

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

**THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: THE HERTZ CORPORATION, Petitioner, v.
MELINDA FRIEND, ET AL.
CASE NO: No. 08-1107
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	C O N T E N T S	
1		
2	ORAL ARGUMENT OF	PAGE
3	SRI SRINIVASAN, ESQ.	
4	On behalf of the Petitioner	3
5	TODD M. SCHNEIDER, ESQ.	
6	On behalf of the Respondents	29
7	REBUTTAL ARGUMENT OF	
8	SRI SRINIVASAN, ESQ.	
9	On behalf of the Petitioner	48
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

P R O C E E D I N G S

(11:07 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument next in Case 08-1107, the Hertz Corporation v. Friend.

Mr. Srinivasan.

ORAL ARGUMENT OF MR. SRINIVASAN
ON BEHALF OF THE PETITIONER

MR. SRINIVASAN: Thank you, Mr. Chief Justice, and may it please the Court:

The diversity statute deems a corporation a citizen of, quote, "the State where it has its principal place of business," close quote. The Ninth Circuit erred in holding that Petitioner Hertz is a citizen of California, even though Hertz is headquartered in New Jersey and conducts over 80 percent of its operations outside the State of California, and even though, under the court's approach, national corporations could regularly be deemed California citizens if they conduct operations in that State that are proportional to the State's population.

The better reading of the statute, in our view, is that it points to the location of the corporation's headquarters, the site from which a corporation directs and controls all of the company's

1 operations throughout all of its locations. And that's
2 particularly the correct reading when the statutory
3 language is considered in light of two considerations.

4 First, the strong preference for simplicity
5 and ease of administration in jurisdictional rules; and,
6 second, Congress's purposes in 1958 to preserve
7 diversity jurisdiction for corporations in 48 States and
8 to deny access to diversity jurisdiction only in one
9 State, the State where the corporation has its home or
10 principal place of business.

11 Now, with respect to the ordinary meaning of
12 the statutory text, the critical phrase is "principal
13 place of business." And dictionary definitions of that
14 term define the term "principal place of business" as
15 corporate headquarters, and that is fortified by Federal
16 and State laws, which also define the term as "company's
17 headquarters" --

18 JUSTICE SOTOMAYOR: Counsel, the problem
19 with every test is that you can find an exception that
20 makes the application ridiculous.

21 Let's assume that we accept that
22 headquarters or nerve center may have some applicability
23 to a corporation that has a business in a variety of
24 different States.

25 MR. SRINIVASAN: Sure.

1 JUSTICE SOTOMAYOR: All right. That --
2 your situation is perhaps the most attractive --

3 MR. SRINIVASAN: Right.

4 JUSTICE SOTOMAYOR: -- because whether
5 California has 20 percent and Florida 14 or 15 percent,
6 to me the differences are not terribly substantial. I
7 can imagine McDonald's having 1 percent in every part of
8 the world, and how you choose then? California would
9 say, then you -- you go back to headquarters. But I
10 don't know why you start there.

11 But let's posit the simpler situation.
12 Headquarters in New Jersey, but everything else is in
13 California. Your test would ignore completely that --
14 and it depends on how you define "headquarters." If
15 they have three corporate executives, that's the entire
16 extent -- or let's say one corporate executive who
17 started the company and he lives in New Jersey, and he
18 flies out to California half the time and runs the
19 business from there but happens to live in New Jersey.
20 Then you would say diversity is still New Jersey,
21 correct?

22 MR. SRINIVASAN: We would, Your Honor. But
23 let me -- let me start first with accepting Your Honor's
24 premise, that in the situation of a multistate
25 corporation with -- with dispersed operations, the

1 principal place of business would be the headquarters.

2 Now, I take your point that there are
3 situations in which the test may not seem so
4 straightforward, but we think even in the -- the
5 hypothetical that Your Honor posits, the better
6 answer -- at least our first submission would be, the
7 better answer is the headquarters would control. And
8 that's for a couple of reasons.

9 Although, again, the one exception that we
10 would have to our rule is exactly Your Honor's
11 hypothetical, and let me just bracket that. Now, the
12 reason we think, first and foremost --

13 JUSTICE SOTOMAYOR: But you have not
14 articulated a -- at least to me, a meaningful principle
15 in which to set that exception. It has to be tied
16 somehow to the test and why the test in some situations
17 would have applicability and others may not.

18 MR. SRINIVASAN: Sure. And let me -- let
19 me --

20 JUSTICE SOTOMAYOR: Because I don't know the
21 difference between one headquarters and two places to do
22 business or three, but I can still see that some
23 factoring has to be done when the places of business are
24 more limited.

25 MR. SRINIVASAN: Well, I -- well, we think,

1 first and foremost, that the headquarters rule would
2 apply even in Your Honor's situation, and I'll get to
3 the exception -- fashioning the exception in
4 just one second --

5 JUSTICE GINSBURG: But your case doesn't
6 call for that judgment, because you have a multistate
7 corporation, and it -- I assume you would be satisfied
8 with saying that when a corporation has dispersed
9 operations, it doesn't have its business center or its
10 headquarters -- doesn't have its business center
11 dominant in any one State, that it's dispersed, then you
12 take the headquarters, because there's no way to pick
13 among -- choose all the others, and it certainly isn't
14 worth the labor to try to do that.

15 So you could have a rule that says:
16 Dispersed across many States, you pick headquarters.
17 And that -- you don't have to urge anything further.

18 MR. SRINIVASAN: No, absolutely, Justice
19 Ginsburg. And we would certainly accept a resolution
20 of the case in -- in that light.

21 If the Court were to announce a rule that
22 says, multistate corporations with diverse operations,
23 the principal place of business in that situation is the
24 headquarters, I think Your Honor is correct that
25 certainly we would prevail under that and that would be

1 entirely acceptable to us. But --

2 JUSTICE SCALIA: Well, why would we say
3 that? Just because it wins your case and solves your
4 problem? I mean, it seems to me, to do that, you
5 abandon your principal argument, which that -- which is
6 that "place" doesn't mean "State."

7 MR. SRINIVASAN: Right.

8 JUSTICE SCALIA: And to talk about the whole
9 State of California as the principal place of doing
10 business -- I mean, if Congress meant that, it would
11 have said "the principal State in which business is
12 done."

13 MR. SRINIVASAN: That's -- that's correct,
14 Justice Scalia, and that's --

15 JUSTICE SCALIA: So you don't want to throw
16 away that good argument, do you?

17 (Laughter.)

18 MR. SRINIVASAN: We certainly don't want to
19 throw it away. We certainly don't want -- first and
20 foremost, we'd like to prevail. And I think even
21 under the narrower approach, we would.

22 JUSTICE GINSBURG: You would -- you would
23 never get to the -- California's thing about State. If
24 you say multistate, you pick the place. The
25 headquarters -- it's a place. It's within a State.

1 MR. SRINIVASAN: Yes. And -- and that's why
2 we would accept that result, Justice Ginsburg. We
3 certainly would. Let me just put that out there first
4 and foremost.

5 CHIEF JUSTICE ROBERTS: Were you done --

6 MR. SRINIVASAN: Now, with respect to --

7 CHIEF JUSTICE ROBERTS: Were you done with
8 your answer to Justice Sotomayor's hypothetical?

9 MR. SRINIVASAN: I don't know that I, in
10 fact, started the answer, Mr. Chief Justice --

11 (Laughter.)

12 MR. SRINIVASAN: -- with respect.

13 The answer is that even in that situation,
14 for the reasons that Justice Scalia highlights, we would
15 say that the headquarters controls. And let me give two
16 -- two principal reasons why.

17 The first is that even if the operations are
18 in one State and the headquarters are in a different
19 State, the headquarters still is where the direction and
20 control comes from. And I think the ordinary meaning of
21 the phrase "principal place of business" in that
22 situation would still direct attention to the
23 headquarters.

24 And the dictionary definitions that we
25 identified in -- in our brief and every Federal and

1 State law that defines the term "principal place of
2 business" defines it at headquarters -- as headquarters,
3 without any exception for the hypothetical situation
4 that Your Honor posits. But the other --

5 JUSTICE SOTOMAYOR: So what constitutes
6 headquarters?

7 MR. SRINIVASAN: I'm sorry.

8 JUSTICE SOTOMAYOR: How many executives have
9 to live there? What else has to exist there? And then
10 what's the default rule if those things don't exist?

11 MR. SRINIVASAN: Right. Your Honor, I think
12 -- and that -- that's a sort of different set of
13 questions which is other ambiguities with respect to the
14 definition of a headquarters in certain situations.

15 Now, by and large, the headquarters is
16 relatively straightforward. It's made in public filings
17 which are an easy place to look, and if you look at the
18 experience of the Seventh Circuit, which of course has
19 applied a headquarters approach across the board over
20 the course of several decades, I think we can see that
21 that test has been straightforward and it's simple in
22 application, in the main.

23 Now, that's not to say that there are not
24 issues about the definition of "headquarters" at the
25 outer perimeters. There are. And I think the place I

1 would look first and foremost is: Where does direction
2 and control for the corporation come from? That's the
3 situs at which the headquarters would be found.

4 And I would look also to what a corporation
5 itself identifies as headquarters in public filings. In
6 10-K filings and under the Model Business Corporations
7 Act, corporations have to report their headquarters in
8 annual reports. And of course they are doing those
9 reports for reasons other than establishing
10 jurisdiction in a particular case, so I think they come
11 with an air of objectivity about them. That's where I'd
12 look.

13 Now, I'd make this other point, though,
14 about the ambiguity that Your Honor points to with
15 respect to the definition of a headquarters. That --
16 that's not at all an ambiguity that only applies to our
17 test, because under Respondents' test and under the test
18 of every court of appeals, they take into account the
19 headquarters.

20 Now, we would think that that is
21 dispositive. The other courts consider it at least
22 highly relevant, albeit not dispositive. But whatever
23 ambiguities --

24 JUSTICE GINSBURG: Why did the others all go
25 through some total -- totality of the factors

1 test? I mean, obviously, you could pick the
2 headquarters. You say Congress wanted one place;
3 headquarters is a logical choice, end of -- but most
4 circuits have made it more complicated than that. The
5 Seventh Circuit is the only one who said, keep it
6 simple, as you urge -- headquarters.

7 Why are the other circuits resistant to the
8 solution that you are proposing?

9 MR. SRINIVASAN: Well, first, in a situation
10 with a multistate corporation with dispersed operations,
11 as we point out in footnote 2 of our reply brief, I
12 think the courts of appeal are generally in agreement
13 that the headquarters would control in that situation.

14 Now, with respect to whether you would have
15 an across-the-board headquarters rule, Justice Ginsburg,
16 I think what happened is, the first court to consider
17 this question was the Third Circuit in the Scott case,
18 pretty soon after the statute was enacted in 1958. And
19 that court, with respect, didn't wrestle with the
20 ordinary meaning of the statutory terms, and it didn't
21 wrestle with the strong premium on simple and
22 administrable jurisdictional rules. And then that
23 doctrine sort of took on a life of its own, I think.
24 And so --

25 JUSTICE GINSBURG: But it's -- they -- they

1 do it in different ways.

2 MR. SRINIVASAN: They do.

3 JUSTICE GINSBURG: Some say business
4 operations; some say headquarters.

5 MR. SRINIVASAN: There -- there's a variety
6 of different approaches. I think all of them share the
7 common feature that they consider, essentially, a
8 totality of the circumstances. And all of them, in our
9 view, share a common flaw, which is --

10 JUSTICE GINSBURG: How does -- how do the
11 bankruptcy courts do it? I mean, you brought out that
12 "principal place of business" was -- was a term that the
13 bankruptcy courts had been using before the amendment of
14 1332 -- 1958. But I -- I don't think that the -- that
15 it is inevitably headquarters for the bankruptcy courts.
16 I mean, there's -- sometimes it's in another place,
17 isn't it?

18 MR. SRINIVASAN: Well, the bankruptcy courts
19 -- I think the fairest assessment of the bankruptcy
20 courts as of 1958 was that it was a muddle.

21 Now, since then, the Collier's treatise, for
22 example, would tell you that the majority and
23 predominant rule is the headquarters rule, even in the
24 bankruptcy context. Pre-1958, I think there was a
25 conflict. That's what the treatises said, and that's

1 what we explain in our brief. But there certainly were
2 some courts that adopted a headquarters approach, even
3 in the bankruptcy context.

4 But I think one thing I would caution the
5 Court about is assuming that just because some courts in
6 the bankruptcy context, because of bankruptcy-specific
7 considerations -- and a specific consideration was a
8 felt need to have the assets of the bankrupt estate
9 within the purview of the court so that the court could
10 administer the estate -- that Congress would have wanted
11 to import every judicial application down to every
12 nuanced detail in the bankruptcy context over to the
13 jurisdictional context, where we know that Congress
14 thought that simplicity was a real virtue.

15 And I think, as Your Honor's opinion in
16 Wachovia v. Schmidt a few terms ago points out, there's
17 no reason to assume that Congress would have taken one
18 word in the venue context and applied the exact same
19 meaning to that same word in the jurisdictional context.
20 And here, because of the strong preference -- excuse me
21 -- in favor of simplicity and administrability in
22 jurisdictional rules, that's a particularly poignant
23 reason why the headquarters approach, in our -- in our
24 point of view, should govern in all circumstances.

25 Now, if I could --

1 JUSTICE GINSBURG: In the case -- this is
2 purely hypothetical, but suppose Hertz were to be
3 bankrupt, file a petition in bankruptcy, where New
4 Jersey would be the place, on your -- or the assets are
5 dominantly someplace else, so it would be another place?

6 MR. SRINIVASAN: Well, I think, if -- if
7 what you are asking, Justice Ginsburg, is, where would
8 the principal place of business be under the bankruptcy
9 statute, the majority rule now -- and there's a Fifth
10 Circuit case, Commonwealth Oil Refining, and the Seventh
11 Circuit case, Peachtree, which show that the majority
12 rule now is that the principal place of business would
13 be New Jersey.

14 And one point I'd like to get to in that
15 regard is the sort of oddity of saying that the -- the
16 principal place of business of a company like Hertz
17 would be somewhere other than New Jersey. The Ninth
18 Circuit has the view that the principal place of
19 business of Hertz is California, based on the fact that
20 Hertz conducts 20 percent of its business in California.

21 But it is important to bear in mind that
22 this statute is a zero-sum game. So that if Hertz is
23 deemed to have its principal place of business in
24 California, such that it's disabled from getting access
25 to diversity jurisdiction in California, the consequence

1 is that Hertz would be enabled to gain diversity
2 jurisdiction in every other State -- and I'm putting to
3 one side Delaware, the State of incorporation -- but it
4 would be enabled to gain access to -- to diversity
5 jurisdiction in every other State.

6 So the consequence would be that if Hertz
7 were sued in a State court action in Park Ridge, New
8 Jersey, the site of its headquarters, Hertz could get
9 Federal court jurisdiction in that jurisdiction on the
10 theory that it's an out-of-State company, it's a
11 California company, because it performs 20 percent of
12 its business in California.

13 Now, that -- the oddity of that, in our
14 view, is particularly poignant if one takes into account
15 a company like Wal-Mart. Wal-Mart is universally
16 recognized to be an Arkansas corporation because it is
17 headquartered in Bentonville, Arkansas, but Wal-Mart
18 also, it's undisputed, does substantially more business
19 by any of the measures that the Ninth Circuit considers
20 significant in Texas. It has more employees there; it
21 has more stores there; it generates more revenues there,
22 by a significant factor, well in excess of 50 percent
23 over and above any other State.

24 But the consequence of deeming Wal-Mart a
25 Texas corporation based on the amount of business it

1 does in Texas would be not only that Wal-Mart would be
2 disabled from getting Federal court jurisdiction in
3 Texas, but that Wal-Mart would be enabled to get Federal
4 court jurisdiction in Bentonville, Arkansas, on the
5 theory that even in Arkansas, Wal-Mart would be an
6 out-of-State corporation, a Texas corporation, because
7 of the level of business that it conducts in Texas.

8 And we don't think that's the result that
9 Congress would have envisioned in 1958 when it enacted
10 the principal place of business provision. Instead,
11 what Congress presumably had in mind is that
12 corporations, as a general matter, are identified with
13 the location of their headquarters.

14 So in the Wal-Mart situation, Wal-Mart
15 rightly is universally acknowledged to be an Arkansas
16 corporation because of the presence in that State of its
17 headquarters.

18 JUSTICE SOTOMAYOR: Counsel, all you're
19 talking about is not necessarily nerve center, because
20 in reading the examples in your brief, what you are
21 talking about is: Where's the place where they have
22 the most important, significant, influential contact?

23 Now, the Ninth Circuit has defined that as
24 the place where business is done; you're suggesting
25 that it's the place where the nerve center is. But it

1 goes back to begging my question: Why -- just simply
2 their declaring it on a tax form doesn't make it
3 important, influential, or significant contact. There
4 has to be something more to the test, and it can't be
5 just what I declare my headquarters to be. There has to
6 be some form of activity in that place.

7 MR. SRINIVASAN: There does, Your Honor, and
8 we think -- I guess the -- the comparison I would make
9 is to an individual, because an individual can't declare
10 that he or she is a domiciliary of a particular State
11 and have it be so for citizenship purposes. There has
12 to be something behind that, and so too with
13 corporations.

14 JUSTICE SOTOMAYOR: That's -- that's the
15 point.

16 MR. SRINIVASAN: Exactly, and we -- we share
17 that view. A corporation couldn't simply declare that
18 its headquarters are located in a -- in a location where
19 it has a mailbox, for example, and have that be
20 dispositive for citizenship purposes. What --

21 JUSTICE SOTOMAYOR: Is there -- is there
22 something to a rule that says headquarters is
23 presumptively the nerve center, but a challenged party,
24 whoever that is, can rebut it?

25 MR. SRINIVASAN: I think certainly it would

1 be a vast improvement over what the Ninth Circuit has.
2 So I would say that as a starting point, Your Honor. I
3 think -- in our view, of course, a principal submission
4 is the headquarters controls in all -- in all
5 situations, and the cost of having, you know, a
6 rebuttable presumption would be: What does it take to
7 rebut it? That would be the question. And I think--

8 JUSTICE SOTOMAYOR: Well, the point
9 that I raised, which is that the headquarters is not an
10 important, consequential, or substantial -- you can
11 rebut it if you can show that it is a shell
12 headquarters.

13 MR. SRINIVASAN: Yes. And I think in that
14 situation, I guess -- I guess there's two different
15 ways that one could look at that. One is to say that
16 you could rebut it, but the other is to say that it's
17 not the headquarters.

18 And I guess that's the way that I would look
19 at it, is to say that if the corporation identifies a
20 location at which it in fact doesn't direct and control
21 the operations of the corporation throughout, it
22 wouldn't constitute the headquarters.

23 JUSTICE SOTOMAYOR: Well, but --

24 MR. SRINIVASAN: So I guess that's where I
25 would place the load-bearing weight. It may be

1 semantic, but --

2 JUSTICE SOTOMAYOR: That's the problem,
3 which is, the party comes in, alleges by summary
4 judgment that -- in a summary judgment motion: This is
5 my corporate headquarters. The other side's going to
6 have to come forth with evidence that shows something.

7 MR. SRINIVASAN: Right. And if -- and --

8 JUSTICE SOTOMAYOR: So it's always a
9 rebuttable presumption.

10 MR. SRINIVASAN: There is, Your Honor, and
11 if the other side were able to show that the location
12 that the party identifies as -- as its headquarters does
13 not, in fact, function as a headquarters, in the sense
14 that suppose there is no executives there, or suppose
15 that the officials that are there in fact don't direct
16 and control the company's operations in other locations.
17 Well, then, that -- that would be a real issue.

18 But there are checks against that, because
19 corporations identify their headquarters in other public
20 filings, and in the main, those headquarters are the
21 locations in -- from which the chief executives direct
22 and control the company's operations in just about all
23 of its --

24 JUSTICE SOTOMAYOR: I actually don't know
25 whether public filings define what "headquarters" mean.

1 Is there a -- I know you have said it in your brief, but
2 what I didn't know is whether those public filings
3 define the activity necessary to designate a place a
4 "headquarters."

5 MR. SRINIVASAN: Well, they -- they do in
6 the following sense, Your Honor. For example, with the
7 10-K report for publicly traded companies, I think the
8 question that's asked is not the location of the
9 headquarters but the location of the principal executive
10 offices. And so I think, by definition, in answering
11 that question, the principal executives would be located
12 at that -- at that location. Now, if they weren't, we
13 would certainly take Your Honor's point that there could
14 be a back-and-forth about that, but that --

15 JUSTICE GINSBURG: Do we know what --
16 Congress picked "principal place of business," and we
17 know that they looked at the bankruptcy courts. There
18 are lots of expressions in other statutes. Some say
19 "headquarters." Some say -- well, there are a variety
20 of things, but Congress picked this particular term,
21 "principal place of business."

22 And I was thinking, when you gave the
23 example of Texas, that the idea of diversity is you are
24 not going to get a Federal forum where you are at home.
25 And so one would think, well, if Wal-Mart is doing so

1 much in Texas, it's really no stranger in Texas. Why
2 shouldn't there be diversity in Texas?

3 MR. SRINIVASAN: Well, in -- in response to
4 the latter point, Your Honor, I think the one thing we
5 do know from 1958 is that Congress didn't think a
6 corporation should be disabled from getting diversity
7 jurisdiction anywhere where it does a substantial
8 business, because it had that proposal before it, and it
9 rejected it.

10 JUSTICE GINSBURG: It rejected it, yes.

11 MR. SRINIVASAN: It instead chose an
12 approach whereby a company is disabled from getting
13 diversity jurisdiction in one, and only one,
14 jurisdiction, the jurisdiction in which it has its
15 principal place of business.

16 And I think what Congress had in mind is
17 that corporations, as a general matter, are identified
18 with their headquarters. And that's why Wal-Mart, for
19 example, is universally recognized as an Arkansas
20 company. It may be that Wal-Mart does substantial
21 business in Texas, substantially in excess of other
22 States, but Wal-Mart also does substantial business in a
23 variety of jurisdictions. But Congress decidedly didn't
24 have the rule that says wherever Wal-Mart does a
25 substantial business and is a well-recognized company,

1 it should be disabled from getting to Federal court. It
2 limited it to one jurisdiction.

3 And we think the best reading of the phrase
4 "principal place of business" is the situs of the
5 headquarters in that there -- with -- with respect
6 to the bankruptcy decisions, Your Honor, there -- there
7 were bankruptcy courts that did have a headquarters
8 approach. And, in fact, the one bankruptcy court of
9 which I am aware that looked at the meaning of the
10 ordinary language -- we cite the -- the relevant -- the
11 portion of the court's opinion at page 50 of our opening
12 brief in footnote 5. It's the First Circuit's opinion
13 in the Burdick case.

14 And what the First Circuit said was that a
15 corporation's, quote, "principal office, rather than a
16 factory, mill or mine, according to ordinary
17 understanding and speech, constitutes the principal
18 place of business within the meaning of the Bankruptcy
19 Code."

20 And so even before 1958, I think there was
21 definitely a sense out there that the term "principal
22 place of business" does mean headquarters. And this
23 gets to Your Honor's other question which is: If
24 Congress really meant "headquarters," why wouldn't they
25 have used the term "headquarters" instead of "principal

1 place of business"?

2 And I think our answer to that, with respect
3 to Your Honor, is that "principal place of business" is
4 an alternative formulation for "headquarters." And so I
5 don't think one can glean too much from the fact that
6 Congress chose "principal place of business" rather than
7 "headquarters" when "principal place of business" in our
8 view is a reference to the headquarters.

9 And this Court's opinion last term in the
10 Abuelhawa v. United States case is a good
11 example of that, because there the statute that was at
12 issue used the term "facilitate" rather than the term
13 "aid or abet." And one could have readily made the
14 argument that because the statute uses the term
15 "facilitate" rather than "aid or abet," that normal
16 principles that accompany aiding and abetting liability
17 shouldn't apply in the statute. But the Court rightly,
18 in our view, reached the contrary conclusion, and it was
19 based on the notion that the term "facilitate,"
20 according to Black's Law Dictionary, means the very same
21 thing as "aid or abet." And once you cross that bridge,
22 then you can apply aiding or abetting principles to the
23 term "facilitate."

24 And here, likewise, the term "principal
25 place of business," according to Black's Law Dictionary,

1 means "headquarters." That's how Black's Law Dictionary
2 defines the term. And so the fact that Congress chose
3 one alternate formulation versus another, I don't think
4 speaks too loudly to the question of --

5 JUSTICE GINSBURG: What of the argument
6 that -- that Hertz has this New Jersey headquarters, but
7 its reservation center is in Oklahoma?

8 MR. SRINIVASAN: Sure, and -- and, again, I
9 would look at the public filings. In the public
10 filings, in the 10-K, for example, Hertz universally
11 identifies its headquarters as Park Ridge, New Jersey.
12 And the reason is that the chief executive officials are
13 all located in Park Ridge.

14 Now, there's other -- there's a large
15 administrative apparatus in Oklahoma City, and,
16 according to the affidavit, its administrative
17 activities are performed in Oklahoma City to a lesser
18 extent. And that is at paragraph 11 of the affidavit,
19 which is at pages 29a to 30a of the appendix to the
20 petition.

21 But I don't think there's any real dispute
22 that Hertz's main headquarters are located in Park Ridge
23 rather than Oklahoma City. In point of fact, what you
24 have in Oklahoma City -- and -- and this isn't spelled
25 out in the -- in the affidavit, but what you have in

1 Oklahoma City is essentially the rental call center and
2 plus principal back-office duties like information
3 technology support. But what you have in Park Ridge is
4 all of the company's chief executives. So the
5 decisionmaking locus for the company's most important
6 decisions is absolutely in Park Ridge, New Jersey,
7 rather than Oklahoma City. And there is no dispute on
8 the point that's before the Court.

9 This Court comes -- this case comes to the
10 Court on the assumption that Hertz's headquarters are
11 located in Park Ridge. The question for the Court is
12 whether that headquarters location should be dispositive
13 for purposes of defining a company's principal place of
14 business.

15 Now, if I could -- if I could turn for one
16 moment to the cost in terms of simplicity and
17 demonstrability of an alternative formulation if the
18 Court were to accommodate a formulation that didn't look
19 to the headquarters, we see three potential categories
20 of costs that are brought about by the -- the proposed
21 approach of Respondents and the one that the Ninth
22 Circuit has established.

23 The first is the one that underlies the
24 strong preference in favor of simple and administrable
25 jurisdictional rules. And that is just the time and

1 resources that would be invested at the threshold
2 jurisdictional stage in divining whether the case is --
3 is before the proper court. That in itself is reason
4 enough, in our view --

5 JUSTICE KENNEDY: Not all diversity suits
6 have major law firms in them and a lot of resources to
7 spend in -- in discovery to determine more complex
8 tests.

9 MR. SRINIVASAN: That's right. Yes, that's
10 our point, Justice Kennedy, and I think a headquarters
11 test is simple and straightforward in that respect, and
12 a totality of circumstances approach isn't. But there
13 is also two additional costs that I would point out
14 about a totality of circumstances approach.

15 One is that you could have the very real
16 possibility, because of the indeterminacy in that
17 approach, that different courts would reach divergent
18 conclusions about the citizenship of the very same
19 corporation. And as we point out on page 40 of our
20 brief, that has already happened. Two district courts
21 in the Ninth Circuit alone in -- two California courts
22 reached divergent conclusions on the citizenship of
23 United Airlines. One court concluded that United was an
24 Illinois citizen, and another court concluded that
25 United was a California citizen. And that's not

1 altogether surprising that you would have those sorts of
2 divergent conclusions given the open-ended nature of a
3 totality of circumstances approach.

4 The third cost that I would point to is the
5 possibility that because of the indeterminacy in the
6 approach, you could have a situation in which a district
7 court finds that there's jurisdiction, proceeds to have
8 a trial on the merits, and render -- renders judgment on
9 the merits, and then several years later the court of
10 appeals would reverse the judgment because the district
11 court had gotten the jurisdictional inquiry wrong at the
12 outset. And, again, that also, as with the situation
13 with divergent conclusions on the citizenship of the
14 same corporation, is not just a problem of theory. It
15 has actually happened.

16 JUSTICE GINSBURG: Even -- even when the
17 direct -- the -- even subject-matter jurisdiction is
18 precluded after final -- final judgment after direct --
19 so that's a little extreme, the example you gave.

20 MR. SRINIVASAN: Well, I think -- I guess my
21 point is that precisely because subject-matter
22 jurisdiction can be raised at any point --

23 JUSTICE GINSBURG: Not any point in the
24 direct -- up to denial of cert on direct review. After
25 that it's precluded, even subject-matter jurisdiction.

1 You can't collaterally attack on that basis.

2 MR. SRINIVASAN: Sure, right. I guess what
3 my point is that you could have a situation where a
4 trial court has reached a resolution on the merits.
5 Several years -- several years later, the court of
6 appeals on direct review would reach the conclusion that
7 the district court got it wrong on subject-matter
8 jurisdiction.

9 JUSTICE GINSBURG: Yes.

10 MR. SRINIVASAN: And there's a case that we
11 cite in our brief, the Diaz -- Diaz v. Pep Boys
12 case, that involved that situation.

13 If the Court has no further questions, I
14 would like to reserve the balance of my time.

15 CHIEF JUSTICE ROBERTS: Thank you, counsel.
16 Mr. Schneider.

17 ORAL ARGUMENT OF TODD M. SCHNEIDER

18 ON BEHALF OF THE RESPONDENTS

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

21 For 50 years, every circuit save the -- save
22 the Seventh had agreed -- has agreed on one overriding
23 principle: That courts must perform a balancing in
24 determining the principal place of business of a
25 corporation, and that balancing must include a

1 determination of where the corporation's people and
2 property are.

3 CHIEF JUSTICE ROBERTS: Is -- is that a fair
4 description of what the Ninth Circuit did here? Did
5 they perform a balancing, or did they look solely to
6 where most of the sales were?

7 MR. SCHNEIDER: The -- the Ninth Circuit
8 specifically in this case noted that 43 percent more
9 employees for Hertz are in California, 75 percent more
10 property, 60 percent more revenue, and --

11 JUSTICE SCALIA: More than -- more than
12 what, more than any other single State?

13 MR. SCHNEIDER: That's correct, Justice
14 Scalia.

15 JUSTICE GINSBURG: But --

16 JUSTICE SCALIA: It doesn't say the --
17 the "principal State of business." It's the "principal
18 place of business."

19 MR. SCHNEIDER: The statute does say --

20 JUSTICE SCALIA: Isn't there a difference
21 between the two?

22 MR. SCHNEIDER: I think I have two answers
23 to that, Your Honor. The first answer is that Congress
24 was using a term of art that was imported from the
25 Bankruptcy Code.

1 In all of the Bankruptcy Code cases prior to
2 1958, the 11 U.S.C. 11 cases take an aggregation
3 approach when they look at it State by State, so, if we
4 read "principal place of business" as a term of art that
5 Congress imported into the statute, then we have to
6 look at an aggregated State-by-State approach.

7 The other answer, I think, is more of a
8 semantic answer, which is how did Congress define the
9 word "place"? Certainly, the English language provides
10 that a place can be a building, as Hertz would have, or
11 a place could be a State, as we -- my place of birth,
12 for example, is New York State.

13 JUSTICE SOTOMAYOR: Why -- why didn't they
14 say "place of doing business"? That's not the
15 terminology that they used.

16 MR. SCHNEIDER: They didn't, and Congress
17 was --

18 JUSTICE SOTOMAYOR: That would be more
19 consistent with an aggregation of -- of all of the
20 factors the Ninth Circuit starts with.

21 MR. SCHNEIDER: Your Honor, Congress chose
22 the phrase "principal place of business" because, to
23 quote the legislative history, there were many cases on
24 the books, and it was an easily understood phrase.

25 I think what Congress intended to do was to

1 not have us end up here, to take a phrase which was
2 known in the case law and to import it --

3 JUSTICE SOTOMAYOR: Counsel, what's very
4 clear from all of the articles I have read in the lower
5 court decisions is that Congress may have thought it was
6 picking a well-defined phrase, but, in fact, it wasn't,
7 that the courts below are confused about what they were
8 doing before the statute.

9 So I don't know why importing the belief
10 that something was clear into a reality that it's not
11 helps us.

12 MR. SCHNEIDER: Your Honor, in answer to
13 Justice Scalia's question, I believe it was clear, from
14 all of the case law, that we were talking about place
15 equaling an aggregation of all of the activity in the
16 State.

17 With regard to your question, we have cited
18 in our brief two district court opinions that performed
19 a scholarly review of all of the case law at the time
20 that Congress passed the 1958 amendments. Particularly
21 of import is the Inland Rubber case.

22 And what the court found in the Inland
23 Rubber case is, while there was two lines of thinking,
24 there was the -- what came to be known as the "nerve
25 center" line of thinking and what came to be known as

1 the "business realities" line of thinking.

2 The nerve center tests could almost all be
3 explained by the fact that, in those cases, the
4 corporation only had one place of business. There were
5 some outliers, but for the most part, the two judges, in
6 the Gilardi case and in the Inland Rubber case --

7 JUSTICE SOTOMAYOR: So why do you -- why do
8 you think that the circuit courts -- the vast majority
9 of them, the Third, the First, the Second, the Fifth --
10 they all start with the proposition that, if a place has
11 far-flung businesses, then the nerve center tests should
12 start the inquiry and control it more than in a
13 situation where there are lesser places of business?

14 MR. SCHNEIDER: Yes. That's the total
15 activities test, Your Honor, and the total activities
16 test would put initial weight on the nerve center, but
17 if one -- and then, of course, weigh whether or not
18 there's a substantial predominance of all of -- of all
19 of the other factors somewhere in the country, which,
20 frankly, is not a lot different than the Ninth Circuit
21 case -- test.

22 The Ninth Circuit simply does it in the
23 other way. It asks the same --

24 JUSTICE SOTOMAYOR: Well, that's a big
25 difference.

1 MR. SCHNEIDER: It asks the same question,
2 whether or not there's a -- a substantial
3 predominance, but finds substantial predominance, not
4 just predominance, but substantial predominance.

5 JUSTICE SOTOMAYOR: I -- I - you know, to
6 me, the word "substantial" usually means closer to 50
7 percent. I'm having a hard time understanding what the
8 appreciable difference is between 20 percent and 14 and
9 the balance being spread over so many other places.

10 What -- that seems very arbitrary in terms
11 of the place that generates the most money. That's it.
12 That's the place you are at home.

13 MR. SCHNEIDER: I think, to understand it,
14 one must look to the purpose of diversity. The real
15 question is, is diversity to be used as a sword by a
16 corporation, such that a corporation can choose its
17 place of diversity jurisdiction, or is it a shield to
18 protect the corporation, a truly foreign corporation,
19 from local bias?

20 JUSTICE SOTOMAYOR: Well, but that's what --
21 but that goes back to the point, if we are talking about
22 shields or swords, Congress had before it a provision
23 that would say: Anywhere you do business, you are not a
24 foreigner, because you are there. The people are going
25 to perceive you as a business -- the local business that

1 is doing business in that location. And Congress
2 rejected that.

3 So "foreign" had to have a meaning that was
4 somewhat different. And you don't think the corporate
5 headquarters where management is, where the direction
6 for the operation of the business is coming from, is the
7 place that needs the most protection in this system
8 because they are the ones making the decisions, and so
9 aren't they the ones who need to be protected from local
10 bias?

11 MR. SCHNEIDER: Courts have found that
12 corporations are best known where they have most of
13 their people and their property. That's because
14 employees go out in the community, property is bought
15 and sold in the community, so the local people will know
16 the corporation more where they have their people and
17 property than, necessarily, where they have the
18 headquarters.

19 Until this case began, I had no idea where
20 Hertz headquarters are. There's many corporations in
21 the State of California that I have no idea are
22 headquartered in the State of California.

23 JUSTICE GINSBURG: But the problem with your
24 -- your approach -- and California is unique in this
25 respect -- is California is a very large State, lots of

1 business, and you are comparing to the next State that
2 has the next number of employees, sales -- Florida.

3 If I were entertaining your approach, I
4 would think, well, you would compare California against
5 the whole rest of the nation, and not pick for a
6 dispersed -- a corporation that is widely dispersed.

7 California is going to be the big winner in
8 this. It's going to be able to keep all those cases in
9 its State courts, because so many multistate
10 corporations, I imagine, would come out just the way
11 Hertz does.

12 Am I right, that, under your analysis, the
13 one place where, if you say, we don't want Federal
14 courts to be dealing with corporations that are at home
15 in the State, but in the State of New Jersey, under your
16 view of things, a New Jersey citizen could sue Hertz in
17 Federal court in New Jersey, right?

18 MR. SCHNEIDER: That is correct, Your Honor,
19 unless, of course, Hertz were to change its place of
20 incorporation to New Jersey.

21 JUSTICE GINSBURG: And why do you say,
22 well -- why is it the Ninth Circuit's method,
23 California versus Florida, instead of California and
24 let's see what the rest of the business is -- is, in the
25 whole United States?

1 MR. SCHNEIDER: I think the answer, Justice
2 Ginsburg, to that question goes back to how the phrase
3 "principal place of business" was looked at under the
4 Bankruptcy Code, and in the Bankruptcy Code, it was, in
5 fact, a State-by-State analysis, rather than a State
6 versus country analysis.

7 Now, Justice Ginsburg, you asked me, did it
8 mean that all corporations were going to end up being
9 California corporations? California -- the Ninth
10 Circuit has been doing it this way for 50 years. Every
11 other circuit has had -- save the Seventh -- has had
12 some balancing test for 50 years, and it has not come to
13 pass that all corporations are California corporations.

14 A matter of fact, if you think of a
15 corporation that sells skis, they're likely going to be
16 a Colorado corporation, or they're going to be a Utah
17 corporation. A -- a corporation that sells mining
18 equipment is likely to end up in West Virginia or one of
19 the mining States.

20 JUSTICE SCALIA: I don't understand why,
21 somehow, a Californian is more likely to identify with
22 Hertz simply because there are more Californians and,
23 hence, more Hertz outlets, than a New Jerseyite is
24 likely to identify with Hertz.

25 Per capita, there are probably as many Hertz

1 outlets in New Jersey as there are in California. The
2 only reason that you come up with California is it's an
3 enormous State. It has 10 percent of the population.

4 But as far as the citizens of the State
5 identifying with that -- with that company and,
6 therefore, the unfairness of -- of letting that
7 company -- you know, remove to Federal court, New Jersey
8 and California are absolutely the same.

9 MR. SCHNEIDER: Congress made a decision in
10 rejecting the "any place where you are doing business"
11 test, that it would not prevent corporations from
12 removing cases in any State where they are doing
13 business.

14 The question in diversity jurisdiction is
15 not whether or not a corporation should be allowed to
16 use the Federal forum because it decides that's the best
17 forum for it, but the question is a different one: Will
18 there be bias in the -- in the State court?

19 And because Hertz does so much business in
20 California, it's hard to argue that it would be biased by
21 being in the State court in California. Remember, this
22 case --

23 JUSTICE SCALIA: Per capita, it doesn't --

24 JUSTICE GINSBURG: But they're not going to
25 be biased by the State court in New Jersey either. The

1 -- you correctly pointed out that Congress said "place
2 of business." It didn't even do as it did with -- it
3 didn't do as it did with -- with corporate citizenship;
4 that is, you could be a citizenship of as many States as
5 you incorporate in. But it's got to be one place, so
6 why not just keep it simple and say presumptively it's
7 the business headquarters? In a particular case, you
8 could show otherwise.

9 MR. SCHNEIDER: Congress had two goals,
10 Justice Ginsburg. The first goal was to prevent gaming
11 of the system. The simplest test is also the most
12 easily --

13 JUSTICE GINSBURG: But that would be a phony
14 headquarters. But nobody is suggesting that -- that the
15 headquarters of Hertz in New Jersey, that that's a sham
16 set-up.

17 MR. SCHNEIDER: But even a -- even a real
18 headquarters wouldn't prevent gaming of the system.
19 If -- if a corporation truly wanted to stay out of State
20 court in a State where it was doing significant
21 business, even all of their business under Hertz's test,
22 they would only have to actually move their headquarters
23 out of that State.

24 There's a second reason that Congress
25 passed the '58 amendments --

1 JUSTICE GINSBURG: Is that a phenomenon? I
2 mean, I can see that as a hypothetical, but does it
3 happen in the real world, that a corporation moves its
4 headquarters in order to escape the Federal courts in a
5 particular State?

6 MR. SCHNEIDER: Because the test is only a
7 Seventh Circuit test, it wouldn't do any good for a
8 corporation --

9 JUSTICE SCALIA: Well, it's one of the
10 factors in other -- in other States as well. It's part
11 of the totality of the circumstances.

12 MR. SCHNEIDER: It is --

13 JUSTICE SCALIA: It would certainly
14 increase your odds to move your headquarters.

15 MR. SCHNEIDER: It would, but it wouldn't be
16 dispositive. We do know that corporations move for all
17 sorts of economic reasons. They move for tax reasons;
18 they move because --

19 JUSTICE GINSBURG: But why would they move
20 simply to avoid a Federal court or to gain access to the
21 Federal court in a particular State?

22 MR. SCHNEIDER: There is -- as witnessed by
23 congressional findings in the Class Action Fairness Act,
24 there is a perception that State courts in certain
25 States are not good for corporations. Whether that --

1 that perception is a real perception or whether it's not
2 a real perception isn't for us today.

3 But if a corporation has all of its people
4 and all of its property and is doing all of its business
5 in one of those States, the corporation shouldn't be
6 allowed to game the system by simply moving its
7 headquarters, its real headquarters, out of that State.

8 JUSTICE GINSBURG: But we are not talking
9 about that all of -- all. I mean, that would be --
10 that's why you make it a presumption, that headquarters
11 is the presumption which could be rebutted. But you're
12 not talking about all business; you're talking about
13 California, where there's a sizeable amount of business
14 simply because of the size of the State, the population
15 of the State.

16 And I would understand your position better
17 if you would say, well, we would measure against the
18 entire United States. But California is going
19 to come out the winner much more often than any other
20 State under this test simply because of its size.

21 MR. SCHNEIDER: With -- with respect,
22 Justice Ginsburg, I don't believe that the case law has
23 borne that out. Again, I have read no studies that say
24 corporations are more often California citizens simply
25 because of the population of California, under -- that

1 doesn't mean that the study hasn't exist -- doesn't
2 exist. I simply haven't read it. There --

3 JUSTICE SCALIA: We -- we don't worry about
4 private individuals gaming the system, do we, by -- you
5 know, in -- in order to get into or out of Federal
6 court, establishing residence in a different State?

7 MR. SCHNEIDER: We do.

8 JUSTICE SCALIA: We don't worry about them
9 gaming the system, do we?

10 MR. SCHNEIDER: We do, Justice Scalia.
11 There is a very fact-intensive test for citizenship for
12 Individuals, based on their intent to stay in a place.

13 JUSTICE SCALIA: Sure.

14 MR. SCHNEIDER: So --

15 JUSTICE SCALIA: But -- but you can
16 have a genuine intent to go somewhere else, and I don't
17 know that people do it for forum reasons because they
18 want to get in or out of Federal court. We -- you
19 really don't worry about that, it seems to me.

20 MR. SCHNEIDER: I do believe it's less
21 likely that an individual would either have the
22 sophistication or, frankly, the litigation volume to
23 make such a decision. But a corporation may, in fact.

24 JUSTICE SCALIA: I know some rich
25 individuals that might have the incentive.

1 (Laughter.)

2 MR. SCHNEIDER: I'd like to turn, if I
3 may, to the second reason that Congress passed the '58
4 amendments, and that was because of the notion of
5 overcrowding of the Federal docket because too many
6 diversity cases -- because there were too many diversity
7 cases because most litigation was happening far away
8 from the facts.

9 Suits involving corporations generally arise
10 where they have a lot of contacts with the public, where
11 their people are and where their property are. If we
12 allow a corporation to move all of its litigation where
13 the bulk of its people and property are to Federal
14 court, Congress's second goal --

15 JUSTICE STEVENS: Mr. Schneider, can I just
16 inject this thought? It goes back to Justice Kennedy's
17 question. I don't think we are just concerned about the
18 defendants gaming the system. I think one other very
19 important concern is plaintiffs sometimes in small
20 communities want to sue somebody, and sometimes they
21 would much rather be in Federal court, because sometimes
22 the judges are better than the local judges, and so
23 forth. So there are a lot of reasons why plaintiffs
24 want to get into Federal courts.

25 And it seems to me it's important to have a

1 rule that makes it easy for the plaintiff to decide what
2 is the citizenship of the defendant -- can I get into
3 Federal court or not? And I see it as a great argument
4 in favor of a very simple rule to benefit plaintiffs.

5 MR. SCHNEIDER: The -- again, for 50 years,
6 Justice Stevens, plaintiffs and plaintiffs' lawyers have
7 been able to under the various tests figure out where
8 corporations are a citizen.

9 JUSTICE STEVENS: But you must acknowledge
10 it's a lot easier for a plaintiff -- there's some
11 place to get on the Internet and say where is their
12 principal place, and you get a simple answer. If you
13 get a question, well, I've got to analyze their business
14 all over the country to decide, that's a formidable
15 obstacle for a -- for a plaintiff to overcome.

16 MR. SCHNEIDER: It may or may not be,
17 depending upon the corporation. The vast majority of
18 corporations are local corporations, so we are really
19 just talking about the --

20 JUSTICE STEVENS: We're talking about a
21 corporation with an interstate business, who are
22 commonly defendants in a lot of lawsuits --

23 MR. SCHNEIDER: That's --

24 JUSTICE STEVENS: -- in a personal injury
25 suit, and the question is: Can I easily decide what the

1 place of incorporation of that defendant is?

2 MR. SCHNEIDER: That's correct, Justice
3 Stevens. And because most of those entities are public
4 corporations, there's a lot of information available in
5 SEC filings, et cetera, as to where they are actually
6 doing business. You can also simply look out your door
7 and figure out whether have I seen a lot of Hertz
8 outlets where I am.

9 CHIEF JUSTICE ROBERTS: Where is -- under
10 the Ninth Circuit test, where is -- what is the
11 principal place of business of Starbucks?

12 MR. SCHNEIDER: Under the Ninth Circuit
13 test, the principal place of Starbucks -- there's a case
14 that says Starbucks is in California. Let me give you,
15 Mr. Chief Justice --

16 JUSTICE SCALIA: That's a surprise.

17 (Laughter.)

18 MR. SCHNEIDER: I was -- I was surprised as
19 well. But -- but let me give you the numbers so that it
20 makes sense, because I have read the case.

21 JUSTICE GINSBURG: Where is -- where is its
22 headquarters.

23 MR. SCHNEIDER: Headquarters is in Seattle,
24 Washington. But over -- that's correct, Your Honor.

25 JUSTICE SOTOMAYOR: That's the very first

1 little shop was there.

2 MR. SCHNEIDER: That's my understanding,
3 yes. However, over 100 percent more workers from
4 Starbucks are in California than Washington.

5 JUSTICE SOTOMAYOR: Can you tell me what
6 100 percent means? Are the number of workers in Seattle
7 inconsequential? Is there one worker there or are we
8 talking about a thousand in --

9 MR. SCHNEIDER: I don't know the total
10 numbers of the workers.

11 JUSTICE SOTOMAYOR: Isn't that important?
12 As Justice Scalia said, you could -- per capita
13 California is going to dwarf anybody anywhere if you are
14 going to have a multi-location place of business. So
15 don't you have to know the raw numbers?

16 MR. SCHNEIDER: I -- I don't know the raw
17 numbers from Starbucks, I'm sorry. I just read the
18 opinion. And what the opinion tells us is that
19 Starbucks has 10 percent of its employees in Washington
20 and 27 percent in California. Over 300 percent more of
21 its gross revenue comes from California than any other
22 State; 200 percent more of its retail stores are in
23 California than in any other State.

24 CHIEF JUSTICE ROBERTS: What about, I guess,
25 mail order houses? I mean, what's the principal place

1 of business of Eddie Bauer?

2 MR. SCHNEIDER: It would -- it would be,
3 Your Honor, wherever there is a substantial predominance
4 of its people and property. I would assume -- and I
5 don't know the facts of Eddie Bauer, but I would assume
6 Eddie Bauer has a central location from which it does
7 its sales, which it does its factory work, where it
8 ships things from.

9 CHIEF JUSTICE ROBERTS: Would it -- would it
10 make a difference if, say -- it may well be the case --
11 30 percent of their business is in California?

12 MR. SCHNEIDER: No. But by "business" you
13 mean revenue, Your Honor?

14 CHIEF JUSTICE ROBERTS: Yes.

15 MR. SCHNEIDER: The test we posit, Your
16 Honor, focuses on people and property. The test would
17 look first to the location of employees, tangible
18 properties, and production activities, and then second
19 to income earned, purchases made, and where sales take
20 place.

21 Mr. Chief Justice, did the Court have
22 interest in the jurisdictional argument?

23 CHIEF JUSTICE ROBERTS: I don't know.

24 (Laughter.)

25 CHIEF JUSTICE ROBERTS: I can only speak for

1 one member of the Court, and that one doesn't.

2 MR. SCHNEIDER: Okay. Then if the Court has
3 any questions about the -- our jurisdictional argument,
4 I would be happy to answer them. And without further
5 questions --

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Mr. Srinivasan, you have 4 minutes
8 remaining.

9 REBUTTAL ARGUMENT OF MR. SRI SRINIVASAN

10 ON BEHALF OF THE PETITIONER

11 MR. SRINIVASAN: Your Honor, just one point,
12 and I'll be brief.

13 The idea that corporations would switch
14 their location of their headquarters in order to
15 achieve jurisdictional results hasn't been borne out in
16 any example of which I'm aware. And there's a
17 fundamental reason why.

18 When a corporation decides to relocate its
19 headquarters, it's making a very important business
20 decision about what is the location from which its
21 direction and control is going to emanate. That's not
22 a gamesmanship decision. That's a bona fide decision
23 about where its headquarters are going to be located and
24 where its most important decision -- business decisions
25 are going to be made.

1 If the Court has no further questions --

2 JUSTICE SCALIA: Well, that means that its
3 principal officers and their families have to move.

4 MR. SRINIVASAN: It does.

5 JUSTICE SCALIA: That's the big
6 disincentive, it seems to me.

7 MR. SRINIVASAN: Absolutely, Justice Scalia.
8 If the Court has no further questions.

9 CHIEF JUSTICE ROBERTS: Thank you, counsel.
10 The case is submitted.

11 (Whereupon, at 11:56 a.m., the case in the
12 above-entitled matter was submitted.)

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A				
abandon 8:5	4:5	32:12 37:1	asks 33:23 34:1	Bauer 47:1,5,6
abet 24:13,15,21	administrative	44:12 48:4	assessment	bear 15:21
abetting 24:16	25:15,16	answering 21:10	13:19	began 35:19
24:22	adopted 14:2	answers 30:22	assets 14:8 15:4	begging 18:1
able 20:11 36:8	affidavit 25:16	anybody 46:13	assume 4:21 7:7	behalf 1:15,17
44:7	25:18,25	apparatus 25:15	14:17 47:4,5	2:4,6,9 3:8
above-entitled	aggregated 31:6	appeal 12:12	assuming 14:5	29:18 48:10
1:11 49:12	aggregation 31:2	appeals 11:18	assumption	belief 32:9
absolutely 7:18	31:19 32:15	28:10 29:6	26:10	believe 32:13
26:6 38:8 49:7	ago 14:16	APPEARANC...	attack 29:1	41:22 42:20
Abuelhawa	agreed 29:22,22	1:14	attention 9:22	benefit 44:4
24:10	agreement 12:12	appendix 25:19	attractive 5:2	Bentonville
accept 4:21 7:19	aid 24:13,15,21	applicability 4:22	available 45:4	16:17 17:4
9:2	aiding 24:16,22	6:17	avoid 40:20	best 23:3 35:12
acceptable 8:1	air 11:11	application 4:20	aware 23:9 48:16	38:16
accepting 5:23	Airlines 27:23	10:22 14:11	a.m 1:13 3:2	better 3:22 6:5,7
access 4:8 15:24	AL 1:6	applied 10:19	49:11	41:16 43:22
16:4 40:20	albeit 11:22	14:18		bias 34:19 35:10
accommodate	alleges 20:3	applies 11:16	B	38:18
26:18	allow 43:12	apply 7:2 24:17	back 5:9 18:1	biased 38:20,25
accompany	allowed 38:15	24:22	34:21 37:2	big 33:24 36:7
24:16	41:6	appreciable 34:8	43:16	49:5
account 11:18	alternate 25:3	approach 3:18	back-and-forth	birth 31:11
16:14	alternative 24:4	8:21 10:19 14:2	21:14	Black's 24:20,25
achieve 48:15	26:17	14:23 22:12	back-office 26:2	25:1
acknowledge	altogether 28:1	23:8 26:21	balance 29:14	board 10:19
44:9	ambiguities	27:12,14,17	34:9	bona 48:22
acknowledged	10:13 11:23	28:3,6 31:3,6	balancing 29:23	books 31:24
17:15	ambiguity 11:14	35:24 36:3	29:25 30:5	borne 41:23
across-the-boa...	11:16	approaches 13:6	37:12	48:15
12:15	amendment	arbitrary 34:10	bankrupt 14:8	bought 35:14
Act 11:7 40:23	13:13	argue 38:20	15:3	Boys 29:11
action 16:7 40:23	amendments	argument 1:12	bankruptcy	bracket 6:11
activities 25:17	32:20 39:25	2:2,7 3:4,7 8:5	13:11,13,15,18	bridge 24:21
33:15,15 47:18	43:4	8:16 24:14 25:5	13:19,24 14:3,6	brief 9:25 12:11
activity 18:6 21:3	amount 16:25	29:17 44:3	14:12 15:3,8	14:1 17:20 21:1
32:15	41:13	47:22 48:3,9	21:17 23:6,7,8	23:12 27:20
additional 27:13	analysis 36:12	Arkansas 16:16	23:18 30:25	29:11 32:18
administer 14:10	37:5,6	16:17 17:4,5,15	31:1 37:4,4	48:12
administrability	analyze 44:13	22:19	bankruptcy-sp..	brought 13:11
14:21	announce 7:21	art 30:24 31:4	14:6	26:20
administrable	annual 11:8	articles 32:4	based 15:19	building 31:10
12:22 26:24	answer 6:6,7 9:8	articulated 6:14	16:25 24:19	bulk 43:13
administration	9:10,13 24:2	asked 21:8 37:7	42:12	Burdick 23:13
	30:23 31:7,8	asking 15:7	basis 29:1	business 3:13

<p>4:10,13,14,23 5:19 6:1,22,23 7:9,10,23 8:10 8:11 9:21 10:2 11:6 13:3,12 15:8,12,16,19 15:20,23 16:12 16:18,25 17:7 17:10,24 21:16 21:21 22:8,15 22:21,22,25 23:4,18,22 24:1 24:3,6,7,25 26:14 29:24 30:17,18 31:4 31:14,22 33:1,4 33:13 34:23,25 34:25 35:1,6 36:1,24 37:3 38:10,13,19 39:2,7,21,21 41:4,12,13 44:13,21 45:6 45:11 46:14 47:1,11,12 48:19,24 businesses 33:11</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2:1 3:1 Cal 1:17 California 3:15 3:17,19 5:5,8 5:13,18 8:9 15:19,20,24,25 16:11,12 27:21 27:25 30:9 35:21,22,24,25 36:4,7,23,23 37:9,9,13 38:1 38:2,8,20,21 41:13,18,24,25 45:14 46:4,13 46:20,21,23 47:11</p>	<p>Californian 37:21 Californians 37:22 California's 8:23 call 7:6 26:1 capita 37:25 38:23 46:12 case 3:4 7:5,20 8:3 11:10 12:17 15:1,10,11 23:13 24:10 26:9 27:2 29:10 29:12 30:8 32:2 32:14,19,21,23 33:6,6,21 35:19 38:22 39:7 41:22 45:13,20 47:10 49:10,11 cases 31:1,2,23 33:3 36:8 38:12 43:6,7 categories 26:19 caution 14:4 center 4:22 7:9 7:10 17:19,25 18:23 25:7 26:1 32:25 33:2,11 33:16 central 47:6 cert 28:24 certain 10:14 40:24 certainly 7:13,19 7:25 8:18,19 9:3 14:1 18:25 21:13 31:9 40:13 cetera 45:5 challenged 18:23 change 36:19 checks 20:18 chief 3:3,10 9:5,7 9:10 20:21 25:12 26:4</p>	<p>29:15,19 30:3 45:9,15 46:24 47:9,14,21,23 47:25 48:6 49:9 choice 12:3 choose 5:8 7:13 34:16 chose 22:11 24:6 25:2 31:21 circuit 3:13 10:18 12:5,17 15:10 15:11,18 16:19 17:23 19:1 23:14 26:22 27:21 29:21 30:4,7 31:20 33:8,20,22 37:10,11 40:7 45:10,12 circuits 12:4,7 Circuit's 23:12 36:22 circumstances 13:8 14:24 27:12,14 28:3 40:11 cite 23:10 29:11 cited 32:17 citizen 3:12,14 27:24,25 36:16 44:8 citizens 3:19 38:4 41:24 citizenship 18:11 18:20 27:18,22 28:13 39:3,4 42:11 44:2 City 25:15,17,23 25:24 26:1,7 Class 40:23 clear 32:4,10,13 close 3:13 closer 34:6 Code 23:19 30:25 31:1 37:4</p>	<p>37:4 collaterally 29:1 Collier's 13:21 Colorado 37:16 come 11:2,10 20:6 36:10 37:12 38:2 41:19 comes 9:20 20:3 26:9,9 46:21 coming 35:6 common 13:7,9 commonly 44:22 Commonwealth 15:10 communities 43:20 community 35:14 35:15 companies 21:7 company 5:17 15:16 16:10,11 16:15 22:12,20 22:25 38:5,7 company's 3:25 4:16 20:16,22 26:4,5,13 compare 36:4 comparing 36:1 comparison 18:8 completely 5:13 complex 27:7 complicated 12:4 concern 43:19 concerned 43:17 concluded 27:23 27:24 conclusion 24:18 29:6 conclusions 27:18,22 28:2 28:13 conduct 3:19 conducts 3:16 15:20 17:7</p>	<p>conflict 13:25 confused 32:7 Congress 8:10 12:2 14:10,13 14:17 17:9,11 21:16,20 22:5 22:16,23 23:24 24:6 25:2 30:23 31:5,8,16,21 31:25 32:5,20 34:22 35:1 38:9 39:1,9,24 43:3 congressional 40:23 Congress's 4:6 43:14 consequence 15:25 16:6,24 consequential 19:10 consider 11:21 12:16 13:7 consideration 14:7 considerations 4:3 14:7 considered 4:3 considers 16:19 consistent 31:19 constitute 19:22 constitutes 10:5 23:17 contact 17:22 18:3 contacts 43:10 context 13:24 14:3,6,12,13 14:18,19 contrary 24:18 control 6:7 9:20 11:2 12:13 19:20 20:16,22 33:12 48:21 controls 3:25 9:15 19:4</p>
--	--	---	---	---

corporate 4:15 5:15,16 20:5 35:4 39:3	course 10:18,20 11:8 19:3 33:17 36:19	48:22,24	29:24	34:17 38:14 43:6,6
corporation 1:3 3:4,11,25 4:9 4:23 5:25 7:7,8 11:2,4 12:10 16:16,25 17:6,6 17:16 18:17 19:19,21 22:6 27:19 28:14 29:25 33:4 34:16,16,18,18 35:16 36:6 37:15,16,17,17 38:15 39:19 40:3,8 41:3,5 42:23 43:12 44:17,21 48:18	court 1:1,12 3:10 7:21 11:18 12:16,19 14:5,9 14:9 16:7,9 17:2,4 23:1,8 24:17 26:8,9,10 26:11,18 27:3 27:23,24 28:7,9 28:11 29:4,5,7 29:13,20 32:5 32:18,22 36:17 38:7,18,21,25 39:20 40:20,21 42:6,18 43:14 43:21 44:3 47:21 48:1,2 49:1,8	decisionmaking 26:5 decisions 23:6 26:6 32:5 35:8 48:24 declare 18:5,9 18:17 declaring 18:2 deemed 3:19 15:23 deeming 16:24 deems 3:11 default 10:10 defendant 44:2 45:1 defendants 43:18 44:22 define 4:14,16 5:14 20:25 21:3 31:8 defined 17:23 defines 10:1,2 25:2 defining 26:13 definitely 23:21 definition 10:14 10:24 11:15 21:10 definitions 4:13 9:24 Delaware 16:3 demonstrability 26:17 denial 28:24 deny 4:8 depending 44:17 depends 5:14 description 30:4 designate 21:3 detail 14:12 determination 30:1 determine 27:7 determining	Diaz 29:11,11 dictionary 4:13 9:24 24:20,25 25:1 difference 6:21 30:20 33:25 34:8 47:10 differences 5:6 different 4:24 9:18 10:12 13:1 13:6 19:14 27:17 33:20 35:4 38:17 42:6 direct 9:22 19:20 20:15,21 28:17 28:18,24,24 29:6 direction 9:19 11:1 35:5 48:21 directs 3:25 disabled 15:24 17:2-22:6,12 23:1 discovery 27:7 disincentive 49:6 dispersed 5:25 7:8,11,16 12:10 36:6,6 dispositive 11:21 11:22 18:20 26:12 40:16 dispute 25:21 26:7 district 27:20 28:6,10 29:7 32:18 divergent 27:17 27:22 28:2,13 diverse 7:22 diversity 3:11 4:7,8 5:20 15:25 16:1,4 21:23 22:2,6,13 27:5 34:14,15	divining 27:2 docket 43:5 doctrine 12:23 doesn't 38:23 doing 8:9 11:8 21:25 31:14 32:8 35:1 37:10 38:10,12 39:20 41:4 45:6 domiciliary 18:10 dominant 7:11 dominantly 15:5 don't 20:24 door 45:6 duties 26:2 dwarf 46:13 D.C 1:8,15
corporations 3:18 4:7 7:22 11:6,7 17:12 18:13 20:19 22:17 35:12,20 36:10,14 37:8,9 37:13,13 38:11 40:16,25 41:24 43:9 44:8,18,18 45:4 48:13	courts 11:21 12:12 13:11,13 13:15,18,20 14:2,5 21:17 23:7 27:17,20 27:21 29:23 32:7 33:8 35:11 36:9,14 40:4,24 43:24			
corporation's 3:24 23:15 30:1	court's 3:18 23:11 24:9			
correct 4:2 5:21 7:24 8:13 30:13 36:18 45:2,24	critical 4:12			
correctly 39:1	cross 24:21			
cost 19:5 26:16 28:4	<hr/> D <hr/>			
costs 26:20 27:13	D 3:1			
counsel 4:18 17:18 29:15 32:3 48:6 49:9	dealing 36:14 decades 10:20 decide 44:1,14 44:25 decidedly 22:23 decides 38:16 48:18 decision 38:9 42:23 48:20,22			
country 33:19 37:6 44:14				
couple 6:8				
				<hr/> E <hr/>
				E 2:1 3:1,1 earned 47:19 ease 4:5 easier 44:10 easily 31:24 39:12 44:25 easy 10:17 44:1 economic 40:17 Eddie 47:1,5,6 either 38:25 42:21 emanate 48:21 employees 16:20 30:9 35:14 36:2 46:19 47:17 enabled 16:1,4 17:3 enacted 12:18 17:9 English 31:9 enormous 38:3 entertaining 36:3 entire 5:15 41:18

<p>entirely 8:1 entities 45:3 envisioned 17:9 equaling 32:15 equipment 37:18 erred 3:14 escape 40:4 ESQ 1:15,17 2:3 2:5,8 essentially 13:7 26:1 established 26:22 establishing 11:9 42:6 estate 14:8,10 et 1:6 45:5 evidence 20:6 exact 14:18 exactly 6:10 18:16 example 13:22 18:19 21:6,23 22:19 24:11 25:10 28:19 31:12 48:16 examples 17:20 exception 4:19 6:9,15 7:3,3 10:3 excess 16:22 22:21 excuse 14:20 executive 5:16 21:9 25:12 executives 5:15 10:8 20:14,21 21:11 26:4 exist 10:9,10 42:1,2 experience 10:18 explain 14:1 explained 33:3 expressions</p>	<p>21:18 extent 5:16 25:18 extreme 28:19</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facilitate 24:12 24:15,19,23 fact 9:10 15:19 19:20 20:13,15 23:8 24:5 25:2 25:23 32:6 33:3 37:5,14 42:23 factor 16:22 factoring 6:23 factors 11:25 31:20 33:19 40:10 factory 23:16 47:7 facts 43:8 47:5 fact-intensive 42:11 fair 30:3 fairest 13:19 Fairness 40:23 families 49:3 far 38:4 43:7 far-flung 33:11 fashioning 7:3 favor 14:21 26:24 44:4 feature 13:7 Federal 4:15 9:25 16:9 17:2 17:3 21:24 23:1 36:13,17 38:7 38:16 40:4,20 40:21 42:5,18 43:5,13,21,24 44:3 felt 14:8 fide 48:22 Fifth 15:9 33:9 figure 44:7 45:7</p>	<p>file 15:3 filings 10:16 11:5 11:6 20:20,25 21:2 25:9,10 45:5 final 28:18,18 find 4:19 findings 40:23 finds 28:7 34:3 firms 27:6 first 4:4 5:23 6:6 6:12 7:1 8:19 9:3,17 11:1 12:9,16 23:12 23:14 26:23 30:23 33:9 39:10 45:25 47:17 flaw 13:9 flies 5:18 Florida 5:5 36:2 36:23 focuses 47:16 following 21:6 footnote 12:11 23:12 foreign 34:18 35:3 foreigner 34:24 foremost 6:12 7:1 8:20 9:4 11:1 form 18:2,6 formidable 44:14 formulation 24:4 25:3 26:17,18 forth 20:6 43:23 fortified 4:15 forum 21:24 38:16,17 42:17 found 11:3 32:22 35:11 Francisco 1:17 frankly 33:20 42:22</p>	<p>Friend 1:6 3:5 function 20:13 fundamental 48:17 further 7:17 29:13 48:4 49:1 49:8</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>G 3:1 gain 16:1,4 40:20 game 15:22 41:6 gamesmanship 48:22 gaming 39:10,18 42:4,9 43:18 general 17:12 22:17 generally 12:12 43:9 generates 16:21 34:11 genuine 42:16 getting 15:24 17:2 22:6,12 23:1 Gilardi 33:6 Ginsburg 7:5,19 8:22 9:2 11:24 12:15,25 13:3 13:10 15:1,7 21:15 22:10 25:5 28:16,23 29:9 30:15 35:23 36:21 37:2,7 38:24 39:10,13 40:1 40:19 41:8,22 45:21 give 9:15 45:14 45:19 given 28:2 glean 24:5 go 5:9 11:24 35:14 42:16</p>	<p>goal 39:10 43:14 goals 39:9 goes 18:1 34:21 37:2 43:16 going 20:5 21:24 34:24 36:7,8 37:8,15,16 38:24 41:18 46:13,14 48:21 48:23,25 good 8:16 24:10 40:7,25 gotten 28:11 govern 14:24 great 44:3 gross 46:21 guess 18:8 19:14 19:14,18,24 28:20 29:2 46:24</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 5:18 happen 40:3 happened 12:16 27:20 28:15 happening 43:7 happens 5:19 happy 48:4 hard 34:7 38:20 headquartered 3:15 16:17 35:22 headquarters 3:24 4:15,17,22 5:9,12,14 6:1,7 6:21 7:1,10,12 7:16,24 8:25 9:15,18,19,23 10:2,2,6,14,15 10:19,24 11:3,5 11:7,15,19 12:2 12:3,6,13,15 13:4,15,23 14:2 14:23 16:8</p>
---	--	--	---	---

<p>17:13,17 18:5 18:18,22 19:4,9 19:12,17,22 20:5,12,13,19 20:20,25 21:4,9 21:19 22:18 23:5,7,22,24 23:25 24:4,7,8 25:1,6,11,22 26:10,12,19 27:10 35:5,18 35:20 39:7,14 39:15,18,22 40:4,14 41:7,7 41:10 45:22,23 48:14,19,23</p> <p>hear 3:3 helps 32:11 Hertz 1:3 3:4,14 3:15 15:2,16,19 15:20,22 16:1,6 16:8 25:6,10 30:9 31:10 35:20 36:11,16 36:19 37:22,23 37:24,25 38:19 39:15 45:7</p> <p>Hertz's 25:22 26:10 39:21</p> <p>highlights 9:14 highly 11:22 history 31:23 holding 3:14 home 4:9 21:24 34:12 36:14</p> <p>Honor 5:22 6:5 7:24 10:4,11 11:14 18:7 19:2 20:10 21:6 22:4 23:6 24:3 30:23 31:21 32:12 33:15 36:18 45:24 47:3,13 47:16 48:11</p> <p>Honor's 5:23</p>	<p>6:10 7:2 14:15 21:13 23:23</p> <p>houses 46:25</p> <p>hypothetical 6:5 6:11 9:8 10:3 15:2 40:2</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 21:23 35:19 35:21 48:13</p> <p>identified 9:25 17:12 22:17</p> <p>identifies 11:5 19:19 20:12 25:11</p> <p>identify 20:19 37:21,24</p> <p>identifying 38:5</p> <p>ignore 5:13</p> <p>Illinois 27:24</p> <p>imagine 5:7 36:10</p> <p>import 14:11 32:2,21</p> <p>important 15:21 17:22 18:3 19:10 26:5 43:19,25 46:11 48:19,24</p> <p>imported 30:24 31:5</p> <p>importing 32:9</p> <p>improvement 19:1</p> <p>incentive 42:25</p> <p>include 29:25</p> <p>income 47:19</p> <p>inconsequential 46:7</p> <p>incorporate 39:5</p> <p>incorporation 16:3 36:20 45:1</p> <p>increase 40:14</p> <p>indeterminacy 27:16 28:5</p>	<p>individual 18:9,9 42:21</p> <p>individuals 42:4 42:12,25</p> <p>inevitably 13:15</p> <p>influential 17:22 18:3</p> <p>information 26:2 45:4</p> <p>initial 33:16</p> <p>inject 43:16</p> <p>injury 44:24</p> <p>Inland 32:21,22 33:6</p> <p>inquiry 28:11 33:12</p> <p>intended 31:25</p> <p>intent 42:12,16</p> <p>interest 47:22</p> <p>Internet 44:11</p> <p>interstate 44:21</p> <p>invested 27:1</p> <p>involved 29:12</p> <p>involving 43:9</p> <p>Isn't 30:20</p> <p>issue 20:17 24:12</p> <p>issues 10:24</p> <p>it's 8:25 10:21 12:25 13:16 15:24 19:16 23:12 40:9 42:20</p> <p>I'd 11:11,13 15:14 43:2</p> <p>I'll 7:2 48:12</p> <p>I've 44:13</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Jersey 3:16 5:12 5:17,19,20 15:4 15:13,17 16:8 25:6,11 26:6 36:15,16,17,20 38:1,7,25 39:15</p>	<p>Jerseyite 37:23</p> <p>judges 33:5 43:22,22</p> <p>judgment 7:6 20:4,4 28:8,10 28:18</p> <p>judicial 14:11</p> <p>jurisdiction 4:7,8 11:10 15:25 16:2,5,9,9 17:2 17:4 22:7,13,14 22:14 23:2 28:7 28:17,22,25 29:8 34:17 38:14</p> <p>jurisdictional 4:5 12:22 14:13,19 14:22 26:25 27:2 28:11 47:22 48:3,15</p> <p>jurisdictions 22:23</p> <p>Justice 3:3,10 4:18 5:1,4 6:13 6:20 7:5,18 8:2 8:8,14,15,22 9:2,5,7,8,10,14 10:5,8 11:24 12:15,25 13:3 13:10 15:1,7 17:18 18:14,21 19:8,23 20:2,8 20:24 21:15 22:10 25:5 27:5 27:10 28:16,23 29:9,15,20 30:3 30:11,13,15,16 30:20 31:13,18 32:3,13 33:7,24 34:5,20 35:23 36:21 37:1,7,20 38:23,24 39:10 39:13 40:1,9,13 40:19 41:8,22 42:3,8,10,13</p>	<p>42:15,24 43:15 43:16 44:6,9,20 44:24 45:2,9,15 45:16,21,25 46:5,11,12,24 47:9,14,21,23 47:25 48:6 49:2 49:5,7,9</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 12:5 36:8 39:6</p> <p>Kennedy 27:5,10</p> <p>Kennedy's 43:16</p> <p>know 5:10 6:20 9:9 14:13 19:5 20:24 21:1,2,15 21:17 22:5 32:9 34:5 35:15 38:7 40:16 42:5,17 42:24 46:9,15 46:16 47:5,23</p> <p>known 32:2,24 32:25 35:12</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labor 7:14</p> <p>language 4:3 23:10 31:9</p> <p>large 10:15 25:14 35:25</p> <p>Laughter 8:17 9:11 43:1 45:17 47:24</p> <p>law 10:1 24:20 24:25 25:1 27:6 32:2,14,19 41:22</p> <p>laws 4:16</p> <p>lawsuits 44:22</p> <p>lawyers 44:6</p> <p>legislative 31:23</p> <p>lesser 25:17 33:13</p> <p>letting 38:6</p>
---	--	---	---	---

<p>let's 4:21 5:11,16 36:24</p> <p>level 17:7</p> <p>liability 24:16</p> <p>life 12:23</p> <p>light 4:3 7:20</p> <p>likewise 24:24</p> <p>limited 6:24 23:2</p> <p>line 32:25 33:1</p> <p>lines 32:23</p> <p>litigation 42:22 43:7,12</p> <p>little 28:19 46:1</p> <p>live 5:19 10:9</p> <p>lives 5:17</p> <p>load-bearing 19:25</p> <p>local 34:19,25 35:9,15 43:22 44:18</p> <p>located 18:18 21:11 25:13,22 26:11 48:23</p> <p>location 3:23 17:13 18:18 19:20 20:11 21:8,9,12 26:12 35:1 47:6,17 48:14,20</p> <p>locations 4:1 20:16,21</p> <p>locus 26:5</p> <p>logical 12:3</p> <p>look 10:17,17 11:1,4,12 19:15 19:18 25:9 26:18 30:5 31:3 31:6 34:14 45:6 47:17</p> <p>looked 21:17 23:9 37:3</p> <p>lot 27:6 33:20 43:10,23 44:10 44:22 45:4,7</p> <p>lots 21:18 35:25</p>	<p>loudly 25:4</p> <p>lower 32:4</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M 1:17 2:5 29:17</p> <p>mail 46:25</p> <p>mailbox 18:19</p> <p>main 10:22 20:20 25:22</p> <p>major 27:6</p> <p>majority 13:22 15:9,11 33:8 44:17</p> <p>making 35:8 48:19</p> <p>management 35:5</p> <p>matter 1:11 17:12 22:17 37:14 49:12</p> <p>McDonald's 5:7</p> <p>mean 8:4,6,10 12:1 13:11,16 20:25 23:22 37:8 40:2 41:9 42:1 46:25 47:13</p> <p>meaning 4:11 9:20 12:20 14:19 23:9,18 35:3</p> <p>meaningful 6:14</p> <p>means 24:20 25:1 34:6 46:6 49:2</p> <p>meant 8:10 23:24</p> <p>measure 41:17</p> <p>measures 16:19</p> <p>MELINDA 1:6</p> <p>member 48:1</p> <p>merits 28:8,9 29:4</p> <p>method 36:22</p> <p>mill 23:16</p> <p>mind 15:21 17:11</p>	<p>22:16</p> <p>mine 23:16</p> <p>mining 37:17,19</p> <p>minutes 48:7</p> <p>Model 11:6</p> <p>moment 26:16</p> <p>money 34:11</p> <p>motion 20:4</p> <p>move 39:22 40:14,16,17,18 40:19 43:12 49:3</p> <p>moves 40:3</p> <p>moving 41:6</p> <p>muddle 13:20</p> <p>multistate 5:24 7:6,22 8:24 12:10 36:9</p> <p>multi-location 46:14</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:1,1 3:1</p> <p>narrower 8:21</p> <p>nation 36:5</p> <p>national 3:18</p> <p>nature 28:2</p> <p>necessarily 17:19 35:17</p> <p>necessary 21:3</p> <p>need 14:8 35:9</p> <p>needs 35:7</p> <p>nerve 4:22 17:19 17:25 18:23 32:24 33:2,11 33:16</p> <p>never 8:23</p> <p>New 3:15 5:12 5:17,19,20 15:3 15:13,17 16:7 25:6,11 26:6 31:12 36:15,16 36:17,20 37:23 38:1,7,25 39:15</p> <p>Ninth 3:13 15:17</p>	<p>16:19 17:23 19:1 26:21 27:21 30:4,7 31:20 33:20,22 36:22 37:9 45:10,12</p> <p>normal 24:15</p> <p>noted 30:8</p> <p>notion 24:19 43:4</p> <p>November 1:9</p> <p>nuanced 14:12</p> <p>number 36:2 46:6</p> <p>numbers 45:19 46:10,15,17</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 2:1 3:1</p> <p>objectivity 11:11</p> <p>obstacle 44:15</p> <p>obviously 12:1</p> <p>oddity 15:15 16:13</p> <p>odds 40:14</p> <p>office 23:15</p> <p>officers 49:3</p> <p>offices 21:10</p> <p>officials 20:15 25:12</p> <p>Oil 15:10</p> <p>Okay 48:2</p> <p>Oklahoma 25:7 25:15,17,23,24 26:1,7</p> <p>once 24:21</p> <p>ones 35:8,9</p> <p>opening 23:11</p> <p>open-ended 28:2</p> <p>operation 35:6</p> <p>operations 3:16 3:20 4:1 5:25 7:9,22 9:17 12:10 13:4 19:21 20:16,22</p> <p>opinion 14:15</p>	<p>23:11,12 24:9 46:18,18</p> <p>opinions 32:18</p> <p>oral 1:11 2:2 3:7 29:17</p> <p>order 40:4 42:5 46:25 48:14</p> <p>ordinary 4:11 9:20 12:20 23:10,16</p> <p>outer 10:25</p> <p>outlets 37:23 38:1 45:8</p> <p>outliers 33:5</p> <p>outset 28:12</p> <p>outside 3:17</p> <p>out-of-State 16:10 17:6</p> <p>overcome 44:15</p> <p>overcrowding 43:5</p> <p>overriding 29:22</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 3:1</p> <p>page 2:2 23:11 27:19</p> <p>pages 25:19</p> <p>paragraph 25:18</p> <p>Park 16:7 25:11 25:13,22 26:3,6 26:11</p> <p>part 5:7 33:5 40:10</p> <p>particular 11:10 18:10 21:20 39:7 40:5,21</p> <p>particularly 4:2 14:22 16:14 32:20</p> <p>party 18:23 20:3 20:12</p> <p>pass 37:13</p> <p>passed 32:20 39:25 43:3</p>
---	--	--	--	--

Peachtree 15:11	15:8,12,16,18	position 41:16	44:12 45:11,13	putting 16:2
people 30:1	15:23 17:10,21	posits 6:5 10:4	46:25 49:3	<hr/>
34:24 35:13,15	17:24,25 18:6	possibility 27:16	principle 6:14	Q
35:16 41:3	19:25 21:3,16	28:5	29:23	question 12:17
42:17 43:11,13	21:21 22:15	potential 26:19	principles 24:16	18:1 19:7 21:8
47:4,16	23:4,18,22 24:1	precisely 28:21	24:22	21:11 23:23
Pep 29:11	24:3,6,7,25	precluded 28:18	prior 31:1	25:4 26:11
perceive 34:25	26:13 29:24	28:25	private 42:4	32:13,17 34:1
percent 3:16 5:5	30:18 31:4,9,10	predominance	probably 37:25	34:15 37:2
5:5,7 15:20	31:11,11,14,22	33:18 34:3,3,4	problem 4:18 8:4	38:14,17 43:17
16:11,22 30:8,9	32:14 33:4,10	34:4 47:3	20:2 28:14	44:13,25
30:10 34:7,8	34:11,12,17	predominant	35:23	questions 10:13
38:3 46:3,6,19	35:7 36:13,19	13:23	proceeds 28:7	29:13 48:3,5
46:20,20,22	37:3 38:10 39:1	preference 4:4	production 47:18	49:1,8
47:11	39:5 42:12	14:20 26:24	proper 27:3	quote 3:12,13
perception 40:24	44:11,12 45:1	premise 5:24	properties 47:18	23:15 31:23
41:1,1,2	45:11,13 46:14	premium 12:21	property 30:2,10	<hr/>
perform 29:23	46:25 47:20	presence 17:16	35:13,14,17	R
30:5	places 6:21,23	preserve 4:6	41:4 43:11,13	R 3:1
performed 25:17	33:13 34:9	presumably	47:4,16	raised 19:9 28:22
32:18	plaintiff 44:1,10	17:11	proportional	raw 46:15,16
performs 16:11	44:15	presumption	3:20	reach 27:17 29:6
perimeters 10:25	plaintiffs 43:19	19:6 20:9 41:10	proposal 22:8	reached 24:18
personal 44:24	43:23 44:4,6,6	41:11	proposed 26:20	27:22 29:4
petition 15:3	please 3:10	presumptively	proposing 12:8	read 31:4 32:4
25:20	29:20	18:23 39:6	proposition	41:23 42:2
Petitioner 1:4,16	plus 26:2	pretty 12:18	33:10	45:20 46:17
2:4,9 3:8,14	poignant 14:22	prevail 7:25 8:20	protect 34:18	readily 24:13
48:10	16:14	prevent 38:11	protected 35:9	reading 3:22 4:2
phenomenon	point 6:2 11:13	39:10,18	protection 35:7	17:20 23:3
40:1	12:11 14:24	Pre-1958 13:24	provides 31:9	real 14:14 20:17
phony 39:13	15:14 18:15	principal 3:12	provision 17:10	25:21 27:15
phrase 4:12 9:21	19:2,8 21:13	4:10,12,14 6:1	34:22	34:14 39:17
23:3 31:22,24	22:4 25:23 26:8	7:23 8:5,9,11	public 10:16 11:5	40:3 41:1,2,7
32:1,6 37:2	27:10,13,19	9:16,21 10:1	20:19,25 21:2	realities 33:1
pick 7:12,16 8:24	28:4,21,22,23	13:12 15:8,12	25:9,9 43:10	reality 32:10
12:1 36:5	29:3 34:21	15:16,18,23	45:3	really 22:1 23:24
picked 21:16,20	48:11	17:10 19:3 21:9	publicly 21:7	42:19 44:18
picking 32:6	pointed 39:1	21:11,16,21	purchases 47:19	reason 6:12
place 3:13 4:10	points 3:23 11:14	22:15 23:4,15	purely 15:2	14:17,23 25:12
4:13,14 6:1	14:16	23:17,21,25	purpose 34:14	27:3 38:2 39:24
7:23 8:6,9,24	population 3:21	24:3,6,7,24	purposes 4:6	43:3 48:17
8:25 9:21 10:1	38:3 41:14,25	26:2,13 29:24	18:11,20 26:13	reasons 6:8 9:14
10:17,25 12:2	portion 23:11	30:17,17 31:4	purview 14:9	9:16 11:9 40:17
13:12,16 15:4,5	posit 5:11 47:15	31:22 37:3	put 9:3 33:16	40:17 42:17

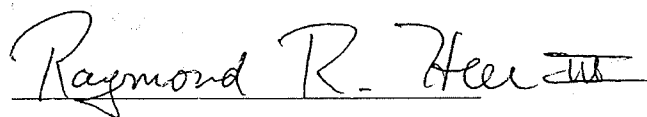
<p>43:23 rebut 18:24 19:7 19:11,16 rebuttable 19:6 20:9 REBUTTAL 2:7 48:9 rebutted 41:11 recognized 16:16 22:19 reference 24:8 Refining 15:10 regard 15:15 32:17 regularly 3:19 rejected 22:9,10 35:2 rejecting 38:10 relatively 10:16 relevant 11:22 23:10 relocate 48:18 remaining 48:8 Remember 38:21 remove 38:7 removing 38:12 render 28:8 renders 28:8 rental 26:1 reply 12:11 report 11:7 21:7 reports 11:8,9 reservation 25:7 reserve 29:14 residence 42:6 resistant 12:7 resolution 7:19 29:4 resources 27:1,6 respect 4:11 9:6 9:12 10:13 11:15 12:14,19 23:5 24:2 27:11 35:25 41:21</p>	<p>Respondents 1:18 2:6 11:17 26:21 29:18 response 22:3 rest 36:5,24 result 9:2 17:8 results 48:15 retail 46:22 revenue 30:10 46:21 47:13 revenues 16:21 reverse 28:10 review 28:24 29:6 32:19 rich 42:24 Ridge 16:7 25:11 25:13,22 26:3,6 26:11 ridiculous 4:20 right 5:1,3 8:7 10:11 20:7 27:9 29:2 36:12,17 rightly 17:15 24:17 ROBERTS 3:3 9:5,7 29:15 30:3 45:9 46:24 47:9,14,23,25 48:6 49:9 Rubber 32:21,23 33:6 rule 6:10 7:1,15 7:21 10:10 12:15 13:23,23 15:9,12 18:22 22:24 44:1,4 rules 4:5 12:22 14:22 26:25 runs 5:18</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 3:1 sales 30:6 36:2 47:7,19 San 1:17</p>	<p>satisfied 7:7 save 29:21,21 37:11 saying 7:8 15:15 says 7:15,22 18:22 22:24 45:14 Scalia 8:2,8,14 8:15 9:14 30:11 30:14,16,20 37:20 38:23 40:9,13 42:3,8 42:10,13,15,24 45:16 46:12 49:2,5,7 Scalia's 32:13 Schmidt 14:16 Schneider 1:17 2:5 29:16,17,19 30:7,13,19,22 31:16,21 32:12 33:14 34:1,13 35:11 36:18 37:1 38:9 39:9 39:17 40:6,12 40:15,22 41:21 42:7,10,14,20 43:2,15 44:5,16 44:23 45:2,12 45:18,23 46:2,9 46:16 47:2,12 47:15 48:2 scholarly 32:19 Scott 12:17 Seattle 45:23 46:6 SEC 45:5 second 4:6 7:4 33:9 39:24 43:3 43:14 47:18 see 6:22 10:20 26:19 36:24 40:2 44:3 seen 45:7 sells 37:15,17</p>	<p>semantic 20:1 31:8 sense 20:13 21:6 23:21 45:20 set 6:15 10:12 set-up 39:16 Seventh 10:18 12:5 15:10 29:22 37:11 40:7 sham 39:15 share 13:6,9 18:16 shell 19:11 shield 34:17 shields 34:22 ships 47:8 shop 46:1 show 15:11 19:11 20:11 39:8 shows 20:6 side 16:3 20:11 side's 20:5 significant 16:20 16:22 17:22 18:3 39:20 simple 10:21 12:6,21 26:24 27:11 39:6 44:4 44:12 simpler 5:11 simplest 39:11 simplicity 4:4 14:14,21 26:16 simply 18:1,17 33:22 37:22 40:20 41:6,14 41:20,24 42:2 45:6 single 30:12 site 3:24 16:8 situation 5:2,11 5:24 7:2,23 9:13,22 10:3 12:9,13 17:14</p>	<p>19:14 28:6,12 29:3,12 33:13 situations 6:3,16 10:14 19:5 situs 11:3 23:4 size 41:14,20 sizeable 41:13 skis 37:15 small 43:19 sold 35:15 solely 30:5 solution 12:8 solves 8:3 somebody 43:20 someplace 15:5 somewhat 35:4 soon 12:18 sophistication 42:22 sorry 10:7 46:17 sort 10:12 12:23 15:15 sorts 28:1 40:17 SOTOMAYOR 4:18 5:1,4 6:13 6:20 10:5,8 17:18 18:14,21 19:8,23 20:2,8 20:24 31:13,18 32:3 33:7,24 34:5,20 45:25 46:5,11 Sotomayor's 9:8 speak 47:25 speaks 25:4 specific 14:7 specifically 30:8 speech 23:17 spelled 25:24 spend 27:7 spread 34:9 SRI 1:15 2:3,8 48:9 Srinivasan 1:15 2:3,8 3:6,7,9</p>
---	---	--	--	--

4:25 5:3,22 6:18,25 7:18 8:7,13,18 9:1,6 9:9,12 10:7,11 12:9 13:2,5,18 15:6 18:7,16,25 19:13,24 20:7 20:10 21:5 22:3 22:11 25:8 27:9 28:20 29:2,10 48:7,9,11 49:4 49:7 stage 27:2 Starbucks 45:11 45:13,14 46:4 46:17,19 start 5:10,23 33:10,12 started 5:17 9:10 starting 19:2 starts 31:20 State 3:12,17,20 4:9,9,16 7:11 8:6,9,11,23,25 9:18,19 10:1 16:2,3,5,7,23 17:16 18:10 30:12,17 31:3,3 31:11,12 32:16 35:21,22,25 36:1,9,15,15 37:5 38:3,4,12 38:18,21,25 39:19,20,23 40:5,21,24 41:7 41:14,15,20 42:6 46:22,23 States 1:1,12 4:7 4:24 7:16 22:22 24:10 36:25 37:19 39:4 40:10,25 41:5 41:18 State's 3:21 State-by-State	31:6 37:5 statute 3:11,22 12:18 15:9,22 24:11,14,17 30:19 31:5 32:8 statutes 21:18 statutory 4:2,12 12:20 stay 39:19 42:12 Stevens 43:15 44:6,9,20,24 45:3 stores 16:21 46:22 straightforward 6:4 10:16,21 27:11 stranger 22:1 strong 4:4 12:21 14:20 26:24 studies 41:23 study 42:1 subject-matter 28:17,21,25 29:7 submission 6:6 19:3 submitted 49:10 49:12 substantial 5:6 19:10 22:7,20 22:22,25 33:18 34:2,3,4,6 47:3 substantially 16:18 22:21 sue 36:16 43:20 sued 16:7 suggesting 17:24 39:14 suit 44:25 suits 27:5 43:9 summary 20:3,4 support 26:3 suppose 15:2 20:14,14	Supreme 1:1,12 Sure 4:25 6:18 25:8 29:2 42:13 surprise 45:16 surprised 45:18 surprising 28:1 switch 48:13 sword 34:15 swords 34:22 system 35:7 39:11,18 41:6 42:4,9 43:18 <hr/> T T 2:1,1 take 6:2 7:12 11:18 19:6 21:13 31:2 32:1 47:19 taken 14:17 takes 16:14 talk 8:8 talking 17:19,21 32:14 34:21 41:8,12,12 44:19,20 46:8 tangible 47:17 tax 18:2 40:17 technology 26:3 tell 13:22 46:5 tells 46:18 term 4:14,14,16 10:1 13:12 21:20 23:21,25 24:9,12,12,14 24:19,23,24 25:2 30:24 31:4 terminology 31:15 terms 12:20 14:16 26:16 34:10 terribly 5:6 test 4:19 5:13 6:3 6:16,16 10:21	11:17,17,17 12:1 18:4 27:11 33:15,16,21 37:12 38:11 39:11,21 40:6,7 41:20 42:11 45:10,13 47:15 47:16 tests 27:8 33:2 33:11 44:7 Texas 16:20,25 17:1,3,6,7 21:23 22:1,1,2 22:21 text 4:12 Thank 3:9 29:15 29:19 48:6 49:9 that's 4:1 8:14 10:12,23 11:2 11:16 14:22 17:8 21:8 22:18 26:8 27:25 44:23 48:21 theory 16:10 17:5 28:14 there's 13:5 14:16 15:9 19:14 25:14,14 25:21 28:7 29:10 33:18 34:2 35:20 39:24 41:13 44:10 45:4,13 48:16 they're 37:15,16 38:24 thing 8:23 14:4 22:4 24:21 things 10:10 21:20 36:16 47:8 think 6:4,12,25 7:24 8:20 9:20 10:11,20,25 11:10,20 12:12	12:16,23 13:6 13:14,19,24 14:4,15 15:6 17:8 18:8,25 19:3,7,13 21:7 21:10,25 22:4,5 22:16 23:3,20 24:2,5 25:3,21 27:10 28:20 30:22 31:7,25 33:8 34:13 35:4 36:4 37:1,14 43:17,18 thinking 21:22 32:23,25 33:1 third 12:17 28:4 33:9 thought 14:14 32:5 43:16 thousand 46:8 three 5:15 6:22 26:19 threshold 27:1 throw 8:15,19 tied 6:15 time 5:18 26:25 29:14 32:19 34:7 today 41:2 TODD 1:17 2:5 29:17 total 11:25 33:14 33:15 46:9 totality 11:25 13:8 27:12,14 28:3 40:11 traded 21:7 treatise 13:21 treatises 13:25 trial 28:8 29:4 truly 34:18 39:19 try 7:14 Tuesday 1:9 turn 26:15 43:2 two 4:3 6:21 9:15
---	---	--	---	---

9:16 19:14 27:13,20,21 30:21,22 32:18 32:23 33:5 39:9	19:3 24:8,18 27:4 36:16 Virginia 37:18 virtue 14:14 volume 42:22	work 47:7 worker 46:7 workers 46:3,6 46:10 world 5:8 40:3 worry 42:3,8,19 worth 7:14 wouldn't 19:22 23:24 39:18 40:7,15 wrestle 12:19,21 wrong 28:11 29:7	<hr/> 2 <hr/> 2 12:11 20 5:5 15:20 16:11 34:8 200 46:22 2009 1:9 27 46:20 29 2:6 29a 25:19
<hr/> U <hr/> underlies 26:23 understand 34:13 37:20 41:16 understanding 23:17 34:7 46:2 understood 31:24 undisputed 16:18 unfairness 38:6 unique 35:24 United 1:1,12 24:10 27:23,23 27:25 36:25 41:18 universally 16:15 17:15 22:19 25:10 urge 7:17 12:6 use 38:16 uses 24:14 usually 34:6 Utah 37:16 U.S.C 31:2	<hr/> W <hr/> Wachovia 14:16 Wal-Mart 16:15 16:15,17,24 17:1,3,5,14,14 21:25 22:18,20 22:22,24 want 8:15,18,19 36:13 42:18 43:20,24 wanted 12:2 14:10 39:19 Washington 1:8 1:15 45:24 46:4 46:19 wasn't 32:6 way 7:12 19:18 33:23 36:10 37:10 ways 13:1 19:15 weigh 33:17 weight 19:25 33:16 well-defined 32:6 well-recognized 22:25 weren't 21:12 West 37:18 we'd 8:20 We're 44:20 what's 10:10 Where's 17:21 widely 36:6 winner 36:7 41:19 wins 8:3 witnessed 40:22 word 14:18,19 31:9 34:6	<hr/> X <hr/> x 1:2,7	<hr/> 3 <hr/> 3 2:4 30 47:11 30a 25:19 300 46:20
<hr/> V <hr/> v 1:5 3:4 14:16 24:10 29:11 variety 4:23 13:5 21:19 22:23 various 44:7 vast 19:1 33:8 44:17 venue 14:18 versus 25:3 36:23 37:6 view 3:23 13:9 14:24 15:18 16:14 18:17	<hr/> Y <hr/> years 28:9 29:5,5 29:21 37:10,12 44:5 York 31:12 you're 17:18,24 41:11,12	<hr/> Z <hr/> zero-sum 15:22	<hr/> 4 <hr/> 4 48:7 40 27:19 43 30:8 48 2:9 4:7
	<hr/> Z <hr/> zero-sum 15:22	<hr/> 0 <hr/> 08-1107 1:5 3:4	<hr/> 5 <hr/> 5 23:12 50 16:22 23:11 29:21 34:6 37:10,12 44:5 58 39:25 43:3
	<hr/> 1 <hr/> 1 5:7 10 1:9 38:3 46:19 10-K 11:6 21:7 25:10 100 46:3,6 11 25:18 31:2,2 11:07 1:13 3:2 11:56 49:11 1332 13:14 14 5:5 34:8 15 5:5 1958 4:6 12:18 13:14,20 17:9 22:5 23:20 31:2 32:20	<hr/> 6 <hr/> 60 30:10	<hr/> 6 <hr/> 60 30:10
	<hr/> 1 <hr/> 1 5:7 10 1:9 38:3 46:19 10-K 11:6 21:7 25:10 100 46:3,6 11 25:18 31:2,2 11:07 1:13 3:2 11:56 49:11 1332 13:14 14 5:5 34:8 15 5:5 1958 4:6 12:18 13:14,20 17:9 22:5 23:20 31:2 32:20	<hr/> 7 <hr/> 75 30:9	<hr/> 7 <hr/> 75 30:9
	<hr/> 1 <hr/> 1 5:7 10 1:9 38:3 46:19 10-K 11:6 21:7 25:10 100 46:3,6 11 25:18 31:2,2 11:07 1:13 3:2 11:56 49:11 1332 13:14 14 5:5 34:8 15 5:5 1958 4:6 12:18 13:14,20 17:9 22:5 23:20 31:2 32:20	<hr/> 8 <hr/> 80 3:16	<hr/> 8 <hr/> 80 3:16

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of: THE HERTZ CORPORATION, Petitioner, v. MELINDA FRIEND, ET AL.; and that these attached pages constitute the original transcript of the proceedings for the records of the Court.

Handwritten signature of Raymond R. Heer in cursive script, with a horizontal line underneath the name.

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