

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 ALPHONSO JAMES, JR., :

4 Petitioner :

5 v. : No. 05-9264

6 UNITED STATES. :

7 - - - - - x

8 Washington, D.C.

9 Tuesday, November 7, 2006

10

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 10:04 a.m.

14 APPEARANCES:

15 CRAIG L. CRAWFORD, ESQ., Assistant Federal Public
16 Defender, Orlando, Fla; on behalf of the Petitioner.

17 JONATHAN L. MARCUS, ESQ., Assistant to the Solicitor
18 General, Department of Justice, Washington, D.C.; on
19 behalf of the Respondent.

20

21

22

23

24

25

	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	CRAIG L. CRAWFORD, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	JONATHAN L. MARCUS, ESQ.	
7	On behalf of the Respondent	24
8	REBUTTAL ARGUMENT OF	
9	CRAIG L. CRAWFORD, ESQ.	
10	On behalf of the Petitioner	52
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in James versus United States. Mr. Crawford?

ORAL ARGUMENT OF CRAIG L. CRAWFORD, ESQ.
ON BEHALF OF THE PETITIONER

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

We confront today the Eleventh Circuit's troubling interpretation of the otherwise clause of the Armed Career Criminal Act. Under the text and structure of the act, as well as the categorical approach that this Court recognized in Shepard and Taylor, Florida attempted burglary convictions should not qualify as they -- these types of convictions do not involve explicitly, implicitly or even inherently, a serious potential risk of physical injury to another.

The Respondent in their brief has enunciated a test to determine whether a conviction should qualify, and that test that they enunciate is basically a district court judge or a sentencing judge uses their common sense and experience to determine whether an offense should qualify. That type of test is not the kind of test that this Court enunciated in Taylor and

1 Shepard when it looked at the very elemental approach at
2 determining whether convictions should qualify.

3 The categorical approach that this Court
4 enunciated refers to predicate offenses in terms not of
5 prior conduct but of prior convictions and the elements
6 of those crimes.

7 As such, the Government's argument would
8 open up a -- is a broad mandate that courts could use to
9 bring in almost any type of crime, any kind of felony to
10 be included within the Armed Career Criminal Act. For
11 instance, simple possession of cocaine is a third-degree
12 felony in Florida. It's a five-year statutory maximum.
13 Under the serious drug offense that Congress enumerated,
14 it would only qualify if it had a 10-year statutory
15 maximum and it involved the distribution of drugs. Yet,
16 if the Government's approach to the interpretation of
17 the otherwise clause is to be used, that simple
18 possession of cocaine could qualify if a judge using
19 their common sense and everyday experience determines it
20 presents a serious potential risk of physical
21 injury to another. Obviously --

22 JUSTICE ALITO: If we were looking at
23 attempted generic burglary of a residence, wouldn't that
24 involve conduct that presents the serious potential risk
25 of physical injury to another?

1 MR. CRAWFORD: Your Honor, in Taylor, this
2 Court was clear that under enumerated burglary or
3 generic burglary, the offense becomes a -- has that
4 serious potential risk when the person actually enters
5 the dwelling or enters the structure; and under an
6 attempted burglary, at least in Florida and in most
7 other States, that act has not occurred. You haven't
8 entered, the defendant has not entered the property.

9 JUSTICE ALITO: If the would-be burglar is
10 climbing through the window or on a ladder with the
11 intent to climb through the window, wouldn't that
12 involve almost the same risk or maybe the same risk?

13 MR. CRAWFORD: If the conduct -- again,
14 we're looking at, then, a fact-based inquiry.
15 Obviously, some attempted burglaries could get that far.
16 Other attempted burglaries are caught well before that
17 actually occurs. But if you were to say that the
18 attempted burglary was climbing up a ladder trying to
19 get into the place and the person actually didn't get
20 in, again, under Taylor, it says the risk is when the
21 person enters. The risk is much less outside the
22 dwelling than inside the dwelling.

23 CHIEF JUSTICE ROBERTS: But in Florida, that
24 would be burglary itself, right, because it covers the
25 curtilage around the house?

1 MR. CRAWFORD: The curtilage is a unique
2 concept, I guess in Florida, in that the curtilage is the
3 enclosed space around the house that has some kind of
4 enclosure, whether by fence or whether by bushes. So if
5 the place was enclosed and you had a ladder going up to
6 the residence, that would actually be a burglary within
7 the State of Florida. In other States, it may not.

8 CHIEF JUSTICE ROBERTS: Right. And we don't
9 even have to ask whether that presents a serious
10 potential risk under the statute, right? Because, if
11 burglary is identified as -- a predicate offense without
12 the need to resort to the definition?

13 MR. CRAWFORD: Well, it would be a burglary
14 in the State of Florida, but under the test enunciated
15 in Taylor, it wouldn't qualify because Taylor was very
16 specific. It is the entering a dwelling or structure.
17 And in Florida, you could be guilty of a burglary
18 without entering a structure or dwelling, just like in a
19 curtilage burglary.

20 JUSTICE SOUTER: Well, you could do it in a
21 noncurtilage burglary State simply by putting the
22 ladder up to the window and getting on the first rung of
23 the ladder. I mean, you would have -- you would have taken
24 a substantial step. You would have made an attempt. Now
25 why would that not qualify under the words of the

1 statute that referred to a potential risk? Haven't you
2 created the potential for the risk of harm that the
3 statute is getting at when you take the substantial
4 step?

5 MR. CRAWFORD: Well, trying to use the
6 Court's words in Taylor, Taylor talked about that --

7 JUSTICE SOUTER: Well, how about my question
8 first?

9 MR. CRAWFORD: Okay.

10 JUSTICE SOUTER: I mean, haven't you in the
11 words of the statute, created the potential for the risk
12 when you take that substantial step by starting up the
13 ladder?

14 MR. CRAWFORD: If you started up the ladder
15 and that's the way the attempted burglary conviction
16 came down, it would be a lot closer call to say that
17 would be a potential risk. Whether it's a serious
18 potential risk under Taylor, it is not as clear.

19 JUSTICE SCALIA: But you wouldn't analyze it
20 on the basis of whether this defendant started up the
21 ladder. As I understand, you would -- you have to
22 analyze it on the basis of whether generically attempted
23 burglary as a whole presents a serious enough risk;
24 isn't that the way it has to be done?

25 MR. CRAWFORD: That's the way that we submit

1 it has to be done, and you wouldn't be getting to those
2 facts.

3 JUSTICE SOUTER: No, but I thought your
4 argument was that that analysis would not lead to the
5 result unfavorable to your client because the nature of
6 starting up the ladder did not create or could not
7 reasonably be seen as creating this kind of risk.

8 In other words, I thought you were saying --
9 maybe I misunderstood your argument -- that the reason
10 the Taylor analysis favors you is that merely taking a
11 substantial step -- which is what the indictment would
12 charge -- could not be seen as creating the potential
13 risk that the statute talks about.

14 Now if I'm not understanding your argument
15 correctly, you know, straighten me out here.

16 MR. CRAWFORD: I think I understand. That
17 substantial step in even taking a step up the ladder,
18 Mr. James would submit based on the language of the
19 statute, would not qualify and would not create that
20 serious potential risk of physical injury.

21 JUSTICE SOUTER: And that's why simply
22 charging attempted burglary will never satisfy the
23 statute under a Taylor analysis as you understand it.

24 MR. CRAWFORD: That's correct.

25 JUSTICE SCALIA: But even if it would,

1 that's only one manner of attempt. And it seems to me,
2 if you're going to do it generically, you have to look
3 over the whole scope of possible attempts and say does
4 the whole scope of possible attempts bear, I would say,
5 a similar risk of the use of physical force as do the
6 specifically mentioned crimes of burglary, arson or
7 extortion? Indeed, I guess you have to use the least
8 dangerous. Wouldn't you say extortion is probably, of
9 those mentioned crimes, burglary, arson, extortion, or
10 the use of explosives, or otherwise involves conduct.
11 Now that "otherwise", that refers me back to the crimes
12 already mentioned, and I would say that means that the
13 unnamed crime has to have a similar risk, at least a
14 risk as high as the least dangerous of the crimes
15 mentioned, which I would take to be extortion.

16 Wouldn't you say?

17 MR. CRAWFORD: Of those four, extortion does
18 seem to potentially have the least risk of all those
19 crimes enumerated. But --

20 JUSTICE SCALIA: And what's a potential
21 risk, by the way?

22 MR. CRAWFORD: A potential risk --

23 JUSTICE SCALIA: A potential potential? I
24 mean, every risk is potential, isn't it?

25 MR. CRAWFORD: In the Government's -- in the

1 Respondent's brief, they talked about how risk and
2 potential and serious, some of those worlds potentially
3 knock each other out, and I apologize for using that
4 very word, but --

5 JUSTICE SCALIA: You think potential risk is
6 just risk really?

7 MR. CRAWFORD: I think it is a risk.

8 JUSTICE SOUTER: But isn't one way of
9 looking at it -- I mean, I, when I read it, you know, I
10 thought it's just redundant. But it may very well be
11 that the word potential is in there in order to
12 accommodate attempts.

13 MR. CRAWFORD: If that were true, I mean,
14 Congress when they wrote the statute, and in
15 924(e)(2)(B)(ii), or (e)(2)(B)(ii)(1), they specifically
16 enumerated attempted crimes to qualify under that
17 violence. So it has an element, use of or attempted use
18 of, or threatened use of physical force. But under
19 prong two, they specifically deleted that word
20 "attempt".

21 CHIEF JUSTICE ROBERTS: Specifically deleted
22 or didn't --

23 MR. CRAWFORD: They did not include it, and
24 under --

25 CHIEF JUSTICE ROBERTS: That's quite

1 different than specifically deleting it. In other
2 words, it was never there in the proposal.

3 MR. CRAWFORD: In 1984 actually, there was a
4 proposal where burglary would qualify and attempted
5 burglary would qualify. That was passed by the Senate,
6 never passed by the House, never enacted.

7 So later on when burglary was actually
8 defined, burglary was defined as the type of burglary
9 that Taylor came close to defining the same way.

10 CHIEF JUSTICE ROBERTS: So, do I understand
11 your submission to be that putting a ladder against the
12 side of a house to attempt burglary, starting up the
13 ladder, that that generically does not pose a potential
14 risk of physical injury?

15 MR. CRAWFORD: If that were the only way to
16 prove an attempted burglary within a State, if that
17 would be -- that would be the requirement, the legal
18 requirement that you have to put the ladder against the
19 house and that's an element of the offense, that to me
20 would be a much closer call; but still, under the
21 analysis that we have provided the Court with the
22 Russello presumption, it should not qualify. But it is
23 a closer case.

24 Whereas categorically when you look at
25 attempted burglaries, the putting the ladder against the

1 side of the house is an element of the offense.

2 CHIEF JUSTICE ROBERTS: We understand from
3 your friend on the other side that an overt act toward
4 fulfilling the attempt is required under Florida law.
5 In other words, it's not just enough to have burglary
6 tools in your house.

7 MR. CRAWFORD: Correct.

8 CHIEF JUSTICE ROBERTS: You've got to take
9 an affirmative step toward accomplishing the burglary.

10 MR. CRAWFORD: It is an overt act that is
11 beyond mere thinking about it.

12 JUSTICE BREYER: Why doesn't anybody -- you
13 know, count. It sounds to me if you're wondering about
14 whether there's a specific serious risk of harm, you could
15 find out. Look at the conviction that in Florida for
16 attempted burglary, look at the convictions for burglary,
17 and see if the harm involved, the number of cases in which
18 people are harmed is roughly similar. We have all these
19 law professors who like statistics. Now they like law in
20 economics and everything. So why don't they go out
21 there and count, and then we'd actually know, instead of
22 sitting here and trying to figure out something I know
23 nothing about. I've never been involved in a lot of
24 burglaries. I don't know how the burglaries operate. I
25 suspect some people are hurt, but rather than my

1 suspicion why don't we find out what the facts are?

2 JUSTICE GINSBURG: We're not going to be
3 able to do that in time to decide this case.

4 JUSTICE BREYER: But wouldn't it be, as a
5 method of approaching --

6 JUSTICE SCALIA: It would also keep the
7 professors from other mischief.

8 (Laughter.)

9 JUSTICE GINSBURG: But what do we know about
10 the dimensions of the Florida attempt crime? For
11 example, you have said it doesn't mean that you possess
12 burglary tools. Does it mean or does it exclude casing
13 the house, walking up and down the street, around the
14 block?

15 When is a step substantial enough to
16 constitute an attempt under Florida law?

17 MR. CRAWFORD: Well, it's not really a step
18 analysis, a substantial step analysis. It is an overt
19 act. It's some overt act manifesting your intent to
20 actually --

21 JUSTICE GINSBURG: What is that concretely?
22 It's not possessing burglar's tools, it's not casing the
23 place. What qualifies as an overt act that would make
24 one guilty of the crime of attempted burglary?

25 MR. CRAWFORD: If you had a diagram of the

1 person's house and you had burglary tools in your car
2 and you had maybe even called to make sure the business
3 was closed and you were driving there and as you're
4 driving there you're telling the person sitting beside
5 you: I'm going to break into that, you know, business
6 at 254 Main Street. That would be enough under Florida
7 law to convict someone for attempted burglary of a
8 structure.

9 JUSTICE SCALIA: I guess we have to decide
10 how many attempts involve that kind of initial action,
11 which doesn't seem very physical threatening, and how
12 many of them involve putting a ladder up against the
13 side of the house.

14 How do we possibly figure that out, to
15 decide whether as a whole the degree of risk from
16 attempted burglary is as high as at least the degree of
17 risk from extortion?

18 MR. CRAWFORD: That may be -- that may be a
19 very difficult question to answer, and maybe the
20 Respondent had that obligation in the district court,
21 because they have the obligation to prove that this
22 enhancement has that substantial or that serious
23 potential risk of physical injury to another and of
24 course they didn't do that. But if you look back in
25 this Court's decision in 1985 in Tennessee versus

1 Garner, this Court was talking about completed
2 burglaries and it talked about physical violence to a
3 person would only occur in a rare case, and it gave the
4 percentage I think of 3.6 or 3.8 percent of the time.

5 But that's in a completed burglary. That's
6 not even talking about an attempted burglary, what's the
7 risk --

8 JUSTICE STEVENS: May I ask you this
9 question: It seems to me there are two ways to read the
10 burglary, arson or extortion examples: That they are
11 clear examples of crimes that would involve harm to
12 individuals, physical injury to another; or they are put
13 in the statute to say, even though they don't involve
14 serious risk, these specific crimes will be covered,
15 because your statistic of 3 percent suggests that
16 burglary itself probably would not qualify as a crime
17 that presents a serious risk of physical injury, but the
18 statute nevertheless defines it.

19 So do you read those terms as giving
20 examples of crimes that would not involve that risk of
21 injury or as examples of crimes that would?

22 MR. CRAWFORD: I think it can be read either
23 way, although I think even the Government's brief in
24 -- or the Respondent's brief in Taylor talks about
25 extortion and burglary being crimes that can be

1 committed with no risk of physical injury to another
2 person and yet Congress still specifically
3 enumerated those --

4 JUSTICE SCALIA: Mr. Crawford, if you had
5 that meaning in mind, you would not have used the word
6 "otherwise". You would have simply said is burglary,
7 arson or extortion, involves the use of explosives, or
8 involves conduct that presents a serious potential risk.
9 The other purpose of the "otherwise," which means in
10 some other manner, some other manner -- other from what?
11 Other from the preceding ones.

12 I don't think there is any sensible way to
13 read it except, you know, in some other manner than
14 these previously named crimes involves a physical risk;
15 and that is what causes me to say, well, what's the
16 least dangerous of the previously mentioned crimes, and
17 any crime you want to get into this residual category
18 has to be at least as dangerous as that. As I've said,
19 I think that's extortion.

20 MR. CRAWFORD: Using that analysis, it's
21 hard to figure out, but again the Government had this
22 obligation or we submit the Government had this
23 obligation, and they've not shown an attempted burglary
24 to be any more dangerous.

25 CHIEF JUSTICE ROBERTS: Do you think that,

1 is conspiracy to commit burglary a crime that poses a
2 serious potential risk as burglary does?

3 MR. CRAWFORD: In Florida, or in the
4 Eleventh Circuit, they have determined that conspiracy
5 to commit enumerated offenses do present that serious
6 potential risk.

7 JUSTICE BREYER: Sorry, go ahead.

8 MR. CRAWFORD: So in the Eleventh Circuit
9 they have determined that. But again, we submit under
10 that Russello presumption or even the statute itself,
11 Congress enumerated those four property crimes,
12 primarily property crimes.

13 CHIEF JUSTICE ROBERTS: Doesn't that seem
14 like a fine line? I mean, if you're sitting around with
15 your coconspirator planning it you can be covered under
16 this provision, planning a burglary. But if you
17 actually get out there with the burglary tools, you put
18 the ladder against the door and you start up the ladder,
19 that somehow involves less of a potential risk of
20 physical injury?

21 MR. CRAWFORD: They both present very little
22 potential risk. They don't even really -- under a
23 serious potential risk, they don't present that. A
24 conspiracy shouldn't either. A conspiracy and attempt
25 are not different things because a conspiracy doesn't

1 qualify --

2 CHIEF JUSTICE ROBERTS: You think the
3 Eleventh Circuit is wrong?

4 MR. CRAWFORD: I believe the Eleventh
5 Circuit is wrong with conspiracy as well.

6 JUSTICE BREYER: If we don't know and if I
7 can't get too far with the language and I frankly could
8 sit in my office looking at the computer screen I think
9 for hours and I wouldn't be closer to knowing whether
10 there is or is not a lot of injury that accompanies
11 attempted burglary, but that is something that is
12 possible to know. All we have to do, as I said before,
13 is count and there are a lot of people who can do that.
14 In fact, there are people who at least have a mandate to
15 do it and that is the sentencing commission. So they
16 have the tools. They have the ability. And so in the
17 absence on a question like this of my being able to get
18 anywhere by cogitating about the language and in a
19 borderline case where it isn't obvious, why don't we as
20 a Court simply follow a reasonable interpretation of
21 what the sentencing commission did in the absence of
22 better information from some other place?

23 MR. CRAWFORD: Well, the sentencing
24 commission when they were interpreting the career
25 offender statute, or guidelines, they were looking at a

1 guideline that is worded different than the --

2 JUSTICE BREYER: They're trying to find out
3 the same answer to the same kind of question: How many
4 of these attempted burglaries, how many burglaries, how
5 many other crimes are accompanied by an individual being
6 hurt? And as I say, I cannot imagine how to answer that
7 question in a borderline case without trying to find the
8 numbers, which I don't have here, and therefore since I
9 don't have them, why don't I look to the best, second
10 best alternative, which is at least they could get them,
11 and I hope they did get them before coming to the
12 conclusion they did.

13 MR. CRAWFORD: Well, they came to that
14 conclusion dealing with whether a career offender
15 provision should include attempted burglary not under
16 the armed career criminal statute and they specifically
17 recognized that.

18 Moreover, when they dealt with whether they
19 wanted to include attempted burglary, they were dealing
20 with career offender, which has, although it increases
21 the guideline range a person can be sentenced to, it
22 certainly doesn't increase the statutory maximum in zero
23 to 10 year offense to a 15 years to life offense.

24 So for those reasons, even if the sentencing
25 commission feels that the career offender statute or

1 guideline should include attempted burglary, that
2 doesn't mean this Court should use that for the armed
3 career criminal statute.

4 Moreover, the career offender statute says
5 it's only a burglary of a dwelling, although the armed
6 career criminal statute says a burglary qualifies if
7 it's a dwelling or a structure.

8 JUSTICE SCALIA: Mr. Crawford, we've held
9 that the named crimes have to be considered generically
10 according to their elements, right? Burglary, arson.
11 Have we ever held that the residual category or
12 "otherwise involves conduct that presents a serious
13 potential risk of physical injury," that that has to be
14 decided generically? I mean, if we could apply that
15 residual category, not generically but according to the
16 crime that was actually tried and of which the defendant
17 has been convicted, such as laying a ladder up against
18 the house, that particular sort of burglary, it seems to
19 me it would be a much easier, much easier case, wouldn't
20 it? We'd be able to tell whether there was a serious
21 risk of physical injury.

22 Is there any obstacle to doing that?

23 MR. CRAWFORD: Well, Taylor and Shepard both
24 talk about that predicate offenses under 924(e) should
25 be looked at in a -- using a categorical approach, and

1 the Court has talked about that being an approach looking
2 to the elements of the offense.

3 JUSTICE SCALIA: Was it referring to the
4 residual category?

5 MR. CRAWFORD: It didn't specifically refer
6 to the residual category. But even in Shepard --

7 JUSTICE SCALIA: Maybe it's not too late to
8 save ourselves from sending out legions of law
9 professors to do studies.

10 MR. CRAWFORD: If the Court were to step
11 back and say that the "otherwise" clause should be
12 interpreted in a noncategorical manner and we're going
13 to -- the Court decides it's a factual-based approach,
14 in Mr. James' case there are no facts, so it may not
15 make any difference for him because there's no facts to
16 indicate what kind of burglary really occurred here.

17 JUSTICE KENNEDY: You mean no facts in the
18 indictment or charging documents?

19 MR. CRAWFORD: Correct.

20 JUSTICE KENNEDY: But there is in the
21 presentence report?

22 MR. CRAWFORD: That is correct. There were
23 facts that were presented in the presentence report that
24 came from police reports.

25 CHIEF JUSTICE ROBERTS: You don't have any

1 doubt that, at least with respect to two of the other
2 named crimes, attempts would present a serious potential
3 risk? In other words, attempted arson or attempted use
4 of explosives? You concede those would be covered,
5 don't you?

6 MR. CRAWFORD: Actually, no. Those crimes,
7 attempted crimes, also should not come in unless there's
8 something about an attempted arson statute that has as
9 an element or something that presents a serious
10 potential risk of physical injury to another, which at
11 least in Florida that's not the case.

12 JUSTICE SCALIA: Don't you think attempted
13 use of explosives is at least as dangerous as extortion?
14 I mean as far as the risk of physical injury is
15 concerned, I would think attempted use of explosives is
16 much more dangerous to physical health than extortion.

17 MR. CRAWFORD: Getting back to your
18 question, maybe this answers part of it: Although the
19 Court -- you asked, Justice Scalia, you asked a question
20 about why can't we make this basically maybe a
21 fact-based inquiry. And if you were to do so, the whole
22 categorical approach that we're dealing with in all the
23 other sections would almost become irrelevant because if
24 something doesn't apply categorically, then we'll go to
25 a fact-based inquiry and that kind of defeats the whole

1 purpose of the categorical approach.

2 JUSTICE ALITO: Mr. Crawford, does the
3 record show that the facts in the PSR came from police
4 reports rather than from a plea colloquy or someplace in the
5 court records?

6 MR. CRAWFORD: The plea colloquy was not
7 ever presented or produced, and it does show that they
8 came from police reports.

9 JUSTICE ALITO: Where is that in the record?

10 MR. CRAWFORD: I believe that is stated in
11 the PSR regarding the facts that they alleged under the
12 attempted burglary, which again were objected to.
13 Specifically, the facts weren't necessarily objected to,
14 but the use of the attempted burglary was objected to,
15 and both the district court and the Eleventh Circuit
16 took that as being an objection to using anything
17 regarding the attempted burglary.

18 JUSTICE SOUTER: Mr. Crawford, may I ask you a
19 question about the relationship between generic burglary
20 and what Florida takes as sufficient to show an attempt?
21 And what I'm getting at is the issue that at least was
22 alluded to in the Jones case.

23 Do you understand Florida law on attempted
24 burglary to be as follows: that there must be an overt
25 act taken toward entering either a dwelling or a

1 structure, as distinct from an overt act taken to get
2 within the curtilage?

3 MR. CRAWFORD: The evidence -- I see my time
4 is up. Little me briefly answer this question. Or -- I
5 want to remain, or let some remain for my rebuttal.
6 Very quickly, the overt act has to refer to the
7 attempting to enter the dwelling. And so --

8 JUSTICE SOUTER: So there's no such thing as
9 attempted entry of the curtilage as an attempt offense
10 under burglary under Florida law.

11 MR. CRAWFORD: Under Florida law attempting
12 to enter the curtilage is an attempted burglary; it is
13 the same thing. Dwelling is defined as the building or
14 the curtilage.

15 JUSTICE SOUTER: Okay, so when you say
16 dwelling you mean dwelling as defined to include
17 curtilage.

18 MR. CRAWFORD: Correct.

19 JUSTICE SOUTER: Okay.

20 MR. CRAWFORD: Thank you.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 Mr. Crawford.

23 Mr. Marcus?

24 ORAL ARGUMENT OF JONATHAN L. MARCUS,

25 ON BEHALF OF THE RESPONDENT

1 MR. MARCUS: Thank you, Mr. Chief Justice,
2 and may it please the Court.

3 Petitioner's conviction for attempted
4 burglary of a dwelling under Florida law is a violent
5 felony under the Armed Career Criminal Act because like
6 the crime of burglary Petitioner's crime categorically
7 involves conduct that presents a serious potential risk
8 of physical injury to another.

9 JUSTICE SOUTER: Mr. Marcus, do you agree
10 with your brother's answer to my last question that
11 there would be an attempt -- could be an attempt under
12 Florida law simply to take an overt -- to commit an
13 overt act toward entering the curtilage as distinct from
14 entering a physical dwelling or a physical structure?

15 MR. MARCUS: Yes, while I would disagree
16 with that, but while there are -- with your
17 characterization. But there are no -- the number of
18 reported cases involving an attempted burglary that
19 involved an attempt to get on to the curtilage, if -- I
20 think -- based on --

21 JUSTICE SOUTER: We don't know basically
22 what Florida law is? I mean, is that the best answer?

23 MR. MARCUS: Yes. I don't, I don't think
24 you could conclude, they have -- there is no decision
25 telling you whether that would suffice. But we're not

1 taking the position that it could not involve an
2 attempted entry into the curtilage.

3 JUSTICE SOUTER: So that literally, I take
4 it then if someone did have a fence around the house,
5 and I, I -- I walked from the sidewalk onto the lawn
6 toward the fence, with the intent of getting over the
7 fence, that would qualify then, as you understand it, as
8 an attempted burglary under Florida law?

9 MR. MARCUS: Yes -- it could. It could --

10 JUSTICE SOUTER: Would that be true if I
11 simply wanted to get into the -- if my intent was to get
12 on the other side of the fence but not into the
13 dwelling? For example, you know, I wanted to steal the
14 apples on the tree?

15 MR. MARCUS: Well, I think --

16 JUSTICE SOUTER: Would that qualify as
17 attempted burglary?

18 MR. MARCUS: I think it could. I think --
19 but I think you --

20 JUSTICE SOUTER: Doesn't that give you a
21 pretty tough row to hoe, in saying that there is a
22 sufficient potential risk of the sort of harm that
23 qualifies under the act?

24 MR. MARCUS: I don't think so, Your Honor.
25 I mean Florida, in the State versus Hamilton case, we

1 discussed in our brief, Florida has defined curtilage
2 narrowly, strictly construed the word curtilage
3 narrowly, to limit that concept to an enclosed area that
4 immediately surrounds the dwelling. And the case
5 discusses a couple of cases from various Florida courts
6 of appeals where the courts construed the concept of
7 curtilage and held that in one case it was marijuana
8 that was quite a distance away from the, from a dwelling
9 house, in another case a whiskey still that was a
10 distance about 50 yards away from the dwelling house,
11 that those were too far out to be considered part of the
12 curtilage, part of that area that immediately surrounds
13 the dwelling that's associated with the intimate
14 activities of the dwelling. So Florida -- and Florida
15 -- and I think the Court should take the Florida Supreme
16 Court at its word when it said it's going to strictly
17 construe that concept, and when it said it's not going
18 to construe it to produce absurd, harsh or unreasonable
19 results, keeping in mind how serious the offense of
20 burglary is.

21 So I think the -- so the first step, I
22 think, if you don't -- if you don't believe that the way
23 Florida defines burglary is generic in the way Congress
24 had in mind, I don't think you could conclude that it
25 presents a categorically different set of risks such that it

1 would even fall outside the otherwise clause.

2 JUSTICE ALITO: There are a number of
3 Florida cases that involve open carports. How would you
4 apply it there? Somebody, if you had a carport that's
5 not fenced off at all, just 20 feet let's say from the
6 street, somebody walks into the carport and steals a
7 garden rake?

8 MR. MARCUS: Well, I think under the
9 current, I think under the current statute, it has been
10 amended since, since 1993 and '94, and -- which is
11 relevant, the statute is relevant to this case. I think
12 now carports are considered part of the dwelling itself,
13 the structure itself but under -- but if it -- but under
14 the Florida's concept of curtilage if the area was not
15 enclosed, it was not enclosed by a fence or other
16 structure it would not be considered part of the
17 curtilage. And in fact, the State versus Hamilton case,
18 it cited a case that cast a doubt on a prior case that
19 had found a burglary that took place on a driveway, and
20 noted that the court in that case hadn't determined
21 whether the area, whether the driveway was enclosed.

22 So it does -- the statute does -- the
23 concept does require an enclosure and the area
24 immediately surrounding the dwelling and I think it is
25 very difficult to conclude that that, that defined in

1 that way, in that limited way, that someone who's
2 intending to get on to a residence into the area either
3 in or right around the dwelling, that that person is not
4 sort of categorically dangerous kind of person that
5 Congress had in mind when it set out burglary as one of
6 the paradigmatic offenses in the statute.

7 JUSTICE BREYER: So in an ordinary city street
8 in Miami walking along the street, there are a lot of
9 houses, and there's a little bit of lawn or bushes in
10 front, and there's not a fence, because there isn't, or
11 there aren't fences in many city blocks, a person goes
12 up to the house and starts to monkey around with the
13 window to raise it or whatever, that's attempted
14 burglary, not burglary, in Florida?

15 MR. MARCUS: That -- yes. That is my
16 understanding. If it was not enclosed.

17 JUSTICE BREYER: All right. So then I doubt
18 -- then again I'm left at sea. I don't know how often
19 that happens or is dangerous. So if I think that this
20 is really a statistical question, and I think maybe it
21 is -- and the Government is in the best position, they
22 have all the statistics, they have whole bureaus over
23 there. So what about a presumption against the Government?
24 In a case where it seems to be a close case and it is a
25 statistical question, and the Government doesn't have

1 any statistics?

2 MR. MARCUS: Well, I think -- I don't think
3 when Congress enacted this law that it expected the
4 courts would have statistics available to --

5 JUSTICE BREYER: How are you supposed to
6 decide it if there's a question as there is this instance
7 I think? I just don't know how dangerous attempted
8 burglaries are. I mean, maybe I'm not supposed to admit
9 there are a lot of things I don't know but there are.
10 And this is one of them.

11 MR. MARCUS: Well, there are several things
12 you can do. First you can look at the text of the
13 statute.

14 JUSTICE BREYER: I read the text several
15 times.

16 MR. MARCUS: Congress provided some guidance
17 by setting out four examples of crimes that do present
18 the type of risk they had in mind.

19 JUSTICE BREYER: Correct. And here I think
20 it might be less than burglary. And extortion, though
21 one thinks of somebody writing a poison pen letter or
22 something and revealing a secret from the past -- many
23 such crimes are threats of violence. I mean, and that
24 just read through the statutes, and that's what they are
25 aiming at. So I would say extortion is something that

1 quite often could involve violence.

2 But again that's cogitating. So I get
3 to attempted burglary. I don't know. Now what do I do?

4 MR. MARCUS: Well, I think -- I think you
5 have to consider what Congress's purpose -- in enacting
6 the statute, Congress directed your attention to the
7 serious potential risk that an offense presents. I
8 think that just -- and criminal law requires courts and
9 juries all the time to take into account and to use
10 their common sense and experience to judge the risks
11 that are presented by a particular crime. I mean, the
12 very concept of recklessness itself refers to a
13 substantial disregard of --

14 JUSTICE SCALIA: Mr. Marcus, it is a lot
15 easier to do that with respect to the facts and
16 circumstances of a particular crime than it is to do it
17 generically -- you know -- picking out attempted
18 burglary. It is very hard to do that. Why shouldn't we
19 read this, this residual category to refer to the facts
20 and circumstances of the particular crime of which the
21 defendant has been convicted? The language enables you
22 to do that. The term violent felony means any crime
23 punishable by imprisonment for a term exceeding one year
24 that involves conduct that presents a serious potential
25 risk of injury, physical injury to another.

1 Why can't we not, not interpret that to mean
2 generic crime, but rather the particular crime of which
3 this defendant stands convicted?

4 MR. MARCUS: Well, all that -- this law has
5 been interpreted for many years. No courts of appeals
6 have, have construed that it way. They have construed
7 it to require a categorical approach. And then if you
8 look at the structure of the provision, Congress clearly
9 with respect to the listed offenses had in mind a sort
10 of a categorical approach that, while these courts had,
11 sort of looking at one of these crimes on an ex post
12 basis, it might not present any risk, the idea that
13 these crimes categorically present a potential -- a
14 serious potential risk of physical injury.

15 JUSTICE GINSBURG: And would you agree,
16 Mr. Marcus, that this Court's decision in Shepard
17 excludes that interpretation? If you look at the
18 particular crime?

19 MR. MARCUS: Well, I think the Court
20 referred both in Taylor and Shepard to the -- to
21 Congress's approach. And under the statute, that sort
22 of that it wants you to take a categorical approach to
23 crimes that are inherently presented --

24 JUSTICE SOUTER: Didn't we -- didn't we also
25 go further and say one reason to construe it that way is

1 we don't want courts to have to be, in effect, having
2 sort of subsidiary collateral trials after the fact, to
3 establish -- you know -- the facts of old trials. There
4 was an administrability analysis involved. I think
5 there was. Yeah, I wrote Shepard. And I think that's
6 what --

7 MR. MARCUS: There was that as well. And I
8 don't think it is beyond the ability of courts to
9 take a crime, look at the elements of the crime, figure
10 out what conduct is necessary to satisfy those elements
11 and then use common sense and experience to make a
12 judgment about how that -- the risks that are posed by
13 that conduct. Looking at the situation --

14 JUSTICE STEVENS: Mr. Marcus, isn't there
15 this -- this linguistic problem with the statute anyway?
16 Because this language if it said -- that sometimes
17 presents a serious risk, then the answer would be
18 obvious. If otherwise it said that characteristically
19 presents a serious risk, then it might be closer. And
20 which do you think is the more normal reading of it?

21 I think either is -- certainly fits the
22 language.

23 MR. MARCUS: And either --

24 JUSTICE STEVENS: Either means sometimes
25 presents a potential risk of physical injury, then

1 obviously they're all covered. Or if it says
2 characteristically presents the risk, potential risk,
3 then do you have to decide whether that, it is a
4 characteristic of potential burglary that it -- that it
5 does present this risk or that just once in a while it
6 does.

7 MR. MARCUS: No. I think it's not -- no I
8 think it has to, characteristically taken at a general
9 level, the conduct required to commit a burglary, of
10 getting --

11 JUSTICE STEVENS: If that were true, and if
12 as your opponent said, that in actual burglaries there's
13 only three percent of them actually involve risk to --
14 of physical injury to another, then attempted burglary
15 must necessarily be somewhat less than three percent. I
16 would think that. Would that satisfy the characteristic
17 requirement?

18 MR. MARCUS: I think it would. First of
19 all, Congress --

20 JUSTICE STEVENS: Why is it two or three
21 percent?

22 MR. MARCUS: The statistics he is referring
23 to came out before Congress amended the statute in 1986
24 and expanded it and specifically enumerated burglary as
25 one of the crimes that it thought paradigmatically

1 presented a serious potential risk of injury.

2 JUSTICE STEVENS: Well, I don't think that's
3 perfectly clear. The "otherwise" language does suggest
4 that you are right. But if the statute instead of
5 saying "otherwise" had said, "or involves other conduct
6 that presents a serious risk," which I think is a
7 permissible reading, perhaps not the best reading, but
8 if it said that, then it is not -- you are not taking as
9 a given the fact that the others satisfy the violent
10 requirement but rather that they are eligible, whether
11 or not they do.

12 MR. MARCUS: Well, this Court interpreted
13 the statute that way in Taylor -- I mean, I'm sorry, on
14 page -- on page 597 of Taylor. I mean this Court said
15 that Congress's choice of language indicates that
16 Congress thought ordinary burglaries as well as
17 burglaries involving some aspect making them especially
18 dangerous, presented a sufficiently serious potential
19 risk to count toward enhancement. I mean, that's right
20 in the Taylor decision, and I think that has got to be
21 the correct reading of the statute. Because why did
22 Congress identify -- they created two categories of
23 violent felonies. The first is with respect to an
24 element of the offense that goes to targeting a person
25 for physical harm. The second category are those crimes

1 that don't necessarily target a person for physical harm
2 but necessarily present, inherently present a risk of
3 physical injury to a person.

4 JUSTICE SCALIA: That would be fine if
5 burglary were the only thing that Congress said there,
6 but it also said extortion. And I think it absolutely
7 fanciful to believe that extortion characteristically --
8 characteristically -- involves a risk of physical harm.
9 I just don't think it does.

10 MR. MARCUS: Well, Congress identified it as
11 a violent felony presumably because it believed it had
12 -- it had the criteria.

13 JUSTICE SCALIA: Yes, but is the criterion
14 "characteristically," or is the criterion whatever
15 minimal risk of harm there is in extortion?

16 MR. MARCUS: Well, that it carries the
17 potential risk, because when any -- when someone
18 commits extortion there might be a tendency to -- if
19 there --

20 JUSTICE SCALIA: Is the level of potential
21 risk the level that exists in extortion? Right? That's
22 what the otherwise refers you to.

23 MR. MARCUS: Yes. To the level of risk
24 that's presented by any of the preceding examples.
25 That's correct.

1 JUSTICE SOUTER: Maybe, the same point,
2 isn't it reasonable to assume that the risk of harm in
3 these attempt cases is characteristically going to be
4 pretty close to zero? I mean, they're not in the house.
5 They're just on the ladder, in the kind of examples
6 we've been talking about.

7 MR. MARCUS: I don't agree, Your Honor. The
8 statute directs you to consider the serious potential
9 risk.

10 JUSTICE SOUTER: One way to do that is to
11 say the potential risk is the potential for the risk of
12 the harm that comes from the commission of the crime
13 itself.

14 I mean, there is -- I don't want to overdo
15 it, but the risk of harm to others from the -- from the
16 step on the ladder is zero, if you consider simply the
17 act itself of putting the ladder up against the building
18 and taking the step. It's only because that creates the
19 potential for getting inside where the risk, in fact, is
20 measurable. I mean, we know there are cases in which
21 victims get shot when they appear in the course of
22 burglaries, but the risk associated with the mere
23 attempt in isolation is going to be minuscule.

24 MR. MARCUS: When you're assessing the risk
25 presented by particular conduct, I think you have to

1 take into account the intent that goes along with that
2 conduct.

3 JUSTICE SOUTER: Oh, I agree with you. But
4 the act that involved -- the act that constitutes the --
5 that qualifies for the attempt doesn't involve it. I'm
6 trying to help you here. I mean --

7 CHIEF JUSTICE ROBERTS: Don't believe it for
8 a minute.

9 (Laughter.)

10 CHIEF JUSTICE ROBERTS: Why do you look at
11 the risk of burglary and then view attempt as a sort of
12 lesser included offense? I mean, attempts themselves
13 have their own independent risk of physical injury.
14 Obviously, if you've got a ladder up against the side of
15 my house and you're halfway up and I come home, there's
16 a risk of injury there, even though there's no --
17 regardless of whether the person gets into the house or
18 not.

19 And I think perhaps there's even a greater
20 risk of potential -- greater potential risk of injury
21 with respect to attempts because they don't succeed.
22 Why don't they succeed? Because something interrupts
23 them. And what interrupts them, it may well be the home
24 owner. So I don't know that you have to look to sort of
25 attempt as a lesser risk than the burglary itself.

1 MR. MARCUS: Well, Congress doesn't look to
2 attempt as a lesser offense. We pointed out in our
3 brief that the vast majority of provisions in the U.S.
4 Criminal Code punish the attempt the same as for the
5 completed offense. And if you think about the purpose
6 of the ACCA, and the ACCA is not focused on the results
7 of the prior crimes of the armed felon committed, it is
8 focused on the risk, the propensity that somebody has,
9 has demonstrated by engaging in at least three prior
10 violent felonies or serious drug offenses to engage
11 in behavior that is dangerous, that presents
12 dangers to public safety. So if you think about the
13 attempt and the whole concept of attempt, I mean, someone
14 who has committed attempt by definition has intended to
15 commit the offense and as you said, Mr. Chief Justice,
16 has only failed by reason of an unforeseen event.
17 Why would Congress in this statute want to differentiate
18 between the frustrated burglar whose only -- who hasn't
19 succeeded only by virtue of an unforeseen event, and the
20 successful burglar? I think the serious potential risk
21 language allows you to sort of look at the attempt as
22 you said, Mr. Chief Justice, as virtually the
23 equivalent --

24 CHIEF JUSTICE ROBERTS: I would suppose the
25 unsuccessful burglar poses a greater risk of physical

1 injury than the successful burglar.

2 MR. MARCUS: Arguably. I mean, if you look
3 at the case law, the vast majority of cases, the
4 furthest out, the furthest case the Petitioner can find,
5 the most extreme case that he's found involves someone
6 who's in the backyard of a dwelling reconnoitering or
7 casing the dwelling, and that was the most extreme
8 example. So even with attempts, you find in all the
9 case law, you do find the physical proximity to the
10 premises.

11 And one of the main reasons it wouldn't
12 succeed is because somebody, there's the presence of
13 someone who frustrates the entry. So that even on that
14 level, at that level, it is hard to say that there's any
15 lower risk presented by the attempt.

16 JUSTICE SOUTER: Well, what do you say about
17 your brother's argument that the statistics show there's
18 a 3 percent chance, I think it was a 3 percent chance of
19 violence in the course of committing the burglary? I
20 take it there isn't any statistic available, if we want
21 to take Justice Breyer's approach, about the
22 potential -- the actual proven potential for violence at
23 the near attempt stage.

24 MR. MARCUS: But again, I think -- I don't
25 think you need to have those statistics.

1 JUSTICE SOUTER: No, I don't think you do
2 either, but I mean, I think your whole argument has got
3 to rest really on the potential for harm in the
4 commission of the offense.

5 MR. MARCUS: That's the very reason that
6 attempts are prohibited, because they present the
7 serious potential to produce the harms that the
8 completed offense presents.

9 JUSTICE STEVENS: Do I correctly understand,
10 we don't need the statistics, I guess they're not
11 available, but in your view if we did have statistics
12 and they showed that in 1/10 of 1 percent of the
13 category of crimes across the nation, there was this
14 risk, that would be enough?

15 MR. MARCUS: For attempts?

16 JUSTICE STEVENS: Yes. Well, for attempts
17 or complete -- I mean, just say the standard of what
18 presents a serious potential risk of physical injury, if
19 1/10 of 1 percent of the crimes -- whatever the
20 category, did present such a risk, that would be
21 sufficient under your view.

22 MR. MARCUS: Yes, I think Congress wanted to
23 treat a frustrated burglar the same --

24 JUSTICE STEVENS: The answer is yes?

25 MR. MARCUS: Yes. They've shown the same

1 propensity to engage in the conduct that Congress was
2 concerned about that falls at the heart of the statute.

3 JUSTICE STEVENS: So then it's a really easy
4 case, because really there is some risk in every case.
5 There's some risk that somebody will, you know, bump
6 into somebody or give them a punch in the nose at least.

7 MR. MARCUS: But that's not what we're
8 asking the Court here. We're asking the Court to look
9 at the elements of the offense, and to look at the
10 elements of the offense to see whether that creates a
11 situation in which violence is likely to arise. Here
12 you're talking about, this is attempted burglary of a
13 dwelling where you have --

14 JUSTICE STEVENS: Yes, but none of the
15 elements of the offense satisfy the risk of physical
16 injury in the burglary case. You can have unarmed
17 burglars.

18 MR. MARCUS: But in considering the conduct
19 involved in the offense, the attempting to get, the
20 attempt to enter a dwelling, enter someone's home,
21 someone's residence, that creates a dynamic situation in
22 which violence could occur --

23 JUSTICE STEVENS: Right. And as I
24 understand your view --

25 MR. MARCUS: That doesn't --

1 JUSTICE STEVENS: If in 1/10 of 1 percent of
2 the cases, there is in fact a physical confrontation,
3 that's enough, which makes it a pretty easy case.

4 MR. MARCUS: Yes. But again, first of all,
5 I don't think the statistics would show that. I don't
6 think logically they would show that in light of the
7 numbers that are shown for completed burglary. But
8 again, I don't see -- with respect to the offenses that
9 are covered that are at the core of the statute, I don't
10 see why you would distinguish between the person who
11 tried to get in but was frustrated by some unforeseen
12 event. They have created the same set of risks, they've
13 triggered the same set of risks that the successful
14 burglar has.

15 JUSTICE ALITO: So in other words, you're
16 saying that in measuring the risk, you should consider
17 not just what this particular defendant succeeded in
18 accomplishing, but what the defendant was attempting to
19 accomplish?

20 MR. MARCUS: That's correct. I think the
21 statute permits you to do that with its plain language
22 of focusing on the potential risk of the conduct, the
23 serious potential risk. And that -- and also in looking
24 at the rationale for attempts and why we punish
25 attempts, in terms of the person is, you get punished

1 for attempts because you sufficiently manifested your
2 dangerousness in the same way as someone who's completed
3 the offense. Again, the State codes, the vast majority
4 of State codes demonstrate the riskiness of attempt
5 behavior. They predicate felony murder convictions on
6 attempted burglary as well as burglary. And as I said
7 --

8 JUSTICE BREYER: What about attempted
9 assault? I bet nobody has ever been hurt in an
10 attempted assault.

11 MR. MARCUS: Well, I think, my understanding
12 would be that would be covered under the first subsection
13 for the use -- attempted use or threat, threatened use of
14 force.

15 JUSTICE BREYER: All right. But it wouldn't
16 fit within your -- I mean, I just wonder what happens
17 when you try to get away from numbers. Maybe there are
18 a certain number of people injured during mail fraud or
19 embezzlement, you know, some people get annoyed during
20 an embezzlement and start hitting each other.

21 I can't get away from the numbers.

22 MR. MARCUS: But there in those type
23 offenses, if you look at the elements of the offense,
24 there's no nexus between those elements and the -- a
25 reaction that someone might have just to being

1 prosecuted. I mean, that's not --

2 JUSTICE BREYER: So what's the test? The
3 test is either a high statistical number of injuries or
4 if not, a nexus to a crime that does have a high
5 statistical number of injuries? I like the word nexus
6 because whenever I see it in an opinion, I have no idea
7 what it means.

8 (Laughter.)

9 MR. MARCUS: Well, in this statute you're
10 talking about career criminals, people who have
11 committed a number of crimes and have recently just been
12 convicted of being an armed felon. And I think
13 that's -- when you look at -- that can be your starting
14 point, and take -- so this case doesn't present
15 questions about other cases that might present --
16 arguably present, or present a serious risk of physical
17 injury, but don't necessarily seem to fit with the
18 crimes that are listed and what the crimes that Congress
19 had in mind. I think that's another case. This case
20 falls at the core of the statute; we're talking about
21 someone who intends to commit the core crime Congress
22 was talking about.

23 JUSTICE SOUTER: Mr. Marcus, assuming we
24 accept your view about the way the statute should be
25 read, I take it you agree that because of the curtilage

1 possibility under Florida law, that Florida law, that
2 burglary in Florida is not a generic burglary?

3 MR. MARCUS: We haven't argued that it is
4 generic burglary. That's correct.

5 JUSTICE SOUTER: I guess my -- so that leads
6 me to this question, because -- I mean, I, my
7 understanding is it's not a generic burglary.

8 Therefore, even on your reading of the
9 statute, an attempted burglary in Florida doesn't
10 necessarily satisfy the prong, and it's got to come in
11 under the residuary clause, of course. And because
12 there is a possibility that the only burglary charged
13 was a burglary of the curtilage, we've got to -- don't
14 we have to send the thing back to find out either from
15 court records whether something more than a mere
16 penetration of curtilage was involved here? And if so,
17 whether -- whether that penetration carried with it the
18 potential for harm?

19 MR. MARCUS: I mean, no. That's why you
20 have the otherwise clause, to cover offenses just as
21 this Court said in Taylor, that they weren't --

22 JUSTICE SOUTER: No, but the only thing we
23 know under the otherwise clause, is that this was an
24 attempt at burglary. If the burglary were a generic
25 burglary, your analysis, if we accept it, would be the

1 end of the case.

2 MR. MARCUS: Yes.

3 JUSTICE SOUTER: But this is not a generic
4 burglary. Therefore, we have to assume that the attempt
5 in this case could have been nothing more than stepping
6 across the grass, moving toward the fence, to lean over
7 to take the apple. And therefore, don't we have to go
8 to court records? In other words, don't we have to take
9 advantage of the qualification in Shepard and Taylor
10 before this case can finally be decided?

11 MR. MARCUS: No. I mean, you've identified
12 an additional step that the Court has to consider in
13 deciding the question in this case, but that step doesn't
14 necessarily require you to go to court records. I mean,
15 it's our position that even including the curtilage, the
16 area, enclosed area immediately surrounding the dwelling
17 presents a serious potential risk of physical injury

18 JUSTICE KENNEDY: Well, could you tell us
19 what your position is if we choose to use the
20 noncategorical or the modified categorical approach?
21 Is there a nexus between what's in the presentence
22 report and some other charging documents, or is it just
23 in the presentencing report?

24 MR. MARCUS: Yes. The charging documents
25 are not part of the record in this case. The record

1 right now is solely comprised of the presentence report.

2 JUSTICE SOUTER: And we don't have any
3 transcript of colloquies with the court or anything like
4 that?

5 MR. MARCUS: No.

6 JUSTICE STEVENS: Well, what about -- do you
7 think the facts in the presentence report are admitted
8 by your opponent or not?

9 MR. MARCUS: He didn't object to the facts
10 in the presentence report. He also did not object --

11 JUSTICE STEVENS: Therefore, can we consider
12 them?

13 MR. MARCUS: Yes.

14 JUSTICE STEVENS: So therefore, then the
15 question is whether throwing the hammer through the
16 window is sufficient; is that right?

17 MR. MARCUS: Well, that would resolve
18 Justice Souter's question about whether it would involve
19 the curtilage at all, which would show that there was an
20 attempted physical entry into the residence.

21 JUSTICE STEVENS: Would you think that the
22 hammer through the window is a decisive fact if we do
23 look at the individual case?

24 MR. MARCUS: Well, we don't -- yes,
25 certainly we think that any attempted burglary of a

1 dwelling presents a serious potential risk
2 categorically. But if you didn't agree with that, then,
3 and you thought that only a subset of attempted
4 burglaries of dwellings would present serious potential
5 risk, then clearly this offense here that would certainly
6 satisfy any conception of that.

7 JUSTICE STEVENS: Because the hammer is
8 thrown through the window, is that -- I just want to be
9 sure I understand your view of the importance of the
10 hammer.

11 MR. MARCUS: Because there was an attempted
12 physical entry into the residence. The person was right
13 on the threshold of the dwelling.

14 JUSTICE STEVENS: I'm still a little unclear
15 as to how much significance we pay to that hammer.

16 MR. MARCUS: Again, we don't think you have
17 to attribute any particular significance to that. I
18 mean, it's our position that categorically this crime is
19 covered. And again, the case law shows that there's --
20 that with attempted burglary cases, there is a physical
21 proximity to the dwelling, but even if there was --

22 JUSTICE GINSBURG: Even though there's some
23 cases in this large category that clearly wouldn't
24 involve any risk to anybody. Say the enterprising but
25 careful burglar who keeps watch for several days to see

1 when no one is in the house, that that's when he chooses
2 to make his entry.

3 MR. MARCUS: That's correct. You can always
4 posit, under the categorical risk, you could always
5 posit a specific nonthreatening hypothetical that
6 equally applies to burglary as it does to attempted
7 burglary. And so while you could posit a hypothetical
8 where someone trying to get onto the curtilage might
9 seem like it wouldn't present any injuries, if you think
10 categorically about people who are trying to surmount,
11 get over fences and walls to commit offenses in the
12 dwelling or immediately around the dwelling, they're
13 presenting the same sort of risk, and therefore the
14 Court can conclude that it also -- within the otherwise
15 clause, the burglary under Florida law is not so
16 different from the kind of burglary that Congress had in
17 mind that it would just drop out of the picture
18 entirely. Armed felons who have the propensity to go
19 into the curtilage of someone's home, to either go in
20 the house or right around the house, present the very
21 kind of risk that Congress was concerned about.

22 JUSTICE KENNEDY: Do you agree that this
23 presentence report cannot be consulted under the
24 reasoning of Shepard, we need more?

25 MR. MARCUS: Well, under Shepard, the

1 defendant in Shepard had objected to the use of police
2 reports. My understanding is he also submitted an
3 affidavit saying he didn't acknowledge the truth of
4 anything in the police report. So I think this case is
5 distinguishable in that there was no objection to the
6 facts in the PSR and there was no objection
7 specifically to using the police report as the source
8 for those facts.

9 JUSTICE KENNEDY: You don't think the PSR
10 has some kind of significance that the police report did
11 not?

12 MR. MARCUS: It wouldn't, no. I don't think
13 it would. But -- no.

14 JUSTICE SOUTER: Is the following sort of
15 summary fair: Because Florida is not a generic burglary
16 State, the mere conviction of burglary would not satisfy
17 the burglary prong in subsection 2? But on your
18 argument, even though Florida is not a generic burglary
19 State, an attempted burglary will always satisfy the
20 "otherwise" prong; is that correct?

21 MR. MARCUS: Argument --

22 JUSTICE SOUTER: Is that a fair statement of
23 your argument?

24 MR. MARCUS: Yes. If the completed offense
25 is a violent felony, the attempt to commit that offense

1 is also a violent felony. That's a fair statement of
2 our position.

3 CHIEF JUSTICE ROBERTS: Thank you, Mr.
4 Marcus.

5 MR. MARCUS: Thank you.

6 CHIEF JUSTICE ROBERTS: Mr. Crawford, you
7 have four minutes.

8 REBUTTAL ARGUMENT OF CRAIG L. CRAWFORD

9 ON BEHALF OF THE PETITIONER

10 MR. CRAWFORD: It seems to me that
11 Respondent's position is taking the "otherwise" clause
12 to trump the entire rest of the statute. Any crime, any
13 felony, has a potential of violence. In fact, in
14 footnote 9 of the reply brief we cited the Golden opinion
15 from the Seventh Circuit and in that particular opinion
16 the court found that serious potential risk for someone
17 who failed to report to a jail because they speculate,
18 you know, law enforcement might have to go and arrest
19 them and there could be violence in that situation.
20 Well, that happens in all crimes, the potential for law
21 enforcement to arrest somebody. There's always a
22 potential for violence.

23 So the Government's position --

24 CHIEF JUSTICE ROBERTS: It's different when
25 you're dealing with an escapee or someone who has

1 visitation right and then doesn't report back and
2 qualifies as a escaped felon from prison. That's quite
3 a bit different from an arrest in a normal situation.

4 MR. CRAWFORD: But there's still the same
5 potential for violence in either one of those.

6 CHIEF JUSTICE ROBERTS: No. There's a
7 greater -- I had this case in the D.C. Circuit. There's
8 a greater degree of potential when you're dealing with
9 someone who's escaped from prison than with someone
10 else who's being arrested. Of course there's always the
11 potential, but the judgment was that there's a greater
12 degree of potential when you're trying to apprehend
13 someone who's escaped.

14 MR. CRAWFORD: For someone who's escaped.
15 Golden wasn't dealing with that. Golden was dealing
16 with someone who failed to report to a facility after
17 being sentenced to do so. The same could be said for
18 someone failing to report to a court for a hearing. A
19 bench warrant is issued. The same type of risk would be
20 inherent in that type of -- for that person as for
21 someone who fails to report to a jail upon being
22 sentenced.

23 All of those potential crimes, basically
24 that would leave open any potential felony to qualify
25 under the "otherwise" prong. Congress obviously

1 couldn't have intended that.

2 Moreover, there's still an issue that was
3 brought up in Shepard on the constitutional avoidance.
4 How do we actually make these determinations and are
5 these necessarily determinations that were found by the
6 Florida court or by the Florida system for a Florida
7 attempted burglary conviction? We submit it's not.

8 And you're going beyond the mere fact of the
9 prior conviction. You're looking at many other
10 components, the risk of the conviction, which is not the
11 same thing as the mere fact of the prior conviction.

12 If there are no further questions --

13 CHIEF JUSTICE ROBERTS: Thank you,
14 Mr. Crawford.

15 The case is submitted.

16 (Whereupon, at 11:02 a.m., the case in the
17 above-entitled matter was submitted.)

18

19

20

21

22

23

24

25

A				
ability 18:16 33:8	37:7 38:3 45:25 49:2 50:22	23:1 32:7,10 32:21,22 40:21 47:20	39:14,21 40:15 40:23 42:20 44:4 46:24 47:4 51:25	46:14 53:1 backyard 40:6 based 8:18 25:20
able 13:3 18:17 20:20	ahead 17:7 aiming 30:25 ALITO 4:22 5:9 23:2,9 28:2 43:15	approaching 13:5 area 27:3,12 28:14,21,23 29:2 47:16,16	attempted 3:15 4:23 5:6,15,16 5:18 7:15,22 8:22 10:16,17 11:4,16,25 12:16 13:24 14:7,16 15:6 16:23 18:11 19:4,15,19 20:1 22:3,3,7,8 22:12,15 23:12 23:14,17,23 24:9,12 25:3 25:18 26:2,8 26:17 29:13 30:7 31:3,17 34:14 42:12 44:6,8,10,13 46:9 48:20,25 49:3,11,20 50:6 51:19 54:7	basically 3:21 22:20 25:21 53:23 basis 7:20,22 32:12 bear 9:4 behalf 1:16,19 2:4,7,10 3:7 24:25 52:9 behavior 39:11 44:5 believe 18:4 23:10 27:22 36:7 38:7 believed 36:11 bench 53:19 best 19:9,10 25:22 29:21 35:7 bet 44:9 better 18:22 beyond 12:11 33:8 54:8 bit 29:9 53:3 block 13:14 blocks 29:11 borderline 18:19 19:7 break 14:5 BREYER 12:12 13:4 17:7 18:6 19:2 29:7,17 30:5,14,19 44:8,15 45:2 Breyer's 40:21 brief 3:19 10:1 15:23,24 27:1 39:3 52:14 briefly 24:4 bring 4:9 broad 4:8 brother's 25:10 40:17
above-entitled 1:11 54:17	alleged 23:11 allows 39:21 alluded 23:22 ALPHONSO 1:3 alternative 19:10 amended 28:10 34:23 analysis 8:4,10 8:23 11:21 13:18,18 16:20 33:4 46:25 analyze 7:19,22 annoyed 44:19 answer 14:19 19:3,6 24:4 25:10,22 33:17 41:24 answers 22:18 anybody 12:12 49:24 anyway 33:15 apologize 10:3 appeals 27:6 32:5 appear 37:21 APPEARAN... 1:14 apple 47:7 apples 26:14 applies 50:6 apply 20:14 22:24 28:4 apprehend 53:12 approach 3:13 4:1,3,16 20:25 21:1,13 22:22	arguably 40:2 45:16 argued 46:3 argument 1:12 2:2,5,8 3:3,6 4:7 8:4,9,14 24:24 40:17 41:2 51:18,21 51:23 52:8 armed 3:12 4:10 19:16 20:2,5 25:5 39:7 45:12 50:18 arrest 52:18,21 53:3 arrested 53:10 arson 9:6,9 15:10 16:7 20:10 22:3,8 asked 22:19,19 asking 42:8,8 aspect 35:17 assault 44:9,10 assessing 37:24 Assistant 1:15 1:17 associated 27:13 37:22 assume 37:2 47:4 assuming 45:23 attempt 6:24 9:1 10:20 11:12 12:4 13:10,16 17:24 23:20 24:9 25:11,11 25:19 37:3,23 38:5,11,25 39:2,4,13,13	attempting 24:7 24:11 42:19 43:18 attempts 9:3,4 10:12 14:10 22:2 38:12,21 40:8 41:6,15 41:16 43:24,25 44:1 attention 31:6 attribute 49:17 available 30:4 40:20 41:11 avoidance 54:3 a.m 1:13 3:2 54:16	back 9:11 14:24 21:11 22:17
absolutely 36:6 absurd 27:18 ACCA 39:6,6 accept 45:24 46:25 accommodate 10:12 accompanied 19:5 accompanies 18:10 accomplish 43:19 accomplishing 12:9 43:18 account 31:9 38:1 acknowledge 51:3 act 3:12,13 4:10 5:7 12:3,10 13:19,19,23 23:25 24:1,6 25:5,13 26:23 37:17 38:4,4 action 14:10 activities 27:14 actual 34:12 40:22 additional 47:12 administrabili... 33:4 admit 30:8 admitted 48:7 advantage 47:9 affidavit 51:3 affirmative 12:9 agree 25:9 32:15				

<p>brought 54:3 building 24:13 37:17 bump 42:5 bureaus 29:22 burglar 5:9 39:18,20,25 40:1 41:23 43:14 49:25 burglaries 5:15 5:16 11:25 12:24,24 15:2 19:4,4 30:8 34:12 35:16,17 37:22 49:4 burglars 42:17 burglary 3:15 4:23 5:2,3,6,18 5:24 6:6,11,13 6:17,19,21 7:15,23 8:22 9:6,9 11:4,5,7 11:8,8,12,16 12:5,9,16,16 13:12,24 14:1 14:7,16 15:5,6 15:10,16,25 16:6,23 17:1,2 17:16,17 18:11 19:15,19 20:1 20:5,6,10,18 21:16 23:12,14 23:17,19,24 24:10,12 25:4 25:6,18 26:8 26:17 27:20,23 28:19 29:5,14 29:14 30:20 31:3,18 34:4,9 34:14,24 36:5 38:11,25 40:19 42:12,16 43:7 44:6,6 46:2,2,4 46:7,9,12,13 46:24,24,25 47:4 48:25 49:20 50:6,7</p>	<p>50:15,16 51:15 51:16,17,18,19 54:7 burglar's 13:22 bushes 6:4 29:9 business 14:2,5</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 call 7:16 11:20 called 14:2 car 14:1 career 3:12 4:10 18:24 19:14,16 19:20,25 20:3 20:4,6 25:5 45:10 careful 49:25 carport 28:4,6 carports 28:3,12 carried 46:17 carries 36:16 case 11:23 13:3 15:3 18:19 19:7 20:19 21:14 22:11 23:22 26:25 27:4,7,9 28:11 28:17,18,18,20 29:24,24 40:3 40:4,5,9 42:4,4 42:16 43:3 45:14,19,19 47:1,5,10,13 47:25 48:23 49:19 51:4 53:7 54:15,16 cases 12:17 25:18 27:5 28:3 37:3,20 40:3 43:2 45:15 49:20,23 casings 13:12,22 40:7 cast 28:18 categorical 3:13 4:3 20:25</p>	<p>22:22 23:1 32:7,10,22 47:20 50:4 categorically 11:24 22:24 25:6 27:25 29:4 32:13 49:2,18 50:10 categories 35:22 category 16:17 20:11,15 21:4 21:6 31:19 35:25 41:13,20 49:23 caught 5:16 causes 16:15 certain 44:18 certainly 19:22 33:21 48:25 49:5 chance 40:18,18 characteristic 34:4,16 characteristic... 33:18 34:2,8 36:7,8,14 37:3 characterizati... 25:17 charge 8:12 charged 46:12 charging 8:22 21:18 47:22,24 Chief 3:3,8 5:23 6:8 10:21,25 11:10 12:2,8 16:25 17:13 18:2 21:25 24:21 25:1 38:7,10 39:15 39:22,24 52:3 52:6,24 53:6 54:13 choice 35:15 choose 47:19 chooses 50:1 Circuit 17:4,8 18:3,5 23:15</p>	<p>52:15 53:7 Circuit's 3:10 circumstances 31:16,20 cited 28:18 52:14 city 29:7,11 clause 3:11 4:17 21:11 28:1 46:11,20,23 50:15 52:11 clear 5:2 7:18 15:11 35:3 clearly 32:8 49:5 49:23 client 8:5 climb 5:11 climbing 5:10 5:18 close 11:9 29:24 37:4 closed 14:3 closer 7:16 11:20,23 18:9 33:19 cocaine 4:11,18 coconspirator 17:15 Code 39:4 codes 44:3,4 cogitating 18:18 31:2 collateral 33:2 colloquies 48:3 colloquy 23:4,6 come 22:7 38:15 46:10 comes 37:12 coming 19:11 commission 18:15,21,24 19:25 37:12 41:4 commit 17:1,5 25:12 34:9 39:15 45:21 50:11 51:25</p>	<p>commits 36:18 committed 16:1 39:7,14 45:11 committing 40:19 common 3:23 4:19 31:10 33:11 complete 41:17 completed 15:1 15:5 39:5 41:8 43:7 44:2 51:24 components 54:10 comprised 48:1 computer 18:8 concede 22:4 concept 6:2 27:3 27:6,17 28:14 28:23 31:12 39:13 conception 49:6 concerned 22:15 42:2 50:21 conclude 25:24 27:24 28:25 50:14 conclusion 19:12,14 concretely 13:21 conduct 4:5,24 5:13 9:10 16:8 20:12 25:7 31:24 33:10,13 34:9 35:5 37:25 38:2 42:1,18 43:22 confront 3:10 confrontation 43:2 Congress 4:13 10:14 16:2 17:11 27:23 29:5 30:3,16 31:6 32:8 34:19,23 35:16</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>35:22 36:5,10 39:1,17 41:22 42:1 45:18,21 50:16,21 53:25 Congress's 31:5 32:21 35:15 consider 31:5 37:8,16 43:16 47:12 48:11 considered 20:9 27:11 28:12,16 considering 42:18 conspiracy 17:1 17:4,24,24,25 18:5 constitute 13:16 constitutes 38:4 constitutional 54:3 construe 27:17 27:18 32:25 construed 27:2 27:6 32:6,6 consulted 50:23 convict 14:7 convicted 20:17 31:21 32:3 45:12 conviction 3:20 7:15 12:15 25:3 51:16 54:7,9,10,11 convictions 3:15 3:16 4:2,5 12:16 44:5 core 43:9 45:20 45:21 correct 8:24 12:7 21:19,22 24:18 30:19 35:21 36:25 43:20 46:4 50:3 51:20 correctly 8:15 41:9 count 12:13,21</p>	<p>18:13 35:19 couple 27:5 course 14:24 37:21 40:19 46:11 53:10 court 1:1,12 3:9 3:14,22,25 4:3 5:2 11:21 14:20 15:1 18:20 20:2 21:1,10,13 22:19 23:5,15 25:2 27:15,16 28:20 32:19 35:12,14 42:8 42:8 46:15,21 47:8,12,14 48:3 50:14 52:16 53:18 54:6 courts 4:8 27:5 27:6 30:4 31:8 32:5,10 33:1,8 Court's 7:6 14:25 32:16 cover 46:20 covered 15:14 17:15 22:4 34:1 43:9 44:12 49:19 covers 5:24 CRAIG 1:15 2:3 2:9 3:6 52:8 Crawford 1:15 2:3,9 3:5,6,8 5:1,13 6:1,13 7:5,9,14,25 8:16,24 9:17 9:22,25 10:7 10:13,23 11:3 11:15 12:7,10 13:17,25 14:18 15:22 16:4,20 17:3,8,21 18:4 18:23 19:13 20:8,23 21:5 21:10,19,22</p>	<p>22:6,17 23:2,6 23:10,18 24:3 24:11,18,20,22 52:6,8,10 53:4 53:14 54:14 create 8:6,19 created 7:2,11 35:22 43:12 creates 37:18 42:10,21 creating 8:7,12 crime 4:9 9:13 13:10,24 15:16 16:17 17:1 20:16 25:6,6 31:11,16,20,22 32:2,2,18 33:9 33:9 37:12 45:4,21 49:18 52:12 crimes 4:6 9:6,9 9:11,14,19 10:16 15:11,14 15:20,21,25 16:14,16 17:11 17:12 19:5 20:9 22:2,6,7 30:17,23 32:11 32:13,23 34:25 35:25 39:7 41:13,19 45:11 45:18,18 52:20 53:23 criminal 3:12 4:10 19:16 20:3,6 25:5 31:8 39:4 criminals 45:10 criteria 36:12 criterion 36:13 36:14 current 28:9,9 curtilage 5:25 6:1,2,19 24:2,9 24:12,14,17 25:13,19 26:2 27:1,2,7,12</p>	<p>28:14,17 45:25 46:13,16 47:15 48:19 50:8,19</p> <hr/> <p>D</p> <hr/> <p>D 3:1 dangerous 9:8 9:14 16:16,18 16:24 22:13,16 29:4,19 30:7 35:18 39:11 dangerousness 44:2 dangers 39:12 days 49:25 dealing 19:14,19 22:22 52:25 53:8,15,15 dealt 19:18 decide 13:3 14:9 14:15 30:6 34:3 decided 20:14 47:10 decides 21:13 deciding 47:13 decision 14:25 25:24 32:16 35:20 decisive 48:22 defeats 22:25 defendant 5:8 7:20 20:16 31:21 32:3 43:17,18 51:1 Defender 1:16 defined 11:8,8 24:13,16 27:1 28:25 defines 15:18 27:23 defining 11:9 definition 6:12 39:14 degree 14:15,16 53:8,12 deleted 10:19,21</p>	<p>deleting 11:1 demonstrate 44:4 demonstrated 39:9 Department 1:18 determinations 54:4,5 determine 3:20 3:23 determined 17:4 17:9 28:20 determines 4:19 determining 4:2 diagram 13:25 difference 21:15 different 11:1 17:25 19:1 27:25 50:16 52:24 53:3 differentiate 39:17 difficult 14:19 28:25 dimensions 13:10 directed 31:6 directs 37:8 disagree 25:15 discussed 27:1 discusses 27:5 disregard 31:13 distance 27:8,10 distinct 24:1 25:13 distinguish 43:10 distinguishable 51:5 distribution 4:15 district 3:22 14:20 23:15 documents 21:18 47:22,24 doing 20:22</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>door 17:18 doubt 22:1 28:18 29:17 driveway 28:19 28:21 driving 14:3,4 drop 50:17 drug 4:13 39:10 drugs 4:15 dwelling 5:5,22 5:22 6:16,18 20:5,7 23:25 24:7,13,16,16 25:4,14 26:13 27:4,8,10,13 27:14 28:12,24 29:3 40:6,7 42:13,20 47:16 49:1,13,21 50:12,12 dwellings 49:4 dynamic 42:21 D.C 1:8,18 53:7</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e 2:1 3:1,1 10:15 easier 20:19,19 31:15 easy 42:3 43:3 economics 12:20 effect 33:1 either 15:22 17:24 23:25 29:2 33:21,23 33:24 41:2 45:3 46:14 50:19 53:5 element 10:17 11:19 12:1 22:9 35:24 elemental 4:1 elements 4:5 20:10 21:2 33:9,10 42:9 42:10,15 44:23 44:24 Eleventh 3:10</p>	<p>17:4,8 18:3,4 23:15 eligible 35:10 embezzlement 44:19,20 enables 31:21 enacted 11:6 30:3 enacting 31:5 enclosed 6:3,5 27:3 28:15,15 28:21 29:16 47:16 enclosure 6:4 28:23 enforcement 52:18,21 engage 39:10 42:1 engaging 39:9 enhancement 14:22 35:19 enter 24:7,12 42:20,20 entered 5:8,8 entering 6:16,18 23:25 25:13,14 enterprising 49:24 enters 5:4,5,21 entire 52:12 entirely 50:18 entry 24:9 26:2 40:13 48:20 49:12 50:2 enumerated 4:13 5:2 9:19 10:16 16:3 17:5,11 34:24 enunciate 3:21 enunciated 3:19 3:25 4:4 6:14 equally 50:6 equivalent 39:23 escaped 53:2,9 53:13,14</p>	<p>escapee 52:25 especially 35:17 ESQ 1:15,17 2:3 2:6,9 3:6 establish 33:3 event 39:16,19 43:12 everyday 4:19 evidence 24:3 ex 32:11 example 13:11 26:13 40:8 examples 15:10 15:11,20,21 30:17 36:24 37:5 exceeding 31:23 exclude 13:12 excludes 32:17 exists 36:21 expanded 34:24 expected 30:3 experience 3:23 4:19 31:10 33:11 explicitly 3:17 explosives 9:10 16:7 22:4,13 22:15 extortion 9:7,8,9 9:15,17 14:17 15:10,25 16:7 16:19 22:13,16 30:20,25 36:6 36:7,15,18,21 extreme 40:5,7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facility 53:16 fact 18:14 28:17 33:2 35:9 37:19 43:2 48:22 52:13 54:8,11 facts 8:2 13:1 21:14,15,17,23 23:3,11,13</p>	<p>31:15,19 33:3 48:7,9 51:6,8 factual-based 21:13 fact-based 5:14 22:21,25 failed 39:16 52:17 53:16 failing 53:18 fails 53:21 fair 51:15,22 52:1 fall 28:1 falls 42:2 45:20 fanciful 36:7 far 5:15 18:7 22:14 27:11 favours 8:10 Federal 1:15 feels 19:25 feet 28:5 felon 39:7 45:12 53:2 felonies 35:23 39:10 felons 50:18 felony 4:9,12 25:5 31:22 36:11 44:5 51:25 52:1,13 53:24 fence 6:4 26:4,6 26:7,12 28:15 29:10 47:6 fenced 28:5 fences 29:11 50:11 figure 12:22 14:14 16:21 33:9 finally 47:10 find 12:15 13:1 19:2,7 40:4,8,9 46:14 fine 17:14 36:4 first 3:4 6:22 7:8 27:21 30:12</p>	<p>34:18 35:23 43:4 44:12 fit 44:16 45:17 fits 33:21 five-year 4:12 Fla 1:16 Florida 3:14 4:12 5:6,23 6:2 6:7,14,17 12:4 12:15 13:10,16 14:6 17:3 22:11 23:20,23 24:10,11 25:4 25:12,22 26:8 26:25 27:1,5 27:14,14,15,23 28:3 29:14 46:1,1,2,9 50:15 51:15,18 54:6,6,6 Florida's 28:14 focused 39:6,8 focusing 43:22 follow 18:20 following 51:14 follows 23:24 footnote 52:14 force 9:5 10:18 44:14 found 28:19 40:5 52:16 54:5 four 9:17 17:11 30:17 52:7 frankly 18:7 fraud 44:18 friend 12:3 front 29:10 frustrated 39:18 41:23 43:11 frustrates 40:13 fulfilling 12:4 further 32:25 54:12 furthest 40:4,4</p> <hr/> <p style="text-align: center;">G</p> <hr/>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>G 3:1 garden 28:7 Garner 15:1 general 1:18 34:8 generic 4:23 5:3 23:19 27:23 32:2 46:2,4,7 46:24 47:3 51:15,18 generically 7:22 9:2 11:13 20:9 20:14,15 31:17 getting 6:22 7:3 8:1 22:17 23:21 26:6 34:10 37:19 GINSBURG 13:2,9,21 32:15 49:22 give 26:20 42:6 given 35:9 giving 15:19 go 12:20 17:7 22:24 32:25 47:7,14 50:18 50:19 52:18 goes 29:11 35:24 38:1 going 6:5 9:2 13:2 14:5 21:12 27:16,17 37:3,23 54:8 Golden 52:14 53:15,15 Government 16:21,22 29:21 29:23,25 Government's 4:7,16 9:25 15:23 52:23 grass 47:6 greater 38:19,20 39:25 53:7,8 53:11 guess 6:2 9:7 14:9 41:10</p>	<p>46:5 guidance 30:16 guideline 19:1 19:21 20:1 guidelines 18:25 guilty 6:17 13:24</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>halfway 38:15 Hamilton 26:25 28:17 hammer 48:15 48:22 49:7,10 49:15 happens 29:19 44:16 52:20 hard 16:21 31:18 40:14 harm 7:2 12:14 12:17 15:11 26:22 35:25 36:1,8,15 37:2 37:12,15 41:3 46:18 harmed 12:18 harms 41:7 harsh 27:18 health 22:16 hear 3:3 hearing 53:18 heart 42:2 held 20:8,11 27:7 help 38:6 high 9:14 14:16 45:3,4 hitting 44:20 hoe 26:21 home 38:15,23 42:20 50:19 Honor 5:1 26:24 37:7 hope 19:11 hours 18:9 house 5:25 6:3 11:6,12,19</p>	<p>12:1,6 13:13 14:1,13 20:18 26:4 27:9,10 29:12 37:4 38:15,17 50:1 50:20,20 houses 29:9 hurt 12:25 19:6 44:9 hypothetical 50:5,7</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 32:12 45:6 identified 6:11 36:10 47:11 identify 35:22 ii 10:15 imagine 19:6 immediately 27:4,12 28:24 47:16 50:12 implicitly 3:17 importance 49:9 imprisonment 31:23 include 10:23 19:15,19 20:1 24:16 included 4:10 38:12 including 47:15 increase 19:22 increases 19:20 independent 38:13 indicate 21:16 indicates 35:15 indictment 8:11 21:18 individual 19:5 48:23 individuals 15:12 information 18:22 inherent 53:20</p>	<p>inherently 3:17 32:23 36:2 initial 14:10 injured 44:18 injuries 45:3,5 50:9 injury 3:18 4:21 4:25 8:20 11:14 14:23 15:12,17,21 16:1 17:20 18:10 20:13,21 22:10,14 25:8 31:25,25 32:14 33:25 34:14 35:1 36:3 38:13,16,20 40:1 41:18 42:16 45:17 47:17 inquiry 5:14 22:21,25 inside 5:22 37:19 instance 4:11 30:6 intended 39:14 54:1 intending 29:2 intends 45:21 intent 5:11 13:19 26:6,11 38:1 interpret 32:1 interpretation 3:11 4:16 18:20 32:17 interpreted 21:12 32:5 35:12 interpreting 18:24 interrupts 38:22 38:23 intimate 27:13 involve 3:16 4:24 5:12</p>	<p>14:10,12 15:11 15:13,20 26:1 28:3 31:1 34:13 38:5 48:18 49:24 involved 4:15 12:17,23 25:19 33:4 38:4 42:19 46:16 involves 9:10 16:7,8,14 17:19 20:12 25:7 31:24 35:5 36:8 40:5 involving 25:18 35:17 irrelevant 22:23 isolation 37:23 issue 23:21 54:2 issued 53:19</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jail 52:17 53:21 James 1:3 3:4 8:18 21:14 JONATHAN 1:17 2:6 24:24 Jones 23:22 JR 1:3 judge 3:22,22 4:18 31:10 judgment 33:12 53:11 juries 31:9 Justice 1:18 3:3 3:8 4:22 5:9,23 6:8,20 7:7,10 7:19 8:3,21,25 9:20,23 10:5,8 10:21,25 11:10 12:2,8,12 13:2 13:4,6,9,21 14:9 15:8 16:4 16:25 17:7,13 18:2,6 19:2 20:8 21:3,7,17 21:20,25 22:12</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>22:19 23:2,9 23:18 24:8,15 24:19,21 25:1 25:9,21 26:3 26:10,16,20 28:2 29:7,17 30:5,14,19 31:14 32:15,24 33:14,24 34:11 34:20 35:2 36:4,13,20 37:1,10 38:3,7 38:10 39:15,22 39:24 40:16,21 41:1,9,16,24 42:3,14,23 43:1,15 44:8 44:15 45:2,23 46:5,22 47:3 47:18 48:2,6 48:11,14,18,21 49:7,14,22 50:22 51:9,14 51:22 52:3,6 52:24 53:6 54:13</p> <hr/> <p style="text-align: center;">K</p> <p>keep 13:6 keeping 27:19 keeps 49:25 KENNEDY 21:17,20 47:18 50:22 51:9 kind 3:25 4:9 6:3 8:7 14:10 19:3 21:16 22:25 29:4 37:5 50:16,21 51:10 knock 10:3 know 8:15 10:9 12:13,21,22,24 13:9 14:5 16:13 18:6,12 25:21 26:13 29:18 30:7,9</p>	<p>31:3,17 33:3 37:20 38:24 42:5 44:19 46:23 52:18 knowing 18:9</p> <hr/> <p style="text-align: center;">L</p> <p>L 1:15,17 2:3,6 2:9 3:6 24:24 52:8 ladder 5:10,18 6:5,22,23 7:13 7:14,21 8:6,17 11:11,13,18,25 14:12 17:18,18 20:17 37:5,16 37:17 38:14 language 8:18 18:7,18 31:21 33:16,22 35:3 35:15 39:21 43:21 large 49:23 late 21:7 Laughter 13:8 38:9 45:8 law 12:4,19,19 13:16 14:7 21:8 23:23 24:10,11 25:4 25:12,22 26:8 30:3 31:8 32:4 40:3,9 46:1,1 49:19 50:15 52:18,20 lawn 26:5 29:9 laying 20:17 lead 8:4 leads 46:5 lean 47:6 leave 53:24 left 29:18 legal 11:17 legions 21:8 lesser 38:12,25 39:2 letter 30:21</p>	<p>let's 28:5 level 34:9 36:20 36:21,23 40:14 40:14 life 19:23 light 43:6 limit 27:3 limited 29:1 line 17:14 linguistic 33:15 listed 32:9 45:18 literally 26:3 little 17:21 24:4 29:9 49:14 logically 43:6 look 9:2 11:24 12:15,16 14:24 19:9 30:12 32:8,17 33:9 38:10,24 39:1 39:21 40:2 42:8,9 44:23 45:13 48:23 looked 4:1 20:25 looking 4:22 5:14 10:9 18:8 18:25 21:1 32:11 33:13 43:23 54:9 lot 7:16 12:23 18:10,13 29:8 30:9 31:14 lower 40:15</p> <hr/> <p style="text-align: center;">M</p> <p>mail 44:18 main 14:6 40:11 majority 39:3 40:3 44:3 making 35:17 mandate 4:8 18:14 manifested 44:1 manifesting 13:19 manner 9:1 16:10,10,13</p>	<p>21:12 Marcus 1:17 2:6 24:23,24 25:1 25:9,15,23 26:9,15,18,24 28:8 29:15 30:2,11,16 31:4,14 32:4 32:16,19 33:7 33:14,23 34:7 34:18,22 35:12 36:10,16,23 37:7,24 39:1 40:2,24 41:5 41:15,22,25 42:7,18,25 43:4,20 44:11 44:22 45:9,23 46:3,19 47:2 47:11,24 48:5 48:9,13,17,24 49:11,16 50:3 50:25 51:12,21 51:24 52:4,5 marijuana 27:7 matter 1:11 54:17 maximum 4:12 4:15 19:22 mean 6:23 7:10 9:24 10:9,13 13:11,12 17:14 20:2,14 21:17 22:14 24:16 25:22 26:25 30:8,23 31:11 32:1 35:13,14 35:19 37:4,14 37:20 38:6,12 39:13 40:2 41:2,17 44:16 45:1 46:6,19 47:11,14 49:18 meaning 16:5 means 9:12 16:9 31:22 33:24 45:7</p>	<p>measurable 37:20 measuring 43:16 mentioned 9:6,9 9:12,15 16:16 mere 12:11 37:22 46:15 51:16 54:8,11 merely 8:10 method 13:5 Miami 29:8 mind 16:5 27:19 27:24 29:5 30:18 32:9 45:19 50:17 minimal 36:15 minuscule 37:23 minute 38:8 minutes 52:7 mischief 13:7 misunderstood 8:9 modified 47:20 monkey 29:12 morning 3:4 moving 47:6 murder 44:5</p> <hr/> <p style="text-align: center;">N</p> <p>N 2:1,1 3:1 named 16:14 20:9 22:2 narrowly 27:2,3 nation 41:13 nature 8:5 near 40:23 necessarily 23:13 34:15 36:1,2 45:17 46:10 47:14 54:5 necessary 33:10 need 6:12 40:25 41:10 50:24 never 8:22 11:2 11:6,6 12:23</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>nevertheless 15:18 nexus 44:24 45:4,5 47:21 noncategorical 21:12 47:20 noncurtilage 6:21 nonthreatening 50:5 normal 33:20 53:3 nose 42:6 noted 28:20 November 1:9 number 12:17 25:17 28:2 44:18 45:3,5 45:11 numbers 19:8 43:7 44:17,21</p> <hr/> <p style="text-align: center;">O</p> <p>O 2:1 3:1 object 48:9,10 objected 23:12 23:13,14 51:1 objection 23:16 51:5,6 obligation 14:20 14:21 16:22,23 obstacle 20:22 obvious 18:19 33:18 obviously 4:21 5:15 34:1 38:14 53:25 occur 15:3 42:22 occurred 5:7 21:16 occurs 5:17 offender 18:25 19:14,20,25 20:4 offense 3:24 4:13 5:3 6:11 11:19 12:1</p>	<p>19:23,23 21:2 24:9 27:19 31:7 35:24 38:12 39:2,5 39:15 41:4,8 42:9,10,15,19 44:3,23 49:5 51:24,25 offenses 4:4 17:5 20:24 29:6 32:9 39:10 43:8 44:23 46:20 50:11 office 18:8 Oh 38:3 Okay 7:9 24:15 24:19 old 33:3 once 34:5 ones 16:11 open 4:8 28:3 53:24 operate 12:24 opinion 45:6 52:14,15 opponent 34:12 48:8 oral 1:11 2:2,5 3:6 24:24 order 10:11 ordinary 29:7 35:16 Orlando 1:16 outside 5:21 28:1 overdo 37:14 overt 12:3,10 13:18,19,23 23:24 24:1,6 25:12,13 owner 38:24</p> <hr/> <p style="text-align: center;">P</p> <p>P 3:1 page 2:2 35:14 35:14 paradigmatic</p>	<p>29:6 paradigmatic... 34:25 part 22:18 27:11 27:12 28:12,16 47:25 particular 20:18 31:11,16,20 32:2,18 37:25 43:17 49:17 52:15 passed 11:5,6 pay 49:15 pen 30:21 penetration 46:16,17 people 12:18,25 18:13,14 44:18 44:19 45:10 50:10 percent 15:4,15 34:13,15,21 40:18,18 41:12 41:19 43:1 percentage 15:4 perfectly 35:3 permissible 35:7 permits 43:21 person 5:4,19,21 14:4 15:3 16:2 19:21 29:3,4 29:11 35:24 36:1,3 38:17 43:10,25 49:12 53:20 person's 14:1 Petitioner 1:4 1:16 2:4,10 3:7 40:4 52:9 Petitioner's 25:3 25:6 physical 3:18 4:20,25 8:20 9:5 10:18 11:14 14:11,23 15:2,12,17 16:1,14 17:20</p>	<p>20:13,21 22:10 22:14,16 25:8 25:14,14 31:25 32:14 33:25 34:14 35:25 36:1,3,8 38:13 39:25 40:9 41:18 42:15 43:2 45:16 47:17 48:20 49:12,20 picking 31:17 picture 50:17 place 5:19 6:5 13:23 18:22 28:19 plain 43:21 planning 17:15 17:16 plea 23:4,6 please 3:9 25:2 point 37:1 45:14 pointed 39:2 poison 30:21 police 21:24 23:3,8 51:1,4,7 51:10 pose 11:13 posed 33:12 poses 17:1 39:25 posit 50:4,5,7 position 26:1 29:21 47:15,19 49:18 52:2,11 52:23 possess 13:11 possessing 13:22 possession 4:11 4:18 possibility 46:1 46:12 possible 9:3,4 18:12 possibly 14:14 post 32:11 potential 3:18 4:20,24 5:4</p>	<p>6:10 7:1,2,11 7:17,18 8:12 8:20 9:20,22 9:23,23,24 10:2,5,11 11:13 14:23 16:8 17:2,6,19 17:22,23 20:13 22:2,10 25:7 26:22 31:7,24 32:13,14 33:25 34:2,4 35:1,18 36:17,20 37:8 37:11,11,19 38:20,20 39:20 40:22,22 41:3 41:7,18 43:22 43:23 46:18 47:17 49:1,4 52:13,16,20,22 53:5,8,11,12 53:23,24 potentially 9:18 10:2 preceding 16:11 36:24 predicate 4:4 6:11 20:24 44:5 premises 40:10 presence 40:12 present 17:5,21 17:23 22:2 30:17 32:12,13 34:5 36:2,2 41:6,20 45:14 45:15,16,16 49:4 50:9,20 presented 21:23 23:7 31:11 32:23 35:1,18 36:24 37:25 40:15 presentence 21:21,23 47:21 48:1,7,10 50:23</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>presentencing 47:23</p> <p>presenting 50:13</p> <p>presents 4:20,24 6:9 7:23 15:17 16:8 20:12 22:9 25:7 27:25 31:7,24 33:17,19,25 34:2 35:6 39:11 41:8,18 47:17 49:1</p> <p>presumably 36:11</p> <p>presumption 11:22 17:10 29:23</p> <p>pretty 26:21 37:4 43:3</p> <p>previously 16:14,16</p> <p>primarily 17:12</p> <p>prior 4:5,5 28:18 39:7,9 54:9,11</p> <p>prison 53:2,9</p> <p>probably 9:8 15:16</p> <p>problem 33:15</p> <p>produce 27:18 41:7</p> <p>produced 23:7</p> <p>professors 12:19 13:7 21:9</p> <p>prohibited 41:6</p> <p>prong 10:19 46:10 51:17,20 53:25</p> <p>propensity 39:8 42:1 50:18</p> <p>property 5:8 17:11,12</p> <p>proposal 11:2,4</p> <p>prosecuted 45:1</p> <p>prove 11:16 14:21</p>	<p>proven 40:22</p> <p>provided 11:21 30:16</p> <p>provision 17:16 19:15 32:8</p> <p>provisions 39:3</p> <p>proximity 40:9 49:21</p> <p>PSR 23:3,11 51:6,9</p> <p>public 1:15 39:12</p> <p>punch 42:6</p> <p>punish 39:4 43:24</p> <p>punishable 31:23</p> <p>punished 43:25</p> <p>purpose 16:9 23:1 31:5 39:5</p> <p>put 11:18 15:12 17:17</p> <p>putting 6:21 11:11,25 14:12 37:17</p> <hr/> <p style="text-align: center;">Q</p> <p>qualification 47:9</p> <p>qualifies 13:23 20:6 26:23 38:5 53:2</p> <p>qualify 3:15,20 3:24 4:2,14,18 6:15,25 8:19 10:16 11:4,5 11:22 15:16 18:1 26:7,16 53:24</p> <p>question 7:7 14:19 15:9 18:17 19:3,7 22:18,19 23:19 24:4 25:10 29:20,25 30:6 46:6 47:13 48:15,18</p>	<p>questions 45:15 54:12</p> <p>quickly 24:6</p> <p>quite 10:25 27:8 31:1 53:2</p> <hr/> <p style="text-align: center;">R</p> <p>R 3:1</p> <p>raise 29:13</p> <p>rake 28:7</p> <p>range 19:21</p> <p>rare 15:3</p> <p>rationale 43:24</p> <p>reaction 44:25</p> <p>read 10:9 15:9 15:19,22 16:13 30:14,24 31:19 45:25</p> <p>reading 33:20 35:7,7,21 46:8</p> <p>really 10:6 13:17 17:22 21:16 29:20 41:3 42:3,4</p> <p>reason 8:9 32:25 39:16 41:5</p> <p>reasonable 18:20 37:2</p> <p>reasonably 8:7</p> <p>reasoning 50:24</p> <p>reasons 19:24 40:11</p> <p>rebuttal 2:8 24:5 52:8</p> <p>recklessness 31:12</p> <p>recognized 3:14 19:17</p> <p>reconnoitering 40:6</p> <p>record 23:3,9 47:25,25</p> <p>records 23:5 46:15 47:8,14</p> <p>redundant 10:10</p> <p>refer 21:5 24:6</p>	<p>31:19</p> <p>referred 7:1 32:20</p> <p>referring 21:3 34:22</p> <p>refers 4:4 9:11 31:12 36:22</p> <p>regarding 23:11 23:17</p> <p>regardless 38:17</p> <p>relationship 23:19</p> <p>relevant 28:11 28:11</p> <p>remain 24:5,5</p> <p>reply 52:14</p> <p>report 21:21,23 47:22,23 48:1 48:7,10 50:23 51:4,7,10 52:17 53:1,16 53:18,21</p> <p>reported 25:18</p> <p>reports 21:24 23:4,8 51:2</p> <p>require 28:23 32:7 47:14</p> <p>required 12:4 34:9</p> <p>requirement 11:17,18 34:17 35:10</p> <p>requires 31:8</p> <p>residence 4:23 6:6 29:2 42:21 48:20 49:12</p> <p>residual 16:17 20:11,15 21:4 21:6 31:19</p> <p>residuary 46:11</p> <p>resolve 48:17</p> <p>resort 6:12</p> <p>respect 22:1 31:15 32:9 35:23 38:21 43:8</p> <p>Respondent</p>	<p>1:19 2:7 3:19 14:20 24:25</p> <p>Respondent's 10:1 15:24 52:11</p> <p>rest 41:3 52:12</p> <p>result 8:5</p> <p>results 27:19 39:6</p> <p>revealing 30:22</p> <p>right 5:24 6:8,10 20:10 29:3,17 35:4,19 36:21 42:23 44:15 48:1,16 49:12 50:20 53:1</p> <p>risk 3:18 4:20 4:24 5:4,12,12 5:20,21 6:10 7:1,2,11,17,18 7:23 8:7,13,20 9:5,13,14,18 9:21,22,24 10:1,5,6,7 11:14 12:14 14:15,17,23 15:7,14,17,20 16:1,8,14 17:2 17:6,19,22,23 20:13,21 22:3 22:10,14 25:7 26:22 30:18 31:7,25 32:12 32:14 33:17,19 33:25 34:2,2,5 34:13 35:1,6 35:19 36:2,8 36:15,17,21,23 37:2,9,11,11 37:15,19,22,24 38:11,13,16,20 38:20,25 39:8 39:20,25 40:15 41:14,18,20 42:4,5,15 43:16,22,23 45:16 47:17</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>49:1,5,24 50:4 50:13,21 52:16 53:19 54:10 riskiness 44:4 risks 27:25 31:10 33:12 43:12,13 ROBERTS 3:3 5:23 6:8 10:21 10:25 11:10 12:2,8 16:25 17:13 18:2 21:25 24:21 38:7,10 39:24 52:3,6,24 53:6 54:13 roughly 12:18 row 26:21 rung 6:22 Russello 11:22 17:10</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 safety 39:12 satisfy 8:22 33:10 34:16 35:9 42:15 46:10 49:6 51:16,19 save 21:8 saying 8:8 26:21 35:5 43:16 51:3 says 5:20 20:4,6 34:1 Scalia 7:19 8:25 9:20,23 10:5 13:6 14:9 16:4 20:8 21:3,7 22:12,19 31:14 36:4,13,20 scope 9:3,4 screen 18:8 sea 29:18 second 19:9 35:25</p>	<p>secret 30:22 sections 22:23 see 12:17 24:3 42:10 43:8,10 45:6 49:25 seen 8:7,12 Senate 11:5 send 46:14 sending 21:8 sense 3:23 4:19 31:10 33:11 sensible 16:12 sentenced 19:21 53:17,22 sentencing 3:22 18:15,21,23 19:24 serious 3:17 4:13,20,24 5:4 6:9 7:17,23 8:20 10:2 12:14 14:22 15:14,17 16:8 17:2,5,23 20:12,20 22:2 22:9 25:7 27:19 31:7,24 32:14 33:17,19 35:1,6,18 37:8 39:10,20 41:7 41:18 43:23 45:16 47:17 49:1,4 52:16 set 27:25 29:5 43:12,13 setting 30:17 Seventh 52:15 Shepard 3:14 4:1 20:23 21:6 32:16,20 33:5 47:9 50:24,25 51:1 54:3 shot 37:21 show 23:3,7,20 40:17 43:5,6 48:19 showed 41:12</p>	<p>shown 16:23 41:25 43:7 shows 49:19 side 11:12 12:1 12:3 14:13 26:12 38:14 sidewalk 26:5 significance 49:15,17 51:10 similar 9:5,13 12:18 simple 4:11,17 simply 6:21 8:21 16:6 18:20 25:12 26:11 37:16 sit 18:8 sitting 12:22 14:4 17:14 situation 33:13 42:11,21 52:19 53:3 solely 48:1 Solicitor 1:17 somebody 28:4 28:6 30:21 39:8 40:12 42:5,6 52:21 someone's 42:20 42:21 50:19 someplace 23:4 somewhat 34:15 sorry 17:7 35:13 sort 20:18 26:22 29:4 32:9,11 32:21 33:2 38:11,24 39:21 50:13 51:14 sounds 12:13 source 51:7 SOUTER 6:20 7:7,10 8:3,21 10:8 23:18 24:8,15,19 25:9,21 26:3 26:10,16,20 32:24 37:1,10</p>	<p>38:3 40:16 41:1 45:23 46:5,22 47:3 48:2 51:14,22 Souter's 48:18 space 6:3 specific 6:16 12:14 15:14 50:5 specifically 9:6 10:15,19,21 11:1 16:2 19:16 21:5 23:13 34:24 51:7 speculate 52:17 stage 40:23 standard 41:17 stands 32:3 start 17:18 44:20 started 7:14,20 starting 7:12 8:6 11:12 45:13 starts 29:12 State 6:7,14,21 11:16 26:25 28:17 44:3,4 51:16,19 stated 23:10 statement 51:22 52:1 States 1:1,6,12 3:4 5:7 6:7 statistic 15:15 40:20 statistical 29:20 29:25 45:3,5 statistics 12:19 29:22 30:1,4 34:22 40:17,25 41:10,11 43:5 statute 6:10 7:1 7:3,11 8:13,19 8:23 10:14 15:13,18 17:10 18:25 19:16,25</p>	<p>20:3,4,6 22:8 28:9,11,22 29:6 30:13 31:6 32:21 33:15 34:23 35:4,13,21 37:8 39:17 42:2 43:9,21 45:9,20,24 46:9 52:12 statutes 30:24 statutory 4:12 4:14 19:22 steal 26:13 steals 28:6 step 6:24 7:4,12 8:11,17,17 12:9 13:15,17 13:18 21:10 27:21 37:16,18 47:12,13 stepping 47:5 STEVENS 15:8 33:14,24 34:11 34:20 35:2 41:9,16,24 42:3,14,23 43:1 48:6,11 48:14,21 49:7 49:14 straighten 8:15 street 13:13 14:6 28:6 29:7,8 strictly 27:2,16 structure 3:12 5:5 6:16,18 14:8 20:7 24:1 25:14 28:13,16 32:8 studies 21:9 submission 11:11 submit 7:25 8:18 16:22 17:9 54:7 submitted 51:2 54:15,17</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>subsection 44:12 51:17</p> <p>subset 49:3</p> <p>subsidiary 33:2</p> <p>substantial 6:24 7:3,12 8:11,17 13:15,18 14:22 31:13</p> <p>succeed 38:21 38:22 40:12</p> <p>succeeded 39:19 43:17</p> <p>successful 39:20 40:1 43:13</p> <p>suffice 25:25</p> <p>sufficient 23:20 26:22 41:21 48:16</p> <p>sufficiently 35:18 44:1</p> <p>suggest 35:3</p> <p>suggests 15:15</p> <p>summary 51:15</p> <p>suppose 39:24</p> <p>supposed 30:5,8</p> <p>Supreme 1:1,12 27:15</p> <p>sure 14:2 49:9</p> <p>surmount 50:10</p> <p>surrounding 28:24 47:16</p> <p>surrounds 27:4 27:12</p> <p>suspect 12:25</p> <p>suspicion 13:1</p> <p>system 54:6</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 2:1,1</p> <p>take 7:3,12 9:15 12:8 25:12 26:3 27:15 31:9 32:22 33:9 38:1 40:20,21 45:14 45:25 47:7,8</p> <p>taken 6:23 23:25</p>	<p>24:1 34:8</p> <p>takes 23:20</p> <p>talk 20:24</p> <p>talked 7:6 10:1 15:2 21:1</p> <p>talking 15:1,6 37:6 42:12 45:10,20,22</p> <p>talks 8:13 15:24</p> <p>target 36:1</p> <p>targeting 35:24</p> <p>Taylor 3:14,25 5:1,20 6:15,15 7:6,6,18 8:10 8:23 11:9 15:24 20:23 32:20 35:13,14 35:20 46:21 47:9</p> <p>tell 20:20 47:18</p> <p>telling 14:4 25:25</p> <p>tendency 36:18</p> <p>Tennessee 14:25</p> <p>term 31:22,23</p> <p>terms 4:4 15:19 43:25</p> <p>test 3:20,21,24 3:25 6:14 45:2 45:3</p> <p>text 3:12 30:12 30:14</p> <p>Thank 24:20,21 25:1 52:3,5 54:13</p> <p>thing 24:8,13 36:5 46:14,22 54:11</p> <p>things 17:25 30:9,11</p> <p>think 8:16 10:5 10:7 15:4,22 15:23 16:12,19 16:25 18:2,8 22:12,15 25:20 25:23 26:15,18 26:18,19,24</p>	<p>27:15,21,22,24 28:8,9,11,24 29:19,20 30:2 30:2,7,19 31:4 31:4,8 32:19 33:4,5,8,20,21 34:7,8,16,18 35:2,6,20 36:6 36:9 37:25 38:19 39:5,12 39:20 40:18,24 40:25 41:1,2 41:22 43:5,6 43:20 44:11 45:12,19 48:7 48:21,25 49:16 50:9 51:4,9,12</p> <p>thinking 12:11</p> <p>thinks 30:21</p> <p>third-degree 4:11</p> <p>thought 8:3,8 10:10 34:25 35:16 49:3</p> <p>threat 44:13</p> <p>threatened 10:18 44:13</p> <p>threatening 14:11</p> <p>threats 30:23</p> <p>three 34:13,15 34:20 39:9</p> <p>threshold 49:13</p> <p>throwing 48:15</p> <p>thrown 49:8</p> <p>time 13:3 15:4 24:3 31:9</p> <p>times 30:15</p> <p>today 3:10</p> <p>tools 12:6 13:12 13:22 14:1 17:17 18:16</p> <p>tough 26:21</p> <p>transcript 48:3</p> <p>treat 41:23</p> <p>tree 26:14</p> <p>trials 33:2,3</p>	<p>tried 20:16 43:11</p> <p>triggered 43:13</p> <p>troubling 3:11</p> <p>true 10:13 26:10 34:11</p> <p>trump 52:12</p> <p>truth 51:3</p> <p>try 44:17</p> <p>trying 5:18 7:5 12:22 19:2,7 38:6 50:8,10 53:12</p> <p>Tuesday 1:9</p> <p>two 10:19 15:9 22:1 34:20 35:22</p> <p>type 3:24 4:9 11:8 30:18 44:22 53:19,20</p> <p>types 3:16</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unarmed 42:16</p> <p>unclear 49:14</p> <p>understand 7:21 8:16,23 11:10 12:2 23:23 26:7 41:9 42:24 49:9</p> <p>understanding 8:14 29:16 44:11 46:7 51:2</p> <p>unfavorable 8:5</p> <p>unforeseen 39:16,19 43:11</p> <p>unique 6:1</p> <p>United 1:1,6,12 3:4</p> <p>unnamed 9:13</p> <p>unreasonable 27:18</p> <p>unsuccessful 39:25</p> <p>use 4:8 7:5 9:5,7 9:10 10:17,17</p>	<p>10:18 16:7 20:2 22:3,13 22:15 23:14 31:9 33:11 44:13,13,13 47:19 51:1</p> <p>uses 3:22</p> <p>U.S 39:3</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 1:5</p> <p>various 27:5</p> <p>vast 39:3 40:3 44:3</p> <p>versus 3:4 14:25 26:25 28:17</p> <p>victims 37:21</p> <p>view 38:11 41:11,21 42:24 45:24 49:9</p> <p>violence 10:17 15:2 30:23 31:1 40:19,22 42:11,22 52:13 52:19,22 53:5</p> <p>violent 25:4 31:22 35:9,23 36:11 39:10 51:25 52:1</p> <p>virtually 39:22</p> <p>virtue 39:19</p> <p>visitation 53:1</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>walked 26:5</p> <p>walking 13:13 29:8</p> <p>walks 28:6</p> <p>walls 50:11</p> <p>want 16:17 24:5 33:1 37:14 39:17 40:20 49:8</p> <p>wanted 19:19 26:11,13 41:22</p> <p>wants 32:22</p> <p>warrant 53:19</p> <p>Washington 1:8</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

1:18	33:5	597 35:14		
wasn't 53:15				
watch 49:25	X	7		
way 7:15,24,25	x 1:2,7	7 1:9		
9:21 10:8 11:9				
11:15 15:23	Y	9		
16:12 27:22,23	yards 27:10	9 52:14		
29:1,1 32:6,25	Yeah 33:5	924(e) 20:24		
35:13 37:10	year 19:23 31:23	924(e)(2)(B)(ii)		
44:2 45:24	years 19:23 32:5	10:15		
ways 15:9		94 28:10		
weren't 23:13	Z			
46:21	zero 19:22 37:4			
we'll 3:3 22:24	37:16			
we're 5:14 13:2				
21:12 22:22	0			
25:25 42:7,8	05-9264 1:5			
45:20				
we've 20:8 37:6	1			
46:13	1 10:15 41:12,19			
whiskey 27:9	43:1			
window 5:10,11	1/10 41:12,19			
6:22 29:13	43:1			
48:16,22 49:8	10 19:23			
wonder 44:16	10-year 4:14			
wondering	10:04 1:13 3:2			
12:13	11:02 54:16			
word 10:4,11,19	15 19:23			
16:5 27:2,16	1984 11:3			
45:5	1985 14:25			
worded 19:1	1986 34:23			
words 6:25 7:6	1993 28:10			
7:11 8:8 11:2				
12:5 22:3	2			
43:15 47:8	2 10:15 51:17			
worlds 10:2	20 28:5			
wouldn't 4:23	2006 1:9			
5:11 6:15 7:19	24 2:7			
8:1 9:8,16 13:4	254 14:6			
18:9 20:19				
40:11 44:15	3			
49:23 50:9	3 2:4 15:15			
51:12	40:18,18			
would-be 5:9	3.6 15:4			
writing 30:21	3.8 15:4			
wrong 18:3,5				
wrote 10:14	5			
	50 27:10			
	52 2:10			