

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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GARY WAETZIG, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) No. 23-971  
 )  
HALLIBURTON ENERGY SERVICES, INC., )  
 )  
 ) Respondent. )  
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Date: January 14, 2025

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 Respondent. )

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Washington, D.C.

Tuesday, January 14, 2025

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:23 a.m.

APPEARANCES:

VINCENT LEVY, ESQUIRE, New York, New York; on behalf of the Petitioner.

MATTHEW D. MCGILL, ESQUIRE, Washington, D.C.; on behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	VINCENT LEVY, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	MATTHEW D. MCGILL, ESQ.	
7	On behalf of the Respondent	26
8	REBUTTAL ARGUMENT OF:	
9	VINCENT LEVY, ESQ.	
10	On behalf of the Petitioner	48
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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P R O C E E D I N G S

(11:23 a.m.)

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

Mr. Levy.

ORAL ARGUMENT OF VINCENT LEVY  
ON BEHALF OF THE PETITIONER

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

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

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

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

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

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

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

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

5 I welcome the Court's questions.

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

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

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

25 JUSTICE THOMAS: So do you agree that

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

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

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

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

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

25 JUSTICE JACKSON: But isn't it a separate

1 motion?

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

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

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

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

15 MR. LEVY: That's right.

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

21 MR. LEVY: Well, I think that goes to  
22 the -- I agree the motion was filed and the  
23 reopening was done to vacate the award. Those  
24 are -- those go to the -- to two different -- they  
25 don't go -- those issues do not go to the question



1 presented.

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

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

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

19           MR. LEVY: It has not been confirmed.

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

23           MR. LEVY: The -- what happened is there  
24 was an arbitration award. Then there was a motion  
25 filed by my client to reopen the case and vacate

1 the award. And then that award was vacated. And  
2 then the matter was appealed.

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

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

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

23 MR. LEVY: So, sequentially, my -- my  
24 client filed an ADEA case. My -- Halliburton  
25 argued that the case should be arbitrated, asked

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

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

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

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

25 MR. LEVY: Well, no, because of the

1 limitation periods.

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

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

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

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

21 MR. LEVY: That's right.

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

25 MR. LEVY: It's -- well, a new case could

1 not have been filed on the merits because of the  
2 limitation period. And a new application under the  
3 FAA also could not have been filed because that has  
4 also a limitation period of 90 days.

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

11 JUSTICE SOTOMAYOR: Counsel, I -- I see  
12 two jurisdictional issues here.

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

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

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

25 MR. LEVY: That's right.

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

5                   MR. LEVY: Right.

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

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

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

17                   MR. LEVY: So --

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

22                   MR. LEVY: Well, it's related in the  
23 sense that it -- as the Court looked at the  
24 question in Badgerow, the question of -- of a -- a  
25 motion to -- to vacate an award, and there, of

1 course, the merits were not before the Court, it  
2 was a standalone motion to vacate. And that was  
3 the premise of the question.

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

13 Kokkonen itself, upon which Badgerow was  
14 based, made very clear --

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

22 MR. LEVY: We do have diversity. The  
23 amount in controversy was not pleaded, and -- and  
24 the court -- whether the court would forgive that  
25 is a matter below.

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

10 MR. LEVY: That's exactly right. It --  
11 none of these issues are -- are obstacles to  
12 resolving the question presented. I'm -- I'm  
13 taking them as -- as -- as given, of course.

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

18 MR. LEVY: I will say that the courts of  
19 appeals after Badgerow have split on the question  
20 as to whether, if the -- if a case remains open,  
21 there is a basis to vacate an award. With the  
22 Seventh Circuit and the Third Circuit saying you do  
23 not need an independent basis and the Fourth  
24 Circuit coming out the other way, that may be the  
25 next case.



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

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

15 The California Supreme Court interpreted  
16 the same words to include voluntary dismissals,  
17 rejected the argument that voluntary dismissals  
18 could not -- could not be reopened because it was  
19 voluntary.

20 The -- the point is --

21 JUSTICE GORSUCH: Mr. Levy, on -- on  
22 that, your reading hinges on "proceeding," places a  
23 lot of weight there. I wonder, though, what  
24 wouldn't be a proceeding on your theory? I know  
25 what an order is, I know what a judgment is.

1 MR. LEVY: Right.

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

6 MR. LEVY: Well, I think the -- the way  
7 the statute was written was to go from narrower to  
8 broader because every judgment --

9 JUSTICE GORSUCH: Without doubt, yeah.

10 MR. LEVY: -- every judgment is also an  
11 order, and the way the courts interpreted  
12 "proceeding" would -- would include orders and --  
13 and judgments --

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

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

20 JUSTICE GORSUCH: So, yes, it does  
21 swallow it, but we should overlook that?

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

24 JUSTICE GORSUCH: It's a virtue, not a  
25 vice. Okay. All right. All right. Got it. I

1 got it, I think.

2 And then Microsoft, how do you deal with  
3 that, where this Court said that a dismissal with  
4 prejudice wasn't a final decision for purposes of  
5 1291?

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

9 JUSTICE GORSUCH: 60(b).

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

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

23 Number two --

24 JUSTICE GORSUCH: Number one's good  
25 enough for me.

1 MR. LEVY: Okay.

2 JUSTICE GORSUCH: Judge Matheson's  
3 dissent and his boomerang theory of finality --

4 MR. LEVY: Yeah.

5 JUSTICE GORSUCH: -- which you seem to  
6 embrace, so I -- I -- I don't mean it pejoratively,  
7 but that things can become final, you didn't make  
8 that argument here.

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

13 MR. LEVY: So ours wins under both  
14 standards. And we took -- we -- we -- we endorsed,  
15 I think, something closer to Yesh from the Fifth  
16 Circuit --

17 JUSTICE GORSUCH: Yeah.

18 MR. LEVY: -- which looks at finality  
19 when made. But we would win under Judge  
20 Matheson --

21 JUSTICE GORSUCH: You would take it if  
22 you had to. Got it. Okay.

23 MR. LEVY: And -- and, as I mentioned, if  
24 finality turns on the limitation period, in this  
25 case, when the dismissal was initially made, the --

1 the limitation period's already applied. So even  
2 that standard would be met.

3 JUSTICE GORSUCH: Thank you, Mr. Levy.

4 JUSTICE JACKSON: Can you walk us through  
5 the enactment history and, in particular, the --  
6 the significance of the addition of "final"?

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

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

18 JUSTICE JACKSON: In an open, pending  
19 case?

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

24 And Professor Moore, in -- in the article  
25 that is referenced in the advisory committee notes,

1 says that's wrong because, as this Court had said  
2 in 1922 in the John Simmons Company case, courts  
3 retain plenary inherent authority to revisit  
4 interlocutory matters and that's how it should be.

5 And so, for that reason, Professor Moore  
6 recommended, and that was ultimately taken up, that  
7 the word "final" be added to Rule 60(b) not to  
8 limit Rule 60(b) but, rather, to make sure that  
9 inherent -- that interlocutory matters would always  
10 be subject to reopening, unconstrained by Rule  
11 60(b).

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

14 MR. LEVY: Well, I think the Respondent  
15 have said "final" means res judicata effect, or  
16 Respondent -- or that "final" means appealability.

17 JUSTICE JACKSON: That it must affect the  
18 parties -- it's the sort of certain kinds of  
19 proceedings is what --

20 MR. LEVY: That's right.

21 JUSTICE JACKSON: -- Respondent looks --  
22 uses "final" to do, and that, therefore, limits the  
23 district court's ability to address after the fact  
24 those kinds of cases?

25 MR. LEVY: That's right. I think -- I

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

11 JUSTICE JACKSON: And you read "orders,  
12 judgments, and proceedings" not as some sort of,  
13 you know, strict list but, really, Congress trying  
14 to say pretty much everything? Waterfront?

15 MR. LEVY: That's right. And I -- that's  
16 how the California Supreme Court interpreted it  
17 under the Court's decision in Hall versus Hall.  
18 The -- the -- the -- the court takes notice when  
19 the advisory committee notes takes a provision from  
20 a statute or other source, puts it into the federal  
21 rules, and holds that that is intentional and  
22 carries the soil with it. At least as a  
23 presumptive matter, the decisions of the California  
24 Supreme Court interpreting "proceeding" to cover  
25 everything and specifically applying their version

1 of the -- of the code, which had the same operative  
2 language, to cover voluntary dismissals is strong  
3 evidence that that was intended by the rule-makers.

4 And, of course, we -- we also rely on the  
5 word "judgment" and not just "proceeding" because,  
6 as I said, at the time, judgments were defined to  
7 include voluntary dismissals, and -- and -- and  
8 that was the settled meaning in 1937, and that's  
9 the way California's Supreme Court talked about it  
10 too.

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

16 MR. LEVY: That's right.

17 JUSTICE SOTOMAYOR: Or a judgment and  
18 order would -- because they require there to be  
19 some sort of judicial intervention as I understand,  
20 that would -- that would mean that every proceeding  
21 would -- encompasses judgment and orders as well  
22 and vice versa.

23 MR. LEVY: I think that both  
24 interpretations -- all the interpretations we've  
25 seen have some surplusage, and in that



1 circumstance, the Court has said the canon against  
2 surplusage doesn't apply. What I will say is we do  
3 give independent meaning to "judgment, order, and  
4 proceeding" because they don't all mean the same  
5 thing in our view of the world. But --

6 JUSTICE SOTOMAYOR: Well, and you have  
7 some support for that because one of the provisions  
8 of this Act talks about the date of the -- the date  
9 of the proceeding as opposed to the entry of the  
10 judgment or order, correct?

11 MR. LEVY: That's right. That's Rule  
12 60(c)(1).

13 JUSTICE SOTOMAYOR: All right. With -- I  
14 guess, with respect to this question of finality,  
15 the other side relies very much on the definition  
16 of 1291, and 1291 doesn't seem quite as apt an  
17 analogy to me as one would think because that has  
18 to do more with what is the jurisdiction between a  
19 district court and an appellate court.

20 And that's very different here because  
21 this is about the jurisdiction of a district court,  
22 correct?

23 MR. LEVY: That's exactly right.

24 JUSTICE SOTOMAYOR: And so I guess  
25 what -- when you're pointing to the California

1 cases and to the -- to the California cases and to  
2 the advisory notes, you're saying you should look  
3 at finality in the way that Congress was using it,  
4 which is case-ending finality rather than legal  
5 determination finality, correct?

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

10 JUSTICE SOTOMAYOR: It can't be the  
11 ending of the controversy because, otherwise, there  
12 wouldn't be jurisdiction, which they admit there  
13 is. If a court signs a judgment dismissing without  
14 prejudice, which it does regularly, that doesn't  
15 end the legal responsibility between the parties,  
16 correct?

17 MR. LEVY: That's right. And there --  
18 there are many orders that are deemed final for  
19 appellate purposes or -- or otherwise that can be  
20 refiled that are nonetheless deemed final because  
21 they terminate the case. And the Court has said  
22 that in its decisions interpreting the appellate  
23 statutes, which --

24 JUSTICE SOTOMAYOR: Thank you, counsel.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice Thomas?

3 JUSTICE THOMAS: No.

4 CHIEF JUSTICE ROBERTS: Justice  
5 Sotomayor, anything further?

6 Justice Kagan?

7 Justice Kavanaugh, anything?

8 Justice Barrett?

9 Justice Jackson?

10 Okay. Thank you, counsel.

11 Mr. McGill.

12 ORAL ARGUMENT OF MATTHEW D. MCGILL

13 ON BEHALF OF THE RESPONDENT

14 MR. MCGILL: Thank you, Mr. Chief

15 Justice, and may it please the Court:

16 I want to start with the question of  
17 jurisdiction. We know from *Badgerow* that a Section  
18 10 motion to vacate under the Federal Arbitration  
19 Act requires its own basis for federal  
20 jurisdiction. We know from *Kokkonen* and Rule 82  
21 that Rule 60 cannot extend the jurisdiction of the  
22 district court to new forms of relief, such as a  
23 motion to vacate an arbitral award.

24 Petitioner needs a basis for his Section  
25 10 request, but Rule 60 can't supply it, and that

1 was the only basis for jurisdiction ever presented  
2 below. That's the argument that there's no  
3 jurisdiction here.

4 On the merits, I want to point to three  
5 major problems with Petitioner's construction of  
6 Rule 60.

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

17 The second point is, because a rule --  
18 the denial or grant for that matter of a Rule 60  
19 motion is itself an appealable final order, this  
20 would -- his definition of "finality," my friend's  
21 definition of "finality," would allow a litigant to  
22 bootstrap himself into an appeal from an otherwise  
23 unappealable order.

24 His definition of "proceeding" means that  
25 prior to 1946, every docket entry could have been

1 subject to a Rule 60 motion, even a complaint or a  
2 notice of appeal. Our -- our reading of the  
3 statute reads "judgment, order, and proceeding" in  
4 harmony. It does not -- one does not subsume the  
5 other.

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

14 I welcome the Court's questions.

15 JUSTICE THOMAS: So do you think that  
16 finality is consistent across all of the Federal  
17 Rules of Civil Procedure?

18 MR. MCGILL: I believe that with respect  
19 to Rule 60 at least, it has to have the same  
20 definition as "final orders" under Rule 1291.  
21 Otherwise, for -- for instance, the Petitioner's  
22 definition could take no account of collateral  
23 orders. A collateral -- the time to -- to appeal a  
24 collateral order runs from the date of the order.  
25 However, under his view, because a collateral order

1 doesn't terminate a case, it's not subject to Rule  
2 60 relief and it couldn't be -- couldn't benefit  
3 from the tolling that FRAP 4 provides for motions  
4 filed under Rule 60.

5           So the -- the rule -- and also, this  
6 Court's decision in Stone versus INS, which we cite  
7 in our red brief, elaborates on how Rule 60 and the  
8 Rules of Appellate Procedure work together to  
9 define the -- the time to file a notice of appeal.  
10 His -- his definition of "finality" is going to  
11 create confusion where it is least desirable --

12           JUSTICE JACKSON: But what do we do about  
13 the fact --

14           MR. MCGILL: -- and where clarity is most  
15 needed.

16           JUSTICE JACKSON: -- what do we do about  
17 the fact that there is evidence in this sort of  
18 record of proceedings that indicates that the  
19 committee here was inserting "final" for a  
20 particular reason?

21           I mean, are you asking that we just  
22 ignore the committee notes in the -- the enactment  
23 history, which suggests that whatever "finality"  
24 means in 1291, here, it was doing particular work?

25           MR. MCGILL: Not -- not at all, Your

1 Honor. So the finality requirement comes in in  
2 1946. In 1946, "final," when used to describe a  
3 judgment or order, had a very particular meaning  
4 that comes from -- came from this Court's appellate  
5 jurisdiction cases --

6 JUSTICE JACKSON: No, but -- but --

7 MR. MCGILL: -- going back to the  
8 founding.

9 JUSTICE JACKSON: -- but do you -- do you  
10 dispute his recitation of the facts with respect to  
11 why the committee put "final" in this particular  
12 rule?

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

15 (Laughter.)

16 MR. MCGILL: The -- the -- so the -- what  
17 the advisory committee note explains is that the  
18 final -- the finality requirement was doing two  
19 things. One is it wanted to make clear that for  
20 final judgments, orders, and proceedings, there was  
21 one way for them to be revisited, and that was  
22 through the Federal Rules of Appellate Procedure.  
23 Gone were the writs of coram nobis, coram vobis,  
24 audita querela, and other things shrouded in lore  
25 and mystery.

1           The second point, which was related to  
2           the first, is that the -- the stricter standards  
3           under Rule 60 applied only to final orders, not to  
4           interlocutory orders that remained subject to the  
5           court's inherent authority.

6           Now that doesn't help Petitioner. He's  
7           never looked to the court's inherent authority  
8           because, under Badgerow, the court's inherent  
9           authority over an ADEA case would not give him  
10          subject matter jurisdiction to vacate --

11          JUSTICE JACKSON: Well, it's --

12          MR MCGILL: -- an arbitration award.

13          JUSTICE JACKSON: -- interesting to me  
14          that you raised Badgerow because I'm trying to  
15          understand where that is in the question presented  
16          in this case even as you have framed it in the red  
17          brief.

18          I was surprised, given our colloquy  
19          earlier, about the fact that there are two  
20          different jurisdictional arguments here and that  
21          this case appeared to be all about the scope of  
22          final judgment, order, or proceeding in Rule 60.  
23          That's what you say in your question presented.

24          So what is this Badgerow argument? Like,  
25          why are we looking at that or caring about that in



1 this context?

2 MR. MCGILL: This Court should care about  
3 it because it goes to the lower court's  
4 jurisdiction under this Court's decision in Bender  
5 versus Williamsport --

6 JUSTICE JACKSON: I understand, but we  
7 didn't take the case to decide that basis for  
8 jurisdiction, right?

9 MR. MCGILL: The -- the same, of course,  
10 was true in Bender versus Williamsport Area School  
11 District. This Court has an independent  
12 obligation, even if I were prepared to concede  
13 jurisdiction, it has its own obligation to assure  
14 itself of its jurisdiction and those of the courts  
15 below.

16 JUSTICE JACKSON: Why didn't you put that  
17 in the question presented that you presented in --  
18 in your red brief? I mean, you led us to believe  
19 by looking at your question presented that this  
20 case was all about Rule 60.

21 MR. MCGILL: So two points, Your Honor.  
22 First is I don't view it as the  
23 Respondent's job to rewrite the Petitioner's  
24 question presented, but I think the -- the gravamen  
25 of your point is why didn't I raise this in our

1 brief in opposition. And the answer to that is  
2 that, candidly, I did not understand or fully  
3 contemplate the jurisdictional significance of the  
4 Petitioner's motion to vacate until we started  
5 briefing on the merits.

6 And let's talk about that --

7 JUSTICE KAGAN: But that's -- but that's  
8 down the road, isn't it, Mr. McGill? I mean, you  
9 might have a very good argument on -- on -- on  
10 Badgerow. You might have a very good argument that  
11 there is no jurisdiction to vacate the arbitration  
12 award. But -- but that's not what's in front of  
13 us. What's in front of us is the 60(b) motion, and  
14 that's an antecedent question. You know, one  
15 question is can you bring a 60(b) motion.

16 MR. MCGILL: It --

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

22 MR. MCGILL: So I -- I've got two -- two  
23 points I want to make in response to that. The  
24 first goes to --

25 JUSTICE KAGAN: I mean, I like Badgerow

1 as well as the next person, you know?

2 (Laughter.)

3 MR. MCGILL: I -- I -- I think it's  
4 fabulous.

5 JUSTICE KAGAN: But it's just like not  
6 the time to be talking about Badgerow. Badgerow,  
7 you might have a lot to say about Badgerow, you  
8 know, in a few months' time.

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

13 First is, what did the motion do? It  
14 starts at page 24 of the court of appeals joint  
15 appendix. It's a motion to reopen and to vacate  
16 the arbitral award. The only relief it requests is  
17 to vacate the arbitral award, and it does not ever  
18 request to reopen actually the existing federal  
19 claim.

20 And the reason we know that is the only  
21 other aspect of relief it requests is to appoint a  
22 new arbitrator to adjudicate that claim for relief.  
23 So the only thing the motion does is to seek to  
24 vacate the arbitral award. It's seeking to use  
25 Rule 60(b) as the jurisdictional hook to do that,

1 something that the case itself could not do. So  
2 that's -- that's the first point: What does the  
3 motion do?

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

9 So you have -- the only request that's  
10 ever been made is to vacate the arbitral award.  
11 That's the relief that requires subject matter  
12 jurisdiction. The relief that's being requested  
13 requires its own form of subject -- its own basis  
14 for subject matter jurisdiction. The only basis  
15 presented is Rule 60. That is not sufficient under  
16 Kokkonen.

17 Second, the sequencing point. The court  
18 of appeals refers to this as a jurisdictional  
19 issue, but I don't think that's correct. We know  
20 that because Rule 80 -- under Rule 82, the  
21 availability of Rule 60 relief could not expand or  
22 contract the district court's statutory  
23 jurisdiction.

24 When the court of appeals was referring  
25 to subject matter jurisdiction, what it really was

1 referring to was the long history that -- that a  
2 court could not -- lacked power to set aside or  
3 otherwise interfere with a plaintiff's voluntary  
4 dismissal. It used a sloppy label in calling it  
5 subject matter jurisdiction. But the availability  
6 of Section 60 relief really is like the question in  
7 Steel Company whether a plaintiff's particular  
8 claim is available under the statute.

9           So we don't think Sinochem's sequencing  
10 actually is available here. It's more like Steel  
11 Company, where the jurisdictional question has to  
12 come first. And there's simply no answer to the  
13 fact that --

14           JUSTICE JACKSON: But I don't --

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

16           JUSTICE JACKSON: -- understand -- I  
17 don't understand that at all. I mean, after -- I  
18 appreciate that the request seemed to merge the  
19 two. But, once the district court broke them apart  
20 and issued two separate orders and the rest of the  
21 way there was a challenge as to whether or not the  
22 district court properly granted a motion to reopen,  
23 and that was the thing that this Court took cert  
24 on, I don't understand why it necessitates us to  
25 care about whether the district court was right

1 with respect to its other order.

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

5 JUSTICE JACKSON: I understand -- I  
6 understand what it sought. What I'm suggesting is  
7 that that claim could never have been responded to  
8 by the district court until it had the ability to  
9 do something. And so, as a threshold matter, the  
10 district court said this is a closed case.

11 MR. MCGILL: It --

12 JUSTICE JACKSON: I would have to reopen  
13 it to give you the relief that you seek. I'm  
14 issuing Order Number 1 reopening the case, and then  
15 here's Order Number 2 regarding the relief that you  
16 seek.

17 And from then on, we all were focused on  
18 whether or not the district court made a mistake in  
19 determining that this case could even be reopened.  
20 And, to the extent that that's the issue, that  
21 that's what was presented here, that that's what  
22 the courts have split on, I don't understand why we  
23 can't just isolate that as requested and answer it.

24 MR. MCGILL: I'm not afraid of the  
25 question presented, but I -- to -- the -- the

1 jurisdictional point is -- is important here. If  
2 the motion had requested some form of relief  
3 related to the case itself, if it had been I want  
4 to relitigate my case and vacate the arbitral  
5 award, then at least there would be a request for  
6 relief that -- over which the district court  
7 originally had subject matter jurisdiction.

8 JUSTICE GORSUCH: But, Mr. McGill, on the  
9 first one, as I understand the common law history,  
10 courts had -- were considered to have jurisdiction  
11 over orders, even final ones, judgments, until the  
12 expiration of the term of the court, right?

13 MR. MCGILL: Except with respect to  
14 voluntary non-suits, Your Honor.

15 JUSTICE GORSUCH: Correct. There's a  
16 little bit of -- all right. But that was the  
17 general rule.

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

23 What's wrong with that understanding of  
24 60(b) and the jurisdictional point there?

25 MR. MCGILL: 60(b), there's -- I would

1 think that Rule 60(b) can't expand itself the  
2 district court's --

3 JUSTICE GORSUCH: No, of course not.

4 MR. MCGILL: -- subject matter  
5 jurisdiction.

6 JUSTICE GORSUCH: But -- but -- but the  
7 point was that courts have always had this -- this  
8 kind of power to fix injustices in their judgments,  
9 in their orders, at least during the term of court,  
10 got rid of that. But the -- the point should  
11 remain with that change that they generally do.

12 MR. MCGILL: I think a district court  
13 certainly has jurisdiction. If you look at the  
14 Beggerly case, the district court has subject  
15 matter jurisdiction to entertain an independent  
16 action attack -- attacking the judgment for --

17 JUSTICE GORSUCH: And to --

18 MR. MCGILL: -- for massive fraud, for  
19 instance.

20 JUSTICE GORSUCH: And to reopen for  
21 massive fraud or things like that.

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

23 JUSTICE GORSUCH: Okay. All right.

24 Okay. I think that -- I got that.

25 And then, on -- on -- on "final" and what



1 does "final" mean and what it meant in 1946 more  
2 importantly, I take -- took it to mean that it's  
3 not interlocutory. I mean, that's how Black's  
4 defined it. That's how Moore and Rogers, that's  
5 how the Rules Committee -- do you disagree with  
6 that understanding?

7 MR. MCGILL: It -- there has to be a  
8 conclusive resolution of the issues in the  
9 litigation.

10 JUSTICE GORSUCH: Okay. I'll take that.  
11 Why isn't there at least a conclusive resolution  
12 that the Petitioner's first non-suit is gone? They  
13 don't get another free bite at the apple, right?  
14 Voluntary dismissal, the beauty of it is you get  
15 another chance anytime you want, but you only get  
16 one. After that, you have to have leave of court.  
17 And, here, didn't the district court at -- at least  
18 resolve that by saying you've had your non-suit,  
19 you've had your voluntary dismissal.

20 Why didn't it finally, conclusively  
21 resolve that aspect of -- of the plaintiff's  
22 rights?

23 MR. MCGILL: The -- so the -- the  
24 dismissal is the retraction of a complaint. It  
25 doesn't resolve any issue --

1 JUSTICE GORSUCH: But it --

2 MR. MCGILL: -- in the litigation.

3 JUSTICE GORSUCH: But you'd agree,  
4 though, that the withdrawal of the non-suit, as it  
5 used to be called, that -- that does have a  
6 consequence in the world?

7 MR. MCGILL: The -- the dismissal has a  
8 legal effect. And --

9 JUSTICE GORSUCH: Plaintiff doesn't get  
10 another free bite at the apple. He's exhausted his  
11 one free bite.

12 MR. MCGILL: I -- I guess I would -- I  
13 would phrase it a little bit differently, Justice  
14 Gorsuch. I would say, if he chooses to file a -- a  
15 second suit and dismisses that second suit, then  
16 that disposition under Rule 41 would be with  
17 prejudice. But that --

18 JUSTICE GORSUCH: Okay. So that --

19 MR. MCGILL: -- is an external  
20 circumstance.

21 JUSTICE GORSUCH: -- so that would --  
22 would that amount to a final something for your  
23 purposes?

24 MR. MCGILL: A dismissal with prejudice  
25 under Rule 41?

1 JUSTICE GORSUCH: Well, the second time.  
2 Say he withdraws again. The second time?

3 MR. MCGILL: Yes.

4 JUSTICE GORSUCH: Has he -- so that would  
5 be. So, if he voluntary withdrew again and,  
6 therefore, out of luck?

7 MR. MCGILL: And may I -- may -- may I  
8 just elaborate why?

9 JUSTICE GORSUCH: Yeah.

10 MR. MCGILL: Because it -- it's a  
11 conclusive resolution. It's an adjudication -- it  
12 operates under the rules as an adjudication on the  
13 merits. It resolves everything.

14 JUSTICE GORSUCH: Correct.

15 MR. MCGILL: It's --

16 JUSTICE GORSUCH: I -- I got that.

17 MR. MCGILL: We -- we would say it's a  
18 proceeding.

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

22 MR. MCGILL: Because it has to be a final  
23 proceeding, and there's no finality because there's  
24 no conclusive resolution of anything. He can  
25 refile in any court at any time.

1 JUSTICE GORSUCH: Okay.

2 MR. MCGILL: And that's -- that --  
3 that -- but I would turn also back to the -- I --  
4 the point that the finality here has to have the  
5 same definition and same scope as the -- as that  
6 that applies to final decisions under 1291.  
7 Otherwise, the notice of appeal tolling  
8 requirements make no sense, and, otherwise,  
9 litigants will be able to bootstrap themselves into  
10 appeals of otherwise unappealable orders.

11 I would like to just address the  
12 California law point that -- because it has been  
13 suggested that the 1937 enactment of Rule 60  
14 somehow incorporates the corpus of California  
15 decisional law. There's no indication of that in  
16 the advisory committee notes itself. And, of  
17 course, California law does not and has never  
18 controlled the federal court's ability to review  
19 its own judgments. That has always been a matter  
20 of federal law. It goes back to Justice -- Chief  
21 Justice Marshall riding circuit in North Carolina  
22 in 1803 in Marsh versus Murray. We cite that case  
23 in our brief.

24 And the Petitioner has no response to it  
25 whatsoever. He cites two California Supreme Court

1 cases. They're both worth noting. The Palace  
2 Hardware case is a dismissal with prejudice, so it  
3 would be final even under the 1946 definition. And  
4 the -- the Stonesifer case he cites says -- says a  
5 proceeding covers -- you know, covers any step in  
6 the action seeking court action. A dismissal  
7 without prejudice, a non-suit, is the opposite of  
8 that. It is a retraction of your complaint. It is  
9 saying I don't need relief from the court anymore.

10 JUSTICE JACKSON: What if that's done  
11 mistakenly? I mean, suppose we have a situation in  
12 which a person files a suit and then they file a  
13 Rule 41 unilateral dismissal, say, a week later,  
14 and on a Monday. And on Tuesday, counsel rushes  
15 back to the court and says: Oh, my goodness, I  
16 made a mistake in filing this notice of voluntary  
17 dismissal, I did it in the wrong case.

18 Is it your position that the court really  
19 has nothing -- they couldn't reopen the case under  
20 those circumstances?

21 MR. MCGILL: It would -- any relief would  
22 not come under Rule 60(b). Of course, the primary  
23 relief --

24 JUSTICE JACKSON: Why not? Because it  
25 wasn't a proceeding?

1                   MR. MCGILL:   Because it's not a final  
2   proceeding.

3                   JUSTICE JACKSON:   Okay.

4                   MR. MCGILL:   And there's no burden that  
5   is being imposed on the litigant because that --  
6   for the court to relieve because, under your  
7   hypothetical --

8                   JUSTICE JACKSON:   Mm-hmm.

9                   MR. MCGILL:   -- the plaintiff can simply  
10  refile his action.

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

17                  MR. MCGILL:   That's always been true  
18  going back to 1803.  The real question here is  
19  whether Rule 60 did anything to upend that settled  
20  practice.  There's no indication of that  
21  whatsoever.  It certainly wouldn't come out of  
22  California law.

23                  All the -- all the Petitioner has to  
24  point to in that is the Salazar case, which is a  
25  single decision of a single intermediate appellate

1 court in California. That is not old soil that  
2 gets transplanted into the federal garden. The --  
3 the language of the rule does mirror the 19 -- does  
4 mirror the California statute. It also mirrors the  
5 New York statute and the Minnesota statute that --  
6 that -- that are also cited in the advisory  
7 committee notes.

8 So there's no indication here that the --  
9 that the -- that the rules committee, this Court,  
10 or Congress ever intended to be bound by California  
11 decisional law going out into the future.

12 The last point I want to make is just  
13 with respect to -- actually, two points I want to  
14 make. One is the argument that this dismissal  
15 without prejudice would constitute a judgment.

16 "Judgments" is defined -- a "judgment" is  
17 defined by the Federal Rules of Civil Procedure in  
18 Rule 54. It is a definition that applies in these  
19 rules. The Petitioner has no answer to that. The  
20 dismissal without prejudice clearly is not a Rule  
21 54 judgment.

22 Finally, the question, Justice Sotomayor,  
23 you asked what is -- what would be a final  
24 proceeding here? The -- the key point is, first,  
25 the -- the -- the proceeding is meant to cover the

1 small sliver of conclusive actions, conclusive  
2 dispositions, that are not themselves judgments or  
3 orders. So what might that be? A writ of habeas  
4 corpus, proceedings supplementary under Rule 69  
5 with respect to the execution of a judgment,  
6 condemnation proceedings under Rule 71.1. These  
7 are --

8 JUSTICE SOTOMAYOR: They all end up in a  
9 judgment or an order.

10 MR. MCGILL: That may be true today, but  
11 it wasn't necessarily true in 1937, and it wasn't  
12 necessarily true going out into the future. The --  
13 the rules could change in a way. And, in fact, you  
14 have Rule 53 masters when they're consented to be  
15 final, a ruling could be -- could be consented to  
16 as final. There's no actual necessity for a court  
17 order. It's better practice --

18 JUSTICE SOTOMAYOR: The problem with all  
19 of that is that they all end up -- all of those  
20 separate proceedings end up with the court doing  
21 something.

22 MR. MCGILL: And I think what -- what the  
23 use of "proceedings" both in California -- in the  
24 California Code and in Rule 60 is meant to do is to  
25 pick up those conclusive dispositions that, for one



1 reason or another, are not under the heading of a  
2 judgment or order. It's not intended to swallow  
3 every order and every judgment.

4 Our reading of the rule --

5 JUSTICE SOTOMAYOR: Thank you, counsel.

6 CHIEF JUSTICE ROBERTS: Nothing further,  
7 Justice Thomas?

8 Justice Alito?

9 Justice Sotomayor?

10 Justice Kagan?

11 Justice Barrett?

12 Justice Jackson?

13 Thank you, counsel.

14 MR. MCGILL: Thank you.

15 CHIEF JUSTICE ROBERTS: Rebuttal,  
16 Mr. Levy?

17 REBUTTAL ARGUMENT OF VINCENT LEVY

18 ON BEHALF OF THE PETITIONER

19 MR. LEVY: The Respondent is proposing a  
20 rule that would render a court without any  
21 authority to remedy an issue of outright fraud or  
22 mistake, leading to the dismissal of a case, albeit  
23 without prejudice, but that causes the plaintiff to  
24 lose its right because of -- of a limitation or  
25 otherwise, and that also leads to the loss of the

1 right to bring a -- a non-suit in a second case.

2 That cannot be what Rule 60 was intended  
3 to capture. There's no evidence of that in the  
4 text or the -- or the advisory committee notes or  
5 the California decisions. The California decisions  
6 were clear on point.

7 They're also in accord with the weight of  
8 authority among the states. That's reflected in --  
9 by the -- in the decision of the Supreme Court of  
10 Connecticut, in the Lusas decision, which cites not  
11 only California for this point but also New York,  
12 which is one of the statutes that is cited by the  
13 rules committee. But Professor Moore did say that  
14 the court -- that that was the inspiration and that  
15 the -- that meaning does come with it.

16 The -- my friend has said that there is  
17 nothing to relieve a -- a moving party from in the  
18 context of without-prejudice dismissal. That is  
19 not true. Beyond the right -- again, I -- I don't  
20 want to repeat myself, but the limitation periods  
21 would be one example and the -- the right to bring  
22 another case with a non-suit could be another.

23 And unless the Court has questions.

24 CHIEF JUSTICE ROBERTS: Thank you. Thank  
25 you, counsel.

1                   The case is submitted.  
2                   (Whereupon, at 12:12 p.m., the case was  
3 submitted.)  
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## Official - Subject to Final Review

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

## Official - Subject to Final Review

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

<p><b>gravamen</b> [1] 32:24  <b>ground</b> [1] 11:10  <b>grounds</b> [2] 9:11 10:15  <b>guess</b> [4] 16:1 24:14,24 41:12</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>habeas</b> [1] 47:3  <b>Hall</b> [2] 22:17,17  <b>HALLIBURTON</b> [3] 1:6 3:5 9:24  <b>handle</b> [2] 8:16 11:16  <b>happened</b> [3] 8:23 11:17 13:20  <b>hard</b> [2] 16:3 38:22  <b>Hardware</b> [1] 44:2  <b>harmony</b> [1] 28:4  <b>heading</b> [1] 48:1  <b>hear</b> [1] 3:3  <b>held</b> [1] 3:12  <b>help</b> [1] 31:6  <b>himself</b> [1] 27:22  <b>hinges</b> [1] 16:22  <b>history</b> [5] 18:20 20:5 29:23 36:1 38:9  <b>hoe</b> [1] 15:15  <b>hold</b> [1] 19:10  <b>holds</b> [1] 22:21  <b>honestly</b> [1] 15:16  <b>Honor</b> [4] 30:1,14 32:21 38:14  <b>hook</b> [1] 34:25  <b>however</b> [2] 16:3 28:25  <b>hypothetical</b> [1] 45:7</p>	<p><b>INS</b> [1] 29:6  <b>inserting</b> [1] 29:19  <b>inspiration</b> [1] 49:14  <b>instance</b> [2] 28:21 39:19  <b>intended</b> [4] 23:3 46:10 48:2 49:2  <b>intent</b> [1] 22:4  <b>intentional</b> [1] 22:21  <b>interacts</b> [1] 27:10  <b>interesting</b> [1] 31:13  <b>interfere</b> [1] 36:3  <b>interlocutory</b> [8] 4:6,10 18:19 20:15 21:4,9 31:4 40:3  <b>intermediate</b> [1] 45:25  <b>interpretations</b> [2] 23:24,24  <b>interpreted</b> [5] 3:21 16:12,15 17:11 22:16  <b>interpreting</b> [2] 22:24 25:22  <b>intervention</b> [1] 23:19  <b>isn't</b> [4] 6:25 33:8 40:11 42:20  <b>isolate</b> [1] 37:23  <b>issue</b> [12] 5:9 6:8,10 7:14 8:4,12 12:8,17 35:19 37:20 40:25 48:21  <b>issued</b> [2] 10:13 36:20  <b>issues</b> [13] 5:13,16,19,20,23,24 7:8,25 10:19 12:6,12 15:11 40:8  <b>issuing</b> [1] 37:14  <b>itself</b> [9] 6:7 8:5 14:13 27:19 32:14 35:1 38:3 39:1 43:16</p>	<p>17,20,21 27:1,3 30:5 31:10 32:4,8,13,14 33:11 35:12,14,23,25 36:5 38:7,10 39:5,13,15  <b>jurisdictional</b> [20] 5:7,16,19,23 6:1,4,11 12:9,12,17 15:8,17 16:5 31:20 33:3 34:25 35:18 36:11 38:1,24  <b>JUSTICE</b> [124] 3:3,9 5:6,17,25 6:12,25 7:3,13,16 8:15,20 9:3,14 10:21 11:2,15,22 12:11 13:1,6,14,18 14:10,15 15:1,14 16:1,21 17:2,9,14,20,24 18:9,24 19:2,5,17,21 20:3,4,18 21:12,17,21 22:11 23:11,12,17 24:6,13,22 25:10,24,25 26:2,3,4,4,6,7,8,9,15 28:15 29:12,16 30:6,9 31:11,13 32:6,16 33:7,17,25 34:5 36:14,16 37:2,5,12 38:8,15 39:3,6,17,20,23 40:10 41:1,3,9,13,18,21 42:1,4,9,14,16,19 43:1,20,21 44:10,24 45:3,8,11 46:22 47:8,18 48:5,6,7,8,9,10,11,12,15 49:24</p>	<p>25 12:25 13:5,11,17,22 14:22 15:10,18 16:8,21 17:1,6,10,17,22 18:6,10 19:1,4,13,18,23 20:3,7,20 21:14,20,25 22:15 23:16,23 24:11,23 25:6,17 48:16,17,19  <b>limit</b> [2] 21:8,13  <b>limitation</b> [9] 10:3 11:1,6 12:2,4 19:24 20:1 48:24 49:20  <b>limitations</b> [2] 11:3,20  <b>limits</b> [1] 21:22  <b>list</b> [1] 22:13  <b>litigant</b> [2] 27:21 45:5  <b>litigants</b> [1] 43:9  <b>litigation</b> [3] 3:22 40:9 41:2  <b>little</b> [3] 7:17 38:16 41:13  <b>long</b> [1] 36:1  <b>longer</b> [1] 13:15  <b>look</b> [2] 25:2 39:13  <b>looked</b> [2] 13:23 31:7  <b>looking</b> [3] 25:6 31:25 32:19  <b>looks</b> [2] 19:18 21:21  <b>lore</b> [1] 30:24  <b>lose</b> [1] 48:24  <b>loss</b> [1] 48:25  <b>lost</b> [2] 6:16 45:11  <b>lot</b> [2] 16:23 34:7  <b>lower</b> [1] 32:3  <b>luck</b> [1] 42:6  <b>Lusas</b> [1] 49:10</p>	<p>22 40:7,23 41:2,7,12,19,24 42:3,7,10,15,17,22 43:2 44:21 45:1,4,9,17 47:10,22 48:14  <b>mean</b> [18] 7:3,18 8:16 9:5 15:14 19:6 23:20 24:4 29:21 32:18 33:8,25 36:17 40:1,2,3 44:11 45:13  <b>meaning</b> [5] 18:22 23:8 24:3 30:3 49:15  <b>meaningless</b> [1] 17:5  <b>means</b> [5] 21:15,16 27:12,24 29:24  <b>meant</b> [3] 40:1 46:25 47:24  <b>meet</b> [4] 22:9 25:7 38:22 45:14  <b>mentioned</b> [1] 19:23  <b>merge</b> [1] 36:18  <b>merits</b> [6] 12:1 14:1,7 27:4 33:5 42:13  <b>met</b> [1] 20:2  <b>Microsoft</b> [1] 18:2  <b>might</b> [5] 16:4 33:9,10 34:7 47:3  <b>Minnesota</b> [1] 46:5  <b>mirror</b> [2] 46:3,4  <b>mirrors</b> [1] 46:4  <b>misreads</b> [1] 4:24  <b>mistake</b> [5] 20:21 37:18 44:16 45:13 48:22  <b>mistakenly</b> [1] 44:11  <b>Mm-hmm</b> [1] 45:8  <b>modified</b> [1] 4:12  <b>modify</b> [2] 4:10 25:9  <b>Monday</b> [1] 44:14  <b>months'</b> [1] 34:8  <b>Moore</b> [6] 20:12,24 21:5 25:8 40:4 49:13  <b>most</b> [1] 29:14  <b>mostly</b> [1] 4:17  <b>motion</b> [29] 6:20,23 7:1,4,4,22 8:24 9:9 12:16,23 13:18,25 14:2 26:18,23 27:19 28:1 33:4,13,15,18 34:11,13,15,23 35:3 36:22 37:3 38:2  <b>motions</b> [1] 29:3  <b>movant</b> [1] 20:21  <b>moving</b> [1] 49:17  <b>much</b> [2] 22:14 24:15  <b>Murray</b> [1] 43:22  <b>must</b> [2] 12:22 21:17  <b>myself</b> [1] 49:20  <b>mystery</b> [1] 30:25</p>
<p style="text-align: center;"><b>I</b></p> <p><b>ignore</b> [1] 29:22  <b>impart</b> [1] 18:21  <b>import</b> [1] 18:8  <b>important</b> [1] 38:1  <b>importantly</b> [1] 40:2  <b>impose</b> [1] 28:12  <b>imposed</b> [1] 45:5  <b>INC</b> [1] 1:6  <b>include</b> [3] 16:16 17:12 23:7  <b>included</b> [1] 16:14  <b>incorporates</b> [1] 43:14  <b>independent</b> [8] 7:6 9:21 14:5,9 15:23 24:3 32:11 39:15  <b>independently</b> [2] 8:22 9:17  <b>indicates</b> [1] 29:18  <b>indication</b> [3] 43:15 45:20 46:8  <b>inequitable</b> [1] 11:6  <b>inherent</b> [8] 4:9,13 21:3,9 25:9 31:5,7,8  <b>initially</b> [4] 4:5 18:16 19:25 20:7  <b>inject</b> [1] 22:1  <b>injustices</b> [1] 39:8</p>	<p style="text-align: center;"><b>J</b></p> <p><b>JACKSON</b> [28] 6:25 7:3,13 20:4,18 21:12,17,21 22:11 26:9 29:12,16 30:6,9 31:11,13 32:6,16 36:14,16 37:2,5,12 44:10,24 45:3,8 48:12  <b>January</b> [1] 1:11  <b>job</b> [1] 32:23  <b>John</b> [1] 21:2  <b>joint</b> [1] 34:14  <b>Judge</b> [3] 19:2,19 45:15  <b>judgment</b> [26] 3:17,17 4:2 16:25 17:4,8,10 23:5,15,17,21 24:3,10 25:13 28:3 30:3 31:22 38:20 39:16 46:15,16,21 47:5,9 48:2,3  <b>judgments</b> [13] 3:15 16:11,13 17:13 20:9 22:12 23:6 30:20 38:11 39:8 43:19 46:16 47:2  <b>judicata</b> [1] 21:15  <b>judicial</b> [1] 23:19  <b>jurisdiction</b> [43] 4:19 5:11,21,24 6:7 10:14 12:14,15,18,23 13:3,7,10,13,14 14:5,9 15:3 24:18,21 25:12 26:</p>	<p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> [10] 14:15 15:1,14 16:1 26:6 33:7,17,25 34:5 48:10  <b>Kavanaugh</b> [1] 26:7  <b>key</b> [2] 28:8 46:24  <b>kind</b> [1] 39:8  <b>kinds</b> [2] 21:18,24  <b>Kokkonen</b> [4] 4:24 14:13 26:20 35:16</p>	<p style="text-align: center;"><b>M</b></p> <p><b>made</b> [10] 5:17 14:14 18:16 19:19,25 20:10,17 35:10 37:18 44:16  <b>major</b> [1] 27:5  <b>majority</b> [2] 8:5 14:11  <b>malfeasance</b> [1] 45:13  <b>many</b> [1] 25:18  <b>Marsh</b> [1] 43:22  <b>Marshall</b> [1] 43:21  <b>massive</b> [2] 39:18,21  <b>masters</b> [1] 47:14  <b>Matheson</b> [1] 19:20  <b>Matheson's</b> [1] 19:2  <b>matter</b> [23] 1:13 4:10 9:2 12:14,15,18 13:9 14:5,9,25 22:5,23 27:18 31:10 35:11,14,25 36:5 37:9 38:7 39:4,15 43:19  <b>matters</b> [5] 4:6 18:20 20:16 21:4,9  <b>MATTHEW</b> [3] 1:20 2:6 26:12  <b>mature</b> [1] 19:11  <b>McGILL</b> [53] 1:20 2:6 26:11,12,14 28:18 29:14,25 30:7,13,16 31:12 32:2,9,21 33:8,16,22 34:3,9 36:15 37:2,11,24 38:8,13,25 39:4,12,18,</p>	<p style="text-align: center;"><b>N</b></p> <p><b>narrow</b> [1] 22:8  <b>narrower</b> [1] 17:7  <b>necessarily</b> [2] 47:11,12  <b>necessary</b> [1] 9:19  <b>necessitates</b> [1] 36:24  <b>necessity</b> [1] 47:16  <b>need</b> [4] 14:5,8 15:23 44:9</p>

## Official - Subject to Final Review

<p><b>needed</b> [1] 29:15  <b>needs</b> [1] 26:24  <b>never</b> [3] 31:7 37:7 43:17  <b>New</b> [9] 1:18,18 4:18 11:25  12:2 26:22 34:22 46:5 49:11  <b>next</b> [5] 3:4 4:3 15:25 33:17 34:1  <b>nobis</b> [1] 30:23  <b>non</b> [1] 6:9  <b>non-suit</b> [8] 40:12,18 41:4 42:21 44:7 45:12 49:1,22  <b>non-suits</b> [1] 38:14  <b>none</b> [1] 15:11  <b>nonetheless</b> [1] 25:20  <b>North</b> [1] 43:21  <b>note</b> [2] 8:3 30:17  <b>noted</b> [1] 14:10  <b>notes</b> [9] 5:4 20:10,25 22:19 25:2 29:22 43:16 46:7 49:4  <b>nothing</b> [3] 44:19 48:6 49:17  <b>notice</b> [7] 22:18 27:11,15 28:2 29:9 43:7 44:16  <b>noting</b> [1] 44:1  <b>number</b> [6] 8:2 18:22,23, 24 37:14,15</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>objection</b> [1] 4:21  <b>obligation</b> [2] 32:12,13  <b>obstacle</b> [1] 4:22  <b>obstacles</b> [1] 15:11  <b>occurred</b> [1] 10:18  <b>offers</b> [1] 5:2  <b>Okay</b> [12] 8:20 16:1 17:25 19:1,22 26:10 39:23,24 40:10 41:18 43:1 45:3  <b>old</b> [1] 46:1  <b>once</b> [2] 13:11 36:19  <b>one</b> [22] 5:22 8:2 10:17 12:13 18:13,22 24:7,17 28:4 30:19,21 33:14 38:9 40:16 41:11 42:20,21 45:12 46:14 47:25 49:12,21  <b>one's</b> [1] 18:24  <b>ones</b> [1] 38:11  <b>only</b> [13] 4:9 27:1,7,8 31:3 34:16,20,23 35:9,14 36:15 40:15 49:11  <b>open</b> [3] 15:20 20:18,20  <b>opened</b> [1] 13:2  <b>operates</b> [1] 42:12  <b>operative</b> [1] 23:1  <b>opinion</b> [2] 8:5 14:12  <b>opposed</b> [2] 9:20 24:9  <b>opposite</b> [1] 44:7  <b>opposition</b> [1] 33:1  <b>oral</b> [5] 1:14 2:2,5 3:7 26:12  <b>order</b> [30] 3:18 7:9 8:14 10:13,17,18 13:8 16:25 17:4,</p>	<p>11 20:17 23:15,18 24:3,10 27:19,23 28:3,24,24,25 30:3 31:22 37:1,14,15 47:9,17 48:2,3  <b>orders</b> [18] 7:8 17:12 20:9 22:5,11 23:21 25:18 28:20,23 30:20 31:3,4 35:5 36:20 38:11 39:9 43:10 47:3  <b>original</b> [1] 12:24  <b>originally</b> [1] 38:7  <b>other</b> [11] 5:23 7:17 12:6 15:24 22:20 23:14 24:15 28:5 30:24 34:21 37:1  <b>otherwise</b> [11] 14:12 20:23 25:11,19 27:22 28:21 36:3 43:7,8,10 48:25  <b>out</b> [5] 15:24 42:6 45:21 46:11 47:12  <b>outright</b> [1] 48:21  <b>over</b> [5] 12:23 18:19 31:9 38:6,11  <b>overlook</b> [1] 17:21  <b>own</b> [5] 26:19 32:13 35:13, 13 43:19</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>p.m</b> [1] 50:2  <b>PAGE</b> [2] 2:2 34:14  <b>Palace</b> [1] 44:1  <b>particular</b> [6] 20:5 29:20, 24 30:3,11 36:7  <b>parties</b> [3] 13:8 21:18 25:15  <b>party</b> [1] 49:17  <b>path</b> [1] 10:16  <b>pejoratively</b> [1] 19:6  <b>pending</b> [2] 20:18,20  <b>period</b> [4] 10:4 12:2,4 19:24  <b>period's</b> [1] 20:1  <b>periods</b> [3] 11:1,6 49:20  <b>person</b> [2] 34:1 44:12  <b>petition</b> [1] 7:9  <b>Petitioner</b> [11] 1:4,19 2:4, 10 3:8 26:24 31:6 43:24 45:23 46:19 48:18  <b>Petitioner's</b> [6] 27:5 28:7, 21 32:23 33:4 40:12  <b>phrase</b> [2] 3:17 41:13  <b>pick</b> [1] 47:25  <b>place</b> [1] 16:7  <b>places</b> [2] 16:22 20:12  <b>plaintiff</b> [4] 28:11 41:9 45:9 48:23  <b>plaintiff's</b> [3] 36:3,7 40:21  <b>play</b> [1] 4:9  <b>pleaded</b> [1] 14:23  <b>please</b> [2] 3:10 26:15  <b>plenary</b> [1] 21:3  <b>point</b> [24] 5:17 9:18 10:2,11 16:20 27:4,17 28:6 31:1 32:25 34:12 35:2,17 38:1, 24 39:7,10 43:4,12 45:24</p>	<p>46:12,24 49:6,11  <b>pointed</b> [1] 10:14  <b>pointing</b> [1] 24:25  <b>points</b> [6] 4:17 18:11 32:21 33:23 34:10 46:13  <b>position</b> [1] 44:18  <b>possible</b> [1] 22:5  <b>power</b> [3] 4:13 36:2 39:8  <b>powerless</b> [1] 45:15  <b>practice</b> [2] 45:20 47:17  <b>precluded</b> [1] 33:20  <b>prejudice</b> [13] 3:14 10:3,23 18:4 25:14 28:11 41:17,24 44:2,7 46:15,20 48:23  <b>premise</b> [1] 14:3  <b>prepared</b> [1] 32:12  <b>presented</b> [17] 4:22 5:1 6:8 8:1 10:20 15:12 16:9 27:1 31:15,23 32:17,17,19,24 35:15 37:21,25  <b>presents</b> [1] 4:22  <b>preserved</b> [1] 8:13  <b>presumptive</b> [1] 22:23  <b>pretty</b> [1] 22:14  <b>prevent</b> [1] 14:17  <b>primary</b> [1] 44:22  <b>prior</b> [1] 27:25  <b>problem</b> [3] 17:5,16 47:18  <b>problems</b> [2] 27:5,9  <b>Procedure</b> [6] 3:20 27:11 28:17 29:8 30:22 46:17  <b>proceeded</b> [1] 10:5  <b>proceeding</b> [28] 3:17,18 4:1 8:21 10:24 16:22,24 17:2,12,16 19:10 22:24 23:5, 14,20 24:4,9 27:24 28:3 31:22 42:18,20,23 44:5,25 45:2 46:24,25  <b>proceedings</b> [13] 3:15 16:11,12 20:9 21:19 22:6,12 29:18 30:20 47:4,6,20,23  <b>process</b> [1] 6:14  <b>Professor</b> [5] 20:11,24 21:5 25:8 49:13  <b>properly</b> [1] 36:22  <b>proposing</b> [1] 48:19  <b>propriety</b> [1] 7:14  <b>provides</b> [1] 29:3  <b>provision</b> [1] 22:19  <b>provisions</b> [1] 24:7  <b>purposes</b> [4] 4:14 18:4 25:19 41:23  <b>put</b> [2] 30:11 32:16  <b>puts</b> [1] 22:20</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>querela</b> [1] 30:24  <b>question</b> [35] 3:12 4:22 5:1, 23 6:7 7:25 13:24,24 14:3 15:8,12,16,17,19 16:4,5,6, 9 23:12 24:14 26:16 31:15, 23 32:17,19,24 33:14,15, 17 36:6,11 37:25 38:20 45:</p>	<p>18 46:22  <b>questions</b> [3] 5:5 28:14 49:23  <b>quite</b> [1] 24:16</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>raise</b> [1] 32:25  <b>raised</b> [2] 31:14 34:12  <b>rate</b> [1] 15:2  <b>rather</b> [2] 21:8 25:4  <b>read</b> [3] 4:5 14:11 22:11  <b>reading</b> [4] 16:22 20:15 28:2 48:4  <b>reads</b> [1] 28:3  <b>real</b> [2] 16:4 45:18  <b>really</b> [6] 22:13 27:9 35:25 36:6 38:22 44:18  <b>reason</b> [7] 6:13 7:18 9:4 21:5 29:20 34:20 48:1  <b>REBUTTAL</b> [3] 2:8 48:15, 17  <b>recitation</b> [1] 30:10  <b>recommended</b> [1] 21:6  <b>record</b> [1] 29:18  <b>red</b> [3] 29:7 31:16 32:18  <b>reexamined</b> [2] 22:6,8  <b>referenced</b> [1] 20:25  <b>referring</b> [2] 35:24 36:1  <b>refers</b> [1] 35:18  <b>refile</b> [3] 28:11 42:25 45:10  <b>refiled</b> [1] 25:20  <b>reflected</b> [1] 49:8  <b>regarding</b> [2] 7:6 37:15  <b>regardless</b> [1] 16:2  <b>regularly</b> [1] 25:14  <b>rejected</b> [1] 16:17  <b>related</b> [4] 13:19,22 31:1 38:3  <b>relief</b> [21] 6:5 8:3,7 11:9 26:22 29:2 34:16,21,22 35:11, 12,21 36:6 37:3,13,15 38:2, 6 44:9,21,23  <b>relies</b> [1] 24:15  <b>relieve</b> [5] 28:8,10,13 45:6 49:17  <b>relitigate</b> [1] 38:4  <b>rely</b> [2] 4:25 23:4  <b>relying</b> [1] 14:17  <b>remain</b> [3] 5:24 11:13 39:11  <b>remained</b> [1] 31:4  <b>remains</b> [1] 15:20  <b>remand</b> [6] 4:23 5:24 8:8, 12 11:12 12:10  <b>remedy</b> [1] 48:21  <b>render</b> [1] 48:20  <b>rendered</b> [2] 10:6 17:5  <b>reopen</b> [16] 6:21 7:5,10 8:25 10:8,15,23 12:23 13:15 34:15,18 36:22 37:3,12 39:20 44:19  <b>reopened</b> [10] 3:14 5:11 6:6 7:11 12:8 13:12 14:8 16:</p>	<p>18 37:19 38:21  <b>reopening</b> [8] 4:20 7:23 10:17 11:13,23 21:10 35:5 37:14  <b>repeat</b> [1] 49:20  <b>replead</b> [1] 15:6  <b>request</b> [5] 26:25 34:18 35:9 36:18 38:5  <b>requested</b> [3] 35:12 37:23 38:2  <b>requests</b> [2] 34:16,21  <b>require</b> [1] 23:18  <b>requirement</b> [2] 30:1,18  <b>requirements</b> [1] 43:8  <b>requires</b> [3] 26:19 35:11, 13  <b>res</b> [1] 21:15  <b>resolution</b> [4] 40:8,11 42:11,24  <b>resolve</b> [3] 40:18,21,25  <b>resolved</b> [2] 5:14 9:5  <b>resolves</b> [1] 42:13  <b>resolving</b> [2] 4:23 15:12  <b>respect</b> [9] 13:21 24:14 28:18 30:10 33:19 37:1 38:13 46:13 47:5  <b>responded</b> [1] 37:7  <b>Respondent</b> [10] 1:7,21 2:7 4:17 5:1 21:14,16,21 26:13 48:19  <b>Respondent's</b> [2] 21:13 32:23  <b>response</b> [4] 5:2 18:11 33:23 43:24  <b>responsibilities</b> [1] 13:20  <b>responsibility</b> [1] 25:15  <b>rest</b> [1] 36:20  <b>restore</b> [1] 9:20  <b>retain</b> [1] 21:3  <b>retraction</b> [2] 40:24 44:8  <b>reverse</b> [1] 5:4  <b>review</b> [2] 5:21 43:18  <b>revise</b> [1] 4:6  <b>revisit</b> [1] 21:3  <b>revisited</b> [1] 30:21  <b>revive</b> [1] 6:15  <b>rewrite</b> [1] 32:23  <b>rid</b> [1] 39:10  <b>riding</b> [1] 43:21  <b>rights</b> [3] 13:20 22:3 40:22  <b>road</b> [2] 16:7 33:8  <b>ROBERTS</b> [16] 3:3 6:12 7:16 8:15,20 9:3,14 10:21 11:2,15,22 25:25 26:4 48:6,15 49:24  <b>Rogers</b> [1] 40:4  <b>row</b> [1] 15:15  <b>Rule</b> [67] 3:13,14,18,25 4:4, 8,14 5:9 6:5 7:10 8:3,7 11:14 20:8,15,22 21:7,8,10 22:2 24:11 26:20,21,25 27:6,8, 10,10,13,13,17,18 28:1,8,</p>
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## Official - Subject to Final Review

19,20 29:1,4,5,7 30:12 31:3,22 32:20 34:25 35:15,20,20,21 38:17 39:1 41:16,25 43:13 44:13,22 45:19 46:3,18,20 47:4,6,14,24 48:4,20 49:2 rule-makers [2] 18:14 23:3 Rules [14] 10:14 11:9 16:13 22:21 28:17 29:8 30:22 40:5 42:12 46:9,17,19 47:13 49:13 ruling [2] 8:8 47:15 runs [2] 27:8 28:24 rushes [1] 44:14	sliver [1] 47:1 sloppy [1] 36:4 small [1] 47:1 soil [2] 22:22 46:1 somehow [1] 43:14 sorry [2] 11:15 20:9 sort [4] 21:18 22:12 23:19 29:17 SOTOMAYOR [18] 12:11 13:1,6,14,18 23:11,17 24:6,13,24 25:10,24 26:5 46:22 47:8,18 48:5,9 sought [2] 37:3,6 source [1] 22:20 specifically [2] 3:22 22:25 split [2] 15:19 37:22 standalone [1] 14:2 standard [1] 20:2 standards [2] 19:14 31:2 start [2] 3:16 26:16 started [1] 33:4 starts [1] 34:14 stated [1] 25:9 STATES [3] 1:1,15 49:8 statute [13] 11:3,19 13:8 14:18 15:5 17:7 20:8 22:20 28:3 36:8 46:4,5,5 statutes [2] 25:23 49:12 statutory [1] 35:22 Steel [2] 36:7,10 stems [1] 12:23 step [2] 22:2 44:5 steps [1] 3:22 Stone [1] 29:6 Stonesifer [1] 44:4 strict [1] 22:13 stricter [1] 31:2 strong [1] 23:2 subject [21] 9:9 12:14,15,18 13:9 14:5,9 18:15 21:10 28:1 29:1 31:4,10 35:11,13,14,25 36:5 38:7 39:4,14 submitted [2] 50:1,3 subsume [1] 28:4 sufficient [1] 35:15 suggest [1] 9:4 suggested [1] 43:13 suggesting [1] 37:6 suggests [2] 6:13 29:23 suit [3] 41:15,15 44:12 superfluity [1] 23:13 supplementary [1] 47:4 supply [1] 26:25 support [1] 24:7 suppose [1] 44:11 SUPREME [9] 1:1,14 3:20 16:15 22:16,24 23:9 43:25 49:9 surplusage [2] 23:25 24:2 surprised [1] 31:18 swallow [3] 17:14,21 48:2	<b>T</b>	talked [1] 23:9 talks [1] 24:8 Tenth [3] 5:6,8 12:20 term [2] 38:12 39:9 terminate [2] 25:21 29:1 terminates [1] 4:11 terms [4] 4:1 16:9 22:5 38:19 test [2] 22:2,9 text [2] 16:10 49:4 themselves [2] 43:9 47:2 theory [4] 4:19 16:24 19:3 45:15 there's [20] 5:15 7:3,4 9:8,8,18 22:3 23:12 27:2 36:12 38:15,25 42:23,23 43:15 45:4,20 46:8 47:16 49:3 therefore [4] 4:13 5:12 21:22 42:6 Third [1] 15:22 THOMAS [6] 5:6,25 26:2,3 28:15 48:7 though [3] 16:23 17:15 41:4 three [1] 27:4 threshold [5] 5:13,20 6:8,10 37:9 today [1] 47:10 together [1] 29:8 toll [1] 27:11 tolling [2] 29:3 43:7 took [4] 10:16 19:14 36:23 40:2 tough [1] 15:15 transplanted [1] 46:2 treat [1] 5:7 treated [2] 5:9 7:7 true [7] 30:14 32:10 45:17 47:10,11,12 49:19 try [3] 6:17 14:20 18:7 trying [6] 6:15 8:16 11:16 22:1,13 31:14 Tuesday [2] 1:11 44:14 turn [1] 43:3 turns [1] 19:24 two [24] 4:25 5:12,19,20 7:5,8,8,24 12:12 13:21 18:23 27:9 30:18 31:19 32:21 33:22,22 34:10,10 35:5 36:19,20 43:25 46:13	29:4 31:3,8 32:4 35:6,7,15,20 36:8 41:16,25 42:12 43:6 44:3,19,22 45:6,15 47:4,6 48:1 understand [13] 19:9 23:19 31:15 32:6 33:2 36:16,17,24 37:5,6,22 38:9 42:19 understanding [3] 14:19 38:23 40:6 understood [1] 38:18 unilateral [1] 44:13 UNITED [2] 1:1,15 unless [1] 49:23 until [4] 3:12 33:4 37:8 38:11 up [6] 10:19 21:6 47:8,19,20,25 upend [1] 45:19 uses [1] 21:22 using [3] 4:12 21:13 25:3	29:23 whatsoever [2] 43:25 45:21 Whereupon [1] 50:2 whether [17] 5:9,10 8:2,13 11:13 14:6,24 15:20 22:2,3 25:8 36:7,21,25 37:18 38:21 45:19 whole [1] 17:15 will [6] 4:23 8:11 11:12 15:18 24:2 43:9 Williamsport [2] 32:5,10 win [1] 19:19 wins [1] 19:13 withdrawal [1] 41:4 withdraws [1] 42:2 withdrew [2] 10:2 42:5 without [12] 3:13 10:2,22 17:9 20:23 25:13 28:10 44:7 46:15,20 48:20,23 without-prejudice [1] 49:18 wonder [1] 16:23 word [4] 4:8 18:18 21:7 23:5 words [3] 16:16 18:14,21 work [2] 29:8,24 world [2] 24:5 41:6 worth [1] 44:1 writ [1] 47:3 writes [1] 30:23 written [1] 17:7
<b>S</b>	<b>S</b>	<b>V</b>	<b>V</b>		
Salazar [1] 45:24 same [8] 6:9 16:16 23:1 24:4 28:19 32:9 43:5,5 satisfied [1] 9:12 saying [7] 10:8 15:7,22 16:2 25:2 40:18 44:9 says [8] 7:18 15:4 21:1 35:5,6 44:4,4,15 School [1] 32:10 scope [2] 31:21 43:5 second [10] 12:17 27:17 31:1 34:11 35:17 41:15,15 42:1,2 49:1 Section [7] 3:19,21,23 10:9 26:17,24 36:6 see [2] 12:11,17 seek [3] 34:23 37:13,16 seeking [2] 34:24 44:6 seem [3] 15:16 19:5 24:16 seemed [1] 36:18 seen [1] 23:25 sense [2] 13:23 43:8 sent [2] 6:22 10:1 separate [6] 6:25 8:12,13 35:5 36:20 47:20 sequencing [4] 5:16 34:12 35:17 36:9 sequentially [1] 9:23 SERVICES [2] 1:6 3:5 set [1] 36:2 settled [2] 23:8 45:19 Seventh [1] 15:22 show [2] 10:13 20:21 shrouded [1] 30:24 side [2] 7:17 24:15 side's [1] 23:14 significance [2] 20:6 33:3 signs [1] 25:13 Simmons [1] 21:2 simply [4] 6:1 13:8 36:12 45:9 single [2] 45:25,25 Sinochem [3] 5:15 6:9 34:12 Sinochem's [1] 36:9 situation [1] 44:11	Salazar [1] 45:24 same [8] 6:9 16:16 23:1 24:4 28:19 32:9 43:5,5 satisfied [1] 9:12 saying [7] 10:8 15:7,22 16:2 25:2 40:18 44:9 says [8] 7:18 15:4 21:1 35:5,6 44:4,4,15 School [1] 32:10 scope [2] 31:21 43:5 second [10] 12:17 27:17 31:1 34:11 35:17 41:15,15 42:1,2 49:1 Section [7] 3:19,21,23 10:9 26:17,24 36:6 see [2] 12:11,17 seek [3] 34:23 37:13,16 seeking [2] 34:24 44:6 seem [3] 15:16 19:5 24:16 seemed [1] 36:18 seen [1] 23:25 sense [2] 13:23 43:8 sent [2] 6:22 10:1 separate [6] 6:25 8:12,13 35:5 36:20 47:20 sequencing [4] 5:16 34:12 35:17 36:9 sequentially [1] 9:23 SERVICES [2] 1:6 3:5 set [1] 36:2 settled [2] 23:8 45:19 Seventh [1] 15:22 show [2] 10:13 20:21 shrouded [1] 30:24 side [2] 7:17 24:15 side's [1] 23:14 significance [2] 20:6 33:3 signs [1] 25:13 Simmons [1] 21:2 simply [4] 6:1 13:8 36:12 45:9 single [2] 45:25,25 Sinochem [3] 5:15 6:9 34:12 Sinochem's [1] 36:9 situation [1] 44:11	vacate [28] 4:20 5:12 6:21 7:4,23 8:25 9:13,19 12:19 13:3,10,19,25 14:2,18 15:3,21 26:18,23 31:10 33:4,11 34:15,17,24 35:7,10 38:4 vacated [5] 7:12 8:10 9:1,13 10:9 vacating [3] 8:14 10:18 33:20 various [1] 20:12 verb [1] 28:8 versa [1] 23:22 version [1] 22:25 versus [6] 3:4 22:17 29:6 32:5,10 43:22 vice [2] 17:25 23:22 view [3] 24:5 28:25 32:22 VINCENT [5] 1:18 2:3,9 3:7 48:17 virtue [2] 17:22,24 vobis [1] 30:23 voluntarily [1] 6:14 voluntary [21] 3:13,16,23 4:3 9:15,19 10:22 11:23 16:14,16,17,19 23:2,7 28:10 36:3 38:14 40:14,19 42:5 44:16	vacate [28] 4:20 5:12 6:21 7:4,23 8:25 9:13,19 12:19 13:3,10,19,25 14:2,18 15:3,21 26:18,23 31:10 33:4,11 34:15,17,24 35:7,10 38:4 vacated [5] 7:12 8:10 9:1,13 10:9 vacating [3] 8:14 10:18 33:20 various [1] 20:12 verb [1] 28:8 versa [1] 23:22 version [1] 22:25 versus [6] 3:4 22:17 29:6 32:5,10 43:22 vice [2] 17:25 23:22 view [3] 24:5 28:25 32:22 VINCENT [5] 1:18 2:3,9 3:7 48:17 virtue [2] 17:22,24 vobis [1] 30:23 voluntarily [1] 6:14 voluntary [21] 3:13,16,23 4:3 9:15,19 10:22 11:23 16:14,16,17,19 23:2,7 28:10 36:3 38:14 40:14,19 42:5 44:16		
<b>U</b>	<b>U</b>	<b>W</b>	<b>Y</b>		
ultimately [1] 21:6 unappealable [2] 27:23 43:10 unconstrained [1] 21:10 under [42] 3:14 5:15 7:10 8:3,7 9:9,10 10:9 11:9,10,14 12:2 19:13,19 20:22 22:17 26:18 27:13,13 28:20,25	ultimately [1] 21:6 unappealable [2] 27:23 43:10 unconstrained [1] 21:10 under [42] 3:14 5:15 7:10 8:3,7 9:9,10 10:9 11:9,10,14 12:2 19:13,19 20:22 22:17 26:18 27:13,13 28:20,25	WAETZIG [2] 1:3 3:4 walk [1] 20:4 wanted [1] 30:19 Washington [2] 1:10,20 Waterfront [1] 22:14 way [13] 6:9,16 11:2 15:24 17:6,11 18:21 20:17 23:9 25:3 30:21 36:21 47:13 week [1] 44:13 weight [2] 16:23 49:7 welcome [2] 5:5 28:14 whatever [3] 11:12 18:17	Yesh [1] 19:15 York [4] 1:18,18 46:5 49:11		