

1                   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - - x

3   UNIVERSAL HEALTH SERVICES, INC.,       :

4                   Petitioner                       :   No. 15-7

5                   v.                                       :

6   UNITED STATES AND MASSACHUSETTS,       :

7   EX REL. JULIO ESCOBAR AND CARMEN       :

8   CORREA,                                       :

9                   Respondents.                       :

10   - - - - - x

11                                       Washington, D.C.

12                                       Tuesday, April 19, 2016

13

14                   The above-entitled matter came on for oral  
15   argument before the Supreme Court of the United States  
16   at 11:01 a.m.

17   APPEARANCES:

18   ROY T. ENGLERT, JR., ESQ., Washington, D.C.; on behalf  
19       of Petitioner.

20   DAVID C. FREDERICK, ESQ., Washington, D.C.; on behalf of  
21       Respondents.

22   MALCOLM L. STEWART, ESQ., Deputy Solicitor General,  
23       Department of Justice, Washington, D.C.; for United  
24       States, as amicus curiae, supporting Respondents.

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	ROY T. ENGLERT, JR., ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	DAVID C. FREDERICK, ESQ.	
7	On behalf of the Respondents	22
8	ORAL ARGUMENT OF	
9	MALCOLM L. STEWART, ESQ.	
10	For United States, as amicus curiae,	
11	supporting the Respondents	35
12	REBUTTAL ARGUMENT OF	
13	ROY T. ENGLERT, JR., ESQ.	
14	On behalf of the Petitioner	49
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (11:01 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument  
4 next in Case 15-7, Universal Health Services v. The  
5 United States and Massachusetts ex rel. Escobar and  
6 Correa.

7 Mr. Englert.

8 ORAL ARGUMENT OF ROY T. ENGLERT, JR.

9 ON BEHALF OF THE PETITIONER

10 MR. ENGLERT: Thank you, Mr. Chief Justice,  
11 and may it please the Court:

12 This entire case turns on four words of the  
13 statute: "False or fraudulent claim." "False" and  
14 "fraudulent" have been unchanged since 1863 in this  
15 statute. "Claim" is defined by statute.

16 I'll come back to those words.

17 Three separate State agencies investigated  
18 the facts of this case in detail. All three agencies  
19 produced lengthy reports and proposed remedial measures  
20 for certain alleged regulatory violations. No agency  
21 asked for any money back. No sanction at all was  
22 imposed on the company. One individual was fined \$1,000  
23 and the claimant director was given two years of  
24 supervision.

25 Through the magic of the

1 implied-certification theory under the False Claims Act,  
2 the very same facts have now been recharacterized as  
3 fraud on the government.

4           The First Circuit focused on a single  
5 alleged regulatory violation involving a regulation not  
6 cited in the complaint, not cited in any appellate  
7 brief, not cited in the amicus brief of the Commonwealth  
8 of Massachusetts. That is not what "fraud" means.

9           Now, coming back to the four words that  
10 matter, "false or fraudulent claim."

11           "False" means false. This Court construed  
12 that word in Williams v. United States. Footnote 3 of  
13 Respondents' brief unsuccessfully tries to distinguish  
14 Williams. The Solicitor General ignores Williams.

15           JUSTICE GINSBURG: It can't mean misleading,  
16 then?

17           So "false" can only mean false? It can't  
18 mean deceptive, misleading?

19           MR. ENGLERT: It cannot, Justice Ginsburg.  
20 Because the body of law that covers deceptive and  
21 misleading statements is not falsity. It's the law of  
22 fraud. And the law of fraud is stated in Section 551 of  
23 the Restatement (Second) of Torts.

24           JUSTICE BREYER: Suppose you have a private  
25 contract. In the private contract, it's for medical

1 services. The written part does not actually use the  
2 word "doctor," but the circumstances are such that any  
3 reasonable person would assume, would believe that the  
4 parties contracted for medical services provided by a  
5 doctor.

6 This is an ordinary contract case. Could  
7 not a jury or the judge find that that implicit term of  
8 the contract that the services would be provided by a  
9 doctor was breached, it was a material breach, and,  
10 therefore, the implicit statement was false?

11 MR. ENGLERT: Two responses, if I may,  
12 Justice Breyer.

13 First, the whole problem here is the  
14 tortification of contract. Yes, that's a good contract  
15 case, but it's not automatically a good tort case.

16 The second answer --

17 JUSTICE BREYER: No, no. What's the second?

18 MR. ENGLERT: Section 551(2)(e) of the  
19 Restatement deals with that exact situation, facts basic  
20 to the transaction. So the common law has developed a  
21 meaning of fraud that will accommodate the cases in  
22 which liability makes sense because every reasonable  
23 person, as Your Honor said, would assume something to be  
24 true.

25 Comments j and k and Illustrations 3, 4, 5

1 and 6 of the Restatement -- rather, 3, 4, 5, 6, 7 and 8,  
2 give one example of facts basic to the transaction and  
3 five examples of facts not basic to the transaction. It  
4 is a very, very, very narrow duty of disclosure.

5 JUSTICE BREYER: Well, fine. But now let's  
6 go a step further. We have our contract. The facts are  
7 such that any reasonable person would assume there is an  
8 implicit statement that the services will be provided by  
9 a doctor. You say that could be a breach of contract.

10 Now it turns out that this company that has  
11 that contract has sold the shares over the SEC. And the  
12 SEC says, you know, it's so obvious that that implicit  
13 statement in the contract meant that they had a doctor  
14 who was a doctor -- that's so obvious -- that we think  
15 in selling shares in this company, where indeed this  
16 contract was absolutely critical, millions of dollars  
17 was at stake, without a doctor, violating of implicit  
18 statement that there was a doctor, we think that's fraud  
19 under Rule 10(b)(5).

20 MR. ENGLERT: I'm glad Your Honor brought  
21 that up.

22 JUSTICE BREYER: All right.

23 MR. ENGLERT: The SEC has a habit of  
24 construing fraud under 10(b)(5), and this Court has a  
25 habit of reining the SEC in. And the Chiarella case is

1 quite key here. And Chiarella is not cited in  
2 Respondents' brief. It's not cited in the government's  
3 brief. In all the dark green amicus briefs, it's cited  
4 once, and the citation is to the dissent. Chiarella  
5 says fraud in a statute is very broad, but it's broad  
6 enough to cover the common law and no more. If Congress  
7 wants to go broader than the common law --

8 JUSTICE BREYER: Well, fine. But what is --  
9 I'm talking the common law. All I know about contracts  
10 came from Blackjack Dawson, my contracts teacher --

11 (Laughter.)

12 JUSTICE BREYER: -- who was a great teacher,  
13 and he taught the common law. So I don't know anything  
14 else. I -- well, I won't go quite that far, but  
15 nonetheless. Nonetheless, I think under common law, you  
16 could say that that was a material breach of contract,  
17 what I just talked to. And indeed, there happened to be  
18 a whole set of regulations on the shelf, et cetera,  
19 which spell it all out to which there was an implicit  
20 reference in the contract if it's -- you understand what  
21 I'm saying. It's common law that I'm saying.

22 MR. ENGLERT: Well, the thousands of pages  
23 of regulations and the implicit reference in the  
24 contract are not what the common law means by fraud.  
25 They are, sadly, what the lower courts have meant by

1 fraud under the False Claims Act.

2 JUSTICE KAGAN: Mr. Englert, I guess I don't  
3 understand that. I mean, let me take Justice Breyer's  
4 hypothetical and make it even simpler.

5 Let's say that there's a contract and there  
6 is an explicit term, and it says I commit to providing a  
7 doctor's care. Yes? And then it turns out that the  
8 medical care that was provided was not by a doctor. It  
9 was by a nurse or it was by somebody with not even that  
10 set of qualifications. And -- and then the person who  
11 enters into the contract makes a statement, demands  
12 payment, and says the care was provided.

13 Now, some care was provided; it is true.  
14 But medical care, a doctor's care was not provided.  
15 Now, by withholding that fact and by just saying the  
16 care was provided, have I not committed fraud under the  
17 common law?

18 MR. ENGLERT: No, Your Honor. Justice  
19 Kagan, that is not fraud. And that situation is  
20 actually dealt with by Restatement Section 551(2)(b) and  
21 by the famous Junius decision written by Justice Cardozo  
22 for the New York Court of Appeals.

23 JUSTICE KENNEDY: What -- what about  
24 Restatements -- oh, I think it's 529, which -- which  
25 says a statement is fraudulent if the maker knows or



1 believes that it's misleading because of his failure to  
2 add an additional statement to make it true?

3 MR. ENGLERT: That's the same principle,  
4 Justice Kennedy.

5 JUSTICE KENNEDY: And I don't see why that  
6 isn't completely applicable to what the hypothetical  
7 that Justice Kagan just gave.

8 MR. ENGLERT: There's -- there's --

9 JUSTICE KENNEDY: There is a failure to make  
10 an additional or qualifying matter in order to make that  
11 statement not false. That's exactly the Justice's  
12 hypothetical.

13 MR. ENGLERT: Justice Kennedy, if I  
14 understood Justice Kagan's hypothetical question  
15 correctly, it is not fraud within the meaning of  
16 551(2)(b). But let's suppose that I'm wrong about that,  
17 okay? Let's suppose that that is fraud. That's still a  
18 very far cry from the facts in this case in which the  
19 court of appeals had to invoke a regulation that cross  
20 referenced another regulation that nobody had cited and  
21 said the failure to announce a violation of that  
22 violation when submitting a claim is fraud.

23 JUSTICE SOTOMAYOR: All right.

24 JUSTICE BREYER: I see that. That's to me  
25 what's at the heart of this. How do you distinguish

1 those regulations, breach of which are fraudulent when  
2 you breach them, and implicit promise not to, from those  
3 that not? There are millions of regulations. That's  
4 what all the amici are worried about.

5 But now, this is my basic question, and it  
6 is a question. The obvious kind of distinction that  
7 would seem possible is a contract-based distinction  
8 between matters that are material where the whole  
9 contract disappears and matters that are sometimes I  
10 think called nonmaterial, I'll get the -- I'll forget  
11 the exact word, partial, where even though the condition  
12 is violated, you don't destroy the contract but you  
13 might get damages for that.

14 Now, that's a distinction that every court  
15 that deals with contracts is used to applying bread and  
16 butter. All right? Normal daily basis. Why not use  
17 that same distinction right here?

18 MR. ENGLERT: Because this is not a contract  
19 case. The government has only --

20 JUSTICE BREYER: No, no. What you'd say, of  
21 course it applies where the condition that was lied  
22 about was material. And there can be implicit lies. Of  
23 course, there has to be an implicit lie. But it could  
24 be an implicit lie that I did not comply -- you might  
25 implicitly imply that you fulfilled provision

1 No. 43876(b) which says paper should be three inches  
2 long, okay? Okay. Or there could be an implicit lie  
3 that that person in your hospital was a doctor. The  
4 first you'd say is not material. The second is  
5 material.

6 Now, that I'm asking because I wonder if a  
7 distinction like that, drawn from contract law would, or  
8 would not, satisfy most of the concerns that are -- are  
9 raised in the amicus briefs supporting you.

10 MR. ENGLERT: Justice Breyer, it would not  
11 satisfy most of those concerns for several reasons.

12 First and foremost, the False Claims Act has  
13 its own definition of materiality, which is greatly  
14 watered down from the common law. Something that is  
15 capable of influencing a decisionmaker is material under  
16 the False Claims Act. So materiality doesn't solve the  
17 problem.

18 Now let me say also that materiality is, at  
19 least arguably, a different element. When I say "at  
20 least arguably," the statute actually doesn't say under  
21 (a) (1) (A) that it has to be material, but courts have  
22 properly read materiality in. But even if materiality  
23 is read in, it's a different element on top of a false  
24 or fraudulent claim.

25 And I really want to bring this Court back

1 with respect to the four words "false or fraudulent  
2 claim" because for it to be fraudulent, there must be,  
3 as Your Honor said, an implicit lie. And the common  
4 law, cases like Junius, Restatements like 551(2)(b),  
5 deal with the implicit lie.

6 JUSTICE SOTOMAYOR: I'm sorry. I'm totally  
7 confused. I always thought that when you asked for  
8 payment, you're making a promise: I did what I agreed  
9 to do. Pay me, please.

10 That's, to me, what's sort of understood.  
11 If I hired you to provide me with doctor services, you  
12 ask me for money, I'm assuming you provided me with  
13 doctor services. And you know you didn't. Why isn't  
14 that a fraud?

15 MR. ENGLERT: Because it's a contract  
16 breach. Breaking a promise is a contract breach. Some  
17 contract breaches are fraud, most are --

18 JUSTICE SOTOMAYOR: So providing a gun that  
19 doesn't shoot to the Army is simply a contract breach?

20 MR. ENGLERT: I don't know, Justice  
21 Sotomayor. It depends on the facts of the case.

22 JUSTICE SOTOMAYOR: What -- what more facts  
23 do you need? Government contracted for guns. All of a  
24 sudden you deliver guns that don't shoot. That -- those  
25 are the facts that led to this Act.

1                   MR. ENGLERT: The additional facts I need  
2 are what was stated in the claim, what was stated in  
3 the regs, what were the reasonable understandings of the  
4 contracting parties. And I'm not making these factors  
5 up as --

6                   JUSTICE SOTOMAYOR: Do you think that  
7 anybody, except yourself, would ever think that it  
8 wasn't a fraud to provide guns that don't shoot if  
9 that's what the -- the government contracted for?  
10 Whether --

11                  MR. ENGLERT: Yes.

12                  JUSTICE SOTOMAYOR: -- they made it --

13                  MR. ENGLERT: Yes, depending on additional  
14 facts, Justice Sotomayor, as stated in Section 551 of  
15 the Restatement. If I'm wrong about these hypothetical  
16 examples, I'm wrong, but I'm happy to rest on  
17 Section 551 of the Restatement as to what "fraud" means.

18                  Chiarella says as a holding of this Court  
19 that the word "fraudulent" requires that there be a  
20 duty. The Restatement, 551(2), is all about when there  
21 is and there isn't a duty.

22                  JUSTICE SOTOMAYOR: If we don't --

23                  JUSTICE KAGAN: So I understood --

24                  JUSTICE KENNEDY: Your earlier argument --  
25 your earlier argument was your point that materiality

1 has its own definition under the Federal contracting  
2 statutes, and it's so broad that we can't use it, so  
3 we'll just forget about materiality? Is that -- do I  
4 understand --

5 MR. ENGLERT: No, no. If I may.

6 JUSTICE KENNEDY: It's my misunderstanding.

7 MR. ENGLERT: The False Claims Act was  
8 amended a few years ago, about 20 -- about 30 years  
9 ago --

10 JUSTICE KENNEDY: Right. Right.

11 MR. ENGLERT: -- to redefine materiality. I  
12 may be wrong on the timing, but it's been amended to  
13 redefine materiality as a very, very low standard. But  
14 the point is not use it or don't use it. The point is  
15 that before you get to materiality, you have to have a  
16 false or fraudulent claim.

17 Materiality is not part of the definition of  
18 false or fraudulent. It is an additional requirement  
19 beyond the false or fraudulent.

20 JUSTICE KENNEDY: That's what I have a hard  
21 time understanding. It -- it seems to me we just can't  
22 think about fraud unless we have materiality in some  
23 sense. And it could be a very strict standard of  
24 materiality.

25 MR. ENGLERT: Justice --

1 JUSTICE KENNEDY: Otherwise, it seems to me,  
2 fraud doesn't make much sense.

3 MR. ENGLERT: Justice Kennedy, I agree with  
4 you. For something to be fraud, it must be fraud as  
5 defined by the common law, and it must be material.  
6 That's this Court's holding in the Neder case.

7 So yes, I agree with you that to think about  
8 fraud, one must have the kind of statement that is  
9 fraudulent and materiality and scienter.

10 JUSTICE KAGAN: So what I understood you to  
11 be saying, Mr. Englert, was that all of these common  
12 examples, examples that really led to the False Claims  
13 Act, are not fraud. So --

14 MR. ENGLERT: Oh, Justice Kagan, that's not  
15 what I'm saying.

16 JUSTICE KAGAN: Well, let me just give you a  
17 few of them.

18 MR. ENGLERT: Sure.

19 JUSTICE KAGAN: Justice Sotomayor said the  
20 government contracts to buy guns; the guns don't shoot.  
21 The government contracts to buy boots -- this was all  
22 within the context of the Civil War -- the boots fell  
23 apart after 12 hours. The government contracts to buy  
24 food; the food was rancid.

25 And each of those contractors would come in

1 and would demand payment.

2 And the entire idea behind this statute is  
3 that in that demand of payment is a representation. The  
4 representation is that I've given you guns that shoot  
5 and boots that wear and food that can be eaten. And  
6 when -- when that is not true, that is a fraudulent  
7 claim. And you're suggesting that all these  
8 hypotheticals -- that somehow that's not a fraudulent  
9 claim. And I guess that leaves me sort of wondering  
10 what do you think would be a fraudulent claim?

11 MR. ENGLERT: Two things, Justice Kagan, in  
12 response. One, those all may be fraudulent claims. I'm  
13 not denying that any of those can be fraudulent claims.  
14 And again, Section 551(2)(b) and (e) of the Restatement  
15 cover those.

16 JUSTICE KAGAN: Well, if those are  
17 fraudulent claims --

18 MR. ENGLERT: But if I may --

19 JUSTICE KAGAN: -- I -- I would think that  
20 this is the exact same, is that the contract was for a  
21 doctor's medical care, and a doctor's medical care was  
22 not provided. A nondoctor's care was provided.

23 MR. ENGLERT: May I explain my key  
24 disagreement with that analysis? In your question,  
25 Justice Kagan, you embedded the proposition that there



1 are implicit representations in the claims. That was  
2 not how the False Claims Act was read from 1863 to 1994.

3 The Ab-Tech case, decided by the Court of  
4 Federal Claims in 1994, was the very first case after  
5 131 years under the statute to use the  
6 implied-certification theory.

7 This -- this concept that's easy to read  
8 back to -- graft back onto the Civil War statute, that  
9 there was an implied certification is not how people  
10 were speaking at the time of the Civil War. It is a new  
11 concept. It's something that has been causing the False  
12 Claims Act to expand dramatically in the last 22 years,  
13 but it is not -- there's nothing at all -- nobody relies  
14 on the 1863 legislative. They rely on the 1986  
15 subsequent legislative.

16 JUSTICE KAGAN: If I understand what you're  
17 saying, you're saying that in representing that you have  
18 satisfied the terms of the contract, you are -- or --  
19 or -- let me say that -- I'll start it over.

20 In demanding payment for having satisfied  
21 the contract, you are not representing that you are --  
22 that you have satisfied the contract; that's your point?  
23 In demanding payment for satisfaction of the contract,  
24 you are not making a recommendation that you have  
25 satisfied the contract?

1                   MR. ENGLERT: Not that broadly. Not -- not  
2 every jot and tittle of the contract. And there's a  
3 policy reason why that's a good rule --

4                   JUSTICE KAGAN: I'm not into every jot and  
5 tittle. I'm into material portions of the contract.  
6 That -- you know, that the guns shoot, that the boots  
7 can be worn, that the food can be eaten --

8                   MR. ENGLERT: That -- that --

9                   JUSTICE KAGAN: -- and a doctor's care is a  
10 doctor's care.

11                  MR. ENGLERT: That is what the Restatement  
12 refers to as essentiality, which is a much, much, much  
13 higher standard than materiality. And this is where the  
14 problem comes in. When essentiality, which does go to  
15 the heart of an -- of an implicit representation,  
16 arguably is confused with materiality, we have the  
17 problems reflected in the light green amicus briefs in  
18 this case.

19                  Now, the Government's and Respondent's main  
20 argument, as I see it, is really not even a textual  
21 argument. It is that men must turn square corners when  
22 they deal with the government. That's a perfectly fine  
23 principle in certain settings but not when a punitive  
24 statute is at issue.

25                  When punishment is at issue, the relevant

1 principles are instead the principle of constitutional  
2 avoidance and fair notice and the rule of lenity. And  
3 both of those principles cut very strongly against the  
4 implied certification theory. 27 years ago, this Court  
5 considered a case of excessive punishment under the  
6 False Claims Act called United States v. Halper. It was  
7 later overruled in just eight years, but it remains  
8 instructive.

9           The judicial instinct to avoid excessive  
10 punishments was so strong that the Court let the  
11 appellee out of FCA civil liability by invoking the  
12 Double Jeopardy Clause.

13           When the Court overruled Halper, it  
14 suggested in passing that the Eighth Amendment might be  
15 better suited than the Fifth to address constitutional  
16 excessiveness concerns. But the recognition by this  
17 Court that punishment under the False Act -- False  
18 Claims Act is Draconian is of long standing, and that  
19 insight to --

20           JUSTICE BREYER: How do you want us to write  
21 this? The -- you're in an area where billions of  
22 dollars are at issue. There -- this is going on a long  
23 time. I don't want to write something that's going to  
24 upset everybody's expectations in the contract area.

25           On the other hand, the common sense of it,

1 and you just said the words, you said, well, if, in  
2 fact, you send in a form which says certainly give me  
3 money for supplying the guns or the medical care,  
4 something is implied. And you used the word  
5 "essentials" to describe that.

6 And then I also know that if the agency  
7 wants to, it could put a little statement at the bottom  
8 saying, I hereby certify I complied with every  
9 regulation. And I guess if they -- if they did that,  
10 then even you would not have an objection saying your  
11 failure to do it while signing was fraud.

12 MR. ENGLERT: If it's --

13 JUSTICE BREYER: So what am I --

14 MR. ENGLERT: If it's in the taking --

15 JUSTICE BREYER: From your point of view,  
16 this word is "essential," whatever that may mean, which  
17 I will look up, how does it work? What's -- what's the  
18 correct standard in your --

19 MR. ENGLERT: Well, here's how it writes.  
20 "False" means false. "Fraud" means fraud.

21 JUSTICE BREYER: Everybody agrees with that.

22 MR. ENGLERT: Okay. "Fraud" means fraud as  
23 reflected in the Restatement, and here's how it writes  
24 from a policy dimension, Justice Breyer.

25 The government holds all the keys here. It

1 can change the claim form. It can change the contract.  
 2 It can go after people for contract violations using the  
 3 law of contracts and the law of government contracts,  
 4 which is very specialized. It can go after people for  
 5 debarment. It can go after people for money. It can go  
 6 after people for restitution. The government holds all  
 7 the keys, and indeed the government, frankly, should  
 8 hold all the keys.

9 JUSTICE BREYER: Please, because I have  
 10 read -- you have lots of good arguments, and I'm not --  
 11 I'm asking for advice from you, from your point of view,  
 12 what the sentence in the opinion should say that  
 13 describes the circumstances under which the person who  
 14 submits a form saying, I want a thousand dollars, I just  
 15 supplied the guns or the medical care, when that  
 16 person -- and, by the way, there are regs say they have  
 17 to fire, and the regs say it has to be a real doctor.  
 18 When has that person committed fraud or -- that's what I  
 19 want. What is the sentence you want me to write?

20 MR. ENGLERT: "See Restatement (Second) of  
 21 Torts, Section 551(2)(b) and (e), and Comments j and k,  
 22 and Illustrations 3 through 8." That's the sentence.

23 JUSTICE BREYER: 551 --

24 MR. ENGLERT: (2)(e) -- (b) and (e),  
 25 Comments j and k, Illustrations 3 through 8.

1 I'd like to reserve the balance of my time.

2 CHIEF JUSTICE ROBERTS: Thank you, counsel.

3 Mr. Frederick.

4 ORAL ARGUMENT OF DAVID C. FREDERICK

5 ON BEHALF OF THE RESPONDENTS

6 MR. FREDERICK: Thank you, Mr. Chief

7 Justice, and may it please the Court:

8 When a claimant asserts a right to  
9 government funds without disclosing that it has  
10 knowingly violated the government's material payment  
11 conditions, that claim is both false and fraudulent  
12 regardless of whether it contains --

13 JUSTICE SOTOMAYOR: Mr. Frederick --

14 MR. FREDERICK: -- express false statements.

15 JUSTICE SOTOMAYOR: -- this confuses me to  
16 no end. I don't know why the lower court relied on the  
17 Section 423, this -- the director's qualifications and  
18 responsibilities when there's a direct regulation that  
19 says that the health service will only pay for services  
20 rendered by a staff member who's qualified.

21 Why did they go off on this indirect method  
22 of analyzing this case?

23 MR. FREDERICK: I think the original sin  
24 here, if I can express it that way, Justice Sotomayor,  
25 was by the district court which was so focused on what

1     were conditions of participation. It used a formulation  
2     of conditions of participation versus conditions of  
3     payment. And once it constructed that ideological  
4     dichotomy, it was so focused on what the conditions of  
5     participation were that it lost sight of the fact that  
6     these regulations all work together and in a way --

7                 JUSTICE SOTOMAYOR: But there's a regulation  
8     right on point.

9                 MR. FREDERICK: I understand, Justice  
10    Sotomayor. And had I been fortunate enough to litigate  
11    the case in the district court, we might have cited that  
12    provision.

13                But I would point out that the key point  
14    here -- and I don't think the other side disputes this,  
15    is that when you're providing mental healthcare to  
16    teenagers and other children, it should be supervised,  
17    and it should be given by people who have the proper  
18    license.

19                I don't think that it takes any great leap  
20    of essentiality or materiality or intrinsicness or  
21    whatever words the Petitioner wants to come up with,  
22    that's pretty basic.

23                And the violation that occurred here was one  
24    that is all over the mass health regulations. You can  
25    look at it in the supervisor, the clinical director's

1 requirements to maintain supervision, which is what the  
2 First Circuit relied on; if you look at the express  
3 payment condition, which is .441(a), it expressly links  
4 to .424, which lays out all the qualifications of the  
5 nurses and the social workers and the psychologists --

6 CHIEF JUSTICE ROBERTS: So is your -- is  
7 your position that every material breach of a contract  
8 gives rise to a False Claims Act -- a claim under the  
9 False Claims Act as false and fraudulent?

10 MR. FREDERICK: No. Our position is that  
11 there are two other requirements in the Act. One is  
12 that they be done knowingly. And under the statute, the  
13 definition of "knowing" has three features, with  
14 knowledge, deliberate indifference or reckless  
15 disregard.

16 So there is a knowledge requirement that has  
17 to be done, and I would point out, Justice Breyer, that  
18 actually solves virtually every problem in the  
19 Petitioner's amici because they are talking about  
20 situations in which they are not focusing on the  
21 knowledge requirement of the fraudster who is seeking to  
22 get government funds.

23 CHIEF JUSTICE ROBERTS: So -- so if -- I  
24 know you've got another one, and I want to keep that in  
25 mind, but if it's a situation where the alleged material



1 breach is of Massachusetts Regulation 185(Z)(3), (4),  
2 (8), (10), or whatever, you -- the claimant would have  
3 to show knowledge of that regulation?

4 MR. FREDERICK: Knowledge that -- that when  
5 it was breaching it, it was going to be material to the  
6 government. That's the second part of what I think is  
7 important.

8 CHIEF JUSTICE ROBERTS: So, I guess, I mean  
9 that --

10 MR. FREDERICK: So --

11 CHIEF JUSTICE ROBERTS: That causes concern,  
12 of course, because there are thousands of pages of  
13 regulations under Medicaid or Medicare programs. And I  
14 guess your -- your position would precipitate litigation  
15 over whether or not the person who said, here's our  
16 bill, knew about -- knew under the reckless and whatever  
17 standard, about the particular regulation that the  
18 government or the relator is claiming made the  
19 submission fraudulent?

20 MR. FREDERICK: The court test, Mr. Chief  
21 Justice, is whether the State could reject the claim for  
22 reimbursement, whether it had a basis in rejecting it  
23 because it was a material claim. It's a --

24 CHIEF JUSTICE ROBERTS: But I thought you  
25 said --

1 MR. FREDERICK: -- material violation. So  
2 if it was a material violation --

3 CHIEF JUSTICE ROBERTS: Yes.

4 MR. FREDERICK: -- and the government had a  
5 basis for rejecting the claim in saying your services do  
6 not cover reimbursement --

7 CHIEF JUSTICE ROBERTS: I understand that.

8 MR. FREDERICK: -- it becomes a fraudulent  
9 or false claim if the claimant omits telling the  
10 government that there was something material --

11 CHIEF JUSTICE ROBERTS: Well, but I thought  
12 your point was the first thing is that the claimant has  
13 to know about it.

14 MR. FREDERICK: That's correct.

15 CHIEF JUSTICE ROBERTS: It has to know about  
16 the particular requirement in the regulation.

17 MR. FREDERICK: That's correct. And it has  
18 to know that it was important to the government. It was  
19 a material condition for the government, that the  
20 government could reject payment on this basis.

21 CHIEF JUSTICE ROBERTS: But it has to know  
22 not only about the particular provision but that it was  
23 material and the government wouldn't pay without it.

24 MR. FREDERICK: That's correct. And that's  
25 why, Justice Kennedy, to go back to your question, the

1 key Restatement provision here is not 551, it's 529,  
2 which we've cited in our brief at page 29, and which  
3 essentially is not discussed in the opening presentation  
4 by my friend.

5 JUSTICE BREYER: But here, looking --  
6 looking at what you just said, you said the three  
7 conditions are where it's not written on the form, and  
8 the -- the submitter has to know about it, second, he --  
9 it has to have been material.

10 MR. FREDERICK: Correct.

11 JUSTICE BREYER: And, third, he has to omit  
12 telling the government about it.

13 MR. FREDERICK: That's right.

14 JUSTICE BREYER: Okay. Now, I look at the  
15 two things he talked about in the Restatement, and he  
16 says matters known to him that he knows to be necessary  
17 to prevent his partial or ambiguous statement from being  
18 misleading -- boy, that's pretty close to what you  
19 said -- and then (e) is facts basic to the transaction  
20 if he knows the other is about to do it under a mistake.

21 What's the difference between -- I mean, I  
22 know the people are experts, and this will tell me there  
23 are huge differences. But what's the difference between  
24 what you just said and what he said?

25 MR. FREDERICK: Well, I think that the

1 difference is that I think there's an easier Restatement  
2 provision that is more directly on point. And if I  
3 could just quote from our brief at page 28 to 29. We  
4 quote the Restatement, Section 529: "A representation  
5 stating the truth so far as it goes but which the maker  
6 knows or believes to be" materialness -- "materially  
7 misleading because of his failure to state additional or  
8 qualifying matter is a fraudulent representation."

9 Here --

10 CHIEF JUSTICE ROBERTS: But it's got to  
11 be -- he has to know about the specific provision in the  
12 regulation.

13 MR. FREDERICK: That's correct. That's  
14 correct.

15 But here, Mr. Chief Justice, I think that it  
16 would be odd to suppose that in what are 28 provisions  
17 of the Mass Health regulations in what is a massive  
18 program involving, you know, billions of dollars, where  
19 their business model is predicated on serving indigent  
20 people so that they can get access to  
21 Medicaid-reimbursed funds, that they would read the  
22 regulations. And a number of them say it is critical to  
23 provide supervision when you're providing mental health  
24 care.

25 CHIEF JUSTICE ROBERTS: Okay. So you think

1 it's an easy case to prove, in other words, because they  
2 would have necessarily known that. But what they have  
3 to know is of that regulation, whatever one of the 28 it  
4 is, and they have to know that the government will  
5 regard that as material.

6 MR. FREDERICK: That's correct. But -- but  
7 the key point here, Mr. Chief Justice, is I don't think  
8 that that should be a difficult case.

9 Now, the other side spends a lot of time  
10 talking about worthless services, and they seek in their  
11 brief at pages 37 and 38 to say that the standard is  
12 only when these goods are so worthless or the services  
13 are so worthless, that it would be rather obvious. And  
14 I would point out that if the worthless services are  
15 recoverable under the False Claims Act, then it is okay  
16 to have an implied certification theory. They have  
17 essentially conceded that if the goods are completely  
18 worthless, it would be okay for the government to bring  
19 a False Claims Act case.

20 Now, I would submit that if the goods are  
21 partially worthless, if -- those have also to be  
22 recoverable because there's no clear way to draw a line  
23 between those that are partially worthless and those  
24 that are completely worthless.

25 Let me give you a simple example.

1                   Here, under what I understand Petitioner's  
2   theory to be, if Petitioner had gotten some college  
3   interns who were studying psychology, and it decided to  
4   allow those interns to practice in their medical  
5   facilities, and those college interns gave what was  
6   called therapy to teenagers, under their theory, they  
7   don't have to tell the government that these are college  
8   interns who don't have college degrees, or  
9   certifications, or licenses required by the State, and  
10   it is A-OK to charge the government full freight. Not  
11   only for the service, but under .408, they're also  
12   charging with the representation that they have embedded  
13   in a supervision cost.

14                  CHIEF JUSTICE ROBERTS: I suspect most cases  
15   are a little more complicated than that, and that's  
16   where the difficulty comes in when you have hundreds,  
17   thousands of pages of regulations. And typically not --  
18   probably not the government. They didn't in this case.  
19   They didn't pick up the -- the false claim; it was the  
20   relator. And the relator comes in and says, well, you  
21   didn't -- you violated the provision, not that the  
22   college intern is a doctor, but that -- whatever it is.  
23   You know, you have to use this particular syringes or  
24   drug company, and, in fact, you didn't. And, therefore,  
25   blah, blah, blah.

1                   And I guess that's where the problem comes  
2     in, in that it's a little more complicated than that.  
3     And I just don't know if I can take your abstract  
4     hypothetical and transfer it to the reality of  
5     government contract.

6                   MR. FREDERICK: Well, let me -- let me go  
7     with the core of what I think the concern is in your  
8     statement, and in the position by the amici on the other  
9     side, and it's that we don't have enough notice. We  
10    don't know what's really important to the government.  
11    That's their basic problem. Right?

12                  Now, they don't solve that problem under  
13    either of the two theories that they present in their  
14    case. If notice is the problem, the government could  
15    solve that by having the check-off box -- I think,  
16    Justice Breyer, you were the one who mentioned this --  
17    that says, I certify I've complied with all the  
18    regulations. Well, that doesn't give them any notice.

19                  And it doesn't give them any notice if,  
20    attached to the contract claim form, the Federal  
21    Acquisition Regulations or the Department of Defense  
22    regulations or the HHS regulations are copied. We would  
23    just be killing forests in order to generate that. That  
24    doesn't give them any more notice either,  
25    Mr. Chief Justice.

1 CHIEF JUSTICE ROBERTS: Well, but it will,  
2 because it changes the reality. They're going to look  
3 at that, and they're going to say, wow. Every single  
4 thing we're going to get in trouble in a False Claims  
5 Act. So our bid is going to be a little bit higher to  
6 cover that potential risk.

7 MR. FREDERICK: These are not bid-ask  
8 situations, by and large, Mr. Chief Justice. These are  
9 in the healthcare area under entitlement programs in  
10 which the government is setting the rate and in which  
11 the person is saying, I'm providing service in  
12 compliance with the Federal statutes and the  
13 regulations, and, therefore, I have a legal entitlement  
14 to receive reimbursement.

15 So in that scenario, the problem is that  
16 what they really want is for the government to pick and  
17 choose among the things that are most important, and  
18 once you do that, you're creating a roadmap for fraud.  
19 Because all you're doing -- every time you omit  
20 something that might be material in any particular  
21 circumstance, but it's not specified in the list of the  
22 absolutely most critical things, you're just inviting  
23 them to say we're not complying with it.

24 JUSTICE BREYER: So what has it done? What  
25 has the government done when they certify things? Do



1     they say things like, I hereby certify that I complied  
2     with all material regulations? What do they say?

3                 MR. FREDERICK: Well, there's some  
4     provisions that have certification requirements. But I  
5     would point out that even if you were to do that, it's  
6     not going to solve most of --

7                 JUSTICE BREYER: No, I agree with you.

8                 MR. FREDERICK: -- because of grant  
9     programs. There are Federal dollars that are going to  
10    third parties in which people are engaging in contracts  
11    with third parties and they are being paid by the  
12    Federal government. And in those kinds of situations,  
13    even your kind of basic certification isn't going to  
14    work.

15                So the problem here, Mr. Chief Justice,  
16    fundamentally, is one where the two elements of  
17    materiality and knowledge are going to solve the vast  
18    bulk of the problems. Because if the claimant is acting  
19    negligently or at a lower standard, simply just missed  
20    it, that's not going to be a case that will be  
21    actionable under the False Claims Act.

22                And, furthermore, if the claimant is asking  
23    for something that the government doesn't deem to be  
24    material, in which the test would be can the government  
25    withhold payment, then that isn't going to be actionable

1 under the False Claims Act either.

2 And notably, the other side has a lot of  
3 amicus briefs, but they don't really point to any  
4 specific cases. And if you look at Professor Angstrom's  
5 amicus brief, he is the leading scholar on what has  
6 happened with the False Claims Act empirically. He has  
7 studied all 6,000 filings since 1986, and he's charted  
8 what they -- what's happened to them.

9 And his conclusion is that not only has  
10 there been no spike as a result of the implied  
11 certification theory having been adopted, but that, in  
12 fact, the problems that are identified don't actually  
13 come to pass because the vast bulk of the cases that are  
14 not intervened in by the government, in fact, are done  
15 at a motion to dismiss.

16 And so I would submit to you that if you  
17 looked at the actual data for the False Claims Act, a  
18 lot of what you would conclude on the basis of the other  
19 side is hyperbole. There is a lot of fear, but it comes  
20 down to two points: One is they would like to have  
21 notice so that, presumably, they don't have to comply  
22 with the things that the government doesn't more  
23 specifically reticulate in its rules. And they want to  
24 be able to know, if they want to get around that, what  
25 are the key things that they have to get around.

1           I would submit to you that in the Civil War,  
2   as Justice Kagan's hypotheticals pointed out, there was  
3   a problem of implied certification because contractors  
4   were selling boots that were made out of cardboard, not  
5   leather, and guns that didn't shoot, and mules that were  
6   not live and whole mules. And that is exactly the same  
7   kind of problem that we're talking about now over 150  
8   years later, with respect to mental health services that  
9   are not being provided by licensed and supervised  
10  professionals. Thank you.

11           CHIEF JUSTICE ROBERTS: Thank you, counsel.  
12           Mr. Stewart.

13           ORAL ARGUMENT OF MALCOLM L. STEWART  
14           FOR UNITED STATES, AS AMICUS CURIAE,  
15           SUPPORTING THE RESPONDENTS

16           MR. STEWART: Mr. Chief Justice, and may it  
17  please the Court:

18           The statute refers to false or fraudulent  
19  claims, and I think there are two different but  
20  complementary analytic routes that the Court could take  
21  to conclude that, if the facts alleged in Respondent's  
22  complaint are true, false or fraudulent claims were  
23  submitted.

24           One way to look at this is to focus on the  
25  fact that in Medicaid, as in other government

1 entitlement programs, a person who submits a claim is  
2 not simply asking for money; he is representing that he  
3 has a legal entitlement to be paid. And you can say, if  
4 a person asserts that he is legally entitled to be paid,  
5 and he knows that he has no such legal entitlement, the  
6 claim is false.

7                   And then you would ask, under what  
8 circumstances would a person know that he had no legal  
9 entitlement to be paid? And the answer would be, if the  
10 person knows that he has failed to comply with a  
11 material term of the contract or a material regulatory  
12 requirement, by definition, the government will have no  
13 obligation to pay, and the claim of legal entitlement  
14 will be false.

15                   And I think, Justice Breyer, you were  
16 exactly right in pointing to the law of contracts which  
17 draws a distinction between material and nonmaterial  
18 terms. And the purpose of that distinction is to  
19 identify the situation in which a breach by one party  
20 will excuse the counterparty's failure to perform. And  
21 so a -- if the government is obligated to pay money and  
22 the contractor makes certain corresponding performances,  
23 if a nonmaterial term is breached, the government's  
24 obligation to pay remains intact.

25                   And so a person who knew himself to be in

1 breach of a nonmaterial term and requested payment  
2 anyway wouldn't be making a false claim. He would be  
3 claiming a legal entitlement to be paid; he would be  
4 entitled to be paid because the breach wouldn't excuse  
5 the government's payment obligation. But if the term  
6 that was being breached was material, the claim of legal  
7 entitlement would be false.

8           The other analytic route that you could take  
9 to -- to get to the same result in this case really  
10 follows up on Justice Kagan's hypothetical about the  
11 situation in which there is a contract for services to  
12 be performed by a doctor, and the -- the person who has  
13 arranged for services to be provided by someone else  
14 comes in and says services have been performed; pay me.

15           And it seems like clear fraud under 529 and  
16 551 under the Restatement. You have made a  
17 representation, services have been performed.  
18 Explaining that they were performed by a nondoctor under  
19 the circumstances is essential to make that  
20 representation nonmisleading.

21           And what we have here, at least if the facts  
22 are as alleged, is basically the same thing. The  
23 complaint recites that in requesting payment, Universal  
24 Health Services submitted various invoices, and they  
25 used billing codes, five-digit numbers that were

1 determined by -- identified by MassHealth as the codes  
2 you use for particular types of services. One of them  
3 corresponded to individual therapy, one to group  
4 therapy, one to family therapy.

5               Now obviously, the claims would have been  
6 false if no services had been provided at all. And I  
7 assume everyone would agree that if MassHealth -- I'm  
8 sorry -- if Universal Health Services had billed for  
9 services provided in a group setting but had used the  
10 code that MassHealth had identified for individual  
11 therapy, that would have been a false claim because  
12 MassHealth is entitled to treat the use of that code as  
13 a representation that the services were -- were  
14 performed individually.

15              And, really, it's no -- it's not a large  
16 leap to say when you use the code for individual  
17 therapy, you are representing by -- that the services  
18 were performed, the treatment was performed by a person  
19 who was legally authorized to provide mental health  
20 therapy under Massachusetts law.

21              Now, unlike the contract hypothetical that  
22 Justice Kagan identified, in determining what implicit  
23 representations are being made, we wouldn't look to the  
24 previous promise that the person had made because  
25 there's no contract. We would look at the MassHealth

1    regs that identify who -- what kind of credentials do  
2    you have to have to perform particular types of mental  
3    health services and would --

4                   CHIEF JUSTICE ROBERTS:  How do you tell --  
5    Mr. Stewart, because at least under Mr. Frederick's view  
6    you have to have knowledge that the government wouldn't  
7    pay.  I assume the government wouldn't pay even for  
8    nonmaterial provisions.

9                   I mean, if you're supposed to pay -- you  
10   know, for \$100,000 you're going to provide these  
11   services, and you don't provide small service?  You  
12   still pay, but you wouldn't pay for that.  I mean, I  
13   don't understand that, how some things are material --  
14   does it go pay at all, or -- or carve out a particular  
15   provision?

16                   When -- when is the government -- when is  
17   there going to be not performance of a contract and the  
18   government's going to pay for that anyway?

19                   MR. STEWART:  Well, I think if we got a bill  
20   for particular services and the services had been  
21   essentially performed as they were expected to be, the  
22   government's policy objectives were adequately advanced  
23   but some technical requirement had not been complied  
24   with, that if it's a nonmaterial term, then by  
25   definition, it wouldn't excuse the government's duty to

1 perform.

2 CHIEF JUSTICE ROBERTS: Okay. So the  
3 contract is to provide all these health services, and by  
4 the way, you've got to buy, you know, staplers made in  
5 the United States, not -- not abroad. And they do  
6 everything, but they don't buy staplers made in the  
7 United States.

8 I would say the government, if they're, you  
9 know, rigorous contracting officers, would say okay, you  
10 get, you know, 99,000 whatever, but we're going to  
11 penalize you because you didn't use staplers -- we put  
12 that in there for a reason, you didn't do it, so we're  
13 going to withhold \$100, right?

14 MR. STEWART: We would certainly agree that  
15 in government contracting it's sometimes the case that  
16 the government's trying to serve ancillary policy  
17 objectives such as buy America, et cetera.

18 And so if under the terms of the agreement  
19 and the -- the law of contracts, the government would be  
20 legally entitled to withhold payment or a portion of the  
21 payment in that circumstance, then that would be a false  
22 claim.

23 CHIEF JUSTICE ROBERTS: Not -- if that would  
24 be --

25 JUSTICE KAGAN: If --



1 CHIEF JUSTICE ROBERTS: -- a false claim --

2 MR. STEWART: It --

3 CHIEF JUSTICE ROBERTS: -- and then they  
4 could bring -- and a relator can sue for that, then I  
5 don't understand the difference between material and  
6 immaterial.

7 MR. STEWART: Well, if it -- if it was the  
8 case -- I mean, it may be that you -- that your more  
9 expansive conception of material terms is correct, and  
10 that there would be some circumstances that I hadn't  
11 envisioned in which the government could lawfully  
12 withhold payment, even though the violation seemed  
13 fairly tangential to the claim. If that's the case, all  
14 it means is that the --

15 JUSTICE KAGAN: What are examples of --

16 CHIEF JUSTICE ROBERTS: I'm sorry. Just --  
17 all it means is?

18 MR. STEWART: All it means is that there  
19 would be more expansive False Claims Act liability, but  
20 not because we would be punishing people who didn't  
21 cheat the government. If -- if knowledge of the  
22 particular breach at issue could have led responsible  
23 government contracting officers to withhold payment  
24 wholly or in part, and the person --

25 JUSTICE BREYER: Well --

1                   MR. STEWART:  -- knows that he is in breach,  
2   he should be made --

3                   JUSTICE BREYER:  The wholly or in part,  
4   now -- now, I just copied out of the Horn book the basic  
5   difference between a material breach and a partial or  
6   nonmaterial breach of contract.  A material breach of  
7   contract is a contract that -- a breach that allows one  
8   party to repudiate the contract.  A nonmaterial breach  
9   is a breach that gives rise to damages but cannot serve  
10  as the basis for repudiation.

11                  Now, until this last interchange, I thought  
12  that was the distinction you were drawing, that if the  
13  piece of paper says nothing, but pay me, and there is a  
14  violation of a reg, if the violation of that reg is such  
15  to be material, meaning, it would be a basis for  
16  repudiation, then it is an implied -- then it is an  
17  implied statement.  It was complied with, and it's  
18  fraud.

19                  But if it's just staples, you may have to  
20  pay damage for staples, but that certainly doesn't -- to  
21  say the contrary there would make the contractor  
22  responsible for having complied with every one of 40,000  
23  regulations, the size of the room, size of the table.

24                  MR. STEWART:  Well, I mean, first, there is  
25  a distinction between situations in which one

1 contracting party could sue for damages, and situations  
2 in which one contracting party could refuse to  
3 perform --

4 JUSTICE BREYER: Yes.

5 MR. STEWART: -- its own obligations under  
6 the contract, including payment.

7 But I think the second thing is that the  
8 scienter requirement really is crucial here. It applies  
9 both to knowledge of the breach, and knowledge that it  
10 is material to the government.

11 The only other thing I wanted to -- to  
12 clarify in response to -- to your question is, we would  
13 say the test is whether the person knew that the  
14 government could lawfully withhold payment, not  
15 necessarily --

16 CHIEF JUSTICE ROBERTS: Withhold payment,  
17 but not repudiate the contract.

18 MR. STEWART: Withhold payment on the  
19 particular claim, because there would certainly be  
20 plenty of situations in which, if somebody billed for  
21 services that were not reimbursable under the terms of  
22 the particular program, there --

23 CHIEF JUSTICE ROBERTS: In other words, if  
24 they don't -- if they put the wrong billing code down,  
25 and, you know, you shouldn't have to pay them. But I

1     don't know that means you can say, okay, you're fired as  
2     our Medicare provider in the State of Massachusetts,  
3     which is what I understand materiality in the contract  
4     concept to be.

5                     But what you're saying is it's a false claim  
6     if it's -- and, you know, you said you were providing  
7     X-rays and you didn't. Okay. But -- and that's  
8     material, I would think, in the sense that you have to  
9     pay for it. You shouldn't pay them for it, but I don't  
10    know if it's material in the sense that you can get out  
11    of the whole --

12                    MR. STEWART: Then I would say material in  
13    the sense of allowing the government to decline to  
14    comply with its corresponding obligation to pay for that  
15    particular shipment or those particular services,  
16    because we certainly, as you say --

17                    JUSTICE SOTOMAYOR: Well, but that doesn't  
18    answer the question. There's a miscoding that's  
19    intentional and knowing, and there's a miscoding that's  
20    negligent.

21                    MR. STEWART: Exactly.

22                    JUSTICE SOTOMAYOR: So if it's a mistake,  
23    you could withhold payment, but you can't sue under the  
24    False Claims Act, correct?

25                    MR. STEWART: Exactly. And there is a

1     mental state that the FCA contemplates between  
2     negligence and actual knowledge, because it defines the  
3     term "knowingly" to include recklessness and --

4                     JUSTICE KAGAN:   Mr. Stewart -- I'm sorry.

5                     MR. STEWART:   Go ahead.

6                     JUSTICE KAGAN:   Could you just -- what are  
7     immaterial terms for the government?  I mean, give me  
8     some examples.  What would count as not material?

9                     MR. STEWART:   I mean, I don't know if there  
10    are any terms that are wholly immaterial, because if  
11    there were, presumably they wouldn't be in the -- the  
12    agreement or the -- the regulations.  But there are  
13    certainly terms that would be immaterial to particular  
14    claims.

15                    So, for example, if the government had a  
16    rule that said at all times, a hospital that is  
17    receiving Medicaid reimbursement has to have the  
18    following equipment in its operating room.  It might  
19    well be the case that a violation of that requirement  
20    would disentitle the claimant to payment for -- for  
21    surgical services performed, but would not disentitle  
22    the claimant to payment for services that had nothing to  
23    do with use of the operating room.

24                    And so to follow up on what I was saying  
25    before, I think what we have here is really a fairly

1 close variant on the hypothetical that -- that you  
2 floated, the case in which they represent that they  
3 performed individual therapy. They don't say that the  
4 person who performed it was not legally authorized to  
5 render billable services under the MassHealth program.  
6 That would seem to be a classic case of implied  
7 misrepresentation, fraudulent omission, et cetera.

8 JUSTICE KAGAN: When you started and you  
9 said that there are two ways in which this could be  
10 argued, do you have a preference as to which one of  
11 those two ways makes most sense, or are there cases  
12 where they diverge, and we should be aware of that?

13 MR. STEWART: I think this -- probably the  
14 one that would be most helpful to the government is the  
15 first one: That if you assert a claim of legal  
16 entitlement to be paid and you know that you are not  
17 legally entitled to be paid or are reckless as to that  
18 fact, the claim is -- the claim is false and it's  
19 knowingly false. That -- that would be the one that's  
20 most helpful to the government just because there are  
21 so -- there's such variations in the nature of the  
22 documentation that is provided by claimants under  
23 various government programs. That -- that general rule  
24 would be of the greatest health -- help.

25 The second I offer, really because in a

1 sense, it's an easier way to decide this case. If the  
2 government was not -- I mean, I'm sorry -- if the Court  
3 was not ready yet to decide whether the broader  
4 proposition was correct, it could still say, in this  
5 case, there was not simply a claim for a particular  
6 dollar amount. There was at least a little bit of  
7 detail as to what were the nature of the services to be  
8 performed. And giving that detail without giving the  
9 offsetting fact, if it is a fact, that the services were  
10 performed by noncredentialed, unsupervised people, would  
11 render the -- the statement that was made misleading.

12           The last two things, if I -- if I could just  
13 say them very briefly, Mr. Englert referred to the  
14 newness of implied certification. The term "implied  
15 certification" is new. I don't believe it was used  
16 until the last 25 years or so. But the concept that a  
17 person can be held liable for fraud even though he says  
18 nothing explicitly false but labors to create a false  
19 impression, that's been around for ages.

20           The second thing is, Mr. Englert said that  
21 the current FCA adopts a watered-down version of the  
22 materiality requirement. I think if you compare the  
23 current statutory definition to this Court's formulation  
24 of the traditional materiality standard in *Neder*, in  
25 *Gaudin*, in *Kungys*, that the current statutory definition

1 is drawn essentially verbatim from this Court's  
2 description of what material -- materiality had  
3 traditionally been at common law.

4 CHIEF JUSTICE ROBERTS: And, Mr. Stewart,  
5 both United States and Massachusetts did not intervene  
6 in this case; is that right?

7 MR. STEWART: That's correct.

8 CHIEF JUSTICE ROBERTS: Why is that?

9 MR. STEWART: We don't -- I don't know the  
10 answer, and we don't typically give public explanations  
11 of why we don't intervene. Sometimes it's because the  
12 dollar amount is small. Sometimes it's because the --  
13 we think that the relator is capable of handling the  
14 case himself, or the relator's counsel. Sometimes we do  
15 decline to intervene, because we're skeptical of the  
16 merits of a case. But even in those situations, it  
17 could be that we agree with the relator's theory and  
18 simply don't know whether the facts could be proved. It  
19 comes in all variations.

20 I -- our amicus brief is obviously the --  
21 the best evidence of what we believe the correct legal  
22 rule to be. The only other thing I would say is that  
23 our decisions about whether to intervene in particular  
24 cases would be skewed if we believed that courts would  
25 draw from our failure to intervene an adverse inference



1 as to our views on the legal theory. If we felt that we  
2 would be made to seem skeptical of the implied  
3 certification by not intervening, we'd feel pressured to  
4 do it.

5 CHIEF JUSTICE ROBERTS: Thank you, counsel.  
6 Eight minutes, Mr. Englert.

7 MR. ENGLERT: Thank you, Mr. Chief Justice.

8 REBUTTAL ARGUMENT OF ROY T. ENGLERT, JR.

9 ON BEHALF OF THE PETITIONER

10 MR. ENGLERT: The False Claims Act uses  
11 words drawn from the common law of torts, not words  
12 drawn from the common law of contracts. This is  
13 Henry Steiner and Duncan Kennedy, not Charles Fried.

14 The test, as stated by my friends on the  
15 other side, is the core test is whether the State could  
16 reject the claim for reimbursement. That is a contract  
17 standard; that is not a tort standard. And if this  
18 Court accepts that version of the implied-certification  
19 theory, it will be much broader than anything the lower  
20 courts have ever done, and a parade of horrors in the  
21 light green amicus briefs would cite many horrible  
22 cases. Mr. Frederick says they cite none. They cite  
23 many real-world horrible cases. That would be the tip  
24 of the iceberg if this Court accepts their theory.

25 It has been suggested that everyone knows

1     that it's common sense and that it's obvious that people  
2     who provide counseling services to teenagers must be  
3     licensed. Well, apparently, the Commonwealth of  
4     Massachusetts doesn't find it obvious. Section  
5     429.424(E) (1), quoted on page 8 of our opening brief,  
6     states the standards in which "counselors and unlicensed  
7     staff may provide counseling services."

8                 If it's so obvious, why did the First  
9     Circuit have to rely on a regulation that applies only  
10    to satellite facilities? When the First Circuit found a  
11    regulation that no one had cited in all of this  
12    litigation, it didn't cite one that applies to every  
13    facility. It cited one that applies only to satellite  
14    facilities. And yet, we're told it's so obvious that my  
15    clients should have known that, and that there is  
16    materiality and scienter in this case.

17                Volume II of the Joint Appendix contains  
18    seven complaints to State agencies, four reports by  
19    State agencies, two consent decrees, and four other  
20    documents. They cite many, many, many, many  
21    regulations. This morass of regulations, bluntly, is  
22    worse than the Internal Revenue Code. It's full of  
23    cross-references; it's full of contradictions, as the  
24    First Circuit itself acknowledged in footnote 15.

25                The way the First Circuit resolved the

1 contradiction was to refer to the nonpromulgating  
2 agency; so it's Chevron on steroids. These things are  
3 not obvious. These regulations are not obvious.

4 Now, Mr. Frederick and Mr. Stewart, and in  
5 particular Mr. Frederick, may seem to have scored a blow  
6 when he put -- said fraudster shouldn't get to pick and  
7 choose which regulations they comply.

8 Well, if you assume fraud, if you put the  
9 rabbit in the hat, you can take the rabbit out of the  
10 hat. People should pick and choose which regulations  
11 they comply with. Why? Because there's so many and  
12 confusing. And who holds the keys to telling them which  
13 regulations to comply with? The regulating agency or  
14 the contracting agency.

15 If the contracting agency or the regulating  
16 agency says, please focus on this regulation because it  
17 really matters, guess what? People will focus on the  
18 regulation because they know it really matters. If  
19 relators come in after the fact, not the Commonwealth of  
20 Massachusetts, not the United States, but relators come  
21 in after the fact and say, this was so critical that you  
22 should have known and you acted -- it was material, it  
23 was essential, and you acted with scienter, and they get  
24 treble damages, attorney's fees, \$5500 or more, \$5500  
25 minimum per claim civil penalties, and the opprobrium of

1 calling someone a fraudster, that's not the system in  
2 which the regulators have control. That is not the  
3 administrative state we know. That is a game of  
4 got-you, after-the-fact got-you.

5 JUSTICE BREYER: How does it differ, what  
6 you just said, from this thing in the Restatement where  
7 you say it would be fraud, facts basic to the  
8 transaction or matters known, that he knows to prevent  
9 his statement from being misleading? The statement is,  
10 implicitly, I did the work. And this kind of problem,  
11 is it or is it not, basic to the transaction that the  
12 doctor be certified, is the kind of thing that I think  
13 you and other lawyers argue very well on opposite sides,  
14 as you just did.

15 But the standard you advocate is, according  
16 to the Restatement, misleading statement about a fact  
17 basic to the transaction, misleading, implicitly, I did  
18 it. Truth? I didn't. You see, I'm saying your  
19 standard gives rise to the same problem, doesn't it?

20 MR. ENGLERT: No.

21 JUSTICE BREYER: Why?

22 MR. ENGLERT: Because the common law has  
23 worked through these problems, Justice Breyer. The  
24 common law of torts, not the common law of contracts.  
25 Look at illustrations 3 through 8 of the -- of the

1 Restatement.

2 But if that doesn't do it for you, think  
3 about the dog that didn't bark in the room. Look for  
4 common-law fraud cases that state their theory. You  
5 won't find them. You won't find them. They don't  
6 exist. This is a theory made up by the plaintiffs' bar  
7 in the last 22 years, and it has run amok.

8 There is a parade of horrors in the light  
9 green amicus briefs. There is a parade of horrors in  
10 the red -- in the dark green amicus briefs. Their  
11 parade of horrors is that it would be A-OK to do these  
12 things. It's not A-OK to do these things. There are  
13 calibrated remedies administered by the government for  
14 breach of contract, for violating regulations.

15 The Massachusetts authorities had calibrated  
16 remedies in this case: Two years of suspension and a  
17 \$1,000 fine. They didn't ask for any money back. They  
18 didn't ask for any money back. They didn't say, this is  
19 the kind of thing that is so basic that you should give  
20 us our money back. They said, we need some corrective  
21 measures. These are services for poor people. These  
22 are --

23 JUSTICE SOTOMAYOR: Let's not forget  
24 something. Money came from the Federal government. It  
25 may be a system in this cooperative program that's

1     flawed, but Massachusetts Health has no incentive to  
2     seek the money back because they're not paying it.

3                 The people with the incentive are the  
4     Federal government, and that's why we have the False  
5     Claims Act, because the Federal government can't enforce  
6     all seeking of money back in these cooperative programs.

7                 MR. ENGLERT:   Okay.   But it has to be a  
8     false or fraudulent claim, which are terms derived from  
9     the common law, construed in this Court's cases,  
10    elaborated through the common law --

11                JUSTICE SOTOMAYOR:   I have a very hard time  
12    accepting that if you provide -- if you claim money for  
13    a service that you don't render, not a qualified  
14    individual, unsupervised by a qualified individual,  
15    which is a requirement specifically in the regulations,  
16    I'm having a hard time understanding how you have not  
17    committed a fraud --

18                MR. ENGLERT:   Your Honor, all the --

19                JUSTICE SOTOMAYOR:   -- if you knew what you  
20    were doing.

21                MR. ENGLERT:   All that was submitted was a  
22    request for payment.   The government controls what it  
23    will require in a request for payment.   There is no  
24    allegation of a false statement in the request for  
25    payment.   The only allegation is that every jot and

1 tittle of every MassHealth regulation is incorporated as  
2 long as it's approved --

3 JUSTICE SOTOMAYOR: I don't think that it's  
4 every --

5 MR. ENGLERT: -- under scienter.

6 JUSTICE SOTOMAYOR: -- provision.

7 MR. ENGLERT: Well, Your Honor, it's --

8 JUSTICE SOTOMAYOR: But I think it's a very  
9 basic provision --

10 MR. ENGLERT: Your Honor, with respect --

11 JUSTICE SOTOMAYOR: -- when you say, I  
12 performed this service, that you performed a service in  
13 accordance with the contract.

14 MR. ENGLERT: And in seven complaints to  
15 administrative agencies, in the -- in the operative  
16 complaint in this case, amended many times, why is not  
17 the regulation the First Circuit relied on even cited?  
18 Why is the regulation Mr. Frederick says he would have  
19 used if he had been litigating this case in the district  
20 court even cited?

21 It proves my point, Your Honor, that this is  
22 a morass. And for one to think, after the fact, this is  
23 basic and central and this is fraud, is a plaintiff's  
24 lawyer's game.

25 Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you, counsel.

2 The case is submitted.

3 (Whereupon, at 12:01 p.m., the case in the  
4 above-entitled matter was submitted.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



<b>A</b>				
<b>A-OK</b> 30:10	53:13	48:20 49:21	<b>Army</b> 12:19	47:15 48:21
53:11,12	<b>administrative</b>	53:9,10	<b>arranged</b> 37:13	<b>believed</b> 48:24
<b>a.m</b> 1:16 3:2	52:3 55:15	<b>amok</b> 53:7	<b>asked</b> 3:21 12:7	<b>believes</b> 9:1 28:6
<b>Ab-Tech</b> 17:3	<b>adopted</b> 34:11	<b>amount</b> 47:6	<b>asking</b> 11:6	<b>best</b> 48:21
<b>able</b> 34:24	<b>adopts</b> 47:21	48:12	21:11 33:22	<b>better</b> 19:15
<b>above-entitled</b>	<b>advanced</b> 39:22	<b>analysis</b> 16:24	36:2	<b>beyond</b> 14:19
1:14 56:4	<b>adverse</b> 48:25	<b>analytic</b> 35:20	<b>assert</b> 46:15	<b>bid</b> 32:5
<b>abroad</b> 40:5	<b>advice</b> 21:11	37:8	<b>asserts</b> 22:8 36:4	<b>bid-ask</b> 32:7
<b>absolutely</b> 6:16	<b>advocate</b> 52:15	<b>analyzing</b> 22:22	<b>assume</b> 5:3,23	<b>bill</b> 25:16 39:19
32:22	<b>after-the-fact</b>	<b>ancillary</b> 40:16	6:7 38:7 39:7	<b>billable</b> 46:5
<b>abstract</b> 31:3	52:4	<b>Angstrom's</b> 34:4	51:8	<b>billed</b> 38:8 43:20
<b>accepting</b> 54:12	<b>agencies</b> 3:17,18	<b>announce</b> 9:21	<b>assuming</b> 12:12	<b>billing</b> 37:25
<b>accepts</b> 49:18,24	50:18,19 55:15	<b>answer</b> 5:16	<b>attached</b> 31:20	43:24
<b>access</b> 28:20	<b>agency</b> 3:20	36:9 44:18	<b>attorney's</b> 51:24	<b>billions</b> 19:21
<b>accommodate</b>	20:6 51:2,13	48:10	<b>authorities</b>	28:18
5:21	51:14,15,16	<b>anybody</b> 13:7	53:15	<b>bit</b> 32:5 47:6
<b>acknowledged</b>	<b>ages</b> 47:19	<b>anyway</b> 37:2	<b>authorized</b>	<b>Blackjack</b> 7:10
50:24	<b>ago</b> 14:8,9 19:4	39:18	38:19 46:4	<b>blah</b> 30:25,25,25
<b>Acquisition</b>	<b>agree</b> 15:3,7	<b>apart</b> 15:23	<b>automatically</b>	<b>blow</b> 51:5
31:21	33:7 38:7	<b>apparently</b> 50:3	5:15	<b>bluntly</b> 50:21
<b>Act</b> 4:1 8:1	40:14 48:17	<b>appeals</b> 8:22	<b>avoid</b> 19:9	<b>body</b> 4:20
11:12,16 12:25	<b>agreed</b> 12:8	9:19	<b>avoidance</b> 19:2	<b>book</b> 42:4
14:7 15:13	<b>agreement</b>	<b>APPEARAN...</b>	<b>aware</b> 46:12	<b>boots</b> 15:21,22
17:2,12 19:6	40:18 45:12	1:17		16:5 18:6 35:4
19:17,18 24:8	<b>agrees</b> 20:21	<b>appellate</b> 4:6	<b>B</b>	<b>bottom</b> 20:7
24:9,11 29:15	<b>ahead</b> 45:5	<b>appellee</b> 19:11	<b>b</b> 21:24	<b>box</b> 31:15
29:19 32:5	<b>allegation</b> 54:24	<b>Appendix</b> 50:17	<b>back</b> 3:16,21 4:9	<b>boy</b> 27:18
33:21 34:1,6	54:25	<b>applicable</b> 9:6	11:25 17:8,8	<b>breach</b> 5:9 6:9
34:17 41:19	<b>alleged</b> 3:20 4:5	<b>applies</b> 10:21	26:25 53:17,18	7:16 10:1,2
44:24 49:10	24:25 35:21	43:8 50:9,12	53:20 54:2,6	12:16,16,19
54:5	37:22	50:13	<b>balance</b> 22:1	24:7 25:1
<b>acted</b> 51:22,23	<b>allow</b> 30:4	<b>applying</b> 10:15	<b>bar</b> 53:6	36:19 37:1,4
<b>acting</b> 33:18	<b>allowing</b> 44:13	<b>approved</b> 55:2	<b>bark</b> 53:3	41:22 42:1,5,6
<b>actionable</b> 33:21	<b>allows</b> 42:7	<b>April</b> 1:12	<b>basic</b> 5:19 6:2,3	42:6,7,8,9 43:9
33:25	<b>ambiguous</b>	<b>area</b> 19:21,24	10:5 23:22	53:14
<b>actual</b> 34:17	27:17	32:9	27:19 31:11	<b>breached</b> 5:9
45:2	<b>amended</b> 14:8	<b>arguably</b> 11:19	33:13 42:4	36:23 37:6
<b>add</b> 9:2	14:12 55:16	11:20 18:16	52:7,11,17	<b>breaches</b> 12:17
<b>additional</b> 9:2	<b>Amendment</b>	<b>argue</b> 52:13	53:19 55:9,23	<b>breaching</b> 25:5
9:10 13:1,13	19:14	<b>argued</b> 46:10	<b>basically</b> 37:22	<b>bread</b> 10:15
14:18 28:7	<b>America</b> 40:17	<b>argument</b> 1:15	<b>basis</b> 10:16	<b>Breaking</b> 12:16
<b>address</b> 19:15	<b>amici</b> 10:4 24:19	2:2,5,8,12 3:3	25:22 26:5,20	<b>Breyer</b> 4:24
<b>adequately</b>	31:8	3:8 13:24,25	34:18 42:10,15	5:12,17 6:5,22
39:22	<b>amicus</b> 1:24	18:20,21 22:4	<b>behalf</b> 1:18,20	7:8,12 9:24
<b>administered</b>	2:10 4:7 7:3	35:13 49:8	2:4,7,14 3:9	10:20 11:10
	11:9 18:17	<b>arguments</b>	22:5 49:9	19:20 20:13,15
	34:3,5 35:14	21:10	<b>believe</b> 5:3	20:21,24 21:9

21:23 24:17 27:5,11,14 31:16 32:24 33:7 36:15 41:25 42:3 43:4 52:5,21 52:23 <b>Breyer's</b> 8:3 <b>brief</b> 4:7,7,13 7:2,3 27:2 28:3 29:11 34:5 48:20 50:5 <b>briefly</b> 47:13 <b>briefs</b> 7:3 11:9 18:17 34:3 49:21 53:9,10 <b>bring</b> 11:25 29:18 41:4 <b>broad</b> 7:5,5 14:2 <b>broader</b> 7:7 47:3 49:19 <b>broadly</b> 18:1 <b>brought</b> 6:20 <b>bulk</b> 33:18 34:13 <b>business</b> 28:19 <b>butter</b> 10:16 <b>buy</b> 15:20,21,23 40:4,6,17	<b>CARMEN</b> 1:7 <b>carve</b> 39:14 <b>case</b> 3:4,12,18 5:6,15,15 6:25 9:18 10:19 12:21 15:6 17:3,4 18:18 19:5 22:22 23:11 29:1,8 29:19 30:18 31:14 33:20 37:9 40:15 41:8,13 45:19 46:2,6 47:1,5 48:6,14,16 50:16 53:16 55:16,19 56:2 56:3 <b>cases</b> 5:21 12:4 30:14 34:4,13 46:11 48:24 49:22,23 53:4 54:9 <b>causes</b> 25:11 <b>causing</b> 17:11 <b>central</b> 55:23 <b>certain</b> 3:20 18:23 36:22 <b>certainly</b> 20:2 40:14 42:20 43:19 44:16 45:13 <b>certification</b> 17:9 19:4 29:16 33:4,13 34:11 35:3 47:14,15 49:3 <b>certifications</b> 30:9 <b>certified</b> 52:12 <b>certify</b> 20:8 31:17 32:25 33:1 <b>cetera</b> 7:18 40:17 46:7 <b>change</b> 21:1,1 <b>changes</b> 32:2	<b>charge</b> 30:10 <b>charging</b> 30:12 <b>Charles</b> 49:13 <b>charted</b> 34:7 <b>cheat</b> 41:21 <b>check-off</b> 31:15 <b>Chevron</b> 51:2 <b>Chiarella</b> 6:25 7:1,4 13:18 <b>Chief</b> 3:3,10 22:2,6 24:6,23 25:8,11,20,24 26:3,7,11,15 26:21 28:10,15 28:25 29:7 30:14 31:25 32:1,8 33:15 35:11,16 39:4 40:2,23 41:1,3 41:16 43:16,23 48:4,8 49:5,7 56:1 <b>children</b> 23:16 <b>choose</b> 32:17 51:7,10 <b>Circuit</b> 4:4 24:2 50:9,10,24,25 55:17 <b>circumstance</b> 32:21 40:21 <b>circumstances</b> 5:2 21:13 36:8 37:19 41:10 <b>citation</b> 7:4 <b>cite</b> 49:21,22,22 50:12,20 <b>cited</b> 4:6,6,7 7:1 7:2,3 9:20 23:11 27:2 50:11,13 55:17 55:20 <b>civil</b> 15:22 17:8 17:10 19:11 35:1 51:25 <b>claim</b> 3:13,15 4:10 9:22 11:24 12:2	13:2 14:16 16:7,9,10 21:1 22:11 24:8 25:21,23 26:5 26:9 30:19 31:20 36:1,6 36:13 37:2,6 38:11 40:22 41:1,13 43:19 44:5 46:15,18 46:18 47:5 49:16 51:25 54:8,12 <b>claimant</b> 3:23 22:8 25:2 26:9 26:12 33:18,22 45:20,22 <b>claimants</b> 46:22 <b>claiming</b> 25:18 37:3 <b>claims</b> 4:1 8:1 11:12,16 14:7 15:12 16:12,13 16:17 17:1,2,4 17:12 19:6,18 24:8,9 29:15 29:19 32:4 33:21 34:1,6 34:17 35:19,22 38:5 41:19 44:24 45:14 49:10 54:5 <b>clarify</b> 43:12 <b>classic</b> 46:6 <b>Clause</b> 19:12 <b>clear</b> 29:22 37:15 <b>clients</b> 50:15 <b>clinical</b> 23:25 <b>close</b> 27:18 46:1 <b>code</b> 38:10,12,16 43:24 50:22 <b>codes</b> 37:25 38:1 <b>college</b> 30:2,5,7 30:8,22 <b>come</b> 3:16 15:25 23:21 34:13	51:19,20 <b>comes</b> 18:14 30:16,20 31:1 34:19 37:14 48:19 <b>coming</b> 4:9 <b>Comments</b> 5:25 21:21,25 <b>commit</b> 8:6 <b>committed</b> 8:16 21:18 54:17 <b>common</b> 5:20 7:6,7,9,13,15 7:21,24 8:17 11:14 12:3 15:5,11 19:25 48:3 49:11,12 50:1 52:22,24 52:24 54:9,10 <b>common-law</b> 53:4 <b>Commonwealth</b> 4:7 50:3 51:19 <b>company</b> 3:22 6:10,15 30:24 <b>compare</b> 47:22 <b>complaint</b> 4:6 35:22 37:23 55:16 <b>complaints</b> 50:18 55:14 <b>complementary</b> 35:20 <b>completely</b> 9:6 29:17,24 <b>compliance</b> 32:12 <b>complicated</b> 30:15 31:2 <b>complied</b> 20:8 31:17 33:1 39:23 42:17,22 <b>comply</b> 10:24 34:21 36:10 44:14 51:7,11 51:13 <b>complying</b> 32:23
---	---	--	--	--

<p><b>conceded</b> 29:17  <b>concept</b> 17:7,11  44:4 47:16  <b>conception</b> 41:9  <b>concern</b> 25:11  31:7  <b>concerns</b> 11:8  11:11 19:16  <b>conclude</b> 34:18  35:21  <b>conclusion</b> 34:9  <b>condition</b> 10:11  10:21 24:3  26:19  <b>conditions</b> 22:11  23:1,2,2,4 27:7  <b>confused</b> 12:7  18:16  <b>confuses</b> 22:15  <b>confusing</b> 51:12  <b>Congress</b> 7:6  <b>consent</b> 50:19  <b>considered</b> 19:5  <b>constitutional</b>  19:1,15  <b>constructed</b>  23:3  <b>construed</b> 4:11  54:9  <b>construing</b> 6:24  <b>contains</b> 22:12  50:17  <b>contemplates</b>  45:1  <b>context</b> 15:22  <b>contract</b> 4:25,25  5:6,8,14,14 6:6  6:9,11,13,16  7:16,20,24 8:5  8:11 10:9,12  10:18 11:7  12:15,16,17,19  16:20 17:18,21  17:22,23,25  18:2,5 19:24  21:1,2 24:7  31:5,20 36:11</p>	<p>37:11 38:21,25  39:17 40:3  42:6,7,7,8 43:6  43:17 44:3  49:16 53:14  55:13  <b>contract-based</b>  10:7  <b>contracted</b> 5:4  12:23 13:9  <b>contracting</b> 13:4  14:1 40:9,15  41:23 43:1,2  51:14,15  <b>contractor</b>  36:22 42:21  <b>contractors</b>  15:25 35:3  <b>contracts</b> 7:9,10  10:15 15:20,21  15:23 21:3,3  33:10 36:16  40:19 49:12  52:24  <b>contradiction</b>  51:1  <b>contradictions</b>  50:23  <b>contrary</b> 42:21  <b>control</b> 52:2  <b>controls</b> 54:22  <b>cooperative</b>  53:25 54:6  <b>copied</b> 31:22  42:4  <b>core</b> 31:7 49:15  <b>corners</b> 18:21  <b>Correa</b> 1:8 3:6  <b>correct</b> 20:18  26:14,17,24  27:10 28:13,14  29:6 41:9  44:24 47:4  48:7,21  <b>corrective</b> 53:20  <b>correctly</b> 9:15  <b>corresponded</b></p>	<p>38:3  <b>corresponding</b>  36:22 44:14  <b>cost</b> 30:13  <b>counsel</b> 22:2  35:11 48:14  49:5 56:1  <b>counseling</b> 50:2  50:7  <b>counselors</b> 50:6  <b>count</b> 45:8  <b>counterparty's</b>  36:20  <b>course</b> 10:21,23  25:12  <b>court</b> 1:1,15  3:11 4:11 6:24  8:22 9:19  10:14 11:25  13:18 17:3  19:4,10,13,17  22:7,16,25  23:11 25:20  35:17,20 47:2  49:18,24 55:20  <b>Court's</b> 15:6  47:23 48:1  54:9  <b>courts</b> 7:25  11:21 48:24  49:20  <b>cover</b> 7:6 16:15  26:6 32:6  <b>covers</b> 4:20  <b>create</b> 47:18  <b>creating</b> 32:18  <b>credentials</b> 39:1  <b>critical</b> 6:16  28:22 32:22  51:21  <b>cross</b> 9:19  <b>cross-references</b>  50:23  <b>crucial</b> 43:8  <b>cry</b> 9:18  <b>curiae</b> 1:24 2:10  35:14</p>	<p><b>current</b> 47:21  47:23,25  <b>cut</b> 19:3</p> <hr/> <p><b>D</b></p> <hr/> <p><b>D</b> 3:1  <b>D.C</b> 1:11,18,20  1:23  <b>daily</b> 10:16  <b>damage</b> 42:20  <b>damages</b> 10:13  42:9 43:1  51:24  <b>dark</b> 7:3 53:10  <b>data</b> 34:17  <b>DAVID</b> 1:20 2:6  22:4  <b>Dawson</b> 7:10  <b>deal</b> 12:5 18:22  <b>deals</b> 5:19 10:15  <b>dealt</b> 8:20  <b>debarment</b> 21:5  <b>deceptive</b> 4:18  4:20  <b>decide</b> 47:1,3  <b>decided</b> 17:3  30:3  <b>decision</b> 8:21  <b>decisionmaker</b>  11:15  <b>decisions</b> 48:23  <b>decline</b> 44:13  48:15  <b>decrees</b> 50:19  <b>deem</b> 33:23  <b>Defense</b> 31:21  <b>defined</b> 3:15  15:5  <b>defines</b> 45:2  <b>definition</b> 11:13  14:1,17 24:13  36:12 39:25  47:23,25  <b>degrees</b> 30:8  <b>deliberate</b> 24:14  <b>deliver</b> 12:24  <b>demand</b> 16:1,3</p>	<p><b>demanding</b>  17:20,23  <b>demands</b> 8:11  <b>denying</b> 16:13  <b>Department</b>  1:23 31:21  <b>depending</b>  13:13  <b>depends</b> 12:21  <b>Deputy</b> 1:22  <b>derived</b> 54:8  <b>describe</b> 20:5  <b>describes</b> 21:13  <b>description</b> 48:2  <b>destroy</b> 10:12  <b>detail</b> 3:18 47:7  47:8  <b>determined</b> 38:1  <b>determining</b>  38:22  <b>developed</b> 5:20  <b>dichotomy</b> 23:4  <b>differ</b> 52:5  <b>difference</b> 27:21  27:23 28:1  41:5 42:5  <b>differences</b>  27:23  <b>different</b> 11:19  11:23 35:19  <b>difficult</b> 29:8  <b>difficulty</b> 30:16  <b>dimension</b> 20:24  <b>direct</b> 22:18  <b>directly</b> 28:2  <b>director</b> 3:23  <b>director's</b> 22:17  23:25  <b>disagreement</b>  16:24  <b>disappears</b> 10:9  <b>disclosing</b> 22:9  <b>disclosure</b> 6:4  <b>discussed</b> 27:3  <b>disentitle</b> 45:20  45:21  <b>dismiss</b> 34:15</p>
--	--	--	--	---

<b>disputes</b> 23:14	13:21 39:25	<b>entitlement</b> 32:9	19:24	20:20,20 22:11
<b>disregard</b> 24:15		32:13 36:1,3,5	<b>expected</b> 39:21	22:14 24:8,9,9
<b>dissent</b> 7:4	<b>E</b>	36:9,13 37:3,7	<b>experts</b> 27:22	26:9 29:15,19
<b>distinction</b> 10:6	<b>e</b> 2:1 3:1,1 16:14	46:16	<b>explain</b> 16:23	30:19 32:4
10:7,14,17	21:21,24,24	<b>envisioned</b>	<b>Explaining</b>	33:21 34:1,6
11:7 36:17,18	27:19	41:11	37:18	34:17 35:18,22
42:12,25	<b>earlier</b> 13:24,25	<b>equipment</b>	<b>explanations</b>	36:6,14 37:2,7
<b>distinguish</b> 4:13	<b>easier</b> 28:1 47:1	45:18	48:10	38:6,11 40:21
9:25	<b>easy</b> 17:7 29:1	<b>Escobar</b> 1:7 3:5	<b>explicit</b> 8:6	41:1,19 44:5
<b>district</b> 22:25	<b>eaten</b> 16:5 18:7	<b>ESQ</b> 1:18,20,22	<b>explicitly</b> 47:18	44:24 46:18,19
23:11 55:19	<b>eight</b> 19:7 49:6	2:3,6,9,13	<b>express</b> 22:14,24	47:18,18 49:10
<b>diverge</b> 46:12	<b>Eighth</b> 19:14	<b>essential</b> 20:16	24:2	54:4,8,24
<b>doctor</b> 5:2,5,9	<b>either</b> 31:13,24	37:19 51:23	<b>expressly</b> 24:3	<b>falsity</b> 4:21
6:9,13,14,17	34:1	<b>essentiality</b>		<b>family</b> 38:4
6:18 8:8 11:3	<b>elaborated</b>	18:12,14 23:20	<b>F</b>	<b>famous</b> 8:21
12:11,13 21:17	54:10	<b>essentially</b> 27:3	<b>facilities</b> 30:5	<b>far</b> 7:14 9:18
30:22 37:12	<b>element</b> 11:19	29:17 39:21	50:10,14	28:5
52:12	11:23	48:1	<b>facility</b> 50:13	<b>FCA</b> 19:11 45:1
<b>doctor's</b> 8:7,14	<b>elements</b> 33:16	<b>essentials</b> 20:5	<b>fact</b> 8:15 20:2	47:21
16:21,21 18:9	<b>embedded</b> 16:25	<b>et</b> 7:18 40:17	23:5 30:24	<b>fear</b> 34:19
18:10	30:12	46:7	34:12,14 35:25	<b>features</b> 24:13
<b>documentation</b>	<b>empirically</b> 34:6	<b>Everybody</b>	46:18 47:9,9	<b>Federal</b> 14:1
46:22	<b>enforce</b> 54:5	20:21	51:19,21 52:16	17:4 31:20
<b>documents</b>	<b>engaging</b> 33:10	<b>everybody's</b>	55:22	32:12 33:9,12
50:20	<b>Englert</b> 1:18 2:3	19:24	<b>factors</b> 13:4	53:24 54:4,5
<b>dog</b> 53:3	2:13 3:7,8,10	<b>evidence</b> 48:21	<b>facts</b> 3:18 4:2	<b>feel</b> 49:3
<b>doing</b> 32:19	4:19 5:11,18	<b>ex</b> 1:7 3:5	5:19 6:2,3,6	<b>fees</b> 51:24
54:20	6:20,23 7:22	<b>exact</b> 5:19 10:11	9:18 12:21,22	<b>fell</b> 15:22
<b>dollar</b> 47:6	8:2,18 9:3,8,13	16:20	12:25 13:1,14	<b>felt</b> 49:1
48:12	10:18 11:10	<b>exactly</b> 9:11	27:19 35:21	<b>Fifth</b> 19:15
<b>dollars</b> 6:16	12:15,20 13:1	35:6 36:16	37:21 48:18	<b>filings</b> 34:7
19:22 21:14	13:11,13 14:5	44:21,25	52:7	<b>find</b> 5:7 50:4
28:18 33:9	14:7,11,25	<b>example</b> 6:2	<b>failed</b> 36:10	53:5,5
<b>Double</b> 19:12	15:3,11,14,18	29:25 45:15	<b>failure</b> 9:1,9,21	<b>fine</b> 6:5 7:8
<b>Draconian</b>	16:11,18,23	<b>examples</b> 6:3	20:11 28:7	18:22 53:17
19:18	18:1,8,11	13:16 15:12,12	36:20 48:25	<b>fined</b> 3:22
<b>dramatically</b>	20:12,14,19,22	41:15 45:8	<b>fair</b> 19:2	<b>fire</b> 21:17
17:12	21:20,24 47:13	<b>excessive</b> 19:5,9	<b>fairly</b> 41:13	<b>fired</b> 44:1
<b>draw</b> 29:22	47:20 49:6,7,8	<b>excessiveness</b>	45:25	<b>first</b> 4:4 5:13
48:25	49:10 52:20,22	19:16	<b>false</b> 3:13,13 4:1	11:4,12 17:4
<b>drawing</b> 42:12	54:7,18,21	<b>excuse</b> 36:20	4:10,11,11,17	24:2 26:12
<b>drawn</b> 11:7 48:1	55:5,7,10,14	37:4 39:25	4:17 5:10 8:1	42:24 46:15
49:11,12	<b>enters</b> 8:11	<b>exist</b> 53:6	9:11 11:12,16	50:8,10,24,25
<b>draws</b> 36:17	<b>entire</b> 3:12 16:2	<b>expand</b> 17:12	11:23 12:1	55:17
<b>drug</b> 30:24	<b>entitled</b> 36:4	<b>expansive</b> 41:9	14:7,16,18,19	<b>five</b> 6:3
<b>Duncan</b> 49:13	37:4 38:12	41:19	15:12 17:2,11	<b>five-digit</b> 37:25
<b>duty</b> 6:4 13:20	40:20 46:17	<b>expectations</b>	19:6,17,17	<b>flawed</b> 54:1

<b>floated</b> 46:2	14:16,18,19	53:19	53:13,24 54:4	<b>helpful</b> 46:14,20
<b>focus</b> 35:24	15:9 16:6,8,10	<b>given</b> 3:23 16:4	54:5,22	<b>Henry</b> 49:13
51:16,17	16:12,13,17	23:17	<b>government's</b>	<b>HHS</b> 31:22
<b>focused</b> 4:4	22:11 24:9	<b>gives</b> 24:8 42:9	7:2 18:19	<b>higher</b> 18:13
22:25 23:4	25:19 26:8	52:19	22:10 36:23	32:5
<b>focusing</b> 24:20	28:8 35:18,22	<b>giving</b> 47:8,8	37:5 39:18,22	<b>hired</b> 12:11
<b>follow</b> 45:24	46:7 54:8	<b>glad</b> 6:20	39:25 40:16	<b>hold</b> 21:8
<b>following</b> 45:18	<b>Frederick</b> 1:20	<b>go</b> 6:6 7:7,14	<b>graft</b> 17:8	<b>holding</b> 13:18
<b>follows</b> 37:10	2:6 22:3,4,6,13	18:14 21:2,4,5	<b>grant</b> 33:8	15:6
<b>food</b> 15:24,24	22:14,23 23:9	21:5 22:21	<b>great</b> 7:12 23:19	<b>holds</b> 20:25 21:6
16:5 18:7	24:10 25:4,10	26:25 31:6	<b>greatest</b> 46:24	51:12
<b>footnote</b> 4:12	25:20 26:1,4,8	39:14 45:5	<b>greatly</b> 11:13	<b>Honor</b> 5:23 6:20
50:24	26:14,17,24	<b>goes</b> 28:5	<b>green</b> 7:3 18:17	8:18 12:3
<b>foremost</b> 11:12	27:10,13,25	<b>going</b> 19:22,23	49:21 53:9,10	54:18 55:7,10
<b>forests</b> 31:23	28:13 29:6	25:5 32:2,3,4,5	<b>group</b> 38:3,9	55:21
<b>forget</b> 10:10	31:6 32:7 33:3	33:6,9,13,17	<b>guess</b> 8:2 16:9	<b>Horn</b> 42:4
14:3 53:23	33:8 49:22	33:20,25 39:10	20:9 25:8,14	<b>horrible</b> 49:21
<b>form</b> 20:2 21:1	51:4,5 55:18	39:17,18 40:10	31:1 51:17	49:23
21:14 27:7	<b>Frederick's</b> 39:5	40:13	<b>gun</b> 12:18	<b>horribles</b> 49:20
31:20	<b>freight</b> 30:10	<b>good</b> 5:14,15	<b>guns</b> 12:23,24	53:8,9,11
<b>formulation</b>	<b>Fried</b> 49:13	18:3 21:10	13:8 15:20,20	<b>hospital</b> 11:3
23:1 47:23	<b>friend</b> 27:4	<b>goods</b> 29:12,17	16:4 18:6 20:3	45:16
<b>fortunate</b> 23:10	<b>friends</b> 49:14	29:20	21:15 35:5	<b>hours</b> 15:23
<b>found</b> 50:10	<b>fulfilled</b> 10:25	<b>got-you</b> 52:4,4		<b>huge</b> 27:23
<b>four</b> 3:12 4:9	<b>full</b> 30:10 50:22	<b>gotten</b> 30:2	<b>H</b>	<b>hundreds</b> 30:16
12:1 50:18,19	50:23	<b>government</b> 4:3	<b>habit</b> 6:23,25	<b>hyperbole</b> 34:19
<b>frankly</b> 21:7	<b>fundamentally</b>	10:19 12:23	<b>Halper</b> 19:6,13	<b>hypothetical</b> 8:4
<b>fraud</b> 4:3,8,22	33:16	13:9 15:20,21	<b>hand</b> 19:25	9:6,12,14
4:22 5:21 6:18	<b>funds</b> 22:9 24:22	15:23 18:22	<b>handling</b> 48:13	13:15 31:4
6:24 7:5,24 8:1	28:21	20:25 21:3,6,7	<b>happened</b> 7:17	37:10 38:21
8:16,19 9:15	<b>further</b> 6:6	22:9 24:22	34:6,8	46:1
9:17,22 12:14	<b>furthermore</b>	25:6,18 26:4	<b>happy</b> 13:16	<b>hypotheticals</b>
12:17 13:8,17	33:22	26:10,18,19,20	<b>hard</b> 14:20	16:8 35:2
14:22 15:2,4,4		26:23 27:12	54:11,16	
15:8,13 20:11	<b>G</b>	29:4,18 30:7	<b>hat</b> 51:9,10	<b>I</b>
20:20,20,22,22	<b>G</b> 3:1	30:10,18 31:5	<b>health</b> 1:3 3:4	<b>iceberg</b> 49:24
21:18 32:18	<b>game</b> 52:3 55:24	31:10,14 32:10	22:19 23:24	<b>idea</b> 16:2
37:15 42:18	<b>Gaudin</b> 47:25	32:16,25 33:12	28:17,23 35:8	<b>idealogical</b> 23:3
47:17 51:8	<b>general</b> 1:22	33:23,24 34:14	37:24 38:8,19	<b>identified</b> 34:12
52:7 53:4	4:14 46:23	34:22 35:25	39:3 40:3	38:1,10,22
54:17 55:23	<b>generate</b> 31:23	36:12,21 39:6	46:24 54:1	<b>identify</b> 36:19
<b>fraudster</b> 24:21	<b>Ginsburg</b> 4:15	39:7,16 40:8	<b>healthcare</b>	39:1
51:6 52:1	4:19	40:15,19 41:11	23:15 32:9	<b>ignores</b> 4:14
<b>fraudulent</b> 3:13	<b>give</b> 6:2 15:16	41:21,23 43:10	<b>hear</b> 3:3	<b>II</b> 50:17
3:14 4:10 8:25	20:2 29:25	43:14 44:13	<b>heart</b> 9:25 18:15	<b>illustrations</b>
10:1 11:24	31:18,19,24	45:7,15 46:14	<b>held</b> 47:17	5:25 21:22,25
12:1,2 13:19	45:7 48:10	46:20,23 47:2	<b>help</b> 46:24	52:25

<b>immaterial</b> 41:6 45:7,10,13	<b>intentional</b> 44:19	13:12,14,22,23 13:24 14:6,10	35:2 37:10 <b>keep</b> 24:24	51:22 52:8
<b>implicit</b> 5:7,10 6:8,12,17 7:19 7:23 10:2,22 10:23,24 11:2 12:3,5 17:1 18:15 38:22	<b>interchange</b> 42:11	14:20,25 15:1 15:3,10,14,16 15:19,19 16:11 16:16,19,25 17:16 18:4,9 19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>Kennedy</b> 8:23 9:4,5,9,13 13:24 14:6,10 14:20 15:1,3 26:25 49:13 <b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	<b>knows</b> 8:25 27:16,20 28:6 36:5,10 42:1 49:25 52:8 <b>Kungys</b> 47:25
<b>implicitly</b> 10:25 52:10,17	<b>intervene</b> 48:5 48:11,15,23,25	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	<b>L</b>
<b>implied</b> 17:9 19:4 20:4 29:16 34:10 35:3 42:16,17 46:6 47:14,14 49:2	<b>intervened</b> 34:14	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	<b>L</b> 1:22 2:9 35:13 <b>labors</b> 47:18 <b>large</b> 32:8 38:15 <b>Laughter</b> 7:11 <b>law</b> 4:20,21,22 5:20 7:6,7,9,13 7:15,21,24 8:17 11:7,14 12:4 15:5 21:3 21:3 36:16 38:20 40:19 48:3 49:11,12 52:22,24,24 54:9,10
<b>implied-certifi...</b> 4:1 17:6 49:18	<b>investigated</b> 3:17	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	<b>lawfully</b> 41:11 43:14 <b>lawyer's</b> 55:24 <b>lawyers</b> 52:13 <b>lays</b> 24:4 <b>leading</b> 34:5 <b>leap</b> 23:19 38:16 <b>leather</b> 35:5 <b>leaves</b> 16:9 <b>led</b> 12:25 15:12 41:22
<b>implied</b> 17:9 19:4 20:4 29:16 34:10 35:3 42:16,17 46:6 47:14,14 49:2	<b>inviting</b> 32:22	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	<b>legally</b> 36:4 38:19 40:20 46:4,17 <b>legislative</b> 17:14 17:15 <b>lengthy</b> 3:19 <b>lenity</b> 19:2 <b>let's</b> 6:5 8:5 9:16 9:17 53:23
<b>implied-certifi...</b> 4:1 17:6 49:18	<b>invoices</b> 37:24	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	<b>liability</b> 5:22
<b>imply</b> 10:25	<b>invoke</b> 9:19	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	
<b>important</b> 25:7 26:18 31:10 32:17	<b>invoking</b> 19:11	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	
<b>imposed</b> 3:22	<b>involving</b> 4:5 28:18	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	
<b>impression</b> 47:19	<b>issue</b> 18:24,25 19:22 41:22	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	
<b>incentive</b> 54:1,3	<b>J</b>	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	
<b>inches</b> 11:1	<b>j</b> 5:25 21:21,25	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	
<b>include</b> 45:3	<b>Jeopardy</b> 19:12	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21:8 51:12 <b>killing</b> 31:23 <b>kind</b> 10:6 15:8 33:13 35:7 39:1 52:10,12 53:19 <b>kinds</b> 33:12 <b>knew</b> 25:16,16 36:25 43:13 54:19 <b>know</b> 6:12 7:9 7:13 12:13,20 18:6 20:6 22:16 24:24 26:13,15,18,21 27:8,22 28:11 28:18 29:3,4 30:23 31:3,10 34:24 36:8 39:10 40:4,9 40:10 43:25 44:1,6,10 45:9 46:16 48:9,18 51:18 52:3	
<b>including</b> 43:6	<b>Joint</b> 50:17	19:20 20:13,15 20:21,24 21:9 21:23 22:2,7 22:13,15,24 23:7,9 24:6,17 24:23 25:8,11 25:21,24 26:3 26:7,11,15,21 26:25 27:5,11 27:14 28:10,15 28:25 29:7 30:14 31:16,25 32:1,8,24 33:7 33:15 35:2,11 35:16 36:15 37:10 38:22 39:4 40:2,23 40:25 41:1,3 41:15,16,25 42:3 43:4,16 43:23 44:17,22 45:4,6 46:8 48:4,8 49:5,7 52:5,21,23 53:23 54:11,19 55:3,6,8,11 56:1	<b>key</b> 7:1 16:23 23:13 27:1 29:7 34:25 <b>keys</b> 20:25 21:7 21	

19:11 41:19 <b>liable</b> 47:17 <b>license</b> 23:18 <b>licensed</b> 35:9 50:3 <b>licenses</b> 30:9 <b>lie</b> 10:23,24 11:2 12:3,5 <b>lied</b> 10:21 <b>lies</b> 10:22 <b>light</b> 18:17 49:21 53:8 <b>line</b> 29:22 <b>links</b> 24:3 <b>list</b> 32:21 <b>litigate</b> 23:10 <b>litigating</b> 55:19 <b>litigation</b> 25:14 50:12 <b>little</b> 20:7 30:15 31:2 32:5 47:6 <b>live</b> 35:6 <b>long</b> 11:2 19:18 19:22 55:2 <b>look</b> 20:17 23:25 24:2 27:14 32:2 34:4 35:24 38:23,25 52:25 53:3 <b>looked</b> 34:17 <b>looking</b> 27:5,6 <b>lost</b> 23:5 <b>lot</b> 29:9 34:2,18 34:19 <b>lots</b> 21:10 <b>low</b> 14:13 <b>lower</b> 7:25 22:16 33:19 49:19	<b>MALCOLM</b> 1:22 2:9 35:13 <b>mass</b> 23:24 28:17 <b>Massachusetts</b> 1:6 3:5 4:8 25:1 38:20 44:2 48:5 50:4 51:20 53:15 54:1 <b>MassHealth</b> 38:1,7,10,12 38:25 46:5 55:1 <b>massive</b> 28:17 <b>material</b> 5:9 7:16 10:8,22 11:4,5,15,21 15:5 18:5 22:10 24:7,25 25:5,23 26:1,2 26:10,19,23 27:9 29:5 32:20 33:2,24 36:11,11,17 37:6 39:13 41:5,9 42:5,6 42:15 43:10 44:8,10,12 45:8 48:2 51:22 <b>materiality</b> 11:13,16,18,22 11:22 13:25 14:3,11,13,15 14:17,22,24 15:9 18:13,16 23:20 33:17 44:3 47:22,24 48:2 50:16 <b>materially</b> 28:6 <b>materialness</b> 28:6 <b>matter</b> 1:14 4:10 9:10 28:8 56:4 <b>matters</b> 10:8,9 27:16 51:17,18	52:8 <b>mean</b> 4:15,17,18 8:3 20:16 25:8 27:21 39:9,12 41:8 42:24 45:7,9 47:2 <b>meaning</b> 5:21 9:15 42:15 <b>means</b> 4:8,11 7:24 13:17 20:20,20,22 41:14,17,18 44:1 <b>meant</b> 6:13 7:25 <b>measures</b> 3:19 53:21 <b>Medicaid</b> 25:13 35:25 45:17 <b>Medicaid-rei...</b> 28:21 <b>medical</b> 4:25 5:4 8:8,14 16:21 16:21 20:3 21:15 30:4 <b>Medicare</b> 25:13 44:2 <b>member</b> 22:20 <b>men</b> 18:21 <b>mental</b> 23:15 28:23 35:8 38:19 39:2 45:1 <b>mentioned</b> 31:16 <b>merits</b> 48:16 <b>method</b> 22:21 <b>millions</b> 6:16 10:3 <b>mind</b> 24:25 <b>minimum</b> 51:25 <b>minutes</b> 49:6 <b>miscoding</b> 44:18 44:19 <b>misleading</b> 4:15 4:18,21 9:1 27:18 28:7 47:11 52:9,16	52:17 <b>misrepresenta...</b> 46:7 <b>missed</b> 33:19 <b>mistake</b> 27:20 44:22 <b>misunderstan...</b> 14:6 <b>model</b> 28:19 <b>money</b> 3:21 12:12 20:3 21:5 36:2,21 53:17,18,20,24 54:2,6,12 <b>morass</b> 50:21 55:22 <b>motion</b> 34:15 <b>mules</b> 35:5,6	<b>nonmisleading</b> 37:20 <b>nonpromulgat...</b> 51:1 <b>Normal</b> 10:16 <b>notably</b> 34:2 <b>notice</b> 19:2 31:9 31:14,18,19,24 34:21 <b>number</b> 28:22 <b>numbers</b> 37:25 <b>nurse</b> 8:9 <b>nurses</b> 24:5
<b>O</b>				
<b>O</b> 2:1 3:1 <b>objection</b> 20:10 <b>objectives</b> 39:22 40:17 <b>obligated</b> 36:21 <b>obligation</b> 36:13 36:24 37:5 44:14 <b>obligations</b> 43:5 <b>obvious</b> 6:12,14 10:6 29:13 50:1,4,8,14 51:3,3 <b>obviously</b> 38:5 48:20 <b>occurred</b> 23:23 <b>odd</b> 28:16 <b>offer</b> 46:25 <b>officers</b> 40:9 41:23 <b>offsetting</b> 47:9 <b>oh</b> 8:24 15:14 <b>okay</b> 9:17 11:2,2 20:22 27:14 28:25 29:15,18 40:2,9 44:1,7 54:7 <b>omission</b> 46:7 <b>omit</b> 27:11 32:19 <b>omits</b> 26:9 <b>once</b> 7:4 23:3				
<b>N</b>				
<b>N</b> 2:1,1 3:1 <b>narrow</b> 6:4 <b>nature</b> 46:21 47:7 <b>necessarily</b> 29:2 43:15 <b>necessary</b> 27:16 <b>Neder</b> 15:6 47:24 <b>need</b> 12:23 13:1 53:20 <b>negligence</b> 45:2 <b>negligent</b> 44:20 <b>negligently</b> 33:19 <b>new</b> 8:22 17:10 47:15 <b>newness</b> 47:14 <b>noncredentialed</b> 47:10 <b>nondoctor</b> 37:18 <b>nondoctor's</b> 16:22 <b>nonmaterial</b> 10:10 36:17,23 37:1 39:8,24 42:6,8				

32:18 <b>opening</b> 27:3 50:5 <b>operating</b> 45:18 45:23 <b>operative</b> 55:15 <b>opinion</b> 21:12 <b>opposite</b> 52:13 <b>opprobrium</b> 51:25 <b>oral</b> 1:14 2:2,5,8 3:8 22:4 35:13 <b>order</b> 9:10 31:23 <b>ordinary</b> 5:6 <b>original</b> 22:23 <b>overruled</b> 19:7 19:13	47:5 48:23 51:5 <b>parties</b> 5:4 13:4 33:10,11 <b>party</b> 36:19 42:8 43:1,2 <b>pass</b> 34:13 <b>passing</b> 19:14 <b>pay</b> 12:9 22:19 26:23 36:13,21 36:24 37:14 39:7,7,9,12,12 39:14,18 42:13 42:20 43:25 44:9,9,14 <b>paying</b> 54:2 <b>payment</b> 8:12 12:8 16:1,3 17:20,23 22:10 23:3 24:3 26:20 33:25 37:1,5,23 40:20,21 41:12 41:23 43:6,14 43:16,18 44:23 45:20,22 54:22 54:23,25 <b>penalize</b> 40:11 <b>penalties</b> 51:25 <b>people</b> 17:9 21:2 21:4,5,6 23:17 27:22 28:20 33:10 41:20 47:10 50:1 51:10,17 53:21 54:3 <b>perfectly</b> 18:22 <b>perform</b> 36:20 39:2 40:1 43:3 <b>performance</b> 39:17 <b>performances</b> 36:22 <b>performed</b> 37:12,14,17,18 38:14,18,18 39:21 45:21	46:3,4 47:8,10 55:12,12 <b>person</b> 5:3,23 6:7 8:10 11:3 21:13,16,18 25:15 32:11 36:1,4,8,10,25 37:12 38:18,24 41:24 43:13 46:4 47:17 <b>Petitioner</b> 1:4,19 2:4,14 3:9 23:21 30:2 49:9 <b>Petitioner's</b> 24:19 30:1 <b>pick</b> 30:19 32:16 51:6,10 <b>piece</b> 42:13 <b>plaintiff's</b> 55:23 <b>plaintiffs'</b> 53:6 <b>please</b> 3:11 12:9 21:9 22:7 35:17 51:16 <b>plenty</b> 43:20 <b>point</b> 13:25 14:14,14 17:22 20:15 21:11 23:8,13,13 24:17 26:12 28:2 29:7,14 33:5 34:3 55:21 <b>pointed</b> 35:2 <b>pointing</b> 36:16 <b>points</b> 34:20 <b>policy</b> 18:3 20:24 39:22 40:16 <b>poor</b> 53:21 <b>portion</b> 40:20 <b>portions</b> 18:5 <b>position</b> 24:7,10 25:14 31:8 <b>possible</b> 10:7 <b>potential</b> 32:6 <b>practice</b> 30:4	<b>precipitate</b> 25:14 <b>predicated</b> 28:19 <b>preference</b> 46:10 <b>present</b> 31:13 <b>presentation</b> 27:3 <b>pressured</b> 49:3 <b>presumably</b> 34:21 45:11 <b>pretty</b> 23:22 27:18 <b>prevent</b> 27:17 52:8 <b>previous</b> 38:24 <b>principle</b> 9:3 18:23 19:1 <b>principles</b> 19:1 19:3 <b>private</b> 4:24,25 <b>probably</b> 30:18 46:13 <b>problem</b> 5:13 11:17 18:14 24:18 31:1,11 31:12,14 32:15 33:15 35:3,7 52:10,19 <b>problems</b> 18:17 33:18 34:12 52:23 <b>produced</b> 3:19 <b>professionals</b> 35:10 <b>Professor</b> 34:4 <b>program</b> 28:18 43:22 46:5 53:25 <b>programs</b> 25:13 32:9 33:9 36:1 46:23 54:6 <b>promise</b> 10:2 12:8,16 38:24 <b>proper</b> 23:17 <b>properly</b> 11:22	<b>proposed</b> 3:19 <b>proposition</b> 16:25 47:4 <b>prove</b> 29:1 <b>proved</b> 48:18 <b>proves</b> 55:21 <b>provide</b> 12:11 13:8 28:23 38:19 39:10,11 40:3 50:2,7 54:12 <b>provided</b> 5:4,8 6:8 8:8,12,13 8:14,16 12:12 16:22,22 35:9 37:13 38:6,9 46:22 <b>provider</b> 44:2 <b>providing</b> 8:6 12:18 23:15 28:23 32:11 44:6 <b>provision</b> 10:25 23:12 26:22 27:1 28:2,11 30:21 39:15 55:6,9 <b>provisions</b> 28:16 33:4 39:8 <b>psychologists</b> 24:5 <b>psychology</b> 30:3 <b>public</b> 48:10 <b>punishing</b> 41:20 <b>punishment</b> 18:25 19:5,17 <b>punishments</b> 19:10 <b>punitive</b> 18:23 <b>purpose</b> 36:18 <b>put</b> 20:7 40:11 43:24 51:6,8
<hr/> <b>P</b> <hr/> <b>P</b> 3:1 <b>p.m</b> 56:3 <b>page</b> 2:2 27:2 28:3 50:5 <b>pages</b> 7:22 25:12 29:11 30:17 <b>paid</b> 33:11 36:3 36:4,9 37:3,4 46:16,17 <b>paper</b> 11:1 42:13 <b>parade</b> 49:20 53:8,9,11 <b>part</b> 5:1 14:17 25:6 41:24 42:3 <b>partial</b> 10:11 27:17 42:5 <b>partially</b> 29:21 29:23 <b>participation</b> 23:1,2,5 <b>particular</b> 25:17 26:16,22 30:23 32:20 38:2 39:2,14,20 41:22 43:19,22 44:15,15 45:13				
				<hr/> <b>Q</b> <hr/> <b>qualifications</b> 8:10 22:17 24:4



<b>qualified</b> 22:20 54:13,14	<b>recklessness</b> 45:3	<b>regulatory</b> 3:20 4:5 36:11	43:17	8:24 12:4
<b>qualifying</b> 9:10 28:8	<b>recognition</b> 19:16	<b>reimbursable</b> 43:21	<b>repudiation</b> 42:10,16	<b>restitution</b> 21:6
<b>question</b> 9:14 10:5,6 16:24 26:25 43:12 44:18	<b>recommendati...</b> 17:24	<b>reimbursement</b> 25:22 26:6 32:14 45:17 49:16	<b>request</b> 54:22,23 54:24	<b>result</b> 34:10 37:9
<b>quite</b> 7:1,14	<b>recoverable</b> 29:15,22	<b>reining</b> 6:25	<b>requested</b> 37:1	<b>reticulate</b> 34:23
<b>quote</b> 28:3,4	<b>red</b> 53:10	<b>reject</b> 25:21 26:20 49:16	<b>requesting</b> 37:23	<b>Revenue</b> 50:22
<b>quoted</b> 50:5	<b>redefine</b> 14:11 14:13	<b>rejecting</b> 25:22 26:5	<b>require</b> 54:23	<b>right</b> 6:22 9:23 10:16,17 14:10 14:10 22:8 23:8 27:13 31:11 36:16 40:13 48:6
<hr/> <b>R</b> <hr/>	<b>refer</b> 51:1	<b>rel</b> 1:7 3:5	<b>required</b> 30:9	<b>rigorous</b> 40:9
<b>R</b> 3:1	<b>reference</b> 7:20 7:23	<b>relator</b> 25:18 30:20,20 41:4 48:13	<b>requirement</b> 14:18 24:16,21 26:16 36:12 39:23 43:8 45:19 47:22 54:15	<b>rise</b> 24:8 42:9 52:19
<b>rabbit</b> 51:9,9	<b>referenced</b> 9:20	<b>relator's</b> 48:14 48:17	<b>requirements</b> 24:1,11 33:4	<b>risk</b> 32:6
<b>raised</b> 11:9	<b>referred</b> 47:13	<b>relators</b> 51:19 51:20	<b>requires</b> 13:19	<b>roadmap</b> 32:18
<b>rancid</b> 15:24	<b>refers</b> 18:12 35:18	<b>relevant</b> 18:25	<b>reserve</b> 22:1	<b>ROBERTS</b> 3:3 22:2 24:6,23 25:8,11,24 26:3,7,11,15 26:21 28:10,25 30:14 32:1 35:11 39:4 40:2,23 41:1,3 41:16 43:16,23 48:4,8 49:5 56:1
<b>rate</b> 32:10	<b>reflected</b> 18:17 20:23	<b>relied</b> 22:16 24:2 55:17	<b>resolved</b> 50:25	
<b>read</b> 11:22,23 17:2,7 21:10 28:21	<b>refuse</b> 43:2	<b>relies</b> 17:13	<b>respect</b> 12:1 35:8 55:10	
<b>ready</b> 47:3	<b>reg</b> 42:14,14	<b>rely</b> 17:14 50:9	<b>Respondent's</b> 18:19 35:21	
<b>real</b> 21:17	<b>regard</b> 29:5	<b>remains</b> 19:7 36:24	<b>Respondents</b> 1:9 1:21,24 2:7,11 22:5 35:15	
<b>real-world</b> 49:23	<b>regardless</b> 22:12	<b>remedial</b> 3:19	<b>Respondents'</b> 4:13 7:2	<b>room</b> 42:23 45:18,23 53:3
<b>reality</b> 31:4 32:2	<b>regs</b> 13:3 21:16 21:17 39:1	<b>remedies</b> 53:13 53:16	<b>response</b> 16:12 43:12	<b>route</b> 37:8
<b>really</b> 11:25 15:12 18:20 31:10 32:16 34:3 37:9 38:15 43:8 45:25 46:25 51:17,18	<b>regulating</b> 51:13 51:15	<b>render</b> 46:5 47:11 54:13	<b>responses</b> 5:11	<b>routes</b> 35:20
<b>reason</b> 18:3 40:12	<b>regulation</b> 4:5 9:19,20 20:9 22:18 23:7 25:1,3,17 26:16 28:12 29:3 50:9,11 51:16,18 55:1 55:17,18	<b>rendered</b> 22:20	<b>responsibilities</b> 22:18	<b>ROY</b> 1:18 2:3 2:13 3:8 49:8
<b>reasonable</b> 5:3 5:22 6:7 13:3	<b>regulations</b> 7:18 7:23 10:1,3 23:6,24 25:13 28:17,22 30:17 31:18,21,22,22 32:13 33:2 42:23 45:12 50:21,21 51:3 51:7,10,13 53:14 54:15	<b>reports</b> 3:19 50:18	<b>responsible</b> 41:22 42:22	<b>rule</b> 6:19 18:3 19:2 45:16 46:23 48:22
<b>reasons</b> 11:11		<b>represent</b> 46:2	<b>rest</b> 13:16	<b>rules</b> 34:23
<b>REBUTTAL</b> 2:12 49:8		<b>representation</b> 16:3,4 18:15 28:4,8 30:12 37:17,20 38:13	<b>Restatement</b> 4:23 5:19 6:1 8:20 13:15,17 13:20 16:14 18:11 20:23 21:20 27:1,15 28:1,4 37:16 52:6,16 53:1	<b>run</b> 53:7
<b>receive</b> 32:14		<b>representations</b> 17:1 38:23		<hr/> <b>S</b> <hr/>
<b>receiving</b> 45:17		<b>representing</b> 17:17,21 36:2 38:17		<b>S</b> 2:1 3:1
<b>recharacterized</b> 4:2		<b>repudiate</b> 42:8		<b>sadly</b> 7:25
<b>recites</b> 37:23				<b>sanction</b> 3:21
<b>reckless</b> 24:14 25:16 46:17	<b>regulators</b> 52:2		<b>Restatements</b>	<b>satellite</b> 50:10 50:13
				<b>satisfaction</b>

17:23 <b>satisfied</b> 17:18 17:20,22,25 <b>satisfy</b> 11:8,11 <b>saying</b> 7:21,21 8:15 15:11,15 17:17,17 20:8 20:10 21:14 26:5 32:11 44:5 45:24 52:18 <b>says</b> 6:12 7:5 8:6 8:12,25 11:1 13:18 20:2 22:19 27:16 30:20 31:17 37:14 42:13 47:17 49:22 51:16 55:18 <b>scenario</b> 32:15 <b>scholar</b> 34:5 <b>scienter</b> 15:9 43:8 50:16 51:23 55:5 <b>scored</b> 51:5 <b>SEC</b> 6:11,12,23 6:25 <b>second</b> 4:23 5:16 5:17 11:4 21:20 25:6 27:8 43:7 46:25 47:20 <b>Section</b> 4:22 5:18 8:20 13:14,17 16:14 21:21 22:17 28:4 50:4 <b>see</b> 9:5,24 18:20 21:20 52:18 <b>seek</b> 29:10 54:2 <b>seeking</b> 24:21 54:6 <b>selling</b> 6:15 35:4 <b>send</b> 20:2 <b>sense</b> 5:22 14:23 15:2 19:25 44:8,10,13	46:11 47:1 50:1 <b>sentence</b> 21:12 21:19,22 <b>separate</b> 3:17 <b>serve</b> 40:16 42:9 <b>service</b> 22:19 30:11 32:11 39:11 54:13 55:12,12 <b>services</b> 1:3 3:4 5:1,4,8 6:8 12:11,13 22:19 26:5 29:10,12 29:14 35:8 37:11,13,14,17 37:24 38:2,6,8 38:9,13,17 39:3,11,20,20 40:3 43:21 44:15 45:21,22 46:5 47:7,9 50:2,7 53:21 <b>serving</b> 28:19 <b>set</b> 7:18 8:10 <b>setting</b> 32:10 38:9 <b>settings</b> 18:23 <b>seven</b> 50:18 55:14 <b>shares</b> 6:11,15 <b>shelf</b> 7:18 <b>shipment</b> 44:15 <b>shoot</b> 12:19,24 13:8 15:20 16:4 18:6 35:5 <b>show</b> 25:3 <b>side</b> 23:14 29:9 31:9 34:2,19 49:15 <b>sides</b> 52:13 <b>sight</b> 23:5 <b>signing</b> 20:11 <b>simple</b> 29:25 <b>simpler</b> 8:4 <b>simply</b> 12:19 33:19 36:2	47:5 48:18 <b>sin</b> 22:23 <b>single</b> 4:4 32:3 <b>situation</b> 5:19 8:19 24:25 36:19 37:11 <b>situations</b> 24:20 32:8 33:12 42:25 43:1,20 48:16 <b>size</b> 42:23,23 <b>skeptical</b> 48:15 49:2 <b>skewed</b> 48:24 <b>small</b> 39:11 48:12 <b>social</b> 24:5 <b>sold</b> 6:11 <b>Solicitor</b> 1:22 4:14 <b>solve</b> 11:16 31:12,15 33:6 33:17 <b>solves</b> 24:18 <b>somebody</b> 8:9 43:20 <b>sorry</b> 12:6 38:8 41:16 45:4 47:2 <b>sort</b> 12:10 16:9 <b>Sotomayor</b> 9:23 12:6,18,21,22 13:6,12,14,22 15:19 22:13,15 22:24 23:7,10 44:17,22 53:23 54:11,19 55:3 55:6,8,11 <b>speaking</b> 17:10 <b>specialized</b> 21:4 <b>specific</b> 28:11 34:4 <b>specifically</b> 34:23 54:15 <b>specified</b> 32:21 <b>spell</b> 7:19 <b>spends</b> 29:9	<b>spike</b> 34:10 <b>square</b> 18:21 <b>staff</b> 22:20 50:7 <b>stake</b> 6:17 <b>standard</b> 14:13 14:23 18:13 20:18 25:17 29:11 33:19 47:24 49:17,17 52:15,19 <b>standards</b> 50:6 <b>standing</b> 19:18 <b>staplers</b> 40:4,6 40:11 <b>staples</b> 42:19,20 <b>start</b> 17:19 <b>started</b> 46:8 <b>state</b> 3:17 25:21 28:7 30:9 44:2 45:1 49:15 50:18,19 52:3 53:4 <b>stated</b> 4:22 13:2 13:2,14 49:14 <b>statement</b> 5:10 6:8,13,18 8:11 8:25 9:2,11 15:8 20:7 27:17 31:8 42:17 47:11 52:9,9,16 54:24 <b>statements</b> 4:21 22:14 <b>states</b> 1:1,6,15 1:24 2:10 3:5 4:12 19:6 35:14 40:5,7 48:5 50:6 51:20 <b>stating</b> 28:5 <b>statute</b> 3:13,15 3:15 7:5 11:20 16:2 17:5,8 18:24 24:12 35:18 <b>statutes</b> 14:2	32:12 <b>statutory</b> 47:23 47:25 <b>Steiner</b> 49:13 <b>step</b> 6:6 <b>steroids</b> 51:2 <b>Stewart</b> 1:22 2:9 35:12,13,16 39:5,19 40:14 41:2,7,18 42:1 42:24 43:5,18 44:12,21,25 45:4,5,9 46:13 48:4,7,9 51:4 <b>strict</b> 14:23 <b>strong</b> 19:10 <b>strongly</b> 19:3 <b>studied</b> 34:7 <b>studying</b> 30:3 <b>submission</b> 25:19 <b>submit</b> 29:20 34:16 35:1 <b>submits</b> 21:14 36:1 <b>submitted</b> 35:23 37:24 54:21 56:2,4 <b>submitter</b> 27:8 <b>submitting</b> 9:22 <b>subsequent</b> 17:15 <b>sudden</b> 12:24 <b>sue</b> 41:4 43:1 44:23 <b>suggested</b> 19:14 49:25 <b>suggesting</b> 16:7 <b>suited</b> 19:15 <b>supervised</b> 23:16 35:9 <b>supervision</b> 3:24 24:1 28:23 30:13 <b>supervisor</b> 23:25 <b>supplied</b> 21:15
--	---	---	---	---

<b>supporting</b> 1:24 2:11 11:9 35:15	54:8	<b>thousand</b> 21:14	33:16 34:20	48:19
<b>suppose</b> 4:24 9:16,17 28:16	<b>test</b> 25:20 33:24	<b>thousands</b> 7:22	35:19 46:9,11	<b>various</b> 37:24
<b>supposed</b> 39:9	43:13 49:14,15	25:12 30:17	47:12 50:19	46:23
<b>Supreme</b> 1:1,15	<b>textual</b> 18:20	<b>three</b> 3:17,18	53:16	<b>vast</b> 33:17 34:13
<b>Sure</b> 15:18	<b>Thank</b> 3:10 22:2	11:1 24:13	<b>types</b> 38:2 39:2	<b>verbatim</b> 48:1
<b>surgical</b> 45:21	22:6 35:10,11	27:6	<b>typically</b> 30:17	<b>version</b> 47:21
<b>suspect</b> 30:14	49:5,7 55:25	<b>time</b> 14:21 17:10	48:10	49:18
<b>suspension</b>	56:1	19:23 22:1		<b>versus</b> 23:2
53:16	<b>theories</b> 31:13	29:9 32:19	<b>U</b>	<b>view</b> 20:15
<b>syringes</b> 30:23	<b>theory</b> 4:1 17:6	54:11,16	<b>unchanged</b> 3:14	21:11 39:5
<b>system</b> 52:1	19:4 29:16	<b>times</b> 45:16	<b>understand</b> 7:20	<b>views</b> 49:1
53:25	30:2,6 34:11	55:16	8:3 14:4 17:16	<b>violated</b> 10:12
	48:17 49:1,19	<b>timing</b> 14:12	23:9 26:7 30:1	22:10 30:21
	49:24 53:4,6	<b>tip</b> 49:23	39:13 41:5	<b>violating</b> 6:17
	<b>therapy</b> 30:6	<b>tittle</b> 18:2,5 55:1	44:3	53:14
	38:3,4,4,11,17	<b>told</b> 50:14	<b>understanding</b>	<b>violation</b> 4:5
<b>T</b>	38:20 46:3	<b>top</b> 11:23	14:21 54:16	9:21,22 23:23
<b>T</b> 1:18 2:1,1,3,13	<b>thing</b> 26:12 32:4	<b>tort</b> 5:15 49:17	<b>understandings</b>	26:1,2 41:12
3:8 49:8	37:22 43:7,11	<b>tortification</b>	13:3	42:14,14 45:19
<b>table</b> 42:23	47:20 48:22	5:14	<b>understood</b> 9:14	<b>violations</b> 3:20
<b>take</b> 8:3 31:3	52:6,12 53:19	<b>torts</b> 4:23 21:21	12:10 13:23	21:2
35:20 37:8	<b>things</b> 16:11	49:11 52:24	15:10	<b>virtually</b> 24:18
51:9	27:15 32:17,22	<b>totally</b> 12:6	<b>United</b> 1:1,6,15	<b>Volume</b> 50:17
<b>takes</b> 23:19	32:25 33:1	<b>traditional</b>	1:23 2:10 3:5	
<b>talked</b> 7:17	34:22,25 39:13	47:24	4:12 19:6	<b>W</b>
27:15	47:12 51:2	<b>traditionally</b>	35:14 40:5,7	<b>want</b> 11:25
<b>talking</b> 7:9	53:12,12	48:3	48:5 51:20	19:20,23 21:14
24:19 29:10	<b>think</b> 6:14,18	<b>transaction</b> 5:20	<b>Universal</b> 1:3	21:19,19 24:24
35:7	7:15 8:24	6:2,3 27:19	3:4 37:23 38:8	32:16 34:23,24
<b>tangential</b> 41:13	10:10 13:6,7	52:8,11,17	<b>unlicensed</b> 50:6	<b>wanted</b> 43:11
<b>taught</b> 7:13	14:22 15:7	<b>transfer</b> 31:4	<b>unsuccessfully</b>	<b>wants</b> 7:7 20:7
<b>teacher</b> 7:10,12	16:10,19 22:23	<b>treat</b> 38:12	4:13	23:21
<b>technical</b> 39:23	23:14,19 25:6	<b>treatment</b> 38:18	<b>unsupervised</b>	<b>War</b> 15:22 17:8
<b>teenagers</b> 23:16	27:25 28:1,15	<b>treble</b> 51:24	47:10 54:14	17:10 35:1
30:6 50:2	28:25 29:7	<b>tries</b> 4:13	<b>upset</b> 19:24	<b>Washington</b>
<b>tell</b> 27:22 30:7	31:7,15 35:19	<b>trouble</b> 32:4	<b>use</b> 5:1 10:16	1:11,18,20,23
39:4	36:15 39:19	<b>true</b> 5:24 8:13	14:2,14,14	<b>wasn't</b> 13:8
<b>telling</b> 26:9	43:7 44:8	9:2 16:6 35:22	17:5 30:23	<b>watered</b> 11:14
27:12 51:12	45:25 46:13	<b>truth</b> 28:5 52:18	38:2,12,16	<b>watered-down</b>
<b>term</b> 5:7 8:6	47:22 48:13	<b>trying</b> 40:16	40:11 45:23	47:21
36:11,23 37:1	52:12 53:2	<b>Tuesday</b> 1:12	<b>uses</b> 49:10	<b>way</b> 21:16 22:24
37:5 39:24	55:3,8,22	<b>turn</b> 18:21		23:6 29:22
45:3 47:14	<b>third</b> 27:11	<b>turns</b> 3:12 6:10	<b>V</b>	35:24 40:4
<b>terms</b> 17:18	33:10,11	8:7	<b>v</b> 1:5 3:4 4:12	47:1 50:25
36:18 40:18	<b>thought</b> 12:7	<b>two</b> 3:23 5:11	19:6	<b>ways</b> 46:9,11
41:9 43:21	25:24 26:11	16:11 24:11	<b>variant</b> 46:1	<b>we'll</b> 3:3 14:3
45:7,10,13	42:11	27:15 31:13	<b>variations</b> 46:21	<b>we're</b> 32:4,23

35:7 40:10,12	<b>X</b>	<b>3</b> 2:4 4:12 5:25		
48:15 50:14	<b>x</b> 1:2,10	6:1 21:22,25		
<b>we've</b> 27:2	<b>X-rays</b> 44:7	52:25		
<b>wear</b> 16:5	<b>Y</b>	<b>30</b> 14:8		
<b>wholly</b> 41:24	<b>years</b> 3:23 14:8	<b>35</b> 2:11		
42:3 45:10	14:8 17:5,12	<b>37</b> 29:11		
<b>Williams</b> 4:12	19:4,7 35:8	<b>38</b> 29:11		
4:14,14	47:16 53:7,16	<b>4</b>		
<b>withhold</b> 33:25	<b>York</b> 8:22	<b>4</b> 5:25 6:1 25:1		
40:13,20 41:12	<b>Z</b>	<b>40,000</b> 42:22		
41:23 43:14,16	<b>0</b>	<b>408</b> 30:11		
43:18 44:23	<b>1</b>	<b>423</b> 22:17		
<b>withholding</b>	<b>1</b>	<b>424</b> 24:4		
8:15	<b>1</b>	<b>429.424(E)(1)</b>		
<b>wonder</b> 11:6	<b>1</b> 11:21	50:5		
<b>wondering</b> 16:9	<b>1,000</b> 3:22 53:17	<b>43876(b)</b> 11:1		
<b>word</b> 4:12 5:2	<b>10</b> 25:2	<b>441(a)</b> 24:3		
10:11 13:19	<b>10(b)(5)</b> 6:19,24	<b>49</b> 2:14		
20:4,16	<b>100</b> 40:13	<b>5</b>		
<b>words</b> 3:12,16	<b>100,000</b> 39:10	<b>5</b> 5:25 6:1		
4:9 12:1 20:1	<b>11:01</b> 1:16 3:2	<b>529</b> 8:24 27:1		
23:21 29:1	<b>12</b> 15:23	28:4 37:15		
43:23 49:11,11	<b>12:01</b> 56:3	<b>5500</b> 51:24,24		
<b>work</b> 20:17 23:6	<b>131</b> 17:5	<b>551</b> 4:22 13:14		
33:14 52:10	<b>15</b> 50:24	13:17 21:23		
<b>worked</b> 52:23	<b>15-7</b> 1:4 3:4	27:1 37:16		
<b>workers</b> 24:5	<b>150</b> 35:7	<b>551(2)</b> 13:20		
<b>worn</b> 18:7	<b>185(Z)(3)</b> 25:1	<b>551(2)(b)</b> 8:20		
<b>worried</b> 10:4	<b>1863</b> 3:14 17:2	9:16 12:4		
<b>worse</b> 50:22	17:14	16:14 21:21		
<b>worthless</b> 29:10	<b>19</b> 1:12	<b>551(2)(e)</b> 5:18		
29:12,13,14,18	<b>1986</b> 17:14 34:7	<b>6</b>		
29:21,23,24	<b>1994</b> 17:2,4	<b>6</b> 6:1,1		
<b>wouldn't</b> 26:23	<b>2</b>	<b>6,000</b> 34:7		
37:2,4 38:23	<b>2</b> 21:24	<b>7</b>		
39:6,7,12,25	<b>20</b> 14:8	<b>7</b> 6:1		
45:11	<b>2016</b> 1:12	<b>8</b>		
<b>wow</b> 32:3	<b>22</b> 2:7 17:12	<b>8</b> 6:1 21:22,25		
<b>write</b> 19:20,23	53:7	25:2 50:5		
21:19	<b>25</b> 47:16	52:25		
<b>writes</b> 20:19,23	<b>27</b> 19:4	<b>9</b>		
<b>written</b> 5:1 8:21	<b>28</b> 28:3,16 29:3	<b>99,000</b> 40:10		
27:7	<b>29</b> 27:2 28:3			
<b>wrong</b> 9:16	<b>3</b>			
13:15,16 14:12				
43:24				