

1 JUSTICE GINSBURG: Well, the court said
2 "general jurisdiction," right?

3 MR. BROOKS: They -- they certainly did.

4 JUSTICE GINSBURG: "General jurisdiction,"
5 instead of saying "of competent jurisdiction" when
6 "competent" generally means -- is this -- the -- the
7 sue-and-be-sued clause gives the corporation capacity to
8 sue and be sued, but competent jurisdiction is addressed
9 to the Court.

10 Does this Court have authority to proceed in
11 this category of cases?

12 MR. BROOKS: Yes, Your Honor. So the way we
13 think all these things work together is, first of all,
14 as I say, the entire phrase, "court of competent
15 jurisdiction," State or Federal, had been unanimously
16 held to confer subject-matter jurisdiction. Right?
17 Those are the cases we talked about, and there were no
18 cases to the contrary at the time.

19 And the understanding of what "competent
20 jurisdiction" was adding was twofold. First of all,
21 from Congress's perspective at the time, I think it's
22 fair to say they weren't thinking about much, because
23 the 1954 Act was a 150-page comprehensive reform of
24 Federal housing policy having very little to do with
25 jurisdiction.

1 And we think what happened is they simply
2 borrowed a phrase that had been unanimously held to
3 confer jurisdiction, and they put it in for Fannie Mae.
4 There was no other reason to think they meant anything
5 different from that.

6 But we also know that less than two years
7 before the 1954 charter for Fannie Mae was adopted, this
8 Court looked at the phrase "competent jurisdiction" on a
9 standalone basis and said that all it referred to at
10 that time in that context was personal jurisdiction.

11 That doesn't mean that's what "competent
12 jurisdiction" means always. But what we think it means
13 is when coupled with the words "State" or "Federal," it
14 means personal jurisdiction courts of general
15 jurisdiction.

16 Now, Justice Sotomayor earlier asked the
17 question about how many statutes had sue-and-be-sued
18 clauses like ours. We have the same count, Your Honor,
19 that your clerk has. We have nine total, including
20 Fannie Mae.

21 JUSTICE SOTOMAYOR: We now have three
22 versions, but that's okay.

23 (Laughter.)

24 MR. BROOKS: I'm going to go with nine.

25 (Laughter.)

1 MR. BROOKS: But here's what else we know.
2 The number of statutes that have the phrase "competent
3 jurisdiction" alone, based on some Lexis research very
4 early this morning, is 781. So if the phrase "competent
5 jurisdiction" together with "State" or "Federal" exists
6 only nine times, but "competent jurisdiction" as a
7 generic matter occurs 781 times, that's the rule that we
8 urge on this Court today.

9 The rule is, when combined with the grant of
10 jurisdiction embodied in the word "Federal" under Red
11 Cross, you have the personal jurisdiction and general
12 jurisdiction holdings of other cases. You have the
13 grant of subject-matter jurisdiction per Red Cross and
14 its progenitors, and that becomes the jurisdictional
15 rule that is very clean.

16 Now --

17 CHIEF JUSTICE ROBERTS: If -- I'm sorry.

18 MR. BROOKS: So Your Honor, I was going
19 to -- go ahead.

20 CHIEF JUSTICE ROBERTS: Your friend on the
21 other side scares me when he says there are 60,000 cases
22 that are going to be added to the Federal docket.

23 Do you have an answer to that?

24 MR. BROOKS: I have many answers to that,
25 Your Honor, but the easiest answer is this.

1 The easiest answer is no --

2 JUSTICE KENNEDY: Don't tell us we're not
3 working hard enough.

4 (Laughter.)

5 MR. BROOKS: I do recall, Justice Kennedy,
6 that once upon a time, the Court took 150 cases a year.
7 Maybe foreclosures could be among them.

8 JUSTICE KENNEDY: They were easier cases.

9 MR. BROOKS: Perhaps I should sit down.

10 (Laughter.)

11 MR. BROOKS: Your Honor, the easiest answer
12 to that is that it's undisputed in this case that
13 Freddie Mac -- whatever one thinks of the Fannie Mae
14 charter, Freddie Mac has clear, undisputed
15 belt-and-suspenders jurisdiction. Freddie Mac has
16 almost as many foreclosures as Fannie Mae has. There
17 has been no race to the Federal courthouse.

18 JUSTICE GINSBURG: But there is a specific
19 statute that makes that crystal clear. And if we -- if
20 Congress wanted Fannie Mae, which it was going private,
21 to be treated the same way as Freddie Mac, then why
22 didn't it say the same thing for Fannie Mae as it
23 said --

24 MR. BROOKS: Well, so, Your Honor, we know a
25 couple of things that Congress thought about Freddie

1 Mac. But just let me make sure I've closed off on the
2 Chief Justice's question, which is the fact that there's
3 no race to the Federal courthouse on foreclosures for
4 Freddie Mac tells you what you need to know about Fannie
5 Mae, its sister organization.

6 Now, Justice Ginsburg, the issue about
7 Freddie Mac is severalfold. So the first thing we know
8 is when Freddy was created in 1970, the legislative
9 history in both the House Report and the Senate Report
10 make crystal clear that Congress's intention was to
11 create an entity that had identical powers that would
12 develop in parallel and that would have no advantage
13 over Fannie Mae. We know that was their intention in
14 drafting it.

15 Now, the words were unquestionably
16 different, just as the words in the Red Cross charter
17 were different from the words in the Second Bank of the
18 United States charter, and yet the outcome was the same.

19 The reason the words were different at the
20 time is because Congress had the luxury, in 1970, of
21 writing in a blank slate. So Congress sat down, without
22 60 years of history, without the need to extricate a
23 legacy agency from Ginnie Mae with a privatization
24 scheme over six different amendments, and to simply sit
25 down and say, this is what we think the GSE should look

1 like.

2 JUSTICE BREYER: I just want you to -- to
3 talk at some point -- I mean, there is a page of
4 legislative history, which could not be more clear. It
5 says exactly what the government says. It says -- they
6 are -- they are asked, does it -- if we did this, aren't
7 we giving these corporations -- I mean, Fannie -- the
8 right to go into a Federal court, although the matter
9 may be purely a State matter? That's not what we
10 intended. All we intended -- then they say, well, you
11 know, they have to look to see whether it's really a
12 State case or whether it's really a Federal case.

13 I mean -- and the words "competent
14 jurisdiction" do -- she says do that. That is their
15 natural meaning. I hadn't quite taken that in, but --
16 but it is -- it is their natural meaning that, what's
17 the point of having these here if the statute without
18 them would grant jurisdiction to go into Federal court
19 if you want?

20 MR. BROOKS: Well, Justice Breyer, on the --

21 JUSTICE BREYER: Let me give you that --
22 what do I do? Maybe you could just say you shouldn't
23 look at legislative history. I'm not prepared to say
24 that. What -- what should I do?

25 MR. BROOKS: Justice Breyer, two -- two

1 points.

2 So first of all, on the -- on the natural
3 reading, I would just urge that the natural reading of
4 "competent jurisdiction" standing alone is different
5 from the natural reading of "competent jurisdiction"
6 State or Federal. And there is no case, I emphasize,
7 that holds those words together, don't confer
8 jurisdiction.

9 But now, on the question about what was --
10 you know, how to understand the colloquy in 1934, there
11 is one respect in which that colloquy could be clearer.
12 And that respect is if the colloquy related to the
13 statute that created Fannie Mae. That would make it
14 clearer.

15 But as it turns out, the 1934 statute that
16 counsel cites in the briefing was not the statute that
17 created Fannie Mae, and so it's not that much more
18 probative than if it had been the legislative history of
19 an utterly unrelated statute. Okay?

20 In 1934, in the Housing Act, Congress
21 authorized the creation of entirely different private
22 mortgage associations which never came into being. The
23 sort of hope in the middle of the Depression in 1934 was
24 that private capital would come into the market pursuant
25 to that statute in places, if you read the rest of the

1 legislative history, in places like Houston, Texas, and
2 Chicago, and New York, and would start creating
3 liquidity to solve the problem.

4 So in 1938, a new statute was passed. That
5 was the same year, I might add, that Senator Bulkley,
6 the Senator whose legislative history is quoted, lost
7 his re-election campaign.

8 JUSTICE BREYER: For this reason.

9 (Laughter.)

10 MR. BROOKS: We -- we -- we can only assume,
11 or perhaps hope.

12 But in any case, 1938 was a different
13 statute. The congressional charter for Fannie Mae, that
14 wasn't even created in 1938. The congressional charter
15 for Fannie Mae that's being reviewed today was created
16 in 1948, one year after the Red Cross charter was
17 adopted, and six years after D'Oench, Duhme. And the
18 language adopted in 1948 was the D'Oench, Duhme
19 language.

20 So somebody has to prevail, either the
21 Supreme Court unanimously in D'Oench, Duhme, or the
22 failed Senator Bulkley. We -- we think the answer is
23 most likely this Court in D'Oench, Duhme followed in Red
24 Cross.

25 CHIEF JUSTICE ROBERTS: The -- the Federal

1 courts -- may be stepping back a bit. There are courts
2 of limited jurisdiction. And to get into them you have
3 to carry, I think, a significant burden to establish
4 their right to be there.

5 Now, I think you have to do more than win
6 51/49, given a presumption against Federal jurisdiction.
7 Do you think -- I suspect you think you do win by more
8 than 51/49, but that seems to me that is a consideration
9 that we need to take into account.

10 MR. BROOKS: So, Chief -- Mr. Chief Justice,
11 there's no question that the courts are limited
12 jurisdiction courts, and we should look at
13 subject-matter jurisdiction with a careful eye.

14 Having said that, this fundamentally is a
15 case about statutory construction. It's about what did
16 Congress mean to do in 1954. That's really all it's
17 about. I don't think there's a serious question but
18 that under Article III --

19 JUSTICE GINSBURG: But there's so many ways
20 that you could -- if you want to make sure that this
21 entity gets into Federal court all the time, what
22 Congress did with Freddie Mac is said, Freddie Mac will
23 be deemed to be a Federal agency for jurisdictional and
24 removal purposes.

25 Now, that is very clear. It means it can

1 come into Federal court to sue. It means it can remove
2 if it's sued in State court.

3 This, compared to "court of competent
4 jurisdiction" -- which, as I go back to competent
5 jurisdiction, competence refers to the ability of the
6 Court, which consists of two things: subject matter and
7 personal.

8 MR. BROOKS: So, Your Honor, let me begin
9 where you ended, if I might, and just say that this
10 Court has repeatedly held that the word -- the phrase
11 "competent jurisdiction" again, standing alone, okay,
12 has multiple different meanings depending on context.

13 In the United States v. Morton in 1984, this
14 Court held that it sometimes refers to subject-matter
15 jurisdiction and sometimes refers to personal
16 jurisdiction citing cases.

17 In the earlier case law of Blackmar v.
18 Guerre, which was the case decided just two years before
19 our statute was decided, it said that in that context,
20 the phrase only referred to personal jurisdiction.

21 So I think the only way to harmonize all of
22 these cases is to say that where competent jurisdiction
23 is included in a phrase that has the Red Cross
24 language/Osborn/D'Oench, Duhme, it means all of the
25 other things that "competent jurisdiction" normally

1 means: personal jurisdiction, courts of general
2 jurisdiction, et cetera. And that's what the case law
3 holds.

4 But the most --

5 JUSTICE GINSBURG: That's because this
6 Court's competence is general competence, which is
7 subject matter, and it's specific competence, which is
8 personal.

9 MR. BROOKS: Correct. That's exactly right.
10 And, again, because this is a case about Congress'
11 intention in adopting a statute, what is critical to
12 understand is when Congress borrowed this language that
13 had pre-existed for the Federal Housing Administration
14 for 20 years and grafted it onto Fannie Mae in its
15 verbatim entirety, every case that had interpreted that
16 language had held it was sufficient to confer
17 subject-matter jurisdiction so strongly that in the
18 Seven Oaks case in 1948 in the Fourth Circuit just six
19 years before our statute, the Fourth Circuit said that
20 those words were no more restrictive than the phrase "in
21 any United States District Court." That's the tapestry
22 on which Congress was weaving at the time.

23 Now, let me address, if I might just
24 briefly, the policy issue. We talked about the text and
25 the history. But counsel spent a few moments talking

1 about this privatization concept and how it would be
2 that what must have happened in the '50s was Congress
3 was going to treat Fannie Mae like any other private
4 company and deprive it of special access to the Federal
5 courts.

6 The presumption behind that argument is
7 that, naturally, Congress would never want a privately
8 owned company to have special access, except we know
9 from the Second Bank of the United States in Osborn that
10 there are times when a privately owned company is
11 sufficiently important, it can have special access. The
12 Second Bank was 80 percent owned by private
13 shareholders.

14 Fast-forward two centuries to 1970, we know
15 that Freddie Mac was created entirely privately owned at
16 its inception with clear and undisputed access to the
17 Federal courts, admittedly with different language, of
18 course, because it was writing in a different era and
19 writing on a different slate without all the baggage
20 that Fannie Mae had gone through. But there's no
21 question that privately owned instrumentalities when
22 pursuing a federally important purpose like housing can
23 qualify under these circumstances.

24 But the other problem with their theory if
25 it fails as a theoretical matter is that it also fails

1 in its mechanism. The truth is this: Congress did not
2 privatize Fannie Mae in 1954. On the contrary, even
3 when Fannie Mae became privately owned, under the 1954
4 Act, it remained a Federal government agency and it
5 still had special access to the Federal courts under
6 1345.

7 So if there had been a conscious legislative
8 judgment to take Fannie out of the Federal courts at
9 that time, they surely would have had to do the work of
10 taking away its agency status.

11 JUSTICE GINSBURG: It shouldn't matter to
12 the Federal court. They can be there if there is
13 diversity or if the claim arises under Federal law.

14 MR. BROOKS: That's true, Your Honor. That
15 exact issue, however, I might point out, was raised
16 specifically in Red Cross. It was a point of discussion
17 in the Red Cross oral argument before this Court that
18 Red Cross had repeatedly moved on diversity grounds.
19 And that issue was pointed out in the opinion as not
20 being particularly relevant. Lots of companies remove
21 on lots of grounds all the time.

22 And by the way --

23 JUSTICE GINSBURG: But Red Cross didn't have
24 the competence language. It was just any court, State
25 or Federal.

1 MR. BROOKS: That's true. But the point I
2 was making is that the fact of diversity jurisdiction
3 didn't have some negative implication for other sources,
4 and, indeed, the Freddie Mac charter is very powerful
5 evidence that that shouldn't matter.

6 Freddie Mac -- talk about belt and
7 suspenders -- has a charter which says, sue and be sued
8 in State or Federal court. It also says, Freddie --
9 Freddie doesn't say competent jurisdiction.

10 But what else Freddie says is Freddie says
11 that Freddie shall be deemed an agency for 1345
12 purposes. It separately says Freddie shall have
13 statutory authorization to remove, notwithstanding the
14 limitations of 1442. So Freddie has four distinct
15 grounds for getting to Federal court.

16 JUSTICE SOTOMAYOR: So why didn't they do
17 that for Fannie Mae?

18 MR. BROOKS: Because we -- I mean, it's hard
19 to know the subjective intentions, Justice Sotomayor, of
20 the Framers of our charter. But the original charter
21 language was written in the '30s and '40s. It was
22 written at a time when we were connected with multiple
23 other agencies. We were part of the Department of
24 Housing and Urban Development. We comprised what became
25 Ginnie Mae. And our language was an attempt to do

1 essentially removal surgery, to separate us from this
2 big accretion of language over decades.

3 Freddie Mac didn't have that problem. So
4 Freddie Mac is what one would do if you were starting
5 from scratch.

6 I will say, I am reminded of Justice Kagan's
7 colloquy in the last argument, though, about what would
8 happen to a Hill staffer looking at the 1954 statute.
9 And I'm trying to imagine what would happen to the poor
10 Hill staffer if he came and he said, well, listen.
11 We -- we'd like to change Fannie Mae's language. We
12 want to add this competent jurisdiction language.

13 Now, that's only been looked at three times
14 before, and all of those cases said that confers
15 jurisdiction. But we think that was just dicta or
16 perhaps wrong, and so we would go ahead and use it as a
17 way of removing jurisdiction.

18 That doesn't sound plausible any more in
19 this case than it did in the prior case to me, given
20 what the case law backdrop was of the time.

21 Now, if I might, I'd like to say one point
22 about the Freddie Mac issue, because, obviously, you
23 know, we are sister companies. Obviously, Freddie Mac
24 has different language. The question is, is this a good
25 thing for our side? Is it a bad thing for our side?

1 Our view basically is Congress said what it
2 meant in the 1970 reports, House and Senate. It said
3 that companies were supposed to be parallel. They were
4 supposed to have no advantages over each other and have
5 all the same powers.

6 The question for this Court is: Why would
7 Congress -- although it used a different language across
8 multiple powers -- why would it have wanted Freddie Mac
9 to have the same mortgage acquisition powers, the same
10 securitization powers, the same tax exemptions and SEC
11 exceptions, the same access to treasury lines of credit,
12 but have different Federal court litigating powers?
13 There's no answer to that.

14 And all we know is that in terms of the
15 Federal interest in access to the Federal courts, what
16 we know is that Fannie is the same as Freddie Mac, only
17 much, much bigger. So it doesn't make a lot of sense to
18 imagine that a \$3 trillion dollar company, the largest
19 company in the United States by assets, creating housing
20 across the country just like Freddie Mac would have been
21 intended not to be protected by Federal court
22 jurisdiction.

23 JUSTICE BREYER: Did you look it up? I
24 mean, is there -- did you try to find out where this
25 language really came from? I mean, somebody wrote it.

1 It didn't just have computers write it. I mean, there
2 is a human being who wrote it.

3 MR. BROOKS: Yeah.

4 JUSTICE BREYER: But who? Where did he come
5 from? Who did he work for? Does anybody know?

6 CHIEF JUSTICE ROBERTS: He was fired.

7 JUSTICE BREYER: He was fired.

8 MR. BROOKS: It's possible it was a former
9 staffer for Senator Buckley, although I certainly hope
10 not.

11 Your Honor, the -- here is what we know. We
12 know the language pre-existed. We know it wasn't
13 created in nineteen --

14 JUSTICE BREYER: Are those words,
15 "competent" -- you know, in any "court of competent
16 jurisdiction" --

17 MR. BROOKS: "State or Federal."

18 JUSTICE BREYER: Yeah, "State or Federal."
19 You know, I've got that point. I just want to know who
20 did this.

21 MR. BROOKS: If I find them, I will let you
22 know.

23 Your Honor, here's what we do know: We know
24 the language was not de novo in 1954. We know it was
25 written in the '30s for the Federal Housing

1 Administration. That's what we know. That's where the
2 phrase first came from. And we know that that language
3 had been repeatedly held to mean one thing, and Congress
4 had no indication it could have meant anything else. We
5 know from Ferguson, from George H. Evans, and from the
6 Seven Oaks case at a minimum, okay, that that phrase,
7 "competent jurisdiction," State or Federal, conferred
8 jurisdiction.

9 Here's what else we know: We know that in
10 briefing before this Court in the '80s, looking at this
11 exact language at Section 1702 of the National Housing
12 Act, the Solicitor General filed a brief in opposition
13 to certiorari in this Court in the Portsmouth
14 Redevelopment case. And in that brief citing Ferguson,
15 the Solicitor General's office said that phrase creates
16 jurisdiction in the district courts. Okay? That's what
17 we know. That has always been the understanding.

18 And if we didn't have that history and we
19 didn't have that case law, we might write it differently
20 on a blank slate. But writing 200 years after Osborn
21 and in the wake of all of that New Deal era case law, we
22 know what it means.

23 The disruption that would be created in the
24 markets, would this Court suddenly reverse the lower
25 courts -- and there are multiple of them all coming to

1 the same result, at least three in the courts of
2 appeals -- and hold that Freddie Mac has different
3 powers than Fannie Mae has would be significant?

4 CHIEF JUSTICE ROBERTS: Well, there is a
5 reason -- your -- your friend on the other side suggests
6 there was a reason for treating them differently, which
7 is that the board -- the Freddie board is -- consists of
8 Federal officers, while the idea, of course, is that
9 Fannie's board, two-thirds of it does not.

10 MR. BROOKS: Right. But the Fannie board,
11 unlike the Freddie board, was one-third appointed by the
12 President of the United States until conservatorship in
13 2008, and at the same time had the same special Treasury
14 access, the same tax exemptions, the same SEC
15 registration exemptions. I mean, Your Honor, there is
16 no material policy different between these two agencies,
17 and again, we have the legislative history that shows an
18 intent to treat these the same.

19 I will say that since 1974, every GSE
20 statute, and there have been many, have simultaneously
21 imposed identical amendments to both the Fannie Mae and
22 the Freddie Mac charter. So since Freddie was created,
23 Congress has never treated one differently, not in the
24 '70s and not today. So there's no plausible reason why
25 they would have wanted these treated differently.

1 CHIEF JUSTICE ROBERTS: Do you know why they
2 have that different structure on the board of directors?

3 MR. BROOKS: Well, again, Your Honor, and
4 it's interesting, I've actually personally spoken to
5 some of the original Fannie Mae directors from the late
6 '60s, okay? They were all former government officials,
7 because Fannie was, in '68, being extricated from its
8 Federal agency role.

9 Freddie Mac was a clean sheet of paper.
10 Freddie Mac was created the way that the Congress of
11 1970 would have wanted it. Fannie Mae wasn't. Fannie
12 Mae was inherited from generations earlier and had to be
13 torn apart from Ginnie Mae. That's why the original
14 board of the private Fannie Mae in 1968 consisted of
15 Paul Volcker, who at the time was a former HUD
16 Undersecretary. It consisted of a former general
17 counsel of HUD. They were all Federal officials at that
18 time, and it took multiple years before they could be
19 extricated. There is just a history here, which makes
20 it different.

21 But I would re-emphasize, Fannie Mae is the
22 largest participant in the largest market in the U.S.
23 economy. Holding that Fannie Mae has different powers
24 and lesser powers than Freddie Mac has, simply because
25 the language of the '50s and a complicated history

1 differed a little bit from the language of the '70s,
2 would be a significant policy shift that we would argue
3 isn't justified by either history or policy or text.

4 If there are no further questions, thank
5 you.

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Mr. Rosenkranz, three minutes.

8 REBUTTAL ARGUMENT OF E. JOSHUA ROSENKRANZ

9 ON BEHALF OF THE PETITIONERS

10 MR. ROSENKRANZ: Thank you, Your Honor.

11 Just a couple of points.

12 First, Justice Breyer wanted to know: What
13 do you do when the language points one way and the cases
14 seem to point another? I would -- I'd dispute the "the
15 cases seem to point another," but my direct answer is:
16 This Court has never gone wrong by going with the
17 language, and in those previous cases, what the Court
18 was trying to do in each case was go with the language,
19 right down to Red Cross where the operative principle
20 was: What did this very language mean last time this
21 Court addressed it?

22 Justice Breyer, you also asked: Which is
23 simpler for lawyers? Now -- now, Fannie doesn't dispute
24 that our reading is a natural reading of the language.
25 Fannie doesn't even dispute that it's the most natural

1 reading. Instead, its entire argument revolves around
2 this proposition that it might actually mean other
3 things, but I still don't know what Fannie thinks it
4 means.

5 Fannie says it could mean personal
6 jurisdiction. It could mean -- it could mean venue. It
7 could mean general jurisdiction. Plug each of those
8 words into the statute, and it just doesn't parse. But
9 the bottom line is you need to commit to what that
10 meaning is, and this Court can't go wrong by
11 interpreting those words to mean what this Court has
12 said of competent jurisdiction.

13 JUSTICE KAGAN: Well, suppose it means
14 personal jurisdiction. Why doesn't it parse?

15 MR. ROSENKRANZ: Okay. So now the statute
16 says, Fannie can sue or be sued in any court that has
17 personal jurisdiction over the parties, State or
18 Federal.

19 Well, the Federal Court of Claims has
20 personal jurisdiction over Fannie, but this was not a
21 grant of jurisdiction, because the -- the whole idea is
22 that this now turns into a grant of Federal
23 subject-matter jurisdiction. It's not a grant of
24 jurisdiction to Fannie.

25 So what about the court of appeals cases

1 that Mr. Brooks has addressed? Those cases did not
2 interpret the phrase of "competent jurisdiction," and
3 they were not about Federal jurisdiction. Everyone
4 understood in those cases, Ferguson and so on, that
5 there was Federal jurisdiction. The question was
6 whether something about the Tucker Act trumped district
7 court jurisdiction to move the cases to the Federal
8 court -- excuse me, to the Court of Federal Claims.

9 JUSTICE SOTOMAYOR: Isn't that USG's
10 position in Portsmouth?

11 MR. ROSENKRANZ: Well, Your Honor, I can't
12 explain the position that the government has taken, but
13 the government has said that those were also kind of
14 drive-by jurisdictional references in cases that simply
15 did not involve the question of what is the source of
16 Federal jurisdiction.

17 If I may, one last point on Fannie and
18 Freddie. Why -- why did Congress treat them
19 differently? The answer is different era, 32 years
20 apart, and better lobbyists. Freddie was being
21 supported and pressed by the Federal Home Loan Board,
22 what used to be called the Home Loan Bank Board. They
23 were ardent that Fannie was going to stop protecting
24 Federal interests. They wanted an advantage.

25 So Congress said, we are not giving them any

1 advantage. But case after case has held that, of
2 course, Freddie has jurisdiction. And if I may, just
3 one more sentence, but the vast majority of cases have
4 held, before this case came along -- the vast majority
5 of cases have held that there was no automatic
6 jurisdiction for Fannie.

7 Thank you, Your Honors.

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.

9 The case is submitted.

10 (Whereupon, at 12:02 p.m., the case in the
11 above-entitled matter was submitted.)

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A	35:12 53:24 54:1	appellate 4:10 27:14,17	21:16 23:14 25:11	50:14 53:21,22
a.m 1:17 3:2	advantages 46:4	applied 24:24	automatic 54:5	borrowed 32:2
ability 40:5	advocating 20:5	appointed 49:11	aware 17:8,13	41:12
able 17:6	Affairs 18:1	approach 20:5	B	borrower 18:20
abolishing 26:22	afresh 13:14	appropriately 12:7	B 17:9	19:9
above-entitled 1:15 54:11	Age 9:8	ardent 53:23	back 13:22 26:7 39:1 40:4	borrowing 27:23
absolutely 7:25	agencies 17:24 18:4 44:23 49:16	arguably 12:1	backdrop 45:20	bothering 13:12
accept 7:9	agency 11:20 13:6 18:12,13 19:16 26:20 27:15,23 28:15 35:23 39:23 43:4,10 44:11 50:8	argue 51:2	bad 45:25	bottom 52:9
access 27:25 42:4,8,11,16 43:5 46:11,15 49:14	agreed 4:19	argues 29:8	baggage 42:19	Breyer 6:18 7:1 7:7,11,20 8:15 8:17 13:9,11 14:11,20 15:7 20:9,13,25 23:17 24:5,14 24:22 36:2,20 36:21,25 38:8 46:23 47:4,7 47:14,18 51:12 51:22
account 39:9	ahead 13:9,10 33:19 45:16	arguing 12:14	Bank 35:17 42:9 42:12 53:22	Breyer's 11:2
accretion 45:2	AL 1:4,9	argument 1:16 2:2,5,9,12 3:4 3:7 5:19 15:23 26:2 42:6 43:17 45:7 51:8 52:1	Bank's 20:2	BRIAN 1:24 2:10 26:2
acquisition 46:9	amended 11:16	arises 43:13	Bankers' 6:23 8:18	brief 48:12,14
act 9:8 28:7,22 30:8 31:23 37:20 43:4 48:12 53:6	amendments 35:24 49:21	arising-under 9:3	bankruptcy 21:13 25:3	briefed 12:13
action 4:9 9:7 18:25	amicus 1:23 2:7 15:24	Article 39:18	barred 30:22	briefing 30:13 30:14 37:16 48:10
ADA 9:11,16	amount 25:7	asked 32:16 36:6 51:22	based 33:3	briefly 41:24
add 13:6 14:3 30:11 38:5 45:12	analysis 21:19	asking 21:18 23:15 24:24	baseline 26:8	bring 18:5 22:16 22:25 23:3,15 25:5
added 7:16 11:11 24:6 33:22	analyze 8:23	assessed 11:10	basically 46:1	Brooks 1:24 2:10 26:1,2,4 27:5 28:4,8 29:22 31:3,12 32:24 33:1,18 33:24 34:5,9 34:11,24 36:20 36:25 38:10 39:10 40:8 41:9 43:14 44:1,18 47:3,8 47:17,21 49:10 50:3 53:1
adding 26:20 31:20	ancient 23:5	assets 46:19	basis 12:12 16:14 24:8 27:2 32:9	bring 18:5 22:16 22:25 23:3,15 25:5
address 18:24 41:23	ANN 1:21 2:6 15:23	Assistant 1:21	began 11:9	
addressed 31:8 51:21 53:1	answer 9:15 14:25 33:23,25 34:1,11 38:22 46:13 51:15 53:19	associations 37:22	behalf 1:19,24 2:4,11,14 3:8 26:3 51:9	
ADEA 9:18	answered 33:24	assume 38:10	believe 23:1	
Administration 41:13 48:1	answers 33:24	assured 11:2	belt 44:6	
admits 10:10	anybody 14:22 47:5	attempt 44:25	belt-and-susp... 12:19 34:15	
admittedly 42:17	apart 50:13 53:20	authority 4:24 5:16 7:19 8:4 31:10	best 16:7	
adopt 28:20	appeals 21:9 30:6 49:2 52:25	authorize 5:24 19:12	better 14:16,17 53:20	
adopted 27:16 32:7 38:17,18	APPEARAN... 1:18	authorized 16:25 25:12 37:21	beyond 5:21	
adopting 41:11		authorizes 9:9 16:5,8	big 45:2	
advantage 19:8		authorizing 5:20	bigger 46:17	
			bit 10:5 39:1 51:1	
			Blackmar 40:17	
			blank 35:21 48:20	
			board 49:7,7,9 49:10,11 50:2	
				brought 12:7 18:8,12 21:17

<p>21:17 22:9,20 25:12 Buckley 47:9 Bulkley 38:5,22 burden 39:3</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 Califano 29:6 called 53:22 campaign 38:7 capacity 5:22 31:7 capital 37:24 careful 39:13 carry 39:3 case 3:4 7:22 12:13 14:12 15:8 16:23 18:6,8,19,23 19:1,7,8,13 20:18 21:1,9 22:15,19 23:3 23:5 24:7 27:8 27:20,21,21 28:23 29:5 30:11,15,19 34:12 36:12,12 37:6 38:12 39:15 40:17,18 41:2,10,15,18 45:19,19,20 48:6,14,19,21 51:18 54:1,1,4 54:9,10 cases 4:14,16,20 6:20 7:21 8:7 13:13,21 14:14 15:15,16,19 18:10,11,17,18 21:22 22:4,6,8 22:24,24 23:1 28:25 29:3,3 31:11,17,18 33:12,21 34:6 34:8 40:16,22 45:14 51:13,15</p>	<p>51:17 52:25 53:1,4,7,14 54:3,5 category 31:11 cause 9:7 causes 18:25 Cendant 1:7 3:4 centuries 42:14 cert 4:10 certainly 14:4 31:3 47:9 certiorari 48:13 cetera 41:2 change 45:11 changed 11:22 21:7 28:12 characterized 8:6 charter 11:17,23 13:1,7,8 16:8 18:7 19:3 20:6 21:3 25:17 32:7 34:14 35:16,18 38:13 38:14,16 44:4 44:7,20,20 49:22 charter's 6:6 chartered 16:5 19:19 26:12 check 25:11 Chicago 38:2 Chief 3:3,9 12:18 15:21 16:1 25:24 26:1,4 33:17 33:20 35:2 38:25 39:10,10 47:6 49:4 50:1 51:6 54:8 choose 3:22 chooses 26:9 chose 11:1 28:5 circuit 8:12 19:23 20:17,20 21:22 30:20 41:18,19</p>	<p>circumstances 42:23 cites 37:16 citing 40:16 48:14 citizenship 25:7 claim 23:15 25:5 43:13 claims 10:14,15 30:9,24 52:19 53:8 clause 5:12 6:15 9:3,18,19 10:11 11:21 12:17 13:2 16:14 17:15 19:11,24 20:3 20:8 21:1,4 31:7 clauses 32:18 clean 33:15 50:9 clear 7:25 9:2 25:21 34:14,19 35:10 36:4 39:25 42:16 clearer 37:11,14 clearly 20:19 clerk 17:5 32:19 closed 35:1 collaterally 22:22 23:8 colloquy 13:16 37:10,11,12 45:7 Columbia 11:24 combined 33:9 come 8:19 37:24 40:1 47:4 comes 6:23 7:1,3 coming 48:25 commit 52:9 companies 43:20 45:23 46:3 company 42:4,8 42:10 46:18,19 compare 12:23</p>	<p>compared 40:3 competence 40:5 41:6,6,7 43:24 competency 5:3 competent 3:12 3:19,23,25 4:5 4:11,22,25 5:2 5:9,13 7:14,23 8:12 9:10,23 10:11,15 11:11 15:8,10 16:6 17:1 19:4 20:10,10,16,21 20:25 21:10,14 23:13,22 24:6 24:16,18,19 25:9 26:21,25 27:2,4,6,9,11 27:18 29:1,4,9 29:14,17,19,24 30:1,16 31:5,6 31:8,14,19 32:8,11 33:2,4 33:6 36:13 37:4,5 40:3,4 40:11,22,25 44:9 45:12 47:15,15 48:7 52:12 53:2 complete 25:6 completely 16:15 complicated 50:25 comprehensive 31:23 comprised 44:24 computers 47:1 concedes 5:12 concept 42:1 concerned 15:13 concession 12:20 concluded 12:10 confer 5:22 6:1 6:7 20:19</p>	<p>25:17,22 28:23 31:16 32:3 37:7 41:16 conferred 21:6 27:19 48:7 conferring 30:13 confers 26:13 45:14 confines 10:7 confirms 10:23 Congress 5:7 11:1,5,8,9,16 11:22 12:25 13:6 15:6,12 16:13,18,21,23 20:19 21:7 25:16,22 26:9 26:11,16,17,19 27:16,22 34:20 34:25 35:20,21 37:20 39:16,22 41:12,22 42:2 42:7 43:1 46:1 46:7 48:3 49:23 50:10 53:18,25 Congress' 41:10 Congress's 31:21 35:10 congressional 6:6 38:13,14 connected 44:22 conscious 28:6 43:7 conservatorship 49:12 consideration 39:8 consisted 50:14 50:16 consistently 12:11 consists 40:6 49:7 construction 7:17 39:15</p>
---	--	--	---	---

consummated 11:16	6:1,15 7:16 8:13,22,23,25	12:14 16:22 18:24 20:1,16	11:7,9,10 13:24 20:24	10:20,21 14:13 21:7 27:13
contemporary 30:2	9:9 10:2,7,11 10:13,14,15	20:20,22,23 21:16,19,23	21:6 23:19 24:3 26:7,14	28:6 32:5 35:16,17,19,24
context 9:23 29:23 30:17 32:10 40:12,19	11:12 12:9,11 13:18,20 15:5 15:7,10,11,17	23:16 24:25 25:2,2,4,4 30:6 30:10,18,19	38:17,18,21,23 D.C 1:12,22,24 12:2,4,5	37:4,21 38:12 40:12 42:17,18 42:19 45:24
contrary 31:18 43:2	15:17,19 16:2 16:6,9,19,20	32:14 39:1,1 39:11,12 41:1	DBA 1:8 de 47:24	46:7,12 49:2 49:16 50:2,20
contrast 28:16	16:23,25 17:3	42:5,17 43:5,8	deal 9:11 29:23 30:3,7 48:21	50:23 53:19
control 16:16	18:5,6,7,9,9,12	46:15 48:16,25	debate 30:6	differently 10:19 48:19
controversy 4:5 25:8	18:13,17,18,21 18:23 19:2,4,7	49:1	decades 45:2	49:6,23,25 53:19
conversation 6:11 15:4	20:17,18,21,25 21:5,8,10,12	create 19:25 35:11	decided 11:5 14:15 40:18,19	dilemma 14:20
corporate 3:18 5:21 26:10	21:12,13,14,18 22:7,9,10	created 20:7 35:8 37:13,17	decision 26:6	direct 23:7 51:15
corporation 1:8 3:5 11:24 16:5 16:8 17:11	23:12,14,18,20 23:23,23,25	38:14,15 42:15 47:13 48:23	decisions 24:3 27:14,17	direction 9:19 30:17
25:20 26:12 28:12 31:7	24:1,3,8,9,16 24:18,18,20	49:22 50:10	deemed 39:23 44:11	directly 7:21
corporation's 25:19	25:3,6,9,11 26:5,13 27:1	creates 48:15	deeply 14:12 15:12	directors 50:2,5
corporations 19:19,19 36:7	27:18,25 29:1 29:2,19 30:9	creating 4:1 9:7 16:21 19:7	defendant 18:21	disagree 8:5 10:1
correct 22:23 23:9 41:9	30:13,23,23,23 31:1,9,10,14	38:2 46:19	defined 11:13	Discrimination 9:8
counsel 15:21 25:24 28:16,25	32:8 33:8 34:6 36:8,18 38:21	creation 37:21	definitely 20:4	discussion 43:16
29:8 37:16 41:25 50:17	38:23 39:21 40:1,2,3,6,10	credit 46:11	delay 19:7	displace 26:16
51:6 54:8	40:14 41:21 43:12,17,24	critical 10:24 41:11	deny 7:7	dispute 51:14,23 51:25
count 32:18	44:8,15 46:6 46:12,21 47:15	Cross 5:18,20 6:3,4,16 7:2	Department 1:22 17:25	disruption 48:23
country 46:20	48:10,13,24 51:16,17,21	11:6,6 14:2 16:4,17 20:1	18:1 44:23	distinct 44:14
couple 34:25 51:11	52:10,11,16,19 52:25 53:7,8,8	21:2 24:4 26:6 26:14 29:12	depending 5:10 10:20 40:12	distinction 28:1
coupled 32:13	Court's 7:13 24:3 29:12	33:11,13 35:16 38:16,24 40:23	depends 11:13	distinguish 8:13
course 42:18 49:8 54:2	41:6 courthouse 34:17 35:3	43:16,17,18,23 51:19	Depression 37:23	district 9:9 11:23 20:1
court 1:1,16 3:10,12,13,14	courts 5:5 6:9,10 6:12 8:1,2,11	crystal 1:3 34:19 35:10	deprive 42:4	21:19,23 23:16 24:25 25:2,4,6
3:19,21,22,22 3:23,25,25 4:1	8:14 9:13,20	curiae 1:23 2:7 15:24	determine 24:17	30:10 41:21 48:16 53:6
4:5,11,17,21 4:25 5:3,9,13			determined 5:4	
5:14,15,21,25			Deveaux 6:20,23	
			develop 35:12	
			Development 17:25 44:24	
			dicta 45:15	
			differed 51:1	
			difference 9:6	
			different 5:10	
				doing 13:14

21:10 30:2 dollar 46:18 dozen 12:12 drafting 35:14 drive-by 9:1 53:14 Duhme 6:24 7:22 8:17,22 8:24 13:24 20:24 21:6 23:19 24:4 26:8,14 38:17 38:18,21,23 40:24	entity 11:16 16:18 17:17 35:11 39:21 equity 8:22 16:19 23:18,25 era 29:23 42:18 48:21 53:19 ESQ 1:19,21,24 2:3,6,10,13 essentially 45:1 establish 39:3 established 25:16 et 1:4,9 41:2 evaluated 12:9 Evans 27:20 48:5 eventually 28:18 evidence 44:5 evolution 10:23 exact 30:14,21 43:15 48:11 exactly 21:5 36:5 41:9 examine 4:1 example 11:13 18:15 exceptions 46:11 excuse 5:1 9:15 10:14 53:8 exemptions 46:10 49:14,15 existed 26:23 exists 33:5 explain 53:12 explained 10:18 20:15 21:3 explanation 16:15 explicitly 7:5 expressly 5:20 26:11 extended 16:4 extends 5:21 extricate 35:22 extricated 50:7 50:19	eye 39:13 <hr/> F <hr/> fact 9:11 17:10 17:23 35:2 44:2 failed 38:22 fails 42:25,25 fair 31:22 Fannie 4:15 5:12 8:10 10:9 10:10,18 11:19 12:11,14 13:4 13:18 15:13,15 16:7 17:11 18:8 20:6 21:3 25:20 26:12,20 27:16,25 28:10 28:16 30:22 32:3,7,20 34:13,16,20,22 35:4,13 36:7 37:13,17 38:13 38:15 41:14 42:3,20 43:2,3 43:8 44:17 45:11 46:16 49:3,10,21 50:5,7,11,11 50:14,21,23 51:23,25 52:3 52:5,16,20,24 53:17,23 54:6 Fannie's 5:6,8 11:23 13:8 18:7 49:9 Fast-forward 42:14 FDIC's 21:5 Federal 3:19,21 3:23 5:5,20,22 5:25 6:1,1,7,8 6:10,12,16,17 8:20,23 9:2,9 9:12 10:3,12 10:13,14,15 11:18 12:11,14	12:17,21,24 13:5,6,18,20 14:9 15:3,4,5 15:18,19 16:9 16:14,20,22,25 17:24 18:2,4,5 18:6,9,9,12,13 19:4,5,7,12,16 19:18,25 20:2 20:6,22 21:6 21:12,19,25 22:9,10 23:16 23:19,20 24:1 24:1,3,8,24 25:1,3,3,6,11 25:18 26:9,13 26:18 27:12,19 27:25 28:11,13 28:15 29:5,11 29:15,15,18,19 30:23 31:15,24 32:13 33:5,10 33:22 34:17 35:3 36:8,12 36:18 37:6 38:25 39:6,21 39:23 40:1 41:13 42:4,17 43:4,5,8,12,13 43:25 44:8,15 46:12,15,15,21 47:17,18,25 48:7 49:8 50:8 50:17 52:18,19 52:22 53:3,5,7 53:8,16,21,24 Federal-questi... 9:17 federally 16:5 19:19 26:12 42:22 Ferguson 27:20 30:11,20 48:5 48:14 53:4 FHA 28:20 figure 8:25 12:6 file 21:11	filed 48:12 final 22:21 23:7 find 3:24 6:18 15:7 16:15 46:24 47:21 Finish 13:9 finished 13:21 22:5 fired 47:6,7 first 12:13 30:5 31:13,20 35:7 37:2 48:2 51:12 five 3:15 4:21 6:19 19:14 28:25 29:3 follow 26:9 followed 38:23 foreclosure 15:18 18:17,24 19:9 foreclosures 34:7,16 35:3 forget 14:14,15 forgot 23:4 form 26:10 former 47:8 50:6,15,16 forward 22:7 found 23:21,24 four 44:14 Fourth 30:20 41:18,19 Framers 44:20 Freddie 3:17 34:13,14,15,21 34:25 35:4,7 39:22,22 42:15 44:4,6,8,9,10 44:10,11,12,14 45:3,4,22,23 46:8,16,20 49:2,7,11,22 49:22 50:9,10 50:24 53:18,20 54:2 Freddy 35:8
--	--	--	---	--

<p>free 29:16 frequently 18:20 Friday 12:14 friend 33:20 49:5 friends 4:14 FSLIC 28:11,14 full 27:18 fully 17:11 fundamentally 39:14 further 11:16 16:24 51:4</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 3:1 general 1:21 8:2 8:3 12:21 25:2 25:16 30:12,18 31:2,4 32:14 33:11 41:1,6 48:12 50:16 52:7 General's 48:15 generally 9:12 30:10 31:6 generations 50:12 generic 33:7 George 27:20 48:5 getting 24:9 44:15 Ginnie 12:23,24 13:3,5 28:3,4,9 35:23 44:25 50:13 Ginnie's 13:7 Ginsburg 4:3 5:17 6:3 22:16 22:20 23:4,10 26:25 29:13 31:1,4 34:18 35:6 39:19 41:5 43:11,23 give 16:23 18:15 36:21</p>	<p>given 18:15 26:23 39:6 45:19 gives 31:7 giving 8:3 36:7 53:25 go 3:21 9:20 13:9,10,18 24:9 32:24 33:19 36:8,18 40:4 45:16 51:18 52:10 God 8:17 24:10 going 7:3,13 11:8 13:21 14:9,13 15:13 15:14 21:23 22:7,25 26:7 26:24 32:24 33:18,22 34:20 42:3 51:16 53:23 good 45:24 government 25:17 36:5 43:4 50:6 53:12,13 government's 16:3 grafted 41:14 grant 5:14,21 6:17 10:10,12 11:3 12:8,10 12:15 33:9,13 36:18 52:21,22 52:23 granting 4:1 grants 3:17 12:17 great 8:12 grounds 43:18 43:21 44:15 GSE 35:25 49:19 Guerre 40:18 guess 23:17 guidance 16:24</p>	<hr/> <p style="text-align: center;">H</p> <hr/> <p>H 27:20 48:5 happen 45:8,9 happened 11:6 12:23 32:1 42:2 happens 18:19 21:20,24 hard 14:7 34:3 44:18 harder 10:6 harmonize 40:21 hear 3:3 4:5 30:19 heard 27:8 30:8 30:9,22 held 3:15 4:17 4:25 15:9,11 27:18 28:23 30:17 31:16 32:2 40:10,14 41:16 48:3 54:1,4,5 help 13:12 14:22 helps 7:8 Hill 45:8,10 historically 28:10 history 7:4,8,10 13:16 14:5,16 26:23 28:1 30:2 35:9,22 36:4,23 37:18 38:1,6 41:25 48:18 49:17 50:19,25 51:3 hold 4:17 49:2 Holding 50:23 holdings 33:12 holds 37:7 41:3 home 20:2 29:16 53:21,22 Honor 6:25 7:6 8:5,21 9:14,25 12:3,23 14:10</p>	<p>14:19,24 27:5 29:22 31:12 32:18 33:18,25 34:11,24 40:8 43:14 47:11,23 49:15 50:3 51:10 53:11 Honors 15:20 54:7 hope 37:23 38:11 47:9 House 35:9 46:2 housing 17:25 27:14 31:24 37:20 41:13 42:22 44:24 46:19 47:25 48:11 Houston 38:1 HUD 18:10,10 18:15,16,21,22 18:22 19:10,13 19:16 50:15,17 HUD's 19:3 human 47:2 hurts 23:18</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 27:9,22 28:18 49:8 52:21 identical 8:18,18 17:9 28:10 35:11 49:21 identify 17:6 III 39:18 imagine 45:9 46:18 immunity 19:11 19:24 implication 44:3 important 25:15 42:11,22 imposed 49:21 inception 42:16 include 4:3,6 included 40:23</p>	<p>including 32:19 incompetent 6:21 17:7 independent 3:13 indication 25:21 48:4 inherited 50:12 instrumentalit... 42:21 Insurance 28:11 intended 36:10 36:10 46:21 intent 49:18 intention 35:10 35:13 41:11 intentions 44:19 interest 18:22 46:15 interesting 50:4 interests 53:24 interpret 53:2 interpreter's 18:7 interpretation 5:6,8 7:13 interpreted 4:21 7:16 19:23 27:13,24 28:21 29:1,4 30:12 41:15 interpreting 52:11 interprets 19:10 involve 19:15 53:15 involved 15:16 involving 17:16 18:8,10 19:13 issue 3:12 7:23 21:1 30:24 35:6 41:24 43:15,19 45:22</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>John 7:24 JOSHUA 1:19 2:3,13 3:7 51:8</p>
--	---	---	---	--

<p>judges 14:17 judgment 22:21 23:7 43:8 judgments 21:21,24 judicata 22:5,12 jurisdiction 3:13 3:14,20,24,25 4:2,4,6,7,9,10 4:11,12,13,15 4:17,19,20,22 5:1,2,5,10,13 5:14,15,23 6:1 6:7,17,22 7:14 7:23 8:3,12 9:2 9:10,12,16,17 9:18,22,23,24 10:2,3,5,11,12 10:16 11:3,12 11:18,19,20,22 11:25 12:8,10 12:12,15,16,17 12:20,21,24 13:5 14:6 15:4 15:8,10,18 16:6,10,14,21 17:3,7 19:5,12 19:25 20:7,10 20:11,16,19,21 20:25 21:6,10 21:14,23,25 22:8,13,17 23:1,13,22 24:7,16,18,19 25:2,4,10,18 25:23 26:13,21 26:22 27:1,2,3 27:3,4,6,10,12 27:19,19 28:24 29:2,4,9,10,11 29:14,17,20,24 30:2,13,16,18 30:19 31:2,4,5 31:8,15,16,20 31:25 32:3,8 32:10,12,14,15 33:3,5,6,10,11</p>	<p>33:12,13 34:15 36:14,18 37:4 37:5,8 39:2,6 39:12,13 40:4 40:5,11,15,16 40:20,22,25 41:1,2,17 44:2 44:9 45:12,15 45:17 46:22 47:16 48:7,8 48:16 52:6,7 52:12,14,17,20 52:21,23,24 53:2,3,5,7,16 54:2,6 jurisdiction,' 3:19 17:1 jurisdictional 4:23 9:1 10:16 33:14 39:23 53:14 Justice 1:22 3:3 3:10 4:3 5:17 5:18 6:2,5,18 7:1,7,11,20,24 8:15,17 9:5,21 11:2 12:1,18 13:9,11 14:11 14:20 15:7,21 16:1 17:4,18 17:20 18:2 19:14,20 20:9 20:13,25 21:20 22:2,11,16,20 23:4,9,17 24:5 24:14,22 25:24 26:1,4,25 28:2 28:5,8 29:13 31:1,4 32:16 32:21 33:17,20 34:2,5,8,18 35:6 36:2,20 36:21,25 38:8 38:25 39:10,19 41:5 43:11,23 44:16,19 45:6 46:23 47:4,6,7</p>	<p>47:14,18 49:4 50:1 51:6,12 51:22 52:13 53:9 54:8 Justice's 35:2 justified 51:3 <hr/> <p style="text-align: center;">K</p> <hr/> <p>KAGAN 52:13 Kagan's 45:6 keep 12:2 14:15 Kennedy 34:2,5 34:8 kind 53:13 know 7:24 13:12 13:22 14:11,25 17:16 19:22 22:6 23:2 32:6 33:1 34:24 35:4,7,13 36:11 37:10 42:8,14 44:19 45:23 46:14,16 47:5,11,12,12 47:15,19,19,22 47:23,23,24 48:1,2,5,9,9,17 48:22 50:1 51:12 52:3</p> </p>	<p>46:7,25 47:12 47:24 48:2,11 50:25 51:1,13 51:17,18,20,24 language/Osb... 40:24 largest 46:18 50:22,22 late 29:23 50:5 Laughter 23:11 32:23,25 34:4 34:10 38:9 law 8:22 11:14 16:11,19 17:2 18:25 23:18,25 25:5 40:17 41:2 43:13 45:20 48:19,21 lawyers 14:17 51:23 leading 7:22 leave 18:23 left 11:8 legacy 35:23 legislative 7:4,8 7:10 8:9 13:15 14:5,16 35:8 36:4,23 37:18 38:1,6 43:7 49:17 lender 18:20 lesser 50:24 let's 3:15 9:7 Lexis 33:3 light 15:1 27:7 Lightfoot 1:4 3:4 likes 18:16 limitations 44:14 limited 25:4 30:8 39:2,11 limiting 4:7,8 9:12 line 52:9 lines 46:11 liquidity 38:3</p>	<p>list 17:14 listen 45:10 litigants 11:17 litigate 18:16 litigating 46:12 little 10:5 24:11 31:24 51:1 Loan 20:2 28:11 53:21,22 lobbyists 53:20 long 29:14 long-standing 26:7 longer 11:20 22:9 look 5:8 6:3,4 12:6 14:12 15:2 17:2 21:15 23:13 24:17 25:10 35:25 36:11,23 39:12 46:23 looked 21:4 29:6 32:8 45:13 looking 25:21 45:8 48:10 lost 38:6 lot 7:12 26:17 29:24 46:17 lots 43:20,21 love 23:22 lower 48:24 luxury 35:20</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>Mac 34:13,14,15 34:21 35:1,4,7 39:22,22 42:15 44:4,6 45:3,4 45:22,23 46:8 46:16,20 49:2 49:22 50:9,10 50:24 Mae 12:24 17:12 25:21 26:12,20 27:16 28:3,9 28:11,16 30:22</p>
--	--	--	--	--

<p>32:3,7,20 34:13,16,20,22 35:5,13,23 37:13,17 38:13 38:15 41:14 42:3,20 43:2,3 44:17,25 49:3 49:21 50:5,11 50:12,13,14,21 50:23 Mae's 16:8 20:6 21:3 27:25 45:11 main 21:8 major 6:19 majority 54:3,4 making 44:2 map 5:7 10:19 mapping 10:8 market 15:14 37:24 50:22 markets 48:24 Marshall 7:24 13:22 match 11:7,9 matched 11:10 material 49:16 matter 1:15 19:5 19:12 23:5 24:10,12 33:7 36:8,9 40:6 41:7 42:25 43:11 44:5 54:11 mean 3:15 4:22 5:10 6:18 9:22 10:12 11:13 12:4 13:16 16:20 17:21 18:7 20:9 21:7 22:24 23:17,19 24:10 28:20 29:17,21,25,25 30:17 32:11 36:3,7,13 39:16 44:18 46:24,25 47:1</p>	<p>48:3 49:15 51:20 52:2,5,6 52:6,7,11 meaning 36:15 36:16 52:10 meanings 40:12 means 5:2 8:1,3 10:2 12:5 15:10,11 17:1 19:5 24:16 27:4,6 29:12 31:6 32:12,12 32:14 39:25 40:1,24 41:1 48:22 52:4,13 meant 5:3 29:24 32:4 46:2 48:4 mechanism 43:1 mention 6:10 mentioned 28:25 mentioning 5:25 mentions 6:8 middle 37:23 minimum 4:11 48:6 minute 4:18 minutes 51:7 mixed 14:7 modifies 5:11 10:21,21 moments 41:25 MONIQUE 1:3 morning 33:4 mortgage 1:7,9 3:5 15:14 18:17,22,24 19:9 37:22 46:9 Morton 40:13 move 53:7 moved 43:18 moving 15:19 multiple 40:12 44:22 46:8 48:25 50:18</p>	<p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1 N.Y 1:19 name 3:18 23:4 named 18:21 National 48:11 natural 3:11 24:15 36:15,16 37:2,3,5 51:24 51:25 naturally 42:7 nature 30:6 need 6:10 12:16 15:3 35:4,22 39:9 52:9 needs 4:20 29:2 29:9 negative 44:3 never 10:18 22:12 37:22 42:7 49:23 51:16 new 1:19 28:17 29:23 30:3,7,7 38:2,4 48:21 nine 32:19,24 33:6 nineteen 47:13 Ninth 21:22 normally 40:25 notwithstandi... 44:13 November 1:13 novo 47:24 number 17:8 29:3 33:2</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1 O'Connell 1:21 2:6 15:22,23 16:1 17:13,19 17:22 18:4 19:18,22 20:12 20:14 22:1,4 22:14,19,23 23:9,12 24:2</p>	<p>24:12,15,23 25:25 Oaks 27:21 41:18 48:6 observed 24:20 obviously 26:16 45:22,23 occurs 33:7 office 48:15 officers 49:8 officials 50:6,17 oh 13:22 okay 8:16 10:5 30:15 32:22 37:19 40:11 48:6,16 50:6 52:15 old 14:3 21:24 once 22:19 24:6 34:6 one-third 49:11 operative 51:19 opinion 15:6 43:19 opposed 12:2 opposite 11:5 28:19 opposition 48:12 oral 1:15 2:2,5,9 3:7 15:23 26:2 43:17 order 6:11 15:3 organization 35:5 original 4:9 10:25 44:20 50:5,13 Osborn 6:21 8:8 8:10 20:11,14 20:15 26:8,14 42:9 48:20 outcome 35:18 outside 4:23,23 7:18 owned 25:20 42:8,10,12,15</p>	<p>42:21 43:3 ownership 28:18 owns 25:19</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 1:24 2:10 3:1 26:2 p.m 54:10 page 2:2 5:19 7:4 13:15 14:4 14:16 36:3 paper 50:9 parallel 35:12 46:3 parse 52:8,14 parses 8:9 part 44:23 participant 50:22 particular 14:12 21:18 particularly 13:15 26:23 43:20 parties 52:17 party 18:10,11 18:14 19:6 passage 3:20 passed 38:4 Paul 50:15 percent 15:16 25:19 42:12 perfectly 15:2 permissible 12:5 person 10:6 personal 4:6,13 4:15,20 9:22 9:24 10:1,4 27:3 32:10,14 33:11 40:7,15 40:20 41:1,8 52:5,14,17,20 personally 50:4 perspective 31:21 Petitioners 1:5</p>
--	--	--	--	---

<p>1:20,23 2:4,8 2:14 3:8 15:25 28:20 29:25 51:9 Petitioners' 27:8 PHH 1:8 Phoenix 4:24 11:13 29:6 phrase 5:9 7:14 7:17 16:7 21:13 24:16 27:7,9,10,11 27:12,18 29:1 29:5,8,11 30:21 31:14 32:2,8 33:2,4 40:10,20,23 41:20 48:2,6 48:15 53:2 phrases 29:7 places 37:25 38:1 plain 3:16 plausible 16:12 45:18 49:24 play 6:12 please 3:10 13:10 16:2 26:5 Plug 52:7 point 5:15 7:18 7:22 12:19 16:17 24:13 25:14,15 36:3 36:17 43:15,16 44:1 45:21 47:19 51:14,15 53:17 pointed 43:19 points 25:13 37:1 51:11,13 policy 26:10 31:24 41:24 49:16 51:2,3 poor 45:9 Portsmouth 30:15 48:13</p>	<p>53:10 position 29:14 53:10,12 possible 47:8 power 3:18 18:5 18:6 powerful 15:7 44:4 powers 35:11 46:5,8,9,10,12 49:3 50:23,24 pre-existed 41:13 47:12 precedent 14:15 precise 15:9 30:10 prepared 36:23 prescribed 5:4 presented 27:8 30:11 President 49:12 pressed 53:21 presuming 9:22 presumption 39:6 42:6 pretty 6:19 13:13 25:21 26:21 prevail 38:20 previous 51:17 previously 11:12 30:12 principle 51:19 prior 45:19 private 11:15,19 13:4 15:14 17:11 19:6 28:18 34:20 37:21,24 42:3 42:12 50:14 privately 25:20 42:7,10,15,21 43:3 privatization 35:23 42:1 privatize 43:2 probably 8:1</p>	<p>probative 37:18 problem 38:3 42:24 45:3 proceed 31:10 prodigy 26:15 progenitors 33:14 proposition 52:2 protected 46:21 protecting 53:23 provide 11:17 provides 9:19 26:11 provision 5:21 6:7 7:15,16 8:9 8:10,23 9:6,7 9:15 11:7,9 13:7 16:10 17:2,15 provisions 11:14 12:6 13:3 public 13:5 pure 25:5 purely 36:9 purpose 11:21 17:16 42:22 purposes 11:24 12:4 39:24 44:12 pursuant 37:24 pursue 26:9 pursuing 42:22 put 30:20 32:3 puts 23:20 puzzling 30:21</p> <hr/> <p>Q</p> <p>qualify 42:23 question 10:4 11:2 18:2 28:9 30:11 32:17 35:2 37:9 39:11,17 42:21 45:24 46:6 53:5,15 questions 18:18 18:24 51:4</p>	<p>quickly 13:13 14:25 quintessential 18:18 quite 36:15 quote 3:17 4:22 5:2 6:6 11:13 11:24 quoted 38:6</p> <hr/> <p>R</p> <p>R 3:1 race 34:17 35:3 raised 43:15 rationales 21:8 re-election 38:7 re-emphasize 50:21 reach 10:20 read 3:11 5:9,14 6:7 9:23 19:20 22:2,3 37:25 reading 13:13 13:21 15:6 16:7 21:21 24:15 37:3,3,5 51:24,24 52:1 reads 10:9 reaffirmed 26:6 really 13:11 36:11,12 39:16 46:25 reason 17:23 21:13 28:14 32:4 35:19 38:8 49:5,6,24 REBUTTAL 2:12 51:8 recall 34:5 rechartered 26:20 Red 5:18,20 6:3 6:4,16 7:2 11:6 11:6 14:2 16:4 16:17 20:1 21:2 24:4 26:6 26:14 29:12</p>	<p>33:10,13 35:16 38:16,23 40:23 43:16,17,18,23 51:19 Redevelopment 48:14 refer 25:1 reference 3:20 4:25 5:1 6:12 9:1 25:16 references 53:14 referred 6:4 20:22 32:9 40:20 referring 5:12 refers 8:1 40:5 40:14,15 reform 31:23 registration 49:15 reinforce 25:14 related 37:12 relevant 43:20 rely 4:14 12:20 remained 43:4 remember 11:6 reminded 45:6 removal 39:24 45:1 remove 18:6 19:6 28:13 40:1 43:20 44:13 removed 18:9,13 22:10 removing 45:17 reopen 23:2 repeatedly 27:24 40:10 43:18 48:3 report 14:3 35:9 35:9 reports 46:2 require 5:9 24:9 requirements 10:16 requisite 25:7</p>
--	--	---	---	--

<p>res 22:5,12 research 33:3 resolution 19:8 resolved 30:24 respect 5:5 20:23 37:11,12 respectfully 8:6 Respondents 1:10,25 2:11 25:1 26:3 rest 37:25 restrict 27:25 restrictive 41:20 result 14:4,13 49:1 results 10:20,21 reverse 48:24 review 23:8,8 reviewed 38:15 revolves 52:1 right 7:5,11 11:11 13:14,18 13:19 17:19 20:12 27:5 28:17 29:10,25 31:2,16 36:8 39:4 41:9 49:10 51:19 right-to-sue 9:6 ROBERTS 3:3 12:18 15:21 25:24 26:1 33:17,20 38:25 47:6 49:4 50:1 51:6 54:8 role 50:8 Rosenkranz 1:19 2:3,13 3:6 3:7,9 4:8 6:2 6:25 7:6,9,12 8:5,16,21 9:14 9:25 12:3,22 13:10 14:10,19 14:24 20:15 21:3 51:7,8,10 52:15 53:11 rule 6:4,5 13:23</p>	<p>16:3,17 23:16 24:24 25:16 26:7,16 29:12 33:7,9,15 rules 5:4</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 Sanders 29:6 sat 35:21 satisfied 10:17 satisfying 16:15 Savings 28:11 saying 8:25 31:5 says 6:15 7:4 8:11,22 10:11 11:8 15:7,17 17:16 20:15 28:16 33:21 36:5,5,5,14 44:7,8,10,10 44:12 52:5,16 scares 33:21 scheme 35:24 scratch 45:5 search 15:15 SEC 46:10 49:14 second 30:25 35:17 42:9,12 Section 25:15 48:11 securitization 46:10 see 7:3 14:6,9 17:2 21:16 23:14 24:22,22 36:11 Senate 35:9 46:2 Senator 38:5,6 38:22 47:9 senators 13:17 sense 13:24 46:17 sentence 5:8 54:3 separate 13:3</p>	<p>29:9,10 45:1 separately 44:12 serious 39:17 sets 26:8 setting 7:17 seven 17:14 27:21 41:18 48:6 Seventh 19:22 severalfold 35:7 SG's 30:14 shareholders 42:13 sheet 50:9 shift 11:15 51:2 Shoshone 4:24 29:6 show 10:2,4 28:6 shows 28:1,19 49:17 side 14:1 33:21 45:25,25 49:5 significant 39:3 49:3 51:2 similar 19:16 simple 15:2 simpler 14:18 51:23 simply 5:6 32:1 35:24 50:24 53:14 simultaneously 49:20 sister 27:14 35:5 45:23 sit 34:9 35:24 situation 9:2 six 35:24 38:17 41:18 slate 35:21 42:19 48:20 Solicitor 1:21 30:12 48:12,15 solution 26:22 solve 38:3 somebody 13:16</p>	<p>38:20 46:25 sorry 33:17 sort 14:3 37:23 Sotomayor 9:5 9:21 12:1 17:4 17:18,20 18:2 19:14,20 21:20 22:2,11 28:2,5 28:8 32:16,21 44:16,19 53:9 sound 45:18 source 3:13 7:18 11:17,18,20 29:9,10 53:15 sources 4:23 44:3 Souter 6:5 Souter's 5:18 sovereign 19:11 19:24 special 42:4,8,11 43:5 49:13 specialized 21:11,16 30:19 specific 8:1 16:18 34:18 41:7 specifically 5:25 6:8 43:16 spent 41:25 split 20:1 21:22 spoken 50:4 staffer 45:8,10 47:9 stand 22:6 standalone 32:9 standing 37:4 40:11 start 3:15 38:2 starting 45:4 State 3:19,22,23 5:13,14,15,16 6:16 8:11,14 8:20,22 10:12 14:8 15:5,17 16:9,19,25 18:17,18,21,23</p>	<p>18:23,25 19:4 20:16,23 21:12 23:18,23,23,25 24:9 25:5 27:12,19 29:5 29:11,15 30:22 31:15 32:13 33:5 36:9,12 37:6 40:2 43:24 44:8 47:17,18 48:7 52:17 statement 5:18 5:19 8:2 States 1:1,16,23 2:7 8:13 15:24 20:17,20 25:19 35:18 40:13 41:21 42:9 46:19 49:12 status 43:10 statute 3:17 10:10 16:4,16 19:21 23:13 26:19 27:15,24 28:13 34:19 36:17 37:13,15 37:16,19,25 38:4,13 40:19 41:11,19 45:8 49:20 52:8,15 statutes 4:1 17:6 17:9,10,14 19:15 21:15 23:14,21 24:21 25:11 32:17 33:2 statutory 5:7,16 7:17 10:23 39:15 44:13 Step 10:25 11:4 11:15 stepping 39:1 steps 10:24 stock 25:19 stop 53:23 story 16:12</p>
---	--	---	--	---

straight 22:17	40:2 44:7	tapestry 41:21	three 6:20 7:15	51:18
strong 26:6	52:16	tax 46:10 49:14	10:24 27:13,13	Tucker 30:8
stronger 14:1	suffices 5:22 6:1	tea 26:21	30:1,4 32:21	53:6
strongest 24:13	sufficient 6:13	tell 16:17 17:20	45:13 49:1	Tuesday 1:13
strongly 41:17	41:16	21:14 23:13	51:7	turn 11:8,11
structure 28:17	sufficiently	25:10 34:2	time 12:25 13:19	turns 37:15
50:2	42:11	telling 21:11	18:16,25 27:17	52:22
study 17:5	suggests 49:5	tells 6:16 35:4	28:15,22 30:17	twice 7:17
subject 19:5,12	suit 5:20,24 9:9	terms 30:7 46:14	30:21 31:18,21	two 6:20 17:23
23:5 40:6 41:7	12:7 16:25	Texas 38:1	32:10 34:6	19:17 29:7
subject-matter	17:16 18:5	text 16:16 41:24	35:20 39:21	32:6 36:25,25
3:14 4:4,7,9,12	19:6,9 21:11	51:3	41:22 43:9,21	40:6,18 42:14
4:16,18 10:1,3	21:17 25:12	textual 25:13	44:22 45:20	49:16
16:21 19:25	suits 12:2,4	thank 3:9 15:20	49:13 50:15,18	two-thirds 49:9
20:6 21:25	support 14:3	15:21 23:9	51:20	twofold 31:20
22:8,12,17	supported 53:21	25:24,25 26:4	times 3:15 4:21	typically 25:5
23:1 25:18,22	supporting 1:23	51:4,6,10 54:7	7:15 12:13	
27:3 31:16	2:8 15:25	54:8	27:13 33:6,7	<hr/> U <hr/>
33:13 39:13	suppose 52:13	theoretical	42:10 45:13	U.S 50:22
40:14 41:17	supposed 46:3,4	42:25	today 33:8 38:15	unanimously
52:23	Supreme 1:1,16	theory 42:24	49:24	31:15 32:2
subjective 44:19	38:21	theretofore 5:4	tomorrow 15:19	38:21
submitted 54:9	sure 6:15 10:6	thing 14:2 15:13	torn 50:13	Undersecretary
54:11	14:24 28:9	28:3 30:5,25	total 32:19	50:16
subtract 24:10	35:1 39:20	34:22 35:7	tough 6:18,19	understand 28:9
sudden 15:17	surely 43:9	45:25,25 48:3	24:11	29:2 37:10
suddenly 48:24	surgery 45:1	things 5:10 14:7	traffic 21:12	41:12
sue 3:18 5:22	surprising 6:22	22:2 30:1,4	transitioning	understanding
6:15 8:4,11	suspect 39:7	31:13 34:25	28:17	31:19 48:17
16:5,9,19	suspenders 44:7	40:6,25 52:3	treasury 46:11	understood 6:2
18:20 19:3	<hr/> T <hr/>	think 4:12 6:3	49:13	12:22 27:7
26:12 31:8	T 2:1,1	6:14,19 13:8	treat 42:3 49:18	28:14 53:4
40:1 44:7	tagged 29:20	13:14,25 16:12	53:18	undisputed
52:16	take 5:15 10:19	17:23 19:25	treated 13:4	34:12,14 42:16
sue-and-be-su...	16:20 39:9	20:14,18 22:1	34:21 49:23,25	unfolded 10:24
6:6 13:1 16:13	43:8	22:4,7 24:12	treating 49:6	United 1:1,16,22
17:15 19:10,23	taken 36:15	25:14 28:13,19	trillion 46:18	2:7 8:13 15:24
20:2,7 21:1,4	53:12	30:1 31:13,21	troubled 17:10	20:17,20 25:18
31:7 32:17	takes 11:8	32:1,4,12	17:22	35:18 40:13
sue-or-be-sued	talk 4:15 36:3	35:25 38:22	true 7:20 9:20	41:21 42:9
9:18 11:21	44:6	39:3,5,7,7,17	43:14 44:1	46:19 49:12
12:16	talked 31:17	40:21 45:15	truly 28:15	unquestionably
sue-to-be 9:6	41:24	thinking 31:22	trumped 53:6	5:3 35:15
sued 3:18 6:15	talking 5:19	thinks 34:13	truth 43:1	unrelated 37:19
8:4,11 16:6,9	7:21 22:14	52:3	try 46:24	Urban 17:25
16:19 19:4	27:20 41:25	thought 13:17	trying 22:21	44:24
26:13 31:8		34:25	25:14 45:9	urge 33:8 37:3

<p>use 16:18 17:6 20:20,24 22:21 29:18 45:16 uses 6:21 16:24 USG's 53:9 utterly 37:19</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>v 1:6 3:4 29:6 40:13,17 V.A.'s 19:23 VA 18:11 various 24:20 vast 54:3,4 venue 11:25 12:4,5,6 52:6 verbatim 41:15 versions 32:22 vested 16:10 17:3 Veterans 18:1 19:16 view 16:3 46:1 viewed 9:12 vigorous 30:6 Volcker 50:15</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wait 4:17 waive 19:24 waiver 19:11 wake 48:21 walks 12:11 want 7:7 13:17 13:19 18:22 22:3 23:21,23 24:1 36:2,19 39:20 42:7 45:12 47:19 wanted 8:8 16:13 20:19 25:22 28:20 34:20 46:8 49:25 50:11 51:12 53:24 wants 14:22 26:17</p>	<p>Washington 1:12,22,24 wasn't 21:24 38:14 47:12 50:11 way 3:11,24 6:3 6:14,23 7:1,3 8:9,19 10:9 15:12 17:11 19:21 21:21 22:3 23:2 24:4 26:8,18 30:20 31:12 34:21 40:21 43:22 45:17 50:10 51:13 ways 21:23 26:17 39:19 we're 11:8 34:2 weak 26:21 weaker 6:24 7:2 14:4 weaving 41:22 welcome 14:23 went 11:19 weren't 31:22 white 15:1 wholly 23:6 win 39:5,7 word 5:11 6:21 7:23 8:20 10:20,22 15:3 20:10 26:18 28:13 29:15,18 33:10 40:10 words 3:15 4:22 7:15 11:11 15:9,10 23:12 24:6,7,10 26:21 29:16,20 29:23 30:14 32:13 35:15,16 35:17,19 36:13 37:7 41:20 47:14 52:8,11 work 21:9 31:13 43:9 47:5</p>	<p>working 34:3 write 8:8,10 47:1 48:19 writing 35:21 42:18,19 48:20 written 44:21,22 47:25 wrong 45:16 51:16 52:10 wrote 5:7 13:16 46:25 47:2</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>x 1:2,11 7:24</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yeah 47:3,18 year 34:6 38:5 38:16 years 32:6 35:22 38:17 40:18 41:14,19 48:20 50:18 53:19 York 1:19 38:2</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 29:5</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 10:25 11:04 1:17 3:2 12:02 54:10 1331 10:4 1345 43:6 44:11 1349 25:15 14-1055 1:5 3:4 1442 44:14 15 2:8 150 34:6 150-page 31:23 1702 48:11 1816 13:22 1934 37:10,15 37:20,23 1938 38:4,12,14 1940s 27:14</p>	<p>1948 38:16,18 41:18 1954 11:4 15:12 16:13 21:7 26:19 27:16,22 31:23 32:7 39:16 43:2,3 45:8 47:24 1968 50:14 1970 35:8,20 42:14 46:2 50:11 1974 11:15 12:25 13:6 49:19 1984 40:13</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 11:4 20 41:14 200 48:20 2008 49:13 2016 1:13 257 5:19 26 2:11</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 2:4 11:15 46:18 30s 44:21 47:25 32 53:19</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>40s 28:22 30:3 44:21</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50 25:19 50s 30:3 42:2 50:25 51 2:14 51/49 39:6,8 54 28:12,22</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>60 35:22 60,000 15:15,16 33:21</p>	<p>60s 50:6 68 50:7</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>70 15:16 70s 49:24 51:1 781 33:4,7</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 1:13 80 42:12 80s 48:10</p> <hr/> <p style="text-align: center;">9</p> <hr/>
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