



1           IN THE SUPREME COURT OF THE UNITED STATES  
2   - - - - -  
3   YSLETA DEL SUR PUEBLO, ET AL.,       )  
4                                    Petitioners,        )  
5                                    v.                        ) No. 20-493  
6   TEXAS,    )  
7                                    Respondent.         )  
8   - - - - -

9  
10                                   Washington, D.C.  
11                                   Tuesday, February 22, 2022

12  
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, ESQUIRE, Fort Worth, Texas; on behalf  
19                                   of the 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		

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

P R O C E E D I N G S

(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 tribe's 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 federalizes 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 that, I'd be pleased to  
10 answer any 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 do -- just  
24 standing alone, what do you think it's doing?

25 MR. MARTIN: Your Honor, I think it's

1 dictating -- it's showing that Congress was  
2 extending the Cabazon framework to this fact  
3 pattern where Congress was federalizing state  
4 law as to prohibited gaming activities.

5 JUSTICE THOMAS: So --

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

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

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

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

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

1 activities" and specifying prohibited gaming  
2 activities.

3 JUSTICE THOMAS: Thank you.

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

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

24 MR. MARTIN: Your Honor, if I may, I  
25 think the tribal resolution had a much more



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

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

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

23 CHIEF JUSTICE ROBERTS: Well, do you  
24 think the law would have been passed without the  
25 tribal resolution, regardless of the particular

1 form that it was enacted?

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

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

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

21 And, Your Honor, if I may --

22 JUSTICE ALITO: Well --

23 CHIEF JUSTICE ROBERTS: I don't know

24 --

25 JUSTICE ALITO: Go ahead.

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

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

12 MR. MARTIN: Your Honor --

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

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

22 JUSTICE KAGAN: Well, suppose that  
23 that's right, Mr. Martin, but I think what the  
24 Chief Justice is suggesting is that it's not the  
25 normal term -- use of the term "prohibited."

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

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

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

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

1 Texas's regulation. And I think that that  
2 clearly evidences --

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

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

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

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

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

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

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

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

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

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

25 MR. MARTIN: It is a term of art, Your

1 Honor, when it's six months after Cabazon and  
2 you're talking about Indian gaming. That --  
3 that would be the distinction I would make.

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

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

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

21 JUSTICE ALITO: Well, maybe what --

22 MR. MARTIN: -- that affected Cabazon.

23 JUSTICE ALITO: -- what synonym would  
24 you have used? All gaming activities which are  
25 what? I better say forbidden, I shouldn't say

1 prohibited? Is that the argument?

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

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

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

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

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

20 JUSTICE SOTOMAYOR: Counsel --

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

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



1 MR. MARTIN: Yes, Your Honor.

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

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

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

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

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

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

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

25 JUSTICE ALITO: Mr. Martin --

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

2 JUSTICE SOTOMAYOR: It showed you it  
3 did.

4 MR. MARTIN: Yes, Your Honor.

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

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

14 JUSTICE GORSUCH: And so what --

15 MR. MARTIN: -- the official --

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

21 MR. MARTIN: In a general sense, yes,  
22 Your Honor, Class III would still be subject to  
23 either a negotiation of a compact with the  
24 state, or they would only be allowed to engage  
25 in Class II gaming under IGRA supervised by the

1 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 MR. MARTIN: Yeah.

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

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

23 JUSTICE GORSUCH: Thank you.  
24 Appreciate it.

25 JUSTICE SOTOMAYOR: Can I go to that

1 question, follow up on it? There seems to be a  
2 dispute whether this type of bingo by machine is  
3 the same as the bingo we know, people in a room  
4 calling out numbers.

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

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

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

1 court, but that would be under the federal  
2 court's jurisdiction.

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

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

9 MR. MARTIN: To a certain extent --

10 JUSTICE KAGAN: -- in your view?

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

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

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

1 under the Restoration Act.

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

8 MR. MARTIN: No, Your Honor. If we go  
9 --

10 JUSTICE KAGAN: That's the same?

11 MR. MARTIN: Yes, Your Honor.

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

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

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

23 MR. MARTIN: No, Your Honor. I mean  
24 --

25 CHIEF JUSTICE ROBERTS: No?

1                   MR. MARTIN: -- I would actually  
2                   dispute that. I think the State of Texas thinks  
3                   it looks like a slot machine. And I certainly  
4                   -- there's been testimony that they think it  
5                   looks like a slot machine. I could -- I could  
6                   tell you --

7                   CHIEF JUSTICE ROBERTS: What would --  
8                   what -- what would you say it looks like?

9                   MR. MARTIN: I would say it looks like  
10                  an electronic bingo machine that has a bingo  
11                  card or --

12                  CHIEF JUSTICE ROBERTS: What makes it  
13                  look like a bingo machine?

14                  (Laughter.)

15                  MR. MARTIN: Well, there's a -- let --  
16                  let me try to --

17                  CHIEF JUSTICE ROBERTS: There's a name  
18                  on it that says bingo?

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

24                  CHIEF JUSTICE ROBERTS: And are there  
25                  people --

1           MR. MARTIN: -- people would  
2 characterize it -- yes.

3           CHIEF JUSTICE ROBERTS: -- calling out  
4 numbers and people -- somebody saying, you know,  
5 B-12 or --

6           MR. MARTIN: There -- there, in fact,  
7 is part of our operations, Your Honor, of my  
8 tribe's operations is live-called bingo and it's  
9 also one of the things that the State of Texas  
10 has complained about.

11          CHIEF JUSTICE ROBERTS: But that's  
12 something different than the slot -- slot  
13 machine bingo, right?

14          MR. MARTIN: It is different than the  
15 electronic machines, Your Honor, but they've  
16 complained about all of it.

17          CHIEF JUSTICE ROBERTS: Okay. Thank  
18 you. I'm sorry.

19                   Justice Thomas?

20          JUSTICE THOMAS: Just one  
21 clarification. Who can operate -- under Texas's  
22 law, who can conduct a bingo game legally?

23          MR. MARTIN: The Texas Bingo Enabling  
24 Act, as you're referencing, it's specific  
25 charitable organizations, Your Honor, that are



1 -- that are set forth in that regulatory scheme.

2 JUSTICE THOMAS: So why is this not  
3 prohibited if it's not a charitable  
4 organization?

5 MR. MARTIN: Because, if the games  
6 under -- under not just the Restoration Act but  
7 also under IGRA and under the cases that come  
8 out of IGRA, if it's allowed to anyone for any  
9 purpose, then it's not a prohibited gaming  
10 activity. And that's specifically under IGRA,  
11 Your Honor.

12 JUSTICE ALITO: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice  
14 Breyer?

15 JUSTICE BREYER: I'm curious about the  
16 bingo machines. If -- if -- suppose that IGRA  
17 applied, and suppose that Texas had a law which  
18 said you can play bingo up to -- the one the  
19 Chief gave, up to \$1,000, but not for more than  
20 1,000. That's a crime.

21 Well, IGRA says -- seems like the same  
22 problem. It -- it -- it -- it says you have to  
23 have -- I guess gaming activity on Indian lands  
24 is okay if the -- if you have a compact or under  
25 III, I guess, or something, if -- if the gaming

1 activity is conducted within a state, which does  
2 not as a matter of criminal law and public  
3 policy prohibit the gaming activity.

4 All right. So isn't it the same  
5 problem? I mean, it says -- because they do  
6 prohibit it over \$1,000, but they don't prohibit  
7 it under \$1,000, but that you want to call  
8 regulation, but IGRA doesn't seem to use the  
9 word "regulation."

10 MR. MARTIN: Well, Your Honor, it's --  
11 it's not the same problem, and the --

12 JUSTICE BREYER: It's not?

13 MR. MARTIN: It's not, because IGRA  
14 actually incorporates that Cabazon prohibited  
15 regulatory juris- -- distinction.

16 JUSTICE BREYER: Yes.

17 MR. MARTIN: And that distinction is  
18 actually critical to the hypothetical that you  
19 posed.

20 JUSTICE BREYER: Right, right, right.  
21 I understand that. So I didn't understand that  
22 IGRA incorporated it, but I guess it doesn't  
23 incorporate it in the language I just read you.

24 So where does it incorporate it?

25 MR. MARTIN: Your Honor, IGRA would be

1 incorporated -- or, I'm sorry, Cabazon would be  
2 incorporated into IGRA under 2701(5) and  
3 2710(b)(1)(A).

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

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

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

8 MR. MARTIN: Right. And there's 20 --

9 JUSTICE BREYER: It didn't say  
10 regulatory.

11 MR. MARTIN: Right. Well --

12 JUSTICE BREYER: It said prohibited.

13 MR. MARTIN: -- I think, if you read  
14 those statutes, our submission would be that  
15 that's where IGRA specifically incorporates the  
16 Cabazon prohibited framework.

17 JUSTICE BREYER: Okay. Okay.

18 CHIEF JUSTICE ROBERTS: Justice Alito?

19 JUSTICE ALITO: Well, I'm puzzled by  
20 both your argument and by Cabazon and, in  
21 particular, by how a court is going to decide  
22 whether these machines, which I don't have a  
23 very clear picture of in my mind, are bingo or  
24 not bingo.

25 If they are not bingo, they're

1 something else. Let's say they're dingo.

2 (Laughter.)

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

5 MR. MARTIN: If Texas prohibited --

6 JUSTICE ALITO: Yeah. Under no --

7 MR. MARTIN: -- dingo --

8 JUSTICE ALITO: -- circumstances can  
9 you have a dingo machine.

10 MR. MARTIN: If it was a criminal  
11 prohibition against dingo, you would be correct,  
12 Your Honor.

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

16 MR. MARTIN: Your Honor, I -- I think  
17 that you don't have to decide the -- this Court  
18 --

19 JUSTICE ALITO: No, we don't have to  
20 --

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

22 JUSTICE ALITO: -- but somebody does.

23 MR. MARTIN: -- decide the platonic  
24 ideal --

25 JUSTICE ALITO: And how is the person

1 who has to decide this going to decide whether  
2 this thing that's not exactly -- it's not the  
3 kind of bingo, you know, that you expect people  
4 to be playing in church or at the Elks. It's  
5 something different. How do you decide whether  
6 that's bingo?

7 MR. MARTIN: Understood, Your Honor.  
8 I think let's -- and let's take the hypothetical  
9 that this gets remanded down through to the  
10 trial court to make that factual determination.

11 I think that court would take into  
12 account a number of things. It would take into  
13 account the definition of bingo that Texas has  
14 under the Texas Bingo Enabling Act, which  
15 actually helps us. It would take into account  
16 what IGRA considers to be bingo under 2701 and  
17 2710. It would take into account the expert  
18 testimony, much like it did in the contempt  
19 hearing below.

20 And I would point out to Your Honor,  
21 and this is what -- what I think --

22 JUSTICE ALITO: There are experts who  
23 they -- they -- they are experts on -- on the  
24 identification of the -- you put something  
25 before these experts and they can say that's

1 bingo, no, that's not bingo? There are people  
2 who can be qualified as experts on that?

3 MR. MARTIN: The answer to the  
4 question -- that question is yes, Your Honor,  
5 there are.

6 JUSTICE BREYER: Did you ask my  
7 grandmother? She was --

8 (Laughter.)

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

17 All of those same things, Your Honor,  
18 are taken into account by the NIGC. You know,  
19 the Kickapoo Tribe, which is the only other out  
20 of these -- the three federally recognized  
21 tribes in the State of Texas, one of them gets  
22 to engage under the NIGC under IGRA and then the  
23 two that are controlled by the Restoration Act  
24 don't because Ysleta I misread the statute and  
25 read 107(b) out of it and talked about it being

1 fed -- a surrogate federal law and that all of  
2 Texas's laws and regulations are surrogate  
3 federal law.

4 We would submit, Your Honor, you can't  
5 read the Restoration Act that way. It's not the  
6 proper way to read it out of --

7 JUSTICE ALITO: Can I ask you one --  
8 one final question? Because I -- I am -- the --  
9 this -- the Cabazon Band is more subtle than my  
10 mind is able to grasp.

11 Do you think that the sale of opioids  
12 without a prescription is prohibited, or is it  
13 merely regulated?

14 MR. MARTIN: Your Honor, I -- when I  
15 would reference Cabazon Band for Restoration  
16 Act -- I -- I don't have an opinion on the -- on  
17 your question, and I want to be very honest with  
18 you about that because I want to be responsive,  
19 but, when you're talking about the Indian gaming  
20 context, that is where Cabazon lies. That's  
21 where this gauntlet is thrown. And that's what  
22 Congress was responding to in 1986 when it  
23 drafted the Restoration Act.

24 CHIEF JUSTICE ROBERTS: Justice  
25 Sotomayor?

1 Justice Kagan?

2 JUSTICE KAGAN: You know, Mr. Martin,  
3 I guess just following up on what Justice Alito  
4 talked about, this Cabazon distinction presents  
5 a wealth of sort of complicated and, quite  
6 frankly, weird questions.

7 And the slot machine would just be one  
8 of like a thousand of them. I mean, it just --  
9 Cabazon tells us to make a distinction about --  
10 between "prohibition" and "regulation" when most  
11 of regulation prohibits certain things.

12 And then you're stuck in the middle of  
13 trying to figure out what's a prohibition and  
14 what's a regulation. But I -- I -- I guess, as  
15 I -- well, Cabazon is there, it's not unique to  
16 the question of slot machines.

17 I mean, how should we figure in any --  
18 any discomfort about Cabazon and the distinction  
19 that it makes itself?

20 MR. MARTIN: I think the distinction  
21 --

22 JUSTICE KAGAN: Because I guess I  
23 would have thought that your answer to Justice  
24 Alito was like: Welcome to the world of  
25 Cabazon. Sorry. You know? And -- and that's



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

6 MR. MARTIN: Well, if I may, Your  
7 Honor --

8 (Laughter.)

9 MR. MARTIN: -- I think the  
10 distinction here and the difference between the  
11 opioid --

12 JUSTICE KAGAN: It wasn't that funny.  
13 (Laughter.)

14 MR. MARTIN: -- the -- the opioid  
15 questions or the other questions that you could  
16 ask along those same lines, which are fair  
17 questions, but the difference is the sovereignty  
18 aspect of it.

19 You're talking about sovereign tribes  
20 and Congress being the only one that has the  
21 plenary power to decide certain aspects of it.  
22 If you remember in Cabazon, it talked about the  
23 fact that Congress made the decision to help --  
24 have the tribes do this in terms of their  
25 self-sufficiency.

1           So I think the sovereignty aspect of  
2     it shouldn't be and can't be overlooked because  
3     that's where 107(b) comes in. That's where the  
4     resolution is answered, right? The tribe was  
5     willing to give up a certain amount of gaming  
6     activities in order to not have Texas state law  
7     apply directly and not be subject to its resolu-  
8     -- regulation. Congress ultimately decided not  
9     to accept their offer and to give them less  
10    restrictions than they could have in response to  
11    Cabazon.

12           So I think all of those fits as a  
13    piece, and it is also why, you know, you could  
14    talk about the -- the opioid hypothetical, you  
15    could talk about other hypotheticals along those  
16    same lines, but this concept of the sovereignty  
17    and the tribe's ability to engage in gaming  
18    activities I do think is a different story.

19           It's not just here's Cabazon, live  
20    with it, right? As you put it, Your Honor, and  
21    much more succinctly than I have in a month of  
22    prepping for this, it's not just that. It's  
23    more there are questions of the sovereignty  
24    aspects of it and the regulatory aspects of it,  
25    the Public Law 280 aspects of it that I think

1 Congress was answering when it wrote the  
2 Restoration Act in response to Cabazon.

3 CHIEF JUSTICE ROBERTS: Justice  
4 Gorsuch?

5 Justice Kavanaugh?

6 Justice Barrett?

7 Thank you, counsel.

8 JUSTICE BARRETT: Oh, oh, sorry, I did  
9 have a question.

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

11 JUSTICE BARRETT: No, that's okay.

12 CHIEF JUSTICE ROBERTS: You're far  
13 away.

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

24 MR. MARTIN: The -- 105(f) certainly  
25 incorporates the Public Law 280 construct, and

1 -- and there's, I don't think, any way to  
2 dispute that, nor would we want to. 107(a) and  
3 what it does differently, Your Honor, than what  
4 105(f) does is it federalizes Texas law as to  
5 prohibited games.

6 I think where the Fifth Circuit went  
7 wrong in talking about surrogate federal law was  
8 it extended it out to laws and regulations of  
9 the State of Texas over all gaming activities.  
10 That's not what 107 says. So I think that's one  
11 of the differences between 105(f) and 107.

12 The second difference that I would  
13 point out to Your Honor is 107(c), which sets up  
14 a different enforce -- enforcement mechanism  
15 than what would have existed had just 105(f)  
16 been inforded -- imported and 107 didn't exist.

17 JUSTICE BARRETT: So you agree that --  
18 sorry. You agree that the Restoration Act  
19 establishes Texas law as surrogate federal law;  
20 you're saying that it only does that, however,  
21 with respect to prohibitions?

22 MR. MARTIN: To pro -- I'm actually  
23 saying it does that with respect to prohibited  
24 gaming activity.

25 JUSTICE BARRETT: Right. Thing that

1 are prohibited --

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

3 JUSTICE BARRETT: -- not those that  
4 are regulated.

5 MR. MARTIN: Yes, Your Honor. So the  
6 --

7 JUSTICE BARRETT: So the only  
8 difference between Cabazon under Section 280 and  
9 -- or Public Law 280 and the Restoration Act is  
10 simply this enforcement mechanism?

11 MR. MARTIN: It's the enforcement  
12 mechanism and then it is -- it is stating what  
13 laws are federal -- what state laws are  
14 federalized for the Restoration Act.

15 JUSTICE BARRETT: Okay.

16 CHIEF JUSTICE ROBERTS: Thank you,  
17 counsel.

18 Mr. Yang.

19 ORAL ARGUMENT OF ANTHONY A. YANG  
20 FOR THE UNITED STATES, AS AMICUS CURIAE,  
21 SUPPORTING THE PETITIONERS

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

24 Just six months after this Court drew  
25 the distinction in Cabazon under Public Law 280

1 between gaming activity that is prohibited  
2 versus gaming activity that is regulated by  
3 state law, Congress enacted Section 107,  
4 mirroring that language to draw the same  
5 distinction in the exact same Indian gaming  
6 context.

7 Section 107(a) forbids a tribe from  
8 engaging in gaming activities that are  
9 prohibited under Texas law, and Section 107(b)  
10 further provides that Section 107(a) does not  
11 grant the state civil or criminal regulatory  
12 jurisdiction.

13 Texas has conceded in this Court that  
14 Section 107(b) restates the limits of Public Law  
15 280. Those limits draw directly from Cabazon,  
16 they limit state regulatory jurisdiction, and  
17 they make clear that Section 107 adopts the  
18 Cabazon framework.

19 The Fifth Circuit's contrary view  
20 erroneously relies on legislative history and  
21 text that Congress once excluded but then  
22 removed from the legislation. This Court should  
23 correct that error.

24 JUSTICE THOMAS: Mr. Yang, what's the  
25 difference between "prohibited" and "regulated"?

1           MR. YANG: Something that is  
2 prohibited is prohibited outright. And the  
3 focus, again, is --

4           JUSTICE THOMAS: Okay. So a statute  
5 or a rule or regulation says all patrons under  
6 the age of 21 are prohibited.

7           MR. YANG: Right. That --

8           JUSTICE THOMAS: Is that a regulation,  
9 or is that a prohibition?

10          MR. YANG: That could be a prohibition  
11 but -- but, here, not in this context. The  
12 statute focuses on gaming activities that are  
13 prohibited. The gaming activity would not be  
14 prohibited in that context. That is a method of  
15 conducting the gaming activity with people under  
16 the age of 21.

17          This is exactly the distinction that  
18 Congress -- that this Court in *Cabazon* drew.  
19 And I would remind -- I would point to *Williams*  
20 versus *Taylor*, which -- a unanimous decision of  
21 this Court which said that when a later statute  
22 on the same subject matter uses words of a prior  
23 Supreme Court opinion, those words are given the  
24 same meaning unless there's a specific --  
25 specific direction to the contrary.

1                   And the word there was "failed." It  
2 wasn't -- "failed" can have a lot of different  
3 meanings in a lot of different contexts.

4                   JUSTICE THOMAS: But -- but let me --  
5 you know, the -- I understand. But going back  
6 to what you just said, that if the activity is  
7 regulated -- basically, what I'm hearing you say  
8 is that if it's permitted in any context, then  
9 it's permitted.

10                  MR. YANG: That's --

11                  JUSTICE THOMAS: So the -- the mere  
12 fact that bingo is permitted to -- for the  
13 churches and the military -- the veterans  
14 organizations means it is not prohibited?

15                  MR. YANG: That's right, and when  
16 Congress took up IGRA shortly thereafter, the  
17 same Congress, Congress adopted the same Cabazon  
18 distinction that is embodied in the -- the  
19 provisions you were -- you were just discussing  
20 with my friend.

21                  The State -- and it does use the term  
22 "regulation." It allows Indians -- tribes to  
23 regulate games that the state does not, as a  
24 matter of criminal law and public policy,  
25 prohibit, such gaming activity, again, drawing



1 on the prohibitory/regulatory distinction in  
2 Cabazon. And then it brings -- it  
3 operationalizes it in 2710(b) and (d) if the  
4 state permits such gaming by any person by --  
5 for any purpose.

6 CHIEF JUSTICE ROBERTS: Mr. Yang --

7 MR. YANG: That -- that's the whole  
8 standard that it governs the entire United  
9 States with respect to activities on tribal  
10 lands, except these two tribes under the Fifth  
11 Circuit's reading.

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

19 I mean, it's prohibited to possess a  
20 certain amount of whatever, but, you know, at --  
21 at a level of personal use or medical whatever,  
22 it's okay, then you can't prohibit it at all.

23 MR. YANG: We -- we aren't concerned  
24 about that because, with respect to this  
25 distinction -- let me take a step back. This

1 distinction exists in Public Law 280. It's done  
2 so for a long time. Cabazon was 35 years ago.

3 Public -- Cabazon applied a  
4 distinction in Bryan. Bryan understood that  
5 there's an important principle at stake here.  
6 You need to preserve tribal sovereignty and  
7 tribal government and that if you allow state  
8 regulatory power on tribal lands, you would  
9 destroy tribal sovereignty. That principle in  
10 Bryan was extended in Cabazon specifically to  
11 the gaming context, where the Court drew this  
12 prohibitory/regulatory distinction.

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

23 JUSTICE GORSUCH: Mr. Yang, just to  
24 follow up on the Chief Justice's point, I -- I  
25 -- I take your argument that this is a unique

1 context and -- and we have to read the language  
2 in that context.

3 But Texas -- Texas argues even in this  
4 context, the difference between "prohibition"  
5 and "regulation" is just unworkable. It's  
6 almost an argument perhaps for overruling  
7 Cabazon.

8 I'd -- I'd like your thoughts about  
9 whether this distinction remains workable in  
10 this context. Forget about the others.

11 MR. YANG: We think it works in this  
12 context because it is working under IGRA. This  
13 is exactly what goes on under IGRA.

14 If the Court were to agree with our  
15 submission and that of the tribe, then the NIGC  
16 would get to determine whether this is a bingo  
17 activity or -- and, in addition, whether it is  
18 Class II bingo or potentially Class III bingo,  
19 which would require a compact with the state.

20 JUSTICE GORSUCH: And what would be  
21 the negative consequences in the government's  
22 view, if any, if we were to elide this  
23 distinction, ignore it, overrule Cabazon?

24 MR. YANG: Wow. If the Court -- first  
25 of all, I don't think that's before the Court.

1 This has been a fundamental distinction that's  
2 existed in the law of -- of tribal sovereignty  
3 and -- and tribal lands for decades upon  
4 decades. Again, it goes back before Cabazon.  
5 So that's the Public Law 280 context.

6 And then you -- you know, I'm not sure  
7 what the Court would do if it was just limited  
8 to this specific context because Congress has  
9 already spoken in IGRA. IGRA exactly parallels  
10 this distinction. It's beyond the stage of  
11 rethinking now Cabazon.

12 JUSTICE BARRETT: Are --

13 MR. YANG: Cabazon is embedded in the  
14 law in all kinds of areas.

15 JUSTICE BARRETT: -- are there  
16 problems under IGRA or Public Law 280 in drawing  
17 the lines that we've been pressing between  
18 "prohibit" and "regulate"?

19 MR. YANG: You know, there may be some  
20 close cases, but as in the mine run of cases,  
21 we've not seen a -- a huge wellspring of  
22 problems. Again, this has existed since Bryan  
23 and since Cabazon 35 years ago, and, again, IGRA  
24 has existed for a long time. There are similar  
25 --

1 JUSTICE BREYER: But is it --

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

3 JUSTICE BREYER: -- because they --

4 JUSTICE GORSUCH: -- if I understand  
5 correctly -- I'm -- I just want to -- I --  
6 please go ahead.

7 JUSTICE BREYER: No, you're fine.

8 JUSTICE GORSUCH: I just wanted to  
9 follow up real quick. So, in the government's  
10 view, if we were to eliminate the distinction  
11 between "regulate" and "prohibit" in -- in -- in  
12 the Restoration Act, we would all -- also wind  
13 up inevitably doing so in IGRA and that that  
14 would have more negative consequences than  
15 positive ones. Is -- is that -- is that  
16 summarizing your view?

17 MR. YANG: I'm not sure how the Court  
18 -- I mean, there's -- there's statutory text in  
19 IGRA. I'm not sure what the Court's decision  
20 would mean for IGRA. It certainly would mean a  
21 huge change in the law in terms of governing  
22 Public Law 280, which is one of the fundamental  
23 statutes governing Indian lands.

24 So I would caution the Court not to be  
25 overly ambitious here. This case does not

1 involve a question of rethinking Cabazon. The  
2 ultimate question presented is whether Congress,  
3 in enacting the -- the Restoration Act, was  
4 adopting the Cabazon framework or instead was  
5 applying all of Texas law governing gaming.

6 JUSTICE GORSUCH: Thank you.

7 I'm sorry, Justice Breyer.

8 JUSTICE BREYER: Is the reason that  
9 this is not a problem that when it comes up,  
10 it's normally a question of where or when or  
11 under what circumstances can you play this game?  
12 But it's not normally a question of how do you  
13 play because, if it were how do you play, you  
14 would have trouble saying, you know, is it bingo  
15 or is it, you know, craps or something? I mean  
16 --

17 MR. YANG: Well --

18 JUSTICE BREYER: -- is it -- is it --  
19 but -- but it's the first three which are  
20 usually fairly easy to decide.

21 MR. YANG: No.

22 JUSTICE BREYER: Am I right or wrong?

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

24 JUSTICE BREYER: Wrong?

25 MR. YANG: -- there is the question of

1 whether things do constitute bingo and it arises  
2 not infrequently in the context of IGRA.

3           You know, this is not in the QP in  
4 terms of is this bingo and we've not briefed it,  
5 and so I can give you a thumbnail sketch, but it  
6 would be difficult, I think, to give you the  
7 whole lay of the land here.

8           JUSTICE GORSUCH: I'd love to hear  
9 what the difference between bingo and dingo is,  
10 so please.

11           MR. YANG: Well, I'd not heard of  
12 dingo, but I can tell you that bingo has three  
13 primary characteristics. These are actually  
14 codified in IGRA. Congress has recognized that  
15 these are the three primary characteristics.  
16 One, you have a card bearing numbers or  
17 designators. Two, you cover those numbers when  
18 they are drawn or somehow identified. And you  
19 win by covering an arrangement of numbers.

20           This is in 2703(7)(A)(i). This is a  
21 kind of understanding of what bingo is. And you  
22 would ask, is this bingo, or is it a method of  
23 conducting bingo when you use a computer?

24           Even Texas, by the way, allows card  
25 mining devices, which are these devices where

1 you can, instead of tracking five cards, you can  
2 track up to 66 cards under state law at one  
3 time. The problem that the district court found  
4 was not that this wasn't bingo; it was that  
5 Texas law requires that you not submit -- put  
6 the money in the device or get paid out by the  
7 device. That was the problem under Texas law.

8           There's a legitimate question whether  
9 this would be Class II or Class III bingo under  
10 IGRA, but, you know, that's not presented here.

11           JUSTICE KAVANAUGH: Mr. Yang, can I  
12 ask, to follow up on Justice Gorsuch's and  
13 Justice Barrett's questions, assume we don't  
14 overrule Cabazon, but if we were to rule for the  
15 State of Texas in this case on this statute,  
16 would there be any follow-on implications for  
17 other statutes, or is it possible to rule for  
18 the State of Texas narrowly in this case without  
19 such follow-on implications in your view?

20           MR. YANG: You know, I think it would  
21 depend on how the Court wrote the opinion. This  
22 is a Texas-specific statute, so it might be  
23 possible.

24           But I would -- you know, so there are  
25 some questions that I'd like to still address.



1 One was about the meaning of 20 -- 107(b). I  
2 think 107(b) has to be read in conjunction with  
3 105(f). 105(f) is a grant of civil and criminal  
4 jurisdiction to the state under Public Law 280.

5 When they use jurisdiction there,  
6 Justice Kagan, it's not with respect to courts.  
7 It's with respect to authority, and the use of  
8 that term is generally used -- you know,  
9 post-Arbaugh we're trying to get away from using  
10 jurisdiction when we don't mean court  
11 jurisdiction, but this is before Arbaugh and  
12 it's quite common both in legislation and in the  
13 Court's decisions.

14 Then, if you look at 107(b), it uses  
15 that same phrase "civil and criminal  
16 jurisdiction" but inserts "regulatory." And  
17 that was the exact distinction that Cabazon  
18 drew.

19 Remember Cabazon was already writing  
20 on top of Bryan, which said there's no crim- --  
21 civil regulatory jurisdiction, and it said just  
22 because you add a criminal sanction doesn't  
23 convert it to a criminal law that you can  
24 enforce under Public Law 280. 107(b) directly  
25 draws on that same Cabazon distinction, and it

1 says nothing in Section 107 shall be interpreted  
2 to grant that authority, which means 107(a),  
3 when it says gaming activities prohibited by  
4 state law, does not grant regulatory authority,  
5 and that is the second half of the Cabazon  
6 framework, prohibited, not regulated.

7           The -- I think also, you know, IGRA is  
8 worth considering here because Congress enacted  
9 IGRA, same Congress, and as the Court -- Justice  
10 Scalia explained in Branch versus Smith, when  
11 you have a similar statute and the same body of  
12 law, you can look at that to clarify the meaning  
13 of another statute because it's within the same  
14 body of law. You read it in pari materia.

15           And I don't think there's really any  
16 dispute that by using the same regulated and  
17 prohibit language and the provisions that we've  
18 talked about, which are at page 9 of our brief,  
19 that Congress in IGRA was adopting Cabazon,  
20 Congress was doing the same thing here. And  
21 there's no reason to distinctly disadvantage  
22 these tribes where Congress used the same  
23 language and establishes a --

24           JUSTICE GORSUCH: Well, but, Mr. Yang,  
25 doesn't that -- doesn't that answer Justice

1 Kavanaugh's question? If -- if we were to  
2 ignore Cabazon here in 107, on what basis could  
3 you continue to recognize that distinction under  
4 IGRA? Wouldn't that be pretty hard?

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

7 JUSTICE GORSUCH: That's the best you  
8 got?

9 MR. YANG: -- I think it would be  
10 difficult to draw that distinction. It really  
11 would. These are the same context in the, you  
12 know, same Indian gaming context, written by the  
13 same Congress in the same general legal world  
14 post-Cabazon, I think it's hard.

15 You know, this -- our view is you  
16 should read Public Law 2 -- excuse me,  
17 Section 107 the same way that you read IGRA.  
18 And I would like to talk about the tribal  
19 resolution.

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

22 MR. YANG: Sure.

23 JUSTICE BARRETT: But, I mean, the  
24 common thread in all of these is Cabazon. So,  
25 without Cabazon, it sounds like you're taking a

1 slightly different position than your friend.  
2 It sounds to me like you're saying Cabazon  
3 drives this. Without Cabazon, if we're talking  
4 about just the ordinary meaning, then it's a lot  
5 harder to make the case for this distinction  
6 between prohibit --

7 MR. YANG: Oh, it -- it's much harder  
8 to make the -- the case. You know, you could  
9 make the case. It would be a much higher hurdle  
10 to cross.

11 I'd like to talk about --

12 JUSTICE KAGAN: But I take your view  
13 to be saying Cabazon is all over this statute.  
14 In other words, it's not just saying, oh, look,  
15 prohibit, six months ago, Cabazon said something  
16 about prohibit. But you're making the case that  
17 if you just look at this entire statute, Cabazon  
18 is pretty much all over it?

19 MR. YANG: And Cabazon was always in  
20 this, well, once it existed. Section 105(f) has  
21 always existed in every piece of legislation  
22 going back to 1984. 105(f) existed. Congress  
23 knew when it was adopting 105(f) which would  
24 then incorporate the Public Law 280 framework  
25 that that comes with Cabazon. And then, with

1 respect specifically to gaming, it's the  
2 specific provision rather than the general  
3 provision in 105(f). It again uses Cabazon's  
4 language five minutes later.

5 I'd like to talk about the tribal  
6 resolution, but --

7 CHIEF JUSTICE ROBERTS: I'll give you  
8 a minute.

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

21 There was also a significant textual  
22 change. When Congress first adopted the  
23 reference to the tribal resolution, it said  
24 pursuant to the tribal resolution -- this is on  
25 page 4 of our brief -- all gaming is prohibited

1 if it's as defined under Texas law. Cabazon  
2 came, Congress retooled 107, and then it said --  
3 instead of said pursuant to the resolution, it  
4 said this is enacted in accordance with the  
5 resolution. We think that has some more  
6 flexibility, and what it really reflects  
7 primarily is the tribe's strong opposition to  
8 the direct application of state law. That's why  
9 Section 107 is federal law, and that's why  
10 federal enforcement generally prevails, with the  
11 exception of state enforcement, if the state has  
12 a preexisting cause of action that it can assert  
13 for an injunction against a tribal officer.

14 CHIEF JUSTICE ROBERTS: Thank you.

15 Justice Thomas?

16 JUSTICE THOMAS: No questions.

17 CHIEF JUSTICE ROBERTS: Justice  
18 Breyer, anything further?

19 Justice Alito?

20 JUSTICE ALITO: Didn't the tribal  
21 resolution ask that the statute include  
22 "language which would provide that all gambling"  
23 -- "gaming, gambling, lottery, or bingo, as  
24 defined by the laws and administrative  
25 regulations of the State of Texas, shall be

1 prohibited on the tribe's reservation or on  
2 tribal land"? Didn't it say that?

3 MR. YANG: It did, and Congress in  
4 response adopted verbatim that language. This  
5 is on page 4 of our brief. That was in 1986.  
6 And then, when H.R. 318 was introduced in 1987,  
7 again, on page 4 of our brief, that exact  
8 language was in the bill.

9 JUSTICE ALITO: But that's -- that's  
10 --

11 MR. YANG: But then Cabazon came.

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

14 MR. YANG: Which is?

15 JUSTICE ALITO: The language I just  
16 read.

17 MR. YANG: 107(a) does not have that  
18 language. It reference -- it says that 107(a)  
19 is enacted in accordance with the tribal  
20 resolution.

21 JUSTICE ALITO: Yeah. Okay.

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

24 JUSTICE ALITO: So -- all right. I  
25 understand. I understand.

1 MR. YANG: Right. And so --

2 JUSTICE ALITO: I understand your  
3 point.

4 MR. YANG: Okay.

5 JUSTICE ALITO: I understand your  
6 point.

7 One other question. You refer to the  
8 Indian canon. Those who favor the  
9 interpretation of statutes to mean what the  
10 words of the statute are generally understood to  
11 mean have some question about some of these  
12 substantive canons.

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

16 MR. YANG: Well, it has a long history  
17 in this Court's jurisprudence, and I think it  
18 recognizes the special role that -- and our  
19 relationship historically with the Indian  
20 tribes.

21 Now I don't think you actually need  
22 the Indian canon. We didn't make a big deal out  
23 of it in our brief. It's certainly part of the  
24 Court's jurisprudence that if there -- if you  
25 find this ambiguous, that you should tip the



1 scale.

2 But we think this is pretty -- a  
3 pretty clear-cut case of Congress six months  
4 after Cabazon adopting the language of Cabazon  
5 to apply Cabazon's distinction in the same  
6 gaming context.

7 JUSTICE ALITO: Well, that doesn't  
8 really answer my question. What is the origin  
9 of this? Is it your -- is it your argument that  
10 throughout history Congress has always framed  
11 statutes in a way that are favorable to Indian  
12 tribes?

13 MR. YANG: I've not -- my research for  
14 this case, unfortunately, has not gone that far  
15 back. I don't have the original -- no one has  
16 challenged the Indian canon's existence here,  
17 and we've not gone back to -- to form an  
18 argument for it, Your Honor.

19 CHIEF JUSTICE ROBERTS: Justice  
20 Sotomayor?

21 JUSTICE SOTOMAYOR: Counsel, the  
22 tribal -- 1986 tribal resolution, in my mind,  
23 seems to serve a variety of different functions.

24 The first, I think, is that you need  
25 Indian approval to have any state law apply on a

1 reservation, correct?

2 MR. YANG: Yeah, I think that's --  
3 that's part.

4 JUSTICE SOTOMAYOR: Generally true.

5 MR. YANG: Yes, and -- but,  
6 significantly, you know, the tribe didn't want  
7 the state to impose its laws directly on the  
8 tribe. That was --

9 JUSTICE SOTOMAYOR: Exactly.

10 MR. YANG: -- that was a very  
11 significant issue.

12 JUSTICE SOTOMAYOR: So that's where  
13 107(c) is in accordance with the resolution,  
14 because they didn't want the state to be able to  
15 regulate or have its laws --

16 MR. YANG: Well --

17 JUSTICE SOTOMAYOR: -- applied  
18 directly, correct?

19 MR. YANG: -- I agree with that, but I  
20 also think 107(a) is because 107(a) applies as  
21 federal law certain -- a limited set of state  
22 laws that prohibit, and -- and what that does is  
23 significant. It makes a federal criminal  
24 offense to conduct prohibited gaming activities.

25 JUSTICE SOTOMAYOR: If we read this

1 the way the State wants, presume that they are  
2 running a bingo game exactly the way the  
3 churches do, okay, is it your view that then the  
4 federal court would be open to seeing whether or  
5 not they have all the signs that are required by  
6 the state, whether they have --

7 MR. YANG: Yeah, that's exactly how  
8 things have played out since Ysleta I. And as  
9 the district court has -- you know, we -- we --  
10 we cite these cases in our brief, this has not  
11 been a good way of providing a regulatory  
12 framework through injunctive actions in federal  
13 courts where a federal court has to talk about,  
14 you know, how many cards can you play and what  
15 hours can you play and what's -- that's not what  
16 Congress would have intended, we think.

17 Congress would have intended to put a  
18 pretty high bar of prohibition, and then, when  
19 it enacted IGRA, it goes straight to the NIGC  
20 and the NIGC, the expert agency, gets to decide  
21 these questions.

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

1           MR. YANG: That's, I think, part of  
2 their argument. And I would say that Cabazon  
3 directly addressed that. Cabazon was a  
4 provision in California law that only allowed  
5 charities to operate bingo and that set a limit  
6 of \$250, and the Court said, you know what, that  
7 is regulating bingo, it is not prohibiting  
8 bingo.

9           JUSTICE SOTOMAYOR: Thank you,  
10 counsel.

11           CHIEF JUSTICE ROBERTS: Justice Kagan?

12           JUSTICE KAGAN: I'm about to take you  
13 outside the scope of this case, so I apologize  
14 beforehand. But Justice Alito raised what to me  
15 is an interesting question that I've been  
16 thinking about a good deal about what these  
17 substantive canons of interpretation are and  
18 when they exist and when they don't exist.

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

23           I mean, if you go through Justice  
24 Scalia's book, you'll find a wealth of canons of  
25 this kind, these sort of substantive canons.

1 Some of them help the government. Some of them  
2 hurt the government.

3 Is there any way that the government  
4 has of coming in and saying, like, how do we  
5 reconcile our views of all these different kinds  
6 of canons? Maybe we should just toss them all  
7 out, you know.

8 MR. YANG: Well --

9 JUSTICE KAGAN: I mean, I think kind  
10 of we should, honestly. Like, what are we doing  
11 here? But is there -- do you have a view of,  
12 like, when these canons are the kind that you're  
13 going to talk about in your briefs and when  
14 these canons are not the kind that you're going  
15 to talk about in your briefs?

16 MR. YANG: Well, I think our briefs  
17 generally grapple first with the text, right, as  
18 we've done here. And canons, I think, can play  
19 an important role in certain contexts. I think,  
20 for instance, Bryan recognized that in the  
21 Indian tribal sovereignty context, there is a  
22 very important principle that kind of underlays  
23 the body of the law there.

24 You do not want to read statutes to  
25 grant state regulatory authority on tribal lands

1 without kind of a clear expression of that. And  
2 I think that those types of principles reflect a  
3 background body of law that one brings when  
4 reading statutes.

5 So it's true, you know, I think I've  
6 seen the Court's decision that, you know,  
7 sometimes you get canons that conflict, right,  
8 that run in contrary directions. These are aids  
9 in interpretation, but we always start with the  
10 text.

11 CHIEF JUSTICE ROBERTS: Justice  
12 Gorsuch?

13 JUSTICE GORSUCH: The government  
14 doesn't waive sovereign immunity lightly.  
15 That's one of our canons, right?

16 MR. YANG: That -- that's exactly  
17 right.

18 JUSTICE GORSUCH: And -- and isn't the  
19 Indian canon very similar in its function in  
20 saying that we don't lightly assume that  
21 Congress is allowed state authorities to  
22 regulate an independent sovereign?

23 MR. YANG: I think it's similar.  
24 There are different underlying principles behind  
25 them, but I think there is a similar spirit to

1 that thought.

2 CHIEF JUSTICE ROBERTS: Justice  
3 Kavanaugh?

4 JUSTICE KAVANAUGH: Just to follow up  
5 on Justice Kagan's question because I think  
6 that's important, and Justice Alito's as well,  
7 on -- on the Indian canon, I just want to  
8 isolate what kind of canon it is, because it  
9 seems like our substantive canons fall into two  
10 buckets. One bucket are in ambiguity-dependent  
11 canons; if a statute's ambiguous, do this.  
12 Another bucket of canons are plain statement  
13 canons for mens rea, extraterritoriality --

14 MR. YANG: Right.

15 JUSTICE KAVANAUGH: -- and the like.  
16 The former category, the ambiguity-dependent,  
17 like Auer deference, Rule of Lenity, and I want  
18 to confirm that you think the Indian canon is an  
19 ambiguity-dependent canon as it's been  
20 traditionally applied.

21 MR. YANG: I think that's generally  
22 true, but there's something else going on here  
23 too, which is the -- the principle that Bryan  
24 recognized. In the specific context when you're  
25 talking about the application of -- of state

1 regulatory authority in -- on Indian lands, you  
2 know, you need to be more cautious.

3 Now, admittedly, this is a federal  
4 statute that implied -- that applies federal  
5 law, but I think some of the caution that Bryan  
6 reflects, I think, should -- should guide the  
7 Court.

8 JUSTICE KAVANAUGH: So that suggests  
9 you need more of a clear statement, and those  
10 usually -- those clear statement rules usually  
11 reflect some constitutional or  
12 quasi-constitutional value, due process,  
13 extraterritorial structure, the structure of the  
14 country. What would that reflect here, that  
15 principle you just described?

16 MR. YANG: Well, I think it -- it  
17 reflects that Indian tribes are sovereign  
18 nations, that they have before the founding of  
19 this country. And, you know, the Court's  
20 opinion in Bay Mills tracks some of this.

21 So, you know, whatever you think about  
22 the canons in general and whether that should  
23 be, you know, plain statement, just, you know,  
24 tip the balance in ambiguity, the Indian canon,  
25 at least when we're talking about tribal



1 sovereignty and the application of state law on  
2 tribal lands, that does have a strong pedigree  
3 and I think, ultimately, it traces to the fact  
4 that these are sovereign nations.

5 JUSTICE KAVANAUGH: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice  
7 Barrett?

8 JUSTICE BARRETT: I want to follow up  
9 on this canon line of questioning. And I'm  
10 sorry, I know you said that you weren't thinking  
11 about the canons when you came in here today.

12 It was actually my understanding --  
13 you know, Justice Kavanaugh pointed out that our  
14 substantive canons fall into these clear  
15 statement and ambiguity buckets.

16 It was my understanding that the  
17 Indian canon was in the ambiguity bucket.

18 MR. YANG: Oh. That -- that -- that  
19 is generally true and that's the way that we  
20 used it in our -- our brief. But, in this case,  
21 because of Cabazon, Cabazon was built on Bryan.

22 Bryan applied a stronger version of  
23 the -- it's actually kind of a -- a brother  
24 doctrine, I guess, or a sister doctrine.

25 JUSTICE BARRETT: Was its debut in

1 Bryan?

2 MR. YANG: No, no. This goes back  
3 quite a long ways. This goes to, you know,  
4 infringements on tribal sovereignty and the  
5 recognition that it's generally only the United  
6 States that -- that governs dependent sovereigns  
7 like tribes.

8 JUSTICE BARRETT: So it's like a  
9 sub-Indian canon canon?

10 MR. YANG: I'm not sure that I'm  
11 prepared to put a proper label on it, but I can  
12 say that it exists in Bryan, which came through  
13 Cabazon, and Bryan itself was -- this is cited  
14 actually on pages 16 to 17 of our brief. We  
15 discuss Bryan and some of the principles  
16 underlying Bryan.

17 JUSTICE BARRETT: Okay. Thank you.

18 CHIEF JUSTICE ROBERTS: Thank you,  
19 counsel.

20 MR. YANG: Thank you.

21 CHIEF JUSTICE ROBERTS: Ms. Pettit.

22 ORAL ARGUMENT OF LANORA C. PETTIT

23 ON BEHALF OF THE RESPONDENT

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

1           In the 1980s, everybody in this case  
2 wanted something. The tribe wanted federal  
3 recognition and was willing to cede some of its  
4 sovereignty. Texas wanted to avoid high-stakes  
5 gambling, which it saw as an invitation to  
6 organized crime, and was willing to cede some of  
7 its jurisdiction.

8           The federal government was split about  
9 how to balance these sovereign interests. So  
10 every -- so everyone made concessions, which are  
11 embodied in the Restoration Act. The tribe got  
12 its recognition and may offer gambling to the  
13 same extent as other Texans, but further  
14 gambling is banned under federal law.

15           The tribe asks to rewrite this  
16 legislative bargain based on Cabazon Band, but  
17 it's admitted that Cabazon Band did not address  
18 how to interpret a statute that federalizes  
19 state law. Its effort to extend Cabazon Band  
20 suffers from three primary faults.

21           First, it ignores that when it comes  
22 to gambling, the Restoration Act departs from  
23 the Cabazon Band framework by treating both  
24 civil and criminal penalties and civil and  
25 criminal regulatory jurisdiction the same way.

1           Second, it overlooks that the Cabazon  
2 Band test was written to avoid a form of state  
3 encroachment into tribal affairs that isn't  
4 possible when a federal court is applying  
5 federal law.

6           And, third, it depends on a definition  
7 of jurisdiction that disregards the close tie  
8 between that term in the 1980s and an  
9 adjudicator's ability to decide a case. That's  
10 how it's used in Public Law 280, in  
11 Section 105(f), and, as Justice Kagan noted, in  
12 Section 107(c).

13           Applying that same definition to  
14 107(b), regulatory jurisdiction encompasses a  
15 state administrative agency's ability to  
16 exercise oversight through, among other things,  
17 reporting requirements, inspections, and  
18 ultimately enforcement actions, not the state's  
19 larger ability to set substantive limits on  
20 gambling.

21           I welcome this Court's questions.

22           JUSTICE THOMAS: Counsel, could you  
23 give me an example of a regulatory law or rule  
24 that applies -- a gaming -- a regulation of  
25 gaming laws that applies to tribes that do not

1 fall under 107(a)?

2 MS. PETTIT: I'm not --

3 JUSTICE THOMAS: I'm sorry, that would  
4 be covered -- would not count as a prohibition  
5 under 107(a)?

6 MS. PETTIT: To the extent -- so 107  
7 -- prohibition, as it's generally understood,  
8 means it's unlawful. There is -- a regulation  
9 that would apply to somebody who's not the tribe  
10 that wouldn't be a prohibition would, for  
11 example, be that the Texas Lottery Commission  
12 can typically get access to passwords so that  
13 people -- they can -- would have an ongoing  
14 oversight into the way that software functions.

15 That's a regulation that wouldn't  
16 apply to the tribe because it's not a  
17 prohibition relating to gaming activity.

18 JUSTICE THOMAS: Now we -- there's  
19 been some discussion as to the -- the difference  
20 between prohibition and regulation.

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

23 MS. PETTIT: So prohibition in this  
24 context and as generally understood can include  
25 a regulation except for, as Justice Barrett

1 noted a couple of times, Cabazon Band.

2 So the regulation distinction made in  
3 Cabazon Band was specific to Public Law 280,  
4 which was trying to decide the difference  
5 between criminal and civil laws, which is a  
6 question not presented by the Restoration Act.

7 JUSTICE THOMAS: So there seems to be  
8 by counsel a suggestion that the mere fact that  
9 any group could participate in bingo, for  
10 example, the veterans organization or the  
11 churches, that even if it's outlawed, as to  
12 other organizations or for profit, that that is  
13 not a prohibition.

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

24 JUSTICE SOTOMAYOR: I'm sorry,  
25 counsel. Could you explain that more clearly to

1 me?

2 Just earlier you said to Justice  
3 Thomas that a regulation that wouldn't apply to  
4 the Indians would be one that required their  
5 passwords to play the game, correct?

6 MS. PETTIT: Yes, Your Honor.

7 JUSTICE SOTOMAYOR: And I assume  
8 that's because you recognize that the  
9 prohibition is on -- on playing bingo, not on  
10 how you play bingo, correct?

11 MS. PETTIT: On the gaming activity,  
12 yes, Your Honor.

13 JUSTICE SOTOMAYOR: All right. So how  
14 is that different than what you just said?  
15 Meaning --

16 MS. PETTIT: So --

17 JUSTICE SOTOMAYOR: -- a financial  
18 requirement, the password requirement, I don't  
19 know how you can read that into gaming  
20 activities which are prohibited by, because  
21 bingo's not prohibited by. What does it matter  
22 whether it's a not-for-profit or not?

23 MS. PETTIT: So the bingo outside of  
24 the limited affirmative jurisdiction -- sorry.  
25 The offense to prosecution is what the Bingo

1 Enabling Act is. So any bingo that is not --  
2 that is not conducted pursuant to the Bingo  
3 Enabling Act is prohibited as a matter of Texas  
4 criminal law.

5 JUSTICE SOTOMAYOR: You can't play  
6 bingo unless you give the password?

7 MS. PETTIT: No, Your Honor.

8 JUSTICE SOTOMAYOR: You can't play  
9 bingo unless you meet certain financial  
10 requirements. You can't play bingo because  
11 you're not a not-for-profit.

12 MS. PETTIT: No, Your Honor.

13 JUSTICE SOTOMAYOR: I don't know where  
14 I draw those lines.

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

24 The state's regulatory interests or  
25 the state's prohibitory interests, however you



1 want to frame it, is different between  
2 low-stakes and high-stakes gambling.

3 So the use of the term "law" is  
4 another -- is another focus under 107(a), and  
5 both the tribe and the United States focused on  
6 a earlier version of the bill that ultimately  
7 became the statute that included the terms  
8 "laws" and "regulations."

9 But, under this Court's precedent, the  
10 term "laws" typically includes regulations, so  
11 you can't really interpret anything by the  
12 deletion of redundant language in a draft bill.

13 JUSTICE BARRETT: Counsel, what about  
14 the other laws that were passed  
15 contemporaneously with this one for other tribes  
16 that used broader language like "prohibit" or  
17 "regulate"? Why shouldn't we look at the  
18 contrast between this more precise or narrower  
19 language and those?

20 MS. PETTIT: By looking at the context  
21 of each of the statutes, each of the statutes  
22 they cite is a settlement act that is enabling a  
23 preexisting agreement between the parties to  
24 litigation.

25 So those -- the language that Your

1 Honor is citing is maybe the language that the  
2 parties determined was necessary, but it doesn't  
3 give much of an indication, if any, about what  
4 Congress would have determined was necessary if  
5 it was on its own.

6 And this also goes to the larger  
7 context of the Restoration Act because the term  
8 "prohibit" and the term "regulate" were in the  
9 Restoration Act before Cabazon Band.

10 After Cabazon Band, in the Senate,  
11 there was two -- there were two distinct changes  
12 to both 107(a) and 107(b) that show a departure  
13 from Cabazon Band which expressly linked the  
14 concept of civil and regulatory and criminal and  
15 prohibitory, that is, the insertion of civil and  
16 criminal penalties in respect to prohibitions in  
17 107(a) and the phrase -- and the insertion of  
18 "and criminal" into a preexisting statute that  
19 said civil regulatory jurisdiction.

20 JUSTICE BREYER: So, if I -- I take it  
21 the difference is you think the words "prohibit"  
22 -- "prohibited by the laws" refers to all the  
23 prohibitions by the criminal laws. And they  
24 think it refers to the -- there is a distinction  
25 between regulatory and prohibiting it outright.

1 Okay.

2 MS. PETTIT: Yeah.

3 JUSTICE BREYER: And the whole key  
4 here is are they referring to Cabazon, as they  
5 think, or are they thinking back to -- back to  
6 the resolution, where they said we don't even  
7 want Texas. You know, that's the big  
8 difference.

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

18 You went and you read the report of  
19 the Senate committee or the House committee or  
20 the conference committee, and you read the  
21 testimony before the committees, and you read  
22 what the Justice Department told them or the  
23 Department of the Interior, and you read what  
24 other people said on the floor perhaps, and  
25 sometimes but not always that, in fact, shed

1 some light on the proper answer.

2 So my question is, if, pursuing my odd  
3 single path perhaps, I did that here, would I  
4 find anything?

5 MS. PETTIT: You would find the Senate  
6 report, which is the only report that deals with  
7 the final version of the statute, and the Senate  
8 report said that the addition of civil and  
9 criminal penalties, what I just mentioned, was  
10 designed to build upon what the House was making  
11 -- what the House had originally amended to say  
12 just prohibit to make clear that civil penalties  
13 were also applicable, which we respectfully  
14 suggest supports our cause.

15 CHIEF JUSTICE ROBERTS: Well, I -- I  
16 -- I pressed your friend, Mr. Martin, a little  
17 bit on the tribal resolution, which I think is  
18 very strong evidence for you. On the other  
19 hand, his answer that, well, that wasn't  
20 addressed in the final bill, it was a  
21 predecessor bill, also seemed pretty good.

22 Do you have an answer to that?

23 MS. PETTIT: Your Honor, the  
24 resolution may have been passed in response to  
25 the -- to a prior bill, but it is incorporated

1 into the text or it's at least referenced in the  
2 text of the actual bill that was passed and  
3 became law, so that has to be given some  
4 meaning. And the fact that it was aimed at a  
5 different bill is not dispositive one way or the  
6 other.

7 JUSTICE KAGAN: Ms. Pettit, if -- if,  
8 you know, this just said "prohibit" and we were  
9 in a world where we didn't have any context on  
10 the page or otherwise, I think you would win.

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

16 So the first is 105(f), which I take  
17 it you acknowledge incorporates Public Law 280,  
18 and Public Law 280 had just been interpreted in  
19 Cabazon as having this prohibitory/regulatory  
20 distinction.

21 MS. PETTIT: Yes, Your Honor.

22 JUSTICE KAGAN: The second is 107(b),  
23 which specifically talks about criminal  
24 regulatory jurisdiction. Now there's a question  
25 as to what kinds of -- what kind of jurisdiction

1 it's talking about here because jurisdiction is  
2 used in two different senses in this statute,  
3 but I think that Mr. Yang has an awfully good  
4 argument that when they're talking about  
5 regulatory jurisdiction, they're not talking  
6 about it in the which court sense, they're  
7 talking about it in the Cabazon sense.

8           So -- so it says, you know, we don't  
9 want to give the state regulatory jurisdiction,  
10 meaning the state doesn't have any regulatory  
11 power here.

12           Then the third thing would be what  
13 Justice Barrett said, I think you've responded  
14 to that, the other statutes passed around the  
15 same time, actually, on the same day, right,  
16 that clearly understand the Cabazon  
17 prohibitory/regulatory distinction.

18           So you take all of those together, and  
19 this is what I meant when I said to Mr. Yang  
20 Cabazon is, like, written all over this statute.  
21 It's not just like we have a world in which we  
22 say: Oh, didn't they know about Cabazon? Would  
23 that have affected what they were doing? I  
24 mean, Cabazon is in this statute in multiple  
25 places. So why isn't it in this statute in a

1 way that defeats your claim here?

2 MS. PETTIT: So, in Cabazon, this  
3 Court used the phrase "regulatory authority,"  
4 not "regulatory jurisdiction." When referring  
5 to the power to set laws, this Court has  
6 typically used the term "legislative  
7 jurisdiction," which is tellingly not the word  
8 that Congress had selected.

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

19 So it may not be a court-specific  
20 term, but absent the phrase "legislative  
21 jurisdiction," it does tend to have an  
22 adjudicative meaning. So that is where -- and  
23 it's used consistently in 105(f), which Your  
24 Honor referenced, in that -- in that sense. And  
25 it's used in 107(c) in that sense. And so it

1 would make sense to use it in 107(b) in that  
2 sense to avoid the charge of the light brigade  
3 with various cannons.

4 So, in that -- in reading it in the  
5 larger context of how that term was used in the  
6 '80s, as opposed to, for example, in the  
7 mid-2000s, after this Court's case of City of  
8 Arlington against FCC, where you equated  
9 authority and jurisdiction, helps to clarify any  
10 ambiguities.

11 So that's all I have. I'm happy to  
12 answer any --

13 JUSTICE KAVANAUGH: Given -- given  
14 Cabazon -- sorry to interrupt. Given Cabazon,  
15 why wouldn't it have been obvious to members of  
16 Congress to say something like the following if  
17 you wanted to do this, like "all Texas law  
18 regulating gaming activities applies to gaming  
19 activities on the reservation and lands of the  
20 tribe"? Why --

21 MS. PETTIT: So --

22 JUSTICE KAVANAUGH: I mean, in other  
23 words, boy, there's this case, we better be  
24 careful. And we're in the world where we're  
25 assuming Congress is responding to the case.



1           So why wouldn't the people who wanted  
2 this broader authority to extend have been -- we  
3 need to -- we need to be careful about this and  
4 doesn't the -- then the absence of that suggest  
5 something that -- that hurts your case here?

6           MS. PETTIT: Two responses.

7           First, I heard a lot from both the  
8 United States and from the tribe that said that  
9 Cabazon Band was -- was especially informative  
10 because of the context. But Cabazon Band  
11 addressed -- may have the facts of Cabazon Band,  
12 may have been relating to gambling, but it  
13 addressed a statute that applied across the  
14 board equally to Texas and to regulation of  
15 pharmaceuticals or a number of the other  
16 hypotheticals we've had today.

17           So why Congress would have necessarily  
18 said: Well, Cabazon Band defines exactly what  
19 term we have for gambling, it -- it's not nearly  
20 as close as that.

21           And I believe Justice Alito asked a  
22 few minutes ago how you determine whether you  
23 are going to apply a canon about assuming  
24 Congress -- or it might have been Justice Kagan  
25 -- I apologize -- about when you assume Congress

1 was understanding the particular context.

2 Normally, this Court does that when  
3 you have a well-established term that's been  
4 used a number of times, whereas, here, you have  
5 just the term "prohibit," which is a commonly  
6 used statutory term, it's been interpreted once  
7 in a case that respectfully is not the most  
8 precise case this course -- Court has ever  
9 issued. And so assuming that Congress enter --  
10 intended to enact and make permanent for all  
11 tribes for all uses of "prohibit" based on this  
12 one case would be taking that canon too far.

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

18 That's not the phrase that we have in  
19 -- in the Restoration Act. That is -- what we  
20 have simply is the use of the common term  
21 "prohibit." You see that again in 2710 when  
22 you're talking about when -- when Congress is  
23 talking about when the state can or the tribe  
24 can engage in activity which is whether the  
25 state prohibit -- permits it for any purpose,

1 for any person, entity, or organization.

2 Again, that tracks the Cabazon Band  
3 prohibition -- prohibition language much more  
4 closely than here, where we just have that term  
5 "prohibit."

6 JUSTICE KAVANAUGH: Was -- wasn't it  
7 obvious or wouldn't it have been obvious that  
8 what happens when a state allows an activity but  
9 regulates it heavily, can those regulations  
10 apply to the tribes? Wasn't that an obvious  
11 question and wouldn't that have been addressed  
12 in a different way, I guess, again, if we're in  
13 this world where we're trying to speculate what  
14 Congress was thinking?

15 MS. PETTIT: This is why it's always  
16 dangerous to speculate what Congress was  
17 thinking.

18 JUSTICE KAVANAUGH: Yeah, that's a  
19 good answer.

20 MS. PETTIT: But laws -- laws  
21 typically does include -- does -- do -- the term  
22 "laws" typically does include regulations,  
23 unless Congress specifies otherwise, which it  
24 didn't do here.

25 And this goes back to a number of the

1 questions we've had today about the signage that  
2 is at -- at casinos and whether that would apply  
3 to the tribe. And it doesn't because it doesn't  
4 go to the gaming activity as this Court defined  
5 that in Bay Mills, where it was the -- the -- I  
6 think the words of the Court were the throw of  
7 the dice or the turn of the wheel, the actual  
8 game that's being played and not the offsite  
9 administrative or regulatory body, so --

10 JUSTICE BARRETT: But, Ms. Pettit, why  
11 would it make sense? You know, here, in 107(c),  
12 the federal court is given jurisdiction if the  
13 state wants to bring an action for an injunction  
14 to stop, in your view, regulatory violations on  
15 the gaming activity.

16 Why would it make sense to enlist  
17 federal district courts to police all these  
18 aspects of gaming? It -- it just seems to me  
19 like that would be an odd system.

20 MS. PETTIT: So the -- we are only  
21 entitled to bring a -- an injunctive action for  
22 violations of the substantive limitations on  
23 gambling, not the regulations that don't go to  
24 the gaming activities, but it does make sense  
25 because, as the United States pointed out, the

1     tribe was very against the direct application of  
2     state laws in state courts, which was the issue  
3     in Cabazon Band.

4             So there isn't the direct application  
5     of state law here. There's this third party, a  
6     federal judge that is a -- neutral might be a  
7     loaded term for this context, but I'll use it  
8     anyway -- a neutral arbiter to apply the issue  
9     rather than having to, for example, go into the  
10    state's home court.

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

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

22            I mean, the district courts in Texas  
23    have complained about all of these things  
24    heading to the district court.

25            MS. PETTIT: So the district courts

1 have said that a version of the -- a previous  
2 injunction issued in 2002 had turned them into a  
3 sort of pre-clearance type of regime that hadn't  
4 been contemplated by the Restoration Act. We  
5 agree that wasn't contemplated by the  
6 Restoration Act, but it was necessitated by the  
7 tribe's actions, who had not attempted to comply  
8 with the Restoration Act.

9 But, fortunately, we're no longer in  
10 that regime. We have brought a separate  
11 complaint, and most of the issues that are  
12 covered in the current injunction before the  
13 Court are statutory ones, not regulations.

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

20 I mean, that's your position. It's  
21 not -- you know, the other person -- side's  
22 position is essentially no, the federal courts  
23 are there when Texas has a statute that says no  
24 table games, and all of a sudden a casino opens  
25 up with craps, but your position is like

1 everything, you know, the -- the -- the -- the  
2 amount of the betting, the hours, the -- the --  
3 the -- I mean, everything that relates to the  
4 turn of the wheel or whatever, and that's a lot  
5 of stuff.

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

20 JUSTICE GORSUCH: Counsel, you argue  
21 at some length that the Cabazon distinction  
22 between "prohibition" and "regulation" is  
23 unworkable. Are you asking us to overturn  
24 Cabazon?

25 MS. PETTIT: No, Your Honor, that's

1 not necessary in this case because, as my  
2 opposing counsel has conceded, this is about  
3 federalizing state law, and Cabazon doesn't --  
4 specifically declined to address that question.

5 JUSTICE GORSUCH: But that -- but that  
6 -- that -- that -- that's not -- that's not  
7 quite what I'm getting at. You -- you say the  
8 distinction between "prohibition" and  
9 "regulation" just generally is not workable.

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

11 JUSTICE GORSUCH: Wouldn't that logic  
12 seem to suggest, if that's true, then -- then --  
13 then Cabazon, we should just get rid of it and  
14 scrap it and -- and the consequences for IGRA be  
15 damned?

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

25 JUSTICE GORSUCH: So you're not asking



1 us to overturn Cabazon?

2 MS. PETTIT: No, Your Honor.

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

5 MS. PETTIT: I'm asking you to  
6 continue to apply IGRA in the IGRA context,  
7 which incorporates pieces.

8 JUSTICE GORSUCH: Which incorporates  
9 Cabazon?

10 MS. PETTIT: Pieces of Cabazon but not  
11 necessarily all of it.

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

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

18 JUSTICE GORSUCH: And that -- that  
19 hinges on whether we -- we -- we agree with your  
20 reading of the statute and the enactment the  
21 same day involving the tribe in Massachusetts,  
22 right?

23 MS. PETTIT: It involves -- it  
24 definitely depends on your agreement that by  
25 slicing and dicing up civil and criminal

1 regulatory and prohibitory, that Congress  
2 intended to depart from Cabazon Band, yes.

3 JUSTICE BARRETT: But, Ms. Pettit, why  
4 is it uniquely unworkable in this context? Mr.  
5 Yang said, look, this has been humming along,  
6 everybody's been living with Cabazon Band and  
7 this distinction between "prohibit" and  
8 "regulate" in Public Law 280 and in IGRA. So  
9 why is it so uniquely unworkable in this  
10 context?

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

19 JUSTICE GORSUCH: Well, isn't that an  
20 argument for overturning it in IGRA too and just  
21 getting rid of it?

22 MS. PETTIT: So IGRA incorporated a  
23 specific part of Cabazon Band that allows the  
24 tribe in 2710 to engage in Class II gaming,  
25 which permits them to -- if the state permits it

1 under any person, any purpose, any organization.

2 So that is a different term than  
3 prohibitory or regulatory and trying to combine  
4 --

5 JUSTICE GORSUCH: I understand that.  
6 But -- but -- but if -- you're -- you're --  
7 you're saying it doesn't work well under IGRA.  
8 You're disputing Mr. Yang on that.

9 MS. PETTIT: So I'm --

10 JUSTICE GORSUCH: But you're saying  
11 this is somehow unique, and I guess I'm  
12 struggling, like -- like -- like my colleague,  
13 to understand how -- how it's uniquely  
14 problematic here but -- but less problematic, I  
15 guess, under IGRA?

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

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

4 MS. PETTIT: Texas doesn't have that  
5 much experience under IGRA, so I'm not able to  
6 answer that question.

7 JUSTICE SOTOMAYOR: It has some  
8 experience. It has the Kickapoo Tribe that's  
9 operating under Class II gaming pursuant to  
10 IGRA. So, right now, what you have is one tribe  
11 under IGRA, another tribe completely out of  
12 IGRA, and even worse, you're saying it wasn't  
13 even intended to be run like the regulatory  
14 prohibition line that Cabazon approved, correct?

15 MS. PETTIT: Correct.

16 JUSTICE SOTOMAYOR: So you want a  
17 system that's unique to everything, to Cabazon,  
18 to Bryan, to every other tribe, and you want to  
19 create a totally different system now?

20 MS. PETTIT: Congress created a  
21 bespoke legislative solution here.

22 JUSTICE SOTOMAYOR: That's assuming we  
23 accept your argument --

24 MS. PETTIT: Yes, Your Honor.

25 JUSTICE SOTOMAYOR: -- that that was

1 Congress's intent.

2 MS. PETTIT: Yes, Your Honor. That,  
3 and the Kickapoo -- the -- my response earlier  
4 was that we do not regulate the Kickapoo, so we  
5 do not have much insight into what they're doing  
6 inside their casino, so it's very difficult for  
7 me to say whether it's been a problem.

8 JUSTICE SOTOMAYOR: Well, anybody can  
9 walk in and play.

10 MS. PETTIT: Yes, Your Honor. But  
11 that one --

12 JUSTICE SOTOMAYOR: So you can see  
13 what they're doing, whether it -- what it's  
14 violating, if you chose.

15 MS. PETTIT: I suspect the tribe would  
16 object if we were to send a peace officer in  
17 without permission to inspect.

18 JUSTICE SOTOMAYOR: Who said a peace  
19 officer? Anybody could walk in. You could send  
20 a peace officer, but --

21 MS. PETTIT: A -- a state employee  
22 could go in without authority and examine it in  
23 their personal capacity, but that's not  
24 typically how laws are enforced.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Thomas?

3 Justice Breyer, anything further?

4 Justice Alito?

5 JUSTICE ALITO: Suppose you scrapped  
6 your laws about bingo and you enacted a statute  
7 that says that under specified circumstances, a  
8 type of gambling called Texas Traditional Board  
9 Game is allowed, and you defined that involving  
10 a board and et cetera, et cetera.

11 But this is not bingo. This is the  
12 Traditional Texas Board Game. Then would bingo  
13 be prohibited, or would it be regulated?

14 MS. PETTIT: If we scrapped the Texas  
15 Bingo Enabling Act, it would fall within the  
16 constitutional prohibitions on lottery and it  
17 would be prohibited. It's still prohibited  
18 outside the Bingo Enabling Act, but it would be  
19 flatly prohibited under state law.

20 JUSTICE ALITO: So this all turns on  
21 the fact that you've -- you've used the term  
22 "bingo" and that in the -- the -- you know,  
23 there is the form of bingo up there and so the  
24 next court is going to decide whether this is  
25 bingo or not?

1 MS. PETTIT: No, Your Honor. This  
2 depends on -- the -- the word "bingo" is not the  
3 relevant question here. And it may be useful to  
4 answer your question to distinguish this from  
5 the facts in California's instance in Cabazon  
6 Band, where they generally permitted gambling  
7 except that which we prohibited.

8 Texas has the exact opposite  
9 presumption. We have a strong public policy and  
10 all gambling is banned under the constitution  
11 unless specifically authorized. The Bingo  
12 Enabling Act specifically authorizes  
13 small-stakes bingo under very limited  
14 circumstances as a defense to prosecution.

15 But, if -- if we were to scrap that  
16 Bingo Enabling Act, it would -- the conduct --  
17 the conduct of the tribe in this instance would  
18 fall within the state's constitutional ban on  
19 lotteries.

20 CHIEF JUSTICE ROBERTS: Justice  
21 Sotomayor, anything further?

22 Justice Gorsuch?

23 Justice Barrett?

24 JUSTICE BARRETT: I just have one  
25 question. If you lost and we vacated and

1 remanded and so then the district court has to  
2 face the question of whether these electronic  
3 bingo games count as bingo, you just revert to  
4 the Texas definition and I gather it's Texas's  
5 position that these electronic machines would  
6 not count as bingo?

7 MS. PETTIT: Yes, Your Honor, because  
8 they are slot machines. They -- they do not  
9 have the competitive aspect of bingo because  
10 what -- I believe somebody referred to their  
11 grandmother earlier, that is a -- you are  
12 matching numbers and the first person to reach a  
13 particular pattern wins. And, here, you have  
14 one card and it is an instant game that is drawn  
15 against a historic -- a historic bingo draw, and  
16 that's just not bingo.

17 JUSTICE BARRETT: And you'd make that  
18 argument based on Texas law?

19 MS. PETTIT: Under the Restoration  
20 Act, we would. It's the same issue under IGRA,  
21 which is why the United States was very careful  
22 to say that the question of whether or not this  
23 is actually bingo under IGRA is a very close  
24 one.

25 JUSTICE BARRETT: Thank you.



1 CHIEF JUSTICE ROBERTS: Thank you,  
2 counsel.

3 Mr. Martin, rebuttal?

4 REBUTTAL ARGUMENT OF BRANT C. MARTIN  
5 ON BEHALF OF THE PETITIONERS

6 MR. MARTIN: Mr. Chief Justice, and  
7 may it please the Court. Four quick points.

8 First of all, in response to a  
9 question from the bench, I -- I think that the  
10 Justices -- you certainly understand the  
11 distinction and the difficulty that the State of  
12 Texas has with making the distinction as to  
13 where the regulatory line starts and where the  
14 regulatory line stops.

15 If they wanted the passwords, they had  
16 to get the passwords. When is that not  
17 regulation and when is it if they can, in fact,  
18 regulate? And the problem is is that their  
19 position requires them to take the position that  
20 the entirety of the regulatory construct of  
21 Texas law, and this is the same thing the Fifth  
22 Circuit said in *Ysleta I*, is that the entirety  
23 of the regulatory construct applies to the  
24 tribes. That's not what 107(b) says.

25 And in response to some of the

1 jurisdictional questions, Section 105(f) grants  
2 civil and criminal jurisdiction to grant the  
3 Public Law 280 authority. Jurisdiction there  
4 means the substantive authority; it's not  
5 limited to court jurisdiction.

6 Section 107(b)'s use of the  
7 jurisdiction is the same. Section 107(c) is  
8 different, and it specifically says jurisdiction  
9 over enforcement.

10 And there was one other aspect of --  
11 of what the State of Texas has -- has argued  
12 just now in this case that I think is --  
13 deserves to be said. There's been a lot of  
14 discussion about whether or not Cabazon applies,  
15 you know, are we stuck in the Cabazon context,  
16 et cetera.

17 Two things I would point out. Justice  
18 Breyer, I would point out that Representative  
19 Udall, who was the chairman of the applicable  
20 subcommittee, stated on the House floor this is  
21 intended to incorporate Cabazon.

22 That's important. The Senate report  
23 that was cited by the State of Texas references  
24 the old language that Congress excised, and that  
25 should be taken into account.

1                   Finally, Your Honor, I would point out  
2           I can't remember exactly how the State of Texas  
3           just put it, but they were talking about  
4           Section 107 and they said that it applies to  
5           everything, not just gaming. Section 107 is  
6           entitled "Indian Gaming." It is entitled -- it  
7           is intended to govern that exact situation in  
8           response to Cabazon.

9                   And if there's no further questions.

10                   CHIEF JUSTICE ROBERTS: Thank you,  
11           counsel. The case is submitted.

12                   (Whereupon, at 11:33 a.m., the case  
13           was submitted.)

14

15

16

17

18

19

20

21

22

23

24

25

## Official - Subject to Final Review

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

## Official - Subject to Final Review

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

## Official - Subject to Final Review

<p><b>country</b> [2] 63:14,19  <b>County</b> [1] 12:20  <b>couple</b> [1] 69:1  <b>course</b> [2] 59:19 81:8  <b>COURT</b> [62] 1:1,14 3:10 5:10 10:18 11:11 19:9,15,16,18 20:1 26:21 27:17 28:10,11 36:23,24 37:13,22 38:18,21,23 41:11,17,21 42:14,24,25 43:7 44:17,24 47:3,21 48:10 49:9 58:4,9,13 59:6 63:7 65:25 67:4 77:6 78:3,5,14 81:2,8 83:4,6,12 84:10,24 85:13,19 86:8 87:21 90:21 93:24 95:1 96:7 97:5  <b>Court's</b> [12] 3:22 11:18 20:2 44:19 48:13 55:17,24 61:6 63:19 67:21 72:9 79:7  <b>court-specific</b> [1] 78:19  <b>courts</b> [11] 12:7,9 21:6 48:6 58:13 83:17 84:2,22,25 85:22 89:11  <b>cover</b> [1] 46:17  <b>covered</b> [2] 68:4 85:12  <b>covering</b> [1] 46:19  <b>covers</b> [1] 40:16  <b>craps</b> [2] 45:15 85:25  <b>create</b> [3] 86:6 90:25 91:19  <b>created</b> [1] 91:20  <b>creates</b> [1] 90:20  <b>crim</b> [1] 48:20  <b>crime</b> [3] 24:20 66:6 85:19  <b>criminal</b> [22] 25:2 27:10 37:11 39:24 48:3,15,22,23 57:23 66:24,25 69:5 71:4 73:14,16,18,23 75:9 76:23 81:17 88:25 97:2  <b>criminal/civil</b> [1] 69:18  <b>critical</b> [1] 25:18  <b>cross</b> [1] 51:10  <b>curiae</b> [1] 2:22 2:8 36:20  <b>curious</b> [2] 21:21 24:15  <b>current</b> [1] 85:12</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] 87:15  <b>dangerous</b> [1] 82:16  <b>dated</b> [1] 8:8  <b>day</b> [4] 16:14,16 77:15 88:21  <b>deal</b> [2] 55:22 59:16  <b>dealing</b> [1] 5:19  <b>deals</b> [1] 75:6  <b>death</b> [1] 74:15  <b>debate</b> [1] 52:14  <b>debut</b> [1] 64:25  <b>decades</b> [3] 7:16 43:3,4  <b>decide</b> [14] 19:9 26:21 27:14,17,23 28:1,1,5 32:21 45:20 58:20 67:9 69:4 93:24  <b>decided</b> [1] 33:8  <b>decision</b> [6] 3:22 32:23 38:</p>	<p>20 41:17 44:19 61:6  <b>decisions</b> [1] 48:13  <b>declined</b> [1] 87:4  <b>defeats</b> [1] 78:1  <b>defense</b> [1] 94:14  <b>deference</b> [1] 62:17  <b>defined</b> [4] 53:1,24 83:4 93:9  <b>defines</b> [1] 80:18  <b>definitely</b> [1] 88:24  <b>definition</b> [4] 28:13 67:6,13 95:4  <b>DEL</b> [2] 1:3 3:4  <b>deletion</b> [1] 72:12  <b>deny</b> [1] 8:12  <b>depart</b> [1] 89:2  <b>Department</b> [3] 1:21 74:22,23  <b>departs</b> [2] 66:22 88:16  <b>departure</b> [1] 73:12  <b>depend</b> [3] 11:7 32:1 47:21  <b>dependent</b> [1] 65:6  <b>depends</b> [3] 67:6 88:24 94:2  <b>Deputy</b> [1] 1:24  <b>derive</b> [1] 89:13  <b>described</b> [1] 63:15  <b>deserves</b> [1] 97:13  <b>designators</b> [1] 46:17  <b>designed</b> [1] 75:10  <b>destroy</b> [1] 41:9  <b>determination</b> [1] 28:10  <b>determine</b> [3] 19:18 42:16 80:22  <b>determined</b> [3] 10:19 73:2,4  <b>device</b> [2] 47:6,7  <b>devices</b> [2] 46:25,25  <b>dice</b> [1] 83:7  <b>dichotomy</b> [2] 3:25 15:24  <b>dicing</b> [1] 88:25  <b>dictate</b> [1] 13:17  <b>dictating</b> [1] 6:1  <b>Dictionary</b> [1] 78:16  <b>difference</b> [12] 5:16 32:10,17 35:12 36:8 37:25 42:4 46:9 68:19 69:4 73:21 74:8  <b>differences</b> [2] 35:11 81:14  <b>different</b> [26] 9:19 21:6 23:12,14 28:5 33:18 35:14 39:2,3 50:5 51:1 56:23 60:5 61:24 70:14 72:1 74:9 76:5 77:2 82:12 86:17,17,18 90:2 91:19 97:8  <b>differently</b> [1] 35:3  <b>difficult</b> [4] 46:6 50:10 89:13 92:6  <b>difficulty</b> [1] 96:11  <b>dingo</b> [7] 27:1,4,7,9,11 46:9,12  <b>direct</b> [6] 7:22 8:1 52:12 53:8 84:1,4</p>	<p><b>direction</b> [1] 38:25  <b>directions</b> [1] 61:8  <b>directly</b> [9] 7:6 33:7 34:22 37:15 41:16 48:24 57:7,18 59:3  <b>disadvantage</b> [1] 49:21  <b>disagree</b> [2] 12:25 87:17  <b>discomfort</b> [1] 31:18  <b>discuss</b> [1] 65:15  <b>discusses</b> [1] 78:17  <b>discussing</b> [1] 39:19  <b>discussion</b> [2] 68:19 97:14  <b>dispute</b> [1] 52:14  <b>dispositive</b> [1] 76:5  <b>dispute</b> [7] 19:2,5,7,13 22:2 35:2 49:16  <b>disputed</b> [1] 84:17  <b>disputing</b> [1] 90:8  <b>disregards</b> [1] 67:7  <b>distinct</b> [1] 73:11  <b>distinction</b> [44] 11:5 14:3 25:15,17 31:4,9,18,20 32:10 36:25 37:5 38:17 39:18 40:1,25 41:1,4,12 42:9,23 43:1,10 44:10 48:17,25 50:3,10 51:5 56:5 69:2,18 71:22,23 73:24 76:20 77:17 86:21 87:8,23 89:7 90:18,23 96:11,12  <b>distinctly</b> [1] 49:21  <b>distinguish</b> [1] 94:4  <b>district</b> [7] 47:3 58:9 83:17 84:22,24,25 95:1  <b>doctrine</b> [2] 64:24,24  <b>doing</b> [9] 5:24 6:10 12:4 44:13 49:20 60:10 77:23 92:5,13  <b>done</b> [2] 41:1 60:18  <b>down</b> [6] 8:19,20,22 19:15 28:9 86:14  <b>draft</b> [1] 72:12  <b>drafted</b> [1] 30:23  <b>draw</b> [5] 37:4,15 50:10 71:14 95:15  <b>drawing</b> [2] 39:25 43:16  <b>drawn</b> [2] 46:18 95:14  <b>draws</b> [1] 48:25  <b>drew</b> [4] 36:24 38:18 41:11 48:18  <b>drive</b> [1] 86:13  <b>drives</b> [1] 51:3  <b>due</b> [1] 63:12</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>Each</b> [3] 5:3 72:21,21  <b>earlier</b> [5] 70:2 72:6 90:16 92:3 95:11  <b>easy</b> [1] 45:20  <b>Edition</b> [1] 78:15  <b>effort</b> [1] 66:19  <b>either</b> [1] 17:23  <b>electronic</b> [4] 22:10 23:15 95:2,5</p>	<p><b>elide</b> [1] 42:22  <b>eliminate</b> [1] 44:10  <b>Elks</b> [1] 28:4  <b>embedded</b> [1] 43:13  <b>embodied</b> [2] 39:18 66:11  <b>employee</b> [1] 92:21  <b>Enabling</b> [9] 23:23 28:14 71:1,3 72:22 93:15,18 94:12,16  <b>enact</b> [1] 81:10  <b>enacted</b> [11] 7:5,6 8:5 9:1 37:3 41:16 49:8 53:4 54:19 58:19 93:6  <b>enacting</b> [1] 45:3  <b>enactment</b> [1] 88:20  <b>encompasses</b> [1] 67:14  <b>encroachment</b> [1] 67:3  <b>end</b> [1] 85:17  <b>enforce</b> [2] 35:14 48:24  <b>enforced</b> [1] 92:24  <b>enforcement</b> [9] 12:23 13:3 35:14 36:10,11 53:10,11 67:18 97:9  <b>engage</b> [6] 4:20 17:24 29:22 33:17 81:24 89:24  <b>engaging</b> [1] 37:8  <b>enlist</b> [1] 83:16  <b>enter</b> [1] 81:9  <b>entire</b> [2] 40:8 51:17  <b>entirely</b> [2] 4:13 21:13  <b>entirety</b> [3] 4:6 96:20,22  <b>entitled</b> [3] 83:21 98:6,6  <b>entity</b> [1] 82:1  <b>equally</b> [1] 80:14  <b>equated</b> [1] 79:8  <b>erroneously</b> [1] 37:20  <b>error</b> [1] 37:23  <b>especially</b> [2] 11:19 80:9  <b>ESQ</b> [4] 2:3,6,10,13  <b>ESQUIRE</b> [1] 1:18  <b>essentially</b> [2] 34:17 85:22  <b>establishes</b> [2] 35:19 49:23  <b>ET</b> [4] 1:3 93:10,10 97:16  <b>even</b> [9] 4:18 40:17 42:3 46:24 69:11,21 74:6 91:12,13  <b>everybody</b> [3] 10:3 66:1 74:9  <b>everybody's</b> [1] 89:6  <b>everyone</b> [1] 66:10  <b>everything</b> [5] 5:3 86:1,3 91:17 98:5  <b>evidence</b> [3] 11:11 29:14 75:18  <b>evidences</b> [1] 12:2  <b>evolution</b> [1] 8:5  <b>Ex</b> [1] 18:4  <b>exact</b> [10] 10:18,21 11:19 13:15,19 37:5 48:17 54:7 94:8 98:7  <b>exactly</b> [11] 6:9 28:2 38:17 42:13 43:9 57:9 58:2,7 61:16 80:18 98:2  <b>examine</b> [1] 92:22</p>	<p><b>example</b> [10] 17:18 67:23 68:11 69:10 71:15,21 79:6 81:15 84:9 85:16  <b>examples</b> [1] 16:13  <b>except</b> [3] 40:10 68:25 94:7  <b>exception</b> [1] 53:11  <b>exceptions</b> [1] 69:22  <b>excised</b> [1] 97:24  <b>excluded</b> [1] 37:21  <b>excuse</b> [1] 50:16  <b>exercise</b> [1] 67:16  <b>exist</b> [4] 20:22 35:16 59:18,18  <b>existed</b> [7] 35:15 43:2,22,24 51:20,21,22  <b>existence</b> [1] 56:16  <b>exists</b> [2] 41:1 65:12  <b>expect</b> [1] 28:3  <b>experience</b> [2] 91:5,8  <b>expert</b> [2] 28:17 58:20  <b>experts</b> [6] 28:22,23,25 29:2,11 32:2  <b>explain</b> [1] 69:25  <b>explained</b> [1] 49:10  <b>explaining</b> [1] 40:14  <b>explicated</b> [1] 6:7  <b>expression</b> [1] 61:1  <b>expressly</b> [1] 73:13  <b>extend</b> [2] 66:19 80:2  <b>extended</b> [2] 35:8 41:10  <b>extending</b> [2] 6:2,8  <b>extension</b> [1] 4:15  <b>extent</b> [4] 20:9,23 66:13 68:6  <b>extraterritorial</b> [1] 63:13  <b>extraterritoriality</b> [1] 62:13</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> [1] 95:2  <b>fact</b> [13] 6:2,8 23:6 29:11 32:23 39:12 64:3 69:8 74:25 76:4 89:13 93:21 96:17  <b>factor</b> [1] 19:25  <b>factors</b> [1] 19:24  <b>facts</b> [2] 80:11 94:5  <b>factual</b> [1] 28:10  <b>failed</b> [2] 39:1,2  <b>fair</b> [1] 32:16  <b>fairly</b> [1] 45:20  <b>fall</b> [5] 62:9 64:14 68:1 93:15 94:18  <b>far</b> [3] 34:12 56:14 81:12  <b>faults</b> [1] 66:20  <b>favor</b> [1] 55:8  <b>favorable</b> [1] 56:11  <b>FCC</b> [1] 79:8  <b>February</b> [2] 1:11 8:20  <b>fed</b> [1] 30:1  <b>federal</b> [33] 6:17 12:7 19:8,18 20:1 21:6 30:1,3 34:20 35:7,19 36:13 53:9,10 57:21,23 58:4,12,13 63:3,4 66:</p>
--	--	--	---	---

## Official - Subject to Final Review

2,8,14 67:4,5 83:12,17 84:6 85:18,19,22 86:8 <b>federalized</b> [1] 36:14 <b>federalizes</b> [3] 4:2 35:4 66:18 <b>federalizing</b> [2] 6:3 87:3 <b>federally</b> [1] 29:20 <b>few</b> [2] 76:14 80:22 <b>Fifth</b> [7] 4:11 12:15 35:6 37:19 40:10 78:15 96:21 <b>figure</b> [2] 31:13,17 <b>final</b> [10] 5:1 6:22,23 9:10,11,17 30:8 52:16 75:7,20 <b>Finally</b> [1] 98:1 <b>financial</b> [2] 70:17 71:9 <b>find</b> [4] 55:25 59:24 75:4,5 <b>finding</b> [2] 19:16 74:16 <b>fine</b> [1] 44:7 <b>first</b> [16] 3:4 6:12 11:15 13:6,7 19:12 42:24 45:19 52:22 56:24 60:17 66:21 76:16 80:7 95:12 96:8 <b>fits</b> [2] 13:13 33:12 <b>five</b> [2] 47:1 52:4 <b>flatly</b> [2] 3:15 93:19 <b>flexibility</b> [1] 53:6 <b>flip</b> [1] 12:6 <b>floor</b> [2] 74:24 97:20 <b>focus</b> [2] 38:3 72:4 <b>focused</b> [2] 9:3 72:5 <b>focuses</b> [1] 38:12 <b>follow</b> [6] 19:1 41:24 44:9 47:12 62:4 64:8 <b>follow-on</b> [2] 47:16,19 <b>follow-up</b> [1] 50:21 <b>following</b> [2] 31:3 79:16 <b>forbid</b> [1] 15:18 <b>forbidden</b> [3] 14:25 15:19 17:20 <b>forbids</b> [1] 37:7 <b>foreclosed</b> [1] 3:18 <b>forecloses</b> [1] 4:5 <b>Forget</b> [1] 42:10 <b>form</b> [4] 9:1 56:17 67:2 93:23 <b>former</b> [1] 62:16 <b>forms</b> [1] 86:19 <b>Fort</b> [1] 1:18 <b>forth</b> [3] 7:9 8:16 24:1 <b>fortunately</b> [1] 85:9 <b>found</b> [1] 47:3 <b>founding</b> [1] 63:18 <b>Four</b> [1] 96:7 <b>frame</b> [1] 72:1 <b>framed</b> [1] 56:10 <b>framework</b> [14] 3:17 4:1,16 6:2 26:16 34:18,21 37:18 45:4 49:6 51:24 58:12 66:23 71:18 <b>frankly</b> [1] 31:6 <b>free</b> [1] 17:7 <b>freedom</b> [1] 5:7 <b>friend</b> [3] 39:20 51:1 75:16 <b>friends</b> [1] 13:1	<b>full</b> [1] 7:16 <b>function</b> [1] 61:19 <b>functions</b> [2] 56:23 68:14 <b>fundamental</b> [5] 43:1 44:22 69:16 86:12 90:24 <b>funny</b> [1] 32:12 <b>further</b> [6] 37:10 53:18 66:13 93:3 94:21 98:9	<b>government</b> [6] 41:7 60:1,2,3 61:13 66:8 <b>government's</b> [2] 42:21 44:9 <b>governor</b> [1] 18:6 <b>governors</b> [1] 18:20 <b>governs</b> [2] 40:8 65:6 <b>grandmother</b> [2] 29:7 95:11 <b>grant</b> [11] 5:12,16,21 20:14,24 37:11 48:3 49:2,4 60:25 97:2 <b>grants</b> [1] 97:1 <b>grapple</b> [1] 60:17 <b>grasp</b> [1] 30:10 <b>greatly</b> [1] 12:14 <b>group</b> [1] 69:9 <b>guess</b> [13] 21:2 24:23,25 25:22 31:3,14,22 58:22 64:24 76:13 82:12 90:11,15 <b>guide</b> [1] 63:6	26:5 27:12,16 28:7,20 29:4,11,17 30:4,14 32:7 33:20 35:3,13 36:5 56:18 70:6,12 71:7,12 73:1 75:23 76:21 78:24 86:7,25 87:10 88:2 91:24 92:2,10 94:1 95:7 98:1 <b>hours</b> [2] 58:15 86:2 <b>House</b> [4] 74:19 75:10,11 97:20 <b>However</b> [3] 8:13 35:20 71:25 <b>huge</b> [3] 43:21 44:21 84:11 <b>humming</b> [1] 89:5 <b>hurdle</b> [1] 51:9 <b>hurt</b> [1] 60:2 <b>hurts</b> [1] 80:5 <b>hypothetical</b> [3] 25:18 28:8 33:14 <b>hypotheticals</b> [2] 33:15 80:16	22 26:1,2 75:25 87:19 89:22 <b>incorporates</b> [7] 4:1 25:14 26:15 34:25 76:17 88:7,8 <b>incorporating</b> [3] 4:24 11:5,19 <b>incorrect</b> [1] 89:12 <b>independent</b> [1] 61:22 <b>Indian</b> [26] 11:20 14:2 16:3 17:6 24:23 30:19 37:5 44:23 50:12 55:8,15,19,22 56:11,16,25 59:20 60:21 61:19 62:7,18 63:1,17,24 64:17 98:6 <b>Indians</b> [2] 39:22 70:4 <b>indication</b> [1] 73:3 <b>inevitably</b> [1] 44:13 <b>inforded</b> [1] 35:16 <b>informative</b> [1] 80:9 <b>infrequently</b> [1] 46:2 <b>infringements</b> [1] 65:4 <b>injunction</b> [7] 19:17 20:17,20 53:13 83:13 85:2,12 <b>injunctive</b> [3] 20:14 58:12 83:21 <b>insertion</b> [2] 73:15,17 <b>inserts</b> [1] 48:16 <b>inside</b> [1] 92:6 <b>insight</b> [1] 92:5 <b>inspect</b> [1] 92:17 <b>inspections</b> [1] 67:17 <b>instance</b> [3] 60:20 94:5,17 <b>instant</b> [1] 95:14 <b>instead</b> [4] 45:4 47:1 53:3 85:17 <b>intended</b> [7] 58:16,17 81:10 89:2 91:13 97:21 98:7 <b>intending</b> [1] 15:6 <b>intent</b> [1] 92:1 <b>interesting</b> [4] 6:21 8:19 20:13 59:15 <b>interests</b> [3] 66:9 71:24,25 <b>Interior</b> [1] 74:23 <b>interpret</b> [3] 34:23 66:18 72:11 <b>interpretation</b> [8] 3:21 4:6,11,12,14 55:9 59:17 61:9 <b>interpreted</b> [3] 49:1 76:18 81:6 <b>interpreting</b> [1] 41:15 <b>interrupt</b> [1] 79:14 <b>introduced</b> [1] 54:6 <b>invitation</b> [1] 66:5 <b>involve</b> [1] 45:1 <b>involved</b> [1] 86:18 <b>involves</b> [1] 88:23 <b>involving</b> [2] 88:21 93:9 <b>isn't</b> [9] 25:4 34:19,22 58:25 61:18 67:3 77:25 84:4 89:19 <b>isolate</b> [1] 62:8 <b>issue</b> [8] 12:15 18:10,12 19:7 57:11 84:2,8 95:20 <b>issued</b> [2] 81:9 85:2
	<b>G</b>			
<b>gam</b> [1] 10:15 <b>gambling</b> [17] 6:24 7:11 53:22,23 66:5,12,14,22 67:20 72:2 80:12,19 83:23 86:14 93:8 94:6,10 <b>game</b> [10] 4:4 7:20 23:22 45:11 58:2 70:5 83:8 93:9,12 95:14 <b>games</b> [12] 3:14 4:3 5:5 10:5,7,9,15 24:5 35:5 39:23 85:24 95:3 <b>gaming</b> [68] 3:19 4:8,21 5:8,20 6:4,12,19,24,25 7:1,11 9:18,20 11:20 14:2,19,24 17:7,20,25 19:19 24:9,23,25 25:3 30:19 33:5,17 35:9,24 37:1,2,5,8 38:12,13,15 39:25 40:4 41:11 45:5 49:3 50:12 52:1,18,25 53:23 56:6 57:24 67:24,25 68:17 70:11,19 71:20,20 79:18,18 83:4,15,18,24 86:19 89:24 91:9 98:5,6 <b>gather</b> [1] 95:4 <b>gauntlet</b> [1] 30:21 <b>gave</b> [3] 14:4 24:19 71:16 <b>General</b> [7] 1:20,24 17:21 41:19 50:13 52:2 63:22 <b>generally</b> [12] 48:8 53:10 55:10 57:4 60:17 62:21 64:19 65:5 68:7,24 87:9 94:6 <b>generator</b> [1] 29:13 <b>genuine</b> [1] 19:7 <b>gets</b> [4] 28:9 29:21 58:20 86:8 <b>getting</b> [2] 87:7 89:21 <b>give</b> [10] 33:5,9 34:14 46:5,6 52:7 67:23 71:6 73:3 77:9 <b>given</b> [6] 38:23 76:3 79:13,13,14 83:12 <b>gives</b> [1] 21:5 <b>GORSUCH</b> [33] 17:5,14,16 18:2,13,18,23 34:4 41:23 42:20 44:2,4,8 45:6 46:8 49:24 50:7 61:12,13,18 86:20 87:5,11,25 88:3,8,12,18 89:19 90:5,10 91:1 94:22 <b>Gorsuch's</b> [3] 20:4 47:12 50:21 <b>got</b> [3] 5:3 50:8 66:11 <b>govern</b> [1] 98:7 <b>governing</b> [3] 44:21,23 45:5	<b>H</b>			
<b>H.R</b> [1] 54:6 <b>half</b> [1] 49:5 <b>halls</b> [1] 86:14 <b>hand</b> [1] 75:19 <b>handed</b> [2] 8:20,22 <b>happened</b> [3] 9:6,6 52:20 <b>happening</b> [1] 10:6 <b>happens</b> [1] 82:8 <b>happy</b> [2] 7:9 79:11 <b>hard</b> [2] 50:4,14 <b>harder</b> [2] 51:5,7 <b>heading</b> [1] 84:24 <b>hear</b> [2] 3:3 46:8 <b>heard</b> [3] 46:11 68:22 80:7 <b>hearing</b> [2] 28:19 39:7 <b>hearkening</b> [1] 12:18 <b>heavily</b> [1] 82:9 <b>heels</b> [2] 3:22 41:17 <b>help</b> [3] 12:11 32:23 60:1 <b>helps</b> [3] 12:13 28:15 79:9 <b>hereby</b> [1] 6:14 <b>herein</b> [1] 20:16 <b>hesitant</b> [1] 18:11 <b>high</b> [1] 58:18 <b>high-stakes</b> [2] 66:4 72:2 <b>higher</b> [1] 51:9 <b>hinges</b> [1] 88:19 <b>historic</b> [2] 95:15,15 <b>historically</b> [1] 55:19 <b>history</b> [7] 7:17 8:3,4 37:20 55:14,16 56:10 <b>home</b> [1] 84:10 <b>honest</b> [1] 30:17 <b>honestly</b> [1] 60:10 <b>Honor</b> [75] 5:14,18,25 6:11,21 7:24 8:7,17 9:2,21 10:12,17 11:15,23 12:14 13:14 14:1,15 15:2,10,17 16:1,6,10,21 17:4,22 18:10,22 19:12 20:11 21:8,11,17,23 23:7,15,25 24:11 25:10,25	<b>I</b>			

## Official - Subject to Final Review

<p><b>issues</b> [4] 17:13 29:10 85:11 86:14</p> <p><b>Itasca</b> [1] 12:20</p> <p><b>itself</b> [8] 6:12 18:7 31:19 34:18 65:13 88:16 90:18, 22</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>judge</b> [1] 84:6</p> <p><b>juris</b> [1] 25:15</p> <p><b>jurisdiction</b> [49] 4:7 5:12, 17,22 12:8,9,17,23 13:4 15:5,15 18:5 19:9 20:2 21:5 37:12,16 48:4,5,10,11,16, 21 66:7,25 67:7,14 69:18 70:24 73:19 76:24,25 77:1, 5,9 78:4,7,11,13,17,21 79:9 83:12 84:15 97:2,3,5,7,8</p> <p><b>jurisdictional</b> [1] 97:1</p> <p><b>jurisprudence</b> [2] 55:17, 24</p> <p><b>Justice</b> [273] 1:21 3:3,9 5:11,15,23 6:5,9,16 7:3,4 8:23 9:22,23,25 10:1,13,22, 24 12:3 13:5,20 14:7,21,23 15:8,12,20,22 16:2,7,12,25 17:2,5,14,16 18:2,13,18,23, 25 20:3,4,10 21:2,10,12,18, 20,25 22:7,12,17,24 23:3, 11,17,19,20 24:2,12,13,13, 15 25:12,16,20 26:4,6,9,12, 17,18,18,19 27:3,6,8,13,19, 22,25 28:22 29:6 30:7,24, 24 31:1,2,3,22,23 32:12 34:3,3,5,6,8,10,11,12,14 35:17,25 36:2,3,7,15,16,22 37:24 38:4,8 39:4,11 40:6,12 41:23 42:20 43:12,15 44:1, 2,3,4,7,8 45:6,7,8,18,22,24 46:8 47:11,12,13 48:6 49:9,24,25 50:7,20,21,23 51:12 52:7 53:14,15,16,17,17, 19,20 54:9,12,15,21,24 55:2,5 56:7,19,19,21 57:4,9, 12,17,25 58:22 59:9,11,11, 12,14,23 60:9 61:11,11,13, 18 62:2,2,4,5,6,15 63:8 64:5,6,6,8,13,25 65:8,17,18, 21,25 67:11,22 68:3,18,25 69:7,20,24 70:2,7,13,17 71:5,8,13 72:13 73:20 74:3,22 75:15 76:7,22 77:13 79:13, 22 80:21,24 82:6,18 83:10 84:11,12 85:14 86:20 87:5, 11,25 88:3,8,12,17,18 89:3, 19 90:5,10 91:1,2,7,16,22, 25 92:8,12,18,25 93:2,3,4, 5,20 94:20,20,22,23,24 95:17,25 96:1,6 97:17 98:10</p> <p><b>Justice's</b> [2] 41:24 71:21</p> <p><b>Justices</b> [1] 96:10</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>KAGAN</b> [23] 10:22 12:3 13:</p>	<p>5 20:3,10 21:2,10,12 31:1, 2,22 32:12 48:6 51:12 59:11,12 60:9 67:11 76:7,22 80:24 84:11 85:14</p> <p><b>Kagan's</b> [1] 62:5</p> <p><b>Kavanaugh</b> [12] 34:5 47:11 62:3,4,15 63:8 64:5,13 79:13,22 82:6,18</p> <p><b>Kavanaugh's</b> [2] 50:1 88:17</p> <p><b>key</b> [1] 74:3</p> <p><b>Kickapoo</b> [4] 29:19 91:8 92:3,4</p> <p><b>kind</b> [13] 11:2 12:5 28:3 46:21 59:25 60:9,12,14,22 61:1 62:8 64:23 76:25</p> <p><b>kinds</b> [4] 43:14 60:5 76:25 84:21</p> <p><b>knows</b> [2] 13:8 16:24</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>label</b> [1] 65:11</p> <p><b>land</b> [2] 46:7 54:2</p> <p><b>lands</b> [10] 6:15 24:23 40:10 41:8 43:3 44:23 60:25 63:1 64:2 79:19</p> <p><b>language</b> [30] 3:20,23 4:19 11:2,18 13:16 25:23 37:4 41:18 42:1 49:17,23 52:4 53:22 54:4,8,15,18 56:4 72:12,16,19,25 73:1 81:14 82:3 87:20 88:15 90:20 97:24</p> <p><b>LANORA</b> [3] 1:24 2:10 65:22</p> <p><b>larger</b> [4] 67:19 71:17 73:6 79:5</p> <p><b>last</b> [1] 21:19</p> <p><b>later</b> [2] 38:21 52:4</p> <p><b>Laughter</b> [6] 18:16 22:14 27:2 29:8 32:8,13</p> <p><b>law</b> [84] 4:2 6:4,7,17 8:24 9:3 10:4 13:9 23:22 24:17 25:2 30:1,3 33:6,25 34:19, 20,25 35:4,7,19,19 36:9,25 37:3,9,14 39:24 41:1 43:2, 5,14,16 44:21,22 45:5 47:2, 5,7 48:4,23,24 49:4,12,14 50:16 51:24 52:13,19 53:1, 8,9 56:25 57:21 59:4 60:23 61:3 63:5 64:1 66:14, 19 67:5,10,23 69:3,16 71:4, 18 72:3 76:3,17,18 78:15 79:17 81:17 84:5 86:13 87:3 89:8 90:17 93:19 95:18 96:21 97:3</p> <p><b>laws</b> [26] 6:13,19 7:14 16:17 30:2 35:8 36:13,13 53:24 57:7,15,22 67:25 69:5 72:8,10,14 73:22,23 78:5 82:20,20,22 84:2 92:24 93:6</p> <p><b>lay</b> [1] 46:7</p> <p><b>least</b> [2] 63:25 76:1</p>	<p><b>left</b> [1] 74:13</p> <p><b>legal</b> [1] 50:13</p> <p><b>legally</b> [1] 23:22</p> <p><b>legislation</b> [5] 7:22 16:14 37:22 48:12 51:21</p> <p><b>legislative</b> [8] 7:17 8:3,4 37:20 66:16 78:6,20 91:21</p> <p><b>legitimate</b> [1] 47:8</p> <p><b>length</b> [1] 86:21</p> <p><b>Lenity</b> [2] 55:14 62:17</p> <p><b>less</b> [2] 33:9 90:14</p> <p><b>level</b> [2] 40:18,21</p> <p><b>license</b> [1] 12:19</p> <p><b>lies</b> [1] 30:20</p> <p><b>light</b> [6] 7:5,6 74:11,13 75:1 79:2</p> <p><b>lightly</b> [2] 61:14,20</p> <p><b>lights</b> [1] 22:22</p> <p><b>limit</b> [2] 37:16 59:5</p> <p><b>limitations</b> [1] 83:22</p> <p><b>limited</b> [5] 43:7 57:21 70:24 94:13 97:5</p> <p><b>limiting</b> [1] 86:15</p> <p><b>limits</b> [3] 37:14,15 67:19</p> <p><b>line</b> [4] 64:9 91:14 96:13,14</p> <p><b>lines</b> [4] 32:16 33:16 43:17 71:14</p> <p><b>linked</b> [1] 73:13</p> <p><b>litigation</b> [1] 72:24</p> <p><b>little</b> [1] 75:16</p> <p><b>live</b> [1] 33:19</p> <p><b>live-called</b> [1] 23:8</p> <p><b>living</b> [1] 89:6</p> <p><b>loaded</b> [1] 84:7</p> <p><b>logic</b> [1] 87:11</p> <p><b>long</b> [5] 41:2 43:24 55:14, 16 65:3</p> <p><b>longer</b> [1] 85:9</p> <p><b>look</b> [12] 12:4 22:13,23 41:19,20 48:14 49:12 51:14, 17 72:17 74:12 89:5</p> <p><b>looking</b> [4] 5:18 15:13 72:20 74:9</p> <p><b>looks</b> [6] 7:20 21:22 22:3,5, 8,9</p> <p><b>lose</b> [3] 15:8,11 76:13</p> <p><b>lost</b> [1] 94:25</p> <p><b>lot</b> [8] 8:2 34:16 39:2,3 51:4 80:7 86:4 97:13</p> <p><b>lotteries</b> [1] 94:19</p> <p><b>lottery</b> [4] 7:11 53:23 68:11 93:16</p> <p><b>love</b> [1] 46:8</p> <p><b>low-stakes</b> [2] 71:22 72:2</p> <p><b>lower</b> [1] 89:11</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>machine</b> [11] 19:2,10,14 21:22 22:3,5,10,13 23:13 27:9 31:7</p> <p><b>machines</b> [7] 23:15 24:16 26:22 31:16 32:3 95:5,8</p> <p><b>made</b> [7] 9:4,18 11:6 32:23 66:10 69:2 78:10</p>	<p><b>major</b> [1] 59:22</p> <p><b>manner</b> [1] 3:13</p> <p><b>many</b> [5] 13:21,23 54:23 58:14 89:15</p> <p><b>March</b> [1] 8:8</p> <p><b>MARTIN</b> [89] 1:18 2:3,13 3:6,7,9 5:14,18,25 6:6,11,18 7:24 9:2 10:12,17,23 11:15 12:13 13:14,25 14:15, 22 15:2,10,17,21 16:1,5,10, 21,25 17:1,4,10,15,21 18:9, 17,21 19:12 20:3,9,11 21:8, 11,15,23 22:1,9,15,19 23:1, 6,14,23 24:5 25:10,13,17, 25 26:5,8,11,13 27:5,7,10, 16,21,23 28:7 29:3,9 30:14 31:2,20 32:6,9,14 34:24 35:22 36:2,5,11 75:16 96:3,4,6</p> <p><b>Massachusetts</b> [1] 88:21</p> <p><b>matching</b> [1] 95:12</p> <p><b>materia</b> [1] 49:14</p> <p><b>math</b> [1] 29:13</p> <p><b>matter</b> [11] 1:13 25:2 38:22 39:24 41:18 69:21 70:21 71:3 81:16 86:11 90:23</p> <p><b>mean</b> [37] 7:4,15,19,20 9:16 10:4 12:4 13:23 16:3 21:13,23 25:5 27:14 31:8, 17 32:4 34:16 40:19 44:18, 20,20 45:15 48:10 50:23 55:9,11 59:23 60:9 68:21 74:16 77:24 79:22 84:13, 13,22 85:20 86:3</p> <p><b>meaning</b> [11] 4:9 14:13 15:18 38:24 48:1 49:12 51:4 70:15 76:4 77:10 78:22</p> <p><b>meanings</b> [2] 15:14 39:3</p> <p><b>means</b> [4] 39:14 49:2 68:8 97:4</p> <p><b>mean</b> [2] 11:21 77:19</p> <p><b>Meanwhile</b> [1] 5:6</p> <p><b>mechanism</b> [3] 35:14 36:10,12</p> <p><b>medical</b> [1] 40:21</p> <p><b>meet</b> [1] 71:9</p> <p><b>members</b> [1] 79:15</p> <p><b>mens</b> [1] 62:13</p> <p><b>mentioned</b> [1] 75:9</p> <p><b>mere</b> [2] 39:11 69:8</p> <p><b>merely</b> [1] 30:13</p> <p><b>method</b> [2] 38:14 46:22</p> <p><b>mid-2000s</b> [1] 79:7</p> <p><b>middle</b> [1] 31:12</p> <p><b>midnight</b> [1] 86:15</p> <p><b>might</b> [3] 47:22 80:24 84:6</p> <p><b>military</b> [1] 39:13</p> <p><b>Mills</b> [2] 63:20 83:5</p> <p><b>mind</b> [4] 11:13 26:23 30:10 56:22</p> <p><b>mine</b> [1] 43:20</p> <p><b>mining</b> [1] 46:25</p> <p><b>minute</b> [1] 52:8</p> <p><b>minutes</b> [2] 52:4 80:22</p>	<p><b>mirror</b> [1] 12:6</p> <p><b>mirroring</b> [1] 37:4</p> <p><b>misread</b> [1] 29:24</p> <p><b>misspoke</b> [2] 84:13 90:16</p> <p><b>modifies</b> [1] 14:19</p> <p><b>money</b> [2] 47:6 86:15</p> <p><b>month</b> [1] 33:21</p> <p><b>months</b> [5] 14:1 16:8 36:24 51:15 56:3</p> <p><b>Moreover</b> [1] 78:9</p> <p><b>morning</b> [1] 3:4</p> <p><b>most</b> [3] 31:10 81:7 85:11</p> <p><b>mother</b> [1] 29:9</p> <p><b>Ms</b> [53] 65:21,24 68:2,6,23 69:14 70:6,11,16,23 71:7, 12,15 72:20 74:2 75:5,23 76:7,21 78:2 79:21 80:6 82:15,20 83:10,20 84:25 86:6,25 87:10,16 88:2,5,10, 15,23 89:3,11,22 90:9,16 91:4,15,20,24 92:2,10,15, 21 93:14 94:1 95:7,19</p> <p><b>much</b> [14] 7:21,25 12:5 18:15 28:18 33:21 51:7,9,18 73:3 76:11 82:3 91:5 92:5</p> <p><b>multiple</b> [1] 77:24</p> <p><b>must</b> [1] 4:8</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>name</b> [1] 22:17</p> <p><b>namely</b> [1] 86:10</p> <p><b>narrower</b> [1] 72:18</p> <p><b>narrowly</b> [1] 47:18</p> <p><b>nations</b> [2] 63:18 64:4</p> <p><b>natural</b> [1] 10:10</p> <p><b>nearly</b> [1] 80:19</p> <p><b>necessarily</b> [3] 78:14 80:17 88:11</p> <p><b>necessary</b> [4] 73:2,4 87:1, 20</p> <p><b>necessitated</b> [2] 85:6 86:9</p> <p><b>need</b> [9] 14:18 41:6 55:21 56:24 63:2,9 80:3,3 87:21</p> <p><b>negative</b> [2] 42:21 44:14</p> <p><b>negotiation</b> [1] 17:23</p> <p><b>neutral</b> [2] 84:6,8</p> <p><b>never</b> [1] 8:15</p> <p><b>next</b> [3] 40:14 59:20 93:24</p> <p><b>NIGC</b> [6] 18:1 29:18,22 42:15 58:19,20</p> <p><b>nominally</b> [1] 89:16</p> <p><b>non-charitable</b> [1] 84:19</p> <p><b>non-prohibited</b> [1] 4:21</p> <p><b>nor</b> [1] 35:2</p> <p><b>normal</b> [4] 10:25 11:8,14 14:10</p> <p><b>normally</b> [3] 45:10,12 81:2</p> <p><b>not-for-profit</b> [2] 70:22 71:11</p> <p><b>not-for-profits</b> [1] 58:23</p> <p><b>noted</b> [2] 67:11 69:1</p> <p><b>nothing</b> [2] 20:16 49:1</p> <p><b>number</b> [7] 19:24 28:12 29:13 80:15 81:4 82:25 84:17</p>
--	--	--	---	---



## Official - Subject to Final Review

<p><b>numbers</b> [6] 19:4 23:4 46:16,17,19 95:12</p> <p style="text-align: center;"><b>O</b></p> <p><b>object</b> [1] 92:16</p> <p><b>obvious</b> [4] 79:15 82:7,7,10</p> <p><b>obviously</b> [2] 7:9 19:13</p> <p><b>odd</b> [4] 7:15 74:12 75:2 83:19</p> <p><b>offense</b> [2] 57:24 70:25</p> <p><b>offer</b> [2] 33:9 66:12</p> <p><b>office</b> [1] 40:13</p> <p><b>officer</b> [5] 53:13 78:14 92:16,19,20</p> <p><b>official</b> [1] 17:15</p> <p><b>offsite</b> [1] 83:8</p> <p><b>okay</b> [20] 10:6 18:2 23:17 24:24 26:4,17,17 27:13 34:11 36:15 38:4 40:22 52:9 54:21 55:4 58:3 65:17 74:1,11 88:12</p> <p><b>old</b> [1] 97:24</p> <p><b>once</b> [4] 37:21 51:20 81:6 84:18</p> <p><b>one</b> [45] 4:17 6:20,22 8:6 9:10,11 11:18 13:22 17:13 18:2 21:19 23:9,20 24:18 29:21 30:7,8 31:7 32:20 35:10 44:22 46:16 47:2 48:1 50:20 52:17 55:7 56:15 61:3,15 62:10 70:4 72:15 76:5,15,15 81:12 86:10 88:13 91:10 92:11 94:24 95:14,24 97:10</p> <p><b>ones</b> [2] 44:15 85:13</p> <p><b>ongoing</b> [1] 68:13</p> <p><b>only</b> [11] 4:2 17:24 29:19 32:20 35:20 36:7 58:23 59:4 65:5 75:6 83:20</p> <p><b>open</b> [1] 58:4</p> <p><b>opens</b> [1] 85:24</p> <p><b>operate</b> [2] 23:21 59:5</p> <p><b>operating</b> [1] 91:9</p> <p><b>operationalizes</b> [1] 40:3</p> <p><b>operations</b> [2] 23:7,8</p> <p><b>operative</b> [2] 8:10 9:16</p> <p><b>opining</b> [1] 20:21</p> <p><b>opinion</b> [5] 12:16 30:16 38:23 47:21 63:20</p> <p><b>opinions</b> [1] 11:18</p> <p><b>opioid</b> [3] 32:11,14 33:14</p> <p><b>opioids</b> [1] 30:11</p> <p><b>opposed</b> [1] 79:6</p> <p><b>opposing</b> [1] 87:2</p> <p><b>opposite</b> [1] 94:8</p> <p><b>opposition</b> [2] 52:12 53:7</p> <p><b>oral</b> [7] 1:14 2:2,5,9 3:7 36:19 65:22</p> <p><b>order</b> [2] 33:6 86:13</p> <p><b>ordinary</b> [3] 15:14,18 51:4</p> <p><b>organization</b> [4] 24:4 69:10 82:1 90:1</p> <p><b>organizations</b> [4] 23:25</p>	<p>39:14 69:12 84:19</p> <p><b>organized</b> [1] 66:6</p> <p><b>origin</b> [1] 56:8</p> <p><b>original</b> [1] 56:15</p> <p><b>originally</b> [1] 75:11</p> <p><b>other</b> [26] 4:18 17:13 20:8 29:19 32:15 33:15 47:17 51:14 55:7 59:22 66:13 67:16 69:12 72:14,15 74:10,24 75:18 76:6 77:14 79:22 80:15 84:16 85:21 91:18 97:10</p> <p><b>others</b> [1] 42:10</p> <p><b>otherwise</b> [2] 76:10 82:23</p> <p><b>out</b> [29] 4:13 8:7 15:13 19:4 20:8 21:14,16 23:3 24:8 28:20 29:19,25 30:6 31:13 35:8,13 47:6 55:22 58:8 60:7 64:13 69:20 74:17 83:25 86:8 91:11 97:17,18 98:1</p> <p><b>outlawed</b> [1] 69:11</p> <p><b>outside</b> [2] 38:2 73:25</p> <p><b>outside</b> [4] 59:13 70:23 90:19 93:18</p> <p><b>over</b> [13] 3:19 4:8,17 12:23 25:6 35:9 40:13 51:13,18 59:19 71:23 77:20 97:9</p> <p><b>overlooked</b> [1] 33:2</p> <p><b>overlooks</b> [1] 67:1</p> <p><b>overly</b> [1] 44:25</p> <p><b>override</b> [2] 42:23 47:14</p> <p><b>overruling</b> [1] 42:6</p> <p><b>oversight</b> [3] 67:16 68:14 84:16</p> <p><b>overturn</b> [3] 86:23 87:22 88:1</p> <p><b>overturning</b> [1] 89:20</p> <p><b>own</b> [2] 29:9 73:5</p> <p style="text-align: center;"><b>P</b></p> <p><b>PAGE</b> [7] 2:2 8:17 49:18 52:25 54:5,7 76:10</p> <p><b>pages</b> [1] 65:14</p> <p><b>paid</b> [1] 47:6</p> <p><b>parallels</b> [1] 43:9</p> <p><b>pari</b> [1] 49:14</p> <p><b>part</b> [6] 8:13 23:7 55:23 57:3 59:1 89:23</p> <p><b>Parte</b> [1] 18:4</p> <p><b>participate</b> [1] 69:9</p> <p><b>particular</b> [5] 8:25 26:21 81:1 86:10 95:13</p> <p><b>particularly</b> [1] 41:16</p> <p><b>parties</b> [2] 72:23 73:2</p> <p><b>party</b> [1] 84:5</p> <p><b>passed</b> [12] 7:23 8:15,24 9:3 11:12 16:14,16,19 72:14 75:24 76:2 77:14</p> <p><b>password</b> [3] 70:18 71:6,15</p> <p><b>passwords</b> [4] 68:12 70:5 96:15,16</p> <p><b>path</b> [1] 75:3</p>	<p><b>patrons</b> [1] 38:5</p> <p><b>pattern</b> [4] 6:3,8 29:15 95:13</p> <p><b>peace</b> [3] 92:16,18,20</p> <p><b>pedigree</b> [1] 64:2</p> <p><b>penalties</b> [4] 66:24 73:16 75:9,12</p> <p><b>people</b> [11] 14:12 19:3 22:25 23:1,4 28:3 29:1 38:15 68:13 74:24 80:1</p> <p><b>perfectly</b> [1] 10:10</p> <p><b>perhaps</b> [3] 42:6 74:24 75:3</p> <p><b>permanent</b> [1] 81:10</p> <p><b>permission</b> [1] 92:17</p> <p><b>permit</b> [1] 58:23</p> <p><b>permits</b> [4] 40:4 81:25 89:25,25</p> <p><b>permitted</b> [6] 7:13 39:8,9,12 40:17 94:6</p> <p><b>person</b> [8] 10:10 27:25 40:4 82:1 85:21 90:1,20 95:12</p> <p><b>personal</b> [2] 40:21 92:23</p> <p><b>Petitioners</b> [9] 1:4,19,23 2:4,8,14 3:8 36:21 96:5</p> <p><b>PETTIT</b> [56] 1:24 2:10 65:21,22,24 68:2,6,23 69:14 70:6,11,16,23 71:7,12,15 72:20 74:2 75:5,23 76:7,21 78:2 79:21 80:6 82:15,20 83:10,20 84:25 86:6,25 87:10,16 88:2,5,10,15,23 89:3,11,22 90:9,16 91:4,15,20,24 92:2,10,15,21 93:14 94:1 95:7,19</p> <p><b>pharmaceuticals</b> [1] 80:15</p> <p><b>phrase</b> [5] 48:15 73:17 78:3,20 81:18</p> <p><b>picture</b> [1] 26:23</p> <p><b>piece</b> [2] 33:13 51:21</p> <p><b>pieces</b> [3] 87:19 88:7,10</p> <p><b>place</b> [2] 3:13 59:19</p> <p><b>places</b> [1] 77:25</p> <p><b>plain</b> [4] 3:20 4:19 62:12 63:23</p> <p><b>platonic</b> [2] 27:15,23</p> <p><b>play</b> [14] 24:18 45:11,13,13 58:14,15,24 60:18 70:5,10 71:5,8,10 92:9</p> <p><b>played</b> [3] 5:5 58:8 83:8</p> <p><b>playing</b> [4] 22:22 28:4 58:25 70:9</p> <p><b>please</b> [6] 3:10 36:23 44:6 46:10 65:25 96:7</p> <p><b>pleased</b> [1] 5:9</p> <p><b>plenary</b> [1] 32:21</p> <p><b>podium</b> [1] 18:15</p> <p><b>point</b> [17] 7:8 8:7 9:9 28:20 35:13 38:19 41:24 55:3,6 76:14 78:9,15 81:13 89:13 97:17,18 98:1</p> <p><b>pointed</b> [3] 64:13 69:20 83:</p>	<p>25</p> <p><b>pointing</b> [1] 16:13</p> <p><b>points</b> [1] 96:7</p> <p><b>police</b> [1] 83:17</p> <p><b>policy</b> [10] 25:3 39:24 69:17,21 81:17 86:12,18 89:18 90:24 94:9</p> <p><b>posed</b> [1] 25:19</p> <p><b>position</b> [9] 51:1 74:12 85:15,20,22,25 95:5 96:19,19</p> <p><b>positive</b> [1] 44:15</p> <p><b>possess</b> [1] 40:19</p> <p><b>possession</b> [1] 40:16</p> <p><b>possibility</b> [1] 18:5</p> <p><b>possible</b> [3] 47:17,23 67:4</p> <p><b>post-Arbaugh</b> [2] 48:9 78:10</p> <p><b>post-Cabazon</b> [1] 50:14</p> <p><b>post-enactment</b> [1] 7:18</p> <p><b>potentially</b> [1] 42:18</p> <p><b>power</b> [4] 32:21 41:8 77:11 78:5</p> <p><b>pre-clearance</b> [1] 85:3</p> <p><b>pre-enactment</b> [1] 7:18</p> <p><b>precedent</b> [1] 72:9</p> <p><b>precise</b> [3] 19:22 72:18 81:8</p> <p><b>precisely</b> [1] 89:15</p> <p><b>preclude</b> [1] 20:16</p> <p><b>predecessor</b> [1] 75:21</p> <p><b>preexisting</b> [4] 20:19 53:12 72:23 73:18</p> <p><b>prepared</b> [1] 65:11</p> <p><b>prepping</b> [1] 33:22</p> <p><b>prescription</b> [1] 30:12</p> <p><b>presented</b> [3] 45:2 47:10 69:6</p> <p><b>presents</b> [2] 3:11 31:4</p> <p><b>preserve</b> [1] 41:6</p> <p><b>pressed</b> [1] 75:16</p> <p><b>pressing</b> [1] 43:17</p> <p><b>presume</b> [2] 13:8 58:1</p> <p><b>presumption</b> [2] 13:12 94:9</p> <p><b>pretty</b> [7] 21:21 50:4 51:18 56:2,3 58:18 75:21</p> <p><b>prevail</b> [2] 17:6 20:5</p> <p><b>prevails</b> [2] 21:7 53:10</p> <p><b>prevent</b> [1] 5:4</p> <p><b>previous</b> [3] 6:22 8:1 85:1</p> <p><b>previously</b> [1] 87:21</p> <p><b>primarily</b> [1] 53:7</p> <p><b>primary</b> [3] 46:13,15 66:20</p> <p><b>Principal</b> [1] 1:24</p> <p><b>principle</b> [5] 41:5,9 60:22 62:23 63:15</p> <p><b>principles</b> [3] 61:2,24 65:15</p> <p><b>prior</b> [2] 38:22 75:25</p> <p><b>pro</b> [1] 35:22</p> <p><b>problem</b> [11] 4:10 24:22 25:5,11 41:13 45:9 47:3,7 69:17 92:7 96:18</p> <p><b>problematic</b> [3] 90:14,14,</p>	<p>18</p> <p><b>problems</b> [2] 43:16,22</p> <p><b>proceeding</b> [1] 18:19</p> <p><b>process</b> [1] 63:12</p> <p><b>profit</b> [3] 58:24 69:12 84:20</p> <p><b>prohibit</b> [33] 3:15 13:17,20,21 15:17 16:18 25:3,6,6 39:25 40:22 41:20,22 43:18 44:11 49:17 51:6,15,16 52:18 57:22 72:16 73:8,21 75:12 76:8,12 81:5,11,21,25 82:5 89:7</p> <p><b>prohibited</b> [67] 4:2,4 5:5 6:4,13,14,19 7:1,12 9:18,20 10:3,11,25 11:4,8,9,14,24 14:10,12,17,18,19 15:1,4,14,24 16:4 19:19 24:3,9 25:14 26:12,16 27:5 30:12 35:5,23 36:1 37:1,9,25 38:2,2,6,13,14 39:14 40:15,19 49:3,6 52:19,25 54:1 57:24 69:23 70:20,21 71:3 73:22 93:13,17,17,19 94:7</p> <p><b>prohibiting</b> [3] 16:20 59:7 73:25</p> <p><b>prohibition</b> [22] 27:11 31:10,13 38:9,10 42:4 58:18 68:4,7,10,17,20,23 69:13,15,20 70:9 82:3,3 86:22 87:8 91:14</p> <p><b>prohibitions</b> [4] 35:21 73:16,23 93:16</p> <p><b>prohibitory</b> [7] 6:19 71:25 73:15 89:1,14,16 90:3</p> <p><b>prohibitory/</b> [2] 3:24 90:17</p> <p><b>prohibitory/regulatory</b> [5] 4:24 40:1 41:12 76:19 77:17</p> <p><b>prohibits</b> [3] 27:3 31:11 81:16</p> <p><b>proper</b> [4] 17:11 30:6 65:11 75:1</p> <p><b>prosecution</b> [2] 70:25 94:14</p> <p><b>provide</b> [2] 7:10 53:22</p> <p><b>provides</b> [2] 3:20 37:10</p> <p><b>providing</b> [1] 58:11</p> <p><b>provision</b> [3] 52:2,3 59:4</p> <p><b>provisions</b> [2] 39:19 49:17</p> <p><b>Public</b> [32] 6:6 25:2 33:25 34:25 36:9,25 37:14 39:24 41:1,3 43:5,16 44:22 48:4,24 50:16 51:24 67:10 69:3,17,21 76:17,18 81:17 86:12,17 89:8,17 90:17,24 94:9 97:3</p> <p><b>published</b> [1] 78:16</p> <p><b>PUEBLO</b> [4] 1:3 3:5,12 17:12</p> <p><b>Pueblos</b> [1] 17:8</p> <p><b>purpose</b> [5] 24:9 40:5 81:25 90:1,20</p> <p><b>pursuant</b> [4] 52:24 53:3 71:2 91:9</p>
--	--	---	---	---

<p><b>pursuing</b> <sup>[1]</sup> 75:2  <b>pushing</b> <sup>[1]</sup> 22:21  <b>put</b> <sup>[6]</sup> 28:24 33:20 47:5 58:17 65:11 98:3  <b>puzzled</b> <sup>[1]</sup> 26:19</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>QP</b> <sup>[1]</sup> 46:3  <b>qualified</b> <sup>[1]</sup> 29:2  <b>quasi-constitutional</b> <sup>[1]</sup> 63:12  <b>question</b> <sup>[42]</sup> 3:11 11:10, 23 13:6 18:3 19:1 20:4 21:19 29:4,4 30:8,17 31:16 34:9 45:1,2,10,12,25 47:8 50:1,21 55:7,11 56:8 59:15 62:5 69:6 75:2 76:11, 24 82:11 86:9 87:4 91:2,6 94:3,4,25 95:2,22 96:9  <b>questioning</b> <sup>[1]</sup> 64:9  <b>questions</b> <sup>[16]</sup> 5:10 29:10 31:6 32:15,15,17 33:23 47:13,25 53:16 58:21 59:22 67:21 83:1 97:1 98:9  <b>quick</b> <sup>[3]</sup> 18:3 44:9 96:7  <b>quinte</b> <sup>[1]</sup> 17:1  <b>quite</b> <sup>[4]</sup> 31:5 48:12 65:3 87:7  <b>quoted</b> <sup>[1]</sup> 87:21</p>	<p>78:24  <b>references</b> <sup>[1]</sup> 97:23  <b>referencing</b> <sup>[1]</sup> 23:24  <b>referred</b> <sup>[1]</sup> 95:10  <b>referring</b> <sup>[2]</sup> 74:4 78:4  <b>refers</b> <sup>[2]</sup> 73:22,24  <b>reflect</b> <sup>[4]</sup> 9:15 61:2 63:11, 14  <b>reflected</b> <sup>[1]</sup> 8:21  <b>reflects</b> <sup>[5]</sup> 5:2 9:13 53:6 63:6,17  <b>regardless</b> <sup>[2]</sup> 7:12 8:25  <b>regime</b> <sup>[2]</sup> 85:3,10  <b>regulate</b> <sup>[12]</sup> 12:19 16:18 39:23 43:18 44:11 57:15 61:22 72:17 73:8 89:8 92:4 96:18  <b>regulated</b> <sup>[9]</sup> 20:6 30:13 36:4 37:2,25 39:7 49:6,16 93:13  <b>regulates</b> <sup>[1]</sup> 82:9  <b>regulating</b> <sup>[3]</sup> 16:20 59:7 79:18  <b>regulation</b> <sup>[24]</sup> 5:8 12:1 25:8,9 31:10,11,14 33:8 38:5, 8 39:22 42:5 67:24 68:8, 15,20,25 69:2 70:3 71:16 80:14 86:22 87:9 96:17  <b>regulations</b> <sup>[12]</sup> 16:17,18, 23 30:2 35:8 53:25 72:8, 10 82:9,22 83:23 85:13  <b>regulatory</b> <sup>[50]</sup> 3:18,25 4:7 10:20 12:17,21 15:5,15,25 16:3 24:1 25:15 26:10 33:24 37:11,16 41:8 48:16,21 49:4 58:11 60:25 63:1 66:25 67:14,23 71:18,24 73:14,19,25 76:24 77:5,9,10 78:3,4 83:9,14 84:15 86:17 89:1,15 90:3,18 91:13 96:13,14,20,23  <b>related</b> <sup>[1]</sup> 5:8  <b>relates</b> <sup>[2]</sup> 3:14 86:3  <b>relating</b> <sup>[2]</sup> 68:17 80:12  <b>relationship</b> <sup>[1]</sup> 55:19  <b>relevant</b> <sup>[2]</sup> 21:20 94:3  <b>relief</b> <sup>[1]</sup> 20:15  <b>relies</b> <sup>[1]</sup> 37:20  <b>relying</b> <sup>[2]</sup> 11:1 15:23  <b>remains</b> <sup>[1]</sup> 42:9  <b>remanded</b> <sup>[2]</sup> 28:9 95:1  <b>remands</b> <sup>[1]</sup> 19:15  <b>remedy</b> <sup>[1]</sup> 20:24  <b>remember</b> <sup>[3]</sup> 32:22 48:19 98:2  <b>remind</b> <sup>[1]</sup> 38:19  <b>removed</b> <sup>[1]</sup> 37:22  <b>repeal</b> <sup>[1]</sup> 87:22  <b>replicate</b> <sup>[1]</sup> 3:24  <b>report</b> <sup>[5]</sup> 74:18 75:6,6,8 97:22  <b>reporting</b> <sup>[1]</sup> 67:17  <b>Representative</b> <sup>[1]</sup> 97:18  <b>request</b> <sup>[3]</sup> 8:10 9:16 52:</p>	<p>16  <b>require</b> <sup>[1]</sup> 42:19  <b>required</b> <sup>[2]</sup> 58:5 70:4  <b>requirement</b> <sup>[2]</sup> 70:18,18  <b>requirements</b> <sup>[2]</sup> 67:17 71:10  <b>requires</b> <sup>[3]</sup> 47:5 85:15 96:19  <b>research</b> <sup>[1]</sup> 56:13  <b>reservation</b> <sup>[4]</sup> 6:15 54:1 57:1 79:19  <b>resolu</b> <sup>[1]</sup> 33:7  <b>resolution</b> <sup>[24]</sup> 7:7,21,25 8:8,22,25 33:4 50:19 52:6,10, 14,16,23,24 53:3,5,21 54:20,22 56:22 57:13 74:6 75:17,24  <b>respect</b> <sup>[9]</sup> 35:21,23 40:9, 24 41:14 48:6,7 52:1 73:16  <b>respectfully</b> <sup>[4]</sup> 12:25 75:13 81:7 87:17  <b>respects</b> <sup>[1]</sup> 52:11  <b>respond</b> <sup>[1]</sup> 34:15  <b>responded</b> <sup>[1]</sup> 77:13  <b>Respondent</b> <sup>[4]</sup> 1:7,25 2:11 65:23  <b>responding</b> <sup>[2]</sup> 30:22 79:25  <b>response</b> <sup>[9]</sup> 33:10 34:2 54:4 75:24 88:17 92:3 96:8,25 98:8  <b>responses</b> <sup>[1]</sup> 80:6  <b>responsive</b> <sup>[1]</sup> 30:18  <b>restates</b> <sup>[1]</sup> 37:14  <b>Restoration</b> <sup>[33]</sup> 3:12,16, 24 4:20 5:1 8:14 16:15 17:11 21:1 24:6 29:23 30:5, 15,23 34:2,18,20,23 35:18 36:9,14 44:12 45:3 66:11, 22 69:6 73:7,9 81:19 85:4, 6,8 95:19  <b>restriction</b> <sup>[2]</sup> 11:25 86:11  <b>restrictions</b> <sup>[3]</sup> 3:13 10:18 33:10  <b>retain</b> <sup>[1]</sup> 5:7  <b>rethinking</b> <sup>[2]</sup> 43:11 45:1  <b>retooled</b> <sup>[1]</sup> 53:2  <b>revert</b> <sup>[1]</sup> 95:3  <b>revoke</b> <sup>[1]</sup> 87:22  <b>rewrite</b> <sup>[1]</sup> 66:15  <b>rid</b> <sup>[2]</sup> 87:13 89:21  <b>risk</b> <sup>[1]</sup> 86:18  <b>ROBERTS</b> <sup>[39]</sup> 3:3 7:4 8:23 9:23 10:1,13 21:18,25 22:7,12,17,24 23:3,11,17 24:13 26:18 30:24 34:3,10, 12 36:16 40:6,12 52:7 53:14,17 56:19 59:11 61:11 62:2 64:6 65:18,21 75:15 92:25 94:20 96:1 98:10  <b>role</b> <sup>[2]</sup> 55:18 60:19  <b>room</b> <sup>[1]</sup> 19:3  <b>rule</b> <sup>[10]</sup> 38:5 47:14,17 55:</p>	<p>13 62:17 67:23 86:7 89:14 90:21,25  <b>rules</b> <sup>[1]</sup> 63:10  <b>run</b> <sup>[3]</sup> 43:20 61:8 91:13  <b>running</b> <sup>[1]</sup> 58:2</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>safe</b> <sup>[1]</sup> 18:18  <b>sale</b> <sup>[1]</sup> 30:11  <b>same</b> <sup>[47]</sup> 10:21 11:19 13:16,18,19 16:14,16 19:3,6 21:10 24:21 25:4,11 29:17 32:16 33:16 37:4,5 38:22, 24 39:17,17 41:18,18 48:15,25 49:9,11,13,16,20,22 50:11,12,13,13,17 56:5 66:13,25 67:13 77:15,15 88:21 95:20 96:21 97:7  <b>sanction</b> <sup>[1]</sup> 48:22  <b>saw</b> <sup>[1]</sup> 66:5  <b>saying</b> <sup>[14]</sup> 14:16 20:21 23:4 35:20,23 45:14 51:2,13, 14 60:4 61:20 90:7,10 91:12  <b>says</b> <sup>[21]</sup> 10:3 12:7,9,23 20:16 22:18 24:21,22 25:5 35:10 38:5 49:1,3 54:18 77:8 81:16 85:16,23 93:7 96:24 97:8  <b>scale</b> <sup>[1]</sup> 56:1  <b>Scalia</b> <sup>[1]</sup> 49:10  <b>Scalia's</b> <sup>[1]</sup> 59:24  <b>scheme</b> <sup>[2]</sup> 21:7 24:1  <b>scope</b> <sup>[1]</sup> 59:13  <b>scrap</b> <sup>[2]</sup> 87:14 94:15  <b>scrapped</b> <sup>[2]</sup> 93:5,14  <b>second</b> <sup>[6]</sup> 11:22 35:12 49:5 67:1 76:22 86:8  <b>secondly</b> <sup>[1]</sup> 16:12  <b>Section</b> <sup>[24]</sup> 3:25 4:5,6,8 6:23 19:20 36:8 37:3,7,9,10, 14,17 49:1 50:17 51:20 53:9 67:11,12 97:1,6,7 98:4,5  <b>Sections</b> <sup>[1]</sup> 4:22  <b>see</b> <sup>[4]</sup> 12:3 14:19 81:21 92:12  <b>seeing</b> <sup>[1]</sup> 58:4  <b>seem</b> <sup>[2]</sup> 25:8 87:12  <b>seemed</b> <sup>[1]</sup> 75:21  <b>seems</b> <sup>[8]</sup> 6:16 12:5 19:1 24:21 56:23 62:9 69:7 83:18  <b>seen</b> <sup>[3]</sup> 7:16 43:21 61:6  <b>selected</b> <sup>[1]</sup> 78:8  <b>self-sufficiency</b> <sup>[1]</sup> 32:25  <b>Seminole</b> <sup>[1]</sup> 16:19  <b>Senate</b> <sup>[5]</sup> 73:10 74:19 75:5,7 97:22  <b>send</b> <sup>[2]</sup> 92:16,19  <b>sending</b> <sup>[1]</sup> 4:23  <b>sense</b> <sup>[15]</sup> 13:24 14:10 17:21 21:13,16 77:6,7 78:24, 25 79:1,2 83:11,16,24 84:15</p>	<p><b>senses</b> <sup>[1]</sup> 77:2  <b>sentence</b> <sup>[3]</sup> 6:12 13:7 20:12  <b>separate</b> <sup>[2]</sup> 20:7 85:10  <b>September</b> <sup>[1]</sup> 8:18  <b>serve</b> <sup>[1]</sup> 56:23  <b>set</b> <sup>[8]</sup> 8:16 11:24,25 24:1 57:21 59:5 67:19 78:5  <b>sets</b> <sup>[1]</sup> 35:13  <b>settlement</b> <sup>[1]</sup> 72:22  <b>shall</b> <sup>[4]</sup> 7:11 20:16 49:1 53:25  <b>shed</b> <sup>[1]</sup> 74:25  <b>shorthand</b> <sup>[1]</sup> 69:17  <b>shortly</b> <sup>[1]</sup> 39:16  <b>shouldn't</b> <sup>[5]</sup> 12:10 14:25 33:2 58:24 72:17  <b>show</b> <sup>[1]</sup> 73:12  <b>showed</b> <sup>[1]</sup> 17:2  <b>showing</b> <sup>[1]</sup> 6:1  <b>side</b> <sup>[2]</sup> 5:3 12:6  <b>side's</b> <sup>[1]</sup> 85:21  <b>signage</b> <sup>[1]</sup> 83:1  <b>signal</b> <sup>[1]</sup> 4:23  <b>significant</b> <sup>[4]</sup> 52:21 57:11, 23 87:18  <b>significantly</b> <sup>[1]</sup> 57:6  <b>signs</b> <sup>[1]</sup> 58:5  <b>similar</b> <sup>[5]</sup> 43:24 49:11 61:19,23,25  <b>simply</b> <sup>[2]</sup> 36:10 81:20  <b>since</b> <sup>[3]</sup> 43:22,23 58:8  <b>single</b> <sup>[2]</sup> 75:3 89:14  <b>sister</b> <sup>[1]</sup> 64:24  <b>situation</b> <sup>[1]</sup> 98:7  <b>six</b> <sup>[5]</sup> 14:1 16:8 36:24 51:15 56:3  <b>sketch</b> <sup>[1]</sup> 46:5  <b>slicing</b> <sup>[1]</sup> 88:25  <b>slightly</b> <sup>[1]</sup> 51:1  <b>slot</b> <sup>[11]</sup> 19:10,14 21:22 22:3,5 23:12,12 31:7,16 32:2 95:8  <b>small-stakes</b> <sup>[1]</sup> 94:13  <b>Smith</b> <sup>[1]</sup> 49:10  <b>software</b> <sup>[1]</sup> 68:14  <b>Solicitor</b> <sup>[2]</sup> 1:20,24  <b>solution</b> <sup>[1]</sup> 91:21  <b>somebody</b> <sup>[5]</sup> 10:8 23:4 27:22 68:9 95:10  <b>somehow</b> <sup>[2]</sup> 46:18 90:11  <b>sometimes</b> <sup>[5]</sup> 13:9,10 61:7 74:25 86:13  <b>sorry</b> <sup>[12]</sup> 23:18 26:1 31:25 34:8,10 35:18 45:7 64:10 68:3 69:24 70:24 79:14  <b>sort</b> <sup>[5]</sup> 10:5 31:5 32:3 59:25 85:3  <b>SOTOMAYOR</b> <sup>[33]</sup> 15:20, 22 16:2,7,12 17:2 18:25 21:21 30:25 56:20,21 57:4, 9,12,17,25 58:22 59:9 69:24 70:7,13,17 71:5,8,13 91:7,16,22,25 92:8,12,18 94:</p>
--	---	--	--	---

## Official - Subject to Final Review

<p>21  <b>sounds</b> [2] 50:25 51:2  <b>sovereign</b> [9] 18:7,11,14  32:19 61:14,22 63:17 64:4  66:9  <b>sovereigns</b> [1] 65:6  <b>sovereignty</b> [12] 5:7 32:17  33:1,16,23 41:6,9 43:2 60:  21 64:1 65:4 66:4  <b>special</b> [1] 55:18  <b>specialized</b> [1] 76:13  <b>specific</b> [9] 5:21 23:24 38:  24,25 43:8 52:2 62:24 69:  3 89:23  <b>specifically</b> [12] 3:18 5:19  24:10 26:15 41:10 52:1 76:  23 78:17 87:4 94:11,12 97:  8  <b>specified</b> [1] 93:7  <b>specifies</b> [1] 82:23  <b>specifying</b> [1] 7:1  <b>speculate</b> [3] 9:5 82:13,16  <b>sphere</b> [1] 13:13  <b>spirit</b> [1] 61:25  <b>split</b> [1] 66:8  <b>spoken</b> [1] 43:9  <b>stage</b> [1] 43:10  <b>stake</b> [3] 10:6 41:5 86:16  <b>standard</b> [1] 40:8  <b>standing</b> [1] 5:24  <b>start</b> [1] 61:9  <b>starts</b> [1] 96:13  <b>State</b> [7] 4:3,10 6:3,14 8:9  12:9 13:1 14:5 15:21 17:  24 20:17,19,25 22:2 23:9  25:1 29:21 33:6 35:9 36:  13 37:3,11,16 39:21,23 40:  4 41:7 42:19 47:2,15,18  48:4 49:4 52:13 53:8,11,  11,25 56:25 57:7,14,21 58:  1,6 60:25 61:21 62:25 64:  1 66:19 67:2,15 77:9,10  81:23,25 82:8 83:13 84:2,  2,5 86:12 87:3 89:17,25  90:24 92:21 93:19 96:11  97:11,23 98:2  <b>state's</b> [6] 12:19 67:18 71:  24,25 84:10 94:18  <b>stated</b> [1] 97:20  <b>statement</b> [5] 62:12 63:9,  10,23 64:15  <b>STATES</b> [13] 1:1,15,22 2:7  20:8 36:20 40:9 65:6 72:5  80:8 83:25 87:18 95:21  <b>stating</b> [1] 36:12  <b>statute</b> [32] 11:12 29:24 38:  4,12,21 41:15,16 47:15,22  49:11,13 50:6 51:13,17 52:  15 53:21 55:10 63:4 66:18  72:7 73:18 75:7 77:2,20,  24,25 80:13 85:16,23 88:  16,20 93:6  <b>statute's</b> [1] 62:11  <b>statutes</b> [12] 4:16 26:14 44:</p>	<p>23 47:17 55:9 56:11 60:24  61:4 72:21,21 74:10 77:14  <b>statutory</b> [3] 44:18 81:6 85:  13  <b>step</b> [1] 40:25  <b>still</b> [17] 15:16 17:8,8,12,20,  22 19:8 20:7,20,22,25 21:3  40:15 47:25 69:15,21 93:  17  <b>stop</b> [1] 83:14  <b>stops</b> [1] 96:14  <b>story</b> [2] 9:19 33:18  <b>straight</b> [1] 58:19  <b>strong</b> [5] 52:12 53:7 64:2  75:18 94:9  <b>stronger</b> [1] 64:22  <b>struck</b> [2] 3:25 5:2  <b>structure</b> [4] 6:7 11:24 63:  13,13  <b>struggling</b> [1] 90:12  <b>stuck</b> [2] 31:12 97:15  <b>stuff</b> [1] 86:5  <b>sub-Indian</b> [1] 65:9  <b>subcommittee</b> [1] 97:20  <b>subject</b> [7] 17:9,12,22 19:8  33:7 38:22 41:18  <b>subjects</b> [1] 3:12  <b>submission</b> [3] 15:3 26:14  42:15  <b>submit</b> [2] 30:4 47:5  <b>submitted</b> [2] 98:11,13  <b>substantive</b> [8] 55:12 59:  17,25 62:9 64:14 67:19 83:  22 97:4  <b>subtle</b> [1] 30:9  <b>succinctly</b> [1] 33:21  <b>sudden</b> [2] 85:18,24  <b>suffers</b> [1] 66:20  <b>suggest</b> [3] 75:14 80:4 87:  12  <b>suggested</b> [1] 89:12  <b>suggesting</b> [2] 10:24 20:  18  <b>suggestion</b> [1] 69:8  <b>suggests</b> [1] 63:8  <b>summarizing</b> [1] 44:16  <b>supervised</b> [1] 17:25  <b>support</b> [1] 3:21  <b>supporting</b> [3] 1:22 2:8 36:  21  <b>supports</b> [1] 75:14  <b>suppose</b> [4] 10:22 24:16,  17 93:5  <b>supposed</b> [1] 59:21  <b>SUPREME</b> [4] 1:1,14 38:  23 41:17  <b>SUR</b> [2] 1:3 3:4  <b>surrogate</b> [6] 30:1,2 34:19,  19 35:7,19  <b>suspect</b> [1] 92:15  <b>switch</b> [1] 22:20  <b>synonym</b> [1] 14:23  <b>system</b> [3] 83:19 91:17,19</p>	<p style="text-align: center;"><b>T</b></p> <p><b>table</b> [1] 85:24  <b>talked</b> [6] 14:6 16:19 29:25  31:4 32:22 49:18  <b>talks</b> [1] 76:23  <b>tax</b> [1] 12:19  <b>Taylor</b> [2] 11:16 38:20  <b>tellingly</b> [1] 78:7  <b>tells</b> [1] 31:9  <b>tend</b> [1] 78:21  <b>term</b> [30] 10:25,25 11:2 12:  18 13:18,18,24,25 39:21  41:21 48:8 67:8 72:3,10  73:7,8 78:6,20 79:5 80:19  81:3,5,6,20 82:4,21 84:7  86:19 90:2 93:21  <b>terms</b> [6] 6:25 32:24 44:21  46:4 72:7 78:18  <b>test</b> [3] 4:25 12:20 67:2  <b>testimony</b> [3] 22:4 28:18  74:21  <b>Texans</b> [1] 66:13  <b>TEXAS</b> [76] 1:6,18,25 3:5,  14 4:2,3,7 5:4 6:14 7:14 8:  10 9:15 10:4 13:1 15:21  19:14,16 20:8,17,19,25 21:  4,14,16 22:2 23:9,23 24:17  27:3,5 28:13,14 29:21 33:  6 35:4,9,19 37:9,13 42:3,3  45:5 46:24 47:5,7,15,18,  52:19 53:1,25 58:22 66:4  68:11 69:16 71:3,18,23 74:  7 79:17 80:14 84:22 85:16,  23 91:4 93:8,12,14 94:8  95:4,18 96:12,21 97:11,23  98:2  <b>Texas's</b> [9] 3:13,18 4:10 6:  18 12:1 14:5 23:21 30:2  95:4  <b>Texas-specific</b> [1] 47:22  <b>text</b> [15] 5:1,19 6:11 8:13 9:  7,8 37:21 44:18 52:13,15,  17 60:17 61:10 76:1,2  <b>textual</b> [2] 8:5 52:21  <b>There's</b> [33] 5:20 7:12 8:2,  12 9:12 10:11 18:4 19:6,7,  24 21:13 22:4,15,17,19 26:  8 35:1 38:24 41:5 44:18,  18 47:8 48:20 49:15,21 52:  13 62:22 68:18 76:24 79:  23 84:5 97:13 98:9  <b>thereafter</b> [1] 39:16  <b>they've</b> [1] 23:15  <b>thinking</b> [6] 59:16,21 64:  10 74:5 82:14,17  <b>thinks</b> [3] 9:11 22:2 52:17  <b>third</b> [4] 20:12 67:6 77:12  84:5  <b>THOMAS</b> [23] 5:11,15,23 6:  5,9,16 7:3 23:19,20 24:2  37:24 38:4,8 39:4,11 53:  15,16 67:22 68:3,18 69:7  70:3 93:2</p>	<p><b>though</b> [3] 6:17 13:21 40:  17  <b>thoughts</b> [2] 32:4 42:8  <b>thousand</b> [1] 31:8  <b>thread</b> [1] 50:24  <b>three</b> [5] 29:20 45:19 46:12,  15 66:20  <b>throughout</b> [1] 56:10  <b>throw</b> [1] 83:6  <b>thrown</b> [1] 30:21  <b>thumbnail</b> [1] 46:5  <b>tie</b> [2] 67:7 78:12  <b>tip</b> [2] 55:25 63:24  <b>title</b> [1] 12:22  <b>today</b> [3] 64:11 80:16 83:1  <b>together</b> [1] 77:18  <b>took</b> [1] 39:16  <b>top</b> [1] 48:20  <b>toss</b> [1] 60:6  <b>total</b> [4] 8:9,11 9:12,14  <b>totally</b> [1] 91:19  <b>traces</b> [1] 64:3  <b>track</b> [3] 47:2 81:15 89:18  <b>tracking</b> [1] 47:1  <b>tracks</b> [2] 63:20 82:2  <b>Traditional</b> [2] 93:8,12  <b>traditionally</b> [1] 62:20  <b>treating</b> [1] 66:23  <b>trial</b> [4] 19:15,18,25 28:10  <b>tribal</b> [34] 4:8 5:20 7:7,21,  25 8:7,22,25 40:9 41:6,7,8,  9 43:2,3 50:18 52:5,9,23,  24 53:13,20 54:2,19,22 56:  22,22 60:21,25 63:25 64:2  65:4 67:3 75:17  <b>tribe</b> [32] 5:6 7:8 10:7 18:6,  6 20:5 29:19 33:4 37:7 42:  15 57:6,8 66:2,11,15 68:9,  16 71:19 72:5 79:20 80:8  81:23 83:3 84:1 88:21 89:  24 91:8,10,11,18 92:15 94:  17  <b>tribe's</b> [7] 3:19 23:8 33:17  52:11 53:7 54:1 85:7  <b>tribes</b> [18] 5:1,6 6:15 29:21  32:19,24 39:22 40:10 49:  22 55:20 56:12 63:17 65:7  67:25 72:15 81:11 82:10  96:24  <b>trouble</b> [1] 45:14  <b>true</b> [6] 21:3 57:4 61:5 62:  22 64:19 87:12  <b>try</b> [2] 22:16 78:10  <b>trying</b> [7] 19:21 31:13 48:9  69:4,19 82:13 90:3  <b>Tuesday</b> [1] 1:11  <b>turn</b> [2] 83:7 86:4  <b>turned</b> [1] 85:2  <b>turns</b> [2] 11:2 93:20  <b>two</b> [10] 4:16 29:23 40:10  46:17 62:9 73:11,11 77:2  80:6 97:17  <b>type</b> [5] 10:18 19:2,10 85:3  93:8</p>	<p><b>types</b> [1] 61:2  <b>typically</b> [6] 68:12 72:10  78:6 82:21,22 92:24</p> <p style="text-align: center;"><b>U</b></p> <p><b>U.S</b> [1] 41:14  <b>U.S.C</b> [1] 40:15  <b>Udall</b> [1] 97:19  <b>ultimate</b> [1] 45:2  <b>ultimately</b> [4] 33:8 64:3 67:  18 72:6  <b>unanimous</b> [1] 38:20  <b>under</b> [65] 10:4 11:16,23  15:18 17:25 19:17,19 20:1,  6 21:1 23:21 24:6,6,7,7,10,  24 25:7 26:2 27:6 28:14,  16 29:22,22 34:20 36:8,25  37:9 38:5,15 40:10 42:12,  13 43:16 45:11 47:2,7,9  48:4,24 50:3 52:19 53:1  66:14 68:1,5 69:14,16 71:  22 72:4,9 90:1,7,15 91:3,5,  9,11 93:7,19 94:10,13 95:  19,20,23  <b>underlays</b> [1] 60:22  <b>underlying</b> [2] 61:24 65:16  <b>understand</b> [14] 17:17 18:  4 25:21,21 39:5 44:4 54:  25,25 55:2,5 77:16 90:5,13  96:10  <b>understanding</b> [6] 41:20  46:21 64:12,16 69:15 81:1  <b>Understood</b> [5] 28:7 41:4  55:10 68:7,24  <b>unfortunately</b> [1] 56:14  <b>unique</b> [4] 31:15 41:25 90:  11 91:17  <b>uniquely</b> [3] 89:4,9 90:13  <b>UNITED</b> [12] 1:1,15,22 2:7  36:20 40:8 65:5 72:5 80:8  83:25 87:17 95:21  <b>unlawful</b> [1] 68:8  <b>unless</b> [5] 38:24 71:6,9 82:  23 94:11  <b>unworkable</b> [4] 42:5 86:23  89:4,9  <b>up</b> [24] 10:5,7,9,16 11:24,25  19:1 24:18,19 31:3 33:5  35:13 39:16 41:24 44:9,13  45:9 47:2,12 62:4 64:8 85:  25 88:25 93:23  <b>upshot</b> [1] 17:16  <b>useful</b> [1] 94:3  <b>uses</b> [4] 38:22 48:14 52:3  81:11  <b>using</b> [8] 11:14 13:15,18  15:3,4 41:18 48:9 49:16</p> <p style="text-align: center;"><b>V</b></p> <p><b>vacated</b> [1] 94:25  <b>valley</b> [1] 74:15  <b>value</b> [1] 63:12  <b>variety</b> [1] 56:23  <b>various</b> [1] 79:3</p>
---	--	---	--	---

## Official - Subject to Final Review

<b>verbatim</b> <sup>[1]</sup> 54:4 <b>version</b> <sup>[10]</sup> 8:15,16,18,21 9:10,12 64:22 72:6 75:7 85:1 <b>versions</b> <sup>[2]</sup> 6:22 8:1 <b>versus</b> <sup>[7]</sup> 3:5 11:16 12:20 15:24 37:2 38:20 49:10 <b>veterans</b> <sup>[2]</sup> 39:13 69:10 <b>view</b> <sup>[15]</sup> 13:11,14 20:10 37: 19 42:22 44:10,16 47:19 50:15 51:12 58:3 60:11 69: 14 83:14 88:14 <b>views</b> <sup>[1]</sup> 60:5 <b>violating</b> <sup>[1]</sup> 92:14 <b>violations</b> <sup>[2]</sup> 83:14,22 <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <b>waive</b> <sup>[3]</sup> 18:11,14 61:14 <b>waiving</b> <sup>[1]</sup> 18:7 <b>walk</b> <sup>[3]</sup> 21:21 92:9,19 <b>wanted</b> <sup>[8]</sup> 14:9 44:8 66:2, 2,4 79:17 80:1 96:15 <b>wants</b> <sup>[3]</sup> 16:22 58:1 83:13 <b>Washington</b> <sup>[2]</sup> 1:10,21 <b>way</b> <sup>[22]</sup> 8:12 9:13 13:6 30: 5,6 35:1 41:21 46:24 50: 17 56:11 58:1,2,11 60:3 64:19 66:25 68:14 76:5,13 78:1 81:13 82:12 <b>ways</b> <sup>[2]</sup> 65:3 74:16 <b>wealth</b> <sup>[2]</sup> 31:5 59:24 <b>week</b> <sup>[1]</sup> 59:20 <b>weird</b> <sup>[1]</sup> 31:6 <b>Welcome</b> <sup>[2]</sup> 31:24 67:21 <b>well-established</b> <sup>[1]</sup> 81:3 <b>wellspring</b> <sup>[1]</sup> 43:21 <b>whatever</b> <sup>[6]</sup> 40:15,17,20, 21 63:21 86:4 <b>wheel</b> <sup>[2]</sup> 83:7 86:4 <b>Whereas</b> <sup>[3]</sup> 12:22 81:4 90: 21 <b>Whereupon</b> <sup>[1]</sup> 98:12 <b>whether</b> <sup>[37]</sup> 3:12 7:12 13: 17 19:2,10,18,22,23 26:22 27:14 28:1,5 29:12,13,14 32:2 42:9,16,17 45:2 46:1 47:8 58:4,6 63:22 70:22 80:22 81:24 83:2 86:10 88: 19 92:7,13 93:24 95:2,22 97:14 <b>who's</b> <sup>[1]</sup> 68:9 <b>whole</b> <sup>[3]</sup> 40:7 46:7 74:3 <b>Williams</b> <sup>[2]</sup> 11:16 38:19 <b>willing</b> <sup>[5]</sup> 7:8,10 33:5 66:3, 6 <b>win</b> <sup>[3]</sup> 15:16 46:19 76:10 <b>wind</b> <sup>[1]</sup> 44:12 <b>Winnepaug</b> <sup>[1]</sup> 16:16 <b>wins</b> <sup>[1]</sup> 95:13 <b>within</b> <sup>[6]</sup> 12:17 13:13 25:1 49:13 93:15 94:18 <b>without</b> <sup>[10]</sup> 8:24 15:9,11 30:12 47:18 50:25 51:3 61: 1 92:17,22	<b>word</b> <sup>[16]</sup> 11:4,8,9,14 13:16 14:10,12,18 15:3 16:22 25: 9 39:1 40:14 41:20 78:7 94:2 <b>words</b> <sup>[9]</sup> 15:14 19:22 38: 22,23 51:14 55:10 73:21 79:23 83:6 <b>work</b> <sup>[2]</sup> 90:7 91:2 <b>workable</b> <sup>[2]</sup> 42:9 87:9 <b>working</b> <sup>[1]</sup> 42:12 <b>works</b> <sup>[1]</sup> 42:11 <b>world</b> <sup>[7]</sup> 31:24 32:4 50:13 76:9 77:21 79:24 82:13 <b>worse</b> <sup>[3]</sup> 21:14,17 91:12 <b>Worth</b> <sup>[2]</sup> 1:18 49:8 <b>Wow</b> <sup>[1]</sup> 42:24 <b>writing</b> <sup>[1]</sup> 48:19 <b>written</b> <sup>[4]</sup> 14:14 50:12 67: 2 77:20 <b>wrote</b> <sup>[2]</sup> 34:1 47:21 <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <b>YANG</b> <sup>[67]</sup> 1:20 2:6 36:18, 19,22 37:24 38:1,7,10 39: 10,15 40:6,7,12,23 41:23 42:11,24 43:13,19 44:17 45:17,21,23,25 46:11 47: 11,20 49:24 50:5,9,22 51:7, 19 52:9 54:3,11,14,17,22 55:1,4,16 56:13 57:2,5,10, 16,19 58:7 59:1 60:8,16 61:16,23 62:14,21 63:16 64:18 65:2,10,20 77:3,19 89:5,12 90:8 <b>years</b> <sup>[4]</sup> 16:9 40:14 41:2 43:23 <b>Young</b> <sup>[1]</sup> 18:4 <b>YSLETA</b> <sup>[6]</sup> 1:3 3:4 4:12 29:24 58:8 96:22
--	--