No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD A. JILES,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

(11th Cir. No. 17-14899)

Petition for *Writ of Certiorari*

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QUESTION PRESENTED

Petitioner Richard A. Jiles was convicted in the U.S. District Court for the Southern District of Georgia of being a felon in possession of a firearm. He was sentenced under the enhanced criminal penalties in the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e) (2014), by virtue of three Georgia predicate convictions, including one for burglary in violation of O.C.G.A. § 16-7-1 (2005). In *United States v. Gundy*, 842 F.3d 1156 (11th Cir. 2016), a divided panel of the Eleventh Circuit held that the Georgia burglary statute qualified as an ACCA predicate because it is unambiguously a divisible statute. Other courts have concluded otherwise.

Accordingly, the question presented is:

1. Was correct to find that Mr. Jiles' prior burglary conviction under O.C.G.A. § 16-7-1 was a predicate offense under the ACCA, 18 U.S.C. §924(e)?

LIST OF PARTIES

All parties appear in the caption of this Petition's cover page.

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TABLE OF AUTHORITIES

Cases

Statutes

Richard A. Jiles respectfully petitions for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS AND ORDERS BELOW

The Eleventh Circuit Court of Appeals did not select its opinion for publication. It is reprinted in the Appendix.

The U.S. District Court for the Southern District of Georgia did not prepare a reported opinion. Its pertinent rulings are reprinted in the Appendix.

JURISDICTION

The district court had jurisdiction over the federal criminal charge. 18 U.S.C. § 3231. Further, it had jurisdiction to consider a motion under 28 U.S.C. § 2255 to modify that judgment.

This Court has jurisdiction to review the judgment of the Eleventh Circuit, which was entered on August 10, 2018, [App. at 1]. 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Federal Statutes

18 U.S.C. § 924(e):

(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection –

(A) the term "serious drug offense" means –

(i) an offense 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.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) 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;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that –

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

* * *

State Statutes

O.C.G.A. § 16-7-1(a) (2005):[1]

(a) A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another or enters or remains within any other building, railroad car, aircraft, or any room or any part thereof. A person convicted of the offense of burglary, for the first such offense, shall be punished by imprisonment for not less than one nor more than 20 years. For the purposes of this Code section, the term "railroad car" shall also

[1] In 2012, the Georgia General Assembly amended the statute to its current form, which among other changes now divides burglary into first- and second-degree offenses. *See* O.C.G.A. § 16-7-1 (2018). First-degree burglary occurs when "[a] person…, without authority and with the intent to commit a felony or theft therein…[,] enters or remains within an occupied, unoccupied, or vacant dwelling house of another or any building, vehicle, railroad car, watercraft, aircraft, or other such structure designed for use as the dwelling of another.". O.C.G.A. § 16-7-1(b). Unless otherwise specifically indicated, all references to O.C.G.A. § 16-7-1 will be to the version in 2005, before the amendment, because that was the version under which Mr. Jiles was convicted in state court.

include trailers on flatcars, containers on flatcars, trailers on railroad property, or containers on railroad property.

(b) Upon a second conviction for a crime of burglary occurring after the first conviction, a person shall be punished by imprisonment for not less than two nor more than 20 years. Upon a third conviction for the crime of burglary occurring after the first conviction, a person shall be punished by imprisonment for not less than five nor more than 20 years. Adjudication of guilt or imposition of sentence shall not be suspended, probated, deferred, or withheld for any offense punishable under this subsection.

STATEMENT OF THE CASE

A federal grand jury in the Southern District of Georgia indicted Petitioner Richard Jiles for being a felon in possession of a firearm. [App. 20]. He pleaded guilty to the charge. [JA 14]. The district court determined that his 2005 Georgia burglary conviction was his third predicate conviction under the under the ACCA, *see* 18 U.S.C. § 924(e), increased the applicable sentencing range as required under the ACCA, and sentenced him to the new mandatory minimum: fifteen years. [App at 15].

Although his appointed lawyer did not timely file a notice of appeal, Mr. Jiles obtained 28 U.S.C. § 2255 relief to enable him to litigate the potential inapplicability of the ACCA to his Georgia burglary conviction. [App. at 6-13].

The Eleventh Circuit, in an unpublished decision that applied its prior precedent, held that Georgia's burglary statute does qualify as an ACCA predicate. [App. at 3]. This petition for *certiorari* follows.

REASONS FOR GRANTING THE PETITION

The ACCA creates enhanced penalties for felons in possession of a firearm who have three prior predicate convictions. 18 U.S.C. § 924(e). "Burglary" is an ACCA predicate. 18 U.S.C. § 924(e)(2)(B)(ii). If a purported predicate ACCA conviction was obtained under a criminal statute that "sweeps more broadly than the generic crime, a conviction under that law cannot count as an ACCA predicate, even if the defendant actually committed the offense in its generic form." *Descamps v. United States*, 570 U.S. 254, 261 (2013).

When comparing elements between a state statute of conviction and the ACCA's list of predicate offenses, this Court's current caselaw focuses on elements versus means:

> The comparison of elements that the categorical approach requires is straightforward when a statute sets out a single (or "indivisible") set of elements to define a single crime. The court then lines up that crime's elements alongside those of the generic offense and sees if they match….
>
> Some statutes, however, have a more complicated (sometimes called "divisible") structure, making the comparison of elements harder. A single statute may list elements in the alternative, and thereby define multiple crimes. Suppose, for example, that the California law noted above had prohibited "the lawful entry or the unlawful entry" of a premises with intent to steal, so as to create two different offenses, one more serious than the other. If the defendant were convicted of the offense with unlawful entry as an element, then his crime of conviction would match generic burglary and count as an ACCA predicate; but, conversely, the conviction would not qualify if it were for the offense with lawful entry as an element. A sentencing court thus requires a way of figuring out which of the alternative elements listed—lawful entry or unlawful entry—was inte-

> gral to the defendant's conviction (that is, which was necessarily found or admitted). To address that need, this Court approved the "modified categorical approach" for use with statutes having multiple alternative elements. *See, e.g., Shepard v. United States*, 544 U. S. 13, 26, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005). Under that approach, a sentencing court looks to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of. The court can then compare that crime, as the categorical approach commands, with the relevant generic offense.

Mathis v. United States, 136 S. Ct. 2243, 2248-49 (2016) (some citations omitted).

This Court predicted that the means-versus-elements test would be an easy one in the typical case because state law will normally be clear:

> This threshold inquiry—elements or means?—is easy in this case, as it will be in many others. Here, a state court decision definitively answers the question: The listed premises in Iowa's burglary law, the State Supreme Court held, are "alternative method[s]" of committing one offense, so that a jury need not agree whether the burgled location was a building, other structure, or vehicle. *See Duncan*, 312 N. W. 2d, at 523; *supra*, at ___, 195 L. Ed. 2d, at 612. When a ruling of that kind exists, a sentencing judge need only follow what it says. Likewise, the statute on its face may resolve the issue. If statutory alternatives carry different punishments, then under *Apprendi* they must be elements. Conversely, if a statutory list is drafted to offer illustrative examples, then it includes only a crime's means of commission. And a statute may itself identify which things must be charged (and so are elements) and which need not be (and so are means). Armed with such authoritative sources of state law, federal sentencing courts can readily determine the nature of an alternatively phrased list.
>
> And if state law fails to provide clear answers, federal judges have another place to look: the record of a prior conviction itself. As Judge Kozinski has explained, such a

> "peek at the [record] documents" is for "the sole and limited purpose of determining whether [the listed items are] element[s] of the offense." *Rendon v. Holder*, 782 F. 3d 466, 473-474 (CA9 2015) (opinion dissenting from denial of *reh'g en banc*). (Only if the answer is yes can the court make further use of the materials, as previously described.) Suppose, for example, that one count of an indictment and correlative jury instructions charge a defendant with burgling a "building, structure, or vehicle"—thus reiterating all the terms of Iowa's law. That is as clear an indication as any that each alternative is only a possible means of commission, not an element that the prosecutor must prove to a jury beyond a reasonable doubt. So too if those documents use a single umbrella term like "premises": Once again, the record would then reveal what the prosecutor has to (and does not have to) demonstrate to prevail. Conversely, an indictment and jury instructions could indicate, by referencing one alternative term to the exclusion of all others, that the statute contains a list of elements, each one of which goes toward a separate crime. Of course, such record materials will not in every case speak plainly, and if they do not, a sentencing judge will not be able to satisfy "*Taylor*'s demand for certainty" when determining whether a defendant was convicted of a generic offense. *Shepard*, 544 U. S., at 21, 125 S. Ct. 1254, 161 L. Ed. 2d 205. But between those documents and state law, that kind of indeterminacy should prove more the exception than the rule.

Id. at 2256-57 (some citations and quotations omitted).

The lower courts have, however, found the elements-versus-means test more difficult to apply than this Court predicted, "not the least because state legislatures and state courts do not draft their laws and craft their decisions with this particular distinction in mind." *United States v. Steiner*, 847 F.3d 103, 120 (3d Cir. 2017). As shown below, the lower courts have particularly struggled with the test with respect to O.C.G.A. § 16-7-1. This Court should grant *certiorari* to resolve that uncertainty with respect to this statute and find

it to be ineligible as an ACCA predicate, either because the statute does not qualify by its terms; or, alternatively, because *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) was wrongly decided, meaning that the fact of a prior conviction must be proven to a jury (or admitted in a guilty plea).

A. The Courts Need Help Understanding How to Apply the ACCA to O.C.G.A. § 16-7-1.

When Congress enumerated burglary as an ACCA predicate, Congress meant only a prior conviction for an offense "having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Taylor v. United States*, 495 U.S. 575, 599 (1990).

In *United States v. Gundy*, 842 F.3d 1156 (11th Cir. 2016), the Eleventh Circuit recently considered whether O.C.G.A. § 16-7-1 qualifies an ACCA predicate even though the statute reaches entry into "any building, *vehicle, railroad car, watercraft*, or other such structure designed for use as the dwelling of another or enters or remains *within any other building, railroad car, aircraft*, or any room or any part thereof," O.C.G.A. § 16-7-1(a) (emphasis added).

A divided panel held that the Georgia location portion of the statute is divisible and thus a conviction actually involving a dwelling could count as an ACCA predicate:

> The salient question… is whether § 16-7-1's alternative phrasing of the locational element—(1) dwelling house, or (2) building, vehicle, railroad car, watercraft, or other such structure designed for use as a dwelling, or (3) any other building, railroad car, aircraft, or any room or any part thereof—lists multiple alternative locational 'elements' or

> various 'means' of satisfying a single, indivisible set of elements.

Gundy, 842 F.3d at 1165. As to that question, the majority concluded that the location options are divisible elements, creating in effect three separate potential crimes:

> Rather than a single locational element, the plain text of the Georgia statute has three subsets of different locational elements, stated in the alternative and in the disjunctive. Each of the three subsets enumerates a finite list of specific structures in which the unlawful entry must occur to constitute the crime of burglary. In doing so, the burglary statute has multiple locational elements effectively creating several different crimes.

Id. at 1167.

By contrast, a vigorous dissent argued that Georgia's burglary statute was not divisible and thus could not serve as an ACCA predicate given that it encompassed more than ACCA-approved burglary:

> Georgia's courts have set forth the elements of burglary, making it clear that the state's burglary statute is indivisible. The Georgia Court of Appeals declared in a precedential decision that it is "readily apparent there are two essential elements [of the crime of burglary] which must be established by the State: 1) lack of authority to enter the *dwelling or building*; 2) intent to commit a felony or theft." *Lloyd v. State*, 168 Ga. App. 5, 308 S.E.2d 25, 25 (Ga. Ct. App. 1983) (emphasis added). Entering without authority either a "dwelling or building" is part of the same 'essential element[],' a single element encompassing the types of locations that can be burglarized. *Id.*
>
> So why does the Georgia courts' grouping of "dwelling" and "building" into a single element necessarily answer the elements-versus-means question with respect to vehicles, railroad cars, and watercraft? It does so for two reasons. First, the statute's use of the term "dwelling" itself includes

locations other than the type of structures that generic burglary encompasses. In Georgia, a person commits the crime of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within" . . . any building, vehicle, railroad car, watercraft, *or other such structure designed for use as the dwelling of another* . . . ." O.C.G.A. § 16-7-1(a) (emphasis added). By using the restrictive clause "or other such structure designed for use as the dwelling of another," the statute unambiguously defines vehicles, railroad cars, and watercraft as possible dwellings. *Id.* So a defendant may be convicted of burglarizing a "dwelling" whether he has entered unlawfully an apartment, which would be a structure falling within the purview of generic burglary structure, or a motorhome or a houseboat, which would not.

Second, in the statute "building" appears twice, both times as part of a series. Both series include types of locations that generic burglary excludes. As a matter of syntax and logic, if one item in the series, "building," is not a separate element because the Georgia courts tells us it is part of the same element as "dwelling," then the others in the series are not separate elements either. For these reasons, *Lloyd's* statement of burglary's elements, which groups "building" and "dwelling" together, compels the conclusion that the location types listed in the Georgia burglary statute are alternate means rather than elements.

An examination of Georgia jury instructions confirms *Lloyd's* statement of burglary's elements…. Georgia courts consistently have upheld jury instructions listing "building or dwelling" as part of a single element. *See, e.g., Dukes v. State*, 264 Ga. App. 820, 592 S.E.2d 473, 477 (Ga. Ct. App. 2003) (upholding against unspecified claim of error jury instruction that "it's only necessary to prove burglary in Georgia that . . . the accused did, without authority, enter a building or dwelling house of another with the intent to commit the alleged felony"); *Hart v. State*, 238 Ga. App. 325, 517 S.E.2d 790, 792-93 (Ga. Ct. App. 1999) (deeming "sufficient to inform the jury of the essential elements of" burglary a jury instruction that included "enters in a building or dwelling house of another"); *see also, e.g., Long v. State*, 307 Ga. App. 669, 674-75, 705 S.E.2d 889 (Ga. Ct. App. 2011) (calling "complete and correct" a jury instruction that included "enters any building or dwelling place of

> another"). Indeed, Georgia's pattern jury instructions for burglary state that a person commits burglary when "without authority, that person enters . . . any building or dwelling place of another . . . with the intent" to commit theft or another felony. GAJICRIM 2.62.10 (4th ed. 2016); *id.* 2.62.20 (4th ed. 2016).

Gundy, 842 F.3d at 1172-73 (Pryor, Jill, J., dissenting) (alterations and emphasis in original).

Because of the ease at which Americans can move about the country, courts outside the Eleventh Circuit have had occasion to consider O.C.G.A. § 16-7-1 and the ACCA. A district judge in the Western District of New York decided several months before *Gundy* that Georgia's burglary statute was unambiguously indivisible; therefore, resort to the "modified categorical approach" is not appropriate:

> The Georgia Court of Appeals has recognized that "Georgia's burglary statute is very broad and 'does not limit its application to buildings of any particular type or in any particular condition.'" *Davis v. State*, 308 Ga. App. 7, 10, 706 S.E.2d 710, 714-15 (2011) (quotation omitted). Moreover, the Georgia Court of Appeals has characterized a discrepancy between the location specified in indictment charging burglary and the location as proved at trial *not* as a challenge to the sufficiency of the evidence, but rather as a claim that the evidence fatally varied from the indictment's allegations. *See Weeks v. State*, 274 Ga. App. 122, 124, 616 S.E.2d 852, 854 (2005) ("Weeks's argument is not a challenge to the sufficiency of the evidence, for the evidence sufficed to show that this was a building under the statute and therefore could be burglarized. Rather, properly characterized, Weeks's argument is a claim that the evidence fatally varied from the allegations of the indictment."); *see also Sanders v. State*, 293 Ga. App. 534, 537-38, 667 S.E.2d 396, 399 (2008) ("The evidence proved that he committed burglary on a building, not on a dwelling house as charged. Nevertheless, our examination of the

> record reveals that this variance was not fatal.")…. The analyses undertaken in these cases further supports the conclusion that Georgia's burglary statute lists alternative means of satisfying an element of the offense of burglary, not elements that have to be found by a jury or admitted in a plea for a defendant to be convicted. Where, as here, a statutory list of alternatives refers only to means of committing the offense rather than elements of the offense, the offense remains "indivisible," and "the categorical approach needs no help from its modified partner." *Descamps*, 133 S. Ct. at 2286. The Court concludes that Georgia's burglary statute is indivisible and, accordingly, it is unnecessary and inappropriate to apply the modified categorical approach here.

Williams v. United States, No. 1:16-cv-00030-MAT, 2016 U.S. Dist. LEXIS 125964, at *17-19 (W.D.N.Y. Apr. 18, 2016).

For its part, the Sixth Circuit has found that reasonable minds can differ on the means-versus-elements question with respect to Georgia law as it currently stands:

> Richardson and the government, as well as the majority and dissent in *Gundy*, present colorable arguments and reasonable inferences. However, neither side has established its position with certainty. Unlike the Iowa burglary statute at issue in *Mathis*, which relied on a clear statement from the Iowa Supreme Court that the premises listed in the statute were "alternative method[s]" of satisfying the locational element, *Mathis*, 136 S. Ct. at 2256, we do not have the benefit of such a clear pronouncement from Georgia's highest court.
>
> Although the parties' arguments do not definitively answer the threshold elements/means inquiry, they do establish that Georgia's burglary statute and the law interpreting it are ambiguous as to whether the different types of listed locations are elements or means of committing the offense….

> Here, even the most persuasive arguments offered by each side do not "definitively" answer the threshold question. *Mathis*, 136 S. Ct. at 2256. We disagree with the *Gundy* majority that the burglary statute's text and structure support the conclusion that the locations listed in the statute are elements rather than means. But we also disagree with the Gundy dissent that Georgia "case law *unambiguously* defines the elements of the crime of burglary, and the different types of locations that can be burglarized are not separate elements." 842 F.3d at 1171 (emphasis added).

Richardson v. United States, 890 F.3d 616, 627-28 (6th Cir. 2018). The Sixth Circuit was only able to resolve the uncertainty, and find the ACCA applicable, by resort to the *Matthias* "peek" at the underlying state conviction documents and found that he had committed a qualifying type of burglary. *Id.* at 628-29.

B. O.C.G.A. § 16-7-1 Is Not an ACCA Predicate.

Given the confusion that attaches to the means-versus-elements inquiry in general—and with respect to O.C.G.A. § 16-7-1 in particular—the Court should grant *certiorari* here. If the Court does so, Mr. Jiles would respectfully submit that the dissent in *Gundy* and the *Williams* court are right: The types of locations that can be burglarized in O.C.G.A. § 16-7-1 are indivisible; therefore, resort to the modified categorical approach is inappropriate.

But there is another reason to grant *certiorari* here. The Court should jettison the *Matthias* "peek" rule in favor of a simpler one: Unless and until the statutory text and/or an authoritative decision from the state's courts perfectly align(s) the state statute with an ACCA predicate, the prior conviction is not ACCA eligible. That way, defendants will have clear notice of when they may be subject to ACCA penalties, as they should. *See generally Sessions v. Dimaya*,

__ U.S. __, 138 S. Ct. 1204, 1225 (2018) (Gorsuch, J., concurring) ("Perhaps the most basic of due process's customary protections is the demand of fair notice." (citation omitted)). And the federal courts can get out of the business of deciding what state substantive criminal law means—an area more constitutionally appropriate for the states themselves to develop, *see, e.g.*, *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) ("Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." (footnote omitted)). Such a narrower interpretation of the ACCA may also encourage Congress to finally "amend[] the ACCA" to fix "a [statutory] system that each year proves more unworkable." *Mathis*, 136 S. Ct. at 2258 (Kennedy, J., concurring). *Cf. also Neal v. Honeywell Inc.*, 191 F.3d 827, 830 (7th Cir. 1999) ("Sometimes the judiciary must act in self-defense.").

C. If O.C.G.A. § 16-7-1 Can Be a Predicate, a Jury Must So Find.

In *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), this Court held that the Constitution does not require a jury to decide whether a prior conviction alters the applicable sentencing range for a new conviction. As Justice Thomas has previously explained, however, that precedent was wrongly decided and should be abandoned:

> [The] ACCA runs afoul of *Apprendi v. New Jersey*, 530 U. S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), because it allows the judge to "mak[e] a finding that raises [a defendant's] sentence beyond the sentence that could have lawfully been imposed by reference to facts found by the jury or admitted by the defendant." *James v. United States*,

> 550 U. S. 192, 231, 127 S. Ct. 1586, 167 L. Ed. 2d 532 (2007) (dissenting opinion) (internal quotation marks omitted). Under the logic of *Apprendi*, a court may not find facts about a prior conviction when such findings increase the statutory maximum. This is so whether a court is determining whether a prior conviction was entered, *see* 530 U. S., at 520-521, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (Thomas, J., concurring), or attempting to discern what facts were necessary to a prior conviction. *See James*, *supra*, at 231-232, 127 S. Ct. 1586, 167 L. Ed. 2d 532 (Thomas, J., dissenting). In either case, the court is inappropriately finding a fact that must be submitted to the jury because it "increases the penalty for a crime beyond the prescribed statutory maximum." *Apprendi*, supra, at 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435.
>
> In light of the foregoing, it does not matter whether a statute is "divisible" or "indivisible," *see ante*, at 257-258, 186 L. Ed. 2d, at 449-450, and courts should not have to struggle with the contours of the so-called "modified categorical" approach. *Ante*, at 257-258, 186 L. Ed. 2d, at 449-450. The only reason Descamps' ACCA enhancement is before us is "because this Court has not yet reconsidered *Almendarez-Torres v. United States*, 523 U. S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998), which draws an exception to the *Apprend*i line of cases for judicial factfinding that concerns a defendant's prior convictions." *Shepard v. United States*, 544 U. S. 13, 27, 125 S. Ct. 1254, 161 L. Ed. 2d 205 (2005) (Thomas, J., concurring in part and concurring in judgment). Regardless of the framework adopted, judicial factfinding increases the statutory maximum in violation of the Sixth Amendment.

Descamps, 570 U.S. at 280-281 (Thomas, J., concurring).

For the reasons stated by Justice Thomas, this Court should overturn *Almendarez-Torres*, and throw out the existing ACCA analysis that is a constitutionally inferior substitute for jury fact-finding.

CONCLUSION

For the forgoing reasons, this Court should grant the petition and reverse the Eleventh Circuit's judgment below.[2]

Dated: November 8, 2018

Respectfully submitted,

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[2] On October 9, 2018, this Court heard oral argument in two ACCA cases that may be relevant to the question presented here. In *United States v. Stitt*, No. 17-765, and in *United States v. Sims*, No. 17-766 (U.S.), this Court is considering how the ACCA applies to the location component of two state burglary statutes, although not Georgia's. Before addressing this petition on the merits, this Court may wish to grant, vacate, and remand with instructions for the Eleventh Circuit to consider the impact of those decisions on Mr. Jiles' challenge to Georgia's burglary statute. New guidance from this Court about how to apply the elements-versus-means test in the burglary context may cause the Eleventh Circuit to alter its analysis of Georgia's statute.

Appendix to
Petition for *Writ of Certiorari*

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14899
Non-Argument Calendar

D.C. Docket Nos. 4:15-cr-00194-LGW-GRS-1,
4:17-cv-00043-LGW-GRS

RICHARD A. JILES,

Defendant-Appellant,

versus

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(August 10, 2018)

Before WILSON, WILLIAM PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Richard Jiles appeals his conviction and sentence for being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The

district court granted him leave to file an out-of-time appeal as the result of his 28 U.S.C. § 2255 proceeding and the district court's order granting in part his § 2255 motion. The district court granted Jiles a certificate of appealability on the issue of whether he was entitled to a de novo resentencing hearing. Jiles also argues on appeal that his indictment was defective and his prior felony conviction for Georgia burglary was not a predicate offense under the Armed Career Criminal Act (ACCA). After careful review of the briefs and record, we affirm.

When an out-of-time direct appeal is warranted, the district court should: (1) vacate the criminal judgment from which the defendant wishes to appeal; (2) impose the same sentence; (3) upon reimposition of the sentence, advise the defendant of all the rights associated with an appeal from a criminal sentence; and (4) advise the defendant of the deadline for filing a notice of appeal. *United States v. Phillips*, 225 F.3d 1198, 1201 (11th Cir. 2000). A defendant does not have a right to a new sentencing hearing or a right to be present when resentenced under the *Phillips* procedure. *See United States v. Parrish*, 427 F.3d 1345, 1348 (11th Cir. 2005) (per curiam). The district court properly followed the *Phillips* procedure in this case, so we now turn to the merits of the appeal.

First, Jiles argues that the indictment fails to allege that, at the time of the offense, he knew that he was a felon. But it is not necessary for the government to prove that Jiles knew that he was a convicted felon in order to be convicted under

§ 922(g)(1). *United States v. Jackson*, 120 F.3d 1226, 1229 (11th Cir. 1997) (per curiam). Thus, Jiles's indictment was not defective.

Second, Jiles argues for the first time on appeal that Georgia's burglary statute is not an ACCA predicate offense. We held in *United States v. Gundy* that Georgia burglary is a violent felony, pursuant to the modified categorical approach, when a defendant has burglarized a dwelling house or building. *See Gundy*, 842 F.3d 1156, 1168–69 (11th Cir. 2016). We must apply *Gundy* under the prior-panel-precedent rule. *See United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). Thus, the district court did not plainly err in classifying Jiles as an armed career criminal.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

August 10, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-14899-JJ
Case Style: USA v. Richard Jiles
District Court Docket No: 4:15-cr-00194-LGW-GRS-1
Secondary Case Number: 4:17-cv-00043-LGW-GRS

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

United States District Court
Southern District of Georgia
Savannah Division

RICHARD JILES,	)	
	)	
Movant,	)	
	)	
v.	)	CV417-043
	)	CR415-194
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

Before the Court is Richard Jiles's motion for a Certificate of Appealability (COA) to overturn Eleventh Circuit precedent, *see United States v. Phillips*, 225 F.3d 1198 (11th Cir. 2000), and to hold a *de novo* sentencing post-*Pepper v. United States*, 131 S. Ct. 1229 (2011). Dkt. No. 56 at 1. At a *de novo* sentencing, Jiles would argue for the first time that his Georgia burglary conviction does not qualify as an Armed Career Criminal Act predicate, *contra United States v. Gundy*, 842 F.3d 1156 (11th Cir. 2016), and that the indictment fails to allege the elements of the offense as required. Dkt. No. 56 at 2. Due to the unique nature of Jiles's out-of-time appeal (which was permitted as a result of the Court's conclusion that trial counsel was ineffective, as set forth in the Report and Recommendation, Dkt. No. 49, adopted, Dkt. No. 54), the Court is

swayed that a COA should issue. 28 U.S.C. § 2253; Fed. R. App. P. 22(b); Rule 11(a) of the Rules Governing Habeas Corpus Cases Under 28 U.S.C. § 2255 ("The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.").

Jiles also seeks leave to proceed IFP on appeal, so that his Criminal Justice Act-appointed § 2255 counsel can continue to represent him in his quest to overturn *Phillips* and secure *de novo* sentencing. Dkt. No. 59 at 1 (citing Fed. R. App. Pro. 24(a)(3) (authorizing appeals IFP for parties previously "determined to be financially unable to obtain an adequate defense in a criminal case")). Because he was considered indigent and thus entitled to CJA counsel at the district court level, the Court concludes he retains that entitlement on appeal.

In sum, Jiles's unopposed motions for a COA and leave to proceed IFP on appeal of the Order granting his 28 U.S.C. § 2255 motion and ordering resentencing (dkt. nos. 56 & 59) are **GRANTED**.

SO ORDERED, this 17 day of November, 2017.

HON. LISA GODBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

RICHARD JILES,	)	
	)	
Movant,	)	
	)	
v.	)	CV417-043
	)	CR415-194
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

The petition for *certiorari* in *Gundy* having been denied by the Supreme Court, *see Gundy v. United States*, __ S.Ct. __, 2017 WL 1301351 (2017), the Court's stay in this matter is LIFTED.

The Court further ADOPTS the Magistrate's Report and Recommendation, VACATES Richard A. Jiles' sentence, CR415-194, doc. 26, and REIMPOSES an identical sentence. The Court has previously informed Jiles as to his right to an appeal, doc. 48 at 13, incorporates it here, and now facilitates movant's wish to appeal, as expressed through his § 2255 motion. Accordingly, newly appointed counsel, Howard W. Anderson, III, shall timely file a new Notice of Appeal on Jiles' behalf. The Clerk shall CLOSE this case.

SO ORDERED, this 25 day of October, 2017.

LISA GODBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

RICHARD A. JILES,	)	
	)	
Movant,	)	
v.	)	CV417-043
	)	CR415-194
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

REPORT AND RECOMMENDATION

As explained in *Jiles v. United States*, ___ F. Supp. 3d ___, 2017 WL 942117 at * 2 (S.D. Ga. Mar. 10, 2017), Richard A. Jiles moves for 28 U.S.C. § 2255 relief. CR415-104, doc. 32. He alleges that his appointed counsel, Charles V. Loncon, provided him with ineffective assistance when he missed some issues at sentencing, *id.* at 9-16, then failed to abide Jiles' request to appeal his 18 U.S.C. § 922(g)(1) conviction.[1] *Id.* at 9 (claiming IAC because Loncon "failed to pursue an appeal upon his request for his lawyer to do so. . . .").

[1] The Eleventh Circuit explained that

> [i]n *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the Court established a two-prong test for deciding whether a defendant has received ineffective assistance of counsel. The defendant must show (1) that counsel's performance failed to meet "an objective standard of reasonableness," *id.* at 688, 104 S.Ct. at 2064; and (2) that the defendant's

After directing additional submissions aimed at sharpening the factual issues, *Jiles v. United States*, 2017 WL 1536488 (S.D. Ga. Apr. 2, 2017); *Jiles v. United States*, 2017 WL 2265192 (S.D. Ga. May 24, 2017), the Government (with Loncon's tacit concurrence) stipulated, at the June 7, 2017 hearing, that Loncon provided ineffective assistance by counseling Jiles against taking an appeal based on a *nonexistent* appeal waiver. *Compare* doc. 38-1 at 4 ¶14 (Loncon's Declaration that he counseled against an appeal based on his mistaken belief that the Plea Agreement contained an appeal waiver), *with* doc. 19 (Plea Agreement containing no such waiver). Hence, the Government concedes the

---

> rights were prejudiced as a result of the attorney's substandard performance. *Id*. at 693, 104 S.Ct. at 2067. In *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000), the Court applied the *Strickland* test to a claim involving an attorney's failure to file an appeal for a client.

Gomez-Diaz v. United States, 433 F.3d 788, 791 (11th Cir. 2005).

Ignoring an appeal request is *per se* ineffective. *Roe*, 528 U.S. at 483-86; *Gaston v. United States*, 237 F. App'x 495, 495 (11th Cir. 2007). Even absent a request, "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." *Roe*, 528 U.S. at 480; *Green v. United States*, 2013 WL 5347355 at * 4-5 (S.D. Ga. Sept. 23, 2013).

new-appeal relief Jiles seeks, obviating the need to resolve the "Notice" issue.[2]

---

[2] To assist attorneys in upholding their *Roe* duty, this Court routinely distributes a "NOTICE OF COUNSEL'S POST-CONVICTION OBLIGATIONS" form. It compels counsel and client to "*Roe*-confer," then witness each other's signatures under the defendant's appeal choice. The Notice also directs attorneys to file it in the record.

In an earlier Order, the Court directed Loncon to explain why no such Notice is in the record, especially since the Court had distributed a blank Notice to him upon his initial appearance, doc. 12. Doc. 37. In that regard, the Court has since learned (in the recently filed March 16, 2016, sentencing transcript), that right after Jiles was sentenced, Loncon confirmed to the district judge his "Notice duty":

> [THE COURT]: Mr. Loncon, you've been furnished with a notice of your postconviction obligations --
>
> MR. LONCON: Yes, ma'am.
>
> THE COURT: -- to your client. And if you'll sign that and have Mr. Jiles sign it and file it on the record in this court.
>
> MR. LONCON: We will, Your Honor.

Doc. 48 at 13.

In response to the undersigned's direction in this § 2255 proceeding, Loncon declared -- under penalty of perjury -- that "I had printed the Notice of Counsel Post-Conviction Obligations and brought it to Court for sentencing. My recollection of the events is simply that I reviewed the waiver with Mr. Jiles following sentencing, obtain[ed] his signature, and handed that form to the courtroom clerk." Doc. 38-1 at 4 ¶ 15. Jiles has counter-declared, however, that he "never signed any documentation stating that I voluntarily waived my rights to a first appeal nor did I tell Mr. Loncon I did not want to appeal my sentence." Doc. 40 at 1. Concluding that the two accounts could not be reconciled, the Court set this matter down for an evidentiary hearing. *Jiles*, 2017 WL 2265192 at *3. Again, the Government's stipulation moots this issue, but the Court reiterates its warning to the bar that hearing costs *will* be recouped from negligent counsel. *Jiles*, 2017 WL 942117 at * 2 n. 1.

The Court agrees. Defendant's § 2255 motion (doc. 32) therefore should be **GRANTED** so that he may pursue an out-of-time direct appeal. Pursuant to *United States v. Phillips*, 225 F.3d 1198, 1201 (11th Cir. 2000): (1) the judgment in movant's criminal case should be vacated; (2) the Court should enter a new judgment imposing the same sentence; (3) movant should be informed of all of his rights associated with filing an appeal of his re-imposed sentence, and (4) movant should be advised that he has 14 days from the date of the reimposition of his sentence to file a timely appeal in accordance with Rule 4(b)(1)(A)(i) of the Federal Rules of Appellate Procedure. *Id*.

Because Jiles affirms (his § 2255 motion) that he wants to appeal, his new lawyer (Howard W. Anderson, III) shall timely file a new Notice of Appeal. *See United States v. Doyle*, ___ F.3d ___, 2017 WL 2274007 at *2 (11th Cir. May 25, 2017) (*Phillips* remedy for defense counsel's alleged ineffectiveness in failing to file direct appeal from the sentence imposed as defendant requested, is limited to district court's vacating and re-imposing the same sentence as before, so as to permit defendant to file what would otherwise be an untimely appeal); *Datts v. United States*, 2012 WL 5997803 at * 2 (S.D. Ga. Oct. 24, 2012).

Finally, since the parties agree to the result reached here, the Clerk is **DIRECTED** to immediately forward this Report and Recommendation to the district judge.

SO REPORTED AND RECOMMENDED, this 12th day of June, 2017.

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA
v.
Richard Jiles

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:15CR00194-1

USM Number: 20001-021

Charles V. Loncon
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to Count 1

☐ pleaded nolo contendere to Count(s) _____ which was accepted by the court.

☐ was found guilty on Count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of this offense:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(e)(1)	Possession of a firearm by a convicted felon	December 18, 2014	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on Count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 16, 2016
Date of Imposition of Judgment

Signature of Judge

LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

Name and Title of Judge

March 21, 2016
Date

DEFENDANT: Richard Jiles
CASE NUMBER: 4:15CR00194-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 180 months. This term shall be served consecutively to the revoked state parole term the defendant is currently serving in Chatham County Superior Court Docket Number CR13-2667-J1.

☒ The court makes the following recommendations to the Bureau of Prisons:
It is recommended that the defendant be evaluated by Bureau of Prisons officials to establish his participation in an appropriate program of substance abuse treatment and counseling during his term of incarceration. The Court recommends that the defendant be designated to an appropriate Bureau of Prisons facility in Butner, North Carolina, in order to receive medical treatment, or in the alternative, Coleman, Florida, in order to receive vocational training, subject to capacity or any regulation affecting such a designation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Richard Jiles
CASE NUMBER: 4:15CR00194-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 5 years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14) any possession, use, or attempted use of any device to impede or evade drug testing shall be a violation of supervised release.

DEFENDANT: Richard Jiles
CASE NUMBER: 4:15CR00194-1

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program of testing for drug and alcohol abuse. Further, the defendant shall not tamper with any testing procedure.

2. The defendant shall submit his person, property, house, residence, office, papers, vehicle, computers (as defined in 18 U.S.C. § 1030(e)(1)), or other electronic communications or data storage devices or media, to a search conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

ACKNOWLEDGMENT

Upon finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

DEFENDANT: Richard Jiles
CASE NUMBER: 4:15CR00194-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100	None	N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Richard Jiles
CASE NUMBER: 4:15CR00194-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 100 due immediately.

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Pursuant to 18 U.S.C. § 3572(d)(3), the defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
Pursuant to the plea agreement, the defendant shall forfeit his interest in the seized Taurus TCP .380 caliber pistol, Serial Number 15029E.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	**Indictment No.** CR415-194
	)	
vs.	)	**Violation:** 18 U.S.C. §922(g)(1)
	)	
RICHARD JILES	)	
	)	
Defendant.	)	

COUNT ONE
(POSSESSION OF A FIREARM BY A CONVICTED FELON)

That on or about December 18, 2014, in Chatham County, within the Southern District of Georgia, the defendant,

RICHARD JILES

who before that time had been convicted of a felony offense, an offense punishable by imprisonment for a term exceeding one year, did unlawfully and knowingly possess in and affecting commerce, a firearm, that is a Taurus .380 caliber pistol, which had previously been transported in interstate and foreign commerce, all in violation of Title 18, United States Code Section 922(g)(1).

NOTICE OF GUN FORFEITURE

1. The allegations of Count One of this Indictment are realleged and incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code Section 924(d)(1) and Title 28, United States Code Section 2461(c).

2. As a result of the offense alleged in Count One, the defendant, Richard Jiles, shall forfeit to the United States pursuant to Title 18, United States Code, Section 924(d)(1) and Title 28, United States Code, Section 2461(c), any firearm or ammunition that was involved in or used

in a knowing violation of Title 18, United States Code Section 922(g)(1), as alleged in Count One of the Indictment including, but not limited to, a Taurus .380 caliber pistol.

3. If any of the property subject to forfeiture pursuant to Paragraph Two of this Notice of Forfeiture, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of this Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

A TRUE BILL.

Deputy Foreperson

Edward J. Tarver
United States Attorney

James Durham
First Assistant United States Attorney

Brian T. Rafferty
Criminal Division Chief

Carlton R. Bourne, Jr.
Assistant United States Attorney

Matthew A. Breedon**
Special Assistant United States Attorney

** Lead counsel