

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
MARK E. PULSIFER)
Petitioner,)
v.) No. 22-340
UNITED STATES,)
Respondent.)
- - - - -

Pages: 1 through 112
Place: Washington, D.C.
Date: October 2, 2023

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrccourtreporters.com

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

MARK E. PULSIFER)

Petitioner,)

v.) No. 22-340

UNITED STATES,)

Respondent.)

- - - - -

Washington, D.C.

Monday, October 2, 2023

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:05 a.m.

APPEARANCES:

SHAY DVORETZKY, ESQUIRE, Washington, D.C.; on behalf of the Petitioner.

FREDERICK LIU, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	SHAY DVORETZKY, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	FREDERICK LIU, ESQ.	
7	On behalf of the Respondent	59
8	REBUTTAL ARGUMENT OF:	
9	SHAY DVORETZKY, ESQ.	
10	On behalf of the Petitioner	108
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument this morning in Case 22-340, Pulsifer versus United States.

Mr. Dvoretzky.

ORAL ARGUMENT OF SHAY DVORETZKY

ON BEHALF OF THE PETITIONER

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

The natural reading of Section 3553(f)(1) is that "and" means "and." It joins together enumerated criteria. To be safety valve eligible, a defendant must not have (A), (B), and (C), all three. That's what ordinary grammar says and the surrounding text confirms. Congress used "and" to join (f)(1)(A) through (C) just as it used "and" to require a defendant to satisfy each of (f)(1) through (5). This reading makes sense.

The historic First Step Act made the safety valve available for many more nonviolent drug offenders. Taken together, (A) through (C) exclude violent recidivists with a history of committing serious crimes, while (f)(2)

1 through (f) disqualify current violent
2 offenders.

3 The government needs "and" to mean
4 "or" or it needs the Court to insert the words
5 "does not have" into the statute three times.
6 But asking for a rewrite isn't statutory
7 interpretation. The government's surplusage
8 and policy arguments don't change that.

9 There is no surplusage because the
10 statute and the guidelines contemplate that not
11 every sentence for a prior offense earns
12 criminal history points.

13 As for policy, the government focuses
14 on whether someone with serial -- serious
15 criminal history could still satisfy (f)(1).
16 But the safety valve isn't a
17 get-out-of-jail-free card. Serious recidivists
18 will likely have a career offender enhanced
19 guidelines range at or above the mandatory
20 minimum, and judges can and do exercise their
21 discretion to impose appropriate sentences.

22 If Congress wanted to disqualify
23 defendants for having any of (A), (B), or (C),
24 all it had to do was say "or." That would have
25 unequivocally expressed a distributive meaning,

1 just as Congress did elsewhere in 3553(f).

2 Letting the government get to "or"
3 when Congress said "and" would encourage
4 Congress to be sloppy with the most basic
5 English words, leaving square corners far
6 behind and, in the criminal context, where
7 fairness matters most. The Court should hold
8 Congress to what it wrote.

9 I welcome the Court's questions.

10 JUSTICE THOMAS: From your argument,
11 it appears you do not accept the argument that
12 "and" could have a distributive reading and a
13 joint reading?

14 MR. DVORETZKY: Not in this context,
15 Justice Thomas, not -- not in the context --
16 not in the structure of a conjunctive negative
17 proof like what we have here in this statute.

18 JUSTICE THOMAS: In what context can
19 it have a distributive meaning?

20 MR. DVORETZKY: So I think the
21 government gives a number of examples where,
22 again, not in a conjunctive negative proof
23 context, you might hear "and" to be "or." I
24 think what's going on in a lot of those
25 examples, it's almost like your brain is

1 auto-correcting from "and" to "or." The proper
2 word actually would be "or" because, again,
3 "and" ordinarily connects things together.

4 But sometimes people use English in a
5 less precise way, and, again, you might
6 understand that to mean "or." That doesn't
7 mean that it's syntactically correct, and that
8 doesn't -- that's not the standard that
9 Congress ought to be held to when it's writing
10 a statute, let alone a criminal statute.

11 JUSTICE KAGAN: So is that what -- I
12 mean, let me give you a hypothetical, and tell
13 me if you think it falls into that category.

14 So you're going in for a medical test
15 and you receive something from the hospital,
16 and it says, to receive this test, the patient
17 should not, and then, you know, it has, like, a
18 list of things that the patient shouldn't do,
19 and it says the patient shouldn't eat any food,
20 drink any liquids, and smoke.

21 So I'm going to assume, Mr. Dvoretzky,
22 that you're not a smoker. Do you feel
23 perfectly able to eat and drink as much as you
24 want?

25 MR. DVORETZKY: No. And that is a

1 situation where I would hear that "and" to be
2 an "or," but there are a couple things about
3 that -- first of all, in your hypothetical,
4 that's all the text that we have to work with,
5 whereas, in 30 -- 3553(f), we have --

6 JUSTICE KAGAN: Well, let's keep it
7 with my text, because you have some arguments
8 about other texts and the government has some
9 arguments about superfluity and anomalies, so
10 let's just keep it to the text itself.

11 MR. DVORETZKY: So, if we're focused
12 just on your hypothetical, I -- I probably -- I
13 would hear that to be an "or" rather than an
14 "and."

15 JUSTICE KAGAN: Obviously, because the
16 context tells you that it's an "or" rather than
17 an "and," that -- and -- and -- and the reason
18 that it's different from an example like "drink
19 and drive," which is, you know, your example,
20 is there's something that connects those two
21 things so that we know that the harm comes from
22 the relationship between the two, whereas, in
23 this case, we know that the harm follows from
24 any one of the things.

25 So, either way, you're using context

1 to establish meaning, aren't you?

2 MR. DVORETZKY: Well, the -- the other
3 thing that we know from your hypothetical, if
4 I'm going in for a medical test, my mindset
5 going into the medical test, I'm not taking any
6 chances with the instructions that the doctor
7 gives me. If there's any ambiguity about
8 whether "and" means "or," I'm going to take the
9 safer course because I want to make sure that
10 my medical test goes properly.

11 So there is the context of the person
12 who is giving you that instruction that I think
13 also would lead you to take the safer choice
14 there, which is to treat the "and" as an "or."

15 JUSTICE BARRETT: But, Mr.
16 Dvoretzky --

17 MR. DVORETZKY: Yeah.

18 JUSTICE BARRETT: -- can I ask you --
19 you know, I hear you saying to Justice Kagan,
20 and you said this to Justice Thomas, that your
21 brain corrects "and"/"or." And when Justice
22 Thomas asked you about whether the distributive
23 understanding of "and" is grammatically
24 correct, you kind of seemed to say no because
25 you keep going to this example where your brain

1 changes "and" to "or." So I just wanted a
2 clear answer from you on that.

3 So you -- do you think that the
4 distributive understanding of "and" is
5 grammatically correct?

6 MR. DVORETZKY: I think it can be
7 grammatically correct in certain contexts but
8 not in this context.

9 JUSTICE BARRETT: So what about the
10 corpus linguistics brief that says in
11 38 percent of the time -- I understand -- and
12 you rely heavily on the fact that over
13 50 percent of the time, people understood it in
14 its joint sense, but 38 percent of the time,
15 they understood it in its distributive sense.

16 MR. DVORETZKY: So -- so they did, and
17 the corpus linguistics scholars concluded that
18 it was unnatural for "and" to have a
19 distributive meaning in that sense. By
20 contrast, they also concluded that a hundred
21 percent of people would understand "or" to be
22 distributive when used in a negative proof.

23 So, if you said, as -- as Reading Law
24 does, Justice Scalia and Professor Garner, in
25 order to qualify, you must not have (A), (B),

1 or (C), that would be unequivocally clear to
2 express a distributive meaning, and it would be
3 unnatural to use "and" even though some people
4 might hear it that way and understand it to be
5 distributive even in that kind of a negated
6 conjunction.

7 JUSTICE GORSUCH: You -- you've been
8 wanting to have the chance to explain why the
9 context here is different and point to your
10 contextual clues in this statute that are
11 different from some of the hypotheticals you've
12 heard. I'd just like to hear those.

13 MR. DVORETZKY: Sure. So there --
14 there are a few points that I would make.

15 First of all, the presumption of
16 consistent usage. Congress used "and" to
17 connect (f)(1) through (f), just as it used
18 "and" to connect (f)(1)(A) through(C). And so,
19 in both instances, that needs to have a
20 consistent joint meaning, particularly since
21 3553(f) is all one long sentence.

22 By contrast -- and this goes to the
23 meaningful variation canon -- Congress used
24 "or" throughout the statute as a disjunctive
25 term. Look, for example, at 3553(f)(4), a

1 defendant satisfies that provision if he was
2 not an organizer, leader, manager, or
3 supervisor and was not engaged in a continuing
4 criminal enterprise. So Congress knows how to
5 use "or" and "and" to mean different things,
6 and that's what it did in 3553.

7 In addition to that, the government's
8 argument is that "does not have" from the
9 beginning of 3553(f)(1) gets distributed to A,
10 B, and C.

11 JUSTICE GORSUCH: But it comes --

12 MR. DVORETZKY: It's that --

13 JUSTICE GORSUCH: -- before the --
14 before the dash.

15 MR. DVORETZKY: It comes before the em
16 dash. So there are a couple of reasons why the
17 em dash doesn't support that distribution in
18 addition to the obvious preliminary point that
19 the statute doesn't say does not have A, does
20 not have B, and does not have C.

21 One, Congress itself didn't think that
22 the em dash distributed the language before it.
23 If it did, then it would not have had to repeat
24 in A, B, and C the phrase "as determined under
25 the Sentencing Guidelines." Congress could

1 have instead said, the defendant does not have,
2 as determined under the Sentencing Guidelines,
3 em dash A, B, C. Instead, Congress repeated
4 that every time. So Congress didn't think the
5 em dash was distributive.

6 Second, it --

7 JUSTICE GORSUCH: So that's your own
8 superfluidity argument on your end.

9 MR. DVORETZKY: Well, I actually don't
10 think it's a super -- superfluidity argument.

11 JUSTICE GORSUCH: No, no, no. For the
12 government's, it would be pointless to have
13 that language repeated but for your
14 interpretation?

15 MR. DVORETZKY: But for the fact that
16 the em dash doesn't distribute --

17 JUSTICE GORSUCH: Right.

18 MR. DVORETZKY: -- what comes before.

19 JUSTICE KAGAN: But, Mr. Dvoretzky --

20 MR. DVORETZKY: Yeah.

21 JUSTICE KAGAN: -- I mean, let me make
22 sure I understand your argument first. If
23 it -- if it said the defendant isn't eligible
24 for relief if he doesn't have A, doesn't have
25 B, and does not have C, you agree that the

1 government wins, is that right?

2 MR. DVORETZKY: Yes, because that
3 would be setting out three independent
4 conditions.

5 JUSTICE KAGAN: Right. So -- so --
6 so, when we look at this statute, I mean, isn't
7 what is most likely to have gone on here is
8 that Congress made a completely ordinary
9 drafting decision which said does not have A,
10 does not have B, and does not have C? Who
11 writes like that?

12 What we usually do is we try to make
13 writing efficient and not repetitive, and so we
14 take out terms that apply to everything and put
15 it in a format where we don't have to keep
16 repeating it. Put it in exactly this format.

17 I -- I mean, you know, we do this in
18 our ordinary writing. Congress does it in
19 writing statutes. We don't keep on repeating a
20 verb when the verb applies to everything.

21 So that's what Congress did here. It
22 just took out the -- rather than say "does not
23 have" three times, it took it out and put it in
24 prefatory language, followed by three things
25 that you shouldn't have.

1 MR. DVORETZKY: Two points, Justice
2 Kagan. One, yet Congress did repeat under --
3 under -- "as determined under the Sentencing
4 Guidelines" three times, which it didn't have
5 to under that -- under that approach.

6 Second, though, if you look at
7 3553(f), the opening paragraph, that also ends
8 with an em dash. So, if the em dash
9 distributes what's come -- what comes before to
10 each of (f)(1) through (5) -- I mean, I'm
11 sorry, if the em dash in (f)(1)(A) distributes
12 "does not have" to each of A, B, and C, then
13 the em dash at the end of 3553(f) also ought to
14 be understood to distribute what precedes that
15 em dash to each of (f)(1) through (5). If
16 that's right, then a defendant who satisfies
17 any one of those (f)(1), (2), (3), (4), or (5),
18 would qualify for relief.

19 So, for example --

20 JUSTICE BARRETT: Well, "does not
21 have" --

22 JUSTICE GORSUCH: You --

23 JUSTICE BARRETT: -- would have a
24 distributive meaning there too, as Judge Oldham
25 said? In that -- in that dash after (f), you

1 know, if the Court finds at sentencing after
2 the government has been afforded an
3 opportunity, et cetera, that could have a
4 distributive meaning, and then it wouldn't be
5 Calvinball, you know, as -- as you've been
6 saying. You could say it's distributive in
7 both situations.

8 MR. DVORETZKY: So I think what gets
9 distributed before the em dash -- the -- the
10 government on page 38 of their brief explains
11 the em dash rule that they're advocating for,
12 the distributive rule that they're advocating
13 for. They say that each item after the em dash
14 must be a logical and grammatical continuation
15 of the prefatory clause so that the two can be
16 read together without regard to the rest of the
17 provision, as if it were complete.

18 And so what would actually get
19 distributed goes all the way back to the court
20 shall impose a sentence without regard to --

21 JUSTICE BARRETT: It doesn't have to.
22 It could just be the clause that's preceded by
23 the comma, if the court finds that. I mean, I
24 get -- I -- I think this is a very hard case.
25 I think it's a very hard case, so I don't mean

1 to suggest that it's clear.

2 All I'm saying is that there is a way
3 to read it that would be perfectly consistent
4 by treating that last clause as distributive.

5 MR. DVORETZKY: I think that would not
6 allow the distribution to be a complete
7 sentence in the same way that starting it
8 earlier would --

9 JUSTICE KAVANAUGH: You --

10 MR. DVORETZKY: -- and that --

11 JUSTICE KAVANAUGH: -- you agree that
12 determining whether the "and" distributes
13 depends on context as a general matter,
14 correct?

15 MR. DVORETZKY: As a general matter, I
16 do, but I think that the key context to look to
17 is the surrounding text in the first instance.

18 JUSTICE KAVANAUGH: Okay. But you
19 agree that context matters?

20 MR. DVORETZKY: Yes.

21 JUSTICE KAVANAUGH: Okay. And the
22 government says that one of the problems
23 contextually with your interpretation, it -- it
24 would mean that offenders with more serious
25 violent records, violent offense records, would

1 be eligible for the safety valve, while
2 offenders with less serious violent offense
3 records would not be eligible, and the
4 government says that would defy common sense.

5 In addition to the superfluity
6 argument they make, that seems to me a serious
7 contextual issue that you have to deal with.
8 So how -- how do you deal with that?

9 MR. DVORETZKY: So, Justice Kavanaugh,
10 Congress didn't have a reason to be concerned
11 about joining A, B, and C for a few reasons.

12 One, it knew that defendants would
13 still have to satisfy the rest of (f)(2)
14 through (f), which focuses on the -- whether
15 the instant offense is a violent crime or not.
16 And Congress could quite rationally have
17 thought that was the focus.

18 In addition to that, as I said in my
19 introduction --

20 JUSTICE KAVANAUGH: Do you accept my
21 premise, though, that -- that your
22 interpretation would mean offenders with more
23 serious violent offense records would be
24 eligible and with less serious violent offense
25 records would not be eligible in certain

1 circumstances?

2 MR. DVORETZKY: I -- I was going to
3 say I -- I don't accept that as a categorical
4 proposition.

5 JUSTICE KAVANAUGH: In certain
6 circumstances?

7 MR. DVORETZKY: It -- there -- you can
8 find individual cases where that would be true,
9 but as Chief Judge Pryor explained in the
10 Garcon case, Congress legislates at a macro
11 level, not at a micro level. That can lead to
12 particular cases where results might be
13 anomalous.

14 The reason that it doesn't defy common
15 sense, though, to use the phrase that I think
16 you used in your question, Congress knew that,
17 first, a defendant would have to satisfy (f)(2)
18 through (f), and, second, the safety valve
19 itself, all that means is that courts exercise
20 discretion to impose proportionate sentences --

21 JUSTICE KAVANAUGH: On --

22 MR. DVORETZKY: -- based on a variety
23 of factors, including criminal history. And so
24 --

25 JUSTICE KAVANAUGH: (f)(2) through (f)

1 don't have anything to do with criminal
2 history, though, per se, right?

3 MR. DVORETZKY: They -- they don't.
4 And Congress could quite rationally, given the
5 history of the -- the -- given the history of
6 mandatory minimums and what Congress was trying
7 to achieve here, wanted to focus more on the
8 nature of the instant offense than on criminal
9 history. But even as to criminal history,
10 district judges can and do take that into
11 account.

12 JUSTICE JACKSON: Don't they --

13 JUSTICE KAGAN: Well, but, presumably,
14 they --

15 JUSTICE JACKSON: -- have to under the
16 Sentencing Guidelines? I mean, the safety
17 valve just removes the mandatory minimum, but
18 don't the judges then have to look at the
19 guidelines, and wouldn't you expect that a
20 defendant who had a number of serious criminal
21 violent priors, the guidelines would take
22 account of that in terms of what the ultimate
23 sentence was going to be?

24 MR. DVORETZKY: You -- you would
25 expect that. You might also expect that a

1 serious violent recidivist would qualify for a
2 career guidelines enhancement.

3 JUSTICE KAGAN: I mean --

4 JUSTICE JACKSON: And would you have
5 --

6 JUSTICE KAGAN: -- presumably, this
7 provision was meant to make some amount of
8 sense, right? Congress would not have just
9 said: Well, whatever, we -- we'll just, you
10 know, repeat some nonsense because we know that
11 district courts have discretion in the end.
12 They meant this gatekeeping provision to be a
13 serious gatekeeping provision with serious
14 criteria that meant something.

15 And the question is: Why would
16 Congress -- why -- I mean, I guess what you're
17 saying is you don't have an explanation for why
18 Congress would say it's okay if you have a
19 gazillion three-point offenses so long as you
20 don't have a two-point violent offense.

21 MR. DVORETZKY: Justice Kagan, we do
22 have an explanation, which is that Congress,
23 again, legislating at a macro level, could have
24 rationally thought that the combination of A,
25 B, and C was serving a gatekeeping function --

1 JUSTICE GORSUCH: And, counsel --

2 MR. DVORETZKY: -- to keep --

3 JUSTICE GORSUCH: -- I -- I -- I mean,
4 why are you resisting the obvious conclusion
5 that the Ninth Circuit came up with, which is,
6 if you have a three-point violent offense, you
7 have a two-point violent offense, and,
8 therefore, there is no -- this anomaly
9 dissipates completely?

10 MR. DVORETZKY: Well, on that point,
11 I -- I think the better reading of the statute
12 is that two points means two points and three
13 points means three points. The Sentencing
14 Guidelines distinguish in that way between
15 two-point offenses and three-point offenses.
16 So I don't know that you need --

17 JUSTICE GORSUCH: So you think the
18 Ninth Circuit was wrong in a case that favors
19 you? Alas --

20 MR. DVORETZKY: I -- I --

21 JUSTICE GORSUCH: -- here we are, day
22 one.

23 MR. DVORETZKY: -- I -- I -- I think
24 the better reading of the statute -- the better
25 reading of the statute is that two and three

1 are --

2 JUSTICE GORSUCH: Okay. So you
3 embrace --

4 MR. DVORETZKY: -- mutually exclusive,
5 but --

6 JUSTICE GORSUCH: -- you embrace the
7 anomaly?

8 MR. DVORETZKY: Well, I -- I -- so I
9 think there are two points associated with
10 this. One is the -- the surplusage point,
11 which we haven't talked about. The other is
12 the anomaly. On the anomaly, I think there can
13 be situations where that would happen. I don't
14 think that makes Congress's statute here
15 irrational.

16 JUSTICE JACKSON: And, indeed --

17 JUSTICE GORSUCH: Right. It doesn't
18 --

19 JUSTICE JACKSON: -- isn't that what
20 just -- isn't that --

21 JUSTICE GORSUCH: It -- it --

22 JUSTICE JACKSON: -- what Judge Pryor
23 said in the Garcon case? I mean, I -- I took
24 you to be sort of embracing his philosophy as
25 to how the guidelines work relative to the

1 mandatory minimums and that it is not
2 irrational at all for Congress to be making the
3 amendment that they were making in this case,
4 which was intended to broaden the -- the
5 availability of the safety valve.

6 MR. DVORETZKY: That's right, Justice
7 Jackson. It was intended to broaden the
8 availability of the safety valve, in
9 recognition of the fact that mandatory
10 minimums, applying automatically without regard
11 for the offenders' particular circumstances,
12 are unfair and unjust, and so Congress wanted
13 to move away from that --

14 JUSTICE ALITO: Are you talking about
15 --

16 MR. DVORETZKY: -- but that -- I'm
17 sorry.

18 JUSTICE ALITO: Just -- I'm sorry.
19 Finish what you were --

20 MR. DVORETZKY: No, no. Please.

21 JUSTICE ALITO: -- finish what you
22 were saying.

23 MR. DVORETZKY: No, please.

24 JUSTICE ALITO: I didn't mean to
25 interrupt. You mentioned surplusage. Could we

1 talk about that? If (B) and (C) made (A)
2 100 percent surplusage, what would you say?

3 MR. DVORETZKY: I would -- even in
4 that circumstance, as Judge Newsom, for
5 example, said in Garcon, you would still have
6 to adhere to the ordinary meaning of "and" in
7 -- in this situation, and the surplusage would
8 not matter.

9 But (B) and (C) don't make (A)
10 surplusage, and I think that's for the reason
11 that Chief Judge Pryor, who was a former acting
12 chair of the Sentencing Commission, explained
13 in Garcon. That is that not every sentence for
14 a prior offense earns criminal history points.

15 JUSTICE ALITO: Well --

16 MR. DVORETZKY: You can have --

17 JUSTICE ALITO: -- okay. I understand
18 that argument. Suppose I think that if it made
19 it a hundred percent surplusage, that would be
20 a pretty strong argument against you. Let's
21 just take that as an assumption.

22 Would you draw a distinction between
23 that situation, where it's a hundred percent
24 surplusage, and the situation where it's
25 99 percent surplusage or 98 percent surplusage?

1 MR. DVORETZKY: I don't know that I
2 would because, either way, the surplusage canon
3 isn't an absolute rule, and it doesn't justify
4 in this case overriding the ordinary meaning of
5 "and." The other -- the other textual cues
6 that we've talked about and argued about in our
7 brief, the Senate's drafting manual here is
8 also a relevant consideration. The manual says
9 that "and" indicates that something is included
10 in a class only if it meets all of the
11 criteria, whereas "or" says that something is
12 included only if it meets one or more of the
13 criteria.

14 So the point is that Congress, by
15 default, following that drafting manual, uses
16 "and" in its joint sense.

17 JUSTICE JACKSON: And, counsel --

18 MR. DVORETZKY: So even if you had --

19 JUSTICE JACKSON: -- didn't -- didn't
20 -- didn't --

21 JUSTICE GORSUCH: I -- I -- I -- go.

22 JUSTICE JACKSON: -- didn't Congress
23 actually contemplate the difference between
24 "and" and "or" in this very context? And by
25 that, I mean, are you familiar with the

1 enactment history? My understanding is that
2 Congress looked at a bill in the previous cycle
3 that would have done exactly -- almost exactly
4 what happened here with respect to increasing
5 to four points, including (B) and (C), and in
6 that draft document, they used the word "or."
7 And yet, here now, on the enactment of this, we
8 have "and."

9 So that suggests to me at least that
10 Congress was consciously determining that there
11 was a difference between "and" and "or."

12 MR. DVORETZKY: Sure. And I think
13 that there are a number of different
14 indicators -- we can go through the list --
15 that Congress understood the difference between
16 "and" and "or," and these are the words that it
17 wrote, and the words that it wrote have to be
18 given effect even in the face of surplusage.

19 I don't think there is --

20 JUSTICE KAVANAUGH: Well, if we're
21 going to go -- if we're going to go into the
22 legislative history, though, when Senator
23 Grassley introduced the bill that became law,
24 the Judiciary Committee report on that said
25 that it would exclude offenders with

1 three-point felony convictions or prior
2 two-point violent offenses. So, if we're going
3 to go down that road, which I'm not saying we
4 should, but if we're going to go down that
5 road, I'm not sure that that fully helps you.

6 MR. DVORETZKY: So I think that
7 particular legislative history that you're
8 focused on, Judge -- Justice Kavanaugh, is a
9 little bit mysterious because the rest of it
10 also says that offenders will not be eligible
11 for the safety valve "absent a judicial finding
12 that those prior offenses substantially
13 overstate the defendant's criminal history and
14 danger of recidivism."

15 So, while the statement that you're
16 referring to used "or" rather than "and," the
17 statement also suggests -- and I'm not quite
18 sure where Congress was getting this -- that
19 courts could exercise discretion to trigger the
20 safety valve notwithstanding a defendant's
21 criminal history.

22 JUSTICE SOTOMAYOR: Counsel, I think
23 it may have come from the legislation they had
24 been looking at. That exact language that you
25 just read came from the Sentencing Reform Act

1 of 2015 that used the "or" between (A), (B),
2 "or" (C). But then it gave a discretion to the
3 sentencing judge to ignore it.

4 It actually supports your position
5 that Congress knew that the "or" should be
6 there but only if the court could deviate.

7 MR. DVORETZKY: Right.

8 JUSTICE SOTOMAYOR: When it decided to
9 take away the power to deviate, it raised up
10 the qualifications by doing (A), (B), "and"
11 (C).

12 MR. DVORETZKY: Right. And all of
13 that accords with the purpose of the First Step
14 Act to move away from mandatory minimums
15 towards considering the offender's individual
16 circumstances in a particular case, which, of
17 course, would include criminal history.

18 District judges obviously apply the
19 guidelines. As the Federal Defenders' brief
20 shows, I think at pages 7 to 8, district judges
21 routinely depart upward where it's called for
22 based on a defendant's criminal history. The
23 career offender guidelines lead to sentences
24 routinely of 25 years to life. And so the
25 Sentencing Guidelines will account for the kind

1 of individualized circumstances that Congress
2 wanted.

3 JUSTICE GORSUCH: On that score, I
4 just wanted to take this case as an example to
5 test it in my own mind, and I went back and
6 looked at the presentence report and things
7 like that. And as I understand it, 15-year
8 minimum, 180 months, for some reason, your
9 client got 162, I'm not sure why. Maybe you
10 can tell me. And that -- so that would be the
11 15-year mandatory minimum.

12 The safety valve gets him with his
13 criminal history approximately, my -- my law
14 clerks tell me, between 120 and 150 months. He
15 was over 60 years old when he's sentenced, so
16 we're talking about whether he might be free
17 when he's 70, 73, or 75. Is that what we're --
18 what's really at stake here?

19 MR. DVORETZKY: That's right. This is
20 a 60-year-old offender. He does have a
21 criminal history. That criminal history would
22 be taken into account under the Sentencing
23 Guidelines. And nobody is talking about him
24 not serving a serious prison term. This is --

25 JUSTICE GORSUCH: He's going to be at

1 least 70 years old when he's released. He'll
2 be under parole, I assume, for a good bit
3 thereafter, supervised release. And -- and the
4 judge, of course, could depart or vary upward
5 if the judge wished to.

6 MR. DVORETZKY: That -- that's right.
7 If the court wanted to do that, it could.

8 JUSTICE KAVANAUGH: Would you have a
9 different rule for a 22-year-old offender?

10 MR. DVORETZKY: No, but the -- but the
11 point, Justice Kavanaugh, is that Congress
12 wanted individualized circumstances --

13 JUSTICE KAVANAUGH: Then why have --

14 MR. DVORETZKY: -- to be taken into
15 account.

16 JUSTICE KAVANAUGH: -- why have the
17 criminal history disqualification at all? At
18 least my understanding of the statistics is
19 of -- based on 2021, of 11,000 offenders who
20 met the non-criminal history requirements
21 pre-First Step Act, 6,000 would be
22 disqualified. Under the government's
23 interpretation, only 4,000 would be
24 disqualified. So a substantial number, 2,000.

25 But, under yours, only 300 or so would

1 be disqualified, which basically eliminates the
2 criminal history disqualification in 98 percent
3 of the cases.

4 MR. DVORETZKY: So to -- to --

5 JUSTICE KAVANAUGH: So why keep it at
6 all? Given the -- as you rightly say, the
7 individualized discretion that sentencing
8 judges use, why -- why have all this if it's
9 really not going to make a difference, as
10 Justice Gorsuch says, in a lot of cases?

11 MR. DVORETZKY: If I could, two -- two
12 points, one conceptual, one on the facts.

13 Conceptually, look, Congress could
14 have thought that the combination of (A), (B),
15 and (C) was a particularly egregious
16 combination, and that at a macro level was what
17 it was targeting. It could still serve some
18 purpose. Congress didn't know when it passed
19 that what the numbers would look like.

20 Second, on a factual level, in
21 response to those numbers, those numbers, the
22 2.8 percent or whatever it is, that's
23 calculating things under the Ninth Circuit's
24 Lopez interpretation. It's not calculating the
25 numbers using the approach that we're

1 advocating and that Chief Judge Pryor adopted
2 in Garcon, which allows old offenses to be
3 counted under (B) or (C) even if they don't
4 count towards the criminal history total in
5 (A).

6 So we actually don't know what the
7 numbers would look like when you apply the
8 approach that we're advocating for those.

9 JUSTICE KAVANAUGH: Well, it would be
10 even fewer --

11 CHIEF JUSTICE ROBERTS: Thank you.

12 JUSTICE KAVANAUGH: Never mind.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Justice Thomas, anything further?

16 Justice Alito?

17 JUSTICE ALITO: Well, just out of
18 curiosity, I wonder if I can ask you a question
19 about how you think language works in general.
20 Let's just forget about special rules that
21 apply to statutory interpretation for a moment
22 and just talk about how language works in
23 general and your understanding of that.

24 If I say something and it's ambiguous
25 and you're trying to figure out whether I mean

1 A or B, to what degree do you take into account
2 whether A or B makes more sense?

3 MR. DVORETZKY: I might take it into
4 account, but the other thing I would take into
5 account is my relationship with you as the
6 speaker.

7 So, if -- to Justice Kagan's
8 hypothetical, if my doctor tells me, don't do
9 A, B, and C, my relationship with the doctor is
10 I want to pass -- I want the medical test to go
11 well, and I assume that my doctor is being very
12 cautious and conservative, because my doctor
13 is, so I'm going to -- that's the context.
14 It's the relationship with the speaker that's
15 letting me turn an "and" into an "or" there.

16 In this situation, if Congress --

17 JUSTICE ALITO: No, I think that's
18 a -- that's a -- that's a fair answer. So we
19 have -- you have to take into account some
20 image of the speaker and your relationship to
21 the speaker.

22 So who is the speaker that we're
23 talking about when we're trying to understand a
24 statute that is enacted by Congress, and what
25 attributes do we attribute to that speaker?

1 MR. DVORETZKY: So I think that
2 actually raises two different questions, I
3 think.

4 JUSTICE ALITO: All right. Who is the
5 speaker?

6 MR. DVORETZKY: So I think the speaker
7 is Congress.

8 JUSTICE ALITO: Okay.

9 MR. DVORETZKY: But --

10 JUSTICE ALITO: And -- and what is our
11 image of -- of this speaker? What
12 characteristics does this speaker have?

13 MR. DVORETZKY: It -- that feels like
14 a loaded question. I -- I -- I --

15 (Laughter.)

16 JUSTICE ALITO: Why is it a loaded --
17 well, no, I don't mean to be derogatory of
18 Congress. I'm not -- I'm not looking for a
19 derogatory answer or necessarily a
20 complimentary one. But, if that's how language
21 works, don't we have to have some image of
22 who -- who's the -- the speaker of this speech
23 that we are interpreting?

24 MR. DVORETZKY: Well, the -- the
25 speaker in this case is an institution.

1 JUSTICE ALITO: Right.

2 MR. DVORETZKY: But the institution is
3 also speaking in the context of a criminal
4 case. And where we have basic words like "and"
5 and "or," I think you hold the -- the
6 institution, the maker of laws, to a higher
7 standard of precision than I would hold my
8 doctor, who I know has my best interests at
9 heart and is trying to make me well.

10 And so, in that situation, where
11 Congress knows how to use "and" or "or," and,
12 again, particularly in a criminal context,
13 where fairness is at stake, you hold Congress
14 to the ordinary meaning of the word "and,"
15 which is not a distributive meaning in this
16 kind of a context.

17 JUSTICE ALITO: I mean, I think that
18 the move to textualism in our interpretation of
19 statutes was enormously beneficial and it
20 eliminated a lot of abuses that previously
21 occurred, but, in the end, we are just
22 interpreting language.

23 Everybody I assume in this courtroom
24 today speaks the English language, and all
25 we're trying to do is understand some words in

1 the English language, and it just seems to me
2 that a lot of these arguments that we've heard
3 -- I mean -- I mean, the people here who
4 haven't studied the case must think this is --
5 this is gibberish. It might as well be -- it
6 might as well be Greek with all this stuff
7 about distributive and em dash and all of that.

8 Is it necessarily that complicated?

9 MR. DVORETZKY: So I -- I don't think
10 it's complicated because I think that the
11 natural way to express what Congress wanted to
12 express here would have been "or." Using "and"
13 to express that any of the three would
14 disqualify you is unnatural. And -- and so I
15 think that really is the key point, is that
16 we're holding Congress to what the ordinary
17 understanding of these terms is.

18 CHIEF JUSTICE ROBERTS: Justice
19 Sotomayor?

20 JUSTICE SOTOMAYOR: I want to go back
21 to that point. And as I understood you
22 earlier, when Congress wanted to use the
23 distributive form, it generally did it. It did
24 it in (f)(2) by using the defendant did not use
25 violence or credible threats of violence or

1 possess a firearm or other dangerous weapon or.

2 When it wanted to do a "not" in
3 (f)(4), it wrote, contrary to Justice Kagan's
4 expectation, in a very cumbersome way, it said,
5 the statute requires a defendant was not an
6 organizer or leader and was not engaged, and it
7 went on and on.

8 So, here, the anomaly would be
9 Congress changing course just for this one
10 provision and changing "and" to mean "or." I
11 think that's your basic point. But assume that
12 we have two ways of reading this statute, that
13 you could accept that there was a possibility
14 of reading "or" to mean "and."

15 Where does the Rule of Lenity come
16 into this?

17 MR. DVORETZKY: If at the end of the
18 day you conclude, taking into account all of
19 the various textual cues that are available
20 here, that this statute is just -- is
21 grievously ambiguous -- that's the standard
22 that the Court has used -- then, at that point,
23 the Rule of Lenity calls for Mr. Pulsifer to
24 win, favoring the defendant.

25 And if Congress wants to change "and"

1 to "or" in a revision of this statute, that's a
2 very easy change for them to make, but the
3 burden of that ought to be on Congress, not on
4 defendants whose liberty is at stake in the
5 face of a -- a seriously ambiguous statute.

6 JUSTICE SOTOMAYOR: So where does
7 surplusage and common sense come into that?
8 Meaning, if all of the grammatical indicators
9 suggest that "and" means and and "or" means or
10 and the two are not the same, does that
11 constitute a grievous enough ambiguity to say
12 that lenity should play a part here?

13 MR. DVORETZKY: I -- I -- I think it
14 does. I think that alone is enough to conclude
15 that "and" means and, even if there were
16 surplusage, which I -- which I don't think
17 there is.

18 JUSTICE SOTOMAYOR: So assume there's
19 not, because I think Justice Alito was saying,
20 I don't know. Can you quantify that surplusage
21 here? The number of cases that would fall into
22 your exception, is it a lot? Is it a little?
23 I'm not sure.

24 MR. DVORETZKY: Meaning the -- the
25 number of cases where somebody would satisfy B

1 and C but not A?

2 JUSTICE SOTOMAYOR: Exactly.

3 MR. DVORETZKY: So -- so I can't
4 quantify it, but Chief Judge Pryor and Judge
5 Wood and others in the lower courts have given
6 a number of examples where that could happen.
7 You could have somebody with old offenses that
8 qualify under B or C or tribal convictions or
9 something subject to the single sentence rule.

10 And the guidelines in those
11 situations, you could have points associated
12 with those offenses that don't add to the
13 criminal history total, which is what A is
14 focused on.

15 How many of those cases there will be,
16 I don't know, but Congress could quite
17 rationally have thought that B and C were
18 serving a different purpose than A.

19 JUSTICE SOTOMAYOR: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice Kagan?

21 JUSTICE KAGAN: I want to go back to
22 Justice Alito's line of questioning, and you
23 said that the -- the -- the difference between
24 my hypothetical and this case has to do with
25 the relationship between the speaker and the

1 person listening to the injunction or the
2 prohibition or whatever you want to call it.

3 MR. DVORETZKY: That's one difference,
4 yeah.

5 JUSTICE KAGAN: Yeah. And -- and I
6 think that that might be one difference. But
7 another difference, which is the one I
8 suggested before, has to do with the
9 relationship of the items on the list.

10 And this is why "don't drink and
11 drive" is so powerful, because, automatically,
12 we understand that the harm that's being sought
13 to be averted is the combination of the two,
14 whereas other lists, you can see that the harms
15 are much more independent, that things are
16 independently disqualifying and would -- were
17 meant to be independently disqualifying.

18 And that's why the three-point/
19 two-point anomaly seems so significant to me,
20 because what that suggests is that these were
21 meant -- you know, when you -- when you take
22 the intersection of those, it doesn't work
23 under your reading and it does work under the
24 government's reading.

25 So I want you to respond to that view.

1 MR. DVORETZKY: I -- I think the
2 answer -- when you say it doesn't work, Justice
3 Kagan, I -- I think what you mean by that is
4 it's leading to an anomalous result in this
5 particular case, that it --

6 JUSTICE KAGAN: Well, not just --

7 MR. DVORETZKY: -- that doesn't --

8 JUSTICE KAGAN: -- in this particular
9 case. It leads to an anomalous result in the
10 case of anybody who has lots of three-point
11 offenses, both violent and non-violent, let's
12 say, but does not have, just happens not to
13 have a two-point violent offense.

14 MR. DVORETZKY: But it doesn't lead to
15 anomalous results in a whole other class of
16 cases where Congress might rationally have --

17 JUSTICE KAGAN: Well, that's true.
18 But this anomaly suggests that those two
19 features, the three-point criterion and the
20 two-point violent criterion, were meant to
21 operate independently, each one being
22 disqualifying.

23 MR. DVORETZKY: I -- that's one
24 inference, but I don't think that's the only
25 inference that you could draw from A, B, and C.

1 Congress could have thought that A, B, and C
2 combined were worse than any of them alone.

3 Now, yes, that could lead to a
4 situation where a -- a seemingly more serious
5 offender qualifies under (f)(1) as opposed
6 to -- as opposed to somebody who's a less
7 serious offender.

8 Congress didn't have a particular
9 reason to be concerned about that because that
10 offender would still have to satisfy (f)(2)
11 through (5), and even then, the Sentencing
12 Guidelines would take into account that
13 person's criminal history and the district
14 judge would take into account that criminal
15 history when determining the sentence.

16 So Congress had no reason to think
17 that as a result of that supposed anomaly there
18 would be unjust results in the real world.

19 JUSTICE KAGAN: Thank you.

20 MR. DVORETZKY: Congress was --

21 JUSTICE KAGAN: I'm sorry.

22 CHIEF JUSTICE ROBERTS: Justice
23 Gorsuch?

24 JUSTICE GORSUCH: Let me see if I've
25 got it right. Tell me where I go wrong, okay?

1 The -- the two arguments we've heard
2 this morning on the other side so far are that
3 there's a surplusage problem you have, but
4 everybody seems to admit there isn't a
5 hundred percent surplusage. It's some --
6 something less than that, so it's not really a
7 surplusage argument of the kind we normally
8 adopt or -- or take seriously.

9 And the second is the
10 two-point/three-point violent offender anomaly,
11 which is in the nature of or in the direction
12 of an absurdity argument, but it never really
13 gets there. And so everybody's dropped the --
14 the -- the label that it's an absurdity. They
15 tried to pursue that below, but nobody really
16 argues that, takes it seriously here. It's a
17 policy argument. It's a policy argument, and
18 it's an imperfect one because one could
19 abstract at a policy level. Okay. That's on
20 one side.

21 On the other side, "and" means and,
22 plain language. Everybody in the room does
23 understand that concept.

24 Number two, there is a distributive --
25 examples elsewhere in the statute. (f)(2) is

1 distributive, as Justice Sotomayor pointed out,
2 so Congress knows how to distribute when it
3 wants to distribute.

4 And then, three, lenity, which is the
5 word that we dare not utter but which Chief
6 Justice Marshall back in Wiltberger said
7 applies before you get to things like
8 legislative history and what Congress might
9 have wanted and policy arguments.

10 And the fact of the matter is, at the
11 end of the day, what we're really talking about
12 here is whether mandatory minimums send people
13 away for lifes, life sentences, effectively,
14 for many people, or whether the guidelines,
15 which are not exactly the most
16 defendant-friendly form of sentencing known to
17 man, themselves apply.

18 That's what's at stake here. What am
19 I missing?

20 MR. DVORETZKY: That -- that summation
21 was better than my introduction.

22 (Laughter.)

23 MR. DVORETZKY: I don't think you're
24 missing anything, Justice Gorsuch.

25 JUSTICE KAVANAUGH: You agree --

1 CHIEF JUSTICE ROBERTS: Justice
2 Kavanaugh?

3 JUSTICE KAVANAUGH: -- you agree,
4 however, that context is relevant, you said
5 that earlier, in determining whether the "and"
6 distributes. I just want to make sure you
7 still agree with that.

8 MR. DVORETZKY: I --

9 JUSTICE KAVANAUGH: You said that
10 earlier.

11 MR. DVORETZKY: I agree with it, and I
12 think that the key context is the surrounding
13 statutory text. That's what -- that's what you
14 look for -- look to first.

15 I don't think that policy
16 considerations, as Justice Gorsuch was
17 explaining in his question, are the relevant
18 context to consider here.

19 JUSTICE KAVANAUGH: And then the
20 second --

21 MR. DVORETZKY: "Context," I think, is
22 a very broad term.

23 JUSTICE KAVANAUGH: And then I have a
24 fact question and then one broader question
25 raised by Justice Gorsuch's comment.

1 On the fact question, how many
2 individual uses or dosages does 141 grams of
3 meth get you? I mean, I'm sure you acknowledge
4 meth is a serious problem in many communities
5 in the United States. And what's your sense of
6 141 grams? And the government can talk about
7 this as well.

8 MR. DVORETZKY: I -- I honestly don't
9 have a sense to give you the answer to that
10 question. You could certainly imagine that
11 being a relevant consideration taking into --
12 taken into account at sentencing, but I -- I
13 can't quantify that for you.

14 JUSTICE KAVANAUGH: And then, on the
15 sentencing guidelines, those are -- are not
16 mandatory, correct?

17 MR. DVORETZKY: They -- they are --
18 they're not mandatory.

19 JUSTICE KAVANAUGH: Right. So --

20 MR. DVORETZKY: But --

21 JUSTICE KAVANAUGH: -- so the
22 reference to the Sentencing Guidelines, a lot
23 of judges would sentence under the Sentencing
24 Guidelines in certain cases. And that happens.
25 I guess the broader point there is the reason

1 they're mandatory minimums -- there are
2 problems with them, as you identify, but I want
3 to give you a chance to respond to the
4 counterpoint, which is that Congress uses them
5 in some circumstances because, with the
6 hundreds and hundreds of federal district
7 judges around the country, they think that some
8 judges might sentence certain serious offenders
9 to too light a sentence, and so they wanted to
10 prevent that from happening in certain kinds of
11 cases.

12 So the discretion doesn't seem like a
13 total answer to the concern that Congress would
14 have about cases like this.

15 MR. DVORETZKY: Well, of course, the
16 government can and does appeal sentences when
17 they think that the sentence ought to have been
18 higher in those circumstances, but --

19 JUSTICE KAVANAUGH: That -- that
20 almost -- you -- you know and I know that
21 almost never works, but what's your other
22 argument then?

23 MR. DVORETZKY: I mean, I think that
24 this goes back to the purpose of the First Step
25 Act. This was a once-in-a-generation

1 sentencing reform, passed in a bipartisan
2 manner, signed by President Trump, where the
3 motivating force here was to move away from
4 mandatory minimums.

5 Yes, it did -- Congress did not
6 completely eliminate mandatory minimums from
7 the U.S. Code. If it had, we wouldn't have
8 this case. Congress chose this rather
9 complicated First Step Act solution to the
10 problem. But the problem it was trying to
11 solve was moving away from numerous instances
12 of unfair and unjust mandatory minimums and
13 giving district courts the discretion, which,
14 by and large, overwhelmingly they exercise
15 properly --

16 JUSTICE KAVANAUGH: Right.

17 MR. DVORETZKY: -- to take into
18 account individual circumstances.

19 JUSTICE KAVANAUGH: Okay. Thank you
20 very much.

21 CHIEF JUSTICE ROBERTS: Justice
22 Barrett?

23 JUSTICE BARRETT: Mr. Dvoretzky, I
24 wanted to give you a chance to respond to the
25 government's argument that lenity doesn't apply

1 to a safety valve statute. So lenity clearly
2 applies to penalty-imposing provisions, like
3 sentencing -- like sentencing provisions, and
4 so one could say, while that principle would
5 say that, you know, this -- this statute is
6 part of the sentence and so it applies, and I
7 assume that would be your answer, but I asked
8 my law clerk if she could find any examples of
9 situations like this. You just told Justice
10 Kavanaugh the point of the First Step Act was
11 to afford relief.

12 And so it actually feels more to me
13 like the argument would be a remedial statute
14 should be construed broadly, rather than
15 lenity, which is like a harsh statute should be
16 construed more narrowly. So can you give any
17 examples of situations in which lenity has
18 applied to a situation like this?

19 MR. DVORETZKY: So, as you said,
20 Justice Barrett, lenity has applied to
21 sentencing cases. I'm not thinking of an
22 example of a sentencing case where we're
23 dealing with a safety valve kind of structure
24 because, as my -- as part of my colloquy with
25 Justice Kavanaugh, I was saying this was a

1 convoluted way for Congress to do this.

2 But either way you want to look at it,
3 whether it is lenity in favor of the defendant,
4 the defendant having to satisfy all three in
5 order to be disqualified, or if you want to
6 look at it as Congress wanted to grant broad
7 relief here from mandatory minimums, so,
8 therefore, we ought to construe "and" to mean
9 and and not limit the class of defendants who
10 are eligible for that broad relief, I think,
11 either way, it leads you to the same
12 conclusion.

13 And, either way, Congress knows how to
14 use "and" and "or." It ought to be held to
15 those ordinary meanings. And if it were to
16 disagree with this Court's decision in our
17 favor, Congress is free to amend the statute.

18 JUSTICE BARRETT: Okay. And then I
19 have one other question that's related to this
20 surplusage argument.

21 Do the guidelines use that phrase? I
22 mean, I don't -- I don't want to go toe to toe
23 with Chief Judge Pryor on what the Sentencing
24 Guidelines allow and not, but I'm having a hard
25 time getting my mind around this because,

1 intuitively, it does seem like the surplusage
2 argument makes more sense, and it seems to me
3 like the argument that you can have a
4 three-point offense that doesn't earn criminal
5 history points because it's too old seems like
6 it's kind of bending over backwards to find a
7 way to make it not superfluous.

8 So, I mean, do the guidelines use that
9 phrase, "three-point offense"?

10 MR. DVORETZKY: The -- the guidelines
11 don't use the phrase "three-point offense," but
12 I think you get there both from the statute and
13 from the guidelines. The statute itself draws
14 this distinction. In (f)(1)(A), it talks about
15 a four-point criminal history total -- point
16 total. But then it excludes a one-point
17 offense.

18 So the statute in (A) is -- is coming
19 -- has this concept that you can have a
20 one-point offense that actually doesn't count
21 towards the criminal history total. That
22 understanding of a one-point offense then
23 carries through to (B) and (C) for a
24 three-point offense and two-point offense.

25 The guidelines are consistent with

1 that in a couple of respects. One, as Chief
2 Judge -- Chief Judge Pryor said, the guidelines
3 do use the term "offense" and they talk about
4 sentences from offenses not counting. That is
5 what 4A1.2 does.

6 And so the guidelines are really
7 setting up an order of operations. Under
8 4A1.1, you assign points to a sentence based on
9 its length. Under 4A2, however, you then say
10 that certain sentences and offenses don't
11 count. And so the guidelines have that
12 concept.

13 Lastly, there's Note 3 to 4A2 which we
14 highlight in our brief. That confirms that the
15 guidelines contemplate that points can be
16 associated with an offense without being
17 counted. So, for purposes of the single
18 sentence rule, the -- that -- that comment
19 tells you that if -- if an offense would have
20 gotten two points, it can still serve as a
21 predicate for the career offender guidelines.
22 That idea of an offense that would have gotten
23 two points if they had counted is this concept
24 that Congress employed here in the statute.

25 JUSTICE BARRETT: So how many did

1 Mr. Pulsifer have? How many three-point
2 offenses? Because he -- well, I'll -- I'll
3 just tell you. Looking at the PCR -- I mean
4 the PSR, I think he had two three-point
5 offenses that counted, counted because they
6 weren't stale, and then one that was too old.
7 Is that correct?

8 MR. DVORETZKY: That -- I think that's
9 right.

10 JUSTICE BARRETT: Okay. But then he
11 argued below that he only had two three-point
12 offenses. So he didn't make this argument that
13 he had three three-point offenses, right?

14 MR. DVORETZKY: He didn't need to
15 argue this one way or another. What he -- what
16 he needed to argue and did argue is that he
17 didn't have a prior two-point violent offense.

18 JUSTICE BARRETT: But I think he said
19 initially that he had two three-point offenses.
20 So you would say now -- your position now is
21 that he has three three-point offenses?

22 MR. DVORETZKY: For purposes of this
23 statute, yes.

24 JUSTICE BARRETT: Okay. Thank you.

25 CHIEF JUSTICE ROBERTS: Justice --

1 MR. DVORETZKY: But not for purposes
2 of (A).

3 CHIEF JUSTICE ROBERTS: -- Jackson.

4 JUSTICE JACKSON: Yeah. So I'd like
5 to go back to Justice Kagan's conception of
6 this in -- in terms of the focus on the
7 anomaly, and I guess I don't see it as
8 anomalous given the context of the point of the
9 statute.

10 And I think you sort of responded to
11 Justice Kagan and Justice Kavanaugh in this
12 way, but I -- I guess maybe you can help me to
13 understand. I -- I thought this statute was
14 about relieving discretion or relieving the
15 mandatory minimum and thereby giving judges
16 discretion.

17 So, to the extent that the First Step
18 Act wanted to do that -- I don't think anybody
19 disputes that -- isn't it conceivable that
20 Congress still just wanted to identify
21 particular circumstances in which the mandatory
22 minimum should apply on the basis of criminal
23 history and they could do the -- that as
24 narrowly as they wanted to, correct?

25 MR. DVORETZKY: Yes. That's right.

1 JUSTICE JACKSON: I mean, right?
2 Like, it just -- it doesn't seem to me to be
3 anomalous that Congress picked out a particular
4 circumstance, as you described it in your
5 introduction, a situation in which a person had
6 all three of these circumstances would be one
7 in which Congress still intended for the
8 mandatory minimum to apply.

9 But, in other circumstances, even if
10 they involve serious offenses, even if they
11 involve, Congress was willing to allow for
12 judges to have discretion under those
13 circumstances to take into account what the
14 guidelines would have said or whatever.

15 I don't understand why that's, like, a
16 harm or anomalous or anything.

17 MR. DVORETZKY: No, I -- I think
18 that's right. And I think that's especially
19 right when we're only talking about (f)(1) as
20 playing the initial gatekeeping role. You
21 still would have to satisfy (f)(2) through (5).

22 JUSTICE JACKSON: Correct.

23 MR. DVORETZKY: And even then --

24 JUSTICE JACKSON: So we already --

25 MR. DVORETZKY: -- you get -- I'm

1 sorry.

2 JUSTICE JACKSON: Yes. Correct. So
3 we already take care of really --

4 MR. DVORETZKY: Right.

5 JUSTICE JACKSON: -- terrible people
6 in this particular situation. And I would
7 think -- I would think that a situation in
8 which you had a two-point offense in your
9 background would be the kind of thing that
10 Congress might hone in on as making sure
11 because, otherwise, it could be kind of a
12 borderline situation.

13 So Congress would say: Okay, we want
14 to make clear that the mandatory minimum should
15 still apply if a person has more than four and
16 they had at least a three -- three-point
17 offense, however it's defined. I under -- I
18 take Justice Barrett's point about that, but I
19 do think the guidelines lead you to identify
20 three-point offenses.

21 But Congress could say: Look, we're
22 lifting the emphasis on criminal history.
23 We're -- we -- this has been a problem, you
24 know, keeping people from -- the court from
25 considering raising -- alleviating the

1 mandatory minimums, so we're not going to have
2 a focus on criminal history anymore.

3 However, there could be a situation in
4 which we want to make clear, because it's so
5 borderline we can't trust district judges to
6 necessarily apply the mandatory minimum in this
7 particular circumstance, so let us make clear
8 that if the person has four criminal history
9 points or more, if they have a three-point
10 offense in their background, and if they have a
11 two-point offense that is violent, you still
12 have to apply the mandatory minimum in that
13 situation.

14 I don't see that as, like, crazy or
15 making the statute not make sense.

16 MR. DVORETZKY: I -- I think that's
17 right. And while -- while the government in
18 its argument may disagree and prefer a
19 different policy outcome, that really is at
20 that point a policy debate.

21 And if the government -- the other
22 thing I would add is, if the government's view
23 were correct that any of A, B, or C were
24 independently disqualifying, you could have
25 people disqualified as in the Lopez case, for

1 example, for a 14-year-old offense for
2 spray-painting a building. That would be a --
3 a three-point offense.

4 JUSTICE JACKSON: Which would seem to
5 undermine Congress's purpose of allowing for
6 district courts to not have to apply the
7 mandatory minimum --

8 MR. DVORETZKY: Right.

9 JUSTICE JACKSON: -- in some
10 situations.

11 MR. DVORETZKY: The -- the
12 government's argument is that under our
13 interpretation, the First Step Act is doing too
14 much. Under their interpretation, the First
15 Step Act, I would argue, is doing too little.
16 Either way, that's a policy debate, and --

17 JUSTICE JACKSON: One that Congress
18 could fix very clearly if we say it's "and" by
19 just changing it to "or," correct?

20 MR. DVORETZKY: That's right. Either
21 way, that's a policy debate and Congress could
22 amend the statute, and it would be very easy
23 for it to do so simply using "and" and "or."

24 JUSTICE JACKSON: Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Mr. Liu.

3 ORAL ARGUMENT OF FREDERICK LIU

4 ON BEHALF OF THE RESPONDENT

5 MR. LIU: Thank you, Mr. Chief

6 Justice, and may it please the Court:

7 "And" is conjunctive in 3553(f)(1).

8 The question is, what does "and" conjoin?

9 It joins together three independently
10 disqualifying conditions by distributing the
11 phrase "does not have." That's the only
12 interpretation that avoids rendering the first
13 subparagraph entirely redundant and the only
14 interpretation that assigns (f)(1) a coherent
15 gatekeeping role.

16 What's inexplicable about Petitioner's
17 reading is that it would disqualify only those
18 defendants with a rare combination of
19 characteristics, including a prior violent
20 offense of exactly two points. So a defendant
21 convicted of a violent offense would actually
22 prefer to receive a longer sentence worth three
23 points to avoid being disqualified. That makes
24 no sense.

25 Petitioner's counterarguments fall

1 into three buckets. First, he argued in his
2 brief that the distributive interpretation is
3 textually impermissible. But grammar, usage,
4 and legal drafting guides say otherwise, and
5 the law is filled with distributive uses of
6 "and." Petitioner this morning attempts to
7 distinguish these as -- as cases involving
8 negative conditions, but that's just a
9 distinction without a difference.

10 Second, Petitioner argues that the
11 distributive use of "and" is less common. But,
12 according to leading grammar authorities, "and"
13 is usually distributive, including when
14 combined with the negative. And even if that
15 weren't true, even if, for example, 40 percent
16 of the "ands" in the world were distributive,
17 the job of the interpreter would be to figure
18 out whether, in context, this case falls within
19 that 40 percent rather than to simply accept
20 Petitioner's reading.

21 Third and finally, Petitioner argues
22 that Congress could have more clearly expressed
23 the government's interpretation by using "or."
24 But Congress could have more clearly expressed
25 Petitioner's interpretation by, for example,

1 using the phrase "does not have" at least one
2 of the following. And if Congress had used
3 "or," you can bet that defendants would be
4 accusing the government of reading "or" to mean
5 "and" by requiring that defendants not have A,
6 not have B, and not have C.

7 In any event, this Court has held that
8 the mere possibility of a clearer phrasing
9 can't defeat a meaning that's clear in context.
10 Because "and" in context joins together three
11 independently disqualifying conditions, the
12 Eighth Circuit should be affirmed.

13 I welcome the Court's questions.

14 JUSTICE THOMAS: Mr. Liu, would you
15 tell us exactly when we are to use the -- the
16 distributive approach reading as opposed to the
17 joint reading?

18 MR. LIU: Well, the answer is it
19 depends. It depends on the context.

20 JUSTICE THOMAS: Well, see, that's the
21 problem. We're not getting direction or
22 guidance as to when it depends. The -- it's
23 almost as though this is a substantive due
24 process of the word "and," that we just make it
25 up as we go along.

1 I -- I -- I think you have to give us
2 more than that. At least Petitioner says the
3 natural -- the more natural reading or almost a
4 default reading is "and" is conjunctive in a --
5 in a joint sense.

6 MR. LIU: Yeah. Well, if you look at
7 the grammar books, they say the opposite. They
8 say, when "and" is used, even when combined
9 with a negative -- this is the Cambridge
10 Grammar of the English language -- they say
11 "and" is more often distributive. So I think
12 that that's a fair starting point.

13 But then I think you do need to look
14 at the context of the statute. "And" -- "and"
15 is a relationship word. It's a word that
16 connects other words. So you can't just look
17 up "and" in the dictionary in isolation to know
18 what it connects. The only way to figure out
19 what it connects is to actually read the other
20 words around "and" in this statute.

21 And, here, we think we have two
22 extremely strong contextual indicators that
23 Congress here intended "and" to be
24 distributive. One is our surplusage argument,
25 and the other is the argument that if you adopt

1 Petitioner's reading, the provision doesn't
2 make any sense.

3 JUSTICE JACKSON: What about the use
4 of "and" at the end of 3553(f)? I mean, if
5 you're right, then is it the government's
6 position that (1), (2), (3), (4), and (5) are
7 also distributive?

8 MR. LIU: No. We think "and" is doing
9 the same work in both places. In the main list
10 of things, (f)(1) through (5), what "and" is
11 doing is creating an eligibility checklist.
12 The Court must find (1), must find (2), must
13 find (3), must find (4), must -- and must find
14 (5).

15 What it's doing is the exact same
16 thing in the subsidiary checklist. The
17 defendant must not have A, must not have B, and
18 must not have C.

19 In both places, it's requiring that
20 all the criteria be satisfied.

21 JUSTICE JACKSON: But only if you put
22 in "must not have" three times. In other
23 words, if you don't repeat "must not have,"
24 then it seems to me that one is saying that the
25 defendant does not have all of those three.

1 MR. LIU: That's true. Our whole --
2 our whole case depends on whether you
3 distribute the "does not have" or you don't.
4 What I'm saying is, if you apply --

5 JUSTICE JACKSON: Well, what do you --

6 MR. LIU: -- the same --

7 JUSTICE JACKSON: -- what do you say
8 about the fact that we have within this 3553 --
9 and I'm looking at (f)(4) now -- a circumstance
10 in which Congress has repeated, you know, the
11 defendant was not an organizer and was not
12 engaged in? So wouldn't we have expected for
13 Congress to do that same sort of thing if it
14 meant for these things to be distributed in
15 (1)?

16 MR. LIU: Well, Congress did do the
17 exact same thing in (f)(1). The only
18 difference is formatting. The only difference
19 is formatting and style.

20 What Congress did in (f)(1) was say:
21 Look, (A), (B), and (C) are pretty long. I
22 mean, this would be a very long -- much longer
23 than (f)(4). And so, to help the reader figure
24 out what the independent conditions are, we're
25 going to split it up.

1 But the principle --

2 JUSTICE JACKSON: So how -- how do you
3 explain the prior bill that actually used the
4 word "or" and had these same criteria? I mean,
5 we do have a change. It's not as though
6 Congress always used "and," and so we're trying
7 to figure this out in that sense.

8 MR. LIU: I think the only -- the only
9 change is the criteria that -- that the author
10 thought were being connected.

11 JUSTICE JACKSON: No, there's a change
12 in the language of the prior bill and this
13 bill --

14 MR. LIU: Right.

15 JUSTICE JACKSON: -- with respect to
16 the use of "and" and "or."

17 MR. LIU: And my guess is, when they
18 put in "or," they thought that (A), (B), and
19 (C) should be read in a package because, when
20 they're read as a -- as a single unit with
21 brackets, then "or" makes sense.

22 But, at some point, I think whoever
23 wrote this thought: Actually, I think the
24 criteria is does not have (A), does not have
25 (B), and does not have (C).

1 JUSTICE KAVANAUGH: Well, I think
2 there are different -- the House had the "or"
3 and the Senate always had the "and," correct?

4 MR. LIU: Right. I mean, look, I
5 don't think we should be looking --

6 JUSTICE KAVANAUGH: I don't know if
7 that is -- that's not a full answer, but it's
8 -- it's relevant to trying to figure out what
9 the difference was.

10 MR. LIU: I think it's relevant, and
11 my -- my -- my deep -- I guess I have two
12 deeper fundamental points. First, I don't
13 think we should be relying on this sort of
14 legislative history at all. But, second --

15 JUSTICE JACKSON: But why is that? I
16 -- I -- can you just -- why? Why not? I mean,
17 we're trying to understand what, I thought,
18 Congress intended this to mean, and so it seems
19 to me at least -- at least relevant what they
20 had previously drafted as they looked at these
21 various issues.

22 MR. LIU: Yeah, I don't think so
23 because, in the context of this case, everyone
24 agrees -- I mean, we've been accused of this
25 throughout the brief -- that the same thing can

1 be rephrased as an "or." So the fact that it
2 was rephrased as an "or" I don't think moves
3 the needle at all.

4 Anytime someone is speaking and uses a
5 connector, they have in mind what's being
6 connected. When they used "or," I would say
7 that Congress --

8 JUSTICE SOTOMAYOR: Mr. Liu --

9 CHIEF JUSTICE ROBERTS: Mr. Liu --

10 JUSTICE SOTOMAYOR: -- Mr. Liu, could
11 you point me to one statute -- we spend a lot
12 of time with common language, but I've been
13 looking at your brief and all the statutes you
14 cited where you say that "and" also meant "or,"
15 but all of them were framed in the affirmative.
16 As examples, "executive" means -- 5 U.S.C.
17 Section 105, "executive agency" means an
18 executive department, a government corporation,
19 and an independent establishment.

20 Or sometimes examples are framed in
21 the negative, such as 26 U.S.C. Section 17 --
22 170(f)(16)(D), which provides that the term
23 "household items" does not include food,
24 paintings, antiques, and other objects of art,
25 jewelry and gems, and collection.

1 But I can't find another statute
2 except this one where a list of criteria is
3 framed in the negative and we distribute that
4 negative the way you have. Point me to one
5 other statute.

6 MR. LIU: Well, I think that the --
7 JUSTICE SOTOMAYOR: You can't do it in
8 this one.

9 MR. LIU: I think the example Your
10 Honor just gave qualifies. The -- the
11 provision in the Internal Revenue Code says, to
12 qualify as a household item eligible for a
13 deduction --

14 JUSTICE SOTOMAYOR: That's a list of
15 examples. I'm talking about criteria that
16 disqualify you. I want an example like this
17 one.

18 MR. LIU: I think -- I think the
19 household items one is just like this one. I
20 think 34 U.S.C. 20 --

21 JUSTICE SOTOMAYOR: All right. We're
22 -- we're -- we're going to fight on the
23 starting premise.

24 JUSTICE GORSUCH: Counsel --

25 CHIEF JUSTICE ROBERTS: I --

1 JUSTICE GORSUCH: Oh, I'm sorry,
2 Chief, you -- go ahead.

3 CHIEF JUSTICE ROBERTS: I was just
4 going to say, if you could discuss for a little
5 while, Mr. Dvoretzky talked about his doctor
6 and Congress, and I think Justice Alito made
7 the very important point that we have to focus
8 on who -- who we're talking to or who we're
9 listening to.

10 What do you -- what do you think about
11 that? I mean, does Congress really, when
12 they're drafting these things, focus as much as
13 we have been focusing today on the grammatical
14 structure and differences, or should we take it
15 in a more colloquial sense, or how should we --

16 MR. LIU: So I -- Mr. Chief Justice, I
17 think the government wins whether you take a
18 literal or hyper-literal or colloquial
19 understanding of what Congress is saying,
20 either way.

21 CHIEF JUSTICE ROBERTS: Okay. But --
22 but, as a general starting point, what should
23 we do? I mean, obviously, we --

24 MR. LIU: Yeah. Well, look --

25 CHIEF JUSTICE ROBERTS: -- we've said

1 we treat the language --

2 MR. LIU: -- I --

3 CHIEF JUSTICE ROBERTS: -- as being
4 used in a common manner, but --

5 MR. LIU: I think the most important
6 thing to know about our relationship with
7 Congress is that we presume Congress to be
8 rational. We presume Congress to be an
9 intelligent drafter of opinion -- of -- of --
10 of -- of statutes. That's why we apply canons
11 like consistent usage and -- and meaningful
12 variation, and that's why we -- this Court has
13 said that it's this Court's role to make sense,
14 rather than nonsense, out of the corpus juris.

15 CHIEF JUSTICE ROBERTS: Well, but you
16 can't really say -- go so far as to say that it
17 would be irrational for Congress to write the
18 statute the way your friend wants to write it.

19 MR. LIU: I do think the -- the -- the
20 way Petitioner frames it, it is -- it is
21 incoherent. It is inexplicable. It is -- it
22 is -- it can't be explained.

23 I mean, just think of this
24 hypothetical that we provide in our brief: Two
25 defendants commit the same three-point offense.

1 Then one defendant goes on to commit a series
2 of murders, all three-point violent offenses.
3 The second defendant goes on to -- to commit
4 just one more offense, a mid-level robbery, a
5 two-point violent offense.

6 If -- if there was any sense to this
7 statute, if -- if, as my friend says, this
8 statute cares about recidivism and violence,
9 then the first -- the first defendant would be
10 the one that's disqualified.

11 JUSTICE GORSUCH: Counsel, that's --

12 MR. LIU: But, under his reading, only
13 the second is.

14 JUSTICE GORSUCH: -- that -- that --
15 that's a good policy argument, but you don't
16 argue that it rises to the level of absurdity
17 that would trigger our absurd doctrines -- our
18 absurdity canons, right?

19 MR. LIU: We do think it would be
20 absurd. We don't think we need to --

21 JUSTICE GORSUCH: You haven't made
22 that argument.

23 MR. LIU: Well, we don't think we need
24 to because absurdity kicks in only when a court
25 needs to disregard the literal text of a

1 statute. And there is a textual --

2 JUSTICE GORSUCH: So -- so you don't
3 invoke that canon, and -- and one could imagine
4 a rational Congress coming to this conclusion.
5 It's not the conclusion you think most
6 rational, but a whole bunch of lower court
7 judges have found it rational.

8 And then you have a -- a superfluidity
9 argument that isn't entirely leakproof, right?
10 It -- it's -- it's a partial superfluidity
11 argument.

12 MR. LIU: No, it's a hundred percent.
13 It's a hundred percent.

14 JUSTICE GORSUCH: A hundred percent?

15 MR. LIU: The entire subparagraph (A)
16 is superfluous.

17 JUSTICE GORSUCH: So Chief Judge Pryor
18 is -- is wrong as well that one could read the
19 statute rationally to -- every -- every offense
20 has a point but that not all of them are
21 counted under A1, 2?

22 MR. LIU: That's right. I mean, his
23 view of the guidelines can't be squared with
24 the text of the guidelines or the text of the
25 statute.

1 JUSTICE JACKSON: Can you explain that
2 a little bit more, please?

3 JUSTICE GORSUCH: Oh, I'm sorry,
4 before that, I had one last question if it's
5 all right.

6 JUSTICE JACKSON: Mm-hmm.

7 JUSTICE GORSUCH: Which is, when we're
8 trying to figure out the most natural reading
9 of a statute and whatever standard we talked
10 about, what should we account for the fact that
11 the government didn't make this argument until
12 this Court in this case, that below, in the
13 Eighth Circuit, it argued that "and" means
14 "or"? You -- you started this argument by
15 saying we agree "and" is conjunctive, but in
16 the Eighth Circuit, the argument was it's
17 disjunctive.

18 MR. LIU: No, I think we made -- we --

19 JUSTICE GORSUCH: Should that weigh in
20 our consideration of what --

21 MR. LIU: -- we made the two arguments
22 in the alternative. We made the distributive
23 argument in our response brief in the Eighth
24 Circuit, and that's why the Eighth Circuit
25 accepted it. We used the word "distributive"

1 in our brief.

2 JUSTICE JACKSON: Counsel, I'd like to
3 get back to the -- whether or not this comports
4 with the guidelines. Guidelines 101 is order
5 of operation. And 4A1.1, one of the things I
6 noticed in the government's brief was the
7 insistence on inverting 4A1.1 and 1.2, which is
8 actually not the way in which the guidelines
9 operate. You start with 1.1, which allows us
10 to determine which prior sentences are eligible
11 for points. You get three points for a certain
12 set of characteristics; that is, if the
13 sentence is over one year and a month, you get
14 two points, et cetera.

15 Once you have identified those, then
16 you go on for 1.2 and determine which count,
17 which of those count for the purpose of the
18 criminal history. So, given that -- and I
19 think that's incontrovertible -- how is it that
20 Judge Pryor's view of the way in which this
21 works is inconsistent with the guidelines?

22 MR. LIU: So, with respect, Justice
23 Jackson, I don't think it's uncontrovertible.
24 I don't think the probation office or any
25 government attorney has ever applied these two

1 guidelines in that fashion.

2 JUSTICE JACKSON: I'm sorry, what's
3 not uncontrovertible? You don't go in order of
4 operation?

5 MR. LIU: Correct. That when -- when
6 you apply -- when -- when -- when someone is
7 applying 4A1.1, they're applying 4A1.2 to
8 determine which offenses should be --

9 JUSTICE JACKSON: Ultimately. But,
10 second, after they do 4A1.1.

11 MR. LIU: No, I don't think so.

12 JUSTICE JACKSON: There's an order of
13 operation.

14 MR. LIU: I respectfully disagree,
15 Justice Jackson. I think the clearest evidence
16 of this is on 4a of our statutory appendix,
17 where you have the application notes too 4A1.1,
18 and all of the application notes for when you
19 add three points or add two points or add one
20 point incorporate 4A1.2.

21 Now, if it were true that you look at
22 4A1.1, you push it away, and then you subtract
23 those points, it wouldn't make sense to build
24 into the commentary for when you add them all
25 the rules in 4A1.2. In other words, what this

1 commentary is saying is, before you add points,
2 see if you -- you're supposed to be counting --

3 JUSTICE JACKSON: All right. Well, if
4 -- if --

5 MR. LIU: -- that offense in the first
6 place.

7 JUSTICE JACKSON: -- if I disagree
8 with you, do you lose on that point? In other
9 words, if the Court decides that there is an
10 order of operation, that you can identify
11 offenses based on the points that are
12 attributed to them under 4A1.1 and then you
13 determine whether or not they're counted under
14 4A1.2, does the government's surplusage,
15 whatever the argument is, do you lose on that
16 point?

17 MR. LIU: If the Court concludes that
18 there is such a thing as a two-point offense
19 that doesn't add points to the defendant's
20 total, then, yes, we do not have a surplusage
21 argument.

22 JUSTICE KAVANAUGH: Can I ask you --

23 JUSTICE KAGAN: Mr. Liu, can I -- can
24 I --

25 JUSTICE KAVANAUGH: Go ahead. You.

1 JUSTICE KAGAN: You know, I understand
2 your argument about the foreign sentences and
3 the old sentences, makes sense to me that you
4 don't add up the points if you're not going to
5 count them anyway.

6 And, indeed, like, trying to figure
7 out what the points are for some foreign
8 conviction strikes me as something that courts
9 don't do and we shouldn't ask them to do.

10 I'm not sure I understand your
11 argument on the single sentence rule.

12 MR. LIU: Sure.

13 JUSTICE KAGAN: I'm not sure I
14 understand Judge Pryor's view of the single
15 sentence rule either.

16 MR. LIU: Right.

17 JUSTICE KAGAN: So I start with not
18 understanding his view, and I end with not
19 understanding your response. So I'm just
20 wondering whether you can go over why you think
21 the single sentence rule does not operate
22 against you --

23 MR. LIU: Well --

24 JUSTICE KAGAN: -- putting aside this
25 -- the old sentence and the foreign -- the old

1 conviction and the foreign conviction rule?

2 MR. LIU: So -- so the single sentence
3 rule in principle is the same as the foreign
4 conviction and military conviction rule in that
5 it tells you what is your baseline for adding
6 points, for being the basis for adding points.

7 And what the single sentence rule says
8 is that when you have two sentences that are,
9 say, charged on the same indictment and the
10 defendant is sentenced on the same day, treat
11 that, count that -- those are literal --
12 literal words -- count that as a single
13 sentence.

14 So then that's the basis on which you
15 move to the instruction in 4A1.1, which says
16 how many points to add. So, when you combine
17 those two, may -- maybe you get a sentence
18 that's three years instead of just one year.
19 So then you know when you get to 4A1.1 we're
20 going to add three points to that instead of
21 just the regular old one or two.

22 So that's how the single sentence rule
23 operates. But the principle is the same, which
24 is that you don't get to the point of adding
25 points --

1 JUSTICE KAGAN: Yeah.

2 MR. LIU: -- until you figure out what
3 you're counting.

4 JUSTICE KAGAN: Now, when Judge Pryor
5 says this is contradicted by the language of
6 (1)(A), why -- why do you think that that's
7 wrong?

8 MR. LIU: I think it's wrong because
9 (1)(A) has all over it the word "add." And so
10 there's no context in which, as I think Chief
11 Judge Pryor was supposing, that points are
12 assigned without adding them. There's only --

13 JUSTICE JACKSON: No, I think she's
14 talking about 3553(f)(1)(A), Judge Pryor --

15 MR. LIU: Oh, (f)(1)(A).

16 JUSTICE JACKSON: Yes, (f)(1)(A).

17 MR. LIU: Right.

18 JUSTICE JACKSON: Mm-hmm.

19 MR. LIU: There's an exclusion in the
20 text of (f)(1)(A) that says we're going to
21 exclude points resulting from one-point
22 offenses.

23 I don't see how that helps my friend
24 because the negative implication of that is
25 that all the two-point and three-point offenses

1 are being included in the total points.

2 And so that just reinforces that when
3 you have a two-point violent offense and a
4 three-point offense, that's not being excluded
5 from the total, it's being included.

6 JUSTICE JACKSON: No, but the fact
7 that you could include or exclude is the
8 problem. In other words, just -- Judge Pryor's
9 point is Congress understood that there would
10 be offenses that are called one-point offenses,
11 are called two- or three-point offenses that
12 would not be included. And that undermines
13 your point because your surplusage argument
14 relies on the view that every three-point
15 offense is only such because it is counted.

16 So, to the extent that you can have a
17 world in which something is a one-point
18 offense, but it is not counted, Judge Pryor at
19 least says that I think that -- sorry, he says
20 that that means that you're wrong about
21 surplusage.

22 MR. LIU: I -- I don't -- I don't
23 think this helps my friend's argument at all.
24 In fact, I think it cuts against it. If you
25 read the exclusion, it says points resulting

1 from one-point offenses.

2 So the only offenses it has in mind
3 are -- are offenses that would actually --
4 actually result in points. What -- the problem
5 with Chief Justice Pryor -- Chief Judge Pryor's
6 vision is, is that there are some offenses out
7 there that would have resulted in points but
8 for the fact that they're not counted.

9 The text of -- of 3553(f)(1)(A)
10 doesn't contemplate that. The only one-point
11 offenses it contemplates are one-point offenses
12 that actually --

13 JUSTICE JACKSON: But what is the
14 government's position on that? Do you disagree
15 that there's a world in which you -- you have
16 an offense that would be assigned points, but
17 those points aren't counted for the purpose of
18 the criminal history score?

19 MR. LIU: I mean, would be -- I mean,
20 sure, you can say would be, but --

21 JUSTICE JACKSON: So then why aren't
22 those the three-point offenses that --

23 MR. LIU: Oh.

24 JUSTICE JACKSON: -- this statute is
25 talking about?

1 MR. LIU: Because, in -- in referring
2 to three-point and two-point offenses, the
3 statute's referring to offenses that actually
4 give rise to two point and three points, just
5 like in the exclusion in (1)(A), it's referring
6 to one-point offenses that actually result --

7 JUSTICE KAVANAUGH: Can --

8 MR. LIU: -- in points that count
9 toward the total.

10 JUSTICE KAVANAUGH: -- can I -- can I
11 ask you a question to follow up on Justice
12 Thomas's original question? Because I think
13 that's really important.

14 MR. LIU: Yeah.

15 JUSTICE KAVANAUGH: So my
16 understanding is there's an established rule of
17 language and grammar that "and" distributes in
18 circumstances where the context establishes
19 that that's the better reading.

20 MR. LIU: Correct.

21 JUSTICE KAVANAUGH: Is there a more
22 precise phrasing you can put on that? The
23 context shows what?

24 MR. LIU: Sure. And I -- I think
25 Justice Kagan provided a helpful heuristic. We

1 read things like "don't drink and drive"
2 because there is something special about the
3 combination of drinking and driving. It is
4 particularly harmful. And so we're telling
5 people don't do the two in combination.

6 The problem here is that there is
7 nothing special about the combination of A, B,
8 and C except for its arbitrariness.

9 JUSTICE KAVANAUGH: But the premise to
10 your point, I think -- and this is important
11 and Justice Thomas raised it -- is the "and"
12 distributes sometimes.

13 MR. LIU: Correct.

14 JUSTICE KAVANAUGH: That's an
15 established rule, so we just have to figure out
16 when it is.

17 MR. LIU: Yeah. And --

18 JUSTICE KAVANAUGH: And then, on
19 context, I think Justice Gorsuch has raised
20 important questions about policy, so you want
21 to distinguish the context that we should look
22 at from policy arguments, or how do we -- how
23 do you respond to the concern that those are
24 just policy arguments and not relevant to the
25 context, particularly the anomaly --

1 MR. LIU: Correct.

2 JUSTICE KAVANAUGH: -- issue and also
3 the number of offenders who would be
4 disqualified now.

5 MR. LIU: I want to make clear that
6 our con- -- our second contextual argument is
7 completely consistent with textualism. It's
8 consistent in three ways.

9 First, we're not arguing that purpose
10 should trump text. We are trying to figure out
11 as between two textually grammatically possible
12 readings which one is the best one in light of
13 context.

14 Second, we are not deriving purpose
15 from the subjective views of the legislature.
16 We are deriving purpose from what a reasonably
17 objective user of words would glean from the
18 text and structure of this statute.

19 And, third, we are not defining this
20 purpose at a high level ab- -- of abstraction
21 like the broader the safety valve or the
22 narrower the better. This isn't about broader
23 or narrower. It's about a line, any line, that
24 makes sense.

25 JUSTICE GORSUCH: That -- that --

1 that -- that -- that -- in a -- in a textualist
2 world, that would be an absurdity argument,
3 that this -- this --

4 MR. LIU: I don't -- I don't --

5 JUSTICE GORSUCH: Let me just finish
6 the question. You can have all the time to
7 respond you want.

8 MR. LIU: Fair enough.

9 JUSTICE GORSUCH: But absurdity, we
10 recognize that's a very high bar, and you
11 haven't invoked that canon directly. Now maybe
12 you want to here at the podium. Good luck with
13 that. But that's a very high bar.

14 You're saying: Hey, Congress wouldn't
15 have done this because it wouldn't capture some
16 bad people. That seems to me at -- at heart
17 one of two things: either an argument about
18 intent, Congress couldn't have intended this,
19 wouldn't have intended this because it wouldn't
20 want bad people to get away, or, two, it's a
21 policy argument, you shouldn't want this to
22 happen.

23 And either of those seem to me
24 straining at least your -- your claim that this
25 is all consistent with textualism, especially

1 since you haven't identified a canon other than
2 absurdity that would be kind of a classic
3 textualist argument.

4 MR. LIU: Well, with respect, Justice
5 Gorsuch, I think we're relying on a traditional
6 tool of construction that this Court relies on
7 all the time.

8 JUSTICE GORSUCH: Which is what? It's
9 called common sense in your brief. I don't
10 know that canon, but I guess it's a -- a good
11 one.

12 MR. LIU: It's called construing the
13 structure and the text of the statute, gleaning
14 the evident purpose --

15 JUSTICE GORSUCH: Purpose. So it is
16 purposivist?

17 MR. LIU: At -- at some level, yeah.
18 It's the -- I mean, I do want to --

19 JUSTICE KAVANAUGH: I thought the -- I
20 thought the point --

21 JUSTICE GORSUCH: Okay. I appreciate
22 that concession.

23 MR. LIU: Absolutely. Mm-hmm.

24 JUSTICE KAVANAUGH: I thought the
25 point was there's an established -- I don't

1 know if you want to call it canon -- rule of
2 English grammar about how to read "and."

3 MR. LIU: That's correct. It's a --
4 it's a --

5 JUSTICE KAVANAUGH: Okay. So that
6 if -- if we accept that there's an established
7 rule of English grammar about how to read "and"
8 and you don't always read it literally because
9 that's not how people speak, then that's -- you
10 don't need to get to absurdity because you're
11 trying to figure out whether the "and"
12 distributes or not. And then, in figuring that
13 out, the established rule is you look at
14 context, right?

15 MR. LIU: Exactly. And this has --
16 this has --

17 JUSTICE KAVANAUGH: But then what's
18 the -- you know, what context? That's --

19 MR. LIU: Right.

20 JUSTICE KAVANAUGH: -- I think, what
21 Justice Gorsuch is zeroing in on.

22 MR. LIU: I -- I think it has to be --

23 JUSTICE KAVANAUGH: That sounds like
24 absurdity when you're bringing context. But
25 maybe it being absurd is helpful to or close to

1 absurd is helpful in thinking about context.

2 MR. LIU: Well, I think this is the
3 way the Court has approached other cases. Take
4 last term's decision in Jones versus Hendrix.
5 The Court there was construing 2255's saving
6 clause, and one of the indicators of context
7 that it relied on was the fact that the
8 defendant's reading would mean that
9 non-constitutional claims, i.e. statutory
10 claims, would be given a superior remedy than
11 constitutional claims. The Court rejected that
12 because it called that result "strange and
13 bizarre."

14 In Abbott versus the United States,
15 which -- which we discuss in our brief, this
16 Court addressed the applicability of 924(c)'s
17 mandatory consecutive sentence regime. Under
18 defendant's reading in that case, the most
19 culpable drug offenders would be excused from
20 the mandatory minimum of 924(c), while the
21 least -- less culpable ones would still be
22 subject to it.

23 JUSTICE JACKSON: But how do you --

24 JUSTICE BARRETT: So --

25 JUSTICE JACKSON: -- how do you -- go

1 ahead.

2 JUSTICE BARRETT: I -- I just want to
3 make sure you're -- you're not conceding that
4 absurdity applies because absurdity applies
5 when the actual plain meaning of the text would
6 lead to an absurd result. And we're at the
7 antecedent point --

8 MR. LIU: Correct.

9 JUSTICE BARRETT: -- of asking what
10 the text means --

11 MR. LIU: Correct.

12 JUSTICE BARRETT: -- relying on these
13 kinds of things. But what do you do about the
14 corpus linguistics brief?

15 MR. LIU: I think the corpus
16 linguistics brief helps us. It helps us in
17 three different ways. Number one, the survey
18 data and its analysis of the statutes in that
19 case just shows that this distributive reading
20 is textually permissible.

21 JUSTICE BARRETT: But less -- less
22 likely?

23 MR. LIU: Less likely according to
24 them, but I think the -- the job of a faithful
25 interpreter is to figure out whether -- you

1 know, if it's an 80 to 20 percent split or a 70
2 to 30, 60/40, the faithful interpreter needs to
3 figure out are we in the 20 percent, are we in
4 the 30 percent, are we in the 40 percent, or
5 are we in the other -- in the other box? It
6 would -- it would be to tolerate a huge error
7 rate if the Court simply assumed that because
8 70 percent of "ands" out there are joint, we're
9 just going to read every -- every "and" in the
10 world as joint. That would be a 30 percent
11 error rate.

12 JUSTICE SOTOMAYOR: Well, I looked at
13 the Senate's manual, the Senate's legislative
14 drafting manual, and it says, "in a statement
15 in the negative, 'or' is almost always the
16 correct word." And I think that's what the
17 linguistic brief is telling us.

18 You're putting it at 20, 30, or 20.
19 But, if your alternative reading is almost
20 always incorrect, taking the negative of what
21 the Senate manual is saying, don't I need
22 something like absurdity?

23 MR. LIU: I don't think so.

24 JUSTICE SOTOMAYOR: Don't you need --
25 I mean, I just don't know how you get to your

1 point unless you get to absurdity.

2 MR. LIU: I think --

3 JUSTICE SOTOMAYOR: And then it's a
4 policy argument.

5 MR. LIU: -- the Senate manual also
6 says "use 'and' when you want to make clear
7 that something needs to satisfy all the
8 criteria." And that's, in our view, how
9 Congress used "and" here. The three criteria
10 are does not have (A), does not have (B) --

11 JUSTICE SOTOMAYOR: No, no, I think
12 you just hurt yourself. You use "and" when you
13 want it to meet all criteria. I think that's
14 joint, all three.

15 MR. LIU: And in our view, the
16 Petitioner doesn't -- Petitioner doesn't have
17 all three because he doesn't have (C). He has
18 two out of the three. So he does not have --
19 he -- he -- he -- he doesn't have all three.

20 JUSTICE SOTOMAYOR: Before we go too
21 -- too far on this, the alternatives are not
22 that the worst criminals are going to get a
23 safety valve because, as -- if someone has all
24 three of this, one could view the Senate as
25 saying this is what disqualifies you only.

1 That would be the worst in the eyes of the
2 Senate. You have to have (A), (B), and (C).

3 MR. LIU: Right.

4 JUSTICE SOTOMAYOR: And so what you're
5 saying is I happen to think that someone that
6 doesn't have (A), (B), and (C) but has more (B)
7 is worse, but that's your policy judgment,
8 isn't it?

9 MR. LIU: No. To -- to be clear, our
10 policy judgment, the -- our contextual argument
11 isn't just the mere policy concern. It is a
12 fundamental statutory construction problem to
13 presume that Congress wrote a statute that
14 doesn't make any sense.

15 And we -- Justice Barrett, I thank you
16 for the clarification. We are not saying that
17 we need to resort to absurdity because our main
18 point is "and" is inherently contextual. It
19 has to be contextual because it is a word that
20 connects other words together. So the only way
21 to figure out what it's connecting is to read
22 those other words in context.

23 JUSTICE SOTOMAYOR: Or it would mean
24 the same thing all the time.

25 MR. LIU: But, to get back to Justice

1 Barrett's question about the -- -- or I -- or I
2 won't.

3 CHIEF JUSTICE ROBERTS: You can answer
4 her question.

5 MR. LIU: I was just going to finish
6 my -- my answer to her question about the
7 corpus linguistics brief. And I think the
8 other two points, just to round out my answer,
9 are that I think that brief itself acknowledges
10 that context matters.

11 On page 7, it gives an example of the
12 phrase "don't take drugs and alcohol." And the
13 meaning of that changes depending on which
14 context you're saying it. And the fact that
15 they can't rule out a distributive reading for
16 124 of the 125 statutes they studied also
17 indicates that context matters.

18 And the last point I'll make on the
19 corpus linguistics brief is that the brief then
20 stops short of actually looking at context.
21 This is also on pages 6 and 7. They say that's
22 beyond the purview of this brief.

23 CHIEF JUSTICE ROBERTS: Justice
24 Thomas, anything further?

25 Justice Alito?

1 JUSTICE ALITO: This case, to me,
2 raises a lot of general questions that may not
3 dictate a decision one way or the other, but on
4 this last point about the corpus linguistics
5 brief, we have -- I think this is a -- a very
6 promising tool, but I don't know that we have
7 decided how it can legitimately play a role in
8 our statutory interpretation cases. I mean,
9 this is an empirical fact that is being
10 introduced into the case in an amicus brief.

11 What guidance would you give us about
12 the propriety of our relying on that?

13 MR. LIU: Yeah, I think the Court
14 needs to proceed with caution when presented
15 with evidence like this, just like it's
16 presented with evidence of any other sort of
17 scientific study.

18 I think, in the context of statutory
19 interpretation, we are trying to figure out
20 what a reasonably objective user of words would
21 understand a text to mean. And often we think
22 of ourselves as occupying that role. And so
23 empirical studies aren't necessarily helpful
24 because we can just -- we can just
25 introspectively think about what that

1 reasonably objective user of words would
2 understand.

3 JUSTICE ALITO: Well, I have no reason
4 to think this was not a study done under the
5 highest -- in accordance with the highest
6 criteria, but it is an interesting question,
7 what we're going to do with this down the road.
8 Are we going to have to make a determination
9 about the -- the methodology that was used in
10 every particular study of this kind that is
11 presented to us in an amicus brief?

12 MR. LIU: I -- I think that's --
13 that's a -- a valid question and -- and why I
14 would suggest the Court view it with caution.
15 I think, though, in this particular case, even
16 if the Court does look at it, it -- it -- I
17 think it helps the government's view because it
18 only confirms what the grammar, usage, and
19 legal drafting books already say. So it's
20 simply reinforcing what -- what other sources
21 are saying about the meaning of these words.

22 JUSTICE ALITO: On another point, do
23 you think the absurdity canon is about anything
24 other than intent?

25 MR. LIU: I -- I think it is partly

1 based on this assumption that Congress is a
2 rational and intelligent drafter of -- of
3 statutes, and so, when we see a result that is
4 absurd, we presume that that is not one
5 Congress meant to embrace.

6 JUSTICE ALITO: It's an intent that's
7 attributed to Congress. We -- we assume that
8 they do not intend to write something that's
9 absurd.

10 MR. LIU: Correct.

11 JUSTICE ALITO: Right? So it is about
12 -- it is about intent?

13 MR. LIU: Correct. It's -- it is --
14 it is about intent, and it's -- it's intent
15 against the backdrop of a body, Congress, that
16 we presume objectively to be reasonable.

17 JUSTICE ALITO: And if that is the
18 case, why would we draw a bright line between
19 absolute absurdity and mere absurdity?

20 MR. LIU: I don't think this Court's
21 -- draw such a line. I think when, as here,
22 there are two textually or grammatically
23 possible readings, the Court quite often tries
24 to make sense, rather than nonsense, of the
25 corpus juris, and that is a perfectly

1 legitimate way, as Scalia and Garner say, of
2 resolving this sort of statutory problem.

3 CHIEF JUSTICE ROBERTS: Justice
4 Sotomayor?

5 Justice Kagan?

6 JUSTICE KAGAN: Mr. Liu, I -- I take
7 your point that there are two grammatically
8 permissible ways of understanding this, and I
9 certainly think that your superfluity and your
10 anomaly arguments are extremely serious.

11 At the same time, I think
12 Mr. Dvoretzky has a point of his own, which is
13 that notwithstanding that there are two
14 grammatically permissible ways of understanding
15 this, that our -- that the most natural way of
16 communicating this idea is to use the word
17 "or." I would say it's sort of the most
18 natural way and also the way that prevents any
19 confusion. You know, we wouldn't be sitting
20 here if Congress had used the word "or."

21 So, in a context in which a
22 defendant's liberty is on the line, where --
23 I'm just going to assume that the Rule of
24 Lenity applies, notwithstanding your argument.
25 Why isn't that enough to get to Mr. Dvoretzky's

1 position?

2 MR. LIU: I think because it's at most
3 just one more -- the fact that "or" might have
4 been a clearer way to express this, I think, at
5 most, that's just one more context --
6 contextual consideration that you put into the
7 balance.

8 And if you care about the
9 "unusualness" of using "and" instead of "or,"
10 well, then I -- I think what's even more
11 unusual are the problems with Petitioner's
12 reading. What's even more unusual than
13 distributive use of "and" is the fact that the
14 very first subparagraph is surplusage and the
15 fact that this provision isn't going to be a
16 coherent measure of a defendant's criminal
17 history.

18 So, to the extent we are kind of
19 weighing unusualness against unusualness, I
20 think there's just a -- maybe just a little bit
21 of unusualness here. I'm not really even
22 willing to concede that given what the books
23 say.

24 But let's say you think there's a
25 little bit of unusualness in using "and." It's

1 far outweighed by the unusualness of just
2 striking out an entire subparagraph and
3 rendering the rest incoherent.

4 JUSTICE KAGAN: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Gorsuch?

7 JUSTICE GORSUCH: In the unusualness
8 question, the government may have alluded to
9 this conjunctive distribution theory in its
10 Eighth Circuit brief, but, really, it argued
11 that it was disjunctive and that "and" can mean
12 "or." That was the thrust of its brief. I've
13 got it in front of me.

14 That's certainly how the Eighth
15 Circuit understood the government's argument
16 below. They said -- they said that "The
17 parties discuss whether 'and' should be read
18 conjunctively or disjunctively, but we do not
19 believe that is the important question."

20 The government also argued the "and"
21 versus "or" theory in Lopez in -- in front of
22 the Ninth Circuit. That's in its brief there
23 too. And I -- I -- I understand that this is
24 a -- a refined position and -- with the benefit
25 of the Solicitor General's office. And that --

1 that's great. And the government's entitled to
2 make whatever arguments it wants.

3 But, when we're looking for plain
4 meaning, what ordinary people would understand
5 words to mean, isn't that some evidence that
6 the government itself took this long to really
7 figure out this particular theory?

8 MR. LIU: I don't -- I don't -- I
9 think it actually kind of proves the opposite.
10 I mean, the government looked at this from the
11 beginning, and the idea that A, B, and C are
12 independently disqualifying was clear as day.

13 JUSTICE GORSUCH: On the basis of a
14 completely different theory, that "and" means
15 "or," which you in your first sentence as you
16 got up, you said it's conjunctive before us.
17 And most of the argument below, I'm not going
18 to say all of it, most of it below was
19 disjunctive. And that's a difference. It's a
20 difference.

21 MR. LIU: I -- I --

22 JUSTICE GORSUCH: And the government
23 of the United States has a lot of resources,
24 and the average criminal defendant doesn't.
25 They're one-off players, you're a repeat

1 player, and you've got a very sophisticated
2 reticulated third theory of the possible
3 meaning of the word "and," right? We're now up
4 to three.

5 And the fact that it took so long to
6 get to the third, what do we do with that?

7 MR. LIU: I -- I acknowledge that
8 there were different theories, one relying on
9 "and," one relying on "or" that were advanced
10 in the lower courts. I think that just
11 reflects what is a well-accepted principle that
12 any phrase, a negative statement involving
13 "and" can be rephrased as a negative statement
14 involving "or."

15 And so, as we often do in -- in this
16 Court and in lower courts, we provide
17 alternative arguments. One way is to read the
18 "and" as distributive. The other way, if -- if
19 you want to go that route, is to read the "and"
20 to mean an "or." But the bottom line of both
21 -- of both interpretations were, as -- as the
22 bargain's theorem shows, logically equivalent.

23 JUSTICE GORSUCH: But you -- you
24 reject the "or" theory as -- as incorrect at
25 this stage? You've not pursued it at any rate?

1 MR. LIU: Correct. There's no need --
2 there's no need to do -- to read this "and" to
3 mean an "or" because the -- the distributive
4 use of "and" is the more common use.

5 JUSTICE GORSUCH: Because you've got
6 this new theory.

7 All right, thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Kavanaugh?

10 Justice Barrett?

11 JUSTICE BARRETT: I -- I'd just like
12 to follow up on that so that I understand the
13 lay of the land. I thought the government did
14 in some of the courts below make the
15 distributive theory because it's what Judge
16 Kirsch relied on in the Seventh.

17 MR. LIU: Yes.

18 JUSTICE BARRETT: It's what Judge
19 Kethledge relied on in the Sixth.

20 MR. LIU: We -- we -- in all those
21 circuits, we did. Correct.

22 JUSTICE BARRETT: Okay.

23 MR. LIU: And we did -- we didn't --

24 JUSTICE BARRETT: So it's just that
25 you didn't make it uniformly across the

1 circuits?

2 MR. LIU: We did not make it at the
3 panel stage in the Ninth Circuit.

4 JUSTICE BARRETT: Okay.

5 MR. LIU: But we have made it in -- in
6 the panel briefs in the other cases maybe with
7 the exception of Garcon at the panel stage.
8 But, in this case, we made both arguments in
9 our brief below. In the Ninth Circuit en banc,
10 we made both arguments. And in the -- in the
11 Seventh, Eighth, and --

12 JUSTICE BARRETT: Sixth.

13 MR. LIU: -- Sixth Circuit cases, we
14 made -- we made the distributive argument as
15 well.

16 CHIEF JUSTICE ROBERTS: Justice
17 Jackson?

18 JUSTICE JACKSON: So I appreciate that
19 "and" can sometimes mean "or," but this is not
20 a conversation. This is a statute, and it's a
21 criminal statute with huge implications for the
22 lives and well-being of the people who come
23 through the system.

24 And so I guess what I'm trying to
25 understand is why the imprecision in this

1 statute, the fact that you say that there are
2 two textually grammatically possible readings.

3 Why doesn't that count against the
4 government? Justice Kagan said I'm going to
5 assume lenity applies. Can you help me
6 understand why it wouldn't?

7 MR. LIU: It wouldn't for two reasons.
8 I'll just say the first one briefly, but I --
9 I'll skip over it after saying it. We don't
10 think this is the type of penal law to which
11 lenity applies.

12 Now, if you think this is the type of
13 --

14 JUSTICE JACKSON: But wait. Why?
15 Why? That's the thing I don't understand.

16 MR. LIU: It's because the -- the --
17 the definition of penal law that this Court has
18 embraced, and it goes all the way back to
19 Blackstone, encompasses laws that define a
20 crime or that increase or impose a punishment.

21 And this provision here does neither.
22 It relieves defendants of punishment. It is a
23 congressional act of lenity. And this Court
24 has never applied the Rule of Lenity --

25 JUSTICE JACKSON: So you just --

1 you -- you reject -- even though it has to do
2 with punishment and the implications of it very
3 dramatically depending -- the level of
4 punishment that a defendant can get varies
5 dramatically depending upon whether or not it
6 applies, you say lenity is not a relevant or a
7 thing that we should consider?

8 MR. LIU: Correct. This Court has
9 never applied the Rule of Lenity to this type
10 of statute. It would be an extension of the
11 Rule of Lenity to a new context.

12 I would analogize this sort of
13 provision to say a statute that sets forth an
14 affirmative defense. An affirmative defense to
15 the substantive prohibition of a crime --

16 JUSTICE JACKSON: But in a civil -- in
17 a civil situation or in a criminal situation?

18 MR. LIU: In a criminal situation.

19 JUSTICE JACKSON: In a criminal
20 situation?

21 MR. LIU: Correct.

22 JUSTICE JACKSON: An affirmative
23 defense, you say no lenity?

24 MR. LIU: No lenity, because that's a
25 type of -- that's not a penal statute. That's

1 a -- that's not the type --

2 JUSTICE JACKSON: Right. But that
3 doesn't necessarily have to do with punishment.
4 I'm talking about we've determined this person
5 is guilty, he's getting a punishment, and this
6 statute relates to the range of applicable
7 penalties that apply to him.

8 Your -- the government's position is
9 still not a penal statute for the purpose of
10 lenity if there is ambiguity as to whether or
11 not it applies?

12 MR. LIU: Correct. And that's because
13 this -- the reading of this -- this statute can
14 only benefit the defendant. It's not the type
15 of statute that could make the defendant --

16 JUSTICE JACKSON: Yeah, but if you
17 don't get it, you don't get the benefit. I
18 mean, there's a difference, right, in -- in
19 terms of your penalty presumably if you -- if
20 you get it versus you don't.

21 MR. LIU: Right. I mean --

22 JUSTICE JACKSON: So it can harm the
23 defendant if you don't get it.

24 MR. LIU: It's certainly true that the
25 defendant prefers one reading over the other.

1 But the type of -- what -- what the Rule of
2 Lenity cares about is the type of provision
3 we're talking about and whether it fits the
4 category of being penal. And a penal
5 sentencing provision is one that imposes a
6 punishment or increases it. This one doesn't
7 do either. It can only go down.

8 Now the reason why we apply lenity in
9 the first context is because we want to be sure
10 before a defendant is made worse off that
11 that's what Congress intended and the defendant
12 had fair notice.

13 But, when the only direction the
14 sentence can go is down, those -- those
15 provisions --

16 JUSTICE JACKSON: The defendant who
17 doesn't get it is not made worse off if
18 everybody else -- their sentences can go down,
19 but his can't. You're saying he's not made
20 worse off?

21 MR. LIU: Not from the perspective of
22 this type of provision. The -- Congress's
23 enactment of this type of provision did not
24 make defendants worse off.

25 JUSTICE JACKSON: Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 Mr. Dvoretzky, rebuttal.

4 REBUTTAL ARGUMENT OF SHAY DVORETZKY
5 ON BEHALF OF THE PETITIONER

6 MR. DVORETZKY: Mr. Chief Justice, I'd
7 like to start out with your question about
8 whether Congress focuses on grammar. I think
9 we have to assume that Congress focuses on
10 grammar. Congress as a speaker does not get
11 the benefit of colloquialisms. It's not the --
12 there's no conversation that people are having
13 with Congress in the way that you do with a
14 doctor or somebody else.

15 The only conversation, if you want to
16 use that analogy, is the conversation that this
17 Court has with Congress by interpreting its
18 words to mean what they say, and if Congress
19 disagrees, it can carry on its part of the
20 conversation by changing the statute.

21 Otherwise, what we end up in is a
22 guessing game about whether Congress might have
23 meant this policy or that policy.

24 Instead, the Court should give
25 Congress clear rules of the road. And, in

1 fact, the Court should -- should instruct
2 Congress to follow its own rules of the road,
3 namely, the Senate Drafting Manual, which in
4 this case would have called for the use of the
5 word "or" if Congress meant a distributive
6 meaning.

7 With respect to Mr. Liu's point that
8 "and" is distributive in grammar books, the
9 government has not come up with any examples of
10 "and" in a negated conjunction in the U.S.
11 Code. Reading Law tells us that when you have
12 the formulation that someone must not have A,
13 B, and C, that means all three.

14 The corpus linguistics study supports
15 that conclusion, that if you had "or" there, it
16 would be perfectly clear, and using "and" there
17 to express a distributive meaning is unnatural.

18 The -- the -- the government's best
19 example of a statute is the household items
20 provision in the Tax Code. First of all, as
21 Justice Sotomayor pointed out, that says "does
22 not include," so it's giving -- it's setting
23 forth a list of examples rather than criteria.

24 Second, just looking at what it's
25 talking about, food, paintings, antiques, other

1 objects of art, jewelry and gems, there is
2 simply no way to combine those things, right?
3 There is no -- there is no such thing as edible
4 antique jewelry. It -- it -- it's beyond
5 absurd to think that there would be.

6 Here, it is not absurd to say that
7 Congress could have required (A), (B), and (C)
8 in combination. The government has policy
9 arguments for why Congress might not have
10 wanted that, but it's not absurd to think that
11 it did.

12 With respect to the policy, if you had
13 an individual defendant who had, let's say, two
14 violent -- previous violent offenses in -- in
15 addition to the current drug offense, that
16 would make that defendant a career offender.
17 And if you walk through the guidelines, you end
18 up with a guidelines range for an offense level
19 of 34 for someone like that and a criminal
20 history category of 6, which is 262 to 327
21 months. That is a serious long sentence.

22 In addition, if you look at the
23 Sentencing Commission's 2022 data, there were
24 approximately 20,000 drug offenders. About
25 1,000 of them, so around 5 percent, were career

1 offenders.

2 Taking those two points together, what
3 that tells us is that you can have -- you will
4 have long sentences for the rare recidivist
5 that we've spent a lot of time talking today as
6 somebody who might somehow satisfy (f)(1).
7 It's entirely sensible that that is not what
8 Congress was focused on when it was seeking to
9 broaden discretionary sentencing and move away
10 from mandatory minimums.

11 Lastly, with respect to common sense,
12 the government focuses a lot on common sense,
13 but it's common sense that if Congress wanted
14 to say "or," it would have said "or." It knew
15 how to do that in other parts of this very
16 sentence, of 3553(f). The -- Congress's own
17 drafting manual says to do so, and that would
18 be the ordinary meaning -- that would be the
19 ordinary term to use in order to express the
20 meaning that the government attributes to this
21 statute.

22 The Court should again hold the court
23 to the ordinary meaning of the terms that it
24 chose, and it's important to do that because,
25 again, this is a -- this is a criminal statute

1 where fairness is at stake. Whether you view
2 that as lenity or whether you view that as the
3 breadth of a remedial statute, there's fairness
4 at stake and there's somebody's liberty at
5 stake. And if Congress wants to use --
6 Congress needs to use terms clearly in order to
7 get the benefit of the government's
8 interpretation here.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel. The case is submitted.

11 (Whereupon, at 11:46 a.m., the case
12 was submitted.)

13
14
15
16
17
18
19
20
21
22
23
24
25

Official - Subject to Final Review

<p>1</p> <p>1 [3] 63:6,12 64:15 1)(A) [3] 79:6,9 82:5 1,000 [1] 110:25 1.1 [1] 74:9 1.2 [2] 74:7,16 10:05 [2] 1:15 3:2 100 [1] 24:2 101 [1] 74:4 105 [1] 67:17 108 [1] 2:10 11,000 [1] 30:19 11:46 [1] 112:11 120 [1] 29:14 124 [1] 93:16 125 [1] 93:16 14-year-old [1] 58:1 141 [2] 46:2,6 15-year [2] 29:7,11 150 [1] 29:14 162 [1] 29:9 17 [1] 67:21 170(f)(16)(D) [1] 67:22 180 [1] 29:8</p> <hr/> <p>2</p> <p>2 [5] 1:11 14:17 63:6,12 72:21 2,000 [1] 30:24 2.8 [1] 31:22 20 [5] 68:20 90:1,3,18,18 20,000 [1] 110:24 2015 [1] 28:1 2021 [1] 30:19 2022 [1] 110:23 2023 [1] 1:11 22-340 [1] 3:4 22-year-old [1] 30:9 2255's [1] 88:5 25 [1] 28:24 26 [1] 67:21 262 [1] 110:20</p> <hr/> <p>3</p> <p>3 [5] 2:4 14:17 52:13 63:6,13 30 [5] 7:5 90:2,4,10,18 300 [1] 30:25 327 [1] 110:20 34 [2] 68:20 110:19 3553 [2] 11:6 64:8 3553(f) [7] 5:1 7:5 10:21 14:7,13 63:4 111:16 3553(f)(1) [3] 3:12 11:9 59:7 3553(f)(1)(A) [2] 79:14 81:9 3553(f)(4) [1] 10:25 38 [3] 9:11,14 15:10</p> <hr/> <p>4</p> <p>4 [3] 14:17 63:6,13 4,000 [1] 30:23 40 [3] 60:15,19 90:4 4a [1] 75:16</p>	<p>4A1.1 [10] 52:8 74:5,7 75:7,10,17,22 76:12 78:15,19 4A1.2 [5] 52:5 75:7,20,25 76:14 4A2 [2] 52:9,13</p> <hr/> <p>5</p> <p>5 [11] 3:20 14:10,15,17 42:11 55:21 63:6,10,14 67:16 110:25 50 [1] 9:13 59 [1] 2:7</p> <hr/> <p>6</p> <p>6 [2] 93:21 110:20 6,000 [1] 30:21 60 [1] 29:15 60-year-old [1] 29:20 60/40 [1] 90:2</p> <hr/> <p>7</p> <p>7 [3] 28:20 93:11,21 70 [4] 29:17 30:1 90:1,8 73 [1] 29:17 75 [1] 29:17</p> <hr/> <p>8</p> <p>8 [1] 28:20 80 [1] 90:1</p> <hr/> <p>9</p> <p>924(c) [1] 88:20 924(c)'s [1] 88:16 98 [2] 24:25 31:2 99 [1] 24:25</p> <hr/> <p>A</p> <p>a.m [3] 1:15 3:2 112:11 A1 [1] 72:21 ab [1] 84:20 Abbott [1] 88:14 able [1] 6:23 above [1] 4:19 above-entitled [1] 1:13 absent [1] 27:11 absolute [2] 25:3 96:19 Absolutely [1] 86:23 abstract [1] 43:19 abstraction [1] 84:20 absurd [10] 71:17,20 87:25 88:1 89:6 96:4,9 110:5,6,10 absurdity [18] 43:12,14 71:16,18,24 85:2,9 86:2 87:10,24 89:4,4 90:22 91:1 92:17 95:23 96:19,19 abuses [1] 35:20 accept [6] 5:11 17:20 18:3 37:13 60:19 87:6 accepted [1] 73:25 accordance [1] 95:5 according [2] 60:12 89:23 accords [1] 28:13 account [16] 19:11,22 28:25 29:22 30:15 33:1,4,5,19 37:18 42:12,14 46:12 48:</p>	<p>18 55:13 73:10 accused [1] 66:24 accusing [1] 61:4 achieve [1] 19:7 acknowledge [2] 46:3 101:7 acknowledges [1] 93:9 across [1] 102:25 Act [11] 3:21 27:25 28:14 30:21 47:25 48:9 49:10 54:18 58:13,15 104:23 acting [1] 24:11 actual [1] 89:5 actually [21] 6:2 12:9 15:18 25:23 28:4 32:6 34:2 49:12 51:20 59:21 62:19 65:3,23 74:8 81:3,4,12 82:3,6 93:20 100:9 add [12] 39:12 57:22 75:19,19,19,24 76:1,19 77:4 78:16,20 79:9 adding [4] 78:5,6,24 79:12 addition [6] 11:7,18 17:5,18 110:15,22 addressed [1] 88:16 adhere [1] 24:6 admit [1] 43:4 adopt [2] 43:8 62:25 adopted [1] 32:1 advanced [1] 101:9 advocating [4] 15:11,12 32:1,8 affirmative [4] 67:15 105:14,14,22 affirmed [1] 61:12 afford [1] 49:11 afforded [1] 15:2 agency [1] 67:17 agree [8] 12:25 16:11,19 44:25 45:3,7,11 73:15 agrees [1] 66:24 ahead [3] 69:2 76:25 89:1 Alas [1] 21:19 alcohol [1] 93:12 ALITO [24] 23:14,18,21,24 24:15,17 32:16,17 33:17 34:4,8,10,16 35:1,17 38:19 69:6 93:25 94:1 95:3,22 96:6,11,17 Alito's [1] 39:22 alleviating [1] 56:25 allow [3] 16:6 50:24 55:11 allowing [1] 58:5 allows [2] 32:2 74:9 alluded [1] 99:8 almost [5] 5:25 26:3 47:20,21 61:23 62:3 90:15,19 alone [3] 6:10 38:14 42:2 already [3] 55:24 56:3 95:19 alternative [3] 73:22 90:19 101:17 alternatives [1] 91:21 ambiguity [3] 8:7 38:11</p>	<p>106:10 ambiguous [3] 32:24 37:21 38:5 amend [2] 50:17 58:22 amendment [1] 23:3 amicus [2] 94:10 95:11 amount [1] 20:7 analogize [1] 105:12 analogy [1] 108:16 analysis [1] 89:18 and"/"or [1] 8:21 and' [2] 91:6 99:17 ands [2] 60:16 90:8 anomalies [1] 7:9 anomalous [7] 18:13 41:4,9,15 54:8 55:3,16 anomaly [12] 21:8 22:7,12,12 37:8 40:19 41:18 42:17 43:10 54:7 83:25 97:10 another [4] 40:7 53:15 68:1 95:22 answer [12] 9:2 33:18 34:19 41:2 46:9 47:13 49:7 61:18 66:7 93:3,6,8 antecedent [1] 89:7 antique [1] 110:4 antiques [2] 67:24 109:25 anybody [2] 41:10 54:18 Anytime [1] 67:4 anyway [1] 77:5 appeal [1] 47:16 APPEARANCES [1] 1:17 appears [1] 5:11 appendix [1] 75:16 applicability [1] 88:16 applicable [1] 106:6 application [2] 75:17,18 applied [5] 49:18,20 74:25 104:24 105:9 applies [11] 13:20 44:7 49:2,6 89:4,4 97:24 104:5,11 105:6 106:11 apply [17] 13:14 28:18 32:7,21 44:17 48:25 54:22 55:8 56:15 57:6,12 58:6 64:4 70:10 75:6 106:7 107:8 applying [3] 23:10 75:7,7 appreciate [2] 86:21 103:18 approach [4] 14:5 31:25 32:8 61:16 approached [1] 88:3 appropriate [1] 4:21 approximately [2] 29:13 110:24 arbitrariness [1] 83:8 aren't [4] 8:1 81:17,21 94:23 argue [5] 53:15,16,16 58:15 71:16 argued [6] 25:6 53:11 60:1 73:13 99:10,20 argues [3] 43:16 60:10,21 arguing [1] 84:9</p>	<p>argument [57] 1:14 2:2,5,8 3:4,7 5:10,11 11:8 12:8,10,22 17:6 24:18,20 43:7,12,17,17 47:22 48:25 49:13 50:20 51:2,3 53:12 57:18 58:12 59:3 62:24,25 71:15,22 72:9,11 73:11,14,16,23 76:15,21 77:2,11 80:13,23 84:6 85:2,17,21 86:3 91:4 92:10 97:24 99:15 100:17 103:14 108:4 arguments [15] 4:8 7:7,9 36:2 43:1 44:9 73:21 83:22,24 97:10 100:2 101:17 103:8,10 110:9 around [4] 47:7 50:25 62:20 110:25 art [2] 67:24 110:1 aside [1] 77:24 assign [1] 52:8 assigned [2] 79:12 81:16 assigns [1] 59:14 Assistant [1] 1:20 associated [3] 22:9 39:11 52:16 assume [11] 6:21 30:2 33:11 35:23 37:11 38:18 49:7 96:7 97:23 104:5 108:9 assumed [1] 90:7 assumption [2] 24:21 96:1 attempts [1] 60:6 attorney [1] 74:25 attribute [1] 33:25 attributed [2] 76:12 96:7 attributes [2] 33:25 111:20 author [1] 65:9 authorities [1] 60:12 auto-correcting [1] 6:1 automatically [2] 23:10 40:11 availability [2] 23:5,8 available [2] 3:22 37:19 average [1] 100:24 averted [1] 40:13 avoid [1] 59:23 avoids [1] 59:12 away [9] 23:13 28:9,14 44:13 48:3,11 75:22 85:20 111:9</p> <hr/> <p>B</p> <p>back [10] 15:19 29:5 36:20 39:21 44:6 47:24 54:5 74:3 92:25 104:18 backdrop [1] 96:15 background [2] 56:9 57:10 backwards [1] 51:6 bad [2] 85:16,20 balance [1] 98:7 banc [1] 103:9 bar [2] 85:10,13 bargain's [1] 101:22</p>
--	---	--	--	---

Official - Subject to Final Review

<p>BARRETT [27] 8:15,18 9:9 14:20,23 15:21 48:22,23 49:20 50:18 52:25 53:10, 18,24 88:24 89:2,9,12,21 92:15 102:10,11,18,22,24 103:4,12 Barrett's [2] 56:18 93:1 based [6] 18:22 28:22 30: 19 52:8 76:11 96:1 baseline [1] 78:5 basic [3] 5:4 35:4 37:11 basically [1] 31:1 basis [4] 54:22 78:6,14 100: 13 became [1] 26:23 beginning [2] 11:9 100:11 behalf [8] 1:18,21 2:4,7,10 3:8 59:4 108:5 behind [1] 5:6 believe [1] 99:19 below [8] 43:15 53:11 73: 12 99:16 100:17,18 102:14 103:9 bending [1] 51:6 beneficial [1] 35:19 benefit [5] 99:24 106:14,17 108:11 112:7 best [3] 35:8 84:12 109:18 bet [1] 61:3 better [6] 21:11,24,24 44: 21 82:19 84:22 between [12] 7:22 21:14 24:22 25:23 26:11,15 28:1 29:14 39:23,25 84:11 96: 18 beyond [2] 93:22 110:4 bill [5] 26:2,23 65:3,12,13 bipartisan [1] 48:1 bit [5] 27:9 30:2 73:2 98:20, 25 bizarre [1] 88:13 Blackstone [1] 104:19 body [1] 96:15 books [4] 62:7 95:19 98:22 109:8 borderline [2] 56:12 57:5 both [10] 10:19 15:7 41:11 51:12 63:9,19 101:20,21 103:8,10 bottom [1] 101:20 box [1] 90:5 brackets [1] 65:21 brain [3] 5:25 8:21,25 breadth [1] 112:3 brief [29] 9:10 15:10 25:7 28:19 52:14 60:2 66:25 67: 13 70:24 73:23 74:1,6 86: 9 88:15 89:14,16 90:17 93: 7,9,19,19,22 94:5,10 95:11 99:10,12,22 103:9 briefly [1] 104:8 briefs [1] 103:6 bright [1] 96:18 bringing [1] 87:24</p>	<p>broad [3] 45:22 50:6,10 broaden [3] 23:4,7 111:9 broader [4] 45:24 46:25 84: 21,22 broadly [1] 49:14 buckets [1] 60:1 build [1] 75:23 building [1] 58:2 bunch [1] 72:6 burden [1] 38:3</p> <p style="text-align: center;">C</p> <p>calculating [2] 31:23,24 call [2] 40:2 87:1 called [7] 28:21 80:10,11 86:9,12 88:12 109:4 calls [1] 37:23 Calvinball [1] 15:5 Cambridge [1] 62:9 came [3] 1:13 21:5 27:25 canon [8] 10:23 25:2 72:3 85:11 86:1,10 87:1 95:23 canons [2] 70:10 71:18 capture [1] 85:15 card [1] 4:17 care [2] 56:3 98:8 career [6] 4:18 20:2 28:23 52:21 110:16,25 cares [2] 71:8 107:2 carries [1] 51:23 carry [1] 108:19 Case [35] 3:4 7:23 15:24,25 18:10 21:18 22:23 23:3 25: 4 28:16 29:4 34:25 35:4 36:4 39:24 41:5,9,10 48:8 49:22 57:25 60:18 64:2 66: 23 73:12 88:18 89:19 94:1, 10 95:15 96:18 103:8 109: 4 112:10,11 cases [17] 18:8,12 31:3,10 38:21,25 39:15 41:16 46: 24 47:11,14 49:21 60:7 88: 3 94:8 103:6,13 categorical [1] 18:3 category [3] 6:13 107:4 110:20 caution [2] 94:14 95:14 cautious [1] 33:12 certain [8] 9:7 17:25 18:5 46:24 47:8,10 52:10 74:11 certainly [4] 46:10 97:9 99: 14 106:24 cetera [2] 15:3 74:14 chair [1] 24:12 chance [3] 10:8 47:3 48:24 chances [1] 8:6 change [6] 4:8 37:25 38:2 65:5,9,11 changes [2] 9:1 93:13 changing [4] 37:9,10 58: 19 108:20 characteristics [3] 34:12 59:19 74:12 charged [1] 78:9</p>	<p>checklist [2] 63:11,16 CHIEF [43] 3:3,9 18:9 24: 11 32:1,11,13 36:18 39:4, 20 42:22 44:5 45:1 48:21 50:23 52:1,2 53:25 54:3 58:25 59:5 67:9 68:25 69: 2,3,16,21,25 70:3,15 72:17 79:10 81:5,5 93:3,23 97:3 99:5 102:8 103:16 108:1,6 112:9 choice [1] 8:13 chose [2] 48:8 111:24 Circuit [13] 21:5,18 61:12 73:13,16,24,24 99:10,15, 22 103:3,9,13 Circuit's [1] 31:23 circuits [2] 102:21 103:1 circumstance [4] 24:4 55: 4 57:7 64:9 circumstances [14] 18:1, 6 23:11 28:16 29:1 30:12 47:5,18 48:18 54:21 55:6, 9,13 82:18 cited [1] 67:14 civil [2] 105:16,17 claim [1] 85:24 claims [3] 88:9,10,11 clarification [1] 92:16 class [3] 25:10 41:15 50:9 classic [1] 86:2 clause [4] 15:15,22 16:4 88:6 clear [13] 9:2 10:1 16:1 56: 14 57:4,7 61:9 84:5 91:6 92:9 100:12 108:25 109: 16 clearer [2] 61:8 98:4 clearest [1] 75:15 clearly [5] 49:1 58:18 60: 22,24 112:6 clerk [1] 49:8 clerks [1] 29:14 client [1] 29:9 close [1] 87:25 clues [1] 10:10 Code [4] 48:7 68:11 109:11, 20 coherent [2] 59:14 98:16 collection [1] 67:25 colloquial [2] 69:15,18 colloquialisms [1] 108:11 colloquy [1] 49:24 combination [9] 20:24 31: 14,16 40:13 59:18 83:3,5,7 110:8 combine [2] 78:16 110:2 combined [3] 42:2 60:14 62:8 come [6] 14:9 27:23 37:15 38:7 103:22 109:9 comes [5] 7:21 11:11,15 12:18 14:9 coming [2] 51:18 72:4 comma [1] 15:23</p>	<p>comment [2] 45:25 52:18 commentary [2] 75:24 76: 1 Commission [1] 24:12 Commission's [1] 110:23 commit [3] 70:25 71:1,3 Committee [1] 26:24 committing [1] 3:25 common [11] 17:4 18:14 38:7 60:11 67:12 70:4 86: 9 102:4 111:11,12,13 communicating [1] 97:16 communities [1] 46:4 complete [2] 15:17 16:6 completely [5] 13:8 21:9 48:6 84:7 100:14 complicated [3] 36:8,10 48:9 complimentary [1] 34:20 comports [1] 74:3 con [1] 84:6 concede [1] 98:22 conceding [1] 89:3 conceivable [1] 54:19 concept [4] 43:23 51:19 52:12,23 conception [1] 54:5 conceptual [1] 31:12 Conceptually [1] 31:13 concern [3] 47:13 83:23 92:11 concerned [2] 17:10 42:9 concession [1] 86:22 conclude [2] 37:18 38:14 concluded [2] 9:17,20 concludes [1] 76:17 conclusion [5] 21:4 50:12 72:4,5 109:15 conditions [5] 13:4 59:10 60:8 61:11 64:24 confirms [3] 3:17 52:14 95: 18 confusion [1] 97:19 Congress [125] 3:17 4:22 5:1,3,4,8 6:9 10:16,23 11: 4,21,25 12:3,4 13:8,18,21 14:2 17:10,16 18:10,16 19: 4,6 20:8,16,18,22 23:2,12 25:14,22 26:2,10,15 27:18 28:5 29:1 30:11 31:13,18 33:16,24 34:7,18 35:11,13 36:11,16,22 37:9,25 38:3 39:16 41:16 42:1,8,16,20 44:2,8 47:4,13 48:5,8 50:1, 6,13,17 52:24 54:20 55:3,7, 11 56:10,13,21 58:17,21 60:22,24 61:2 62:23 64:10, 13,16,20 65:6 66:18 67:7 69:6,11,19 70:7,7,8,17 72: 4 80:9 85:14,18 91:9 92: 13 96:1,5,7,15 97:20 107: 11 108:8,9,10,13,17,18,22, 25 109:2,5 110:7,9 111:8, 13 112:5,6</p>	<p>Congress's [4] 22:14 58:5 107:22 111:16 congressional [1] 104:23 conjoin [1] 59:8 conjunction [2] 10:6 109: 10 conjunctive [7] 5:16,22 59: 7 62:4 73:15 99:9 100:16 conjunctively [1] 99:18 connect [2] 10:17,18 connected [2] 65:10 67:6 connecting [1] 92:21 connector [1] 67:5 connects [6] 6:3 7:20 62: 16,18,19 92:20 consciously [1] 26:10 consecutive [1] 88:17 conservative [1] 33:12 consider [2] 45:18 105:7 consideration [4] 25:8 46: 11 73:20 98:6 considerations [1] 45:16 considering [2] 28:15 56: 25 consistent [8] 10:16,20 16: 3 51:25 70:11 84:7,8 85: 25 constitute [1] 38:11 constitutional [1] 88:11 construction [2] 86:6 92: 12 construe [1] 50:8 construed [2] 49:14,16 construing [2] 86:12 88:5 contemplate [4] 4:10 25: 23 52:15 81:10 contemplates [1] 81:11 context [51] 5:6,14,15,18, 23 7:16,25 8:11 9:8 10:9 16:13,16,19 25:24 33:13 35:3,12,16 45:4,12,18,21 54:8 60:18 61:9,10,19 62: 14 66:23 79:10 82:18,23 83:19,21,25 84:13 87:14, 18,24 88:1,6 92:22 93:10, 14,17,20 94:18 97:21 98:5 105:11 107:9 contexts [1] 9:7 contextual [8] 10:10 17:7 62:22 84:6 92:10,18,19 98: 6 contextually [1] 16:23 continuation [1] 15:14 continuing [1] 11:3 contradicted [1] 79:5 contrary [1] 37:3 contrast [2] 9:20 10:22 conversation [5] 103:20 108:12,15,16,20 convicted [1] 59:21 conviction [5] 77:8 78:1,1, 4,4 convictions [2] 27:1 39:8 convoluted [1] 50:1</p>
---	--	---	--	---

Official - Subject to Final Review

<p>corners ^[1] 5:5</p> <p>corporation ^[1] 67:18</p> <p>corpus ^[10] 9:10,17 70:14 89:14,15 93:7,19 94:4 96:25 109:14</p> <p>correct ^[28] 6:7 8:24 9:5,7 16:14 46:16 53:7 54:24 55:22 56:2 57:23 58:19 66:3 75:5 82:20 83:13 84:1 87:3 89:8,11 90:16 96:10,13 102:1,21 105:8,21 106:12</p> <p>corrects ^[1] 8:21</p> <p>couldn't ^[1] 85:18</p> <p>counsel ^[10] 21:1 25:17 27:22 32:14 59:1 68:24 71:11 74:2 108:2 112:10</p> <p>count ^[10] 32:4 51:20 52:11 74:16,17 77:5 78:11,12 82:8 104:3</p> <p>counted ^[11] 32:3 52:17,23 53:5,5 72:21 76:13 80:15,18 81:8,17</p> <p>counterarguments ^[1] 59:25</p> <p>counterpoint ^[1] 47:4</p> <p>counting ^[3] 52:4 76:2 79:3</p> <p>country ^[1] 47:7</p> <p>couple ^[3] 7:2 11:16 52:1</p> <p>course ^[5] 8:9 28:17 30:4 37:9 47:15</p> <p>COURT ^[40] 1:1,14 3:10 4:4 5:7 15:1,19,23 28:6 30:7 37:22 56:24 59:6 61:7 63:12 70:12 71:24 72:6 73:12 76:9,17 86:6 88:3,5,11,16 90:7 94:13 95:14,16 96:23 101:16 104:17,23 105:8 108:17,24 109:1 111:22,22</p> <p>Court's ^[5] 5:9 50:16 61:13 70:13 96:20</p> <p>courtroom ^[1] 35:23</p> <p>courts ^[10] 18:19 20:11 27:19 39:5 48:13 58:6 77:8 101:10,16 102:14</p> <p>crazy ^[1] 57:14</p> <p>creating ^[1] 63:11</p> <p>credible ^[1] 36:25</p> <p>crime ^[3] 17:15 104:20 105:15</p> <p>crimes ^[1] 3:25</p> <p>criminal ^[43] 4:12,15 5:6 6:10 11:4 18:23 19:1,8,9,20 24:14 27:13,21 28:17,22 29:13,21,21 30:17 31:2 32:4 35:3,12 39:13 42:13,14 51:4,15,21 54:22 56:22 57:2,8 74:18 81:18 98:16 100:24 103:21 105:17,18,19 110:19 111:25</p> <p>criminals ^[1] 91:22</p> <p>criteria ^[15] 3:13 20:14 25:11,13 63:20 65:4,9,24 68:2,15 91:8,9,13 95:6 109:23</p>	<p>criterion ^[2] 41:19,20</p> <p>cues ^[2] 25:5 37:19</p> <p>culpable ^[2] 88:19,21</p> <p>cumbersome ^[1] 37:4</p> <p>curiosity ^[1] 32:18</p> <p>current ^[2] 4:1 110:15</p> <p>cuts ^[1] 80:24</p> <p>cycle ^[1] 26:2</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C ^[3] 1:10,18,21</p> <p>danger ^[1] 27:14</p> <p>dangerous ^[1] 37:1</p> <p>dare ^[1] 44:5</p> <p>dash ^[17] 11:14,16,17,22 12:3,5,16 14:8,8,11,13,15,25 15:9,11,13 36:7</p> <p>data ^[2] 89:18 110:23</p> <p>day ^[5] 21:21 37:18 44:11 78:10 100:12</p> <p>deal ^[2] 17:7,8</p> <p>dealing ^[1] 49:23</p> <p>debate ^[3] 57:20 58:16,21</p> <p>decided ^[2] 28:8 94:7</p> <p>decides ^[1] 76:9</p> <p>decision ^[4] 13:9 50:16 88:4 94:3</p> <p>deduction ^[1] 68:13</p> <p>deep ^[1] 66:11</p> <p>deeper ^[1] 66:12</p> <p>default ^[2] 25:15 62:4</p> <p>defeat ^[1] 61:9</p> <p>defendant ^[32] 3:14,19 11:1 12:1,23 14:16 18:17 19:20 36:24 37:5,24 50:3,4 59:20 63:17,25 64:11 71:1,3,9 78:10 100:24 105:4 106:14,15,23,25 107:10,11,16 110:13,16</p> <p>defendant's ^[8] 27:13,20 28:22 76:19 88:8,18 97:22 98:16</p> <p>defendant-friendly ^[1] 44:16</p> <p>defendants ^[10] 4:23 17:12 38:4 50:9 59:18 61:3,5 70:25 104:22 107:24</p> <p>Defenders' ^[1] 28:19</p> <p>defense ^[3] 105:14,14,23</p> <p>define ^[1] 104:19</p> <p>defined ^[1] 56:17</p> <p>defining ^[1] 84:19</p> <p>definition ^[1] 104:17</p> <p>defy ^[2] 17:4 18:14</p> <p>degree ^[1] 33:1</p> <p>depart ^[2] 28:21 30:4</p> <p>Department ^[2] 1:21 67:18</p> <p>depending ^[3] 93:13 105:3,5</p> <p>depends ^[5] 16:13 61:19,19,22 64:2</p> <p>deriving ^[2] 84:14,16</p> <p>derogatory ^[2] 34:17,19</p> <p>described ^[1] 55:4</p>	<p>determination ^[1] 95:8</p> <p>determine ^[4] 74:10,16 75:8 76:13</p> <p>determined ^[4] 11:24 12:2 14:3 106:4</p> <p>determining ^[4] 16:12 26:10 42:15 45:5</p> <p>deviate ^[2] 28:6,9</p> <p>dictate ^[1] 94:3</p> <p>dictionary ^[1] 62:17</p> <p>difference ^[15] 25:23 26:11,15 31:9 39:23 40:3,6,7 60:9 64:18,18 66:9 100:19,20 106:18</p> <p>differences ^[1] 69:14</p> <p>different ^[13] 7:18 10:9,11 11:5 26:13 30:9 34:2 39:18 57:19 66:2 89:17 100:14 101:8</p> <p>direction ^[3] 43:11 61:21 107:13</p> <p>directly ^[1] 85:11</p> <p>disagree ^[5] 50:16 57:18 75:14 76:7 81:14</p> <p>disagrees ^[1] 108:19</p> <p>discretion ^[11] 4:21 18:20 20:11 27:19 28:2 31:7 47:12 48:13 54:14,16 55:12</p> <p>discretionary ^[1] 111:9</p> <p>discuss ^[3] 69:4 88:15 99:17</p> <p>disjunctive ^[4] 10:24 73:17 99:11 100:19</p> <p>disjunctively ^[1] 99:18</p> <p>disputes ^[1] 54:19</p> <p>disqualification ^[2] 30:17 31:2</p> <p>disqualified ^[8] 30:22,24 31:1 50:5 57:25 59:23 71:10 84:4</p> <p>disqualifies ^[1] 91:25</p> <p>disqualify ^[5] 4:1,22 36:14 59:17 68:16</p> <p>disqualifying ^[7] 40:16,17 41:22 57:24 59:10 61:11 100:12</p> <p>disregard ^[1] 71:25</p> <p>dissipates ^[1] 21:9</p> <p>distinction ^[3] 24:22 51:14 60:9</p> <p>distinguish ^[3] 21:14 60:7 83:21</p> <p>distribute ^[6] 12:16 14:14 44:2,3 64:3 68:3</p> <p>distributed ^[5] 11:9,22 15:9,19 64:14</p> <p>distributes ^[7] 14:9,11 16:12 45:6 82:17 83:12 87:12</p> <p>distributing ^[1] 59:10</p> <p>distribution ^[3] 11:17 16:6 99:9</p> <p>distributive ^[42] 4:25 5:12,19 8:22 9:4,15,19,22 10:2,5 12:5 14:24 15:4,6,12 16:</p>	<p>4 35:15 36:7,23 43:24 44:1 60:2,5,11,13,16 61:16 62:11,24 63:7 73:22,25 89:19 93:15 98:13 101:18 102:3,15 103:14 109:5,8,17</p> <p>district ^[9] 19:10 20:11 28:18,20 42:13 47:6 48:13 57:5 58:6</p> <p>doctor ^[8] 8:6 33:8,9,11,12 35:8 69:5 108:14</p> <p>doctrines ^[1] 71:17</p> <p>document ^[1] 26:6</p> <p>doing ^[6] 28:10 58:13,15 63:8,11,15</p> <p>done ^[3] 26:3 85:15 95:4</p> <p>dosages ^[1] 46:2</p> <p>down ^[6] 27:3,4 95:7 107:7,14,18</p> <p>draft ^[1] 26:6</p> <p>drafted ^[1] 66:20</p> <p>drafter ^[2] 70:9 96:2</p> <p>drafting ^[9] 13:9 25:7,15 60:4 69:12 90:14 95:19 109:3 111:17</p> <p>dramatically ^[2] 105:3,5</p> <p>draw ^[4] 24:22 41:25 96:18,21</p> <p>draws ^[1] 51:13</p> <p>drink ^[5] 6:20,23 7:18 40:10 83:1</p> <p>drinking ^[1] 83:3</p> <p>drive ^[3] 7:19 40:11 83:1</p> <p>driving ^[1] 83:3</p> <p>dropped ^[1] 43:13</p> <p>drug ^[4] 3:23 88:19 110:15,24</p> <p>drugs ^[1] 93:12</p> <p>due ^[1] 61:23</p> <p>DVORETZKY ^[112] 1:18 2:3,9 3:6,7,9 5:14,20 6:21,25 7:11 8:2,16,17 9:6,16 10:13 11:12,15 12:9,15,18,19,20 13:2 14:1 15:8 16:5,10,15,20 17:9 18:2,7,22 19:3,24 20:21 21:2,10,20,23 22:4,8 23:6,16,20,23 24:3,16 25:1,18 26:12 27:6 28:7,12 29:19 30:6,10,14 31:4,11 33:3 34:1,6,9,13,24 35:2 36:9 37:17 38:13,24 39:3 40:3 41:1,7,14,23 42:20 44:20,23 45:8,11,21 46:8,17,20 47:15,23 48:17,23 49:19 51:10 53:8,14,22 54:1,25 55:17,23,25 56:4 57:16 58:8,11,20 69:5 97:12 108:3,4,6</p> <p>Dvoretzky's ^[1] 97:25</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each ^[6] 3:19 14:10,12,15 15:13 41:21</p> <p>earlier ^[4] 16:8 36:22 45:5,10</p>	<p>earn ^[1] 51:4</p> <p>earns ^[2] 4:11 24:14</p> <p>easy ^[2] 38:2 58:22</p> <p>eat ^[2] 6:19,23</p> <p>edible ^[1] 110:3</p> <p>effect ^[1] 26:18</p> <p>effectively ^[1] 44:13</p> <p>efficient ^[1] 13:13</p> <p>egregious ^[1] 31:15</p> <p>Eighth ^[8] 61:12 73:13,16,23,24 99:10,14 103:11</p> <p>either ^[12] 7:25 25:2 50:2,11,13 58:16,20 69:20 77:15 85:17,23 107:7</p> <p>eligibility ^[1] 63:11</p> <p>eligible ^[10] 3:14 12:23 17:1,3,24,25 27:10 50:10 68:12 74:10</p> <p>eliminate ^[1] 48:6</p> <p>eliminated ^[1] 35:20</p> <p>eliminates ^[1] 31:1</p> <p>elsewhere ^[2] 5:1 43:25</p> <p>em ^[15] 11:15,17,22 12:3,5,16 14:8,8,11,13,15 15:9,11,13 36:7</p> <p>embrace ^[3] 22:3,6 96:5</p> <p>embraced ^[1] 104:18</p> <p>embracing ^[1] 22:24</p> <p>emphasis ^[1] 56:22</p> <p>empirical ^[2] 94:9,23</p> <p>employed ^[1] 52:24</p> <p>en ^[1] 103:9</p> <p>enacted ^[1] 33:24</p> <p>enactment ^[3] 26:1,7 107:23</p> <p>encompasses ^[1] 104:19</p> <p>encourage ^[1] 5:3</p> <p>end ^[10] 12:8 14:13 20:11 35:21 37:17 44:11 63:4 77:18 108:21 110:17</p> <p>ends ^[1] 14:7</p> <p>engaged ^[3] 11:3 37:6 64:12</p> <p>English ^[7] 5:5 6:4 35:24 36:1 62:10 87:2,7</p> <p>enhanced ^[1] 4:18</p> <p>enhancement ^[1] 20:2</p> <p>enormously ^[1] 35:19</p> <p>enough ^[4] 38:11,14 85:8 97:25</p> <p>enterprise ^[1] 11:4</p> <p>entire ^[2] 72:15 99:2</p> <p>entirely ^[3] 59:13 72:9 111:7</p> <p>entitled ^[1] 100:1</p> <p>enumerated ^[1] 3:13</p> <p>equivalent ^[1] 101:22</p> <p>error ^[2] 90:6,11</p> <p>especially ^[2] 55:18 85:25</p> <p>ESQ ^[3] 2:3,6,9</p> <p>ESQUIRE ^[1] 1:18</p> <p>establish ^[1] 8:1</p> <p>established ^[5] 82:16 83:15 86:25 87:6,13</p>
---	--	--	---	---

Official - Subject to Final Review

<p>establishes [1] 82:18 establishment [1] 67:19 et [2] 15:3 74:14 even [21] 10:3,5 19:9 24:3 25:18 26:18 32:3,10 38:15 42:11 55:9,10,23 60:14,15 62:8 95:15 98:10,12,21 105:1 event [1] 61:7 Everybody [4] 35:23 43:4, 22 107:18 everybody's [1] 43:13 everyone [1] 66:23 everything [2] 13:14,20 evidence [4] 75:15 94:15, 16 100:5 evident [1] 86:14 exact [3] 27:24 63:15 64:17 exactly [8] 13:16 26:3,3 39: 2 44:15 59:20 61:15 87:15 example [15] 7:18,19 8:25 10:25 14:19 24:5 29:4 49: 22 58:1 60:15,25 68:9,16 93:11 109:19 examples [11] 5:21,25 39: 6 43:25 49:8,17 67:16,20 68:15 109:9,23 except [2] 68:2 83:8 exception [2] 38:22 103:7 exclude [4] 3:24 26:25 79: 21 80:7 excluded [1] 80:4 excludes [1] 51:16 exclusion [3] 79:19 80:25 82:5 exclusive [1] 22:4 excused [1] 88:19 executive [3] 67:16,17,18 exercise [4] 4:20 18:19 27: 19 48:14 expect [3] 19:19,25,25 expectation [1] 37:4 expected [1] 64:12 explain [3] 10:8 65:3 73:1 explained [3] 18:9 24:12 70:22 explaining [1] 45:17 explains [1] 15:10 explanation [2] 20:17,22 express [7] 10:2 36:11,12, 13 98:4 109:17 111:19 expressed [3] 4:25 60:22, 24 extension [1] 105:10 extent [3] 54:17 80:16 98: 18 extremely [2] 62:22 97:10 eyes [1] 92:1</p> <hr/> <p style="text-align: center;">F</p> <p>f)(1 [13] 3:19 4:15 10:17 14: 10,15,17 42:5 55:19 59:14 63:10 64:17,20 111:6 f)(1)(A [7] 3:18 10:18 14:11</p>	<p>51:14 79:15,16,20 f)(2 [8] 3:25 17:13 18:17,25 36:24 42:10 43:25 55:21 f)(4 [3] 37:3 64:9,23 face [2] 26:18 38:5 fact [21] 9:12 12:15 23:9 44: 10 45:24 46:1 64:8 67:1 73:10 80:6,24 81:8 88:7 93:14 94:9 98:3,13,15 101: 5 104:1 109:1 factors [1] 18:23 facts [1] 31:12 factual [1] 31:20 fair [4] 33:18 62:12 85:8 107:12 fairness [4] 5:7 35:13 112: 1,3 faithful [2] 89:24 90:2 fall [2] 38:21 59:25 falls [2] 6:13 60:18 familiar [1] 25:25 far [5] 5:5 43:2 70:16 91:21 99:1 fashion [1] 75:1 favor [2] 50:3,17 favoring [1] 37:24 favors [1] 21:18 features [1] 41:19 Federal [2] 28:19 47:6 feel [1] 6:22 feels [2] 34:13 49:12 felony [1] 27:1 few [2] 10:14 17:11 fewer [1] 32:10 fight [1] 68:22 figure [17] 32:25 60:17 62: 18 64:23 65:7 66:8 73:8 77:6 79:2 83:15 84:10 87: 11 89:25 90:3 92:21 94:19 100:7 figuring [1] 87:12 filled [1] 60:5 finally [1] 60:21 find [9] 18:8 49:8 51:6 63: 12,12,13,13,13 68:1 finding [1] 27:11 finds [2] 15:1,23 Finish [4] 23:19,21 85:5 93: 5 firearm [1] 37:1 First [26] 3:21 7:3 10:15 12: 22 16:17 18:17 28:13 45: 14 47:24 48:9 49:10 54:17 58:13,14 59:12 60:1 66:12 71:9,9 76:5 84:9 98:14 100:15 104:8 107:9 109: 20 fits [1] 107:3 fix [1] 58:18 focus [6] 17:17 19:7 54:6 57:2 69:7,12 focused [4] 7:11 27:8 39: 14 111:8 focuses [5] 4:13 17:14 108:</p>	<p>8,9 111:12 focusing [1] 69:13 follow [3] 82:11 102:12 109:2 followed [1] 13:24 following [2] 25:15 61:2 follows [1] 7:23 food [3] 6:19 67:23 109:25 force [1] 48:3 foreign [5] 77:2,7,25 78:1, 3 forget [1] 32:20 form [2] 36:23 44:16 format [2] 13:15,16 formatting [2] 64:18,19 former [1] 24:11 formulation [1] 109:12 forth [2] 105:13 109:23 found [1] 72:7 four [3] 26:5 56:15 57:8 four-point [1] 51:15 framed [3] 67:15,20 68:3 frames [1] 70:20 FREDERICK [3] 1:20 2:6 59:3 free [2] 29:16 50:17 friend [3] 70:18 71:7 79:23 friend's [1] 80:23 front [2] 99:13,21 full [1] 66:7 fully [1] 27:5 function [1] 20:25 fundamental [2] 66:12 92: 12 further [2] 32:15 93:24</p> <hr/> <p style="text-align: center;">G</p> <p>game [1] 108:22 Garcon [6] 18:10 22:23 24: 5,13 32:2 103:7 Garner [2] 9:24 97:1 gatekeeping [5] 20:12,13, 25 55:20 59:15 gave [2] 28:2 68:10 gazillion [1] 20:19 gems [2] 67:25 110:1 General [7] 1:20 16:13,15 32:19,23 69:22 94:2 General's [1] 99:25 generally [1] 36:23 get-out-of-jail-free [1] 4: 17 gets [4] 11:9 15:8 29:12 43: 13 getting [4] 27:18 50:25 61: 21 106:5 gibberish [1] 36:5 give [9] 6:12 46:9 47:3 48: 24 49:16 62:1 82:4 94:11 108:24 given [9] 19:4,5 26:18 31:6 39:5 54:8 74:18 88:10 98: 22 gives [3] 5:21 8:7 93:11</p>	<p>giving [4] 8:12 48:13 54:15 109:22 glean [1] 84:17 gleaning [1] 86:13 GORSUCH [49] 10:7 11:11, 13 12:7,11,17 14:22 21:1,3, 17,21 22:2,6,17,21 25:21 29:3,25 31:10 42:23,24 44: 24 45:16 68:24 69:1 71:11, 14,21 72:2,14,17 73:3,7,19 83:19 84:25 85:5,9 86:5,8, 15,21 87:21 99:6,7 100:13, 22 101:23 102:5 Gorsuch's [1] 45:25 got [6] 29:9 42:25 99:13 100:16 101:1 102:5 gotten [2] 52:20,22 government [30] 4:3,13 5: 2,21 7:8 13:1 15:2,10 16: 22 17:4 46:6 47:16 57:17, 21 61:4 67:18 69:17 73:11 74:25 99:8,20 100:6,10,22 102:13 104:4 109:9 110:8 111:12,20 government's [19] 4:7 11: 7 12:12 30:22 40:24 48:25 57:22 58:12 60:23 63:5 74: 6 76:14 81:14 95:17 99:15 100:1 106:8 109:18 112:7 grammar [12] 3:16 60:3,12 62:7,10 82:17 87:2,7 95: 18 108:8,10 109:8 grammatical [3] 15:14 38: 8 69:13 grammatically [8] 8:23 9: 5,7 84:11 96:22 97:7,14 104:2 grams [2] 46:2,6 grant [1] 50:6 Grassley [1] 26:23 great [1] 100:1 Greek [1] 36:6 grievous [1] 38:11 grievously [1] 37:21 guess [8] 20:16 46:25 54:7, 12 65:17 66:11 86:10 103: 24 guessing [1] 108:22 guidance [2] 61:22 94:11 guidelines [43] 4:10,19 11: 25 12:2 14:4 19:16,19,21 20:2 21:14 22:25 28:19,23, 25 29:23 39:10 42:12 44: 14 46:15,22,24 50:21,24 51:8,10,13,25 52:2,6,11,15, 21 55:14 56:19 72:23,24 74:4,4,8,21 75:1 110:17,18 guides [1] 60:4 guilty [1] 106:5</p> <hr/> <p style="text-align: center;">H</p> <p>happen [4] 22:13 39:6 85: 22 92:5 happened [1] 26:4</p>	<p>happening [1] 47:10 happens [2] 41:12 46:24 hard [3] 15:24,25 50:24 harm [5] 7:21,23 40:12 55: 16 106:22 harmful [1] 83:4 harms [1] 40:14 harsh [1] 49:15 He'll [1] 30:1 hear [7] 3:3 5:23 7:1,13 8: 19 10:4,12 heard [3] 10:12 36:2 43:1 heart [2] 35:9 85:16 heavily [1] 9:12 held [3] 6:9 50:14 61:7 help [3] 54:12 64:23 104:5 helpful [4] 82:25 87:25 88: 1 94:23 helps [6] 27:5 79:23 80:23 89:16,16 95:17 Hendrix [1] 88:4 heuristic [1] 82:25 high [3] 84:20 85:10,13 higher [2] 35:6 47:18 highest [2] 95:5,5 highlight [1] 52:14 historic [1] 3:21 history [40] 3:24 4:12,15 18:23 19:2,5,5,9,9 24:14 26:1,22 27:7,13,21 28:17, 22 29:13,21,21 30:17,20 31:2 32:4 39:13 42:13,15 44:8 51:5,15,21 54:23 56: 22 57:2,8 66:14 74:18 81: 18 98:17 110:20 hold [5] 5:7 35:5,7,13 111: 22 holding [1] 36:16 hone [1] 56:10 honestly [1] 46:8 Honor [1] 68:10 hospital [1] 6:15 House [1] 66:2 household [4] 67:23 68:12, 19 109:19 however [4] 45:4 52:9 56: 17 57:3 huge [2] 90:6 103:21 hundred [7] 9:20 24:19,23 43:5 72:12,13,14 hundreds [2] 47:6,6 hurt [1] 91:12 hyper-literal [1] 69:18 hypothetical [7] 6:12 7:3, 12 8:3 33:8 39:24 70:24 hypotheticals [1] 10:11</p> <hr/> <p style="text-align: center;">I</p> <p>i.e [1] 88:9 idea [3] 52:22 97:16 100:11 identified [2] 74:15 86:1 identify [4] 47:2 54:20 56: 19 76:10 ignore [1] 28:3</p>
--	--	---	---	--

Official - Subject to Final Review

<p>image ^[3] 33:20 34:11,21 imagine ^[2] 46:10 72:3 imperfect ^[1] 43:18 impermissible ^[1] 60:3 implication ^[1] 79:24 implications ^[2] 103:21 105:2 important ^[7] 69:7 70:5 82:13 83:10,20 99:19 111:24 impose ^[4] 4:21 15:20 18:20 104:20 imposes ^[1] 107:5 imprecision ^[1] 103:25 include ^[4] 28:17 67:23 80:7 109:22 included ^[5] 25:9,12 80:1,5,12 including ^[4] 18:23 26:5 59:19 60:13 incoherent ^[2] 70:21 99:3 inconsistent ^[1] 74:21 incontrovertible ^[1] 74:19 incorporate ^[1] 75:20 incorrect ^[2] 90:20 101:24 increase ^[1] 104:20 increases ^[1] 107:6 increasing ^[1] 26:4 indeed ^[2] 22:16 77:6 independent ^[4] 13:3 40:15 64:24 67:19 independently ^[7] 40:16,17 41:21 57:24 59:9 61:11 100:12 indicates ^[2] 25:9 93:17 indicators ^[4] 26:14 38:8 62:22 88:6 indictment ^[1] 78:9 individual ^[5] 18:8 28:15 46:2 48:18 110:13 individualized ^[3] 29:1 30:12 31:7 inexplicable ^[2] 59:16 70:21 inference ^[2] 41:24,25 inherently ^[1] 92:18 initial ^[1] 55:20 initially ^[1] 53:19 injunction ^[1] 40:1 insert ^[1] 4:4 insistence ^[1] 74:7 instance ^[1] 16:17 instances ^[2] 10:19 48:11 instant ^[2] 17:15 19:8 instead ^[6] 12:1,3 78:18,20 98:9 108:24 institution ^[3] 34:25 35:2,6 instruct ^[1] 109:1 instruction ^[2] 8:12 78:15 instructions ^[1] 8:6 intelligent ^[2] 70:9 96:2 intend ^[1] 96:8 intended ^[8] 23:4,7 55:7 62:23 66:18 85:18,19 107:11</p>	<p>intent ^[6] 85:18 95:24 96:6,12,14,14 interesting ^[1] 95:6 interests ^[1] 35:8 Internal ^[1] 68:11 interpretation ^[18] 4:7 12:14 16:23 17:22 30:23 31:24 32:21 35:18 58:13,14 59:12,14 60:2,23,25 94:8,19 112:8 interpretations ^[1] 101:21 interpreter ^[3] 60:17 89:25 90:2 interpreting ^[3] 34:23 35:22 108:17 interrupt ^[1] 23:25 intersection ^[1] 40:22 introduced ^[2] 26:23 94:10 introduction ^[3] 17:19 44:21 55:5 introspectively ^[1] 94:25 intuitively ^[1] 51:1 inverting ^[1] 74:7 invoke ^[1] 72:3 invoked ^[1] 85:11 involve ^[2] 55:10,11 involving ^[3] 60:7 101:12,14 irrational ^[3] 22:15 23:2 70:17 isn't ^[16] 4:6,16 12:23 13:6 22:19,20 25:3 43:4 54:19 72:9 84:22 92:8,11 97:25 98:15 100:5 isolation ^[1] 62:17 issue ^[2] 17:7 84:2 issues ^[1] 66:21 item ^[2] 15:13 68:12 items ^[4] 40:9 67:23 68:19 109:19 itself ^[6] 7:10 11:21 18:19 51:13 93:9 100:6</p> <p style="text-align: center;">J</p> <p>JACKSON ^[60] 19:12,15 20:4 22:16,19,22 23:7 25:17,19,22 54:3,4 55:1,22,24 56:2,5 58:4,9,17,24 63:3,21 64:5,7 65:2,11,15 66:15 73:1,6 74:2,23 75:2,9,12,15 76:3,7 79:13,16,18 80:6 81:13,21,24 88:23,25 103:17,18 104:14,25 105:16,19,22 106:2,16,22 107:16,25 jewelry ^[3] 67:25 110:1,4 job ^[2] 60:17 89:24 join ^[1] 3:17 joining ^[1] 17:11 joins ^[3] 3:13 59:9 61:10 joint ^[9] 5:13 9:14 10:20 25:16 61:17 62:5 90:8,10 91:14 Jones ^[1] 88:4</p>	<p>Judge ^[27] 14:24 18:9 22:22 24:4,11 27:8 28:3 30:4,5 32:1 39:4,4 42:14 50:23 52:2,2 72:17 74:20 77:14 79:4,11,14 80:8,18 81:5 102:15,18 judges ^[13] 4:20 19:10,18 28:18,20 31:8 46:23 47:7,8 54:15 55:12 57:5 72:7 judgment ^[2] 92:7,10 judicial ^[1] 27:11 Judiciary ^[1] 26:24 juris ^[2] 70:14 96:25 Justice ^[32] 1:21 3:3,9 5:10,15,18 6:11 7:6,15 8:15,18,19,20,21 9:9,24 10:7 11:11,13 12:7,11,17,19,21 13:5 14:1,20,22,23 15:21 16:9,11,18,21 17:9,20 18:5,21,25 19:12,13,15 20:3,4,6,21 21:1,3,17,21 22:2,6,16,17,19,21,22 23:6,14,18,21,24 24:15,17 25:17,19,21,22 26:20 27:8,22 28:8 29:3,25 30:8,11,13,16 31:5,10 32:9,11,12,13,15,16,17 33:7,17 34:4,8,10,16 35:1,17 36:18,18,20 37:3 38:6,18,19 39:2,19,20,20,21,22 40:5 41:2,6,8,17 42:19,21,22,22,24 44:1,6,24,25 45:1,1,3,9,16,19,23,25 46:14,19,21 47:19 48:16,19,21,21,23 49:9,20,25 50:18 52:25 53:10,18,24,25,25 54:3,4,5,11,11 55:1,22,24 56:2,5,18 58:4,9,17,24,25 59:6 61:14,20 63:3,21 64:5,7 65:2,11,15 66:1,6,15 67:8,9,10 68:7,14,21,24,25 69:1,3,6,16,21,25 70:3,15 71:11,14,21 72:2,14,17 73:1,3,6,7,19 74:2,22 75:2,9,12,15 76:3,7,22,23,25 77:1,13,17,24 79:1,4,13,16,18 80:6 81:5,13,21,24 82:7,10,11,15,21,25 83:9,11,14,18,19 84:2,25 85:5,9 86:4,8,15,19,21,24 87:5,17,20,21,23 88:23,24,25 89:2,9,12,21 90:12,24 91:3,11,20 92:4,15,23,25 93:3,23,23,25 94:1 95:3,22 96:6,11,17 97:3,3,5,6 99:4,5,5,7 100:13,22 101:23 102:5,8,8,10,11,18,22,24 103:4,12,16,16,18 104:4,14,25 105:16,19,22 106:2,16,22 107:16,25 108:1,6 109:21 112:9 justify ^[1] 25:3</p> <p style="text-align: center;">K</p> <p>KAGAN ^[34] 6:11 7:6,15 8:19 12:19,21 13:5 14:2 19:</p>	<p>13 20:3,6,21 39:20,21 40:5 41:3,6,8,17 42:19,21 54:11 76:23 77:1,13,17,24 79:1,4 82:25 97:5,6 99:4 104:4 Kagan's ^[3] 33:7 37:3 54:5 KAVANAUGH ^[52] 16:9,11,18,21 17:9,20 18:5,21,25 26:20 27:8 30:8,11,13,16 31:5 32:9,12 44:25 45:2,3,9,19,23 46:14,19,21 47:19 48:16,19 49:10,25 54:11 66:1,6 76:22,25 82:7,10,15,21 83:9,14,18 84:2 86:19,24 87:5,17,20,23 102:9 keep ^[7] 7:6,10 8:25 13:15,19 21:2 31:5 keeping ^[1] 56:24 Kethledge ^[1] 102:19 key ^[3] 16:16 36:15 45:12 kicks ^[1] 71:24 kind ^[13] 8:24 10:5 28:25 35:16 43:7 49:23 51:6 56:9,11 86:2 95:10 98:18 100:9 kinds ^[2] 47:10 89:13 Kirsch ^[1] 102:16 known ^[1] 44:16 knows ^[4] 11:4 35:11 44:2 50:13</p> <p style="text-align: center;">L</p> <p>label ^[1] 43:14 land ^[1] 102:13 language ^[17] 11:22 12:13 13:24 27:24 32:19,22 34:20 35:22,24 36:1 43:22 62:10 65:12 67:12 70:1 79:5 82:17 large ^[1] 48:14 last ^[5] 16:4 73:4 88:4 93:18 94:4 Lastly ^[2] 52:13 111:11 Laughter ^[2] 34:15 44:22 Law ^[8] 9:23 26:23 29:13 49:8 60:5 104:10,17 109:11 laws ^[2] 35:6 104:19 lay ^[1] 102:13 lead ^[7] 8:13 18:11 28:23 41:14 42:3 56:19 89:6 leader ^[2] 11:2 37:6 leading ^[2] 41:4 60:12 leads ^[2] 41:9 50:11 leakproof ^[1] 72:9 least ^[11] 26:9 30:1,18 56:16 61:1 62:2 66:19,19 80:19 85:24 88:21 leaving ^[1] 5:5 legal ^[2] 60:4 95:19 legislates ^[1] 18:10 legislating ^[1] 20:23 legislation ^[1] 27:23 legislative ^[5] 26:22 27:7 44:8 66:14 90:13</p>	<p>legislature ^[1] 84:15 legitimate ^[1] 97:1 legitimately ^[1] 94:7 length ^[1] 52:9 Lenity ^[24] 37:15,23 38:12 44:4 48:25 49:1,15,17,20 50:3 97:24 104:5,11,23,24 105:6,9,11,23,24 106:10 107:2,8 112:2 less ^[10] 6:5 17:2,24 42:6 43:6 60:11 88:21 89:21,21,23 Letting ^[2] 5:2 33:15 level ^[11] 18:11,11 20:23 31:16,20 43:19 71:16 84:20 86:17 105:3 110:18 liberty ^[3] 38:4 97:22 112:4 life ^[2] 28:24 44:13 lives ^[1] 44:13 lifting ^[1] 56:22 light ^[2] 47:9 84:12 likely ^[4] 4:18 13:7 89:22,23 limit ^[1] 50:9 line ^[7] 39:22 84:23,23 96:18,21 97:22 101:20 linguistic ^[1] 90:17 linguistics ^[8] 9:10,17 89:14,16 93:7,19 94:4 109:14 liquids ^[1] 6:20 list ^[7] 6:18 26:14 40:9 63:9 68:2,14 109:23 listening ^[2] 40:1 69:9 lists ^[1] 40:14 literal ^[4] 69:18 71:25 78:11,12 literally ^[1] 87:8 little ^[7] 27:9 38:22 58:15 69:4 73:2 98:20,25 LIU ^[116] 1:20 2:6 59:2,3,5 61:14,18 62:6 63:8 64:1,6,16 65:8,14,17 66:4,10,22 67:8,9,10 68:6,9,18 69:16,24 70:2,5,19 71:12,19,23 72:12,15,22 73:18,21 74:22 75:5,11,14 76:5,17,23 77:12,16,23 78:2 79:2,8,15,17,19 80:22 81:19,23 82:1,8,14,20,24 83:13,17 84:1,5 85:4,8 86:4,12,17,23 87:3,15,19,22 88:2 89:8,11,15,23 90:23 91:2,5,15 92:3,9,25 93:5 94:13 95:12,25 96:10,13,20 97:6 98:2 100:8,21 101:7 102:1,17,20,23 103:2,5,13 104:7,16 105:8,18,21,24 106:12,21,24 107:21 Liu's ^[1] 109:7 lives ^[1] 103:22 loaded ^[2] 34:14,16 logical ^[1] 15:14 logically ^[1] 101:22 long ^[8] 10:21 20:19 64:21,</p>
---	---	---	--	--

Official - Subject to Final Review

<p>22 100:6 101:5 110:21 111:4 longer [2] 59:22 64:22 Look [24] 10:25 13:6 14:6 16:16 19:18 31:13,19 32:7 45:14,14 50:2,6 56:21 62: 6,13,16 64:21 66:4 69:24 75:21 83:21 87:13 95:16 110:22 looked [5] 26:2 29:6 66:20 90:12 100:10 looking [9] 27:24 34:18 53: 3 64:9 66:5 67:13 93:20 100:3 109:24 Lopez [3] 31:24 57:25 99: 21 lose [2] 76:8,15 lot [11] 5:24 31:10 35:20 36: 2 38:22 46:22 67:11 94:2 100:23 111:5,12 lots [1] 41:10 lower [4] 39:5 72:6 101:10, 16 luck [1] 85:12</p> <hr/> <p style="text-align: center;">M</p> <p>macro [3] 18:10 20:23 31: 16 made [17] 3:21 13:8 24:1, 18 69:6 71:21 73:18,21,22 103:5,8,10,14,14 107:10, 17,19 main [2] 63:9 92:17 maker [1] 35:6 man [1] 44:17 manager [1] 11:2 mandatory [26] 4:19 19:6, 17 23:1,9 28:14 29:11 44: 12 46:16,18 47:1 48:4,6,12 50:7 54:15,21 55:8 56:14 57:1,6,12 58:7 88:17,20 111:10 manner [2] 48:2 70:4 manual [9] 25:7,8,15 90:13, 14,21 91:5 109:3 111:17 many [8] 3:22 39:15 44:14 46:1,4 52:25 53:1 78:16 MARK [1] 1:3 Marshall [1] 44:6 matter [5] 1:13 16:13,15 24: 8 44:10 matters [4] 5:7 16:19 93: 10,17 mean [64] 4:3 6:6,7,12 11:5 12:21 13:6,17 14:10 15:23, 25 16:24 17:22 19:16 20:3, 16 21:3 22:23 23:24 25:25 32:25 34:17 35:17 36:3,3 37:10,14 41:3 46:3 47:23 50:8,22 51:8 53:3 55:1 61: 4 63:4 64:22 65:4 66:4,16, 18,24 69:11,23 70:23 72: 22 81:19,19 86:18 88:8 90: 25 92:23 94:8,21 99:11</p>	<p>100:5,10 101:20 102:3 103:19 106:18,21 108:18 meaning [25] 4:25 5:19 8:1 9:19 10:2,20 14:24 15:4 24:6 25:4 35:14,15 38:8, 24 61:9 89:5 93:13 95:21 100:4 101:3 109:6,17 111: 18,20,23 meaningful [2] 10:23 70: 11 meanings [1] 50:15 means [16] 3:12 8:8 18:19 21:12,13 38:9,9,15 43:21 67:16,17 73:13 80:20 89: 10 100:14 109:13 meant [11] 20:7,12,14 40: 17,21 41:20 64:14 67:14 96:5 108:23 109:5 measure [1] 98:16 medical [5] 6:14 8:4,5,10 33:10 meet [1] 91:13 meets [2] 25:10,12 mentioned [1] 23:25 mere [3] 61:8 92:11 96:19 met [1] 30:20 meth [2] 46:3,4 methodology [1] 95:9 micro [1] 18:11 mid-level [1] 71:4 might [18] 5:23 6:5 10:4 18: 12 19:25 29:16 33:3 36:5, 6 40:6 41:16 44:8 47:8 56: 10 98:3 108:22 110:9 111: 6 military [1] 78:4 mind [5] 29:5 32:12 50:25 67:5 81:2 mindset [1] 8:4 minimum [12] 4:20 19:17 29:8,11 54:15,22 55:8 56: 14 57:6,12 58:7 88:20 minimums [12] 19:6 23:1, 10 28:14 44:12 47:1 48:4, 6,12 50:7 57:1 111:10 missing [2] 44:19,24 Mm-hmm [3] 73:6 79:18 86:23 moment [1] 32:21 Monday [1] 1:11 month [1] 74:13 months [3] 29:8,14 110:21 morning [3] 3:4 43:2 60:6 most [14] 5:4,7 13:7 44:15 70:5 72:5 73:8 88:18 97: 15,17 98:2,5 100:17,18 motivating [1] 48:3 move [6] 23:13 28:14 35: 18 48:3 78:15 111:9 moves [1] 67:2 moving [1] 48:11 much [6] 6:23 40:15 48:20 58:14 64:22 69:12 murders [1] 71:2</p>	<p>must [16] 3:14 9:25 15:14 36:4 63:12,12,12,13,13,13, 17,17,18,22,23 109:12 mutually [1] 22:4 mysterious [1] 27:9</p> <hr/> <p style="text-align: center;">N</p> <p>namely [1] 109:3 narrower [2] 84:22,23 narrowly [2] 49:16 54:24 natural [7] 3:11 36:11 62:3, 3 73:8 97:15,18 nature [2] 19:8 43:11 necessarily [5] 34:19 36:8 57:6 94:23 106:3 need [11] 21:16 53:14 62: 13 71:20,23 87:10 90:21, 24 92:17 102:1,2 needed [1] 53:16 needle [1] 67:3 needs [8] 4:3,4 10:19 71: 25 90:2 91:7 94:14 112:6 negated [2] 10:5 109:10 negative [14] 5:16,22 9:22 60:8,14 62:9 67:21 68:3,4 79:24 90:15,20 101:12,13 neither [1] 104:21 Never [5] 32:12 43:12 47: 21 104:24 105:9 new [2] 102:6 105:11 Newsom [1] 24:4 Ninth [6] 21:5,18 31:23 99: 22 103:3,9 nobody [2] 29:23 43:15 non-constitutional [1] 88: 9 non-criminal [1] 30:20 non-violent [1] 41:11 nonsense [3] 20:10 70:14 96:24 nonviolent [1] 3:22 normally [1] 43:7 Note [1] 52:13 notes [2] 75:17,18 nothing [1] 83:7 notice [1] 107:12 noticed [1] 74:6 notwithstanding [3] 27: 20 97:13,24 number [10] 5:21 19:20 26: 13 30:24 38:21,25 39:6 43: 24 84:3 89:17 numbers [5] 31:19,21,21, 25 32:7 numerous [1] 48:11</p> <hr/> <p style="text-align: center;">O</p> <p>objective [3] 84:17 94:20 95:1 objectively [1] 96:16 objects [2] 67:24 110:1 obvious [2] 11:18 21:4 Obviously [3] 7:15 28:18 69:23</p>	<p>occupying [1] 94:22 occurred [1] 35:21 October [1] 1:11 offender [10] 4:18 28:23 29:20 30:9 42:5,7,10 43: 10 52:21 110:16 offender's [1] 28:15 offenders [13] 3:23 4:2 16: 24 17:2,22 26:25 27:10 30: 19 47:8 84:3 88:19 110:24 111:1 offenders' [1] 23:11 offense [46] 4:11 16:25 17: 2,15,23,24 19:8 20:20 21:6, 7 24:14 41:13 51:4,9,11,17, 20,22,24,24 52:3,16,19,22 53:17 56:8,17 57:10,11 58: 1,3 59:20,21 70:25 71:4,5 72:19 76:5,18 80:3,4,15,18 81:16 110:15,18 offenses [38] 20:19 21:15, 15 27:2,12 32:2 39:7,12 41:11 52:4,10 53:2,5,12,13, 19 21 55:10 56:20 71:2 75: 8 76:11 79:22,25 80:10,10, 11 81:1,2,3,6,11,11,22 82: 2,3,6 110:14 office [2] 74:24 99:25 often [4] 62:11 94:21 96:23 101:15 Okay [18] 16:18,21 20:18 22:2 24:17 34:8 42:25 43: 19 48:19 50:18 53:10,24 56:13 69:21 86:21 87:5 102:22 103:4 old [10] 29:15 30:1 32:2 39: 7 51:5 53:6 77:3,25,25 78: 21 Oldham [1] 14:24 Once [1] 74:15 once-in-a-generation [1] 47:25 one [69] 7:24 10:21 11:21 14:2,17 16:22 17:12 21:22 22:10 25:12 31:12,12 34: 20 37:9 40:3,6,7 41:21,23 43:18,18,20 45:24 49:4 50: 19 52:1 53:6,15 55:6 58: 17 61:1 62:24 63:24 67:11 68:2,4,8,17,19,19 71:1,4, 10 72:3,18 73:4 74:5,13 75:19 78:18,21 84:12,12 85:17 86:11 88:6 89:17 91: 24 94:3 96:4 98:3,5 101:8, 9,17 104:8 106:25 107:5,6 one-off [1] 100:25 one-point [10] 51:16,20,22 79:21 80:10,17 81:1,10,11 82:6 ones [1] 88:21 only [30] 25:10,12 28:6 30: 23,25 41:24 53:11 55:19 59:11,13,17 62:18 63:21 64:17,18 65:8,8 71:12,24</p>	<p>79:12 80:15 81:2,10 91:25 92:20 95:18 106:14 107:7, 13 108:15 opening [1] 14:7 operate [3] 41:21 74:9 77: 21 operates [1] 78:23 operation [4] 74:5 75:4,13 76:10 operations [1] 52:7 opinion [1] 70:9 opportunity [1] 15:3 opposed [3] 42:5,6 61:16 opposite [2] 62:7 100:9 or' [1] 90:15 oral [5] 1:14 2:2,5 3:7 59:3 order [9] 9:25 50:5 52:7 74: 4 75:3,12 76:10 111:19 112:6 ordinarily [1] 6:3 ordinary [12] 3:16 13:8,18 24:6 25:4 35:14 36:16 50: 15 100:4 111:18,19,23 organizer [3] 11:2 37:6 64: 11 original [1] 82:12 other [40] 7:8 8:2 22:11 25: 5,5 33:4 37:1 40:14 41:15 43:2,21 47:21 50:19 55:9 57:21 62:16,19,25 63:22 67:24 68:5 75:25 76:8 80: 8 86:1 88:3 90:5,5 92:20, 22 93:8 94:3,16 95:20,24 101:18 103:6 106:25 109: 25 111:15 others [1] 39:5 otherwise [3] 56:11 60:4 108:21 ought [6] 6:9 14:13 38:3 47:17 50:8,14 ourselves [1] 94:22 out [34] 13:3,14,22,23 32: 17,25 44:1 55:3 60:18 62: 18 64:24 65:7 66:8 70:14 73:8 77:7 79:2 81:6 83:15 84:10 87:11,13 89:25 90:3, 8 91:18 92:21 93:8,15 94: 19 99:2 100:7 108:7 109: 21 outcome [1] 57:19 outweighed [1] 99:1 over [8] 9:12 29:15 51:6 74: 13 77:20 79:9 104:9 106: 25 overriding [1] 25:4 overstate [1] 27:13 overwhelmingly [1] 48:14 own [6] 12:7 29:5 97:12 109:2 111:16</p> <hr/> <p style="text-align: center;">P</p> <p>package [1] 65:19 PAGE [3] 2:2 15:10 93:11 pages [2] 28:20 93:21</p>
---	--	---	--	--

Official - Subject to Final Review

<p>paintings [2] 67:24 109:25 panel [3] 103:3,6,7 paragraph [1] 14:7 parole [1] 30:2 part [4] 38:12 49:6,24 108:19 partial [1] 72:10 particular [14] 18:12 23:11 27:7 28:16 41:5,8 42:8 54:21 55:3 56:6 57:7 95:10,15 100:7 particularly [5] 10:20 31:15 35:12 83:4,25 parties [1] 99:17 partly [1] 95:25 parts [1] 111:15 pass [1] 33:10 passed [2] 31:18 48:1 patient [3] 6:16,18,19 PCR [1] 53:3 penal [6] 104:10,17 105:25 106:9 107:4,4 penalties [1] 106:7 penalty [1] 106:19 penalty-imposing [1] 49:2 people [17] 6:4 9:13,21 10:3 36:3 44:12,14 56:5,24 57:25 83:5 85:16,20 87:9 100:4 103:22 108:12 per [1] 19:2 percent [24] 9:11,13,14,21 24:2,19,23,25,25 31:2,22 43:5 60:15,19 72:12,13,14 90:1,3,4,4,8,10 110:25 perfectly [4] 6:23 16:3 96:25 109:16 permissible [3] 89:20 97:8,14 person [6] 8:11 40:1 55:5 56:15 57:8 106:4 person's [1] 42:13 perspective [1] 107:21 Petitioner [13] 1:4,19 2:4,10 3:8 60:6,10,21 62:2 70:20 91:16,16 108:5 Petitioner's [6] 59:16,25 60:20,25 63:1 98:11 philosophy [1] 22:24 phrase [9] 11:24 18:15 50:21 51:9,11 59:11 61:1 93:12 101:12 phrasing [2] 61:8 82:22 picked [1] 55:3 place [1] 76:6 places [2] 63:9,19 plain [3] 43:22 89:5 100:3 play [2] 38:12 94:7 player [1] 101:1 players [1] 100:25 playing [1] 55:20 please [5] 3:10 23:20,23 59:6 73:2 podium [1] 85:12</p>	<p>point [42] 10:9 11:18 21:10 22:10 25:14 30:11 36:15,21 37:11,22 46:25 49:10 51:15 54:8 56:18 57:20 62:12 65:22 67:11 68:4 69:7,22 72:20 75:20 76:8,16 78:24 80:9,13 82:4 83:10 86:20,25 89:7 91:1 92:18 93:18 94:4 95:22 97:7,12 109:7 pointed [2] 44:1 109:21 pointless [1] 12:12 points [49] 4:12 10:14 14:1 21:12,12,13,13 22:9 24:14 26:5 31:12 39:11 51:5 52:8,15,20,23 57:9 59:20,23 66:12 74:11,11,14 75:19,19,23 76:1,11,19 77:4,7 78:6,6,16,20,25 79:11,21 80:1,25 81:4,7,16,17 82:4,8 93:8 111:2 policy [24] 4:8,13 43:17,17,19 44:9 45:15 57:19,20 58:16,21 71:15 83:20,22,24 85:21 91:4 92:7,10,11 108:23,23 110:8,12 position [7] 28:4 53:20 63:6 81:14 98:1 99:24 106:8 possess [1] 37:1 possibility [2] 37:13 61:8 possible [4] 84:11 96:23 101:2 104:2 power [1] 28:9 powerful [1] 40:11 pre-First [1] 30:21 preceded [1] 15:22 precedes [1] 14:14 precise [2] 6:5 82:22 precision [1] 35:7 predicate [1] 52:21 prefatory [2] 13:24 15:15 prefer [2] 57:18 59:22 prefers [1] 106:25 preliminary [1] 11:18 premise [3] 17:21 68:23 83:9 presented [3] 94:14,16 95:11 presentence [1] 29:6 President [1] 48:2 presumably [3] 19:13 20:6 106:19 presume [5] 70:7,8 92:13 96:4,16 presumption [1] 10:15 pretty [2] 24:20 64:21 prevent [1] 47:10 prevents [1] 97:18 previous [2] 26:2 110:14 previously [2] 35:20 66:20 principle [5] 49:4 65:1 78:3,23 101:11 prior [9] 4:11 24:14 27:1,12 53:17 59:19 65:3,12 74:10</p>	<p>priors [1] 19:21 prison [1] 29:24 probably [1] 7:12 probation [1] 74:24 problem [11] 43:3 46:4 48:10,10 56:23 61:21 80:8 81:4 83:6 92:12 97:2 problems [3] 16:22 47:2 98:11 proceed [1] 94:14 process [1] 61:24 Professor [1] 9:24 prohibition [2] 40:2 105:15 promising [1] 94:6 proof [3] 5:17,22 9:22 proper [1] 6:1 properly [2] 8:10 48:15 proportionate [1] 18:20 proposition [1] 18:4 propriety [1] 94:12 proves [1] 100:9 provide [2] 70:24 101:16 provided [1] 82:25 provides [1] 67:22 provision [16] 11:1 15:17 20:7,12,13 37:10 63:1 68:11 98:15 104:21 105:13 107:2,5,22,23 109:20 provisions [3] 49:2,3 107:15 Pryor [13] 18:9 22:22 24:11 32:1 39:4 50:23 52:2 72:17 79:4,11,14 80:18 81:5 Pryor's [4] 74:20 77:14 80:8 81:5 PSR [1] 53:4 PULSIFER [4] 1:3 3:4 37:23 53:1 punishment [7] 104:20,22 105:2,4 106:3,5 107:6 purpose [14] 28:13 31:18 39:18 47:24 58:5 74:17 81:17 84:9,14,16,20 86:14,15 106:9 purposes [3] 52:17 53:22 54:1 purposivist [1] 86:16 pursue [1] 43:15 pursued [1] 101:25 purview [1] 93:22 push [1] 75:22 put [7] 13:14,16,23 63:21 65:18 82:22 98:6 putting [2] 77:24 90:18</p>	<p>32:18 34:14 45:17,24,24 46:1,10 50:19 59:8 73:4 82:11,12 85:6 93:1,4,6 95:6,13 99:8,19 108:7 questioning [1] 39:22 questions [5] 5:9 34:2 61:13 83:20 94:2 quite [5] 17:16 19:4 27:17 39:16 96:23</p> <p style="text-align: center;">R</p> <p>raised [4] 28:9 45:25 83:11,19 raises [2] 34:2 94:2 raising [1] 56:25 range [3] 4:19 106:6 110:18 rare [2] 59:18 111:4 rate [3] 90:7,11 101:25 rather [10] 7:13,16 13:22 27:16 48:8 49:14 60:19 70:14 96:24 109:23 rational [5] 70:8 72:4,6,7 96:2 rationally [6] 17:16 19:4 20:24 39:17 41:16 72:19 read [18] 15:16 16:3 27:25 62:19 65:19,20 72:18 80:25 83:1 87:2,7,8 90:9 92:21 99:17 101:17,19 102:2 reader [1] 64:23 reading [32] 3:11,20 5:12,13 9:23 21:11,24,25 37:12,14 40:23,24 59:17 60:20 61:4,16,17 62:3,4 63:1 71:12 73:8 82:19 88:8,18 89:19 90:19 93:15 98:12 106:13,25 109:11 readings [3] 84:12 96:23 104:2 real [1] 42:18 really [16] 29:18 31:9 36:15 43:6,12,15 44:11 52:6 56:3 57:19 69:11 70:16 82:13 98:21 99:10 100:6 reason [10] 7:17 17:10 18:14 24:10 29:8 42:9,16 46:25 95:3 107:8 reasonable [1] 96:16 reasonably [3] 84:16 94:20 95:1 reasons [3] 11:16 17:11 104:7 REBUTTAL [3] 2:8 108:3,4 receive [3] 6:15,16 59:22 recidivism [2] 27:14 71:8 recidivist [2] 20:1 111:4 recidivists [2] 3:24 4:17 recognition [1] 23:9 recognize [1] 85:10 records [5] 16:25,25 17:3,23,25 redundant [1] 59:13</p>	<p>reference [1] 46:22 referring [4] 27:16 82:1,3,5 refined [1] 99:24 reflects [1] 101:11 Reform [2] 27:25 48:1 regard [3] 15:16,20 23:10 regime [1] 88:17 regular [1] 78:21 reinforces [1] 80:2 reinforcing [1] 95:20 reject [2] 101:24 105:1 rejected [1] 88:11 related [1] 50:19 relates [1] 106:6 relationship [9] 7:22 33:5,9,14,20 39:25 40:9 62:15 70:6 relative [1] 22:25 release [1] 30:3 released [1] 30:1 relevant [9] 25:8 45:4,17 46:11 66:8,10,19 83:24 105:6 relied [3] 88:7 102:16,19 relief [5] 12:24 14:18 49:11 50:7,10 relies [2] 80:14 86:6 relieves [1] 104:22 relieving [2] 54:14,14 rely [1] 9:12 relying [6] 66:13 86:5 89:12 94:12 101:8,9 rely [2] 49:13 112:3 remedy [1] 88:10 removes [1] 19:17 rendering [2] 59:12 99:3 repeat [5] 11:23 14:2 20:10 63:23 100:25 repeated [3] 12:3,13 64:10 repeating [2] 13:16,19 repetitive [1] 13:13 rephrased [3] 67:1,2 101:13 report [2] 26:24 29:6 require [1] 3:19 required [1] 110:7 requirements [1] 30:20 requires [1] 37:5 requiring [2] 61:5 63:19 resisting [1] 21:4 resolving [1] 97:2 resort [1] 92:17 resources [1] 100:23 respect [7] 26:4 65:15 74:22 86:4 109:7 110:12 111:11 respectfully [1] 75:14 respects [1] 52:1 respond [5] 40:25 47:3 48:24 83:23 85:7 responded [1] 54:10 Respondent [4] 1:7,22 2:7 59:4 response [3] 31:21 73:23</p>
--	---	--	---	---

Official - Subject to Final Review

77:19 rest ^[4] 15:16 17:13 27:9 99:3 result ^[8] 41:4,9 42:17 81:4 82:6 88:12 89:6 96:3 resulted ^[1] 81:7 resulting ^[2] 79:21 80:25 results ^[3] 18:12 41:15 42:18 reticulated ^[1] 101:2 Revenue ^[1] 68:11 revision ^[1] 38:1 rewrite ^[1] 4:6 rightly ^[1] 31:6 rise ^[1] 82:4 rises ^[1] 71:16 road ^[5] 27:3,5 95:7 108:25 109:2 robbery ^[1] 71:4 ROBERTS ^[26] 3:3 32:11,13 36:18 39:20 42:22 45:148:21 53:25 54:3 58:25 67:9 68:25 69:3,21,25 70:3,15 93:3,23 97:3 99:5 102:8 103:16 108:1 112:9 role ^[5] 55:20 59:15 70:13 94:7,22 room ^[1] 43:22 round ^[1] 93:8 route ^[1] 101:19 routinely ^[2] 28:21,24 rule ^[27] 15:11,12 25:3 30:9 37:15,23 39:9 52:18 77:11,15,21 78:1,3,4,7,22 82:16 83:15 87:1,7,13 93:15 97:23 104:24 105:9,11 107:1 rules ^[4] 32:20 75:25 108:25 109:2	7,15 79:5,20 80:19,19,25 90:14 91:6 109:21 111:17 Scalia ^[2] 9:24 97:1 scholars ^[1] 9:17 scientific ^[1] 94:17 score ^[2] 29:3 81:18 se ^[1] 19:2 Second ^[14] 12:6 14:6 18:18 31:20 43:9 45:20 60:10 66:14 71:3,13 75:10 84:6,14 109:24 Section ^[3] 3:12 67:17,21 see ^[8] 40:14 42:24 54:7 57:14 61:20 76:2 79:23 96:3 seeking ^[1] 111:8 seem ^[5] 47:12 51:1 55:2 58:4 85:23 seemed ^[1] 8:24 seemingly ^[1] 42:4 seems ^[9] 17:6 36:1 40:19 43:4 51:2,5 63:24 66:18 85:16 Senate ^[6] 66:3 90:21 91:5,24 92:2 109:3 Senator's ^[3] 25:7 90:13,13 Senator ^[1] 26:22 send ^[1] 44:12 sense ^[31] 3:20 9:14,15,19 17:4 18:15 20:8 25:16 33:2 38:7 46:5,9 51:2 57:15 59:24 62:5 63:2 65:7,21 69:15 70:13 71:6 75:23 77:3 84:24 86:9 92:14 96:24 111:11,12,13 sensible ^[1] 111:7 sentence ^[31] 4:11 10:21 15:20 16:7 19:23 24:13 39:9 42:15 46:23 47:8,9,17 49:6 52:8,18 59:22 74:13 77:11,15,21,25 78:2,7,13,17,22 88:17 100:15 107:14 110:21 111:16 sentenced ^[2] 29:15 78:10 sentences ^[13] 4:21 18:20 28:23 44:13 47:16 52:4,10 74:10 77:2,3 78:8 107:18 111:4 Sentencing ^[27] 11:25 12:2 14:3 15:1 19:16 21:13 24:12 27:25 28:3,25 29:22 31:7 42:11 44:16 46:12,15,22,23 48:1 49:3,3,21,22 50:23 107:5 110:23 111:9 serial ^[1] 4:14 series ^[1] 71:1 serious ^[20] 3:25 4:14,17 16:24 17:2,6,23,24 19:20 20:1,13,13 29:24 42:4,7 46:4 47:8 55:10 97:10 110:21 seriously ^[3] 38:5 43:8,16 serve ^[2] 31:17 52:20 servicing ^[3] 20:25 29:24 39:18	set ^[1] 74:12 sets ^[1] 105:13 setting ^[3] 13:3 52:7 109:22 Seventh ^[2] 102:16 103:11 shall ^[1] 15:20 SHAY ^[5] 1:18 2:3,9 3:7 108:4 she's ^[1] 79:13 short ^[1] 93:20 shouldn't ^[5] 6:18,19 13:25 77:9 85:21 shows ^[4] 28:20 82:23 89:19 101:22 side ^[3] 43:2,20,21 signed ^[1] 48:2 significant ^[1] 40:19 simply ^[5] 58:23 60:19 90:7 95:20 110:2 since ^[2] 10:20 86:1 single ^[10] 39:9 52:17 65:20 77:11,14,21 78:2,7,12,22 sitting ^[1] 97:19 situation ^[18] 7:1 24:7,23,24 33:16 35:10 42:4 49:18 55:5 56:6,7,12 57:3,13 105:17,17,18,20 situations ^[6] 15:7 22:13 39:11 49:9,17 58:10 Sixth ^[3] 102:19 103:12,13 skip ^[1] 104:9 sloppy ^[1] 5:4 smoke ^[1] 6:20 smoker ^[1] 6:22 Solicitor ^[2] 1:20 99:25 solution ^[1] 48:9 solve ^[1] 48:11 somebody ^[5] 38:25 39:7 42:6 108:14 111:6 somebody's ^[1] 112:4 somehow ^[1] 111:6 someone ^[7] 4:14 67:4 75:6 91:23 92:5 109:12 110:19 sometimes ^[4] 6:4 67:20 83:12 103:19 sophisticated ^[1] 101:1 sorry ^[9] 14:11 23:17,18 42:21 56:1 69:1 73:3 75:2 80:19 sort ^[8] 22:24 54:10 64:13 66:13 94:16 97:2,17 105:12 SOTOMAYOR ^[23] 27:22 28:8 36:19,20 38:6,18 39:2,19 44:1 67:8,10 68:7,14,21 90:12,24 91:3,11,20 92:4,23 97:4 109:21 sought ^[1] 40:12 sounds ^[1] 87:23 sources ^[1] 95:20 speaker ^[14] 33:6,14,20,21,22,25 34:5,6,11,12,22,25	39:25 108:10 speaking ^[2] 35:3 67:4 speaks ^[1] 35:24 special ^[3] 32:20 83:2,7 speech ^[1] 34:22 spend ^[1] 67:11 spent ^[1] 111:5 split ^[2] 64:25 90:1 spray-painting ^[1] 58:2 square ^[1] 5:5 squared ^[1] 72:23 stage ^[3] 101:25 103:3,7 stake ^[7] 29:18 35:13 38:4 44:18 112:1,4,5 stale ^[1] 53:6 standard ^[4] 6:8 35:7 37:21 73:9 start ^[3] 74:9 77:17 108:7 started ^[1] 73:14 starting ^[4] 16:7 62:12 68:23 69:22 statement ^[5] 27:15,17 90:14 101:12,13 STATES ^[7] 1:1,6,15 3:5 46:5 88:14 100:23 statistics ^[1] 30:18 statute ^[65] 4:5,10 5:17 6:10,10 10:10,24 11:19 13:6 21:11,24,25 22:14 33:24 37:5,12,20 38:1,5 43:25 49:1,5,13,15 50:17 51:12,13,18 52:24 53:23 54:9,13 57:15 58:22 62:14,20 67:11 68:1,5 70:18 71:7,8 72:1,19,25 73:9 81:24 84:18 86:13 92:13 103:20,21 104:1 105:10,13,25 106:6,9,13,15 108:20 109:19 111:21,25 112:3 statute's ^[1] 82:3 statutes ^[7] 13:19 35:19 67:13 70:10 89:18 93:16 96:3 statutory ^[9] 4:6 32:21 45:13 75:16 88:9 92:12 94:8,18 97:2 Step ^[9] 3:21 28:13 30:21 47:24 48:9 49:10 54:17 58:13,15 still ^[14] 4:15 17:13 24:5 31:17 42:10 45:7 52:20 54:20 55:7,21 56:15 57:11 88:21 106:9 stops ^[1] 93:20 straining ^[1] 85:24 strange ^[1] 88:12 strikes ^[1] 77:8 striking ^[1] 99:2 strong ^[2] 24:20 62:22 structure ^[5] 5:16 49:23 69:14 84:18 86:13 studied ^[2] 36:4 93:16 studies ^[1] 94:23 study ^[4] 94:17 95:4,10	109:14 stuff ^[1] 36:6 style ^[1] 64:19 subject ^[2] 39:9 88:22 subjective ^[1] 84:15 submitted ^[2] 112:10,12 subparagraph ^[4] 59:13 72:15 98:14 99:2 subsidiary ^[1] 63:16 substantial ^[1] 30:24 substantially ^[1] 27:12 substantive ^[2] 61:23 105:15 subtract ^[1] 75:22 suggest ^[3] 16:1 38:9 95:14 suggested ^[1] 40:8 suggests ^[4] 26:9 27:17 40:20 41:18 summation ^[1] 44:20 super ^[1] 12:10 superfluidity ^[4] 12:8,10 72:8,10 superfluity ^[3] 7:9 17:5 97:9 superfluous ^[2] 51:7 72:16 superior ^[1] 88:10 supervised ^[1] 30:3 supervisor ^[1] 11:3 support ^[1] 11:17 supports ^[2] 28:4 109:14 Suppose ^[1] 24:18 supposed ^[2] 42:17 76:2 supposing ^[1] 79:11 SUPREME ^[2] 1:1,14 surplusage ^[27] 4:7,9 22:10 23:25 24:2,7,10,19,24,25,25 25:2 26:18 38:7,16,20 43:3,5,7 50:20 51:1 62:24 76:14,20 80:13,21 98:14 surrounding ^[3] 3:16 16:17 45:12 survey ^[1] 89:17 syntactically ^[1] 6:7 system ^[1] 103:23
S				
safer ^[2] 8:9,13 safety ^[15] 3:14,22 4:16 17:1 18:18 19:16 23:5,8 27:11,20 29:12 49:1,23 84:21 91:23 same ^[17] 16:7 38:10 50:11 63:9,15 64:6,13,17 65:4 66:25 70:25 78:3,9,10,23 92:24 97:11 satisfied ^[1] 63:20 satisfies ^[2] 11:1 14:16 satisfy ^[10] 3:19 4:15 17:13 18:17 38:25 42:10 50:4 55:21 91:7 111:6 saving ^[1] 88:5 saying ^[22] 8:19 15:6 16:2 20:17 23:22 27:3 38:19 49:25 63:24 64:4 69:19 73:15 76:1 85:14 90:21 91:25 92:5,16 93:14 95:21 104:9 107:19 says ^[24] 3:16 6:16,19 9:10 16:22 17:4 25:8,11 27:10 31:10 62:2 68:11 71:7 78:				
T				
talked ^[4] 22:11 25:6 69:5 73:9 talks ^[1] 51:14 targeting ^[1] 31:17 Tax ^[1] 109:20 tells ^[6] 7:16 33:8 52:19 78:5 109:11 111:3 term ^[6] 10:25 29:24 45:22 52:3 67:22 111:19 term's ^[1] 88:4 terms ^[7] 13:14 19:22 36:17 54:6 106:19 111:23 112:6 terrible ^[1] 56:5 test ^[7] 6:14,16 8:4,5,10 29:				

Official - Subject to Final Review

<p>5 33:10 text ^[17] 3:16 7:4,7,10 16:17 45:13 71:25 72:24,24 79:20 81:9 84:10,18 86:13 89:5,10 94:21 texts ^[1] 7:8 textual ^[3] 25:5 37:19 72:1 textualism ^[3] 35:18 84:7 85:25 textualist ^[2] 85:1 86:3 textually ^[5] 60:3 84:11 89:20 96:22 104:2 themselves ^[1] 44:17 theorem ^[1] 101:22 theories ^[1] 101:8 theory ^[8] 99:9,21 100:7,14 101:2,24 102:6,15 there's ^[22] 7:20 8:7 38:18 43:3 52:13 65:11 75:12 79:10,12,19 81:15 82:16 86:25 87:6 98:20,24 102:1,2 106:18 108:12 112:3,4 thereafter ^[1] 30:3 thereby ^[1] 54:15 therefore ^[2] 21:8 50:8 thinking ^[2] 49:21 88:1 Third ^[4] 60:21 84:19 101:2,6 THOMAS ^[10] 5:10,15,18 8:20,22 32:15 61:14,20 83:11 93:24 Thomas's ^[1] 82:12 though ^[10] 10:3 14:6 17:21 18:15 19:2 26:22 61:23 65:5 95:15 105:1 threats ^[1] 36:25 three ^[37] 3:15 4:5 13:3,23,24 14:4 21:12,13,25 36:13 44:4 50:4 53:13,21 55:6 56:16 59:9,22 60:1 61:10 63:22,25 74:11 75:19 78:18,20 82:4 84:8 89:17 91:9,14,17,18,19,24 101:4 109:13 three-point ^[28] 20:19 21:6,15 27:1 41:10,19 51:4,9,11,24 53:1,4,11,13,19,21 56:16,20 57:9 58:3 70:25 71:2 79:25 80:4,11,14 81:22 82:2 three-point/ ^[1] 40:18 through(C) ^[1] 10:18 throughout ^[2] 10:24 66:25 thrust ^[1] 99:12 today ^[3] 35:24 69:13 111:5 toe ^[2] 50:22,22 together ^[8] 3:13,23 6:3 15:16 59:9 61:10 92:20 111:2 tolerate ^[1] 90:6 took ^[5] 13:22,23 22:23 100:6 101:5 tool ^[2] 86:6 94:6</p>	<p>total ^[10] 32:4 39:13 47:13 51:15,16,21 76:20 80:1,5 82:9 toward ^[1] 82:9 towards ^[3] 28:15 32:4 51:21 traditional ^[1] 86:5 treat ^[3] 8:14 70:1 78:10 treating ^[1] 16:4 tribal ^[1] 39:8 tried ^[1] 43:15 tries ^[1] 96:23 trigger ^[2] 27:19 71:17 true ^[6] 18:8 41:17 60:15 64:1 75:21 106:24 Trump ^[2] 48:2 84:10 trust ^[1] 57:5 try ^[1] 13:12 trying ^[15] 19:6 32:25 33:23 35:9,25 48:10 65:6 66:8,17 73:8 77:6 84:10 87:11 94:19 103:24 turn ^[1] 33:15 two ^[48] 7:20,22 14:1 15:15 21:12,12,25 22:9 31:11,11 34:2 37:12 38:10 40:13 41:18 43:1,24 52:20,23 53:4,11,19 59:20 62:21 66:11 70:24 73:21 74:14,25 75:19 78:8,17,21 80:11 82:4 83:5 84:11 85:17,20 91:18 93:8 96:22 97:7,13 104:2,7 110:13 111:2 two-point ^[16] 20:20 21:7,15 27:2 40:19 41:13,20 51:24 53:17 56:8 57:11 71:5 76:18 79:25 80:3 82:2 two-point/three-point ^[1] 43:10 type ^[10] 104:10,12 105:9,25 106:1,14 107:1,2,22,23</p> <hr/> <p style="text-align: center;">U</p> <p>U.S ^[2] 48:7 109:10 U.S.C ^[3] 67:16,21 68:20 ultimate ^[1] 19:22 Ultimately ^[1] 75:9 uncontrovertible ^[2] 74:23 75:3 under ^[31] 11:24 12:2 14:2,3,3,5,5 19:15 29:22 30:2,22,25 31:23 32:3 39:8 40:23,23 42:5 46:23 52:7,9 55:12 56:17 58:12,14 71:12 72:21 76:12,13 88:17 95:4 undermine ^[1] 58:5 undermines ^[1] 80:12 understand ^[25] 6:6 9:11,21 10:4 12:22 24:17 29:7 33:23 35:25 40:12 43:23 54:13 55:15 66:17 77:1,10,14 94:21 95:2 99:23 100:4 102:12 103:25 104:6,15</p>	<p>understanding ^[13] 8:23 9:4 26:1 30:18 32:23 36:17 51:22 69:19 77:18,19 82:16 97:8,14 understood ^[7] 9:13,15 14:14 26:15 36:21 80:9 99:15 unequivocally ^[2] 4:25 10:1 unfair ^[2] 23:12 48:12 uniformly ^[1] 102:25 unit ^[1] 65:20 UNITED ^[7] 1:1,6,15 3:5 46:5 88:14 100:23 unjust ^[3] 23:12 42:18 48:12 unless ^[1] 91:1 unnatural ^[4] 9:18 10:3 36:14 109:17 until ^[2] 73:11 79:2 unusual ^[2] 98:11,12 unusualness ^[7] 98:9,19,19,21,25 99:1,7 up ^[14] 21:5 28:9 52:7 61:25 62:17 64:25 77:4 82:11 100:16 101:3 102:12 108:21 109:9 110:18 upward ^[2] 28:21 30:4 usage ^[4] 10:16 60:3 70:11 95:18 user ^[3] 84:17 94:20 95:1 uses ^[5] 25:15 46:2 47:4 60:5 67:4 using ^[10] 7:25 31:25 36:12,24 58:23 60:23 61:1 98:9,25 109:16 utter ^[1] 44:5</p> <hr/> <p style="text-align: center;">V</p> <p>valid ^[1] 95:13 valve ^[15] 3:14,22 4:16 17:1 18:18 19:17 23:5,8 27:11,20 29:12 49:1,23 84:21 91:23 variation ^[2] 10:23 70:12 varies ^[1] 105:4 variety ^[1] 18:22 various ^[2] 37:19 66:21 vary ^[1] 30:4 verb ^[2] 13:20,20 versus ^[5] 3:5 88:4,14 99:21 106:20 view ^[14] 40:25 57:22 72:23 74:20 77:14,18 80:14 91:8,15,24 95:14,17 112:1,2 views ^[1] 84:15 violence ^[3] 36:25,25 71:8 violent ^[27] 3:24 4:1 16:25,25 17:2,15,23,24 19:21 20:1,20 21:6,7 27:2 41:11,13,20 43:10 53:17 57:11 59:19,21 71:2,5 80:3 110:14,14 vision ^[1] 81:6</p>	<p style="text-align: center;">W</p> <p>wait ^[1] 104:14 walk ^[1] 110:17 wanted ^[20] 4:22 9:1 19:7 23:12 29:2,4 30:7,12 36:11,22 37:2 44:9 47:9 48:24 50:6 54:18,20,24 110:10 111:13 wanting ^[1] 10:8 wants ^[5] 37:25 44:3 70:18 100:2 112:5 Washington ^[3] 1:10,18,21 way ^[39] 6:5 7:25 10:4 15:19 16:2,7 21:14 25:2 36:11 37:4 50:1,2,11,13 51:7 53:15 54:12 58:16,21 62:18 68:4 69:20 70:18,20 74:8,20 88:3 92:20 94:3 97:1,15,18,18 98:4 101:17,18 104:18 108:13 110:2 ways ^[5] 37:12 84:8 89:17 97:8,14 weapon ^[1] 37:1 weigh ^[1] 73:19 weighing ^[1] 98:19 welcome ^[2] 5:9 61:13 well-accepted ^[1] 101:11 well-being ^[1] 103:22 whatever ^[7] 20:9 31:22 40:2 55:14 73:9 76:15 100:2 whereas ^[4] 7:5,22 25:11 40:14 Whereupon ^[1] 112:11 whether ^[28] 4:14 8:8,22 16:12 17:14 29:16 32:25 33:2 44:12,14 45:5 50:3 60:18 64:2 69:17 74:3 76:13 77:20 87:11 89:25 99:17 105:5 106:10 107:3 108:8,22 112:1,2 who's ^[2] 34:22 42:6 whoever ^[1] 65:22 whole ^[4] 41:15 64:1,2 72:6 will ^[6] 3:3 4:18 27:10 28:25 39:15 111:3 willing ^[2] 55:11 98:22 Wiltberger ^[1] 44:6 win ^[1] 37:24 wins ^[2] 13:1 69:17 wished ^[1] 30:5 within ^[2] 60:18 64:8 without ^[6] 15:16,20 23:10 52:16 60:9 79:12 wonder ^[1] 32:18 wondering ^[1] 77:20 Wood ^[1] 39:5 word ^[16] 6:2 26:6 35:14 44:5 61:24 62:15,15 65:4 73:25 79:9 90:16 92:19 97:16,20 101:3 109:5</p>	<p>words ^[21] 4:4 5:5 26:16,17 35:4,25 62:16,20 63:23 75:25 76:9 78:12 80:8 84:17 92:20,22 94:20 95:1,21 100:5 108:18 work ^[6] 7:4 22:25 40:22,23 41:2 63:9 works ^[5] 32:19,22 34:21 47:21 74:21 world ^[6] 42:18 60:16 80:17 81:15 85:2 90:10 worse ^[6] 42:2 92:7 107:10,17,20,24 worst ^[2] 91:22 92:1 worth ^[1] 59:22 write ^[3] 70:17,18 96:8 writes ^[1] 13:11 writing ^[4] 6:9 13:13,18,19 wrote ^[6] 5:8 26:17,17 37:3 65:23 92:13</p> <hr/> <p style="text-align: center;">Y</p> <p>year ^[2] 74:13 78:18 years ^[4] 28:24 29:15 30:1 78:18 yourself ^[1] 91:12</p> <hr/> <p style="text-align: center;">Z</p> <p>zeroing ^[1] 87:21</p>
---	--	--	---	--