:11</p> <p><b>respects</b> <sup>[1]</sup> 52:3</p> <p><b>respond</b> <sup>[1]</sup> 34:9</p> <p><b>responded</b> <sup>[1]</sup> 77:6</p> <p><b>Respondent</b> <sup>[4]</sup> 1:7,25 2:11 65:15</p> <p><b>responding</b> <sup>[2]</sup> 30:16 79:18</p> <p><b>response</b> <sup>[9]</sup> 33:3,20 53:21 75:17 88:11 91:21 95:25 96:16 97:23</p> <p><b>responses</b> <sup>[1]</sup> 79:24</p> <p><b>responsive</b> <sup>[1]</sup> 30:11</p> <p><b>restates</b> <sup>[1]</sup> 37:7</p> <p><b>Restoration</b> <sup>[33]</sup> 3:12,16, 24 4:20 5:1 8:15 16:16 17:12 20:25 24:1 29:17,23 30:8,17 33:20 34:12,14,17 35:12 36:2,7 44:4,20 66:3,14 68:24 72:25 73:2 81:13 84:23,25 85:2 95:10</p> <p><b>restriction</b> <sup>[2]</sup> 12:1 86:5</p> <p><b>restrictions</b> <sup>[3]</sup> 3:13 10:19 33:3</p> <p><b>retain</b> <sup>[1]</sup> 5:7</p> <p><b>rethinking</b> <sup>[2]</sup> 43:3 44:18</p> <p><b>retooled</b> <sup>[1]</sup> 52:19</p> <p><b>revert</b> <sup>[1]</sup> 94:19</p> <p><b>revoke</b> <sup>[1]</sup> 87:16</p> <p><b>rewrite</b> <sup>[1]</sup> 66:7</p> <p><b>rid</b> <sup>[2]</sup> 87:7 89:14</p> <p><b>risk</b> <sup>[1]</sup> 86:12</p> <p><b>ROBERTS</b> <sup>[40]</sup> 3:3 7:5 8:24 9:24 10:2,14 21:16,23 22:4,8,13,20,24 23:6,12 24:9 26:12 30:18 33:21,25 34:4,6 36:9 39:24 40:5 51:24 53:6,9 56:11 59:3 61:3,19 63:23 65:10,13 75:8 92:18 94:11 95:17 97:25</p> <p><b>role</b> <sup>[2]</sup> 55:10 60:11</p> <p><b>room</b> <sup>[1]</sup> 19:2</p> <p><b>rule</b> <sup>[10]</sup> 37:23 47:6,9 55:5 62:9 67:15 86:1 89:7 90:14,18</p> <p><b>rules</b> <sup>[1]</sup> 63:2</p> <p><b>run</b> <sup>[3]</sup> 43:12 60:25 91:6</p> <p><b>running</b> <sup>[1]</sup> 57:19</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>safe</b> <sup>[1]</sup> 18:17</p> <p><b>sale</b> <sup>[1]</sup> 30:4</p> <p><b>same</b> <sup>[47]</sup> 10:22 11:20 13:</p>	<p>17,19,20 16:15,17 19:2,5 21:8 24:17 25:1,8 29:11 32:10 33:8 36:22,23 38:15, 17 39:10,10 41:11,11 48:7, 17 49:1,3,5,8,12,14 50:3,4, 5,5,9 55:22 66:5,17 67:5 77:8,8 88:15 95:11 96:12, 23</p> <p><b>sanction</b> <sup>[1]</sup> 48:14</p> <p><b>saw</b> <sup>[1]</sup> 65:22</p> <p><b>saying</b> <sup>[14]</sup> 14:17 20:20 22:25 35:14,16 45:6 50:19 51:5,6 59:21 61:12 89:25 90:3 91:5</p> <p><b>says</b> <sup>[20]</sup> 10:4 12:8,10,24 20:15 22:14 24:17,18 35:4 37:23 48:18,20 54:10 77:1 81:10 85:10,17 92:25 96:15,24</p> <p><b>scale</b> <sup>[1]</sup> 55:18</p> <p><b>Scalia</b> <sup>[1]</sup> 49:2</p> <p><b>Scalia's</b> <sup>[1]</sup> 59:16</p> <p><b>scheme</b> <sup>[2]</sup> 21:6 23:21</p> <p><b>scope</b> <sup>[1]</sup> 59:5</p> <p><b>scrap</b> <sup>[2]</sup> 87:8 94:7</p> <p><b>scrapped</b> <sup>[2]</sup> 92:23 93:7</p> <p><b>second</b> <sup>[6]</sup> 11:23 35:6 48:22 66:18 76:15 86:2</p> <p><b>secondly</b> <sup>[1]</sup> 16:13</p> <p><b>Section</b> <sup>[24]</sup> 3:25 4:5,6,8 6:24 19:19 36:1,21,25 37:2,3, 7,10 48:18 50:9 51:12 53:1 67:3,4 96:17,22,23 97:19, 20</p> <p><b>Sections</b> <sup>[1]</sup> 4:22</p> <p><b>see</b> <sup>[4]</sup> 12:4 14:20 81:15 92:5</p> <p><b>seeing</b> <sup>[1]</sup> 57:21</p> <p><b>seem</b> <sup>[2]</sup> 25:5 87:6</p> <p><b>seemed</b> <sup>[1]</sup> 75:14</p> <p><b>seems</b> <sup>[8]</sup> 6:17 12:6 18:25 24:17 56:15 62:1 68:25 83:12</p> <p><b>seen</b> <sup>[3]</sup> 7:17 43:13 60:23</p> <p><b>selected</b> <sup>[1]</sup> 78:1</p> <p><b>self-sufficiency</b> <sup>[1]</sup> 32:18</p> <p><b>Seminole</b> <sup>[1]</sup> 16:20</p> <p><b>Senate</b> <sup>[5]</sup> 73:3 74:12,23, 25 97:12</p> <p><b>send</b> <sup>[2]</sup> 92:9,12</p> <p><b>sending</b> <sup>[1]</sup> 4:23</p> <p><b>sense</b> <sup>[15]</sup> 13:25 14:11 17:22 21:11,14 76:24,25 78:17,18,19,20 83:5,10,18 84:9</p> <p><b>senses</b> <sup>[1]</sup> 76:20</p> <p><b>sentence</b> <sup>[3]</sup> 6:13 13:8 20:11</p> <p><b>separate</b> <sup>[2]</sup> 20:6 85:4</p> <p><b>September</b> <sup>[1]</sup> 8:19</p> <p><b>serve</b> <sup>[1]</sup> 56:15</p> <p><b>set</b> <sup>[8]</sup> 8:17 11:25 12:1 23:21 57:13 58:22 67:11 77:23</p>	<p><b>sets</b> <sup>[1]</sup> 35:8</p> <p><b>settlement</b> <sup>[1]</sup> 72:15</p> <p><b>shall</b> <sup>[4]</sup> 7:12 20:15 48:18 53:17</p> <p><b>shed</b> <sup>[1]</sup> 74:18</p> <p><b>shorthand</b> <sup>[1]</sup> 69:10</p> <p><b>shortly</b> <sup>[1]</sup> 39:9</p> <p><b>shouldn't</b> <sup>[5]</sup> 12:11 15:1 32:20 58:16 72:10</p> <p><b>show</b> <sup>[1]</sup> 73:5</p> <p><b>showed</b> <sup>[1]</sup> 17:3</p> <p><b>showing</b> <sup>[1]</sup> 6:2</p> <p><b>side</b> <sup>[2]</sup> 5:3 12:7</p> <p><b>side's</b> <sup>[1]</sup> 85:15</p> <p><b>signage</b> <sup>[1]</sup> 82:20</p> <p><b>signal</b> <sup>[1]</sup> 4:23</p> <p><b>significant</b> <sup>[4]</sup> 52:13 57:3, 15 87:12</p> <p><b>significantly</b> <sup>[1]</sup> 56:22</p> <p><b>signs</b> <sup>[1]</sup> 57:22</p> <p><b>similar</b> <sup>[5]</sup> 43:16 49:3 61:11,15,17</p> <p><b>simply</b> <sup>[2]</sup> 36:3 81:14</p> <p><b>since</b> <sup>[3]</sup> 43:14,15 57:25</p> <p><b>single</b> <sup>[2]</sup> 74:21 89:7</p> <p><b>sister</b> <sup>[1]</sup> 64:16</p> <p><b>situation</b> <sup>[1]</sup> 97:22</p> <p><b>six</b> <sup>[5]</sup> 14:2 16:9 36:17 51:7 55:20</p> <p><b>sketch</b> <sup>[1]</sup> 45:22</p> <p><b>slicing</b> <sup>[1]</sup> 88:19</p> <p><b>slightly</b> <sup>[1]</sup> 50:18</p> <p><b>slot</b> <sup>[11]</sup> 19:9,13 21:20 22:1, 2 23:7,7 31:1,10,21 94:24</p> <p><b>small</b> <sup>[1]</sup> 94:4</p> <p><b>Smith</b> <sup>[1]</sup> 49:2</p> <p><b>software</b> <sup>[1]</sup> 68:6</p> <p><b>Solicitor</b> <sup>[2]</sup> 1:20,24</p> <p><b>solution</b> <sup>[1]</sup> 91:14</p> <p><b>somebody</b> <sup>[5]</sup> 10:9 22:25 27:16 68:1 95:1</p> <p><b>somehow</b> <sup>[2]</sup> 46:10 90:4</p> <p><b>sometimes</b> <sup>[5]</sup> 13:10,11 60:24 74:18 86:7</p> <p><b>sorry</b> <sup>[12]</sup> 23:13 25:22 31:19 34:2,4 35:12 44:24 64:2 67:20 69:17 70:17 79:7 59:17 84:22</p> <p><b>SOTOMAYOR</b> <sup>[33]</sup> 15:21, 23 16:3,8,13 17:3 18:24 21:18 30:19 56:12,13,21 57:1,4,9,17 58:14 59:1 69:17,25 70:6,10,23 71:1,6 90:25 91:9,15,18 92:1,5,11 94:12</p> <p><b>sounds</b> <sup>[2]</sup> 50:17,19</p> <p><b>sovereign</b> <sup>[9]</sup> 18:7,11,14 32:12 61:6,14 63:9,21 66:1</p> <p><b>sovereigns</b> <sup>[1]</sup> 64:23</p> <p><b>sovereignty</b> <sup>[12]</sup> 5:7 32:11, 19 33:9,16 40:24 41:2 42:19 60:13 63:18 64:21 65:</p>
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## Official - Subject to Final Review

<p>21  <b>special</b> <sup>[1]</sup> 55:10  <b>specialized</b> <sup>[1]</sup> 76:6  <b>specific</b> <sup>[9]</sup> 5:21 23:19 38:17,18 42:25 51:19 62:16 68:21 89:16  <b>specifically</b> <sup>[12]</sup> 3:18 5:19 24:6 26:9 41:3 51:18 76:16 78:10 86:23 94:3,4 96:24  <b>specified</b> <sup>[1]</sup> 92:25  <b>specifies</b> <sup>[1]</sup> 82:17  <b>specifying</b> <sup>[1]</sup> 7:2  <b>speculate</b> <sup>[3]</sup> 9:6 82:7,10  <b>sphere</b> <sup>[1]</sup> 13:14  <b>spirit</b> <sup>[1]</sup> 61:17  <b>split</b> <sup>[1]</sup> 65:25  <b>spoken</b> <sup>[1]</sup> 43:1  <b>stage</b> <sup>[1]</sup> 43:2  <b>stake</b> <sup>[3]</sup> 10:7 40:23 86:10  <b>stakes</b> <sup>[5]</sup> 65:21 71:15,20,20 94:5  <b>standard</b> <sup>[1]</sup> 40:1  <b>standing</b> <sup>[1]</sup> 5:24  <b>start</b> <sup>[1]</sup> 61:1  <b>starts</b> <sup>[1]</sup> 96:5  <b>state</b> <sup>[70]</sup> 4:3,10 6:4,15 8:10 12:10 13:2 14:6 15:22 17:24 20:16,18,24 21:25 23:5 24:23 29:15 32:24 35:3 36:6,21 37:4,9 39:14,16,22 40:25 42:11 46:19 47:7,10,21 48:21 52:5,25 53:3,3,10,21 56:17,23 57:6,13,18,23 60:17 61:13 62:17 63:18 66:11,19 77:2,3 81:17,19 82:2 83:7,21,21,24 86:6,22 89:10,18 90:17 92:14 93:12 96:3 97:2,13,17  <b>state's</b> <sup>[6]</sup> 12:20 67:10 71:17,18 84:4 94:10  <b>state-administrative</b> <sup>[1]</sup> 67:7  <b>stated</b> <sup>[1]</sup> 97:10  <b>statement</b> <sup>[5]</sup> 62:4 63:1,2,15 64:7  <b>STATES</b> <sup>[13]</sup> 1:1,15,22 2:7 20:7 36:13 40:2 64:23 71:24 80:1 83:19 87:12 95:12  <b>stating</b> <sup>[1]</sup> 36:5  <b>statute</b> <sup>[32]</sup> 11:13 29:18 37:22 38:5,14 41:8,9 47:7,14 49:3,5,23 51:5,9 52:7 53:13 55:2 62:21 66:10 71:25 73:11 74:25 76:20 77:13,17,18 80:6 85:10,17 88:10,14 92:24  <b>statute's</b> <sup>[1]</sup> 62:3  <b>statutes</b> <sup>[12]</sup> 4:16 26:8 44:15 47:9 55:1 56:3 60:16,21 72:14,14 74:3 77:7  <b>statutory</b> <sup>[3]</sup> 44:10 80:24 85:7  <b>step</b> <sup>[1]</sup> 40:18</p>	<p><b>still</b> <sup>[17]</sup> 15:17 17:9,9,13,21,23 19:7 20:6,19,21,24 21:2 40:8 47:17 69:8,14 93:10  <b>stop</b> <sup>[1]</sup> 83:8  <b>stops</b> <sup>[1]</sup> 96:5  <b>story</b> <sup>[2]</sup> 9:20 33:11  <b>straight</b> <sup>[1]</sup> 58:11  <b>strong</b> <sup>[5]</sup> 52:4,24 63:19 75:11 94:1  <b>stronger</b> <sup>[1]</sup> 64:14  <b>struck</b> <sup>[2]</sup> 3:25 5:2  <b>structure</b> <sup>[4]</sup> 6:8 11:25 63:5,5  <b>struggling</b> <sup>[1]</sup> 90:5  <b>stuck</b> <sup>[2]</sup> 31:6 97:6  <b>stuff</b> <sup>[1]</sup> 85:24  <b>sub-Indian</b> <sup>[1]</sup> 65:1  <b>subcommittee</b> <sup>[1]</sup> 97:10  <b>subject</b> <sup>[7]</sup> 17:10,13,23 19:7 32:25 38:15 41:11  <b>subjects</b> <sup>[1]</sup> 3:12  <b>submission</b> <sup>[3]</sup> 15:4 26:8 42:7  <b>submit</b> <sup>[2]</sup> 29:22 46:22  <b>submitted</b> <sup>[2]</sup> 98:1,3  <b>substantive</b> <sup>[8]</sup> 55:3 59:9,17 62:1 64:6 67:11 83:16 96:20  <b>subtle</b> <sup>[1]</sup> 30:2  <b>succinctly</b> <sup>[1]</sup> 33:14  <b>sudden</b> <sup>[2]</sup> 85:12,18  <b>suffers</b> <sup>[1]</sup> 66:12  <b>suggest</b> <sup>[3]</sup> 75:7 79:22 87:6  <b>suggested</b> <sup>[1]</sup> 89:5  <b>suggesting</b> <sup>[2]</sup> 10:25 20:17  <b>suggestion</b> <sup>[1]</sup> 69:1  <b>suggests</b> <sup>[1]</sup> 62:25  <b>summarizing</b> <sup>[1]</sup> 44:8  <b>supervised</b> <sup>[1]</sup> 18:1  <b>support</b> <sup>[1]</sup> 3:21  <b>supporting</b> <sup>[3]</sup> 1:22 2:8 36:14  <b>supports</b> <sup>[1]</sup> 75:7  <b>suppose</b> <sup>[4]</sup> 10:23 24:12,13 92:23  <b>supposed</b> <sup>[1]</sup> 59:13  <b>SUPREME</b> <sup>[4]</sup> 1:1,14 38:16 41:10  <b>SUR</b> <sup>[2]</sup> 1:3 3:4  <b>surrogate</b> <sup>[6]</sup> 29:19,21 34:13,13 35:1,13  <b>suspect</b> <sup>[1]</sup> 92:8  <b>switch</b> <sup>[1]</sup> 22:16  <b>synonym</b> <sup>[1]</sup> 14:24  <b>system</b> <sup>[3]</sup> 83:13 91:10,12</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p><b>table</b> <sup>[1]</sup> 85:18  <b>talked</b> <sup>[6]</sup> 14:7 16:20 29:19 30:23 32:15 49:10  <b>talks</b> <sup>[1]</sup> 76:16  <b>tax</b> <sup>[1]</sup> 12:20</p>	<p><b>Taylor</b> <sup>[2]</sup> 11:17 38:13  <b>tellingly</b> <sup>[1]</sup> 77:25  <b>tells</b> <sup>[1]</sup> 31:3  <b>ten</b> <sup>[1]</sup> 40:7  <b>tend</b> <sup>[1]</sup> 78:14  <b>term</b> <sup>[30]</sup> 11:1,1,3 12:19 13:19,19,25 14:1 39:14 41:14 47:25 66:25 71:21 72:3,25 73:1 77:24 78:13,23 80:12,21,23,24 81:14,23 82:15 84:1 86:13 89:20 93:14  <b>terms</b> <sup>[6]</sup> 7:1 32:17 44:13 45:21 72:1 78:11  <b>test</b> <sup>[3]</sup> 4:25 12:21 66:19  <b>testimony</b> <sup>[3]</sup> 22:2 28:12 74:14  <b>Texans</b> <sup>[1]</sup> 66:5  <b>TEXAS</b> <sup>[76]</sup> 1:6,18,25 3:5,14 4:2,3,7 5:4 6:15 7:15 8:11 9:16 10:5 13:2 15:22 19:13,15 20:7,16,18,24 21:3,12,14,25 23:5,18 24:13 26:22,24 28:7,8 29:15 32:24 34:23 35:3,13 37:2,6 41:21,21 44:22 46:16,22,24 47:7,10 52:11,18 53:17 58:14 65:21 68:3 69:9 70:21 71:11,16 73:25 79:10 80:7 84:16 85:10,17 90:22 93:1,5,7,25 94:20 95:9 96:3,12 97:2,13,17  <b>Texas's</b> <sup>[9]</sup> 3:13,18 4:10 6:19 12:2 14:6 23:16 29:20 94:20  <b>Texas-specific</b> <sup>[1]</sup> 47:14  <b>text</b> <sup>[15]</sup> 5:1,19 6:12 8:14 9:8,9 37:14 44:10 52:5,7,9 60:9 61:2 75:19,20  <b>textual</b> <sup>[2]</sup> 8:6 52:13  <b>There's</b> <sup>[31]</sup> 5:20 7:13 8:3,12 9:13 10:12 18:4 19:5,6,23 21:11 22:1,11,13,15 26:4 34:20 38:17 40:23 44:10,10 46:25 48:12 49:7,13 52:5 62:14 68:11 76:17 79:16 83:24  <b>thereafter</b> <sup>[1]</sup> 39:9  <b>they've</b> <sup>[1]</sup> 23:10  <b>thinking</b> <sup>[6]</sup> 59:8,13 64:2 73:23 82:8,11  <b>thinks</b> <sup>[3]</sup> 9:12 21:25 52:9  <b>third</b> <sup>[4]</sup> 20:11 66:23 77:5 83:24  <b>THOMAS</b> <sup>[23]</sup> 5:11,15,23 6:6,10,17 7:4 23:14,15,22 37:17,22 38:1,22 39:4 53:7,8 67:14,20 68:11,25 69:21 92:20  <b>though</b> <sup>[3]</sup> 6:18 13:22 40:10  <b>thoughts</b> <sup>[2]</sup> 31:23 41:25  <b>thousand</b> <sup>[1]</sup> 31:2  <b>thread</b> <sup>[1]</sup> 50:16  <b>three</b> <sup>[5]</sup> 29:14 45:11 46:4,</p>	<p>7 66:12  <b>throughout</b> <sup>[1]</sup> 56:2  <b>throw</b> <sup>[1]</sup> 82:25  <b>thrown</b> <sup>[1]</sup> 30:14  <b>thumbnail</b> <sup>[1]</sup> 45:22  <b>tie</b> <sup>[2]</sup> 66:24 78:5  <b>tip</b> <sup>[2]</sup> 55:17 63:16  <b>title</b> <sup>[1]</sup> 12:23  <b>today</b> <sup>[3]</sup> 64:3 80:9 82:20  <b>together</b> <sup>[1]</sup> 77:11  <b>took</b> <sup>[1]</sup> 39:9  <b>top</b> <sup>[1]</sup> 48:12  <b>toss</b> <sup>[1]</sup> 59:23  <b>total</b> <sup>[4]</sup> 8:10,12 9:13,14  <b>totally</b> <sup>[1]</sup> 91:12  <b>traces</b> <sup>[1]</sup> 63:20  <b>track</b> <sup>[3]</sup> 46:19 81:9 89:11  <b>tracking</b> <sup>[1]</sup> 46:18  <b>tracks</b> <sup>[2]</sup> 63:12 81:21  <b>Traditional</b> <sup>[2]</sup> 93:1,5  <b>traditionally</b> <sup>[1]</sup> 62:12  <b>treating</b> <sup>[1]</sup> 66:15  <b>trial</b> <sup>[4]</sup> 19:14,17,24 28:4  <b>tribal</b> <sup>[34]</sup> 4:8 5:20 7:8,22 8:1,8,23 9:1 40:2,24,25 41:1,2 42:19,20 50:10 51:22 52:1,15,16 53:5,12,19 54:11,14 56:14,14 60:13,17 63:17,19 64:21 66:20 75:10  <b>tribe</b> <sup>[32]</sup> 5:6 7:9 10:8 18:6,6 20:4 29:13 32:22 36:25 42:7 56:23,24 65:19 66:3,7 68:2,9 71:12,23 79:13 80:1 81:17 82:22 83:20 88:15 89:17 91:1,3,4,11 92:8 94:9  <b>tribe's</b> <sup>[6]</sup> 23:3 33:10 52:3,24 53:18 85:1  <b>tribes</b> <sup>[18]</sup> 5:1,6 6:16 29:14 32:12,17 39:15 40:3 49:14 55:12 56:4 63:9 64:24 67:17 72:8 81:5 82:4 96:15  <b>tribes'</b> <sup>[1]</sup> 3:19  <b>trouble</b> <sup>[1]</sup> 45:6  <b>true</b> <sup>[6]</sup> 21:2 56:21 60:22 62:14 64:11 87:6  <b>try</b> <sup>[1]</sup> 78:3  <b>trying</b> <sup>[7]</sup> 19:20 31:7 48:1 68:22 69:12 82:7 89:21  <b>Tuesday</b> <sup>[1]</sup> 1:11  <b>turn</b> <sup>[2]</sup> 83:1 85:23  <b>turned</b> <sup>[1]</sup> 84:21  <b>turns</b> <sup>[2]</sup> 11:3 93:13  <b>two</b> <sup>[10]</sup> 4:16 29:16 40:3 46:9 62:1 73:3,4 76:20 79:24 97:7  <b>type</b> <sup>[5]</sup> 10:19 19:1,9 84:22 93:1  <b>types</b> <sup>[1]</sup> 60:19  <b>typically</b> <sup>[6]</sup> 68:4 72:3 77:24 82:15,16 92:17</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>U.S.</b> <sup>[1]</sup> 41:7</p>	<p><b>U.S.C.</b> <sup>[1]</sup> 40:8  <b>Udall</b> <sup>[1]</sup> 97:9  <b>ultimate</b> <sup>[1]</sup> 44:19  <b>ultimately</b> <sup>[4]</sup> 33:1 63:20 67:10 71:25  <b>unanimous</b> <sup>[1]</sup> 38:13  <b>under</b> <sup>[65]</sup> 10:5 11:17,24 15:19 18:1 19:16,18,25 20:5,25 23:16 24:1,1,2,2,6,20 25:3,23 26:25 28:8,11 29:15,16 34:14 36:1,18 37:2,23 38:9 40:3 42:4,5 43:8 45:3 46:19,24 47:1,21 48:16 49:20 52:11,18 66:6 67:18,22 69:7,9 71:15,22 72:2 89:18,25 90:8,21,23 91:2,3 92:25 93:12 94:2,5 95:10,11,14  <b>underlays</b> <sup>[1]</sup> 60:14  <b>underlying</b> <sup>[2]</sup> 61:16 65:8  <b>understand</b> <sup>[14]</sup> 17:18 18:4 25:17,17 38:23 43:21 54:17,17,19,22 77:9 89:23 90:6 96:2  <b>understanding</b> <sup>[6]</sup> 41:13 46:13 64:4,8 69:8 80:19  <b>Understood</b> <sup>[5]</sup> 28:1 40:22 55:2 67:25 68:17  <b>unfortunately</b> <sup>[1]</sup> 56:6  <b>unique</b> <sup>[4]</sup> 31:9 41:18 90:4 91:10  <b>uniquely</b> <sup>[3]</sup> 88:23 89:3 90:6  <b>UNITED</b> <sup>[12]</sup> 1:1,15,22 2:7 36:13 40:1 64:22 71:23 80:1 83:19 87:11 95:12  <b>unlawful</b> <sup>[1]</sup> 67:25  <b>unless</b> <sup>[5]</sup> 38:17 70:24 71:2 82:17 94:3  <b>unworkable</b> <sup>[4]</sup> 41:23 86:17 88:23 89:3  <b>up</b> <sup>[24]</sup> 10:6,8,10,17 11:25 12:1 18:25 24:14,15 30:22 32:23 35:8 39:9 41:17 44:1,5 45:1 46:19 47:4 61:21 63:25 85:19 88:19 93:15  <b>upshot</b> <sup>[1]</sup> 17:17  <b>useful</b> <sup>[1]</sup> 93:21  <b>uses</b> <sup>[4]</sup> 38:15 48:6 51:20 81:5  <b>using</b> <sup>[8]</sup> 11:15 13:16,19 15:4,5 41:11 48:2 49:8</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p><b>vacated</b> <sup>[1]</sup> 94:16  <b>valley</b> <sup>[1]</sup> 74:8  <b>value</b> <sup>[1]</sup> 63:4  <b>variety</b> <sup>[1]</sup> 56:15  <b>various</b> <sup>[1]</sup> 78:21  <b>verbatim</b> <sup>[1]</sup> 53:21  <b>version</b> <sup>[10]</sup> 8:16,17,19,22 9:11,12 64:14 71:24 74:25 84:20  <b>versions</b> <sup>[2]</sup> 6:23 8:2</p>
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## Official - Subject to Final Review

<p><b>versus</b> <sup>[7]</sup> 3:5 11:17 12:21 15:25 36:20 38:13 49:2 <b>veterans</b> <sup>[2]</sup> 39:6 69:3 <b>view</b> <sup>[15]</sup> 13:12,15 20:9 37: 12 42:14 44:2,8 47:11 50: 7 51:4 57:20 60:3 69:7 83: 8 88:8 <b>views</b> <sup>[1]</sup> 59:22 <b>violating</b> <sup>[1]</sup> 92:7 <b>violations</b> <sup>[2]</sup> 83:8,16</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waive</b> <sup>[3]</sup> 18:11,14 61:6 <b>waiving</b> <sup>[1]</sup> 18:7 <b>walk</b> <sup>[3]</sup> 21:19 92:2,12 <b>wanted</b> <sup>[8]</sup> 14:10 43:25 65: 19,19,21 79:10,19 96:6 <b>wants</b> <sup>[3]</sup> 16:23 57:18 83:7 <b>Washington</b> <sup>[2]</sup> 1:10,21 <b>way</b> <sup>[22]</sup> 8:13 9:13 13:7 29: 23,24 34:20 41:14 46:16 50:9 56:3 57:18,19 58:3 59:20 64:11 66:17 68:6 75: 23 76:6 77:19 81:7 82:6 <b>ways</b> <sup>[2]</sup> 64:20 74:9 <b>wealth</b> <sup>[2]</sup> 30:24 59:16 <b>week</b> <sup>[1]</sup> 59:12 <b>weird</b> <sup>[1]</sup> 30:25 <b>Welcome</b> <sup>[2]</sup> 31:18 67:13 <b>well-established</b> <sup>[1]</sup> 80: 21 <b>wellspring</b> <sup>[1]</sup> 43:13 <b>whatever</b> <sup>[6]</sup> 40:8,10,13,14 63:13 85:23 <b>wheel</b> <sup>[2]</sup> 83:1 85:23 <b>Whereas</b> <sup>[3]</sup> 12:23 80:22 90:14 <b>Whereupon</b> <sup>[1]</sup> 98:2 <b>whether</b> <sup>[37]</sup> 3:12 7:13 13: 18 19:1,9,17,21,22 26:16 27:8,19,24 29:6,7,8 31:21 42:1,8,9 44:19 45:18 46: 25 57:21,23 63:14 70:15 80:15 81:18 82:21 86:4 88: 13 91:25 92:6 93:16 94:18 95:13 97:5 <b>who's</b> <sup>[1]</sup> 68:1 <b>whole</b> <sup>[3]</sup> 39:25 45:24 73: 21 <b>Williams</b> <sup>[2]</sup> 11:17 38:12 <b>willing</b> <sup>[5]</sup> 7:9,11 32:23 65: 20,23 <b>win</b> <sup>[3]</sup> 15:17 46:11 76:3 <b>wind</b> <sup>[1]</sup> 44:4 <b>Winnepaug</b> <sup>[1]</sup> 16:17 <b>wins</b> <sup>[1]</sup> 95:4 <b>within</b> <sup>[6]</sup> 12:18 13:14 24: 23 49:5 93:8 94:9 <b>without</b> <sup>[10]</sup> 8:25 15:10,12 30:5 47:10 50:17,20 60:18 92:10,15 <b>word</b> <sup>[16]</sup> 11:5,9,10,15 13: 17 14:11,13,19 15:4 16:23 25:5 38:19 40:7 41:13 77:</p>	<p>25 93:19 <b>words</b> <sup>[9]</sup> 15:15 19:21 38: 15,16 51:6 55:1 73:14 79: 16 82:25 <b>work</b> <sup>[2]</sup> 89:25 90:20 <b>workable</b> <sup>[2]</sup> 42:1 87:3 <b>working</b> <sup>[1]</sup> 42:4 <b>works</b> <sup>[1]</sup> 42:3 <b>world</b> <sup>[7]</sup> 31:18,23 50:5 76: 2 77:14 79:17 82:7 <b>worse</b> <sup>[3]</sup> 21:12,15 91:5 <b>Worth</b> <sup>[2]</sup> 1:18 48:25 <b>Wow</b> <sup>[1]</sup> 42:16 <b>writing</b> <sup>[1]</sup> 48:11 <b>written</b> <sup>[4]</sup> 14:15 50:4 66: 19 77:13 <b>wrote</b> <sup>[2]</sup> 33:19 47:13</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>YANG</b> <sup>[66]</sup> 1:20 2:6 36:11, 12,15 37:17,19,25 38:3 39: 3,8,25 40:5,16 41:16 42:3, 16 43:5,11 44:9 45:9,13,15, 17 46:3 47:3,12 49:16,22 50:1,14,24 51:11 52:1 53: 20 54:3,6,9,14,18,21 55:8 56:5,19,22 57:2,8,11,24 58: 18 59:25 60:8 61:8,15 62: 6,13 63:8 64:10,19 65:2,12 76:21 77:12 88:24 89:5 90: 1 <b>years</b> <sup>[4]</sup> 16:10 40:7,20 43: 15 <b>Young</b> <sup>[1]</sup> 18:4 <b>YSLETA</b> <sup>[6]</sup> 1:3 3:4 4:12 29:18 57:25 96:13</p>
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