

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 SAMUEL JAMES JOHNSON, :

4 Petitioner :

5 v. : No. 13-7120

6 UNITED STATES. :

7 - - - - - x

8 Washington, D.C.

9 Wednesday, November 5, 2014

10

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

14 APPEARANCES:

15 KATHERINE M. MENENDEZ, ESQ., Assistant Federal Defender,
16 Minneapolis, Minn.; on behalf of Petitioner.

17 JOHN F. BASH, ESQ., Assistant to the Solicitor General,
18 Department of Justice, Washington, D.C.; on behalf of
19 Respondent.

20

21

22

23

24

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	KATHERINE M. MENENDEZ, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF	
6	JOHN F. BASH, ESQ.	
7	On behalf of the Respondent	26
8	REBUTTAL ARGUMENT OF	
9	KATHERINE M. MENENDEZ, ESQ.	
10	On behalf of the Petitioner	50
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 (11:04 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next in Case 13-7120, Samuel Johnson v. United
5 States.

6 Ms. Menendez.

7 ORAL ARGUMENT OF KATHERINE M. MENENDEZ

8 ON BEHALF OF THE PETITIONER

9 MS. MENENDEZ: Mr. Chief Justice, and may it
10 please the Court:

11 Mere possession of a short-barreled shotgun
12 is not a violent felony within the definition of the
13 Armed Career Criminal Act's residual clause because it
14 is neither similar in the degree of risk nor similar in
15 kind to the enumerated offenses set forth in the
16 language that immediately precedes that clause. And
17 this Court has repeatedly held that those enumerated
18 offenses provide important both qualitative and
19 quantitative parameters to lower courts in examining
20 whether a particular predicate offense counts as a
21 violent felony.

22 Just 6 years ago in *Begay*, this Court made
23 clear that the enumerated offenses must be similar --
24 I'm sorry, a question predicate offense must be similar
25 in kind to one of the enumerated offenses as well as

1 similar in degree of risk. And when that proper
2 framework is applied to the question of mere possession
3 of a short-barreled shotgun, it satisfies neither test.

4 JUSTICE GINSBURG: Should the Court --
5 should the Court take into account that in the
6 sentencing guidelines a possession of a short-barreled
7 shotgun is ranked under career, is under the career
8 offenses?

9 MS. MENENDEZ: Your Honor, in Guideline
10 Amendment 674 in 2004, which Your Honor asks about, the
11 Sentencing Commission included mere possession of an
12 unregistered short-barreled shotgun or possession of a
13 short-barreled shotgun as a crime of violence. But it
14 did not do so after an examination of the empirical data
15 or an assessment of the pool of data that gives us great
16 confidence in the Sentencing Commission's decisions.

17 In marked contrast, Your Honor, in 1991,
18 when the Sentencing Commission adopted Amendment 433
19 that concluded that being a felon in possession of a
20 firearm should not count as a crime of violence under
21 the guidelines, it reached that conclusion after an
22 extensive examination of empirical data. The difference
23 between the adoption of those two amendments highlights
24 the reason that the Sentencing Commission's decision on
25 this point does not deserve deference in this case.

1 An additional consideration, Your Honor, is
2 that in making that decision in 2004, the Sentencing
3 Commission was not anticipating the guidance that this
4 Court provided in James, Begay, Chambers, and Sykes, and
5 it doesn't engage in any of the proper analysis. So
6 whether we look at it as the Sentencing Commission not
7 serving their traditional role as factfinders and the
8 keepers of empirical data or whether we acknowledge the
9 fact that it preceded very important guidance from this
10 Court, I don't think it controls this Court's decision.

11 JUSTICE SOTOMAYOR: Is it --

12 JUSTICE ALITO: Is it possible --

13 JUSTICE SOTOMAYOR: I'm sorry.

14 JUSTICE ALITO: Is it possible for any
15 possession offense to qualify as a violent felony?

16 MS. MENENDEZ: Your Honor, I believe it
17 would be possible for a very rare possession offense to
18 qualify as a violent felony if the possession alone
19 presents a serious potential risk of injury.

20 Respectfully, I believe the flaw with the other side's
21 position in this case is their entire analysis is based
22 not on the risk inherent in the mere possession, but on
23 the risk inherent in committing a further violent crime
24 with that weapon. And so I believe that any mere
25 possession of a firearm, including a short-barreled

1 firearm, is not going to satisfy the definition.

2 JUSTICE KAGAN: But if I understand the
3 government's argument, it's that there's a very strong
4 correlation between possession in this case and use for
5 criminal purposes of a kind that clearly would pose a
6 risk of -- of violent conduct and injury. So are you
7 saying that we never can take that kind of correlation
8 into account, that possession crimes just have to be
9 treated in a box, and we can't think about whether the
10 possession of something increases the risk of use which
11 then will pose a serious risk of injury?

12 MS. MENENDEZ: Your -- Your Honor, my
13 response is twofold. First, although the government has
14 asserted that correlation, they have not substantiated
15 it in any way. And there's no data before the Court
16 that supports the claim that merely possessing a
17 short-barreled shotgun is somehow connected with
18 frequent or even regular use.

19 JUSTICE KAGAN: So -- so that seems right,
20 that it's a question to pose to the government. It's
21 like, what's in back of this correlation? But is your
22 argument, then, they haven't made their empirical case
23 or even if they had lots of statistics, it still
24 wouldn't be enough?

25 MS. MENENDEZ: And that is correct, Your

1 Honor. I think even if they had made the empirical
2 case, it wouldn't be enough. And here's why.

3 JUSTICE SCALIA: is there any other
4 use for a short-barreled shotgun?

5 MS. MENENDEZ: Your Honor, as many as 40,000
6 Americans have purchased these weapons legally,
7 registered them lawfully and have found that they serve
8 some purpose. Whether that purpose is in hunting for a
9 person of a smaller stature or home defense, the
10 question before the Court is not whether there is some
11 reason to have them. Many people believe there is. The
12 question is whether merely possessing such a weapon is a
13 violent felony. And with due respect, Your Honor, I
14 don't think there's any support for the assertion that
15 these are somehow uniquely more dangerous.

16 JUSTICE SCALIA: People have purchased this
17 even though it's criminal to possess it?

18 MS. MENENDEZ: It is not, Your Honor. In
19 fact, it's fully lawful to possess a short-barreled
20 shotgun in many States as long as it's registered
21 federally, somebody passes a background check, and pays
22 a \$200 tax. And the government's own statistics
23 document, Your Honor, that as many as tens of thousands
24 of Americans have followed those processes in order to
25 legally purchase or own one of these weapons. And, in

1 fact, I was surprised in doing the research for this
2 case that you can get these on line in States where
3 their possession is legal as long as you comply with the
4 Federal regulations.

5 JUSTICE SOTOMAYOR: How many States is it
6 illegal, do you remember?

7 MS. MENENDEZ: Your Honor, I believe there's
8 10 States that outright ban possession regardless of
9 compliance with Federal regulations. And then in the
10 remainder of the States, the question is whether, if its
11 possession is legal in compliance with either State
12 registrations or always in compliance with the Federal
13 registrations.

14 JUSTICE SOTOMAYOR: Just a factual question.
15 On his plea for this possession, was he charged with
16 another crime?

17 MS. MENENDEZ: Yes, he was, Your Honor. He
18 was charged with a -- a marijuana-related crime. And
19 both of those were pleaded guilty to with Alford pleas,
20 Your Honor.

21 Your Honor, I think the question is how much
22 speculation is permitted. And as Your Honor correctly
23 points out, it is our position that even if the
24 government brought forth better data, that still
25 wouldn't justify allowing mere possession to count as a

1 crime of violence. The reason, I think, is inherent in
2 this Court's jurisprudence from James, Begay, and the
3 other cases. We have to begin this with a consideration
4 of the elements. In fact, in the James case --

5 JUSTICE ALITO: But you said that a
6 possession offense could qualify. So if someone
7 possesses a nuclear bomb, that could qualify?

8 MS. MENENDEZ: Your Honor, I think that
9 might be --

10 JUSTICE ALITO: A biological or chemical
11 weapon, that could qualify?

12 MS. MENENDEZ: And I think that is the
13 precise thing that could qualify. And here is why, with
14 due respect, Your Honor. Possessing a biological or a
15 chemical agent, by itself, presents a substantial risk,
16 just alone, even if it's under your bed.

17 JUSTICE ALITO: Well, how do we know that?
18 You -- you could make the same argument that you've just
19 made, that we don't know what the -- the risk is that
20 this will, in the case of a biological weapon, the risk
21 that it will cause an infection unintentionally. We
22 don't know that. That statistic is no more available
23 than the statistic on sawed-off shotguns, is it?

24 MS. MENENDEZ: Your Honor, I suspect that we
25 would be better able to document the certainty that even

1 doing nothing more than possessing such an item --

2 JUSTICE ALITO: How would you do that?

3 You'd look at all the -- you try to -- to identify the
4 universe of people who have possessed biological weapons
5 and see how many times somebody has gotten infected
6 unintentionally?

7 MS. MENENDEZ: Your Honor, that -- that
8 might be appropriate, or perhaps the science alone. But
9 that demonstrates the difference with this. This is no
10 more dangerous than any other firearm if it's kept in a
11 locked gun safe, kept in a closet, kept under a
12 mattress, under a bed or any of the other myriad places.
13 We've highlighted for the Court 14 different cases on
14 page 14 of our reply brief where such a weapon was found
15 in completely nonviolent circumstances, somewhere in a
16 home or even in a trunk, in a locked gun safe.

17 JUSTICE ALITO: So you would say the same
18 thing about any weapon.

19 MS. MENENDEZ: Any firearm for certain, Your
20 Honor.

21 JUSTICE ALITO: Any firearm? Mortars?

22 MS. MENENDEZ: I'm sorry?

23 JUSTICE ALITO: Mortars? Artillery pieces?

24 MS. MENENDEZ: Your Honor, I think mere
25 possession does not pose the kind of substantial risk

1 that this statute is talking about. I think that when
2 we get into the very, I'm sure, hypothetical instance of
3 the bomb that's inherently dangerous, like a biological
4 agent, that might be different even untouched, Your
5 Honor.

6 JUSTICE ALITO: Rockets would not be --
7 illegal possession of a rocket, that wouldn't be a
8 violent felony in your submission. Maybe that's right.

9 MS. MENENDEZ: I believe that's correct,
10 Your Honor.

11 JUSTICE ALITO: That's correct.

12 MS. MENENDEZ: I believe that using a rocket
13 in a crime of violence or in any other circumstance
14 would be. And, in fact, Your Honor, I think that in
15 many of these cases, for instance possession of a
16 biological agent or a nuclear weapon, the person would
17 likely be charged with some sort of terrorism offense,
18 which would, by itself, trigger the Armed Career
19 Criminal Act if they were free to go on and commit
20 future crimes, which I -- I somewhat doubt.

21 In this case, though, I think there's
22 nothing different about mere possession of a
23 short-barreled shotgun as compared to other firearms
24 that could be simply possessed. They are simply not
25 enough.

1 Your Honors, this Court's jurisprudence
2 clearly requires a categorical assessment of the
3 question, not an imagining of what further crimes could
4 ever happen as a result of the offense, but a looking at
5 what comes from the elements itself. I'd encourage the
6 Court to remember its decision in James. In James, the
7 Court first examined the elements of the burglary, the
8 attempted burglary statute in question, and noted that
9 mere possession of burglary tools was not enough to
10 constitute a violation of that attempted burglary
11 statute. And in part, because an overt act toward
12 entry, which presented the same sort of risk as the
13 burglary itself was present, the Court found that that
14 could present a risk sufficient to trigger the residual
15 clause.

16 This is very different. This is much more
17 like mere possession of the burglary tools, which would
18 not be enough, than it is completing an additional overt
19 act.

20 Your Honor, the government uses the Court's
21 language of ordinary case to invite this Court to engage
22 in substantial speculation about someone -- what someone
23 might do with a short-barreled shotgun. And with due
24 respect, I don't believe that was the purpose of the
25 ordinary case doctrine whatsoever. In fact, in James,

1 the ordinary case doctrine was borne not to enable
2 rampant and creative speculation, but to limit rampant
3 and creative speculation.

4 JUSTICE BREYER: But what you have -- what
5 were the numbers, if they're there, about how many
6 people are injured as a result of possession of a
7 short-barreled shotgun?

8 MS. MENENDEZ: There are no statistics.

9 JUSTICE BREYER: So we have absolutely no
10 idea?

11 MS. MENENDEZ: We have -- we have no
12 statistics that demonstrate, Your Honor, a correlation
13 between mere possession of a short-barreled shotgun
14 and --

15 JUSTICE BREYER: That's not what I'm
16 thinking of. I'm thinking of do we have a statistic
17 that says how many people are injured, forgetting how --
18 whether it's possession or not possession or anything
19 else?

20 MS. MENENDEZ: We don't have that, either,
21 Your Honor. We do have statistics offered both in our
22 brief and some reference in opposing counsel's brief
23 about how short-barreled shotguns are at most a de
24 minimis, de minimis percentage of harm from weapons in
25 general across the country, but that doesn't answer Your

1 Honor's question. And Your Honor, I think that that is
2 precisely why the Begay formulation remains very
3 important in this case.

4 This case, unlike Sykes, which had an ample
5 amount of data, although I think we could discuss at
6 length how useful that data is and how much data can be
7 manipulated, but there was a great deal of data
8 documenting deaths and injuries. And therefore, this
9 Court found that the examination of the nature of the
10 offense and whether it was purposeful, violent or
11 aggressive was redundant. That's not the case here,
12 Your Honor, because we don't have the statistical
13 analysis to make the risk assessment easy.

14 I do think, though, that common sense weighs
15 heavily in favor of Mr. Johnson. And that is, as Your
16 Honor indicated in the Doe opinion many years ago on the
17 First Circuit, that merely possessing something is a
18 very far cry from using it in a crime. And the
19 government's entire analysis requires this Court to
20 assume that these weapons are most commonly possessed
21 only for the purpose of being used in a crime. That's
22 simply not supported by the data, and it's not even
23 supported by the case law provided by the government.

24 JUSTICE SOTOMAYOR: I'm sorry. Do we know
25 how many possession crimes have been prosecuted,

1 possession for short-barreled shotguns?

2 MS. MENENDEZ: I don't have that statistic,
3 I apologize, Your Honor. I can say that, having been an
4 assistant Federal defender for quite a long time, we
5 don't see these very commonly, but we do see people
6 prosecuted for possessing a short-barreled shotgun
7 that's not federally registered. It's not an incredibly
8 frequent crime.

9 However, this has greater implications,
10 obviously, Your Honor, because approximately 600 people
11 every year suffer the greater penalties of the Armed
12 Career Criminal Act as a result of enhancements such as
13 this.

14 JUSTICE SOTOMAYOR: That's what I mean.
15 It's about 600 a year?

16 MS. MENENDEZ: 600 ACCA cases each year,
17 more or less, Your Honor.

18 JUSTICE SOTOMAYOR: More or less. So we're
19 talking about 35,000 people or 40,000 who own the
20 shotguns legally.

21 MS. MENENDEZ: Oh, I apologize, Your Honor.
22 I -- I provided Your Honor an incorrect statistic. I'm
23 talking about people whose current conviction is for
24 felon in possession, triggering the Armed Career
25 Criminal Act.

1 JUSTICE SOTOMAYOR: I see what you mean.

2 MS. MENENDEZ: I apologize. I -- I do not
3 know how many people nationwide are prosecuted for
4 violation of one of the several States that outright
5 bans these or for violating some other portion. I do
6 know that they're not very common in the State of
7 Minnesota, which is where our statute arises.

8 Your Honors, it's also important to keep in
9 mind that in Minnesota as well as almost every place
10 else that this is criminalized or criminalized if not
11 properly registered, that constructive possession of the
12 weapon alone is enough to make somebody guilty. This
13 doesn't have to be on or near their person. It
14 certainly need not be used in a crime or possessed with
15 the intent to use it in a future crime. And, in fact,
16 some of the cases that we've proffered to the Court
17 involve possessing this in nothing more than a locked
18 gun case. That is simply not the sort of active,
19 purposeful, violent and aggressive or risky conduct that
20 the Armed Career Criminal Act's residual clause is
21 designed to apply to.

22 JUSTICE KAGAN: When you say "constructive
23 possession," what does that mean?

24 MS. MENENDEZ: That means where you don't
25 have an item directly on your person, Your Honor, but

1 you have the intent, at least in the Eighth Circuit,
2 it's the intent to exercise dominion and control and the
3 power to do so. So, for instance, I have constructive
4 possession of the items in my briefcase, even though I
5 don't have them with me and I have constructive
6 possession of items in my home, even though that's back
7 in Minnesota. And so that demonstrates, Your Honor, the
8 broad application of mere possession crimes and how far
9 removed they can be from the parade of horrors, with
10 due respect, that the government suggests these are
11 inherently intrinsically tied to.

12 Your Honor, I'd also invite the Court to
13 examine closely the cases cited by opposing counsel in
14 their brief, because while they do cite 16 cases in
15 their brief in which mere -- I'm sorry, in which
16 short-barreled shotguns were used in violent crimes,
17 it's important for the Court to note that in only two of
18 those cases was there actually a conviction for a
19 weapons offense or mere possession of a weapon. So in
20 only two of those cases was the prior offense actually
21 before the Court today even being considered.

22 In the other 14, and indeed also in those
23 two, the person was convicted of the far more serious
24 crime of violence that the weapon was used during,
25 ranging from assault to capital murder. And as Justice

1 Gruender, in his dissent in the Vincent case in the
2 Eighth Circuit made very clear, in such a case, that
3 much more serious offense would readily trigger
4 application of the Armed Career Criminal Act and we
5 wouldn't need to resort to the overinclusive
6 interpretation proffered by the Government.

7 JUSTICE ALITO: What are -- what do you
8 think is the basis for a State legislature's prohibiting
9 the possession of a short-barreled shotgun or a
10 short-barreled shotgun that is not properly registered?

11 MS. MENENDEZ: Your Honor, I can't say what
12 all the State legislatures' bases were, although I would
13 note that Michigan just last year changed its mind and
14 made these lawful. But I think that many State
15 legislatures, and indeed Congress in 1934 when it
16 decided to regulate these weapons, were persuaded by at
17 least the reputation of this gun, that it was associated
18 with gangster activity in the Prohibition era.

19 With due respect, although I am not at all
20 disagreeing that States are within their rights to ban
21 possession of this weapon, that reputation is somewhat
22 dated, and in fact today, you can get far more lethal
23 and far more intimidating weapons without even
24 triggering the application.

25 JUSTICE ALITO: Well, do you think that

1 those State legislatures came to the conclusion that
2 there was a strong correlation between the possession of
3 a short-barreled shotgun and the use of that weapon in
4 committing crimes?

5 MS. MENENDEZ: I think they may have come to
6 that conclusion. I'm unaware of them doing so based on
7 data, Your Honor, including the Minnesota Act. I am
8 unaware of even the National Firearms Act, when it was
9 adopted in 1934, relying on actual statistics about the
10 danger presented by this weapon --

11 JUSTICE ALITO: Do you think Congress --

12 MS. MENENDEZ:: -- as opposed to --

13 JUSTICE ALITO: -- had statistics before it
14 when it listed the specifically enumerated offenses in
15 the Armed Career Criminal Act? Is this the sort of
16 thing with respect to which it is reasonable to expect
17 that there will be empirical evidence, or is this the
18 sort of thing, the sort of decision that legislatures
19 make based in -- on an impressionistic way and taking
20 into account common sense?

21 MS. MENENDEZ: Your Honor, I don't know
22 whether Congress, when it passed the residual clause,
23 assumed that we would come to such statistical analysis
24 of the --

25 JUSTICE ALITO: Well, when they said

1 burglary is a violent offense, do you think they had
2 statistics about the percentage of all burglar -- of all
3 burglaries that occur within the United States that
4 result in violence?

5 MS. MENENDEZ: I don't believe so, Your
6 Honor. I think burglary motivated the Armed Career
7 Criminal Act in the first place. Burglary and robbery
8 seem to be the two -- the two predicate offenses that
9 most specifically the court -- I mean, I'm sorry,
10 Congress intended to include as triggering prior
11 offenses. Why? I think it's because they had the
12 belief that an armed burglar would be more dangerous
13 than an unarmed burglar and wanted to capture people who
14 were repeat and persistent property offenders who would
15 then later possess a gun.

16 JUSTICE ALITO: Well, if that is a
17 reasonable conclusion for the national legislature to
18 reach in enacting the Armed Career Criminal Act, why is
19 it not equally defensible for a State legislature to
20 make the same decision with respect to the illegal
21 possession of a sawed-off shotgun?

22 MS. MENENDEZ: It's absolutely appropriate
23 for them to make that decision. That should not control
24 this Court's decision about whether merely possessing
25 that unlawful weapon is a violent felony. That decision

1 has to be governed by the residual clause language, and
2 it doesn't satisfy --

3 JUSTICE ALITO: Do you think that that
4 judgment on the part of legislature is entitled to any
5 respect from this Court?

6 MS. MENENDEZ: Your Honor, certainly it
7 matters that some legislatures have chosen to ban it,
8 but I think it matters even more that most legislatures
9 and the United States Congress do not outlaw this
10 weapon. They permit it to be possessed when lawfully
11 registered. And even in 19 --

12 JUSTICE ALITO: Well, that's what I'm
13 talking about, the cases where it is possessed
14 illegally, either because it is flatly banned or that it
15 is possessed by somebody who will not register it for
16 whatever reason, very possibly because that person
17 doesn't want it known that he or she possesses the
18 weapon.

19 MS. MENENDEZ: Certainly, Your Honor. Or
20 because they're unaware of the registration requirement,
21 which in almost every State will nonetheless make it a
22 criminal conduct, or because they're unaware of the
23 characteristics of the weapon that require it to be
24 registered, which in some States doesn't protect one
25 from the conviction.

1 Your Honor, I think it's important, if we're
2 using the opinion of legislatures and Congress to help
3 us determine whether this is a violent felony, it's
4 important to recognize that it is widely legal.

5 But you are right that the question before
6 the Court is the unlawful possession and whether
7 unlawful possession of a firearm is a violent felony.

8 JUSTICE BREYER: What should we do if we
9 think that the reason that the legislature has made
10 possession unlawful is because the legislature believes
11 that possession will lead to a risk of physical injury?

12 MS. MENENDEZ: Your Honor, I don't think
13 that answers the question. I think the question has to
14 be grounded in the residual clause, and the residual
15 clause requires not just the possibility of future
16 injury, but that the offense itself, when examined
17 categorically and based on its element, creates a
18 substantial --

19 JUSTICE BREYER: Well, it says -- it says if
20 I use those words, I could repeat the same question and
21 say the reason that the legislature makes it unlawful to
22 possess a sawed-off shotgun is because the legislature
23 believes that the possession, that's the crime, presents
24 a serious potential risk of physical injury to another.
25 That's why they made it unlawful. What other reason

1 could there have been? And therefore, their judgment is
2 the same words that the statute uses, but for the word
3 otherwise.

4 MS. MENENDEZ: Your Honor, I -- I -- I don't
5 think there's any suggestion that either the Minnesota
6 legislature or the other minority legislatures that have
7 reached that conclusion did so based on an understanding --

8 JUSTICE BREYER: What other reason would
9 they have had for making possession unlawful?

10 MS. MENENDEZ: Because I think there's a
11 strong belief that firearms in general are unlawful,
12 that certain types of fire are -- are dangerous, that
13 certain types of firearms are more dangerous than
14 others, and that's appropriate. We aren't saying these
15 should be legal. We aren't saying these are --

16 JUSTICE BREYER: No, I'm just saying what
17 other reason could they have had for making this a
18 crime, the possession --

19 MS. MENENDEZ: Perhaps --

20 JUSTICE BREYER: -- unless they thought that
21 possession presents a serious potential risk of physical
22 injury to another? I'm not suggesting an answer. I
23 want to know what your answer is.

24 MS. MENENDEZ: Perhaps they were, in fact,
25 adopting a different standard which is: We, as the

1 Minnesota legislature, hypothetically, are going to ban
2 this weapon because we believe that it is somewhat more
3 dangerous than other weapons, and we would prefer it is
4 not possessed. I don't think we can assume that they
5 went this far, and this is the question the Court has to
6 answer.

7 Also, Your Honor, the Michigan legislature,
8 for instance, obviously disagreed when they recently
9 changed their law to no longer prohibit mere possession
10 of a short-barreled shotgun.

11 I do think it is a recognition, Your Honor,
12 that legislatures think these are dangerous weapons, and
13 they are dangerous weapons, but that does not make their
14 mere possession violative of the residual clause of the
15 Armed Career Criminal Act. I think it's very important
16 in every case that we tie the examination not to a
17 possible thing that could be done with the gun in the
18 future, but to the actual risk presented by mere
19 possession. In the same way that in the James case the
20 Court was motivated by the fact that something more than
21 mere possession of burglary tools was required, here
22 something more than mere possession of the weapon should
23 be required.

24 We would be having a much different
25 conversation if we were talking about a different part

1 of Section 924 of Title 18, 924(c), which penalizes
2 using a weapon, even a short-barreled shotgun, during a
3 crime of violence. That could certainly be a violent
4 felony. But the mere possession --

5 JUSTICE GINSBURG: You pointed out in your
6 brief that explosives -- one of the enumerated crimes is
7 use of explosives, but is no -- anywhere a crime of
8 possession.

9 MS. MENENDEZ: That's correct, Your Honor,
10 and I'm glad you reminded me because that was an
11 important point for me to make, is that when we look at
12 these enumerated offenses as providing guidance for the
13 residual clause, it is very important that Congress
14 adopted use of explosives rather than possession. And
15 in fact, in the legislative history, in 1986, they gave
16 examples of the sorts of things they believed would be
17 included by that provision, and it was not mere
18 possession of explosives.

19 JUSTICE ALITO: Has any legislature
20 prohibited the possession of explosives?

21 MS. MENENDEZ: I am sure that some have,
22 using certain language.

23 JUSTICE ALITO: They just flatly prohibited,
24 within our State, you cannot possess any explosives.
25 Has any legislature done that?

1 MS. MENENDEZ: I'm not aware of that, Your
2 Honor. I apologize, I don't know. I'm sure --

3 JUSTICE ALITO: Well, do you think it's a
4 possibility that there are States in which explosives
5 cannot be used for demolition purposes?

6 MS. MENENDEZ: No, I don't think that's
7 likely, Your Honor. But nonetheless, Your Honor, when
8 Congress was adopting this language, they chose to put
9 "use of" prior to the term "explosives." If they wanted
10 it to be more inclusive, they could have certainly made
11 it more inclusive. They did not. In fact, the examples
12 given were the use of explosives to destroy energy
13 facilities or transportation facilities.

14 I see that I -- will reserve the rest of my
15 time for rebuttal, if I might. Thank you, Your Honors.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.
17 Mr. Bash.

18 ORAL ARGUMENT BY JOHN F. BASH

19 ON BEHALF OF UNITED STATES

20 MR. BASH: Mr. Chief Justice, and may it
21 please the Court:

22 The ordinary case of possession of a
23 sawed-off shotgun is possession in connection with
24 serious criminal activity. That is the judgment that
25 Congress, State legislatures, this Court in Miller and

1 Heller, and lower courts have reached for 8 decades.

2 JUSTICE SOTOMAYOR: If that's the case, how
3 many charges do you have that are for mere possession,
4 not involved with an underlying crime?

5 MR. BASH: Most of these charges are brought
6 at the State level, so I don't have sort of the
7 comprehensive statistics. But what I will point out is
8 that Petitioner has now had two briefs to come forward
9 with examples of law-abiding citizens just kind of
10 caught up in this sawed-off shotgun regime.

11 JUSTICE SOTOMAYOR: She raises 14 cases in
12 her reply brief.

13 MR. BASH: If you look at all of those
14 cases, Your Honor, the vast majority of them, both cited
15 in the opening brief and in the reply brief, involved
16 people involved in other very serious criminal activity,
17 meth dealing, sexual abuse, assaults. So those cases
18 only verify what I think has been this Court's judgment
19 in Heller and Miller, Congress's judgment, the judgment
20 of State legislatures for a long time, that these are
21 exclusively used for unlawful purposes.

22 JUSTICE SOTOMAYOR: So why haven't they been
23 outlawed federally and why is it only a minority of
24 States that have outlawed their -- just their
25 possession, not their registration?

1 MR. BASH: Because I think what the National
2 Firearm Act reflects, and this was reflected in Attorney
3 General Cummings' arguments in favor of the law when it
4 was under consideration, is that if you're willing to
5 disclose your fingerprints and photograph to the Federal
6 Government and undergo a background check -- that's only
7 by regulation, but undergo a background check, it
8 dissipates the chance that you're going to be involved
9 in crimes.

10 Gang members, terrorists, and bank robbers
11 do not go around disclosing their fingerprints and
12 photograph to the government. So there are some
13 atypical gun collections who build collection of, I
14 think, rare firearms, and those are the sorts of
15 applications the ATF sees.

16 But I just want to emphasize the point
17 about, sort of, how many of these things are lawfully
18 registered. We made a good faith attempt at an estimate
19 in our brief, and it's 140,000 lawfully registered ever.
20 It appears that the vast majority of those are to law
21 enforcement agencies or to the manufacturers themselves.

22 Just by way of comparison, the Congressional
23 Research Service put out a gun control analysis in 2012
24 that estimated that there are currently 82 million
25 shotguns of all varieties, either in private hands or

1 available for purchase by private citizens. So the
2 number of -- whether it's 40,000, 50,000 ever, is a
3 vanishingly small number of sawed-off shotguns that have
4 been lawfully registered. I think --

5 JUSTICE GINSBURG: Wasn't there something in
6 one of these briefs that a manufacturer in States where
7 these weapons are lawful has advertised them as ideal
8 for use in self-defense?

9 MR. BASH: There is something like that in
10 one of the briefs. I don't think a manufacturer's, sort
11 of, market strategy should govern the analysis. It
12 certainly shouldn't refute this Court's judgment,
13 Congress's judgment, the judgment of State legislatures
14 for decades, that these weapons have no lawful uses.
15 And I am not aware of, for example, a spike in
16 applications for registrations for sawed-off shotguns to
17 the ATF, which you might expect to see if these weapons
18 were suddenly being in common use for self-defense.

19 I just wanted to address a point that I
20 think Justice Kagan raised with my friend, which was,
21 are we, sort of, solely relying on a correlative
22 relationship between the enumerated offense and the
23 potential for violence. I think it's a great deal more
24 than a correlative relationship. I think it's actually
25 precisely the same relationship between the crime and

1 the potential for violence present for burglary,
2 attempted burglary, extortion, which is to say this:
3 The enumerated crime enables the potential for violence
4 in a but-for causal sense, but the offender has to take
5 an additional act of volition to bring the violence to
6 fruition.

7 So, for example, with a burglary or an
8 attempted burglary, a burglar could say, if I'm
9 confronted by a homeowner or police officer, I am going
10 to flee. I am not going to attack anybody or I am going
11 to give up. The burglary enables that confrontation to
12 occur, but the offender has to take an additional act of
13 volition to actually bring violence to fruition.

14 JUSTICE KAGAN: I would think the analogy to
15 that is the person who uses the sawed-off shotgun in a
16 crime, but decides: I'm not going to shoot it. And
17 then you say: It doesn't really matter if you're not
18 going to shoot it; you just used it in a criminal
19 activity, that's enough for us.

20 But this is a good deal more attenuated than
21 that because this person could, for whatever reason,
22 maybe because he wants to commit a crime in the future
23 or maybe he's one of the odd collectors or people who
24 think that this is good for self-defense, this person
25 could have kept it in a locked closet, in a safe deposit

1 box, and never have brought it out and never have any
2 potential for use in a crime. I mean, it would be one
3 thing to say use in a crime causes enough risk of
4 serious injury, but this is a step further.

5 MR. BASH: I agree that a necessary premise
6 of our argument is that the ordinary case of possession
7 is possession in connection with crimes. So if you
8 don't buy that, we're in trouble. But you should buy
9 that. It's what this Court said in Heller when it said
10 short-barreled shotguns are not typically used by law
11 abiding citizens for lawful purposes.

12 JUSTICE KAGAN: But they are two separate
13 offenses, right, possession of this gun and use of this
14 gun. And you're converting the one into the other for
15 purposes of ACCA.

16 MR. BASH: And that makes total sense, and
17 let me explain why. If it wasn't like that, clause 2 of
18 the definition of violent felony -- it's at 11a of our
19 statutory appendix -- would do no work. The whole point
20 of that clause is to capture situations that were
21 pregnant with the possibility of violence but where the
22 apprehender was offended before the violence occurred.
23 If an offender used a firearm against somebody, he would
24 be squarely within clause 1, which is the use of force
25 or the threatened or attempted use of force against

1 somebody.

2 The whole point of clause 2 is when you
3 catch someone who put themselves in the position to do
4 violence but the violence didn't materialize on that
5 occasion, they still fall within clause 2, and that
6 makes sense because that sort of behavior is reflective
7 of the armed career criminal. I mean, this is the
8 weapon of choice historically, along with machine guns,
9 of the armed career criminal. So it would be kind of
10 odd if the illegal possession of this weapon didn't
11 satisfy -- didn't count as a predicate under the Armed
12 Career Criminal Act.

13 JUSTICE KAGAN: Do you think the same would
14 be true of a felon in possession?

15 MR. BASH: No, and I think that's an
16 important difference. I think the felon in possession
17 statute reflects a slightly different judgment. It's
18 the judgment that someone who has committed a felony,
19 whether it's a violent felony or, you know, bank fraud
20 or something, has revealed themselves to be an
21 irresponsible person who can't be trusted with a
22 firearm. I think in that sense, it's more prophylactic
23 in nature, but you certainly don't have --

24 JUSTICE KAGAN: I would think that in the
25 felon -- a felon in possession law, I mean, honestly,

1 I'm sure the numbers dwarf the sawed-off shotguns, and
2 the whole point of that is, yes, they're people who have
3 shown themselves to be irresponsible, who have shown
4 themselves perhaps to use weapons irresponsibly, and
5 they're going to do it again, and there's a pretty
6 strong correlation of a kind of recidivism that makes
7 Congress pass that law.

8 MR. BASH: I think that's an accurate
9 description of felon in possession, but there are,
10 nevertheless, felons who legitimately want a handgun,
11 which has been in common use for decades, for
12 self-defense or for target practice or whatever.

13 The judgment that this Court has rendered
14 and that Congress has rendered is that these weapons do
15 not have other purposes in the ordinary case, and I
16 think that distinguishes really a sawed-off shotgun
17 offense almost from any other --

18 JUSTICE BREYER: Where did Congress say
19 that? Where? Where? I mean, a felon in possession has
20 a gun, and you say he might keep it upstairs in his
21 closet, in the back of a car, in his hand, many places
22 he might possess it, and he might never use it for a
23 crime. Recognizing that, you say that doesn't fall
24 within the statute. Just substitute the words
25 "sawed-off shotgun." In the closet, back of a car,

1 glass case, maybe in his hand, maybe in somebody else's
2 hand. Maybe he just says to somebody: I have a
3 sawed-off shotgun up there; give me your money.

4 All right? All those things are possible
5 with either. And so since they're possible with either,
6 on what basis do we write an opinion that says that you
7 win with the sawed-off shotgun, but you lose with almost
8 every other kind of gun. What's our theory? What lines
9 would there be in that opinion?

10 MR. BASH: Here's the line. When you have a
11 firearm that has historically been exclusively
12 associated with violence, unlike a handgun, but just
13 like a sawed-off shotgun --

14 JUSTICE BREYER: My goodness, stop right
15 there for a second, because what we heard was there are
16 40,000 or more people in 10 States and others that don't
17 even make it unlawful. So how can we say it's more
18 associated with crime than, what, a handgun or a
19 regular -- or a torpedo? I don't know.

20 MR. BASH: I think we would contend that
21 unlawful possession of a torpedo --

22 (Laughter.)

23 JUSTICE BREYER: I realized you were going
24 to say that, and all I put that in was to express my own
25 lack of knowledge of which is which, and therefore I

1 can't just speak ex cathedra and say this. I would have
2 to have some proof.

3 MR. BASH: I understand the uncertainty in a
4 case without empirical data. It was the same
5 uncertainty that the Court had in James, where it said
6 we don't have empirical data to make the judgment. And
7 in both James and Sykes, the Court said at the end of
8 the day in some of these ACCA cases we need to rely on
9 our common sense judgment. But here I think what I hope
10 would be the Court's common sense judgment --

11 JUSTICE BREYER: Well, I don't -- I mean,
12 I've seen a lot of movies. James Cagney used to, but I
13 can't use that.

14 MR. BASH: Well, let me just say -- let me
15 just say where I -- where I think you can ground the
16 common sense judgment. We've set forward in the brief
17 Federal statutes, State statutes, the legislative
18 history, Senate and House reports saying these weapons
19 are exclusively associated with lawbreaking and crime.
20 There is a history of that. That's why they've been
21 regulated. And I think, to go to a colloquy that my
22 colleague was having with one of the members of the
23 bench, the judgment of State legislatures and the
24 Federal Congress is not something sort of to be cast
25 away as the product of superstition. State legislators,

1 Congresspeople, talk with their constituents, they speak
2 with law enforcement agencies. They exercise reasonable
3 judgment based on the facts on the ground when they
4 enact laws like this.

5 And I don't think it can be really disputed,
6 as Justice Alito was alluding to earlier, that those
7 legislatures have made a judgment that these weapons are
8 exclusively associated with crime. And I think that's a
9 much better factual record --

10 JUSTICE BREYER: We couldn't say the same
11 thing with a Saturday night special?

12 MR. BASH: I don't know. I'm not familiar
13 with the term.

14 JUSTICE BREYER: They used to be. A
15 Saturday night special is a kind of pistol that was
16 really used very, very heavily with robberies and
17 crimes. They were viewed -- that was one of the first
18 things that people tried to get banned after
19 assassinations and so forth.

20 MR. BASH: I'm not saying that our argument
21 couldn't apply to any other weapons. I imagine we'd
22 have a similar case on unlawful possession of machine
23 guns, for example.

24 JUSTICE SOTOMAYOR: How many --

25 JUSTICE BREYER: No, no. This isn't a

1 machine gun. It's a pistol, a handgun.

2 MR. BASH: We'd have to do the work. I
3 don't mean to cut off --

4 JUSTICE BREYER: No.

5 MR. BASH: We'd have to do the work. Here I
6 think we have done the work. We have a legislative and
7 judicial consensus over decades that these are
8 exclusively used in crimes.

9 CHIEF JUSTICE ROBERTS: But we -- but we
10 know that's not true. We know there are 40,000
11 registered that by -- and, you know, and you yourself I
12 think said or -- that if you're willing to give your
13 photograph and fingerprint or whatever to the Federal
14 Government, you're probably not going to use it
15 illegally. So we know it's not true that these are
16 exclusively used in criminal activity.

17 MR. BASH: Well, I think there's two points
18 in that. One was the point I was alluding to earlier,
19 which is not only that Congress thinks sort of this
20 process ameliorates the -- the normal effect of
21 possession of a sawed-off shotgun and that these are
22 actually registered in extraordinarily small numbers
23 relative to total gun population.

24 CHIEF JUSTICE ROBERTS: Well, what number
25 would be enough? I mean if we had 100,000

1 registrations, does that mean that it's no longer
2 conduct that presents a serious potential risk?

3 MR. BASH: I'm not sure. I want to give you
4 two answers to that question. I mean, the first is
5 that, as this Court said in James, the relevant data
6 point is convictions. So there's no convictions for
7 lawful possession of a sawed-off shotgun. The relevant
8 data point is how many convictions for unlawful
9 possession are associated with otherwise nonviolent
10 activity, and Petitioner hasn't really pointed to any
11 cases of sort of law-abiding citizens using them for
12 other reasons.

13 CHIEF JUSTICE ROBERTS: Well, then -- then
14 is possession, possession of explosives, an offense
15 under this enhancement provision?

16 MR. BASH: I think we'd run the same
17 analysis, and we talk about this at pages 47 to 48 of
18 our brief, which is to say explosives regulated by the
19 NFA, which are defined to be explosives designed as
20 weapons, yes, it's pretty much the same analysis we'd
21 run through which --

22 CHIEF JUSTICE ROBERTS: Even though the
23 statute -- even though the statute says use of
24 explosives is covered?

25 MR. BASH: And I don't think --

1 CHIEF JUSTICE ROBERTS: You'd say, well,
2 under the catch-all phrase, mere possession is covered.

3 MR. BASH: No. And there's no redundancy,
4 because -- maybe we explained this unclearly. What we
5 tried to explain is that the use of explosives would
6 encompass a felony conviction for the use of any
7 explosives. So there are felony convictions for the use
8 of TNT or dynamite, explosives that are not inherently
9 dangerous in character, but could be used unlawfully.

10 The possession offense under the reasoning
11 that we've set forth in the brief would apply to
12 weaponized explosives, those regulated under the NFA
13 because they're designed as -- as weapons, napalm and
14 things like that, not to the unlawful possession of TNT,
15 even though the unlawful use of TNT would fall under the
16 use of explosives statute provided as a felony. So I
17 don't think there's any redundancy created there.

18 And I guess just to wrap up this colloquy, I
19 think it's possible to imagine an alternative universe
20 where sawed-off shotguns developed as self-defense
21 weapons in ordinary use. In that case, the ordinary
22 case analysis would look very different. You would say,
23 well, maybe there are some people who unlawfully acquire
24 these, just like some people unlawfully acquire handguns
25 for self-defense. But this Court has never recognized this,

1 this Court said very clearly in Heller in
2 distinguishing Miller, that these are not in lawful use
3 by law-abiding citizens.

4 That's not the way the real world looks. In
5 the real world these are unlawfully possessed for use in
6 crime. And once you accept that proposition, the final
7 step of our analysis is that when these items are
8 brought to crimes, it seriously increases the chance
9 that someone is going to be killed or wounded. We've
10 set forth the characteristics of the weapon and the sort
11 of damage they do. I won't repeat that. But I don't
12 even really hear Petitioner to dispute that in the
13 ordinary case, when the -- in what we call the ordinary
14 case, when these are brought to crimes, they massively
15 increase the chance --

16 CHIEF JUSTICE ROBERTS: Well, that's a
17 second step, unlike the others. When you're engaged in
18 a burglary, the -- the risk is there. When it's mere
19 possession, the risk isn't there. You have to take an
20 additional step of taking it and using it in a crime.

21 MR. BASH: And I think burglary has the
22 exact same connection. Burglar -- maybe it's easier to
23 see it with extortion, but the same analysis would apply
24 to burglary. When you -- extortion, as defined most
25 narrowly, as Justice Scalia would have defined it in

1 James to be a threat of violence to person or property,
2 that itself does not create the possibility of violence.
3 It's only if the extortionist is willing to follow
4 through on the threat to take an additional step, just
5 like the additional step of using a firearm, that the
6 violence materializes.

7 So the sort of connection between the
8 underlying offense and violence that Congress had in
9 mind did contemplate an additional step by the offender
10 himself.

11 CHIEF JUSTICE ROBERTS: Well, or the
12 homeowner could happen to have a short-barreled shotgun
13 and shoot the burglar.

14 MR. BASH: But remember --

15 CHIEF JUSTICE ROBERTS: Then the violence
16 doesn't depend on any additional act by the burglar.

17 MR. BASH: It does, Mr. Chief Justice,
18 because the statute says violence to another. So if
19 the -- if the homeowner clocks the burglar, that's not
20 the violence the statute contemplates. And I suppose
21 you could imagine fanciful scenarios where the police
22 officer accidentally shoots the homeowner, but surely
23 that's not the sort of ordinary case violence that this
24 statute had in mind.

25 So I think --

1 CHIEF JUSTICE ROBERTS: So the parallel
2 you're drawing is that burglary itself doesn't present a
3 risk of violence until the burglar pulls a gun?

4 MR. BASH: Or -- or attacks the homeowner.
5 Like I said, I think it's most clear in extortion. I
6 mean, even -- the Court suggested in James that
7 extortion could be even much broader to include
8 blackmail and sort of prototypical extortion. But even
9 if we just accept Justice Scalia's view of extortion,
10 which is that it's a threat to person or property, there
11 must be some number of extortionists that say: Well,
12 I'm going to make the threat, but I'm actually not going
13 to follow through on the threat. And the violence --

14 JUSTICE GINSBURG: What about the -- what
15 about the analogy to -- explosives, you say that there
16 could be lawful possession because explosives, it's use
17 that's given as an enumerated crime.

18 MR. BASH: And what we would say is, by
19 parity of reasoning to what we've set forth in the brief
20 with respect to firearms, weaponized explosives, that is
21 to say explosives that only have a use as a weapon,
22 could fall under the residual clause.

23 JUSTICE BREYER: Is there -- the proposition
24 then that I must accept I think for you to prevail is
25 possession of that which is normally used or has a very

1 serious risk of being used in a way that risks physical
2 injury to another falls within the statute. And instead
3 of drawing a line between possession and some other use
4 of the thing, we say sometimes possession is in itself
5 within the statute, sometimes it's not. If you possess
6 those things that have as a predominant use
7 participation in a matter that's likely to cause
8 physical injury to another, that's within the statute.
9 If that's the proposition, is there any case where
10 simple possession of anything has been interpreted as
11 falling within this language? I don't know the answer
12 to that.

13 MR. BASH: You mean circuit or Supreme Court
14 cases?

15 JUSTICE BREYER: Any, any case.

16 MR. BASH: Well, we won this. We've won
17 this issue in --

18 JUSTICE BREYER: Well, I know -- you've won
19 this issue in --

20 MR. BASH: In circuit courts. I think the
21 Eighth Circuit and the First Circuit.

22 JUSTICE BREYER: But it's this issue.
23 There's not some other area I could look at?

24 MR. BASH: I think there's a case out of the
25 Fourth Circuit with possession of weapon in prisons.

1 Obviously the setting can change the analysis to some
2 degree. But I believe there's a Fourth Circuit. Maybe
3 my co -- my opponent will have a better recollection of
4 that.

5 JUSTICE BREYER: There's a Fourth Circuit
6 case and then this line right here. Okay.

7 MR. BASH: I -- I don't mean to suggest that
8 there's no other cases. I would not be surprised if
9 there were possession of machine gun and short-barreled
10 rifle and silencer; in other words, the very firearms
11 covered by the NFA. Also, I think short-barreled
12 shotguns are, just to underscore the point, more often
13 used in crimes, and so you're going to see a
14 proliferation of cases there.

15 JUSTICE GINSBURG: Why not burglar tools?
16 Isn't it -- burglar tools are outside, right?
17 Possession of burglar tools will not get you under ACCA.

18 MR. BASH: This Court reserved that question
19 in James in a footnote, because I think some States
20 purportedly had defined attempted burglary to be
21 something like possession or to include something like
22 possession of burglar tools. I think we'd have a much
23 harder case there because there's a longer chain of
24 attenuation.

25 JUSTICE SOTOMAYOR: Pardon --

1 JUSTICE GINSBURG: But there's no other use.
2 There's no other use for burglar tools than in burglary.

3 MR. BASH: I think that's true. I think
4 we'd have to build through the practical case, one, that
5 burglar tools -- the mere possession of burglar tools is
6 sort of inevitably associated with committing burglary.
7 It may be that there's a lot of people who acquire them,
8 think about committing burglary, but don't make the sort
9 of attempt that James contemplated will result in a
10 confrontation, and then it's more attenuated because
11 you're linking up this burglary -- burglary tools with
12 committing burglary and then burglary with the
13 confrontation.

14 I think it's a much tighter nexus here. I
15 think if you ask an ordinary congressperson whether they
16 think there's a tighter connection between possession of
17 a sawed-off shotgun and acts of violence rather than,
18 you know, possession of a crowbar and acts of violence,
19 I think most people would say, yes, that's sort of the
20 common sense answer that most legislators would give.

21 JUSTICE SOTOMAYOR: I'm a little still
22 confused about the felony possession, okay? You say
23 that's not a crime of violence. I -- I don't know how
24 to differentiate that from this because most felons, in
25 possession of a gun, I'm sure the statistics would show,

1 are committing crimes. So if the question is the risk
2 of injury to others, it would be a felon possessing a
3 handgun of any kind and not a common citizen. Because,
4 yes, common citizens more often than not, we hope, use
5 guns that they possess for lawful purposes; but felons,
6 I would think, just as a matter of logic, what Justice
7 Alito was asking, that felons more often than not use
8 guns in illegal activities.

9 MR. BASH: I -- I don't know. And for
10 one -- for one thing, we have a -- the judgment of the
11 sentencing commission here that we're in full accord
12 with that possession of a sawed-off shotgun is
13 fundamentally different than felony possession.

14 And they see --

15 JUSTICE SOTOMAYOR: Well, I understand that.
16 I just want you to give me some sort of analytical
17 approach on when to judge that -- when to judge that
18 risk, or how to differentiate that risk --

19 MR. BASH: I think the analytical --

20 JUSTICE SOTOMAYOR: -- so that everything,
21 no -- every possession crime doesn't become a crime of
22 violence.

23 MR. BASH: I understand the concern. And I
24 think the analytical line to draw is that weapons that
25 by their nature are exclusively associated, or in the

1 ordinary case, associated with violent crimes count
2 under ACCA. I don't think that the felon in possession
3 statute reflects quite the judgment that every felon
4 that possesses a firearm is going to commit acts of
5 violence with it. I think it reflects the sort of
6 prophylactic concern that these folks have proven
7 themselves irresponsible lawbreakers -- even if they
8 committed a nonviolence felony and they've, you know,
9 lost their ability to responsibly care for firearms and
10 to handle firearms. I do think it's a different
11 judgment than the judgment of why people can't
12 unlawfully possess mortars and artillery pieces and
13 torpedoes and -- and sawed-off rifles and shotguns and
14 machine guns. I think it's a different judgment.

15 The Court -- Petitioner has really not
16 refuted the historical understanding that these are
17 uniquely and purely associated with crime. And I think
18 a few thousand registrations since 1934, lawfully, does
19 not refute the common sense conclusion that the unlawful
20 possession of a sawed-off shotgun is associated with
21 crime.

22 CHIEF JUSTICE ROBERTS: That -- you're -- is
23 that the 40,000 you're talking about?

24 MR. BASH: I'm sorry --

25 CHIEF JUSTICE ROBERTS: When you say a few

1 thousand, is that the same statistic as --

2 MR. BASH: Yes. And I'll just say it's
3 140,000; we think it's a great deal lower than that.
4 That's the total number of registrations since 1934. As
5 we say in the brief, we can't have perfect certainty,
6 but it appears that the majority are registered with law
7 enforcement or manufacturers.

8 CHIEF JUSTICE ROBERTS: I might have used a
9 different word than a few thousand.

10 MR. BASH: Forgive me, a few ten thousand
11 or --

12 CHIEF JUSTICE ROBERTS: Yes, that would --
13 (Laughter.)

14 MR. BASH: A few dozen thousand.

15 JUSTICE ALITO: In the Armed Career Criminal
16 Act in general, and the residual clause in particular,
17 has caused no end of problems for this Court. Are you
18 aware of any efforts made by the Justice Department to
19 propose legislation revising either the -- either the
20 Act in general or the residual clause?

21 MR. BASH: I am not aware of those efforts.
22 That doesn't mean they don't exist, but I, standing
23 here, am not aware of the efforts. But I --

24 JUSTICE BREYER: What would you think, which
25 I once suggested and certainly didn't have the nerve to

1 follow through, that it's more likely that the
2 Department of Justice, with the aid of the sentencing
3 commission, could get the relevant statistics than it is
4 that a defendant could. So if no statistics appear, we
5 should draw a presumption against the department.

6 MR. BASH: Well, this Court has held
7 otherwise in James.

8 JUSTICE BREYER: Yes, yes. I realize that.

9 MR. BASH: So, I mean, I think that's a
10 statutory stare decisis holding that -- that governs --

11 JUSTICE BREYER: But could you do something,
12 that is to say, even without legislation? Is it
13 possible that the department, through its statistical
14 gathering resources, and it has some, working with the
15 sentencing commission, could help us more on the -- on
16 the underlying statistical data that would give us a
17 clue as to what was dangerous and what was not?

18 MR. BASH: I think -- I think that's
19 conceivable. I'm not familiar with all the sort of
20 statistical resources of the Department of Justice. But
21 I just want to emphasize, this is the clear case. This
22 is the case where Congress and State legislatures and
23 this Court in Heller and Miller have said for decades.
24 So I don't think there's a fair argument that criminals
25 are not on notice that possession of an unlawful shotgun

1 can carry very serious consequences. Maybe in a closer
2 case down the road you say, well, the department could
3 have come up with statistics, and that would be -- you
4 know, we're going to rule against the department for
5 that reason. But, I mean, we have a quote from Judge
6 Boudin in the brief in the Shaw case, where, you know,
7 anyone that watches television or reads the newspaper
8 knows that these are especially associated with crimes.
9 So I don't think it came as a surprise to Mr. Johnson
10 that when he commits two robberies and one illegal
11 possession of a sawed-off shotgun, eventually that's
12 going to catch up with him.

13 If the Court has no further questions.

14 CHIEF JUSTICE ROBERTS: Thank you, counsel.

15 Ms. Menendez, you have four minutes
16 remaining.

17 REBUTTAL ARGUMENT OF KATHERINE M. MENENDEZ

18 ON BEHALF OF PETITIONER

19 MS. MENENDEZ: Thank you, Mr. Chief Justice.

20 Just briefly. You're -- with respect to
21 Justice Breyer's question, there are a couple of related
22 contexts where there are some appellate decisions. The
23 Eighth Circuit in Archer, which is cited in our brief,
24 has held that possession of a concealed weapon is not a
25 violent felony under the Armed Career Criminal Act.

1 In addition, in the Fourth -- I'm sorry, the
2 Ninth Circuit in a case called Fish, which I am not sure
3 whether we've cited it in our brief, but it's a 2004
4 decision, held that possession of a pipe bomb was not a
5 crime of violence under the sentencing guideline
6 provision, not the Armed Career Criminal Act.

7 And I do agree with my opposing counsel that
8 there's been one decision that went the way we disagree
9 with in the Fourth Circuit about possession of a weapon
10 in prison, which I think is a very different
11 circumstance.

12 Your Honors, I do think that it's important
13 to look at James, comparing attempted burglary as to
14 burglary. I think it gives us a great deal of guidance.
15 In James, the Court found that there wasn't any textual
16 justification for treating those differently. Here we
17 have a very clear textual justification in terms of use
18 of explosives, which gives us a strong signal that mere
19 possession wasn't contemplated. The government invites
20 this Court to do pretty convoluted reasoning, adopting
21 an unstated definition from a totally unrelated statute
22 in Title 26. And assuming that Congress meant when it
23 said use of explosives, that all things listed in the
24 National Firearms Act would be included by mere
25 possession, I don't think we can make that leap.

1 Your Honors, it's also not true that there
2 is a unanimous belief that these are inherently
3 unjustifiable weapons. In fact, I think that the fact
4 is most legislatures allow these to be possessed in some
5 context or another, and Michigan has just indicated that
6 perhaps the old historical reputation of this weapon is
7 no longer deserved. But this Court doesn't have to like
8 the short-barreled shotgun or decide that it's even an
9 appropriate weapon for punish -- or for possession in
10 order to agree that we can't assume from its possession
11 alone that someone has only nefarious purpose.

12 In addition, Your Honors, the relevant
13 analysis has to begin with the offense. And the
14 government tries over and over again to say, well, it's
15 obvious that these would only be possessed for nefarious
16 reason, but they cannot substantiate that. They
17 disagree with the 14 cases I encourage the Court to look
18 at from page 14 of our reply brief, that those are mere
19 possession cases. By characterizing the people who
20 possessed those weapons, they were found during the
21 course of investigations of other crimes, but that
22 doesn't mean a single one of those possession acts was
23 actually possession during a crime. And this Court
24 certainly can't assume that merely because a criminal or
25 a bad person had possessed the weapon, that they

1 possessed it for nefarious purposes.

2 Finally, Your Honors, I would really
3 encourage the Court to consider the -- the rule of
4 lenity and its application in this case. The government
5 has not brought statistics nor clear, decisive, textual
6 argument that mandate the application of one of the most
7 onerous sentencing provisions that we see in Federal
8 courts every day. This statute is applied to 600 people
9 a year. It lacks all clarity. And while this Court
10 need not get into whether it is unconstitutionally vague
11 and the baby should go out with the bath water, the
12 Court can certainly decide that Congress did not speak
13 clearly on this question, and that it should not be
14 applied to Mr. Johnson.

15 Unless there are any further questions, I
16 appreciate the opportunity to present argument.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 The case is submitted.

19 (Whereupon, at 11:59 a.m., the case in the
20 above-entitled matter was submitted.)

21

22

23

24

25

A				
abiding 31:11 ability 47:9 able 9:25 aboveentitled 1:11 53:20 absolutely 13:9 20:22 abuse 27:17 acca 15:16 31:15 35:8 44:17 47:2 accept 40:6 42:9,24 accidentally 41:22 accord 46:11 account 4:5 6:8 19:20 accurate 33:8 acknowledge 5:8 acquire 39:23,24 45:7 act 11:19 12:11,19 15:12,25 18:4 19:7,8,15 20:7,18 24:15 28:2 30:5 30:12 32:12 41:16 48:16,20 50:25 51:6,24 active 16:18 activities 46:8 activity 18:18 26:24 27:16 30:19 37:16 38:10 acts 3:13 16:20 45:17,18 47:4 52:22 actual 19:9 24:18 addition 51:1 52:12 additional 5:1 12:18 30:5,12 40:20 41:4,5,9,16 address 29:19 adopted 4:18 19:9 25:14 adopting 23:25 26:8 51:20 adoption 4:23	advertised 29:7 agencies 28:21 36:2 agent 9:15 11:4,16 aggressive 14:11 16:19 ago 3:22 14:16 agree 31:5 51:7 52:10 aid 49:2 alford 8:19 alito 5:12,14 9:5,10 9:17 10:2,17,21 10:23 11:6,11 18:7,25 19:11,13 19:25 20:16 21:3 21:12 25:19,23 26:3 36:6 46:7 48:15 allow 52:4 allowing 8:25 alluding 36:6 37:18 alternative 39:19 ameliorates 37:20 amendment 4:10 4:18 amendments 4:23 americans 7:6,24 amount 14:5 ample 14:4 analogy 30:14 42:15 analysis 5:5,21 14:13,19 19:23 28:23 29:11 38:17 38:20 39:22 40:7 40:23 44:1 52:13 analytical 46:16,19 46:24 answer 13:25 23:22 23:23 24:6 43:11 45:20 answers 22:13 38:4 anticipating 5:3 anybody 30:10 apologize 15:3,21 16:2 26:2	appear 49:4 appearances 1:14 appears 28:20 48:6 appellate 50:22 appendix 31:19 application 17:8 18:4,24 53:4,6 applications 28:15 29:16 applied 4:2 53:8,14 apply 16:21 36:21 39:11 40:23 appreciate 53:16 apprehender 31:22 approach 46:17 appropriate 10:8 20:22 23:14 52:9 approximately 15:10 archer 50:23 area 43:23 arent 23:14,15 argument 1:12 2:2 2:5,8 3:4,7 6:3,22 9:18 26:18 31:6 36:20 49:24 50:17 53:6,16 arguments 28:3 arises 16:7 armed 3:13 11:18 15:11,24 16:20 18:4 19:15 20:6 20:12,18 24:15 32:7,9,11 48:15 50:25 51:6 artillery 10:23 47:12 asking 46:7 asks 4:10 assassinations 36:19 assault 17:25 assaults 27:17 asserted 6:14 assertion 7:14 assessment 4:15	12:2 14:13 assistant 1:15,17 15:4 associated 18:17 34:12,18 35:19 36:8 38:9 45:6 46:25 47:1,17,20 50:8 assume 14:20 24:4 52:10,24 assumed 19:23 assuming 51:22 atf 28:15 29:17 attack 30:10 attacks 42:4 attempt 28:18 45:9 attempted 12:8,10 30:2,8 31:25 44:20 51:13 attenuated 30:20 45:10 attenuation 44:24 attorney 28:2 atypical 28:13 available 9:22 29:1 aware 26:1 29:15 48:18,21,23	28:1 29:9 31:5,16 32:15 33:8 34:10 34:20 35:3,14 36:12,20 37:2,5 37:17 38:3,16,25 39:3 40:21 41:14 41:17 42:4,18 43:13,16,20,24 44:7,18 45:3 46:9 46:19,23 47:24 48:2,10,14,21 49:6,9,18 basis 18:8 34:6 bath 53:11 bed 9:16 10:12 begay 3:22 5:4 9:2 14:2 behalf 1:16,18 2:4 2:7,10 3:8 26:19 50:18 behavior 32:6 belief 20:12 23:11 52:2 believe 5:16,20,24 7:11 8:7 11:9,12 12:24 20:5 24:2 44:2 believed 25:16 believes 22:10,23 bench 35:23 better 8:24 9:25 36:9 44:3 biological 9:10,14 9:20 10:4 11:3,16 blackmail 42:8 bomb 9:7 11:3 51:4 borne 13:1 boudin 50:6 box 6:9 31:1 breyer 13:4,9,15 22:8,19 23:8,16 23:20 33:18 34:14 34:23 35:11 36:10 36:14,25 37:4 42:23 43:15,18,22 44:5 48:24 49:8

49:11 breyers 50:21 brief 10:14 13:22 13:22 17:14,15 25:6 27:12,15,15 28:19 35:16 38:18 39:11 42:19 48:5 50:6,23 51:3 52:18 briefcase 17:4 briefly 50:20 briefs 27:8 29:6,10 bring 30:5,13 broad 17:8 broader 42:7 brought 8:24 27:5 31:1 40:8,14 53:5 build 28:13 45:4 burglar 20:2,12,13 30:8 40:22 41:13 41:16,19 42:3 44:15,16,17,22 45:2,5,5 burglaries 20:3 burglary 12:7,8,9 12:10,13,17 20:1 20:6,7 24:21 30:1 30:2,7,8,11 40:18 40:21,24 42:2 44:20 45:2,6,8,11 45:11,12,12 51:13 51:14 butfor 30:4 buy 31:8,8	capture 20:13 31:20 car 33:21,25 care 47:9 career 3:13 4:7,7 11:18 15:12,24 16:20 18:4 19:15 20:6,18 24:15 32:7,9,12 48:15 50:25 51:6 carry 50:1 case 3:4 4:25 5:21 6:4,22 7:2 8:2 9:4 9:20 11:21 12:21 12:25 13:1 14:3,4 14:11,23 16:18 18:1,2 24:16,19 26:22 27:2 31:6 33:15 34:1 35:4 36:22 39:21,22 40:13,14 41:23 43:9,15,24 44:6 44:23 45:4 47:1 49:21,22 50:2,6 51:2 53:4,18,19 cases 9:3 10:13 11:15 15:16 16:16 17:13,14,18,20 21:13 27:11,14,17 35:8 38:11 43:14 44:8,14 52:17,19 cast 35:24 catch 32:3 50:12 catchall 39:2 categorical 12:2 categorically 22:17 cathedral 35:1 caught 27:10 causal 30:4 cause 9:21 43:7 caused 48:17 causes 31:3 certain 10:19 23:12 23:13 25:22 certainly 16:14 21:6,19 25:3	26:10 29:12 32:23 48:25 52:24 53:12 certainty 9:25 48:5 chain 44:23 chambers 5:4 chance 28:8 40:8 40:15 change 44:1 changed 18:13 24:9 character 39:9 characteristics 21:23 40:10 characterizing 52:19 charged 8:15,18 11:17 charges 27:3,5 check 7:21 28:6,7 chemical 9:10,15 chief 3:3,9 26:16,20 37:9,24 38:13,22 39:1 40:16 41:11 41:15,17 42:1 47:22,25 48:8,12 50:14,19 53:17 choice 32:8 chose 26:8 chosen 21:7 circuit 14:17 17:1 18:2 43:13,20,21 43:21,25 44:2,5 50:23 51:2,9 circumstance 11:13 51:11 circumstances 10:15 cite 17:14 cited 17:13 27:14 50:23 51:3 citizen 46:3 citizens 27:9 29:1 31:11 38:11 40:3 46:4 claim 6:16 clarity 53:9 clause 3:13,16	12:15 16:20 19:22 21:1 22:14,15 24:14 25:13 31:17 31:20,24 32:2,5 42:22 48:16,20 clear 3:23 18:2 42:5 49:21 51:17 53:5 clearly 6:5 12:2 40:1 53:13 clocks 41:19 closely 17:13 closer 50:1 closet 10:11 30:25 33:21,25 clue 49:17 colleague 35:22 collection 28:13 collections 28:13 collectors 30:23 colloquy 35:21 39:18 come 19:5,23 27:8 50:3 comes 12:5 commission 4:11 4:18 5:3,6 46:11 49:3,15 commissions 4:16 4:24 commit 11:19 30:22 47:4 commits 50:10 committed 32:18 47:8 committing 5:23 19:4 45:6,8,12 46:1 common 14:14 16:6 19:20 29:18 33:11 35:9,10,16 45:20 46:3,4 47:19 commonly 14:20 15:5 compared 11:23	comparing 51:13 comparison 28:22 completely 10:15 completing 12:18 compliance 8:9,11 8:12 comply 8:3 comprehensive 27:7 concealed 50:24 conceivable 49:19 concern 46:23 47:6 concluded 4:19 conclusion 4:21 19:1,6 20:17 23:7 47:19 conduct 6:6 16:19 21:22 38:2 confidence 4:16 confrontation 30:11 45:10,13 confronted 30:9 confused 45:22 congress 18:15 19:11,22 20:10 21:9 22:2 25:13 26:8,25 33:7,14 33:18 35:24 37:19 41:8 49:22 51:22 53:12 congressional 28:22 congresspeople 36:1 congressperson 45:15 congresss 27:19 29:13 connected 6:17 connection 26:23 31:7 40:22 41:7 45:16 consensus 37:7 consequences 50:1 consider 53:3 consideration 5:1
<hr/> C <hr/>				
c 1:8,18 2:1 3:1 25:1 cagney 35:12 call 40:13 called 51:2 cant 6:9 18:11 32:21 35:1,13 47:11 48:5 52:10 52:24 capital 17:25				

<p>9:3 28:4 considered 17:21 constituents 36:1 constitute 12:10 constructive 16:11 16:22 17:3,5 contemplate 41:9 contemplated 45:9 51:19 contemplates 41:20 contend 34:20 context 52:5 contexts 50:22 contrast 4:17 control 17:2 20:23 28:23 controls 5:10 conversation 24:25 converting 31:14 convicted 17:23 conviction 15:23 17:18 21:25 39:6 convictions 38:6,6 38:8 39:7 convoluted 51:20 correct 6:25 11:9 11:11 25:9 correctly 8:22 correlation 6:4,7 6:14,21 13:12 19:2 33:6 correlative 29:21 29:24 couldnt 36:10,21 counsel 17:13 26:16 50:14 51:7 53:17 counsels 13:22 count 4:20 8:25 32:11 47:1 country 13:25 counts 3:20 couple 50:21 course 52:21 court 1:1,12 3:10 3:17,22 4:4,5 5:4</p>	<p>5:10 6:15 7:10 10:13 12:6,7,13 12:21 14:9,19 16:16 17:12,17,21 20:9 21:5 22:6 24:5,20 26:21,25 31:9 33:13 35:5,7 38:5 39:25 40:1 42:6 43:13 44:18 47:15 48:17 49:6 49:23 50:13 51:15 51:20 52:7,17,23 53:3,9,12 courts 3:19 5:10 9:2 12:1,20 20:24 27:1,18 29:12 35:10 43:20 53:8 covered 38:24 39:2 44:11 create 41:2 created 39:17 creates 22:17 creative 13:2,3 crime 4:13,20 5:23 8:16,18 9:1 11:13 14:18,21 15:8 16:14,15 17:24 22:23 23:18 25:3 25:7 27:4 29:25 30:3,16,22 31:2,3 33:23 34:18 35:19 36:8 40:6,20 42:17 45:23 46:21 46:21 47:17,21 51:5 52:23 crimes 6:8 11:20 12:3 14:25 17:8 17:16 19:4 25:6 28:9 31:7 36:17 37:8 40:8,14 44:13 46:1 47:1 50:8 52:21 criminal 3:13 6:5 7:17 11:19 15:12 15:25 16:20 18:4 19:15 20:7,18</p>	<p>21:22 24:15 26:24 27:16 30:18 32:7 32:9,12 37:16 48:15 50:25 51:6 52:24 criminalized 16:10 16:10 criminals 49:24 crowbar 45:18 cry 14:18 cummings 28:3 current 15:23 currently 28:24 cut 37:3</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d 1:8,18 3:1 damage 40:11 danger 19:10 dangerous 7:15 10:10 11:3 20:12 23:12,13 24:3,12 24:13 39:9 49:17 data 4:14,15,22 5:8 6:15 8:24 14:5,6,6 14:7,22 19:7 35:4 35:6 38:5,8 49:16 dated 18:22 day 35:8 53:8 de 13:23,24 deal 14:7 29:23 30:20 48:3 51:14 dealing 27:17 deaths 14:8 decades 27:1 29:14 33:11 37:7 49:23 decide 52:8 53:12 decided 18:16 decides 30:16 decision 4:24 5:2 5:10 12:6 19:18 20:20,23,24,25 51:4,8 decisions 4:16 50:22 decisis 49:10</p>	<p>decisive 53:5 defendant 49:4 defender 1:15 15:4 defense 7:9 defensible 20:19 deference 4:25 defined 38:19 40:24,25 44:20 definition 3:12 6:1 31:18 51:21 degree 3:14 4:1 44:2 demolition 26:5 demonstrate 13:12 demonstrates 10:9 17:7 department 1:18 48:18 49:2,5,13 49:20 50:2,4 depend 41:16 deposit 30:25 description 33:9 deserve 4:25 deserved 52:7 designed 16:21 38:19 39:13 destroy 26:12 determine 22:3 developed 39:20 didnt 32:4,10,11 48:25 difference 4:22 10:9 32:16 different 10:13 11:4,22 12:16 23:25 24:24,25 32:17 39:22 46:13 47:10,14 48:9 51:10 differentiate 45:24 46:18 differently 51:16 directly 16:25 disagree 51:8 52:17 disagreed 24:8 disagreeing 18:20</p>	<p>disclose 28:5 disclosing 28:11 discuss 14:5 dispute 40:12 disputed 36:5 dissent 18:1 dissipates 28:8 distinguishes 33:16 distinguishing 40:2 doctrine 12:25 13:1 document 7:23 9:25 documenting 14:8 doe 14:16 doesnt 5:5 13:25 16:13 21:2,17,24 30:17 33:23 41:16 42:2 46:21 48:22 52:7,22 doing 8:1 10:1 19:6 dominion 17:2 dont 5:10 7:14 9:19 9:22 12:24 13:20 14:12 15:2,5 16:24 17:5 19:21 20:5 22:12 23:4 24:4 26:2,6 27:6 29:10 31:8 32:23 34:16,19 35:6,11 36:5,12 37:3 38:25 39:17 40:11 43:11 44:7 45:8 45:23 46:9 47:2 48:22 49:24 50:9 51:25 doubt 11:20 dozen 48:14 draw 46:24 49:5 drawing 42:2 43:3 due 7:13 9:14 12:23 17:10 18:19 dwarf 33:1 dynamite 39:8</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e 2:1 3:1,1</p>
---	--	---	--	---

earlier 36:6 37:18 easier 40:22 easy 14:13 effect 37:20 efforts 48:18,21,23 eighth 17:1 18:2 43:21 50:23 either 8:11 13:20 21:14 23:5 28:25 34:5,5 48:19,19 element 22:17 elements 9:4 12:5,7 elses 34:1 emphasize 28:16 49:21 empirical 4:14,22 5:8 6:22 7:1 19:17 35:4,6 enable 13:1 enables 30:3,11 enact 36:4 enacting 20:18 encompass 39:6 encourage 12:5 52:17 53:3 energy 26:12 enforcement 28:21 36:2 48:7 engage 5:5 12:21 engaged 40:17 enhancement 38:15 enhancements 15:12 entire 5:21 14:19 entitled 21:4 entry 12:12 enumerated 3:15 3:17,23,25 19:14 25:6,12 29:22 30:3 42:17 equally 20:19 era 18:18 especially 50:8 esq 1:15,17 2:3,6,9 estimate 28:18 estimated 28:24	eventually 50:11 evidence 19:17 ex 35:1 exact 40:22 examination 4:14 4:22 14:9 24:16 examine 17:13 examined 12:7 22:16 examining 3:19 example 29:15 30:7 36:23 examples 25:16 26:11 27:9 exclusively 27:21 34:11 35:19 36:8 37:8,16 46:25 exercise 17:2 36:2 exist 48:22 expect 19:16 29:17 explain 31:17 39:5 explained 39:4 explosives 25:6,7 25:14,18,20,24 26:4,9,12 38:14 38:18,19,24 39:5 39:7,8,12,16 42:15,16,20,21 51:18,23 express 34:24 extensive 4:22 extortion 30:2 40:23,24 42:5,7,8 42:9 extortionist 41:3 extortionists 42:11 extraordinarily 37:22	52:3,3 factfinders 5:7 facts 36:3 factual 8:14 36:9 fair 49:24 faith 28:18 fall 32:5 33:23 39:15 42:22 falling 43:11 falls 43:2 familiar 36:12 49:19 fanciful 41:21 far 14:18 17:8,23 18:22,23 24:5 favor 14:15 28:3 federal 1:15 8:4,9 8:12 15:4 28:5 35:17,24 37:13 53:7 federally 7:21 15:7 27:23 felon 4:19 15:24 32:14,16,25,25 33:9,19 46:2 47:2 47:3 felons 33:10 45:24 46:5,7 felony 3:12,21 5:15 5:18 7:13 11:8 20:25 22:3,7 25:4 31:18 32:18,19 39:6,7,16 45:22 46:13 47:8 50:25 final 40:6 finally 53:2 fingerprint 37:13 fingerprints 28:5 28:11 fire 23:12 firearm 4:20 5:25 6:1 10:10,19,21 22:7 28:2 31:23 32:22 34:11 41:5 47:4 firearms 11:23	19:8 23:11,13 28:14 42:20 44:10 47:9,10 51:24 first 6:13 12:7 14:17 20:7 36:17 38:4 43:21 fish 51:2 flatly 21:14 25:23 flaw 5:20 flee 30:10 folks 47:6 follow 41:3 42:13 49:1 followed 7:24 footnote 44:19 force 31:24,25 forgetting 13:17 forgive 48:10 formulation 14:2 forth 3:15 8:24 36:19 39:11 40:10 42:19 forward 27:8 35:16 found 7:7 10:14 12:13 14:9 51:15 52:20 four 50:15 fourth 43:25 44:2,5 51:1,9 framework 4:2 fraud 32:19 free 11:19 frequent 6:18 15:8 friend 29:20 fruition 30:6,13 full 46:11 fully 7:19 fundamentally 46:13 further 5:23 12:3 31:4 50:13 53:15 future 11:20 16:15 22:15 24:18 30:22	gang 28:10 gangster 18:18 gathering 49:14 general 1:17 13:25 23:11 28:3 48:16 48:20 ginsburg 4:4 25:5 29:5 42:14 44:15 45:1 give 30:11 34:3 37:12 38:3 45:20 46:16 49:16 given 26:12 42:17 gives 4:15 51:14,18 glad 25:10 glass 34:1 go 11:19 28:11 35:21 53:11 going 6:1 24:1 28:8 30:9,10,10,16,18 33:5 34:23 37:14 40:9 42:12,12 44:13 47:4 50:4 50:12 good 28:18 30:20 30:24 goodness 34:14 gotten 10:5 govern 29:11 governed 21:1 government 6:13 6:20 8:24 12:20 14:23 17:10 18:6 28:6,12 37:14 51:19 52:14 53:4 governments 6:3 7:22 14:19 governs 49:10 great 4:15 14:7 29:23 48:3 51:14 greater 15:9,11 ground 35:15 36:3 grounded 22:14 gruender 18:1 guess 39:18 guidance 5:3,9
--	---	---	--	--

25:12 51:14 guideline 4:9 51:5 guidelines 4:6,21 guilty 8:19 16:12 gun 10:11,16 16:18 18:17 20:15 24:17 28:13,23 31:13,14 33:20 34:8 37:1 37:23 42:3 44:9 45:25 guns 32:8 36:23 46:5,8 47:14	17:6 homeowner 30:9 41:12,19,22 42:4 honestly 32:25 honor 4:9,10,17 5:1 5:16 6:12 7:1,5,13 7:18,23 8:7,17,20 8:21,22 9:8,14,24 10:7,20,24 11:5 11:10,14 12:20 13:12,21 14:1,12 14:16 15:3,10,17 15:21,22 16:25 17:7,12 18:11 19:7,21 20:6 21:6 21:19 22:1,12 23:4 24:7,11 25:9 26:2,7,7 27:14 honors 12:1 14:1 16:8 26:15 51:12 52:1,12 53:2 hope 35:9 46:4 horribles 17:9 house 35:18 hunting 7:8 hypothetical 11:2 hypothetically 24:1	38:3 42:12,12 45:21,25 47:24 49:19 51:1 imagine 36:21 39:19 41:21 imagining 12:3 immediately 3:16 implications 15:9 important 3:18 5:9 14:3 16:8 17:17 22:1,4 24:15 25:11,13 32:16 51:12 impressionistic 19:19 include 20:10 42:7 44:21 included 4:11 25:17 51:24 including 5:25 19:7 inclusive 26:10,11 incorrect 15:22 increase 40:15 increases 6:10 40:8 incredibly 15:7 indicated 14:16 52:5 inevitably 45:6 infected 10:5 infection 9:21 inherent 5:22,23 9:1 inherently 11:3 17:11 39:8 52:2 injured 13:6,17 injuries 14:8 injury 5:19 6:6,11 22:11,16,24 23:22 31:4 43:2,8 46:2 instance 11:2,15 17:3 24:8 intended 20:10 intent 16:15 17:1,2 interpretation 18:6 interpreted 43:10 intimidating 18:23	intrinsically 17:11 investigations 52:21 invite 12:21 17:12 invites 51:19 involve 16:17 involved 27:4,15,16 28:8 irresponsible 32:21 33:3 47:7 irresponsibly 33:4 isnt 36:25 40:19 44:16 issue 43:17,19,22 item 10:1 16:25 items 17:4,6 40:7 ive 35:12	14:24 15:14,18 16:1,22 17:25 18:7,25 19:11,13 19:25 20:16 21:3 21:12 22:8,19 23:8,16,20 25:5 25:19,23 26:3,16 26:20 27:2,11,22 29:5,20 30:14 31:12 32:13,24 33:18 34:14,23 35:11 36:6,10,14 36:24,25 37:4,9 37:24 38:13,22 39:1 40:16,25 41:11,15,17 42:1 42:9,14,23 43:15 43:18,22 44:5,15 44:25 45:1,21 46:6,15,20 47:22 47:25 48:8,12,15 48:18,24 49:2,8 49:11,20 50:14,19 50:21 53:17 justification 51:16 51:17 justify 8:25
H hand 33:21 34:1,2 handgun 33:10 34:12,18 37:1 46:3 handguns 39:24 handle 47:10 hands 28:25 happen 12:4 41:12 harder 44:23 harm 13:24 hasnt 38:10 havent 6:22 27:22 hear 3:3 40:12 heard 34:15 heavily 14:15 36:16 held 3:17 49:6 50:24 51:4 heller 27:1,19 31:9 40:1 49:23 help 22:2 49:15 heres 7:2 34:10 hes 30:23 highlighted 10:13 highlights 4:23 historical 47:16 52:6 historically 32:8 34:11 history 25:15 35:18 35:20 holding 49:10 home 7:9 10:16	I id 12:5 17:12 idea 13:10 ideal 29:7 identify 10:3 ill 48:2 illegal 8:6 11:7 20:20 32:10 46:8 50:10 illegally 21:14 37:15 im 3:24 5:13 10:22 11:2 13:15,16 14:24 15:22 17:15 19:6 20:9 21:12 23:16,22 25:10 26:1,2 30:8,16 33:1 36:12,20	J james 1:3 5:4 9:2,4 12:6,6,25 24:19 35:5,7,12 38:5 41:1 42:6 44:19 45:9 49:7 51:13 51:15 john 1:17 2:6 26:18 johnson 1:3 3:4 14:15 50:9 53:14 judge 46:17,17 50:5 judgment 21:4 23:1 26:24 27:18,19,19 29:12,13,13 32:17 32:18 33:13 35:6 35:9,10,16,23 36:3,7 46:10 47:3 47:11,11,14 judicial 37:7 jurisprudence 9:2 12:1 justice 1:18 3:3,9 4:4 5:11,12,13,14 6:2,19 7:3,16 8:5 8:14 9:5,10,17 10:2,17,21,23 11:6,11 13:4,9,15	K kagan 6:2,19 16:22 29:20 30:14 31:12 32:13,24 katherine 1:15 2:3 2:9 3:7 50:17 keep 16:8 33:20 keepers 5:8 kept 10:10,11,11 30:25 killed 40:9 kind 3:15,25 6:5,7 10:25 27:9 32:9 33:6 34:8 36:15 46:3 know 9:17,19,22 14:24 16:3,6 19:21 23:23 26:2	

32:19 34:19 36:12 37:10,10,11,15 43:11,18 45:18,23 46:9 47:8 50:4,6 knowledge 34:25 known 21:17 knows 50:8	legislatures 18:8,12 18:15 19:1,18 21:7,8 22:2 23:6 24:12 26:25 27:20 29:13 35:23 36:7 49:22 52:4 legitimately 33:10 length 14:6 lenity 53:4 lethal 18:22 level 27:6 limit 13:2 line 8:2 34:10 43:3 44:6 46:24 lines 34:8 linking 45:11 listed 19:14 51:23 little 45:21 locked 10:11,16 16:17 30:25 logic 46:6 long 7:20 8:3 15:4 27:20 longer 24:9 38:1 44:23 52:7 look 5:6 10:3 25:11 27:13 39:22 43:23 51:13 52:17 looking 12:4 looks 40:4 lose 34:7 lost 47:9 lot 35:12 45:7 lots 6:23 lower 3:19 27:1 48:3	manipulated 14:7 manufacturer 29:6 manufacturers 28:21 29:10 48:7 marijuanarelated 8:18 marked 4:17 market 29:11 massively 40:14 materialize 32:4 materializes 41:6 matter 1:11 30:17 43:7 46:6 53:20 matters 21:7,8 mattress 10:12 mean 15:14 16:1,23 20:9 31:2 32:7,25 33:19 35:11 37:3 37:25 38:1,4 42:6 43:13 44:7 48:22 49:9 50:5 52:22 means 16:24 meant 51:22 members 28:10 35:22 menendez 1:15 2:3 2:9 3:6,7,9 4:9 5:16 6:12,25 7:5 7:18 8:7,17 9:8,12 9:24 10:7,19,22 10:24 11:9,12 13:8,11,20 15:2 15:16,21 16:2,24 18:11 19:5,12,21 20:5,22 21:6,19 22:12 23:4,10,19 23:24 25:9,21 26:1,6 50:15,17 50:19 mere 3:11 4:2,11 5:22,24 8:25 10:24 11:22 12:9 12:17 13:13 17:8 17:15,19 24:9,14 24:18,21,22 25:4 25:17 27:3 39:2	40:18 45:5 51:18 51:24 52:18 merely 6:16 7:12 14:17 20:24 52:24 meth 27:17 michigan 18:13 24:7 52:5 miller 26:25 27:19 40:2 49:23 million 28:24 mind 16:9 18:13 41:9,24 minimis 13:24,24 minn 1:16 minneapolis 1:16 minnesota 16:7,9 17:7 19:7 23:5 24:1 minority 23:6 27:23 minutes 50:15 money 34:3 mortars 10:21,23 47:12 motivated 20:6 24:20 movies 35:12 murder 17:25 myriad 10:12	nerve 48:25 never 6:7 31:1,1 33:22 39:25 nevertheless 33:10 newspaper 50:7 nexus 45:14 nfa 38:19 39:12 44:11 night 36:11,15 ninth 51:2 nonviolence 47:8 nonviolent 10:15 38:9 normal 37:20 normally 42:25 note 17:17 18:13 noted 12:8 notice 49:25 november 1:9 nuclear 9:7 11:16 number 29:2,3 37:24 42:11 48:4 numbers 13:5 33:1 37:22
<hr/> L <hr/>				<hr/> O <hr/>
lack 34:25 lacks 53:9 language 3:16 12:21 21:1 25:22 26:8 43:11 laughter 34:22 48:13 law 14:23 24:9 28:3 28:20 31:10 32:25 33:7 36:2 48:6 lawabiding 27:9 38:11 40:3 lawbreakers 47:7 lawbreaking 35:19 lawful 7:19 18:14 29:7,14 31:11 38:7 40:2 42:16 46:5 lawfully 7:7 21:10 28:17,19 29:4 47:18 laws 36:4 lead 22:11 leap 51:25 legal 8:3,11 22:4 23:15 legally 7:6,25 15:20 legislation 48:19 49:12 legislative 25:15 35:17 37:6 legislators 35:25 45:20 legislature 20:17 20:19 21:4 22:9 22:10,21,22 23:6 24:1,7 25:19,25	<hr/> M <hr/>		<hr/> N <hr/>	o 2:1 3:1 obvious 52:15 obviously 15:10 24:8 44:1 occasion 32:5 occur 20:3 30:12 occurred 31:22 odd 30:23 32:10 offended 31:22 offender 30:4,12 31:23 41:9 offenders 20:14 offense 3:20,24 5:15,17 9:6 11:17 12:4 14:10 17:19 17:20 18:3 20:1 22:16 29:22 33:17 38:14 39:10 41:8 52:13 offenses 3:15,18,23

3:25 4:8 19:14 20:8,11 25:12 31:13 offered 13:21 officer 30:9 41:22 oh 15:21 okay 44:6 45:22 old 52:6 once 40:6 48:25 onerous 53:7 opening 27:15 opinion 14:16 22:2 34:6,9 opponent 44:3 opportunity 53:16 opposed 19:12 opposing 13:22 17:13 51:7 oral 1:11 2:2,5 3:7 26:18 order 7:24 52:10 ordinary 12:21,25 13:1 26:22 31:6 33:15 39:21,21 40:13,13 41:23 45:15 47:1 outlaw 21:9 outlawed 27:23,24 outright 8:8 16:4 outside 44:16 overinclusive 18:5 overt 12:11,18	particular 3:20 48:16 pass 33:7 passed 19:22 passes 7:21 pays 7:21 penalizes 25:1 penalties 15:11 people 7:11,16 10:4 13:6,17 15:5,10 15:19,23 16:3 20:13 27:16 30:23 33:2 34:16 36:18 39:23,24 45:7,19 47:11 52:19 53:8 percentage 13:24 20:2 perfect 48:5 permit 21:10 permitted 8:22 persistent 20:14 person 7:9 11:16 16:13,25 17:23 21:16 30:15,21,24 32:21 41:1 42:10 52:25 persuaded 18:16 petitioner 1:4,16 2:4,10 3:8 27:8 38:10 40:12 47:15 50:18 photograph 28:5 28:12 37:13 phrase 39:2 physical 22:11,24 23:21 43:1,8 pieces 10:23 47:12 pipe 51:4 pistol 36:15 37:1 place 16:9 20:7 places 10:12 33:21 plea 8:15 pleaded 8:19 pleas 8:19 please 3:10 26:21 point 4:25 25:11	27:7 28:16 29:19 31:19 32:2 33:2 37:18 38:6,8 44:12 pointed 25:5 38:10 points 8:23 37:17 police 30:9 41:21 pool 4:15 population 37:23 portion 16:5 pose 6:5,11,20 10:25 position 5:21 8:23 32:3 possess 7:17,19 20:15 22:22 25:24 33:22 43:5 46:5 47:12 possessed 10:4 11:24 14:20 16:14 21:10,13,15 24:4 40:5 52:4,15,20 52:25 53:1 possesses 9:7 21:17 47:4 possessing 6:16 7:12 9:14 10:1 14:17 15:6 16:17 20:24 46:2 possession 3:11 4:2 4:6,11,12,19 5:15 5:17,18,22,25 6:4 6:8,10 8:3,8,11,15 8:25 9:6 10:25 11:7,15,22 12:9 12:17 13:6,13,18 13:18 14:25 15:1 15:24 16:11,23 17:4,6,8,19 18:9 18:21 19:2 20:21 22:6,7,10,11,23 23:9,18,21 24:9 24:14,19,21,22 25:4,8,14,18,20 26:22,23 27:3,25 31:6,7,13 32:10	32:14,16,25 33:9 33:19 34:21 36:22 37:21 38:7,9,14 38:14 39:2,10,14 40:19 42:16,25 43:3,4,10,25 44:9 44:17,21,22 45:5 45:16,18,22,25 46:12,13,21 47:2 47:20 49:25 50:11 50:24 51:4,9,19 51:25 52:9,10,19 52:22,23 possibility 22:15 26:4 31:21 41:2 possible 5:12,14,17 24:17 34:4,5 39:19 49:13 possibly 21:16 potential 5:19 22:24 23:21 29:23 30:1,3 31:2 38:2 power 17:3 practical 45:4 practice 33:12 preceded 5:9 precedes 3:16 precise 9:13 precisely 14:2 29:25 predicate 3:20,24 20:8 32:11 predominant 43:6 prefer 24:3 pregnant 31:21 premise 31:5 present 12:13,14 30:1 42:2 53:16 presented 12:12 19:10 24:18 presents 5:19 9:15 22:23 23:21 38:2 presumption 49:5 pretty 33:5 38:20 51:20 prevail 42:24	prior 17:20 20:10 26:9 prison 51:10 prisons 43:25 private 28:25 29:1 probably 37:14 problems 48:17 process 37:20 processes 7:24 product 35:25 proffered 16:16 18:6 prohibit 24:9 prohibited 25:20 25:23 prohibiting 18:8 prohibition 18:18 proliferation 44:14 proof 35:2 proper 4:1 5:5 properly 16:11 18:10 property 20:14 41:1 42:10 prophylactic 32:22 47:6 propose 48:19 proposition 40:6 42:23 43:9 prosecuted 14:25 15:6 16:3 protect 21:24 prototypical 42:8 proven 47:6 provide 3:18 provided 5:4 14:23 15:22 39:16 providing 25:12 provision 25:17 38:15 51:6 provisions 53:7 pulls 42:3 punish 52:9 purchase 7:25 29:1 purchased 7:6,16 purely 47:17
P				
p 3:1 page 2:2 10:14 52:18 pages 38:17 parade 17:9 parallel 42:1 parameters 3:19 pardon 44:25 parity 42:19 part 12:11 21:4 24:25 participation 43:7				

<p>purportedly 44:20</p> <p>purpose 7:8,8 12:24 14:21 52:11</p> <p>purposeful 14:10 16:19</p> <p>purposes 6:5 26:5 27:21 31:11,15 33:15 46:5 53:1</p> <p>put 26:8 28:23 32:3 34:24</p> <hr/> <p>Q</p> <p>qualify 5:15,18 9:6 9:7,11,13</p> <p>qualitative 3:18</p> <p>quantitative 3:19</p> <p>question 3:24 4:2 6:20 7:10,12 8:10 8:14,21 12:3,8 14:1 22:5,13,13 22:20 24:5 38:4 44:18 46:1 50:21 53:13</p> <p>questions 50:13 53:15</p> <p>quite 15:4 47:3</p> <p>quote 50:5</p> <hr/> <p>R</p> <p>r 3:1</p> <p>raised 29:20</p> <p>raises 27:11</p> <p>rampant 13:2,2</p> <p>ranging 17:25</p> <p>ranked 4:7</p> <p>rare 5:17 28:14</p> <p>reach 20:18</p> <p>reached 4:21 23:7 27:1</p> <p>readily 18:3</p> <p>reads 50:7</p> <p>real 40:4,5</p> <p>realize 49:8</p> <p>realized 34:23</p> <p>really 30:17 33:16 36:5,16 38:10</p>	<p>40:12 47:15 53:2</p> <p>reason 4:24 7:11 9:1 21:16 22:9,21 22:25 23:8,17 30:21 50:5 52:16</p> <p>reasonable 19:16 20:17 36:2</p> <p>reasoning 39:10 42:19 51:20</p> <p>reasons 38:12</p> <p>rebuttal 2:8 26:15 50:17</p> <p>recidivism 33:6</p> <p>recognition 24:11</p> <p>recognize 22:4</p> <p>recognized 39:25</p> <p>recognizing 33:23</p> <p>recollection 44:3</p> <p>record 36:9</p> <p>redundancy 39:3 39:17</p> <p>redundant 14:11</p> <p>reference 13:22</p> <p>reflected 28:2</p> <p>reflective 32:6</p> <p>reflects 28:2 32:17 47:3,5</p> <p>refute 29:12 47:19</p> <p>refuted 47:16</p> <p>regardless 8:8</p> <p>regime 27:10</p> <p>register 21:15</p> <p>registered 7:7,20 15:7 16:11 18:10 21:11,24 28:18,19 29:4 37:11,22 48:6</p> <p>registration 21:20 27:25</p> <p>registrations 8:12 8:13 29:16 38:1 47:18 48:4</p> <p>regular 6:18 34:19</p> <p>regulate 18:16</p> <p>regulated 35:21 38:18 39:12</p>	<p>regulation 28:7</p> <p>regulations 8:4,9</p> <p>related 50:21</p> <p>relationship 29:22 29:24,25</p> <p>relative 37:23</p> <p>relevant 38:5,7 49:3 52:12</p> <p>rely 35:8</p> <p>relying 19:9 29:21</p> <p>remainder 8:10</p> <p>remaining 50:16</p> <p>remains 14:2</p> <p>remember 8:6 12:6 41:14</p> <p>reminded 25:10</p> <p>removed 17:9</p> <p>rendered 33:13,14</p> <p>repeat 20:14 22:20 40:11</p> <p>repeatedly 3:17</p> <p>reply 10:14 27:12 27:15 52:18</p> <p>reports 35:18</p> <p>reputation 18:17 18:21 52:6</p> <p>require 21:23</p> <p>required 24:21,23</p> <p>requirement 21:20</p> <p>requires 12:2 14:19 22:15</p> <p>research 8:1 28:23</p> <p>reserve 26:14</p> <p>reserved 44:18</p> <p>residual 3:13 12:14 16:20 19:22 21:1 22:14,14 24:14 25:13 42:22 48:16 48:20</p> <p>resort 18:5</p> <p>resources 49:14,20</p> <p>respect 7:13 9:14 12:24 17:10 18:19 19:16 20:20 21:5 42:20 50:20</p> <p>respectfully 5:20</p>	<p>respondent 1:19 2:7</p> <p>response 6:13</p> <p>responsibly 47:9</p> <p>rest 26:14</p> <p>result 12:4 13:6 15:12 20:4 45:9</p> <p>revealed 32:20</p> <p>revising 48:19</p> <p>rifle 44:10</p> <p>rifles 47:13</p> <p>right 6:19 11:8 22:5 31:13 34:4 34:14 44:6,16</p> <p>rights 18:20</p> <p>risk 3:14 4:1 5:19 5:22,23 6:6,10,11 9:15,19,20 10:25 12:12,14 14:13 22:11,24 23:21 24:18 31:3 38:2 40:18,19 42:3 43:1 46:1,18,18</p> <p>risks 43:1</p> <p>risky 16:19</p> <p>road 50:2</p> <p>robberies 36:16 50:10</p> <p>robbers 28:10</p> <p>robbery 20:7</p> <p>roberts 3:3 26:16 37:9,24 38:13,22 39:1 40:16 41:11 41:15 42:1 47:22 47:25 48:8,12 50:14 53:17</p> <p>rocket 11:7,12</p> <p>rockets 11:6</p> <p>role 5:7</p> <p>rule 50:4 53:3</p> <p>run 38:16,21</p> <hr/> <p>S</p> <p>s 2:1 3:1</p> <p>safe 10:11,16 30:25</p> <p>samuel 1:3 3:4</p>	<p>satisfies 4:3</p> <p>satisfy 6:1 21:2 32:11</p> <p>saturday 36:11,15</p> <p>sawedoff 9:23 20:21 22:22 26:23 27:10 29:3,16 30:15 33:1,16,25 34:3,7,13 37:21 38:7 39:20 45:17 46:12 47:13,20 50:11</p> <p>saying 6:7 23:14,15 23:16 35:18 36:20</p> <p>says 13:17 22:19,19 34:2,6 38:23 41:18</p> <p>scalia 7:3,16 40:25</p> <p>scalias 42:9</p> <p>scenarios 41:21</p> <p>science 10:8</p> <p>second 34:15 40:17</p> <p>section 25:1</p> <p>see 10:5 15:5,5 16:1 26:14 29:17 40:23 44:13 46:14 53:7</p> <p>seen 35:12</p> <p>sees 28:15</p> <p>selfdefense 29:8,18 30:24 33:12 39:20 39:25</p> <p>senate 35:18</p> <p>sense 14:14 19:20 30:4 31:16 32:6 32:22 35:9,10,16 45:20 47:19</p> <p>sentencing 4:6,11 4:16,18,24 5:2,6 46:11 49:2,15 51:5 53:7</p> <p>separate 31:12</p> <p>serious 5:19 6:11 17:23 18:3 22:24 23:21 26:24 27:16 31:4 38:2 43:1 50:1</p>
---	---	---	---	---

seriously 40:8 serve 7:7 service 28:23 serving 5:7 set 3:15 35:16 39:11 40:10 42:19 setting 44:1 sexual 27:17 shaw 50:6 shoot 30:16,18 41:13 shoots 41:22 shortbarreled 3:11 4:3,6,12,13 5:25 6:17 7:4,19 11:23 12:23 13:7,13,23 15:1,6 17:16 18:9 18:10 19:3 24:10 25:2 31:10 41:12 44:9,11 52:8 shotgun 3:11 4:3,7 4:12,13 6:17 7:4 7:20 11:23 12:23 13:7,13 15:6 18:9 18:10 19:3 20:21 22:22 24:10 25:2 26:23 27:10 30:15 33:16,25 34:3,7 34:13 37:21 38:7 41:12 45:17 46:12 47:20 49:25 50:11 52:8 shotguns 9:23 13:23 15:1,20 17:16 28:25 29:3 29:16 31:10 33:1 39:20 44:12 47:13 shouldnt 29:12 show 45:25 shown 33:3,3 sides 5:20 signal 51:18 silencer 44:10 similar 3:14,14,23 3:24 4:1 36:22 simple 43:10	simply 11:24,24 14:22 16:18 single 52:22 situations 31:20 slightly 32:17 small 29:3 37:22 smaller 7:9 solely 29:21 solicitor 1:17 somebody 7:21 10:5 16:12 21:15 31:23 32:1 34:1,2 somewhat 11:20 18:21 24:2 sorry 3:24 5:13 10:22 14:24 17:15 20:9 47:24 51:1 sort 11:17 12:12 16:18 19:15,18,18 27:6 28:17 29:10 29:21 32:6 35:24 37:19 38:11 40:10 41:7,23 42:8 45:6 45:8,19 46:16 47:5 49:19 sorts 25:16 28:14 sotomayor 5:11,13 8:5,14 14:24 15:14,18 16:1 27:2,11,22 36:24 44:25 45:21 46:15 46:20 speak 35:1 36:1 53:12 special 36:11,15 specifically 19:14 20:9 speculation 8:22 12:22 13:2,3 spike 29:15 squarely 31:24 standard 23:25 standing 48:22 stare 49:10 state 8:11 16:6 18:8 18:12,14 19:1	20:19 21:21 25:24 26:25 27:6,20 29:13 35:17,23,25 49:22 states 1:1,6,12 3:5 7:20 8:2,5,8,10 16:4 18:20 20:3 21:9,24 26:4,19 27:24 29:6 34:16 44:19 statistic 9:22,23 13:16 15:2,22 48:1 statistical 14:12 19:23 49:13,16,20 statistics 6:23 7:22 13:8,12,21 19:9 19:13 20:2 27:7 45:25 49:3,4 50:3 53:5 stature 7:9 statute 11:1 12:8 12:11 16:7 23:2 32:17 33:24 38:23 38:23 39:16 41:18 41:20,24 43:2,5,8 47:3 51:21 53:8 statutes 35:17,17 statutory 31:19 49:10 step 31:4 40:7,17 40:20 41:4,5,9 stop 34:14 strategy 29:11 strong 6:3 19:2 23:11 33:6 51:18 submission 11:8 submitted 53:18,20 substantial 9:15 10:25 12:22 22:18 substantiate 52:16 substantiated 6:14 substitute 33:24 suddenly 29:18 suffer 15:11 sufficient 12:14	suggest 44:7 suggested 42:6 48:25 suggesting 23:22 suggestion 23:5 suggests 17:10 superstition 35:25 support 7:14 supported 14:22,23 supports 6:16 suppose 41:20 supreme 1:1,12 43:13 sure 11:2 25:21 26:2 33:1 38:3 45:25 51:2 surely 41:22 surprise 50:9 surprised 8:1 44:8 suspect 9:24 sykes 5:4 14:4 35:7	15:7,14 17:6 21:12 22:23,25 23:14 25:9 26:6 27:2 28:6 30:19 32:15 33:8 35:20 36:8 37:10 40:4 40:16 41:19,23 42:17 43:7,8,9 45:3,19,23 48:4 49:9,18 50:11 theory 34:8 theres 6:3,15 7:14 8:7 11:21 23:5,10 33:5 37:17 38:6 39:3,17 43:23,24 44:2,5,8,23 45:1,2 45:7,16 49:24 51:8 theyre 13:5 16:6 21:20,22 33:2,5 34:5 39:13 theyve 35:20 47:8 thing 9:13 10:18 19:16,18 24:17 31:3 36:11 43:4 46:10 things 25:16 28:17 34:4 36:18 39:14 43:6 51:23 think 5:10 6:9 7:1 7:14 8:21 9:1,8,12 10:24 11:1,14,21 14:1,5,14 18:8,14 18:25 19:5,11 20:1,6,11 21:3,8 22:1,9,12,13 23:5 23:10 24:4,11,12 24:15 26:3,6 27:18 28:1,14 29:4,10,20,23,24 30:14,24 32:13,15 32:16,22,24 33:8 33:16 34:20 35:9 35:15,21 36:5,8 37:6,12,17 38:16 38:25 39:17,19
---	--	---	---	--

40:21 41:25 42:5 42:24 43:20,24 44:11,19,22 45:3 45:3,8,14,15,16 45:19 46:6,19,24 47:2,5,10,14,17 48:3,24 49:9,18 49:18,24 50:9 51:10,12,14,25 52:3 thinking 13:16,16 thinks 37:19 thought 23:20 thousand 47:18 48:1,9,10,14 thousands 7:23 threat 41:1,4 42:10 42:12,13 threatened 31:25 tie 24:16 tied 17:11 tighter 45:14,16 time 15:4 26:15 27:20 times 10:5 title 25:1 51:22 tnt 39:8,14,15 today 17:21 18:22 tools 12:9,17 24:21 44:15,16,17,22 45:2,5,5,11 torpedo 34:19,21 torpedoes 47:13 total 31:16 37:23 48:4 totally 51:21 traditional 5:7 transportation 26:13 treated 6:9 treating 51:16 tried 36:18 39:5 tries 52:14 trigger 11:18 12:14 18:3 triggering 15:24	18:24 20:10 trouble 31:8 true 32:14 37:10,15 45:3 52:1 trunk 10:16 trusted 32:21 try 10:3 two 4:23 17:17,20 17:23 20:8,8 27:8 31:12 37:17 38:4 50:10 twofold 6:13 types 23:12,13 typically 31:10 <hr/> U unanimous 52:2 unarmed 20:13 unaware 19:6,8 21:20,22 uncertainty 35:3,5 unclearly 39:4 unconstitutionally 53:10 undergo 28:6,7 underlying 27:4 41:8 49:16 underscore 44:12 understand 6:2 35:3 46:15,23 understanding 23:7 47:16 unintentionally 9:21 10:6 uniquely 7:15 47:17 united 1:1,6,12 3:4 20:3 21:9 26:19 universe 10:4 39:19 unjustifiable 52:3 unlawful 20:25 22:6,7,10,21,25 23:9,11 27:21 34:17,21 36:22 38:8 39:14,15 47:19 49:25	unlawfully 39:9,23 39:24 40:5 47:12 unregistered 4:12 unrelated 51:21 unstated 51:21 untouched 11:4 upstairs 33:20 use 6:4,10,18 7:4 16:15 19:3 22:20 25:7,14 26:9,12 29:8,18 31:2,3,13 31:24,25 33:4,11 33:22 35:13 37:14 38:23 39:5,6,7,15 39:16,21 40:2,5 42:16,21 43:3,6 45:1,2 46:4,7 51:17,23 useful 14:6 uses 12:20 23:2 29:14 30:15 <hr/> V v 1:5 3:4 vague 53:10 vanishingly 29:3 varieties 28:25 vast 27:14 28:20 verify 27:18 view 42:9 viewed 36:17 vincent 18:1 violating 16:5 violation 12:10 16:4 violative 24:14 violence 4:13,20 9:1 11:13 17:24 20:4 25:3 29:23 30:1,3,5,13 31:21 31:22 32:4,4 34:12 41:1,2,6,8 41:15,18,20,23 42:3,13 45:17,18 45:23 46:22 47:5 51:5	violent 3:12,21 5:15,18,23 6:6 7:13 11:8 14:10 16:19 17:16 20:1 20:25 22:3,7 25:3 31:18 32:19 47:1 50:25 volition 30:5,13 <hr/> W want 21:17 23:23 28:16 33:10 38:3 46:16 49:21 wanted 20:13 26:9 29:19 wants 30:22 washington 1:8,18 wasnt 29:5 31:17 51:15,19 watches 50:7 water 53:11 way 6:15 19:19 24:19 28:22 40:4 43:1 51:8 weapon 5:24 7:12 9:11,20 10:14,18 11:16 16:12 17:19 17:24 18:21 19:3 19:10 20:25 21:10 21:18,23 24:2,22 25:2 32:8,10 40:10 42:21 43:25 50:24 51:9 52:6,9 52:25 weaponized 39:12 42:20 weapons 7:6,25 10:4 13:24 14:20 17:19 18:16,23 24:3,12,13 29:7 29:14,17 33:4,14 35:18 36:7,21 38:20 39:13,21 46:24 52:3,20 wed 36:21 37:2,5 38:16,20 44:22	45:4 wednesday 1:9 weighs 14:14 went 24:5 51:8 weve 10:13 16:16 35:16 39:11 40:9 42:19 43:16 51:3 whats 6:21 34:8 whatsoever 12:25 widely 22:4 willing 28:4 37:12 41:3 win 34:7 won 43:16,16,18 wont 40:11 word 23:2 48:9 words 22:20 23:2 33:24 44:10 work 31:19 37:2,5 37:6 working 49:14 world 40:4,5 wouldnt 6:24 7:2 8:25 11:7 18:5 wounded 40:9 wrap 39:18 write 34:6 <hr/> X x 1:2,7 <hr/> Y year 15:11,15,16 18:13 53:9 years 3:22 14:16 youd 10:3 39:1 youre 28:4,8 30:17 31:14 37:12,14 40:17 42:2 44:13 45:11 47:22,23 50:20 youve 9:18 43:18 <hr/> Z <hr/> 0 000 7:5 15:19,19
---	---	--	--	--

28:19 29:2,2 34:16 37:10,25 47:23 48:3 04 1:13 3:2	6 6 3:22 600 15:10,15,16 53:8 674 4:10			
1	7			
1 31:24 10 8:8 34:16 100 37:25 11 1:13 3:2 53:19 11a 31:18 137120 1:5 3:4 14 10:13,14 17:22 27:11 52:17,18 140 28:19 48:3 16 17:14 18 25:1 19 21:11 1934 18:15 19:9 47:18 48:4 1986 25:15 1991 4:17	8 27:1 82 28:24 9 924 25:1,1			
2				
2 31:17 32:2,5 200 7:22 2004 4:10 5:2 51:3 2012 28:23 2014 1:9 26 2:7 51:22				
3				
3 2:4 35 15:19				
4				
40 7:5 15:19 29:2 34:16 37:10 47:23 433 4:18 47 38:17 48 38:17				
5				
5 1:9 50 2:10 29:2 59 53:19				