





1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	ROMAN MARTINEZ, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	ANTHONY A. YANG, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioner	32
9	ORAL ARGUMENT OF:	
10	SHAY DVORETZKY, ESQ.	
11	On behalf of the Respondents	49
12	REBUTTAL ARGUMENT OF:	
13	ROMAN MARTINEZ, ESQ.	
14	On behalf of the Petitioner	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  
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24  
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P R O C E E D I N G S

(10:02 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 21-887, Perez versus Sturgis Public Schools.

Mr. Martinez.

ORAL ARGUMENT OF ROMAN MARTINEZ

ON BEHALF OF THE PETITIONER

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

For 12 years, Sturgis neglected Miguel, denied him an education, and lied to his parents about the progress he was allegedly making in school. This shameful conduct permanently stunted Miguel's ability to communicate with the outside world. It also violated two federal statutes, the IDEA and the ADA, giving different remedies to victims of discrimination.

Miguel responded by doing everything the IDEA wants him to do. He filed an IDEA agency claim. He followed the IDEA settlement procedures. And he accepted a favorable settlement giving him full IDEA relief, including an immediate FAPE.

1           Sturgis wants you to hold that this  
2 settlement extinguishes Miguel's separate and  
3 distinct rights to money damages under the ADA.  
4 You should reject that.

5           I want to emphasize three points.  
6 First, the text only requires exhaustion if a  
7 non-IDEA claim seeks relief that's actually  
8 available under the IDEA. Exhaustion isn't  
9 required in cases like this one seeking only  
10 money damages, a remedy the IDEA does not  
11 authorize.

12           Second, Miguel's settlement fully  
13 exhausted the IDEA procedures. Further  
14 exhaustion is unnecessary and it's futile  
15 because it would be pointless. Miguel has  
16 already received everything he's entitled to  
17 under the IDEA statute.

18           And, third, the net effect of  
19 Sturgis's arguments here is to defy the IDEA's  
20 clear purpose. That purpose is twofold: one,  
21 getting kids a FAPE as quickly as possible,  
22 and, two, preserving their legal rights under  
23 other statutes and the Constitution.

24           Sturgis puts these goals on a  
25 collision course with each other. In any given

1 case, its rule will either disincentivize  
2 settlements and block immediate FAPE relief, or  
3 it will nullify rights under other statutes.  
4 That makes no sense.

5 Congress didn't punish kids for saying  
6 yes to favorable IDEA settlements. One way or  
7 the other, this case should proceed.

8 I welcome the Court's questions.

9 JUSTICE THOMAS: If the -- this -- if  
10 this statute were written in a way that you had  
11 a progression of remedies from administrative,  
12 from informal to formal, and it was about the  
13 very same thing, that is, the education of  
14 Petitioner, then why -- then wouldn't this be  
15 exhausted at some level?

16 MR. MARTINEZ: Your Honor, we have --  
17 just to step back and sort of clarify, we have  
18 a number of different arguments. Our second --

19 JUSTICE THOMAS: Well, I guess the  
20 difference -- the difficulty I'm having is I  
21 can't see where ADA fits in with IDEA.

22 MR. MARTINEZ: Right.

23 JUSTICE THOMAS: That seems to be an  
24 entirely different remedy, and whether we --  
25 when we have PLRA cases, et cetera, it's

1 usually about the same thing.

2 MR. MARTINEZ: A hundred percent, Your  
3 Honor. And I think that's exactly the right  
4 way to think about the statute. And I think  
5 what Congress was trying to do here was  
6 essentially say we want you to have rights  
7 under both statutes, we want you to be able to  
8 go into court if necessary and vindicate your  
9 separate rights to separate types of relief  
10 under both statutes. But, in circumstances --  
11 in certain circumstances, we want you to go  
12 through the IDEA administrative procedures  
13 first.

14 And the text of the statute says that  
15 if your ADA claim is only seeking things that  
16 you can't get under the IDEA, in the words of  
17 Fry, if the consequence of your ADA claim, if  
18 you brought it in the IDEA procedure, would be  
19 that the IDEA hearing officer would have to  
20 send you away empty-handed because that statute  
21 just does not provide you that type of relief,  
22 that type of relief is not available, then you  
23 do not have to exhaust.

24 JUSTICE THOMAS: I guess that's why  
25 I'm having trouble considering it exhaustion.

1 MR. MARTINEZ: Right.

2 JUSTICE THOMAS: Because it seems to  
3 be -- normally, you would think of exhaustion  
4 as being similar. The relief would be similar  
5 to the exhausted claims.

6 MR. MARTINEZ: Exactly.

7 JUSTICE THOMAS: This seems to be an  
8 entirely different statute. So I don't  
9 understand even the use of the term  
10 "exhaustion" here.

11 MR. MARTINEZ: I -- I think it's --  
12 it's a -- it's a unique sort of a one-of-a-kind  
13 statute, and I think that in this kind of  
14 circumstance where you have a unique statute,  
15 two things. One, it's especially important to  
16 focus on the exact text of the statute, and the  
17 text of the statute, the overwhelmingly most  
18 reasonable reading of the statute, the only  
19 reasonable reading of the statute in our view,  
20 is that if you are seeking money damages -- and  
21 everyone agrees money damages are not available  
22 under the IDEA -- then you just do not have to  
23 exhaust. The exhaustion requirement doesn't  
24 apply.

25 Even if you disagreed with us on that,



1     though, I think that in a -- in a -- in a  
2     situation like this, where the exhaustion  
3     requirement is saying you need to exhaust the  
4     IDEA administrative procedures on your IDEA  
5     claim, in a circumstance where those procedures  
6     specifically say you need to engage in a  
7     settlement process, presumably, in good faith,  
8     and if the school comes to you in the  
9     settlement process and says you're right, we  
10    were wrong, we're going to give you everything  
11    you're asking for, we're going to give you  
12    everything you're entitled to under the IDEA,  
13    of course, the statute wants you to say yes.

14                 And that's exactly what happened here.  
15    Miguel got an offer of full relief and he  
16    accepted it. That's -- that is a success story  
17    under the IDEA. It's not a success story in  
18    total --

19                 CHIEF JUSTICE ROBERTS: Well --

20                 MR. MARTINEZ: -- in -- in -- in -- it  
21    doesn't make Miguel completely whole because he  
22    suffered other damages as well. But, under the  
23    IDEA, he got everything he was entitled to --

24                 CHIEF JUSTICE ROBERTS: Well, the --  
25    the -- the two --

1           MR. MARTINEZ: -- and he set -- he  
2 exhausted.

3           CHIEF JUSTICE ROBERTS: -- the -- the  
4 two are not entirely unrelated. I mean, in  
5 each -- in both cases, your -- your claims are  
6 going to be based on the denial of an FAPE or a  
7 FAPE. I -- and it's certainly reasonable to  
8 assume that the settlement process under the  
9 IDEA could well be significant in resolving the  
10 other claims.

11           It seems to me that what's unusual in  
12 this case is that the school board said, well,  
13 don't worry about those, we're going to settle  
14 this. I mean, if this were any other type of  
15 litigation, the lawyers would want to say,  
16 we've got a lot on the table and let's figure  
17 out how to resolve it.

18           And it's not clear to me why you would  
19 necessarily or artificially separate those two.  
20 And, of course, your -- your friend on the  
21 other side has a construction answer to your  
22 notion of how the exhaustion works, that  
23 relief, the relief you're seeking, is based on  
24 a FAPE. That's what's going to be pertinent in  
25 all those cases. Why isn't that --

1           MR. MARTINEZ: So -- so two points to  
2 that, Your Honor. First of all, I think it's  
3 certainly true that if you bring the IDEA  
4 claim, you could have a settlement discussion  
5 that encompasses not just the IDEA claims but  
6 also other claims that you might have that  
7 haven't yet been asserted in that process.

8           And I think the normal thing that we  
9 would expect is that when bargain -- when  
10 parties are bargaining and if this -- if the  
11 child is going to give up those other claims,  
12 they're going to get something in return.

13           In this case, that settlement  
14 discussion happened, and, you know, the --  
15 the -- there was a settlement discussion, and  
16 Miguel would have turned down a request to give  
17 up ADA rights without any compensation for  
18 those ADA rights.

19           And the effect of Sturgis's rule is  
20 that if he accepts the settlement on the IDEA  
21 claim, it, like, automatically gets rid of --  
22 it essentially gives the school a full release,  
23 a get-out-of-jail-free card on the ADA  
24 liability. And that's just not right.

25           And I think the second thing I was

1 going to say, Your Honor, is that this isn't  
2 artificial, an artificial limit. This is a  
3 limit that comes out of the text of the  
4 statute. And Congress was very clear, it chose  
5 words very precisely, and it said that you --  
6 it made clear you don't have to exhaust if the  
7 relief you're seeking in the non-IDEA claim is  
8 not available under the IDEA.

9           And I think, in -- in these  
10 circumstances, it makes sense to -- to read  
11 that language the way you would apply -- you  
12 would look at the same words elsewhere in the  
13 IDEA, the -- the same word "relief" appears  
14 elsewhere, and it means what we say it means.

15           That's the way the -- the word  
16 "relief" is used in other legal contexts.  
17 That's consistent and I think reinforced by the  
18 reasoning of Fry, which says that if you have  
19 to go to the hearing officer and the hearing  
20 officer would necessarily turn you away  
21 empty-handed, we don't want exhaustion in that  
22 circumstance.

23           This Court's decision in Carr versus  
24 Sall announces the very common-sense principal,  
25 this is two terms ago, saying that it makes

1 little sense to require litigants to present  
2 claims to adjudicators who are powerless to  
3 grant the relief requested.

4 JUSTICE JACKSON: Mr. Martinez --

5 JUSTICE KAGAN: One of the --

6 JUSTICE ALITO: Mr. --

7 JUSTICE KAGAN: -- arguments that the  
8 Respondents make, Mr. Martinez, is that on your  
9 reading of the statute, all that a plaintiff  
10 has to do is put the words "compensatory  
11 damages" into a complaint and then the person  
12 can head off to federal court, ignoring the  
13 exhaustion procedures which Congress did think  
14 were important in resolving what to do about  
15 the denial of a FAPE.

16 So what is your response to that?

17 MR. MARTINEZ: I -- I -- I don't think  
18 that's going to happen. And the -- the -- the  
19 procedures -- if, by -- by tacking compensatory  
20 damages on to the complaint, what you're  
21 suggesting is that you could sort of circumvent  
22 the IDEA process by going and getting all the  
23 IDEA remedies along with ADA remedies for  
24 compensatory damages in court, absolutely not.

25 If you go to court and you have a

1 claim that asks for relief that is available  
2 under the IDEA and you have not exhausted that  
3 request for that relief, the Court cannot move  
4 forward as to that request for relief.

5 JUSTICE KAGAN: So the court --

6 JUSTICE ALITO: What do you --

7 JUSTICE KAGAN: -- would be required  
8 to -- to split it up and send you back on any  
9 other claims?

10 MR. MARTINEZ: Right. It could  
11 dismiss the portions of the complaint that are  
12 not properly exhausted, or it could give the --  
13 the plaintiff a choice to get rid of the whole  
14 case and so the -- the plaintiff could come  
15 back later in the whole case, but either way --

16 JUSTICE KAGAN: And is there something  
17 a little odd, even supposing that's true, about  
18 two parallel proceedings going on in that way,  
19 one for damages and the other for, you know,  
20 the relief that an IDEA officer can give?

21 MR. MARTINEZ: I -- I don't think  
22 there's anything odd. I think sometimes this  
23 sort of situation comes up in the law, and I  
24 think there's a very ready response to that,  
25 which is that if -- if a court thinks that

1 there's an agency considering a similar factual  
2 scenario dealing with similar issues, what the  
3 court can just do is -- is issue a stay.

4 We think that would be perfectly  
5 appropriate if this Court wants to say that  
6 in -- in the cases -- and we think there will  
7 be rare cases where parallel proceedings are  
8 pending, and in those cases --

9 JUSTICE KAGAN: Why -- why rare?

10 MR. MARTINEZ: I think it'll be rare  
11 because most parents are going to do what  
12 Miguel did here, which is not bring the  
13 parallel proceeding. Rather, in -- in -- in  
14 the real world, the way these cases tend to be  
15 litigated, parents do not typically have a lot  
16 of resources. Their lawyers are busy. They  
17 are busy. And, usually, they're not going to  
18 try to be litigating simultaneously similar  
19 sets of facts in two different forum. They're  
20 going to do one and then the other.

21 As the Chief pointed out, it's  
22 possible that you could reach some sort of  
23 global settlement that comes out of the IDEA  
24 discussion that actually is going to resolve  
25 and give you effective relief on your ADA claim

1 as well. I think --

2 JUSTICE JACKSON: And even -- even if  
3 it is odd, though, Mr. Martinez, isn't that  
4 exactly what the statute seems to contemplate?

5 I mean, I guess I'm wondering whether  
6 or not we're even in a position to question the  
7 notion of dual proceedings, given that at least  
8 as I read the statute, Congress is  
9 contemplating that you'll have a situation in  
10 which there's a civil action that's seeking  
11 relief that is not available under the IDEA.

12 So I -- I take this to mean that  
13 Congress thought that dual actions at least in  
14 some circumstances were possible and that was  
15 fine.

16 MR. MARTINEZ: I think that's exactly  
17 right under the statute. And I think that the  
18 nice thing about the statute is that it doesn't  
19 take away the -- the inherent discretion of  
20 district courts to manage their dockets in this  
21 way.

22 And if you thought or five of you  
23 thought that it was important to give some  
24 guidance to lower courts and sort of remind  
25 them that if they wanted to -- to stay parallel



1 proceedings, if you were concerned about that,  
2 you could do that.

3 On the other hand, Justice Jackson, I  
4 think you are right that the statute does not  
5 seem to say that it has to be a stay.

6 JUSTICE JACKSON: I mean, in -- in --  
7 in my view -- and maybe you can just react to  
8 that -- isn't -- isn't what really is going on  
9 here that Congress was concerned about people  
10 doing an end run around the IDEA in a certain  
11 way?

12 That is, you have, you know, a set of  
13 facts concerning the denial of a FAPE that  
14 could give rise to claims under, let's say,  
15 both of these statutes, the IDEA and the ADA.  
16 And, you know, the -- the plaintiff is the  
17 master of their complaint and can decide which  
18 statute to bring it under.

19 And so, in a situation in which the  
20 relief that is being asked for is only the kind  
21 of relief that is available under the IDEA,  
22 maybe Congress didn't want the person to call  
23 that an ADA statute and thereby get around the  
24 exhaustion.

25 But, if you're asking for something

1 else, if your claim is something else, then  
2 Congress didn't have a problem with both of  
3 those proceeding in tandem.

4 MR. MARTINEZ: I -- I think that's --  
5 that's absolutely a fair way of looking at the  
6 statute, and there's certainly no circumvention  
7 concern when the only thing you need is  
8 something that you can't get under the IDEA.

9 Again, if the hearing officer --

10 JUSTICE ALITO: Well, what do you --  
11 Mr. Martinez, what do you make of the fact that  
12 1415(f) uses the term "remedies" and then also  
13 uses the term "relief"?

14 MR. MARTINEZ: Are you talking about  
15 the -- the 1415(l), the exhaustion provision,  
16 or -- or --

17 JUSTICE ALITO: I -- I'm sorry, yes,  
18 that's what I'm talking about.

19 MR. MARTINEZ: I -- I think that -- I  
20 don't make much of that, Your Honor, because I  
21 think that whatever "remedies" might mean,  
22 "relief" really only has one reasonable meaning  
23 here, and it means the specific remedies that  
24 you can get at the end of the case.

25 JUSTICE ALITO: Well, why would

1 they -- compensatory damages is a remedy. Why  
2 wouldn't they use the term "remedies" there?

3 MR. MARTINEZ: I think they -- I think  
4 they could have used the term "remedies" there,  
5 but I don't think that they had to. And I  
6 don't --

7 JUSTICE ALITO: It's just elegant  
8 variation?

9 MR. MARTINEZ: Yeah. And there are  
10 other places in the U.S. Code where you have  
11 these terms, "remedies" and "relief," used in  
12 close proximity without any reason to think  
13 that they mean something different.

14 You know, two examples I'd point you  
15 to, Your Honor, these aren't in the briefs, but  
16 18 U.S.C. 3626(d), 28 U.S.C. 3306. Like, these  
17 statutes sometimes just use these terms  
18 interchangeably. The other side says that  
19 "remedies" actually has a different meaning as  
20 well, a means of enforcement meaning, which I  
21 think got a little bit of discussion yesterday,  
22 but even if that were true, that wouldn't  
23 affect the statutory term at issue here we do  
24 believe.

25 JUSTICE ALITO: How have the courts of

1 appeals interpreted this provision?

2 MR. MARTINEZ: The courts of appeals  
3 have generally not agreed with our first  
4 argument, which is that the text of the statute  
5 has to come out our way, although I would note  
6 that two of the courts of appeals have done  
7 that, although they've acknowledged that our  
8 side has the better textual argument.

9 I think the First Circuit and the  
10 Fifth Circuit have said that. Judge Bumatay's  
11 dissenting opinion in the Ninth Circuit I think  
12 makes the same point pretty -- pretty well.

13 They have -- the courts of appeals  
14 have generally agreed with us on our futility  
15 argument, which is that the settlement  
16 constitutes futility. And I think that one  
17 thing that's important here is we have a bunch  
18 of different arguments and they're -- they're  
19 kind of confusing. I actually -- it's  
20 confusing to kind of distinguish them.

21 I think that one thing that's really  
22 important here is to look at the net effect of  
23 Sturgis's responses. And maybe you -- you  
24 could think, okay, they have a fair point on  
25 this argument or a fair point on that argument,

1 but if you step back from all of it, the  
2 bottom-line position that -- the bottom-line  
3 place that Sturgis arrives at is that a parent  
4 who does everything right, Miguel's parents and  
5 Miguel, they did everything right, they  
6 accepted the settlement, they lose their ADA  
7 claims. That just can't be right.

8 I mean, imagine -- put yourself in a  
9 parent's position. They have wonderful claims  
10 under both the IDEA and the ADA. Say their  
11 child has been denied a FAPE, sent to a room  
12 for disabled children and there has suffered  
13 medical injuries. They've got claims under  
14 both statutes.

15 And then the school comes to them and  
16 says: Okay, we know you're desperate to get a  
17 new IEP, desperate to remedy your immediate  
18 on-the-ground denial of FAPE, we're going to  
19 give you that. What do you want the parent to  
20 do? What does Sturgis want the parent to do?

21 Apparently, Sturgis has -- there are  
22 two answers. Number one, you can accept the  
23 settlement, but the price of accepting the  
24 settlement, even though the settlement doesn't  
25 give up ADA rights, is to extinguish your ADA

1 rights.

2 JUSTICE ALITO: Well, when you have a

3 --

4 MR. MARTINEZ: That can't possibly --

5 JUSTICE ALITO: -- situation like  
6 this, the -- the result, the nature of the  
7 settlement could reflect a strategic choice on  
8 the part of both parties. It could also  
9 reflect bad lawyering on the part of one or  
10 both parties.

11 MR. MARTINEZ: Right. And --

12 JUSTICE ALITO: If it's the latter,  
13 what -- why does this case make that much  
14 difference?

15 MR. MARTINEZ: Well, I -- I think that

16 --

17 JUSTICE ALITO: I mean, the -- the  
18 parents' attorneys, maybe they're -- they may  
19 not be that sophisticated, but they could have  
20 -- both parties could have discussed whether  
21 they wanted to wrap up the whole thing in the  
22 settlement. They could have done that.

23 Or they could say, well, we're not  
24 going to do that and we'll take our chances  
25 later in litigation.

1           MR. MARTINEZ: Well, I think -- I  
2 think your point about how the settlement  
3 negotiations would play out is extremely  
4 important, and I think it favors us because  
5 what -- our rule would allow the parties to  
6 come together. If they can reach a global  
7 settlement of everything, terrific.

8           But, if they can only reach a partial  
9 settlement, if they can only reach a settlement  
10 that addresses the IDEA claims, our rule would  
11 say, yes, of course, in that case, the student  
12 and the parents should accept that settlement,  
13 get the on-the-ground FAPE relief immediately,  
14 and then the parties can agree to go on and  
15 fight about the ADA claims for relief later.

16           JUSTICE ALITO: Well, then the  
17 settlement could have specifically preserved  
18 the other claims too.

19           MR. MARTINEZ: Well, I -- I think,  
20 under their rule, it could not because, under  
21 their rule, if you accept the settlement, you  
22 automatically extinguish your ADA claims.

23           So our rule allows the parties a sort  
24 of freedom of contract. Their rule says, if  
25 you -- if you're not willing to give up the ADA

1 claims, you get -- you can't get anything by  
2 settlement because the -- the effect of the  
3 settlement is to give up everything. That rule  
4 doesn't make sense.

5 CHIEF JUSTICE ROBERTS: Thank you.  
6 Justice Thomas?

7 JUSTICE THOMAS: Just back to my  
8 original question. Can you think of another  
9 area in which the -- the -- the claim that is  
10 exhausted doesn't naturally fit the claim that  
11 you're trying to pursue?

12 MR. MARTINEZ: I think this is a  
13 one-of-a-kind statute, Your Honor, and I'm not  
14 aware of any -- any statute like that.

15 JUSTICE THOMAS: And much of the  
16 difficulty seems to flow from the fact that it  
17 doesn't flow -- it doesn't -- it isn't a  
18 natural progression of rights. Normally, you  
19 have informal, administrative, and then  
20 judicial, all about the very same thing,  
21 pursuing a similar remedy at different stages.

22 This is a different remedy under a  
23 different statute, so I'm just wondering if  
24 there's anything close to it. Is there an  
25 analogue?



1           MR. MARTINEZ: I -- I don't know that  
2 there's an -- I don't know of any analogue. I  
3 will say one thing because I think your comment  
4 really emphasizes -- it underscores one thing  
5 that's important about how this Court has  
6 always talked about and interpreted exhaustion  
7 requirements.

8           It's not like exhaustion is like some  
9 sort of one-size-fits-all rule that you apply  
10 mechanically in every case. What the Court has  
11 said is that exhaustion means, you know, going  
12 through the administrative procedures to an  
13 appropriate conclusion and that that needs to  
14 be looked at given the particulars of the  
15 statutory and administrative scheme at issue.

16           And in this case, where you have a  
17 one-of-a-kind administrative scheme that sort  
18 of bizarrely requires you to exhaust procedures  
19 for one claim before bringing a different  
20 claim, it makes perfect sense to treat a  
21 settlement agreement, which is a preferred  
22 resolution, not just appropriate but preferred  
23 resolution of the IDEA claim, it makes perfect  
24 sense to treat that preferred resolution as an  
25 appropriate conclusion of the IDEA process that

1 at that point constitutes settlement and allows  
2 you to bring your ADA claim for different  
3 relief.

4 CHIEF JUSTICE ROBERTS: Justice Alito?

5 JUSTICE ALITO: Under Fry, is the  
6 gravamen of Petitioner's complaint the denial  
7 of a FAPE?

8 MR. MARTINEZ: Your Honor, we -- we  
9 challenged that and we litigated that below.  
10 As the case comes to this Court, we are no  
11 longer challenging that. And so, for purposes  
12 of -- of your decision, we think that -- that,  
13 you know, the Fry -- the gravamen is the same.  
14 It is -- the gravamen of the case does involve  
15 a FAPE denial, so we haven't pressed that here.

16 JUSTICE SOTOMAYOR: In answer, earlier  
17 answer, to Justice Alito's question, you said  
18 that according to the court below, which is  
19 sort of the difficulty with it, if you win an  
20 IDEA case, you then can't pursue any other  
21 remedies, correct?

22 MR. MARTINEZ: That was the logic of  
23 the court below, and we strongly disagree with  
24 that logic.

25 JUSTICE SOTOMAYOR: Clearly. But

1 putting that aside, let's assume the parallel  
2 litigation question. We know in the normal  
3 course of things the agency findings under the  
4 IDEA are given deference by the court reviewing  
5 it, correct?

6 MR. MARTINEZ: I think it depends what  
7 you mean by "deference," but, certainly,  
8 respectful consideration. But I don't think  
9 they're binding, and the parents are allowed to  
10 bring in new evidence. So it's --

11 JUSTICE SOTOMAYOR: Yes, but there is  
12 some deference. Does the same hold true under  
13 an ADA claim?

14 MR. MARTINEZ: No, Your Honor.  
15 Congress has not decided to -- to require ADA  
16 district court judges to even respectfully  
17 consider what's happened before in the agency  
18 proceeding on a different statute.

19 JUSTICE SOTOMAYOR: So there are two  
20 separate proceedings mandated by circumstances,  
21 this odd creature, platypus, that has been  
22 created?

23 MR. MARTINEZ: That's right, Your  
24 Honor.

25 JUSTICE SOTOMAYOR: All right.

1 CHIEF JUSTICE ROBERTS: Justice Kagan?  
2 Justice Gorsuch?  
3 Justice Kavanaugh?  
4 Justice Barrett?

5 JUSTICE BARRETT: Mr. Martinez, as a  
6 practical matter, could your client, under your  
7 friend on the other side's view, have tried to  
8 proceed, where I assume no parallel litigation,  
9 holding on to the ADA claim as your client did  
10 here, proceeds through, gets the settlement but  
11 rejects the settlement -- is there -- is there  
12 any way he could have even kept the IDEA claim  
13 alive and then gone to district court and filed  
14 both of them?

15 MR. MARTINEZ: I'm sorry, Your Honor.  
16 Could you just clarify? That there's a  
17 settlement offer on the IDEA claim --

18 JUSTICE BARRETT: Settlement offer,  
19 yeah.

20 MR. MARTINEZ: -- that's accepted or  
21 rejected?

22 JUSTICE BARRETT: Well, rejected  
23 because your client wants to exhaust, right, so  
24 --

25 MR. MARTINEZ: Oh, be -- under --

1 under his rule, yes.

2 JUSTICE BARRETT: Exactly, under his  
3 rule. So your client could have done that?

4 MR. MARTINEZ: If -- right. I think  
5 -- I think that the net effect of that rule is  
6 that we would have -- if we had wanted to  
7 preserve our ADA rights, we would have been  
8 required to reject the settlement --

9 JUSTICE BARRETT: And thereby --

10 MR. MARTINEZ: -- litigate to a full  
11 conclusion and lose.

12 JUSTICE BARRETT: And give up  
13 attorneys' fees, right? Because, if you  
14 rejected a reasonable settlement offer, the  
15 statute says that --

16 MR. MARTINEZ: Right.

17 JUSTICE BARRETT: -- you don't get  
18 attorneys' fees for subsequent services.

19 MR. MARTINEZ: If -- if you get less  
20 relief than you would have gotten in a  
21 settlement, then you give up your attorneys'  
22 fees, which is another reason to conclude that  
23 the statute really wants you to settle --

24 JUSTICE BARRETT: Right.

25 MR. MARTINEZ: -- if you can reach a

1 reasonable settlement.

2 JUSTICE BARRETT: Right. Thank you.

3 CHIEF JUSTICE ROBERTS: Justice  
4 Jackson?

5 JUSTICE JACKSON: Yes. Your brief at  
6 one point references some of the legislative  
7 history, and I just want to give you a chance  
8 to reflect on what Congress's actual intentions  
9 may have been with respect to the enactment of  
10 this provision.

11 MR. MARTINEZ: So I think the  
12 legislative history in two places is helpful  
13 both in illustrating Congress's intentions and  
14 also in confirming the original public meaning  
15 of -- of the statutory text that was enacted.

16 For purposes of our first argument, I  
17 think the most important thing is the House  
18 report at page 7, and what it says there is  
19 that -- it's interpreting the language that  
20 ultimately became law, and it said that  
21 exhaustion is not required when -- and I'm  
22 quoting -- "the hearing officer lacks the  
23 authority to grant the relief sought."

24 So that just confirms our textual  
25 argument that if you're seeking relief that's

1 not available, you -- you don't have to exhaust  
2 because there the hearing officer wouldn't  
3 grant relief.

4 I think the legislative history is  
5 also helpful on our argument that -- that the  
6 best way to think about a settlement is that it  
7 -- it constitutes exhaustion or supports a  
8 futility argument. And there I would point you  
9 to the Senate report, which says that -- and,  
10 here, I'm quoting again -- "exhaustion of  
11 administrative remedies would be excused where  
12 they would not be required to be exhausted  
13 under the IDEA such as when resort to those  
14 proceedings would be futile."

15 And so that recognizes that there is a  
16 futility exception that is available under this  
17 statute, contrary to what --

18 JUSTICE JACKSON: Isn't that also  
19 helpful with your first argument insofar as,  
20 you know, again, if you're sort of  
21 conceptualizing it the way that I am, which is  
22 exhaustion being only required for the same  
23 relief and to the same extent that it would be  
24 as if you were bringing the other claim? So  
25 Congress was trying, I think, to prevent the

1 end-run scenario.

2 MR. MARTINEZ: Right.

3 JUSTICE JACKSON: You can't just call  
4 an IDEA claim an ADA claim and get out of  
5 exhausting it to the same extent as you would  
6 have to if it was labeled IDEA.

7 MR. MARTINEZ: I think you're  
8 absolutely right. I think that that -- that  
9 futility argument would also apply. I think,  
10 you know, the fact that it's futile to go to an  
11 agency officer -- official and ask for money  
12 damages when they can't give you money damages,  
13 I think that is an example of futility.

14 I will say that the courts of appeals  
15 that have looked at this have said that there  
16 is -- have generally said that there is a  
17 futility exception. Eleven circuits have said  
18 that, although they generally have not treated  
19 a request for a different type of damages as  
20 futility.

21 But I think you're right, Justice  
22 Jackson, that that language in the futility  
23 sort of concept here, you know, would give  
24 us -- get to the same place, and I think  
25 actually the text of the statute in many ways



1 is intended to codify that, that general idea.

2 CHIEF JUSTICE ROBERTS: Thank you,  
3 counsel.

4 Mr. Yang.

5 ORAL ARGUMENT OF ANTHONY A. YANG  
6 FOR THE UNITED STATES, AS AMICUS CURIAE,  
7 SUPPORTING THE PETITIONER

8 MR. YANG: Mr. Chief Justice, and may  
9 it please the Court:

10 The path Petitioner took in this case  
11 was exactly right. He settled his IDEA claim,  
12 obtained prompt educational relief, and then  
13 filed a separate ADA action for compensatory  
14 damages, things he couldn't get under the IDEA.

15 But, under the Sixth Circuit's ruling,  
16 Petitioner would have had to reject a favorable  
17 IDEA settlement and forgo the attorneys' fees,  
18 delay needed educational relief, and pursue  
19 pointless administrative proceedings that  
20 cannot provide remedies that the ADA provides  
21 simply to pursue the remedies that he already  
22 secured by settlement.

23 That makes no sense. The ruling erred  
24 -- the Sixth Circuit erred in three important  
25 ways. First, the exhaustion requirement does

1 not apply if Petitioner's A -- because the  
2 Petitioner's ADA claim seeks relief that is not  
3 also available under the IDEA.

4 The whole point of the exhaustion  
5 requirement here is, if you're seeking the same  
6 relief, Congress wanted to -- to have you go  
7 through the IDEA first. Second, it would be  
8 futile to do it. And, third, settlement in  
9 this context is exhaustion.

10 I welcome the Court's questions.

11 JUSTICE SOTOMAYOR: Do you prefer the  
12 second or the third if the first were bypassed?

13 MR. YANG: If the Court bypasses the  
14 issue that it reserved in Fry, the seek --  
15 seeking relief question, the government would  
16 prefer the Court to address the futility  
17 argument first, and the reason is that  
18 futility -- the Sixth Circuit's decision sweeps  
19 much broader than just this context.

20 It held that Honig discussion of  
21 futility was dicta, notwithstanding two  
22 subsequent recodifications, and that is a  
23 problem both for schools and for parents. As  
24 Honig itself reflects, schools can invoke the  
25 futility exception in cases where they need to

1 remove a student.

2 Now, subsequently, in subsection (k),  
3 Congress has made that easier for students that  
4 either bring a gun or drugs to school or who  
5 have already caused serious bodily harm to  
6 someone else.

7 But there was -- there remains the  
8 need to go to court quickly in some contexts,  
9 and that is how the courts have always done it  
10 is through the futility exception.

11 CHIEF JUSTICE ROBERTS: You want --  
12 you say you want us to decide futility first?

13 MR. YANG: No, no, no. No. If we  
14 bypass the first question about whether the  
15 exhaustion requirement -- that's exactly as I  
16 understood it.

17 JUSTICE SOTOMAYOR: Yes.

18 MR. YANG: In terms of the order of  
19 operation, I think the Court should just decide  
20 the logically antecedent question first even  
21 though the futility issue is important.

22 CHIEF JUSTICE ROBERTS: Oh, okay.

23 JUSTICE ALITO: If the -- suppose  
24 there were no IDEA. Could Petitioner prevail  
25 on a straight ADA claim? And, if so, what

1 would be the nature of the -- of the claim?

2 MR. YANG: Well, we're not going to  
3 take a position on the -- the specifics of this  
4 case being adjudicated under the ADA, but he  
5 certainly has a -- a -- a viable claim that can  
6 be litigated, which is that he was discrim- --

7 JUSTICE ALITO: Well, what would --  
8 all right. I'll rephrase it. I -- I don't --  
9 I don't want to ask a question about this  
10 that's specific to this case.

11 What would be the nature of an ADA  
12 claim for a situation in which a student was  
13 not given a -- a -- a FAPE?

14 MR. YANG: Oh.

15 JUSTICE ALITO: Without the FAPE.  
16 Without the IDEA being on the books, what would  
17 it be? It would be the -- the student would  
18 have to argue that there was a denial of  
19 reasonable accommodation? Is that what it  
20 would be?

21 MR. YANG: Yes. This is on page 6 of  
22 our brief. There -- the ADA in Title II of the  
23 ADA's discrimination provision has been fleshed  
24 out in regulations. The regulations require  
25 the public entity to furnish appropriate

1 auxiliary aids and services, which include  
2 qualified interpreters for the deaf, where  
3 necessary to afford individuals an equal  
4 opportunity to participate in and enjoy the  
5 benefits of the service, program, or activity.  
6 The claim would be based on that.

7 It -- it would not be based on the  
8 denial of FAPE. A FAPE is not the sine qua non  
9 of my -- of the --

10 JUSTICE ALITO: But that regulation --  
11 that regulation is based on -- on reasonable  
12 accommodation, am I correct?

13 MR. YANG: It is based on the  
14 antidiscrimination provision, yes.

15 JUSTICE SOTOMAYOR: The elements of an  
16 ADA claim and an IDEA claim are different,  
17 aren't they?

18 MR. YANG: They are. They are. In  
19 order to obtain damages under the ADA, for  
20 instance, you need to establish some type of  
21 intentional conduct. Most courts of appeals  
22 have concluded that you need to show deliberate  
23 indifference.

24 Also, there are certain defenses under  
25 the ADA, undue burden, fundamental alteration,

1 and also just the element of the discrimination  
2 claim is itself different. You now have to  
3 establish that there's a violation of a -- of a  
4 FAPE.

5 JUSTICE KAGAN: When -- when you said  
6 before, Mr. Yang, that the Court should decide  
7 the antecedent question first, the logically  
8 antecedent question, is there any other reason  
9 than, oh, it's logically antecedent that you  
10 would rather have us decide that question?

11 I guess what I'm asking is, what is  
12 the more important question practically  
13 speaking --

14 MR. YANG: Practically speaking --

15 JUSTICE KAGAN: -- in this case?

16 MR. YANG: -- it's probably futility  
17 but not because of the settlement context.  
18 However, I think the logically antecedent  
19 question, it's useful to answer, because it  
20 tells you a bit about what the whole futility  
21 requirement or the exhaustion requirement means  
22 in the statute. And it's worth thinking what  
23 would exhaustion look like if the Sixth Circuit  
24 were right here, and I think this helps to  
25 inform the -- the -- the case.

1           It's even odd -- I think, Justice  
2 Thomas, you were touching upon this. It's odd  
3 to even contemplate exhausting a claim where  
4 the -- under the IDEA, where you can't get the  
5 very thing that the claim asks for, which is  
6 compensatory damages.

7           The claim lacks merit, as Respondents  
8 acknowledge. So what would you do? You'd go  
9 to the hearing officer and say, I want  
10 compensatory damages under the IDEA. The  
11 hearing officer would say: Well, you can't get  
12 compensatory damages under the IDEA. I dismiss  
13 your claim.

14           What's the point of this? It just  
15 makes no sense. I think this speaks to --

16           CHIEF JUSTICE ROBERTS: Well, but it  
17 makes no sense under -- under your view because  
18 you're thinking of the relief as -- as a  
19 remedy. If you think of the relief as a  
20 correction or fixing the -- the flaws in the  
21 education, the denial of a FAPE, if you think  
22 of that, then it does make sense.

23           MR. YANG: But that just can't, I  
24 don't think, be fairly squared with the text  
25 because "relief" has a meaning -- in the legal

1 context, as Fry acknowledged, has a very  
2 specific meaning, and that is the redress or  
3 benefit that you ask the court and the court  
4 can provide. And -- and --

5 CHIEF JUSTICE ROBERTS: Well, you  
6 might call that a remedy. I mean, their  
7 argument is that those are two different words,  
8 and you're seeing -- treating them as if they  
9 mean the same thing --

10 MR. YANG: Remedies have --

11 CHIEF JUSTICE ROBERTS: -- which they  
12 might.

13 MR. YANG: "Remedy" has two different  
14 meanings, again, as -- as I think you just  
15 touched upon yesterday. One is the meaning  
16 that we advocate and I think that Fry already  
17 used.

18 The second is the process or the means  
19 of obtaining relief. But that can't be the  
20 case here because the statute asks if the  
21 action is seeking relief. You don't seek a  
22 process.

23 JUSTICE KAGAN: And -- and when you --

24 MR. YANG: You -- you --

25 JUSTICE KAGAN: -- said Fry uses this



1 understanding of relief, I mean, it does right  
2 there. This is the part of the opinion that's  
3 unanimous. The ordinary meaning of "relief" in  
4 the context of a lawsuit is the redress or  
5 benefit that attends a favorable judgment,  
6 Black's Law Dictionary.

7 MR. YANG: And I think this in a legal  
8 context, and this is the only reasonable  
9 interpretation of relief. It's not like I'm  
10 saying it's hot outside, I'm going into the --  
11 inside for relief, right? I mean, that's a  
12 meaning of "relief" in a non-legal context.

13 It may be, like, that colloquial  
14 meaning might have some -- you know, some  
15 weight here. I -- I -- I think not. But, when  
16 you're talking to lawyers and Congress is  
17 talking about exhausting the procedures under a  
18 statute --

19 JUSTICE JACKSON: And isn't --

20 MR. YANG: -- it's not -- it's not --  
21 it's not a --

22 JUSTICE ALITO: Well, "relief" --  
23 "relief" could mean relief for the denial of a  
24 FAPE. And Mr. Martinez agrees that the  
25 gravamen of the complaint here is the denial of

1 the FAPE.

2 MR. YANG: I -- I don't think it can  
3 mean that either because it is -- the whole  
4 premise is that it's a non-IDEA action under  
5 such laws seeking relief that's also available.

6 Now it's true that in order to be also  
7 available under the IDEA, it has to be -- the  
8 gravamen has to be for the denial of a FAPE.  
9 But the relief that you're seeking under the  
10 ADA is not for the denial of a FAPE. It is  
11 something that you're seeking, like  
12 compensatory damages. If you're --

13 JUSTICE ALITO: Well, does the -- does  
14 the ADA -- does the ADA require a school to  
15 provide auxiliary aids regardless of the cost?

16 MR. YANG: Does the ADA?

17 JUSTICE ALITO: Yes, the --

18 MR. YANG: No, because there is a --  
19 there is an exception for substantial burden,  
20 financial or administrative burden.

21 JUSTICE JACKSON: Mr. Yang, is it --

22 JUSTICE ALITO: And do -- just one --  
23 one follow-up.

24 Does a FAPE sometimes require very --  
25 very expensive expenditures by a district,

1 expenditures that would exceed what could be  
2 obtained under the ADA?

3 MR. YANG: I think, in some contexts,  
4 that would be true. Again, this is all very  
5 contextual, right? It depends on what we're  
6 talking about, but that's certainly possible.

7 JUSTICE JACKSON: Yes. I was just  
8 wondering whether part of your answer to the  
9 Chief Justice's question about, I guess, a  
10 total overlap in the claims is the first part  
11 of 1415. In other words, the statute suggests  
12 that you would have some ability to bring a  
13 claim under the ADA that is different from or  
14 outside of the IDEA and that Congress wanted,  
15 as Mr. Martinez said, for you to be able to do  
16 both. Is that right?

17 MR. YANG: I think Congress did  
18 contemplate that you could do both. That's why  
19 it focused on an action that's seeking relief  
20 that's available. And only in that specific  
21 context did Congress want you to go through --  
22 through the IDEA process.

23 And that makes sense because, when  
24 you're seeking the same relief that's  
25 available, you're talking about educational

1 relief. And the IDEA process has a pretty  
2 quick way of resolving that. Plus, it builds  
3 into the front end of that getting the parties  
4 together to try to resolve this collaboratively  
5 --

6 JUSTICE JACKSON: And if you were --

7 MR. YANG: -- which results in  
8 settlement if they --

9 JUSTICE JACKSON: And -- and if you  
10 were forced to bring your AD -- ADA claim  
11 through the exhaustive procedures of the IDEA,  
12 even if you were looking for different relief,  
13 wouldn't that be limiting the rights,  
14 procedures, and remedies available under the  
15 ADA in a way that Congress says they didn't  
16 want to do?

17 MR. YANG: It -- it would. But also,  
18 as I think I was discussing earlier, it just  
19 makes no sense because what is a hearing  
20 officer to do, right? You bring an ADA claim  
21 where you're seeking relief, this ADA-type  
22 relief, I'm a hearing officer -- I mean, Fry  
23 says the hearing officer does not -- I mean, in  
24 so many words, the hearing officer does not  
25 have authority under the IDEA to decide an ADA

1 claim.

2 JUSTICE BARRETT: Mr. Yang --

3 MR. YANG: I mean, there's just  
4 nothing to do. What would happen here is  
5 exactly what happened here, which is that the  
6 hearing officer dismisses the ADA claim --

7 JUSTICE BARRETT: Well, and it --

8 MR. YANG: -- or dismisses the claim  
9 for ADA relief.

10 JUSTICE BARRETT: -- and it would be  
11 would be a losing claim, as you were saying to  
12 Justice Alito, that, you know, you can't  
13 recover under the ADA simply because you didn't  
14 get a FAPE?

15 MR. YANG: Yep.

16 JUSTICE BARRETT: It's not the same  
17 thing. And if that's all you're seeking, if --  
18 if your only claim -- I mean, here, there are  
19 claims for emotional distress and other sorts  
20 of compensatory relief, right, for damages,  
21 backward-looking damages. But, if all you've  
22 got is you didn't give me a FAPE and you owed  
23 me a FAPE, and you can't make out the elements  
24 of the ADA claim, you just lose, right? So you  
25 can't just tack on compensatory damages at the

1 end of your request for IDEA relief. That's  
2 just not going to work, right?

3 MR. YANG: I think that's right, and  
4 if you did have a case where you were seeking  
5 things that have -- could have been sought  
6 under the IDEA and you haven't exhausted, and  
7 then you're seeking compensatory damages or  
8 something that wasn't, we think the right  
9 result -- this is supported by the Court's  
10 decision in Jones v. Bock, it's also analogous  
11 to Article III standing, where you have to show  
12 Article III standing for each form of relief  
13 that you're seeking --

14 JUSTICE BARRETT: Right.

15 MR. YANG: -- you would just tie off  
16 the -- the problematic type of relief and  
17 proceed.

18 JUSTICE BARRETT: Right.

19 MR. YANG: So, you know, it's a little  
20 difficult to understand where the Sixth Circuit  
21 was going on this. I think they may have lost  
22 the forest a bit for the trees. But, if you  
23 answer QP-1 first and you explain that the  
24 relief sought has to be relief that is actually  
25 available under the IDEA, I think that solves a

1 lot of the problems.

2 That would leave the futility  
3 question, Justice Kagan, unresolved, but you'll  
4 take the Sixth Circuit's decision off the  
5 books. And given that every -- you've got  
6 Honig, you've got all the other courts of  
7 appeals, you've got ratification twice, I'm  
8 pretty confident we can, you know, fix that  
9 going forward, hopefully, in the Sixth Circuit.

10 But, again, you can decide how you  
11 want to decide the case, whether it's the first  
12 issue or -- or the second issue, which can be  
13 decided in two ways.

14 CHIEF JUSTICE ROBERTS: Justice  
15 Thomas?

16 Justice Alito?

17 Justice Sotomayor?

18 JUSTICE SOTOMAYOR: Is there much  
19 parallel litigation now? Most of the court of  
20 appeals require going through the -- through  
21 the IDEA, but if you do and settle or you lose,  
22 they --

23 MR. YANG: Well, I think there's --  
24 there's two things that you might be talking  
25 to, and I can address both.

1           First, on QP-1, whether having a  
2 purely non-IDEA relief type of claim can  
3 proceed, there used to be a Circuit split.  
4 There was at least at the time the Court  
5 granted Fry. The Tenth Circuit -- I mean,  
6 excuse me, the Ninth Circuit, in a case called  
7 Payne in 2011, adopted the view that we  
8 advocate, and that was I think probably the  
9 basis for the Court granting cert in Fry.

10           However, after 10 years living with  
11 that rule, the Ninth Circuit en banc has -- has  
12 gone the other way. But, in those 10 years --  
13 remember, the Ninth Circuit is nine states, two  
14 territories, and about 20 percent of the U.S.  
15 population. No one has identified a single  
16 instance -- maybe there's a few -- of this  
17 becoming a problem.

18           And I think that that really touches  
19 upon the recognition that the Court had in  
20 Rowley, which is parents have every incentive  
21 to proceed IDEA relief. It's a speedy path.  
22 It concerns the education of their children,  
23 where time is of the essence. They're  
24 realistically going to go after IDEA relief and  
25 then pursue, as my friend explained, ADA relief



1 later. And I think the 10 years in the Tenth  
2 Circuit without the ability of the other side  
3 to identify any problem speaks to that.

4 The second issue is about the  
5 settlement. We've had three Circuits that --  
6 as we explained in our invitation brief, that  
7 have our rule about futility, the Third  
8 Circuit, the Ninth Circuit, and the Tenth  
9 Circuit. And that's been since, in the Third  
10 Circuit, 1995. Again, no untoward results.

11 Again, I think this speaks to the  
12 recognition of the Court in Rowley that court  
13 -- that parents are going to pursue IDEA  
14 relief. It is quick, it is fast, and it is  
15 important when we're talking about ongoing  
16 educational relief for your own kids.

17 CHIEF JUSTICE ROBERTS: Justice Kagan?

18 JUSTICE KAGAN: I'm wondering,  
19 Mr. Yang, if the SG has given any thought to  
20 what kinds of compensatory relief are available  
21 after Cummings? I mean, is -- is there any at  
22 this point? And for what?

23 MR. YANG: We -- we've not taken a  
24 position either in this case or subsequently.  
25 I know there is a -- an argument that is being

1 presented or will be presented should this case  
2 be litigated that Cummings forecloses ADA  
3 relief for emotional damages. There's also an  
4 argument that precludes the other types of  
5 compensatory damages. We're just not taking a  
6 position on that in this case.

7 Our position is that Petitioner  
8 clearly was entitled to at least litigate those  
9 questions.

10 CHIEF JUSTICE ROBERTS: Justice  
11 Gorsuch?

12 Justice Kavanaugh?

13 Justice Barrett?

14 Justice Jackson?

15 Thank you, counsel.

16 MR. YANG: Thank you.

17 CHIEF JUSTICE ROBERTS: Mr. Dvoretzky.

18 ORAL ARGUMENT OF SHAY DVORETZKY

19 ON BEHALF OF THE RESPONDENTS

20 MR. DVORETZKY: Mr. Chief Justice, and  
21 may it please the Court:

22 When Congress enacted Section 1415(1),  
23 it channeled all FAPE denial claims through the  
24 IDEA's exhaustion procedures. Congress  
25 carefully crafted those procedures, and it

1 wanted parents and school districts to go  
2 through them because of the primacy of a FAPE.

3 Congress's choice helps answer both  
4 questions presented, plus the third that  
5 Mr. Perez wants to add.

6 On the first question, Congress's  
7 choice shows that the word "relief" in 1415(1)  
8 means redress for harm, not a specific remedy.  
9 When a plaintiff complains of a FAPE denial,  
10 relief is available under the IDEA, and the  
11 plaintiff must exhaust. Any other test would  
12 allow plaintiffs to circumvent the exhaustion  
13 requirement Congress carefully crafted by using  
14 the magic word "damages" and going straight to  
15 court.

16 On the futility question, Congress's  
17 choice explains the unusually specific words  
18 that Congress wrote. A plaintiff must exhaust  
19 to the same extent as would be required had the  
20 action been brought under the IDEA. That  
21 directive reflects Congress's focus on  
22 delivering a FAPE, and it makes two things  
23 clear.

24 One, exhausting a non-IDEA claim means  
25 obtaining an administrative decision from an

1 educational expert, just as an IDEA plaintiff  
2 must do before going to court. That's why  
3 Mr. Perez's improper new argument that  
4 "settles" equals "exhaustion" is incorrect. An  
5 IDEA plaintiff cannot sue after settling.  
6 Thus, neither can a non-IDEA plaintiff.

7 Two, settlement doesn't excuse  
8 exhaustion. Neither the unavailability of  
9 damages nor settlement constitutes futility  
10 under the IDEA. Futility may excuse exhaustion  
11 where a court can grant relief that a hearing  
12 officer can't. But neither a hearing officer  
13 nor a court can award IDEA damages or  
14 adjudicate a settled claim. Thus, to the same  
15 extent, neither the unavailability of damages  
16 nor settlement constitutes futility for an ADA  
17 claim.

18 I welcome the Court's questions.

19 JUSTICE THOMAS: Couldn't you have  
20 solved this problem or precluded this, obviated  
21 this problem by obtaining a general release in  
22 your settlement?

23 MR. DVORETZKY: I think we could have.  
24 And I think we -- that going forward, whatever  
25 rule the Court adopts here will ultimately

1 function as just a default rule.

2 If the Court -- if the Court were to  
3 adopt our rule, then plaintiffs could insist on  
4 either complete compensation or a waiver of the  
5 exhaustion requirement as the price for a FAPE  
6 settlement.

7 If the Court adopts Mr. Perez's rule,  
8 then school districts could insist, if they  
9 wanted to, on a global release, or, if they  
10 were willing to proceed with litigation later  
11 on in an ADA claim, they could do that as well.

12 At bottom, we're just talking about a  
13 default rule here.

14 JUSTICE THOMAS: Is -- are there any  
15 other actions that are required to be exhausted  
16 before -- that -- that must be -- that you must  
17 exhaust the IDEA claim before you pursue them?

18 For example, let's say there's a tort  
19 action as a result of a student being injured  
20 as a result of poor training. Would that be  
21 exhausted -- have -- required to be exhausted?

22 MR. DVORETZKY: So, Justice Thomas, if  
23 it's a state law tort action, which I  
24 understand to be --

25 JUSTICE THOMAS: Yeah.

1           MR. DVORETZKY: -- the premise of your  
2 question, then I think, no, you would not have  
3 IDEA exhaustion. And that's because of the  
4 language of 1415(1), which says nothing shall  
5 be construed to restrict or, et cetera, rights  
6 under the Constitution, the ADA, the  
7 Rehabilitation Act, or other federal laws.

8           JUSTICE THOMAS: So the -- was  
9 there -- before you had (1), this provision,  
10 1415(1), did you have an exhaustion  
11 requirement?

12           MR. DVORETZKY: Before 15 -- before  
13 1415(1), the 15 -- 1415(1) was a response to  
14 the Court's decision in Smith.

15           JUSTICE THOMAS: Yeah.

16           MR. DVORETZKY: And under the Court's  
17 understanding in Smith, all FAPE-related claims  
18 had to proceed through the IDEA exclusively.  
19 So an exhaustion requirement wasn't really  
20 relevant because you simply couldn't bring  
21 non-IDEA FAPE claims --

22           JUSTICE JACKSON: But isn't that --  
23 isn't that --

24           MR. DVORETZKY: -- at all.

25           JUSTICE JACKSON: -- isn't that what's

1 happening here with your interpretation of the  
2 statute? I mean, that's sort of what concerns  
3 me, that it was clear that you -- you're right  
4 that there was a -- an attempt on the part of  
5 Congress to respond to Smith, and it would seem  
6 as though Congress was trying to make clear  
7 with the statutory language that we're  
8 interpreting that they did not want all claims  
9 arising out of these circumstances to have to  
10 go through the process.

11 So how do you square that, the kind of  
12 abrogation piece of this, with -- with your  
13 argument?

14 MR. DVORETZKY: Justice Jackson, two  
15 points, one about the history and context and  
16 the other about the language of the statute  
17 that -- that Congress actually enacted.

18 With respect to the -- the history and  
19 context, Smith really did three things, and  
20 Congress's response was not to overturn all of  
21 them.

22 One, Smith said no attorneys' fees  
23 under the IDEA. Congress changed that.

24 Two, Smith said no non-IDEA FAPE  
25 claims. And Smith did -- and -- and 1415(1)

1 did overturn that.

2 But the third thing Smith said was  
3 that it had a concern with circumventing the  
4 IDEA's procedures. And Congress, in fact,  
5 reaffirmed that concern by, on the one hand,  
6 allowing non-IDEA FAPE claims to be brought  
7 but, on the other hand, channeling them first  
8 through the IDEA's exhaustion procedure.

9 JUSTICE JACKSON: But only --

10 MR. DVORETZKY: And that's the second  
11 --

12 JUSTICE JACKSON: -- but that's not  
13 what the language says. The language says to  
14 the extent or if they are seeking the same  
15 relief, number one, and if we read it the way  
16 that you want to read it, doesn't -- don't we  
17 end up going back to the part of Smith that you  
18 even agree Congress overturned, which is the  
19 part about whether or not we can have non-IDA  
20 -- IDEA FAPE claims because, as Justice Barrett  
21 pointed out earlier, you know, through your  
22 analysis, it would seem as though you wouldn't  
23 have any ability to bring an ADA claim if  
24 someone, you know, is successful on the IDEA  
25 claim.



1           MR. DVORETZKY: Justice Jackson, I  
2     don't think that that is the result of our  
3     analysis, and I also don't think that is the  
4     correct textual reading of the statute.

5           The result of our analysis does allow  
6     for non-IDEA FAPE claims to be brought once the  
7     IDEA's exhaustion procedures have been -- have  
8     been followed.

9           So all we're talking about here is  
10    that if you have a FAPE claim, you bring that  
11    to the IDEA hearing officer first. You get a  
12    FAPE, which is the primary relief that the IDEA  
13    is concerned with. And once you have that, if  
14    you think you have an ADA claim to pursue, you  
15    can pursue that some number of months later.  
16    But Congress's focus first and foremost was on  
17    making sure that the -- that the child gets a  
18    FAPE.

19           With respect to the statutory text, I  
20    think all of this comes down to how we  
21    interpret or how you interpret the word  
22    "relief" in 1415(1), and the word "relief" read  
23    in isolation can mean one of two things. It  
24    can either mean redress for harm or it can mean  
25    a specific remedy.

1           The better reading here is that it  
2 means redress for harm. That is consistent  
3 with how Fry understood the term "relief."

4           CHIEF JUSTICE ROBERTS: And -- and  
5 your --

6           MR. DVORETZKY: Fry said --

7           CHIEF JUSTICE ROBERTS: I'm sorry.  
8 And your -- your point is that the denial of a  
9 FAPE is the same harm in both cases?

10          MR. DVORETZKY: Yes.

11          CHIEF JUSTICE ROBERTS: In the ADA and  
12 under the IDEA?

13          MR. DVORETZKY: If you have a case, as  
14 I think is stipulated at this point in this --  
15 in this Court, where the gravamen of the  
16 complaint is the denial of a FAPE, then that is  
17 the harm that is being redressed.

18          It is being --

19          CHIEF JUSTICE ROBERTS: But you can  
20 have an AD -- you could have litigated this as  
21 a straight ADA claim and gone through the whole  
22 process without using the acronyms for FAPE,  
23 right? There's no necessity to prove or focus  
24 on or whatever under the ADA claim. Nothing  
25 under the ADA says you have to have a FAPE,

1 right?

2 MR. DVORETZKY: Well, Mr. Chief  
3 Justice, I think Fry is -- is trying to address  
4 this question by saying that whatever label the  
5 plaintiff puts on the complaint, we -- or on  
6 the claim, the Court looks to see what the  
7 gravamen of the complaint is.

8 And is the gravamen of the complaint  
9 the denial of a FAPE, whatever you might call  
10 it in your complaint, or is it something else?  
11 And -- and, in this case, I think using the two  
12 guideposts that Fry provides, one, could an  
13 adult at a school have brought the same claim?  
14 No, because the claim is about the denial of an  
15 education. Could a child at another public  
16 facility like a library have brought the same  
17 claim? No, for the same reason, because, at  
18 bottom, what's alleged here is the denial of a  
19 proper education.

20 And so that under the Fry analysis --  
21 I don't think it's a question presented here --  
22 makes -- makes that the gravamen of the  
23 complaint there.

24 JUSTICE KAGAN: I mean, Mr. Dvoretzky,  
25 just going back to this question of what

1 "relief" means and whether you're seeking  
2 relief that's also available under the IDEA  
3 when you're seeking damages, I would have  
4 thought that the first blush and maybe also the  
5 second blush and third blush reading of that  
6 is, well, no, if you're seeking damages, then  
7 you're not seeking relief that's also available  
8 under the IDEA.

9           And that's exactly how the rest of  
10 1415 uses "relief." So that there are a couple  
11 of different provisions in the same statutory  
12 section. One says it directs the court to  
13 grant such relief as it determines as  
14 appropriate. So, you know, it's like, are you  
15 granting an injunction? Are you granting  
16 damages?

17           Another prohibits attorneys' fees if  
18 the court finds that the relief obtained isn't  
19 more favorable to the parents than the offer of  
20 settlement. Again, it's relief in the normal  
21 sense. You know, what did you get? Did you --  
22 how much money did -- was put on the table?

23           It's just a normal wording of the word  
24 "relief," the one that comes out of Black's Law  
25 Dictionary that Fry quotes, which is like I'm

1 seeking damages. That's not relief that's  
2 available under the IDEA.

3 MR. DVORETZKY: Justice Kagan, I think  
4 that redress can also bear a different meaning,  
5 which is not just the specific remedy that  
6 you're asking for but redress for a harm. It's  
7 the -- it's the kind of situation where you may  
8 not get what you ask for, but you get what you  
9 need.

10 And if you bring a FAPE denial claim  
11 seeking damages to an IDEA hearing officer,  
12 you're not going to get damages because the  
13 IDEA doesn't give you that, but you will get a  
14 FAPE, and that is redress for the harm of  
15 denial of a FAPE.

16 With respect to how Fry used the term,  
17 Fry said "relief" is the redress or benefit  
18 that attends a favorable judgment. It didn't  
19 say redress -- the specific redress or benefit  
20 demanded by the plaintiff that attends a  
21 favorable judgment.

22 With respect to the other uses of  
23 "relief" in the IDEA, again, I think "relief"  
24 in isolation can bear different meanings.

25 JUSTICE KAGAN: Well, these are --

1 MR. DVORETZKY: Other --

2 JUSTICE KAGAN: -- provisions that are  
3 surrounding the very provision that we're  
4 supposed to interpret, which are clearly using  
5 the term "relief" to mean something very  
6 different from what you're saying.

7 MR. DVORETZKY: Justice Kagan, I  
8 respectfully disagree with that reading of the  
9 word "relief" in the other provisions as well.  
10 If you look at those two provisions, one talks  
11 about how the court shall grant such relief as  
12 the court determines is appropriate. That's my  
13 "you get what you need, not necessarily what  
14 you want" understanding of relief. The court  
15 will grant whatever relief is appropriate,  
16 regardless of what relief you have specifically  
17 asked for.

18 The other example is in the settlement  
19 context. No fees if the relief finally  
20 obtained is less favorable than the settlement  
21 offer.

22 Under Mr. Perez's understanding of  
23 relief, what "relief" really means is a type of  
24 relief. That doesn't plug in -- that  
25 understanding doesn't plug in to that

1 settlement provision. How do you compare  
2 different types of relief as being more or less  
3 favorable? It's apples and oranges.

4           And so I -- I don't actually think  
5 that playing the isolated definition game of  
6 looking at "relief" in different contexts gets  
7 you very far here. I think the real question  
8 is, what did Congress mean when it used the  
9 word "relief" in 1415(1) and which of the two  
10 plausible understandings of that term did  
11 Congress mean to adopt?

12           Our understanding makes more sense  
13 here for a few reasons. One --

14           JUSTICE JACKSON: Can you, before you  
15 go into those reasons, if the question is what  
16 did Congress intend, as you started out, how --  
17 how do you respond to opposing counsel's  
18 reference to the legislative history and in  
19 particular the statement in the House report  
20 where Congress says it's not appropriate to  
21 require the use of the exhaustion process if an  
22 IDEA hearing officer lacks the authority to  
23 grant the relief sought?

24           MR. DVORETZKY: Justice Jackson, this  
25 was a compromise bill that went through a

1 number of different iterations, and I just  
2 don't think that there is much, if any, weight  
3 that can be placed on the legislative history  
4 to shed light on that.

5 I think, if we -- if we look at the  
6 purposes that Congress was more broadly trying  
7 to achieve here, the main purpose of the IDEA  
8 -- and it says this in its first declaration of  
9 purpose -- is to ensure that all children with  
10 disabilities have available to them a FAPE.

11 The exhaustion requirement is designed  
12 to address that FAPE requirement right away.  
13 Rather than --

14 JUSTICE JACKSON: For IDEA claims.  
15 But what about the purposes of the other  
16 non-IDEA statutes which Congress is clearly  
17 preserving here?

18 MR. DVORETZKY: Congress is preserving  
19 them, but the second half of 1415(1) channels  
20 those through the IDEA's exhaustion procedures.  
21 And the reason for that is because of the  
22 primacy of getting a FAPE under the IDEA.

23 The exhaustion requirement is designed  
24 to say, you can pursue your other claims later,  
25 but, first and foremost, you have to try to get



1 a FAPE because that's what's in the best  
2 interests of the child. And you have to go  
3 through the IDEA's procedures in order to do  
4 that, rather than allowing parents to choose a  
5 particular remedy that they might prefer under  
6 other statutes by going straight to court.

7 Fry, I think, also reflects that  
8 insight in that it recognizes the primacy of  
9 the FAPE in asking whether the gravamen of a  
10 complaint is the denial of the FAPE.

11 Reading "relief" to mean the redress  
12 that the IDEA provides also avoids a  
13 circumvention problem because circumvention and  
14 going straight to court may, first of all,  
15 deprive the child of a FAPE by focusing on  
16 damages and not requiring parents to go  
17 through -- through the FAPE process.

18 Second, it deprives both parents and  
19 schools of help from educational experts, which  
20 Article III judges are not. I think Congress  
21 recognized that there are educational experts  
22 in the agencies who ought to address these  
23 sorts of issues first.

24 And, third, by putting -- it would --  
25 the circumvention and going straight to court

1 would put the FAPE question before inexperienced  
2 Article III judges without the benefit of  
3 getting findings in a decision, which is what  
4 the IDEA's exhaustion procedures require from  
5 an educational expert.

6 JUSTICE ALITO: Which of the two  
7 default rules better serves the objectives of  
8 the IDEA?

9 MR. DVORETZKY: So -- so it -- it  
10 depends which question we're talking about. I  
11 think what we have been talking about --

12 JUSTICE ALITO: But you said earlier  
13 that there -- what we're talking about is the  
14 default rule. And the default rule could  
15 either be the one you'd like or the one that  
16 Mr. Martinez likes. Which one better serves  
17 the objectives of --

18 MR. DVORETZKY: To --

19 JUSTICE ALITO: -- the IDEA?

20 MR. DVORETZKY: To clarify, Justice  
21 Alito, I think that the -- the notion of a  
22 default rule only comes into play on the second  
23 and third questions presented here about --  
24 about what happens after a settlement.

25 The question that we have, I think,

1 mostly been talking about here is the first  
2 question presented, which goes beyond the  
3 context of a settlement. And -- and I think  
4 Mr. -- Mr. Martinez is asking for a rule where,  
5 whenever a plaintiff seeks monetary damages,  
6 that gets you out of the exhaustion requirement  
7 in 1415(1).

8 As to that rule, that's not a default  
9 rule principle at play there. That would be an  
10 absolute rule outside the context of  
11 settlement.

12 With respect to the default rule, I  
13 think that only comes up in a situation which  
14 will probably be rare after this case where you  
15 have a settlement that doesn't speak one way or  
16 another to -- to what happens to future ADA  
17 claims.

18 And on that --

19 JUSTICE GORSUCH: On that, I -- I -- I  
20 just want to press you on that assertion  
21 because your friend on the other side says no,  
22 if we were to adopt your rule, the parties  
23 couldn't contract to allow an ADA claim to be  
24 brought later, that a settlement would itself  
25 extinguish the potential for an ADA claim. You

1 have to exhaust -- your theory of exhaustion  
2 requires proceeding through the administrative  
3 process all together.

4 Do you want to respond to that?

5 MR. DVORETZKY: Yes, I don't think  
6 that's right, Justice Gorsuch. I think that  
7 the exhaustion requirement under the IDEA, in  
8 light of this Court's clear statement rule,  
9 although it's not a fourth question presented  
10 here, I don't think the Court would likely find  
11 that the exhaustion requirement is a  
12 jurisdictional one.

13 And so it is something that, either  
14 way, whether you adopt our rule or --

15 JUSTICE GORSUCH: But absent waiver by  
16 the other side, it would operate in the way  
17 Mr. Martinez suggests, wouldn't it?

18 MR. DVORETZKY: Absent a waiver, it  
19 would. And that I think takes us to the  
20 default rule point.

21 JUSTICE GORSUCH: Okay.

22 MR. DVORETZKY: But either way --

23 JUSTICE GORSUCH: Okay. And on -- on  
24 that, with respect to futility, it seems like  
25 most of the courts of appeals have gravitated

1 around a rule that there -- a futility  
2 exception does exist here. And what's wrong  
3 with that rule, and how is it operated in a way  
4 that's problematic in your view?

5 MR. DVORETZKY: Justice Gorsuch, I  
6 think it depends precisely what futility rule  
7 we are talking about and futility with respect  
8 to what? 1415(1) is setting up -- and I think  
9 your -- your -- your opinion in the A.F. case  
10 --

11 JUSTICE GORSUCH: Oh, do not invoke my  
12 opinions below. That's dangerous, counsel.

13 (Laughter.)

14 JUSTICE GORSUCH: Every lawyer knows  
15 that's dangerous. I'm bound by circuit  
16 precedent and arguments that weren't made to  
17 me. Okay? Here we are with all sorts of  
18 excellently lawyered arguments on both sides  
19 and no circuit precedent. Proceed with  
20 caution.

21 (Laughter.)

22 MR. DVORETZKY: Giving no deference to  
23 the Tenth Circuit, I think the Tenth -- the  
24 Tenth Circuit had it right.

25 (Laughter.)

1 JUSTICE GORSUCH: Touché.

2 MR. DVORETZKY: The -- the Tenth  
3 Circuit had it right in setting up the -- the  
4 critical question that Congress instructed  
5 courts to answer here is whether a plaintiff  
6 bringing a non-IDEA claim could invoke futility  
7 when bringing that same claim as an IDEA claim.

8 JUSTICE GORSUCH: Well, as I recall  
9 the Tenth Circuit has held that the futility  
10 exception does exist. It just wasn't present  
11 in the particular case you mentioned because  
12 the party didn't argue it. So, again, what's  
13 wrong with the futility exception as  
14 interpreted by most circuits, including my  
15 former circuit?

16 MR. DVORETZKY: I -- there is no  
17 futility exception that applies in this  
18 situation because of how 1415(1) operates. The  
19 -- the rule -- what the Court needs to look at  
20 is whether an IDEA claim would be subject to a  
21 futilities -- futility exception. In other  
22 words, if this FAPE-related ADA claim or FAPE  
23 denial ADA claim had been brought as an IDEA  
24 claim, would there be a futility exception to  
25 that IDEA claim? And the answer to that

1 question is no.

2           The relevant principle of exhaustion,  
3 exhaustion is excused as futile when the agency  
4 can't grant you some relief that a court could  
5 grant you. That's the circumstance in which it  
6 makes sense to say we're going to excuse  
7 exhaustion, we're going to allow you to skip  
8 over the first level decisionmaker and go  
9 straight to a second level decisionmaker who  
10 can help you.

11           That principle doesn't apply either as  
12 to a damages request or in the settlement  
13 context for an IDEA claim. A damages request  
14 can't excuse exhaustion as futile because  
15 neither a hearing officer, nor a court can  
16 award damages under the IDEA. The problem is  
17 that the IDEA doesn't authorize damages in the  
18 first place, not that the hearing officer is  
19 somehow uniquely powerless to grant them.

20           Settlement also can't excuse  
21 exhaustion as futile. Futility and exhaustion  
22 are concepts that really only make sense as  
23 preparation for a lawsuit. But when a  
24 plaintiff settles his IDEA claim, he  
25 extinguishes it. Futility excuses exhaustion

1 so someone can go to court. When the case has  
2 been settled, no one's going to court.

3 So whatever futility exceptions there  
4 might be in other contexts in the IDEA, those  
5 futility exceptions don't logically apply when  
6 you have a request for damages or a settlement.

7 JUSTICE BARRETT: But it sounds like  
8 you're assuming that the request for damages --  
9 that the damages aren't available under the ADA  
10 either. Right? Like --

11 MR. DVORETZKY: No.

12 JUSTICE BARRETT: Clearly, everybody  
13 is in agreement here that compensatory damages  
14 aren't available under the IDEA. But when you  
15 said futility wouldn't apply because  
16 compensatory damages aren't available, I take  
17 that to be that compensatory damages aren't  
18 available under the IDEA?

19 MR. DVORETZKY: I think that the  
20 hypothetical inquiry that 1415(1) requires the  
21 court to engage in is what would have happened  
22 if the same claim had been brought under the  
23 IDEA? We're not talking about exhausting the  
24 ADA claim before the hearing officer. We're  
25 talking about bringing the FAPE denial claim



1 before the hearing officer as an IDEA claim.

2 If you were --

3 JUSTICE BARRETT: So you're not taking  
4 the position that they couldn't later or --  
5 let's see. You're not -- are you taking the  
6 position -- I guess it's just hard for me to  
7 see how the ADA claim ever gets asserted, then.

8 MR. DVORETZKY: I think if you bring  
9 an IDEA claim to a hearing officer --

10 JUSTICE BARRETT: Mm-hmm.

11 MR. DVORETZKY: -- win or lose,  
12 whatever happens, you get findings in a  
13 decision, at that point, you have satisfied  
14 1415(1) because you have -- the exhaustion --  
15 the procedures of (f) and (g) have been  
16 exhausted to the same extent as if a claim were  
17 -- as if the claim were brought under the IDEA,  
18 which, in fact, it was.

19 At that point, you go to court having  
20 satisfied 1415 --

21 JUSTICE SOTOMAYOR: So you're --  
22 you're breaking with the Sixth Circuit?

23 MR. DVORETZKY: I'm -- I'm --

24 JUSTICE SOTOMAYOR: The Sixth Circuit  
25 said if you win the IDEA claim, you're not an

1 aggrieved party so you can't go and get  
2 compensation for your damages. I thought  
3 that's what it said.

4 MR. DVORETZKY: So I -- I think that  
5 aggrievement is really not a relevant concept  
6 here. If you --

7 JUSTICE SOTOMAYOR: Oh, I agree with  
8 you. So you're disagreeing with the Sixth  
9 Circuit's analysis?

10 MR. DVORETZKY: Well, on that  
11 particular --

12 JUSTICE SOTOMAYOR: Just answer the  
13 question.

14 MR. DVORETZKY: On that point, yes,  
15 because I think aggrievement isn't really the  
16 relevant concept. What is relevant under  
17 1415(i), which as this Court has said --

18 JUSTICE SOTOMAYOR: Continue answering  
19 Justice Barrett. I just wanted to make sure we  
20 were on the same page.

21 (Laughter.)

22 MR. DVORETZKY: And what page was  
23 that?

24 JUSTICE BARRETT: I think you've  
25 mostly answered. I mean, I -- I guess you're

1 -- you are envisioning a world, it seems maybe  
2 a very narrow world, in which an ADA claim  
3 could be pursued after your vision of  
4 exhaustion occurs.

5 MR. DVORETZKY: I think it could.  
6 Whether it is -- whether it's narrower or not  
7 may depend on what remedies are ultimately  
8 available under the ADA, which I think in light  
9 of Cummings --

10 JUSTICE BARRETT: Cummings.

11 MR. DVORETZKY: -- and in light of the  
12 same contract analysis that would apply to a  
13 lost income claim, under state law you  
14 generally can't have a breach of contract claim  
15 for educational malpractice. And so whether  
16 it's an emotional distress claim, whether it's  
17 a lost income claim, I don't think that there  
18 are meaningful damages that would be available  
19 under the ADA, given the state of the law right  
20 now.

21 But, yes, that sort of claim could be  
22 brought after exhaustion of the -- the -- of --  
23 of the procedures in (f) and (g).

24 JUSTICE JACKSON: Can I ask you the  
25 same -- maybe the same question as the

1 hypothetical, just so that I understand because  
2 I think I'm a little confused?

3           So suppose we have a student who has  
4 both a viable IDEA claim and a viable ADA claim  
5 arising out of the same facts, which is the  
6 school is not giving her what she needs to get  
7 an appropriate education. But, for whatever  
8 reason, she only wants to bring the claim for  
9 money damages. Maybe she's going into her  
10 senior year, she's given up to education, she  
11 wants to go to work, so she doesn't want any of  
12 the, you know, adjust my education, give me the  
13 actual accommodations. She just wants to drop  
14 out and go to work and get compensatory damages  
15 for the harm that's been caused, she says, by  
16 the school's neglect under the ADA.

17           Does she have to exhaust using the  
18 procedures in this statute or not?

19           MR. DVORETZKY: I think she does, but  
20 in order to answer that question, I also have  
21 to just challenge one premise of it, which is I  
22 think that in -- generally speaking, even after  
23 you have graduated, you can still get redress  
24 for the denial of a FAPE through the IDEA --

25           JUSTICE JACKSON: But not compensatory

1 damages. She doesn't want any of the  
2 injunctive relief related to the circumstances  
3 of education.

4 So whatever the relief is that she  
5 could have gotten from the hearing officer  
6 about the state or status of her educational  
7 circumstances, she disclaims. All she wants is  
8 to be compensated for what she says occurred to  
9 her during the period of her education. And so  
10 she says: I don't want to bring an IDEA claim.  
11 I have an ADA claim.

12 Does she have to sit in front of the  
13 hearing officer and talk about ways in which  
14 her education could be changed, et cetera?

15 MR. DVORETZKY: Yes. And I think what  
16 she could get under the IDEA in that situation  
17 is compensatory education. She can have  
18 additional, even after she has graduated,  
19 additional --

20 JUSTICE JACKSON: But she doesn't want  
21 that. She doesn't want that. She's saying:  
22 I'm 18. I don't have to go to school any more.  
23 I don't want to go to school any more. I'm  
24 dropping out. I just want compensatory damages  
25 under the ADA.

1           What I'm trying to understand is why  
2 do we have a statute in your view that would  
3 make her exhaust under the IDEA, the IDEA as if  
4 she was asking for that other form of relief?

5           MR. DVORETZKY: Because whatever her  
6 preference is as to damages, Congress's  
7 priority in enacting the ADA and in -- as  
8 reflected in 1415(1) was first and foremost to  
9 make sure that people get a FAPE.

10           And so the remedy that she would get  
11 for the denial of a FAPE may not be immediately  
12 her first choice. She might --

13           JUSTICE JACKSON: And you don't see  
14 yourself as reading out the first part of the  
15 statute that says nothing about this limits the  
16 person's remedies or rights under the non-IDEA  
17 statute?

18           MR. DVORETZKY: I don't, because the  
19 second part of 1415(1) starts out by saying  
20 except that, before the filing of a civil  
21 action. So the first half is preserving some  
22 remedies, but the second half is by its terms  
23 creating a carveout.

24           And that carveout requires  
25 FAPE-related claims to be channeled through the

1 IDEA. That may result in a situation, as I  
2 say, where the plaintiff doesn't get right off  
3 the bat whatever their first choice specific  
4 remedy is. They get what the IDEA provides.

5 They have to wait six months or  
6 however long it takes to then go to court and  
7 seek damages, but Congress's goal in passing  
8 the IDEA was to make sure that people get FAPEs  
9 and Congress's prioritization and sequencing of  
10 IDEA and non-IDEA claims in 1415(l) reflect  
11 that.

12 With respect to -- if I can go back to  
13 Justice Alito's earlier question, which I think  
14 was if we are in the world of default rules as  
15 to the settlement issue, why is our default  
16 rule preferable for that situation?

17 I think a couple of points. One, our  
18 default rule leads to global settlement.  
19 Global settlement is generally preferred. It  
20 is generally preferred because once the parties  
21 have agreed on a FAPE, the parents and the  
22 school still have to continue to cooperate and  
23 working together in that -- work together in  
24 that situation.

25 And so having global peace rather than

1 having separate litigation, if you're looking  
2 for a default rule, is the better default rule.

3 Second, if you are going to have  
4 subsequent litigation, Congress's preference  
5 was for that to be informed by an  
6 administrative finding, by administrative  
7 findings and decision and the expertise of the  
8 educational experts who are involved in the  
9 IDEA process.

10 And so if we have to have a default  
11 rule, the default rule ought to be against  
12 subsequent litigation without that expertise.

13 Third, this is just how the text  
14 operates with the somewhat peculiar language of  
15 1415(1), to Justice Thomas's point earlier, I'm  
16 not aware of another statute that subjects one  
17 -- that subjects a claim under one statute to  
18 exhaustion procedures under another, but that  
19 by its plain terms is what 1415(1) is doing.

20 So our default rule honors that text.  
21 If you were to create an exception to that, it  
22 would potentially open the flood gates to other  
23 sorts of exceptions to futility or exhaustion  
24 that one might seek. And that's going to lead  
25 to uncertainty and further litigation in the



1 lower courts.

2 And, lastly, on the equities, as I was  
3 saying to Justice Barrett, in light of the  
4 state of the law right now it's not clear that  
5 there even are compensatory damages available  
6 under the ADA. And so there is no great  
7 inequity in holding as a default rule that once  
8 you have gotten the FAPE, which was Congress's,  
9 again, primary purpose in enacting the IDEA,  
10 once you have gotten that, at that point --

11 JUSTICE KAGAN: Well, no one has  
12 decided that question yet, Mr. Dvoretzky. So  
13 while those damages remain open and potentially  
14 available, the question is, you know, what  
15 should Miguel have done?

16 I think Mr. Martinez stood up and the  
17 first words out of his mouth were Miguel did  
18 everything right. And it's hard for me to see  
19 how that's not true. What should Miguel have  
20 done differently from what he did do in this  
21 case?

22 MR. DVORETZKY: I think a plaintiff in  
23 that situation has several options. One is, as  
24 part of the settlement, to negotiate whatever  
25 compensation he thinks he's entitled to for his

1 non-IDEA claims.

2 Another is to negotiate as part of the  
3 settlement a waiver from the school of the  
4 exhaustion requirement and then proceed to  
5 court. So there were options as part of that  
6 global settlement to get the full relief he was  
7 asking for.

8 JUSTICE KAGAN: Now, Sturgis was not,  
9 for all we know, offering any of those things.  
10 So what's he supposed to do?

11 MR. DVORETZKY: Negotiate. I mean, as  
12 in all settlements.

13 JUSTICE KAGAN: Better -- negotiate  
14 better. Just pound his fist on the table with  
15 your legal rule, such that Sturgis doesn't have  
16 to offer any of those things because he can't  
17 -- he has two choices. He can either reject a  
18 good settlement, which is enabling him to  
19 receive educational services, or give up on the  
20 potential, which this statute clearly gives him  
21 of getting compensatory damages as well under  
22 the ADA.

23 MR. DVORETZKY: Justice Kagan, I think  
24 that takes us back to the default rule point,  
25 which is whichever rule this Court adopts,

1 either side could, if it wanted, pound its fist  
2 on the table and insist on one outcome or  
3 another.

4           Either you can -- either a plaintiff  
5 can insist on getting full recovery or a waiver  
6 or a school district could insist if it wanted  
7 to on no deal unless it gets a waiver. I mean  
8 -- I'm sorry, unless it gets a full release.

9           The other point that I will make as a  
10 practical matter, though, and I think it's also  
11 true in this case, although these facts haven't  
12 been developed because the case hasn't been  
13 litigated, school districts have an interest in  
14 starting to provide the FAPE as soon as they  
15 are aware and as soon as their lawyers make  
16 their aware -- make them aware that there has  
17 been some deficiency.

18           It's not in a school district's  
19 interest to say we're going to hold the FAPE  
20 hostage.

21           JUSTICE KAGAN: But parents also have  
22 an interest in that. And that suggests why  
23 your sort of the sky is falling isn't going to  
24 happen because, of course, parents are not  
25 going to bypass the process that gives them

1 most speedily, most inexpensively, the  
2 opportunity to get the education fixed.

3 So, yes, they're going to go and --  
4 and try to get that, but, you know, at the same  
5 time they may also want, you know, I'm entitled  
6 under the ADA for damages.

7 MR. DVORETZKY: Justice Kagan, I don't  
8 know that as a practical matter, that that view  
9 of how parents will operate is always going to  
10 be true.

11 JUSTICE KAGAN: Well, I don't know  
12 that your view of how school districts are  
13 going to operate is always going to be true.  
14 As between the two, it strikes me that actually  
15 it's the parents that have the greater  
16 incentive to get the education fixed for their  
17 child.

18 MR. DVORETZKY: I think that sometimes  
19 --

20 JUSTICE KAGAN: That isn't litigation  
21 being run by a lot of rapacious lawyers, you  
22 know. This is litigation being run by parents  
23 who are trying to do right by their kids.

24 MR. DVORETZKY: And -- and I certainly  
25 think that most parents and most school

1 districts are trying to do right by the kids.  
2 I absolutely -- absolutely think that that's  
3 right.

4 I think part of the reason that we  
5 have not seen a rush to the courthouse seeking  
6 just damages claims, by passing the IDEA, is  
7 that the circuits have been aligned, that there  
8 has been a circuit consensus in favor of our  
9 rule on the first question presented that you  
10 can't do that if you're going to court and  
11 you're seeking damages for what is  
12 fundamentally a denial of FAPE claim.

13 And so when we talk about whether the  
14 sky is falling in the real world, the reason  
15 that it hasn't been is that the lower courts  
16 have aligned around the rule that we're asking  
17 this Court to adopt in the first question.

18 JUSTICE BARRETT: But what about  
19 Mr. Yang's point that the majority rule in the  
20 circuits is that the futility exception  
21 applies? And he pointed out that the sky  
22 hasn't fallen, even though as a practical  
23 matter the futility exception essentially, you  
24 know, cuts in favor of Mr. Martinez's position  
25 on the antecedent question?

1           MR. DVORETZKY: I don't think that the  
2 circuits have adopted a futility -- that an  
3 overwhelming number of circuits have adopted a  
4 futility rule in this context. Lower courts  
5 have recognized some futility exceptions to the  
6 IDEA, yes, but not futility exceptions for  
7 either damages or settlement. The overwhelming  
8 weight of authority has been, about situations  
9 like the ones this Court addressed in -- in  
10 Smith and Honig, for example, where you are  
11 challenging the -- the procedures themselves,  
12 you might have futility.

13           Where a school district wants to  
14 challenge the stay put provision because of a  
15 dangerous child, you might have futility that  
16 lets you go straight to court. But it's not  
17 this kind of a situation where you're invoking  
18 futility in order to avoid exhaustion of a  
19 damages claim where you could get relief for  
20 denial of a FAPE through the IDEA.

21           CHIEF JUSTICE ROBERTS: Thank you,  
22 counsel.

23           Justice Thomas?

24           JUSTICE THOMAS: Can you think of any  
25 claim in the context of this case that could

1 have been brought under ADA that need not have  
2 been exhausted?

3 MR. DVORETZKY: Hypothetically -- and  
4 this is not what was alleged here -- but if you  
5 had a situation where the plaintiffs wanted to  
6 say Mr. Perez was -- was denied educational  
7 services -- well, this would -- I guess this  
8 wouldn't a be an ADA claim. It could be an  
9 equal protection claim, for example, saying he  
10 was denied educational services because of his  
11 race and compare his treatment to that of this  
12 other kid over there.

13 That's a FAPE-related claim, but I  
14 think in that situation, the gravamen of the  
15 complaint isn't really the denial of the FAPE;  
16 it's the equal protection claim. So there are  
17 some -- some FAPE-related claims that could  
18 still be brought. And I think, again, that's  
19 the Fry question about what is really the  
20 gravamen of what is being complained about  
21 here.

22 CHIEF JUSTICE ROBERTS: Justice Alito?  
23 Justice Sotomayor?  
24 Justice Kagan?  
25 Justice Gorsuch?

1 JUSTICE GORSUCH: I do want to just  
2 ask you one more question about the relief  
3 point because it seems like you spent most of  
4 your time elsewhere, understandably. The text  
5 says "relief that is also available under this  
6 subchapter." I mean, just focus with me for a  
7 second on just those words.

8 MR. DVORETZKY: Sure.

9 JUSTICE GORSUCH: What about that  
10 speaks of gravamen? I -- I would have -- you  
11 know, the natural reading for me, at least,  
12 would have been to suggest that I look at what  
13 relief is -- is legally available or  
14 permissible under that subchapter. I don't see  
15 gravamen hiding in there.

16 MR. DVORETZKY: I think the -- the way  
17 I would read those words is relief can either  
18 mean -- in the ordinary sense, if I say I got  
19 relief from something, that doesn't necessarily  
20 mean that I got the relief that I wanted. It  
21 just means that my injury was redressed.

22 JUSTICE GORSUCH: I understand that as  
23 a potential reading. I -- I will spot you  
24 that, that sometimes the law uses the word in  
25 that sense.



1                   What about these words suggest that  
2 sense?

3                   MR. DVORETZKY: I think you -- I think  
4 if you look at "relief that is also available,"  
5 those words in isolation don't suggest either  
6 sense. I think you -- you need to understand  
7 --

8                   JUSTICE GORSUCH: Why don't they  
9 suggest to a judge that he or she should go  
10 look and see what remedies or reliefs, forms of  
11 relief, are legally available under this  
12 subchapter?

13                   MR. DVORETZKY: I don't think it  
14 suggests what forms of relief. It doesn't say  
15 what forms of relief. It doesn't say such laws  
16 seeking particular types of relief that are  
17 also available under this subchapter.

18                   JUSTICE GORSUCH: Seeking relief that  
19 is also available under this subchapter.  
20 You're right. It doesn't say "particular." It  
21 doesn't say "forms," but it does say "available  
22 under this subchapter."

23                   MR. DVORETZKY: But I -- but I think  
24 that the lack of saying "particular" or "forms"  
25 is exactly what allows this phrase to mean --

1 to be understood in either sense. I don't  
2 think that just looking at those five words in  
3 isolation tells you one way or another.

4 I think that the context of what  
5 Congress was trying to achieve in the IDEA,  
6 which, as Fry recognized, was primarily to  
7 ensure that students get a -- get a FAPE first  
8 and foremost, that does suggest our reading  
9 because otherwise parents could circumvent that  
10 by going straight to court without the benefit  
11 of the educational experts that Congress wanted  
12 to put in place and without potentially even  
13 getting --

14 JUSTICE GORSUCH: I understand your  
15 purposivist arguments. I was just curious  
16 about your textualist ones.

17 MR. DVORETZKY: So I -- I think on the  
18 textual point, again, I think the text can be  
19 read either way, and so at that point, I  
20 wouldn't think of it as a purposivist argument  
21 as much as I would about a contextual -- as a  
22 contextual argument which actually derives from  
23 elsewhere in the IDEA's text, including the --  
24 the IDEA's statement that it seeks to ensure  
25 the availability of a FAPE first and foremost.

1 JUSTICE GORSUCH: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice  
3 Barrett?

4 JUSTICE BARRETT: No.

5 CHIEF JUSTICE ROBERTS: Nothing?  
6 Justice Jackson?

7 JUSTICE JACKSON: So just going back  
8 to what Justice Gorsuch just explored with you,  
9 I guess I'm wondering why the word "seeking" in  
10 the statute doesn't undermine your view?

11 I mean, you -- you suggest that you,  
12 you know, come to the hearing officer and you  
13 get what you get and you don't get upset and  
14 you don't get to choose.

15 (Laughter.)

16 JUSTICE JACKSON: That's what my  
17 daughters sometimes say.

18 So -- but -- but don't we have  
19 language in the statute just before the five  
20 words that you focused on that we have to take  
21 into account with respect to what it is that  
22 the person is actually seeking? Help -- help  
23 me to understand whether you're cutting that  
24 out of the -- of -- of your scenario or how it  
25 squares with your view that it doesn't matter

1 what it is that you -- you really want in terms  
2 of your relief?

3 MR. DVORETZKY: I think it really all  
4 comes back, Justice Jackson, to the word  
5 "relief." When we talk about seeking relief,  
6 if I have some injury, somebody broke my arm,  
7 I'm seeking -- I'm seeking medical care for  
8 that arm.

9 It doesn't matter whether I think I  
10 should have a cast or a sling or what. Like  
11 that might be the specific relief that I'm  
12 seeking, but actually I just go to the doctor  
13 and I get redress for my broken arm.

14 JUSTICE JACKSON: And going back --

15 MR. DVORETZKY: ^ Check: and I'm just  
16 --

17 JUSTICE JACKSON: -- to my hypo, if I  
18 am seeking money and -- and compensation for  
19 the school's failure to accommodate me when I  
20 asked for it all those years, is -- is that a  
21 separate claim? Is it not? Is it covered? Do  
22 I have to exhaust that?

23 MR. DVORETZKY: I think that takes us  
24 back to the Fry gravamen question. The way to  
25 think about that is that, regardless of whether

1 you are seeking money or further education or  
2 anything else, what you are seeking at bottom  
3 is redress for a FAPE denial.

4 That's what you're seeking. And the  
5 IDEA --

6 JUSTICE JACKSON: So there's no ADA  
7 claim that's preserved? Justice Thomas asked  
8 you about like what other claims could go on  
9 without being exhausted. There's no ADA  
10 reasonable accommodations claim that is -- that  
11 you can bring directly in court, under -- under  
12 your view?

13 MR. DVORETZKY: It -- not -- not --

14 JUSTICE JACKSON: You talked about the  
15 equal protection claim. I'm just trying to --

16 MR. DVORETZKY: Well --

17 JUSTICE JACKSON: -- understand if  
18 there's an ADA claim that could be brought.

19 MR. DVORETZKY: Not if the gravamen of  
20 your complaint is seeking a FAPE denial. But,  
21 again, I think that's just what follows from  
22 Fry, that however you frame your complaint,  
23 whether you call it a FAPE denial claim or not,  
24 we ask what at bottom are you actually seeking?

25 And that's where the two questions of

1 Fry are helpful because they ask could a  
2 student at the school -- I'm sorry, could an  
3 adult at the school have brought the same  
4 claim? Could a student at another public  
5 facility have brought the same claim?

6 If the answer is yes -- if the answer  
7 is yes, then in that situation, you are not  
8 actually seeking a FAPE denial. But if the  
9 answer to those questions is no, then whatever  
10 you call it, the relief that you're seeking is  
11 relief for the denial of a FAPE. It's my  
12 broken arm example.

13 JUSTICE JACKSON: Thank you.

14 CHIEF JUSTICE ROBERTS: Thank you,  
15 counsel.

16 Justice Kagan?

17 JUSTICE KAGAN: I mean -- just wanted  
18 to ask a question because you've been invoking  
19 Fry repeatedly. And of course it's true that  
20 Fry specifically reserved the question that  
21 we're talking about.

22 MR. DVORETZKY: Yeah.

23 JUSTICE KAGAN: It could not have been  
24 clearer. It --

25 MR. DVORETZKY: That's true.

1 JUSTICE KAGAN: It -- it typically  
2 reserved it twice. And it's -- it's just kind  
3 of not right logic to argue from Fry to your  
4 gravamen position.

5 I mean, what Fry said was, look, if  
6 you're not objecting to the denial of a FAPE at  
7 all, then you're obviously outside this sphere  
8 of the exhaustion requirement. And then it  
9 said: And then there's another question, which  
10 is if you're seeking relief for that denial of  
11 a FAPE that's not available under the IDEA,  
12 i.e., if you're seeking compensatory damages,  
13 which everybody understood not to be available  
14 under the IDEA. And that's the question that  
15 Fry says nothing about. Is that correct?

16 MR. DVORETZKY: Justice Kagan, it is,  
17 of course, absolutely correct that Fry did not  
18 decide this question and reserved that  
19 question.

20 I think Fry recognized --

21 JUSTICE KAGAN: It didn't even  
22 indicate -- I mean, it didn't hint, it didn't  
23 provide evidence of. All that -- you're --  
24 you're -- Fry said there's a necessary  
25 condition, which is are you objecting to the

1 denial of a FAPE? That's a really different  
2 question from is that a sufficient condition,  
3 which is the -- the position that you're  
4 taking.

5 MR. DVORETZKY: Justice Kagan, my only  
6 point is that there are certain key principles  
7 about the IDEA, including the primacy of a FAPE  
8 and the importance of the IDEA's procedures,  
9 that drive the analysis to the question -- to  
10 the question that's before the Court today and  
11 that I think Fry also recognized. That's all.

12 CHIEF JUSTICE ROBERTS: Thank --

13 MR. DVORETZKY: Fry recognized those  
14 principles.

15 CHIEF JUSTICE ROBERTS: Thank you,  
16 counsel.

17 Rebuttal, Mr. Martinez?

18 REBUTTAL ARGUMENT OF ROMAN MARTINEZ  
19 ON BEHALF OF THE PETITIONER

20 MR. MARTINEZ: Your Honors, I think  
21 Sturgis's answer to Justice Kagan's question  
22 about Miguel's dilemma really gives away the  
23 game here. Their answer is that if Sturgis had  
24 refused to cave in, had refused to give Miguel  
25 more than it had already negotiated, Miguel



1 would have had to reject the settlement, turn  
2 down the immediate FAPE relief, and roll the  
3 dice in an IDEA proceeding that might risk not  
4 only his recovery but also his attorneys' fees.  
5 No way. That's not what the statute is about.

6 And I think what that answer shows is  
7 what Sturgis is really seeking here is a rule  
8 that's going to nullify ADA rights and it's  
9 going to resurrect the regime of Smith versus  
10 Robinson that Congress expressly rejected.

11 A couple of additional points.

12 With respect to the text, their  
13 interpretation of relief means that if I go and  
14 I file an ADA claim and a complaint and it says  
15 in the complaint that I do not want injunctive  
16 relief or any other relief that's available  
17 under the IDEA in their view my complaint is  
18 seeking relief that is available under the ADA.

19 That can't possibly be right. It's  
20 inconsistent with the dictionaries,  
21 inconsistent with Fry, inconsistent with the  
22 legislative history, and it's inconsistent with  
23 common sense.

24 So they don't have a good textual  
25 argument so they fall back to policy. But

1 policy can't beat text. And it certainly can't  
2 beat text here when their circumvention  
3 argument doesn't work. Miguel settled and  
4 received full FAPE relief. He did not  
5 circumvent anything, Number 1.

6           Number 2, in other cases, parents are  
7 not going to have an incentive to circumvent  
8 because they're going to have to give up all  
9 the IDEA relief that they would otherwise be --  
10 have available to them. The ADA claim is going  
11 to be harder to prove. They're just not going  
12 to do that. They're going to try to maintain  
13 and preserve their rights under both statutes.

14           With respect to policy, our rule makes  
15 much more sense than their rule. It avoids a  
16 pointless exercise in which you have to go to  
17 an IDEA hearing officer and ask for relief that  
18 the IDEA hearing officer has no authority to  
19 give and it avoids the result in this case  
20 where, as we've said repeatedly, Miguel did  
21 everything right. He settled, he got the FAPE  
22 and he nonetheless, on their view, has to give  
23 up his ADA claims.

24           With respect to the default rule  
25 point, Mr. Dvoretzky for the first time says

1 that oh, what -- what everyone knows you should  
2 have had to do is negotiate a waiver of the  
3 exhaustion requirement. Well that's asking a  
4 lot for parents who are struggling with kids  
5 with disabilities to -- to have to negotiate  
6 that fine-tuned waiver and it's also not clear  
7 that it's even available.

8           There's a circuit split right now on  
9 the question of whether exhaustion is, in fact,  
10 jurisdictional. So if that rule is in effect,  
11 I don't know what parents are supposed to do in  
12 circuits that say you can't make such a waiver.  
13 At a minimum, it's going to mean that this  
14 Court is going to have to decide another case  
15 involving this provision. I don't think that  
16 makes any sense.

17           Finally, with respect to purpose, Mr.  
18 Dvoretzky says this is all about the primacy of  
19 a FAPE. Of course the ADA is about the primacy  
20 of a FAPE. That's exactly what Miguel did when  
21 he invoked his IDEA rights, went to the IDEA  
22 process, and convinced the -- the Sturgis after  
23 having discriminated against him for 12 years,  
24 finally convinced the school to give him a  
25 FAPE.

1                   That was the settlement that he  
2                   reached. The IDEA is also intended, though, to  
3                   protect other legal rights and Congress did not  
4                   intend to force parents, Miguel, and other  
5                   victims of discrimination to give up those  
6                   rights in order to reach settlements.

7                   We ask this Court to reverse. Thank  
8                   you, Your Honors.

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

11                  (Whereupon, at 11:31 a.m., the case  
12                  was submitted.)

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## Official - Subject to Final Review

<b>1</b>	<b>account</b> <sup>[1]</sup> 91:21 <b>achieve</b> <sup>[2]</sup> 64:7 <b>90:5</b> <b>acknowledge</b> <sup>[1]</sup> 39:8 <b>acknowledged</b> <sup>[2]</sup> 20:7 <b>40:1</b> <b>acronyms</b> <sup>[1]</sup> 58:22 <b>Act</b> <sup>[1]</sup> 54:7 <b>action</b> <sup>[9]</sup> 16:10 <b>33:13</b> <b>40:21</b> <b>42:4</b> 43:19 <b>51:20</b> <b>53:19,23</b> <b>78:21</b> <b>actions</b> <sup>[2]</sup> 16:13 <b>53:15</b> <b>activity</b> <sup>[1]</sup> 37:5 <b>actual</b> <sup>[2]</sup> 30:8 <b>76:13</b> <b>actually</b> <sup>[14]</sup> 5:7 <b>15:24</b> <b>19:19</b> <b>20:19</b> 19 <b>32:25</b> <b>46:24</b> <b>55:17</b> <b>63:4</b> <b>84:14</b> <b>90:22</b> <b>91:22</b> <b>92:12</b> <b>93:24</b> <b>94:8</b> <b>AD</b> <sup>[2]</sup> 44:10 <b>58:20</b> <b>ADA</b> <sup>[90]</sup> 4:18 <b>5:3</b> <b>6:21</b> <b>7:15,17</b> <b>11:17,18,23</b> <b>13:23</b> <b>15:25</b> <b>17:15,23</b> <b>21:6,10,25,25</b> <b>23:15,22,25</b> <b>26:2</b> <b>27:13,15</b> <b>28:9</b> <b>29:7</b> <b>32:4</b> <b>33:13,20</b> <b>34:2</b> <b>35:25</b> <b>36:4,11,22</b> <b>37:16,19,25</b> <b>42:10,14,14,16</b> <b>43:2,13</b> <b>44:10,15,20,25</b> <b>45:6,9,13,24</b> <b>48:25</b> <b>50:2</b> <b>52:16</b> <b>53:11</b> <b>54:6</b> <b>56:23</b> <b>57:14</b> <b>58:11,21,24,25</b> <b>67:16,23,25</b> <b>70:22,23</b> <b>72:9,24</b> <b>73:7</b> <b>75:2,8,19</b> <b>76:4,16</b> <b>77:11,25</b> <b>78:7</b> <b>81:6</b> <b>82:22</b> <b>84:6</b> <b>87:1,8</b> <b>93:6,9,18</b> <b>97:8,14,18</b> <b>98:10,23</b> <b>99:19</b> <b>ADA's</b> <sup>[1]</sup> 36:23 <b>ADA-type</b> <sup>[1]</sup> 44:21 <b>add</b> <sup>[1]</sup> 51:5 <b>additional</b> <sup>[3]</sup> 77:18,19 <b>97:11</b> <b>address</b> <sup>[5]</sup> 34:16 <b>47:25</b> <b>59:3</b> <b>64:12</b> <b>65:22</b> <b>addressed</b> <sup>[1]</sup> 86:9 <b>addresses</b> <sup>[1]</sup> 23:10 <b>adjudicate</b> <sup>[1]</sup> 52:14 <b>adjudicated</b> <sup>[1]</sup> 36:4 <b>adjudicators</b> <sup>[1]</sup> 13:2 <b>adjust</b> <sup>[1]</sup> 76:12 <b>administrative</b> <sup>[14]</sup> 6:11 <b>7:12</b> <b>9:4</b> <b>24:19</b> <b>25:12,15,17</b> <b>31:11</b> <b>33:19</b> <b>42:20</b> <b>51:25</b> <b>68:2</b> <b>80:6,6</b> <b>adopt</b> <sup>[5]</sup> 53:3 <b>63:11</b> <b>67:22</b> <b>68:14</b> <b>85:17</b> <b>adopted</b> <sup>[3]</sup> 48:7 <b>86:2,3</b> <b>adopts</b> <sup>[3]</sup> 52:25 <b>53:7</b> <b>82:25</b> <b>adult</b> <sup>[2]</sup> 59:13 <b>94:3</b> <b>advocate</b> <sup>[2]</sup> 40:16 <b>48:8</b> <b>affect</b> <sup>[1]</sup> 19:23 <b>afford</b> <sup>[1]</sup> 37:3 <b>agencies</b> <sup>[1]</sup> 65:22 <b>agency</b> <sup>[6]</sup> 4:22 <b>15:1</b> <b>27:3,17</b> <b>32:11</b> <b>71:3</b> <b>aggrieved</b> <sup>[1]</sup> 74:1 <b>aggravement</b> <sup>[2]</sup> 74:5,15 <b>ago</b> <sup>[1]</sup> 12:25 <b>agree</b> <sup>[3]</sup> 23:14 <b>56:18</b> <b>74:7</b> <b>agreed</b> <sup>[3]</sup> 20:3,14 <b>79:21</b> <b>agreement</b> <sup>[2]</sup> 25:21 <b>72:13</b> <b>agrees</b> <sup>[2]</sup> 8:21 <b>41:24</b> <b>aids</b> <sup>[2]</sup> 37:1 <b>42:15</b> <b>AL</b> <sup>[1]</sup> 1:6 <b>aligned</b> <sup>[2]</sup> 85:7,16 <b>ALITO</b> <sup>[29]</sup> 13:6 <b>14:6</b> <b>18:10,17,25</b>	<b>19:7,25</b> <b>22:2,5,12,17</b> <b>23:16</b> <b>26:4,5</b> <b>35:23</b> <b>36:7,15</b> <b>37:10</b> <b>41:22</b> <b>42:13,17,22</b> <b>45:12</b> <b>47:16</b> <b>66:6,12,19,21</b> <b>87:22</b> <b>Alito's</b> <sup>[2]</sup> 26:17 <b>79:13</b> <b>alive</b> <sup>[1]</sup> 28:13 <b>alleged</b> <sup>[2]</sup> 59:18 <b>87:4</b> <b>allegedly</b> <sup>[1]</sup> 4:13 <b>allow</b> <sup>[5]</sup> 23:5 <b>51:12</b> <b>57:5</b> <b>67:23</b> <b>71:7</b> <b>allowed</b> <sup>[1]</sup> 27:9 <b>allowing</b> <sup>[2]</sup> 56:6 <b>65:4</b> <b>allows</b> <sup>[3]</sup> 23:23 <b>26:1</b> <b>89:25</b> <b>already</b> <sup>[5]</sup> 5:16 <b>33:21</b> <b>35:5</b> <b>40:16</b> <b>96:25</b> <b>alteration</b> <sup>[1]</sup> 37:25 <b>although</b> <sup>[5]</sup> 20:5,7 <b>32:18</b> <b>68:9</b> <b>83:11</b> <b>amicus</b> <sup>[3]</sup> 1:22 <b>3:7</b> <b>33:6</b> <b>analogous</b> <sup>[1]</sup> 46:10 <b>analogue</b> <sup>[2]</sup> 24:25 <b>25:2</b> <b>analysis</b> <sup>[7]</sup> 56:22 <b>57:3,5</b> <b>59:20</b> <b>74:9</b> <b>75:12</b> <b>96:9</b> <b>announces</b> <sup>[1]</sup> 12:24 <b>another</b> <sup>[13]</sup> 24:8 <b>29:22</b> <b>59:15</b> <b>60:17</b> <b>67:16</b> <b>80:16,18</b> <b>82:2</b> <b>83:3</b> <b>90:3</b> <b>94:4</b> <b>95:9</b> <b>99:14</b> <b>answer</b> <sup>[17]</sup> 10:21 <b>26:16,17</b> <b>38:19</b> <b>43:8</b> <b>46:23</b> <b>51:3</b> <b>70:5,25</b> <b>74:12</b> <b>76:20</b> <b>94:6,6,9</b> <b>96:21,23</b> <b>97:6</b> <b>answered</b> <sup>[1]</sup> 74:25 <b>answering</b> <sup>[1]</sup> 74:18 <b>answers</b> <sup>[1]</sup> 21:22 <b>antecedent</b> <sup>[6]</sup> 35:20 <b>38:7,8,9,18</b> <b>85:25</b> <b>ANTHONY</b> <sup>[3]</sup> 1:20 <b>3:6</b> <b>33:5</b> <b>antidiscrimination</b> <sup>[1]</sup> 37:14 <b>Apparently</b> <sup>[1]</sup> 21:21 <b>appeals</b> <sup>[9]</sup> 20:1,2,6,13 <b>32:14</b> <b>37:21</b> <b>47:7,20</b> <b>68:25</b> <b>APPEARANCES</b> <sup>[1]</sup> 1:17 <b>appears</b> <sup>[1]</sup> 12:13 <b>apples</b> <sup>[1]</sup> 63:3 <b>applies</b> <sup>[2]</sup> 70:17 <b>85:21</b> <b>apply</b> <sup>[9]</sup> 8:24 <b>12:11</b> <b>25:9</b> <b>32:9</b> <b>34:1</b> <b>71:11</b> <b>72:5,15</b> <b>75:12</b> <b>appropriate</b> <sup>[10]</sup> 15:5 <b>25:13,22,25</b> <b>36:25</b> <b>60:14</b> <b>62:12,15</b> <b>63:20</b> <b>76:7</b> <b>area</b> <sup>[1]</sup> 24:9 <b>aren't</b> <sup>[6]</sup> 19:15 <b>37:17</b> <b>72:9,14,16,17</b> <b>argue</b> <sup>[3]</sup> 36:18 <b>70:12</b> <b>95:3</b> <b>argument</b> <sup>[3]</sup> 1:14 <b>3:2,5,9,12</b> <b>4:4,7</b> <b>20:4,8,15,25,25</b> <b>30:16,25</b> <b>31:5,8,19</b> <b>32:9</b> <b>33:5</b> <b>34:17</b> <b>40:7</b> <b>49:25</b> <b>50:4,18</b> <b>52:3</b> <b>55:13</b> <b>90:20,22</b> <b>96:18</b> <b>97:25</b> <b>98:3</b> <b>arguments</b> <sup>[7]</sup> 5:19 <b>6:18</b> <b>13:7</b> <b>20:18</b> <b>69:16,18</b> <b>90:15</b> <b>arising</b> <sup>[2]</sup> 55:9 <b>76:5</b> <b>arm</b> <sup>[4]</sup> 92:6,8,13 <b>94:12</b> <b>around</b> <sup>[4]</sup> 17:10,23 <b>69:1</b> <b>85:16</b> <b>arrives</b> <sup>[1]</sup> 21:3 <b>Article</b> <sup>[4]</sup> 46:11,12 <b>65:20</b> <b>66:2</b>	<b>artificial</b> <sup>[2]</sup> 12:2,2 <b>artificially</b> <sup>[1]</sup> 10:19 <b>aside</b> <sup>[1]</sup> 27:1 <b>asks</b> <sup>[3]</sup> 14:1 <b>39:5</b> <b>40:20</b> <b>asserted</b> <sup>[2]</sup> 11:7 <b>73:7</b> <b>assertion</b> <sup>[1]</sup> 67:20 <b>Assistant</b> <sup>[1]</sup> 1:20 <b>assume</b> <sup>[3]</sup> 10:8 <b>27:1</b> <b>28:8</b> <b>assuming</b> <sup>[1]</sup> 72:8 <b>attempt</b> <sup>[1]</sup> 55:4 <b>attends</b> <sup>[3]</sup> 41:5 <b>61:18,20</b> <b>attorneys</b> <sup>[1]</sup> 22:18 <b>attorneys'</b> <sup>[7]</sup> 29:13,18,21 <b>33:17</b> <b>55:22</b> <b>60:17</b> <b>97:4</b> <b>authority</b> <sup>[5]</sup> 30:23 <b>44:25</b> <b>63:22</b> <b>86:8</b> <b>98:18</b> <b>authorize</b> <sup>[2]</sup> 5:11 <b>71:17</b> <b>automatically</b> <sup>[2]</sup> 11:21 <b>23:22</b> <b>auxiliary</b> <sup>[2]</sup> 37:1 <b>42:15</b> <b>availability</b> <sup>[1]</sup> 90:25 <b>available</b> <sup>[43]</sup> 5:8 <b>7:22</b> <b>8:21</b> <b>12:8</b> <b>14:1</b> <b>16:11</b> <b>17:21</b> <b>31:1,16</b> <b>34:3</b> <b>42:5,7</b> <b>43:20,25</b> <b>44:14</b> <b>46:25</b> <b>49:20</b> <b>51:10</b> <b>60:2,7</b> <b>61:2</b> <b>64:10</b> <b>72:9,14,16,18</b> <b>75:8,18</b> <b>81:5,14</b> <b>88:5,13</b> <b>89:4,11,17,19,21</b> <b>95:11,13</b> <b>97:16,18</b> <b>98:10</b> <b>99:7</b> <b>avoid</b> <sup>[1]</sup> 86:18 <b>avoids</b> <sup>[3]</sup> 65:12 <b>98:15,19</b> <b>award</b> <sup>[2]</sup> 52:13 <b>71:16</b> <b>aware</b> <sup>[5]</sup> 24:14 <b>80:16</b> <b>83:15,16,16</b> <b>away</b> <sup>[5]</sup> 7:20 <b>12:20</b> <b>16:19</b> <b>64:12</b> <b>96:22</b>
<b>2</b>	<b>2</b> <sup>[1]</sup> 98:6 <b>20</b> <sup>[1]</sup> 48:14 <b>2011</b> <sup>[1]</sup> 48:7 <b>2023</b> <sup>[1]</sup> 1:11 <b>21-887</b> <sup>[1]</sup> 4:4 <b>28</b> <sup>[1]</sup> 19:16		
<b>3</b>	<b>3</b> <sup>[1]</sup> 3:4 <b>32</b> <sup>[1]</sup> 3:8 <b>3306</b> <sup>[1]</sup> 19:16 <b>3626(d)</b> <sup>[1]</sup> 19:16		
<b>4</b>	<b>49</b> <sup>[1]</sup> 3:11		
<b>6</b>	<b>6</b> <sup>[1]</sup> 36:21		
<b>7</b>	<b>7</b> <sup>[1]</sup> 30:18		
<b>9</b>	<b>95</b> <sup>[1]</sup> 3:14		
<b>^</b>	<b>^</b> <sup>[1]</sup> 92:15		
<b>A</b>	<b>A.F</b> <sup>[1]</sup> 69:9 <b>a.m</b> <sup>[3]</sup> 1:15 <b>4:2</b> <b>100:11</b> <b>ability</b> <sup>[4]</sup> 4:15 <b>43:12</b> <b>49:2</b> <b>56:23</b> <b>able</b> <sup>[2]</sup> 7:7 <b>43:15</b> <b>above-entitled</b> <sup>[1]</sup> 1:13 <b>abrogation</b> <sup>[1]</sup> 55:12 <b>absent</b> <sup>[2]</sup> 68:15,18 <b>absolute</b> <sup>[1]</sup> 67:10 <b>absolutely</b> <sup>[6]</sup> 13:24 <b>18:5</b> <b>32:8</b> <b>85:2,2</b> <b>95:17</b> <b>accept</b> <sup>[3]</sup> 21:22 <b>23:12,21</b> <b>accepted</b> <sup>[4]</sup> 4:23 <b>9:16</b> <b>21:6</b> <b>28:20</b> <b>accepting</b> <sup>[1]</sup> 21:23 <b>accepts</b> <sup>[1]</sup> 11:20 <b>accommodate</b> <sup>[1]</sup> 92:19 <b>accommodation</b> <sup>[2]</sup> 36:19 <b>37:12</b> <b>accommodations</b> <sup>[2]</sup> 76:13 <b>93:10</b> <b>according</b> <sup>[1]</sup> 26:18		
<b>B</b>	<b>back</b> <sup>[14]</sup> 6:17 <b>14:8,15</b> <b>21:1</b> <b>24:7</b> <b>56:17</b> <b>59:25</b> <b>79:12</b> <b>82:24</b> <b>91:7</b> <b>92:4,14,24</b> <b>97:25</b> <b>backward-looking</b> <sup>[1]</sup> 45:21 <b>bad</b> <sup>[1]</sup> 22:9 <b>banc</b> <sup>[1]</sup> 48:11 <b>bargain</b> <sup>[1]</sup> 11:9 <b>bargaining</b> <sup>[1]</sup> 11:10 <b>Barrett</b> <sup>[29]</sup> 28:4,5,18,22 <b>29:2,9,12,17,24</b> <b>30:2</b> <b>45:2,7,10,16</b> <b>46:14,18</b> <b>50:13</b> <b>56:20</b> <b>72:7,12</b> <b>73:3,10</b> <b>74:19,24</b> <b>75:10</b> <b>81:3</b> <b>85:18</b> <b>91:3,4</b> <b>based</b> <sup>[6]</sup> 10:6,23 <b>37:6,7,11,13</b> <b>basis</b> <sup>[1]</sup> 48:9 <b>bat</b> <sup>[1]</sup> 79:3 <b>bear</b> <sup>[2]</sup> 61:4,24 <b>beat</b> <sup>[2]</sup> 98:1,2 <b>became</b> <sup>[1]</sup> 30:20 <b>becoming</b> <sup>[1]</sup> 48:17 <b>behalf</b> <sup>[8]</sup> 1:18 <b>2:24</b> <b>3:4,11,14</b> <b>4:8</b> <b>50:19</b> <b>96:19</b> <b>believe</b> <sup>[1]</sup> 19:24 <b>below</b> <sup>[4]</sup> 26:9,18,23 <b>69:12</b> <b>benefit</b> <sup>[6]</sup> 40:3 <b>41:5</b> <b>61:17,19</b> <b>66:2</b> <b>90:10</b> <b>benefits</b> <sup>[1]</sup> 37:5 <b>best</b> <sup>[2]</sup> 31:6 <b>65:1</b> <b>better</b> <sup>[7]</sup> 20:8 <b>58:1</b> <b>66:7,16</b> <b>80:2</b> <b>82:13,14</b>		

## Official - Subject to Final Review

<p><b>between</b> <sup>[1]</sup> 84:14  <b>beyond</b> <sup>[1]</sup> 67:2  <b>bill</b> <sup>[1]</sup> 63:25  <b>binding</b> <sup>[1]</sup> 27:9  <b>bit</b> <sup>[3]</sup> 19:21 38:20 46:22  <b>bizarrely</b> <sup>[1]</sup> 25:18  <b>Black's</b> <sup>[2]</sup> 41:6 60:24  <b>block</b> <sup>[1]</sup> 6:2  <b>blush</b> <sup>[3]</sup> 60:4,5,5  <b>board</b> <sup>[1]</sup> 10:12  <b>Bock</b> <sup>[1]</sup> 46:10  <b>bodily</b> <sup>[1]</sup> 35:5  <b>books</b> <sup>[2]</sup> 36:16 47:5  <b>both</b> <sup>[22]</sup> 7:7,10 10:5 17:15 18:2  21:10,14 22:8,10,20 28:14 30:13  34:23 43:16,18 47:25 51:3 58:9  65:18 69:18 76:4 98:13  <b>bottom</b> <sup>[4]</sup> 53:12 59:18 93:2,24  <b>bottom-line</b> <sup>[2]</sup> 21:2,2  <b>bound</b> <sup>[1]</sup> 69:15  <b>breach</b> <sup>[1]</sup> 75:14  <b>breaking</b> <sup>[1]</sup> 73:22  <b>brief</b> <sup>[3]</sup> 30:5 36:22 49:6  <b>briefs</b> <sup>[1]</sup> 19:15  <b>bring</b> <sup>[17]</sup> 11:3 15:12 17:18 26:2  27:10 35:4 43:12 44:10,20 54:20  56:23 57:10 61:10 73:8 76:8 77:  10 93:11  <b>bringing</b> <sup>[5]</sup> 25:19 31:24 70:6,7 72:  25  <b>broader</b> <sup>[1]</sup> 34:19  <b>broadly</b> <sup>[1]</sup> 64:6  <b>broke</b> <sup>[1]</sup> 92:6  <b>broken</b> <sup>[2]</sup> 92:13 94:12  <b>brought</b> <sup>[16]</sup> 7:18 51:20 56:6 57:6  59:13,16 67:24 70:23 72:22 73:17  75:22 87:1,18 93:18 94:3,5  <b>builds</b> <sup>[1]</sup> 44:2  <b>Bumatay's</b> <sup>[1]</sup> 20:10  <b>bunch</b> <sup>[1]</sup> 20:17  <b>burden</b> <sup>[3]</sup> 37:25 42:19,20  <b>busy</b> <sup>[2]</sup> 15:16,17  <b>bypass</b> <sup>[2]</sup> 35:14 83:25  <b>bypassed</b> <sup>[1]</sup> 34:12  <b>bypasses</b> <sup>[1]</sup> 34:13</p> <p style="text-align: center;"><b>C</b></p> <p><b>call</b> <sup>[6]</sup> 17:22 32:3 40:6 59:9 93:23  94:10  <b>called</b> <sup>[1]</sup> 48:6  <b>came</b> <sup>[1]</sup> 1:13  <b>cannot</b> <sup>[3]</sup> 14:3 33:20 52:5  <b>card</b> <sup>[1]</sup> 11:23  <b>care</b> <sup>[1]</sup> 92:7  <b>carefully</b> <sup>[2]</sup> 50:25 51:13  <b>Carr</b> <sup>[1]</sup> 12:23  <b>carveout</b> <sup>[2]</sup> 78:23,24  <b>Case</b> <sup>[41]</sup> 4:4 6:1,7 10:12 11:13 14:  14,15 18:24 22:13 23:11 25:10,16  26:10,14,20 33:10 36:4,10 38:15,  25 40:20 46:4 47:11 48:6 49:24  50:1,6 58:13 59:11 67:14 69:9 70:  11 72:1 81:21 83:11,12 86:25 98:  19 99:14 100:10,11</p>	<p><b>cases</b> <sup>[11]</sup> 5:9 6:25 10:5,25 15:6,7,  8,14 34:25 58:9 98:6  <b>cast</b> <sup>[1]</sup> 92:10  <b>caused</b> <sup>[2]</sup> 35:5 76:15  <b>caution</b> <sup>[1]</sup> 69:20  <b>cave</b> <sup>[1]</sup> 96:24  <b>cert</b> <sup>[1]</sup> 48:9  <b>certain</b> <sup>[4]</sup> 7:11 17:10 37:24 96:6  <b>certainly</b> <sup>[8]</sup> 10:7 11:3 18:6 27:7  36:5 43:6 84:24 98:1  <b>cetera</b> <sup>[3]</sup> 6:25 54:5 77:14  <b>challenge</b> <sup>[2]</sup> 76:21 86:14  <b>challenged</b> <sup>[1]</sup> 26:9  <b>challenging</b> <sup>[2]</sup> 26:11 86:11  <b>chance</b> <sup>[1]</sup> 30:7  <b>chances</b> <sup>[1]</sup> 22:24  <b>changed</b> <sup>[2]</sup> 55:23 77:14  <b>channeled</b> <sup>[2]</sup> 50:23 78:25  <b>channeling</b> <sup>[1]</sup> 56:7  <b>channels</b> <sup>[1]</sup> 64:19  <b>Check</b> <sup>[1]</sup> 92:15  <b>CHIEF</b> <sup>[36]</sup> 4:3,9 9:19,24 10:3 15:  21 24:5 26:4 28:1 30:3 33:2,8 35:  11,22 39:16 40:5,11 43:9 47:14  49:17 50:10,17,20 58:4,7,11,19  59:2 86:21 87:22 91:2,5 94:14 96:  12,15 100:9  <b>child</b> <sup>[8]</sup> 11:11 21:11 57:17 59:15  65:2,15 84:17 86:15  <b>children</b> <sup>[3]</sup> 21:12 48:22 64:9  <b>choice</b> <sup>[7]</sup> 14:13 22:7 51:3,7,17 78:  12 79:3  <b>choices</b> <sup>[1]</sup> 82:17  <b>choose</b> <sup>[2]</sup> 65:4 91:14  <b>chose</b> <sup>[1]</sup> 12:4  <b>Circuit</b> <sup>[28]</sup> 20:9,10,11 33:24 38:23  46:20 47:9 48:3,5,6,11,13 49:2,8,  8,9,10 69:15,19,23,24 70:3,9,15  73:22,24 85:8 99:8  <b>Circuit's</b> <sup>[4]</sup> 33:15 34:18 47:4 74:9  <b>circuits</b> <sup>[8]</sup> 32:17 49:5 70:14 85:7,  20 86:2,3 99:12  <b>circumstance</b> <sup>[4]</sup> 8:14 9:5 12:22  71:5  <b>circumstances</b> <sup>[8]</sup> 7:10,11 12:10  16:14 27:20 55:9 77:2,7  <b>circumvent</b> <sup>[5]</sup> 13:21 51:12 90:9  98:5,7  <b>circumventing</b> <sup>[1]</sup> 56:3  <b>circumvention</b> <sup>[5]</sup> 18:6 65:13,13,  25 98:2  <b>civil</b> <sup>[2]</sup> 16:10 78:20  <b>claim</b> <sup>[114]</sup> 4:22 5:7 7:15,17 9:5 11:  4,21 12:7 14:1 15:25 18:1 24:9,10  25:19,20,23 26:2 27:13 28:9,12,  17 31:24 32:4,4 33:11 34:2 35:25  36:1,5,12 37:6,16,16 38:2 39:3,5,  7,13 43:13 44:10,20 45:1,6,8,11,  18,24 48:2 51:24 52:14,17 53:11,  17 56:23,25 57:10,14 58:21,24 59:  6,13,14,17 61:10 67:23,25 70:6,7,  7,20,22,23,24,25 71:13,24 72:22,  24,25 73:1,7,9,16,17,25 75:2,13,  14,16,17,21 76:4,4,8 77:10,11 80:</p>	<p>17 85:12 86:19,25 87:8,9,13,16  92:21 93:7,10,15,18,23 94:4,5 97:  14 98:10  <b>claims</b> <sup>[37]</sup> 8:5 10:5,10 11:5,6,11  13:2 14:9 17:14 21:7,9,13 23:10,  15,18,22 24:1 43:10 45:19 50:23  54:17,21 55:8,25 56:6,20 57:6 64:  14,24 67:17 78:25 79:10 82:1 85:  6 87:17 93:8 98:23  <b>clarify</b> <sup>[3]</sup> 6:17 28:16 66:20  <b>clear</b> <sup>[10]</sup> 5:20 10:18 12:4,6 51:23  55:3,6 68:8 81:4 99:6  <b>clearer</b> <sup>[1]</sup> 94:24  <b>Clearly</b> <sup>[6]</sup> 26:25 50:8 62:4 64:16  72:12 82:20  <b>client</b> <sup>[4]</sup> 28:6,9,23 29:3  <b>close</b> <sup>[2]</sup> 19:12 24:24  <b>Code</b> <sup>[1]</sup> 19:10  <b>codify</b> <sup>[1]</sup> 33:1  <b>collaboratively</b> <sup>[1]</sup> 44:4  <b>collision</b> <sup>[1]</sup> 5:25  <b>colloquial</b> <sup>[1]</sup> 41:13  <b>come</b> <sup>[4]</sup> 14:14 20:5 23:6 91:12  <b>comes</b> <sup>[11]</sup> 9:8 12:3 14:23 15:23  21:15 26:10 57:20 60:24 66:22 67:  13 92:4  <b>comment</b> <sup>[1]</sup> 25:3  <b>common</b> <sup>[1]</sup> 97:23  <b>common-sense</b> <sup>[1]</sup> 12:24  <b>communicate</b> <sup>[1]</sup> 4:16  <b>compare</b> <sup>[2]</sup> 63:1 87:11  <b>compensated</b> <sup>[1]</sup> 77:8  <b>compensation</b> <sup>[5]</sup> 11:17 53:4 74:  2 81:25 92:18  <b>compensatory</b> <sup>[24]</sup> 13:10,19,24  19:1 33:13 39:6,10,12 42:12 45:  20,25 46:7 49:20 50:5 72:13,16,  17 76:14,25 77:17,24 81:5 82:21  95:12  <b>complained</b> <sup>[1]</sup> 87:20  <b>complains</b> <sup>[1]</sup> 51:9  <b>complaint</b> <sup>[19]</sup> 13:11,20 14:11 17:  17 26:6 41:25 58:16 59:5,7,8,10,  23 65:10 87:15 93:20,22 97:14,15,  17  <b>complete</b> <sup>[1]</sup> 53:4  <b>completely</b> <sup>[1]</sup> 9:21  <b>compromise</b> <sup>[1]</sup> 63:25  <b>concept</b> <sup>[3]</sup> 32:23 74:5,16  <b>concepts</b> <sup>[1]</sup> 71:22  <b>conceptualizing</b> <sup>[1]</sup> 31:21  <b>concern</b> <sup>[3]</sup> 18:7 56:3,5  <b>concerned</b> <sup>[3]</sup> 17:1,9 57:13  <b>concerning</b> <sup>[1]</sup> 17:13  <b>concerns</b> <sup>[2]</sup> 48:22 55:2  <b>conclude</b> <sup>[1]</sup> 29:22  <b>concluded</b> <sup>[1]</sup> 37:22  <b>conclusion</b> <sup>[3]</sup> 25:13,25 29:11  <b>condition</b> <sup>[2]</sup> 95:25 96:2  <b>conduct</b> <sup>[2]</sup> 4:14 37:21  <b>confident</b> <sup>[1]</sup> 47:8  <b>confirming</b> <sup>[1]</sup> 30:14  <b>confirms</b> <sup>[1]</sup> 30:24  <b>confused</b> <sup>[1]</sup> 76:2</p>	<p><b>confusing</b> <sup>[2]</sup> 20:19,20  <b>Congress</b> <sup>[41]</sup> 6:5 7:5 12:4 13:13  16:8,13 17:9,22 18:2 27:15 31:25  34:6 35:3 41:16 43:14,17,21 44:  15 50:22,24 51:13,18 55:5,6,17,23  56:4,18 63:8,11,16,20 64:6,16,18  65:20 70:4 90:5,11 97:10 100:3  <b>Congress's</b> <sup>[13]</sup> 30:8,13 51:3,6,16,  21 55:20 57:16 78:6 79:7,9 80:4  81:8  <b>consensus</b> <sup>[1]</sup> 85:8  <b>consequence</b> <sup>[1]</sup> 7:17  <b>consider</b> <sup>[1]</sup> 27:17  <b>consideration</b> <sup>[1]</sup> 27:8  <b>considering</b> <sup>[2]</sup> 7:25 15:1  <b>consistent</b> <sup>[2]</sup> 12:17 58:2  <b>constitutes</b> <sup>[5]</sup> 20:16 26:1 31:7  52:9,16  <b>Constitution</b> <sup>[2]</sup> 5:23 54:6  <b>construction</b> <sup>[1]</sup> 10:21  <b>construed</b> <sup>[1]</sup> 54:5  <b>contemplate</b> <sup>[3]</sup> 16:4 39:3 43:18  <b>contemplating</b> <sup>[1]</sup> 16:9  <b>context</b> <sup>[17]</sup> 34:9,19 38:17 40:1 41:  4,8,12 43:21 55:15,19 62:19 67:3,  10 71:13 86:4,25 90:4  <b>contexts</b> <sup>[5]</sup> 12:16 35:8 43:3 63:6  72:4  <b>contextual</b> <sup>[3]</sup> 43:5 90:21,22  <b>Continue</b> <sup>[2]</sup> 74:18 79:22  <b>contract</b> <sup>[4]</sup> 23:24 67:23 75:12,14  <b>contrary</b> <sup>[1]</sup> 31:17  <b>convinced</b> <sup>[2]</sup> 99:22,24  <b>cooperate</b> <sup>[1]</sup> 79:22  <b>correct</b> <sup>[6]</sup> 26:21 27:5 37:12 57:4  95:15,17  <b>correction</b> <sup>[1]</sup> 39:20  <b>cost</b> <sup>[1]</sup> 42:15  <b>couldn't</b> <sup>[5]</sup> 33:14 52:19 54:20 67:  23 73:4  <b>counsel</b> <sup>[7]</sup> 33:3 50:15 69:12 86:  22 94:15 96:16 100:10  <b>counsel's</b> <sup>[1]</sup> 63:17  <b>couple</b> <sup>[3]</sup> 60:10 79:17 97:11  <b>course</b> <sup>[9]</sup> 5:25 9:13 10:20 23:11  27:3 83:24 94:19 95:17 99:19  <b>COURT</b> <sup>[74]</sup> 1:1,14 4:10 7:8 13:12,  24,25 14:3,5,25 15:3,5 25:5,10 26:  10,18,23 27:4,16 28:13 33:9 34:  13,16 35:8,19 38:6 40:3,3 47:19  48:4,9,19 49:12,12 50:21 51:15  52:2,11,13,25 53:2,2,7 58:15 59:6  60:12,18 62:11,12,14 65:6,14,25  68:10 70:19 71:4,15 72:1,2,21 73:  19 74:17 79:6 82:5,25 85:10,17  86:9,16 90:10 93:11 96:10 99:14  100:7  <b>Court's</b> <sup>[8]</sup> 6:8 12:23 34:10 46:9  52:18 54:14,16 68:8  <b>courthouse</b> <sup>[1]</sup> 85:5  <b>courts</b> <sup>[15]</sup> 16:20,24 19:25 20:2,6,  13 32:14 35:9 37:21 47:6 68:25  70:5 81:1 85:15 86:4  <b>covered</b> <sup>[1]</sup> 92:21</p>
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## Official - Subject to Final Review

<p><b>crafted</b> [2] 50:25 51:13  <b>create</b> [1] 80:21  <b>created</b> [1] 27:22  <b>creating</b> [1] 78:23  <b>creature</b> [1] 27:21  <b>critical</b> [1] 70:4  <b>Cummings</b> [4] 49:21 50:2 75:9,10  <b>curiae</b> [3] 1:22 3:8 33:6  <b>curious</b> [1] 90:15  <b>cuts</b> [1] 85:24  <b>cutting</b> [1] 91:23</p>	<p><b>developed</b> [1] 83:12  <b>dice</b> [1] 97:3  <b>dicta</b> [1] 34:21  <b>dictionaries</b> [1] 97:20  <b>Dictionary</b> [2] 41:6 60:25  <b>difference</b> [2] 6:20 22:14  <b>different</b> [29] 4:18 6:18,24 8:8 15:19 19:13,19 20:18 24:21,22,23 25:19 26:2 27:18 32:19 37:16 38:2 40:7,13 43:13 44:12 60:11 61:4, 24 62:6 63:2,6 64:1 96:1  <b>differently</b> [1] 81:20  <b>difficult</b> [1] 46:20  <b>difficulty</b> [3] 6:20 24:16 26:19  <b>dilemma</b> [1] 96:22  <b>directive</b> [1] 51:21  <b>directly</b> [1] 93:11  <b>directs</b> [1] 60:12  <b>disabilities</b> [2] 64:10 99:5  <b>disabled</b> [1] 21:12  <b>disagree</b> [2] 26:23 62:8  <b>disagreed</b> [1] 8:25  <b>disagreeing</b> [1] 74:8  <b>disclaims</b> [1] 77:7  <b>discretion</b> [1] 16:19  <b>discrim</b> [1] 36:6  <b>discriminated</b> [1] 99:23  <b>discrimination</b> [4] 4:19 36:23 38:1 100:5  <b>discussed</b> [1] 22:20  <b>discussing</b> [1] 44:18  <b>discussion</b> [6] 11:4,14,15 15:24 19:21 34:20  <b>disincentivize</b> [1] 6:1  <b>dismiss</b> [2] 14:11 39:12  <b>dismisses</b> [2] 45:6,8  <b>dissenting</b> [1] 20:11  <b>distinct</b> [1] 5:3  <b>distinguish</b> [1] 20:20  <b>distress</b> [2] 45:19 75:16  <b>district</b> [6] 16:20 27:16 28:13 42:25 83:6 86:13  <b>district's</b> [1] 83:18  <b>districts</b> [5] 51:1 53:8 83:13 84:12 85:1  <b>dockets</b> [1] 16:20  <b>doctor</b> [1] 92:12  <b>doing</b> [3] 4:20 17:10 80:19  <b>done</b> [6] 20:6 22:22 29:3 35:9 81:15,20  <b>down</b> [3] 11:16 57:20 97:2  <b>drive</b> [1] 96:9  <b>drop</b> [1] 76:13  <b>dropping</b> [1] 77:24  <b>drugs</b> [1] 35:4  <b>dual</b> [2] 16:7,13  <b>during</b> [1] 77:9  <b>DVORETZKY</b> [77] 2:24 3:10 50:17, 18,20 52:23 53:22 54:1,12,16,24 55:14 56:10 57:1 58:6,10,13 59:2, 24 61:3 62:1,7 63:24 64:18 66:9, 18,20 68:5,18,22 69:5,22 70:2,16 72:11,19 73:8,11,23 74:4,10,14,22 75:5,11 76:19 77:15 78:5,18 81:</p>	<p>12,22 82:11,23 84:7,18,24 86:1 87:3 88:8,16 89:3,13,23 90:17 92:3,15,23 93:13,16,19 94:22,25 95:16 96:5,13 98:25 99:18</p>	<p>3 44:12 56:18 76:22 77:18 81:5 85:22 90:12 95:21 99:7  <b>everybody</b> [2] 72:12 95:13  <b>everyone</b> [2] 8:21 99:1  <b>everything</b> [11] 4:20 5:16 9:10,12, 23 21:4,5 23:7 24:3 81:18 98:21  <b>evidence</b> [2] 27:10 95:23  <b>exact</b> [1] 8:16  <b>exactly</b> [12] 7:3 8:6 9:14 16:4,16 29:2 33:11 35:15 45:5 60:9 89:25 99:20  <b>example</b> [6] 32:13 53:18 62:18 86:10 87:9 94:12  <b>examples</b> [1] 19:14  <b>exceed</b> [1] 43:1  <b>excellently</b> [1] 69:18  <b>except</b> [1] 78:20  <b>exception</b> [14] 31:16 32:17 34:25 35:10 42:19 69:2 70:10,13,17,21, 24 80:21 85:20,23  <b>exceptions</b> [5] 72:3,5 80:23 86:5, 6  <b>exclusively</b> [1] 54:18  <b>excuse</b> [6] 48:6 52:7,10 71:6,14, 20  <b>excused</b> [2] 31:11 71:3  <b>excuses</b> [1] 71:25  <b>exercise</b> [1] 98:16  <b>exhaust</b> [14] 7:23 8:23 9:3 12:6 25:18 28:23 31:1 51:11,18 53:17 68:1 76:17 78:3 92:22  <b>exhausted</b> [15] 5:13 6:15 8:5 10:2 14:2,12 24:10 31:12 46:6 53:15, 21,21 73:16 87:2 93:9  <b>exhausting</b> [5] 32:5 39:3 41:17 51:24 72:23  <b>exhaustion</b> [63] 5:6,8,14 7:25 8:3, 10,23 9:2 10:22 12:21 13:13 17:24 18:15 25:6,8,11 30:21 31:7,10, 22 33:25 34:4,9 35:15 38:21,23 50:24 51:12 52:4,8,10 53:5 54:3, 10,19 56:8 57:7 63:21 64:11,20, 23 66:4 67:6 68:1,7,11 71:2,3,7, 14,21,21,25 73:14 75:4,22 80:18, 23 82:4 86:18 95:8 99:3,9  <b>exhaustive</b> [1] 44:11  <b>exist</b> [2] 69:2 70:10  <b>expect</b> [1] 11:9  <b>expenditures</b> [2] 42:25 43:1  <b>expensive</b> [1] 42:25  <b>expert</b> [2] 52:1 66:5  <b>expertise</b> [2] 80:7,12  <b>experts</b> [4] 65:19,21 80:8 90:11  <b>explain</b> [1] 46:23  <b>explained</b> [2] 48:25 49:6  <b>explains</b> [1] 51:17  <b>explored</b> [1] 91:8  <b>expressly</b> [1] 97:10  <b>extent</b> [6] 31:23 32:5 51:19 52:15 56:14 73:16  <b>extinguish</b> [3] 21:25 23:22 67:25  <b>extinguishes</b> [2] 5:2 71:25  <b>extremely</b> [1] 23:3</p>
<b>E</b>			
<p style="text-align: center;"><b>D</b></p> <p><b>D.C</b> [4] 1:10,18,21 2:24  <b>damages</b> [64] 5:3,10 8:20,21 9:22 13:11,20,24 14:19 19:1 32:12,12, 19 33:14 37:19 39:6,10,12 42:12 45:20,21,25 46:7 50:3,5 51:14 52:9,13,15 60:3,6,16 61:1,11,12 65:16 67:5 71:12,13,16,17 72:6,8,9, 13,16,17 74:2 75:18 76:9,14 77:1, 24 78:6 79:7 81:5,13 82:21 84:6 85:6,11 86:7,19 95:12  <b>dangerous</b> [3] 69:12,15 86:15  <b>daughters</b> [1] 91:17  <b>deaf</b> [1] 37:2  <b>deal</b> [1] 83:7  <b>dealing</b> [1] 15:2  <b>decide</b> [10] 17:17 35:12,19 38:6,10 44:25 47:10,11 95:18 99:14  <b>decided</b> [3] 27:15 47:13 81:12  <b>decision</b> [10] 12:23 26:12 34:18 46:10 47:4 51:25 54:14 66:3 73:13 80:7  <b>decisionmaker</b> [2] 71:8,9  <b>declaration</b> [1] 64:8  <b>default</b> [20] 53:1,13 66:7,14,14,22 67:8,12 68:20 79:14,15,18 80:2,2, 10,11,20 81:7 82:24 98:24  <b>defenses</b> [1] 37:24  <b>deference</b> [4] 27:4,7,12 69:22  <b>deficiency</b> [1] 83:17  <b>definition</b> [1] 63:5  <b>defy</b> [1] 5:19  <b>delay</b> [1] 33:18  <b>deliberate</b> [1] 37:22  <b>delivering</b> [1] 51:22  <b>demand</b> [1] 61:20  <b>denial</b> [38] 10:6 13:15 17:13 21:18 26:6,15 36:18 37:8 39:21 41:23, 25 42:8,10 50:23 51:9 58:8,16 59:9,14,18 61:10,15 65:10 70:23 72:25 76:24 78:11 85:12 86:20 87:15 93:3,20,23 94:8,11 95:6,10 96:1  <b>denied</b> [4] 4:12 21:11 87:6,10  <b>Department</b> [1] 1:21  <b>depend</b> [1] 75:7  <b>depends</b> [4] 27:6 43:5 66:10 69:6  <b>deprive</b> [1] 65:15  <b>deprives</b> [1] 65:18  <b>derives</b> [1] 90:22  <b>designed</b> [2] 64:11,23  <b>desperate</b> [2] 21:16,17  <b>determines</b> [2] 60:13 62:12</p>	<p>12,22 82:11,23 84:7,18,24 86:1 87:3 88:8,16 89:3,13,23 90:17 92:3,15,23 93:13,16,19 94:22,25 95:16 96:5,13 98:25 99:18</p>	<p><b>each</b> [3] 5:25 10:5 46:12  <b>earlier</b> [6] 26:16 44:18 56:21 66:12 79:13 80:15  <b>easier</b> [1] 35:3  <b>education</b> [16] 4:12 6:13 39:21 48:22 59:15,19 76:7,10,12 77:3,9,14, 17 84:2,16 93:1  <b>educational</b> [15] 33:12,18 43:25 49:16 52:1 65:19,21 66:5 75:15 77:6 80:8 82:19 87:6,10 90:11  <b>effect</b> [6] 5:18 11:19 20:22 24:2 29:5 99:10  <b>effective</b> [1] 15:25  <b>either</b> [21] 6:1 14:15 35:4 42:3 49:24 53:4 57:24 66:15 68:13,22 71:11 72:10 82:17 83:1,4,4 86:7 88:17 89:5 90:1,19  <b>elegant</b> [1] 19:7  <b>element</b> [1] 38:1  <b>elements</b> [2] 37:15 45:23  <b>Eleven</b> [1] 32:17  <b>elsewhere</b> [4] 12:12,14 88:4 90:23  <b>emotional</b> [3] 45:19 50:3 75:16  <b>emphasize</b> [1] 5:5  <b>emphasizes</b> [1] 25:4  <b>empty-handed</b> [2] 7:20 12:21  <b>en</b> [1] 48:11  <b>enabling</b> [1] 82:18  <b>enacted</b> [3] 30:15 50:22 55:17  <b>enacting</b> [2] 78:7 81:9  <b>enactment</b> [1] 30:9  <b>encompasses</b> [1] 11:5  <b>end</b> [5] 17:10 18:24 44:3 46:1 56:17  <b>end-run</b> [1] 32:1  <b>enforcement</b> [1] 19:20  <b>engage</b> [2] 9:6 72:21  <b>enjoy</b> [1] 37:4  <b>ensure</b> [3] 64:9 90:7,24  <b>entirely</b> [3] 6:24 8:8 10:4  <b>entitled</b> [6] 5:16 9:12,23 50:8 81:25 84:5  <b>entity</b> [1] 36:25  <b>envisioning</b> [1] 75:1  <b>equal</b> [4] 37:3 87:9,16 93:15  <b>equals</b> [1] 52:4  <b>equities</b> [1] 81:2  <b>erred</b> [2] 33:23,24  <b>especially</b> [1] 8:15  <b>ESQ</b> [4] 3:3,6,10,13  <b>ESQUIRE</b> [2] 1:18 2:24  <b>essence</b> [1] 48:23  <b>essentially</b> [3] 7:6 11:22 85:23  <b>establish</b> [2] 37:20 38:3  <b>ET</b> [4] 1:6 6:25 54:5 77:14  <b>even</b> [22] 8:9,25 14:17 16:2,2,6 19:22 21:24 27:16 28:12 35:20 39:1,</p>	<p>12,22 82:11,23 84:7,18,24 86:1 87:3 88:8,16 89:3,13,23 90:17 92:3,15,23 93:13,16,19 94:22,25 95:16 96:5,13 98:25 99:18</p>

## Official - Subject to Final Review

F			hint <sup>[1]</sup> 95:22
<p><b>facility</b> <sup>[2]</sup> 59:16 94:5  <b>fact</b> <sup>[6]</sup> 18:11 24:16 32:10 56:4 73:18 99:9  <b>facts</b> <sup>[4]</sup> 15:19 17:13 76:5 83:11  <b>factual</b> <sup>[1]</sup> 15:1  <b>failure</b> <sup>[1]</sup> 92:19  <b>fair</b> <sup>[3]</sup> 18:5 20:24,25  <b>fairly</b> <sup>[1]</sup> 39:24  <b>faith</b> <sup>[1]</sup> 9:7  <b>fall</b> <sup>[1]</sup> 97:25  <b>fallen</b> <sup>[1]</sup> 85:22  <b>falling</b> <sup>[2]</sup> 83:23 85:14  <b>FAPE</b> <sup>[86]</sup> 4:25 5:21 6:2 10:6,7,24 13:15 17:13 21:11,18 23:13 26:7,15 36:13,15 37:8,8 38:4 39:21 41:24 42:1,8,10,24 45:14,22,23 50:23 51:2,9,22 53:5 54:21 55:24 56:6,20 57:6,10,12,18 58:9,16,22,25 59:9 61:10,14,15 64:10,12,22 65:1,9,10,15,17 66:1 70:22 72:25 76:24 78:9,11 79:21 81:8 83:14,19 85:12 86:20 87:15 90:7,25 93:3,20,23 94:8,11 95:6,11 96:1,7 97:2 98:4,21 99:19,20,25  <b>FAPE-related</b> <sup>[5]</sup> 54:17 70:22 78:25 87:13,17  <b>FAPes</b> <sup>[1]</sup> 79:8  <b>far</b> <sup>[1]</sup> 63:7  <b>fast</b> <sup>[1]</sup> 49:14  <b>favor</b> <sup>[2]</sup> 85:8,24  <b>favorable</b> <sup>[9]</sup> 4:23 6:6 33:16 41:5 60:19 61:18,21 62:20 63:3  <b>favours</b> <sup>[1]</sup> 23:4  <b>federal</b> <sup>[3]</sup> 4:17 13:12 54:7  <b>fees</b> <sup>[8]</sup> 29:13,18,22 33:17 55:22 60:17 62:19 97:4  <b>few</b> <sup>[2]</sup> 48:16 63:13  <b>Fifth</b> <sup>[1]</sup> 20:10  <b>fight</b> <sup>[1]</sup> 23:15  <b>figure</b> <sup>[1]</sup> 10:16  <b>file</b> <sup>[1]</sup> 97:14  <b>filed</b> <sup>[3]</sup> 4:21 28:13 33:13  <b>filing</b> <sup>[1]</sup> 78:20  <b>finally</b> <sup>[3]</sup> 62:19 99:17,24  <b>financial</b> <sup>[1]</sup> 42:20  <b>find</b> <sup>[1]</sup> 68:10  <b>finding</b> <sup>[1]</sup> 80:6  <b>findings</b> <sup>[4]</sup> 27:3 66:3 73:12 80:7  <b>finds</b> <sup>[1]</sup> 60:18  <b>fine</b> <sup>[1]</sup> 16:15  <b>fine-tuned</b> <sup>[1]</sup> 99:6  <b>First</b> <sup>[42]</sup> 5:6 7:13 11:2 20:3,9 30:16 31:19 33:25 34:7,12,17 35:12,14,20 38:7 43:10 46:23 47:11 48:1 51:6 56:7 57:11,16 60:4 64:8,25 65:14,23 67:1 71:8,18 78:8,12,14,21 79:3 81:17 85:9,17 90:7,25 98:25  <b>fist</b> <sup>[2]</sup> 82:14 83:1  <b>fit</b> <sup>[1]</sup> 24:10  <b>fits</b> <sup>[1]</sup> 6:21  <b>five</b> <sup>[3]</sup> 16:22 90:2 91:19</p>	<p><b>fix</b> <sup>[1]</sup> 47:8  <b>fixed</b> <sup>[2]</sup> 84:2,16  <b>fixing</b> <sup>[1]</sup> 39:20  <b>flaws</b> <sup>[1]</sup> 39:20  <b>fleshed</b> <sup>[1]</sup> 36:23  <b>flood</b> <sup>[1]</sup> 80:22  <b>flow</b> <sup>[2]</sup> 24:16,17  <b>focus</b> <sup>[5]</sup> 8:16 51:21 57:16 58:23 88:6  <b>focused</b> <sup>[2]</sup> 43:19 91:20  <b>focusing</b> <sup>[1]</sup> 65:15  <b>follow-up</b> <sup>[1]</sup> 42:23  <b>followed</b> <sup>[2]</sup> 4:22 57:8  <b>follows</b> <sup>[1]</sup> 93:21  <b>force</b> <sup>[1]</sup> 100:4  <b>forced</b> <sup>[1]</sup> 44:10  <b>forecloses</b> <sup>[1]</sup> 50:2  <b>foremost</b> <sup>[5]</sup> 57:16 64:25 78:8 90:8,25  <b>forest</b> <sup>[1]</sup> 46:22  <b>forgo</b> <sup>[1]</sup> 33:17  <b>form</b> <sup>[2]</sup> 46:12 78:4  <b>formal</b> <sup>[1]</sup> 6:12  <b>former</b> <sup>[1]</sup> 70:15  <b>forms</b> <sup>[5]</sup> 89:10,14,15,21,24  <b>forum</b> <sup>[1]</sup> 15:19  <b>forward</b> <sup>[3]</sup> 14:4 47:9 52:24  <b>fourth</b> <sup>[1]</sup> 68:9  <b>frame</b> <sup>[1]</sup> 93:22  <b>freedom</b> <sup>[1]</sup> 23:24  <b>friend</b> <sup>[4]</sup> 10:20 28:7 48:25 67:21  <b>front</b> <sup>[2]</sup> 44:3 77:12  <b>Fry</b> <sup>[36]</sup> 7:17 12:18 26:5,13 34:14 40:1,16,25 44:22 48:5,9 58:3,6 59:3,12,20 60:25 61:16,17 65:7 87:19 90:6 92:24 93:22 94:1,19,20 95:3,5,15,17,20,24 96:11,13 97:21  <b>full</b> <sup>[8]</sup> 4:24 9:15 11:22 29:10 82:6 83:5,8 98:4  <b>fully</b> <sup>[1]</sup> 5:12  <b>function</b> <sup>[1]</sup> 53:1  <b>fundamental</b> <sup>[1]</sup> 37:25  <b>fundamentally</b> <sup>[1]</sup> 85:12  <b>furnish</b> <sup>[1]</sup> 36:25  <b>Further</b> <sup>[3]</sup> 5:13 80:25 93:1  <b>futile</b> <sup>[7]</sup> 5:14 31:14 32:10 34:8 71:3,14,21  <b>futilities</b> <sup>[1]</sup> 70:21  <b>futility</b> <sup>[49]</sup> 20:14,16 31:8,16 32:9,13,17,20,22 34:16,18,21,25 35:10,12,21 38:16,20 47:2 49:7 51:16 52:9,10,16 68:24 69:1,6,7 70:6,9,13,17,21,24 71:21,25 72:3,5,15 80:23 85:20,23 86:2,4,5,6,12,15,18  <b>future</b> <sup>[1]</sup> 67:16</p>	<p>6 73:7 83:7,8  <b>getting</b> <sup>[8]</sup> 5:21 13:22 44:3 64:22 66:3 82:21 83:5 90:13  <b>give</b> <sup>[28]</sup> 9:10,11 11:11,16 14:12,20 15:25 16:23 17:14 21:19,25 23:25 24:3 29:12,21 30:7 32:12,23 45:22 61:13 76:12 82:19 96:24 98:8,19,22 99:24 100:5  <b>given</b> <sup>[9]</sup> 5:25 16:7 25:14 27:4 36:13 47:5 49:19 75:19 76:10  <b>gives</b> <sup>[4]</sup> 11:22 82:20 83:25 96:22  <b>giving</b> <sup>[4]</sup> 4:18,24 69:22 76:6  <b>global</b> <sup>[7]</sup> 15:23 23:6 53:9 79:18,19,25 82:6  <b>goal</b> <sup>[1]</sup> 79:7  <b>goals</b> <sup>[1]</sup> 5:24  <b>Gorsuch</b> <sup>[21]</sup> 28:2 50:11 67:19 68:6,15,21,23 69:5,11,14 70:1,8 87:25 88:1,9,22 89:8,18 90:14 91:1,8  <b>got</b> <sup>[12]</sup> 9:15,23 10:16 19:21 21:13 45:22 47:5,6,7 88:18,20 98:21  <b>gotten</b> <sup>[4]</sup> 29:20 77:5 81:8,10  <b>government</b> <sup>[1]</sup> 34:15  <b>graduated</b> <sup>[2]</sup> 76:23 77:18  <b>grant</b> <sup>[11]</sup> 13:3 30:23 31:3 52:11 60:13 62:11,15 63:23 71:4,5,19  <b>granted</b> <sup>[1]</sup> 48:5  <b>granting</b> <sup>[3]</sup> 48:9 60:15,15  <b>gravamen</b> <sup>[17]</sup> 26:6,13,14 41:25 42:8 58:15 59:7,8,22 65:9 87:14,20 88:10,15 92:24 93:19 95:4  <b>gravitated</b> <sup>[1]</sup> 68:25  <b>great</b> <sup>[1]</sup> 81:6  <b>greater</b> <sup>[1]</sup> 84:15  <b>guess</b> <sup>[9]</sup> 6:19 7:24 16:5 38:11 43:9 73:6 74:25 87:7 91:9  <b>guidance</b> <sup>[1]</sup> 16:24  <b>guideposts</b> <sup>[1]</sup> 59:12  <b>gun</b> <sup>[1]</sup> 35:4</p>	<p><b>history</b> <sup>[8]</sup> 30:7,12 31:4 55:15,18 63:18 64:3 97:22  <b>hold</b> <sup>[3]</sup> 5:1 27:12 83:19  <b>holding</b> <sup>[2]</sup> 28:9 81:7  <b>Honig</b> <sup>[4]</sup> 34:20,24 47:6 86:10  <b>Honor</b> <sup>[11]</sup> 6:16 7:3 11:2 12:1 18:20 19:15 24:13 26:8 27:14,24 28:15  <b>honors</b> <sup>[3]</sup> 80:20 96:20 100:8  <b>hopefully</b> <sup>[1]</sup> 47:9  <b>hostage</b> <sup>[1]</sup> 83:20  <b>hot</b> <sup>[1]</sup> 41:10  <b>House</b> <sup>[2]</sup> 30:17 63:19  <b>However</b> <sup>[4]</sup> 38:18 48:10 79:6 93:22  <b>hundred</b> <sup>[1]</sup> 7:2  <b>hypo</b> <sup>[1]</sup> 92:17  <b>hypothetical</b> <sup>[2]</sup> 72:20 76:1  <b>Hypothetically</b> <sup>[1]</sup> 87:3</p> <hr/> <p><b>I</b></p> <p><b>i.e</b> <sup>[1]</sup> 95:12  <b>IDEA</b> <sup>[146]</sup> 4:17,21,21,22,24 5:8,10,13,17 6:6,21 7:12,16,18,19 8:22 9:4,4,12,17,23 10:9 11:3,5,20 12:8,13 13:22,23 14:2,20 15:23 16:11 17:10,15,21 18:8 21:10 23:10 25:23,25 26:20 27:4 28:12,17 31:13 32:4,6 33:1,11,14,17 34:3,7 35:24 36:16 37:16 39:4,10,12 42:7 43:14,22 44:1,11,25 46:1,6,25 47:21 48:21,24 49:13 51:10,20 52:1,5,10,13 53:17 54:3,18 55:23 56:20,24 57:11,12 58:12 60:2,8 61:2,11,13,23 63:22 64:7,14,22 65:12 66:8,19 68:7 70:7,20,23,25 71:13,16,17,24 72:4,14,18,23 73:1,9,17,25 76:4,24 77:10,16 78:3,3 79:1,4,8,10 80:9 81:9 85:6 86:6,20 90:5 93:5 95:11,14 96:7 97:3,17 98:9,17,18 99:21,21 100:2  <b>IDEA's</b> <sup>[11]</sup> 5:19 50:24 56:4,8 57:7 64:20 65:3 66:4 90:23,24 96:8  <b>identified</b> <sup>[1]</sup> 48:15  <b>identify</b> <sup>[1]</sup> 49:3  <b>IEP</b> <sup>[1]</sup> 21:17  <b>ignoring</b> <sup>[1]</sup> 13:12  <b>II</b> <sup>[1]</sup> 36:22  <b>III</b> <sup>[4]</sup> 46:11,12 65:20 66:2  <b>illustrating</b> <sup>[1]</sup> 30:13  <b>imagine</b> <sup>[1]</sup> 21:8  <b>immediate</b> <sup>[4]</sup> 4:25 6:2 21:17 97:2  <b>immediately</b> <sup>[2]</sup> 23:13 78:11  <b>importance</b> <sup>[1]</sup> 96:8  <b>important</b> <sup>[12]</sup> 8:15 13:14 16:23 20:17,22 23:4 25:5 30:17 33:24 35:21 38:12 49:15  <b>improper</b> <sup>[1]</sup> 52:3  <b>incentive</b> <sup>[3]</sup> 48:20 84:16 98:7  <b>include</b> <sup>[1]</sup> 37:1  <b>including</b> <sup>[4]</sup> 4:25 70:14 90:23 96:7  <b>income</b> <sup>[2]</sup> 75:13,17</p>



## Official - Subject to Final Review

<p><b>inconsistent</b> <sup>[4]</sup> 97:20,21,21,22  <b>incorrect</b> <sup>[1]</sup> 52:4  <b>indicate</b> <sup>[1]</sup> 95:22  <b>indifference</b> <sup>[1]</sup> 37:23  <b>individuals</b> <sup>[1]</sup> 37:3  <b>inequity</b> <sup>[1]</sup> 81:7  <b>inexpensively</b> <sup>[1]</sup> 84:1  <b>inexpert</b> <sup>[1]</sup> 66:1  <b>inform</b> <sup>[1]</sup> 38:25  <b>informal</b> <sup>[2]</sup> 6:12 24:19  <b>informed</b> <sup>[1]</sup> 80:5  <b>inherent</b> <sup>[1]</sup> 16:19  <b>injunction</b> <sup>[1]</sup> 60:15  <b>injunctive</b> <sup>[2]</sup> 77:2 97:15  <b>injured</b> <sup>[1]</sup> 53:19  <b>injuries</b> <sup>[1]</sup> 21:13  <b>injury</b> <sup>[2]</sup> 88:21 92:6  <b>inquiry</b> <sup>[1]</sup> 72:20  <b>inside</b> <sup>[1]</sup> 41:11  <b>insight</b> <sup>[1]</sup> 65:8  <b>insist</b> <sup>[5]</sup> 53:3,8 83:2,5,6  <b>insofar</b> <sup>[1]</sup> 31:19  <b>instance</b> <sup>[2]</sup> 37:20 48:16  <b>instructed</b> <sup>[1]</sup> 70:4  <b>intend</b> <sup>[2]</sup> 63:16 100:4  <b>intended</b> <sup>[2]</sup> 33:1 100:2  <b>intentional</b> <sup>[1]</sup> 37:21  <b>intentions</b> <sup>[2]</sup> 30:8,13  <b>interchangeably</b> <sup>[1]</sup> 19:18  <b>interest</b> <sup>[3]</sup> 83:13,19,22  <b>interests</b> <sup>[1]</sup> 65:2  <b>interpret</b> <sup>[3]</sup> 57:21,21 62:4  <b>interpretation</b> <sup>[3]</sup> 41:9 55:1 97:13  <b>interpreted</b> <sup>[3]</sup> 20:1 25:6 70:14  <b>interpreters</b> <sup>[1]</sup> 37:2  <b>interpreting</b> <sup>[2]</sup> 30:19 55:8  <b>invitation</b> <sup>[1]</sup> 49:6  <b>invoke</b> <sup>[3]</sup> 34:24 69:11 70:6  <b>invoked</b> <sup>[1]</sup> 99:21  <b>invoking</b> <sup>[2]</sup> 86:17 94:18  <b>involve</b> <sup>[1]</sup> 26:14  <b>involved</b> <sup>[1]</sup> 80:8  <b>involving</b> <sup>[1]</sup> 99:15  <b>isn't</b> <sup>[17]</sup> 5:8 10:25 12:1 16:3 17:8, 8 24:17 31:18 41:19 54:22,23,25 60:18 74:15 83:23 84:20 87:15  <b>isolated</b> <sup>[1]</sup> 63:5  <b>isolation</b> <sup>[4]</sup> 57:23 61:24 89:5 90:3  <b>issue</b> <sup>[9]</sup> 15:3 19:23 25:15 34:14 35:21 47:12,12 49:4 79:15  <b>issues</b> <sup>[2]</sup> 15:2 65:23  <b>it'll</b> <sup>[1]</sup> 15:10  <b>iterations</b> <sup>[1]</sup> 64:1  <b>itself</b> <sup>[3]</sup> 34:24 38:2 67:24</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>JACKSON</b> <sup>[38]</sup> 13:4 16:2 17:3,6 30:4,5 31:18 32:3,22 41:19 42:21 43:7 44:6,9 50:14 54:22,25 55:14 56:9,12 57:1 63:14,24 64:14 75:24 76:25 77:20 78:13 91:6,7,16 92:4,14,17 93:6,14,17 94:13  <b>January</b> <sup>[1]</sup> 1:11</p>	<p><b>Jones</b> <sup>[1]</sup> 46:10  <b>Judge</b> <sup>[2]</sup> 20:10 89:9  <b>judges</b> <sup>[3]</sup> 27:16 65:20 66:2  <b>judgment</b> <sup>[3]</sup> 41:5 61:18,21  <b>judicial</b> <sup>[1]</sup> 24:20  <b>jurisdictional</b> <sup>[2]</sup> 68:12 99:10  <b>Justice</b> <sup>[229]</sup> 1:21 4:3,9 6:9,19,23 7:24 8:2,7 9:19,24 10:3 13:4,5,6,7 14:5,6,7,16 15:9 16:2 17:3,6 18:10,17,25 19:7,25 22:2,5,12,17 23:16 24:5,6,7,15 26:4,4,5,16,17,25 27:11,19,25 28:1,1,2,3,4,5,18,22 29:2,9,12,17,24 30:2,3,3,5 31:18 32:3,21 33:2,8 34:11 35:11,17,22, 23 36:7,15 37:10,15 38:5,15 39:1, 16 40:5,11,23,25 41:19,22 42:13, 17,21,22 43:7 44:6,9 45:2,7,10,12, 16 46:14,18 47:3,14,14,16,17,18 49:17,17,18 50:10,10,12,13,14,17, 20 52:19 53:14,22,25 54:8,15,22, 25 55:14 56:9,12,20 57:1 58:4,7, 11,19 59:3,24 61:3,25 62:2,7 63:14,24 64:14 66:6,12,19,20 67:19 68:6,15,21,23 69:5,11,14 70:1,8 72:7,12 73:3,10,21,24 74:7,12,18, 19,24 75:10,24 76:25 77:20 78:13 79:13 80:15 81:3,11 82:8,13,23 83:21 84:7,11,20 85:18 86:21,23, 24 87:22,22,23,24,25 88:1,9,22 89: 8,18 90:14 91:1,2,2,4,5,6,7,8,16 92:4,14,17 93:6,7,14,17 94:13,14, 16,17,23 95:1,16,21 96:5,12,15,21 100:9  <b>Justice's</b> <sup>[1]</sup> 43:9</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>KAGAN</b> <sup>[35]</sup> 13:5,7 14:5,7,16 15:9 28:1 38:5,15 40:23,25 47:3 49:17, 18 59:24 61:3,25 62:2,7 81:11 82: 8,13,23 83:21 84:7,11,20 87:24 94:16,17,23 95:1,16,21 96:5  <b>Kagan's</b> <sup>[1]</sup> 96:21  <b>Kavanaugh</b> <sup>[2]</sup> 28:3 50:12  <b>kept</b> <sup>[1]</sup> 28:12  <b>key</b> <sup>[1]</sup> 96:6  <b>kid</b> <sup>[1]</sup> 87:12  <b>kids</b> <sup>[6]</sup> 5:21 6:5 49:16 84:23 85:1 99:4  <b>kind</b> <sup>[8]</sup> 8:13 17:20 20:19,20 55:11 61:7 86:17 95:2  <b>kinds</b> <sup>[1]</sup> 49:20  <b>knows</b> <sup>[2]</sup> 69:14 99:1</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>label</b> <sup>[1]</sup> 59:4  <b>labeled</b> <sup>[1]</sup> 32:6  <b>lack</b> <sup>[1]</sup> 89:24  <b>lacks</b> <sup>[3]</sup> 30:22 39:7 63:22  <b>language</b> <sup>[10]</sup> 12:11 30:19 32:22 54:4 55:7,16 56:13,13 80:14 91: 19  <b>lastly</b> <sup>[1]</sup> 81:2  <b>later</b> <sup>[9]</sup> 14:15 22:25 23:15 49:1 53: 10 57:15 64:24 67:24 73:4</p>	<p><b>latter</b> <sup>[1]</sup> 22:12  <b>Laughter</b> <sup>[5]</sup> 69:13,21,25 74:21 91: 15  <b>law</b> <sup>[9]</sup> 14:23 30:20 41:6 53:23 60: 24 75:13,19 81:4 88:24  <b>laws</b> <sup>[3]</sup> 42:5 54:7 89:15  <b>lawsuit</b> <sup>[2]</sup> 41:4 71:23  <b>lawyer</b> <sup>[1]</sup> 69:14  <b>lawyered</b> <sup>[1]</sup> 69:18  <b>lawyering</b> <sup>[1]</sup> 22:9  <b>lawyers</b> <sup>[5]</sup> 10:15 15:16 41:16 83: 15 84:21  <b>lead</b> <sup>[1]</sup> 80:24  <b>leads</b> <sup>[1]</sup> 79:18  <b>least</b> <sup>[5]</sup> 16:7,13 48:4 50:8 88:11  <b>leave</b> <sup>[1]</sup> 47:2  <b>legal</b> <sup>[6]</sup> 5:22 12:16 39:25 41:7 82: 15 100:3  <b>legally</b> <sup>[2]</sup> 88:13 89:11  <b>legislative</b> <sup>[6]</sup> 30:6,12 31:4 63:18 64:3 97:22  <b>less</b> <sup>[3]</sup> 29:19 62:20 63:2  <b>level</b> <sup>[3]</sup> 6:15 71:8,9  <b>liability</b> <sup>[1]</sup> 11:24  <b>library</b> <sup>[1]</sup> 59:16  <b>lied</b> <sup>[1]</sup> 4:12  <b>light</b> <sup>[5]</sup> 64:4 68:8 75:8,11 81:3  <b>likely</b> <sup>[1]</sup> 68:10  <b>likes</b> <sup>[1]</sup> 66:16  <b>limit</b> <sup>[2]</sup> 12:2,3  <b>limiting</b> <sup>[1]</sup> 44:13  <b>limits</b> <sup>[1]</sup> 78:15  <b>litigants</b> <sup>[1]</sup> 13:1  <b>litigate</b> <sup>[2]</sup> 29:10 50:8  <b>litigated</b> <sup>[6]</sup> 15:15 26:9 36:6 50:2 58:20 83:13  <b>litigating</b> <sup>[1]</sup> 15:18  <b>litigation</b> <sup>[12]</sup> 10:15 22:25 27:2 28: 8 47:19 53:10 80:1,4,12,25 84:20, 22  <b>little</b> <sup>[5]</sup> 13:1 14:17 19:21 46:19 76: 2  <b>living</b> <sup>[1]</sup> 48:10  <b>logic</b> <sup>[3]</sup> 26:22,24 95:3  <b>logically</b> <sup>[5]</sup> 35:20 38:7,9,18 72:5  <b>long</b> <sup>[1]</sup> 79:6  <b>longer</b> <sup>[1]</sup> 26:11  <b>look</b> <sup>[10]</sup> 12:12 20:22 38:23 62:10 64:5 70:19 88:12 89:4,10 95:5  <b>looked</b> <sup>[2]</sup> 25:14 32:15  <b>looking</b> <sup>[5]</sup> 18:5 44:12 63:6 80:1 90:2  <b>looks</b> <sup>[1]</sup> 59:6  <b>lose</b> <sup>[5]</sup> 21:6 29:11 45:24 47:21 73: 11  <b>losing</b> <sup>[1]</sup> 45:11  <b>lost</b> <sup>[3]</sup> 46:21 75:13,17  <b>lot</b> <sup>[5]</sup> 10:16 15:15 47:1 84:21 99:4  <b>lower</b> <sup>[4]</sup> 16:24 81:1 85:15 86:4  <b>LUNA</b> <sup>[1]</sup> 1:3</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>made</b> <sup>[3]</sup> 12:6 35:3 69:16  <b>magic</b> <sup>[1]</sup> 51:14</p>	<p><b>main</b> <sup>[1]</sup> 64:7  <b>maintain</b> <sup>[1]</sup> 98:12  <b>majority</b> <sup>[1]</sup> 85:19  <b>malpractice</b> <sup>[1]</sup> 75:15  <b>manage</b> <sup>[1]</sup> 16:20  <b>mandated</b> <sup>[1]</sup> 27:20  <b>many</b> <sup>[2]</sup> 32:25 44:24  <b>MARTINEZ</b> <sup>[63]</sup> 1:18 3:3,13 4:6,7, 9 6:16,22 7:2 8:1,6,11 9:20 10:1 11:1 13:4,8,17 14:10,21 15:10 16: 3,16 18:4,11,14,19 19:3,9 20:2 22: 4,11,15 23:1,19 24:12 25:1 26:8, 22 27:6,14,23 28:5,15,20,25 29:4, 10,16,19,25 30:11 32:2,7 41:24 43:15 66:16 67:4 68:17 81:16 96: 17,18,20  <b>Martinez's</b> <sup>[1]</sup> 85:24  <b>master</b> <sup>[1]</sup> 17:17  <b>matter</b> <sup>[7]</sup> 1:13 28:6 83:10 84:8 85: 23 91:25 92:9  <b>mean</b> <sup>[43]</sup> 10:4,14 16:5,12 17:6 18: 21 19:13 21:8 22:17 27:7 40:6,9 41:1,11,23 42:3 44:22,23 45:3,18 48:5 49:21 55:2 57:23,24,24 59: 24 62:5 63:8,11 65:11 74:25 82: 11 83:7 88:6,18,20 89:25 91:11 94:17 95:5,22 99:13  <b>meaning</b> <sup>[11]</sup> 18:22 19:19,20 30: 14 39:25 40:2,15 41:3,12,14 61:4  <b>meaningful</b> <sup>[1]</sup> 75:18  <b>meanings</b> <sup>[2]</sup> 40:14 61:24  <b>means</b> <sup>[14]</sup> 12:14,14 18:23 19:20 25:11 38:21 40:18 51:8,24 58:2 60:1 62:23 88:21 97:13  <b>mechanically</b> <sup>[1]</sup> 25:10  <b>medical</b> <sup>[2]</sup> 21:13 92:7  <b>mentioned</b> <sup>[1]</sup> 70:11  <b>merit</b> <sup>[1]</sup> 39:7  <b>might</b> <sup>[15]</sup> 11:6 18:21 40:6,12 41: 14 47:24 59:9 65:5 72:4 78:12 80: 24 86:12,15 92:11 97:3  <b>MIGUEL</b> <sup>[18]</sup> 1:3 4:12,20 5:15 9:15, 21 11:16 15:12 21:5 81:15,17,19 96:24,25 98:3,20 99:20 100:4  <b>Miguel's</b> <sup>[5]</sup> 4:15 5:2,12 21:4 96: 22  <b>minimum</b> <sup>[1]</sup> 99:13  <b>Mm-hmm</b> <sup>[1]</sup> 73:10  <b>monetary</b> <sup>[1]</sup> 67:5  <b>money</b> <sup>[10]</sup> 5:3,10 8:20,21 32:11, 12 60:22 76:9 92:18 93:1  <b>months</b> <sup>[2]</sup> 57:15 79:5  <b>morning</b> <sup>[1]</sup> 4:4  <b>most</b> <sup>[12]</sup> 8:17 15:11 30:17 37:21 47:19 68:25 70:14 84:1,1,2,5,25 88:3  <b>mostly</b> <sup>[2]</sup> 67:1 74:25  <b>mouth</b> <sup>[1]</sup> 81:17  <b>move</b> <sup>[1]</sup> 14:3  <b>much</b> <sup>[9]</sup> 18:20 22:13 24:15 34:19 47:18 60:22 64:2 90:21 98:15  <b>must</b> <sup>[5]</sup> 51:11,18 52:2 53:16,16</p> <hr/> <p style="text-align: center;"><b>N</b></p>
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## Official - Subject to Final Review

<p><b>narrow</b> <sup>[1]</sup> 75:2  <b>narrower</b> <sup>[1]</sup> 75:6  <b>natural</b> <sup>[2]</sup> 24:18 88:11  <b>naturally</b> <sup>[1]</sup> 24:10  <b>nature</b> <sup>[3]</sup> 22:6 36:1,11  <b>necessarily</b> <sup>[4]</sup> 10:19 12:20 62:13 88:19  <b>necessary</b> <sup>[3]</sup> 7:8 37:3 95:24  <b>necessity</b> <sup>[1]</sup> 58:23  <b>need</b> <sup>[11]</sup> 9:3,6 18:7 34:25 35:8 37:20,22 61:9 62:13 87:1 89:6  <b>needed</b> <sup>[1]</sup> 33:18  <b>needs</b> <sup>[3]</sup> 25:13 70:19 76:6  <b>neglect</b> <sup>[1]</sup> 76:16  <b>neglected</b> <sup>[1]</sup> 4:11  <b>negotiate</b> <sup>[6]</sup> 81:24 82:2,11,13 99:2,5  <b>negotiated</b> <sup>[1]</sup> 96:25  <b>negotiations</b> <sup>[1]</sup> 23:3  <b>neither</b> <sup>[5]</sup> 52:6,8,12,15 71:15  <b>net</b> <sup>[3]</sup> 5:18 20:22 29:5  <b>new</b> <sup>[3]</sup> 21:17 27:10 52:3  <b>nice</b> <sup>[1]</sup> 16:18  <b>nine</b> <sup>[1]</sup> 48:13  <b>Ninth</b> <sup>[5]</sup> 20:11 48:6,11,13 49:8  <b>non</b> <sup>[1]</sup> 37:8  <b>non-IDA</b> <sup>[1]</sup> 56:19  <b>non-IDEA</b> <sup>[15]</sup> 5:7 12:7 42:4 48:2 51:24 52:6 54:21 55:24 56:6 57:6 64:16 70:6 78:16 79:10 82:1  <b>non-legal</b> <sup>[1]</sup> 41:12  <b>nonetheless</b> <sup>[1]</sup> 98:22  <b>nor</b> <sup>[4]</sup> 52:9,13,16 71:15  <b>normal</b> <sup>[4]</sup> 11:8 27:2 60:20,23  <b>normally</b> <sup>[2]</sup> 8:3 24:18  <b>note</b> <sup>[1]</sup> 20:5  <b>nothing</b> <sup>[6]</sup> 45:4 54:4 58:24 78:15 91:5 95:15  <b>notion</b> <sup>[3]</sup> 10:22 16:7 66:21  <b>notwithstanding</b> <sup>[1]</sup> 34:21  <b>nullify</b> <sup>[2]</sup> 6:3 97:8  <b>number</b> <sup>[8]</sup> 6:18 21:22 56:15 57:15 64:1 86:3 98:5,6</p>	<p><b>official</b> <sup>[1]</sup> 32:11  <b>okay</b> <sup>[6]</sup> 20:24 21:16 35:22 68:21,23 69:17  <b>on-the-ground</b> <sup>[2]</sup> 21:18 23:13  <b>once</b> <sup>[5]</sup> 57:6,13 79:20 81:7,10  <b>one</b> <sup>[46]</sup> 5:9,20 6:6 8:15 13:5 14:19 15:20 18:22 20:16,21 21:22 22:9 25:3,4,19 30:6 40:15 42:22,23 48:15 51:24 55:15,22 56:5,15 57:23 59:12 60:12,24 62:10 63:13 66:15,15,16 67:15 68:12 76:21 79:17 80:16,17,24 81:11,23 83:2 88:2 90:3  <b>one's</b> <sup>[1]</sup> 72:2  <b>one-of-a-kind</b> <sup>[3]</sup> 8:12 24:13 25:17  <b>one-size-fits-all</b> <sup>[1]</sup> 25:9  <b>ones</b> <sup>[2]</sup> 86:9 90:16  <b>ongoing</b> <sup>[1]</sup> 49:15  <b>only</b> <sup>[20]</sup> 5:6,9 7:15 8:18 17:20 18:7,22 23:8,9 31:22 41:8 43:20 45:18 56:9 66:22 67:13 71:22 76:8 96:5 97:4  <b>open</b> <sup>[2]</sup> 80:22 81:13  <b>operate</b> <sup>[3]</sup> 68:16 84:9,13  <b>operated</b> <sup>[1]</sup> 69:3  <b>operates</b> <sup>[2]</sup> 70:18 80:14  <b>operation</b> <sup>[1]</sup> 35:19  <b>opinion</b> <sup>[3]</sup> 20:11 41:2 69:9  <b>opinions</b> <sup>[1]</sup> 69:12  <b>opportunity</b> <sup>[2]</sup> 37:4 84:2  <b>opposing</b> <sup>[1]</sup> 63:17  <b>options</b> <sup>[2]</sup> 81:23 82:5  <b>oral</b> <sup>[7]</sup> 1:14 3:2,5,9 4:7 33:5 50:18  <b>oranges</b> <sup>[1]</sup> 63:3  <b>order</b> <sup>[7]</sup> 35:18 37:19 42:6 65:3 76:20 86:18 100:6  <b>ordinary</b> <sup>[2]</sup> 41:3 88:18  <b>original</b> <sup>[2]</sup> 24:8 30:14  <b>other</b> <sup>[53]</sup> 5:23,25 6:3,7 9:22 10:10,14,21 11:6,11 12:16 14:9,19 15:20 17:3 19:10,18 23:18 26:20 28:7 31:24 38:8 43:11 45:19 47:6 48:12 49:2 50:4 51:11 53:15 54:7 55:16 56:7 61:22 62:1,9,18 64:15,24 65:6 67:21 68:16 70:21 72:4 78:4 80:22 83:9 87:12 93:8 97:16 98:6 100:3,4  <b>otherwise</b> <sup>[2]</sup> 90:9 98:9  <b>ought</b> <sup>[2]</sup> 65:22 80:11  <b>out</b> <sup>[22]</sup> 10:17 12:3 15:21,23 20:5 23:3 32:4 36:24 45:23 55:9 56:21 60:24 63:16 67:6 76:5,14 77:24 78:14,19 81:17 85:21 91:24  <b>outcome</b> <sup>[1]</sup> 83:2  <b>outside</b> <sup>[5]</sup> 4:16 41:10 43:14 67:10 95:7  <b>over</b> <sup>[2]</sup> 71:8 87:12  <b>overlap</b> <sup>[1]</sup> 43:10  <b>overturn</b> <sup>[2]</sup> 55:20 56:1  <b>overturned</b> <sup>[1]</sup> 56:18  <b>overwhelming</b> <sup>[2]</sup> 86:3,7  <b>overwhelmingly</b> <sup>[1]</sup> 8:17  <b>owed</b> <sup>[1]</sup> 45:22  <b>own</b> <sup>[1]</sup> 49:16</p>	<p style="text-align: center;"><b>P</b></p> <p><b>PAGE</b> <sup>[5]</sup> 3:2 30:18 36:21 74:20,22  <b>parallel</b> <sup>[7]</sup> 14:18 15:7,13 16:25 27:1 28:8 47:19  <b>parent</b> <sup>[3]</sup> 21:3,19,20  <b>parent's</b> <sup>[1]</sup> 21:9  <b>parents</b> <sup>[26]</sup> 4:13 15:11,15 21:4 23:12 27:9 34:23 48:20 49:13 51:1 60:19 65:4,16,18 79:21 83:21,24 84:9,15,22,25 90:9 98:6 99:4,11 100:4  <b>parents'</b> <sup>[1]</sup> 22:18  <b>part</b> <sup>[14]</sup> 22:8,9 41:2 43:8,10 55:4 56:17,19 78:14,19 81:24 82:2,5 85:4  <b>partial</b> <sup>[1]</sup> 23:8  <b>participate</b> <sup>[1]</sup> 37:4  <b>particular</b> <sup>[7]</sup> 63:19 65:5 70:11 74:11 89:16,20,24  <b>particulars</b> <sup>[1]</sup> 25:14  <b>parties</b> <sup>[10]</sup> 11:10 22:8,10,20 23:5,14,23 44:3 67:22 79:20  <b>party</b> <sup>[2]</sup> 70:12 74:1  <b>passing</b> <sup>[2]</sup> 79:7 85:6  <b>path</b> <sup>[2]</sup> 33:10 48:21  <b>Payne</b> <sup>[1]</sup> 48:7  <b>peace</b> <sup>[1]</sup> 79:25  <b>peculiar</b> <sup>[1]</sup> 80:14  <b>pending</b> <sup>[1]</sup> 15:8  <b>people</b> <sup>[3]</sup> 17:9 78:9 79:8  <b>percent</b> <sup>[2]</sup> 7:2 48:14  <b>PEREZ</b> <sup>[4]</sup> 1:3 4:4 51:5 87:6  <b>Perez's</b> <sup>[3]</sup> 52:3 53:7 62:22  <b>perfect</b> <sup>[2]</sup> 25:20,23  <b>perfectly</b> <sup>[1]</sup> 15:4  <b>period</b> <sup>[1]</sup> 77:9  <b>permanently</b> <sup>[1]</sup> 4:15  <b>permissible</b> <sup>[1]</sup> 88:14  <b>person</b> <sup>[3]</sup> 13:11 17:22 91:22  <b>person's</b> <sup>[1]</sup> 78:16  <b>pertinent</b> <sup>[1]</sup> 10:24  <b>Petitioner</b> <sup>[14]</sup> 1:4,19,23 3:4,8,14 4:8 6:14 33:7,10,16 35:24 50:7 96:19  <b>Petitioner's</b> <sup>[3]</sup> 26:6 34:1,2  <b>phrase</b> <sup>[1]</sup> 89:25  <b>piece</b> <sup>[1]</sup> 55:12  <b>place</b> <sup>[4]</sup> 21:3 32:24 71:18 90:12  <b>placed</b> <sup>[1]</sup> 64:3  <b>places</b> <sup>[2]</sup> 19:10 30:12  <b>plain</b> <sup>[1]</sup> 80:19  <b>plaintiff</b> <sup>[18]</sup> 13:9 14:13,14 17:16 51:9,11,18 52:1,5,6 59:5 61:20 67:5 70:5 71:24 79:2 81:22 83:4  <b>plaintiffs</b> <sup>[3]</sup> 51:12 53:3 87:5  <b>platypus</b> <sup>[1]</sup> 27:21  <b>plausible</b> <sup>[1]</sup> 63:10  <b>play</b> <sup>[3]</sup> 23:3 66:22 67:9  <b>playing</b> <sup>[1]</sup> 63:5  <b>please</b> <sup>[3]</sup> 4:10 33:9 50:21  <b>PLRA</b> <sup>[1]</sup> 6:25  <b>plug</b> <sup>[2]</sup> 62:24,25</p>	<p><b>Plus</b> <sup>[2]</sup> 44:2 51:4  <b>point</b> <sup>[27]</sup> 19:14 20:12,24,25 23:2 26:1 30:6 31:8 34:4 39:14 49:22 58:8,14 68:20 73:13,19 74:14 80:15 81:10 82:24 83:9 85:19 88:3 90:18,19 96:6 98:25  <b>pointed</b> <sup>[3]</sup> 15:21 56:21 85:21  <b>pointless</b> <sup>[3]</sup> 5:15 33:19 98:16  <b>points</b> <sup>[5]</sup> 5:5 11:1 55:15 79:17 97:11  <b>policy</b> <sup>[3]</sup> 97:25 98:1,14  <b>poor</b> <sup>[1]</sup> 53:20  <b>population</b> <sup>[1]</sup> 48:15  <b>portions</b> <sup>[1]</sup> 14:11  <b>position</b> <sup>[12]</sup> 16:6 21:2,9 36:3 49:24 50:6,7 73:4,6 85:24 95:4 96:3  <b>possible</b> <sup>[4]</sup> 5:21 15:22 16:14 43:6  <b>possibly</b> <sup>[2]</sup> 22:4 97:19  <b>potential</b> <sup>[3]</sup> 67:25 82:20 88:23  <b>potentially</b> <sup>[3]</sup> 80:22 81:13 90:12  <b>pound</b> <sup>[2]</sup> 82:14 83:1  <b>powerless</b> <sup>[2]</sup> 13:2 71:19  <b>practical</b> <sup>[4]</sup> 28:6 83:10 84:8 85:22  <b>practically</b> <sup>[2]</sup> 38:12,14  <b>precedent</b> <sup>[2]</sup> 69:16,19  <b>precisely</b> <sup>[2]</sup> 12:5 69:6  <b>precluded</b> <sup>[1]</sup> 52:20  <b>precludes</b> <sup>[1]</sup> 50:4  <b>prefer</b> <sup>[3]</sup> 34:11,16 65:5  <b>preferable</b> <sup>[1]</sup> 79:16  <b>preference</b> <sup>[2]</sup> 78:6 80:4  <b>preferred</b> <sup>[5]</sup> 25:21,22,24 79:19,20  <b>premise</b> <sup>[3]</sup> 42:4 54:1 76:21  <b>preparation</b> <sup>[1]</sup> 71:23  <b>present</b> <sup>[2]</sup> 13:1 70:10  <b>presented</b> <sup>[8]</sup> 50:1,1 51:4 59:21 66:23 67:2 68:9 85:9  <b>preserve</b> <sup>[2]</sup> 29:7 98:13  <b>preserved</b> <sup>[2]</sup> 23:17 93:7  <b>preserving</b> <sup>[4]</sup> 5:22 64:17,18 78:21  <b>press</b> <sup>[1]</sup> 67:20  <b>pressed</b> <sup>[1]</sup> 26:15  <b>presumably</b> <sup>[1]</sup> 9:7  <b>pretty</b> <sup>[4]</sup> 20:12,12 44:1 47:8  <b>prevail</b> <sup>[1]</sup> 35:24  <b>prevent</b> <sup>[1]</sup> 31:25  <b>price</b> <sup>[2]</sup> 21:23 53:5  <b>primacy</b> <sup>[6]</sup> 51:2 64:22 65:8 96:7 99:18,19  <b>primarily</b> <sup>[1]</sup> 90:6  <b>primary</b> <sup>[2]</sup> 57:12 81:9  <b>principal</b> <sup>[1]</sup> 12:24  <b>principle</b> <sup>[3]</sup> 67:9 71:2,11  <b>principles</b> <sup>[2]</sup> 96:6,14  <b>prioritization</b> <sup>[1]</sup> 79:9  <b>priority</b> <sup>[1]</sup> 78:7  <b>probably</b> <sup>[3]</sup> 38:16 48:8 67:14  <b>problem</b> <sup>[8]</sup> 18:2 34:23 48:17 49:3 52:20,21 65:13 71:16  <b>problematic</b> <sup>[2]</sup> 46:16 69:4</p>
<p style="text-align: center;"><b>O</b></p> <p><b>objecting</b> <sup>[2]</sup> 95:6,25  <b>objectives</b> <sup>[2]</sup> 66:7,17  <b>obtain</b> <sup>[1]</sup> 37:19  <b>obtained</b> <sup>[4]</sup> 33:12 43:2 60:18 62:20  <b>obtaining</b> <sup>[3]</sup> 40:19 51:25 52:21  <b>obviated</b> <sup>[1]</sup> 52:20  <b>obviously</b> <sup>[1]</sup> 95:7  <b>occurred</b> <sup>[1]</sup> 77:8  <b>occurs</b> <sup>[1]</sup> 75:4  <b>odd</b> <sup>[6]</sup> 14:17,22 16:3 27:21 39:1,2  <b>offer</b> <sup>[7]</sup> 9:15 28:17,18 29:14 60:19 62:21 82:16  <b>offering</b> <sup>[1]</sup> 82:9  <b>officer</b> <sup>[30]</sup> 7:19 12:19,20 14:20 18:9 30:22 31:2 32:11 39:9,11 44:20,22,23,24 45:6 52:12,12 57:11 61:11 63:22 71:15,18 72:24 73:1,9 77:5,13 91:12 98:17,18</p>			

## Official - Subject to Final Review

<p><b>problems</b> <sup>[1]</sup> 47:1</p> <p><b>procedure</b> <sup>[2]</sup> 7:18 56:8</p> <p><b>procedures</b> <sup>[25]</sup> 4:23 5:13 7:12 9:4,5 13:13,19 25:12,18 41:17 44:11,14 50:24,25 56:4 57:7 64:20 65:3 66:4 73:15 75:23 76:18 80:18 86:11 96:8</p> <p><b>proceed</b> <sup>[9]</sup> 6:7 28:8 46:17 48:3,21 53:10 54:18 69:19 82:4</p> <p><b>proceeding</b> <sup>[5]</sup> 15:13 18:3 27:18 68:2 97:3</p> <p><b>proceedings</b> <sup>[7]</sup> 14:18 15:7 16:7 17:1 27:20 31:14 33:19</p> <p><b>proceeds</b> <sup>[1]</sup> 28:10</p> <p><b>process</b> <sup>[18]</sup> 9:7,9 10:8 11:7 13:22 25:25 40:18,22 43:22 44:1 55:10 58:22 63:21 65:17 68:3 80:9 83:25 99:22</p> <p><b>program</b> <sup>[1]</sup> 37:5</p> <p><b>progress</b> <sup>[1]</sup> 4:13</p> <p><b>progression</b> <sup>[2]</sup> 6:11 24:18</p> <p><b>prohibits</b> <sup>[1]</sup> 60:17</p> <p><b>prompt</b> <sup>[1]</sup> 33:12</p> <p><b>proper</b> <sup>[1]</sup> 59:19</p> <p><b>properly</b> <sup>[1]</sup> 14:12</p> <p><b>protect</b> <sup>[1]</sup> 100:3</p> <p><b>protection</b> <sup>[3]</sup> 87:9,16 93:15</p> <p><b>prove</b> <sup>[2]</sup> 58:23 98:11</p> <p><b>provide</b> <sup>[6]</sup> 7:21 33:20 40:4 42:15 83:14 95:23</p> <p><b>provides</b> <sup>[4]</sup> 33:20 59:12 65:12 79:4</p> <p><b>provision</b> <sup>[10]</sup> 18:15 20:1 30:10 36:23 37:14 54:9 62:3 63:1 86:14 99:15</p> <p><b>provisions</b> <sup>[4]</sup> 60:11 62:2,9,10</p> <p><b>proximity</b> <sup>[1]</sup> 19:12</p> <p><b>PUBLIC</b> <sup>[6]</sup> 1:6 4:5 30:14 36:25 59:15 94:4</p> <p><b>punish</b> <sup>[1]</sup> 6:5</p> <p><b>purely</b> <sup>[1]</sup> 48:2</p> <p><b>purpose</b> <sup>[6]</sup> 5:20,20 64:7,9 81:9 99:17</p> <p><b>purposes</b> <sup>[4]</sup> 26:11 30:16 64:6,15</p> <p><b>purposivist</b> <sup>[2]</sup> 90:15,20</p> <p><b>pursue</b> <sup>[10]</sup> 24:11 26:20 33:18,21 48:25 49:13 53:17 57:14,15 64:24</p> <p><b>pursued</b> <sup>[1]</sup> 75:3</p> <p><b>pursuing</b> <sup>[1]</sup> 24:21</p> <p><b>put</b> <sup>[6]</sup> 13:10 21:8 60:22 66:1 86:14 90:12</p> <p><b>puts</b> <sup>[2]</sup> 5:24 59:5</p> <p><b>putting</b> <sup>[2]</sup> 27:1 65:24</p>	<p>2 92:24 94:18,20 95:9,14,18,19 96:2,9,10,21 99:9</p> <p><b>questions</b> <sup>[8]</sup> 6:8 34:10 50:9 51:4 52:18 66:23 93:25 94:9</p> <p><b>quick</b> <sup>[2]</sup> 44:2 49:14</p> <p><b>quickly</b> <sup>[2]</sup> 5:21 35:8</p> <p><b>quotes</b> <sup>[1]</sup> 60:25</p> <p><b>quoting</b> <sup>[2]</sup> 30:22 31:10</p>	<p><b>regulations</b> <sup>[2]</sup> 36:24,24</p> <p><b>Rehabilitation</b> <sup>[1]</sup> 54:7</p> <p><b>reinforced</b> <sup>[1]</sup> 12:17</p> <p><b>reject</b> <sup>[5]</sup> 5:4 29:8 33:16 82:17 97:1</p> <p><b>rejected</b> <sup>[4]</sup> 28:21,22 29:14 97:10</p> <p><b>rejects</b> <sup>[1]</sup> 28:11</p> <p><b>related</b> <sup>[1]</sup> 77:2</p> <p><b>release</b> <sup>[4]</sup> 11:22 52:21 53:9 83:8</p> <p><b>relevant</b> <sup>[5]</sup> 54:20 71:2 74:5,16,16</p> <p><b>relief</b> <sup>[142]</sup> 4:24 5:7 6:2 7:9,21,22 8:4 9:15 10:23,23 12:7,13,16 13:3 14:1,3,4,20 15:25 16:11 17:20,21 18:13,22 19:11 23:13,15 26:3 29:20 30:23,25 31:3,23 33:12,18 34:2,6,15 39:18,19,25 40:19,21 41:1,3,9,11,12,22,23,23 42:5,9 43:19,24 44:1,12,21,22 45:9,20 46:1,12,16,24,24 48:2,21,24,25 49:14,16,20 50:3 51:7,10 52:11 56:15 57:12,22,22 58:3 60:1,2,7,10,13,18,20,24 61:1,17,23,23 62:5,9,11,14,15,16,19,23,23,24 63:2,6,9,23 65:11 71:4 77:2,4 78:4 82:6 86:19 88:2,5,13,17,19,20 89:4,11,14,15,16,18 92:2,5,5,11 94:10,11 95:10 97:2,13,16,16,18 98:4,9,17</p> <p><b>reliefs</b> <sup>[1]</sup> 89:10</p> <p><b>remain</b> <sup>[1]</sup> 81:13</p> <p><b>remains</b> <sup>[1]</sup> 35:7</p> <p><b>remedies</b> <sup>[21]</sup> 4:18 6:11 13:23,23 18:12,21,23 19:2,4,11,19 26:21 31:11 33:20,21 40:10 44:14 75:7 78:16,22 89:10</p> <p><b>remedy</b> <sup>[15]</sup> 5:10 6:24 19:1 21:17 24:21,22 39:19 40:6,13 51:8 57:25 61:5 65:5 78:10 79:4</p> <p><b>remember</b> <sup>[1]</sup> 48:13</p> <p><b>remind</b> <sup>[1]</sup> 16:24</p> <p><b>remove</b> <sup>[1]</sup> 35:1</p> <p><b>repeatedly</b> <sup>[2]</sup> 94:19 98:20</p> <p><b>rephrase</b> <sup>[1]</sup> 36:8</p> <p><b>report</b> <sup>[3]</sup> 30:18 31:9 63:19</p> <p><b>request</b> <sup>[9]</sup> 11:16 14:3,4 32:19 46:1 71:12,13 72:6,8</p> <p><b>requested</b> <sup>[1]</sup> 13:3</p> <p><b>require</b> <sup>[8]</sup> 13:1 27:15 36:24 42:14,24 47:20 63:21 66:4</p> <p><b>required</b> <sup>[9]</sup> 5:9 14:7 29:8 30:21 31:12,22 51:19 53:15,21</p> <p><b>requirement</b> <sup>[20]</sup> 8:23 9:3 33:25 34:5 35:15 38:21,21 51:13 53:5 54:11,19 64:11,12,23 67:6 68:7,11 82:4 95:8 99:3</p> <p><b>requirements</b> <sup>[1]</sup> 25:7</p> <p><b>requires</b> <sup>[5]</sup> 5:6 25:18 68:2 72:20 78:24</p> <p><b>requiring</b> <sup>[1]</sup> 65:16</p> <p><b>reserved</b> <sup>[4]</sup> 34:14 94:20 95:2,18</p> <p><b>resolution</b> <sup>[3]</sup> 25:22,23,24</p> <p><b>resolve</b> <sup>[3]</sup> 10:17 15:24 44:4</p> <p><b>resolving</b> <sup>[3]</sup> 10:9 13:14 44:2</p> <p><b>resort</b> <sup>[1]</sup> 31:13</p> <p><b>resources</b> <sup>[1]</sup> 15:16</p>	<p><b>respect</b> <sup>[14]</sup> 30:9 55:18 57:19 61:16,22 67:12 68:24 69:7 79:12 91:21 97:12 98:14,24 99:17</p> <p><b>respectful</b> <sup>[1]</sup> 27:8</p> <p><b>respectfully</b> <sup>[2]</sup> 27:16 62:8</p> <p><b>respond</b> <sup>[3]</sup> 55:5 63:17 68:4</p> <p><b>responded</b> <sup>[1]</sup> 4:20</p> <p><b>Respondents</b> <sup>[6]</sup> 1:7 2:25 3:11 13:8 39:7 50:19</p> <p><b>response</b> <sup>[4]</sup> 13:16 14:24 54:13 55:20</p> <p><b>responses</b> <sup>[1]</sup> 20:23</p> <p><b>rest</b> <sup>[1]</sup> 60:9</p> <p><b>restrict</b> <sup>[1]</sup> 54:5</p> <p><b>result</b> <sup>[8]</sup> 22:6 46:9 53:19,20 57:2,5 79:1 98:19</p> <p><b>results</b> <sup>[2]</sup> 44:7 49:10</p> <p><b>resurrect</b> <sup>[1]</sup> 97:9</p> <p><b>return</b> <sup>[1]</sup> 11:12</p> <p><b>reverse</b> <sup>[1]</sup> 100:7</p> <p><b>reviewing</b> <sup>[1]</sup> 27:4</p> <p><b>rid</b> <sup>[2]</sup> 11:21 14:13</p> <p><b>rights</b> <sup>[19]</sup> 5:3,22 6:3 7:6,9 11:17,18 21:25 22:1 24:18 29:7 44:13 54:5 78:16 97:8 98:13 99:21 100:3,6</p> <p><b>rise</b> <sup>[1]</sup> 17:14</p> <p><b>risk</b> <sup>[1]</sup> 97:3</p> <p><b>ROBERTS</b> <sup>[30]</sup> 4:3 9:19,24 10:3 24:5 26:4 28:1 30:3 33:2 35:11,22 39:16 40:5,11 47:14 49:17 50:10,17 58:4,7,11,19 86:21 87:22 91:2,5 94:14 96:12,15 100:9</p> <p><b>Robinson</b> <sup>[1]</sup> 97:10</p> <p><b>roll</b> <sup>[1]</sup> 97:2</p> <p><b>ROMAN</b> <sup>[5]</sup> 1:18 3:3,13 4:7 96:18</p> <p><b>room</b> <sup>[1]</sup> 21:11</p> <p><b>Rowley</b> <sup>[2]</sup> 48:20 49:12</p> <p><b>rule</b> <sup>[56]</sup> 6:1 11:19 23:5,10,20,21,23,24 24:3 25:9 29:1,3,5 48:11 49:7 52:25 53:1,3,7,13 66:14,14,22 67:4,8,9,10,12,22 68:8,14,20 69:1,3,6 70:19 79:16,18 80:2,2,11,11,20 81:7 82:15,24,25 85:9,16,19 86:4 97:7 98:14,15,24 99:10</p> <p><b>rules</b> <sup>[2]</sup> 66:7 79:14</p> <p><b>ruling</b> <sup>[2]</sup> 33:15,23</p> <p><b>run</b> <sup>[3]</sup> 17:10 84:21,22</p> <p><b>rush</b> <sup>[1]</sup> 85:5</p>
<p style="text-align: center;"><b>Q</b></p> <p><b>QP-1</b> <sup>[2]</sup> 46:23 48:1</p> <p><b>qua</b> <sup>[1]</sup> 37:8</p> <p><b>qualified</b> <sup>[1]</sup> 37:2</p> <p><b>question</b> <sup>[53]</sup> 16:6 24:8 26:17 27:2 34:15 35:14,20 36:9 38:7,8,10,12,19 43:9 47:3 51:6,16 54:2 59:4,21,25 63:7,15 66:1,10,25 67:2 68:9 70:4 71:1 74:13 75:25 76:20 79:13 81:12,14 85:9,17,25 87:19 88:</p>	<p style="text-align: center;"><b>R</b></p> <p><b>race</b> <sup>[1]</sup> 87:11</p> <p><b>rapacious</b> <sup>[1]</sup> 84:21</p> <p><b>rare</b> <sup>[4]</sup> 15:7,9,10 67:14</p> <p><b>Rather</b> <sup>[5]</sup> 15:13 38:10 64:13 65:4 79:25</p> <p><b>ratification</b> <sup>[1]</sup> 47:7</p> <p><b>reach</b> <sup>[6]</sup> 15:22 23:6,8,9 29:25 100:6</p> <p><b>reached</b> <sup>[1]</sup> 100:2</p> <p><b>react</b> <sup>[1]</sup> 17:7</p> <p><b>read</b> <sup>[7]</sup> 12:10 16:8 56:15,16 57:22 88:17 90:19</p> <p><b>reading</b> <sup>[12]</sup> 8:18,19 13:9 57:4 58:1 60:5 62:8 65:11 78:14 88:11,23 90:8</p> <p><b>ready</b> <sup>[1]</sup> 14:24</p> <p><b>reaffirmed</b> <sup>[1]</sup> 56:5</p> <p><b>real</b> <sup>[3]</sup> 15:14 63:7 85:14</p> <p><b>realistically</b> <sup>[1]</sup> 48:24</p> <p><b>really</b> <sup>[19]</sup> 17:8 18:22 20:21 25:4 29:23 48:18 54:19 55:19 62:23 71:22 74:5,15 87:15,19 92:1,3 96:1,22 97:7</p> <p><b>reason</b> <sup>[9]</sup> 19:12 29:22 34:17 38:8 59:17 64:21 76:8 85:4,14</p> <p><b>reasonable</b> <sup>[10]</sup> 8:18,19 10:7 18:22 29:14 30:1 36:19 37:11 41:8 93:10</p> <p><b>reasoning</b> <sup>[1]</sup> 12:18</p> <p><b>reasons</b> <sup>[2]</sup> 63:13,15</p> <p><b>REBUTTAL</b> <sup>[3]</sup> 3:12 96:17,18</p> <p><b>recall</b> <sup>[1]</sup> 70:8</p> <p><b>receive</b> <sup>[1]</sup> 82:19</p> <p><b>received</b> <sup>[2]</sup> 5:16 98:4</p> <p><b>recodifications</b> <sup>[1]</sup> 34:22</p> <p><b>recognition</b> <sup>[2]</sup> 48:19 49:12</p> <p><b>recognized</b> <sup>[6]</sup> 65:21 86:5 90:6 95:20 96:11,13</p> <p><b>recognizes</b> <sup>[2]</sup> 31:15 65:8</p> <p><b>recover</b> <sup>[1]</sup> 45:13</p> <p><b>recovery</b> <sup>[2]</sup> 83:5 97:4</p> <p><b>redress</b> <sup>[15]</sup> 40:2 41:4 51:8 57:24 58:2 61:4,6,14,17,19,19 65:11 76:23 92:13 93:3</p> <p><b>redressed</b> <sup>[2]</sup> 58:17 88:21</p> <p><b>reference</b> <sup>[1]</sup> 63:18</p> <p><b>references</b> <sup>[1]</sup> 30:6</p> <p><b>reflect</b> <sup>[4]</sup> 22:7,9 30:8 79:10</p> <p><b>reflected</b> <sup>[1]</sup> 78:8</p> <p><b>reflects</b> <sup>[3]</sup> 34:24 51:21 65:7</p> <p><b>refused</b> <sup>[2]</sup> 96:24,24</p> <p><b>regardless</b> <sup>[3]</sup> 42:15 62:16 92:25</p> <p><b>regime</b> <sup>[1]</sup> 97:9</p> <p><b>regulation</b> <sup>[2]</sup> 37:10,11</p>	<p style="text-align: center;"><b>S</b></p> <p><b>Sall</b> <sup>[1]</sup> 12:24</p> <p><b>same</b> <sup>[35]</sup> 6:13 7:1 12:12,13 20:12 24:20 26:13 27:12 31:22,23 32:5,24 34:5 40:9 43:24 45:16 51:19 52:14 56:14 58:9 59:13,16,17 60:11 70:7 72:22 73:16 74:20 75:12,25,25 76:5 84:4 94:3,5</p> <p><b>satisfied</b> <sup>[2]</sup> 73:13,20</p> <p><b>saying</b> <sup>[12]</sup> 6:5 9:3 12:25 41:10 45:11 59:4 62:6 77:21 78:19 81:3 87:9 89:24</p> <p><b>says</b> <sup>[28]</sup> 7:14 9:9 12:18 19:18 21:16 23:24 29:15 30:18 31:9 44:15,</p>	

## Official - Subject to Final Review

<p>23 54:4 56:13,13 58:25 60:12 63:20 64:8 67:21 76:15 77:8,10 78:15 88:5 95:15 97:14 98:25 99:18</p> <p><b>scenario</b> [3] 15:2 32:1 91:24</p> <p><b>scheme</b> [2] 25:15,17</p> <p><b>school</b> [24] 4:14 9:8 10:12 11:22 21:15 35:4 42:14 51:1 53:8 59:13 76:6 77:22,23 79:22 82:3 83:6,13, 18 84:12,25 86:13 94:2,3 99:24</p> <p><b>school's</b> [2] 76:16 92:19</p> <p><b>SCHOOLS</b> [5] 1:6 4:5 34:23,24 65:19</p> <p><b>Second</b> [18] 5:12 6:18 11:25 34:7, 12 40:18 47:12 49:4 56:10 60:5 64:19 65:18 66:22 71:9 78:19,22 80:3 88:7</p> <p><b>Section</b> [2] 50:22 60:12</p> <p><b>secured</b> [1] 33:22</p> <p><b>see</b> [8] 6:21 59:6 73:5,7 78:13 81:18 88:14 89:10</p> <p><b>seeing</b> [1] 40:8</p> <p><b>seek</b> [4] 34:14 40:21 79:7 80:24</p> <p><b>seeking</b> [49] 5:9 7:15 8:20 10:23 12:7 16:10 30:25 34:5,15 40:21 42:5,9,11 43:19,24 44:21 45:17 46:4,7,13 56:14 60:1,3,6,7 61:1, 11 85:5,11 89:16,18 91:9,22 92:5, 7,7,12,18 93:1,2,4,20,24 94:8,10 95:10,12 97:7,18</p> <p><b>seeks</b> [4] 5:7 34:2 67:5 90:24</p> <p><b>seem</b> [3] 17:5 55:5 56:22</p> <p><b>seems</b> [9] 6:23 8:2,7 10:11 16:4 24:16 68:24 75:1 88:3</p> <p><b>seen</b> [1] 85:5</p> <p><b>Senate</b> [1] 31:9</p> <p><b>send</b> [2] 7:20 14:8</p> <p><b>senior</b> [1] 76:10</p> <p><b>sense</b> [24] 6:4 12:10 13:1 24:4 25:20,24 33:23 39:15,17,22 43:23 44:19 60:21 63:12 71:6,22 88:18,25 89:2,6 90:1 97:23 98:15 99:16</p> <p><b>sent</b> [1] 21:11</p> <p><b>separate</b> [8] 5:2 7:9,9 10:19 27:20 33:13 80:1 92:21</p> <p><b>sequencing</b> [1] 79:9</p> <p><b>serious</b> [1] 35:5</p> <p><b>serves</b> [2] 66:7,16</p> <p><b>service</b> [1] 37:5</p> <p><b>services</b> [5] 29:18 37:1 82:19 87:7, 10</p> <p><b>set</b> [2] 10:1 17:12</p> <p><b>sets</b> [1] 15:19</p> <p><b>setting</b> [2] 69:8 70:3</p> <p><b>settle</b> [3] 10:13 29:23 47:21</p> <p><b>settled</b> [5] 33:11 52:14 72:2 98:3, 21</p> <p><b>settlement</b> [72] 4:22,24 5:2,12 9:7, 9 10:8 11:4,13,15,20 15:23 20:15 21:6,23,24,24 22:7,22 23:2,7,9,9, 12,17,21 24:2,3 25:21 26:1 28:10, 11,17,18 29:8,14,21 30:1 31:6 33:17,22 34:8 38:17 44:8 49:5 52:7,9, 16,22 53:6 60:20 62:18,20 63:1 66:24 67:3,11,15,24 71:12,20 72:</p>	<p>6 79:15,18,19 81:24 82:3,6,18 86:7 97:1 100:1</p> <p><b>settlements</b> [4] 6:2,6 82:12 100:6</p> <p><b>settles</b> [2] 52:4 71:24</p> <p><b>settling</b> [1] 52:5</p> <p><b>several</b> [1] 81:23</p> <p><b>SG</b> [1] 49:19</p> <p><b>shall</b> [2] 54:4 62:11</p> <p><b>shameful</b> [1] 4:14</p> <p><b>SHAY</b> [3] 2:24 3:10 50:18</p> <p><b>she's</b> [3] 76:9,10 77:21</p> <p><b>shed</b> [1] 64:4</p> <p><b>show</b> [2] 37:22 46:11</p> <p><b>shows</b> [2] 51:7 97:6</p> <p><b>side</b> [7] 10:21 19:18 20:8 49:2 67:21 68:16 83:1</p> <p><b>side's</b> [1] 28:7</p> <p><b>sides</b> [1] 69:18</p> <p><b>significant</b> [1] 10:9</p> <p><b>similar</b> [6] 8:4,4 15:1,2,18 24:21</p> <p><b>simply</b> [3] 33:21 45:13 54:20</p> <p><b>simultaneously</b> [1] 15:18</p> <p><b>since</b> [1] 49:9</p> <p><b>sine</b> [1] 37:8</p> <p><b>single</b> [1] 48:15</p> <p><b>sit</b> [1] 77:12</p> <p><b>situation</b> [18] 9:2 14:23 16:9 17:19 22:5 36:12 61:7 67:13 70:18 77:16 79:1,16,24 81:23 86:17 87:5,14 94:7</p> <p><b>situations</b> [1] 86:8</p> <p><b>six</b> [1] 79:5</p> <p><b>Sixth</b> [10] 33:15,24 34:18 38:23 46:20 47:4,9 73:22,24 74:8</p> <p><b>skip</b> [1] 71:7</p> <p><b>sky</b> [3] 83:23 85:14,21</p> <p><b>sling</b> [1] 92:10</p> <p><b>Smith</b> [11] 54:14,17 55:5,19,22,24, 25 56:2,17 86:10 97:9</p> <p><b>Solicitor</b> [1] 1:20</p> <p><b>solved</b> [1] 52:20</p> <p><b>solves</b> [1] 46:25</p> <p><b>somebody</b> [1] 92:6</p> <p><b>somehow</b> [1] 71:19</p> <p><b>someone</b> [3] 35:6 56:24 72:1</p> <p><b>sometimes</b> [6] 14:22 19:17 42:24 84:18 88:24 91:17</p> <p><b>somewhat</b> [1] 80:14</p> <p><b>soon</b> [2] 83:14,15</p> <p><b>sophisticated</b> [1] 22:19</p> <p><b>sorry</b> [5] 18:17 28:15 58:7 83:8 94:2</p> <p><b>sort</b> [15] 6:17 8:12 13:21 14:23 15:22 16:24 23:23 25:9,17 26:19 31:20 32:23 55:2 75:21 83:23</p> <p><b>sorts</b> [4] 45:19 65:23 69:17 80:23</p> <p><b>SOTOMAYOR</b> [16] 26:16,25 27:11,19,25 34:11 35:17 37:15 47:17, 18 73:21,24 74:7,12,18 87:23</p> <p><b>sought</b> [4] 30:23 46:5,24 63:23</p> <p><b>sounds</b> [1] 72:7</p> <p><b>speaking</b> [3] 38:13,14 76:22</p> <p><b>speaks</b> [4] 39:15 49:3,11 88:10</p> <p><b>specific</b> [11] 18:23 36:10 40:2 43:</p>	<p>20 51:8,17 57:25 61:5,19 79:3 92:11</p> <p><b>specifically</b> [4] 9:6 23:17 62:16 94:20</p> <p><b>specifics</b> [1] 36:3</p> <p><b>speedily</b> [1] 84:1</p> <p><b>speedy</b> [1] 48:21</p> <p><b>spent</b> [1] 88:3</p> <p><b>sphere</b> [1] 95:7</p> <p><b>split</b> [3] 14:8 48:3 99:8</p> <p><b>spot</b> [1] 88:23</p> <p><b>square</b> [1] 55:11</p> <p><b>squared</b> [1] 39:24</p> <p><b>squares</b> [1] 91:25</p> <p><b>stages</b> [1] 24:21</p> <p><b>standing</b> [2] 46:11,12</p> <p><b>started</b> [1] 63:16</p> <p><b>starting</b> [1] 83:14</p> <p><b>starts</b> [1] 78:19</p> <p><b>state</b> [5] 53:23 75:13,19 77:6 81:4</p> <p><b>statement</b> [3] 63:19 68:8 90:24</p> <p><b>STATES</b> [6] 1:1,15,22 3:7 33:6 48:13</p> <p><b>status</b> [1] 77:6</p> <p><b>statute</b> [49] 5:17 6:10 7:4,14,20 8:8,13,14,16,17,18,19 9:13 12:4 13:9 16:4,8,17,18 17:4,18,23 18:6 20:4 24:13,14,23 27:18 29:15,23 31:17 32:25 38:22 40:20 41:18 43:11 55:2,16 57:4 76:18 78:2,15,17 80:16,17 82:20 91:10,19 97:5</p> <p><b>statutes</b> [11] 4:17 5:23 6:3 7:7,10 17:15 19:17 21:14 64:16 65:6 98:13</p> <p><b>statutory</b> [6] 19:23 25:15 30:15 55:7 57:19 60:11</p> <p><b>stay</b> [4] 15:3 16:25 17:5 86:14</p> <p><b>step</b> [2] 6:17 21:1</p> <p><b>still</b> [3] 76:23 79:22 87:18</p> <p><b>stipulated</b> [1] 58:14</p> <p><b>stood</b> [1] 81:16</p> <p><b>story</b> [2] 9:16,17</p> <p><b>straight</b> [9] 35:25 51:14 58:21 65:6,14,25 71:9 86:16 90:10</p> <p><b>strategic</b> [1] 22:7</p> <p><b>strikes</b> [1] 84:14</p> <p><b>strongly</b> [1] 26:23</p> <p><b>struggling</b> [1] 99:4</p> <p><b>student</b> [8] 23:11 35:1 36:12,17 53:19 76:3 94:2,4</p> <p><b>students</b> [2] 35:3 90:7</p> <p><b>stunted</b> [1] 4:15</p> <p><b>STURGIS</b> [13] 1:6 4:5,11 5:1,24 21:3,20,21 82:8,15 96:23 97:7 99:22</p> <p><b>Sturgis's</b> [4] 5:19 11:19 20:23 96:21</p> <p><b>subchapter</b> [6] 88:6,14 89:12,17, 19,22</p> <p><b>subject</b> [1] 70:20</p> <p><b>subjects</b> [2] 80:16,17</p> <p><b>submitted</b> [2] 100:10,12</p> <p><b>subsection</b> [1] 35:2</p> <p><b>subsequent</b> [4] 29:18 34:22 80:4,</p>	<p>12</p> <p><b>subsequently</b> [2] 35:2 49:24</p> <p><b>substantial</b> [1] 42:19</p> <p><b>success</b> [2] 9:16,17</p> <p><b>successful</b> [1] 56:24</p> <p><b>sue</b> [1] 52:5</p> <p><b>suffered</b> [2] 9:22 21:12</p> <p><b>sufficient</b> [1] 96:2</p> <p><b>suggest</b> [6] 88:12 89:1,5,9 90:8 91:11</p> <p><b>suggesting</b> [1] 13:21</p> <p><b>suggests</b> [4] 43:11 68:17 83:22 89:14</p> <p><b>supported</b> [1] 46:9</p> <p><b>supporting</b> [3] 1:22 3:8 33:7</p> <p><b>supports</b> [1] 31:7</p> <p><b>suppose</b> [2] 35:23 76:3</p> <p><b>supposed</b> [3] 62:4 82:10 99:11</p> <p><b>supposing</b> [1] 14:17</p> <p><b>SUPREME</b> [2] 1:1,14</p> <p><b>surrounding</b> [1] 62:3</p> <p><b>sweeps</b> [1] 34:18</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> [4] 10:16 60:22 82:14 83:2</p> <p><b>tack</b> [1] 45:25</p> <p><b>tacking</b> [1] 13:19</p> <p><b>talked</b> [2] 25:6 93:14</p> <p><b>talks</b> [1] 62:10</p> <p><b>tandem</b> [1] 18:3</p> <p><b>tells</b> [2] 38:20 90:3</p> <p><b>tend</b> [1] 15:14</p> <p><b>Tenth</b> [8] 48:5 49:1,8 69:23,23,24 70:2,9</p> <p><b>term</b> [10] 8:9 18:12,13 19:2,4,23 58:3 61:16 62:5 63:10</p> <p><b>terms</b> [7] 12:25 19:11,17 35:18 78:22 80:19 92:1</p> <p><b>terrific</b> [1] 23:7</p> <p><b>territories</b> [1] 48:14</p> <p><b>test</b> [1] 51:11</p> <p><b>text</b> [18] 5:6 7:14 8:16,17 12:3 20:4 30:15 32:25 39:24 57:19 80:13,20 88:4 90:18,23 97:12 98:1,2</p> <p><b>textual</b> [5] 20:8 30:24 57:4 90:18 97:24</p> <p><b>textualist</b> [1] 90:16</p> <p><b>themselves</b> [1] 86:11</p> <p><b>theory</b> [1] 68:1</p> <p><b>there's</b> [22] 14:22,24 15:1 16:10 18:6 24:24 25:2 28:16 38:3 45:3 47:23,24 48:16 50:3 53:18 58:23 93:6,9,18 95:9,24 99:8</p> <p><b>thereby</b> [2] 17:23 29:9</p> <p><b>they've</b> [2] 20:7 21:13</p> <p><b>thinking</b> [2] 38:22 39:18</p> <p><b>thinks</b> [2] 14:25 81:25</p> <p><b>third</b> [11] 5:18 34:8,12 49:7,9 51:4 56:2 60:5 65:24 66:23 80:13</p> <p><b>THOMAS</b> [20] 6:9,19,23 7:24 8:2,7 24:6,7,15 39:2 47:15 52:19 53:14, 22,25 54:8,15 86:23,24 93:7</p> <p><b>Thomas's</b> [1] 80:15</p> <p><b>though</b> [9] 9:1 16:3 21:24 35:21</p>
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## Official - Subject to Final Review

<p>55:6 56:22 83:10 85:22 100:2  <b>three</b> <sup>[4]</sup> 5:5 33:24 49:5 55:19  <b>tie</b> <sup>[1]</sup> 46:15  <b>Title</b> <sup>[1]</sup> 36:22  <b>today</b> <sup>[1]</sup> 96:10  <b>together</b> <sup>[5]</sup> 23:6 44:4 68:3 79:23, 23  <b>took</b> <sup>[1]</sup> 33:10  <b>tort</b> <sup>[2]</sup> 53:18,23  <b>total</b> <sup>[2]</sup> 9:18 43:10  <b>Touché</b> <sup>[1]</sup> 70:1  <b>touched</b> <sup>[1]</sup> 40:15  <b>touches</b> <sup>[1]</sup> 48:18  <b>touching</b> <sup>[1]</sup> 39:2  <b>training</b> <sup>[1]</sup> 53:20  <b>treat</b> <sup>[2]</sup> 25:20,24  <b>treated</b> <sup>[1]</sup> 32:18  <b>treating</b> <sup>[1]</sup> 40:8  <b>treatment</b> <sup>[1]</sup> 87:11  <b>trees</b> <sup>[1]</sup> 46:22  <b>tried</b> <sup>[1]</sup> 28:7  <b>trouble</b> <sup>[1]</sup> 7:25  <b>true</b> <sup>[12]</sup> 11:3 14:17 19:22 27:12 42:6 43:4 81:19 83:11 84:10,13 94:19,25  <b>try</b> <sup>[5]</sup> 15:18 44:4 64:25 84:4 98:12  <b>trying</b> <sup>[11]</sup> 7:5 24:11 31:25 55:6 59:3 64:6 78:1 84:23 85:1 90:5 93:15  <b>turn</b> <sup>[2]</sup> 12:20 97:1  <b>turned</b> <sup>[1]</sup> 11:16  <b>twice</b> <sup>[2]</sup> 47:7 95:2  <b>two</b> <sup>[33]</sup> 4:17 5:22 8:15 9:25 10:4, 19 11:1 12:25 14:18 15:19 19:14 20:6 21:22 27:19 30:12 34:21 40:7,13 47:13,24 48:13 51:22 52:7 55:14,24 57:23 59:11 62:10 63:9 66:6 82:17 84:14 93:25  <b>twofold</b> <sup>[1]</sup> 5:20  <b>type</b> <sup>[8]</sup> 7:21,22 10:14 32:19 37:20 46:16 48:2 62:23  <b>types</b> <sup>[4]</sup> 7:9 50:4 63:2 89:16  <b>typically</b> <sup>[2]</sup> 15:15 95:1</p>	<p>95:11,14 97:17,18 98:13  <b>undermine</b> <sup>[1]</sup> 91:10  <b>underscores</b> <sup>[1]</sup> 25:4  <b>understand</b> <sup>[10]</sup> 8:9 46:20 53:24 76:1 78:1 88:22 89:6 90:14 91:23 93:17  <b>understandably</b> <sup>[1]</sup> 88:4  <b>understanding</b> <sup>[6]</sup> 41:1 54:17 62:14,22,25 63:12  <b>understandings</b> <sup>[1]</sup> 63:10  <b>understood</b> <sup>[4]</sup> 35:16 58:3 90:1 95:13  <b>undue</b> <sup>[1]</sup> 37:25  <b>unique</b> <sup>[2]</sup> 8:12,14  <b>uniquely</b> <sup>[1]</sup> 71:19  <b>UNITED</b> <sup>[5]</sup> 1:1,15,22 3:7 33:6  <b>unless</b> <sup>[2]</sup> 83:7,8  <b>unnecessary</b> <sup>[1]</sup> 5:14  <b>unrelated</b> <sup>[1]</sup> 10:4  <b>unresolved</b> <sup>[1]</sup> 47:3  <b>untoward</b> <sup>[1]</sup> 49:10  <b>unusual</b> <sup>[1]</sup> 10:11  <b>unusually</b> <sup>[1]</sup> 51:17  <b>up</b> <sup>[20]</sup> 11:11,17 14:8,23 21:25 22:21 23:25 24:3 29:12,21 56:17 67:13 69:8 70:3 76:10 81:16 82:19 98:8,23 100:5  <b>upset</b> <sup>[1]</sup> 91:13  <b>useful</b> <sup>[1]</sup> 38:19  <b>uses</b> <sup>[6]</sup> 18:12,13 40:25 60:10 61:22 88:24  <b>using</b> <sup>[5]</sup> 51:13 58:22 59:11 62:4 76:17</p>	<p><b>Wednesday</b> <sup>[1]</sup> 1:11  <b>weight</b> <sup>[3]</sup> 41:15 64:2 86:8  <b>welcome</b> <sup>[3]</sup> 6:8 34:10 52:18  <b>whatever</b> <sup>[14]</sup> 18:21 52:24 58:24 59:4,9 62:15 72:3 73:12 76:7 77:4 78:5 79:3 81:24 94:9  <b>whenever</b> <sup>[1]</sup> 67:5  <b>Whereupon</b> <sup>[1]</sup> 100:11  <b>whether</b> <sup>[23]</sup> 6:24 16:5 22:20 35:14 43:8 47:11 48:1 56:19 60:1 65:9 68:14 70:5,20 75:6,6,15,16 85:13 91:23 92:9,25 93:23 99:9  <b>whichever</b> <sup>[1]</sup> 82:25  <b>whole</b> <sup>[8]</sup> 9:21 14:13,15 22:21 34:4 38:20 42:3 58:21  <b>will</b> <sup>[13]</sup> 6:1,3 15:6 25:3 32:14 50:1 52:25 61:13 62:15 67:14 83:9 84:9 88:23  <b>willing</b> <sup>[2]</sup> 23:25 53:10  <b>win</b> <sup>[3]</sup> 26:19 73:11,25  <b>without</b> <sup>[11]</sup> 11:17 19:12 36:15,16 49:2 58:22 66:2 80:12 90:10,12 93:9  <b>wonderful</b> <sup>[1]</sup> 21:9  <b>wondering</b> <sup>[5]</sup> 16:5 24:23 43:8 49:18 91:9  <b>word</b> <sup>[12]</sup> 12:13,15 51:7,14 57:21, 22 60:23 62:9 63:9 88:24 91:9 92:4  <b>wording</b> <sup>[1]</sup> 60:23  <b>words</b> <sup>[16]</sup> 7:16 12:5,12 13:10 40:7 43:11 44:24 51:17 70:22 81:17 88:7,17 89:1,5 90:2 91:20  <b>work</b> <sup>[5]</sup> 46:2 76:11,14 79:23 98:3  <b>working</b> <sup>[1]</sup> 79:23  <b>works</b> <sup>[1]</sup> 10:22  <b>world</b> <sup>[6]</sup> 4:16 15:14 75:1,2 79:14 85:14  <b>worry</b> <sup>[1]</sup> 10:13  <b>worth</b> <sup>[1]</sup> 38:22  <b>wrap</b> <sup>[1]</sup> 22:21  <b>written</b> <sup>[1]</sup> 6:10  <b>wrote</b> <sup>[1]</sup> 51:18</p>
<p style="text-align: center;"><b>U</b></p> <p><b>U.S</b> <sup>[2]</sup> 19:10 48:14  <b>U.S.C</b> <sup>[2]</sup> 19:16,16  <b>ultimately</b> <sup>[3]</sup> 30:20 52:25 75:7  <b>unanimous</b> <sup>[1]</sup> 41:3  <b>unavailability</b> <sup>[2]</sup> 52:8,15  <b>uncertainty</b> <sup>[1]</sup> 80:25  <b>under</b> <sup>[108]</sup> 5:3,8,17,22 6:3 7:7,10, 16 8:22 9:12,17,22 10:8 12:8 14:2 16:11,17 17:14,18,21 18:8 21:10, 13 23:20,20 24:22 26:5 27:3,12 28:6,25 29:1,2 31:13,16 33:14,15 34:3 36:4 37:19,24 39:4,10,12,17, 17 41:17 42:4,7,9 43:2,13 44:14, 25 45:13 46:6,25 51:10,20 52:10 54:6,16 55:23 58:12,24,25 59:20 60:2,8 61:2 62:22 64:22 65:5 68:7 71:16 72:9,14,18,22 73:17 74:16 75:8,13,19 76:16 77:16,25 78:3, 16 80:17,18 81:6 82:21 84:6 87:1 88:5,14 89:11,17,19,22 93:11,11</p>	<p style="text-align: center;"><b>V</b></p> <p><b>variation</b> <sup>[1]</sup> 19:8  <b>versus</b> <sup>[3]</sup> 4:5 12:23 97:9  <b>viable</b> <sup>[3]</sup> 36:5 76:4,4  <b>victims</b> <sup>[2]</sup> 4:18 100:5  <b>view</b> <sup>[14]</sup> 8:19 17:7 28:7 39:17 48:7 69:4 78:2 84:8,12 91:10,25 93:12 97:17 98:22  <b>vindicate</b> <sup>[1]</sup> 7:8  <b>violated</b> <sup>[1]</sup> 4:17  <b>violation</b> <sup>[1]</sup> 38:3  <b>vision</b> <sup>[1]</sup> 75:3</p>	<p style="text-align: center;"><b>Y</b></p> <p><b>YANG</b> <sup>[41]</sup> 1:20 3:6 33:4,5,8 34:13 35:13,18 36:2,14,21 37:13,18 38:6,14,16 39:23 40:10,13,24 41:7,20 42:2,16,18,21 43:3,17 44:7,17 45:2,3,8,15 46:3,15,19 47:23 49:19, 23 50:16  <b>Yang's</b> <sup>[1]</sup> 85:19  <b>year</b> <sup>[1]</sup> 76:10  <b>years</b> <sup>[6]</sup> 4:11 48:10,12 49:1 92:20 99:23  <b>Yep</b> <sup>[1]</sup> 45:15  <b>yesterday</b> <sup>[2]</sup> 19:21 40:15  <b>yourself</b> <sup>[2]</sup> 21:8 78:14</p>
<p style="text-align: center;"><b>W</b></p> <p><b>wait</b> <sup>[1]</sup> 79:5  <b>waiver</b> <sup>[9]</sup> 53:4 68:15,18 82:3 83:5, 7 99:2,6,12  <b>wanted</b> <sup>[14]</sup> 16:25 22:21 29:6 34:6 43:14 51:1 53:9 74:19 83:1,6 87:5 88:20 90:11 94:17  <b>wants</b> <sup>[12]</sup> 4:21 5:1 9:13 15:5 28:23 29:23 51:5 76:8,11,13 77:7 86:13  <b>Washington</b> <sup>[4]</sup> 1:10,18,21 2:24  <b>way</b> <sup>[29]</sup> 6:6,10 7:4 12:11,15 14:15, 18 15:14 16:21 17:11 18:5 20:5 28:12 31:6,21 44:2,15 48:12 56:15 67:15 68:14,16,22 69:3 88:16 90:3,19 92:24 97:5  <b>ways</b> <sup>[4]</sup> 32:25 33:25 47:13 77:13</p>	<p style="text-align: center;"><b>W</b></p>	<p style="text-align: center;"><b>Y</b></p>