

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

MEDICAL MARIJUANA, INC., ET AL.,)
 Petitioners,)
 v.) No. 23-365
DOUGLAS J. HORN,)
 Respondent.)

Pages: 1 through 86
Place: Washington, D.C.
Date: October 15, 2024

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10 Washington, D.C.

11 Tuesday, October 15, 2024

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13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:06 a.m.

16

17 APPEARANCES:

18 LISA S. BLATT, ESQUIRE, Washington, D.C.; on behalf of
19 the Petitioners.

20 EASHA ANAND, ESQUIRE, Stanford, California; on behalf
21 of the Respondent.

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1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	LISA S. BLATT, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	EASHA ANAND, ESQ.	
7	On behalf of the Respondent	42
8	REBUTTAL ARGUMENT OF:	
9	LISA S. BLATT, ESQ.	
10	On behalf of the Petitioners	83
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
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4
5
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P R O C E E D I N G S

(10:06 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 23-365, Medical Marijuana versus Horn.

Ms. Blatt.

ORAL ARGUMENT OF LISA S. BLATT

ON BEHALF OF THE PETITIONERS

MS. BLATT: Thank you, and may it please the Court:

RICO states that any person injured in his business or property by reason of racketeering can sue therefor and recover threefold the damages he sustains. Because RICO's cause of action excludes personal injuries, RICO excludes damages resulting from personal injuries.

The text differentiates the injury from racketeering and the damages sustained from that injury, thus showing that injury and damages are distinct. And the references to damages he sustains shows that damages are the losses suffered as a result of the injury. Damages are not themselves the injury inflicted by the defendant.

1 This distinction tracks this Court's
2 recognition that lost wages and medical expenses
3 are classic damages from personal injuries.

4 Respondent's complaint alleges the
5 personal injury of unwanted ingestion of THC and
6 the resulting damages of lost wages. To quote
7 the complaint: "Defendant's behavior caused
8 Plaintiff's fiscal harm in the ingestion of
9 Dixie, and as a direct result of consuming this
10 product, he was dismissed from his employment."
11 That's a personal injury claim outside civil
12 RICO.

13 Respondent argues that every economic
14 loss is its own RICO injury but not to worry
15 because RICO still bars non-pecuniary damages.
16 But that view conflates injury and damages by
17 treating RICO's exclusion of personal injuries
18 as just excluding a narrow type of damages:
19 pain and suffering and emotional distress.

20 Respondent's rule also leaves the
21 personal exclusion toothless since virtually all
22 personal injuries result in monetary loss. It
23 is utterly implausible that Congress federalized
24 every slip and fall involving RICO predicates.
25 Personal injuries are serious and may support

1 state tort -- tort claims, but they are not the
2 stuff of RICO.

3 I welcome questions.

4 JUSTICE THOMAS: What does it mean to
5 be injured, someone to be injured, in his
6 business?

7 MS. BLATT: The Court in -- in the
8 Clayton Act case of Reiter talked about what --
9 injury to business, and it was referring to
10 anytime a commercial enterprise suffers any
11 monetary loss, it would be both a right -- a --
12 a injury to both business and property, a right
13 to carry on business.

14 Now the lower courts pre-RICO under
15 the Clayton Act have also recognized that an
16 employee has a business kind of a right to carry
17 on in his employment, and we haven't contested
18 that. So, in those cases, if you conspired to
19 prevent -- in those cases, they involved
20 encyclopedic salesmen, deprived those people of
21 their right to carry on their profession as a
22 salesman, the -- the lower courts recognized
23 that that was an injury to business. So it's a
24 right to carry on, you know, a profession or
25 your commercial enterprise.

1 JUSTICE THOMAS: Can loss of
2 employment ever constitute a injury in business?

3 MS. BLATT: Well, it's -- it certainly
4 does in the Clayton Act. And the example I
5 could think of, the only example that readily
6 comes to mind, in RICO would be the human
7 trafficking cases, where a person is forced to
8 work against their will, and the -- there's an
9 injury in your right to get, you know, the --
10 the payment for your performed work. So that
11 would be an injury, a direct injury, to one's
12 business. And that human trafficking -- it's
13 hard to see how it would otherwise come up
14 unless you defrauded someone into quitting their
15 job, but, generally, lost wages are pretty
16 standard, prototypical damages from personal
17 injury.

18 JUSTICE SOTOMAYOR: Ms. Blatt, you're
19 raising an example that leads me to think that
20 what you're really arguing about is proximate
21 cause, meaning -- and not really whether
22 personal injury is recoverable or not. It is
23 under, by your own admission, certain
24 circumstances. And, in your brief, you list a
25 bunch of examples that seem to me quintessential

1 personal injuries, but you related them to the
2 business loss and then said those were
3 recoverable.

4 MS. BLATT: So personal --

5 JUSTICE SOTOMAYOR: So it doesn't make
6 any sense to me to say a mob can threaten a
7 store owner to take over his business and, if he
8 doesn't, injure him and he can't recover, but if
9 they put a bomb in the place and close it down,
10 they close it down by hitting him or shooting
11 him but then throw a bomb, he can recover for
12 the bomb but not for the injury to himself.

13 MS. BLATT: So no one in -- under this
14 statute can ever recover for personal injuries,
15 full stop, never ever. If there's an
16 independent infringement --

17 JUSTICE SOTOMAYOR: But why? Isn't --

18 MS. BLATT: -- of the right to
19 property --

20 JUSTICE SOTOMAYOR: -- isn't that an
21 issue or shouldn't it be an issue of proximate
22 cause, which wasn't reached in this case,
23 correct?

24 MS. BLATT: So, no, and here's why,
25 because a lot of examples, the plaintiff will

1 meet a direct and proximate cause, and I can
2 start to give you a million, but they would
3 still be damages resulting from personal injury.

4 Take your -- a shooting where someone
5 is shot and suffers medical expenses and can't
6 work. Direct injury, sure, the lost wages and
7 medical expenses, but, still, it's damages
8 resulting from personal injury, so a proximate
9 cause --

10 JUSTICE SOTOMAYOR: But, no, there's a
11 whole lot more to RICO than simply damages.
12 There's also the predicate that you have to have
13 a racketeering --

14 MS. BLATT: For sure.

15 JUSTICE SOTOMAYOR: -- enterprise.
16 You have to have willful intent. In product
17 liability cases, most of those are negligence or
18 strict liability, so you're not going to have
19 willfulness or intent.

20 And, similarly, you have to show
21 proximate causation, reasonably foreseeable.
22 There's a serious question as to whether you
23 shoot someone not related to the enterprise and
24 you cause damage, but another predicate act
25 occurs that you're going to recover.

1 MS. BLATT: So, in your normal case of
2 any personal injury, you read a -- misread -- a
3 label's confuse -- misleading, you're injured,
4 you are -- can't work, you have lost -- lost --

5 JUSTICE SOTOMAYOR: You're still not
6 --

7 MS. BLATT: That's --

8 JUSTICE SOTOMAYOR: -- you're still
9 not answering my --

10 MS. BLATT: Well, I guess what -- so
11 two things. You can always have causation, but
12 there's still an independent requirement that
13 you must be injured in your business or
14 property.

15 JUSTICE SOTOMAYOR: There has to be
16 proximate causation --

17 MS. BLATT: Yes. And there's --

18 JUSTICE SOTOMAYOR: -- which is very
19 different.

20 MS. BLATT: -- plenty of proximate,
21 direct, absolute causation, no ands, ifs, or
22 buts, but it's still just a personal injury
23 action that's outside the scope of RICO.

24 JUSTICE JACKSON: But, Ms. --

25 JUSTICE KAGAN: But you --

1 JUSTICE JACKSON: Oh, go ahead. Go
2 ahead.

3 JUSTICE KAGAN: You started by talking
4 to Justice Thomas about what it means to be
5 injured in your business or property. Now there
6 might be a set of questions there that this
7 Court has not addressed, lower courts have, but
8 you said lower courts have said that to -- to
9 lose a job is to be injured in your business or
10 property.

11 MS. BLATT: No. Sorry. To lose a job
12 can be both damages or an injury. It depends on
13 the nature of the cause of action.

14 So you always generally, with every
15 personal injury, can have permanent job loss.
16 You can have lost wages. Those are damages.

17 JUSTICE KAGAN: Well, it's also --

18 MS. BLATT: It is a very rare case --

19 JUSTICE KAGAN: -- it's also a loss
20 when -- you know, it's a -- it's a harm when I
21 lose a job. You know, I've been harmed. I lost
22 my job. And --

23 MS. BLATT: When you pay medical
24 expenses, you're harmed as well.

25 JUSTICE KAGAN: If you're harmed when

1 you lose a job, then you've been injured in your
2 business, haven't you?

3 I mean, just as -- I -- I guess what
4 I'm saying is the simplest, clearest reading of
5 this statutory language is it doesn't -- it
6 doesn't distinguish by what causes the harm. It
7 just says, if you're harmed in a way that's in
8 your business or property, which has been
9 understood to include being harmed by loss of a
10 job, and that's by reason of a violation of
11 Section 1962, then you're entitled to threefold
12 the damages you would otherwise be --

13 MS. BLATT: And the problem with that
14 is it's reading the statute just like the
15 Federal Tort Claims Act, the Antiterrorism Act,
16 to say any person injured in his person can
17 recover threefold the damages. And the --

18 JUSTICE KAGAN: Well, it's not reading
19 the statute the same way as injured in his
20 person because, if -- if all I come in and say
21 is, you know, I suffered emotional distress or I
22 suffered pain and suffering, I would not be
23 entitled to damage -- to threefold damages.

24 MS. BLATT: So that's an
25 infinitesimal, small number of cases that would

1 be excluded.

2 JUSTICE KAGAN: It might be an
3 infinitesimal, small number of cases. I'm just
4 trying to figure out -- like, that's the most
5 normal, natural reading of the statutory
6 language. If you've been -- it doesn't say what
7 you've been injured by. I mean, you have to be
8 injured by the RICO violation. But it doesn't
9 distinguish among different kinds of RICO
10 violations. It just says, if you've been
11 injured by a RICO violation in your business --

12 MS. BLATT: In your business, right.

13 JUSTICE KAGAN: -- which includes your
14 employment, then you're entitled to threefold
15 damages.

16 MS. BLATT: And the only way to give
17 the statute its normal meaning of "damages
18 sustained" is to distinguish between the injury.
19 If the Respondent had hit a tree because he was
20 impaired from THC, that would be a classic
21 personal injury action for lost wages and
22 medical expenses.

23 It sounds like you think maybe the
24 Second Circuit is right. The Second Circuit
25 seemed to think lost wages are always

1 recoverable, but medical expenses never would be
2 because that results from a physical injury.

3 And, of course, property loss, the
4 most fundamental of all property loss is
5 monetary loss.

6 JUSTICE KAGAN: But I -- I think
7 what --

8 MS. BLATT: All personal injury
9 actions result in monetary loss except, I guess,
10 a case where there's just exclusively
11 psychological damage. But every slip and
12 fall --

13 JUSTICE KAGAN: Well, I -- I don't
14 know exactly how your rule works because, if you
15 don't read it that normal, straightforward way,
16 then, you know, you -- you get into all these --
17 you admit in a whole set of hypos that I can do
18 something to you that we would normally classify
19 as a personal injury and you would be entitled
20 to RICO damages.

21 MS. BLATT: No.

22 JUSTICE KAGAN: So, if I hit you and,
23 as a result of that -- this is your car wash
24 operator example -- there's an assault that's
25 usually understood as a personal injury, but, as

1 a result, you decide to do business with the
2 mobster rather than with a legitimate
3 businessman and you say, well, notwithstanding
4 that it was all caused by an assault, which was
5 a personal injury, you are entitled to RICO
6 damages.

7 And I think you could say the same
8 thing here.

9 MS. BLATT: But that's just not our
10 argument.

11 JUSTICE KAGAN: I mean, you could
12 have -- you could have a proximate -- well, I
13 don't know how you get to the answers of your
14 hypotheticals if that's not your argument.

15 MS. BLATT: Sure. Whenever you have a
16 robbery where money is taken or an extortion
17 where money is taken or kidnapping where ransom
18 is taken, there are two independent
19 infringements of your legal right.

20 You have a right to not be hit or
21 assaulted or whatever, you know, kidnapped, and
22 you have a right not to have your money taken.
23 And when money is taken, you get your money back
24 under RICO because that's a monetary independent
25 loss. You cannot recover for physical --

1 JUSTICE KAGAN: Well, money is taken
2 as a result of the assault. The assault
3 happens, and then you say: Okay, I better do
4 business with you.

5 So, I mean, you're --

6 MS. BLATT: But that's why our test --

7 JUSTICE KAGAN: -- it's a -- it's a
8 consequential injury from the assault.

9 MS. BLATT: Let me give you an
10 example. If you take the money and then shove
11 the person down the stairs, you took the money.
12 You may have shoved the person down the stairs
13 to prevent them from getting their money back,
14 but our test doesn't ask which --

15 JUSTICE KAGAN: But that's not your
16 own hypos. Your own hypos are things like
17 there's an assault, there's a kidnapping,
18 there's a murder. All of those things are
19 personal injuries that don't have any particular
20 economic component.

21 As a result of those things, you lose
22 some business opportunities, and -- and you
23 yourself say you get RICO under that -- you get
24 RICO damages under those hypotheticals. So this
25 one --

1 MS. BLATT: You can --

2 JUSTICE KAGAN: -- looks pretty much
3 like that.

4 MS. BLATT: No. You can always get
5 RICO damages for independent property
6 violations. And, here, there is just an allege
7 of a right not to have -- not to be induced to
8 consume THC.

9 Our position is no different than the
10 Clayton Act. It's the exact same rule. This
11 Court, in the Truett versus Chrysler Motor
12 Company case, said: No damages resulting from
13 personal injuries. That is our test.

14 JUSTICE JACKSON: But, Ms. Blatt, can
15 I --

16 JUSTICE BARRETT: Ms. Blatt, can I ask
17 you --

18 JUSTICE JACKSON: Go ahead.

19 JUSTICE BARRETT: Ms. Blatt, can I ask
20 you where you get your definition of "legal
21 injury"? I mean, are you looking at just kind
22 of general tort principles? I guess I'm having
23 a hard time figuring out exactly how you look at
24 it and define it.

25 MS. BLATT: Two -- two -- two places.

1 So, when it says, you know, this RJR Nabisco and
2 also just the statute, you can sue and you can
3 sue for a personal injury, that, to me, conjures
4 up the infringement of a right.

5 And in WesternGeco, when the Court
6 talked about an infringement of the patent
7 right, it called it "the injury."

8 In Yegiazaryan, when it talked about
9 what the injury in that case was when trying to
10 decide if there's a domestic injury, it talked
11 about what the racketeering activity directly
12 did to the plaintiff.

13 And so injury as an infringement of a
14 legal right is a -- I think we cite Ballentine,
15 but that is a standard definition of "injury."

16 JUSTICE BARRETT: Where does the
17 "legal" in the "legal right" come from? Are you
18 looking kind of at general principles? You're
19 just looking at the nature of the harm? Does it
20 help you in terms of property or --

21 MS. BLATT: Oh, I think it's just a
22 question of federal law. I mean, so whether you
23 have an injury to person, property, or business,
24 that's a question of federal law that's informed
25 by general tort principles.

1 JUSTICE BARRETT: So are you looking
2 at, like, the Restatement?

3 MS. BLATT: You could in the Burke
4 case that dealt with whether something was a
5 personal injury on -- sorry, damages on account
6 of personal injury.

7 The Court looked at things like a
8 Dobbs and Restatements, but it was a federal
9 question on whether the damages resulted from
10 the personal injury --

11 JUSTICE JACKSON: Why -- why aren't
12 you looking --

13 MS. BLATT: -- and whether there was a
14 per -- whether -- whether discrimination under
15 Title VII was, in fact, a personal injury or
16 some other kind of injury. The Court looked at
17 a bunch of state law sources, but it was a
18 federal law question.

19 JUSTICE JACKSON: Ms. Blatt, I -- I'm
20 trying to understand the personal injury that
21 you say was alleged or happened in this case.

22 I did not perceive Mr. Horn to be
23 relying on any sort of personal injury
24 allegation with respect to the RICO count. He
25 doesn't say, for example, that he took the THC

1 and that he got ill from it and, as a result of
2 that, he took off from work and then he got
3 fired.

4 He says, instead, just directly, that
5 he -- let me see --

6 MS. BLATT: Well, I think --

7 JUSTICE JACKSON: -- alleges a pattern
8 of mail and wire fraud related to your client's
9 alleged fraud about whether the product took --
10 contained THC. He relied on that, and he got
11 fired as a result.

12 I don't see where personal injury is
13 doing any work in his RICO claim.

14 MS. BLATT: I think you're correct in
15 the complaint that the allegations we're talking
16 about, where he's talking about physical harm,
17 it's talking about either the -- the allegations
18 that are general. But page 21 of our brief goes
19 into great detail of all the other places in his
20 affidavit and in the RICO case statement --

21 JUSTICE JACKSON: Yeah, but those are
22 in other counts. Those are in the personal
23 injury counts. And I think that matters, right?

24 MS. BLATT: No, not in the RICO
25 statement. The RICO statement, by definition,

1 is the RICO claim.

2 JUSTICE JACKSON: No, no, no. What
3 I'm saying is the question presented in this
4 case, that you've presented, is whether economic
5 harms resulting from personal injuries are
6 injuries to business and property.

7 So I'm trying to understand the
8 allegation of personal injury here from which
9 the business harm results.

10 MS. BLATT: Yeah, and I guess --

11 JUSTICE JACKSON: He doesn't say: My
12 injury is resulting from a personal injury. He
13 says: I'm injured because I got fired.

14 MS. BLATT: Well, his entire
15 causation -- and, again, I'm not just quoting
16 from the complaint. His affidavit -- he needs
17 to rely on the consumption or he doesn't have
18 causation. Consumption is personal injury.

19 But this was litigated at the cert
20 stage.

21 JUSTICE JACKSON: But does your test
22 need to rely on the consumption? I mean,
23 suppose there was -- suppose the employer's
24 rule.

25 MS. BLATT: I think that's fair,

1 you're right.

2 JUSTICE JACKSON: So -- but -- but
3 that's why I'm sort of, with Justice Kagan,
4 trying to understand your rule. So --

5 MS. BLATT: I think our rule is, if
6 there's no personal injury, we don't need to be
7 here and have this discussion.

8 JUSTICE JACKSON: No, no, no. What
9 I'm asking you -- let me ask you in a
10 hypothetical.

11 MS. BLATT: Okay.

12 JUSTICE JACKSON: All right? So
13 suppose we have the same basic situation, but
14 the employer's rule is that you can't possess --

15 MS. BLATT: Mm-hmm.

16 JUSTICE JACKSON: -- THC. Can't have
17 it. And he looks at all of the advertising
18 materials. He understands that your product
19 does not have it based on your advertising
20 materials, and so he buys it and he has it in
21 his locker.

22 I think this is an example --

23 MS. BLATT: Yeah.

24 JUSTICE JACKSON: -- that the
25 Respondents came up with.

1 MS. BLATT: Yes.

2 JUSTICE JACKSON: And then he's
3 fired --

4 MS. BLATT: Yes.

5 JUSTICE JACKSON: -- because the --
6 the -- the employer says: You have it. You're
7 not supposed to have it.

8 MS. BLATT: Right.

9 JUSTICE JACKSON: Does he have a RICO
10 claim or not under those circumstances?

11 MS. BLATT: Well, he doesn't have a
12 RICO claim, but it wouldn't be covered by this
13 case because there's no personal injury. It
14 would be no different if he was --

15 JUSTICE JACKSON: No, no, no. You're
16 inserting personal injury. What I'm
17 suggesting --

18 MS. BLATT: Your example doesn't
19 involve a personal injury.

20 Now, at most -- if I can just answer
21 the direct question. If I was that person's
22 lawyer, I would say: You were injured in your
23 business or property for the purchase price.
24 You paid -- purchase price is a classic RICO
25 injury, classic Clayton Act. He's entitled to

1 three times his purchase price.

2 JUSTICE JACKSON: So you're saying he
3 would have a RICO claim in --

4 MS. BLATT: For purchase price.

5 JUSTICE JACKSON: He would -- okay.
6 So --

7 MS. BLATT: But lost wages aren't --
8 he doesn't rely on the law -- he -- and he would
9 fail any kind of causation test if he tried to
10 say: I was fired from the purchase price.

11 He would ultimately fail causation
12 under three of your Supreme Court cases that say
13 there has to be a direct relationship between
14 the conduct that was done to the plaintiff and
15 the lost claim. And there, you had the
16 independent actor of the employer.

17 It would be no different if the
18 employer fired him for being tricked into buying
19 baby powder that, you know, didn't have the
20 requisite -- it might -- he might have an
21 injury, but he just wouldn't have a RICO claim
22 because there would be lack of causation.

23 JUSTICE KAGAN: And -- and isn't that
24 essentially what's wrong with this case too, is
25 what Justice Sotomayor was suggesting?

1 MS. BLATT: It does --

2 JUSTICE KAGAN: I mean, there is a
3 definite causation problem in this case.

4 MS. BLATT: Absolutely.

5 JUSTICE KAGAN: His -- his -- you
6 know, he buys this thing. He ingests this
7 thing.

8 MS. BLATT: And someone else fired
9 him.

10 JUSTICE KAGAN: A different person
11 fires him. This is not a good RICO claim for
12 that reason, but it has nothing to do with the
13 reason that you're giving.

14 MS. BLATT: Oh, no, no, no, no. You
15 can win for more than one reason, Justice Kagan.
16 The Second Circuit held that a --

17 JUSTICE KAGAN: But you're relying on
18 an intuition that your client should win and
19 Ms. Anand should lose. And that intuition may
20 be a very valid one and -- but the -- but the
21 intuition works because there's no proximate
22 cause.

23 MS. BLATT: But all -- with all --

24 JUSTICE KAGAN: The intuition does not
25 work because he hasn't satisfied the business or

1 property requirement because he has. He's been
2 injured in his person or property --

3 MS. BLATT: No, and with all due
4 respect --

5 JUSTICE KAGAN: -- by reason of a RICO
6 violation.

7 MS. BLATT: -- with all due respect,
8 every classic slip-and-fall personal injury
9 case, you could talk about causation clearly,
10 but it would still be the lost wages, you're
11 fired because you either can't work because
12 you're permanently disabled, or your employer
13 fires you because you can no longer see or have
14 an arm.

15 JUSTICE KAGAN: Well, maybe there's --

16 MS. BLATT: You still lose your job,
17 but it's --

18 JUSTICE KAGAN: -- maybe there's also
19 an issue -- I mean, we haven't -- we haven't
20 decided what this "business or property" phrase
21 means. Maybe "business or property" doesn't
22 mean lost wages. But, again, it -- that's a --
23 that's a second reason why you might win but
24 also a reason that has nothing to do with the
25 reason that you're articulating here.

1 MS. BLATT: Just -- Justice Kagan, the
2 Ninth Circuit and the Second Circuit hold, if
3 you have a personal injury, and what the other
4 side reads the statute to say anybody injured in
5 his person, have at it under RICO; just don't
6 assert economic damages.

7 That flips the statute on its head.
8 It doesn't say anything about being injured in
9 your person. And, under their rule, all
10 personal injuries are recoverable under RICO,
11 which is an absurd not just intuitive
12 proposition, but that cannot be within the
13 contemplation --

14 JUSTICE KAVANAUGH: Can I pick up --

15 MS. BLATT: -- of Congress.

16 JUSTICE KAVANAUGH: -- on Justice
17 Barrett's question? Because I think the other
18 side says that injury, just ordinary meaning,
19 means harm.

20 MS. BLATT: Mm-hmm.

21 JUSTICE KAVANAUGH: And you say that's
22 wrong based on an idea that "injury" is a term
23 of art, I think --

24 MS. BLATT: Yes.

25 JUSTICE KAVANAUGH: -- in tort law.

1 Can you elaborate on why injury does not equal
2 harm? Because that's --

3 MS. BLATT: So --

4 JUSTICE KAVANAUGH: -- front and
5 center in their brief.

6 MS. BLATT: -- so I think injury could
7 mean harm just as it means the -- the legal harm
8 that was invaded. So I don't have a problem
9 with the word "harm." But what it doesn't mean
10 is loss in terms of any damage.

11 And they have no meaning or
12 independent distinction between "injury" and
13 "damages sustained." And I think inherent in
14 that distinction between the injury that -- the
15 injury that you sue over is the type of
16 infringement. And you have to have -- look,
17 everyone agrees at least I think since you've
18 said it twice under Clayton Act and RICO that
19 the cause of action excludes personal injuries.

20 So what does that mean? We think it
21 means what it says. It excludes personal
22 injuries. So that means the damages from
23 personal injuries. They say no, no, no, it
24 includes personal injuries and it includes all
25 damages from personal injuries.

1 JUSTICE JACKSON: But why is this a
2 damage from personal injury? That's the part I
3 don't understand. He's not claiming that he got
4 ill because of the product. He's not saying he
5 was personally injured. He didn't even know --

6 MS. BLATT: True.

7 JUSTICE JACKSON: -- that he had
8 ingested THC until the testing and the firing.

9 MS. BLATT: Yeah.

10 JUSTICE JACKSON: Isn't that where his
11 injury comes in?

12 MS. BLATT: I think -- I mean, this
13 was the -- this was what the other side briefed
14 to the Second Circuit and the Second Circuit
15 didn't decide it. But, if I ate poppyseed
16 bagels and failed a drug test, it's a personal
17 injury. If I took a medicine like doxycycline,
18 which is an antibiotic, and I can't be out in
19 the sun and I lose my job as a lifeguard, it's a
20 personal injury claim.

21 JUSTICE JACKSON: But why are you
22 saying that? You can -- I mean, you're just
23 saying that. I'm asking you, you know --

24 MS. BLATT: Why am I saying it?

25 JUSTICE JACKSON: -- there are --

1 there are personal injury claims that derive
2 from a person being harmed by -- by the
3 ingestion of the product, right? They're
4 bodily, physically harmed because they have
5 taken this thing.

6 I don't read this claim to be that
7 kind of injury. He's not saying that the
8 product itself injured him in any way.

9 MS. BLATT: I think it is inconsistent
10 with all of tort law to say a bodily invasion is
11 not a personal injury just because you didn't
12 have to go to the hospital or cough.

13 JUSTICE JACKSON: He voluntarily took
14 the product.

15 MS. BLATT: Well, we all do.

16 JUSTICE JACKSON: He was not invaded.
17 He --

18 MS. BLATT: We all take products that
19 can be mislabeled. We take them and we either
20 get sick or we don't. But we all take products
21 and we claim, yeah, but the label told me I
22 wasn't going to have a side effect --

23 JUSTICE GORSUCH: Ms. Blatt --

24 MS. BLATT: -- and I had the side
25 effect.

1 JUSTICE GORSUCH: -- Ms. Blatt, if I
2 might ask you a different question. You rely
3 heavily on the Clayton Act and -- and the
4 similar language there.

5 I went and looked at the
6 Areeda-Hovenkamp, what they have to say about
7 this.

8 MS. BLATT: Oh, dear.

9 JUSTICE GORSUCH: I know. I know.
10 (Laughter.)

11 MS. BLATT: Okay.

12 JUSTICE GORSUCH: Yeah. "Oh, dear" is
13 right. They say: Reiter thus made plain that
14 the business-or-property requirement is
15 virtually always satisfied provided there's some
16 kind of injury that can properly be
17 characterized as economic.

18 MS. BLATT: Yeah. Well, I don't -- I
19 mean, that's not right.

20 JUSTICE GORSUCH: Okay. So --

21 MS. BLATT: I would go -- no.

22 JUSTICE GORSUCH: -- you just disagree
23 with Areeda --

24 MS. BLATT: Oh, yeah. No, that's
25 definitely wrong.

1 JUSTICE GORSUCH: Okay. Okay. Okay.

2 MS. BLATT: Absolutely. And --

3 JUSTICE GORSUCH: That's all I need to
4 know. Thank you.

5 MS. BLATT: Yeah. No. Wrong, wrong,
6 wrong. And Reiter, I think, I mean, says
7 anytime a commercial enterprise suffers any
8 monetary loss it's going to be a business or
9 injury. But let's -- look, there are Clayton
10 Act cases after Clayton -- any -- any conspiracy
11 to affect drug prices that result in a personal
12 injury would mean treble damages under Clayton
13 Act. That would be a sea change -- a sea change
14 in Clayton Act if you had personal injury
15 recovery for price-fixing.

16 JUSTICE GORSUCH: So even Homer nods,
17 the great Areeda and Hovenkamp treatise wrong?

18 MS. BLATT: No, absolutely.

19 JUSTICE GORSUCH: Okay.

20 MS. BLATT: No, absolutely, because
21 you would -- you would -- that would be, like I
22 said, a sea change under Clayton Act. I mean,
23 it might be a boondoggle for plaintiffs'
24 lawyers, but I think it would freak everyone
25 else out.

1 JUSTICE JACKSON: Ms. Blatt, aren't
2 you estopped from claiming that he has a
3 personal injury here when below you argued or
4 your client argued that he had no personal
5 injury, which is why all the personal injury
6 claims were dismissed?

7 MS. BLATT: Mm-hmm.

8 JUSTICE JACKSON: I don't understand
9 how you can have it both ways.

10 MS. BLATT: Sure. On page 113 of the
11 Pet. App., the district court is recognizing
12 that we argued, and the court said, there's no
13 cognizable injury. But, on pages 49 and 50,
14 which I think is pretty bad for the other side,
15 the court is saying but there's clearly a --
16 this is a classic personal injury claim, which
17 is why he can get lost wages for fraud.

18 JUSTICE JACKSON: I understand. I'm
19 talking about what you argued. Your client
20 argued, to get rid of the personal injury
21 claims, that he had no personal injury; the only
22 thing was economic.

23 MS. BLATT: So -- so --

24 JUSTICE JACKSON: And so now that he's
25 left with the economic, you say no, there is a

1 personal injury and he can't get damages for
2 that.

3 MS. BLATT: Yeah. Sorry. On pages 49
4 and 50, it goes through how we, the defendants,
5 are arguing this is a personal injury claim. So
6 we did argue it was a personal injury claim. We
7 claimed what we're talking about before, there's
8 no cognizable personal injury. It's like saying
9 emotional damage, it's not -- it doesn't count
10 because you didn't have -- it didn't manifest
11 itself in physical. So I don't think we're
12 estopped.

13 If you want to let that, I guess, I
14 don't know, reverse, you'd have to reverse the
15 rule and then decide if we're estopped, but I
16 don't -- I'm not sure how that would work out if
17 that's what you thought.

18 JUSTICE KAVANAUGH: Do you want to
19 respond to their invocation of the liberal
20 construction canon?

21 MS. BLATT: Yes, a couple responses.

22 I mean, liberal construction in light
23 of its remedial purposes, but the one thing all
24 nine of you should agree on, its remedial
25 purposes did not extend to personal injuries.

1 You've already said that twice, in the Clayton
2 Act and in RJR Nabisco. It doesn't extend to
3 remediate personal injury.

4 Second of all, I think it's a
5 tie-breaker. Their -- their serious reading of
6 the statute inserts the word "injured in its
7 person" to read just like the Antiterrorism Act.

8 And, finally, I think it does run up
9 against the constitutional principle of
10 federalism, that their view does cannibalize all
11 of state tort law. Every -- every slip and fall
12 from a mislabel now is a RICO case.

13 So I think, I mean, that should be --
14 the Court -- I mean, one more thing I'll try on
15 that, the Court last cited that clause in 1985.
16 I mean, it hasn't relied on it since and says
17 you shouldn't use it to put RICO in contexts
18 that Congress, you know, didn't want or couldn't
19 have contemplated.

20 And, here, it is just so -- would be
21 so striking to think that RICO remedied personal
22 injuries.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Justice Thomas, anything?

1 Justice Alito?

2 JUSTICE ALITO: Well, you say that
3 under RICO, injury is "the invasion of a legal
4 right." So how would we go about determining
5 whether something is a legal right for this
6 purpose?

7 MS. BLATT: So, first, you look at the
8 complaint. I think property's pretty easy
9 because the Court has already said any monetary
10 loss is a property loss. So, I mean, you could
11 quibble about whether loss of consortium, if
12 state law defines that as a property loss.

13 And then injury is also, I think,
14 pretty easy because that involves the body.

15 JUSTICE ALITO: Well, what authorities
16 would we look at?

17 MS. BLATT: Oh. Look at the
18 complaint. Look at state law general tort
19 principles. Again, that Burke case --

20 JUSTICE ALITO: General tort
21 principles?

22 MS. BLATT: Yeah. What Burke said is
23 -- which I like because it -- I think it works
24 -- is that are the damages -- what are the
25 damages seeking to redress? Are the damages

1 redressing a -- something that happened to the
2 body, are they redressing stolen property, or
3 are they redressing a right to carry on in your
4 business?

5 JUSTICE ALITO: All right. Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor?

8 JUSTICE SOTOMAYOR: Ms. Blatt, you
9 rely a lot on WesternGeco. You mentioned it a
10 few minutes ago.

11 MS. BLATT: Yeah.

12 JUSTICE SOTOMAYOR: But you ignore its
13 language where they differentiate a patent case
14 where the legal right is the right not to be
15 infringed and where you feel the economic loss
16 is different.

17 And we said there that the Patent Act
18 was different from civil RICO because the
19 question in civil RICO is where the plaintiff
20 feels the injury, in other words, where he
21 suffers the economic harm that the damages
22 compensate.

23 So why should we think -- in -- in
24 Sedima, we were very, very clear that RICO
25 doesn't rely on state law -- state tort law

1 concepts. We said that explicitly. What we
2 said was that RICO complicates injuries to have
3 been caused by predicate acts. That's our --

4 MS. BLATT: Yeah.

5 JUSTICE SOTOMAYOR: -- and we
6 explicitly -- explicitly say: Not otherwise an
7 injury cognizable under state tort law.

8 MS. BLATT: But that's even better for
9 me because our position is you shouldn't -- you
10 can't get recovery that's -- that's caused by
11 personal injury, which I think this case is.

12 But, on RJR Nabisco -- sorry, the
13 WesternGeco citing RJR Nabisco, I didn't --

14 JUSTICE SOTOMAYOR: But that goes back
15 to what Justice Jackson and -- and what I tried
16 earlier and Justice Kagan point out: You're
17 trying to say there's a difference between the
18 two. But we've made very clear in WesternGeco
19 there isn't. Injury is where you feel the harm.

20 Now the question is: What's the harm?

21 MS. BLATT: Yegiazaryan said the
22 opposite. Yeah.

23 JUSTICE SOTOMAYOR: And, as Justice
24 Jackson said, the harm is not ingesting the
25 drugs. That's the personal injury. The harm is

1 from being fired. And whether there's a
2 connection between the predicate acts and that
3 harm --

4 MS. BLATT: So --

5 JUSTICE SOTOMAYOR: -- is a question
6 of proximate cause, not a question of personal
7 injury.

8 MS. BLATT: -- Yegiazaryan is the most
9 recent case where you said the injury was -- the
10 inability to collect the California judgment was
11 a domestic injury. You did not say it was the
12 injury where all the effects were felt, which
13 were a million different places --

14 JUSTICE SOTOMAYOR: But that has
15 nothing to do with the language of RICO -- of
16 RICO, which says --

17 MS. BLATT: It was the language of
18 RICO.

19 JUSTICE SOTOMAYOR: -- compensable
20 injuries are the harms caused by predicate acts.
21 And that's what we said in *WesternGeco*.

22 MS. BLATT: Yeah. So --

23 JUSTICE SOTOMAYOR: It's where you
24 feel the harm.

25 MS. BLATT: -- Yegiazaryan quotes that

1 exact same language, and I think it's talk -- it
2 begs the question about what is the harm talking
3 about. Is it the harm that's the legal invasion
4 of the right, or is it the damages at the end of
5 the day?

6 JUSTICE SOTOMAYOR: Thank you,
7 counsel.

8 CHIEF JUSTICE ROBERTS: Justice Kagan?
9 Justice Gorsuch?
10 Justice Kavanaugh?
11 Justice Jackson?

12 JUSTICE JACKSON: Can I just ask you
13 about a hypo? Because I'm still trying to
14 understand your rule.

15 You seem to be suggesting that the
16 mere existence of physical harm renders any
17 business injury not compensable. Is that -- is
18 that the -- do I have the sum total of your --

19 MS. BLATT: No.

20 JUSTICE JACKSON: No? Okay.

21 MS. BLATT: Because you just said --

22 JUSTICE JACKSON: So what is your
23 rule?

24 MS. BLATT: -- you just -- because you
25 just said it's any personal injury renders the

1 damages not recoverable.

2 Obviously, if you have a business
3 injury, a property injury, you can recover
4 damages.

5 JUSTICE JACKSON: Even if you have a
6 physical injury too?

7 MS. BLATT: Absolutely, because that's
8 the example of a robbery. If you are thrown
9 down a flight of stairs and they take your
10 wallet, you have two injuries. You fell down
11 the stairs and you lost your wallet.

12 JUSTICE JACKSON: Okay.

13 MS. BLATT: You've got -- so you have
14 a property injury --

15 JUSTICE JACKSON: Okay.

16 MS. BLATT: -- and a personal injury
17 --

18 JUSTICE JACKSON: And --

19 MS. BLATT: -- two independent
20 invasions.

21 JUSTICE JACKSON: -- and so, here, you
22 say he took the drugs and that was an injury.
23 And he says: I was also fired.

24 Why isn't that two injuries too?

25 MS. BLATT: Because every -- you

1 would -- because -- because that conflates
2 damages. Every personal injury, you could say I
3 slip and fell --

4 JUSTICE JACKSON: But this is --
5 imagine that this is not damages in the
6 following sense, all right? If we have a case
7 in which he takes the drugs --

8 MS. BLATT: Mm-hmm.

9 JUSTICE JACKSON: -- and, as a result
10 of taking the drugs, he has to go to the
11 hospital, and, as a result of being in the
12 hospital, he can't work.

13 MS. BLATT: Mm-hmm.

14 JUSTICE JACKSON: And then he's fired.

15 MS. BLATT: Right.

16 JUSTICE JACKSON: I kind of understand
17 the argument you're making.

18 But, in this situation, he takes the
19 drugs and there is no harm --

20 MS. BLATT: Okay.

21 JUSTICE JACKSON: -- to him from
22 taking the drugs.

23 MS. BLATT: Let me leave you with one
24 more example. He goes to the hospital and he
25 loses his sight and he can't drive anymore, so

1 he gets fired. He still has a loss of
2 employment. It is a damage.

3 JUSTICE JACKSON: I understand. But
4 that's not this case. Nothing happened to him
5 as a result of taking the drugs.

6 Instead, what happened to him, I
7 think -- and this is -- maybe I'm just not
8 understanding.

9 MS. BLATT: Well, he failed a drug
10 test. It changed his -- well, allegedly, it had
11 THC in it. I think it's the same thing as if
12 you took something and had an allergic reaction.
13 It's a physical, chemical, bodily invasion. He
14 didn't want -- he didn't want THC and he took
15 it. It's like taking cocaine. That's a -- to
16 me, that's a physical injury --

17 JUSTICE JACKSON: Thank you.

18 MS. BLATT: -- whether or not you hid
19 something.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Ms. Anand.

23 ORAL ARGUMENT OF EASHA ANAND, ESQ.

24 ON BEHALF OF THE RESPONDENT

25 MS. ANAND: Mr. Chief Justice, and may

1 it please the Court:

2 I want to address two quick points.
3 The first is about the "damages sustained"
4 locution in Section 1964(c). That means
5 compensatory damages. We know that from the
6 rest of the U.S. Code, the syntax of the
7 sentence, and the plain meaning of the word
8 "damages."

9 So rest of the U.S. Code, that
10 locution, "damages sustained," appears some
11 three dozen times in the U.S. Code. It always
12 means compensatory damages. So we point you to
13 the example of 18 U.S.C. 2255, where victims of
14 crime choose between liquidated damages and
15 damages sustained. You can't choose between
16 liquidated damages and harm. Those have to be
17 two measures of compensation.

18 Syntax of the rest of the sentence.
19 The sentence says: Recover the damages
20 sustained. If it meant harm, you would expect
21 it to say "recover for the damages sustained."
22 You recover for harm. You don't recover the
23 harm. But, if it means compensatory damages,
24 that's a perfectly sensible sentence.

25 And, finally, the plain meaning of

1 "damages." Every dictionary will tell you
2 damages is a measure of compensation, including
3 the treatise that Petitioners cite at page 15 of
4 their opening brief.

5 So, absent that textual hook, the
6 other problem with Petitioners' rule is they
7 still have not told you how to distinguish the
8 human trafficking case from this case.

9 Here are some of the things I heard my
10 friend say: Look at the Restatement.

11 Well, we think the relevant
12 Restatement principle is Section 525, the
13 fraudulent misrepresentation tort. That's the
14 only state law tort that survived to trial,
15 right? It's not a product liability claim.
16 It's an economic tort, fraudulent
17 misrepresentation.

18 She said: Look to a legal right.

19 Well, Sedima tells us that the legal
20 right protected by RICO is the right not to be
21 harmed by reason of the predicate acts.

22 She said: Look at whether money was
23 taken.

24 This isn't a forfeiture or a unjust
25 enrichment statute, right? It's not worded that

1 way.

2 She said: Look to directness.

3 As Justice Kagan explained, that's a
4 proximate cause problem. We recognize we have a
5 heavy burden on remand, but that's not the
6 argument before you.

7 And she said: Look at what is trying
8 to be redressed.

9 Here, we're trying to redress the loss
10 of income from being fired.

11 I welcome the Court's questions.

12 JUSTICE THOMAS: Is the loss of income
13 from being fired an injury in business?

14 MS. ANAND: Yes, Your Honor. And I
15 believe my friend on the other side conceded
16 that. She said inability to carry on one's
17 livelihood is an injury to business.

18 JUSTICE THOMAS: And is -- what's the
19 difference between injury and damages?

20 MS. ANAND: So injury is the harm.
21 Damages is how you compensate for that harm.
22 And, again, I think that's a perfectly sensible
23 reading of the statute.

24 JUSTICE THOMAS: So, if the harm is a
25 loss of income, aren't you collapsing or

1 conflating the two?

2 MS. ANAND: So it's true that we use
3 the term "lost wages" as shorthand for both.
4 But, in one case, you are losing your source of
5 income. Lost wages is the measure of
6 compensation you need to make yourself whole.

7 And, again, that "damages" definition,
8 damages is compensation, that's the definition
9 that every legal dictionary or treatise
10 articulates.

11 JUSTICE THOMAS: Okay. So just walk
12 me through factually what is the injury here.

13 MS. ANAND: So the injury here is we
14 were fired. That's the injury to our business.

15 Now, as a measure of compensation for
16 that, the damages we claim are an amount equal
17 to the salary we would have made and the other
18 economic benefits we would have gotten had we
19 remained employed.

20 JUSTICE THOMAS: But Medical Marijuana
21 did not fire you.

22 MS. ANAND: So, again, Your Honor, we
23 accept that on remand we will have to meet the
24 kind of heavy factual burden of showing
25 proximate cause, but that's the home for the

1 problem Your Honor is articulating: how direct
2 is the link between the predicate acts and what
3 happened here.

4 And, in this case, you know, our
5 argument is we acted in reasonable reliance on
6 Medical Marijuana's misrepresentations that the
7 classic, right, Restatement 525, the pecuniary
8 loss occasioned as a result of relying on a
9 fraudulent misrepresentation, is usually
10 actionable.

11 We think we can prove proximate cause,
12 but, again, that's a question for remand, not
13 for this Court.

14 CHIEF JUSTICE ROBERTS: Counsel, I
15 understood the business-or-property limitation
16 as having been intended to be a significant
17 limitation on the reach of RICO.

18 Your friend said that your position
19 would make every slip and fall a RICO violation.

20 Why isn't that the case?

21 MS. ANAND: So two reasons, Your
22 Honor.

23 The first is sort of empirical. We
24 can look at, for instance, the evidence from the
25 Ninth Circuit, which has had this rule for 20

1 years, and, as we explain in our -- in our
2 brief, you have substantially fewer civil RICO
3 complaints than you'd expect.

4 And that's because the "injured in his
5 business or property" requirement is still doing
6 something really important, which is fencing out
7 any claim that the harm I suffered is pain and
8 suffering or emotional distress. Those are the
9 sort of lion's share of recoveries in most of
10 these tort cases, right? This is the reason
11 that plaintiffs' lawyers bring these cases, are
12 for those massive recoveries.

13 The second -- sorry. Does that --
14 CHIEF JUSTICE ROBERTS: No, no, go --
15 go ahead.

16 MS. ANAND: The sort of second point
17 I'll -- I'll make on that front is, you know,
18 RICO has a number of guardrails. In your
19 average slip-and-fall case, you're not going to
20 be able to prove a predicate act, let alone a
21 pattern of predicate acts, let alone a pattern
22 carried on through a racketeering enterprise.

23 CHIEF JUSTICE ROBERTS: Well, but, I
24 mean, those guardrails are addressing different
25 things. I mean, the business-or-property

1 requirement is pretty central to the heart of
2 RICO and what separates it from all these other
3 cases.

4 So I'm not sure it's very responsive
5 to say, oh, don't worry about that basic,
6 fundamental question because there are all these
7 other more subsidiary ones that are going to
8 take care of the problem.

9 MS. ANAND: So I think that's -- I
10 think that's right, that it's still -- it's
11 doing meaningful work because, again, it fences
12 out the sort of pain and suffering, emotional
13 distress, the kind of lion's share of the
14 recoveries.

15 You know, as Justice Gorsuch noted and
16 as lower courts have kind of grappled with, it
17 turns out that Congress maybe wasn't doing quite
18 as much work as it wanted to with this
19 guardrail. We know that from the antitrust
20 context, where it's virtually always satisfied.
21 But, as this Court has said time and --

22 CHIEF JUSTICE ROBERTS: You mean -- by
23 "this guardrail," you mean the
24 business-or-property restriction?

25 MS. ANAND: Yes. As Justice Gorsuch

1 noted, in the antitrust context, it's virtually
2 always satisfied. And what this Court has said
3 time and again, right, that's Sedima, that's
4 Bridge, that's Turkette, Congress may have
5 written the statute too broadly, but that's a
6 problem for Congress to have its say.

7 JUSTICE KAVANAUGH: Do you agree that
8 the statute excludes damages for personal
9 injuries?

10 MS. ANAND: So, yes, I agree that if
11 the injury you suffered is an injury to your
12 body, you can't claim damages for that.

13 JUSTICE KAVANAUGH: And I think what
14 the other side is saying, that the damages for
15 personal injuries are usually including lost
16 wages and medical expenses and that what you're
17 doing, even though you just admitted that the
18 statute excludes damages for personal injuries,
19 is taking lost wages and medical expenses and
20 saying, oh, well, we can get around that
21 limitation that the Chief Justice referred to by
22 characterizing the lost wages or medical
23 expenses as separate injuries to your business
24 or property. That's the concern. I'm curious,
25 your response.

1 MS. ANAND: So I do think lost wages
2 are an injury to business. And my friend on the
3 other side said --

4 JUSTICE KAVANAUGH: But they're also
5 damages for the personal injury --

6 MS. ANAND: So yes --

7 JUSTICE KAVANAUGH: -- in some of
8 these cases.

9 MS. ANAND: So --

10 JUSTICE KAVANAUGH: And the question
11 is whether -- I think the question and the
12 problem here that we have to figure out is, when
13 you characterize them, if they are damages from
14 personal injury, can you just recharacterize
15 them as injury to business or property and get
16 around, as the Chief Justice's point, the
17 limitation that Congress at least thought was
18 important?

19 MS. ANAND: So I think that when
20 Congress wants to exclude something that is
21 intertwined with a personal injury, it knows how
22 to do so, right? It can exclude -- there's lots
23 of statutes, we give examples in our brief,
24 where it says you cannot recover damages on
25 account of a personal injury. That is, if

1 there's a personal injury intertwined with the
2 business injury or in the chain of causation
3 leading up to the business injury, you are out
4 of luck.

5 Congress didn't do that here.
6 Congress just said find an injury to business --
7 and we think being fired is a classic injury to
8 business; you can no longer carry out your
9 livelihood -- and that's all you need to get to
10 --

11 JUSTICE KAVANAUGH: But that would
12 mean, I think you're saying -- okay -- I think
13 you're saying yes, the damages from personal
14 injuries can be characterized as injuries to
15 business or property. Therefore, you can just
16 bring them under RICO. That would mean that
17 every state tort personal injury suit in which
18 you're seeking lost wages or medical expenses
19 can be now brought on -- under RICO and seek
20 treble damages.

21 And I would think the federalism
22 canon, among several others, would kick in there
23 and say, well, that would be a dramatic, really
24 radical shift in how tort suits are -- are
25 brought throughout the United States, and we

1 would expect a clearer indication from Congress.

2 MS. ANAND: Sure, Your Honor. So two
3 responses on that front.

4 The first is I think it's a mistake to
5 think that most state garden-variety torts can
6 form the basis of a RICO claim. There's a
7 reason why most product liability cases are
8 brought in strict liability or negligence.
9 There's a reason why the pattern --

10 JUSTICE KAVANAUGH: There are going to
11 be a lot of false advertising kind of cases,
12 inadequate warning cases that can easily be made
13 into a RICO predicate than can, under your
14 theory, be brought in federal court under RICO
15 for treble damages and then -- you know, you've
16 seen it in the amicus briefs, I'm just raising
17 what's there -- class actions and MDLs, where
18 you have the treble damages. And that's a
19 dramatic -- I'm not saying it's right or wrong,
20 but I think it's a dramatic shift -- and the
21 Ninth Circuit doesn't have exactly the rule
22 you're asking for, so I don't think the Ninth
23 Circuit's actually a good answer to the Chief
24 Justice -- a dramatic shift in how tort suits
25 are prosecuted, which may be good, may not be

1 good. I'm not sure Congress really put that
2 into this statute.

3 MS. ANAND: Sure. So just on the
4 federalism canon point, I'll note that if Your
5 Honor is right that every state false
6 advertising case actually can be actionable as
7 intentional fraud committed through a
8 racketeering enterprise, that means that under
9 criminal RICO -- remember, does not have an
10 injured in its business or property
11 requirement -- those are prosecutable with a
12 20-year sentence. And so, if Congress did not
13 have any federalism concerns with subjecting the
14 garden-variety state tortfeasor to criminal --
15 federal criminal liability, I think it's hard to
16 say the federalism canon kicks in when they're
17 subjected to civil liability.

18 JUSTICE KAVANAUGH: Well, they -- they
19 didn't -- I think the lack of the language in
20 the criminal RICO provision shows that they were
21 more concerned about federalizing the civil RICO
22 side because, there, they did have the
23 limitation, injured in your business or
24 property, not injured in your person.

25 MS. ANAND: So maybe two -- two more

1 responses let me try to -- to Your Honor's
2 hypothetical.

3 The first is the word "injured," if it
4 doesn't mean harm, my friend on the other side
5 haven't -- hasn't told you what else it might
6 mean. And --

7 JUSTICE KAVANAUGH: Well, the
8 Restatement -- I'm sorry to interrupt.

9 MS. ANAND: Oh, please.

10 JUSTICE KAVANAUGH: But your brief
11 starts with injured equals harm.

12 MS. ANAND: Yeah.

13 JUSTICE KAVANAUGH: It's right on page
14 1, like, fifth line, and that's the linchpin of
15 your argument, which I think, as a matter of
16 ordinary meaning, yes, but, as a matter of tort
17 law, the Restatement makes very clear, like
18 Restatement 7 says injury and harm contrasted.

19 MS. ANAND: That's right.

20 JUSTICE KAVANAUGH: They're two --
21 they're two different concepts and have been for
22 years and decades and centuries in tort law.
23 Injury and harm are two very different concepts.

24 MS. ANAND: So that's right, injury
25 can mean invasion of a legal right, but, here,

1 that's trivially true, right? That's the square
2 holding of Sedima. In Sedima, someone tried to
3 come to this Court and say, look, it can't just
4 be an injury meaning you were harmed by the
5 predicate acts. There's got to be some sort of
6 racketeering injury. That's the legal right
7 being invaded. And this Court said, "The
8 compensable injury necessarily is the harm
9 caused by the predicate acts."

10 So we're happy with a definition that
11 says invasion of a legal right, but Sedima tells
12 you what that legal right is, and it is harm
13 caused by the predicate acts. The right that
14 RICO protects is the right not to be harmed by
15 the predicate acts.

16 And so I think whether you say injury
17 just means harm, period, or it means an invasion
18 of a legal right, there's no way on the text of
19 the statute to somehow distinguish between the
20 human trafficking and kidnapping hypotheticals
21 and --

22 JUSTICE KAVANAUGH: Just to close it
23 out, you're okay if we say injury is the
24 invasion of legal right?

25 MS. ANAND: We're -- we are completely

1 okay with that so long as you accept that Sedima
2 tells you what that legal right looks like.

3 JUSTICE GORSUCH: Ms. Anand, just a
4 couple quick questions.

5 First, in your dialogue with Justice
6 Kavanaugh, there was some discussion of lost
7 wages and medical expenses.

8 Do you think medical expenses are
9 recoverable as well as lost wages under business
10 and property?

11 MS. ANAND: So I happen to think yes,
12 and I think that follows from Rotella and
13 Reiter. But we don't particularly have a dog in
14 that fight because that's under the property
15 branch and not the business branch.

16 So I'm happy to explain why I think
17 the answer is yes. Reiter seems to say --

18 JUSTICE GORSUCH: Briefly, but I -- it
19 seems to me you're telling me we don't need to
20 decide that question in this case, is your
21 top-line answer.

22 MS. ANAND: Top-line answer is you
23 don't need to decide that question. The way you
24 know that is the Second Circuit, Pet. App. 18a,
25 Judge Moore's dissent in Jackson, all these

1 jurists who have accepted our rule have reserved
2 the question of medical expenses --

3 JUSTICE GORSUCH: Okay.

4 MS. ANAND: -- as just a separate
5 question.

6 JUSTICE GORSUCH: And would you --
7 would you encourage us to do so here?

8 MS. ANAND: No, I would not urge you
9 to do so.

10 JUSTICE GORSUCH: You encourage us to
11 decide it, of course. Okay. So, briefly, give
12 me your best shot at it.

13 MS. ANAND: So -- okay. So -- so, on
14 the precedent piece, Reiter/Clayton Act context
15 says economic expenditure equals injury.

16 JUSTICE GORSUCH: Okay.

17 MS. ANAND: And Rotella Petitioners
18 seem to accept at Reply Brief page 8, right?
19 This is the case doctors wrongly impose
20 psychiatric confinement and then bill someone
21 for it, and Petitioners seem to accept that that
22 bill counts as a harm to property.

23 JUSTICE GORSUCH: Okay. All right.
24 And the second question: There was an extensive
25 dialogue about the car wash hypothetical and the

1 kidnapping hypothetical, and if I understood
2 Ms. Blatt, her argument, it goes something like
3 this: that there are two injuries, however
4 characterized, whether as a harm or an invasion
5 of a legal right. One is the assault or the
6 kidnapping. The other is the act of extortion.
7 And only the latter is recoverable, and it isn't
8 a causation question so much as the nature of
9 the injury in those two cases.

10 Your best response?

11 MS. ANAND: I think, under that
12 framework, we also have two injuries, right?
13 There's the bodily invasion, the sort of
14 undetected consumption of THC --

15 JUSTICE GORSUCH: No, no, the --

16 MS. ANAND: -- and then the firing.

17 JUSTICE GORSUCH: Deal -- I understand
18 that, but deal with the hypotheticals if you
19 will.

20 MS. ANAND: So I --

21 JUSTICE GORSUCH: You both -- you both
22 go back and forth forever on these
23 hypotheticals, and they're very interesting
24 ones, so --

25 MS. ANAND: Sure. So I -- I agree the

1 car wash owner gets to recover, and I would say
2 that is because the only thing you're looking at
3 in the "injured in his business or property"
4 requirement is, was the person harmed in his
5 business? And the answer is yes.

6 Now there are other parts of the
7 statute that take care of how direct is the
8 connection between the predicate offense and the
9 injury to business. That's the "by reason of"
10 language. That's the proximate cause test.

11 JUSTICE GORSUCH: So the assault, if I
12 understand your answer if I -- see if this is
13 right. I just want to understand it.

14 MS. ANAND: Sure.

15 JUSTICE GORSUCH: That the assault in
16 -- in the car wash hypothetical and the kid --
17 act of kidnapping in the kidnapping hypothetical
18 may or may not be recoverable depending upon
19 whether they're proximately related to the
20 extortion acts in both cases?

21 MS. ANAND: I think that's right. So
22 the -- the only part that's recoverable is the
23 money or business part. And the only --

24 JUSTICE GORSUCH: The extortion.

25 MS. ANAND: Right.

1 JUSTICE GORSUCH: The extortion part
2 that I paid money --

3 MS. ANAND: Or -- or the ransom in the
4 kidnapping hypothetical.

5 JUSTICE GORSUCH: And the ransom.
6 Right.

7 MS. ANAND: And the only question is,
8 are those proximately caused by the RICO
9 predicate of the kidnapping or the extortion?

10 JUSTICE GORSUCH: Thank you.

11 MS. ANAND: And, you know, I think, in
12 those cases, right, the causal connection may be
13 tighter, but, again, right, that's, again,
14 classic proximate cause. Congress connected
15 predicate act with injury to business and
16 property using the phrase "by reason of."

17 JUSTICE GORSUCH: Got it.

18 MS. ANAND: It anticipated some link
19 to the cause.

20 JUSTICE KAVANAUGH: Can I ask one --

21 JUSTICE ALITO: If we --

22 JUSTICE BARRETT: Ms. Anand --

23 CHIEF JUSTICE ROBERTS: Justice Alito?

24 JUSTICE ALITO: If we agree with your
25 reasoning but reserve the question of the

1 coverage of medical expenses, would there, in a
2 later case, be a principled basis for drawing
3 that distinction, or would we be effectively
4 deciding that by agreeing with your reasoning?

5 MS. ANAND: So, again, I think the
6 answer is that those count, but I can tell you
7 what lower courts have sort of said to
8 distinguish those. There's been kind of two
9 explanations.

10 One is that Reiter's "all money counts
11 as property" definition doesn't map on cleanly
12 to civil RICO. And the other is that there's
13 sort of a common law principle that mitigation
14 measures don't count. And so, if you're trying
15 to mitigate your pain and suffering through
16 medical expenses, that wouldn't count.

17 Now, again, I'm not -- we have no dog
18 in that fight. I don't know whether those are
19 right or wrong. And, again, I think Rotella
20 kind of already crosses that bridge, but I think
21 you can reserve the question here.

22 JUSTICE ALITO: One other question.
23 There's been talk about proximate cause. I
24 assume you believe on remand you can show that
25 the injury here, the lost wages, were

1 proximately caused. Could you explain why?

2 MS. ANAND: Sure, Your Honor. So I
3 think our -- the two best points for us.

4 The first is how the Restatement
5 provision talks about fraudulent
6 misrepresentation, and it says: Any pecuniary
7 loss occasioned by reasonable reliance on the
8 misrepresentation is usually recoverable.

9 And so we think, here, that's exactly
10 what happened. In reasonable reliance on
11 Petitioners' misrepresentation, we took this
12 drug. The foreseeable consequence is that we
13 got fired.

14 The second is a sort of factual point.
15 Remember, it's not just about general
16 misrepresentations on YouTube and on the
17 website. Ms. Harp-Horn called Customer Service,
18 says: I'm a trucker. Can you promise me this
19 doesn't have THC? And they say: Yes.

20 Now, again, we know we're going to
21 have a heavy burden on remand. This Court's
22 cases have said that proximate cause is not just
23 a common law concept, but you layer on top of
24 that specific civil RICO directness
25 requirements.

1 JUSTICE ALITO: Is this a jury
2 question?

3 MS. ANAND: The question of proximate
4 cause? We think there are factual issues
5 embedded in the proximate cause question.

6 JUSTICE ALITO: What percentage of --

7 MS. ANAND: But, again -- apologies.

8 JUSTICE ALITO: What percentage of
9 RICO cases go to trial?

10 MS. ANAND: I don't know the answer to
11 that off the top of my head, Justice Alito.

12 I will say that on this point,
13 Petitioners' proximate cause arguments at
14 summary judgment related primarily to
15 Ms. Harp-Horn and not to Mr. Horn.

16 So, in other words, had they made the
17 argument that Justice Kagan articulated, we
18 don't know how the district court would have
19 ruled. They did not make that argument.

20 JUSTICE ALITO: Thank you.

21 JUSTICE BARRETT: Ms. Anand, it seems
22 to me -- and -- and, you know, I just would like
23 to get your take on this -- that Medical
24 Marijuana has litigated this case differently
25 than it was framed below and differently than

1 the circuits that are on its side of the split
2 in this definition of "injury." You know, the
3 Second Circuit said: Well, if personal injury
4 is the derivative of the property damage, it
5 doesn't count.

6 As you said and as Justice Kagan said
7 when she was going back and forth with
8 Ms. Blatt, proximate cause seems a natural home
9 for this.

10 I mean, what do you think? I mean,
11 can you point to developed ideas in the courts
12 of appeals about how to define this injury?
13 This idea of looking to a federal definition of
14 it, looking to Restatements, I mean, in your
15 view, are there circuits that are actually doing
16 that?

17 MS. ANAND: So I don't think so, Your
18 Honor, and I think you can see that in the
19 question presented, which asks: When economic
20 harm results from a personal injury, is it
21 actionable? Right?

22 So the -- the question presented seems
23 to contemplate this sort of chain-of-causation
24 test, which, as we're sort of talking about, I
25 think proximate cause and not some sort of

1 per se rule about what the links are should
2 count.

3 I don't see that there's a body of
4 case law doing something different in the -- in
5 the -- in the lower courts.

6 JUSTICE BARRETT: So, in your view,
7 Medical Marijuana's theory of the case is kind
8 of novel?

9 MS. ANAND: I think Medical
10 Marijuana's theory of the case is novel,
11 although I guess I -- I would say again I'm not
12 sure I understand it. That is, I'm not sure I
13 understand where they're asking you to look to
14 find the legal right.

15 It's not civil RICO because Sedima
16 tells us we can't do that. I don't think it's
17 state tort law because it would be a little bit
18 strange to have a list of predicates that
19 includes trafficking in nuclear weapons and
20 counterfeit phonograph records and say, look at
21 the Restatement.

22 And if you look at the Restatement in
23 this case, the only state tort law claim that's
24 still live in our case, fraudulent
25 misrepresentation, looks economic and not

1 personal.

2 So I'm not positive what their test
3 is, but I agree that it is not something that
4 we've seen in the lower courts.

5 JUSTICE BARRETT: I share your
6 confusion.

7 JUSTICE JACKSON: Ms. Anand, did your
8 client suffer a personal injury that caused his
9 firing and lost wages?

10 MS. ANAND: So we think that he did
11 not suffer any harm to his person. And we are
12 not here challenging the district court's ruling
13 that we cannot even bring a products liability
14 claim because we did not suffer harm.

15 Does that answer your question? So,
16 in other words --

17 JUSTICE JACKSON: Yeah, I mean, I
18 think so. I guess I'm -- I'm still struggling
19 with the question presented in this case --

20 MS. ANAND: Yeah.

21 JUSTICE JACKSON: -- which assumes
22 that sort of connection, that there's a personal
23 injury from which economic damages result.

24 And I don't see a personal injury, and
25 maybe I'm just looking it in a peculiar way.

1 MS. ANAND: Well, so we -- we
2 vociferously argued at the brief-in-opposition
3 stage that this is an improper vehicle to grant
4 cert because we did not think there was a
5 personal injury here. Or, at the very least,
6 the personal injury here is so strange, right,
7 the personal injury that only gets discovered
8 after the economic injury, that it would be a
9 strange case to connect those overall.

10 JUSTICE JACKSON: And, in fact, below,
11 they argued there was no personal injury --

12 MS. ANAND: That's right.

13 JUSTICE JACKSON: -- in seeking to
14 dismiss all of the personal injury claims,
15 correct?

16 MS. ANAND: That's exactly right. And
17 none of those claims are proceeding to trial.
18 So they successfully argued for dismissal of
19 those claims.

20 JUSTICE GORSUCH: Well, why wouldn't
21 there be a personal injury, though? Just --
22 you -- there's a failure to warn that this
23 product contains ingredients that your --
24 your -- your client didn't know about and should
25 have known about and had a right to know about.

1 I would have thought that that would
2 have been kind of a classic personal injury.

3 MS. ANAND: So two responses, Your
4 Honor.

5 The first is --

6 JUSTICE GORSUCH: I mean, perhaps --
7 perhaps that's what you argued below. I don't
8 know.

9 MS. ANAND: That is what -- so I was
10 going to say the strange thing about how this
11 case comes to you, right, is --

12 JUSTICE GORSUCH: No, I understand.
13 But this is -- this -- that was your theory
14 below?

15 MS. ANAND: That -- that was our
16 theory below --

17 JUSTICE GORSUCH: Yeah.

18 MS. ANAND: -- that we should be able
19 to bring a state law products liability claim.
20 Opposing counsel said: No, you can't. District
21 court sided with them.

22 JUSTICE GORSUCH: Got it. Got it.
23 Thank you.

24 MS. ANAND: It's what the -- the only
25 other thing I'll say is, kind of going back to

1 the hypothetical earlier, we just don't think
2 that ingestion is particularly critical to our
3 case. In other words, we would bring exactly
4 the same case, we would allege exactly the same
5 predicate acts, the same measure of
6 compensation, the same sort of theory of harm,
7 if the Medical -- if Medical Marijuana's product
8 had been found in a locker and we'd been fired
9 as a result.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 A big part of your answer in your
13 dialogue with Justice Scalia to why this -- why
14 we shouldn't worry about the expansion of RICO
15 that your -- your friend suggests might follow
16 is that you have to show proximate cause.

17 And I -- I don't quite remember your
18 formulation. I'm sure it was carefully guarded.
19 But you -- you -- you suggested that that was
20 going to be hard to do, right?

21 Tell me again why that is.

22 MS. ANAND: So -- so I said we would
23 have a heavy factual burden to carry on remand.

24 CHIEF JUSTICE ROBERTS: That sounds
25 hard.

1 MS. ANAND: But I think that if we can
2 prove that, in fact, you know, there was
3 reasonable reliance on this misrepresentation
4 and, more specifically, that Ms. Harp-Horn
5 called Customer Service, said, you know, I'm a
6 trucker, promise me this does have zero percent
7 THC, I think that satisfies proximate cause even
8 under this Court's more restrictive test. But
9 we accept we're going to have to prove those
10 things up.

11 CHIEF JUSTICE ROBERTS: Well, what's
12 so hard about that? In other words, if you're
13 concerned about the reach of your argument and
14 your answer is, don't worry, we have to show
15 proximate cause, that seems like a pretty normal
16 proximate cause argument.

17 MS. ANAND: So -- so apologies. My
18 answer isn't just proximate cause. It's also
19 you have to show RICO predicates, right? Most
20 products liability are --

21 CHIEF JUSTICE ROBERTS: Yeah, fraud,
22 mail fraud.

23 MS. ANAND: -- strict liability,
24 right?

25 CHIEF JUSTICE ROBERTS: Right.

1 MS. ANAND: But, again, that's
2 intentional. And there's a reason why most
3 people bring product liability claims under
4 strict liability or negligence. You're also
5 going to have to prove a pattern, right,
6 continuity and relatedness. You have to prove
7 the enterprise requirement.

8 And I think, most importantly, again,
9 the mine-run of cases, the big chunk of recovery
10 is pain and suffering or economic distress, and
11 you cannot get those in -- under civil RICO,
12 right? Those are not injuries to business or
13 property.

14 And I think that the --

15 CHIEF JUSTICE ROBERTS: Well, again,
16 you're talking about these other guardrails, not
17 to worry about the fact that you're diluting the
18 business-or-property requirement.

19 MS. ANAND: So I -- I disagree that
20 we're diluting the business-or-property
21 requirement. We think that lost employment is a
22 classic business injury.

23 Now the relationship between the lost
24 employment and the predicate acts, you know,
25 Congress put "by reason of" in there. It didn't

1 put a more stringent test. It didn't say, you
2 know, in the course of the predicate act you
3 have to injure a business or property. It
4 didn't -- you know, it didn't have a motive or a
5 targeting requirement.

6 And we think that the plain import of
7 that, as this Court has held in Holmes and from
8 there on, is, if you have a predicate act, you
9 have a loss of livelihood, and the -- the work
10 to do is to connect those with the proximate
11 cause requirement.

12 CHIEF JUSTICE ROBERTS: Thank you.

13 Justice Thomas?

14 Justice Alito?

15 JUSTICE ALITO: Well, just out of
16 curiosity, why do you think you're going to face
17 a heavy burden on remand to show foreseeability?
18 Wouldn't you argue that a company that
19 advertises its product as being completely free
20 of THC, not just that it has only such an
21 infinitesimal amount that it's not going to get
22 people high, but it is completely free of THC,
23 is appealing to a category of potential
24 customers who, for some reason, want to make
25 sure that they don't ingest even a tiny, tiny

1 amount of -- of THC?

2 And when someone who purchases the
3 product then suffers the consequences of having
4 a very small amount of THC in that person's
5 system, that is an entirely foreseeable result?

6 MS. ANAND: So I agree, Justice Alito.

7 JUSTICE ALITO: Yeah.

8 MS. ANAND: I was just responding to
9 Justice Kagan's point that, in many cases, the
10 intervening act of a third party does cut off
11 the chain of custody --

12 JUSTICE ALITO: Yeah, I know.

13 MS. ANAND: -- but for exactly the
14 reason --

15 JUSTICE ALITO: You're -- you're
16 trying to tell us that the proximate -- among
17 other things, you have other arguments, but the
18 proximate cause requirement is going to do some
19 of the work that some of us might fear will be
20 needed if we agree with your interpretation of
21 "injury to business or property." I get it.
22 But I'm not sure why they're -- why your case is
23 a -- is a good example of that.

24 MS. ANAND: Sure. I think that's
25 right. I was responding only to Justice Kagan's

1 concern about the third-party actor, but, you
2 know, we agree, we think we're going to meet the
3 proximate cause test.

4 I just want to say so my bottom-line
5 position here is defendants have come to this
6 Court for decades and said the sky is going to
7 fall if you interpret RICO the way its text
8 literally says it should be interpreted. The
9 sky hasn't fallen. This Court has, time after
10 time, including unanimously in *Bridge*, said, you
11 know, Congress probably wrote a statute that's a
12 little too broad in some ways, but here we are.

13 And it should stay the course here.
14 That's my fundamental position.

15 JUSTICE ALITO: Well, I think you're
16 -- are you overstating your argument? If we
17 look back at everything that the Court has done
18 in civil RICO cases, I -- I certainly don't
19 think the Court has consistently applied the --
20 the liberal construction policy or just relied
21 on the plain language of the statute.

22 RICO is a -- RICO is a tough thing to
23 deal with.

24 MS. ANAND: I think that's right, but
25 I think that's because of things in the statute,

1 like the enterprise requirement, right? It's
2 not just someone commits a predicate act; they
3 have to use an enterprise to do it or fund an
4 enterprise through doing so. It's because the
5 predicate acts often require sort of higher
6 degrees of proof. There's lots of reasons in
7 the text why RICO --

8 JUSTICE ALITO: All right.

9 MS. ANAND: -- is challenging.

10 JUSTICE ALITO: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Sotomayor?

13 Justice Kagan?

14 Justice Kavanaugh?

15 JUSTICE KAVANAUGH: A couple
16 questions. The -- the larger issue afoot from
17 the amicus briefs, of course, is the class
18 action MDL, that state tort suits are going to
19 be converted into civil RICO because you can get
20 treble damages, and this is going to be a bit of
21 a change.

22 On that, one thing you've stressed is
23 proximate cause. When -- of course, in those
24 types of suits -- and you can respond whether
25 you think that's correct or not, that factual

1 prediction. But, in those kinds of suits, of
2 course, getting past the motion to dismiss,
3 getting past summary judgment is the key. When
4 would proximate cause be resolved?

5 MS. ANAND: So I think some of those
6 can be resolved early on, right? In most cases,
7 it's not going to be the case that firing is the
8 obvious consequence of whatever mislabeling
9 happened, right? And so I think fairly early on
10 --

11 JUSTICE KAVANAUGH: But you're saying
12 in this case --

13 MS. ANAND: Well, because of what
14 Justice Alito explained, right? The only reason
15 to market this as having zero percent THC, right
16 -- there are a couple reasons you might market
17 it. You can say no psychoactive effect for the
18 person who's worried about that, but the
19 emphasis on zero percent THC, that's for someone
20 who's either worried about their employer or
21 about federal law. Like, the particular
22 misrepresentation here is intimately tethered to
23 the business harm that occurred, right?

24 And that won't be the case in every
25 kind of, you know, average -- or product

1 mislabeling case.

2 JUSTICE KAVANAUGH: What about the
3 factual prediction? Do you want to say anything
4 about that? Because the amicus briefs really
5 are quite aggressive on that. And you could say
6 yes, but that's good, or you can say no, that's
7 not going to happen. And, if it's the latter,
8 I'd like to hear why.

9 MS. ANAND: Right. So I think we have
10 two data points for why this is unlikely to
11 happen. The first is sort of the Ninth Circuit,
12 as I explained. The second is, right, there are
13 lots of product liability cases -- think the
14 washing machine that floods your home, right --
15 where there's no personal injury anywhere in the
16 ambit, right? It's all property damage.

17 You see those cases. You see lots of
18 those cases in state court. You don't see them
19 being brought as civil RICO. That's not because
20 of Petitioners' rule. Petitioners' rule has
21 nothing to do with the oven that burns the house
22 or the washing machine that floods the basement.
23 That's all the other aspects of RICO are keeping
24 that case out.

25 So I think, you know, those are the

1 two data points I can give you. You know, the
2 -- and just the other thing I would say is I do
3 think that the other guardrails do some work in
4 fencing out those cases. I think that's why you
5 don't see those cases being brought.

6 And, again, as a kind of incentive
7 matter, ruling out all pain and suffering and
8 emotional distress means it isn't proper.

9 JUSTICE KAVANAUGH: Well, you've said
10 that umpteen times, which I -- and I understand
11 why you've said it.

12 MS. ANAND: Yes.

13 JUSTICE KAVANAUGH: But lost wages and
14 medical expenses are a huge part of personal
15 injury tort suits, the damages.

16 MS. ANAND: I think we -- I think
17 that's right. My friend on the other side and I
18 disagree on exactly what -- what fraction, but,
19 you know, the Chamber of Commerce study that we
20 cite in our brief says the lion's share of the
21 recovery are these sort of non-pecuniary
22 intangible harms.

23 And I think that's correct, right?
24 Medical expenses, you may see insurance
25 companies bringing these suits, although I

1 think, under Petitioners' theory, insurance
2 companies can still sue for medical expenses, is
3 I think what they told you in the brief. But,
4 in the sort of average case, the big incentives,
5 I think that's why you're not seeing -- I don't
6 know the reason you're not seeing these cases in
7 the Ninth Circuit or in the products liability
8 that don't result in bodily injury contexts, but
9 you're not. And I think that should give you
10 some solace.

11 My fallback position is just Congress
12 wrote this statute to just ask about an injury
13 to business or property. That may have been
14 profoundly unwise. It may have been profoundly
15 unwise to use mail and wire fraud as predicate
16 offenses.

17 JUSTICE KAVANAUGH: And the federalism
18 canon doesn't kick in at all you said. I just
19 want to make I had that answer nailed down.

20 MS. ANAND: I don't think the
21 federalism canon kicks in because Petitioners
22 have not been able to give you any definition
23 that's tenable on the plain text of the statute,
24 which is where the canon would kick in as a tie
25 break, if at all.

1 JUSTICE KAVANAUGH: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice
3 Barrett?

4 JUSTICE BARRETT: No.

5 CHIEF JUSTICE ROBERTS: Justice
6 Jackson?

7 JUSTICE JACKSON: And I just wanted to
8 let you finish the discussion of whether or not
9 this statute is overly broad. I mean, it gives
10 me some solace that we have actual text from
11 Congress directing courts to liberally construe
12 the provisions of RICO to effectuate its
13 purposes. So it seems as though Congress
14 contemplated that this was going to have a
15 pretty broad sweep and that we should allow it
16 to do that.

17 MS. ANAND: I think that's right.
18 It's very rare Congress writes a liberal
19 construction canon into the text of the statute.
20 And I think that the ill that Congress was
21 targeting is one that's sort of hard to pin down
22 and define, right?

23 We've talked a little bit about the
24 wire and mail fraud predicates, which I think
25 are -- I think sort of what is causing this

1 Court some heartburn is the fact that mail and
2 wire fraud are among the predicate offenses, and
3 those seem to map onto a lot of state tort law
4 claims but that the --

5 JUSTICE JACKSON: And it seems as
6 though some of the concern is, you know, are we
7 expanding beyond what the text says here and
8 would it be a sea change that actually brings in
9 a lot of things that weren't intended to be
10 covered, or is Ms. Blatt asking us to narrow
11 down what the text says and make business and --
12 or property, you know, narrower?

13 I kind of see it as the latter, but
14 can you just speak to that as the final word
15 here?

16 MS. ANAND: So I agree it would be the
17 latter. "Injury to business or property" means
18 injury to business or property, whether that's
19 harm or legal harm. It just means that you are
20 harmed in your ability to earn a livelihood.

21 Now, again, I think that Congress used
22 that language and used the liberal construction
23 provision and put things like mail and wire
24 fraud in the predicate -- in the list of
25 predicate offenses because they wanted the

1 statute to sweep quite broadly. And I think
2 that this Court should just enforce the text as
3 it was written.

4 JUSTICE JACKSON: Thank you.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Rebuttal, Ms. Blatt?

8 REBUTTAL ARGUMENT OF LISA S. BLATT
9 ON BEHALF OF THE PETITIONERS

10 MS. BLATT: Thank you, and may it
11 please the Court:

12 Let's just start with the text. I
13 don't think there's a response to the fact that
14 the other side is reading this as any person
15 injured in his person, business, or property can
16 recover three times the economic damages. So
17 they're adding the word "injury," a personal
18 injury, to the injury requirement, and they're
19 adding the economic restriction to the damages.
20 It completely flips this statute on its head.
21 And this is the way the Clayton Act has been
22 read since eternity, that personal injuries are
23 not recoverable.

24 On the consequences, we cite, I think
25 on page 27, this case, Hopp. It involves a

1 boxer. And that's a case where the district
2 court just ignored the Ninth Circuit, and that's
3 why there's not consequences, is because
4 district courts aren't crazy, and when they see
5 a personal injury action, they're just not
6 citing Diaz and they're preventing personal
7 injury cases from going forward.

8 The Ninth Circuit also has some
9 language that says lost wages may not be
10 recoverable. So it's a little bit quirky.

11 In terms of the lion's share, that
12 mega-study is just dealing with gargantuan
13 mega-hits. It doesn't matter if pain and
14 suffering is 60 percent or 20 percent;
15 99.99999 percent of all personal injury cases
16 come in under their rule. All they're doing is
17 excluding a narrow type of damages. So any
18 personal injury comes in as long as there's an
19 economic damage.

20 In terms of proximate cause, proximate
21 cause, we think there is no proximate cause, but
22 that's not the problem. You have a case before
23 you that will be a legal rule where there is
24 proximate cause in all personal injury actions
25 resulting in medical expenses and lost wages.

1 There's direct cause. You don't even need
2 proximate cause. It's but proximate, direct,
3 what have you. Yet only our rule will exclude
4 it. There will be proximate cause when you have
5 a slip and fall and lose your job, either lose
6 wages or you can't work because you lose your
7 ability to use your hands or eyesight.

8 In terms of the other thing about, oh,
9 RICO's a big deal, on 107, 108, and 76, 77a, two
10 sales were the RICO predicate act and three ads.
11 That's what it took to state a mail and wire
12 fraud: two sales in a 10-year period. That is
13 not that complicated.

14 Justice Barrett, in terms of the
15 shifting position, I do think we came up with
16 WesternGeco at the merits stage, but both the
17 Sixth, Seventh, and the Eleventh Circuit do talk
18 about damages in recovery for personal injury.
19 So I think we refined it here, but we certainly
20 got it from those cases. The district court
21 itself held this is a personal injury action and
22 there's lost wages damages.

23 The other thing I will say is we took
24 your language from that Chrysler Motor case that
25 said damages resulting from personal injury, so

1 we stole it straight from your language because
2 we figured we can't go wrong if we just stick
3 with the Clayton Act rule.

4 In terms of medical expenses, I'm
5 sorry, I don't see how you can carve out medical
6 expenses. That's the biggest loss of property
7 to say that what the -- the court below did, it
8 just said, well, personal injury damages would
9 be excluded, but lost wages will be recoverable
10 because that's an injury to business.

11 Well, all lost wages could be
12 categorized as injury to business when they're
13 just damages. To be sure, you can have a lost
14 property damage or a lost property injury. You
15 can have damages or injury to both. It just
16 depends on what the nature of the cause of
17 action is.

18 And I think that's it. Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel. The case is submitted.

21 (Whereupon, at 11:14 a.m., the case
22 was submitted.)

23
24
25

Official - Subject to Final Review

<p>1</p> <p>1 [1] 55:14 10-year [1] 85:12 10:06 [2] 1:15 3:2 107 [1] 85:9 108 [1] 85:9 11:14 [1] 86:21 113 [1] 32:10 15 [2] 1:11 44:3 18 [1] 43:13 18a [1] 57:24 1962 [1] 11:11 1964(c) [1] 43:4 1985 [1] 34:15</p>	<p>30:3 31:10,13,14,22 34:2,7 36:17 48:20 58:14 59:6 60: 17 61:15 73:2,8 74:10 76: 2 83:21 85:10 86:3 acted [1] 47:5 action [9] 3:15 9:23 10:13 12:21 27:19 76:18 84:5 85: 21 86:17 actionable [3] 47:10 54:6 65:21 actions [3] 13:9 53:17 84: 24 activity [1] 17:11 actor [2] 23:16 75:1 acts [14] 37:3 38:2,20 44: 21 47:2 48:21 56:5,9,13,15 60:20 70:5 72:24 76:5 actual [1] 81:10 actually [4] 53:23 54:6 65: 15 82:8 adding [2] 83:17,19 address [1] 43:2 addressed [1] 10:7 addressing [1] 48:24 admission [1] 6:23 admit [1] 13:17 admitted [1] 50:17 ads [1] 85:10 advertises [1] 73:19 advertising [4] 21:17,19 53:11 54:6 affect [1] 31:11 affidavit [2] 19:20 20:16 afoot [1] 76:16 aggressive [1] 78:5 ago [1] 36:10 agree [10] 33:24 50:7,10 59: 25 61:24 67:3 74:6,20 75: 2 82:16 agreeing [1] 62:4 agrees [1] 27:17 ahead [4] 10:1,2 16:18 48: 15 AL [1] 1:3 Alito [24] 35:1,2,15,20 36:5 61:21,23,24 62:22 64:1,6,8, 11,20 73:14,15 74:6,7,12, 15 75:15 76:8,10 77:14 allegation [2] 18:24 20:8 allegations [2] 19:15,17 allege [2] 16:6 70:4 alleged [2] 18:21 19:9 allegedly [1] 42:10 alleges [2] 4:4 19:7 allergic [1] 42:12 allow [1] 81:15 alone [2] 48:20,21 already [3] 34:1 35:9 62:20 although [2] 66:11 79:25 ambit [1] 78:16 amicus [3] 53:16 76:17 78: 4 among [4] 12:9 52:22 74: 16 82:2</p>	<p>amount [4] 46:16 73:21 74: 1,4 ANAND [86] 1:20 2:6 24:19 42:22,23,25 45:14,20 46:2, 13,22 47:21 48:16 49:9,25 50:10 51:1,6,9,19 53:2 54: 3,25 55:9,12,19,24 56:25 57:3,11,22 58:4,8,13,17 59: 11,16,20,25 60:14,21,25 61:3,7,11,18,22 62:5 63:2 64:3,7,10,21 65:17 66:9 67:7,10,20 68:1,12,16 69:3, 9,15,18,24 70:22 71:1,17, 23 72:1,19 74:6,8,13,24 75: 24 76:9 77:5,13 78:9 79: 12,16 80:20 81:17 82:16 ands [1] 9:21 another [1] 8:24 answer [14] 22:20 53:23 57:17,21,22 60:5,12 62:6 64:10 67:15 70:12 71:14, 18 80:19 answering [1] 9:9 answers [1] 14:13 antibiotic [1] 28:18 anticipated [1] 61:18 Antiterrorism [2] 11:15 34: 7 antitrust [2] 49:19 50:1 anybody [1] 26:4 anytime [2] 5:10 31:7 apologies [2] 64:7 71:17 App [2] 32:11 57:24 appealing [1] 73:23 appeals [1] 65:12 APPEARANCES [1] 1:17 appears [1] 43:10 applied [1] 75:19 Areeda [2] 30:23 31:17 Areeda-Hovenkamp [1] 30:6 aren't [5] 18:11 23:7 32:1 45:25 84:4 argue [2] 33:6 73:18 argued [9] 32:3,4,12,19,20 68:2,11,18 69:7 argues [1] 4:13 arguing [2] 6:20 33:5 argument [20] 1:14 2:2,5,8 3:4,7 14:10,14 41:17 42: 23 45:6 47:5 55:15 59:2 64:17,19 71:13,16 75:16 83:8 arguments [2] 64:13 74: 17 arm [1] 25:14 around [2] 50:20 51:16 art [1] 26:23 articulated [1] 64:17 articulates [1] 46:10 articulating [2] 25:25 47:1 asks [1] 65:19 aspects [1] 78:23 assault [9] 13:24 14:4 15:2,</p>	<p>2,8,17 59:5 60:11,15 assaulted [1] 14:21 assert [1] 26:6 assume [1] 62:24 assumes [1] 67:21 ate [1] 28:15 authorities [1] 35:15 average [3] 48:19 77:25 80: 4</p>	<p>10 83:7,8,10 bodily [5] 29:4,10 42:13 59: 13 80:8 body [4] 35:14 36:2 50:12 66:3 bomb [3] 7:9,11,12 boondoggle [1] 31:23 both [10] 5:11,12 10:12 32: 9 46:3 59:21,21 60:20 85: 16 86:15 bottom-line [1] 75:4 boxer [1] 84:1 branch [2] 57:15,15 break [1] 80:25 Bridge [3] 50:4 62:20 75: 10 brief [10] 6:24 19:18 27:5 44:4 48:2 51:23 55:10 58: 18 79:20 80:3 brief-in-opposition [1] 68: 2 briefed [1] 28:13 Briefly [2] 57:18 58:11 briefs [3] 53:16 76:17 78:4 bring [6] 48:11 52:16 67:13 69:19 70:3 72:3 bringing [1] 79:25 brings [1] 82:8 broad [3] 75:12 81:9,15 broadly [2] 50:5 83:1 brought [6] 52:19,25 53:8, 14 78:19 79:5 bring [2] 6:25 18:17 burden [5] 45:5 46:24 63: 21 70:23 73:17 Burke [3] 18:3 35:19,22 burns [1] 78:21 business [65] 3:12 5:6,9, 12,13,16,23 6:2,12 7:2,7 9: 13 10:5,9 11:2,8 12:11,12 22:23 24:25 25:20,21 31:8 36:4 39:17 40:2 45:13,17 46:14 48:5 50:23 51:2,15 52:2,3,6,8,15 54:10,23 57: 9,15 60:3,5,9,23 61:15 72: 12,22 73:3 74:21 77:23 80: 13 82:11,17,18 83:15 86: 10,12 business-or-property [6] 30:14 47:15 48:25 49:24 72:18,20 businessman [1] 14:3 but [1] 9:22 buying [1] 23:18 buys [2] 21:20 24:6</p>
<p>2</p> <p>20 [2] 47:25 84:14 20-year [1] 54:12 2024 [1] 1:11 21 [1] 19:18 2255 [1] 43:13 23-365 [1] 3:4 27 [1] 83:25</p>	<p>3</p> <p>3 [1] 2:4</p>	<p>amount [4] 46:16 73:21 74: 1,4 ANAND [86] 1:20 2:6 24:19 42:22,23,25 45:14,20 46:2, 13,22 47:21 48:16 49:9,25 50:10 51:1,6,9,19 53:2 54: 3,25 55:9,12,19,24 56:25 57:3,11,22 58:4,8,13,17 59: 11,16,20,25 60:14,21,25 61:3,7,11,18,22 62:5 63:2 64:3,7,10,21 65:17 66:9 67:7,10,20 68:1,12,16 69:3, 9,15,18,24 70:22 71:1,17, 23 72:1,19 74:6,8,13,24 75: 24 76:9 77:5,13 78:9 79: 12,16 80:20 81:17 82:16 ands [1] 9:21 another [1] 8:24 answer [14] 22:20 53:23 57:17,21,22 60:5,12 62:6 64:10 67:15 70:12 71:14, 18 80:19 answering [1] 9:9 answers [1] 14:13 antibiotic [1] 28:18 anticipated [1] 61:18 Antiterrorism [2] 11:15 34: 7 antitrust [2] 49:19 50:1 anybody [1] 26:4 anytime [2] 5:10 31:7 apologies [2] 64:7 71:17 App [2] 32:11 57:24 appealing [1] 73:23 appeals [1] 65:12 APPEARANCES [1] 1:17 appears [1] 43:10 applied [1] 75:19 Areeda [2] 30:23 31:17 Areeda-Hovenkamp [1] 30:6 aren't [5] 18:11 23:7 32:1 45:25 84:4 argue [2] 33:6 73:18 argued [9] 32:3,4,12,19,20 68:2,11,18 69:7 argues [1] 4:13 arguing [2] 6:20 33:5 argument [20] 1:14 2:2,5,8 3:4,7 14:10,14 41:17 42: 23 45:6 47:5 55:15 59:2 64:17,19 71:13,16 75:16 83:8 arguments [2] 64:13 74: 17 arm [1] 25:14 around [2] 50:20 51:16 art [1] 26:23 articulated [1] 64:17 articulates [1] 46:10 articulating [2] 25:25 47:1 asks [1] 65:19 aspects [1] 78:23 assault [9] 13:24 14:4 15:2,</p>	<p>B</p> <p>baby [1] 23:19 back [7] 14:23 15:13 37:14 59:22 65:7 69:25 75:17 bad [1] 32:14 bagels [1] 28:16 Ballentine [1] 17:14 BARRETT [11] 16:16,19 17:16 18:1 61:22 64:21 66: 6 67:5 81:3,4 85:14 Barrett's [1] 26:17 bars [1] 4:15 based [2] 21:19 26:22 basement [1] 78:22 basic [2] 21:13 49:5 basis [2] 53:6 62:2 begs [1] 39:2 behalf [8] 1:18,20 2:4,7,10 3:8 42:24 83:9 behavior [1] 4:7 believe [2] 45:15 62:24 below [7] 32:3 64:25 68:10 69:7,14,16 86:7 benefits [1] 46:18 best [3] 58:12 59:10 63:3 better [2] 15:3 37:8 between [13] 12:18 23:13 27:12,14 37:17 38:2 43:14, 15 45:19 47:2 56:19 60:8 72:23 beyond [1] 82:7 big [4] 70:12 72:9 80:4 85:9 biggest [1] 86:6 bill [2] 58:20,22 bit [4] 66:17 76:20 81:23 84: 10 BLATT [132] 1:18 2:3,9 3:6, 7,9 5:7 6:3,18 7:4,13,18, 24 8:14 9:1,7,10,17,20 10: 11,18,23 11:13,24 12:12, 16 13:8,21 14:9,15 15:6,9 16:1,4,14,16,19,25 17:21 18:3,13,19 19:6,14,24 20: 10,14,25 21:5,11,15,23 22: 1,4,8,11,18 23:4,7 24:1,4,8, 14,23 25:3,7,16 26:1,15,20, 24 27:3,6 28:6,9,12,24 29: 9,15,18,23,24 30:1,8,11,18, 21,24 31:2,5,18,20 32:1,7, 10,23 33:3,21 35:7,17,22 36:8,11 37:4,8,21 38:4,8, 17,22,25 39:19,21,24 40:7, 13,16,19,25 41:8,13,15,20, 23 42:9,18 59:2 65:8 82:</p>	<p>10 83:7,8,10 bodily [5] 29:4,10 42:13 59: 13 80:8 body [4] 35:14 36:2 50:12 66:3 bomb [3] 7:9,11,12 boondoggle [1] 31:23 both [10] 5:11,12 10:12 32: 9 46:3 59:21,21 60:20 85: 16 86:15 bottom-line [1] 75:4 boxer [1] 84:1 branch [2] 57:15,15 break [1] 80:25 Bridge [3] 50:4 62:20 75: 10 brief [10] 6:24 19:18 27:5 44:4 48:2 51:23 55:10 58: 18 79:20 80:3 brief-in-opposition [1] 68: 2 briefed [1] 28:13 Briefly [2] 57:18 58:11 briefs [3] 53:16 76:17 78:4 bring [6] 48:11 52:16 67:13 69:19 70:3 72:3 bringing [1] 79:25 brings [1] 82:8 broad [3] 75:12 81:9,15 broadly [2] 50:5 83:1 brought [6] 52:19,25 53:8, 14 78:19 79:5 bring [2] 6:25 18:17 burden [5] 45:5 46:24 63: 21 70:23 73:17 Burke [3] 18:3 35:19,22 burns [1] 78:21 business [65] 3:12 5:6,9, 12,13,16,23 6:2,12 7:2,7 9: 13 10:5,9 11:2,8 12:11,12 22:23 24:25 25:20,21 31:8 36:4 39:17 40:2 45:13,17 46:14 48:5 50:23 51:2,15 52:2,3,6,8,15 54:10,23 57: 9,15 60:3,5,9,23 61:15 72: 12,22 73:3 74:21 77:23 80: 13 82:11,17,18 83:15 86: 10,12 business-or-property [6] 30:14 47:15 48:25 49:24 72:18,20 businessman [1] 14:3 but [1] 9:22 buying [1] 23:18 buys [2] 21:20 24:6</p>
<p>3</p> <p>3 [1] 2:4</p>	<p>4</p> <p>42 [1] 2:7 49 [2] 32:13 33:3</p>	<p>amount [4] 46:16 73:21 74: 1,4 ANAND [86] 1:20 2:6 24:19 42:22,23,25 45:14,20 46:2, 13,22 47:21 48:16 49:9,25 50:10 51:1,6,9,19 53:2 54: 3,25 55:9,12,19,24 56:25 57:3,11,22 58:4,8,13,17 59: 11,16,20,25 60:14,21,25 61:3,7,11,18,22 62:5 63:2 64:3,7,10,21 65:17 66:9 67:7,10,20 68:1,12,16 69:3, 9,15,18,24 70:22 71:1,17, 23 72:1,19 74:6,8,13,24 75: 24 76:9 77:5,13 78:9 79: 12,16 80:20 81:17 82:16 ands [1] 9:21 another [1] 8:24 answer [14] 22:20 53:23 57:17,21,22 60:5,12 62:6 64:10 67:15 70:12 71:14, 18 80:19 answering [1] 9:9 answers [1] 14:13 antibiotic [1] 28:18 anticipated [1] 61:18 Antiterrorism [2] 11:15 34: 7 antitrust [2] 49:19 50:1 anybody [1] 26:4 anytime [2] 5:10 31:7 apologies [2] 64:7 71:17 App [2] 32:11 57:24 appealing [1] 73:23 appeals [1] 65:12 APPEARANCES [1] 1:17 appears [1] 43:10 applied [1] 75:19 Areeda [2] 30:23 31:17 Areeda-Hovenkamp [1] 30:6 aren't [5] 18:11 23:7 32:1 45:25 84:4 argue [2] 33:6 73:18 argued [9] 32:3,4,12,19,20 68:2,11,18 69:7 argues [1] 4:13 arguing [2] 6:20 33:5 argument [20] 1:14 2:2,5,8 3:4,7 14:10,14 41:17 42: 23 45:6 47:5 55:15 59:2 64:17,19 71:13,16 75:16 83:8 arguments [2] 64:13 74: 17 arm [1] 25:14 around [2] 50:20 51:16 art [1] 26:23 articulated [1] 64:17 articulates [1] 46:10 articulating [2] 25:25 47:1 asks [1] 65:19 aspects [1] 78:23 assault [9] 13:24 14:4 15:2,</p>	<p>5</p> <p>50 [2] 32:13 33:4 525 [2] 44:12 47:7</p>	<p>6</p> <p>60 [1] 84:14</p>
<p>7</p> <p>7 [1] 55:18 76 [1] 85:9 77a [1] 85:9</p>	<p>8</p> <p>8 [1] 58:18 83 [1] 2:10</p>	<p>amount [4] 46:16 73:21 74: 1,4 ANAND [86] 1:20 2:6 24:19 42:22,23,25 45:14,20 46:2, 13,22 47:21 48:16 49:9,25 50:10 51:1,6,9,19 53:2 54: 3,25 55:9,12,19,24 56:25 57:3,11,22 58:4,8,13,17 59: 11,16,20,25 60:14,21,25 61:3,7,11,18,22 62:5 63:2 64:3,7,10,21 65:17 66:9 67:7,10,20 68:1,12,16 69:3, 9,15,18,24 70:22 71:1,17, 23 72:1,19 74:6,8,13,24 75: 24 76:9 77:5,13 78:9 79: 12,16 80:20 81:17 82:16 ands [1] 9:21 another [1] 8:24 answer [14] 22:20 53:23 57:17,21,22 60:5,12 62:6 64:10 67:15 70:12 71:14, 18 80:19 answering [1] 9:9 answers [1] 14:13 antibiotic [1] 28:18 anticipated [1] 61:18 Antiterrorism [2] 11:15 34: 7 antitrust [2] 49:19 50:1 anybody [1] 26:4 anytime [2] 5:10 31:7 apologies [2] 64:7 71:17 App [2] 32:11 57:24 appealing [1] 73:23 appeals [1] 65:12 APPEARANCES [1] 1:17 appears [1] 43:10 applied [1] 75:19 Areeda [2] 30:23 31:17 Areeda-Hovenkamp [1] 30:6 aren't [5] 18:11 23:7 32:1 45:25 84:4 argue [2] 33:6 73:18 argued [9] 32:3,4,12,19,20 68:2,11,18 69:7 argues [1] 4:13 arguing [2] 6:20 33:5 argument [20] 1:14 2:2,5,8 3:4,7 14:10,14 41:17 42: 23 45:6 47:5 55:15 59:2 64:17,19 71:13,16 75:16 83:8 arguments [2] 64:13 74: 17 arm [1] 25:14 around [2] 50:20 51:16 art [1] 26:23 articulated [1] 64:17 articulates [1] 46:10 articulating [2] 25:25 47:1 asks [1] 65:19 aspects [1] 78:23 assault [9] 13:24 14:4 15:2,</p>	<p>9</p> <p>99.99999 [1] 84:15</p>	<p>10 83:7,8,10 bodily [5] 29:4,10 42:13 59: 13 80:8 body [4] 35:14 36:2 50:12 66:3 bomb [3] 7:9,11,12 boondoggle [1] 31:23 both [10] 5:11,12 10:1</p>

Official - Subject to Final Review

<p>canon [8] 33:20 52:22 54:4, 16 80:18,21,24 81:19</p> <p>car [4] 13:23 58:25 60:1,16</p> <p>care [2] 49:8 60:7</p> <p>carefully [1] 70:18</p> <p>carried [1] 48:22</p> <p>carry [8] 5:13,16,21,24 36:3 45:16 52:8 70:23</p> <p>carve [1] 86:5</p> <p>Case [57] 3:4 5:8 7:22 9:1 10:18 13:10 16:12 17:9 18:4,21 19:20 20:4 22:13 23:24 24:3 25:9 34:12 12 35:19 36:13 37:11 38:9 41:6 42:4 44:8,8 46:4 47:4,20 48:19 54:6 57:20 58:19 62:2 64:24 66:4,7,10,23,24 67:19 68:9 69:11 70:3,4 74:22 77:7,12,24 78:1,24 80:4 83:25 84:1,22 85:24 86:20, 21</p> <p>cases [33] 5:18,19 6:7 8:17 11:25 12:3 23:12 31:10 48:10,11 49:3 51:8 53:7,11,12 59:9 60:20 61:12 63:22 64:9 72:9 74:9 75:18 77:6 78:13,17,18 79:4,5 80:6 84:7, 15 85:20</p> <p>categorized [1] 86:12</p> <p>category [1] 73:23</p> <p>causal [1] 61:12</p> <p>causation [13] 8:21 9:11, 16,21 20:15,18 23:9,11,22 24:3 25:9 52:2 59:8</p> <p>cause [41] 3:15 6:21 7:22 8:1,9,24 10:13 24:22 27:19 38:6 45:4 46:25 47:11 60:10 61:14,19 62:23 63:22 64:4,5,13 65:8,25 70:16 71:7,15,16,18 73:11 74:18 75:3 76:23 77:4 84:20,21, 21,24 85:1,2,4 86:16</p> <p>caused [10] 4:7 14:4 37:3, 10 38:20 56:9,13 61:8 63:1 67:8</p> <p>causes [1] 11:6</p> <p>causing [1] 81:25</p> <p>center [1] 27:5</p> <p>central [1] 49:1</p> <p>centuries [1] 55:22</p> <p>cert [2] 20:19 68:4</p> <p>certain [1] 6:23</p> <p>certainly [3] 6:3 75:18 85:19</p> <p>chain [2] 52:2 74:11</p> <p>chain-of-causation [1] 65:23</p> <p>challenging [2] 67:12 76:9</p> <p>Chamber [1] 79:19</p> <p>change [5] 31:13,13,22 76:21 82:8</p> <p>changed [1] 42:10</p> <p>characterize [1] 51:13</p> <p>characterized [3] 30:17</p>	<p>52:14 59:4</p> <p>characterizing [1] 50:22</p> <p>chemical [1] 42:13</p> <p>CHIEF [26] 3:3 34:23 36:6 39:8 42:20,25 47:14 48:14, 23 49:22 50:21 51:16 53:23 61:23 70:10,24 71:11, 21,25 72:15 73:12 76:11 81:2,5 83:5 86:19</p> <p>choose [2] 43:14,15</p> <p>Chrysler [2] 16:11 85:24</p> <p>chunk [1] 72:9</p> <p>Circuit [16] 12:24,24 24:16 26:2,2 28:14,14 47:25 53:21 57:24 65:3 78:11 80:7 84:2,8 85:17</p> <p>Circuit's [1] 53:23</p> <p>circuits [2] 65:1,15</p> <p>circumstances [2] 6:24 22:10</p> <p>cite [4] 17:14 44:3 79:20 83:24</p> <p>cited [1] 34:15</p> <p>citing [2] 37:13 84:6</p> <p>civil [13] 4:11 36:18,19 48:2 54:17,21 62:12 63:24 66:15 72:11 75:18 76:19 78:19</p> <p>claim [23] 4:11 19:13 20:1 22:10,12 23:3,15,21 24:11 28:20 29:6,21 32:16 33:5, 6 44:15 46:16 48:7 50:12 53:6 66:23 67:14 69:19</p> <p>claimed [1] 33:7</p> <p>claiming [2] 28:3 32:2</p> <p>claims [10] 5:1 11:15 29:1 32:6,21 68:14,17,19 72:3 82:4</p> <p>class [2] 53:17 76:17</p> <p>classic [11] 4:3 12:20 22:24,25 25:8 32:16 47:7 52:7 61:14 69:2 72:22</p> <p>classify [1] 13:18</p> <p>clause [1] 34:15</p> <p>Clayton [15] 5:8,15 6:4 16:10 22:25 27:18 30:3 31:9, 10,12,14,22 34:1 83:21 86:3</p> <p>cleanly [1] 62:11</p> <p>clear [3] 36:24 37:18 55:17</p> <p>clearer [1] 53:1</p> <p>clearest [1] 11:4</p> <p>clearly [2] 25:9 32:15</p> <p>client [5] 24:18 32:4,19 67:8 68:24</p> <p>client's [1] 19:8</p> <p>close [3] 7:9,10 56:22</p> <p>cocaine [1] 42:15</p> <p>Code [3] 43:6,9,11</p> <p>cognizable [3] 32:13 33:8 37:7</p> <p>collapsing [1] 45:25</p> <p>collect [1] 38:10</p> <p>come [6] 6:13 11:20 17:17</p>	<p>56:3 75:5 84:16</p> <p>comes [4] 6:6 28:11 69:11 84:18</p> <p>Commerce [1] 79:19</p> <p>commercial [3] 5:10,25 31:7</p> <p>commits [1] 76:2</p> <p>committed [1] 54:7</p> <p>common [2] 62:13 63:23</p> <p>companies [2] 79:25 80:2</p> <p>Company [2] 16:12 73:18</p> <p>compensable [3] 38:19 39:17 56:8</p> <p>compensate [2] 36:22 45:21</p> <p>compensation [6] 43:17 44:2 46:6,8,15 70:6</p> <p>compensatory [3] 43:5,12, 23</p> <p>complaint [6] 4:4,7 19:15 20:16 35:8,18</p> <p>complaints [1] 48:3</p> <p>completely [4] 56:25 73:19,22 83:20</p> <p>complicated [1] 85:13</p> <p>complicates [1] 37:2</p> <p>component [1] 15:20</p> <p>conceded [1] 45:15</p> <p>concept [1] 63:23</p> <p>concepts [3] 37:1 55:21, 23</p> <p>concern [3] 50:24 75:1 82:6</p> <p>concerned [2] 54:21 71:13</p> <p>concerns [1] 54:13</p> <p>conduct [1] 23:14</p> <p>confinement [1] 58:20</p> <p>conflates [2] 4:16 41:1</p> <p>conflating [1] 46:1</p> <p>confuse [1] 9:3</p> <p>confusion [1] 67:6</p> <p>Congress [22] 4:23 26:15 34:18 49:17 50:4,6 51:17, 20 52:5,6 53:1 54:1,12 61:14 72:25 75:11 80:11 81:11,13,18,20 82:21</p> <p>conjures [1] 17:3</p> <p>connect [2] 68:9 73:10</p> <p>connected [1] 61:14</p> <p>connection [4] 38:2 60:8 61:12 67:22</p> <p>consequence [2] 63:12 77:8</p> <p>consequences [3] 74:3 83:24 84:3</p> <p>consequential [1] 15:8</p> <p>consistently [1] 75:19</p> <p>consortium [1] 35:11</p> <p>conspiracy [1] 31:10</p> <p>conspired [1] 5:18</p> <p>constitute [1] 6:2</p> <p>constitutional [1] 34:9</p> <p>construction [5] 33:20,22 75:20 81:19 82:22</p>	<p>construe [1] 81:11</p> <p>consume [1] 16:8</p> <p>consuming [1] 4:9</p> <p>consumption [4] 20:17,18, 22 59:14</p> <p>contained [1] 19:10</p> <p>contains [1] 68:23</p> <p>contemplate [1] 65:23</p> <p>contemplated [2] 34:19 81:14</p> <p>contemplation [1] 26:13</p> <p>contested [1] 5:17</p> <p>context [3] 49:20 50:1 58:14</p> <p>contexts [2] 34:17 80:8</p> <p>continuity [1] 72:6</p> <p>contrasted [1] 55:18</p> <p>converted [1] 76:19</p> <p>correct [5] 7:23 19:14 68:15 76:25 79:23</p> <p>cough [1] 29:12</p> <p>couldn't [1] 34:18</p> <p>counsel [8] 34:24 39:7 42:21 47:14 69:20 70:11 83:6 86:20</p> <p>count [7] 18:24 33:9 62:6, 14,16 65:5 66:2</p> <p>counterfeit [1] 66:20</p> <p>counts [4] 19:22,23 58:22 62:10</p> <p>couple [4] 33:21 57:4 76:15 77:16</p> <p>course [7] 13:3 58:11 73:2 75:13 76:17,23 77:2</p> <p>COURT [37] 1:1,14 3:10 5:7 10:7 16:11 17:5 18:7,16 23:12 32:11,12,15 34:14, 15 35:9 43:1 47:13 49:21 50:2 53:14 56:3,7 64:18 69:21 73:7 75:6,9,17,19 78:18 82:1 83:2,11 84:2 85:20 86:7</p> <p>Court's [5] 4:1 45:11 63:21 67:12 71:8</p> <p>courts [11] 5:14,22 10:7,8 49:16 62:7 65:11 66:5 67:4 81:11 84:4</p> <p>coverage [1] 62:1</p> <p>covered [2] 22:12 82:10</p> <p>crazy [1] 84:4</p> <p>crime [1] 43:14</p> <p>criminal [4] 54:9,14,15,20</p> <p>critical [1] 70:2</p> <p>crosses [1] 62:20</p> <p>curiosity [1] 73:16</p> <p>curious [1] 50:24</p> <p>custody [1] 74:11</p> <p>Customer [2] 63:17 71:5</p> <p>customers [1] 73:24</p> <p>cut [1] 74:10</p>	<p>11 27:10 28:2 33:9 42:2 65:4 78:16 84:19 86:14</p> <p>damages [86] 3:14,16,19, 21,22,22,24 4:3,6,15,16,18 6:16 8:3,7,11 10:12,16 11:12,17,23 12:15,17 13:20 14:6 15:24 16:5,12 18:5,9 26:6 27:13,22,25 31:12 33:1 35:24,25,25 36:21 39:4 40:1,4 41:2,5 43:3,5,8,10, 12,14,15,16,19,21,23 44:1, 2 45:19,21 46:7,8,16 50:8, 12,14,18 51:5,13,24 52:13, 20 53:15,18 67:23 76:20 79:15 83:16,19 84:17 85:18,22,25 86:8,13,15</p> <p>data [2] 78:10 79:1</p> <p>day [1] 39:5</p> <p>Deal [4] 59:17,18 75:23 85:9</p> <p>dealing [1] 84:12</p> <p>dealt [1] 18:4</p> <p>dear [2] 30:8,12</p> <p>decades [2] 55:22 75:6</p> <p>decide [7] 14:1 17:10 28:15 33:15 57:20,23 58:11</p> <p>decided [1] 25:20</p> <p>deciding [1] 62:4</p> <p>defendant [1] 3:25</p> <p>Defendant's [1] 4:7</p> <p>defendants [2] 33:4 75:5</p> <p>define [3] 16:24 65:12 81:22</p> <p>defines [1] 35:12</p> <p>definite [1] 24:3</p> <p>definitely [1] 30:25</p> <p>definition [10] 16:20 17:15 19:25 46:7,8 56:10 62:11 65:2,13 80:22</p> <p>defrauded [1] 6:14</p> <p>degrees [1] 76:6</p> <p>depending [1] 60:18</p> <p>depends [2] 10:12 86:16</p> <p>deprived [1] 5:20</p> <p>derivative [1] 65:4</p> <p>derive [1] 29:1</p> <p>detail [1] 19:19</p> <p>determining [1] 35:4</p> <p>developed [1] 65:11</p> <p>dialogue [3] 57:5 58:25 70:13</p> <p>Diaz [1] 84:6</p> <p>dictionary [2] 44:1 46:9</p> <p>difference [2] 37:17 45:19</p> <p>different [14] 9:19 12:9 16:9 22:14 23:17 24:10 30:2 36:16,18 38:13 48:24 55:21,23 66:4</p> <p>differentiate [1] 36:13</p> <p>differentiates [1] 3:18</p> <p>differently [2] 64:24,25</p> <p>diluting [2] 72:17,20</p> <p>direct [11] 4:9 6:11 8:1,6 9:21 22:21 23:13 47:1 60:7</p>
D				
<p>D.C [2] 1:10,18</p> <p>damage [11] 8:24 11:23 13:</p>				

Official - Subject to Final Review

<p>85:1,2 directing [1] 81:11 directly [2] 17:11 19:4 directness [2] 45:2 63:24 disabled [1] 25:12 disagree [3] 30:22 72:19 79:18 discovered [1] 68:7 discrimination [1] 18:14 discussion [3] 21:7 57:6 81:8 dismiss [2] 68:14 77:2 dismissal [1] 68:18 dismissed [2] 4:10 32:6 dissent [1] 57:25 distinct [1] 3:21 distinction [4] 4:1 27:12, 14 62:3 distinguish [6] 11:6 12:9, 18 44:7 56:19 62:8 distress [6] 4:19 11:21 48:8 49:13 72:10 79:8 district [7] 32:11 64:18 67:12 69:20 84:1,4 85:20 Dixie [1] 4:9 Dobbs [1] 18:8 doctors [1] 58:19 dog [2] 57:13 62:17 doing [9] 19:13 48:5 49:11, 17 50:17 65:15 66:4 76:4 84:16 domestic [2] 17:10 38:11 done [2] 23:14 75:17 DOUGLAS [1] 1:6 down [9] 7:9,10 15:11,12 40:9,10 80:19 81:21 82:11 doxycycline [1] 28:17 dozen [1] 43:11 dramatic [4] 52:23 53:19, 20,24 drawing [1] 62:2 drive [1] 41:25 drug [4] 28:16 31:11 42:9 63:12 drugs [7] 37:25 40:22 41:7, 10,19,22 42:5 due [2] 25:3,7</p> <hr/> <p style="text-align: center;">E</p> <p>earlier [2] 37:16 70:1 early [2] 77:6,9 earn [1] 82:20 EASHA [3] 1:20 2:6 42:23 easily [1] 53:12 easy [2] 35:8,14 economic [20] 4:13 15:20 20:4 26:6 30:17 32:22,25 36:15,21 44:16 46:18 58:15 65:19 66:25 67:23 68:8 72:10 83:16,19 84:19 effect [3] 29:22,25 77:17 effectively [1] 62:3 effects [1] 38:12 effectuate [1] 81:12</p>	<p>either [5] 19:17 25:11 29:19 77:20 85:5 elaborate [1] 27:1 Eleventh [1] 85:17 embedded [1] 64:5 emotional [6] 4:19 11:21 33:9 48:8 49:12 79:8 emphasis [1] 77:19 empirical [1] 47:23 employed [1] 46:19 employee [1] 5:16 employer [5] 22:6 23:16, 18 25:12 77:20 employer's [2] 20:23 21:14 employment [7] 4:10 5:17 6:2 12:14 42:2 72:21,24 encourage [2] 58:7,10 encyclopedic [1] 5:20 end [1] 39:4 enforce [1] 83:2 enrichment [1] 44:25 enterprise [11] 5:10,25 8:15,23 31:7 48:22 54:8 72:7 76:1,3,4 entire [1] 20:14 entirely [1] 74:5 entitled [6] 11:11,23 12:14 13:19 14:5 22:25 equal [2] 27:1 46:16 equals [2] 55:11 58:15 ESQ [4] 2:3,6,9 42:23 ESQUIRE [2] 1:18,20 essentially [1] 23:24 estopped [3] 32:2 33:12, 15 ET [1] 1:3 eternity [1] 83:22 even [9] 28:5 31:16 37:8 40:5 50:17 67:13 71:7 73:25 85:1 everyone [2] 27:17 31:24 everything [1] 75:17 evidence [1] 47:24 exact [2] 16:10 39:1 exactly [9] 13:14 16:23 53:21 63:9 68:16 70:3,4 74:13 79:18 example [12] 6:4,5,19 13:24 15:10 18:25 21:22 22:18 40:8 41:24 43:13 74:23 examples [3] 6:25 7:25 51:23 except [1] 13:9 exclude [3] 51:20,22 85:3 excluded [2] 12:1 86:9 excludes [6] 3:15,16 27:19, 21 50:8,18 excluding [2] 4:18 84:17 exclusion [2] 4:17,21 exclusively [1] 13:10 existence [1] 39:16 expanding [1] 82:7 expansion [1] 70:14</p>	<p>expect [3] 43:20 48:3 53:1 expenditure [1] 58:15 expenses [21] 4:2 8:5,7 10:24 12:22 13:1 50:16,19,23 52:18 57:7,8 58:2 62:1,16 79:14,24 80:2 84:25 86:4, 6 explain [3] 48:1 57:16 63:1 explained [3] 45:3 77:14 78:12 explanations [1] 62:9 explicitly [3] 37:1,6,6 extend [2] 33:25 34:2 extensive [1] 58:24 extortion [6] 14:16 59:6 60:20,24 61:1,9 eyesight [1] 85:7</p> <hr/> <p style="text-align: center;">F</p> <p>face [1] 73:16 fact [6] 18:15 68:10 71:2 72:17 82:1 83:13 factual [6] 46:24 63:14 64:4 70:23 76:25 78:3 factually [1] 46:12 fail [2] 23:9,11 failed [2] 28:16 42:9 failure [1] 68:22 fair [1] 20:25 fairly [1] 77:9 fall [6] 4:24 13:12 34:11 47:19 75:7 85:5 fallback [1] 80:11 fallen [1] 75:9 false [2] 53:11 54:5 fear [1] 74:19 Federal [9] 11:15 17:22,24 18:8,18 53:14 54:15 65:13 77:21 federalism [7] 34:10 52:21 54:4,13,16 80:17,21 federalized [1] 4:23 federalizing [1] 54:21 feel [3] 36:15 37:19 38:24 feels [1] 36:20 fell [2] 40:10 41:3 felt [1] 38:12 fences [1] 49:11 fencing [2] 48:6 79:4 few [1] 36:10 fewer [1] 48:2 fifth [1] 55:14 fight [2] 57:14 62:18 figure [2] 12:4 51:12 figured [1] 86:2 figuring [1] 16:23 final [1] 82:14 finally [2] 34:8 43:25 find [2] 52:6 66:14 finish [1] 81:8 fire [1] 46:21 fired [18] 19:3,11 20:13 22:3 23:10,18 24:8 25:11 38:1 40:23 41:14 42:1 45:10,</p>	<p>13 46:14 52:7 63:13 70:8 fires [2] 24:11 25:13 firing [4] 28:8 59:16 67:9 77:7 first [10] 3:4 35:7 43:3 47:23 53:4 55:3 57:5 63:4 69:5 78:11 fiscal [1] 4:8 flight [1] 40:9 flips [2] 26:7 83:20 floods [2] 78:14,22 follow [1] 70:15 following [1] 41:6 follows [1] 57:12 forced [1] 6:7 foreseeability [1] 73:17 foreseeable [3] 8:21 63:12 74:5 forever [1] 59:22 forfeiture [1] 44:24 form [1] 53:6 formulation [1] 70:18 forth [2] 59:22 65:7 forward [1] 84:7 found [1] 70:8 fraction [1] 79:18 framed [1] 64:25 framework [1] 59:12 fraud [11] 19:8,9 32:17 54:7 71:21,22 80:15 81:24 82:2,24 85:12 fraudulent [5] 44:13,16 47:9 63:5 66:24 freak [1] 31:24 free [2] 73:19,22 friend [7] 44:10 45:15 47:18 51:2 55:4 70:15 79:17 front [3] 27:4 48:17 53:3 full [1] 7:15 fund [1] 76:3 fundamental [3] 13:4 49:6 75:14</p> <hr/> <p style="text-align: center;">G</p> <p>garden-variety [2] 53:5 54:14 gargantuan [1] 84:12 general [7] 16:22 17:18,25 19:18 35:18,20 63:15 generally [2] 6:15 10:14 gets [3] 42:1 60:1 68:7 getting [3] 15:13 77:2,3 give [8] 8:2 12:16 15:9 51:23 58:11 79:1 80:9,22 gives [1] 81:9 giving [1] 24:13 GORSUCH [35] 29:23 30:1, 9,12,20,22 31:1,3,16,19 39:9 49:15,25 57:3,18 58:3,6, 10,16,23 59:15,17,21 60:11,15,24 61:1,5,10,17 68:20 69:6,12,17,22 got [13] 19:1,2,10 20:13 28:3 40:13 56:5 61:17 63:13</p>	<p>69:22,22 72:11 85:20 gotten [1] 46:18 grant [1] 68:3 grappled [1] 49:16 great [2] 19:19 31:17 guarded [1] 70:18 guardrail [2] 49:19,23 guardrails [4] 48:18,24 72:16 79:3 guess [8] 9:10 11:3 13:9 16:22 20:10 33:13 66:11 67:18</p> <hr/> <p style="text-align: center;">H</p> <p>hands [1] 85:7 happen [3] 57:11 78:7,11 happened [7] 18:21 36:1 42:4,6 47:3 63:10 77:9 happens [1] 15:3 happy [2] 56:10 57:16 hard [7] 6:13 16:23 54:15 70:20,25 71:12 81:21 harm [46] 4:8 10:20 11:6 17:19 19:16 20:9 26:19 27:2,7,7,9 36:21 37:19,20,24, 25 38:3,24 39:2,3,16 41:19 43:16,20,22,23 45:20,21, 24 48:7 55:4,11,18,23 56:8, 12,17 58:22 59:4 65:20 67:11,14 70:6 77:23 82:19,19 harmed [12] 10:21,24,25 11:7,9 29:2,4 44:21 56:4, 14 60:4 82:20 harms [3] 20:5 38:20 79:22 Harp-Horn [3] 63:17 64:15 71:4 head [3] 26:7 64:11 83:20 hear [2] 3:3 78:8 heard [1] 44:9 heart [1] 49:1 heartburn [1] 82:1 heavily [1] 30:3 heavy [5] 45:5 46:24 63:21 70:23 73:17 held [3] 24:16 73:7 85:21 help [1] 17:20 hid [1] 42:18 high [1] 73:22 higher [1] 76:5 himself [1] 7:12 hit [3] 12:19 13:22 14:20 hitting [1] 7:10 hold [1] 26:2 holding [1] 56:2 Holmes [1] 73:7 home [3] 46:25 65:8 78:14 Homer [1] 31:16 Honor [9] 45:14 46:22 47:1, 22 53:2 54:5 63:2 65:18 69:4 Honor's [1] 55:1 hook [1] 44:5 Hopp [1] 83:25 HORN [4] 1:6 3:5 18:22 64:</p>
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Official - Subject to Final Review

15 hospital [4] 29:12 41:11,12, 24 house [1] 78:21 Hovenkamp [1] 31:17 however [1] 59:3 huge [1] 79:14 human [4] 6:6,12 44:8 56:20 hypo [1] 39:13 hypos [3] 13:17 15:16,16 hypothetical [8] 21:10 55:2 58:25 59:1 60:16,17 61:4 70:1 hypotheticals [5] 14:14 15:24 56:20 59:18,23	ingredients [1] 68:23 inherent [1] 27:13 injure [2] 7:8 73:3 injured [29] 3:11 5:5,5 9:3, 13 10:5,9 11:1,16,19 12:7, 8,11 20:13 22:22 25:2 26:4,8 28:5 29:8 34:6 48:4 54:10,23,24 55:3,11 60:3 83:15 injuries [34] 3:16,17 4:3,17, 22,25 7:1,14 15:19 16:13 20:5,6 26:10 27:19,22,23, 24,25 33:25 34:22 37:2 38:20 40:10,24 50:9,15,18,23 52:14,14 59:3,12 72:12 83:22 injury [187] 3:18,20,20,23, 24 4:5,11,14,16 5:9,12,23 6:2,9,11,11,17,22 7:12 8:3, 6,8 9:2,22 10:12,15 12:18, 21 13:2,8,19,25 14:5 15:8 16:21 17:3,7,9,10,13,15,23 18:5,6,10,15,16,20,23 19:12,23 20:8,12,12,18 21:6 22:13,16,19,25 23:21 25:8 26:3,18,22 27:1,6,12,14,15 28:2,11,17,20 29:1,7,11 30:16 31:9,12,14 32:3,5,5,13, 16,20,21 33:1,5,6,8 34:3 35:3,13 36:20 37:7,11,19, 25 38:7,9,11,12 39:17,25 40:3,3,6,14,16,22 41:2 42:16 45:13,17,19,20 46:12, 13,14 50:11,11 51:2,5,14, 15,21,25 52:1,2,3,6,7,17 55:18,23,24 56:4,6,8,16,23 58:15 59:9 60:9 61:15 62:25 65:2,3,12,20 67:8,23,24 68:5,6,7,8,11,14,21 69:2 72:22 74:21 78:15 79:15 80:8,12 82:17,18 83:17,18, 18 84:5,7,15,18,24 85:18, 21,25 86:8,10,12,14,15 inserting [1] 22:16 inserts [1] 34:6 instance [1] 47:24 instead [2] 19:4 42:6 insurance [2] 79:24 80:1 intangible [1] 79:22 intended [2] 47:16 82:9 intent [2] 8:16,19 intentional [2] 54:7 72:2 interesting [1] 59:23 interpret [1] 75:7 interpretation [1] 74:20 interpreted [1] 75:8 interrupt [1] 55:8 intertwined [2] 51:21 52:1 intervening [1] 74:10 intimately [1] 77:22 intuition [4] 24:18,19,21, 24 intuitive [1] 26:11 invaded [3] 27:8 29:16 56:	7 invasion [10] 29:10 35:3 39:3 42:13 55:25 56:11,17, 24 59:4,13 invasions [1] 40:20 invocation [1] 33:19 involve [1] 22:19 involved [1] 5:19 involves [2] 35:14 83:25 involving [1] 4:24 Isn't [11] 7:17,20 23:23 28:10 37:19 40:24 44:24 47:20 59:7 71:18 79:8 issue [4] 7:21,21 25:19 76:16 issues [1] 64:4 itself [3] 29:8 33:11 85:21	11,17,20,21 65:6 66:6 67:5, 7,17,21 68:10,13,20 69:6, 12,17,22 70:10,13,24 71:11,21,25 72:15 73:12,13, 14,15 74:6,7,9,12,15,25 75:15 76:8,10,11,11,13,14,15 77:11,14 78:2 79:9,13 80:17 81:1,2,2,4,5,5,7 82:5 83:4,5 85:14 86:19 Justice's [1] 51:16	lawyer [1] 22:22 lawyers [2] 31:24 48:11 layer [1] 63:23 leading [1] 52:3 leads [1] 6:19 least [3] 27:17 51:17 68:5 leave [1] 41:23 leaves [1] 4:20 left [1] 32:25 legal [24] 14:19 16:20 17:14,17,17 27:7 35:3,5 36:14 39:3 44:18,19 46:9 55:25 56:6,11,12,18,24 57:2 59:5 66:14 82:19 84:23 legitimate [1] 14:2 liability [15] 8:17,18 44:15 53:7,8 54:15,17 67:13 69:19 71:20,23 72:3,4 78:13 80:7 liberal [5] 33:19,22 75:20 81:18 82:22 liberally [1] 81:11 lifeguard [1] 28:19 light [1] 33:22 limitation [9] 47:15,17 50:21 51:17 54:23 linchpin [1] 55:14 line [1] 55:14 link [2] 47:2 61:18 links [1] 66:1 lion's [4] 48:9 49:13 79:20 84:11 liquidated [2] 43:14,16 LISA [5] 1:18 2:3,9 3:7 83:8 list [3] 6:24 66:18 82:24 literally [1] 75:8 litigated [2] 20:19 64:24 little [4] 66:17 75:12 81:23 84:10 live [1] 66:24 livelihood [4] 45:17 52:9 73:9 82:20 locker [2] 21:21 70:8 locution [2] 43:4,10 long [2] 57:1 84:18 longer [2] 25:13 52:8 look [18] 16:23 27:16 31:9 35:7,16,17,18 44:10,18,22 45:2,7 47:24 56:3 66:13, 20,22 75:17 looked [3] 18:7,16 30:5 looking [9] 16:21 17:18,19 18:1,12 60:2 65:13,14 67:25 looks [4] 16:2 21:17 57:2 66:25 lose [11] 10:9,11,21 11:1 15:21 24:19 25:16 28:19 85:5,5,6 loses [1] 41:25 losing [1] 46:4 loss [28] 4:14,22 5:11 6:1 7:2 10:15,19 11:9 13:3,4,5,9 14:25 27:10 31:8 35:10,10,
I idea [2] 26:22 65:13 ideas [1] 65:11 ifs [1] 9:21 ignore [1] 36:12 ignored [1] 84:2 ill [3] 19:1 28:4 81:20 imagine [1] 41:5 impaired [1] 12:20 implausible [1] 4:23 import [1] 73:6 important [2] 48:6 51:18 importantly [1] 72:8 impose [1] 58:19 improper [1] 68:3 inability [2] 38:10 45:16 inadequate [1] 53:12 INC [1] 1:3 incentive [1] 79:6 incentives [1] 80:4 include [1] 11:9 includes [4] 12:13 27:24, 24 66:19 including [3] 44:2 50:15 75:10 income [4] 45:10,12,25 46:5 inconsistent [1] 29:9 independent [8] 7:16 9:12 14:18,24 16:5 23:16 27:12 40:19 indication [1] 53:1 induced [1] 16:7 infinitesimal [3] 11:25 12:3 73:21 inflicted [1] 3:24 informed [1] 17:24 infringed [1] 36:15 infringement [5] 7:16 17:4, 6,13 27:16 infringements [1] 14:19 ingest [1] 73:25 ingested [1] 28:8 ingesting [1] 37:24 ingestion [4] 4:5,8 29:3 70:2 ingests [1] 24:6	J JACKSON [61] 9:24 10:1 16:14,18 18:11,19 19:7,21 20:2,11,21 21:2,8,12,16,24 22:2,5,9,15 23:2,5 28:1,7, 10,21,25 29:13,16 32:1,8, 18,24 37:15,24 39:11,12, 20,22 40:5,12,15,18,21 41:4,9,14,16,21 42:3,17 57:25 67:7,17,21 68:10,13 81:6,7 82:5 83:4 job [11] 6:15 10:9,11,15,21, 22 11:1,10 25:16 28:19 85:5 Judge [1] 57:25 judgment [3] 38:10 64:14 77:3 jurists [1] 58:1 jury [1] 64:1 JUSTICE [256] 3:3 5:4 6:1, 18 7:5,17,20 8:10,15 9:5,8, 15,18,24,25 10:1,3,4,17,19, 25 11:18 12:2,13 13:6,13, 22 14:11 15:1,7,15 16:2,14, 16,18,19 17:16 18:1,11,19 19:7,21 20:2,11,21 21:2,3, 8,12,16,24 22:2,5,9,15 23:2,5,23,25 24:2,5,10,15,17, 24 25:5,15,18 26:1,14,16, 16,21,25 27:4 28:1,7,10,21, 25 29:13,16,23 30:1,9,12, 20,22 31:1,3,16,19 32:1,8, 18,24 33:18 34:23,25 35:1, 2,15,20 36:5,6,6,8,12 37:5, 14,15,16,23,23 38:5,14,19, 23 39:6,8,8,9,10,11,12,20, 22 40:5,12,15,18,21 41:4,9, 14,16,21 42:3,17,20,25 45:3,12,18,24 46:11,20 47:14 48:14,23 49:15,22,25 50:7, 13,21 51:4,7,10 52:11 53:10,24 54:18 55:7,10,13,20 56:22 57:3,5,18 58:3,6,10, 16,23 59:15,17,21 60:11, 15,24 61:1,5,10,17,20,21, 22,23,23,24 62:22 64:1,6,8,	K KAGAN [34] 9:25 10:3,17, 19,25 11:18 12:2,13 13:6, 13,22 14:11 15:1,7,15 16:2 21:3 23:23 24:2,5,10,15,17, 24 25:5,15,18 26:1 37:16 39:8 45:3 64:17 65:6 76:13 Kagan's [2] 74:9,25 KAVANAUGH [30] 26:14, 16,21,25 27:4 33:18 39:10 50:7,13 51:4,7,10 52:11 53:10 54:18 55:7,10,13,20 56:22 57:6 61:20 76:14,15 77:11 78:2 79:9,13 80:17 81:1 keeping [1] 78:23 key [1] 77:3 kick [3] 52:22 80:18,24 kicks [2] 54:16 80:21 kid [1] 60:16 kidnapped [1] 14:21 kidnapping [9] 14:17 15:17 56:20 59:1,6 60:17,17 61:4,9 kind [20] 5:16 16:21 17:18 18:16 23:9 29:7 30:16 41:16 46:24 49:13,16 53:11 62:8,20 66:7 69:2,25 77:25 79:6 82:13 kinds [2] 12:9 77:1 known [1] 68:25 knows [1] 51:21	L label [1] 29:21 label's [1] 9:3 lack [2] 23:22 54:19 language [14] 11:5 12:6 30:4 36:13 38:15,17 39:1 54:19 60:10 75:21 82:22 84:9 85:24 86:1 larger [1] 76:16 last [1] 34:15 later [1] 62:2 latter [4] 59:7 78:7 82:13, 17 Laughter [1] 30:10 law [24] 17:22,24 18:17,18 23:8 26:25 29:10 34:11 35:12,18 36:25,25 37:7 44:14 55:17,22 62:13 63:23 66:4, 17,23 69:19 77:21 82:3	

Official - Subject to Final Review

11,12 36:15 42:1 45:9,12, 25 47:8 63:7 73:9 86:6 losses [1] 3:23 lost [37] 4:2,6 6:15 8:6 9:4, 4 10:16,21 12:21,25 23:7, 15 25:10,22 32:17 40:11 46:3,5 50:15,19,22 51:1 52:18 57:6,9 62:25 67:9 72:21,23 79:13 84:9,25 85: 22 86:9,11,13,14 lot [6] 7:25 8:11 36:9 53:11 82:3,9 lots [4] 51:22 76:6 78:13,17 lower [8] 5:14,22 10:7,8 49: 16 62:7 66:5 67:4 luck [1] 52:4	medicine [1] 28:17 meet [3] 8:1 46:23 75:2 mega-hits [1] 84:13 mega-study [1] 84:12 mentioned [1] 36:9 mere [1] 39:16 merits [1] 85:16 might [11] 10:6 12:2 23:20, 20 25:23 30:2 31:23 55:5 70:15 74:19 77:16 million [2] 8:2 38:13 mind [1] 6:6 mine-run [1] 72:9 minutes [1] 36:10 mislabel [1] 34:12 misabeled [1] 29:19 mislabeling [2] 77:8 78:1 misleading [1] 9:3 misread [1] 9:2 misrepresentation [9] 44: 13,17 47:9 63:6,8,11 66:25 71:3 77:22 misrepresentations [2] 47:6 63:16 mistake [1] 53:4 mitigate [1] 62:15 mitigation [1] 62:13 Mm-hmm [5] 21:15 26:20 32:7 41:8,13 mob [1] 7:6 mobster [1] 14:2 monetary [7] 4:22 5:11 13: 5,9 14:24 31:8 35:9 money [13] 14:16,17,22,23, 23 15:1,10,11,13 44:22 60: 23 61:2 62:10 Moore's [1] 57:25 morning [1] 3:4 most [12] 8:17 12:4 13:4 22: 20 38:8 48:9 53:5,7 71:19 72:2,8 77:6 motion [1] 77:2 motive [1] 73:4 Motor [2] 16:11 85:24 Ms [214] 3:6,9 5:7 6:3,18 7: 4,13,18,24 8:14 9:1,7,10, 17,20,24 10:11,18,23 11: 13,24 12:12,16 13:8,21 14: 9,15 15:6,9 16:1,4,14,16, 19,25 17:21 18:3,13,19 19: 6,14,24 20:10,14,25 21:5, 11,15,23 22:1,4,8,11,18 23: 4,7 24:1,4,8,14,19,23 25:3, 7,16 26:1,15,20,24 27:3,6 28:6,9,12,24 29:9,15,18,23, 24 30:1,8,11,18,21,24 31:2, 5,18,20 32:1,7,10,23 33:3, 21 35:7,17,22 36:8,11 37:4, 8,21 38:4,8,17,22,25 39:19, 21,24 40:7,13,16,19,25 41: 8,13,15,20,23 42:9,18,22, 25 45:14,20 46:2,13,22 47: 21 48:16 49:9,25 50:10 51: 1,6,9,19 53:2 54:3,25 55:9,	12,19,24 56:25 57:3,11,22 58:4,8,13,17 59:2,11,16,20, 25 60:14,21,25 61:3,7,11, 18,22 62:5 63:2,17 64:3,7, 10,15,21 65:8,17 66:9 67:7, 10,20 68:1,12,16 69:3,9,15, 18,24 70:22 71:1,4,17,23 72:1,19 74:6,8,13,24 75:24 76:9 77:5,13 78:9 79:12, 16 80:20 81:17 82:10,16 83:7,10 much [3] 16:2 49:18 59:8 murder [1] 15:18 must [1] 9:13	30:11,20 31:1,1,1,19 39:20 40:12,15 41:20 46:11 52: 12 56:23 57:1 58:3,11,13, 16,23 one [14] 7:13 15:25 24:15, 20 33:23 34:14 41:23 46:4 59:5 61:20 62:10,22 76:22 81:21 one's [2] 6:11 45:16 ones [2] 49:7 59:24 only [16] 6:5 12:16 32:21 44:14 59:7 60:2,22,23 61: 7 66:23 68:7 69:24 73:20 74:25 77:14 85:3 opening [1] 44:4 operator [1] 13:24 opportunities [1] 15:22 Opposing [1] 69:20 opposite [1] 37:22 oral [5] 1:14 2:2,5 3:7 42: 23 ordinary [2] 26:18 55:16 other [35] 18:16 19:19,22 26:3,17 28:13 32:14 36:20 44:6 45:15 46:17 49:2,7 50:14 51:3 55:4 59:6 60:6 62:12,22 64:16 67:16 69: 25 70:3 71:12 72:16 74:17, 17 78:23 79:2,3,17 83:14 85:8,23 others [1] 52:22 otherwise [3] 6:13 11:12 37:6 out [18] 12:4 16:23 28:18 31:25 33:16 37:16 48:6 49: 12,17 51:12 52:3,8 56:23 73:15 78:24 79:4,7 86:5 outside [2] 4:11 9:23 oven [1] 78:21 over [2] 7:7 27:15 overall [1] 68:9 overly [1] 81:9 overstating [1] 75:16 own [4] 4:14 6:23 15:16,16 owner [2] 7:7 60:1	payment [1] 6:10 peculiar [1] 67:25 pecuniary [2] 47:7 63:6 people [3] 5:20 72:3 73:22 per [2] 18:14 66:1 perceive [1] 18:22 percent [6] 71:6 77:15,19 84:14,14,15 percentage [2] 64:6,8 perfectly [2] 43:24 45:22 performed [1] 6:10 perhaps [2] 69:6,7 period [2] 56:17 85:12 permanent [1] 10:15 permanently [1] 25:12 person [20] 3:11 6:7 11:16, 16,20 15:11,12 17:23 24: 10 25:2 26:5,9 29:2 34:7 54:24 60:4 67:11 77:18 83: 14,15 person's [2] 22:21 74:4 personal [113] 3:15,17 4:3, 5,11,17,21,22,25 6:16,22 7: 1,4,14 8:3,8 9:2,22 10:15 12:21 13:8,19,25 14:5 15: 19 16:13 17:3 18:5,6,10,15, 20,23 19:12,22 20:5,8,12, 18 21:6 22:13,16,19 25:8 26:3,10 27:19,21,23,24,25 28:2,16,20 29:1,11 31:11, 14 32:3,4,5,16,20,21 33:1, 5,6,8,25 34:3,21 37:11,25 38:6 39:25 40:16 41:2 50: 8,15,18 51:5,14,21,25 52:1, 13,17 65:3,20 67:1,8,22,24 68:5,6,7,11,14,21 69:2 78: 15 79:14 83:17,22 84:5,6, 15,18,24 85:18,21,25 86:8 personally [1] 28:5 Pet [2] 32:11 57:24 Petitioners [10] 1:4,19 2:4, 16 3:8 44:3 58:17,21 80: 21 83:9 Petitioners' [6] 44:6 63:11 64:13 78:20,20 80:1 phonograph [1] 66:20 phrase [2] 25:20 61:16 physical [8] 13:2 14:25 19: 16 33:11 39:16 40:6 42:13, 16 physically [1] 29:4 pick [1] 26:14 piece [1] 58:14 pin [1] 81:21 place [1] 7:9 places [3] 16:25 19:19 38: 13 plain [6] 30:13 43:7,25 73: 6 75:21 80:23 plaintiff [4] 7:25 17:12 23: 14 36:19 Plaintiff's [1] 4:8 plaintiffs' [2] 31:23 48:11 please [4] 3:10 43:1 55:9
M				
machine [2] 78:14,22 made [5] 30:13 37:18 46: 17 53:12 64:16 mail [7] 19:8 71:22 80:15 81:24 82:1,23 85:11 manifest [1] 33:10 many [1] 74:9 map [2] 62:11 82:3 MARIJUANA [4] 1:3 3:5 46:20 64:24 Marijuana's [4] 47:6 66:7, 10 70:7 market [2] 77:15,16 massive [1] 48:12 materials [2] 21:18,20 matter [5] 1:13 55:15,16 79: 7 84:13 matters [1] 19:23 MDL [1] 76:18 MDLs [1] 53:17 mean [40] 5:4 11:3 12:7 14: 11 15:5 16:21 17:22 20:22 24:2 25:19,22 27:7,9,20 28:12,22 30:19 31:6,12,22 33:22 34:13,14,16 35:10 48:24,25 49:22,23 52:12, 16 55:4,6,25 65:10,10,14 67:17 69:6 81:9 meaning [8] 6:21 12:17 26: 18 27:11 43:7,25 55:16 56: 4 meaningful [1] 49:11 means [15] 10:4 25:21 26: 19 27:7,21,22 43:4,12,23 54:8 56:17,17 79:8 82:17, 19 meant [1] 43:20 measure [4] 44:2 46:5,15 70:5 measures [2] 43:17 62:14 MEDICAL [30] 1:3 3:5 4:2 8:5,7 10:23 12:22 13:1 46: 20 47:6 50:16,19,22 52:18 57:7,8 58:2 62:1,16 64:23 66:7,9 70:7,7 79:14,24 80: 2 84:25 86:4,5	N	Nabisco [4] 17:1 34:2 37: 12,13 nailed [1] 80:19 narrow [3] 4:18 82:10 84: 17 narrower [1] 82:12 natural [2] 12:5 65:8 nature [4] 10:13 17:19 59:8 86:16 necessarily [1] 56:8 need [8] 20:22 21:6 31:3 46:6 52:9 57:19,23 85:1 needed [1] 74:20 needs [1] 20:16 negligence [3] 8:17 53:8 72:4 never [2] 7:15 13:1 nine [1] 33:24 Ninth [8] 26:2 47:25 53:21, 22 78:11 80:7 84:2,8 nods [1] 31:16 non-pecuniary [2] 4:15 79:21 none [1] 68:17 normal [5] 9:1 12:5,17 13: 15 71:15 normally [1] 13:18 note [1] 54:4 noted [2] 49:15 50:1 nothing [5] 24:12 25:24 38: 15 42:4 78:21 notwithstanding [1] 14:3 novel [2] 66:8,10 nuclear [1] 66:19 number [3] 11:25 12:3 48: 18	P	PAGE [7] 2:2 19:18 32:10 44:3 55:13 58:18 83:25 pages [2] 32:13 33:3 paid [2] 22:24 61:2 pain [8] 4:19 11:22 48:7 49: 12 62:15 72:10 79:7 84:13 part [6] 28:2 60:22,23 61:1 70:12 79:14 particular [2] 15:19 77:21 particularly [2] 57:13 70:2 parts [1] 60:6 party [1] 74:10 past [2] 77:2,3 patent [3] 17:6 36:13,17 pattern [5] 19:7 48:21,21 53:9 72:5 pay [1] 10:23
O				
obvious [1] 77:8 Obviously [1] 40:2 occasioned [2] 47:8 63:7 occurred [1] 77:23 occurs [1] 8:25 October [1] 1:11 offense [1] 60:8 offenses [3] 80:16 82:2,25 often [1] 76:5 Okay [22] 15:3 21:11 23:5,				

Official - Subject to Final Review

<p>83:11 plenty [1] 9:20 point [9] 37:16 43:12 48:16 51:16 54:4 63:14 64:12 65: 11 74:9 points [4] 43:2 63:3 78:10 79:1 policy [1] 75:20 poppyseed [1] 28:15 position [7] 16:9 37:9 47: 18 75:5,14 80:11 85:15 positive [1] 67:2 possess [1] 21:14 potential [1] 73:23 powder [1] 23:19 pre-RICO [1] 5:14 precedent [1] 58:14 predicate [28] 8:12,24 37:3 38:2,20 44:21 47:2 48:20, 21 53:13 56:5,9,13,15 60:8 61:9,15 70:5 72:24 73:2,8 76:2,5 80:15 82:2,24,25 85:10 predicates [4] 4:24 66:18 71:19 81:24 prediction [2] 77:1 78:3 presented [5] 20:3,4 65:19, 22 67:19 pretty [8] 6:15 16:2 32:14 35:8,14 49:1 71:15 81:15 prevent [2] 5:19 15:13 preventing [1] 84:6 price [5] 22:23,24 23:1,4, 10 price-fixing [1] 31:15 prices [1] 31:11 primarily [1] 64:14 principle [3] 34:9 44:12 62: 13 principled [1] 62:2 principles [5] 16:22 17:18, 25 35:19,21 probably [1] 75:11 problem [10] 11:13 24:3 27:8 44:6 45:4 47:1 49:8 50:6 51:12 84:22 proceeding [1] 68:17 product [17] 4:10 8:16 19: 9 21:18 28:4 29:3,8,14 44: 15 53:7 68:23 70:7 72:3 73:19 74:3 77:25 78:13 products [6] 29:18,20 67: 13 69:19 71:20 80:7 profession [2] 5:21,24 profoundly [2] 80:14,14 promise [2] 63:18 71:6 proof [1] 76:6 proper [1] 79:8 properly [1] 30:16 property [48] 3:12 5:12 7: 19 9:14 10:5,10 11:8 13:3, 4 16:5 17:20,23 20:6 22: 23 25:1,2,20,21 35:10,12 36:2 40:3,14 48:5 50:24</p>	<p>51:15 52:15 54:10,24 57: 10,14 58:22 60:3 61:16 62: 11 65:4 72:13 73:3 74:21 78:16 80:13 82:12,17,18 83:15 86:6,14,14 property's [1] 35:8 proposition [1] 26:12 prosecutable [1] 54:11 prosecuted [1] 53:25 protected [1] 44:20 protects [1] 56:14 prototypical [1] 6:16 prove [6] 47:11 48:20 71:2, 9 72:5,6 provided [1] 30:15 provision [3] 54:20 63:5 82:23 provisions [1] 81:12 proximate [40] 6:20 7:21 8: 1,8,21 9:16,20 14:12 24:21 38:6 45:4 46:25 47:11 60: 10 61:14 62:23 63:22 64:3, 5,13 65:8,25 70:16 71:7,15, 16,18 73:10 74:16,18 75:3 76:23 77:4 84:20,20,21,24 85:2,2,4 proximately [3] 60:19 61:8 63:1 psychiatric [1] 58:20 psychoactive [1] 77:17 psychological [1] 13:11 purchase [5] 22:23,24 23: 1,4,10 purchases [1] 74:2 purpose [1] 35:6 purposes [3] 33:23,25 81: 13 put [6] 7:9 34:17 54:1 72: 25 73:1 82:23</p>	<p>radical [1] 52:24 raising [2] 6:19 53:16 ransom [3] 14:17 61:3,5 rare [2] 10:18 81:18 rather [1] 14:2 reach [2] 47:17 71:13 reached [1] 7:22 reaction [1] 42:12 read [5] 9:2 13:15 29:6 34: 7 83:22 readily [1] 6:5 reading [7] 11:4,14,18 12:5 34:5 45:23 83:14 reads [1] 26:4 really [6] 6:20,21 48:6 52: 23 54:1 78:4 reason [2] 3:12 11:10 24: 12,13,15 25:5,23,24,25 44: 21 48:10 53:7,9 60:9 61: 16 72:2,25 73:24 74:14 77: 14 80:6 reasonable [4] 47:5 63:7, 10 71:3 reasonably [1] 8:21 reasoning [2] 61:25 62:4 reasons [3] 47:21 76:6 77: 16 REBUTTAL [3] 2:8 83:7,8 recent [1] 38:9 recharacterize [1] 51:14 recognition [1] 4:2 recognize [1] 45:4 recognized [5] 5:15,22 recognizing [1] 32:11 records [1] 66:20 recover [15] 3:13 7:8,11,14 8:25 11:17 14:25 40:3 43: 19,21,22,22 51:24 60:1 83: 16 recoverable [13] 6:22 7:3 13:1 26:10 40:1 57:9 59:7 60:18,22 63:8 83:23 84:10 86:9 recoveries [3] 48:9,12 49: 14 recovery [5] 31:15 37:10 72:9 79:21 85:18 redress [2] 35:25 45:9 redressed [1] 45:8 redressing [3] 36:1,2,3 references [1] 3:21 referred [1] 50:21 referring [1] 5:9 refined [1] 85:19 Reiter [5] 5:8 30:13 31:6 57:13,17 Reiter's [1] 62:10 Reiter/Clayton [1] 58:14 related [5] 7:1 8:23 19:8 60:19 64:14 relatedness [1] 72:6 relationship [2] 23:13 72: 23 relevant [1] 44:11</p>	<p>reliance [4] 47:5 63:7,10 71:3 relied [3] 19:10 34:16 75: 20 rely [6] 20:17,22 23:8 30:2 36:9,25 relying [3] 18:23 24:17 47: 8 remained [1] 46:19 remand [7] 45:5 46:23 47: 12 62:24 63:21 70:23 73: 17 remedial [2] 33:23,24 remediate [1] 34:3 remedied [1] 34:21 remember [3] 54:9 63:15 70:17 renders [2] 39:16,25 Reply [1] 58:18 require [1] 76:5 requirement [15] 9:12 25: 1 30:14 48:5 49:1 54:11 60:4 72:7,18,21 73:5,11 74:18 76:1 83:18 requirements [1] 63:25 requisite [1] 23:20 reserve [2] 61:25 62:21 reserved [1] 58:1 resolved [2] 77:4,6 respect [3] 18:24 25:4,7 respond [2] 33:19 76:24 Respondent [6] 1:7,21 2:7 4:13 12:19 42:24 Respondent's [2] 4:4,20 Respondents [1] 21:25 responding [2] 74:8,25 response [3] 50:25 59:10 83:13 responses [4] 33:21 53:3 55:1 69:3 responsive [1] 49:4 rest [3] 43:6,9,18 Restatement [10] 18:2 44: 10,12 47:7 55:8,17,18 63:4 66:21,22 Restatements [2] 18:8 65: 14 restriction [2] 49:24 83:19 restrictive [1] 71:8 result [19] 3:23 4:9,22 13:9, 23 14:1 15:2,21 19:1,11 31:11 41:9,11 42:5 47:8 67:23 70:9 74:5 80:8 resulted [1] 18:9 resulting [9] 3:16 4:6 8:3,8 16:12 20:5,12 84:25 85:25 results [3] 13:2 20:9 65:20 reverse [2] 33:14,14 RICO [79] 3:11,16 4:12,14, 15,24 5:2 6:6 8:11 9:23 12: 8,9,11 13:20 14:5,24 15:23, 24 16:5 18:24 19:13,20,24, 25 20:1 22:9,12,24 23:3,21 24:11 25:5 26:5,10 27:18</p>	<p>34:12,17,21 35:3 36:18,19, 24 37:2 38:15,16,18 44:20 47:17,19 48:2,18 49:2 52: 16,19 53:6,13,14 54:9,20, 21 56:14 61:8 62:12 63:24 64:9 66:15 70:14 71:19 72: 11 75:7,18,22,22 76:7,19 78:19,23 81:12 85:10 RICO's [3] 3:15 4:17 85:9 rid [1] 32:20 RJR [4] 17:1 34:2 37:12,13 robbery [2] 14:16 40:8 ROBERTS [22] 3:3 34:23 36:6 39:8 42:20 47:14 48: 14,23 49:22 61:23 70:10, 24 71:11,21,25 72:15 73: 12 76:11 81:2,5 83:5 86: 19 Rotella [3] 57:12 58:17 62: 19 rule [22] 4:20 13:14 16:10 20:24 21:4,5,14 26:9 33: 15 39:14,23 44:6 47:25 53: 21 58:1 66:1 78:20,20 84: 16,23 85:3 86:3 ruled [1] 64:19 ruling [2] 67:12 79:7 run [1] 34:8</p>
Q				
<p>question [35] 8:22 17:22, 24 18:9,18 20:3 22:21 26: 17 30:2 36:19 37:20 38:5, 6 39:2 47:12 49:6 51:10, 11 57:20,23 58:2,5,24 59:8 61:7,25 62:21,22 64:2,3,5 65:19,22 67:15,19 questions [5] 5:3 10:6 45: 11 57:4 76:16 quibble [1] 35:11 quick [2] 43:2 57:4 quintessential [1] 6:25 quirky [1] 84:10 quite [4] 49:17 70:17 78:5 83:1 quitting [1] 6:14 quote [1] 4:6 quotes [1] 38:25 quoting [1] 20:15</p>	<p>R</p>	<p>racketeering [7] 3:13,19 8: 13 17:11 48:22 54:8 56:6</p>	<p>salary [1] 46:17 sales [2] 85:10,12 salesman [1] 5:22 salesmen [1] 5:20 same [10] 11:19 14:7 16:10 21:13 39:1 42:11 70:4,4,5, 6 satisfied [4] 24:25 30:15 49:20 50:2 satisfies [1] 71:7 saying [16] 11:4 20:3 23:2 28:4,22,23,24 29:7 32:15 33:8 50:14,20 52:12,13 53: 19 77:11 says [24] 11:7 12:10 17:1 19:4 20:13 22:6 26:18 27: 21 31:6 34:16 38:16 40:23 43:19 51:24 55:18 56:11 58:15 63:6,18 75:8 79:20 82:7,11 84:9 Scalia [1] 70:13 scope [1] 9:23 se [1] 66:1 sea [4] 31:13,13,22 82:8 Second [15] 12:24,24 24: 16 25:23 26:2 28:14,14 34: 4 48:13,16 57:24 58:24 63: 14 65:3 78:12 Section [3] 11:11 43:4 44: 12 Sedima [8] 36:24 44:19 50: 3 56:2,2,11 57:1 66:15 see [16] 6:13 19:5,12 25:13 60:12 65:18 66:3 67:24 78:</p>	

Official - Subject to Final Review

17,17,18 79:5,24 82:13 84:4 86:5 seeing [2] 80:5,6 seek [1] 52:19 seeking [3] 35:25 52:18 68:13 seem [5] 6:25 39:15 58:18, 21 82:3 seemed [1] 12:25 seems [8] 57:17,19 64:21 65:8,22 71:15 81:13 82:5 seen [2] 53:16 67:4 sense [2] 7:6 41:6 sensible [2] 43:24 45:22 sentence [5] 43:7,18,19,24 54:12 separate [2] 50:23 58:4 separates [1] 49:2 serious [3] 4:25 8:22 34:5 Service [2] 63:17 71:5 set [2] 10:6 13:17 Seventh [1] 85:17 several [1] 52:22 share [5] 48:9 49:13 67:5 79:20 84:11 shift [3] 52:24 53:20,24 shifting [1] 85:15 shoot [1] 8:23 shooting [2] 7:10 8:4 shorthand [1] 46:3 shot [2] 8:5 58:12 shouldn't [4] 7:21 34:17 37:9 70:14 shove [1] 15:10 shoved [1] 15:12 show [6] 8:20 62:24 70:16 71:14,19 73:17 showing [2] 3:20 46:24 shows [2] 3:22 54:20 sick [1] 29:20 side [14] 26:4,18 28:13 29:22,24 32:14 45:15 50:14 51:3 54:22 55:4 65:1 79:17 83:14 sided [1] 69:21 sight [1] 41:25 significant [1] 47:16 similar [1] 30:4 similarly [1] 8:20 simplest [1] 11:4 simply [1] 8:11 since [4] 4:21 27:17 34:16 83:22 situation [2] 21:13 41:18 Sixth [1] 85:17 sky [2] 75:6,9 slip [6] 4:24 13:11 34:11 41:3 47:19 85:5 slip-and-fall [2] 25:8 48:19 small [3] 11:25 12:3 74:4 solace [2] 80:10 81:10 somehow [1] 56:19 someone [10] 5:5 6:14 8:4,	23 24:8 56:2 58:20 74:2 76:2 77:19 Sorry [7] 10:11 18:5 33:3 37:12 48:13 55:8 86:5 sort [22] 18:23 21:3 47:23 48:9,16 49:12 56:5 59:13 62:7,13 63:14 65:23,24,25 67:22 70:6 76:5 78:11 79:21 80:4 81:21,25 SOTOMAYOR [23] 6:18 7:5,17,20 8:10,15 9:5,8,15, 18 23:25 36:7,8,12 37:5,14, 23 38:5,14,19,23 39:6 76:12 sounds [2] 12:23 70:24 source [1] 46:4 sources [1] 18:17 specific [1] 63:24 specifically [1] 71:4 split [1] 65:1 square [1] 56:1 stage [3] 20:20 68:3 85:16 stairs [4] 15:11,12 40:9,11 standard [2] 6:16 17:15 Stanford [1] 1:20 start [2] 8:2 83:12 started [1] 10:3 starts [1] 55:11 state [20] 5:1 18:17 34:11 35:12,18 36:25,25 37:7 44:14 52:17 53:5 54:5,14 66:17,23 69:19 76:18 78:18 82:3 85:11 statement [3] 19:20,25,25 STATES [4] 1:1,15 3:11 52:25 statute [25] 7:14 11:14,19 12:17 17:2 26:4,7 34:6 44:25 45:23 50:5,8,18 54:2 56:19 60:7 75:11,21,25 80:12,23 81:9,19 83:1,20 statutes [1] 51:23 statutory [2] 11:5 12:5 stay [1] 75:13 stick [1] 86:2 still [17] 4:15 8:3,7 9:5,8,12, 22 25:10,16 39:13 42:1 44:7 48:5 49:10 66:24 67:18 80:2 stole [1] 86:1 stolen [1] 36:2 stop [1] 7:15 store [1] 7:7 straight [1] 86:1 straightforward [1] 13:15 strange [4] 66:18 68:6,9 69:10 stressed [1] 76:22 strict [4] 8:18 53:8 71:23 72:4 striking [1] 34:21 stringent [1] 73:1 struggling [1] 67:18 study [1] 79:19	stuff [1] 5:2 subjected [1] 54:17 subjecting [1] 54:13 submitted [2] 86:20,22 subsidiary [1] 49:7 substantially [1] 48:2 successfully [1] 68:18 sue [5] 3:13 17:2,3 27:15 80:2 suffer [3] 67:8,11,14 suffered [5] 3:23 11:21,22 48:7 50:11 suffering [8] 4:19 11:22 48:8 49:12 62:15 72:10 79:7 84:14 suffers [5] 5:10 8:5 31:7 36:21 74:3 suggested [1] 70:19 suggesting [3] 22:17 23:25 39:15 suggests [1] 70:15 suit [1] 52:17 suits [7] 52:24 53:24 76:18, 24 77:1 79:15,25 sum [1] 39:18 summary [2] 64:14 77:3 sun [1] 28:19 support [1] 4:25 suppose [3] 20:23,23 21:13 supposed [1] 22:7 SUPREME [3] 1:1,14 23:12 survived [1] 44:14 sustained [8] 3:19 12:18 27:13 43:3,10,15,20,21 sustains [2] 3:14,22 sweep [2] 81:15 83:1 syntax [2] 43:6,18 system [1] 74:5	22 74:1,4 77:15,19 themselves [1] 3:24 theory [7] 53:14 66:7,10 69:13,16 70:6 80:1 there's [45] 6:8 7:15 8:10, 12,22 9:12,17 13:10,24 15:17,17,18 17:10 21:6 22:13 24:21 25:15,18 30:15 32:12,15 33:7 37:17 38:1 51:22 52:1 53:6,9 56:5,18 59:13 62:8,12,23 66:3 67:22 68:22 72:2 76:6 78:15 83:13 84:3,18 85:1,22 therefor [1] 3:13 Therefore [1] 52:15 third [1] 74:10 third-party [1] 75:1 THOMAS [10] 5:4 6:1 10:4 34:25 45:12,18,24 46:11, 20 73:13 though [4] 50:17 68:21 81:13 82:6 threaten [1] 7:6 three [5] 23:1,12 43:11 83:16 85:10 threefold [5] 3:14 11:11,17, 23 12:14 throughout [1] 52:25 throw [1] 7:11 thrown [1] 40:8 tie [1] 80:24 tie-breaker [1] 34:5 tighter [1] 61:13 tiny [2] 73:25,25 Title [1] 18:15 took [12] 15:11 18:25 19:2, 9 28:17 29:13 40:22 42:12, 14 63:11 85:11,23 toothless [1] 4:21 top [2] 63:23 64:11 top-line [2] 57:21,22 tort [26] 5:1,1 11:15 16:22 17:25 26:25 29:10 34:11 35:18,20 36:25 37:7 44:13, 14,16 48:10 52:17,24 53:24 55:16,22 66:17,23 76:18 79:15 82:3 tortfeasor [1] 54:14 torts [1] 53:5 total [1] 39:18 tough [1] 75:22 tracks [1] 4:1 trafficking [5] 6:7,12 44:8 56:20 66:19 treating [1] 4:17 treatise [3] 31:17 44:3 46:9 treble [5] 31:12 52:20 53:15,18 76:20 tree [1] 12:19 trial [3] 44:14 64:9 68:17 tricked [1] 23:18 tried [3] 23:9 37:15 56:2 trivially [1] 56:1 trucker [2] 63:18 71:6	True [3] 28:6 46:2 56:1 Truett [1] 16:11 try [2] 34:14 55:1 trying [11] 12:4 17:9 18:20 20:7 21:4 37:17 39:13 45:7,9 62:14 74:16 Tuesday [1] 1:11 Turkette [1] 50:4 turns [1] 49:17 twice [2] 27:18 34:1 two [29] 9:11 14:18 16:25, 25,25 37:18 40:10,19,24 43:2,17 46:1 47:21 53:2 54:25,25 55:20,21,23 59:3, 9,12 62:8 63:3 69:3 78:10 79:1 85:9,12 type [3] 4:18 27:15 84:17 types [1] 76:24
U				
U.S [3] 43:6,9,11 U.S.C [1] 43:13 ultimately [1] 23:11 umpteen [1] 79:10 unanimously [1] 75:10 under [30] 5:14 6:23 7:13 14:24 15:23,24 18:14 22:10 23:12 26:5,9,10 27:18 31:12,22 35:3 37:7 52:16, 19 53:13,14 54:8 57:9,14 59:11 71:8 72:3,11 80:1 84:16 understand [16] 18:20 20:7 21:4 28:3 32:8,18 39:14 41:16 42:3 59:17 60:12,13 66:12,13 69:12 79:10 understanding [1] 42:8 understands [1] 21:18 understood [4] 11:9 13:25 47:15 59:1 undetected [1] 59:14 UNITED [3] 1:1,15 52:25 unjust [1] 44:24 unless [1] 6:14 unlikely [1] 78:10 until [1] 28:8 unwanted [1] 4:5 unwise [2] 80:14,15 up [8] 6:13 17:4 21:25 26:14 34:8 52:3 71:10 85:15 urge [1] 58:8 using [1] 61:16 utterly [1] 4:23				
V				
valid [1] 24:20 vehicle [1] 68:3 versus [2] 3:5 16:11 victims [1] 43:13 view [4] 4:16 34:10 65:15 66:6 VII [1] 18:15 violation [5] 11:10 12:8,11 25:6 47:19				

Official - Subject to Final Review

<p>violations ^[2] 12:10 16:6 virtually ^[4] 4:21 30:15 49:20 50:1 vociferously ^[1] 68:2 voluntarily ^[1] 29:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wages ^[29] 4:2,6 6:15 8:6 10:16 12:21,25 23:7 25:10, 22 32:17 46:3,5 50:16,19, 22 51:1 52:18 57:7,9 62:25 67:9 79:13 84:9,25 85:6,22 86:9,11 walk ^[1] 46:11 wallet ^[2] 40:10,11 wanted ^[3] 49:18 81:7 82:25 wants ^[1] 51:20 warn ^[1] 68:22 warning ^[1] 53:12 wash ^[4] 13:23 58:25 60:1, 16 washing ^[2] 78:14,22 Washington ^[2] 1:10,18 way ^[11] 11:7,19 12:16 13:15 29:8 45:1 56:18 57:23 67:25 75:7 83:21 ways ^[2] 32:9 75:12 weapons ^[1] 66:19 website ^[1] 63:17 welcome ^[2] 5:3 45:11 WesternGeco ^[6] 17:5 36:9 37:13,18 38:21 85:16 whatever ^[2] 14:21 77:8 Whenever ^[1] 14:15 Whereupon ^[1] 86:21 whether ^[23] 6:21 8:22 17:22 18:4,9,13,14,14 19:9 20:4 35:5,11 38:1 42:18 44:22 51:11 56:16 59:4 60:19 62:18 76:24 81:8 82:18 who's ^[2] 77:18,20 whole ^[3] 8:11 13:17 46:6 will ^[12] 6:8 7:25 44:1 46:23 59:19 64:12 74:19 84:23 85:3,4,23 86:9 willful ^[1] 8:16 willfulness ^[1] 8:19 win ^[3] 24:15,18 25:23 wire ^[6] 19:8 80:15 81:24 82:2,23 85:11 within ^[1] 26:12 word ^[6] 27:9 34:6 43:7 55:3 82:14 83:17 worded ^[1] 44:25 words ^[5] 36:20 64:16 67:16 70:3 71:12 work ^[16] 6:8,10 8:6 9:4 19:2,13 24:25 25:11 33:16 41:12 49:11,18 73:9 74:19 79:3 85:6 works ^[3] 13:14 24:21 35:23 worried ^[2] 77:18,20</p>	<p>worry ^[5] 4:14 49:5 70:14 71:14 72:17 writes ^[1] 81:18 written ^[2] 50:5 83:3 wrongly ^[1] 58:19 wrote ^[2] 75:11 80:12</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years ^[2] 48:1 55:22 Yegiazaryan ^[4] 17:8 37:21 38:8,25 yourself ^[2] 15:23 46:6 YouTube ^[1] 63:16</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero ^[3] 71:6 77:15,19</p>
---	---