

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -  
LABORATORY CORPORATION OF AMERICA )  
HOLDINGS, D/B/A LABCORP, )  
Petitioner, )  
v. ) No. 24-304  
LUKE DAVIS, ET AL., )  
Respondents. )  
- - - - -

Pages: 1 through 122  
Place: Washington, D.C.  
Date: April 29, 2025

---

**HERITAGE REPORTING CORPORATION**  
*Official Reporters*  
1150 Connecticut Avenue, N.W., Suite 305  
Washington, D.C. 20036  
(202) 628-4888  
[www.hrccourtreporters.com](http://www.hrccourtreporters.com)

1           IN THE SUPREME COURT OF THE UNITED STATES  
2   - - - - -  
3   LABORATORY CORPORATION OF AMERICA   )  
4   HOLDINGS, D/B/A LABCORP,                )  
5                           Petitioner,                )  
6                           v.                                ) No. 24-304  
7   LUKE DAVIS, ET AL.,                        )  
8                           Respondents.                )  
9   - - - - -

10  
11                           Washington, D.C.  
12                           Tuesday, April 29, 2025  
13

14           The above-entitled matter came on for  
15   oral argument before the Supreme Court of the  
16   United States at 11:03 a.m.  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 APPEARANCES:

2 NOEL J. FRANCISCO, ESQUIRE, Washington, D.C.; on  
3 behalf of the Petitioner.

4 SOPAN JOSHI, Assistant to the Solicitor General,  
5 Department of Justice, Washington, D.C.; for the  
6 United States, as amicus curiae, supporting  
7 neither party.

8 DEEPAK GUPTA, ESQUIRE, Washington, D.C.; on behalf of  
9 the Respondents.

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	NOEL J. FRANCISCO, ESQ.	
4	On behalf of the Petitioner	4
5	ORAL ARGUMENT OF:	
6	SOPAN JOSHI, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting neither party	50
9	DEEPAK GUPTA, ESQ.	
10	On behalf of the Respondents	79
11	REBUTTAL ARGUMENT OF:	
12	NOEL J. FRANCISCO, ESQ.	
13	On behalf of the Petitioner	119
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 (11:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear  
4 argument next in Case 24-304, Laboratory  
5 Corporation of America versus Davis.

6 Mr. Francisco.

7 ORAL ARGUMENT OF NOEL J. FRANCISCO

8 ON BEHALF OF THE PETITIONER

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

11 Two basic principles resolve this  
12 case. First, a class action is just a tool for  
13 aggregating claims. So, if an individual  
14 plaintiff doesn't have Article III standing to  
15 bring his own claim, he can't bring it as part  
16 of a class either. That's why Laroe held that  
17 an intervenor has to show Article III standing  
18 in order to intervene, and, as Justice Scalia  
19 said in Shady Grove, class actions are just  
20 another species of joinder.

21 Second, Rule 23(b)(3)'s predominance  
22 requirement leads to the same result. If a  
23 class is defined to include plaintiffs without  
24 Article III standing and, as a result, you need  
25 thousands of mini-trials to separate the wheat

1 from the chaff, the Article III issue  
2 necessarily swamps any common ones.

3 This case is a perfect example.  
4 Plaintiffs who don't want to use kiosks don't  
5 have standing to challenge how kiosks work any  
6 more than a vegan has standing to challenge how  
7 a restaurant defines a medium rare steak.

8 As a result, the Court needs to assess  
9 whether each of the 8,000 to 112,000 class  
10 members actually want to use kiosks, and that  
11 will necessarily swamp any common issues, as the  
12 D.C. and First Circuits correctly held in the  
13 Rail Freight and Asacol cases.

14 Plaintiff's only response is to say  
15 that courts should assess the merits first and  
16 jurisdiction second. But that makes no sense.  
17 What if they lose on the merits?

18 Either the unnamed class members are  
19 bound by a judgment regardless of whether the  
20 court had Article III jurisdiction over it, or  
21 the court has to determine if it had  
22 jurisdiction over each plaintiff in the first  
23 place. And that's why courts have to address  
24 the jurisdiction before the merits, just like in  
25 every other case.

1                   Plaintiff's rule, in contrast, assumes  
2           either they win or coerce a settlement, but  
3           there's no basis for that "heads I win, tails  
4           you lose" approach to Article III.

5                   I welcome your questions.

6                   JUSTICE THOMAS:   The -- in this case,  
7           there have been a number of orders, and it seems  
8           as though the one that we have before us is the  
9           May order, which is inoperative.   Would you  
10          spend a minute on why we still -- we have  
11          jurisdiction over the May order when there have  
12          been subsequent orders?

13                  MR. FRANCISCO:   Sure, Your Honor.   For  
14          a variety of reasons.   I think the simplest way  
15          to understand it is that the Ninth Circuit  
16          resolved the question presented in this case,  
17          affirmed the certification of a class against  
18          us.   It just got it wrong.   You have  
19          jurisdiction to review that judgment.

20                  Now I can unpack that a little bit  
21          more.   Everybody here agrees that the May order  
22          is before the Court.   The August order didn't  
23          change the May order in any material way.  
24          That's what the district court explicitly found.  
25          That's what Plaintiffs argued to the district

1 court below.

2 That's why we couldn't have actually  
3 appealed the August order even if we wanted to.  
4 It would have been barred by 23(f)'s 14-day  
5 statute of limitations.

6 And I think, more importantly, that is  
7 precisely why the Ninth Circuit resolved the  
8 question presented in the context of the May  
9 order. It issued a judgment. That judgment  
10 went against us. It had reasoning. We think  
11 that reasoning is wrong.

12 This Court has the jurisdiction to  
13 address that judgment, reverse it, and send it  
14 back --

15 JUSTICE SOTOMAYOR: Counsel --

16 MR. FRANCISCO: -- to the Ninth  
17 Circuit.

18 JUSTICE SOTOMAYOR: -- you're --  
19 you're skipping a lot of steps in there. The  
20 May order is before us, but it's inoperative.  
21 The August order superseded it and replaced it.

22 That's what the Ninth Circuit said.  
23 When it reached the May order, it said you  
24 didn't move to amend your notice of appeal.  
25 We're basing this on the May order. We're not



1 may -- basing it on the August order because you  
2 didn't move to amend.

3 Isn't us looking at the May order --  
4 that's not the operative language right now.  
5 Isn't it an advisory opinion?

6 JUSTICE SOTOMAYOR: Counsel, I -- I --  
7 I'm -- I'd like -- I want to follow up on your  
8 answer to Justice Alito, when does a party  
9 become -- when does a party become a part of a  
10 litigation.

11 I always thought it was at the time  
12 the class was certified, which is not at the  
13 time where -- where the judgment is entered. I  
14 didn't think they became parties until the  
15 judgment is entered in a class action.

16 MR. FRANCISCO: I think their claims  
17 are clearly added the moment the class is  
18 certified. That's why --

19 JUSTICE SOTOMAYOR: The claim -- the  
20 claim, yes, but not them as parties.

21 MR. FRANCISCO: Well, I -- I --

22 JUSTICE SOTOMAYOR: So I'm not quite  
23 sure how you -- why they have to -- they have to  
24 prove that they are injured or uninjured.

25 MR. FRANCISCO: So I'll give you two

1     answers.

2                   The first is I think just as a  
3     technical, formal matter when the claims are  
4     added at certification, you have to have  
5     jurisdiction over those claims.

6                   The practical answer is the one that I  
7     think I -- I've already given, which is, what if  
8     the class is certified, all the claims are  
9     added, and the Court then rules against the  
10    class?

11                  JUSTICE SOTOMAYOR: All right. But  
12    you said earlier --

13                  MR. FRANCISCO: The rule is the whole  
14    class is bound.

15                  JUSTICE SOTOMAYOR: Counsel, you said  
16    earlier -- yes, but it's not bound until the  
17    class is certified. And between -- until  
18    judgment is entered. The way class actions  
19    happen, the -- they get amended constantly  
20    during the proceeding.

21                  MR. FRANCISCO: Sure.

22                  JUSTICE SOTOMAYOR: Sometimes some  
23    claims are dropped altogether. They are  
24    altered.

25                  The whole process is fluid as problems

1 start arising. And it's not until the -- until  
2 the judgment is entered that you have to  
3 determine whether there's an administrable way  
4 to identify them -- using your own words, to  
5 identify who's been injured or not.

6 MR. FRANCISCO: So say --

7 JUSTICE SOTOMAYOR: So you're saying,  
8 instead, we've got to do it immediately.

9 MR. FRANCISCO: Well --

10 JUSTICE SOTOMAYOR: They're saying it  
11 has -- the Court below said it has to be done.

12 MR. FRANCISCO: What -- what I'm  
13 saying is that you need to always address  
14 jurisdiction before you adjudicate the merits of  
15 a claim. That's what this Court --

16 JUSTICE SOTOMAYOR: Well, but we have  
17 jurisdiction. We have some people, the named  
18 Plaintiffs, who wanted to use this kiosk. They  
19 are clearly a part of that class.

20 Now the question becomes, in naming  
21 that class, will there be people who are blind  
22 who didn't want to use it. And they have to  
23 show that there's an administrable way to  
24 identify the difference between those people and  
25 themselves.

1                   MR. FRANCISCO: So, Your Honor, let's  
2     assume --

3                   JUSTICE SOTOMAYOR: I think that's a  
4     Rule 23 question.

5                   MR. FRANCISCO: -- let's assume for  
6     the sake of argument that people who don't want  
7     to use kiosks don't have standing to challenge  
8     kiosks. And let's further assume that we've got  
9     a class here that includes both -- both groups  
10    of people.

11                  JUSTICE SOTOMAYOR: Well, but that's  
12    going to be the legal fight, but --

13                  MR. FRANCISCO: No, I get that, which  
14    is why I stipulate --

15                  JUSTICE SOTOMAYOR: And I'm asking why  
16    do it immediately at class certification stage.

17                  There is an argument that if I'm  
18    blind, the benefit that the statute gives me is  
19    like the standing question we faced with the ADA  
20    person who was calling hotels. And all she said  
21    is I want -- I want to walk in there. I may  
22    want to use it. We didn't require her to use  
23    it. All she had to say was I may want to use  
24    it.

25                  They're saying the same thing, if I'm

1 blind and I walk in, I'm being denied the  
2 choice.

3 MR. FRANCISCO: And that's --

4 JUSTICE SOTOMAYOR: I don't know if  
5 that will hold up for injury.

6 MR. FRANCISCO: Sure.

7 JUSTICE SOTOMAYOR: But the question  
8 is: Why are we facing that question at class  
9 certification?

10 MR. FRANCISCO: And that's the  
11 question I want answered, because I think what  
12 your question really is doing is joining the  
13 issue --

14 JUSTICE SOTOMAYOR: No. I --

15 MR. FRANCISCO: -- and an issue that  
16 needs to be --

17 JUSTICE SOTOMAYOR: -- think --

18 MR. FRANCISCO: -- resolved. And  
19 here --

20 JUSTICE SOTOMAYOR: I think -- I think  
21 the question -- I think --

22 MR. FRANCISCO: -- the class --

23 JUSTICE SOTOMAYOR: Mr. Francisco,  
24 hear me out. I think the question only becomes  
25 pertinent when you're trying to give a damage

1       award to anyone.

2                   MR. FRANCISCO:   And that's where I  
3       fundamentally disagree with you, because that's  
4       only true if they win.

5                   If they lose, if the class is  
6       certified and they lose, the entire class is  
7       bound by that adverse judgment.

8                   So if you have certified --

9                   JUSTICE SOTOMAYOR:   Well, it depends  
10      on what ground they lose.

11                  MR. FRANCISCO:   Let's say they just  
12      lose across the board on the merits on a motion  
13      to dismiss.   That binds the entire class.

14                  So if you have certified a class that  
15      includes uninjured people and the class loses  
16      across the board, the general rule is the entire  
17      class is bound.   But that can't be the case if  
18      you didn't have jurisdiction in the first place,  
19      which is why jurisdiction always, in every case,  
20      precedes the merits.   It doesn't follow the  
21      merits.

22                  That's my -- that's one of our  
23      principal objections to their position.   Your  
24      position, Your Honor, as you just very well  
25      articulated --

1 JUSTICE SOTOMAYOR: Well, but I -- I  
2 guess --

3 MR. FRANCISCO: -- makes perfect sense  
4 when they win --

5 JUSTICE SOTOMAYOR: Yeah, but  
6 you're --

7 MR. FRANCISCO: -- but makes no sense  
8 when they lose.

9 JUSTICE SOTOMAYOR: But you're still  
10 saying it's a question of predominance and that  
11 that's what has to be addressed. If there's an  
12 administrable way to do it, then the class gets  
13 certified. If there's not, then you can't.

14 MR. FRANCISCO: So I'm saying two  
15 things. Under Article III, they have got to  
16 define the class properly at the front end.

17 Under 23(b)(3), I'm not sure I  
18 necessarily disagree with you, but you've got to  
19 have an administrable way to separate the wheat  
20 from the chaff before you address the merits,  
21 not after you address the merits.

22 And if the only way to do that  
23 consistent with protecting the defendants'  
24 rights is thousands of mini trials, that is  
25 necessarily going to defeat predominance, just

1     like if the fraud on the market theory fails in  
2     a way that requires individual issues of  
3     reliance.

4             Again, the rule that we're asking for  
5     under 23(b)(3) is the one that Judge Katsas  
6     adopted in the D.C. Circuit and Judge Kayatta  
7     adopted in the First Circuit.

8             CHIEF JUSTICE ROBERTS: Justice Kagan?

9             JUSTICE KAGAN: So I want to pick up  
10    there and also go back to the Chief Justice's  
11    question and make sure I understand what you're  
12    saying, which is that the Article III question,  
13    you're saying, in a case like this is not so  
14    hard to solve, that it's merely a matter of  
15    taking it from all the people who walked into  
16    the facilities to the people -- the blind people  
17    who walked into the facilities and wanted to use  
18    the kiosk.

19            And that's the key move to get you to  
20    a place where it's not the Article III question  
21    that's important but, rather, the predominance.  
22    Is that --

23            MR. FRANCISCO: With one insignificant  
24    tweak for purposes of this. I don't know that  
25    we would concede -- in fact, I know we wouldn't



1 concede that merely wanting to is good enough.  
2 There -- I think there has to be a further  
3 injury. But it doesn't really affect the -- the  
4 -- the force of your question, Your Honor.

5 JUSTICE KAGAN: Okay. Wanting to,  
6 tried to, something like that.

7 MR. FRANCISCO: And -- and was  
8 hindered in their ability to -- to check in.

9 JUSTICE KAGAN: Yeah. Okay. So --  
10 okay. Then we can go back to the procedural  
11 question again, which I don't want to do, but,  
12 you know, but that does raise the procedural  
13 question, is like isn't that exactly what the  
14 May order said, and the problem was really the  
15 August order, which was way wider than that, but  
16 the May order seems on its face and at least in  
17 some of the district courts' comments to be  
18 exactly that.

19 MR. FRANCISCO: Except for when the  
20 district court specifically addressed it, it  
21 explicitly told us there is not an iota worth of  
22 difference between the two orders when it comes  
23 to the size of the class.

24 JUSTICE KAGAN: I -- I totally can see  
25 that it does say that at some times. And then

1     it says at other times: I'm just talking about  
2     people who tried to use the kiosk. So that's a  
3     little bit of a mystery.

4             MR. FRANCISCO: But the one time it  
5     specifically did address it, twice it said the  
6     two orders are materially identical. And that's  
7     --

8             JUSTICE KAGAN: Yeah, on --

9             MR. FRANCISCO: -- a quote.

10            JUSTICE KAGAN: -- its face they're  
11     still obviously not materially identical, but --  
12     okay. I -- I actually was going someplace else.

13            MR. FRANCISCO: Sure.

14            JUSTICE KAGAN: We'll leave that as  
15     a -- a question to be asked.

16            Okay. But -- but that's the full  
17     range of the Article I question you see, and  
18     everything else, you're saying, really is a  
19     predominance inquiry and is a matter -- and I  
20     think you said it's not how many people.  
21     It's -- it's just you have a mechanism for  
22     easily separating the wheat from the chaff. Is  
23     that correct?

24            MR. FRANCISCO: While protecting the  
25     defendant's rights.

1 JUSTICE KAGAN: Yeah, well, that is  
2 what protects the defendant's rights, isn't it?  
3 Is there something else that I'm missing?

4 MR. FRANCISCO: Well, you know, I  
5 mean, there have been suggestions that you could  
6 just do everything through affidavits and  
7 deprive the defendants their right of -- of --  
8 of contesting those affidavits through the  
9 crucible of cross-examination.

10 It is specifically what Judge Kayatta  
11 addressed in the Asacol case, where he said,  
12 look, when it comes to issues of preference, you  
13 can't simply rely on affidavits, because --  
14 unless the defendants stand up and say we  
15 concede that all the affidavits are true.

16 Instead, a defendant, if it has a  
17 good-faith basis to do so, has a right to  
18 contest the veracity of affidavits.

19 Here, given how implausible it would  
20 be if 112,000 people came forward and said we  
21 all preferred to use the kiosk. Given the  
22 inherent implausibility of that, I think we  
23 would have a very strong basis to say: No, we  
24 want to test every one of those affidavits.  
25 We're going to spend, you know, anywhere between

1 two and ten years addressing the threshold  
2 question of jurisdiction, necessarily going to  
3 overwhelm any common issue.

4 JUSTICE KAGAN: So you're saying you  
5 can't do it by, like, surveys or other  
6 mechanisms that addressed the classes -- you  
7 know, addressed -- addressed the class as a  
8 whole.

9 MR. FRANCISCO: Those only work if you  
10 could also introduce them in an individual case.  
11 That's what you held in Tyson's.

12 But take an individual case like this  
13 one. If somebody came in and said I like  
14 kiosks, I want to use the kiosks, you couldn't  
15 put forward a survey that says 50 percent of  
16 people like to use kiosks, therefore, you like  
17 to use kiosks.

18 That would be completely inadmissible  
19 in an individual case and it's so inadmissible  
20 in a class case.

21 So what they have to do is identify  
22 something that they could do that's consistent  
23 with our right to cross-examine and contest that  
24 evidence. And in a case like this there is  
25 simply no way to do that, short of putting these

1 people on the stand and testing whether their  
2 assertions failed to survive the crucible of  
3 cross-examination.

4 JUSTICE KAGAN: Okay. That's helpful  
5 to me, and I hope Mr. Gupta addresses the same  
6 question. I'm sure he will, because what I hear  
7 you saying in your argument, again aside from  
8 the procedural matter as to whether you have any  
9 right to object to the May order, is really that  
10 the -- the crux of the matter is something along  
11 the lines of, there's no procedure that we can  
12 think of that -- that is easy enough to address  
13 the predominance inquiry.

14 MR. FRANCISCO: Well, I -- again, it's  
15 not just any procedure we can think of. It's a  
16 procedure that exists and also is protective of  
17 --

18 JUSTICE KAGAN: Yeah.

19 MR. FRANCISCO: -- the defendant's  
20 rights. Again, this is an issue that I think  
21 Judge Katsas and Kayatta both went through in --  
22 in quite a bit of detail.

23 JUSTICE KAGAN: Yeah, I didn't mean to  
24 take that out.

25 MR. FRANCISCO: Yeah. In your opinion

1 -- yeah.

2 JUSTICE KAGAN: I meant to -- to,  
3 like, you know, say, like, exactly how much the  
4 --

5 MR. FRANCISCO: Yeah.

6 JUSTICE KAGAN: -- does the defendant  
7 need such that you can have a mechanism that  
8 actually works to separate people who are  
9 injured from people who are uninjured.

10 MR. FRANCISCO: And the critical issue  
11 I would add to that, Your Honor, is that that is  
12 a procedure that also -- always has to be  
13 capable of taking place before you reach the  
14 merits. You can never kick the jurisdictional  
15 question to after you resolve the merits. It's  
16 also -- always got to be resolved before you  
17 reach the merits.

18 JUSTICE KAGAN: And -- and this is  
19 only because the -- because you're worried about  
20 the -- the -- the -- the case if you -- if the  
21 defendant loses.

22 MR. FRANCISCO: I think that just  
23 illustrates the nature of the problem. I think  
24 that just reflects the fundamental principles of  
25 Article III jurisdiction. When a class action

1 is just an aggregation tool, so when you certify  
2 a class, you're adding a bunch of claims to the  
3 case. You're increasing the exposure to the  
4 defendant. You cannot -- you don't have the  
5 power to adjudicate the merits of those claims  
6 either up or down unless you have jurisdiction  
7 over those claims in the first place.

8 JUSTICE KAGAN: Yeah, I think this  
9 one, I think we're going to have to agree to  
10 disagree on this one because the court is not  
11 doing anything with respect to those claims  
12 until the court actually provides damages,  
13 otherwise exercises remedial powers with respect  
14 to those claims, and as long as the court  
15 figures this question out before the court  
16 actually does anything with respect to those  
17 claims, that seems to me good enough.  
18 Otherwise, they're just riding along. They're  
19 not -- they're not -- they're not affecting the  
20 litigation in any way.

21 MR. FRANCISCO: Sure. And I disagree  
22 with that for a couple of reasons. One is that,  
23 as this Court has said a couple of different  
24 times, class actions are claims aggregation  
25 tools. As Justice Scalia explained in Shady

1 Grove, it's just another joinder device.

2 And I think that the reason why I  
3 point to what happens if there's a loss is  
4 because it does illustrate that the claims  
5 are -- it illustrates the basic principles that  
6 I'm trying to articulate in other ways because  
7 it shows that those claims actually do become  
8 part of the case at the moment of certification,  
9 because they are capable of being resolved in an  
10 adverse way against the defendant.

11 And I think that is why this Court has  
12 always said that class actions are just joinder  
13 devices no different from intervention. And  
14 Laroe makes clear that if you're going to add  
15 that new claim to a case by way of intervention,  
16 you need to have jurisdiction over that new  
17 claim. I don't think there's any different of a  
18 rule that would apply in the class action  
19 context.

20 JUSTICE KAGAN: Thank you.

21 MR. FRANCISCO: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice  
23 Gorsuch?

24 JUSTICE GORSUCH: Sorry to belabor  
25 this, but I am -- I am struggling to understand



1 your argument.

2 I believe in response to the Chief  
3 Justice, though you can correct me, that you  
4 acknowledged that a court can certify a class  
5 action with some noninjured people in it, and  
6 that in response to Justice Kagan you said,  
7 basically, that you have to do the predominance  
8 and manageability inquiry early on. That's --  
9 that's what I got out of it.

10 MR. FRANCISCO: That -- then I --

11 JUSTICE GORSUCH: And then you  
12 determine whether you can separate the wheat  
13 from the chaff early on in order to ensure that  
14 you can weed out people who aren't injured. And  
15 if all that's true -- and you can tell me where  
16 I'm wrong -- boy, that sure sounds like Rule 23  
17 to me.

18 MR. FRANCISCO: So, Your Honor, I  
19 think I wasn't clear if that's how you  
20 understood my articulation of the rule. There  
21 are sort of two steps. There's the Article III  
22 step and the 23(b)(3) step.

23 JUSTICE GORSUCH: Yeah, in the Article  
24 III step, you said --

25 MR. FRANCISCO: You need to define the

1 class so that it's limited only -- only to  
2 injured people.

3 JUSTICE GORSUCH: Only -- so you can  
4 never have an uninjured person in a class  
5 definition?

6 MR. FRANCISCO: At least not --

7 JUSTICE GORSUCH: Is -- is that it?

8 MR. FRANCISCO: -- on the face of the  
9 definition. But I think that in a case like  
10 this and in most cases, that can be solved  
11 pretty easily. You just --

12 JUSTICE GORSUCH: So -- so --

13 MR. FRANCISCO: -- define the class  
14 factually to include --

15 JUSTICE GORSUCH: Okay, I -- I've  
16 heard all that before. I don't mean to force  
17 you to repeat it. So your position now is a  
18 class definition can never have one uninjured  
19 person in it?

20 MR. FRANCISCO: I --

21 JUSTICE GORSUCH: If I can imagine a  
22 definition that -- that yields one uninjured  
23 person, I can't certify it?

24 MR. FRANCISCO: Well, if you can  
25 imagine a class definition that yields one

1 uninjured person, you can redefine the class to  
2 eliminate that uninjured person.

3 JUSTICE GORSUCH: Well, maybe I can  
4 and maybe I can't, but I know that common issues  
5 predominate, and I know that I can sort out  
6 those things later. And I still can't certify  
7 this --

8 MR. FRANCISCO: I think what you do,  
9 what the proper approach there would be, to  
10 simply redefine the class to eliminate the one  
11 person.

12 JUSTICE GORSUCH: Well --

13 MR. FRANCISCO: You can say, okay, the  
14 class --

15 JUSTICE GORSUCH: So I think the  
16 answer is -- I think the answer to the question  
17 is yes.

18 MR. FRANCISCO: Yes. Yes.

19 JUSTICE GORSUCH: You cannot certify  
20 that class at -- at all.

21 MR. FRANCISCO: Yes.

22 JUSTICE GORSUCH: Okay.

23 MR. FRANCISCO: But you can redefine.

24 JUSTICE GORSUCH: And if that's true,  
25 is that protective of defendants' rights? I

1 mean, we've been talking about judgments in  
2 class action litigation. My memory's a little  
3 hazy, but I remember doing a little -- a little  
4 bit of it back in the day. And these things  
5 never go to judgment. They're always settled.

6 And often defendants like broad class  
7 definitions because it gives them peace. And  
8 the alternative, which I think your rule would  
9 invite, is mass tort claims in which you're  
10 litigating these -- you talk about piecemeal;  
11 you're really going to be litigating it  
12 piecemeal. Thoughts?

13 MR. FRANCISCO: So I guess my first  
14 thought would be, if you look at, just as a  
15 practical matter, are the positions that we're  
16 articulating pro-defendant or anti-defendant, I  
17 guess my first answer would be I don't think it  
18 really matters. But my second answer would be  
19 that, to the extent it does, I'm pretty  
20 comfortable with my position from a pro-defense  
21 standpoint, because if you look who's lined up  
22 in favor of our position, it's pretty much the  
23 entire defense bar.

24 Then to take it on more directly, what  
25 I'd say is, if you can properly define the

1 class, the case can be easily settled. You just  
2 have to figure out who's in that class and  
3 settle it with respect to those people.

4 I think that the problem when you can  
5 lard up a class, not just with one, not just  
6 with two uninjured members, but you can define a  
7 class in a way like this one that maybe includes  
8 as many as a majority of uninjured members out  
9 of the 112,000 --

10 JUSTICE GORSUCH: Well, then -- then  
11 you maybe have some predominance issues, some  
12 manageability issues. And I take all that  
13 point. But that's what rule 23 exists to sort  
14 out. And maybe it isn't certifiable for that  
15 reason. But that's a Rule 23 inquiry, it seems  
16 to me.

17 MR. FRANCISCO: And that's the second  
18 part of our argument, Your Honor. Even if you  
19 completely disagree with me on my Article III  
20 question --

21 JUSTICE GORSUCH: Yeah, maybe --

22 MR. FRANCISCO: -- on 23(b)(3), if  
23 there isn't a way to separate them out before  
24 you reach the merits, short of having all of the  
25 mini-trials, it's going to fail under

1 23(b)(3)(ii).

2 JUSTICE GORSUCH: Okay. Thank you.

3 MR. FRANCISCO: Yeah.

4 CHIEF JUSTICE ROBERTS: Justice  
5 Kavanaugh?

6 JUSTICE KAVANAUGH: I thought one of  
7 the problems with an overly broad class being  
8 certified was that it would pressure defendants  
9 into settlements that are coercive and unfair.  
10 Isn't that one of the concerns you -- you have?

11 MR. FRANCISCO: Yes, Your Honor, and  
12 that would have been fourth on my list, had I  
13 had a chance to get to that.

14 And the other point I'd like to --

15 JUSTICE KAVANAUGH: And do you want to  
16 explain that, the real-world problem?

17 MR. FRANCISCO: Yeah. In the real  
18 world, what drives settlement is the fact of  
19 certification and the size of the class that's  
20 certified, because those are the two numbers  
21 that really require defendants to roll the dice.  
22 Maybe I can defeat everything at the end of the  
23 day. If I don't, I'm looking at a massive  
24 number times whatever damages there are per  
25 person.

1 JUSTICE KAVANAUGH: So the flip side  
2 of the peace from a larger class is the  
3 disaster, from your perspective, of being  
4 pressured into a settlement with an overly broad  
5 class once it's certified.

6 MR. FRANCISCO: I think that's right.  
7 We don't want to be pressured into those  
8 settlements.

9 And the -- the other thing that I  
10 would add is it's not like you need class  
11 actions across the board in every manifestation  
12 in order to make sure that plaintiffs are  
13 protected and defendants are punished.

14 You also have federal and state law  
15 enforcement authorities who are charged with  
16 enforcing the federal and state consumer  
17 protection and antidiscrimination laws. One of  
18 the problems with an overly aggressive use of  
19 class certification is that it interferes with  
20 that law enforcement discretion by deputizing  
21 literally thousands of plaintiffs lawyers to act  
22 as private attorneys general.

23 I think this case is a pretty good  
24 illustration of that. Here, about a year ago,  
25 the Department of Health and Human Services

1 actually put forward a rule that suggested that  
2 what we are doing is what we should be doing;  
3 that is, providing a front desk alternative to  
4 kiosks. Yet, notwithstanding that rule, we're  
5 being subjected to a massive class action that  
6 goes after us for doing precisely what the rule  
7 appears to contemplate.

8 JUSTICE KAVANAUGH: And on the facts  
9 here -- I think you've maybe covered this, but I  
10 just want to be clear. On the facts, general  
11 facts, here could they permissibly define a  
12 damages class consistent with Article III and  
13 23(b)(3), and if so, how?

14 MR. FRANCISCO: I think they could do  
15 it here with respect to Article III. On these  
16 facts, I don't think they could do it consistent  
17 with Rule 23(b)(3). They could -- let's assume  
18 that anyone who wants to use a kiosk has  
19 standing. As I mentioned to Justice Kagan, we  
20 dispute that. We think more is needed. But for  
21 purposes of this I'll assume that's enough.  
22 They could define the class as anybody who  
23 wanted to use a kiosk and visited a Labcorp  
24 facility and couldn't use the kiosk.

25 That then walks you straight into Rule



1 23(b)(3), and I don't see any way for them to  
2 show -- to -- to meet Rule 23(b)(3), because  
3 you'd have to have literally 112,000 mini-trials  
4 to determine whether any particular unnamed  
5 member actually wants to use that kiosk,  
6 particularly given how many people in this  
7 country -- I talked about myself; I imagine I'm  
8 not alone in this room -- don't like using  
9 kiosks and will avoid them whenever they can.

10 JUSTICE KAVANAUGH: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice  
12 Barrett?

13 JUSTICE BARRETT: I'm with you. I  
14 like to avoid kiosks too.

15 Okay. So I want to figure out exactly  
16 what would be open to you on remand. I mean,  
17 there are different paths that we could take  
18 here.

19 Let -- let's imagine that we say, oh,  
20 this whole confusion about the order, we think  
21 that the August order is operative and that's  
22 not before us, so we send it back.

23 Given the Ninth Circuit's rules and  
24 that you have, you know, a time, like you were  
25 pointing out under 23(f), you had time and the

1 Ninth Circuit says that you can't -- you  
2 can't -- you couldn't appeal the August order,  
3 right, because they said it was the same?

4 You say the Ninth Circuit -- and --  
5 and you're right, that the Ninth Circuit said  
6 you couldn't appeal the August order because it  
7 was the same.

8 So have you lost it? If -- if -- if  
9 your friend on the other side is right and so  
10 it's not properly before us, can you still  
11 appeal that certification?

12 Do you follow me? Am I being clear?

13 MR. FRANCISCO: Yeah, I think so.

14 JUSTICE BARRETT: Okay.

15 MR. FRANCISCO: Yeah.

16 JUSTICE BARRETT: So, like, if -- if  
17 it's the case that what we really have before us  
18 is the May order or the May order as amended in  
19 June, and if we said, no, no, no, no, really, it  
20 was this August order. You know, Justice Kagan  
21 was pointing out, no, I think the language is  
22 materially different. Let's say that that's the  
23 view that carries the day. What happens to you?  
24 Are you still able to make these arguments with  
25 respect to the August order?

1                   MR. FRANCISCO: So, if the May order  
2                   was immaterially amended by the August order, as  
3                   the district order said and the Ninth Circuit  
4                   found, no, we cannot appeal the August order.  
5                   So --

6                   JUSTICE BARRETT: What if -- but what  
7                   if Justice Kagan is right? You know, she said,  
8                   if you look at the August order -- Justice  
9                   Kagan's question to you was -- and I know you  
10                  disagree with this, so just -- just assume this.

11                  Let's assume that we thought that the  
12                  August order did materially order -- alter the  
13                  May order.

14                  MR. FRANCISCO: Okay.

15                  JUSTICE BARRETT: What happens to you?  
16                  Do you still have the --

17                  MR. FRANCISCO: All right. So the  
18                  assumption is that we're going to override the  
19                  district court's own interpretation of its own  
20                  orders --

21                  JUSTICE BARRETT: Go with the  
22                  hypothetical.

23                  MR. FRANCISCO: I get it. I get it.  
24                  And override their understanding of the orders.

25                  JUSTICE BARRETT: Yeah. Yeah, yeah.

1                   MR. FRANCISCO: I -- I -- I'll accept  
2                   that too. I would have to think through that  
3                   more, Your Honor, and I would be uncomfortable  
4                   making a definitive representation here given  
5                   how far we are away from all of the different  
6                   orders.

7                   If you did that, I would certainly  
8                   probably do my best to come up with an argument  
9                   that we could appeal that August order  
10                  separately. I don't think that there's any  
11                  reason for you to do any of that because I think  
12                  the simplest route here is that you have a Ninth  
13                  Circuit judgment before you.

14                 JUSTICE BARRETT: I -- I understand  
15                 that. But I think --

16                 MR. FRANCISCO: Yeah.

17                 JUSTICE BARRETT: -- you can tell from  
18                 some of the questions today that there's some  
19                 question about that on the bench, so I'm just --

20                 MR. FRANCISCO: Yeah.

21                 JUSTICE BARRETT: -- trying to figure  
22                 out what happens if that doesn't carry the day.

23                 Justice Alito pointed out this is a  
24                 weird, not clear rule from the Ninth Circuit.  
25                 So I'm trying to figure out what the consequence

1 to your client would be if some of those  
2 concerns carried the day.

3 I understand it's not your position  
4 and there are other routes open.

5 MR. FRANCISCO: So the reason why I  
6 think it's complicated is let's say you reversed  
7 the Ninth Circuit's procedural ruling and you  
8 said the August 8 order was the operative one.

9 Under Rule 23(f), we are way past the  
10 14-day period to appeal the August order. So  
11 there would have to be then some other -- some  
12 kind of equitable tolling concept that gets  
13 built into and on top of that.

14 And, as I said, if you were to do  
15 that -- and -- and I would strongly urge you not  
16 to -- I would be vigorously arguing for anything  
17 I could think of to allow us to appeal that  
18 August order well past the 14-day period of  
19 limitations under 28(f), and I would do my best  
20 to succeed. I just can't represent to you what  
21 I think the answer is.

22 JUSTICE BARRETT: No, and I agree, and  
23 that's why I brought up the 23(f) timing.

24 MR. FRANCISCO: Yeah.

25 JUSTICE BARRETT: So it seems to me

1     that -- that maybe -- and tell me if you think  
2     this is a description of your dilemma.

3             If we understood the August order to  
4     materially -- despite the -- despite the  
5     descriptions in the lower courts, if we  
6     understood it as Justice Kagan was  
7     hypothesizing, that there was a material  
8     difference, we said, no, no, no, we've got to  
9     look at the orders ahead of us -- in front of  
10    us, that's wrong, the whole reason you would be  
11    in this position is because of the weird rule  
12    that Justice Alito was pointing out, this not  
13    clear rule, we would be sending it back, and  
14    then it would be kind of -- there would be a  
15    risk of "too bad for you" because the 23(f)  
16    timeline has run.

17            So another way to look at this would  
18    be for you to say, okay, there might be some  
19    procedural quirks, maybe they flow from the  
20    Ninth Circuit's odd, you know, way of deciding  
21    what orders are appealable, what orders are  
22    operative, but that, here, you should just  
23    decide the question presented on the facts as  
24    they've come up to you because you do have a  
25    judgment in front of you from the Ninth Circuit.

1 MR. FRANCISCO: A hundred percent.

2 JUSTICE BARRETT: Okay. How much of  
3 this -- I mean, I -- I take it -- I just want to  
4 clarify. In your comments to Justice Kavanaugh,  
5 we -- we didn't take the case to decide whether,  
6 in fact, under the class as certified by the  
7 district court there would be standing.

8 Justice Sotomayor, I think I heard her  
9 to say that we had decided that the woman who  
10 called the hotels had standing even though she  
11 didn't walk in. We actually didn't in Acheson  
12 reach that question, and we didn't take this  
13 case to decide that here. But that is still  
14 open to you to argue on remand, correct?

15 MR. FRANCISCO: Yes, Your Honor. And  
16 the only thing I'd add to that is I think that  
17 the facts here provide a good, nice way to  
18 illustrate the application of the rule because I  
19 think the facts are relatively clean,  
20 notwithstanding the procedural issues that we're  
21 discussing.

22 But, yes, it would still be open to us  
23 on remand because the rule that the Ninth  
24 Circuit and the district court adopted was that  
25 it just didn't matter.

1 JUSTICE BARRETT: Right.

2 MR. FRANCISCO: It didn't matter  
3 whether the class included uninjured people  
4 because, under the Ninth Circuit rule, is -- you  
5 can certify a class as long as the main  
6 plaintiff has standing, and -- and it doesn't  
7 matter if there are lots of other people who  
8 don't.

9 JUSTICE BARRETT: Gotcha. Yeah, I  
10 agree. And I think that's why we --

11 MR. FRANCISCO: Yeah.

12 JUSTICE BARRETT: -- took the case, to  
13 decide that issue and not -- I was just kind of  
14 carving out that other issue --

15 MR. FRANCISCO: Mm-hmm.

16 JUSTICE BARRETT: -- saying that you  
17 are not accepting that this class definition  
18 would -- that everyone in this class could  
19 satisfy Article III even if you collected a  
20 hundred thousand affidavits that said: We  
21 walked into the LabCorp, didn't matter if we  
22 wanted to use the kiosk or not, but we couldn't  
23 have used it if we wanted to because we were  
24 blind, right?

25 MR. FRANCISCO: We would not accept



1       that as a valid class.

2                   JUSTICE BARRETT:   Yes.   Yes.   Yes.

3       Okay.

4                   MR. FRANCISCO:   Correct.

5                   JUSTICE BARRETT:   Thank you.

6                   CHIEF JUSTICE ROBERTS:   Justice

7       Jackson?

8                   JUSTICE JACKSON:   So it seems to me  
9       that the merits of your argument actually rests  
10      on two premises that I am struggling with, so  
11      maybe you can help me.

12                  MR. FRANCISCO:   Mm-hmm.

13                  JUSTICE JACKSON:   All right.   I hear  
14      you saying at bottom that it violates Article  
15      III to include uninjured people in the class  
16      definition and that it violates Rule 23 if there  
17      are lots of uninjured people in the class  
18      definition.   And so if I can just ask you  
19      questions about those two different basic  
20      propositions that I think is really what is  
21      underpinning your arguments here.

22                  The problem that I keep coming back to  
23      with your Article III point, that it violates  
24      the Constitution to include uninjured people in  
25      the class and so you would, therefore, need to

1     redefine it to be only injured people, is our  
2     standard rules and principles with respect to  
3     standing and when the jurisdiction of the Court  
4     can be invoked.

5             My understanding is that you -- you  
6     only need one plaintiff, one plaintiff, who  
7     establishes standing, even if there are others  
8     there who are making the same claim. I  
9     appreciate that our law says if they're making  
10    different claims by nature. I mean, obviously,  
11    they're different because there are different  
12    people there.

13            But what we say is, if there's a claim  
14    that is being made and the claim is you violated  
15    the law in this way and we have five people who  
16    are saying that and they are named plaintiffs in  
17    this action, only one of them has to establish  
18    injury for standing purposes.

19            If that's true, I don't understand  
20    your Article III argument.

21            MR. FRANCISCO: So I would push back  
22    on whether or not that is true.

23            This Court has never applied the  
24    one-plaintiff rule to a damages case, which I  
25    think because, by definition, in a damages case,

1 every plaintiff is seeking his own form of  
2 damages instead --

3 JUSTICE JACKSON: And we've done that  
4 at the threshold? I mean, my understanding is  
5 that at the --

6 MR. FRANCISCO: That's Laroe.

7 JUSTICE JACKSON: No, what -- what --  
8 what I -- my understanding is that, yes, at the  
9 end of the day, each person has to have been  
10 injured in order to be entitled to damages.  
11 But, for the invocation of the power of the  
12 court, which is what Article III standing is  
13 about, we don't go into the harm to each person  
14 in order to take up the claim that is being  
15 made.

16 MR. FRANCISCO: Sure. I -- I  
17 respectfully disagree with that, and I think  
18 it's --

19 JUSTICE JACKSON: All right.

20 MR. FRANCISCO: -- squarely foreclosed  
21 by Laroe.

22 JUSTICE JACKSON: Okay.

23 MR. FRANCISCO: What Laroe  
24 specifically said was that at the point of  
25 intervention, you don't allow the intervenor to

1 add his new claim to the case unless he can show  
2 an Article III injury --

3 JUSTICE JACKSON: But I'm not talking  
4 about intervention. I'm talking about original  
5 action. We have five plaintiffs. They are  
6 making a claim. They have one count in their  
7 complaint. And I understood that many, many  
8 times we just say: One person, show us  
9 your harm.

10 MR. FRANCISCO: Never in a damages  
11 case have you ever done that, Your Honor.

12 JUSTICE JACKSON: Okay.

13 MR. FRANCISCO: Only in injunctions,  
14 and even there, only where plaintiffs were  
15 seeking --

16 JUSTICE JACKSON: All right. So --

17 MR. FRANCISCO: -- the same injunction  
18 or declaratory relief.

19 JUSTICE JACKSON: -- I understand.  
20 That's where I'm having the disconnect.

21 All right. The second problem is with  
22 respect to the proposition that it violates Rule  
23 23 if there are lots of uninjured people in the  
24 class.

25 And I got to tell you I'm struggling

1 with why it matters that there are uninjured  
2 people.

3 I hear you say that the reason is  
4 because we have to have a bunch of mini-trials.  
5 And I just want to put to you a quick  
6 hypothetical --

7 MR. FRANCISCO: Mm-hmm.

8 JUSTICE JACKSON: -- which, to me,  
9 demonstrates that that's not always the case,  
10 and so, therefore, that might be a problem with  
11 your argument.

12 So suppose we have a Verizon customer  
13 who brings a class action against the company,  
14 arguing that Verizon charged her and all  
15 customers certain fees over a six-month time  
16 period that she says were unlawful. And this is  
17 a claim that does not have an element of harm in  
18 it. She's just saying these fees, unlawful, you  
19 weren't allowed to do it. And she seeks to  
20 certify a class of all Verizon customers during  
21 that six-month time frame.

22 Now imagine that Verizon says that it  
23 only charged some of its customers during that  
24 six-month time frame the relevant fee. So, in  
25 actuality, only some of the members of the

1 defined class were injured. And Verizon says  
2 that, over time, with some effort, it can  
3 generate a list of those customers.

4 MR. FRANCISCO: Mm-hmm.

5 JUSTICE JACKSON: So, at the class  
6 certification stage, everybody knows that we  
7 will eventually be able to figure out which  
8 customers were actually charged the fee. But we  
9 have a class that's defined of everybody --

10 MR. FRANCISCO: Sure.

11 JUSTICE JACKSON: -- during this  
12 six-month period. I guess I don't understand  
13 why it matters how many injured versus  
14 noninjured members there are in this class as  
15 defined.

16 MR. FRANCISCO: Yeah. I think the way  
17 that the resolution of that hypothetical would  
18 proceed was, at the front end, if you know that  
19 you've got a class that includes both people who  
20 were charged the fee and people who were not  
21 charged the fee, you define the class to include  
22 only people who were charged the fee. That  
23 solves the Article III problem.

24 JUSTICE JACKSON: Well, assuming --  
25 assuming there is an Article III problem.

1                   MR. FRANCISCO: And then -- and  
2 then -- and then you get to the -- and then --

3                   JUSTICE JACKSON: Okay.

4                   MR. FRANCISCO: Yeah, right,  
5 assuming it is an Article -- I totally -- I  
6 totally agree with that.

7                   JUSTICE JACKSON: Right. Okay.

8                   MR. FRANCISCO: Then you get to the  
9 second stage, and you do the Rule 23(b)(3)  
10 analysis and you say -- and it's not really --  
11 as I mentioned to the Chief Justice, it's not so  
12 much a numbers game. The question is, is it  
13 easy to figure out --

14                  JUSTICE JACKSON: No, but I -- I  
15 guess --

16                  MR. FRANCISCO: -- who paid the fees  
17 or not. And, in your hypothetical, it might  
18 well be very easy to figure it out.

19                  JUSTICE JACKSON: So we do certify  
20 that class or we don't?

21                  MR. FRANCISCO: I think that it would  
22 turn on how easy it is to figure out --

23                  JUSTICE JACKSON: But why? What  
24 difference does it make?

25                  MR. FRANCISCO: -- definitively who's

1 in the class.

2 JUSTICE JACKSON: What -- what  
3 difference does it make when we're certifying  
4 this class to establish the liability, there are  
5 common issues with respect to that, and, really,  
6 the only thing that figuring out who is harmed  
7 and not matters to is who gets damages at the  
8 end of the day?

9 MR. FRANCISCO: With --

10 JUSTICE JACKSON: I don't understand  
11 why class certification would be held up or  
12 evaluated with respect to, you know, the numbers  
13 of people who were actually injured or not in  
14 the class.

15 MR. FRANCISCO: Sure. And with  
16 respect, Your Honor, I think it makes all the  
17 difference in the world from both a practical  
18 matter and a legal matter.

19 From a practical matter, these bloated  
20 classes are what allow plaintiffs' lawyers to  
21 extract massive settlements on weak claims.  
22 From a legal matter, what you are doing are  
23 adding claims to a case over whom the Court  
24 doesn't have jurisdiction. Those claims  
25 allow --



1 JUSTICE JACKSON: Assuming your  
2 Article III question is correct. And let me  
3 just --

4 MR. FRANCISCO: No, no, no. No. Even  
5 assuming my Article III question is wrong,  
6 Your Honor.

7 If you have a class that includes  
8 people who have not been injured -- I'll assume  
9 that you don't think that that is an Article III  
10 problem. When it comes to Rule 23(b)(3), you  
11 still at some point have to figure out whether  
12 or not you have jurisdiction over those  
13 individual claims. And you cannot proceed to  
14 adjudicate the merits of those individual claims  
15 unless you first assure yourself that you have  
16 Article III --

17 JUSTICE JACKSON: All right. One  
18 final question --

19 MR. FRANCISCO: -- jurisdiction over  
20 the individual claims.

21 JUSTICE JACKSON: One final question  
22 on the -- assuming the claim is different from  
23 other claims, but -- but setting that aside,  
24 with respect to the practicality of it, I  
25 appreciate Justice Kavanaugh's point that many

1 of these settle and that, you know, it sort of  
2 tilts the scales in some way for -- from the  
3 defendants' perspective, but don't defendants  
4 also have, in my case, for example, all of the  
5 information that would be necessary for them to  
6 say we know that only X number of people have  
7 injure -- injury?

8 In other words, the defendants have  
9 the best lawyers. They have a gajillion  
10 dollars. They are being sued. And they have  
11 some responsibility and understanding of the  
12 claim and the population of people who were  
13 injured, right?

14 MR. FRANCISCO: And -- and -- and I  
15 think that's why, Your Honor, in your  
16 hypothetical I said that it would be pretty easy  
17 to define the class that met our Article III  
18 rule, anybody who paid the fee.

19 And on the 23(b)(3) issue, in a case  
20 that really is just looking at the company's  
21 records to figure out who paid the fee, that  
22 might well survive the 23(b)(3) inquiry as well.

23 It's essentially like TransUnion. If  
24 TransUnion you had limited the class at the  
25 front end to only people whose credit reports

1 had been disseminated to third parties, you  
2 would have defined the class as the universe of  
3 people who were injured under this Court's  
4 ruling --

5 JUSTICE JACKSON: Thank you.

6 MR. FRANCISCO: -- then you probably  
7 could have just looked at TransUnion's records  
8 to figure out who was in or out. That is the  
9 polar opposite of a class like the one before  
10 you today.

11 CHIEF JUSTICE ROBERTS: Thank you,  
12 counsel.

13 Mr. Joshi.

14 ORAL ARGUMENT OF SOPAN JOSHI

15 FOR THE UNITED STATES, AS AMICUS CURIAE,  
16 SUPPORTING NEITHER PARTY

17 MR. JOSHI: Mr. Chief Justice, and may  
18 it please the Court:

19 This Court has frequently said that  
20 Rule 23 requires all class members to share the  
21 same injury. We think that includes an Article  
22 III injury. So, if there are members of a class  
23 that aren't even injured, they can't share the  
24 same injury with the other class members.

25 Respondents accuse us of somehow

1     creating a special rule for Article III injury.  
2     I guess I view it a little bit differently. I  
3     view Respondents' rule as creating a special  
4     rule for Article III injury because they would  
5     pluck Article III injury out of the  
6     certification context and either authorize or  
7     require, I'm not quite sure, district courts to  
8     delay and defer consideration of Article III and  
9     only Article III until the end of the case,  
10    after the merits, after the remedial stage, when  
11    it comes time to dole out the actual relief.

12                 Rule 23 doesn't support that kind of  
13    rule. I don't think it's supported in practice,  
14    as illustrated by cases in which the defense  
15    wins. I've never heard of a court certifying a  
16    class, ruling for the defense, and then figuring  
17    out if the plaintiffs have Article III standing.  
18    And I think it's inconsistent with the view of  
19    Rule 23 as a purely procedural aggregation  
20    device.

21                 I think my light went off.

22                 JUSTICE THOMAS: So what would you do  
23    at the early stages of the litigation, say,  
24    post-certification, and you find injured --  
25    uninjured parties in the -- in the class?

1                   MR. JOSHI: Yeah. So our view is  
2                   surprisingly maybe not that far from what  
3                   Respondents are saying. I think the way we  
4                   would approach it is what Rule 23 requires at  
5                   certification is that the class be defined in  
6                   such a way that, on its face, it includes only  
7                   injured members. And at that stage of the  
8                   litigation, you might not have much information  
9                   about them.

10                  But then, as the litigation proceeds,  
11                  as -- as Amchem recognized, courts have a duty  
12                  to -- to continually reevaluate the class, and  
13                  if it comes to light that maybe there's a group  
14                  of absent class members who aren't injured or  
15                  don't share the same injury or really any other  
16                  issue that might go to Rule 23, the court should  
17                  reevaluate: Do I need to redefine this case to  
18                  carve out those plaintiffs that I now know are  
19                  uninjured?

20                  And the question then is going to be:  
21                  Can I do it in a way that doesn't require a lot  
22                  of individualized analysis? And this is why I  
23                  say I think we're not that far away from  
24                  Respondents here, and I think Petitioner agrees  
25                  with us, that if there's some class-wide way or

1 easily administrable way or mechanical way of  
2 identifying them, then that's what the court  
3 should do, and you can keep on going.

4 If there's not, if you're going to  
5 need, you know, a hundred thousand individual  
6 mini-trials --

7 JUSTICE GORSUCH: Why would that be  
8 the case, though? Because you have uninjured  
9 people in the party that you've now found. Why  
10 isn't that an Article III problem if it's an  
11 Article III problem up front at certification?

12 MR. JOSHI: So we are not making the  
13 Article III argument. We are saying Rule 23 is  
14 what requires commonality, predominance --

15 JUSTICE GORSUCH: So you don't think  
16 Article III requires injury?

17 MR. JOSHI: We have not taken a  
18 position on Petitioner's Article III argument.  
19 We're saying Rule 23 requires courts --

20 JUSTICE GORSUCH: Okay. And if  
21 that's the case -- let's work with your -- your  
22 view, which is different than Petitioner's view,  
23 and I hear you not endorsing it.

24 MR. JOSHI: We haven't taken a  
25 position on it.

1 JUSTICE GORSUCH: Yeah. Okay. What  
2 do we do with historical practice where it was  
3 very common to treat, in representative actions,  
4 unnamed parties as not parties for purposes of  
5 the proceeding until and unless relief was given  
6 to them, and then you go through the injury  
7 analysis?

8 MR. JOSHI: I was --

9 JUSTICE GORSUCH: I'm thinking here of  
10 Justice Story's Commentaries, for example.

11 MR. JOSHI: I guess I view the history  
12 a little bit differently. I think the  
13 historical examples -- and, you know, we go  
14 through some of that in our own brief. I think,  
15 in every one of those cases, it was obvious that  
16 everyone shared an Article III injury. Indeed,  
17 the representative action stemmed from the  
18 harshness of the rule in equity that all  
19 necessary parties had to be joined to a case.

20 If you're a necessary party, you  
21 definitely have suffered an injury. And the  
22 representative action was meant to say it might  
23 be difficult to get all of those injured people,  
24 those necessary parties, joined, and so here's  
25 an exception we can create.

1                   So I read the history a little bit  
2     differently. It -- it might be relevant to --  
3     to, say, a 23(b)(1) class. That's sort of the  
4     forerunner, but I think 23(b)(3) really is a  
5     1966 innovation, and I think the further it  
6     strays from those roots, the more we ought to be  
7     careful about.

8                   JUSTICE GORSUCH: Where do you --  
9     where do you find in Rule 23 the rule that the  
10    class must be limited to injured persons?

11                  MR. JOSHI: We derive it from the  
12    Court's repeated statements and the --

13                  JUSTICE GORSUCH: How about Rule 23?

14                  MR. JOSHI: Oh, from commonality, from  
15    typicality, adequacy, predominance, we think all  
16    of those tell us, as this Court has recognized,  
17    that class members should share the same injury.  
18    I don't see why that would exclude the Article  
19    III injury at the core of the claim.

20                  JUSTICE GORSUCH: But it's not an  
21    Article III injury. You say it's not an Article  
22    III requirement. It's a Rule 23 requirement.

23                  MR. JOSHI: We're saying Rule 23  
24    requires all class members to share the same  
25    injury, including, therefore, the same Article



1     III injury.  I do not --

2                   JUSTICE GORSUCH:  So it is an Article  
3     III argument then.  I'm just -- I'm really  
4     confused now.

5                   MR. JOSHI:  I -- I'm -- I'm trying to  
6     help you out, so let me try and explain.

7                   We believe that under Rule 23 it  
8     requires that a class cannot be certified unless  
9     all class members share the same injury,  
10    including an Article III injury.  Including --

11                   JUSTICE GORSUCH:  So an Article III  
12    injury is required.  It's a backdoor way of  
13    getting to Petitioner's position, I think.

14                   MR. JOSHI:  I think our -- our  
15    approaches land at the same spot.  But what I'm  
16    saying is that --

17                   JUSTICE GORSUCH:  So you think it's  
18    not required by Article III but Rule 23 requires  
19    Article III injury for all class members?

20                   MR. JOSHI:  I am -- yes, I am saying  
21    Rules 23 requires it.  Whether Article --

22                   JUSTICE GORSUCH:  What -- where in the  
23    rule is that?  I don't see Article III mentioned  
24    in Rule 23.

25                   MR. JOSHI:  No, but -- but to -- but

1 to say a class satisfies commonality and  
2 predominance is to say it has the same injury.  
3 That's this Court's words, not mine.

4 JUSTICE GORSUCH: It's to say that  
5 overall, looking at the whole thing, it's  
6 manageable. There are at least some common  
7 questions. The -- these named Plaintiffs are  
8 generally typical --

9 MR. JOSHI: I just --

10 JUSTICE GORSUCH: -- and -- and common  
11 issues predominate. That's how I would have --  
12 maybe -- where does it -- I just don't get --  
13 everyone -- every single person must have an  
14 Article III, I don't get that out of the rule.

15 MR. JOSHI: The rule requires  
16 commonality and predominance. This Court has  
17 interpreted those terms in Rule 23 to require  
18 all class members to share the same injury.

19 That's why in Falcon the -- the  
20 applicants claiming discrimination couldn't be  
21 certified in the same class with those claiming  
22 a denial of promotion for the same  
23 discrimination.

24 That's why in Amchem those exposed to  
25 the asbestos products who were ill couldn't be

1 certified in the same class with those --

2 JUSTICE GORSUCH: That's predominance  
3 issues and commonality issues, for sure.

4 MR. JOSHI: Yeah. And all we're  
5 saying is that Article III -- an Article III  
6 injury is the same kind of thing. If there are  
7 members of the class that don't even have an  
8 injury, how can they share the same injury with  
9 other members of the class who do? How does  
10 that satisfy commonality and predominance?

11 That is our view of what Rule 23  
12 requires. In other words --

13 JUSTICE JACKSON: But you're saying --

14 MR. JOSHI: -- we're saying there's  
15 nothing special about Article III injuries. It  
16 should be treated just like any other element of  
17 class certification. That's our only --

18 JUSTICE JACKSON: But Mr. Joshi, when  
19 we look at commonality and predominance, and the  
20 treatises say this, they don't pick out a  
21 particular issue and say you have to have that.  
22 You don't have to have commonality with respect  
23 to every issue.

24 So Justice Gorsuch's question is: If  
25 you don't have commonality with respect to the

1 injury issue, what difference does it make? Why  
2 is that fatal to the class? There's no rule  
3 that says that particular issue you have to have  
4 commonality with respect to.

5 MR. JOSHI: I take --

6 JUSTICE KAGAN: Just to supplement  
7 that, if you mostly have commonality with  
8 respect to the injury issue but not with respect  
9 to every single person, what does that have to  
10 do with commonality and predominance?

11 MR. JOSHI: So let me take those in  
12 turn.

13 JUSTICE KAGAN: I think that they're  
14 both the same.

15 JUSTICE JACKSON: Same question.  
16 That's fine.

17 MR. JOSHI: Sure. So I -- I think  
18 this Court's cases in Walmart, in Halliburton  
19 and Amgen and in Comcast illustrate that there  
20 are some items on which, if there is variation  
21 across the class, they are no fundamental to the  
22 case that you really just aren't going to be  
23 able to certify the class.

24 In Walmart it was injury and  
25 causation. In Amgen and Halliburton it's

1     reliance in a securities claim. In Comcast it  
2     was damages.

3             And so the same argument could have  
4     been made in Comcast, right, where we all had  
5     the same antitrust theory of injury, but because  
6     the damages were going to vary, that class  
7     couldn't be certified. And I think we're just  
8     saying the same thing.

9             If -- if you have a class in which  
10    Article III injury is not present for some but  
11    is present for the others, that's just not going  
12    to meet the commonality standard.

13            Now, Justice Kagan, you said: Well,  
14    what if it's only a few? And I think my answer  
15    is the same as Mr. Francisco's and, frankly, the  
16    same that Respondents give in their brief, or as  
17    I read it, which is: If there is a classwide,  
18    manageable mechanical way to separate them as  
19    in, for example, TransUnion there would have  
20    been, or as in Justice Jackson's Verizon  
21    hypothetical there would be a manageable  
22    classwide way to do it, we think that's fine.  
23    Rule 23 doesn't preclude that sort of  
24    certification.

25            But what we are saying is that Rule 23

1 needs to be followed at certification and then  
2 throughout the litigation. As the litigation  
3 proceeds, if there is more in --

4 JUSTICE GORSUCH: Well, hold on. I  
5 thought you said that commonality means -- I had  
6 understood it as one issue has to be common, and  
7 that that has to be predominant, that has to be  
8 the predominant. That's the way I understood  
9 it. Okay. Fine.

10 Now you're telling me that Article  
11 III, and Article III alone, must be satisfied by  
12 everyone at the outset. I thought.

13 MR. JOSHI: What I'm saying is Article  
14 III injury is no different from any other  
15 requirement for class certification that should  
16 be common to the class, like injury, causation,  
17 reliance, damages. All of these must be common.  
18 And I take the point that there needs to be --

19 JUSTICE GORSUCH: No, they don't  
20 all have -- they don't all have to be common.  
21 There has to be a common question that  
22 predominates over others. And if it -- and --  
23 and -- and now a special rule that Article III  
24 must exist for all class members?

25 MR. JOSHI: I am not asking for a

1 special rule any more than Comcast had a special  
2 rule for damages or Walmart had a special rule  
3 for causation or Halliburton and Amgen had a  
4 special rule for reliance.

5 I'm just trying to say that Article  
6 III injury is of that sort, important enough  
7 that it's just unlikely you're ever going to be  
8 able to certify a class.

9 CHIEF JUSTICE ROBERTS: Thank you,  
10 counsel.

11 I'm not sure I've been following the  
12 bouncing ball.

13 Does Article III in this context  
14 require an injury? Now, I don't know if you're  
15 saying that not at the outset, but at -- at the  
16 back end, before any relief is granted or what.

17 MR. JOSHI: Article III, of its own  
18 force, of course, requires every class member to  
19 have standing before he or she can collect a  
20 damages award. That's TransUnion.

21 CHIEF JUSTICE ROBERTS: I'm happy to  
22 stop there.

23 MR. JOSHI: Yeah. Well, so I -- I  
24 take Petitioner's point to be that -- or  
25 Petitioner's Article III argument, as I

1 understand it, is that Article III, of its own  
2 force, also requires each class member to  
3 demonstrate standing at certification.

4 And we're not taking a view on that.  
5 What we're saying is that Rule 23's commonality  
6 and predominance requirements requires that same  
7 thing, and so there's no need to decide whether  
8 Article III, of its own force, would require it,  
9 if, say, Rule 23 --

10 CHIEF JUSTICE ROBERTS: So Article III  
11 is in the case. You just like to run it through  
12 the certification process?

13 MR. JOSHI: That's right.

14 CHIEF JUSTICE ROBERTS: Okay.

15 Justice Thomas, anything further?

16 Justice Alito?

17 JUSTICE ALITO: Well, just to clarify  
18 this last point. Are -- are you saying that  
19 Rule 23 requires something that just happens to  
20 correspond with what Article III requires?  
21 That, I would understand.

22 Or are you saying that Rule 23  
23 requires compliance with Article III? Which,  
24 then, doesn't seem to me to be any different  
25 from Petitioner's argument.



1                   MR. JOSHI: Yeah, we're saying the  
2 first thing.

3                   JUSTICE ALITO: Okay.

4                   MR. JOSHI: And all we're saying is  
5 that as an empirical matter, in practice an  
6 Article III injury is just so fundamental to the  
7 claim that, just like in Walmart or Halliburton  
8 and Comcast, it's the kind of thing that, if  
9 it's not common, if it's individualized, then  
10 that's probably going to predominate in -- in  
11 such a class.

12                  JUSTICE ALITO: Okay. So why do you  
13 want to -- why do you approach this issue in  
14 that way? Is this just sort of abstract respect  
15 for constitutional avoidance, or does the  
16 government think that there's some -- that there  
17 are different consequences from taking your  
18 approach and the Petitioner's approach?

19                  MR. JOSHI: No. It really is from  
20 constitutional avoidance. And -- and ruling on  
21 this case narrowly, as the case presents itself,  
22 we take -- we took the Court, when it reframed  
23 the question presented to limit it to 23(b)(3),  
24 as a signal that maybe it wanted us to talk  
25 about Rule 23(b)(3), and that's what we think

1     you should do here.

2                   CHIEF JUSTICE ROBERTS:   Thank you.

3                   Justice Sotomayor?

4                   JUSTICE SOTOMAYOR:   In TransUnion -- I  
5     can go back.   Relying on old memory, but I think  
6     the class was defined as anyone who had false  
7     statements in their credit reports.   It wasn't  
8     until the litigation came forward that we found  
9     out that some people's false information was not  
10    disseminated.

11                  And we basically said you can't give  
12    out the damages to the people who weren't  
13    injured, because there was no dissemination.  
14    But that wasn't known until the end.

15                  I think what Mr. Francisco is now  
16    saying, and I'm not sure you are or aren't, that  
17    now we have to have that fight at the class  
18    certification stage, that we have to define a  
19    class in a way that says only people who receive  
20    the report, instead of the way it was defined.

21                  Do you agree with that?

22                  MR. JOSHI:   Now that we know -- so  
23    if --

24                  JUSTICE SOTOMAYOR:   No, but use  
25    without -- we don't know at the beginning.

1 MR. JOSHI: Well, if you don't know --

2 JUSTICE SOTOMAYOR: But he's going to  
3 put in an affidavit in that says some weren't  
4 disseminated, so this class shouldn't be  
5 certified.

6 MR. JOSHI: If -- if we don't know,  
7 then no. I mean, we're not asking for Rule 23  
8 to be applied in a senseless way. We think it  
9 should be applied sensibly, reasonably, with  
10 reasonable inferences.

11 So in -- but now that we know, now  
12 that we have TransUnion on the books, if there's  
13 a future claim under FCRA for, you know, OFAC  
14 warnings on credit reports, yeah, I think a  
15 court there should say, well, I know in  
16 TransUnion this class of plaintiffs wouldn't  
17 have standing, so I'm going to certify a class  
18 only of plaintiffs whose credit reports were  
19 disseminated. That would be the responsible  
20 thing to do now that we have TransUnion on the  
21 books.

22 But our view is that, you know, in a  
23 case like TransUnion or in a case like Tyson  
24 Foods, which I would love to talk about --

25 JUSTICE SOTOMAYOR: We go back to, is

1       there -- is there administrable way --  
2               MR. JOSHI:   Exactly.  
3               JUSTICE SOTOMAYOR:  -- to identify the  
4       injury?  
5               MR. JOSHI:   Exactly.   Exactly.  
6               JUSTICE SOTOMAYOR:  Okay.   And that's  
7       what the 23(f) inquiry is.  
8               MR. JOSHI:   23(b)(3).   Yeah.  
9               JUSTICE SOTOMAYOR:  I'm sorry.  
10       23(b)(3).  
11              MR. JOSHI:   Exactly.   Exactly.  
12              CHIEF JUSTICE ROBERTS:  Justice Kagan?  
13              JUSTICE KAGAN:  Do you think, Mr.  
14       Joshi, that this is the way we've handled class  
15       actions over the years?  You know, I -- I -- if  
16       you look back for the last 70 years of class  
17       action or whatever Rule 23 is, you know, it  
18       strikes me that if you look at all the classes  
19       that have been certified by that point, you're  
20       always going to be able to find people for  
21       idiosyncratic reasons who don't share the same  
22       injury, who don't have standing, and that that's  
23       never been seen as kind of the end all and be  
24       all, the whole -- like, okay, we have to explode  
25       everything.

1                   So it seems very inconsistent to me  
2     with the way class actions have been practiced  
3     for many decades.

4                   MR. JOSHI: Yeah, so I disagree. I --  
5     I have read every single one of this Court's  
6     class action cases, you might imagine, in -- in  
7     preparation for this case, and the one theme I  
8     see consistently is that, where there's a  
9     difference in injuries or the type of relief or  
10    even the type of remedy that, you know, the  
11    defendant is requested to make, this Court has  
12    said that those really can't be in the same  
13    class together. And it just strikes me that  
14    Article III is kind of --

15                  JUSTICE KAGAN: But the rule that  
16    you're suggesting is a rule that says to  
17    district courts, you have to do this right up  
18    front, you have to figure out whether everybody  
19    has the exact same injury. If, like, there are  
20    a few people who have a different kind of  
21    injury, that's verboten. I -- I mean, that is  
22    something that I don't think district courts  
23    have ever thought that they needed to do.

24                  Rather, what they've thought is, by  
25    the time we get around to issuing remedial

1 orders and issuing damages, we better make sure  
2 that we're not handing out money to people who  
3 aren't injured. So that, I think, everybody has  
4 understood is their obligation all -- but not  
5 this, not like we have to do all the work the  
6 moment the case comes in the door to figure out  
7 exactly who is injured and how.

8 MR. JOSHI: I guess I have a few  
9 responses to that. One is what I just said to  
10 Justice Sotomayor, which is that we think Rule  
11 23(b)(3) should be applied in a sensible,  
12 reasonable manner.

13 So, for example, if there's, say, an  
14 antitrust class and the allegation is  
15 price-fixing and the class is defined as all  
16 purchasers of the product during the period of  
17 price-fixing where there were super-competitive  
18 prices. We think that would be a valid class  
19 definition, even if there's some idiosyncratic  
20 person that likes paying higher prices for  
21 whatever reason.

22 Or if it's a product liability, you  
23 know, a defective product that injured people,  
24 you know, all purchasers of a product who  
25 suffered the injury would be a valid class in

1     our view, even if there's somebody who, because  
2     of the injury, you know, missed a test and then  
3     -- that he didn't study for but then did the  
4     makeup test later on, got a better grade, got a  
5     Supreme Court clerkship at the end of it, and  
6     therefore wasn't injured, I -- you know, those  
7     sorts of idiosyncratic things, we agree, that's  
8     not what Rule 23 requires, but --

9             JUSTICE KAGAN:   Okay.   So this is  
10    really not an Article III rule, because if it  
11    were really an Article III rule, you couldn't  
12    agree on all those things.

13            MR. JOSHI:   That -- that's right.   We  
14    think this is a Rule 23 issue.   It's just that,  
15    when we read the question presented as  
16    reformulated, the Court was very careful to say  
17    an Article III injury.   And we read that as  
18    saying how is that different from the kinds of  
19    injuries in Falcon you said couldn't be --

20            JUSTICE KAGAN:   Yeah.

21            MR. JOSHI:   -- sort of --

22            JUSTICE KAGAN:   But I'm --   I'm taking  
23    from your -- you know, you went back and forth  
24    with Justice Gorsuch about were you endorsing,  
25    were you not endorsing, do you have a position.

1 In fact, you do have a position on  
2 Mr. Francisco's hard Article III argument  
3 because you couldn't have said that those  
4 classes should go forward if you accepted  
5 Mr. Francisco's argument.

6 MR. JOSHI: We're saying those classes  
7 could go forward under Rule 23. We are not  
8 taking a position on whether Article III -- its  
9 independent force would prevent that -- would  
10 preclude those sorts of classes.

11 JUSTICE KAGAN: Okay. Well, then  
12 that's just --

13 MR. JOSHI: So we don't think it's --

14 JUSTICE KAGAN: Come on. Okay.

15 MR. JOSHI: That -- that's our  
16 position.

17 JUSTICE KAGAN: Okay. Thank you.

18 CHIEF JUSTICE ROBERTS: Justice  
19 Gorsuch?

20 JUSTICE GORSUCH: Yeah, there are a  
21 lot of price-fixing cases where the victim can  
22 pass through the overcharge and suffers no  
23 injury, but you let that go forward.

24 MR. JOSHI: That's a substantive rule  
25 of antitrust law, I believe.



1 JUSTICE GORSUCH: Well, it's a fact in  
2 the world too.

3 MR. JOSHI: Yeah.

4 JUSTICE GORSUCH: And they're not  
5 injured. And you'd let that class go forward?

6 MR. JOSHI: As I said, my  
7 understanding is that's a substantive rule of  
8 antitrust law that only direct purchasers can  
9 bring claims.

10 JUSTICE GORSUCH: Well, some places  
11 yes and some places no, and after Apple, I don't  
12 know. But you would allow that class to go  
13 forward, no Article III problem?

14 MR. JOSHI: Under Rule 23 --

15 JUSTICE GORSUCH: Yes.

16 MR. JOSHI: -- there's no problem.

17 JUSTICE GORSUCH: Okay. All right. I  
18 just wanted to make sure I understood it.

19 MR. JOSHI: Yeah.

20 JUSTICE GORSUCH: You've heard some of  
21 the discussion about the procedural problems in  
22 this case. The government didn't talk about  
23 them in its brief. I wanted to give you an  
24 opportunity to give us your thoughts on whether  
25 we have the problem before us given that the May

1 order talks about only injured persons.

2 MR. JOSHI: Yeah. So we didn't talk  
3 about it in our brief because our brief was  
4 filed before the red brief was filed, so we  
5 didn't know this issue was going to be raised.  
6 It wasn't raised in the brief in opposition.

7 As an amicus, we're poorly situated to  
8 take a strong view of matters, but, that said, I  
9 think -- I think Petitioners have the better of  
10 the argument.

11 And what I would rely on are two  
12 things. One, under cases like ASARCO against  
13 Kadish, we know that the court of appeals issued  
14 an adverse judgment to Petitioner. It's  
15 jurisdictionally properly before this Court.  
16 This Court has jurisdiction over the case. So I  
17 don't think it's a matter of jurisdiction.

18 So then there's the question, well,  
19 which order are you really looking at here? And  
20 I guess I would place greater emphasis on  
21 something that Mr. Francisco mentioned a couple  
22 of times in his discussion, but for me it's very  
23 important, which is on page 63a of the appendix.  
24 This is the August order.

25 The August order does not purport to

1 enter a new class or certify a new class and get  
2 rid of the old one. What it says is page 24  
3 lines 13 to 23 of the earlier order is replaced  
4 with the following.

5 And so I view it as sort of nunc pro  
6 tunc modifying the earlier order for which there  
7 was a notice of appeal. And I know there's been  
8 a lot of --

9 JUSTICE GORSUCH: I appreciate that.  
10 What do we do about the fact that the only order  
11 that the Ninth Circuit was reviewing was the May  
12 12th order, and it specifically said we can't  
13 hear, we have no authority to -- no jurisdiction  
14 over the August order that you're asking us to  
15 rely on? That you didn't -- you didn't address  
16 that squirrely complication.

17 MR. JOSHI: Yeah. Again, you know,  
18 there's an August order, but one of the terms of  
19 the August order was to nunc pro tunc --

20 JUSTICE GORSUCH: I understand.

21 MR. JOSHI: -- amend the earlier one.

22 JUSTICE GORSUCH: I understand, but  
23 the court of appeals didn't understand itself to  
24 have jurisdiction over that order, and we're  
25 only reviewing the court of appeals' resolution

1 of its view on the May 12th order.

2 MR. JOSHI: That's right. And -- and  
3 that's why I would fall back on the fact that  
4 you have jurisdiction to review the Ninth  
5 Circuit's decision. We think it contains an  
6 error of law. You could correct that error of  
7 law.

8 And, you know, Justice Barrett asked  
9 what's left on remand. I think if you corrected  
10 that error of law and sent it back, even if the  
11 Ninth Circuit adheres to its view that it had  
12 only the May class definition in front of it,  
13 and even if the Ninth Circuit then holds that  
14 the May definition doesn't run afoul of the rule  
15 that by hypothesis you would adopt in this case,  
16 then -- and even if, as Mr. Francisco suggested,  
17 he's out of time to appeal the August order, I  
18 would imagine that on remand in the district  
19 court with that binding precedent, Petitioner  
20 could move for decertification or --

21 JUSTICE GORSUCH: Oh, I -- I accept  
22 all of that, but that really does start to sound  
23 sort of like an advisory upon to me because the  
24 only binding force we would have is to say that  
25 the May 12th order was fine because it addressed

1     only injured people, period. I mean, that's our  
2     judgment.

3                 MR. JOSHI: This Court frequently  
4     corrects errors of law in what court of appeals  
5     say without analyzing whether the prevailing  
6     party below could nevertheless still prevail  
7     under the new rule. It does that all the time,  
8     and I think you could take that case here.

9                 JUSTICE GORSUCH: All right. Okay.

10                MR. JOSHI: Take that approach here.

11                CHIEF JUSTICE ROBERTS: Justice  
12     Kavanaugh?

13                JUSTICE KAVANAUGH: When you said Rule  
14     23 is narrower Article III, I just want to make  
15     sure I understand how you think it's narrower.  
16     It's not narrower in the result that would be  
17     reached in particular cases, at last as I  
18     understand your position. It's narrower, I  
19     gather, in the sense that, theoretically, Rule  
20     23 could be changed, and at that point, we would  
21     have to confront, in your view, the Article III  
22     issue.

23                Is that what you mean by narrower?

24                MR. JOSHI: That's exactly what I  
25     mean, yeah.

1 JUSTICE KAVANAUGH: Okay. Thank you.

2 CHIEF JUSTICE ROBERTS: Justice  
3 Barrett?

4 Justice Jackson?

5 JUSTICE JACKSON: I guess I'm still  
6 struggling with why isn't the sensible and  
7 reasonable manner of applying Rule 23 the way  
8 that, as Justice Kagan says, we always do, that  
9 we look at commonality, or the district courts  
10 look at commonality and predominance sort of in  
11 the aggregate with all of the issues on the  
12 table, there aren't directed to one or another  
13 to say that if this particular issue does not  
14 have commonality, you can't certify the class.  
15 And that seems to be what you are saying.

16 I appreciate that there are certain  
17 other cases where the Court has picked out  
18 various issues and said either you've gotten it  
19 wrong or right on commonality and that you would  
20 like for this to be one of them.

21 But it's unclear to me that the rule  
22 is such that it requires that this particular  
23 issue, there has to be commonality with respect  
24 to.

25 MR. JOSHI: I think the one thing --

1 I -- I read the cases differently. I think  
2 there is a strong through line of this Court's  
3 class action cases, Falcon, AmChem, Walmart,  
4 Lewis against Casey, so many cases, East Texas  
5 Motor Freight, in which the Court has said that  
6 different injuries --

7 JUSTICE JACKSON: Yeah.

8 MR. JOSHI: -- cannot be certified in  
9 the same class.

10 JUSTICE JACKSON: Let me ask you a  
11 question. Do those cases talk about those  
12 injuries in the context of the harm being an  
13 element of the claim?

14 If I go back and look at them, are  
15 those cases ones in which the harms that we're  
16 talking about are just in the damages realm?  
17 There are many claims in which harm is actually  
18 an element of liability, and I totally  
19 understand, in those worlds, you're thinking  
20 about can this be proven by common proof or do  
21 we have a bunch of individual actions here.

22 But it seems to me that when we're  
23 talking about damages apart from liability, it's  
24 very hard to see a world in which individual  
25 proof with respect to damages can overwhelm from

1 the standpoint of predominance the kind of  
2 consideration of whether or not you should have  
3 a -- a -- a Rule 23 certification.

4 MR. JOSHI: So there are cases of both  
5 types, and Comcast is the perfect example of the  
6 case you just said. In Comcast, the plaintiffs  
7 had an antitrust theory that was common to the  
8 class that was common to the defendants that  
9 would have established, you know, the injury,  
10 causation, et cetera, but it was the variation  
11 in damages that precluded certification of that  
12 class because it's just so fundamental to the  
13 kind of claim that was being brought that it was  
14 just going to overwhelm even the common  
15 antitrust liability theory, and we're saying  
16 Article III injury is just as fundamental and --

17 JUSTICE JACKSON: Thank you.

18 MR. JOSHI: -- Rule 23 would preclude  
19 certification in those circumstances.

20 CHIEF JUSTICE ROBERTS: Thank you,  
21 counsel.

22 Mr. Gupta.

23 ORAL ARGUMENT OF DEEPAK GUPTA  
24 ON BEHALF OF THE RESPONDENTS

25 MR. GUPTA: Mr. Chief Justice, and may



1     it please the Court:

2                 As this Court held in TransUnion and  
3     as the Chief Justice recognized in Tyson Foods,  
4     Article III doesn't give federal courts the  
5     power to give relief to any uninjured plaintiff,  
6     class action or not.

7                 So, if the Court finds its way to  
8     reaching the question presented and writes an  
9     advisory opinion, and it's what we think it  
10    would be, the advisory opinion should hold that,  
11    at the class certification stage, the proper  
12    inquiry is whether there will be an  
13    administratively feasible mechanism to weed out  
14    the uninjured.

15                Consistent with centuries of  
16    historical practice from the chancery courts at  
17    the time of the Constitution's ratification to  
18    now, it is the representative who is actually  
19    before the court, not the absentees, who must  
20    prove the existence of an Article III case or  
21    controversy at the outset.

22                But, if we are here to police the  
23    jurisdiction of the federal courts under Article  
24    III, we should probably start with this case in  
25    this Court.

1           LabCorp now concedes that any appeal  
2     of the August order on which LabCorp's arguments  
3     have exclusively relied was not actually in the  
4     case in the court of appeals and, therefore,  
5     isn't within this Court's certiorari  
6     jurisdiction.

7           In its reply, LabCorp has shifted  
8     gears and attempted to reorient its challenge to  
9     the May order that is concededly no longer in  
10    effect and that is not harming LabCorp.

11          But any appeal of that superseded  
12    order is moot under the general rule that  
13    interlocutory appeals from superseded orders are  
14    moot. The traditional exceptions to mootness do  
15    not apply.

16          And this Court should reject the  
17    invitation to craft a new mootness exception on  
18    the fly. It would make little sense for this  
19    Court to reach broad pronouncements on Article  
20    III's limits in a case that itself presents such  
21    serious jurisdictional barriers to reaching the  
22    question presented.

23          I welcome the Court's questions.

24          JUSTICE THOMAS: Did you raise that in  
25    your brief in opposition?

1           MR. GUPTA: I'll acknowledge that the  
2     brief in opposition did not raise this  
3     jurisdictional problem. It did raise the -- the  
4     fundamental problem that in -- in the  
5     Respondents' view, the question presented is not  
6     presented by this case and other preservation  
7     issues.

8           But, as the amicus brief of the  
9     federal jurisdiction professors indicates, there  
10    were a number of ways in which the petition  
11    obscured this jurisdictional problem. It became  
12    apparent when the blue brief was filed that the  
13    arguments rested entirely on this outdated order  
14    and class definition, and we pointed it out in  
15    the -- in the red briefing.

16           In hindsight, with the 20/20 of  
17    hind -- view of hindsight, I wish these -- all  
18    of these issues had been fleshed out at the --  
19    at the cert stage and perhaps we wouldn't be  
20    here, but I do think, even when wisdom comes  
21    too -- comes late, we should acknowledge it, and  
22    this Court's rules are clear that -- that the  
23    failure to raise jurisdictional objections at  
24    the certiorari stage doesn't deem them  
25    forfeited.

1 JUSTICE BARRETT: What's your view of  
2 what would happen on remand? I asked  
3 Mr. Francisco what would happen given that the  
4 23(f) time has expired. You heard the question.

5 What's your view of what would happen  
6 and whether that August order remains something  
7 that he could appeal or not?

8 MR. GUPTA: Right. And so we don't --  
9 we don't think there should be a deem -- a  
10 remand if you agree with us that the -- the  
11 case, you know, is moot. You could dismiss as  
12 improvidently granted or -- or perhaps a  
13 revacatur, but either way --

14 JUSTICE BARRETT: Even if we did that  
15 and then it goes back down --

16 MR. GUPTA: Set all that aside --

17 JUSTICE BARRETT: -- what happens  
18 after this?

19 MR. GUPTA: Yeah, yeah. So I think  
20 they have available to them the ability to move  
21 to decertify the class. They have the ability  
22 to move to dismiss for lack of standing the  
23 named plaintiff. So they're not without rights.

24 And, you know, Rule 23(f) is a  
25 discretionary appeal mechanism. And there was

1 some discussion earlier about what was described  
2 to the Ninth Circuit, this material change  
3 doctrine. It's actually not just the Ninth  
4 Circuit.

5 I know you don't have briefing on  
6 this, but all of the circuits have had to  
7 confront this question. And I think their  
8 approach is similar, which is it doesn't assign  
9 dispositive significance to what the district  
10 court said, whether the district court  
11 characterizes there being a material change.

12 The -- the court of appeals has the  
13 discretion under Rule 23(f) to have a  
14 gatekeeping role and to decide whether there's  
15 an appeal. So it's true that they failed to  
16 take an appeal under 23(f) from that August  
17 order, but it -- it would have been a mistake to  
18 ascribe any significance to the district court's  
19 determination on this.

20 And, actually --

21 JUSTICE ALITO: Well, why would it  
22 be --

23 MR. GUPTA: -- in our opposition to  
24 the -- in Rule 23(f) -- I just want to make sure  
25 I point this out, Justice Alito -- that in our

1 opposition to the Rule 23(f) petition, we did  
2 point out that there was a -- a fight in the  
3 district court about the class definition, and  
4 that could actually render the Rule 23(f)  
5 petition moot. So we put, you know, the  
6 defendant on notice of this.

7           They -- they had the ability to file a  
8 second petition and they didn't, and they still  
9 have the ability in the district court to --  
10 because class certification is always a constant  
11 moving target, they have the ability to -- to  
12 seek relief even now in the district court and  
13 then perhaps, if they don't like that, they can  
14 appeal and maybe they would come back here.

15           Sorry, Justice Alito.

16           JUSTICE ALITO: Do you think this  
17 material modification rule is required by  
18 statute?

19           MR. GUPTA: By the -- by Rule 23(f)?  
20 I -- I think Rule 23(f) --

21           JUSTICE ALITO: In other words, if a  
22 different court of appeals said we don't want  
23 any part of this rule, we think it's a silly  
24 rule, we're going to adopt a different rule,  
25 would that be wrong?

1 MR. GUPTA: I think that --

2 JUSTICE ALITO: Would it be contrary  
3 to some statute?

4 MR. GUPTA: I think the best way to  
5 understand what the lower courts are doing is  
6 that they are interpreting Rule 23(f), and Rule  
7 23(f) limits the interlocutory appeal  
8 jurisdiction to an order granting or an order  
9 denying class certification.

10 And so the courts are trying to figure  
11 out do we have, you know, a new order granting  
12 or denying certification. And, in this case, I  
13 think it's quite clear, and, actually, I  
14 disagree with Mr. Joshi's characterization. I  
15 think it's quite clear that the May order and  
16 the August order are different orders with  
17 respect to class certification.

18 In fact, the August order, it's true  
19 that it -- it says it's modifying the previous  
20 order. That was the June order, which the Ninth  
21 Circuit also said was outside of its  
22 jurisdiction.

23 JUSTICE ALITO: Well, suppose the  
24 district court issues a -- a -- an order  
25 certifying a class. There is an appeal. And,

1 after that, the district court makes some change  
2 in the order, but the district court says, look,  
3 this is not material. This is immaterial,  
4 absolutely immaterial.

5 MR. GUPTA: Right.

6 JUSTICE ALITO: What -- what is the --  
7 the party who's taken the earlier appeal  
8 supposed to do? Is that party -- the party  
9 would -- I would think, if your position is  
10 correct, the party has to say, well, you know,  
11 I -- I don't want to bet everything on this.  
12 Even though the district court has said it's  
13 immaterial, I'm going to have to take -- I'm  
14 going to have to file a new notice of appeal  
15 always.

16 MR. GUPTA: Right. So I think that's  
17 exactly what this doctrine is intended to  
18 address. And I think, you know, if -- if there  
19 was a typographical error, for example, in a  
20 class certification order, I think nobody would  
21 reasonably insist that there needs to be a  
22 second 23(f) petition. And I think Judge Posner  
23 has a -- a decision on this in the Apple  
24 Illinois case. So I think that -- he explains  
25 that's part of the reasoning for this.



1                   But I just want to point out we're  
2     here, you know, in -- in this case talking about  
3     23(f) appealability jurisprudence in a case  
4     where my friends didn't challenge the  
5     jurisdictional holding of the court of appeals.  
6     If they had taken -- if they had filed in their  
7     cert petition -- if they had told you about this  
8     problem and they said, look, there's a May order  
9     and an August order, and our beef is really with  
10    the August order, and -- and maybe we think the  
11    jurisdictional holding of the court of appeals  
12    was wrong, they could have challenged that. But  
13    they didn't. They didn't do that here.

14                  I think the reason we're talking about  
15    it is, as I understand the reply brief and the  
16    letters that were exchanged, I think the  
17    suggestion -- Labcorp's suggestion is that the  
18    case is not moot because you should import --  
19    this is how I understand their argument -- that  
20    you should import this material change doctrine  
21    into the mootness exception and craft some kind  
22    of exception for mootness on that basis.

23                  And they cite in their reply brief the  
24    Jacksonville case. That case is a case about an  
25    exception for mootness, but it is about the

1 voluntary cessation and capable of repetition  
2 exception, which is a recognized exception.

3 JUSTICE ALITO: If the -- I -- I don't  
4 want to belabor this, but I will ask one more  
5 question on it.

6 If the -- the Ninth Circuit's rule is  
7 not required by statute, then why is there a  
8 jurisdictional problem?

9 MR. GUPTA: Oh, I think that the --  
10 the court of appeals have to have some way of  
11 determining what is within their jurisdiction  
12 and what is not. And remember it's  
13 discretionary, so they have certiorari-like  
14 discretion to determine their --

15 JUSTICE ALITO: Well, that's a  
16 different question, but, surely --

17 MR. GUPTA: Right.

18 JUSTICE ALITO: -- the court of  
19 appeals can't by means of some -- by -- by means  
20 of a decision say we -- we are defining our  
21 jurisdiction in a particular way?

22 MR. GUPTA: Well, I think they -- they  
23 exercised their discretion with respect to a  
24 order granting or denying class certification.  
25 They exercised that discretion with respect to

1 the order that they were asked to review, that  
2 was attached to the petition.

3 And then the question is, is --  
4 should -- should some kind of exception be made  
5 because there was a subsequent order that --  
6 that wasn't appealed.

7 JUSTICE ALITO: All right. Thank you.

8 JUSTICE KAVANAUGH: I think you said  
9 earlier, and I might have misunderstood, but I  
10 think your position was that the Petitioner  
11 should have disregarded the district court's  
12 characterization of its own order, is that  
13 correct?

14 MR. GUPTA: Well, yeah, I mean, that's  
15 not quite how I'd put it because I think, as --  
16 as Justice Kagan was saying --

17 JUSTICE KAVANAUGH: But I think that's  
18 the -- I think that's what you mean -- that's  
19 not what you said, but I think that's what you  
20 mean, and I doubt many lawyers, you know, your  
21 clients -- I doubt, you know, anyone really  
22 wants to live under that rule, that a lawyer  
23 should be disregarding how the district court  
24 characterizes its own orders for purposes of  
25 these timing rules. That strikes me as -- as

1 asking for a lot of chaos.

2 MR. GUPTA: I think there's an earlier  
3 colloquy with Justice Kagan brought out there --  
4 a lot of people said a lot of different things  
5 about the differences between these orders, and  
6 perhaps it would be worth pointing to what the  
7 defendants said when there was a fight about  
8 this order. And this is in the district court  
9 at Document 110 on the first page of their brief  
10 about the refinement. They said this is no  
11 refinement at all. This proposed definition,  
12 the August definition, is -- is broader than the  
13 existing one and clearly includes those who have  
14 no injury.

15 So they understood it to be a very big  
16 change and -- and --

17 JUSTICE KAVANAUGH: The question was  
18 about how the district court characterized it.

19 MR. GUPTA: Right. I don't think -- I  
20 don't read that footnote --

21 JUSTICE KAVANAUGH: And there are at  
22 least at times -- at least at times, the  
23 district court characterized it in a way that  
24 you said -- you say, oh, well, a reasonable  
25 lawyer would have just ignored that. And I

1     just -- it strikes me as contrary to how lawyers  
2     practice law and --

3             MR. GUPTA:   Well, I --

4             JUSTICE KAVANAUGH:  -- and -- and just  
5     say, oh, well, the district court is clearly  
6     wrong in how it's characterizing its own order,  
7     so we should just ignore that and, you know,  
8     file this and that.  This is --

9             MR. GUPTA:   Well, that one footnote  
10    wasn't the only thing that was said, and I  
11    think, if I were advising a client in this  
12    circumstance, I would say, look, if what we  
13    really want to challenge is the August order,  
14    we'd better make darn sure that we challenge the  
15    August order and we shouldn't rely on the fact  
16    that an order that we regard as --

17            JUSTICE KAVANAUGH:  Are you going to  
18    be -- are you going to be held to that standard  
19    always?

20            MR. GUPTA:   Yeah, I mean, I -- I don't  
21    think this is actually --

22            JUSTICE KAVANAUGH:  Because that's  
23    asking a lot.

24            MR. GUPTA:   I don't think this is a  
25    close question under the -- the lower court's

1 material change doctrine cases. And I think  
2 another thing that Judge Posner said in that  
3 case that I mentioned is that what the inquiry  
4 turns on is what it is that the party seeking  
5 the 23(f) appeal is actually seeking to  
6 challenge. It was pretty clear that there was  
7 a -- a fight over these definitions and that  
8 Labcorp regarded this as a big change.

9 Recall that they sold -- they --  
10 they -- they persuaded this Court to grant  
11 certiorari on the idea that you've got  
12 unscrupulous plaintiffs' lawyer -- lawyers that  
13 are stuffing classes full of uninjured people,  
14 right? But they regarded that first definition,  
15 the problem with it is that it was actually too  
16 tethered to the plaintiffs' injury, that it --  
17 that it was failsafe because it only had  
18 uninjured people. And then they regarded the  
19 second definition as broader and -- and wanted  
20 to challenge that definition.

21 So, under those circumstances, I do  
22 not think it would be reasonable for somebody to  
23 rely on the idea that the original 23(f)  
24 petition didn't extend.

25 But -- but we're now here talking

1     about, you know, the appealability of that -- of  
2     that order. And that jurisdictional holding  
3     wasn't challenged. And I actually read the  
4     reply and the letters that were exchanged as  
5     acknowledging that Labcorp hasn't preserved and  
6     isn't seeking to contest that jurisdictional  
7     holding of the court of appeals.

8                 So now what you're left with is an  
9     appeal from an order that has been superseded.  
10    And I alluded earlier to the general rule. The  
11    general rule in this Court's cases -- and this  
12    comes up when you have, for example, a  
13    preliminary injunction that has been outstripped  
14    and then you had an appeal from the preliminary  
15    injunction. This Court has said those appeals  
16    are moot. Or if you have, for example, an  
17    appeal with respect to a complaint, the  
18    complaint has been amended, the interlocutory  
19    appeal is rendered moot. You might have a -- a  
20    case in a redistricting case where there's a  
21    debate about a map, and then the map has been  
22    changed. That appeal would be rendered moot.

23                And so that's the general rule. And  
24    that's why I said earlier that what I regard  
25    Labcorp as asking you to do is to craft an

1     exception from that general rule on mootness for  
2     this circumstance.

3             And I think I regard them as relying  
4     on this material change doctrine from the lower  
5     courts as supplying a standard for that mootness  
6     exception. Mr. Francisco can correct me if I'm  
7     wrong, but that's how we read their reply brief  
8     and the letter. And I think, you know, in our  
9     view, that would be an ill-advised thing to do.  
10    You don't have briefing on that.

11            And -- and, as the examples that I  
12    recited, I think, tell you, this is not an  
13    unimportant question. It is something that is  
14    recurring. And even in class action practice, I  
15    think this is a recurring issue about how the  
16    courts of appeals police the boundaries of  
17    their -- of their jurisdiction as class actions  
18    are continuing to move through the district  
19    courts. And it's important -- it is important  
20    that jurisdictional rules be clear, to be sure.

21            It is also important that the court of  
22    appeals be able to use their limited resources  
23    to exercise their discretion to decide live  
24    controversies with respect to actual, in effect  
25    class certification orders, rather than have



1 appeals that are, you know, backwards-looking  
2 and are about a target that has already moved.

3 JUSTICE SOTOMAYOR: In their opening  
4 brief, Petitioner said: "The definition for the  
5 damages class, the only class before this  
6 Court" --

7 MR. GUPTA: Right.

8 JUSTICE SOTOMAYOR: -- "is as  
9 follows."

10 MR. GUPTA: Right.

11 JUSTICE SOTOMAYOR: And it gave the  
12 August definition, not the May definition.

13 MR. GUPTA: Right.

14 JUSTICE SOTOMAYOR: Mr. Francisco  
15 relies on, and I think it was a question that  
16 Justice Alito was referring to, that they view,  
17 the district court, the class definition as not  
18 meaningfully different between the May and  
19 August. But it was meaningfully different  
20 because of your change, correct? Your change  
21 was in response to their claim that you had a  
22 fail class definition that was the problem.

23 MR. GUPTA: Yeah. I mean, the reason  
24 they're pointing -- they're pointing to  
25 statements by the district court or by the

1 plaintiffs is, if you actually look at the --  
2 the -- the -- Labcorp has been fairly consistent  
3 that they regard this as a big change, and they  
4 regarded the original definition, as I said  
5 earlier, as too tethered to -- to injury --

6 JUSTICE SOTOMAYOR: All right. Can --

7 MR. GUPTA: -- because it was defined  
8 in terms of who was denied a full and equal  
9 enjoyment of services.

10 JUSTICE SOTOMAYOR: This is the hard  
11 question. It may be unfair, and you can tell me  
12 you want to think about it. But they claim that  
13 you do not have an administrable way of  
14 identifying the injured and uninjured.

15 MR. GUPTA: Right.

16 JUSTICE SOTOMAYOR: All right? So,  
17 whether it's under Article III or it's under  
18 Rule 23, according to the SG, that you can't  
19 prove that. What's your point on that?

20 MR. GUPTA: Well, so, you know, I  
21 can -- I'd be happy to talk about it in the  
22 abstract, and I can talk about what all the  
23 lower courts have said in cases where this  
24 question has actually been presented.

25 The oddity of this case is that issue

1 was never presented in the district court, and  
2 so the district court didn't have any battle  
3 over this and didn't certify a class that was  
4 premised on the idea that there was a contest  
5 over whether there were uninjured people.

6 And actually our position has been all  
7 along that the -- the -- everyone in this class  
8 is injured, and that's what the lower courts, I  
9 think, recognized. And the reason why is, you  
10 know, similar to other cases where there's a  
11 discrimination alleged, this Court has always  
12 said discrimination itself is an Article III  
13 injury. And so one analogous case is a case  
14 where you have people that are challenging  
15 affirmative action policy of a university.

16 JUSTICE BARRETT: Well, Mr. Gupta,  
17 that -- that's the question that we didn't get  
18 to in Acheson, right? There -- there are  
19 arguments that racial discrimination and other  
20 kinds of discrimination are different.

21 So I do think it's an -- I do think,  
22 in fairness, that that's an open question,  
23 whether there's a --

24 MR. GUPTA: Well, I mean, you don't  
25 have a case directly on point, and I agree that

1     was teed up in Acheson. I think the case is  
2     very, very different from Acheson, because these  
3     are not, you know, people who are in Maine  
4     talking about something in Hawaii.

5             JUSTICE BARRETT: I -- I'm not saying  
6     it's the same, and maybe you might win. All I'm  
7     saying is I don't think it's as settled as  
8     you're presenting it.

9             MR. GUPTA: Sure -- sure. And, I  
10    mean -- and it -- it wasn't presented in the  
11    lower courts and so that's why I'm in the  
12    position of just kind of, you know, making this  
13    argument on the fly.

14            But -- but I'll say, if you set  
15    aside -- and you're right, Justice Barrett, if  
16    you set aside this question of whether  
17    disability discrimination maps on to this  
18    Court's precedence of discrimination -- and we  
19    think it should. I think if you do that, this  
20    is a case where all of the people are injured  
21    for the same reason as in a case like Gratz  
22    versus Bollinger, the affirmative action case,  
23    where what the Court said there was you are --  
24    you are confronted with this barrier on the  
25    basis of the protected characteristic.

1                   The fact that you didn't reach the  
2    thing --

3                   JUSTICE BARRETT:   But I didn't mean to  
4    lead you down this road --

5                   MR. GUPTA:   Okay.

6                   JUSTICE BARRETT:   -- because that's  
7    not before us, right?  We didn't take that.

8                   MR. GUPTA:   It is not.  It is not --

9                   JUSTICE BARRETT:   And so the whole  
10   point is that even if we assume that you're  
11   right and that the class, as you defined it,  
12   does include only people who are injured, that  
13   doesn't take away Mr. Francisco's argument that  
14   there would still have to be some sort of  
15   process and certification to identify who --

16                   MR. GUPTA:   Oh.

17                   JUSTICE BARRETT:   -- was injured or  
18   not, even if it was just who wanted to go to  
19   LabCorp.

20                   MR. GUPTA:   Well, I think, Justice  
21   Barrett -- I mean, this points up the  
22   strangeness of this vehicle, because this is a  
23   case -- this is a question that arises with some  
24   frequency in the lower courts.

25                   But where it arises, there is an

1 understanding that there -- there is a real  
2 question about whether there are uninjured  
3 people and how they will be weeded out.

4 And it -- it principally arises in  
5 cases -- it happens a lot in antitrust cases and  
6 other kinds of cases where the Plaintiffs'  
7 method of proof relies on economic model about a  
8 counterfactual world.

9 And so, you know, in a price-fixing  
10 case, for example, there's going to be a  
11 question: Did everyone pay the super  
12 competitive price? And it might not be possible  
13 ex ante to determine who the people are.

14 JUSTICE BARRETT: But what -- but what  
15 you're saying -- I mean, because I don't want to  
16 take up your time, and you can divert it. Just  
17 what you're saying is that it would be  
18 impossible -- if -- if we agree with you on kind  
19 of the Acheson-esque point, you're saying it  
20 would be impossible for everyone in the class  
21 not to have standing, as you describe it, so  
22 that this would just kind of be irrelevant.

23 MR. GUPTA: Yeah. I mean, it's  
24 another way in which writing an opinion here  
25 would be an advisory opinion. Because you'd

1 be -- you'd be --

2 JUSTICE BARRETT: Well, we'd have to  
3 decide that we agreed with you on the question  
4 that we don't want to answer, which is --

5 MR. GUPTA: Well, you'd be -- you'd  
6 have to reach an antecedent question that really  
7 wasn't presented below.

8 JUSTICE BARRETT: And we deliberately  
9 excluded it from the question, so.

10 MR. GUPTA: Right. And I think you do  
11 that all the time. You grant cases where  
12 there's an assumption built into the question  
13 presented. But I think it does matter whether  
14 that assumption is true or has been established  
15 in the lower courts.

16 I don't want to fight on this, because  
17 it's outside the -- the -- the QP. But I would  
18 just -- to continue what I was saying, I think  
19 where the question arises, it tends to be where  
20 there's a battle of the experts, as Justice  
21 Gorsuch was talking about earlier in cases like,  
22 you know, antitrust cases, or in a case like  
23 Tyson Foods.

24 Tyson Foods was a -- a case that came  
25 here where you had a complex question about how

1 to weed out the uninjured people. And because  
2 the defendant hadn't kept records, the  
3 Plaintiffs had to rely on expert testimony. And  
4 there were 212 people at that pork processing  
5 plant in Storm Lake, Iowa, who it turned out  
6 were not injured.

7 It would have been really easy to have  
8 a trial and weed them out if there had been a  
9 special interrogatory form. Those were people  
10 who were uninjured simply because, you know,  
11 they didn't work over 40 hours, and so they  
12 weren't deprived of overtime.

13 But if you -- you -- you accept the  
14 submission on the other side here today, I think  
15 what should have happened, in their view, is  
16 redefine -- you would have redefined the class.  
17 And then you would have had a failsafe problem,  
18 perhaps, which is you would have defined the  
19 class to be only those people who worked 40  
20 hours and were not paid overtime. That's not  
21 really in the Defendant's interest.

22 The Defendant -- as Justice Gorsuch  
23 was describing earlier, the Defendant wants a  
24 class definition that's ultimately going to  
25 provide global peace when the -- when the case



1 is resolved.

2 CHIEF JUSTICE ROBERTS: When I -- when  
3 I said in this short concurrence, which Justice  
4 Alito, and Justice Alito alone, joined --

5 (Laughter.)

6 CHIEF JUSTICE ROBERTS: -- the -- the  
7 answer, when you get to the point and realize  
8 that these people had not worked 40 hours, is  
9 not that you then go back and carve them out.  
10 What -- what I suggested is that that would be a  
11 good reason not to certify the class in the  
12 first place.

13 MR. GUPTA: Yeah. I mean, I think the  
14 problem in Tyson Foods, though, was -- you'll  
15 recall the -- the conundrum that the parties  
16 faced there was because they hadn't done a trial  
17 where there was a special interrogatory, it was  
18 all one proceeding, and so you had this weird  
19 aggregate judgment.

20 And then the question was: Could  
21 you -- is there some way to reverse-engineer  
22 what happened with that judgment to weed out the  
23 uninjured, right?

24 But if you had -- if you had to redo  
25 the experiment of Tyson Foods, it's a pretty

1 standard kind of case, except that the  
2 defendants didn't have those records. And it  
3 would have been easily possible to try that case  
4 in a way where the -- the case would have weeded  
5 out those uninjured people and then, of course,  
6 would comport with the defendant's Seventh  
7 Amendment right.

8 CHIEF JUSTICE ROBERTS: Well, right,  
9 but, I mean, everybody knows the elephant in the  
10 room, that once you get to trial you sort of --  
11 I mean, the -- the -- the possibility of facing  
12 the damages that are at issue in many of these  
13 cases is enough to prevent defendants, as a  
14 practical matter, from going to trial.

15 MR. GUPTA: Well, I mean, I  
16 acknowledge that, you know, many class action  
17 cases don't go to trial. I'm not sure -- you  
18 know, that's true of litigation in general.

19 But I think the suggestion on the  
20 other side is that the in terrorem effect of  
21 certification is magnified because of the  
22 incremental difference in the class definition  
23 that includes some uninjured people.

24 And the story is -- right, that's the  
25 story on the other side. This case itself

1     believes that story, right? The -- the -- the  
2     problem here was the Plaintiffs, in their view,  
3     had defined the class in a way that was too  
4     tethered to injury, and they wanted to change  
5     that class definition, to expand it.

6                 And at the end stage of litigation, it  
7     is the Defendants who want the broadest possible  
8     definition --

9                 CHIEF JUSTICE ROBERTS: I'm sure  
10    there's a situation they should -- they should  
11    do this because it's actually going to be good  
12    for them. But on the other hand, it's  
13    reasonable to suspect that that's not always  
14    going to be the case, and that they may be the  
15    best judge of whether it's good for them or not.

16                MR. GUPTA: I mean, look, I think, in  
17    strategic -- in litigation where there's high  
18    stakes, the parties are going to behave  
19    strategically in a way that maximizes their  
20    interest. And as I'm suggesting, that interest  
21    changes over -- over time.

22                But I just resist the -- the  
23    suggestion that what's really happening in the  
24    real world is that there's some incremental  
25    marginal advantage that Plaintiffs are seeking

1 to get by expanding the definition to include  
2 the uninjured. Because that just creates --  
3 the -- the goal is to try to eliminate those  
4 manageability problems, to the extent possible.

5 And in the settlement calculus, those  
6 uninjured people, we know after TransUnion,  
7 they're not going to recover. And so I -- you  
8 know, I think the -- the policy argument -- I'm  
9 not sure that, you know, this is the right body  
10 to be considering those policy arguments, but I  
11 also think the economic logic just doesn't hold  
12 up.

13 JUSTICE KAVANAUGH: Do you think the  
14 amicus briefs are wrong, then? They're just not  
15 understanding their own interest? The  
16 interest -- the amicus briefs on the other side.

17 I guess I'm picking up on the Chief  
18 Justice's question. I think they know their own  
19 interests. I'm not saying they're right. I'm  
20 just saying -- you're saying their interests are  
21 just misguided entirely.

22 MR. GUPTA: Well, I -- I actually  
23 think some of the amicus briefs on the other  
24 side take a more measured position that is -- is  
25 really more consistent with the consensus view

1 in the lower courts on Rule 23.

2 The parties' positions have coalesced  
3 quite a bit on the Rule 23 question. And -- and  
4 I know you were persuaded to take this case on  
5 the idea that there's some circuit split, but if  
6 you actually look at the -- the circuit  
7 decisions that are deciding this question on  
8 Rule 23, I think the divergences are largely  
9 explained just by the differences in the record  
10 and the economic models, which are complex.

11 But they're all saying really the  
12 same -- I think Judge Katsas and Judge Kayatta  
13 and Judge Dyk in the First Circuit, they are all  
14 saying the same thing, which is this has to be  
15 administratively feasible, and we have to figure  
16 out whether it's going to be possible --

17 JUSTICE KAVANAUGH: Do you agree with  
18 Judge Katsas's opinion?

19 MR. GUPTA: Yeah. I -- I mean, I  
20 think I might --

21 JUSTICE KAVANAUGH: Judge Katsas --

22 MR. GUPTA: Perhaps if I were sitting  
23 with Judge Katsas on that case, I might have  
24 come out differently on those facts, but I think  
25 the -- the legal framework for these cases, they

1 are just not very different.

2 And I think everyone recognizes,  
3 especially after TransUnion, that the job is to  
4 weed out the uninjured. And it's just a  
5 question of whether on those records, whether  
6 it's -- it's going to be manageable to do so.

7 I think the -- the Article III  
8 argument on the other side here is much more  
9 ambitious and would really be a departure from  
10 the -- the way things work.

11 JUSTICE KAGAN: If -- if I could  
12 just -- in Mr. Francisco's understanding of this  
13 case is you have sort of two groups of people,  
14 the ones who wanted to use the kiosk, who tried  
15 to use the kiosk, who couldn't use the kiosks,  
16 and the ones who wanted no part of the kiosks.

17 MR. GUPTA: Right.

18 JUSTICE KAGAN: And, of course, that's  
19 very different from your understanding, which is  
20 discrimination is discrimination.

21 But just take for a moment -- and this  
22 is a question that we're not going to decide one  
23 way or the other in this case -- if you take for  
24 a moment Mr. Francisco's understanding of who  
25 has -- you know, what the wheat and what the

1       chaff is --

2                   MR. GUPTA:   Mm-hmm.

3                   JUSTICE KAGAN:  -- is he right that  
4       you have no way of separating out those two  
5       groups of people?

6                   MR. GUPTA:  No.  I think -- I think it  
7       would be a harder case than this one, but I  
8       think it's not infrequently the case that, you  
9       know, membership in a class turns on some  
10      attribute of a person that can be tested through  
11      a claims process.

12                   And you have an amicus brief from the  
13      claims administrators that explains how this  
14      happens.  It happens in a lot of different  
15      contexts, products liability.  And there can  
16      be -- you know, there was discussion of  
17      affidavits.  There can be affidavits.  That can  
18      be one way it can be done.  It can be done based  
19      on an examination of records.  The defendant  
20      often has records that will confirm membership  
21      in the class.

22                   So I -- I -- I reject the suggestion  
23      that that's impossible to do, but I think, you  
24      know, as this Court said in *Dukes*, like, the  
25      predominance inquiry is very case-specific and

1     it has to be a rigorous inquiry based on the  
2     record.

3                   And so what I -- I appreciate you're  
4     not going to answer, you know, the specific  
5     standing question in this case, but I would also  
6     just caution the Court, because of the -- the  
7     strangeness of this vehicle, where none of this  
8     was teed up in the courts below, not to paint  
9     with a broad brush and -- and address situations  
10    that aren't before the Court, where, actually,  
11    managerial district judges are able to do a very  
12    good job of weeding out the uninjured under  
13    existing practice.

14                  JUSTICE SOTOMAYOR: Justice Alito,  
15    going back to his point about the variation  
16    among circuits as to when you should appeal --

17                  MR. GUPTA: Mm-hmm.

18                  JUSTICE SOTOMAYOR: -- an amended --  
19    sorry, my throat -- a frog got into it. When  
20    you should appeal a amended order.

21                  MR. GUPTA: Right.

22                  JUSTICE SOTOMAYOR: And he takes from  
23    that that if there's no time -- if there's no  
24    clarity to the rule, then you can do it at any  
25    time. Do you think that's correct?



1                   Meaning I read 23(f) and it says a  
2                   court of appeals may permit an appeal from an  
3                   order granting or denying class. A party must  
4                   file a petition with the circuit court within 14  
5                   days after the order is entered.

6                   MR. GUPTA: Right.

7                   JUSTICE SOTOMAYOR: All right? Here,  
8                   we have a Ninth Circuit ruling that the August 9  
9                   order was not properly appealed, correct?

10                  MR. GUPTA: Correct.

11                  JUSTICE SOTOMAYOR: Whatever its  
12                  reasons for not properly appealing it, it's  
13                  holding that that order is not operative,  
14                  correct?

15                  MR. GUPTA: Correct.

16                  JUSTICE SOTOMAYOR: And what they're  
17                  attacking here is an inoperative order by the  
18                  Ninth Circuit's ruling?

19                  MR. GUPTA: Correct.

20                  JUSTICE SOTOMAYOR: If they had come  
21                  to us and used the earlier version of the order,  
22                  which wasn't a failsafe class, it was only  
23                  people who were injured, you would have a  
24                  different set of arguments, correct?

25                  MR. GUPTA: Absolutely.

1 JUSTICE SOTOMAYOR: All right. Thank  
2 you.

3 CHIEF JUSTICE ROBERTS: Thank you,  
4 counsel.

5 MR. GUPTA: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice  
7 Thomas?

8 Justice Alito?

9 JUSTICE ALITO: Well, to return to a  
10 question that's a great favorite, do you think  
11 that this Ninth Circuit rule about material  
12 versus immaterial changes is jurisdictional, or  
13 is it a claims-processing rule?

14 MR. GUPTA: I -- as I understand it --  
15 and, again, you know, there's been no briefing  
16 on it. I don't think the Ninth Circuit's  
17 jurisprudence is any different from any of the  
18 other circuits' and I think it's a  
19 jurisdictional -- it's a body of jurisdictional  
20 law -- the best way I can understand it is  
21 they're interpreting --

22 JUSTICE ALITO: Okay. That's all I  
23 wanted to know. It's -- you think it's --

24 MR. GUPTA: Jurisdictional.

25 JUSTICE ALITO: -- jurisdictional?

1 MR. GUPTA: Yes.

2 JUSTICE ALITO: And if I think that  
3 it's not jurisdictional and the Ninth Circuit  
4 erred in saying we lack jurisdiction to consider  
5 this, what should I do?

6 MR. GUPTA: I think that you'd -- they  
7 haven't asked -- they didn't file a cert  
8 petition on that question, didn't ask you to  
9 decide that, and so I don't think you should  
10 decide that.

11 JUSTICE ALITO: Well, you -- you argue  
12 that it's a jurisdictional question that we have  
13 to decide.

14 MR. GUPTA: No. I -- I think what I'm  
15 saying is that the -- the case, as it comes to  
16 you, comes with that jurisdictional holding that  
17 hasn't been challenged. They've now  
18 acknowledged that the only order before you is  
19 an order that isn't live. And then the question  
20 is whether the case is moot.

21 JUSTICE ALITO: Well, so what? If the  
22 district -- the court of appeals said there's a  
23 lack of jurisdiction in a particular case and  
24 the petitioner doesn't raise that, are we not  
25 required to decide whether that's right?

1           MR. GUPTA: I think, as a prudential  
2     matter, you -- you -- you shouldn't. I think  
3     you can. It's within -- it's always, of course,  
4     within your jurisdiction to decide your  
5     jurisdiction.

6           But I think there's a reason they  
7     didn't challenge -- if they had -- if they had  
8     filed a cert petition that said, look, there are  
9     two orders, we really want to challenge the one  
10    that the Ninth Circuit said we don't have  
11    jurisdiction over, and so we have this first  
12    question presented that's this jurisdictional  
13    question and there's really not a split on it,  
14    but we'd like you to take it so you can get to  
15    this other question, you would have denied that  
16    petition, I think.

17           JUSTICE ALITO: Thank you.

18           CHIEF JUSTICE ROBERTS: Justice  
19     Sotomayor?

20           Justice Kagan?

21           Justice Gorsuch?

22           Justice Kavanaugh?

23           Justice Barrett?

24           Justice Jackson?

25           JUSTICE JACKSON: One quick thing.

1     You say the job is to weed out the uninjured. I  
2     think Mr. Francisco says you have to do that at  
3     the start by virtue of Article III and Rule 23.  
4     And the government joins him with respect to the  
5     second point of that.

6             You seem to say it suffices just to  
7     know that there is going to be a mechanism to do  
8     that down the road eventually. Why is he wrong  
9     about the timing of this?

10            MR. GUPTA: Yeah. I -- I do think  
11     it's a question of timing. And I think, if  
12     we're analyzing this from the perspective of  
13     Article III, this Court has always said that the  
14     case or controversy between the plaintiffs in a  
15     class action and the defendants is between the  
16     named plaintiff, the representative party.  
17     That's the person that's the party.

18            So, if you think about this from the  
19     perspective of what Justice Story said about how  
20     representative litigation worked at equity  
21     practice or how it works under modern Rule 23,  
22     Justice Scalia's opinion in Devlin, the  
23     understanding has always been that, pretty much  
24     always, the absentees are not parties over whom  
25     the court exercises jurisdiction unless and

1     until the court is doing one of two things:  
2     exercising its remedial power with respect to an  
3     absentee or deciding a question that it wouldn't  
4     otherwise have to decide, like an individual  
5     question.

6             At that point, we acknowledge that  
7     those people who are absentees, they then have  
8     to establish Article III standing. But why  
9     should you --

10            JUSTICE JACKSON: What about Rule 23?

11            MR. GUPTA: But why should you do all  
12     this before you have to? That's one of the  
13     efficiencies of the class device. And I think  
14     Rule 23 is designed to promote those  
15     efficiencies through representative litigation  
16     so long as you have a case or controversy with a  
17     representative. The way it works now is really  
18     the way it worked in Anglo-American courts at  
19     the time of the -- the founding, is that you --  
20     you decide the common questions with respect to  
21     the person who is actually before the court, and  
22     then, if and only if there's -- they prevail,  
23     then the people can come in under the decree.  
24     That was the language that Justice Story used,  
25     and it's the same language that Rule 23 uses.

1 But why would you decide all of that, those  
2 individualized questions if you don't have to,  
3 because the defendant is actually going to  
4 prevail?

5 And this brings me to one point  
6 that -- that I just want to mention if I have  
7 time, which is that there's a suggestion on the  
8 first page of the reply brief that if you  
9 adopted our rule, that -- that what's going to  
10 happen is you're not going to have preclusive  
11 class judgments.

12 And I actually think this is a big bug  
13 with their approach and -- and a feature of  
14 ours, which is right now a defendant can rest  
15 easy knowing that they've prevailed in a class  
16 action and someone isn't going to run into state  
17 court and bring the exact same claim and say,  
18 a-ha, we didn't -- we wouldn't have had Article  
19 III standing in that first case. And that  
20 disturbs the finality of class-wide judgments.

21 Class-wide judgments and their  
22 finality and their preclusive effect under our  
23 current law is predicated on adequate  
24 representation and due process. And I think you  
25 would be breaking the system if you were to

1     adopt their position that makes Article III a  
2     necessary prerequisite and -- and invites  
3     collateral attacks and retrospective inquiries  
4     into the finality of class judgments.

5             JUSTICE JACKSON:   Thank you.

6             CHIEF JUSTICE ROBERTS:   Thank you,  
7     counsel.

8             MR. GUPTA:   Thank you.

9             CHIEF JUSTICE ROBERTS:   Mr. Francisco,  
10    rebuttal?

11            REBUTTAL ARGUMENT OF NOEL J. FRANCISCO  
12                           ON BEHALF OF THE PETITIONER

13            MR. FRANCISCO:   Thank you, Mr. Chief  
14    Justice.

15            To begin with the procedural issue,  
16    here's what the district court said twice:   In  
17    refining the class definition, this order does  
18    not materially alter the composition of the  
19    class or materially change in any manner the  
20    original definition of the class.

21            Here's what plaintiffs argued to the  
22    district court when it urged the district court  
23    to adopt the August definition.   It moved to --  
24    to refine the class definition, and it assured  
25    the court that it was "identical in every way to



1 the original May definition." And it assured it  
2 that it had not changed the "substance" of the  
3 class. That's at page 107 of the district  
4 court's docket, pages 3 and 7.

5 Now there is a reason for that. The  
6 definition, the original May definition, was  
7 defined to include any blind person who was  
8 denied full and equal enjoyment of the goods,  
9 services, facilities, privileges, advantages, or  
10 accommodations due to Labcorp's failure to have  
11 accessible kiosks.

12 Their position with respect to that  
13 language was the position that my friend just  
14 articulated. Every single person who walked  
15 into a Labcorp facility had those rights denied  
16 regardless of whether they wanted to use a kiosk  
17 or not. That's what he just stood up and told  
18 you was their understanding of who's injured,  
19 and that fits within that definition.

20 That is why they took the position  
21 that the August definition and the May  
22 definition were the same. That is why the  
23 district court took the position that the August  
24 definition and the May definitions were the  
25 same. Because the district court agreed that

1     that was what the definition of the class and  
2     the class of people who would have had standing  
3     and perhaps, most importantly, that is why the  
4     Ninth Circuit resolved the question presented.

5             It acknowledged that it couldn't  
6     address an issue that pertained solely to the  
7     August order, but because on the issue that it  
8     did resolve, there was not a -- an iota of  
9     difference between the May order and the August  
10    order for the reasons my friend explained to you  
11    when he was standing up here.

12            It did resolve that question, that it  
13    reduced to a judgment. That judgment is before  
14    you. You plainly have jurisdiction to resolve  
15    that question presented.

16            Turning to the merits, I think that  
17    the -- as we've discussed, the Article III issue  
18    is easy to solve but it walks right into the  
19    23(b)(3) question. My friend essentially  
20    acknowledged that when it comes to a class loss,  
21    the only consequence is that you're going to end  
22    up binding a class even if it includes members  
23    over whom the Court lacked jurisdiction.

24            That is a fairly shocking proposition.  
25    To say that a court can say I know I am

1 adjudicating a whole group of people, many of  
2 whom I don't have jurisdiction over, yet,  
3 nonetheless, I am going to proceed to bind them  
4 with that judgment, that is in the teeth of  
5 Steel Company, we ask that you reverse.

6 CHIEF JUSTICE ROBERTS: Thank you,  
7 counsel. The case is submitted.

8 (Whereupon, at 1:19 p.m., the case in  
9 the above-entitled matter was submitted.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## Official - Subject to Final Review

<p><b>1</b></p> <p><b>1:19</b> [1] 122:8  <b>107</b> [1] 120:3  <b>11:03</b> [2] 1:16 4:2  <b>110</b> [1] 91:9  <b>112,000</b> [4] 5:9 18:20 28:9  <b>32:3</b>  <b>119</b> [1] 3:13  <b>12th</b> [3] 74:12 75:1,25  <b>13</b> [1] 74:3  <b>14</b> [1] 112:4  <b>14-day</b> [3] 7:4 36:10,18  <b>1966</b> [1] 55:5</p>	<p><b>8</b> [1] 36:8  <b>8,000</b> [1] 5:9</p> <p><b>9</b></p> <p><b>9</b> [1] 112:8</p> <p><b>A</b></p> <p><b>a-ha</b> [1] 118:18  <b>a.m</b> [2] 1:16 4:2  <b>ability</b> [6] 16:8 83:20,21 85:7,9,11  <b>able</b> [7] 33:24 45:7 59:23 62:8 67:20 95:22 111:11  <b>above-entitled</b> [2] 1:14 122:9  <b>absent</b> [1] 52:14  <b>absentee</b> [1] 117:3  <b>absentees</b> [3] 80:19 116:24 117:7  <b>absolutely</b> [2] 87:4 112:25  <b>abstract</b> [2] 64:14 97:22  <b>accept</b> [4] 35:1 39:25 75:21 103:13  <b>accepted</b> [1] 71:4  <b>accepting</b> [1] 39:17  <b>accessible</b> [1] 120:11  <b>accommodations</b> [1] 120:10  <b>according</b> [1] 97:18  <b>accuse</b> [1] 50:25  <b>Acheson</b> [4] 38:11 98:18 99:1,2  <b>Acheson-esque</b> [1] 101:19  <b>acknowledge</b> [4] 82:1,21 105:16 117:6  <b>acknowledged</b> [4] 24:4 114:18 121:5,20  <b>acknowledging</b> [1] 94:5  <b>across</b> [4] 13:12,16 30:11 59:21  <b>act</b> [1] 30:21  <b>action</b> [22] 4:12 8:15 21:25 23:18 24:5 27:2 31:5 41:17 43:5 44:13 54:17,22 67:17 68:6 78:3 80:6 95:14 98:15 99:22 105:16 116:15 118:16  <b>actions</b> [10] 4:19 9:18 22:24 23:12 30:11 54:3 67:15 68:2 78:21 95:17  <b>actual</b> [2] 51:11 95:24  <b>actuality</b> [1] 44:25  <b>actually</b> [34] 5:10 7:2 17:12 21:8 22:12,16 23:7 31:1 32:5 38:11 40:9 45:8 47:13 78:17 80:18 81:3 84:3, 20 85:4 86:13 92:21 93:5, 15 94:3 97:1,24 98:6 106:11 107:22 108:6 111:10 117:21 118:3,12  <b>ADA</b> [1] 11:19  <b>add</b> [5] 21:11 23:14 30:10 38:16 43:1</p>	<p><b>added</b> [3] 8:17 9:4,9  <b>adding</b> [2] 22:2 47:23  <b>address</b> [11] 5:23 7:13 10:13 14:20,21 17:5 20:12 74:15 87:18 111:9 121:6  <b>addressed</b> [7] 14:11 16:20 18:11 19:6,7,7 75:25  <b>addresses</b> [1] 20:5  <b>addressing</b> [1] 19:1  <b>adequacy</b> [1] 55:15  <b>adequate</b> [1] 118:23  <b>adheres</b> [1] 75:11  <b>adjudicate</b> [3] 10:14 22:5 48:14  <b>adjudicating</b> [1] 122:1  <b>administrable</b> [7] 10:3,23 14:12,19 53:1 67:1 97:13  <b>administratively</b> [2] 80:13 108:15  <b>administrators</b> [1] 110:13  <b>adopt</b> [4] 75:15 85:24 119:1,23  <b>adopted</b> [4] 15:6,7 38:24 118:9  <b>advantage</b> [1] 106:25  <b>advantages</b> [1] 120:9  <b>adverse</b> [3] 13:7 23:10 73:14  <b>advising</b> [1] 92:11  <b>advisory</b> [5] 8:5 75:23 80:9, 10 101:25  <b>affect</b> [1] 16:3  <b>affecting</b> [1] 22:19  <b>affidavit</b> [1] 66:3  <b>affidavits</b> [9] 18:6,8,13,15, 18,24 39:20 110:17,17  <b>affirmative</b> [2] 98:15 99:22  <b>affirmed</b> [1] 6:17  <b>afoul</b> [1] 75:14  <b>aggregate</b> [2] 77:11 104:19  <b>aggregating</b> [1] 4:13  <b>aggregation</b> [3] 22:1,24 51:19  <b>aggressive</b> [1] 30:18  <b>ago</b> [1] 30:24  <b>agree</b> [11] 22:9 36:22 39:10 46:6 65:21 70:7,12 83:10 98:25 101:18 108:17  <b>agreed</b> [2] 102:3 120:25  <b>agrees</b> [2] 6:21 52:24  <b>ahead</b> [1] 37:9  <b>AL</b> [1] 1:7  <b>Alito</b> [31] 8:8 35:23 37:12 63:16,17 64:3,12 84:21,25 85:15,16,21 86:2,23 87:6 89:3,15,18 90:7 96:16 104:4,4 111:14 113:8,9,22,25 114:2,11,21 115:17  <b>allegation</b> [1] 69:14  <b>alleged</b> [1] 98:11  <b>allow</b> [5] 36:17 42:25 47:20, 25 72:12  <b>allowed</b> [1] 44:19</p>	<p><b>alluded</b> [1] 94:10  <b>alone</b> [3] 32:8 61:11 104:4  <b>already</b> [2] 9:7 96:2  <b>alter</b> [2] 34:12 119:18  <b>altered</b> [1] 9:24  <b>alternative</b> [2] 27:8 31:3  <b>altogether</b> [1] 9:23  <b>ambitious</b> [1] 109:9  <b>Amchem</b> [3] 52:11 57:24 78:3  <b>amend</b> [3] 7:24 8:2 74:21  <b>amended</b> [6] 9:19 33:18 34:2 94:18 111:18,20  <b>Amendment</b> [1] 105:7  <b>AMERICA</b> [2] 1:3 4:5  <b>Amgen</b> [3] 59:19,25 62:3  <b>amicus</b> [9] 2:6 3:7 50:15 73:7 82:8 107:14,16,23 110:12  <b>among</b> [1] 111:16  <b>analogous</b> [1] 98:13  <b>analysis</b> [3] 46:10 52:22 54:7  <b>analyzing</b> [2] 76:5 116:12  <b>Anglo-American</b> [1] 117:18  <b>another</b> [6] 4:20 23:1 37:17 77:12 93:2 101:24  <b>answer</b> [11] 8:8 9:6 26:16, 16 27:17,18 36:21 60:14 102:4 104:7 111:4  <b>answered</b> [1] 12:11  <b>answers</b> [1] 9:1  <b>ante</b> [1] 101:13  <b>antecedent</b> [1] 102:6  <b>anti-defendant</b> [1] 27:16  <b>antidiscrimination</b> [1] 30:17  <b>antitrust</b> [8] 60:5 69:14 71:25 72:8 79:7,15 101:5 102:22  <b>anybody</b> [2] 31:22 49:18  <b>apart</b> [1] 78:23  <b>apparent</b> [1] 82:12  <b>appeal</b> [30] 7:24 33:2,6,11 34:4 35:9 36:10,17 74:7 75:17 81:1,11 83:7,25 84:15,16 85:14 86:7,25 87:7, 14 93:5 94:9,14,17,19,22 111:16,20 112:2  <b>appealability</b> [2] 88:3 94:1  <b>appealable</b> [1] 37:21  <b>appealed</b> [3] 7:3 90:6 112:9  <b>appealing</b> [1] 112:12  <b>appeals</b> [18] 73:13 74:23 76:4 81:4,13 84:12 85:22 88:5,11 89:10,19 94:7,15 95:16,22 96:1 112:2 114:22  <b>appeals'</b> [1] 74:25  <b>APPEARANCES</b> [1] 2:1  <b>appears</b> [1] 31:7  <b>appendix</b> [1] 73:23</p>	<p><b>Apple</b> [2] 72:11 87:23  <b>applicants</b> [1] 57:20  <b>application</b> [1] 38:18  <b>applied</b> [4] 41:23 66:8,9 69:11  <b>apply</b> [2] 23:18 81:15  <b>applying</b> [1] 77:7  <b>appreciate</b> [5] 41:9 48:25 74:9 77:16 111:3  <b>approach</b> [9] 6:4 26:9 52:4 64:13,18,18 76:10 84:8 118:13  <b>approaches</b> [1] 56:15  <b>April</b> [1] 1:12  <b>aren't</b> [8] 24:14 50:23 52:14 59:22 65:16 69:3 77:12 111:10  <b>argue</b> [2] 38:14 114:11  <b>argued</b> [2] 6:25 119:21  <b>arguing</b> [2] 36:16 44:14  <b>argument</b> [32] 1:15 3:2,5, 11 4:4,7 11:6,17 20:7 24:1 28:18 35:8 40:9 41:20 44:11 50:14 53:13,18 56:3 60:3 62:25 63:25 71:2,5 73:10 79:23 88:19 99:13 100:13 107:8 109:8 119:11  <b>arguments</b> [7] 33:24 40:21 81:2 82:13 98:19 107:10 112:24  <b>arises</b> [4] 100:23,25 101:4 102:19  <b>arising</b> [1] 10:1  <b>around</b> [1] 68:25  <b>Article</b> [96] 4:14,17,24 5:1, 20 6:4 14:15 15:12,20 17:17 21:25 24:21,23 28:19 31:12,15 39:19 40:14,23 41:20 42:12 43:2 45:23,25 46:5 48:2,5,9,16 49:17 50:21 51:1,4,5,8,9,17 53:10, 11,13,16,18 54:16 55:18, 21,21,25 56:2,10,11,18,19, 21,23 57:14 58:5,5,15 60:10 61:10,11,13,23 62:5,13, 17,25 63:1,8,10,20,23 64:6 68:14 70:10,11,17 71:2,8 72:13 76:14,21 79:16 80:4, 20,23 81:19 97:17 98:12 109:7 116:3,13 117:8 118:18 119:1 121:17  <b>articulate</b> [1] 23:6  <b>articulated</b> [2] 13:25 120:14  <b>articulating</b> [1] 27:16  <b>articulation</b> [1] 24:20  <b>Asacol</b> [2] 5:13 18:11  <b>ASARCO</b> [1] 73:12  <b>asbestos</b> [1] 57:25  <b>ascribe</b> [1] 84:18  <b>aside</b> [5] 20:7 48:23 83:16 99:15,16  <b>assertions</b> [1] 20:2  <b>assess</b> [2] 5:8,15</p>
---	---	--	---	---

## Official - Subject to Final Review

<p><b>assign</b> <sup>[1]</sup> 84:8  <b>Assistant</b> <sup>[1]</sup> 2:4  <b>assume</b> <sup>[9]</sup> 11:2,5,8 31:17, 21 34:10,11 48:8 100:10  <b>assumes</b> <sup>[1]</sup> 6:1  <b>assuming</b> <sup>[6]</sup> 45:24,25 46: 5 48:1,5,22  <b>assumption</b> <sup>[3]</sup> 34:18 102: 12,14  <b>assure</b> <sup>[1]</sup> 48:15  <b>assured</b> <sup>[2]</sup> 119:24 120:1  <b>attached</b> <sup>[1]</sup> 90:2  <b>attacking</b> <sup>[1]</sup> 112:17  <b>attacks</b> <sup>[1]</sup> 119:3  <b>attempted</b> <sup>[1]</sup> 81:8  <b>attorneys</b> <sup>[1]</sup> 30:22  <b>attribute</b> <sup>[1]</sup> 110:10  <b>August</b> <sup>[43]</sup> 6:22 7:3,21 8:1 16:15 32:21 33:2,6,20,25 34:2,4,8,12 35:9 36:8,10, 18 37:3 73:24,25 74:14,18, 19 75:17 81:2 83:6 84:16 86:16,18 88:9,10 91:12 92: 13,15 96:12,19 112:8 119: 23 120:21,23 121:7,9  <b>authorities</b> <sup>[1]</sup> 30:15  <b>authority</b> <sup>[1]</sup> 74:13  <b>authorize</b> <sup>[1]</sup> 51:6  <b>available</b> <sup>[1]</sup> 83:20  <b>avoid</b> <sup>[2]</sup> 32:9,14  <b>avoidance</b> <sup>[2]</sup> 64:15,20  <b>award</b> <sup>[2]</sup> 13:1 62:20  <b>away</b> <sup>[3]</sup> 35:5 52:23 100:13</p>	<p><b>become</b> <sup>[3]</sup> 8:9,9 23:7  <b>becomes</b> <sup>[2]</sup> 10:20 12:24  <b>beef</b> <sup>[1]</sup> 88:9  <b>begin</b> <sup>[1]</sup> 119:15  <b>beginning</b> <sup>[1]</sup> 65:25  <b>behalf</b> <sup>[8]</sup> 2:3,8 3:4,10,13 4: 8 79:24 119:12  <b>behave</b> <sup>[1]</sup> 106:18  <b>belabor</b> <sup>[2]</sup> 23:24 89:4  <b>belies</b> <sup>[1]</sup> 106:1  <b>believe</b> <sup>[3]</sup> 24:2 56:7 71:25  <b>below</b> <sup>[5]</sup> 7:1 10:11 76:6 102:7 111:8  <b>bench</b> <sup>[1]</sup> 35:19  <b>benefit</b> <sup>[1]</sup> 11:18  <b>best</b> <sup>[6]</sup> 35:8 36:19 49:9 86: 4 106:15 113:20  <b>bet</b> <sup>[1]</sup> 87:11  <b>better</b> <sup>[4]</sup> 69:1 70:4 73:9 92:14  <b>between</b> <sup>[9]</sup> 9:17 10:24 16: 22 18:25 91:5 96:18 116: 14,15 121:9  <b>big</b> <sup>[4]</sup> 91:15 93:8 97:3 118: 12  <b>bind</b> <sup>[1]</sup> 122:3  <b>binding</b> <sup>[3]</sup> 75:19,24 121: 22  <b>binds</b> <sup>[1]</sup> 13:13  <b>bit</b> <sup>[8]</sup> 6:20 17:3 20:22 27:4 51:2 54:12 55:1 108:3  <b>blind</b> <sup>[6]</sup> 10:21 11:18 12:1 15:16 39:24 120:7  <b>bloated</b> <sup>[1]</sup> 47:19  <b>blue</b> <sup>[1]</sup> 82:12  <b>board</b> <sup>[3]</sup> 13:12,16 30:11  <b>body</b> <sup>[2]</sup> 107:9 113:19  <b>Bollinger</b> <sup>[1]</sup> 99:22  <b>books</b> <sup>[2]</sup> 66:12,21  <b>both</b> <sup>[7]</sup> 11:9,9 20:21 45:19 47:17 59:14 79:4  <b>bottom</b> <sup>[1]</sup> 40:14  <b>bouncing</b> <sup>[1]</sup> 62:12  <b>bound</b> <sup>[5]</sup> 5:19 9:14,16 13: 7,17  <b>boundaries</b> <sup>[1]</sup> 95:16  <b>boy</b> <sup>[1]</sup> 24:16  <b>breaking</b> <sup>[1]</sup> 118:25  <b>brief</b> <sup>[18]</sup> 54:14 60:16 72:23 73:3,3,4,6 81:25 82:2,8,12 88:15,23 91:9 95:7 96:4 110:12 118:8  <b>briefing</b> <sup>[4]</sup> 82:15 84:5 95: 10 113:15  <b>briefs</b> <sup>[3]</sup> 107:14,16,23  <b>bring</b> <sup>[4]</sup> 4:15,15 72:9 118: 17  <b>brings</b> <sup>[2]</sup> 44:13 118:5  <b>broad</b> <sup>[5]</sup> 27:6 29:7 30:4 81:19 111:9  <b>broader</b> <sup>[2]</sup> 91:12 93:19  <b>broadest</b> <sup>[1]</sup> 106:7  <b>brought</b> <sup>[3]</sup> 36:23 79:13 91: 3</p>	<p><b>brush</b> <sup>[1]</sup> 111:9  <b>bug</b> <sup>[1]</sup> 118:12  <b>built</b> <sup>[2]</sup> 36:13 102:12  <b>bunch</b> <sup>[3]</sup> 22:2 44:4 78:21</p> <p style="text-align: center;"><b>C</b></p> <p><b>calculus</b> <sup>[1]</sup> 107:5  <b>called</b> <sup>[1]</sup> 38:10  <b>calling</b> <sup>[1]</sup> 11:20  <b>came</b> <sup>[5]</sup> 1:14 18:20 19:13 65:8 102:24  <b>cannot</b> <sup>[6]</sup> 22:4 26:19 34:4 48:13 56:8 78:8  <b>capable</b> <sup>[3]</sup> 21:13 23:9 89: 1  <b>careful</b> <sup>[2]</sup> 55:7 70:16  <b>carried</b> <sup>[1]</sup> 36:2  <b>carries</b> <sup>[1]</sup> 33:23  <b>carry</b> <sup>[1]</sup> 35:22  <b>carve</b> <sup>[2]</sup> 52:18 104:9  <b>carving</b> <sup>[1]</sup> 39:14  <b>Case</b> <sup>[102]</sup> 4:4,12 5:3,25 6: 6,16 13:17,19 15:13 18:11 19:10,12,19,20,24 21:20 22:3 23:8,15 25:9 28:1 30: 23 33:17 38:5,13 39:12 41: 24,25 43:1,11 44:9 47:23 49:4,19 51:9 52:17 53:8, 21 54:19 59:22 63:11 64: 21,21 66:23,23 68:7 69:6 72:22 73:16 75:15 76:8 79: 6 80:20,24 81:4,20 82:6 83:11 86:12 87:24 88:2,3, 18,24,24,24 93:3 94:20,20 97:25 98:13,13,25 99:1,20, 21,22 100:23 101:10 102: 22,24 103:25 105:1,3,4,25 106:14 108:4,23 109:13,23 110:7,8 111:5 114:15,20, 23 116:14 117:16 118:19 122:7,8  <b>case-specific</b> <sup>[1]</sup> 110:25  <b>cases</b> <sup>[29]</sup> 5:13 25:10 51: 14 54:15 59:18 68:6 71:21 73:12 76:17 77:17 78:1,3, 4,11,15 79:4 93:1 94:11 97:23 98:10 101:5,5,6 102: 11,21,22 105:13,17 108:25  <b>Casey</b> <sup>[1]</sup> 78:4  <b>causation</b> <sup>[4]</sup> 59:25 61:16 62:3 79:10  <b>caution</b> <sup>[1]</sup> 111:6  <b>centuries</b> <sup>[1]</sup> 80:15  <b>cert</b> <sup>[4]</sup> 82:19 88:7 114:7 115:8  <b>certain</b> <sup>[2]</sup> 44:15 77:16  <b>certainly</b> <sup>[1]</sup> 35:7  <b>certifiable</b> <sup>[1]</sup> 28:14  <b>certification</b> <sup>[33]</sup> 6:17 9:4 11:16 12:9 23:8 29:19 30: 19 33:11 45:6 47:11 51:6 52:5 53:11 58:17 60:24 61: 1,15 63:3,12 65:18 79:3,11, 19 80:11 85:10 86:9,12,17</p>	<p>87:20 89:24 95:25 100:15 105:21  <b>certified</b> <sup>[19]</sup> 8:12,18 9:8, 17 13:6,8,14 14:13 29:8,20 30:5 38:6 56:8 57:21 58:1 60:7 66:5 67:19 78:8  <b>certify</b> <sup>[15]</sup> 22:1 24:4 25:23 26:6,19 39:5 44:20 46:19 59:23 62:8 66:17 74:1 77: 14 98:3 104:11  <b>certifying</b> <sup>[3]</sup> 47:3 51:15 86:25  <b>certiorari</b> <sup>[3]</sup> 81:5 82:24 93:11  <b>certiorari-like</b> <sup>[1]</sup> 89:13  <b>cessation</b> <sup>[1]</sup> 89:1  <b>cetera</b> <sup>[1]</sup> 79:10  <b>chaff</b> <sup>[5]</sup> 5:1 14:20 17:22 24:13 110:1  <b>challenge</b> <sup>[11]</sup> 5:5,6 11:7 81:8 88:4 92:13,14 93:6, 20 115:7,9  <b>challenged</b> <sup>[3]</sup> 88:12 94:3 114:17  <b>challenging</b> <sup>[1]</sup> 98:14  <b>chance</b> <sup>[1]</sup> 29:13  <b>chancery</b> <sup>[1]</sup> 80:16  <b>change</b> <sup>[14]</sup> 6:23 84:2,11 87:1 88:20 91:16 93:1,8 95:4 96:20,20 97:3 106:4 119:19  <b>changed</b> <sup>[3]</sup> 76:20 94:22 120:2  <b>changes</b> <sup>[2]</sup> 106:21 113:12  <b>chaos</b> <sup>[1]</sup> 91:1  <b>characteristic</b> <sup>[1]</sup> 99:25  <b>characterization</b> <sup>[2]</sup> 86: 14 90:12  <b>characterized</b> <sup>[2]</sup> 91:18, 23  <b>characterizes</b> <sup>[2]</sup> 84:11 90:24  <b>characterizing</b> <sup>[1]</sup> 92:6  <b>charged</b> <sup>[7]</sup> 30:15 44:14, 23 45:8,20,21,22  <b>check</b> <sup>[1]</sup> 16:8  <b>CHIEF</b> <sup>[36]</sup> 4:3,9 15:8,10 23:22 24:2 29:4 32:11 40: 6 46:11 50:11,17 62:9,21 63:10,14 65:2 67:12 71:18 76:11 77:2 79:20,25 80:3 104:2,6 105:8 106:9 107: 17 113:3,6 115:18 119:6,9, 13 122:6  <b>choice</b> <sup>[1]</sup> 12:2  <b>Circuit</b> <sup>[30]</sup> 6:15 7:7,17,22 15:6,7 33:1,4,5 34:3 35:13, 24 37:25 38:24 39:4 74:11 75:11,13 84:2,4 86:21 108: 5,6,13 112:4,8 113:11 114: 3 115:10 121:4  <b>Circuit's</b> <sup>[7]</sup> 32:23 36:7 37: 20 75:5 89:6 112:18 113: 16</p>	<p><b>Circuits</b> <sup>[3]</sup> 5:12 84:6 111: 16  <b>circuits'</b> <sup>[1]</sup> 113:18  <b>circumstance</b> <sup>[2]</sup> 92:12 95:2  <b>circumstances</b> <sup>[2]</sup> 79:19 93:21  <b>cite</b> <sup>[1]</sup> 88:23  <b>claim</b> <sup>[24]</sup> 4:15 8:19,20 10: 15 23:15,17 41:8,13,14 42: 14 43:1,6 44:17 48:22 49: 12 55:19 60:1 64:7 66:13 78:13 79:13 96:21 97:12 118:17  <b>claiming</b> <sup>[2]</sup> 57:20,21  <b>claims</b> <sup>[28]</sup> 4:13 8:16 9:3,5, 8,23 22:2,5,7,11,14,17,24 23:4,7 27:9 41:10 47:21, 23,24 48:13,14,20,23 72:9 78:17 110:11,13  <b>claims-processing</b> <sup>[1]</sup> 113:13  <b>clarify</b> <sup>[2]</sup> 38:4 63:17  <b>clarity</b> <sup>[1]</sup> 111:24  <b>class</b> <sup>[197]</sup> 4:12,16,19,23 5: 9,18 6:17 8:12,15,17 9:8, 10,14,17,18 10:19,21 11:9, 16 12:8,22 13:5,6,13,14,15, 17 14:12,16 16:23 19:7,20 21:25 22:2,24 23:12,18 24: 4 25:1,4,13,18,25 26:1,10, 14,20 27:2,6 28:1,2,5,7 29: 7,19 30:2,5,10,19 31:5,12, 22 38:6 39:3,5,17,18 40:1, 15,17,25 43:24 44:13,20 45:1,5,9,14,19,21 46:20 47: 1,4,11,14 48:7 49:17,24 50: 2,9,20,22,24 51:16,25 52:5, 12,14 55:3,10,17,24 56:8,9, 19 57:1,18,21 58:1,7,9,17 59:2,21,23 60:6,9 61:15,16, 24 62:8,18 63:2 64:11 65: 6,17,19 66:4,16,17 67:14, 16 68:2,6,13 69:14,15,18, 25 72:5,12 74:1,1 75:12 77:14 78:3,9 79:8,12 80:6, 11 82:14 83:21 85:3,10 86: 9,17,25 87:20 89:24 95:14, 17,25 96:5,5,17,22 98:3,7 100:11 101:20 103:16,19, 24 104:11 105:16,22 106:3, 5 110:9,21 112:3,22 116: 15 117:13 118:11,15 119:4, 17,19,20,24 120:3 121:1,2, 20,22  <b>class-wide</b> <sup>[3]</sup> 52:25 118: 20,21  <b>classes</b> <sup>[7]</sup> 19:6 47:20 67: 18 71:4,6,10 93:13  <b>classwide</b> <sup>[2]</sup> 60:17,22  <b>clean</b> <sup>[1]</sup> 38:19  <b>clear</b> <sup>[11]</sup> 23:14 24:19 31: 10 33:12 35:24 37:13 82: 22 86:13,15 93:6 95:20</p>
---	--	--	--	---

## Official - Subject to Final Review

<p><b>clearly</b> [4] 8:17 10:19 91:13 92:5</p> <p><b>clerkship</b> [1] 70:5</p> <p><b>client</b> [2] 36:1 92:11</p> <p><b>clients</b> [1] 90:21</p> <p><b>close</b> [1] 92:25</p> <p><b>coalesced</b> [1] 108:2</p> <p><b>coerce</b> [1] 6:2</p> <p><b>coercive</b> [1] 29:9</p> <p><b>collateral</b> [1] 119:3</p> <p><b>collect</b> [1] 62:19</p> <p><b>collected</b> [1] 39:19</p> <p><b>colloquy</b> [1] 91:3</p> <p><b>Comcast</b> [7] 59:19 60:1,4 62:1 64:8 79:5,6</p> <p><b>come</b> [7] 35:8 37:24 71:14 85:14 108:24 112:20 117:23</p> <p><b>comes</b> [12] 16:22 18:12 48:10 51:11 52:13 69:6 82:20, 21 94:12 114:15,16 121:20</p> <p><b>comfortable</b> [1] 27:20</p> <p><b>coming</b> [1] 40:22</p> <p><b>Commentaries</b> [1] 54:10</p> <p><b>comments</b> [2] 16:17 38:4</p> <p><b>common</b> [19] 5:2,11 19:3 26:4 47:5 54:3 57:6,10 61:6,16,17,20,21 64:9 78:20 79:7,8,14 117:20</p> <p><b>commonality</b> [20] 53:14 55:14 57:1,16 58:3,10,19, 22,25 59:4,7,10 60:12 61:5 63:5 77:9,10,14,19,23</p> <p><b>company</b> [2] 44:13 122:5</p> <p><b>company's</b> [1] 49:20</p> <p><b>competitive</b> [1] 101:12</p> <p><b>complaint</b> [3] 43:7 94:17, 18</p> <p><b>completely</b> [2] 19:18 28:19</p> <p><b>complex</b> [2] 102:25 108:10</p> <p><b>compliance</b> [1] 63:23</p> <p><b>complicated</b> [1] 36:6</p> <p><b>complication</b> [1] 74:16</p> <p><b>comport</b> [1] 105:6</p> <p><b>composition</b> [1] 119:18</p> <p><b>concede</b> [3] 15:25 16:1 18:15</p> <p><b>concededly</b> [1] 81:9</p> <p><b>concedes</b> [1] 81:1</p> <p><b>concept</b> [1] 36:12</p> <p><b>concerns</b> [2] 29:10 36:2</p> <p><b>concurrence</b> [1] 104:3</p> <p><b>confirm</b> [1] 110:20</p> <p><b>confront</b> [2] 76:21 84:7</p> <p><b>confronted</b> [1] 99:24</p> <p><b>confused</b> [1] 56:4</p> <p><b>confusion</b> [1] 32:20</p> <p><b>consensus</b> [1] 107:25</p> <p><b>consequence</b> [2] 35:25 121:21</p> <p><b>consequences</b> [1] 64:17</p> <p><b>consider</b> [1] 114:4</p> <p><b>consideration</b> [2] 51:8 79:2</p>	<p>2</p> <p><b>considering</b> [1] 107:10</p> <p><b>consistent</b> [7] 14:23 19:22 31:12,16 80:15 97:2 107:25</p> <p><b>consistently</b> [1] 68:8</p> <p><b>constant</b> [1] 85:10</p> <p><b>constantly</b> [1] 9:19</p> <p><b>Constitution</b> [1] 40:24</p> <p><b>Constitution's</b> [1] 80:17</p> <p><b>constitutional</b> [2] 64:15, 20</p> <p><b>consumer</b> [1] 30:16</p> <p><b>contains</b> [1] 75:5</p> <p><b>contemplate</b> [1] 31:7</p> <p><b>contest</b> [4] 18:18 19:23 94:6 98:4</p> <p><b>contesting</b> [1] 18:8</p> <p><b>context</b> [5] 7:8 23:19 51:6 62:13 78:12</p> <p><b>contexts</b> [1] 110:15</p> <p><b>continually</b> [1] 52:12</p> <p><b>continue</b> [1] 102:18</p> <p><b>continuing</b> [1] 95:18</p> <p><b>contrary</b> [2] 86:2 92:1</p> <p><b>contrast</b> [1] 6:1</p> <p><b>controversies</b> [1] 95:24</p> <p><b>controversy</b> [3] 80:21 116:14 117:16</p> <p><b>conundrum</b> [1] 104:15</p> <p><b>core</b> [1] 55:19</p> <p><b>CORPORATION</b> [2] 1:3 4:5</p> <p><b>correct</b> [17] 17:23 24:3 38:14 40:4 48:2 75:6 87:10 90:13 95:6 96:20 111:25 112:9,10,14,15,19,24</p> <p><b>corrected</b> [1] 75:9</p> <p><b>correctly</b> [1] 5:12</p> <p><b>corrects</b> [1] 76:4</p> <p><b>correspond</b> [1] 63:20</p> <p><b>couldn't</b> [14] 7:2 19:14 31:24 33:2,6 39:22 57:20,25 60:7 70:11,19 71:3 109:15 121:5</p> <p><b>Counsel</b> [9] 7:15 8:6 9:15 50:12 62:10 79:21 113:4 119:7 122:7</p> <p><b>count</b> [1] 43:6</p> <p><b>counterfactual</b> [1] 101:8</p> <p><b>country</b> [1] 32:7</p> <p><b>couple</b> [3] 22:22,23 73:21</p> <p><b>course</b> [4] 62:18 105:5 109:18 115:3</p> <p><b>COURT</b> [107] 1:1,15 4:10 5:8,20,21 6:22,24 7:1,12 9:9 10:11,15 16:20 22:10,12, 14,15,23 23:11 24:4 38:7, 24 41:3,23 42:12 47:23 50:18,19 51:15 52:16 53:2 55:16 57:16 64:22 66:15 68:11 70:5,16 73:13,15,16 74:23,25 75:19 76:3,4 77:17 78:5 80:1,2,7,19,25 81:4,</p>	<p>16,19 84:10,10,12 85:3,9, 12,22 86:24 87:1,2,12 88:5, 11 89:10,18 90:23 91:8,18, 23 92:5 93:10 94:7,15 95:21 96:6,17,25 98:1,2,11 99:23 110:24 111:6,10 112:2, 4 114:22 116:13,25 117:1, 21 118:17 119:16,22,22,25 120:23,25 121:23,25</p> <p><b>court's</b> [16] 34:19 50:3 55:12 57:3 59:18 68:5 78:2 81:5,23 82:22 84:18 90:11 92:25 94:11 99:18 120:4</p> <p><b>courts</b> [25] 5:15,23 37:5 51:7 52:11 53:19 68:17,22 77:9 80:4,16,23 86:5,10 95:5, 16,19 97:23 98:8 99:11 100:24 102:15 108:1 111:8 117:18</p> <p><b>courts'</b> [1] 16:17</p> <p><b>covered</b> [1] 31:9</p> <p><b>craft</b> [3] 81:17 88:21 94:25</p> <p><b>create</b> [1] 54:25</p> <p><b>creates</b> [1] 107:2</p> <p><b>creating</b> [2] 51:1,3</p> <p><b>credit</b> [4] 49:25 65:7 66:14, 18</p> <p><b>critical</b> [1] 21:10</p> <p><b>cross-examination</b> [2] 18:9 20:3</p> <p><b>cross-examine</b> [1] 19:23</p> <p><b>crucible</b> [1] 18:9 20:2</p> <p><b>crux</b> [1] 20:10</p> <p><b>curiae</b> [3] 2:6 3:8 50:15</p> <p><b>current</b> [1] 118:23</p> <p><b>customer</b> [1] 44:12</p> <p><b>customers</b> [5] 44:15,20,23 45:3,8</p>	<p>117:3</p> <p><b>decision</b> [3] 75:5 87:23 89:20</p> <p><b>decisions</b> [1] 108:7</p> <p><b>declaratory</b> [1] 43:18</p> <p><b>decree</b> [1] 117:23</p> <p><b>deem</b> [2] 82:24 83:9</p> <p><b>DEEPAK</b> [3] 2:8 3:9 79:23</p> <p><b>defeat</b> [2] 14:25 29:22</p> <p><b>defective</b> [1] 69:23</p> <p><b>defendant</b> [13] 18:16 21:6, 21 22:4 23:10 68:11 85:6 103:2,22,23 110:19 118:3, 14</p> <p><b>defendant's</b> [5] 17:25 18:2 20:19 103:21 105:6</p> <p><b>defendants</b> [14] 18:7,14 27:6 29:8,21 30:13 49:3,8 79:8 91:7 105:2,13 106:7 116:15</p> <p><b>defendants'</b> [3] 14:23 26:25 49:3</p> <p><b>defense</b> [3] 27:23 51:14,16</p> <p><b>defer</b> [1] 51:8</p> <p><b>define</b> [10] 14:16 24:25 25:13 27:25 28:6 31:11,22 45:21 49:17 65:18</p> <p><b>defined</b> [14] 4:23 45:1,9,15 50:2 52:5 65:6,20 69:15 97:7 100:11 103:18 106:3 120:7</p> <p><b>defines</b> [1] 5:7</p> <p><b>defining</b> [1] 89:20</p> <p><b>definitely</b> [1] 54:21</p> <p><b>definition</b> [42] 25:5,9,18,22, 25 39:17 40:16,18 41:25 69:19 75:12,14 82:14 85:3 91:11,12 93:14,19,20 96:4, 12,12,17,22 97:4 103:24 105:22 106:5,8 107:1 119:17,20,23,24 120:1,6,6,19, 21,22,24 121:1</p> <p><b>definitions</b> [3] 27:7 93:7 120:24</p> <p><b>definitive</b> [1] 35:4</p> <p><b>definitively</b> [1] 46:25</p> <p><b>delay</b> [1] 51:8</p> <p><b>deliberately</b> [1] 102:8</p> <p><b>demonstrate</b> [1] 63:3</p> <p><b>demonstrates</b> [1] 44:9</p> <p><b>denial</b> [1] 57:22</p> <p><b>denied</b> [5] 12:1 97:8 115:15 120:8,15</p> <p><b>denying</b> [4] 86:9,12 89:24 112:3</p> <p><b>Department</b> [2] 2:5 30:25</p> <p><b>departure</b> [1] 109:9</p> <p><b>depends</b> [1] 13:9</p> <p><b>deprive</b> [1] 18:7</p> <p><b>deprived</b> [1] 103:12</p> <p><b>deputizing</b> [1] 30:20</p> <p><b>derive</b> [1] 55:11</p> <p><b>describe</b> [1] 101:21</p> <p><b>described</b> [1] 84:1</p>	<p><b>describing</b> [1] 103:23</p> <p><b>description</b> [1] 37:2</p> <p><b>descriptions</b> [1] 37:5</p> <p><b>designed</b> [1] 117:14</p> <p><b>desk</b> [1] 31:3</p> <p><b>despite</b> [2] 37:4,4</p> <p><b>detail</b> [1] 20:22</p> <p><b>determination</b> [1] 84:19</p> <p><b>determine</b> [6] 5:21 10:3 24:12 32:4 89:14 101:13</p> <p><b>determining</b> [1] 89:11</p> <p><b>device</b> [3] 23:1 51:20 117:13</p> <p><b>devices</b> [1] 23:13</p> <p><b>Devlin</b> [1] 116:22</p> <p><b>dice</b> [1] 29:21</p> <p><b>difference</b> [10] 10:24 16:22 37:8 46:24 47:3,17 59:1 68:9 105:22 121:9</p> <p><b>differences</b> [2] 91:5 108:9</p> <p><b>different</b> [32] 22:23 23:13, 17 32:17 33:22 35:5 40:19 41:10,11,11 48:22 53:22 61:14 63:24 64:17 68:20 70:18 78:6 85:22,24 86:16 89:16 91:4 96:18,19 98:20 99:2 109:1,19 110:14 112:24 113:17</p> <p><b>differently</b> [5] 51:2 54:12 55:2 78:1 108:24</p> <p><b>difficult</b> [1] 54:23</p> <p><b>dilemma</b> [1] 37:2</p> <p><b>direct</b> [1] 72:8</p> <p><b>directed</b> [1] 77:12</p> <p><b>directly</b> [2] 27:24 98:25</p> <p><b>disability</b> [1] 99:17</p> <p><b>disagree</b> [9] 13:3 14:18 22:10,21 28:19 34:10 42:17 68:4 86:14</p> <p><b>disaster</b> [1] 30:3</p> <p><b>disconnect</b> [1] 43:20</p> <p><b>discretion</b> [6] 30:20 84:13 89:14,23,25 95:23</p> <p><b>discretionary</b> [2] 83:25 89:13</p> <p><b>discrimination</b> [10] 57:20, 23 98:11,12,19,20 99:17, 18 109:20,20</p> <p><b>discussed</b> [1] 121:17</p> <p><b>discussing</b> [1] 38:21</p> <p><b>discussion</b> [4] 72:21 73:22 84:1 110:16</p> <p><b>dismiss</b> [3] 13:13 83:11,22</p> <p><b>dispositive</b> [1] 84:9</p> <p><b>dispute</b> [1] 31:20</p> <p><b>disregarded</b> [1] 90:11</p> <p><b>disregarding</b> [1] 90:23</p> <p><b>disseminated</b> [4] 50:1 65:10 66:4,19</p> <p><b>dissemination</b> [1] 65:13</p> <p><b>district</b> [42] 6:24,25 16:17, 20 34:3,19 38:7,24 51:7 68:17,22 75:18 77:9 84:9, 10,18 85:3,9,12 86:24 87:1,</p>
--	--	--	---	--

## Official - Subject to Final Review

<p>2,12 90:11,23 91:8,18,23 92:5 95:18 96:17,25 98:1, 2 111:11 114:22 119:16,22, 22 120:3,23,25 disturbs [1] 118:20 divergences [1] 108:8 divert [1] 101:16 docket [1] 120:4 doctrine [5] 84:3 87:17 88: 20 93:1 95:4 Document [1] 91:9 doing [9] 12:12 22:11 27:3 31:2,2,6 47:22 86:5 117:1 dole [1] 51:11 dollars [1] 49:10 done [6] 10:11 42:3 43:11 104:16 110:18,18 door [1] 69:6 doubt [2] 90:20,21 down [4] 22:6 83:15 100:4 116:8 drives [1] 29:18 dropped [1] 9:23 due [2] 118:24 120:10 Dukes [1] 110:24 during [5] 9:20 44:20,23 45:11 69:16 duty [1] 52:11 Dyk [1] 108:13</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p>each [5] 5:9,22 42:9,13 63: 2 earlier [15] 9:12,16 74:3,6, 21 84:1 87:7 90:9 91:2 94: 10,24 97:5 102:21 103:23 112:21 early [3] 24:8,13 51:23 easily [5] 17:22 25:11 28:1 53:1 105:3 East [1] 78:4 easy [8] 20:12 46:13,18,22 49:16 103:7 118:15 121: 18 economic [3] 101:7 107: 11 108:10 effect [4] 81:10 95:24 105: 20 118:22 efficiencies [2] 117:13,15 effort [1] 45:2 either [7] 4:16 5:18 6:2 22: 6 51:6 77:18 83:13 element [4] 44:17 58:16 78: 13,18 elephant [1] 105:9 eliminate [3] 26:2,10 107:3 emphasis [1] 73:20 empirical [1] 64:5 end [13] 14:16 29:22 42:9 45:18 47:8 49:25 51:9 62: 16 65:14 67:23 70:5 106:6 121:21 endorsing [3] 53:23 70:24, 25</p>	<p>enforcement [2] 30:15,20 enforcing [1] 30:16 enjoyment [2] 97:9 120:8 enough [6] 16:1 20:12 22: 17 31:21 62:6 105:13 ensure [1] 24:13 enter [1] 74:1 entered [5] 8:13,15 9:18 10:2 112:5 entire [4] 13:6,13,16 27:23 entirely [2] 82:13 107:21 entitled [1] 42:10 equal [2] 97:8 120:8 equitable [1] 36:12 equity [2] 54:18 116:20 erred [1] 114:4 error [4] 75:6,6,10 87:19 errors [1] 76:4 especially [1] 109:3 ESQ [4] 3:3,6,9,12 ESQUIRE [2] 2:2,8 essentially [2] 49:23 121: 19 establish [3] 41:17 47:4 117:8 established [2] 79:9 102: 14 establishes [1] 41:7 ET [2] 1:7 79:10 evaluated [1] 47:12 even [24] 7:3 28:18 38:10 39:19 41:7 43:14 48:4 50: 23 58:7 68:10 69:19 70:1 75:10,13,16 79:14 82:20 83:14 85:12 87:12 95:14 100:10,18 121:22 eventually [2] 45:7 116:8 Everybody [6] 6:21 45:6,9 68:18 69:3 105:9 everyone [6] 39:18 54:16 57:13 61:12 98:7 101:11, 20 109:2 everything [5] 17:18 18:6 29:22 67:25 87:11 evidence [1] 19:24 ex [1] 101:13 exact [2] 68:19 118:17 exactly [12] 16:13,18 21:3 32:15 67:2,5,5,11,11 69:7 76:24 87:17 examination [1] 110:19 example [10] 5:3 49:4 54: 10 60:19 69:13 79:5 87:19 94:12,16 101:10 examples [2] 54:13 95:11 Except [2] 16:19 105:1 exception [10] 54:25 81:17 88:21,22,25 89:2,2 90:4 95:1,6 exceptions [1] 81:14 exchanged [2] 88:16 94:4 exclude [1] 55:18 excluded [1] 102:9 exclusively [1] 81:3</p>	<p>exercise [1] 95:23 exercised [2] 89:23,25 exercises [2] 22:13 116:25 exercising [1] 117:2 exist [1] 61:24 existence [1] 80:20 existing [2] 91:13 111:13 exists [2] 20:16 28:13 expand [1] 106:5 expanding [1] 107:1 experiment [1] 104:25 expert [1] 103:3 experts [1] 102:20 expired [1] 83:4 explain [2] 29:16 56:6 explained [3] 22:25 108:9 121:10 explains [2] 87:24 110:13 explicitly [2] 6:24 16:21 explode [1] 67:24 exposed [1] 57:24 exposure [1] 22:3 extend [1] 93:24 extent [2] 27:19 107:4 extract [1] 47:21</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p>face [4] 16:16 17:10 25:8 52:6 faced [2] 11:19 104:16 facilities [3] 15:16,17 120: 9 facility [2] 31:24 120:15 facing [2] 12:8 105:11 fact [10] 15:25 29:18 38:6 71:1 72:1 74:10 75:3 86: 18 92:15 100:1 facts [8] 31:8,10,11,16 37: 23 38:17,19 108:24 factually [1] 25:14 fail [2] 28:25 96:22 failed [2] 20:2 84:15 fails [1] 15:1 failsafe [3] 93:17 103:17 112:22 failure [2] 82:23 120:10 fairly [2] 97:2 121:24 fairness [1] 98:22 Falcon [3] 57:19 70:19 78: 3 fall [1] 75:3 false [2] 65:6,9 far [3] 35:5 52:2,23 fatal [1] 59:2 favor [1] 27:22 favorite [1] 113:10 FCRA [1] 66:13 feasible [2] 80:13 108:15 feature [1] 118:13 federal [5] 30:14,16 80:4, 23 82:9 fee [7] 44:24 45:8,20,21,22 49:18,21 fees [3] 44:15,18 46:16</p>	<p>few [3] 60:14 68:20 69:8 fight [6] 11:12 65:17 85:2 91:7 93:7 102:16 figure [15] 28:2 32:15 35: 21,25 45:7 46:13,18,22 48: 11 49:21 50:8 68:18 69:6 86:10 108:15 figures [1] 22:15 figuring [2] 47:6 51:16 file [5] 85:7 87:14 92:8 112: 4 114:7 filed [5] 73:4,4 82:12 88:6 115:8 final [2] 48:18,21 finality [3] 118:20,22 119:4 find [3] 51:24 55:9 67:20 finds [1] 80:7 fine [4] 59:16 60:22 61:9 75: 25 First [19] 4:12 5:12,15,22 9: 2 13:18 15:7 22:7 27:13, 17 48:15 64:2 91:9 93:14 104:12 108:13 115:11 118: 8,19 fits [1] 120:19 five [2] 41:15 43:5 fleshed [1] 82:18 flip [1] 30:1 flow [1] 37:19 fluid [1] 9:25 fly [2] 81:18 99:13 follow [3] 8:7 13:20 33:12 followed [1] 61:1 following [2] 62:11 74:4 follows [1] 96:9 Foods [6] 66:24 80:3 102: 23,24 104:14,25 footnote [2] 91:20 92:9 force [7] 16:4 25:16 62:18 63:2,8 71:9 75:24 foreclosed [1] 42:20 forerunner [1] 55:4 forfeited [1] 82:25 form [2] 42:1 103:9 formal [1] 9:3 forth [1] 70:23 forward [9] 18:20 19:15 31: 1 65:8 71:4,7,23 72:5,13 found [4] 6:24 34:4 53:9 65:8 founding [1] 117:19 fourth [1] 29:12 frame [2] 44:21,24 framework [1] 108:25 FRANCISCO [122] 2:2 3:3, 12 4:6,7,9 6:13 7:16 8:16, 21,25 9:13,21 10:6,9,12 11: 1,5,13 12:3,6,10,15,18,22, 23 13:2,11 14:3,7,14 15:23 16:7,19 17:4,9,13,24 18:4 19:9 20:14,19,25 21:5,10, 22 22:21 23:21 24:10,18, 25 25:6,8,13,20,24 26:8,13, 18,21,23 27:13 28:17,22</p>	<p>29:3,11,17 30:6 31:14 33: 13,15 34:1,14,17,23 35:1, 16,20 36:5,24 38:1,15 39:2, 11,15,25 40:4,12 41:21 42: 6,16,20,23 43:10,13,17 44: 7 45:4,10,16 46:1,4,8,16, 21,25 47:9,15 48:4,19 49: 14 50:6 65:15 73:21 75:16 83:3 95:6 96:14 116:2 119: 9,11,13 Francisco's [6] 60:15 71:2, 5 100:13 109:12,24 frankly [1] 60:15 fraud [1] 15:1 Freight [2] 5:13 78:5 frequency [1] 100:24 frequently [2] 50:19 76:3 friend [4] 33:9 120:13 121: 10,19 friends [1] 88:4 frog [1] 111:19 front [9] 14:16 31:3 37:9,25 45:18 49:25 53:11 68:18 75:12 full [4] 17:16 93:13 97:8 120:8 fundamental [6] 21:24 59: 21 64:6 79:12,16 82:4 fundamentally [1] 13:3 further [4] 11:8 16:2 55:5 63:15 future [1] 66:13</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p>gajillion [1] 49:9 game [1] 46:12 gatekeeping [1] 84:14 gather [1] 76:19 gave [1] 96:11 gears [1] 81:8 General [10] 2:4 13:16 30: 22 31:10 81:12 94:10,11, 23 95:1 105:18 generally [1] 57:8 generate [1] 45:3 gets [3] 14:12 36:12 47:7 getting [1] 56:13 give [8] 8:25 12:25 60:16 65:11 72:23,24 80:4,5 given [9] 9:7 18:19,21 32:6, 23 35:4 54:5 72:25 83:3 gives [2] 11:18 27:7 global [1] 103:25 goal [1] 107:3 good-faith [1] 18:17 goods [1] 120:8 Gorsuch [52] 23:23,24 24: 11,23 25:3,7,12,15,21 26:3, 12,15,19,22,24 28:10,21 29:2 53:7,15,20 54:1,9 55: 8,13,20 56:2,11,17,22 57:4, 10 58:2 61:4,19 70:24 71: 19,20 72:1,4,10,15,17,20 74:9,20,22 75:21 76:9 102:</p>
--	---	--	---	--

## Official - Subject to Final Review

<p>21 103:22 115:21  <b>Gorsuch's</b> <sup>[1]</sup> 58:24  <b>got</b> <sup>[14]</sup> 6:18 10:8 11:8 14:15,18 21:16 24:9 37:8 43:25 45:19 70:4,4 93:11 111:19  <b>Gotcha</b> <sup>[1]</sup> 39:9  <b>gotten</b> <sup>[1]</sup> 77:18  <b>government</b> <sup>[3]</sup> 64:16 72:22 116:4  <b>grade</b> <sup>[1]</sup> 70:4  <b>grant</b> <sup>[2]</sup> 93:10 102:11  <b>granted</b> <sup>[2]</sup> 62:16 83:12  <b>granting</b> <sup>[4]</sup> 86:8,11 89:24 112:3  <b>Gratz</b> <sup>[1]</sup> 99:21  <b>great</b> <sup>[1]</sup> 113:10  <b>greater</b> <sup>[1]</sup> 73:20  <b>ground</b> <sup>[1]</sup> 13:10  <b>group</b> <sup>[2]</sup> 52:13 122:1  <b>groups</b> <sup>[3]</sup> 11:9 109:13 110:5  <b>Grove</b> <sup>[2]</sup> 4:19 23:1  <b>guess</b> <sup>[11]</sup> 14:2 27:13,17 45:12 46:15 51:2 54:11 69:8 73:20 77:5 107:17  <b>GUPTA</b> <sup>[69]</sup> 2:8 3:9 20:5 79:22,23,25 82:1 83:8,16,19 84:23 85:19 86:1,4 87:5,16 89:9,17,22 90:14 91:2,19 92:3,9,20,24 96:7,10,13,23 97:7,15,20 98:16,24 99:9 100:5,8,16,20 101:23 102:5,10 104:13 105:15 106:16 107:22 108:19,22 109:17 110:2,6 111:17,21 112:6,10,15,19,25 113:5,14,24 114:1,6,14 115:1 116:10 117:11 119:8</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>Halliburton</b> <sup>[4]</sup> 59:18,25 62:3 64:7  <b>hand</b> <sup>[1]</sup> 106:12  <b>handing</b> <sup>[1]</sup> 69:2  <b>handled</b> <sup>[1]</sup> 67:14  <b>happen</b> <sup>[5]</sup> 9:19 83:2,3,5 118:10  <b>happened</b> <sup>[2]</sup> 103:15 104:22  <b>happening</b> <sup>[1]</sup> 106:23  <b>happens</b> <sup>[9]</sup> 23:3 33:23 34:15 35:22 63:19 83:17 101:5 110:14,14  <b>happy</b> <sup>[2]</sup> 62:21 97:21  <b>hard</b> <sup>[4]</sup> 15:14 71:2 78:24 97:10  <b>harder</b> <sup>[1]</sup> 110:7  <b>harm</b> <sup>[5]</sup> 42:13 43:9 44:17 78:12,17  <b>harmed</b> <sup>[1]</sup> 47:6  <b>harming</b> <sup>[1]</sup> 81:10  <b>harms</b> <sup>[1]</sup> 78:15  <b>harshness</b> <sup>[1]</sup> 54:18</p>	<p><b>Hawaii</b> <sup>[1]</sup> 99:4  <b>hazy</b> <sup>[1]</sup> 27:3  <b>heads</b> <sup>[1]</sup> 6:3  <b>Health</b> <sup>[1]</sup> 30:25  <b>hear</b> <sup>[7]</sup> 4:3 12:24 20:6 40:13 44:3 53:23 74:13  <b>heard</b> <sup>[5]</sup> 25:16 38:8 51:15 72:20 83:4  <b>held</b> <sup>[6]</sup> 4:16 5:12 19:11 47:11 80:2 92:18  <b>help</b> <sup>[2]</sup> 40:11 56:6  <b>helpful</b> <sup>[1]</sup> 20:4  <b>high</b> <sup>[1]</sup> 106:17  <b>higher</b> <sup>[1]</sup> 69:20  <b>hind</b> <sup>[1]</sup> 82:17  <b>hindered</b> <sup>[1]</sup> 16:8  <b>hindsight</b> <sup>[2]</sup> 82:16,17  <b>historical</b> <sup>[3]</sup> 54:2,13 80:16  <b>history</b> <sup>[2]</sup> 54:11 55:1  <b>hold</b> <sup>[4]</sup> 12:5 61:4 80:10 107:11  <b>holding</b> <sup>[6]</sup> 88:5,11 94:2,7 112:13 114:16  <b>HOLDINGS</b> <sup>[1]</sup> 1:4  <b>holds</b> <sup>[1]</sup> 75:13  <b>Honor</b> <sup>[14]</sup> 6:13 11:1 13:24 16:4 21:11 24:18 28:18 29:11 35:3 38:15 43:11 47:16 48:6 49:15  <b>hope</b> <sup>[1]</sup> 20:5  <b>hotels</b> <sup>[2]</sup> 11:20 38:10  <b>hours</b> <sup>[3]</sup> 103:11,20 104:8  <b>Human</b> <sup>[1]</sup> 30:25  <b>hundred</b> <sup>[3]</sup> 38:1 39:20 53:5  <b>hypothesis</b> <sup>[1]</sup> 75:15  <b>hypothesizing</b> <sup>[1]</sup> 37:7  <b>hypothetical</b> <sup>[6]</sup> 34:22 44:6 45:17 46:17 49:16 60:21</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>idea</b> <sup>[4]</sup> 93:11,23 98:4 108:5  <b>identical</b> <sup>[3]</sup> 17:6,11 119:25  <b>identify</b> <sup>[6]</sup> 10:4,5,24 19:21 67:3 100:15  <b>identifying</b> <sup>[2]</sup> 53:2 97:14  <b>idiosyncratic</b> <sup>[3]</sup> 67:21 69:19 70:7  <b>ignore</b> <sup>[1]</sup> 92:7  <b>ignored</b> <sup>[1]</sup> 91:25  <b>Ill</b> <sup>[92]</sup> 4:14,17,24 5:1,20 6:4 14:15 15:12,20 21:25 24:21,24 28:19 31:12,15 39:19 40:15,23 41:20 42:12 43:2 45:23,25 48:2,5,9,16 49:17 50:22 51:1,4,5,8,9,17 53:10,11,13,16,18 54:16 55:19,21,22 56:1,3,10,11,18,19,23 57:14 58:5,5,15 60:10 61:11,11,14,23 62:6,13,17,25 63:1,8,10,20,</p>	<p>23 64:6 68:14 70:10,11,17 71:2,8 72:13 76:14,21 79:16 80:4,20,24 97:17 98:12 109:7 116:3,13 117:8 118:19 119:1 121:17  <b>Ill's</b> <sup>[1]</sup> 81:20  <b>ill</b> <sup>[1]</sup> 57:25  <b>ill-advised</b> <sup>[1]</sup> 95:9  <b>Illinois</b> <sup>[1]</sup> 87:24  <b>illustrate</b> <sup>[3]</sup> 23:4 38:18 59:19  <b>illustrated</b> <sup>[1]</sup> 51:14  <b>illustrates</b> <sup>[2]</sup> 21:23 23:5  <b>illustration</b> <sup>[1]</sup> 30:24  <b>imagine</b> <sup>[7]</sup> 25:21,25 32:7,19 44:22 68:6 75:18  <b>immaterial</b> <sup>[4]</sup> 87:3,4,13 113:12  <b>immaterially</b> <sup>[1]</sup> 34:2  <b>immediately</b> <sup>[2]</sup> 10:8 11:16  <b>implausibility</b> <sup>[1]</sup> 18:22  <b>implausible</b> <sup>[1]</sup> 18:19  <b>import</b> <sup>[2]</sup> 88:18,20  <b>important</b> <sup>[6]</sup> 15:21 62:6 73:23 95:19,19,21  <b>importantly</b> <sup>[2]</sup> 7:6 121:3  <b>impossible</b> <sup>[3]</sup> 101:18,20 110:23  <b>improvidently</b> <sup>[1]</sup> 83:12  <b>inadmissible</b> <sup>[2]</sup> 19:18,19  <b>include</b> <sup>[8]</sup> 4:23 25:14 40:15,24 45:21 100:12 107:1 120:7  <b>included</b> <sup>[1]</sup> 39:3  <b>includes</b> <sup>[10]</sup> 11:9 13:15 28:7 45:19 48:7 50:21 52:6 91:13 105:23 121:22  <b>including</b> <sup>[3]</sup> 55:25 56:10,10  <b>inconsistent</b> <sup>[2]</sup> 51:18 68:1  <b>increasing</b> <sup>[1]</sup> 22:3  <b>incremental</b> <sup>[2]</sup> 105:22 106:24  <b>Indeed</b> <sup>[1]</sup> 54:16  <b>independent</b> <sup>[1]</sup> 71:9  <b>indicates</b> <sup>[1]</sup> 82:9  <b>individual</b> <sup>[12]</sup> 4:13 15:2 19:10,12,19 48:13,14,20 53:5 78:21,24 117:4  <b>individualized</b> <sup>[3]</sup> 52:22 64:9 118:2  <b>inferences</b> <sup>[1]</sup> 66:10  <b>information</b> <sup>[3]</sup> 49:5 52:8 65:9  <b>infrequently</b> <sup>[1]</sup> 110:8  <b>inherent</b> <sup>[1]</sup> 18:22  <b>injunction</b> <sup>[3]</sup> 43:17 94:13,15  <b>injunctions</b> <sup>[1]</sup> 43:13  <b>injure</b> <sup>[1]</sup> 49:7  <b>injured</b> <sup>[35]</sup> 8:24 10:5 21:9 24:14 25:2 41:1 42:10 45:</p>	<p>1,13 47:13 48:8 49:13 50:3,23 51:24 52:7,14 54:23 55:10 65:13 69:3,7,23 70:6 72:5 73:1 76:1 97:14 98:8 99:20 100:12,17 103:6 112:23 120:18  <b>injuries</b> <sup>[5]</sup> 58:15 68:9 70:19 78:6,12  <b>injury</b> <sup>[55]</sup> 12:5 16:3 41:18 43:2 49:7 50:21,22,24 51:1,4,5 52:15 53:16 54:6,16,21 55:17,19,21,25 56:1,9,10,12,19 57:2,18 58:6,8,8 59:1,8,24 60:5,10 61:14,16 62:6,14 64:6 67:4,22 68:19,21 69:25 70:2,17 71:23 79:9,16 91:14 93:16 97:5 98:13 106:4  <b>innovation</b> <sup>[1]</sup> 55:5  <b>inoperative</b> <sup>[3]</sup> 6:9 7:20 112:17  <b>inquiries</b> <sup>[1]</sup> 119:3  <b>inquiry</b> <sup>[10]</sup> 17:19 20:13 24:8 28:15 49:22 67:7 80:12 93:3 110:25 111:1  <b>insignificant</b> <sup>[1]</sup> 15:23  <b>insist</b> <sup>[1]</sup> 87:21  <b>instead</b> <sup>[4]</sup> 10:8 18:16 42:2 65:20  <b>intended</b> <sup>[1]</sup> 87:17  <b>interest</b> <sup>[5]</sup> 103:21 106:20,20 107:15,16  <b>interests</b> <sup>[2]</sup> 107:19,20  <b>interferes</b> <sup>[1]</sup> 30:19  <b>interlocutory</b> <sup>[3]</sup> 81:13 86:7 94:18  <b>interpretation</b> <sup>[1]</sup> 34:19  <b>interpreted</b> <sup>[1]</sup> 57:17  <b>interpreting</b> <sup>[2]</sup> 86:6 113:21  <b>interrogatory</b> <sup>[2]</sup> 103:9 104:17  <b>intervene</b> <sup>[1]</sup> 4:18  <b>intervenor</b> <sup>[2]</sup> 4:17 42:25  <b>intervention</b> <sup>[4]</sup> 23:13,15 42:25 43:4  <b>introduce</b> <sup>[1]</sup> 19:10  <b>invitation</b> <sup>[1]</sup> 81:17  <b>invite</b> <sup>[1]</sup> 27:9  <b>invites</b> <sup>[1]</sup> 119:2  <b>invocation</b> <sup>[1]</sup> 42:11  <b>invoked</b> <sup>[1]</sup> 41:4  <b>iota</b> <sup>[2]</sup> 16:21 121:8  <b>Iowa</b> <sup>[1]</sup> 103:5  <b>irrelevant</b> <sup>[1]</sup> 101:22  <b>Isn't</b> <sup>[13]</sup> 8:3,5 16:13 18:2 28:14,23 29:10 53:10 77:6 81:5 94:6 114:19 118:16  <b>issue</b> <sup>[29]</sup> 5:1 12:13,15 19:3 20:20 21:10 39:13,14 49:19 52:16 58:21,23 59:1,3,8 61:6 64:13 70:14 73:5 76:22 77:13,23 95:15 97:25 105:12 119:15 121:6,7,17</p>	<p><b>issued</b> <sup>[2]</sup> 7:9 73:13  <b>issues</b> <sup>[16]</sup> 5:11 15:2 18:12 26:4 28:11,12 38:20 47:5 57:11 58:3,3 77:11,18 82:7,18 86:24  <b>issuing</b> <sup>[2]</sup> 68:25 69:1  <b>items</b> <sup>[1]</sup> 59:20  <b>itself</b> <sup>[5]</sup> 64:21 74:23 81:20 98:12 105:25</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>Jackson</b> <sup>[38]</sup> 40:7,8,13 42:3,7,19,22 43:3,12,16,19 44:8 45:5,11,24 46:3,7,14,19,23 47:2,10 48:1,17,21 50:5 58:13,18 59:15 77:4,5 78:7,10 79:17 115:24,25 117:10 119:5  <b>Jackson's</b> <sup>[1]</sup> 60:20  <b>Jacksonville</b> <sup>[1]</sup> 88:24  <b>job</b> <sup>[3]</sup> 109:3 111:12 116:1  <b>joinder</b> <sup>[3]</sup> 4:20 23:1,12  <b>joined</b> <sup>[3]</sup> 54:19,24 104:4  <b>joining</b> <sup>[1]</sup> 12:12  <b>joins</b> <sup>[1]</sup> 116:4  <b>JOSHI</b> <sup>[66]</sup> 2:4 3:6 50:13,14,17 52:1 53:12,17,24 54:8,11 55:11,14,23 56:5,14,20,25 57:9,15 58:4,14,18 59:5,11,17 61:13,25 62:17,23 63:13 64:1,4,19 65:22 66:1,6 67:2,5,8,11,14 68:4 69:8 70:13,21 71:6,13,15,24 72:3,6,14,16,19 73:2 74:17,21 75:2 76:3,10,24 77:25 78:8 79:4,18  <b>Joshi's</b> <sup>[1]</sup> 86:14  <b>Judge</b> <sup>[13]</sup> 15:5,6 18:10 20:21 87:22 93:2 106:15 108:12,12,13,18,21,23  <b>judges</b> <sup>[1]</sup> 111:11  <b>judgment</b> <sup>[20]</sup> 5:19 6:19 7:9,9,13 8:13,15 9:18 10:2 13:7 27:5 35:13 37:25 73:14 76:2 104:19,22 121:13,13 122:4  <b>judgments</b> <sup>[5]</sup> 27:1 118:11,20,21 119:4  <b>June</b> <sup>[2]</sup> 33:19 86:20  <b>jurisdiction</b> <sup>[42]</sup> 5:16,20,22,24 6:11,19 7:12 9:5 10:14,17 13:18,19 19:2 21:25 22:6 23:16 41:3 47:24 48:12,19 73:16,17 74:13,24 75:4 80:23 81:6 82:9 86:8,22 89:11,21 95:17 114:4,23 115:4,5,11 116:25 121:14,23 122:2  <b>jurisdictional</b> <sup>[20]</sup> 21:14 81:21 82:3,11,23 88:5,11 89:8 94:2,6 95:20 113:12,19,19,24,25 114:3,12,16 115:12  <b>jurisdictionally</b> <sup>[1]</sup> 73:15</p>
--	--	--	--	--



## Official - Subject to Final Review

<p><b>jurisprudence</b> [2] 88:3 113:17 <b>Justice</b> [321] 2:5 4:3,9,18 6:6 7:15,18 8:6,8,19,22 9:11,15,22 10:7,10,16 11:3,11,15 12:4,7,14,17,20,23 13:9 14:1,5,9 15:8,8,9 16:5,9,24 17:8,10,14 18:1 19:4 20:4,18,23 21:2,6,18 22:8,25 23:20,22,22,24 24:3,6,11,23 25:3,7,12,15,21 26:3,12,15,19,22,24 28:10,21 29:2,4,4,6,15 30:1 31:8,19 32:10,11,11,13 33:14,16,20 34:6,7,8,15,21,25 35:14,17,21,23 36:22,25 37:6,12 38:2,4,8 39:1,9,12,16 40:2,5,6,6,8,13 42:3,7,19,22 43:3,12,16,19 44:8 45:5,11,24 46:3,7,11,14,19,23 47:2,10 48:1,17,21,25 50:5,11,17 51:22 53:7,15,20 54:1,9,10 55:8,13,20 56:2,11,17,22 57:4,10 58:2,13,18,24 59:6,13,15 60:13,20 61:4,19 62:9,21 63:10,14,15,16,17 64:3,12 65:2,3,4,24 66:2,25 67:3,6,9,12,12,13 68:15 69:10 70:9,20,22,24 71:11,14,17,18,18,20 72:1,4,10,15,17,20 74:9,20,22 75:8,21 76:9,11,11,13 77:1,2,2,4,5,8 78:7,10 79:17,20,25 80:3 81:24 83:1,14,17 84:21,25 85:15,16,21 86:2,23 87:6 89:3,15,18 90:7,8,16,17 91:3,17,21 92:4,17,22 96:3,8,11,14,16 97:6,10,16 98:16 99:5,15 100:3,6,9,17,20 101:14 102:2,8,20 103:22 104:2,3,4,6 105:8 106:9 107:13 108:17,21 109:11,18 110:3 111:14,14,18,22 112:7,11,16,20 113:1,3,6,6,8,9,22,25 114:2,11,21 115:17,18,18,20,21,22,23,24,25 116:19,22 117:10,24 119:5,6,9,14 122:6 <b>Justice's</b> [2] 15:10 107:18</p> <hr/> <p><b>K</b></p> <p><b>Kadish</b> [1] 73:13 <b>Kagan</b> [42] 15:8,9 16:5,9,24 17:8,10,14 18:1 19:4 20:4,18,23 21:2,6,18 22:8 23:20 24:6 31:19 33:20 34:7 37:6 59:6,13 60:13 67:12,13 68:15 70:9,20,22 71:11,14,17 77:8 90:16 91:3 109:11,18 110:3 115:20 <b>Kagan's</b> [1] 34:9 <b>Katsas</b> [5] 15:5 20:21 108:12,21,23 <b>Katsas's</b> [1] 108:18</p>	<p><b>Kavanaugh</b> [21] 29:5,6,15 30:1 31:8 32:10 38:4 76:12,13 77:1 90:8,17 91:17,21 92:4,17,22 107:13 108:17,21 115:22 <b>Kavanaugh's</b> [1] 48:25 <b>Kayatta</b> [4] 15:6 18:10 20:21 108:12 <b>keep</b> [2] 40:22 53:3 <b>kept</b> [1] 103:2 <b>key</b> [1] 15:19 <b>kick</b> [1] 21:14 <b>kind</b> [17] 36:12 37:14 39:13 51:12 58:6 64:8 67:23 68:14,20 79:1,13 88:21 90:4 99:12 101:18,22 105:1 <b>kinds</b> [3] 70:18 98:20 101:6 <b>kiosk</b> [12] 10:18 15:18 17:2 18:21 31:18,23,24 32:5 39:22 109:14,15 120:16 <b>kiosks</b> [15] 5:4,5,10 11:7,8 19:14,14,16,17 31:4 32:9,14 109:15,16 120:11 <b>knowing</b> [1] 118:15 <b>known</b> [1] 65:14 <b>knows</b> [2] 45:6 105:9</p> <hr/> <p><b>L</b></p> <p><b>LABCORP</b> [12] 1:4 31:23 39:21 81:1,7,10 93:8 94:5,25 97:2 100:19 120:15 <b>LabCorp's</b> [3] 81:2 88:17 120:10 <b>LABORATORY</b> [2] 1:3 4:4 <b>lack</b> [3] 83:22 114:4,23 <b>lacked</b> [1] 121:23 <b>Lake</b> [1] 103:5 <b>land</b> [1] 56:15 <b>language</b> [5] 8:4 33:21 117:24,25 120:13 <b>lard</b> [1] 28:5 <b>largely</b> [1] 108:8 <b>larger</b> [1] 30:2 <b>Laroe</b> [5] 4:16 23:14 42:6,21,23 <b>last</b> [3] 63:18 67:16 76:17 <b>late</b> [1] 82:21 <b>later</b> [2] 26:6 70:4 <b>Laughter</b> [1] 104:5 <b>law</b> [13] 30:14,20 41:9,15 71:25 72:8 75:6,7,10 76:4 92:2 113:20 118:23 <b>laws</b> [1] 30:17 <b>lawyer</b> [3] 90:22 91:25 93:12 <b>lawyers</b> [6] 30:21 47:20 49:9 90:20 92:1 93:12 <b>lead</b> [1] 100:4 <b>leads</b> [1] 4:22 <b>least</b> [5] 16:16 25:6 57:6 91:22,22 <b>leave</b> [1] 17:14 <b>left</b> [2] 75:9 94:8</p>	<p><b>legal</b> [4] 11:12 47:18,22 108:25 <b>letter</b> [1] 95:8 <b>letters</b> [2] 88:16 94:4 <b>Lewis</b> [1] 78:4 <b>liability</b> [6] 47:4 69:22 78:18,23 79:15 110:15 <b>light</b> [2] 51:21 52:13 <b>likes</b> [1] 69:20 <b>limit</b> [1] 64:23 <b>limitations</b> [2] 7:5 36:19 <b>limited</b> [4] 25:1 49:24 55:10 95:22 <b>limits</b> [2] 81:20 86:7 <b>line</b> [1] 78:2 <b>lined</b> [1] 27:21 <b>lines</b> [2] 20:11 74:3 <b>list</b> [2] 29:12 45:3 <b>literally</b> [2] 30:21 32:3 <b>litigating</b> [2] 27:10,11 <b>litigation</b> [14] 8:10 22:20 27:2 51:23 52:8,10 61:2,2 65:8 105:18 106:6,17 116:20 117:15 <b>little</b> [9] 6:20 17:3 27:2,3,3 51:2 54:12 55:1 81:18 <b>live</b> [3] 90:22 95:23 114:19 <b>logic</b> [1] 107:11 <b>long</b> [3] 22:14 39:5 117:16 <b>longer</b> [1] 81:9 <b>look</b> [19] 18:12 27:14,21 34:8 37:9,17 58:19 67:16,18 77:9,10 78:14 87:2 88:8 92:12 97:1 106:16 108:6 115:8 <b>looked</b> [1] 50:7 <b>looking</b> [5] 8:3 29:23 49:20 57:5 73:19 <b>lose</b> [7] 5:17 6:4 13:5,6,10,12 14:8 <b>loses</b> [2] 13:15 21:21 <b>loss</b> [2] 23:3 121:20 <b>lost</b> [1] 33:8 <b>lot</b> [10] 7:19 52:21 71:21 74:8 91:1,4,4 92:23 101:5 110:14 <b>lots</b> [3] 39:7 40:17 43:23 <b>love</b> [1] 66:24 <b>lower</b> [10] 37:5 86:5 92:25 95:4 97:23 98:8 99:11 100:24 102:15 108:1 <b>LUKE</b> [1] 1:7</p> <hr/> <p><b>M</b></p> <p><b>made</b> [4] 41:14 42:15 60:4 90:4 <b>magnified</b> [1] 105:21 <b>main</b> [1] 39:5 <b>Maine</b> [1] 99:3 <b>majority</b> [1] 28:8 <b>makeup</b> [1] 70:4 <b>manageability</b> [3] 24:8 28:12 107:4 <b>manageable</b> [4] 57:6 60:</p>	<p>18,21 109:6 <b>managerial</b> [1] 111:11 <b>manifestation</b> [1] 30:11 <b>manner</b> [3] 69:12 77:7 119:19 <b>many</b> [14] 17:20 28:8 32:6 43:7,7 45:13 48:25 68:3 78:4,17 90:20 105:12,16 122:1 <b>map</b> [2] 94:21,21 <b>maps</b> [1] 99:17 <b>marginal</b> [1] 106:25 <b>market</b> [1] 15:1 <b>mass</b> [1] 27:9 <b>massive</b> [3] 29:23 31:5 47:21 <b>material</b> [10] 6:23 37:7 84:2,11 85:17 87:3 88:20 93:1 95:4 113:11 <b>materially</b> [7] 17:6,11 33:22 34:12 37:4 119:18,19 <b>matter</b> [21] 1:14 9:3 15:14 17:19 20:8,10 27:15 38:25 39:2,7,21 47:18,18,19,22 64:5 73:17 102:13 105:14 115:2 122:9 <b>matters</b> [5] 27:18 44:1 45:13 47:7 73:8 <b>maximizes</b> [1] 106:19 <b>mean</b> [30] 18:5 20:23 25:16 27:1 32:16 38:3 41:10 42:4 66:7 68:21 76:1,23,25 90:14,18,20 92:20 96:23 98:24 99:10 100:3,21 101:15,23 104:13 105:9,11,15 106:16 108:19 <b>Meaning</b> [1] 112:1 <b>meaningfully</b> [2] 96:18,19 <b>means</b> [3] 61:5 89:19,19 <b>meant</b> [2] 21:2 54:22 <b>measured</b> [1] 107:24 <b>mechanical</b> [2] 53:1 60:18 <b>mechanism</b> [5] 17:21 21:7 80:13 83:25 116:7 <b>mechanisms</b> [1] 19:6 <b>medium</b> [1] 5:7 <b>meet</b> [2] 32:2 60:12 <b>member</b> [3] 32:5 62:18 63:2 <b>members</b> [20] 5:10,18 28:6,8 44:25 45:14 50:20,22,24 52:7,14 55:17,24 56:9,19 57:18 58:7,9 61:24 121:22 <b>membership</b> [2] 110:9,20 <b>memory</b> [1] 65:5 <b>memory's</b> [1] 27:2 <b>mention</b> [1] 118:6 <b>mentioned</b> [5] 31:19 46:11 56:23 73:21 93:3 <b>merely</b> [2] 15:14 16:1 <b>merits</b> [18] 5:15,17,24 10:14 13:12,20,21 14:20,21 21:14,15,17 22:5 28:24 40:9 48:14 51:10 121:16</p>	<p><b>met</b> [1] 49:17 <b>method</b> [1] 101:7 <b>might</b> [15] 37:18 44:10 46:17 49:22 52:8,16 54:22 55:2 68:6 90:9 94:19 99:6 101:12 108:20,23 <b>mine</b> [1] 57:3 <b>mini</b> [1] 14:24 <b>mini-trials</b> [5] 4:25 28:25 32:3 44:4 53:6 <b>minute</b> [1] 6:10 <b>misguided</b> [1] 107:21 <b>missed</b> [1] 70:2 <b>missing</b> [1] 18:3 <b>mistake</b> [1] 84:17 <b>misunderstood</b> [1] 90:9 <b>Mm-hmm</b> [6] 39:15 40:12 44:7 45:4 110:2 111:17 <b>model</b> [1] 101:7 <b>models</b> [1] 108:10 <b>modern</b> [1] 116:21 <b>modification</b> [1] 85:17 <b>modifying</b> [2] 74:6 86:19 <b>moment</b> [5] 8:17 23:8 69:6 109:21,24 <b>money</b> [1] 69:2 <b>moot</b> [9] 81:12,14 83:11 85:5 88:18 94:16,19,22 114:20 <b>mootness</b> [7] 81:14,17 88:21,22,25 95:1,5 <b>most</b> [2] 25:10 121:3 <b>mostly</b> [1] 59:7 <b>motion</b> [1] 13:12 <b>Motor</b> [1] 78:5 <b>move</b> [7] 7:24 8:2 15:19 75:20 83:20,22 95:18 <b>moved</b> [2] 96:2 119:23 <b>moving</b> [1] 85:11 <b>much</b> [7] 21:3 27:22 38:2 46:12 52:8 109:8 116:23 <b>must</b> [7] 55:10 57:13 61:11,17,24 80:19 112:3 <b>myself</b> [1] 32:7 <b>mystery</b> [1] 17:3</p> <hr/> <p><b>N</b></p> <p><b>named</b> [5] 10:17 41:16 57:7 83:23 116:16 <b>naming</b> [1] 10:20 <b>narrower</b> [5] 76:14,15,16,18,23 <b>narrowly</b> [1] 64:21 <b>nature</b> [2] 21:23 41:10 <b>necessarily</b> [5] 5:2,11 14:18,25 19:2 <b>necessary</b> [5] 49:5 54:19,20,24 119:2 <b>need</b> [11] 4:24 10:13 21:7 23:16 24:25 30:10 40:25 41:6 52:17 53:5 63:7 <b>needed</b> [2] 31:20 68:23 <b>needs</b> [5] 5:8 12:16 61:1,18 87:21</p>
--	---	---	---	---

## Official - Subject to Final Review

<p><b>neither</b> [3] 2:7 3:8 50:16  <b>never</b> [9] 21:14 25:4,18 27:5 41:23 43:10 51:15 67:23 98:1  <b>nevertheless</b> [1] 76:6  <b>new</b> [9] 23:15,16 43:1 74:1,1 76:7 81:17 86:11 87:14  <b>next</b> [1] 4:4  <b>nice</b> [1] 38:17  <b>Ninth</b> [3] 6:15 7:7,16,22 32:23 33:1,4,5 34:3 35:12,24 36:7 37:20,25 38:23 39:4 74:11 75:4,11,13 84:2,3 86:20 89:6 112:8,18 113:11,16 114:3 115:10 121:4  <b>nobody</b> [1] 87:20  <b>NOEL</b> [5] 2:2 3:3,12 4:7 119:11  <b>none</b> [1] 111:7  <b>nonetheless</b> [1] 122:3  <b>noninjured</b> [2] 24:5 45:14  <b>nothing</b> [1] 58:15  <b>notice</b> [4] 7:24 74:7 85:6 87:14  <b>notwithstanding</b> [2] 31:4 38:20  <b>number</b> [4] 6:7 29:24 49:6 82:10  <b>numbers</b> [3] 29:20 46:12 47:12  <b>nunc</b> [2] 74:5,19</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>object</b> [1] 20:9  <b>objections</b> [2] 13:23 82:23  <b>obligation</b> [1] 69:4  <b>obscured</b> [1] 82:11  <b>obvious</b> [1] 54:15  <b>obviously</b> [2] 17:11 41:10  <b>odd</b> [1] 37:20  <b>oddity</b> [1] 97:25  <b>OFAC</b> [1] 66:13  <b>often</b> [2] 27:6 110:20  <b>Okay</b> [37] 16:5,9,10 17:12,16 20:4 25:15 26:13,22 29:2 32:15 33:14 34:14 37:18 38:2 40:3 42:22 43:12 46:3,7 53:20 54:1 61:9 63:14 64:3,12 67:6,24 70:9 71:11,14,17 72:17 76:9 77:1 100:5 113:22  <b>old</b> [2] 65:5 74:2  <b>once</b> [2] 30:5 105:10  <b>one</b> [54] 6:8 9:6 13:22 15:5,23 17:4 18:24 19:13 22:9,10,22 25:18,22,25 26:10 28:5,7 29:6,10 30:17 36:8 41:6,6,17 43:6,8 48:17,21 50:9 54:15 61:6 68:5,7 69:9 73:12 74:2,18,21 77:12,20,25 89:4 91:13 92:9 98:13 104:18 109:22 110:7,18 115:9,25 117:1,12 118:5  <b>one-plaintiff</b> [1] 41:24</p>	<p><b>ones</b> [4] 5:2 78:15 109:14,16  <b>only</b> [43] 5:14 12:24 13:4 14:22 19:9 21:19 25:1,1,3 38:16 41:1,6,17 43:13,14 44:23,25 45:22 47:6 49:6,25 51:9 52:6 58:17 60:14 65:19 66:18 72:8 73:1 74:10,25 75:12,24 76:1 92:10 93:17 96:5 100:12 103:19 112:22 114:18 117:22 121:21  <b>open</b> [5] 32:16 36:4 38:14,22 98:22  <b>opening</b> [1] 96:3  <b>operative</b> [5] 8:4 32:21 36:8 37:22 112:13  <b>opinion</b> [8] 8:5 20:25 80:9,10 101:24,25 108:18 116:22  <b>opportunity</b> [1] 72:24  <b>opposite</b> [1] 50:9  <b>opposition</b> [5] 73:6 81:25 82:2 84:23 85:1  <b>oral</b> [6] 1:15 3:2,5 4:7 50:14 79:23  <b>order</b> [102] 4:18 6:9,11,21,22,23 7:3,9,20,21,23,25 8:1,3 16:14,15,16 20:9 24:13 30:12 32:20,21 33:2,6,18,18,20,25 34:1,2,3,4,8,12,12,13 35:9 36:8,10,18 37:3 42:10,14 73:1,19,24,25 74:3,6,10,12,14,18,19,24 75:1,17,25 81:2,9,12 82:13 83:6 84:17 86:8,8,11,15,16,18,20,20,24 87:2,20 88:8,9,10 89:24 90:1,5,12 91:8 92:6,13,15,16 94:2,9 111:20 112:3,5,9,13,17,21 114:18,19 119:17 121:7,9,10  <b>orders</b> [17] 6:7,12 16:22 17:6 34:20,24 35:6 37:9,21,21 69:1 81:13 86:16 90:24 91:5 95:25 115:9  <b>original</b> [6] 43:4 93:23 97:4 119:20 120:1,6  <b>other</b> [35] 5:25 17:1 19:5 23:6 29:14 30:9 33:9 36:4,11 39:7,14 48:23 49:8 50:24 52:15 58:9,12,16 61:14 77:17 82:6 85:21 98:10,19 101:6 103:14 105:20,25 106:12 107:16,23 109:8,23 113:18 115:15  <b>others</b> [3] 41:7 60:11 61:22  <b>otherwise</b> [3] 22:13,18 117:4  <b>ought</b> [1] 55:6  <b>out</b> [62] 12:24 20:24 22:15 24:9,14 26:5 28:2,8,14,23 32:15,25 33:21 35:22,23,25 37:12 39:14 45:7 46:13,18,22 47:6 48:11 49:21 50:</p>	<p>8,8 51:5,11,17 52:18 56:6 57:14 58:20 65:9,12 68:18 69:2,6 75:17 77:17 80:13 82:14,18 84:25 85:2 86:11 88:1 91:3 101:3 103:1,5,8 104:9,22 105:5 108:16,24 109:4 110:4 111:12 116:1  <b>outdated</b> [1] 82:13  <b>outset</b> [3] 61:12 62:15 80:21  <b>outside</b> [2] 86:21 102:17  <b>outstripped</b> [1] 94:13  <b>over</b> [26] 5:20,22 6:11 9:5 22:7 23:16 44:15 45:2 47:23 48:12,19 61:22 67:15 73:16 74:14,24 93:7 98:3,5 103:11 106:21,21 115:11 116:24 121:23 122:2  <b>overall</b> [1] 57:5  <b>overcharge</b> [1] 71:22  <b>overly</b> [3] 29:7 30:4,18  <b>override</b> [2] 34:18,24  <b>overturn</b> [2] 103:12,20  <b>overwhelm</b> [3] 19:3 78:25 79:14  <b>own</b> [14] 4:15 10:4 34:19,19 42:1 54:14 62:17 63:1,8 90:12,24 92:6 107:15,18</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m</b> [1] 122:8  <b>PAGE</b> [6] 3:2 73:23 74:2 91:9 118:8 120:3  <b>pages</b> [1] 120:4  <b>paid</b> [4] 46:16 49:18,21 103:20  <b>paint</b> [1] 111:8  <b>part</b> [8] 4:15 8:9 10:19 23:8 28:18 85:23 87:25 109:16  <b>particular</b> [8] 32:4 58:21 59:3 76:17 77:13,22 89:21 114:23  <b>particularly</b> [1] 32:6  <b>parties</b> [11] 8:14,20 50:1 51:25 54:4,4,19,24 104:15 106:18 116:24  <b>parties'</b> [1] 108:2  <b>party</b> [16] 2:7 3:8 8:8,9 50:16 53:9 54:20 76:6 87:7,8,8,10 93:4 112:3 116:16,17  <b>pass</b> [1] 71:22  <b>past</b> [2] 36:9,18  <b>paths</b> [1] 32:17  <b>pay</b> [1] 101:11  <b>paying</b> [1] 69:20  <b>peace</b> [3] 27:7 30:2 103:25  <b>people</b> [74] 10:17,21,24 11:6,10 13:15 15:15,16,16 17:2,20 18:20 19:16 20:1 21:8,9 24:5,14 25:2 28:3 32:6 39:3,7 40:15,17,24 41:1,12,15 43:23 44:2 45:19,20,22 47:13 48:8 49:6,12,25 50:3 53:9 54:23 65:12,19 67:</p>	<p>20 68:20 69:2,23 76:1 91:4 93:13,18 98:5,14 99:3,20 100:12 101:3,13 103:1,4,9,19 104:8 105:5,23 107:6 109:13 110:5 112:23 117:7,23 121:2 122:1  <b>people's</b> [1] 65:9  <b>per</b> [1] 29:24  <b>percent</b> [2] 19:15 38:1  <b>perfect</b> [3] 5:3 14:3 79:5  <b>perhaps</b> [7] 82:19 83:12 85:13 91:6 103:18 108:22 121:3  <b>period</b> [6] 36:10,18 44:16 45:12 69:16 76:1  <b>permissibly</b> [1] 31:11  <b>permit</b> [1] 112:2  <b>person</b> [19] 11:20 25:4,19,23 26:1,2,11 29:25 42:9,13 43:8 57:13 59:9 69:20 110:10 116:17 117:21 120:7,14  <b>persons</b> [2] 55:10 73:1  <b>perspective</b> [4] 30:3 49:3 116:12,19  <b>persuaded</b> [2] 93:10 108:4  <b>pertained</b> [1] 121:6  <b>pertinent</b> [1] 12:25  <b>petition</b> [12] 82:10 85:1,5,8 87:22 88:7 90:2 93:24 112:4 114:8 115:8,16  <b>Petitioner</b> [12] 1:5 2:3 3:4,13 4:8 52:24 73:14 75:19 90:10 96:4 114:24 119:12  <b>Petitioner's</b> [7] 53:18,22 56:13 62:24,25 63:25 64:18  <b>Petitioners</b> [1] 73:9  <b>pick</b> [2] 15:9 58:20  <b>picked</b> [1] 77:17  <b>picking</b> [1] 107:17  <b>piecemeal</b> [2] 27:10,12  <b>place</b> [7] 5:23 13:18 15:20 21:13 22:7 73:20 104:12  <b>places</b> [2] 72:10,11  <b>plainly</b> [1] 121:14  <b>plaintiff</b> [9] 4:14 5:22 39:6 41:6,6 42:1 80:5 83:23 116:16  <b>Plaintiff's</b> [2] 5:14 6:1  <b>plaintiffs</b> [21] 4:23 5:4 6:25 10:18 30:12,21 41:16 43:5,14 51:17 52:18 57:7 66:16,18 79:6 97:1 103:3 106:2,25 116:14 119:21  <b>plaintiffs'</b> [4] 47:20 93:12,16 101:6  <b>plant</b> [1] 103:5  <b>please</b> [3] 4:10 50:18 80:1  <b>pluck</b> [1] 51:5  <b>point</b> [24] 23:3 28:13 29:14 40:23 42:24 48:11,25 61:18 62:24 63:18 67:19 76:20 84:25 85:2 88:1 97:19 98:25 100:10 101:19 104:</p>	<p>7 111:15 116:5 117:6 118:5  <b>pointed</b> [2] 35:23 82:14  <b>pointing</b> [6] 32:25 33:21 37:12 91:6 96:24,24  <b>points</b> [1] 100:21  <b>polar</b> [1] 50:9  <b>police</b> [2] 80:22 95:16  <b>policy</b> [3] 98:15 107:8,10  <b>poorly</b> [1] 73:7  <b>population</b> [1] 49:12  <b>pork</b> [1] 103:4  <b>position</b> [25] 13:23,24 25:17 27:20,22 36:3 37:11 53:18,25 56:13 70:25 71:1,8,16 76:18 87:9 90:10 98:6 99:12 107:24 119:1 120:12,13,20,23  <b>positions</b> [2] 27:15 108:2  <b>Posner</b> [2] 87:22 93:2  <b>possibility</b> [1] 105:11  <b>possible</b> [5] 101:12 105:3 106:7 107:4 108:16  <b>post-certification</b> [1] 51:24  <b>power</b> [4] 22:5 42:11 80:5 117:2  <b>powers</b> [1] 22:13  <b>practical</b> [5] 9:6 27:15 47:17,19 105:14  <b>practicality</b> [1] 48:24  <b>practice</b> [8] 51:13 54:2 64:5 80:16 92:2 95:14 111:13 116:21  <b>practiced</b> [1] 68:2  <b>precedence</b> [1] 99:18  <b>precedent</b> [1] 75:19  <b>precedes</b> [1] 13:20  <b>precisely</b> [2] 7:7 31:6  <b>preclude</b> [3] 60:23 71:10 79:18  <b>precluded</b> [1] 79:11  <b>preclusive</b> [2] 118:10,22  <b>predicated</b> [1] 118:23  <b>predominance</b> [20] 4:21 14:10,25 15:21 17:19 20:13 24:7 28:11 53:14 55:15 57:2,16 58:2,10,19 59:10 63:6 77:10 79:1 110:25  <b>predominant</b> [2] 61:7,8  <b>predominate</b> [3] 26:5 57:11 64:10  <b>predominates</b> [1] 61:22  <b>preference</b> [1] 18:12  <b>preferred</b> [1] 18:21  <b>preliminary</b> [2] 94:13,14  <b>premised</b> [1] 98:4  <b>premises</b> [1] 40:10  <b>preparation</b> [1] 68:7  <b>prerequisite</b> [1] 119:2  <b>present</b> [2] 60:10,11  <b>presented</b> [17] 6:16 7:8 37:23 64:23 70:15 80:8 81:22 82:5,6 97:24 98:1 99:10</p>
---	---	---	---	---

## Official - Subject to Final Review

<p>102:7,13 115:12 121:4,15  <b>presenting</b> <sup>[1]</sup> 99:8  <b>presents</b> <sup>[2]</sup> 64:21 81:20  <b>preservation</b> <sup>[1]</sup> 82:6  <b>preserved</b> <sup>[1]</sup> 94:5  <b>pressure</b> <sup>[1]</sup> 29:8  <b>pressured</b> <sup>[2]</sup> 30:4,7  <b>pretty</b> <sup>[8]</sup> 25:11 27:19,22  30:23 49:16 93:6 104:25  116:23  <b>prevail</b> <sup>[3]</sup> 76:6 117:22 118:4  <b>prevailed</b> <sup>[1]</sup> 118:15  <b>prevailing</b> <sup>[1]</sup> 76:5  <b>prevent</b> <sup>[2]</sup> 71:9 105:13  <b>previous</b> <sup>[1]</sup> 86:19  <b>price</b> <sup>[1]</sup> 101:12  <b>price-fixing</b> <sup>[4]</sup> 69:15,17  71:21 101:9  <b>prices</b> <sup>[2]</sup> 69:18,20  <b>principal</b> <sup>[1]</sup> 13:23  <b>principally</b> <sup>[1]</sup> 101:4  <b>principles</b> <sup>[4]</sup> 4:11 21:24  23:5 41:2  <b>private</b> <sup>[1]</sup> 30:22  <b>privileges</b> <sup>[1]</sup> 120:9  <b>pro</b> <sup>[2]</sup> 74:5,19  <b>pro-defendant</b> <sup>[1]</sup> 27:16  <b>pro-defense</b> <sup>[1]</sup> 27:20  <b>probably</b> <sup>[4]</sup> 35:8 50:6 64:10 80:24  <b>problem</b> <sup>[25]</sup> 16:14 21:23  28:4 29:16 40:22 43:21 44:10 45:23,25 48:10 53:10,11 72:13,16,25 82:3,4,11 88:8 89:8 93:15 96:22 103:17 104:14 106:2  <b>problems</b> <sup>[5]</sup> 9:25 29:7 30:18 72:21 107:4  <b>procedural</b> <sup>[9]</sup> 16:10,12 20:8 36:7 37:19 38:20 51:19 72:21 119:15  <b>procedure</b> <sup>[4]</sup> 20:11,15,16 21:12  <b>proceed</b> <sup>[3]</sup> 45:18 48:13 122:3  <b>proceeding</b> <sup>[3]</sup> 9:20 54:5 104:18  <b>proceeds</b> <sup>[2]</sup> 52:10 61:3  <b>process</b> <sup>[5]</sup> 9:25 63:12 100:15 110:11 118:24  <b>processing</b> <sup>[1]</sup> 103:4  <b>product</b> <sup>[4]</sup> 69:16,22,23,24  <b>products</b> <sup>[2]</sup> 57:25 110:15  <b>professors</b> <sup>[1]</sup> 82:9  <b>promote</b> <sup>[1]</sup> 117:14  <b>promotion</b> <sup>[1]</sup> 57:22  <b>pronouncements</b> <sup>[1]</sup> 81:19  <b>proof</b> <sup>[3]</sup> 78:20,25 101:7  <b>proper</b> <sup>[2]</sup> 26:9 80:11  <b>properly</b> <sup>[6]</sup> 14:16 27:25 33:10 73:15 112:9,12  <b>proposed</b> <sup>[1]</sup> 91:11</p>	<p><b>proposition</b> <sup>[2]</sup> 43:22 121:24  <b>propositions</b> <sup>[1]</sup> 40:20  <b>protected</b> <sup>[2]</sup> 30:13 99:25  <b>protecting</b> <sup>[2]</sup> 14:23 17:24  <b>protection</b> <sup>[1]</sup> 30:17  <b>protective</b> <sup>[2]</sup> 20:16 26:25  <b>protects</b> <sup>[1]</sup> 18:2  <b>prove</b> <sup>[3]</sup> 8:24 80:20 97:19  <b>proven</b> <sup>[1]</sup> 78:20  <b>provide</b> <sup>[2]</sup> 38:17 103:25  <b>provides</b> <sup>[1]</sup> 22:12  <b>providing</b> <sup>[1]</sup> 31:3  <b>prudential</b> <sup>[1]</sup> 115:1  <b>punished</b> <sup>[1]</sup> 30:13  <b>purchasers</b> <sup>[3]</sup> 69:16,24 72:8  <b>purely</b> <sup>[1]</sup> 51:19  <b>purport</b> <sup>[1]</sup> 73:25  <b>purposes</b> <sup>[5]</sup> 15:24 31:21 41:18 54:4 90:24  <b>push</b> <sup>[1]</sup> 41:21  <b>put</b> <sup>[6]</sup> 19:15 31:1 44:5 66:3 85:5 90:15  <b>putting</b> <sup>[1]</sup> 19:25</p> <p style="text-align: center;"><b>Q</b></p> <p><b>QP</b> <sup>[1]</sup> 102:17  <b>question</b> <sup>[90]</sup> 6:16 7:8 10:20 11:4,19 12:7,8,11,12,21,24 14:10 15:11,12,20 16:4,11,13 17:15,17 19:2 20:6 21:15 22:15 26:16 28:20 34:9 35:19 37:23 38:12 46:12 48:2,5,18,21 52:20 58:24 59:15 61:21 64:23 70:15 73:18 78:11 80:8 81:22 82:5 83:4 84:7 89:5,16 90:3 91:17 92:25 95:13 96:15 97:11,24 98:17,22 99:16 100:23 101:2,11 102:3,6,9,12,19,25 104:20 107:18 108:3,7 109:5,22 111:5 113:10 114:8,12,19 115:12,13,15 116:11 117:3,5 121:4,12,15,19  <b>questions</b> <sup>[7]</sup> 6:5 35:18 40:19 57:7 81:23 117:20 118:2  <b>quick</b> <sup>[2]</sup> 44:5 115:25  <b>quirks</b> <sup>[1]</sup> 37:19  <b>quite</b> <sup>[7]</sup> 8:22 20:22 51:7 86:13,15 90:15 108:3  <b>quote</b> <sup>[1]</sup> 17:9</p> <p style="text-align: center;"><b>R</b></p> <p><b>racial</b> <sup>[1]</sup> 98:19  <b>Rail</b> <sup>[1]</sup> 5:13  <b>raise</b> <sup>[6]</sup> 16:12 81:24 82:2,3,23 114:24  <b>raised</b> <sup>[2]</sup> 73:5,6  <b>range</b> <sup>[1]</sup> 17:17  <b>rare</b> <sup>[1]</sup> 5:7  <b>rather</b> <sup>[3]</sup> 15:21 68:24 95:25</p>	<p>25  <b>ratification</b> <sup>[1]</sup> 80:17  <b>reach</b> <sup>[7]</sup> 21:13,17 28:24 38:12 81:19 100:1 102:6  <b>reached</b> <sup>[2]</sup> 7:23 76:17  <b>reaching</b> <sup>[2]</sup> 80:8 81:21  <b>read</b> <sup>[10]</sup> 55:1 60:17 68:5 70:15,17 78:1 91:20 94:3 95:7 112:1  <b>real</b> <sup>[3]</sup> 29:17 101:1 106:24  <b>real-world</b> <sup>[1]</sup> 29:16  <b>realize</b> <sup>[1]</sup> 104:7  <b>really</b> <sup>[37]</sup> 12:12 16:3,14 17:18 20:9 27:11,18 29:21 33:17,19 40:20 46:10 47:5 49:20 52:15 55:4 56:3 59:22 64:19 68:12 70:10,11 73:19 75:22 88:9 90:21 92:13 102:6 103:7,21 106:23 107:25 108:11 109:9 115:9,13 117:17  <b>realm</b> <sup>[1]</sup> 78:16  <b>reason</b> <sup>[14]</sup> 23:2 28:15 35:11 36:5 37:10 44:3 69:21 88:14 96:23 98:9 99:21 104:11 115:6 120:5  <b>reasonable</b> <sup>[6]</sup> 66:10 69:12 77:7 91:24 93:22 106:13  <b>reasonably</b> <sup>[2]</sup> 66:9 87:21  <b>reasoning</b> <sup>[3]</sup> 7:10,11 87:25  <b>reasons</b> <sup>[5]</sup> 6:14 22:22 67:21 112:12 121:10  <b>REBUTTAL</b> <sup>[3]</sup> 3:11 119:10,11  <b>Recall</b> <sup>[2]</sup> 93:9 104:15  <b>receive</b> <sup>[1]</sup> 65:19  <b>recited</b> <sup>[1]</sup> 95:12  <b>recognized</b> <sup>[5]</sup> 52:11 55:16 80:3 89:2 98:9  <b>recognizes</b> <sup>[1]</sup> 109:2  <b>record</b> <sup>[2]</sup> 108:9 111:2  <b>records</b> <sup>[7]</sup> 49:21 50:7 103:2 105:2 109:5 110:19,20  <b>recover</b> <sup>[1]</sup> 107:7  <b>recurring</b> <sup>[2]</sup> 95:14,15  <b>red</b> <sup>[2]</sup> 73:4 82:15  <b>redefine</b> <sup>[6]</sup> 26:1,10,23 41:1 52:17 103:16  <b>redefined</b> <sup>[1]</sup> 103:16  <b>redistricting</b> <sup>[1]</sup> 94:20  <b>redo</b> <sup>[1]</sup> 104:24  <b>reduced</b> <sup>[1]</sup> 121:13  <b>reevaluate</b> <sup>[2]</sup> 52:12,17  <b>referring</b> <sup>[1]</sup> 96:16  <b>refine</b> <sup>[1]</sup> 119:24  <b>refinement</b> <sup>[2]</sup> 91:10,11  <b>refining</b> <sup>[1]</sup> 119:17  <b>reflects</b> <sup>[1]</sup> 21:24  <b>reformulated</b> <sup>[1]</sup> 70:16  <b>reframed</b> <sup>[1]</sup> 64:22  <b>regard</b> <sup>[4]</sup> 92:16 94:24 95:3 97:3</p>	<p><b>regarded</b> <sup>[4]</sup> 93:8,14,18 97:4  <b>regardless</b> <sup>[2]</sup> 5:19 120:16  <b>reject</b> <sup>[2]</sup> 81:16 110:22  <b>relatively</b> <sup>[1]</sup> 38:19  <b>relevant</b> <sup>[2]</sup> 44:24 55:2  <b>reliance</b> <sup>[4]</sup> 15:3 60:1 61:17 62:4  <b>relied</b> <sup>[1]</sup> 81:3  <b>relief</b> <sup>[7]</sup> 43:18 51:11 54:5 62:16 68:9 80:5 85:12  <b>relies</b> <sup>[2]</sup> 96:15 101:7  <b>rely</b> <sup>[6]</sup> 18:13 73:11 74:15 92:15 93:23 103:3  <b>Relying</b> <sup>[2]</sup> 65:5 95:3  <b>remains</b> <sup>[1]</sup> 83:6  <b>remand</b> <sup>[7]</sup> 32:16 38:14,23 75:9,18 83:2,10  <b>remedial</b> <sup>[4]</sup> 22:13 51:10 68:25 117:2  <b>remedy</b> <sup>[1]</sup> 68:10  <b>remember</b> <sup>[2]</sup> 27:3 89:12  <b>render</b> <sup>[1]</sup> 85:4  <b>rendered</b> <sup>[2]</sup> 94:19,22  <b>reorient</b> <sup>[1]</sup> 81:8  <b>repeat</b> <sup>[1]</sup> 25:17  <b>repeated</b> <sup>[1]</sup> 55:12  <b>repetition</b> <sup>[1]</sup> 89:1  <b>replaced</b> <sup>[2]</sup> 7:21 74:3  <b>reply</b> <sup>[6]</sup> 81:7 88:15,23 94:4 95:7 118:8  <b>report</b> <sup>[1]</sup> 65:20  <b>reports</b> <sup>[4]</sup> 49:25 65:7 66:14,18  <b>represent</b> <sup>[1]</sup> 36:20  <b>representation</b> <sup>[2]</sup> 35:4 118:24  <b>representative</b> <sup>[8]</sup> 54:3,17,22 80:18 116:16,20 117:15,17  <b>requested</b> <sup>[1]</sup> 68:11  <b>require</b> <sup>[7]</sup> 11:22 29:21 51:7 52:21 57:17 62:14 63:8  <b>required</b> <sup>[5]</sup> 56:12,18 85:17 89:7 114:25  <b>requirement</b> <sup>[4]</sup> 4:22 55:22,22 61:15  <b>requirements</b> <sup>[1]</sup> 63:6  <b>requires</b> <sup>[20]</sup> 15:2 50:20 52:4 53:14,16,19 55:24 56:8,18,21 57:15 58:12 62:18 63:2,6,19,20,23 70:8 77:22  <b>resist</b> <sup>[1]</sup> 106:22  <b>resolution</b> <sup>[2]</sup> 45:17 74:25  <b>resolve</b> <sup>[5]</sup> 4:11 21:15 121:8,12,14  <b>resolved</b> <sup>[7]</sup> 6:16 7:7 12:18 21:16 23:9 104:1 121:4  <b>resources</b> <sup>[1]</sup> 95:22  <b>respect</b> <sup>[29]</sup> 22:11,13,16 28:3 31:15 33:25 41:2 43:22 47:5,12,16 48:24 58:22,25 59:4,8,8 64:14 77:23 78:25 86:17 89:23,25 94:17 95:24 116:4 117:2,20 120:12</p>	<p><b>respectfully</b> <sup>[1]</sup> 42:17  <b>Respondents</b> <sup>[8]</sup> 1:8 2:9 3:10 50:25 52:3,24 60:16 79:24  <b>Respondents'</b> <sup>[2]</sup> 51:3 82:5  <b>response</b> <sup>[4]</sup> 5:14 24:2,6 96:21  <b>responses</b> <sup>[1]</sup> 69:9  <b>responsibility</b> <sup>[1]</sup> 49:11  <b>responsible</b> <sup>[1]</sup> 66:19  <b>rest</b> <sup>[1]</sup> 118:14  <b>restaurant</b> <sup>[1]</sup> 5:7  <b>rested</b> <sup>[1]</sup> 82:13  <b>rests</b> <sup>[1]</sup> 40:9  <b>result</b> <sup>[4]</sup> 4:22,24 5:8 76:16  <b>retrospective</b> <sup>[1]</sup> 119:3  <b>return</b> <sup>[1]</sup> 113:9  <b>revacatur</b> <sup>[1]</sup> 83:13  <b>reverse</b> <sup>[2]</sup> 7:13 122:5  <b>reverse-engineer</b> <sup>[1]</sup> 104:21  <b>reversed</b> <sup>[1]</sup> 36:6  <b>review</b> <sup>[3]</sup> 6:19 75:4 90:1  <b>reviewing</b> <sup>[2]</sup> 74:11,25  <b>rid</b> <sup>[1]</sup> 74:2  <b>riding</b> <sup>[1]</sup> 22:18  <b>rights</b> <sup>[7]</sup> 14:24 17:25 18:2 20:20 26:25 83:23 120:15  <b>rigorous</b> <sup>[1]</sup> 111:1  <b>risk</b> <sup>[1]</sup> 37:15  <b>road</b> <sup>[2]</sup> 100:4 116:8  <b>ROBERTS</b> <sup>[27]</sup> 4:3 15:8 23:22 29:4 32:11 40:6 50:11 62:9,21 63:10,14 65:2 67:12 71:18 76:11 77:2 79:20 104:2,6 105:8 106:9 113:3,6 115:18 119:6,9 122:6  <b>role</b> <sup>[1]</sup> 84:14  <b>roll</b> <sup>[1]</sup> 29:21  <b>room</b> <sup>[2]</sup> 32:8 105:10  <b>roots</b> <sup>[1]</sup> 55:6  <b>route</b> <sup>[1]</sup> 35:12  <b>routes</b> <sup>[1]</sup> 36:4  <b>Rule</b> <sup>[123]</sup> 4:21 6:1 9:13 11:4 13:16 15:4 23:18 24:16,20 27:8 28:13,15 31:1,4,6,17,25 32:2 35:24 36:9 37:11,13 38:18,23 39:4 40:16 41:24 43:22 46:9 48:10 49:18 50:20 51:1,3,4,12,13,19 52:4,16 53:13,19 54:18 55:9,9,13,22,23 56:7,18,23,24 57:14,15,17 58:11 59:2 60:23,25 61:23 62:1,2,2,4 63:5,9,19,22 64:25 66:7 67:17 68:15,16 69:10 70:8,10,11,14 71:7,24 72:7,14 75:14 76:7,13,19 77:7,21 79:3,18 81:12 83:24 84:13,24 85:1,4,17,19,20,23,24,24 86:6,6 89:6 90:22 94:10,11,23 95:17 95:24 116:4 117:2,20 120:12</p>
--	---	--	---	---

## Official - Subject to Final Review

<p>1 97:18 108:1,3,8 111:24 113:11,13 116:3,21 117:10, 14,25 118:9 rules [7] 9:9 32:23 41:2 56: 21 82:22 90:25 95:20 ruling [6] 36:7 50:4 51:16 64:20 112:8,18 run [4] 37:16 63:11 75:14 118:16</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p>sake [1] 11:6 same [42] 4:22 11:25 20:5 33:3,7 41:8 43:17 50:21, 24 52:15 55:17,24,25 56:9, 15 57:2,18,21,22 58:1,6,8 59:14,15 60:3,5,8,15,16 63: 6 67:21 68:12,19 78:9 99: 6,21 108:12,14 117:25 118: 17 120:22,25 satisfied [1] 61:11 satisfies [1] 57:1 satisfy [2] 39:19 58:10 saying [52] 10:7,10,13 11: 25 14:10,14 15:12,13 17: 18 19:4 20:7 39:16 40:14 41:16 44:18 52:3 53:13,19 55:23 56:16,20 58:5,13,14 60:8,25 61:13 62:15 63:5, 18,22 64:1,4 65:16 70:18 71:6 77:15 79:15 90:16 99: 5,7 101:15,17,19 102:18 107:19,20,20 108:11,14 114:4,15 says [17] 17:1 19:15 33:1 41:9 44:16,22 45:1 59:3 65:19 66:3 68:16 74:2 77: 8 86:19 87:2 112:1 116:2 scales [1] 49:2 Scalia [2] 4:18 22:25 Scalia's [1] 116:22 Second [10] 4:21 5:16 27: 18 28:17 43:21 46:9 85:8 87:22 93:19 116:5 securities [1] 60:1 see [7] 16:24 17:17 32:1 55: 18 56:23 68:8 78:24 seek [1] 85:12 seeking [6] 42:1 43:15 93: 4,5 94:6 106:25 seeks [1] 44:19 seem [2] 63:24 116:6 seems [9] 6:7 16:16 22:17 28:15 36:25 40:8 68:1 77: 15 78:22 seen [1] 67:23 send [2] 7:13 32:22 sending [1] 37:13 sense [5] 5:16 14:3,7 76: 19 81:18 senseless [1] 66:8 sensible [2] 69:11 77:6 sensibly [1] 66:9 sent [1] 75:10</p>	<p>separate [6] 4:25 14:19 21: 8 24:12 28:23 60:18 separately [1] 35:10 separating [2] 17:22 110:4 serious [1] 81:21 Services [3] 30:25 97:9 120:9 Set [4] 83:16 99:14,16 112: 24 setting [1] 48:23 settle [2] 28:3 49:1 settled [3] 27:5 28:1 99:7 settlement [4] 6:2 29:18 30:4 107:5 settlements [3] 29:9 30:8 47:21 Seventh [1] 105:6 SG [1] 97:18 Shady [2] 4:19 22:25 share [9] 50:20,23 52:15 55:17,24 56:9 57:18 58:8 67:21 shared [1] 54:16 She's [1] 44:18 shifted [1] 81:7 shocking [1] 121:24 short [3] 19:25 28:24 104:3 shouldn't [3] 66:4 92:15 115:2 show [5] 4:17 10:23 32:2 43:1,8 shows [1] 23:7 side [8] 30:1 33:9 103:14 105:20,25 107:16,24 109:8 signal [1] 64:24 significance [2] 84:9,18 silly [1] 85:23 similar [2] 84:8 98:10 simplest [2] 6:14 35:12 simply [4] 18:13 19:25 26: 10 103:10 single [4] 57:13 59:9 68:5 120:14 sitting [1] 108:22 situated [1] 73:7 situation [1] 106:10 situations [1] 111:9 six-month [4] 44:15,21,24 45:12 size [2] 16:23 29:19 skipping [1] 7:19 sold [1] 93:9 solely [1] 121:6 Solicitor [1] 2:4 solve [2] 15:14 121:18 solved [1] 25:10 solves [1] 45:23 somebody [3] 19:13 70:1 93:22 somehow [1] 50:25 someone [1] 118:16 someplace [1] 17:12 Sometimes [1] 9:22 SOPAN [3] 2:4 3:6 50:14</p>	<p>Sorry [4] 23:24 67:9 85:15 111:19 sort [15] 24:21 26:5 28:13 49:1 55:3 60:23 62:6 64: 14 70:21 74:5 75:23 77:10 100:14 105:10 109:13 sorts [2] 70:7 71:10 SOTOMAYOR [50] 7:15,18 8:6,19,22 9:11,15,22 10:7, 10,16 11:3,11,15 12:4,7,14, 17,20,23 13:9 14:1,5,9 38: 8 65:3,4,24 66:2,25 67:3,6, 9 69:10 96:3,8,11,14 97:6, 10,16 111:14,18,22 112:7, 11,16,20 113:1 115:19 sound [1] 75:22 sounds [1] 24:16 special [10] 51:1,3 58:15 61:23 62:1,1,2,4 103:9 104:17 species [1] 4:20 specific [1] 111:4 specifically [5] 16:20 17:5 18:10 42:24 74:12 spend [2] 6:10 18:25 split [2] 108:5 115:13 spot [1] 56:15 squarely [1] 42:20 squirrely [1] 74:16 stage [10] 11:16 45:6 46:9 51:10 52:7 65:18 80:11 82: 19,24 106:6 stages [1] 51:23 stakes [1] 106:18 stand [2] 18:14 20:1 standard [5] 41:2 60:12 92: 18 95:5 105:1 standing [27] 4:14,17,24 5: 5,6 11:7,19 31:19 38:7,10 39:6 41:3,7,18 42:12 51: 17 62:19 63:3 66:17 67:22 83:22 101:21 111:5 117:8 118:19 121:2,11 standpoint [2] 27:21 79:1 start [4] 10:1 75:22 80:24 116:3 state [3] 30:14,16 118:16 statements [3] 55:12 65:7 96:25 STATES [5] 1:1,16 2:6 3:7 50:15 statute [5] 7:5 11:18 85:18 86:3 89:7 steak [1] 5:7 Steel [1] 122:5 stemmed [1] 54:17 step [3] 24:22,22,24 steps [2] 7:19 24:21 still [14] 6:10 14:9 17:11 26: 6 33:10,24 34:16 38:13,22 48:11 76:6 77:5 85:8 100: 14 stipulate [1] 11:14 stood [1] 120:17</p>	<p>stop [1] 62:22 Storm [1] 103:5 story [5] 105:24,25 106:1 116:19 117:24 Story's [1] 54:10 straight [1] 31:25 strangeness [2] 100:22 111:7 strategic [1] 106:17 strategically [1] 106:19 strays [1] 55:6 strikes [4] 67:18 68:13 90: 25 92:1 strong [3] 18:23 73:8 78:2 strongly [1] 36:15 struggling [4] 23:25 40:10 43:25 77:6 study [1] 70:3 stuffing [1] 93:13 subjected [1] 31:5 submission [1] 103:14 submitted [2] 122:7,9 subsequent [2] 6:12 90:5 substance [1] 120:2 substantive [2] 71:24 72:7 succeed [1] 36:20 sued [1] 49:10 suffered [2] 54:21 69:25 suffers [1] 71:22 suffices [1] 116:6 suggested [3] 31:1 75:16 104:10 suggesting [2] 68:16 106: 20 suggestion [6] 88:17,17 105:19 106:23 110:22 118: 7 suggestions [1] 18:5 super [1] 101:11 super-competitive [1] 69: 17 superseded [4] 7:21 81: 11,13 94:9 supplement [1] 59:6 supplying [1] 95:5 support [1] 51:12 supported [1] 51:13 supporting [3] 2:6 3:8 50: 16 suppose [2] 44:12 86:23 supposed [1] 87:8 SUPREME [3] 1:1,15 70:5 surely [1] 89:16 surprisingly [1] 52:2 survey [1] 19:15 surveys [1] 19:5 survive [2] 20:2 49:22 suspect [1] 106:13 swamp [1] 5:11 swamps [1] 5:2 system [1] 118:25</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p>table [1] 77:12</p>	<p>tails [1] 6:3 talked [1] 32:7 talks [1] 73:1 target [2] 85:11 96:2 technical [1] 9:3 teed [2] 99:1 111:8 teeth [1] 122:4 ten [1] 19:1 tends [1] 102:19 terms [3] 57:17 74:18 97:8 terrorem [1] 105:20 test [3] 18:24 70:2,4 tested [1] 110:10 testimony [1] 103:3 testing [1] 20:1 tethered [3] 93:16 97:5 106:4 Texas [1] 78:4 theme [1] 68:7 themselves [1] 10:25 theoretically [1] 76:19 theory [4] 15:1 60:5 79:7, 15 there's [49] 6:3 10:3,23 14: 11,13 20:11 23:3,17 24:21 35:10,18 41:13 52:13,25 53:4 58:14 59:2 63:7 64: 16 66:12 68:8 69:13,19 70: 1 72:16 73:18 74:7,18 84: 14 88:8 91:2 94:20 98:10, 23 101:10 102:12,20 106: 10,17,24 108:5 111:23,23 113:15 114:22 115:6,13 117:22 118:7 therefore [6] 19:16 40:25 44:10 55:25 70:6 81:4 they've [4] 37:24 68:24 114:17 118:15 thinking [2] 54:9 78:19 third [1] 50:1 THOMAS [5] 6:6 51:22 63: 15 81:24 113:7 though [6] 6:8 24:3 38:10 53:8 87:12 104:14 Thoughts [2] 27:12 72:24 thousand [2] 39:20 53:5 thousands [3] 4:25 14:24 30:21 threshold [2] 19:1 42:4 throat [1] 111:19 throughout [1] 61:2 tilts [1] 49:2 timeline [1] 37:16 timing [4] 36:23 90:25 116: 9,11 today [3] 35:18 50:10 103: 14 together [1] 68:13 tolling [1] 36:12 took [4] 39:12 64:22 120: 20,23 tool [2] 4:12 22:1 tools [1] 22:25 top [1] 36:13</p>
---	---	---	---	---

## Official - Subject to Final Review

<b>tort</b> <sup>[1]</sup> 27:9 <b>totally</b> <sup>[4]</sup> 16:24 46:5,6 78:18 <b>traditional</b> <sup>[1]</sup> 81:14 <b>TransUnion</b> <sup>[12]</sup> 49:23,24 60:19 62:20 65:4 66:12,16,20,23 80:2 107:6 109:3 <b>TransUnion's</b> <sup>[1]</sup> 50:7 <b>treat</b> <sup>[1]</sup> 54:3 <b>treated</b> <sup>[1]</sup> 58:16 <b>treatises</b> <sup>[1]</sup> 58:20 <b>trial</b> <sup>[5]</sup> 103:8 104:16 105:10,14,17 <b>trials</b> <sup>[1]</sup> 14:24 <b>tried</b> <sup>[3]</sup> 16:6 17:2 109:14 <b>true</b> <sup>[10]</sup> 13:4 18:15 24:15 26:24 41:19,22 84:15 86:18 102:14 105:18 <b>try</b> <sup>[3]</sup> 56:6 105:3 107:3 <b>trying</b> <sup>[7]</sup> 12:25 23:6 35:21,25 56:5 62:5 86:10 <b>Tuesday</b> <sup>[1]</sup> 1:12 <b>tunc</b> <sup>[2]</sup> 74:6,19 <b>turn</b> <sup>[2]</sup> 46:22 59:12 <b>turned</b> <sup>[1]</sup> 103:5 <b>Turning</b> <sup>[1]</sup> 121:16 <b>turns</b> <sup>[2]</sup> 93:4 110:9 <b>tweak</b> <sup>[1]</sup> 15:24 <b>twice</b> <sup>[2]</sup> 17:5 119:16 <b>Two</b> <sup>[16]</sup> 4:11 8:25 14:14 16:22 17:6 19:1 24:21 28:6 29:20 40:10,19 73:11 109:13 110:4 115:9 117:1 <b>type</b> <sup>[2]</sup> 68:9,10 <b>types</b> <sup>[1]</sup> 79:5 <b>typical</b> <sup>[1]</sup> 57:8 <b>typicality</b> <sup>[1]</sup> 55:15 <b>typographical</b> <sup>[1]</sup> 87:19 <b>Tyson</b> <sup>[6]</sup> 66:23 80:3 102:23,24 104:14,25 <b>Tyson's</b> <sup>[1]</sup> 19:11	<b>understood</b> <sup>[9]</sup> 24:20 37:3,6 43:7 61:6,8 69:4 72:18 91:15 <b>unfair</b> <sup>[2]</sup> 29:9 97:11 <b>unimportant</b> <sup>[1]</sup> 95:13 <b>uninjured</b> <sup>[36]</sup> 8:24 13:15 21:9 25:4,18,22 26:1,2 28:6,8 39:3 40:15,17,24 43:23 44:1 51:25 52:19 53:8 80:5,14 93:13,18 97:14 98:5 101:2 103:1,10 104:23 105:5,23 107:2,6 109:4 111:12 116:1 <b>UNITED</b> <sup>[5]</sup> 1:1,16 2:6 3:7 50:15 <b>universe</b> <sup>[1]</sup> 50:2 <b>university</b> <sup>[1]</sup> 98:15 <b>unlawful</b> <sup>[2]</sup> 44:16,18 <b>unless</b> <sup>[7]</sup> 18:14 22:6 43:1 48:15 54:5 56:8 116:25 <b>unlikely</b> <sup>[1]</sup> 62:7 <b>unnamed</b> <sup>[3]</sup> 5:18 32:4 54:4 <b>unpack</b> <sup>[1]</sup> 6:20 <b>unscrupulous</b> <sup>[1]</sup> 93:12 <b>until</b> <sup>[11]</sup> 8:14 9:16,17 10:1,1 22:12 51:9 54:5 65:8,14 117:1 <b>up</b> <sup>[24]</sup> 8:7 12:5 15:9 18:14 22:6 27:21 28:5 35:8 36:23 37:24 42:14 47:11 53:11 68:17 94:12 99:1 100:21 101:16 107:12,17 111:8 120:17 121:11,22 <b>urge</b> <sup>[1]</sup> 36:15 <b>urged</b> <sup>[1]</sup> 119:22 <b>uses</b> <sup>[1]</sup> 117:25 <b>using</b> <sup>[2]</sup> 10:4 32:8	<b>violates</b> <sup>[4]</sup> 40:14,16,23 43:22 <b>virtue</b> <sup>[1]</sup> 116:3 <b>visited</b> <sup>[1]</sup> 31:23 <b>voluntary</b> <sup>[1]</sup> 89:1	<b>122:1</b> <b>whom</b> <sup>[4]</sup> 47:23 116:24 121:23 122:2 <b>wider</b> <sup>[1]</sup> 16:15 <b>will</b> <sup>[11]</sup> 4:3 5:11 10:21 12:5 20:6 32:9 45:7 80:12 89:4 101:3 110:20 <b>win</b> <sup>[5]</sup> 6:2,3 13:4 14:4 99:6 <b>wins</b> <sup>[1]</sup> 51:15 <b>wisdom</b> <sup>[1]</sup> 82:20 <b>wish</b> <sup>[1]</sup> 82:17 <b>within</b> <sup>[6]</sup> 81:5 89:11 112:4 115:3,4 120:19 <b>without</b> <sup>[4]</sup> 4:23 65:25 76:5 83:23 <b>woman</b> <sup>[1]</sup> 38:9 <b>words</b> <sup>[5]</sup> 10:4 49:8 57:3 58:12 85:21 <b>work</b> <sup>[6]</sup> 5:5 19:9 53:21 69:5 103:11 109:10 <b>worked</b> <sup>[4]</sup> 103:19 104:8 116:20 117:18 <b>works</b> <sup>[3]</sup> 21:8 116:21 117:17 <b>world</b> <sup>[6]</sup> 29:18 47:17 72:2 78:24 101:8 106:24 <b>worlds</b> <sup>[1]</sup> 78:19 <b>worried</b> <sup>[1]</sup> 21:19 <b>worth</b> <sup>[2]</sup> 16:21 91:6 <b>writes</b> <sup>[1]</sup> 80:8 <b>writing</b> <sup>[1]</sup> 101:24
<b>ultimately</b> <sup>[1]</sup> 103:24 <b>unclear</b> <sup>[1]</sup> 77:21 <b>uncomfortable</b> <sup>[1]</sup> 35:3 <b>Under</b> <sup>[29]</sup> 14:15,17 15:5 28:25 32:25 36:9,19 38:6 39:4 50:3 56:7 66:13 71:7 72:14 73:12 76:7 80:23 81:12 84:13,16 90:22 92:25 93:21 97:17,17 111:12 116:21 117:23 118:22 <b>underpinning</b> <sup>[1]</sup> 40:21 <b>understand</b> <sup>[22]</sup> 6:15 15:11 23:25 35:14 36:3 41:19 43:19 45:12 47:10 63:1,21 74:20,22,23 76:15,18 78:19 86:5 88:15,19 113:14,20 <b>understanding</b> <sup>[13]</sup> 34:24 41:5 42:4,8 49:11 72:7 101:1 107:15 109:12,19,24 116:23 120:18	<b>valid</b> <sup>[3]</sup> 40:1 69:18,25 <b>variation</b> <sup>[3]</sup> 59:20 79:10 111:15 <b>variety</b> <sup>[1]</sup> 6:14 <b>various</b> <sup>[1]</sup> 77:18 <b>vary</b> <sup>[1]</sup> 60:6 <b>vegan</b> <sup>[1]</sup> 5:6 <b>vehicle</b> <sup>[2]</sup> 100:22 111:7 <b>veracity</b> <sup>[1]</sup> 18:18 <b>verboden</b> <sup>[1]</sup> 68:21 <b>Verizon</b> <sup>[6]</sup> 44:12,14,20,22 45:1 60:20 <b>version</b> <sup>[1]</sup> 112:21 <b>versus</b> <sup>[4]</sup> 4:5 45:13 99:22 113:12 <b>victim</b> <sup>[1]</sup> 71:21 <b>view</b> <sup>[26]</sup> 33:23 51:2,3,18 52:1 53:22,22 54:11 58:11 63:4 66:22 70:1 73:8 74:5 75:1,11 76:21 82:5,17 83:1,5 95:9 96:16 103:15 106:2 107:25 <b>vigorously</b> <sup>[1]</sup> 36:16 <b>violated</b> <sup>[1]</sup> 41:14	<b>W</b> <b>walk</b> <sup>[3]</sup> 11:21 12:1 38:11 <b>walked</b> <sup>[4]</sup> 15:15,17 39:21 120:14 <b>walks</b> <sup>[2]</sup> 31:25 121:18 <b>Walmart</b> <sup>[5]</sup> 59:18,24 62:2 64:7 78:3 <b>wanted</b> <sup>[16]</sup> 7:3 10:18 15:17 31:23 39:22,23 64:24 72:18,23 93:19 100:18 106:4 109:14,16 113:23 120:16 <b>wanting</b> <sup>[2]</sup> 16:1,5 <b>wants</b> <sup>[4]</sup> 31:18 32:5 90:22 103:23 <b>warnings</b> <sup>[1]</sup> 66:14 <b>Washington</b> <sup>[4]</sup> 1:11 2:2,5,8 <b>way</b> <sup>[62]</sup> 6:14,23 9:18 10:3,23 14:12,19,22 15:2 16:15 19:25 22:20 23:10,15 28:7,23 32:1 36:9 37:17,20 38:17 41:15 45:16 49:2 52:3,6,21,25 53:1,1 56:12 60:18,22 61:8 64:14 65:19,20 66:8 67:1,14 68:2 77:7 80:7 83:13 86:4 89:10,21 91:23 97:13 101:24 104:21 105:4 106:3,19 109:10,23 110:4,18 113:20 117:17,18 119:25 <b>ways</b> <sup>[2]</sup> 23:6 82:10 <b>weak</b> <sup>[1]</sup> 47:21 <b>weed</b> <sup>[7]</sup> 24:14 80:13 103:1,8 104:22 109:4 116:1 <b>weeded</b> <sup>[2]</sup> 101:3 105:4 <b>weeding</b> <sup>[1]</sup> 111:12 <b>weird</b> <sup>[3]</sup> 35:24 37:11 104:18 <b>welcome</b> <sup>[2]</sup> 6:5 81:23 <b>whatever</b> <sup>[4]</sup> 29:24 67:17 69:21 112:11 <b>wheat</b> <sup>[5]</sup> 4:25 14:19 17:22 24:12 109:25 <b>whenever</b> <sup>[1]</sup> 32:9 <b>Whereupon</b> <sup>[1]</sup> 122:8 <b>whether</b> <sup>[35]</sup> 5:9,19 10:3 20:1,8 24:12 32:4 38:5 39:3 41:22 48:11 56:21 63:7 68:18 71:8 72:24 76:5 79:2 80:12 83:6 84:10,14 97:17 98:5,23 99:16 101:2 102:13 106:15 108:16 109:5,5 114:20,25 120:16 <b>who's</b> <sup>[6]</sup> 10:5 27:21 28:2 46:25 87:7 120:18 <b>whole</b> <sup>[9]</sup> 9:13,25 19:8 32:20 37:10 57:5 67:24 100:9	<b>Y</b> <b>year</b> <sup>[1]</sup> 30:24 <b>years</b> <sup>[3]</sup> 19:1 67:15,16 <b>yields</b> <sup>[2]</sup> 25:22,25 <b>yourself</b> <sup>[1]</sup> 48:15