

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
GARY WAETZIG,)
Petitioner,)
v.) No. 23-971
HALLIBURTON ENERGY SERVICES, INC.,)
Respondent.)
- - - - -

Pages: 1 through 50

Place: Washington, D.C.

Date: January 14, 2025

HERITAGE REPORTING CORPORATION

Official Reporters

1150 Connecticut Avenue, N.W., Suite 305

Washington, D.C. 20036

(202) 628-4888

www.hrccourtreporters.com

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

2

3

4

5

6

7

8

9

10

11

12

13
14
15

16

17

18

19

20

21

22

23

24

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	VINCENT LEVY, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	MATTHEW D. MCGILL, ESQ.	
7	On behalf of the Respondent	26
8	REBUTTAL ARGUMENT OF:	
9	VINCENT LEVY, ESQ.	
10	On behalf of the Petitioner	49
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (11:23 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument next in Case 23-971, Waetzig versus
5 Halliburton Energy Services.

6 Mr. Levy.

7 ORAL ARGUMENT OF VINCENT LEVY

8 ON BEHALF OF THE PETITIONER

9 MR. LEVY: Mr. Chief Justice, and may it
10 please the Court:

11 As ever -- every Federal Circuit to have
12 considered the question held until the decision
13 below, Rule 41 voluntary dismissals without
14 prejudice may be reopened under Rule 60(b) because
15 they are final proceedings or final judgments.

16 To start, a voluntary dismissal is a
17 proceeding or a judgment. The phrase "judgment,
18 order, or proceeding" in Rule 60(b) was taken in
19 1937 from Section 473 of California's Code of Civil
20 Procedure, and at the time, California's Supreme
21 Court had interpreted Section 473 to cover all
22 steps in litigation and it's -- it had specifically
23 applied Section 473 to voluntary dismissals. These
24 authoritative -- California decisions were carried
25 into Rule 60(b), and they are consistent with --

1 dictionary definitions of the terms "proceeding"
2 and "judgment."

3 Next, a voluntary dismissal is also
4 final. Some courts, after adoption of the rule,
5 initially read it to constrain their authority to
6 revise interlocutory matters. And the advisory
7 committee thought this was wrong, so it added the
8 word "final" to confirm that Rule 60(b) comes into
9 play only when a court lacks inherent authority to
10 modify a matter as interlocutory.

11 But a dismissal terminates a case, so it
12 cannot be modified using a court -- the court's
13 inherent power, and it is, therefore, final for
14 Rule 60(b) purposes. And that conclusion, again,
15 is confirmed by contemporaneous dictionary
16 definitions.

17 Respondent mostly avoids these points.
18 It leads by asking the Court to affirm on the new
19 theory that the district court lacked jurisdiction
20 to vacate an arbitration award after reopening the
21 case. This objection is not covered by the
22 question presented and presents no obstacle to
23 resolving it. And the argument will fail on remand
24 because it misreads *Badgerow* and *Kokkonen*, which
25 are the two cases my friends rely upon. And when

1 it comes to the question presented, Respondent
2 offers no cogent response to the dictionary
3 definitions, the -- California decisions, or the
4 advisory notes. The Court should reverse.

5 I welcome the Court's questions.

6 JUSTICE THOMAS: Didn't the Tenth Circuit
7 also treat this as jurisdictional?

8 MR. LEVY: The -- the Tenth Circuit
9 treated the decision -- the issue of whether Rule
10 60(b) could be -- whether the case could be
11 reopened as going to the jurisdiction of the court
12 to vacate the award, and, therefore, there are two,
13 effectively, threshold issues that could be
14 resolved.

15 And, under Sinochem, of course, there's
16 no sequencing to jurisdictional issues, which is, I
17 think, the point that Justice Gorsuch made in the
18 dissent that we cite in our briefs, where, if there
19 are two jurisdictional issues and the court
20 grant -- or two issues that are threshold and go to
21 a court's jurisdiction and the court grants review
22 to decide one of them, it should decide that
23 question, and the other jurisdictional issues or
24 issues going to jurisdiction remain for remand.

25 JUSTICE THOMAS: So do you agree that

1 it's jurisdictional, or is it simply an application
2 of 60(b)?

3 MR. LEVY: I -- I do not agree that it's
4 jurisdictional. I think it's a -- it's a -- it's
5 about the application of Rule 60(b), and if relief
6 is granted, then the case is reopened and there is
7 jurisdiction. But the question it's -- that is
8 itself presented I would characterize as a
9 threshold issue in the same way as, in Sinochem,
10 forum non conveniens was a threshold issue which
11 was not jurisdictional.

12 CHIEF JUSTICE ROBERTS: Your -- your
13 friend suggests that the reason that you're going
14 through this process after voluntarily dismissing
15 the case, now trying to revive it, it's an ADEA
16 claim that you lost in arbitration, and it's a way
17 to try to bring a collateral attack on the
18 arbitration award.

19 Is that's -- is that what's going on?

20 MR. LEVY: Well, there -- there was a
21 motion to -- to reopen the case and to vacate the
22 award, and the case was then sent back to
23 arbitration. So it -- it was -- the motion was a
24 challenge to the arbitration award.

25 CHIEF JUSTICE ROBERTS: What --

1 JUSTICE JACKSON: But isn't it a separate
2 motion?

3 MR. LEVY: It was -- it was -- it --

4 JUSTICE JACKSON: I mean, there's a
5 motion to vacate, but there's also a motion to
6 reopen, and the court would have to make two
7 independent determinations regarding that, correct?

8 MR. LEVY: The district court treated it
9 as two issues, entered two orders. They are both
10 attached to our petition. The first order
11 chronologically was to reopen the case under Rule
12 60(b). And then later, having reopened the case,
13 the court vacated the arbitration award.

14 JUSTICE JACKSON: And, here, we're just
15 concerned about the propriety of the first issue?

16 MR. LEVY: That's right.

17 CHIEF JUSTICE ROBERTS: Well, your friend
18 on the other side is concerned about a little more
19 than that. He says -- I mean, what is the reason
20 for what you're doing if not to collaterally attack
21 the arbitration award?

22 MR. LEVY: Well, I think that goes to
23 the -- I agree the motion was filed and the
24 reopening was done to vacate the award. Those
25 are -- those go to the -- to two different -- they

1 don't go -- those issues do not go to the question
2 presented.

3 They go to, number one, whether the court
4 was right to grant relief under Rule 60(b). I note
5 that that issue was not addressed by the court
6 itself in the majority opinion, although the
7 dissent would have affirmed the district court's
8 grant of relief under Rule 60(b)(6). And so, on
9 remand, my friends can argue that the 60(b) ruling,
10 the exercise of discretion by the district court
11 should be vacated as an abuse of discretion.

12 And then, of course, there will be the
13 separate issue on remand, to the extent arguments
14 have been preserved, as to whether the separate
15 order vacating the award should be affirmed.

16 CHIEF JUSTICE ROBERTS: Right. But, I
17 mean, I'm just trying to get a handle on why the --
18 we're going through all this. And the arbitration
19 award has been confirmed in court, right?

20 MR. LEVY: It has not been confirmed.

21 CHIEF JUSTICE ROBERTS: Okay. But there
22 is a proceeding to do that, or are you challenging
23 that independently?

24 MR. LEVY: The -- the -- what happened is
25 there was an arbitration award. Then there was a

1 motion filed by my client to reopen the case and
2 vacate the award. And then that award was vacated.
3 And then the matter was appealed.

4 CHIEF JUSTICE ROBERTS: Well, then, so
5 your friend is wrong to suggest that the reason --
6 I mean, the ADEA claim was resolved in the
7 arbitration. Now, if it's going to be challenged,
8 it should be challenged in that forum. No?

9 MR. LEVY: Well, there's -- there's a
10 motion under -- arbitration awards would be subject
11 to challenge under the FAA. And the court, the
12 district court here, determined that those grounds
13 were satisfied and that the arbitration award
14 should be vacated and did vacate the award.

15 CHIEF JUSTICE ROBERTS: Well, the --
16 your -- your dismissal was a voluntary dismissal,
17 right? So you should have -- you could have
18 challenged the arbitration award independently at
19 that point, right? There's no -- it -- why -- why
20 do you -- why is it necessary for you to vacate
21 your voluntary dismissal to restore the -- that
22 action, as opposed to bringing an independent
23 action challenging the arbitration award?

24 MR. LEVY: So, sequentially, my -- my
25 client filed an ADEA case. My -- Halliburton

1 argued that the case should be arbitrated, asked
2 that the case be dismissed and sent to arbitration.
3 My client withdrew the case at that point without
4 prejudice, although it was after the limitation
5 period had lapsed, and went to arbitration.

6 The arbitration proceeded. An
7 arbitration award was rendered. And my client then
8 challenged the award by going back to court and
9 saying we would like to reopen the case and have
10 the arbitration vacated under Section 10 of the
11 FAA.

12 At that point, the district court said
13 the -- that it had -- that the case had been
14 dismissed and issued an order to show cause asking
15 how it had jurisdiction. My client pointed to
16 Rules 60(b)(1) and (6) as grounds to reopen the
17 case, and that's the path that the district court
18 took. It entered one order reopening the case and
19 then, after that occurred, entered another order
20 vacating the award. When the case went up on
21 appeal, all those issues were presented.

22 CHIEF JUSTICE ROBERTS: Well, but if --
23 why -- your voluntary dismissal was without
24 prejudice, right? Why do you have to reopen that?
25 Can't you just bring another proceeding?

1 MR. LEVY: Well, no, because of the
2 limitation periods.

3 CHIEF JUSTICE ROBERTS: So this is a way
4 of avoiding the -- the statute of limitations?

5 MR. LEVY: Well, it's -- it's -- it's an
6 application arguing that the application of the
7 limitation periods to this case is inequitable --
8 given the circumstances of the case, which is an --
9 an -- an argument that the district court accepted
10 in granting relief under real -- Rules 60(b)(6) and
11 (b)(1) as well. But, under (b)(6), that was the
12 ground that the dissent would have affirmed. And
13 so, on remand, that -- that will be whatever
14 arguments remain as to whether the reopening of the
15 case under Rule 60(b)(6) --

16 CHIEF JUSTICE ROBERTS: I'm sorry, I'm
17 just trying to get a handle on exactly what
18 happened.

19 If you had filed another ADEA challenge,
20 that would have been barred by the statute of
21 limitations?

22 MR. LEVY: That's right.

23 CHIEF JUSTICE ROBERTS: So you're
24 reopening your voluntary dismissal to avoid that
25 consequence?

1 MR. LEVY: It's -- well, a new case could
2 not have been filed on the merits because of the
3 limitation period. And a new application under the
4 FAA also could not have been filed because that has
5 also a limitation period of 90 days.

6 And so, considering all these factors,
7 the -- the law, and -- and the other issues that
8 are discussed by the district court, the district
9 court reopened the case. And that is an issue that
10 is, A, not jurisdictional, B, was not addressed
11 below, and -- and C, could be considered -- on
12 remand.

13 JUSTICE SOTOMAYOR: Counsel, I -- I see
14 two jurisdictional issues here.

15 One, what's the district court's
16 jurisdiction? What's the subject matter -- what
17 gives it subject matter jurisdiction to consider
18 the 60(b) motion at all?

19 And the second jurisdictional issue I see
20 is: What gives it subject matter jurisdiction to
21 vacate an arbitrable award?

22 So they chose to go, the Tenth Circuit,
23 on the 60(b). That's what we granted cert on. And
24 so I'm assuming that you must think that the
25 jurisdiction over the motion to reopen stems from

1 the original ADEA case?

2 MR. LEVY: That's right.

3 JUSTICE SOTOMAYOR: All right. So that
4 has been opened. What would have given the
5 district court jurisdiction to vacate the -- an
6 arbitrable award?

7 MR. LEVY: Right.

8 JUSTICE SOTOMAYOR: Because I don't think
9 the jurisdiction that's granted by the federal
10 statute or the ADEA is simply to order parties to
11 go to arbitration. So what gives it subject matter
12 jurisdiction to vacate the award?

13 MR. LEVY: Well, once the case is
14 reopened, it's a federal case, and -- and our --
15 first, it has jurisdiction because of that. And --

16 JUSTICE SOTOMAYOR: It has jurisdiction
17 to reopen the ADEA case, but this is no longer an
18 ADEA case.

19 MR. LEVY: So --

20 JUSTICE SOTOMAYOR: At least the motion
21 to vacate is not related to anything that's
22 happened in the rights and responsibilities between
23 the two of you with respect to the claim.

24 MR. LEVY: Well, it -- it's related in
25 the sense that it -- it -- as the Court looked at

1 the question in Badgerow, the question of -- of
2 a -- a motion to -- to vacate an award, and there,
3 of course, the merits were not before the Court, it
4 was a standalone motion to vacate. And that was
5 the premise of the question.

6 And the Court said in that circumstances
7 you need independent subject matter jurisdiction.
8 It didn't speak to whether, if the case -- the
9 merits were before the Court and the case were
10 reopened, there would be a -- a need for an
11 independent -- for subject matter jurisdiction.
12 Justice Breyer, in dissent, noted there -- there
13 may not be. And I -- I didn't read the majority --
14 the opinion of the Court to say otherwise.

15 Kokkonen itself, upon which Badgerow was
16 based, made very clear --

17 JUSTICE KAGAN: Well, assume that -- if
18 you assume that -- I think that Badgerow would
19 prevent you from just relying on the federal
20 statute to vacate the arbitration award. My -- my
21 understanding of the facts here is that you're
22 going to try to get in through diversity. Is that
23 right?

24 MR. LEVY: We do have diversity. The
25 amount in controversy was not pleaded, and the --

1 and the court -- whether the court would forgive
2 that is a matter below.

3 JUSTICE KAGAN: Uh-huh.

4 MR. LEVY: It --

5 JUSTICE KAGAN: And if -- at any rate,
6 even if you can't -- even if you don't have
7 jurisdiction to vacate the arbitration award,
8 because Badgerow says you can't do it based on the
9 federal statute and they're not going to allow you
10 to replead your diversity claim, you know, even
11 assuming that, I take it that what you're saying is
12 that the jurisdictional question as to 60(b) is
13 entirely different?

14 MR. LEVY: That's exactly right. It --
15 it -- none of these issues are -- are obstacles to
16 resolving the question presented. I'm -- I'm just
17 taking them as -- as -- as given, of course.

18 JUSTICE KAGAN: Yeah. I mean, I think
19 you have a tough row to hoe on the Badgerow
20 question, honestly, but that doesn't seem to be the
21 jurisdictional question that's in front of us.

22 MR. LEVY: I -- I will say that the
23 courts of appeals after Badgerow have split on the
24 question as to whether, if there -- if a case
25 remains open, there is a basis to vacate an award.

1 With the Seventh Circuit and the Third Circuit
2 saying you do not need an independent basis and the
3 Fourth Circuit coming out the other way, that may
4 be the next case.

5 JUSTICE KAGAN: Okay. But I guess
6 regardless, is what I'm saying, even if I disagree
7 with you or, you know, however hard or easy that
8 question might be, your real contention here is
9 that this is a different jurisdictional question
10 and that the Badgerow question can be decided at
11 some place down the road.

12 MR. LEVY: That's exactly right. And in
13 terms of -- of the question presented, it -- the
14 text is clear and the California courts are clear
15 that proceedings and judgments are to be --
16 proceedings are to be interpreted broadly.
17 Judgments at the time the rules were enacted
18 included voluntary dismissals.

19 The California Supreme Court interpreted
20 the same words to include voluntary dismissals,
21 rejected the argument that voluntary dismissals
22 could not -- could not be reopened because it was
23 voluntary.

24 The -- the point is --

25 JUSTICE GORSUCH: Mr. Levy, on -- on

1 that, your reading hinges on "proceeding," places a
2 lot of weight there. I wonder, though, what
3 wouldn't be a proceeding on your theory? I know
4 what an order is, I know what a judgment is.

5 MR. LEVY: Right.

6 JUSTICE GORSUCH: But is a proceeding
7 every docket entry? And if it is, then why do we
8 have order and judgment? Have -- have we created
9 a -- a problem where they're rendered meaningless?

10 MR. LEVY: Well, I -- I think the -- the
11 way the statute was written was to go from narrower
12 to broader because every judgment --

13 JUSTICE GORSUCH: Without doubt, yeah.

14 MR. LEVY: -- every judgment is also an
15 order, and the way the courts interpreted
16 "proceeding" would -- would include orders and --
17 and judgments --

18 JUSTICE GORSUCH: Yeah, does it swallow
19 the whole thing, though, and does that create a
20 problem? And what wouldn't be a proceeding?

21 MR. LEVY: Well, I think it's a
22 belts-and-suspenders approach to making sure that
23 there was broad authority to --

24 JUSTICE GORSUCH: So, yes, it does
25 swallow it, but we should overlook that?

1 MR. LEVY: Well, it's a virtue, so
2 I don't know that I would --

3 JUSTICE GORSUCH: It's a virtue, not a
4 vice. Okay. All right. All right. Got it. I --
5 I got it, I think.

6 And -- and then Microsoft, how do you
7 deal with that, where this Court said that a
8 dismissal with prejudice wasn't a final decision
9 for purposes of 1291?

10 MR. LEVY: Right. So I think this goes
11 to an argument my friends make, which is to try to
12 import the concept of finality from appeals to --

13 JUSTICE GORSUCH: 60(b).

14 MR. LEVY: -- 60(b). And I think a
15 couple of points in response, and we make them in
16 our brief.

17 The first one is that the -- the -- the
18 rule-makers used different words. It did -- didn't
19 use final decisions, final decisions subject to
20 appeal. They made very clear initially that it
21 covered whatever California covered, which is
22 everything. And then the word "final" was added
23 later to make clear that the courts' authority over
24 interlocutory matters was not constrained. So that
25 history and the way the -- where the words come

1 from impart a very different meaning. So that's
2 number one.

3 Number two --

4 JUSTICE GORSUCH: Number one's good
5 enough for me.

6 MR. LEVY: Okay.

7 JUSTICE GORSUCH: Judge Matheson's
8 dissent and his boomerang theory of finality --

9 MR. LEVY: Yeah.

10 JUSTICE GORSUCH: -- which you seem to
11 embrace, so I'm -- I'm -- I don't mean it
12 pejoratively, but that things can become final, you
13 didn't make that argument here.

14 You're asking us, as I understand it, to
15 hold that there was always a final proceeding.
16 It -- it didn't -- it didn't mature into finality
17 due to later events. Is that right?

18 MR. LEVY: So ours wins under both
19 standards. And we took -- we -- we -- we endorsed,
20 I think, something closer to Yesh from the Fifth
21 Circuit --

22 JUSTICE GORSUCH: Yeah.

23 MR. LEVY: -- which looks at finality
24 when made. But we would win under Judge
25 Matheson --

1 JUSTICE GORSUCH: You -- you'd take it if
2 you had to. Got it. Okay.

3 MR. LEVY: And -- and, as I mentioned, if
4 finality turns on the limitation period, in this
5 case, when the dismissal was initially made, the --
6 the limitation period's already applied. So even
7 that standard would be met.

8 JUSTICE GORSUCH: Thank you, Mr. Levy.

9 JUSTICE JACKSON: Can you walk us through
10 the enactment history and, in particular, the --
11 the significance of the addition of "final"?

12 MR. LEVY: So, initially, as I said,
13 the -- the -- in 1937, the statute -- the -- the
14 rule, I'm sorry, covered judgments, orders, or
15 proceedings. The advisory committee notes made
16 clear that's taken from the California decisions,
17 and Professor Moore has said in various places at
18 the time that the California decisions are
19 authoritative.

20 Between 1937 and 1946, some courts were
21 reading Rule 60(b) to apply to interlocutory
22 matters so that if a -- if a -- a decision were
23 made or an order taken along the way, that --

24 JUSTICE JACKSON: In an open, pending
25 case?

1 MR. LEVY: In an open, pending case.
2 That the movant would have to show a mistake,
3 fraud, or the like under Rule 60(b), and,
4 otherwise, the court would be without authority.

5 And Professor Moore, in -- in the article
6 that is referenced in the advisory committee notes,
7 says that's wrong because, as this Court had said
8 in 1922 in the John Simmons Company case, courts
9 retain plenary inherent authority to revisit
10 interlocutory matters and that's how it should be.

11 And so, for that reason, Professor Moore
12 recommended, and that was ultimately taken up, that
13 the word "final" be added to Rule 60(b) not to
14 limit Rule 60(b) but, rather, to make sure that
15 inherent -- that interlocutory matters would always
16 be subject to reopening, unconstrained by Rule
17 60(b).

18 JUSTICE JACKSON: And how is it that
19 Respondent's argument is using "final" to limit?

20 MR. LEVY: Well, I think the Respondent
21 have said "final" means res judicata effect, or
22 Respondent -- or that "final" means appealability.

23 JUSTICE JACKSON: That it must affect the
24 parties -- it's the sort of certain kinds of
25 proceedings is what --

1 MR. LEVY: That's right.

2 JUSTICE JACKSON: -- Respondent looks --
3 uses "final" to do, and that, therefore, limits the
4 district court's ability to address after the fact
5 those kinds of cases?

6 MR. LEVY: That's right. I think -- I
7 think my friends are trying to inject in the first
8 step of whether Rule 60(b) is even available a test
9 as to whether there's an effect on the legal rights
10 when the intent was clear to make 60(b) as broad as
11 possible in terms of which orders, matter, or
12 proceedings could be -- reexamined and to make very
13 clear that the circumstances in which they could be
14 reexamined would be narrow and they would have to
15 be -- to meet the 60(b)(1) through (6) test in the
16 court's -- in -- in the discretion of the district
17 court.

18 JUSTICE JACKSON: And you read "orders,
19 judgments, and proceedings" not as some sort of,
20 you know, strict list but, really, Congress trying
21 to say pretty much everything? Waterfront?

22 MR. LEVY: That's right. And I -- that's
23 how the California Supreme Court interpreted it
24 under the Court's decision in Hall versus Hall.
25 The -- the -- the -- the court takes notice when

1 the advisory committee notes takes a provision from
2 a statute or other source, puts it into the federal
3 rules, and holds that that is intentional and
4 carries the -- the soil with it. At least as a
5 presumptive matter, the decisions of the California
6 Supreme Court interpreting "proceeding" to cover
7 everything and specifically applying their version
8 of the -- of the code, which had the same operative
9 language, to cover voluntary dismissals is strong
10 evidence that that was intended by the rule-makers.

11 And, of course, we -- we also rely on the
12 word "judgment" and not just "proceeding" because,
13 as I said, at the time, judgments were defined to
14 include voluntary dismissals, and -- and -- and
15 that was the settled meaning in 1937, and that's
16 the way California's Supreme Court talked about it
17 too.

18 JUSTICE SOTOMAYOR: Can I go back to -- a
19 bit to Justice Gorsuch's question. There's some
20 superfluity in your definition, but there is also
21 in the other side's because every proceeding would
22 encompass a judgment and an order, correct?

23 MR. LEVY: That's right.

24 JUSTICE SOTOMAYOR: Or a judgment and
25 order would -- because they require there to be

1 some sort of judicial intervention as I understand,
2 that would -- that would mean that every proceeding
3 would -- encompasses judgment and orders as well
4 and vice versa.

5 MR. LEVY: I think that both
6 interpretations -- all the interpretations we've
7 seen have some surplusage, and in that
8 circumstance, the Court has said the canon against
9 surplusage doesn't apply. What I will say is we do
10 give independent meaning to "judgment, order, and
11 proceeding" because they don't all mean the same
12 thing in our view of the world. But --

13 JUSTICE SOTOMAYOR: Well, and you have
14 some support for that because one of the provisions
15 of this Act talks about the date of the -- the date
16 of the proceeding as opposed to the entry of the
17 judgment or order, correct?

18 MR. LEVY: That's right. That's Rule
19 60(c)(1).

20 JUSTICE SOTOMAYOR: All right. With --
21 with respect to this question of finality, the
22 other side relies very much on the definition of
23 1291, and 1291 doesn't seem quite as apt an analogy
24 to me as one would think because that has to do
25 more with what is the jurisdiction between a

1 district court and an appellate court.

2 And that's very different here because
3 this is about the jurisdiction of a district court,
4 correct?

5 MR. LEVY: That's exactly right.

6 JUSTICE SOTOMAYOR: And so I guess
7 what -- when you're pointing to the California
8 cases and to the -- to the California cases and to
9 the advisory notes, you're saying you should look
10 at finality in the way that Congress was using it,
11 which is case-ending finality rather than legal
12 determination finality, correct?

13 MR. LEVY: We're -- we're looking -- we
14 meet -- we do endorse the case-ending finality
15 concept and -- and also whether, as Professor Moore
16 stated, there is -- inherent authority to modify --

17 JUSTICE SOTOMAYOR: It can't be the
18 ending of the controversy because, otherwise, there
19 wouldn't be jurisdiction, which they admit there
20 is. If a court signs a judgment dismissing without
21 prejudice, which it does regularly, that doesn't
22 end the legal responsibility between the parties,
23 correct?

24 MR. LEVY: That's right. And there --
25 there are many orders that are deemed final for

1 appellate purposes or -- or otherwise that can be
2 refiled that are nonetheless deemed final because
3 they terminate the case. And the Court has said
4 that in its decisions interpreting the appellate
5 statutes, which --

6 JUSTICE SOTOMAYOR: Thank you, counsel.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Justice Thomas?

10 JUSTICE THOMAS: No.

11 CHIEF JUSTICE ROBERTS: Justice
12 Sotomayor, anything further? Okay.

13 Justice Kagan?

14 Justice Kavanaugh, anything?

15 Justice Barrett?

16 Justice Jackson?

17 Okay. Thank you, counsel.

18 Mr. McGill.

19 ORAL ARGUMENT OF MATTHEW D. MCGILL

20 ON BEHALF OF THE RESPONDENT

21 MR. MCGILL: Thank you, Mr. Chief
22 Justice, and may it please the Court:

23 I want to start with the question of
24 jurisdiction. We know from Badgerow that a Section
25 10 motion to vacate under the Federal Arbitration

1 Act requires its own basis for federal
2 jurisdiction. We know from Kokkonen and Rule 82
3 that Rule 60 cannot extend the jurisdiction of the
4 district court to new forms of relief, such as a
5 motion to vacate an arbitral award.

6 Petitioner needs a basis for his Section
7 10 request, but Rule 60 can't supply it, and that
8 was the only basis for jurisdiction ever presented
9 below. That's the argument that there's no
10 jurisdiction here.

11 On the merits, I want to point to three
12 major problems with Petitioner's construction of
13 Rule 60.

14 First, we have a good only -- good for
15 only Rule 60 definition of "finality." That runs
16 into two really big problems. The first is that
17 Rule 60 interacts with Federal Rule of Appellate
18 Procedure 4 to toll the deadline to file a notice
19 of appeal. If "finality" means something different
20 under Rule 60 than it does under Rule 4, we're
21 going to have confusion where confusion is least
22 desirable: the time and deadline to file a notice
23 of appeal.

24 The second point is, because a rule --
25 the denial or grant for that matter of a Rule 60

1 motion is itself an appealable final order, this
2 would -- his definition of "finality," my friend's
3 definition of "finality," would allow a litigant to
4 bootstrap himself into an appeal from an otherwise
5 unappealable order.

6 His definition of "proceeding" means that
7 prior to 1946, every docket entry could have been
8 subject to a Rule 60 motion, even a complaint or a
9 notice of appeal. Our -- our reading of the
10 statute reads "judgment, order, and proceeding" in
11 harmony. It does not -- one does not subsume the
12 other.

13 And the last point is -- that I would
14 make is Petitioner's definition here takes no
15 account of the -- Rule 60's key verb, which is to
16 relieve. There has to be some burden for the court
17 to relieve, and a voluntary dismissal without
18 prejudice that leaves the plaintiff free to refile
19 his claims at any time in any court is -- does not
20 impose any legal burden for a court to relieve.

21 I welcome the Court's questions.

22 JUSTICE THOMAS: So do you think that
23 finality is consistent across all of the Federal
24 Rules of Civil Procedure?

25 MR. MCGILL: I believe that with respect

1 to Rule 60 at least, it has to have the same
2 definition as "final orders" under Rule 1291.
3 Otherwise, for -- for instance, the Petitioner's
4 definition could take no account of collateral
5 orders. A collateral -- the time to -- to appeal a
6 collateral order runs from the date of the order.
7 However, under his view, because a collateral order
8 doesn't terminate a case, it's not subject to Rule
9 60 relief and it couldn't be -- couldn't benefit
10 from the tolling that FRAP 4 provides for motions
11 filed under Rule 60.

12 So the -- the rule -- the -- and also,
13 this Court's decision in *Stone versus INS*, which we
14 cite in our red brief, elaborates on how Rule 60
15 and the Rules of Appellate Procedure work together
16 to define the -- the time to file a notice of
17 appeal. His -- his definition of "finality" is
18 going to create confusion where it is least
19 desirable --

20 JUSTICE JACKSON: But what do we do about
21 the fact --

22 MR. MCGILL: -- and where clarity is most
23 needed.

24 JUSTICE JACKSON: -- what -- what do we
25 do about the fact that there is evidence in this

1 sort of record of proceedings that indicates that
2 the committee here was inserting "final" for a
3 particular reason?

4 I mean, are you asking that we just
5 ignore the committee notes in the -- the enactment
6 history, which suggests that whatever "finality"
7 means in 1291, here, it was doing particular work?

8 MR. MCGILL: Not -- not at all, Your
9 Honor. So the finality requirement comes in in
10 1946. At -- in 1946, "final," when used to
11 describe a judgment or order, had a very particular
12 meaning that comes from -- came from this Court's
13 appellate jurisdiction cases --

14 JUSTICE JACKSON: No, but -- but --

15 MR. MCGILL: -- going back to the
16 founding.

17 JUSTICE JACKSON: -- but do you -- do you
18 dispute his recitation of the facts with respect to
19 why the committee put "final" in this particular
20 rule?

21 MR. MCGILL: It's not false, but it's not
22 entirely true, Your Honor.

23 (Laughter.)

24 MR. MCGILL: The -- the -- so the -- what
25 the advisory committee note explains is that the

1 final -- the -- the finality requirement was doing
2 two things. One is it wanted to make clear that
3 for final judgments, orders, and proceedings, there
4 was one way for them to be revisited, and that was
5 through the Federal Rules of Appellate Procedure.
6 Gone were the writs of coram nobis, coram vobis,
7 audita querela, and other things shrouded in lore
8 and mystery.

9 The second point, which was related to
10 the first, is that the -- the stricter standards
11 under Rule 60 applied only to final orders, not to
12 interlocutory orders that remained subject to the
13 court's inherent authority.

14 Now that doesn't help Petitioner. He's
15 never looked to the court's inherent authority
16 because, under Badgerow, the court's inherent
17 authority over an ADEA case would not give him
18 subject matter jurisdiction to vacate --

19 JUSTICE JACKSON: Well, it's --

20 MR MCGILL: -- an arbitration award.

21 JUSTICE JACKSON: -- interesting to me
22 that you raised Badgerow because I'm trying to
23 understand where that is in the question presented
24 in this case even as you have framed it in the red
25 brief.

1 I was surprised, given our colloquy
2 earlier, about the fact that there are two
3 different jurisdictional arguments here and that
4 this case appeared to be all about the scope of
5 final judgment, order, or proceeding in Rule 60.
6 That's what you say in your question presented.

7 So what is this Badgerow argument? Like,
8 why are we looking at that or caring about that in
9 this context?

10 MR. MCGILL: This Court should care about
11 it because it goes to the lower court's
12 jurisdiction under this Court's decision in Bender
13 versus Williamsport --

14 JUSTICE JACKSON: I understand, but we
15 didn't take the case to decide that basis for
16 jurisdiction, right?

17 MR. MCGILL: The -- the same, of course,
18 was true in Bender versus Williamsport Area School
19 District. This Court has an independent
20 obligation, even if I were prepared to concede
21 jurisdiction, it has its own obligation to assure
22 itself of its jurisdiction and those of the courts
23 below.

24 JUSTICE JACKSON: Why didn't you put that
25 in the question presented that you presented in --

1 in your red brief? I mean, you led us to believe
2 by looking at your question presented that this
3 case was all about Rule 60.

4 MR. MCGILL: So -- two points, Your
5 Honor.

6 First is I don't view it as the
7 Respondent's job to rewrite the Petitioner's
8 question presented, but I think the -- the gravamen
9 of your point is why didn't I raise this in our
10 brief in opposition. And the answer to that is
11 that, candidly, I did not understand or fully
12 contemplate the jurisdictional significance of the
13 Petitioner's motion to vacate until we started
14 briefing on the merits.

15 And let's talk about that --

16 JUSTICE KAGAN: But that's -- but that's
17 down the road, isn't it, Mr. McGill? I mean, you
18 might have a very good argument on -- on -- on
19 Badgerow. You might have a very good argument that
20 there is no jurisdiction to vacate the arbitration
21 award. But -- but that's not what's in front of
22 us. What's in front of us is the 60(b) motion, and
23 that's an antecedent question. You know, one
24 question is can you bring a 60(b) motion.

25 MR. MCGILL: It --

1 JUSTICE KAGAN: The next question is: If
2 you do bring a 60(b) motion and get it granted, can
3 you do anything with respect to that, or are you
4 precluded from vacating the arbitration award
5 because of Badgerow?

6 MR. MCGILL: So I -- I've got two -- two
7 points I want to make in response to that. The
8 first goes to --

9 JUSTICE KAGAN: I mean, I like Badgerow
10 as well as the next person, you know?

11 (Laughter.)

12 MR. MCGILL: I -- I -- I think it's
13 fabulous.

14 JUSTICE KAGAN: But it's just like not
15 the time to be talking about Badgerow.

16 MR. MCGILL: I --

17 JUSTICE KAGAN: Badgerow, you might have
18 a lot to say about Badgerow, you know, in a few
19 months' time.

20 MR. MCGILL: So let me address it -- it
21 with two -- two points. The first goes to what the
22 motion below actually did, and the second goes to
23 the sequencing Sinochem point that has been raised.

24 First is, what did the motion do? It
25 starts at page 24 of the court of appeals joint

1 appendix. It's a motion to reopen and to vacate
2 the arbitral award. The only relief it requests is
3 to vacate the arbitral award, and it does not ever
4 request to reopen actually the existing federal
5 claim.

6 And the reason we know that is the only
7 other aspect of relief it requests is to appoint a
8 new arbitrator to adjudicate that claim for relief.
9 So the only thing the motion does is to seek to
10 vacate the arbitral award. It's seeking to use
11 Rule 60(b) as the jurisdictional hook to do that,
12 something that the case itself could not do. So
13 that's -- that's the first point: What does the
14 motion do?

15 The district court then breaks it apart
16 into two separate orders. It says: I'm reopening
17 under 60(1) -- 60(b)(1) and (6). And then it says
18 under the FAA, later, I'm going to vacate the
19 arbitral award.

20 So you have -- the only request that's
21 ever been made is to vacate the arbitral award.
22 That's the relief that requires subject matter
23 jurisdiction. The relief that's being requested
24 requires its own form of subject -- its own basis
25 for subject matter jurisdiction. The only basis

1 presented is Rule 60. That is not sufficient under
2 Kokkonen.

3 Second, the sequencing point. The court
4 of appeals refers to this as a jurisdictional
5 issue, but I don't think that's correct. We know
6 that because Rule 80 -- under Rule 82, the
7 availability of Rule 60 relief could not expand or
8 contract the district court's statutory
9 jurisdiction.

10 When the court of appeals was referring
11 to subject matter jurisdiction, what it really was
12 referring to was the long history that -- that a
13 court could not -- lacked power to set aside or
14 otherwise interfere with a plaintiff's voluntary
15 dismissal. It used a sloppy label in calling it
16 subject matter jurisdiction. But the availability
17 of Section 60 relief really is like the question in
18 Steel Company whether a plaintiff's particular
19 claim is available under the statute.

20 So we don't think Sinochem's sequencing
21 actually is available here. It's more like Steel
22 Company, where the jurisdictional question has to
23 come first. And there's simply no answer to the
24 fact that --

25 JUSTICE JACKSON: But I don't --

1 MR. MCGILL: -- the only basis --

2 JUSTICE JACKSON: -- understand -- I
3 don't understand that at all. I mean, after -- I
4 appreciate that the request seemed to merge the
5 two. But, once the district court broke them apart
6 and issued two separate orders and the rest of the
7 way there was a challenge as to whether or not the
8 district court properly granted a motion to reopen,
9 and that was the thing that this Court took cert
10 on, I don't understand why it necessitates us to
11 care about whether the district court was right
12 with respect to its other order.

13 MR. MCGILL: I -- Justice Jackson, it's
14 because the motion to reopen had -- sought no
15 relief on a claim.

16 JUSTICE JACKSON: I understand -- I
17 understand what it sought. What I'm suggesting is
18 that that claim could never have been responded to
19 by the district court until it had --

20 MR. MCGILL: But --

21 JUSTICE JACKSON: -- the ability to do
22 something. And so, as a threshold matter, the
23 district court said this is a closed case.

24 MR. MCGILL: It --

25 JUSTICE JACKSON: I would have to reopen

1 it to give you the relief that you seek. I'm
2 issuing Order Number 1 reopening the case, and then
3 here's Order Number 2 regarding the relief that you
4 seek.

5 And from then on, we all were focused on
6 whether or not the district court made a mistake in
7 determining that this case could even be reopened.
8 And, to the extent that that's the issue, that
9 that's what was presented here, that that's what
10 the courts have split on, I don't understand why we
11 can't just isolate that as requested and answer it.

12 MR. MCGILL: I'm not afraid of the
13 question presented, but I -- to -- the -- the
14 jurisdictional point is -- is important here. If
15 the motion had requested some form of relief
16 related to the case itself, if it had been I want
17 to relitigate my case and vacate the arbitral
18 award, then at least there would be a request for
19 relief that -- over which the district court
20 originally had subject matter jurisdiction.

21 JUSTICE GORSUCH: But, Mr. -- Mr. McGill,
22 on the first one, as I understand the common law
23 history, courts had -- were considered to have
24 jurisdiction over orders, even final ones,
25 judgments, until the expiration of the term of the

1 court, right?

2 MR. MCGILL: Except with respect to
3 voluntary non-suits, Your Honor.

4 JUSTICE GORSUCH: Are -- are -- are --
5 correct. There's a little bit of -- all right.
6 But that was the general rule.

7 And I understood 60(b) to say -- well, we
8 don't have terms -- we don't do that anymore, but
9 you have a federal question about your judgment and
10 whether it should be reopened that's available to
11 you if you can meet these really hard criteria.

12 What's wrong with that understanding of
13 60(b) and the jurisdictional point there?

14 MR. MCGILL: 60(b), there's -- I would
15 think that Rule 60(b) can't expand itself the
16 district court's --

17 JUSTICE GORSUCH: No, of course not.

18 MR. MCGILL: -- subject matter
19 jurisdiction.

20 JUSTICE GORSUCH: But -- but -- but the
21 point was that courts have always had this -- this
22 kind of power to fix injustices in their judgments,
23 in their orders, at least during the term of court,
24 got rid of that. But the -- the point should
25 remain with that change that they generally do.

1 MR. MCGILL: I think a district court
2 certainly has jurisdiction. If you look at the
3 Beggerly case, the district court has subject
4 matter jurisdiction to entertain an independent
5 action attack -- attacking the judgment for --

6 JUSTICE GORSUCH: And to --

7 MR. MCGILL: -- for massive fraud, for
8 instance.

9 JUSTICE GORSUCH: And to reopen for
10 massive fraud or things like that.

11 MR. MCGILL: Correct. But that -- but --

12 JUSTICE GORSUCH: Okay. All right.

13 Okay. I think that -- I got that.

14 And then, on -- on -- on "final" and what
15 does "final" mean and what it meant in 1946 more
16 importantly, I -- I -- I take -- took it to mean
17 that it's not interlocutory. I mean, that's how
18 Black's defined it. That's how Moore and Rogers,
19 that's how the Rules Committee -- do you disagree
20 with that understanding?

21 MR. MCGILL: It -- there has to be a
22 conclusive resolution of the issues in litigation.

23 JUSTICE GORSUCH: Okay. I'll take that.
24 Why isn't there at least a conclusive resolution
25 that the Petitioner's first non-suit is gone? They

1 don't get another free bite at the apple, right?
2 Voluntary dismissal, the beauty of it is you get
3 another chance anytime you want, but you only get
4 one. After that, you have to have leave of court.
5 And, here, didn't the district court at -- at least
6 resolve that by saying you've had your non-suit,
7 you've had your voluntary dismissal.

8 Why didn't it finally, conclusively
9 resolve that aspect of -- of the plaintiff's
10 rights?

11 MR. MCGILL: The -- so the -- the
12 dismissal is the retraction of a complaint. It
13 doesn't resolve any issue --

14 JUSTICE GORSUCH: But it --

15 MR. MCGILL: -- in the litigation.

16 JUSTICE GORSUCH: But you'd agree,
17 though, that the withdrawal of the non-suit, as it
18 used to be called, that -- that does have a
19 consequence in the world?

20 MR. MCGILL: The -- the dismissal has a
21 legal effect. And --

22 JUSTICE GORSUCH: Plaintiff doesn't get
23 another free bite at the apple. He's exhausted his
24 one free bite.

25 MR. MCGILL: I -- I guess I would -- I

1 would phrase it a -- a little bit differently,
2 Justice Gorsuch. I would say, if he chooses to
3 file a -- a second suit and dismisses that second
4 suit, then that disposition under the Rule 41 would
5 be with prejudice. But that --

6 JUSTICE GORSUCH: Okay. So that --

7 MR. MCGILL: -- is an external
8 circumstance.

9 JUSTICE GORSUCH: -- so that would --
10 would that amount to a final something for your
11 purposes?

12 MR. MCGILL: A dismissal with prejudice
13 under Rule 41?

14 JUSTICE GORSUCH: Well, the second time.
15 Say he withdraws again. The second time?

16 MR. MCGILL: Yes.

17 JUSTICE GORSUCH: Has he -- so that would
18 be. So, if he voluntary withdrew again and,
19 therefore, out of luck?

20 MR. MCGILL: And -- and may I -- may --
21 may I just elaborate why?

22 JUSTICE GORSUCH: Yeah.

23 MR. MCGILL: Because it -- it's a
24 conclusive resolution. It's an adjudication -- it
25 operates under the rules as --

1 JUSTICE GORSUCH: Would --

2 MR. MCGILL: -- an adjudication on the
3 merits. It resolves everything.

4 JUSTICE GORSUCH: Correct.

5 MR. MCGILL: It's --

6 JUSTICE GORSUCH: I -- I got that.

7 MR. MCGILL: We -- we would say it's a
8 proceeding.

9 JUSTICE GORSUCH: I understand that. So
10 why isn't the first one a proceeding when he's
11 exhausting his one free non-suit?

12 MR. MCGILL: Because the -- it has to be
13 a final proceeding, and there's no finality because
14 there's no conclusive resolution of anything. He
15 can refile in any court at any time.

16 JUSTICE GORSUCH: Okay.

17 MR. MCGILL: And that's -- that --
18 that -- but I -- I would turn also back to the --
19 I -- the -- the point that the finality here has to
20 have the same definition and same scope as the --
21 as that that applies to final decisions under 1291.
22 Otherwise, the notice of appeal tolling
23 requirements make no sense, and, otherwise,
24 litigants will be able to bootstrap themselves into
25 appeals of otherwise unappealable orders.

1 I would like to just address the
2 California law point that -- because it has been
3 suggested that the 1937 enactment of Rule 60
4 somehow incorporates the corpus of California
5 decisional law. There's no indication of that in
6 the advisory committee notes itself. And, of
7 course, California law does not and has never
8 controlled the federal court's ability to review
9 its own judgments. That has always been a matter
10 of federal law. It goes back to Justice -- Chief
11 Justice Marshall riding circuit in North Carolina
12 in 1803 in Marsh versus Murray. We cite that case
13 in our brief.

14 And the Petitioner has no response to it
15 whatsoever. He cites two California Supreme Court
16 cases. They're both worth noting. The Palace
17 Hardware case -- is a dismissal with prejudice,
18 the -- so it would be final even under the 1946
19 definition. And the -- the Stonesifer case he
20 cites says -- says a proceeding covers -- you know,
21 covers any step in the action seeking court action.
22 A dismissal without prejudice, a non-suit, is the
23 opposite of that. It is a retraction of your
24 complaint. It is saying I don't need relief from
25 the court anymore.

1 JUSTICE JACKSON: What if that's done
2 mistakenly? I mean, suppose we have a situation in
3 which a person files a suit and then they file a
4 Rule 41 unilateral dismissal, say, a week later,
5 and on a Monday. And on Tuesday, counsel rushes
6 back to the court and says: Oh, my goodness, I
7 made a mistake in filing this notice of voluntary
8 dismissal, I did it in the wrong case.

9 Is it your position that the court really
10 has nothing they -- they couldn't reopen the case
11 under those circumstances?

12 MR. MCGILL: It would -- it -- any relief
13 would not come under Rule 60(b). The -- of course,
14 the primary relief --

15 JUSTICE JACKSON: Why not? Because it
16 wasn't a proceeding?

17 MR. MCGILL: Be -- because it's not a
18 final proceeding.

19 JUSTICE JACKSON: Okay.

20 MR. MCGILL: And there's no burden that
21 is being imposed on the litigant because that --
22 for the court to relieve because, under your
23 hypothetical --

24 JUSTICE JACKSON: Mm-hmm.

25 MR. MCGILL: -- the plaintiff can simply

1 refile his action.

2 JUSTICE GORSUCH: Well, but he's lost his
3 one free non-suit and -- because of his attorney's
4 malfeasance and mistake. I mean, it could be fraud
5 even. And it can meet all the 60(b) criteria, but
6 the judge would be powerless under your theory to
7 do anything about it.

8 MR. MCGILL: That's always been true
9 going back to 1803. The real question here is
10 whether Rule 60 did anything to upend that settled
11 practice. There's no indication of that
12 whatsoever. It certainly wouldn't come out of
13 California law.

14 All the -- all the Petitioner has to
15 point to in that is the Salazar case, which is a
16 single decision of a single intermediate appellate
17 court in California. That is not old soil that
18 gets transplanted into the federal garden. The --
19 the language of the rule does mirror the 19 -- does
20 mirror the California statute. It also mirrors the
21 New York statute and the Minnesota statute that --
22 that -- that are also cited in the advisory
23 committee notes.

24 So there's no indication here that the --
25 that the -- that the rules committee, this Court,

1 or Congress ever intended to be bound by California
2 decisional law going out into the future.

3 The last point I want to make is just
4 with respect to -- actually, two points I want to
5 make. One is the argument that the -- this
6 dismissal without prejudice would constitute a
7 judgment.

8 "Judgments" is defined -- a "judgment" is
9 defined by the Federal Rules of Civil Procedure in
10 Rule 54. It is a definition that applies in these
11 rules. The Petitioner has no answer to that. The
12 dismissal without prejudice clearly is not a Rule
13 54 judgment.

14 Finally, the question, Justice Sotomayor,
15 you asked what is -- what would be a final
16 proceeding here? The -- the key point is, first,
17 the -- the -- the proceeding is meant to cover the
18 small sliver of conclusive actions, conclusive
19 dispositions, that are not themselves judgments or
20 orders. So what might that be? A writ of habeas
21 corpus, proceedings supplementary under Rule 69
22 with respect to the execution of a judgment,
23 condemnation proceedings under Rule 71.1. These
24 are -- its --

25 JUSTICE SOTOMAYOR: They all end up in a

1 judgment or an order.

2 MR. MCGILL: That may be true today, but
3 it wasn't necessarily true in 1937, and it wasn't
4 necessarily true going out into the future. The --
5 the rules could change in a way. And, in fact, you
6 have Rule 53 masters when they're consented to be
7 final, a ruling could be -- could be consented to
8 as final. There's no actual necessity for a court
9 order. It's better practice --

10 JUSTICE SOTOMAYOR: The problem with all
11 of that is that they all end up -- all of those
12 separate proceedings end up with the court doing
13 something.

14 MR. MCGILL: And I think what -- what the
15 use of "proceedings" both in California -- in the
16 California Code and in Rule 60 is meant to do is to
17 pick up those conclusive dispositions that, for one
18 reason or another, are not under the heading of a
19 judgment or order. It's not intended to swallow
20 every order and every judgment.

21 Our reading of the rule --

22 JUSTICE SOTOMAYOR: Thank you, counsel.

23 CHIEF JUSTICE ROBERTS: Nothing further,
24 Justice Thomas?

25 Justice Alito?

1 Justice Sotomayor?

2 Justice Kagan?

3 Justice Barrett?

4 Justice Jackson?

5 Thank you, counsel.

6 MR. MCGILL: Thank you.

7 CHIEF JUSTICE ROBERTS: Rebuttal,

8 Mr. Levy?

9 REBUTTAL ARGUMENT OF VINCENT LEVY

10 ON BEHALF OF THE PETITIONER

11 MR. LEVY: The Respondent is proposing a
12 rule that would render a court without any
13 authority to remedy an issue of outright fraud or
14 mistake, leading to the dismissal of a case, albeit
15 without prejudice, but that causes the plaintiff to
16 lose its right because of -- of a limitation or
17 otherwise, and that also leads to the loss of the
18 right to bring a -- a non-suit in a second case.

19 That cannot be what Rule 60 was intended
20 to capture. There's no evidence of that in the
21 text or the -- or the advisory committee notes or
22 the California decisions. The California decisions
23 were clear on point.

24 They're also in accord with the weight of
25 authority among the states. That's reflected in --

1 by the -- in the decision of the Supreme Court of
2 Connecticut, in the Lusas decision, which cites not
3 only California for this point but also New York,
4 which is one of the statutes that is cited by the
5 rules committee. But Professor Moore did say that
6 the court -- that that was the inspiration and that
7 the -- that meaning does come with it.

8 The -- my friend has said that there is
9 nothing to relieve a -- a moving party from in the
10 context of without-prejudice dismissal. That is
11 not true. Beyond the right -- again, I -- I don't
12 want to repeat myself, but the limitation periods
13 would be one example and the -- the right to bring
14 another case with a non-suit could be another.

15 And unless the Court has questions.

16 CHIEF JUSTICE ROBERTS: Thank you. Thank
17 you, counsel.

18 The case is submitted.

19 (Whereupon, at 12:12 p.m., the case was
20 submitted.)

21

22

23

24

25

Official

<p>1</p> <p>1 ^[1] 38:2</p> <p>10 ^[3] 10:10 26:25 27:7</p> <p>11:23 ^[2] 1:15 3:2</p> <p>12:12 ^[1] 50:19</p> <p>1291 ^[6] 18:9 24:23,23 29:2 30:7 43:21</p> <p>14 ^[1] 1:11</p> <p>1803 ^[2] 44:12 46:9</p> <p>19 ^[1] 46:19</p> <p>1922 ^[1] 21:8</p> <p>1937 ^[6] 3:19 20:13,20 23:15 44:3 48:3</p> <p>1946 ^[6] 20:20 28:7 30:10,10 40:15 44:18</p> <p>2</p> <p>2 ^[1] 38:3</p> <p>2025 ^[1] 1:11</p> <p>23-971 ^[1] 3:4</p> <p>24 ^[1] 34:25</p> <p>26 ^[1] 2:7</p> <p>3</p> <p>3 ^[1] 2:4</p> <p>4</p> <p>4 ^[3] 27:18,20 29:10</p> <p>41 ^[4] 3:13 42:4,13 45:4</p> <p>473 ^[3] 3:19,21,23</p> <p>49 ^[1] 2:10</p> <p>5</p> <p>53 ^[1] 48:6</p> <p>54 ^[2] 47:10,13</p> <p>6</p> <p>6 ^[3] 10:16 22:15 35:17</p> <p>60 ^[22] 27:3,7,13,15,17,20,25 28:8 29:1,9,11,14 31:11 32:5 33:3</p> <p>36:1,7,17 44:3 46:10 48:16 49:19</p> <p>60's ^[1] 28:15</p> <p>60(1) ^[1] 35:17</p> <p>60(b) ^[33] 3:14,18,25 4:8,14 5:10 6:2,5 7:12 8:4,9 12:18,23 15:12 18:13,14 20:21 21:3,13,14,17 22:8,10 33:22,24 34:2 35:11 39:7,13,14,15 45:13 46:5</p> <p>60(b)(1) ^[3] 10:16 22:15 35:17</p> <p>60(b)(6) ^[3] 8:8 11:10,15</p> <p>60(c)(1) ^[1] 24:19</p> <p>69 ^[1] 47:21</p> <p>7</p> <p>71.1 ^[1] 47:23</p> <p>8</p>	<p>80 ^[1] 36:6</p> <p>82 ^[2] 27:2 36:6</p> <p>9</p> <p>90 ^[1] 12:5</p> <p>A</p> <p>a.m ^[2] 1:15 3:2</p> <p>ability ^[3] 22:4 37:21 44:8</p> <p>able ^[1] 43:24</p> <p>above-entitled ^[1] 1:13</p> <p>abuse ^[1] 8:11</p> <p>accepted ^[1] 11:9</p> <p>accord ^[1] 49:24</p> <p>account ^[2] 28:15 29:4</p> <p>across ^[1] 28:23</p> <p>Act ^[2] 24:15 27:1</p> <p>action ^[6] 9:22,23 40:5 44:21,21 46:1</p> <p>actions ^[1] 47:18</p> <p>actual ^[1] 48:8</p> <p>actually ^[4] 34:22 35:4 36:21 47:4</p> <p>added ^[3] 4:7 18:22 21:13</p> <p>addition ^[1] 20:11</p> <p>address ^[3] 22:4 34:20 44:1</p> <p>addressed ^[2] 8:5 12:10</p> <p>ADEA ^[9] 6:15 9:6,25 11:19 13:1,10,17,18 31:17</p> <p>adjudicate ^[1] 35:8</p> <p>adjudication ^[2] 42:24 43:2</p> <p>admit ^[1] 25:19</p> <p>adoption ^[1] 4:4</p> <p>advisory ^[10] 4:6 5:4 20:15 21:6 23:1 25:9 30:25 44:6 46:22 49:21</p> <p>affect ^[1] 21:23</p> <p>affirm ^[1] 4:18</p> <p>affirmed ^[3] 8:7,15 11:12</p> <p>afraid ^[1] 38:12</p> <p>agree ^[4] 5:25 6:3 7:23 41:16</p> <p>albeit ^[1] 49:14</p> <p>Alito ^[1] 48:25</p> <p>allow ^[15] 5:9 28:3</p> <p>already ^[1] 20:6</p> <p>although ^[2] 8:6 10:4</p> <p>among ^[1] 49:25</p> <p>amount ^[2] 14:25 42:10</p> <p>analogy ^[1] 24:23</p> <p>another ^[9] 10:19,25 11:19 41:1,3,23 48:18 50:14,14</p>	<p>answer ^[4] 33:10 36:23 38:11 47:11</p> <p>antecedent ^[1] 33:23</p> <p>anytime ^[1] 41:3</p> <p>apart ^[2] 35:15 37:5</p> <p>appeal ^[9] 10:21 18:20 27:19,23 28:4,9 29:5,17 43:22</p> <p>appealability ^[1] 21:22</p> <p>appealable ^[1] 28:1</p> <p>appealed ^[1] 9:3</p> <p>appeals ^[6] 15:23 18:12 34:25 36:4,10 43:25</p> <p>APPEARANCES ^[1] 1:17</p> <p>appeared ^[1] 32:4</p> <p>appellate ^[8] 25:1 26:1,4 27:17 29:15 30:13 31:5 46:16</p> <p>appendix ^[1] 35:1</p> <p>apple ^[2] 41:1,23</p> <p>application ^[5] 6:1,5 11:6,6 12:3</p> <p>applied ^[3] 3:23 20:6 31:11</p> <p>applies ^[2] 43:21 47:10</p> <p>apply ^[2] 20:21 24:9</p> <p>applying ^[1] 23:7</p> <p>appoint ^[1] 35:7</p> <p>appreciate ^[1] 37:4</p> <p>approach ^[1] 17:22</p> <p>apt ^[1] 24:23</p> <p>arbitrable ^[2] 12:21 13:6</p> <p>arbitral ^[7] 27:5 35:2,3,10,19,21 38:17</p> <p>arbitrated ^[1] 10:1</p> <p>arbitration ^[26] 4:20 6:16,18,23,24 7:13,21 8:18,25 9:7,10,13,18,23 10:2,5,6,7,10 13:11 14:20 15:7 26:25 31:20 33:20 34:4</p> <p>arbitrator ^[1] 35:8</p> <p>Area ^[1] 32:18</p> <p>argue ^[1] 8:9</p> <p>argued ^[1] 10:1</p> <p>arguing ^[1] 11:6</p> <p>argument ^[19] 1:14 2:2,5,8 3:4,7 4:23 11:9 16:21 18:11 19:13 21:19 26:19 27:9 32:7 33:18,19 47:5 49:9</p> <p>arguments ^[3] 8:13 11:14 32:3</p> <p>article ^[1] 21:5</p> <p>aside ^[1] 36:13</p> <p>aspect ^[2] 35:7 41:9</p> <p>assume ^[2] 14:17,18</p> <p>assuming ^[2] 12:24 15:11</p>	<p>assure ^[1] 32:21</p> <p>attached ^[1] 7:10</p> <p>attack ^[3] 6:17 7:20 40:5</p> <p>attacking ^[1] 40:5</p> <p>attorney's ^[1] 46:3</p> <p>audita ^[1] 31:7</p> <p>authoritative ^[2] 3:24 20:19</p> <p>authority ^[12] 4:5,9 17:23 18:23 21:4,9 25:16 31:13,15,17 49:13,25</p> <p>availability ^[2] 36:7,16</p> <p>available ^[4] 22:8 36:19,21 39:10</p> <p>avoid ^[1] 11:24</p> <p>avoiding ^[1] 11:4</p> <p>avoids ^[1] 4:17</p> <p>award ^[37] 4:20 5:12 6:18,22,24 7:13,21,24 8:15,19,25 9:2,2,13,14,18,23 10:7,8,20 12:21 13:6,12 14:2,20 15:7,25 27:5 31:20 33:21 34:4 35:2,3,10,19,21 38:18</p> <p>awards ^[1] 9:10</p> <p>B</p> <p>b)(1) ^[1] 11:11</p> <p>b)(6) ^[1] 11:11</p> <p>back ^[8] 6:22 10:8 23:18 30:15 43:18 44:10 45:6 46:9</p> <p>Badgerow ^[18] 4:24</p> <p>14:1,15,18 15:8,19,23 16:10 26:24 31:16,22 32:7 33:19 34:5,9,15,17,18</p> <p>barred ^[1] 11:20</p> <p>Barrett ^[2] 26:15 49:3</p> <p>based ^[2] 14:16 15:8</p> <p>basis ^[9] 15:25 16:2 27:1,6,8 32:15 35:24,25 37:1</p> <p>beauty ^[1] 41:2</p> <p>become ^[1] 19:12</p> <p>Beggerly ^[1] 40:3</p> <p>behalf ^[8] 1:18,20 2:4,7,10 3:8 26:20 49:10</p> <p>believe ^[2] 28:25 33:1</p> <p>below ^[6] 3:13 12:11 15:2 27:9 32:23 34:22</p> <p>belts-and-suspenders ^[1] 17:22</p> <p>Bender ^[2] 32:12,18</p> <p>benefit ^[1] 29:9</p> <p>better ^[1] 48:9</p> <p>between ^[4] 13:22 20:20 24:25 25:22</p> <p>Beyond ^[1] 50:11</p>	<p>big ^[1] 27:16</p> <p>bit ^[3] 23:19 39:5 42:1</p> <p>bite ^[3] 41:1,23,24</p> <p>Black's ^[1] 40:18</p> <p>boomerang ^[1] 19:8</p> <p>bootstrap ^[2] 28:4 43:24</p> <p>both ^[5] 7:9 19:18 24:5 44:16 48:15</p> <p>bound ^[1] 47:1</p> <p>breaks ^[1] 35:15</p> <p>Breyer ^[1] 14:12</p> <p>brief ^[6] 18:16 29:14 31:25 33:1,10 44:13</p> <p>briefing ^[1] 33:14</p> <p>briefs ^[1] 5:18</p> <p>bring ^[6] 6:17 10:25 33:24 34:2 49:18 50:13</p> <p>bringing ^[1] 9:22</p> <p>broad ^[2] 17:23 22:10</p> <p>broader ^[1] 17:12</p> <p>broadly ^[1] 16:16</p> <p>broke ^[1] 37:5</p> <p>burden ^[3] 28:16,20 45:20</p> <p>C</p> <p>California ^[24] 3:24 5:3 16:14,19 18:21 20:16,18 22:23 23:5 25:7,8 44:2,4,7,15 46:13,17,20 47:1 48:15,16 49:22,22 50:3</p> <p>California's ^[3] 3:19,20 23:16</p> <p>called ^[1] 41:18</p> <p>calling ^[1] 36:15</p> <p>came ^[2] 1:13 30:12</p> <p>candidly ^[1] 33:11</p> <p>cannot ^[3] 4:12 27:3 49:19</p> <p>canon ^[1] 24:8</p> <p>capture ^[1] 49:20</p> <p>care ^[2] 32:10 37:11</p> <p>caring ^[1] 32:8</p> <p>Carolina ^[1] 44:11</p> <p>carried ^[1] 3:24</p> <p>carries ^[1] 23:4</p> <p>Case ^[63] 3:4 4:11,21 5:10 6:6,15,21,22 7:11,12 9:1,25 10:1,2,3,9,13,17,18,20 11:7,8,15 12:1,9 13:1,13,14,17,18 14:8,9 15:24 16:4 20:5,25 21:1,8 26:3 29:8 31:17,24 32:4,15 33:3 35:12 37:23 38:2,7,16,17 40:3 44:12,17,19 45:8,10 46:15 49:14,18 50:14,18,19</p> <p>case-ending ^[2] 25:11,14</p>	<p>cases ^[6] 4:25 22:5 25:8,8 30:13 44:16</p> <p>cause ^[1] 10:14</p> <p>causes ^[1] 49:15</p> <p>cert ^[2] 12:23 37:9</p> <p>certain ^[1] 21:24</p> <p>certainly ^[2] 40:2 46:12</p> <p>challenge ^[4] 6:24 9:11 11:19 37:7</p> <p>challenged ^[4] 9:7,8,18 10:8</p> <p>challenging ^[2] 8:22 9:23</p> <p>chance ^[1] 41:3</p> <p>change ^[2] 39:25 48:5</p> <p>characterize ^[1] 6:8</p> <p>CHIEF ^[20] 3:3,9 6:12,25 7:17 8:16,21 9:4,15 10:22 11:3,16,23 26:7,11,21 44:10 48:23 49:7 50:16</p> <p>chooses ^[1] 42:2</p> <p>chose ^[1] 12:22</p> <p>chronologically ^[1] 7:11</p> <p>Circuit ^[9] 3:11 5:6,8 12:22 16:1,1,3 19:21 44:11</p> <p>circumstance ^[2] 24:8 42:8</p> <p>circumstances ^[4] 11:8 14:6 22:13 45:11</p> <p>cite ^[3] 5:18 29:14 44:12</p> <p>cited ^[2] 46:22 50:4</p> <p>cites ^[3] 44:15,20 50:2</p> <p>Civil ^[3] 3:19 28:24 47:9</p> <p>claim ^[9] 6:16 9:6 13:23 15:10 35:5,8 36:19 37:15,18</p> <p>claims ^[1] 28:19</p> <p>clarity ^[1] 29:22</p> <p>clear ^[10] 14:16 16:14,14 18:20,23 20:16 22:10,13 31:2 49:23</p> <p>clearly ^[1] 47:12</p> <p>client ^[5] 9:1,25 10:3,7,15</p> <p>closed ^[1] 37:23</p> <p>closer ^[1] 19:20</p> <p>Code ^[3] 3:19 23:8 48:16</p> <p>cogent ^[1] 5:2</p> <p>collateral ^[5] 6:17 29:4,5,6,7</p> <p>collaterally ^[1] 7:20</p> <p>colloquy ^[1] 32:1</p> <p>come ^[5] 18:25 36:23 45:13 46:12 50:7</p> <p>comes ^[4] 4:8 5:1 30:9,12</p>
---	---	--	--	---	---

Official

<p>coming ^[1] 16:3 committee ^[14] 4:7 20:15 21:6 23:1 30:2, 5,19,25 40:19 44:6 46:23,25 49:21 50:5 common ^[1] 38:22 Company ^[3] 21:8 36: 18,22 complaint ^[3] 28:8 41: 12 44:24 concede ^[1] 32:20 concept ^[2] 18:12 25: 15 concerned ^[2] 7:15, 18 conclusion ^[1] 4:14 conclusive ^[7] 40:22, 24 42:24 43:14 47:18, 18 48:17 conclusively ^[1] 41:8 condemnation ^[1] 47: 23 confirm ^[1] 4:8 confirmed ^[3] 4:15 8: 19,20 confusion ^[3] 27:21, 21 29:18 Congress ^[3] 22:20 25:10 47:1 Connecticut ^[1] 50:2 consented ^[2] 48:6,7 consequence ^[2] 11: 25 41:19 consider ^[1] 12:17 considered ^[3] 3:12 12:11 38:23 considering ^[1] 12:6 consistent ^[2] 3:25 28:23 constitute ^[1] 47:6 constrain ^[1] 4:5 constrained ^[1] 18: 24 construction ^[1] 27: 12 contemplate ^[1] 33: 12 contemporaneous ^[1] 4:15 contention ^[1] 16:8 context ^[2] 32:9 50:10 contract ^[1] 36:8 controlled ^[1] 44:8 controversy ^[2] 14: 25 25:18 conveniens ^[1] 6:10 coram ^[2] 31:6,6 corpus ^[2] 44:4 47:21 correct ^[10] 7:7 23:22 24:17 25:4,12,23 36: 5 39:5 40:11 43:4 couldn't ^[3] 29:9,9 45: 10 Counsel ^[8] 12:13 26:</p>	<p>6,8,17 45:5 48:22 49: 5 50:17 couple ^[1] 18:15 course ^[9] 5:15 8:12 14:3 15:17 23:11 32: 17 39:17 44:7 45:13 COURT ^[9] 1:1,14 3: 10,21 4:9,12,18,19 5: 4,11,19,21 7:6,8,13 8: 3,5,10,19 9:11,12 10: 8,12,17 11:9 12:8,9 13:5,25 14:3,6,9,14 15:1,1 16:19 18:7 21: 4,7 22:17,23,25 23:6, 16 24:8 25:1,1,3,20 26:3,22 27:4 28:16, 19,20 32:10,19 34:25 35:15 36:3,10,13 37: 5,8,9,11,19,23 38:6, 19 39:1,23 40:1,3 41: 4,5 43:15 44:15,21,25 45:6,9,22 46:17,25 48:8,12 49:12 50:1,6, 15 court's ^[19] 4:12 5:5, 21 8:7 12:15 22:4,16, 24 28:21 29:13 30:12 31:13,15,16 32:11,12 36:8 39:16 44:8 courts ^[10] 4:4 15:23 16:14 17:15 20:20 21: 8 32:22 38:10,23 39: 21 courts' ^[1] 18:23 cover ^[4] 3:21 23:6,9 47:17 covered ^[4] 4:21 18: 21,21 20:14 covers ^[2] 44:20,21 create ^[2] 17:19 29:18 created ^[1] 17:8 criteria ^[2] 39:11 46:5</p> <hr/> <p>D</p> <p>D.C ^[2] 1:10,20 date ^[3] 24:15,15 29:6 days ^[1] 12:5 deadline ^[2] 27:18,22 deal ^[1] 18:7 decide ^[3] 5:22,22 32: 15 decided ^[1] 16:10 decision ^[10] 3:12 5:9 18:8 20:22 22:24 29: 13 32:12 46:16 50:1, 2 decisional ^[2] 44:5 47:2 decisions ^[11] 3:24 5: 3 18:19,19 20:16,18 23:5 26:4 43:21 49: 22,22 deemed ^[2] 25:25 26: 2</p>	<p>define ^[1] 29:16 defined ^[4] 23:13 40: 18 47:8,9 definition ^[13] 23:20 24:22 27:15 28:2,3,6, 14 29:2,4,17 43:20 44:19 47:10 definitions ^[3] 4:1,16 5:3 denial ^[1] 27:25 describe ^[1] 30:11 desirable ^[2] 27:22 29:19 determination ^[1] 25: 12 determinations ^[1] 7: 7 determined ^[1] 9:12 determining ^[1] 38:7 dictionary ^[3] 4:1,15 5:2 different ^[8] 7:25 15: 13 16:9 18:18 19:1 25:2 27:19 32:3 differently ^[1] 42:1 disagree ^[2] 16:6 40: 19 discretion ^[3] 8:10,11 22:16 discussed ^[1] 12:8 dismissal ^[25] 3:16 4: 3,11 9:16,16,21 10:23 11:24 18:8 20:5 28: 17 36:15 41:2,7,12,20 42:12 44:17,22 45:4, 8 47:6,12 49:14 50: 10 dismissals ^[7] 3:13, 23 16:18,20,21 23:9, 14 dismissed ^[2] 10:2, 14 dismisses ^[1] 42:3 dismissing ^[2] 6:14 25:20 disposition ^[1] 42:4 dispositions ^[2] 47: 19 48:17 dispute ^[1] 30:18 dissent ^[5] 5:18 8:7 11:12 14:12 19:8 district ^[3] 4:19 7:8 8: 7,10 9:12 10:12,17 11:9 12:8,8,15 13:5 22:4,16 25:1,3 27:4 32:19 35:15 36:8 37: 5,8,11,19,23 38:6,19 39:16 40:1,3 41:5 diversity ^[3] 14:22,24 15:10 docket ^[2] 17:7 28:7 doing ^[4] 7:20 30:7 31: 1 48:12 done ^[2] 7:24 45:1</p>	<p>doubt ^[1] 17:13 down ^[2] 16:11 33:17 due ^[1] 19:17 during ^[1] 39:23</p> <hr/> <p>E</p> <p>earlier ^[1] 32:2 easy ^[1] 16:7 effect ^[3] 21:21 22:9 41:21 effectively ^[1] 5:13 elaborate ^[1] 42:21 elaborates ^[1] 29:14 embrace ^[1] 19:11 enacted ^[1] 16:17 enactment ^[3] 20:10 30:5 44:3 encompass ^[1] 23:22 encompasses ^[1] 24: 3 end ^[4] 25:22 47:25 48: 11,12 ending ^[1] 25:18 endorse ^[1] 25:14 endorsed ^[1] 19:19 ENERGY ^[2] 1:6 3:5 enough ^[1] 19:5 entered ^[3] 7:9 10:18, 19 entertain ^[1] 40:4 entirely ^[2] 15:13 30: 22 entry ^[3] 17:7 24:16 28:7 ESQ ^[3] 2:3,6,9 ESQUIRE ^[2] 1:18,20 even ^[13] 15:6,6,10 16: 6 20:6 22:8 28:8 31: 24 32:20 38:7,24 44: 18 46:5 events ^[1] 19:17 everything ^[4] 18:22 22:21 23:7 43:3 evidence ^[3] 23:10 29: 25 49:20 exactly ^[4] 11:17 15: 14 16:12 25:5 example ^[1] 50:13 Except ^[1] 39:2 execution ^[1] 47:22 exercise ^[1] 8:10 exhausted ^[1] 41:23 exhausting ^[1] 43:11 existing ^[1] 35:4 expand ^[2] 36:7 39:15 expiration ^[1] 38:25 explains ^[1] 30:25 extend ^[1] 27:3 extent ^[2] 8:13 38:8 external ^[1] 42:7</p> <hr/> <p>F</p> <p>FAA ^[4] 9:11 10:11 12: 4 35:18</p>	<p>fabulous ^[1] 34:13 fact ^[6] 22:4 29:21,25 32:2 36:24 48:5 factors ^[1] 12:6 facts ^[2] 14:21 30:18 fail ^[1] 4:23 false ^[1] 30:21 Federal ^[17] 3:11 13:9, 14 14:19 15:9 23:2 26:25 27:1,17 28:23 31:5 35:4 39:9 44:8, 10 46:18 47:9 few ^[1] 34:18 Fifth ^[1] 19:20 file ^[5] 27:18,22 29:16 42:3 45:3 filed ^[7] 7:23 9:1,25 11: 19 12:2,4 29:11 files ^[1] 45:3 filing ^[1] 45:7 final ^[39] 3:15,15 4:4,8, 13 18:8,19,19,22 19: 12,15 20:11 21:13,19, 21,22 22:3 25:25 26: 2 28:1 29:2 30:2,10, 19 31:1,3,11 32:5 38: 24 40:14,15 42:10 43: 13,21 44:18 45:18 47: 15 48:7,8 finality ^[2] 18:12 19:8, 16,23 20:4 24:21 25: 10,11,12,14 27:15,19 28:2,3 29:17 30:6, 9 31:1 43:13,19 finally ^[2] 41:8 47:14 first ^[18] 7:10,15 13:15 18:17 22:7 27:14,16 31:10 33:6 34:8,21, 24 35:13 36:23 38:22 40:25 43:10 47:16 fix ^[1] 39:22 focused ^[1] 38:5 forgive ^[1] 15:1 form ^[2] 35:24 38:15 forms ^[1] 27:4 forum ^[2] 6:10 9:8 founding ^[1] 30:16 Fourth ^[1] 16:3 framed ^[1] 31:24 FRAP ^[1] 29:10 fraud ^[5] 21:3 40:7,10 46:4 49:13 free ^[6] 28:18 41:1,23, 24 43:11 46:3 friend ^[4] 6:13 7:17 9: 5 50:8 friend's ^[1] 28:2 friends ^[4] 4:25 8:9 18:11 22:7 front ^[3] 15:21 33:21, 22 fully ^[1] 33:11 further ^[2] 26:12 48: 23</p>	<p>future ^[2] 47:2 48:4</p> <hr/> <p>G</p> <p>garden ^[1] 46:18 GARY ^[1] 1:3 general ^[1] 39:6 generally ^[1] 39:25 gets ^[1] 46:18 give ^[3] 24:10 31:17 38:1 given ^[4] 11:8 13:4 15: 17 32:1 gives ^[3] 12:17,20 13: 11 goodness ^[1] 45:6 Gorsuch ^[37] 5:17 16: 25 17:6,13,18,24 18:3, 13 19:4,7,10,22 20:1, 8 38:21 39:4,17,20 40:6,9,12,23 41:14,16, 22 42:2,6,9,14,17,22 43:1,4,6,9,16 46:2 Gorsuch's ^[1] 23:19 Got ^[7] 18:4,5 20:2 34: 6 39:24 40:13 43:6 grant ^[4] 5:20 8:4,8 27: 25 granted ^[5] 6:6 12:23 13:9 34:2 37:8 granting ^[1] 11:10 grants ^[1] 5:21 gravamen ^[1] 33:8 ground ^[1] 11:12 grounds ^[2] 9:12 10: 16 guess ^[3] 16:5 25:6 41:25</p> <hr/> <p>H</p> <p>habeas ^[1] 47:20 Hall ^[2] 22:24,24 HALLIBURTON ^[3] 1: 6 3:5 9:25 handle ^[2] 8:17 11:17 happened ^[3] 8:24 11: 18 13:22 hard ^[2] 16:7 39:11 Hardware ^[1] 44:17 harmony ^[1] 28:11 heading ^[1] 48:18 hear ^[1] 3:3 held ^[1] 3:12 help ^[1] 31:14 himself ^[1] 28:4 hinges ^[1] 17:1 history ^[5] 18:25 20: 10 30:6 36:12 38:23 hoe ^[1] 15:19 hold ^[1] 19:15 holds ^[1] 23:3 honestly ^[1] 15:20 Honor ^[4] 30:9,22 33: 5 39:3 hook ^[1] 35:11</p>
--	---	--	---	---	--

Official

<p>however [2] 16:7 29:7</p> <p>hypothetical [1] 45:23</p> <hr/> <p>I</p> <p>ignore [1] 30:5</p> <p>impart [1] 19:1</p> <p>import [1] 18:12</p> <p>important [1] 38:14</p> <p>importantly [1] 40:16</p> <p>impose [1] 28:20</p> <p>imposed [1] 45:21</p> <p>INC [1] 1:6</p> <p>include [3] 16:20 17:16 23:14</p> <p>included [1] 16:18</p> <p>incorporates [1] 44:4</p> <p>independent [8] 7:7 9:22 14:7,11 16:2 24:10 32:19 40:4</p> <p>independently [2] 8:23 9:18</p> <p>indicates [1] 30:1</p> <p>indication [3] 44:5 46:11,24</p> <p>inequitable [1] 11:7</p> <p>inherent [8] 4:9,13 21:9,15 25:16 31:13,15,16</p> <p>initially [4] 4:5 18:20 20:5,12</p> <p>inject [1] 22:7</p> <p>injustices [1] 39:22</p> <p>INS [1] 29:13</p> <p>inserting [1] 30:2</p> <p>inspiration [1] 50:6</p> <p>instance [2] 29:3 40:8</p> <p>intended [4] 23:10 47:1 48:19 49:19</p> <p>intent [1] 22:10</p> <p>intentional [1] 23:3</p> <p>interacts [1] 27:17</p> <p>interesting [1] 31:21</p> <p>interfere [1] 36:14</p> <p>interlocutory [8] 4:6,10 18:24 20:21 21:10,15 31:12 40:17</p> <p>intermediate [1] 46:16</p> <p>interpretations [2] 24:6,6</p> <p>interpreted [5] 3:21 16:16,19 17:15 22:23</p> <p>interpreting [2] 23:6 26:4</p> <p>intervention [1] 24:1</p> <p>isn't [4] 7:1 33:17 40:24 43:10</p> <p>isolate [1] 38:11</p> <p>issue [12] 5:9 6:9,10 7:15 8:5,13 12:9,19 36:5 38:8 41:13 49:13</p> <p>issued [2] 10:14 37:6</p> <p>issues [13] 5:13,16,19,</p>	<p>20,23,24 7:9 8:1 10:21 12:7,14 15:15 40:22</p> <p>issuing [1] 38:2</p> <p>itself [9] 6:8 8:6 14:15 28:1 32:22 35:12 38:16 39:15 44:6</p> <hr/> <p>J</p> <p>JACKSON [29] 7:1,4,14 20:9,24 21:18,23 22:2,18 26:16 29:20,24 30:14,17 31:19,21 32:14,24 36:25 37:2,13,16,21,25 45:1,15,19,24 49:4</p> <p>January [1] 1:11</p> <p>job [1] 33:7</p> <p>John [1] 21:8</p> <p>joint [1] 34:25</p> <p>Judge [3] 19:7,24 46:6</p> <p>judgment [26] 3:17,17 4:2 17:4,8,12,14 23:12,22,24 24:3,10,17 25:20 28:10 30:11 32:5 39:9 40:5 47:7,8,13,22 48:1,19,20</p> <p>judgments [13] 3:15 16:15,17 17:17 20:14 22:19 23:13 31:3 38:25 39:22 44:9 47:8,19</p> <p>judicata [1] 21:21</p> <p>judicial [1] 24:1</p> <p>jurisdiction [43] 4:19 5:11,21,24 6:7 10:15 12:16,17,20,25 13:5,9,12,15,16 14:7,11 15:7 24:25 25:3,19 26:24 27:2,3,8,10 30:13 31:18 32:12,16,21,22 33:20 35:23,25 36:9,11,16 38:20,24 39:19 40:2,4</p> <p>jurisdictional [20] 5:7,16,19,23 6:1,4,11 12:10,14,19 15:12,21 16:9 32:3 33:12 35:11 36:4,22 38:14 39:13</p> <p>JUSTICE [129] 3:3,9 5:6,17,25 6:12,25 7:1,4,14,17 8:16,21 9:4,15 10:22 11:3,16,23 12:13 13:3,8,16,20 14:12,17 15:3,5,18 16:5,25 17:6,13,18,24 18:3,13 19:4,7,10,22 20:1,8,9,24 21:18,23 22:2,18 23:18,19,24 24:13,20 25:6,17 26:6,7,9,10,11,11,13,14,15,16,22 28:22 29:20,24 30:14,17 31:19,21 32:14,24</p>	<p>33:16 34:1,9,14,17 36:25 37:2,13,16,21,25 38:21 39:4,17,20 40:6,9,12,23 41:14,16,22 42:2,6,9,14,17,22 43:1,4,6,9,16 44:10,11 45:1,15,19,24 46:2 47:14,25 48:10,22,23,24,25 49:1,2,3,4,7 50:16</p> <hr/> <p>K</p> <p>KAGAN [12] 14:17 15:3,5,18 16:5 26:13 33:16 34:1,9,14,17 49:2</p> <p>Kavanaugh [1] 26:14</p> <p>key [2] 28:15 47:16</p> <p>kind [1] 39:22</p> <p>kinds [2] 21:24 22:5</p> <p>Kokkonen [4] 4:24 14:15 27:2 36:2</p> <hr/> <p>L</p> <p>label [1] 36:15</p> <p>lacked [2] 4:19 36:13</p> <p>lacks [1] 4:9</p> <p>language [2] 23:9 46:19</p> <p>lapsed [1] 10:5</p> <p>last [2] 28:13 47:3</p> <p>later [5] 7:12 18:23 19:17 35:18 45:4</p> <p>Laughter [2] 30:23 34:11</p> <p>law [8] 12:7 38:22 44:2,5,7,10 46:13 47:2 leading [1] 49:14</p> <p>leads [2] 4:18 49:17</p> <p>least [9] 13:20 23:4 27:21 29:1,18 38:18 39:23 40:24 41:5</p> <p>leave [1] 41:4</p> <p>leaves [1] 28:18</p> <p>led [1] 33:1</p> <p>legal [5] 22:9 25:11,22 28:20 41:21</p> <p>LEVY [60] 1:18 2:3,9 3:6,7,9 5:8 6:3,20 7:3,8,16,22 8:20,24 9:9,24 11:1,5,22 12:1 13:2,7,13,19,24 14:24 15:4,14,22 16:12,25 17:5,10,14,21 18:1,10,14 19:6,9,18,23 20:3,8,12 21:1,20 22:1,6,22 23:23 24:5,18 25:5,13,24 49:8,9,11</p> <p>limit [2] 21:14,19</p> <p>limitation [9] 10:4 11:2,7 12:3,5 20:4,6 49:16 50:12</p> <p>limitations [2] 11:4,21</p> <p>limits [1] 22:3</p>	<p>list [1] 22:20</p> <p>litigant [2] 28:3 45:21</p> <p>litigants [1] 43:24</p> <p>litigation [3] 3:22 40:22 41:15</p> <p>little [3] 7:18 39:5 42:1</p> <p>long [1] 36:12</p> <p>longer [1] 13:17</p> <p>look [2] 25:9 40:2</p> <p>looked [2] 13:25 31:15</p> <p>looking [3] 25:13 32:8 33:2</p> <p>looks [2] 19:23 22:2</p> <p>lore [1] 31:7</p> <p>lose [1] 49:16</p> <p>loss [1] 49:17</p> <p>lost [2] 6:16 46:2</p> <p>lot [2] 17:2 34:18</p> <p>lower [1] 32:11</p> <p>luck [1] 42:19</p> <p>Lusas [1] 50:2</p> <hr/> <p>M</p> <p>made [10] 5:17 14:16 18:20 19:24 20:5,15,23 35:21 38:6 45:7</p> <p>major [1] 27:12</p> <p>majority [2] 8:6 14:13</p> <p>malfeasance [1] 46:4</p> <p>many [1] 25:25</p> <p>Marsh [1] 44:12</p> <p>Marshall [1] 44:11</p> <p>massive [2] 40:7,10</p> <p>masters [1] 48:6</p> <p>Matheson [1] 19:25</p> <p>Matheson's [1] 19:7</p> <p>matter [23] 1:13 4:10 9:3 12:16,17,20 13:11 14:7,11 15:2 22:11 23:5 27:25 31:18 35:22,25 36:11,16 37:22 38:20 39:18 40:4 44:9</p> <p>matters [5] 4:6 18:24 20:22 21:10,15</p> <p>MATTHEW [3] 1:20 2:6 26:19</p> <p>mature [1] 19:16</p> <p>McGILL [56] 1:20 2:6 26:18,19,21 28:25 29:22 30:8,15,21,24 31:20 32:10,17 33:4,17,25 34:6,12,16,20 37:1,13,20,24 38:12,21 39:2,14,18 40:1,7,11,21 41:11,15,20,25 42:7,12,16,20,23 43:2,5,7,12,17 45:12,17,20,25 46:8 48:2,14 49:6</p> <p>mean [18] 7:4,19 8:17 9:6 15:18 19:11 24:2,11 30:4 33:1,17 34:9 37:3 40:15,16,17 45:</p>	<p>2 46:4</p> <p>meaning [5] 19:1 23:15 24:10 30:12 50:7</p> <p>meaningless [1] 17:9</p> <p>means [5] 21:21,22 27:19 28:6 30:7</p> <p>meant [3] 40:15 47:17 48:16</p> <p>meet [4] 22:15 25:14 39:11 46:5</p> <p>mentioned [1] 20:3</p> <p>merge [1] 37:4</p> <p>merits [6] 12:2 14:3,9 27:11 33:14 43:3</p> <p>met [1] 20:7</p> <p>Microsoft [1] 18:6</p> <p>might [5] 16:8 33:18,19 34:17 47:20</p> <p>Minnesota [1] 46:21</p> <p>mirror [2] 46:19,20</p> <p>mirrors [1] 46:20</p> <p>misreads [1] 4:24</p> <p>mistake [5] 21:2 38:6 45:7 46:4 49:14</p> <p>mistakenly [1] 45:2</p> <p>Mm-hmm [1] 45:24</p> <p>modified [1] 4:12</p> <p>modify [2] 4:10 25:16</p> <p>Monday [1] 45:5</p> <p>months [1] 34:19</p> <p>Moore [6] 20:17 21:5,11 25:15 40:18 50:5</p> <p>most [1] 29:22</p> <p>mostly [1] 4:17</p> <p>motion [29] 6:21,23 7:2,5,5,23 9:1,10 12:18,25 13:20 14:2,4 26:25 27:5 28:1,8 33:13,22,24 34:2,22,24 35:1,9,14 37:8,14 38:15</p> <p>motions [1] 29:10</p> <p>movant [1] 21:2</p> <p>moving [1] 50:9</p> <p>much [2] 22:21 24:22</p> <p>Murray [1] 44:12</p> <p>must [2] 12:24 21:23</p> <p>myself [1] 50:12</p> <p>mystery [1] 31:8</p> <hr/> <p>N</p> <p>narrow [1] 22:14</p> <p>narrower [1] 17:11</p> <p>necessarily [2] 48:3,4</p> <p>necessary [1] 9:20</p> <p>necessitates [1] 37:10</p> <p>necessity [1] 48:8</p> <p>need [4] 14:7,10 16:2 44:24</p> <p>needed [1] 29:23</p> <p>needs [1] 27:6</p> <p>never [3] 31:15 37:18 44:7</p>	<p>New [9] 1:18,18 4:18 12:1,3 27:4 35:8 46:21 50:3</p> <p>next [5] 3:4 4:3 16:4 34:1,10</p> <p>nobis [1] 31:6</p> <p>non [1] 6:10</p> <p>non-suit [8] 40:25 41:6,17 43:11 44:22 46:3 49:18 50:14</p> <p>non-suits [1] 39:3</p> <p>none [1] 15:15</p> <p>nonetheless [1] 26:2</p> <p>North [1] 44:11</p> <p>note [2] 8:4 30:25</p> <p>noted [1] 14:12</p> <p>notes [9] 5:4 20:15 21:6 23:1 25:9 30:5 44:6 46:23 49:21</p> <p>nothing [3] 45:10 48:23 50:9</p> <p>notice [7] 22:25 27:18,22 28:9 29:16 43:22 45:7</p> <p>noting [1] 44:16</p> <p>number [6] 8:3 19:2,3,4 38:2,3</p> <hr/> <p>O</p> <p>objection [1] 4:21</p> <p>obligation [2] 32:20,21</p> <p>obstacle [1] 4:22</p> <p>obstacles [1] 15:15</p> <p>occurred [1] 10:19</p> <p>offers [1] 5:2</p> <p>Okay [13] 8:21 16:5 18:4 19:6 20:2 26:12,17 40:12,13,23 42:6 43:16 45:19</p> <p>old [1] 46:17</p> <p>once [2] 13:13 37:5</p> <p>one [22] 5:22 8:3 10:18 12:15 18:17 19:2 24:14,24 28:11 31:2,4 33:23 38:22 41:4,24 43:10,11 46:3 47:5 48:17 50:4,13</p> <p>one's [1] 19:4</p> <p>ones [1] 38:24</p> <p>only [13] 4:9 27:8,14,15 31:11 35:2,6,9,20,25 37:1 41:3 50:3</p> <p>open [3] 15:25 20:24 21:1</p> <p>opened [1] 13:4</p> <p>operates [1] 42:25</p> <p>operative [1] 23:8</p> <p>opinion [2] 8:6 14:14</p> <p>opposed [2] 9:22 24:16</p> <p>opposite [1] 44:23</p> <p>opposition [1] 33:10</p> <p>oral [5] 1:14 2:2,5 3:7</p>
--	--	--	---	--	--

Official

<p>26:19 order ^[30] 3:18 7:10 8:15 10:14,18,19 13:10 17:4,8,15 20:23 23:22,25 24:10,17 28:1,5,10 29:6,6,7 30:11 32:5 37:12 38:2,3 48:1,9,19,20 orders ^[18] 7:9 17:16 20:14 22:11,18 24:3 25:25 29:2,5 31:3,11,12 35:16 37:6 38:24 39:23 43:25 47:20 original ^[1] 13:1 originally ^[1] 38:20 other ^[11] 5:23 7:18 12:7 16:3 23:2,21 24:22 28:12 31:7 35:7 37:12 otherwise ^[11] 14:14 21:4 25:18 26:1 28:4 29:3 36:14 43:22,23,25 49:17 out ^[5] 16:3 42:19 46:12 47:2 48:4 outright ^[1] 49:13 over ^[5] 12:25 18:23 31:17 38:19,24 overlook ^[1] 17:25 own ^[5] 27:1 32:21 35:24,24 44:9</p> <hr/> <p>P</p> <p>p.m ^[1] 50:19 PAGE ^[2] 2:2 34:25 Palace ^[1] 44:16 particular ^[6] 20:10 30:3,7,11,19 36:18 parties ^[3] 13:10 21:24 25:22 party ^[1] 50:9 path ^[1] 10:17 pejoratively ^[1] 19:12 pending ^[2] 20:24 21:1 period ^[4] 10:5 12:3,5 20:4 period's ^[1] 20:6 periods ^[3] 11:2,7 50:12 person ^[2] 34:10 45:3 petition ^[1] 7:10 Petitioner ^[11] 1:4,19 2:4,10 3:8 27:6 31:14 44:14 46:14 47:11 49:10 Petitioner's ^[6] 27:12 28:14 29:3 33:7,13 40:25 phrase ^[2] 3:17 42:1 pick ^[1] 48:17 place ^[1] 16:11 places ^[2] 17:1 20:17 plaintiff ^[4] 28:18 41:</p>	<p>22 45:25 49:15 plaintiff's ^[3] 36:14,18 41:9 play ^[1] 4:9 pleaded ^[1] 14:25 please ^[2] 3:10 26:22 plenary ^[1] 21:9 point ^[24] 5:17 9:19 10:3,12 16:24 27:11,24 28:13 31:9 33:9 34:23 35:13 36:3 38:14 39:13,21,24 43:19 44:2 46:15 47:3,16 49:23 50:3 pointed ^[1] 10:15 pointing ^[1] 25:7 points ^[6] 4:17 18:15 33:4 34:7,21 47:4 position ^[1] 45:9 possible ^[1] 22:11 power ^[3] 4:13 36:13 39:22 powerless ^[1] 46:6 practice ^[2] 46:11 48:9 precluded ^[1] 34:4 prejudice ^[13] 3:14 10:4,24 18:8 25:21 28:18 42:5,12 44:17,22 47:6,12 49:15 premise ^[1] 14:5 prepared ^[1] 32:20 presented ^[17] 4:22 5:1 6:8 8:2 10:21 15:16 16:13 27:8 31:23 32:6,25,25 33:2,8 36:1 38:9,13 presents ^[1] 4:22 preserved ^[1] 8:14 presumptive ^[1] 23:5 pretty ^[1] 22:21 prevent ^[1] 14:19 primary ^[1] 45:14 prior ^[1] 28:7 problem ^[3] 17:9,20 48:10 problems ^[2] 27:12,16 Procedure ^[6] 3:20 27:18 28:24 29:15 31:5 47:9 proceeded ^[1] 10:6 proceeding ^[28] 3:17,18 4:1 8:22 10:25 17:1,3,6,16,20 19:15 23:6,12,21 24:2,11,16 28:6,10 32:5 43:8,10,13 44:20 45:16,18 47:16,17 proceedings ^[13] 3:15 16:15,16 20:15 21:25 22:12,19 30:1 31:3 47:21,23 48:12,15 process ^[1] 6:14</p>	<p>Professor ^[5] 20:17 21:5,11 25:15 50:5 properly ^[1] 37:8 proposing ^[1] 49:11 propriety ^[1] 7:15 provides ^[1] 29:10 provision ^[1] 23:1 provisions ^[1] 24:14 purposes ^[4] 4:14 18:9 26:1 42:11 put ^[2] 30:19 32:24 puts ^[1] 23:2</p> <hr/> <p>Q</p> <p>querela ^[1] 31:7 question ^[35] 3:12 4:22 5:1,23 6:7 8:1 14:1,1,5 15:12,16,20,21,24 16:8,9,10,13 23:19 24:21 26:23 31:23 32:6,25 33:2,8,23,24 34:1 36:17,22 38:13 39:9 46:9 47:14 questions ^[3] 5:5 28:21 50:15 quite ^[1] 24:23</p> <hr/> <p>R</p> <p>raise ^[1] 33:9 raised ^[2] 31:22 34:23 rate ^[1] 15:5 rather ^[2] 21:14 25:11 read ^[3] 4:5 14:13 22:18 reading ^[4] 17:1 20:21 28:9 48:21 reads ^[1] 28:10 real ^[3] 11:10 16:8 46:9 really ^[6] 22:20 27:16 36:11,17 39:11 45:9 reason ^[7] 6:13 7:19 9:5 21:11 30:3 35:6 48:18 REBUTTAL ^[3] 2:8 49:7,9 recitation ^[1] 30:18 recommended ^[1] 21:12 record ^[1] 30:1 red ^[3] 29:14 31:24 33:1 reexamined ^[2] 22:12,14 referenced ^[1] 21:6 referring ^[2] 36:10,12 refers ^[1] 36:4 refile ^[3] 28:18 43:15 46:1 refiled ^[1] 26:2 reflected ^[1] 49:25 regarding ^[2] 7:7 38:3 regardless ^[1] 16:6</p>	<p>regularly ^[1] 25:21 rejected ^[1] 16:21 related ^[4] 13:21,24 31:9 38:16 relief ^[21] 6:5 8:4,8 11:10 27:4 29:9 35:2,7,8,22,23 36:7,17 37:15 38:1,3,15,19 44:24 45:12,14 relies ^[1] 24:22 relieve ^[5] 28:16,17,20 45:22 50:9 relitigate ^[1] 38:17 rely ^[2] 4:25 23:11 relying ^[1] 14:19 remain ^[3] 5:24 11:14 39:25 remained ^[1] 31:12 remains ^[1] 15:25 remand ^[6] 4:23 5:24 8:9,13 11:13 12:12 remedy ^[1] 49:13 render ^[1] 49:12 rendered ^[2] 10:7 17:9 reopen ^[16] 6:21 7:6,11 9:1 10:9,16,24 12:25 13:17 35:1,4 37:8,14,25 40:9 45:10 reopened ^[10] 3:14 5:11 6:6 7:12 12:9 13:14 14:10 16:22 38:7 39:10 reopening ^[8] 4:20 7:24 10:18 11:14,24 21:16 35:16 38:2 repeat ^[1] 50:12 replead ^[1] 15:10 request ^[5] 27:7 35:4,20 37:4 38:18 requested ^[3] 35:23 38:11,15 requests ^[2] 35:2,7 require ^[1] 23:25 requirement ^[2] 30:9 31:1 requirements ^[1] 43:23 requires ^[3] 27:1 35:22,24 res ^[1] 21:21 resolution ^[4] 40:22,24 42:24 43:14 resolve ^[3] 41:6,9,13 resolved ^[2] 5:14 9:6 resolves ^[1] 43:3 resolving ^[2] 4:23 15:16 respect ^[9] 13:23 24:21 28:25 30:18 34:3 37:12 39:2 47:4,22 responded ^[1] 37:18 Respondent ^[10] 1:7,21 2:7 4:17 5:1 21:20,</p>	<p>22 22:2 26:20 49:11 Respondent's ^[2] 21:19 33:7 response ^[4] 5:2 18:15 34:7 44:14 responsibilities ^[1] 13:22 responsibility ^[1] 25:22 rest ^[1] 37:6 restore ^[1] 9:21 retain ^[1] 21:9 retraction ^[2] 41:12 44:23 reverse ^[1] 5:4 review ^[2] 5:21 44:8 revise ^[1] 4:6 revisit ^[1] 21:9 revisited ^[1] 31:4 revive ^[1] 6:15 rewrite ^[1] 33:7 rid ^[1] 39:24 riding ^[1] 44:11 rights ^[3] 13:22 22:9 41:10 road ^[2] 16:11 33:17 ROBERTS ^[17] 3:3 6:12,25 7:17 8:16,21 9:4,15 10:22 11:3,16,23 26:7,11 48:23 49:7 50:16 Rogers ^[1] 40:18 row ^[1] 15:19 Rule ^[67] 3:13,14,18,25 4:4,8,14 5:9 6:5 7:11 8:4,8 11:15 20:14,21 21:3,13,14,16 22:8 24:18 27:2,3,7,13,15,17,17,20,20,24,25 28:8,15 29:1,2,8,11,12,14 30:20 31:11 32:5 33:3 35:11 36:1,6,6,7 39:6,15 42:4,13 44:3 45:4,13 46:10,19 47:10,12,21,23 48:6,16,21 49:12,19 rule-makers ^[2] 18:18 23:10 Rules ^[14] 10:16 11:10 16:17 23:3 28:24 29:15 31:5 40:19 42:25 46:25 47:9,11 48:5 50:5 ruling ^[2] 8:9 48:7 runs ^[2] 27:15 29:6 rushes ^[1] 45:5</p> <hr/> <p>S</p> <p>Salazar ^[1] 46:15 same ^[8] 6:9 16:20 23:8 24:11 29:1 32:17 43:20,20 satisfied ^[1] 9:13 saying ^[7] 10:9 15:11</p>	<p>16:2,6 25:9 41:6 44:24 says ^[8] 7:19 15:8 21:7 35:16,17 44:20,20 45:6 School ^[1] 32:18 scope ^[2] 32:4 43:20 second ^[10] 12:19 27:24 31:9 34:22 36:3 42:3,3,14,15 49:18 Section ^[7] 3:19,21,23 10:10 26:24 27:6 36:17 see ^[2] 12:13,19 seek ^[3] 35:9 38:1,4 seeking ^[2] 35:10 44:21 seem ^[3] 15:20 19:10 24:23 seemed ^[1] 37:4 seen ^[1] 24:7 sense ^[2] 13:25 43:23 sent ^[2] 6:22 10:2 separate ^[6] 7:1 8:13,14 35:16 37:6 48:12 sequencing ^[4] 5:16 34:23 36:3,20 sequentially ^[1] 9:24 SERVICES ^[2] 1:6 3:5 set ^[1] 36:13 settled ^[2] 23:15 46:10 Seventh ^[1] 16:1 show ^[2] 10:14 21:2 shrouded ^[1] 31:7 side ^[2] 7:18 24:22 side's ^[1] 23:21 significance ^[2] 20:11 33:12 signs ^[1] 25:20 Simmons ^[1] 21:8 simply ^[4] 6:1 13:10 36:23 45:25 single ^[2] 46:16,16 Sinochem ^[3] 5:15 6:9 34:23 Sinochem's ^[1] 36:20 situation ^[1] 45:2 sliver ^[1] 47:18 sloppy ^[1] 36:15 small ^[1] 47:18 soil ^[2] 23:4 46:17 somehow ^[1] 44:4 sorry ^[2] 11:16 20:14 sort ^[4] 21:24 22:19 24:1 30:1 SOTOMAYOR ^[18] 12:13 13:3,8,16,20 23:18,24 24:13,20 25:6,17 26:6,12 47:14,25 48:10,22 49:1 sought ^[2] 37:14,17 source ^[1] 23:2 specifically ^[2] 3:22</p>
--	--	---	--	--	---

Official

<p>23:7 split ^[2] 15:23 38:10 standalone ^[1] 14:4 standard ^[1] 20:7 standards ^[2] 19:19 31:10 start ^[2] 3:16 26:23 started ^[1] 33:13 starts ^[1] 34:25 stated ^[1] 25:16 STATES ^[3] 1:1,15 49:25 statute ^[13] 11:4,20 13:10 14:20 15:9 17:11 20:13 23:2 28:10 36:19 46:20,21,21 statutes ^[2] 26:5 50:4 statutory ^[1] 36:8 Steel ^[2] 36:18,21 stems ^[1] 12:25 step ^[2] 22:8 44:21 steps ^[1] 3:22 Stone ^[1] 29:13 Stonesifer ^[1] 44:19 strict ^[1] 22:20 stricter ^[1] 31:10 strong ^[1] 23:9 subject ^[21] 9:10 12:16,17,20 13:11 14:7,11 18:19 21:16 28:8 29:8 31:12,18 35:22,24,25 36:11,16 38:20 39:18 40:3 submitted ^[2] 50:18,20 subsume ^[1] 28:11 sufficient ^[1] 36:1 suggest ^[1] 9:5 suggested ^[1] 44:3 suggesting ^[1] 37:17 suggests ^[2] 6:13 30:6 suit ^[3] 42:3,4 45:3 superfluity ^[1] 23:20 supplementary ^[1] 47:21 supply ^[1] 27:7 support ^[1] 24:14 suppose ^[1] 45:2 SUPREME ^[9] 1:1,14 3:20 16:19 22:23 23:6,16 44:15 50:1 surplusage ^[2] 24:7,9 surprised ^[1] 32:1 swallow ^[3] 17:18,25 48:19</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>talked ^[1] 23:16 talks ^[1] 24:15 Tenth ^[3] 5:6,8 12:22 term ^[2] 38:25 39:23 terminate ^[2] 26:3 29:8</p>	<p>terminates ^[1] 4:11 terms ^[4] 4:1 16:13 22:11 39:8 test ^[2] 22:8,15 text ^[2] 16:14 49:21 themselves ^[2] 43:24 47:19 theory ^[4] 4:19 17:3 19:8 46:6 there's ^[20] 5:15 7:4,5 9:9,9,19 22:9 23:19 27:9 36:23 39:5,14 43:13,14 44:5 45:20 46:11,24 48:8 49:20 therefore ^[4] 4:13 5:12 22:3 42:19 Third ^[1] 16:1 THOMAS ^[6] 5:6,25 26:9,10 28:22 48:24 though ^[3] 17:2,19 41:17 three ^[1] 27:11 threshold ^[5] 5:13,20 6:9,10 37:22 today ^[1] 48:2 together ^[1] 29:15 toll ^[1] 27:18 tolling ^[2] 29:10 43:22 took ^[4] 10:18 19:19 37:9 40:16 tough ^[1] 15:19 transplanted ^[1] 46:18 treat ^[1] 5:7 treated ^[2] 5:9 7:8 true ^[7] 30:22 32:18 46:8 48:2,3,4 50:11 try ^[3] 6:17 14:22 18:11 trying ^[6] 6:15 8:17 11:17 22:7,20 31:22 Tuesday ^[2] 1:11 45:5 turn ^[1] 43:18 turns ^[1] 20:4 two ^[24] 4:25 5:12,19,20 7:6,9,9,25 12:14 13:23 19:3 27:16 31:2 32:2 33:4 34:6,6,21,21 35:16 37:5,6 44:15 47:4</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately ^[1] 21:12 unappealable ^[2] 28:5 43:25 unconstrained ^[1] 21:16 under ^[42] 3:14 5:15 7:11 8:4,8 9:10,11 10:10 11:10,11,15 12:3 19:18,24 21:3 22:24 26:25 27:20,20 29:2,7,11 31:11,16 32:12 35:17,18 36:1,6,19</p>	<p>42:4,13,25 43:21 44:18 45:11,13,22 46:6 47:21,23 48:18 understand ^[13] 19:14 24:1 31:23 32:14 33:11 37:2,3,10,16,17 38:10,22 43:9 understanding ^[3] 14:21 39:12 40:20 understood ^[1] 39:7 unilateral ^[1] 45:4 UNITED ^[2] 1:1,15 unless ^[1] 50:15 until ^[4] 3:12 33:13 37:19 38:25 up ^[6] 10:20 21:12 47:25 48:11,12,17 upend ^[1] 46:10 uses ^[1] 22:3 using ^[3] 4:12 21:19 25:10</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacate ^[28] 4:20 5:12 6:21 7:5,24 9:2,14,20 12:21 13:5,12,21 14:2,4,20 15:7,25 26:25 27:5 31:18 33:13,20 35:1,3,10,18,21 38:17 vacated ^[5] 7:13 8:11 9:2,14 10:10 vacating ^[3] 8:15 10:20 34:4 various ^[1] 20:17 verb ^[1] 28:15 versa ^[1] 24:4 version ^[1] 23:7 versus ^[6] 3:4 22:24 29:13 32:13,18 44:12 vice ^[2] 18:4 24:4 view ^[3] 24:12 29:7 33:6 VINCENT ^[5] 1:18 2:3,9 3:7 49:9 virtue ^[2] 18:1,3 vobis ^[1] 31:6 voluntarily ^[1] 6:14 voluntary ^[21] 3:13,16,23 4:3 9:16,21 10:23 11:24 16:18,20,21,23 23:9,14 28:17 36:14 39:3 41:2,7 42:18 45:7</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>WAETZIG ^[2] 1:3 3:4 walk ^[1] 20:9 wanted ^[1] 31:2 Washington ^[2] 1:10,20 Waterfront ^[1] 22:21 way ^[13] 6:9,16 11:3 16:3 17:11,15 18:25 20:23 23:16 25:10 31:4 37:7 48:5 week ^[1] 45:4 weight ^[2] 17:2 49:24 welcome ^[2] 5:5 28:21 whatever ^[3] 11:13 18:21 30:6 whatsoever ^[2] 44:15 46:12 Whereupon ^[1] 50:19 whether ^[17] 5:9,10 8:3,14 11:14 14:8 15:1,24 22:8,9 25:15 36:18 37:7,11 38:6 39:10 46:10 whole ^[1] 17:19 will ^[6] 4:23 8:12 11:13 15:22 24:9 43:24 Williamsport ^[2] 32:13,18 win ^[1] 19:24 wins ^[1] 19:18 withdrawal ^[1] 41:17 withdraws ^[1] 42:15 withdrew ^[2] 10:3 42:18 without ^[12] 3:13 10:3,23 17:13 21:4 25:20 28:17 44:22 47:6,12 49:12,15 without-prejudice ^[1] 50:10 wonder ^[1] 17:2 word ^[4] 4:8 18:22 21:13 23:12 words ^[3] 16:20 18:18,25 work ^[2] 29:15 30:7 world ^[2] 24:12 41:19 worth ^[1] 44:16 writ ^[1] 47:20 writs ^[1] 31:6 written ^[1] 17:11</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yesh ^[1] 19:20 York ^[4] 1:18,18 46:21 50:3</p>
--	---	--