

1 APPEARANCES:
2 BRIAN H. FLETCHER, Principal Deputy Solicitor General,
3 Department of Justice, Washington, D.C.; on behalf
4 of the Applicants.
5 JESUS A. OSETE, Deputy Attorney General, Jefferson
6 City, Missouri; on behalf of the Respondents in
7 No. 21A240.
8 ELIZABETH MURRILL, Solicitor General, Baton Rouge,
9 Louisiana; on behalf of the Respondents in
10 No. 21A241.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	BRIAN H. FLETCHER, ESQ.	
4	On behalf of the Applicants	4
5	ORAL ARGUMENT OF:	
6	JESUS A. OSETE, ESQ.	
7	On behalf of the Respondents in No. 21A240	45
8	ORAL ARGUMENT OF:	
9	ELIZABETH MURRILL, ESQ.	
10	On behalf of the Respondents in No. 21A241	73
11	REBUTTAL ARGUMENT OF:	
12	BRIAN H. FLETCHER, ESQ.	
13	On behalf of the Applicants	89
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(12:12 p.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in 21A240, Biden, President of the United States, versus Missouri, and the consolidated case.

Mr. Fletcher.

ORAL ARGUMENT OF BRIAN H. FLETCHER

ON BEHALF OF THE APPLICANTS

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

Hospitals, nursing homes, and other Medicare and Medicaid providers serve patients who are especially vulnerable to COVID-19 in settings that are especially conducive to the spread of the virus.

The Secretary required those providers to make sure that their staff are vaccinated, subject to medical and religious exemptions, because he found that vaccination is the best way to prevent workers from infecting their patients with a potentially deadly disease. He also found that any delay in implementing that requirement would cause preventable deaths and severe illnesses.

1 The preliminary injunctions in these
2 cases are delaying that urgently needed
3 protection for Medicaid and Medicare patients
4 in half the country. This Court should stay
5 those injunctions for two reasons.

6 First, requiring medical staff
7 vaccination during a pandemic falls squarely
8 within the Secretary's statutory authority to
9 protect the health and safety of Medicare and
10 Medicaid patients. Vaccination requirements
11 are a traditional and common way to curb the
12 spread of infectious disease. Many healthcare
13 workers are already required to be vaccinated
14 against diseases like hepatitis, measles, and
15 the flu. And the medical community
16 overwhelmingly supports COVID-19 vaccination
17 requirements, which have been adopted by
18 providers around the country. Those
19 requirements are, in short, the paradigmatic
20 example of a health and safety measure.

21 Second, the Secretary's decision was
22 thoroughly explained and supported by the
23 record. The states do not seriously deny that
24 requiring vaccination will save lives.
25 Instead, they predict that it will cause

1 staffing shortages, especially in some rural
2 areas.

3 But the Secretary carefully considered
4 that concern. He explained that experience
5 from around the country shows that most workers
6 actually will choose to be vaccinated rather
7 than to leave their jobs in response to
8 vaccination requirements. And he concluded
9 that the risk of some temporary staffing
10 shortages is outweighed by the urgent need to
11 protect all Medicare and Medicaid patients
12 during a deadly pandemic.

13 Congress assigned those quintessential
14 predictive and policy judgments to the
15 Secretary, and the states have identified no
16 basis to disturb his conclusions.

17 I'd welcome the Court's questions.

18 JUSTICE THOMAS: Counsel, are you
19 relying on 1302(a)? For obvious --

20 MR. FLETCHER: The -- the Secretary
21 invoked -- that's the Secretary's general
22 rulemaking authority under the Social Security
23 Act, and he invoked that general rulemaking
24 authority as he typically does when he makes
25 rules under the Act.

1 But we're not relying primarily or --
2 or -- on that. We're instead relying on
3 specific authorities as to each category of
4 covered providers that allow the Secretary to
5 set standards that set the requirements for
6 their participation in Medicare and Medicaid.

7 JUSTICE THOMAS: I don't understand
8 what you just said.

9 MR. FLETCHER: I'm sorry. The answer
10 is yes, but not only on 1302. We also have
11 specific statutes that speak to each of the
12 covered providers here.

13 JUSTICE THOMAS: So, if I look at the
14 language in 1302, which says that you -- that
15 the Secretary shall make and publish such rules
16 and regulations as may be necessary to the
17 efficient administration of the functions with
18 which each is charged under this chapter, you
19 say there is more than that authorizing the
20 Secretary?

21 MR. FLETCHER: Correct. Yes.

22 JUSTICE THOMAS: What is that more?

23 MR. FLETCHER: So the more is set
24 forth -- it's different as to each category of
25 providers. So take hospitals. There, the

1 additional authority is in section 1395x(e)(9),
2 which authorizes the Secretary to set such
3 requirements as he finds necessary in the
4 interest of the health and safety of patients
5 in Medicare and Medicaid.

6 The Secretary cited other similar
7 requirements that authorize him to set
8 conditions of participation for each of the
9 categories of providers, for nursing homes, for
10 ambulatory surgical centers. All of those
11 categories of providers are subject to similar
12 requirements that say the Secretary gets to
13 determine the requirements for their
14 participation in Medicare and Medicaid. The
15 Secretary has long relied on those specific
16 statutory authorities to set forth detailed
17 conditions of participation that are in the
18 Code of Federal Regulations.

19 And what he did here was say, I'm
20 going to add an additional condition of
21 participation pursuant to those specific
22 authorities for each category of provider
23 requiring vaccination against COVID-19.

24 JUSTICE THOMAS: Has that been used in
25 the past -- the argument or the authority that

1 you just set out, has that been used to require
2 vaccinations in the past?

3 MR. FLETCHER: It has not, no. But
4 the Secretary explained why not. He explained
5 that this is a unique pandemic where we have
6 unique access to effective vaccines. So he
7 explained that, in other settings, healthcare
8 workers are typically vaccinated against
9 communicable diseases because they got them
10 during childhood when all of us did or because
11 state authorities have required vaccinations.

12 But this is a uniquely deadly pandemic
13 that because it is so new, those requirements
14 haven't caught up and ensured the level of
15 staff vaccination that you see in the context
16 of other diseases. And that's why he found it
17 necessary to step in with this requirement.

18 JUSTICE THOMAS: One last -- just a
19 question. Don't you think it's a bit curious
20 that you're placing significant reliance on a
21 provision that speaks about necessary to the
22 efficient administration to administer a
23 vaccine that has -- could have significant
24 health consequences?

25 MR. FLETCHER: Justice Thomas, I

1 don't. So, first of all, I just want to be
2 clear, again, I'm not claiming that that
3 general authority alone would authorize the
4 vaccination requirement. We're resting on the
5 conditions specific to each category of
6 provider, the vast majority of which, the ones
7 covering 97 percent of the workers affected by
8 this rule, specifically reference conditions
9 aimed at health and safety.

10 JUSTICE THOMAS: Thank you.

11 MR. FLETCHER: I think, when you look
12 at it in that context, it's clear that this is
13 a paradigmatic health and safety requirement.

14 CHIEF JUSTICE ROBERTS: Counsel, in
15 which case is the relationship between the
16 agency closer to the COVID-19 danger, in -- in
17 this CMS case that you're arguing before us now
18 or in the OSHA case that your boss just
19 finished arguing?

20 MR. FLETCHER: I think they're both --
21 they're different cases. I think it's hard to
22 say which one is closer. The OSHA case, the
23 OSH Act gives the Secretary of Labor
24 responsibility for workplace safety, and you
25 just heard why the COVID-19 pandemic is a grave

1 threat in the workplace.

2 CMS has authority to protect the
3 health and safety of patients in Medicare and
4 Medicaid and explained at length why the
5 COVID-19 pandemic is an acute danger to
6 patients in that setting. So I -- I -- I think
7 they're both very close direct relationships.

8 CHIEF JUSTICE ROBERTS: Well, maybe
9 I'll expand it. Which is a more acute danger,
10 OSHA, CMS, or the federal contractor vaccine
11 mandate?

12 MR. FLETCHER: Well, I think all of
13 them. I think this gets to the question you
14 asked my boss earlier, which is, you know, the
15 government is doing a lot of things in response
16 to the pandemic, and I don't think that's a
17 surprise. This is an unprecedented pandemic
18 that touches virtually every aspect of American
19 life, and so it does affect the authorities of
20 lots of different federal agencies.

21 CHIEF JUSTICE ROBERTS: Do you think
22 the -- the -- that the government has picked
23 the three most pressing areas to address and
24 that they're doing it in order, or why -- why
25 OSHA, why CMS, why federal contractors? Why

1 not any host of other areas --

2 MR. FLETCHER: Well, because --

3 CHIEF JUSTICE ROBERTS: -- that are
4 also -- you know, where COVID-19 is also a
5 serious problem?

6 MR. FLETCHER: Well, because the
7 federal government is, as some of the questions
8 earlier have suggested, a government with
9 limited powers. The federal agencies have the
10 authorities that Congress has given them.

11 Congress has made OSHA responsible for
12 workplace safety. Congress has made CMS
13 responsible for Medicaid and Medicare patient
14 safety, and those agencies have determined and
15 explained their conclusions why those
16 authorities are called upon here by the sort of
17 unique threat that the COVID-19 pandemic poses
18 in both contexts.

19 CHIEF JUSTICE ROBERTS: I thought you
20 might have said, and it may have been
21 uncomfortable, but I thought you might have
22 said we're dealing here in this case with
23 healthcare, with Medicare and Medicaid.

24 And what could be closer to addressing
25 the COVID-19 problem to health than healthcare?

1 I mean, people already get sick when they go to
2 the hospital. But, if they -- they go and face
3 COVID-19 concerns, well, that's -- that's much
4 worse. On the other hand, OSHA, it's work --
5 it's workplace, yes, COVID is a problem in the
6 workplace, and in some situations, it may be a
7 more serious problem.

8 But it seems to me that if any of the
9 three that I've been talking about anyway
10 present a close connection, it would surely
11 be between a -- be between a health threat like
12 COVID-19 and the government's healthcare.

13 MR. FLETCHER: Mr. Chief Justice, I
14 certainly don't want to disagree with that at
15 all. I think there is an acute threat that
16 COVID-19 poses in healthcare settings. We've
17 seen that throughout the pandemic, especially
18 in nursing homes and other congregate care
19 settings, which are within the scope of this
20 rule.

21 I absolutely agree that Americans
22 shouldn't be forced to choose between getting
23 medical care and exposing themselves
24 unnecessarily to a virus. And as we explain,
25 healthcare workers have long been expected to

1 take extra precautions, including vaccinations,
2 in order to prevent them from infecting their
3 patients.

4 So I -- I don't disagree with any of
5 that, but in making all of those points, I
6 don't want to undersell also everything you
7 heard about in the first case about the grave
8 danger that the pandemic poses for workers as
9 well in a way that implicates OSHA's authority
10 too.

11 JUSTICE SOTOMAYOR: Counsel, there is
12 another significant difference that you haven't
13 talked about. This is a Spending Clause case
14 and not a general powers case.

15 And I always thought that when you're
16 talking about Spending Clause that the
17 government has more power to define where it
18 wants to spend its money, correct?

19 MR. FLETCHER: Absolutely.

20 JUSTICE SOTOMAYOR: And to that
21 extent, one of the major arguments raised by
22 the other side here that I want you to address
23 is the -- what they describe as the enormous
24 cost that this will affect on hospitals and the
25 fact that it's affecting so many healthcare

1 providers, et cetera.

2 Could you please tell me whether this
3 is unprecedented in terms of what CMS generally
4 does?

5 MR. FLETCHER: I can. And, first, if
6 I could, I'd like to put in context the cost.
7 I think the Secretary's cost estimate was on
8 the order of \$1.3 billion, much of which will
9 be borne by the federal government, which
10 covers the cost of vaccinations.

11 He put that in context by emphasizing
12 that healthcare spending in this country is \$4
13 trillion and that the costs in this case amount
14 to about \$125 per employee. So I don't think
15 the costs of this rule when viewed in context
16 are particularly great.

17 And I think the -- it is not at all
18 unprecedented for the Secretary to exercise the
19 same authorities that I was discussing with
20 Justice Thomas here: the authorities to set
21 conditions of participation for hospitals and
22 other providers in Medicare and Medicaid, to
23 impose very detailed, very prescriptive
24 requirements that would have very high
25 compliance costs.

1 This is not a place where it's
2 unfamiliar to have the Secretary involved in
3 the details of the management of healthcare
4 organizations.

5 JUSTICE ALITO: Did the states have
6 clear notice that by accepting Medicaid funds
7 they would be subject to vaccination
8 requirements for staff at their state-run
9 facilities?

10 MR. FLETCHER: So the facilities --
11 and this applies to all facilities in Medicaid
12 and Medicare, not to the states as the
13 administrators of -- of their own Medicaid
14 programs, but I acknowledge states do have
15 state-run facilities.

16 All of them are on notice that they're
17 subject to the health and safety requirements
18 that the Secretary may adopt from time to time.
19 Obviously, they didn't have specific notice of
20 the vaccination requirement because it didn't
21 exist until the pandemic came about, but the
22 way that the program operates is that all
23 providers are on notice that they have to
24 comply with the Secretary's regulations which
25 could change.

1 JUSTICE ALITO: So, if they read the
2 statutes that you are now relying on primarily,
3 that would provide them clear notice that they
4 might be subject to something like this
5 vaccination requirement?

6 MR. FLETCHER: It would sub -- put
7 them on clear notice that they are subject to
8 such requirements as the Secretary finds
9 necessary in the interest of patient health and
10 safety, which have long included infection
11 control. In the past, that's been general.
12 It's been requiring infection control plans
13 that meet national guidelines, fire
14 preparedness, emergency safety, things of that
15 nature.

16 So they've long been on notice that
17 they are subject to requirements by the
18 Secretary in the interest of patient health and
19 safety, and I think this is a sort of heartland
20 case of a measure to protect patient health and
21 safety in the midst of a pandemic.

22 JUSTICE ALITO: I -- I don't have
23 before me the particular statutory provision
24 that you spoke of earlier, but is it the case
25 that some -- some of many, if not all, of these

1 additional statutory provisions on which you
2 are now placing your principal reliance are
3 definitional provisions rather than provisions
4 that expressly authorize the Secretary to
5 promulgate regulations?

6 Is that correct or incorrect?

7 MR. FLETCHER: They are both. So they
8 are definitions. The provision I quoted
9 earlier, 1395x(e), is the definition of a
10 hospital --

11 JUSTICE ALITO: Right.

12 MR. FLETCHER: -- for purposes of the
13 statute.

14 JUSTICE ALITO: Right.

15 MR. FLETCHER: But, in that
16 definition, it says a hospital, and what that
17 -- it means to be a hospital is to eligible for
18 Medicare reimbursement.

19 What it means to be a hospital is to
20 meet the following specified requirements,
21 including such other requirements as the
22 Secretary finds necessary. So --

23 JUSTICE ALITO: Right. But it
24 isn't -- it doesn't say the Secretary is
25 authorized to promulgate any regulations that

1 protect the health and welfare of people in a
2 hospital or in any of these other facilities.

3 It says that the definition of a
4 hospital and the definitions of these other
5 facilities, by definition, they -- they are
6 facilities that are required to comply with
7 regulations.

8 MR. FLETCHER: As the Secretary finds
9 necessary in the interest of patient health and
10 safety, yes.

11 JUSTICE ALITO: Is there any limit to
12 that power? What could the Secretary -- what,
13 if anything, could the Secretary not do if the
14 Secretary finds that something is necessary to
15 protect the health and safety of people in
16 those facilities?

17 MR. FLETCHER: Well, I think the
18 Secretary -- the major limit is the one in the
19 text of the statute itself. The Secretary has
20 to find that it's a requirement that's in the
21 interest of patient health and safety, as the
22 Secretary did here.

23 I think the other constraints on that
24 authority are the types of health and safety
25 measures that you see in healthcare providers.

1 So the way you know that this provision is
2 within the Secretary's authority is that you
3 see providers adopting it on their own. You
4 see medical societies, like the American
5 Hospital Association, the AMA, the American
6 Nurses Association, recommending this policy.
7 You see some states adopting this policy.

8 I think all of those things are
9 powerful confirmations that this is a routine,
10 common, effective measure for protecting
11 patient health and safety.

12 JUSTICE ALITO: One of the arguments
13 on the other side is that you were required by
14 statute to consult with the states before you
15 did this. What is your response to that?

16 MR. FLETCHER: There is a provision of
17 the statute that says that when the Secretary
18 sets conditions of participation for some of
19 the providers at issue here, in carrying out
20 that function, he shall consult with the
21 states.

22 The statute doesn't say that that
23 consultation has to happen before rulemaking.
24 And the way that the Secretary has long
25 understood that to function is to require

1 consultation in conjunction with the
2 notice-and-comment process. That's the big --

3 JUSTICE ALITO: I mean, isn't that --
4 isn't that an odd understanding of -- of the
5 consultation requirement? We're -- we're going
6 to tell you to do something, and then, after
7 we've told you to do it, we're going to consult
8 with you about what we've already said you have
9 to do?

10 MR. FLETCHER: I don't think so,
11 Justice Alito, in the context of the provisions
12 of the statute that also contemplate, as the
13 APA does, that in some circumstances the
14 Secretary will have good cause to act without
15 notice and comment.

16 So, in the ordinary case, there's
17 going to be notice and public comment, which
18 has the benefits that Justice Barrett referred
19 to earlier.

20 JUSTICE ALITO: Right.

21 MR. FLETCHER: When that happens, you
22 should also be sure you consult with the states
23 and with accrediting boards. But, when there's
24 good cause to skip that, the agency has long
25 interpreted that to mean that it can defer

1 consultation with the states to the parallel
2 public comment process.

3 JUSTICE ALITO: But is there -- is
4 there a good cause exception in the provision
5 that requires consultation?

6 MR. FLETCHER: There isn't, but
7 there's no temporal requirement at all. So
8 it's actually the other side that's asking you
9 to read into that a requirement that it happen
10 before rulemaking and to make that requirement
11 apply even when the good cause exception is
12 satisfied. And we don't think there's any
13 basis to do that, certainly not in the
14 Secretary's past practice.

15 This has long been the way that the
16 Secretary has interpreted this provision in
17 conjunction with the good cause exception --

18 JUSTICE BARRETT: Mister --

19 MR. FLETCHER: -- to
20 notice-and-comment.

21 JUSTICE BARRETT: -- Mr. Fletcher, can
22 I follow up on the questions that Justice
23 Thomas and Justice Alito have been asking you
24 about the facility-specific statutes?

25 MR. FLETCHER: Yes.

1 JUSTICE BARRETT: I think it was wise
2 to shift your focus to those because of their
3 references to health and safety, but I find it
4 difficult because the language of each of those
5 statutes is different, and not all of them
6 reference health and safety.

7 MR. FLETCHER: That's right.

8 JUSTICE BARRETT: So, for example, I
9 think the one on long-term care facilities is
10 your best because that's the one that also
11 refers to or requires skilled nursing
12 facilities to establish and maintain an
13 infection control program.

14 That one, I think, gives you a
15 stronger case than the ones that don't mention
16 health and safety at all, or, for example, for
17 ambulatory surgical centers, you know, the
18 provision on which you rely describes the
19 benefits provided to an individual, and then it
20 lists the kind of services that would be
21 covered, right, and then, parenthetically, it
22 says "performed at an ambulatory surgical
23 center (that meets health and safety and other
24 standards specified by the Secretary)," it
25 seems to me a heavier lift to say that that

1 kind of aside in a parenthetical is a grant of
2 authority to CMS to impose this kind of
3 vaccination requirement on those who work at
4 the ambulatory surgical centers.

5 So I guess my question is this: One,
6 you know, the government here seeking the stay
7 of the injunction has the burden of showing
8 likelihood of success on the merits, and -- and
9 I understand because of space limits and the
10 number of statutes on which you're now relying,
11 it would be hard to make the specific case for
12 each of these provisions, but what if I think
13 some of the provisions might support you and
14 others don't?

15 This was an omnibus rule, and even
16 though the Secretary, in a chart, identified
17 all these, you know, specific provisions, we
18 don't really have before us the structural and
19 textual arguments directed at each of these
20 provisions. So what if I think some do and
21 some don't? In an omnibus rule, what am I
22 supposed to do?

23 MR. FLETCHER: Well, so we agree
24 entirely that the focus ought to be on the
25 statutory text, and one of our complaints with

1 the district court decisions in these cases
2 it's -- is that they blew past all of those
3 distinctions and didn't focus on the text at
4 all. So we absolutely agree the text of these
5 provisions should be the Court's focus.

6 In terms of how to think about them, I
7 understand it's unwieldy. There are 15
8 different provisions. I would group them into
9 two categories. There are 11 or so that we
10 cite at pages 5 to 6 of our reply brief that
11 include that health -- that specific health and
12 safety language, in different formulations, but
13 all of them specifically referring to
14 requirements in the interest of patient health
15 and safety.

16 And as we've explained, we think that
17 this is the paradigmatic health and safety
18 regulation, and that's reinforced by the
19 consensus of the medical community, by other
20 regulators, by practices of providers.

21 Now there are a few statutes that we
22 cite at page 9 of our reply brief that don't
23 include that specific language. Those statutes
24 are the ones applicable to providers that
25 employ about 3 percent of all of the workers

1 covered by the rule.

2 Now our view is that those -- all of
3 those statutes still give the Secretary the
4 authority to set standards or requirements for
5 participating providers. And if you look at
6 those provisions, what you find is that
7 Congress was a little bit less detailed. In
8 the hospital provision, the 1395x(e)(9), the
9 preceding eight sections all detail relatively
10 nuanced, very specific requirements for
11 hospitals. And then the (e)(9) adds "and such
12 other requirements as may be necessary to
13 patient health and safety."

14 JUSTICE BARRETT: But what if I
15 disagree? So I understand that your position
16 is that all of these granted the Secretary
17 authority, but what if I disagree? What if I
18 say, for example -- you suggested in a footnote
19 in your reply brief that because such a small
20 percentage of employees are covered by the
21 statutes that don't reference health and
22 safety, that we should just allow the
23 injunction to remain in place only as to those.

24 And let's say that I disagree with you
25 that every single one of the statutes that

1 references health and safety could be
2 interpreted as a grant of rulemaking authority
3 for the reason I suggested with ambulatory
4 surgical centers.

5 The rule is an omnibus rule. You
6 know, it wasn't adopted on a
7 facility-by-facility basis. So, if I assume
8 the premise that I disagree with you that every
9 single statute grants this authority, why
10 shouldn't then we just leave the Fifth
11 Circuit's injunction in place?

12 MR. FLETCHER: Well, because I think,
13 to the extent you're looking at likelihood of
14 success -- that's the factor that this would be
15 relevant to -- I think that does depend, as you
16 say, on the authorities as to each category of
17 providers, and the Secretary included -- I -- I
18 -- in some sense, it's an omnibus regulation,
19 he did it all at once, but he included specific
20 severability language that we cite in that
21 footnote -- it's at page 61608 -- and said if
22 any of these provisions are no good, then the
23 rest ought to stand.

24 And so I think, if -- if you disagree
25 with us on either of the provisions that lack

1 health and safety language or if you disagree
2 with us on the ones that have it, although I
3 want to talk about both of those things to
4 hopefully persuade you otherwise, I think the
5 result would be we don't have a likelihood of
6 success at obtaining -- prevailing on those
7 provisions.

8 But that wouldn't justify allowing the
9 injunctions to remain in place as to all of the
10 other provisions, you know, especially those
11 that cover the vast majority of workers. So I
12 -- I think that's the -- the approach we'd
13 suggest if that's where you find yourself.

14 JUSTICE SOTOMAYOR: Mr. Fletcher, I --
15 I -- I'm not -- I do understand that we could
16 go provision by provision, but I thought in
17 reading your brief that the general authority
18 to pass regulations to -- with respect to the
19 Secretary's functions, that all that you were
20 saying is that generalized authority is well
21 documented by the fact that in the vast
22 majority of these at least 11, if not 12, of
23 these specific rules, they referenced health
24 and safety directly.

25 Isn't that your point?

1 MR. FLETCHER: That's our point. And,
2 in addition, that even as to the ones that
3 don't reference health and safety, so the
4 end-stage renal disease providers or the
5 psychiatric residential treatment facilities,
6 those categories, Justice Barrett and -- and
7 Justice Sotomayor, they still give the
8 Secretary even broader authority to set
9 conditions for participation.

10 And our view is that when the
11 Secretary is authorized to set conditions for
12 participation in Medicare and Medicaid, that
13 has to include the authority to set patient
14 health and safety requirements. And, in fact,
15 that's the way the Secretary has long
16 interpreted them.

17 If you look at the regulations that
18 are being amended by the provisions addressing
19 those categories of providers, there are
20 existing bodies of patient health and safety
21 measures, in many cases addressing infection
22 control already, in other cases addressing
23 other matters directed at patient health and
24 safety.

25 So the Secretary has long interpreted

1 those more general grants of authority to
2 include the authority to impose patient health
3 and safety conditions, and we think that's the
4 right way to read them in the context of the
5 statute.

6 JUSTICE SOTOMAYOR: I dare say that I
7 looked at some of the regulations at issue
8 here, not the ones you passed with respect to
9 COVID but the other regulations. Is it fair to
10 say that the vast majority of the regulations
11 across all facilities relate to health and
12 safety?

13 MR. FLETCHER: I think that's fair,
14 yes. That's certainly consistent with my
15 reading of the regulations applicable to the
16 facility providers at issue here.

17 JUSTICE SOTOMAYOR: It does seem that
18 since it's a program to serve ill people,
19 people with conditions like renal failure,
20 psychiatric conditions, other conditions, that
21 that would be the primary focus of contracting
22 with places that are safe for those people,
23 correct?

24 MR. FLETCHER: Absolutely. And that's
25 the way the Secretary has always understood

1 those more general authorities.

2 JUSTICE SOTOMAYOR: All right, thank
3 you.

4 MR. FLETCHER: If I -- I could say
5 just a word about the other argument that the
6 other side has pressed heavily in this case,
7 and that's the concern about staffing
8 shortages, that is a concern that the Secretary
9 acknowledged and considered in the regulation,
10 and he explained nonetheless that he was
11 adopting a vaccination requirement for several
12 reasons.

13 First, he explained that experience
14 from around the country has shown that even
15 workers who express hesitancy or even strong
16 objections to becoming vaccinated don't
17 actually end up leaving their jobs in those
18 large numbers when vaccination requirements are
19 imposed, when their employers can help
20 facilitate vaccination, can counsel them, that
21 across the economy, including in the healthcare
22 sector, including in rural areas, including
23 healthcare systems in North Carolina and
24 Indiana, the Secretary found that vaccination
25 requirements achieved very high levels of

1 compliance.

2 He sought comment on the issue. He
3 welcomed input from stakeholders about the
4 particular challenges faced by rural hospitals,
5 but he also explained that any temporary
6 staffing shortages are likely to be relatively
7 minor in the context of this industry, which
8 already faces enormous staff turnover every
9 year. He said the rate of staff turnover in
10 the healthcare industry generally is about
11 25 percent in normal conditions and that in
12 those circumstances, any marginal additional
13 turnover attributable to the vaccination
14 requirement does not outweigh the need to
15 impose this health and safety measure that,
16 again, is supported by the medical community
17 and has already been adopted by providers
18 around the country.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Justice Thomas?

22 Justice Breyer, anything further?

23 Justice Alito?

24 Justice Kagan?

25 JUSTICE KAGAN: Mr. Fletcher, the

1 states talk quite a bit about the time that it
2 took the administration to get out the good
3 cause rule and suggest that, in that amount of
4 time, it could have done a full
5 notice-and-comment proceeding.

6 I guess I would like you to comment on
7 that. Is that true?

8 MR. FLETCHER: It's not for a number
9 of reasons. I think the clearest is the
10 provision governing notice-and-comment
11 regulations that applies when good cause isn't
12 found for the Secretary. 1395hh says that the
13 Secretary has to allow a 60-day comment period.
14 So that right there is more than two months.

15 You know, in addition to that, the
16 Secretary has to write the rule, which involves
17 not just developing the regulation and fitting
18 it into the existing conditions of
19 participation for 15 different categories of
20 providers but also writing the sort of detailed
21 cost benefit analysis and Paperwork Reduction
22 Act analysis that are required by statutes and
23 executive orders and that occupy dozens of
24 pages at the back end of the rule.

25 So I think the suggestion that in two

1 months the agency could have completed
2 notice-and-comment rulemaking is inconsistent
3 with both the applicable legal requirements and
4 just experience with regulatory process more
5 generally.

6 JUSTICE KAGAN: Yeah. I guess, sort
7 of for an ordinary person, an ordinary person
8 might say, well, if it's really important, why
9 don't you just work faster?

10 MR. FLETCHER: I -- I understand that.
11 I mean, that doesn't get you around the 60-day
12 time limit. And -- and what I can tell you is
13 that the Secretary did work extremely fast,
14 produced a 73-page rule in two months, and
15 explained why the rule was necessary, satisfied
16 all of the legal requirements.

17 And I think -- you know, I don't want
18 to fault my friends on the other side, but I
19 think, if the Secretary had rushed something
20 out with a less thorough explanation, I think
21 we'd be hearing legal challenges that he hadn't
22 adequately explained things or considered
23 things or calculated out the cost-benefits.

24 I think agencies that are trying to
25 make policies that will stick have to make sure

1 that they engage in the kind of robust analysis
2 and document that analysis in the way that the
3 Secretary did here.

4 CHIEF JUSTICE ROBERTS: Justice
5 Sotomayor? Anything further?

6 Back to you, Justice Gorsuch.

7 JUSTICE GORSUCH: This statute, unlike
8 the -- the OSHA statute, actually contains an
9 express limitation on the Secretary's authority
10 that we haven't yet discussed and that I know
11 you're familiar with. Among other things, it
12 says, you know, the Secretary shall not control
13 the tenure of -- of employees at covered
14 healthcare facilities or their compensation or
15 their selection.

16 And -- and this regulation, arguably,
17 the other side will say -- I'm sure we're going
18 to hear it, so I didn't want to hear your --
19 ought have a chance -- is going to say this
20 effectively controls the employment of
21 individuals at these healthcare facilities in a
22 way that Congress specifically prohibited.

23 As I understand your response, it is
24 we're just providing money or not providing
25 money, and by withholding money, we're not

1 controlling who you hire.

2 And I might understand that in some
3 circumstances, but in a statute where
4 everything is about spending, it's a Spending
5 Clause statute, I would have thought that
6 Congress would have understood and we should
7 interpret this language in that light, that you
8 cannot use the money as a weapon to control
9 these things.

10 And, in fact, of course, as you know,
11 the Court has some anti-commandeering law.
12 That's doctrinal speak for you can't always use
13 money without -- and claim you're not
14 controlling what's going on.

15 And I wonder whether we should take
16 particular cognizance of that here given that
17 these statutes sometimes constitute, we're
18 told, 10 percent of all the funding state
19 governments receive. This regulation affects,
20 we're told, 10 million healthcare workers and
21 will cost over a billion dollars for employers
22 to comply with.

23 So what's your reaction to that? Why
24 isn't this a regulation that effectively
25 controls the employment and tenure of -- of --

1 of healthcare workers at hospitals, an issue
2 Congress said the agency didn't have the
3 authority, that should be left to states to
4 regulate?

5 MR. FLETCHER: So, Justice Gorsuch,
6 you're talking about section 1395, and that
7 says that nothing in the Medicaid Act shall
8 be -- or Medicare Act shall be interpreted to
9 authorize any federal official to control, as
10 you say, tenure, staffing, the practice of
11 medicine, or the administration of entities.

12 We read, as the Secretary has long
13 read, that to mean that he can't dictate
14 particular decisions, hire this person, don't
15 hire that person, you know, treat this patient
16 this way, not that way, that that's what
17 control and supervision means and they're --

18 JUSTICE GORSUCH: Can it -- can it --
19 can it mean, though -- could it mean, should it
20 mean, have we in other cases interpreted
21 similar language to mean you can't use money in
22 a way that commandeers a state or private
23 entity?

24 MR. FLETCHER: So I -- I think the
25 most direct answer is that that's not -- it

1 can't mean that in this context because you
2 have to read --

3 JUSTICE GORSUCH: Could -- could it
4 mean it and do you agree that it means that in
5 other contexts?

6 MR. FLETCHER: I -- I -- control and
7 supervision can mean different things in
8 different contexts, but I just -- I do want to
9 get out that they have to mean something that's
10 within --

11 JUSTICE GORSUCH: So -- fine. I'll
12 let you do it, I promise. But you'd agree that
13 in some contexts, in some circumstances, that's
14 a possible meaning?

15 MR. FLETCHER: I think it may be a
16 possible meaning. I don't think it's the most
17 natural reading.

18 JUSTICE GORSUCH: All right.

19 MR. FLETCHER: And -- and --

20 JUSTICE GORSUCH: Now you get it -- go
21 ahead. Got it.

22 MR. FLETCHER: Thank you. I
23 appreciate it. So the reason why it can't mean
24 that here is that succeeding provisions of the
25 Medicare statute authorize the Secretary to do

1 or actually do directly by Congress exactly
2 that sort of standard-setting that the
3 Secretary is engaged in here.

4 So just take the hospital statute that
5 we've talked about a bunch, 1396x(e), there's
6 -- provision -- or we talked about (e)(9),
7 which is health and safety. The preceding
8 provisions say things like you have to be
9 staffed by doctors and the doctors have to have
10 particular licenses. You have to have a
11 certified nurse on duty 24 hours a day. You
12 have to have a budget plan that meets the
13 requirements of another subsection that I gave.

14 JUSTICE GORSUCH: Okay. So that
15 doesn't control. But somewhere along the line
16 you move from general regulations that outline
17 things you -- you, the hospital, have to do to
18 somewhere more directly where you are
19 controlling or supervising. We agree?

20 MR. FLETCHER: Yes.

21 JUSTICE GORSUCH: There's a sliding
22 scale in there?

23 MR. FLETCHER: I -- I'm not sure about
24 sliding scale. I would say standard-setting we
25 can tell from that context.

1 JUSTICE GORSUCH: There's a range?

2 Can we agree on that?

3 MR. FLETCHER: Sure.

4 JUSTICE GORSUCH: Okay. Where is the
5 line?

6 MR. FLETCHER: I think that, as is
7 often the case with ranges, the line may be
8 hard to draw when you get out towards more
9 granular controls.

10 I think what I can be confident about
11 is that this standard is on the right side of
12 the line because it's consistent with standards
13 in the statute itself that say you have to hire
14 physicians and nurses that meet these
15 qualifications or with other provisions that
16 say you have to train -- your -- your staff
17 must be trained in this way.

18 JUSTICE GORSUCH: I understand -- I
19 understand that. What do we do about the fact
20 with -- that Congress has never before --
21 sorry, that CMS -- not Congress, we don't have
22 Congress here -- CMS has never before said
23 among its standards a vaccination requirement
24 or any other health standard with respect to
25 employees and actions they must take outside

1 the work environment?

2 So, for example, could Congress --
3 sorry, CMS, also implement regulations about
4 exercise regimes, sleep habits, medicines and
5 supplements that must be ingested by hospital
6 employees in the name of health and safety, and
7 would -- would the government argue that does
8 not control the tenure of those employees?

9 MR. FLETCHER: You know, I'm not sure
10 that there would be a problem with those
11 requirements. I don't think it would be the
12 section 1395 control. I think it would be that
13 it's very hard to characterize those as
14 requirements for the health and safety of
15 patients.

16 JUSTICE GORSUCH: But -- but, in your
17 argument -- but, in your view, that would not
18 control the tenure of employees?

19 MR. FLETCHER: I think that does
20 not -- setting standards, even if they're
21 outlandish standards that we think couldn't be
22 set for other reasons, wouldn't be controlling
23 -- in the standard.

24 JUSTICE GORSUCH: Still doesn't
25 control? Doesn't control, even though they

1 have to take these medications, they have to
2 get this much sleep, they have to do this much
3 exercise every day?

4 MR. FLETCHER: In any more -- again, I
5 want to be clear, I'm not suggesting the
6 Secretary can do any of those things. I'm just
7 suggesting that the reason he can't is not
8 1395.

9 JUSTICE GORSUCH: Is that because it
10 doesn't constitute control of an employee's
11 tenure or compensation?

12 MR. FLETCHER: Correct. Because
13 setting --

14 JUSTICE GORSUCH: Thank you.

15 MR. FLETCHER: -- standards for
16 employees does not exercise control.

17 CHIEF JUSTICE ROBERTS: Justice
18 Kavanaugh.

19 JUSTICE KAVANAUGH: You -- you
20 mentioned at the beginning that the over
21 billion dollar in costs would be borne mostly
22 by the federal government, I think you said.

23 Can you explain that?

24 MR. FLETCHER: Sure. I think in large
25 part by the federal government. So the -- the

1 Secretary, in estimating the costs, said a big
2 driver of the cost was going to be the cost of
3 the vaccinations themselves, the shots, and the
4 cost of administering the shots.

5 The Secretary explained that he was
6 including that in the cost-benefit analysis to
7 be comprehensive about the effects of the rule,
8 even though the federal government covers the
9 costs of vaccines for most employees and would
10 cover them here.

11 JUSTICE KAVANAUGH: Okay. And then,
12 on the question to follow up on Justice
13 Gorsuch's question, what is the story as you
14 understand it for why CMS has not previously
15 required flu shots for healthcare workers or
16 some of the other vaccines that, as you pointed
17 out, the states still insist upon for
18 healthcare workers? Is there a story there or
19 explanation there for why CMS has not
20 previously done that?

21 MR. FLETCHER: I think the Secretary
22 laid this out and sort of identified different
23 reasons as to different categories of vaccines.

24 So, as to some, where state
25 vaccination requirements mean that everyone is

1 basically vaccinated against those diseases
2 already, there was no need for the Secretary to
3 do that.

4 The Secretary also hasn't acted with
5 respect to flu vaccines. Some states have done
6 that. Not every state has done that. But the
7 Secretary explained that this is a pandemic
8 that is a much graver threat than the seasonal
9 flu is and also that these are uniquely
10 effective vaccines and explained that it's that
11 combination, the sort of unique pandemic
12 situation that we haven't seen before and the
13 uniquely effective vaccines, that led him to
14 choose to adopt that here.

15 JUSTICE KAVANAUGH: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Barrett?

18 JUSTICE BARRETT: One verification:
19 are you arguing with respect to the
20 facility-specific grants -- and this goes back
21 to the questions that Justice Sotomayor asked
22 you after we last talked -- are you arguing
23 that those facility-specific grants inform the
24 general grants in 1302(a) and 1395hh such that
25 we should interpret the general grants as

1 encompassing the authority to impose health and
2 safety measures, or are you arguing that even
3 if we pretend that these two general grants
4 don't exist, that the facility-specific grants
5 would nonetheless equip the Secretary with this
6 authority?

7 MR. FLETCHER: I think the latter. I
8 think I'd be making the same argument even if
9 we didn't have the general grant. I think the
10 general grant, you know, reinforces the idea
11 that when the Secretary sets standards, he has
12 the power to do that through regulations. But
13 we're relying primarily on the specific grants,
14 and I think those would be sufficient even if
15 you set aside 1302.

16 JUSTICE BARRETT: Thank you.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Mr. Osete.

20 ORAL ARGUMENT OF JESUS A. OSETE

21 ON BEHALF OF THE RESPONDENTS IN NO. 21A240

22 MR. OSETE: Mr. Chief Justice, and may
23 it please the Court:

24 In early 2020, while millions stayed
25 at home, millions of healthcare workers

1 heroically stayed at their -- at work. These
2 same workers are now forced to choose between
3 losing their jobs and complying with the
4 government's vaccine mandate.

5 The Secretary claim -- the Secretary's
6 claim of authority to impose this mandate is
7 expansive, unprecedented, and unlawful for two
8 principal reasons.

9 First, the Secretary believes a series
10 of vague catch-all provisions scattered
11 throughout the Social Security Act authorize
12 this sweeping mandate. But the relevant text,
13 structure, and context say otherwise.

14 For example, the Secretary ignores
15 eight provisions that precede the catch-all
16 prime -- provision he primarily invokes, all of
17 which are materially unlike a permanent medical
18 procedure that cannot be undone after a shift
19 is over. Exceedingly clear language is
20 required here because the mandate regulates
21 matters that have traditionally been within the
22 province of the states.

23 Second, the rule is arbitrary and
24 capricious under the APA. The Secretary
25 impermissibly extrapolated evidence for one

1 category of facilities to justify regulating
2 all 15 and failed to adequately explain his
3 sudden shift from encouraging vaccination to
4 mandating it.

5 But, more fundamentally, the Secretary
6 overlooked the critical perspective of rural
7 healthcare facilities in the states and the
8 devastating consequences the mandate will have
9 on rural Americans' access to healthcare.
10 Categorically excluding an entire class from
11 employment will mean that patients in rural
12 Nebraska will have to seek primary and
13 emergency care two to three hours away and
14 cannot undergo surgery.

15 This represents vast stretches of this
16 country where healthcare is not provided by
17 massive institutional providers with tens of
18 thousands of employees but by smaller
19 healthcare facilities run by local communities.
20 While a 1 percent loss of staff may be
21 insignificant to the former, it is fatal to the
22 latter.

23 Without the injunction, rural America
24 will face an imminent crisis. The government's
25 stay application should be denied.

1 And I welcome the Court's questions.

2 JUSTICE THOMAS: Counsel, would you
3 discuss the preemption issue just briefly?

4 MR. OSETE: Yes, Your Honor. This
5 regulation -- the Secretary says in this
6 regulation that it is intended to preempt
7 arguably any inconsistent state laws with
8 respect to vaccination requirements.

9 And, for example, in this case, the
10 most direct example I can point to, Your Honor,
11 is at 20-7-134 of the Arkansas Code that
12 prohibits as a condition of employment any sort
13 of vaccination requirement.

14 JUSTICE THOMAS: But that's somewhat
15 ironic since he -- the government relies on --
16 on those other vaccinations to argue for this
17 vaccination. But are all of the party states
18 in the same position with respect to
19 preemption?

20 MR. OSETE: Your Honor, certainly, the
21 district court in this case at the very least
22 cited that Arkansas, Wyoming, and Missouri are
23 similarly situated with that respect, and,
24 certainly, there are other states in our -- in
25 the Missouri-led coalition that also have laws

1 that are going to be preempted by this
2 regulation.

3 The key point here, Your Honor, just
4 like in *Mass v. EPA*, is so long as one of us
5 has one of these laws that would affect our
6 duly enacted legislation through an unlawful
7 mandate, we are -- it is -- it does present an
8 issue on preemption.

9 Now that's independent, obviously,
10 from other interests that the states have in
11 this case, which is the states are the
12 administrator. It's our providers with respect
13 to Medicaid, with Medicare. We're being asked
14 to facilitate this program for the federal
15 government. We have compliance costs. We have
16 surveyors who have to go out and enforce this
17 rule. All of that are -- are the states'
18 interests, Your Honor.

19 JUSTICE THOMAS: Well, the one final
20 point has to go to standing. You seem to rely
21 on *parens patriae* a bit. And would you discuss
22 that standing and why we should apply that?

23 MR. OSETE: Well, sure, Your Honor.
24 And -- and just to be clear, we -- we do have
25 various capacities here. We mention sovereign

1 interests, we mention proprietary -- a whole
2 plethora of them, and, certainly, we did invoke
3 also a quasi-sovereign interest in the health
4 and well-being of our citizens. For example,
5 this mandate will close the doors of many of
6 these rural facilities. That will effectively
7 deprive our citizens of healthcare. And we
8 also are asserting rights under federal law
9 with respect to the APA on many of these
10 claims.

11 That -- that is -- but that is not the
12 only basis that we're seeking standing in this
13 case. We have various other capacities that
14 we're suing under, just like the ones I
15 mentioned, Your Honor.

16 JUSTICE THOMAS: Is that true of all
17 of the parties?

18 MR. OSETE: I -- I -- I believe so,
19 Your Honor, yes.

20 JUSTICE THOMAS: Thank you.

21 MR. OSETE: There was a -- there was a
22 question -- sorry, Chief.

23 CHIEF JUSTICE ROBERTS: No, I was just
24 going to ask you about the -- the Spending
25 Clause context. In other words, we're not just

1 dealing with federal law in the abstract; we're
2 dealing with a provision that says Congress
3 authorized it -- well, the Secretary to ensure
4 compliance with requirements that the Secretary
5 finds necessary in the interest of the health
6 and safety of patients.

7 That's very broad, and I -- I think --
8 I -- well, you agree that you -- they have
9 broader authority because it's in a Spending
10 Clause provision? I mean, you signed the --
11 you signed the contract.

12 MR. OSETE: Well, sure. And -- and
13 even in the Spending Clause context -- I would
14 say two responses to that, Your Honor.

15 First, even in the Spending Clause
16 context, as Justice Alito mentioned earlier,
17 the states are entitled to clear notice. So
18 there is -- whatever conditions the Secretary
19 does state, they have to derive from
20 unambiguous grants of statutory authority.

21 In this case, Your Honor, we -- we
22 respectfully disagree with my friend, Mr.
23 Fletcher, because he only cites certain parts
24 of these provisions. For example, with respect
25 to the hospital in this application, he ignores

1 the "such other requirements" language that
2 precedes the Secretary's authority to regulate
3 health and safety.

4 And many of those provisions, for
5 example, (e)(1) through (8), none of those talk
6 about immunization. They talk about
7 recordkeeping. They talk about discharge
8 procedures. They talk about many --

9 JUSTICE KAGAN: Mr. Osete, really? Do
10 you think that the CMS head and that the
11 Secretary of HHS are bookkeepers with respect
12 to this statute? Do you think that they don't
13 have responsibility to protect the safety of
14 these two incredibly vulnerable patient
15 populations? Isn't that their principal
16 responsibility in these laws? Isn't that the
17 most important thing that both of them do?

18 MR. OSETE: Your Honor, certainly, the
19 Secretary does have authority to set
20 requirements in the interest of health and
21 safety. All I'm saying is you have to look at
22 the statute in context.

23 I'm not saying that HHS is somehow
24 just this recordkeeping function. I mean,
25 certainly, it is important for these facilities

1 to have adequate recordkeeping. You're dealing
2 with vital records, health records, other
3 things. The -- the context here --

4 JUSTICE KAGAN: Well, I wasn't saying
5 that they don't have to concern -- be concerned
6 about records either. I'm just saying, in
7 addition to being concerned about records, this
8 statute clearly gives them, by reference to the
9 health and safety delegations, by reference
10 even to the idea of administering efficiently
11 programs like this, their principal job is to
12 look after the health and safety of Medicare
13 and Medicaid recipients.

14 And -- and with the understanding that
15 those two groups of patients are pretty much
16 the most vulnerable patients there are, either
17 elderly patients or the -- in the -- in the
18 case of Medicaid, unfortunately, poverty has a
19 great deal to do with medical outcomes.

20 So, you know, with respect to these
21 two vulnerable populations and especially
22 vulnerable when it comes to COVID, how can it
23 not be the principal, prime responsibility of
24 the CMS head and the Secretary of HHS to look
25 out for their health and safety?

1 MR. OSETE: Because that
2 responsibility that falls in (e)(9) with
3 respect to the hospitals, which is what the
4 Secretary has put forward in this application,
5 that authority is informed -- the grant of
6 authority in that section is informed by the
7 other provisions in that statute.

8 Doubly so here, Your Honor, where you
9 have a situation where this Court has said that
10 ordinarily compulsory vaccination is not
11 something that ordinarily concerns the federal
12 government. That was in Jacobson at page 38.

13 Doubly so here, Your Honor, because,
14 when you're going to alter, significantly
15 alter, the balance between state and federal
16 powers, something that has traditionally been
17 in the province of the states, you have to do
18 so with exceedingly clear language. The Court
19 said that in Alabama Realtors recently. The
20 Court said that also in U.S. Forest in 2020.
21 That is the kind of language we're asking here.
22 It's not that the Secretary --

23 JUSTICE KAGAN: Do you think that the
24 Secretary can require the adoption of various
25 infection prevention and control measures? You

1 know, can they say to hospitals, you have to
2 sterilize your instruments, you have to wash
3 your hands in a certain way? One of the things
4 we understand about settings like this one is
5 the way that infections spread.

6 MR. OSETE: Sure.

7 JUSTICE KAGAN: And you have to do a
8 variety of things to make sure that you prevent
9 the spread of infection. Can they do that?

10 MR. OSETE: Your Honor, absolutely.

11 JUSTICE KAGAN: Because that's their
12 job, right?

13 MR. OSETE: Your Honor, certainly,
14 with respect to 1395i-3(d)(3), which goes to
15 skilled nursing facilities, there's express
16 language that the -- the Secretary can adopt
17 infection control measures to --

18 JUSTICE KAGAN: Yeah. Well --

19 MR. OSETE: -- prevent the spread of
20 diseases and --

21 JUSTICE KAGAN: -- whether there's
22 express language of that kind or not, the
23 responsibility to look after the health and
24 safety of vulnerable populations includes
25 requiring infection prevention and -- measures,

1 isn't that right?

2 MR. OSETE: Well, certainly, Your
3 Honor, if -- if -- if Congress -- Congress
4 decided to write statutes in very express terms
5 with respect to skilled nursing facilities, and
6 I will submit --

7 JUSTICE KAGAN: I think you're
8 ignoring the question. Put that aside.
9 Suppose there were -- was -- it didn't say
10 infection at all, but it says you have to look
11 after the health and safety of your patients.
12 Does that include infection prevention?

13 MR. OSETE: It -- it -- it may very
14 well include infection prevention. I guess all
15 I'm saying is that, in this case, Your Honor,
16 where there is express language that talks
17 about that, Congress knows how to do that and
18 chose not to regulate with such specificity.

19 JUSTICE KAGAN: I -- I --

20 JUSTICE BREYER: Your view is that --
21 is -- what you're saying is they don't have
22 authority under this? Is that what -- in
23 response to Justice Kagan?

24 MR. OSETE: Your Honor --

25 JUSTICE BREYER: They can't say wash

1 your hands. Can they say, if there's a
2 diphtheria -- we don't want anybody with
3 diphtheria walking into the hospital because
4 everybody will get it. You're saying they
5 can't say that, is that right?

6 MR. OSETE: Your Honor, there are
7 various -- there are various measures that --

8 JUSTICE BREYER: Are you saying that
9 or not? Take -- take the example either --

10 MR. OSETE: I'm saying they can --

11 JUSTICE BREYER: -- that Justice Kagan
12 gave of the washing hands or -- or sterilizing
13 instruments or the one I just gave you of
14 diphtheria. Can they say it or not?

15 MR. OSETE: Yes, they can regulate all
16 kinds of things --

17 JUSTICE BREYER: All right. If they
18 can say that, then why can't they say in the
19 same breath, and, by the way, we don't want you
20 walking in here in crowds that will spread
21 COVID and this is how you stop it?

22 MR. OSETE: Because --

23 JUSTICE BREYER: Why can they say the
24 one and not the other?

25 MR. OSETE: Because gloves -- taking

1 off gloves and masks -- a vaccine cannot --

2 JUSTICE BREYER: I didn't say that. I
3 said diphtheria.

4 MR. OSETE: Your Honor, the Secretary
5 certainly has authority to implement all kind
6 of infection control measures at these
7 facilities. I am not disputing that, Your
8 Honor. All we're saying --

9 JUSTICE KAGAN: Well, all the
10 Secretary is doing here is to say to providers,
11 you know what, like, basically, the -- the one
12 thing you can't do is to kill your patients.
13 So you have to get -- you have to get
14 vaccinated so that you're not transmitting the
15 disease that can kill elderly Medicare
16 patients, that can kill sick Medicaid patients.

17 I mean, that seems like a pretty basic
18 infection prevention measure. You can't be the
19 carrier of disease.

20 MR. OSETE: But, Your Honor, here,
21 you're -- we're dealing specifically with a
22 vaccine requirement that, again, has
23 historically been in the states' province. And
24 if Congress wants to give that authority to
25 CMS, the federal agency here, it has to do so

1 in exceedingly clear language.

2 JUSTICE BREYER: All right. What do I
3 do with this? If you want my real -- and
4 perhaps you can tell me I'm way off base, and I
5 -- I don't mind if you do, but, I mean, here we
6 are, ask for a stay, okay?

7 MR. OSETE: Mm-hmm.

8 JUSTICE BREYER: And in the one case,
9 either this will go ahead or it won't. In the
10 case earlier, it'll go ahead or it won't. And
11 to what extent can we take account of what I'd
12 think would be relevant with stays or not stays
13 or how we act in the interim and da, da, da,
14 da, da, okay, but there are 750,000 people got
15 this yesterday, but the hospitals are full to
16 overflowing, that -- there is a problem, worse
17 than diphtheria, that people all over the world
18 are getting this, and they are here too, and
19 they're dying, that's what we're trying to ask
20 you, or they're filling up hospital beds and
21 others are dying because they can't get in.

22 Okay? Now public interest call it.
23 Call it something else. Call it what you
24 might. But it seems to me it's hard for me to
25 believe -- look, it seems to me that every

1 minute that these things are not in effect,
2 thousands of more people are getting this
3 disease, okay?

4 And we have some discretionary power.
5 And, therefore, well, you tell me I can't take
6 that into account. To me, that's fairly
7 unbelievable, but I want to hear it.

8 MR. OSETE: Your -- Your Honor, the
9 public interest is flexible, and you can take
10 all that account. All I'm saying is the two
11 statutes, the provisions that the Secretary has
12 put forward in this case, we do not believe
13 that they have met their burden of showing a
14 likelihood of success that on the merits those
15 were lawful exercises of authority.

16 Even in situations where the Secretary
17 desires to prevent the spread of COVID, it
18 cannot act unlawfully. Doubly so here, again,
19 because this is exactly the kind of requirement
20 that historically has been in the province of
21 the states.

22 And if Congress wants to take that
23 away and give it to CMS or give it to a federal
24 agency, it has to do so in exceeding clarity.
25 Now I will point out too, in the public

1 interest, Your Honor, keeping -- doing away
2 with the injunction as we said so is going to
3 be devastating to vulnerable patients in rural
4 America, in rural Nebraska.

5 No surgeries. The only
6 anesthesiologist in a rural Nebraska hospital,
7 he is not going to be able to go to work. That
8 means no surgeries. Emergency C-sections.

9 JUSTICE BREYER: All right. I have --
10 on that one, I have a question too. I take
11 what you say as correct. All right? I don't
12 know if it is correct, but I'll assume it.

13 Well, if these states -- if we act in
14 such a way that over the next two weeks or the
15 next week these rules go ahead as planned and
16 people do get inoculated because they have to
17 or -- now, if the bad thing that you are
18 talking about then occurs, we'll know it,
19 because what they're saying at the moment on
20 the other side is there is another bad thing,
21 which is the bad thing that I mentioned at the
22 beginning, that hundreds of thousands of people
23 more get this disease.

24 And we know what happens from
25 Massachusetts and in New York in the old

1 people's homes.

2 MR. OSETE: Right.

3 JUSTICE BREYER: Okay? So they're
4 saying there are two bad things, and you're
5 saying the one and the agency the other is the
6 more predominant.

7 So suppose if faced with that
8 division, we let it go ahead. And then, if
9 you're right, everybody will know it, and we
10 can draw back. That's not perfect for you, but
11 that's at least something, and it helps protect
12 the people who might otherwise get very sick.

13 MR. OSETE: And -- and, unfortunately,
14 Your Honor, it's going to -- Mr. Chief Justice,
15 may I?

16 CHIEF JUSTICE ROBERTS: Please.

17 MR. OSETE: Unfortunately, Your Honor,
18 in this case, it's going to devastate local
19 economies. It's going to decimate these local
20 towns that don't draw their pool of applicants
21 from the coast, Your Honor. These are local
22 communities. They run these hospitals.

23 And that is the problem here, Your
24 Honor, is those kind of interests, that
25 perspective was not heard in this context, and

1 that is going to be devastating, Your Honor.

2 CHIEF JUSTICE ROBERTS: Justice
3 Thomas, anything further?

4 JUSTICE THOMAS: No further questions.

5 CHIEF JUSTICE ROBERTS: All right.
6 No?

7 Justice Alito? No?

8 Justice Kagan?

9 JUSTICE KAGAN: Mr. Osete, this rural
10 hospital question, you've presented some
11 declarations that suggest that there would be
12 labor disruptions. The Secretary took that
13 into account specifically, basically has a
14 different view of the size of the disruptions
15 based on the data that he had and then, in
16 addition to that, said that there are
17 countervailing things, there's countervailing
18 things with respect to the labor force, and the
19 -- and the Secretary said some people might
20 come back because they won't have to deal with
21 unvaccinated colleagues.

22 Some people -- you know, that there
23 will -- there will be savings in terms of fewer
24 people out sick and so forth. And then the
25 Secretary has an important job to do, and

1 that's to balance, whatever disruptions there
2 are, the Secretary says they're much less than
3 you say they are, but then to balance those
4 disruptions against the safety of the Medicare
5 and Medicaid recipients, whom he is statutorily
6 obligated to protect.

7 And -- and, you know, it just seems
8 pretty basic to me, as I said, that the first
9 thing that that means in the context of this
10 pandemic is that providers can't be carriers of
11 the disease itself. And then, in addition,
12 there are other health benefits. You know,
13 people are not showing up to hospitals because
14 they're afraid of getting COVID from staff, and
15 so they're not coming for their mammograms and
16 they're not coming for their colonoscopies and
17 so forth. So he has to balance all those
18 health benefits against what you say are these
19 labor disruptions.

20 And the question is, I mean, you might
21 have a point. I don't know. I don't know very
22 much about the rural market, the -- you know,
23 but the Secretary, that's his job.

24 Should it be that we decide, you know,
25 as against what the Secretary has decided, in

1 performing his important function of evaluating
2 these potential disruptions and -- and weighing
3 those disruptions against the health benefits
4 that he sees in that rule? Should we say we
5 think that the -- that the disruptions are more
6 -- greater than the Secretary thought and we
7 further would weigh them differently against
8 the health benefits of the rural? Is that for
9 courts to decide?

10 MR. OSETE: Your Honor, there is a lot
11 there, and I -- I think the -- the -- the
12 simplest way I can answer that directly is, in
13 this case, it's this critical perspective of
14 these tiny communities that, again, he did cite
15 to one example in North Carolina with 35,000 --
16 I think it was Novant Health, 35,000 employees
17 as this is going to be insignificant to them.

18 But I think that critical perspective
19 of these tiny hospitals that, again, are 100 or
20 less, these numerous facilities that are going
21 to be devastated by this, that sort of relevant
22 factor, that important aspect of the problem,
23 we don't see how the Secretary could have
24 properly weighed everything properly when that
25 sort of critical perspective was ignored, and

1 these folks did not have a chance to be heard.

2 And in this case, it's almost as if
3 the Secretary put a rock on one side of the
4 scale and a feather on the other. What -- what
5 may work in Detroit and Houston may actually be
6 counterproductive in Memphis, Missouri, or, for
7 that matter, in El Dorado, Arkansas.

8 All of those places have different
9 considerations, which is why this historically
10 has been a local and state matter, and the
11 states, again, are free to require it or not
12 require it --

13 JUSTICE SOTOMAYOR: So why is this --

14 MR. OSETE: -- and so are local
15 governments.

16 JUSTICE SOTOMAYOR: -- an issue for
17 the states to require or not require? I mean,
18 this is the federal government paying for
19 services, and why doesn't it have a right as
20 the payer for services to specify what services
21 it wants to pay for?

22 I mean, that's -- now, in terms of
23 clear rules, I -- I'm having a very hard time
24 understanding how you can say, yes, they could
25 pass a rule that requires people to wear gloves

1 or they could pass a rule that requires them to
2 isolate individuals who are -- are infected by
3 something, but they can't pass this rule, and
4 you say because it wasn't clear?

5 If it's clear enough that they can
6 consider safety and health regulations, why is
7 this particular rule subject to us saying no?

8 MR. OSETE: Because, Your Honor, this
9 Court in Jacobson and various cases has drawn
10 the line at compulsory vaccination being
11 something that the states do. And when
12 Congress enacts laws --

13 JUSTICE SOTOMAYOR: Well, wait a
14 minute. That's what they do with respect to
15 other issues, but this is with respect to, if
16 you want my money, your facility has to do
17 this.

18 MR. OSETE: Sure.

19 JUSTICE SOTOMAYOR: It has to have --
20 it has to serve certain food. It has to serve
21 certain meals a day. It has to give snacks.

22 These are all state issues usually,
23 but, under the Spending Clause, we're the
24 buyer. The federal government says what it
25 wants to spend its money on. This is not a --

1 an issue of power between the states and
2 federal government. This is an issue of what
3 do -- what does the federal -- what right does
4 the federal government to dictate what it wants
5 to buy.

6 MR. OSETE: Your Honor, it is a
7 vaccine requirement -- requirement masquerading
8 as a condition of participation. And if
9 Congress intended that, this Court has made it
10 very clear that something like compulsory
11 vaccination, even in the Spending Clause
12 context, which itself demands Congress to speak
13 with a clear voice, it requires --

14 JUSTICE SOTOMAYOR: How much clearer
15 do you need for Congress to say than pass
16 regulations that protect the health and welfare
17 of ill people?

18 MR. OSETE: Perhaps the one example I
19 can think of right away, Your Honor, is in
20 (e)(7) of 1395x(e), where Congress acknowledged
21 or spoke with a very clear voice that when it
22 comes to licensing at the state level, that is
23 something that the states do. And that's
24 exactly -- I mean, Congress knows how to
25 directly speak to issues that invade into the

1 state -- into state areas --

2 JUSTICE SOTOMAYOR: And it hasn't --

3 MR. OSETE: -- like that.

4 JUSTICE SOTOMAYOR: -- done it with
5 health and safety. It has given that right to
6 the Commissioner. Thank you, counsel.

7 CHIEF JUSTICE ROBERTS: Justice
8 Gorsuch?

9 Justice Kavanaugh?

10 JUSTICE KAVANAUGH: A couple
11 questions.

12 MR. OSETE: Sure.

13 JUSTICE KAVANAUGH: First, this is an
14 unusual administrative law situation from my
15 experience because the people who are regulated
16 are not here complaining about the regulation,
17 the -- the hospitals and healthcare
18 organizations. It's a very unusual situation.
19 They, in fact, overwhelmingly appear to support
20 the Secretary's -- the CMS regulation. So I
21 want -- and the government makes something of
22 that.

23 What -- what are we to make of that?

24 MR. OSETE: Your Honor, certainly,
25 there are large institutional providers that

1 may have no problem with this. Obviously,
2 there are smaller ones, very small community
3 hospitals, that do have a problem with that.

4 But -- but, here, the states have
5 their facilities. They are also --

6 JUSTICE KAVANAUGH: The states have a
7 very small percentage of the facilities. Most
8 of the facilities are private-run facilities,
9 right? This picks up on Justice Thomas's
10 question. Like, where -- where are the
11 regulated parties complaining about the
12 regulation? That's how we usually have -- the
13 last case is a good example, obviously.

14 MR. OSETE: Sure.

15 JUSTICE KAVANAUGH: There's a missing
16 element here.

17 MR. OSETE: Well, they're not --
18 they're not -- certainly, they -- these sort of
19 entities that would be subject to this rule,
20 like small private facilities that receive
21 Medicaid funding, certainly are not plaintiffs
22 per se, but the states do represent the
23 citizens of our -- our constituencies, like
24 these places that run these facilities, these
25 small community hospitals. We speak on their

1 behalves.

2 And all I would say here is we have --
3 we have made value judgments through our
4 policies to not require vaccination because a
5 one-size-fits-all requirement does not help.
6 And that kind of policy judgment, as expressed
7 through our laws, our duly enacted laws, that
8 would be applicable both to state-run
9 facilities and private facilities, that is
10 what's -- what's being preempted here, Your
11 Honor, by this unlawful mandate.

12 And that's how we're -- we're speaking
13 in that capacity here, Your Honor, is the folks
14 whose voices were ignored throughout this
15 entire process and shouldn't have been ignored,
16 especially with these devastating consequences.

17 JUSTICE KAVANAUGH: And then, second,
18 just -- I think you've alluded to this, but how
19 is a vaccine different in kind, from your
20 perspective, from, say, the requirement to wear
21 gloves or the requirement to wash your hands or
22 the other kinds of requirements? Because I
23 think, if you acknowledge that the -- there's
24 authority to require the latter, then you need
25 to explain why the -- the vaccine is different.

1 MR. OSETE: I don't think I could say
2 it any better than Chief Judge Sutton did at
3 page 12 of his dissent in the OSHA case, which
4 is masks can come off, gloves can come off. A
5 vaccine requirement, the taking a vaccine is a
6 permanent medical procedure that cannot come
7 off after work is over. That is, there are --
8 there are materially different conditions,
9 materially different procedures at stake.

10 And when you look at the context, for
11 example, in the hospital requirement, 1395x(e),
12 nothing in that statute comes close to
13 authorizing this precise mandate in this case,
14 which is going to have devastating consequences
15 for vast swaths of this country, Your Honor.

16 JUSTICE KAVANAUGH: Thank you very
17 much.

18 CHIEF JUSTICE ROBERTS: Justice
19 Barrett?

20 JUSTICE BARRETT: No questions.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 General Murrill, are you still on the
24 line?

25 MS. MURRILL: I am, Mr. Chief Justice.

1 CHIEF JUSTICE ROBERTS: You may
2 proceed.

3 ORAL ARGUMENT OF ELIZABETH MURRILL
4 ON BEHALF OF THE RESPONDENTS IN NO. 21A241

5 MS. MURRILL: Thank you, Mr. Chief
6 Justice, and may it please the Court:

7 This case is not about whether
8 vaccines are effective, useful, or a good idea.
9 It's about whether this federal executive
10 branch agency has the power to force millions
11 of people working for or with a Medicare or
12 Medicaid provider to undergo an invasive,
13 irrevocable, forced medical treatment, a COVID
14 shot. It's a bureaucratic power move that is
15 unprecedented.

16 If it can do that, the question still
17 remains as to whether it properly exercised
18 that power here. The district court answered
19 no to both questions at the preliminary
20 injunction stage, and the court below supported
21 its ruling with a number of well-reasoned
22 conclusions.

23 Now, without even addressing all the
24 underlying bases for the ruling, the government
25 asks this Court to jump ahead of the Fifth

1 Circuit and dissolve the injunction,
2 irrevocably changing the status quo in a way
3 that will effectively give the federal
4 government all the relief it seeks. This will
5 create chaos in state provider networks, limit
6 access to care for the poor and needy, and
7 eviscerate informed consent for millions of
8 people.

9 The Court should reject the
10 government's request and maintain the status
11 quo because the district court's holdings were
12 correct on all counts.

13 I'm happy to take questions or speak
14 to some of the questions that have already been
15 asked by the Court.

16 JUSTICE THOMAS: Just briefly,
17 counsel. The -- I'd like you to address
18 whether or not or at least to what extent this
19 rule preempts rules of your state.

20 MS. MURRILL: Justice Thomas, it does
21 preempt rules of some of the states in our
22 coalition. I don't know that it preempts rules
23 in every state, but it affects Alabama,
24 Louisiana, and Montana in different ways,
25 different laws.

1 JUSTICE THOMAS: Could you address, as
2 I asked earlier, the *parens patriae* standing?
3 I think that's going to be an important matter,
4 and I'd like you to address it.

5 MS. MURRILL: So I think we have
6 *parens patriae* standing to protect the
7 interests of our citizens, but that is not the
8 sole basis on which we appear in these cases.
9 And there's been, you know, some questions
10 about Medicare and Medicaid. I think the
11 government has conflated those two programs in
12 -- in an enormous way because just in Louisiana
13 alone, I can tell you that 41 percent of our
14 budget is Medicaid funding. So we have
15 enormous, enormous interests in the way these
16 programs operate, and that's one of the reasons
17 why there are express consultation requirements
18 built into the statute.

19 JUSTICE THOMAS: Thank you.

20 CHIEF JUSTICE ROBERTS: General, do
21 you agree with the district court's statement
22 that "COVID" -- this is a quote -- "COVID no
23 longer poses the dire emergency it once did"?

24 MS. MURRILL: Your Honor, I -- I -- I
25 think that that is a shifting -- those are

1 shifting sands. Obviously, COVID conditions
2 can change at any given time, and they have.

3 JUSTICE BREYER: What is your other
4 basis for standing?

5 MS. MURRILL: Our basis for standing
6 is that we are being regulated directly by this
7 rule. We have to implement it, and it affects
8 our provider networks. It directly affects
9 Medicaid funding, and that is a program that is
10 implemented entirely by the state.

11 JUSTICE BREYER: Thank you.

12 MS. MURRILL: I don't think I could
13 underestimate enough the impact on the states
14 and their provider networks. That's precisely
15 what the -- the -- the declarations that we
16 submitted and I think many that were submitted
17 in the Missouri case also go to, is the effect
18 on our ability to actually provide access to
19 care, which is the actual primary goal of this
20 program.

21 CHIEF JUSTICE ROBERTS: I'd like to
22 touch on the Spending Clause issue just a bit.
23 It was a broad provision that you agreed to,
24 which authorized the Secretary to impose
25 requirements that are -- that the Secretary

1 finds are necessary in the interest of the
2 health and safety of -- of patients.

3 Why did that not give you adequate
4 notice that something like this could be
5 enacted?

6 MS. MURRILL: I don't think that gave
7 us any more notice that that could be enacted
8 than -- I mean, no one even expected COVID, so
9 how could we possibly have expected to have the
10 federal government, through a spending
11 condition imposed upon us years after this
12 program was created, co-opt a -- a
13 quintessential police -- state police power for
14 deciding whether the -- the -- its citizens
15 should be vaccinated or not?

16 That's just not something that we
17 could have reasonably anticipated given the
18 general broad language that is put into the
19 statute. And -- and, again, I don't think that
20 their primary role is to -- is to actually
21 provide directly for the health and safety of
22 the people. It is to provide funding to the
23 states to implement these programs or through
24 Medicare to reimburse for healthcare to
25 individuals.

1 CHIEF JUSTICE ROBERTS: Has --

2 MS. MURRILL: I -- I could -- I mean,
3 I would also point just to the secondary aspect
4 of any Spending Clause argument, also turns on
5 the voluntarily and knowingly accepting the
6 terms. And so I think that goes straight to
7 your question, that that -- respecting that
8 limitation is absolutely critical to main --
9 respecting the balance of the states'
10 sovereignty in this program.

11 CHIEF JUSTICE ROBERTS: Well, it's --

12 JUSTICE SOTOMAYOR: Well, how does
13 that --

14 CHIEF JUSTICE ROBERTS: -- not the
15 respective determination, it is what the
16 Secretary finds and it's what the Secretary
17 finds necessary. So I'm not saying there's not
18 some limit there, but I don't know why a
19 provision addressing a -- an infectious disease
20 of this scope is beyond the Secretary's
21 determination that the -- the -- the mandated
22 issue here is -- is necessary.

23 MS. MURRILL: Well, we've never taken
24 the position that the Secretary has no
25 authority to address it in any given -- in any

1 -- at all. We're saying that the -- that they
2 can't do this. And they've never, ever, ever
3 done anything like this, which they
4 acknowledge.

5 And -- and the Solicitor General in
6 the argument that preceded this one also
7 pointed and conceded that where there are other
8 textual and structural cues in a statute that
9 may be inconsistent with the -- with the
10 agency's jurisdiction, that you should be
11 looking at that in terms of the discretion
12 that -- that you give and whether -- when you
13 evaluate whether this is a question or an issue
14 that falls within the general discretion and
15 scope that was granted earlier by Congress.

16 And -- and, here, there are multiple
17 cues that conflict directly with the broad,
18 broad scope and grant of authority that they're
19 claiming here.

20 JUSTICE ALITO: Do you think we need
21 to find that you have *parens patriae* standing
22 in order to take into account the interests of
23 employees within your state who do not want to
24 be vaccinated? Is that a standing question, or
25 is it a question that can be taken into account

1 in the context of determining what the statute
2 means and whether it satisfies whatever
3 requirements there may be under the Spending
4 Clause?

5 MS. MURRILL: I -- I think it's both.
6 I mean, I -- I certainly believe that you can
7 take it into account as part of our standing.
8 We have independent grounds for standing. When
9 you get past that question, I think it also
10 relates to the -- the -- the question
11 of whether it's actually controlling the tenure
12 of -- of employees.

13 I think it directly conflicts with
14 that. I mean, Justice Alito, there's --
15 there's really no question, I think, in our
16 mind that this was a -- a pretext that the
17 entire -- as the Chief Justice alluded to, that
18 this was a workaround.

19 This was an intent -- the -- the
20 government intended to tether all of these
21 restrictions together, all of these -- these
22 mandates together to vaccinate as many -- as
23 much of the American public as they could
24 touch.

25 And in this particular rule, at -- at

1 the Federal Register 61607, the -- the
2 government even acknowledged that the most
3 important inducement here was the fear of job
4 loss.

5 This is targeted at people. It's not
6 targeted at facilities. And they've never done
7 anything like this before, precisely because
8 there are structural prohibitions against it in
9 the statute. And where we are in this
10 procedure is -- is extraordinary.

11 They want a -- to -- you to dissolve
12 an injunction, parts of which have not even
13 been contested, so that they can upend the
14 status quo, which will disturb enormously our
15 provider networks.

16 JUSTICE BREYER: Well, all that's
17 true, but I'd like to get your response -- I
18 mean, there's some truth to what you say, but
19 there -- I'd like to get your response to what
20 I asked previously twice, really.

21 We sit in both these cases something,
22 as the inheritor of a court of equity and we do
23 that particularly in respect to stays, whether
24 you call them administrative or not. And that
25 may be, both sides, and in the other case, you

1 know, is -- that's why I say there's a side in
2 each case that is predicting harm if the agency
3 rule goes into effect.

4 And the other side predicts serious
5 harm if the agency rule does not go into
6 effect. And as you heard in the OSHA case at
7 the last minute, on the one hand, if they have
8 to start complying with this, they have to get
9 plans and the employers are hurt.

10 On the other hand, if they don't start
11 to get those plans ready, people might -- well,
12 it looks like a lot of people will get sick and
13 take up hospital beds or worse.

14 So, in weighing those equities, why
15 don't we have to take and put quite a lot of
16 weight on avoiding even by a minute or a
17 second, because, if you divide 750,000 by the
18 number of seconds in a day, you get a lot of
19 people.

20 And why do we not have to take those
21 things into account, see how the government
22 would balance them, see if that is reasonable,
23 and be very weary at the least of interfering
24 with rules that will, in fact, save people's
25 lives or hospital beds or from getting the

1 disease?

2 Do you see what I am --

3 MS. MURRILL: Justice --

4 JUSTICE BREYER: -- saying? I'm
5 asking -- I'm putting a burden on you to say,
6 yeah, that's what I am doing.

7 MS. MURRILL: I -- I do.

8 JUSTICE BREYER: And I want to know
9 why.

10 MS. MURRILL: I understand the
11 question.

12 JUSTICE BREYER: Yeah.

13 MS. MURRILL: I think -- I -- I think,
14 first of all, these aren't just plans. But,
15 here, this rule is different. There -- there's
16 no test-and-mask exception. There's this is a
17 vaccinate, and it's a short, short shot clock.

18 And -- and so they do not have a
19 choice. They have to be fired or they cannot
20 be hired, and so it handcuffs our providers in
21 a way that is -- that is extraordinary and
22 immediate. And that, the status quo right now
23 is that they still comply with all the other
24 rules of Medicaid and Medicare, which means
25 they have infectious disease control measures

1 in place, they are doing the very best job that
2 they can, they need all the boots on the ground
3 that they can get, and this rule will actually
4 change that.

5 That will -- it will immediately
6 change that. So I think it is extraordinarily
7 different, and it also comes up in a different
8 context. It comes up in the context of a
9 preliminary injunction, multiple injunctions,
10 but specifically in ours, where they did not
11 even contest certain aspects of it, so they --
12 they present to you a request for a stay that
13 does not even contest certain aspects of an
14 injunction that they want you to overturn.

15 JUSTICE BREYER: Thank you. Thank
16 you.

17 JUSTICE SOTOMAYOR: Counsel, I -- I'm
18 having a very hard time trying to do this state
19 power argument with respect to a Spending
20 Clause program that doesn't affect the states
21 directly except as proprietors, because, as
22 proprietor of state-run facilities, those are
23 the ones that are affected by this rule. The
24 private facilities are, and, as one of my
25 colleagues noted, Justice Kavanaugh, we don't

1 have many amici of them complaining.

2 But putting that aside, I am having a
3 hard time understanding how and why a rule like
4 this is so substantially different than
5 the volumes of rules that CMS has with respect
6 to so many issues involving health and welfare.
7 They tell you how high the bed has to be. They
8 tell you how close hand sanitizers have to be.
9 This is before COVID.

10 They have so many different rules that
11 one could arguably say belonged within the
12 states' rights that -- that -- give me a
13 working principle that says to the federal
14 agency charged with the health and safety of --
15 of patients who believes that the only way to
16 protect these vulnerable patients is by this
17 one tactic, by this one step, why that should
18 tie their hands.

19 You may argue otherwise, that the
20 other ways of doing it are effective, but
21 they've decided in this particular context,
22 with the vulnerability of this -- of these
23 particular populations, that the other steps
24 are inadequate.

25 MS. MURRILL: Your Honor, there --

1 there's two aspects to your question, and I'd
2 like to speak to both of them.

3 One is the issue of whether we're just
4 proprietors. We are not just proprietors. And
5 I think the Court effectively discussed that in
6 NFIB versus Sebelius. Medicaid is an enormous
7 program where states are contracted with the
8 federal government, not providers. The
9 providers are contracted with the states. So
10 it is -- it is important, I think, to keep that
11 distinction between these two programs.

12 But, to -- to your question about the
13 -- the dividing line, the dividing line here is
14 -- is precisely why we are in a question of --
15 major questions doctrine land, because they
16 have never done this for at least since the
17 Jacobson case.

18 And -- and -- and, before that,
19 predominantly, this has been a question --
20 protecting the health and safety of individuals
21 and exercising this kind of -- of -- of power
22 to force the individual to submit to a medical
23 treatment has never ever been something that
24 has been authorized by Congress or done by an
25 agency on an emergency basis without consulting

1 states --

2 JUSTICE SOTOMAYOR: Counsel, I don't
3 mean to interrupt you, but we've never had a
4 situation like this one before.

5 MS. MURRILL: We haven't.

6 JUSTICE SOTOMAYOR: It's
7 unprecedented.

8 MS. MURRILL: But I don't think in
9 this case that justifies them co-opting a
10 quintessential state police power. In fact,
11 the opposite is true. It only points up the
12 need to evaluate this in the larger context of
13 whether Congress -- I mean, Congress didn't do
14 this, by the way.

15 I mean, the Congress just as recently
16 as last summer changed some of the discrete
17 statutes specifically related to skilled
18 nursing and nursing homes and authorized
19 certain measures for strike teams to augment
20 staff in those facilities due to COVID
21 outbreaks, but they didn't authorize vaccines,
22 so -- for staff.

23 I think there are cues. There are
24 cues in the statute. There are cues in the --
25 in the -- the -- the history and structure and

1 the precedents of this Court that -- that
2 support waiting and maintaining the status quo,
3 as the district court below did and the Fifth
4 Circuit did.

5 CHIEF JUSTICE ROBERTS: Justice
6 Thomas, anything further?

7 JUSTICE THOMAS: Nothing further,
8 Chief.

9 CHIEF JUSTICE ROBERTS: Justice
10 Breyer?

11 Justice Alito?

12 Anything further, Justice Sotomayor?

13 JUSTICE SOTOMAYOR: I just want to say
14 the Sixth Circuit didn't, correct?

15 MS. MURRILL: The Sixth Circuit in the
16 OSHA case --

17 JUSTICE SOTOMAYOR: I'm sorry, I
18 confused --

19 MS. MURRILL: -- operated differently.

20 JUSTICE SOTOMAYOR: Yes.

21 MS. MURRILL: Yes.

22 CHIEF JUSTICE ROBERTS: Justice Kagan?

23 Justice Gorsuch?

24 Justice Kavanaugh?

25 Justice Barrett?

1 Thank you, counsel.

2 Rebuttal, Mr. Fletcher?

3 REBUTTAL ARGUMENT OF BRIAN H. FLETCHER

4 ON BEHALF OF THE APPLICANTS

5 MR. FLETCHER: Thank you, Mr. Chief
6 Justice. Just three quick points.

7 I'd like to start with the
8 interpretation of the statutes before you that
9 the other side is offering because I don't hear
10 them to contest that the Secretary's authority
11 to set conditions for participating in the
12 federal Medicare and Medicaid programs includes
13 the authority to protect patient health and
14 safety, even in the statutes that don't include
15 that language.

16 I don't hear them to be disputing that
17 the Secretary can adopt infection control
18 mechanisms or require people to wear gloves or
19 do other things of that nature. Instead, their
20 submission seems to be that vaccines are
21 different. And I think the problem with that
22 is that they haven't really given you a basis
23 to ground that in the statute.

24 The first thing that they've said is
25 vaccination is typically the prerogative of the

1 states. And, of course, that's true in some
2 sense, but we're talking here about a federal
3 spending program.

4 And the regulation of medicine is
5 typically the prerogative of the states.
6 Usually it's the states who require hospitals
7 to make sure their employees wear gloves or
8 they follow the Fire Code or they have
9 sprinklers, things like that.

10 But no one disputes that Congress has
11 given the Secretary the authority to make sure
12 that providers who are providing care under the
13 aegis of the federal Medicare and Medicaid
14 program live up to standards set by the
15 Secretary. That's what the Secretary has done
16 here.

17 The other thing that I've heard them
18 say about why vaccines are different is that
19 you can't take them off, that vaccines are
20 somehow different than gloves or other safety
21 measures and so some special specific
22 authorization ought to be required. And I just
23 don't think that can be squared with the
24 context of the healthcare industry.

25 Vaccination requirements are common

1 throughout our society. They're particularly
2 common for healthcare workers. They've been
3 adopted voluntarily by providers around the
4 country. You have virtually the uniform view
5 of the medical community telling you that this
6 is the best way to protect patient health and
7 safety.

8 If anything, I think it would be
9 bizarre to say that the Secretary's authority
10 to protect the health and safety of Medicare
11 and Medicaid patients does not include the
12 authority to adopt a measure that you see other
13 regulators adopting, the medical community
14 urging, and other providers adopting
15 voluntarily.

16 The whole point of the statute is to
17 let the Secretary make sure that the standards
18 of care for Medicare and Medicaid patients meet
19 best practices, and that's what he has done
20 here.

21 The second point I want to make,
22 Justice Barrett, goes back to the colloquy that
23 you and I had earlier about some of the
24 different statutes. I hope we persuaded you
25 that we're right about all of them, but in case

1 we have not, I just want to make the case that
2 it actually is worth the candle in this stay
3 posture to go provision by provision.

4 So, as we explained, 97 percent of the
5 employees affected by this regulation are
6 covered by statutes that include the express
7 health and safety language.

8 Even if you just narrow it down beyond
9 that, three categories, the largest three
10 categories of providers -- hospitals, home
11 health agencies, and long-term care facilities
12 -- account for more than 90 percent of the
13 covered workers. This is shown at the table at
14 page 61603.

15 All of those provisions have express
16 health and safety language of the sort that
17 we've been discussing, and two of them,
18 long-term care facilities or nursing homes and
19 home health providers, actually include the
20 extra provisions that we cite at page 6 of our
21 reply that says the Secretary has not just the
22 authority to ensure health and safety but also
23 the duty to do so. And I think, at an absolute
24 minimum, it's worth letting the rule go into
25 effect as to them.

1 And, finally, Justice Breyer, I want
2 to come back to a point that you have raised a
3 few times about the equities because we are
4 here on a stay. And I think a couple of
5 observations to make about the equities.

6 The first is a point that Justice
7 Kavanaugh raised. You don't have providers
8 before you here. You don't have workers before
9 you here. Instead, providers and workers
10 overwhelmingly support the vaccination
11 requirement. Instead, you have before you
12 states who do operate some facilities covered
13 by the rule but only a tiny fraction of them.

14 The second thing I'd say is that even
15 as to the providers and the workers who are
16 covered by the regulation, some of my friend's
17 presentation has suggested that if the stays
18 are lifted or if the preliminary injunctions
19 are stayed and the rule goes into effect, that
20 means that tomorrow people are going to be out
21 of a job, and that is not true.

22 The Secretary has put out guidance
23 after the Fifth Circuit narrowed the previously
24 nationwide injunction to cover only the
25 plaintiff states here, put out guidance giving

1 regulated entities 30 days to come into
2 compliance as the -- as to the first shot, 60
3 days to come into compliance as to the second
4 shot, and making clear that even if a regulated
5 entity has not met full compliance by that
6 60-day deadline, if the entity is at 90 percent
7 compliance and has a plan to come into full
8 compliance within 30 days, the Secretary won't
9 take enforcement action.

10 Even if that isn't met, even if at the
11 end of 90 days there is still not full
12 compliance, the Secretary has always exercised
13 enforcement discretion before terminating a
14 provider from the program, and one of the
15 things the Secretary has considered is access
16 to care issues of the sort that the other side
17 has raised. So there are ways to address some
18 of the problems that my friends have relied on
19 even if the rule goes into effect.

20 On the other side of the ledger, and
21 this is where I'll close, if the preliminary
22 injunctions remain stayed, then we know what
23 the consequence is. We know that this urgently
24 needed measure is not going to be in effect to
25 protect Medicare and Medicaid patients in half

1 of the country during a pandemic.

2 And I think the Secretary found, and I
3 don't think anyone seriously disputes, that any
4 delay in the operation of the rule will cost
5 lives and cause unnecessary serious illnesses.

6 We'd ask that the preliminary
7 injunctions be stayed.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel. The applications are submitted.

10 (Whereupon, at 1:38 p.m., the
11 applications were submitted.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

<p style="text-align: center;">\$</p> <p>\$1.3 [1] 15:8 \$125 [1] 15:14 \$4 [1] 15:12</p> <hr/> <p style="text-align: center;">1</p> <p>1 [1] 47:20 1:38 [1] 95:10 10 [2] 36:18,20 100 [1] 65:19 11 [2] 25:9 28:22 12 [2] 28:22 72:3 12:12 [2] 1:24 4:2 1302 [3] 7:10,14 45:15 1302(a) [2] 6:19 44:24 1395 [3] 37:6 41:12 42:8 1395hh [2] 33:12 44:24 1395i-3(d)(3) [1] 55:14 1395x(e) [3] 18:9 68:20 72:11 1395x(e)(9) [2] 8:1 26:8 1396x(e) [1] 39:5 15 [3] 25:7 33:19 47:2</p> <hr/> <p style="text-align: center;">2</p> <p>20-7-134 [1] 48:11 2020 [2] 45:24 54:20 2022 [1] 1:20 21A240 [4] 2:7 3:7 4:4 45:21 21A241 [3] 2:10 3:10 73:4 24 [1] 39:11 25 [1] 32:11</p> <hr/> <p style="text-align: center;">3</p> <p>3 [1] 25:25 30 [2] 94:1,8 35,000 [2] 65:15,16 38 [1] 54:12</p> <hr/> <p style="text-align: center;">4</p> <p>4 [1] 3:4 41 [1] 75:13 45 [1] 3:7</p> <hr/> <p style="text-align: center;">5</p> <p>5 [1] 25:10</p> <hr/> <p style="text-align: center;">6</p> <p>6 [2] 25:10 92:20 60 [1] 94:2 60-day [3] 33:13 34:11 94:6 61603 [1] 92:14 61607 [1] 81:1 61608 [1] 27:21</p> <hr/> <p style="text-align: center;">7</p> <p>7 [1] 1:20 73 [1] 3:10 73-page [1] 34:14 750,000 [2] 59:14 82:17</p> <hr/> <p style="text-align: center;">8</p> <p>8 [1] 52:5 89 [1] 3:13</p>	<p style="text-align: center;">9</p> <p>9 [1] 25:22 90 [3] 92:12 94:6,11 97 [2] 10:7 92:4</p> <hr/> <p style="text-align: center;">A</p> <p>ability [1] 76:18 able [1] 61:7 above-entitled [1] 1:22 absolute [1] 92:23 absolutely [6] 13:21 14:19 25:4 30:24 55:10 78:8 abstract [1] 51:1 accepting [2] 16:6 78:5 access [5] 9:6 47:9 74:6 76:18 94:15 account [9] 59:11 60:6,10 63:13 79:22,25 80:7 82:21 92:12 accrediting [1] 21:23 achieved [1] 31:25 acknowledge [3] 16:14 71:23 79:4 acknowledged [3] 31:9 68:20 81:2 across [2] 30:11 31:21 Act [11] 6:23,25 10:23 21:14 33:22 37:7,8 46:11 59:13 60:18 61:13 acted [1] 44:4 action [1] 94:9 actions [1] 40:25 actual [1] 76:19 actually [12] 6:6 22:8 31:17 35:8 39:1 66:5 76:18 77:20 80:11 84:3 92:2,19 acute [3] 11:5,9 13:15 add [1] 8:20 addition [5] 29:2 33:15 53:7 63:16 64:11 additional [4] 8:1,20 18:1 32:12 address [7] 11:23 14:22 74:17 75:1,4 78:25 94:17 addressing [6] 12:24 29:18,21,22 73:23 78:19 adds [1] 26:11 adequate [2] 53:1 77:3 adequately [2] 34:22 47:2 administer [1] 9:22 administering [2] 43:4 53:10 administration [4] 7:17 9:22 33:2 37:11 administrative [2] 69:14 81:24 administrator [1] 49:12 administrators [1] 16:13 adopt [5] 16:18 44:14 55:16 89:17 91:12 adopted [4] 5:17 27:6 32:17 91:3 adopting [5] 20:3,7 31:11</p>	<p>91:13,14 adoption [1] 54:24 aegis [1] 90:13 affect [4] 11:19 14:24 49:5 84:20 affected [3] 10:7 84:23 92:5 affecting [1] 14:25 affects [4] 36:19 74:23 76:7,8 afraid [1] 64:14 agencies [5] 11:20 12:9,14 34:24 92:11 agency [12] 10:16 21:24 34:1 37:2 58:25 60:24 62:5 73:10 82:2,5 85:14 86:25 agency's [1] 79:10 agree [9] 13:21 24:23 25:4 38:4,12 39:19 40:2 51:8 75:21 agreed [1] 76:23 ahead [6] 38:21 59:9,10 61:15 62:8 73:25 aimed [1] 10:9 AL [4] 1:5,8,12,15 Alabama [2] 54:19 74:23 ALITO [19] 16:5 17:1,22 18:11,14,23 19:11 20:12 21:3,11,20 22:3,23 32:23 51:16 63:7 79:20 80:14 88:11 allow [3] 7:4 26:22 33:13 allowing [1] 28:8 alluded [2] 71:18 80:17 almost [1] 66:2 alone [2] 10:3 75:13 already [8] 5:13 13:1 21:8 29:22 32:8,17 44:2 74:14 alter [2] 54:14,15 although [1] 28:2 AMA [1] 20:5 ambulatory [5] 8:10 23:17,22 24:4 27:3 amended [1] 29:18 America [2] 47:23 61:4 American [4] 11:18 20:4,5 80:23 Americans [1] 13:21 Americans' [1] 47:9 amici [1] 85:1 Among [2] 35:11 40:23 amount [2] 15:13 33:3 analysis [5] 33:21,22 35:1,2 43:6 anesthesiologist [1] 61:6 another [3] 14:12 39:13 61:20 answer [3] 7:9 37:25 65:12 answered [1] 73:18 anti-commandeering [1] 36:11 anticipated [1] 77:17 anybody [1] 57:2 anyway [1] 13:9 APA [3] 21:13 46:24 50:9</p>	<p>appear [2] 69:19 75:8 APPEARANCES [1] 2:1 applicable [4] 25:24 30:15 34:3 71:8 Applicants [8] 1:6,13 2:4 3:4,13 4:9 62:20 89:4 application [3] 47:25 51:25 54:4 applications [2] 95:9,11 applies [2] 16:11 33:11 apply [2] 22:11 49:22 appreciate [1] 38:23 approach [1] 28:12 arbitrary [1] 46:23 areas [5] 6:2 11:23 12:1 31:22 69:1 aren't [1] 83:14 arguably [3] 35:16 48:7 85:11 argue [3] 41:7 48:16 85:19 arguing [5] 10:17,19 44:19,22 45:2 argument [17] 1:23 3:2,5,8,11 4:4,8 8:25 31:5 41:17 45:8,20 73:3 78:4 79:6 84:19 89:3 arguments [3] 14:21 20:12 24:19 Arkansas [3] 48:11,22 66:7 around [6] 5:18 6:5 31:14 32:18 34:11 91:3 aside [4] 24:1 45:15 56:8 85:2 asks [1] 73:25 aspect [3] 11:18 65:22 78:3 aspects [3] 84:11,13 86:1 asserting [1] 50:8 assigned [1] 6:13 Association [2] 20:5,6 assume [2] 27:7 61:12 Attorney [1] 2:5 attributable [1] 32:13 augment [1] 87:19 authorities [11] 7:3 8:16,22 9:11 11:19 12:10,16 15:19,20 27:16 31:1 authority [45] 5:8 6:22,24 8:1,25 10:3 11:2 14:9 19:24 20:2 24:2 26:4,17 27:2,9 28:17,20 29:8,13 30:1,2 35:9 37:3 45:1,6 46:6 51:9,20 52:2,19 54:5,6 56:22 58:5,24 60:15 71:24 78:25 79:18 89:10,13 90:11 91:9,12 92:22 authorization [1] 90:22 authorize [7] 8:7 10:3 18:4 37:9 38:25 46:11 87:21 authorized [6] 18:25 29:11 51:3 76:24 86:24 87:18 authorizes [1] 8:2 authorizing [2] 7:19 72:13</p>	<p>avoiding [1] 82:16 away [4] 47:13 60:23 61:1 68:19</p> <hr/> <p style="text-align: center;">B</p> <p>back [7] 33:24 35:6 44:20 62:10 63:20 91:22 93:2 bad [4] 61:17,20,21 62:4 balance [6] 54:15 64:1,3,17 78:9 82:22 Barrett [14] 21:18 22:18,21 23:1,8 26:14 29:6 44:17,18 45:16 72:19,20 88:25 91:22 base [1] 59:4 based [1] 63:15 bases [1] 73:24 basic [2] 58:17 64:8 basically [3] 44:1 58:11 63:13 basis [9] 6:16 22:13 27:7 50:12 75:8 76:4,5 86:25 89:22 Baton [1] 2:8 BECERRA [1] 1:11 becoming [1] 31:16 bed [1] 85:7 beds [3] 59:20 82:13,25 beginning [2] 42:20 61:22 behalf [11] 2:3,6,9 3:4,7,10,13 4:9 45:21 73:4 89:4 behaves [1] 71:1 believe [4] 50:18 59:25 60:12 80:6 believes [2] 46:9 85:15 belonged [1] 85:11 below [2] 73:20 88:3 benefit [1] 33:21 benefits [6] 21:18 23:19 64:12,18 65:3,8 best [5] 4:20 23:10 84:1 91:6,19 better [1] 72:2 between [8] 10:15 13:11,11,22 46:2 54:15 68:1 86:11 beyond [2] 78:20 92:8 BIDEN [2] 1:3 4:4 big [2] 21:2 43:1 billion [3] 15:8 36:21 42:21 bit [5] 9:19 26:7 33:1 49:21 76:22 bizarre [1] 91:9 blew [1] 25:2 boards [1] 21:23 bodies [1] 29:20 bookkeepers [1] 52:11 boots [1] 84:2 borne [2] 15:9 42:21 boss [2] 10:18 11:14 both [13] 10:20 11:7 12:18 18:7 28:3 34:3 52:17 71:8 73:19 80:5 81:21,25 86:2 branch [1] 73:10</p>
--	---	---	---	---

Official

<p>breath ^[1] 57:19 Breyer ^[21] 32:22 56:20,25 57:8,11,17,23 58:2 59:2,8 61:9 62:3 76:3,11 81:16 83:4,8,12 84:15 88:10 93:1 BRIAN ^[5] 2:2 3:3,12 4:8 89:3 brief ^[4] 25:10,22 26:19 28:17 briefly ^[2] 48:3 74:16 broad ^[5] 51:7 76:23 77:18 79:17,18 broader ^[2] 29:8 51:9 budget ^[2] 39:12 75:14 built ^[1] 75:18 bunch ^[1] 39:5 burden ^[3] 24:7 60:13 83:5 bureaucratic ^[1] 73:14 buy ^[1] 68:5 buyer ^[1] 67:24</p>	<p>center ^[1] 23:23 centers ^[4] 8:10 23:17 24:4 27:4 certain ^[7] 51:23 55:3 67:20,21 84:11,13 87:19 certainly ^[15] 13:14 22:13 30:14 48:20,24 50:2 52:18,25 55:13 56:2 58:5 69:24 70:18,21 80:6 certified ^[1] 39:11 cetera ^[1] 15:1 challenges ^[2] 32:4 34:21 chance ^[2] 35:19 66:1 change ^[4] 16:25 76:2 84:4,6 changed ^[1] 87:16 changing ^[1] 74:2 chaos ^[1] 74:5 chapter ^[1] 7:18 characterize ^[1] 41:13 charged ^[2] 7:18 85:14 chart ^[1] 24:16 CHIEF ^[39] 4:3,10 10:14 11:8,21 12:3,19 13:13 32:19 35:4 42:17 44:16 45:17,22 50:22,23 62:14,16 63:2,5 69:7 72:2,18,21,25 73:1,5 75:20 76:21 78:1,11,14 80:17 88:5,8,9,22 89:5 95:8 childhood ^[1] 9:10 choice ^[1] 83:19 choose ^[4] 6:6 13:22 44:14 46:2 chose ^[1] 56:18 Circuit ^[5] 74:1 88:4,14,15 93:23 Circuit's ^[1] 27:11 circumstances ^[4] 21:13 32:12 36:3 38:13 cite ^[5] 25:10,22 27:20 65:14 92:20 cited ^[2] 8:6 48:22 cites ^[1] 51:23 citizens ^[5] 50:4,7 70:23 75:7 77:14 City ^[1] 2:6 claim ^[3] 36:13 46:5,6 59:8,10 60:12 62:18 65:13 66:2 70:13 72:3,13 73:7 76:17 81:25 82:2,6 86:17 87:9 88:16 91:25 92:1 cases ^[9] 5:2 10:21 25:1 29:21,22 37:20 67:9 75:8 81:21 catch-all ^[2] 46:10,15 Categorically ^[1] 47:10 categories ^[9] 8:9,11 25:9 29:6,19 33:19 43:23 92:9,10 category ^[6] 7:3,24 8:22 10:5 27:16 47:1 caught ^[1] 9:14 cause ^[10] 4:24 5:25 21:14,24 22:4,11,17 33:3,11 95:5</p>	<p>72:12 85:8 94:21 closer ^[3] 10:16,22 12:24 CMS ^[18] 10:17 11:2,10,25 12:12 15:3 24:2 40:21,22 41:3 43:14,19 52:10 53:24 58:25 60:23 69:20 85:5 co-opt ^[1] 77:12 co-opting ^[1] 87:9 coalition ^[2] 48:25 74:22 coast ^[1] 62:21 Code ^[3] 8:18 48:11 90:8 cognizance ^[1] 36:16 colleagues ^[2] 63:21 84:25 colloquy ^[1] 91:22 colonoscopies ^[1] 64:16 combination ^[1] 44:11 come ^[8] 63:20 72:4,4,6 93:2 94:1,3,7 comes ^[5] 53:22 68:22 72:12 84:7,8 coming ^[2] 64:15,16 commandeers ^[1] 37:22 comment ^[6] 21:15,17 22:2 32:2 33:6,13 Commissioner ^[1] 69:6 common ^[4] 5:11 20:10 90:25 91:2 communicable ^[1] 9:9 communities ^[3] 47:19 62:22 65:14 community ^[7] 5:15 25:19 32:16 70:2,25 91:5,13 compensation ^[2] 35:14 42:11 complaining ^[3] 69:16 70:11 85:1 complaints ^[1] 24:25 completed ^[1] 34:1 compliance ^[10] 15:25 32:1 49:15 51:4 94:2,3,5,7,8,12 comply ^[4] 16:24 19:6 36:22 83:23 complying ^[2] 46:3 82:8 comprehensive ^[1] 43:7 compulsory ^[3] 54:10 67:10 68:10 conceded ^[1] 79:7 concern ^[4] 6:4 31:7,8 53:5 concerned ^[2] 53:5,7 concerns ^[2] 13:3 54:11 concluded ^[1] 6:8 conclusions ^[3] 6:16 12:15 73:22 condition ^[4] 8:20 48:12 68:8 77:11 conditions ^[18] 8:8,17 10:5,8 15:21 20:18 29:9,11 30:3,19,20,20 32:11 33:18 51:18 72:8 76:1 89:11 conductive ^[1] 4:15 confident ^[1] 40:10</p>	<p>confirmations ^[1] 20:9 conflated ^[1] 75:11 conflict ^[1] 79:17 conflicts ^[1] 80:13 confused ^[1] 88:18 congregate ^[1] 13:18 Congress ^[31] 6:13 12:10,11,12 26:7 35:22 36:6 37:2 39:1 40:20,21,22 41:2 51:2 56:3,3,17 58:24 60:22 67:12 68:9,12,15,20,24 79:15 86:24 87:13,13,15 90:10 conjunction ^[2] 21:1 22:17 connection ^[1] 13:10 consensus ^[1] 25:19 consent ^[1] 74:7 consequence ^[1] 94:23 consequences ^[4] 9:24 47:8 71:16 72:14 consider ^[1] 67:6 considerations ^[1] 66:9 considered ^[4] 6:3 31:9 34:22 94:15 consistent ^[2] 30:14 40:12 consolidated ^[1] 4:6 constituencies ^[1] 70:23 constitute ^[2] 36:17 42:10 constraints ^[1] 19:23 consult ^[4] 20:14,20 21:7,22 consultation ^[6] 20:23 21:1,5 22:1,5 75:17 consulting ^[1] 86:25 contains ^[1] 35:8 contemplate ^[1] 21:12 contest ^[3] 84:11,13 89:10 contested ^[1] 81:13 context ^[26] 9:15 10:12 15:6,11,15 21:11 30:4 32:7 38:1 39:25 46:13 50:25 51:13,16 52:22 53:3 62:25 64:9 68:12 72:10 80:1 84:8,8 85:21 87:12 90:24 contexts ^[4] 12:18 38:5,8,13 contract ^[1] 51:11 contracted ^[2] 86:7,9 contracting ^[1] 30:21 contractor ^[1] 11:10 contractors ^[1] 11:25 control ^[22] 17:11,12 23:13 29:22 35:12 36:8 37:9,17 38:6 39:15 41:8,12,18,25,25 42:10,16 54:25 55:17 58:6 83:25 89:17 controlling ^[5] 36:1,14 39:19 41:22 80:11 controls ^[3] 35:20 36:25 40:9 Correct ^[9] 7:21 14:18 18:6 30:23 42:12 61:11,12 74:12 88:14</p>	<p>cost ^[10] 14:24 15:6,7,10 33:21 36:21 43:2,2,4 95:4 cost-benefit ^[1] 43:6 cost-benefits ^[1] 34:23 costs ^[7] 15:13,15,25 42:21 43:1,9 49:15 couldn't ^[1] 41:21 Counsel ^[14] 6:18 10:14 14:11 31:20 32:20 45:18 48:2 69:6 72:22 74:17 84:17 87:2 89:1 95:9 counterproductive ^[1] 66:6 countervailing ^[2] 63:17,17 country ^[10] 5:4,18 6:5 15:12 31:14 32:18 47:16 72:15 91:4 95:1 counts ^[1] 74:12 couple ^[2] 69:10 93:4 course ^[2] 36:10 90:1 COURT ^[23] 1:1,23 4:11 5:4 25:1 36:11 45:23 48:21 54:9,18,20 67:9 68:9 73:6,18,20,25 74:9,15 81:22 86:5 88:1,3 Court's ^[5] 6:17 25:5 48:1 74:11 75:21 courts ^[1] 65:9 cover ^[3] 28:11 43:10 93:24 covered ^[10] 7:4,12 23:21 26:1,20 35:13 92:6,13 93:12,16 covering ^[1] 10:7 covers ^[2] 15:10 43:8 COVID ^[13] 13:5 30:9 53:22 57:21 60:17 64:14 73:13 75:22,22 76:1 77:8 85:9 87:20 COVID-19 ^[12] 4:14 5:16 8:23 10:16,25 11:5 12:4,17,25 13:3,12,16 create ^[1] 74:5 created ^[1] 77:12 crisis ^[1] 47:24 critical ^[5] 47:6 65:13,18,25 78:8 crowds ^[1] 57:20 cues ^[9] 7:8,17 87:23,24,24 curb ^[1] 5:11 curious ^[1] 9:19</p>
C				
<p>C-sections ^[1] 61:8 calculated ^[1] 34:23 call ^[4] 59:22,23,23 81:24 called ^[1] 12:16 came ^[2] 1:22 16:21 candle ^[1] 92:2 cannot ^[7] 36:8 46:18 47:14 58:1 60:18 72:6 83:19 capacities ^[2] 49:25 50:13 capacity ^[1] 71:13 capricious ^[1] 46:24 care ^[11] 13:18,23 23:9 47:13 74:6 76:19 90:12 91:18 92:11,18 94:16 carefully ^[1] 6:3 Carolina ^[2] 31:23 65:15 carrier ^[1] 58:19 carriers ^[1] 64:10 carrying ^[1] 20:19 case ^[43] 4:6 10:15,17,18,22 12:22 14:7,13,14 15:13 17:20,24 21:16 23:15 24:11 31:6 40:7 48:9,21 49:11 50:13 51:21 53:18 56:15 59:8,10 60:12 62:18 65:13 66:2 70:13 72:3,13 73:7 76:17 81:25 82:2,6 86:17 87:9 88:16 91:25 92:1 cases ^[9] 5:2 10:21 25:1 29:21,22 37:20 67:9 75:8 81:21 catch-all ^[2] 46:10,15 Categorically ^[1] 47:10 categories ^[9] 8:9,11 25:9 29:6,19 33:19 43:23 92:9,10 category ^[6] 7:3,24 8:22 10:5 27:16 47:1 caught ^[1] 9:14 cause ^[10] 4:24 5:25 21:14,24 22:4,11,17 33:3,11 95:5</p>				
D				
<p>D.C ^[2] 1:19 2:3 da ^[5] 59:13,13,13,14,14 danger ^[4] 10:16 11:5,9 14:8 dare ^[1] 30:6 data ^[1] 63:15 day ^[4] 39:11 42:3 67:21 82:18 days ^[4] 94:1,3,8,11</p>				

Official

<p>deadline [1] 94:6 deadly [3] 4:22 6:12 9:12 deal [2] 53:19 63:20 dealing [5] 12:22 51:1,2 53:1 58:21 deaths [1] 4:24 decide [2] 64:24 65:9 decided [3] 56:4 64:25 85:21 deciding [1] 77:14 decimate [1] 62:19 decision [1] 5:21 decisions [2] 25:1 37:14 declarations [2] 63:11 76:15 defer [1] 21:25 define [1] 14:17 definition [4] 18:9,16 19:3,5 definitional [1] 18:3 definitions [2] 18:8 19:4 delay [2] 4:23 95:4 delaying [1] 5:2 delegations [1] 53:9 demands [1] 68:12 denied [1] 47:25 deny [1] 5:23 Department [1] 2:3 depend [1] 27:15 deprive [1] 50:7 Deputy [2] 2:2,5 derive [1] 51:19 describe [1] 14:23 describes [1] 23:18 desires [1] 60:17 detail [1] 26:9 detailed [4] 8:16 15:23 26:7 33:20 details [1] 16:3 determination [2] 78:15,21 determine [1] 8:13 determined [1] 12:14 determining [1] 80:1 Detroit [1] 66:5 devastate [1] 62:18 devastated [1] 65:21 devastating [5] 47:8 61:3 63:1 71:16 72:14 developing [1] 33:17 dictate [2] 37:13 68:4 difference [1] 14:12 different [28] 7:24 10:21 11:20 23:5 25:8,12 33:19 38:7,8 43:22,23 63:14 66:8 71:19,25 72:8,9 74:24,25 83:15 84:7,7 85:4,10 89:21 90:18,20 91:24 differently [2] 65:7 88:19 difficult [1] 23:4 diphtheria [5] 57:2,3,14 58:3 59:17 dire [1] 75:23 direct [3] 11:7 37:25 48:10</p>	<p>directed [2] 24:19 29:23 directly [11] 28:24 39:1,18 65:12 68:25 76:6,8 77:21 79:17 80:13 84:21 disagree [9] 13:14 14:4 26:15,17,24 27:8,24 28:1 51:22 discharge [1] 52:7 discrete [1] 87:16 discretion [3] 79:11,14 94:13 discretionary [1] 60:4 discuss [2] 48:3 49:21 discussed [2] 35:10 86:5 discussing [2] 15:19 92:17 disease [11] 4:22 5:12 29:4 58:15,19 60:3 61:23 64:11 78:19 83:1,25 diseases [5] 5:14 9:9,16 44:1 55:20 disputes [2] 90:10 95:3 disputing [2] 58:7 89:16 disruptions [8] 63:12,14 64:1,4,19 65:2,3,5 dissent [1] 72:3 dissolve [2] 74:1 81:11 distinction [1] 86:11 distinctions [1] 25:3 district [6] 25:1 48:21 73:18 74:11 75:21 88:3 disturb [2] 6:16 81:14 divide [1] 82:17 dividing [2] 86:13,13 division [1] 62:8 doctors [2] 39:9,9 doctrinal [1] 36:12 doctrine [1] 86:15 document [1] 35:2 documented [1] 28:21 doing [7] 11:15,24 58:10 61:1 83:6 84:1 85:20 dollar [1] 42:21 dollars [1] 36:21 done [11] 33:4 43:20 44:5,6 69:4 79:3 81:6 86:16,24 90:15 91:19 doors [1] 50:5 Dorado [1] 66:7 Doubly [3] 54:8,13 60:18 down [1] 92:8 dozens [1] 33:23 draw [3] 40:8 62:10,20 drawn [1] 67:9 driver [1] 43:2 due [1] 87:20 duly [2] 49:6 71:7 during [4] 5:7 6:12 9:10 95:1 duty [2] 39:11 92:23 dying [2] 59:19,21</p>	<p>e)(7 [1] 68:20 e)(9 [3] 26:11 39:6 54:2 each [12] 7:3,11,18,24 8:8,22 10:5 23:4 24:12,19 27:16 82:2 earlier [10] 11:14 12:8 17:24 18:9 21:19 51:16 59:10 75:2 79:15 91:23 early [1] 45:24 economies [1] 62:19 economy [1] 31:21 effect [8] 60:1 76:17 82:3,6 92:25 93:19 94:19,24 effective [6] 9:6 20:10 44:10,13 73:8 85:20 effectively [5] 35:20 36:24 50:6 74:3 86:5 effects [1] 43:7 efficient [2] 7:17 9:22 efficiently [1] 53:10 eight [2] 26:9 46:15 either [5] 27:25 53:6,16 57:9 59:9 EI [1] 66:7 elderly [2] 53:17 58:15 element [1] 70:16 eligible [1] 18:17 ELIZABETH [3] 2:8 3:9 73:3 emergency [5] 17:14 47:13 61:8 75:23 86:25 emphasizing [1] 15:11 employ [1] 25:25 employee [1] 15:14 employee's [1] 42:10 employees [14] 26:20 35:13 40:25 41:6,8,18 42:16 43:9 47:18 65:16 79:23 80:12 90:7 92:5 employers [3] 31:19 36:21 82:9 employment [4] 35:20 36:25 47:11 48:12 enacted [4] 49:6 71:7 77:5,7 enacts [1] 67:12 encompassing [1] 45:1 encouraging [1] 47:3 end [3] 31:17 33:24 94:11 end-stage [1] 29:4 enforce [1] 49:16 enforcement [2] 94:9,13 engage [1] 35:1 engaged [1] 39:3 enormous [6] 14:23 32:8 75:12,15,15 86:6 enormously [1] 81:14 enough [2] 67:5 76:13 ensure [2] 51:3 92:22 ensured [1] 9:14 entire [3] 47:10 71:15 80:17 entirely [2] 24:24 76:10 entities [3] 37:11 70:19 94:</p>	<p>1 entitled [1] 51:17 entity [3] 37:23 94:5,6 environment [1] 41:1 EPA [1] 49:4 equip [1] 45:5 equities [3] 82:14 93:3,5 equity [1] 81:22 especially [7] 4:14,15 6:1 13:17 28:10 53:21 71:16 ESQ [4] 3:3,6,9,12 establish [1] 23:12 estimate [1] 15:7 estimating [1] 43:1 ET [5] 1:5,8,12,15 15:1 evaluate [2] 79:13 87:12 evaluating [1] 65:1 even [31] 22:11 24:15 29:2,8 31:14,15 41:20,25 43:8 45:2,8,14 51:13,15 53:10 60:16 68:11 73:23 77:8 81:2,12 82:16 84:11,13 89:14 92:8 93:14 94:4,10,10,19 everybody [2] 57:4 62:9 everyone [1] 43:25 everything [3] 14:6 36:4 65:24 evidence [1] 46:25 eviscerate [1] 74:7 exactly [3] 39:1 60:19 68:24 example [16] 5:20 23:8,16 26:18 41:2 46:14 48:9,10 50:4 51:24 52:5 57:9 65:15 68:18 70:13 72:11 exceeding [1] 60:24 Exceedingly [3] 46:19 54:18 59:1 except [1] 84:21 exception [4] 22:4,11,17 83:16 excluding [1] 47:10 executive [2] 33:23 73:9 exemptions [1] 4:19 exercise [4] 15:18 41:4 42:3,16 exercised [2] 73:17 94:12 exercises [1] 60:15 exercising [1] 86:21 exist [2] 16:21 45:4 existing [2] 29:20 33:18 expand [1] 11:9 expansive [1] 46:7 expected [3] 13:25 77:8,9 experience [4] 6:4 31:13 34:4 69:15 explain [4] 13:24 42:23 47:2 71:25 explained [17] 5:22 6:4 9:4,4,7 11:4 12:15 25:16 31:10,13 32:5 34:15,22 43:5 44:7,10 92:4 explanation [2] 34:20 43:19</p>	<p>exposing [1] 13:23 express [9] 31:15 35:9 55:15,22 56:4,16 75:17 92:6,15 expressed [1] 71:6 expressly [1] 18:4 extent [4] 14:21 27:13 59:11 74:18 extra [2] 14:1 92:20 extraordinarily [1] 84:6 extraordinary [2] 81:10 83:21 extrapolated [1] 46:25 extremely [1] 34:13</p>
F				
<p>face [2] 13:2 47:24 faced [2] 32:4 62:7 faces [1] 32:8 facilitate [2] 31:20 49:14 facilities [38] 16:9,10,11,15 19:2,5,6,16 23:9,12 29:5 30:11 35:14,21 47:1,7,19 50:6 52:25 55:15 56:5 58:7 65:20 70:5,7,8,8,20,24 71:9,9 81:6 84:22,24 87:20 92:11,18 93:12 facility [2] 30:16 67:16 facility-by-facility [1] 27:7 facility-specific [4] 22:24 44:20,23 45:4 fact [8] 14:25 28:21 29:14 36:10 40:19 69:19 82:24 87:10 factor [2] 27:14 65:22 failed [1] 47:2 failure [1] 30:19 fair [2] 30:9,13 fairly [1] 60:6 falls [3] 5:7 54:2 79:14 familiar [1] 35:11 fast [1] 34:13 faster [1] 34:9 fatal [1] 47:21 fault [1] 34:18 fear [1] 81:3 feather [1] 66:4 Federal [32] 8:18 11:10,20,25 12:7,9 15:9 37:9 42:22,25 43:8 49:14 50:8 51:1 54:11,15 58:25 60:23 66:18 67:24 68:2,3,4 73:9 74:3 77:10 81:1 85:13 86:8 89:12 90:2,13 few [2] 25:21 93:3 fewer [1] 63:23 Fifth [4] 27:10 73:25 88:3 93:23 filling [1] 59:20 final [1] 49:19 finally [1] 93:1 find [5] 19:20 23:3 26:6 28:13 79:21 finds [9] 8:3 17:8 18:22 19:</p>				
E				
<p>e)(1 [1] 52:5</p>				

Official

8,14 51:5 77:1 78:16,17 fine [1] 38:11 finished [1] 10:19 fire [2] 17:13 90:8 fired [1] 83:19 First [13] 5:6 10:1 14:7 15:5 31:13 46:9 51:15 64:8 69:13 83:14 89:24 93:6 94:2 fitting [1] 33:17 FLETCHER [67] 2:2 3:3,12 4:7,8,10 6:20 7:9,21,23 9:3,25 10:11,20 11:12 12:2,6 13:13 14:19 15:5 16:10 17:6 18:7,12,15 19:8,17 20:16 21:10,21 22:6,19,21,25 23:7 24:23 27:12 28:14 29:1 30:13,24 31:4 32:25 33:8 34:10 37:5,24 38:6,15,19,22 39:20,23 40:3,6 41:9,19 42:4,12,15,24 43:21 45:7 51:23 89:2,3,5 flexible [1] 60:9 flu [4] 5:15 43:15 44:5,9 focus [5] 23:2 24:24 25:3,5 30:21 folks [2] 66:1 71:13 follow [3] 22:22 43:12 90:8 following [1] 18:20 food [1] 67:20 footnote [2] 26:18 27:21 force [3] 63:18 73:10 86:22 forced [3] 13:22 46:2 73:13 Forest [1] 54:20 former [1] 47:21 formulations [1] 25:12 forth [4] 7:24 8:16 63:24 64:17 forward [2] 54:4 60:12 found [6] 4:20,23 9:16 31:24 33:12 95:2 fraction [1] 93:13 free [1] 66:11 Friday [1] 1:20 friend [1] 51:22 friend's [1] 93:16 friends [2] 34:18 94:18 full [5] 33:4 59:15 94:5,7,11 function [4] 20:20,25 52:24 65:1 functions [2] 7:17 28:19 fundamentally [1] 47:5 funding [5] 36:18 70:21 75:14 76:9 77:22 funds [1] 16:6 further [8] 32:22 35:5 63:3,4 65:7 88:6,7,12	45:3,9,10 72:23 75:20 77:18 79:5,14 generalized [1] 28:20 generally [3] 15:3 32:10 34:5 gets [2] 8:12 11:13 getting [5] 13:22 59:18 60:2 64:14 82:25 give [10] 26:3 29:7 58:24 60:23,23 67:21 74:3 77:3 79:12 85:12 given [8] 12:10 36:16 69:5 76:2 77:17 78:25 89:22 90:11 gives [3] 10:23 23:14 53:8 giving [1] 93:25 gloves [8] 57:25 58:1 66:25 71:21 72:4 89:18 90:7,20 goal [1] 76:19 Gorsuch [19] 35:6,7 37:5,18 38:3,11,18,20 39:14,21 40:1,4,18 41:16,24 42:9,14 69:8 88:23 Gorsuch's [1] 43:13 got [3] 9:9 38:21 59:14 governing [1] 33:10 government [27] 11:15,22 12:7,8 14:17 15:9 24:6 41:7 42:22,25 43:8 48:15 49:15 54:12 66:18 67:24 68:2,4 69:21 73:24 74:4 75:11 77:10 80:20 81:2 82:21 86:8 government's [4] 13:12 46:4 47:24 74:10 governments [2] 36:19 66:15 grant [6] 24:1 27:2 45:9,10 54:5 79:18 granted [2] 26:16 79:15 grants [10] 27:9 30:1 44:20,23,24,25 45:3,4,13 51:20 granular [1] 40:9 grave [2] 10:25 14:7 graver [1] 44:8 great [2] 15:16 53:19 greater [1] 65:6 ground [2] 84:2 89:23 grounds [1] 80:8 group [1] 25:8 groups [1] 53:15 guess [4] 24:5 33:6 34:6 56:14 guidance [2] 93:22,25 guidelines [1] 17:13	happen [2] 20:23 22:9 happens [2] 21:21 61:24 happy [1] 74:13 hard [8] 10:21 24:11 40:8 41:13 59:24 66:23 84:18 85:3 harm [2] 82:2,5 head [2] 52:10 53:24 HEALTH [76] 1:12 5:9,20 8:4 9:24 10:9,13 11:3 12:25 13:11 16:17 17:9,18,20 19:1,9,15,21,24 20:11 23:3,6,16,23 25:11,11,14,17 26:13,21 27:1 28:1,23 29:3,14,20,23 30:2,11 32:15 39:7 40:24 41:6,14 45:1 50:3 51:5 52:3,20 53:2,9,12,25 55:23 56:11 64:12,18 65:3,8,16 67:6 68:16 69:5 77:2,21 85:6,14 86:20 89:13 91:6,10 92:7,11,16,19,22 healthcare [30] 5:12 9:7 12:23,25 13:12,16,25 14:25 15:12 16:3 19:25 31:21,23 32:10 35:14,21 36:20 37:1 43:15,18 45:25 47:7,9,16,19 50:7 69:17 77:24 90:24 91:2 hear [6] 4:3 35:18,18 60:7 89:9,16 heard [6] 10:25 14:7 62:25 66:1 82:6 90:17 hearing [1] 34:21 heartland [1] 17:19 heavier [1] 23:25 heavily [1] 31:6 help [2] 31:19 71:5 helps [1] 62:11 hepatitis [1] 5:14 heroically [1] 46:1 hesitancy [1] 31:15 HHS [3] 52:11,23 53:24 high [3] 15:24 31:25 85:7 hire [4] 36:1 37:14,15 40:13 hired [1] 83:20 historically [3] 58:23 60:20 66:9 history [1] 87:25 holdings [1] 74:11 home [3] 45:25 92:10,19 homes [6] 4:12 8:9 13:18 62:1 87:18 92:18 Honor [39] 48:4,10,20 49:3,18,23 50:15,19 51:14,21 52:18 54:8,13 55:10,13 56:3,15,24 57:6 58:4,8,20 60:8 61:1 62:14,17,21,24 63:1 65:10 67:8 68:6,19 69:24 71:11,13 72:15 75:24 85:25 hope [1] 91:24 hopefully [1] 28:4 hospital [20] 13:2 18:10,16,17,19 19:2,4 20:5 26:8 39:	4,17 41:5 51:25 57:3 59:20 61:6 63:10 72:11 82:13,25 Hospitals [18] 4:12 7:25 14:24 15:21 26:11 32:4 37:1 54:3 55:1 59:15 62:22 64:13 65:19 69:17 70:3,25 90:6 92:10 host [1] 12:1 hours [2] 39:11 47:13 Houston [1] 66:5 HUMAN [1] 1:12 hundreds [1] 61:22 hurt [1] 82:9	13 29:21 54:25 55:9,17,25 56:10,12,14 58:6,18 89:17 infections [1] 55:5 infectious [3] 5:12 78:19 83:25 inform [1] 44:23 informed [3] 54:5,6 74:7 ingested [1] 41:5 inheritor [1] 81:22 injunction [11] 24:7 26:23 27:11 47:23 61:2 73:20 74:1 81:12 84:9,14 93:24 injunctions [7] 5:1,5 28:9 84:9 93:18 94:22 95:7 inoculated [1] 61:16 input [1] 32:3 insignificant [2] 47:21 65:17 insist [1] 43:17 Instead [5] 5:25 7:2 89:19 93:9,11 institutional [2] 47:17 69:25 instruments [2] 55:2 57:13 intended [3] 48:6 68:9 80:20 intent [1] 80:19 interest [13] 8:4 17:9,18 19:9,21 25:14 50:3 51:5 52:20 59:22 60:9 61:1 77:1 interests [7] 49:10,18 50:1 62:24 75:7,15 79:22 interfering [1] 82:23 interim [1] 59:13 interpret [2] 36:7 44:25 interpretation [1] 89:8 interpreted [7] 21:25 22:16 27:2 29:16,25 37:8,20 interrupt [1] 87:3 inadequate [1] 68:25 invasive [1] 73:12 invoke [1] 50:2 invoked [2] 6:21,23 invokes [1] 46:16 involved [1] 16:2 involves [1] 33:16 involving [1] 85:6 ironic [1] 48:15 irrevocable [1] 73:13 irrevocably [1] 74:2 isn't [11] 18:24 21:3,4 22:6 28:25 33:11 36:24 52:15,16 56:1 94:10 isolate [1] 67:2 issue [14] 20:19 30:7,16 32:2 37:1 48:3 49:8 66:16 68:1,2 76:22 78:22 79:13 86:3 issues [5] 67:15,22 68:25 85:6 94:16 it'll [1] 59:10 itself [4] 19:19 40:13 64:11 68:12
G	H	I		
gave [4] 39:13 57:12,13 77:6 General [22] 2:2,5,8 6:21,23 10:3 14:14 17:11 28:17 30:1 31:1 39:16 44:24,25	habits [1] 41:4 half [2] 5:4 94:25 hand [4] 13:4 82:7,10 85:8 handcuffs [1] 83:20 hands [5] 55:3 57:1,12 71:21 85:18	idea [3] 45:10 53:10 73:8 identified [3] 6:15 24:16 43:22 ignored [3] 65:25 71:14,15 ignores [2] 46:14 51:25 ignoring [1] 56:8 ill [2] 30:18 68:17 illnesses [2] 4:25 95:5 immediate [1] 83:22 immediately [1] 84:5 imminent [1] 47:24 immunization [1] 52:6 impact [1] 76:13 impermissibly [1] 46:25 implement [4] 41:3 58:5 76:7 77:23 implemented [1] 76:10 implementing [1] 4:23 implicates [1] 14:9 important [9] 34:8 52:17,25 63:25 65:1,22 75:3 81:3 86:10 impose [7] 15:23 24:2 30:2 32:15 45:1 46:6 76:24 imposed [2] 31:19 77:11 inadequate [1] 85:24 include [10] 25:11,23 29:13 30:2 56:12,14 89:14 91:11 92:6,19 included [3] 17:10 27:17,19 includes [2] 55:24 89:12 including [6] 14:1 18:21 31:21,22,22 43:6 inconsistent [3] 34:2 48:7 79:9 incorrect [1] 18:6 incredibly [1] 52:14 independent [2] 49:9 80:8 Indiana [1] 31:24 individual [2] 23:19 86:22 individuals [4] 35:21 67:2 77:25 86:20 inducement [1] 81:3 industry [3] 32:7,10 90:24 infected [1] 67:2 infecting [2] 4:21 14:2 infection [14] 17:10,12 23:		

Official

<p style="text-align: center;">J</p> <p>Jacobson [3] 54:12 67:9 86:17</p> <p>January [1] 1:20</p> <p>Jefferson [1] 2:5</p> <p>JESUS [3] 2:5 3:6 45:20</p> <p>job [7] 53:11 55:12 63:25 64:23 81:3 84:1 93:21</p> <p>jobs [3] 6:7 31:17 46:3</p> <p>JOSEPH [1] 1:3</p> <p>JR [1] 1:3</p> <p>Judge [1] 72:2</p> <p>judgment [1] 71:6</p> <p>judgments [2] 6:14 71:3</p> <p>jump [1] 73:25</p> <p>jurisdiction [1] 79:10</p> <p>Justice [193] 2:3 4:3, 11 6:18 7:7, 13, 22 8:24 9:18, 25 10:10, 14 11:8, 21 12:3, 19 13:13 14:11, 20 15:20 16:5 17:1, 22 18:11, 14, 23 19:11 20:12 21:3, 11, 18, 20 22:3, 18, 21, 22, 23 23:1, 8 26:14 28:14 29:6, 7 30:6, 17 31:2 32:19, 21, 22, 23, 24, 25 34:6 35:4, 4, 6, 7 37:5, 18 38:3, 11, 18, 20 39:14, 21 40:1, 4, 18 41:16, 24 42:9, 14, 17, 19 43:11, 12 44:15, 16, 18, 21 45:16, 17, 22 48:2, 14 49:19 50:16, 20, 23 51:16 52:9 53:4 54:23 55:7, 11, 18, 21 56:7, 19, 20, 23, 25 57:8, 11, 11, 17, 23 58:2, 9 59:2, 8 61:9 62:3, 14, 16 63:2, 2, 4, 5, 7, 8, 9 66:13, 16 67:13, 19 68:14 69:2, 4, 7, 9, 10, 13 70:6, 9, 15, 21 73:1, 6 74:16, 20 75:1, 19, 20 76:3, 11, 21 78:1, 11, 12, 14 79:20 80:14, 17 81:16 83:3, 4, 8, 12 84:15, 17, 25 87:2, 6 88:5, 5, 7, 9, 11, 12, 13, 17, 20, 22, 23, 24, 25 89:6 91:22 93:1, 6 95:8</p> <p>justifies [1] 87:9</p> <p>justify [2] 28:8 47:1</p>	<p>24 71:6, 19 86:21</p> <p>kinds [2] 57:16 71:22</p> <p>knowingly [1] 78:5</p> <p>knows [2] 56:17 68:24</p> <hr/> <p style="text-align: center;">L</p> <p>Labor [4] 10:23 63:12, 18 64:19</p> <p>lack [1] 27:25</p> <p>laid [1] 43:22</p> <p>land [1] 86:15</p> <p>language [20] 7:14 23:4 25:12, 23 27:20 28:1 36:7 37:21 46:19 52:1 54:18, 21 55:16, 22 56:16 59:1 77:18 89:15 92:7, 16</p> <p>large [3] 31:18 42:24 69:25</p> <p>larger [1] 87:12</p> <p>largest [1] 92:9</p> <p>last [5] 9:18 44:22 70:13 82:7 87:16</p> <p>latter [3] 45:7 47:22 71:24</p> <p>law [4] 36:11 50:8 51:1 69:14</p> <p>lawful [1] 60:15</p> <p>laws [8] 48:7, 25 49:5 52:16 67:12 71:7, 7 74:25</p> <p>least [6] 28:22 48:21 62:11 74:18 82:23 86:16</p> <p>leave [2] 6:7 27:10</p> <p>leaving [1] 31:17</p> <p>led [1] 44:13</p> <p>ledger [1] 94:20</p> <p>left [1] 37:3</p> <p>legal [3] 34:3, 16, 21</p> <p>legislation [1] 49:6</p> <p>length [1] 11:4</p> <p>less [4] 26:7 34:20 64:2 65:20</p> <p>letting [1] 92:24</p> <p>level [2] 9:14 68:22</p> <p>levels [1] 31:25</p> <p>licenses [1] 39:10</p> <p>licensing [1] 68:22</p> <p>life [1] 11:19</p> <p>lift [1] 23:25</p> <p>lifted [1] 93:18</p> <p>light [1] 36:7</p> <p>likelihood [4] 24:8 27:13 28:5 60:14</p> <p>likely [1] 32:6</p> <p>limit [5] 19:11, 18 34:12 74:5 78:18</p> <p>limitation [2] 35:9 78:8</p> <p>limited [1] 12:9</p> <p>limits [1] 24:9</p> <p>line [3] 39:15 40:5, 7, 12 67:10 72:24 86:13, 13</p> <p>lists [1] 23:20</p> <p>little [1] 26:7</p> <p>live [1] 90:14</p> <p>lives [3] 5:24 82:25 95:5</p> <p>local [6] 47:19 62:18, 19, 21 66:10, 14</p>	<p>long [11] 8:15 13:25 17:10, 16 20:24 21:24 22:15 29:15, 25 37:12 49:4</p> <p>long-term [3] 23:9 92:11, 18</p> <p>longer [1] 75:23</p> <p>look [11] 7:13 10:11 26:5 29:17 52:21 53:12, 24 55:23 56:10 59:25 72:10</p> <p>looked [1] 30:7</p> <p>looking [2] 27:13 79:11</p> <p>looks [1] 82:12</p> <p>losing [1] 46:3</p> <p>loss [2] 47:20 81:4</p> <p>lot [5] 11:15 65:10 82:12, 15, 18</p> <p>lots [1] 11:20</p> <p>LOUISIANA [4] 1:15 2:9 74:24 75:12</p> <hr/> <p style="text-align: center;">M</p> <p>made [4] 12:11, 12 68:9 71:3</p> <p>main [1] 78:8</p> <p>maintain [2] 23:12 74:10</p> <p>maintaining [1] 88:2</p> <p>major [3] 14:21 19:18 86:15</p> <p>majority [4] 10:6 28:11, 22 30:10</p> <p>mammograms [1] 64:15</p> <p>management [1] 16:3</p> <p>mandate [10] 11:11 46:4, 6, 12, 20 47:8 49:7 50:5 71:11 72:13</p> <p>mandated [1] 78:21</p> <p>mandates [1] 80:22</p> <p>mandating [1] 47:4</p> <p>Many [13] 5:12 14:25 17:25 29:21 50:5, 9 52:4, 8 76:16 80:22 85:1, 6, 10</p> <p>marginal [1] 32:12</p> <p>market [1] 64:22</p> <p>masks [2] 58:1 72:4</p> <p>masquerading [1] 68:7</p> <p>Mass [1] 49:4</p> <p>Massachusetts [1] 61:25</p> <p>massive [1] 47:17</p> <p>materially [3] 46:17 72:8, 9</p> <p>matter [4] 1:22 66:7, 10 75:3</p> <p>matters [2] 29:23 46:21</p> <p>meals [1] 67:21</p> <p>mean [32] 13:1 21:3, 25 34:11 37:13, 19, 19, 20, 21 38:1, 4, 7, 9, 23 43:25 47:11 51:10 52:24 58:17 59:5 64:20 66:17, 22 68:24 77:8 78:2 80:6, 14 81:18 87:3, 13, 15</p> <p>meaning [2] 38:14, 16</p> <p>means [9] 18:17, 19 37:17 38:4 61:8 64:9 80:2 83:24 93:20</p> <p>measles [1] 5:14</p>	<p>measure [7] 5:20 17:20 20:10 32:15 58:18 91:12 94:24</p> <p>measures [11] 19:25 29:21 45:2 54:25 55:17, 25 57:7 58:6 83:25 87:19 90:21</p> <p>mechanisms [1] 89:18</p> <p>Medicaid [33] 4:13 5:3, 10 6:11 7:6 8:5, 14 11:4 12:13, 23 15:22 16:6, 11, 13 29:12 37:7 49:13 53:13, 18 58:16 64:5 70:21 73:12 75:10, 14 76:9 83:24 86:6 89:12 90:13 91:11, 18 94:25</p> <p>medical [14] 4:19 5:6, 15 13:23 20:4 25:19 32:16 46:17 53:19 72:6 73:13 86:22 91:5, 13</p> <p>Medicare [29] 4:13 5:3, 9 6:11 7:6 8:5, 14 11:3 12:13, 23 15:22 16:12 18:18 29:12 37:8 38:25 49:13 53:12 58:15 64:4 73:11 75:10 77:24 83:24 89:12 90:13 91:10, 18 94:25</p> <p>medications [1] 42:1</p> <p>medicine [2] 37:11 90:4</p> <p>medicines [1] 41:4</p> <p>meet [4] 17:13 18:20 40:14 91:18</p> <p>meets [2] 23:23 39:12</p> <p>Memphis [1] 66:6</p> <p>mention [3] 23:15 49:25 50:1</p> <p>mentioned [4] 42:20 50:15 51:16 61:21</p> <p>merits [2] 24:8 60:14</p> <p>met [3] 60:13 94:5, 10</p> <p>midst [1] 17:21</p> <p>might [11] 12:20, 21 17:4 24:13 34:8 36:2 59:24 62:12 63:19 64:20 82:11</p> <p>million [1] 36:20</p> <p>millions [4] 45:24, 25 73:10 74:7</p> <p>mind [2] 59:5 80:16</p> <p>minimum [1] 92:24</p> <p>minor [1] 32:7</p> <p>minute [4] 60:1 67:14 82:7, 16</p> <p>missing [1] 70:15</p> <p>MISSOURI [6] 1:8 2:6 4:5 48:22 66:6 76:17</p> <p>Missouri-led [1] 48:25</p> <p>Mister [1] 22:18</p> <p>Mm-hmm [1] 59:7</p> <p>moment [1] 61:19</p> <p>money [9] 14:18 35:24, 25, 25 36:8, 13 37:21 67:16, 25</p> <p>Montana [1] 74:24</p> <p>months [3] 33:14 34:1, 14</p> <p>most [10] 6:5 11:23 37:25 38:16 43:9 48:10 52:17 53:16 70:7 81:2</p>	<p>mostly [1] 42:21</p> <p>move [2] 39:16 73:14</p> <p>MS [21] 72:25 73:5 74:20 75:5, 24 76:5, 12 77:6 78:2, 23 80:5 83:3, 7, 10, 13 85:25 87:5, 8 88:15, 19, 21</p> <p>much [11] 13:3 15:8 42:2, 2 44:8 53:15 64:2, 22 68:14 72:17 80:23</p> <p>multiple [2] 79:16 84:9</p> <p>MURRILL [25] 2:8 3:9 72:23, 25 73:3, 5 74:20 75:5, 24 76:5, 12 77:6 78:2, 23 80:5 83:3, 7, 10, 13 85:25 87:5, 8 88:15, 19, 21</p> <p>must [3] 40:17, 25 41:5</p> <hr/> <p style="text-align: center;">N</p> <p>name [1] 41:6</p> <p>narrow [1] 92:8</p> <p>narrowed [1] 93:23</p> <p>national [1] 17:13</p> <p>nationwide [1] 93:24</p> <p>natural [1] 38:17</p> <p>nature [2] 17:15 89:19</p> <p>Nebraska [3] 47:12 61:4, 6</p> <p>necessary [14] 7:16 8:3 9:17, 21 17:9 18:22 19:9, 14 26:12 34:15 51:5 77:1 78:17, 22</p> <p>need [8] 6:10 32:14 44:2 68:15 71:24 79:20 84:2 87:12</p> <p>needed [2] 5:2 94:24</p> <p>needy [1] 74:6</p> <p>networks [4] 74:5 76:8, 14 81:15</p> <p>never [8] 40:20, 22 78:23 79:2 81:6 86:16, 23 87:3</p> <p>new [2] 9:13 61:25</p> <p>next [3] 4:4 61:14, 15</p> <p>NFIB [1] 86:6</p> <p>none [1] 52:5</p> <p>nonetheless [2] 31:10 45:5</p> <p>normal [1] 32:11</p> <p>North [2] 31:23 65:15</p> <p>noted [1] 84:25</p> <p>nothing [3] 37:7 72:12 88:7</p> <p>notice [12] 16:6, 16, 19, 23 17:3, 7, 16 21:15, 17 51:17 77:4, 7</p> <p>notice-and-comment [5] 21:2 22:20 33:5, 10 34:2</p> <p>Novant [1] 65:16</p> <p>nuanced [1] 26:10</p> <p>number [4] 24:10 33:8 73:21 82:18</p> <p>numbers [1] 31:18</p> <p>numerous [1] 65:20</p> <p>nurse [1] 39:11</p> <p>Nurses [2] 20:6 40:14</p> <p>nursing [9] 4:12 8:9 13:18</p>
--	---	--	--	---

Official

23:11 55:15 56:5 87:18,18 92:18 <hr/> O <hr/>	OSHA's ^[1] 14:9 other ^[65] 4:12 8:6 9:7,16 12:1 13:4,18 14:22 15:22 18:21 19:2,4,23 20:13 22: 8 23:23 25:19 26:12 28:10 29:22,23 30:9,20 31:5,6 34:18 35:11,17 37:20 38:5 40:15,24 41:22 43:16 48: 16,24 49:10 50:13,25 52:1 53:2 54:7 57:24 61:20 62: 5 64:12 66:4 67:15 71:22 76:3 79:7 81:25 82:4,10 83:23 85:20,23 89:9,19 90: 17,20 91:12,14 94:16,20 others ^[2] 24:14 59:21 otherwise ^[4] 28:4 46:13 62:12 85:19 ought ^[4] 24:24 27:23 35: 19 90:22 out ^[16] 9:1 20:19 33:2 34: 20,23 38:9 40:8 43:17,22 49:16 53:25 60:25 63:24 93:20,22,25 outbreaks ^[1] 87:21 outcomes ^[1] 53:19 outlandish ^[1] 41:21 outline ^[1] 39:16 outside ^[1] 40:25 outweigh ^[1] 32:14 outweighed ^[1] 6:10 over ^[6] 36:21 42:20 46:19 59:17 61:14 72:7 overlooking ^[1] 59:16 overlooked ^[1] 47:6 overturn ^[1] 84:14 overwhelmingly ^[3] 5:16 69:19 93:10 own ^[2] 16:13 20:3 <hr/> P <hr/>	25 85:21,23 particularly ^[3] 15:16 81: 23 91:1 parties ^[2] 50:17 70:11 parts ^[2] 51:23 81:12 party ^[1] 48:17 pass ^[5] 28:18 66:25 67:1,3 68:15 passed ^[1] 30:8 past ^[6] 8:25 9:2 17:11 22: 14 25:2 80:9 patient ^[17] 12:13 17:9,18, 20 19:9,21 20:11 25:14 26: 13 29:13,20,23 30:2 37:15 52:14 89:13 91:6 patients ^[26] 4:13,22 5:3, 10 6:11 8:4 11:3,6 14:3 41: 15 47:11 51:6 53:15,16,17 56:11 58:12,16,16 61:3 77: 2 85:15,16 91:11,18 94:25 patriae ^[4] 49:21 75:2,6 79: 21 pay ^[1] 66:21 payer ^[1] 66:20 paying ^[1] 66:18 people ^[28] 13:1 19:1,15 30:18,19,22 59:14,17 60:2 61:16,22 62:12 63:19,22, 24 64:13 66:25 68:17 69: 15 73:11 74:8 77:22 81:5 82:11,12,19 89:18 93:20 people's ^[2] 62:1 82:24 per ^[2] 15:14 70:22 percent ^[9] 10:7 25:25 32: 11 36:18 47:20 75:13 92:4, 12 94:6 percentage ^[2] 26:20 70:7 perfect ^[1] 62:10 performed ^[1] 23:22 performing ^[1] 65:1 perhaps ^[2] 59:4 68:18 period ^[1] 33:13 permanent ^[2] 46:17 72:6 person ^[4] 34:7,7 37:14,15 perspective ^[6] 47:6 62:25 65:13,18,25 71:20 persuade ^[1] 28:4 persuaded ^[1] 91:24 physicians ^[1] 40:14 picked ^[1] 11:22 picks ^[1] 70:9 place ^[5] 16:1 26:23 27:11 28:9 84:1 places ^[3] 30:22 66:8 70: 24 placing ^[2] 9:20 18:2 plaintiff ^[1] 93:25 plaintiffs ^[1] 70:21 plan ^[2] 39:12 94:7 planned ^[1] 61:15 plans ^[4] 17:12 82:9,11 83: 14 please ^[5] 4:11 15:2 45:23 62:16 73:6	plethora ^[1] 50:2 point ^[12] 28:25 29:1 48:10 49:3,20 60:25 64:21 78:3 91:16,21 93:2,6 pointed ^[2] 43:16 79:7 points ^[3] 14:5 87:11 89:6 police ^[3] 77:13,13 87:10 policies ^[2] 34:25 71:4 policy ^[4] 6:14 20:6,7 71:6 pool ^[1] 62:20 poor ^[1] 74:6 populations ^[4] 52:15 53: 21 55:24 85:23 poses ^[4] 12:17 13:16 14:8 75:23 position ^[3] 26:15 48:18 78:24 possible ^[2] 38:14,16 possibly ^[1] 77:9 posture ^[1] 92:3 potential ^[1] 65:2 potentially ^[1] 4:22 poverty ^[1] 53:18 power ^[12] 14:17 19:12 45: 12 60:4 68:1 73:10,14,18 77:13 84:19 86:21 87:10 powerful ^[1] 20:9 powers ^[3] 12:9 14:14 54: 16 practice ^[2] 22:14 37:10 practices ^[2] 25:20 91:19 precautions ^[1] 14:14 precede ^[1] 46:15 preceded ^[1] 79:6 precedents ^[1] 88:1 precedes ^[1] 52:2 preceding ^[2] 26:9 39:7 precise ^[1] 72:13 precisely ^[3] 76:14 81:7 86: 14 predict ^[1] 5:25 predicting ^[1] 82:2 predictive ^[1] 6:14 predicts ^[1] 82:4 predominant ^[1] 62:6 predominantly ^[1] 86:19 preempt ^[2] 48:6 74:21 preempted ^[2] 49:1 71:10 preemption ^[3] 48:3,19 49: 8 preempts ^[2] 74:19,22 preliminary ^[6] 5:1 73:19 84:9 93:18 94:21 95:6 premise ^[1] 27:8 preparedness ^[1] 17:14 prerogative ^[2] 89:25 90:5 prescriptive ^[1] 15:23 present ^[3] 13:10 49:7 84: 12 presentation ^[1] 93:17 presented ^[1] 63:10 PRESIDENT ^[2] 1:4 4:4 pressed ^[1] 31:6 pressing ^[1] 11:23	pretend ^[1] 45:3 pretext ^[1] 80:16 pretty ^[3] 53:15 58:17 64:8 prevailing ^[1] 28:6 prevent ^[5] 4:21 14:2 55:8, 19 60:17 preventable ^[1] 4:24 prevention ^[5] 54:25 55:25 56:12,14 58:18 previously ^[4] 43:14,20 81: 20 93:23 primarily ^[4] 7:1 17:2 45: 13 46:16 primary ^[4] 30:21 47:12 76: 19 77:20 prime ^[2] 46:16 53:23 Principal ^[6] 2:2 18:2 46:8 52:15 53:11,23 principle ^[1] 85:13 private ^[4] 37:22 70:20 71: 9 84:24 private-run ^[1] 70:8 problem ^[11] 12:5,25 13:5, 7 41:10 59:16 62:23 65:22 70:1,3 89:21 problems ^[1] 94:18 procedure ^[3] 46:18 72:6 81:10 procedures ^[2] 52:8 72:9 proceed ^[1] 73:2 proceeding ^[1] 33:5 process ^[4] 21:2 22:2 34:4 71:15 produced ^[1] 34:14 program ^[13] 16:22 23:13 30:18 49:14 76:9,20 77:12 78:10 84:20 86:7 90:3,14 94:14 programs ^[7] 16:14 53:11 75:11,16 77:23 86:11 89: 12 prohibited ^[1] 35:22 prohibitions ^[1] 81:8 prohibits ^[1] 48:12 promise ^[1] 38:12 promulgate ^[2] 18:5,25 properly ^[3] 65:24,24 73: 17 proprietary ^[1] 50:1 proprietor ^[1] 84:22 proprietors ^[3] 84:21 86:4, 4 protect ^[16] 5:9 6:11 11:2 17:20 19:1,15 52:13 62:11 64:6 68:16 75:6 85:16 89: 13 91:6,10 94:25 protecting ^[2] 20:10 86:20 protection ^[1] 5:3 provide ^[4] 17:3 76:18 77: 21,22 provided ^[2] 23:19 47:16 provider ^[8] 8:22 10:6 73: 12 74:5 76:8,14 81:15 94: 14
--	--	---	--	---

Official

<p>providers ^[39] 4:13,17 5:18 7:4,12,25 8:9,11 15:1,22 16:23 19:25 20:3,19 25:20,24 26:5 27:17 29:4,19 30:16 32:17 33:20 47:17 49:12 58:10 64:10 69:25 83:20 86:8,9 90:12 91:3,14 92:10,19 93:7,9,15</p> <p>providing ^[3] 35:24,24 90:12</p> <p>province ^[4] 46:22 54:17 58:23 60:20</p> <p>provision ^[20] 9:21 17:23 18:8 20:1,16 22:4,16 23:18 26:8 28:16,16 33:10 39:6 46:16 51:2,10 76:23 78:19 92:3,3</p> <p>provisions ^[27] 18:1,3,3 21:11 24:12,13,17,20 25:5,8 26:6 27:22,25 28:7,10 29:18 38:24 39:8 40:15 46:10,15 51:24 52:4 54:7 60:11 92:15,20</p> <p>psychiatric ^[2] 29:5 30:20</p> <p>public ^[6] 21:17 22:2 59:22 60:9,25 80:23</p> <p>publish ^[1] 7:15</p> <p>purposes ^[1] 18:12</p> <p>pursuant ^[1] 8:21</p> <p>put ^[1] 15:6,11 17:6 54:4 56:8 60:12 66:3 77:18 82:15 93:22,25</p> <p>putting ^[2] 83:5 85:2</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifications ^[1] 40:15</p> <p>quasi-sovereign ^[1] 50:3</p> <p>question ^[24] 9:19 11:13 24:5 43:12,13 50:22 56:8 61:10 63:10 64:20 70:10 73:16 78:7 79:13,24,25 80:9,10,15 83:11 86:1,12,14,19</p> <p>questions ^[13] 6:17 12:7 22:22 44:21 48:1 63:4 69:11 72:20 73:19 74:13,14 75:9 86:15</p> <p>quick ^[1] 89:6</p> <p>quintessential ^[3] 6:13 77:13 87:10</p> <p>quite ^[2] 33:1 82:15</p> <p>quo ^[5] 74:2,11 81:14 83:22 88:2</p> <p>quote ^[1] 75:22</p> <p>quoted ^[1] 18:8</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>raised ^[4] 14:21 93:2,7 94:17</p> <p>range ^[1] 40:1</p> <p>ranges ^[1] 40:7</p> <p>rate ^[1] 32:9</p> <p>rather ^[2] 6:6 18:3</p> <p>reaction ^[1] 36:23</p>	<p>read ^[6] 17:1 22:9 30:4 37:12,13 38:2</p> <p>reading ^[3] 28:17 30:15 38:17</p> <p>ready ^[1] 82:11</p> <p>real ^[1] 59:3</p> <p>really ^[6] 24:18 34:8 52:9 80:15 81:20 89:22</p> <p>Realtors ^[1] 54:19</p> <p>reason ^[3] 27:3 38:23 42:7</p> <p>reasonable ^[1] 82:22</p> <p>reasonably ^[1] 77:17</p> <p>reasons ^[7] 5:5 31:12 33:9 41:22 43:23 46:8 75:16</p> <p>REBUTTAL ^[3] 3:11 89:2,3</p> <p>receive ^[2] 36:19 70:20</p> <p>recently ^[2] 54:19 87:15</p> <p>recipients ^[2] 53:13 64:5</p> <p>recommending ^[1] 20:6</p> <p>record ^[1] 5:23</p> <p>recordkeeping ^[3] 52:7,24 53:1</p> <p>records ^[4] 53:2,2,6,7</p> <p>Reduction ^[1] 33:21</p> <p>reference ^[6] 10:8 23:6 26:21 29:3 53:8,9</p> <p>referenced ^[1] 28:23</p> <p>references ^[2] 23:3 27:1</p> <p>referred ^[1] 21:18</p> <p>referring ^[1] 25:13</p> <p>refers ^[1] 23:11</p> <p>regimes ^[1] 41:4</p> <p>Register ^[1] 81:1</p> <p>regulate ^[4] 37:4 52:2 56:18 57:15</p> <p>regulated ^[5] 69:15 70:11 76:6 94:1,4</p> <p>regulates ^[1] 46:20</p> <p>regulating ^[1] 47:1</p> <p>regulation ^[16] 25:18 27:18 31:9 33:17 35:16 36:19,24 48:5,6 49:2 69:16,20 70:12 90:4 92:5 93:16</p> <p>regulations ^[18] 7:16 8:18 16:24 18:5,25 19:7 28:18 29:17 30:7,9,10,15 33:11 39:16 41:3 45:12 67:6 68:16</p> <p>regulators ^[2] 25:20 91:13</p> <p>regulatory ^[1] 34:4</p> <p>reimburse ^[1] 77:24</p> <p>reimbursement ^[1] 18:18</p> <p>reinforced ^[1] 25:18</p> <p>reinforces ^[1] 45:10</p> <p>reject ^[1] 74:9</p> <p>relate ^[1] 30:11</p> <p>related ^[1] 87:17</p> <p>relates ^[1] 80:10</p> <p>relationship ^[1] 10:15</p> <p>relationships ^[1] 11:7</p> <p>relatively ^[2] 26:9 32:6</p> <p>relevant ^[4] 27:15 46:12 59:12 65:21</p>	<p>reliance ^[2] 9:20 18:2</p> <p>relied ^[2] 8:15 94:18</p> <p>relief ^[1] 74:4</p> <p>relies ^[1] 48:15</p> <p>religious ^[1] 4:19</p> <p>rely ^[2] 23:18 49:20</p> <p>relying ^[6] 6:19 7:1,2 17:2 24:10 45:13</p> <p>remain ^[3] 26:23 28:9 94:22</p> <p>remains ^[1] 73:17</p> <p>renal ^[2] 29:4 30:19</p> <p>reply ^[4] 25:10,22 26:19 92:21</p> <p>represent ^[1] 70:22</p> <p>represents ^[1] 47:15</p> <p>request ^[2] 74:10 84:12</p> <p>require ^[11] 9:1 20:25 54:24 66:11,12,17,17 71:4,24 89:18 90:6</p> <p>required ^[9] 4:17 5:13 9:11 19:6 20:13 33:22 43:15 46:20 90:22</p> <p>requirement ^[26] 4:24 9:17 10:4,13 16:20 17:5 19:20 21:5 22:7,9,10 24:3 31:11 32:14 40:23 48:13 58:22 60:19 68:7,7 71:5,20,21 72:5,11 93:11</p> <p>requirements ^[39] 5:10,17,19 6:8 7:5 8:3,7,12,13 9:13 15:24 16:8,17 17:8,17 18:20,21 25:14 26:4,10,12 29:14 31:18,25 34:3,16 39:13 41:11,14 43:25 48:8 51:4 52:1,20 71:22 75:17 76:25 80:3 90:25</p> <p>requires ^[5] 22:5 23:11 66:25 67:1 68:13</p> <p>requiring ^[5] 5:6,24 8:23 17:12 55:25</p> <p>residential ^[1] 29:5</p> <p>respect ^[22] 28:18 30:8 40:24 44:5,19 48:8,18,23 49:12 50:9 51:24 52:11 53:20 54:3 55:14 56:5 63:18 67:14,15 81:23 84:19 85:5</p> <p>respectfully ^[1] 51:22</p> <p>respecting ^[2] 78:7,9</p> <p>respective ^[1] 78:15</p> <p>Respondents ^[8] 1:9,16 2:6,9 3:7,10 45:21 73:4</p> <p>response ^[7] 6:7 11:15 20:15 35:23 56:23 81:17,19</p> <p>responses ^[1] 51:14</p> <p>responsibility ^[6] 10:24 52:13,16 53:23 54:2 55:23</p> <p>responsible ^[2] 12:11,13</p> <p>rest ^[1] 27:23</p> <p>resting ^[1] 10:4</p> <p>restrictions ^[1] 80:21</p> <p>result ^[1] 28:5</p> <p>rights ^[2] 50:8 85:12</p> <p>risk ^[1] 6:9</p>	<p>ROBERTS ^[28] 4:3 10:14 11:8,21 12:3,19 32:19 35:4 42:17 44:16 45:17 50:23 62:16 63:2,5 69:7 72:18,21 73:1 75:20 76:21 78:1,11,14 88:5,9,22 95:8</p> <p>robust ^[1] 35:1</p> <p>rock ^[1] 66:3</p> <p>role ^[1] 77:20</p> <p>Rouge ^[1] 2:8</p> <p>routine ^[1] 20:9</p> <p>rule ^[36] 10:8 13:20 15:15 24:15,21 26:1 27:5,5 33:3,16,24 34:14,15 43:7 46:23 49:17 65:4 66:25 67:1,3,7 70:19 74:19 76:7 80:25 82:3,5 83:15 84:3,23 85:3 92:24 93:13,19 94:19 95:4</p> <p>rulemaking ^[6] 6:22,23 20:23 22:10 27:2 34:2</p> <p>rules ^[12] 6:25 7:15 28:23 61:15 66:23 74:19,21,22 82:24 83:24 85:5,10</p> <p>ruling ^[2] 73:21,24</p> <p>run ^[3] 47:19 62:22 70:24</p> <p>rural ^[14] 6:1 31:22 32:4 47:6,9,11,23 50:6 61:3,4,6 63:9 64:22 65:8</p> <p>rushed ^[1] 34:19</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe ^[1] 30:22</p> <p>safety ^[65] 5:9,20 8:4 10:9,13,24 11:3 12:12,14 16:17 17:10,14,19,21 19:10,15,21,24 20:11 23:3,6,16,23 25:12,15,17 26:13,22 27:1 28:1,24 29:3,14,20,24 30:3,12 32:15 39:7 41:6,14 45:2 51:6 52:3,13,21 53:9,12,25 55:24 56:11 64:4 67:6 69:5 77:2,21 85:14 86:20 89:14 90:20 91:7,10 92:7,16,22</p> <p>same ^[5] 15:19 45:8 46:2 48:18 57:19</p> <p>sands ^[1] 76:1</p> <p>sanitizers ^[1] 85:8</p> <p>satisfied ^[2] 22:12 34:15</p> <p>satisfies ^[1] 80:2</p> <p>save ^[2] 5:24 82:24</p> <p>savings ^[1] 63:23</p> <p>saying ^[19] 28:20 52:21,23 53:4,6 56:15,21 57:4,8,10 58:8 60:10 61:19 62:4,5 67:7 78:17 79:1 83:4</p> <p>says ^[15] 7:14 18:16 19:3 20:17 23:22 33:12 35:12 37:7 48:5 51:2 56:10 64:2 67:24 85:13 92:21</p> <p>scale ^[3] 39:22,24 66:4</p> <p>scattered ^[1] 46:10</p> <p>scope ^[4] 13:19 78:20 79:15,18</p>	<p>se ^[1] 70:22</p> <p>seasonal ^[1] 44:8</p> <p>Sebelius ^[1] 86:6</p> <p>Second ^[7] 5:21 46:23 71:17 82:17 91:21 93:14 94:3</p> <p>secondary ^[1] 78:3</p> <p>seconds ^[1] 82:18</p> <p>SECRETARY ^[109] 1:11 4:17 6:3,15,20 7:4,15,20 8:2,6,12,15 9:4 10:23 15:18 16:2,18 17:8,18 18:4,22,24 19:8,12,13,14,18,19,22 20:17,24 21:14 22:16 23:24 24:16 26:3,16 27:17 29:8,11,15,25 30:25 31:8,24 33:12,13,16 34:13,19 35:3,12 37:12 38:25 39:3 42:6 43:1,5,21 44:2,4,7 45:5,11 46:5,9,14,24 47:5 48:5 51:3,4,18 52:11,19 53:24 54:4,22,24 55:16 58:4,10 60:11,16 63:12,19,25 64:2,23,25 65:6,23 66:3 76:24,25 78:16,16,24 89:17 90:11,15,15 91:17 92:21 93:22 94:8,12,15 95:2</p> <p>Secretary's ^[15] 5:8,21 6:21 15:7 16:24 20:2 22:14 28:19 35:9 46:5 52:2 69:20 78:20 89:10 91:9</p> <p>section ^[4] 8:1 37:6 41:12 54:6</p> <p>sections ^[1] 26:9</p> <p>sector ^[1] 31:22</p> <p>Security ^[2] 6:22 46:11</p> <p>see ^[10] 9:15 19:25 20:3,4,7 65:23 82:21,22 83:2 91:12</p> <p>seek ^[1] 47:12</p> <p>seeking ^[2] 24:6 50:12</p> <p>seeks ^[1] 74:4</p> <p>seem ^[2] 30:17 49:20</p> <p>seems ^[7] 13:8 23:25 58:17 59:24,25 64:7 89:20</p> <p>seen ^[2] 13:17 44:12</p> <p>sees ^[1] 65:4</p> <p>selection ^[1] 35:15</p> <p>sense ^[2] 27:18 90:2</p> <p>series ^[1] 46:9</p> <p>serious ^[4] 12:5 13:7 82:4 95:5</p> <p>seriously ^[2] 5:23 95:3</p> <p>serve ^[4] 4:13 30:18 67:20,20</p> <p>SERVICES ^[5] 1:12 23:20 66:19,20,20</p> <p>set ^[17] 7:5,5,23 8:2,7,16 9:1 15:20 26:4 29:8,11,13 41:22 45:15 52:19 89:11 90:14</p> <p>sets ^[2] 20:18 45:11</p> <p>setting ^[3] 11:6 41:20 42:13</p> <p>settings ^[5] 4:15 9:7 13:16,19 55:4</p>
---	---	--	---	--

Official

<p>severability ^[1] 27:20</p> <p>several ^[1] 31:11</p> <p>severe ^[1] 4:25</p> <p>shall ^[5] 7:15 20:20 35:12 37:7,8</p> <p>shift ^[3] 23:2 46:18 47:3</p> <p>shifting ^[2] 75:25 76:1</p> <p>short ^[3] 5:19 83:17,17</p> <p>shortages ^[4] 6:1,10 31:8 32:6</p> <p>shot ^[4] 73:14 83:17 94:2,4</p> <p>shots ^[3] 43:3,4,15</p> <p>shouldn't ^[3] 13:22 27:10 71:15</p> <p>showing ^[3] 24:7 60:13 64:13</p> <p>shown ^[2] 31:14 92:13</p> <p>shows ^[1] 6:5</p> <p>sick ^[5] 13:1 58:16 62:12 63:24 82:12</p> <p>side ^[14] 14:22 20:13 22:8 31:6 34:18 35:17 40:11 61:20 66:3 82:1,4 89:9 94:16,20</p> <p>sides ^[1] 81:25</p> <p>signed ^[2] 51:10,11</p> <p>significant ^[3] 9:20,23 14:12</p> <p>significantly ^[1] 54:14</p> <p>similar ^[3] 8:6,11 37:21</p> <p>similarly ^[1] 48:23</p> <p>simplest ^[1] 65:12</p> <p>since ^[3] 30:18 48:15 86:16</p> <p>single ^[2] 26:25 27:9</p> <p>sit ^[1] 81:21</p> <p>situated ^[1] 48:23</p> <p>situation ^[5] 44:12 54:9 69:14,18 87:4</p> <p>situations ^[2] 13:6 60:16</p> <p>Sixth ^[2] 88:14,15</p> <p>size ^[1] 63:14</p> <p>skilled ^[4] 23:11 55:15 56:5 87:17</p> <p>skip ^[1] 21:24</p> <p>sleep ^[2] 41:4 42:2</p> <p>sliding ^[2] 39:21,24</p> <p>small ^[5] 26:19 70:2,7,20,25</p> <p>smaller ^[2] 47:18 70:2</p> <p>snacks ^[1] 67:21</p> <p>Social ^[2] 6:22 46:11</p> <p>societies ^[1] 20:4</p> <p>society ^[1] 91:1</p> <p>sole ^[1] 75:8</p> <p>Solicitor ^[3] 2:2,8 79:5</p> <p>somehow ^[2] 52:23 90:20</p> <p>sometimes ^[1] 36:17</p> <p>somewhat ^[1] 48:14</p> <p>somewhere ^[2] 39:15,18</p> <p>sorry ^[5] 7:9 40:21 41:3 50:22 88:17</p> <p>sort ^[13] 12:16 17:19 33:20 34:6 39:2 43:22 44:11 48:12 65:21,25 70:18 92:16</p>	<p>94:16</p> <p>SOTOMAYOR ^[24] 14:11,20 28:14 29:7 30:6,17 31:2 35:5 44:21 66:13,16 67:13,19 68:14 69:2,4 78:12 84:17 87:2,6 88:12,13,17,20</p> <p>sought ^[1] 32:2</p> <p>sovereign ^[1] 49:25</p> <p>sovereignty ^[1] 78:10</p> <p>space ^[1] 24:9</p> <p>speaking ^[1] 71:12</p> <p>speaks ^[1] 9:21</p> <p>special ^[1] 90:21</p> <p>specific ^[15] 7:3,11 8:15,21 10:5 16:19 24:11,17 25:11,23 26:10 27:19 28:23 45:13 90:21</p> <p>specifically ^[7] 10:8 25:13 35:22 58:21 63:13 84:10 87:17</p> <p>specificity ^[1] 56:18</p> <p>specified ^[2] 18:20 23:24</p> <p>specify ^[1] 66:20</p> <p>spend ^[2] 14:18 67:25</p> <p>Spending ^[17] 14:13,16 15:12 36:4,4 50:24 51:9,13,15 67:23 68:11 76:22 77:10 78:4 80:3 84:19 90:3</p> <p>spoke ^[2] 17:24 68:21</p> <p>spread ^[7] 4:16 5:12 55:5,9,19 57:20 60:17</p> <p>sprinklers ^[1] 90:9</p> <p>squared ^[1] 90:23</p> <p>squarely ^[1] 5:7</p> <p>staff ^[11] 4:18 5:6 9:15 16:8 32:8,9 40:16 47:20 64:14 87:20,22</p> <p>staffed ^[1] 39:9</p> <p>staffing ^[5] 6:1,9 31:7 32:6 37:10</p> <p>stage ^[1] 73:20</p> <p>stake ^[1] 72:9</p> <p>stakeholders ^[1] 32:3</p> <p>stand ^[1] 27:23</p> <p>standard ^[3] 40:11,24 41:23</p> <p>standard-setting ^[2] 39:2,24</p> <p>standards ^[11] 7:5 23:24 26:4 40:12,23 41:20,21 42:15 45:11 90:14 91:17</p> <p>standing ^[11] 49:20,22 50:12 75:2,6 76:4,5 79:21,24 80:7,8</p> <p>start ^[3] 82:8,10 89:7</p> <p>state ^[21] 9:11 36:18 37:22 43:24 44:6 48:7 51:19 54:15 66:10 67:22 68:22 69:1,1 74:5,19,23 76:10 77:13 79:23 84:18 87:10</p> <p>state-run ^[4] 16:8,15 71:8 84:22</p> <p>statement ^[1] 75:21</p>	<p>STATES ^[48] 1:1,4,24 4:5 5:23 6:15 16:5,12,14 20:7,14,21 21:22 22:1 33:1 37:3 43:17 44:5 46:22 47:7 48:17,24 49:10,11 51:17 54:17 60:21 61:13 66:11,17 67:11 68:1,23 70:4,6,22 74:21 76:13 77:23 84:20 86:7,9 87:1 90:1,5,6 93:12,25</p> <p>states' ^[4] 49:17 58:23 78:9 85:12</p> <p>status ^[5] 74:2,10 81:14 83:22 88:2</p> <p>statute ^[28] 18:13 19:19 20:14,17,22 21:12 27:9 30:5 35:7,8 36:3,5 38:25 39:4 40:13 52:12,22 53:8 54:7 72:12 75:18 77:19 79:8 80:1 81:9 87:24 89:23 91:16</p> <p>statutes ^[19] 7:11 17:2 22:24 23:5 24:10 25:21,23 26:3,21,25 33:22 36:17 56:4 60:11 87:17 89:8,14 91:24 92:6</p> <p>statutorily ^[1] 64:5</p> <p>statutory ^[6] 5:8 8:16 17:23 18:1 24:25 51:20</p> <p>stay ^[7] 5:4 24:6 47:25 59:6 84:12 92:2 93:4</p> <p>stayed ^[5] 45:24 46:1 93:19 94:22 95:7</p> <p>stays ^[4] 59:12,12 81:23 93:17</p> <p>step ^[2] 9:17 85:17</p> <p>steps ^[1] 85:23</p> <p>sterilize ^[1] 55:2</p> <p>sterilizing ^[1] 57:12</p> <p>stick ^[1] 34:25</p> <p>still ^[8] 26:3 29:7 41:24 43:17 72:23 73:16 83:23 94:11</p> <p>stop ^[1] 57:21</p> <p>story ^[2] 43:13,18</p> <p>straight ^[1] 78:6</p> <p>stretches ^[1] 47:15</p> <p>strike ^[1] 87:19</p> <p>strong ^[1] 31:15</p> <p>stronger ^[1] 23:15</p> <p>structural ^[3] 24:18 79:8 81:8</p> <p>structure ^[2] 46:13 87:25</p> <p>sub ^[1] 17:6</p> <p>subject ^[9] 4:19 8:11 16:7,17 17:4,7,17 67:7 70:19</p> <p>submission ^[1] 89:20</p> <p>submit ^[2] 56:6 86:22</p> <p>submitted ^[4] 76:16,16 95:9,11</p> <p>subsection ^[1] 39:13</p> <p>substantially ^[1] 85:4</p> <p>succeeding ^[1] 38:24</p> <p>success ^[4] 24:8 27:14 28:6 60:14</p>	<p>sudden ^[1] 47:3</p> <p>sufficient ^[1] 45:14</p> <p>suggest ^[3] 28:13 33:3 63:11</p> <p>suggested ^[4] 12:8 26:18 27:3 93:17</p> <p>suggesting ^[2] 42:5,7</p> <p>suggestion ^[1] 33:25</p> <p>suing ^[1] 50:14</p> <p>summer ^[1] 87:16</p> <p>supervising ^[1] 39:19</p> <p>supervision ^[2] 37:17 38:7</p> <p>supplements ^[1] 41:5</p> <p>support ^[4] 24:13 69:19 88:2 93:10</p> <p>supported ^[3] 5:22 32:16 73:20</p> <p>supports ^[1] 5:16</p> <p>Suppose ^[2] 56:9 62:7</p> <p>supposed ^[1] 24:22</p> <p>SUPREME ^[2] 1:1,23</p> <p>surely ^[1] 13:10</p> <p>surgeries ^[2] 61:5,8</p> <p>surgery ^[1] 47:14</p> <p>surgical ^[5] 8:10 23:17,22 24:4 27:4</p> <p>surprise ^[1] 11:17</p> <p>surveyors ^[1] 49:16</p> <p>Sutton ^[1] 72:2</p> <p>swaths ^[1] 72:15</p> <p>sweeping ^[1] 46:12</p> <p>systems ^[1] 31:23</p>	<p>THOMAS ^[24] 6:18 7:7,13,22 8:24 9:18,25 10:10 15:20 22:23 32:21 48:2,14 49:19 50:16,20 63:3,4 74:16,20 75:1,19 88:6,7</p> <p>Thomas's ^[1] 70:9</p> <p>thorough ^[1] 34:20</p> <p>thoroughly ^[1] 5:22</p> <p>though ^[4] 24:16 37:19 41:25 43:8</p> <p>thousands ^[3] 47:18 60:2 61:22</p> <p>threat ^[5] 11:1 12:17 13:11,15 44:8</p> <p>three ^[6] 11:23 13:9 47:13 89:6 92:9,9</p> <p>throughout ^[4] 13:17 46:11 71:14 91:1</p> <p>tie ^[1] 85:18</p> <p>tiny ^[3] 65:14,19 93:13</p> <p>together ^[2] 80:21,22</p> <p>tomorrow ^[1] 93:20</p> <p>took ^[2] 33:2 63:12</p> <p>touch ^[2] 76:22 80:24</p> <p>touches ^[1] 11:18</p> <p>towards ^[1] 40:8</p> <p>towns ^[1] 62:20</p> <p>traditional ^[1] 5:11</p> <p>traditionally ^[2] 46:21 54:16</p> <p>train ^[1] 40:16</p> <p>trained ^[1] 40:17</p> <p>transmitting ^[1] 58:14</p> <p>treat ^[1] 37:15</p> <p>treatment ^[3] 29:5 73:13 86:23</p> <p>trillion ^[1] 15:13</p> <p>true ^[6] 33:7 50:16 81:17 87:11 90:1 93:21</p> <p>truth ^[1] 81:18</p> <p>trying ^[3] 34:24 59:19 84:18</p> <p>turnover ^[3] 32:8,9,13</p> <p>turns ^[1] 78:4</p> <p>twice ^[1] 81:20</p> <p>two ^[19] 5:5 25:9 33:14,25 34:14 45:3 46:7 47:13 51:14 52:14 53:15,21 60:10 61:14 62:4 75:11 86:1,11 92:17</p> <p>types ^[1] 19:24</p> <p>typically ^[4] 6:24 9:8 89:25 90:5</p>
T				
<p>table ^[1] 92:13</p> <p>tactic ^[1] 85:17</p> <p>talked ^[4] 14:13 39:5,6 44:22</p> <p>talks ^[1] 56:16</p> <p>targeted ^[2] 81:5,6</p> <p>teams ^[1] 87:19</p> <p>temporal ^[1] 22:7</p> <p>temporary ^[2] 6:9 32:5</p> <p>tens ^[1] 47:17</p> <p>tenure ^[7] 35:13 36:25 37:10 41:8,18 42:11 80:11</p> <p>terminating ^[1] 94:13</p> <p>terms ^[7] 15:3 25:6 56:4 63:23 66:22 78:6 79:11</p> <p>test-and-mask ^[1] 83:16</p> <p>tether ^[1] 80:20</p> <p>text ^[5] 19:19 24:25 25:3,4 46:12</p> <p>textual ^[2] 24:19 79:8</p> <p>themselves ^[2] 13:23 43:3</p> <p>there's ^[22] 21:16,23 22:7,12 39:5,21 40:1 55:15,21 57:1 63:17 70:15 71:23 75:9 78:17 80:14,15 81:18 82:1 83:15,16 86:1</p> <p>therefore ^[1] 60:5</p> <p>they've ^[6] 17:16 79:2 81:6 85:21 89:24 91:2</p>	<p>U</p> <p>U.S. ^[1] 54:20</p> <p>unambiguous ^[1] 51:20</p> <p>unbelievable ^[1] 60:7</p> <p>uncomfortable ^[1] 12:21</p> <p>under ^[10] 6:22,25 7:18 46:24 50:8,14 56:22 67:23 80:3 90:12</p> <p>underestimate ^[1] 76:13</p> <p>undergo ^[2] 47:14 73:12</p>			

Official

underlying ^[1] 73:24	24 57:7,7 67:9	6 57:4,20 59:9 60:25 62:9
undersell ^[1] 14:6	vast ^[6] 10:6 28:11,21 30:	63:23,23 74:3,4 81:14 82:
understand ^[13] 7:7 24:9	10 47:15 72:15	12,24 84:3,5,5 95:4
25:7 26:15 28:15 34:10 35:	verification ^[1] 44:18	wise ^[1] 23:1
23 36:2 40:18,19 43:14 55:	versus ^[2] 4:5 86:6	withholding ^[1] 35:25
4 83:10	view ^[6] 26:2 29:10 41:17	within ^[9] 5:8 13:19 20:2
understanding ^[4] 21:4	56:20 63:14 91:4	38:10 46:21 79:14,23 85:
53:14 66:24 85:3	viewed ^[1] 15:15	11 94:8
understood ^[3] 20:25 30:	virtually ^[2] 11:18 91:4	without ^[5] 21:14 36:13 47:
25 36:6	virus ^[2] 4:16 13:24	23 73:23 86:25
undone ^[1] 46:18	vital ^[1] 53:2	wonder ^[1] 36:15
unfamiliar ^[1] 16:2	voice ^[2] 68:13,21	word ^[1] 31:5
unfortunately ^[3] 53:18 62:	voices ^[1] 71:14	words ^[1] 50:25
13,17	volumes ^[1] 85:5	work ^[9] 13:4 24:3 34:9,13
uniform ^[1] 91:4	voluntarily ^[3] 78:5 91:3,	41:1 46:1 61:7 66:5 72:7
unique ^[4] 9:5,6 12:17 44:	15	workaround ^[1] 80:18
11	vulnerability ^[1] 85:22	workers ^[2] 4:21 5:13 6:5
uniquely ^[3] 9:12 44:9,13	vulnerable ^[8] 4:14 52:14	9:8 10:7 13:25 14:8 25:25
UNITED ^[4] 1:1,4,23 4:5	53:16,21,22 55:24 61:3 85:	28:11 31:15 36:20 37:1 43:
unlawful ^[3] 46:7 49:6 71:	16	15,18 45:25 46:2 91:2 92:
11	W	13 93:8,9,15
unlawfully ^[1] 60:18	wait ^[1] 67:13	working ^[2] 73:11 85:13
unlike ^[2] 35:7 46:17	waiting ^[1] 88:2	workplace ^[5] 10:24 11:1
unnecessarily ^[1] 13:24	walking ^[2] 57:3,20	12:12 13:5,6
unnecessary ^[1] 95:5	wants ^[6] 14:18 58:24 60:	world ^[1] 59:17
unprecedented ^[6] 11:17	22 66:21 67:25 68:4	worse ^[3] 13:4 59:16 82:13
15:3,18 46:7 73:15 87:7	wash ^[3] 55:2 56:25 71:21	worth ^[2] 92:2,24
until ^[1] 16:21	washing ^[1] 57:12	write ^[2] 33:16 56:4
unusual ^[2] 69:14,18	Washington ^[2] 1:19 2:3	writing ^[1] 33:20
unvaccinated ^[1] 63:21	way ^[29] 4:21 5:11 14:9 16:	Wyoming ^[1] 48:22
unwieldy ^[1] 25:7	22 20:1,24 22:15 29:15 30:	X
up ^[12] 9:14 22:22 31:17 43:	4,25 35:2,22 37:16,16,22	XAVIER ^[1] 1:11
12 59:20 64:13 70:9 82:13	40:17 55:3,5 57:19 59:4	Y
84:7,8 87:11 90:14	61:14 65:12 74:2 75:12,15	year ^[1] 32:9
upend ^[1] 81:13	83:21 85:15 87:14 91:6	years ^[1] 77:11
urgent ^[1] 6:10	ways ^[3] 74:24 85:20 94:17	yesterday ^[1] 59:15
urgently ^[2] 5:2 94:23	weapon ^[1] 36:8	York ^[1] 61:25
urging ^[1] 91:14	wear ^[4] 66:25 71:20 89:18	yourself ^[1] 28:13
useful ^[1] 73:8	90:7	
V	weary ^[1] 82:23	
vaccinate ^[2] 80:22 83:17	week ^[1] 61:15	
vaccinated ^[9] 4:18 5:13 6:	weeks ^[1] 61:14	
6 9:8 31:16 44:1 58:14 77:	weigh ^[1] 65:7	
15 79:24	weighed ^[1] 65:24	
vaccination ^[3] 4:20 5:7,	weighing ^[2] 65:2 82:14	
10,16,24 6:8 8:23 9:15 10:	weight ^[1] 82:16	
4 16:7,20 17:5 24:3 31:11,	welcome ^[2] 6:17 48:1	
18,20,24 32:13 40:23 43:	welcomed ^[1] 32:3	
25 47:3 48:8,13,17 54:10	welfare ^[3] 19:1 68:16 85:6	
67:10 68:11 71:4 89:25 90:	well-being ^[1] 50:4	
25 93:10	well-reasoned ^[1] 73:21	
vaccinations ^[6] 9:2,11 14:	whatever ^[3] 51:18 64:1	
1 15:10 43:3 48:16	80:2	
vaccine ^[10] 9:23 11:10 46:	Whereupon ^[1] 95:10	
4 58:1,22 68:7 71:19,25	whether ^[15] 15:2 36:15 55:	
72:5,5	21 73:7,9,17 74:18 77:14	
vaccines ^[12] 9:6 43:9,16,	79:12,13 80:2,11 81:23 86:	
23 44:5,10,13 73:8 87:21	3 87:13	
89:20 90:18,19	whole ^[2] 50:1 91:16	
vague ^[1] 46:10	whom ^[1] 64:5	
value ^[1] 71:3	will ^[32] 5:24,25 6:6 14:24	
variety ^[1] 55:8	15:8 21:14 34:25 35:17 36:	
various ^[6] 49:25 50:13 54:	21 47:8,11,12,24 50:5,6 56:	