SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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MIGUEL LUNA PEREZ,   )

        Petitioner,   )

           v.   ) No. 21-887

STURGIS PUBLIC SCHOOLS, ET AL.,   )

        Respondents.   )

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Pages: 1 through 99

Place: Washington, D.C.

Date: January 18, 2023

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10   Washington, D.C.

11   Wednesday, January 18, 2023

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13   The above-entitled matter came on for

14   oral argument before the Supreme Court of the

15   United States at 10:02 a.m.

16

17   APPEARANCES:

18   ROMAN MARTINEZ, ESQUIRE, Washington, D.C.; on behalf

19   of the Petitioner.

20   ANTHONY A. YANG, Assistant to the Solicitor General,

21   Department of Justice, Washington, D.C.; for the

22   United States, as amicus curiae, supporting the

23   Petitioner.

24   SHAY DVORETZKY, ESQUIRE, Washington, D.C.; on behalf

25   of the Respondents.

1   C O N T E N T S

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1	P R O C E E D I N G S
2	(10:02 a.m.)
3	CHIEF JUSTICE ROBERTS: We'll hear
4	argument this morning in Case 21-887, Perez
5	versus Sturgis Public Schools.
6	Mr. Martinez.
7	ORAL ARGUMENT OF ROMAN MARTINEZ
8	ON BEHALF OF THE PETITIONER
9	MR. MARTINEZ: Mr. Chief Justice, and
10	may it please the Court:
11	For 12 years, Sturgis neglected
12	Miguel, denied him an education, and lied to
13	his parents about the progress he was allegedly
14	making in school. This shameful conduct
15	permanently stunted Miguel's ability to
16	communicate with the outside world. It also
17	violated two federal statutes, the IDEA and the
18	ADA, giving different remedies to victims of
19	discrimination.
20	Miguel responded by doing everything
21	the IDEA wants him to do. He filed an IDEA
22	agency claim. He followed the IDEA settlement
23	procedures. And he accepted a favorable
24	settlement giving him full IDEA relief,
25	including an immediate FAPE.

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 1          Sturgis wants you to hold that this
 2   settlement extinguishes Miguel's separate and
 3   distinct rights to money damages under the ADA.
 4   You should reject that.
 5          I want to emphasize three points.
 6   First, the text only requires exhaustion if a
 7   non-IDEA claim seeks relief that's actually
 8   available under the IDEA.  Exhaustion isn't
 9   required in cases like this one seeking only
10   money damages, a remedy the IDEA does not
11   authorize.
12          Second, Miguel's settlement fully
13   exhausted the IDEA procedures.  Further
14   exhaustion is unnecessary and it's futile
15   because it would be pointless.  Miguel has
16   already received everything he's entitled to
17   under the IDEA statute.
18          And, third, the net effect of
19   Sturgis's arguments here is to defy the IDEA's
20   clear purpose.  That purpose is twofold:  one,
21   getting kids a FAPE as quickly as possible,
22   and, two, preserving their legal rights under
23   other statutes and the Constitution.
24          Sturgis puts these goals on a
25   collision course with each other.  In any given
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 1   case, its rule will either disincentivize

 2   settlements and block immediate FAPE relief, or

 3   it will nullify rights under other statutes.

 4   That makes no sense.

 5   Congress didn't punish kids for saying

 6   yes to favorable IDEA settlements. One way or

 7   the other, this case should proceed.

 8   I welcome the Court's questions.

 9   JUSTICE THOMAS: If the -- this -- if

10   this statute were written in a way that you had

11   a progression of remedies from administrative,

12   from informal to formal, and it was about the

13   very same thing, that is, the education of

14   Petitioner, then why -- then wouldn't this be

15   exhausted at some level?

16   MR. MARTINEZ: Your Honor, we have --

17   just to step back and sort of clarify, we have

18   a number of different arguments. Our second --

19   JUSTICE THOMAS: Well, I -- I guess

20   the difference -- the -- the difficulty I'm

21   having is I can't see where ADA fits in with

22   IDEA.

23   MR. MARTINEZ: Right.

24   JUSTICE THOMAS: That seems to be an

25   entirely different remedy, and whether we --

1 when we have PLRA cases, et cetera, it's

2 usually about the same thing.

3   MR. MARTINEZ: A hundred percent, Your

4 Honor. I think that's exactly the right way to

5 think about the statute. And I think what

6 Congress was trying to do here was essentially

7 say we want you to have rights under both

8 statutes, we want you to be able to go into

9 court if necessary and vindicate your separate

10 rights to separate types of relief under both

11 statutes. But, in circumstances -- in certain

12 circumstances, we want you to go through the

13 IDEA administrative procedures first.

14   And the text of the statute says that

15 if your ADA claim is only seeking things that

16 you can't get under the IDEA, in the words of

17 Fry, if the consequence of your ADA claim, if

18 you brought it in the IDEA procedure, would be

19 that the IDEA hearing officer would have to

20 send you away empty-handed because that statute

21 just does not provide you that type of relief,

22 that type of relief is not available, then you

23 do not have to exhaust.

24   JUSTICE THOMAS: I guess that's why

25 I'm having trouble considering it exhaustion.

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 1          MR. MARTINEZ:  Right.
 2          JUSTICE THOMAS:  Because it seems to
 3   be -- normally, you would think of exhaustion
 4   as being similar.  The relief would be similar
 5   to the exhausted claims.
 6          MR. MARTINEZ:  Exactly.
 7          JUSTICE THOMAS:  This seems to be an
 8   entirely different statute.  So I don't
 9   understand even the use of the term
10   "exhaustion" here.
11          MR. MARTINEZ:  I -- I think it's --
12   it's a -- it's a unique sort of a one-of-a-kind
13   statute, and I think that in this kind of
14   circumstance where you have a unique statute,
15   two things.
16          One, it's especially important to
17   focus on the exact text of the statute, and the
18   text of the statute, the overwhelmingly most
19   reasonable reading of the statute, the only
20   reasonable reading of the statute in our view,
21   is that if you are seeking money damages -- and
22   everyone agrees money damages are not available
23   under the IDEA -- then you just do not have to
24   exhaust.  The exhaustion requirement doesn't
25   apply.
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1   Even if you disagreed with us on that,

2   though, I think that in a -- in a -- in a

3   situation like this, where the exhaustion

4   requirement is saying you need to exhaust the

5   IDEA administrative procedures on your IDEA

6   claim, in a circumstance where those procedures

7   specifically say you need to engage in a

8   settlement process, presumably, in good faith,

9   and if the school comes to you in the

10   settlement process and says you're right, we

11   were wrong, we're going to give you everything

12   you're asking for, we're going to give you

13   everything you're entitled to under the IDEA,

14   of course, the statute wants you to say yes.

15   And that's exactly what happened here.

16   Miguel got an offer of full relief and he

17   accepted it. That's -- that is a success story

18   under the IDEA. It's not a success story in

19   total --

20   CHIEF JUSTICE ROBERTS: Well --

21   MR. MARTINEZ: -- in -- in -- in -- it

22   doesn't make Miguel completely whole because he

23   suffered other damages as well. But, under the

24   IDEA, he got everything he was entitled to --

25   CHIEF JUSTICE ROBERTS: Well, the --

1   the -- the two --

2   MR. MARTINEZ: -- and he sat -- he

3   exhausted.

4   CHIEF JUSTICE ROBERTS: -- the -- the

5   two are not entirely unrelated. I mean, in

6   each -- in both cases, your -- your claims are

7   going to be based on the denial of an F-A-P-E

8   or a FAPE. And it's certainly reasonable to

9   assume that the settlement process under the

10   IDEA could well be significant in resolving the

11   other claims.

12   It seems to me that what's unusual in

13   this case is that the school board said, well,

14   don't worry about those, we're going to settle

15   this. I mean, if this were any other type of

16   litigation, the lawyers would want to say,

17   we've got a lot on the table and let's figure

18   out how to resolve it.

19   And it's not clear to me why you would

20   necessarily or artificially separate those two.

21   And, of course, your -- your friend on the

22   other side has a construction answer to your

23   notion of how the exhaustion works, that

24   relief, the relief you're seeking, is based on

25   a FAPE. That's what's going to be pertinent in

1   all those cases. Why isn't that --

2   MR. MARTINEZ: So -- so two points to

3   that, Your Honor. First of all, I think it's

4   certainly true that if you bring the IDEA

5   claim, you could have a settlement discussion

6   that encompasses not just the IDEA claims but

7   also other claims that you might have that

8   haven't yet been asserted in that process.

9   And I think the normal thing that we

10   would expect is that when bargain -- when

11   parties are bargaining and if this -- if the

12   child is going to give up those other claims,

13   they're going to get something in return.

14   In this case, that settlement

15   discussion happened, and, you know, the --

16   the -- there was a settlement discussion, and

17   Miguel would have turned down a request to give

18   up ADA rights without any compensation for

19   those ADA rights.

20   And the effect of Sturgis's rule is

21   that if he accepts the settlement on the IDEA

22   claim, it, like, automatically gets rid of --

23   it essentially gives the school a full release,

24   a get-out-of-jail-free card on the ADA

25   liability, and that's just not right.

1   And I think the second thing I was

2 going to say, Your Honor, is that this isn't

3 artificial, an artificial limit. This is a

4 limit that comes out of the text of the

5 statute. And Congress was very clear, it chose

6 words very precisely, and it said that you --

7 it made clear you don't have to exhaust if the

8 relief you're seeking in the non-IDEA claim is

9 not available under the IDEA.

10   And I think, in -- in these

11 circumstances, it makes sense to -- to read

12 that language the way you would apply -- you

13 would look at the same words elsewhere in the

14 IDEA, the -- the same word "relief" appears

15 elsewhere, and it means what we say it means.

16   That's the way the -- the word

17 "relief" is used in other legal contexts.

18 That's consistent and I think reinforced by the

19 reasoning of Fry, which says that if you have

20 to go to the hearing officer and the hearing

21 officer would necessarily turn you away

22 empty-handed, we don't want exhaustion in that

23 circumstance.

24   This Court's decision in Carr versus

25 Saul announces the very common-sense principle,

1   this is two terms ago, saying that "it -- it

2   makes little sense to require litigants to

3   present claims to adjudicators who are

4   powerless to grant the relief requested."

5   JUSTICE JACKSON: Mr. Martinez --

6   JUSTICE KAGAN: One of the --

7   JUSTICE ALITO: Mr. --

8   JUSTICE KAGAN: -- arguments that the

9   Respondents make, Mr. Martinez, is that on your

10   reading of the statute, all that a plaintiff

11   has to do is put the words "compensatory

12   damages" into a complaint and then the person

13   can head off to federal court, ignoring the

14   exhaustion procedures which Congress did think

15   were important in resolving what to do about

16   the denial of a FAPE.

17   So what is your response to that?

18   MR. MARTINEZ: I -- I -- I don't think

19   that's going to happen. And the -- the -- the

20   procedures -- if, by -- by tacking compensatory

21   damages on to the complaint, what you're

22   suggesting is that you could sort of circumvent

23   the IDEA process by going and getting all the

24   IDEA remedies along with ADA remedies for

25   compensatory damages in court, absolutely not.

1   If you go to court and you have a

2   claim that asks for relief that is available

3   under the IDEA and you have not exhausted that

4   request for that relief, the Court cannot move

5   forward as to that request for relief.

6   JUSTICE KAGAN: So the court --

7   JUSTICE ALITO: What do you --

8   JUSTICE KAGAN: -- would be required

9   to -- to split it up and send you back on any

10   other claims?

11   MR. MARTINEZ: Right. It could

12   dismiss the portions of the complaint that are

13   not properly exhausted, or it could give the --

14   the plaintiff a choice to get rid of the whole

15   case and so the -- the plaintiff could come

16   back later in the whole case, but either way --

17   JUSTICE KAGAN: And is there something

18   a little odd, even supposing that's true, about

19   two parallel proceedings going on in that way,

20   one for damages and the other for, you know,

21   the relief that an IDEA officer can give?

22   MR. MARTINEZ: I -- I don't think

23   there's anything odd. I think sometimes this

24   sort of situation comes up in the law, and I

25   think there's a very ready response to that,

1   which is that if -- if a court thinks that

2   there's an agency considering a similar factual

3   scenario dealing with similar issues, what the

4   court can just do is -- is issue a stay.

5   We think that would be perfectly

6   appropriate if this Court wants to say that

7   in -- in the cases -- and we think there will

8   be rare cases where parallel proceedings are

9   pending, and in those cases --

10   JUSTICE KAGAN: Why -- why rare?

11   MR. MARTINEZ: I think it'll be rare

12   because most parents are going to do what

13   Miguel did here, which is not bring the

14   parallel proceeding. Rather, in -- in -- in

15   the real world, the way these cases tend to be

16   litigated, parents do not typically have a lot

17   of resources. Their lawyers are busy. They

18   are busy. And, usually, they're not going to

19   try to be litigating simultaneously similar

20   sets of facts in two different forum. They're

21   going to do one and then the other.

22   As the Chief pointed out, it's

23   possible that you could reach some sort of

24   global settlement that comes out of the IDEA

25   discussion that actually is going to resolve

1   and give you effective relief on your ADA claim

2   as well. I think --

3   JUSTICE JACKSON: And even -- even if

4   it is odd, though, Mr. Martinez, isn't that

5   exactly what the statute seems to contemplate?

6   I mean, I guess I'm wondering whether

7   or not we're even in a position to question the

8   notion of dual proceedings, given that at least

9   as I read the statute, Congress is

10   contemplating that you'll have a situation in

11   which there's a civil action that's seeking

12   relief that is not available under the IDEA.

13   So I -- I take this to mean that

14   Congress thought that dual actions at least in

15   some circumstances were possible and that was

16   fine.

17   MR. MARTINEZ: I think that's exactly

18   right under the statute. And I think that the

19   nice thing about the statute is that it doesn't

20   take away the -- the inherent discretion of

21   district courts to manage their dockets in this

22   way.

23   And if you thought or five of you

24   thought that it was important to give some

25   guidance to lower courts and sort of remind

 1   them that if they wanted to -- to stay parallel

 2   proceedings, if you were concerned about that,

 3   you could do that.

 4   On the other hand, Justice Jackson, I

 5   think you are right that the statute does not

 6   seem to say that it has to be a stay.

 7   JUSTICE JACKSON: I mean, in -- in --

 8   in my view -- and maybe you can just react to

 9   that -- is -- isn't -- isn't what really is

10   going on here that Congress was concerned about

11   people doing an end run around the IDEA in a

12   certain way?

13   That is, you have, you know, a set of

14   facts concerning the denial of a FAPE that

15   could give rise to claims under, let's say,

16   both of these statutes, the IDEA and the ADA,

17   and, you know, the -- the plaintiff is the

18   master of their complaint and can decide which

19   statute to bring it under.

20   And so, in a situation in which the

21   relief that is being asked for is only the kind

22   of relief that is available under the IDEA,

23   maybe Congress didn't want the person to call

24   that an ADA statute and thereby get around the

25   exhaustion.

1   But, if you're asking for something

2   else, if your claim is something else, then

3   Congress didn't have a problem with both of

4   those proceeding in tandem.

5   MR. MARTINEZ: I -- I think that's --

6   that's absolutely a fair way of looking at the

7   statute, and there's certainly no circumvention

8   concern when the only thing you need is

9   something that you can't get under the IDEA.

10   Again, if the hearing --

11   JUSTICE ALITO: Well, what do you --

12   Mr. Martinez, what do you make of the fact that

13   1415(f) uses the term "remedies" and then also

14   uses the term "relief"?

15   MR. MARTINEZ: Are you talking about

16   the -- the 1415(l), the exhaustion provision,

17   or -- or --

18   JUSTICE ALITO: I -- I'm sorry, yes,

19   that's what I'm talking about.

20   MR. MARTINEZ: I -- I think that -- I

21   don't make much of that, Your Honor, because I

22   think that whatever "remedies" might mean,

23   "relief" really only has one reasonable meaning

24   here, and it means the specific remedies that

25   you can get at the end of the case.

1   JUSTICE ALITO: Well, why would

2   they -- compensatory damages is a remedy. Why

3   wouldn't they use the term "remedies" there?

4   MR. MARTINEZ: I think they -- I think

5   they could have used the term "remedies" there,

6   but I don't think that they had to. And I

7   don't --

8   JUSTICE ALITO: It's just elegant

9   variation?

10   MR. MARTINEZ: Yeah. And there are

11   other places in the U.S. Code where you have

12   these terms, "remedies" and "relief," used in

13   close proximity without any reason to think

14   that they mean something different.

15   You know, two examples I'd point you

16   to, Your Honor, these aren't in the briefs, but

17   18 U.S.C. 3626(d), 28 U.S.C. 3306. Like, these

18   statutes sometimes just use these terms

19   interchangeably.

20   The other side says that "remedies"

21   actually has a different meaning as well, a

22   means of enforcement meaning, which I think got

23   a little bit of discussion yesterday, but even

24   if that were true, that wouldn't affect the

25   statutory term at issue here we do believe.

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 1          JUSTICE ALITO:  How have the courts of
 2    appeals interpreted this provision?
 3          MR. MARTINEZ:  The courts of appeals
 4    have generally not agreed with our first
 5    argument, which is that the text of the statute
 6    has to come out our way, although I would note
 7    that two of the courts of appeals have done
 8    that, although they've acknowledged that our
 9    side has the better textual argument.
10          I think the First Circuit and the
11    Fifth Circuit have said that.  Judge Bumatay's
12    dissenting opinion in the Ninth Circuit I think
13    makes the same point pretty -- pretty well.
14          They have -- the courts of appeals
15    have generally agreed with us on our futility
16    argument, which is that the settlement
17    constitutes futility.  And I think that one
18    thing that's important here is we have a bunch
19    of different arguments and they're -- they're
20    kind of confusing.  I actually -- it's
21    confusing to kind of distinguish them.
22          I think that one thing that's really
23    important here is to look at the net effect of
24    Sturgis's responses.  And maybe you -- you
25    could think, okay, they have a fair point on
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 1   this argument or a fair point on that argument,

 2   but if you step back from all of it, the

 3   bottom-line position that -- the bottom-line

 4   place that Sturgis arrives at is that a parent

 5   who does everything right, Miguel's parents and

 6   Miguel, they did everything right, they

 7   accepted the settlement, they lose their ADA

 8   claims. That just can't be right.

 9   I mean, imagine -- put yourself in a

10   parent's position. They have wonderful claims

11   under both the IDEA and the ADA. Say their

12   child has been denied a FAPE, sent to a room

13   for disabled children and there has suffered

14   medical injuries. They've got claims under

15   both statutes.

16   And then the school comes to them and

17   says: Okay, we know you're desperate to get a

18   new IEP, desperate to remedy your immediate

19   on-the-ground denial of FAPE, we're going to

20   give you that. What do you want the parent to

21   do? What does Sturgis want the parent to do?

22   Apparently, Sturgis has -- there are

23   two answers. Number one, you can accept the

24   settlement, but the price of accepting the

25   settlement, even though the settlement doesn't

 1   give up ADA rights, is to extinguish your ADA

 2   rights.

 3   JUSTICE ALITO: Well, when you have a

 4   --

 5   MR. MARTINEZ: That can't possibly --

 6   JUSTICE ALITO: -- situation like

 7   this, the -- the result, the nature of the

 8   settlement could reflect a strategic choice on

 9   the part of both parties. It could also

10   reflect bad lawyering on the part of one or

11   both parties.

12   MR. MARTINEZ: Right. And --

13   JUSTICE ALITO: If it's the latter,

14   what -- why does this case make that much

15   difference?

16   MR. MARTINEZ: Well, I -- I think that

17   --

18   JUSTICE ALITO: I mean, the -- the --

19   the parents' attorneys, maybe they're -- they

20   may not be that sophisticated, but they could

21   have -- both parties could have discussed

22   whether they wanted to wrap up the whole thing

23   in the settlement. They could have done that.

24   Or they could say, well, we're not

25   going to do that and we'll take our chances

 1   later in litigation.

 2   MR. MARTINEZ: Well, I think -- I

 3   think your point about how the settlement

 4   negotiations would play out is extremely

 5   important, and I think it favors us because

 6   what -- our rule would allow the parties to

 7   come together. If they can reach a global

 8   settlement of everything, terrific.

 9   But, if they can only reach a partial

10   settlement, if they can only reach a settlement

11   that addresses the IDEA claims, our rule would

12   say, yes, of course, in that case, the student

13   and the parents should accept that settlement,

14   get the on-the-ground FAPE relief immediately,

15   and then the parties can agree to go on and

16   fight about the ADA claims for relief later.

17   JUSTICE ALITO: Well, and the

18   settlement could have specifically preserved

19   the other claims too.

20   MR. MARTINEZ: Well, I -- I think,

21   under their rule, it could not because, under

22   their rule, if you accept a settlement, you

23   automatically extinguish your ADA claims.

24   So our rule allows the parties a sort

25   of freedom of contract. Their rule says, if

1   you -- if you're not willing to give up the ADA

2   claims, you get -- you can't get anything by

3   settlement because the -- the effect of the

4   settlement is to give up everything. That rule

5   doesn't make sense.

6   CHIEF JUSTICE ROBERTS: Thank you.

7   Justice Thomas?

8   JUSTICE THOMAS: Just back to my

9   original question. Can you think of another

10   area in which the -- the -- the claim that is

11   exhausted doesn't naturally fit the claim that

12   you're trying to pursue?

13   MR. MARTINEZ: I think this is a

14   one-of-a-kind statute, Your Honor, and I -- I'm

15   not aware of any -- any statute like that.

16   JUSTICE THOMAS: And much of the

17   difficulty seems to flow from the fact that it

18   doesn't flow -- it doesn't -- it isn't a

19   natural progression of rights. Normally, you

20   have informal, administrative, and then

21   judicial, all about the very same thing,

22   pursuing a similar remedy at different stages.

23   This is a different remedy under a

24   different statute, so I'm just wondering if

25   there's anything close to it. Is there an

1   analogue?

2   MR. MARTINEZ: I -- I don't know that

3   there's an -- I don't know of any analogue. I

4   will say one thing because I think your comment

5   really emphasizes -- it underscores one thing

6   that's important about how this Court has

7   always talked about and interpreted exhaustion

8   requirements.

9   It's not like exhaustion is like some

10   sort of one-size-fits-all rule that you apply

11   mechanically in every case. What the Court has

12   said is that exhaustion means, you know, going

13   through the administrative procedures to an

14   appropriate conclusion and that that needs to

15   be looked at given the particulars of the

16   statutory and administrative scheme at issue.

17   And in this case, where you have a

18   one-of-a-kind administrative scheme that sort

19   of bizarrely requires you to exhaust procedures

20   for one claim before bringing a different

21   claim, it makes perfect sense to treat a

22   settlement agreement, which is a preferred

23   resolution, not just appropriate but preferred

24   resolution of the IDEA claim, it makes perfect

25   sense to treat that preferred resolution as an

1   appropriate conclusion of the IDEA process that

2   at that point constitutes settlement and allows

3   you to bring your ADA claim for different

4   relief.

5   CHIEF JUSTICE ROBERTS: Justice Alito?

6   JUSTICE ALITO: Under Fry, is the

7   gravamen of Petitioner's complaint the denial

8   of a FAPE?

9   MR. MARTINEZ: Your Honor, we -- we

10   challenged that and we litigated that below.

11   As the case comes to this Court, we are no

12   longer challenging that. And so, for purposes

13   of -- of your decision, we think that -- that,

14   you know, the Fry -- the -- the gravamen is the

15   same. It is -- the gravamen of the case does

16   involve a FAPE denial, so we haven't pressed

17   that here.

18   JUSTICE SOTOMAYOR: In answer, earlier

19   answer, to Justice Alito's question, you said

20   that according to the court below, which is

21   sort of the difficulty with it, if you win an

22   IDEA case, you then can't pursue any other

23   remedies, correct?

24   MR. MARTINEZ: That was the logic of

25   the court below, and we strongly disagree with

1   that logic.

2   JUSTICE SOTOMAYOR: Clearly. But

3   putting that aside, let's assume the parallel

4   litigation question. We know in the normal

5   course of things the agency findings under the

6   IDEA are given deference by the court reviewing

7   it, correct?

8   MR. MARTINEZ: I think it depends what

9   you mean by "deference," but, certainly,

10   respectful consideration. But I don't think

11   they're binding, and -- and the parents are

12   allowed to bring in new evidence. So it's --

13   JUSTICE SOTOMAYOR: Yes, but there is

14   some deference. Does the same hold true under

15   an ADA claim?

16   MR. MARTINEZ: No, Your Honor. The --

17   Congress has not decided to -- to require ADA

18   district court judges to even respectfully

19   consider what's happened before in the agency

20   proceeding on a different statute.

21   JUSTICE SOTOMAYOR: So there is two

22   separate proceedings mandated by circumstances,

23   this odd creature, platypus, that has been

24   created?

25   MR. MARTINEZ: That's right, Your

1   Honor.

2   JUSTICE SOTOMAYOR: All right. Thank

3   you.

4   CHIEF JUSTICE ROBERTS: Justice Kagan?

5   Justice Gorsuch?

6   Justice Kavanaugh?

7   Justice Barrett?

8   JUSTICE BARRETT: Mr. Martinez, as a

9   practical matter, could your client, under your

10   friend on the other side's view, have tried to

11   proceed, where I assume no parallel litigation,

12   holding on to the ADA claim, as your client did

13   here, proceeds through, gets the settlement but

14   rejects the settlement -- is there -- is there

15   any way he could have even kept the IDEA claim

16   alive and then gone to district court and filed

17   both of them?

18   MR. MARTINEZ: I'm sorry, Your Honor.

19   Could you just clarify? That there's a

20   settlement offer on the IDEA claim --

21   JUSTICE BARRETT: Settlement offer,

22   yeah.

23   MR. MARTINEZ: -- that's accepted or

24   rejected?

25   JUSTICE BARRETT: Well, rejected

1   because your client wants to exhaust, right, so

2   rejected.

3   MR. MARTINEZ: Oh, be -- under --

4   under his rule, yes.

5   JUSTICE BARRETT: Exactly, under his

6   rule. So your client could have done that?

7   MR. MARTINEZ: If -- right. I think

8   -- I think that the net effect of their rule is

9   that we would have -- if we had wanted to

10   preserve our ADA rights, we would have been

11   required to reject the settlement --

12   JUSTICE BARRETT: And thereby --

13   MR. MARTINEZ: -- litigate to a full

14   conclusion and lose.

15   JUSTICE BARRETT: And give up

16   attorneys' fees, right? Because, if you

17   rejected a reasonable settlement offer, the

18   statute says that --

19   MR. MARTINEZ: Right.

20   JUSTICE BARRETT: -- you don't get

21   attorneys' fees for subsequent services.

22   MR. MARTINEZ: If -- if you get less

23   relief than you would have gotten in the

24   settlement, then you give up your attorneys'

25   fees, which is another reason to conclude that

 1   the statute really wants you to settle --

 2   JUSTICE BARRETT: Right.

 3   MR. MARTINEZ: -- if you can reach a

 4   reasonable settlement.

 5   JUSTICE BARRETT: Right. Thank you.

 6   CHIEF JUSTICE ROBERTS: Justice

 7   Jackson?

 8   JUSTICE JACKSON: Yes. Your brief at

 9   one point references some of the legislative

10   history, and I just want to give you a chance

11   to reflect on what Congress's actual intentions

12   may have been with respect to the enactment of

13   this provision.

14   MR. MARTINEZ: So I think the

15   legislative history in two places is helpful

16   both in illustrating Congress's intentions and

17   also in confirming the original public meaning

18   of -- of the statutory text that was enacted.

19   For purposes of our first argument, I

20   think the most important thing is the House

21   report at page 7, and what it says there is

22   that -- it's interpreting the language that was

23   -- ultimately became law, and it said that

24   exhaustion is not required when -- and I'm

25   quoting -- "the hearing officer lacks the

 1   authority to grant the relief sought."

 2   So that just confirms our textual

 3   argument that if you're seeking relief that's

 4   not available, you -- you don't have to exhaust

 5   because there the hearing officer wouldn't

 6   grant relief.

 7   I think the legislative history is

 8   also helpful on our argument that -- that the

 9   best way to think about a settlement is that it

10   -- it -- it constitutes exhaustion or supports

11   a futility argument. And there I would point

12   you to the Senate report, which says that --

13   and, here, I'm quoting again -- "exhaustion of

14   administrative remedies would be excused where

15   they would not be required to be exhausted

16   under the [IDEA], such as when resort to those

17   proceedings would be futile."

18   And so that recognizes that there is a

19   futility exception that is available under this

20   statute, contrary to what --

21   JUSTICE JACKSON: Is -- isn't that

22   also helpful with your first argument insofar

23   as, you know, if, again, if you're sort of

24   conceptualizing it the way that I am, which is

25   exhaustion being only required for the same

 1   relief and to the same extent that it would be

 2   as if you were bringing the other claim? So

 3   Congress was trying, I think, to prevent the

 4   end-run scenario.

 5   MR. MARTINEZ: Right.

 6   JUSTICE JACKSON: You can't just call

 7   an IDEA claim an ADA claim and get out of

 8   exhausting it to the same extent as you would

 9   have to if it was labeled IDEA.

10   MR. MARTINEZ: I -- I think you're

11   absolutely right. I think that that -- that

12   futility argument would also apply. I think,

13   you know, the fact that it's futile to go to an

14   agency officer -- official and ask for money

15   damages when they can't give you money damages,

16   I think that is an example of futility.

17   I will say that the courts of appeals

18   that have looked at this have said that there

19   is -- have generally said that there is a

20   futility exception. Eleven circuits have said

21   that, although they generally have not treated

22   a request for a different type of damages as

23   futility.

24   But I think you're right, Justice

25   Jackson, that that language in the futility

 1   sort of concept here, you know, would give

 2   us -- get to the same place, and I think,

 3   actually, the text of the statute in many ways

 4   is intended to codify that, that general idea.

 5   CHIEF JUSTICE ROBERTS: Thank you,

 6   counsel.

 7   Mr. Yang.

 8   ORAL ARGUMENT OF ANTHONY A. YANG

 9   FOR THE UNITED STATES, AS AMICUS CURIAE,

10   SUPPORTING THE PETITIONER

11   MR. YANG: Mr. Chief Justice, and may

12   it please the Court:

13   The path Petitioner took in this case

14   was exactly right. He settled his IDEA claim,

15   obtained prompt educational relief, and then

16   filed a separate ADA action for compensatory

17   damages, things he couldn't get under the IDEA.

18   But, under the Sixth Circuit's ruling,

19   Petitioner would have had to reject a favorable

20   IDEA settlement and forgo the attorneys' fees,

21   delay needed educational relief, and pursue

22   pointless administrative proceedings that

23   cannot provide remedies that the ADA provides

24   simply to pursue the remedies that he already

25   secured by settlement.

1   That makes no sense. The ruling erred

2   -- the Sixth Circuit erred in three important

3   ways. First, the exhaustion requirement does

4   not apply if Petitioner's A -- because the

5   Petitioner's ADA claim seeks relief that is not

6   also available under the IDEA.

7   The whole point of the exhaustion

8   requirement here is, if you're seeking the same

9   relief, Congress wanted to -- to have you go

10   through the IDEA first. Second, it would be

11   futile to do it. And, third, settlement in

12   this context is exhaustion.

13   I welcome the Court's questions.

14   JUSTICE SOTOMAYOR: Do you prefer the

15   second or the third if the first were bypassed?

16   MR. YANG: If the Court bypasses the

17   issue that it reserved in Fry, the seek --

18   seeking relief question, the government would

19   prefer the Court to address the futility

20   argument first, and the reason is that

21   futility -- the Sixth Circuit's decision sweeps

22   much broader than just this context.

23   It held that Honig discussion of

24   futility was dicta, notwithstanding two

25   subsequent recodifications, and that is a

 1   problem both for schools and for parents. As

 2   Honig itself reflects, schools can invoke the

 3   futility exception in cases where they need to

 4   remove a student.

 5   Now, subsequently, in subsection (k),

 6   Congress has made that easier for students that

 7   either bring a gun or drugs to school or who

 8   have already caused serious bodily harm to

 9   someone else.

10   But there was -- there remains the

11   need to go to court quickly in some contexts,

12   and that is how the courts have always done it

13   is through the futility exception.

14   CHIEF JUSTICE ROBERTS: You want --

15   you say you want us to decide futility first?

16   MR. YANG: No, no, no. No. If we

17   bypass the first question about whether the

18   exhaustion requirement -- that's exactly as I

19   understood it.

20   JUSTICE SOTOMAYOR: Yes.

21   MR. YANG: If the -- in terms of the

22   order of operation, I think the Court should

23   just decide the logically antecedent question

24   first even though the futility issue is

25   important.

1   CHIEF JUSTICE ROBERTS: Oh, okay.

2   JUSTICE ALITO: If the -- suppose

3   there were no IDEA. Could Petitioner prevail

4   on a straight ADA claim? And, if so, what

5   would be the nature of the -- of the claim?

6   MR. YANG: Well, we're not going to

7   take a position on the -- the specifics of this

8   case being adjudicated under the ADA, but he

9   certainly has a -- a -- a viable claim that can

10   be litigated, which is that he was discrim- --

11   JUSTICE ALITO: Well, what would --

12   all right. I'll rephrase it. I -- I don't --

13   I don't want to ask a question about this

14   that's specific to this case.

15   What would be the nature of an ADA

16   claim for a situation in which a student was

17   not given a -- a -- a FAPE?

18   MR. YANG: Oh.

19   JUSTICE ALITO: Without the FAPE.

20   Without the IDEA being on the books, what would

21   it be? It would be the -- the -- the student

22   would have to argue that there was a denial of

23   reasonable accommodation? Is that what it

24   would be?

25   MR. YANG: Yes. This is on page 6 of

1   our brief. There, the ADA -- Title II of the

2   ADA's discrimination provision has been fleshed

3   out in regulations. The regulations require

4   the public entity to furnish appropriate

5   auxiliary aids and services, which include

6   qualified interpreters for the Deaf, where

7   necessary to afford individuals an equal

8   opportunity to participate in and enjoy the

9   benefits of the service, program, or activity.

10   The claim would be based on that.

11   It -- it would not be based on the

12   denial of FAPE. A FAPE is not the sine qua non

13   of my -- of -- of the --

14   JUSTICE ALITO: But that regulation --

15   that regulation is based on -- on reasonable

16   accommodation, am I correct?

17   MR. YANG: It is based on the

18   antidiscrimination provision, yes.

19   JUSTICE SOTOMAYOR: The elements of an

20   ADA claim and an IDEA claim are different,

21   aren't they?

22   MR. YANG: They are. They are. In

23   order to obtain damages under the ADA, for

24   instance, you need to establish some type of

25   intentional conduct. Most courts of appeals

1   have concluded that you need to show deliberate

2   indifference.

3   Also, there are certain defenses under

4   the ADA, undue burden, fundamental alteration,

5   and also just the element of the discrimination

6   claim is itself different. You now have to

7   establish that there's a violation of a -- of a

8   FAPE.

9   JUSTICE KAGAN: When -- when you said

10   before, Mr. Yang, that the Court should decide

11   the antecedent question first, the logically

12   antecedent question, is there any other reason

13   than, oh, it's logically antecedent that you

14   would rather have us decide that question?

15   I guess what I'm asking is, what is

16   the more important question practically

17   speaking --

18   MR. YANG: Practically speaking --

19   JUSTICE KAGAN: -- in this case?

20   MR. YANG: -- it's probably futility

21   but not because of the settlement context.

22   However, I think the logically antecedent

23   question, it's useful to answer, because it

24   tells you a bit about what the whole futility

25   requirement or the exhaustion requirement means

          1   in the statute. And it's worth thinking what

          2   would exhaustion look like if the Sixth Circuit

          3   were right here, and I think this helps to

          4   inform the -- the -- the case.

          5   It's even odd -- I think, Justice

          6   Thomas, you were touching upon this. It's odd

          7   to even contemplate exhausting a claim where

          8   the -- under the IDEA, where you can't get the

          9   very thing that the claim asks for, which is

         10   compensatory damage.

         11   The claim lacks merit, as Respondents

         12   acknowledge. So what would you do? You'd go

         13   to the hearing officer and say, I want

         14   compensatory damages under the IDEA. And the

         15   hearing officer would say: Well, you can't get

         16   compensatory damages under the IDEA, I dismiss

         17   your claim.

         18   What's the point of this? It just

         19   makes no sense. I think this speaks to --

         20   CHIEF JUSTICE ROBERTS: Well, but it

         21   makes no sense under -- under your view because

         22   you're thinking of the relief as -- as a

         23   remedy. If you think of the relief as a

         24   correction or fixing the -- the flaws in the

         25   education, the denial of a FAPE, if you think

1   of that, then it does make sense.

2   MR. YANG: But that just can't, I

3   don't think, be fairly squared with the text

4   because "relief" has a mean -- in -- in the

5   legal context, as Fry acknowledged, has a very

6   specific meaning, and that is the redress or

7   benefit that you ask the court and the court

8   can provide. And -- and --

9   CHIEF JUSTICE ROBERTS: Well, you

10   might call that a remedy. I mean, their

11   argument is that those are two different words,

12   and you're seeing -- treating them as if they

13   mean the same thing --

14   MR. YANG: Remedies have --

15   CHIEF JUSTICE ROBERTS: -- which they

16   might.

17   MR. YANG: "Remedy" has two different

18   meanings, again, as -- as I think you just

19   touched upon yesterday. One is the meaning

20   that we advocate and I think that Fry already

21   used.

22   The second is the process or the means

23   of obtaining relief. But that can't be the

24   case here because the statute asks if the

25   action is seeking relief. You don't seek a

1   process.

2   JUSTICE KAGAN: And -- and when you --

3   MR. YANG: You -- you --

4   JUSTICE KAGAN: -- said Fry uses this

5   understanding of relief, I mean, it does right

6   there. This is the part of the opinion that's

7   unanimous. The ordinary meaning of "relief" in

8   the context of a lawsuit is the redress or

9   benefit that attends a favorable judgment,

10   Black's Law Dictionary.

11   MR. YANG: And I think this is the --

12   in a legal context, and this is the only

13   reasonable interpretation of relief. It's not

14   like I'm saying, it's hot outside, I'm going

15   into the -- inside for relief, right? I mean,

16   that's a meaning of "relief" in a non-legal

17   context.

18   It may be, like, that colloquial

19   meaning might have some -- you know, some

20   weight here. I -- I -- I think not. But, when

21   you're talking to lawyers and Congress is

22   talking about exhausting the procedures under a

23   statute --

24   JUSTICE JACKSON: And isn't --

25   MR. YANG: -- it's not -- it's not --

1   it's not a --

2   JUSTICE ALITO: Well, "relief" --

3   "relief" could mean relief for the denial of a

4   FAPE. And Mr. Martinez agrees that the

5   gravamen of the complaint here is the denial of

6   the FAPE.

7   MR. YANG: I -- I don't think it can

8   mean that either because it is -- the whole

9   premise is that it's a non-IDEA action under

10   such laws seeking relief that's also available.

11   Now it's true that in order to be also

12   available under the IDEA, it has to be -- the

13   gravamen has to be for the denial of a FAPE.

14   But the relief that you're seeking under the

15   ADA is not for the denial of a FAPE. It is

16   something that you're seeking, like

17   compensatory damages. If you're --

18   JUSTICE ALITO: Well, does the -- does

19   the ADA -- does the ADA require a school to

20   provide auxiliary aids regardless of the cost?

21   MR. YANG: Does the ADA?

22   JUSTICE ALITO: Yes, the --

23   MR. YANG: No, because there is a --

24   there is an exception for substantial burden,

25   financial or administrative burden.

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 1            JUSTICE JACKSON:  Mr. Yang, and it --

 2            JUSTICE ALITO:  And do -- just one --

 3       one follow-up.

 4            Does a FAPE sometimes require very --

 5       very expensive expenditures by a district,

 6       expenditures that would exceed what could be

 7       obtained under the ADA?

 8            MR. YANG:  I think, in some contexts,

 9       that would be true.  Again, this is all very

10       contextual, right?  It depends on what we're

11       talking about, but that's certainly possible.

12            JUSTICE JACKSON:  Yes.  I was just

13       wondering whether part of your answer to the

14       Chief Justice's question about, I guess, a

15       total overlap in the claims is the first part

16       of 1415.  In other words, the statute suggests

17       that you would have some ability to bring a

18       claim under the ADA that is different from or

19       outside of the IDEA and that Congress wanted,

20       as Mr. Martinez said, for you to be able to do

21       both.  Is that right?

22            MR. YANG:  I think Congress did

23       contemplate that you could do both.  That's why

24       it focused on an action that's seeking relief

25       that's available.  And in -- only in that
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1   specific context did Congress want you to go

2   through -- through the IDEA process.

3   And that makes sense because, when

4   you're seeking the same relief that's

5   available, you're talking about educational

6   relief. And the IDEA process has a pretty

7   quick way of resolving that. Plus, it builds

8   into the front end of that getting the parties

9   together to try to resolve this collaboratively

10   --

11   JUSTICE JACKSON: And if you were --

12   MR. YANG: -- which results in

13   settlement as it did here.

14   JUSTICE JACKSON: -- and -- and if you

15   were forced to bring your ADA -- ADA claim

16   through the exhaustive procedures of the IDEA,

17   even if you were looking for different relief,

18   wouldn't that be limiting the rights,

19   procedures, and remedies available under the

20   ADA in a way that Congress says they didn't

21   want to do?

22   MR. YANG: It -- it would. But also,

23   as I think I was discussing earlier, it just

24   makes no sense because what is a hearing

25   officer to do, right? You bring an ADA claim

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1    where you're seeking relief, this ADA-type

2    relief.  I'm a hearing officer -- I mean, Fry

3    says the hearing officer does not -- I mean, in

4    so many words, a hearing officer does not have

5    authority under the IDEA to decide an ADA

6    claim.

7              JUSTICE BARRETT:  Mr. Yang --

8              MR. YANG:  I mean, there's just

9    nothing to do.  What would happen here is

10   exactly what happened here, which is that the

11   hearing officer dismisses the ADA claim --

12             JUSTICE BARRETT:  Well, and it --

13             MR. YANG:  -- or dismisses the claim

14   for ADA relief.

15             JUSTICE BARRETT:  -- and it would be

16   would be a losing claim, as you were saying to

17   Justice Alito, that, you know, you can't

18   recover under the ADA simply because you didn't

19   get a FAPE?

20             MR. YANG:  Yep.

21             JUSTICE BARRETT:  It -- it's not the

22   same thing.  And if that's all you're seeking,

23   if -- if your only claim -- I mean, here, there

24   are claims for emotional distress and other

25   sorts of compensatory relief, right, for
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 1   damages, backward-looking damages. But, if all

 2   you've got is you didn't give me a FAPE and you

 3   owed me a FAPE, and you can't make out the

 4   elements of the ADA claim, you just lose,

 5   right? So you can't just tack on compensatory

 6   damages at the end of your request for IDEA

 7   relief. That's just not going to work, right?

 8   MR. YANG: I think that's right, and

 9   if you did have a case where you were seeking

10   things that have -- could have been sought

11   under the IDEA and you haven't exhausted, and

12   then you're seeking compensatory damages or

13   something that wasn't, we think the right

14   result -- this is supported by the Court's

15   decision in Jones v. Bock, it's also analogous

16   to Article III standing, where you have to show

17   Article III standing for each form of relief

18   that you're seeking --

19   JUSTICE BARRETT: Right.

20   MR. YANG: -- you would just tie off

21   the -- the problematic type of relief and

22   proceed.

23   JUSTICE BARRETT: Right.

24   MR. YANG: So, you know, it's -- it's

25   a little difficult to understand where the

 1   Sixth Circuit was going on this. I think they

 2   may have lost the forest a bit for the trees.

 3   But, if you answer QP-1 first and you explain

 4   that the relief sought has to be relief that is

 5   actually available under the IDEA, I think that

 6   solves a lot of the problems.

 7   That would leave the futility

 8   question, Justice Kagan, unresolved, but you'll

 9   take the Sixth Circuit's decision off the

10   books. And given that every -- you've got

11   Honig, you've got all the other courts of

12   appeals, you've got ratification twice, I'm

13   pretty confident we can, you know, fix that

14   going forward, hopefully, in the Sixth Circuit.

15   But, again, you can decide how you

16   want to decide the case, whether it's the first

17   issue or -- or the second issue, which can be

18   decided in two ways.

19   CHIEF JUSTICE ROBERTS: Justice

20   Thomas?

21   Justice Alito?

22   Justice Sotomayor?

23   JUSTICE SOTOMAYOR: Is there much

24   parallel litigation now? Most of the court of

25   appeals require going through the -- through

 1   the IDEA, but if you do and settle or you lose,

 2   they --

 3   MR. YANG: Well, I think there's --

 4   there's two things that you might be talking

 5   to, and I can address both.

 6   First, on QP-1, whether having a

 7   purely non-IDEA relief type of claim can

 8   proceed, there used to be a circuit split.

 9   There was at least at the time the Court

10   granted Fry. The Tenth Circuit -- I mean,

11   excuse me, the Ninth Circuit, in a case called

12   Payne in 2011, adopted the view that we

13   advocate, and that was I think probably the

14   basis for the Court granting cert in Fry.

15   However, after 10 years living with

16   that rule, the Ninth Circuit en banc has -- has

17   gone the other way. But, in those 10 years --

18   remember, the Ninth Circuit is nine states, two

19   territories, and about 20 percent of the U.S.

20   population. No one has identified a single

21   instance -- maybe there's a few -- of this

22   becoming a problem.

23   And I think that that really touches

24   upon the recognition that the Court had in

25   Rowley, which is parents have every incentive

 1   to proceed IDEA relief. It's a speedy path and

 2   concerns the education of their children, where

 3   time is of the essence. They're realistically

 4   going to go after IDEA relief and then pursue,

 5   as my friend explained, ADA relief later. And

 6   I think the 10 years in the Tenth Circuit

 7   without the ability of the other side to

 8   identify any problem speaks to that.

 9   The second issue is about the

10   settlement. We've had three circuits that --

11   as -- as we explained in our invitation brief,

12   that have our rule about futility, the Third

13   Circuit, the Ninth Circuit, and the Tenth

14   Circuit. And that's been since, in the Third

15   Circuit, 1995. Again, no untoward results.

16   Again, I think this speaks to the

17   recognition of the Court in Rowley that court

18   -- that parents are going to pursue IDEA

19   relief. It is quick, it is fast, and it is

20   important when we're talking about ongoing

21   educational relief for your own kids.

22   CHIEF JUSTICE ROBERTS: Justice Kagan?

23   JUSTICE KAGAN: I'm wondering,

24   Mr. Yang, if the SG has given any thought to

25   what kinds of compensatory relief are available

1   after Cummings? I mean, is -- is there any at

2   this point? And for what?

3   MR. YANG: We -- we've not taken a

4   position either in this case or subsequently.

5   I know there is a -- an argument that is being

6   presented or will be presented should this case

7   be litigated that Cummings forecloses ADA

8   relief for emotional damages. There's also an

9   argument that precludes the other types of

10   compensatory damages. We're just not taking a

11   position on that in this case.

12   Our position is that Petitioner

13   clearly was entitled to at least litigate those

14   questions.

15   CHIEF JUSTICE ROBERTS: Justice

16   Gorsuch?

17   Justice Kavanaugh?

18   Justice Barrett?

19   Justice Jackson?

20   Thank you, counsel.

21   MR. YANG: Thank you.

22   CHIEF JUSTICE ROBERTS: Mr. Dvoretzky.

23   ORAL ARGUMENT OF SHAY DVORETZKY

24   ON BEHALF OF THE RESPONDENTS

25   MR. DVORETZKY: Mr. Chief Justice, and

 1   may it please the Court:

 2   When Congress enacted Section 1415(l),

 3   it channeled all FAPE denial claims through the

 4   IDEA's exhaustion procedures. Congress

 5   carefully crafted those procedures, and it

 6   wanted parents and school districts to go

 7   through them because of the primacy of a FAPE.

 8   Congress's choice helps answer both

 9   questions presented, plus the third that

10   Mr. Perez wants to add.

11   On the first question, Congress's

12   choice shows that the word "relief" in 1415(l)

13   means redress for harm, not a specific remedy.

14   When a plaintiff complains of a FAPE denial,

15   relief is available under the IDEA, and the

16   plaintiff must exhaust. Any other test would

17   allow plaintiffs to circumvent the exhaustion

18   requirement Congress carefully crafted by using

19   the magic word "damages" and going straight to

20   court.

21   On the futility question, Congress's

22   choice explains the unusually specific words

23   that Congress wrote. A plaintiff must exhaust

24   to the same extent as would be required had the

25   action been brought under the IDEA. That

 1   directive reflects Congress's focus on

 2   delivering a FAPE, and it makes two things

 3   clear.

 4   One, exhausting a non-IDEA claim means

 5   obtaining an administrative decision from an

 6   educational expert, just as an IDEA plaintiff

 7   must do before going to court. That's why

 8   Mr. Perez's improper new argument that

 9   "settles" equals "exhaustion" is incorrect. An

10   IDEA plaintiff cannot sue after settling.

11   Thus, neither can a non-IDEA plaintiff.

12   Two, settlement doesn't excuse

13   exhaustion. Neither the unavailability of

14   damages nor settlement constitutes futility

15   under the IDEA. Futility may excuse exhaustion

16   where a court can grant relief that a hearing

17   officer can't. But neither a hearing officer

18   nor a court can award IDEA damages or

19   adjudicate a settled claim. Thus, to the same

20   extent, neither the unavailability of damages

21   nor settlement constitutes futility for an ADA

22   claim.

23   I welcome the Court's questions.

24   JUSTICE THOMAS: Couldn't you have

25   solved this problem or precluded this, obviated

         1   this problem by obtaining a general release in

         2   your settlement?

         3   MR. DVORETZKY: I think we could have.

         4   And I think we -- that going forward, whatever

         5   rule the Court adopts here will ultimately

         6   function as just a default rule.

         7   If the Court -- if the Court were to

         8   adopt our rule, then plaintiffs could insist on

         9   either complete compensation or a waiver of the

        10   exhaustion requirement as the price for a FAPE

        11   settlement.

        12   If the Court adopts Mr. Perez's rule,

        13   then school districts could insist, if they

        14   wanted to, on a global release, or, if they

        15   were willing to proceed with litigation later

        16   on in an ADA claim, they could do that as well.

        17   At bottom, we're just talking about a

        18   default rule here.

        19   JUSTICE THOMAS: Is -- are there any

        20   other actions that are required to be exhausted

        21   before -- that -- that must be -- that you must

        22   exhaust the IDEA claim before you pursue them?

        23   For example, let's say there's a tort

        24   action as a result of a student being injured

        25   as a result of poor training. Would that be

 1   exhausted -- have -- required to be exhausted?

 2   MR. DVORETZKY: So, Justice Thomas, if

 3   it's a state law tort action, which I

 4   understand to be --

 5   JUSTICE THOMAS: Yeah.

 6   MR. DVORETZKY: -- the premise of your

 7   question, then I think, no, you would not have

 8   IDEA exhaustion. And that's because of the

 9   language of 1415(l), which says nothing shall

10   be construed to restrict or, et cetera, rights

11   under the Constitution, the ADA, the

12   Rehabilitation Act, or other federal laws.

13   JUSTICE THOMAS: So the -- was

14   there -- before you had (l), this provision,

15   1415(l), did you have an exhaustion

16   requirement?

17   MR. DVORETZKY: Before 15 -- before

18   1415(l), the 15 -- 1415(l) was a response to

19   the Court's decision in Smith.

20   JUSTICE THOMAS: Yeah.

21   MR. DVORETZKY: And under the Court's

22   understanding in Smith, all FAPE-related claims

23   had to proceed through the IDEA exclusively.

24   So an exhaustion requirement wasn't really

25   relevant because you simply couldn't bring

 1   non-IDEA FAPE claims --

 2   JUSTICE JACKSON: But isn't that --

 3   isn't that --

 4   MR. DVORETZKY: -- at all.

 5   JUSTICE JACKSON: -- isn't that what's

 6   happening here with your interpretation of the

 7   statute? I mean, that's sort of what concerns

 8   me, that it was clear that you -- you're right

 9   that there was a -- an attempt on the part of

10   Congress to respond to Smith, and it would seem

11   as though Congress was trying to make clear

12   with the statutory language that we're

13   interpreting that they did not want all claims

14   arising out of these circumstances to have to

15   go through the process.

16   So how do you square that, the kind of

17   abrogation piece of this, with -- with your

18   argument?

19   MR. DVORETZKY: Justice Jackson, two

20   points, one about the -- the history and

21   context and the other about the language of the

22   statute that -- that Congress actually enacted.

23   With respect to the -- the history and

24   context, Smith really did three things, and

25   Congress's response was not to overturn all of

1   them.

2   One, Smith said no attorneys' fees

3   under the IDEA. Congress changed that.

4   Two, Smith said no non-IDEA FAPE

5   claims. And Smith did -- and -- and 1415(l)

6   did overturn that.

7   But the third thing Smith said was

8   that it had a concern with circumventing the

9   IDEA's procedures. And Congress, in fact,

10   reaffirmed that concern by, on the one hand,

11   allowing non-IDEA FAPE claims to be brought

12   but, on the other hand, channeling them first

13   through the IDEA's exhaustion procedure.

14   JUSTICE JACKSON: But only --

15   MR. DVORETZKY: And that's the second

16   --

17   JUSTICE JACKSON: -- but that's not

18   what the language says. The language says to

19   the extent or if they are seeking the same

20   relief, number one, and if we read it the way

21   that you want to read it, doesn't -- don't we

22   end up going back to the part of Smith that you

23   even agree Congress overturned, which is the

24   part about whether or not we can have non-IDA

25   -- IDEA FAPE claims because, as Justice Barrett

 1   pointed out earlier, you know, through your

 2   analysis, it would seem as though you wouldn't

 3   have any ability to bring an ADA claim if

 4   someone, you know, is successful on the IDEA

 5   claim.

 6   MR. DVORETZKY: Justice Jackson, I

 7   don't think that that is the result of our

 8   analysis, and I also don't think that is the

 9   correct textual reading of the statute.

10   The result of our analysis does allow

11   for non-IDEA FAPE claims to be brought once the

12   IDEA's exhaustion procedures have been -- have

13   been followed.

14   So all we're talking about here is

15   that if you have a FAPE claim, you bring that

16   to the IDEA hearing officer first. You get a

17   FAPE, which is the primary relief that the IDEA

18   is concerned with. And once you have that, if

19   you think you have an ADA claim to pursue, you

20   can pursue that some number of months later.

21   But Congress's focus first and foremost was on

22   making sure that the -- that the child gets a

23   FAPE.

24   With respect to the statutory text, I

25   think all of this comes down to how we

 1   interpret or how you interpret the word

 2   "relief" in 1415(l), and the word "relief" read

 3   in isolation can mean one of two things. It

 4   can either mean redress for a harm, or it can

 5   mean a specific remedy.

 6   The better reading here is that it

 7   means redress for a harm. That is consistent

 8   with how Fry understood the term "relief."

 9   CHIEF JUSTICE ROBERTS: And -- and

10   your --

11   MR. DVORETZKY: Fry said --

12   CHIEF JUSTICE ROBERTS: I'm sorry.

13   And your -- your point is that the denial of a

14   FAPE is the same harm in both cases?

15   MR. DVORETZKY: Yes.

16   CHIEF JUSTICE ROBERTS: In the ADA and

17   under the IDEA?

18   MR. DVORETZKY: If you have a case, as

19   I think is stipulated at this point in this --

20   in this Court, where the gravamen of the

21   complaint is the denial of a FAPE, then that is

22   the harm that is being redressed.

23   It is being --

24   CHIEF JUSTICE ROBERTS: But you can

25   have an AD -- you could have litigated this as

 1   a straight ADA claim and gone through the whole

 2   process without using the acronyms for FAPE,

 3   right? There's no necessity to prove or focus

 4   on or whatever under the ADA claim. Nothing

 5   under the ADA says you have to have a FAPE,

 6   right?

 7   MR. DVORETZKY: Well, Mr. Chief

 8   Justice, I think Fry is -- is trying to address

 9   this question by saying that whatever label the

10   plaintiff puts on the complaint, we -- or on

11   the claim, the Court looks to see what the

12   gravamen of the complaint is.

13   And is the gravamen of the complaint

14   the denial of a FAPE, whatever you might call

15   it in your complaint, or is it something else?

16   And -- and, in this case, I think using the two

17   guideposts that Fry provides, one, could an

18   adult at a school have brought the same claim?

19   No, because the claim is about the denial of an

20   education. Could a child at another public

21   facility like a library have brought the same

22   claim? No, for the same reason, because, at

23   bottom, what's alleged here is the denial of a

24   proper education.

25   And so that under the Fry analysis --

1   I don't think it's a question presented here --

2   makes -- makes that the gravamen of the

3   complaint there.

4   JUSTICE KAGAN: I mean, Mr. Dvoretzky,

5   just going back to this question of what

6   "relief" means and whether you're seeking

7   relief that's also available under the IDEA

8   when you're seeking damages, I would have

9   thought that the first blush and maybe also the

10   second blush and third blush reading of that

11   is, well, no, if you're seeking damages, then

12   you're not seeking relief that's also available

13   under the IDEA.

14   And that's exactly how the rest of

15   1415 uses "relief." So that there are a couple

16   of different provisions in the same statutory

17   section. One says it directs the court to

18   grant such relief as it determines as

19   appropriate. So, you know, it's like, are you

20   granting an injunction? Are you granting

21   damages?

22   Another prohibits attorneys' fees if

23   the court finds that the relief obtained isn't

24   more favorable to the parents than the offer of

25   settlement. Again, it's relief in the normal

 1   sense. You know, what did you get? Did you --

 2   how much money did -- was put on the table?

 3   It's just a normal wording of the word

 4   "relief," the one that comes out of Black's Law

 5   Dictionary, that Fry quotes, which is like I'm

 6   seeking damages. That's not relief that's

 7   available under the IDEA.

 8   MR. DVORETZKY: Justice Kagan, I think

 9   that "redress" can also bear a different

10   meaning, which is not just the specific remedy

11   that you're asking for but redress for a harm.

12   It's the -- it's the kind of situation where

13   you may not get what you ask for, but you get

14   what you need.

15   And if you bring a FAPE denial claim

16   seeking damages to an IDEA hearing officer,

17   you're not going to get damages because the

18   IDEA doesn't give you that, but you will get a

19   FAPE, and that is redress for the harm of

20   denial of a FAPE.

21   With respect to how Fry used the term,

22   Fry said "relief" is the redress or benefit

23   that attends a favorable judgment. It didn't

24   say redress -- the specific redress or benefit

25   demanded by the plaintiff that attends a

1   favorable judgment.

2   With respect to the other uses of

3   "relief" in the IDEA, again, I think "relief"

4   in isolation can bear different meanings.

5   JUSTICE KAGAN: Well, these are --

6   MR. DVORETZKY: Other --

7   JUSTICE KAGAN: -- provisions that are

8   surrounding the very provision that we're

9   supposed to interpret, which are clearly using

10   the term "relief" to mean something very

11   different from what you're saying.

12   MR. DVORETZKY: Justice Kagan, I

13   respectfully disagree with that reading of the

14   word "relief" in the other provisions as well.

15   If you look at those two provisions, one talks

16   about how the court shall grant such relief as

17   the court determines is appropriate. That's my

18   "you get what you need, not necessarily what

19   you want" understanding of relief. The court

20   will grant whatever relief is appropriate,

21   regardless of what relief you have specifically

22   asked for.

23   The other example is in the settlement

24   context. No fees if the relief finally

25   obtained is less favorable than the settlement

1   offer.

2   Under Mr. Perez's understanding of

3   relief, what "relief" really means is a type of

4   relief. That doesn't plug in -- that

5   understanding doesn't plug in to that

6   settlement provision. How do you compare

7   different types of relief as being more or less

8   favorable? It's apples and oranges.

9   And so I -- I don't actually think

10   that playing the isolated definition game of

11   looking at "relief" in different contexts gets

12   you very far here. I think the real question

13   is, what did Congress mean when it used the

14   word "relief" in 1415(l) and which of the two

15   plausible understandings of that term did

16   Congress mean to adopt?

17   Our understanding makes more sense

18   here for a few reasons. One --

19   JUSTICE JACKSON: Can you, before you

20   go into those reasons, if the question is what

21   did Congress intend, as you started out, how --

22   how do you respond to opposing counsel's

23   reference to the legislative history and in

24   particular the statement in the House report

25   where Congress says it's not appropriate to

 1   require the use of the exhaustion process if an

 2   IDEA hearing officer lacks the authority to

 3   grant the relief sought?

 4   MR. DVORETZKY: Justice Jackson, this

 5   was a compromise bill that went through a

 6   number of different iterations, and I just

 7   don't think that there is much, if any, weight

 8   that can be placed on the legislative history

 9   to shed light on that.

10   I think, if we -- if we look at the

11   purposes that Congress was more broadly trying

12   to achieve here, the main purpose of the IDEA

13   -- and it says this in its first declaration of

14   purpose -- is to ensure that all children with

15   disabilities have available to them a FAPE.

16   The exhaustion requirement is designed

17   to address that FAPE requirement right away.

18   Rather than --

19   JUSTICE JACKSON: For IDEA claims.

20   But what about the purposes of the other

21   non-IDEA statutes which Congress is clearly

22   preserving here?

23   MR. DVORETZKY: Congress is preserving

24   them, but the second half of 1415(l) channels

25   those through the IDEA's exhaustion procedures.

 1   And the reason for that is because of the

 2   primacy of getting a FAPE under the IDEA.

 3   The exhaustion requirement is designed

 4   to say, you can pursue your other claims later,

 5   but, first and foremost, you have to try to get

 6   a FAPE because that's what's in the best

 7   interests of the child. And you have to go

 8   through the IDEA's procedures in order to do

 9   that, rather than allowing parents to choose a

10   particular remedy that they might prefer under

11   other statutes by going straight to court.

12   Fry, I think, also reflects that

13   insight in that it recognizes the primacy of

14   the FAPE in asking whether the gravamen of a

15   complaint is the denial of the FAPE.

16   Reading "relief" to mean the redress

17   that the IDEA provides also avoids a

18   circumvention problem because circumvention and

19   going straight to court may, first of all,

20   deprive the child of a FAPE by focusing on

21   damages and not requiring parents to go

22   through -- through the FAPE process.

23   Second, it deprives both parents and

24   schools of help from educational experts, which

25   Article III judges are not. I think Congress

 1   recognized that there are educational experts

 2   in the agencies who ought to address these

 3   sorts of issues first.

 4   And, third, by putting -- it would --

 5   the circumvention and going straight to court

 6   would put the FAPE question before inexpert

 7   Article III judges without the benefit of

 8   getting findings in a decision, which is what

 9   the IDEA's exhaustion procedures require, from

10   an educational expert.

11   JUSTICE ALITO: Which of the two

12   default rules better serves the objectives of

13   the IDEA?

14   MR. DVORETZKY: So -- so it -- it

15   depends which question we're talking about. I

16   think what we have been talking about --

17   JUSTICE ALITO: Well, you said earlier

18   that there -- what we're talking about is the

19   default rule, and the default rule could either

20   be the one you'd like or the one that Mr.

21   Martinez likes. Which one better serves the

22   objectives of --

23   MR. DVORETZKY: To --

24   JUSTICE ALITO: -- the IDEA?

25   MR. DVORETZKY: -- to clarify, Justice

 1   Alito, I think that the -- the notion of a

 2   default rule only comes into play on the -- the

 3   second and third questions presented here about

 4   -- about what happens after a settlement.

 5   The question that we have, I think,

 6   mostly been talking about here is the first

 7   question presented, which goes beyond the

 8   context of a settlement. And -- and I think

 9   Mr. -- Mr. Martinez is asking for a rule where,

10   whenever a plaintiff seeks monetary damages,

11   that gets you out of the exhaustion requirement

12   in 1415(l).

13   As to that rule, that -- that's not a

14   default rule principle at play there. That

15   would be an absolute rule outside the context

16   of settlement.

17   With respect to the default rule, I

18   think that only comes up in a situation which

19   will probably be rare after this case where you

20   have a settlement that doesn't speak one way or

21   another to -- to what happens to -- to future

22   ADA claims.

23   And on that --

24   JUSTICE GORSUCH: On that, I -- I -- I

25   just want to press you on that assertion

 1   because your friend on the other side says, no,

 2   if we were to adopt your rule, the parties

 3   couldn't contract to allow an ADA claim to be

 4   brought later, that a settlement would itself

 5   extinguish the potential for an ADA claim. You

 6   have to exhaust -- your theory of exhaustion

 7   requires proceeding through the administrative

 8   process altogether.

 9   Do you want to respond to that?

10   MR. DVORETZKY: Yes. I don't think

11   that's right, Justice Gorsuch. I think that

12   the exhaustion requirement under the IDEA, in

13   light of this Court's clear statement rule,

14   although it's not a fourth question presented

15   here, I don't think the Court would likely find

16   that the exhaustion requirement is a

17   jurisdictional one.

18   And so it is something that, either

19   way, whether you adopt our rule or --

20   JUSTICE GORSUCH: Well, absent waiver

21   by the other side, it would operate in the way

22   Mr. Martinez suggests, wouldn't it?

23   MR. DVORETZKY: Absent a waiver, it

24   would, and that, I think, takes us to the

25   default rule point.

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 1          JUSTICE GORSUCH:  Okay.
 2          MR. DVORETZKY:  But either way --
 3          JUSTICE GORSUCH:  Okay.  And on -- on
 4    that, with respect to futility, it seems like
 5    most of the courts of appeals have gravitated
 6    around a rule that there -- a futility
 7    exception does exist here.  And what's wrong
 8    with that rule, and how has it operated in a
 9    way that's problematic in your view?
10          MR. DVORETZKY:  Justice Gorsuch, I
11    think it depends precisely what futility rule
12    we are talking about and futility with respect
13    to what.  1415(l) is setting up -- and I think
14    your -- your opinion in the A.F. case in the
15    Tenth Circuit sets this out --
16          JUSTICE GORSUCH:  Oh, do not invoke my
17    opinions below.  That's dangerous, counsel.
18          (Laughter.)
19          JUSTICE GORSUCH:  Every lawyer knows
20    that's dangerous.  I'm bound by circuit
21    precedent and arguments that weren't made to
22    me, okay?  Here we are with all sorts of
23    excellently lawyered arguments on both sides
24    and no circuit precedent.  Proceed with
25    caution.
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        1   (Laughter.)

        2   MR. DVORETZKY: Giving no deference to

        3   the Tenth Circuit, I think the Tenth -- the

        4   Tenth Circuit had it right.

        5   (Laughter.)

        6   JUSTICE GORSUCH: Touché.

        7   MR. DVORETZKY: The -- the Tenth

        8   Circuit had it right in setting up that the --

        9   the critical question that Congress instructed

       10   courts to answer here is whether a plaintiff

       11   bringing a non-IDEA claim could invoke futility

       12   when bringing that same claim as an IDEA claim.

       13   JUSTICE GORSUCH: Well, as I recall,

       14   the Tenth Circuit has held that the futility

       15   exception does exist. It just wasn't present

       16   in the particular case you mentioned because

       17   the party didn't argue it. So, again, what's

       18   wrong with the futility exception as

       19   interpreted by most circuits, including my

       20   former circuit?

       21   MR. DVORETZKY: I -- there is no

       22   futility exception that applies in this

       23   situation because of how 1415(l) operates. The

       24   -- the rule -- what the Court needs to look at

       25   is whether an IDEA claim would be subject to a

1   futilities -- futility exception. In other
2   words, if this FAPE-related ADA claim or FAPE
3   denial ADA claim had been brought as an IDEA
4   claim, would there be a futility exception to
5   that IDEA claim? And the answer to that
6   question is no.
7   The relevant principle of exhaustion,
8   exhaustion is excused as futile when the agency
9   can't grant you some relief that a court could
10   grant you. That's the circumstance in which it
11   makes sense to say we're going to excuse
12   exhaustion, we're going to allow you to skip
13   over the first-level decisionmaker and go
14   straight to a second-level decisionmaker who
15   can help you.
16   That principle doesn't apply either as
17   to a damages request or in the settlement
18   context for an IDEA claim. A damages request
19   can't excuse exhaustion as futile because
20   neither a hearing officer nor a court can award
21   damages under the IDEA. The problem is that
22   the IDEA doesn't authorize damages in the first
23   place, not that the hearing officer is somehow
24   uniquely powerless to grant them.
25   Settlement also can't excuse

 1   exhaustion as futile. Futility and exhaustion

 2   are concepts that really only make sense as

 3   preparation for a lawsuit. But, when a

 4   plaintiff settles his IDEA claim, he

 5   extinguishes it. Futility excuses exhaustion

 6   so someone can go to court. When the case has

 7   been settled, no one's going to court.

 8   So, no -- whatever futility exceptions

 9   there might be in other contexts in the IDEA,

10   those futility exceptions don't logically apply

11   when you have a request for damages or a

12   settlement.

13   JUSTICE BARRETT: But it sounds like

14   you're assuming that the request for damages --

15   that the damages aren't available under the ADA

16   either, right? Like --

17   MR. DVORETZKY: No.

18   JUSTICE BARRETT: -- clearly,

19   everybody is in agreement here that

20   compensatory damages aren't available under the

21   IDEA. But, when you said futility wouldn't

22   apply because compensatory damages aren't

23   available, I take that to be that compensatory

24   damages aren't available under the IDEA?

25   MR. DVORETZKY: I think that the

1 hypothetical inquiry that 1415(l) requires the

2 court to engage in is, what would have happened

3 if the same claim had been brought under the

4 IDEA? We're not talking about exhausting the

5 ADA claim before the hearing officer. We're

6 talking about bringing the FAPE denial claim

7 before the hearing officer as an IDEA claim.

8 And if you were --

9 JUSTICE BARRETT: So you're not taking

10 the position that they couldn't later or --

11 let's see. You're not -- are you taking the

12 position -- I guess it's just hard for me to

13 see how the ADA claim ever gets asserted then.

14 MR. DVORETZKY: I think, if you bring

15 an IDEA claim to a hearing officer --

16 JUSTICE BARRETT: Mm-hmm.

17 MR. DVORETZKY: -- win or lose,

18 whatever happens, you get findings and a

19 decision, at that point, you have satisfied

20 1415(l) because you -- the exhaustion -- the --

21 the procedures of (f) and (g) have been

22 exhausted to the same extent as if a claim were

23 -- as if the claim were brought under the IDEA,

24 which, in fact, it was.

25 At that point, you go to court having

1   satisfied 1415 --

2   JUSTICE SOTOMAYOR: So you're --

3   you're breaking with the Sixth Circuit?

4   MR. DVORETZKY: I'm --

5   JUSTICE SOTOMAYOR: Because the Sixth

6   Circuit said, if you win the IDEA claim, you're

7   not an aggrieved party, so you can't go and get

8   compensation for your damages. I thought

9   that's what it said.

10   MR. DVORETZKY: So I -- I think that

11   aggrievement is really not a relevant concept

12   here. If you --

13   JUSTICE SOTOMAYOR: Oh, I agree with

14   you. So you're disagreeing with the Sixth

15   Circuit's analysis?

16   MR. DVORETZKY: Well, on that

17   particular --

18   JUSTICE SOTOMAYOR: Just answer the

19   question.

20   MR. DVORETZKY: On that point, yes,

21   because I think aggrievement isn't really the

22   relevant concept. What is relevant under

23   1415(i), which, as this Court has said --

24   JUSTICE SOTOMAYOR: Continue answering

25   Justice Barrett. I just wanted to make sure we

 1   were on the same page.

 2   (Laughter.)

 3   MR. DVORETZKY: And what page was

 4   that?

 5   JUSTICE BARRETT: I think you've

 6   mostly answered. I mean, I -- I guess you're

 7   -- you are envisioning a world, it seems maybe

 8   a very narrow world, in which an ADA claim

 9   could be pursued after your vision of

10   exhaustion occurs.

11   MR. DVORETZKY: I think it could.

12   Whether it is -- whether it's narrow or not may

13   depend on what remedies are ultimately

14   available under the ADA, which I think, in

15   light of Cummings --

16   JUSTICE BARRETT: Cummings.

17   MR. DVORETZKY: -- and in light of the

18   same contract analysis that would apply to a

19   lost income claim, under state law, you

20   generally can't have a breach of contract claim

21   for educational malpractice. And so whether

22   it's an emotional distress claim, whether it's

23   a lost income claim, I don't think that there

24   are meaningful damages that would be available

25   under the ADA given the state of the law right

1   now.

2   But, yes, that sort of claim could be

3   brought after exhaustion of the -- the ID -- of

4   -- of -- of the procedures in (f) and (g).

5   JUSTICE JACKSON: Can I ask you the

6   same -- maybe the same question as the

7   hypothetical just so that I understand because

8   I think I'm a little confused?

9   So suppose we have a student who has

10   both a viable IDEA claim and a viable ADA claim

11   arising out of the same facts, which is the

12   school is not giving her what she needs to get

13   an appropriate education. But, for whatever

14   reason, she only wants to bring the claim for

15   money damages. Maybe she's going into her

16   senior year, she's given up on education and

17   she wants to go to work, so she doesn't want

18   any of the, you know, adjust my education, give

19   me the actual accommodations. She just wants

20   to drop out and go to work and get compensatory

21   damages for the harm that's been caused, she

22   says, by the school's neglect under the ADA.

23   Does she have to exhaust using the

24   procedures in this statute or not?

25   MR. DVORETZKY: I think she does, but,

     1   in order to answer that question, I also have

     2   to just challenge one premise of it, which is I

     3   think that in -- generally speaking, even after

     4   you have graduated, you can still get redress

     5   for the denial of a FAPE through the IDEA in --

     6   JUSTICE JACKSON: But not compensatory

     7   damages. She doesn't want any of the

     8   injunctive relief related to the circumstances

     9   of education. So whatever the relief is that

    10   she could have gotten from the hearing officer

    11   about the state or status of her educational

    12   circumstances she disclaims. All she wants is

    13   to be compensated for what she says occurred to

    14   her during the period of her education. And so

    15   she says: I don't want to bring an IDEA claim,

    16   I have an ADA claim.

    17   Does she have to sit in front of the

    18   hearing officer and talk about ways in which

    19   her education could be changed, et cetera?

    20   MR. DVORETZKY: Yes. And I think what

    21   she could get under the IDEA in that situation

    22   is compensatory education. She can have

    23   additional, even after she's graduated,

    24   additional forward --

    25   JUSTICE JACKSON: But she doesn't want

1   that. She doesn't want that. She doesn't --

2   she's saying: I'm 18, I don't have to go to

3   school anymore, I don't want to go to school

4   anymore, I'm dropping out, I just want

5   compensatory damages under the ADA.

6   What I'm trying to understand is why

7   do we have a statute in your view that would

8   make her exhaust under the IDA -- the IDEA, as

9   if she was asking for that other form of

10   relief?

11   MR. DVORETZKY: Because whatever her

12   preference is as to damages, Congress's

13   priority in enacting the ADA and in -- as

14   reflected in 1415(l) was first and foremost to

15   make sure that people get a FAPE.

16   And so the remedy that she would get

17   for the denial of a FAPE may not be immediately

18   her first choice. She might --

19   JUSTICE JACKSON: And you don't see

20   yourself as reading out the first part of the

21   statute that says nothing about this limits the

22   person's remedies or rights under the non-IDEA

23   statute?

24   MR. DVORETZKY: I -- I don't, because

25   the second part of 1415(l) starts out by saying

 1   except that, before the filing of a civil

 2   action. So the first half is preserving some

 3   remedies, but the second half is by its terms

 4   creating a carveout, and that carveout requires

 5   FAPE-related claims to be channeled through the

 6   IDEA. That may result in a situation, as I

 7   say, where the plaintiff doesn't get right off

 8   the bat whatever their first-choice specific

 9   remedy is. They get what the IDEA provides.

10   They have to wait six months or

11   however long it takes to then go to court and

12   seek damages, but Congress's goal in passing

13   the IDEA was to make sure that people get

14   FAPEs, and Congress's prioritization and

15   sequencing of IDEA and non-IDEA claims in

16   1415(l) reflect that.

17   With respect to -- if I can go back to

18   Justice Alito's earlier question, which I think

19   was, if we are in the world of default rules as

20   to the settlement issue, why is our default

21   rule preferable for that situation?

22   I think a couple of points. One, our

23   default rule leads to global settlement.

24   Global settlement is generally preferred. It

25   is generally preferred because, once the

 1   parties have agreed on a FAPE, the parents and

 2   the school still have to continue to cooperate

 3   and working together in that -- work together

 4   in that situation. And so having global peace

 5   rather than having separate litigation, if

 6   you're looking for a default rule, is the

 7   better default rule.

 8   Second, if you are going to have

 9   subsequent litigation, Congress's preference

10   was for that to be informed by an

11   administrative finding -- by administrative

12   findings and decision and the expertise of the

13   -- the educational experts who are involved in

14   the IDEA process. And so, if we have to have a

15   default rule, the default rule ought to be

16   against subsequent litigation without that

17   expertise.

18   Third, this is just how the -- the

19   text operates with the somewhat peculiar

20   language of 1415(l). To Justice Thomas's point

21   earlier, I'm not aware of another statute that

22   subjects one -- that subjects a claim under one

23   statute to exhaustion procedures under another,

24   but that by its plain terms is what 1415(l) is

25   doing. So our default rule honors that text.

1   If you were to create an exception to

2   that, it would potentially open the flood gates

3   to other sorts of exceptions to futility or

4   exhaustion that one might seek, and that's

5   going to lead to uncertainty and further

6   litigation in the lower courts.

7   And, lastly, on the equities, as I was

8   saying to Justice Barrett, in light of the

9   state of the law right now, it -- it's not

10 clear that there even are compensatory damages

11 available under the ADA. And so there is no

12 great inequity in holding as a default rule

13 that once you have gotten the FAPE, which was

14 Congress's, again, primary purpose in enacting

15 the IDEA, once you've gotten that, at that

16 point, you have gotten --

17   JUSTICE KAGAN: Well, no, no one's

18 decided that question yet, Mr. Dvoretzky. So,

19 while those damages remain open and potentially

20 available, the question is, you know, what

21 should Miguel have done?

22   I think Mr. Martinez stood up and the

23 first words out of his mouth were "Miguel did

24 everything right." And it's hard for me to see

25 how that's not true.

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1           What should Miguel have done
2  differently from what he did do in this case?
3           MR. DVORETZKY:  I think a plaintiff in
4  that situation has several options.  One is, as
5  part of the settlement, to negotiate whatever
6  compensation he thinks he's entitled to for his
7  non-IDEA claims.
8           Another is to negotiate as part of the
9  settlement a waiver from the school of the
10  exhaustion requirement and then proceed to
11  court.  So there were options as part of that
12  global settlement to get --
13          JUSTICE KAGAN:  But -- but, you know
14  --
15          MR. DVORETZKY:  -- the full relief he
16  was asking for.
17          JUSTICE KAGAN:  -- Sturgis was not,
18  for all we know, offering any of those things.
19  So what -- what's he supposed to do?
20          MR. DVORETZKY:  Negotiate, I mean, as
21  in all settlements.
22          JUSTICE KAGAN:  Better -- negotiate
23  better.  Just pound his fist on the table with
24  your legal rule such that Sturgis doesn't have
25  to offer any of those things because he can't
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1   -- he has two choices. He can either reject a

2   good settlement which is enabling him to

3   receive educational services or give up on the

4   potential, which this statute clearly gives

5   him, of getting compensatory damages as well

6   under the ADA.

7   MR. DVORETZKY: Justice Kagan, I think

8   that takes us back to the default rule point,

9   which is whichever rule this Court adopts,

10   either side could, if it wanted, pound its fist

11   on the table and insist on one outcome or

12   another.

13   Either you can -- either a plaintiff

14   can insist on getting full recovery or a waiver

15   or a school district could insist if it wanted

16   to on no deal unless it gets a waiver. I mean,

17   I'm sorry, unless it gets a full release.

18   The other point that I'll make as a

19   practical matter, though, and I think it's also

20   true in this case, although these facts haven't

21   been developed because the -- the case hasn't

22   been litigated, school districts have an

23   interest in starting to provide the FAPE as

24   soon as they are aware and as soon as their

25   lawyers make their aware -- make them aware

 1   that there has been some deficiency. It's not

 2   in a school district's interests to say we're

 3   going to hold the FAPE hostage.

 4   JUSTICE KAGAN: But parents also have

 5   an interest in that, and that suggests why your

 6   sort of the sky is falling isn't going to

 7   happen, because, of course, parents are not

 8   going to bypass the process that gives them

 9   most speedily, most inexpensively, the

10   opportunity to get the education fixed.

11   So, yes, they're going to go and --

12   and -- and try to get that, but, at -- you

13   know, at the same time, they may also want, you

14   know, I'm entitled under the ADA for damages.

15   MR. DVORETZKY: Justice Kagan, I don't

16   know that as a practical matter that that view

17   of how parents will operate is always going to

18   be true. Having spoken --

19   JUSTICE KAGAN: Well, I don't know

20   that your view of how school districts are

21   going to operate is always going to be true.

22   As between the two, it strikes me that actually

23   it's the parents that have the greater

24   incentive to get the education fixed for their

25   child.

1   MR. DVORETZKY: I think that sometimes
2   that --
3   JUSTICE KAGAN: This isn't litigation
4   being run by a lot of rapacious lawyers, you
5   know. This is litigation being run by parents
6   who are trying to do right by their kids.
7   MR. DVORETZKY: And -- and I certainly
8   think that most parents and most school
9   districts are trying to do right by the kids.
10   I absolutely -- absolutely think that that's
11   right.
12   I think part of the reason that we
13   have not seen a rush to the courthouse seeking
14   just damages claims, bypassing the IDEA, is
15   that the circuits have been aligned, that
16   there's been a circuit consensus in favor of
17   our rule on the first question presented that
18   you can't do that if you're going to court and
19   you're seeking damages for what is
20   fundamentally a denial of FAPE claim.
21   And so, when we talk about whether the
22   sky is falling in the real world, the reason
23   that it hasn't been is that the lower courts
24   have aligned around the rule that we're asking
25   this Court to adopt in the first question.

1   JUSTICE BARRETT: But what about

2   Mr. Yang's point that the majority rule in the

3   circuits is that the futility exception

4   applies? And he pointed out that the sky

5   hasn't fallen, even though, as a practical

6   matter, the futility exception essentially, you

7   know, cuts in favor of Mr. Martinez's position

8   on the antecedent question?

9   MR. DVORETZKY: I don't think that the

10   circuits have adopted a futility -- that an

11   overwhelming number of circuits have adopted a

12   futility rule in this context. Lower courts

13   have recognized some futility exceptions to the

14   IDEA, yes, but not futility exceptions for

15   either damages or settlement. The overwhelming

16   weight of authority has been about situations

17   like the ones this Court addressed in -- in

18   Smith and Honig, for example, where you are

19   challenging the -- the procedures themselves,

20   you might have futility.

21   Where a school district wants to

22   challenge the "stay put" provision because of a

23   dangerous child, you might have futility that

24   lets you go straight to court. But it's not

25   this kind of a situation where you're invoking

 1   futility in order to avoid exhaustion of a

 2   damages claim where you could get relief for

 3   denial of a FAPE through the IDEA.

 4   CHIEF JUSTICE ROBERTS: Thank you,

 5   counsel.

 6   Justice Thomas?

 7   JUSTICE THOMAS: Can you think of any

 8   claim in the context of this case that could

 9   have been brought under ADA that need not have

10   been exhausted?

11   MR. DVORETZKY: Hypothetically -- and

12   this is not what was alleged here -- but if you

13   had a situation where the plaintiffs wanted to

14   say Mr. Perez was -- was denied educational

15   services -- well, this would -- I guess this

16   wouldn't be an ADA claim. It could be an equal

17   protection claim, for example, saying he was

18   denied educational services because of his race

19   and compare his treatment to that of this other

20   kid over there.

21   That's a FAPE-related claim, but I

22   think, in that situation, the gravamen of the

23   complaint isn't really the denial of the FAPE;

24   it's the -- the equal protection claim. So

25   there are some -- some FAPE-related claims that

 1   could still be brought, and I think, again,

 2   that's the Fry question about what is really

 3   the gravamen of what is being complained about

 4   here.

 5   CHIEF JUSTICE ROBERTS: Justice Alito?

 6   Justice Sotomayor?

 7   Justice Kagan?

 8   Justice Gorsuch?

 9   JUSTICE GORSUCH: I -- I do want to

10   just ask you one more question about the relief

11   point because it seems like you spent most of

12   your time elsewhere, understandably. The text

13   says "relief that is also available under this

14   subchapter." I mean, just focus with me for a

15   second on just those words.

16   MR. DVORETZKY: Sure.

17   JUSTICE GORSUCH: What about that

18   speaks of gravamen? I -- I would have -- you

19   know, the natural reading for me at least would

20   have been to suggest that I look at what relief

21   is -- is legally available or permissible under

22   that subchapter. I don't see gravamen hiding

23   in there.

24   MR. DVORETZKY: I think the -- the way

25   I would read those words is "relief" can either

1   mean -- in the ordinary sense, if I say I got

2   relief from something, that doesn't necessarily

3   mean that I got the relief that I wanted. It

4   just means that my injury was redressed.

5   JUSTICE GORSUCH: I understand that as

6   a potential reading. I -- I will spot you

7   that, that sometimes the law uses the word in

8   that sense.

9   What about these words suggest that

10   sense?

11   MR. DVORETZKY: I think -- I think, if

12   you look at "relief that is also available,"

13   those words in isolation don't suggest either

14   sense. I think you -- you need to under --

15   JUSTICE GORSUCH: Why don't they

16   suggest to a judge that he or she should go

17   look and see what remedies or reliefs, forms of

18   relief, are legally available under this

19   subchapter?

20   MR. DVORETZKY: I don't think it

21   suggests what forms of relief. It doesn't say

22   what forms of relief. It doesn't say such laws

23   seeking particular types of relief that are

24   also available under this subchapter.

25   JUSTICE GORSUCH: Seeking relief that

 1   is also available under this subchapter.

 2   You're right. It doesn't say "particular." It

 3   doesn't say "forms." But it does say

 4   "available under this subchapter."

 5   MR. DVORETZKY: But -- but -- but I

 6   think that the -- the lack of saying

 7   "particular" or "forms" is exactly what allows

 8   this phrase to mean -- to -- to be understood

 9   in either sense. I don't think that just

10   looking at those five words in isolation tells

11   you one way or another.

12   I think that the context of what

13   Congress was trying to achieve in the IDEA,

14   which, as Fry recognized, was primarily to

15   ensure that students get a -- get a FAPE first

16   and foremost, that does suggest our reading

17   because, otherwise, parents could circumvent

18   that by going straight to court without the

19   benefit of the educational experts that

20   Congress wanted to put in place and without

21   potentially even getting --

22   JUSTICE GORSUCH: I understand your

23   purposivist arguments. I was just curious

24   about your textualist ones.

25   MR. DVORETZKY: So I -- I think, on

1   the textual point, again, I think the text can

2   be read either way, and so, at that point, I

3   wouldn't think of it as a purposivist argument

4   as much as I would about a contextual -- as a

5   contextual argument which actually derives from

6   elsewhere in the IDEA's text, including the --

7   the IDEA's statement that it seeks to ensure

8   the availability of a FAPE first and foremost.

9   JUSTICE GORSUCH: Thank you -- thank

10   you.

11   CHIEF JUSTICE ROBERTS: Justice

12   Barrett?

13   JUSTICE BARRETT: No.

14   CHIEF JUSTICE ROBERTS: No?

15   Justice Jackson?

16   JUSTICE JACKSON: So just going back

17   to what Justice Gorsuch just explored with you,

18   I guess I'm wondering why the word "seeking" in

19   the statute doesn't undermine your view.

20   I mean, you -- you suggest that you,

21   you know, come to the hearing officer and you

22   get what you get and you don't get upset and

23   you don't get to choose.

24   (Laughter.)

25   JUSTICE JACKSON: That's what my

 1   daughters sometimes say.

 2   So -- but -- but -- but don't we have

 3   language in the statute just before the five

 4   words that you focused on that we have to take

 5   into account with respect to what it is that

 6   the person is actually seeking? Help -- help

 7   me to understand whether you're cutting that

 8   out of the -- of your scenario or how it

 9   squares with your view that it doesn't matter

10   what it is that you -- you really want in terms

11   of your relief.

12   MR. DVORETZKY: I -- I think it really

13   all comes back, Justice Jackson, to the word

14   "relief." When we talk about seeking relief,

15   if I have some injury, somebody broke my arm,

16   I'm seeking -- I'm seeking medical care for

17   that arm. It doesn't matter whether I think I

18   should have a cast or a sling or what. Like,

19   that might be the specific relief that I'm

20   seeking, but, actually, I just go to the doctor

21   and I get redress for my broken arm.

22   JUSTICE JACKSON: And going back --

23   MR. DVORETZKY: And I'm -- that's what

24   I'm seeking.

25   JUSTICE JACKSON: -- to my hypo, if

 1   I'm seeking money and -- and compensation for

 2   the school's failure to accommodate me when I

 3   asked for it all those years, is -- is that a

 4   separate claim? Is it not? Is it covered? Do

 5   I have to exhaust that?

 6   MR. DVORETZKY: I -- I think that

 7   takes us back to the Fry gravamen question.

 8   The way to think about that is that regardless

 9   of whether you are seeking money or further

10   education or anything else, what you are

11   seeking at bottom is redress for a FAPE denial.

12   That's what you're seeking. And the IDEA --

13   JUSTICE JACKSON: So there's no ADA

14   claim that's preserved? Justice Thomas asked

15   you about, like, what other claims could go on

16   without being exhausted. There's no ADA

17   reasonable accommodations claim that is -- that

18   you can bring directly in court in -- under

19   your view?

20   MR. DVORETZKY: It -- not -- not --

21   JUSTICE JACKSON: You -- you talked

22   about the equal protection claim. I'm just

23   trying to --

24   MR. DVORETZKY: Well --

25   JUSTICE JACKSON: -- understand if

 1   there's an ADA claim that could be brought.

 2   MR. DVORETZKY: -- not if the gravamen

 3   of your complaint is seeking a FAPE denial.

 4   But, again, I think that's just what follows

 5   from Fry, that however you frame your

 6   complaint, whether you call it a FAPE denial

 7   claim or not, we ask, what at bottom are you

 8   actually seeking?

 9   And that's where the two questions of

10   Fry are helpful because they ask, could a

11   student at the school -- I'm sorry, could an

12   adult at the school have brought the same

13   claim? Could a student at another public

14   facility have brought the same claim?

15   If the answer is yes -- if the answer

16   is yes, then, in that situation, you are not

17   actually seeking a FAPE denial. But, if the

18   answer to those questions is no, then whatever

19   you call it, the relief that you're seeking is

20   relief for the denial of a FAPE. It's my

21   broken arm example.

22   JUSTICE JACKSON: Thank you.

23   CHIEF JUSTICE ROBERTS: Thank you.

24   Justice Kagan?

25   JUSTICE KAGAN: I mean, I just wanted

1   to ask a question because you've been invoking

2   Fry repeatedly. And, of -- of course, it's

3   true that Fry specifically reserved the

4   question that we're talking about.

5   MR. DVORETZKY: Yes.

6   JUSTICE KAGAN: It could not have been

7   clearer. It -- it -- it --

8   MR. DVORETZKY: That's true.

9   JUSTICE KAGAN: -- specifically

10   reserved it twice. And it's -- it's -- it's

11   just kind of not right logic to argue from Fry

12   to your gravamen position.

13   I mean, what Fry said was, look, if

14   you're not objecting to the denial of a FAPE at

15   all, then you're obviously outside the sphere

16   of the exhaustion requirement. And then it

17   said: And then there's another question, which

18   is, if you're seeking relief for that denial of

19   a FAPE that's not available under the IDEA,

20   i.e., if you're seeking compensatory damages,

21   which everybody understood not to be available

22   under the IDEA. And that's the question that

23   Fry says nothing about. Is that correct?

24   MR. DVORETZKY: Justice Kagan, it is,

25   of course, absolutely correct that Fry did not

1   decide this question and reserved that

2   question.

3   I think Fry recognized --

4   JUSTICE KAGAN: It didn't even

5   indicate -- I mean, it didn't hint, it didn't

6   provide evidence of. All that -- you're --

7   you're -- Fry said there's a necessary

8   condition, which is, are you objecting to the

9   denial of a FAPE? That's a really different

10   question from is that a sufficient condition,

11   which is the -- the position that you're

12   taking.

13   MR. DVORETZKY: Justice Kagan, my only

14   point is that there are certain key principles

15   about the IDEA, including the primacy of a FAPE

16   and the importance of the IDEA's procedures,

17   that drive the analysis to the question -- to

18   the question that's before the Court today and

19   that I think Fry also recognized. That's all.

20   CHIEF JUSTICE ROBERTS: Thank --

21   MR. DVORETZKY: Fry recognized those

22   principles.

23   CHIEF JUSTICE ROBERTS: Thank you,

24   counsel.

25   Rebuttal, Mr. Martinez?

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 1           REBUTTAL ARGUMENT OF ROMAN MARTINEZ
 2             ON BEHALF OF THE PETITIONER
 3           MR. MARTINEZ:  Your Honors, I think
 4    Sturgis's answer to Justice Kagan's question
 5    about Miguel's dilemma really gives away the
 6    game here.  Their answer is that if Sturgis had
 7    refused to cave in, had refused to give Miguel
 8    more than it had already negotiated, Miguel
 9    would have had to reject the settlement, turn
10    down the immediate FAPE relief, and roll the
11    dice in an IDEA proceeding that might risk not
12    only his recovery but also his attorneys' fees.
13    No way.  That's not what this statute is about.
14           And I think what that answer shows is
15    what Sturgis is really seeking here is a rule
16    that's going to nullify ADA rights and it's
17    going to resurrect the regime of Smith versus
18    Robinson that Congress expressly rejected.
19           A couple of additional points.
20           With respect to the text, their
21    interpretation of "relief" means that if I go
22    and I file an ADA claim and a complaint and it
23    says in the complaint that I do not want
24    injunctive relief or any other relief that's
25    available under the IDEA, in their view, my
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1   complaint is still seeking relief that is

2   available under the ADA.

3   That can't possibly be right. It's

4   inconsistent with the dictionaries,

5   inconsistent with Fry, inconsistent with the

6   legislative history, and it's inconsistent with

7   common sense.

8   So they don't have a good textual

9   argument, so they fall back to policy. But

10   policy can't beat text, and it certainly can't

11   beat text here when their circumvention

12   argument doesn't work. Miguel settled and

13   received full FAPE relief. He did not

14   circumvent anything, number one.

15   Number two, in other cases, parents

16   are not going to have an incentive to

17   circumvent because they're going to have to

18   give up all the IDEA relief that they would

19   otherwise be -- have available to them. The

20   ADA claim is going to be harder to prove.

21   They're just not going to do that. They're

22   going to try to maintain and preserve their

23   rights under both statutes.

24   With respect to policy, our rule makes

25   much more sense than their rule. It avoids a

 1   pointless exercise in which you have to go to

 2   an IDEA hearing officer and ask for relief that

 3   the IDEA hearing officer has no authority to

 4   give, and it avoids the result in this case

 5   where, as we've said repeatedly, Miguel did

 6   everything right. He settled, he got the FAPE,

 7   and he nonetheless, on their view, has to give

 8   up his ADA claims.

 9   With respect to the default rule

10   point, Mr. Dvoretzky for the first time says

11   that oh, what -- what everyone knows you should

12   have had to do is negotiate a waiver of the

13   exhaustion requirement. Well, that's asking a

14   lot for parents who are struggling with kids

15   with disabilities to -- to have to negotiate

16   that fine-tuned a waiver, and it's also not

17   clear that it's even available.

18   There's a circuit split right now on

19   the question of whether exhaustion is, in fact,

20   jurisdictional. So, if that rule is in effect,

21   I don't know what parents are supposed to do in

22   circuits that say you can't make such a waiver.

23   At a minimum, it's going to mean that this

24   Court is going to have to decide another case

25   involving this provision. I don't think that

1   makes any sense.

2   Finally, with respect to purpose, Mr.

3   Dvoretzky says this is all about the primacy of

4   a FAPE. Of course, the IDEA is about the

5   primacy of a FAPE. That's exactly what Miguel

6   did when he invoked his IDEA rights, went to

7   the IDEA process, and convinced the -- the

8   Sturgis, after having discriminated against him

9   for 12 years, finally convinced the school to

10   give him a FAPE.

11   That was the settlement that he

12   reached. The IDEA is also intended, though, to

13   protect other legal rights, and Congress did

14   not intend to force parents of Miguel and other

15   victims of discrimination to give up those

16   rights in order to reach settlements.

17   We ask this Court to reverse. Thank

18   you, Your Honors.

19   CHIEF JUSTICE ROBERTS: Thank you,

20   counsel. The case is submitted.

21   (Whereupon, at 11:31 a.m., the case

22   was submitted.)

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Official

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