No. 18-6662

IN THE

Supreme Court of the United States

EDDIE LEE SHULAR,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the determination of a "serious drug offense" under the Armed Career Criminal Act requires the same categorical approach used in the determination of a "violent felony" under the Act.

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INTRODUCTION

Time and again, the Court has been asked to determine whether a prior state conviction qualifies as a predicate offense under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). And time and again the Court has affirmed the same analytical approach: Identify the elements of the state crime of conviction, compare those elements to the generic definition of the offense listed under § 924(e), and determine whether the state offense either matches or is narrower than the generic offense. That is because "the Act should ensure, to the extent that it is consistent with the prerogatives of the States in defining their own offenses, that the same type of conduct is punishable on the Federal level in all cases." *Taylor* v. *United States*, 495 U.S. 575, 582 (1990).

Florida's controlled substances offenses are inconsistent with federal law and the laws of the vast majority of states. Since 2002, Florida has chosen to deviate from the common law presumption of *mens rea* by expanding its drug offenses to cover, for example, a person who distributes a substance that turns out to be controlled, even though the person had no knowledge of its illicit nature. Nonetheless, the Eleventh Circuit, in casting aside the categorical approach described above, concluded that Mr. Shular's prior Florida convictions should be regarded as "serious drug offenses," even though the conduct established would not even be criminal under federal law, much less under the law of the overwhelming majority of the states.

The court of appeals reached this conclusion by deciding it need not define the generic version of the offenses under § 924(e)(2)(A)(ii) at all, and instead reasoned that drug offenses punishable by ten years

or more of imprisonment were sufficiently defined to exclude *mens rea*. Yet the text does not support such a departure from this Court's uniform construction of § 924(e).

Rather, the text, structure, and history of ACCA make clear that § 924(e)(2)(A)(ii) defines a class of state offenses, each to be compared to a generic standard, to determine whether the offense constitutes a "serious drug offense." Congress recognized that States have used a wide variety of differently worded provisions to proscribe the conduct that Congress intended to identify as predicate offenses for purposes of ACCA. Thus, those generic predicate offenses are "offense[s] under State law involving manufacturing, distributing, or possessing with intent to manufacture or distribute" controlled substances, which are punishable by ten or more years' imprisonment. 18 U.S.C. § 924(e)(2)(A)(ii).

Because Mr. Shular's prior Florida convictions for sale of cocaine and possession with intent to sell cocaine sweep more broadly than the generic versions of the offenses identified in § 924(e)(2)(A)(ii), they do not qualify as serious drug offenses.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit, *United States* v. *Eddie Lee Shular*, 736 F. App'x 876 (11th Cir. 2018) (per curiam), was issued on September 5, 2018 and is reproduced in the Appendix for the Petition for Writ of Certiorari at Pet. App. A.

JURISDICTION

The Court of Appeals entered judgment on September 5, 2018, and Mr. Shular did not move for rehearing. The petition for writ of certiorari was filed

on November 8, 2018, and granted on June 28, 2019. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of the Armed Career Criminal Act, 18 U.S.C. § 924(e), are reproduced at Pet. App. D at 51–52.

STATEMENT OF THE CASE

Petitioner Eddie Lee Shular pleaded guilty to being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1). The basis for the charge was Mr. Shular's possession of his mother's unloaded firearm. Transcript of Sentencing at 7, *United States* v. *Shular*, No. 4:17-CR-37 (N.D. Fla. Jan. 19, 2018) ("Sentencing Tr."). His mother had asked that he hold it while her home was being rebuilt. *Id.*

The default term of imprisonment for a felon-in-possession offense is zero to 120 months. See 18 U.S.C. § 924(a)(2). ACCA increases that penalty to a term of 15 years to life if the defendant has "three previous convictions . . . for a violent felony or a *serious drug offense*." 18 U.S.C. § 924(e)(1) (emphasis added).

The United States Probation Office determined that Mr. Shular had six prior Florida convictions—five for sale of cocaine and one for possession with intent to sell cocaine. Presentence Investigation Report ¶ 32, *United States* v. *Shular*, No. 4:17-CR-37 (N.D. Fla. Jan. 12, 2018), ECF No. 30 (under seal). The Probation Office therefore recommended that Mr. Shular receive enhanced sentencing under ACCA because each of his six prior convictions qualified as a "serious drug offense," and calculated Mr. Shular's advisory Guidelines range to be 188 to 235 months. *Id.* ¶¶ 32, 76-77. Without the ACCA enhancement,

the advisory Guidelines range would have been forty-six to fifty-seven months. Sentencing Tr. at 7.

Mr. Shular objected to the Probation Office's determination that his prior Florida drug convictions constituted "serious drug offense[s]" under ACCA. See Response Letter to Presentence Investigation Report, *United States* v. *Shular*, No. 4:17-CR-37 (N.D. Fla. Dec. 29, 2017), ECF No. 29 (under seal). Mr. Shular contended that "Congress intended 'serious drug offense' as defined in 18 U.S.C. § 924(e)(2)(A) to be those offenses that require" a particular "*mens rea* element," namely, that "the defendant knew he was selling a controlled substance," and that the Florida statutes under which Mr. Shular was convicted omitted the necessary *mens rea*. *Id.*

Applying Eleventh Circuit precedent in *United States* v. *Smith*, 775 F.3d 1262 (11th Cir. 2014), the district court found that the Florida drug convictions at issue qualified as serious drug offenses for purposes of ACCA. The district court rejected Mr. Shular's objection to the Probation Office's determination that he qualified for enhanced sentencing under ACCA as foreclosed by *Smith*. See Judgment, *United States* v. *Shular*, No. 4:17-CR-37 (N.D. Fla. Jan. 22, 2018), ECF No. 32. The court sentenced Mr. Shular to 180 months of imprisonment. See *id.*

The Eleventh Circuit affirmed in an unpublished per curiam opinion. Pet. App. A. The court of appeals agreed that *Smith* foreclosed Mr. Shular's contention that his Florida drug convictions under Fla. Stat. § 893.13(1) (2012) did not qualify as "serious drug offenses" under ACCA. *Id.* at 5–6. Mr. Shular argued that *Smith* was incorrect, but the court held that it was bound. *Id.*

SUMMARY OF THE ARGUMENT

Every tool of statutory interpretation demonstrates that § 924(e)(2)(A)(ii) enumerates a class of sufficiently serious generic offenses triggering a sentencing enhancement. As the Court has done each time before when presented with such generic offenses, it "compare[s] the elements of the defendant's conviction with the elements of the 'generic' crime—*i.e.*, the offense as commonly understood" to determine whether the state offense is the same as, or narrower than, the generic offense. *Descamps* v. *United States*, 570 U.S. 254, 257 (2013).

Section 924(e)(2)(A)(ii) provides a list of generic offenses—manufacturing of a controlled substance, distribution of a controlled substance, possession with intent to manufacture a controlled substance, and possession with intent to distribute a controlled substance—that were well-established in States' laws in 1986. By that year, nearly all of the States had adopted the Uniform Controlled Substances Act, which likewise relied on the same core offenses. These offenses remain the building blocks of the States' controlled substances laws, even while their laws have grown more complex.

Congress's use of the word "involving" to introduce these generic offenses reinforces that courts should "examine what the state conviction *necessarily involved*, not the facts underlying the case" when it determines whether a state offense is an ACCA predicate. *Moncrieffe* v. *Holder*, 569 U.S. 184, 190 (2013) (emphasis added). That is why the Court has engaged in the same generic offense inquiry when analyzing another statute "involving" a list of offenses. See *Scheidler* v. *Nat'l Org. for Women, Inc.*, 537 U.S. 393 (2003). Because controlled substance offenses do not have the same common law lexicon as those enu-

merated in the violent felony provision (burglary, arson, and extortion), Congress's use of "involving" better denotes what categories of offenses qualify as predicates for purposes of ACCA.

Section 924(e)'s larger structure reinforces the need for this categorical approach. The parallel structure of § 924(e)(2)(A)(i)'s Federal-offenses provision and § 924(e)(2)(A)(ii)'s State-offenses provision indicates Congress's intent to identify similarly serious offenses. Each provision defines qualifying offenses based on the penalty incurred, the nature of the substance involved, and the seriousness of the prior offense. This parallel within § 924(e)(2)(A) reflects the broader structure of § 924(e). Like the violent felony provision, the serious drug offense provision lists generic offenses. Reading the serious drug offenses provision as anything but a list of generic offenses would create disharmony within § 924(e). See *Mellouli* v. *Lynch*, 135 S. Ct. 1980, 1989 (2015).

Finally, the legislative history confirms the textual and structural understanding that in amending ACCA in 1986 to include "serious drug offenses," Congress intended to expand the list of predicate offenses by "adding as predicate offenses State and Federal laws for which a maximum term of imprisonment of 10 years or more is prescribed for manufacturing, distributing or possessing with intent to manufacture or distribute controlled substances and violent felonies." H.R. Rep. No. 99-849, at 3 (1986). This history shows that Congress intended to bring certain drug offenses into ACCA, and therefore confirms that the categorical approach applies here, as it does throughout the statute.

To the extent ambiguity remained regarding the text of § 924(e)(2)(A)(ii) following application of the tools of statutory interpretation, the rule of lenity

would favor Mr. Shular's narrower interpretation. See *United States* v. *Davis*, 139 S. Ct. 2319, 2333 (2019).

The generic offenses listed in § 924(e)(2)(A)(ii) must include a *mens rea* requirement. When Congress added the "serious drug offense" provision to ACCA in 1986, nearly all the states and the federal government had established that knowledge of the illicit nature of the substance was an element of the crimes of manufacturing, distributing, or possessing with intent to manufacture or distribute. Such a broad consensus therefore requires that the "serious drug offenses" provision likewise includes a *mens rea* requirement. Cf. *Quarles* v. *United States*, 139 S. Ct. 1872, 1878 (2019); *United States* v. *Stitt*, 139 S. Ct. 399, 405–06 (2018). This conclusion accords not only with the analytical framework of the categorical approach, but also the foundational principle that "the requirement of some *mens rea* for a crime . . . is the rule of, rather than the exception to, Anglo-American criminal jurisprudence." *Staples* v. *United States*, 511 U.S. 600, 605 (1994); *Rehaif* v. *United States*, 139 S. Ct. 2191, 2195 (2019).

The Eleventh Circuit's conclusion that it need not define the generic offenses under § 924(e)(2)(A)(ii) treated what are essentially strict liability crimes as "serious drug offenses." That decision does violence to the statute. It creates different definitions for serious drug offenses under state and federal law, given that conduct that would not amount to a drug offense under federal criminal law (which requires *mens rea*) nonetheless qualifies as a serious drug offense if occurring in an outlier state like Florida.

Animating the reasoning of the Eleventh Circuit and other courts of appeals is the notion that the word "involving" expands the scope of the categorical

inquiry to include as predicate offenses any convictions that "relate to" the statute's generic offenses. See *United States* v. *White*, 837 F.3d 1225, 1233 (11th Cir. 2016) (per curiam), *cert. denied*, 138 S. Ct. 1282 (2018). Courts engaging in this broad, indeterminate inquiry strip the statute of any limiting principle while also rendering language redundant. Such an approach shares similarities to the residual clause inquiries this Court has invalidated, along with the same vagueness and ambiguity concerns. See *Johnson* v. *United States*, 135 S. Ct. 2551 (2015).

Because none of Mr. Shular's convictions under Florida law match the generic offenses specified in ACCA, reversal is warranted and the Court may remand Mr. Shular's case for resentencing without the ACCA enhancement.

ARGUMENT

I. THE TEXT, STRUCTURE, AND HISTORY OF § 924(e) REQUIRE COURTS TO APPLY AN OFFENSE-MATCHING CATEGORICAL APPROACH TO DETERMINE WHETHER A STATE OFFENSE QUALIFIES AS A "SERIOUS DRUG OFFENSE" UNDER ACCA

Since *Taylor*, the Court has applied the categorical approach uniformly in its ACCA cases. Cf. *Taylor*, 495 U.S. at 588; *Descamps*, 570 U.S. at 257. And it has applied the same approach in statutes that parallel ACCA, such as 18 U.S.C. § 924(c) and the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2). *E.g.*, *Davis*, 139 S. Ct. at 2323; *Esquivel-Quintana* v. *Sessions*, 137 S. Ct. 1562, 1567–68 (2017) (determining whether a state offense "categorically fits within the 'generic' federal definition of a corresponding aggravated felony"); *Mellouli*, 135 S. Ct. at 1990.

ACCA's serious drug offenses provision compels the same approach as a matter of text, statutory structure, and legislative history. There is no logical reason to apply the categorical approach in all other aspects of ACCA and to extend it to other sentence-enhancement statutes, but to set it aside for purposes of serious drug offenses.

A. Through § 924(e)'s Plain Text, Congress Indicated That Certain State Drug Offenses Would Be ACCA Predicates.

Section 924(e)(2)(A)(ii) defines a "serious drug offense" as "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii).

The key statutory phrase is "involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance." Congress used this particular phrase to reflect the controlled substance offenses that were on the books in the overwhelming majority of states by 1986. And the word "involving" signals Congress's recognition that not every state had used the same labels to proscribe the same offenses. In conjunction with the phrase signaling which offenses can trigger the ACCA enhancement, the word "involving" brings the serious drug offenses provision into harmony with the approach Congress took in the rest of § 924(e).

1. The most natural reading of the serious drug offenses provision is as an enumeration of generic offenses. The key language in the statute designates manufacturing, distributing, and possession with in-

tent to manufacture or distribute drugs—four types of drug offenses—as predicate offenses.[1] See § 924(e)(2)(A)(ii).

These are more than simply four offenses. These are generic terms for offenses widely recognized throughout the country at the time of ACCA's amendment. Congress used the language of existing state and federal drug offenses to indicate which offenses were sufficiently serious to warrant an ACCA sentence enhancement. *First*, the language used to describe these offenses reflects the phrasing of the general offense provision of the federal Controlled Substances Act (CSA). See 21 U.S.C. § 841(a)(1) ("[I]t shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.").

The same language is used elsewhere in federal law to define drug offenses. See 21 U.S.C. § 959(b)(1) ("It shall be unlawful for any person to manufacture or distribute a listed chemical . . . intending or knowing that the listed chemical will be used to manufacture a controlled substance"); 46 U.S.C. § 70503(a)(1) (prohibiting "[w]hile on board a covered vessel" a person from "knowingly or intentionally . . . manufactur[ing] or distribut[ing], or possess[ing] with intent to manufacture or distribute, a controlled substance").

Second, by the time Congress enacted ACCA in 1986, the States had "[a]lmost all" adopted "the

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[1] As a simple matter of the distributive property, § 942(e)(2)(A)(ii) expresses four generic offenses: (1) manufacture of a controlled substance; (2) distribution of a controlled substance; (3) possession with intent to manufacture a controlled substance; and (4) possession with intent to distribute a controlled substance. 18 U.S.C. § 942(e)(2)(A)(ii).

mechanism used in the federal [Controlled Substances Act] to establish" their own offenses. See *Federal and State Controlled Substances Acts (CSAs)*, in *Handbook of Drug Control in the United States* 349, 358 (James A. Inciardi, ed., 1990). That mechanism was also used by the model Uniform Controlled Substances Act ("UCSA") that was later adopted by all of the States. See 1970 Uniform Controlled Substance Act, § 401(a) ("[I]t is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance."). These laws involve "two general categories of offenses," which can be described as simple "possession" offenses and more serious "manufacturing, delivery, and sale" offenses. *Id.*; compare Ariz. Stat. § 13-3407(A)(1) ("Possess or use a dangerous drug"), with *id.* § 13-3407(A)(2) ("Possess a dangerous drug for sale"), and § 13-3407(A)(3) ("Manufactur[e] a dangerous drug"). ACCA's text indicates that only categories of offenses including manufacturing, distributing, and selling constitute eligible predicate offenses.

The States' various penal codes are replete with provisions prohibiting manufacturing, distributing, and possession with intent to manufacture or distribute controlled substances. Some use that precise formulation.[2] Others vary, for example, by prohibiting the same core conduct under different monikers or breaking up prohibited acts across different sections of their criminal codes. *E.g.*, Haw. Rev. Stat. Ann. §§ 712-1241 to 1243 (naming controlled substances offenses arising from possession and distribu-

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[2] *See, e.g.*, D.C. Code Ann. § 48-904.1(a)(1); Idaho Code Ann. § 37-2732(a); 720 Ill. Comp. Stat. Ann. 570/401; 21 R.I. Gen. Laws § 21-28-4.01.

tion conduct as "[p]romoting a dangerous drug").[3] Nevertheless, when Congress defined which conduct called for a sentence enhancement, it would have understood that the States overwhelmingly targeted the same core conduct, even if they used slightly different language to accomplish their goals. In other words, the States' penal codes reflect the same conduct Congress chose to warrant the ACCA enhancement.

Almost all states have followed the approach of the UCSA to some degree. By 1986, all of the states and the District of Columbia had adopted the UCSA. Notably, like the federal controlled-substance law, forty-

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[3] *See also* Cal. Health & Safety Code § 11351 ("every person who possesses for sale or purchases for purposes of sale . . . [a specified] controlled substance"); *Id.* § 11379.6 ("every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, . . . [a specified] controlled substance"); Ga. Code Ann. § 16-13-30 ("it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance."); Me. Rev. Stat. Ann. tit. 17-A, § 1103.1-A ("[A] person is guilty of unlawful trafficking in a scheduled drug if the person intentionally or knowingly trafficks in what the person knows or believes to be a scheduled drug, which is in fact a scheduled drug . . . ."); *Id.* § 1101.17 ("Traffick" means "[t]o make, create manufacture;" or "[t]o sell barter, trade, exchange or otherwise furnish for consideration;" or "[t]o possess with the intent to do any . . . ." of those acts); Del. Code Ann. tit. 16, § 4753(1) (Drug Dealing—Aggravated Possession; Class C Felony) ("Except as authorized in this chapter, any person who: . . . [m]anufactures, delivers, or possess with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity"); *Id.* § 4754(1) (Drug Dealing—Aggravated Possession; Class D Felony) ("Except as authorized by this chapter, any person who: . . . [m]anufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance.").

seven states required *mens rea* for these types of offenses either by statute or decision.[4]

Nearly thirty years later, however, not all of the states' provisions mirror the language of the federal CSA, the UCSA, or ACCA's serious drug offense provision. While the UCSA defined the offenses relevant here in one section, some states' criminal laws are now more numerous while maintaining the same core offenses. Many now codify serious drug offenses across several sections of their statutes or use different terms other than "manufacture" or "distribute" such as "unlawful manufacture" or "misconduct."[5]

At their core, however, these statutes continue to define certain state drug offenses in terms of manufacturing, distribution, or possession with intent to manufacture or distribute. Thus, there is every reason to apply the categorical approach by matching the prior offense under state law with the offenses listed in ACCA.

2. Congress's use of the word "involving" to introduce these offenses reinforces the conclusion that a

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[4] See Appendix. The Appendix cites each state's legislative enactment adopting the UCSA, and includes a citation to a statute or case explaining the *mens rea* requirement for the relevant offenses.

[5] *E.g.*, Ala. Code § 13a-12-211 ("Unlawful Distribution of Controlled Substances; Possession with Intent to Distribute a Controlled Substance"); *Id.* § 13a-12-217 ("Unlawful Manufacture of Controlled Substance in the Second Degree"); *Id.* § 13a-12-218 ("Unlawful Manufacture of Controlled Substance in the First Degree"); *cf.* Alaska Stat. §§ 11.71.021, 11.71.030, 11.71.040, 11.71.050, 11.71.060 (based on the controlled substance's schedule, stating that "a person commits the crime of misconduct involving a controlled substance" in various degrees when the person commits an act of manufacturing, distributing, or possessing with intent to manufacture or distribute the substance).

generic-offense matching exercise is warranted here. In conducting the categorical approach a court "examine[s] what the state conviction *necessarily involved*, not the facts underlying the case" when it determines whether a state offense is an ACCA predicate. *Moncrieffe*, 569 U.S. at 191. The word "involving" in the serious drug offenses provision requires the Court to examine whether the state offense necessarily requires proof of the facts that would prove one of the generic offenses. See *Involve*, The Random House Dictionary of the English Language (2d ed., unabr. 1987) ("to include as a necessary circumstance, condition, or consequence").

While the word prefacing the list of generic offenses in the serious drug offense provision ("involving") differs from the language introducing the list of violent felonies in § 924(e)(2)(B)(ii) ("is"), Congress would not have simply repeated the word "is." The violent felonies provision defines the predicate offenses, in part, by introducing a list of common law offenses—burglary, arson, and extortion. Like drug crimes, those offenses also have a variety of state-law counterparts. But they also have a deeply rooted, common-law heritage. Cf. *Taylor*, 495 U.S. at 590–98 (discussing the common-law definition of burglary in addition to the Model Penal Code and state laws at the time of ACCA's passage to determine the generic definition of the offense). The drug offenses that Congress deemed "serious"—manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance—did not have the same heritage and the same established lexicon. And these offenses did not exist in the same form in all of the states.

Accordingly, "involving" better denotes categories of drug crimes because not every state uses identical

terminology to describe its own drug offenses. See *supra* note 3; cf. *Taylor*, 495 U.S. at 592 (ACCA does not turn on labels). Its word choice does not transform this particular provision into something entirely out of step with the larger statute in which it is housed, for Congress "does not . . . hide elephants in mouseholes." *Whitman* v. *Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001); *Gonzales* v. *Oregon*, 546 U.S. 243, 267 (2006).

Indeed, elsewhere in the United States Code, when a list of offenses begins with "involving," the Court nonetheless has concluded that "the conduct must be capable of being generically classified" as the listed offenses. *Scheidler,* 537 U.S. at 393. There the question was whether the defendants had violated Section 1961 of the Racketeer Influenced and Corrupt Organizations Act (RICO) by virtue of convictions for state extortion offenses. Section 1961 defined "racketeering activity" as "any act or threat *involving* murder, kidnapping, gambling, arson, robbery, bribery, extortion . . . which is chargeable under State law and punishable by imprisonment for more than one year." 18 U.S.C. § 1961(1)(A) (emphasis added).

Even though the word "involving" preceded the list of qualifying offenses, the Court followed the same categorical analysis prescribed in *Taylor*: It defined the generic crime of extortion and compared the elements of that generic offense to the elements of the state extortion offense. Ultimately, there was no categorical match because the state offense did not include the element that the party obtain or seek to obtain property. *Scheidler,* 537 U.S. at 410 (citing *Taylor*, 495 U.S. at 598).

The Court has even endorsed the generic offense-matching approach, albeit in dicta, to enumerated offenses preceded by arguably broader language. See

Lockhart v. *United States*, 136 S. Ct. 958 (2016). Evaluating 18 U.S.C. § 2252(b)(2), which triggers a ten-year mandatory minimum sentence if the individual has "a prior conviction . . . under the laws of any State *relating to* aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward," this Court explained that those terms would either be defined by their "generic" definition or would otherwise be "defined in light of their federal counterparts." *Id.* at 968 (emphasis added).

B. Section 924(e)(2)'s Structure Supports the Plain-Text Reading.

The Federal-offenses clause in § 924(e)(2)(A)(i) and the State-offenses clause in § 924(e)(2)(A)(ii) define "serious drug offenses" in parallel fashion. Each clause defines the type of drug offense that qualifies as an ACCA predicate by the penalty incurred—"a maximum term of imprisonment of ten years or more." 18 U.S.C. § 924(e)(2). Each clause also limits the type of drug offense that qualifies as an ACCA predicate by the nature of the substance involved—"a controlled substance" as defined by the Controlled Substances Act, 21 U.S.C. § 802.[6]

Each clause also defines the predicate offenses that trigger ACCA's sentence enhancement. The Federal-offenses clause enumerates which federal crimes constitute ACCA predicate offenses, and it includes a panoply of distribution, manufacturing, and posses-

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[6] Subsection (e)(2)(A)(i) incorporates offenses under the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, the Controlled Substances Import and Export Act, 21 U.S.C. § 951 *et seq.*, and maritime drug enforcement laws, 46 U.S.C. §§ 70501–70508. The latter two laws in this category incorporate 21 U.S.C. § 802, which defines controlled substances for purposes of the Controlled Substances Act.

sion-with-intent-to-distribute-or-manufacture offenses (each with a *mens rea* component). See*, e.g.*, 21 U.S.C. § 841(a)(1) (making it "unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance); 21 U.S.C. § 959(b)(1) ("It shall be unlawful for any person to manufacture or distribute a listed chemical . . . intending or knowing that the listed chemical will be used to manufacture a controlled substance"); 46 U.S.C. § 70503(a)(1) (prohibiting "[w]hile on board a covered vessel" a person from "knowingly or intentionally . . . manufactur[ing] or distribut[ing], or possess[ing] with intent to manufacture or distribute, a controlled substance"). Likewise, the State-offense clause defines the class of state-law crimes that constitute predicate offenses for purposes of ACCA.

Two further aspects of § 924(e)'s structure indicate that Congress used the phrase "manufacturing, distributing, or possessing with intent to manufacture or distribute" as generic offenses to indicate which state laws get swept into ACCA.

First, the parallel between the Federal-offenses and State-offenses clauses in § 924(e)(2)(A) reflects the broader structure of § 924(e) and, specifically, its use of generic offenses. Just as § 924(e)(2)(A)(ii) provides a list of generic offenses to determine whether a state conviction qualifies as a "serious drug offense," so too does subsection (e)(2)(B)(ii) provide a list of generic offenses qualifying as "violent felonies."

Second, the contrast between the offenses listed in the serious drug offenses provision and the violent felony provision's elements clause compels a different construction for each phrase. 18 U.S.C. § 924(e)(2)(B)(i) ("'violent felony' means any crime

punishable by imprisonment for a term exceeding one year . . . that (i) *has as an element* the use, attempted use, or threatened use of physical force against the person of another."). Congress's intentional use of the phrase "has as an element" in that section counsels against a conclusion that it implicitly adopted that construction in § 924(e)(2)(A)(ii). If it wanted courts to consider the listed terms as elements, it could have said so. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (citation omitted)).

A contrary interpretation would strike a dissonant chord in the larger ACCA framework. Through the elements clause, Congress intended that the categorical inquiry focus only on an individual element of a previous offense, rather than all the elements (much less the facts) of a state conviction. Here, by contrast, Congress focused on the nature of the drug activity as defined by state law, not by a narrow element.

To read § 924(e)(2)(A)(ii) as anything but describing generic offenses against which a state conviction should be compared would be to displace the categorical approach entirely. Such a reading would render § 924(e)(2)(A)(ii) anomalous in the broader statutory context of ACCA. This cannot be. *Mellouli*, 135 S. Ct. at 1989 ("Statutes should be interpreted as 'a symmetrical and coherent regulatory scheme.'"); *Erlengbaugh* v. *United States*, 409 U.S. 239, 243–44 (1972) (sections of a statute passed by the same Congress must be read "*in pari materia*").

C. Legislative History Confirms Congress's Intent.

As the Court detailed in *Taylor*, the legislative history showed that Congress "intended that the enhancement provision be triggered by crimes having certain elements," not by crimes labeled a certain way under the vagaries of state law. 495 U.S. at 588–89. When Congress made the amendments in 1986, which included adding the "serious drug offenses," the goal was simply to add additional predicate offenses, not to create a new class of offenses that might be subject to a different test. Representative Wyden: "I think we can all agree that we should expand the predicate offenses"; Senator Specter: "The time seems ripe in many quarters, including the Department of Justice, to expand the armed career criminal bill to include other offenses." See *id.* at 583–84 (quoting hearings before House and Senate Committees). Thus:

> [A] consensus developed in support of an expansion of the predicate offenses to include serious drug trafficking offenses under both State and Federal law and violent felonies, generally. This concept was encompassed in H.R. 4885 by deleting the specific predicate offenses for robbery and burglary and adding as predicate offenses State and Federal laws for which a maximum term of imprisonment of 10 years or more is prescribed for manufacturing, distributing or possessing with intent to manufacture or distribute controlled substances and violent felonies . . . .

H.R. Rep. No. 99-849, at 3 (1986). Nothing about this uncontroverted history suggests that Congress intended for "serious drug offenses" to somehow be interpreted differently from the violent felonies,

which require a match between the state offense and its generic analogue. To the contrary, this history supports the idea that the "serious drug offenses" provision was merely an expansion of the violent felonies, and thus they should be construed the same way under the statute.

In addition, this legislative history shows that Congress intended for both sets of crimes to have a *mens rea* component. Congress drew a parallel between federal and state offenses involving manufacture, distribution, or possession with intent to distribute or manufacture, controlled substances. Because Congress contemplated that both the federal and state offenses would involve similar crimes, Congress could not reasonably have intended to carve out an entirely different standard that would sweep in outlier state offenses.

Likewise, Congress had in mind the same RICO provision targeting conduct "involving" enumerated offenses that the Court evaluated in *Scheidler* when it drafted the list of generic offenses qualifying as "serious drug offenses." The House Report explained that the serious-drug-offense provision "describes in general terms (similar to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961) those State drug trafficking offenses for which a maximum confinement of 10 years or more is prescribed which would be predicate offenses under the new definition of serious drug offense." H.R. Rep. No. 99-849, at 4 (1986). "Involving," therefore, cannot mean anything different in ACCA than it does in RICO without directly contravening this legislative history.

D. The Rule of Lenity Favors Mr. Shular's Interpretation.

Even if, after applying each of the tools of statutory construction above, ambiguity remained regarding whether the term "involving" somehow changed the nature of the categorical approach, the rule of lenity would favor Mr. Shular's interpretation. See *United States* v. *Hayes*, 555 U.S. 415, 429 (2009) (lenity applies "only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute"). The rule teaches that "ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *Davis*, 139 S. Ct. at 2333. As Mr. Shular's case demonstrates, contrary interpretations of § 924(e)(2)(A)(ii) broaden the scope of the statute—and thus, the application of its significant consequences—by including in its ambit criminal defendants with no *mens rea* as to the illicit nature of the substance.

II. SECTION 924(e)(2)(A)(ii)'S LIST OF QUALIFYING OFFENSES UNDER STATE LAW MUST INCLUDE A *MENS REA* REQUIREMENT

In 1986, nearly every state's controlled substances offenses—including Florida's—were modeled after the Uniform Controlled Substances Act (UCSA). See Appendix. In adopting those provisions, an overwhelming majority of states had by 1986, either by statute or judicial decision, determined that knowledge of the illicit nature of the substance was an element of the crimes of manufacture, distribution or possession with intent to manufacture or distribute.[7] So too had the federal government. See 21

[7] Indeed, even for the crime of simple possession, nearly every state had included a requirement of *mens rea* as to the illicit na-

U.S.C. § 841(a); *McFadden* v. *United States*, 135 S. Ct. 2298, 2304 (2015)

Given the nearly universal agreement on a *mens rea* requirement for such offenses in 1986, the categorical approach likewise requires that the "serious drug offenses" also include a *mens rea* requirement. Cf. *Quarles*, 139 S. Ct. at 1878; *Taylor*, 495 U.S. at 598 (interpreting burglary by "the generic sense in which the term is now used in the criminal codes of most States"); *Stitt*, 139 S. Ct. at 406 (evaluating whether states in 1986 included vehicles converted to lodging in their burglary statutes).

Mr. Shular's prior convictions under Florida law—contrary to the current federal law and the law in every other state—required no *mens rea* as to the illicit nature of the substance sold. The crime of sale of cocaine had only two elements: (1) the defendant sold a certain substance, and (2) the substance was cocaine. See *In re Standard Jury Instructions in Crim. Cases (No. 2005-3)*, 969 So. 2d 245 (Fla. 2007). This was not always the case. In 1987, the Florida Supreme Court held that knowledge of the nature of the substance was an element of trafficking in cocaine (including sale). See *State* v. *Dominguez*, 509 So. 2d 917 (Fla. 1987); see also *Chicone* v. *State*, 684 So. 2d 736, 744 (Fla. 1996) (holding that knowledge of the illicit nature of the substance was an element of Florida's controlled substance offenses, rejecting the State's argument that such knowledge was an affirmative defense), *superseded by* Fla. Stat. § 893.101. The Florida legislature responded in 2002 by declaring that Florida's controlled substances offenses had no such element. See Fla. Stat. § 893.101. Yet the

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ture of the substance. See *Dawkins* v. *State*, 547 A.2d 1041, 1044 n.6 (Md. 1988) (compiling standard in fifty states).

Eleventh Circuit concluded that what are essentially strict liability crimes qualify as "serious drug offenses" as defined under 924(e)(2)(A)(ii), triggering a mandatory fifteen-year sentence.

This position runs headlong into the bedrock presumption that "the requirement of some *mens rea* for a crime is . . . the rule of, rather than the exception to, Anglo-American criminal jurisprudence." *Staples*, 511 U.S. at 605–06. The requirement applies absent some indication from Congress, either express or implied, that it meant to do away with *mens rea*. *Id.* Furthermore, such intent to do away with *mens rea* cannot be implied when the penalty is particularly harsh. *Id.* at 616. Here, Congress amended ACCA against a uniform backdrop that included a *mens rea* component in the generic versions of serious drug crimes. And Congress ensured that the penalties for eligible predicates would be undeniably harsh (up to ten years' incarceration or more).

Even if the serious drug offenses provision listed only elements, rather than complete offenses, the same presumption of *mens rea* would apply. The "longstanding presumption, traceable to the common law" is that a defendant "possess a culpable mental state regarding each of the statutory elements that criminalize otherwise innocent conduct." *Rehaif*, 139 S. Ct. at 2195 (internal quotation omitted). The same presumption applies here. The manufacture of a controlled substance implies knowledge of the nature of the substance, as does the distribution of a controlled substance. Cf. *Leocal* v. *Ashcroft*, 543 U.S. 1, 8–9 (2004) (use of physical force against the person of another implies "*intentional* availment" of force).

III. THE ELEVENTH CIRCUIT'S APPROACH HAS NO CLEAR BOUNDARIES AND LEADS TO INDETERMINATE OUTCOMES

1. The Eleventh Circuit's decision in *Smith*, by failing to define generically the offenses provided in § 924(e)(2)(A)(ii), wrongly excluded *mens rea* as to the illicit nature of the substance. Such a conclusion creates a bizarre bifurcation of the meaning of "serious drug offense" under § 924(e)(2)(A). All of the analogous federal drug offenses cross-referenced in § 924(e)(2)(A)(i) require proof of *mens rea* as an element. See 21 U.S.C. § 801 *et seq.*; see also *McFadden*, 135 S. Ct. at 2304–05. Under the Eleventh Circuit's formulation, however, "serious drug offenses" under (A)(ii) require no *mens rea*.

In other words, conduct that would not amount to a drug offense at all under federal criminal law—much less a "serious drug offense" under (A)(i)—would nonetheless equal a "serious drug offense" under (A)(ii) if charged under laws like Florida's. Courts cannot read the statute in such a way as to render it inconsistent. See *Mellouli*, 135 S. Ct. at 1989.

Worse yet, the Eleventh Circuit has concluded in a subsequent opinion that a state statute criminalizing "trafficking" by virtue of possession of a certain quantity of a controlled substance qualified as the "serious drug offense" of possession with intent to distribute or manufacture under § 924(e)(2)(A)(ii). *White*, 837 F.3d at 1235. The conclusion that the simple possession of a certain amount of a controlled substance—without any finding of intent to distribute—qualified as a "serious drug offense" directly contradicts the language of § 924(e)(2)(A)(ii) defining the offense as: "[P]ossessing *with intent* to distribute or manufacture" a controlled substance.

The court in *White* reasoned that the term "involving" means that a serious drug offense "might include state offenses that do not have as an element the manufacture, distribution, or possession of drugs with intent to manufacture or distribute." *Id.* at 1233. Endorsing this "expansive interpretation of the word 'involving'" from its sister courts, the import of the Eleventh Circuit's decision is that the crime need only "be sufficiently related to" distribution. *Id.* But that would render other language in the statute superfluous: If possession with intent to distribute only needs to be "related to" distribution, Congress's inclusion of "possession with intent to distribute" as a predicate offense would have no purpose or meaning. See *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 574–75 (1995); *United States* v. *Alaska*, 521 U.S. 1, 59 (1997).

2. Allowing courts to determine whether a state offense is "related to" drug manufacture, distribution, or possession with intent to distribute or manufacture strips the statute of any limiting principle or guidance upon which courts might rely. This is because "related to" is a "broad" and "indeterminate" term—one that could extend "to the furthest stretch of indeterminacy" and ultimately "stop nowhere." *Mellouli*, 135 S. Ct. at 1990.

Recent case law demonstrates how this is so. In *United States* v. *Eason*, for example, the Sixth Circuit evaluated a Tennessee controlled substances statute, which required the court to determine whether "purchasing an ingredient that could be used to manufacture methamphetamine with a reckless disregard of its intended use" constituted the "serious drug offense" of manufacturing a controlled substance under 924(e)(2)(A)(ii). 919 F.3d 385, 391 (6th Cir. 2019).

The Sixth Circuit rightly began its categorical inquiry by defining the elements of the crime of convic-

tion and determining whether the crime was divisible or not. *Id.* at 388–89 (citing *Mathis*, 136 S. Ct. at 2256–57. Next, the court determined what the least culpable conduct punished would be under the statute. *Id.* at 389 (citing *Moncrieffe*, 569 U.S. at 190–91).

At this point, however, the court reasoned it had only to determine whether that conduct—purchasing a product that could be used to manufacture methamphetamine with reckless disregard for its intended use—sufficiently "related to" manufacturing a controlled substance. Without the crucial final step in the categorical inquiry of matching the elements of the state crime of conviction to the generic definition, the test offers no real guidance.

Thus, while the court acknowledged that ingredients used in methamphetamine can be purchased over the counter, and that "as culpability diminishes"—in this case reckless disregard—"so too does the connection to manufacturing," it nonetheless concluded that such conduct was a "serious drug offense." *Id.* at 391.

To be clear, the kinds of ingredients that can be purchased over the counter that *could* be used to manufacture methamphetamine include: Cold medicine, paint thinner, drain cleaner, and nail polish remover (acetone). See U.S. Dep't of Justice Archive, *Meth Awareness*, https://www.justice.gov/archive/olp/methawareness/ (Sept. 23, 2019). Yet, under the "related to" approach, a purchaser's "reckless disregard" (the least culpable act criminalized) for the intended use of nail polish remover, or cold medicine, amounts to a serious drug offense meriting the harshest punishment.

Applying that definition of "involving" to the categorical inquiry "might well encompass convictions for offenses related to drug activity more generally, such as gun possession, even if those convictions do not actually involve drugs." *Mellouli*, 135 S. Ct. at 1990. See*, e.g.*, *United States* v. *Gibbs*, 656 F.3d 180, 189 (3d Cir. 2011) (determining that wearing body armor while in commission of a felony constituted a "serious drug offense" because the underlying felony (for which the defendant was not convicted) was possession with intent to deliver cocaine). A court might "consider the possibility that the person possessing the [firearm] will later use it to commit a crime" related to drug manufacture, distribution, or possession with intent. See *Johnson*, 135 S. Ct. at 2559.

3. Judicial attempts to determine whether a state offense is merely "related to" the generic offenses under § 924(e)(2)(A)(ii) bear more than a passing resemblance to the residual clause inquiries this Court declared unconstitutionally vague. Such inquiries tie the assessment to judicial imagination, "not to real-world facts or statutory elements," see *id.,* and invite the same kind of challenges the Court struggled with for years under the residual clause inquiry. See*, e.g.*, *James* v. *United States*, 550 U.S. 192, 220 (2007); *Chambers* v. *United States*, 555 U.S. 122, 128–29 (2009); *Begay* v. *United States,* 553 U.S. 137 (2008); *Sykes* v. *United States,* 564 U.S. 1 (2011). The Court rightly, and repeatedly, closed the door on those inquiries. See *Johnson*, 135 S. Ct. at 2258–60; *Sessions* v. *Dimaya*, 138 S. Ct. 1204, 1216 (2018); *Davis*, 139 S. Ct. at 2335–36.

Again, recent case law demonstrates that this is no imagined danger. The Fourth Circuit looked past the statutory elements of defendant's predicate offense (possession of twenty-eight grams of cocaine) to ask

at what quantity it was "natural and reasonable" to assume that mere possession "involved" possession with intent. *United States* v. *Brandon*, 247 F.3d 186, 193 (4th Cir. 2001). Yet such an inquiry introduces vagueness into a statute where it need not exist, and in doing so undermines the separation of powers by assigning responsibility for defining crimes to judges rather than the representatives authorized by election to "make an act a crime." *Davis*, 139 S. Ct. at 2325 (quoting *United States* v. *Hudson*, 7 Cranch 32, 34 (1812)). The analysis would invariably "'devolve[] into guesswork and intuition', invite[] arbitrary enforcement, and fail[] to provide fair notice." *Dimaya*, 138 S. Ct. at 1223.

Unsurprisingly then, courts of appeals applying the same approach have reached opposite conclusions regarding whether possession (without intent) of twenty-eight grams of cocaine was sufficiently related to "possession *with intent* to distribute" as defined under 924(e)(2)(A)(ii) to constitute a "serious drug offense." Compare *White*, 837 F.3d at 1235 (Alabama conviction for trafficking by possession of at least twenty-eight grams of cocaine constitutes a serious drug offense and a valid predicate under ACCA), with *Brandon*, 247 F.3d at 195–97 (North Carolina conviction for trafficking by possession of at least twenty-eight grams of cocaine is not a serious drug offense under ACCA).

As noted previously, courts in these cases addressed state crimes labeled as "trafficking," which criminalized, among other things, possession of a certain quantity of various controlled substances. At first blush, a crime labeled "trafficking" might appear to qualify as distribution or possession with intent to distribute under ACCA. But this is the precise logic that the Court rejected in *Taylor*, in which individu-

als would receive sentencing enhancements "depending on [how] the State of [the] prior conviction" labeled the crime. See 495 U.S. at 590–91. State labels should not govern courts' inquiries into predicate offenses.

Moreover, even though it may be "sensible 'to assume' that persons possessing 'very large' drug quantities 'intend to distribute' them . . . the difficult question is what is the right amount of drugs a person must possess 'before this presumption of an intent to distribute is appropriate.'" *United States* v. *Mulkern*, 854 F.3d 87, 96 (1st Cir. 2016). States have variously specified what quantities of drugs transform mere possession into trafficking. As the Fourth Circuit noted, in Delaware a defendant who possessed five grams or more of cocaine is trafficking, while in Missouri the threshold is 150 grams, and in North Carolina the threshold is twenty-eight grams. *Brandon*, 247 F.3d at 192.

States obviously can target certain drugs and certain quantities in light of their own priorities and circumstances, but in the ACCA context such variability cannot be tolerated. Requiring judges to look past the elements of the generic offenses and make inferences of intent to determine what "relates to" the "serious drug offenses" would leave outcomes to the individual sensibilities of judges and "sweep in the bizarre or unexpected state offenses." *Lockhart*, 136 S. Ct. at 968. Such a lack of predictability fails to provide defendants "fair notice of what the law demands of them." *Davis*, 139 S. Ct. at 2325.

IV. THE CATEGORICAL APPROACH EXCLUDES MR. SHULAR'S FLORIDA CONVICTIONS AS "SERIOUS DRUG OFFENSES"

Because Mr. Shular's prior convictions under Florida law required no showing of *mens rea*, Florida's law is broader than the generic offenses of distribution and possession with intent to distribute a controlled substance. Accordingly, the Eleventh Circuit's opinion should be reversed, and the case remanded for resentencing without an ACCA enhancement.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below and reinstate a categorical analysis comparing state law crimes and generic analogues when determining sentencing enhancements under § 924(e)(2)(A)(ii).

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Appendix

Appendix

The following table illustrates the nature of controlled substance offenses in the States at the time Congress amended ACCA in 1986. The column titled "UCSA Enactment" cites the session law through which each state adopted its version of the Uniform Controlled Substances Act. The column titled "*Mens Rea*" provides case law from each state applying a *mens rea* element to controlled substances offenses (generally drug trafficking or one of manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance), either by the plain terms of the statute or through judicial interpretation.

State	UCSA Enactment	*Mens Rea*
Alabama	No. 1407, § 401, 1971 Ala. Laws 2378, 2395	*E.g.*, *Harris* v. *State*, 826 So. 2d 897, 898 (Ala. 2000) (quoting Ala. Code § 13A-12-231(2) (1975))
Alaska	Ch. 45, §§ 11.71.030–.050, 1982 Alaska Sess. Laws 1, 3-7	*E.g.*, *Carranza* v. *State*, No. A-2216, 1989 WL 1594957 (Alaska Ct. App. May 31, 1989)
Arizona	Ch. 103, § 36-2531, 1979 Ariz. Sess. Laws 294, 317-318	*E.g.*, *State* v. *Salinas*, 887 P.2d 985, 987 (Ariz. 1994) (In Banc) (citing *State* v.

State	UCSA Enactment	*Mens Rea*
		Arce, 483 P.2d 1395, 1399 (Ariz. 1971)
Arkansas	No. 590, art. IV, § 1, 1971 Ark. Acts 1321, 1340-42	[no pre-1986 case identified]
California	Ch. 1407, §§ 11351–52, 1972 Cal. Stat. 2986, 3011-13	*E.g.*, *People* v. *Daniels*, 537 P.2d 1232, 1235 (Calif. 1975) (In Bank)
Colorado	Ch. 128, § 18-18-105, 1981 Colo. Sess. Laws 707, 730	*E.g.*, *People* v. *Cagle*, 751 P.2d 614, 619 (Colo. 1988) (en banc) (quoting 8 C.R.S. § 18-18-105(1)(a) (Supp. 1983))
Connecticut	No. 555, § 8, 1967 Conn. Pub. Acts 770, 775	*E.g.*, *State* v. *Avila*, 353 A.2d 776, 779–80 (Conn. 1974)
Delaware	Ch. 424, §§ 4751–4756, 58 Del. Laws. 1279, 1302-04 (1971)	*E.g. Pyror* v. *State*, 453 A.2d 98, 100 (Del. 1982); see also *Traylor* v. *State*, 458 A.2d 1170, 1176 n.6 (Del. 1983) (quoting 16 Del. Code

State	UCSA Enactment	*Mens Rea*
		Ann. § 4753A(a)(3))
District of Columbia	No. 4-51, § 401, 28 D.C. Reg. 3081, 3102-03 (July 10, 1981)	*E.g.*, *Briscoe* v. *United States*, 528 A.2d 1243, 1245 (D.C. 1987) (quoting D.C.Code § 33-541(a)(1)–(2), (D) (1986 Supp.))
Florida	Ch. 73-331, § 13, 1973 Fla. Laws 783, 799–800	*E.g.*, *State* v. *Dominguez*, 509 So. 2d 917, 917–18 (Fla. 1987) (citing Fla. Stat. § 893.135(1)(b), (1985))
Georgia	No. 823, § 79A-811, 1974 Ga. Laws 221, 243	*E.g.*, *Blount* v. *State*, 352 S.E.2d 220, 222 (Ga. Ct. App. 1986) (quoting OCGA § 16-13-31)
Hawaii	No. 10, §§ 27–29, 1972 Haw. Sess. Laws 142, 157-58	*E.g.*, *State* v. *Shofill*, 621 P.2d 364, 368 (Haw. 1980) (citing Haw. Rev. Stat. § 712-1241 (1976 & Supp. 1979))

State	UCSA Enactment	*Mens Rea*
Idaho	Ch. 215, § 37-2732, 1971 Idaho Sess. Laws 939, 957–58	[no pre-1986 case identified]
Illinois	No. 77-757, § 401, 1971 Ill. Laws 1538, 1559–60	*E.g.*, *People* v. *Lev*, 519 N.E.2d 1168, 1171 (Ill. Ct. App. 1988) (quoting Ill. Rev. Stat. ch. 56½, par. 1401 (1985)).
Indiana	No. 148, ch. 4, §§ 1–6, 1976 Ind. Acts 718, 783–84	*E.g.*, *Sherlis* v. *State*, 498 N.E.2d 973, 975 (Ind. 1986) (quoting Ind. Code 35–48–4–1)
Iowa	Ch. 148, § 401, 1971 Iowa Acts 305, 318–19	*E.g.*, *State* v. *Luter*, 346 N.W.2d 802, 811 (Iowa 1984), *superseded on other grounds by statute as noted in State* v. *Swaim*, 412 N.W.2d 568 (Iowa 1982); see also *State* v. *Osmundson*, 241 N.W.2d 892, 893 (Iowa 1976)
Kansas	Ch. 234, §§ 24, 26, 1972 Kan.	*E.g.*, *State* v. *Faulkner*, 551 P.2d

State	UCSA Enactment	*Mens Rea*
	Sess. Laws 941, 954–55	1247, 1251–52 (Kan. 1976); *State* v. *Justice*, 704 P.2d 1012, 1018 (Kan. Ct. App. 1985)
Kentucky	Ch. 226, §§ 15–16, 31, 1972 Ky. Acts 941, 949-50, 960-65.	*E.g.*, *Byrd* v. *Commonwealth*, 709 S.W.2d 844, 845 (Ky. Ct. App. 1986) (quoting Ky. Rev. Stat. 218A.990(1))
Louisiana	No. 633, §§ 966–971, 1972 La. Acts 1406, 1418–22	*E.g.*, *State* v. *Banks*, 307 So. 2d 594, 596–97 (La. 1975) (quoting La. Rev. Stat. 40:966)
Maine	Ch. 499, § 1103, 1975 Me. Laws 1273, 1347-49	*E.g.*, *State* v. *Mansir*, 440 A.2d 6, 6 n.1 (Me. 1982) (quoting 17-A.M.R.S.A. § 1103 (Supp. 1981))
Maryland	Ch. 403, § 286, 1970 Md. Laws 896-97.	*E.g.*, *Waller* v. *State*, 284 A.2d 446, 447–48 (Md. 1971)
Massachusetts	Ch. 1071, §§ 32, 34, 1971 Mass.	*E.g.*, *Commonwealth* v. *Perry*, 464 N.E.2d 389,

State	UCSA Enactment	*Mens Rea*
	Acts 1019, 1043–46	392 n.2 (Mass. 1984) (quoting Mass. Gen L. c. 94c, §§ 32-32G)
Michigan	No. 368, §§ 333.7401, .7403, 1978 Mich. Pub. Acts 865, 975–76	*E.g., People* v. *Delgado*, 273 N.W.2d 395, 399 (Mich. 1978)
Minnesota	Ch. 937, § 152.09, 1971 Minn. Laws 1923, 1932	*E.g.*, *State* v. *Dick*, 253 N.W.2d 277, 279 (Minn. 1977)
Mississippi	Ch. 521, § 20 1971 Miss. Laws 802, 819–21	*E.g.*, *Applegate v. State*, 301 So. 2d 853, 855 (Miss. 1974); see also *Coyne* v. *State*, 484 So. 2d 1018, 1021 (Miss. 1986) (quoting Miss. Code Ann. § 41-29-139 (Supp. 1985))
Missouri	No. 69 § 195.020, 1971 Mo. Laws 237, 247	*E.g.*, *State* v. *Pilchak*, 655 S.W.2d 646, 650–51 (Mo. Ct. App. 1983)
Montana	Ch. 412, sec. 24, §§ 54-132 to 133,	*E.g.*, *State* v. *Starr,* 664 P.2d 893, 897–

State	UCSA Enactment	*Mens Rea*
	1973 Mont. Laws 969, 984–85	98 (Mont. 1983); see also *State* v. *Anderson*, 498 P.2d 295, 298–99 (Mont. 1972)
Nebraska	No. 326, § 11 1971 Neb. Laws 1, 18	*E.g.*, *State* v. *Anderson*, 427 N.W.2d 764, 769 (Neb. 1988) (quoting Neb. Rev. Stat. § 28-416(1)(a) (cum. supp. 1986))
Nevada	Ch. 667, § 62, 1971 Nev. Stat. 1999, 2018–19	*E.g.*, *Rowe* v. *State*, 542 P.2d 1059, 1059 (Nev. 1975)
New Hampshire	Ch. 547, § 318-B:2, 1977 N.H. Laws 699, 700	*E.g.*, *State* v. *Renfrew*, 444 A.2d 527, 529–30 (N.H. 1982) (citing N.H. Rev. Stat. Ann. 318–B:26 I(a) (Supp. 1981))
New Jersey	Ch. 226, § 24:21-19 to 20, 1970 N.J. Laws 769, 789-90	*E.g.*, *State* v. *Brown*, 404 A.2d 1111, 1118 (N.J. 1979)

State	UCSA Enactment	*Mens Rea*
New Mexico	Ch. 84, §§ 20, 23, 1972 N.M. Laws 437, 465–68	*E.g.*, *Martinez* v. *State*, 580 P.2d 968, 970 (N.M. 1978) (quoting N.M. Stat. Ann. § 54-11-20(B) (Supp. 1975)).
New York	Ch. 878, § 3304, 1972 N.Y. Sess. Laws 3296, 3302	*E.g.*, *People* v. *Tramuta*, 109 A.D.2d 765, 766 (N.Y. App. Div. 1985); *People* v. *Rosenthal*, 398 N.Y.S.2d 639, 640–41 (N.Y. Sup. Ct. 1977)
North Carolina	Ch. 919, sec. 1, § 90-95, 1971 N.C. Sess. Laws 1477, 1488–90	*E.g.*, *State* v. *Weldon*, 333 S.E.2d 701, 702 (N.C. 1985); *State* v. *Siler*, 314 S.E.2d 547, 549 (N.C. 1984)
North Dakota	Ch. 235, § 23, 1971 N.D. Laws 474, 491–92	But see *State* v. *Rippley*, 319 N.W.2d 129, 133 (N.D. 1982) (strict liability)
Ohio	Am. Sub. H.B. No. 300, Sec. 1, § 2925.03,	*E.g.*, *State* v. *Patterson*, 432 N.E.2d 802, 803 (1982)

State	UCSA Enactment	*Mens Rea*
	1975/76 Ohio Laws 2311, 2318–23	(per curiam) (citing Ohio Rev. Code 2925.03(A)(1))
Oklahoma	Ch. 119, § 2-401, 1971 Okla. Sess. Laws 345, 363–64	*E.g.*, *Rudd* v. *State*, 649 P.2d 791, 794–95 (Okla. Crim. App. 1982)
Oregon	Ch. 745, § 15, 1977 Or. Laws 701, 706	*E.g.*, *State* v. *Rainey*, 693 P.2d 635, 637 n.1 (Or. 1978) (en banc) (citing Or. Rev. Stat. 475.922(2)(a), 475.005(8), 161.095(2))
Pennsylvania	No. 64, § 13, 1972 Pa. Laws 233, 251–55	*E.g.*, *Commonwealth* v. *Rambo*, 412 A.2d 535, 537 (Pa. 1980) (quoting 35 P.S. 780-113(a)(30))
Rhode Island	Ch. 183, sec. 2, § 21-28-4.01, 1974 R.I. Pub. Laws 977, 1026–28	*E.g.*, *State* v. *Jenison*, 442 A.2d 866, 875 (R.I. 1982); *Sharbuno* v. *Moran*, 429 A.2d 1294, 1296 (R.I. 1981)

State	UCSA Enactment	*Mens Rea*
South Carolina	No. 445, § 29, 1971 S.C. Acts 800, 820–23	*E.g.*, *State* v. *Wise*, 252 S.E.2d 294 (S.C. 1979); see also *State* v. *Ferguson*, 395 S.E.2d 182, 184 n.4 (S.C. 1990) (quoting S.C. Code Ann. § 44-53-370(a) (1985))
South Dakota	Ch. 229, § 10 1970 S.D. Sess. Laws 267, 281–84	*E.g.*, *State* v. *Barr*, 237 N.W.2d 888, 890–91 (S.D. 1976)
Tennessee	Ch. 163, § 25, 1971 Tenn. Pub. Acts 366, 393–96	*E.g.*, *State* v. *Ash*, 729 S.W.2d 275, 279 (Tenn. Crim. App. 1984) (quoting Tenn. Code Ann. § 39-6-417(c)(1)(D) (Supp. 1986))
Texas	Ch. 429, § 4.03, 1973 Tex. Gen. Laws 1132, 1153–54	*E.g.*, *Stewart* v. *State*, 718 S.W.2d 286, 287–88 n.1 (Tex. Crim. App. 1986) (en banc) (quoting V.A.C.S., Art. 4476-15, § 4.03(a))

State	UCSA Enactment	*Mens Rea*
Utah	Ch. 145, § 8, 1971 Utah Laws 475, 492–97	*E.g.*, *State* v. *Fox*, 709 P.2d 316, 318–19 (Utah 1985); see also *State* v. *Gray*, 717 P.2d 1313, 1315 n.1, 1316 (Utah 1986)
Vermont	No. 199, § 16, 1971 Vt. Acts & Resolves 212, 212–13	*E.g.*, *State* v. *Neale*, 491 A.2d 1025, 1030 (Vt. 1985); *State* v. *Bressette*, 388 A.2d 395, 396 (Vt. 1978)
Virginia	Ch. 650, § 54-524.101, 1970 Va. Acts 1358, 1390–91	*E.g.*, *Sharp* v. *Commonwealth*, 192 S.E.2d 217, 218 (Va. 1972) (quoting Va. Stat. § 54—524.101(a))
Washington	Ch. 308, § 69.50.401, 1971 Wash. Sess. Laws 1794, 1811–12	*E.g.*, *State* v. *Boyer*, 588 P.2d 1151, 1152 (Wash. 1979) (en banc)
West Virginia	Ch. 54, § 60A-4-401, 1971 W. Va. Acts 269, 291–92	*E.g.*, *State* v. *Barnett*, 284 S.E.2d 622, 623 (W. Va 1981); *State* v. *Dunn*, 246 S.E.2d

State	UCSA Enactment	*Mens Rea*
		245, 252 (W. Va. 1978)
Wisconsin	Ch. 219, § 161.41, 1971 Wis. Sess. Laws 609, 627–28	*E.g.*, *State* v. *Gladney*, 313 N.W.2d 279, at *1 (Wisc. Ct. App. 1981) (mem.); see also *Lunde v. State*, 270 N.W.2d 180 (Wisc. 1978)
Wyoming	Ch. 246, § 31, 1971 Wyo. Sess. Laws 467, 485–86	*E.g.*, *Dorador* v. *State*, 573 P.2d 839, 843 (Wyo. 1978)