

1 IN THE SUPREME COURT OF THE UNITED STATES
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3 LARRY STEVEN WILKINS, ET AL.,)
4 Petitioners,)
5 v.) No. 21-1164
6 UNITED STATES,)
7 Respondent.)
8 - - - - -

9
10 Washington, D.C.
11 Wednesday, November 30, 2022

12
13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:03 a.m.

16
17 APPEARANCES:

18
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20 behalf of the Petitioners.

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1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	JEFFREY W. McCOY, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF:	
6	BENJAMIN W. SNYDER, ESQ.	
7	On behalf of the Respondent	28
8	REBUTTAL ARGUMENT OF:	
9	JEFFREY W. McCOY, ESQ.	
10	On behalf of the Petitioners	68
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
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P R O C E E D I N G S

(10:03 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 21-1164, Wilkins versus the United States.

Mr. McCoy.

ORAL ARGUMENT OF JEFFREY W. McCOY

ON BEHALF OF THE PETITIONERS

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

This Court has repeatedly held that when Congress wants to make a time bar jurisdictional it must clearly state so. In passing the Quiet Title Act, Congress did not clearly state that the statute of limitations is jurisdictional. Instead, the text, context, structure, and history indicate that Congress intended the statute of limitations to be a non-jurisdictional affirmative defense.

In its briefs here, the government does not argue that Congress clearly stated that the statute of limitations is jurisdictional. Instead, it points to offhand use of the word "jurisdiction" in this Court's previous Quiet Title Act cases. But "jurisdiction" is a word

1 of many meanings, and it wasn't until recently
2 that this Court brought discipline to the use of
3 the term.

4 Prior to that, courts and litigants
5 often used "jurisdictional" to refer to
6 mandatory but non-jurisdictional time bars and
7 other prescriptions. That is what happened in
8 Block and Mottaz. Nothing in those cases
9 indicate this Court was using "jurisdiction" in
10 the fundamental sense. The issue was not
11 presented to this Court. The parties did not
12 cross swords over it. And the outcome did not
13 turn on subject matter jurisdiction.

14 As a result, whether the Quiet Title
15 Act's statute of limitations is jurisdictional
16 is an open question, and because Congress did
17 not clearly state it is, courts, including this
18 Court, should treat it as non-jurisdictional.

19 I welcome the Court's questions.

20 JUSTICE THOMAS: Mr. McCoy, going
21 beyond the text just for a bit, what do you do
22 with the fact that this statute of limitation
23 occurs in the context of a waiver of sovereign
24 immunity?

25 MR. MCCOY: Well, Your Honor, as this

1 Court has said in Wong or as this Court
2 recognized in Boechler last term, a waiver of
3 sovereign immunity is not necessarily a
4 jurisdictional prerequisite.

5 And what this Court has -- has done is
6 it has construed statute of limitations and
7 other time limits when there was a waiver of
8 sovereign immunity strictly. But construing it
9 strictly is different than jurisdictional and
10 whether it is a jurisdictional time bar.

11 JUSTICE THOMAS: But I -- I think
12 haven't we been quite careful to treat the
13 conditions to waiver of sovereign immunity as
14 jurisdictional or mandatory?

15 MR. McCOY: Well, it -- mandatory,
16 yes, Your Honor, but mandatory is different than
17 jurisdictional. And Boechler is a -- Boechler
18 was a waiver of sovereign immunity. This
19 Court -- the -- this Court found that the time
20 bar was non-jurisdictional. It even found there
21 was equitable tolling in that. And, in -- in
22 terms of how this Court has viewed waivers of
23 sovereign immunity, it certainly has strictly
24 construed waivers of time bar, but, again, that
25 is a -- that's a separate question than whether

1 or not it's jurisdictional.

2 CHIEF JUSTICE ROBERTS: Counsel, you
3 and your friend on the other side both rely on
4 this Court's opinion in -- in Beggerly, and I --
5 I'm not sure why it matters to you whether it's
6 a jurisdictional ruling or simply a ruling about
7 equitable estoppel. Either way -- I mean, maybe
8 you're right on jurisdiction, maybe you're not
9 right on jurisdiction, but either way you lose
10 because the one thing Beggerly was quite clear
11 about was that there was no equitable estoppel.
12 It went through and gave the reasons for that
13 under the Quiet Title Act. Which your client is
14 looking for is equitable estoppel because you
15 didn't meet the -- satisfy the timeline.

16 But whether you're right in Beggerly
17 about jurisdiction or not, you still lose,
18 right?

19 MR. McCOY: No, Your Honor, and in
20 Beggerly, this Court said there was no equitable
21 tolling, but, as Justice Stevens recognized in
22 his concurrence, this Court left open the
23 question of whether there is equitable estoppel,
24 which are distinct equitable doctrines that
25 excuse the statute of limitations.

1 But, beyond that, whether or not this
2 is jurisdiction -- if it's jurisdictional, the
3 plaintiffs have the burden of proving
4 jurisdiction, while, if it is a
5 non-jurisdictional affirmative defense, then the
6 government would have the burden of proving and
7 it --

8 CHIEF JUSTICE ROBERTS: Yeah, but
9 they're going to -- they're -- they're not going
10 to have any trouble carrying that burden because
11 Beggerly says quite clearly that whether --
12 whether jurisdictional or not, you -- you don't
13 get -- 12 years is 12 years. You don't get
14 beyond that.

15 MR. McCOY: Your Honor, there are
16 disputed facts, and because of the -- because
17 the Court treated it as a motion for lack of
18 subject matter jurisdiction, under the -- the
19 standards of review in the Ninth Circuit, the
20 Court did not have to engage in these disputed
21 facts.

22 And, in particular, the Court relied
23 on a -- a 2006 order. We had presented
24 declarations that that order was not posted. We
25 had presented declarations that were -- that

1 were contradictory to how a reasonable person
2 would interpret the maps, including statements
3 from the Bitterroot National Forest itself that
4 said that those maps were unclear, and that is
5 why they engaged in the travel management
6 process.

7 And we -- because it was a
8 jurisdictional burden, the -- the district court
9 did not engage with those disputed facts, and,
10 as a result, we did not get past the motion to
11 dismiss stage, did not even get to motion -- to
12 a motion for summary judgment to be able to make
13 those claims.

14 And to determine whether or not we
15 would lose, this Court only needs to look at the
16 magistrate judge's findings and recommendations
17 and compare them to the district court's
18 findings and recommendations.

19 JUSTICE SOTOMAYOR: Counsel, a Quiet
20 Title action is tried by a judge, correct?

21 MR. McCOY: Yes.

22 JUSTICE SOTOMAYOR: Not by a jury.
23 And the judge here said -- all of the evidence
24 you've pointed to it looked at and said it
25 considered all the evidence that you provided

1 and the government provided and that it was
2 "'abundantly clear' that a reasonable person
3 would have known of the government's adverse
4 claim."

5 So I don't know -- whoever bears the
6 burden, that's -- was the Court's findings. So
7 I don't know how you win. But you're going to
8 have to explain that to me. And go back to
9 Justice Roberts' question, which was, even if I
10 give you that Justice Souter and Stevens thought
11 that Beggerly only dealt with equitable tolling
12 and not equitable estoppel or fraudulent
13 concealment, what facts do you have to claim
14 equitable estoppel? I always thought this was a
15 tolling case, not an estoppel case.

16 MR. McCOY: Well, Your Honor, it --
17 first, just to the question of whether the --
18 the statute of limitations has run, as the Court
19 said -- this is at Cert Appendix D-3 of the
20 opinion -- that when resolving a motion to
21 dismiss, that the Court did not have to hold an
22 evidentiary hearing.

23 And, again, as I said, for the 2006
24 order, we have declarations that dispute that,
25 and we do think that -- that an evidentiary

1 hearing to weigh the credibility of witnesses is
2 necessary for that.

3 As to equitable estoppel -- again,
4 this is on JA 6 -- there was some testimony from
5 a Forest Service official that said that he told
6 Mr. Wilkins -- Mr. Wilkins to participate in the
7 travel management process, and then -- and this
8 is on Joint Appendix 32 -- the Bitterroot
9 National Forest proposed that there -- the road
10 would be decommissioned, and with that, Mr.
11 Wilkins decided not to sue at that time because
12 he had recognized the problems, and this was the
13 travel management process being --

14 JUSTICE SOTOMAYOR: Exactly, but I
15 don't think any representation of that kind has
16 ever been considered equitable estoppel --

17 MR. McCOY: Your Honor --

18 JUSTICE SOTOMAYOR: -- if some -- an
19 adverse party telling you let's try to work this
20 out doesn't mean you make a choice of whether to
21 sue or not. They're not telling you don't sue.

22 MR. McCOY: Your Honor, under
23 equitable estoppel, if the adverse party makes
24 representations that it will be resolved, that
25 is one factor in the analysis for equitable

1 estoppel. And, again -- but, also, there are
2 facts -- even putting aside the equitable
3 estoppel, there are disputed facts over -- what
4 a reasonable person would have viewed for this
5 -- for these maps, and there are disputed facts
6 over the 2006 order that were not resolved
7 because the court treated this as a
8 jurisdictional statute of limitations.

9 JUSTICE ALITO: Mr. McCoy, was there a
10 time when this Court regarded sovereign immunity
11 as tied to subject matter jurisdiction?

12 MR. MCCOY: Your Honor, as this Court
13 said in John R. Sand, prior to Irwin, there was
14 an ad hoc approach. And, as I said, certainly,
15 a waiver of sovereign immunity -- this Court
16 views waiver of sovereign immunities strictly,
17 but it was still an ad hoc approach even for,
18 for example, in John R. Sand, what was at issue
19 was the previous cases for the Court of Claims
20 statute, which became the Tucker Act.

21 And it looked -- the -- the previous
22 cases also applied an ad hoc approach to that,
23 and there are distinguishing factors from the
24 Court of Claims statute and the Quiet Title Act,
25 namely, that Congress created its own court, an

1 Article I court, to hear those claims.

2 They are unique claims that arise
3 under the Fifth Amendment, unlike Quiet Title
4 Act claims, which are a -- were available at
5 common law, which every state has, and that is
6 some of the factors that indicate that Congress
7 intended, when passing the Quiet Title Act, to
8 treat it as normal -- a normal Quiet Title
9 action.

10 JUSTICE ALITO: Well, there are cases
11 from earlier times when the Court seemed to
12 regard sovereign immunity as tied to subject
13 matter jurisdiction. For example, United States
14 versus Sherwood in 1941, the Court said, "The
15 United States as sovereign is immune from suits
16 save as it consents to be sued, and,
17 [therefore,] the terms of its consent to be sued
18 in any court define that court's jurisdiction to
19 entertain the suit."

20 So, if that was the Court's view at
21 one time, what does -- what effect does that
22 have on our interpretation of cases like Block
23 and Mottaz?

24 MR. McCOY: Your Honor, I would
25 disagree that that -- again, "jurisdiction" is a

1 word of many meanings. And that line that you
2 quoted was also quoted in Lehman versus
3 Nakshian, which 453 U.S. 156, and it quoted the
4 same line, but, in that case in Lehman, subject
5 matter jurisdiction was not at issue. The issue
6 was whether a -- a plaintiff in a federal age
7 discrimination case had the right to a jury
8 trial.

9 This Court quoted that language that
10 Your Honor quoted and as more of a canon of
11 construction to interpret the statute strictly
12 and held that because Congress had not
13 explicitly allowed a jury trial, a jury trial
14 was not allowed. This Court has used that
15 language and has used "jurisdiction" in many
16 different ways.

17 CHIEF JUSTICE ROBERTS: Well, if
18 you're looking at the ways it's used, does it
19 make a difference -- I mean, certainly, we've
20 articulate -- correctly set forth the test that
21 we've articulated, and it makes -- the
22 application is pretty direct going forward. The
23 people across the street are on clear notice
24 that they've really got to spell it out if they
25 want one of these time limits to be

1 jurisdictional.

2 But that was not the case when you --
3 you're applying that sort of clear statement
4 requirement to prior cases. Congress wasn't on
5 notice that it had to be particularly clear
6 about the jurisdictional import of these
7 limitations prior to the time we told them they
8 did. In fact, that test we applied, I think,
9 was departed quite a bit from some of the prior
10 precedent.

11 And you're right, "jurisdiction" is a
12 word of many meanings. We've said that many
13 times. But going forward, the answer is pretty
14 clear. I -- I mean, it's a whole different
15 thing, isn't it, when you're applying that test
16 to -- to the past?

17 MR. McCOY: This Court rejected a very
18 similar argument last term in *Boechler*, and I
19 believe the Court referred to that argument as
20 the weakest of the Commissioner's argument in
21 that case, that Congress intended to
22 incorporate -- incorporate these views and
23 especially views of appellate courts when it
24 adopted the provision at issue in *Boechler*.

25 And what matters, I think, is -- is

1 John R. Sand -- whether there was a definitive
2 earlier interpretation, and this Court in Reed
3 Elsevier, in Arbaugh, set out some factors for
4 how you would determine whether it was a
5 definitive earlier statement. In Arbaugh, it
6 was if the issue had -- was raised, if the --
7 parties crossed swords over it, whether the
8 outcome turned on it. In -- in Reed --

9 JUSTICE JACKSON: Mr. McCoy, can I
10 just ask you, can you help me to understand why
11 it matters whether there is a definitive
12 interpretation?

13 I understand that John R. Sand said
14 that, but I -- I guess I'm just struggling with,
15 similar to questions that have already been
16 asked, what difference it makes that in the past
17 the Court allowed for the determination to be
18 made on an -- an ad hoc basis if today, when the
19 question is being asked, we have a clear
20 standard, we're looking for a clear statement,
21 and it seems, as even the government in this
22 case suggests in its brief, that if we apply
23 that test today, it comes out in a certain way.

24 So what difference does it make that
25 way in the past we had a different way of

1 figuring this out?

2 MR. McCOY: Your Honor, I -- I do not
3 think it does. The key question is whether it's
4 a matter of first impression for this Court, and
5 that's where John R. Sand comes in. As Wong
6 recognized, if -- if this Court has made a
7 definitive earlier statement, then this Court
8 will follow it, but -- and -- but, again, yes,
9 you --

10 JUSTICE JACKSON: But I guess my
11 question is, why should we follow it? Is it --
12 is that just to suggest that we can't have new
13 tests that apply to current determinations that
14 we previously addressed in the past?

15 MR. McCOY: I -- I -- you -- yes, Your
16 Honor. The -- this Court can apply the new
17 standards. And the only question then -- and I
18 -- seems that my friend on the other side, as
19 you -- as Your Honor pointed out, does not
20 really engage with the test that this Court now
21 applies. The only question is, has this Court
22 held that the statute of limitations is
23 jurisdictional for stare decisis purposes?

24 CHIEF JUSTICE ROBERTS: Well, I mean,
25 it's -- it's -- when you're saying we'll have a

1 new test, the original determination was a
2 ruling on what Congress did, what Congress
3 meant, how to interpret the statute.

4 Now do we -- when we're adopting a new
5 test, are we going back and saying we were wrong
6 in deciding what Congress meant or -- or what?

7 MR. McCOY: Your Honor, I would say
8 that Block and Mottaz do not even opine on
9 whether the statute of limitations is
10 jurisdictional. As this Court said in Reed
11 Elsevier in Footnote 8, if the legal character
12 of the rule was not at issue --

13 CHIEF JUSTICE ROBERTS: So you're
14 saying that sort of the -- the -- the
15 hypothetical, whatever I'm posing, isn't
16 presented, and I understand that, that because
17 you think it was not clearly established.

18 But do we transport ourselves back in
19 time and try to say whether that was true when
20 the Court decided the case, which is kind of an
21 -- you -- I'm -- I'm not sure whether our test
22 requires that or not, but it's kind of an
23 awkward inquiry, because now we go forward in
24 saying, well, Congress knows they've got to be
25 clear, and if they haven't been clear, the

1 answer is easy.

2 But, back then, Congress didn't know
3 it had to be clear, and we were put to what
4 might have been -- well, our predecessors -- a
5 harder question of what did Congress mean in
6 this case, but, if they did reach a decision,
7 and you say they didn't, or that we didn't say
8 they did, do we go and do that over and say,
9 well, we said previously it was jurisdictional,
10 but now we're going to say it's not because,
11 when you apply a case -- a principle 80 years
12 down the road, it turns out the answer is
13 different?

14 MR. McCOY: Your Honor, this Court
15 said no in Boechler. It said that opinions,
16 and, yes, it was discussing appellate opinions,
17 but opinions prior to this Court's discipline to
18 bring use -- to the use of the word
19 "jurisdictional" --

20 CHIEF JUSTICE ROBERTS: It's
21 retroactive discipline.

22 MR. McCOY: Yes, Your Honor, because
23 -- because jurisdiction, and as this Court
24 admittedly holds, it's been in -- inexact when
25 it has used "jurisdiction." And so -- and, as

1 this Court said in -- in Eberhart or -- and in
2 Kontrick that this Court has sometimes used
3 "jurisdictional" to mean mandatory.

4 And that -- see, that is what this
5 Court was indicating in Block. In Block, it
6 said that -- what this Court said was that the
7 district court had to engage with a valid
8 affirmative defense. The question presented
9 was: Is a statute of limitations a valid
10 affirmative defense when the -- when the
11 plaintiff is a state? This Court said yes and
12 remanded for that.

13 JUSTICE ALITO: Well, in Block, the
14 Court said, "If North Dakota's suit is barred by
15 the 12-year time limitation, the courts below
16 had no jurisdiction to inquire into the merits."

17 Now, if the Court had said the courts
18 had no subject matter jurisdiction to inquire
19 into the merits, would that decide this case?

20 MR. McCOY: That would be a -- a
21 stronger indication because the Court would --
22 would have clearly been saying subject matter
23 jurisdiction, but, in Block, as Judge
24 Easterbrook said in his opinion in Wisconsin
25 Valley, Block is an -- another example of this

1 Court using the term "jurisdiction" loosely, and
2 that is why the Seventh Circuit did not feel
3 bound by Block when it --

4 JUSTICE ALITO: Well, if it had said
5 subject matter jurisdiction, you said that would
6 be stronger. Would it not be dispositive?
7 Unless we're going to say that Block is -- that
8 we're overruling Block or Block has already been
9 overruled?

10 MR. MCCOY: Yes, I think, if it had
11 used "subject matter jurisdiction" in --

12 JUSTICE ALITO: Okay. So are --

13 JUSTICE KAGAN: I think you're giving
14 too much away there, Mr. McCoy.

15 (Laughter.)

16 JUSTICE ALITO: Well, maybe -- maybe
17 Mr. McCoy could answer my next question --

18 (Laughter.)

19 JUSTICE ALITO: -- which is --
20 although Justice Kagan and I like to ask each
21 other questions.

22 (Laughter.)

23 JUSTICE ALITO: I'll reciprocate. But
24 anyway --

25 JUSTICE KAGAN: Well, you haven't even

1 given me a chance to, but, okay, go ahead.

2 (Laughter.)

3 JUSTICE ALITO: Now I've forgotten
4 what my next question is.

5 (Laughter.)

6 MR. McCOY: Well, let me -- let me
7 rephrase my answer.

8 JUSTICE ALITO: No, no, I -- I know.
9 I -- it's come back to me. So are you
10 advocating a magic words test? So, if -- if
11 Block says subject matter jurisdiction, okay,
12 that's stronger or maybe as strong as it can
13 get, but if they have to use, in interpreting a
14 past decision to determine whether a court was
15 talking about subject matter jurisdiction or a
16 mandatory claims-processing rule, they have to
17 use the magic words?

18 MR. McCOY: No, Your Honor. And
19 even -- even using "subject matter
20 jurisdiction," this was a similar situation that
21 was in Arbaugh, where the Court had referred
22 explicitly to subject matter jurisdiction in the
23 previous Title VII cases, and this Court held in
24 Arbaugh that -- that was not.

25 And I -- the -- overall, if -- I --

1 one of the key questions is, if this Court were
2 to overrule Block, what would it overrule? This
3 Court overrules holdings. The holding was that
4 the Quiet Title Act's statute of limitations
5 applies to states. That was not the holding.
6 So there really is nothing to overturn in that
7 -- in that case in --

8 JUSTICE ALITO: Maybe Justice Kagan
9 wants to ask you a question.

10 JUSTICE KAGAN: No, no, I'm good.

11 (Laughter.)

12 JUSTICE JACKSON: I'll ask a question
13 then. I'll jump in. So I'm still sort of
14 interested in the Chief Justice's points about
15 the rule of decision and how it is that we
16 determine whether or not something is
17 jurisdictional and that we used to do it in a
18 different way in the past and now we have a -- a
19 clearer standard.

20 And a -- it appears that from Boechler
21 we said, well, we don't go back and do it over
22 again. But I guess I'm wondering, if we don't
23 do it over, how do we get everybody on the same
24 page around this kind of determination?

25 It seems to me that you could then

1 have -- if we say -- if we've spoken to this in
2 the past before and we've labeled it
3 jurisdictional, and, under today's test, the
4 answer would be non-jurisdictional, but we're
5 stuck because we previously spoke to it, then
6 you might have a situation in which, you know,
7 near-identical if not identical statutory
8 provisions that have the same text, structure,
9 and even history related to this time bar
10 question would have different legal results
11 about the characterization because some of them
12 we had spoken to before and we said
13 jurisdictional, and the new ones, the ones that
14 we hadn't -- maybe they're old, they're old,
15 they were passed by Congress at exactly the same
16 time, but we never had the question before us
17 before about that provision, and that comes to
18 us today and we apply the new rule because we
19 don't have.

20 And I'm -- that seems to me a really
21 messy and odd way, as opposed to just saying
22 today we have a test, you're bringing this
23 question, I thought the question presented here
24 was is this jurisdictional, you're bringing it
25 to us today, and we're going to apply the test

1 we had today, and to the extent that it's
2 different than what we said in the past, we just
3 truck it up to the fact that we have a new rule
4 of decision.

5 MR. McCOY: Yes, Your Honor. And the
6 key is this is a matter of statutory in --
7 interpretation. And -- and Irwin is -- maybe
8 presents a new canon of statutory in --
9 interpretation, but the ultimate question is,
10 what did Congress intend?

11 And -- and even -- and, yes, this
12 Court has said it has to clearly state so, but
13 applying the -- the normal canons of statutory
14 construction demonstrates that this is a -- a
15 affirmative defense. And -- one key aspect is
16 that Congress originally proposed no statute of
17 limitations for the Quiet Title Act. After some
18 negotiations with the Department of Justice, it
19 adopted one, but the Department of Justice said
20 that it would -- if it chose to dispute the
21 statute of limitations, meaning that it's
22 waivable, it would have the burden, meaning that
23 it's an affirmative defense. And those are
24 inconsistent with a jurisdictional rule.

25 JUSTICE BARRETT: Mr. McCoy, let me

1 just slip in one question before we run out of
2 time. I guess I thought that when we started
3 imposing this clear statement rule, we were
4 correcting ourselves. We weren't trying to
5 impose a new burden on Congress that maybe it
6 didn't understand before.

7 I thought we were saying we have been
8 too loose with it because this is not what
9 Congress has been intending. And if that's how
10 you understand our new, you know, rule, I mean,
11 I don't -- clear statement, I -- I thought it
12 was supposed to be approximating what Congress
13 had been doing all along, which makes this
14 question of time lag different because it's not
15 saying, hey, Congress, you have to, you know,
16 line up behind what we say now. It's been
17 saying, like, hey, Congress, we weren't quite
18 getting what you were doing and you were not
19 intending to establish jurisdictional rules. Am
20 I understanding that in a way that --

21 MR. McCOY: Yes, Your Honor, and that
22 is how courts develop canons of statutory
23 construction. It's really -- it's always about
24 what Congress intended. And I think the clear
25 statement rule in that respect was just a

1 recognition that Congress ordinarily is going to
2 adopt the background principles for things like
3 statute of limitations, and if it wants to
4 diverge from that, it needs to be explicit.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel. I -- I just have one more follow-up on
7 this time travel issue. You say it's a question
8 of statutory interpretation.

9 Back in the bad old days where we had
10 a statute to interpret, we looked at all sorts
11 of stuff, you know, hearings, reports,
12 testimony, all sorts of things, at sometimes to
13 the expense of the actual language, which these
14 days we look at much more carefully.

15 Now, if we've interpreted the meaning
16 of a statute, put aside statutes of limitations,
17 just the meaning of a statute, and we look at
18 what we did in 1950, and there, the Court relied
19 on all of this extra-statutory material and
20 said, based on that, this is what we think the
21 statute means, today, where we have a different
22 approach, when that question comes up, are we
23 supposed to go back and say: That was then and
24 this is now, and now we're going to look
25 primarily at the plain language, and look, it

1 gives us a different answer.

2 Is that -- is that what we do?

3 MR. McCOY: Well, Your Honor, I think
4 applying -- looking at everything or applying at
5 the language and the structure of the Act, it
6 reaches the same conclusion, which is --

7 CHIEF JUSTICE ROBERTS: Well, I know
8 you think it does, but maybe for some of us we
9 don't think it does reach the same conclusion.
10 Is the way we go about statutory interpretation
11 today to wipe the slate clean and let's say
12 we're going back to the beginning?

13 MR. McCOY: Well, Your Honor, as
14 Justice Barrett said, it's really, when you --
15 the Court announced the clear statement rule, it
16 wasn't announcing a rule. It was more just
17 getting at what Congress was trying to do and it
18 -- and guiding this Court's interpretation, not
19 guiding Congress. And, in that case, this Court
20 is applying that canon of statutory construction
21 when there is a rule and whether or not it's
22 jurisdictional.

23 CHIEF JUSTICE ROBERTS: Thank you.

24 MR. McCOY: I see that I'm out of
25 time.

1 CHIEF JUSTICE ROBERTS: Well, no,
2 you're -- Justice Thomas, anything further?

3 Justice Sotomayor?

4 Justice Barrett?

5 Justice Jackson?

6 Okay, thank you, counsel.

7 MR. McCOY: Thank you.

8 CHIEF JUSTICE ROBERTS: Mr. Snyder.

9 ORAL ARGUMENT OF BENJAMIN W. SNYDER

10 ON BEHALF OF THE RESPONDENT

11 MR. SNYDER: Mr. Chief Justice, and
12 may it please the Court:

13 On two prior occasions when the Quiet
14 Title Act's 12-year time bar was squarely at
15 issue, this Court held that the time bar imposed
16 a jurisdictional limit on the Court's power to
17 adjudicate the merits of property claims against
18 the United States.

19 Those decisions were clearly correct
20 under then-governing law, and, indeed, this
21 Court later cited them as controlling authority
22 for the settled principle that conditions on a
23 waiver of sovereign immunity should be treated
24 as jurisdictional.

25 Petitioners now ask this Court to

1 disregard its jurisdictional holdings in Block
2 and Mottaz, arguing that this Court's
3 intervening decisions have made it harder to
4 show that a restriction is jurisdictional and
5 that under the new test the time bar here should
6 be treated as just a claim-processing rule.

7 For three reasons, the Court should
8 reject that invitation. First, Block and Mottaz
9 reflected this Court's considered and binding
10 judgment that the time bar was jurisdictional
11 and therefore merits stare decisis respect. In
12 both cases, the Court cited earlier decisions
13 that had recognized the strictly jurisdictional
14 nature of comparable limits, and in both cases,
15 the jurisdictional determination had concrete
16 significance for the litigation before the
17 Court. They were not mere drive-by
18 jurisdictional rulings.

19 Second, when Congress amended the
20 Quiet Title Act in 1986, it ratified the
21 jurisdictional determinations of not only this
22 Court but also of the courts of appeals, which
23 had uniformly agreed that the time bar was
24 strictly jurisdictional.

25 Third and finally, revisiting the time

1 bar's jurisdictional status would cause
2 unnecessary disruption. At a broad level, it
3 would leave the lower courts confused about when
4 they have to comply with this Court's
5 applications of governing law.

6 And at a narrower level, Petitioners'
7 rule would just delay the resolution of disputed
8 timeliness questions, preventing their
9 resolution as threshold issues and instead
10 requiring potentially meaningless trials on the
11 merits of decades-old easements and property
12 lines.

13 Rather than bring about that confusion
14 and inefficiency, the Court should adhere to its
15 prior determinations in Block and Mottaz and
16 affirm the decision below.

17 I welcome the Court's questions.

18 JUSTICE THOMAS: Could you reach the
19 same result without relying on the precedent
20 that you cite --

21 MR. SNYDER: So, Justice Thomas --

22 JUSTICE THOMAS: -- so, it -- just by
23 reading the statute?

24 MR. SNYDER: So, just by reading the
25 statute, I think we would have a good argument

1 that you should treat this as a -- a
2 jurisdictional requirement, and I'm happy to
3 walk through the reasons why I think that's
4 true, but, candidly, nearly all of those reasons
5 were rejected by this Court in Wong. Four
6 justices thought they were persuasive, but five
7 didn't, and we're not back making those same
8 arguments.

9 But, to the extent that you think
10 prior decisions of this Court control here, we
11 think the relevant decisions are Block and
12 Mottaz, which speak to the precise statute of
13 limitations that's at issue here.

14 JUSTICE JACKSON: Can I ask, you said
15 in your third reason that it would cause
16 unnecessary disruption to the lower courts, and
17 I guess I don't -- I don't understand why that's
18 the case.

19 It -- it seems to me the question is,
20 you know, or the -- the fact of the matter is
21 that the lower courts would have to apply the
22 old holdings unless and until this Court changes
23 it, and the question is whether we should change
24 it under these circumstances.

25 MR. SNYDER: So, Justice Jackson, let

1 me unpack a few things from that. The first is
2 that I -- I have taken Petitioners to argue that
3 they are not asking this Court to overrule any
4 prior decisions, that they are just asking this
5 Court to construe Block and Mottaz narrowly to
6 not actually mean jurisdiction.

7 So the -- the confusion that that
8 would cause is that on their view, the lower
9 courts weren't required to adhere to Block and
10 Mottaz at all all along.

11 JUSTICE JACKSON: That's just because
12 the dispute between the two of you is whether
13 Block and Mottaz really spoke definitively to
14 the question.

15 We assume that to begin with, all
16 right, in a world in which we assume that the --
17 this Court using the prior methodology actually
18 held that it was jurisdictional, then I would
19 assume all the lower courts and everyone else
20 would have to abide by that until it got here,
21 and the question for us would be, you know, now
22 that we have a new test for determining
23 jurisdictional nature of a statute, do we apply
24 that new test and therefore change what we said
25 before, or do -- are we somehow bound by what we

1 previously said?

2 MR. SNYDER: So, Justice Jackson, I
3 like that assumption. I think that's the real
4 world. And I -- I what I would say is this
5 Court addressed exactly that argument in John
6 R. Sand and said that it is not inadministrable
7 to have statutes that are worded in similar ways
8 but that are treated differently for
9 jurisdictional purposes depending on whether
10 this Court had previously interpreted the
11 provision at issue.

12 And -- and I had taken my friend to
13 disclaim any argument that he can satisfy the
14 stare decisis factors to overrule this -- this
15 Court's decisions - --

16 JUSTICE KAGAN: Yeah, Mr. Snyder, I
17 mean, just on that point, I mean, we don't need
18 a new test. We have a test. We have many, many
19 decisions that have clearly stated what we do in
20 this situation, the situation being we've used
21 the word "jurisdictional" in the past and what
22 consequence does that have.

23 And we clearly stated, as you just
24 said, that if we've really addressed the issue,
25 decided the issue, then that controls. It has

1 stare decisis effect. But, if we've just kind
2 of used the word without deciding the issue,
3 then I -- then -- then that doesn't have stare
4 decisis effect and, to the contrary, we disclaim
5 any understanding that the thing was meant to be
6 jurisdictional in the pure sense.

7 So I guess you have to convince me
8 that this is just more than using the word like
9 we always used the word routinely to encompass
10 mandatory claims-processing rules.

11 MR. SNYDER: -- so, Justice Kagan, I
12 want to convince you of that. Let me just sort
13 of put on the table that even if you don't agree
14 with me on that, we have a ratification argument
15 that we think could lead you to the same result.
16 But let me -- let me start with the question
17 you're asking.

18 JUSTICE KAGAN: It's -- if you can't
19 convince me of this first question, you're not
20 going to convince me of the second question.

21 (Laughter.)

22 MR. SNYDER: Well, let me try even
23 harder here. I think there are two things that
24 this Court can look to in deciding whether its
25 earlier decisions were really definitive

1 resolutions or were just sort of drive-by
2 jurisdictional rulings.

3 JUSTICE KAGAN: And if I could just
4 interrupt, I mean, you are agreeing with the
5 Petitioner that the question is do we have a
6 definitive interpretation, a definitive
7 resolution. That's the language we've always
8 used or, you know, we've used for, you know,
9 five, six cases in the past.

10 MR. SNYDER: Yes. Putting aside my
11 ratification argument, for again, I agree
12 that -- that on this part that is the test.

13 We think it's -- the resolution of
14 this issue in both Block and Mottaz was
15 definitive. We think the first thing that you
16 can look to is what the Court cited in
17 articulating its jurisdictional determination.
18 And in both cases, the Court cited earlier
19 decisions that had used "jurisdictional" in the
20 strict subject matter sense.

21 So, in Mottaz, for example, the -- the
22 only case other than Block that the Court relied
23 on was the Sherwood decision that you mentioned,
24 Justice Alito, which was a decision about
25 jurisdiction under the Tucker Act in the

1 district courts. And if you read that decision,
2 it is thoroughly and strictly jurisdictional in
3 the modern sense.

4 JUSTICE KAGAN: You see, I guess, I
5 mean, look, we can sort of, you know, try to
6 find hints of this or that and, you know, go
7 read the cited opinions and -- but I always
8 thought that what we were looking for was, in
9 the case itself, it mattered whether something
10 was jurisdictional or whether it was a
11 claims-processing rule.

12 And we said, oh, we have this
13 question, does, you know, equitable estoppel
14 apply? Does equitable tolling apply? To -- to
15 decide that question, we have to decide in a --
16 you know, is -- is it really jurisdictional, or
17 is it just claims processing? And I don't see
18 any of that in either of these two cases.

19 MR. SNYDER: So -- so, Justice Kagan,
20 I disagree with that. I think it's present in
21 both. Let me walk through them.

22 In *Mottaz*, the way that I think that's
23 present is, if you look at page 840 of the -- of
24 this Court's opinion, the Court goes out of its
25 way to note that the government had apparently

1 raised the Quiet Title Act's statute of
2 limitations for the first time in its petition
3 for rehearing en banc.

4 JUSTICE KAGAN: Yes, you say that in
5 your brief, and I went to look at it and I was,
6 oh, if that's true, that's meaningful. But
7 then, you know, the -- the -- the -- the -- the
8 -- the -- the the opinion just notes it in the
9 facts and never comes back to it. It's
10 completely irrelevant to the questions that the
11 body of the opinion decides.

12 MR. SNYDER: So, Justice Kagan, I just
13 read the different -- the -- the decision
14 differently than you, respectfully. The Court
15 notes that. It is a strange thing to note.
16 Ordinarily, if you noted that, the -- the sort
17 of next thing you would do is engage with
18 questions of whether the government had
19 forfeited it.

20 Instead, the first two sentences of
21 the very next paragraph say questions like this
22 one go to a court's jurisdiction, and then the
23 Court just dives into the analysis of the
24 statute of limitations question there, without
25 another word about the possibility of

1 forfeiture.

2 So we think that, combined with the
3 fact that those decisions that it was citing in
4 those next two sentences --

5 JUSTICE KAGAN: I mean, there's no
6 indication that anybody even raised the question
7 of waiver or forfeiture in that case, that
8 anybody thought it was important.

9 MR. SNYDER: I -- I -- Justice Kagan,
10 I think the fact that the Court noted it in its
11 opinion and then in the next paragraph --

12 JUSTICE KAGAN: Yes, we do a lot of
13 gratuitous stuff, and --

14 (Laughter.)

15 JUSTICE KAGAN: -- and -- and all this
16 was is the -- is the last paragraph of the
17 statement of facts, and the reason it's in the
18 next paragraph that we use that -- it's -- it's
19 just -- it's just the last thing that happened
20 in the case. It's just fortuity that it's --
21 it's in the next paragraph.

22 MR. SNYDER: Maybe I have more respect
23 for the -- the structure of the opinion than --
24 than you do or view it differently. You're --
25 you're better positioned to know, I suppose. I

1 --

2 JUSTICE BARRETT: But, Mr. Snyder,
3 also, if you go back and look below, it seemed
4 like in the Eighth Circuit there was confusion
5 in that case about whether the Quiet Title Act
6 even applied.

7 So the waiver issue -- I mean, if you
8 really want to dig in not just to extraneous
9 statements but to what happened below, it's not
10 clear that that was in the case in that sense.

11 MR. SNYDER: So -- so, Justice
12 Barrett, I agree with that. And -- and,
13 candidly, if -- if we had needed to, I'm certain
14 that we would have argued that it was not for --
15 forfeited for other reasons.

16 My point is just the Court didn't need
17 to get into any of those reasons because the
18 Court said this wasn't raised until the petition
19 for rehearing en banc. And, to be candid again,
20 the government had flagged it in a footnote in
21 its panel-stage brief. But the Court says it
22 apparently hadn't been raised and then in the
23 next paragraph says it's jurisdictional and
24 doesn't deal with any of those questions about
25 whether --

1 JUSTICE BARRETT: The Court made a
2 mistake and if the Court had properly -- that
3 maybe it had been -- maybe it had been raised
4 before, maybe it wasn't forfeited, but because
5 the Court made a mistake and proceeded on the
6 premise of a mistake, we take that as
7 jurisdictional?

8 MR. SNYDER: No, I don't think the
9 Court made a mistake at all. I -- I mean, I
10 think, to -- to take the Chief Justice's line of
11 questioning earlier, I think, at the -- the time
12 these cases were decided, it was clearly correct
13 that conditions on a waiver of sovereign
14 immunity were treated as going to the court's
15 jurisdiction. And, in doing so, it --

16 JUSTICE KAGAN: Hmm. Irwin says
17 something different, and this goes back to what
18 Justice Jack -- Barrett said before, is -- is,
19 in fact, Irwin says, you know -- you -- you
20 know, we -- we don't think that -- when we said
21 that, we don't think that we were representing
22 really what Congress thought, and now we're
23 going to correct it. And that's where Irwin
24 comes from, saying, you know, this is actually a
25 bad reflection of Congress's intent and we're

1 dropping it in favor of a better reflection of
2 Congress's intent.

3 MR. SNYDER: So I think it's true that
4 the Court said that in Irwin. The Court says
5 that it had sort of taken an ad hoc approach to
6 this in this area, but both of the decisions
7 that Irwin said sort of were on the other side
8 of this as treating these kinds of conditions as
9 non-jurisdictional were in 1985 and 1986, so
10 they were after Block was decided.

11 At the time that Block was decided,
12 this Court's precedents recognized that
13 conditions on a waiver of sovereign immunity
14 were -- went to a court's jurisdiction.

15 Now, in Irwin, the Court decided to
16 change that -- that assumption, but I think it
17 is just indisputably true that at the time that
18 Block was decided, this Court treated those
19 limits as jurisdictional. And so the fact that
20 the Court said that at the time we don't think
21 was a mistake under the then-prevailing law. We
22 think that accurately reflected this Court's
23 doctrine.

24 The fact that this Court later adopted
25 a new test that it applies on a prospective

1 basis when it's addressing statutes that it
2 hasn't previously encountered doesn't change the
3 meaning of the Court's prior decisions applying
4 that prior rule.

5 JUSTICE ALITO: We are often called
6 upon to decide what we, in fact, held in a prior
7 case because that's important for stare decisis
8 purposes. It arises in many different contexts,
9 not just when we're interpreting a statute that
10 refers to jurisdiction.

11 Do you think that the test for
12 determining what we held in a prior case and
13 therefore what is protected by stare decisis is
14 different in this context, that special clarity
15 is required here, or is it the same test that we
16 use in other contexts?

17 MR. SNYDER: I -- I think it's the
18 same test that we -- that you use in other
19 contexts. I don't think there's any reason to
20 apply a different test in evaluating this
21 Court's jurisdictional decisions to determine
22 whether there were holdings and what those
23 holdings meant then in other contexts.

24 And I acknowledge that there are cases
25 where this Court has used "jurisdictional" in a

1 loose sense or has used "jurisdictional" just in
2 the course of sort of describing the background
3 of a statute. So, in Fort Bend County, for
4 example, this Court was dealing with whether the
5 charge filing requirement under Title VII went
6 to the Court's jurisdiction, and it acknowledged
7 that in McDonnell Douglas it had described that
8 as jurisdictional in sort of the background
9 section of the opinion. But it hadn't been at
10 issue there at all, and -- and so the Court said
11 it wasn't bound by that.

12 JUSTICE GORSUCH: And -- and -- and
13 you'd agree, just to follow up on Justice
14 Alito's question, that when we are trying to
15 figure out what we held in a prior case versus
16 what's extraneous, dicta, we've all often
17 cautioned parties against reading our opinions
18 like statutes and giving talismanic effect to
19 every word?

20 MR. SNYDER: I -- so I agree with
21 that, Justice Gorsuch. My -- my colloquy with
22 Justice Kagan earlier was intended to indicate
23 that -- that we think the jurisdictional nature
24 of the sovereign -- of the statute of
25 limitations here --

1 JUSTICE GORSUCH: You just think you
2 clear that bar?

3 MR. SNYDER: We think we clear that
4 bar.

5 JUSTICE GORSUCH: But you understand
6 that even -- no -- no judge wants his or her
7 work to be read for every last period, comma,
8 jot and tittle the way we'd read a statute?

9 MR. SNYDER: That's -- that's correct.
10 I understand that.

11 JUSTICE GORSUCH: There's a degree of
12 judicial humility required about our own past
13 work.

14 MR. SNYDER: I -- so -- so I
15 appreciate that. We think we do satisfy that
16 bar. We think the -- as I was talking about
17 with Mottaz, the significance there was not just
18 in the use of the word. We think it was the
19 fact that it used the word "jurisdictional"
20 rather than dealing with forfeiture issues.

21 If I could turn to Block and why I
22 think the jurisdictional determination really
23 mattered in Block as well, the Court there cited
24 earlier decisions that had used "jurisdictional"
25 in the context of conditions on a waiver of

1 sovereign immunity in a strict sense, including
2 Soriano, for example, which is one of the cases
3 that this Court cited in John R. Sand.

4 And then, in the closing paragraphs of
5 the Court's opinion in issuing the mandate for
6 what the courts -- for what the courts below
7 should do on remand, the Court said that
8 whatever the merits of the title dispute may be,
9 the federal defendants are correct. If North
10 Dakota's suit is barred by Section -- by the
11 statute of limitations, the courts below had no
12 jurisdiction to inquire into the merits.

13 If Petitioners were right, what that
14 sentence would have said is that the United
15 States was entitled to judgment on an
16 affirmative defense.

17 JUSTICE KAGAN: But -- but -- I -- I
18 would think, Mr. Snyder, that that's exactly the
19 kind of drive-by use of "jurisdiction" that
20 we've talked about many times before. I mean,
21 if you look at the page where the Court does
22 talk about Soriano, the Court never uses the
23 word "jurisdiction" there. This is 287.

24 And, in fact, what the Court is saying
25 is that we've been unclear about what

1 interpretive principles to apply to, you know,
2 statutes of limitations and other conditions on
3 sovereign immunity. Do we strictly construe
4 them and so forth? And -- and so the -- the
5 issue on that page is really about how do we go
6 about interpreting waivers of sovereign
7 immunity. It's nothing about this
8 jurisdictional question.

9 And -- and then, on page 292, five
10 pages later, it says, you know, the suit is
11 barred, and so the courts below had no
12 jurisdiction. I mean, that's just a very
13 standard thing that we've noticed in many of our
14 opinions, which is that instead of saying so the
15 court shouldn't have addressed the issue, we say
16 so the court had -- didn't have jurisdiction
17 over the issue, because we're not making a clear
18 distinction between real jurisdiction and other
19 reasons not to address issues.

20 MR. SNYDER: So, Justice Kagan, again,
21 I -- I respectfully disagree. I -- I think the
22 fact that the Court said they had no
23 jurisdiction to address the merits had a great
24 deal of significance there because the district
25 court had already held a trial in the case.

1 And so, if Petitioners were right, the
2 most the United States would have gotten was a
3 judgment saying that we had prevailed on our
4 affirmative defense, and so the district court
5 was not going to affirmatively quiet title in
6 North Dakota. But North Dakota's hope was to
7 keep those factual findings from the trial in
8 effect in the hope that they could use them for
9 preclusion purposes if the issue came up again
10 in the future.

11 JUSTICE SOTOMAYOR: Counsel, I -- I'm
12 sorry. Maybe I'm too simplistic. I think I
13 might be. But in neither of those two cases was
14 there an issue of equitable tolling, equitable
15 concealment, fraudulent estoppel.

16 In each of them -- in one of them, it
17 was, does the six-year statute apply or does the
18 12-year statute apply? So I have an almost
19 impossible time understanding that the Court was
20 focused on, thinking about, believing it was
21 ruling that this was subject matter jurisdiction
22 in -- in some firm way.

23 Certainly, there are suggestions of
24 it, but that wasn't the holding of Brown for
25 sure. And Mottaz was the same thing. Nobody

1 was raising an equitable reason to toll.
2 Everybody was just focused in on which statute
3 applied or -- I -- I don't understand. Why am I
4 -- why am I -- why is my simplicity out of
5 joint?

6 MR. SNYDER: I -- I don't think it's
7 simplicity. I -- but I -- I -- so, in Mottaz,
8 we think that there was a question about
9 forfeiture, and we think that the way the Court
10 addressed that question about forfeiture was,
11 rather than dealing with sort of the complicated
12 posture of the court below --

13 JUSTICE SOTOMAYOR: Well, the problem
14 is, if it was forfeited, we had no reason to
15 rule at all --

16 MR. SNYDER: I --

17 JUSTICE SOTOMAYOR: -- meaning, if we
18 take pure subject matter jurisdiction and the
19 Court thought it -- it can be raised at any
20 single time, that was the belief back then, so
21 whether it was raised in a petition for
22 rehearing or it was raised even after a party
23 could raise it at any point and the Court had to
24 satisfy itself of jurisdiction, yet this Court
25 didn't.

1 MR. SNYDER: So, Justice Sotomayor,
2 that last part is where I disagree with you. I
3 -- the -- so what I'm arguing about Mottaz is
4 that if -- if the Court in Mottaz had understood
5 the statute of limitations to be
6 non-jurisdictional, then the fact that the
7 government had apparently pressed it for the
8 first time in a petition for rehearing en banc
9 below would have led the Court to engage in a
10 forfeiture analysis and decide whether it
11 would --

12 JUSTICE SOTOMAYOR: Why, if that's
13 something you leave for the court below? It --
14 it -- that's not something you as a court can
15 choose to ignore. If you raise lack of subject
16 matter jurisdiction, we can't -- we have to
17 address that question.

18 MR. SNYDER: So that's exactly my
19 point, that the reason this Court addressed it
20 was that this Court understood it to go to
21 subject matter jurisdiction. If this Court had
22 thought that it was non-jurisdictional, the
23 Court would have needed to talk about
24 forfeiture. It didn't talk about forfeiture
25 because, as it said in the very next paragraph,

1 conditions like this one at the time went to
2 subject matter jurisdiction.

3 And the other thing I'd say is that I
4 -- I think it's a little unfair to sort of
5 critique these opinions because they didn't go
6 on at length --

7 JUSTICE SOTOMAYOR: Well --

8 MR. SNYDER: -- about --

9 JUSTICE SOTOMAYOR: -- so why don't we
10 do something and require that the opinion speak
11 clearly? Isn't that what we have said in Wong
12 and Irwin? We depended on whether the Court has
13 spoken to the issue. So, unless we have a clear
14 statement that that was what was litigated, why
15 would we -- we try to give stare decisis to
16 issues that weren't identified by the Court?

17 MR. SNYDER: I -- I -- I mean, so, in
18 Mottaz, the Court says that conditions on a
19 waiver of sovereign immunity go to the Court's
20 jurisdiction, and the next sentence identifies
21 statute of limitations in a case where the
22 statute of limitations here was at issue as
23 among those conditions. And then, for the
24 reasons I've explained, we think it was directly
25 at issue there.

1 The point I was going to make about
2 the Court not going on at length about this is
3 it sort of creates this strange world where
4 points that were very obvious and
5 straightforward at the time get less respect
6 today. At the time, it was obvious that this
7 was a -- a question of jurisdiction because that
8 was the prevailing rule that this Court applied.

9 JUSTICE KAGAN: Well, that, again, is
10 relitigating, I think, Irwin. But -- but -- I
11 mean, just one way to think about it is take the
12 case where we do say, look, there's a rule here.
13 We've said it, John R. Sand, you know, and so we
14 have to respect our precedent.

15 So the reasons that John R. Sand gives
16 for that, it goes through two opinions at great
17 length, two prior opinions saying that the
18 plaintiff had asked for equitable tolling or
19 that there was a question of waiver, and in each
20 of those two cases, it would have made a
21 difference whether the rule was jurisdictional
22 in the strict sense or not.

23 And that's the kind of proof that
24 we've required. In other words, you know, we've
25 -- we -- you -- you know, look back. This

1 mattered to -- to the Court and the Court fully
2 considered it. And -- and if we -- if we were
3 to write the opinion coming out your way, we
4 couldn't do anything that comes close to what
5 John R. Sand looks like.

6 MR. SNYDER: So, Justice Kagan, again,
7 I just respectfully disagree. I think it -- it
8 didn't matter in the same ways in Block and
9 Mottaz that it did in the cases that the Court
10 cited in John R. Sand. But it mattered.

11 It -- it allowed the Court to deal
12 with the issue without concerning itself with
13 forfeiture in Mottaz. In Block, it dictated the
14 course of the proceedings on remand. On remand,
15 North Dakota tried to keep the findings of fact
16 that had been entered in the earlier trial, but
17 the Eighth Circuit, sort of a contemporaneous
18 understanding of this Court's decision in that
19 very case, said no, this issue is
20 jurisdictional, and, therefore, the proper
21 remedy, even though there's already been a
22 trial, is to remand to the district court and
23 dismiss the complaint, notwithstanding the fact
24 that there had already been a trial.

25 A few years later, after Congress

1 amended the Quiet Title Act, North Dakota was
2 able to sue again, and this time around, because
3 those findings had been vacated, the United
4 States was successful on the merits, whereas
5 previously it had been unsuccessful.

6 So the jurisdictional treatment was
7 dispositive of the conflict at issue there.

8 JUSTICE BARRETT: Mr. Snyder, can I --

9 CHIEF JUSTICE ROBERTS: Well, also,
10 you -- Justice Kagan said you were relitigating
11 Irwin. I -- I just want you to know that I
12 would intently listen to such an argument.

13 (Laughter.)

14 CHIEF JUSTICE ROBERTS: But I think
15 it's the amicus in -- in this case that
16 suggested there were other consequences to
17 whether this provision was jurisdictional than
18 the equitable tolling or equitable estoppel, and
19 one of them was that the government, I don't
20 know if they won't or can't enter in the
21 settlement negotiations if the bar is -- is
22 jurisdictional.

23 And I wanted to find out what exactly
24 the government's position was on that.

25 MR. SNYDER: So I think that it's true

1 that if the bar is jurisdictional, the
2 government would not be able to enter into
3 prelitigation agreements to toll the statute of
4 limitations.

5 But, in those circumstances --

6 CHIEF JUSTICE ROBERTS: Well, I guess
7 I wouldn't say it's to -- you -- I -- I'm
8 questioning the predicate. If it's true that
9 it's jurisdictional, then you can't do this.
10 But what if the whole point is the
11 jurisdictional aspect is being litigated?

12 Like here, could you enter into
13 negotiations here and settle this case because
14 whether it's jurisdictional or not is up in the
15 air?

16 MR. SNYDER: So we could -- we could
17 settle this case. My understanding of the
18 amicus's argument was not that it would preclude
19 settlements but that it would force parties to
20 sort of bring these things up earlier because
21 the government couldn't agree to a tolling
22 arrangement.

23 Now we don't think that's a serious
24 concern because the -- the Quiet Title Act
25 already provides a generous 12-year statute of

1 limitations. We think that's ample time once
2 you know or should know of your claim to reach
3 a -- a resolution of that claim with the
4 government without needing a tolling agreement.

5 And if you run up to that bar, it
6 would be possible to file suit and then ask a
7 court to -- to stay the litigation while you try
8 to negotiate it. But I do want to address some
9 of the other consequences of the jurisdictional
10 versus non-jurisdictional line.

11 One of those deals with the -- the
12 practical consequences of Petitioners' position
13 in litigating Quiet Title Act cases. If you
14 look at pages 18 and 19 of our brief in
15 opposition and 19 and 20 of our merits brief, we
16 point to nine different courts of appeals that
17 have all treated this rule as jurisdictional, in
18 some cases, going back decades, and in those
19 circuits, when a timeliness question comes up,
20 that timeliness question can be resolved at the
21 outset of the case.

22 We think that's important because, as
23 this Court explained in *Block*, one of the
24 primary reasons the executive branch was so
25 insistent on having a 12-year statute of

1 limitations in the Quiet Title Act was a concern
2 about the burden on the executive branch of
3 needing to litigate stale claims. So --

4 JUSTICE GORSUCH: Well, but one could
5 make that argument with respect to any statute
6 of limitations. It always serves the value of
7 repose, but we have to respect what balance
8 Congress struck, not what balance we might
9 prefer. And one can make an argument that it
10 also serves some useful value to not have a
11 strict statute of limitations jurisdictional
12 bar, right?

13 MR. SNYDER: Right.

14 JUSTICE GORSUCH: I mean, you can see
15 their policy arguments on the other side, I
16 assume.

17 MR. SNYDER: So I think the policy
18 arguments on the other side are especially weak
19 in this case for --

20 JUSTICE GORSUCH: Oh, I'm sure you do.
21 (Laughter.)

22 MR. SNYDER: So -- so let me --

23 JUSTICE GORSUCH: I'm sure you do.
24 But you'd agree that a rational Congress could
25 disagree with that?

1 MR. SNYDER: I -- I would agree that a
2 rational Congress should -- could disagree with
3 that. I don't think a rational Congress should
4 --

5 JUSTICE GORSUCH: Should, of course, I
6 understand. But -- but could. And so why isn't
7 that the end of the policy arguments?

8 MR. SNYDER: So, because,
9 respectfully, this Court has looked to those
10 policy arguments in explaining why it's
11 particularly reluctant to treat provisions as
12 jurisdictional. And so I think it's relevant
13 here that those policy arguments just apply with
14 less force or cut in a different direction in
15 the Quiet Title Act context.

16 There are two things in particular
17 that I'd point to. The first is that in
18 Arbaugh, one of the reasons that this Court gave
19 for preferring non-jurisdictional to
20 jurisdictional readings was that that line can
21 affect the decisionmaker that decides any
22 disputes of fact.

23 But, in the Quiet Title Act, whether
24 this is resolved at the 12(b)(1) stage or after
25 trial, it's going to be resolved by the exact

1 same decisionmaker.

2 Justice Sotomayor, you were asking
3 about what difference this will make in the
4 case. The reality is that the district court
5 here has already looked at all of the timeliness
6 quest -- all of the timeliness evidence. I
7 don't think it disregarded that evidence. It
8 was just that 12(b)(1) allowed it to consider
9 all of the evidence.

10 JUSTICE GORSUCH: Well, I'm not sure
11 how that cuts. You're saying it's going to be
12 very efficient either way.

13 MR. SNYDER: No. I --

14 JUSTICE GORSUCH: That the district
15 court's going to be able to get to this rather
16 promptly. Whether it's 12(b)(1) or a motion for
17 summary judgment, it's going to be before the
18 judge. Don't have to go to a jury. It's just
19 going to be who bears the burden. And I
20 understand the government would prefer not to
21 carry the burden, but that's just policy talk,
22 right?

23 MR. SNYDER: No, I don't -- I -- I
24 don't think so. The burden I -- I don't think
25 matters very much. It will -- it will matter in

1 the cases where the evidence is completely in
2 equipoise, but, other than that, that burden
3 question, I don't think, is going to be
4 significant.

5 The concern that I'm identifying is
6 the one that this Court talked about in Block as
7 leading to adoption of the statute of
8 limitations, which is a concern about the burden
9 of litigating stale claims.

10 JUSTICE GORSUCH: Well, what do we do
11 about the government's own representations when
12 it proposed this 12-years statute of limitations
13 that suggested if the government chooses to
14 raise the issue, which is a suggestion that the
15 government itself -- now I understand the
16 government can change its views, I understand,
17 but the government itself at least at one time
18 thought this was something other than subject
19 matter jurisdiction --

20 MR. SNYDER: So, Justice --

21 JUSTICE GORSUCH: -- when it proposed
22 the law.

23 MR. SNYDER: So, Justice Gorsuch, if
24 you want to consider the legislative history --

25 JUSTICE GORSUCH: I'm -- I -- ooh.

1 (Laughter.)

2 MR. SYNDER: I -- I thought that might
3 be effective.

4 JUSTICE GORSUCH: I'm asking you about
5 the government's own positions.

6 MR. SNYDER: We understand those
7 representations very differently. What the
8 government said was that the -- the plaintiff
9 would merely need to allege that he didn't know
10 or had no reason to know of the claim.

11 Now, on their view, the plaintiff
12 wouldn't even need to allege that. If this is
13 an affirmative defense, it doesn't -- the
14 plaintiff doesn't need to say anything at all
15 about it. And --

16 JUSTICE GORSUCH: What -- what about
17 the subsequent sentence? So -- I mean, in
18 another world, if we -- if -- if the sentence
19 were written differently, I suspect we'd be --
20 have -- have a call for deference to it.
21 Instead, it's -- it -- you're running away from
22 it. So what about that other sentence --

23 MR. SNYDER: I'm not -- I'm not
24 running away from it at all. What we -- what we
25 said in that next sentence was, if the plaintiff

1 makes that representation, then the government
2 would have the burden of overcoming it.

3 And I think that's absolutely true. I
4 mean, once you have a case where, on one side of
5 the -- the ledger, you have the plaintiff's
6 declaration that he didn't know and -- and
7 couldn't know about the existence of the
8 government's claim, then, of course, now that
9 you've got evidence on one side, the government
10 needs to come forward with evidence on the other
11 side.

12 JUSTICE GORSUCH: So the burden --

13 MR. SNYDER: I don't think that's --

14 JUSTICE GORSUCH: -- the burden would
15 always rest with the plaintiff if it's
16 jurisdictional, though, the burden of
17 persuasion?

18 MR. SNYDER: Yes, the burden of
19 persuasion. I don't think that that letter was
20 speaking in precise terms about the burden of
21 persuasion.

22 JUSTICE GORSUCH: Ah, so the
23 government's letter wasn't speaking precisely.
24 Okay. All right then. Thank you.

25 MR. SNYDER: I mean, the government's

1 letter was talking about the -- I'm sorry. I
2 see my time has expired.

3 CHIEF JUSTICE ROBERTS: You can finish
4 your sentence.

5 (Laughter.)

6 MR. SNYDER: I -- was speaking --

7 CHIEF JUSTICE ROBERTS: Maybe.

8 MR. SNYDER: -- about burdens. We
9 think that the -- the burdens to be concerned
10 with are the burdens of litigating stale claims,
11 which Petitioners' rule would require a trial
12 for.

13 CHIEF JUSTICE ROBERTS: Justice
14 Thomas?

15 Justice Alito?

16 JUSTICE ALITO: What do you make of
17 the 1986 amendments?

18 MR. SNYDER: So, Justice Alito, at the
19 time that Congress adopted those amendments,
20 every single one of the courts of appeals to
21 have addressed this issue had held that the
22 statute of limitations was jurisdictional.

23 My friends say that they were just
24 sort of using language loosely. That's not
25 true. If you -- if you look at the decisions

1 that we cite at 19 and 20 of our brief, the
2 First Circuit had held that because this went to
3 jurisdiction, it was required to raise it sua
4 sponte on appeal. The -- the Third Circuit held
5 the same thing. The Eighth Circuit, on remand
6 in Block, held that because it was
7 jurisdictional, the remedy was to remand and
8 dismiss the complaint even though there had
9 always -- already been a trial.

10 So we think Congress is presumptively
11 aware of those decisions, and then you have the
12 additional fact that this Court had, in Block
13 and Mottaz, described this limit as
14 jurisdictional. And even if you didn't think
15 that those were square holdings of the Court, I
16 think they crystallized attention on this
17 consensus in the lower courts in a way that the
18 Court hasn't encountered in prior cases and make
19 it that much more obvious that Congress, when it
20 acted to amend the -- the statute of limitations
21 in direct response to Block but did nothing to
22 displace this jurisdictional treatment, intended
23 to ratify that treatment.

24 CHIEF JUSTICE ROBERTS: Justice
25 Sotomayor, anything further?

1 Justice Kagan?

2 JUSTICE KAGAN: We -- we wasted a lot
3 of time in Beggerly if you're right. And if
4 you're right, in Beggerly, we could have issued
5 a summary opinion just citing these two cases,
6 but we didn't do that. You know, we said, is
7 equitable tolling available under the Quiet
8 Title Act? And we went through an extended
9 analysis of the text, of the history, and we
10 addressed that question.

11 If you're right, we had two precedents
12 saying equitable tolling was not available
13 because this is jurisdictional.

14 MR. SNYDER: So, Justice Kagan, of
15 course, the holding in Beggerly fully supports
16 us here. The fact that equitable tolling --

17 JUSTICE KAGAN: That's not the
18 question, Mr. Snyder. The question is, why was
19 all of that opinion necessary?

20 MR. SNYDER: So, at the time that this
21 Court decided Beggerly, it was, frankly, unclear
22 what the Court had done in Irwin. So I -- I
23 mentioned earlier that one of the decisions
24 Block relied on was Soriano. Justice White's
25 separate opinion in Irwin disagreed with the

1 majority's new presumption, and one of the
2 things he said was that it directly overruled
3 Soriano. And so, when --

4 JUSTICE KAGAN: Well, there was a
5 dissent, but Irwin --

6 MR. SNYDER: No, no, no. Absolutely,
7 it was a dissent, but I'm saying at the time
8 that Beggerly was decided, I think there was a
9 real question about whether this Court's
10 pre-Irwin decisions survived Irwin or not.

11 JUSTICE KAGAN: Well, you know, if
12 that's right, and I don't really think it is,
13 but, if it's right, then the Court might have
14 said something like that, and -- but the Court
15 -- but nobody addressed this question. Nobody
16 thought that these two opinions had anything to
17 do with this question.

18 MR. SNYDER: So, Justice Kagan, we --
19 we made the judgment to just argue that even
20 under Irwin, it was abundantly clear that
21 Congress did not intend courts to equitably toll
22 the statute of limitations.

23 And I -- I think the fact that it's so
24 clear that Congress didn't intend to allow
25 equitable tolling is a -- a, you know, a factor

1 on the scale in -- in thinking that Congress
2 really did intend this to be jurisdictional.

3 JUSTICE KAGAN: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Gorsuch?

6 Justice Kavanaugh?

7 Justice Barrett?

8 Justice Jackson?

9 JUSTICE JACKSON: Yes. So I -- I
10 realize that under John R. Sand the question
11 that we're all debating now is whether the prior
12 cases were definitive holdings that the Quiet
13 Title Act's time bar is jurisdictional, but can
14 I just for a second ask you to hypothesize a --
15 a world in which we didn't have a prior case
16 about this issue, and so we were applying what
17 we now understand to be the way in which you
18 determine the question of what Congress intended
19 about the jurisdictional nature of this?

20 In that world, is the government's
21 position -- and I wasn't quite clear from pages
22 12 and 13 of your brief -- is the government's
23 position that this would be jurisdictional under
24 the current test?

25 MR. SNYDER: So, Justice Jackson, let

1 me identify the -- the sort of four things that
2 we would point to as supporting jurisdictional
3 treatment here. I will -- I will front that the
4 Court rejected three of them in Wong. So I
5 don't know if Wong sort of goes or stays in your
6 hypothetical, but let me put them all on the
7 table at least.

8 The first is that the language here
9 bears a marked similarity to the language of the
10 Tucker Act statute of limitations that this
11 Court had held for well over a century was
12 jurisdictional.

13 The second is that to the extent
14 there's a difference between this language and
15 that language, it cuts in favor of treating this
16 language as jurisdictional. The Tucker Act
17 provision said every claim shall be barred.
18 This provision says any civil action shall be
19 barred. And so the -- the difference there is
20 that this provision is speaking more to the
21 Court's power to adjudicate the claims than to
22 the underlying merits of the claims. That would
23 point -- that's the one that was not at issue in
24 Wong.

25 The third is that this language is

1 definitive. It doesn't invite Congress to -- it
2 doesn't invite the courts to make exceptions.

3 And the fourth is that this arose in
4 the context of a waiver of sovereign immunity,
5 which the Court, at the time that this statute
6 was passed in 1972, had repeatedly said
7 conditions on a waiver of sovereign immunity go
8 to the court's jurisdiction.

9 Now, again, the Court rejected most of
10 those in Wong. And, candidly, I don't think the
11 one more that we've added here would have
12 changed the outcome in Wong. But those are --
13 those are what we would point to.

14 JUSTICE JACKSON: Thank you.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Mr. McCoy, rebuttal?

18 REBUTTAL ARGUMENT OF JEFFREY W. McCOY

19 ON BEHALF OF THE PETITIONERS

20 MR. McCOY: Thank you, Mr. Chief
21 Justice.

22 On the point about congressional
23 acquiescence, as this Court said in Alexander,
24 appellate courts' interpretations provide little
25 weight in the interpretive process of what

1 Congress meant and that inaction is not an
2 acquiescence to it.

3 And as for the lower -- the appellate
4 courts' opinions on how they treated it, as
5 Justice Gorsuch said yesterday in oral argument,
6 appellate courts say a lot of things. That does
7 not make it stare decisis on this Court.

8 And, ultimately, the question is what
9 Block and Mottaz say. And I -- my friend's rule
10 would make it more confusing for lower courts.
11 So we spent a lot of time digging deep into what
12 Mottaz said, even looking at oral arguments and
13 -- but the -- what this Court had said in John
14 R. Sand, and as Justice Kagan said, it's -- is
15 it a definitive earlier statement? Was it the
16 holding? That is a clear factor for lower
17 courts to decide if they are presented with an
18 issue like this. They don't have to go in.

19 I'd also like to address in the -- the
20 forfeiture argument, although I think, again, it
21 was not in the holding, but the plaintiff there
22 forfeited any argument, as this Court
23 recognized. The plaintiff did not -- did not
24 bring the claim under the Quiet Title Act. At
25 this Court, in opening statements, plaintiff s'

1 counsel said this case has to rise and fall as a
2 General Allotment Act claim. This is not a
3 Quiet Title Act claim.

4 So, in that, they forfeited any
5 arguments about whether or not the -- the
6 government had waived or forfeited anything
7 about -- a -- a -- about whether it was --
8 whether the Quiet Title Act was waived.

9 Finally, I would just like to -- the
10 important thing is -- Justice Gorsuch was get --
11 was getting at is that this -- what did Congress
12 intend? And although Justice Gorsuch may not
13 want to look at the legislative history, the
14 Senate report makes it clear. There was grave
15 inequities. There was grave inequities because
16 property owners could not bring these claims to
17 resolve these disputes. And so it passed the
18 Quiet Title Act to resolve those grave
19 inequities, and it wants these property disputes
20 to be resolved, and making it jurisdictional
21 makes it harder to resolve those claims.

22 If there are no further questions.
23 Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel. The case is submitted.

1 (Whereupon, at 11:09 a.m., the case
2 was submitted.)
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Official

1	acted ^[1] 63:20 action ^[3] 8:20 12:9 67:18 actual ^[1] 26:13 actually ^[3] 32:6,17 40:24 ad ^[5] 11:14,17,22 15:18 41:5 added ^[1] 68:11 additional ^[1] 63:12 address ^[5] 46:19,23 49:17 55:8 69:19 addressed ^[9] 16:14 33:5, 24 46:15 48:10 49:19 62:21 64:10 65:15 addressing ^[1] 42:1 adhere ^[2] 30:14 32:9 adjudicate ^[2] 28:17 67:21 admittedly ^[1] 18:24 adopt ^[1] 26:2 adopted ^[4] 14:24 24:19 41:24 62:19 adopting ^[1] 17:4 adoption ^[1] 59:7 adverse ^[3] 9:3 10:19,23 advocating ^[1] 21:10 affect ^[1] 57:21 affirm ^[1] 30:16 affirmative ^[9] 3:19 7:5 19:8,10 24:15,23 45:16 47:4 60:13 affirmatively ^[1] 47:5 age ^[1] 13:6 agree ^[8] 34:13 35:11 39:12 43:13,20 54:21 56:24 57:1 agreed ^[1] 29:23 agreeing ^[1] 35:4 agreement ^[1] 55:4 agreements ^[1] 54:3 Ah ^[1] 61:22 ahead ^[1] 21:1 air ^[1] 54:15 AL ^[1] 1:3 Alexander ^[1] 68:23 ALITO ^[16] 11:9 12:10 19:13 20:4,12,16,19,23 21:3,8 22:8 35:24 42:5 62:15,16, 18 Alito's ^[1] 43:14 allege ^[2] 60:9,12 Allotment ^[1] 70:2 allow ^[1] 65:24 allowed ^[5] 13:13,14 15:17 52:11 58:8 almost ^[1] 47:18 already ^[8] 15:15 20:8 46:25 52:21,24 54:25 58:5 63:9 although ^[3] 20:20 69:20 70:12 amend ^[1] 63:20 amended ^[2] 29:19 53:1 Amendment ^[1] 12:3 amendments ^[2] 62:17,19 amicus ^[1] 53:15	amicus's ^[1] 54:18 among ^[1] 50:23 ample ^[1] 55:1 analysis ^[4] 10:25 37:23 49:10 64:9 announced ^[1] 27:15 announcing ^[1] 27:16 another ^[3] 19:25 37:25 60:18 answer ^[7] 14:13 18:1,12 20:17 21:7 23:4 27:1 anybody ^[2] 38:6,8 anyway ^[1] 20:24 apparently ^[3] 36:25 39:22 49:7 appeal ^[1] 63:4 appeals ^[3] 29:22 55:16 62:20 APPEARANCES ^[1] 1:17 appears ^[1] 22:20 appellate ^[5] 14:23 18:16 68:24 69:3,6 Appendix ^[2] 9:19 10:8 application ^[1] 13:22 applications ^[1] 30:5 applied ^[5] 11:22 14:8 39:6 48:3 51:8 applies ^[3] 16:21 22:5 41:25 apply ^[15] 15:22 16:13,16 18:11 23:18,25 31:21 32:23 36:14,14 42:20 46:1 47:17,18 57:13 applying ^[8] 14:3,15 24:13 27:4,4,20 42:3 66:16 appreciate ^[1] 44:15 approach ^[5] 11:14,17,22 26:22 41:5 approximating ^[1] 25:12 Arbaugh ^[5] 15:3,5 21:21, 24 57:18 area ^[1] 41:6 argue ^[3] 3:21 32:2 65:19 argued ^[1] 39:14 arguing ^[2] 29:2 49:3 argument ^[23] 1:14 2:2,5,8 3:4,7 14:18,19,20 28:9 30:25 33:5,13 34:14 35:11 53:12 54:18 56:5,9 68:18 69:5,20,22 arguments ^[8] 31:8 56:15, 18 57:7,10,13 69:12 70:5 arise ^[1] 12:2 arises ^[1] 42:8 arose ^[1] 68:3 around ^[2] 22:24 53:2 arrangement ^[1] 54:22 Article ^[1] 12:1 articulate ^[1] 13:20 articulated ^[1] 13:21 articulating ^[1] 35:17 aside ^[3] 11:2 26:16 35:10 aspect ^[2] 24:15 54:11 Assistant ^[1] 1:21	assume ^[4] 32:15,16,19 56:16 assumption ^[2] 33:3 41:16 attention ^[1] 63:16 authority ^[1] 28:21 available ^[3] 12:4 64:7,12 aware ^[1] 63:11 away ^[3] 20:14 60:21,24 awkward ^[1] 17:23 <hr/> B <hr/> back ^[16] 9:8 17:5,18 18:2 21:9 22:21 26:9,23 27:12 31:7 37:9 39:3 40:17 48:20 51:25 55:18 background ^[3] 26:2 43:2, 8 bad ^[2] 26:9 40:25 balance ^[2] 56:7,8 banc ^[3] 37:3 39:19 49:8 bar ^[18] 3:12 5:10,20,24 23:9 28:14,15 29:5,10,23 44:2, 4,16 53:21 54:1 55:5 56:12 66:13 bar's ^[1] 30:1 barred ^[5] 19:14 45:10 46:11 67:17,19 BARRETT ^[9] 24:25 27:14 28:4 39:2,12 40:1,18 53:8 66:7 bars ^[1] 4:6 based ^[1] 26:20 basis ^[2] 15:18 42:1 bears ^[3] 9:5 58:19 67:9 became ^[1] 11:20 Beggerly ^[11] 6:4,10,16,20 7:11 9:11 64:3,4,15,21 65:8 begin ^[1] 32:15 beginning ^[1] 27:12 behalf ^[8] 1:20,23 2:4,7,10 3:8 28:10 68:19 behind ^[1] 25:16 belief ^[1] 48:20 believe ^[1] 14:19 believing ^[1] 47:20 below ^[10] 19:15 30:16 39:3,9 45:6,11 46:11 48:12 49:9,13 Bend ^[1] 43:3 BENJAMIN ^[3] 1:21 2:6 28:9 better ^[2] 38:25 41:1 between ^[3] 32:12 46:18 67:14 beyond ^[3] 4:21 7:1,14 binding ^[1] 29:9 bit ^[2] 4:21 14:9 Bitterroot ^[2] 8:3 10:8 Block ^[37] 4:8 12:22 17:8 19:5,5,13,23,25 20:3,7,8,8 21:11 22:2 29:1,8 30:15 31:11 32:5,9,13 35:14,22	41:10,11,18 44:21,23 52:8, 13 55:23 59:6 63:6,12,21 64:24 69:9 body ^[1] 37:11 Boechler ^[7] 5:2,17,17 14:18,24 18:15 22:20 both ^[7] 6:3 29:12,14 35:14, 18 36:21 41:6 bound ^[3] 20:3 32:25 43:11 branch ^[2] 55:24 56:2 brief ^[7] 15:22 37:5 39:21 55:14,15 63:1 66:22 briefs ^[1] 3:20 bring ^[5] 18:18 30:13 54:20 69:24 70:16 bringing ^[2] 23:22,24 broad ^[1] 30:2 brought ^[1] 4:2 Brown ^[1] 47:24 burden ^[19] 7:3,6,10 8:8 9:6 24:22 25:5 56:2 58:19, 21,24 59:2,8 61:2,12,14,16, 18,20 burdens ^[3] 62:8,9,10 <hr/> C <hr/> California ^[1] 1:19 call ^[1] 60:20 called ^[1] 42:5 came ^[2] 1:13 47:9 candid ^[1] 39:19 candidly ^[3] 31:4 39:13 68:10 canon ^[3] 13:10 24:8 27:20 canons ^[2] 24:13 25:22 careful ^[1] 5:12 carefully ^[1] 26:14 carry ^[1] 58:21 carrying ^[1] 7:10 Case ^[39] 3:4 9:15,15 13:4, 7 14:2,21 15:22 17:20 18:6,11 19:19 22:7 27:19 31:18 35:22 36:9 38:7,20 39:5,10 42:7,12 43:15 46:25 50:21 51:12 52:19 53:15 54:13,17 55:21 56:19 58:4 61:4 66:15 70:1,25 71:1 cases ^[25] 3:25 4:8 11:19, 22 12:10,22 14:4 21:23 29:12,14 35:9,18 36:18 40:12 42:24 45:2 47:13 51:20 52:9 55:13,18 59:1 63:18 64:5 66:12 cause ^[3] 30:1 31:15 32:8 cautioned ^[1] 43:17 century ^[1] 67:11 Cert ^[1] 9:19 certain ^[2] 15:23 39:13 certainly ^[4] 5:23 11:14 13:19 47:23 chance ^[1] 21:1 change ^[5] 31:23 32:24 41:16 42:2 59:16 changed ^[1] 68:12
----------	--	--	--	---

Official

<p>changes [1] 31:22 character [1] 17:11 characterization [1] 23:11 charge [1] 43:5 CHIEF [27] 3:3,9 6:2 7:8 13:17 16:24 17:13 18:20 22:14 26:5 27:7,23 28:1,8,11 40:10 53:9,14 54:6 62:3,7,13 63:24 66:4 68:15,20 70:24 choice [1] 10:20 choose [1] 49:15 chooses [1] 59:13 chose [1] 24:20 Circuit [7] 7:19 20:2 39:4 52:17 63:2,4,5 circuits [1] 55:19 circumstances [2] 31:24 54:5 cite [2] 30:20 63:1 cited [8] 28:21 29:12 35:16,18 36:7 44:23 45:3 52:10 citing [2] 38:3 64:5 civil [1] 67:18 claim [10] 9:4,13 55:2,3 60:10 61:8 67:17 69:24 70:2,3 claim-processing [1] 29:6 claims [15] 8:13 11:19,24 12:1,2,4 28:17 36:17 56:3 59:9 62:10 67:21,22 70:16,21 claims-processing [3] 21:16 34:10 36:11 clarity [1] 42:14 clean [1] 27:11 clear [24] 6:10 13:23 14:3,5,14 15:19,20 17:25,25 18:3 25:3,11,24 27:15 39:10 44:2,3 46:17 50:13 65:20,24 66:21 69:16 70:14 clear' [1] 9:2 clearer [1] 22:19 clearly [13] 3:13,15,21 4:17 7:11 17:17 19:22 24:12 28:19 33:19,23 40:12 50:11 client [1] 6:13 close [1] 52:4 closing [1] 45:4 colloquy [1] 43:21 combined [1] 38:2 come [2] 21:9 61:10 comes [8] 15:23 16:5 23:17 26:22 37:9 40:24 52:4 55:19 coming [1] 52:3 comma [1] 44:7 Commissioner's [1] 14:20 common [1] 12:5 comparable [1] 29:14 compare [1] 8:17</p>	<p>complaint [2] 52:23 63:8 completely [2] 37:10 59:1 complicated [1] 48:11 comply [1] 30:4 concealment [2] 9:13 47:15 concern [4] 54:24 56:1 59:5,8 concerned [1] 62:9 concerning [1] 52:12 conclusion [2] 27:6,9 concrete [1] 29:15 concurrence [1] 6:22 conditions [11] 5:13 28:22 40:13 41:8,13 44:25 46:2 50:1,18,23 68:7 conflict [1] 53:7 confused [1] 30:3 confusing [1] 69:10 confusion [3] 30:13 32:7 39:4 Congress [45] 3:12,14,17,21 4:16 11:25 12:6 13:12 14:4,21 17:2,2,6,24 18:2,5 23:15 24:10,16 25:5,9,12,15,17,24 26:1 27:17,19 29:19 40:22 52:25 56:8,24 57:2,3 62:19 63:10,19 65:21,24 66:1,18 68:1 69:1 70:11 Congress's [2] 40:25 41:2 congressional [1] 68:22 consensus [1] 63:17 consent [1] 12:17 consents [1] 12:16 consequence [1] 33:22 consequences [3] 53:16 55:9,12 consider [2] 58:8 59:24 considered [4] 8:25 10:16 29:9 52:2 construction [4] 13:11 24:14 25:23 27:20 construe [2] 32:5 46:3 construed [2] 5:6,24 construing [1] 5:8 contemporaneous [1] 52:17 context [6] 3:16 4:23 42:14 44:25 57:15 68:4 contexts [4] 42:8,16,19,23 contradictory [1] 8:1 contrary [1] 34:4 control [1] 31:10 controlling [1] 28:21 controls [1] 33:25 convince [4] 34:7,12,19,20 correct [6] 8:20 28:19 40:12,23 44:9 45:9 correcting [1] 25:4 correctly [1] 13:20 couldn't [3] 52:4 54:21 61:7 Counsel [8] 6:2 8:19 26:6</p>	<p>28:6 47:11 68:16 70:1,25 County [1] 43:3 course [5] 43:2 52:14 57:5 61:8 64:15 COURT [167] 1:1,14 3:10,11 4:2,9,11,18 5:1,1,5,19,19,22 6:20,22 7:17,20,22 8:8,15 9:18,21 11:7,10,12,15,19,24,25 12:1,11,14,18 13:9,14 14:17,19 15:2,17 16:4,6,7,16,20,21 17:10,20 18:14,23 19:1,2,5,6,7,11,14,17,21 20:1 21:14,21,23 22:1,3 24:12 26:18 27:15,19 28:12,15,21,25 29:7,12,17,22 30:14 31:5,10,22 32:3,5,17 33:5,10 34:24 35:16,18,22 36:24 37:14,23 38:10 39:16,18,21 40:1,2,5,9 41:4,4,15,18,20,24 42:25 43:4,10 44:23 45:3,7,21,22,24 46:15,16,22,25 47:4,19 48:9,12,19,23,24 49:4,9,13,14,19,20,21,23 50:12,16,18 51:2,8 52:1,1,9,11,22 55:7,23 57:9,18 58:4 59:6 63:12,15,18 64:21,22 65:13,14 67:4,11 68:5,9,23 69:7,13,22,25 Court's [31] 3:24 4:19 6:4 8:17 9:6 12:18,20 18:17 27:18 28:16 29:2,9 30:4,17 33:15 36:24 37:22 40:14 41:12,14,22 42:3,21 43:6 45:5 50:19 52:18 58:15 65:9 67:21 68:8 courts [25] 4:4,17 14:23 19:15,17 25:22 29:22 30:3 31:16,21 32:9,19 36:1 45:6,6,11 46:11 55:16 62:20 63:17 65:21 68:2 69:6,10,17 courts' [2] 68:24 69:4 created [1] 11:25 creates [1] 51:3 credibility [1] 10:1 critique [1] 50:5 cross [1] 4:12 crossed [1] 15:7 crystallized [1] 63:16 current [2] 16:13 66:24 cut [1] 57:14 cuts [2] 58:11 67:15</p>	<p>dealt [1] 9:11 debating [1] 66:11 decades [1] 55:18 decades-old [1] 30:11 decide [6] 19:19 36:15,15 42:6 49:10 69:17 decided [10] 10:11 17:20 33:25 40:12 41:10,11,15,18 64:21 65:8 decides [2] 37:11 57:21 deciding [3] 17:6 34:2,24 decision [10] 18:6 21:14 22:15 24:4 30:16 35:23,24 36:1 37:13 52:18 decisionmaker [2] 57:21 58:1 decisions [19] 28:19 29:3,12 31:10,11 32:4 33:15,19 34:25 35:19 38:3 41:6 42:3,21 44:24 62:25 63:11 64:23 65:10 decisis [9] 16:23 29:11 33:14 34:1,4 42:7,13 50:15 69:7 declaration [1] 61:6 declarations [3] 7:24,25 9:24 decommissioned [1] 10:10 deep [1] 69:11 defendants [1] 45:9 defense [9] 3:19 7:5 19:8,10 24:15,23 45:16 47:4 60:13 deference [1] 60:20 define [1] 12:18 definitive [11] 15:1,5,11 16:7 34:25 35:6,6,15 66:12 68:1 69:15 definitively [1] 32:13 degree [1] 44:11 delay [1] 30:7 demonstrates [1] 24:14 departed [1] 14:9 Department [3] 1:22 24:18,19 depended [1] 50:12 depending [1] 33:9 described [2] 43:7 63:13 describing [1] 43:2 determination [6] 15:17 17:1 22:24 29:15 35:17 44:22 determinations [3] 16:13 29:21 30:15 determine [6] 8:14 15:4 21:14 22:16 42:21 66:18 determining [2] 32:22 42:12 develop [1] 25:22 dicta [1] 43:16 dictated [1] 52:13 difference [7] 13:19 15:16,24 51:21 58:3 67:14,19</p>	<p>different [19] 5:9,16 13:16 14:14 15:25 18:13 22:18 23:10 24:2 25:14 26:21 27:2 37:13 40:17 42:8,14,20 55:16 57:14 differently [5] 33:8 37:14 38:24 60:7,19 dig [1] 39:8 digging [1] 69:11 direct [2] 13:22 63:21 direction [1] 57:14 directly [2] 50:24 65:2 disagree [7] 12:25 36:20 46:21 49:2 52:7 56:25 57:2 disagreed [1] 64:25 discipline [3] 4:2 18:17,21 disclaim [2] 33:13 34:4 discrimination [1] 13:7 discussing [1] 18:16 dismiss [4] 8:11 9:21 52:23 63:8 displace [1] 63:22 dispositive [2] 20:6 53:7 dispute [4] 9:24 24:20 32:12 45:8 disputed [6] 7:16,20 8:9 11:3,5 30:7 disputes [3] 57:22 70:17,19 disregard [1] 29:1 disregarded [1] 58:7 disruption [2] 30:2 31:16 dissent [2] 65:5,7 distinct [1] 6:24 distinction [1] 46:18 distinguishing [1] 11:23 district [9] 8:8,17 19:7 36:1 46:24 47:4 52:22 58:4,14 diverge [1] 26:4 dives [1] 37:23 doctrine [1] 41:23 doctrines [1] 6:24 doing [3] 25:13,18 40:15 done [2] 5:5 64:22 Douglas [1] 43:7 down [1] 18:12 drive-by [3] 29:17 35:1 45:19 dropping [1] 41:1</p>
D				
<p>D-3 [1] 9:19 D.C [2] 1:10,22 Dakota [3] 47:6 52:15 53:1 Dakota's [3] 19:14 45:10 47:6 days [2] 26:9,14 deal [3] 39:24 46:24 52:11 dealing [3] 43:4 44:20 48:11 deals [1] 55:11</p>				
E				
<p>each [3] 20:20 47:16 51:19 earlier [14] 12:11 15:2,5 16:7 29:12 34:25 35:18 40:11 43:22 44:24 52:16 54:20 64:23 69:15 easements [1] 30:11 Easterbrook [1] 19:24 easy [1] 18:1 Eberhart [1] 19:1 effect [5] 12:21 34:1,4 43:18 47:8</p>				

Official

<p>effective [1] 60:3 efficient [1] 58:12 Eighth [3] 39:4 52:17 63:5 Either [4] 6:7,9 36:18 58:12 Elsevier [2] 15:3 17:11 en [3] 37:3 39:19 49:8 encompass [1] 34:9 encountered [2] 42:2 63:18 end [1] 57:7 engage [6] 7:20 8:9 16:20 19:7 37:17 49:9 engaged [1] 8:5 enter [3] 53:20 54:2,12 entered [1] 52:16 entertain [1] 12:19 entitled [1] 45:15 equipoise [1] 59:2 equitable [27] 5:21 6:7,11,14,20,23,24 9:11,12,14 10:3,16,23,25 11:2 36:13,14 47:14,14 48:1 51:18 53:18,18 64:7,12,16 65:25 equitably [1] 65:21 especially [2] 14:23 56:18 ESQ [3] 2:3,6,9 ESQUIRE [1] 1:19 establish [1] 25:19 established [1] 17:17 estoppel [15] 6:7,11,14,23 9:12,14,15 10:3,16,23 11:1,3 36:13 47:15 53:18 ET [1] 1:3 evaluating [1] 42:20 even [24] 5:20 8:11 9:9 11:2,17 15:21 17:8 20:25 21:19,19 23:9 24:11 34:13,22 38:6 39:6 44:6 48:22 52:21 60:12 63:8,14 65:19 69:12 everybody [2] 22:23 48:2 everyone [1] 32:19 everything [1] 27:4 evidence [8] 8:23,25 58:6,7,9 59:1 61:9,10 evidentiary [2] 9:22,25 exact [1] 57:25 Exactly [6] 10:14 23:15 33:5 45:18 49:18 53:23 example [6] 11:18 12:13 19:25 35:21 43:4 45:2 exceptions [1] 68:2 excuse [1] 6:25 executive [2] 55:24 56:2 existence [1] 61:7 expense [1] 26:13 expired [1] 62:2 explain [1] 9:8 explained [2] 50:24 55:23 explaining [1] 57:10 explicit [1] 26:4 explicitly [2] 13:13 21:22 extended [1] 64:8</p>	<p>extent [3] 24:1 31:9 67:13 extra-statutory [1] 26:19 extraneous [2] 39:8 43:16</p> <p style="text-align:center">F</p> <p>fact [20] 4:22 14:8 24:3 31:20 38:3,10 40:19 41:19,24 42:6 44:19 45:24 46:22 49:6 52:15,23 57:22 63:12 64:16 65:23 factor [3] 10:25 65:25 69:16 factors [4] 11:23 12:6 15:3 33:14 facts [9] 7:16,21 8:9 9:13 11:2,3,5 37:9 38:17 factual [1] 47:7 fall [1] 70:1 favor [2] 41:1 67:15 federal [2] 13:6 45:9 feel [1] 20:2 few [2] 32:1 52:25 Fifth [1] 12:3 figure [1] 43:15 figuring [1] 16:1 file [1] 55:6 filing [1] 43:5 finally [2] 29:25 70:9 find [2] 36:6 53:23 findings [8] 8:16,18 9:6 47:7 52:15 53:3 finish [1] 62:3 firm [1] 47:22 first [12] 9:17 16:4 29:8 32:1 34:19 35:15 37:2,20 49:8 57:17 63:2 67:8 five [3] 31:6 35:9 46:9 flagged [1] 39:20 focused [2] 47:20 48:2 follow [3] 16:8,11 43:13 follow-up [1] 26:6 Footnote [2] 17:11 39:20 force [2] 54:19 57:14 Forest [3] 8:3 10:5,9 forfeited [7] 37:19 39:15 40:4 48:14 69:22 70:4,6 forfeiture [10] 38:1,7 44:20 48:9,10 49:10,24,24 52:13 69:20 forgotten [1] 21:3 Fort [1] 43:3 forth [2] 13:20 46:4 fortuity [1] 38:20 forward [4] 13:22 14:13 17:23 61:10 found [2] 5:19,20 Four [2] 31:5 67:1 fourth [1] 68:3 frankly [1] 64:21 fraudulent [2] 9:12 47:15 friend [3] 6:3 16:18 33:12 friend's [1] 69:9 friends [1] 62:23 front [1] 67:3</p>	<p>fully [2] 52:1 64:15 fundamental [1] 4:10 further [3] 28:2 63:25 70:22 future [1] 47:10</p> <p style="text-align:center">G</p> <p>gave [2] 6:12 57:18 General [2] 1:22 70:2 generous [1] 54:25 getting [3] 25:18 27:17 70:11 give [2] 9:10 50:15 given [1] 21:1 gives [2] 27:1 51:15 giving [2] 20:13 43:18 GORSUCH [25] 43:12,21 44:1,5,11 56:4,14,20,23 57:5 58:10,14 59:10,21,23,25 60:4,16 61:12,14,22 66:5 69:5 70:10,12 got [4] 13:24 17:24 32:20 61:9 gotten [1] 47:2 governing [1] 30:5 government [21] 3:20 7:6 9:1 15:21 36:25 37:18 39:20 49:7 53:19 54:2,21 55:4 58:20 59:13,15,16,17 60:8 61:1,9 70:6 government's [9] 9:3 53:24 59:11 60:5 61:8,23,25 66:20,22 gratuitous [1] 38:13 grave [3] 70:14,15,18 great [2] 46:23 51:16 guess [8] 15:14 16:10 22:22 25:2 31:17 34:7 36:4 54:6 guiding [2] 27:18,19</p> <p style="text-align:center">H</p> <p>happened [3] 4:7 38:19 39:9 happy [1] 31:2 harder [4] 18:5 29:3 34:23 70:21 hear [2] 3:3 12:1 hearing [2] 9:22 10:1 hearings [1] 26:11 held [15] 3:11 13:12 16:22 21:23 28:15 32:18 42:6,12 43:15 46:25 62:21 63:2,4,6 67:11 help [1] 15:10 hints [1] 36:6 history [5] 3:17 23:9 59:24 64:9 70:13 Hmm [1] 40:16 hoc [5] 11:14,17,22 15:18 41:5 hold [1] 9:21 holding [6] 22:3,5 47:24 64:15 69:16,21</p>	<p>holdings [7] 22:3 29:1 31:22 42:22,23 63:15 66:12 holds [1] 18:24 Honor [21] 4:25 5:16 6:19 7:15 9:16 10:17,22 11:12 12:24 13:10 16:2,16,19 17:7 18:14,22 21:18 24:5 25:21 27:3,13 hope [2] 47:6,8 humility [1] 44:12 hypothesize [1] 66:14 hypothetical [2] 17:15 67:6</p> <p style="text-align:center">I</p> <p>identical [1] 23:7 identified [1] 50:16 identifies [1] 50:20 identify [1] 67:1 identifying [1] 59:5 ignore [1] 49:15 immune [1] 12:15 immunities [1] 11:16 immunity [18] 4:24 5:3,8,13,18,23 11:10,15 12:12 28:23 40:14 41:13 45:1 46:3,7 50:19 68:4,7 import [1] 14:6 important [4] 38:8 42:7 55:22 70:10 impose [1] 25:5 imposed [1] 28:15 imposing [1] 25:3 impossible [1] 47:19 impression [1] 16:4 inaction [1] 69:1 inadmissible [1] 33:6 including [3] 4:17 8:2 45:1 inconsistent [1] 24:24 incorporate [2] 14:22,22 indeed [1] 28:20 indicate [4] 3:17 4:9 12:6 43:22 indicating [1] 19:5 indication [2] 19:21 38:6 indisputably [1] 41:17 inefficiency [1] 30:14 inequities [3] 70:15,15,19 inexact [1] 18:24 inquire [3] 19:16,18 45:12 inquiry [1] 17:23 insistent [1] 55:25 Instead [6] 3:16,23 30:9 37:20 46:14 60:21 intend [5] 24:10 65:21,24 66:2 70:12 intended [7] 3:18 12:7 14:21 25:24 43:22 63:22 66:18 intending [2] 25:9,19 intent [2] 40:25 41:2 intently [1] 53:12 interested [1] 22:14 interpret [4] 8:2 13:11 17:3</p>	<p>26:10 interpretation [9] 12:22 15:2,12 24:7,9 26:8 27:10,18 35:6 interpretations [1] 68:24 interpreted [2] 26:15 33:10 interpreting [3] 21:13 42:9 46:6 interpretive [2] 46:1 68:25 interrupt [1] 35:4 intervening [1] 29:3 invitation [1] 29:8 invite [2] 68:1,2 irrelevant [1] 37:10 Irwin [16] 11:13 24:7 40:16,19,23 41:4,7,15 50:12 51:10 53:11 64:22,25 65:5,10,20 isn't [4] 14:15 17:15 50:11 57:6 issue [33] 4:10 11:18 13:5,5 14:24 15:6 17:12 26:7 28:15 31:13 33:11,24,25 34:2 35:14 39:7 43:10 46:5,15,17 47:9,14 50:13,22,25 52:12,19 53:7 59:14 62:21 66:16 67:23 69:18 issued [1] 64:4 issues [4] 30:9 44:20 46:19 50:16 issuing [1] 45:5 itself [6] 8:3 36:9 48:24 52:12 59:15,17</p> <p style="text-align:center">J</p> <p>JA [1] 10:4 Jack [1] 40:18 JACKSON [12] 15:9 16:10 22:12 28:5 31:14,25 32:11 33:2 66:8,9,25 68:14 JEFFREY [5] 1:19 2:3,9 3:7 68:18 John [13] 11:13,18 15:1,13 16:5 33:5 45:3 51:13,15 52:5,10 66:10 69:13 Joint [2] 10:8 48:5 jot [1] 44:8 judge [5] 8:20,23 19:23 44:6 58:18 judge's [1] 8:16 judgment [6] 8:12 29:10 45:15 47:3 58:17 65:19 judicial [1] 44:12 jump [1] 22:13 jurisdiction [54] 3:24,25 4:9,13 6:8,9,17 7:2,4,18 11:11 12:13,18,25 13:5,15 14:11 18:23,25 19:16,18,23 20:1,5,11 21:11,15,20,22 32:6 35:25 37:22 40:15 41:14 42:10 43:6 45:12,19,23 46:12,16,18,23 47:21 48:18,24 49:16,21 50:2,20 51:</p>
--	--	---	---	--

Official

<p>7 59:19 63:3 68:8 jurisdictional [93] 3:13,16, 22 4:5,15 5:4,9,10,14,17 6: 1,6 7:2,12 8:8 11:8 14:1,6 16:23 17:10 18:9,19 19:3 22:17 23:3,13,24 24:24 25: 19 27:22 28:16,24 29:1,4, 10,13,15,18,21,24 30:1 31: 2 32:18,23 33:9,21 34:6 35:2,17,19 36:2,10,16 39: 23 40:7 41:19 42:21,25 43: 1,8,23 44:19,22,24 46:8 51: 21 52:20 53:6,17,22 54:1,9, 11,14 55:9,17 56:11 57:12, 20 61:16 62:22 63:7,14,22 64:13 66:2,13,19,23 67:2, 12,16 70:20 jury [5] 8:22 13:7,13,13 58: 18 Justice [151] 1:22 3:3,9 4: 20 5:11 6:2,21 7:8 8:19,22 9:9,10 10:14,18 11:9 12: 10 13:17 15:9 16:10,24 17: 13 18:20 19:13 20:4,12,13, 16,19,20,23,25 21:3,8 22:8, 8,10,12 24:18,19,25 26:5 27:7,14,23 28:1,2,3,4,5,8, 11 30:18,21,22 31:14,25 32:11 33:2,16 34:11,18 35: 3,24 36:4,19 37:4,12 38:5, 9,12,15 39:2,11 40:1,16,18 42:5 43:12,13,21,22 44:1,5, 11 45:17 46:20 47:11 48: 13,17 49:1,12 50:7,9 51:9 52:6 53:8,9,10,14 54:6 56: 4,14,20,23 57:5 58:2,10,14 59:10,20,21,23,25 60:4,16 61:12,14,22 62:3,7,13,13, 15,16,18 63:24,24 64:1,2, 14,17,24 65:4,11,18 66:3,4, 4,6,7,8,9,25 68:14,15,21 69:5,14 70:10,12,24 Justice's [2] 22:14 40:10 justices [1] 31:6</p>	<p>labeled [1] 23:2 lack [2] 7:17 49:15 lag [1] 25:14 language [13] 13:9,15 26: 13,25 27:5 35:7 62:24 67: 8,9,14,15,16,25 LARRY [1] 1:3 last [6] 5:2 14:18 38:16,19 44:7 49:2 later [4] 28:21 41:24 46:10 52:25 Laughter [12] 20:15,18,22 21:2,5 22:11 34:21 38:14 53:13 56:21 60:1 62:5 law [5] 12:5 28:20 30:5 41: 21 59:22 lead [1] 34:15 leading [1] 59:7 least [2] 59:17 67:7 leave [2] 30:3 49:13 led [1] 49:9 ledger [1] 61:5 left [1] 6:22 legal [2] 17:11 23:10 legislative [2] 59:24 70:13 Lehman [2] 13:2,4 length [3] 50:6 51:2,17 less [2] 51:5 57:14 letter [3] 61:19,23 62:1 level [2] 30:2,6 limit [2] 28:16 63:13 limitation [2] 4:22 19:15 limitations [37] 3:15,18,22 4:15 5:6 6:25 9:18 11:8 14: 7 16:22 17:9 19:9 22:4 24: 17,21 26:3,16 31:13 37:2, 24 43:25 45:11 46:2 49:5 50:21,22 54:4 55:1 56:1,6, 11 59:8,12 62:22 63:20 65: 22 67:10 limits [4] 5:7 13:25 29:14 41:19 line [6] 13:1,4 25:16 40:10 55:10 57:20 lines [1] 30:12 listen [1] 53:12 litigants [1] 4:4 litigate [1] 56:3 litigated [2] 50:14 54:11 litigating [3] 55:13 59:9 62: 10 litigation [2] 29:16 55:7 little [2] 50:4 68:24 look [17] 8:15 26:14,17,24, 25 34:24 35:16 36:5,23 37: 5 39:3 45:21 51:12,25 55: 14 62:25 70:13 looked [5] 8:24 11:21 26: 10 57:9 58:5 looking [6] 6:14 13:18 15: 20 27:4 36:8 69:12 looks [1] 52:5 loose [2] 25:8 43:1 loosely [2] 20:1 62:24</p>	<p>lose [3] 6:9,17 8:15 lot [4] 38:12 64:2 69:6,11 lower [9] 30:3 31:16,21 32: 8,19 63:17 69:3,10,16</p> <hr/> <p style="text-align: center;">M</p> <p>made [8] 15:18 16:6 29:3 40:1,5,9 51:20 65:19 magic [2] 21:10,17 magistrate [1] 8:16 majority's [1] 65:1 management [3] 8:5 10:7, 13 mandate [1] 45:5 mandatory [7] 4:6 5:14,15, 16 19:3 21:16 34:10 many [10] 4:1 13:1,15 14: 12,12 33:18,18 42:8 45:20 46:13 maps [3] 8:2,4 11:5 marked [1] 67:9 material [1] 26:19 matter [26] 1:13 4:13 7:18 11:11 12:13 13:5 16:4 19: 18,22 20:5,11 21:11,15,19, 22 24:6 31:20 35:20 47:21 48:18 49:16,21 50:2 52:8 58:25 59:19 mattered [4] 36:9 44:23 52: 1,10 matters [4] 6:5 14:25 15: 11 58:25 McCOY [41] 1:19 2:3,9 3:6, 7,9 4:20,25 5:15 6:19 7:15 8:21 9:16 10:17,22 11:9, 12 12:24 14:17 15:9 16:2, 15 17:7 18:14,22 19:20 20: 10,14,17 21:6,18 24:5,25 25:21 27:3,13,24 28:7 68: 17,18,20 McDonnell [1] 43:7 mean [24] 6:7 10:20 13:19 14:14 16:24 18:5 19:3 25: 10 32:6 33:17,17 35:4 36: 5 38:5 39:7 40:9 45:20 46: 12 50:17 51:11 56:14 60: 17 61:4,25 meaning [6] 24:21,22 26: 15,17 42:3 48:17 meaningful [1] 37:6 meaningless [1] 30:10 meanings [3] 4:1 13:1 14: 12 means [1] 26:21 meant [5] 17:3,6 34:5 42: 23 69:1 meet [1] 6:15 mentioned [2] 35:23 64:23 mere [1] 29:17 merely [1] 60:9 merits [11] 19:16,19 28:17 29:11 30:11 45:8,12 46:23 53:4 55:15 67:22 messy [1] 23:21</p>	<p>methodology [1] 32:17 might [6] 18:4 23:6 47:13 56:8 60:2 65:13 mistake [5] 40:2,5,6,9 41: 21 modern [1] 36:3 morning [1] 3:4 most [2] 47:2 68:9 motion [6] 7:17 8:10,11,12 9:20 58:16 Mottaz [24] 4:8 12:23 17:8 29:2,8 30:15 31:12 32:5, 10,13 35:14,21 36:22 44: 17 47:25 48:7 49:3,4 50: 18 52:9,13 63:13 69:9,12 much [4] 20:14 26:14 58: 25 63:19 must [1] 3:13</p> <hr/> <p style="text-align: center;">N</p> <p>Nakshian [1] 13:3 namely [1] 11:25 narrower [1] 30:6 narrowly [1] 32:5 National [2] 8:3 10:9 nature [4] 29:14 32:23 43: 23 66:19 near-identical [1] 23:7 nearly [1] 31:4 necessarily [1] 5:3 necessary [2] 10:2 64:19 need [5] 33:17 39:16 60:9, 12,14 needed [2] 39:13 49:23 needing [2] 55:4 56:3 needs [3] 8:15 26:4 61:10 negotiate [1] 55:8 negotiations [3] 24:18 53: 21 54:13 neither [1] 47:13 never [3] 23:16 37:9 45:22 new [16] 16:12,16 17:1,4 23:13,18 24:3,8 25:5,10 29:5 32:22,24 33:18 41:25 65:1 next [12] 20:17 21:4 37:17, 21 38:4,11,18,21 39:23 49: 25 50:20 60:25 nine [1] 55:16 Ninth [1] 7:19 Nobody [3] 47:25 65:15,15 non-jurisdictional [11] 3: 19 4:6,18 5:20 7:5 23:4 41: 9 49:6,22 55:10 57:19 normal [3] 12:8,8 24:13 North [6] 19:14 45:9 47:6,6 52:15 53:1 note [2] 36:25 37:15 noted [2] 37:16 38:10 notes [2] 37:8,15 Nothing [4] 4:8 22:6 46:7 63:21 notice [2] 13:23 14:5 noticed [1] 46:13</p>	<p>notwithstanding [1] 52: 23 November [1] 1:11</p> <hr/> <p style="text-align: center;">O</p> <p>obvious [3] 51:4,6 63:19 occasions [1] 28:13 occurs [1] 4:23 odd [1] 23:21 offhand [1] 3:23 official [1] 10:5 often [3] 4:5 42:5 43:16 Okay [5] 20:12 21:1,11 28: 6 61:24 old [4] 23:14,14 26:9 31:22 once [2] 55:1 61:4 one [29] 6:10 10:25 12:21 13:25 22:1 24:15,19 25:1 26:6 37:22 45:2 47:16 50: 1 51:11 53:19 55:11,23 56: 4,9 57:18 59:6,17 61:4,9 62:20 64:23 65:1 67:23 68: 11 ones [2] 23:13,13 only [6] 8:15 9:11 16:17,21 29:21 35:22 ooh [1] 59:25 open [2] 4:16 6:22 opening [1] 69:25 opine [1] 17:8 opinion [15] 6:4 9:20 19:24 36:24 37:8,11 38:11,23 43: 9 45:5 50:10 52:3 64:5,19, 25 opinions [11] 18:15,16,17 36:7 43:17 46:14 50:5 51: 16,17 65:16 69:4 opposed [1] 23:21 opposition [1] 55:15 oral [7] 1:14 2:2,5 3:7 28:9 69:5,12 order [4] 7:23,24 9:24 11:6 ordinarily [2] 26:1 37:16 original [1] 17:1 originally [1] 24:16 other [23] 4:7 5:7 6:3 16:18 20:21 35:22 39:15 41:7 42: 16,18,23 46:2,18 50:3 51: 24 53:16 55:9 56:15,18 59: 2,18 60:22 61:10 ourselves [2] 17:18 25:4 out [14] 10:20 13:24 15:3, 23 16:1,19 18:12 25:1 27: 24 36:24 43:15 48:4 52:3 53:23 outcome [3] 4:12 15:8 68: 12 outset [1] 55:21 over [9] 4:12 11:3,6 15:7 18:8 22:21,23 46:17 67:11 overall [1] 21:25 overcoming [1] 61:2 overrule [4] 22:2,2 32:3 33: 14</p>
--	--	--	--	--

Official

<p>overruled [2] 20:9 65:2 overrules [1] 22:3 overruling [1] 20:8 overturn [1] 22:6 own [4] 11:25 44:12 59:11 60:5 owners [1] 70:16</p> <hr/> <p style="text-align: center;">P</p> <p>PAGE [6] 2:2 22:24 36:23 45:21 46:5,9 pages [3] 46:10 55:14 66:21 panel-stage [1] 39:21 paragraph [7] 37:21 38:11, 16,18,21 39:23 49:25 paragraphs [1] 45:4 part [2] 35:12 49:2 participate [1] 10:6 particular [1] 57:16 particularly [3] 7:22 14:5 57:11 parties [4] 4:11 15:7 43:17 54:19 party [3] 10:19,23 48:22 passed [3] 23:15 68:6 70:17 passing [2] 3:14 12:7 past [12] 8:10 14:16 15:16, 25 16:14 21:14 22:18 23:2 24:2 33:21 35:9 44:12 people [1] 13:23 period [1] 44:7 person [3] 8:1 9:2 11:4 persuasion [3] 61:17,19, 21 persuasive [1] 31:6 petition [4] 37:2 39:18 48:21 49:8 Petitioner [1] 35:5 Petitioners [10] 1:4,20 2:4, 10 3:8 28:25 32:2 45:13 47:1 68:19 Petitioners' [3] 30:6 55:12 62:11 plain [1] 26:25 plaintiff [11] 13:6 19:11 51:18 60:8,11,14,25 61:15 69:21,23,25 plaintiff's [1] 61:5 plaintiffs [1] 7:3 please [2] 3:10 28:12 point [12] 33:17 39:16 48:23 49:19 51:1 54:10 55:16 57:17 67:2,23 68:13,22 pointed [2] 8:24 16:19 points [3] 3:23 22:14 51:4 policy [6] 56:15,17 57:7,10, 13 58:21 posing [1] 17:15 position [4] 53:24 55:12 66:21,23 positioned [1] 38:25 positions [1] 60:5</p>	<p>possibility [1] 37:25 possible [1] 55:6 posted [1] 7:24 posture [1] 48:12 potentially [1] 30:10 power [2] 28:16 67:21 practical [1] 55:12 pre-Irwin [1] 65:10 precedent [3] 14:10 30:19 51:14 precedents [2] 41:12 64:11 precise [2] 31:12 61:20 precisely [1] 61:23 preclude [1] 54:18 preclusion [1] 47:9 predecessors [1] 18:4 predicate [1] 54:8 prefer [2] 56:9 58:20 preferring [1] 57:19 prelitigation [1] 54:3 premise [1] 40:6 prerequisite [1] 5:4 prescriptions [1] 4:7 present [2] 36:20,23 presented [7] 4:11 7:23,25 17:16 19:8 23:23 69:17 presents [1] 24:8 pressed [1] 49:7 presumption [1] 65:1 presumptively [1] 63:10 pretty [2] 13:22 14:13 prevailed [1] 47:3 prevailing [1] 51:8 preventing [1] 30:8 previous [4] 3:24 11:19,21 21:23 previously [7] 16:14 18:9 23:5 33:1,10 42:2 53:5 primarily [1] 26:25 primary [1] 55:24 principle [2] 18:11 28:22 principles [2] 26:2 46:1 Prior [20] 4:4 11:13 14:4,7, 9 18:17 28:13 30:15 31:10 32:4,17 42:3,4,6,12 43:15 51:17 63:18 66:11,15 problem [1] 48:13 problems [1] 10:12 preceeded [1] 40:5 proceedings [1] 52:14 process [4] 8:6 10:7,13 68:25 processing [1] 36:17 promptly [1] 58:16 proof [1] 51:23 proper [1] 52:20 properly [1] 40:2 property [4] 28:17 30:11 70:16,19 proposed [4] 10:9 24:16 59:12,21 prospective [1] 41:25 protected [1] 42:13</p>	<p>provide [1] 68:24 provided [2] 8:25 9:1 provides [1] 54:25 proving [2] 7:3,6 provision [7] 14:24 23:17 33:11 53:17 67:17,18,20 provisions [2] 23:8 57:11 pure [2] 34:6 48:18 purposes [4] 16:23 33:9 42:8 47:9 put [4] 18:3 26:16 34:13 67:6 putting [2] 11:2 35:10</p> <hr/> <p style="text-align: center;">Q</p> <p>quest [1] 58:6 question [56] 4:16 5:25 6:23 9:9,17 15:19 16:3,11,17, 21 18:5 19:8 20:17 21:4 22:9,12 23:10,16,23,23 24:9 25:1,14 26:7,22 31:19,23 32:14,21 34:16,19,20 35:5 36:13,15 37:24 38:6 43:14 46:8 48:8,10 49:17 51:7, 19 55:19,20 59:3 64:10,18, 18 65:9,15,17 66:10,18 69:8 questioning [2] 40:11 54:8 questions [11] 4:19 15:15 20:21 22:1 30:8,17 37:10, 18,21 39:24 70:22 Quiet [28] 3:14,24 4:14 6:13 8:19 11:24 12:3,7,8 22:4 24:17 28:13 29:20 37:1 39:5 47:5 53:1 54:24 55:13 56:1 57:15,23 64:7 66:12 69:24 70:3,8,18 quite [6] 5:12 6:10 7:11 14:9 25:17 66:21 quoted [5] 13:2,2,3,9,10</p> <hr/> <p style="text-align: center;">R</p> <p>raise [4] 48:23 49:15 59:14 63:3 raised [9] 15:6 37:1 38:6 39:18,22 40:3 48:19,21,22 raising [1] 48:1 Rather [4] 30:13 44:20 48:11 58:15 ratification [2] 34:14 35:11 ratified [1] 29:20 ratify [1] 63:23 rational [3] 56:24 57:2,3 reach [4] 18:6 27:9 30:18 55:2 reaches [1] 27:6 read [5] 36:1,7 37:13 44:7, 8 reading [3] 30:23,24 43:17 readings [1] 57:20 real [3] 33:3 46:18 65:9 reality [1] 58:4</p>	<p>realize [1] 66:10 really [16] 13:24 16:20 22:6 23:20 25:23 27:14 32:13 33:24 34:25 36:16 39:8 40:22 44:22 46:5 65:12 66:2 reason [7] 31:15 38:17 42:19 48:1,14 49:19 60:10 reasonable [3] 8:1 9:2 11:4 reasons [11] 6:12 29:7 31:3,4 39:15,17 46:19 50:24 51:15 55:24 57:18 REBUTTAL [3] 2:8 68:17, 18 recently [1] 4:1 reciprocate [1] 20:23 recognition [1] 26:1 recognized [7] 5:2 6:21 10:12 16:6 29:13 41:12 69:23 recommendations [2] 8:16,18 Reed [3] 15:2,8 17:10 refer [1] 4:5 referred [2] 14:19 21:21 refers [1] 42:10 reflected [2] 29:9 41:22 reflection [2] 40:25 41:1 regard [1] 12:12 regarded [1] 11:10 rehearing [4] 37:3 39:19 48:22 49:8 reject [1] 29:8 rejected [4] 14:17 31:5 67:4 68:9 related [1] 23:9 relevant [2] 31:11 57:12 relied [4] 7:22 26:18 35:22 64:24 relitigating [2] 51:10 53:10 reluctant [1] 57:11 rely [1] 6:3 relying [1] 30:19 remand [6] 45:7 52:14,14, 22 63:5,7 remanded [1] 19:12 remedy [2] 52:21 63:7 repeatedly [2] 3:11 68:6 rephrase [1] 21:7 report [1] 70:14 reports [1] 26:11 repose [1] 56:7 representation [2] 10:15 61:1 representations [3] 10:24 59:11 60:7 representing [1] 40:21 require [2] 50:10 62:11 required [5] 32:9 42:15 44:12 51:24 63:3 requirement [3] 14:4 31:2 43:5 requires [1] 17:22 requiring [1] 30:10</p>	<p>resolution [5] 30:7,9 35:7, 13 55:3 resolutions [1] 35:1 resolve [3] 70:17,18,21 resolved [6] 10:24 11:6 55:20 57:24,25 70:20 resolving [1] 9:20 respect [7] 25:25 29:11 38:22 51:5,14 56:5,7 respectfully [4] 37:14 46:21 52:7 57:9 Respondent [4] 1:7,23 2:7 28:10 response [1] 63:21 rest [1] 61:15 restriction [1] 29:4 result [4] 4:14 8:10 30:19 34:15 results [1] 23:10 retroactive [1] 18:21 review [1] 7:19 revisiting [1] 29:25 rise [1] 70:1 road [2] 10:9 18:12 ROBERTS [22] 3:3 6:2 7:8 13:17 16:24 17:13 18:20 26:5 27:7,23 28:1,8 53:9, 14 54:6 62:3,7,13 63:24 66:4 68:15 70:24 Roberts' [1] 9:9 routinely [1] 34:9 rule [23] 17:12 21:16 22:15 23:18 24:3,24 25:3,10,25 27:15,16,21 29:6 30:7 36:11 42:4 48:15 51:8,12,21 55:17 62:11 69:9 rules [2] 25:19 34:10 ruling [4] 6:6,6 17:2 47:21 rulings [2] 29:18 35:2 run [3] 9:18 25:1 55:5 running [2] 60:21,24</p> <hr/> <p style="text-align: center;">S</p> <p>s' [1] 69:25 Sacramento [1] 1:19 same [15] 13:4 22:23 23:8, 15 27:6,9 30:19 31:7 34:15 42:15,18 47:25 52:8 58:1 63:5 Sand [13] 11:13,18 15:1,13 16:5 33:6 45:3 51:13,15 52:5,10 66:10 69:14 satisfy [4] 6:15 33:13 44:15 48:24 save [1] 12:16 saying [17] 16:25 17:5,14, 24 19:22 23:21 25:7,15,17 40:24 45:24 46:14 47:3 51:17 58:11 64:12 65:7 says [10] 7:11 21:11 39:21, 23 40:16,19 41:4 46:10 50:18 67:18 scale [1] 66:1 Second [4] 29:19 34:20 66:</p>
--	--	--	--	--

Official

14 67:13 section [2] 43:9 45:10 see [6] 19:4 27:24 36:4,17 56:14 62:2 seemed [2] 12:11 39:3 seems [5] 15:21 16:18 22:25 23:20 31:19 Senate [1] 70:14 sense [8] 4:10 34:6 35:20 36:3 39:10 43:1 45:1 51:22 sentence [7] 45:14 50:20 60:17,18,22,25 62:4 sentences [2] 37:20 38:4 separate [2] 5:25 64:25 serious [1] 54:23 serves [2] 56:6,10 Service [1] 10:5 set [2] 13:20 15:3 settle [2] 54:13,17 settled [1] 28:22 settlement [1] 53:21 settlements [1] 54:19 Seventh [1] 20:2 shall [2] 67:17,18 Sherwood [2] 12:14 35:23 shouldn't [1] 46:15 show [1] 29:4 side [8] 6:3 16:18 41:7 56:15,18 61:4,9,11 significance [3] 29:16 44:17 46:24 significant [1] 59:4 similar [4] 14:18 15:15 21:20 33:7 similarity [1] 67:9 simplicity [2] 48:4,7 simplistic [1] 47:12 simply [1] 6:6 single [2] 48:20 62:20 situation [4] 21:20 23:6 33:20,20 six [1] 35:9 six-year [1] 47:17 slate [1] 27:11 slip [1] 25:1 SNYDER [6] 1:21 2:6 28:8,9,11 30:21,24 31:25 33:2,16 34:11,22 35:10 36:19 37:12 38:9,22 39:2,11 40:8 41:3 42:17 43:20 44:3,9,14 45:18 46:20 48:6,16 49:1,18 50:8,17 52:6 53:8,25 54:16 56:13,17,22 57:1,8 58:13,23 59:20,23 60:6,23 61:13,18,25 62:6,8,18 64:14,18,20 65:6,18 66:25 Solicitor [1] 1:21 somehow [1] 32:25 sometimes [2] 19:2 26:12 Soriano [4] 45:2,22 64:24 65:3 sorry [2] 47:12 62:1 sort [19] 14:3 17:14 22:13	34:12 35:1 36:5 37:16 41:5,7 43:2,8 48:11 50:4 51:3 52:17 54:20 62:24 67:1,5 sorts [2] 26:10,12 SOTOMAYOR [14] 8:19,22 10:14,18 28:3 47:11 48:13,17 49:1,12 50:7,9 58:2 63:25 Souter [1] 9:10 sovereign [2] 1:4 23 5:3,8,13,18,23 11:10,15,16 12:12,15 28:23 40:13 41:13 43:24 45:1 46:3,6 50:19 68:4,7 speaking [4] 61:20,23 62:6 67:20 special [1] 42:14 spell [1] 13:24 spent [1] 69:11 spoke [2] 23:5 32:13 spoken [3] 23:1,12 50:13 sponte [1] 63:4 square [1] 63:15 squarely [1] 28:14 stage [2] 8:11 57:24 stale [3] 56:3 59:9 62:10 standard [3] 15:20 22:19 46:13 standards [2] 7:19 16:17 stare [9] 16:23 29:11 33:14 34:1,3 42:7,13 50:15 69:7 start [1] 34:16 started [1] 25:2 state [6] 3:13,15 4:17 12:5 19:11 24:12 stated [3] 3:21 33:19,23 statement [1] 14:3 15:5,20 16:7 25:3,11,25 27:15 38:17 50:14 69:15 statements [3] 8:2 39:9 69:25 STATES [1] 1:1,6,15 3:5 12:13,15 22:5 28:18 45:15 47:2 53:4 status [1] 30:1 statute [5] 3:15,18,22 4:15,22 5:6 6:25 9:18 11:8,20,24 13:11 16:22 17:3,9 19:9 22:4 24:16,21 26:3,10,16,17,21 30:23,25 31:12 32:23 37:1,24 42:9 43:3,24 44:8 45:11 47:17,18 48:2 49:5 50:21,22 54:3,25 55:25 56:5,11 59:7,12 62:22 63:20 65:22 67:10 68:5 statutes [5] 26:16 33:7 42:1 43:18 46:2 statutory [8] 23:7 24:6,8,13 25:22 26:8 27:10,20 stay [1] 55:7 stays [1] 67:5 STEVEN [1] 1:3 Stevens [2] 6:21 9:10	still [3] 6:17 11:17 22:13 straightforward [1] 51:5 strange [2] 37:15 51:3 street [1] 13:23 strict [4] 35:20 45:1 51:22 56:11 strictly [9] 5:8,9,23 11:16 13:11 29:13,24 36:2 46:3 strong [1] 21:12 stronger [3] 19:21 20:6 21:12 struck [1] 56:8 structure [4] 3:17 23:8 27:5 38:23 struggling [1] 15:14 stuck [1] 23:5 stuff [2] 26:11 38:13 sua [1] 63:3 subject [20] 4:13 7:18 11:11 12:12 13:4 19:18,22 20:5,11 21:11,15,19,22 35:20 47:21 48:18 49:15,21 50:2 59:18 submitted [2] 70:25 71:2 subsequent [1] 60:17 successful [1] 53:4 sue [4] 10:11,21,21 53:2 sued [2] 12:16,17 suggest [1] 16:12 suggested [2] 53:16 59:13 suggestion [1] 59:14 suggestions [1] 47:23 suggests [1] 15:22 suit [5] 12:19 19:14 45:10 46:10 55:6 suits [1] 12:15 summary [3] 8:12 58:17 64:5 supporting [1] 67:2 supports [1] 64:15 suppose [1] 38:25 supposed [2] 25:12 26:23 SUPREME [2] 1:1,14 survived [1] 65:10 suspect [1] 60:19 swords [2] 4:12 15:7 SYNDER [1] 60:2	there's [6] 38:5 42:19 44:11 51:12 52:21 67:14 therefore [5] 12:17 29:11 32:24 42:13 52:20 they've [2] 13:24 17:24 thinking [2] 47:20 66:1 Third [4] 29:25 31:15 63:4 67:25 THOMAS [7] 4:20 5:11 28:2 30:18,21,22 62:14 thoroughly [1] 36:2 though [3] 52:21 61:16 63:8 three [2] 29:7 67:4 threshold [1] 30:9 tied [2] 11:11 12:12 timeline [1] 6:15 timeliness [5] 30:8 55:19,20 58:5,6 Title [3] 3:14,25 4:14 6:13 8:20 11:24 12:3,7,8 21:23 22:4 24:17 28:14 29:20 37:1 39:5 43:5 45:8 47:5 53:1 54:24 55:13 56:1 57:15,23 64:8 66:13 69:24 70:3,8,18 tittle [1] 44:8 today [9] 15:18,23 23:18,22,25 24:1 26:21 27:11 51:6 today's [1] 23:3 toll [3] 48:1 54:3 65:21 tolling [14] 5:21 6:21 9:11,15 36:14 47:14 51:18 53:18 54:21 55:4 64:7,12,16 65:25 transport [1] 17:18 travel [4] 8:5 10:7,13 26:7 treat [5] 4:18 5:12 12:8 31:1 57:11 treated [9] 7:17 11:7 28:23 29:6 33:8 40:14 41:18 55:17 69:4 treating [2] 41:8 67:15 treatment [4] 53:6 63:22,23 67:3 trial [11] 13:8,13,13 46:25 47:7 52:16,22,24 57:25 62:11 63:9 trials [1] 30:10 tried [2] 8:20 52:15 trouble [1] 7:10 truck [1] 24:3 true [9] 17:19 31:4 37:6 41:3,17 53:25 54:8 61:3 62:25 try [6] 10:19 17:19 34:22 36:5 50:15 55:7 trying [3] 25:4 27:17 43:14 Tucker [4] 11:20 35:25 67:10,16 turn [2] 4:13 44:21 turned [1] 15:8 turns [1] 18:12 two [14] 28:13 32:12 34:23	36:18 37:20 38:4 47:13 51:16,17,20 57:16 64:5,11 65:16 <hr/> U U.S [1] 13:3 ultimate [1] 24:9 ultimately [1] 69:8 unclear [3] 8:4 45:25 64:21 under [16] 6:13 7:18 10:22 12:3 23:3 28:20 29:5 31:24 35:25 41:21 43:5 64:7 65:20 66:10,23 69:24 underlying [1] 67:22 understand [1] 15:10,13 17:16 25:6,10 31:17 44:5,10 48:3 57:6 58:20 59:15,16 60:6 66:17 understanding [5] 25:20 34:5 47:19 52:18 54:17 understood [2] 49:4,20 unfair [1] 50:4 uniformly [1] 29:23 unique [1] 12:2 UNITED [10] 1:1,6,15 3:5 12:13,15 28:18 45:14 47:2 53:3 Unless [3] 20:7 31:22 50:13 unlike [1] 12:3 unnecessary [2] 30:2 31:16 unpack [1] 32:1 unsuccessful [1] 53:5 until [4] 4:1 31:22 32:20 39:18 up [9] 24:3 25:16 26:22 43:13 47:9 54:14,20 55:5,19 useful [1] 56:10 uses [1] 45:22 using [6] 4:9 20:1 21:19 32:17 34:8 62:24 <hr/> V vacated [1] 53:3 valid [2] 19:7,9 Valley [1] 19:25 value [2] 56:6,10 versus [5] 3:5 12:14 13:2 43:15 55:10 view [4] 12:20 32:8 38:24 60:11 viewed [2] 5:22 11:4 views [4] 11:16 14:22,23 59:16 VII [2] 21:23 43:5 <hr/> W waivable [1] 24:22 waived [2] 70:6,8 waiver [17] 4:23 5:2,7,13,18 11:15,16 28:23 38:7 39:7 40:13 41:13 44:25 50:19 51:19 68:4,7 waivers [3] 5:22,24 46:6
--	--	--	--	---

walk ^[2] 31:3 36:21
wanted ^[1] 53:23
wants ^[5] 3:12 22:9 26:3
 44:6 70:19
Washington ^[2] 1:10,22
wasted ^[1] 64:2
way ^[19] 6:7,9 15:23,25,25
 22:18 23:21 25:20 27:10
 36:22,25 44:8 47:22 48:9
 51:11 52:3 58:12 63:17 66:
 17
ways ^[4] 13:16,18 33:7 52:
 8
weak ^[1] 56:18
weakest ^[1] 14:20
Wednesday ^[1] 1:11
weigh ^[1] 10:1
weight ^[1] 68:25
welcome ^[2] 4:19 30:17
whatever ^[2] 17:15 45:8
whereas ^[1] 53:4
Whereupon ^[1] 71:1
whether ^[48] 4:14 5:10,25
 6:5,16,23 7:1,11,12 8:14 9:
 17 10:20 13:6 15:1,4,7,11
 16:3 17:9,19,21 21:14 22:
 16 27:21 31:23 32:12 33:9
 34:24 36:9,10 37:18 39:5,
 25 42:22 43:4 48:21 49:10
 50:12 51:21 53:17 54:14
 57:23 58:16 65:9 66:11 70:
 5,7,8
White's ^[1] 64:24
whoever ^[1] 9:5
whole ^[2] 14:14 54:10
WILKINS ^[5] 1:3 3:4 10:6,6,
 11
will ^[7] 10:24 16:8 58:3,25,
 25 67:3,3
win ^[1] 9:7
wipe ^[1] 27:11
Wisconsin ^[1] 19:24
without ^[5] 30:19 34:2 37:
 24 52:12 55:4
witnesses ^[1] 10:1
wondering ^[1] 22:22
Wong ^[9] 5:1 16:5 31:5 50:
 11 67:4,5,24 68:10,12
word ^[14] 3:23,25 13:1 14:
 12 18:18 33:21 34:2,8,9
 37:25 43:19 44:18,19 45:
 23
worded ^[1] 33:7
words ^[3] 21:10,17 51:24
work ^[3] 10:19 44:7,13
world ^[6] 32:16 33:4 51:3
 60:18 66:15,20
write ^[1] 52:3
written ^[1] 60:19

Y

years ^[4] 7:13,13 18:11 52:
 25
yesterday ^[1] 69:5