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IN THE SUPREME COURT OF THE UNITED STATES

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WENDY SMITH, ET AL.,)

Petitioners,)

v.) No. 22-1218

KEITH SPIZZIRRI, ET AL.,)

Respondents.)

- - - - -

Washington, D.C.

Monday, April 22, 2024

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 12:32 p.m.

APPEARANCES:

DANIEL L. GEYSER, ESQUIRE, Dallas, Texas; on behalf of the Petitioners.

E. JOSHUA ROSENKRANZ, ESQUIRE, New York, New York; on behalf of the Respondents.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	DANIEL L. GEYSER, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	E. JOSHUA ROSENKRANZ, ESQ.	
7	On behalf of the Respondents	21
8	REBUTTAL ARGUMENT OF:	
9	DANIEL L. GEYSER, ESQ.	
10	On behalf of the Petitioners	43
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

(12:32 p.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 22-1218, Smith versus Spizzirri.

Mr. Geysler.

ORAL ARGUMENT OF DANIEL L. GEYSER

ON BEHALF OF THE PETITIONERS

MR. GEYSER: Thank you, Mr. Chief Justice, and may it please the Court:

Section 3 unambiguously mandates a stay pending arbitration, and the FAA's plain text, structure, and purpose confirm that conclusion. Congress directed that a court shall stay the trial of the action until the arbitration is complete. There is no mention of dismissal, and there are no exceptions for cases where all claims are subject to arbitration.

If a court ignores that command and dismisses, it activates a premature right to appeal, contrary to the FAA's reticulated scheme. It illuminates the essential backdrop that protects litigant rights if a party compels arbitration but abandons the arbitration process, which has happened in this very case.

1 And, critically, it invites wasteful disputes
2 that pointlessly burden parties and courts as
3 litigants fight over whether to stay or dismiss
4 and then take appeals over whether to stay or
5 dismiss.

6 A bright-line rule answers that
7 procedural question in a manner that best
8 preserves judicial and party resources and
9 directly advances the core purpose of the FAA
10 itself, eliminating waste, avoiding unnecessary
11 litigation, and sending parties to arbitration
12 as quickly as possible.

13 I welcome the Court's questions.

14 JUSTICE THOMAS: Mr. Geyser, what
15 difference does it make to grant a stay here or
16 dismissal without prejudice?

17 MR. GEYSER: Well, it makes a big
18 difference whether we have a seat to come back
19 to. The arbitration has now failed. The
20 Respondents have not paid their fees. Our --
21 our clients will have to file new suits, engage
22 in new service, do new case-initiating
23 documents, and waste our time and the court's
24 time.

25 We also face a situation where

1 Respondents could then move to compel
2 arbitration again and further --

3 JUSTICE THOMAS: But aren't you also
4 encouraging people to start out in federal
5 court?

6 MR. GEYSER: I don't believe so, Your
7 Honor. That hasn't been a problem in any of the
8 six circuits that have adopted the majority rule
9 now for quite some time. Even if a party did
10 file a suit in the hopes of anchoring federal
11 jurisdiction, the court could always decline to
12 exercise supplemental jurisdiction and not
13 decide any of the FAA motions, which should
14 render the entire practice a waste of time.

15 JUSTICE THOMAS: Has there been a
16 problem of, when cases have been dismissed
17 without prejudice, to get back into federal
18 court?

19 MR. GEYSER: There are sometimes
20 limitations problems, which you can see both in
21 the Green decision from the Eighth Circuit and
22 Anderson in the Sixth Circuit.

23 But I -- I think the more important
24 point is not even the cases that can't come
25 back; it's the very waste of time and resources

1 litigating whether to stay or dismiss when it's
2 such a one-sided bargain.

3 This -- there are over 800 contested
4 arbitration matters every single year. There --
5 there's very little upside to saying, in every
6 one of those cases, whenever anyone disagrees
7 about whether to stay or dismiss, the parties
8 should brief that question, the court should
9 waste its resources deciding it, the losing
10 party could take an appeal, instead of just
11 saying, as a categorical matter, let's follow
12 what the statute actually says.

13 JUSTICE JACKSON: Well, you talk about
14 what the statute actually says. It says stay
15 the trial. And Respondent makes a lot of that.
16 So what is your response to that argument?

17 MR. GEYSER: I think we have a few
18 responses. The first is this is the trial that
19 would happen if there isn't an arbitration. So
20 it's staying the trial of the action. This is
21 trying the case, staying the merits
22 adjudication, so that the parties can effectuate
23 the arbitration agreement.

24 The other thing I would say is that
25 when my -- my friend suggests that there won't

1 be a trial because the case is subject to
2 arbitration, that's inherently speculative.
3 There are lots of examples where a court compels
4 arbitration and the parties return to court
5 either because there's a delegation clause and
6 it turns out the whole dispute isn't subject to
7 arbitration, you can have the plaintiff not
8 initiating the arbitration, you can have the
9 defendant not paying the arbitration fees, which
10 is what happened --

11 JUSTICE JACKSON: But you would -- you
12 would have an easier case if it said stay the
13 proceeding or stay the action. I mean, the
14 statute is using the word "trial." You want us
15 to interpret it to be proceeding or action, but
16 that's not exactly what it says.

17 MR. GEYSER: Well, for -- for what
18 it's worth, the -- the title, which is actually
19 a part of what Congress inserted into the United
20 States Code in 1947, does say "stay of
21 proceedings." So Congress has always understood
22 this to be staying the proceedings, the merits
23 adjudication.

24 Now I think the FAA, which is not
25 known for being the world's most precisely

1 drafted statute -- I think still, though,
2 Congress here could have used that language for
3 a particular reason. If you stay the entire
4 case, it's not clear the court would have
5 jurisdiction because, remember, it's staying the
6 case until the arbitration is over. It's not
7 clear the court would have jurisdiction to
8 entertain motions under the FAA that would
9 facilitate the arbitration.

10 So let's say the parties have trouble
11 appointing an arbitrator. Could the court then
12 lift the stay to decide that motion? It's not
13 clear. But, if Congress is simply saying stay
14 the trial of the action, that's staying trying
15 the action, staying the merits adjudication,
16 that leaves the courts, you know, available to
17 decide these other motions under the Federal
18 Arbitration Act.

19 And just --

20 JUSTICE SOTOMAYOR: Would a district
21 court -- under Bagderow, could it dismiss rather
22 than stay a federal action or a motion to -- to
23 compel if it properly concludes that it does not
24 have subject matter jurisdiction over the case?
25 Non-diverse parties and only involves state law

1 issues.

2 In that situation, if the arbitration
3 fails, you have to go sue in state court,
4 correct? You can't stay in federal court
5 anyway?

6 MR. GEYSER: I -- I just -- I want to
7 make sure that I'm answering the question
8 correctly --

9 JUSTICE SOTOMAYOR: Mm-hmm.

10 MR. GEYSER: -- so please -- please
11 correct me if I'm not. You're dealing here with
12 a situation under Section 3. So there's already
13 a preexisting suit in federal court where there
14 is federal jurisdiction.

15 Now, if a court concludes that there
16 never should be any case in federal court, the
17 underlying case on the merits is a state law
18 dispute between non-diverse parties, the court
19 would dismiss. It wouldn't compel arbitration.
20 It has no jurisdiction to do anything.

21 JUSTICE SOTOMAYOR: Okay.

22 MR. GEYSER: But -- but, if the court
23 has jurisdiction at the outset, then Section 3
24 says this is the proper remedy for enforcing the
25 parties' arbitration agreement. Do the stay.

1 Once arbitration has been had in accordance with
2 the agreement, then the court would have the
3 option to exercise supplemental jurisdiction and
4 decide the case going forward under the -- the
5 post-arbitration motions, or it could dismiss
6 and say go to state court, enforce, you know,
7 the -- the arbitration award in some other
8 venue.

9 JUSTICE SOTOMAYOR: Thank you.

10 MR. GEYSER: I think just -- you know,
11 I hate to belabor it. My friends just -- I
12 think one of their stronger arguments is they
13 try to suggest that there's inherent authority
14 for a court to decide what to do when you have
15 an arbitration agreement. I think that fails
16 for multiple reasons.

17 It first fails in its premise because
18 there is no inherent authority of the kind that
19 this Court has recognized as being the sort of
20 timeless power that courts have in order to
21 function as courts. This is effectively a
22 substantive rule of decision. It's saying this
23 is the procedure that a court should apply in
24 deciding how to process an arbitration motion
25 and enforce it in court. Even if there were

1 some inherent authority, it's obviously been
2 overridden by what we consider to be the fairly
3 unambiguous language of the statute.

4 Just one last point to Justice
5 Jackson's question at the outset, my friends did
6 suggest in their brief in opposition that trial
7 really just meant trial, as in like the
8 fact-finding event. It didn't state anything
9 else. That, of course, is absolutely
10 incompatible with the entire purpose of the
11 Federal Arbitration Act.

12 That would say that courts could
13 actually entertain motions to dismiss, summary
14 judgment motions. You could have court-based
15 discovery. You could have everything as long as
16 the court at the very last minute stops before
17 empaneling a jury. We don't think that's a
18 plausible reading of the act.

19 JUSTICE GORSUCH: Mr. Geysler --

20 CHIEF JUSTICE ROBERTS: Well --

21 JUSTICE GORSUCH: -- I got one -- oh.

22 CHIEF JUSTICE ROBERTS: Go ahead.

23 JUSTICE GORSUCH: I got one for you.

24 On the inherent power point -- and I -- I take
25 your point about the trial. I mean, I don't --

1 I never filed a complaint where I didn't want a
2 trial. That was the whole reason why I filed
3 the complaint.

4 But, on the inherent power, what about
5 the district court's authority to dismiss a case
6 for abusive litigation tactics, for example?
7 Does this prevent that?

8 MR. GEYSER: Absolutely not. So all
9 Section 3 does is say, if the operative fact is
10 I found that any issue in the case is subject to
11 arbitration, what do I do? That doesn't
12 preclude the court's ability to access any other
13 source of federal law that would let it do
14 anything else in the case.

15 JUSTICE GORSUCH: Very good. Thank
16 you.

17 CHIEF JUSTICE ROBERTS: Your friend
18 makes the point that the Arbitration Act is
19 designed to prevent wasteful litigation among --
20 among other things. Why isn't it wasteful to
21 maintain the case on the court docket if, for
22 example, all -- all claims are subject to
23 arbitration?

24 MR. GEYSER: I -- I don't think it's
25 wasteful for multiple reasons, including, first

1 and foremost, it's -- it's very little waste at
2 all. It's just an inactive case. The court can
3 have a status report. It can be a sentence
4 long. The case is still pending in arbitration,
5 the stay should remain in effect.

6 It's -- it's hard to imagine how --
7 what kind of burden that would impose. And it
8 saves waste in multiple ways. The first is that
9 if the arbitration does fail, then the parties
10 are coming back to the same court filing a new
11 complaint. They're doing new service, new
12 case-initiating documents, they're spending a
13 lot more of the court's time.

14 It also would invite the court again,
15 as I said at the outset, to decide in each case,
16 on a case-by-case basis, should I stay or
17 dismiss. That is an enormous and wasteful use
18 of the court's time that will overwhelm whatever
19 minor savings a district court might have in not
20 having to read a status report every so often.

21 And the final point I'd raise is that
22 it would also avoid the premature appeals. If
23 you dismiss, if the court dismisses, that
24 activates unintended finality. At that point,
25 the case is final. The party has a right to

1 take an appeal. They can charge -- challenge
2 the arbitrability determination.

3 That's inconsistent with what Congress
4 wrote specifically in Section 16, and it would
5 invite and breed even more litigation, as this
6 Court in Bissonnette just reminded that we
7 shouldn't be doing, while parties are stuck
8 litigating arbitrability on appeal at the same
9 time they're trying to arbitrate the merits in
10 arbitration.

11 JUSTICE KAGAN: So what do most courts
12 do when they have a case like this where, you
13 know, they don't want to do anything, but there
14 it is, still has to be on my docket?

15 MR. GEYSER: Most courts, they -- they
16 do one of two things. They either have a
17 requirement for intermittent status reports,
18 sometimes it's every three months, sometimes
19 it's every six months, just saying just let us
20 know when you're done.

21 Other courts move it to inactive
22 status. So it's still pending on the court's
23 docket, there's still a stay, but then they
24 don't even have to worry about it at all. They
25 just leave it to the -- the parties to let them

1 know once they're finished with the arbitration.

2 JUSTICE KAGAN: What's the worst thing
3 that could happen from this?

4 MR. GEYSER: Well, the worst thing
5 that would happen, I think, would be the court
6 affirming, but -- but the --

7 (Laughter.)

8 MR. GEYSER: -- the -- the second
9 worst thing would be I think, if this were a
10 national rule, it's just -- it's going to
11 consume an unbelievable amount of time and
12 resources. And what it means is, as we've seen
13 in the four circuits, I mean, if you look at the
14 dozens and dozens and dozens of reported
15 district court decisions with parties fighting,
16 should we stay or should we dismiss, where the
17 upside of a dismissal is there's an immediate
18 appeal that shouldn't happen yet, and the
19 court -- and the court is inviting potential
20 problems in the future, when parties come back
21 and it turns out the arbitration fails for any
22 number of reasons, and then they're litigating
23 potentially limitations questions, possible
24 tolling issues.

25 It -- it just creates an enormous

1 problem out of a statute that's designed to
2 eliminate problems. A simple stay, it's
3 categorical, it's simple. Go to arbitrate. Let
4 us know when you're done. In the meantime, it's
5 imposing effectively no burden on anyone.

6 JUSTICE SOTOMAYOR: Counsel --

7 JUSTICE ALITO: What would your
8 argument -- what would your argument look like
9 if there were no Section 16? So neither party
10 had the right to an interlocutory appeal.

11 MR. GEYSER: I think we'd have one
12 fewer arrow in our quiver, but I think our
13 argument would otherwise be identical. I think
14 Section 16 makes it -- our -- our job a lot
15 easier because this Court does read sections in
16 context.

17 And when you have Section 16 and
18 Congress saying specifically, you can take that
19 immediate appeal if the court denies arbitration
20 but not if they grant arbitration and subject to
21 1292(b), so Congress was even thinking there
22 could be exceptions, but if you dismiss, then
23 you have an immediate appeal because the case is
24 final.

25 It's -- there's no second gateway with

1 an appellate court deciding to accept a 1292(b)
2 appeal. You don't have to meet any of those
3 conditions. So I think it's really hard to
4 understand how dismissal is consistent with
5 Section 16. But, even without that, we have our
6 plain text reading and we have all the other
7 points that we've suggested are in our favor.

8 JUSTICE JACKSON: Counsel, you've said
9 that one of the reasons why stay is preferable
10 to dismiss is that the court could then sort of
11 continue to help out with certain administrative
12 matters operating in the background when the
13 arbitration is happening, like the appointment
14 of an arbitrator under Section 5 or compelling
15 witnesses under Section 7.

16 As I read the Respondents' response,
17 they point to Badgerow and say that, well, there
18 might need to be an independent jurisdictional
19 basis for the court to continue to operate in
20 that fashion. Is that how you read Badgerow
21 with respect to those kinds of tasks?

22 MR. GEYSER: Not at all. Badgerow
23 involved a case where there -- there was no
24 litigation in federal court. There was an
25 arbitration and then there was a freestanding

1 lawsuit filed simply to confirm or to vacate the
2 arbitration award.

3 In this case, there is preexisting
4 jurisdiction. You don't -- you don't need more
5 jurisdiction or extra jurisdiction. Once a
6 court has power to decide the case, they can
7 decide the case.

8 And at that point, as this Court said
9 in Cortez Byrd, once there is a suit and it's
10 been stayed under Section 3, the Court then has
11 the power on the back end.

12 Now, granted, it's -- it's in the
13 court's discretion, it's supplemental
14 jurisdiction at that point to decide whether to
15 engage in any of those other motions, but we
16 don't see any inconsistency with Badgerow and,
17 in fact --

18 JUSTICE JACKSON: What about
19 confirmation? Is that the same kind of thing?
20 Would you think that the parties in a case like
21 this, if it were stayed, could come back to this
22 same court to seek confirmation of any award
23 that was issued?

24 MR. GEYSER: They -- they absolutely
25 could. And that's what Cortez Byrd

1 contemplates. Now, again, though, it's in the
2 court's discretion, we admit. The court could
3 say no.

4 JUSTICE JACKSON: Right.

5 MR. GEYSER: I'm done with the case,
6 go have it confirmed somewhere else. And if the
7 court did that and it was -- it was a proper
8 exercise of the court's discretion, then we'd be
9 out of luck. We'd have to go somewhere else to
10 confirm the award, which is also, by the way,
11 why this is very different than Section 8.

12 Section 8, aside from dealing only
13 with maritime cases, is a specific instruction
14 to retain jurisdiction all the way to the entry
15 of the decree. So Congress is addressing a very
16 different problem in a different way.

17 JUSTICE ALITO: Suppose that on a
18 Monday a district court grants a motion to
19 compel and sends the entire dispute to
20 arbitration and then the parties don't
21 immediately ask for a stay, so on Tuesday
22 morning, bright and early, the district court
23 wants to clear up the docket, dismisses the
24 case.

25 What would happen there?

1 MR. GEYSER: I -- I -- I think that
2 the parties realistically -- in reality would
3 come back and say, actually, we would like a
4 stay. It's a -- it's a little too early to
5 dismiss.

6 I -- if the -- if the party hasn't
7 requested a stay, which is why what we did here
8 I think is the best practice, when the other
9 side says we move to compel, in the answer to
10 the motion to compel, if you want a stay, you
11 should say and we would like a stay. That way,
12 you avoid that scenario.

13 But, technically, if the court has
14 acted and the party hasn't requested a stay,
15 then, on its face, Section 3 hasn't yet applied
16 because it only applies if a party applies for a
17 stay.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 Anything further?

21 Anything further?

22 Thank you.

23 Mr. Rosenkranz.

24

25

1 ORAL ARGUMENT OF E. JOSHUA ROSENKRANZ

2 ON BEHALF OF THE RESPONDENTS

3 MR. ROSENKRANZ: Thank you, Mr. Chief
4 Justice, and may it please the Court:

5 When Congress directed courts to stay
6 the trial of a case in deference to arbitration,
7 it meant stop the litigation in court. It did
8 not mean you must retain jurisdiction. It did
9 not mean never dismiss, no matter how clear it
10 is that the case will never come back to court.

11 I get that modern lawyers often think
12 of stays and dismissals as two completely
13 distinct animals, but when Congress passed
14 Section 3 a hundred years ago, Congress would
15 not have drawn that stark a distinction. The
16 drafters would have understood that a dismissal
17 was one way to stay a litigation.

18 When Congress intended that a court
19 retain jurisdiction, it used those words in
20 Section 8. Even if that is not the best
21 understanding, this Court should accept it as
22 long as it's plausible. Courts generally have
23 the discretion to dismiss cases without
24 prejudice when no one is asking them to do
25 anything here and now and when another forum is

1 actively adjudicating the case.

2 If Congress wants to revoke that
3 inherent power, it's got to do it clearly, and
4 as Mr. Geyser said, Congress did nothing clearly
5 in this statute.

6 Congress did not issue such a clear
7 direction. Congress does not even mention
8 requiring ongoing jurisdiction. It does not
9 even prohibit dismissing. Congress passed
10 Section 3 to enforce contractual obligations to
11 arbitrate and to avoid parallel litigation in
12 court, not to encourage parallel litigation and
13 reward plaintiffs who violate their contracts by
14 suing in court.

15 I welcome the Court's questions.

16 JUSTICE THOMAS: Can you give another
17 example of this continuing discretion when you
18 have language similar to Section 3 that gives
19 the parties -- that makes it clear that a stay
20 is to be granted?

21 MR. ROSENKRANZ: Well, Your Honor, let
22 me -- I -- I quibble with the second half, that
23 it makes it clear that a stay is to be granted.
24 But, yes, we do --

25 JUSTICE THOMAS: So what's unclear

1 about it?

2 MR. ROSENKRANZ: Well, so when
3 Congress used the word "stay" back in 1925, it
4 meant that it was requiring courts to stop the
5 litigation. And it understood that courts could
6 achieve it by either retaining jurisdiction over
7 the case and putting it on ice or by dismissing
8 it with -- without prejudice to come back, if
9 there's ever something for the court to do.

10 In 1925, the word "stay" was just not
11 categorically inconsistent with a dismissal.
12 The lead definition of "stay" in Black's Law
13 Dictionary at the time was "stopping." The act
14 of arresting what? Arresting a judicial
15 proceeding. Another said that a stay of the
16 action could include a total discontinuance.

17 JUSTICE SOTOMAYOR: Counsellor,
18 putting aside that the title says "stay of
19 proceedings" and Black's Law Dictionary makes
20 clear that that's different from dismissal --
21 I'm going to put that aside.

22 I can't put aside the language, which
23 says "stay until such arbitration has been had
24 in accordance with the terms of the agreement,"
25 and so it's putting a limit. And it also says

1 "providing that the applicant for the stay is
2 not in default in proceeding when such" -- when
3 the application is made, the district court
4 can't tell how long it's going to be, can't tell
5 whether party is going to go into default.

6 It -- it -- I -- I can't read
7 dismissal into those two conditions. If they
8 were going to permit dismissal, they would have
9 put "stay the action," period.

10 MR. ROSENKRANZ: Understood, Your
11 Honor.

12 JUSTICE SOTOMAYOR: And you can reopen
13 the action or you can sue again if you don't
14 have the arbitration concluded or if the other
15 party defaults or something. But that's not how
16 they wrote it.

17 MR. ROSENKRANZ: I understand, Your
18 Honor. Let me just -- I need to quibble with
19 the -- with your first premise about Black's Law
20 Dictionary. It supports us, not the other side.
21 The very first definition is about -- about
22 stalling the proceeding. It's about stopping.

23 But I'll answer the question about the
24 -- both the durational limitation and the
25 proviso. They're two separate pieces:

1 "Until" simply means how long the
2 litigation has to stop. If the court has
3 dismissed without prejudice, the durational
4 language dictates when the case can return to
5 court. The durational language was also
6 necessary to establish that any non-arbitrable
7 claims, which cannot be dismissed, may be
8 litigated in court when the section is over.

9 But Section 3 is not a command to the
10 court to retain jurisdiction for the duration of
11 the arbitration. It does not say you must
12 retain jurisdiction.

13 When Congress wanted courts to retain
14 jurisdiction, as it did in Section 8, it said
15 "retain jurisdiction," and it would not have
16 needed to say "retain jurisdiction" in Section 8
17 if Section 3 already required the court to
18 retain jurisdiction.

19 As to the proviso that a stay
20 applicant not be in default, that makes perfect
21 sense on our reading also. If a plaintiff
22 starts by filing an arbitration proceeding,
23 that's the first thing, the defendant then
24 refuses to arbitrate, the plaintiff can then
25 file in court under Section 4.

1 The proviso says when the defendant
2 says, hold on, wait a minute, you need to
3 arbitrate, the proviso says, no, the defendant
4 cannot force an arbitration because the
5 defendant is in fault.

6 Similarly, if the plaintiff begins in
7 court and then the court dismisses without
8 prejudice and the defendant then defaults, the
9 proviso says that the plaintiff has a free pass
10 for the --

11 JUSTICE SOTOMAYOR: Okay. Thank you.

12 CHIEF JUSTICE ROBERTS: Have there
13 been any problems in the six -- six circuits
14 that have filed -- followed your friend's rule?

15 MR. ROSENKRANZ: So -- so, yes, Your
16 Honor. The problems in those circuits is that
17 the courts are required to keep these cases on
18 their dockets. And when you look at the
19 differential costs to the district courts itself
20 as opposed to -- to the parties, this is, if you
21 nationalize this, this is death by tens of
22 thousands of cuts.

23 You can imagine the practice articles
24 that are going to emerge after this Court issues
25 its opinion if it's in favor of the Petitioners.

1 They will say exactly what Justice Thomas said
2 in his very first question. Never, ever file an
3 arbitration first. Start in court, preferably
4 in federal court, because when you're there, the
5 court will be a helicopter parent for as long as
6 you want it. Don't worry if there's zero basis
7 for you to even resist arbitration.

8 JUSTICE KAGAN: Well, but what's the
9 biggest --

10 CHIEF JUSTICE ROBERTS: Well, I guess
11 -- I was just going to say, well, I guess the
12 flip side of that is it's a much greater burden
13 if the case isn't there and something arises
14 where you need to go to court. You're going to
15 have to start all over.

16 MR. ROSENKRANZ: So, Your Honor, two
17 -- two observations about that. First is the
18 burden on the district court in just having the
19 case sitting there. There are 100,000
20 arbitrations a year. Mr. Geysler refers to only
21 800 of them that ever come back to court because
22 they are contested.

23 Once all of these stays are sitting in
24 court, the court has to manage them. It has to
25 report on them. It has to hold status

1 conferences, possibly for years. And think
2 about it from the perspective of these district
3 courts. I know it's easy to say what's the big
4 deal, just hold a status conference, but there
5 are courts that are in dire circumstances. They
6 are overwhelmed. They are in emergency --

7 JUSTICE JACKSON: Is there a rule that
8 the district court has to hold a status
9 conference? I was not aware of that.

10 MR. ROSENKRANZ: No, there's not a
11 rule that a district court has to do that.

12 JUSTICE JACKSON: So they could just
13 ask for a one-line report?

14 MR. ROSENKRANZ: The court does not
15 have to hold in-person status conferences.
16 That's -- that is correct. But simply having to
17 keep track of all of these cases, in some
18 federal courts, there's no such thing as
19 administrative closure. The court is constantly
20 documenting and asking: Wait a minute, is this
21 case still alive? I --

22 CHIEF JUSTICE ROBERTS: Well, I -- I
23 may not be familiar with the practice, but why
24 can't you just -- constantly monitoring it, why
25 don't you tell the parties, if you need to get

1 back or when something happens in the
2 arbitration, let us know?

3 MR. ROSENKRANZ: Well, Your Honor, it
4 is the responsibility of the district court to
5 know what's on its docket --

6 CHIEF JUSTICE ROBERTS: Yeah, well --

7 MR. ROSENKRANZ: -- and not to keep
8 cases on the docket that are not active. It --
9 it's -- it -- it's not supposed to be keeping
10 cases that, for example, have settled and no
11 one's told the court or where the parties go to
12 a different court for confirmation, which is
13 perfectly --

14 JUSTICE KAGAN: But, presumably, Mr.
15 Rosenkranz, a district court will just keep a
16 list of cases now in arbitration, and that list
17 will exist in some file someplace, and nobody
18 will do anything with it, except if there's a
19 problem.

20 MR. ROSENKRANZ: Well, this court
21 still has to keep a list. That is still work,
22 and it is more work than is necessary because,
23 when you think about the flip side, to answer
24 the second half of the Chief Justice's question,
25 the flip side is, okay, so a party has to -- if

1 it ever needs further judicial intervention, the
2 party has to file a new action.

3 It's a streamlined process. It almost
4 never happens. Courts almost never need to
5 intervene to appoint an arbitrator or to compel
6 a witness. Mr. Geyser points out a very -- very
7 tiny proportion of these arbitrations are even
8 ever contested, and they may not even be
9 contested in the same court. So it is needless
10 activity.

11 JUSTICE JACKSON: But don't parties
12 often seek confirmation of arbitration awards?

13 MR. ROSENKRANZ: No, Your Honor. It's
14 very rare. If the -- if the party on the other
15 side is going to pay the judgment, for example,
16 or if the defendant has won, no one really seeks
17 confirmation --

18 JUSTICE JACKSON: Well, sure. If the
19 defendant has won, but let's say we have a
20 situation in which a plaintiff who originally
21 brought this case in court because they thought
22 it was the kind of thing that should be
23 litigated in court, lost the motion for
24 arbitrability, so it's now sent off to an
25 arbitrator, and then, miracle of miracles, they

1 win on the arbitration.

2 My question is, isn't that a situation
3 in which a plaintiff could at least come back to
4 the district court if it had been stayed and
5 asked for confirmation?

6 MR. ROSENKRANZ: Hypothetically could,
7 yes. It's very rare, but --

8 JUSTICE JACKSON: But, if the case is
9 dismissed, they would have to actually file a
10 new action with the fee and everything else to
11 open up that case to -- which they, by the way,
12 thought should have been in court to begin with
13 because, in my hypothetical, that's where they
14 brought it originally. Why isn't that more
15 burdensome for the overall system than to just
16 allow the district court to put this on a list
17 somewhere and, if the plaintiff wins, be able to
18 entertain a motion for confirmation?

19 MR. ROSENKRANZ: Well, so two -- two
20 answers, Your Honor. The first is, as I was
21 saying earlier, yes, hypothetically, the
22 plaintiff in that situation could seek
23 confirmation. It is very rare because
24 defendants almost never challenge the judgment
25 in the first place.

1 So no one ever seeks confirmation.
2 The case is sitting there without any need ever
3 to come back to the district court. The second
4 answer is filing a new action, it sounds like
5 it's such a big deal, but there's a streamlined
6 process. It's not that much of a burden.

7 JUSTICE JACKSON: You have to pay,
8 don't you? I mean, you'd have to file a new
9 action. Like, we paid -- the plaintiff says I
10 paid on day one because I brought this in court
11 and it was whatever the filing fee is. My case
12 got shunted to arbitration. I win. And now
13 you're saying I have to pay another \$500 to --

14 MR. ROSENKRANZ: Sure, sure. And then
15 the flip side is there is a tax on the parties
16 who are sitting in -- in arbitration and also
17 have to report to the district court.

18 What the court would basically be
19 saying to those parties is sure, you have a
20 right to arbitration, but you've got to report
21 to the district court. Sometimes you have to
22 negotiate with the other side on what that
23 report contains.

24 You've got to quibble over whose in
25 default and -- and why this is taking so long.

1 And so that's hundreds of dollars of taxes on
2 both parties for a case that doesn't need to sit
3 in --

4 JUSTICE KAGAN: Mightn't --

5 CHIEF JUSTICE ROBERTS: Well you're --
6 I'm sorry.

7 JUSTICE KAGAN: No, go ahead.

8 CHIEF JUSTICE ROBERTS: You're saying
9 that it's more trouble to let the thing just sit
10 there than to file a new action, right? I mean
11 you're saying: Well, even if it -- even if it's
12 just a stay, you know, it's just sitting there
13 but they've got to keep track of it and whatever
14 and saying the alternative is, file a new
15 lawsuit. It seems to me that the alternative
16 would be a lot more burdensome than just --

17 MR. ROSENKRANZ: And -- and --

18 CHIEF JUSTICE ROBERTS: -- sitting
19 there.

20 MR. ROSENKRANZ: So it could be, but
21 it may not necessarily be, if there are constant
22 and repeated reports, but we're -- we're not
23 basing our argument on costs. We're basing --
24 we're basing our argument on the language of the
25 statute.

1 And a century ago, lawyers --
2 JUSTICE KAGAN: Just -- just before
3 you get back to the language, I mean, mightn't
4 the statute of limitations have run if you have
5 to file a new action but the statute of
6 limitations has run in the meantime? There's no
7 tolling of the statute of limitations in the
8 circumstance that you're talking about, is
9 there?

10 MR. ROSENKRANZ: There can be in some
11 jurisdictions, but there's an easy solution to
12 that. If a party wants to oppose a stay on the
13 ground that there is a statute of limitations
14 problem, they just raise that as a basis for the
15 district court to deny dismissal. And -- and
16 the district court can consider that or it can
17 condition dismissal.

18 JUSTICE KAGAN: But that's just
19 beginning to sound very complicated. It's like
20 sometimes I should dismiss; sometimes I
21 shouldn't dismiss. I have to go figure out what
22 the statute of limitations consequences are.

23 MR. ROSENKRANZ: Your Honor, look at
24 -- look at the papers before the district court
25 on this case when the parties were fighting

1 about or arguing about stay versus dismissal.
2 It was three paragraphs in their response brief
3 and response to our motion to dismiss, and two
4 paragraphs in our response brief.

5 I -- I'll give you the page numbers.
6 It's 97 to 98 in their response brief and 103 to
7 104. It's not that complicated.

8 But Petitioners are trying to cram a
9 lot of meaning into the word "stay." They say
10 it means stop the litigation and continue to
11 exercise jurisdiction and don't dismiss,
12 regardless of how unlikely it is that anyone is
13 ever come -- going to come back to the -- to
14 court.

15 The word "stay" does not carry all of
16 that meaning. When Congress wanted to
17 communicate don't -- wanted to communicate that
18 the court must retain jurisdiction, that's what
19 it said. It said retain jurisdiction, which is
20 what it said in Section 8.

21 I would also underscore there's
22 another reason to read the statute our way.
23 Section 4, a plaintiff can bring an action in
24 the first instance, as I was saying earlier,
25 under Section 4, seeking an order directing the

1 court to compel arbitration when the defendant
2 has refused to engage in arbitration.

3 But Congress never said that the court
4 has to retain jurisdiction in that circumstance.
5 And the norm in that circumstance is that the
6 district court dismisses after ordering
7 arbitration because that's the only thing it's
8 been asked to do.

9 Now, if it was so important for
10 Congress to make sure that parties never appeal
11 a -- a dismissal -- excuse me -- never appeal an
12 order to arbitrate while the arbitration is
13 going on, if it's so important to Congress that
14 federal courts retain jurisdiction while an
15 arbitration is going on, it would have applied
16 the same rule to Section 4, but it didn't.

17 I was saying earlier that even if the
18 Court thinks that Petitioner's reading is
19 better, they cannot avoid the language of the
20 statute or the ambiguity -- excuse me, they
21 cannot avoid the result that we're arguing if
22 the statute is ambiguity -- is -- is ambiguous.

23 Any doubt has to be resolved in favor
24 of maintaining the district court's traditional
25 discretion to dismiss cases when appropriate and

1 preserving the backdrop -- the backdrop common
2 law in which courts routinely dismissed in
3 deference to arbitration.

4 When parties have nothing that they
5 want the court to do here and now, a court has
6 the power to dismiss, without prejudice, but to
7 dismiss, in the interest of controlling its own
8 docket and maximizing efficiencies for the court
9 and all of the parties.

10 Courts also routinely dismiss without
11 prejudice when the parties are litigating a case
12 before another forum; for example, when an
13 agency is considering an important issue or a
14 foreign court. The rules are especially salient
15 in the arbitration context because, as I was
16 saying earlier, the overwhelming likelihood is
17 that this case is never coming back to any court
18 and certainly not or potentially not even to
19 this court.

20 I'll give you an example. If parties
21 settle a lawsuit --

22 JUSTICE JACKSON: Counsel, how is that
23 argument consistent with the language that
24 Justice Sotomayor puts forward? I mean, I
25 understand your point about the overwhelming

1 likelihood is that it's not coming back, but the
2 statute says "stay until," so at least Congress
3 thought that it could come back, right?

4 MR. ROSENKRANZ: Congress certainly
5 thought that there are circumstances in which a
6 case could come back -- could come back to the
7 court for sure, but --

8 JUSTICE JACKSON: Right. So doesn't
9 that undermine your argument that we have to
10 read this as though the -- you know, with an
11 understanding that it's never coming back?

12 MR. ROSENKRANZ: No, Your Honor, not
13 with the understanding that it's never coming
14 back, but preserving the district court's
15 jurisdiction -- the district court's discretion
16 to say, look, if you have something that you
17 want to come back to me with, come back to me,
18 but the answer to your question, Your Honor, is
19 that "until" still works under our reading,
20 because I was -- as I was saying earlier,
21 "until" simply indicates how long the litigation
22 has to stop for and the party could can come
23 back to the court.

24 JUSTICE JACKSON: Yes, I understand.
25 Thank you.

1 JUSTICE KAVANAUGH: I thought "until"
2 goes to the verb "stay"? Stay until.

3 MR. ROSENKRANZ: Right. And if you
4 read the word stop -- the word "stay" to mean
5 "stop," which could entail a dismissal, you have
6 to stop it until the arbitration is completed.

7 And at that point the court no longer
8 has to stop it, so when it was dismissed without
9 prejudice, the party can come back to the court
10 and the stay provision no longer applies.

11 And let me just say one last thing,
12 which is that this Court should also read
13 Section 3 in light of the problem that Congress
14 was trying to solve with Section 3. It was the
15 problem that too many courts were not honoring
16 arbitration obligations and were not stopping
17 the litigation when parties violated their
18 arbitration agreements and brought their claims
19 in court.

20 There's no reason to believe that
21 Congress wanted to address that problem by
22 requiring courts to hold on to lawsuits
23 unnecessarily, much less by requiring courts to
24 hold on to them in order to reward plaintiffs
25 like Petitioners who violated their contractual

1 obligations to go to arbitration instead of
2 court.

3 Just to sum up, this Court is not
4 deciding and we're not asking the Court to
5 decide what "stay" means in all contexts and for
6 all time. And I'm -- all I'm saying here is
7 that context matters.

8 In the context of the Federal
9 Arbitration Act passed a century ago, Congress
10 was trying to solve a specific problem that
11 courts were refusing to stop litigation in
12 deference to arbitration. Our reading comports
13 with the leading dictionary definitions and the
14 cases that routinely dismissed at the time the
15 common way to stop litigations was through
16 discontinuance or dismissal and Congress said
17 retain jurisdiction when that's what it meant.

18 All of this supports our position that
19 "stay" means "stop" under Section 3, but at a
20 minimum, the alternative reading is not as clear
21 as my friend on the other side suggests and it's
22 not enough to overcome both the prevailing
23 common law practice and the court's inherent
24 power to dismiss cases with prejudice when
25 another forum is addressing the dispute and none

1 of the parties have anything for the court to do
2 here and now.

3 JUSTICE KAVANAUGH: On your point
4 about Congress's overall objective, if it's
5 dismissed rather than stayed, then that opens up
6 the interlocutory appellate right, would
7 Congress have wanted that?

8 MR. ROSENKRANZ: So, Your Honor, a
9 couple of things to say about that. First, it
10 is simply not true that the FAA generally
11 postpones appellate review of orders to
12 arbitrate until after the arbitration. I was
13 giving the example of a case that begins in
14 arbitration and the defendant refuses to
15 arbitrate. What happens next? There is an
16 action under Section 4.

17 And that is an action that asks for
18 only one thing, which is to compel arbitration.
19 When that order is granted, the case is
20 routinely dismissed and the appeal will follow,
21 so it is simply not true that there is a grand
22 congressional design not to allow appeals of
23 orders granting arbitration.

24 In any event, this Court has already
25 rejected Petitioner's argument about the effect

1 of Section 16(b) in Green Tree. That case
2 explains that 16(b) is about interlocutory
3 appeals, which is obviously where Congress was
4 anticipating that a court would stay, but was
5 not saying that the court has to stay. The
6 court still has the discretion.

7 Nothing in that section bars an appeal
8 of a final order, which is what a dismissal is.
9 And the last thing I'd say about that is that I
10 know one reads a statute as a whole, but we have
11 to bear in mind that Congress used the phrase
12 "stay the trial of the action," it wrote it in
13 1925. Section 16 was passed 60 years later.

14 It is highly unlikely that Congress
15 intended Section 16 to affect the interpretation
16 of Section 3. And I would also say that
17 Congress acknowledged in its Senate summary that
18 it was anticipating that there would be
19 dismissals followed by appeals. The dismissals
20 would be final and that would trigger an appeal.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel. Thank you.

23 Rebuttal, Mr. Geyser?

24
25

1 REBUTTAL ARGUMENT OF DANIEL L. GEYSER
2 ON BEHALF OF THE PETITIONERS

3 MR. GEYSER: I'll be -- I'll be brief.
4 My friend says that we're cramming a lot of
5 meaning into the word "stay." We're just saying
6 that "stay" means "stay."

7 At the time in 1925, if you look to
8 Black's Law Dictionary, stay was a state of
9 proceedings, which is what this is, was defined
10 as a temporary suspension of the case. It's
11 exactly what Section 3 is doing.

12 My friend says there are other
13 dictionaries that say total discontinuance. He
14 is referring to the Dictionary of American and
15 English Law. That's the second dictionary --
16 that's the second definition of "stay." The
17 first definition was a temporary suspension.

18 Again, exactly what "stay" always
19 means. I think if this Court tried to stay a
20 lower court order and the lower court turned
21 around and dismissed the case, I think the Court
22 would be fairly surprised. It's just not a
23 consistent understanding of what "stay" means.

24 Justice Sotomayor is exactly right,
25 that the definition of "stay" meaning suddenly

1 dismissed is inconsistent with the surrounding
2 clauses. Justice Jackson is also correct that
3 it's inconsistent with the proviso at the very
4 end of Section 3 that shows that Congress itself
5 contemplated that cases could come back to court
6 because arbitrations do sometimes fail.

7 Sometimes parties are in default.

8 My friend pointed to the difference
9 between Section 4 and Section 3 and said that
10 you can take an immediate appeal when a Section
11 4 petition is granted and dismissed. That's
12 because there's no alternative.

13 When else can you take that appeal?
14 You'd have to craft an entire new appellate
15 scheme. When -- when would you take the appeal
16 from 30 days from what event? Where would you
17 file the notice of appeal?

18 You know, if there's no longer a court
19 case, I don't know where -- you go to the
20 district court to file the notice of appeal.
21 Congress looked at that and said no statute
22 pursues its purpose at all costs. We can't have
23 unreviewable district court orders compelling
24 arbitration, so in that context where there
25 isn't a preexisting, freestanding suit, we will

1 allow the immediate appeal.

2 In terms of wasting time, it is
3 inherently speculative to say some cases are
4 unlikely to come back; some cases are likely to
5 come back. Will there be a tolling problem?
6 Will there not be a tolling problem? Those are
7 exactly the kind of issues that are pointless
8 for courts and parties to debate.

9 It's much easier to say let's just
10 stay it. It is exactly correct, as multiple
11 members of the Court have recognized, you
12 maintain a list. This Court will maintain cases
13 that are contemplating settlement on the -- on
14 its petition stage docket. I don't believe it's
15 overwhelming the Court to do that.

16 It's not overwhelming district courts
17 who can truly say, just let us know whenever the
18 arbitration is finished. If you do look at the
19 briefing in this case, I think it probably
20 consumed a good 50 or 100, you know, status
21 worth of time of status reports that we could
22 have filed, instead of having to debate this at
23 the district court and then debate it on appeal.

24 Unless the Court has further
25 questions.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel. The case is submitted.
3 (Whereupon, at 1:16 p.m., the case was
4 submitted.)

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<p>conferences [2] 28:1,15 confirm [3] 3:13 18:1 19:10 confirmation [9] 18:19,22 29:12 30:12,17 31:5,18,23 32:1 confirmed [1] 19:6 Congress [37] 3:14 7:19, 21 8:2,13 14:3 16:18,21 19:15 21:5,13,14,18 22:2,4, 6,7,9 23:3 25:13 35:16 36:3,10,13 38:2,4 39:13,21 40:9,16 41:7 42:3,11,14,17 44:4,21 Congress's [1] 41:4 congressional [1] 41:22 consequences [1] 34:22 consider [2] 11:2 34:16 considering [1] 37:13 consistent [3] 17:4 37:23 43:23 constant [1] 33:21 constantly [2] 28:19,24 consume [1] 15:11 consumed [1] 45:20 contains [1] 32:23 contemplated [1] 44:5 contemplates [1] 19:1 contemplating [1] 45:13 contested [4] 6:3 27:22 30:8,9 context [5] 16:16 37:15 40:7,8 44:24 contexts [1] 40:5 continue [3] 17:11,19 35:10 continuing [1] 22:17 contracts [1] 22:13 contractual [2] 22:10 39:25 contrary [1] 3:21 controlling [1] 37:7 core [1] 4:9 correct [5] 9:4,11 28:16 44:2 45:10 correctly [1] 9:8 Cortez [2] 18:9,25 costs [3] 26:19 33:23 44:22 Counsel [6] 16:6 17:8 20:19 37:22 42:22 46:2 Counsellor [1] 23:17 couple [1] 41:9 course [1] 11:9 COURT [143] 1:1,14 3:10, 14,19 5:5,11,18 6:8 7:3,4 8:4,7,11,21 9:3,4,13,15,16, 18,22 10:2,6,14,19,23,25 11:16 12:21 13:2,10,14,19, 23 14:6 15:5,15,19,19 16:15,19 17:1,10,19,24 18:6,8, 10,22 19:2,7,18,22 20:13 21:4,7,10,18,21 22:12,14 23:9 24:3 25:2,5,8,10,17,</p>	<p>25 26:7,7,24 27:3,4,5,14, 18,21,24,24 28:8,11,14,19 29:4,11,12,15,20 30:9,21, 23 31:4,12,16 32:3,10,17, 18,21 34:15,16,24 35:14, 18 36:1,3,6,18 37:5,5,8,14, 17,19 38:7,23 39:7,9,12,19 40:2,3,4 41:1,24 42:4,5,6 43:19,20,20,21 44:5,18,20, 23 45:11,12,15,23,24 Court's [15] 4:13,23 12:5, 12 13:13,18 14:22 18:13 19:2,8 22:15 36:24 38:14, 15 40:23 court-based [1] 11:14 courts [28] 4:2 8:16 10:20, 21 11:12 14:11,15,21 21:5, 22 23:4,5 25:13 26:17,19 28:3,5,18 30:4 36:14 37:2, 10 39:15,22,23 40:11 45:8, 16 craft [1] 44:14 cram [1] 35:8 cramming [1] 43:4 creates [1] 15:25 critically [1] 4:1 cuts [1] 26:22</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C [1] 1:10 Dallas [1] 1:18 DANIEL [5] 1:18 2:3,9 3:7 43:1 day [1] 32:10 days [1] 44:16 deal [2] 28:4 32:5 dealing [2] 9:11 19:12 death [1] 26:21 debate [3] 45:8,22,23 decide [10] 5:13 8:12,17 10:4,14 13:15 18:6,7,14 40:5 deciding [4] 6:9 10:24 17:1 40:4 decision [2] 5:21 10:22 decisions [1] 15:15 decline [1] 5:11 decree [1] 19:15 default [5] 24:2,5 25:20 32:25 44:7 defaults [2] 24:15 26:8 defendant [10] 7:9 25:23 26:1,3,5,8 30:16,19 36:1 41:14 defendants [1] 31:24 reference [3] 21:6 37:3 40:12 defined [1] 43:9 definition [5] 23:12 24:21 43:16,17,25 definitions [1] 40:13 delegation [1] 7:5 denies [1] 16:19 deny [1] 34:15 design [1] 41:22</p>	<p>designed [2] 12:19 16:1 determination [1] 14:2 dictates [1] 25:4 dictionaries [1] 43:13 Dictionary [7] 23:13,19 24:20 40:13 43:8,14,15 difference [3] 4:15,18 44:8 different [5] 19:11,16,16 23:20 29:12 differential [1] 26:19 dire [1] 28:5 directed [2] 3:14 21:5 directing [1] 35:25 direction [1] 22:7 directly [1] 4:9 disagrees [1] 6:6 discontinuance [3] 23:16 40:16 43:13 discovery [1] 11:15 discretion [8] 18:13 19:2,8 21:23 22:17 36:25 38:15 42:6 dismiss [26] 4:3,5 6:1,7 8:21 9:19 10:5 11:13 12:5 13:17,23 15:16 16:22 17:10 20:5 21:9,23 34:20,21 35:3,11 36:25 37:6,7,10 40:24 dismissal [16] 3:17 4:16 15:17 17:4 21:16 23:11,20 24:7,8 34:15,17 35:1 36:11 39:5 40:16 42:8 dismissals [3] 21:12 42:19,19 dismissed [12] 5:16 25:3,7 31:9 37:2 39:8 40:14 41:5, 20 43:21 44:1,11 dismisses [5] 3:20 13:23 19:23 26:7 36:6 dismissing [2] 22:9 23:7 dispute [4] 7:6 9:18 19:19 40:25 disputes [1] 4:1 distinct [1] 21:13 distinction [1] 21:15 district [30] 8:20 12:5 13:19 15:15 19:18,22 24:3 26:19 27:18 28:2,8,11 29:4,15 31:4,16 32:3,17,21 34:15, 16,24 36:6,24 38:14,15 44:20,23 45:16,23 docket [8] 12:21 14:14,23 19:23 29:5,8 37:8 45:14 dockets [1] 26:18 documenting [1] 28:20 documents [2] 4:23 13:12 doing [3] 13:11 14:7 43:11 dollars [1] 33:1 done [3] 14:20 16:4 19:5 doubt [1] 36:23 dozens [3] 15:14,14,14 drafted [1] 8:1 drafters [1] 21:16 drawn [1] 21:15</p>	<p>duration [1] 25:10 durational [3] 24:24 25:3,5</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each [1] 13:15 earlier [5] 31:21 35:24 36:17 37:16 38:20 early [2] 19:22 20:4 easier [3] 7:12 16:15 45:9 easy [2] 28:3 34:11 effect [2] 13:5 41:25 effectively [2] 10:21 16:5 effectuate [1] 6:22 efficiencies [1] 37:8 Eighth [1] 5:21 either [3] 7:5 14:16 23:6 eliminate [1] 16:2 eliminating [1] 4:10 emerge [1] 26:24 emergency [1] 28:6 empanelling [1] 11:17 encourage [1] 22:12 encouraging [1] 5:4 end [2] 18:11 44:4 enforce [3] 10:6,25 22:10 enforcing [1] 9:24 engage [3] 4:21 18:15 36:2 English [1] 43:15 enormous [2] 13:17 15:25 enough [1] 40:22 entail [1] 39:5 entertain [3] 8:8 11:13 31:18 entire [5] 5:14 8:3 11:10 19:19 44:14 entry [1] 19:14 especially [1] 37:14 ESQ [3] 2:3,6,9 ESQUIRE [2] 1:18,20 essential [1] 3:22 establish [1] 25:6 ET [2] 1:3,6 Even [17] 5:9,24 10:25 14:5, 24 16:21 17:5 21:20 22:7, 9 27:7 30:7,8 33:11,11 36:17 37:18 event [3] 11:8 41:24 44:16 everything [2] 11:15 31:10 exactly [7] 7:16 27:1 43:11, 18,24 45:7,10 example [8] 12:6,22 22:17 29:10 30:15 37:12,20 41:13 examples [1] 7:3 except [1] 29:18 exceptions [2] 3:17 16:22 excuse [2] 36:11,20 exercise [4] 5:12 10:3 19:8 35:11 exist [1] 29:17 explains [1] 42:2 extra [1] 18:5</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>FAA [5] 4:9 5:13 7:24 8:8 41:10 FAA's [2] 3:12,21 face [2] 4:25 20:15 facilitate [1] 8:9 fact [2] 12:9 18:17 fact-finding [1] 11:8 fail [2] 13:9 44:6 failed [1] 4:19 fails [4] 9:3 10:15,17 15:21 fairly [2] 11:2 43:22 familiar [1] 28:23 fashion [1] 17:20 fault [1] 26:5 favor [3] 17:7 26:25 36:23 federal [16] 5:4,10,17 8:17, 22 9:4,13,14,16 11:11 12:13 17:24 27:4 28:18 36:14 40:8 fee [2] 31:10 32:11 fees [2] 4:20 7:9 few [1] 6:17 fewer [1] 16:12 fight [1] 4:3 fighting [2] 15:15 34:25 figure [1] 34:21 file [13] 4:21 5:10 25:25 27:2 29:17 30:2 31:9 32:8 33:10,14 34:5 44:17,20 filed [5] 12:1,2 18:1 26:14 45:22 filing [4] 13:10 25:22 32:4, 11 final [5] 13:21,25 16:24 42:8,20 finality [1] 13:24 finished [2] 15:1 45:18 first [15] 6:18 10:17 12:25 13:8 24:19,21 25:23 27:2, 3,17 31:20,25 35:24 41:9 43:17 flip [4] 27:12 29:23,25 32:15 follow [2] 6:11 41:20 followed [2] 26:14 42:19 force [1] 26:4 foreign [1] 37:14 foremost [1] 13:1 forum [3] 21:25 37:12 40:25 forward [2] 10:4 37:24 found [1] 12:10 four [1] 15:13 free [1] 26:9 freestanding [2] 17:25 44:25 friend [6] 6:25 12:17 40:21 43:4,12 44:8 friend's [1] 26:14 friends [2] 10:11 11:5 function [1] 10:21 further [5] 5:2 20:20,21 30:1 45:24 future [1] 15:20</p>
---	--	---	--

<p style="text-align: center;">G</p> <p>gateway [1] 16:25 generally [2] 21:22 41:10 GEYSER [33] 1:18 2:3,9 3:6,7,9 4:14,17 5:6,19 6:17 7:17 9:6,10,22 10:10 11:19 12:8,24 14:15 15:4,8 16:11 17:22 18:24 19:5 20:1 22:4 27:20 30:6 42:23 43:1,3 give [3] 22:16 35:5 37:20 gives [1] 22:18 giving [1] 41:13 GORSUCH [4] 11:19,21,23 12:15 got [7] 11:21,23 22:3 32:12, 20,24 33:13 grand [1] 41:21 grant [2] 4:15 16:20 granted [5] 18:12 22:20,23 41:19 44:11 granting [1] 41:23 grants [1] 19:18 greater [1] 27:12 Green [2] 5:21 42:1 ground [1] 34:13 guess [2] 27:10,11</p>	<p>37:13 impose [1] 13:7 imposing [1] 16:5 in-person [1] 28:15 inactive [2] 13:2 14:21 include [1] 23:16 including [1] 12:25 incompatible [1] 11:10 inconsistency [1] 18:16 inconsistent [4] 14:3 23:11 44:1,3 independent [1] 17:18 indicates [1] 38:21 inherent [7] 10:13,18 11:1, 24 12:4 22:3 40:23 inherently [2] 7:2 45:3 initiating [1] 7:8 inserted [1] 7:19 instance [1] 35:24 instead [3] 6:10 40:1 45:22 instruction [1] 19:13 intended [2] 21:18 42:15 interest [1] 37:7 interlocutory [3] 16:10 41:6 42:2 intermittent [1] 14:17 interpret [1] 7:15 interpretation [1] 42:15 intervene [1] 30:5 intervention [1] 30:1 invite [2] 13:14 14:5 invites [1] 4:1 inviting [1] 15:19 involved [1] 17:23 involves [1] 8:25 isn't [7] 6:19 7:6 12:20 27:13 31:2,14 44:25 issue [3] 12:10 22:6 37:13 issued [1] 18:23 issues [4] 9:1 15:24 26:24 45:7 itself [3] 4:10 26:19 44:4</p>	<p>5:3,15 6:13 7:11 8:20 9:9, 21 10:9 11:4,19,20,21,22, 23 12:15,17 14:11 15:2 16:6,7 17:8 18:18 19:4,17 20:18 21:4 22:16,25 23:17 24:12 26:11,12 27:1,8,10 28:7, 12,22 29:6,14 30:11,18 31:8 32:7 33:4,5,7,8,18 34:2, 18 37:22,24 38:8,24 39:1 41:3 42:21 43:24 44:2 46:1 Justice's [1] 29:24</p> <p style="text-align: center;">K</p> <p>KAGAN [8] 14:11 15:2 27:8 29:14 33:4,7 34:2,18 KAVANAUGH [2] 39:1 41:3 keep [6] 26:17 28:17 29:7, 15,21 33:13 keeping [1] 29:9 KEITH [1] 1:6 kind [5] 10:18 13:7 18:19 30:22 45:7 kinds [1] 17:21 known [1] 7:25</p>	<p>12 23:5 25:2 35:10 38:21 39:17 40:11 litigations [1] 40:15 little [3] 6:5 13:1 20:4 long [8] 11:15 13:4 21:22 24:4 25:1 27:5 32:25 38:21 longer [3] 39:7,10 44:18 look [8] 15:13 16:8 26:18 34:23,24 38:16 43:7 45:18 looked [1] 44:21 losing [1] 6:9 lost [1] 30:23 lot [6] 6:15 13:13 16:14 33:16 35:9 43:4 lots [1] 7:3 lower [2] 43:20,20 luck [1] 19:9</p>	<p>most [3] 7:25 14:11,15 motion [8] 8:12,22 10:24 19:18 20:10 30:23 31:18 35:3 motions [7] 5:13 8:8,17 10:5 11:13,14 18:15 move [3] 5:1 14:21 20:9 much [4] 27:12 32:6 39:23 45:9 multiple [4] 10:16 12:25 13:8 45:10 must [3] 21:8 25:11 35:18</p>
<p style="text-align: center;">H</p> <p>half [2] 22:22 29:24 happen [5] 6:19 15:3,5,18 19:25 happened [2] 3:25 7:10 happening [1] 17:13 happens [3] 29:1 30:4 41:15 hard [2] 13:6 17:3 hate [1] 10:11 hear [1] 3:3 helicopter [1] 27:5 help [1] 17:11 highly [1] 42:14 hold [7] 26:2 27:25 28:4,8, 15 39:22,24 Honor [13] 5:7 22:21 24:11, 18 26:16 27:16 29:3 30:13 31:20 34:23 38:12,18 41:8 honoring [1] 39:15 hopes [1] 5:10 hundred [1] 21:14 hundreds [1] 33:1 hypothetical [1] 31:13 Hypothetically [2] 31:6,21</p>	<p style="text-align: center;">J</p> <p>JACKSON [15] 6:13 7:11 17:8 18:18 19:4 28:7,12 30:11,18 31:8 32:7 37:22 38:8,24 44:2 Jackson's [1] 11:5 job [1] 16:14 JOSHUA [3] 1:20 2:6 21:1 judgment [3] 11:14 30:15 31:24 judicial [3] 4:8 23:14 30:1 jurisdiction [31] 5:11,12 8:5,7,24 9:14,20,23 10:3 18:4,5,5,14 19:14 21:8,19 22:8 23:6 25:10,12,14,15,16, 18 35:11,18,19 36:4,14 38:15 40:17 jurisdictional [1] 17:18 jurisdictions [1] 34:11 jury [1] 11:17 JUSTICE [64] 3:3,10 4:14</p>	<p style="text-align: center;">L</p> <p>language [10] 8:2 11:3 22:18 23:22 25:4,5 33:24 34:3 36:19 37:23 last [4] 11:4,16 39:11 42:9 later [1] 42:13 Laughter [1] 15:7 law [10] 8:25 9:17 12:13 23:12,19 24:19 37:2 40:23 43:8,15 lawsuit [3] 18:1 33:15 37:21 lawsuits [1] 39:22 lawyers [2] 21:11 34:1 lead [1] 23:12 leading [1] 40:13 least [2] 31:3 38:2 leave [1] 14:25 leaves [1] 8:16 less [1] 39:23 lift [1] 8:12 light [1] 39:13 likelihood [2] 37:16 38:1 likely [1] 45:4 limit [1] 23:25 limitation [1] 24:24 limitations [7] 5:20 15:23 34:4,6,7,13,22 list [5] 29:16,16,21 31:16 45:12 litigant [1] 3:23 litigants [1] 4:3 litigated [2] 25:8 30:23 litigating [4] 6:1 14:8 15:22 37:11 litigation [15] 4:11 12:6,19 14:5 17:24 21:7,17 22:11,</p>	<p style="text-align: center;">M</p> <p>made [1] 24:3 maintain [3] 12:21 45:12, 12 maintaining [1] 36:24 majority [1] 5:8 manage [1] 27:24 mandates [1] 3:11 manner [1] 4:7 many [1] 39:15 maritime [1] 19:13 matter [4] 1:13 6:11 8:24 21:9 matters [3] 6:4 17:12 40:7 maximizing [1] 37:8 mean [10] 7:13 11:25 15:13 21:8,9 32:8 33:10 34:3 37:24 39:4 meaning [4] 35:9,16 43:5, 25 means [8] 15:12 25:1 35:10 40:5,19 43:6,19,23 meant [4] 11:7 21:7 23:4 40:17 meantime [2] 16:4 34:6 meet [1] 17:2 members [1] 45:11 mention [2] 3:16 22:7 merits [5] 6:21 7:22 8:15 9:17 14:9 might [2] 13:19 17:18 Mightn't [2] 33:4 34:3 mind [1] 42:11 minimum [1] 40:20 minor [1] 13:19 minute [3] 11:16 26:2 28:20 miracle [1] 30:25 miracles [1] 30:25 Mm-hmm [1] 9:9 modern [1] 21:11 Monday [2] 1:11 19:18 monitoring [1] 28:24 months [2] 14:18,19 morning [1] 19:22</p>	<p style="text-align: center;">N</p> <p>national [1] 15:10 nationalize [1] 26:21 necessarily [1] 33:21 necessary [2] 25:6 29:22 need [9] 17:18 18:4 24:18 26:2 27:14 28:25 30:4 32:2 33:2 needed [1] 25:16 needless [1] 30:9 needs [1] 30:1 negotiate [1] 32:22 neither [1] 16:9 never [14] 9:16 12:1 21:9, 10 27:2 30:4,4 31:24 36:3, 10,11 37:17 38:11,13 New [16] 1:20,20 4:21,22, 22 13:10,11,11 30:2 31:10 32:4,8 33:10,14 34:5 44:14 next [2] 3:4 41:15 nobody [1] 29:17 non-arbitrable [1] 25:6 Non-diverse [2] 8:25 9:18 none [1] 40:25 norm [1] 36:5 nothing [3] 22:4 37:4 42:7 notice [2] 44:17,20 number [1] 15:22 numbers [1] 35:5</p> <p style="text-align: center;">O</p> <p>objective [1] 41:4 obligations [3] 22:10 39:16 40:1 observations [1] 27:17 obviously [2] 11:1 42:3 often [3] 13:20 21:11 30:12 Okay [3] 9:21 26:11 29:25 Once [5] 10:1 15:1 18:5,9 27:23 one [16] 6:6 10:12 11:4,21, 23 14:16 16:11 17:9 21:17, 24 30:16 32:1,10 39:11 41:18 42:10 one's [1] 29:11 one-line [1] 28:13 one-sided [1] 6:2 ongoing [1] 22:8 only [8] 8:25 19:12 20:16 27:20 36:7 41:18</p>
<p>ice [1] 23:7 identical [1] 16:13 ignores [1] 3:19 illuminates [1] 3:22 imagine [2] 13:6 26:23 immediate [5] 15:17 16:19, 23 44:10 45:1 immediately [1] 19:21 important [4] 5:23 36:9,13</p>				

Official - Subject to Final Review

<p>open ^[1] 31:11</p> <p>opens ^[1] 41:5</p> <p>operate ^[1] 17:19</p> <p>operating ^[1] 17:12</p> <p>operative ^[1] 12:9</p> <p>opinion ^[1] 26:25</p> <p>oppose ^[1] 34:12</p> <p>opposed ^[1] 26:20</p> <p>opposition ^[1] 11:6</p> <p>option ^[1] 10:3</p> <p>oral ^[5] 1:14 2:2,5 3:7 21:1</p> <p>order ^[7] 10:20 35:25 36:12 39:24 41:19 42:8 43:20</p> <p>ordering ^[1] 36:6</p> <p>orders ^[3] 41:11,23 44:23</p> <p>originally ^[2] 30:20 31:14</p> <p>other ^[15] 6:24 8:17 10:7 12:12,20 14:21 17:6 18:15 20:8 24:14,20 30:14 32:22 40:21 43:12</p> <p>otherwise ^[1] 16:13</p> <p>out ^[8] 5:4 7:6 15:21 16:1 17:11 19:9 30:6 34:21</p> <p>outset ^[3] 9:23 11:5 13:15</p> <p>over ^[9] 4:3,4 6:3 8:6,24 23:6 25:8 27:15 32:24</p> <p>overall ^[2] 31:15 41:4</p> <p>overcome ^[1] 40:22</p> <p>overridden ^[1] 11:2</p> <p>overwhelm ^[1] 13:18</p> <p>overwhelmed ^[1] 28:6</p> <p>overwhelming ^[4] 37:16, 25 45:15,16</p> <p>own ^[1] 37:7</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m ^[3] 1:15 3:2 46:3</p> <p>PAGE ^[2] 2:2 35:5</p> <p>paid ^[3] 4:20 32:9,10</p> <p>papers ^[1] 34:24</p> <p>paragraphs ^[2] 35:2,4</p> <p>parallel ^[2] 22:11,12</p> <p>parent ^[1] 27:5</p> <p>part ^[1] 7:19</p> <p>particular ^[1] 8:3</p> <p>parties ^[34] 4:2,11 6:7,22 7:4 8:10,25 9:18 13:9 14:7, 25 15:15,20 18:20 19:20 20:2 22:19 26:20 28:25 29:11 30:11 32:15,19 33:2 34:25 36:10 37:4,9,11,20 39:17 41:1 44:7 45:8</p> <p>parties' ^[1] 9:25</p> <p>party ^[17] 3:23 4:8 5:9 6:10 13:25 16:9 20:6,14,16 24:5,15 29:25 30:2,14 34:12 38:22 39:9</p> <p>pass ^[1] 26:9</p> <p>passed ^[4] 21:13 22:9 40:9 42:13</p> <p>pay ^[3] 30:15 32:7,13</p> <p>paying ^[1] 7:9</p> <p>pending ^[3] 3:12 13:4 14:22</p>	<p>people ^[1] 5:4</p> <p>perfect ^[1] 25:20</p> <p>perfectly ^[1] 29:13</p> <p>period ^[1] 24:9</p> <p>permit ^[1] 24:8</p> <p>perspective ^[1] 28:2</p> <p>petition ^[2] 44:11 45:14</p> <p>Petitioner's ^[2] 36:18 41:25</p> <p>Petitioners ^[9] 1:4,19 2:4, 10 3:8 26:25 35:8 39:25 43:2</p> <p>phrase ^[1] 42:11</p> <p>pieces ^[1] 24:25</p> <p>place ^[1] 31:25</p> <p>plain ^[2] 3:12 17:6</p> <p>plaintiff ^[1] 7:7 25:21,24 26:6,9 30:20 31:3,17,22 32:9 35:23</p> <p>plaintiffs ^[2] 22:13 39:24</p> <p>plausible ^[2] 11:18 21:22</p> <p>please ^[4] 3:10 9:10,10 21:4</p> <p>point ^[13] 5:24 11:4,24,25 12:18 13:21,24 17:17 18:8, 14 37:25 39:7 41:3</p> <p>pointed ^[1] 44:8</p> <p>pointless ^[1] 45:7</p> <p>pointlessly ^[1] 4:2</p> <p>points ^[2] 17:7 30:6</p> <p>position ^[1] 40:18</p> <p>possible ^[2] 4:12 15:23</p> <p>possibly ^[1] 28:1</p> <p>post-arbitration ^[1] 10:5</p> <p>postpones ^[1] 41:11</p> <p>potential ^[1] 15:19</p> <p>potentially ^[2] 15:23 37:18</p> <p>power ^[8] 10:20 11:24 12:4 18:6,11 22:3 37:6 40:24</p> <p>practice ^[5] 5:14 20:8 26:23 28:23 40:23</p> <p>precisely ^[1] 7:25</p> <p>preclude ^[1] 12:12</p> <p>preexisting ^[3] 9:13 18:3 44:25</p> <p>preferable ^[1] 17:9</p> <p>preferably ^[1] 27:3</p> <p>prejudice ^[10] 4:16 5:17 21:24 23:8 25:3 26:8 37:6, 11 39:9 40:24</p> <p>premature ^[2] 3:20 13:22</p> <p>premise ^[2] 10:17 24:19</p> <p>preserves ^[1] 4:8</p> <p>preserving ^[2] 37:1 38:14</p> <p>presumably ^[1] 29:14</p> <p>prevailing ^[1] 40:22</p> <p>prevent ^[2] 12:7,19</p> <p>probably ^[1] 45:19</p> <p>problem ^[12] 5:7,16 16:1 19:16 29:19 34:14 39:13, 15,21 40:10 45:5,6</p> <p>problems ^[5] 5:20 15:20 16:2 26:13,16</p> <p>procedural ^[1] 4:7</p>	<p>procedure ^[1] 10:23</p> <p>proceeding ^[6] 7:13,15 23:15 24:2,22 25:22</p> <p>proceedings ^[4] 7:21,22 23:19 43:9</p> <p>process ^[4] 3:25 10:24 30:3 32:6</p> <p>prohibit ^[1] 22:9</p> <p>proper ^[2] 9:24 19:7</p> <p>properly ^[1] 8:23</p> <p>proportion ^[1] 30:7</p> <p>protects ^[1] 3:23</p> <p>providing ^[1] 24:1</p> <p>provision ^[1] 39:10</p> <p>proviso ^[6] 24:25 25:19 26:1,3,9 44:3</p> <p>purpose ^[4] 3:13 4:9 11:10 44:22</p> <p>pursues ^[1] 44:22</p> <p>put ^[4] 23:21,22 24:9 31:16</p> <p>puts ^[1] 37:24</p> <p>putting ^[3] 23:7,18,25</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question ^[9] 4:7 6:8 9:7 11:5 24:23 27:2 29:24 31:2 38:18</p> <p>questions ^[4] 4:13 15:23 22:15 45:25</p> <p>quibble ^[3] 22:22 24:18 32:24</p> <p>quickly ^[1] 4:12</p> <p>quite ^[1] 5:9</p> <p>quiver ^[1] 16:12</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raise ^[2] 13:21 34:14</p> <p>rare ^[3] 30:14 31:7,23</p> <p>rather ^[2] 8:21 41:5</p> <p>read ^[9] 13:20 16:15 17:16, 20 24:6 35:22 38:10 39:4, 12</p> <p>reading ^[7] 11:18 17:6 25:21 36:18 38:19 40:12,20</p> <p>reads ^[1] 42:10</p> <p>realistically ^[1] 20:2</p> <p>reality ^[1] 20:2</p> <p>really ^[3] 11:7 17:3 30:16</p> <p>reason ^[4] 8:3 12:2 35:22 39:20</p> <p>reasons ^[4] 10:16 12:25 15:22 17:9</p> <p>REBUTTAL ^[3] 2:8 42:23 43:1</p> <p>recognized ^[2] 10:19 45:11</p> <p>referring ^[1] 43:14</p> <p>refers ^[1] 27:20</p> <p>refused ^[1] 36:2</p> <p>refuses ^[2] 25:24 41:14</p> <p>refusing ^[1] 40:11</p> <p>regardless ^[1] 35:12</p> <p>rejected ^[1] 41:25</p> <p>remain ^[1] 13:5</p>	<p>remedy ^[1] 9:24</p> <p>remember ^[1] 8:5</p> <p>reminded ^[1] 14:6</p> <p>render ^[1] 5:14</p> <p>reopen ^[1] 24:12</p> <p>repeated ^[1] 33:22</p> <p>report ^[7] 13:3,20 27:25 28:13 32:17,20,23</p> <p>reported ^[1] 15:14</p> <p>reports ^[3] 14:17 33:22 45:21</p> <p>requested ^[2] 20:7,14</p> <p>required ^[2] 25:17 26:17</p> <p>requirement ^[1] 14:17</p> <p>requiring ^[4] 22:8 23:4 39:22,23</p> <p>resist ^[1] 27:7</p> <p>resolved ^[1] 36:23</p> <p>resources ^[4] 4:8 5:25 6:9 15:12</p> <p>respect ^[1] 17:21</p> <p>Respondent ^[1] 6:15</p> <p>Respondents ^[6] 1:7,21 2:7 4:20 5:1 21:2</p> <p>Respondents' ^[1] 17:16</p> <p>response ^[6] 6:16 17:16 35:2,3,4,6</p> <p>responses ^[1] 6:18</p> <p>responsibility ^[1] 29:4</p> <p>result ^[1] 36:21</p> <p>retain ^[14] 19:14 21:8,19 25:10,12,13,15,16,18 35:18,19 36:4,14 40:17</p> <p>retaining ^[1] 23:6</p> <p>reticulated ^[1] 3:21</p> <p>return ^[2] 7:4 25:4</p> <p>review ^[1] 41:11</p> <p>revoke ^[1] 22:2</p> <p>reward ^[2] 22:13 39:24</p> <p>rights ^[1] 3:23</p> <p>ROBERTS ^[14] 3:3 11:20, 22 12:17 20:18 26:12 27:10 28:22 29:6 33:5,8,18 42:21 46:1</p> <p>ROSENKRANZ ^[29] 1:20 2:6 20:23 21:1,3 22:21 23:2 24:10,17 26:15 27:16 28:10,14 29:3,7,15,20 30:13 31:6,19 32:14 33:17,20 34:10,23 38:4,12 39:3 41:8</p> <p>routinely ^[4] 37:2,10 40:14 41:20</p> <p>rule ^[8] 4:6 5:8 10:22 15:10 26:14 28:7,11 36:16</p> <p>rules ^[1] 37:14</p> <p>run ^[2] 34:4,6</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>salient ^[1] 37:14</p> <p>same ^[6] 13:10 14:8 18:19, 22 30:9 36:16</p> <p>saves ^[1] 13:8</p> <p>savings ^[1] 13:19</p> <p>saying ^[19] 6:5,11 8:13 10:22 14:19 16:18 31:21 32:13,19 33:8,11,14 35:24 36:17 37:16 38:20 40:6 42:5 43:5</p> <p>says ^[17] 6:12,14,14 7:16 9:24 20:9 23:18,23,25 26:1,2, 3,9 32:9 38:2 43:4,12</p> <p>scenario ^[1] 20:12</p> <p>scheme ^[2] 3:22 44:15</p> <p>seat ^[1] 4:18</p> <p>second ^[7] 15:8 16:25 22:22 29:24 32:3 43:15,16</p> <p>Section ^[43] 3:11 9:12,23 12:9 14:4 16:9,14,17 17:5, 14,15 18:10 19:11,12 20:15 21:14,20 22:10,18 25:8, 9,14,16,17,25 35:20,23,25 36:16 39:13,14 40:19 41:16 42:1,7,13,15,16 43:11 44:4,9,9,10</p> <p>sections ^[1] 16:15</p> <p>see ^[2] 5:20 18:16</p> <p>seek ^[3] 18:22 30:12 31:22</p> <p>seeking ^[1] 35:25</p> <p>seeks ^[2] 30:16 32:1</p> <p>seems ^[1] 33:15</p> <p>seen ^[1] 15:12</p> <p>Senate ^[1] 42:17</p> <p>sending ^[1] 4:11</p> <p>sends ^[1] 19:19</p> <p>sense ^[1] 25:21</p> <p>sent ^[1] 30:24</p> <p>sentence ^[1] 13:3</p> <p>separate ^[1] 24:25</p> <p>service ^[2] 4:22 13:11</p> <p>settle ^[1] 37:21</p> <p>settled ^[1] 29:10</p> <p>settlement ^[1] 45:13</p> <p>shall ^[1] 3:15</p> <p>shouldn't ^[3] 14:7 15:18 34:21</p> <p>shows ^[1] 44:4</p> <p>shunted ^[1] 32:12</p> <p>side ^[9] 20:9 24:20 27:12 29:23,25 30:15 32:15,22 40:21</p> <p>similar ^[1] 22:18</p> <p>Similarly ^[1] 26:6</p> <p>simple ^[2] 16:2,3</p> <p>simply ^[7] 8:13 18:1 25:1 28:16 38:21 41:10,21</p> <p>single ^[1] 6:4</p> <p>sit ^[2] 33:2,9</p> <p>sitting ^[6] 27:19,23 32:2,16 33:12,18</p> <p>situation ^[6] 4:25 9:2,12 30:20 31:2,22</p> <p>six ^[4] 5:8 14:19 26:13,13</p> <p>Sixth ^[1] 5:22</p> <p>SMITH ^[2] 1:3 3:4</p> <p>solution ^[1] 34:11</p> <p>solve ^[2] 39:14 40:10</p> <p>someplace ^[1] 29:17</p> <p>sometimes ^[8] 5:19 14:18,</p>
--	---	---	--

Official - Subject to Final Review

<p>18 32:21 34:20,20 44:6,7 somewhere [3] 19:6,9 31:17 sorry [1] 33:6 sort [2] 10:19 17:10 SOTOMAYOR [10] 8:20 9:9,21 10:9 16:6 23:17 24:12 26:11 37:24 43:24 sound [1] 34:19 sounds [1] 32:4 source [1] 12:13 specific [2] 19:13 40:10 specifically [2] 14:4 16:18 speculative [2] 7:2 45:3 spending [1] 13:12 SPIZZIRRI [2] 1:6 3:5 stage [1] 45:14 stalling [1] 24:22 stark [1] 21:15 start [3] 5:4 27:3,15 starts [1] 25:22 state [6] 8:25 9:3,17 10:6 11:8 43:8 STATES [3] 1:1,15 7:20 status [10] 13:3,20 14:17,22 27:25 28:4,8,15 45:20,21 statute [19] 6:12,14 7:14 8:1 11:3 16:1 22:5 33:25 34:4,5,7,13,22 35:22 36:20,22 38:2 42:10 44:21 stay [68] 3:12,15 4:3,4,15 6:1,7,14 7:12,13,20 8:3,12,13,22 9:4,25 13:5,16 14:23 15:16 16:2 17:9 19:21 20:4,7,10,11,14,17 21:5,17 22:19,23 23:3,10,12,15,18,23 24:1,9 25:19 33:12 34:12 35:1,9,15 38:2 39:2,2,4,10 40:5,19 42:4,5,12 43:5,6,6,8,16,18,19,23,25 45:10 stayed [4] 18:10,21 31:4 41:5 staying [6] 6:20,21 7:22 8:5,14,15 stays [2] 21:12 27:23 still [10] 8:1 13:4 14:14,22,23 28:21 29:21,21 38:19 42:6 stop [12] 21:7 23:4 25:2 35:10 38:22 39:4,5,6,8 40:11,15,19 stopping [3] 23:13 24:22 39:16 stops [1] 11:16 streamlined [2] 30:3 32:5 stronger [1] 10:12 structure [1] 3:13 stuck [1] 14:7 subject [7] 3:18 7:1,6 8:24 12:10,22 16:20 submitted [2] 46:2,4 substantive [1] 10:22 suddenly [1] 43:25</p>	<p>sue [2] 9:3 24:13 suggest [2] 10:13 11:6 suggested [1] 17:7 suggests [2] 6:25 40:21 suing [1] 22:14 suit [4] 5:10 9:13 18:9 44:25 suits [1] 4:21 sum [1] 40:3 summary [2] 11:13 42:17 supplemental [3] 5:12 10:3 18:13 supports [2] 24:20 40:18 Suppose [1] 19:17 supposed [1] 29:9 SUPREME [2] 1:1,14 surprised [1] 43:22 surrounding [1] 44:1 suspension [2] 43:10,17 system [1] 31:15</p> <hr/> <p style="text-align: center;">T</p> <p>tactics [1] 12:6 tasks [1] 17:21 tax [1] 32:15 taxes [1] 33:1 technically [1] 20:13 temporary [2] 43:10,17 tens [1] 26:21 terms [2] 23:24 45:2 Texas [1] 1:18 text [2] 3:13 17:6 there's [19] 6:5 7:5 9:12 10:13 14:23 15:17 16:25 23:9 27:6 28:10,18 29:18 32:5 34:6,11 35:21 39:20 44:12,18 they've [1] 33:13 thinking [1] 16:21 thinks [1] 36:18 THOMAS [6] 4:14 5:3,15 22:16,25 27:1 though [3] 8:1 19:1 38:10 thousands [1] 26:22 three [2] 14:18 35:2 timeless [1] 10:20 tiny [1] 30:7 title [2] 7:18 23:18 tolling [4] 15:24 34:7 45:5,6 total [2] 23:16 43:13 track [2] 28:17 33:13 traditional [1] 36:24 Tree [1] 42:1 trial [13] 3:15 6:15,18,20 7:1,14 8:14 11:6,7,25 12:2 21:6 42:12 tried [1] 43:19 trigger [1] 42:20 trouble [2] 8:10 33:9 true [2] 41:10,21 truly [1] 45:17 try [1] 10:13 trying [6] 6:21 8:14 14:9 35:</p>	<p>8 39:14 40:10 Tuesday [1] 19:21 turned [1] 43:20 turns [2] 7:6 15:21 two [9] 14:16 21:12 24:7,25 27:16,17 31:19,19 35:3</p> <hr/> <p style="text-align: center;">U</p> <p>unambiguous [1] 11:3 unambiguously [1] 3:11 unbelievable [1] 15:11 unclear [1] 22:25 under [13] 8:8,17,21 9:12 10:4 17:14,15 18:10 25:25 35:25 38:19 40:19 41:16 underlying [1] 9:17 undermine [1] 38:9 underscore [1] 35:21 understand [4] 17:4 24:17 37:25 38:24 understanding [4] 21:21 38:11,13 43:23 understood [4] 7:21 21:16 23:5 24:10 unintended [1] 13:24 UNITED [3] 1:1,15 7:19 Unless [1] 45:24 unlikely [3] 35:12 42:14 45:4 unnecessarily [1] 39:23 unnecessary [1] 4:10 unreviewable [1] 44:23 until [11] 3:15 8:6 23:23 25:1 38:2,19,21 39:1,2,6 41:12 up [4] 19:23 31:11 40:3 41:5 upside [2] 6:5 15:17 using [1] 7:14</p> <hr/> <p style="text-align: center;">V</p> <p>vacate [1] 18:1 venue [1] 10:8 verb [1] 39:2 versus [2] 3:4 35:1 violate [1] 22:13 violated [2] 39:17,25</p> <hr/> <p style="text-align: center;">W</p> <p>wait [2] 26:2 28:20 wanted [5] 25:13 35:16,17 39:21 41:7 wants [3] 19:23 22:2 34:12 Washington [1] 1:10 waste [7] 4:10,23 5:14,25 6:9 13:1,8 wasteful [5] 4:1 12:19,20,25 13:17 wasting [1] 45:2 way [8] 19:10,14,16 20:11 21:17 31:11 35:22 40:15 ways [1] 13:8 welcome [2] 4:13 22:15 WENDY [1] 1:3 whatever [3] 13:18 32:11</p>	<p>33:13 whenever [2] 6:6 45:17 Whereupon [1] 46:3 whether [7] 4:3,4,18 6:1,7 18:14 24:5 whole [3] 7:6 12:2 42:10 will [13] 4:21 13:18 21:10 27:1,5 29:15,17,18 41:20 44:25 45:5,6,12 win [2] 31:1 32:12 wins [1] 31:17 without [11] 4:16 5:17 17:5 21:23 23:8 25:3 26:7 32:2 37:6,10 39:8 witness [1] 30:6 witnesses [1] 17:15 won [2] 30:16,19 word [8] 7:14 23:3,10 35:9,15 39:4,4 43:5 words [1] 21:19 work [2] 29:21,22 works [1] 38:19 world's [1] 7:25 worry [2] 14:24 27:6 worst [3] 15:2,4,9 worth [2] 7:18 45:21 wrote [3] 14:4 24:16 42:12</p> <hr/> <p style="text-align: center;">Y</p> <p>year [2] 6:4 27:20 years [3] 21:14 28:1 42:13 York [2] 1:20,20</p> <hr/> <p style="text-align: center;">Z</p> <p>zero [1] 27:6</p>
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