Nos. 17-765 and 17-766

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

VICTOR J. STITT, II

UNITED STATES OF AMERICA, PETITIONER

v.

JASON DANIEL SIMS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SIXTH AND EIGHTH CIRCUITS

REPLY BRIEF FOR THE UNITED STATES

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Respondents, like the courts below, embrace a definition of "burglary" that would all but erase the term from the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e)(2)(B)(ii). As this Court explained in *Taylor* v. *United States*, 495 U.S. 575 (1990), when Congress adopted the current version of the ACCA in 1986, it "meant by 'burglary' the generic sense in which the term is now used in the criminal codes of most States." *Id.* at 598. Respondents do not dispute that, at that time, "most States" had at least one burglary statute protecting the type of mobile or nonpermanent homes

at issue here. Yet they press an interpretation of "burglary" that would exclude laws designed to protect all dwellings equally and that would leave most States without *any* offense that constitutes "burglary" under the ACCA. See pp. 4-8 & nn.1-3, *infra*.

Respondents' attempts to justify such a dramatic diminution of generic burglary largely repeat the errors of the courts below. Respondents counterintuitively contend that because some state burglary statutes in 1986 were even *broader* than the ones at issue here, this Court should ignore that nearly every State in 1986 criminalized the home invasions that the state statutes at issue in these cases proscribe. And respondents erroneously suggest that this Court has already decided the question presented by stating that statutes covering all vehicles do not constitute generic burglary—even though the Court has never considered the narrower class of structures covered by the Tennessee and Arkansas provisions.

None of respondents' arguments on the question presented supports excising home-invasion offenses—the "heart of the crime" of burglary, *Stitt* Pet. App. 51a (Sutton, J., dissenting)—from the definition of "burglary" under the ACCA. Nor do respondents provide any sound reason for the Court to venture beyond the question presented to affirm the decisions below based on alternative and unavailing state-law and constitutional claims that those decisions did not address. Instead, the decisions below should be reversed and the cases should be remanded for further proceedings consistent with a proper interpretation of the important and recurring ACCA predicate of "burglary."

A. *Taylor*'s Definition Of Generic "Burglary" Encompasses The Invasion Of Nonpermanent Or Mobile Dwellings

In *Taylor*, this Court held that "burglary" under the ACCA includes "any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." 495 U.S. at 599. As the government has explained (Br. 17-31), each of the considerations on which *Taylor* relied to derive that definition demonstrates that burglary of a structure includes burglary of a nonpermanent or mobile structure that is adapted or used for overnight accommodation.

1. Most States have treated invasion of a mobile or nonpermanent dwelling as burglary

Taylor's definition was designed to capture what "Congress meant by 'burglary'"—namely, "the generic sense in which the term is now used in the criminal codes of most States." 495 U.S. at 598. Neither respondent disputes that when Congress enacted the current version of the ACCA in 1986, "the criminal codes of most States"—43 of them, plus the District of Columbia—included at least one burglary statute that protected nonpermanent or mobile structures, such as vehicles, boats, and tents, adapted or used as dwellings. Gov't Br. 18 & App. B; *Stitt* Br. 24-28; *Sims* Br. 21-22; see Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39. Respondents cannot square that legal regime with their own cramped view of generic burglary, and their attempts to minimize or disregard it are unsound.

a. Relying on *Esquivel-Quintana* v. *Sessions*, 137 S. Ct. 1562 (2017), Sims contends that "a multijuris-

dictional analysis 'is not required by the categorical approach.'" *Sims* Br. 21 (quoting *Esquivel-Quintana*, 137 S. Ct. at 1571 n.3). But even in *Esquivel-Quintana*, this Court recognized that a multijurisdictional analysis is "useful insofar as it helps shed light on the common understanding and meaning of the federal provision being interpreted," 137 S. Ct. 1571 n.3 (citations and internal quotation marks omitted), and the Court relied on such an analysis to determine the meaning of the phrase "sexual abuse of a minor" in 8 U.S.C. 1101(a)(43)(A), see 137 S. Ct. 1570-1572. And such an analysis is inescapably relevant in the particular context of ACCA burglary, because *Taylor* defined "'burglary'" by reference to "the generic sense in which the term is now used in the criminal codes of most States." 495 U.S. at 598.

b. Respondents next point out (*Stitt* Br. 24-28; *Sims* Br. 21) that in 1986, some state burglary statutes were not limited to nonpermanent or mobile structures adapted or used as dwellings, but also included other structures (*e.g.*, vehicles used for other purposes). But the existence of even *broader* statutes would be an anomalous reason for *narrowing* generic burglary to exclude common ground. Even if such statutes might themselves sweep more broadly than generic burglary in certain respects, cf., *e.g.*, Gov't Br. at 44, *Mathis* v. *United States*, 136 S. Ct. 2243 (2016) (No. 15-6092) (acknowledging that burglary statute covering, *inter alia*, vehicles used for storage was not generic), they underscore that the "criminal codes of most States," *Taylor*, 495 U.S. at 598, at least covered the nonpermanent or mobile structures at issue here.

The definition of burglary has always focused on the protection of "dwellings," and burglary statutes that equally protect residences of all stripes are the modern-

day translation of the crime's common-law "core," *Taylor*, 495 U.S. at 592-593. See Gov't Br. 27-29; *Stitt* Pet. App. 53a-54a (Sutton, J., dissenting). By 1986, at least 21 jurisdictions (20 States and the District of Columbia) had enacted dwelling-focused burglary statutes that included (either explicitly or by reasonable inference) the categories of structures at issue here—nonpermanent or mobile structures that are adapted or used for overnight accommodation—but did not extend to such structures if adapted or used for other purposes.[1] Thus, al-

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[1] See Ala. Code § 13A-7-1(3) (Supp. 1983) (defining "dwelling") (capitalization omitted); *id.* § 13A-7-5 (1982) (first-degree burglary of a "dwelling"); Alaska Stat. § 11.46.300(1) (1983) (first-degree burglary of a "dwelling"); *id.* § 11.81.900(b)(17) (Supp. 1985) (defining "dwelling"); Conn. Gen. Stat. Ann. § 53a-100(2) (West Supp. 1985) (defining "dwelling"); *id.* § 53a-102 (West 1972) (second-degree burglary of a "dwelling"); *id.* § 53a-102a (West Supp. 1985) (second-degree burglary of a dwelling with a firearm); Del. Code Ann. tit. 11, § 825(1) (1979) (second-degree burglary of a "dwelling"); *id.* § 826 (first-degree burglary of a "dwelling"); *id.* § 829(b) (defining "[d]welling"); D.C. Code Ann. § 22-1801(a) (1973) (first-degree burglary of a "dwelling"); Ga. Code Ann. § 16-7-1(a) (Michie 1984) (burglary of "any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another"); Haw. Rev. Stat. § 708-800(1) and (6) (1985) (defining "[b]uilding" and "[d]welling"); *id.* § 708-810(1)(c) (first-degree burglary of a "dwelling"); *id.* § 708-811(1) (second-degree burglary of a "building"); Ill. Rev. Stat. ch. 38, para. 2-6 (1983) (defining "[d]welling"); *id.* para. 19-3(a) (residential burglary of the "dwelling place of another"); Ind. Code Ann. § 35-43-2-1 (Burns Supp. 1984) (Class B burglary of a "dwelling"); Ky. Rev. Stat. Ann. § 511.010(1) and (2) (Michie 1985) (defining "[b]uilding" and "[d]welling"); *id.* § 511.030 (second-degree burglary of a "dwelling"); La. Rev. Stat. Ann. § 14:62.2 (West 1986) (simple burglary of an inhabited "dwelling, house, apartment or other structure used in whole or in part as a home or place of abode by a person or persons"); Me. Rev. Stat. Ann. tit. 17-A, § 2(10) and (24) (West 1983) (defining "[d]welling

though respondents' cramped definition of generic burglary would include the burglary offenses of only

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place" and "[s]tructure"); *id.* § 401(2)(B) (class B burglary of a "structure which is a dwelling place"); Minn. Stat. § 609.581(2) and (3) (1986) (defining "[b]uilding" and "[d]welling"); *id.* § 609.582(1)(a) (first-degree burglary of an occupied "dwelling"); *id.* § 609.582(2)(a) (second-degree burglary of a "dwelling"); N.H. Rev. Stat. Ann. § 635:1(I)-(II) (1986) (Class A burglary of a "dwelling"); N.Y. Penal Law § 140.00(2) and (3) (McKinney Supp. 1986) (defining "[b]uilding" and "[d]welling"); *id.* § 140.25(2) (McKinney Supp. 1983) (second-degree burglary of a "dwelling"); *id.* § 140.30 (McKinney 1975 & Supp. 1983) (first-degree burglary of a "dwelling"); N.D. Cent. Code § 12.22-02(2)(a) (1985) (Class B burglary of a "dwelling"); Or. Rev. Stat. § 164.205(1) and (2) (1983) (defining "[b]uilding" and "[d]welling"); *id.* § 164.225(1) (first-degree burglary of a "dwelling"); S.C. Code Ann. § 16-11-10 (Law. Co-op. 1977) (defining "dwelling house"); *id.* § 16-11-310(1) and (2) (Law. Co-op. Supp. 1985) (defining "[b]uilding" and "[d]welling"); *id.* § 16-11-311 (first-degree burglary of a "dwelling"); *id.* § 16-11-312(A) (second-degree burglary of a "dwelling"); Utah Code Ann. § 76-6-201(1) and (2) (1978) (defining "[b]uilding" and "[d]welling"); *id.* § 76-6-202(2) (second-degree burglary of a "dwelling"); W. Va. Code Ann. § 61-3-11(a)-(b) (Michie 1977) (burglary of a "dwelling house"); *id.* § 61-3-11(c) (defining "dwelling house"); Wis. Stat. § 340.01(33m) (1985-1986) (defining "[m]otor home"); Wis. Stat. Ann. § 943.10(1)(e) (West 1982) (burglary of a "motor home or other motorized type of home or a trailer home"). This tally is underinclusive insofar as it omits statutes that courts have suggested do not constitute generic burglary for the reason that they are not divisible or for another reason unrelated to the locational element.

Amicus the National Association of Criminal Defense Lawyers contends (Br. 5) that in 1984 and 1986, "the majority of states' burglary statutes distinguished, in one way or another, between structures, such as buildings, on the one hand, and temporary spaces or mobile vehicles—even if habitable—such as RVs, boats, or railroad cars, on the other hand." But even if some of the state burglary statutes cited above identified mobile or nonpermanent dwellings as a particular subcategory of buildings or structures, they all prohibited the invasion of such dwellings.

12 States at that time,[2] a definition that also encompassed such residential-burglary crimes would include at least one burglary statute in 31 jurisdictions, as well as an additional burglary statute in two States (Georgia and Wisconsin). A definition of "burglary" that includes the types of structures at issue here would therefore reflect "the criminal codes of most States," *Taylor*, 495 U.S. at 598. Respondents' definition alone, however, would flout that description. See *United States* v. *Castleman*, 572 U.S. 157, 167 (2014) (rejecting reading of 18 U.S.C. 922(g)(9) that "would have rendered [it] inoperative in many States at the time of its enactment"); *Taylor*, 495 U.S. at 594 (declining to adopt the common-law definition of burglary because it

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[2] Ga. Code Ann. § 16-7-1(a) (Michie 1984) (burglary of "the dwelling house of another"); Md. Ann. Code art. 27, § 30 (1982) (breaking and entering of a "dwelling house" at night); *id.* § 34 (burglary of a "building" with explosives); Mass. Gen. L. ch. 266, § 1 (1986) (defining "dwelling house"); *id.* § 14 (armed burglary of an occupied "dwelling house"); *id.* § 15 (unarmed burglary of a "dwelling house"); Mich. Comp. Laws § 750.110 (1981) (breaking and entering an "occupied dwelling house"); Miss. Code Ann. § 97-17-19 (1973) (burglary of a "dwelling house"); *id.* § 97-17-21 (burglary of an inhabited "dwelling house"); *id.* § 97-17-23 (armed burglary of an inhabited "dwelling house"); *id.* § 97-17-31 (defining "dwelling house"); N.M. Stat. Ann. § 30-16-3(A) (Michie 1978) (third-degree burglary of a "dwelling house"); N.C. Gen. Stat. § 14-51 (1986) (codifying common-law burglary); Okla. Stat. Ann. tit. 21, § 1431 (West 1983) (first-degree burglary of a "dwelling house"); *id.* § 1439 (defining "dwelling house"); R.I. Gen. Laws § 11-8-1 (1981) (codifying common-law burglary); Tenn. Code Ann. §§ 39-3-401, 39-3-403 (1982) (burglary and second-degree burglary of a "dwelling house, or any other house, building, room or rooms therein used and occupied by any person or persons as a dwelling place or lodging"); Va. Code Ann. § 18.2-89 (Michie 1982) (burglary of a "dwelling house"); Wis. Stat. Ann. § 943.10(1)(a) (West 1982) (burglary of a "building or dwelling").

"would come close to nullifying that term's effect in the [ACCA]").[3]

2. Secondary sources confirm that ACCA burglary covers nonpermanent or mobile dwellings

As the government has explained (Br. 20-24), the secondary sources on which *Taylor* relied reinforce that the locational element of ACCA burglary encompasses nonpermanent or mobile structures adapted or used for overnight accommodation. Respondents' arguments to the contrary (*Stitt* Br. 14-16; *Sims* Br. 19-21) lack merit.

a. *Taylor* made clear that its definition of "burglary" in the ACCA "approximate[d]" the Model Penal Code's. 495 U.S. at 598 n.8; see Gov't Br. 20-22. Since 1980, the Model Penal Code has described burglary to include the unlawful entry into "a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein." Model Penal Code § 221.1(1) (1980). And since that time, the Model Penal Code has further defined "occupied structure" to mean "any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." *Id.* § 221.0(1). The Model Penal Code's definition of burglary thus expressly encompasses the nonpermanent or mobile dwellings at issue here.

Stitt's observation (Br. 14) that the Code's definition would encompass burglary offenses even broader than those at issue in these cases again provides no meaningful support for his efforts to *narrow* the definition of ACCA burglary. And Sims's attempt to effectively disregard the Model Penal Code definition, on the ground

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[3] The numbers for current-day statutes are similar. See *Stitt* Cert. Reply Br. 7-9.

that the Court in *Taylor* used the word "approximates" to describe its relationship to the ACCA definition, see *Sims* Br. 21 (citation omitted), gives short shrift to the language and analysis in *Taylor*, see, *e.g.*, *Webster's Third New International Dictionary* 107 (1986) (*Webster*'s *Third*) (defining "approximate" as "to come near to"). Moreover, *Taylor* is far from the only case in which this Court has looked to the Model Penal Code in determining the "generic" meaning of a particular offense for purposes of interpreting federal law. See, *e.g.*, *Esquivel-Quintana*, 137 S. Ct. at 1571; *Scheidler* v. *National Org. for Women, Inc.*, 537 U.S. 393, 410 (2003).

b. *Taylor*'s reference to 2 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* (1986) (LaFave); see 495 U.S. at 598, likewise supports a definition of "burglary" that includes burglary of a nonpermanent or mobile dwelling. As the government has explained (Br. 22-24), LaFave recognized that contemporary burglary statutes "typically describe the place [that is burglarized] as a 'building' or 'structure,' and these terms are often broadly construed." § 8.13(c), at 471 (footnotes omitted).

Sims errs in reading (Br. 20-21) the LaFave treatise to nevertheless support a crabbed construction of the word "structure." Contrary to Sims's contention, LaFave's statement that some jurisdictions had extended their "burglary statutes * * * to still other places, such as all or some types of vehicles," § 8.13(c), at 471 (footnote omitted), does not suggest—much less "clearly explain[]"—that LaFave viewed "any statute covering even 'some types of vehicles'" as atypical,

Sims Br. 20 (citation omitted).[4] The treatise in fact indicates otherwise. It states that covering vehicles "may make sense in some circumstances, *as where the vehicle is a motor home*." LaFave § 8.13(c) n.85, at 472 (emphasis added); see *ibid.* (citing with approval Wis. Stat. Ann. § 943.10 (West 1982), which covered, *inter alia*, "[a] motor home or other motorized type of home or a trailer home"). And 12 of the 13 state statutes that LaFave described as "typical[]," § 8.13(c) & nn.81-82, at 471, covered the types of nonpermanent or mobile structures at issue here, Gov't Br. 22-23. Sims suggests (Br. 20) that "LaFave (or, more likely, his research assistant) simply collected" those statutes without reading them (or the corresponding definitional provisions). But the far better view is that—consistent with the substantial majority of state legislatures—LaFave meant to illustrate that invasion of nonpermanent or mobile structures adapted or used for overnight accommodation is "burglary."

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[4] Respondents' focus (*Stitt* Br. 15; *Sims* Br. 20-21) on LaFave's citation of Tex. Penal Code Ann. § 30.01 (West 1974), as an example of a state statute that covered "vehicle[s]" rather than "structure[s]," is misplaced. Section 30.01 was (and remains) a definitional provision that defines, *inter alia*, the terms "[h]abitation" and "[v]ehicle" used in the different burglary provisions. *Id.* § 30.01 (West Supp. 2017); *id.* § 30.01 (West 1974). As the government has explained (Br. 35 n.2), the best reading of LaFave's citation to Section 30.01 is that the treatise meant simply to highlight the express coverage of *all* "vehicle[s]" for purposes of one particular version of burglary, Tex. Penal Code Ann. § 30.04 (West 1974). Indeed, the definition of vehicles in the Texas statute expressly *excludes* vehicles adapted for overnight accommodation. See *id.* § 30.01(3). Vehicles that are so adapted are classified as "[h]abitation[s]" and treated like other "structure[s]" adapted for that purpose. See *id.* § 30.01(1).

3. The ACCA's design does not suggest any distinction between the invasions of different types of homes

Taylor observed that when Congress enacted the ACCA, it was particularly focused on burglary because of the crime's "inherent potential for harm to persons," 495 U.S. at 588, especially in the context of home invasions, see *id.* at 581, 585. As the government has explained (Br. 24-27), and as the vast majority of States recognized by 1986, see pp. 4-8 & nn.1-2, *supra*, home invasion is in no way a less significant crime when the home is nonpermanent or can be moved, see *United States* v. *Rivera-Oros*, 590 F.3d 1123, 1130 (10th Cir. 2009) ("[T]he unique wounds caused by residential burglary are independent of the size or construction of the dwelling. They are the same for the mansion house and the boarding house, the tract home and the mobile home."). Respondents' efforts to introduce such a distinction into the ACCA's definition of "burglary" are accordingly misconceived.

Stitt simply asserts (Br. 12) that *Taylor*'s locational element "categorically excludes vehicles." See *Stitt* Br. 16, 23-24. But he identifies no sound reason why Congress would have wanted to treat two otherwise-identical structures differently solely because one has wheels. Consider the two homes depicted below:

Stitt would attribute to Congress the view that invasion of the home on the left is "burglary," but invasion of the home on the right is not. But neither the risk of harm to inhabitants nor the culpability of the intruder would be different in either case.

Tellingly, Sims does not endorse Stitt's dividing line. Sims instead acknowledges that "[t]he government may be right that invading a mobile home carries a 'level of seriousness[]' comparable to invading a single-family home." *Sims* Br. 22 (citations omitted); see *id.* at 23-24. But, he contends (Br. 23), "vehicles such as RV's, campers, and boats with sleeping quarters present very different circumstances," because while they "are adapted for overnight accommodation, they typically sit empty in driveways, parking lots, and marinas." He thus proposes a test under which "a 'vehicle' is a distinct category of location from a 'building' or 'structure,' *at least when the vehicle is designed for only occasional overnight use*." *Sims* Br. 9 (emphasis added).

That highly stylized rule is seriously flawed. As a threshold matter, it appears to rest largely on Sims's own subjective assessment of the risk of violence inherent in the burglary of particular types of structures. But as Stitt emphasizes (Br. 12), this Court in *Taylor* rejected an approach that would differentiate between burglary offenses on that ground. See 495 U.S. at 596-597.[5] Furthermore, even if *Taylor* could be read to

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[5] Stitt errs in suggesting (Br. 12) that the government itself "urges this Court to redefine burglary based on the risk of harm." See also Nat'l Ass'n of Fed. Defenders Amicus Br. 5-7. That suggestion misunderstands the government's point, which is simply that Congress's concern with burglary's "inherent potential for harm to persons," *Taylor*, 495 U.S. at 588, applies with full force to

countenance such risk-based divisions, it could not be read to countenance an approach that assesses risk based on the likelihood of occupancy. The Court in *Taylor* rejected a definition of burglary limited to, *inter alia*, "aggravated-burglary statutes having elements such as entering an occupied building." *Id.* at 596. The Court thus did not attribute to Congress any intent to distinguish between burglary offenses based on occupancy. Even if an RV is infrequently occupied, the same could be said of an abandoned warehouse, a vacation home, or the least desirable room in a remotely located motel. Yet invasion of any of those locations would indisputably constitute generic burglary.

Sims correctly notes (Br. 23) that some "relatively humble" boats and vehicles may "have sleeping quarters." But the invasion of a structure with "sleeping quarters," *ibid.*, is the same crime irrespective of what type of structure the owner has the "financial means to afford," *Collins* v. *Virginia*, 138 S. Ct. 1663, 1675 (2018); see *Stitt* Pet. App. 54a (Sutton, J., dissenting). Indeed, if Sims were correct in his view that the relative dangerousness of an intrusion is key, then the more modest the dwelling, the *stronger* the argument that its invasion should constitute generic burglary. The unauthorized entry of RVs, campers, and small boats that are used or adapted for overnight accommodation "pose[s] a greater risk of violence to the occupant or owner than the burglary of a building or house because it is more difficult for the burglar to enter or escape unnoticed." *United States* v. *Spring*, 80 F.3d 1450, 1462 (10th Cir.), cert. denied, 519 U.S. 963 (1996).

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the burglary offenses that respondents would exclude from the statutory definition.

4. Respondents' reliance on stare decisis is misplaced

Respondents' contention (*Stitt* Br. 8-9, 16-19, 31-33; *Sims* Br. 9-10) that this Court has already decided the question presented in their favor is insupportable.

First, respondents err insofar as they suggest that *Taylor* limited ACCA burglary to the burglary of buildings. Respondents derive that suggestion (*Stitt* Br. 7-9; *Sims* Br. 10) from the definition of burglary in the 1984 version of the ACCA, which expressly referenced only "building[s]," 18 U.S.C. App. 1202(c)(9), at 107 (Supp. II 1984), and the Court's statement that *Taylor*'s definition of burglary was "practically identical" to the deleted one, 495 U.S. at 598. But at least with respect to the locational element, *Taylor* did not invite guesswork about how the Court would have construed the deleted statutory definition or the degree to which the definition adopted in *Taylor* might not be fully identical. Instead, *Taylor* was explicit that the locational element of burglary under the current version of the ACCA encompasses "building[s] or *other structure[s].*" *Ibid.* (emphasis added). And the Court's post-*Taylor* decisions have reinforced the point. See, *e.g.*, *Mathis* v. *United States*, 136 S. Ct. 2243, 2246 (2016) (reciting *Taylor*'s "building or other structure" formulation); *Shepard* v. *United States*, 544 U.S. 13, 15-16 (2005) (explaining that the ACCA "makes burglary a violent felony only if committed in a building or enclosed space").

As a matter of plain meaning, the word "structure" is capacious enough to include nonpermanent or mobile dwellings. See, *e.g.*, *Webster's Third* 2267 (defining "structure" as "something constructed or built"); see also *Stitt* Pet. App. 50a (Sutton, J., dissenting) ("Bridges, cranes, gazebos, and doll houses are all 'structures.'").

The extensive examples of States defining burglary to include such structures when they are adapted or used for overnight accommodation, see pp. 4-8 & nn.1-3, *supra*, belie Stitt's assertion (Br. 32) that a similar reading of *Taylor* will create confusion or arbitrariness. See Model Penal Code § 221.1 cmt. 3(b) ("The essential notion is apparent potential for regular occupancy.").[6] And to the extent that Stitt's catalog (Br. 16-19) of unsuccessful post-*Taylor* legislative proposals to resurrect the prior statutory definition might have any relevance to this case, see *Bruesewitz* v. *Wyeth LLC*, 562 U.S. 223, 242 (2011) (rejecting reliance on "[p]ost-enactment legislative history"), it demonstrates that Congress itself is satisfied with the *Taylor* formulation.

Second, respondents err in suggesting that this Court has answered the question presented here by stating, in cases presenting different questions, that generic burglary does not include burglary of "vehicles," *Stitt* Br. 12-19, or "automobiles," *Sims* Br. 9 (citation omitted). As the government has explained (Br. 33-36), none of those statements was made in a context in which the Court considered a burglary statute that covered vehicles or automobiles only to the extent they are adapted or used for overnight accommodation. Cf. *United States* v. *Gaudin*, 515 U.S. 506, 522 (1995) (declining to give stare decisis effect to a prior decision that

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[6] Sims invokes (Br. 24-25) the rule of lenity, but it has no application here. That tool of statutory construction "only applies if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what Congress intended." *Maracich* v. *Spears*, 570 U.S. 48, 76 (2013) (citation omitted). *Taylor* neither found nor created grievous ambiguity in the definition of ACCA burglary.

did not involve the precise question presented and thus "had no reason to explore" the relevant arguments). Sims nevertheless proposes (Br. 18-19) that this Court treat those statements as if they were on-point holdings by adopting a special ACCA-specific version of stare decisis. But inventing and applying a *sui generis* species of stare decisis would itself subvert the "even-handed[ness]," "predictab[ility]," "consisten[cy]," and "integrity" of judicial decisionmaking that the doctrine is intended to promote. *Kimble* v. *Marvel Ent'mt*, *LLC*, 135 S. Ct. 2401, 2409 (2015) (citation omitted).

B. Respondents' Alternative Arguments Do Not Warrant Affirmance Of The Judgments Below

In addition to addressing the question presented, each respondent attempts to defend the judgment in his case on alternative grounds. This Court can and should reverse the decisions below without addressing those arguments. This Court has discretion to "consider, or decline to entertain, alternative grounds for affirmance." *United States* v. *Tinklenberg*, 563 U.S. 647, 661 (2011) (citation and internal quotation marks omitted). Respondents' alternative arguments here were not raised in their responses to the petitions for writs of certiorari. And they consist only of unsound state-law arguments and a constitutional claim that this Court has previously rejected.

1. This Court should not affirm either judgment below on state-specific grounds

As the government has explained (Br. 31-33), a correct interpretation of ACCA "burglary" would cover the particular Tennessee and Arkansas residential-burglary offenses at issue in respondents' cases. In contending otherwise (*Stitt* Br. 33-35; *Sims* Br. 25-41),

respondents invite this Court to address "matters that involve the construction of state law," in derogation of the Court's "settled and firm policy of deferring to regional courts of appeals," *Bowen* v. *Massachusetts*, 487 U.S. 879, 908 (1988); see also, *e.g.*, *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 16 (2004). And they do so in circumstances in which the issues were not even addressed in the first instance below. To the extent respondents preserved their alternative arguments in the lower courts, those courts may consider them on remand. In any event, respondents' state-law arguments are meritless.

Stitt contends (Br. 33-35) that even if ACCA burglary encompasses burglary of "a nonpermanent or mobile structure adapted for overnight accommodation of persons," his Tennessee burglary offense still would not qualify, because its locational element includes "each structure appurtenant to or connected with [a covered] structure or vehicle," Tenn. Code Ann. § 39-14-401(1)(C) (Supp. 2001). That contention rests on a misreading of the state statute. In particular, it overlooks that the appurtenant or connected location must itself be a "structure." *Ibid.* And the term "structure" includes only "buildings, module units, mobile homes, trailers, and tents, which [are] designed or adapted for the overnight accommodation of persons." *Id.* § 39-14-401(1)(A).

Sims similarly contends (Br. 25-29) that the Arkansas residential-burglary statute is not generic, but with a different state-specific rationale. He posits (Br. 26) that the Arkansas law would cover "an ordinary motor vehicle," because it defines a "[r]esidential occupiable structure" to include "a vehicle, building, or other structure: * * * In which any person lives." Ark. Code

Ann. § 5-39-101(4)(A) (2013). Sims acknowledges, however, that no published Arkansas judicial opinion has applied the statute to "an ordinary car," *Sims* Br. 29-30, and he fails to satisfy his own requirement to show that the statute is "facially broader than the locational element of generic burglary," *id.* at 32.

In particular, Sims provides no basis for assuming that a car in which someone "lives," within the meaning of Arkansas law, would be structurally "ordinary," so as to fall outside what he assumes to be the typical scope of residential-burglary laws. To the contrary, if someone "live[s]"—*i.e.*, "occup[ies] a home," *Webster's Third* 1323—in a vehicle, then that vehicle will exhibit some physical alterations or modifications (*e.g.*, a repository for valuables or curtains for privacy) that adapt it to that purpose. The burglary of such a vehicle would therefore likely be covered by at least some burglary statutes encompassing structures "adapted" for overnight accommodation. Furthermore, Sims himself identifies (Br. 27 & n.7) a number of state burglary statutes in effect in 1986 that are similar to Arkansas's, and even his count is incomplete. See, *e.g.*, Ill. Rev. Stat. ch. 38, paras. 2-6, 19-3(a) (1983); La. Rev. Stat. Ann. § 14:62.2 (West 1986); Minn. Stat. § 609.581(2) and (3) (1986); *id.* § 609.582(1)(a) and (2)(a).

2. This Court should disregard respondents' untimely request to overrule well-established precedent

This Court should not consider respondents' request—made for the first time in their merits briefs—that this Court overrule *Almendarez-Torres* v. *United States*, 523 U.S. 224 (1998); extend the constitutional right recognized in *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), to the fact of a prior conviction; and "hold [that]

the sentencing structure of the ACCA is unconstitutional." *Stitt* Br. 35; see *Sims* Br. 43. Respondents' newly sprouted constitutional claim is not fairly included in (or logically antecedent to) the question presented, see Sup. Ct. R. 14.1(a), and it has not been preserved at any time in these proceedings. These cases therefore are not "appropriate" ones, *Stitt* Br. 35 (citation omitted); *Sims* Br. 41 (citation omitted), in which to consider it.

This Court has also recently and repeatedly reiterated that the *Apprendi* rule applies only to penalty-enhancing facts "[o]ther than the fact of a prior conviction." 530 U.S. at 490; see also, *e.g.*, *Descamps* v. *United States*, 570 U.S. 254, 269 (2013); *Alleyne* v. *United States*, 570 U.S. 99, 111 n.1 (2013); *Southern Union Co.* v. *United States*, 567 U.S. 343, 346 (2012); *Carachuri-Rosendo* v. *Holder*, 560 U.S. 563, 567 n.3 (2010). And it has frequently interpreted the ACCA without reconsidering *Almendarez-Torres*. See, *e.g.*, *Mathis*, 136 S. Ct. 2243; *Descamps*, 570 U.S. 254. It should follow the same course here.

* * * * *

For the foregoing reasons and those stated in our opening brief, the judgments of the courts of appeals should be reversed and the cases remanded for further proceedings.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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