

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -  
WARNER CHAPPELL MUSIC, INC., )  
ET AL., )  
                    Petitioners, )  
                    v. ) No. 22-1078  
SHERMAN NEALY, ET AL., )  
                    Respondents. )  
- - - - -

Pages: 1 through 63  
Place: Washington, D.C.  
Date: February 21, 2024

---

**HERITAGE REPORTING CORPORATION**  
*Official Reporters*  
1220 L Street, N.W., Suite 206  
Washington, D.C. 20005  
(202) 628-4888  
www.hrccourtreporters.com

1           IN THE SUPREME COURT OF THE UNITED STATES  
2   - - - - -  
3   WARNER CHAPPELL MUSIC, INC.,           )  
4   ET AL.,                                    )  
5                                    Petitioners,            )  
6                                    v.                                ) No. 22-1078  
7   SHERMAN NEALY, ET AL.,                )  
8                                    Respondents.            )  
9   - - - - -  
10                                   Washington, D.C.  
11                                   Wednesday, February 21, 2024

12  
13           The above-entitled matter came on for  
14   oral argument before the Supreme Court of the  
15   United States at 11:41 a.m.

16  
17   APPEARANCES:  
18   KANNON K. SHANMUGAM, ESQUIRE, Washington, D.C.; on  
19        behalf of the Petitioners.  
20   JOE WESLEY EARNHARDT, ESQUIRE, New York, New York; on  
21        behalf of the Respondents.  
22   YAIRA DUBIN, Assistant to the Solicitor General,  
23        Department of Justice, Washington, D.C.; for the  
24        United States, as amicus curiae, supporting the  
25        Respondents.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	KANNON K. SHANMUGAM, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	JOE WESLEY EARNHARDT, ESQ.	
7	On behalf of the Respondents	30
8	ORAL ARGUMENT OF:	
9	YAIRA DUBIN, ESQ.	
10	For the United States, as amicus	
11	curiae, supporting the Respondents	51
12	REBUTTAL ARGUMENT OF:	
13	KANNON K. SHANMUGAM, ESQ.	
14	On behalf of the Petitioners	58
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:41 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 22-1078, Warner Chappell Music versus Nealy.

Mr. Shanmugam.

ORAL ARGUMENT OF KANNON K. SHANMUGAM  
ON BEHALF OF THE PETITIONERS

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

This case presents the question whether a copyright plaintiff can recover damages for acts that allegedly occurred more than three years before the filing of suit.

As a straightforward matter of statutory interpretation, the answer to that question here is no. Under the applicable statute of limitations, a civil action must be brought within three years after the claim accrued. A claim accrues when the plaintiff has a complete cause of action.

Accordingly, as this Court repeatedly stated in *Petrella*, a plaintiff can obtain damages for acts of infringement only within three years of filing. And under this Court's

1 understanding of the background discovery rule,  
2 a plaintiff is entitled to extend that period  
3 only in cases involving fraud.

4 Now faced with those points,  
5 Respondents seek to use the rephrased question  
6 presented to clear the board of Petitioners'  
7 strongest arguments. But that question directs  
8 the parties to address the statute, and  
9 statutory construction begins with the text.

10 Respondents eventually joined issue on  
11 the text, but the inferences from the other  
12 provisions they cite cannot overcome the plain  
13 meaning of the term "accrues." And even if the  
14 statutory text were somehow off the table here,  
15 Respondents offer no valid explanation for this  
16 Court's statements in *Petrella*, and they assume  
17 the existence of a broad discovery rule, even in  
18 the face of disagreement among the lower courts  
19 about the discovery rule's scope. And  
20 Respondents do not dispute that if the discovery  
21 rule applies only in cases involving fraud, they  
22 are not entitled to invoke it.

23 There is no precedent for this Court's  
24 resolving a question of statutory interpretation  
25 by assuming away the relevant statutory text.

1 At most, the rephrased question presented  
2 assumes the existence of some version of the  
3 discovery rule. It does not take sides on the  
4 scope of that rule.

5 Nor need the Court establish the exact  
6 contours of the discovery rule here. Instead,  
7 it need only hold that Respondents in this case  
8 are not entitled to damages for acts that took  
9 place more than a decade before they filed suit.  
10 And on that basis, this Court should reverse the  
11 court of appeals' judgment.

12 I welcome the Court's questions.

13 JUSTICE THOMAS: Did the courts, any  
14 of the courts below, rule on or pass on the  
15 discovery rule, or did they just simply assume  
16 the existence of some discovery rule?

17 MR. SHANMUGAM: So I think that the  
18 court of appeals reaffirmed its prior discovery  
19 rule from the Webster decision, which applies  
20 parenthetically only in the context of ownership  
21 disputes.

22 JUSTICE THOMAS: So the argument that  
23 you're making now, was it raised below?

24 MR. SHANMUGAM: So we did not raise  
25 that argument in the Eleventh Circuit precisely

1 because we were bound by the Webster decision.  
2 But we would respectfully submit that that is  
3 not necessary both because the Eleventh Circuit  
4 passed upon the issue and because there has  
5 never been a requirement that a party challenge  
6 binding court of appeals case law as a ticket to  
7 raise arguments before this Court.

8 JUSTICE THOMAS: What was the question  
9 that was certified to the Eleventh Circuit?

10 MR. SHANMUGAM: So the question that  
11 was certified was the question of the  
12 availability of retrospective relief for acts  
13 beyond three years from the time of the filings.

14 JUSTICE THOMAS: But didn't it assume  
15 the existence of -- of the discovery rule?

16 MR. SHANMUGAM: Precisely because, in  
17 the Eleventh Circuit, there was binding case law  
18 on that issue. And our fundamental submission  
19 for this Court is that we are not challenging  
20 the existence of a discovery rule.

21 To be sure, the question of the scope  
22 of any discovery rule is to some extent  
23 intertwined with the substantive question that  
24 is presented here. And to quote from this  
25 Court's question presented, that question is

1 "whether a copyright plaintiff can recover  
2 damages for acts that allegedly occurred more  
3 than three years before the filing of a  
4 lawsuit."

5 JUSTICE BARRETT: Mr. Shanmugam, we  
6 took it off the table, and your cert petition  
7 did not ask us to grant cert on the merits of  
8 the discovery rule. In fact, your cert petition  
9 acknowledged that there was no split on the  
10 discovery rule and that the split was between  
11 the Second and the Ninth on this recovery of  
12 damages beyond three years point.

13 MR. SHANMUGAM: Well, I would  
14 respectfully disagree with that, Justice  
15 Barrett, to this extent: In the star footnote  
16 in our petition, we indicated that the Court may  
17 wish --

18 JUSTICE BARRETT: But it wasn't the  
19 question on which you sought cert. And your  
20 brief pretty much says, well, this is our  
21 strongest point, so this is what we're going to  
22 focus on. The star footnote was not what you  
23 asked us to grant cert on.

24 MR. SHANMUGAM: Well, we asked this  
25 Court to grant cert on a somewhat broader



1 question presented. The formulation of our  
2 question presented, as we indicated in the star  
3 footnote, would have given the Court the  
4 opportunity to pass on the antecedent question  
5 of whether or not the Copyright Act embodies a  
6 discovery rule.

7           Once this Court rephrased the question  
8 presented, we abandoned any argument that there  
9 is no discovery rule. My point to this Court is  
10 simply that the scope of the discovery rule is  
11 relevant to this question. Why is --

12           JUSTICE JACKSON: But how so, Mr.  
13 Shanmugam? When we rephrased the question, we  
14 rephrased it. And I noted that you didn't read  
15 the part, when you talked about what the  
16 question presented is, whether under the  
17 discovery rule applied by the circuit courts and  
18 the Copyright Act's statute of limitation for  
19 civil actions. We were very specific. We  
20 weren't saying, you know, please entertain some  
21 arguments about the scope of the rule. We were  
22 taking it off the table, as Justice Barrett  
23 suggests.

24           MR. SHANMUGAM: Yeah, happy to address  
25 that, and I certainly didn't mean to ignore the

1 prepositional phrase at the beginning.

2 JUSTICE JACKSON: The critical -- the  
3 critical part.

4 MR. SHANMUGAM: Well -- well, let me  
5 address that directly. So I think that what  
6 that part of the question presented did was to  
7 direct the parties to address the substantive  
8 question, the availability of retrospective  
9 relief, in light of two considerations, as you  
10 say, first, the discovery accrual rule applied  
11 by the circuits courts and, second, the statute  
12 of limitations itself.

13 Now our submission, as the Court will  
14 be aware, as to the first part of that is that  
15 there is no consensus in the courts of appeals  
16 about the scope of the discovery rule. There is  
17 consensus about the existence of a discovery  
18 rule. On that issue, all of the regional  
19 circuits have said to some extent that there is  
20 a discovery rule. We read this Court's  
21 rephrasing of the question presented to take  
22 that issue off the table precisely because there  
23 was no circuit conflict on that issue.

24 But the Court also addressed --  
25 directed us to address the statutory text. And

1 our submission, to the extent that Respondents  
2 and the government suggest that, well, you  
3 should just look at the arguments in the court  
4 of appeals' decisions addressing the circuit  
5 conflict, is that when you look at those  
6 decisions, they in turn address this Court's  
7 decision in Petrella, they cite the language on  
8 which we rely from Petrella, and our submission  
9 to this Court is that that language, in turn,  
10 relied on the statute of limitations. It relied  
11 on Section 507(b). When the Court said on  
12 multiple occasions that retrospective relief was  
13 not available for acts beyond three years, the  
14 Court was discussing Section 507(b).

15 So I think it would be quite  
16 artificial for this Court to try to --

17 JUSTICE SOTOMAYOR: Counsel, isn't it  
18 artificial for you to do what Justice Barrett  
19 said, which is to raise the most important part  
20 of your argument in a footnote to say the Court  
21 can reach it if it wants?

22 The Court chose not to. Your  
23 petition -- you point to Samia, where the Court  
24 did reach a question that wasn't argued below.  
25 It's a very good example. And that petition was

1 very honest about the fact that it was asking  
2 the Court to answer the question that it had not  
3 raised below because of binding circuit  
4 precedent.

5 You didn't do that.

6 MR. SHANMUGAM: Well --

7 JUSTICE SOTOMAYOR: You came in and  
8 said reach this other question, not the one  
9 that's most important, not the one I'm going to  
10 hinge my argument on in my brief. Don't reach  
11 that because there's no circuit split, you don't  
12 have to. We're just going to rely on the  
13 discovery rule argument.

14 MR. SHANMUGAM: So I have two points  
15 in response to that. The first is that, again,  
16 in the cert petition, I think we were quite  
17 forthright in indicating that we would raise the  
18 issue on which we were bound below, the issue of  
19 whether or not the Copyright Act embodied a  
20 discovery rule at all. When the Court --

21 JUSTICE SOTOMAYOR: No, counsel. You  
22 put that in a footnote, that there was no  
23 circuit split around it.

24 MR. SHANMUGAM: Yes, but -- but --

25 JUSTICE SOTOMAYOR: Can I move on to

1 another --

2 MR. SHANMUGAM: -- but I'm happy to --

3 JUSTICE SOTOMAYOR: -- can I move on

4 to another issue? Show me the statutory

5 language that you rely on.

6 The damages section speaks about

7 damages. The statute of limitations speaks

8 about a time period to file a complaint. You're

9 automatically tying the two. Tell me how you're  
10 doing it.

11 MR. SHANMUGAM: Sure, I'd be glad to.

12 And that is precisely why --

13 JUSTICE SOTOMAYOR: Statutorily how.

14 MR. SHANMUGAM: Yes. And that's

15 precisely why in our brief we start with the

16 statutory language. After all, this is a

17 question of statutory interpretation.

18 We believe that the relevant language

19 is the language in Section 507(b), as this Court

20 directed in the rephrased question presented,

21 and not the language in 504 or any other

22 provision. We would freely recognize that in

23 the remedial provision, there is no sort of

24 limitations period built into that.

25 We believe that the language of

1 Section 507(b) and, of course, in particular,  
2 the operative term "accrues" is the relevant  
3 language.

4 Now I will say that this Court's  
5 decision in *Petrella*, which I think my friends  
6 on the other side acknowledge is well within the  
7 scope of the question presented, because, after  
8 all, that was the primary authority discussed by  
9 the Second Circuit and the Ninth Circuit and the  
10 Eleventh Circuit, when this Court said time and  
11 again that there was a limitation on  
12 retrospective relief, the Court cited the  
13 statute of limitations in Section 507(b).

14 Now, to be sure, the Court in its  
15 opinion in Footnote 4 recognized that some  
16 courts of appeals had recognized a discovery  
17 rule.

18 We think that those two things can be  
19 harmonized by concluding that when the Court  
20 referred to the discovery rule there, what it  
21 was really referring to is the more modest  
22 equity-based discovery rule that this Court has  
23 recognized, most recently in *Gabelli* and  
24 *Rotkiske*, a discovery rule that is limited to  
25 cases involving fraud and not a broad-based

1 discovery rule more generally.

2 But it is really for that reason that  
3 treatises like --

4 JUSTICE SOTOMAYOR: That -- that --  
5 that's the -- the scope of when the exception  
6 can be raised is different from whether it can  
7 or not.

8 MR. SHANMUGAM: Correct.

9 JUSTICE SOTOMAYOR: If it is a statute  
10 of limitations as you claim that does not permit  
11 recovery at all if it's outside the three-year  
12 period, then there would be no fraud exception.  
13 It would be almost like a statute of repose.

14 But that's not the argument you're  
15 making. You're making a very different one that  
16 would be subject to briefing in the appropriate  
17 case of how -- why the expansive was the  
18 discovery -- was the fraud exception in the  
19 common law. But there is an exception of some  
20 sort that you're recognizing. The only question  
21 is its breadth.

22 MR. SHANMUGAM: Correct. And on that  
23 issue --

24 JUSTICE SOTOMAYOR: That wasn't what  
25 we granted cert on.

1                   MR. SHANMUGAM: But, to circle back to  
2 Justice Jackson's question about the rephrased  
3 question presented, I don't think that this  
4 Court when it rephrased the question presented  
5 -- and you can certainly tell me if I'm  
6 incorrect about this -- was accepting any  
7 particular version of the discovery rule.

8                   And there is disagreement about that  
9 in the courts of appeals.

10                  JUSTICE SOTOMAYOR: The only  
11 disagreement is whether it applies to ownership  
12 versus infringement. There is no disagreement  
13 on the issue of whether, if it applies, how  
14 limited is it.

15                  JUSTICE BARRETT: And does that matter  
16 that you're an ownership case versus an  
17 infringement case? Does that matter to your  
18 argument here at all, that -- that disagreement  
19 about the discovery rule?

20                  MR. SHANMUGAM: Well, as this case  
21 comes to the Court, the Eleventh Circuit does  
22 apply the discovery rule to ownership claims.  
23 Our point is simply that in the courts of  
24 appeals, there are a variety of views about the  
25 scope of the discovery rule not just on that



1 axis but on other axes.

2 As we point out in the Third Circuit,  
3 the Third Circuit does not locate the discovery  
4 rule in any notion of accrual. It instead  
5 locates it in a notion of equitable tolling.

6 And my submission to this Court -- and  
7 this goes to one of our other arguments that,  
8 again, I think is properly before the Court --  
9 is that in rephrasing the question presented, I  
10 don't think that the Court is bound to any of  
11 the options the courts of appeals have  
12 previously accepted, particularly when those  
13 decisions are inconsistent with this Court's  
14 approach to the discovery rule more generally.

15 JUSTICE ALITO: Mr. Shanmugam --

16 MR. SHANMUGAM: I just --

17 JUSTICE ALITO: Oh, I'm sorry.

18 Finish.

19 MR. SHANMUGAM: No, go ahead.

20 JUSTICE ALITO: If -- if we were to  
21 hold that there -- there is no discovery rule  
22 with respect to the statute of limitations and  
23 the Copyright Act, this -- the question on which  
24 we granted review would go away, would it not?

25 MR. SHANMUGAM: Yes. The answer to

1 that question would be no, with a proviso that  
2 the Court could and I think should leave open  
3 the question of whether or not there is a  
4 narrower equity-based discovery rule for cases  
5 involving fraud. And the Court does not need to  
6 opine on that here for the reason that I gave in  
7 the opening, namely, that there's no claim here.

8 JUSTICE ALITO: Well, let me map out  
9 what would happen if, in the event -- and this  
10 may or may not occur -- we granted cert in the  
11 case, we were to dismiss this petition as  
12 improvidently granted. The case, I assume,  
13 would go back to the district court, and the  
14 district court would be aware that we recently  
15 granted review in a case that does present the  
16 issue of whether there is a discovery rule for  
17 the Copyright Act statute of limitations.

18 So, if I were the district court judge  
19 in those circumstances, I might choose not to  
20 plow ahead with further proceedings in this case  
21 until that issue was resolved.

22 Isn't that true?

23 MR. SHANMUGAM: Yes. Well, I think,  
24 that the court would be bound by the existing  
25 Eleventh Circuit case law. But let me just say

1 a word about this question of whether or not to  
2 dismiss the case, because I don't think that  
3 this is a case involving, you know, unfair  
4 surprise or anything like that. We flagged this  
5 issue again in the petition.

6 It's really a dispute about what  
7 arguments are available to us and what arguments  
8 the Court should address concerning the question  
9 presented because, after all, as you pointed  
10 out, if our view of the statutory language is  
11 correct, the answer to the question presented  
12 will be no.

13 Now we have a number of arguments  
14 before this Court --

15 JUSTICE ALITO: Well, what -- what  
16 concerns me is that we're being asked to decide  
17 what -- a -- a question that may be eliminated  
18 based on a subsequent decision. I mean, we're  
19 -- there are two questions, one would think.

20 Is there a discovery rule? If there  
21 is, what -- what are its implications for  
22 relief? The first is logically prior to the  
23 second. Why does it make sense to talk about  
24 the second without resolving the first?

25 MR. SHANMUGAM: Well, it -- it

1 doesn't, but I think what I would say is that  
2 it's really critical, as is always true in a  
3 case of statutory interpretation, to start with  
4 the relevant statutory language, and that is  
5 precisely why, when the Court rephrased the  
6 question presented, we pivoted away from any  
7 threshold argument that there's no discovery  
8 rule and we said let's start with the statutory  
9 language, as this Court directed, and figure out  
10 how it bears on this question of the  
11 availability of retrospective relief.

12 JUSTICE JACKSON: So what is your  
13 argument on that, please?

14 MR. SHANMUGAM: Sure. Our argument is  
15 very simple, and I think that the issue is  
16 abundantly joined in the briefing in this case.

17 It is, what is the meaning of the term  
18 "accrues"? Our submission is simple. As this  
19 Court has said, the standard rule is that  
20 "accrues" means at the point when you have a  
21 complete and present cause of action.

22 Now that's not a hard-and-fast rule.  
23 That can be rebutted by context or other cues.  
24 But, here, the statutes that Respondents and  
25 their amici cite simply don't rebut that

1 ordinary presumption.

2 JUSTICE JACKSON: I guess what I don't  
3 understand is why that has to do with the scope  
4 of the damages. So we have "accrues" and we  
5 have "accrues" in Section 507, which talks about  
6 when a civil action shall be maintained.

7 So fine, right? Even if I agree with  
8 you that "accrues" means what you say it means,  
9 that just -- the consequence of that, it looks  
10 like, under this statute is that the action  
11 shall be maintained within that time frame.

12 You -- you seem to be arguing that if  
13 you maintain an action within that time frame,  
14 the three-year statute of limitations that  
15 pertains to 507 is somehow transported into the  
16 consideration of how much damages you can get.  
17 And so that's the part where you've lost me.

18 MR. SHANMUGAM: Happy to address that.

19 JUSTICE JACKSON: Yes.

20 MR. SHANMUGAM: So the question  
21 presented in this case is whether a plaintiff  
22 can recover damages for acts that allegedly  
23 occurred more than three years before the filing  
24 of a lawsuit.

25 And if you go back and look at this

1 Court's decision in Petrella, I think that that  
2 was a distinction that the Court was drawing. I  
3 think the Court was saying, if the act takes  
4 place more than three years before, you cannot  
5 get retrospective relief.

6 And, as we explain in our brief,  
7 prospective relief is different for the simple  
8 reason that you don't have to have any past  
9 violation at all in order to get injunctive  
10 relief. All you have to show is a likelihood of  
11 future infringement.

12 JUSTICE JACKSON: But what do we do  
13 with 504 and the discussion of being entitled to  
14 recover the actual damages suffered by him? So,  
15 if you have an act that occurs within the time  
16 frame, but the damages extend before that, I  
17 take it your position is you can't go back any  
18 more than three years, but I don't see that in  
19 the statute.

20 MR. SHANMUGAM: Our position,  
21 consistent with Petrella and I think the Second  
22 Circuit's reasoning in Sohm, is that it's  
23 actually the timing of the act. In other words,  
24 in the perhaps unlikely scenario that you had an  
25 act that took place four or five years earlier,

1 we're not saying there's a damages cutoff at  
2 three years. And I don't think that that's what  
3 Justice Ginsburg in her opinion for the Court  
4 was saying either.

5 Now I recognize that that feels like  
6 the flip side of the broad version of the  
7 discovery rule, and I would submit to the Court  
8 that it is. That is why these issues are so  
9 hard conceptually to disentangle.

10 My point is simply that when it comes  
11 to retrospective relief, if the act took place  
12 more than three years earlier, the implication  
13 of the statutory language is you are out of  
14 luck. You cannot recover for retrospective  
15 relief. If you're bringing a claim for  
16 prospective relief, it will turn on whether  
17 there is a likelihood of future infringement.

18 Now I want to say a word about  
19 Petrella and our other arguments before this  
20 Court because, as I was saying to Justice Alito,  
21 the reason why this is not really a case  
22 involving dismissal, it's really a case  
23 involving what issues the Court should address,  
24 is because we have three other arguments.

25 The first is our argument concerning

1 Petrella, and I've already addressed that to  
2 some extent. I think the only other thing I  
3 would add is that I don't think that  
4 Respondents' or the government's  
5 characterization of Petrella is credible.

6 They say that when the Court on  
7 multiple occasions was talking about the  
8 availability of retrospective relief, the Court  
9 was really talking about Ms. Petrella's case,  
10 and because she was not relying on a discovery  
11 rule, that those statements should all be read  
12 in that context.

13 But the Court was relying on the  
14 unavailability of retrospective relief for acts  
15 more than three years earlier precisely to  
16 explain why applying the doctrine of laches was  
17 unnecessary because there was a strict statutory  
18 cutoff.

19 And that is why the leading treatises  
20 have said that the logic of Petrella supports  
21 our position here. It supports our position  
22 because that was a necessary premise of the  
23 Court's decision, and, again, I would submit  
24 that when Justice Ginsburg, one of the most  
25 careful opinion writers ever to sit on this



1 Court, made those statements, she was relying on  
2 the language in the statute of limitations, not  
3 some penumbra of Section 504 or something else.

4 Now the two other arguments that we  
5 are making to this Court are, first, the  
6 argument that under a proper understanding of  
7 the discovery rule, it should be limited to  
8 fraud.

9 When you look out over the court of  
10 appeals' opinions that have adopted the  
11 discovery rule, there is not a lot of reasoning  
12 in those opinions. They really rely on two  
13 things: first, the broad-based presumption in  
14 favor of a discovery rule that this Court cast  
15 doubt on in TRW and then repudiated in Rotkiske  
16 and, second, the fact that the criminal statute  
17 of limitations uses "arises" rather than  
18 "accrues."

19 And as recently as yesterday, members  
20 of the Court indicated that there's no  
21 meaningful difference between those two terms.  
22 The Court itself recognized as much in Petrella  
23 itself. And the legislative history indicates  
24 that Congress intended for those two periods to  
25 be similar.

1           And our last argument before the  
2 Court, again, an argument that is plainly within  
3 the scope of the question presented even if you  
4 take the stingiest view of it, is the argument  
5 that, at a minimum, if the Court thinks that  
6 there is a broad discovery rule, it should  
7 characterize that as an equitable rule that is  
8 subject to equitable limitations.

9           And, at a minimum, we think that this  
10 Court's statements in *Petrella*, if the Court  
11 doesn't agree with us on the interpretation of  
12 the statute, should be applied as an equitable  
13 limitation on that equitable rule. Indeed, in  
14 *Petrella* itself, the Court recognized that the  
15 doctrine of laches could apply where what you're  
16 dealing with is an equitable principle or a  
17 source of equitable relief.

18           So, at bottom, what is really going on  
19 here, I would submit -- and I recognize that it  
20 is difficult to sort of parse questions  
21 presented sometimes. We spent a lot of time  
22 trying to figure out exactly what the Court was  
23 intending when it reframed the question  
24 presented in a way that directed us both to the  
25 text and to what the lower courts had done.

1           Our fundamental submission is it would  
2 -- it would be wholly artificial for the Court  
3 to try to resolve this case without starting  
4 with the relevant statutory language. It would  
5 be a straw man for the Court to say: Well,  
6 there's no limitation in Section 504 or Section  
7 502. And that is precisely because we are  
8 dealing with a three-year limitations period  
9 that is in Section 507(b).

10           JUSTICE GORSUCH: May -- may I ask a  
11 question about your last submission? It seems  
12 to me a pretty tough one. Kind of a halfway  
13 textualism, if you will, to -- to say that  
14 there's a discovery rule, put aside fraud, a  
15 real discovery rule, the real bad wine, okay,  
16 but we're only going to do three years because  
17 Petrella, which interpreted the statute, which  
18 you think doesn't have a discovery rule? I  
19 mean, that's a -- that's a bit of a -- a few  
20 gymnastics required there.

21           MR. SHANMUGAM: So I don't think that  
22 that's quite what we're saying, Justice Gorsuch.  
23 So just to be clear about our argument  
24 concerning the text, again, our argument is a  
25 claim accrues when you have a complete and

1 present cause of action. None of these --

2 JUSTICE GORSUCH: I totally understand  
3 that argument.

4 MR. SHANMUGAM: None of these other  
5 statutes overcomes that. So, therefore, what is  
6 the consequence?

7 JUSTICE GORSUCH: I -- I -- I got all  
8 that. I'm asking about your last argument and  
9 only your last argument.

10 MR. SHANMUGAM: Sure. So our last  
11 argument is the equitable limitation.

12 JUSTICE GORSUCH: Yes.

13 MR. SHANMUGAM: And I recognize that  
14 you only get to that as a fallback if you reject  
15 our statutory argument or if you somehow say  
16 that that is off the table. And I would submit  
17 that the Court really shouldn't --

18 JUSTICE GORSUCH: Well, no, nobody --  
19 nobody's going to say it's off the table, all  
20 right? I haven't -- you know, it may -- may not  
21 be on this table. It may be on another table.  
22 But it's on the table, okay?

23 MR. SHANMUGAM: Well, I would say two  
24 things about that --

25 JUSTICE GORSUCH: So --

1                   MR. SHANMUGAM: -- first, that the  
2 Court has a petition currently pending before  
3 it --

4                   JUSTICE GORSUCH: I -- I -- I'm well  
5 aware, counsel.

6                   MR. SHANMUGAM: -- in the Martinelli  
7 case that presents that issue.

8                   JUSTICE GORSUCH: And I'm just asking,  
9 assuming that we are not going to decide 507 and  
10 you've got Petrella out there, how do you -- how  
11 do you get to this, okay, there's a discovery  
12 rule, but it's only a three-year discovery rule?

13                   MR. SHANMUGAM: The best reading of  
14 Petrella is that Petrella was in turn resting on  
15 507(b).

16                   JUSTICE GORSUCH: Right.

17                   MR. SHANMUGAM: We are not arguing for  
18 a -- a three-year discovery rule. We're arguing  
19 for a three-year injury rule. We think that the  
20 trigger is the point of injury.

21                   JUSTICE GORSUCH: So it's not even a  
22 discovery rule. That's my point. It's not even  
23 -- it's not even the old bad wine. It's  
24 something else. It's a new bad wine.

25                   MR. SHANMUGAM: Well, I think that the

1 discovery rule, as applied by the lower courts,  
2 allows you to go back for acts that have taken  
3 place more than three years earlier. As we  
4 point out in this case, we're talking about acts  
5 of infringement going back to 2008.

6           And -- and we would submit that a  
7 proper understanding of the discovery rule is to  
8 limit it to cases of fraud. So the way that  
9 this legal regime should work, if the Court  
10 feels unencumbered by the exact parsing of the  
11 question presented, is acts of infringement more  
12 than three years earlier, ordinarily not  
13 actionable. Under the ordinary operation of the  
14 discovery rule, they are actionable if you have  
15 fraud or concealment or one of the other  
16 traditionally recognized equity-based  
17 exceptions.

18           This is not a difficult question. The  
19 Court has before it all of the arguments to  
20 resolve the question of the correct  
21 interpretation of Section 507(b), and we would  
22 submit that the Court can proceed to do that  
23 accordingly in this case.

24           CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1 Justice Thomas?  
2 Justice Alito?  
3 Justice Sotomayor?  
4 Justice Kagan?  
5 Justice Gorsuch, anything further?  
6 No?  
7 Justice Kavanaugh?  
8 Justice Barrett?  
9 Thank you, counsel.  
10 MR. SHANMUGAM: Thank you.  
11 CHIEF JUSTICE ROBERTS: Mr. Earnhardt.  
12 ORAL ARGUMENT OF JOE WESLEY EARNHARDT  
13 ON BEHALF OF THE RESPONDENTS  
14 MR. EARNHARDT: Mr. Chief Justice, and  
15 may it please the Court:  
16 The Court reformulated the question  
17 presented to set aside debates about the  
18 discovery rule. Those issues were never raised  
19 or decided below, and reaching them is not  
20 necessary to resolve the circuit split targeted  
21 by the Court's actual question presented.  
22 Assuming Respondents' claims are  
23 timely under the discovery rule, Respondents are  
24 entitled to seek damages as a remedy for those  
25 claims. Section 507(b) makes no distinction

1 between claims seeking the remedy of damages and  
2 claims seeking other forms of relief. Section  
3 504 is entitled "Remedies for Infringement,  
4 Damages, and Profits," and it expressly says  
5 that a copyright owner is entitled to recover  
6 the actual damages suffered by him, any profits  
7 of the infringer, or statutory damages for all  
8 infringements involved in the action. There is  
9 no damages bar for copyright claims in Title 17.

10 Now Congress has enacted three-year  
11 lookback damages bars as narrow exceptions  
12 elsewhere in Title 17, but Congress needed to  
13 add those as narrow exceptions precisely because  
14 there is no damages bar in Title 17 as a general  
15 rule.

16 Nor would a judicially created damages  
17 bar be permissible. In *Petrella*, this Court  
18 held that if a copyright claim is timely under  
19 the statute of limitations, again, as is assumed  
20 here, courts are not at liberty to impose  
21 equitable-based time limits on the recovery of  
22 damages for those claims.

23 Now, to be sure, in *Petrella*, recovery  
24 was limited to infringements committed during  
25 the three years before the complaint was filed.



1 But that was because, under a laches case like  
2 that one and any other laches case, earlier  
3 claims which separately accrue were and will  
4 become time-barred under the statute of  
5 limitations when the plaintiff doesn't sue on  
6 them.

7 That is how the statute of limitations  
8 takes account of delay. It bars claims if  
9 they're not brought within three years of when  
10 they accrue. But, if a copyright claim is  
11 brought within three years of when it accrues  
12 and, thus, is timely under the statute of  
13 limitations, damages must be available as a  
14 remedy.

15 I welcome the Court's questions.

16 JUSTICE THOMAS: Petitioner seems to  
17 argue that, well, I'm willing to assume a  
18 discovery rule, but it's a very narrow or  
19 cramped discovery rule.

20 If we're going to assume the existence  
21 of a discovery rule, how do we determine its  
22 scope?

23 MR. EARNHARDT: Well, I think the  
24 question presented answers that question as  
25 well. The way that I interpret the question

1 presented -- and I don't think it's very  
2 complicated -- is that Clause 1 of the question  
3 presented defines a term nested within Clause 2.

4           So Clause 2 refers to Section 507(b).  
5 507(b) uses the word "accrue," okay? What rule  
6 determines when a claim accrues? Well, Clause 1  
7 of the question presented tells us what the  
8 assumption is here, which is the discovery  
9 accrual rule applied by the circuit courts tells  
10 you when a claim accrues. And so the reason a  
11 fraud-based discovery rule doesn't work is  
12 that's not the discovery accrual rule applied by  
13 the circuit courts.

14           Another piece of potential confusion  
15 that I think I should clear up is we -- we agree  
16 that what the scope of the discovery rule is is  
17 not necessary to answer the question presented.  
18 You hold that constant and say does the  
19 discovery rule apply and, if so, what are the  
20 consequences of damages. But, even if that were  
21 relevant, there is no disagreement in the lower  
22 courts about the scope of the discovery rule  
23 even with respect to ownership claims.

24           So Petitioners say in their reply  
25 brief that in the Sixth, Ninth, and Tenth

1 Circuits, the courts don't apply a discovery  
2 rule if it's a so-called ownership claim. I  
3 believe that's demonstrably false. Here is what  
4 the Abbas case from the Ninth Circuit, which  
5 they cite for that proposition, says about the  
6 discovery rule under an ownership claim: "Under  
7 these circumstances, a plaintiff must bring suit  
8 within three years of receiving notice of the  
9 repudiation of his or her ownership rights."

10 That is a discovery rule. It's a more  
11 permissive form of a discovery rule. Inquiry  
12 notice is not enough. It has to be actual  
13 notice. And it has to be a particular type of  
14 actual notice and express repudiation. All of  
15 those things can only delay the statute of  
16 limitations running, but it's a discovery rule.  
17 It turns on what the plaintiff knows, not on  
18 what the defendant did. And so, for that  
19 reason, there is no variability in the lower  
20 courts about the scope of discovery rule if that  
21 were relevant.

22 JUSTICE JACKSON: Do you have a view  
23 on Justice Alito's suggestion about dismissing  
24 the case?

25 MR. EARNHARDT: You know, I think

1 either path is viable. I will say that, you  
2 know, being from New York, the -- the Sohm court  
3 is -- is causing some mischief there and the  
4 decision of the Second Circuit in Sohm is so  
5 facially incorrect that I believe it would be  
6 helpful to the -- to the bar to clarify that  
7 it's wrong, that there is no separate damages  
8 bar, and that would resolve the circuit split  
9 that currently exists between the Second Circuit  
10 on the one hand and the Ninth and the Eleventh  
11 on the other.

12 I have to say, you know, we don't have  
13 sort of a dog in the hunt in this case about  
14 whether there is a discovery rule or not, but,  
15 for 40 years, the courts of appeals unanimously  
16 have found that there is one, and Congress  
17 during that time period has amended the  
18 Copyright Act 79 times, reasons big and small,  
19 and they've never stepped in to say that there's  
20 not one.

21 In fact, when they've wanted there to  
22 be one, when Congress has expanded the  
23 traditional rights of copyright, as a  
24 counterbalance, they've instituted a discovery  
25 rule -- I mean, I'm sorry, a damages bar --

1 JUSTICE GORSUCH: Counsel, you said  
2 you don't have a dog in the hunt on whether  
3 there's a discovery rule. If not, then why are  
4 we here?

5 MR. EARNHARDT: Well, because we --  
6 that's assumed by the question presented here.  
7 I -- I believe we're here because that has been  
8 the unanimous view of the courts of appeals, and  
9 the only question is assuming that there is a  
10 discovery rule --

11 JUSTICE GORSUCH: So you have a dog in  
12 the hunt on the scope of the discovery rule --

13 MR. EARNHARDT: Well --

14 JUSTICE GORSUCH: -- but not on  
15 whether there is a discovery rule?

16 MR. EARNHARDT: Well, no, I --

17 JUSTICE GORSUCH: Is that what you're  
18 saying?

19 MR. EARNHARDT: No, I'm saying --

20 JUSTICE GORSUCH: What is this dog?

21 (Laughter.)

22 MR. EARNHARDT: This dog already has a  
23 bone because --

24 JUSTICE GORSUCH: Oh, boy.

25 MR. EARNHARDT: -- this Court assumes

1 --

2 JUSTICE GORSUCH: Oh, boy.

3 MR. EARNHARDT: -- that there is a  
4 discovery rule. All -- all I mean by saying we  
5 don't have a dog in the hunt is we don't -- we  
6 don't have that issue before us.

7 JUSTICE GORSUCH: We don't have it  
8 before us, and that is a curiosity of this case.  
9 We're being asked to decide the scope of  
10 something that may or may not exist.

11 And I think Justice Alito was asking  
12 shouldn't we as a matter of -- you're asking  
13 what would be helpful to the bar. You mentioned  
14 that and clarity.

15 Wouldn't it be just good governance to  
16 take up that question first?

17 MR. EARNHARDT: I -- I don't think so,  
18 Your Honor, and the reason is we have a 40-year  
19 history in which the courts of appeals have  
20 applied the discovery rule.

21 JUSTICE GORSUCH: All over the map.  
22 All over the map. And we also have a lot of  
23 cases in this Court casting doubt on the  
24 existence of a discovery rule. We've called it  
25 wine from a bad vintage or something like that,

1 and we've done it, like, several times,  
2 including, like, two years ago.

3 So what do we do with that?

4 MR. EARNHARDT: Well, Your Honor, I  
5 think that with respect to the wine of bad  
6 vintage, that's not the type of discovery rule  
7 that would exist in the Copyright Act. It --  
8 you know, that does exist in the Copyright Act.  
9 That --

10 JUSTICE GORSUCH: Well, it may or may  
11 not. And -- and some people say that the wine  
12 is there. Other people say there's no dog and  
13 we've got bones. I don't know.

14 (Laughter.)

15 JUSTICE GORSUCH: Why wouldn't -- why  
16 wouldn't we just take up that question first,  
17 counsel?

18 MR. EARNHARDT: Well, to -- to borrow  
19 a phrase from the Court, in this case, there's a  
20 lot of stuff that would prevent us from doing  
21 that. It wasn't raised below. It wasn't  
22 accepted by the Eleventh Circuit as part of the  
23 interlocutory question.

24 This Court rephrased the question  
25 presented to exclude it, and so neither we nor

1 the United States briefed it. It's not  
2 necessary to decide the circuit split targeted  
3 by the actual question presented, which is, if  
4 there's a discovery rule, are damages somehow  
5 not available as a remedy? So I think this is a  
6 bad vehicle for that.

7 I also have to say on the issue of  
8 whether this is the bad wine of recent  
9 vintage --

10 JUSTICE GORSUCH: If it's a bad  
11 vehicle, does that not suggest we should dismiss  
12 this as improvidently granted?

13 MR. EARNHARDT: I -- I don't think so.  
14 The reason this case is so --

15 JUSTICE GORSUCH: I mean, I've never  
16 -- well, very rarely do I hear counsel standing  
17 at the podium argue against a result that helps  
18 their client in a particular case. I mean, a  
19 dismissal as improvidently granted would --  
20 would go some way for you.

21 MR. EARNHARDT: And -- and that's why  
22 we spent a significant amount of time in our  
23 brief saying that that's a viable option and it  
24 is. However, between the two options of  
25 dismissing it as improvidently granted compared



1 to clarifying that the Sohm rule is incorrect,  
2 the Sohm rule being clarified as incorrect  
3 because it so clearly is --

4 JUSTICE KAGAN: So what -- what  
5 mischief is Sohm causing? You said it was  
6 causing mischief. Explain.

7 MR. EARNHARDT: Well, so in the Second  
8 Circuit, under current law, even if a claim is  
9 timely, there's a peculiar rule that you can  
10 only seek damages going back for three years for  
11 that claim.

12 And that is completely different from  
13 the rule that now exists in the Ninth Circuit  
14 under the --

15 JUSTICE KAGAN: Yeah. I guess I'm  
16 just wondering, is that rule being applied  
17 frequently? Are there many cases that raise  
18 this issue? Has the Second Circuit  
19 rearticulated it? Have there been district  
20 courts that have applied it?

21 What's the status of this rule now?

22 MR. EARNHARDT: It's more an issue of  
23 forum shopping. Some folks want to be in the  
24 Second Circuit. Other folks want to be in the  
25 Ninth and Eleventh Circuits.

1                   And so I think that it's an issue of  
2   -- the -- the -- the point of the Copyright Act,  
3   the reason that there was a statute of  
4   limitations enacted in the first place because  
5   there did not used to be one, you used to look  
6   at the state statute of limitations, was for  
7   there to be a uniform period during which  
8   time -- claims are timely and recovery is  
9   granted. Now there's not.

10                   There's a circuit split between the  
11   Second Circuit on the one hand and the Ninth and  
12   the Eleventh on the other about the availability  
13   of damages under the discovery rule. And that's  
14   a -- that's a -- an inconsistency that the  
15   Court, I think, importantly should resolve, and  
16   that's the -- the circuit split directed by the  
17   question presented.

18                   Now, on the issue of whether this is  
19   the bad wine of recent vintage, that, as I  
20   understand the Court's critique of that, that's  
21   courts of appeals below assuming there's this  
22   background principle that there's a discovery  
23   rule when the word "accrue" is used, and that  
24   I -- I understand the Court has taken issue with  
25   in recent cases.

1                   That would not be the basis for the  
2                   discovery rule here. Here, the -- the --  
3                   Section 507(b) uses the word "accrue" and in  
4                   Crown Coats, this Court was very careful to say  
5                   that you cannot apply a universal meaning to the  
6                   word "accrue." You have to roll up your sleeves  
7                   and look at what the Congress meant when it used  
8                   that -- that word.

9                   So, if there's a discovery rule here  
10                  in the Copyright Act, which we -- we submit that  
11                  there is and that the question presented assumes  
12                  there is, it's because, in 1957, when Congress  
13                  adopted that term, they intended it to include a  
14                  discovery rule.

15                  JUSTICE GORSUCH: Counsel --

16                  JUSTICE BARRETT: Counsel, can I --

17                  JUSTICE GORSUCH: I'm sorry.

18                  JUSTICE BARRETT: Oh, sorry.

19                  JUSTICE GORSUCH: No, go ahead.

20                  JUSTICE BARRETT: Do you think that  
21                  the antecedent question of whether there's a  
22                  discovery rule is cert worthy? And by that, I  
23                  mean, is there a split -- let's just -- let's  
24                  just say that -- so we know there's a split on  
25                  this other question about the scope of damages,

1 right?

2 And the antecedent question at least  
3 at the cert stage was kind of presented as,  
4 well, all the courts of appeals are applying  
5 this, but there is this division about the other  
6 thing.

7 Do you think that if it just came to  
8 us straight up, is there a discovery rule or is  
9 this an injury accrual, that that's the kind of  
10 thing the Court should take?

11 MR. EARNHARDT: I -- I do not, Your  
12 Honor, and the reason is there is no circuit  
13 split on that issue.

14 JUSTICE BARRETT: Is there a circuit  
15 split about the scope?

16 MR. EARNHARDT: There is --

17 JUSTICE BARRETT: Mr. Shanmugam says  
18 there's a circuit split about the -- the scope  
19 of the discovery rule, some saying ownership  
20 versus infringement.

21 MR. EARNHARDT: That's incorrect.  
22 That is -- that is demonstrably incorrect.  
23 The -- the cases that apply the owner -- the  
24 ownership claim distinction, which, by the way,  
25 is a -- is a -- is a questionable distinction in

1 the first place, but the courts that do apply  
2 that distinction apply a discovery rule.

3 It turns on when the plaintiff  
4 receives notice of an express repudiation.  
5 That's a more permissive form of a discovery  
6 rule. It can only delay the statute of  
7 limitations running, but it is a discovery rule.

8 So you have a situation where, for 40  
9 years, the courts of appeals have uniformly  
10 applied a rule. There's no contrary opinion in  
11 the courts of appeals that that is the rule.

12 And Congress, this is not like the  
13 Sherman Act, where they -- they pass a -- an act  
14 with a few sentences and let the courts sort of  
15 figure it out. Congress has taken an active  
16 role in managing the copyright law of this  
17 country. They've amended the Copyright Act 79  
18 times since 1976. Yet --

19 JUSTICE ALITO: How can the -- how can  
20 the question about -- how can a question about  
21 the scope of the discovery rule be cert worthy  
22 and yet the existence, the question of the  
23 existence of the -- of the discovery rule, not  
24 be cert worthy?

25 MR. EARNHARDT: Well, because, Your

1 Honor --

2 JUSTICE ALITO: I mean, you're making  
3 an argument that this -- that the court of  
4 appeals decisions recognizing a discovery rule  
5 are correct. And that may well be true, and  
6 it's impressive that so many of them have  
7 reached that conclusion. But I don't understand  
8 how the second question can be cert worthy and  
9 the first is not.

10 MR. EARNHARDT: Well, it's because the  
11 Second Circuit in Sohm took -- took such a  
12 strange turn off of the -- off of the path.  
13 They -- they fashioned this peculiar rule that  
14 says we're going to assume that there is a  
15 discovery rule, we're going to assume that it  
16 applies to claims and that the claims are  
17 timely, but we're going to have this other rule  
18 that, even if the claim is timely, you're not  
19 allowed to recover damages for that claim.

20 And that is -- created the circuit  
21 split, and so that's why that issue is cert  
22 worthy and the other is not.

23 JUSTICE KAVANAUGH: If the Second  
24 Circuit had gone the other way and hadn't gone  
25 off the path, none of this would be cert worthy

1 is your view, right?

2 MR. EARNHARDT: That's correct, yes.

3 JUSTICE JACKSON: And -- and we  
4 frequently assume certain aspects of cases when  
5 we're looking at a split about a -- a subsequent  
6 issue.

7 MR. EARNHARDT: Absolutely. And it's  
8 entirely appropriate to do that here, to assume  
9 that there's a discovery rule and ask what  
10 impact does that rule have on damages.

11 JUSTICE JACKSON: And is that how you  
12 read our refashioning of the question presented?

13 MR. EARNHARDT: That's exactly how I  
14 read it. As I said before, I read the question  
15 presented as the first clause defining a term  
16 nested within the second clause. The second  
17 clause says 507(b). 507(b) says "accrue." What  
18 rule should we use to determine when a claim  
19 accrues under the Copyright Act? Look to Clause  
20 Number 1. You use a discovery accrual rule  
21 applied by the circuit courts.

22 So I think that's a -- that's a --  
23 that's a clear -- a clear reading of the  
24 question presented.

25 Just a few -- just one comment on

1 policy. Congress gets to decide what the best  
2 policy is here. And in the Copyright Act, it  
3 balances repose on the one hand with  
4 compensation and motivation on the other.

5 So the Copyright Act doesn't exist  
6 primarily to compensate authors whose works are  
7 being infringed. It exists primarily to  
8 motivate other folks to create works based on  
9 the profit motive that's available to them.

10 So, when Congress decides that policy,  
11 in certain circumstances, it has imposed a  
12 three-year lookback damages bar incompatible  
13 with a discovery rule for vessel hull design and  
14 other situations. It hasn't done that with  
15 general copyright claims precisely because it  
16 wants to really motivate the -- the creation of  
17 future works.

18 And I respectfully submit that  
19 Congress's policy -- policy decisions on these  
20 questions should not be second-guessed.

21 JUSTICE GORSUCH: You say the  
22 discovery rule allows you to look back more than  
23 three years, right?

24 MR. EARNHARDT: It doesn't allow you  
25 to look back more than three years. It allows



1 --

2 JUSTICE GORSUCH: Recover damages for  
3 more than three years?

4 MR. EARNHARDT: If the claim is  
5 timely, yes.

6 JUSTICE GORSUCH: Okay. And that fits  
7 with Petrella because Petrella doesn't cover all  
8 cases; it covers some subset of cases. Is that  
9 the gist of it?

10 MR. EARNHARDT: No. It's because  
11 that's the -- the precise holding of Petrella.  
12 Petrella says that if a claim is timely under  
13 the statute of limitations -- in the discovery  
14 rule context, that would mean it is brought  
15 within three years of when the claim is or  
16 reasonably should have been discovered -- then  
17 there cannot be equity-based limits on the  
18 remedy of damages for that claim.

19 JUSTICE GORSUCH: Well, Petrella says  
20 you look back -- as I read it; maybe we're just  
21 reading it differently -- you look back three  
22 years and no more.

23 MR. EARNHARDT: No. That --

24 JUSTICE GORSUCH: You disagree with  
25 that?

1 MR. EARNHARDT: Well, I -- I just  
2 think --

3 JUSTICE GORSUCH: That's a misreading  
4 of Petrella?

5 MR. EARNHARDT: It -- it is. And --  
6 and the Court --

7 JUSTICE GORSUCH: Yeah. Okay.

8 MR. EARNHARDT: There are many  
9 statements where the Court says retrospective  
10 relief is limited to three years.

11 JUSTICE GORSUCH: I -- I -- that's  
12 what I had recalled.

13 MR. EARNHARDT: Yeah. The reason the  
14 Court was making those statements was to explain  
15 why it was that Ms. Petrella's laches had  
16 consequences under the statute of limitations.

17 The -- the dissent in that case said  
18 this isn't fair. Ms. Petrella is getting a fair  
19 -- a free pass. She sat on her hands and didn't  
20 sue. How can it be that she can bring claims  
21 and recover damages? The majority responds to  
22 that by saying no, no, no, many of  
23 Ms. Petrella's claims based on infringements  
24 that happened years ago accrued, the three-year  
25 period ran, and then those claims were

1 time-barred, but it's the statute of limitations  
2 and the dismissal of claims that aren't brought  
3 within three years of when they accrue that --

4 JUSTICE GORSUCH: So Petrella only is  
5 with respect -- in your reading is Petrella is  
6 only with respect to claims in three years; it  
7 says nothing about the damages period.

8 MR. EARNHARDT: Well, that -- that --

9 JUSTICE GORSUCH: Am I understanding  
10 that broadly?

11 MR. EARNHARDT: -- that has to be  
12 correct because Ms. Petrella only brought claims  
13 for the three-year period -- infringements in --  
14 that occurred --

15 JUSTICE GORSUCH: So all the language  
16 in Petrella about three years for damages is  
17 neither here nor there?

18 MR. EARNHARDT: It -- I -- I don't  
19 read it as being three years for damages. I  
20 read it as -- as being --

21 JUSTICE GORSUCH: The claim?

22 MR. EARNHARDT: -- the -- the claim.  
23 If the claim is untimely because of the -- the  
24 -- the discovery rule, there can be no damages.

25 CHIEF JUSTICE ROBERTS: Anyone else?

1 No?

2 Anyone else? No.

3 Thank you, counsel.

4 Ms. Dubin.

5 ORAL ARGUMENT OF YAIRA DUBIN

6 FOR THE UNITED STATES, AS AMICUS CURIAE,

7 SUPPORTING THE RESPONDENTS

8 MS. DUBIN: Mr. Chief Justice, and may  
9 it please the Court:

10 First, the only question properly  
11 before the Court today is damages. Read fairly,  
12 the reformulated question presented bakes in an  
13 assumption. It tells the parties to assume that  
14 a copyright claim can accrue upon discovery,  
15 then ask whether damages are available if a  
16 claim is timely under that rule.

17 The answer to that question is a  
18 simple yes. If a claim is timely under 507(b),  
19 nothing in the Copyright Act imposes a separate  
20 time-based limit on damages. This Court's  
21 decision in *Petrella* rejected the idea that  
22 courts could impose an atextual bar on recovery  
23 for timely copyright claims, so the Second  
24 Circuit erred in relying on out-of-context  
25 language from *Petrella* to adopt a different

1       atextual bar.

2                   Second, Petitioners don't much defend  
3       the Second Circuit -- Second Circuit's damages  
4       rule, perhaps because it lacks a textual basis.  
5       Instead, they're really asking the Court to  
6       answer a different question, whether the  
7       discovery accrual rule applies to copyright  
8       claims at all or at least to the claims here.

9                   But this Court reformulated the  
10       question presented to exclude that question,  
11       setting those arguments out of bounds. If the  
12       Court reaches the merits, it should affirm the  
13       judgment below.

14                   I welcome the Court's questions.

15                   JUSTICE THOMAS: Does the government  
16       have a view on whether or not there is a  
17       discovery rule?

18                   MS. DUBIN: The government does not  
19       have a view on whether there is a discovery rule  
20       at this time. We took our cues from the  
21       question presented as reformulated by the Court,  
22       and the question on which we solicited views  
23       across the government and provided our views is  
24       on the question of damages.

25                   JUSTICE THOMAS: That was just an

1 unfair question.

2 (Laughter.)

3 JUSTICE BARRETT: Should we DIG?

4 MS. DUBIN: The United States doesn't  
5 have and hasn't expressed a view on between two  
6 options of dismissing the case as improvidently  
7 granted and affirming. I think there are good  
8 reasons to affirm here on the Sohm damages rule  
9 and reverse that -- that rule.

10 The circuits are divided on that  
11 question. Eleven circuits apply a discovery  
12 rule, so the question of damages under that rule  
13 is important. This Court granted certiorari to  
14 resolve that, and that conflict stems from a  
15 misreading of this Court's decision in Petrella.  
16 So this Court is uniquely situated to resolve  
17 that conflict.

18 JUSTICE BARRETT: I mean, Justice  
19 Alito pointed out that antecedent -- the  
20 antecedent question is whether there's a  
21 discovery rule at all. Do you think the effect  
22 of doing that cleanup and resolving the circuit  
23 split will solidify the discovery rule in a way  
24 that then doesn't give the Court an opportunity  
25 to address it again if we think that the

1 acceptance of the discovery rule is wrong?

2 MS. DUBIN: To be candid, I think the  
3 discovery rule is pretty solidified as it is.  
4 Eleven courts of appeals apply that rule. So I  
5 think it's unlikely to solidify it further.

6 This Court does often grant certiorari  
7 on questions that bake in an assumption and then  
8 decide only that question, such as in the  
9 PROMESA case two years ago and U.S. Bank several  
10 years before that. There is an assumption baked  
11 into both of those cases, and the Court goes on  
12 to resolve the question on which there is a --

13 JUSTICE BARRETT: And we're free then  
14 to just revisit it later if we ever decide, hey,  
15 there's an error that we want to correct?

16 MS. DUBIN: Of course. Absolutely.

17 CHIEF JUSTICE ROBERTS: Well, it  
18 doesn't sound like that later day is ever going  
19 to come.

20 MS. DUBIN: This Court sometimes, when  
21 there is a -- a -- a well-solidified rule in the  
22 courts of appeals and this Court thinks it's  
23 wrong and it's important to resolve it, does  
24 sometimes grant certiorari when there is no  
25 circuit conflict. Of course, it could choose to

1 do so in an appropriate case.

2 Here, Petitioner suggested that the  
3 Court do exactly that, and the Court said no.  
4 The Court reformulated the question presented.

5 JUSTICE KAGAN: Does the government  
6 have a view on whether we should do that next  
7 time around?

8 MS. DUBIN: We do not have a view.  
9 There is a petition pending that presents this  
10 question. We have not offered our views, nor  
11 has this Court called for our views on that  
12 question.

13 JUSTICE KAGAN: The government doesn't  
14 have many views here.

15 (Laughter.)

16 MS. DUBIN: Justice Kagan, we do have  
17 strong views on two questions. One, the damages  
18 rule applied by the Second Circuit is wrong.  
19 There's no textual basis for it. They misread  
20 this Court's decision in *Petrella*. This Court  
21 could clarify that and do good in -- in  
22 providing uniform administration of copyright  
23 law.

24 But the second thing that we have a  
25 strong view on is that you shouldn't do what



1 Petitioner is asking you to do and go outside  
2 the reformulated question presented and address  
3 the question of accrual on a one-sided  
4 presentation from Petitioners' counsel.

5 As this Court heard yesterday, the  
6 question of accrual is context-specific. If you  
7 were deciding that question in the context of  
8 the Copyright Act, you would want to be deciding  
9 it with briefing from both sides on both parties  
10 as to what "accrue" means in Section 507(b).

11 JUSTICE JACKSON: Why don't you take  
12 this opportunity to just explain why the Second  
13 Circuit is wrong.

14 MS. DUBIN: Absolutely. Thank you,  
15 Justice Jackson.

16 The Second Circuit believed that  
17 Petrella imposed a separate bar on damages,  
18 separate from the question of accrual under the  
19 Copyright Act. But that's not the right reading  
20 of Petrella.

21 What Petrella was trying to explain  
22 was that in a case in which your claims are  
23 untimely for acts of infringement that occurred  
24 more than three years before you filed suit, you  
25 can't then use claims within the limitation

1 period to bootstrap in those claims.

2 That's the way in which the separate  
3 accrual protects both the interests of  
4 defendants and plaintiffs.

5 In Petrella itself, all claims for  
6 acts that occurred more than three years before  
7 she filed suit were untimely and she didn't try  
8 to invoke the discovery rule and couldn't have  
9 invoked the discovery rule because MGM's  
10 exploitation of Raging Bull was so open and  
11 notorious.

12 But nothing in Petrella should be read  
13 to suggest that in a case in which a plaintiff  
14 could raise a timely claim for acts that  
15 occurred more than three years before it filed  
16 suit, she still can't recover damages.

17 And I wanted to respond to  
18 Petitioners', you know, suggestion that we're  
19 suggesting in some way that Petrella is  
20 careless. That is not our suggestion at all.  
21 Petrella reserved the question in Footnote 4 of  
22 the discovery accrual rule.

23 But I think Petitioners' reading of  
24 Petrella would suggest that in the same opinion  
25 in which Justice Ginsburg reserved the question

1 of whether the discovery rule applied, she also  
2 decided to gut it by eliminating damages  
3 thereunder with no textual basis for it, and I  
4 would submit that that's a far stranger reading  
5 of Petrella.

6 CHIEF JUSTICE ROBERTS: Anything  
7 further?

8 Thank you, counsel.

9 Rebuttal, Mr. Shanmugam?

10 REBUTTAL ARGUMENT OF KANNON K. SHANMUGAM  
11 ON BEHALF OF THE PETITIONERS

12 MR. SHANMUGAM: Thank you, Mr. Chief  
13 Justice.

14 Respondents and the government now  
15 seemingly ask for a narrow affirmance that  
16 resolves the circuit conflict and that rejects  
17 the circuit's -- Second Circuit's reasoning in  
18 Sohm. We think that that reasoning is correct  
19 and that Sohm appropriately rested on its  
20 reading of this Court's decision in Petrella.

21 And I would note parenthetically that  
22 it's not just the majority opinion in Petrella,  
23 it's Justice Breyer's dissent and, indeed, even  
24 the government's own brief in Petrella that all  
25 seem to understand the statute of limitations

1 the same way, namely, as a statute under which  
2 claims accrue, consistent with what the  
3 government has recently as a couple of terms ago  
4 described as the standard rule at the time of  
5 injury.

6 And I would submit that Respondents  
7 have fully joined issue on the relevant part of  
8 this, which is the question of the extent to  
9 which the statutory language bears on the  
10 availability of retrospective relief.

11 If you look at pages 32 to 40 of  
12 Respondents' brief, they make all of the  
13 arguments that are available to the best of my  
14 knowledge as to why "accrue" should not be given  
15 that standard meaning.

16 So that issue is fully teed up, and we  
17 rely on the statutory language, as this Court  
18 directed in the rephrased question presented,  
19 notwithstanding my friend, Mr. Earnhardt's  
20 careful parsing. I think that this Court  
21 directed the parties to address the statute of  
22 limitations, and we did so consistent with that,  
23 explaining how it bears on the question that  
24 this Court actually asked.

25 Now we don't think that the Court

1 needs to resolve the validity of the discovery  
2 rule, but let me explain why the Court may want  
3 to do that. And the Court does, as Justice  
4 Gorsuch alluded to, have before it right now a  
5 petition in the Martinelli case presenting that  
6 issue. It is true that now 11 courts of appeals  
7 have accepted a broad-based discovery rule,  
8 though there are disputes -- Pache, Mr.  
9 Earnhardt -- about how -- how that applies in  
10 the context of ownership claims, where it comes  
11 from and the like.

12 I would submit that if this Court  
13 doesn't intervene here, particularly given what  
14 this Court has said about the discovery rule  
15 more recently, that it will really solidify the  
16 discovery rule in place.

17 And how we know that is that both in  
18 the Second Circuit in Sohm and in the Fifth  
19 Circuit in Martinelli, parties raised the  
20 question of whether this Court's more recent  
21 case law discussing the bad wine of recent  
22 vintage cast doubt on discovery rules in those  
23 circuits and yet the courts continued to apply  
24 them.

25 I take Justice Jackson's point that

1 this Court assumes things in questions presented  
2 all the time, but I'm not aware of any precedent  
3 where the Court has assumed away the most  
4 relevant statutory language -- and we all agree  
5 that the language of 507(b) is the most relevant  
6 for purposes of resolving a question of  
7 statutory interpretation -- or a case where the  
8 Court has confined itself to the interpretations  
9 of particular courts of appeals.

10 This Court is always free to reject  
11 all of the interpretations of the courts of  
12 appeals where they are wrong, and particularly  
13 here, where those interpretations rely on an  
14 outdated presumption in favor of the discovery  
15 rule that this Court has now definitively  
16 rejected, it would be artificial for the Court  
17 to do so.

18 I recognize the desire for judicial  
19 modesty and incremental decision-making, but  
20 this is a context in which, as all of the amicus  
21 briefs and all of the commentary reflects,  
22 parties and lower courts are crying out for  
23 guidance on what is at bottom a simple question  
24 of statutory interpretation.

25 So whether the Court does so in this

1 case or whether it holds this case and then  
2 grants the Martinelli petition and resolves the  
3 broader questions here, we believe that the  
4 broader questions are important to litigants.  
5 They are really intertwined with the narrower  
6 question that Respondents and the government are  
7 asking this Court to resolve.

8           And I do submit that it would really  
9 be unfortunate if this Court, however it decides  
10 this case, left in place lower court decisions  
11 that really cannot be reconciled with this  
12 Court's own precedents.

13           The answer in this case is  
14 straightforward. All the Court need do is to  
15 apply the standard rule concerning the meaning  
16 of the term "accrues" and, if it does so, the  
17 answer to the question presented of whether a  
18 copyright plaintiff can recover damages for acts  
19 that allegedly occurred more than three years  
20 before the filing of a lawsuit is no. And so we  
21 would ask that the judgment of the Eleventh  
22 Circuit be reversed.

23           Thank you.

24           CHIEF JUSTICE ROBERTS: Thank you,  
25 counsel.

1                   The case is submitted.  
2                   (Whereupon, at 12:35 p.m., the case  
3 was submitted.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



## Official - Subject to Final Review

<p align="center"><b>1</b></p> <p><b>1</b> [3] 33:2,6 46:20  <b>11</b> [1] 60:6  <b>11:41</b> [2] 1:15 3:2  <b>12:35</b> [1] 63:2  <b>17</b> [3] 31:9,12,14  <b>1957</b> [1] 42:12  <b>1976</b> [1] 44:18</p>	<p>26:25 32:11 33:6,10 46:19  <b>62:16</b>  <b>acknowledge</b> [1] 13:6  <b>acknowledged</b> [1] 7:9  <b>across</b> [1] 52:23  <b>Act</b> [23] 8:5 11:19 16:23 17:17 21:3,15,23,25 22:11 35:18 38:7,8 41:2 42:10 44:13,13,17 46:19 47:2,5 51:19 56:8,19  <b>Act's</b> [1] 8:18  <b>action</b> [8] 3:18,21 19:21 20:6,10,13 27:1 31:8  <b>actionable</b> [2] 29:13,14  <b>actions</b> [1] 8:19  <b>active</b> [1] 44:15  <b>acts</b> [15] 3:13,24 5:8 6:12 7:2 10:13 20:22 23:14 29:2,4,11 56:23 57:6,14 62:18  <b>actual</b> [6] 21:14 30:21 31:6 34:12,14 39:3  <b>actually</b> [2] 21:23 59:24  <b>add</b> [2] 23:3 31:13  <b>address</b> [12] 4:8 8:24 9:5,7,25 10:6 18:8 20:18 22:23 53:25 56:2 59:21  <b>addressed</b> [2] 9:24 23:1  <b>addressing</b> [1] 10:4  <b>administration</b> [1] 55:22  <b>adopt</b> [1] 51:25  <b>adopted</b> [2] 24:10 42:13  <b>affirm</b> [2] 52:12 53:8  <b>affirmance</b> [1] 58:15  <b>affirming</b> [1] 53:7  <b>ago</b> [4] 38:2 49:24 54:9 59:3  <b>agree</b> [4] 20:7 25:11 33:15 61:4  <b>ahead</b> [3] 16:19 17:20 42:19</p>	<p><b>answers</b> [1] 32:24  <b>antecedent</b> [5] 8:4 42:21 43:2 53:19,20  <b>appeals</b> [20] 5:18 6:6 9:15 13:16 15:9,24 16:11 35:15 36:8 37:19 41:21 43:4 44:9,11 45:4 54:4,22 60:6 61:9,12  <b>appeals'</b> [3] 5:11 10:4 24:10  <b>APPEARANCES</b> [1] 1:17  <b>applicable</b> [1] 3:17  <b>applied</b> [13] 8:17 9:10 25:12 29:1 33:9,12 37:20 40:16,20 44:10 46:21 55:18 58:1  <b>applies</b> [7] 4:21 5:19 15:11,13 45:16 52:7 60:9  <b>apply</b> [12] 15:22 25:15 33:19 34:1 42:5 43:23 44:1,2 53:11 54:4 60:23 62:15  <b>applying</b> [2] 23:16 43:4  <b>approach</b> [1] 16:14  <b>appropriate</b> [3] 14:16 46:8 55:1  <b>appropriately</b> [1] 58:19  <b>aren't</b> [1] 50:2  <b>argue</b> [2] 32:17 39:17  <b>argued</b> [1] 10:24  <b>arguing</b> [3] 20:12 28:17,18  <b>argument</b> [34] 1:14 2:2,5,8,12 3:4,7 5:22,25 8:8 10:20 11:10,13 14:14 15:18 19:7,13,14 22:25 24:6 25:1,2,4 26:23,24 27:3,8,9,11,15 30:12 45:3 51:5 58:10  <b>arguments</b> [14] 4:7 6:7 8:21 10:3 16:7 18:7,7,13 22:19,24 24:4 29:19 52:11 59:13</p>	<p><b>available</b> [7] 10:13 18:7 32:13 39:5 47:9 51:15 59:13  <b>aware</b> [4] 9:14 17:14 28:5 61:2  <b>away</b> [4] 4:25 16:24 19:6 61:3  <b>axes</b> [1] 16:1  <b>axis</b> [1] 16:1</p>	<p><b>breadth</b> [1] 14:21  <b>Breyer's</b> [1] 58:23  <b>brief</b> [8] 7:20 11:10 12:15 21:6 33:25 39:23 58:24 59:12  <b>briefed</b> [1] 39:1  <b>briefing</b> [3] 14:16 19:16 56:9  <b>briefs</b> [1] 61:21  <b>bring</b> [2] 34:7 49:20  <b>bringing</b> [1] 22:15  <b>broad</b> [3] 4:17 22:6 25:6  <b>broad-based</b> [3] 13:25 24:13 60:7  <b>broader</b> [3] 7:25 62:3,4  <b>broadly</b> [1] 50:10  <b>brought</b> [6] 3:19 32:9,11 48:14 50:2,12  <b>built</b> [1] 12:24  <b>Bull</b> [1] 57:10</p>
<p align="center"><b>2</b></p> <p><b>2</b> [2] 33:3,4  <b>2008</b> [1] 29:5  <b>2024</b> [1] 1:11  <b>21</b> [1] 1:11  <b>22-1078</b> [1] 3:4</p>	<p><b>AL</b> [2] 1:4,7  <b>ALITO</b> [11] 16:15,17,20 17:8 18:15 22:20 30:2 37:11 44:19 45:2 53:19  <b>Alito's</b> [1] 34:23  <b>allegedly</b> [4] 3:13 7:2 20:22 62:19  <b>allow</b> [1] 47:24  <b>allowed</b> [1] 45:19  <b>allows</b> [3] 29:2 47:22,25  <b>alluded</b> [1] 60:4  <b>almost</b> [1] 14:13  <b>already</b> [2] 23:1 36:22  <b>amended</b> [2] 35:17 44:17  <b>amici</b> [1] 19:25  <b>amicus</b> [4] 1:24 2:10 51:6 61:20  <b>among</b> [1] 4:18  <b>amount</b> [1] 39:22  <b>another</b> [4] 12:1,4 27:21 33:14  <b>answer</b> [9] 3:16 11:2 16:25 18:11 33:17 51:17 52:6 62:13,17</p>	<p><b>arises</b> [1] 24:17  <b>around</b> [2] 11:23 55:7  <b>artificial</b> [4] 10:16,18 26:2 61:16  <b>aside</b> [2] 26:14 30:17  <b>aspects</b> [1] 46:4  <b>Assistant</b> [1] 1:22  <b>assume</b> [11] 4:16 5:15 6:14 17:12 32:17,20 45:14,15 46:4,8 51:13  <b>assumed</b> [3] 31:19 36:6 61:3  <b>assumes</b> [4] 5:2 36:25 42:11 61:1  <b>assuming</b> [5] 4:25 28:9 30:22 36:9 41:21  <b>assumption</b> [4] 33:8 51:13 54:7,10  <b>atextual</b> [2] 51:22 52:1  <b>authority</b> [1] 13:8  <b>authors</b> [1] 47:6  <b>automatically</b> [1] 12:9  <b>availability</b> [6] 6:12 9:8 19:11 23:8 41:12 59:10</p>	<p align="center"><b>B</b></p> <p><b>back</b> [11] 15:1 17:13 20:25 21:17 29:2,5 40:10 47:22,25 48:20,21  <b>background</b> [2] 4:1 41:22  <b>bad</b> [10] 26:15 28:23,24 37:25 38:5 39:6,8,10 41:19 60:21  <b>bake</b> [1] 54:7  <b>baked</b> [1] 54:10  <b>bakes</b> [1] 51:12  <b>balances</b> [1] 47:3  <b>Bank</b> [1] 54:9  <b>bar</b> [11] 31:9,14,17 35:6,8,25 37:13 47:12 51:22 52:1 56:17  <b>BARRETT</b> [15] 7:5,15,18 8:22 10:18 15:15 30:8 42:16,18,20 43:14,17 53:3,18 54:13  <b>bars</b> [2] 31:11 32:8  <b>based</b> [3] 18:18 47:8 49:23  <b>basis</b> [5] 5:10 42:1 52:4 55:19 58:3  <b>bears</b> [3] 19:10 59:9,23  <b>become</b> [1] 32:4  <b>beginning</b> [1] 9:1  <b>begins</b> [1] 4:9  <b>behalf</b> [8] 1:19,21 2:4,7,14 3:8 30:13 58:11  <b>believe</b> [6] 12:18,25 34:3 35:5 36:7 62:3  <b>believed</b> [1] 56:16  <b>below</b> [9] 5:14,23 10:24 11:3,18 30:19 38:21 41:21 52:13  <b>best</b> [3] 28:13 47:1 59:13  <b>between</b> [7] 7:10 24:21 31:1 35:9 39:24 41:10 53:5  <b>beyond</b> [3] 6:13 7:12 10:13  <b>big</b> [1] 35:18  <b>binding</b> [3] 6:6,17 11:3  <b>bit</b> [1] 26:19  <b>board</b> [1] 4:6  <b>bone</b> [1] 36:23  <b>bones</b> [1] 38:13  <b>bootstrap</b> [1] 57:1  <b>borrow</b> [1] 38:18  <b>both</b> [7] 6:3 25:24 54:11 56:9,9 57:3 60:17  <b>bottom</b> [2] 25:18 61:23  <b>bound</b> [4] 6:1 11:18 16:10 17:24  <b>bounds</b> [1] 52:11  <b>boy</b> [2] 36:24 37:2</p>	<p align="center"><b>C</b></p> <p><b>called</b> [2] 37:24 55:11  <b>came</b> [3] 1:13 11:7 43:7  <b>candid</b> [1] 54:2  <b>cannot</b> [6] 4:12 21:4 22:14 42:5 48:17 62:11  <b>careful</b> [3] 23:25 42:4 59:20  <b>careless</b> [1] 57:20  <b>Case</b> [50] 3:4,11 5:7 6:6,17 14:17 15:16,17,20 17:11,12,15,20,25 18:2,3 19:3,16 20:21 22:21,22 23:9 26:3 28:7 29:4,23 32:1,2 34:4,24 35:13 37:8 38:19 39:14,18 49:17 53:6 54:9 55:1 56:22 57:13 60:5,21 61:7 62:1,1,10,13 63:1,2  <b>cases</b> [13] 4:3,21 13:25 17:4 29:8 37:23 40:17 41:25 43:23 46:4 48:8,8 54:11  <b>cast</b> [2] 24:14 60:22  <b>casting</b> [1] 37:23  <b>cause</b> [3] 3:21 19:21 27:1  <b>causing</b> [3] 35:3 40:5,6  <b>cert</b> [16] 7:6,7,8,19,23,25 11:16 14:25 17:10 42:22 43:3 44:21,24 45:8,21,25  <b>certain</b> [2] 46:4 47:11  <b>certainly</b> [2] 8:25 15:5  <b>certified</b> [2] 6:9,11  <b>certiorari</b> [3] 53:13 54:6,24  <b>challenge</b> [1] 6:5  <b>challenging</b> [1] 6:19  <b>CHAPPELL</b> [2] 1:3 3:4  <b>characterization</b> [1] 23:5  <b>characterize</b> [1] 25:7  <b>CHIEF</b> [11] 3:3,9 29:24 30:11,14 50:25 51:8 54:17 58:6,12 62:24  <b>choose</b> [2] 17:19 54:25  <b>chose</b> [1] 10:22  <b>circle</b> [1] 15:1</p>
<p align="center"><b>3</b></p> <p><b>3</b> [1] 2:4  <b>30</b> [1] 2:7  <b>32</b> [1] 59:11</p>	<p><b>acted</b> [1] 1:11  <b>act</b> [1] 1:11  <b>act's</b> [1] 1:11  <b>action</b> [1] 1:11  <b>actionable</b> [1] 1:11  <b>actions</b> [1] 1:11  <b>active</b> [1] 1:11  <b>acts</b> [1] 1:11  <b>add</b> [1] 1:11  <b>address</b> [1] 1:11  <b>addressed</b> [1] 1:11  <b>addressing</b> [1] 1:11  <b>administration</b> [1] 1:11  <b>adopt</b> [1] 1:11  <b>adopted</b> [1] 1:11  <b>affirm</b> [1] 1:11  <b>affirmance</b> [1] 1:11  <b>affirming</b> [1] 1:11  <b>ago</b> [1] 1:11  <b>agree</b> [1] 1:11  <b>ahead</b> [1] 1:11  <b>AL</b> [1] 1:11  <b>ALITO</b> [1] 1:11  <b>allegedly</b> [1] 1:11  <b>allow</b> [1] 1:11  <b>allowed</b> [1] 1:11  <b>allows</b> [1] 1:11  <b>alluded</b> [1] 1:11  <b>almost</b> [1] 1:11  <b>already</b> [1] 1:11  <b>amended</b> [1] 1:11  <b>amici</b> [1] 1:11  <b>amicus</b> [1] 1:11  <b>among</b> [1] 1:11  <b>amount</b> [1] 1:11  <b>another</b> [1] 1:11  <b>answer</b> [1] 1:11</p>	<p><b>answers</b> [1] 1:11  <b>antecedent</b> [1] 1:11  <b>appeals</b> [1] 1:11  <b>APPEARANCES</b> [1] 1:11  <b>applicable</b> [1] 1:11  <b>applied</b> [1] 1:11  <b>applies</b> [1] 1:11  <b>apply</b> [1] 1:11  <b>applying</b> [1] 1:11  <b>approach</b> [1] 1:11  <b>appropriate</b> [1] 1:11  <b>appropriately</b> [1] 1:11  <b>aren't</b> [1] 1:11  <b>argue</b> [1] 1:11  <b>argued</b> [1] 1:11  <b>arguing</b> [1] 1:11  <b>argument</b> [1] 1:11  <b>arguments</b> [1] 1:11  <b>arises</b> [1] 1:11  <b>around</b> [1] 1:11  <b>artificial</b> [1] 1:11  <b>aside</b> [1] 1:11  <b>aspects</b> [1] 1:11  <b>Assistant</b> [1] 1:11  <b>assume</b> [1] 1:11  <b>assumed</b> [1] 1:11  <b>assumes</b> [1] 1:11  <b>assuming</b> [1] 1:11  <b>assumption</b> [1] 1:11  <b>atextual</b> [1] 1:11  <b>authority</b> [1] 1:11  <b>authors</b> [1] 1:11  <b>automatically</b> [1] 1:11  <b>availability</b> [1] 1:11</p>	<p><b>available</b> [1] 1:11  <b>aware</b> [1] 1:11  <b>away</b> [1] 1:11  <b>axes</b> [1] 1:11  <b>axis</b> [1] 1:11</p>	<p><b>breadth</b> [1] 1:11  <b>Breyer's</b> [1] 1:11  <b>brief</b> [1] 1:11  <b>briefed</b> [1] 1:11  <b>briefing</b> [1] 1:11  <b>briefs</b> [1] 1:11  <b>bring</b> [1] 1:11  <b>bringing</b> [1] 1:11  <b>broad</b> [1] 1:11  <b>broad-based</b> [1] 1:11  <b>broader</b> [1] 1:11  <b>broadly</b> [1] 1:11  <b>brought</b> [1] 1:11  <b>built</b> [1] 1:11  <b>Bull</b> [1] 1:11</p>
<p align="center"><b>4</b></p> <p><b>4</b> [2] 13:15 57:21  <b>40</b> [3] 35:15 44:8 59:11  <b>40-year</b> [1] 37:18</p>	<p><b>acted</b> [1] 1:11  <b>act</b> [1] 1:11  <b>act's</b> [1] 1:11  <b>action</b> [1] 1:11  <b>actionable</b> [1] 1:11  <b>actions</b> [1] 1:11  <b>active</b> [1] 1:11  <b>acts</b> [1] 1:11  <b>add</b> [1] 1:11  <b>address</b> [1] 1:11  <b>addressed</b> [1] 1:11  <b>addressing</b> [1] 1:11  <b>administration</b> [1] 1:11  <b>adopt</b> [1] 1:11  <b>adopted</b> [1] 1:11  <b>affirm</b> [1] 1:11  <b>affirmance</b> [1] 1:11  <b>affirming</b> [1] 1:11  <b>ago</b> [1] 1:11  <b>agree</b> [1] 1:11  <b>ahead</b> [1] 1:11  <b>AL</b> [1] 1:11  <b>ALITO</b> [1] 1:11  <b>allegedly</b> [1] 1:11  <b>allow</b> [1] 1:11  <b>allowed</b> [1] 1:11  <b>allows</b> [1] 1:11  <b>alluded</b> [1] 1:11  <b>almost</b> [1] 1:11  <b>already</b> [1] 1:11  <b>amended</b> [1] 1:11  <b>amici</b> [1] 1:11  <b>amicus</b> [1] 1:11  <b>among</b> [1] 1:11  <b>amount</b> [1] 1:11  <b>another</b> [1] 1:11  <b>answer</b> [1] 1:11</p>	<p><b>answers</b> [1] 1:11  <b>antecedent</b> [1] 1:11  <b>appeals</b> [1] 1:11  <b>APPEARANCES</b> [1] 1:11  <b>applicable</b> [1] 1:11  <b>applied</b> [1] 1:11  <b>applies</b> [1] 1:11  <b>apply</b> [1] 1:11  <b>applying</b> [1] 1:11  <b>approach</b> [1] 1:11  <b>appropriate</b> [1] 1:11  <b>appropriately</b> [1] 1:11  <b>aren't</b> [1] 1:11  <b>argue</b> [1] 1:11  <b>argued</b> [1] 1:11  <b>arguing</b> [1] 1:11  <b>argument</b> [1] 1:11  <b>arguments</b> [1] 1:11  <b>arises</b> [1] 1:11  <b>around</b> [1] 1:11  <b>artificial</b> [1] 1:11  <b>aside</b> [1] 1:11  <b>aspects</b> [1] 1:11  <b>Assistant</b> [1] 1:11  <b>assume</b> [1] 1:11  <b>assumed</b> [1] 1:11  <b>assumes</b> [1] 1:11  <b>assuming</b> [1] 1:11  <b>assumption</b> [1] 1:11  <b>atextual</b> [1] 1:11  <b>authority</b> [1] 1:11  <b>authors</b> [1] 1:11  <b>automatically</b> [1] 1:11  <b>availability</b> [1] 1:11</p>	<p><b>available</b> [1] 1:11  <b>aware</b> [1] 1:11  <b>away</b> [1] 1:11  <b>axes</b> [1] 1:11  <b>axis</b> [1] 1:11</p>	<p><b>breadth</b> [1] 1:11  <b>Breyer's</b> [1] 1:11  <b>brief</b> [1] 1:11  <b>briefed</b> [1] 1:11  <b>briefing</b> [1] 1:11  <b>briefs</b> [1] 1:11  <b>bring</b> [1] 1:11  <b>bringing</b> [1] 1:11  <b>broad</b> [1] 1:11  <b>broad-based</b> [1] 1:11  <b>broader</b> [1] 1:11  <b>broadly</b> [1] 1:11  <b>brought</b> [1] 1:11  <b>built</b> [1] 1:11  <b>Bull</b> [1] 1:11</p>
<p align="center"><b>5</b></p> <p><b>502</b> [1] 26:7  <b>504</b> [5] 12:21 21:13 24:3 26:6 31:3  <b>507</b> [3] 20:5,15 28:9  <b>507(b)</b> [17] 10:11,14 12:19 13:1,13 26:9 28:15 29:21 30:25 33:4,5 42:3 46:17,17 51:18 56:10 61:5  <b>51</b> [1] 2:11  <b>58</b> [1] 2:14</p>	<p><b>acted</b> [1] 1:11  <b>act</b> [1] 1:11  <b>act's</b> [1] 1:11  <b>action</b> [1] 1:11  <b>actionable</b> [1] 1:11  <b>actions</b> [1] 1:11  <b>active</b> [1] 1:11  <b>acts</b> [1] 1:11  <b>add</b> [1] 1:11  <b>address</b> [1] 1:11  <b>addressed</b> [1] 1:11  <b>addressing</b> [1] 1:11  <b>administration</b> [1] 1:11  <b>adopt</b> [1] 1:11  <b>adopted</b> [1] 1:11  <b>affirm</b> [1] 1:11  <b>affirmance</b> [1] 1:11  <b>affirming</b> [1] 1:11  <b>ago</b> [1] 1:11  <b>agree</b> [1] 1:11  <b>ahead</b> [1] 1:11  <b>AL</b> [1] 1:11  <b>ALITO</b> [1] 1:11  <b>allegedly</b> [1] 1:11  <b>allow</b> [1] 1:11  <b>allowed</b> [1] 1:11  <b>allows</b> [1] 1:11  <b>alluded</b> [1] 1:11  <b>almost</b> [1] 1:11  <b>already</b> [1] 1:11  <b>amended</b> [1] 1:11  <b>amici</b> [1] 1:11  <b>amicus</b> [1] 1:11  <b>among</b> [1] 1:11  <b>amount</b> [1] 1:11  <b>another</b> [1] 1:11  <b>answer</b> [1] 1:11</p>	<p><b>answers</b> [1] 1:11  <b>antecedent</b> [1] 1:11  <b>appeals</b> [1] 1:11  <b>APPEARANCES</b> [1] 1:11  <b>applicable</b> [1] 1:11  <b>applied</b> [1] 1:11  <b>applies</b> [1] 1:11  <b>apply</b> [1] 1:11  <b>applying</b> [1] 1:11  <b>approach</b> [1] 1:11  <b>appropriate</b> [1] 1:11  <b>appropriately</b> [1] 1:11  <b>aren't</b> [1] 1:11  <b>argue</b> [1] 1:11  <b>argued</b> [1] 1:11  <b>arguing</b> [1] 1:11  <b>argument</b> [1] 1:11  <b>arguments</b> [1] 1:11  <b>arises</b> [1] 1:11  <b>around</b> [1] 1:11  <b>artificial</b> [1] 1:11  <b>aside</b> [1] 1:11  <b>aspects</b> [1] 1:11  <b>Assistant</b> [1] 1:11  <b>assume</b> [1] 1:11  <b>assumed</b> [1] 1:11  <b>assumes</b> [1] 1:11  <b>assuming</b> [1] 1:11  <b>assumption</b> [1] 1:11  <b>atextual</b> [1] 1:11  <b>authority</b> [1] 1:11  <b>authors</b> [1] 1:11  <b>automatically</b> [1] 1:11  <b>availability</b> [1] 1:11</p>	<p><b>available</b> [1] 1:11  <b>aware</b> [1] 1:11  <b>away</b> [1] 1:11  <b>axes</b> [1] 1:11  <b>axis</b> [1] 1:11</p>	<p><b>breadth</b> [1] 1:11  <b>Breyer's</b> [1] 1:11  <b>brief</b> [1] 1:11  <b>briefed</b> [1] 1:11  <b>briefing</b> [1] 1:11  <b>briefs</b> [1] 1:11  <b>bring</b> [1] 1:11  <b>bringing</b> [1] 1:11  <b>broad</b> [1] 1:11  <b>broad-based</b> [1] 1:11  <b>broader</b> [1] 1:11  <b>broadly</b> [1] 1:11  <b>brought</b> [1] 1:11  <b>built</b> [1] 1:11  <b>Bull</b> [1] 1:11</p>
<p align="center"><b>A</b></p> <p><b>a.m</b> [2] 1:15 3:2  <b>abandoned</b> [1] 8:8  <b>Abbas</b> [1] 34:4  <b>above-entitled</b> [1] 1:13  <b>Absolutely</b> [3] 46:7 54:16 56:14  <b>abundantly</b> [1] 19:16  <b>acceptance</b> [1] 54:1  <b>accepted</b> [3] 16:12 38:22 60:7  <b>accepting</b> [1] 15:6  <b>Accordingly</b> [2] 3:22 29:23  <b>account</b> [1] 32:8  <b>accrual</b> [12] 9:10 16:4 33:9,12 43:9 46:20 52:7 56:3,6,18 57:3,22  <b>accrue</b> [12] 32:3,10 33:5 41:23 42:3,6 46:17 50:3 51:14 56:10 59:2,14  <b>accrued</b> [2] 3:20 49:24  <b>accrues</b> [15] 3:20 4:13 13:2 19:18,20 20:4,5,8 24:18</p>	<p><b>acted</b> [1] 1:11  <b>act</b> [1] 1:11  <b>act's</b> [1] 1:11  <b>action</b> [1] 1:11  <b>actionable</b> [1] 1:11  <b>actions</b> [1] 1:11  <b>active</b> [1] 1:11  <b>acts</b> [1] 1:11  <b>add</b> [1] 1:11  <b>address</b> [1] 1:11  <b>addressed</b> [1] 1:11  <b>addressing</b> [1] 1:11  <b>administration</b> [1] 1:11  <b>adopt</b> [1] 1:11  <b>adopted</b> [1] 1:11  <b>affirm</b> [1] 1:11  <b>affirmance</b> [1] 1:11  <b>affirming</b> [1] </p>			

## Official - Subject to Final Review

<p><b>Circuit</b> <sup>[5]</sup> 5:25 6:3,9,17 8:17 9:23 10:4 11:3,11,23 13:9,9,10 15:21 16:2,3 17:25 30:20 33:9,13 34:4 35:4,8,9 38:22 39:2 40:8,13,18,24 41:10,11,16 43:12,14,18 45:11,20,24 46:21 51:24 52:3 53:22 54:25 55:18 56:13,16 58:16 60:18,19 62:22</p> <p><b>Circuit's</b> <sup>[4]</sup> 21:22 52:3 58:17,17</p> <p><b>circuits</b> <sup>[7]</sup> 9:11,19 34:1 40:25 53:10,11 60:23</p> <p><b>circumstances</b> <sup>[3]</sup> 17:19 34:7 47:11</p> <p><b>cite</b> <sup>[4]</sup> 4:12 10:7 19:25 34:5</p> <p><b>cited</b> <sup>[1]</sup> 13:12</p> <p><b>civil</b> <sup>[3]</sup> 3:18 8:19 20:6</p> <p><b>claim</b> <sup>[29]</sup> 3:19,20 14:10 17:7 22:15 26:25 31:18 32:10 33:6,10 34:2,6 40:8,11 43:24 45:18,19 46:18 48:4,12,15,18 50:21,22,23 51:14,16,18 57:14</p> <p><b>claims</b> <sup>[29]</sup> 15:22 30:22,25 31:1,2,9,22 32:3,8 33:23 41:8 45:16,16 47:15 49:20,23,25 50:2,6,12 51:23 52:8,8 56:22,25 57:1,5 59:2 60:10</p> <p><b>clarified</b> <sup>[1]</sup> 40:2</p> <p><b>clarify</b> <sup>[2]</sup> 35:6 55:21</p> <p><b>clarifying</b> <sup>[1]</sup> 40:1</p> <p><b>clarity</b> <sup>[1]</sup> 37:14</p> <p><b>Clause</b> <sup>[8]</sup> 33:2,3,4,6 46:15,16,17,19</p> <p><b>cleanup</b> <sup>[1]</sup> 53:22</p> <p><b>clear</b> <sup>[5]</sup> 4:6 26:23 33:15 46:23,23</p> <p><b>clearly</b> <sup>[1]</sup> 40:3</p> <p><b>client</b> <sup>[1]</sup> 39:18</p> <p><b>Coats</b> <sup>[1]</sup> 42:4</p> <p><b>come</b> <sup>[1]</sup> 54:19</p> <p><b>comes</b> <sup>[3]</sup> 15:21 22:10 60:10</p> <p><b>comment</b> <sup>[1]</sup> 46:25</p> <p><b>commentary</b> <sup>[1]</sup> 61:21</p> <p><b>committed</b> <sup>[1]</sup> 31:24</p> <p><b>common</b> <sup>[1]</sup> 14:19</p> <p><b>compared</b> <sup>[1]</sup> 39:25</p> <p><b>compensate</b> <sup>[1]</sup> 47:6</p> <p><b>compensation</b> <sup>[1]</sup> 47:4</p> <p><b>complaint</b> <sup>[2]</sup> 12:8 31:25</p> <p><b>complete</b> <sup>[3]</sup> 3:21 19:21 26:25</p> <p><b>completely</b> <sup>[1]</sup> 40:12</p> <p><b>complicated</b> <sup>[1]</sup> 33:2</p> <p><b>concealment</b> <sup>[1]</sup> 29:15</p> <p><b>conceptually</b> <sup>[1]</sup> 22:9</p> <p><b>concerning</b> <sup>[4]</sup> 18:8 22:25 26:24 62:15</p> <p><b>concerns</b> <sup>[1]</sup> 18:16</p>	<p><b>concluding</b> <sup>[1]</sup> 13:19</p> <p><b>conclusion</b> <sup>[1]</sup> 45:7</p> <p><b>confined</b> <sup>[1]</sup> 61:8</p> <p><b>conflict</b> <sup>[6]</sup> 9:23 10:5 53:14,17 54:25 58:16</p> <p><b>confusion</b> <sup>[1]</sup> 33:14</p> <p><b>Congress</b> <sup>[11]</sup> 24:24 31:10,12 35:16,22 42:7,12 44:12,15 47:1,10</p> <p><b>Congress's</b> <sup>[1]</sup> 47:19</p> <p><b>consensus</b> <sup>[2]</sup> 9:15,17</p> <p><b>consequence</b> <sup>[2]</sup> 20:9 27:6</p> <p><b>consequences</b> <sup>[2]</sup> 33:20 49:16</p> <p><b>consideration</b> <sup>[1]</sup> 20:16</p> <p><b>considerations</b> <sup>[1]</sup> 9:9</p> <p><b>consistent</b> <sup>[3]</sup> 21:21 59:2,22</p> <p><b>constant</b> <sup>[1]</sup> 33:18</p> <p><b>construction</b> <sup>[1]</sup> 4:9</p> <p><b>context</b> <sup>[7]</sup> 5:20 19:23 23:12 48:14 56:7 60:10 61:20</p> <p><b>context-specific</b> <sup>[1]</sup> 56:6</p> <p><b>continued</b> <sup>[1]</sup> 60:23</p> <p><b>contours</b> <sup>[1]</sup> 5:6</p> <p><b>contrary</b> <sup>[1]</sup> 44:10</p> <p><b>copyright</b> <sup>[3]</sup> 1:2 7:1 8:5,18 11:19 16:23 17:17 31:5,9,18 32:10 35:18,23 38:7,8 41:2 42:10 44:16,17 46:19 47:2,5,15 51:14,19,23 52:7 55:22 56:8,19 62:18</p> <p><b>Correct</b> <sup>[9]</sup> 14:8,22 18:11 29:20 45:5 46:2 50:12 54:15 58:18</p> <p><b>couldn't</b> <sup>[1]</sup> 57:8</p> <p><b>Counsel</b> <sup>[14]</sup> 10:17 11:21 28:5 29:25 30:9 36:1 38:17 39:16 42:15,16 51:3 56:19 23,24 58:8 62:25</p> <p><b>counterbalance</b> <sup>[1]</sup> 35:24</p> <p><b>country</b> <sup>[1]</sup> 44:17</p> <p><b>couple</b> <sup>[1]</sup> 59:3</p> <p><b>course</b> <sup>[3]</sup> 13:1 54:16,25</p> <p><b>COURT</b> <sup>[131]</sup> 1:1,14 3:10,22 5:5,10,11,18 6:6,7,19 7:16,25 8:3,7,9 9:13,24 10:3,9,11,14,16,20,22,23 11:2,20 12:19 13:10,12,14,19,22 15:4,21 16:6,8,10 17:2,5,13,14,18,24 18:8,14 19:5,9,19 21:2,3 22:3,7,20,23 23:6,8,13 24:1,5,9,14,20,22 25:2,5,10,14,22 26:2,5 27:17 28:2 29:9,19,22 30:15,16 31:17 35:2 36:25 37:23 38:19,24 41:15,24 42:4 43:10 45:3 49:6,9,14 51:9,11 52:5,9,12,21 53:13,16,24 54:6,11,20,22 55:3,3,4,11,20 56:5 59:17,20,24,25 60:2,3,12,14 61:1,3,8,10,15,16,25 62:7,9,10,14</p>	<p><b>Court's</b> <sup>[22]</sup> 3:25 4:16,23 5:12 6:25 9:20 10:6 13:4 16:13 21:1 23:23 25:10 30:21 32:15 41:20 51:20 52:14 53:15 55:20 58:20 60:20 62:12</p> <p><b>courts</b> <sup>[37]</sup> 4:18 5:13,14 8:17 9:11,15 13:16 15:9,23 16:11 25:25 29:1 31:20 33:9,13,22 34:1,20 35:15 36:8 37:19 40:20 41:21 43:4 44:1,9,11,14 46:21 51:22 54:4,22 60:6,23 61:9,11,22</p> <p><b>cover</b> <sup>[1]</sup> 48:7</p> <p><b>covers</b> <sup>[1]</sup> 48:8</p> <p><b>cramped</b> <sup>[1]</sup> 32:19</p> <p><b>create</b> <sup>[1]</sup> 47:8</p> <p><b>created</b> <sup>[2]</sup> 31:16 45:20</p> <p><b>creation</b> <sup>[1]</sup> 47:16</p> <p><b>credible</b> <sup>[1]</sup> 23:5</p> <p><b>criminal</b> <sup>[1]</sup> 24:16</p> <p><b>critical</b> <sup>[3]</sup> 9:2,3 19:2</p> <p><b>critique</b> <sup>[1]</sup> 41:20</p> <p><b>Crown</b> <sup>[1]</sup> 42:4</p> <p><b>crying</b> <sup>[1]</sup> 61:22</p> <p><b>cues</b> <sup>[2]</sup> 19:23 52:20</p> <p><b>curiae</b> <sup>[3]</sup> 1:24 2:11 51:6</p> <p><b>curiosity</b> <sup>[1]</sup> 37:8</p> <p><b>current</b> <sup>[1]</sup> 40:8</p> <p><b>currently</b> <sup>[2]</sup> 28:2 35:9</p> <p><b>cutoff</b> <sup>[2]</sup> 22:1 23:18</p> <hr/> <p><b>D</b></p> <p><b>D.C</b> <sup>[3]</sup> 1:10,18,23</p> <p><b>damages</b> <sup>[53]</sup> 3:13,24 5:8 7:2,12 12:6,7 20:4,16,22 21:14,16 22:1 30:24 31:1,4,6,7,9,11,14,16,22 32:13 33:20 35:7,25 39:4 40:10 41:13 42:25 45:19 46:10 47:12 48:2,18 49:21 50:7,16,19,24 51:11,15,20 52:3,24 53:8,12 55:17 56:17 57:16 58:2 62:18</p> <p><b>day</b> <sup>[1]</sup> 54:18</p> <p><b>dealing</b> <sup>[2]</sup> 25:16 26:8</p> <p><b>debates</b> <sup>[1]</sup> 30:17</p> <p><b>decade</b> <sup>[1]</sup> 5:9</p> <p><b>decide</b> <sup>[7]</sup> 18:16 28:9 37:9 39:2 47:1 54:8,14</p> <p><b>decided</b> <sup>[2]</sup> 30:19 58:2</p> <p><b>decides</b> <sup>[2]</sup> 47:10 62:9</p> <p><b>deciding</b> <sup>[2]</sup> 56:7,8</p> <p><b>decision</b> <sup>[12]</sup> 5:19 6:1 10:7 13:5 18:18 21:1 23:23 35:4 51:21 53:15 55:20 58:20</p> <p><b>decision-making</b> <sup>[1]</sup> 61:19</p> <p><b>decisions</b> <sup>[6]</sup> 10:4,6 16:13 45:4 47:19 62:10</p> <p><b>defend</b> <sup>[1]</sup> 52:2</p> <p><b>defendant</b> <sup>[1]</sup> 34:18</p> <p><b>defendants</b> <sup>[1]</sup> 57:4</p> <p><b>defines</b> <sup>[1]</sup> 33:3</p>	<p><b>defining</b> <sup>[1]</sup> 46:15</p> <p><b>definitively</b> <sup>[1]</sup> 61:15</p> <p><b>delay</b> <sup>[3]</sup> 32:8 34:15 44:6</p> <p><b>demonstrably</b> <sup>[2]</sup> 34:3 43:22</p> <p><b>Department</b> <sup>[1]</sup> 1:23</p> <p><b>described</b> <sup>[1]</sup> 59:4</p> <p><b>design</b> <sup>[1]</sup> 47:13</p> <p><b>desire</b> <sup>[1]</sup> 61:18</p> <p><b>determine</b> <sup>[2]</sup> 32:21 46:18</p> <p><b>determines</b> <sup>[1]</sup> 33:6</p> <p><b>difference</b> <sup>[1]</sup> 24:21</p> <p><b>different</b> <sup>[6]</sup> 14:6,15 21:7 40:12 51:25 52:6</p> <p><b>differently</b> <sup>[1]</sup> 48:21</p> <p><b>difficult</b> <sup>[2]</sup> 25:20 29:18</p> <p><b>DIG</b> <sup>[1]</sup> 53:3</p> <p><b>direct</b> <sup>[1]</sup> 9:7</p> <p><b>directed</b> <sup>[7]</sup> 9:25 12:20 19:9 25:24 41:16 59:18,21</p> <p><b>directly</b> <sup>[1]</sup> 9:5</p> <p><b>directs</b> <sup>[1]</sup> 4:7</p> <p><b>disagree</b> <sup>[2]</sup> 7:14 48:24</p> <p><b>disagreement</b> <sup>[6]</sup> 4:18 15:8,11,12,18 33:21</p> <p><b>discovered</b> <sup>[1]</sup> 48:16</p> <p><b>discovery</b> <sup>[125]</sup> 4:1,17,19,20 5:3,6,15,16,18 6:15,20,22 7:8,10 8:6,9,10,17 9:10,16,17,20 11:13,20 13:16,20,22,24 14:1,18 15:7,19,22,25 16:3,14,21 17:4,16 18:20 19:7 22:7 23:10 24:7,11,14 25:6 26:14,15,18 28:11,12,18,22 29:1,7,14 30:18,23 32:18,19,21 33:8,11,12,16,19,22 34:1,6,10,11,16,20 35:14,24 36:3,10,12,15 37:4,20,24 38:6 39:4 41:13,22 42:2,9,14,22 43:8,19 44:2,5,7,21,23 45:4,15 46:9,20 47:13,22 48:13 50:24 51:14 52:7,17,19 53:11,21,23 54:1,3 57:8,9,22 58:1 60:1,7,14,16,22 61:14</p> <p><b>discussed</b> <sup>[1]</sup> 13:8</p> <p><b>discussing</b> <sup>[2]</sup> 10:14 60:21</p> <p><b>discussion</b> <sup>[1]</sup> 21:13</p> <p><b>disentangle</b> <sup>[1]</sup> 22:9</p> <p><b>dismiss</b> <sup>[3]</sup> 17:11 18:2 39:11</p> <p><b>dismissal</b> <sup>[3]</sup> 22:22 39:19 50:2</p> <p><b>dismissing</b> <sup>[3]</sup> 34:23 39:25 53:6</p> <p><b>dispute</b> <sup>[2]</sup> 4:20 18:6</p> <p><b>disputes</b> <sup>[2]</sup> 5:21 60:8</p> <p><b>dissent</b> <sup>[2]</sup> 49:17 58:23</p> <p><b>distinction</b> <sup>[5]</sup> 21:2 30:25 43:24,25 44:2</p> <p><b>district</b> <sup>[4]</sup> 17:13,14,18 40:19</p> <p><b>divided</b> <sup>[1]</sup> 53:10</p>	<p><b>division</b> <sup>[1]</sup> 43:5</p> <p><b>doctrine</b> <sup>[2]</sup> 23:16 25:15</p> <p><b>dog</b> <sup>[7]</sup> 35:13 36:2,11,20,22 37:5 38:12</p> <p><b>doing</b> <sup>[3]</sup> 12:10 38:20 53:22</p> <p><b>done</b> <sup>[3]</sup> 25:25 38:1 47:14</p> <p><b>doubt</b> <sup>[3]</sup> 24:15 37:23 60:22</p> <p><b>drawing</b> <sup>[1]</sup> 21:2</p> <p><b>DUBIN</b> <sup>[13]</sup> 1:22 2:9 51:4,5,8 52:18 53:4 54:2,16,20 55:8,16 56:14</p> <p><b>during</b> <sup>[3]</sup> 31:24 35:17 41:7</p> <hr/> <p><b>E</b></p> <p><b>earlier</b> <sup>[6]</sup> 21:25 22:12 23:15 29:3,12 32:2</p> <p><b>EARNHARDT</b> <sup>[42]</sup> 1:20 2:6 30:11,12,14 32:23 34:25 36:5,13,16,19,22,25 37:3,17 38:4,18 39:13,21 40:7,22 43:11,16,21 44:25 45:10 46:2,7,13 47:24 48:4,10,23 49:1,5,8,13 50:8,11,18,22 60:9</p> <p><b>Earnhardt's</b> <sup>[1]</sup> 59:19</p> <p><b>effect</b> <sup>[1]</sup> 53:21</p> <p><b>either</b> <sup>[2]</sup> 22:4 35:1</p> <p><b>Eleven</b> <sup>[2]</sup> 53:11 54:4</p> <p><b>Eleventh</b> <sup>[12]</sup> 5:25 6:3,9,17 13:10 15:21 17:25 35:10 38:22 40:25 41:12 62:21</p> <p><b>eliminated</b> <sup>[1]</sup> 18:17</p> <p><b>eliminating</b> <sup>[1]</sup> 58:2</p> <p><b>elsewhere</b> <sup>[1]</sup> 31:12</p> <p><b>embodied</b> <sup>[1]</sup> 11:19</p> <p><b>embodies</b> <sup>[1]</sup> 8:5</p> <p><b>enacted</b> <sup>[2]</sup> 31:10 41:4</p> <p><b>enough</b> <sup>[1]</sup> 34:12</p> <p><b>entertain</b> <sup>[1]</sup> 8:20</p> <p><b>entirely</b> <sup>[1]</sup> 46:8</p> <p><b>entitled</b> <sup>[7]</sup> 4:2,22 5:8 21:13 30:24 31:3,5</p> <p><b>equitable</b> <sup>[8]</sup> 16:5 25:7,8,12,13,16,17 27:11</p> <p><b>equitable-based</b> <sup>[1]</sup> 31:21</p> <p><b>equity-based</b> <sup>[4]</sup> 13:22 17:4 29:16 48:17</p> <p><b>erred</b> <sup>[1]</sup> 51:24</p> <p><b>error</b> <sup>[1]</sup> 54:15</p> <p><b>ESQ</b> <sup>[4]</sup> 2:3,6,9,13</p> <p><b>ESQUIRE</b> <sup>[2]</sup> 1:18,20</p> <p><b>establish</b> <sup>[1]</sup> 5:5</p> <p><b>ET</b> <sup>[2]</sup> 1:4,7</p> <p><b>even</b> <sup>[12]</sup> 4:13,17 20:7 25:3 28:21,22,23 33:20,23 40:8 45:18 58:23</p> <p><b>event</b> <sup>[1]</sup> 17:9</p> <p><b>eventually</b> <sup>[1]</sup> 4:10</p> <p><b>exact</b> <sup>[2]</sup> 5:5 29:10</p> <p><b>exactly</b> <sup>[3]</sup> 25:22 46:13 55:3</p>
--	--	--	---	---

## Official - Subject to Final Review

<p><b>example</b> [1] 10:25  <b>exception</b> [4] 14:5,12,18, 19  <b>exceptions</b> [3] 29:17 31: 11,13  <b>exclude</b> [2] 38:25 52:10  <b>exist</b> [4] 37:10 38:7,8 47:5  <b>existence</b> [10] 4:17 5:2,16 6:15,20 9:17 32:20 37:24 44:22,23  <b>existing</b> [1] 17:24  <b>exists</b> [3] 35:9 40:13 47:7  <b>expanded</b> [1] 35:22  <b>expansive</b> [1] 14:17  <b>explain</b> [7] 21:6 23:16 40:6 49:14 56:12,21 60:2  <b>explaining</b> [1] 59:23  <b>explanation</b> [1] 4:15  <b>exploitation</b> [1] 57:10  <b>express</b> [2] 34:14 44:4  <b>expressed</b> [1] 53:5  <b>expressly</b> [1] 31:4  <b>extend</b> [2] 4:2 21:16  <b>extent</b> [6] 6:22 7:15 9:19 10:1 23:2 59:8</p>	<p><b>form</b> [2] 34:11 44:5  <b>forms</b> [1] 31:2  <b>formulation</b> [1] 8:1  <b>forthright</b> [1] 11:17  <b>forum</b> [1] 40:23  <b>found</b> [1] 35:16  <b>four</b> [1] 21:25  <b>frame</b> [3] 20:11,13 21:16  <b>fraud</b> [10] 4:3,21 13:25 14: 12,18 17:5 24:8 26:14 29: 8,15  <b>fraud-based</b> [1] 33:11  <b>free</b> [3] 49:19 54:13 61:10  <b>freely</b> [1] 12:22  <b>frequently</b> [2] 40:17 46:4  <b>friend</b> [1] 59:19  <b>friends</b> [1] 13:5  <b>fully</b> [2] 59:7,16  <b>fundamental</b> [2] 6:18 26:1  <b>further</b> [4] 17:20 30:5 54:5 58:7  <b>future</b> [3] 21:11 22:17 47: 17</p>	<p><b>hand</b> [3] 35:10 41:11 47:3  <b>hands</b> [1] 49:19  <b>happen</b> [1] 17:9  <b>happened</b> [1] 49:24  <b>happy</b> [3] 8:24 12:2 20:18  <b>hard</b> [1] 22:9  <b>hard-and-fast</b> [1] 19:22  <b>harmonized</b> [1] 13:19  <b>hear</b> [2] 3:3 39:16  <b>heard</b> [1] 56:5  <b>held</b> [1] 31:18  <b>helpful</b> [2] 35:6 37:13  <b>helps</b> [1] 39:17  <b>hinge</b> [1] 11:10  <b>history</b> [2] 24:23 37:19  <b>hold</b> [3] 5:7 16:21 33:18  <b>holding</b> [1] 48:11  <b>holds</b> [1] 62:1  <b>honest</b> [1] 11:1  <b>Honor</b> [4] 37:18 38:4 43:12 45:1  <b>However</b> [2] 39:24 62:9  <b>hull</b> [1] 47:13  <b>hunt</b> [4] 35:13 36:2,12 37:5</p>	<p><b>5</b>  <b>Inquiry</b> [1] 34:11  <b>Instead</b> [3] 5:6 16:4 52:5  <b>instituted</b> [1] 35:24  <b>intended</b> [2] 24:24 42:13  <b>intending</b> [1] 25:23  <b>interests</b> [1] 57:3  <b>interlocutory</b> [1] 38:23  <b>interpret</b> [1] 32:25  <b>interpretation</b> [8] 3:16 4: 24 12:17 19:3 25:11 29:21 61:7,24  <b>interpretations</b> [3] 61:8, 11,13  <b>interpreted</b> [1] 26:17  <b>intertwined</b> [2] 6:23 62:5  <b>intervene</b> [1] 60:13  <b>invoke</b> [2] 4:22 57:8  <b>invoked</b> [1] 57:9  <b>involved</b> [1] 31:8  <b>involving</b> [7] 4:3,21 13:25 17:5 18:3 22:22,23  <b>isn't</b> [3] 10:17 17:22 49:18  <b>issue</b> [29] 4:10 6:4,18 9:18, 22,23 11:18,18 12:4 14:23 15:13 17:16,21 18:5 19:15 28:7 37:6 39:7 40:18,22 41:1,18,24 43:13 45:21 46: 6 59:7,16 60:6  <b>issues</b> [3] 22:8,23 30:18  <b>itself</b> [6] 9:12 24:22,23 25: 14 57:5 61:8</p>	<p style="text-align: center;"><b>K</b></p> <p><b>Kagan</b> [6] 30:4 40:4,15 55: 5,13,16  <b>KANNON</b> [5] 1:18 2:3,13 3: 7 58:10  <b>Kavanaugh</b> [2] 30:7 45:23  <b>Kind</b> [3] 26:12 43:3,9  <b>knowledge</b> [1] 59:14  <b>knows</b> [1] 34:17</p> <p style="text-align: center;"><b>L</b></p> <p><b>laches</b> [5] 23:16 25:15 32: 1,2 49:15  <b>lacks</b> [1] 52:4  <b>language</b> [21] 10:7,9 12:5, 16,18,19,21,25 13:3 18:10 19:4,9 22:13 24:2 26:4 50: 15 51:25 59:9,17 61:4,5  <b>last</b> [5] 25:1 26:11 27:8,9, 10  <b>later</b> [2] 54:14,18  <b>Laughter</b> [4] 36:21 38:14 53:2 55:15  <b>law</b> [8] 6:6,17 14:19 17:25 40:8 44:16 55:23 60:21  <b>lawsuit</b> [3] 7:4 20:24 62:20  <b>leading</b> [1] 23:19  <b>least</b> [2] 43:2 52:8  <b>leave</b> [1] 17:2  <b>left</b> [1] 62:10  <b>legal</b> [1] 29:9  <b>legislative</b> [1] 24:23  <b>liberty</b> [1] 31:20  <b>light</b> [1] 9:9  <b>likelihood</b> [2] 21:10 22:17  <b>limit</b> [2] 29:8 51:20  <b>limitation</b> [6] 8:18 13:11 25:13 26:6 27:11 56:25  <b>limitations</b> [27] 3:18 9:12 10:10 12:7,24 13:13 14:10 16:22 17:17 20:14 24:2,17 25:8 26:8 31:19 32:5,7,13 34:16 41:4,6 44:7 48:13 49:16 50:1 58:25 59:22  <b>limited</b> [5] 13:24 15:14 24: 7 31:24 49:10  <b>limits</b> [2] 31:21 48:17  <b>litigants</b> [1] 62:4  <b>locate</b> [1] 16:3  <b>locates</b> [1] 16:5  <b>logic</b> [1] 23:20  <b>logically</b> [1] 18:22  <b>look</b> [12] 10:3,5 20:25 24:9 41:5 42:7 46:19 47:22,25 48:20,21 59:11  <b>lookback</b> [2] 31:11 47:12  <b>looking</b> [1] 46:5  <b>looks</b> [1] 20:9  <b>lost</b> [1] 20:17  <b>lot</b> [4] 24:11 25:21 37:22 38: 20  <b>lower</b> [7] 4:18 25:25 29:1 33:21 34:19 61:22 62:10</p>
<p style="text-align: center;"><b>F</b></p> <p><b>face</b> [1] 4:18  <b>faced</b> [1] 4:4  <b>facially</b> [1] 35:5  <b>fact</b> [4] 7:8 11:1 24:16 35: 21  <b>fair</b> [2] 49:18,18  <b>fairly</b> [1] 51:11  <b>fallback</b> [1] 27:14  <b>false</b> [1] 34:3  <b>far</b> [1] 58:4  <b>fashioned</b> [1] 45:13  <b>favor</b> [2] 24:14 61:14  <b>February</b> [1] 1:11  <b>feels</b> [2] 22:5 29:10  <b>few</b> [3] 26:19 44:14 46:25  <b>Fifth</b> [1] 60:18  <b>figure</b> [3] 19:9 25:22 44:15  <b>file</b> [1] 12:8  <b>filed</b> [5] 5:9 31:25 56:24 57: 7,15  <b>filing</b> [5] 3:14,25 7:3 20:23 62:20  <b>filings</b> [1] 6:13  <b>fine</b> [1] 20:7  <b>Finish</b> [1] 16:18  <b>first</b> [16] 9:10,14 11:15 18: 22,24 22:25 24:5,13 28:1 37:16 38:16 41:4 44:1 45: 9 46:15 51:10  <b>fits</b> [1] 48:6  <b>five</b> [1] 21:25  <b>flagged</b> [1] 18:4  <b>flip</b> [1] 22:6  <b>focus</b> [1] 7:22  <b>folks</b> [3] 40:23,24 47:8  <b>footnote</b> [7] 7:15,22 8:3 10: 20 11:22 13:15 57:21</p>	<p style="text-align: center;"><b>G</b></p> <p><b>Gabelli</b> [1] 13:23  <b>gave</b> [1] 17:6  <b>General</b> [3] 1:22 31:14 47: 15  <b>generally</b> [2] 14:1 16:14  <b>gets</b> [1] 47:1  <b>getting</b> [1] 49:18  <b>Ginsburg</b> [3] 22:3 23:24 57:25  <b>gist</b> [1] 48:9  <b>give</b> [1] 53:24  <b>given</b> [8] 8:3 59:14 60:13  <b>glad</b> [1] 12:11  <b>GORSUCH</b> [41] 26:10,22 27:2,7,12,18,25 28:4,8,16, 21 30:5 36:1,11,14,17,20, 24 37:2,7,21 38:10,15 39: 10,15 42:15,17,19 47:21 48:2,6,19,24 49:3,7,11 50: 4,9,15,21 60:4  <b>got</b> [3] 27:7 28:10 38:13  <b>governance</b> [1] 37:15  <b>government</b> [9] 10:2 52: 15,18,23 55:5,13 58:14 59: 3 62:6  <b>government's</b> [2] 23:4 58: 24  <b>grant</b> [5] 7:7,23,25 54:6,24  <b>granted</b> [11] 14:25 16:24 17:10,12,15 39:12,19,25 41:9 53:7,13  <b>grants</b> [1] 62:2  <b>guess</b> [2] 20:2 40:15  <b>guidance</b> [1] 61:23  <b>gut</b> [1] 58:2  <b>gymnastics</b> [1] 26:20</p> <p style="text-align: center;"><b>H</b></p> <p><b>halfway</b> [1] 26:12</p>	<p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [1] 51:21  <b>ignore</b> [1] 8:25  <b>impact</b> [1] 46:10  <b>implication</b> [1] 22:12  <b>implications</b> [1] 18:21  <b>important</b> [5] 10:19 11:9 53:13 54:23 62:4  <b>importantly</b> [1] 41:15  <b>impose</b> [2] 31:20 51:22  <b>imposed</b> [2] 47:11 56:17  <b>imposes</b> [1] 51:19  <b>impressive</b> [1] 45:6  <b>improvably</b> [5] 17:12 39:12,19,25 53:6  <b>INC</b> [1] 1:3  <b>include</b> [1] 42:13  <b>including</b> [1] 38:2  <b>incompatible</b> [1] 47:12  <b>inconsistency</b> [1] 41:14  <b>inconsistent</b> [1] 16:13  <b>incorrect</b> [6] 15:6 35:5 40: 1,2 43:21,22  <b>incremental</b> [1] 61:19  <b>Indeed</b> [2] 25:13 58:23  <b>indicated</b> [3] 7:16 8:2 24: 20  <b>indicates</b> [1] 24:23  <b>indicating</b> [1] 11:17  <b>inferences</b> [1] 4:11  <b>infringed</b> [1] 47:7  <b>infringement</b> [10] 3:24 15: 12,17 21:11 22:17 29:5,11 31:3 43:20 56:23  <b>infringements</b> [4] 31:8,24 49:23 50:13  <b>infringer</b> [1] 31:7  <b>injunctive</b> [1] 21:9  <b>injury</b> [4] 28:19,20 43:9 59:</p>	<p style="text-align: center;"><b>J</b></p> <p><b>JACKSON</b> [11] 8:12 9:2 19: 12 20:2,19 21:12 34:22 46: 3,11 56:11,15  <b>Jackson's</b> [2] 15:2 60:25  <b>JOE</b> [3] 1:20 2:6 30:12  <b>joined</b> [3] 4:10 19:16 59:7  <b>judge</b> [1] 17:18  <b>judgment</b> [3] 5:11 52:13 62:21  <b>judicial</b> [1] 61:18  <b>judicially</b> [1] 31:16  <b>Justice</b> [124] 1:23 3:3,10 5: 13,22 6:8,14 7:5,14,18 8: 12,22 9:2 10:17,18 11:7,21, 25 12:3,13 14:4,9,24 15:2, 10,15 16:15,17,20 17:8 18: 15 19:12 20:2,19 21:12 22: 3,20 23:24 26:10,22 27:2,7, 12,18,25 28:4,8,16,21 29: 24 30:1,2,3,4,5,7,8,11,14 32:16 34:22,23 36:1,11,14, 17,20,24 37:2,7,11,21 38: 10,15 39:10,15 40:4,15 42: 15,16,17,18,19,20 43:14, 17 44:19 45:2,23 46:3,11 47:21 48:2,6,19,24 49:3,7, 11 50:4,9,15,21,25 51:8 52: 15,25 53:3,18,18 54:13,17 55:5,13,16 56:11,15 57:25 58:6,13,23 60:3,25 62:24</p>	

## Official - Subject to Final Review

<p><b>luck</b> <sup>[1]</sup> 22:14</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>made</b> <sup>[1]</sup> 24:1  <b>maintain</b> <sup>[1]</sup> 20:13  <b>maintained</b> <sup>[2]</sup> 20:6,11  <b>majority</b> <sup>[2]</sup> 49:21 58:22  <b>man</b> <sup>[1]</sup> 26:5  <b>managing</b> <sup>[1]</sup> 44:16  <b>many</b> <sup>[5]</sup> 40:17 45:6 49:8, 22 55:14  <b>map</b> <sup>[3]</sup> 17:8 37:21,22  <b>Martinelli</b> <sup>[4]</sup> 28:6 60:5,19 62:2  <b>matter</b> <sup>[5]</sup> 1:13 3:15 15:15, 17 37:12  <b>mean</b> <sup>[11]</sup> 8:25 18:18 26:19 35:25 37:4 39:15,18 42:23 45:2 48:14 53:18  <b>meaning</b> <sup>[5]</sup> 4:13 19:17 42:5 59:15 62:15  <b>meaningful</b> <sup>[1]</sup> 24:21  <b>means</b> <sup>[4]</sup> 19:20 20:8,8 56:10  <b>meant</b> <sup>[1]</sup> 42:7  <b>members</b> <sup>[1]</sup> 24:19  <b>mentioned</b> <sup>[1]</sup> 37:13  <b>merits</b> <sup>[2]</sup> 7:7 52:12  <b>MGM's</b> <sup>[1]</sup> 57:9  <b>might</b> <sup>[1]</sup> 17:19  <b>minimum</b> <sup>[2]</sup> 25:5,9  <b>mischief</b> <sup>[3]</sup> 35:3 40:5,6  <b>misread</b> <sup>[1]</sup> 55:19  <b>misreading</b> <sup>[2]</sup> 49:3 53:15  <b>modest</b> <sup>[1]</sup> 13:21  <b>modesty</b> <sup>[1]</sup> 61:19  <b>most</b> <sup>[7]</sup> 5:1 10:19 11:9 13:23 23:24 61:3,5  <b>motivate</b> <sup>[2]</sup> 47:8,16  <b>motivation</b> <sup>[1]</sup> 47:4  <b>motive</b> <sup>[1]</sup> 47:9  <b>move</b> <sup>[2]</sup> 11:25 12:3  <b>Ms</b> <sup>[15]</sup> 23:9 49:15,18,23 50:12 51:4,8 52:18 53:4 54:2, 16,20 55:8,16 56:14  <b>much</b> <sup>[4]</sup> 7:20 20:16 24:22 52:2  <b>multiple</b> <sup>[2]</sup> 10:12 23:7  <b>MUSIC</b> <sup>[2]</sup> 1:3 3:5  <b>must</b> <sup>[3]</sup> 3:18 32:13 34:7</p>	<p><b>never</b> <sup>[4]</sup> 6:5 30:18 35:19 39:15  <b>New</b> <sup>[4]</sup> 1:20,20 28:24 35:2  <b>next</b> <sup>[2]</sup> 3:4 55:6  <b>Ninth</b> <sup>[8]</sup> 7:11 13:9 33:25 34:4 35:10 40:13,25 41:11  <b>nobody</b> <sup>[1]</sup> 27:18  <b>nobody's</b> <sup>[1]</sup> 27:19  <b>None</b> <sup>[3]</sup> 27:1,4 45:25  <b>Nor</b> <sup>[5]</sup> 5:5 31:16 38:25 50:17 55:10  <b>note</b> <sup>[1]</sup> 58:21  <b>noted</b> <sup>[1]</sup> 8:14  <b>nothing</b> <sup>[3]</sup> 50:7 51:19 57:12  <b>notice</b> <sup>[5]</sup> 34:8,12,13,14 44:4  <b>notion</b> <sup>[2]</sup> 16:4,5  <b>notorious</b> <sup>[1]</sup> 57:11  <b>notwithstanding</b> <sup>[1]</sup> 59:19  <b>number</b> <sup>[2]</sup> 18:13 46:20</p>	<p><b>ordinarily</b> <sup>[1]</sup> 29:12  <b>ordinary</b> <sup>[2]</sup> 20:1 29:13  <b>other</b> <sup>[28]</sup> 4:11 11:8 12:21 13:6 16:1,7 19:23 21:23 22:19,24 23:2 24:4 27:4 29:15 31:2 32:2 35:11 38:12 40:24 41:12 42:25 43:5 45:17,22,24 47:4,8,14  <b>out</b> <sup>[13]</sup> 16:2 17:8 18:10 19:9 22:13 24:9 25:22 28:10 29:4 44:15 52:11 53:19 61:22  <b>out-of-context</b> <sup>[1]</sup> 51:24  <b>outdated</b> <sup>[1]</sup> 61:14  <b>outside</b> <sup>[2]</sup> 14:11 56:1  <b>over</b> <sup>[3]</sup> 24:9 37:21,22  <b>overcome</b> <sup>[1]</sup> 4:12  <b>overcomes</b> <sup>[1]</sup> 27:5  <b>own</b> <sup>[2]</sup> 58:24 62:12  <b>owner</b> <sup>[2]</sup> 31:5 43:23  <b>ownership</b> <sup>[11]</sup> 5:20 15:11, 16,22 33:23 34:2,6,9 43:19, 24 60:10</p>	<p>56:1  <b>Petitioners</b> <sup>[8]</sup> 1:5,19 2:4, 14 3:8 33:24 52:2 58:11  <b>Petitioners'</b> <sup>[4]</sup> 4:6 56:4 57:18,23  <b>Petrella</b> <sup>[47]</sup> 3:23 4:16 10:7, 8 13:5 21:1,21 22:19 23:1, 5,20 24:22 25:10,14 26:17 28:10,14,14 31:17,23 48:7, 7,11,12,19 49:4,18 50:4,5, 12,16 51:21,25 53:15 55:20 56:17,20,21 57:5,12,19, 21,24 58:5,20,22,24  <b>Petrella's</b> <sup>[3]</sup> 23:9 49:15, 23  <b>phrase</b> <sup>[2]</sup> 9:1 38:19  <b>piece</b> <sup>[1]</sup> 33:14  <b>pivoted</b> <sup>[1]</sup> 19:6  <b>place</b> <sup>[9]</sup> 5:9 21:4,25 22:11 29:3 41:4 44:1 60:16 62:10  <b>plain</b> <sup>[1]</sup> 4:12  <b>plainly</b> <sup>[1]</sup> 25:2  <b>plaintiff</b> <sup>[12]</sup> 3:12,20,23 4:2 7:1 20:21 32:5 34:7,17 44:3 57:13 62:18  <b>plaintiffs</b> <sup>[1]</sup> 57:4  <b>please</b> <sup>[5]</sup> 3:10 8:20 19:13 30:15 51:9  <b>plow</b> <sup>[1]</sup> 17:20  <b>podium</b> <sup>[1]</sup> 39:17  <b>point</b> <sup>[13]</sup> 7:12,21 8:9 10:23 15:23 16:2 19:20 22:10 28:20,22 29:4 41:2 60:25  <b>pointed</b> <sup>[2]</sup> 18:9 53:19  <b>points</b> <sup>[2]</sup> 4:4 11:14  <b>policy</b> <sup>[5]</sup> 47:1,2,10,19,19  <b>position</b> <sup>[4]</sup> 21:17,20 23:21,21  <b>potential</b> <sup>[1]</sup> 33:14  <b>precedent</b> <sup>[3]</sup> 4:23 11:4 61:2  <b>precedents</b> <sup>[1]</sup> 62:12  <b>precise</b> <sup>[1]</sup> 48:11  <b>precisely</b> <sup>[10]</sup> 5:25 6:16 9:22 12:12,15 19:5 23:15 26:7 31:13 47:15  <b>premise</b> <sup>[1]</sup> 23:22  <b>prepositional</b> <sup>[1]</sup> 9:1  <b>present</b> <sup>[3]</sup> 17:15 19:21 27:1  <b>presentation</b> <sup>[1]</sup> 56:4  <b>presented</b> <sup>[47]</sup> 4:6 5:1 6:24,25 8:1,2,8,16 9:6,21 12:20 13:7 15:3,4 16:9 18:9, 11 19:6 20:21 25:3,21,24 29:11 30:17,21 32:24 33:1, 3,7,17 36:6 38:25 39:3 41:17 42:11 43:3 46:12,15,24 51:12 52:10,21 55:4 56:2 59:18 61:1 62:17  <b>presenting</b> <sup>[1]</sup> 60:5  <b>presents</b> <sup>[3]</sup> 3:11 28:7 55:9</p>	<p><b>presumption</b> <sup>[3]</sup> 20:1 24:13 61:14  <b>pretty</b> <sup>[3]</sup> 7:20 26:12 54:3  <b>prevent</b> <sup>[1]</sup> 38:20  <b>previously</b> <sup>[1]</sup> 16:12  <b>primarily</b> <sup>[2]</sup> 47:6,7  <b>primary</b> <sup>[1]</sup> 13:8  <b>principle</b> <sup>[2]</sup> 25:16 41:22  <b>prior</b> <sup>[2]</sup> 5:18 18:22  <b>proceed</b> <sup>[1]</sup> 29:22  <b>proceedings</b> <sup>[1]</sup> 17:20  <b>profit</b> <sup>[1]</sup> 47:9  <b>Profits</b> <sup>[2]</sup> 31:4,6  <b>PROMESA</b> <sup>[1]</sup> 54:9  <b>proper</b> <sup>[2]</sup> 24:6 29:7  <b>properly</b> <sup>[2]</sup> 16:8 51:10  <b>proposition</b> <sup>[1]</sup> 34:5  <b>prospective</b> <sup>[2]</sup> 21:7 22:16  <b>protects</b> <sup>[1]</sup> 57:3  <b>provided</b> <sup>[1]</sup> 52:23  <b>providing</b> <sup>[1]</sup> 55:22  <b>provision</b> <sup>[2]</sup> 12:22,23  <b>provisions</b> <sup>[1]</sup> 4:12  <b>proviso</b> <sup>[1]</sup> 17:1  <b>purposes</b> <sup>[1]</sup> 61:6  <b>put</b> <sup>[2]</sup> 11:22 26:14</p>
<p style="text-align: center;"><b>N</b></p> <hr/> <p><b>namely</b> <sup>[2]</sup> 17:7 59:1  <b>narrow</b> <sup>[4]</sup> 31:11,13 32:18 58:15  <b>narrower</b> <sup>[2]</sup> 17:4 62:5  <b>NEALY</b> <sup>[2]</sup> 1:7 3:5  <b>necessary</b> <sup>[5]</sup> 6:3 23:22 30:20 33:17 39:2  <b>need</b> <sup>[4]</sup> 5:5,7 17:5 62:14  <b>needed</b> <sup>[1]</sup> 31:12  <b>needs</b> <sup>[1]</sup> 60:1  <b>neither</b> <sup>[2]</sup> 38:25 50:17  <b>nested</b> <sup>[2]</sup> 33:3 46:16</p>	<p style="text-align: center;"><b>O</b></p> <hr/> <p><b>obtain</b> <sup>[1]</sup> 3:23  <b>occasions</b> <sup>[2]</sup> 10:12 23:7  <b>occur</b> <sup>[1]</sup> 17:10  <b>occurred</b> <sup>[8]</sup> 3:13 7:2 20:23 50:14 56:23 57:6,15 62:19  <b>occurs</b> <sup>[1]</sup> 21:15  <b>offer</b> <sup>[1]</sup> 4:15  <b>offered</b> <sup>[1]</sup> 55:10  <b>often</b> <sup>[1]</sup> 54:6  <b>okay</b> <sup>[6]</sup> 26:15 27:22 28:11 33:5 48:6 49:7  <b>old</b> <sup>[1]</sup> 28:23  <b>Once</b> <sup>[1]</sup> 8:7  <b>one</b> <sup>[18]</sup> 11:8,9 14:15 16:7 18:19 23:24 26:12 29:15 32:2 35:10,16,20,22 41:5, 11 46:25 47:3 55:17  <b>one-sided</b> <sup>[1]</sup> 56:3  <b>only</b> <sup>[21]</sup> 3:24 4:3,21 5:7,20 14:20 15:10 23:2 26:16 27:9,14 28:12 34:15 36:9 40:10 44:6 50:4,6,12 51:10 54:8  <b>open</b> <sup>[2]</sup> 17:2 57:10  <b>opening</b> <sup>[1]</sup> 17:7  <b>operation</b> <sup>[1]</sup> 29:13  <b>operative</b> <sup>[1]</sup> 13:2  <b>opine</b> <sup>[1]</sup> 17:6  <b>opinion</b> <sup>[6]</sup> 13:15 22:3 23:25 44:10 57:24 58:22  <b>opinions</b> <sup>[2]</sup> 24:10,12  <b>opportunity</b> <sup>[3]</sup> 8:4 53:24 56:12  <b>option</b> <sup>[1]</sup> 39:23  <b>options</b> <sup>[3]</sup> 16:11 39:24 53:6  <b>oral</b> <sup>[7]</sup> 1:14 2:2,5,8 3:7 30:12 51:5  <b>order</b> <sup>[1]</sup> 21:9</p>	<p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m</b> <sup>[1]</sup> 63:2  <b>Pache</b> <sup>[1]</sup> 60:8  <b>PAGE</b> <sup>[1]</sup> 2:2  <b>pages</b> <sup>[1]</sup> 59:11  <b>parenthetically</b> <sup>[2]</sup> 5:20 58:21  <b>parse</b> <sup>[1]</sup> 25:20  <b>parsing</b> <sup>[2]</sup> 29:10 59:20  <b>part</b> <sup>[8]</sup> 8:15 9:3,6,14 10:19 20:17 38:22 59:7  <b>particular</b> <sup>[5]</sup> 13:1 15:7 34:13 39:18 61:9  <b>particularly</b> <sup>[3]</sup> 16:12 60:13 61:12  <b>parties</b> <sup>[7]</sup> 4:8 9:7 51:13 56:9 59:21 60:19 61:22  <b>party</b> <sup>[1]</sup> 6:5  <b>pass</b> <sup>[4]</sup> 5:14 8:4 44:13 49:19  <b>passed</b> <sup>[1]</sup> 6:4  <b>past</b> <sup>[1]</sup> 21:8  <b>path</b> <sup>[3]</sup> 35:1 45:12,25  <b>peculiar</b> <sup>[2]</sup> 40:9 45:13  <b>pending</b> <sup>[2]</sup> 28:2 55:9  <b>penumbra</b> <sup>[1]</sup> 24:3  <b>people</b> <sup>[2]</sup> 38:11,12  <b>perhaps</b> <sup>[2]</sup> 21:24 52:4  <b>period</b> <sup>[11]</sup> 4:2 12:8,24 14:12 26:8 35:17 41:7 49:25 50:7,13 57:1  <b>periods</b> <sup>[1]</sup> 24:24  <b>permissible</b> <sup>[1]</sup> 31:17  <b>permissive</b> <sup>[2]</sup> 34:11 44:5  <b>permit</b> <sup>[1]</sup> 14:10  <b>pertains</b> <sup>[1]</sup> 20:15  <b>petition</b> <sup>[12]</sup> 7:6,8,16 10:23, 25 11:16 17:11 18:5 28:2 55:9 60:5 62:2  <b>Petitioner</b> <sup>[3]</sup> 32:16 55:2</p>	<p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>question</b> <sup>[111]</sup> 3:11,17 4:5, 7,24 5:1 6:8,10,11,21,23, 25,25 7:19 8:1,2,4,7,11,13, 16 9:6,8,21 10:24 11:2,8 12:17,20 13:7 14:20 15:2, 3,4 16:9,23 17:1,3 18:1,8, 11,17 19:6,10 20:20 25:3, 23 26:11 29:11,18,20 30:16,21 32:24,24,25 33:2,7, 17 36:6,9 37:16 38:16,23, 24 39:3 41:17 42:11,21,25 43:2 44:20,20,22 45:8 46:12,14,24 51:10,12,17 52:6, 10,10,21,22,24 53:1,11,12, 20 54:8,12 55:4,10,12 56:2, 3,6,7,18 57:21,25 59:8,18, 23 60:20 61:6,23 62:6,17  <b>questionable</b> <sup>[1]</sup> 43:25  <b>questions</b> <sup>[11]</sup> 5:12 18:19 25:20 32:15 47:20 52:14 54:7 55:17 61:1 62:3,4  <b>quite</b> <sup>[3]</sup> 10:15 11:16 26:22  <b>quote</b> <sup>[1]</sup> 6:24</p>	
			<p style="text-align: center;"><b>R</b></p> <hr/> <p><b>Raging</b> <sup>[1]</sup> 57:10  <b>raise</b> <sup>[6]</sup> 5:24 6:7 10:19 11:17 40:17 57:14  <b>raised</b> <sup>[6]</sup> 5:23 11:3 14:6 30:18 38:21 60:19  <b>ran</b> <sup>[1]</sup> 49:25  <b>rarely</b> <sup>[1]</sup> 39:16  <b>rather</b> <sup>[1]</sup> 24:17  <b>reach</b> <sup>[4]</sup> 10:21,24 11:8,10  <b>reached</b> <sup>[1]</sup> 45:7</p>	

## Official - Subject to Final Review

<p>reaches <sup>[1]</sup> 52:12  reaching <sup>[1]</sup> 30:19  read <sup>[11]</sup> 8:14 9:20 23:11  46:12,14,14 48:20 50:19,  20 51:11 57:12  reading <sup>[8]</sup> 28:13 46:23 48:  21 50:5 56:19 57:23 58:4,  20  reaffirmed <sup>[1]</sup> 5:18  real <sup>[2]</sup> 26:15,15  really <sup>[16]</sup> 13:21 14:2 18:6  19:2 22:21,22 23:9 24:12  25:18 27:17 47:16 52:5 60:  15 62:5,8,11  rearticulated <sup>[1]</sup> 40:19  reason <sup>[11]</sup> 14:2 17:6 21:8  22:21 33:10 34:19 37:18  39:14 41:3 43:12 49:13  reasonably <sup>[1]</sup> 48:16  reasoning <sup>[4]</sup> 21:22 24:11  58:17,18  reasons <sup>[2]</sup> 35:18 53:8  rebut <sup>[1]</sup> 19:25  REBUTTAL <sup>[3]</sup> 2:12 58:9,  10  rebutted <sup>[1]</sup> 19:23  recalled <sup>[1]</sup> 49:12  receives <sup>[1]</sup> 44:4  receiving <sup>[1]</sup> 34:8  recent <sup>[5]</sup> 39:8 41:19,25 60:  20,21  recently <sup>[5]</sup> 13:23 17:14 24:  19 59:3 60:15  recognize <sup>[5]</sup> 12:22 22:5  25:19 27:13 61:18  recognized <sup>[6]</sup> 13:15,16,  23 24:22 25:14 29:16  recognizing <sup>[2]</sup> 14:20 45:  4  reconciled <sup>[1]</sup> 62:11  recover <sup>[11]</sup> 3:12 7:1 20:22  21:14 22:14 31:5 45:19 48:  2 49:21 57:16 62:18  recovery <sup>[6]</sup> 7:11 14:11 31:  21,23 41:8 51:22  refashioning <sup>[1]</sup> 46:12  referred <sup>[1]</sup> 13:20  referring <sup>[1]</sup> 13:21  refers <sup>[1]</sup> 33:4  reflects <sup>[1]</sup> 61:21  reformulated <sup>[6]</sup> 30:16 51:  12 52:9,21 55:4 56:2  reframed <sup>[1]</sup> 25:23  regime <sup>[1]</sup> 29:9  regional <sup>[1]</sup> 9:18  reject <sup>[2]</sup> 27:14 61:10  rejected <sup>[2]</sup> 51:21 61:16  rejects <sup>[1]</sup> 58:16  relevant <sup>[11]</sup> 4:25 8:11 12:  18 13:2 19:4 26:4 33:21  34:21 59:7 61:4,5  relied <sup>[2]</sup> 10:10,10  relief <sup>[18]</sup> 6:12 9:9 10:12 13:  12 18:22 19:11 21:5,7,10</p>	<p>22:11,15,16 23:8,14 25:17  31:2 49:10 59:10  rely <sup>[6]</sup> 10:8 11:12 12:5 24:  12 59:17 61:13  relying <sup>[4]</sup> 23:10,13 24:1  51:24  remedial <sup>[1]</sup> 12:23  Remedies <sup>[1]</sup> 31:3  remedy <sup>[5]</sup> 30:24 31:1 32:  14 39:5 48:18  repeatedly <sup>[1]</sup> 3:22  rephrased <sup>[11]</sup> 4:5 5:1 8:7,  13,14 12:20 15:2,4 19:5  38:24 59:18  rephrasing <sup>[2]</sup> 9:21 16:9  reply <sup>[1]</sup> 33:24  repose <sup>[2]</sup> 14:13 47:3  repudiated <sup>[1]</sup> 24:15  repudiation <sup>[3]</sup> 34:9,14 44:  4  required <sup>[1]</sup> 26:20  requirement <sup>[1]</sup> 6:5  reserved <sup>[2]</sup> 57:21,25  resolve <sup>[11]</sup> 26:3 29:20 30:  20 35:8 41:15 53:14,16 54:  12,23 60:1 62:7  resolved <sup>[1]</sup> 17:21  resolves <sup>[2]</sup> 58:16 62:2  resolving <sup>[4]</sup> 4:24 18:24  53:22 61:6  respect <sup>[5]</sup> 16:22 33:23 38:  5 50:5,6  respectfully <sup>[3]</sup> 6:2 7:14  47:18  respond <sup>[1]</sup> 57:17  Respondents <sup>[18]</sup> 1:8,21,  25 2:7,11 4:5,10,15,20 5:7  10:1 19:24 30:13,23 51:7  58:14 59:6 62:6  Respondents' <sup>[3]</sup> 23:4 30:  22 59:12  responds <sup>[1]</sup> 49:21  response <sup>[1]</sup> 11:15  rested <sup>[1]</sup> 58:19  resting <sup>[1]</sup> 28:14  result <sup>[1]</sup> 39:17  retrospective <sup>[12]</sup> 6:12 9:  8 10:12 13:12 19:11 21:5  22:11,14 23:8,14 49:9 59:  10  reverse <sup>[2]</sup> 5:10 53:9  reversed <sup>[1]</sup> 62:22  review <sup>[2]</sup> 16:24 17:15  revisit <sup>[1]</sup> 54:14  rights <sup>[2]</sup> 34:9 35:23  ROBERTS <sup>[7]</sup> 3:3 29:24  30:11 50:25 54:17 58:6 62:  24  role <sup>[1]</sup> 44:16  roll <sup>[1]</sup> 42:6  Rotkiske <sup>[2]</sup> 13:24 24:15  rule <sup>[153]</sup> 4:1,17,21 5:3,4,6,  14,15,16,19 6:15,20,22 7:8,  10 8:6,9,10,17,21 9:10,16,</p>	<p>18,20 11:13,20 13:17,20,  22,24 14:1 15:7,19,22,25  16:4,14,21 17:4,16 18:20  19:8,19,22 22:7 23:11 24:  7,11,14 25:6,7,13 26:14,15,  18 28:12,12,18,19,22 29:1,  7,14 30:18,23 31:15 32:18,  19,21 33:5,9,11,12,16,19,  22 34:2,6,10,11,16,20 35:  14,25 36:3,10,12,15 37:4,  20,24 38:6 39:4 40:1,2,9,  13,16,21 41:13,23 42:2,9,  14,22 43:8,19 44:2,6,7,10,  11,21,23 45:4,13,15,17 46:  9,10,18,20 47:13,22 48:14  50:24 51:16 52:4,7,17,19  53:8,9,12,12,21,23 54:1,3,  4,21 55:18 57:8,9,22 58:1  59:4 60:2,7,14,16 61:15  62:15  rule's <sup>[1]</sup> 4:19  rules <sup>[1]</sup> 60:22  running <sup>[2]</sup> 34:16 44:7</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p>same <sup>[2]</sup> 57:24 59:1  Samia <sup>[1]</sup> 10:23  sat <sup>[1]</sup> 49:19  saying <sup>[12]</sup> 8:20 21:3 22:1,  4,20 26:22 36:18,19 37:4  39:23 43:19 49:22  says <sup>[11]</sup> 7:20 31:4 34:5 43:  17 45:14 46:17,17 48:12,  19 49:9 50:7  scenario <sup>[1]</sup> 21:24  scope <sup>[21]</sup> 4:19 5:4 6:21 8:  10,21 9:16 13:7 14:5 15:  25 20:3 25:3 32:22 33:16,  22 34:20 36:12 37:9 42:25  43:15,18 44:21  Second <sup>[28]</sup> 7:11 9:11 13:9  18:23,24 21:21 24:16 35:4,  9 40:7,18,24 41:11 45:8,11,  23 46:16,16 51:23 52:2,3,3  55:18,24 56:12,16 58:17  60:18  second-guessed <sup>[1]</sup> 47:  20  Section <sup>[17]</sup> 10:11,14 12:6,  19 13:1,13 20:5 24:3 26:6,  6,9 29:21 30:25 31:2 33:4  42:3 56:10  see <sup>[1]</sup> 21:18  seek <sup>[3]</sup> 4:5 30:24 40:10  seeking <sup>[2]</sup> 31:1,2  seem <sup>[2]</sup> 20:12 58:25  seemingly <sup>[1]</sup> 58:15  seems <sup>[2]</sup> 26:11 32:16  sense <sup>[1]</sup> 18:23  sentences <sup>[1]</sup> 44:14  separate <sup>[5]</sup> 35:7 51:19 56:  17,18 57:2  separately <sup>[1]</sup> 32:3  set <sup>[1]</sup> 30:17</p>	<p>setting <sup>[1]</sup> 52:11  several <sup>[2]</sup> 38:1 54:9  shall <sup>[2]</sup> 20:6,11  SHANMUGAM <sup>[51]</sup> 1:18 2:  3,13 3:6,7,9 5:17,24 6:10,  16 7:5,13,24 8:13,24 9:4  11:6,14,24 12:2,11,14 14:8,  22 15:1,20 16:15,16,19,25  17:23 18:25 19:14 20:18,  20 21:20 26:21 27:4,10,13,  23 28:1,6,13,17,25 30:10  43:17 58:9,10,12  SHERMAN <sup>[2]</sup> 1:7 44:13  shopping <sup>[1]</sup> 40:23  shouldn't <sup>[3]</sup> 27:17 37:12  55:25  Show <sup>[2]</sup> 12:4 21:10  side <sup>[2]</sup> 13:6 22:6  sides <sup>[2]</sup> 5:3 56:9  significant <sup>[1]</sup> 39:22  similar <sup>[1]</sup> 24:25  simple <sup>[5]</sup> 19:15,18 21:7  51:18 61:23  simply <sup>[5]</sup> 5:15 8:10 15:23  19:25 22:10  since <sup>[1]</sup> 44:18  sit <sup>[1]</sup> 23:25  situated <sup>[1]</sup> 53:16  situation <sup>[1]</sup> 44:8  situations <sup>[1]</sup> 47:14  Sixth <sup>[1]</sup> 33:25  sleeves <sup>[1]</sup> 42:6  small <sup>[1]</sup> 35:18  so-called <sup>[1]</sup> 34:2  Sohm <sup>[11]</sup> 21:22 35:2,4 40:  1,2,5 45:11 53:8 58:18,19  60:18  solicited <sup>[1]</sup> 52:22  Solicitor <sup>[1]</sup> 1:22  solidified <sup>[1]</sup> 54:3  solidify <sup>[3]</sup> 53:23 54:5 60:  15  somehow <sup>[4]</sup> 4:14 20:15  27:15 39:4  sometimes <sup>[3]</sup> 25:21 54:  20,24  somewhat <sup>[1]</sup> 7:25  sorry <sup>[4]</sup> 16:17 35:25 42:17,  18  sort <sup>[5]</sup> 12:23 14:20 25:20  35:13 44:14  SOTOMAYOR <sup>[11]</sup> 10:17  11:7,21,25 12:3,13 14:4,9,  24 15:10 30:3  sought <sup>[1]</sup> 7:19  sound <sup>[1]</sup> 54:18  source <sup>[1]</sup> 25:17  speaks <sup>[2]</sup> 12:6,7  specific <sup>[1]</sup> 8:19  spent <sup>[2]</sup> 25:21 39:22  split <sup>[17]</sup> 7:9,10 11:11,23  30:20 35:8 39:2 41:10,16  42:23,24 43:13,15,18 45:  21 46:5 53:23</p>	<p>stage <sup>[1]</sup> 43:3  standard <sup>[4]</sup> 19:19 59:4,15  62:15  standing <sup>[1]</sup> 39:16  star <sup>[3]</sup> 7:15,22 8:2  start <sup>[3]</sup> 12:15 19:3,8  starting <sup>[1]</sup> 26:3  state <sup>[1]</sup> 41:6  stated <sup>[1]</sup> 3:23  statements <sup>[6]</sup> 4:16 23:11  24:1 25:10 49:9,14  STATES <sup>[7]</sup> 1:1,15,24 2:10  39:1 51:6 53:4  status <sup>[1]</sup> 40:21  statute <sup>[32]</sup> 3:18 4:8 8:18 9:  11 10:10 12:7 13:13 14:9,  13 16:22 17:17 20:10,14  21:19 24:2,16 25:12 26:17  31:19 32:4,7,12 34:15 41:  3,6 44:6 48:13 49:16 50:1  58:25 59:1,21  statutes <sup>[2]</sup> 19:24 27:5  Statutorily <sup>[1]</sup> 12:13  statutory <sup>[23]</sup> 3:16 4:9,14,  24,25 9:25 12:4,16,17 18:  10 19:3,4,8 22:13 23:17  26:4 27:15 31:7 59:9,17  61:4,7,24  stems <sup>[1]</sup> 53:14  stepped <sup>[1]</sup> 35:19  still <sup>[1]</sup> 57:16  stingiest <sup>[1]</sup> 25:4  straight <sup>[1]</sup> 43:8  straightforward <sup>[2]</sup> 3:15  62:14  strange <sup>[1]</sup> 45:12  stranger <sup>[1]</sup> 58:4  straw <sup>[1]</sup> 26:5  strict <sup>[1]</sup> 23:17  strong <sup>[2]</sup> 55:17,25  strongest <sup>[4]</sup> 7:7 21  stuff <sup>[1]</sup> 38:20  subject <sup>[2]</sup> 14:16 25:8  submission <sup>[8]</sup> 6:18 9:13  10:1,8 16:6 19:18 26:1,11  submit <sup>[13]</sup> 6:2 22:7 23:23  25:19 27:16 29:6,22 42:10  47:18 58:4 59:6 60:12 62:  8  submitted <sup>[2]</sup> 63:1,3  subsequent <sup>[2]</sup> 18:18 46:  5  subset <sup>[1]</sup> 48:8  substantive <sup>[2]</sup> 6:23 9:7  sue <sup>[2]</sup> 32:5 49:20  suffered <sup>[2]</sup> 21:14 31:6  suggest <sup>[4]</sup> 10:2 39:11 57:  13,24  suggested <sup>[1]</sup> 55:2  suggesting <sup>[1]</sup> 57:19  suggestion <sup>[3]</sup> 34:23 57:  18,20  suggests <sup>[1]</sup> 8:23  suit <sup>[6]</sup> 3:14 5:9 34:7 56:24</p>
--	---	---	---	--

## Official - Subject to Final Review

<p>57:7,16  <b>supporting</b> <sup>[3]</sup> 1:24 2:11  51:7  <b>supports</b> <sup>[2]</sup> 23:20,21  <b>SUPREME</b> <sup>[2]</sup> 1:1,14  <b>surprise</b> <sup>[1]</sup> 18:4</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> <sup>[9]</sup> 4:14 7:6 8:22 9:22  27:16,19,21,21,22  <b>talked</b> <sup>[1]</sup> 8:15  <b>talks</b> <sup>[1]</sup> 20:5  <b>targeted</b> <sup>[2]</sup> 30:20 39:2  <b>teed</b> <sup>[1]</sup> 59:16  <b>tells</b> <sup>[3]</sup> 33:7,9 51:13  <b>Tenth</b> <sup>[1]</sup> 33:25  <b>term</b> <sup>[7]</sup> 4:13 13:2 19:17 33:  3 42:13 46:15 62:16  <b>terms</b> <sup>[2]</sup> 24:21 59:3  <b>text</b> <sup>[7]</sup> 4:9,11,14,25 9:25  25:25 26:24  <b>textual</b> <sup>[3]</sup> 52:4 55:19 58:3  <b>textualism</b> <sup>[1]</sup> 26:13  <b>there's</b> <sup>[27]</sup> 11:11 17:7 19:  7 22:1 24:20 26:6,14 28:  11 35:19 36:3 38:12,19 39:  4 40:9 41:9,10,21,22 42:9,  21,24 43:18 44:10 46:9 53:  20 54:15 55:19  <b>therefore</b> <sup>[1]</sup> 27:5  <b>thereunder</b> <sup>[1]</sup> 58:3  <b>they've</b> <sup>[4]</sup> 35:19,21,24 44:  17  <b>thinks</b> <sup>[2]</sup> 25:5 54:22  <b>Third</b> <sup>[2]</sup> 16:2,3  <b>THOMAS</b> <sup>[8]</sup> 5:13,22 6:8,  14 30:1 32:16 52:15,25  <b>though</b> <sup>[1]</sup> 60:8  <b>three</b> <sup>[36]</sup> 3:14,19,25 6:13 7:  3,12 10:13 20:23 21:4,18  22:2,12,24 23:15 26:16 29:  3,12 31:25 32:9,11 34:8  40:10 47:23,25 48:3,15,21  49:10 50:3,6,16,19 56:24  57:6,15 62:19  <b>three-year</b> <sup>[10]</sup> 14:11 20:  14 26:8 28:12,18,19 31:10  47:12 49:24 50:13  <b>threshold</b> <sup>[1]</sup> 19:7  <b>ticket</b> <sup>[1]</sup> 6:6  <b>time-barred</b> <sup>[2]</sup> 32:4 50:1  <b>time-based</b> <sup>[1]</sup> 51:20  <b>timely</b> <sup>[13]</sup> 30:23 31:18 32:  12 40:9 41:8 45:17,18 48:  5,12 51:16,18,23 57:14  <b>timing</b> <sup>[1]</sup> 21:23  <b>Title</b> <sup>[3]</sup> 31:9,12,14  <b>today</b> <sup>[1]</sup> 51:11  <b>tolling</b> <sup>[1]</sup> 16:5  <b>took</b> <sup>[7]</sup> 5:8 7:6 21:25 22:  11 45:11,11 52:20  <b>totally</b> <sup>[1]</sup> 27:2  <b>tough</b> <sup>[1]</sup> 26:12  <b>traditional</b> <sup>[1]</sup> 35:23</p>	<p><b>traditionally</b> <sup>[1]</sup> 29:16  <b>transported</b> <sup>[1]</sup> 20:15  <b>treatises</b> <sup>[2]</sup> 14:3 23:19  <b>trigger</b> <sup>[1]</sup> 28:20  <b>true</b> <sup>[4]</sup> 17:22 19:2 45:5 60:  6  <b>TRW</b> <sup>[1]</sup> 24:15  <b>try</b> <sup>[3]</sup> 10:16 26:3 57:7  <b>trying</b> <sup>[2]</sup> 25:22 56:21  <b>turn</b> <sup>[5]</sup> 10:6,9 22:16 28:14  45:12  <b>turns</b> <sup>[2]</sup> 34:17 44:3  <b>two</b> <sup>[15]</sup> 9:9 11:14 12:9 13:  18 18:19 24:4,12,21,24 27:  23 38:2 39:24 53:5 54:9  55:17  <b>tying</b> <sup>[1]</sup> 12:9  <b>type</b> <sup>[2]</sup> 34:13 38:6</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U.S</b> <sup>[1]</sup> 54:9  <b>unanimous</b> <sup>[1]</sup> 36:8  <b>unanimously</b> <sup>[1]</sup> 35:15  <b>unavailability</b> <sup>[1]</sup> 23:14  <b>Under</b> <sup>[24]</sup> 3:17,25 8:16 20:  10 24:6 29:13 30:23 31:18  32:1,4,12 34:6,6 40:8,14  41:13 46:19 48:12 49:16  51:16,18 53:12 56:18 59:1  <b>understand</b> <sup>[6]</sup> 20:3 27:2  41:20,24 45:7 58:25  <b>understanding</b> <sup>[4]</sup> 4:1 24:  6 29:7 50:9  <b>unencumbered</b> <sup>[1]</sup> 29:10  <b>unfair</b> <sup>[2]</sup> 18:3 53:1  <b>unfortunate</b> <sup>[1]</sup> 62:9  <b>uniform</b> <sup>[2]</sup> 41:7 55:22  <b>uniformly</b> <sup>[1]</sup> 44:9  <b>uniquely</b> <sup>[1]</sup> 53:16  <b>UNITED</b> <sup>[7]</sup> 1:1,15,24 2:10  39:1 51:6 53:4  <b>universal</b> <sup>[1]</sup> 42:5  <b>unlikely</b> <sup>[2]</sup> 21:24 54:5  <b>unnecessary</b> <sup>[1]</sup> 23:17  <b>until</b> <sup>[1]</sup> 17:21  <b>untimely</b> <sup>[3]</sup> 50:23 56:23  57:7  <b>up</b> <sup>[6]</sup> 33:15 37:16 38:16 42:  6 43:8 59:16  <b>uses</b> <sup>[3]</sup> 24:17 33:5 42:3</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>valid</b> <sup>[1]</sup> 4:15  <b>validity</b> <sup>[1]</sup> 60:1  <b>variability</b> <sup>[1]</sup> 34:19  <b>variety</b> <sup>[1]</sup> 15:24  <b>vehicle</b> <sup>[2]</sup> 39:6,11  <b>version</b> <sup>[3]</sup> 5:2 15:7 22:6  <b>versus</b> <sup>[4]</sup> 3:5 15:12,16 43:  20  <b>vessel</b> <sup>[1]</sup> 47:13  <b>viable</b> <sup>[2]</sup> 35:1 39:23  <b>view</b> <sup>[11]</sup> 18:10 25:4 34:22  36:8 46:1 52:16,19 53:5</p>	<p>55:6,8,25  <b>views</b> <sup>[7]</sup> 15:24 52:22,23  55:10,11,14,17  <b>vintage</b> <sup>[5]</sup> 37:25 38:6 39:9  41:19 60:22  <b>violation</b> <sup>[1]</sup> 21:9</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wanted</b> <sup>[2]</sup> 35:21 57:17  <b>wants</b> <sup>[2]</sup> 10:21 47:16  <b>WARNER</b> <sup>[2]</sup> 1:3 3:4  <b>Washington</b> <sup>[3]</sup> 1:10,18,  23  <b>way</b> <sup>[10]</sup> 25:24 29:8 32:25  39:20 43:24 45:24 53:23  57:2,19 59:1  <b>Webster</b> <sup>[2]</sup> 5:19 6:1  <b>Wednesday</b> <sup>[1]</sup> 1:11  <b>welcome</b> <sup>[3]</sup> 5:12 32:15 52:  14  <b>well-solidified</b> <sup>[1]</sup> 54:21  <b>WESLEY</b> <sup>[3]</sup> 1:20 2:6 30:  12  <b>Whereupon</b> <sup>[1]</sup> 63:2  <b>whether</b> <sup>[30]</sup> 3:12 7:1 8:5,  16 11:19 14:6 15:11,13 17:  3,16 18:1 20:21 22:16 35:  14 36:2,15 39:8 41:18 42:  21 51:15 52:6,16,19 53:20  55:6 58:1 60:20 61:25 62:  1,17  <b>wholly</b> <sup>[1]</sup> 26:2  <b>will</b> <sup>[9]</sup> 9:13 13:4 18:12 22:  16 26:13 32:3 35:1 53:23  60:15  <b>willing</b> <sup>[1]</sup> 32:17  <b>wine</b> <sup>[9]</sup> 26:15 28:23,24 37:  25 38:5,11 39:8 41:19 60:  21  <b>wish</b> <sup>[1]</sup> 7:17  <b>within</b> <sup>[15]</sup> 3:19,24 13:6 20:  11,13 21:15 25:2 32:9,11  33:3 34:8 46:16 48:15 50:  3 56:25  <b>without</b> <sup>[2]</sup> 18:24 26:3  <b>wondering</b> <sup>[1]</sup> 40:16  <b>word</b> <sup>[7]</sup> 18:1 22:18 33:5  41:23 42:3,6,8  <b>words</b> <sup>[1]</sup> 21:23  <b>work</b> <sup>[2]</sup> 29:9 33:11  <b>works</b> <sup>[3]</sup> 47:6,8,17  <b>worthy</b> <sup>[6]</sup> 42:22 44:21,24  45:8,22,25  <b>writers</b> <sup>[1]</sup> 23:25</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>YAIRA</b> <sup>[3]</sup> 1:22 2:9 51:5  <b>years</b> <sup>[42]</sup> 3:14,19,25 6:13  7:3,12 10:13 20:23 21:4,  18,25 22:2,12 23:15 26:16  29:3,12 31:25 32:9,11 34:  8 35:15 38:2 40:10 44:9  47:23,25 48:3,15,22 49:10,  24 50:3,6,16,19 54:9,10 56:  24 57:6,15 62:19  <b>yesterday</b> <sup>[2]</sup> 24:19 56:5  <b>York</b> <sup>[3]</sup> 1:20,20 35:2</p>
---	---	--