

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

-----  
SALVATORE DELLIGATTI, )  
 )  
 Petitioner, )  
 )  
 v. ) No. 23-825  
 )  
 UNITED STATES, )  
 )  
 Respondent. )  
-----

Pages: 1 through 73  
Place: Washington, D.C.  
Date: November 12, 2024

---

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

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -

3 SALVATORE DELLIGATTI, )

4 Petitioner, )

5 v. ) No. 23-825

6 UNITED STATES, )

7 Respondent. )

8 - - - - -

9

10 Washington, D.C.

11 Tuesday, November 12, 2024

12

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

16

17 APPEARANCES:

18 ALLON KEDEM, ESQUIRE, Washington, D.C.; on behalf of  
19 the Petitioner.

20 ERIC J. FEIGIN, Deputy Solicitor General, Department  
21 of Justice, Washington, D.C.; on behalf of the  
22 Respondent.

23

24

25

|    |                             |       |
|----|-----------------------------|-------|
| 1  | C O N T E N T S             |       |
| 2  | ORAL ARGUMENT OF:           | PAGE: |
| 3  | ALLON KEDEM, ESQ.           |       |
| 4  | On behalf of the Petitioner | 3     |
| 5  | ORAL ARGUMENT OF:           |       |
| 6  | ERIC J. FEIGIN, ESQ.        |       |
| 7  | On behalf of the Respondent | 33    |
| 8  | REBUTTAL ARGUMENT OF:       |       |
| 9  | ALLON KEDEM, ESQ.           |       |
| 10 | On behalf of the Petitioner | 68    |
| 11 |                             |       |
| 12 |                             |       |
| 13 |                             |       |
| 14 |                             |       |
| 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

(11:13 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument next in Case 23-825, Delligatti versus United States.

Mr. Kedem.

ORAL ARGUMENT OF ALLON KEDEM  
ON BEHALF OF THE PETITIONER

MR. KEDEM: Mr. Chief Justice, and may it please the Court:

Using physical force against another requires taking some step to bring force into contact with the victim. That can happen directly, as with a kick or a punch, or indirectly, such as giving a gentle push to someone teetering on the edge of a cliff. But it does not involve an offense that can be committed by pure omission, such as failing to render aid to someone suffering from a natural disorder.

The government's attempt to reverse-engineer the use of force from the presence of injury is contrary to logic and plain meaning. It also runs counter to this Court's instructions that "use" means active

1 employment, that physical force is violent  
2 force, and that "against another" means making  
3 contact with another.

4           The government's appeal to practical  
5 consequences, in addition to being irrelevant to  
6 interpreting the statute's text, is similarly  
7 unpersuasive. At the time the Elements Clause  
8 was adopted, all or nearly all of the statutes  
9 identified by the government would have  
10 satisfied the Residual Clause, and, per the  
11 government's hedging here, many will satisfy the  
12 Elements Clause too regardless of whether crimes  
13 of omission are excluded.

14           A failure to counteract harm may be  
15 morally and legally culpable and it may merit  
16 severe punishment, but it does not categorically  
17 involve the use of violent physical force  
18 against another.

19           I would welcome the Court's questions.

20           JUSTICE THOMAS: So, in your thinking,  
21 if you poison someone and cause -- thereby cause  
22 the death of that person, the -- that is, in  
23 your argument, under your argument, treated  
24 differently from withholding critical, say,  
25 heart medicine when someone is in the process of

1 having a heart attack?

2 MR. KEDEM: That's correct, Your  
3 Honor. So this Court has described poison as  
4 having forceful physical properties that you  
5 would have put into contact with the victim by  
6 putting it in their drink. That's a very  
7 different situation than someone who potentially  
8 through natural causes slips into distress and  
9 you don't take any action to put them into  
10 contact with any force, and there may not be any  
11 force involved if, for instance, it's a  
12 congenital disorder.

13 So there's no force at all and you  
14 wouldn't have used that force actively.

15 JUSTICE SOTOMAYOR: I'm sorry, I don't  
16 know -- you almost seem to be talking proximate  
17 cause. There's no force in the poison itself in  
18 what you did. The force is in the nature of the  
19 substance that goes through the person's body.  
20 Similarly, there's no violent force in a gentle  
21 push of a 90-year-old down the stairs. You  
22 could probably do it with a finger. So there's  
23 no violent force there.

24 What you seem to be saying is, if I  
25 have a duty to act and I choose not to, I'm not

1 responsible for the force that I let work on  
2 this human being? That's your position,  
3 correct?

4 MR. KEDEM: No, Your Honor. So, in  
5 both the poisoning example and giving a gentle  
6 push to someone who falls down the stairs or off  
7 of a cliff, you are not directly applying  
8 violent physical force. It's a gentle touch or  
9 you're just letting the molecules of the poison  
10 fall from your hand. But there is still an  
11 application of violent physical force when they  
12 hit the ground at high speed.

13 JUSTICE SOTOMAYOR: Well, I -- I would  
14 tell someone who's freezing in the snow that  
15 there's an application of winter conditions to  
16 their body to kill them.

17 MR. KEDEM: Sure. And in that  
18 instance, again, you might describe the elements  
19 as involved -- involving violent physical force,  
20 which perhaps you could describe as using  
21 indirectly if, for instance, you throw them out  
22 into the snow.

23 But that's a very different situation  
24 than a pure omission, where someone, let's say,  
25 has an allergic reaction --

1 JUSTICE SOTOMAYOR: It's not a pure  
2 omission. It's an obligation to act.

3 MR. KEDEM: Sure.

4 JUSTICE SOTOMAYOR: I mean --

5 MR. KEDEM: It's -- it's --

6 JUSTICE SOTOMAYOR: -- I could be in a  
7 restaurant watching someone die, but I have no  
8 obligation even if I know the Heimlich maneuver  
9 to do it. However, if it's a child and my  
10 child, I have an obligation to try to save them.

11 MR. KEDEM: That's correct. And it is  
12 a serious offense --

13 JUSTICE SOTOMAYOR: So I'm letting  
14 nature use its force to kill that child.

15 MR. KEDEM: So it -- there's no  
16 dispute that it is criminally culpable behavior  
17 and can be punished severely. But the question  
18 is, is there violent force being applied to the  
19 victim and have you actively employed that  
20 force? And in a situation where, for instance,  
21 you just don't provide medicine or nutrition to  
22 someone and they slowly expire, there is no  
23 violent physical force of any sort. It's not  
24 like hitting the ground at high speed.

25 And, moreover, you haven't taken any



1 step to actively employ any force.

2 JUSTICE KAGAN: I guess I'm not sure I  
3 get that. In the poison case, you're agreeing  
4 that it's not my putting the poison into the  
5 drink that's violent physical force; rather,  
6 it's the way the poison acts on the body.

7 MR. KEDEM: Right.

8 JUSTICE KAGAN: And in the  
9 withholding-of-medication situation, it's  
10 similarly the way the disease acts against the  
11 body, and -- and you're enabling that disease to  
12 run.

13 MR. KEDEM: Right. So I think this  
14 Court has analogized poison to sort of like a  
15 little explosive device that detonates when you  
16 swallow it. I don't think the same is true, for  
17 instance, to just the absence of chemical inputs  
18 as necessary to keep your cells going. That's  
19 not analogous to violent physical force.

20 And even in the poisoning example, you  
21 are still taking some step to bring the person  
22 into contact with that poison, without which  
23 they wouldn't have the force applied to them at  
24 all, even indirectly.

25 JUSTICE BARRETT: So, if I take a

1 hostage and then just let the hostage starve,  
2 which side of the line does that fall on for  
3 you?

4 MR. KEDEM: So putting aside that that  
5 would probably be a threat or, you know,  
6 attempted use of force --

7 JUSTICE BARRETT: But physical force.  
8 Just --

9 MR. KEDEM: Sure. So --

10 JUSTICE BARRETT: -- physical force.

11 MR. KEDEM: -- so let's say there was  
12 someone sleeping in a room and you lock them in  
13 the room and then they slowly expire. From our  
14 perspective, that would not involve a  
15 application of violent physical force, and you  
16 could say you used the locks, but you haven't  
17 actually used force against them.

18 JUSTICE GORSUCH: Mr. --

19 JUSTICE BARRETT: Well, what do you do  
20 with the fact that Stokeling especially seems to  
21 measure force not from the front end, like force  
22 applied, but from the back end on what does the  
23 force -- what -- what is its result? It seems  
24 to me that for murder, necessarily, the result  
25 was pretty extreme.

1                   MR. KEDEM: So, respectfully, I -- I  
2                   don't think Stokeling takes that position. In  
3                   fact, the whole discussion in Stokeling was how  
4                   much force do you need to apply, what's the  
5                   amount of force, to overcome resistance, which,  
6                   again, the Court wasn't focused on whether the  
7                   person was injured or not. It was can you do it  
8                   just sort of by gently grabbing it, or does it  
9                   need to be more -- more vigorous.

10                   JUSTICE BARRETT: But the measure of  
11                   the force, if you're prying someone's fingers  
12                   off of a purse --

13                   MR. KEDEM: Right.

14                   JUSTICE BARRETT: -- I mean, the  
15                   measure of force --

16                   MR. KEDEM: Yeah.

17                   JUSTICE BARRETT: -- I wouldn't  
18                   describe that as severe or aggressive.

19                   MR. KEDEM: So -- so that -- and that  
20                   was the back-and-forth. Everyone was focused on  
21                   that same question. So they were still focused  
22                   on how much force was involved.

23                   You look also, for instance, at -- at  
24                   Castleman. So Castleman gives the example of a  
25                   squeeze of an arm that causes a bruise, which

1 the Court said would count as common law force  
2 for purposes of domestic violence but would not  
3 count as violent force for generic purposes,  
4 which shows that even the direct application of  
5 enough force that sometimes causes an injury, a  
6 bruise, is not enough because it's still not a  
7 high enough degree of force.

8 JUSTICE GORSUCH: Mr. Kedem, you know,  
9 our intuition is that often omissions are just  
10 as bad as acts and they are --

11 MR. KEDEM: Sure.

12 JUSTICE GORSUCH: -- sometimes hard to  
13 distinguish. And, certainly, it can be murder  
14 when there's a preexisting duty of care that you  
15 then omit to fulfill.

16 MR. KEDEM: Right.

17 JUSTICE GORSUCH: All right. But  
18 there are some places where we have gone well  
19 beyond that common law rule and imposed a duty  
20 of care even for the good Samaritan.

21 So let's take a hypothetical. Someone  
22 comes across the street, sees that the manhole  
23 cover's open, doesn't rescue the little old lady  
24 who steps into it --

25 MR. KEDEM: Mm-hmm.

1 JUSTICE GORSUCH: -- because this  
2 person has animus toward little old ladies. Now  
3 an extreme hypothetical. Justice Breyer might  
4 be proud.

5 (Laughter.)

6 JUSTICE GORSUCH: That would be murder  
7 in a -- in a state with a good Samaritan  
8 statute. Physical force, I guess the gravity's  
9 -- I mean, what -- what more powerful force in  
10 the universe is there than that? Would that in  
11 your view fall within the government's  
12 understanding of what would qualify as -- as the  
13 application of violent force?

14 MR. KEDEM: It would have to. The  
15 government's view essentially is anytime you  
16 have a bad result, you know that there must have  
17 been violent physical force, which means that  
18 not only would the death or other injury in your  
19 example be violent physical force, it would also  
20 be involved in literally every death since the  
21 beginning of time because, in every death,  
22 something bad happens because you either are  
23 injured or run out of the cellular inputs  
24 necessary to sustain life.

25 JUSTICE GORSUCH: And if I might just

1 ask a slightly different question. This is one  
2 that -- yeah, I don't know of any more powerful  
3 force in the universe than gravity, but any -- I  
4 wonder whether this statute is divisible between  
5 acts and omissions, and that isn't something  
6 either side explored.

7 MR. KEDEM: Mm-hmm.

8 JUSTICE GORSUCH: I know it won't help  
9 your client, okay, but perhaps -- I'd welcome  
10 your thoughts on whether --

11 MR. KEDEM: Sure.

12 JUSTICE GORSUCH: -- you think that  
13 this statute is, in fact, divisible.

14 MR. KEDEM: So this statute is not.  
15 We have opinions from the court of appeals, New  
16 York's highest court, saying that the statute  
17 can be committed either by affirmative acts or  
18 by omissions, including pure omissions.

19 So we have the Wong case, where there  
20 were two caregivers, one of whom shook the  
21 child, the other of whom failed to render aid.

22 JUSTICE GORSUCH: Yes. And -- and  
23 they're duty-of-care cases, classic --

24 MR. KEDEM: Sure.

25 JUSTICE GORSUCH: -- common law

1 duty-of-care cases, so you have to prove a duty  
2 and then the failure to fulfill it.

3 MR. KEDEM: That's right.

4 JUSTICE GORSUCH: Very different than  
5 killing somebody or ordering a hit on somebody  
6 by act. I mean, giving them a pistol in a brown  
7 paper bag is a little different.

8 MR. KEDEM: It is. Presumably, if the  
9 government thought that this statute was  
10 divisible, they would have argued it, but I  
11 think your question really highlights an  
12 important point, which is it just so happens  
13 that this murder statute can be satisfied either  
14 by acts or omissions.

15 But the government's argument would  
16 have to be the same even if New York had a  
17 murder-by-omission statute that could only be  
18 satisfied by a pure omission in which there was  
19 no actus reus whatsoever, other than just having  
20 a duty that you failed to satisfy. And the  
21 government's argument would have to be, in every  
22 single instance of that murder-by-omission  
23 statute, violent physical force was involved.

24 JUSTICE JACKSON: And I take it your  
25 argument is that when we look at the federal

1 statute and its definition of "crime of  
2 violence," that, really, what is at issue here  
3 is a -- is the conduct of the defendant?

4 MR. KEDEM: That's correct.

5 JUSTICE JACKSON: That it's not  
6 whether force is operating in the universe --

7 MR. KEDEM: That's correct.

8 JUSTICE JACKSON: -- to achieve a  
9 certain result, but the plain text here seems to  
10 suggest that we're looking for use, attempted  
11 use, or threatened use of physical force and --  
12 and that at least the common sense view of that  
13 is that it's the defendant acting to use,  
14 threaten to use, or attempting to use.

15 Is that -- is that the thrust of your  
16 argument?

17 MR. KEDEM: It is, Your Honor. And I  
18 would emphasize there are lots of criminal  
19 statutes, including in 924, in fact, even in  
20 924(c), that focus on outcomes.

21 So subsection (c)(5)(B) applies a  
22 heightened penalty if death results. The  
23 Elements Clause, by contrast, is, as you've  
24 described it, focused on the method, a  
25 particular way of committing an offense that



1 Congress associated with armed career criminal  
2 behavior.

3 JUSTICE JACKSON: Well, in the --

4 JUSTICE KAGAN: I take the point that  
5 ordinary understandings of what it means to use  
6 violent force might not cover omissions, but so  
7 too it wouldn't cover poison. And we have said  
8 that it does cover poison.

9 MR. KEDEM: Right.

10 JUSTICE KAGAN: So we're not really  
11 operating in a world in which it's completely  
12 sort of ordinary Joe understandings of the  
13 phrase.

14 MR. KEDEM: So, respectfully, Your  
15 Honor, I agree poison is sort of the outer  
16 limit, but I do think the Court was making a  
17 point there, which is that in response to the  
18 defendant's argument in Castleman that  
19 essentially you had to apply the force directly  
20 in order for it to count, the Court said no, if  
21 you put poison in tea, it's very much like  
22 pulling the trigger of a gun. It's a gentle  
23 pull of the trigger. That's not the violent  
24 force. The violent force is later, when the  
25 bullet makes impact.

1                   But still, in both of those instances,  
2                   you're still doing something to bring the victim  
3                   into contact with that force which may be wholly  
4                   absent in the case of a pure omission.

5                   JUSTICE JACKSON: You're still using  
6                   something.

7                   MR. KEDEM: You're still using  
8                   actively.

9                   JUSTICE JACKSON: You're still using  
10                  actively. Let me ask you --

11                  JUSTICE KAGAN: How about if, instead  
12                  of putting poison in, I knew that there was  
13                  something in the refrigerator which had gone  
14                  very bad and it was completely toxic.

15                  MR. KEDEM: Mm-hmm.

16                  JUSTICE KAGAN: And I said to my worst  
17                  enemy: Why don't you eat that cake in the  
18                  refrigerator. Where does that fall on your --  
19                  in your -- you know, which side of the line?

20                  MR. KEDEM: Yeah. That sounds a lot  
21                  like the food in the fridge is poison and you're  
22                  just tricking them into consuming it.

23                  JUSTICE KAGAN: Correct. And so?

24                  MR. KEDEM: And so it would count as  
25                  use of violent physical force.

1 JUSTICE KAGAN: Even though now you  
2 haven't done anything really.

3 MR. KEDEM: Well, respectfully, you  
4 have taken some step to bring them into contact  
5 with it, without which, if you hadn't taken that  
6 step, they wouldn't consume what was in the  
7 fridge.

8 JUSTICE KAGAN: Well, I mean, in any  
9 of these cases, including in the supposedly pure  
10 omission cases, we can find some step. I mean,  
11 when you're withholding medicine from the ailing  
12 person, probably there's some step that you've  
13 taken that prevents the ailing person from  
14 getting that medicine herself or, you know,  
15 there's some step that you've taken to put  
16 yourself in a -- in a position of duty to that  
17 person.

18 I mean, there's always something that  
19 we can look to if -- if you're going so far as  
20 to say that my telling the person to eat the  
21 cake in the refrigerator is an action.

22 MR. KEDEM: So I think you have to ask  
23 yourself two questions. One, is there even  
24 violent physical force involved? In the  
25 instance in which someone expires because they

1 don't have the right medication, usually, you  
2 would not describe that as involving violent  
3 physical force.

4           So, if a septuagenarian slips into a  
5 coma and then doesn't eat and as a result dies,  
6 no one is going to describe that death as  
7 involving violent physical force. So the  
8 question is, would you describe it as involving  
9 violent physical force because there was someone  
10 who was supposed to be there feeding the  
11 nutrition tube -- tube but failed to do so?

12           JUSTICE JACKSON: And is that because  
13 the context is violent physical force because  
14 we're in a statute that relates to firearms,  
15 that Congress clearly was trying to get at a  
16 certain category of person?

17           MR. KEDEM: That's correct.

18           JUSTICE JACKSON: The person who is of  
19 the type that they would engage in these kinds  
20 of crimes that present, you know, risks of  
21 violence in this way?

22           MR. KEDEM: That -- that --

23           JUSTICE JACKSON: I mean, I thought  
24 that was the sort of context. So all of these  
25 --

1 MR. KEDEM: That's right.

2 JUSTICE JACKSON: -- hypotheticals  
3 about inaction, you know, even though there  
4 might be a step or not a step, you know, setting  
5 that aside, the point is they're not even in the  
6 realm of the kind of thing this statute was  
7 about?

8 MR. KEDEM: That's right. We're  
9 defining a felony crime of violence. And  
10 Congress had a very specific theory.

11 JUSTICE ALITO: Well, pick -- picking  
12 up on that, do you -- would you argue that your  
13 client is not the kind of armed career criminal  
14 that Congress was trying to get at when they  
15 enacted this statute?

16 MR. KEDEM: We would not argue that,  
17 Your Honor. We're focused here on the type of  
18 offense, and that's because the Elements Clause  
19 requires an assessment of the elements of the  
20 offense and whether violent physical force is  
21 present in all instances.

22 JUSTICE BARRETT: Well, counsel,  
23 picking --

24 JUSTICE ALITO: But the question is  
25 whether your client was convicted of a crime of

1 violence, right?

2 MR. KEDEM: That's correct.

3 JUSTICE ALITO: And some of the -- I  
4 mean, these are fascinating legal arguments.  
5 Some of the people who have come here to hear  
6 this case may not know much about the facts of  
7 the case. So what was the offense for which  
8 your client was convicted?

9 MR. KEDEM: Hiring someone in order to  
10 commit a murder.

11 JUSTICE ALITO: And that, in your  
12 submission, is not a crime of violence?

13 MR. KEDEM: It does not have as an  
14 element the use of violent physical force.

15 JUSTICE JACKSON: And that's a  
16 function of the categorical approach, right?

17 MR. KEDEM: That's correct.

18 JUSTICE JACKSON: It's not -- you're  
19 not talking about your client; you're talking  
20 about the statute.

21 MR. KEDEM: That's -- that's correct,  
22 Your Honor. Congress had a very specific theory  
23 when it wrote the Elements Clause. It was not  
24 aiming for all or even the most serious  
25 offenses. It was aiming for a certain type of

1 offense, actively using violent physical force  
2 against another, the character of which changes  
3 when you add a gun to the mix.

4 JUSTICE BARRETT: But, counsel, we  
5 also said in Castleman and Stokeling that we  
6 look at the nature of the crime and that  
7 influences the scope of the interpretation. And  
8 so, if interpreting the statute a certain way or  
9 interpreting violent force a certain way would  
10 have the effect of excluding and making the  
11 statute virtually inapplicable to most of the  
12 statutes in the states, robbery or domestic  
13 violence or, so here, I mean, murder?

14 MR. KEDEM: Yeah. So -- so a few  
15 points on that.

16 First of all, Stokeling was an  
17 instance where the Court was interpreting a  
18 common law term of art, "force," that made an  
19 appearance both in the federal statute and in  
20 the state statute, so it made a lot of sense to  
21 look at the states to see how they used that  
22 term.

23 But, beyond that, the Court is not  
24 convince -- it doesn't engage in a sort of  
25 nose-counting exercise. And even with respect

1 to states that have murder statutes, it's not as  
2 if they're all going to be in or all going to be  
3 out. So take New York's second degree murder as  
4 an example. It's got five subdivisions. Two of  
5 them are already out because of Borden because  
6 they can be committed recklessly. There are two  
7 others that can only be committed by an act, and  
8 so they're going to stay in regardless at least  
9 as we interpret them.

10 And that leaves just the one under  
11 which Mr. Delligatti -- that served as the  
12 predicate for Mr. Delligatti's arrest.

13 JUSTICE BARRETT: So you think there  
14 would still be in many states many murder  
15 convictions that would still qualify?

16 MR. KEDEM: Yes.

17 JUSTICE BARRETT: It just seems -- I  
18 mean, you can understand why stepping back,  
19 which is, I think, Justice Alito's --

20 MR. KEDEM: Right.

21 JUSTICE BARRETT: -- point to, you  
22 know, those observing the argument in the  
23 courtroom --

24 MR. KEDEM: Right.

25 JUSTICE BARRETT: -- to say that



1 murder isn't a crime of violence and will rarely  
2 trigger -- trigger the provision here seems a  
3 little counterintuitive.

4 MR. KEDEM: It -- it -- I understand  
5 that because, if you were to ask someone is  
6 murder a crime of violence, they would say of  
7 course. In the vast majority of instances, the  
8 way you commit murder is going to be violence,  
9 which makes it a perfect fit for the Residual  
10 Clause, the idea that under the Residual Clause  
11 --

12 JUSTICE BARRETT: But you think that  
13 Congress thought it was only covered by the  
14 Residual Clause and that it wasn't an elements  
15 offense, murder?

16 MR. KEDEM: So I think that if  
17 Congress wanted us to do this sort of as a  
18 category assessment, it would have enumerated  
19 murder the way it did for some other offenses.  
20 Instead, what it said is we want you to look at  
21 whether their element of the offense involved  
22 the use of violent physical force because,  
23 again, if you add a gun to that sort of  
24 offense -- so a robbery offense, for instance,  
25 robbery is obviously dangerous enough, but when

1 you add a gun to the mix, the danger goes up  
2 exponentially. It changes the character.

3           The same is not true for an omission  
4 offense. Obviously, omission offenses can be  
5 horrible and can be punished severely, but you  
6 don't change anything about it when you add a  
7 gun, and so it's not the sort of armed career  
8 criminal behavior that Congress was aimed at.

9           JUSTICE JACKSON: And didn't Congress  
10 really home in on this? I mean, you -- you talk  
11 about at least some of the legislative history  
12 for the Criminal Code Reform Act in 1981, and I  
13 was struck by a particular example in a report  
14 that Congress -- the Senate report, where the  
15 report talks about a dam operator who threatens  
16 to refuse to open the floodgates during a flood  
17 and thereby places residents' lives in jeopardy.  
18 And the report says, "Assuming the operator had  
19 some legal duty to act, his threat would be to  
20 engage in unlawful conduct dangerous to human  
21 life, which is not a crime of violence since he  
22 did not use or threaten to use physical force."

23           So it seems as though we had examples  
24 in the record that Congress was aware of  
25 omission and made pretty clear that when you

1 don't act, you know, you're not threatening to  
2 use physical force in the way that they  
3 intended.

4 MR. KEDEM: That's correct. It's  
5 remarkably specific. And I understand that not  
6 all members of the Court are taken with  
7 legislative history, but we can rely on it just  
8 as a sort of contemporaneous use of the relevant  
9 terms in context.

10 One of the most remarkable things  
11 about the government's brief is that they  
12 haven't identified a single instance, and they  
13 looked high and low, both in published opinions  
14 and also in news articles. Every single one of  
15 their examples was someone who had used  
16 something actively, not passively, not the sort  
17 of passive benefit theory. They were described  
18 as, for instance, NASA using the moon's  
19 gravitational field by shooting a rocket up into  
20 space and then aiming their satellite at the  
21 right point to make contact with the moon's  
22 gravitational field.

23 This idea that you can use something  
24 just by passively benefiting from it, the  
25 government wasn't able to identify a single

1 real-world instance of it, in contrast to the  
2 one that you -- you've just identified, Your  
3 Honor.

4 CHIEF JUSTICE ROBERTS: How about I  
5 use the rain as an excuse to stay indoors?

6 MR. KEDEM: So I think, first of all,  
7 you can use the rain in that sort of conceptual  
8 sense. It's very different from using something  
9 in a physical sense like physical force. And  
10 even in that instance, you don't have the  
11 "against another" or "against the person or  
12 property of another" phrase, which also is a  
13 sort of physical phrase.

14 Again, in the government's brief, they  
15 don't identify any instance other than one that  
16 they make up themselves that uses "use" and  
17 "against another" in combination. And the  
18 example they come up with is he used the  
19 victim's disease against her. But, there, it's  
20 against her interests, not against her person.

21 So, again, the government presumably  
22 spent a lot of time trying to come up with this  
23 passive benefit sense of "use" in combination  
24 with "against another." And if this is all that  
25 they can come up with, I think we can conclude

1 it's not a normal way of speaking.

2 JUSTICE KAGAN: In most of our cases  
3 where we've talked about what "use" is doing in  
4 this phrase, we've talked about it as a  
5 requirement of mens rea. In other words, to use  
6 physical force means to have some understanding  
7 in your head of what that physical force is  
8 supposed to achieve.

9 MR. KEDEM: Right.

10 JUSTICE KAGAN: So we haven't  
11 suggested that it really adds to the physical  
12 force language with respect to the actus reus.

13 MR. KEDEM: So I think that's correct,  
14 but let me just sort of trace it through, and I  
15 think it actually comes out where we're asking  
16 you to.

17 So the first appearance of  
18 interpreting "use" in 924(c) is in Bailey, where  
19 the word "use" is in combination with a firearm  
20 in (c)(1), and the Court looks at dictionary  
21 definitions and say they imply action and  
22 implementation, and it adopts an active  
23 employment sense of the word "use." And it  
24 rejects the government's argument that you can  
25 use a firearm even if it's just stashed in the

1 closet because you derive some benefit from it.  
2 So it's -- it's an actus reus interpretation of  
3 the word "use."

4 Then that was ported over to an  
5 Elements Clause in Leocal and then again in  
6 Borden. And you're right that Leocal and Borden  
7 were both about the mental state. But they  
8 adopted wholesale the active employment sense of  
9 use, and that active employment sense came from  
10 what Bailey said was the ordinary meaning of the  
11 term.

12 So, unless somehow they ported over  
13 just the mental state part of active employment,  
14 even though mental state wasn't at issue in  
15 Bailey, then I think you bring the whole thing  
16 along with it.

17 JUSTICE GORSUCH: If we -- if we adopt  
18 the government's view of "use" as not being  
19 personally employing some instrument but  
20 allowing the laws of physics to take their  
21 course --

22 MR. KEDEM: Mm-hmm.

23 JUSTICE GORSUCH: -- what was the  
24 point of us deciding that this statute is  
25 different than the -- the -- the -- the domestic

1 violence situation?

2 MR. KEDEM: Sure.

3 JUSTICE GORSUCH: Aren't we just back  
4 to that?

5 MR. KEDEM: Yes. So --

6 JUSTICE GORSUCH: Because anybody who  
7 wishes to use the laws of nature to harm another  
8 is -- is convictable and -- I mean, this is just  
9 a statutory enhancement. Your client's going to  
10 spend a lot of years in jail. This is just how  
11 many much more, how many more, right?

12 MR. KEDEM: That's correct, yes. So  
13 -- and -- and I think there are some pretty --

14 JUSTICE GORSUCH: And -- and we don't  
15 really care about your client here, do we?

16 MR. KEDEM: Well, I can't --

17 JUSTICE GORSUCH: We're trying to get  
18 the law right.

19 MR. KEDEM: I -- I -- I wouldn't  
20 presume to speak for you. Obviously --

21 JUSTICE GORSUCH: Yeah.

22 MR. KEDEM: -- we do care about the  
23 extra 60 months that he would spend in prison.

24 JUSTICE GORSUCH: That's what we're  
25 talking about. How many years is he already

1 spending?

2 MR. KEDEM: So, regardless of the --  
3 separate and apart from the (c) -- (c)(4) --  
4 (c)(3)(b) conviction, it's 240 months.

5 JUSTICE GORSUCH: All right.

6 MR. KEDEM: Yeah.

7 JUSTICE GORSUCH: Back to my question.

8 MR. KEDEM: Yes. So the domestic  
9 violence statute, very briefly, had a very  
10 different function, which was to close a  
11 loophole that made it lawful for certain  
12 misdemeanor offenders to possess a gun, and the  
13 Court was concerned that if it read the clause  
14 narrowly, it would render that provision  
15 inoperative in a number of states.

16 Here, there's no dispute that,  
17 obviously, murder is going to stay very illegal  
18 everywhere, and our reading would not render the  
19 Elements Clause inoperative in any state.

20 CHIEF JUSTICE ROBERTS: Thank you,  
21 counsel.

22 Justice Thomas?

23 JUSTICE THOMAS: Are you really  
24 talking about your --

25 MR. KEDEM: I apologize.



1 JUSTICE THOMAS: Oh, that's okay.

2 (Laughter.)

3 CHIEF JUSTICE ROBERTS: Thank you.

4 JUSTICE THOMAS: Are you really  
5 talking about your client? We make this  
6 distinction between action and omission. Are we  
7 talking -- because we're in the world of theory  
8 now, we're not really talking about what your  
9 client did, as Justice Alito alluded.

10 MR. KEDEM: That's right. We're here  
11 as a consequence of invalidation of the Residual  
12 Clause.

13 JUSTICE THOMAS: So would your case be  
14 different if we did not use the categorical  
15 approach?

16 MR. KEDEM: I suppose it would, but,  
17 although this Court has considered abandoning  
18 the categorical approach for the Residual Clause  
19 and at least one justice has for the elements --  
20 for the enumerated offenses, I'm not aware that  
21 any justice has considered it for the Elements  
22 Clause because it requires as an element the use  
23 of violent physical force.

24 JUSTICE THOMAS: But, I mean, we're --  
25 we're -- I think it's fair to say, though, that

1 we are discussing something that bears no  
2 factual relationship to your case.

3 MR. KEDEM: So I -- I accept that,  
4 Your Honor, and would respectfully suggest you  
5 essentially take the position you did in Borden,  
6 which was to say whatever it is, criticism about  
7 the categorical approach, but then to give the  
8 Elements Clause its natural meaning.

9 CHIEF JUSTICE ROBERTS: Justice Alito?  
10 Justice Sotomayor?

11 Justice Jackson?

12 I mean, Justice Barrett?

13 Thank you, counsel.

14 Mr. Feigin.

15 ORAL ARGUMENT OF ERIC J. FEIGIN

16 ON BEHALF OF THE RESPONDENT

17 MR. FEIGIN: Thank you, Mr. Chief  
18 Justice, and may it please the Court:

19 It's hard to believe that we're  
20 actually here debating whether murder is a crime  
21 of violence, as I think Petitioner just  
22 acknowledged. This is one case where the law  
23 already tracks common sense. Castleman tells us  
24 that internal force, like a disease, can be  
25 physical force. It also tells us that physical

1 injury must result from physical force. And the  
2 Borden plurality recognizes that someone uses  
3 force against the person of another when he  
4 makes force his instrument to cause that person  
5 harm through -- through force. I used "force"  
6 twice there, but you -- I think you get the  
7 point.

8           And there's really no basis in law or  
9 logic to draw a distinction between the person  
10 who gently sprinkles poison in the cup and the  
11 person who, hating the victim, just withholds  
12 the antidote.

13           By urging that distinction, Petitioner  
14 is asking this Court to discard literally two  
15 millennia of common law that treat acts of  
16 omission just like other acts.

17           He's asking this Court to cut out any  
18 number of canonically violent murder, robbery,  
19 and assault offenses out of 924(c), the  
20 definition of "violent felony" under the Armed  
21 Career Criminal Act, and the definition of  
22 "misdemeanor, crime of domestic violence" as  
23 relevant to 922(g)(9).

24           And he would make all three of those  
25 statutes -- he's asking this Court to make all

1 three of those statutes turn on distinctions so  
2 arbitrary, unprecedented, and bizarre that it  
3 would make application of those statutes --  
4 again, Your Honor, I use this word with -- with  
5 respect -- truly absurd.

6 I would like to address a -- a couple  
7 of his points, but, if the Court has questions,  
8 I realize my light just flashed.

9 JUSTICE THOMAS: Mr. Feigin, we  
10 normally think, though, of -- think of force as  
11 coming from the perpetrator, not from some  
12 outside force, like gravity or some internal  
13 disease. So how do we get from where you are to  
14 where he is?

15 I -- I think his argument actually  
16 does make -- does have a common-sense value to  
17 it.

18 MR. FEIGIN: Well, Your Honor, I  
19 think, as Castleman demonstrates, we know that  
20 whatever force causes death can be an internal  
21 force. It can be the action of -- whatever  
22 action within the body is induced by poison.

23 We also know from Castleman one of the  
24 examples it uses is a disease. So the actual  
25 death-causing force can be a purely internal

1 force. If I know you have a weak heart and I  
2 frighten you and you die, your body is attacking  
3 itself. That's also true if you intentionally  
4 and torturously starve a child. That's -- the  
5 starvation causes the body to attack itself. It  
6 starts eating itself away because it has no  
7 other source of nourishment.

8           If you're asking me about whether that  
9 force has to be in some way -- I think the words  
10 Petitioner uses in the brief are "unleashed or  
11 channeled in some way by the defendant" -- I  
12 think that's somewhat of a gerrymandered  
13 requirement.

14           He's trying to do it to catch things  
15 like, you know, your -- the wind -- your -- the  
16 wind catches your sail, or the example in our  
17 brief where you're involuntary placed on a raft,  
18 you see which way the current is going, and you  
19 use the current to get you to shore without  
20 doing anything.

21           But that channeling requirement is  
22 equally satisfied in an omission case, where you  
23 can stop -- force is going to occur. You can  
24 stop it, you should stop it, and you don't stop  
25 it because not stopping it accomplishes your

1 purpose.

2 JUSTICE GORSUCH: Mr. Feigin, on that  
3 score -- and if we're going to talk about common  
4 sense, that's a good place to start sometimes --  
5 your view, I think, would capture the good  
6 Samaritan example as well and make that subject  
7 to an additional enhancement under ACCA, right?

8 MR. FEIGIN: I don't think that's  
9 necessarily true, Your Honor.

10 JUSTICE GORSUCH: Why -- why -- why  
11 not? Just to set the table again, we have  
12 somebody, a passerby on the street who doesn't  
13 like little old ladies and intentionally allows  
14 someone to fall into and die, and the physical  
15 force -- your -- your view is gravity's good  
16 enough. I don't have to push her.

17 And now that would depart from the  
18 common law, where there's normally a duty,  
19 but -- a preexisting duty, but, here, we have a  
20 good Samaritan statute. So that is an ACCA  
21 offense in the government's view? And why  
22 wouldn't that defy common sense, if it does?

23 MR. FEIGIN: Not necessarily, Your  
24 Honor, and let me explain why. I'll take just  
25 one second to unpack this.

1                   It -- it turns on what -- it -- it  
2 turns on how you interpret "use of physical  
3 force against the person or property of  
4 another." And we think --

5                   JUSTICE GORSUCH: Yeah, but you -- you  
6 use -- you use rivers and currents. And what --  
7 what's wrong with gravity?

8                   MR. FEIGIN: So gravity is fine. It's  
9 the problem of you're postulating that some  
10 state has some kind of aberrant duty --

11                   JUSTICE GORSUCH: Oh, no, it's not  
12 aberrant. Some states do. And many in Europe  
13 have a good -- good Samaritan laws that --

14                   MR. FEIGIN: So, Your Honor --

15                   JUSTICE GORSUCH: -- impose  
16 affirmative duties that didn't exist at common  
17 law.

18                   MR. FEIGIN: -- we -- we think that in  
19 order to use physical force against the person  
20 of another, there has to be, number one, a  
21 deliberate choice. That's the phrase --

22                   JUSTICE GORSUCH: Sure, I got that.

23                   MR. FEIGIN: -- that -- that's what  
24 the Borden plurality tells us.

25                   And, two, the common definitions have

1 used, like, "avail oneself of," we do think have  
2 an element of causation in there and that's  
3 what's causing --

4 JUSTICE GORSUCH: Yeah. No, I --  
5 it -- it -- there's no doubt that my failure to  
6 act caused this person's death. I've got  
7 causation and I have intention. I have mens  
8 rea.

9 Now I understand that when there's a  
10 common law duty, our intuition is that that's  
11 really bad. When a parent doesn't feed a child,  
12 when a doctor doesn't care for a patient,  
13 that -- that's problematical.

14 I'm testing how far -- and I don't see  
15 what line you would draw between that and a good  
16 Samaritan statute, which, again, many states  
17 have.

18 MR. FEIGIN: So causation includes  
19 both cause and fact, which we have here, and  
20 proximate cause. And I think the proximate  
21 cause inquiry at --

22 JUSTICE GORSUCH: Let's say I have  
23 that box checked too.

24 MR. FEIGIN: Well, Your Honor, I think  
25 where we part ways is I don't think I



1 necessarily think you have that box checked in  
2 your example, and here's why.

3 Proximate -- the proximate cause  
4 that's built into the statute here, I think, can  
5 be informed by the common law duty as of 1984.

6 JUSTICE GORSUCH: No. No, no, no.  
7 No. Again, the -- I have a statute that's a  
8 good Samaritan statute that imposes a higher  
9 duty on ordinary people to be good Samaritans,  
10 and so it creates a proximate cause test that's  
11 different from a common law test.

12 MR. FEIGIN: So --

13 JUSTICE GORSUCH: You're just  
14 resisting the hypothetical, and I can understand  
15 why --

16 MR. FEIGIN: -- your --

17 JUSTICE GORSUCH: -- because the  
18 consequence of your interpretation has its own  
19 common-sense problem.

20 MR. FEIGIN: With --

21 JUSTICE GORSUCH: It would capture all  
22 omissions cases, wherever the duty comes from.

23 MR. FEIGIN: With respect, Your Honor,  
24 if I could just explain. I -- I don't think I'm  
25 resisting the hypothetical. I think I'm just

1 explaining that, as we normally do in  
2 interpreting these kinds of statutes with the  
3 categorical approach, there is some concept of  
4 generic federal law.

5 And, here, what federal law might mean  
6 by "use," its concept of proximate cause would  
7 be informed by the common law scope of duties as  
8 of 1984 if --

9 JUSTICE GORSUCH: Where does that come  
10 from? I didn't see that anywhere in your brief.  
11 That's -- that's new here at the lectern. Where  
12 does that come from?

13 MR. FEIGIN: Well, Your Honor, I think  
14 that's just how we've been interpreting these  
15 statutes. There's always -- it's always a  
16 question of federal law.

17 JUSTICE GORSUCH: "Use" -- the term  
18 "use" depends upon common law duties in 1984?

19 MR. FEIGIN: Well, Your Honor, we  
20 think "use" --

21 JUSTICE GORSUCH: Has any court ever  
22 said that?

23 MR. FEIGIN: -- incorporates the  
24 proximate cause requirement.

25 JUSTICE GORSUCH: Yeah, yeah, but --

1 but --

2 MR. FEIGIN: It hasn't -- Your Honor,  
3 it hasn't come up because, until the Third  
4 Circuit --

5 JUSTICE GORSUCH: Right. But it will  
6 after this case.

7 JUSTICE JACKSON: Mr. Feigin, can I  
8 ask you --

9 MR. FEIGIN: Yeah.

10 JUSTICE JACKSON: -- just piggybacking  
11 on what Justice Gorsuch is saying.

12 I guess I'm just trying to understand  
13 the government's position on what it means to  
14 use physical force against the person of another  
15 in an omission case.

16 So let's -- let's take this  
17 hypothetical. Say you have a lifeguard, and she  
18 has a duty of care to rescue children in the  
19 pool. A kid who she hates, hates, gets into the  
20 pool entirely of their own volition.

21 Is it your position that she uses  
22 physical force against this kid if she doesn't  
23 jump into the water when she sees him drowning?

24 MR. FEIGIN: Yes.

25 JUSTICE JACKSON: Okay. So how can

1 that possibly be? I mean, you're saying she  
2 uses physical force, and that means no action  
3 but an intention that this victim succumb to a  
4 harm that she didn't put into place, that she  
5 had really nothing to do with, but she sees it  
6 happening?

7 MR. FEIGIN: So, Your Honor, she is  
8 using physical force against the person of  
9 another because, again, she could stop it, she  
10 is legally required to stop it, and she doesn't  
11 stop it because she wants the victim to die.

12 And to use a dictionary definition --

13 JUSTICE JACKSON: So it's her -- it's  
14 only her mental state that is doing the work of  
15 her using physical force?

16 MR. FEIGIN: No, Your Honor. It's the  
17 combination of those things.

18 Under just a plain dictionary  
19 definition of "use," she has availed herself of  
20 the force, she has had enjoyment of the force,  
21 she's made the force the -- her instrument to  
22 accomplish her purpose. She's --

23 JUSTICE JACKSON: All right. Let me  
24 ask you about the other parts of the statute,  
25 the attempt and threaten. Same situation.

1                   How does it work in an omission case  
2                   for this lifeguard to threaten the -- the -- the  
3                   -- the use of physical force against this kid?  
4                   Is it because she says something to him that  
5                   would make it a threat?

6                   Like, I don't understand how omission  
7                   works with respect to the rest of the statute.

8                   MR. FEIGIN: Well, Your Honor, I -- if  
9                   I could depart from the lifeguard example, where  
10                  it might be -- I mean, I could --

11                  JUSTICE JACKSON: No, no, I want the  
12                  lifeguard example.

13                  MR. FEIGIN: You want an example of  
14                  the life --

15                  JUSTICE JACKSON: I -- I -- I want to  
16                  ask you -- I want to ask you: In the lifeguard  
17                  example, if she says, hey, kid, if you get into  
18                  the water but can't swim or start to drown, I'm  
19                  not coming to get you, is that a threat of use  
20                  of physical force in your view? Or how else  
21                  would you accomplish the threat part of this?

22                  MR. FEIGIN: Well, two points, Your  
23                  Honor.

24                  Number one, I think, if that were  
25                  generally considered a threat for purposes of

1 the substantive statute that the person also has  
2 to violate under state or federal law, then  
3 perhaps that would be the threatened use of  
4 force.

5 But it's easy to see threatened use of  
6 force in omission cases in other examples.

7 Suppose you're the caretaker for an  
8 old, sickly man, and you tell him: Look, I'm  
9 not going to give you your medicine today, and  
10 you're going to die unless you give me a -- the  
11 combination to that safe over there, where you  
12 keep all your gold bars. That is threatening an  
13 omission. I think everyone would consider that  
14 threatening an omission. And it's --

15 JUSTICE JACKSON: But is it a violent  
16 --

17 MR. FEIGIN: -- I think it would also  
18 constitute --

19 JUSTICE JACKSON: -- is it a crime of  
20 violence? I mean, this was the point that  
21 Justice Gorsuch, I thought, was making before,  
22 that you may have culpable conduct under the  
23 law, but what we're looking for for the purpose  
24 of this enhancement is violent conduct, violent  
25 criminal conduct.

1                   And I guess what I'm worried about is  
2                   the government's interpretation that has, you  
3                   know, lifeguards and caregivers and people who  
4                   very intentionally and perhaps even criminally  
5                   withhold their duties actually being put in the  
6                   bucket of violence even though they don't act.

7                   MR. FEIGIN: Well, Your Honor, if you  
8                   look at page 550 of the Court's decision in  
9                   Stokeling, you'll see one dictionary definition  
10                  of "violence" that defines it in terms of the  
11                  causation of physical harm. And in these  
12                  cases -- I mean, let's not lose sight of it --  
13                  someone is using harm -- I mean, I realize --

14                  JUSTICE JACKSON: But they're not  
15                  using, Mr. Feigin. I mean, that's my -- my  
16                  problem is I don't understand how you get use to  
17                  inaction, how you get use out of inaction.

18                  MR. FEIGIN: So, Your Honor, maybe a  
19                  few examples. He accuses us of having no  
20                  examples. I think, if you look at our brief,  
21                  you'll see a number of them. But let me give  
22                  you an example that comes basically straight  
23                  from one of this Court's own opinions, which is  
24                  let's take a look at the Borden plurality again.

25                  The Borden plurality has an example of

1 use of physical force against the person of  
2 another when someone is driving a car, sees  
3 someone come in front of them, and keeps, in the  
4 Court's words, plowing or -- sorry -- the  
5 plurality's words, plowing ahead and hits them.

6 JUSTICE JACKSON: Action. Action.  
7 They're moving, right?

8 MR. FEIGIN: Well, Your Honor, I --  
9 this is all just a game of -- I -- I -- I think  
10 this is what one might describe as just sort of  
11 a terminological word game. I could also --

12 JUSTICE KAGAN: I mean, when you ask  
13 -- answer these questions, Mr. Feigin, are you  
14 thinking about the use of physical force as an  
15 ordinary meaning kind of question, or are you  
16 saying it has a specialized legal meaning?

17 MR. FEIGIN: I think it's an ordinary  
18 meaning that's informed by the common law. So,  
19 Your Honor, to the ordinary meaning point, on  
20 the Borden plurality example, I could easily  
21 describe that conduct as simply omitting to hit  
22 the brakes or omitting to turn the steering  
23 wheel.

24 JUSTICE KAGAN: And then we'd say  
25 you're playing word games, I mean, because I



1 think, when you push your foot on the  
2 accelerator and drive your car into somebody,  
3 that's not really such a hard case.

4 MR. FEIGIN: And --

5 JUSTICE KAGAN: But some of these are  
6 hard cases, like the lifeguard example, where we  
7 would say, you know, the lifeguard is just  
8 sitting there, and this is not like what a  
9 normal person would think of as a use of  
10 physical force.

11 So it's almost as though we have to  
12 pick our absurdity. You started with one  
13 absurdity. We would say that murder is not a  
14 crime of violence. That seems pretty absurd.  
15 But here's another absurdity. The lifeguard is  
16 just sitting up there watching somebody, is  
17 using physical force. That seems pretty weird  
18 too.

19 MR. FEIGIN: So, Your Honor, I think  
20 your two questions, as Your Honor probably  
21 recognizes, really pair together here. And the  
22 reason that we have two millennia of law that  
23 don't draw this distinction is precisely because  
24 it is a word game.

25 If you look at, for example, the Hall

1 -- the Hall treatise that we cite, that's from  
2 1960 but still substantially predates the ACCA,  
3 or you even want to go further back and you look  
4 at the 1875 Wharton treatise, you'll see that  
5 the Wharton treatise, for example, in Section 72  
6 says even sleeping can be an affirmative act and  
7 it can lead to liability when there's something  
8 you're supposed to be doing but you're not doing  
9 it.

10 And the common law sources that we  
11 cite, both Hall and Territory against Manton,  
12 which is an 1888 case, have no trouble  
13 describing those kinds of omission cases as  
14 involving the use of force.

15 CHIEF JUSTICE ROBERTS: Counsel,  
16 getting -- I'd like to get back to the lifeguard  
17 also. You say the force she was -- she was  
18 using the force of gravity. And was she using  
19 it before the child jumped in the pool?

20 MR. FEIGIN: I -- no, Your Honor. And  
21 part of --

22 CHIEF JUSTICE ROBERTS: So she did  
23 something that suddenly gravity was there?

24 MR. FEIGIN: Well, Your Honor, what  
25 happened -- first of all, I don't think the

1 force here is the gravity. I think the force is  
2 whatever --

3 CHIEF JUSTICE ROBERTS: I thought --

4 MR. FEIGIN: -- whatever happens  
5 within the body to -- I mean, you -- you can  
6 conceive of it in a number of ways. It could be  
7 the force of the water. It could be the  
8 gravity. It could be, as --

9 CHIEF JUSTICE ROBERTS: What is the  
10 force of the water?

11 MR. FEIGIN: I mean, I don't know if  
12 she -- I guess the pool is probably not deep  
13 enough for her to get crushed in it, but it's --  
14 the gravity is dragging her down in the pool.  
15 There's an internal process going on in her body  
16 whereby her life is sucked away from her. I  
17 apologize I'm not a doctor. I couldn't quite  
18 tell you what happens with asphyxiation. But  
19 the body's going to be attacking itself there,  
20 gasping for air --

21 CHIEF JUSTICE ROBERTS: I mean --

22 MR. FEIGIN: -- eventually to die.

23 CHIEF JUSTICE ROBERTS: -- it's the  
24 same thing Justice Kagan said. The lifeguard's  
25 not doing anything.

1           MR. FEIGIN: Well, Your Honor, to your  
2 specific point, I could easily reframe it as the  
3 lifeguard withholding to -- from the lifeguard's  
4 duty to rescue the child. And, you know, if you  
5 think of the -- I mean, again, I -- I -- I think  
6 this is easier to see, and I'll translate the  
7 lifeguard example in a second, but easier to see  
8 in the -- in the Borden car-plowing-ahead  
9 example. I mean, if I just --

10           CHIEF JUSTICE ROBERTS: The car -- car  
11 plowing ahead is different than the lifeguard  
12 doing nothing?

13           MR. FEIGIN: Well, I don't think --  
14 well, okay, Your Honor, I think the lifeguard is  
15 using the force there because the lifeguard is  
16 using some physical force that causes the  
17 victim's death, and the lifeguard wants the  
18 victim to die. The lifeguard is availing --

19           CHIEF JUSTICE ROBERTS: The lifeguard  
20 wants -- but all that, that's beside the point.  
21 Your submission is that somebody who's just  
22 sitting there is using force, the force of  
23 gravity --

24           MR. FEIGIN: Yes. I mean, under a  
25 plain --

1 CHIEF JUSTICE ROBERTS: -- and the  
2 force of the water.

3 MR. FEIGIN: -- under a plain  
4 definition, he's taking advantage of the force,  
5 he is availing himself of the force, he's  
6 enjoying the force --

7 CHIEF JUSTICE ROBERTS: All right.

8 MR. FEIGIN: -- he's making the force  
9 his instrument. Oh, I don't have --

10 CHIEF JUSTICE ROBERTS: But he's not  
11 doing anything.

12 JUSTICE GORSUCH: Mr. -- Mr. --

13 JUSTICE KAVANAUGH: Well, don't --

14 JUSTICE GORSUCH: -- Mr. Feigin, if I  
15 might just follow up on this. Is there any  
16 death that's intended and caused by somebody  
17 doing nothing, like our lifeguard, that wouldn't  
18 involve the use of violent physical force  
19 because every death is going to be affected by  
20 gravity or water or -- and the body will fight  
21 itself in your terms? I mean, that's how death  
22 occurs, I guess, in the government's view.

23 MR. FEIGIN: So, Your Honor, to answer  
24 your --

25 JUSTICE GORSUCH: What -- what death

1 wouldn't qualify?

2 MR. FEIGIN: So, to answer your  
3 specific question, I don't think every death  
4 fits the -- involves the -- someone using  
5 physical force against the person of another.

6 JUSTICE GORSUCH: Well, if the  
7 lifeguard can do it.

8 MR. FEIGIN: But I do think that every  
9 death does involve physical force. The physical  
10 force requirement --

11 JUSTICE GORSUCH: Every death involves  
12 physical force. And why wouldn't it all be  
13 violent? Because it's all extremely unpleasant.

14 MR. FEIGIN: We do think every death  
15 involves physical force and violent physical  
16 force --

17 JUSTICE GORSUCH: Okay.

18 MR. FEIGIN: -- within the meaning of  
19 Curtis Johnson.

20 JUSTICE GORSUCH: Okay. All right.  
21 Got it. Got it.

22 MR. FEIGIN: The -- not all of them  
23 are going to satisfy this statute because not  
24 all of them are going --

25 JUSTICE GORSUCH: They're all violent

1 physical force, though?

2 MR. FEIGIN: Yes, Your Honor --

3 JUSTICE GORSUCH: Okay. All right.

4 MR. FEIGIN: -- because -- because  
5 there is --

6 JUSTICE GORSUCH: All right. I've got  
7 another question for you.

8 MR. FEIGIN: -- the --

9 JUSTICE GORSUCH: I got it. I got it.

10 MR. FEIGIN: Sorry. Can I add --

11 JUSTICE GORSUCH: Sure.

12 MR. FEIGIN: Sorry. I just wanted to  
13 add the point that the physical force  
14 requirement of the statute is not to carve out  
15 things like murder and physical harm. It's to  
16 carve out, like, property crimes, fraud --

17 JUSTICE GORSUCH: Yeah.

18 MR. FEIGIN: -- that sort of thing.

19 JUSTICE GORSUCH: But all murders are,  
20 by definition, the use of violent physical  
21 force, I think. I think it has to be.

22 MR. FEIGIN: Subject to the proximate  
23 cause caveat I was discussing with you earlier  
24 --

25 JUSTICE GORSUCH: Mm-hmm. Yeah, yeah.

1 Yeah. With the lifeguard, yeah.

2 MR. FEIGIN: -- Justice Gorsuch, yes.

3 JUSTICE GORSUCH: Okay. Okay.

4 JUSTICE SOTOMAYOR: And the mens rea.

5 MR. FEIGIN: And it's going to be --

6 JUSTICE GORSUCH: And the mens rea.

7 MR. FEIGIN: And the mens rea --

8 JUSTICE GORSUCH: Yeah, yeah.

9 MR. FEIGIN: -- of course, that --

10 JUSTICE GORSUCH: Yeah.

11 MR. FEIGIN: -- that I also mentioned  
12 at that time.

13 JUSTICE GORSUCH: But -- all right.

14 It -- kind of a little strange to think that  
15 Congress meant by this, if we want to talk about  
16 common sense, that every -- every death is  
17 encompassed so long as I can meet mens rea and  
18 causation.

19 But put that aside. I really think  
20 you're struggling, if I'm honest with you, to  
21 try and defend a position that just has nothing  
22 to do with this case, right? We've got a  
23 defendant over here who ordered a hit job. I  
24 mean, that's what everyone's -- the common sense  
25 on your side.



1 MR. FEIGIN: And handed them the gun.

2 JUSTICE GORSUCH: And handed them a  
3 gun in a paper bag and the whole nine yards.  
4 It's like out of a movie. And here we are  
5 talking about lifeguards and omissions, and it  
6 makes me wonder whether, again, as I asked your  
7 friend on the other side, anybody considered  
8 whether this statute might be divisible because  
9 traditionally, traditionally, murder statutes  
10 encompass two very distinct things, acts  
11 ordering the hit job and omissions where there  
12 is a preexisting duty of care. Very different.

13 Does that -- does that resonate to you  
14 at all? It might help you.

15 MR. FEIGIN: Yeah, Your Honor, I think  
16 we might make divisibility arguments with  
17 respect to some statutes, perhaps including this  
18 one, if the Court were to rule against us.  
19 Obviously, we won in the Second Circuit and we  
20 didn't make a divisibility argument because we  
21 were already --

22 JUSTICE GORSUCH: Well, if that's the  
23 case, maybe we go back to Justice Kavanaugh's  
24 question from the last case. Why wouldn't we  
25 remand this to ask that -- we resolve that first

1 before we start talking about lifeguards and  
2 every murder being encompassed within this?

3 MR. FEIGIN: Well, Your Honor --

4 JUSTICE GORSUCH: Every death.

5 MR. FEIGIN: -- I think this is going  
6 to come up in any number of cases whether or not  
7 the Court resolves it here because, as we point  
8 out in our brief, 35 states by statute include  
9 omission liability, and one common way to do  
10 that is just to define the word "act" to include  
11 omissions. That's the way New York does it.

12 JUSTICE GORSUCH: Well, omissions plus  
13 duty of care is what they do.

14 MR. FEIGIN: Yes.

15 JUSTICE GORSUCH: And so, again, if  
16 you -- if you won here, you'd have a great  
17 precedent maybe that some of the others would be  
18 divisible too. I would have thought that would  
19 have been useful to you.

20 MR. FEIGIN: Well, Your Honor, we did  
21 not make that argument --

22 JUSTICE GORSUCH: I know that.

23 MR. FEIGIN: -- below. It's a state  
24 law argument that we don't think is  
25 appropriately made in this Court. And we do

1 want to be --

2 JUSTICE GORSUCH: I agree with that.

3 JUSTICE KAGAN: Well, what would a --

4 JUSTICE KAVANAUGH: Is --

5 JUSTICE KAGAN: -- divisibility  
6 argument as to this statute look like, if I can  
7 ask?

8 MR. FEIGIN: I think we would probably  
9 be relying on cases, and New York has some,  
10 where, because omission liability, as Justice  
11 Gorsuch just pointed out, requires a duty as  
12 well, there are cases where the jury  
13 instructions, for example, were found deficient  
14 because they didn't specifically allege the  
15 duty.

16 But there are cases, and we -- yeah,  
17 there are a couple of examples of them in the  
18 briefs, where something like horrific child  
19 neglect, the -- and also beating a child are  
20 kind of charged together. So I think the -- the  
21 outcome of that would be a little bit in doubt.

22 And that's actually the only reason  
23 why we've said that all the statutes listed in  
24 our appendix are just at risk. It's the same  
25 thing the Court said in *Voisine*. They're at

1 risk because we're not quite sure how the  
2 divisibility analysis is going to shake out.

3 But there's no question that we've  
4 already lost in the Third Circuit. There's no  
5 question that that's going to affect charges  
6 under the hate crimes statute in that circuit.

7 It's going -- and we think, if the  
8 Court were to rule against us, it would affect  
9 charges in the hate crime statute in other  
10 cases. The Buffalo supermarket shooter has  
11 raised this very argument and preserved it. And  
12 if we lose it here, then the hate crimes statute  
13 is not a crime of violence, killing somebody  
14 because you are biased against their race,  
15 because it could possibly be committed by the  
16 conduct of being a daycare worker and realizing  
17 that there's a bomb in the building and deciding  
18 you're only going to save the children of one  
19 race.

20 JUSTICE JACKSON: So is this just --

21 CHIEF JUSTICE ROBERTS: Are you  
22 fighting the categorical approach?

23 JUSTICE JACKSON: Yes.

24 CHIEF JUSTICE ROBERTS: I mean, isn't  
25 that the root of your problem? And I guess, I

1 mean, the divisibility argument has a lot going  
2 for it, but is it -- how does it fit with the  
3 categorical approach?

4 MR. FEIGIN: Your Honor, not every  
5 statute is going to be -- be divisible by act  
6 versus omission. It's very common to define  
7 "act" as, you know, by -- to define it by  
8 omission. That's the model penal code  
9 definition in Section 1.137.

10 But, as to fighting the categorical  
11 approach, we had that fight a few years ago and  
12 we lost, so I am no longer --

13 JUSTICE KAVANAUGH: Is --

14 MR. FEIGIN: -- fighting the  
15 categorical approach to the statute.

16 CHIEF JUSTICE ROBERTS: Well, I'm just  
17 wondering if you're trying to get it in the  
18 backdoor.

19 MR. FEIGIN: No, Your Honor. The  
20 point I'm making is I -- I think there's -- I  
21 think that approaching this with some sort of  
22 degree of common sense that is here informed by  
23 two millennia of common law, and Voisine looked  
24 at the common law to a certain extent in  
25 interpreting what the term "use" meant.

1 JUSTICE KAVANAUGH: The other side  
2 says that the common sense is really captured by  
3 the Residual Clause.

4 MR. FEIGIN: Your Honor, let me make  
5 several points about that.

6 JUSTICE KAVANAUGH: And let me just  
7 finish.

8 MR. FEIGIN: Okay.

9 JUSTICE KAVANAUGH: And the Residual  
10 Clause, of course, in Johnson and Davis was --  
11 was declared unconstitutional. And that -- the  
12 other side says what you're -- and -- and, by  
13 the way, it was pointed out that that would lead  
14 to absurdities, and here we are, and that you're  
15 trying to jam cases that would have naturally  
16 fit under the Residual Clause into the other  
17 clause. So that's what the other side is  
18 suggesting you're doing.

19 MR. FEIGIN: If I could have a second,  
20 several points on that.

21 Number one, I think he's trying to  
22 have it both ways. He's arguing that Congress  
23 wouldn't want -- have wanted this to be a crime  
24 of violence at all, and he's relying on this  
25 Residual Clause argument.

1           As to the Residual Clause argument,  
2           this isn't a case about potential risks, which  
3           is what the Residual Clause covers. This is a  
4           case where we know somebody dies. I think the  
5           Court has not relied on the Residual Clause in  
6           other cases where it might have equally been  
7           applicable under the kind of logic you're  
8           suggesting, Justice Kavanaugh, like Stokeling.  
9           I think that's because everyone recognizes the  
10          Elements Clause has its own specific function.

11           I'd also point you not just to  
12          924(c)(3)'s Residual Clause but to the Armed  
13          Career Criminal Act's Residual Clause, which is  
14          worded a little bit differently, although no one  
15          thinks it affects the scope of the Elements  
16          Clause. It requires a serious potential risk of  
17          physical injury. I don't know who could think  
18          that that's the way you're capturing murder. It  
19          doesn't have a serious potential risk of  
20          physical injury. Somebody gets harmed.

21           JUSTICE JACKSON: Yes, but, Mr. Feigin  
22          --

23           MR. FEIGIN: And then, finally -- I'm  
24          sorry.

25           JUSTICE JACKSON: Oh, go ahead. Go

1 ahead. Sorry.

2 MR. FEIGIN: And then, finally, I just  
3 wanted to point out that Section 922(g)(9), the  
4 definition doesn't appear there. That's in  
5 Section 921.33(a). The definition of  
6 "misdemeanor, crime of domestic violence,"  
7 doesn't even have a Residual Clause.

8 And if you look at the appendix we  
9 submitted in Voisine, most of the assault  
10 statutes the Court was worried about there are  
11 defined in terms of causation of harm or  
12 causation of offense of touching. I thank you  
13 for your indulgence, Justice Jackson.

14 JUSTICE JACKSON: Yes. No,  
15 Mr. Feigin, I -- I appreciate that somebody died  
16 here and that we would ordinarily think of  
17 murder in that situation.

18 But it's clear that the language of  
19 this provision of the statute is not focused on  
20 the outcome or the effect.

21 And I think the common-sense reading  
22 of this that cuts against you is the fact that  
23 "physical force" has a common-sense meaning,  
24 "use" has a common-sense meaning and that it  
25 suggests that the defendant has to act, that



1 they have to do something.

2 And so Justice Gorsuch's point is --  
3 about divisibility is kind of my thought, which  
4 is, at the beginning of this, it seems like we  
5 have a bifurcation of Congress's view that you  
6 have action by a defendant and you have omission  
7 in a different column, and we're sort of in the  
8 realm of action.

9 So I guess my question is, how could  
10 Congress have possibly written the words "use,  
11 attempted use, or threatened use of physical  
12 force" and meant that the defendant doesn't have  
13 to do anything at all?

14 MR. FEIGIN: Well, Your Honor, the --  
15 this goes back to the common-law backdrop  
16 against when -- and I -- I think the easiest way  
17 to see that, that there's some linguistic ways  
18 to see that to the dictionary definitions.

19 JUSTICE JACKSON: No, I'm just looking  
20 at the text of the statute. If you're right --  
21 if you're right that what Congress was trying to  
22 capture with this is a defendant -- a -- a -- a  
23 victim dying or a person being bodily -- you  
24 know, injured bodily, Congress has said that  
25 many other places, even in this very statute,

1 when that was the triggering thing.

2           What I'm worried about is interpreting  
3 the words "use, attempted use, and threatened  
4 use of physical force" to encompass a situation  
5 in which a person is not acting. That seems  
6 completely counterintuitive. It seems like it  
7 has no bearing in the words of the statute.

8           I've already talked with -- with --  
9 with your friend on the other side about the  
10 legislative history that actually shows that  
11 Congress wasn't talking about omissions, but how  
12 -- how do you get past this sort of conceptual  
13 concern that we're really talking about doing  
14 something here and you're suggesting that you  
15 don't have to?

16           MR. FEIGIN: Well, Your Honor, if I  
17 could respond, I would have, like, three  
18 principal points --

19           JUSTICE JACKSON: Yes.

20           MR. FEIGIN: -- in response to that.

21           One of them is you -- the premise of  
22 your argument -- not argument -- the premise of  
23 your question was that this statute doesn't look  
24 at results. But I'd respectfully point the  
25 Court to Castleman and as well as Justice

1 Scalia's current -- concurrence in Castleman,  
2 which both point out that where you have --  
3 where you actually have physical injury, it must  
4 have been caused by physical force.

5 JUSTICE JACKSON: But Castleman was --  
6 Castleman -- Castleman was dealing with a  
7 different question, like how much force? What  
8 is force? Is -- is putting the -- the -- the  
9 poison in the drink enough to be physical force?

10 I'm talking about a situation in which  
11 a person does nothing.

12 MR. FEIGIN: Okay. The second point  
13 I'd make, Your Honor, and I've been trying to  
14 make it this morning, and I take as part of your  
15 question you've kind of rejected this, but I do  
16 think it fits squarely within the dictionary  
17 definitions.

18 Again, if my car is just rolling down,  
19 you know, a hill and I see some -- my enemy walk  
20 in front of me and I let the car keep going and  
21 just don't do anything, I think we'd all say I  
22 used physical force. Now maybe I got in the car  
23 and turned the key and started the car, but I  
24 certainly didn't have the intent to use physical  
25 force against the person of another. I only had

1 it at the point I stopped doing something.

2 And the third point I'd make if -- if  
3 you'll indulge me one --

4 CHIEF JUSTICE ROBERTS: Sure.

5 MR. FEIGIN: -- second longer, Chief  
6 -- Mr. Chief Justice, thank you -- is that I  
7 don't think this would have defied common sense  
8 because, again, if you look at all the  
9 common-law sources, everyone recognizes this is  
10 a word game. Do I call it withholding, do I  
11 call it not acting when I refuse to give someone  
12 medicine? And the common law has always treated  
13 doing something other than what you're supposed  
14 to do, fiddling while Rome burns, as an  
15 affirmative act.

16 Thank you, Mr. Chief Justice.

17 CHIEF JUSTICE ROBERTS: Thank you,  
18 counsel.

19 Justice Thomas?

20 Justice Alito?

21 Justice Sotomayor?

22 Justice Barrett?

23 Justice Jackson?

24 MR. FEIGIN: Okay. Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Rebuttal, Mr. Kedem?

3 REBUTTAL ARGUMENT OF ALLON KEDEM

4 ON BEHALF OF THE PETITIONER

5 MR. KEDEM: Thank you, Your Honor.

6 Starting first with divisibility, when  
7 this Court has asked whether a statute is  
8 divisible for purposes of the categorical  
9 approach, it is asking whether it is  
10 linguistically divisible, whether the text of  
11 the statute allows it to be divided into  
12 separate offenses.

13 Sometimes there are a list of  
14 different ways of committing an offense.  
15 Sometimes they are different offenses. So you  
16 could say that it involve -- burglary involves  
17 breaking into a house or a houseboat or  
18 whatever, and then the question is, is house a  
19 different crime than houseboat? But it has to  
20 be linguistically divisible. You don't look at  
21 -- and you can look at state, common law, or  
22 otherwise to figure out whether those are  
23 different elements or means, but you don't look  
24 at -- at -- at case law generally to ask whether  
25 omissions are different offenses than not. That

1 is what my friend is asking you to do, something  
2 this Court has never done.

3 And, at minimum, if you're going to  
4 start to engage in that kind of divisibility in  
5 an entirely new realm, I would think that you'd  
6 want a case where that issue had been raised and  
7 briefed.

8 My friend also said that essentially  
9 the only question about whether all the statutes  
10 in its appendix are out is a question about  
11 divisibility. We respectfully disagree. States  
12 can agree with the general principle, as I think  
13 all of them do, that omissions can sometimes be  
14 liable. They can accept the common-law  
15 principle but still believe that certain  
16 specific offenses cannot be committed except by  
17 affirmative acts.

18 We have cases in our brief, in our  
19 reply brief, in, for instance, Louisiana, which  
20 accepts the general principle but nevertheless  
21 says that felony murder cannot be committed  
22 except by an affirmative act because it is  
23 written in a way that requires a killing. And  
24 so you have a number of those statutes even in  
25 those effective states that wouldn't necessarily

1 be excluded.

2           Going to the Residual Clause, the  
3 Residual Clause is a natural home for offenses  
4 like murder not because murder isn't always bad  
5 but precisely because it is usually bad. In  
6 other words, the vast majority of murders are,  
7 in fact, violent, which is why it makes sense to  
8 fall under a clause that talks about the risk in  
9 an ordinary case that physical force against  
10 another will be used during the course of  
11 commission. It allows for these sorts of edge  
12 cases, the difficult hypotheticals that we've  
13 been talking about.

14           The Elements Clause is not written  
15 that way. It requires the use of violent  
16 physical force as an element, which means in  
17 absolutely every case. And my friend does not  
18 dispute that there is no interpretive  
19 significance to the fact that the Residual  
20 Clause is no -- no longer operative.

21           Going to the word "use," my friend  
22 says that "use" derives some meaning from the  
23 common law. This Court in Bailey said "use"  
24 must be given its ordinary meaning, which is  
25 active employment. And you notice that when my

1 friend started talking about using things like  
2 metabolism or the body's natural processes, he  
3 lapsed into this sort of abstract concept speak  
4 rather than talking about something physical,  
5 like physical force that you use against the  
6 person of another.

7 Castleman. Castleman examples are all  
8 indirect force, poison, pulling the trigger of a  
9 gun, introducing a disease, by which I think the  
10 Court meant, if you infect someone with the  
11 Ebola virus, obviously, that's an indirect use  
12 of violent physical force. But they're all  
13 taking steps to bring someone into contact with  
14 the thing, without which, without the step you  
15 take to bring them into contact with it, there  
16 would be no harm whatsoever. So it's not a word  
17 game.

18 Whether you describe, you know,  
19 failing to feed someone as an act of withholding  
20 or an omission, either way, you are not bringing  
21 them into contact with any force, much less  
22 violent physical force.

23 My friend relied very heavily on the  
24 common law, as their brief does as well. He  
25 says that acts of omission are treated as other



1 acts. And that, as a general principle, makes  
2 sense for liability. But the problem with the  
3 government's argument on that is none of those  
4 terms make their appearance in the Elements  
5 Clause, which talks about the use of violent  
6 physical force. That's the thing that has to be  
7 present in each case.

8           And that's why, to your question,  
9 Justice Barrett, Stokeling is different because  
10 it was interpreting a common law term of art  
11 which appeared both in the federal provision and  
12 in the state provision. We're not here  
13 interpreting words, "act" or "omission." We're  
14 interpreting "use of violent physical force."

15           Finally, I want to end with a point  
16 about all these hard examples. You posed a lot  
17 of very difficult hypotheticals both to me and  
18 my friend from the government. And the thing is  
19 you don't have to agree with us on essentially  
20 any of them, except the pure omission scenario,  
21 where there's an octogenarian who falls into a  
22 coma and slowly expires because they are not  
23 being fed nutrition. No one would describe that  
24 as a death involving violent physical force,  
25 except for perhaps the government, which thinks

1 that literally every death involves violent  
2 physical force.

3 But, if that in a sort of normal  
4 scenario is not a death involving violent  
5 physical force, it doesn't suddenly become  
6 violent physical force because there was someone  
7 who had a legal duty to provide that nutrition.  
8 It may be a very serious crime. It can be  
9 punished severely, but it does not categorically  
10 involve the use of violent physical force.

11 Thank you.

12 CHIEF JUSTICE ROBERTS: Thank you,  
13 counsel. The case is submitted.

14 (Whereupon, at 12:16 p.m., the case  
15 was submitted.)

16

17

18

19

20

21

22

23

24

25

## Official - Subject to Final Review

|  |   |  |   |  |
|--|---|--|---|--|
| <p><b>1</b></p> <p>1.137 [1] 60:9<br/> 11:13 [2] 1:15 3:2<br/> 12 [1] 1:11<br/> 12:16 [1] 73:14<br/> 1875 [1] 49:4<br/> 1888 [1] 49:12<br/> 1960 [1] 49:2<br/> 1981 [1] 25:12<br/> 1984 [3] 40:5 41:8,18</p> | <p>46:6 49:6 57:10 60:5,7 63:25 67:15 69:22 71:19 72:13<br/> <b>Act's</b> [1] 62:13<br/> <b>acting</b> [3] 15:13 65:5 67:11<br/> <b>action</b> [11] 5:9 18:21 28:21 32:6 35:21,22 43:2 47:6,6 64:6,8<br/> <b>active</b> [6] 3:25 28:22 29:8, 9,13 70:25<br/> <b>actively</b> [7] 5:14 7:19 8:1 17:8,10 22:1 26:16<br/> <b>acts</b> [12] 8:6,10 11:10 13:5, 17 14:14 34:15,16 56:10 69:17 71:25 72:1<br/> <b>actual</b> [1] 35:24<br/> <b>actually</b> [8] 9:17 28:15 33:20 35:15 46:5 58:22 65:10 66:3<br/> <b>actus</b> [3] 14:19 28:12 29:2<br/> <b>add</b> [6] 22:3 24:23 25:1,6 54:10,13<br/> <b>addition</b> [1] 4:5<br/> <b>additional</b> [1] 37:7<br/> <b>address</b> [1] 35:6<br/> <b>adds</b> [1] 28:11<br/> <b>adopt</b> [1] 29:17<br/> <b>adopted</b> [2] 4:8 29:8<br/> <b>adopts</b> [1] 28:22<br/> <b>advantage</b> [1] 52:4<br/> <b>affect</b> [2] 59:5,8<br/> <b>affected</b> [1] 52:19<br/> <b>affects</b> [1] 62:15<br/> <b>affirmative</b> [6] 13:17 38:16 49:6 67:15 69:17,22<br/> <b>aggressive</b> [1] 10:18<br/> <b>ago</b> [1] 60:11<br/> <b>agree</b> [4] 16:15 58:2 69:12 72:19<br/> <b>agreeing</b> [1] 8:3<br/> <b>ahead</b> [4] 47:5 51:11 62:25 63:1<br/> <b>aid</b> [2] 3:19 13:21<br/> <b>ailing</b> [2] 18:11,13<br/> <b>aimed</b> [1] 25:8<br/> <b>aiming</b> [3] 21:24,25 26:20<br/> <b>air</b> [1] 50:20<br/> <b>ALITO</b> [7] 20:11,24 21:3,11 32:9 33:9 67:20<br/> <b>Alito's</b> [1] 23:19<br/> <b>allege</b> [1] 58:14<br/> <b>allergic</b> [1] 6:25<br/> <b>ALLON</b> [5] 1:18 2:3,9 3:7 68:3<br/> <b>allowing</b> [1] 29:20<br/> <b>allows</b> [3] 37:13 68:11 70:11<br/> <b>alluded</b> [1] 32:9<br/> <b>almost</b> [2] 5:16 48:11<br/> <b>already</b> [6] 23:5 30:25 33:23 56:21 59:4 65:8<br/> <b>although</b> [2] 32:17 62:14<br/> <b>amount</b> [1] 10:5<br/> <b>analogized</b> [1] 8:14</p> | <p><b>analogous</b> [1] 8:19<br/> <b>analysis</b> [1] 59:2<br/> <b>animus</b> [1] 12:2<br/> <b>another</b> [22] 3:11 4:2,3,18 22:2 27:11,12,17,24 30:7 34:3 38:4,20 42:14 43:9 47:2 48:15 53:5 54:7 66:25 70:10 71:6<br/> <b>answer</b> [3] 47:13 52:23 53:2<br/> <b>antidote</b> [1] 34:12<br/> <b>anybody</b> [2] 30:6 56:7<br/> <b>anytime</b> [1] 12:15<br/> <b>apart</b> [1] 31:3<br/> <b>apologize</b> [2] 31:25 50:17<br/> <b>appeal</b> [1] 4:4<br/> <b>appeals</b> [1] 13:15<br/> <b>appear</b> [1] 63:4<br/> <b>appearance</b> [3] 22:19 28:17 72:4<br/> <b>APPEARANCES</b> [1] 1:17<br/> <b>appeared</b> [1] 72:11<br/> <b>appendix</b> [3] 58:24 63:8 69:10<br/> <b>applicable</b> [1] 62:7<br/> <b>application</b> [6] 6:11,15 9:15 11:4 12:13 35:3<br/> <b>applied</b> [3] 7:18 8:23 9:22<br/> <b>applies</b> [1] 15:21<br/> <b>apply</b> [2] 10:4 16:19<br/> <b>applying</b> [1] 6:7<br/> <b>appreciate</b> [1] 63:15<br/> <b>approach</b> [10] 21:16 32:15, 18 33:7 41:3 59:22 60:3, 11,15 68:9<br/> <b>approaching</b> [1] 60:21<br/> <b>appropriately</b> [1] 57:25<br/> <b>arbitrary</b> [1] 35:2<br/> <b>Aren't</b> [1] 30:3<br/> <b>argue</b> [2] 20:12,16<br/> <b>argued</b> [1] 14:10<br/> <b>arguing</b> [1] 61:22<br/> <b>argument</b> [29] 1:14 2:2,5,8 3:4,7 4:23,23 14:15,21,25 15:16 16:18 23:22 28:24 33:15 35:15 56:20 57:21, 24 58:6 59:11 60:1 61:25 62:1 65:22,22 68:3 72:3<br/> <b>arguments</b> [2] 21:4 56:16<br/> <b>arm</b> [1] 10:25<br/> <b>armed</b> [5] 16:1 20:13 25:7 34:20 62:12<br/> <b>arrest</b> [1] 23:12<br/> <b>art</b> [2] 22:18 72:10<br/> <b>articles</b> [1] 26:14<br/> <b>aside</b> [3] 9:4 20:5 55:19<br/> <b>asphyxiation</b> [1] 50:18<br/> <b>assault</b> [2] 34:19 63:9<br/> <b>assessment</b> [2] 20:19 24:18<br/> <b>associated</b> [1] 16:1<br/> <b>Assuming</b> [1] 25:18<br/> <b>attack</b> [2] 5:1 36:5<br/> <b>attacking</b> [2] 36:2 50:19</p> | <p><b>attempt</b> [2] 3:21 43:25<br/> <b>attempted</b> [4] 9:6 15:10 64:11 65:3<br/> <b>attempting</b> [1] 15:14<br/> <b>avail</b> [1] 39:1<br/> <b>availed</b> [1] 43:19<br/> <b>availing</b> [2] 51:18 52:5<br/> <b>aware</b> [2] 25:24 32:20<br/> <b>away</b> [2] 36:6 50:16</p>   | <p><b>breaking</b> [1] 68:17<br/> <b>Breyer</b> [1] 12:3<br/> <b>brief</b> [10] 26:11 27:14 36:10, 17 41:10 46:20 57:8 69:18, 19 71:24<br/> <b>briefed</b> [1] 69:7<br/> <b>briefly</b> [1] 31:9<br/> <b>briefs</b> [1] 58:18<br/> <b>bring</b> [7] 3:12 8:21 17:2 18:4 29:15 71:13,15<br/> <b>bringing</b> [1] 71:20<br/> <b>brown</b> [1] 14:6<br/> <b>bruise</b> [2] 10:25 11:6<br/> <b>bucket</b> [1] 46:6<br/> <b>Buffalo</b> [1] 59:10<br/> <b>building</b> [1] 59:17<br/> <b>built</b> [1] 40:4<br/> <b>bullet</b> [1] 16:25<br/> <b>burglary</b> [1] 68:16<br/> <b>burns</b> [1] 67:14</p>   |
| <p><b>2</b></p> <p>2024 [1] 1:11<br/> 23-825 [1] 3:4<br/> 240 [1] 31:4</p>   | <p><b>2</b></p> <p>2024 [1] 1:11<br/> 23-825 [1] 3:4<br/> 240 [1] 31:4</p>  | <p><b>2</b></p> <p>2024 [1] 1:11<br/> 23-825 [1] 3:4<br/> 240 [1] 31:4</p>   | <p><b>B</b></p> <p><b>back</b> [8] 9:22 23:18 30:3 31:7 49:3,16 56:23 64:15<br/> <b>back-and-forth</b> [1] 10:20<br/> <b>backdoor</b> [1] 60:18<br/> <b>backdrop</b> [1] 64:15<br/> <b>bad</b> [7] 11:10 12:16,22 17:14 39:11 70:4,5<br/> <b>bag</b> [2] 14:7 56:3<br/> <b>Bailey</b> [4] 28:18 29:10,15 70:23<br/> <b>BARRETT</b> [17] 8:25 9:7,10, 19 10:10,14,17 20:22 22:4 23:13,17,21,25 24:12 33:12 67:22 72:9<br/> <b>bars</b> [1] 45:12<br/> <b>basically</b> [1] 46:22<br/> <b>basis</b> [1] 34:8<br/> <b>bearing</b> [1] 65:7<br/> <b>bears</b> [1] 33:1<br/> <b>beating</b> [1] 58:19<br/> <b>become</b> [1] 73:5<br/> <b>beginning</b> [2] 12:21 64:4<br/> <b>behalf</b> [8] 1:18,21 2:4,7,10 3:8 33:16 68:4<br/> <b>behavior</b> [3] 7:16 16:2 25:8<br/> <b>believe</b> [2] 33:19 69:15<br/> <b>below</b> [1] 57:23<br/> <b>benefit</b> [3] 26:17 27:23 29:1<br/> <b>benefiting</b> [1] 26:24<br/> <b>beside</b> [1] 51:20<br/> <b>between</b> [4] 13:4 32:6 34:9 39:15<br/> <b>beyond</b> [2] 11:19 22:23<br/> <b>biased</b> [1] 59:14<br/> <b>bifurcation</b> [1] 64:5<br/> <b>bit</b> [2] 58:21 62:14<br/> <b>bizarre</b> [1] 35:2<br/> <b>bodily</b> [2] 64:23,24<br/> <b>body</b> [10] 5:19 6:16 8:6,11 35:22 36:2,5 50:5,15 52:20<br/> <b>body's</b> [2] 50:19 71:2<br/> <b>bomb</b> [1] 59:17<br/> <b>Borden</b> [10] 23:5 29:6,6 33:5 34:2 38:24 46:24,25 47:20 51:8<br/> <b>both</b> [11] 6:5 17:1 22:19 26:13 29:7 39:19 49:11 61:22 66:2 72:11,17<br/> <b>box</b> [2] 39:23 40:1<br/> <b>brakes</b> [1] 47:22</p> | <p><b>C</b></p> <p><b>c)(1)</b> [1] 28:20<br/> <b>c)(3)(b)</b> [1] 31:4<br/> <b>c)(4)</b> [1] 31:3<br/> <b>c)(5)(B)</b> [1] 15:21<br/> <b>cake</b> [2] 17:17 18:21<br/> <b>call</b> [2] 67:10,11<br/> <b>came</b> [2] 1:13 29:9<br/> <b>cannot</b> [2] 69:16,21<br/> <b>canonically</b> [1] 34:18<br/> <b>capture</b> [3] 37:5 40:21 64:22<br/> <b>captured</b> [1] 61:2<br/> <b>capturing</b> [1] 62:18<br/> <b>car</b> [8] 47:2 48:2 51:10,10 66:18,20,22,23<br/> <b>car-plowing-ahead</b> [1] 51:8<br/> <b>care</b> [8] 11:14,20 30:15,22 39:12 42:18 56:12 57:13<br/> <b>career</b> [5] 16:1 20:13 25:7 34:21 62:13<br/> <b>caregivers</b> [2] 13:20 46:3<br/> <b>caretaker</b> [1] 45:7<br/> <b>carve</b> [2] 54:14,16<br/> <b>Case</b> [27] 3:4 8:3 13:19 17:4 21:6,7 32:13 33:2,22 36:22 42:6,15 44:1 48:3 49:12 55:22 56:23,24 62:2,4 68:24 69:6 70:9,17 72:7 73:13,14<br/> <b>cases</b> [19] 13:23 14:1 18:9, 10 28:2 40:22 45:6 46:12 48:6 49:13 57:6 58:9,12, 16 59:10 61:15 62:6 69:18 70:12<br/> <b>Castleman</b> [14] 10:24,24 16:18 22:5 33:23 35:19,23 65:25 66:1,5,6,6 71:7,7<br/> <b>catch</b> [1] 36:14<br/> <b>catches</b> [1] 36:16<br/> <b>categorical</b> [10] 21:16 32:14,18 33:7 41:3 59:22 60:</p> |

## Official - Subject to Final Review

|  |   |   |   |   |
|--|---|---|---|---|
| <p>3,10,15 68:8<br/> <b>categorically</b> [2] 4:16 73:9<br/> <b>category</b> [2] 19:16 24:18<br/> <b>causation</b> [7] 39:2,7,18 46:11 55:18 63:11,12<br/> <b>cause</b> [12] 4:21,21 5:17 34:4 39:19,20,21 40:3,10 41:6,24 54:23<br/> <b>caused</b> [3] 39:6 52:16 66:4<br/> <b>causes</b> [6] 5:8 10:25 11:5 35:20 36:5 51:16<br/> <b>causing</b> [1] 39:3<br/> <b>caveat</b> [1] 54:23<br/> <b>cells</b> [1] 8:18<br/> <b>cellular</b> [1] 12:23<br/> <b>certain</b> [8] 15:9 19:16 21:25 22:8,9 31:11 60:24 69:15<br/> <b>certainly</b> [2] 11:13 66:24<br/> <b>change</b> [1] 25:6<br/> <b>changes</b> [2] 22:2 25:2<br/> <b>channeled</b> [1] 36:11<br/> <b>channeling</b> [1] 36:21<br/> <b>character</b> [2] 22:2 25:2<br/> <b>charged</b> [1] 58:20<br/> <b>charges</b> [2] 59:5,9<br/> <b>checked</b> [2] 39:23 40:1<br/> <b>chemical</b> [1] 8:17<br/> <b>CHIEF</b> [28] 3:3,9 27:4 31:20 32:3 33:9,17 49:15,22 50:3,9,21,23 51:10,19 52:1,7,10 59:21,24 60:16 67:4,5,6,16,17,25 73:12<br/> <b>child</b> [10] 7:9,10,14 13:21 36:4 39:11 49:19 51:4 58:18,19<br/> <b>children</b> [2] 42:18 59:18<br/> <b>choice</b> [1] 38:21<br/> <b>choose</b> [1] 5:25<br/> <b>Circuit</b> [4] 42:4 56:19 59:4,6<br/> <b>cite</b> [2] 49:1,11<br/> <b>classic</b> [1] 13:23<br/> <b>Clause</b> [35] 4:7,10,12 15:23 20:18 21:23 24:10,10,14 29:5 31:13,19 32:12,18,22 33:8 61:3,10,16,17,25 62:1,3,5,10,12,13,16 63:7 70:2,3,8,14,20 72:5<br/> <b>clear</b> [2] 25:25 63:18<br/> <b>clearly</b> [1] 19:15<br/> <b>client</b> [8] 13:9 20:13,25 21:8,19 30:15 32:5,9<br/> <b>client's</b> [1] 30:9<br/> <b>cliff</b> [2] 3:16 6:7<br/> <b>close</b> [1] 31:10<br/> <b>closet</b> [1] 29:1<br/> <b>Code</b> [2] 25:12 60:8<br/> <b>column</b> [1] 64:7<br/> <b>coma</b> [2] 19:5 72:22<br/> <b>combination</b> [5] 27:17,23 28:19 43:17 45:11<br/> <b>come</b> [9] 21:5 27:18,22,25 41:9,12 42:3 47:3 57:6</p> | <p><b>comes</b> [4] 11:22 28:15 40:22 46:22<br/> <b>coming</b> [2] 35:11 44:19<br/> <b>commission</b> [1] 70:11<br/> <b>commit</b> [2] 21:10 24:8<br/> <b>committed</b> [7] 3:18 13:17 23:6,7 59:15 69:16,21<br/> <b>committing</b> [2] 15:25 68:14<br/> <b>common</b> [33] 11:1,19 13:25 15:12 22:18 33:23 34:15 37:3,18,22 38:16,25 39:10 40:5,11 41:7,18 47:18 49:10 55:16,24 57:9 60:6,22,23,24 61:2 67:7,12 68:21 70:23 71:24 72:10<br/> <b>common-law</b> [3] 64:15 67:9 69:14<br/> <b>common-sense</b> [5] 35:16 40:19 63:21,23,24<br/> <b>completely</b> [3] 16:11 17:14 65:6<br/> <b>conceive</b> [1] 50:6<br/> <b>concept</b> [3] 41:3,6 71:3<br/> <b>conceptual</b> [2] 27:7 65:12<br/> <b>concern</b> [1] 65:13<br/> <b>concerned</b> [1] 31:13<br/> <b>conclude</b> [1] 27:25<br/> <b>concurrency</b> [1] 66:1<br/> <b>conditions</b> [1] 6:15<br/> <b>conduct</b> [7] 15:3 25:20 45:22,24,25 47:21 59:16<br/> <b>congenital</b> [1] 5:12<br/> <b>Congress</b> [17] 16:1 19:15 20:10,14 21:22 24:13,17 25:8,9,14,24 55:15 61:22 64:10,21,24 65:11<br/> <b>Congress's</b> [1] 64:5<br/> <b>consequence</b> [2] 32:11 40:18<br/> <b>consequences</b> [1] 4:5<br/> <b>consider</b> [1] 45:13<br/> <b>considered</b> [4] 32:17,21 44:25 56:7<br/> <b>constitute</b> [1] 45:18<br/> <b>consume</b> [1] 18:6<br/> <b>consuming</b> [1] 17:22<br/> <b>contact</b> [11] 3:13 4:3 5:5,10 8:22 17:3 18:4 26:21 71:13,15,21<br/> <b>contemporaneous</b> [1] 26:8<br/> <b>context</b> [3] 19:13,24 26:9<br/> <b>contrary</b> [1] 3:23<br/> <b>contrast</b> [2] 15:23 27:1<br/> <b>convictable</b> [1] 30:8<br/> <b>convicted</b> [2] 20:25 21:8<br/> <b>conviction</b> [1] 31:4<br/> <b>convictions</b> [1] 23:15<br/> <b>convince</b> [1] 22:24<br/> <b>correct</b> [13] 5:2 6:3 7:11 15:4,7 17:23 19:17 21:2,17,21 26:4 28:13 30:12<br/> <b>couldn't</b> [1] 50:17</p> | <p><b>counsel</b> [8] 20:22 22:4 31:21 33:13 49:15 67:18 68:1 73:13<br/> <b>count</b> [4] 11:1,3 16:20 17:24<br/> <b>counter</b> [1] 3:24<br/> <b>counteract</b> [1] 4:14<br/> <b>counterintuitive</b> [2] 24:3 65:6<br/> <b>couple</b> [2] 35:6 58:17<br/> <b>course</b> [5] 24:7 29:21 55:9 61:10 70:10<br/> <b>COURT</b> [35] 1:1,14 3:10 5:3 8:14 10:6 11:1 13:15,16 16:16,20 22:17,23 26:6 28:20 31:13 32:17 33:18 34:14,17,25 35:7 41:21 56:18 57:7,25 58:25 59:8 62:5 63:10 65:25 68:7 69:2 70:23 71:10<br/> <b>Court's</b> [5] 3:25 4:19 46:8,23 47:4<br/> <b>courtroom</b> [1] 23:23<br/> <b>cover</b> [3] 16:6,7,8<br/> <b>cover's</b> [1] 11:23<br/> <b>covered</b> [1] 24:13<br/> <b>covers</b> [1] 62:3<br/> <b>creates</b> [1] 40:10<br/> <b>crime</b> [18] 15:1 20:9,25 21:12 22:6 24:1,6 25:21 33:20 34:22 45:19 48:14 59:9,13 61:23 63:6 68:19 73:8<br/> <b>crimes</b> [5] 4:12 19:20 54:16 59:6,12<br/> <b>criminal</b> [8] 15:18 16:1 20:13 25:8,12 34:21 45:25 62:13<br/> <b>criminally</b> [2] 7:16 46:4<br/> <b>critical</b> [1] 4:24<br/> <b>criticism</b> [1] 33:6<br/> <b>crushed</b> [1] 50:13<br/> <b>culpable</b> [3] 4:15 7:16 45:22<br/> <b>cup</b> [1] 34:10<br/> <b>current</b> [3] 36:18,19 66:1<br/> <b>currents</b> [1] 38:6<br/> <b>Curtis</b> [1] 53:19<br/> <b>cut</b> [1] 34:17<br/> <b>cuts</b> [1] 63:22</p> | <p><b>death-causing</b> [1] 35:25<br/> <b>debating</b> [1] 33:20<br/> <b>deciding</b> [2] 29:24 59:17<br/> <b>decision</b> [1] 46:8<br/> <b>declared</b> [1] 61:11<br/> <b>deep</b> [1] 50:12<br/> <b>defend</b> [1] 55:21<br/> <b>defendant</b> [8] 15:3,13 36:11 55:23 63:25 64:6,12,22<br/> <b>defendant's</b> [1] 16:18<br/> <b>deficient</b> [1] 58:13<br/> <b>defied</b> [1] 67:7<br/> <b>define</b> [3] 57:10 60:6,7<br/> <b>defined</b> [1] 63:11<br/> <b>defines</b> [1] 46:10<br/> <b>defining</b> [1] 20:9<br/> <b>definition</b> [11] 15:1 34:20,21 43:12,19 46:9 52:4 54:20 60:9 63:4,5<br/> <b>definitions</b> [4] 28:21 38:25 64:18 66:17<br/> <b>defy</b> [1] 37:22<br/> <b>degree</b> [3] 11:7 23:3 60:22<br/> <b>deliberate</b> [1] 38:21<br/> <b>DELLIGATTI</b> [3] 1:3 3:4 23:11<br/> <b>Delligatti's</b> [1] 23:12<br/> <b>demonstrates</b> [1] 35:19<br/> <b>depart</b> [2] 37:17 44:9<br/> <b>Department</b> [1] 1:20<br/> <b>depends</b> [1] 41:18<br/> <b>Deputy</b> [1] 1:20<br/> <b>derive</b> [1] 29:1<br/> <b>derives</b> [1] 70:22<br/> <b>describe</b> [10] 6:18,20 10:18 19:2,6,8 47:10,21 71:18 72:23<br/> <b>described</b> [3] 5:3 15:24 26:17<br/> <b>describing</b> [1] 49:13<br/> <b>detonates</b> [1] 8:15<br/> <b>device</b> [1] 8:15<br/> <b>dictionary</b> [6] 28:20 43:12,18 46:9 64:18 66:16<br/> <b>die</b> [7] 7:7 36:2 37:14 43:11 45:10 50:22 51:18<br/> <b>died</b> [1] 63:15<br/> <b>dies</b> [2] 19:5 62:4<br/> <b>different</b> [20] 5:7 6:23 13:14 4:7 27:8 29:25 31:10 32:14 40:11 51:11 56:12 64:7 66:7 68:14,15,19,23,25 72:9<br/> <b>differently</b> [2] 4:24 62:14<br/> <b>difficult</b> [2] 70:12 72:17<br/> <b>direct</b> [1] 11:4<br/> <b>directly</b> [3] 3:14 6:7 16:19<br/> <b>disagree</b> [1] 69:11<br/> <b>discard</b> [1] 34:14<br/> <b>discussing</b> [2] 33:1 54:23<br/> <b>discussion</b> [1] 10:3<br/> <b>disease</b> [7] 8:10,11 27:19 33:24 35:13,24 71:9<br/> <b>disorder</b> [2] 3:20 5:12</p> | <p><b>dispute</b> [3] 7:16 31:16 70:18<br/> <b>distinct</b> [1] 56:10<br/> <b>distinction</b> [4] 32:6 34:9,13 48:23<br/> <b>distinctions</b> [1] 35:1<br/> <b>distinguish</b> [1] 11:13<br/> <b>distress</b> [1] 5:8<br/> <b>divided</b> [1] 68:11<br/> <b>divisibility</b> [9] 56:16,20 58:5 59:2 60:1 64:3 68:6 69:4,11<br/> <b>divisible</b> [9] 13:4,13 14:10 56:8 57:18 60:5 68:8,10,20<br/> <b>doctor</b> [2] 39:12 50:17<br/> <b>doing</b> [14] 17:2 28:3 36:20 43:14 49:8,8 50:25 51:12 52:11,17 61:18 65:13 67:1,13<br/> <b>domestic</b> [6] 11:2 22:12 29:25 31:8 34:22 63:6<br/> <b>done</b> [2] 18:2 69:2<br/> <b>doubt</b> [2] 39:5 58:21<br/> <b>down</b> [4] 5:21 6:6 50:14 66:18<br/> <b>dragging</b> [1] 50:14<br/> <b>draw</b> [3] 34:9 39:15 48:23<br/> <b>drink</b> [3] 5:6 8:5 66:9<br/> <b>drive</b> [1] 48:2<br/> <b>driving</b> [1] 47:2<br/> <b>drown</b> [1] 44:18<br/> <b>drowning</b> [1] 42:23<br/> <b>during</b> [2] 25:16 70:10<br/> <b>duties</b> [4] 38:16 41:7,18 46:5<br/> <b>duty</b> [21] 5:25 11:14,19 14:1,20 18:16 25:19 37:18,19 38:10 39:10 40:5,9,22 42:18 51:4 56:12 57:13 58:11,15 73:7<br/> <b>duty-of-care</b> [2] 13:23 14:1<br/> <b>dying</b> [1] 64:23</p> |
| <b>E</b>   |   |   |   |   |
| <p><b>each</b> [1] 72:7<br/> <b>earlier</b> [1] 54:23<br/> <b>easier</b> [2] 51:6,7<br/> <b>easiest</b> [1] 64:16<br/> <b>easily</b> [2] 47:20 51:2<br/> <b>easy</b> [1] 45:5<br/> <b>eat</b> [3] 17:17 18:20 19:5<br/> <b>eating</b> [1] 36:6<br/> <b>Ebola</b> [1] 71:11<br/> <b>edge</b> [2] 3:16 70:11<br/> <b>effect</b> [2] 22:10 63:20<br/> <b>effective</b> [1] 69:25<br/> <b>either</b> [5] 12:22 13:6,17 14:13 71:20<br/> <b>element</b> [5] 21:14 24:21 32:22 39:2 70:16<br/> <b>Elements</b> [18] 4:7,12 6:18 15:23 20:18,19 21:23 24:</p>   |   |   |   |   |

## Official - Subject to Final Review

|   |   |   |   |   |
|---|---|---|---|---|
| <p>14 29:5 31:19 32:19,21 33:8 62:10,15 68:23 70:14 72:4</p> <p><b>emphasize</b> [1] 15:18</p> <p><b>employ</b> [1] 8:1</p> <p><b>employed</b> [1] 7:19</p> <p><b>employing</b> [1] 29:19</p> <p><b>employment</b> [6] 4:1 28:23 29:8,9,13 70:25</p> <p><b>enabling</b> [1] 8:11</p> <p><b>enacted</b> [1] 20:15</p> <p><b>encompass</b> [2] 56:10 65:4</p> <p><b>encompassed</b> [2] 55:17 57:2</p> <p><b>end</b> [3] 9:21,22 72:15</p> <p><b>enemy</b> [2] 17:17 66:19</p> <p><b>engage</b> [4] 19:19 22:24 25:20 69:4</p> <p><b>enhancement</b> [3] 30:9 37:7 45:24</p> <p><b>enjoying</b> [1] 52:6</p> <p><b>enjoyment</b> [1] 43:20</p> <p><b>enough</b> [7] 11:5,6,7 24:25 37:16 50:13 66:9</p> <p><b>entirely</b> [2] 42:20 69:5</p> <p><b>enumerated</b> [2] 24:18 32:20</p> <p><b>equally</b> [2] 36:22 62:6</p> <p><b>ERIC</b> [3] 1:20 2:6 33:15</p> <p><b>especially</b> [1] 9:20</p> <p><b>ESQ</b> [3] 2:3,6,9</p> <p><b>ESQUIRE</b> [1] 1:18</p> <p><b>essentially</b> [6] 12:15 16:19 33:5 69:8 72:19</p> <p><b>Europe</b> [1] 38:12</p> <p><b>even</b> [23] 7:8 8:20,24 11:4,20 14:16 15:19 18:1,23 20:3,5 21:24 22:25 27:10 28:25 29:14 46:4,6 49:3,6 63:7 64:25 69:24</p> <p><b>eventually</b> [1] 50:22</p> <p><b>Everyone</b> [4] 10:20 45:13 62:9 67:9</p> <p><b>everyone's</b> [1] 55:24</p> <p><b>everywhere</b> [1] 31:18</p> <p><b>example</b> [23] 6:5 8:20 10:24 12:19 23:4 25:13 27:18 36:16 37:6 40:2 44:9,12,13,17 46:22,25 47:20 48:6,25 49:5 51:7,9 58:13</p> <p><b>examples</b> [9] 25:23 26:15 35:24 45:6 46:19,20 58:17 71:7 72:16</p> <p><b>except</b> [4] 69:16,22 72:20,25</p> <p><b>excluded</b> [2] 4:13 70:1</p> <p><b>excluding</b> [1] 22:10</p> <p><b>excuse</b> [1] 27:5</p> <p><b>exercise</b> [1] 22:25</p> <p><b>exist</b> [1] 38:16</p> <p><b>expire</b> [2] 7:22 9:13</p> <p><b>expires</b> [2] 18:25 72:22</p> <p><b>explain</b> [2] 37:24 40:24</p> <p><b>explaining</b> [1] 41:1</p> | <p><b>explored</b> [1] 13:6</p> <p><b>explosive</b> [1] 8:15</p> <p><b>exponentially</b> [1] 25:2</p> <p><b>extent</b> [1] 60:24</p> <p><b>extra</b> [1] 30:23</p> <p><b>extreme</b> [2] 9:25 12:3</p> <p><b>extremely</b> [1] 53:13</p> <hr/> <p style="text-align:center"><b>F</b></p> <p><b>fact</b> [8] 9:20 10:3 13:13 15:19 39:19 63:22 70:7,19</p> <p><b>facts</b> [1] 21:6</p> <p><b>factual</b> [1] 33:2</p> <p><b>failed</b> [3] 13:21 14:20 19:11</p> <p><b>failing</b> [2] 3:18 71:19</p> <p><b>failure</b> [3] 4:14 14:2 39:5</p> <p><b>fair</b> [1] 32:25</p> <p><b>fall</b> [6] 6:10 9:2 12:11 17:18 37:14 70:8</p> <p><b>falls</b> [2] 6:6 72:21</p> <p><b>far</b> [2] 18:19 39:14</p> <p><b>fascinating</b> [1] 21:4</p> <p><b>fed</b> [1] 72:23</p> <p><b>federal</b> [7] 14:25 22:19 41:4,5,16 45:2 72:11</p> <p><b>feed</b> [2] 39:11 71:19</p> <p><b>feeding</b> [1] 19:10</p> <p><b>FEIGIN</b> [93] 1:20 2:6 33:14,15,17 35:9,18 37:2,8,23 38:8,14,18,23 39:18,24 40:12,16,20,23 41:13,19,23 42:2,7,9,24 43:7,16 44:8,13,22 45:17 46:7,15,18 47:8,13,17 48:4,19 49:20,24 50:4,11,22 51:1,13,24 52:3,8,14,23 53:2,8,14,18,22 54:2,8,10,12,18,22 55:2,5,7,9,11 56:1,15 57:3,5,14,20,23 58:8 60:4,14,19 61:4,8,19 62:21,23 63:2,15 64:14 65:16,20 66:12 67:5,24</p> <p><b>FEIGN</b> [1] 54:4</p> <p><b>felony</b> [3] 20:9 34:20 69:21</p> <p><b>few</b> [3] 22:14 46:19 60:11</p> <p><b>fiddling</b> [1] 67:14</p> <p><b>field</b> [2] 26:19,22</p> <p><b>fight</b> [2] 52:20 60:11</p> <p><b>fighting</b> [3] 59:22 60:10,14</p> <p><b>figure</b> [1] 68:22</p> <p><b>finally</b> [3] 62:23 63:2 72:15</p> <p><b>find</b> [1] 18:10</p> <p><b>fine</b> [1] 38:8</p> <p><b>finger</b> [1] 5:22</p> <p><b>fingers</b> [1] 10:11</p> <p><b>finish</b> [1] 61:7</p> <p><b>firearm</b> [2] 28:19,25</p> <p><b>firearms</b> [1] 19:14</p> <p><b>First</b> [6] 22:16 27:6 28:17 49:25 56:25 68:6</p> <p><b>fit</b> [3] 24:9 60:2 61:16</p> <p><b>fits</b> [2] 53:4 66:16</p> <p><b>five</b> [1] 23:4</p> <p><b>flashed</b> [1] 35:8</p> | <p><b>flood</b> [1] 25:16</p> <p><b>floodgates</b> [1] 25:16</p> <p><b>focus</b> [1] 15:20</p> <p><b>focused</b> [6] 10:6,20,21 15:24 20:17 63:19</p> <p><b>follow</b> [1] 52:15</p> <p><b>food</b> [1] 17:21</p> <p><b>foot</b> [1] 48:1</p> <p><b>force</b> [159] 3:11,12,22 4:1,2,17 5:10,11,13,14,17,18,20,23 6:1,8,11,19 7:14,18,20,23 8:1,5,19,23 9:6,7,10,15,17,21,21,23 10:4,5,11,15,22 11:1,3,5,7 12:8,9,13,17,19 13:3 14:23 15:6,11 16:6,19,24,24 17:3,25 18:24 19:3,7,9,13 20:20 21:14 22:1,9,18 24:22 25:22 26:2 27:9 28:6,7,12 32:23 33:24,25 34:1,3,4,5,5 35:10,12,20,21,25 36:1,9,23 37:15 38:3,19 42:14,22 43:2,8,15,20,20,21 44:3,20 45:4,6 47:1,14 48:10,17 49:14,17,18 50:1,1,7,10 51:15,16,22,22 52:2,4,5,6,8,18 53:5,9,10,12,15,16 54:1,13,21 63:23 64:12 65:4 66:4,7,8,9,22,25 70:9,16 71:5,8,12,21,22 72:6,14,24 73:2,5,6,10</p> <p><b>forceful</b> [1] 5:4</p> <p><b>found</b> [1] 58:13</p> <p><b>fraud</b> [1] 54:16</p> <p><b>freezing</b> [1] 6:14</p> <p><b>fridge</b> [2] 17:21 18:7</p> <p><b>friend</b> [9] 56:7 65:9 69:1,8 70:17,21 71:1,23 72:18</p> <p><b>frighten</b> [1] 36:2</p> <p><b>front</b> [3] 9:21 47:3 66:20</p> <p><b>fulfill</b> [2] 11:15 14:2</p> <p><b>function</b> [3] 21:16 31:10 62:10</p> <p><b>further</b> [1] 49:3</p> <hr/> <p style="text-align:center"><b>G</b></p> <p><b>game</b> [5] 47:9,11 48:24 67:10 71:17</p> <p><b>games</b> [1] 47:25</p> <p><b>gasping</b> [1] 50:20</p> <p><b>General</b> [4] 1:20 69:12,20 72:1</p> <p><b>generally</b> [2] 44:25 68:24</p> <p><b>generic</b> [2] 11:3 41:4</p> <p><b>gentle</b> [5] 3:15 5:20 6:5,8 16:22</p> <p><b>gently</b> [2] 10:8 34:10</p> <p><b>gerrymandered</b> [1] 36:12</p> <p><b>gets</b> [2] 42:19 62:20</p> <p><b>getting</b> [2] 18:14 49:16</p> <p><b>give</b> [5] 33:7 45:9,10 46:21 67:11</p> <p><b>given</b> [1] 70:24</p> <p><b>gives</b> [1] 10:24</p> <p><b>giving</b> [3] 3:15 6:5 14:6</p> | <p><b>gold</b> [1] 45:12</p> <p><b>GORSUCH</b> [70] 9:18 11:8,12,17 12:1,6,25 13:8,12,22,25 14:4 29:17,23 30:3,6,14,17,21,24 31:5,7 37:2,10 38:5,11,15,22 39:4,22 40:6,13,17,21 41:9,17,21,25 42:5,11 45:21 52:12,14,25 53:6,11,17,20,25 54:3,6,9,11,17,19,25 55:2,3,6,8,10,13 56:2,22 57:4,12,15,22 58:2,11</p> <p><b>Gorsuch's</b> [1] 64:2</p> <p><b>got</b> [10] 23:4 38:22 39:6 53:21,21 54:6,9,9 55:22 66:22</p> <p><b>government</b> [6] 4:9 14:9 26:25 27:21 72:18,25</p> <p><b>government's</b> [16] 3:21 4:4,11 12:11,15 14:15,21 26:11 27:14 28:24 29:18 37:21 42:13 46:2 52:22 72:3</p> <p><b>grabbing</b> [1] 10:8</p> <p><b>gravitational</b> [2] 26:19,22</p> <p><b>gravity</b> [11] 13:3 35:12 38:7,8 49:18,23 50:1,8,14 51:23 52:20</p> <p><b>gravity's</b> [2] 12:8 37:15</p> <p><b>great</b> [1] 57:16</p> <p><b>ground</b> [2] 6:12 7:24</p> <p><b>guess</b> [8] 8:2 12:8 42:12 46:1 50:12 52:22 59:25 64:9</p> <p><b>gun</b> [9] 16:22 22:3 24:23 25:1,7 31:12 56:1,3 71:9</p> <hr/> <p style="text-align:center"><b>H</b></p> <p><b>Hall</b> [3] 48:25 49:1,11</p> <p><b>hand</b> [1] 6:10</p> <p><b>handed</b> [2] 56:1,2</p> <p><b>happen</b> [1] 3:13</p> <p><b>happened</b> [1] 49:25</p> <p><b>happening</b> [1] 43:6</p> <p><b>happens</b> [4] 12:22 14:12 50:4,18</p> <p><b>hard</b> [5] 11:12 33:19 48:3,6 72:16</p> <p><b>harm</b> [9] 4:14 30:7 34:5 43:4 46:11,13 54:15 63:11 71:16</p> <p><b>harmed</b> [1] 62:20</p> <p><b>hate</b> [3] 59:6,9,12</p> <p><b>hates</b> [2] 42:19,19</p> <p><b>hating</b> [1] 34:11</p> <p><b>head</b> [1] 28:7</p> <p><b>hear</b> [2] 3:3 21:5</p> <p><b>heart</b> [3] 4:25 5:1 36:1</p> <p><b>heavily</b> [1] 71:23</p> <p><b>hedging</b> [1] 4:11</p> <p><b>heightened</b> [1] 15:22</p> <p><b>Heimlich</b> [1] 7:8</p> <p><b>help</b> [2] 13:8 56:14</p> <p><b>herself</b> [2] 18:14 43:19</p> <p><b>high</b> [4] 6:12 7:24 11:7 26:13</p> <p><b>higher</b> [1] 40:8</p> | <p><b>highest</b> [1] 13:16</p> <p><b>highlights</b> [1] 14:11</p> <p><b>hill</b> [1] 66:19</p> <p><b>himself</b> [1] 52:5</p> <p><b>Hiring</b> [1] 21:9</p> <p><b>history</b> [3] 25:11 26:7 65:10</p> <p><b>hit</b> [5] 6:12 14:5 47:21 55:23 56:11</p> <p><b>hits</b> [1] 47:5</p> <p><b>hitting</b> [1] 7:24</p> <p><b>home</b> [2] 25:10 70:3</p> <p><b>honest</b> [1] 55:20</p> <p><b>Honor</b> [44] 5:3 6:4 15:17 16:15 20:17 21:22 27:3 33:4 35:4,18 37:9,24 38:14 39:24 40:23 41:13,19 42:2 43:7,16 44:8,23 46:7,18 47:8,19 48:19,20 49:20,24 51:1,14 52:23 54:2 56:15 57:3,20 60:4,19 61:4 64:14 65:16 66:13 68:5</p> <p><b>horrible</b> [1] 25:5</p> <p><b>horrific</b> [1] 58:18</p> <p><b>hostage</b> [2] 9:1,1</p> <p><b>house</b> [2] 68:17,18</p> <p><b>houseboat</b> [2] 68:17,19</p> <p><b>However</b> [1] 7:9</p> <p><b>human</b> [2] 6:2 25:20</p> <p><b>hypothetical</b> [5] 11:21 12:3 40:14,25 42:17</p> <p><b>hypotheticals</b> [3] 20:2 70:12 72:17</p> <hr/> <p style="text-align:center"><b>I</b></p> <p><b>idea</b> [2] 24:10 26:23</p> <p><b>identified</b> [3] 4:9 26:12 27:2</p> <p><b>identify</b> [2] 26:25 27:15</p> <p><b>illegal</b> [1] 31:17</p> <p><b>impact</b> [1] 16:25</p> <p><b>implementation</b> [1] 28:22</p> <p><b>imply</b> [1] 28:21</p> <p><b>important</b> [1] 14:12</p> <p><b>impose</b> [1] 38:15</p> <p><b>imposed</b> [1] 11:19</p> <p><b>imposes</b> [1] 40:8</p> <p><b>inaction</b> [3] 20:3 46:17,17</p> <p><b>inapplicable</b> [1] 22:11</p> <p><b>include</b> [2] 57:8,10</p> <p><b>includes</b> [1] 39:18</p> <p><b>including</b> [4] 13:18 15:19 18:9 56:17</p> <p><b>incorporates</b> [1] 41:23</p> <p><b>indirect</b> [2] 71:8,11</p> <p><b>indirectly</b> [3] 3:15 6:21 8:24</p> <p><b>indoors</b> [1] 27:5</p> <p><b>induced</b> [1] 35:22</p> <p><b>indulge</b> [1] 67:3</p> <p><b>indulgence</b> [1] 63:13</p> <p><b>infect</b> [1] 71:10</p> <p><b>influences</b> [1] 22:7</p> <p><b>informed</b> [4] 40:5 41:7 47:</p> |
|---|---|---|---|---|

## Official - Subject to Final Review

|  |   |  |  |  |
|--|---|--|--|--|
| 18 60:22<br><b>injured</b> [3] 10:7 12:23 64:24<br><b>injury</b> [7] 3:23 11:5 12:18 34:1 62:17,20 66:3<br><b>inoperative</b> [2] 31:15,19<br><b>inputs</b> [2] 8:17 12:23<br><b>inquiry</b> [1] 39:21<br><b>instance</b> [10] 5:11 6:18,21 7:20 8:17 10:23 14:22 18:25 22:17 24:24 26:12,18 27:1,10,15 69:19<br><b>instances</b> [3] 17:1 20:21 24:7<br><b>instead</b> [2] 17:11 24:20<br><b>instructions</b> [2] 3:25 58:13<br><b>instrument</b> [4] 29:19 34:4 43:21 52:9<br><b>intended</b> [2] 26:3 52:16<br><b>intent</b> [1] 66:24<br><b>intention</b> [2] 39:7 43:3<br><b>intentionally</b> [3] 36:3 37:13 46:4<br><b>interests</b> [1] 27:20<br><b>internal</b> [5] 33:24 35:12,20,25 50:15<br><b>interpret</b> [2] 23:9 38:2<br><b>interpretation</b> [4] 22:7 29:2 40:18 46:2<br><b>interpreting</b> [12] 4:6 22:8,9,17 28:18 41:2,14 60:25 65:2 72:10,13,14<br><b>interpretive</b> [1] 70:18<br><b>introducing</b> [1] 71:9<br><b>intuition</b> [2] 11:9 39:10<br><b>invalidation</b> [1] 32:11<br><b>involuntary</b> [1] 36:17<br><b>involve</b> [7] 3:17 4:17 9:14 52:18 53:9 68:16 73:10<br><b>involved</b> [7] 5:11 6:19 10:22 12:20 14:23 18:24 24:21<br><b>involves</b> [5] 53:4,11,15 68:16 73:1<br><b>involving</b> [7] 6:19 19:2,7,8 49:14 72:24 73:4<br><b>irrelevant</b> [1] 4:5<br><b>isn't</b> [5] 13:5 24:1 59:24 62:2 70:4<br><b>issue</b> [3] 15:2 29:14 69:6<br><b>itself</b> [6] 5:17 36:3,5,6 50:19 52:21 | <b>jeopardy</b> [1] 25:17<br><b>job</b> [2] 55:23 56:11<br><b>Joe</b> [1] 16:12<br><b>Johnson</b> [2] 53:19 61:10<br><b>jump</b> [1] 42:23<br><b>jumped</b> [1] 49:19<br><b>jury</b> [1] 58:12<br><b>Justice</b> [206] 1:21 3:3,9 4:20 5:15 6:13 7:1,4,6,13 8:2,8,25 9:7,10,18,19 10:10,14,17 11:8,12,17 12:1,3,6,25 13:8,12,22,25 14:4,24 15:5,8 16:3,4,10 17:5,9,11,16,23 18:1,8 19:12,18,23 20:2,11,22,24 21:3,11,15,18 22:4 23:13,17,19,21,25 24:12 25:9 27:4 28:2,10 29:17,23 30:3,6,14,17,21,24 31:5,7,20,22,23 32:1,3,4,9,13,19,21,24 33:9,9,10,11,12,18 35:9 37:2,10 38:5,11,15,22 39:4,22 40:6,13,17,21 41:9,17,21,25 42:5,7,10,11,25 43:13,23 44:11,15 45:15,19,21 46:14 47:6,12,24 48:5 49:15,22 50:3,9,21,23,24 51:10,19 52:1,7,10,12,13,14,25 53:6,11,17,20,25 54:3,6,9,11,17,19,25 55:2,3,4,6,8,10,13 56:2,22,23 57:4,12,15,22 58:2,3,4,5,10 59:20,21,23,24 60:13,16 61:1,6,9 62:8,21,25 63:13,14 64:2,19 65:19,25 66:5 67:4,6,16,17,19,20,21,22,23,25 72:9 73:12 | <b>kind</b> [10] 20:6,13 38:10 47:15 55:14 58:20 62:7 64:3 66:15 69:4<br><b>kinds</b> [3] 19:19 41:2 49:13   | <b>longer</b> [3] 60:12 67:5 70:20<br><b>look</b> [19] 10:23 14:25 18:19 22:6,21 24:20 45:8 46:8,20,24 48:25 49:3 58:6 63:8 65:23 67:8 68:20,21,23<br><b>looked</b> [2] 26:13 60:23<br><b>looking</b> [3] 15:10 45:23 64:19<br><b>looks</b> [1] 28:20<br><b>loophole</b> [1] 31:11<br><b>lose</b> [2] 46:12 59:12<br><b>lost</b> [2] 59:4 60:12<br><b>lot</b> [6] 17:20 22:20 27:22 30:10 60:1 72:16<br><b>lots</b> [1] 15:18<br><b>Louisiana</b> [1] 69:19<br><b>low</b> [1] 26:13  | <b>minimum</b> [1] 69:3<br><b>misdemeanor</b> [3] 31:12 34:22 63:6<br><b>mix</b> [2] 22:3 25:1<br><b>Mm-hmm</b> [5] 11:25 13:7 17:15 29:22 54:25<br><b>model</b> [1] 60:8<br><b>molecules</b> [1] 6:9<br><b>months</b> [2] 30:23 31:4<br><b>moon's</b> [2] 26:18,21<br><b>morally</b> [1] 4:15<br><b>moreover</b> [1] 7:25<br><b>morning</b> [1] 66:14<br><b>most</b> [5] 21:24 22:11 26:10 28:2 63:9<br><b>movie</b> [1] 56:4<br><b>moving</b> [1] 47:7<br><b>much</b> [7] 10:4,22 16:21 21:6 30:11 66:7 71:21<br><b>murder</b> [26] 9:24 11:13 12:6 14:13 21:10 22:13 23:1,3,14 24:1,6,8,15,19 31:17 33:20 34:18 48:13 54:15 56:9 57:2 62:18 63:17 69:21 70:4,4<br><b>murder-by-omission</b> [2] 14:17,22<br><b>murders</b> [2] 54:19 70:6<br><b>must</b> [4] 12:16 34:1 66:3 70:24  |
| <b>JACKSON</b> [35] 14:24 15:5,8 16:3 17:5,9 19:12,18,23 20:2 21:15,18 25:9 33:11 42:7,10,25 43:13,23 44:11,15 45:15,19 46:14 47:6 59:20,23 62:21,25 63:13,14 64:19 65:19 66:5 67:23<br><b>jail</b> [1] 30:10<br><b>jam</b> [1] 61:15  | <b>K</b><br><b>KAGAN</b> [17] 8:2,8 16:4,10 17:11,16,23 18:1,8 28:2,10 47:12,24 48:5 50:24 58:3,5<br><b>KAVANAUGH</b> [7] 52:13 58:4 60:13 61:1,6,9 62:8<br><b>Kavanaugh's</b> [1] 56:23<br><b>KEDEM</b> [8] 1:18 2:3,9 3:6,7,9 5:2 6:4,17 7:3,5,11,15 8:7,13 9:4,9,11 10:1,13,16,19 11:8,11,16,25 12:14 13:7,11,14,24 14:3,8 15:4,7,17 16:9,14 17:7,15,20,24 18:3,22 19:17,22 20:1,8,16 21:2,9,13,17,21 22:14 23:16,20,24 24:4,16 26:4 27:6 28:9,13 29:22 30:2,5,12,16,19,22 31:2,6,8,25 32:10,16 33:3 68:2,3,5<br><b>keep</b> [3] 8:18 45:12 66:20<br><b>keeps</b> [1] 47:3<br><b>key</b> [1] 66:23<br><b>kick</b> [1] 3:14<br><b>kid</b> [4] 42:19,22 44:3,17<br><b>kill</b> [2] 6:16 7:14<br><b>killing</b> [3] 14:5 59:13 69:23  | <b>ladies</b> [2] 12:2 37:13<br><b>lady</b> [1] 11:23<br><b>language</b> [2] 28:12 63:18<br><b>lapsed</b> [1] 71:3<br><b>last</b> [1] 56:24<br><b>later</b> [1] 16:24<br><b>Laughter</b> [2] 12:5 32:2<br><b>law</b> [32] 11:1,19 13:25 22:18 30:18 33:22 34:8,15 37:18 38:17 39:10 40:5,11 41:4,5,7,16,18 45:2,23 47:18 48:22 49:10 57:24 60:23,24 67:12 68:21,24 70:23 71:24 72:10<br><b>lawful</b> [1] 31:11<br><b>laws</b> [3] 29:20 30:7 38:13<br><b>lead</b> [2] 49:7 61:13<br><b>least</b> [4] 15:12 23:8 25:11 32:19<br><b>leaves</b> [1] 23:10<br><b>lectern</b> [1] 41:11<br><b>legal</b> [4] 21:4 25:19 47:16 73:7<br><b>legally</b> [2] 4:15 43:10<br><b>legislative</b> [3] 25:11 26:7 65:10<br><b>Leocal</b> [2] 29:5,6<br><b>less</b> [1] 71:21<br><b>letting</b> [2] 6:9 7:13<br><b>liability</b> [4] 49:7 57:9 58:10 72:2<br><b>liable</b> [1] 69:14<br><b>life</b> [4] 12:24 25:21 44:14 50:16<br><b>lifeguard</b> [20] 42:17 44:2,9,12,16 48:6,7,15 49:16 51:3,7,11,14,15,17,18,19 52:17 53:7 55:1<br><b>lifeguard's</b> [2] 50:24 51:3<br><b>lifeguards</b> [3] 46:3 56:5 57:1<br><b>light</b> [1] 35:8<br><b>limit</b> [1] 16:16<br><b>line</b> [3] 9:2 17:19 39:15<br><b>linguistic</b> [1] 64:17<br><b>linguistically</b> [2] 68:10,20<br><b>list</b> [1] 68:13<br><b>listed</b> [1] 58:23<br><b>literally</b> [3] 12:20 34:14 73:1<br><b>little</b> [9] 8:15 11:23 12:2 14:7 24:3 37:13 55:14 58:21 62:14<br><b>lives</b> [1] 25:17<br><b>lock</b> [1] 9:12<br><b>locks</b> [1] 9:16<br><b>logic</b> [3] 3:23 34:9 62:7<br><b>long</b> [1] 55:17 | <b>M</b><br><b>made</b> [6] 22:18,20 25:25 31:11 43:21 57:25<br><b>majority</b> [2] 24:7 70:6<br><b>man</b> [1] 45:8<br><b>maneuver</b> [1] 7:8<br><b>manhole</b> [1] 11:22<br><b>Manton</b> [1] 49:11<br><b>many</b> [9] 4:11 23:14,14 30:11,11,25 38:12 39:16 64:25<br><b>matter</b> [1] 1:13<br><b>mean</b> [34] 7:4 10:14 12:9 14:6 18:8,10,18 19:23 21:4 22:13 23:18 25:10 30:8 32:24 33:12 41:5 43:1 44:10 45:20 46:12,13,15 47:12,25 50:5,11,21 51:5,9,24 52:21 55:24 59:24 60:1<br><b>meaning</b> [12] 3:24 29:10 33:8 47:15,16,18,19 53:18 63:23,24 70:22,24<br><b>means</b> [9] 3:25 4:2 12:17 16:5 28:6 42:13 43:2 68:23 70:16<br><b>meant</b> [4] 55:15 60:25 64:12 71:10<br><b>measure</b> [3] 9:21 10:10,15<br><b>medication</b> [1] 19:1<br><b>medicine</b> [6] 4:25 7:21 18:11,14 45:9 67:12<br><b>meet</b> [1] 55:17<br><b>members</b> [1] 26:6<br><b>mens</b> [6] 28:5 39:7 55:4,6,7,17<br><b>mental</b> [4] 29:7,13,14 43:14<br><b>mentioned</b> [1] 55:11<br><b>merit</b> [1] 4:15<br><b>metabolism</b> [1] 71:2<br><b>method</b> [1] 15:24<br><b>might</b> [13] 6:18 12:3,25 16:6 20:4 41:5 44:10 47:10 52:15 56:8,14,16 62:6<br><b>millennia</b> [3] 34:15 48:22 60:23 | <b>N</b><br><b>narrowly</b> [1] 31:14<br><b>NASA</b> [1] 26:18<br><b>natural</b> [5] 3:19 5:8 33:8 70:3 71:2<br><b>naturally</b> [1] 61:15<br><b>nature</b> [4] 5:18 7:14 22:6 30:7<br><b>nearly</b> [1] 4:8<br><b>necessarily</b> [5] 9:24 37:9,23 40:1 69:25<br><b>necessary</b> [2] 8:18 12:24<br><b>need</b> [2] 10:4,9<br><b>neglect</b> [1] 58:19<br><b>never</b> [1] 69:2<br><b>nevertheless</b> [1] 69:20<br><b>New</b> [7] 13:15 14:16 23:3 41:11 57:11 58:9 69:5<br><b>news</b> [1] 26:14<br><b>next</b> [1] 3:4<br><b>nine</b> [1] 56:3<br><b>none</b> [1] 72:3<br><b>normal</b> [3] 28:1 48:9 73:3<br><b>normally</b> [3] 35:10 37:18 41:1<br><b>nose-counting</b> [1] 22:25<br><b>nothing</b> [5] 43:5 51:12 52:17 55:21 66:11<br><b>notice</b> [1] 70:25<br><b>nourishment</b> [1] 36:7<br><b>November</b> [1] 1:11<br><b>number</b> [9] 31:15 34:18 38:20 44:24 46:21 50:6 57:6 |

## Official - Subject to Final Review

|  |  |   |   |  |
|--|--|---|---|--|
| <p>61:21 69:24<br/> <b>nutrition</b> [4] 7:21 19:11 72:23 73:7</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>obligation</b> [3] 7:2,8,10<br/> <b>observing</b> [1] 23:22<br/> <b>obviously</b> [6] 24:25 25:4 30:20 31:17 56:19 71:11<br/> <b>occur</b> [1] 36:23<br/> <b>occurs</b> [1] 52:22<br/> <b>octogenarian</b> [1] 72:21<br/> <b>offenders</b> [1] 31:12<br/> <b>offense</b> [15] 3:17 7:12 15:25 20:18,20 21:7 22:1 24:15,21,24,24 25:4 37:21 63:12 68:14<br/> <b>offenses</b> [10] 21:25 24:19 25:4 32:20 34:19 68:12,15,25 69:16 70:3<br/> <b>often</b> [1] 11:9<br/> <b>okay</b> [12] 13:9 32:1 42:25 51:14 53:17,20 54:3 55:3,3 61:8 66:12 67:24<br/> <b>old</b> [4] 11:23 12:2 37:13 45:8<br/> <b>omission</b> [29] 3:18 4:13 6:24 7:2 14:18 17:4 18:10 25:3,4,25 32:6 34:16 36:22 42:15 44:1,6 45:6,13,14 49:13 57:9 58:10 60:6,8 64:6 71:20,25 72:13,20<br/> <b>omissions</b> [14] 11:9 13:5,18,18 14:14 16:6 40:22 56:5,11 57:11,12 65:11 68:25 69:13<br/> <b>omit</b> [1] 11:15<br/> <b>omitting</b> [2] 47:21,22<br/> <b>one</b> [27] 13:1,20 18:23 19:6 23:10 26:10,14 27:2,15 32:19 33:22 35:23 37:25 38:20 44:24 46:9,23 47:10 48:12 56:18 57:9 59:18 61:21 62:14 65:21 67:3 72:23<br/> <b>oneself</b> [1] 39:1<br/> <b>only</b> [9] 12:18 14:17 23:7 24:13 43:14 58:22 59:18 66:25 69:9<br/> <b>open</b> [2] 11:23 25:16<br/> <b>operating</b> [2] 15:6 16:11<br/> <b>operative</b> [1] 70:20<br/> <b>operator</b> [2] 25:15,18<br/> <b>opinions</b> [3] 13:15 26:13 46:23<br/> <b>oral</b> [5] 1:14 2:2,5 3:7 33:15<br/> <b>order</b> [3] 16:20 21:9 38:19<br/> <b>ordered</b> [1] 55:23<br/> <b>ordering</b> [2] 14:5 56:11<br/> <b>ordinarily</b> [1] 63:16<br/> <b>ordinary</b> [9] 16:5,12 29:10 40:9 47:15,17,19 70:9,24<br/> <b>other</b> [22] 12:18 13:21 14:19 24:19 27:15 28:5 34:16</p> | <p>36:7 43:24 45:6 56:7 59:9 61:1,12,16,17 62:6 64:25 65:9 67:13 70:6 71:25<br/> <b>others</b> [2] 23:7 57:17<br/> <b>otherwise</b> [1] 68:22<br/> <b>out</b> [19] 6:21 12:23 23:3,5 28:15 34:17,19 46:17 54:14,16 56:4 57:8 58:11 59:2 61:13 63:3 66:2 68:22 69:10<br/> <b>outcome</b> [2] 58:21 63:20<br/> <b>outcomes</b> [1] 15:20<br/> <b>outer</b> [1] 16:15<br/> <b>outside</b> [1] 35:12<br/> <b>over</b> [4] 29:4,12 45:11 55:23<br/> <b>overcome</b> [1] 10:5<br/> <b>own</b> [4] 40:18 42:20 46:23 62:10</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>p.m</b> [1] 73:14<br/> <b>PAGE</b> [2] 2:2 46:8<br/> <b>pair</b> [1] 48:21<br/> <b>paper</b> [2] 14:7 56:3<br/> <b>parent</b> [1] 39:11<br/> <b>part</b> [5] 29:13 39:25 44:21 49:21 66:14<br/> <b>particular</b> [2] 15:25 25:13<br/> <b>parts</b> [1] 43:24<br/> <b>passerby</b> [1] 37:12<br/> <b>passive</b> [2] 26:17 27:23<br/> <b>passively</b> [2] 26:16,24<br/> <b>past</b> [1] 65:12<br/> <b>patient</b> [1] 39:12<br/> <b>penal</b> [1] 60:8<br/> <b>penalty</b> [1] 15:22<br/> <b>people</b> [3] 21:5 40:9 46:3<br/> <b>per</b> [1] 4:10<br/> <b>perfect</b> [1] 24:9<br/> <b>perhaps</b> [6] 6:20 13:9 45:3 46:4 56:17 72:25<br/> <b>perpetrator</b> [1] 35:11<br/> <b>person</b> [29] 4:22 8:21 10:7 12:2 18:12,13,17,20 19:16,18 27:11,20 34:3,4,9,11 38:3,19 42:14 43:8 45:1 47:1 48:9 53:5 64:23 65:5 66:11,25 71:6<br/> <b>person's</b> [2] 5:19 39:6<br/> <b>personally</b> [1] 29:19<br/> <b>perspective</b> [1] 9:14<br/> <b>Petitioner</b> [9] 1:4,19 2:4,10 3:8 33:21 34:13 36:10 68:4<br/> <b>phrase</b> [5] 16:13 27:12,13 28:4 38:21<br/> <b>physical</b> [90] 3:11 4:1,17 5:4 6:8,11,19 7:23 8:5,19 9:7,10,15 12:8,17,19 14:23 15:11 17:25 18:24 19:3,7,9,13 20:20 21:14 22:1 24:22 25:22 26:2 27:9,9,13 28:6,7,11 32:23 33:25,25</p> | <p>34:1 37:14 38:2,19 42:14,22 43:2,8,15 44:3,20 46:11 47:1,14 48:10,17 51:16 52:18 53:5,9,9,12,15,15 54:1,13,15,20 62:17,20 63:23 64:11 65:4 66:3,4,9,22,24 70:9,16 71:4,5,12,22 72:6,14,24 73:2,5,6,10<br/> <b>physics</b> [1] 29:20<br/> <b>pick</b> [2] 20:11 48:12<br/> <b>picking</b> [2] 20:11,23<br/> <b>piggybacking</b> [1] 42:10<br/> <b>pistol</b> [1] 14:6<br/> <b>place</b> [2] 37:4 43:4<br/> <b>placed</b> [1] 36:17<br/> <b>places</b> [3] 11:18 25:17 64:25<br/> <b>plain</b> [5] 3:24 15:9 43:18 51:25 52:3<br/> <b>playing</b> [1] 47:25<br/> <b>please</b> [2] 3:10 33:18<br/> <b>plowing</b> [3] 47:4,5 51:11<br/> <b>plurality</b> [5] 34:2 38:24 46:24,25 47:20<br/> <b>plurality's</b> [1] 47:5<br/> <b>plus</b> [1] 57:12<br/> <b>point</b> [24] 14:12 16:4,17 20:5 23:21 26:21 29:24 34:7 45:20 47:19 51:2,20 54:13 57:7 60:20 62:11 63:3 64:2 65:24 66:2,12 67:1,2 72:15<br/> <b>pointed</b> [2] 58:11 61:13<br/> <b>points</b> [6] 22:15 35:7 44:22 61:5,20 65:18<br/> <b>poison</b> [19] 4:21 5:3,17 6:9 8:3,4,6,14,22 16:7,8,15,21 17:12,21 34:10 35:22 66:9 71:8<br/> <b>poisoning</b> [2] 6:5 8:20<br/> <b>pool</b> [5] 42:19,20 49:19 50:12,14<br/> <b>ported</b> [2] 29:4,12<br/> <b>posed</b> [1] 72:16<br/> <b>position</b> [7] 6:2 10:2 18:16 33:5 42:13,21 55:21<br/> <b>possess</b> [1] 31:12<br/> <b>possibly</b> [3] 43:1 59:15 64:10<br/> <b>postulating</b> [1] 38:9<br/> <b>potential</b> [3] 62:2,16,19<br/> <b>potentially</b> [1] 5:7<br/> <b>powerful</b> [2] 12:9 13:2<br/> <b>practical</b> [1] 4:4<br/> <b>precedent</b> [1] 57:17<br/> <b>precisely</b> [2] 48:23 70:5<br/> <b>predates</b> [1] 49:2<br/> <b>predicate</b> [1] 23:12<br/> <b>preexisting</b> [3] 11:14 37:19 56:12<br/> <b>premise</b> [2] 65:21,22<br/> <b>presence</b> [1] 3:23<br/> <b>present</b> [3] 19:20 20:21 72:7</p> | <p><b>preserved</b> [1] 59:11<br/> <b>Presumably</b> [2] 14:8 27:21<br/> <b>presume</b> [1] 30:20<br/> <b>pretty</b> [5] 9:25 25:25 30:13 48:14,17<br/> <b>prevents</b> [1] 18:13<br/> <b>principal</b> [1] 65:18<br/> <b>principle</b> [4] 69:12,15,20 72:1<br/> <b>prison</b> [1] 30:23<br/> <b>probably</b> [6] 5:22 9:5 18:12 48:20 50:12 58:8<br/> <b>problem</b> [5] 38:9 40:19 46:16 59:25 72:2<br/> <b>problematical</b> [1] 39:13<br/> <b>process</b> [2] 4:25 50:15<br/> <b>processes</b> [1] 71:2<br/> <b>properties</b> [1] 5:4<br/> <b>property</b> [3] 27:12 38:3 54:16<br/> <b>proud</b> [1] 12:4<br/> <b>prove</b> [1] 14:1<br/> <b>provide</b> [2] 7:21 73:7<br/> <b>provision</b> [5] 24:2 31:14 63:19 72:11,12<br/> <b>proximate</b> [9] 5:16 39:20,20 40:3,3,10 41:6,24 54:22<br/> <b>prying</b> [1] 10:11<br/> <b>published</b> [1] 26:13<br/> <b>pull</b> [1] 16:23<br/> <b>pulling</b> [2] 16:22 71:8<br/> <b>punch</b> [1] 3:14<br/> <b>punished</b> [3] 7:17 25:5 73:9<br/> <b>punishment</b> [1] 4:16<br/> <b>pure</b> [8] 3:18 6:24 7:1 13:18 14:18 17:4 18:9 72:20<br/> <b>purely</b> [1] 35:25<br/> <b>purpose</b> [3] 37:1 43:22 45:23<br/> <b>purposes</b> [4] 11:2,3 44:25 68:8<br/> <b>purse</b> [1] 10:12<br/> <b>push</b> [5] 3:15 5:21 6:6 37:16 48:1<br/> <b>put</b> [7] 5:5,9 16:21 18:15 43:4 46:5 55:19<br/> <b>putting</b> [5] 5:6 8:4 9:4 17:12 66:8</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualify</b> [3] 12:12 23:15 53:1<br/> <b>question</b> [22] 7:17 10:21 13:1 14:11 19:8 20:24 31:7 41:16 47:15 53:3 54:7 56:24 59:3,5 64:9 65:23 66:7,15 68:18 69:9,10 72:8<br/> <b>questions</b> [5] 4:19 18:23 35:7 47:13 48:20<br/> <b>quite</b> [2] 50:17 59:1</p> | <p style="text-align: center;"><b>R</b></p> <p><b>race</b> [2] 59:14,19<br/> <b>raft</b> [1] 36:17<br/> <b>rain</b> [2] 27:5,7<br/> <b>raised</b> [2] 59:11 69:6<br/> <b>rarely</b> [1] 24:1<br/> <b>rather</b> [2] 8:5 71:4<br/> <b>rea</b> [6] 28:5 39:8 55:4,6,7,17<br/> <b>reaction</b> [1] 6:25<br/> <b>read</b> [1] 31:13<br/> <b>reading</b> [2] 31:18 63:21<br/> <b>real-world</b> [1] 27:1<br/> <b>realize</b> [2] 35:8 46:13<br/> <b>realizing</b> [1] 59:16<br/> <b>really</b> [18] 14:11 15:2 16:10 18:2 25:10 28:11 30:15 31:3 23 32:4,8 34:8 39:11 43:5 48:3,21 55:19 61:2 65:13<br/> <b>realm</b> [3] 20:6 64:8 69:5<br/> <b>reason</b> [2] 48:22 58:22<br/> <b>REBUTTAL</b> [3] 2:8 68:2,3<br/> <b>recklessly</b> [1] 23:6<br/> <b>recognizes</b> [4] 34:2 48:21 62:9 67:9<br/> <b>record</b> [1] 25:24<br/> <b>Reform</b> [1] 25:12<br/> <b>reframe</b> [1] 51:2<br/> <b>refrigerator</b> [3] 17:13,18 18:21<br/> <b>refuse</b> [2] 25:16 67:11<br/> <b>regardless</b> [3] 4:12 23:8 31:2<br/> <b>rejected</b> [1] 66:15<br/> <b>rejects</b> [1] 28:24<br/> <b>relates</b> [1] 19:14<br/> <b>relationship</b> [1] 33:2<br/> <b>relevant</b> [2] 26:8 34:23<br/> <b>relied</b> [2] 62:5 71:23<br/> <b>rely</b> [1] 26:7<br/> <b>relying</b> [2] 58:9 61:24<br/> <b>remand</b> [1] 56:25<br/> <b>remarkable</b> [1] 26:10<br/> <b>remarkably</b> [1] 26:5<br/> <b>render</b> [4] 3:19 13:21 31:14,18<br/> <b>reply</b> [1] 69:19<br/> <b>report</b> [4] 25:13,14,15,18<br/> <b>required</b> [1] 43:10<br/> <b>requirement</b> [6] 28:5 36:13,21 41:24 53:10 54:14<br/> <b>requires</b> [7] 3:12 20:19 32:22 58:11 62:16 69:23 70:15<br/> <b>rescue</b> [3] 11:23 42:18 51:4<br/> <b>residents'</b> [1] 25:17<br/> <b>Residual</b> [19] 4:10 24:9,10,14 32:11,18 61:3,9,16,25 62:1,3,5,12,13 63:7 70:2,3,19<br/> <b>resistance</b> [1] 10:5<br/> <b>resisting</b> [2] 40:14,25</p> |
|--|--|---|---|--|

## Official - Subject to Final Review

|  |   |   |   |   |
|--|---|---|---|---|
| <p><b>resolve</b> [1] 56:25<br/> <b>resolves</b> [1] 57:7<br/> <b>resonate</b> [1] 56:13<br/> <b>respect</b> [6] 22:25 28:12 35:5 40:23 44:7 56:17<br/> <b>respectfully</b> [6] 10:1 16:14 18:3 33:4 65:24 69:11<br/> <b>respond</b> [1] 65:17<br/> <b>Respondent</b> [4] 1:7,22 2:7 33:16<br/> <b>response</b> [2] 16:17 65:20<br/> <b>responsible</b> [1] 6:1<br/> <b>rest</b> [1] 44:7<br/> <b>restaurant</b> [1] 7:7<br/> <b>result</b> [6] 9:23,24 12:16 15:9 19:5 34:1<br/> <b>results</b> [2] 15:22 65:24<br/> <b>reus</b> [3] 14:19 28:12 29:2<br/> <b>reverse-engineer</b> [1] 3:22<br/> <b>risk</b> [5] 58:24 59:1 62:16,19 70:8<br/> <b>risks</b> [2] 19:20 62:2<br/> <b>rivers</b> [1] 38:6<br/> <b>robbery</b> [4] 22:12 24:24,25 34:18<br/> <b>ROBERTS</b> [23] 3:3 27:4 31:20 32:3 33:9 49:15,22 50:3,9,21,23 51:10,19 52:1,7,10 59:21,24 60:16 67:4,17,25 73:12<br/> <b>rocket</b> [1] 26:19<br/> <b>rolling</b> [1] 66:18<br/> <b>Rome</b> [1] 67:14<br/> <b>room</b> [2] 9:12,13<br/> <b>root</b> [1] 59:25<br/> <b>rule</b> [3] 11:19 56:18 59:8<br/> <b>run</b> [2] 8:12 12:23<br/> <b>runs</b> [1] 3:24</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>safe</b> [1] 45:11<br/> <b>sail</b> [1] 36:16<br/> <b>SALVATORE</b> [1] 1:3<br/> <b>Samaritan</b> [7] 11:20 12:7 37:6,20 38:13 39:16 40:8<br/> <b>Samaritans</b> [1] 40:9<br/> <b>same</b> [7] 8:16 10:21 14:16 25:3 43:25 50:24 58:24<br/> <b>satellite</b> [1] 26:20<br/> <b>satisfied</b> [4] 4:10 14:13,18 36:22<br/> <b>satisfy</b> [3] 4:11 14:20 53:23<br/> <b>save</b> [2] 7:10 59:18<br/> <b>saying</b> [5] 5:24 13:16 42:11 43:1 47:16<br/> <b>says</b> [9] 25:18 44:4,17 49:6 61:2,12 69:21 70:22 71:25<br/> <b>Scalia's</b> [1] 66:1<br/> <b>scenario</b> [2] 72:20 73:4<br/> <b>scope</b> [3] 22:7 41:7 62:15<br/> <b>score</b> [1] 37:3<br/> <b>second</b> [7] 23:3 37:25 51:7 56:19 61:19 66:12 67:5</p> | <p><b>Section</b> [4] 49:5 60:9 63:3,5<br/> <b>see</b> [13] 22:21 36:18 39:14 41:10 45:5 46:9,21 49:4 51:6,7 64:17,18 66:19<br/> <b>seem</b> [2] 5:16,24<br/> <b>seems</b> [11] 9:20,23 15:9 23:17 24:2 25:23 48:14,17 64:4 65:5,6<br/> <b>sees</b> [4] 11:22 42:23 43:5 47:2<br/> <b>Senate</b> [1] 25:14<br/> <b>sense</b> [18] 15:12 22:20 27:8,9,23 28:23 29:8,9 33:23 37:4,22 55:16,24 60:22 61:2 67:7 70:7 72:2<br/> <b>separate</b> [2] 31:3 68:12<br/> <b>septuagenarian</b> [1] 19:4<br/> <b>serious</b> [5] 7:12 21:24 62:16,19 73:8<br/> <b>served</b> [1] 23:11<br/> <b>set</b> [1] 37:11<br/> <b>setting</b> [1] 20:4<br/> <b>several</b> [2] 61:5,20<br/> <b>severe</b> [2] 4:16 10:18<br/> <b>severely</b> [3] 7:17 25:5 73:9<br/> <b>shake</b> [1] 59:2<br/> <b>she's</b> [2] 43:21,22<br/> <b>shook</b> [1] 13:20<br/> <b>shooter</b> [1] 59:10<br/> <b>shooting</b> [1] 26:19<br/> <b>shore</b> [1] 36:19<br/> <b>shows</b> [2] 11:4 65:10<br/> <b>sickly</b> [1] 45:8<br/> <b>side</b> [9] 9:2 13:6 17:19 55:25 56:7 61:1,12,17 65:9<br/> <b>sight</b> [1] 46:12<br/> <b>significance</b> [1] 70:19<br/> <b>similarly</b> [3] 4:6 5:20 8:10<br/> <b>simply</b> [1] 47:21<br/> <b>since</b> [2] 12:20 25:21<br/> <b>single</b> [4] 14:22 26:12,14,25<br/> <b>sitting</b> [3] 48:8,16 51:22<br/> <b>situation</b> [9] 5:7 6:23 7:20 8:9 30:1 43:25 63:17 65:4 66:10<br/> <b>sleeping</b> [2] 9:12 49:6<br/> <b>slightly</b> [1] 13:1<br/> <b>slips</b> [2] 5:8 19:4<br/> <b>slowly</b> [3] 7:22 9:13 72:22<br/> <b>snow</b> [2] 6:14,22<br/> <b>Solicitor</b> [1] 1:20<br/> <b>somebody</b> [1] 14:5,5 37:12 48:2,16 51:21 52:16 59:13 62:4,20 63:15<br/> <b>someone</b> [1] 29:12<br/> <b>someone</b> [28] 3:16,19 4:21,25 5:7 6:6,14,24 7:7,22 9:12 11:21 18:25 19:9 21:9 24:5 26:15 34:2 37:14 46:13 47:2,3 53:4 67:11 71:10,13,19 73:6<br/> <b>someone's</b> [1] 10:11</p> | <p><b>sometimes</b> [6] 11:5,12 37:4 68:13,15 69:13<br/> <b>somewhat</b> [1] 36:12<br/> <b>sorry</b> [6] 5:15 47:4 54:10,12 62:24 63:1<br/> <b>sort</b> [22] 7:23 8:14 10:8 16:12,15 19:24 22:24 24:17,23 25:7 26:8,16 27:7,13 28:14 47:10 54:18 60:21 64:7 65:12 71:3 73:3<br/> <b>sorts</b> [1] 70:11<br/> <b>SOTOMAYOR</b> [9] 5:15 6:13 7:1,4,6,13 33:10 55:4 67:21<br/> <b>sounds</b> [1] 17:20<br/> <b>source</b> [1] 36:7<br/> <b>sources</b> [2] 49:10 67:9<br/> <b>space</b> [1] 26:20<br/> <b>speaking</b> [1] 28:1<br/> <b>specialized</b> [1] 47:16<br/> <b>specific</b> [7] 20:10 21:22 26:5 51:2 53:3 62:10 69:16<br/> <b>specifically</b> [1] 58:14<br/> <b>speed</b> [2] 6:12 7:24<br/> <b>spend</b> [2] 30:10,23<br/> <b>pending</b> [1] 31:1<br/> <b>spent</b> [1] 27:22<br/> <b>sprinkles</b> [1] 34:10<br/> <b>squarely</b> [1] 66:16<br/> <b>squeeze</b> [1] 10:25<br/> <b>stairs</b> [2] 5:21 6:6<br/> <b>start</b> [4] 37:4 44:18 57:1 69:4<br/> <b>started</b> [3] 48:12 66:23 71:1<br/> <b>Starting</b> [1] 68:6<br/> <b>starts</b> [1] 36:6<br/> <b>starvation</b> [1] 36:5<br/> <b>starve</b> [2] 9:1 36:4<br/> <b>stashed</b> [1] 28:25<br/> <b>state</b> [12] 12:7 22:20 29:7,13,14 31:19 38:10 43:14 45:2 57:23 68:21 72:12<br/> <b>STATES</b> [14] 1:1,6,15 3:5 22:12,21 23:1,14 31:15 38:12 39:16 57:8 69:11,25<br/> <b>statute</b> [45] 12:8 13:4,13,14,16 14:9,13,17,23 15:1 19:14 20:6,15 21:20 22:8,11,19,20 29:24 31:9 37:20 39:16 40:4,7,8 43:24 44:7 45:1 53:23 54:14 56:8 57:8 58:6 59:6,9,12 60:5,15 63:19 64:20,25 65:7,23 68:7,11<br/> <b>statute's</b> [1] 4:6<br/> <b>statutes</b> [15] 4:8 15:19 22:12 23:1 34:25 35:1,3 41:2,15 56:9,17 58:23 63:10 69:9,24<br/> <b>statutory</b> [1] 30:9<br/> <b>stay</b> [3] 23:8 27:5 31:17<br/> <b>steering</b> [1] 47:22<br/> <b>step</b> [11] 3:12 8:1,21 18:4,6,</p> | <p>10,12,15 20:4,4 71:14<br/> <b>stepping</b> [1] 23:18<br/> <b>steps</b> [2] 11:24 71:13<br/> <b>still</b> [13] 6:10 8:21 10:21 11:6 17:1,2,5,7,9 23:14,15 49:2 69:15<br/> <b>Stokeling</b> [8] 9:20 10:2,3 22:5,16 46:9 62:8 72:9<br/> <b>stop</b> [7] 36:23,24,24,24 43:9,10,11<br/> <b>stopped</b> [1] 67:1<br/> <b>stopping</b> [1] 36:25<br/> <b>straight</b> [1] 46:22<br/> <b>strange</b> [1] 55:14<br/> <b>street</b> [2] 11:22 37:12<br/> <b>struck</b> [1] 25:13<br/> <b>struggling</b> [1] 55:20<br/> <b>subdivisions</b> [1] 23:4<br/> <b>subject</b> [2] 37:6 54:22<br/> <b>submission</b> [2] 21:12 51:21<br/> <b>submitted</b> [3] 63:9 73:13,15<br/> <b>subsection</b> [1] 15:21<br/> <b>substance</b> [1] 5:19<br/> <b>substantially</b> [1] 49:2<br/> <b>substantive</b> [1] 45:1<br/> <b>succumb</b> [1] 43:3<br/> <b>sucked</b> [1] 50:16<br/> <b>suddenly</b> [2] 49:23 73:5<br/> <b>suffering</b> [1] 3:19<br/> <b>suggest</b> [2] 15:10 33:4<br/> <b>suggested</b> [1] 28:11<br/> <b>suggesting</b> [3] 61:18 62:8 65:14<br/> <b>suggests</b> [1] 63:25<br/> <b>supermarket</b> [1] 59:10<br/> <b>suppose</b> [2] 32:16 45:7<br/> <b>supposed</b> [4] 19:10 28:8 49:8 67:13<br/> <b>supposedly</b> [1] 18:9<br/> <b>SUPREME</b> [2] 1:1,14<br/> <b>sustain</b> [1] 12:24<br/> <b>swallow</b> [1] 8:16<br/> <b>swim</b> [1] 44:18</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> [1] 37:11<br/> <b>talked</b> [3] 28:3,4 65:8<br/> <b>talks</b> [3] 25:15 70:8 72:5<br/> <b>tea</b> [1] 16:21<br/> <b>teetering</b> [1] 3:16<br/> <b>tells</b> [3] 33:23,25 38:24<br/> <b>term</b> [6] 22:18,22 29:11 41:17 60:25 72:10<br/> <b>terminological</b> [1] 47:11<br/> <b>terms</b> [5] 26:9 46:10 52:21 63:11 72:4<br/> <b>Territory</b> [1] 49:11<br/> <b>test</b> [2] 40:10,11<br/> <b>testing</b> [1] 39:14<br/> <b>text</b> [4] 4:6 15:9 64:20 68:10<br/> <b>themselves</b> [1] 27:16</p> | <p><b>theory</b> [4] 20:10 21:22 26:17 32:7<br/> <b>there's</b> [24] 5:13,17,20,22 6:15 7:15 11:14 18:12,15,18 31:16 34:8 37:18 39:5,9 41:15 49:7 50:15 59:3,4,17 60:20 64:17 72:21<br/> <b>thereby</b> [2] 4:21 25:17<br/> <b>thinking</b> [2] 4:20 47:14<br/> <b>thinks</b> [2] 62:15 72:25<br/> <b>Third</b> [3] 42:3 59:4 67:2<br/> <b>THOMAS</b> [9] 4:20 31:22,23 32:1,4,13,24 35:9 67:19<br/> <b>though</b> [9] 18:1 20:3 25:23 29:14 32:25 35:10 46:6 48:11 54:1<br/> <b>thoughts</b> [1] 13:10<br/> <b>threat</b> [6] 9:5 25:19 44:5,19,21,25<br/> <b>threaten</b> [4] 15:14 25:22 43:25 44:2<br/> <b>threatened</b> [5] 15:11 45:3,5 64:11 65:3<br/> <b>threatening</b> [3] 26:1 45:12,14<br/> <b>threatens</b> [1] 25:15<br/> <b>three</b> [3] 34:24 35:1 65:17<br/> <b>throw</b> [1] 6:21<br/> <b>thrust</b> [1] 15:15<br/> <b>today</b> [1] 45:9<br/> <b>together</b> [2] 48:21 58:20<br/> <b>tortuously</b> [1] 36:4<br/> <b>touch</b> [1] 6:8<br/> <b>touching</b> [1] 63:12<br/> <b>toward</b> [1] 12:2<br/> <b>toxic</b> [1] 17:14<br/> <b>trace</b> [1] 28:14<br/> <b>tracks</b> [1] 33:23<br/> <b>traditionally</b> [2] 56:9,9<br/> <b>translate</b> [1] 51:6<br/> <b>treat</b> [1] 34:15<br/> <b>treated</b> [3] 4:23 67:12 71:25<br/> <b>treatise</b> [3] 49:1,4,5<br/> <b>tricking</b> [1] 17:22<br/> <b>trigger</b> [5] 16:22,23 24:2,2 71:8<br/> <b>triggering</b> [1] 65:1<br/> <b>trouble</b> [1] 49:12<br/> <b>true</b> [4] 8:16 25:3 36:3 37:9<br/> <b>truly</b> [1] 35:5<br/> <b>try</b> [2] 7:10 55:21<br/> <b>trying</b> [1] 19:15 20:14 27:22 30:17 36:14 42:12 60:17 61:15,21 64:21 66:13<br/> <b>tube</b> [2] 19:11,11<br/> <b>Tuesday</b> [1] 1:11<br/> <b>turn</b> [2] 35:1 47:22<br/> <b>turned</b> [1] 66:23<br/> <b>turns</b> [2] 38:1,2<br/> <b>twice</b> [1] 34:6<br/> <b>two</b> [11] 13:20 18:23 23:4,6 34:14 38:25 44:22 48:20,22 56:10 60:23</p> |
|--|---|---|---|---|



|   |  |  |
|---|--|--|
| <p><b>type</b> <sup>[3]</sup> 19:19 20:17 21:25</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>unconstitutional</b> <sup>[1]</sup> 61:11</p> <p><b>under</b> <sup>[14]</sup> 4:23 23:10 24:10 34:20 37:7 43:18 45:2,22 51:24 52:3 59:6 61:16 62:7 70:8</p> <p><b>understand</b> <sup>[8]</sup> 23:18 24:4 26:5 39:9 40:14 42:12 44:6 46:16</p> <p><b>understanding</b> <sup>[2]</sup> 12:12 28:6</p> <p><b>understandings</b> <sup>[2]</sup> 16:5,12</p> <p><b>UNITED</b> <sup>[4]</sup> 1:1,6,15 3:5</p> <p><b>universe</b> <sup>[3]</sup> 12:10 13:3 15:6</p> <p><b>unlawful</b> <sup>[1]</sup> 25:20</p> <p><b>unleashed</b> <sup>[1]</sup> 36:10</p> <p><b>unless</b> <sup>[2]</sup> 29:12 45:10</p> <p><b>unpack</b> <sup>[1]</sup> 37:25</p> <p><b>unpersuasive</b> <sup>[1]</sup> 4:7</p> <p><b>unpleasant</b> <sup>[1]</sup> 53:13</p> <p><b>unprecedented</b> <sup>[1]</sup> 35:2</p> <p><b>until</b> <sup>[1]</sup> 42:3</p> <p><b>up</b> <sup>[11]</sup> 20:12 25:1 26:19 27:16,18,22,25 42:3 48:16 52:15 57:6</p> <p><b>urging</b> <sup>[1]</sup> 34:13</p> <p><b>useful</b> <sup>[1]</sup> 57:19</p> <p><b>uses</b> <sup>[6]</sup> 27:16 34:2 35:24 36:10 42:21 43:2</p> <p><b>Using</b> <sup>[20]</sup> 3:11 6:20 17:5,7,9 22:1 26:18 27:8 43:8,15 46:13,15 48:17 49:18,18 51:15,16,22 53:4 71:1</p> | <p>25 54:20 70:7,15 71:12,22 72:5,14,24 73:1,4,6,10</p> <p><b>virtually</b> <sup>[1]</sup> 22:11</p> <p><b>virus</b> <sup>[1]</sup> 71:11</p> <p><b>Voisine</b> <sup>[3]</sup> 58:25 60:23 63:9</p> <p><b>volition</b> <sup>[1]</sup> 42:20</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>walk</b> <sup>[1]</sup> 66:19</p> <p><b>wanted</b> <sup>[4]</sup> 24:17 54:12 61:23 63:3</p> <p><b>wants</b> <sup>[3]</sup> 43:11 51:17,20</p> <p><b>Washington</b> <sup>[3]</sup> 1:10,18,21</p> <p><b>watching</b> <sup>[2]</sup> 7:7 48:16</p> <p><b>water</b> <sup>[6]</sup> 42:23 44:18 50:7,10 52:2,20</p> <p><b>way</b> <sup>[21]</sup> 8:6,10 15:25 19:21 22:8,9 24:8,19 26:2 28:1 36:9,11,18 57:9,11 61:13 62:18 64:16 69:23 70:15 71:20</p> <p><b>ways</b> <sup>[5]</sup> 39:25 50:6 61:22 64:17 68:14</p> <p><b>weak</b> <sup>[1]</sup> 36:1</p> <p><b>weird</b> <sup>[1]</sup> 48:17</p> <p><b>welcome</b> <sup>[2]</sup> 4:19 13:9</p> <p><b>Wharton</b> <sup>[2]</sup> 49:4,5</p> <p><b>whatever</b> <sup>[6]</sup> 33:6 35:20,21 50:2,4 68:18</p> <p><b>whatsoever</b> <sup>[2]</sup> 14:19 71:16</p> <p><b>wheel</b> <sup>[1]</sup> 47:23</p> <p><b>whereby</b> <sup>[1]</sup> 50:16</p> <p><b>Whereupon</b> <sup>[1]</sup> 73:14</p> <p><b>wherever</b> <sup>[1]</sup> 40:22</p> <p><b>whether</b> <sup>[20]</sup> 4:12 10:6 13:4,10 15:6 20:20,25 24:21 33:20 36:8 56:6,8 57:6 68:7,9,10,22,24 69:9 71:18</p> <p><b>who's</b> <sup>[2]</sup> 6:14 51:21</p> <p><b>whole</b> <sup>[3]</sup> 10:3 29:15 56:3</p> <p><b>wholesale</b> <sup>[1]</sup> 29:8</p> <p><b>wholly</b> <sup>[1]</sup> 17:3</p> <p><b>whom</b> <sup>[2]</sup> 13:20,21</p> <p><b>will</b> <sup>[6]</sup> 3:3 4:11 24:1 42:5 52:20 70:10</p> <p><b>wind</b> <sup>[2]</sup> 36:15,16</p> <p><b>winter</b> <sup>[1]</sup> 6:15</p> <p><b>wishes</b> <sup>[1]</sup> 30:7</p> <p><b>withhold</b> <sup>[1]</sup> 46:5</p> <p><b>withholding</b> <sup>[5]</sup> 4:24 18:11 51:3 67:10 71:19</p> <p><b>withholding-of-medication</b> <sup>[1]</sup> 8:9</p> <p><b>withholds</b> <sup>[1]</sup> 34:11</p> <p><b>within</b> <sup>[6]</sup> 12:11 35:22 50:5 53:18 57:2 66:16</p> <p><b>without</b> <sup>[5]</sup> 8:22 18:5 36:19 71:14,14</p> <p><b>won</b> <sup>[2]</sup> 56:19 57:16</p> <p><b>wonder</b> <sup>[2]</sup> 13:4 56:6</p> <p><b>wondering</b> <sup>[1]</sup> 60:17</p> | <p><b>Wong</b> <sup>[1]</sup> 13:19</p> <p><b>word</b> <sup>[11]</sup> 28:19,23 29:3 35:4 47:11,25 48:24 57:10 67:10 70:21 71:16</p> <p><b>worded</b> <sup>[1]</sup> 62:14</p> <p><b>words</b> <sup>[9]</sup> 28:5 36:9 47:4,5 64:10 65:3,7 70:6 72:13</p> <p><b>work</b> <sup>[3]</sup> 6:1 43:14 44:1</p> <p><b>worker</b> <sup>[1]</sup> 59:16</p> <p><b>works</b> <sup>[1]</sup> 44:7</p> <p><b>world</b> <sup>[2]</sup> 16:11 32:7</p> <p><b>worried</b> <sup>[3]</sup> 46:1 63:10 65:2</p> <p><b>worst</b> <sup>[1]</sup> 17:16</p> <p><b>written</b> <sup>[3]</sup> 64:10 69:23 70:14</p> <p><b>wrote</b> <sup>[1]</sup> 21:23</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yards</b> <sup>[1]</sup> 56:3</p> <p><b>years</b> <sup>[3]</sup> 30:10,25 60:11</p> <p><b>York</b> <sup>[3]</sup> 14:16 57:11 58:9</p> <p><b>York's</b> <sup>[2]</sup> 13:16 23:3</p> <p><b>yourself</b> <sup>[2]</sup> 18:16,23</p> |
| <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>value</b> <sup>[1]</sup> 35:16</p> <p><b>vast</b> <sup>[2]</sup> 24:7 70:6</p> <p><b>versus</b> <sup>[2]</sup> 3:4 60:6</p> <p><b>victim</b> <sup>[9]</sup> 3:13 5:5 7:19 17:2 34:11 43:3,11 51:18 64:23</p> <p><b>victim's</b> <sup>[2]</sup> 27:19 51:17</p> <p><b>view</b> <sup>[10]</sup> 12:11,15 15:12 29:18 37:5,15,21 44:20 52:22 64:5</p> <p><b>vigorous</b> <sup>[1]</sup> 10:9</p> <p><b>violate</b> <sup>[1]</sup> 45:2</p> <p><b>violence</b> <sup>[22]</sup> 11:2 15:2 19:21 20:9 21:1,12 22:13 24:1,6,8 25:21 30:1 31:9 33:21 34:22 45:20 46:6,10 48:14 59:13 61:24 63:6</p> <p><b>violent</b> <sup>[53]</sup> 4:1,17 5:20,23 6:8,11,19 7:18,23 8:5,19 9:15 11:3 12:13,17,19 14:23 16:6,23,24 17:25 18:24 19:2,7,9,13 20:20 21:14 22:1,9 24:22 32:23 34:18,20 45:15,24,24 52:18 53:13,15,</p>  |  |  |