

# SUPREME COURT OF THE UNITED STATES

---

IN THE SUPREME COURT OF THE UNITED STATES

-----  
RYAN THORNELL, DIRECTOR, )  
ARIZONA DEPARTMENT OF CORRECTIONS, )  
Petitioner, )  
v. ) No. 22-982  
DANNY LEE JONES, )  
Respondent. )  
-----

Pages: 1 through 72  
Place: Washington, D.C.  
Date: April 17, 2024

---

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

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

RYAN THORNELL, DIRECTOR, )

ARIZONA DEPARTMENT OF CORRECTIONS, )

Petitioner, )

v. ) No. 22-982

DANNY LEE JONES, )

Respondent. )

- - - - -

Washington, D.C.

Wednesday, April 17, 2024

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:15 a.m.

APPEARANCES:

JASON D. LEWIS, Deputy Solicitor General, Phoenix, Arizona; on behalf of the Petitioner.

JEAN-CLAUDE ANDRE, ESQUIRE, Santa Monica, California; on behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	JASON D. LEWIS, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	JEAN-CLAUDE ANDRE, ESQ.	
7	On behalf of the Respondent	39
8	REBUTTAL ARGUMENT OF:	
9	JASON D. LEWIS, ESQ.	
10	On behalf of the Petitioner	70
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:15 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 22-982, Thornell versus Jones.

Mr. Lewis.

ORAL ARGUMENT OF JASON D. LEWIS

ON BEHALF OF THE PETITIONER

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

The Ninth Circuit erred in two critical ways. First, it failed to give any deference to the district court's factual determinations. After hearing the evidence and testimony at the evidentiary hearing, the district court made factual findings as to whether Jones suffered from specific mental conditions and whether those conditions caused him to murder Robert and Tisha Weaver. The Ninth Circuit disregarded those findings, instead substituting its own judgment.

My friend defends this error by positing that the district court's only role was to determine whether unrepresented mitigation evidence existed. This view eviscerates the --

1 the traditional role of trial courts in the  
2 fact-finding process and would radically change  
3 habeas practice, resulting in far more writs  
4 undoing state sentences.

5 The Ninth Circuit further erred by  
6 failing to meaningfully consider the aggravating  
7 evidence or its weight. Strickland does not  
8 allow for a sentence to be undone whenever there  
9 is some new mitigation that addresses moral  
10 culpability. Instead, it requires a reasonable  
11 probability that the new mitigation would have  
12 changed the sentence in light of the balance  
13 between the total mitigation and the aggravating  
14 evidence. The Ninth Circuit's approach is  
15 contrary to this longstanding test and must be  
16 rejected.

17 I urge this Court to reverse the Ninth  
18 Circuit's judgment, clarify the applicability of  
19 clear error review in the Strickland context,  
20 and reaffirm the principle that a Strickland  
21 prejudice determination requires a reviewing  
22 court to reweigh both the total mitigation and  
23 the aggravation.

24 I welcome the Court's questions.

25 JUSTICE THOMAS: Can we resolve this

1 simply by saying that de novo review is  
2 improper?

3 MR. LEWIS: I think so, Your Honor.  
4 You know, in my friend's responsive brief, he  
5 argues that Village Lakeside stands for the  
6 proposition that these types of mixed questions  
7 addressing constitutional issues are totally de  
8 novo. I think there's more room in the  
9 Strickland question than that and specifically  
10 in the Strickland prejudice context.

11 JUSTICE SOTOMAYOR: I'm sorry, I don't  
12 think I understand your answer.

13 There's no dispute that the court  
14 below did not -- I'm not talking the federal  
15 court. The state court never reached the  
16 prejudice prong, correct?

17 MR. LEWIS: We haven't raised that  
18 issue, Your Honor, no.

19 JUSTICE SOTOMAYOR: No. And you're  
20 not raising it now?

21 MR. LEWIS: No, Your Honor.

22 JUSTICE SOTOMAYOR: You're accepting  
23 that de novo review with respect to the  
24 prejudice prong is correct at least for purposes  
25 of this argument?

1 MR. LEWIS: De novo review is correct  
2 as to the legal determination on the mixed  
3 question, yes, Your Honor.

4 JUSTICE SOTOMAYOR: All right. So  
5 that, I think, was the question being asked.

6 JUSTICE KAGAN: Right. So that it's  
7 not AEDPA deference that you're seeking?

8 MR. LEWIS: No, Your Honor.

9 JUSTICE KAGAN: Yes. Okay.

10 JUSTICE ALITO: You're -- just to  
11 clarify, you're saying that there's de novo  
12 review in the district court, not de novo review  
13 on appeal?

14 MR. LEWIS: There's de novo review of  
15 the district court's -- the district court made  
16 a prejudice determination, and we haven't raised  
17 the question of whether the state court made a  
18 prejudice determination and --

19 JUSTICE ALITO: Yeah.

20 MR. LEWIS: -- that judgment was  
21 entitled to deference under AEDPA.

22 JUSTICE ALITO: The --

23 MR. LEWIS: So the district court made  
24 a prejudice determination.

25 JUSTICE ALITO: Right.

1           MR. LEWIS: We're asserting that that  
2           determination would be reviewed de novo as to  
3           the legal question in the Strickland inquiry.  
4           But, on the factual question of the mixed  
5           question, then those factual determinations are  
6           entitled to clear error deference under Rule 52  
7           and this Court's precedents.

8           JUSTICE SOTOMAYOR: Assuming we accept  
9           your argument that the court below didn't weigh  
10          the aggravating and mitigating factors, you're  
11          asking us for a reversal. Why isn't a vacate  
12          and remand appropriate?

13          MR. LEWIS: I think concepts of  
14          finality would dictate that the circuit court  
15          has had this case for so long and has spent so  
16          much time granting relief on certain issues,  
17          reserving other ones, and then having it sent  
18          back continuously, it has to end at some point.

19          JUSTICE SOTOMAYOR: That's nice, but  
20          we're not fact finders, and we generally don't  
21          weigh evidence. There's thousands of pages in  
22          this record.

23          I'm still not quite sure why -- I -- I  
24          understand the basis of your argument. The  
25          district -- the -- the circuit court did lay



1       forth the fact that it should balance  
2       aggravating and mitigating, but I accept that it  
3       really didn't do that. It mentioned them but  
4       didn't compare them --

5                   MR. LEWIS: Yes, Your Honor.

6                   JUSTICE SOTOMAYOR: -- to the  
7       mitigating. That's the step you say is missing?

8                   MR. LEWIS: Yes, Your Honor.

9                   JUSTICE SOTOMAYOR: And I accept that  
10       under Arizona law, the aggravating factors that  
11       it failed to weigh are usually given great  
12       weight --

13                   MR. LEWIS: Yes, Your Honor.

14                   JUSTICE SOTOMAYOR: -- under Arizona  
15       law. So -- but that still -- I could accept  
16       that they didn't weigh them the way they're  
17       supposed to. Why are you asking us to do that?  
18       I think that that's something that shouldn't --  
19       isn't better practice for us to tell the court  
20       what it's supposed to do so it gets it right the  
21       next time?

22                   MR. LEWIS: Yes, Your Honor, I think  
23       so, and I think that's what this Court did in  
24       Wong v. Belmontes. We've just asked for sort of  
25       this extra step because, in our view, the

1     aggravating evidence is so compelling and the  
2     mitigating evidence that was developed in the  
3     federal evidentiary hearing is -- is so slight.

4             JUSTICE SOTOMAYOR: Well, really? I  
5     mean, let me just mention one, the head  
6     injuries. The original sentencing court knew of  
7     two or three head injuries. In none of them was  
8     there proof that the defendant had gone  
9     unconscious as there was in the new evidence  
10    that was developed that when I think he was --  
11    if I don't -- if -- the facts are close to this.  
12    If I don't get the details right, please forgive  
13    me.

14            MR. LEWIS: Sure, Your Honor.

15            JUSTICE SOTOMAYOR: But -- you can  
16    correct me if I'm wrong -- that at five years  
17    old, he fell, went unconscious. His mother  
18    found him just waking up. In another incident,  
19    he fell on his head on a metal roof and taken to  
20    the hospital and there was brain swelling.

21            Don't you think that those facts are  
22    sufficiently more serious than what was  
23    presented at first and would have shown greater  
24    -- for a fact finder reasonably to conclude that  
25    there was neurological damage from this number

1 of injuries?

2 MR. LEWIS: So, as to the two  
3 incidents --

4 JUSTICE SOTOMAYOR: And types of  
5 injuries.

6 MR. LEWIS: Yes, Your Honor. I think  
7 that the -- the evidence concerning when Jones  
8 was five years old and fell off the swing and  
9 had lost consciousness, I believe that was  
10 introduced through Dr. Potts's testimony. And I  
11 believe that the 11-year-old incident was --  
12 came in through Dr. Potts as well, which was  
13 presented to the trial court, along with the  
14 evidence of -- of Jones's having, you know, been  
15 passed out while he was in the military and sort  
16 of the report associated with that. I -- I  
17 could be wrong, Your Honor.

18 JUSTICE SOTOMAYOR: I -- I --

19 MR. LEWIS: That was my understanding  
20 of the record.

21 JUSTICE SOTOMAYOR: -- I think --

22 MR. LEWIS: Okay.

23 JUSTICE SOTOMAYOR: Assume my set of  
24 facts.

25 MR. LEWIS: Sure.

1 JUSTICE SOTOMAYOR: I do know that  
2 some of the incidents were introduced at trial  
3 by Dr. Potts but that the more serious ones were  
4 found on habeas review and after a more detailed  
5 mitigation examination by the experts.

6 MR. LEWIS: Sure. And --

7 JUSTICE SOTOMAYOR: The ones showing  
8 his unconscious nature and the brain swelling.

9 MR. LEWIS: And so, even -- even  
10 assuming that those incidents happened and that  
11 that information was only introduced  
12 post-sentence, the district court's findings  
13 about the credibility of Jones's expert  
14 witnesses are compelling and entitled to  
15 deference because the head injury alone isn't  
16 really dispositive of anything. It just says  
17 that Jones fell and hit his head and he lost  
18 consciousness and there may have been some  
19 swelling in these things.

20 But, without the underlying expert  
21 opinions to explain why that affected Jones and  
22 why that affected his conduct at the time of the  
23 crimes, it's not as compelling of mitigation as  
24 it would be otherwise.

25 JUSTICE SOTOMAYOR: Can I say

1 something?

2 MR. LEWIS: Sure.

3 JUSTICE SOTOMAYOR: If a judge, a  
4 district court were to say I will only consider  
5 mitigating evidence if it is confirmed by 1,000  
6 scientists beyond a reasonable doubt --

7 MR. LEWIS: I don't think that's --

8 JUSTICE SOTOMAYOR: -- and then -- and  
9 then says I'm not going to consider it --

10 MR. LEWIS: Sure.

11 JUSTICE SOTOMAYOR: -- even if you  
12 credit it, you could come back and say the  
13 aggravators still outweigh the mitigators,  
14 correct?

15 MR. LEWIS: Correct, Judge.

16 JUSTICE SOTOMAYOR: So -- but, if a  
17 judge were to make that error --

18 MR. LEWIS: Mm-hmm.

19 JUSTICE SOTOMAYOR: -- would that be a  
20 legal error?

21 MR. LEWIS: I think so, you know,  
22 because it -- it wouldn't reflect the actual  
23 sentencing process where the sentencer has to  
24 have the ability to consider any relevant  
25 mitigating evidence.

1 JUSTICE SOTOMAYOR: All right. So I  
2 read the circuit court here as saying that's  
3 what the district court did or how it erred, not  
4 in ignoring the credibility determinations, et  
5 cetera, but in requiring more proof than the law  
6 required. Even under Arizona law, for example,  
7 it says you don't need to prove a nexus between  
8 the injury and the crime. That's what -- I have  
9 Tennard, T-E-N-N-A-R-D. It's a -- it's a  
10 Arizona case that says you don't need to prove  
11 that connection.

12 MR. LEWIS: Right.

13 JUSTICE SOTOMAYOR: All right? So  
14 what I read the Ninth Circuit as saying is the  
15 court applied the wrong standard. It might want  
16 to give it less weight in the calculus, but  
17 that's not what it did. It set a legal standard  
18 that said you had to show conclusively that it  
19 was present.

20 MR. LEWIS: I don't think the district  
21 court ever purported to say that it was refusing  
22 to consider any of this evidence for what it was  
23 worth. What we had here for --

24 JUSTICE SOTOMAYOR: What it said is  
25 Jones did not present "evidence confirming that

1 he suffers from neurological damage caused by  
2 head trauma or other factors." I don't see how  
3 that's not requiring positive proof.

4 MR. LEWIS: I think you can split it  
5 up. So the district court, when it was faced  
6 with conflicting experts on specified diagnoses,  
7 said, I have to figure out what's true and  
8 what's not true.

9 JUSTICE JACKSON: Except that's not  
10 what we said in Porter. I mean, I'm sort of  
11 picking up on Justice Sotomayor's point here.  
12 This Court appears to have looked at a similar  
13 situation and said, you know, even -- I'm  
14 talking about the Porter case.

15 MR. LEWIS: Mm-hmm.

16 JUSTICE JACKSON: Even though the  
17 state's experts identified problems with the  
18 defendant's expert testimony, it was not  
19 reasonable for the court, the district court, to  
20 discount entirely the effect that this testimony  
21 might have had on the jury and the sentencing  
22 judge.

23 So I take that to mean that the -- the  
24 responsibility or the role of the district court  
25 is to see that there's mitigating evidence there

1 and, in the ultimate weighing perhaps, take into  
2 account whether the district court thinks  
3 something is more or less credible as it weighs  
4 it against the aggravating evidence.

5 But to discount it, to say I'm not  
6 going to look at it because you haven't proven  
7 or whatever, seems like a problem with the  
8 district court's analysis.

9 MR. LEWIS: Sure. So two points about  
10 that. If -- if I'm remembering Porter  
11 correctly, I think what you had there wasn't the  
12 same sort of battle of experts that you had here  
13 because, in Porter, I believe the state's  
14 experts said that they couldn't agree on whether  
15 or not it would establish the sort of statutory  
16 mitigating circumstance.

17 So I think it's much different when  
18 you have experts that are saying categorically  
19 no, Jones does not suffer from cognitive  
20 impairment or PTSD, and the district court is  
21 forced to decide which account of Jones's mental  
22 condition is more accurate.

23 JUSTICE JACKSON: But I guess what  
24 you're -- you're asking us here to say that the  
25 court of appeals erred in recognizing what could



1 be a problem with the district court's analysis.  
2 The court of appeals had to defer to these  
3 credibility findings under circumstances in  
4 which it isn't clear that the district court was  
5 supposed to be making this kind of finding. So  
6 it feels like one step more you -- you want us  
7 to establish here.

8 MR. LEWIS: Sure. And -- and, you  
9 know, I would just point out, Your Honor, that  
10 the district court still considered the evidence  
11 establishing the foundation of all of these  
12 specified diagnoses.

13 For instance, the district court  
14 considered the impact of Jones's alleged further  
15 physical and sexual abuse, but the district  
16 court didn't give it very much weight because,  
17 as the district court saw it, Jones wasn't a  
18 credible reporter for that history --

19 JUSTICE KAGAN: But isn't --

20 MR. LEWIS: -- especially --

21 JUSTICE KAGAN: I'm sorry, go ahead.

22 MR. LEWIS: Oh, just especially in  
23 light of the trial court's finding that Jones  
24 had manufactured the tale about this third-party  
25 culpability theory and -- and presented it to

1 the jury.

2 JUSTICE KAGAN: I mean, isn't it  
3 possible that the district court misunderstood  
4 its role here? And this doesn't at all go to  
5 the question of whether the court of appeals  
6 might have also misunderstood its role.

7 But just focusing on the district  
8 court for a moment, the district court seemed to  
9 think that it was the fact finder in this case  
10 and using a kind of preponderance-of-the-  
11 evidence standard, did you show this, did you  
12 show that, you know, by 51 percent.

13 MR. LEWIS: Mm-hmm.

14 JUSTICE KAGAN: But I don't think that  
15 that's what the reasonable probability asks a  
16 district court to do. I mean, if you were just  
17 to put some artificial numbers on this, suppose  
18 that there was enough evidence in mitigation  
19 that a court could say something like, I don't  
20 know, there's like a 30 percent chance that this  
21 might have affected the way the original  
22 sentencer would have decided.

23 MR. LEWIS: Mm-hmm.

24 JUSTICE KAGAN: Now a 30 percent  
25 chance is not a 51 percent chance. So, if I'm

1 the fact finder, I find you haven't met your  
2 burden.

3 MR. LEWIS: Mm-hmm.

4 JUSTICE KAGAN: But, as I understand  
5 what we've asked district courts to do in this  
6 special Strickland area, it's basically to ask a  
7 different kind of question which does not give  
8 you a 51 percent threshold. It just says, you  
9 know, if there's some kind of chance, it might  
10 be 30 percent or it might be 25 percent or  
11 whatever it is --

12 MR. LEWIS: Mm-hmm.

13 JUSTICE KAGAN: -- that the district  
14 court -- that the original sentencer would have  
15 done something differently, then I'm supposed to  
16 give it back to the original sentencer.

17 So that's where I think it looks to me  
18 as though the district court misunderstood its  
19 role, and I'm wondering what the answer to that  
20 is.

21 MR. LEWIS: I mean, it's -- it's  
22 possible, I suppose, Your Honor, that -- that --  
23 you know, these are trial courts and they're  
24 used to, you know, settling disputes between  
25 conflicting evidence.

1 JUSTICE KAGAN: Completely. It seems  
2 like a very natural thing for the district court  
3 to have done. I'm a fact finder. I'm going to  
4 say you're credible; you're not. You've met  
5 your 51 percent burden; you haven't. But this  
6 is a special context where we -- we actually  
7 have said that that's not the right inquiry.

8 MR. LEWIS: And, you know, I think the  
9 district court was doing things that were still  
10 proper even under this view. It's just that  
11 those things would happen in the weighing of the  
12 prejudice determination.

13 JUSTICE ALITO: Mr. Lewis, have we  
14 ever said that it's enough to show there's some  
15 kind of chance?

16 MR. LEWIS: No, Your Honor.

17 JUSTICE ALITO: Did the district court  
18 ever say that it was applying a  
19 preponderance-of-the-evidence standard?

20 MR. LEWIS: No, Your Honor.

21 JUSTICE KAGAN: Is it a reasonable  
22 understanding of their opinion to think that it  
23 was doing fact finding in the normal way?

24 MR. LEWIS: I think it was reasonable  
25 to assume from the opinion that the district

1 court, when confronted with the conflicting  
2 evidence on specified diagnoses, did what it had  
3 to do to separate truth from fiction.

4 JUSTICE BARRETT: Counsel, can I ask  
5 you about the evidentiary hearing in the -- in  
6 the first place? I've been trying to figure out  
7 because this case has a long procedural history,  
8 and the state isn't challenging this, I  
9 understand, but I just want to understand the  
10 rationale for it.

11 Why -- do you think the district court  
12 was right to conduct an evidentiary hearing and  
13 take in the extra evidence? Because, you know,  
14 2254(e)(2) requires the court to find two things  
15 before the -- the new evidence is taken in, and  
16 one is a factual predicate that could not have  
17 been previously discovered through the exercise  
18 of due diligence and -- that was what the Ninth  
19 Circuit found -- and -- and, B, the facts  
20 underlying the claim would be sufficient to  
21 establish by clear and convincing evidence that  
22 but for the constitutional error, no reasonable  
23 fact finder would have found the applicant  
24 guilty of the underlying offense.

25 How did -- how did that figure into

1 the conducting of the evidentiary hearing? I  
2 mean, maybe -- maybe it was right. Like I say,  
3 the procedural -- you know, the procedural  
4 history of this is complicated.

5 MR. LEWIS: Sure.

6 JUSTICE BARRETT: Was that correct,  
7 and, if it wasn't, why isn't the state  
8 challenging that?

9 MR. LEWIS: Well, this was a -- a  
10 pre-Pinholster evidentiary hearing. So I  
11 believe the hearing was granted in 2003,  
12 thereabouts, if I'm remembering correctly. I --  
13 I can't give the reasons for why --

14 JUSTICE BARRETT: Yeah.

15 MR. LEWIS: -- the state didn't more  
16 vehemently oppose the hearing.

17 JUSTICE BARRETT: Well, was it proper  
18 to have the evidentiary hearing?

19 MR. LEWIS: I think probably not, Your  
20 Honor, but this is -- you know, we live in this  
21 sort of post-Ramirez world where, you know, we  
22 expect people to exhaust their claims and  
23 develop their records in state court before  
24 those claims can be considered in federal court  
25 and without the benefit of any new evidence that

1 wasn't put before the state court.

2           So I think where we are now, we would  
3 clearly say this is improper, but at the time  
4 when the court granted the hearing in 2003, you  
5 know --

6           JUSTICE BARRETT: Okay.

7           MR. LEWIS: -- it's hard to say. I  
8 appreciate the question, though.

9           JUSTICE JACKSON: Can I direct your  
10 attention to the second alleged problem --

11          MR. LEWIS: Sure.

12          JUSTICE JACKSON: -- with the court of  
13 appeals? You said that they failed to  
14 meaningfully consider the aggregating -- the  
15 aggravating evidence and its weight.

16          MR. LEWIS: Sure.

17          JUSTICE JACKSON: And I'm just trying  
18 to understand that argument in light of what  
19 they actually did. I see them as listing three  
20 aggravating factors, as saying the -- the  
21 correct standard. I think you agree that the  
22 standard is that they say, on de novo review, we  
23 must weigh these factors against the mitigating  
24 evidence developed in the state record that was  
25 available but not presented. Is that the right

1 standard?

2 MR. LEWIS: Sure. Yeah.

3 JUSTICE JACKSON: All right. And then  
4 they say, reweighing the evidence in aggravation  
5 against the total -- totality of the mitigating  
6 evidence, they conclude that the mitigating  
7 evidence outweighs. But the important part, I  
8 think, is that they go on to say: This  
9 conclusion is supported by the Strickland  
10 prejudice analysis conducted by the Supreme  
11 Court and our court in similar cases.

12 MR. LEWIS: Mm-hmm.

13 JUSTICE JACKSON: And then they go  
14 through case after case after case, identifying  
15 an aggravating factor that is similar to the one  
16 in this case and explaining how, in that case,  
17 the court, whether it's this Court or another  
18 court, found it to be outweighed by similar  
19 mitigating evidence.

20 So why --

21 MR. LEWIS: Sure.

22 JUSTICE JACKSON: -- why is that not a  
23 kind of weighing analysis that -- that is proper  
24 in this circumstance?

25 MR. LEWIS: Well, first, you know,



1 there's -- there's no ascription by the circuit  
2 court of any type of weight to the aggravating  
3 circumstances. So what we have here is the  
4 district court making the first de novo review  
5 of the prejudice question. It wasn't made in  
6 state court. We haven't raised that here. The  
7 district court's the first one to make it. And  
8 the district court ascribes great weight to the  
9 aggravating circumstances present here.

10 The Ninth Circuit doesn't rebut that  
11 at all, and they don't make any comment on the  
12 actual weight of those aggravating circumstances  
13 to give some context for how it's actually being  
14 weighed.

15 JUSTICE JACKSON: So you're saying  
16 they have to speak direct -- because what I see  
17 them as doing here is rebutting that in the  
18 context of its review of other cases that have  
19 talked about similar aggravating factors and  
20 have done the weighing.

21 MR. LEWIS: Mm-hmm.

22 JUSTICE JACKSON: I mean, I total ---  
23 I'm totally with you if they hadn't --

24 MR. LEWIS: Yeah.

25 JUSTICE JACKSON: -- done that.

1 MR. LEWIS: Yeah.

2 JUSTICE JACKSON: Right? Because then  
3 we -- we see them not even grappling with the  
4 idea of weighing. But it looks like they've  
5 gone through and they've said, okay, let's find  
6 other cases where similar aggravating factors  
7 have been present --

8 MR. LEWIS: Mm-hmm.

9 JUSTICE JACKSON: -- and mitigating  
10 factors were not presented and what did the  
11 court say in the -- in those situations and --  
12 and this one is similar. I -- I guess you're --  
13 you're saying that the error here is that they  
14 had to have an additional paragraph in which  
15 they directly said, and so the district court  
16 got it wrong or --

17 MR. LEWIS: You know, I think that's  
18 possible because that's the last thing we have  
19 in the record that actually ascribes any sort of  
20 weight to the aggravating circumstances. And if  
21 you read Judge Bennett's dissent, you see what  
22 we would be looking for in that type of  
23 situation.

24 In a lot of the cases that my friend  
25 cites, you know, we were dealing with AEDPA

1 review of a state court determination. And when  
2 you think about Williams v. Taylor, you know,  
3 this Court is saying that the state court  
4 correct -- correctly emphasized the strength of  
5 the prosecution evidence supporting the future  
6 dangerousness of the aggravating circumstance.  
7 Even a sentence like that shows that the court  
8 has assigned some weight to an aggravating  
9 circumstance and considered it in some way.

10 But we don't have that here. We just  
11 have a bare recitation that aggravating  
12 circumstances were found, that they existed, but  
13 the court focused solely on the weight of the  
14 new mitigating evidence. And I think that  
15 demonstrates that they didn't consider what  
16 Strickland calls for them to consider, which is  
17 the balance between the total mitigation and the  
18 aggravation.

19 CHIEF JUSTICE ROBERTS: Counsel, you  
20 mentioned, I think, in -- in your opening if I'm  
21 remembering correctly, that one thing we should  
22 do today is clarify the legal standards that are  
23 applicable. What do you want us to say that we  
24 haven't said already?

25 MR. LEWIS: You know, I -- I do think

1 that this Court in Strickland was -- was clear  
2 that, you know, there's a factual component to  
3 this inquiry and that the legal questions are  
4 whether there was deficient performance and  
5 whether there was prejudice from such deficient  
6 performance.

7           But I think there's a little room  
8 within those legal determinations for factual  
9 findings that are entitled to deference. These  
10 prejudice determinations are so fact-intensive  
11 because you're -- reviewing courts are required  
12 to engage with the circumstances of the crime,  
13 with life history details, and to figure out how  
14 those would be weighed and -- and resolve the  
15 issue.

16           So I think, when the district court  
17 makes those types of weighing determinations  
18 with the benefit of seeing live testimony, the  
19 demeanor of how people are presenting their  
20 opinions, all these things that trial courts are  
21 so well situated to do, makes them a good fact  
22 finder in this context, even when you're within  
23 the legal question of prejudice, for instance,  
24 that I think deference is appropriate.

25           And it would be helpful to -- to any

1 courts conducting these type of reviews to  
2 understand how far that deference to their  
3 factual determination extends.

4 JUSTICE BARRETT: So, to be clear, you  
5 would say that underlying facts like the head  
6 injury, for example, would be entitled to clear  
7 error deference by the court of appeals?

8 MR. LEWIS: I think so, Your Honor.

9 JUSTICE BARRETT: And that it's only  
10 the prejudice weighing, the weighing of the  
11 mitigating and the prejudicial evidence, that  
12 gets de novo review in the court of appeals?

13 MR. LEWIS: I think that's right  
14 because, there, the district court is applying  
15 the legal test that this Court gave in  
16 Strickland for finding prejudice, and so that  
17 would be naturally subject to de novo review.

18 JUSTICE BARRETT: And so just to  
19 connect it back to some of the questions Justice  
20 Kagan was asking you, you're saying that for the  
21 underlying fact like, for example, the head  
22 injury, a preponderance standard would apply,  
23 but that the Strickland standard, the special  
24 Strickland -- Stick -- Strickland standard --  
25 sorry -- applies at the weighing only?

1           MR. LEWIS: I'm not sure. I don't  
2 think we've really briefed what burden would  
3 apply to -- to establish these facts. You know,  
4 in a traditional mitigating hear -- you know, in  
5 a penalty phase hearing in a -- in a trial  
6 court, in Arizona at least, capital defendants  
7 are required to prove their evidence by a  
8 preponderance of the evidence.

9           But, even if it's under a reasonable  
10 probability standard, that is, whether there's a  
11 reasonable probability that a sentencer would  
12 find it compelling in the weighing, that's still  
13 a burden that they have to meet, and the  
14 district court or trial court's determination in  
15 that regard would be entitled to deference.

16           JUSTICE KAGAN: Mr. Lewis, I -- I  
17 agree with you entirely that the circuit court  
18 is supposed to treat the district -- should  
19 treat the district court's evaluation of these  
20 kinds of claims with great care. The district  
21 court is the one that sat there through all the  
22 evidence. The district court presumably knows  
23 the record a lot better than the circuit court  
24 does. So I'm full square with you on that.

25           But, when you start talking about sort

1 of clear error review of fact finding, that's  
2 when I see a real switch in the way we do the --  
3 in the way we understand the Strickland inquiry,  
4 because that would suggest to district courts  
5 that their job in this procedure -- proceeding  
6 -- may I finish?

7 CHIEF JUSTICE ROBERTS: Yes, sure.

8 JUSTICE KAGAN: Is to say: Was there  
9 a head injury, was there not a head injury? Did  
10 he have PTSD, did he not have PTSD? Which is,  
11 of course, the usual thing that district courts  
12 do but not the usual thing that we've asked them  
13 to do in this context.

14 MR. LEWIS: I mean, I see the point,  
15 Your Honor. I just think that there is room for  
16 these types of factual determinations and,  
17 because the district court is so well situated  
18 to make those determinations, that they should  
19 be entitled to deference.

20 CHIEF JUSTICE ROBERTS: Justice  
21 Thomas?

22 Justice Alito?

23 JUSTICE ALITO: Mr. Lewis, the  
24 question of prejudice is a mixed question,  
25 right?

1 MR. LEWIS: Yes, Your Honor.

2 JUSTICE ALITO: All right. What's the  
3 legal component and what is the factual  
4 component?

5 MR. LEWIS: The legal component is  
6 whether there's a reasonable probability that,  
7 in consideration of the total mitigation and the  
8 aggravating evidence, the sentence would have  
9 changed.

10 JUSTICE ALITO: You think that whether  
11 there's a reasonable probability is a question  
12 of law?

13 MR. LEWIS: I think that's -- that's  
14 the standard that Strickland formulated.

15 JUSTICE ALITO: Probability is a  
16 question of law? Is -- if I flip a coin, what's  
17 the probability that it's going to be heads?

18 MR. LEWIS: Fifty-fifty, Your Honor.

19 JUSTICE ALITO: Is that a legal  
20 question?

21 MR. LEWIS: No, Your Honor.

22 JUSTICE ALITO: Is that a factual  
23 question?

24 MR. LEWIS: Yes, Your Honor.

25 JUSTICE ALITO: Somebody jumps out a



1 -- out of a -- a third-story window. What is  
2 the probability that the person is going to die?  
3 Is that a factual question?

4 MR. LEWIS: Perhaps an actuary and a  
5 doctor could formulate some probability to guess  
6 at that.

7 JUSTICE ALITO: Give me a situation in  
8 which probability is anything other than a  
9 factual question.

10 MR. LEWIS: Right, Your Honor.

11 JUSTICE ALITO: Then why do you -- why  
12 are you saying that whether there's a reasonable  
13 probability is a -- is a legal question?

14 There's a legal part of the -- of the  
15 prejudice inquiry. It's what is the standard.  
16 The standard is reasonable probability. If the  
17 district court says, no, it's any minor  
18 probability, that's wrong. If the district  
19 court says it's beyond a reasonable doubt,  
20 that's wrong. But they're -- that's the legal  
21 part. Then the factual part is applying that to  
22 the facts of the case, was there a reasonable  
23 probability.

24 Are you with me so far?

25 MR. LEWIS: Yes, Your Honor.

1 JUSTICE ALITO: Thank you.

2 MR. LEWIS: Thank you, Judge.

3 CHIEF JUSTICE ROBERTS: Justice  
4 Sotomayor?

5 JUSTICE SOTOMAYOR: The district court  
6 never said that this defendant never experienced  
7 those head injuries. He just said he didn't  
8 believe that they were tied to the crime,  
9 correct?

10 MR. LEWIS: I think, in some regards,  
11 because you had all these other injuries that  
12 were being reported in the -- that is correct.

13 JUSTICE SOTOMAYOR: But he never said  
14 he believed -- disbelieved the reporting of the  
15 mother that the child -- that the defendant had  
16 at five years old?

17 MR. LEWIS: Not as to the  
18 five-year-old incident.

19 JUSTICE SOTOMAYOR: And not to any of  
20 it. All right. Justice Barrett asked you about  
21 2254(e)(2). I think Cullen itself said that  
22 when there's de novo review of an issue, the  
23 state court -- presented to the state court that  
24 it never reached, that a fact finding was --  
25 fact finding was appropriate in habeas? That

1 might be the reason why the state didn't fight  
2 the fact finder?

3 MR. LEWIS: Perhaps, Your Honor. I --  
4 I didn't come prepared to -- to answer those  
5 questions. I apologize.

6 JUSTICE SOTOMAYOR: But Cullen, I will  
7 say Cullen at 185 says that.

8 MR. LEWIS: Thank you, Your Honor.

9 JUSTICE SOTOMAYOR: As you know, I  
10 dissented there, so I know that decision well.

11 MR. LEWIS: Thank you, Your Honor.

12 CHIEF JUSTICE ROBERTS: Justice Kagan?  
13 Justice Gorsuch?

14 JUSTICE GORSUCH: Just want to see if  
15 I understand where the ball has bounced this  
16 morning.

17 MR. LEWIS: Sure, Your Honor.

18 JUSTICE GORSUCH: So one could view  
19 reasonable probability, as your colloquy with  
20 Justice Alito suggested, as a factual inquiry,  
21 right?

22 MR. LEWIS: Sure, Your Honor.

23 JUSTICE GORSUCH: Or one could, I  
24 think, as you've suggested otherwise in response  
25 to other questions, suggest that it has both a

1 factual and a legal component, and in order to  
2 assess whether a jury or a judge at sentencing  
3 would have changed its mind, you first need to  
4 know what the facts are --

5 MR. LEWIS: Yes, Your Honor.

6 JUSTICE GORSUCH: -- that would be  
7 relevant to that -- that inquiry, call it legal,  
8 call it factual, and somebody has to decide what  
9 those facts are.

10 MR. LEWIS: Yes, Your Honor.

11 JUSTICE GORSUCH: Was he hit on the  
12 head? How many times? Did it -- did it change  
13 his cognitive abilities at the time of the  
14 crime? Those are all facts that somebody needs  
15 to find. Is that your point?

16 MR. LEWIS: Yes, Your Honor. And --  
17 and that's what we've advocated for in this case  
18 through the briefing, is that the district court  
19 was faced with diametrically conflicting  
20 evidence. Jones has PTSD. Jones does not have  
21 PTSD. And the district court had to determine  
22 what was true and what was not true before it  
23 could move on to the legal question.

24 JUSTICE GORSUCH: Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Jackson?

2 JUSTICE JACKSON: So I guess where I'm  
3 getting a little confused about all of this is  
4 that I thought that the standard at issue, as  
5 you articulated it in response to Justice Alito,  
6 was whether, in consideration of the total  
7 mitigating evidence, a reasonable -- there's a  
8 reasonable probability that the outcome would  
9 have been different.

10 Is that right?

11 MR. LEWIS: So, as Strickland terms  
12 it, it's a reasonable probability that the  
13 sentence would have been different in  
14 consideration of the total mitigation weighed  
15 against the aggravating circumstances.

16 JUSTICE JACKSON: Perfect. All right.  
17 I agree.

18 I -- I think what Justice Kagan is  
19 saying is that that standard takes into account  
20 for the purpose of its application that all of  
21 the mitigating evidence is being presented, that  
22 we present this mitigating evidence, we present  
23 this aggravating evidence, and would, if all of  
24 that had happened, be out -- is there a  
25 reasonable probability that the outcome would be

1 different.

2 I think the problem that's happening  
3 here is that the district court, being a  
4 district court, is screening the mitigating  
5 evidence upfront. There's sort of like another  
6 layer being added to this on the front end where  
7 the district court, as you said in response to  
8 Justice Gorsuch, is deciding, well, is this  
9 really mitigating evidence? Is this a fact?  
10 Did this thing happen?

11 And it's sort of putting that initial  
12 screen on it so that when we get to the  
13 Strickland weighing, we have a smaller corpus of  
14 mitigating evidence because we've already weeded  
15 out the stuff that the district court -- I think  
16 that's not what's supposed to be happening  
17 actually.

18 I think that whether or not this thing  
19 is actually a fact is determined ultimately,  
20 that at this level right now, the district court  
21 is just deciding whether or not -- that this  
22 basically has to go back to the states, whether  
23 the person gets habeas and it's got to be done  
24 over again in some sense. And later is where we  
25 find out whether or not the thing is really

1 true.

2 But, in the context of Strickland  
3 prejudice, we're just saying this fact was never  
4 presented at all, and the question is to what  
5 extent was the defendant prejudiced by that  
6 omission. So we're not screening upfront for  
7 whether or not that fact was true in any sense.  
8 We're sort of accepting it and -- and -- and  
9 saying: Well, in any event, the defendant might  
10 not even be prejudiced because it was such a  
11 thing, right, that it doesn't outweigh the  
12 aggravators, so we're not going to send it back.

13 So I think the problem with your  
14 analysis is it has -- and the district court's  
15 analysis in -- in this case is it has the  
16 district court doing something that actually  
17 doesn't fit in this Strickland dynamic.

18 Does that make sense?

19 MR. LEWIS: I see your point, Your  
20 Honor. That's not the argument that we've made.  
21 And I think, even under your point, even if it  
22 was improper for the district court to -- to  
23 screen the things in the manner that -- that the  
24 point says that they do, I think that those  
25 determinations are still properly made in the

1 weighing.

2           When you look at a case like Belmontes  
3 and the Court is talking about how what  
4 courts -- reviewing courts need to consider is  
5 the interaction between this evidence, how it  
6 changes the entire evidentiary picture, where  
7 the district court is saying things like Jones's  
8 experts are not credible for X, Y, and Z  
9 reasons, then, even under this view, those  
10 considerations become relevant in the weighing.

11           JUSTICE JACKSON: Thank you.

12           CHIEF JUSTICE ROBERTS: Thank you,  
13 counsel.

14           Mr. Andre.

15           ORAL ARGUMENT OF JEAN-CLAUDE ANDRE  
16           ON BEHALF OF THE RESPONDENT

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

19           The issue in this case is whether Mr.  
20 Jones was prejudiced at his capital sentencing  
21 hearing by the concededly deficient performance  
22 of his counsel. Counsel had only been a lawyer  
23 for three-and-a-half years and never as lead  
24 capital counsel.

25           Despite numerous red flags about



1 Jones's mental health and emotional disorders,  
2 counsel did not start his mitigation case or  
3 mitigation investigation until after Jones's  
4 conviction, and all he did was request an  
5 Arizona Rule 26.5 evaluator.

6 The result was that the sentencing  
7 judge heard only about Jones's complicated  
8 birth, abuse by his first step-father up until  
9 age six, some head injuries, and from the Rule  
10 26.5 evaluator that Jones had some "possible"  
11 neurological abnormalities, and that was because  
12 the evaluator did not have the time and it would  
13 be beyond his charge to make actual diagnoses.

14 At the federal evidentiary hearing in  
15 this case, of course, Mr. Jones introduced  
16 substantial new mitigation evidence that the --  
17 that the sentencing judge had never heard. The  
18 new mitigating evidence showed that Jones was  
19 chronically abused throughout his entire  
20 formative years in childhood, well beyond age  
21 six by not just one but by multiple male family  
22 members, he was plied with alcohol by a  
23 step-grandfather who then sexually abused him,  
24 and, most critically, the new mitigation  
25 evidence actually included diagnoses, evidence

1 about the effects that all the abuse and head  
2 injuries had on Jones.

3           These included the opinions of four  
4 experts who diagnosed him with, among other  
5 things, brain damage, PTSD, bipolar depressive  
6 disorder, and a learning disability.

7           All this new evidence would have  
8 dramatically changed the sentencing calculus  
9 both in the trial court and before the Arizona  
10 Supreme Court on its independent review.

11           But, instead of looking at the sum  
12 total of all the evidence and asking whether it  
13 established a reasonable probability that the  
14 Arizona court system might have imposed a  
15 different sentence, the district court serially  
16 nit-picked all of Jones's mitigating evidence  
17 and then offered its view of what it thought the  
18 more persuasive side was.

19           That was error. The Ninth Circuit  
20 properly corrected it, and this Court should  
21 affirm. If this Court has questions, I welcome  
22 them.

23           JUSTICE THOMAS: It seems the district  
24 court did not say from -- at least from my  
25 reading that this evidence was as significant as

1 you say it is. Otherwise, it would have found  
2 prejudice, right?

3 MR. ANDRE: Well, the district court  
4 -- I think, in the most recent colloquy between  
5 Justice Jackson and Mr. Lewis, I think the  
6 district court did exactly what Justice Jackson  
7 described, which was the district court here  
8 went through and said: Okay, here's this  
9 disputed fact, I'm going to resolve it 51/49,  
10 60/40, whatever I -- I -- I view of it, and  
11 then, because Jones loses on that point, it  
12 doesn't get considered with respect to  
13 Strickland prejudice.

14 And so, to answer I guess your  
15 question more directly, yes, the district court  
16 thought the state should win here, but the  
17 problem is that -- and I understand this. You  
18 know, district courts sentence federal  
19 defendants all the time and are called on to  
20 make -- make findings that then are subject to  
21 clear error review, right, vulnerable victim,  
22 loss calculations, which, you know, white-collar  
23 defendant's financial loss expert is more  
24 credible. That's not this context.

25 This is a context where the district

1 court is supposed to collect all this evidence  
2 and make its observations about what -- what --  
3 how significant the evidence is, how weighty it  
4 is, but actually address Strickland prejudice at  
5 the back end and then, when the appellate court  
6 looks at it, the only things to which clear  
7 error review would attach would be the kind of  
8 core factual findings that this Court has said  
9 it should be making: is the evidence new, is it  
10 mitigating, is it substantial, was it available  
11 at the time, and then whatever other kind of  
12 screening mechanisms it has to --

13 JUSTICE KAGAN: Well, but there's  
14 something else that the circuit court is  
15 supposed to do, which is the circuit court is  
16 supposed to weigh the mitigating evidence  
17 against the aggravating evidence.

18 And, here, you know, the circuit court  
19 once said that that was what it was doing, but  
20 then it completely ignores all the aggravating  
21 evidence, which was substantial in this case.

22 So, you know, what everyone can say  
23 about what the district court did wrong, we're  
24 reviewing the circuit court opinion, and that  
25 opinion doesn't do what it's supposed to do.

1           MR. ANDRE: I will acknowledge,  
2 Justice Kagan, that that is the -- the hardest  
3 part for me, at least my view, of the Ninth  
4 Circuit's opinion. I mean, the Ninth Circuit  
5 did go through over four pages and compare the  
6 facts of this case to the facts of other cases.  
7 But I -- I take the point, and I forget which  
8 one of Your Honors mentioned it, that the --

9           JUSTICE KAGAN: Right, but it's  
10 comparing, like, oh, in these other cases, the  
11 court had all this mitigating evidence, and,  
12 here, there's the same kind of mitigating  
13 evidence, and that means our job is done.

14           But that's -- you know, what we've  
15 said is that the circuit court has to look at  
16 the good and the bad. So the circuit court is  
17 supposed to look at the mitigating evidence, as  
18 well look at the rebuttal case that the state  
19 put on about -- about the strength of that  
20 mitigating evidence, and then, most crucially,  
21 weigh it against the aggravating evidence.

22           And that -- that most crucial last  
23 stage -- I mean, there were lots of aggravators  
24 in this case, and the circuit court doesn't even  
25 mention some of them.

1           MR. ANDRE: Well -- so I'd like to  
2 push back on you, respectfully. So the Ninth  
3 Circuit did three times separately acknowledge  
4 its obligation to do the reweighing. Then the  
5 Ninth Circuit twice didn't just cite but  
6 actually quoted the aggravating factors cite --  
7 found by the trial court. And so -- then listed  
8 them, and they have, you know, brutal language  
9 built right into them.

10           Then the court, you know, also didn't  
11 shy away from the -- the underlying facts of  
12 these murders. It recounted them in detail in  
13 the beginning of the opinion and again in the  
14 section where it did engage in the comparison.

15           Again, I acknowledge this is -- I wish  
16 the Ninth Circuit had said more on this  
17 particular part of its analysis because it is  
18 the thinnest, but I think it's still enough.

19           And what's notable also about this  
20 case, because, you know, you mentioned the  
21 additional bad evidence that may have come out,  
22 this is not a case like Wong v. Belmontes. In  
23 fact, Wong, I like that case quite a bit because  
24 it's a great contrast for us. There is no new  
25 bad, unlike a new -- an additional murder like

1 we had in Wong. There is no new additional bad  
2 to be introduced in this case. The only  
3 rebuttal case the state had to what we presented  
4 at the federal evidentiary hearing were its  
5 competing views of our experts.

6 And as, you know, we've been  
7 discussing, that ultimately -- that ultimate  
8 credibility determination is best reserved for  
9 the state sentencer. When you have competing  
10 experts -- they're not Daubertable, if I can  
11 make up that word, they're not looney tunes and  
12 subject to Rule 702 -- they go to the ultimate  
13 fact finder if it's a toxic tort case or the  
14 ultimate sentencer if it's a criminal case.

15 And so, again, here, there really  
16 isn't new bad to be weighed. There's just what  
17 was always in the case that was aggravating --  
18 and it's significant. I get that. Three  
19 murders, you know, this is a brutal case. But  
20 against this wealth of mitigation evidence, old  
21 and new, that we were able to put in between the  
22 various proceedings, and, on balance, this case  
23 looks like a lot like Williams and Porter.

24 JUSTICE ALITO: Mr. -- Mr. Andre, can  
25 I ask you about what seems to be your lead

1 argument? This is on page 14 of your brief in  
2 the summary. "If the defendant presents  
3 substantial evidence of the kind that a  
4 reasonable sentencer might deem relevant to the  
5 defendant's moral culpability, even despite  
6 powerful aggravation evidence, relief is  
7 warranted." Okay?

8           So let's think of a case where the  
9 defendant is sort of like Hannibal Lecter, all  
10 right? You've got a defendant who has kidnapped  
11 and hideously tortured 25 children and sent  
12 messages to the media saying: I love to kill  
13 and I'll always kill if I have the chance.

14           So you've got the most horrible  
15 aggravating evidence that you possibly can have.  
16 Then you say that all that's necessary in order  
17 to get resentenced is for the defendant to come  
18 up with evidence that a reasonable sentencer  
19 might deem relevant to the defendant's moral  
20 capability? That's your argument?

21           MR. ANDRE: I will acknowledge in --  
22 that is in the summary of argument section of  
23 the brief, not the argument. I think our -- our  
24 position is quite more nuanced. I mean,  
25 ultimately, what it is, is that the sum total of



1 evidence, the good and the bad, is then compared  
2 against the guideposts that, whether you're the  
3 district court or you're the Ninth Circuit, the  
4 guideposts that those courts have, and those  
5 guideposts are this Court's Strickland  
6 precedents.

7 JUSTICE ALITO: All right. Let me ask  
8 you about another legal argument that you make,  
9 and this is on page 15. "A district court errs  
10 when its fact finding assumes the role of state  
11 sentencer by disregarding the opinions of one  
12 party's experts based on the superior  
13 credibility of the other" -- "other party's  
14 experts."

15 All right. So, I mean, let's think of  
16 a case where the state's expert is minimally  
17 qualified, is torn apart on cross-examination in  
18 the hearing before the district court, and then  
19 the defendant has -- and let's say the issue is  
20 whether there's organic brain damage. The  
21 defendant has the country's five leading experts  
22 on organic brain damage, and they all testify.

23 You say, well, it can't -- the court  
24 can't make a credibility determination?

25 MR. ANDRE: So --

1 JUSTICE ALITO: Or does it go just the  
2 other way? I mean, just go one way?

3 MR. ANDRE: No. The --

4 JUSTICE ALITO: The court -- the court  
5 can say I'm not going to give any real weight to  
6 this very -- this expert who has low  
7 qualifications, testimony was horrible, I don't  
8 believe him, he -- he looked like a liar on the  
9 stand, and then all these other experts whose  
10 credentials are unimpeachable and their  
11 testimony was very impressive, can't make a  
12 credibility determination?

13 MR. ANDRE: So I'd like to unpack that  
14 with a number of responses if I may, Justice  
15 Alito. First, I read the Ninth Circuit's use of  
16 credibility in that section of its opinion as a  
17 little imprecise. The Ninth Circuit  
18 acknowledged in its opinion that a district  
19 court remains free to make credibility  
20 determinations. Then, in the next sentence, it  
21 said the trial court or the district court here  
22 erred in determining which side's experts were  
23 more credible as well.

24 JUSTICE ALITO: Well, I'm not -- I'm  
25 not really talking here about what the Ninth

1 Circuit said. I'm talking about what you said  
2 in your brief.

3 MR. ANDRE: Oh, I --

4 JUSTICE ALITO: Can the -- can the  
5 court make credibility determinations about  
6 experts, yes or no?

7 MR. ANDRE: Yes. And the district  
8 court here did not, and that's what I was trying  
9 to get at by explaining what the Ninth Circuit  
10 was saying. The district court didn't say that  
11 these experts are trying to sneak in junk  
12 science, that, you know, Andre was there on the  
13 stand, he was sweating bullets, he wouldn't let  
14 anybody -- look anybody in the eyes; therefore,  
15 I don't believe him.

16 The district court effectively  
17 resolved this battle of the experts based on the  
18 transcript. To be sure, the district court did  
19 sit through the hearing, but when you look at  
20 the district court's ruling, nowhere does the  
21 court layer on any of the kind of in-court  
22 demeanor observations that Rule 52 itself says  
23 you have to give kind of even special deference  
24 to.

25 So my point being the -- the district

1 court is free to make these kinds of credibility  
2 determinations that are unique to it when it is  
3 receiving evidence live. This district court  
4 didn't do that.

5 The Ninth Circuit's point and my point  
6 is that in the Strickland prejudice context, it  
7 is error for a district court to say I think  
8 that the state's experts are more persuasive  
9 than Jones's; therefore, I'm going to not  
10 consider all of the evidence that came from  
11 Jones's experts, and, therefore, he loses on  
12 Strickland prejudice.

13 JUSTICE ALITO: Well, there's no  
14 question that a fact finder gets special  
15 deference when the -- the credibility -- when he  
16 makes a credibility determination based on  
17 demeanor, et cetera, in -- in a hearing before.

18 But, even if it's -- even if the --  
19 the court says, look, I've looked at the  
20 credentials of this person and I've looked at  
21 the credentials of this other person, I've  
22 looked at the report, a very poor, short  
23 conclusory report of this one expert, these  
24 other reports that are much longer, much more  
25 detailed, much more impressive, can't say I'm

1 not going to give any real weight to this one as  
2 opposed to the other one? Can't do that, and  
3 that's subject -- that's not subject to clear  
4 error review?

5 MR. ANDRE: In -- in -- in this  
6 context, no. And, actually, even in other  
7 contexts, I'm not sure it would be. It would  
8 still get kind of careful respect, as Justice  
9 Kagan noticed -- noted, because we do care what,  
10 you know, the lower court judges think about  
11 issues as they percolate up. That's why courts  
12 often remand even pure questions of law back to  
13 lower courts, to get their input on how should  
14 we resolve this.

15 JUSTICE GORSUCH: Well --

16 JUSTICE JACKSON: And there's a --

17 JUSTICE GORSUCH: -- counsel, how does  
18 -- how does a district court do -- do the  
19 Strickland analysis without finding some facts?  
20 It has to do a reasonable probability analysis.  
21 You -- I think you've conceded that --

22 MR. ANDRE: Absolutely.

23 JUSTICE GORSUCH: -- today. Well,  
24 okay. Well, page 24 of your brief says the  
25 state sentencer does that, not the federal

1 district court. So I -- you know, I -- I'm a  
2 little flummoxed by that, I've got to confess  
3 too, as Justice Alito was.

4 But having acknowledged that, that the  
5 federal district court has to make a reasonable  
6 probability determination, I would think that  
7 sometimes at least a district court could say,  
8 putting aside the facts of your case, that I --  
9 I believe this expert rather than that expert,  
10 and that's -- that informs my reasonable  
11 probability analysis. I have to determine what  
12 the facts are before I can decide whether a jury  
13 would or, in this case a sentencing judge,  
14 would -- there's a reasonable probability, not a  
15 51 percent probability, we all agree, but a  
16 reasonable probability that the outcome might  
17 have been different.

18 And if -- if one of the experts is  
19 patently unbelievable, incredible, just assume  
20 that, wouldn't that be a factual finding that  
21 could inform a probable -- a probabilistic  
22 analysis?

23 MR. ANDRE: Yes. And, again, that's  
24 not -- that's not our case.

25 JUSTICE GORSUCH: I understand that.

1 But, in that case, so you agree that's a fact  
2 finding that a district court can make. Do you  
3 -- do you also agree that would be reviewable  
4 for clear error?

5 MR. ANDRE: Yes.

6 JUSTICE GORSUCH: Okay.

7 MR. ANDRE: So, again, this, the kind  
8 of 702, Daubertable, or just pure demeanor,  
9 in-court observation findings, those are factual  
10 findings that go beyond the ones relating to  
11 whether the evidence is new, whether it's  
12 mitigating, and whether it was available at the  
13 time, that a district court is free to make but  
14 our district court did not here. And because  
15 we're --

16 JUSTICE GORSUCH: I understand, but --  
17 but we agree on the legal principle that  
18 sometimes a probabilistic analysis is going to  
19 depend on what the facts are?

20 MR. ANDRE: Yes.

21 JUSTICE GORSUCH: And a district  
22 court's best positioned to do that?

23 MR. ANDRE: Right.

24 JUSTICE GORSUCH: And that's  
25 reviewable for clear error?

1                   MR. ANDRE: Right. But, in a case  
2 like this, where you have all of this evidence  
3 and there wasn't a true credibility  
4 determination, that then all of that evidence  
5 gets thrown into the reasonable probability  
6 analysis on the back end, which, again, the  
7 district court has to make that call in the  
8 first instance.

9                   We're not suggesting any kind of, you  
10 know, gag order on district courts when they're  
11 conducting these evidentiary hearings and  
12 issuing their rulings after them.

13                   The question is what deference must  
14 the court of appeal and this Court give to the  
15 district court's observations, gloss, on -- on  
16 the evidence.

17                   JUSTICE JACKSON: So can I --

18                   JUSTICE BARRETT: Given --

19                   JUSTICE JACKSON: -- state what I  
20 understand you to be saying so that I can make  
21 sure that I understand it?

22                   In response to Justice Gorsuch, you  
23 say that the district court can make these  
24 credibility determinations, but the problem, I  
25 think, with the I believe this expert, not this



1 one, upfront is that once you then take that  
2 mitigating expert's evidence off the table and  
3 then do the weighing, you might reach a  
4 different result than if you take all the  
5 evidence and then, in the context of the  
6 weighing, you say this mitigating evidence is  
7 not going to be given as much weight.

8 MR. ANDRE: That's exactly right.

9 JUSTICE JACKSON: Is that what I'm  
10 saying? Because I understood the Strickland  
11 question to be that the district court is  
12 answering, if the sentencing judge had heard the  
13 evidence that the counsel deficiently failed to  
14 present, was there a reasonable probability that  
15 the outcome would have been different?

16 And so he's -- he's assuming that the  
17 uncredible expert is going to be presented and  
18 -- and sort of folding into his ultimate  
19 weighing would the outcome have been different  
20 if I had heard from that expert, if the  
21 sentencing court had heard from that expert,  
22 whereas, in a situation like this one, if he  
23 takes that expert out of the picture ahead of  
24 time and then makes that analysis, he could  
25 reach a different result?

1           MR. ANDRE: Absolutely. That's  
2 absolutely correct.

3           JUSTICE JACKSON: Yeah.

4           JUSTICE BARRETT: Counsel, if -- you  
5 know, Justice Kagan was asking you about whether  
6 the Ninth Circuit had considered the aggravating  
7 evidence alongside the mitigating evidence, and,  
8 you know, the Ninth Circuit's opinion, I -- I  
9 must say I read, similarly to Justice Kagan, it  
10 didn't really do that.

11           Why wouldn't a vacate and remand be  
12 appropriate then?

13           MR. ANDRE: If this Court finds that  
14 the Ninth Circuit's weighing on pages 58 to 62  
15 of the -- of the Pet. App. is insufficient, I  
16 think that is the proper recourse, to send it  
17 back to the Ninth Circuit.

18           Again, I think, for the reasons I  
19 explained to Justice Kagan, the Ninth Circuit  
20 said enough. It acknowledged its obligation.  
21 It quoted the actual aggravators. It didn't  
22 just point to. It cited them. It quoted them.  
23 It didn't shy away from the facts. And it  
24 engaged in the comparative analysis that, I  
25 think, Strickland requires by saying, you know,

1 here are all of these cases that are very  
2 similar with respect to how brutal the crimes  
3 were and with respect to what the mitigation  
4 was, and we think --

5 JUSTICE GORSUCH: Well --

6 MR. ANDRE: -- relief is warranted,  
7 but if the Court --

8 JUSTICE GORSUCH: -- what do you --  
9 what do you say, though, to your friend's  
10 argument on the other side that this case has  
11 been lingering for decades and that we've  
12 already vacated and remanded this case once and  
13 that if we think that the Ninth Circuit didn't  
14 engage in the classic Strickland analysis this  
15 Court requires -- again, I know you disagree --  
16 but positing Justice Barrett's point, wouldn't  
17 there be some value to everybody to have some  
18 finality in this case and just have us do the  
19 Strickland weighing in the first instance?

20 MR. ANDRE: I'm not -- I'm not  
21 resisting this Court doing the weighing. It's  
22 just I think that the typical procedure is to  
23 send it back to the lower court. But, if this  
24 Court wants to do that, you know, you have the  
25 record. You have the law. You could do that

1       reweighing if you think the Ninth Circuit was --  
2       was insufficient. But it's a question of law,  
3       so I don't think the Court, without engaging in  
4       that reweighing, could issue a judgment.

5                 JUSTICE GORSUCH: Well, it just would  
6       be was there a reasonable probability? And, as  
7       you say, we have the whole record before us and  
8       nothing's changed in 20 years.

9                 MR. ANDRE: Right.

10                JUSTICE KAVANAUGH: Why do you think  
11       there's a reasonable probability that the  
12       sentence would be different given that the  
13       sentencing judge, the original sentencing judge,  
14       had Dr. Potts's report before it and -- and  
15       found mitigators that dealt with the substance  
16       abuse, with the childhood, with the treatment,  
17       the abuse problem, and Dr. Potts's report had  
18       found, I think, seven mitigating circumstances  
19       that -- that basically were -- were similar to  
20       what the -- the trial court ultimately found?

21                MR. ANDRE: Well, of course, the  
22       reasonable probability inquiry is not, you know,  
23       what would Judge Chavez have done had this  
24       evidence been before him in 1993. It's, you  
25       know, a non-idiosyncratic reasonable, objective

1       sentencer.

2                   But I think whoever that person is in  
3       this hypothetical, there's a lot more evidence,  
4       and Dr. Potts was by no means a defense expert.

5                   Dr. Potts noted seven possible  
6       mitigators, but even the three that related to  
7       psychological and neuropsychological disorders,  
8       they are couched expressly in conditional terms.

9                   And I'm looking right at page JA 140:  
10      possibly an affective disorder, the likelihood  
11      of a major mental illness, an increased  
12      potential for neurologic sequelae. That's --  
13      that's in stark contrast to the seven diagnoses  
14      that Jones's expert said this guy actually has.

15                  And so I think that that changes the  
16      calculus right there. And then, on top of that,  
17      we have --

18                  JUSTICE KAVANAUGH: Well, Dr. Potts  
19      reported on the likelihood that he suffers from  
20      a major mental illness, the head trauma he  
21      suffered, which increases the potential for  
22      neurologic problems, his intoxication at the  
23      time of the offense, his genetic loading for  
24      substance abuse, the chaotic and abusive  
25      childhood, was clearly before the sentencing

1 judge.

2           Novak was the lawyer. The sentencing  
3 judge at the post-conviction review proceeding  
4 in 2000 said Novak is a very good attorney and  
5 did a good job with this difficult trial.

6           That attorney, Novak, testified that  
7 Potts, Dr. Potts, really -- they didn't do the  
8 mitigation expert back at the time the way it's  
9 done now but that Dr. Potts performed a role  
10 that really was quite similar to how mitigation  
11 experts work in the more modern times and that  
12 Potts was on their team, so to speak, in trying  
13 to help them.

14           MR. ANDRE: I mean, I think Novak was  
15 trying to effectively, you know, clear his own  
16 name in this context. Again, possibly,  
17 likelihood, potential, the three mental illness  
18 --

19           JUSTICE KAVANAUGH: Well, no, that's a  
20 fair point. The sentencing judge is the one who  
21 said Novak's a very good attorney who did a very  
22 good job in this difficult case.

23           MR. ANDRE: No, that's true. But,  
24 even if we go back to Dr. Potts, Dr. Potts said  
25 when he gave all these conditional hypotheses

1 about what Jones may be suffering from, said: I  
2 would like to get more testing. I would like to  
3 know more.

4 And then that's exactly what we  
5 presented at the federal evidentiary hearing.  
6 And then, when Dr. Potts was confronted with  
7 that, he said: Yeah, that's exactly what we  
8 needed back then.

9 And so not only do you have, again,  
10 actual diagnoses now that are finally coming in  
11 in 2006 that the sentencer didn't hear in 1993,  
12 you also have additional facts that give rise to  
13 those various diagnoses. So you have additional  
14 head injuries and you have a dramatically more  
15 significant history and pattern of abuse.

16 I mean, it's one thing for Jones to  
17 have been, you know, treated very, very poorly  
18 up until age six. It's another thing for Jones  
19 to have been abused by not just one stepfather  
20 but two and a step-grandfather, including  
21 sexually, all the way up to age 17.

22 JUSTICE KAVANAUGH: And then what's  
23 the -- I understand all that and I appreciate  
24 all that, that it's different and more. I -- I  
25 get that.

1                   How -- how do we do the reweighing or  
2                   how does whatever court does the reweighing do  
3                   that reweighing given the horrible aggravators?

4                   MR. ANDRE: Well --

5                   JUSTICE KAVANAUGH: You know, I -- I  
6                   don't know, are we putting ourselves in the  
7                   perspective of a -- I think you said a  
8                   non-idiosyncratic sentencing judge in Arizona in  
9                   1992, or what -- what are we doing?

10                  MR. ANDRE: No, that is what you do.  
11                  And I guess I want to start out with one point.  
12                  In all these cases, the question is, you know,  
13                  are the defendants getting from -- from zero to  
14                  60. And I just want to be clear that it doesn't  
15                  matter whether one defendant started, let's say,  
16                  at 10 and then got to 60 miles an hour all at  
17                  the evidentiary hearing stage in federal court  
18                  or with Jones, where there was more mitigation  
19                  than in Porter, Rompilla, Wiggins, and Williams.  
20                  And so Jones might be starting out at 15 or 20  
21                  miles an hour. But they have to get to 60 in  
22                  order to establish the reasonable probability  
23                  for relief.

24                  And so the way that you would engage  
25                  in this weighing is I think you would look at



1 the four lead cases this Court has decided --  
2 Anders v. Texas is also relevant in this space  
3 based on how the Court characterized the  
4 evidence there -- and say: Okay, that sets the  
5 floor. That's the 60-mile-an-hour speed test.

6 Did Jones, with all of his mitigation  
7 balancing against the aggravating factors and  
8 the facts of the crime, did he get there? And  
9 so it really is just a comparative analysis of  
10 the good and the bad of this case against this  
11 -- this Court's four lead precedents in this  
12 space.

13 JUSTICE KAVANAUGH: And I guess I  
14 would think it different if the -- if the  
15 sentencing judge had no awareness of the  
16 childhood abuse, no awareness of the head  
17 injuries, no awareness of the substance abuse,  
18 but the -- the sentencing judge was aware of all  
19 that, those basics --

20 MR. ANDRE: But --

21 JUSTICE KAVANAUGH: -- but still said  
22 these crimes are too much, you know, and we  
23 don't need to go through them, but they're --  
24 you know, the sentencing judge was too much.

25 MR. ANDRE: That's why I used the

1 zero-to-60 reference, Justice Kavanaugh. It  
2 doesn't matter where Jones started vis-à-vis the  
3 other defendants in these cases because Jones  
4 did start out a little bit ahead of them because  
5 there was more mitigation at the aggravation and  
6 mitigation sentencing hearing before Judge  
7 Chavez than there were in Porter, Rompilla,  
8 Williams, and Wiggins.

9 But my point is that I think Jones  
10 clearly got to 60 miles an hour, and he had an  
11 easier time getting there because he did have  
12 more to start with.

13 But the question just is did they get  
14 there and then, you know, how bad is the  
15 aggravation. Again, brutal crimes here. We  
16 acknowledge that, but there's a lot of  
17 mitigation, and when you match it up against  
18 those -- the four cases from this Court, it's  
19 really hard to see any difference. There's, you  
20 know, longstanding childhood trauma, a lot of  
21 head injuries, and diagnoses by doctors who were  
22 not precluded from testifying because they were  
23 sneaking in junk -- junk science and not because  
24 they were looney tunes under 702. That all goes  
25 to the state sentencer to weigh. And -- and

1 because we're not there yet, we're in the  
2 federal system, we're asking, is there a  
3 reasonable probability that all of that evidence  
4 might have persuaded that state sentencer to  
5 favor life?

6 CHIEF JUSTICE ROBERTS: Well, that --  
7 you know, just to continue with your analogy, I  
8 think the question is he didn't have to get to  
9 60, right? He needed to get to 120 given the  
10 aggravating circumstances that were before the  
11 -- before the jury.

12 MR. ANDRE: That -- if that's --  
13 that's what this Court feels, that's what this  
14 -- this Court feels. And I guess this -- this  
15 underscores why the analysis of the weight and  
16 persuasiveness to be given each piece of  
17 evidence is best dealt with on the back end  
18 under the prejudice prong, right?

19 So the district court, again, is going  
20 to take all this evidence and it's going to  
21 express its views. The Ninth Circuit's going to  
22 look at that. It's not going to have to defer  
23 to those views, but it's going to do its own  
24 weighing and it's going to come to this Court  
25 and this Court's going to opine. And if this

1 Court, you know, wants to say, in Porter,  
2 Rompilla, Wiggins, Williams -- actually,  
3 Williams and Porter are the strongest for my  
4 side -- yeah, those defendants only had to get  
5 to 60, here Jones had to get to 120, that's for  
6 this Court to do but for this Court to do  
7 without deference to the district court's gloss  
8 on the evidence from 13, 14 years ago.

9 CHIEF JUSTICE ROBERTS: Thank you,  
10 counsel.

11 Justice Thomas?

12 Justice Alito?

13 JUSTICE SOTOMAYOR: Somehow we're  
14 losing, I think, a view of what this case is  
15 about. Nobody disputes that trial counsel was  
16 deficient.

17 MR. ANDRE: Correct.

18 JUSTICE SOTOMAYOR: In no capital case  
19 should any lawyer wait until someone's been  
20 found guilty to start mitigation because it  
21 doesn't give you enough time to do a thorough  
22 investigation, correct?

23 MR. ANDRE: Correct.

24 JUSTICE SOTOMAYOR: All right. And  
25 there's no doubt that there was a mountain of

1 additional evidence that the new experts found  
2 with a proper investigation. But we're not here  
3 to undo the conviction, correct?

4 MR. ANDRE: Correct. The conviction  
5 is not in dispute and not -- it's not even --

6 JUSTICE SOTOMAYOR: All right.

7 MR. ANDRE: Yeah.

8 JUSTICE SOTOMAYOR: We're only here to  
9 decide who should decide whether to resentence  
10 him. And you said that's how the Court feels.  
11 But why is it our feeling? Shouldn't it be the  
12 trial court's feeling? An Arizona state judge  
13 should look at this. Isn't that what you want,  
14 an Arizona state court judge to look at this and  
15 say the aggravators outweigh the mitigators?

16 MR. ANDRE: The other way around,  
17 Justice Sotomayor.

18 JUSTICE SOTOMAYOR: All right.

19 MR. ANDRE: But -- but -- but --

20 JUSTICE SOTOMAYOR: No, you want them  
21 to say, but --

22 MR. ANDRE: Yes.

23 JUSTICE SOTOMAYOR: -- the point is  
24 that what we're asking for here is for the trial  
25 court to determine that weight?

1                   MR. ANDRE: Absolutely. Absolutely.  
2                   And I guess I want to be clear that, you know,  
3                   the rule we're asking --

4                   JUSTICE SOTOMAYOR: So it really is  
5                   should the Arizona court consider that evidence  
6                   now?

7                   MR. ANDRE: Right. It -- it -- was  
8                   there enough -- was there enough mitigating  
9                   evidence in total when weighed against the bad  
10                  such that an Arizona court, when looking at this  
11                  anew, might reach the opposite result?

12                  And I guess one thing I do want to  
13                  underscore really quickly is that, you know, our  
14                  rule would cut both ways. If there was a  
15                  district judge in Judge Bolton's situation who  
16                  made -- and I counted 13 -- she never used the  
17                  word "preponderance," to your point earlier,  
18                  Justice Alito, but a lot of synonyms for  
19                  "preponderance." If you had a district judge  
20                  who made 13 findings favorable to the defense  
21                  and the state were to appeal, our rule would  
22                  help the state out there and say no, you know,  
23                  the district court can do certain things  
24                  factually, but generally speaking, when the  
25                  court is evaluating which side's evidence is

1 more persuasive, is there a diagnosis or not,  
2 that all gets dealt with on the back end under  
3 Strickland prejudice, and that at least is  
4 subject to de novo review on appeal.

5 CHIEF JUSTICE ROBERTS: Justice Kagan?  
6 Justice Gorsuch? All right.  
7 Justice Jackson? Okay.  
8 Thank you, counsel.

9 MR. ANDRE: Thank you.

10 CHIEF JUSTICE ROBERTS: Rebuttal, Mr.  
11 Lewis?

12 REBUTTAL ARGUMENT OF JASON D. LEWIS  
13 ON BEHALF OF THE PETITIONER

14 MR. LEWIS: Thank you, Mr. Chief  
15 Justice.

16 Even putting aside the particular  
17 questions about the scope and where the line is  
18 drawn and the factual question, on Strickland  
19 reweighing alone, this Court's action is  
20 compelled. The seven aggravating circumstances  
21 found here are among the most weighty  
22 aggravating circumstances under Arizona law.

23 And, you know, this was footnoted in  
24 the brief, and I wanted to scream it in the  
25 brief. The -- the district -- or the -- the

1 circuit court barely mentioned the -- the fourth  
2 aggravating circumstance as to Tisha Weaver, the  
3 seven-year-old girl who Jones brutally murdered.  
4 That bare mention tells me and tells any reader  
5 that it did not factor into their determination.

6           When you look at those aggravating  
7 circumstances and you understand how Arizona  
8 courts treat those aggravating circumstances,  
9 this is, as we argue in our brief, almost a  
10 foregone conclusion that there is no reasonable  
11 probability that this sentence would have been  
12 different.

13           And I would submit, even if you take  
14 every single scrap of Jones's evidence submitted  
15 in a district court as true, the brutality  
16 inflicted upon the victims here -- and let's  
17 include Katherine Gumina, the grandmother who  
18 died but died too late because she was in a coma  
19 for months until she died right before trial  
20 started -- this is far different from those core  
21 cases that my friend relies on. There are more  
22 victims. The aggravation is more severe. And  
23 the difference in mitigation is less because, as  
24 you all have recognized, Jones had a pretty good  
25 mitigation case before the trial court.



1                   The trial court found that he suffered  
2                   from long-term substance abuse, that genetic  
3                   factors and head injuries contributed to that  
4                   substance abuse, that he was under the influence  
5                   of drugs and alcohol at the time of the crimes,  
6                   which is especially compelling in Arizona as far  
7                   as mitigation evidence goes because it actually  
8                   links the mitigating evidence to the crimes, and  
9                   that Jones had a chaotic and abusive childhood.  
10                  And it may have left out some details, I don't  
11                  know, but anything else that was added was  
12                  cumulative and pales in comparison to the  
13                  aggravation present here.

14                  Thank you.

15                  CHIEF JUSTICE ROBERTS: Thank you,  
16                  counsel.

17                  The case is submitted.

18                  (Whereupon, at 11:20 a.m., the case  
19                  was submitted.)

20

21

22

23

24

25

## Official - Subject to Final Review

<p><b>1</b></p> <p><b>1,000</b> [1] 12:5  <b>10</b> [1] 63:16  <b>10:15</b> [2] 1:16 3:2  <b>11-year-old</b> [1] 10:11  <b>11:20</b> [1] 72:18  <b>120</b> [2] 66:9 67:5  <b>13</b> [3] 67:8 69:16,20  <b>14</b> [2] 47:1 67:8  <b>140</b> [1] 60:9  <b>15</b> [2] 48:9 63:20  <b>17</b> [2] 1:12 62:21  <b>185</b> [1] 34:7  <b>1992</b> [1] 63:9  <b>1993</b> [2] 59:24 62:11</p>	<p><b>accept</b> [4] 7:8 8:2,9,15  <b>accepting</b> [2] 5:22 38:8  <b>account</b> [3] 15:2,21 36:19  <b>accurate</b> [1] 15:22  <b>acknowledge</b> [5] 44:1 45:3,15 47:21 65:16  <b>acknowledged</b> [3] 49:18  <b>53:4 57:20</b>  <b>action</b> [1] 70:19  <b>actual</b> [5] 12:22 24:12 40:13 57:21 62:10  <b>actually</b> [14] 19:6 22:19 24:13 25:19 37:17,19 38:16 40:25 43:4 45:6 52:6 60:14 67:2 72:7  <b>actuary</b> [1] 32:4  <b>added</b> [2] 37:6 72:11  <b>additional</b> [7] 25:14 45:21,25 46:1 62:12,13 68:1  <b>address</b> [1] 43:4  <b>addresses</b> [1] 4:9  <b>addressing</b> [1] 5:7  <b>advocated</b> [1] 35:17  <b>AEDPA</b> [3] 6:7,21 25:25  <b>affected</b> [3] 11:21,22 17:21  <b>affective</b> [1] 60:10  <b>affirm</b> [1] 41:21  <b>age</b> [4] 40:9,20 62:18,21  <b>aggravating</b> [36] 4:6,13 7:10 8:2,10 9:1 15:4 22:15,20 23:15 24:2,9,12,19 25:6,20 26:6,8,11 31:8 36:15,23 43:17,20 44:21 45:6 46:17 47:15 57:6 64:7 66:10 70:20,22 71:2,6,8  <b>aggravation</b> [8] 4:23 23:4 26:18 47:6 65:5,15 71:22 72:13  <b>aggravators</b> [6] 12:13 38:12 44:23 57:21 63:3 68:15  <b>aggregating</b> [1] 22:14  <b>ago</b> [1] 67:8  <b>agree</b> [8] 15:14 22:21 29:17 36:17 53:15 54:1,3,17  <b>ahead</b> [3] 16:21 56:23 65:4  <b>alcohol</b> [2] 40:22 72:5  <b>ALITO</b> [30] 6:10,19,22,25 19:13,17 30:22,23 31:2,10,15,19,22,25 32:7,11 33:1 34:20 36:5 46:24 48:7 49:1,4,15,24 50:4 51:13 53:3 67:12 69:18  <b>alleged</b> [2] 16:14 22:10  <b>allow</b> [1] 4:8  <b>almost</b> [1] 71:9  <b>alone</b> [2] 11:15 70:19  <b>alongside</b> [1] 57:7  <b>already</b> [3] 26:24 37:14 58:12  <b>among</b> [2] 41:4 70:21  <b>analogy</b> [1] 66:7  <b>analysis</b> [18] 15:8 16:1 23:10,23 38:14,15 45:17 52:19,20 53:11,22 54:18 55:6</p>	<p><b>56:24 57:24 58:14 64:9 66:15</b>  <b>Anders</b> [1] 64:2  <b>ANDRE</b> [48] 1:21 2:6 39:14,15,17 42:3 44:1 45:1 46:24 47:21 48:25 49:3,13 50:3,7,12 52:5,22 53:23 54:5,7,20,23 55:1 56:8 57:1,13 58:6,20 59:9,21 61:14,23 63:4,10 64:20,25 66:12 67:17,23 68:4,7,16,19,22 69:1,7 70:9  <b>anew</b> [1] 69:11  <b>another</b> [5] 9:18 23:17 37:5 48:8 62:18  <b>answer</b> [4] 5:12 18:19 34:4 42:14  <b>answering</b> [1] 56:12  <b>anybody</b> [2] 50:14,14  <b>apart</b> [1] 48:17  <b>apologize</b> [1] 34:5  <b>App</b> [1] 57:15  <b>appeal</b> [4] 6:13 55:14 69:21 70:4  <b>appeals</b> [6] 15:25 16:2 17:5 22:13 28:7,12  <b>APPEARANCES</b> [1] 1:18  <b>appears</b> [1] 14:12  <b>appellate</b> [1] 43:5  <b>applicability</b> [1] 4:18  <b>applicable</b> [1] 26:23  <b>applicant</b> [1] 20:23  <b>application</b> [1] 36:20  <b>applied</b> [1] 13:15  <b>applies</b> [1] 28:25  <b>apply</b> [2] 28:22 29:3  <b>applying</b> [3] 19:18 28:14 32:21  <b>appreciate</b> [2] 22:8 62:23  <b>approach</b> [1] 4:14  <b>appropriate</b> [4] 7:12 27:24 33:25 57:12  <b>April</b> [1] 1:12  <b>area</b> [1] 18:6  <b>argue</b> [1] 71:9  <b>argues</b> [1] 5:5  <b>argument</b> [19] 1:15 2:2,5,8 3:4,7 5:25 7:9,24 22:18 38:20 39:15 47:1,20,22,23 48:8 58:10 70:12  <b>ARIZONA</b> [18] 1:4,20 8:10,14 13:6,10 29:6 40:5 41:9,14 63:8 68:12,14 69:5,10 70:22 71:7 72:6  <b>around</b> [1] 68:16  <b>articulated</b> [1] 36:5  <b>artificial</b> [1] 17:17  <b>ascribes</b> [2] 24:8 25:19  <b>ascription</b> [1] 24:1  <b>aside</b> [2] 53:8 70:16  <b>asks</b> [1] 17:15  <b>asserting</b> [1] 7:1  <b>assess</b> [1] 35:2  <b>assigned</b> [1] 26:8</p>	<p><b>associated</b> [1] 10:16  <b>Assume</b> [3] 10:23 19:25 53:19  <b>assumes</b> [1] 48:10  <b>Assuming</b> [3] 7:8 11:10 56:16  <b>attach</b> [1] 43:7  <b>attention</b> [1] 22:10  <b>attorney</b> [3] 61:4,6,21  <b>available</b> [3] 22:25 43:10 54:12  <b>aware</b> [1] 64:18  <b>awareness</b> [3] 64:15,16,17  <b>away</b> [2] 45:11 57:23</p>	<p><b>bounced</b> [1] 34:15  <b>brain</b> [5] 9:20 11:8 41:5 48:20,22  <b>brief</b> [8] 5:4 47:1,23 50:2 52:24 70:24,25 71:9  <b>briefed</b> [1] 29:2  <b>briefing</b> [1] 35:18  <b>brutal</b> [4] 45:8 46:19 58:2 65:15  <b>brutality</b> [1] 71:15  <b>brutally</b> [1] 71:3  <b>built</b> [1] 45:9  <b>bullets</b> [1] 50:13  <b>burden</b> [4] 18:2 19:5 29:2,13</p>
<p><b>2</b></p> <p><b>20</b> [2] 59:8 63:20  <b>2000</b> [1] 61:4  <b>2003</b> [2] 21:11 22:4  <b>2006</b> [1] 62:11  <b>2024</b> [1] 1:12  <b>22-982</b> [1] 3:4  <b>2254(e)(2)</b> [2] 20:14 33:21  <b>24</b> [1] 52:24  <b>25</b> [2] 18:10 47:11  <b>26.5</b> [2] 40:5,10</p>	<p><b>3</b></p> <p><b>3</b> [1] 2:4  <b>30</b> [3] 17:20,24 18:10  <b>39</b> [1] 2:7</p>	<p><b>back</b> [17] 7:18 12:12 18:16 28:19 37:22 38:12 43:5 45:2 52:12 55:6 57:17 58:23 61:8,24 62:8 66:17 70:2  <b>bad</b> [9] 44:16 45:21,25 46:1,16 48:1 64:10 65:14 69:9  <b>balance</b> [4] 4:12 8:1 26:17 46:22  <b>balancing</b> [1] 64:7  <b>ball</b> [1] 34:15  <b>bare</b> [2] 26:11 71:4  <b>barely</b> [1] 71:1  <b>BARRETT</b> [11] 20:4 21:6,14,17 22:6 28:4,9,18 33:20 55:18 57:4  <b>Barrett's</b> [1] 58:16  <b>based</b> [4] 48:12 50:17 51:16 64:3  <b>basically</b> [3] 18:6 37:22 59:19  <b>basics</b> [1] 64:19  <b>basis</b> [1] 7:24  <b>battle</b> [2] 15:12 50:17  <b>become</b> [1] 39:10  <b>beginning</b> [1] 45:13  <b>behalf</b> [8] 1:20,22 2:4,7,10 3:8 39:16 70:13  <b>believe</b> [9] 10:9,11 15:13 21:11 33:8 49:8 50:15 53:9 55:25  <b>believed</b> [1] 33:14  <b>Belmontes</b> [3] 8:24 39:2 45:22  <b>below</b> [2] 5:14 7:9  <b>benefit</b> [2] 21:25 27:18  <b>Bennett's</b> [1] 25:21  <b>best</b> [3] 46:8 54:22 66:17  <b>better</b> [2] 8:19 29:23  <b>between</b> [7] 4:13 13:7 18:24 26:17 39:5 42:4 46:21  <b>beyond</b> [5] 12:6 32:19 40:13,20 54:10  <b>bipolar</b> [1] 41:5  <b>birth</b> [1] 40:8  <b>bit</b> [2] 45:23 65:4  <b>Bolton's</b> [1] 69:15  <b>both</b> [4] 4:22 34:25 41:9 69:14</p>	<p><b>C</b></p> <p><b>calculations</b> [1] 42:22  <b>calculus</b> [3] 13:16 41:8 60:16  <b>California</b> [1] 1:21  <b>call</b> [3] 35:7 8:55 7  <b>called</b> [1] 42:19  <b>calls</b> [1] 26:16  <b>came</b> [3] 1:14 10:12 51:10  <b>capability</b> [1] 47:20  <b>capital</b> [4] 29:6 39:20,24 67:18  <b>care</b> [2] 29:20 52:9  <b>careful</b> [1] 52:8  <b>Case</b> [49] 3:4 7:15 13:10 14:14 17:9 20:7 23:14,14,14,16,16 32:22 35:17 38:15 39:2,19 40:2,15 43:21 44:6,18,24 45:20,22,23 46:2,3,13,14,17,19,22 47:8 48:16 53:8,13,24 54:1 55:1 58:10,12,18 61:22 64:10 67:14,18 71:25 72:17,18  <b>cases</b> [12] 23:11 24:18 25:6,24 44:6,10 58:1 63:12 64:1 65:3,18 71:21  <b>categorically</b> [1] 15:18  <b>caused</b> [2] 3:18 14:1  <b>certain</b> [2] 7:16 69:23  <b>cetera</b> [2] 13:5 51:17  <b>challenging</b> [2] 20:8 21:8  <b>chance</b> [6] 17:20,25,25 18:9 19:15 47:13  <b>change</b> [2] 4:2 35:12  <b>changed</b> [5] 4:12 31:9 35:3 41:8 59:8  <b>changes</b> [2] 39:6 60:15  <b>chaotic</b> [2] 60:24 72:9  <b>characterized</b> [1] 64:3  <b>charge</b> [1] 40:13  <b>Chavez</b> [2] 59:23 65:7  <b>CHIEF</b> [16] 3:3,9 26:19 30:7,20 33:3 34:12 35:25 39:12,17 66:6 67:9 70:5,10,14 72:15  <b>child</b> [1] 33:15  <b>childhood</b> [6] 40:20 59:16 60:25 64:16 65:20 72:9</p>	

## Official - Subject to Final Review

<p><b>children</b> <sup>[1]</sup> 47:11  <b>chronically</b> <sup>[1]</sup> 40:19  <b>Circuit</b> <sup>[34]</sup> 3:11,20 4:5 7:14,25 13:2,14 20:19 24:1,10 29:17,23 41:19 43:14,15,18,24 44:4,15,16,24 45:3,5,16 48:3 49:17 50:1,9 57:6,17,19 58:13 59:1 71:1  <b>Circuit's</b> <sup>[8]</sup> 4:14,18 44:4 49:15 51:5 57:8,14 66:21  <b>circumstance</b> <sup>[5]</sup> 15:16 23:24 26:6,9 71:2  <b>circumstances</b> <sup>[14]</sup> 16:3 24:3,9,12 25:20 26:12 27:12 36:15 59:18 66:10 70:20,22 71:7,8  <b>cite</b> <sup>[2]</sup> 45:5,6  <b>cited</b> <sup>[1]</sup> 57:22  <b>cites</b> <sup>[1]</sup> 25:25  <b>claim</b> <sup>[1]</sup> 20:20  <b>claims</b> <sup>[3]</sup> 21:22,24 29:20  <b>clarify</b> <sup>[3]</sup> 4:18 6:11 26:22  <b>classic</b> <sup>[1]</sup> 58:14  <b>clear</b> <sup>[16]</sup> 4:19 7:16 16:4 20:21 27:1 28:4,6 30:1 42:21 43:6 52:3 54:4,25 61:15 63:14 69:2  <b>clearly</b> <sup>[3]</sup> 22:3 60:25 65:10  <b>close</b> <sup>[1]</sup> 9:11  <b>cognitive</b> <sup>[2]</sup> 15:19 35:13  <b>coin</b> <sup>[1]</sup> 31:16  <b>collect</b> <sup>[1]</sup> 43:1  <b>colloquy</b> <sup>[2]</sup> 34:19 42:4  <b>coma</b> <sup>[1]</sup> 71:18  <b>come</b> <sup>[5]</sup> 12:12 34:4 45:21 47:17 66:24  <b>coming</b> <sup>[1]</sup> 62:10  <b>comment</b> <sup>[1]</sup> 24:11  <b>comparative</b> <sup>[2]</sup> 57:24 64:9  <b>compare</b> <sup>[2]</sup> 8:4 44:5  <b>compared</b> <sup>[1]</sup> 48:1  <b>comparing</b> <sup>[1]</sup> 44:10  <b>comparison</b> <sup>[2]</sup> 45:14 72:12  <b>compelled</b> <sup>[1]</sup> 70:20  <b>compelling</b> <sup>[5]</sup> 9:1 11:14,23 29:12 72:6  <b>competing</b> <sup>[2]</sup> 46:5,9  <b>Completely</b> <sup>[2]</sup> 19:1 43:20  <b>complicated</b> <sup>[2]</sup> 21:4 40:7  <b>component</b> <sup>[5]</sup> 27:2 31:3,4,5 35:1  <b>conceded</b> <sup>[1]</sup> 52:21  <b>concededly</b> <sup>[1]</sup> 39:21  <b>concepts</b> <sup>[1]</sup> 7:13  <b>concerning</b> <sup>[1]</sup> 10:7  <b>conclude</b> <sup>[2]</sup> 9:24 23:6  <b>conclusion</b> <sup>[2]</sup> 23:9 71:10  <b>conclusively</b> <sup>[1]</sup> 13:18  <b>conclusory</b> <sup>[1]</sup> 51:23  <b>condition</b> <sup>[1]</sup> 15:22</p>	<p><b>conditional</b> <sup>[2]</sup> 60:8 61:25  <b>conditions</b> <sup>[2]</sup> 3:18,18  <b>conduct</b> <sup>[2]</sup> 11:22 20:12  <b>conducted</b> <sup>[1]</sup> 23:10  <b>conducting</b> <sup>[3]</sup> 21:1 28:1 55:11  <b>confess</b> <sup>[1]</sup> 53:2  <b>confirmed</b> <sup>[1]</sup> 12:5  <b>confirming</b> <sup>[1]</sup> 13:25  <b>conflicting</b> <sup>[4]</sup> 14:6 18:25 20:1 35:19  <b>confronted</b> <sup>[2]</sup> 20:1 62:6  <b>confused</b> <sup>[1]</sup> 36:3  <b>connect</b> <sup>[1]</sup> 28:19  <b>connection</b> <sup>[1]</sup> 13:11  <b>consciousness</b> <sup>[2]</sup> 10:9 11:18  <b>consider</b> <sup>[11]</sup> 4:6 12:4,9,24 13:22 22:14 26:15,16 39:4 51:10 69:5  <b>consideration</b> <sup>[3]</sup> 31:7 36:6,14  <b>considerations</b> <sup>[1]</sup> 39:10  <b>considered</b> <sup>[6]</sup> 16:10,14 21:24 26:9 42:12 57:6  <b>constitutional</b> <sup>[2]</sup> 5:7 20:22  <b>context</b> <sup>[14]</sup> 4:19 5:10 19:6 24:13,18 27:22 30:13 38:2 42:24,25 51:6 52:6 56:5 61:16  <b>contexts</b> <sup>[1]</sup> 52:7  <b>continue</b> <sup>[1]</sup> 66:7  <b>continuously</b> <sup>[1]</sup> 7:18  <b>contrary</b> <sup>[1]</sup> 4:15  <b>contrast</b> <sup>[2]</sup> 45:24 60:13  <b>contributed</b> <sup>[1]</sup> 72:3  <b>conviction</b> <sup>[3]</sup> 40:4 68:3,4  <b>convincing</b> <sup>[1]</sup> 20:21  <b>core</b> <sup>[2]</sup> 43:8 71:20  <b>corpus</b> <sup>[1]</sup> 37:13  <b>correct</b> <sup>[17]</sup> 5:16,24 6:1 9:16 12:14,15 21:6 22:21 26:4 33:9,12 57:2 67:17,22,23 68:3,4  <b>corrected</b> <sup>[1]</sup> 41:20  <b>CORRECTIONS</b> <sup>[1]</sup> 1:4  <b>correctly</b> <sup>[4]</sup> 15:11 21:12 26:4,21  <b>couched</b> <sup>[1]</sup> 60:8  <b>couldn't</b> <sup>[1]</sup> 15:14  <b>Counsel</b> <sup>[14]</sup> 20:4 26:19 39:13,22,22,24 40:2 52:17 56:13 57:4 67:10,15 70:8 72:16  <b>counted</b> <sup>[1]</sup> 69:16  <b>country's</b> <sup>[1]</sup> 48:21  <b>course</b> <sup>[3]</sup> 30:11 40:15 59:21  <b>COURT</b> <sup>[193]</sup> 1:1,15 3:10,16 4:17,22 5:13,15,15 6:12,15,17,23 7:9,14,25 8:19,23 9:6 10:13 12:4 13:2,3,15,21 14:5,12,19,19,24 15:2,</p>	<p>20,25 16:2,4,10,13,16,17 17:3,5,8,8,16,19 18:14,18 19:2,9,17 20:1,11,14 21:23,24 22:1,4,12 23:11,11,17,17,18 24:2,4,6,8 25:11,15 26:1,3,3,7,13 27:1,16 28:7,12,14,15 29:6,14,17,21,22,23 30:17 32:17,19 33:5,23,38 35:18,21 37:3,4,7,15,20 38:16,22 39:3,7,18 41:9,10,14,15,20,21,24 42:3,6,7,15 43:1,5,8,14,15,18,23,24 44:11,15,16,24 45:7,10 48:3,9,18,23 49:4,4,19,21,21 50:5,8,10,16,18,21 51:1,3,7,19 52:10,18 53:1,5,7 54:2,13,14 55:7,14,14,23 56:11,21 57:13 58:7,15,21,23,24 59:3,20 63:2,17 64:1,3 65:18 66:13,14,19,24 67:1,6,6 68:10,14,25 69:5,10,23,25 71:1,15,25 72:1  <b>court's</b> <sup>[22]</sup> 3:13,23 4:24 6:15 7:7 11:12 15:8 16:1,23 24:7 29:14,19 38:14 48:5 50:20 54:22 55:15 64:11 66:25 67:7 68:12 70:19  <b>courts</b> <sup>[16]</sup> 4:1 18:5,23 27:11,20 28:1 30:4,11 39:4,4 42:18 48:4 52:11,13 55:10 71:8  <b>credentials</b> <sup>[3]</sup> 49:10 51:20,21  <b>credibility</b> <sup>[15]</sup> 11:13 13:4 16:3 46:8 48:13,24 49:12,16,19 50:5 51:1,15,16 55:3,24  <b>credible</b> <sup>[6]</sup> 15:3 16:18 19:4 39:8 42:24 49:23  <b>credit</b> <sup>[1]</sup> 12:12  <b>crime</b> <sup>[5]</sup> 13:8 27:12 33:8 35:14 64:8  <b>crimes</b> <sup>[6]</sup> 11:23 58:2 64:22 65:15 72:5,8  <b>criminal</b> <sup>[1]</sup> 46:14  <b>critical</b> <sup>[1]</sup> 3:12  <b>critically</b> <sup>[1]</sup> 40:24  <b>cross-examination</b> <sup>[1]</sup> 48:17  <b>crucial</b> <sup>[1]</sup> 44:22  <b>crucially</b> <sup>[1]</sup> 44:20  <b>Cullen</b> <sup>[3]</sup> 33:21 34:6,7  <b>culpability</b> <sup>[3]</sup> 4:10 16:25 47:5  <b>cumulative</b> <sup>[1]</sup> 72:12  <b>cut</b> <sup>[1]</sup> 69:14</p>	<p>8  <b>de</b> <sup>[14]</sup> 5:1,7,23 6:1,11,12,14 7:2 22:22 24:4 28:12,17 33:22 70:4  <b>dealing</b> <sup>[1]</sup> 25:25  <b>dealt</b> <sup>[3]</sup> 59:15 66:17 70:2  <b>decades</b> <sup>[1]</sup> 58:11  <b>decide</b> <sup>[5]</sup> 15:21 35:8 53:12 68:9,9  <b>decided</b> <sup>[2]</sup> 17:22 64:1  <b>deciding</b> <sup>[2]</sup> 37:8,21  <b>decision</b> <sup>[1]</sup> 34:10  <b>deem</b> <sup>[2]</sup> 47:4,19  <b>defendant</b> <sup>[12]</sup> 9:8 33:6,15 38:5,9 47:2,9,10,17 48:19,21 63:15  <b>defendant's</b> <sup>[4]</sup> 14:18 42:23 47:5,19  <b>defendants</b> <sup>[5]</sup> 29:6 42:19 63:13 65:3 67:4  <b>defends</b> <sup>[1]</sup> 3:22  <b>defense</b> <sup>[2]</sup> 60:4 69:20  <b>defer</b> <sup>[2]</sup> 16:2 66:22  <b>deference</b> <sup>[15]</sup> 3:13 6:7,21 7:6 11:15 27:9,24 28:2,7 29:15 30:19 50:23 51:15 55:13 67:7  <b>deficient</b> <sup>[4]</sup> 27:4,5 39:21 67:16  <b>deficiently</b> <sup>[1]</sup> 56:13  <b>demeanor</b> <sup>[4]</sup> 27:19 50:22 51:17 54:8  <b>demonstrates</b> <sup>[1]</sup> 26:15  <b>DEPARTMENT</b> <sup>[1]</sup> 1:4  <b>depend</b> <sup>[1]</sup> 54:19  <b>depressive</b> <sup>[1]</sup> 41:5  <b>Deputy</b> <sup>[1]</sup> 1:19  <b>described</b> <sup>[1]</sup> 42:7  <b>Despite</b> <sup>[2]</sup> 39:25 47:5  <b>detail</b> <sup>[1]</sup> 45:12  <b>detailed</b> <sup>[2]</sup> 11:4 51:25  <b>details</b> <sup>[3]</sup> 9:12 27:13 72:10  <b>determination</b> <sup>[17]</sup> 4:21 6:2,16,18,24 7:2 19:12 26:1 28:3 29:14 46:8 48:24 49:12 51:16 53:6 55:4 71:5  <b>determinations</b> <sup>[13]</sup> 3:14 7:5 13:4 27:8,10,17 30:16,18 38:25 49:20 50:5 51:2 55:24  <b>determine</b> <sup>[4]</sup> 3:24 35:21 53:11 68:25  <b>determined</b> <sup>[1]</sup> 37:19  <b>determining</b> <sup>[1]</sup> 49:22  <b>develop</b> <sup>[1]</sup> 21:23  <b>developed</b> <sup>[3]</sup> 9:2,10 22:24  <b>diagnosed</b> <sup>[1]</sup> 41:4  <b>diagnoses</b> <sup>[9]</sup> 14:6 16:12 20:2 40:13,25 60:13 62:10,13 65:21  <b>diagnosis</b> <sup>[1]</sup> 70:1  <b>diametrically</b> <sup>[1]</sup> 35:19</p>	<p><b>dictate</b> <sup>[1]</sup> 7:14  <b>die</b> <sup>[1]</sup> 32:2  <b>died</b> <sup>[3]</sup> 71:18,18,19  <b>difference</b> <sup>[2]</sup> 65:19 71:23  <b>different</b> <sup>[16]</sup> 15:17 18:7 36:9,13 37:1 41:15 53:17 56:4,15,19,25 59:12 62:24 64:14 71:12,20  <b>differently</b> <sup>[1]</sup> 18:15  <b>difficult</b> <sup>[2]</sup> 61:5,22  <b>diligence</b> <sup>[1]</sup> 20:18  <b>direct</b> <sup>[2]</sup> 22:9 24:16  <b>directly</b> <sup>[2]</sup> 25:15 42:15  <b>DIRECTOR</b> <sup>[1]</sup> 1:3  <b>disability</b> <sup>[1]</sup> 41:6  <b>disagree</b> <sup>[1]</sup> 58:15  <b>disbelieved</b> <sup>[1]</sup> 33:14  <b>discount</b> <sup>[2]</sup> 14:20 15:5  <b>discovered</b> <sup>[1]</sup> 20:17  <b>discussing</b> <sup>[1]</sup> 46:7  <b>disorder</b> <sup>[2]</sup> 41:6 60:10  <b>disorders</b> <sup>[2]</sup> 40:1 60:7  <b>dispositive</b> <sup>[1]</sup> 11:16  <b>dispute</b> <sup>[2]</sup> 5:13 68:5  <b>disputed</b> <sup>[1]</sup> 42:9  <b>disputes</b> <sup>[2]</sup> 18:24 67:15  <b>disregarded</b> <sup>[1]</sup> 3:20  <b>disregarding</b> <sup>[1]</sup> 48:11  <b>dissent</b> <sup>[1]</sup> 25:21  <b>dissented</b> <sup>[1]</sup> 34:10  <b>district</b> <sup>[106]</sup> 3:13,16,23 6:12,15,15,23 7:25 11:12 12:4 13:3,20 14:5,19,24 15:2,8,20 16:1,4,10,13,15,17 17:3,7,8,16 18:5,13,18 19:2,9,17,25 20:11 24:4,7,8 25:15 27:16 28:14 29:14,18,19,20,22 30:4,11,17 32:17,18 33:5 35:18,21 37:3,4,7,15,20 38:14,16,22 39:7 41:15,23 42:3,6,7,15,18,25 43:23 48:3,9,18 49:18,21 50:7,10,16,18,20,25 51:3,7 52:18 53:1,5,7 54:2,13,14,21 55:7,10,15,23 56:11 66:19 67:7 69:15,19,23 70:25 71:15  <b>doctor</b> <sup>[1]</sup> 32:5  <b>doctors</b> <sup>[1]</sup> 65:21  <b>doing</b> <sup>[7]</sup> 19:9,23 24:17 38:16 43:19 58:21 63:9  <b>done</b> <sup>[8]</sup> 18:15 19:3 24:20,25 37:23 44:13 59:23 61:9  <b>doubt</b> <sup>[3]</sup> 12:6 32:19 67:25  <b>dramatically</b> <sup>[2]</sup> 41:8 62:14  <b>drawn</b> <sup>[1]</sup> 70:18  <b>drugs</b> <sup>[1]</sup> 72:5  <b>due</b> <sup>[1]</sup> 20:18  <b>dynamic</b> <sup>[1]</sup> 38:17</p>
<b>D</b>				
<p><b>D.C</b> <sup>[1]</sup> 1:11  <b>damage</b> <sup>[5]</sup> 9:25 14:1 41:5 48:20,22  <b>dangerousness</b> <sup>[1]</sup> 26:6  <b>DANNY</b> <sup>[1]</sup> 1:7  <b>Daubertable</b> <sup>[2]</sup> 46:10 54:</p>				
<b>E</b>				
<p><b>each</b> <sup>[1]</sup> 66:16  <b>earlier</b> <sup>[1]</sup> 69:17  <b>easier</b> <sup>[1]</sup> 65:11</p>				

## Official - Subject to Final Review

<p><b>effect</b> [1] 14:20  <b>effectively</b> [2] 50:16 61:15  <b>effects</b> [1] 41:1  <b>emotional</b> [1] 40:1  <b>emphasized</b> [1] 26:4  <b>end</b> [6] 7:18 37:6 43:5 55:6 66:17 70:2  <b>engage</b> [4] 27:12 45:14 58:14 63:24  <b>engaged</b> [1] 57:24  <b>engaging</b> [1] 59:3  <b>enough</b> [7] 17:18 19:14 45:18 57:20 67:21 69:8,8  <b>entire</b> [2] 39:6 40:19  <b>entirely</b> [2] 14:20 29:17  <b>entitled</b> [7] 6:21 7:6 11:14 27:9 28:6 29:15 30:19  <b>erred</b> [5] 3:11 4:5 13:3 15:25 49:22  <b>error</b> [16] 3:22 4:19 7:6 12:17,20 20:22 25:13 28:7 30:1 41:19 42:21 43:7 51:7 52:4 54:4,25  <b>errs</b> [1] 48:9  <b>especially</b> [3] 16:20,22 72:6  <b>ESQ</b> [3] 2:3,6,9  <b>ESQUIRE</b> [1] 1:21  <b>establish</b> [5] 15:15 16:7 20:21 29:3 63:22  <b>established</b> [1] 41:13  <b>establishing</b> [1] 16:11  <b>et</b> [2] 13:4 51:17  <b>evaluating</b> [1] 69:25  <b>evaluation</b> [1] 29:19  <b>evaluator</b> [3] 40:5,10,12  <b>even</b> [27] 11:9,9 12:11 13:6 14:13,16 19:10 25:3 26:7 27:22 29:9 38:10,21,21 39:9 44:24 47:5 50:23 51:18,18 52:6,12 60:6 61:24 68:5 70:16 71:13  <b>event</b> [1] 38:9  <b>everybody</b> [1] 58:17  <b>everyone</b> [1] 43:22  <b>evidence</b> [99] 3:14,25 4:7,14 7:21 9:1,2,9 10:7,14 12:5,25 13:22,25 14:25 15:4 16:10 17:11,18 18:25 20:2,13,15,21 21:25 22:15,24 23:4,6,7,19 26:5,14 28:11 29:7,8,22 31:8 35:20 36:7,21,22,23 37:5,9,14 39:5 40:16,18,25,25 41:7,12,16,25 43:1,3,9,16,17,21 44:11,13,17,20,21 45:21 46:20 47:3,6,15,18 48:1 51:3,10 54:11 55:2,4,16 56:2,5,6,13 57:7,7 59:24 60:3 64:4 66:3,17,20 67:8 68:1 69:5,9,25 71:14 72:7,8  <b>evidentiary</b> [13] 3:15 9:3 20:5,12 21:1,10,18 39:6 40:14 46:4 55:11 62:5 63:</p>	<p>17  <b>eviscerates</b> [1] 3:25  <b>exactly</b> [4] 42:6 56:8 62:4,7  <b>examination</b> [1] 11:5  <b>example</b> [3] 13:6 28:6,21  <b>Except</b> [1] 14:9  <b>exercise</b> [1] 20:17  <b>exhaust</b> [1] 21:22  <b>existed</b> [2] 3:25 26:12  <b>expect</b> [1] 21:22  <b>experienced</b> [1] 33:6  <b>expert</b> [17] 11:13,20 14:18 42:23 48:16 49:6 51:23 53:9,9 55:25 56:17,20,21,23 60:4,14 61:8  <b>expert's</b> [1] 56:2  <b>experts</b> [23] 11:5 14:6,17 15:12,14,18 39:8 41:4 46:5,10 48:12,14,21 49:9,22 50:6,11,17 51:8,11 53:18 61:11 68:1  <b>explain</b> [1] 11:21  <b>explained</b> [1] 57:19  <b>explaining</b> [2] 23:16 50:9  <b>express</b> [1] 66:21  <b>expressly</b> [1] 60:8  <b>extends</b> [1] 28:3  <b>extent</b> [1] 38:5  <b>extra</b> [2] 8:25 20:13  <b>eyes</b> [1] 50:14</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>faced</b> [2] 14:5 35:19  <b>fact</b> [24] 7:20 8:1 9:24 17:9 18:1 19:3,23 20:23 27:21 28:21 30:1 33:24,25 34:2 37:9,19 38:3,7 42:9 45:23 46:13 48:10 51:14 54:1  <b>fact-finding</b> [1] 4:2  <b>fact-intensive</b> [1] 27:10  <b>factor</b> [2] 23:15 71:5  <b>factors</b> [11] 7:10 8:10 14:2 22:20,23 24:19 25:6,10 45:6 64:7 72:3  <b>facts</b> [20] 9:11,21 10:24 20:19 28:5 29:3 32:22 35:4,9,14 44:6,6 45:11 52:19 53:8,12 54:19 57:23 62:12 64:8  <b>factual</b> [21] 3:13,16 7:4,5 20:16 27:2,8 28:3 30:16 31:3,22 32:3,9,21 34:20 35:1,8 43:8 53:20 54:9 70:18  <b>factually</b> [1] 69:24  <b>failed</b> [4] 3:12 8:11 22:13 56:13  <b>failing</b> [1] 4:6  <b>fair</b> [1] 61:20  <b>family</b> [1] 40:21  <b>far</b> [5] 4:3 28:2 32:24 71:20 72:6  <b>favor</b> [1] 66:5</p>	<p><b>favorable</b> [1] 69:20  <b>federal</b> [11] 5:14 9:3 21:24 40:14 42:18 46:4 52:25 53:5 62:5 63:17 66:2  <b>feeling</b> [2] 68:11,12  <b>feels</b> [4] 16:6 66:13,14 68:10  <b>fell</b> [4] 9:17,19 10:8 11:17  <b>fiction</b> [1] 20:3  <b>Fifty-fifty</b> [1] 31:18  <b>fight</b> [1] 34:1  <b>figure</b> [4] 14:7 20:6,25 27:13  <b>finality</b> [2] 7:14 58:18  <b>finally</b> [1] 62:10  <b>financial</b> [1] 42:23  <b>find</b> [6] 18:1 20:14 25:5 29:12 35:15 37:25  <b>finder</b> [9] 9:24 17:9 18:1 19:3 20:23 27:22 34:2 46:13 51:14  <b>finders</b> [1] 7:20  <b>finding</b> [11] 16:5,23 19:23 28:16 30:1 33:24,25 48:10 52:19 53:20 54:2  <b>findings</b> [10] 3:16,20 11:12 16:3 27:9 42:20 43:8 54:9,10 69:20  <b>finds</b> [1] 57:13  <b>finish</b> [1] 30:6  <b>First</b> [11] 3:12 9:23 20:6 23:25 24:4,7 35:3 40:8 49:15 55:8 58:19  <b>fit</b> [1] 38:17  <b>five</b> [4] 9:16 10:8 33:16 48:21  <b>five-year-old</b> [1] 33:18  <b>flags</b> [1] 39:25  <b>flip</b> [1] 31:16  <b>floor</b> [1] 64:5  <b>flummoxed</b> [1] 53:2  <b>focused</b> [1] 26:13  <b>focusing</b> [1] 17:7  <b>folding</b> [1] 56:18  <b>footnoted</b> [1] 70:23  <b>forced</b> [1] 15:21  <b>foregone</b> [1] 71:10  <b>forget</b> [1] 44:7  <b>forgive</b> [1] 9:12  <b>formative</b> [1] 40:20  <b>formulate</b> [1] 32:5  <b>formulated</b> [1] 31:14  <b>forth</b> [1] 8:1  <b>found</b> [16] 9:18 11:4 20:19,23 23:18 26:12 42:1 45:7 59:15,18,20 67:20 68:1 70:21 72:1  <b>foundation</b> [1] 16:11  <b>four</b> [5] 41:3 44:5 64:1,11 65:18  <b>fourth</b> [1] 71:1  <b>free</b> [3] 49:19 51:1 54:13  <b>friend</b> [3] 3:22 25:24 71:21  <b>friend's</b> [2] 5:4 58:9</p>	<p><b>front</b> [1] 37:6  <b>full</b> [1] 29:24  <b>further</b> [2] 4:5 16:14  <b>future</b> [1] 26:5</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>gag</b> [1] 55:10  <b>gave</b> [2] 28:15 61:25  <b>General</b> [1] 1:19  <b>generally</b> [2] 7:20 69:24  <b>genetic</b> [2] 60:23 72:2  <b>gets</b> [6] 8:20 28:12 37:23 51:14 55:5 70:2  <b>getting</b> [3] 36:3 63:13 65:11  <b>girl</b> [1] 71:3  <b>give</b> [14] 3:12 13:16 16:16 18:7,16 21:13 24:13 32:7 49:5 50:23 52:1 55:14 62:12 67:21  <b>given</b> [7] 8:11 55:18 56:7 59:12 63:3 66:9,16  <b>gloss</b> [2] 55:15 67:7  <b>Gorsuch</b> [21] 34:13,14,18,23 35:6,11,24 37:8 52:15,17,23 53:25 54:6,16,21,24 55:22 58:5,8 59:5 70:6  <b>got</b> [7] 25:16 37:23 47:10,14 53:2 63:16 65:10  <b>grandmother</b> [1] 71:17  <b>granted</b> [2] 21:11 22:4  <b>granting</b> [1] 7:16  <b>grappling</b> [1] 25:3  <b>great</b> [4] 8:11 24:8 29:20 45:24  <b>greater</b> [1] 9:23  <b>guess</b> [10] 15:23 25:12 32:5 36:2 42:14 63:11 64:13 66:14 69:2,12  <b>guideposts</b> [3] 48:2,4,5  <b>guilty</b> [2] 20:24 67:20  <b>Gumina</b> [1] 71:17  <b>guy</b> [1] 60:14</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>habeas</b> [4] 4:3 11:4 33:25 37:23  <b>Hannibal</b> [1] 47:9  <b>happen</b> [2] 19:11 37:10  <b>happened</b> [2] 11:10 36:24  <b>happening</b> [2] 37:2,16  <b>hard</b> [2] 22:7 65:19  <b>hardest</b> [1] 44:2  <b>head</b> [19] 9:5,7,19 11:15,17 14:2 28:5,21 30:9,9 33:7 35:12 40:9 41:1 60:20 62:14 64:16 65:21 72:3  <b>heads</b> [1] 31:17  <b>health</b> [1] 40:1  <b>hear</b> [3] 3:3 29:4 62:11  <b>heard</b> [5] 40:7,17 56:12,20,21  <b>hearing</b> [21] 3:14,15 9:3 20:5,12 21:1,10,11,16,18 22:4</p>	<p>29:5 39:21 40:14 46:4 48:18 50:19 51:17 62:5 63:17 65:6  <b>hearings</b> [1] 55:11  <b>help</b> [2] 61:13 69:22  <b>helpful</b> [1] 27:25  <b>hideously</b> [1] 47:11  <b>history</b> [5] 16:18 20:7 21:4 27:13 62:15  <b>hit</b> [2] 11:17 35:11  <b>Honor</b> [34] 5:3,18,21 6:3,8 8:5,8,13,22 9:14 10:6,17 16:9 18:22 19:16,20 21:20 28:8 30:15 31:1,18,21,24 32:10,25 34:3,8,11,17,22 35:5,10,16 38:20  <b>Honors</b> [1] 44:8  <b>horrible</b> [3] 47:14 49:7 63:3  <b>hospital</b> [1] 9:20  <b>hour</b> [3] 63:16,21 65:10  <b>hypotheses</b> [1] 61:25  <b>hypothetical</b> [1] 60:3</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>idea</b> [1] 25:4  <b>identified</b> [1] 14:17  <b>identifying</b> [1] 23:14  <b>ignores</b> [1] 43:20  <b>ignoring</b> [1] 13:4  <b>illness</b> [3] 60:11,20 61:17  <b>impact</b> [1] 16:14  <b>impairment</b> [1] 15:20  <b>important</b> [1] 23:7  <b>imposed</b> [1] 41:14  <b>imprecise</b> [1] 49:17  <b>impressive</b> [2] 49:11 51:25  <b>improper</b> [3] 5:2 22:3 38:22  <b>in-court</b> [2] 50:21 54:9  <b>incident</b> [3] 9:18 10:11 33:18  <b>incidents</b> [3] 10:3 11:2,10  <b>include</b> [1] 71:17  <b>included</b> [2] 40:25 41:3  <b>including</b> [1] 62:20  <b>increased</b> [1] 60:11  <b>increases</b> [1] 60:21  <b>incredible</b> [1] 53:19  <b>independent</b> [1] 41:10  <b>inflicted</b> [1] 71:16  <b>influence</b> [1] 72:4  <b>inform</b> [1] 53:21  <b>information</b> [1] 11:11  <b>informs</b> [1] 53:10  <b>initial</b> [1] 37:11  <b>injuries</b> [12] 9:6,7 10:1,5 33:7,11 40:9 41:2 62:14 64:17 65:21 72:3  <b>injury</b> [6] 11:15 13:8 28:6,22 30:9,9  <b>input</b> [1] 52:13  <b>inquiry</b> [8] 7:3 19:7 27:3</p>
---	--	--	---	--

<p><b>30:3 32:15 34:20 35:7 59:22</b>  <b>instance</b> [4] 16:13 27:23  <b>55:8 58:19</b>  <b>instead</b> [3] 3:21 4:10 41:11  <b>insufficient</b> [2] 57:15 59:2  <b>interaction</b> [1] 39:5  <b>intoxication</b> [1] 60:22  <b>introduced</b> [5] 10:10 11:2, 11 40:15 46:2  <b>investigation</b> [3] 40:3 67:22 68:2  <b>isn't</b> [10] 7:11 8:19 11:15 16:4, 19 17:2 20:8 21:7 46:16 68:13  <b>issue</b> [7] 5:18 27:15 33:22 36:4 39:19 48:19 59:4  <b>issues</b> [3] 5:7 7:16 52:11  <b>issuing</b> [1] 55:12  <b>itself</b> [2] 33:21 50:22</p>	<p>18, 19 <b>29:16 30:7,8,20,20, 22,23 31:2,10,15,19,22,25 32:7,11 33:1,3,3,5,13,19, 20 34:6,9,12,12,13,14,18, 20,23 35:6,11,24,25,25 36:2,5,16,18 37:8 39:11,12,17 41:23 42:5,6 43:13 44:2,9 46:24 48:7 49:1,4,14,24 50:4 51:13 52:8,15,16,17, 23 53:3,25 54:6,16,21,24 55:17,18,19,22 56:9 57:3,4, 5,9,19 58:5,8,16 59:5,10 60:18 61:19 62:22 63:5 64:13,21 65:1 66:6 67:9,11,12, 13,18,24 68:6,8,17,18,20, 23 69:4,18 70:5,5,6,7,10, 15 72:15</b></p>	<p><b>level</b> [1] 37:20  <b>LEWIS</b> [101] 1:19 2:3,9 3:6, 7,9 5:3,17,21 6:1,8,14,20, 23 7:1,13 8:5,8,13,22 9:14 10:2,6,19,22,25 11:6,9 12:2,7,10,15,18,21 13:12,20 14:4,15 15:9 16:8,20,22 17:13,23 18:3,12,21 19:8, 13,16,20,24 21:5,9,15,19 22:7,11,16 23:2,12,21,25 24:21,24 25:1,8,17 26:25 28:8,13 29:1,16 30:14,23 31:1,5,13,18,21,24 32:4,10, 25 33:2,10,17 34:3,8,11,17, 22 35:5,10,16 36:11 38:19 42:5 70:11,12,14  <b>liar</b> [1] 49:8  <b>life</b> [2] 27:13 66:5  <b>light</b> [3] 4:12 16:23 22:18  <b>likelihood</b> [3] 60:10,19 61:17  <b>line</b> [1] 70:17  <b>lingering</b> [1] 58:11  <b>links</b> [1] 72:8  <b>listed</b> [1] 45:7  <b>listing</b> [1] 22:19  <b>little</b> [5] 27:7 36:3 49:17 53:2 65:4  <b>live</b> [3] 21:20 27:18 51:3  <b>loading</b> [1] 60:23  <b>long</b> [2] 7:15 20:7  <b>long-term</b> [1] 72:2  <b>longer</b> [1] 51:24  <b>longstanding</b> [2] 4:15 65:20  <b>look</b> [13] 15:6 39:2 44:15, 17,18 50:14,19 51:19 63:25 66:22 68:13,14 71:6  <b>looked</b> [5] 14:12 49:8 51:19,20,22  <b>looking</b> [4] 25:22 41:11 60:9 69:10  <b>looks</b> [4] 18:17 25:4 43:6 46:23  <b>looney</b> [2] 46:11 65:24  <b>loses</b> [2] 42:11 51:11  <b>losing</b> [1] 67:14  <b>loss</b> [2] 42:22,23  <b>lost</b> [10] 9:11 17  <b>lot</b> [7] 25:24 29:23 46:23 60:3 65:16,20 69:18  <b>lots</b> [1] 44:23  <b>love</b> [1] 47:12  <b>low</b> [1] 49:6  <b>lower</b> [3] 52:10,13 58:23</p>	<p><b>match</b> [1] 65:17  <b>matter</b> [3] 1:14 63:15 65:2  <b>mean</b> [16] 9:5 14:10,23 17:2,16 18:21 21:2 24:22 30:14 44:4,23 47:24 48:15 49:2 61:14 62:16  <b>meaningfully</b> [2] 4:6 22:14  <b>means</b> [2] 44:13 60:4  <b>mechanisms</b> [1] 43:12  <b>media</b> [1] 47:12  <b>meet</b> [1] 29:13  <b>members</b> [1] 40:22  <b>mental</b> [6] 3:17 15:21 40:1 60:11,20 61:17  <b>mention</b> [3] 9:5 44:25 71:4  <b>mentioned</b> [5] 8:3 26:20 44:8 45:20 71:1  <b>messages</b> [1] 47:12  <b>met</b> [2] 18:1 19:4  <b>metal</b> [1] 9:19  <b>might</b> [16] 13:15 14:21 17:6,21 18:9,10 34:1 38:9 41:14 47:4,19 53:16 56:3 63:20 66:4 69:11  <b>miles</b> [3] 63:16,21 65:10  <b>military</b> [1] 10:15  <b>mind</b> [1] 35:3  <b>minimally</b> [1] 48:16  <b>minor</b> [1] 32:17  <b>missing</b> [1] 8:7  <b>misunderstood</b> [3] 17:3,6 18:18  <b>mitigating</b> [37] 7:10 8:2,7 9:2 12:5,25 14:25 15:16 22:23 23:5,6,19 25:9 26:14 28:11 29:4 36:7,21,22 37:4,9,14 40:18 41:16 43:10,16 44:11,12,17,20 54:12 56:2,6 57:7 59:18 69:8 72:8  <b>mitigation</b> [28] 3:24 4:9,11, 13,22 11:5,23 17:18 26:17 31:7 36:14 40:2,3,16,24 46:20 58:3 61:8,10 63:18 64:6 65:5,6,17 67:20 71:23,25 72:7  <b>mitigators</b> [4] 12:13 59:15 60:6 68:15  <b>mixed</b> [4] 5:6 6:2 7:4 30:24  <b>Mm-hmm</b> [9] 12:18 14:15 17:13,23 18:3,12 23:12 24:21 25:8  <b>modern</b> [1] 61:11  <b>moment</b> [1] 17:8  <b>Monica</b> [1] 1:21  <b>months</b> [1] 71:19  <b>moral</b> [3] 4:9 47:5,19  <b>morning</b> [2] 3:4 34:16  <b>most</b> [6] 40:24 42:4 44:20, 22 47:14 70:21  <b>mother</b> [2] 9:17 33:15  <b>mountain</b> [1] 67:25  <b>move</b> [1] 35:23</p>	<p><b>much</b> [9] 7:16 15:17 16:16 51:24,24,25 56:7 64:22,24  <b>multiple</b> [1] 40:21  <b>murder</b> [2] 3:19 45:25  <b>murdered</b> [1] 71:3  <b>murders</b> [2] 45:12 46:19  <b>must</b> [4] 4:15 22:23 55:13 57:9</p>
<p style="text-align: center;"><b>J</b></p> <p><b>JA</b> [1] 60:9  <b>JACKSON</b> [26] 14:9,16 15:23 22:9,12,17 23:3,13,22 24:15,22,25 25:2,9 36:1,2, 16 39:11 42:5,6 52:16 55:17,19 56:9 57:3 70:7  <b>JASON</b> [5] 1:19 2:3,9 3:7 70:12  <b>JEAN-CLAUDE</b> [3] 1:21 2:6 39:15  <b>job</b> [4] 30:5 44:13 61:5,22  <b>JONES</b> [31] 1:7 3:5,17 10:7 11:17,21 13:25 15:19 16:17,23 35:20,20 39:20 40:10,15,18 41:2 42:11 62:1, 16,18 63:18,20 64:6 65:2,3, 9 67:5 71:3,24 72:9  <b>Jones's</b> [13] 10:14 11:13 15:21 16:14 39:7 40:1,3,7 41:16 51:9,11 60:14 71:14  <b>judge</b> [27] 12:3,15,17 14:22 25:21 33:2 35:2 40:7,17 53:13 56:12 59:13,13,23 61:1,3,20 63:8 64:15,18,24 65:6 68:12,14 69:15,15,19  <b>judges</b> [1] 52:10  <b>judgment</b> [4] 3:21 4:18 6:20 59:4  <b>jumps</b> [1] 31:25  <b>junk</b> [3] 50:11 65:23,23  <b>jury</b> [5] 14:21 17:1 35:2 53:12 66:11  <b>JUSTICE</b> [184] 3:3,10 4:25 5:11,19,22 6:4,6,9,10,19, 22,25 7:8,19 8:6,9,14 9:4, 15 10:4,18,21,23 11:1,7,25 12:3,8,11,16,19 13:1,13,24 14:9,11,16 15:23 16:19,21 17:2,14,24 18:4,13 19:1,13, 17,21 20:4 21:6,14,17 22:6, 9,12,17 23:3,13,22 24:15, 22,25 25:2,9 26:19 28:4,9,</p>	<p style="text-align: center;"><b>K</b></p> <p><b>KAGAN</b> [24] 6:6,9 16:19,21 17:2,14,24 18:4,13 19:1,21 28:20 29:16 30:8 34:12 36:18 43:13 44:2,9 52:9 57:5, 9,19 70:5  <b>Katherine</b> [1] 71:17  <b>KAVANAUGH</b> [8] 59:10 60:18 61:19 62:22 63:5 64:13,21 65:1  <b>kidnapped</b> [1] 47:10  <b>kill</b> [2] 47:12,13  <b>kind</b> [15] 16:5 17:10 18:7,9 19:15 23:23 43:7,11 44:12 47:3 50:21,23 52:8 54:7 55:9  <b>kinds</b> [2] 29:20 51:1  <b>knows</b> [1] 29:22</p>	<p style="text-align: center;"><b>L</b></p> <p><b>Lakeside</b> [1] 5:5  <b>language</b> [1] 45:8  <b>last</b> [2] 25:18 44:22  <b>late</b> [1] 71:18  <b>later</b> [1] 37:24  <b>law</b> [10] 8:10,15 13:5,6 31:12,16 52:12 58:25 59:2 70:22  <b>lawyer</b> [3] 39:22 61:2 67:19  <b>lay</b> [1] 7:25  <b>layer</b> [2] 37:6 50:21  <b>lead</b> [4] 39:23 46:25 64:1, 11  <b>leading</b> [1] 48:21  <b>learning</b> [1] 41:6  <b>least</b> [6] 5:24 29:6 41:24 44:3 53:7 70:3  <b>Lecter</b> [1] 47:9  <b>LEE</b> [1] 1:7  <b>left</b> [1] 72:10  <b>legal</b> [20] 6:2 7:3 12:20 13:17 26:22 27:3,8,23 28:15 31:3,5,19 32:13,14,20 35:1, 7,23 48:8 54:17  <b>less</b> [3] 13:16 15:3 71:23</p>	<p style="text-align: center;"><b>M</b></p> <p><b>made</b> [9] 3:16 6:15,17,23 24:5 38:20,25 69:16,20  <b>major</b> [2] 60:11,20  <b>male</b> [1] 40:21  <b>manner</b> [1] 38:23  <b>manufactured</b> [1] 16:24  <b>many</b> [1] 35:12</p>	<p style="text-align: center;"><b>N</b></p> <p><b>name</b> [1] 61:16  <b>natural</b> [1] 19:2  <b>naturally</b> [1] 28:17  <b>nature</b> [1] 11:8  <b>necessary</b> [1] 47:16  <b>need</b> [5] 13:7,10 35:3 39:4 64:23  <b>needed</b> [2] 62:8 66:9  <b>needs</b> [1] 35:14  <b>neurologic</b> [2] 60:12,22  <b>neurological</b> [3] 9:25 14:1 40:11  <b>neuropsychological</b> [1] 60:7  <b>never</b> [9] 5:15 33:6,6,13,24 38:3 39:23 40:17 69:16  <b>new</b> [18] 4:9,11 9:9 20:15 21:25 26:14 40:16,18,24 41:7 43:9 45:24,25 46:1, 16,21 54:11 68:1  <b>next</b> [2] 8:21 49:20  <b>nexus</b> [1] 13:47  <b>nice</b> [1] 7:19  <b>Ninth</b> [28] 3:11,20 4:5,14, 17 13:14 20:18 24:10 41:19 44:3,4 45:2,5,16 48:3 49:15,17,25 50:9 51:5 57:6,8,14,17,19 58:13 59:1 66:21  <b>nit-picked</b> [1] 41:16  <b>Nobody</b> [1] 67:15  <b>non-idiosyncratic</b> [2] 59:25 63:8  <b>none</b> [1] 9:7  <b>normal</b> [1] 19:23  <b>notable</b> [1] 45:19  <b>noted</b> [2] 52:9 60:5  <b>nothing's</b> [1] 59:8  <b>noticed</b> [1] 52:9  <b>Novak</b> [4] 61:2,4,6,14  <b>Novak's</b> [1] 61:21  <b>novo</b> [14] 5:1,8,23 6:1,11, 12,14 7:2 22:22 24:4 28:12,17 33:22 70:4  <b>nowhere</b> [1] 50:20  <b>nuanced</b> [1] 47:24  <b>number</b> [2] 9:25 49:14  <b>numbers</b> [1] 17:17  <b>numerous</b> [1] 39:25</p>
<p style="text-align: center;"><b>O</b></p> <p><b>objective</b> [1] 59:25  <b>obligation</b> [2] 45:4 57:20  <b>observation</b> [1] 54:9</p>				

## Official - Subject to Final Review

<p><b>observations</b> [3] 43:2 50:22 55:15  <b>offense</b> [2] 20:24 60:23  <b>offered</b> [1] 41:17  <b>often</b> [1] 52:12  <b>Okay</b> [10] 6:9 10:22 22:6 25:5 42:8 47:7 52:24 54:6 64:4 70:7  <b>old</b> [4] 9:17 10:8 33:16 46:20  <b>omission</b> [1] 38:6  <b>once</b> [3] 43:19 56:1 58:12  <b>one</b> [26] 9:5 16:6 20:16 23:15 24:7 25:12 26:21 29:21 34:18,23 40:21 44:8 48:11 49:2 51:23 52:1,2 53:18 56:1,22 61:20 62:16,19 63:11,15 69:12  <b>ones</b> [4] 7:17 11:3,7 54:10  <b>only</b> [12] 3:23 11:11 12:4 28:9,25 39:22 40:7 43:6 46:2 62:9 67:4 68:8  <b>opening</b> [1] 26:20  <b>opine</b> [1] 66:25  <b>opinion</b> [9] 19:22,25 43:24,25 44:4 45:13 49:16,18 57:8  <b>opinions</b> [4] 11:21 27:20 41:3 48:11  <b>oppose</b> [1] 21:16  <b>opposed</b> [1] 52:2  <b>opposite</b> [1] 69:11  <b>oral</b> [5] 1:15 2:2,5 3:7 39:15  <b>order</b> [4] 35:1 47:16 55:10 63:22  <b>organic</b> [2] 48:20,22  <b>original</b> [5] 9:6 17:21 18:14,16 59:13  <b>other</b> [22] 7:17 14:2 24:18 25:6 32:8 33:11 34:25 41:4 43:11 44:6,10 48:13,13 49:2,9 51:21,24 52:2,6 58:10 65:3 68:16  <b>otherwise</b> [3] 11:24 34:24 42:1  <b>ourselves</b> [1] 63:6  <b>out</b> [17] 10:15 14:7 16:9 20:6 27:13 31:25 32:1 36:24 37:15,25 45:21 56:23 63:11,20 65:4 69:22 72:10  <b>outcome</b> [5] 36:8,25 53:16 56:15,19  <b>outweigh</b> [3] 12:13 38:11 68:15  <b>outweighed</b> [1] 23:18  <b>outweighs</b> [1] 23:7  <b>over</b> [2] 37:24 44:5  <b>own</b> [3] 3:21 61:15 66:23</p>	<p><b>pales</b> [1] 72:12  <b>paragraph</b> [1] 25:14  <b>part</b> [6] 23:7 32:14,21,21 44:3 45:17  <b>particular</b> [2] 45:17 70:16  <b>party's</b> [2] 48:12,13  <b>passed</b> [1] 10:15  <b>patently</b> [1] 53:19  <b>pattern</b> [1] 62:15  <b>penalty</b> [1] 29:5  <b>people</b> [2] 21:22 27:19  <b>percent</b> [9] 17:12,20,24,25 18:8,10,10 19:5 53:15  <b>percolate</b> [1] 52:11  <b>Perfect</b> [1] 36:16  <b>performance</b> [3] 27:4,6 39:21  <b>performed</b> [1] 61:9  <b>perhaps</b> [3] 15:1 32:4 34:3  <b>person</b> [5] 32:2 37:23 51:20,21 60:2  <b>perspective</b> [1] 63:7  <b>persuaded</b> [1] 66:4  <b>persuasive</b> [3] 41:18 51:8 70:1  <b>persuasiveness</b> [1] 66:16  <b>Pet</b> [1] 57:15  <b>Petitioner</b> [6] 1:5,20 2:4,10 3:8 70:13  <b>phase</b> [1] 29:5  <b>Phoenix</b> [1] 1:19  <b>physical</b> [1] 16:15  <b>picking</b> [1] 14:11  <b>picture</b> [2] 39:6 56:23  <b>piece</b> [1] 66:16  <b>place</b> [1] 20:6  <b>please</b> [3] 3:10 9:12 39:18  <b>plied</b> [1] 40:22  <b>point</b> [20] 7:18 14:11 16:9 30:14 35:15 38:19,21,24 42:11 44:7 50:25 51:5,5 57:22 58:16 61:20 63:11 65:9 68:23 69:17  <b>points</b> [1] 15:9  <b>poor</b> [1] 51:22  <b>poorly</b> [1] 62:17  <b>Porter</b> [9] 14:10,14 15:10,13 46:23 63:19 65:7 67:1,3  <b>positing</b> [2] 3:23 58:16  <b>position</b> [1] 47:24  <b>positioned</b> [1] 54:22  <b>positive</b> [1] 14:3  <b>possible</b> [5] 17:3 18:22 25:18 40:10 60:5  <b>possibly</b> [3] 47:15 60:10 61:16  <b>post-conviction</b> [1] 61:3  <b>post-Ramirez</b> [1] 21:21  <b>post-sentence</b> [1] 11:12  <b>potential</b> [3] 60:12,21 61:17  <b>Potts</b> [12] 10:12 11:3 60:4,5,18 61:7,7,9,12,24,24 62:</p>	<p>6  <b>Potts's</b> [3] 10:10 59:14,17  <b>powerful</b> [1] 47:6  <b>practice</b> [2] 4:3 8:19  <b>pre-Pinholster</b> [1] 21:10  <b>precedents</b> [3] 7:7 48:6 64:11  <b>precluded</b> [1] 65:22  <b>predicate</b> [1] 20:16  <b>prejudice</b> [25] 4:21 5:10,16,24 6:16,18,24 19:12 23:10 24:5 27:5,10,23 28:10,16 30:24 32:15 38:3 42:2,13 43:4 51:6,12 66:18 70:3  <b>prejudiced</b> [3] 38:5,10 39:20  <b>prejudicial</b> [1] 28:11  <b>prepared</b> [1] 34:4  <b>preponderance</b> [4] 28:22 29:8 69:17,19  <b>preponderance-of-the</b> [1] 17:10  <b>preponderance-of-the-evidence</b> [1] 19:19  <b>present</b> [8] 13:19,25 24:9 25:7 36:22,22 56:14 72:13  <b>presented</b> [11] 9:23 10:13 16:25 22:25 25:10 33:23 36:21 38:4 46:3 56:17 62:5  <b>presenting</b> [1] 27:19  <b>presents</b> [1] 47:2  <b>presumably</b> [1] 29:22  <b>pretty</b> [1] 71:24  <b>previously</b> [1] 20:17  <b>principle</b> [2] 4:20 54:17  <b>probabilistic</b> [2] 53:21 54:18  <b>probability</b> [34] 4:11 17:15 29:10,11 31:6,11,15,17 32:2,5,8,13,16,18,23 34:19 36:8,12,25 41:13 52:20 53:6,11,14,15,16 55:5 56:14 59:6,11,22 63:22 66:3 71:11  <b>probable</b> [1] 53:21  <b>probably</b> [1] 21:19  <b>problem</b> [8] 15:7 16:1 22:10 37:2 38:13 42:17 55:24 59:17  <b>problems</b> [2] 14:17 60:22  <b>procedural</b> [3] 20:7 21:3,3  <b>procedure</b> [2] 30:5 58:22  <b>proceeding</b> [2] 30:5 61:3  <b>proceedings</b> [1] 46:22  <b>process</b> [2] 4:2 12:23  <b>prong</b> [3] 5:16,24 66:18  <b>proof</b> [3] 9:8 13:5 14:3  <b>proper</b> [5] 19:10 21:17 23:23 57:16 68:2  <b>properly</b> [2] 38:25 41:20  <b>proposition</b> [1] 5:6  <b>prosecution</b> [1] 26:5  <b>prove</b> [3] 13:7,10 29:7  <b>proven</b> [1] 15:6</p>	<p><b>psychological</b> [1] 60:7  <b>PTSD</b> [6] 15:20 30:10,10 35:20,21 41:5  <b>pure</b> [2] 52:12 54:8  <b>purported</b> [1] 13:21  <b>purpose</b> [1] 36:20  <b>purposes</b> [1] 5:24  <b>push</b> [1] 45:2  <b>put</b> [4] 17:17 22:1 44:19 46:21  <b>putting</b> [4] 37:11 53:8 63:6 70:16</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>qualifications</b> [1] 49:7  <b>qualified</b> [1] 48:17  <b>question</b> [32] 5:9 6:3,5,17 7:3,4,5 17:5 18:7 22:8 24:5 27:23 30:24,24 31:11,16,20,23 32:3,9,13 35:23 38:4 42:15 51:14 55:13 56:11 59:2 63:12 65:13 66:8 70:18  <b>questions</b> [9] 4:24 5:6 27:3 28:19 34:5,25 41:21 52:12 70:17  <b>quickly</b> [1] 69:13  <b>quite</b> [4] 7:23 45:23 47:24 61:10  <b>quoted</b> [3] 45:6 57:21,22</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>radically</b> [1] 4:2  <b>raised</b> [3] 5:17 6:16 24:6  <b>raising</b> [1] 5:20  <b>rather</b> [1] 53:9  <b>rationale</b> [1] 20:10  <b>reach</b> [3] 56:3,25 69:11  <b>reached</b> [2] 5:15 33:24  <b>read</b> [5] 13:2,14 25:21 49:15 57:9  <b>reader</b> [1] 71:4  <b>reading</b> [1] 41:25  <b>reaffirm</b> [1] 4:20  <b>real</b> [3] 30:2 49:5 52:1  <b>really</b> [15] 8:3 9:4 11:16 29:2 37:9,25 46:15 49:25 57:10 61:7,10 64:9 65:19 69:4,13  <b>reason</b> [1] 34:1  <b>reasonable</b> [37] 4:10 12:6 14:19 17:15 19:21,24 20:22 29:9,11 31:6,11 32:12,16,19,22 34:19 36:7,8,12,25 41:13 47:4,18 52:20 53:5,10,14,16 55:5 56:14 59:6,11,22,25 63:22 66:3 71:10  <b>reasonably</b> [1] 9:24  <b>reasons</b> [3] 21:13 39:9 57:18  <b>rebut</b> [1] 24:10  <b>REBUTTAL</b> [5] 2:8 44:18 46:3 70:10,12  <b>rebutting</b> [1] 24:17</p>	<p><b>receiving</b> [1] 51:3  <b>recent</b> [1] 42:4  <b>recitation</b> [1] 26:11  <b>recognized</b> [1] 71:24  <b>recognizing</b> [1] 15:25  <b>record</b> [7] 7:22 10:20 22:24 25:19 29:23 58:25 59:7  <b>records</b> [1] 21:23  <b>recounted</b> [1] 45:12  <b>recourse</b> [1] 57:16  <b>red</b> [1] 39:25  <b>reference</b> [1] 65:1  <b>reflect</b> [1] 12:22  <b>refusing</b> [1] 13:21  <b>regard</b> [1] 29:15  <b>regards</b> [1] 33:10  <b>rejected</b> [1] 4:16  <b>related</b> [1] 60:6  <b>relating</b> [1] 54:10  <b>relevant</b> [6] 12:24 35:7 39:10 47:4,19 64:2  <b>relief</b> [4] 7:16 47:6 58:6 63:23  <b>relies</b> [1] 71:21  <b>remains</b> [1] 49:19  <b>remand</b> [3] 7:12 52:12 57:11  <b>remanded</b> [1] 58:12  <b>remembering</b> [3] 15:10 21:12 26:21  <b>report</b> [5] 10:16 51:22,23 59:14,17  <b>reported</b> [2] 33:12 60:19  <b>reporter</b> [1] 16:18  <b>reporting</b> [1] 33:14  <b>reports</b> [1] 51:24  <b>request</b> [1] 40:4  <b>required</b> [3] 13:6 27:11 29:7  <b>requires</b> [5] 4:10,21 20:14 57:25 58:15  <b>requiring</b> [2] 13:5 14:3  <b>resentence</b> [1] 68:9  <b>resentenced</b> [1] 47:17  <b>reserved</b> [1] 46:8  <b>reserving</b> [1] 7:17  <b>resisting</b> [1] 58:21  <b>resolve</b> [4] 4:25 27:14 42:9 52:14  <b>resolved</b> [1] 50:17  <b>respect</b> [5] 5:23 42:12 52:8 58:2,3  <b>respectfully</b> [1] 45:2  <b>Respondent</b> [4] 1:8,22 2:7 39:16  <b>response</b> [4] 34:24 36:5 37:7 55:22  <b>responses</b> [1] 49:14  <b>responsibility</b> [1] 14:24  <b>responsive</b> [1] 5:4  <b>result</b> [4] 40:6 56:4,25 69:11  <b>resulting</b> [1] 4:3  <b>reversal</b> [1] 7:11</p>
<p style="text-align: center;"><b>P</b></p> <p><b>PAGE</b> [5] 2:2 47:1 48:9 52:24 60:9  <b>pages</b> [3] 7:21 44:5 57:14</p>				

## Official - Subject to Final Review

<p><b>reverse</b> <sup>[1]</sup> 4:17</p> <p><b>review</b> <sup>[22]</sup> 4:19 5:1,23 6:1, 12,12,14 11:4 22:22 24:4, 18 26:1 28:12,17 30:1 33: 22 41:10 42:21 43:7 52:4 61:3 70:4</p> <p><b>reviewable</b> <sup>[2]</sup> 54:3,25</p> <p><b>reviewed</b> <sup>[1]</sup> 7:2</p> <p><b>reviewing</b> <sup>[4]</sup> 4:21 27:11 39:4 43:24</p> <p><b>reviews</b> <sup>[1]</sup> 28:1</p> <p><b>reweigh</b> <sup>[1]</sup> 4:22</p> <p><b>reweighing</b> <sup>[8]</sup> 23:4 45:4 59:1,4 63:1,2,3 70:19</p> <p><b>rise</b> <sup>[1]</sup> 62:12</p> <p><b>Robert</b> <sup>[1]</sup> 3:19</p> <p><b>ROBERTS</b> <sup>[13]</sup> 3:3 26:19 30:7,20 33:3 34:12 35:25 39:12 66:6 67:9 70:5,10 72:15</p> <p><b>role</b> <sup>[8]</sup> 3:23 4:1 14:24 17:4, 6 18:19 48:10 61:9</p> <p><b>Rompilla</b> <sup>[3]</sup> 63:19 65:7 67: 2</p> <p><b>roof</b> <sup>[1]</sup> 9:19</p> <p><b>room</b> <sup>[3]</sup> 5:8 27:7 30:15</p> <p><b>Rule</b> <sup>[8]</sup> 7:6 40:5,9 46:12 50:22 69:3,14,21</p> <p><b>ruling</b> <sup>[1]</sup> 50:20</p> <p><b>rulings</b> <sup>[1]</sup> 55:12</p> <p><b>RYAN</b> <sup>[1]</sup> 1:3</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>same</b> <sup>[2]</sup> 15:12 44:12</p> <p><b>Santa</b> <sup>[1]</sup> 1:21</p> <p><b>sat</b> <sup>[1]</sup> 29:21</p> <p><b>saw</b> <sup>[1]</sup> 16:17</p> <p><b>saying</b> <sup>[20]</sup> 5:1 6:11 13:2, 14 15:18 22:20 24:15 25: 13 26:3 28:20 32:12 36:19 38:3,9 39:7 47:12 50:10 55:20 56:10 57:25</p> <p><b>says</b> <sup>[12]</sup> 11:16 12:9 13:7, 10 18:8 32:17,19 34:7 38: 24 50:22 51:19 52:24</p> <p><b>science</b> <sup>[2]</sup> 50:12 65:23</p> <p><b>scientists</b> <sup>[1]</sup> 12:6</p> <p><b>scope</b> <sup>[1]</sup> 70:17</p> <p><b>scrap</b> <sup>[1]</sup> 71:14</p> <p><b>scream</b> <sup>[1]</sup> 70:24</p> <p><b>screen</b> <sup>[2]</sup> 37:12 38:23</p> <p><b>screening</b> <sup>[3]</sup> 37:4 38:6 43: 12</p> <p><b>second</b> <sup>[1]</sup> 22:10</p> <p><b>section</b> <sup>[3]</sup> 45:14 47:22 49: 16</p> <p><b>see</b> <sup>[11]</sup> 14:2,25 22:19 24: 16 25:3,21 30:2,14 34:14 38:19 65:19</p> <p><b>seeing</b> <sup>[1]</sup> 27:18</p> <p><b>seeking</b> <sup>[1]</sup> 6:7</p> <p><b>seemed</b> <sup>[1]</sup> 17:8</p> <p><b>seems</b> <sup>[4]</sup> 15:7 19:1 41:23 46:25</p>	<p><b>send</b> <sup>[3]</sup> 38:12 57:16 58:23</p> <p><b>sense</b> <sup>[3]</sup> 37:24 38:7,18</p> <p><b>sent</b> <sup>[2]</sup> 7:17 47:11</p> <p><b>sentence</b> <sup>[10]</sup> 4:8,12 26:7 31:8 36:13 41:15 42:18 49: 20 59:12 71:11</p> <p><b>sentencer</b> <sup>[15]</sup> 12:23 17:22 18:14,16 29:11 46:9,14 47: 4,18 48:11 52:25 60:1 62: 11 65:25 66:4</p> <p><b>sentences</b> <sup>[1]</sup> 4:4</p> <p><b>sentencing</b> <sup>[2]</sup> 9:6 12:23 14:21 35:2 39:20 40:6,17 41:8 53:13 56:12,21 59:13, 13 60:25 61:2,20 63:8 64: 15,18,24 65:6</p> <p><b>separate</b> <sup>[1]</sup> 20:3</p> <p><b>separately</b> <sup>[1]</sup> 45:3</p> <p><b>sequelae</b> <sup>[1]</sup> 60:12</p> <p><b>serially</b> <sup>[1]</sup> 41:15</p> <p><b>serious</b> <sup>[2]</sup> 9:22 11:3</p> <p><b>set</b> <sup>[2]</sup> 10:23 13:17</p> <p><b>sets</b> <sup>[1]</sup> 64:4</p> <p><b>settling</b> <sup>[1]</sup> 18:24</p> <p><b>seven</b> <sup>[4]</sup> 59:18 60:5,13 70: 20</p> <p><b>seven-year-old</b> <sup>[1]</sup> 71:3</p> <p><b>severe</b> <sup>[1]</sup> 71:22</p> <p><b>sexual</b> <sup>[1]</sup> 16:15</p> <p><b>sexually</b> <sup>[2]</sup> 40:23 62:21</p> <p><b>short</b> <sup>[1]</sup> 51:22</p> <p><b>shouldn't</b> <sup>[2]</sup> 8:18 68:11</p> <p><b>show</b> <sup>[4]</sup> 13:18 17:11,12 19: 14</p> <p><b>showed</b> <sup>[1]</sup> 40:18</p> <p><b>showing</b> <sup>[1]</sup> 11:7</p> <p><b>shown</b> <sup>[1]</sup> 9:23</p> <p><b>shows</b> <sup>[1]</sup> 26:7</p> <p><b>shy</b> <sup>[2]</sup> 45:11 57:23</p> <p><b>side</b> <sup>[3]</sup> 41:18 58:10 67:4</p> <p><b>side's</b> <sup>[2]</sup> 49:22 69:25</p> <p><b>significant</b> <sup>[4]</sup> 41:25 43:3 46:18 62:15</p> <p><b>similar</b> <sup>[10]</sup> 14:12 23:11,15, 18 24:19 25:6,12 58:2 59: 19 61:10</p> <p><b>similarly</b> <sup>[1]</sup> 57:9</p> <p><b>simply</b> <sup>[1]</sup> 5:1</p> <p><b>single</b> <sup>[1]</sup> 71:14</p> <p><b>sit</b> <sup>[1]</sup> 50:19</p> <p><b>situated</b> <sup>[2]</sup> 27:21 30:17</p> <p><b>situation</b> <sup>[5]</sup> 14:13 25:23 32:7 56:22 69:15</p> <p><b>situations</b> <sup>[1]</sup> 25:11</p> <p><b>six</b> <sup>[3]</sup> 40:9,21 62:18</p> <p><b>slight</b> <sup>[1]</sup> 9:3</p> <p><b>smaller</b> <sup>[1]</sup> 37:13</p> <p><b>sneak</b> <sup>[1]</sup> 50:11</p> <p><b>sneaking</b> <sup>[1]</sup> 65:23</p> <p><b>solely</b> <sup>[1]</sup> 26:13</p> <p><b>Solicitor</b> <sup>[1]</sup> 1:19</p> <p><b>Somebody</b> <sup>[3]</sup> 31:25 35:8, 14</p> <p><b>Somehow</b> <sup>[1]</sup> 67:13</p>	<p><b>someone's</b> <sup>[1]</sup> 67:19</p> <p><b>sometimes</b> <sup>[2]</sup> 53:7 54:18</p> <p><b>sorry</b> <sup>[3]</sup> 5:11 16:21 28:25</p> <p><b>sort</b> <sup>[13]</sup> 8:24 10:15 14:10 15:12,15 21:21 25:19 29: 25 37:5,11 38:8 47:9 56: 18</p> <p><b>SOTOMAYOR</b> <sup>[42]</sup> 5:11,19, 22 6:4 7:8,19 8:6,9,14 9:4, 15 10:4,18,21,23 11:1,7,25 12:3,8,11,16,19 13:1,13,24 33:4,5,13,19 34:6,9 67:13, 18,24 68:6,8,17,18,20,23 69:4</p> <p><b>Sotomayor's</b> <sup>[1]</sup> 14:11</p> <p><b>space</b> <sup>[2]</sup> 64:2,12</p> <p><b>speaking</b> <sup>[1]</sup> 69:24</p> <p><b>special</b> <sup>[5]</sup> 18:6 19:6 28:23 50:23 51:14</p> <p><b>specific</b> <sup>[1]</sup> 3:17</p> <p><b>specifically</b> <sup>[1]</sup> 5:9</p> <p><b>specified</b> <sup>[3]</sup> 14:6 16:12 20:2</p> <p><b>speed</b> <sup>[1]</sup> 64:5</p> <p><b>spent</b> <sup>[1]</sup> 7:15</p> <p><b>split</b> <sup>[1]</sup> 14:4</p> <p><b>square</b> <sup>[1]</sup> 29:24</p> <p><b>stage</b> <sup>[2]</sup> 44:23 63:17</p> <p><b>stand</b> <sup>[2]</sup> 49:9 50:13</p> <p><b>standard</b> <sup>[16]</sup> 13:15,17 17: 11 19:19 22:21,22 23:1 28: 22,23,24 29:10 31:14 32: 15,16 36:4,19</p> <p><b>standards</b> <sup>[1]</sup> 26:22</p> <p><b>stands</b> <sup>[1]</sup> 5:5</p> <p><b>stark</b> <sup>[1]</sup> 60:13</p> <p><b>start</b> <sup>[6]</sup> 29:25 40:2 63:11 65:4,12 67:20</p> <p><b>started</b> <sup>[3]</sup> 63:15 65:2 71: 20</p> <p><b>starting</b> <sup>[1]</sup> 63:20</p> <p><b>state</b> <sup>[28]</sup> 4:4 5:15 6:17 20: 8 21:7,15,23 22:1,24 24:6 26:1,3 33:23,23 34:1 42: 16 44:18 46:3,9 48:10 52: 25 55:19 65:25 66:4 68:12, 14 69:21,22</p> <p><b>state's</b> <sup>[4]</sup> 14:17 15:13 48: 16 51:8</p> <p><b>STATES</b> <sup>[3]</sup> 1:1,16 37:22</p> <p><b>statutory</b> <sup>[1]</sup> 15:15</p> <p><b>step</b> <sup>[3]</sup> 8:7,25 16:6</p> <p><b>step-father</b> <sup>[1]</sup> 40:8</p> <p><b>step-grandfather</b> <sup>[2]</sup> 40: 23 62:20</p> <p><b>stepfather</b> <sup>[1]</sup> 62:19</p> <p><b>Stick</b> <sup>[1]</sup> 28:24</p> <p><b>still</b> <sup>[10]</sup> 7:23 8:15 12:13 16: 10 19:9 29:12 38:25 45:18 52:8 64:21</p> <p><b>strength</b> <sup>[2]</sup> 26:4 44:19</p> <p><b>Strickland</b> <sup>[32]</sup> 4:7,19,20 5: 9,10 7:3 18:6 23:9 26:16 27:1 28:16,23,24,24 30:3</p>	<p>31:14 36:11 37:13 38:2,17 42:13 43:4 48:5 51:6,12 52:19 56:10 57:25 58:14, 19 70:3,18</p> <p><b>strongest</b> <sup>[1]</sup> 67:3</p> <p><b>stuff</b> <sup>[1]</sup> 37:15</p> <p><b>subject</b> <sup>[6]</sup> 28:17 42:20 46: 12 52:3,3 70:4</p> <p><b>submit</b> <sup>[1]</sup> 71:13</p> <p><b>submitted</b> <sup>[3]</sup> 71:14 72:17, 19</p> <p><b>substance</b> <sup>[5]</sup> 59:15 60:24 64:17 72:2,4</p> <p><b>substantial</b> <sup>[4]</sup> 40:16 43: 10,21 47:3</p> <p><b>substituting</b> <sup>[1]</sup> 3:21</p> <p><b>suffer</b> <sup>[1]</sup> 15:19</p> <p><b>suffered</b> <sup>[3]</sup> 3:17 60:21 72: 1</p> <p><b>suffering</b> <sup>[1]</sup> 62:1</p> <p><b>suffers</b> <sup>[2]</sup> 14:1 60:19</p> <p><b>sufficient</b> <sup>[1]</sup> 20:20</p> <p><b>sufficiently</b> <sup>[1]</sup> 9:22</p> <p><b>suggest</b> <sup>[2]</sup> 30:4 34:25</p> <p><b>suggested</b> <sup>[2]</sup> 34:20,24</p> <p><b>suggesting</b> <sup>[1]</sup> 55:9</p> <p><b>sum</b> <sup>[2]</sup> 41:11 47:25</p> <p><b>summary</b> <sup>[2]</sup> 47:2,22</p> <p><b>superior</b> <sup>[1]</sup> 48:12</p> <p><b>supported</b> <sup>[1]</sup> 23:9</p> <p><b>supporting</b> <sup>[1]</sup> 26:5</p> <p><b>suppose</b> <sup>[2]</sup> 17:17 18:22</p> <p><b>supposed</b> <sup>[11]</sup> 8:17,20 16: 5 18:15 29:18 37:16 43:1, 15,16,25 44:17</p> <p><b>SUPREME</b> <sup>[4]</sup> 1:1,15 23: 10 41:10</p> <p><b>sweating</b> <sup>[1]</sup> 50:13</p> <p><b>swelling</b> <sup>[3]</sup> 9:20 11:8,19</p> <p><b>swing</b> <sup>[1]</sup> 10:8</p> <p><b>switch</b> <sup>[1]</sup> 30:2</p> <p><b>synonyms</b> <sup>[1]</sup> 69:18</p> <p><b>system</b> <sup>[2]</sup> 41:14 66:2</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>T-E-N-N-A-R-D</b> <sup>[1]</sup> 13:9</p> <p><b>table</b> <sup>[1]</sup> 56:2</p> <p><b>tale</b> <sup>[1]</sup> 16:24</p> <p><b>talked</b> <sup>[1]</sup> 24:19</p> <p><b>Taylor</b> <sup>[1]</sup> 26:2</p> <p><b>team</b> <sup>[1]</sup> 61:12</p> <p><b>tells</b> <sup>[2]</sup> 71:4,4</p> <p><b>Tennard</b> <sup>[1]</sup> 13:9</p> <p><b>terms</b> <sup>[2]</sup> 36:11 60:8</p> <p><b>test</b> <sup>[3]</sup> 4:15 28:15 64:5</p> <p><b>testified</b> <sup>[1]</sup> 61:6</p> <p><b>testify</b> <sup>[1]</sup> 48:22</p> <p><b>testifying</b> <sup>[1]</sup> 65:22</p> <p><b>testimony</b> <sup>[7]</sup> 3:15 10:10 14:18,20 27:18 49:7,11</p> <p><b>testing</b> <sup>[1]</sup> 62:2</p> <p><b>Texas</b> <sup>[1]</sup> 64:2</p> <p><b>theory</b> <sup>[1]</sup> 16:25</p> <p><b>there's</b> <sup>[33]</sup> 5:8,13 6:11,14</p>	<p>7:21 14:25 17:20 18:9 19: 14 24:1,1 27:2,7 29:10 31: 6,11 32:12,14 33:22 36:7 37:5 43:13 44:12 46:16 48: 20 51:13 52:16 53:14 59: 11 60:3 65:16,19 67:25</p> <p><b>thereabouts</b> <sup>[1]</sup> 21:12</p> <p><b>therefore</b> <sup>[3]</sup> 50:14 51:9,11</p> <p><b>they've</b> <sup>[2]</sup> 25:4,5</p> <p><b>thinks</b> <sup>[1]</sup> 15:2</p> <p><b>thinnest</b> <sup>[1]</sup> 45:18</p> <p><b>third-party</b> <sup>[1]</sup> 16:24</p> <p><b>third-story</b> <sup>[1]</sup> 32:1</p> <p><b>THOMAS</b> <sup>[4]</sup> 4:25 30:21 41: 23 67:11</p> <p><b>THORNELL</b> <sup>[2]</sup> 1:3 3:4</p> <p><b>through</b> <sup>[1]</sup> 67:21</p> <p><b>though</b> <sup>[4]</sup> 14:16 18:18 22: 8 58:9</p> <p><b>thousands</b> <sup>[1]</sup> 7:21</p> <p><b>three</b> <sup>[6]</sup> 9:7 22:19 45:3 46: 18 60:6 61:17</p> <p><b>three-and-a-half</b> <sup>[1]</sup> 39:23</p> <p><b>threshold</b> <sup>[1]</sup> 18:8</p> <p><b>throughout</b> <sup>[1]</sup> 40:19</p> <p><b>thrown</b> <sup>[1]</sup> 55:5</p> <p><b>tied</b> <sup>[1]</sup> 33:8</p> <p><b>Tisha</b> <sup>[2]</sup> 3:19 71:2</p> <p><b>today</b> <sup>[2]</sup> 26:22 52:23</p> <p><b>top</b> <sup>[1]</sup> 60:16</p> <p><b>torn</b> <sup>[1]</sup> 48:17</p> <p><b>tort</b> <sup>[1]</sup> 46:13</p> <p><b>tortured</b> <sup>[1]</sup> 47:11</p> <p><b>total</b> <sup>[11]</sup> 4:13,22 23:5 24: 22 26:17 31:7 36:6,14 41: 12 47:25 69:9</p> <p><b>totality</b> <sup>[1]</sup> 23:5</p> <p><b>totally</b> <sup>[2]</sup> 5:7 24:23</p> <p><b>toxic</b> <sup>[1]</sup> 46:13</p> <p><b>traditional</b> <sup>[2]</sup> 4:1 29:4</p> <p><b>transcript</b> <sup>[1]</sup> 50:18</p> <p><b>trauma</b> <sup>[3]</sup> 14:2 60:20 65: 20</p> <p><b>treat</b> <sup>[3]</sup> 29:18,19 71:8</p> <p><b>treated</b> <sup>[1]</sup> 62:17</p> <p><b>treatment</b> <sup>[1]</sup> 59:16</p> <p><b>trial</b> <sup>[19]</sup> 4:1 10:13 11:2 16: 23 18:23 27:20 29:5,14 41: 9 45:7 49:21 59:20 61:5 67:15 68:12,24 71:19,25 72:1</p> <p><b>true</b> <sup>[9]</sup> 14:7,8 35:22,22 38: 1,7 55:3 61:23 71:15</p> <p><b>truth</b> <sup>[1]</sup> 20:3</p> <p><b>trying</b> <sup>[6]</sup> 20:6 22:17 50:8, 11 61:12,15</p> <p><b>tunes</b> <sup>[2]</sup> 46:11 65:24</p> <p><b>twice</b> <sup>[1]</sup> 45:5</p> <p><b>two</b> <sup>[6]</sup> 3:11 9:7 10:2 15:9 20:14 62:20</p> <p><b>type</b> <sup>[3]</sup> 24:2 25:22 28:1</p> <p><b>types</b> <sup>[4]</sup> 5:6 10:4 27:17 30: 16</p> <p><b>typical</b> <sup>[1]</sup> 58:22</p>
---	--	---	--	---

## Official - Subject to Final Review

<b>U</b>	<p><b>wants</b> <sup>[2]</sup> 58:24 67:1</p> <p><b>warranted</b> <sup>[2]</sup> 47:7 58:6</p> <p><b>Washington</b> <sup>[1]</sup> 1:11</p> <p><b>way</b> <sup>[12]</sup> 8:16 17:21 19:23 26:9 30:2,3 49:2,2 61:8 62: 21 63:24 68:16</p> <p><b>ways</b> <sup>[2]</sup> 3:12 69:14</p> <p><b>wealth</b> <sup>[1]</sup> 46:20</p> <p><b>Weaver</b> <sup>[2]</sup> 3:19 71:2</p> <p><b>Wednesday</b> <sup>[1]</sup> 1:12</p> <p><b>weeded</b> <sup>[1]</sup> 37:14</p> <p><b>weigh</b> <sup>[8]</sup> 7:9,21 8:11,16 22:23 43:16 44:21 65:25</p> <p><b>weighed</b> <sup>[5]</sup> 24:14 27:14 36:14 46:16 69:9</p> <p><b>weighing</b> <sup>[21]</sup> 15:1 19:11 23:23 24:20 25:4 27:17 28: 10,10,25 29:12 37:13 39:1, 10 56:3,6,19 57:14 58:19, 21 63:25 66:24</p> <p><b>weighs</b> <sup>[1]</sup> 15:3</p> <p><b>weight</b> <sup>[16]</sup> 4:7 8:12 13:16 16:16 22:15 24:2,8,12 25: 20 26:8,13 49:5 52:1 56:7 66:15 68:25</p> <p><b>weighty</b> <sup>[2]</sup> 43:3 70:21</p> <p><b>welcome</b> <sup>[2]</sup> 4:24 41:21</p> <p><b>whatever</b> <sup>[5]</sup> 15:7 18:11 42:10 43:11 63:2</p> <p><b>whenever</b> <sup>[1]</sup> 4:8</p> <p><b>whereas</b> <sup>[1]</sup> 56:22</p> <p><b>Whereupon</b> <sup>[1]</sup> 72:18</p> <p><b>whether</b> <sup>[32]</sup> 3:17,18,24 6: 17 15:2,14 17:5 23:17 27: 4,5 29:10 31:6,10 32:12 35:2 36:6 37:18,21,22,25 38:7 39:19 41:12 48:2,20 53:12 54:11,11,12 57:5 63: 15 68:9</p> <p><b>white-collar</b> <sup>[1]</sup> 42:22</p> <p><b>whoever</b> <sup>[1]</sup> 60:2</p> <p><b>whole</b> <sup>[1]</sup> 59:7</p> <p><b>Wiggins</b> <sup>[3]</sup> 63:19 65:8 67: 2</p> <p><b>will</b> <sup>[5]</sup> 3:3 12:4 34:6 44:1 47:21</p> <p><b>Williams</b> <sup>[6]</sup> 26:2 46:23 63: 19 65:8 67:2,3</p> <p><b>win</b> <sup>[1]</sup> 42:16</p> <p><b>window</b> <sup>[1]</sup> 32:1</p> <p><b>wish</b> <sup>[1]</sup> 45:15</p> <p><b>within</b> <sup>[2]</sup> 27:8,22</p> <p><b>without</b> <sup>[5]</sup> 11:20 21:25 52: 19 59:3 67:7</p> <p><b>witnesses</b> <sup>[1]</sup> 11:14</p> <p><b>wondering</b> <sup>[1]</sup> 18:19</p> <p><b>Wong</b> <sup>[4]</sup> 8:24 45:22,23 46: 1</p> <p><b>word</b> <sup>[2]</sup> 46:11 69:17</p> <p><b>work</b> <sup>[1]</sup> 61:11</p> <p><b>world</b> <sup>[1]</sup> 21:21</p> <p><b>worth</b> <sup>[1]</sup> 13:23</p> <p><b>writs</b> <sup>[1]</sup> 4:3</p>	<b>Y</b>
		<p><b>years</b> <sup>[7]</sup> 9:16 10:8 33:16 39:23 40:20 59:8 67:8</p>
		<b>Z</b>
		<p><b>zero</b> <sup>[1]</sup> 63:13</p> <p><b>zero-to-60</b> <sup>[1]</sup> 65:1</p>
<b>V</b>		
<p><b>vacate</b> <sup>[2]</sup> 7:11 57:11</p> <p><b>vacated</b> <sup>[1]</sup> 58:12</p> <p><b>value</b> <sup>[1]</sup> 58:17</p> <p><b>various</b> <sup>[2]</sup> 46:22 62:13</p> <p><b>vehemently</b> <sup>[1]</sup> 21:16</p> <p><b>versus</b> <sup>[1]</sup> 3:5</p> <p><b>victim</b> <sup>[1]</sup> 42:21</p> <p><b>victims</b> <sup>[2]</sup> 71:16,22</p> <p><b>view</b> <sup>[9]</sup> 3:25 8:25 19:10 34: 18 39:9 41:17 42:10 44:3 67:14</p> <p><b>views</b> <sup>[3]</sup> 46:5 66:21,23</p> <p><b>Village</b> <sup>[1]</sup> 5:5</p> <p><b>vis-à-vis</b> <sup>[1]</sup> 65:2</p> <p><b>vulnerable</b> <sup>[1]</sup> 42:21</p>		
<b>W</b>		
<p><b>wait</b> <sup>[1]</sup> 67:19</p> <p><b>waking</b> <sup>[1]</sup> 9:18</p> <p><b>wanted</b> <sup>[1]</sup> 70:24</p>		