distinguishes Miller from a Guideline situation.

JUSTICE SOTOMAYOR: But doesn't a judge still have to make a finding that there's a reason to give a defendant a higher sentence? There may be some judges who determine the nature of the past conduct qualifies this defendant for career criminal status, but absent that, it seems like the vast majority of those judges who are now resentencing don't believe that those -- that prior criminal history justifies the higher sentence.

MR. DREEBEN: We don't doubt, Justice Sotomayor, that the Guidelines range is influential. The question is whether it sets an eligibility threshold. The test is not likelihood of outcome. That would, in effect, collapse one aspect of the test for a watershed procedural rule into the criterion for a substantive rule for retroactivity.

A watershed procedural rule both has to have a fundamental effect on accuracy, plus it has to change our bedrock understanding of the elements of --

JUSTICE SOTOMAYOR: Could I just ask something? If we rule in your favor and say it's not retroactive, how much is left of the Johnson ruling? What effect would it have? How many cases are there in fact, except the -- I guess it's the felon in possession

cases would be the one example that the Guideline -- that the Guidelines haven't already been structured to take care of all career offenders.

MR. DREEBEN: Our position is, as the Court knows from our submission in Welch, that in Armed Career Criminal Act cases where the effect of the residual clause was to change a defendant from having a maximum of 10 to a minimum of 15, Johnson is retroactive. And we have sought and supported retroactive rulings in cases where somebody is no longer qualified for an Armed Career Criminal Act sentence under Johnson.

JUSTICE SOTOMAYOR: Outside of felon and possessions --

MR. DREEBEN: We do not --

JUSTICE SOTOMAYOR: -- can you think of any other situations?

MR. DREEBEN: We do not think that Sentencing Guidelines should be interpreted --

JUSTICE SOTOMAYOR: You're not quite answering my question. What other situations besides the felon in possession would Johnson and Welch be operative? Because as I understand it, in virtually all cases, most others, the Guidelines are within the statutory maximum.

MR. DREEBEN: That's right. Well, I think

in all cases, Guidelines ranges have to be in the statutory maximum. And that is precisely our point. Guidelines ranges function as advice to the judge when he is sentencing. The Guidelines do not impose an insuperable barrier that requires a specific finding of fact before the judge can sentence outside the Guidelines. That was the problem with mandatory guidelines. Advisory guidelines allow the judge to look at the totality of the circumstances and to make policy judgments that may be at variance with the Commission.

Now, they don't do that all that often because the Commission is doing its job. And that is why we are on the side of Petitioner with respect to the due process issue.

JUSTICE GINSBURG: The third -- the third issue -- you've confused me by your argument. I thought from your brief that if we decide the first issue, that is, was there fair notice of the sawed-off shotgun, then there's no vagueness, and the case is over. But -- so I was thinking, well, we could decide that third issue and not reach either vagueness or retroactivity.

MR. DREEBEN: So, Justice Ginsburg, I would urge the Court to decide retroactivity. There are thousands of cases in the Federal system that have already been filed urging resentencing.

JUSTICE GINSBURG: But would you say that is not necessary if we agree that in this case there was fair notice about the sawed-off shotgun being --

MR. DREEBEN: Well, Justice Ginsburg, this Court's Teague jurisprudence says that in a collateral review case, a habeas case, the threshold question is retroactivity because if the new rule that the Petitioner seeks would not be retroactive to cases on collateral review, there should be no adjudication of that prisoner's constitutional claim. The issue --

JUSTICE ALITO: That's like jurisdiction, that we are bound, we have no choice but to decide retroactivity before deciding anything else.

MR. DREEBEN: No. It's not a jurisdictional limitation. Teague is a doctrine that this Court framed, Justice Alito, if the Court wanted to decide something else before then, but the reason why the government thinks that it would be in the interest of criminal justice for the Court to resolve the retroactivity issue is that there are thousands of cases waiting in the wings that are being held up today.

Now, Justice Sotomayor, you --

JUSTICE SOTOMAYOR: Mr. Dreeben, what will happen to all those cases that have been resentenced already?

MR. DREEBEN: They will keep their sentences. And the ones that --

JUSTICE SOTOMAYOR: Even the -- where the circuits said no retroactivity -- where they have permitted retroactivity?

MR. DREEBEN: Well, no circuit has actually ruled on retroactivity. The circuits have ruled on vagueness. All except for the Eleventh have either said vagueness applies to the Guidelines and the residual clause falls. Or they have said we accept the government's concession that vagueness applies.

JUSTICE SOTOMAYOR: But they've been resentencing?

MR. DREEBEN: They have been resentencing -- 88 are pointed to in Petitioner's reply brief, and Your Honor asked about those. My view on those is that they are a tiny, small, and unrepresentative sample of the cases that are waiting being held for this one.

The reason that those cases have gone forward are most likely because the judge took a look at that defendant and said, I actually am going to sentence him to a lower sentence, maybe time served. I do not want to wait for the Supreme Court's decision in Beckles.

The vast majority of cases, however, are on

hold, which I think could represent a view by the sentencing judges that they are not so confident that they will resentence the defendant to a lower sentence. After all, these defendants haven't had a change in their criminal history. They've had a change in the advice that the Sentencing Commission is going to give.

JUSTICE SOTOMAYOR: If I were a district court judge and I wasn't going to change the sentence no matter what -- what the reason for the retroactivity ruling, I would have just had the sentence.

MR. DREEBEN: Well, Justice Sotomayor, you would have produced an efficient result. But I think that for the --

JUSTICE SOTOMAYOR: I was known for that.

(Laughter.)

MR. DREEBEN: And that's admirable. But for many of the judges that are sitting on hundreds upon hundreds of these cases and for U.S. attorneys that are grappling with old records and attempting to reconstruct sentencings from many years ago, they are looking to a decision by this Court on the retroactivity question.

JUSTICE ALITO: Well, if I think that it's retroactive, should I stop there, should I go on to consider whether it's vague, or should I just accept your concession that it's vague?

MR. DREEBEN: Well, I think that the Court should decide the legal issue. We have submitted to the Court why the Due Process Rule that we think does exist would not be retroactive if the Court disagrees and thinks that it would be retroactive if it is true. Then I think the Court should go on to say that, yes, vagueness applies to the sentencing guidelines, but in view of the commentary here that specified the sawed-off shotgun, the residual clause is not vague as to that particular offense. And as a result, the judgment should be affirmed.

But I think that the systemic interest of justice right now in the wake of this Court's decision in Johnson and knowing the pendency of Beckles is for the Supreme Court to pronounce authoritatively on whether retroactivity should apply to the new Due Process Rule that Petitioner seeks and that the government thinks in light of this Court's decisions in Peugh and Molina-Martinez is correct.

So the sequence of analysis in the government's view would be first you address retroactivity. If the Court agrees with the government that this is a procedural rule that does not have the consequences that Welch and Montgomery attributed to procedural rules, then the case is over. If the Court

concludes that that Due Process Rule would be retroactive if it were correct, I think the Court should go on to decide whether vagueness applies to the Guidelines. I do not agree that any other guideline is going to be invalid under vagueness analysis. Just this one, except insofar as the commentary has specified in enumerated offenses.

On that prong, we believe that Petitioner loses because a sawed-off shotgun is an enumerated offense.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

MR. DREEBEN: Thank you.

CHIEF JUSTICE ROBERTS: Mr. Mortara.

ORAL ARGUMENT OF ADAM K. MORTARA

FOR COURT-APPOINTED AMICUS CURIAE

IN SUPPORT OF THE JUDGMENT BELOW

ON QUESTION 2

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

I want to start off correcting something that my friend said when he referred to historical sentencing as not being arbitrary. The United States Senate report on the Sentence Reform -- Sentencing Reform Act said: "Correcting our arbitrary and capricious method of sentencing will not be a panacea."

That's in the Senate report on the Sentencing Reform Act. Judge Frankel understood sentencing is arbitrary under the old system. It was arbitrary. It may have been individualized, but it was arbitrary.

Now, moving forward --

JUSTICE SOTOMAYOR: I'm sorry. It wasn't arbitrary to the judge at issue --

MR. MORTARA: Correct, Your Honor.

JUSTICE SOTOMAYOR: -- meaning, the judge at issue always had his or her own reasons.

MR. MORTARA: Correct.

JUSTICE SOTOMAYOR: What was arbitrary was that one judge could have put different values on a reason in one place and -- in New York and different values in California. That's a very different form of arbitrariness.

MR. MORTARA: I don't think so, when one looks at the sentencing factors in 3553(a)(2), the purposes of sentencing that my friends both agree are not subject to vagueness challenges. These purposes are even more vague than the career offender enhancement -- adequate deterrence, respect for the law, just punishment -- yet they result in the calculation in the mind of the judge of a single number, a fixed,

determinate sentence.

My friend referred to arbitrary determinate sentencing arising from the career offender enhancement residual clause. But think about what 3553(a), the first sentence says: "The Court shall impose a sentence sufficient but not greater than necessary to comply with the extremely vague purposes of (a)(2)."

JUSTICE BREYER: But his point, I think, is that, yes, all that you say is true, but this is a special kind of guideline. This is like a threshold. This is like a rule of law that says, get into this career offender business if and only if you satisfy this rule. Thus, most rules are telling the judge, Judge, go back to your history of what this is about. Look at the offender, figure out what he did, and then try to find an appropriate sentence in light of factors. This isn't that.

This is off/on. You either are in the career offender or you are not. And just as you couldn't, even before, have decided the sentence through a throw of the dice, so you cannot now interpret an on-off rule to say it's no worse than what you're talking about.

MR. MORTARA: And, Justice Breyer, that amounts to an argument that because the career offender

enhancement residual clause isn't quite that vague, it's more subject to constitutional vagueness challenges.

JUSTICE BREYER: No, no, I'm not saying it's not that vague. It is that -- it is saying you can't rely on how sentencing used to work in order to save this on-off rule.

Then what was worrying me in our conversation is I could think of other parts of the Guidelines; for example, the part that deals with concurrent versus consecutive sentencing, which, you know, is a nightmare and is also the notion of a kind of on-off rule, and I'm afraid of what we would do here. See, that's where I a.m. in this. I mean, I'm not saying don't go ahead, go ahead. But I think he's trying to make a qualitative difference in what we're talking about here.

MR. MORTARA: I do want to get back to the (a)(2) factors, but I -- I'll address your question directly.

My friend said that the problem here is Molina-Martinez and Peugh and the weight that the Guidelines are given. And that weight in part comes from Rita, which says that -- that an appellate court can presume a within-Guideline sentence is reasonable, because that reflects the judgment of both the

Commission and the sentencing judge that the 3553(a) factors have been met.

But that's actually not true with the career offender enhancement, and that's because the career offender enhancement exists at the command of Congress in 994(h). The Commission is not actually deploying its expertise when it made the career offender enhancement. It's doing something it was commanded to do, which is make sure that sentences get at or near the statutory maximum.

So the rationale for the reasonableness presumption of Rita completely goes away with the career offender guideline, and that's why the career offender enhancement should not get that kind of weight and that's why it doesn't.

My friend referred to 80 percent of sentences being within Guidelines ranges. It's 75 percent outside of the Guidelines ranges -- Guideline ranges for career offenders. Only 25 percent of career offenders in 2015 got within the Guidelines-range sentences. And some of that is government-sponsored departures to be sure. But an astounding nearly 30 percent of career offenders got below Guideline-range sentences without the government sponsoring them.

And what's going on there is that judges are

not giving the career offender enhancement as much weight as Molina-Martinez and Peugh are talking about because it doesn't come from a Commission's expertise on the 3553(a) factors, and the Rita rationale is gone and because sentencing judges are commanded to consider the very facts of the offense and the criminal history that they were deprived of considering under the ACCA.

In Johnson, the Court made very clear that the saving construction offered by one of the other opinions, the so-called criminal history or record-based approach, was not available as a matter of statutory interpretation. But under the sentencing guidelines in factor (a)(1), a sentencing judge must consider those facts.

So to take the example from Johnson, a variety in a correctional institution under Connecticut law under the categorical approach, probably a crime of violence, but there might be the rare violence-free riot. A sentencing judge under the Guidelines can look at what actually happened and look at the severe effect of the career offender enhancement and then sentence below the range.

And that is what is, in fact, happening, because judges are looking at the facts, and they are not acting like automatons blindly adhering to the

Guidelines whatever their weight.

But coming back to the (a)(2) factors -- and I do want to come back to them -- in 1984, the (a)(2) factors were enacted. They are vague by anyone's definition. And the only answer we get from my friends is the Sentencing Guidelines require numerical range. The (a)(2) factors lead to a specific number, a fixed sentence in the mind of the judge. Which is more arbitrary or provides less notice? That's easy.

The only other explanation we get is the weight afforded to the Guidelines. I've already mentioned that a little bit, but another way we can think about it is a district judge is allowed to deviate from the Guidelines if it disagrees with them as a matter of policy. That's Kimbrough and Spears. A district judge cannot declare that they disagree with the purposes in (a)(2) and say, I a.m. now going to sentence under my theory of radical over-deterrence, instead of adequate deterrence. That would be reversible error under all of this Court's precedents. So whatever weight Molina-Martinez and Peugh say should be given to the Guidelines, the (a)(2) purposes have actually equal or more weight, because a district judge cannot disagree with them. They are, in a sense, more binding than the non-binding career offender

enhancement.

And in that respect, it goes from discretionary sentencing, which I agree historically we've all accepted as constitutional, and then to the (a)(2) purposes, which may be an attempt to codify that historical practice, but they are law. It -- it is a statute. It says shall impose a sentence, a fixed number. And they are vague. And if you accept that discretionary sentencing is constitutional and you accept that (a)(2) purposes are not subject to a constitutional vagueness challenge, it seems extremely difficult to accept that the career offender enhancement is somehow subject to a constitutional vagueness challenge either because of the numerical range, it's a fixed number for (a)(2), or because of the weight for the reasons I've given.

One other thing I wanted to raise, which is related to questions Justice Sotomayor was asking about the resentencings. I'm not aware of the percentage of those 88, what percentage that is of the total resentencing that would come up, and my friend suggested it's an unrepresentative sample. But there's plenty of confounders in this resentencing.

The -- the first is, sometimes it's been a different judge.

The second is, sometimes the -- the defendant was originally sentenced under Booker, or pre-Booker, so mandatory guidelines.

The third is that in some of these cases -- and I've looked at the government's sentencing referendum -- the United States has gone in and said, well, because the Commission has gotten rid of the residual clause, we would like the defendant's sentence to reflect the way sentences are going to be going forward, so we're asking you to impose a lower sentence because we want things to look, in the future, the way they are going to look for this defendant today.

All of those things are confounders on the actual effect that the career offender guideline had in its original form on the defendant's sentence. And to take an example of Mr. Beckles, we talked a lot about Molina-Martinez and Peugh, and some other decisions that are mentioned in Peugh as giving weight to the Guidelines. Most of those decisions did not exist when Mr. Beckles was actually sentenced. Only Rita was there. And Mr. Beckles' lawyer told the sentencing judge that all the factors in 3553(a) were equal, that none of them had any more weight than any of the others, and Mr. Beckles still got his within-Guidelines range sentence.

It is true that six years later the district judge said, I would have sentenced him differently. But that may -- that may be just as much an indication of a Rita-Gall style error of overinterpreting the Guidelines or overweighting them as anything else.

If the Court has no further questions, I'm -- I'm prepared to sit down.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Ms. Bergmann, you have a minute remaining.

REBUTTAL ARGUMENT OF JANICE L. BERGMANN

ON BEHALF OF THE PETITIONER

MS. BERGMANN: I'd like to make -- start with a point about retroactivity analysis.

Mr. Dreeben states that the rule here is a procedural rule, and I would disagree in part because Mr. Dreeben misstated Montgomery as an eligibility test.

In both Welch and Montgomery, the defendant was eligible for the same sentence so long as the court made specific findings. And here, just like Montgomery, it will be the rare case where a court can impose the same sentence once the defender -- the defendant no longer qualifies as a career offender. And that's because the court would have to make additional findings just was as true in Montgomery. There it was permanent incorrigibility, but here, the very upward from an

ordinary guideline range to the career offender range would require the judge to come forward with specific and compelling significant determination, a justification that would be so compelling that would allow a court to double someone's sentence, and those considerations would have to be things that were not already taken into account by the Sentencing Commission when they determined what the ordinary guideline range would be.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

MS. BERGMANN: Thank you, Your Honor.

CHIEF JUSTICE ROBERTS: Mr. Mortara, this Court appointed you to brief and argue this case as an amicus curiae in support of the judgment below on Question 2. You have ably discharged that responsibility, for which we are grateful.

The case is submitted.

(Whereupon, at 11:05 a.m., the case in the above-entitled matter was submitted.)

A

a.m 1:14 3:2 49:13 52:17 56:18
ably 56:15
above-entitled 1:12 56:19
absent 39:7
abstract 29:10
ACCA 15:9 34:17 35:18,23 36:9,11 51:7
accept 13:15 23:24 24:1 43:10 44:24 53:8,10,12
accepted 53:4
account 29:1 31:6 56:7
accuracy 39:19
act 7:17 8:7,11 12:16 17:2 21:16,18 26:1 29:3 35:16,17 40:6,11 46:24 47:2
acting 51:25
action 26:25 31:23
actions 24:4
activity 38:6
actual 31:7 54:14
ADAM 1:22 2:9 46:14
added 9:3 36:2
additional 29:7 55:23
address 45:21 49:18
addressed 29:13
adequate 47:23 52:19
adequately 30:4
adhering 51:25
adjudication 42:9
administer 35:7
administrable 35:6
administration 35:24
administrative 23:9,11
admirable 44:16
adopt 25:10 35:22
adopted 9:7,9 29:9 35:16
adopting 8:8
adoption 9:4
advice 41:3 44:6
advisory 27:5 28:13,15,23 29:21 41:8
affirmed 45:11
afforded 24:7,11 52:11
afraid 49:12
agencies' 8:2
agency 5:22 13:6 23:9,16 23:23 24:9
agency's 7:10 24:7
ago 44:20
agree 3:17 4:8 4:12 22:23 34:6 42:2 46:4 47:20 53:3
agrees 45:22
ahead 49:14,14
Alabama 38:12
Alito 6:22 7:18 7:23 9:11,22 10:17 11:1 12:14 14:14 25:12 27:25 28:15,20 29:6 29:22 42:11,16 44:22
allow 41:8 56:5
allowed 16:20 52:13
alters 32:16
amazed 35:1
ambiguous 24:16
amended 6:17
amendment 6:18 8:20
amendments 8:22
amicus 1:23 2:10 46:15 56:14
amounts 48:25
analysis 15:12 16:13 25:18 26:4 29:12 32:4 34:15 38:22,24 45:20 46:5 55:13
anchor 37:5,22
anchoring 27:16
announced 26:9
answer 5:20 10:23,25 20:4 20:8 29:9 52:5
answering 40:20
anymore 29:24
anyone's 52:4
appeal 29:17 31:10
appeals 29:17 31:9 33:19
appear 33:7,8,9
APPEARAN... 1:15
appeared 37:16
appears 31:18 33:13
appellate 49:23
applicable 11:21
application 15:5 17:1 23:17
applied 12:1 23:13 38:6
applies 13:5 32:4 43:9,11 45:7 46:3
apply 12:4 15:18 15:25 16:15 18:21 19:20,25 20:1 22:21,24 23:3,4 28:6,10 29:20 32:13 45:16
appointed 56:13
approach 33:23 51:11,17
appropriate 26:19 48:16
approval 9:8,10
approved 8:22 8:24 9:2
arbitrariness 10:8,10 12:9 12:12,15 17:19 17:21 22:11,11 31:24 47:17
arbitrary 10:1 13:2 17:9,14 17:19 22:1,6 22:15,22 23:5 26:22,25 31:23 36:25 37:5,11 46:22,24 47:3 47:4,5,8,13 48:2 52:9
arguable 14:17
argue 11:25 56:13
argument 1:13 2:2,5,8,13 3:4 3:7 13:4,12 17:7 22:5 25:3 27:25 28:10 30:6,8 31:14 41:16 46:14 48:25 55:10
arising 48:3
Armed 7:17 8:7 8:10 17:1 21:16,17 40:5 40:10
array 26:15
arson 6:25
articulated 32:15
ascertainable 24:17
asked 15:25 43:16
asking 15:20 53:18 54:10
aspect 38:25 39:15
assignment 37:4
assignments 36:25
assistance 18:17 18:22
Assistant 1:16
Assume 20:23 20:24
astounding 50:22
attaching 3:11
attempt 53:5
attempted 21:11
attempting 4:20 44:19
attorneys 9:13 44:18
attributed 45:24
authoritative 33:11,14
authoritatively 45:15
automatons 51:25
available 51:11
average 3:11 15:21
aware 16:12 53:19

B

back 8:14 34:23 37:15 48:14 49:17 52:2,3
background 37:10

bad 17:7
barrier 41:5
barring 28:2
based 6:19 12:18 18:16,21 19:6 29:2,11
basically 15:20 23:4 27:25 38:12
basing 19:3
bear 26:19
Beckles 1:3 3:4 18:17 43:24 45:14 54:16,20 54:24
Beckles' 54:21
bedrock 39:20
Begay 21:11
behalf 1:17,20 2:4,7,15 3:8 25:4 55:11
believe 13:1 21:4 39:8 46:8
bench 25:12
Bergmann 1:16 2:3,14 3:6,7,9 4:12 5:7,10,12 5:14,18,23 6:4 7:5,22 8:1,17 8:23 9:6,21,25 10:13 11:2,13 12:2,24 13:11 13:16,23 14:1 14:4 15:3,22 16:6,11,19 17:18 18:4,10 18:13,15,25 19:5 20:8,13 21:2 22:8,15 22:25 23:18 55:9,10,12 56:11
best 20:8
bet 34:20
better 8:12 13:21,25 17:6 17:15,17 21:7 32:1 34:5
binding 11:8 52:25
bit 52:12
black 36:22
blindly 51:25
board 36:16
bodily 14:24,25 35:3
body 23:24 24:4 24:5
Booker 54:2
borrowed 7:20 37:12
borrowing 35:15
bothering 33:1
bound 42:12
Breyer 10:9,15 19:7 20:6,11 20:14 25:11 32:24 34:6,18 48:8,24 49:3
brief 10:22 26:23 41:17 43:15 56:13
briefly 10:25
broad 25:16
broader 21:16
burglary 6:24 35:21,21
Burke 12:5
business 48:12
buy 22:5

C

C 2:1 3:1
calculate 14:8 27:7 30:2
calculation 47:24
California 47:16
call 25:15 29:2
calls 24:15
capricious 46:25
capriciousness 22:11
care 40:3
career 3:11,14 3:16,24 4:7 7:17 8:7,8,10 8:18 14:9 15:8 15:9 17:2 18:18,25 21:15 21:16,18 24:7 32:2 35:10 37:1,8 39:6 40:3,5,11 47:22 48:3,12 48:19,25 50:3 50:4,7,12,13 50:19,19,23 51:1,21 52:25 53:12 54:14 55:22 56:1
case 3:4 4:2 5:11 5:13 10:19 14:10,10 15:6 15:12,21 16:9 16:13,14 17:15 18:6 19:18 25:7,14 26:23 28:12,13 29:20 32:15,16 33:16 41:19 42:2,6,6 45:25 55:20 56:13,17,18
cases 12:4 23:11 23:20 25:9 26:5 29:14 30:1 35:25 36:11,12,14 39:24 40:1,6 40:10,23 41:1 41:24 42:8,20 42:24 43:18,19 43:25 44:18 54:4
categorical 51:17
caused 19:22
central 17:6
century 26:2
certain 17:23 24:5
challenge 14:17 17:9 32:4 53:11,14
challenged 23:12
challenges 16:17 16:20 28:16 47:21 49:2
Chambers 21:11
chance 13:7
change 39:19 40:7 44:4,5,8
changes 29:20
character 29:8
characteristics 13:9
chevron 24:11
Chief 3:3,9 11:10,22 17:4 25:1,5 30:16 30:20 46:11,13 46:18 55:8 56:10,12
choice 42:12
choose 18:20
choosing 24:16
circuit 16:17,20 43:6
circuits 38:5 43:4,7
circumstances 41:9
cited 26:22
citing 36:10
city 23:10
claim 42:10
clarified 4:21 21:8
clarify 4:21 21:7 21:12
clarifying 20:15 23:22 24:2,4
class 32:5,17
classification 37:1
classifications 36:25
clause 3:16,18 3:25 4:3,17,18 4:22 5:3 6:1,7 6:15,21 8:16 8:20,24 9:4 13:19 14:9 15:9,10,19 16:24 17:20,23 19:20 21:5 22:18,19 23:2 24:20 29:20 34:10,16,17 35:8,19 36:11 36:12,14,16,18 40:7 43:10 45:9 48:4 49:1 54:8
clear 14:21 51:8
close 28:9
codify 53:5
cognizant 27:8
coin 17:11,13,16 32:1
collapse 39:15
collateral 25:9 42:5,9
combination 15:11,13
come 4:15 34:23 36:14 51:3 52:3 53:21 56:2
comes 17:21 22:16 49:22
coming 10:24 52:2
command 50:5
commanded 50:8 51:5
commentary 4:4 4:9,15 5:16,25 6:17 7:11,25 8:25 9:2,3,9 17:20 21:24 24:17 34:9 36:5,18,19

45:8 46:6
commission 4:16,20 5:22 5:24,25 6:16 7:12,14 8:3,4,8 8:11,19,21 9:14 17:22,25 20:19 21:6 22:17,18 23:1 24:15,20 27:13 28:24 30:12 31:4,6 33:18 33:20 34:16 35:10,14 36:8 37:7,12 41:10 41:12 44:6 50:1,6 54:7 56:7
Commission's 7:19 22:22 51:3
committed 22:14
committing 21:23
company 34:14
comparison 16:10
compelling 32:21 56:3,4
complaint 31:24
complete 28:2
completely 50:12
complicated 35:24
comply 48:6
comport 3:23
conceding 20:15
conceptual 38:10
Conceptually 38:11
concern 12:9 17:19
concerned 17:1
concerning 17:3
concerns 4:14 12:6 14:21 15:4,6 32:21 34:13
concession 43:11 44:25
conclude 17:23
concludes 46:1
concluding 6:20
concurrent 49:10
condemned 36:21
conduct 7:2 21:23 32:17 33:4 39:5
confident 44:2
conflict 31:13
confounders 53:23 54:13
confused 41:16
confusion 36:23
Congress 8:6,22 8:25 9:2,8 19:20 35:9,16 50:5
Congress's 9:9 24:9
congressional 27:13 36:9
Connecticut 51:16
conscientious 26:24
consciously 35:22
consecutive 49:10
consequences 45:24
consider 14:9,10 29:17 44:24 51:5,13
considerable 31:13
consideration 28:2
considerations 12:7 56:6
considered 27:12
considering 51:7
constant 27:22
Constitution 19:12 32:23 33:25
constitutional 4:14 19:9 20:18 34:3,15 42:10 49:2 53:4,9,11,13
construction 24:2 51:9
constructions 23:23
construing 34:10
context 32:22
continuing 27:18 31:2
continuum 28:1
contradicts 26:5
controlling 36:4
conversation 49:8
convicted 9:17
correct 8:16 11:13 15:22 16:5,6,11,19 45:19 46:2 47:9,12
correcting 46:20 46:24
correctional 51:16
counsel 25:1 26:18 46:11 55:8 56:10
country 25:24 36:10
counts 4:9,9
court 1:1,13 3:10 4:21 6:19 7:9,16 8:2,13 10:3 11:4,16 11:17,19 12:7 12:8 13:18 14:5,5,10 15:7 16:1,14 17:1 18:1,19 21:5,9 21:11 22:18,20 23:4,21,23 24:5,15 25:6 25:10,23 26:23 26:24 27:4,15 27:15 28:22 29:13,17,19 30:8 31:6,10 32:14,22 33:19 35:9,19 36:13 36:20 38:23 40:4 41:23 42:15,16,19 44:8,21 45:1,3 45:4,6,15,22 45:25 46:2,19 48:5 49:23 51:8 55:6,18 55:20,23 56:5 56:13
Court's 12:4 15:5 28:13 42:5 43:23 45:13,18 52:20
Court-appoin... 1:23 2:10 46:15
courtroom 26:18
courts 14:7 16:17 19:14 23:3 30:10 31:9 35:6 36:9 36:16
covered 35:11
created 5:25 7:14
creates 5:5
crime 4:5 6:9,23 9:5 21:24 22:14 34:12 35:14,16 37:9 51:17
crimes 26:1 35:11 37:2
criminal 7:17 8:7,10 9:16 14:18 17:2 19:21 21:16,18 32:19 35:7,24 39:6,9 40:6,11 42:19 44:5 51:6,10
criterion 39:16
cure 20:24,25
curiae 1:23 2:10 46:15 56:14
customarily 35:2
customary 25:21 35:3

D

D 3:1
D.C 1:9,20,22
dangerous 5:4
dangers 13:14
day 20:9
deals 49:9
debating 18:7
decades 16:21
decide 41:17,20 41:23 42:12,16 45:2 46:3
decided 17:12 48:20
decides 10:19
deciding 42:13
decision 12:13 43:23 44:21 45:13
decisions 6:20 24:3 45:18 54:17,19
declare 52:16
deemed 18:1
deep 19:8
defendant 3:12

3:14 13:10 22:2,12 26:18 37:3,18,24 38:15,16 39:4 39:6 40:7 43:21 44:3 54:2,12 55:17 55:21
defendant's 14:11 21:22 54:8,15
defendants 38:7 44:4
defender 1:17 55:21
deference 8:2 24:6,11,13,13 24:14,22
define 9:5
defined 35:14
definition 6:11 6:14 8:17 35:15,18 52:5
definitions 6:8 6:14
departing 30:14 30:17
Department 1:20
departures 11:12,14 27:21 30:1,18,23 50:22
depend 29:5
depending 12:6
deploying 50:6
deprived 51:7
Deputy 1:19
describe 25:13 33:21
described 10:4 26:24 27:4,15
description 28:13 34:14
designed 29:8
determinant 10:1
determinate 48:1,2
determination 12:25 15:18 56:3
determinations 35:25
determine 22:7 39:5
determined 15:8 56:8
deterrence 12:19 47:23 52:19
deviate 52:13
dice 48:21
dictionary 25:21
difference 14:23 49:15
different 23:6 23:14 31:19,21 32:22 34:3 35:8 37:20 47:14,15,16 53:25
differently 55:2
difficult 11:25 13:15 26:16 53:12
directly 23:4 49:19
disagree 12:2 13:17 52:16,24 55:15
disagrees 45:4 52:14
discern 3:19
discharged 56:15
discretion 22:21 22:23,25 28:2
discretionary 25:15,25 53:3 53:9
discussed 29:13
dispositive 32:9 32:11
distinguishes 39:1
district 14:7 22:18,20 23:3 27:15 29:24 30:13 31:5 33:15 44:7 52:13,16,23 55:1
doctrine 15:6 26:9 27:2 31:22 42:15
doing 6:19 19:13 41:12 50:8
double 56:5
doubles 3:12 14:12
doubt 39:11
Dreeben 1:19 2:6 25:2,3,5 28:11,18 29:5 30:7,19 31:16 31:20 32:6,10 34:6,22 37:14 38:9 39:11 40:4,14,17,25 41:22 42:4,14 42:23 43:1,6 43:14 44:11,16 45:1 46:12 55:14,16
drifting 30:10
drill 30:2
dropped 27:22
drug 35:12
due 3:23 4:19 12:4,6 25:14 25:19,19,21 26:4,6 32:13 34:12 36:24 41:14 45:3,16 46:1
due-process 27:1
dwelling 6:25 35:22

E

E 2:1 3:1,1
early 12:4
easy 52:9
effect 4:1 27:16 27:18,19 29:15 39:15,19,24 40:6 51:20 54:14
effectively 32:18
efficient 44:12
effort 17:25 20:24,25
either 41:21 43:8 48:18 53:14
element 6:12 35:3
elements 35:2 39:20
Eleventh 43:8
eligibility 38:20 39:13 55:16
eligible 32:19 38:15 55:18
empirical 30:9
enabling 7:15 34:1
enacted 52:4
ends 37:13
enforce 23:5
enforcement 22:12,16
enhance 3:22
enhancement 4:7 14:12 22:1 22:4,13 47:22 48:3 49:1 50:4 50:5,7,14 51:1 51:21 53:1,12
entire 10:8
entitled 4:6 24:22 38:1
enumerated 6:12 34:8 35:20 36:5 46:7,9
equal 52:23 54:22
equally 17:2
error 52:20 55:4
especially 10:14 10:15
ESQ 1:16,19,22 2:3,6,9,14
essence 15:16
essential 31:24
essentially 18:6
establish 18:19
eventually 33:11
Everybody 17:13
evidence 10:12 10:12 30:9
ex 29:20
exact 7:16
exactly 10:16 11:1 17:13
examine 26:18
examined 27:5
examines 25:23 30:12
examining 32:23
example 5:4 20:17 40:1 49:9 51:15 54:16
examples 19:19 20:17,20,20,25 21:12 23:7 34:20
exclusive 6:8,14
exist 45:3 54:19
existed 36:23
existing 10:18 15:18
exists 50:5
experience 31:7
expert 27:12
expertise 50:7 51:3
explanation 31:13 52:10

explicitly 8:9
explosives 6:25
expressed 12:9 15:4,6
extend 14:13
extent 19:14 34:7
extortion 6:25
extremely 48:7 53:11

F

fact 10:6 39:25 41:6 51:23
facto 29:20
factor 28:3 51:13
factors 29:2 31:5 47:19 48:16 49:18 50:2 51:4 52:2 52:4,7 54:22
facts 15:18,25 16:2 26:15,19 51:6,14,24
factual 35:6
fair 41:18 42:3
fairly 19:7 33:10
fairness 25:22 25:23
fall 6:7,11,15 17:23
falling 4:18
falls 19:10 23:2 43:10
fantasize 15:20
favor 36:15 39:22
features 27:14 29:19
Federal 1:16 3:12 11:6,18 13:1 19:14,25 24:4 31:3 35:25 41:24
Federalism 23:22
feed 34:1
feedback 30:12 33:20
fell 3:15 6:21 24:19
felon 21:18 39:25 40:12,21
figure 48:15
filed 41:25
filtered 27:13
finality 32:21
find 16:8 48:15
finding 37:19,25 38:12,13,14 39:3 41:5
findings 55:19 55:23
firearms 37:1,9
first 3:21 6:11 33:18 41:17 45:21 48:5 53:24
fixed 47:25 52:7 53:7,15
Fla 1:17
flip 32:1
focus 38:25
footnote 26:23
force 6:12 11:15
forces 16:14
Ford 1:17
form 47:16 54:15
forth 6:13
forward 43:20 47:6 54:10 56:2
four 6:12
framed 35:5 42:16
framework 31:1 35:23 36:17 37:6
Frankel 47:2
friend 46:21 48:2 49:20 50:16 53:21
friends 47:20 52:5
function 41:3
fundamental 9:12 25:22,22 39:19
further 20:7 29:12 55:6
future 54:11

G

G 3:1
Gall 29:14
general 1:19 34:24
generate 14:16
Ginsburg 4:8 6:3 18:3,5,11 18:14 41:15,22 42:1,4
Ginsburg's 4:25 5:21
give 7:10 13:13 39:4 44:6
given 23:24 49:22 52:22 53:16
gives 8:2
giving 20:25 51:1 54:18
go 8:14 14:14 20:6,6 30:1,3 34:21 37:14 38:12,24 44:23 45:6 46:3 48:13 49:14,14
goes 11:20 33:18 33:20 50:12 53:2
going 17:8,14 19:8,15 22:1 22:12 34:25 37:24 43:21 44:6,8 46:5 50:25 52:17 54:9,9,12
Gonzales 24:10
good 21:1
gotten 54:7
governing 23:24
government 10:22 18:17 23:7 30:25 32:20 36:15 42:18 45:18,22 50:24
government's 33:1,2 43:11 45:21 54:5
government-s... 27:21 30:23 50:21
grappling 44:19
grateful 56:16
greater 22:3 48:6
group 28:25
guess 21:21 39:25
guidance 13:7 13:13,18 14:6 26:1
guide 11:5
guideline 3:17 7:7,10,13 8:5,6 8:18,24 9:8 10:2,6,10 11:20,24 12:12 12:13 13:3 14:8 18:12,20 19:1,10 22:21 22:24 23:1 24:8 28:4 29:25 31:25 33:7,13 34:4 35:10 37:2,25 39:1 40:1 46:4 48:10 50:13,18 54:14 56:1,8
Guideline-ena... 19:11
Guideline-ran... 50:23
guidelines 4:4 6:8,13,23 7:18 8:9,15 9:15 10:11,16,18,20 11:3,5,12,15 11:18 14:15 15:24 16:13,15 16:21 18:9 19:15 24:14,23 25:17 27:3,8 27:10,16,21 28:6,7,12,13 28:15,17,23 29:6,9,14 30:3 30:11,13,15,24 31:1,2,8 34:5 34:20,23 35:5 36:11 37:21 38:4 39:12 40:2,18,23 41:1,3,4,7,8,8 43:9 45:7 46:4 49:9,22 50:17 50:18 51:12,19 52:1,6,11,14 52:22 54:3,19 55:4
Guidelines-ra... 50:20
guilty 14:22

H

habeas 32:22 38:21 42:6
hand 27:3 28:5
happen 17:14 29:22 42:24
happened 51:20
happening 51:23
happens 15:19
hard 29:9
hear 3:3
heavy 12:23
heeded 36:10
held 4:22 11:16 21:5 42:21 43:18

higher 39:4,10
historical 26:7 46:21 53:6
historically 53:3
history 25:23,24 35:25 37:3 39:9 44:5 48:14 51:6,10
hold 11:3 44:1
hole 36:22
homicide 38:16
Honor 4:12 5:7 5:10,15,23 6:4 7:5,11 8:1,19 8:23 9:6,21,25 10:13 11:3,13 12:2,24 13:11 13:16,23 14:1 14:4 15:3,22 16:6,11,19 17:18 18:10,13 18:15 19:5 20:13 21:2,4 21:13 22:8 23:19 43:16 47:9 56:11
hovers 30:21
hundreds 34:20 44:17,18

I

i.e 37:19
idea 26:4
ideas 12:18
identified 4:5
identify 4:17
ignore 23:1
illegal 22:3
imagine 9:14 16:14
impermissible 28:3
implemented 29:6
implicate 15:14 27:1
implicated 26:10
important 26:13 32:10 33:2
importantly 38:5
impose 14:7 30:4 41:4 48:5 53:7 54:10 55:20
imposed 12:21 12:23
imposing 22:2 38:20
impossible 3:18 16:8 18:1 21:13
imprecise 4:10 4:13
imprisoned 9:18
improvement 11:25
improvements 31:8
impulse 34:7
incapacitation 12:19
include 6:17 8:18 22:19
included 5:15 8:20 25:25
including 8:15
inconsistent 32:8
incorporate 31:8
incorporated 30:24
incorporates 30:14
incorporating 8:10
incorrigibility 38:13,25 55:25
increases 3:13
increasing 11:11 11:14 30:17
independent 34:11
indeterminate 10:3,6 11:8,23 12:3,10
indicated 12:6
indication 55:3
individual 23:13 37:8,19
individualizat... 26:14
individualized 12:25 47:4
influence 27:17
influential 31:3 39:12
informed 25:16
informs 27:10
injects 10:7 12:12 27:6
injury 7:3 14:24 14:25 33:5 35:3
insofar 46:6
instance 8:11
instant 21:17 35:12
institution 51:16
instructed 35:9
insuperable 41:5
intended 27:17 31:4
intends 37:7
interchangeably 36:10
interest 42:18 45:12
interpret 8:12 21:7 36:17 48:21
interpretation 7:10 23:25 24:7 51:12
interpretations 8:3 24:23
interpreted 7:24 38:11,19 40:18
interpreting 4:16 5:24 6:1 7:12,15,16,17 8:4 17:22 22:17 24:9,16 24:20 33:16
interprets 22:19
interrupt 4:25
invalid 46:5
invalidate 26:5
invalidated 35:19
invalidates 4:4
invidious 28:3
invoking 3:21
involved 14:23
involves 6:25 7:1,2 26:15 33:4
involving 23:20
irredeemable 37:19
issue 7:8 18:7 20:18 22:10 41:14,16,17,20 42:10,20 45:2 47:8,11

J

James 21:10
JANICE 1:16 2:3,14 3:7 55:10
job 33:16 41:12
Johnson 4:22 5:2 13:18 15:4 15:17 16:8 17:2 18:1,2 21:10 22:6 35:20 36:13 38:6 39:23 40:8,11,21 45:14 51:8,15
judge 10:19 12:17 13:7 15:17,20 16:3 18:23,23 19:3 22:6 26:1,17 27:7,8,11 29:24 31:6 33:15 37:7,10 37:17,22 39:2 41:3,6,8 43:20 44:8 47:2,8,10 47:14,25 48:13 48:13 50:1 51:13,19 52:8 52:13,16,23 53:25 54:22 55:2 56:2
judge's 12:18 27:10
judges 12:20,22 13:1 28:25 30:1,13 38:4 39:5,8 44:2,17 50:25 51:5,24
judgment 1:24 2:11 26:24 45:10 46:16 49:25 56:14
judgmental 35:6
judgments 41:10
judicial 28:2
jurisdiction 42:11
jurisdictional 42:14
jurisprudence 42:5
justice 1:20 3:3 3:9 4:8,23,25 5:8,11,13,17 5:20,21 6:3,22 7:18,23 8:14 8:21 9:1,11,22 10:9,15,17 11:1,10,22 12:14 13:4,12 13:21,24 14:3 14:14 15:16,24 16:7,16 17:4 18:3,5,11,14

18:24 19:2,7 20:6,11,14 21:20 22:9,23 23:6 25:1,5,11 25:12 27:25 28:15,20 29:6 29:22 30:16,20 31:12,16,18 32:3,7,24 34:6 34:18 37:14,15 38:9 39:2,11 39:21 40:12,15 40:19 41:15,22 42:1,4,11,16 42:19,22,23 43:3,12 44:7 44:11,14,22 45:13 46:11,13 46:18 47:7,10 47:13 48:8,24 49:3 53:18 55:8 56:10,12
justification 56:4
justifies 39:9
juvenile 38:16

K

K 1:22 2:9 46:14
keep 21:3 43:1
Kennedy 4:23 5:8,11,13,17 5:20 13:4,12 13:21,24 14:3 31:12,16,18 32:3,7
Kennedy's 37:15
keys 37:2
Kimbrough 52:15
kind 20:15 24:6 24:10 48:10 49:11 50:14
knew 22:12
know 6:3,5,16 14:17,22 17:4 17:5,11 28:23 29:11 30:2 34:18 49:11
knowing 37:11 45:14
known 44:14
knows 17:13 21:24 22:2 27:11 40:5

L

L 1:16 2:3,14 3:7 55:10
label 3:12
lack 31:23
language 5:15 6:1 7:14 8:10 8:12 15:10 17:22 21:7,8 21:12 22:17 23:24 24:16,21 34:10,16 36:4 36:8,23 37:12
large 26:15
largely 35:23
Lauderdale 1:17
Laughter 20:5 20:10 44:15
law 25:20 27:6 35:7 38:13 47:23 48:11 51:17 53:6
lawyer 54:21
lead 29:19 52:7
leads 36:24 37:3
leaving 33:15
left 39:23
legal 16:12 29:19 31:21 36:17 45:2
legislation 34:2
legislature 13:6
legitimate 30:5
let's 20:6,6 29:23
level 30:22
life 37:18 38:12 38:15,19
life-threatening 14:25
light 12:21 45:18 48:16
likelihood 38:21 38:23 39:14
limitation 42:15
limited 21:18 33:10
line 30:21
list 36:5
listed 5:19
little 31:25 52:12
local 23:21,23
lodestar 11:6 29:15
lodestone 11:6 29:15
logical 33:23
long 55:18
longer 32:19 36:17 40:10 55:22
look 16:2,9 23:12,22 36:7 41:8 43:20 48:14 51:19,20 54:11,12
looked 30:20 54:5
looking 25:22 31:5,22 38:17 44:20 51:24
looks 47:19
loop 30:12
loses 46:9
lot 9:23,23 10:12 34:25 54:16
lower 6:19 38:8 43:22 44:3 54:10

M

main 17:19
majority 38:7 39:7 43:25
mandatory 28:5 28:7,9,12,17 29:25 41:7 54:3
material 12:8
matter 1:12 19:14 23:22 34:24 44:9 51:11 52:15 56:19
maximizes 26:12
maximum 40:7 40:24 41:2 50:10
mean 4:24 7:13 11:11,15 14:15 15:1 16:23 17:8,11,18 20:22 33:22,24 34:2 49:13
meaning 3:19 21:5,6 24:21 33:10,12,14 37:20 47:10
meaningless 13:19 21:8
meanings 24:17 34:3
means 6:24
meant 16:10
Medina 26:6
mentioned 52:12 54:18
met 50:2
method 46:25
methodology 36:20
MICHAEL 1:19 2:6 25:3
middle 28:8
Miller 38:11,17 38:19 39:1
mind 19:8 33:3 47:25 52:8
minimal 14:19 14:23 16:3
minimum 40:8
minute 55:9
mirror 34:17 35:1
misinformation 12:8
misstated 55:16
model 36:8
Molina-Marti... 11:17 29:12 45:19 49:21 51:2 52:21 54:17
Monday 1:10
Montgomery 32:15 37:15,21 37:23 38:11,17 45:24 55:16,17 55:19,24
months 18:8,12 18:14
moot 18:7
morning 3:4
Mortara 1:22 2:9 46:13,14 46:18 47:9,12 47:18 48:24 49:17 56:12
mouth 21:3
moving 47:6
multiplicity 26:19
municipal 23:10

N

N 2:1,1 3:1
narrow 21:11 32:20
narrowed 23:9 23:17
narrows 17:17 23:10,10
nature 17:3 39:5
near 50:9
nearly 50:22
necessary 42:2

48:6
never 20:18
new 42:7 45:16 47:15
nightmare 49:11
Ninth 16:20
non-arbitrary 37:11
non-binding 52:25
non-guideline 30:25
normal 19:3 33:25
note 30:13
notice 31:23 41:18 42:3 52:9
notion 49:11
November 1:10
number 11:14 47:25 52:7 53:8,15
numerical 52:6 53:14

O

O 2:1 3:1
off/on 48:18
offender 3:11,15 3:16,24 4:7 8:9 8:18 14:9 15:8 15:10 18:18 19:1 21:15 24:8 32:2 35:10 37:1,8 47:22 48:3,12 48:15,19,25 50:4,5,7,13,13 51:1,21 52:25 53:12 54:14 55:22 56:1
offenders 40:3 50:19,20,23
offense 4:5,18 5:4,4 6:6,18 7:6 9:17 12:22 12:23 13:10 14:22 21:17 23:2 24:19 35:2,4,12 37:9 45:10 46:10 51:6
offenses 3:15 6:13 14:11 17:23 34:8 35:12,20 36:3 36:5 46:7
offered 51:9
Oh 20:1
Okay 13:10,10 33:6
old 44:19 47:3
older 35:13
on-off 48:22 49:6,12
once 22:18 23:1 55:21
ones 43:2
open 15:1 19:16
opened 14:15
operative 40:22
opinions 27:4 51:10
opposed 15:18
oral 1:12 2:2,5,8 3:7 25:3 46:14
order 4:17 31:8 49:5
ordinance 23:10
ordinances 23:21
ordinary 15:12 16:9,10,13 56:1,8
original 8:17 54:15
originally 35:14 54:2
ought 28:25 29:1
outcome 39:14
outset 25:13
outside 40:12 41:6 50:18
over-deterrence 52:18
overinterpreti... 55:4
overruled 36:13
overweighting 55:5

P

P 3:1
PAGE 2:2
pages 23:7
panacea 46:25
parole 37:18
part 4:20,25 9:7 16:25 24:8 34:14 49:9,22 55:15
particular 12:22 12:23 37:18 45:10
particularized 36:3
parts 49:8
passed 8:15,20 10:11 35:17
peculiar 18:6
pendency 45:14
people 35:11
percent 18:21 19:2,6 27:23 30:1,22 38:3 50:16,18,19,23
percentage 11:11 19:4 53:19,20
permanent 14:24 55:24
permit 16:17
permitted 38:5 43:5
person 9:17 32:1 32:18
personal 12:18
persons 32:17
Petitioner 1:4,18 2:4,15 3:8,13 3:20 4:6 25:8 41:13 42:8 45:17 46:8 55:11
Petitioner's 4:1 4:5 43:15
Peugh 11:17 29:12,19 30:8 45:19 49:21 51:2 52:21 54:17,18
physical 7:3 33:5
pick 12:17
place 11:4 21:7 27:6 30:12 47:15
planning 14:19 14:23 16:3
play 4:15 17:21 22:16 31:21 32:9,10
please 3:10 25:6 46:19
plenty 53:22
plus 30:22 39:19
point 4:16 8:16 8:19 21:21 25:18 36:24 38:10,11 41:2 48:8 55:13
pointed 43:15
points 31:19
policy 27:13 41:9 52:15
position 8:12 10:5 28:12 33:2,2 40:4
positions 31:19
possess 21:25
possessing 4:10 21:23
possession 4:13 4:17 5:5,18 6:10,17,20 7:1 21:19 22:19 24:18 39:25 40:21
possessions 40:13
post 29:20
post-Booker 27:6
potential 7:2 31:23 33:5
power 11:18
practical 38:10
practice 12:20 25:23 26:7 30:13 53:6
pre-Booker 54:3
pre-Sentencing 12:16
precedents 52:20
preceding 19:19
precisely 31:4 41:2
predicate 3:15 14:11
predictable 26:12
premise 13:17
prepared 55:7
present 19:25
presents 7:2 33:5
presumably 29:18
presume 31:9 49:24
presumption 50:12
primacy 29:8
principles 28:6
prior 18:1 21:10 37:2 38:13 39:9
prisoner's 42:10
probably 51:17
problem 7:4 12:11 13:2 17:11 19:23,24

28:4,25 36:23 41:7 49:20
procedural 29:7 31:15 32:8 37:16,21 39:16 39:18 45:23,25 55:15
process 3:23 4:19 8:15 10:8 12:4,6 25:14 25:19,19,21 26:4,6,17 27:7 27:9 29:16 32:13 33:21 34:12 36:24 41:14 45:3,17 46:1
processes 23:11
produced 44:12
produces 26:11
producing 36:21
prong 46:8
pronounce 45:15
proper 36:7
proportionality 26:14
proposition 17:5 17:12
propositions 9:24
prosecutions 36:1
protects 25:21
proven 38:3
provide 20:19 21:12
provided 14:6
provides 36:19 37:5 52:9
providing 24:18 34:11
provision 3:22 4:21 9:16 12:15 17:16 18:18 21:15 23:5,25 24:1,2 36:21,22
provisions 7:19 14:16 15:7,15 16:12,18,21,25 23:21 25:20
Public 1:16
punished 32:17
punishment 33:24 47:24
purely 28:23
purpose 27:1 34:4
purposes 26:8 28:21 30:5 47:20,21 48:7 52:17,22 53:5 53:10
put 27:5 33:3,6 33:7 35:10 47:14

Q

qualified 40:10
qualifies 39:6 55:22
qualify 3:14 14:11 21:17
qualitative 49:15
question 1:24 2:12 5:1,21 9:1 9:12 10:23 11:1 18:5 19:8 19:10,16 21:21 25:7,15 29:10 32:12 34:7 37:15 39:13 40:20 42:6 44:21 46:17 49:18 56:15
questions 25:11 53:18 55:6
quite 40:19 49:1

R

R 1:19 2:6 3:1 25:3
radical 52:18
radically 30:10 30:17
raise 53:17
random 14:16 15:2
range 11:20 14:8 18:9,12 18:20,20 25:16 25:25 26:21 27:8,10,16,20 27:24 28:4 29:21 32:17 37:4 39:12 51:22 52:6 53:14 54:24 56:1,1,8
ranges 41:1,3 50:17,18,19
rare 51:18 55:20
rate 27:20
rationale 50:11 51:4
reach 41:21
reached 19:9
read 5:3 29:1 34:19
real 21:21
really 10:21,22 16:24 28:25
reason 4:19 26:10 39:3 42:17 43:19 44:9 47:15
reasonable 29:18 31:10 49:24
reasonableness 33:19 50:11
reasoning 22:6
reasons 6:18 20:23 21:13 30:11 47:11 53:16
REBUTTAL 2:13 55:10
received 18:15 38:8
recidivism 35:25
recognized 11:17,19 30:24 31:11
reconcile 9:24
reconstruct 44:19
record-based 51:10
records 44:19
reduce 26:16
reduced 18:8
reduction 18:16 18:21 19:6
referendum 54:6
referred 46:21 48:2 50:16
refined 36:6
refinements 29:13 30:15
refines 31:7
reflect 54:9
reflects 27:12 49:25
Reform 12:16 29:3 35:17 46:23,24 47:2
regime 29:25
regulate 21:22
regulations 8:3
regulatory 24:4 24:5
reinforce 29:8
rejected 30:8
related 53:18
relatively 27:22
relies 12:13 24:14 26:17
rely 49:5
remained 27:22
remaining 24:25 55:9
remembers 29:25
rendered 15:13
repeatedly 11:5
reply 26:23 43:15
report 46:23 47:1
represent 44:1
require 25:20 52:6 56:2
required 14:8,9 38:14
requirement 38:20
requires 32:23 41:5
requiring 23:4 38:12
resentence 44:3
resentenced 18:18 38:7 42:24
resentencing 4:7 18:19,23 39:8 41:25 43:13,14 53:21,23
resentencings 53:19
reserve 24:25
residual 3:16,17 3:25 4:3,16,18 4:22 5:3 6:1,7 6:15,21 8:16 8:20,23 9:4 13:19 14:9 15:9,10,19 16:23 17:20,23 19:20 21:5 22:17,19 23:2 24:20 34:10,16 34:17 35:8,19 36:11,12,14,15 36:18 40:6 43:9 45:9 48:4 49:1 54:8
resolve 42:19
respect 7:9 14:6 15:4 23:20 24:3,10,12,22

41:13 47:23 53:2
respected 28:24
respecting 24:3
respective 13:1
Respondent 1:7 1:21 2:7 25:4
responds 32:21
responses 23:18
responsibility 56:16
result 29:4 44:12 45:10 47:24
results 26:12 31:25
retained 36:6
retribution 12:18
retroactive 4:1 25:9 38:6 39:23 40:8,9 42:8 44:23 45:4,5 46:2
retroactivity 25:8 28:19 32:12,14 39:17 41:21,23 42:7 42:13,20 43:4 43:5,7 44:9,21 45:16,22 55:13
reversible 52:20
review 19:15 25:9 33:19 42:6,9
reviewable 16:1
rid 54:7
right 4:11 11:11 11:23 16:3,18 20:2,3,3,12 28:20 30:18 32:11 40:25 45:13
riot 51:19
risk 5:5 7:2 15:12 33:5 37:23 38:3
Rita 29:14 31:11 49:23 50:12 51:4 54:20
Rita-Gall 55:4
ROBERTS 3:3 11:10,22 17:4 25:1 30:16 46:11,13 55:8 56:10,12
Rock 24:13
role 31:3 32:9,10
rule 25:8,14 32:16 37:16 39:16,17,18,22 42:7 45:3,17 45:23 46:1 48:11,13,22 49:6,12 55:14 55:15
ruled 15:7 43:7 43:7
rules 26:16 29:7 45:25 48:13
ruling 3:24 15:17 39:23 44:10
rulings 40:9
run 17:5

S

S 2:1 3:1
sample 43:17 53:22
satisfied 38:21
satisfy 14:21 34:12 48:12
save 49:5
saving 51:9
sawed-off 4:11 4:14 5:5,19 6:6 6:10,18,20 7:1 9:3 20:21 21:25 22:7,20 24:19 41:18 42:3 45:8 46:9
saying 12:14 13:13,24 14:2 14:4 32:8 35:21 38:18 49:3,4,14
says 9:16,19 42:5 48:5,11 49:23 53:7
scheme 10:3 11:4,8 12:4,10
scope 19:11
second 3:24 54:1
Section 13:8 35:15 36:4
see 14:16 17:10 19:12 20:2 49:13
seeking 31:1 36:8
seeks 25:8 32:20 42:8 45:17
select 26:20
selected 34:16
selecting 24:17 24:18
selection 27:11
Seminole 24:13
Senate 46:23 47:1
sense 25:21 34:21 37:21 52:24
sensible 33:23
sensibly 33:16
sentence 3:12,22 12:17,21,23 14:7,12 17:12 18:8,11,16,20 18:22 26:20 27:11 29:18 30:4,25 32:19 37:17 38:1,4,8 38:13,15,19 39:4,10 40:11 41:6 43:21,22 44:3,8,10 46:23 48:1,5,5 48:16,20 49:24 51:21 52:8,18 53:7 54:8,10 54:15,25 55:18 55:21 56:5
sentenced 3:14 37:24 54:2,20 55:2
sentences 11:19 11:21 27:17 30:22 31:10 43:2 50:9,17 50:21,24 54:9
sentencing 5:21 5:24,25 9:14 9:15 10:1,3,7,8 11:4,7,8,23 12:3,10,13,16 13:22 14:15 16:25 22:2 25:16,17,25 26:10,11,13,15 26:17,20 27:3 27:7,9,12,14 28:24 29:3,16 30:5,10 31:3,7 35:17 36:11,14 36:16 37:5,17 40:18 41:4 44:2,6 45:7 46:22,23,25 47:2,3,19,20 48:3 49:5,10 50:1 51:5,12 51:13,19 52:6 53:3,9 54:5,21 56:7
sentencings 44:20
sequence 45:20
serious 5:5 7:2 14:24 33:5 35:3,12
Seriousness 13:10
served 43:22
serves 30:5 37:4
set 29:3 34:19
sets 39:13
seven 3:13
severe 51:20
shapeless 3:21 3:21 36:21
shock 9:13
shotgun 4:11,14 4:17 5:6,11,13 5:19 6:6,10,18 6:21 7:1 9:3 20:21 21:25 22:7,20 24:19 41:18 42:3 45:9 46:9
shut 21:3
side 10:18,18 41:13
significant 3:23 15:11 29:15 56:3
significantly 27:23
similar 20:23
simplify 35:24
simply 21:18
simultaneous 9:4
single 47:25
sit 55:7
sitting 44:17
situation 22:10 23:14 39:1
situations 24:6 40:16,20
six 55:1
slightly 36:6
small 43:17
so-called 51:10
Solicitor 1:19
somebody 37:9 40:10
someone's 3:22 56:5
someplace 28:8
sorry 8:4 13:23 18:4 21:3 22:25 24:18 47:7

Sotomayor 8:14 8:21 9:1 15:16 15:24 16:7,16 18:24 19:2 21:20 22:9,23 23:6 37:14 38:9 39:2,12 39:21 40:12,15 40:19 42:22,23 43:3,12 44:7 44:11,14 47:7 47:10,13 53:18
sought 35:22 40:9
sounds 17:7
Spears 52:15
special 11:3,3 48:10
specific 13:6,13 13:18 15:11,25 35:1 41:5 52:7 55:19 56:2
specification 34:11
specifications 36:2
specificity 36:19
specified 45:8 46:6
spent 34:24
sponsoring 50:24
standard 15:12 16:10
start 25:13 46:20 55:12
starting 25:18
state 6:8 13:5 19:21 20:1 23:20,23 24:2
stated 6:19 8:9 11:5 13:18
statement 32:11
states 1:1,6,13 3:5 6:13 12:5 21:13 23:1 46:22 54:6 55:14
statistic 38:3
statistics 30:20
status 39:6
statute 4:24 5:2 5:6,8,12,14,19 7:15,20 13:8 14:18 19:11,18 20:16 23:8,13 23:15 33:8,9 34:4 37:13 53:7
statutes 19:21 19:25 20:1 26:2 36:9
statutory 23:25 28:4 34:1 40:24 41:2 50:9 51:11
steadily 11:11 30:17
step 20:7
Stinson 24:13
stop 44:23
stress 27:6
stricter 32:12
structured 40:2
struggled 21:9
studied 28:25
style 55:4
subject 22:3,13 28:16,17 47:21 49:2 53:10,13
submission 40:5
submit 9:25
submits 3:20
submitted 9:8 45:2 56:17,19
substantial 18:16,22 19:6 37:23 38:2
substantive 3:25 19:15 31:15 39:17
successful 16:22
sufficient 20:22 48:6
sufficiently 11:7 14:20,21
suggested 53:21
suggesting 30:9
support 1:23 2:11 46:16 56:14
supported 40:9
suppose 4:23 5:2 28:22
supposed 14:6
Supreme 1:1,13 43:23 45:15
sure 6:3 50:9,22
surely 28:16
susceptible 17:9
sweeping 13:12
switched 35:18
Sykes 21:10
system 10:16,17 12:16,21 14:3 27:5,6,14 29:19 33:22 41:24 47:3
systematically 10:7
systemic 45:12
systems 13:5

T

T 2:1,1
take 26:6 29:1 38:2,10 40:3 51:15 54:16
taken 28:11 56:7
takes 30:13 31:6
talk 13:9
talked 54:16
talking 28:19 33:4 34:8 48:23 49:16 51:2
Teague 42:5,15
tell 32:25
telling 13:5 48:13
tells 21:25
ten 29:22,23
tends 27:17
tension 31:13
term 6:9,23 14:13
terms 8:1 22:5 33:24
test 32:12,14,20 38:23 39:14,15 55:16
tests 31:21
text 6:7 7:6,13 8:5,6,7,24
Thank 20:4 25:1 46:11,12 55:8 56:10,11
theory 52:18
thing 15:17 20:12 21:23 32:24 53:17
things 3:20 6:24 35:2 54:11,13 56:6
think 10:13 11:2 14:20 19:17,23 25:12,14,18 26:8 29:5 30:4 30:9,19 31:16 31:20,24 32:11 32:25,25 34:9 34:21,22,24 35:23 36:7 40:15,17,25 44:1,12,22 45:1,3,6,12 46:2 47:18 48:4,8 49:8,14 52:13
thinking 20:12 41:20
thinks 37:7 42:18 45:5,18
third 4:3 41:15 41:15,20 54:4
thought 17:6 41:16
thousands 19:21 41:24 42:20
three 3:20 6:8 6:14 19:19 20:17
threshold 25:7 39:14 42:6 48:10
throw 48:21
time 3:13 8:16 22:13 24:25 34:25 35:7 43:22
times 11:16
tiny 43:17
today 10:18 29:11 42:21 54:12
told 54:21
toss 17:11,13,16
total 53:20
totality 41:9
touchstone 26:6
Townsend 12:5
traditional 25:15 26:10,11 26:17
TRAVIS 1:3
treated 32:2 37:8
trend 30:21
tried 19:20
tries 13:6
true 24:12 45:5 48:9 50:3 55:1 55:24
try 38:10 48:15
trying 21:22 49:15
Tucker 12:5
tweak 35:20
twenty 20:17
two 9:24 23:18 31:19,21 34:3 35:12 36:14
type 30:4
typical 16:14

U

U.S 44:18
U.S.C 13:9
uncertainty 17:17 36:22
unconstitutio... 13:14
unconstitutio... 9:20
understand 10:24 40:22
understanding 39:20
understood 47:2
undertaking 17:25
unduly 9:13
uniform 26:11
unintelligible 3:18 13:20
unique 15:14 16:24
United 1:1,6,13 3:4 12:5 46:22 54:6
unrepresentat... 43:17 53:22
unusual 16:23
upward 55:25
urge 41:23
urging 41:25
use 6:25 10:5,19 16:13
useful 25:13
uses 15:10

V

v 1:5 3:4 12:5,5 38:11
vague 9:20 10:2 10:5 12:1,11 15:7,13 17:13 17:22 19:18,19 23:8,15,15,16 24:21 25:20 31:25 34:23 36:16 37:12,13 44:24,25 45:9 47:22 48:7 49:1,4 52:4 53:8
vagueness 3:25 7:4,8 13:8 14:17,21 15:5 15:5,13 16:17 16:20 17:10 20:16,23 23:12 26:4,9 27:1 28:4,6,16,17 28:18,21 31:22 32:4 33:25 34:12 41:19,21 43:8,9,11 45:7 46:3,5 47:21 49:2 53:11,13
vaguer 9:23
vaguest 11:24
valid 5:9,17
value 26:13
values 47:14,16
variance 41:10
variety 19:22 51:16
vary 19:21
varying 30:14
vast 38:7 39:7 43:25
version 30:7
versus 34:3,4 49:10
view 25:11 36:24 43:16 44:1 45:8,21
viewed 33:14,15 34:9
views 27:12
violates 4:19
violence 4:5 6:9 6:24 9:5 21:24 34:12 35:11,15 35:16 37:2,10 51:18
violence-free 51:18
violent 22:9
virtually 40:22
void 3:25
voiding 4:3

W

wait 43:23
waiting 42:21 43:18
wake 45:13
want 9:13 43:23 46:20 49:17 52:3 54:11
wanted 42:16 53:17
Washington 1:9 1:20,22
wasn't 10:12 15:16 35:9 44:8 47:7
watershed 39:16 39:18
way 3:23 11:8 13:2 15:14 16:15 19:13 20:4,15 24:23 26:3 32:18 36:7 37:10 52:12 54:9,11
ways 6:5 19:22 35:6
we're 18:7 21:22 33:3 34:8 49:15 54:10
we've 23:8,15 53:4
weekend 30:21 34:25
weight 49:21,22 50:14 51:2 52:1,11,21,23 53:15 54:18,23
Welch 32:16 40:5,21 45:24 55:17
wings 42:21
within-Guidel... 49:24
within-Guidel... 54:24
within-range 29:18 30:22 31:9
words 7:13,16 7:19,24,24 8:5 8:6 13:19 19:11 24:9,10 33:3,6,25 34:19
work 49:5
works 33:23
worrying 49:7
worse 10:6 48:22
wouldn't 15:14
written 26:3

X

x 1:2,8

Y

yeah 20:2,2
years 3:13 9:18 11:16 12:17 14:13 29:23,23 44:20 55:1
York 47:15
youths 38:18

Z

zero 12:17

0

1

1 51:13
10 40:8
10:03 1:14 3:2
11:05 56:18
15 40:8
15-8544 1:4 3:4
16(b) 35:15 36:4
1790 26:1
18 13:9 35:13
1984 52:3
19th 26:2

2

2 1:24 2:12 26:23 46:17 48:7 49:18 52:2,3,7,17,22 53:5,10,15 56:15
20 9:18 12:17
2004 9:7,9
2011 27:20
2015 50:20
2016 1:10
216 18:8,14
25 2:7 50:19
262 18:12
28 1:10

3

3 2:4
30 50:23
327 18:12
3553 13:8
3553(a) 31:5 48:4 50:1 51:4 54:22
3553(a)(2) 47:19

4

40 18:21 19:2,6
46 2:12

5

55 2:15 23:7
57 23:8

6

7

75 50:18

8

80 27:23 30:22 38:3 50:16
85 30:1
88 43:15 53:20

9 **994(h)** 50:6				