

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

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
ATLANTIC RICHFIELD COMPANY,)
Petitioner,)
v.) No. 17-1498
GREGORY A. CHRISTIAN, ET AL.,)
Respondents.)
- - - - -

Washington, D.C.

Tuesday, December 3, 2019

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:06 a.m.

APPEARANCES:

LISA S. BLATT, ESQ., Washington, D.C.;
on behalf of the Petitioner.
CHRISTOPHER G. MICHEL, Assistant to the Solicitor General, Department of Justice, Washington, D.C.;
for the United States, as amicus curiae,
supporting the Petitioner.
JOSEPH R. PALMORE, ESQ., Washington, D.C.;
on behalf of the Respondents.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	LISA S. BLATT, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	CHRISTOPHER G. MICHEL, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioner	20
9	ORAL ARGUMENT OF:	
10	JOSEPH R. PALMORE, ESQ.	
11	On behalf of the Respondents	31
12	REBUTTAL ARGUMENT OF:	
13	LISA S. BLATT, ESQ.	
14	On behalf of the Petitioner	65
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:06 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 17-1498, Atlantic Richfield versus Christian.

Ms. Blatt.

ORAL ARGUMENT OF LISA S. BLATT

ON BEHALF OF THE PETITIONER

MS. BLATT: Thank you, Mr. Chief Justice, and may it please the Court:

This case involves whether the hundreds of thousands of landowners on Superfund sites can bring state lawsuits to implement their own piecemeal hazardous waste cleanups. The answer should be no.

CERCLA entrusts EPA to protect human health and the environment by developing a remedial plan that protects the whole community. Respondents are profoundly wrong that removing waste is always better than leaving it in place.

Superfund sites contain extremely hazardous substances, lead, mercury, plutonium, to name a few. Excavation, transportation, and disposal of these substances is risky not only to neighbors but the millions of people who live

1 next door to Superfund sites. Whether these
2 risks are worth any benefits should be evaluated
3 by EPA, not juries on an ad hoc basis.

4 Since 2013, EPA has objected that
5 Respondents' restoration remedy would thwart
6 more than three decades of efforts -- of its
7 efforts at the Anaconda site, including by
8 digging up soil that EPA wants left undisturbed
9 and by building miles of underground trenches
10 that would affect an entire community's
11 groundwater.

12 This Court should reverse for three
13 reasons. First, Section 113 bars Respondents'
14 challenge to EPA's remedy.

15 Second, Section 122 bars Respondents
16 from undertaking any remedial actions absent
17 EPA's authorization.

18 And, third, a restoration remedy is
19 preempted because it would require Atlantic
20 Richfield to effectuate the very cleanup that
21 federal law prohibits the company from doing on
22 its own, and a restoration remedy would prevent
23 EPA from carrying out its statutory mandate to
24 implement comprehensive cleanups.

25 JUSTICE SOTOMAYOR: Ms. Blatt, I've

1 been trying to unpackage this case in my own
2 mind, and I start with the language of the
3 statute. I'm sorry. I interrupted you.
4 Finish.

5 MS. BLATT: No, we're good.

6 JUSTICE SOTOMAYOR: Okay.

7 (Laughter.)

8 JUSTICE SOTOMAYOR: I'm sorry.

9 MS. BLATT: No.

10 JUSTICE SOTOMAYOR: I -- I'm trying to
11 figure out -- let's assume for the sake of
12 argument that the remedial plan that the state
13 court orders supplements, rather than
14 contradicts, the EPA plan, that it was something
15 in top of.

16 I read the savings clauses to permit
17 that. It -- the savings clauses are very
18 explicit that it's not displacing or intending
19 to displace state law remedies for liability or
20 for anything else.

21 So, if these plans supplement, why
22 would this part of Montana law be preempted?

23 MS. BLATT: So, in terms of
24 preemption, so it's quite emphatic to understand
25 that Section 122(e)(6) and the over 20

1 administrative orders impose both a floor and a
2 ceiling on the type of cleanup --

3 JUSTICE SOTOMAYOR: If I disagree that
4 it's a ceiling, if I think it's just a flaw -- a
5 floor --

6 MS. BLATT: Sure.

7 JUSTICE SOTOMAYOR: -- and that the
8 EPA has the power to decide whether any plan can
9 supplement its own --

10 MS. BLATT: Of course.

11 JUSTICE SOTOMAYOR: -- where does that
12 leave this argument?

13 MS. BLATT: So you --

14 JUSTICE SOTOMAYOR: If -- if -- if --
15 if I believe --

16 MS. BLATT: Sure.

17 JUSTICE SOTOMAYOR: -- that it's a --
18 it's a floor only, not a ceiling --

19 MS. BLATT: Uh-huh.

20 JUSTICE SOTOMAYOR: -- that the EPA
21 has the right to establish when a plan will be a
22 ceiling, where does that leave this case?

23 MS. BLATT: Okay. So, in terms of
24 conflict preemption, so we know that EPA would
25 absolutely have to change federal law, which it

1 could, to approve their plan. So you are
2 absolutely correct. The EP --

3 JUSTICE SOTOMAYOR: I'm sorry.

4 MS. BLATT: EP -- federal law requires
5 a specific action level and a specific amount of
6 dirt that can be dug and that no wall could be
7 built. If that happens, EPA --

8 JUSTICE SOTOMAYOR: At the moment?

9 MS. BLATT: Yes. And EPA can change
10 it. And this Court in Mensing said that courts
11 do not withhold preemption based on the
12 speculation that federal government may change
13 the law. And the law would have to be --

14 JUSTICE GINSBURG: But it isn't the
15 law, Ms. Blatt. It's -- it's the EPA Superfund
16 plan for this site. The specific things that
17 you mention are not in the law. They are in the
18 EPA's plan.

19 And if the EPA said we permit what the
20 landowners -- the -- the further cleanup the
21 landowners want, we permit it or we permit what
22 they want with certain modifications, if EPA
23 says yes, then there's no preemption that I
24 could see that would be involved in this case.

25 MS. BLATT: So that's not correct

1 because, when you said plan -- and maybe I
2 misspoke -- the law is not a U.S. code law.
3 It's a binding administrative order where
4 Atlantic Richfield would incur massive penalties
5 every day if it violated. It's a law in terms
6 of an administrative order that sets forth the
7 plan.

8 Now Atlantic Richfield cannot carry
9 out that plan without massive fines and
10 violating law. In the order, it says
11 undertaking any action without EPA's approval
12 violates the order. And under ordinary --

13 JUSTICE GINSBURG: But suppose the EPA
14 approves. The EPA says what you want to do is
15 okay with us, or at least, as was suggested in
16 the briefing, part of what the landowners want
17 is okay with EPA.

18 MS. BLATT: So all of the pillars of
19 their plan violate EPA's order. And your
20 supposition that EPA could approve it is just
21 not the test under preemption. The test under
22 preemption is whether a party today could
23 independently do under federal law what state
24 law requires.

25 And I mean by that, and what this

1 Court in Mensing and Bartlett said, that means
2 complying with state law duties without the
3 government's assistance and permission.

4 JUSTICE KAGAN: Well, Ms. Blatt, same
5 kind of question, and maybe it goes to a bunch
6 of your arguments. I mean, look, if I were
7 writing this statute, I would say it all goes to
8 the EPA. It's just -- you know, that's the
9 sensible solution to have one party that makes
10 all the rules in this.

11 But I'm not writing the statute. And
12 the statute has three savings clauses in it,
13 which -- which suggests that the states have a
14 significant role in this. And, in particular,
15 one that says that the states get to impose
16 additional liability or requirements with
17 respect to the release of hazardous substances.

18 And I guess, you know, one way into
19 this is if I -- if -- if -- if we imagine that
20 this was done not with a damages rule, but
21 suppose the Montana legislature just said, you
22 know what, this plan that the EPA has put in
23 place, it requires arsenic at a certain level,
24 and we think it would be better to lower that,
25 and we don't really care that the EPA thinks

1 that that would not be a good idea for health
2 purposes, as well as for economic purposes; we
3 think that that arsenic level should be lowered.
4 Do you think that the state gets to do that?

5 MS. BLATT: No, and Section 121 deals
6 with this directly. It spells out in like over
7 3,000 words how states can incorporate into
8 EPA's, their plans, and EPA can override that
9 state standard. And it goes -- then states have
10 the remedy to sue. It's one of the exceptions
11 under 113.

12 And so -- and I think you're right
13 that their position under the savings clause is
14 that not only could state law say don't enact
15 EPA's remedy because we hate it and do a
16 different remedy, but state courts could order
17 independent warring cleanups, you know, case by
18 case, block by block, house by house. And this
19 Court, in the Abilene Cotton case and in the
20 AT&T case, interpreted almost an identically
21 worded savings clause and said you can't
22 interpret those clauses to completely destroy
23 other parts of the Act.

24 And this would utterly destroy EPA's
25 whole design under CERCLA.

1 JUSTICE GINSBURG: So -- so what --
2 what do they save then? I mean, the savings is
3 all over this statute. They have to save
4 something. What do they save that -- that
5 states can do independently?

6 MS. BLATT: So let -- let me be very
7 clear how narrow our argument is. They have
8 four -- four claims of compensatory damages and
9 punitive damages. So typical state law claims
10 for nuisance and whatever else they want to
11 claim for damages is fine.

12 The objection here is that the actual
13 remedy orders Atlantic Richfield to pay
14 Respondents to carry out their contrary plan and
15 that Respondents under state law must actually
16 implement the very plan that Atlantic Richfield
17 would violate federal law.

18 So this is a -- not only a challenge
19 and not only its direct remedial action that has
20 to be taken in violation of 122, but it's the
21 only claim that would meet our standard of
22 conflict preemption because it requires Atlantic
23 Richfield to effectuate a violation of federal
24 law, either whether they hire their own
25 employees or whether they hire the plaintiff's

1 employees and put a different hard hat or give
2 them a different shovel.

3 JUSTICE SOTOMAYOR: Ms. Blatt, if --
4 if I have questions about what state law
5 requires, because I -- I can't find anything in
6 the state law that requires a damages remedy to
7 be put in trust for the remediation, that's what
8 the court below said. I know that's what it
9 said. But I can't find any law that says that's
10 what has to happen. Number one.

11 Number two. I can't find any state
12 law requirement that the Petitioner has to prove
13 that they're going to actually use the money
14 they're awarded for the purposes that they
15 claim. So I'm very confused about the state law
16 question.

17 MS. BLATT: Yeah. And I think that's
18 all a fair question. And --

19 JUSTICE SOTOMAYOR: If it is a fair
20 question --

21 MS. BLATT: Yeah, I was going to
22 answer it.

23 JUSTICE SOTOMAYOR: -- why is it
24 preempted, meaning why wouldn't I just remand
25 this case and say you can't make -- you can't

1 award damages unless the other side proves or
2 the side claiming these damages proves that it
3 can get EPA approval of whatever it wants to do,
4 and that it will, in fact, only use that award
5 for those purposes?

6 MS. BLATT: Right. So --

7 JUSTICE SOTOMAYOR: What's wrong with
8 a ruling that's just that basic that says you
9 can get more if you can prove the EPA will give
10 you more, as simple as that?

11 MS. BLATT: So you know --

12 JUSTICE SOTOMAYOR: What's wrong with
13 that --

14 MS. BLATT: Sure.

15 JUSTICE SOTOMAYOR: -- kind of
16 opinion?

17 MS. BLATT: Sp you took this case on
18 the assumption -- and we cite it on page 16 of
19 our reply brief -- all the places where the
20 Respondent concedes, and the Montana Supreme
21 Court expressly said, that this money has to be
22 used to carry out the remedy. And that's the
23 way this case comes up.

24 If you want to know the reason for
25 Sunburst, it's because of the reason is

1 personal. So, if you own a property and love it
2 so much and you don't have any damages, the
3 whole point of the restoration remedy to avoid
4 the windfall is you have to spend the money.

5 So I'm quite confident that I'm
6 accurately stating Montana law and that
7 Respondents never argued to the contrary. And
8 in our reply brief, again, we cite all the
9 concessions, including, I think, the opinion
10 below in three places says the money has to go
11 to a trustee and that money has to be spent on
12 the cleanup.

13 And I'm agreeing with you that key to
14 the preemption argument is that under state law,
15 they will be forced to carry out a remedy that
16 would violate EPA's orders, these administrative
17 orders, if we carried it out itself.

18 JUSTICE SOTOMAYOR: So what's wrong
19 with an opinion that we write that says what
20 you're missing is the next step. You have to be
21 able to show that that remediation will be
22 approved.

23 MS. BLATT: Yeah. So --

24 JUSTICE SOTOMAYOR: So, if -- if
25 that's their burden, why do we need to go any

1 further?

2 MS. BLATT: So I -- two responses.

3 So, right now, they don't have federal
4 permission. And under Section 122, you have to
5 take federal --

6 JUSTICE SOTOMAYOR: I didn't say --

7 MS. BLATT: We're talking about --

8 JUSTICE SOTOMAYOR: -- they have to
9 show that they will get EPA approval.

10 MS. BLATT: And all I'm saying is you
11 know today.

12 Let me just make one other point as a
13 practical matter. This is not a case in its
14 infancy. It was cooked. It was about to go to
15 trial. It was three weeks away from jury
16 selection when the court got stayed.

17 We know they're going to trial and the
18 whole case is about whether a different remedy
19 should be put on. And we know under state law,
20 because they've conceded it, that they have to
21 carry out that remedy. And we know they don't
22 have EPA's permission.

23 So you not only know two things. You
24 know, again, it's conceded that the remedy seeks
25 something different, and it would require a

1 change in federal law. And you know they never
2 got EPA's permission. And I guess this is
3 assuming we're not even getting --

4 JUSTICE BREYER: The answer -- the
5 answer, I think, is this right, to the question,
6 which is a question I had, too, is that in order
7 to bring an action where the result will be an
8 order to do certain things, dig dirt or do
9 physical things, if they are a potentially
10 responsible party, they have to show not that
11 EPA might approve it, but what it says is unless
12 such remedial action, which is the reaction
13 they're seeking, has been authorized by EPA.

14 MS. BLATT: And you know today that --

15 JUSTICE BREYER: It has not.

16 MS. BLATT: -- not only has it not
17 been, they never ask you --

18 JUSTICE BREYER: And, therefore, what
19 we should do if you are right on the potentially
20 responsible party is we should send it back and
21 say they have to get that permission from EPA.
22 And there is no need to answer the other
23 questions. Is that right or wrong?

24 MS. BLATT: That's wrong and I
25 disagree. You already know today they don't

1 have it. And just as the case sits today,
2 whether they could have brought some separate
3 federal lawsuit after they asked EPA -- excuse
4 me, state lawsuit, but you already know today
5 that they never asked for it.

6 JUSTICE BREYER: Yeah. That's why I
7 say we'd send it back, they do not meet that
8 requirement if they are potentially responsible
9 parties, so dismiss the case.

10 Now, if that -- if you win in that
11 respect, I'm asking if there is a need to reach
12 the other two questions.

13 MS. BLATT: Okay.

14 JUSTICE BREYER: I suspect there
15 isn't, but am I right?

16 MS. BLATT: Yes. If you rule for us
17 under Section 122 that they can't carry out
18 their restoration remedy because they don't have
19 EPA's permission, then that's sufficient to
20 resolve the case.

21 JUSTICE BREYER: Fine. Now they say
22 they are not potentially responsible parties,
23 but you say they are. Why?

24 MS. BLATT: Because in three --
25 because they are landowners with -- with

1 hazardous waste on a Superfund site. And three
2 provisions textually equate all persons who are
3 owners and operators under 107 because they own
4 land on a Superfund site.

5 JUSTICE BREYER: But they say they are
6 not potentially responsible. Perhaps they were
7 potentially responsible, but they are not
8 potentially responsible because EPA and
9 everybody else has told them they're not
10 responsible.

11 MS. BLATT: So no, and here is why:
12 Potentially responsible parties has always been
13 understood by this Court and everyone else as a
14 status, not whether you could be liable.

15 And their rule that says could you be
16 liable at any given point in time is not only
17 unheard of, it's unworkable, because you would
18 never know whether a court would accept a
19 defense, including --

20 JUSTICE SOTOMAYOR: Whether they were
21 or they weren't potentially responsible parties,
22 they are landowners, correct? And do I
23 understand correctly, whether they're PRPs or
24 not, if they're landowners, they can't take any
25 -- they can't make any change without EPA

1 approval?

2 MS. BLATT: They can't take a
3 statutorily defined term called remedial action
4 that's defined in 101/24, and it defines what a
5 remedial action is, so they can do ordinary
6 things to their property. They can't do the
7 major upheaval of 500,000 tons and --

8 JUSTICE SOTOMAYOR: Whether the PRP is
9 responsible to someone else or to the EPA,
10 whether they're continuous landowners or
11 something else that exempts them, that -- that's
12 my bottom line, which is the mere fact that they
13 want to take some action on their land that's
14 remedial, they would have to get EPA approval?

15 MS. BLATT: Absolutely. And PRP
16 status, it doesn't --

17 JUSTICE SOTOMAYOR: Can you point me
18 to the provision that says that, that says
19 whether they're PRPs or not, as long as they're
20 landowners, if they're going to take any
21 remedial action on their property?

22 MS. BLATT: So 122E(6) is the one that
23 says PRPs have to have EPA's permission for any
24 remedial action. And then the 107, 122A,
25 122E(1) and 105H(4) -- H -- excuse me, H4(a) is

1 the one that defines or equates owners and
2 operators under 107 with PRP status.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Mr. Michel.

6 ORAL ARGUMENT OF CHRISTOPHER G.

7 MICHEL, FOR THE UNITED STATES, AS AMICUS

8 CURIAE, SUPPORTING PETITIONER

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

11 The United States is here because the
12 narrow aspect of Respondents' suit that is
13 before this Court, namely the request for a
14 distinctive state law remedy under which a jury
15 may authorize a plan to clean up toxic
16 contamination at a Superfund site in a way that
17 conflicts with and in many respects physically
18 destroys the EPA plan selected under CERCLA,
19 squarely conflicts with CERCLA and would
20 jeopardize EPA's cleanups at this Superfund site
21 and other Superfund sites across the nation.

22 Now, to go to some of the questions
23 that have -- have been raised already, this is a
24 narrow -- our argument here is narrow. The --
25 the statute does have savings clauses, and we

1 don't dispute that Respondents can move forward
2 with their claims for money damages under state
3 law and nuisance and tort and other related
4 theories that don't call into question the EPA
5 remedy.

6 And, likewise, as Justice Kagan
7 pointed out, there are a number of mechanisms in
8 the statute for states to adopt what are called
9 ARARs, Applicable and/or Relevant and
10 Appropriate Standards, that could be implemented
11 as part of -- of the EPA cleanup plan.

12 And I think that goes to a broader
13 point, which is that CERCLA really lays out a
14 two-step process. At the first step, EPA, or
15 whatever federal agency is conducting the plan,
16 goes through a very reticulated process of
17 getting public comment, meeting with -- meeting
18 with landowners, meeting with the state, and
19 selects a cleanup plan in -- in compliance with
20 those procedural and the substantive requirement
21 that they protect human health.

22 Then, at the second stage, CERCLA says
23 go and carry out the cleanup plan and CERCLA
24 erects a number of protections --

25 JUSTICE SOTOMAYOR: Sorry, are you

1 agreeing with Ms. Blatt that your plan is both
2 the floor and the ceiling?

3 MR. MICHEL: So I think it -- not
4 necessarily in every respect, but I think in the
5 respect that matters in this case, it is.

6 And --

7 JUSTICE SOTOMAYOR: No, no, no, let me
8 -- let me go back. Is it always the ceiling?

9 MR. MICHEL: I mean, an EPA --

10 JUSTICE SOTOMAYOR: An owner can come
11 to you and say I want to do more, and you can
12 decide yes or no, right?

13 MR. MICHEL: Yes, absolutely.

14 JUSTICE SOTOMAYOR: So it's not always
15 the ceiling.

16 MR. MICHEL: I mean -- yes. And, in
17 fact, the statute --

18 JUSTICE SOTOMAYOR: All right.

19 MR. MICHEL: -- as we discussed, as --
20 as Ms. Blatt discussed at length --

21 JUSTICE SOTOMAYOR: So are you reading
22 their state -- are you reading this remedy as
23 requiring the remediation that's awarded no
24 matter what? With or without EPA approval?

25 MR. MICHEL: I -- I think the Montana

1 Supreme Court decision implies that Respondents
2 could move forward with their claim as it now
3 exists even if they didn't have EPA approval.
4 And we think that is --

5 JUSTICE SOTOMAYOR: How about if they
6 did, if they could get your approval, if they
7 could show that they could get your approval?

8 MR. MICHEL: I mean, if they could get
9 our approval under 122(e)(6), then we wouldn't
10 have a problem with -- with the suit, but I
11 think that --

12 JUSTICE SOTOMAYOR: All right. How
13 about if they're not a PRP? Let's assume
14 they're a contiguous -- there's a whole set of
15 arguments in these briefs by some of them,
16 putting aside whether they're a PRP because of
17 -- of the statute of limitations, which, you
18 know, is not very compelling to me, okay?

19 But putting that aside, let's assume
20 that by definition they are a PRP. Or they're
21 not a PRP; they're a continuous landowner.
22 There are not a PRP. What about those people?

23 MR. MICHEL: So I think an important
24 distinction is that if they were found to be a
25 contiguous landowner, that would not take them

1 out of the status of being a PRP. That would
2 imply that they're not liable, as -- as you
3 pointed out --

4 JUSTICE SOTOMAYOR: All right. So
5 what you're saying is if you're a landowner, you
6 might not be liable because some justices might
7 have a problem with the concept that someone who
8 didn't pollute and doesn't encourage the
9 polluting would be financially liable.

10 MR. MICHEL: And that's an instinct
11 that EPA shares as we quote in our brief. EPA
12 has had a policy since 1991 of not imposing
13 liability on residential landowners on Superfund
14 sites. But --

15 JUSTICE KAGAN: So, Mr. Michel, if I
16 could ask about the PRP status, because there
17 are obvious consequences of labeling somebody a
18 PRP in the way that you suggest, that these
19 sites -- and they can be sites for decades and
20 decade and -- and deprive people of doing some
21 significant things that they want to do to their
22 land.

23 And the question, I guess, is why do
24 you -- why do we think the statute requires
25 those consequences as to a person whom has --

1 who has never been treated as a PRP by the
2 government, who has never been involved in
3 settlement negotiations, who, under reigning
4 law, including the statute of limitations, has
5 no liability exposure?

6 I mean, it would seem a big deal to
7 take a person like that and say you've lost some
8 significant property rights. Why?

9 MR. MICHEL: So I think two responses.
10 First, I do want to make clear that 122(e)(6),
11 the PRP provision that we're talking about here,
12 only applies to remedial action. And that has a
13 defined statutory definition. It's in
14 9601(a)(4).

15 JUSTICE KAGAN: But I said some
16 significant things.

17 MR. MICHEL: So -- so --

18 JUSTICE KAGAN: So, you know, look,
19 that you can still, you know, make a garden.

20 MR. MICHEL: Absolutely, you can still
21 make a garden. Now, as to significant things, I
22 think it does make perfect sense that you
23 wouldn't want somebody who lives on a Superfund
24 site doing things in the earth that will
25 interfere with the EPA remedy. Of course, you

1 know, there's -- there is, on a Superfund site,
2 a sort of butterfly flaps its wings problem
3 where if you dig up two feet of soil on your
4 land, you can kick up arsenic into the air, or
5 if you dig a trench on your land --

6 JUSTICE KAGAN: So I guess I -- I
7 completely take the point that that might have
8 been a sensible policy decision for Congress to
9 make, but, as I look at these provisions, the
10 only -- the -- the -- where this PRP comes from
11 is -- is -- is in a section that deals with
12 settlement negotiations.

13 And these people were not ever
14 involved in settlement negotiations. Nobody for
15 a moment considered that they should be involved
16 in settlement negotiations. So to apply that
17 section to these people seems, you know, a
18 stretch.

19 MR. MICHEL: So I -- I don't think so,
20 Justice Kagan. I -- PRP is used in the statute
21 a lot of different times, not just in the
22 settlement. You're right that (e)(6) is under
23 the settlement provision, but if you look at
24 (e)(1), it's -- it -- it equates owners on the
25 site with PRPs. And so the Court could leave

1 for another day whether PRP is coterminous with
2 covered persons under Section 107 and simply
3 decide that owners on Superfund sites are PRPs.

4 And, again, we think that makes
5 perfect sense because, by definition, when you
6 have a cleanup plan that takes into account an
7 entire Superfund site, as this one does, and one
8 landowner does something that affects the earth
9 or affects the environment, it's going to spread
10 across onto other parts of the Superfund site.

11 And the water barriers that we've
12 discussed in this case are a good example, where
13 EPA has a considered plan to treat the water in
14 a certain way, and Respondents want to dig -- I
15 think it's an 8,000-foot trench that would
16 change the gradient and would physically change
17 the land in a way that could endanger the whole
18 Superfund site off of their own property.

19 So it is true that when you live on a
20 Superfund site and you have large amounts of
21 toxic chemicals, you are more restricted in the
22 kind of land use that you --

23 JUSTICE KAVANAUGH: But it seems a
24 very indirect way for Congress to have gone
25 about this, as Justice Kagan says, to, in

1 essence, hinder a landowner from doing any
2 significant action for decades.

3 MR. MICHEL: I mean, I think on --
4 it's not that strange to see that an owner of a
5 Superfund site, somebody who lives on a
6 contaminated property, is hindered from taking
7 remedial action, which is a fairly significant
8 action, without EPA approval. Of course, EPA
9 can grant approval, and EPA has in other cases
10 granted approval for remedial actions on
11 Superfund sites.

12 JUSTICE KAVANAUGH: So your two
13 answers are, one, it's only significant action
14 and, two, EPA could grant approval?

15 MR. MICHEL: Absolutely. It's a -- so
16 it's a limited incursion to the degree that it
17 restricts property rights. That's what comes
18 with living on -- on a Superfund site, and
19 that's what's necessary to protect --

20 JUSTICE GINSBURG: Then -- then what
21 is your answer to the question Ms. Blatt was
22 asked? If we say the landowners are PRPs and
23 they have to get EPA permission for any
24 restoration that they want to do, if the Court
25 said that, then I don't see that the further

1 questions in this case need to be answered. And
2 I don't see any reason to get into preemption.

3 MR. MICHEL: I agree with you, Justice
4 Ginsburg. You could resolve the case by -- by
5 saying that Respondents are PRPs who need EPA
6 authorization -- authorization and don't have it
7 and, therefore, their -- their claim fails.

8 JUSTICE GORSUCH: What do we do about
9 the government's prior representations that
10 permission might be granted for something like
11 this?

12 MR. MICHEL: Well, I mean, the
13 government stands ready to listen to EPA -- to
14 any proposals from the landowners. They have
15 not formally presented us with any proposals, so
16 we're working off of the best available
17 information, which is the expert reports that
18 they have introduced in the state litigation.

19 JUSTICE GORSUCH: So it's still at
20 least possible that the government might approve
21 something like this?

22 MR. MICHEL: I mean, based on what we
23 know, we've made very clear, we're now in the
24 Supreme Court litigating this case, that we
25 would not approve what we understand their plan

1 to be, but we're not saying never. Of course,
2 they could present something and we would listen
3 to it.

4 JUSTICE GORSUCH: And I might -- might
5 have missed it, but just when is the
6 government's role here likely to finish in this
7 particular site?

8 MR. MICHEL: So I think the government
9 -- the ongoing remediation will continue through
10 2025, is the latest -- is the latest projection.
11 It may be that, you know, there are continuing
12 operations beyond that, but the active site
13 remediation we expect to continue through 2025.

14 JUSTICE GORSUCH: Is there -- is there
15 a takings claim, do you think, that arises from
16 the government's position that any remediation
17 efforts for a period of, I guess, 45 years is
18 prohibited by landowners?

19 MR. MICHEL: I mean, in the literal
20 sense, there's no takings claim because they
21 haven't raised one in this case. I think more
22 -- more broadly -- of course, one could raise a
23 takings claim, but I think it would be a very
24 weak claim given that, in fact, EPA's remedy has
25 improved the value of the property and that you

1 have to start from the premise that the property
2 is -- is covered with arsenic.

3 JUSTICE GORSUCH: Well, it's -- it's
4 -- it's improved the value of the property from
5 its prior state but not -- not to a level that
6 state law would allow.

7 MR. MICHEL: Well, I -- I do think
8 that that's an important point, Justice Gorsuch,
9 is that the EPA plan fully complies with the
10 state environmental laws. Those are the ARARs
11 that I mentioned earlier. This is a separate
12 private plan that a jury would have to approve.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Mr. Palmore.

16 ORAL ARGUMENT OF JOSEPH R. PALMORE

17 ON BEHALF OF THE RESPONDENTS

18 MR. PALMORE: Thank you, Mr. Chief
19 Justice, and may it please the Court:

20 This Court lacks jurisdiction, but, if
21 it finds it has jurisdiction, it should affirm.

22 Briefly on jurisdiction: The decision
23 below affirming denial of summary judgment on
24 one damages theory and remanding for trial is
25 non-final. This Court has exercised review over

1 Montana supervisory writ decisions only where
2 reversal by this Court would end the case
3 entirely. That critical condition is absent
4 here.

5 On the merits: This Court held and
6 explained in CTS versus Waldburger --

7 JUSTICE SOTOMAYOR: If we -- I'm
8 sorry, go ahead.

9 MR. PALMORE: -- that CERCLA does not
10 establish a comprehensive remedial framework;
11 instead, it leaves untouched state judgments
12 about causes of action and the scope of
13 liability for property damage. Montana, like
14 many other states, has made the judgment that
15 one who puts toxic materials on another person's
16 property is liable for trespass and nuisance and
17 that a measure of recovery is the cost of
18 removal.

19 Nothing in CERCLA bars that core
20 exercise of state authority to vindicate private
21 property rights. ARCO's invocation of Section
22 113(h) fails, that's the challenge provision,
23 because it doesn't apply in federal court and
24 even in federal court, it doesn't apply to state
25 law claims.

1 ARCO fares no better on
2 Section 122(e)(6), the PRP provision, because
3 the landowners here are not potentially
4 responsible for anything because they face no
5 possible liability. And that provision
6 certainly cannot be read to give EPA the vast
7 power that it seeks, the ability to control
8 forever the removal of a shovelful of dirt from
9 a private landowner's backyard.

10 There's no basis for preemption
11 either. CERCLA establishes a floor, not a
12 ceiling, on environmental remediation, and in
13 several provisions makes clear that Congress
14 wanted to leave state law in place.

15 Nor is there any impossibility. The
16 duty that ARCO breached was the duty not to
17 pollute. Nothing in federal law required it to
18 do so. Justice Sotomayor?

19 JUSTICE SOTOMAYOR: I -- I still have
20 a problem, which is it seems to me that if you
21 go on a piece of -- if you own a piece of land
22 and you know the EPA has been fixing it up, that
23 whether you're responsible financially for the
24 cleanup, that you shouldn't be able to interfere
25 with the EPA's efforts, meaning you might have a

1 takings claim, as Justice Gorsuch claims, you
2 might have some other claims, but I don't know
3 how you can go about instituting a plan without
4 conflict preemption, instituting a plan that
5 interferes with what the EPA is doing.

6 MR. PALMORE: Your Honor, first of
7 all, and this is critical, there is no
8 interference here. The vast majority of my
9 clients have had zero work done on their land.

10 And if you put all their land
11 together, the work has been done on only
12 5 percent, okay? So, on 95 percent of the land,
13 literally nothing has been done. So there's no
14 undoing there.

15 On groundwater, EPA made the decision
16 to do nothing to clean the groundwater an
17 opportunity, so we're not undoing a remedy.
18 We're doing something that EPA -- where EPA has
19 done nothing. And what's the 5 percent? They
20 dug down 18 inches, they put in clean soil, and
21 they planted grass.

22 All we want to do --

23 CHIEF JUSTICE ROBERTS: Well, on the
24 ground -- on the groundwater, I understand their
25 position to be that if they did do something

1 along the lines that you're proposing, it would
2 have very significant adverse impacts. So the
3 fact that they haven't done anything, that's
4 what they want you -- they don't want you to do
5 anything.

6 So you can't say having -- having done
7 nothing represents that there's no -- there
8 would be no adverse impact from what you plan to
9 do.

10 MR. PALMORE: A couple answers on
11 that, Chief Justice Roberts.

12 First of all, they decided, and if you
13 look at the actual regulatory materials, and
14 that -- the EPA makes decisions in this area
15 through records of decision, which are official
16 documents, they say they didn't want to do the
17 groundwater remedy, it was a different wall, it
18 was a different one, because it was technically
19 impracticable, which is a term of art under
20 CERCLA for too expensive.

21 In the regulatory materials, there is
22 absolutely no finding that that wall, much less
23 the one that we've proposed which is different,
24 would call any environmental harm. If you look
25 to what the government cites here for that

1 proposition, if you trace it through, it's
2 citing its own amicus brief in the Montana
3 Supreme Court.

4 If you look at the Montana Supreme
5 Court amicus brief, the government cites
6 literally nothing.

7 CHIEF JUSTICE ROBERTS: So you're
8 talking about the particular specifics in your
9 case. But, as a general matter, for example,
10 you can understand that the EPA looking at this
11 might say, okay, we're going to do this, we're
12 going to do this, we're going to do this, and
13 we're going to get to that as soon as we're done
14 doing this other stuff.

15 And yet someone else in your position
16 would come in and say: Well, you're not doing
17 anything here, and so we're going to go ahead
18 and do this, when the EPA's answer might simply
19 be that well, we haven't gotten to it yet, but
20 we want to be the ones to decide what to do,
21 rather than the particular landowners there,
22 because we have a broader perspective affecting
23 the whole site, rather than individual sites
24 where the people may reasonably want something
25 to be done but still may be inconsistent with

1 EPA's plan.

2 MR. PALMORE: Well, here, Mr. Chief
3 Justice, the issue isn't we'll get to that
4 later. They're done. All the remedial work
5 such as it was on our property has been over for
6 several years. They are completely done. And
7 that's another reason why there's no
8 interference with anything they're doing.
9 They're finished.

10 CHIEF JUSTICE ROBERTS: I'm trying to
11 move beyond your particular --

12 MR. PALMORE: And I understand that.
13 So one can imagine a different case involving a
14 conflict preemption claim with respect to the
15 EPA remedial orders. That's not this case.

16 ARCO's argument here, which -- which
17 Ms. Blatt articulated, is that CERCLA itself
18 establishes a floor and a ceiling, such that any
19 state law remedy that goes beyond even one inch
20 beyond what CERC -- what a remedial order
21 required is preempted.

22 They are not making a very different
23 argument that in -- perhaps in a case like Your
24 Honor is referring to could be made, which there
25 could be an argument made that there is obstacle

1 preemption with respect to an actual remedial
2 order. That case might look a lot like Geier,
3 right?

4 So if in a -- in a case EPA had
5 evaluated various remedies and it had rejected a
6 remedy because it said that remedy will cause
7 environmental harm, so we choose not to adopt it
8 --

9 JUSTICE BREYER: No, the problem isn't
10 -- I don't think the problem we're stating is
11 anything to do with preemption or anything.
12 It's just whether someone in your position
13 should first have to go and get the EPA's
14 permission.

15 And you're talking about a shovel of
16 dirt or something. Suppose they did do
17 something like that. Isn't there a remedy?
18 It's called the Administrative Procedures Act.
19 And you say here they've made an administrative
20 procedure, and it was arbitrary, capricious, and
21 abuse of discretion. That way, as the Chief
22 said, as others say, we channel all this through
23 the EPA and the courts reviewing the EPA.

24 And what we don't have is 10,000
25 juries or -- or 50 states or whatever it is

1 imposing sometimes conflicting duties and
2 leaving it up to hundreds of different judges to
3 decide.

4 MR. PALMORE: Your Honor, a couple
5 answers. One is EPA doesn't need this
6 122(e)(6), which is what you're referring to, to
7 prevent harm at a Superfund site or protect the
8 integrity of its remedy. The government made
9 that point at page 17 of its invitation brief.

10 It said we have plenty of tools. We
11 can get administrative orders. We can get
12 injunctions. There's no problem here. We can
13 use those tools to protect the integrity of our
14 -- of our remedy.

15 The 122(e)(6) applies only to
16 potentially responsible parties. What is a
17 potentially responsible party? It is not
18 defined in the statute. So, under normal rules
19 of statutory construction, this Court looks to
20 what does that mean. Is someone potentially
21 responsible if they face no prospect of
22 liability? No, they're not potentially
23 responsible.

24 JUSTICE GORSUCH: I -- I --

25 JUSTICE GINSBURG: It's been said they

1 are covered parties. And who is a covered party
2 that is not a potentially responsible party?
3 The -- the -- we are told that this Court has
4 equated the term "covered party" with personally
5 responsible party, that a covered party is a
6 potentially responsible party. And you say
7 that's not right, they're not one and the same
8 thing.

9 So who is a covered party but would
10 not be a potentially responsible party?

11 MR. PALMORE: There could be a number
12 of ways. And you're right, Justice Ginsburg,
13 that this Court has, as shorthand, used the two,
14 linked the two. And the concepts are clearly
15 linked. All potentially responsible parties
16 have to at one point been covered persons.

17 But a covered person would include a
18 residential landowner with certain exceptions.
19 Justice Sotomayor, you asked about the
20 contiguous landowner defense. If you look at
21 that, that is a carveout from the definition of
22 owner, so someone who establishes the
23 requirements that that carveout is not even an
24 owner, so under ARCO's view, where all owners
25 under Section 107 are potentially responsible

1 parties, those who satisfied that defense and
2 the bona fide purchaser defense aren't even
3 owners.

4 But, more importantly, Congress could
5 have said in 122(e)(6) all 107 covered parties
6 have to get EPA permission in order to remove
7 toxic waste for -- or arsenic from their land.
8 It didn't say that. It said potentially
9 responsible parties. It used a different term.

10 JUSTICE KAGAN: Well, it did -- it
11 did, Mr. Palmore, but, under your theory, how
12 would you decide whether somebody is a
13 potentially responsible party? It sounds like
14 you would need a court adjudication to do that.

15 And that seems unlikely that Congress
16 meant for that to happen.

17 MR. PALMORE: Well, Your Honor, I
18 don't think it would necessarily need a court
19 adjudication. And, in fact, the statute puts
20 the onus on EPA. This is Section 113(k)(2)(D)
21 to notify, identify and notify all potentially
22 responsible parties as early as it can before
23 taking any removal action.

24 So, here, we're talking about in the
25 1980s. It's on them to identify potentially

1 responsible parties and send them a letter. And
2 when there is settlement negotiations and you
3 referred to this in Section 122, they have to
4 identify all potentially responsible parties and
5 include them. They never --

6 JUSTICE KAGAN: So you're saying that
7 even in the absence of the statute of
8 limitations issue, these would not be
9 potentially responsible parties because the
10 government is subject to a kind of estoppel
11 principle?

12 MR. PALMORE: I'm saying that if there
13 is some concern about how will we know who a
14 potentially responsible party is, the government
15 has tools to at least put people on notice that
16 it thinks they are potentially responsible
17 parties.

18 Now, of course it might be wrong. But
19 in -- in this case, though, we never got any of
20 those kinds of notices. In the district court
21 in this case the government's brief said we take
22 no position on whether these landowners are
23 potentially responsible parties.

24 JUSTICE GINSBURG: They are -- they --
25 they own land that contains hazardous

1 substances. I thought that potentially
2 responsible parties are people who own land,
3 whether they have any fault or not, but their
4 land does contain hazardous substances.

5 MR. PALMORE: It does, Justice
6 Ginsburg. And that makes them owners under
7 Section 107, unless they are carved out from
8 that definition by one of the defenses that we
9 were talking about. That makes them owners, but
10 107 does not use the phrase potentially
11 responsible party.

12 And I think there's a -- there's a
13 critical kind of elephants in a mouse hole
14 aspect to this argument. Section 122 -- and we
15 reproduce all of it in the appendix to our brief
16 at 50A through 80A -- is all about settlement.
17 If you read it front to back, it's all about
18 settlement.

19 JUSTICE KAGAN: I understood --

20 MR. PALMORE: And if that --

21 JUSTICE KAGAN: -- Ms. Blatt, as I --
22 because I made that point to her, and I thought
23 that she said to me that there are other places
24 in the statute which use the term potentially
25 responsible parties, so that it's not all about

1 settlement.

2 MR. PALMORE: There are a few others,
3 most of them refer back to the settlement
4 provision, but I think that explains the purpose
5 of 122(e)(6) and also explains why it should be
6 read according to its ordinary plain terms,
7 which potentially responsible means --
8 potentially responsible means like someone who
9 could be liable, which is that when there are
10 settlement negotiations and EPA has notified all
11 the PRPs of the settlement negotiations and
12 included them -- something they've never done
13 here, we've been excluded -- then they don't
14 want these -- these parties who face possible
15 liability and, therefore, are in settlement
16 negotiations to go off and do their own remedial
17 plan.

18 JUSTICE ALITO: And you think a party
19 could be potentially responsible at one point
20 but then at a later point cease to be
21 potentially responsible?

22 MR. PALMORE: Absolutely, Your Honor,
23 I do think that. That's --

24 JUSTICE ALITO: What sense --

25 MR. PALMORE: That's inherent in the

1 --

2 JUSTICE ALITO: -- would -- what sense
3 would that make with respect to a rule limiting
4 the ability of that party to engage in
5 remediation? It's not consistent with the EPA
6 plan.

7 MR. PALMORE: Because, Your Honor,
8 first of all, that's the way statute of
9 limitations work. Right? Parties get repose
10 when the statute has passed.

11 And I think you have to understand the
12 implications of the contrary position, which is
13 -- you asked -- someone asked the question when
14 will this plan be over? It's already over on
15 our land. The plan overall is targeted to be
16 completed in 2025.

17 But it's never over because all of the
18 arsenic and other contaminants will not be
19 removed. There is a five-year review process
20 where more remedial action could be taken. ARCO
21 could be required to do it. And that will go on
22 literally forever.

23 So the argument on the other side is
24 that EPA has a permanent easement on my client's
25 property requiring them to store ARCO's arsenic

1 and lead forever unless we get EPA permission to
2 remove it.

3 JUSTICE KAVANAUGH: Can I go back to
4 Justice Kagan's question for a second? If EPA
5 notified landowners early on that they were all
6 PRPs, and you disagreed, how would that be
7 resolved?

8 MR. PALMORE: Well, I think we -- we
9 would then -- I think it kind of depends on how
10 it comes up here. This PRP issue is coming up
11 in an odd posture in this case because I think
12 it's critical to point out that what we're
13 talking about here is, one, a measure of
14 damages. Right? These are trespass and
15 nuisance claims.

16 And under Montana law, we have -- the
17 default is diminution of value. But if we can
18 establish that we have personal reasons for
19 wanting to stay on our property and -- and
20 remove the arsenic, then we can get this other
21 measure of damages, restoration damages. And
22 then it comes in, ARCO has argued that as like a
23 defense to -- to that.

24 JUSTICE KAVANAUGH: I think her
25 question went to it would be odd to think that

1 the statute creates uncertainty about who is
2 subject -- who is a PRP and who isn't, given who
3 needs to get approval from EPA to do
4 improvements on the land. You would want
5 certainty at the front end. And if you can
6 disagree and she said go to court, that seems
7 unusual for this statutory structure. Do you
8 want to respond to that?

9 MR. PALMORE: Well, Your Honor, of
10 course EPA has the ability to provide some
11 measure of certainty. At least it can put
12 people on notice that it believes they are PRPs.
13 It's actually obligated to do that under the
14 statute. And it didn't do that here.

15 JUSTICE KAVANAUGH: Right. But even
16 if they do, there is disagreement, that would
17 have to be resolved somehow with satellite
18 collateral litigation, I think, or else we would
19 be back in the same spot decades later.

20 MR. PALMORE: Perhaps, Your Honor.
21 But I think that the assumption behind those
22 kinds of questions is that EPA critically needs
23 122(e)(6) in order to effectuate its goals --

24 JUSTICE KAGAN: Would -- would --

25 MR. PALMORE: -- on a CERCLA run --

1 JUSTICE KAGAN: -- think it would be a

2 --

3 MR. PALMORE: -- site, and that's not
4 correct.

5 JUSTICE KAGAN: Would you think it
6 would be an appropriate rule if basically it
7 were up to EPA to designate potentially
8 responsible parties or at least that there were
9 a strong presumption that, if EPA designated
10 somebody as a potentially responsible party,
11 they were one?

12 MR. PALMORE: I -- I -- I don't --
13 they certainly don't have the -- the power to do
14 it unquestionably, because it's -- it's a
15 defined term under the statute.

16 So they did send us such a letter as a
17 litigation filing, as a letter to counsel, right
18 before the cert petition in this case was filed.

19 And so I don't think that -- that's
20 not binding because they are wrong. We're not
21 potentially responsible parties. And it also
22 came decades after they were supposed to do
23 that. And they have never treated us as
24 potentially responsible parties.

25 But at least that would define a

1 universe, if done properly, according to the
2 statute --

3 JUSTICE KAGAN: Yeah, I --

4 MR. PALMORE: -- people --

5 JUSTICE KAGAN: -- actually -- you are
6 quite right. I was not clear enough in my
7 question.

8 I actually meant as -- that they would
9 designate somebody as part of putting together
10 the settlement negotiations that 136 is all
11 about.

12 MR. PALMORE: Absolutely. That would
13 at least allow them to identify the universe and
14 put people on notice that EPA --

15 JUSTICE BREYER: The problem, knowing
16 your land -- your clients are landowners of land
17 that is polluted, and it's a Superfund site.
18 Now, they know that.

19 MR. PALMORE: Yes.

20 JUSTICE BREYER: You're a good lawyer.
21 I wouldn't think there was actually a problem of
22 their being ignorant. Maybe there is. I don't
23 know what it is. I haven't seen it.

24 So does it boil down to -- and you
25 said this, but I don't think you're right --

1 that -- that on the one hand you said EPA gets
2 some kind of permanent easement on their
3 property to tell them what to do. But isn't
4 that an overstatement?

5 What EPA can do is they can say we
6 don't want you physically to change this land.
7 And if you think that they are unreasonable, you
8 go to court. That's their side of it.

9 And you say they are unreasonable.
10 Okay? That's simple. And most people can do
11 that. And if you win, then it's really about
12 the same thing. You can go and say, look, we
13 under our Montana statute believe that we should
14 not just get money, but we should get money that
15 is earmarked and must be used to make physical
16 changes in the property. That's the problem.

17 And if you can do that, it may be
18 easier to get. But the problem is that there
19 could be many states that have that, and you
20 can't run it in a central way.

21 Have I stated correctly what the issue
22 is?

23 MR. PALMORE: Perhaps, Your Honor.
24 First of all, a couple of answers. One is
25 Congress wanted to allow state law to -- to

1 proceed --

2 JUSTICE BREYER: They did for damages.
3 There is no doubt.

4 MR. PALMORE: And for what --

5 JUSTICE BREYER: But is there --

6 MR. PALMORE: -- and --

7 JUSTICE BREYER: -- any indication
8 they wanted physical changes to be made by 40
9 different entities?

10 MR. PALMORE: Yes, Your Honor. If you
11 look at Section 114(b), which is a no double
12 recovery provision, Congress contemplated that
13 there would be state law recovery for removal.
14 And the only limit it put on it was that there
15 be no double recovery.

16 Congress knew that there could be
17 state law -- state law recovery for removal and
18 it allowed it to continue.

19 And also I think that the -- the --
20 the --

21 JUSTICE GINSBURG: But what, Mr.
22 Palmore, of the argument that what the state
23 court might order conflicts with what EEOC --
24 that what with the EPA, for -- one example was
25 given here. You want more arsenic removed. The

1 EPA said that that would involve danger. There
2 would be additional hazards.

3 The -- the problem with not having EPA
4 as the overall supervisor means that there --
5 that there can be clashes between what state law
6 says is okay and what EPA says should be the
7 proper treatment. So --

8 MR. PALMORE: Justice Ginsburg, of
9 course, if EPA thinks that a remedy is going to
10 cause harm, as it said in its invitation, we
11 believe it has ample tools to stop it.

12 Second of all, there is simply in this
13 case -- that might be an issue in another case.
14 In this case, there is no such finding in any of
15 the regulatory documents of -- of environmental
16 harm.

17 They just said we're going to go this
18 far and no further. They didn't reject any --
19 they didn't reject our permeable wall to clean
20 the groundwater. They didn't say we can't do 24
21 inches, much less did they say that any of those
22 things would cause environmental harm.

23 So in a -- in -- one can imagine --

24 JUSTICE SOTOMAYOR: Maybe it was a
25 moot question if it's your obligation to ask

1 them, meaning if you are a PRP and that's what
2 we conclude, it would be your obligation to ask
3 them for permission.

4 So if Ms. Blatt is right that the
5 award here, assuming you were to get one, were
6 conditioned on you being a PRP and any action
7 you took had to be approved by the EPA, what
8 damage does this do to you?

9 MR. PALMORE: That would be a
10 question --

11 JUSTICE SOTOMAYOR: You would have
12 administrative remedies to challenge their
13 denial of any activity you wanted to take. That
14 would be litigated by a court. But at least
15 there would be clarity. Landowners on super
16 site funds, before you interfere with the EPA,
17 get their approval or before you attempt to or
18 before you attempt to do anything, get their
19 approval. What's wrong with such a ruling?

20 MR. PALMORE: Well, Your Honor, of
21 course, our position is we're not required to
22 get approval because we're not PRPs. If we lose
23 on that and if you conclude we -- we also are
24 not contiguous landowners, which carves us out
25 --

1 JUSTICE SOTOMAYOR: I don't have to
2 decide that.

3 MR. PALMORE: -- of the definition of
4 owner --

5 JUSTICE SOTOMAYOR: That -- the Court
6 --

7 MR. PALMORE: Well, their argument is
8 all owners are PRPs.

9 JUSTICE SOTOMAYOR: Whether --

10 MR. PALMORE: If we're not owners --

11 JUSTICE SOTOMAYOR: -- whether --

12 MR. PALMORE: -- we're not a PRP.

13 JUSTICE SOTOMAYOR: -- just assume --

14 MR. PALMORE: If you --

15 JUSTICE SOTOMAYOR: -- that we rule --

16 MR. PALMORE: -- assume away all of
17 that, then it's really a state law question.

18 This is a state law question.

19 JUSTICE SOTOMAYOR: No, it's not a
20 state law question.

21 MR. PALMORE: It -- it --

22 JUSTICE SOTOMAYOR: We would hold that
23 it would -- it would conflict with federal law,
24 with federal rules, if you go ahead with that --
25 with remediation without EPA approval. You are

1 a PRP. And conflict preemption stops you from
2 taking any actions that are not approved by the
3 EPA, period, end of case.

4 MR. PALMORE: The reason that would be
5 a remand question, Justice Sotomayor, is because
6 we haven't asked the EPA for that permission
7 because we've -- we don't believe we are PRPs.
8 And, In fact, EPA itself took no position on
9 whether we are PRPs in this very case.

10 So we might be able to get in the
11 district court in Montana --

12 JUSTICE SOTOMAYOR: I thought their
13 whole brief said you were --

14 MR. PALMORE: In the district court in
15 Montana, the U.S. government said we take no
16 position on whether landowners here are PRPs.
17 Their position has changed dramatically over
18 time.

19 What I'm saying is we never had any
20 reason to seek their permission. If you were to
21 hold that we need their permission, then we --
22 A, we might get it, they've said before that
23 there are aspects of our plan they could
24 approve; and, B, to the extent that there's
25 uncertainty about that, that is a state law

1 question because, again, all we're talking about
2 here is whether --

3 JUSTICE SOTOMAYOR: No, it's not a
4 state law question.

5 MR. PALMORE: It's embedded -- it's a
6 federal question --

7 JUSTICE SOTOMAYOR: We have said
8 there's a conflict, it's a federal question --

9 MR. PALMORE: It's a federal question
10 embedded in a state law question because the
11 state law question is: Do we intend to use this
12 money to clean up our land? And that prevents
13 windfalls. That's the Montana Supreme Court's
14 decision in Sunburst.

15 What they're saying is, well, you may
16 not get EPA approval to clean your land, so you
17 wouldn't actually be able to do it. How that
18 uncertainty, that possibility of need for EPA
19 approval would be factored into the damages
20 calculation is a state law question.

21 JUSTICE GORSUCH: Can --

22 MR. PALMORE: If I could return to
23 Justice Breyer's question.

24 JUSTICE GORSUCH: Well, okay, before
25 you do that, I just was hoping you might return

1 to Justice Ginsburg's question. And let --
2 let's suppose for the purposes of this
3 hypothetical that you're -- you're not a PRP but
4 that EPA thinks that some aspects of your plan
5 would interfere with its interests.

6 You said that the EPA has plenty of
7 tools available to it in that scenario to
8 address any conflicts. Can you be specific
9 about what EPA could do to take care of its
10 interests in that scenario?

11 MR. PALMORE: Yes, Your Honor. And I
12 -- I -- you don't have to take my --

13 JUSTICE GORSUCH: Because 122 won't
14 work, right?

15 MR. PALMORE: You don't have to take
16 my word for it. You can look at page 17 of the
17 government's invitation brief in this case,
18 where it said you don't need to take cert on
19 this PRP issue because we have plenty of tools
20 in order to safeguard the integrity of our
21 remedial plan. Those are under Section 106. It
22 can seek administrative orders. It can seek
23 injunctions. There are plenty of tools it
24 can --

25 JUSTICE GORSUCH: Can it do that even

1 with respect to somebody who's not a PRP?

2 MR. PALMORE: Absolutely. If -- if
3 someone is going to do something that's going to
4 release toxic substances into the -- onto their
5 neighbors' property or into a creek or
6 something, then they have plenty of tools to
7 address that. They don't need this -- this
8 ongoing supervision.

9 And that ties into a part of Justice
10 Breyer's question, which I didn't ask yet. I
11 think -- answer yet, which is you were asking
12 about well, couldn't they get approval and why
13 is this -- why might this be a taking. It
14 depends on what the default rule is, right?
15 Where does the property right lie? Does it lie
16 with -- lie with EPA? Or does it lie with the
17 landowners?

18 Under Montana law, we have a right, a
19 wrongdoer has put arsenic on our land, and we
20 have a state law right to get a judgment
21 sufficient to remove it.

22 It's not -- that's not applying the
23 CERCLA health standard. That's applying
24 bread-and-butter Montana property law.

25 JUSTICE KAVANAUGH: Am I right that

1 your answer to Justice Gorsuch's question really
2 just turns on who has the burden? Under your
3 theory, EPA has the burden to initiate
4 proceedings; under the other side's argument,
5 the landowner has the burden to go to EPA first?
6 Is that an accurate way of looking at it?

7 MR. PALMORE: That is, Your Honor. So
8 they -- the presumption is we are private
9 property owners, that we have control of our own
10 property, and we can remove arsenic on our own
11 property if we want to. Nothing in their
12 122(e)(6) argument --

13 JUSTICE KAVANAUGH: The question is
14 whether CERCLA displaces that presumption.

15 MR. PALMORE: Whether CERCLA displaces
16 that forever --

17 JUSTICE KAVANAUGH: Right.

18 MR. PALMORE: Right? A thousand years
19 from now, under their view, we would -- if we
20 wanted to remove a shovelful --

21 JUSTICE KAVANAUGH: But either --

22 MR. PALMORE: -- of dirt --

23 JUSTICE KAVANAUGH: -- way -- sorry to
24 interrupt. Either way, EPA would have the say.
25 It's just whether EPA initiates or you go to

1 EPA. I think you just said that.

2 MR. PALMORE: Yeah, but I think the
3 default rule is critical, right? I mean, we
4 have the bundle of property rights --

5 JUSTICE KAVANAUGH: Yeah.

6 MR. PALMORE: -- and if we, you know,
7 commit an environmental offense, then EPA as a
8 regulator can use its power --

9 JUSTICE KAGAN: What would the --

10 MR. PALMORE: -- to go after us.

11 JUSTICE KAGAN: -- government have to
12 show? What's the -- what would -- what would
13 the test be? What would the legal standard be?

14 MR. PALMORE: If -- if they went after
15 us, it would be a violation of -- of CERCLA.
16 These are the -- this is what -- and the
17 government itself took the position that those
18 tools are fully adequate here to protect the
19 integrity of the remedy.

20 JUSTICE BREYER: These things are
21 likely to be pretty complicated. And if we --
22 one way, it's central, everyone goes to EPA, and
23 there's a central review in court.

24 The other way, you want EPA to go to
25 any place where a landowner has a law in -- in

1 his favor, lets him do some things, and EPA is
2 going to have to prove that this particular
3 thing in each of these cases is a CERCLA
4 violation, which is already a standard that's --
5 it might not, it might just be an interference
6 with their plan. It might just be raising the
7 cost of their plan. It might be who knows. I'm
8 not an expert in this.

9 But that's -- that's the question:
10 How did Congress want this to work?

11 MR. PALMORE: Right. And one can
12 imagine Congress writing a statute to give EPA
13 complete control, but it didn't -- it didn't do
14 that.

15 JUSTICE BREYER: And it might have
16 used the words potentially responsible person
17 has to go to EPA and, by that, meant that those
18 people who live or own property on a toxic waste
19 center. That's what they argue.

20 MR. PALMORE: Right, Your Honor, their
21 position is that every single private property
22 landowner --

23 JUSTICE BREYER: Yeah.

24 MR. PALMORE: -- in this vast
25 300-square-mile Superfund site has to get their

1 permission to remove even a shovelful of dirt
2 from their own backyard.

3 JUSTICE BREYER: No, I don't know that
4 they --

5 CHIEF JUSTICE ROBERTS: Well, but
6 that's the reason, though --

7 MR. PALMORE: That is page 34 of the
8 blue brief. ARCO says remedial action covers
9 virtually any physical action with respect to
10 hazardous waste at the site, including storage,
11 excavation. It has a list there. It's
12 virtually anything.

13 They're saying that our -- my clients
14 in Opportunity, Montana, have to get permission
15 from EPA in Washington if they want to dig out
16 part of their backyard to put in a sandbox for
17 their grandchildren and --

18 JUSTICE BREYER: And are you saying
19 also it's an --

20 CHIEF JUSTICE ROBERTS: Well, you can
21 say dig out -- you can say dig out part of their
22 backyard. EPA would say if you want to disturb
23 arsenic-infected land, dirt in a way that would
24 not only harm your neighbors but could harm
25 people many -- many miles away. I mean, yes,

1 you want to just do things --

2 MR. PALMORE: And if --

3 CHIEF JUSTICE ROBERTS: -- on your
4 land, but you can't overlook the fact that that
5 is going to have harmful effects on everybody
6 else around you.

7 MR. PALMORE: And if you assume that
8 harm that's assumed, embedded, in your question,
9 they have the tools to go after that. What I'm
10 talking about is when there's no showing of
11 harm. Their argument is whether there's harm or
12 not, we have to get their permission.

13 And if I can --

14 JUSTICE KAGAN: I guess the --

15 JUSTICE KAVANAUGH: Just --

16 JUSTICE KAGAN: -- question, though,
17 is -- and, you know, you might say, look, this
18 is a policy matter and Congress decided it. But
19 I guess the question is it -- it's hard for EPA
20 to go around and try to figure out who's
21 creating sandboxes. And so why should the onus
22 be on EPA to figure out who's creating
23 sandboxes?

24 MR. PALMORE: Well, EPA is, of course,
25 all over this site, and it can enforce the law

1 here. The question is whether we are -- should
2 be similarly situated to just you and me and any
3 American who, if we violate the law, the
4 regulator, the law enforcement, can come after
5 us, or whether we have this kind of
6 superintending presence of agency authority over
7 us and our private property for the rest of ours
8 lives. And that's not what -- that's not the
9 scheme that Congress created. It went out of
10 its way to allow state law over these
11 traditionally state law subjects to continue.

12 JUSTICE KAVANAUGH: But your -- your
13 -- your parade of horrors can still come true
14 with EPA being aggressive in getting to all
15 those places. So really the --

16 MR. PALMORE: If -- if they want to
17 come out -- you're right.

18 JUSTICE KAVANAUGH: -- the question
19 Justice Breyer asked is does it make sense to
20 have you go to EPA first so that they can
21 maintain control? "Comprehensive" is the word
22 in the statute after all.

23 MR. PALMORE: Your Honor, there's no
24 evidence that Congress intended this obscure
25 corner of Section 122 about settlements to give

1 EPA that kind of vast control forever over
2 private property.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Three minutes, Ms. Blatt.

6 REBUTTAL ARGUMENT OF LISA S. BLATT

7 ON BEHALF OF THE PETITIONER

8 MS. BLATT: Thank you, Mr. Chief
9 Justice.

10 Justice Sotomayor, I answered one of
11 your questions incorrectly on a cite, and I -- I
12 need to correct it. Section 107(q)(1)(A) 3
13 through 5 is the contiguous landowner provision
14 that says if you live on a Superfund site, no
15 matter what, you have to make sure you comply
16 and not interfere with EPA.

17 So there's provisions throughout
18 CERCLA that say no matter what your defenses may
19 be, you always are on the hook to not do
20 anything to interfere with EPA's remedy. And I
21 just gave you different cites.

22 So on PRPs, in terms of this is a
23 status and not a financial liability, EPA,
24 they're always liable under 106 for abatement.
25 And they're always liable in a suit by Atlantic

1 Richfield when the cleanup ends under Section
2 113(g)(2)(A). We might not get much money but
3 they're -- they're definitely on the hook.

4 But the real question is one of
5 status. And it's -- Justice Gorsuch and Justice
6 Kavanaugh, you were wrong on this as being a
7 question of who has to sue and a burden. EPA
8 would have no way of knowing what -- they only
9 know in this case and wrote them a letter
10 because there's a lawsuit and a Supreme Court
11 case in the state of Montana, but there are
12 hundreds of thousands of people who live along
13 -- live on Superfund sites with the uranium, and
14 God knows what else, and how is EPA exactly
15 supposed to know when someone is removing
16 uranium? It has a half-life of 4.7 billion
17 years.

18 Arsenic has no half-life. It always
19 is there. It cannot be destroyed. It doesn't
20 evaporate. So, yeah, they have some
21 restrictions before they move hazardous waste.

22 The other thing is in terms of who
23 you'd have to sue, I would freak out if I got a
24 -- a -- a letter. Their view is you have to sue
25 these poor innocent landowners and say you're

1 liable under CERCLA. Just so you know, that's
2 the only way we can keep control of the site.

3 That's the only way we're going to
4 know and then, you know, now they're on notice
5 because otherwise you would have this
6 metaphysical thing of who knows who's liable?

7 In terms of the taking issue, and I
8 think that Justice -- I mean, you guys already
9 answered this, but this is really a question of
10 do you have to go to EPA. If EPA denies
11 permission and they want to bring a takings
12 claim, go sue EPA.

13 There is also a citizen suit provision
14 that in 2025, they can bring a lawsuit and say:
15 EPA, you're remedy was terrible, we don't like
16 it, I violated CERCLA, come up with a new one.
17 That -- that's what the citizen suit provision
18 is before -- for.

19 On the mouse hole point, I don't think
20 it's a mouse hole. So it has mouses or
21 elephants, I guess, all the way in the statute.
22 There are provision after provision in the
23 contiguous landowner, in the demicrominimus --
24 or whatever that word is -- in the bona fide
25 landowner that says at all times you have to

1 make sure you don't interfere with EPA's remedy.

2 Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel, the case is submitted.

5 (Whereupon, at 12:07 p.m., the case
6 was submitted.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official - Subject to Final Review

1	9601(a)(4) [1] 25:14	and/or [1] 21:9	avoid [1] 14:3
10,000 [1] 38:24	A	another [4] 27:1 32:15 37:7 52:13	award [3] 13:1,4 53:5
101/24 [1] 19:4	a.m. [2] 1:14 3:2	answer [9] 3:15 12:22 16:4,5,22	awarded [2] 12:14 22:23
105H(4) [1] 19:25	abatement [1] 65:24	28:21 36:18 58:11 59:1	away [3] 15:15 54:16 62:25
106 [2] 57:21 65:24	Abilene [1] 10:19	answered [3] 29:1 65:10 67:9	B
107 [8] 18:3 19:24 20:2 27:2 40:25	ability [3] 33:7 45:4 47:10	answers [4] 28:13 35:10 39:5 50:24	back [7] 16:20 17:7 22:8 43:17 44:3 46:3 47:19
41:5 43:7,10	able [4] 14:21 33:24 55:10 56:17	APPEARANCES [1] 1:16	backyard [4] 33:9 62:2,16,22
107(q)(1)(A) [1] 65:12	above-entitled [1] 1:12	appendix [1] 43:15	barriers [1] 27:11
11:06 [2] 1:14 3:2	absence [1] 42:7	Applicable [1] 21:9	bars [3] 4:13,15 32:19
113 [2] 4:13 10:11	absent [2] 4:16 32:3	applies [2] 25:12 39:15	Bartlett [1] 9:1
113(g)(2)(A) [1] 66:2	absolutely [10] 6:25 7:2 19:15 22:13 25:20 28:15 35:22 44:22 49:12 58:2	apply [3] 26:16 32:23,24	based [2] 7:11 29:22
113(h) [1] 32:22	abuse [1] 38:21	applying [2] 58:22,23	basic [1] 13:8
113(k)(2)(D) [1] 41:20	accept [1] 18:18	Appropriate [2] 21:10 48:6	basically [1] 48:6
114(b) [1] 51:11	according [2] 44:6 49:1	approval [22] 8:11 13:3 15:9 19:1,14 22:24 23:3,6,7,9 28:8,9,10,14 47:3 53:17,19,22 54:25 56:16,19 58:12	basis [2] 4:3 33:10
12:07 [1] 68:5	account [1] 27:6	approve [7] 7:1 8:20 16:11 29:20,25 31:12 55:24	behalf [8] 1:18,24 2:4,11,14 3:8 31:17 65:7
121 [1] 10:5	accurate [1] 59:6	approved [3] 14:22 53:7 55:2	behind [1] 47:21
122 [8] 4:15 11:20 15:4 17:17 42:3 43:14 57:13 64:25	accurately [1] 14:6	approves [1] 8:14	believe [4] 6:15 50:13 52:11 55:7
122(e)(6) [10] 5:25 23:9 25:10 33:2 39:6,15 41:5 44:5 47:23 59:12	across [2] 20:21 27:10	ARARs [2] 21:9 31:10	believes [1] 47:12
122A [1] 19:24	act [2] 10:23 38:18	arbitrary [1] 38:20	below [3] 12:8 14:10 31:23
122E(1) [1] 19:25	action [2] 7:5 8:11 11:19 16:7,12 19:3,5,13,21,24 25:12 28:2,7,8,13 32:12 41:23 45:20 53:6 62:8,9	ARCO [5] 33:1,16 45:20 46:22 62:8	benefits [1] 4:2
122E(6) [1] 19:22	actions [3] 4:16 28:10 55:2	ARCO's [4] 32:21 37:16 40:24 45:25	best [1] 29:16
136 [1] 49:10	active [1] 30:12	area [1] 35:14	better [3] 3:20 9:24 33:1
16 [1] 13:18	activity [1] 53:13	aren't [1] 41:2	between [1] 52:5
17 [2] 39:9 57:16	actual [3] 11:12 35:13 38:1	argue [1] 61:19	beyond [4] 30:12 37:11,19,20
17-1498 [1] 3:4	actually [7] 11:15 12:13 47:13 49:5,8,21 56:17	argued [2] 14:7 46:22	big [1] 25:6
18 [1] 34:20	ad [1] 4:3	argument [25] 1:13 2:2,5,9,12 3:4,7 5:12 6:12 11:7 14:14 20:6,24 31:16 37:16,23,25 43:14 45:23 51:22 54:7 59:4,12 63:11 65:6	billion [1] 66:16
1980s [1] 41:25	additional [2] 9:16 52:2	arguments [2] 9:6 23:15	binding [2] 8:3 48:20
1991 [1] 24:12	address [2] 57:8 58:7	arises [1] 30:15	BLATT [54] 1:17 2:3,13 3:6,7,9 4:25 5:5,9,23 6:6,10,13,16,19,23 7:4,9,15,25 8:18 9:4 10:5 11:6 12:3,17,21 13:6,11,14,17 14:23 15:2,7,10 16:14,16,24 17:13,16,24 18:11 19:2,15,22 22:1,20 28:21 37:17 43:21 53:4 65:5,6,8
2	adequate [1] 60:18	around [2] 63:6,20	block [2] 10:18,18
20 [2] 2:8 5:25	adjudication [2] 41:14,19	arsenic [12] 9:23 10:3 26:4 31:2 41:7 45:18,25 46:20 51:25 58:19 59:10 66:18	blue [1] 62:8
2013 [1] 4:4	administrative [9] 6:1 8:3,6 14:16 38:18,19 39:11 53:12 57:22	arsenic-infected [1] 62:23	boil [1] 49:24
2019 [1] 1:10	adopt [2] 21:8 38:7	art [1] 35:19	bona [2] 41:2 67:24
2025 [4] 30:10,13 45:16 67:14	adverse [2] 35:2,8	articulated [1] 37:17	both [2] 6:1 22:1
24 [1] 52:20	affect [1] 4:10	aside [2] 23:16,19	bottom [1] 19:12
3	affecting [1] 36:22	aspect [2] 20:12 43:14	breached [1] 33:16
3 [3] 1:10 2:4 65:12	affects [2] 27:8,9	aspects [2] 55:23 57:4	bread-and-butter [1] 58:24
3,000 [1] 10:7	affirm [1] 31:21	assistance [1] 9:3	BREYER [19] 16:4,15,18 17:6,14,21 18:5 38:9 49:15,20 51:2,5,7 60:20 61:15,23 62:3,18 64:19
300-square-mile [1] 61:25	affirming [1] 31:23	Assistant [1] 1:19	Breyer's [2] 56:23 58:10
31 [1] 2:11	agency [2] 21:15 64:6	assume [6] 5:11 23:13,19 54:13,16 63:7	brief [1] 13:19 14:8 24:11 36:2,5 39:9 42:21 43:15 55:13 57:17 62:8
34 [1] 62:7	aggressive [1] 64:14	assumed [1] 63:8	briefing [1] 8:16
4	agree [1] 29:3	assuming [2] 16:3 53:5	Briefly [1] 31:22
4.7 [1] 66:16	agreeing [2] 14:13 22:1	assumption [2] 13:18 47:21	briefs [1] 23:15
40 [1] 51:8	ahead [3] 32:8 36:17 54:24	AT&T [1] 10:20	bring [4] 3:13 16:7 67:11,14
45 [1] 30:17	air [1] 26:4	ATLANTIC [9] 1:3 3:4 4:19 8:4,8 11:13,16,22 65:25	broader [2] 21:12 36:22
5	AL [1] 1:6	attempt [2] 53:17,18	broadly [1] 30:22
5 [3] 34:12,19 65:13	ALITO [3] 44:18,24 45:2	authority [2] 32:20 64:6	brought [1] 17:2
50 [1] 38:25	allow [4] 31:6 49:13 50:25 64:10	authorization [3] 4:17 29:6,6	building [1] 4:9
500,000 [1] 19:7	allowed [1] 51:18	authorize [1] 20:15	built [1] 7:7
50A [1] 43:16	almost [1] 10:20	authorized [1] 16:13	bunch [1] 9:5
6	already [6] 16:25 17:4 20:23 45:14 61:4 67:8	available [2] 29:16 57:7	bundle [1] 60:4
65 [1] 2:14	American [1] 64:3		burden [5] 14:25 59:2,3,5 66:7
8	amicus [5] 1:21 2:7 20:7 36:2,5		
8,000-foot [1] 27:15	amount [1] 7:5		
80A [1] 43:16	amounts [1] 27:20		
9	ample [1] 52:11		
95 [1] 34:12	Anaconda [1] 4:7		

Official - Subject to Final Review

<p>butterfly ^[1] 26:2</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculation ^[1] 56:20 call ^[2] 21:4 35:24 called ^[3] 19:3 21:8 38:18 came ^[2] 1:12 48:22 cannot ^[3] 8:8 33:6 66:19 capricious ^[1] 38:20 care ^[2] 9:25 57:9 carried ^[1] 14:17 carry ^[7] 8:8 11:14 13:22 14:15 15:21 17:17 21:23 carrying ^[1] 4:23 carved ^[1] 43:7 carveout ^[2] 40:21,23 carves ^[1] 53:24 Case ^[44] 3:4,11 5:1 6:22 7:24 10:17,18,19,20 12:25 13:17,23 15:13,18 17:1,9,20 22:5 27:12 29:1,4,24 30:21 32:2 36:9 37:13,15,23 38:2,4 42:19,21 46:11 48:18 52:13,13,14 55:3,9 57:17 66:9,11 68:4,5 cases ^[2] 28:9 61:3 cause ^[3] 38:6 52:10,22 causes ^[1] 32:12 cease ^[1] 44:20 ceiling ^[9] 6:2,4,18,22 22:2,8,15 33:12 37:18 center ^[1] 61:19 central ^[3] 50:20 60:22,23 CERC ^[1] 37:20 CERCLA ^[21] 3:16 10:25 20:18,19 21:13,22,23 32:9,19 33:11 35:20 37:17 47:25 58:23 59:14,15 60:15 61:3 65:18 67:1,16 cert ^[2] 48:18 57:18 certain ^[5] 7:22 9:23 16:8 27:14 40:18 certainly ^[2] 33:6 48:13 certainty ^[2] 47:5,11 challenge ^[4] 4:14 11:18 32:22 53:12 change ^[8] 6:25 7:9,12 16:1 18:25 27:16,16 50:6 changed ^[1] 55:17 changes ^[2] 50:16 51:8 channel ^[1] 38:22 chemicals ^[1] 27:21 CHIEF ^[18] 3:3,9 20:3,9 31:13,18 34:23 35:11 36:7 37:2,10 38:21 62:5,20 63:3 65:3,8 68:3 choose ^[1] 38:7 CHRISTIAN ^[2] 1:6 3:5 CHRISTOPHER ^[3] 1:19 2:6 20:6 cite ^[3] 13:18 14:8 65:11 cites ^[3] 35:25 36:5 65:21 citing ^[1] 36:2 citizen ^[2] 67:13,17 claim ^[12] 11:11,21 12:15 23:2 29:7 30:15,20,23,24 34:1 37:14 67:12 claiming ^[1] 13:2 claims ^[7] 11:8,9 21:2 32:25 34:1,</p>	<p>2 46:15 clarity ^[1] 53:15 clashes ^[1] 52:5 clause ^[2] 10:13,21 clauses ^[5] 5:16,17 9:12 10:22 20:25 clean ^[6] 20:15 34:16,20 52:19 56:12,16 cleanup ^[10] 4:20 6:2 7:20 14:12 21:11,19,23 27:6 33:24 66:1 cleanups ^[4] 3:14 4:24 10:17 20:20 clear ^[5] 11:7 25:10 29:23 33:13 49:6 clearly ^[1] 40:14 client's ^[1] 45:24 clients ^[3] 34:9 49:16 62:13 code ^[1] 8:2 collateral ^[1] 47:18 come ^[6] 22:10 36:16 64:4,13,17 67:16 comes ^[5] 13:23 26:10 28:17 46:10,22 coming ^[1] 46:10 comment ^[1] 21:17 commit ^[1] 60:7 community ^[1] 3:18 community's ^[1] 4:10 COMPANY ^[2] 1:3 4:21 compelling ^[1] 23:18 compensatory ^[1] 11:8 complete ^[1] 61:13 completed ^[1] 45:16 completely ^[3] 10:22 26:7 37:6 compliance ^[1] 21:19 complicated ^[1] 60:21 complies ^[1] 31:9 comply ^[1] 65:15 complying ^[1] 9:2 comprehensive ^[3] 4:24 32:10 64:21 conceded ^[2] 15:20,24 concedes ^[1] 13:20 concept ^[1] 24:7 concepts ^[1] 40:14 concern ^[1] 42:13 concessions ^[1] 14:9 conclude ^[2] 53:2,23 condition ^[1] 32:3 conditioned ^[1] 53:6 conducting ^[1] 21:15 confident ^[1] 14:5 conflict ^[7] 6:24 11:22 34:4 37:14 54:23 55:1 56:8 conflicting ^[1] 39:1 conflicts ^[4] 20:17,19 51:23 57:8 confused ^[1] 12:15 Congress ^[13] 26:8 27:24 33:13 41:4,15 50:25 51:12,16 61:10,12 63:18 64:9,24 consequences ^[2] 24:17,25 considered ^[2] 26:15 27:13 consistent ^[1] 45:5 construction ^[1] 39:19</p>	<p>contain ^[2] 3:21 43:4 contains ^[1] 42:25 contaminants ^[1] 45:18 contaminated ^[1] 28:6 contamination ^[1] 20:16 contemplated ^[1] 51:12 contiguous ^[6] 23:14,25 40:20 53:24 65:13 67:23 continue ^[4] 30:9,13 51:18 64:11 continuing ^[1] 30:11 continuous ^[2] 19:10 23:21 contradicts ^[1] 5:14 contrary ^[3] 11:14 14:7 45:12 control ^[6] 33:7 59:9 61:13 64:21 65:1 67:2 cooked ^[1] 15:14 core ^[1] 32:19 corner ^[1] 64:25 correct ^[5] 7:2,25 18:22 48:4 65:12 correctly ^[2] 18:23 50:21 cost ^[2] 32:17 61:7 coterminous ^[1] 27:1 Cotton ^[1] 10:19 couldn't ^[1] 58:12 counsel ^[5] 20:4 31:14 48:17 65:4 68:4 couple ^[3] 35:10 39:4 50:24 course ^[10] 6:10 25:25 28:8 30:1,22 42:18 47:10 52:9 53:21 63:24 COURT ^[43] 1:1,13 3:10 4:12 5:13 7:10 9:1 10:19 12:8 13:21 15:16 18:13,18 20:10,13 23:1 26:25 28:24 29:24 31:19,20,25 32:2,5,23,24 36:3,5 39:19 40:3,13 41:14,18 42:20 47:6 50:8 51:23 53:14 54:5 55:11,14 60:23 66:10 Court's ^[1] 56:13 courts ^[3] 7:10 10:16 38:23 covered ^[10] 27:2 31:2 40:1,1,4,5,9,16,17 41:5 covers ^[1] 62:8 created ^[1] 64:9 creates ^[1] 47:1 creating ^[2] 63:21,22 creek ^[1] 58:5 critical ^[5] 32:3 34:7 43:13 46:12 60:3 critically ^[1] 47:22 CTS ^[1] 32:6 curiae ^[3] 1:21 2:8 20:8</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C ^[4] 1:9,17,20,23 damage ^[2] 32:13 53:8 damages ^[15] 9:20 11:8,9,11 12:6 13:1,2 14:2 21:2 31:24 46:14,21,21 51:2 56:19 danger ^[1] 52:1 day ^[2] 8:5 27:1 deal ^[1] 25:6 deals ^[2] 10:5 26:11 decade ^[1] 24:20 decades ^[5] 4:6 24:19 28:2 47:19</p>	<p>48:22 December ^[1] 1:10 decide ^[7] 6:8 22:12 27:3 36:20 39:3 41:12 54:2 decided ^[2] 35:12 63:18 decision ^[6] 23:1 26:8 31:22 34:15 35:15 56:14 decisions ^[2] 32:1 35:14 default ^[3] 46:17 58:14 60:3 defense ^[5] 18:19 40:20 41:1,2 46:23 defenses ^[2] 43:8 65:18 define ^[1] 48:25 defined ^[5] 19:3,4 25:13 39:18 48:15 defines ^[2] 19:4 20:1 definitely ^[1] 66:3 definition ^[6] 23:20 25:13 27:5 40:21 43:8 54:3 degree ^[1] 28:16 demicrominimus ^[1] 67:23 denial ^[2] 31:23 53:13 denies ^[1] 67:10 Department ^[1] 1:20 depends ^[2] 46:9 58:14 deprive ^[1] 24:20 design ^[1] 10:25 designate ^[2] 48:7 49:9 designated ^[1] 48:9 destroy ^[2] 10:22,24 destroyed ^[1] 66:19 destroys ^[1] 20:18 developing ^[1] 3:17 different ^[15] 10:16 12:1,2 15:18,25 26:21 35:17,18,23 37:13,22 39:2 41:9 51:9 65:21 dig ^[7] 16:8 26:3,5 27:14 62:15,21,21 digging ^[1] 4:8 diminution ^[1] 46:17 direct ^[1] 11:19 directly ^[1] 10:6 dirt ^[7] 7:6 16:8 33:8 38:16 59:22 62:1,23 disagree ^[3] 6:3 16:25 47:6 disagreed ^[1] 46:6 disagreement ^[1] 47:16 discretion ^[1] 38:21 discussed ^[3] 22:19,20 27:12 dismiss ^[1] 17:9 displace ^[1] 5:19 displaces ^[2] 59:14,15 displacing ^[1] 5:18 disposal ^[1] 3:24 dispute ^[1] 21:1 distinction ^[1] 23:24 distinctive ^[1] 20:14 district ^[3] 42:20 55:11,14 disturb ^[1] 62:22 documents ^[2] 35:16 52:15 doing ^[9] 4:21 24:20 25:24 28:1 34:5,18 36:14,16 37:8 done ^[13] 9:20 34:9,11,13,19 35:3,6 36:13,25 37:4,6 44:12 49:1</p>
---	--	---	--

Official - Subject to Final Review

<p>door ^[1] 4:1 double ^[2] 51:11,15 doubt ^[1] 51:3 down ^[2] 34:20 49:24 dramatically ^[1] 55:17 dug ^[2] 7:6 34:20 duties ^[2] 9:2 39:1 duty ^[2] 33:16,16</p>	<p>1 38:13 65:20 68:1 equate ^[1] 18:2 equated ^[1] 40:4 equates ^[2] 20:1 26:24 erects ^[1] 21:24 ESQ ^[6] 1:17,23 2:3,6,10,13 essence ^[1] 28:1 establish ^[3] 6:21 32:10 46:18 establishes ^[3] 33:11 37:18 40:22 estoppel ^[1] 42:10 ET ^[1] 1:6 evaluated ^[2] 4:2 38:5 evaporate ^[1] 66:20 even ^[10] 16:3 23:3 32:24 37:19 40:23 41:2 42:7 47:15 57:25 62:1 everybody ^[2] 18:9 63:5 everyone ^[2] 18:13 60:22 evidence ^[1] 64:24 exactly ^[1] 66:14 example ^[3] 27:12 36:9 51:24 Excavation ^[2] 3:23 62:11 exceptions ^[2] 10:10 40:18 excluded ^[1] 44:13 excuse ^[2] 17:3 19:25 exempts ^[1] 19:11 exercise ^[1] 32:20 exercised ^[1] 31:25 exists ^[1] 23:3 expect ^[1] 30:13 expensive ^[1] 35:20 expert ^[2] 29:17 61:8 explained ^[1] 32:6 explains ^[2] 44:4,5 explicit ^[1] 5:18 exposure ^[1] 25:5 expressly ^[1] 13:21 extent ^[1] 55:24 extremely ^[1] 3:21</p>	<p>finds ^[1] 31:21 fine ^[2] 11:11 17:21 finer ^[1] 8:9 Finish ^[2] 5:4 30:6 finished ^[1] 37:9 First ^[10] 4:13 21:14 25:10 34:6 35:12 38:13 45:8 50:24 59:5 64:20 five-year ^[1] 45:19 fixing ^[1] 33:22 flaps ^[1] 26:2 flaw ^[1] 6:4 floor ^[6] 6:1,5,18 22:2 33:11 37:18 forced ^[1] 14:15 forever ^[5] 33:8 45:22 46:1 59:16 65:1 formally ^[1] 29:15 forth ^[1] 8:6 forward ^[2] 21:1 23:2 found ^[1] 23:24 four ^[2] 11:8,8 framework ^[1] 32:10 freak ^[1] 66:23 front ^[2] 43:17 47:5 fully ^[2] 31:9 60:18 funds ^[1] 53:16 further ^[4] 7:20 15:1 28:25 52:18</p>	<p>17 63:14,19 67:21 guys ^[1] 67:8</p>
E			
<p>e)(1) ^[1] 26:24 e)(6) ^[1] 26:22 each ^[1] 61:3 earlier ^[1] 31:11 early ^[2] 41:22 46:5 earmarked ^[1] 50:15 earth ^[2] 25:24 27:8 easement ^[2] 45:24 50:2 easier ^[1] 50:18 economic ^[1] 10:2 EEOC ^[1] 51:23 effects ^[1] 63:5 effectuate ^[3] 4:20 11:23 47:23 efforts ^[4] 4:6,7 30:17 33:25 either ^[4] 11:24 33:11 59:21,24 elephants ^[2] 43:13 67:21 embedded ^[3] 56:5,10 63:8 emphatic ^[1] 5:24 employees ^[2] 11:25 12:1 enact ^[1] 10:14 encourage ^[1] 24:8 end ^[3] 32:2 47:5 55:3 endanger ^[1] 27:17 ends ^[1] 66:1 enforce ^[1] 63:25 enforcement ^[1] 64:4 engage ^[1] 45:4 enough ^[1] 49:6 entire ^[2] 4:10 27:7 entirely ^[1] 32:3 entities ^[1] 51:9 entrusts ^[1] 3:16 environment ^[2] 3:17 27:9 environmental ^[7] 31:10 33:12 35:24 38:7 52:15,22 60:7 EP ^[2] 7:2,4 EPA ^[124] 3:16 4:3,4,8,23 5:14 6:8,20,24 7:7,9,15,19,22 8:13,14,17,20 9:8,22,25 10:8 13:3,9 15:9 16:11,13,21 17:3 18:8,25 19:9,14 20:18 21:4,11,14 22:9,24 23:3 24:11,11 25:25 27:13 28:8,8,9,14,23 29:5,13 31:9 33:6,22 34:5,15,18,18 35:14 36:10 37:15 38:4,23,23 39:5 41:6,20 44:10 45:5,24 46:1,4 47:3,10,22 48:7,9 49:14 50:1,5 51:24 52:1,3,6,9 53:7,16 54:25 55:3,6,8 56:16,18 57:4,6,9 58:16 59:3,5,24,25 60:1,7,22,24 61:1,12,17 62:15,22 63:19,22,24 64:14,20 65:1,16,23 66:7,14 67:10,10,12,15 EPA's ^[21] 4:14,17 7:18 8:11,19 10:8,15,24 14:16 15:22 16:2 17:19 19:23 20:20 30:24 33:25 36:18 37:</p>	<p>face ^[3] 33:4 39:21 44:14 fact ^[8] 13:4 19:12 22:17 30:24 35:3 41:19 55:8 63:4 factored ^[1] 56:19 fails ^[2] 29:7 32:22 fair ^[2] 12:18,19 fairly ^[1] 28:7 far ^[1] 52:18 fares ^[1] 33:1 fault ^[1] 43:3 favor ^[1] 61:1 federal ^[20] 4:21 6:25 7:4,12 8:23 11:17,23 15:3,5 16:1 17:3 21:15 32:23,24 33:17 54:23,24 56:6,8,9 feet ^[1] 26:3 few ^[2] 3:23 44:2 fide ^[2] 41:2 67:24 figure ^[3] 5:11 63:20,22 filed ^[1] 48:18 filing ^[1] 48:17 financial ^[1] 65:23 financially ^[2] 24:9 33:23 find ^[3] 12:5,9,11 finding ^[2] 35:22 52:14</p>	<p>garden ^[2] 25:19,21 gave ^[1] 65:21 Geier ^[1] 38:2 General ^[2] 1:20 36:9 gets ^[2] 10:4 50:1 getting ^[3] 16:3 21:17 64:14 GINSBURG ^[11] 7:14 8:13 11:1 28:20 29:4 39:25 40:12 42:24 43:6 51:21 52:8 Ginsburg's ^[1] 57:1 give ^[5] 12:1 13:9 33:6 61:12 64:25 given ^[4] 18:16 30:24 47:2 51:25 goals ^[1] 47:23 God ^[1] 66:14 GORSUCH ^[13] 29:8,19 30:4,14 31:3,8 34:1 39:24 56:21,24 57:13,25 66:5 Gorsuch's ^[1] 59:1 got ^[4] 15:16 16:2 42:19 66:23 gotten ^[1] 36:19 government ^[13] 7:12 25:2 29:13,20 30:8 35:25 36:5 39:8 42:10,14 55:15 60:11,17 government's ^[6] 9:3 29:9 30:6,16 42:21 57:17 gradient ^[1] 27:16 grandchildren ^[1] 62:17 grant ^[2] 28:9,14 granted ^[2] 28:10 29:10 grass ^[1] 34:21 GREGORY ^[1] 1:6 ground ^[1] 34:24 groundwater ^[6] 4:11 34:15,16,24 35:17 52:20 guess ^[8] 9:18 16:2 24:23 26:6 30:</p>	<p>H</p> <p>H4(a) ^[1] 19:25 half-life ^[2] 66:16,18 hand ^[1] 50:1 happen ^[2] 12:10 41:16 happens ^[1] 7:7 hard ^[2] 12:1 63:19 harm ^[11] 35:24 38:7 39:7 52:10,16,22 62:24,24 63:8,11,11 harmful ^[1] 63:5 hat ^[1] 12:1 hate ^[1] 10:15 hazardous ^[8] 3:14,22 9:17 18:1 42:25 43:4 62:10 66:21 hazards ^[1] 52:2 health ^[4] 3:17 10:1 21:21 58:23 hear ^[1] 3:3 held ^[1] 32:5 hinder ^[1] 28:1 hindered ^[1] 28:6 hire ^[2] 11:24,25 hoc ^[1] 4:3 hold ^[2] 54:22 55:21 hole ^[3] 43:13 67:19,20 Honor ^[15] 34:6 37:24 39:4 41:17 44:22 45:7 47:9,20 50:23 51:10 53:20 57:11 59:7 61:20 64:23 hook ^[2] 65:19 66:3 hoping ^[1] 56:25 horribles ^[1] 64:13 house ^[2] 10:18,18 human ^[2] 3:16 21:21 hundreds ^[3] 3:12 39:2 66:12 hypothetical ^[1] 57:3</p>
F			
G			
H			
I			
<p>idea ^[1] 10:1 identically ^[1] 10:20 identify ^[4] 41:21,25 42:4 49:13 ignorant ^[1] 49:22 imagine ^[4] 9:19 37:13 52:23 61:12 impact ^[1] 35:8 impacts ^[1] 35:2 implement ^[3] 3:13 4:24 11:16 implemented ^[1] 21:10 implications ^[1] 45:12 implies ^[1] 23:1 imply ^[1] 24:2 important ^[2] 23:23 31:8 importantly ^[1] 41:4 impose ^[2] 6:1 9:15 imposing ^[2] 24:12 39:1 impossibility ^[1] 33:15 impracticable ^[1] 35:19 improved ^[2] 30:25 31:4 improvements ^[1] 47:4 inch ^[1] 37:19 inches ^[2] 34:20 52:21 include ^[2] 40:17 42:5 included ^[1] 44:12</p>	<p>face ^[3] 33:4 39:21 44:14 fact ^[8] 13:4 19:12 22:17 30:24 35:3 41:19 55:8 63:4 factored ^[1] 56:19 fails ^[2] 29:7 32:22 fair ^[2] 12:18,19 fairly ^[1] 28:7 far ^[1] 52:18 fares ^[1] 33:1 fault ^[1] 43:3 favor ^[1] 61:1 federal ^[20] 4:21 6:25 7:4,12 8:23 11:17,23 15:3,5 16:1 17:3 21:15 32:23,24 33:17 54:23,24 56:6,8,9 feet ^[1] 26:3 few ^[2] 3:23 44:2 fide ^[2] 41:2 67:24 figure ^[3] 5:11 63:20,22 filed ^[1] 48:18 filing ^[1] 48:17 financial ^[1] 65:23 financially ^[2] 24:9 33:23 find ^[3] 12:5,9,11 finding ^[2] 35:22 52:14</p>	<p>garden ^[2] 25:19,21 gave ^[1] 65:21 Geier ^[1] 38:2 General ^[2] 1:20 36:9 gets ^[2] 10:4 50:1 getting ^[3] 16:3 21:17 64:14 GINSBURG ^[11] 7:14 8:13 11:1 28:20 29:4 39:25 40:12 42:24 43:6 51:21 52:8 Ginsburg's ^[1] 57:1 give ^[5] 12:1 13:9 33:6 61:12 64:25 given ^[4] 18:16 30:24 47:2 51:25 goals ^[1] 47:23 God ^[1] 66:14 GORSUCH ^[13] 29:8,19 30:4,14 31:3,8 34:1 39:24 56:21,24 57:13,25 66:5 Gorsuch's ^[1] 59:1 got ^[4] 15:16 16:2 42:19 66:23 gotten ^[1] 36:19 government ^[13] 7:12 25:2 29:13,20 30:8 35:25 36:5 39:8 42:10,14 55:15 60:11,17 government's ^[6] 9:3 29:9 30:6,16 42:21 57:17 gradient ^[1] 27:16 grandchildren ^[1] 62:17 grant ^[2] 28:9,14 granted ^[2] 28:10 29:10 grass ^[1] 34:21 GREGORY ^[1] 1:6 ground ^[1] 34:24 groundwater ^[6] 4:11 34:15,16,24 35:17 52:20 guess ^[8] 9:18 16:2 24:23 26:6 30:</p>	<p>I</p> <p>idea ^[1] 10:1 identically ^[1] 10:20 identify ^[4] 41:21,25 42:4 49:13 ignorant ^[1] 49:22 imagine ^[4] 9:19 37:13 52:23 61:12 impact ^[1] 35:8 impacts ^[1] 35:2 implement ^[3] 3:13 4:24 11:16 implemented ^[1] 21:10 implications ^[1] 45:12 implies ^[1] 23:1 imply ^[1] 24:2 important ^[2] 23:23 31:8 importantly ^[1] 41:4 impose ^[2] 6:1 9:15 imposing ^[2] 24:12 39:1 impossibility ^[1] 33:15 impracticable ^[1] 35:19 improved ^[2] 30:25 31:4 improvements ^[1] 47:4 inch ^[1] 37:19 inches ^[2] 34:20 52:21 include ^[2] 40:17 42:5 included ^[1] 44:12</p>

Official - Subject to Final Review

<p>including ^[5] 4:7 14:9 18:19 25:4 62:10</p> <p>inconsistent ^[1] 36:25</p> <p>incorporate ^[1] 10:7</p> <p>incorrectly ^[1] 65:11</p> <p>incur ^[1] 8:4</p> <p>incursion ^[1] 28:16</p> <p>independent ^[1] 10:17</p> <p>independently ^[2] 8:23 11:5</p> <p>indication ^[1] 51:7</p> <p>indirect ^[1] 27:24</p> <p>individual ^[1] 36:23</p> <p>infancy ^[1] 15:14</p> <p>information ^[1] 29:17</p> <p>inherent ^[1] 44:25</p> <p>initiate ^[1] 59:3</p> <p>initiates ^[1] 59:25</p> <p>injunctions ^[2] 39:12 57:23</p> <p>innocent ^[1] 66:25</p> <p>instead ^[1] 32:11</p> <p>instinct ^[1] 24:10</p> <p>instituting ^[2] 34:3,4</p> <p>integrity ^[4] 39:8,13 57:20 60:19</p> <p>intend ^[1] 56:11</p> <p>intended ^[1] 64:24</p> <p>intending ^[1] 5:18</p> <p>interests ^[2] 57:5,10</p> <p>interfere ^[7] 25:25 33:24 53:16 57:5 65:16,20 68:1</p> <p>interference ^[3] 34:8 37:8 61:5</p> <p>interferes ^[1] 34:5</p> <p>interpret ^[1] 10:22</p> <p>interpreted ^[1] 10:20</p> <p>interrupt ^[1] 59:24</p> <p>interrupted ^[1] 5:3</p> <p>introduced ^[1] 29:18</p> <p>invitation ^[3] 39:9 52:10 57:17</p> <p>invocation ^[1] 32:21</p> <p>involve ^[1] 52:1</p> <p>involved ^[4] 7:24 25:2 26:14,15</p> <p>involves ^[1] 3:11</p> <p>involving ^[1] 37:13</p> <p>isn't ^[7] 7:14 17:15 37:3 38:9,17 47:2 50:3</p> <p>issue ^[7] 37:3 42:8 46:10 50:21 52:13 57:19 67:7</p> <p>itself ^[4] 14:17 37:17 55:8 60:17</p> <hr/> <p style="text-align: center;">J</p> <p>jeopardize ^[1] 20:20</p> <p>JOSEPH ^[3] 1:23 2:10 31:16</p> <p>judges ^[1] 39:2</p> <p>judgment ^[3] 31:23 32:14 58:20</p> <p>judgments ^[1] 32:11</p> <p>juries ^[2] 4:3 38:25</p> <p>jurisdiction ^[3] 31:20,21,22</p> <p>jury ^[3] 15:15 20:14 31:12</p> <p>Justice ^[159] 1:20 3:3,10 4:25 5:6, 8,10 6:3,7,11,14,17,20 7:3,8,14 8:13 9:4 11:1 12:3,19,23 13:7,12,15 14:18,24 15:6,8 16:4,15,18 17:6, 14,21 18:5,20 19:8,17 20:3,10 21:6,25 22:7,10,14,18,21 23:5,12 24:4,15 25:15,18 26:6,20 27:23,25</p>	<p>28:12,20 29:3,8,19 30:4,14 31:3,8, 13,19 32:7 33:18,19 34:1,23 35:11 36:7 37:3,10 38:9 39:24,25 40:12,19 41:10 42:6,24 43:5,19,21 44:18,24 45:2 46:3,4,24 47:15,24 48:1,5 49:3,5,15,20 51:2,5,7,21 52:8,24 53:11 54:1,5,9,11,13,15, 19,22 55:5,12 56:3,7,21,23,24 57:1,13,25 58:9,25 59:1,13,17,21,23 60:5,9,11,20 61:15,23 62:3,5,18, 20 63:3,14,15,16 64:12,18,19 65:3, 9,10 66:5,5 67:8 68:3</p> <p>justices ^[1] 24:6</p> <hr/> <p style="text-align: center;">K</p> <p>KAGAN ^[24] 9:4 21:6 24:15 25:15, 18 26:6,20 27:25 41:10 42:6 43:19,21 47:24 48:1,5 49:3,5 60:9,11 63:14,16</p> <p>Kagan's ^[1] 46:4</p> <p>KAVANAUGH ^[15] 27:23 28:12 46:3,24 47:15 58:25 59:13,17,21,23 60:5 63:15 64:12,18 66:6</p> <p>keep ^[1] 67:2</p> <p>key ^[1] 14:13</p> <p>kick ^[1] 26:4</p> <p>kind ^[9] 9:5 13:15 27:22 42:10 43:13 46:9 50:2 64:5 65:1</p> <p>kinds ^[2] 42:20 47:22</p> <p>knowing ^[2] 49:15 66:8</p> <p>knows ^[3] 61:7 66:14 67:6</p> <hr/> <p style="text-align: center;">L</p> <p>labeling ^[1] 24:17</p> <p>lacks ^[1] 31:20</p> <p>land ^[25] 18:4 19:13 24:22 26:4,5 27:17,22 33:21 34:9,10,12 41:7 42:25 43:2,4 45:15 47:4 49:16,16 50:6 56:12,16 58:19 62:23 63:4</p> <p>landowner ^[13] 23:21,25 24:5 27:8 28:1 40:18,20 59:5 60:25 61:22 65:13 67:23,25</p> <p>landowner's ^[1] 33:9</p> <p>landowners ^[24] 3:12 7:20,21 8:16 17:25 18:22,24 19:10,20 21:18 24:13 28:22 29:14 30:18 33:3 36:21 42:22 46:5 49:16 53:15,24 55:16 58:17 66:25</p> <p>language ^[1] 5:2</p> <p>large ^[1] 27:20</p> <p>later ^[3] 37:4 44:20 47:19</p> <p>latest ^[2] 30:10,10</p> <p>Laughter ^[1] 5:7</p> <p>law ^[62] 4:21 5:19,22 6:25 7:4,13, 13,15,17 8:2,2,5,10,23,24 9:2 10:14 11:9,15,17,24 12:4,6,9,12,15 14:6,14 15:19 16:1 20:14 21:3 25:4 31:6 32:25 33:14,17 37:19 46:16 50:25 51:13,17,17 52:5 54:17, 18,20,23 55:25 56:4,10,11,20 58:18,20,24 60:25 63:25 64:3,4,10,11</p> <p>laws ^[1] 31:10</p> <p>lawsuit ^[4] 17:3,4 66:10 67:14</p> <p>lawsuits ^[1] 3:13</p>	<p>lawyer ^[1] 49:20</p> <p>lays ^[1] 21:13</p> <p>lead ^[2] 3:22 46:1</p> <p>least ^[8] 8:15 29:20 42:15 47:11 48:8,25 49:13 53:14</p> <p>leave ^[4] 6:12,22 26:25 33:14</p> <p>leaves ^[1] 32:11</p> <p>leaving ^[2] 3:20 39:2</p> <p>left ^[1] 4:8</p> <p>legal ^[1] 60:13</p> <p>legislature ^[1] 9:21</p> <p>length ^[1] 22:20</p> <p>less ^[2] 35:22 52:21</p> <p>letter ^[5] 42:1 48:16,17 66:9,24</p> <p>level ^[4] 7:5 9:23 10:3 31:5</p> <p>liability ^[9] 5:19 9:16 24:13 25:5 32:13 33:5 39:22 44:15 65:23</p> <p>liable ^[11] 18:14,16 24:2,6,9 32:16 44:9 65:24,25 67:1,6</p> <p>lie ^[4] 58:15,15,16,16</p> <p>likely ^[2] 30:6 60:21</p> <p>likewise ^[1] 21:6</p> <p>limit ^[1] 51:14</p> <p>limitations ^[4] 23:17 25:4 42:8 45:9</p> <p>limited ^[1] 28:16</p> <p>limiting ^[1] 45:3</p> <p>line ^[1] 19:12</p> <p>lines ^[1] 35:1</p> <p>linked ^[2] 40:14,15</p> <p>LISA ^[5] 1:17 2:3,13 3:7 65:6</p> <p>list ^[1] 62:11</p> <p>listen ^[2] 29:13 30:2</p> <p>literal ^[1] 30:19</p> <p>literally ^[3] 34:13 36:6 45:22</p> <p>litigated ^[1] 53:14</p> <p>litigating ^[1] 29:24</p> <p>litigation ^[3] 29:18 47:18 48:17</p> <p>live ^[6] 3:25 27:19 61:18 65:14 66:12,13</p> <p>lives ^[3] 25:23 28:5 64:8</p> <p>living ^[1] 28:18</p> <p>long ^[1] 19:19</p> <p>look ^[13] 9:6 25:18 26:9,23 35:13, 24 36:4 38:2 40:20 50:12 51:11 57:16 63:17</p> <p>looking ^[2] 36:10 59:6</p> <p>looks ^[1] 39:19</p> <p>lose ^[1] 53:22</p> <p>lost ^[1] 25:7</p> <p>lot ^[2] 26:21 38:2</p> <p>love ^[1] 14:1</p> <p>lower ^[1] 9:24</p> <p>lowered ^[1] 10:3</p> <hr/> <p style="text-align: center;">M</p> <p>made ^[9] 29:23 32:14 34:15 37:24, 25 38:19 39:8 43:22 51:8</p> <p>maintain ^[1] 64:21</p> <p>major ^[1] 19:7</p> <p>majority ^[1] 34:8</p> <p>mandate ^[1] 4:23</p> <p>many ^[5] 20:17 32:14 50:19 62:25, 25</p>	<p>massive ^[2] 8:4,9</p> <p>materials ^[3] 32:15 35:13,21</p> <p>matter ^[7] 1:12 15:13 22:24 36:9 63:18 65:15,18</p> <p>matters ^[1] 22:5</p> <p>mean ^[15] 8:25 9:6 11:2 22:9,16 23:8 25:6 28:3 29:12,22 30:19 39:20 60:3 62:25 67:8</p> <p>meaning ^[3] 12:24 33:25 53:1</p> <p>means ^[4] 9:1 44:7,8 52:4</p> <p>meant ^[3] 41:16 49:8 61:17</p> <p>measure ^[4] 32:17 46:13,21 47:11</p> <p>mechanisms ^[1] 21:7</p> <p>meet ^[2] 11:21 17:7</p> <p>meeting ^[3] 21:17,17,18</p> <p>Mensing ^[2] 7:10 9:1</p> <p>mention ^[1] 7:17</p> <p>mentioned ^[1] 31:11</p> <p>mercury ^[1] 3:22</p> <p>mere ^[1] 19:12</p> <p>merits ^[1] 32:5</p> <p>metaphysical ^[1] 67:6</p> <p>MICHEL ^[27] 1:19 2:6 20:5,7,9 22:3,9,13,16,19,25 23:8,23 24:10,15 25:9,17,20 26:19 28:3,15 29:3,12, 22 30:8,19 31:7</p> <p>might ^[27] 16:11 24:6,6 26:7 29:10, 20 30:4,4 33:25 34:2 36:11,18 38:2 42:18 51:23 52:13 55:10,22 56:25 58:13 61:5,5,6,7,15 63:17 66:2</p> <p>miles ^[2] 4:9 62:25</p> <p>millions ^[1] 3:25</p> <p>mind ^[1] 5:2</p> <p>minutes ^[1] 65:5</p> <p>missed ^[1] 30:5</p> <p>missing ^[1] 14:20</p> <p>misspoke ^[1] 8:2</p> <p>modifications ^[1] 7:22</p> <p>moment ^[2] 7:8 26:15</p> <p>money ^[10] 12:13 13:21 14:4,10,11 21:2 50:14,14 56:12 66:2</p> <p>Montana ^[18] 5:22 9:21 13:20 14:6 22:25 32:1,13 36:2,4 46:16 50:13 55:11,15 56:13 58:18,24 62:14 66:11</p> <p>moot ^[1] 52:25</p> <p>most ^[2] 44:3 50:10</p> <p>mouse ^[3] 43:13 67:19,20</p> <p>mouses ^[1] 67:20</p> <p>move ^[4] 21:1 23:2 37:11 66:21</p> <p>Ms ^[49] 3:6,9 4:25 5:5,9,23 6:6,10, 13,16,19,23 7:4,9,15,25 8:18 9:4 10:5 11:6 12:3,17,21 13:6,11,14, 17 14:23 15:2,7,10 16:14,16,24 17:13,16,24 18:11 19:2,15,22 22:1,20 28:21 37:17 43:21 53:4 65:5, 8</p> <p>much ^[4] 14:2 35:22 52:21 66:2</p> <p>must ^[2] 11:15 50:15</p> <hr/> <p style="text-align: center;">N</p> <p>name ^[1] 3:23</p> <p>namely ^[1] 20:13</p> <p>narrow ^[4] 11:7 20:12,24,24</p>
---	---	---	---

Official - Subject to Final Review

<p>nation ^[1] 20:21 necessarily ^[2] 22:4 41:18 necessary ^[1] 28:19 need ^[13] 14:25 16:22 17:11 29:1,5 39:5 41:14,18 55:21 56:18 57:18 58:7 65:12 needs ^[2] 47:3,22 negotiations ^[9] 25:3 26:12,14,16 42:2 44:10,11,16 49:10 neighbors ^[2] 3:25 62:24 neighbors' ^[1] 58:5 never ^[14] 14:7 16:1,17 17:5 18:18 25:1,2 30:1 42:5,19 44:12 45:17 48:23 55:19 new ^[1] 67:16 next ^[3] 3:4 4:1 14:20 Nobody ^[1] 26:14 non-final ^[1] 31:25 Nor ^[1] 33:15 normal ^[1] 39:18 Nothing ^[8] 32:19 33:17 34:13,16, 19 35:7 36:6 59:11 notice ^[4] 42:15 47:12 49:14 67:4 notices ^[1] 42:20 notified ^[2] 44:10 46:5 notify ^[2] 41:21,21 nuisance ^[4] 11:10 21:3 32:16 46:15 Number ^[5] 12:10,11 21:7,24 40:11</p>	<p>6,8 37:20 38:2 41:6 47:23 51:23 57:20 orders ^[8] 5:13 6:1 11:13 14:16,17 37:15 39:11 57:22 ordinary ^[3] 8:12 19:5 44:6 other ^[19] 10:23 13:1 15:12 16:22 17:12 20:21 21:3 27:10 28:9 32:14 34:2 36:14 43:23 45:18,23 46:20 59:4 60:24 66:22 others ^[2] 38:22 44:2 otherwise ^[1] 67:5 out ^[26] 4:23 5:11 8:9 10:6 11:14 13:22 14:15,17 15:21 17:17 21:7, 13,23 24:1,3 43:7 46:12 53:24 62:15,21,21 63:20,22 64:9,17 66:23 over ^[13] 5:25 10:6 11:3 31:25 37:5 45:14,14,17 55:17 63:25 64:6,10 65:1 overall ^[2] 45:15 52:4 overlook ^[1] 63:4 override ^[1] 10:8 overstatement ^[1] 50:4 own ^[17] 3:14 4:22 5:1 6:9 11:24 14:1 18:3 27:18 33:21 36:2 42:25 43:2 44:16 59:9,10 61:18 62:2 owner ^[5] 22:10 28:4 40:22,24 54:4 owners ^[11] 18:3 20:1 26:24 27:3 40:24 41:3 43:6,9 54:8,10 59:9</p>	<p>Perhaps ^[4] 18:6 37:23 47:20 50:23 period ^[2] 30:17 55:3 permanent ^[2] 45:24 50:2 permeable ^[1] 52:19 permission ^[20] 9:3 15:4,22 16:2, 21 17:19 19:23 28:23 29:10 38:14 41:6 46:1 53:3 55:6,20,21 62:1,14 63:12 67:11 permit ^[4] 5:16 7:19,21,21 person ^[4] 24:25 25:7 40:17 61:16 person's ^[1] 32:15 personal ^[2] 14:1 46:18 personally ^[1] 40:4 persons ^[3] 18:2 27:2 40:16 perspective ^[1] 36:22 petition ^[1] 48:18 Petitioner ^[10] 1:4,18,22 2:4,8,14 3:8 12:12 20:8 65:7 phrase ^[1] 43:10 physical ^[4] 16:9 50:15 51:8 62:9 physically ^[3] 20:17 27:16 50:6 piece ^[2] 33:21,21 piecemeal ^[1] 3:14 pillars ^[1] 8:18 place ^[4] 3:20 9:23 33:14 60:25 places ^[4] 13:19 14:10 43:23 64:15 plain ^[1] 44:6 plaintiff's ^[1] 11:25 plan ^[40] 3:18 5:12,14 6:8,21 7:1, 16,18 8:1,7,9,19 9:22 11:14,16 20:15,18 21:11,15,19,23 22:1 27:6,13 29:25 31:9,12 34:3,4 35:8 37:1 44:17 45:6,14,15 55:23 57:4,21 61:6, 7 plans ^[2] 5:21 10:8 planted ^[1] 34:21 please ^[3] 3:10 20:10 31:19 plenty ^[5] 39:10 57:6,19,23 58:6 plutonium ^[1] 3:22 point ^[14] 14:3 15:12 18:16 19:17 21:13 26:7 31:8 39:9 40:16 43:22 44:19,20 46:12 67:19 pointed ^[2] 21:7 24:3 policy ^[3] 24:12 26:8 63:18 pollute ^[2] 24:8 33:17 polluted ^[1] 49:17 polluting ^[1] 24:9 poor ^[1] 66:25 position ^[13] 10:13 30:16 34:25 36:15 38:12 42:22 45:12 53:21 55:8, 16,17 60:17 61:21 possibility ^[1] 56:18 possible ^[3] 29:20 33:5 44:14 posture ^[1] 46:11 potentially ^[40] 16:9,19 17:8,22 18:6,7,8,12,21 33:3 39:16,17,20, 22 40:2,6,10,15,25 41:8,13,21,25 42:4,9,14,16,23 43:1,10,24 44:7,8, 19,21 48:7,10,21,24 61:16 power ^[4] 6:8 33:7 48:13 60:8 practical ^[1] 15:13 preempted ^[4] 4:19 5:22 12:24 37:</p>	<p>21 preemption ^[15] 5:24 6:24 7:11, 23 8:21,22 11:22 14:14 29:2 33:10 34:4 37:14 38:1,11 55:1 premise ^[1] 31:1 presence ^[1] 64:6 present ^[1] 30:2 presented ^[1] 29:15 presumption ^[3] 48:9 59:8,14 pretty ^[1] 60:21 prevent ^[2] 4:22 39:7 prevents ^[1] 56:12 principle ^[1] 42:11 prior ^[2] 29:9 31:5 private ^[7] 31:12 32:20 33:9 59:8 61:21 64:7 65:2 problem ^[12] 23:10 24:7 26:2 33:20 38:9,10 39:12 49:15,21 50:16, 18 52:3 procedural ^[1] 21:20 procedure ^[1] 38:20 Procedures ^[1] 38:18 proceed ^[1] 51:1 proceedings ^[1] 59:4 process ^[3] 21:14,16 45:19 profoundly ^[1] 3:19 prohibited ^[1] 30:18 prohibits ^[1] 4:21 projection ^[1] 30:10 proper ^[1] 52:7 properly ^[1] 49:1 property ^[29] 14:1 19:6,21 25:8 27:18 28:6,17 30:25 31:1,4 32:13,16, 21 37:5 45:25 46:19 50:3,16 58:5, 15,24 59:9,10,11 60:4 61:18,21 64:7 65:2 proposals ^[2] 29:14,15 proposed ^[1] 35:23 proposing ^[1] 35:1 proposition ^[1] 36:1 prospect ^[1] 39:21 protect ^[6] 3:16 21:21 28:19 39:7, 13 60:18 protections ^[1] 21:24 protects ^[1] 3:18 prove ^[3] 12:12 13:9 61:2 proves ^[2] 13:1,2 provide ^[1] 47:10 provision ^[13] 19:18 25:11 26:23 32:22 33:2,5 44:4 51:12 65:13 67:13,17,22,22 provisions ^[4] 18:2 26:9 33:13 65:17 PRP ^[26] 19:8,15 20:2 23:13,16,20, 21,22 24:1,16,18 25:1,11 26:10,20 27:1 33:2 46:10 47:2 53:1,6 54:12 55:1 57:3,19 58:1 PRPs ^[16] 18:23 19:19,23 26:25 27:3 28:22 29:5 44:11 46:6 47:12 53:22 54:8 55:7,9,16 65:22 public ^[1] 21:17 punitive ^[1] 11:9 purchaser ^[1] 41:2 purpose ^[1] 44:4</p>
O			
<p>objected ^[1] 4:4 objection ^[1] 11:12 obligated ^[1] 47:13 obligation ^[2] 52:25 53:2 obscure ^[1] 64:24 obstacle ^[1] 37:25 obvious ^[1] 24:17 odd ^[2] 46:11,25 offense ^[1] 60:7 official ^[1] 35:15 Okay ^[11] 5:6 6:23 8:15,17 17:13 23:18 34:12 36:11 50:10 52:6 56:24 one ^[36] 9:9,15,18 10:10 12:10 15:12 19:22 20:1 27:7,7 28:13 30:21, 22 31:24 32:15 35:18,23 37:13,19 39:5 40:7,16 43:8 44:19 46:13 48:11 50:1,24 51:24 52:23 53:5 60:22 61:11 65:10 66:4 67:16 ones ^[1] 36:20 ongoing ^[2] 30:9 58:8 only ^[21] 3:24 6:18 10:14 11:18,19, 21 13:4 15:23 16:16 18:16 25:12 26:10 28:13 32:1 34:11 39:15 51:14 62:24 66:8 67:2,3 onus ^[2] 41:20 63:21 operations ^[1] 30:12 operators ^[2] 18:3 20:2 opinion ^[3] 13:16 14:9,19 opportunity ^[2] 34:17 62:14 oral ^[7] 1:13 2:2,5,9 3:7 20:6 31:16 order ^[14] 8:3,6,10,12,19 10:16 16:</p>	<p>p.m ^[1] 68:5 PAGE ^[5] 2:2 13:18 39:9 57:16 62:7 PALMORE ^[70] 1:23 2:10 31:15, 16,18 32:9 34:6 35:10 37:2,12 39:4 40:11 41:11,17 42:12 43:5,20 44:2,22,25 45:7 46:8 47:9,20,25 48:3,12 49:4,12,19 50:23 51:4,6, 10,22 52:8 53:9,20 54:3,7,10,12, 14,16,21 55:4,14 56:5,9,22 57:11, 15 58:2 59:7,15,18,22 60:2,6,10, 14 61:11,20,24 62:7 63:2,7,24 64:16,23 parade ^[1] 64:13 part ^[7] 5:22 8:16 21:11 49:9 58:9 62:16,21 particular ^[6] 9:14 30:7 36:8,21 37:11 61:2 parties ^[23] 17:9,22 18:12,21 39:16 40:1,15 41:1,5,9,22 42:1,4,9,17, 23 43:2,25 44:14 45:9 48:8,21,24 parts ^[2] 10:23 27:10 party ^[19] 8:22 9:9 16:10,20 39:17 40:1,2,4,5,6,9,10 41:13 42:14 43:11 44:18 45:4 48:10 passed ^[1] 45:10 pay ^[1] 11:13 penalties ^[1] 8:4 people ^[15] 3:25 23:22 24:20 26:13,17 36:24 42:15 43:2 47:12 49:4,14 50:10 61:18 62:25 66:12 percent ^[3] 34:12,12,19 perfect ^[2] 25:22 27:5</p>	<p>P</p>	
P			

Official - Subject to Final Review

<p>purposes ^[5] 10:2,2 12:14 13:5 57:2</p> <p>put ^[12] 9:22 12:1,7 15:19 34:10,20 42:15 47:11 49:14 51:14 58:19 62:16</p> <p>puts ^[2] 32:15 41:19</p> <p>putting ^[3] 23:16,19 49:9</p>	<p>6,6,17 39:8,14 52:9 60:19 65:20 67:15 68:1</p> <p>removal ^[5] 32:18 33:8 41:23 51:13,17</p> <p>remove ^[7] 41:6 46:2,20 58:21 59:10,20 62:1</p> <p>removed ^[2] 45:19 51:25</p> <p>removing ^[2] 3:19 66:15</p> <p>reply ^[2] 13:19 14:8</p> <p>reports ^[1] 29:17</p> <p>repose ^[1] 45:9</p> <p>representations ^[1] 29:9</p> <p>represents ^[1] 35:7</p> <p>reproduce ^[1] 43:15</p> <p>request ^[1] 20:13</p> <p>require ^[2] 4:19 15:25</p> <p>required ^[4] 33:17 37:21 45:21 53:21</p> <p>requirement ^[3] 12:12 17:8 21:20</p> <p>requirements ^[2] 9:16 40:23</p> <p>requires ^[7] 7:4 8:24 9:23 11:22 12:5,6 24:24</p> <p>requiring ^[2] 22:23 45:25</p> <p>residential ^[2] 24:13 40:18</p> <p>resolve ^[2] 17:20 29:4</p> <p>resolved ^[2] 46:7 47:17</p> <p>respect ^[9] 9:17 17:11 22:4,5 37:14 38:1 45:3 58:1 62:9</p> <p>respects ^[1] 20:17</p> <p>respond ^[1] 47:8</p> <p>Respondent ^[1] 13:20</p> <p>Respondents ^[13] 1:7,24 2:11 3:19 4:15 11:14,15 14:7 21:1 23:1 27:14 29:5 31:17</p> <p>Respondents' ^[3] 4:5,13 20:12</p> <p>responses ^[2] 15:2 25:9</p> <p>responsible ^[44] 16:10,20 17:8,22 18:6,7,8,10,12,21 19:9 33:4,23 39:16,17,21,23 40:2,5,6,10,15,25 41:9,13,22 42:1,4,9,14,16,23 43:2,11,25 44:7,8,19,21 48:8,10,21,24 61:16</p> <p>rest ^[1] 64:7</p> <p>restoration ^[7] 4:5,18,22 14:3 17:18 28:24 46:21</p> <p>restricted ^[1] 27:21</p> <p>restrictions ^[1] 66:21</p> <p>restricts ^[1] 28:17</p> <p>result ^[1] 16:7</p> <p>reticulated ^[1] 21:16</p> <p>return ^[2] 56:22,25</p> <p>reversal ^[1] 32:2</p> <p>reverse ^[1] 4:12</p> <p>review ^[3] 31:25 45:19 60:23</p> <p>reviewing ^[1] 38:23</p> <p>RICHFIELD ^[9] 1:3 3:5 4:20 8:4,8 11:13,16,23 66:1</p> <p>rights ^[4] 25:8 28:17 32:21 60:4</p> <p>risks ^[1] 4:2</p> <p>risky ^[1] 3:24</p> <p>ROBERTS ^[12] 3:3 20:3 31:13 34:23 35:11 36:7 37:10 62:5,20 63:3 65:3 68:3</p> <p>role ^[2] 9:14 30:6</p>	<p>rule ^[8] 9:20 17:16 18:15 45:3 48:6 54:15 58:14 60:3</p> <p>rules ^[3] 9:10 39:18 54:24</p> <p>ruling ^[2] 13:8 53:19</p> <p>run ^[2] 47:25 50:20</p>	<p>significant ^[9] 9:14 24:21 25:8,16,21 28:2,7,13 35:2</p> <p>similarly ^[1] 64:2</p> <p>simple ^[2] 13:10 50:10</p> <p>simply ^[3] 27:2 36:18 52:12</p> <p>Since ^[2] 4:4 24:12</p> <p>single ^[1] 61:21</p> <p>site ^[27] 4:7 7:16 18:1,4 20:16,20 25:24 26:1,25 27:7,10,18,20 28:5,18 30:7,12 36:23 39:7 48:3 49:17 53:16 61:25 62:10 63:25 65:14 67:2</p> <p>sites ^[11] 3:13,21 4:1 20:21 24:14,19,19 27:3 28:11 36:23 66:13</p> <p>sits ^[1] 17:1</p> <p>situated ^[1] 64:2</p> <p>soil ^[3] 4:8 26:3 34:20</p> <p>Solicitor ^[1] 1:19</p> <p>solution ^[1] 9:9</p> <p>somebody ^[7] 24:17 25:23 28:5 41:12 48:10 49:9 58:1</p> <p>somehow ^[1] 47:17</p> <p>someone ^[10] 19:9 24:7 36:15 38:12 39:20 40:22 44:8 45:13 58:3 66:15</p> <p>sometimes ^[1] 39:1</p> <p>soon ^[1] 36:13</p> <p>sorry ^[6] 5:3,8 7:3 21:25 32:8 59:23</p> <p>sort ^[1] 26:2</p> <p>SOTOMAYOR ^[53] 4:25 5:6,8,10 6:3,7,11,14,17,20 7:3,8 12:3,19,23 13:7,12,15 14:18,24 15:6,8 18:20 19:8,17 21:25 22:7,10,14,18,21 23:5,12 24:4 32:7 33:18,19 40:19 52:24 53:11 54:1,5,9,11,13,15,19,22 55:5,12 56:3,7 65:10</p> <p>sounds ^[1] 41:13</p> <p>Sp ^[1] 13:17</p> <p>specific ^[4] 7:5,5,16 57:8</p> <p>specifics ^[1] 36:8</p> <p>speculation ^[1] 7:12</p> <p>spells ^[1] 10:6</p> <p>spend ^[1] 14:4</p> <p>spent ^[1] 14:11</p> <p>spot ^[1] 47:19</p> <p>spread ^[1] 27:9</p> <p>squarely ^[1] 20:19</p> <p>stage ^[1] 21:22</p> <p>standard ^[5] 10:9 11:21 58:23 60:13 61:4</p> <p>Standards ^[1] 21:10</p> <p>stands ^[1] 29:13</p> <p>start ^[2] 5:2 31:1</p> <p>state ^[49] 3:13 5:12,19 8:23 9:2 10:4,9,14,16 11:9,15 12:4,6,11,15 14:14 15:19 17:4 20:14 21:2,18 22:22 29:18 31:5,6,10 32:11,20,24 33:14 37:19 50:25 51:13,17,17,22 52:5 54:17,18,20 55:25 56:4,10,11,20 58:20 64:10,11 66:11</p> <p>stated ^[1] 50:21</p> <p>STATES ^[15] 1:1,14,21 2:7 9:13,15 10:7,9 11:5 20:7,11 21:8 32:14 38:3</p>
<p style="text-align: center;">Q</p> <p>question ^[41] 9:5 12:16,18,20 16:5,6 21:4 24:23 28:21 45:13 46:4,25 49:7 52:25 53:10 54:17,18,20 55:5 56:1,4,6,8,9,10,11,20,23 57:1 58:10 59:1,13 61:9 63:8,16,19 64:1,18 66:4,7 67:9</p> <p>questions ^[7] 12:4 16:23 17:12 20:22 29:1 47:22 65:11</p> <p>quite ^[3] 5:24 14:5 49:6</p> <p>quote ^[1] 24:11</p>	<p>removing ^[2] 3:19 66:15</p> <p>reply ^[2] 13:19 14:8</p> <p>reports ^[1] 29:17</p> <p>repose ^[1] 45:9</p> <p>representations ^[1] 29:9</p> <p>represents ^[1] 35:7</p> <p>reproduce ^[1] 43:15</p> <p>request ^[1] 20:13</p> <p>require ^[2] 4:19 15:25</p> <p>required ^[4] 33:17 37:21 45:21 53:21</p> <p>requirement ^[3] 12:12 17:8 21:20</p> <p>requirements ^[2] 9:16 40:23</p> <p>requires ^[7] 7:4 8:24 9:23 11:22 12:5,6 24:24</p> <p>requiring ^[2] 22:23 45:25</p> <p>residential ^[2] 24:13 40:18</p> <p>resolve ^[2] 17:20 29:4</p> <p>resolved ^[2] 46:7 47:17</p> <p>respect ^[9] 9:17 17:11 22:4,5 37:14 38:1 45:3 58:1 62:9</p> <p>respects ^[1] 20:17</p> <p>respond ^[1] 47:8</p> <p>Respondent ^[1] 13:20</p> <p>Respondents ^[13] 1:7,24 2:11 3:19 4:15 11:14,15 14:7 21:1 23:1 27:14 29:5 31:17</p> <p>Respondents' ^[3] 4:5,13 20:12</p> <p>responses ^[2] 15:2 25:9</p> <p>responsible ^[44] 16:10,20 17:8,22 18:6,7,8,10,12,21 19:9 33:4,23 39:16,17,21,23 40:2,5,6,10,15,25 41:9,13,22 42:1,4,9,14,16,23 43:2,11,25 44:7,8,19,21 48:8,10,21,24 61:16</p> <p>rest ^[1] 64:7</p> <p>restoration ^[7] 4:5,18,22 14:3 17:18 28:24 46:21</p> <p>restricted ^[1] 27:21</p> <p>restrictions ^[1] 66:21</p> <p>restricts ^[1] 28:17</p> <p>result ^[1] 16:7</p> <p>reticulated ^[1] 21:16</p> <p>return ^[2] 56:22,25</p> <p>reversal ^[1] 32:2</p> <p>reverse ^[1] 4:12</p> <p>review ^[3] 31:25 45:19 60:23</p> <p>reviewing ^[1] 38:23</p> <p>RICHFIELD ^[9] 1:3 3:5 4:20 8:4,8 11:13,16,23 66:1</p> <p>rights ^[4] 25:8 28:17 32:21 60:4</p> <p>risks ^[1] 4:2</p> <p>risky ^[1] 3:24</p> <p>ROBERTS ^[12] 3:3 20:3 31:13 34:23 35:11 36:7 37:10 62:5,20 63:3 65:3 68:3</p> <p>role ^[2] 9:14 30:6</p>	<p style="text-align: center;">S</p> <p>safeguard ^[1] 57:20</p> <p>sake ^[1] 5:11</p> <p>same ^[4] 9:4 40:7 47:19 50:12</p> <p>sandbox ^[1] 62:16</p> <p>sandboxes ^[2] 63:21,23</p> <p>satellite ^[1] 47:17</p> <p>satisfied ^[1] 41:1</p> <p>save ^[3] 11:2,3,4</p> <p>savings ^[7] 5:16,17 9:12 10:13,21 11:2 20:25</p> <p>saying ^[10] 15:10 24:5 29:5 30:1 42:6,12 55:19 56:15 62:13,18</p> <p>says ^[20] 7:23 8:10,14 9:15 12:9 13:8 14:10,19 16:11 18:15 19:18,18,23 21:22 27:25 52:6,6 62:8 65:14 67:25</p> <p>scenario ^[2] 57:7,10</p> <p>scheme ^[1] 64:9</p> <p>scope ^[1] 32:12</p> <p>Second ^[4] 4:15 21:22 46:4 52:12</p> <p>Section ^[21] 4:13,15 5:25 10:5 15:4 17:17 26:11,17 27:2 32:21 33:2 40:25 41:20 42:3 43:7,14 51:11 57:21 64:25 65:12 66:1</p> <p>see ^[4] 7:24 28:4,25 29:2</p> <p>seek ^[3] 55:20 57:22,22</p> <p>seeking ^[1] 16:13</p> <p>seeks ^[2] 15:24 33:7</p> <p>seem ^[1] 25:6</p> <p>seems ^[5] 26:17 27:23 33:20 41:15 47:6</p> <p>seen ^[1] 49:23</p> <p>selected ^[1] 20:18</p> <p>selection ^[1] 15:16</p> <p>selects ^[1] 21:19</p> <p>send ^[4] 16:20 17:7 42:1 48:16</p> <p>sense ^[6] 25:22 27:5 30:20 44:24 45:2 64:19</p> <p>sensible ^[2] 9:9 26:8</p> <p>separate ^[2] 17:2 31:11</p> <p>set ^[1] 23:14</p> <p>sets ^[1] 8:6</p> <p>settlement ^[15] 25:3 26:12,14,16,22,23 42:2 43:16,18 44:1,3,10,11,15 49:10</p> <p>settlements ^[1] 64:25</p> <p>several ^[2] 33:13 37:6</p> <p>shares ^[1] 24:11</p> <p>shorthand ^[1] 40:13</p> <p>shouldn't ^[1] 33:24</p> <p>shovel ^[2] 12:2 38:15</p> <p>shovelful ^[3] 33:8 59:20 62:1</p> <p>show ^[5] 14:21 15:9 16:10 23:7 60:12</p> <p>showing ^[1] 63:10</p> <p>side ^[4] 13:1,2 45:23 50:8</p> <p>side's ^[1] 59:4</p>	

Official - Subject to Final Review

<p>25 50:19 stating [2] 14:6 38:10 status [7] 18:14 19:16 20:2 24:1, 16 65:23 66:5 statute [26] 5:3 9:7,11,12 11:3 20: 25 21:8 22:17 23:17 24:24 25:4 26:20 39:18 41:19 42:7 43:24 45: 8,10 47:1,14 48:15 49:2 50:13 61: 12 64:22 67:21 statutorily [1] 19:3 statutory [4] 4:23 25:13 39:19 47: 7 stay [1] 46:19 stayed [1] 15:16 step [2] 14:20 21:14 still [6] 25:19,20 29:19 33:19 36:25 64:13 stop [1] 52:11 stops [1] 55:1 storage [1] 62:10 store [1] 45:25 strange [1] 28:4 stretch [1] 26:18 strong [1] 48:9 structure [1] 47:7 stuff [1] 36:14 subject [2] 42:10 47:2 subjects [1] 64:11 submitted [2] 68:4,6 substances [6] 3:22,24 9:17 43:1, 4 58:4 substantive [1] 21:20 sue [5] 10:10 66:7,23,24 67:12 sufficient [2] 17:19 58:21 suggest [1] 24:18 suggested [1] 8:15 suggests [1] 9:13 suit [5] 20:12 23:10 65:25 67:13,17 summary [1] 31:23 Sunburst [2] 13:25 56:14 super [1] 53:15 Superfund [25] 3:12,21 4:1 7:15 18:1,4 20:16,20,21 24:13 25:23 26:1 27:3,7,10,18,20 28:5,11,18 39:7 49:17 61:25 65:14 66:13 superintending [1] 64:6 supervision [1] 58:8 supervisor [1] 52:4 supervisory [1] 32:1 supplement [2] 5:21 6:9 supplements [1] 5:13 supporting [3] 1:22 2:8 20:8 suppose [4] 8:13 9:21 38:16 57:2 supposed [2] 48:22 66:15 supposition [1] 8:20 SUPREME [9] 1:1,13 13:20 23:1 29:24 36:3,4 56:13 66:10 suspect [1] 17:14</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>takings [5] 30:15,20,23 34:1 67:11 targeted [1] 45:15 technically [1] 35:18 term [6] 19:3 35:19 40:4 41:9 43:</p>	<p>24 48:15 terms [7] 5:23 6:23 8:5 44:6 65:22 66:22 67:7 terrible [1] 67:15 test [3] 8:21,21 60:13 textually [1] 18:2 theories [1] 21:4 theory [3] 31:24 41:11 59:3 there's [19] 7:23 23:14 26:1 30:20 33:10 34:13 35:7 37:7 39:12 43: 12,12 55:24 56:8 60:23 63:10,11 64:23 65:17 66:10 therefore [3] 16:18 29:7 44:15 they've [4] 15:20 38:19 44:12 55: 22 thinks [4] 9:25 42:16 52:9 57:4 third [1] 4:18 though [3] 42:19 62:6 63:16 thousand [1] 59:18 thousands [2] 3:12 66:12 three [8] 4:6,12 9:12 14:10 15:15 17:24 18:1 65:5 throughout [1] 65:17 thwart [1] 4:5 ties [1] 58:9 today [6] 8:22 15:11 16:14,25 17:1, 4 together [2] 34:11 49:9 tons [1] 19:7 took [4] 13:17 53:7 55:8 60:17 tools [10] 39:10,13 42:15 52:11 57: 7,19,23 58:6 60:18 63:9 top [1] 5:15 tort [1] 21:3 toxic [6] 20:15 27:21 32:15 41:7 58:4 61:18 trace [1] 36:1 traditionally [1] 64:11 transportation [1] 3:23 treat [1] 27:13 treated [2] 25:1 48:23 treatment [1] 52:7 trench [2] 26:5 27:15 trenches [1] 4:9 trespass [2] 32:16 46:14 trial [3] 15:15,17 31:24 true [2] 27:19 64:13 trust [1] 12:7 trustee [1] 14:11 try [1] 63:20 trying [3] 5:1,10 37:10 Tuesday [1] 1:10 turns [1] 59:2 two [10] 12:11 15:2,23 17:12 25:9 26:3 28:12,14 40:13,14 two-step [1] 21:14 type [1] 6:2 typical [1] 11:9</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S [2] 8:2 55:15 uncertainty [3] 47:1 55:25 56:18 under [39] 8:12,21,21,23 10:11,13, 25 11:15 14:14 15:4,19 17:17 18:</p>	<p>3 20:2,14,18 21:2 23:9 25:3 26:22 27:2 35:19 39:18 40:24,25 41:11 43:6 46:16 47:13 48:15 50:13 57: 21 58:18 59:2,4,19 65:24 66:1 67: 1 underground [1] 4:9 understand [7] 5:24 18:23 29:25 34:24 36:10 37:12 45:11 understood [2] 18:13 43:19 undertaking [2] 4:16 8:11 undisturbed [1] 4:8 undoing [2] 34:14,17 unheard [1] 18:17 UNITED [6] 1:1,14,21 2:7 20:7,11 universe [2] 49:1,13 unless [4] 13:1 16:11 43:7 46:1 unlikely [1] 41:15 unpackage [1] 5:1 unquestionably [1] 48:14 unreasonable [2] 50:7,9 untouched [1] 32:11 unusual [1] 47:7 unworkable [1] 18:17 up [12] 4:8 13:23 20:15 26:3,4 33: 22 39:2 46:10,10 48:7 56:12 67: 16 upheaval [1] 19:7 uranium [2] 66:13,16 utterly [1] 10:24</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>value [3] 30:25 31:4 46:17 various [1] 38:5 vast [4] 33:6 34:8 61:24 65:1 vast [4] 33:6 34:8 61:24 65:1 vast [4] 33:6 34:8 61:24 65:1 versus [2] 3:5 32:6 view [3] 40:24 59:19 66:24 vindicate [1] 32:20 violate [4] 8:19 11:17 14:16 64:3 violated [2] 8:5 67:16 violates [1] 8:12 violating [1] 8:10 violation [4] 11:20,23 60:15 61:4 virtually [2] 62:9,12</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Waldburger [1] 32:6 wall [4] 7:6 35:17,22 52:19 wanted [5] 33:14 50:25 51:8 53:13 59:20 wanting [1] 46:19 wants [2] 4:8 13:3 warring [1] 10:17 Washington [5] 1:9,17,20,23 62: 15 waste [7] 3:14,20 18:1 41:7 61:18 62:10 66:21 water [2] 27:11,13 way [21] 9:18 13:23 20:16 24:18 27: 14,17,24 38:21 45:8 50:20 59:6, 23,24 60:22,24 62:23 64:10 66:8 67:2,3,21 ways [1] 40:12 weak [1] 30:24 weeks [1] 15:15</p>	<p>whatever [5] 11:10 13:3 21:15 38: 25 67:24 Whereupon [1] 68:5 whether [33] 3:11 4:1 6:8 8:22 11: 24,25 15:18 17:2 18:14,18,20,23 19:8,10,19 23:16 27:1 33:23 38: 12 41:12 42:22 43:3 54:9,11 55:9, 16 56:2 59:14,15,25 63:11 64:1,5 who's [4] 58:1 63:20,22 67:6 whole [8] 3:18 10:25 14:3 15:18 23:14 27:17 36:23 55:13 whom [1] 24:25 will [14] 6:21 13:4,9 14:15,21 15:9 16:7 25:24 30:9 38:6 42:13 45:14, 18,21 win [2] 17:10 50:11 windfall [1] 14:4 windfalls [1] 56:13 wings [1] 26:2 withhold [1] 7:11 without [8] 8:9,11 9:2 18:25 22:24 28:8 34:3 54:25 word [3] 57:16 64:21 67:24 worded [1] 10:21 words [2] 10:7 61:16 work [6] 34:9,11 37:4 45:9 57:14 61:10 working [1] 29:16 worth [1] 4:2 writ [1] 32:1 write [1] 14:19 writing [3] 9:7,11 61:12 wrongdoer [1] 58:19 wrote [1] 66:9</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years [4] 30:17 37:6 59:18 66:17</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero [1] 34:9</p>
---	---	--	--