No. 18-9460

IN THE SUPREME COURT OF THE UNITED STATES

QUENTIN PERRY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's enhanced sentence under the Armed Career Criminal Act of 1984 (ACCA) should be set aside on plain-error review on the theory that the Fifth and Sixth Amendments require a jury to assess whether he was previously convicted of three violent felonies that were "committed on occasions different from one another," 18 U.S.C. 924(e)(1).

2. Whether petitioner's sentence should be set aside, on plain-error review, on the theory that the ACCA's sentencing enhancement based on prior felony convictions for offenses that were "committed on occasions different from one another," 18 U.S.C. 924(e)(1), is unconstitutionally vague.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (8th Cir.):

United States v. Perry, No. 17-3236 (Nov. 15, 2018)

United States District Court (D. Minn.):

United States v. Perry, No. 16-cr-287 (Oct. 6, 2017)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 908 F.3d 1126.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 2018. A petition for rehearing was denied on February 20, 2019 (Pet. App. 19a). The petition for a writ of certiorari was not filed until May 22, 2019, and appears to be out of time under Rule 13.1 of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Minnesota, petitioner was convicted on one count of possessing a firearm after a felony conviction, in violation of 18 U.S.C. 922(g)(1), and one count of possessing ammunition after a felony conviction, in violation of 18 U.S.C. 922(g)(1). Pet. App. 20a. The district court sentenced petitioner to 180 months of imprisonment, to be followed by five years of supervised release. Id. at 21a-22a. The court of appeals affirmed. Id. at 1a-18a.

1. Petitioner was arrested on August 7, 2016, in St. Paul, Minnesota, while in possession of a handgun and ammunition. Pet. App. 2a; see Gov't C.A. Br. 2. Petitioner had come to the attention of police officers that evening after a witness called 911 to report that she had seen a man with a gun -- later identified as petitioner -- exit a bar and fire several shots in the air. Gov't C.A. Br. 2-3. After firing the shots, petitioner called his uncle to pick him up from the bar. Id. at 4. His uncle met him in front of the bar, and the two men drove in his uncle's car to a nearby parking lot, where they both got out. Ibid. When police officers arrived, petitioner was standing outside the car on the passenger side. Id. at 6. From outside the car, an officer saw a handgun and two magazines of ammunition partially hidden under the front passenger seat. Id. at 7. Petitioner was arrested. Ibid. In a search incident to the arrest, officers found three 9-millimeter

bullets in petitioner's pockets. Ibid. Officers also located the witness who had called 911, and she identified petitioner as the man whom she had seen fire the shots. Id. at 7-8.

The handgun underneath the passenger seat proved to be a 9-millimeter semiautomatic. Gov't C.A. Br. 8. One of the magazines of ammunition in the car was empty; the other contained 14 9-millimeter bullets. Id. at 9. Forensic testing later determined that the gun recovered from the car matched seven shell casings recovered from outside the bar. Id. at 9-10.

2. A grand jury in the District of Minnesota charged petitioner with one count of possessing a firearm after a felony conviction, in violation of 18 U.S.C. 922(g)(1), and one count of possessing ammunition after a felony conviction, in violation of 18 U.S.C. 922(g)(1). Indictment 1-2.

The case proceeded to trial. Petitioner represented himself with the assistance of standby counsel. Pet. App. 4a. The jury found him guilty on both counts. Id. at 20a. The Probation Office recommended that he be sentenced as an armed career criminal under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e). See Presentence Investigation Report (PSR) ¶ 24. Under the ACCA, a defendant who violates Section 922(g) and who "has three previous convictions * * * for a violent felony[,] * * * committed on occasions different from one another," is subject to a sentencing range of 15 years to life imprisonment. 18 U.S.C. 924(e)(1); cf. 18 U.S.C. 924(a)(2) (specifying a default sentencing range for a

Section 922(g) violation of "not more than 10 years" in prison). The ACCA defines a "violent felony" to include "any crime punishable by imprisonment for a term exceeding one year" that "has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. 924(e)(2)(B) and (B)(i).

The presentence report explained that, following a jury trial in Goodhue County District Court on February 15, 2005, in Red Wing, Minnesota, petitioner had been convicted of first-degree aggravated robbery, simple robbery, second-degree assault, and terroristic threats. PSR ¶ 33. Citing the complaint in the case, the presentence report further explained that the convictions were based on the following incidents on July 19, 2004:

> [Petitioner] pointed a Colt .357-caliber revolver at the cashier (R.P.) of a gas station[;] * * * reached into the cash register to take money; and then fled from the gas station on foot. A witness (E.L.) observed [petitioner] running from the gas station while brandishing the firearm, and E.L. followed [petitioner] in a vehicle (also occupied by E.L.'s wife, child, and friend). [Petitioner] then discharged a round towards E.L.'s vehicle, and E.L. reported hearing a bullet "zing" over his vehicle and smelling gun powder.

Ibid. In that case, petitioner was sentenced to 52 months of imprisonment. Ibid. The presentence report recommended that the convictions for first-degree aggravated robbery of the gas-station cashier and second-degree assault of the bystander be treated as occurring "on occasions different from one another," 18 U.S.C. 924(e)(1), for ACCA purposes. See PSR ¶ 33. Petitioner's third

prior violent felony conviction was a 2013 Minnesota conviction for second-degree domestic assault. Id. ¶¶ 24, 38.

Petitioner objected to his classification as an armed career criminal. Pet. Sent. Mem. 3-4. Although he "did not object to any of the relevant facts" in the presentence report, Pet. App. 9a n.2, petitioner argued that his 2005 convictions "were part of a continuous course of conduct and not separate and distinct as required by [Section] 924(e)," Pet. Sent. Mem. 19 (capitalization and emphasis omitted). Petitioner did not request that a jury be convened to decide that issue. He maintained, instead, that the ACCA "requires the [c]ourt to evaluate the facts surrounding the offense[s]" to determine whether they "occurred on occasions different from one another." Ibid. (emphasis altered).

The district court overruled petitioner's objection and sentenced him under the ACCA. Sent. Tr. 45-46. The court concluded that petitioner's assault conviction for shooting at the "good [S]amaritan" who pursued him after the robbery was a "second instance that [was] separate and * * * distinct" from the gas-station robbery. Id. at 46. The court also "adopt[ed] the presentence report," id. at 45, which had explained in an addendum (prepared after petitioner's objections) that the robbery and assault convictions occurred on different occasions because they occurred at "a different time and location, and involved a different victim and aggression," Addendum to PSR A.4. The court sentenced petitioner to 180 months of imprisonment, to be followed

by five years of supervised release. Sent. Tr. 51-52; Pet. App. 21a-22a.

3. The court of appeals affirmed. Pet. App. 1a-18a.

The court of appeals agreed with the district court that petitioner's first-degree aggravated robbery and second-degree assault convictions were for violent felonies "committed on occasions different from one another," 18 U.S.C. 924(e)(1). Pet. App. 6a-9a. The court explained that "[t]hree main factors bear" on the question whether two offenses were committed on different occasions for these purposes: "'(1) the time lapse between offenses, (2) the physical distance between their occurrence, and (3) their lack of overall substantive continuity, a factor that is often demonstrated in the violent-felony context by different victims or different aggressions.'" Id. at 6a (quoting United States v. Willoughby, 653 F.3d 738, 743 (8th Cir. 2011)). Based on the "undisputed facts" in the presentence report, id. at 9a n.2, the court reasoned that each of those factors supported the district court's decision. The court of appeals observed that the "time lapse between [the] crimes was not long, but they were far from simultaneous." Id. at 7a. The court additionally observed that the crimes were "committed * * * in different locations," with the robbery occurring "in the gas station, at the checkout counter," and the assault occurring "a short distance" away, during petitioner's flight. Ibid. Finally, the court noted that the crimes "had different victims," emphasizing that the second victim

-- the bystander -- had "nothing to do with the initial robbery" and had become "involved only after [petitioner] completed the robbery and fled." Ibid.; see id. at 9a (noting that petitioner "had time after he left the gas station to choose to give up, or at least to try to escape without committing another life-threatening criminal act against a new victim").

Judge Stras filed a concurring opinion in which he expressed the view that, notwithstanding circuit precedent, under the Sixth Amendment "[a] finding that [petitioner] committed his past crimes on different occasions exposes him to a longer sentence, so the jury should make the finding, not the court." Pet. App. 12a. Judge Kelly concurred in part and dissented in part. Id. at 16a-18a. She agreed in substantial part with Judge Stras and also would have remanded the case to the district court for that court to review the "the charging document, jury instructions, * * * and comparable judicial records" of petitioner's prior convictions, id. at 16a (citation omitted), for further consideration of "when, where, and how [petitioner] committed the robbery and the assault," id. at 18a.

4. Petitioner sought rehearing en banc, arguing for the first time that his sentence violated the Fifth and Sixth Amendments because the question whether his robbery and assault convictions were "committed on occasions different from one another," 18 U.S.C. 924(e)(1), was not submitted to the jury and proved beyond a reasonable doubt. Pet. C.A. Pet. for Reh'g 3-10.

Petitioner also argued -- again, for the first time -- that the "committed on occasions different from one another" clause in Section 924(e)(1) is unconstitutionally vague. Id. at 17; see id. at 16-19. The court of appeals denied rehearing. Pet. App. 19a.

ARGUMENT

Petitioner contends (Pet. 8-18) that his sentence violated the Fifth and Sixth Amendments because a judge, rather than a jury, determined that his prior convictions were for violent felonies "committed on occasions different from one another," 18 U.S.C. 924(e)(1). That contention does not warrant this Court's review. The decision below is correct and does not conflict with any decision of this Court or another court of appeals. This Court has repeatedly denied review of petitions for writs of certiorari presenting the same question. See, e.g., Smallwood v. United States, 137 S. Ct. 51 (2016) (No. 15-9179); Blair v. United States, 135 S. Ct. 49 (2014) (No. 13-9210); Brady v. United States, 566 U.S. 923 (2012) (No. 11-6881); Garza v. United States, 547 U.S. 1132 (2006) (No. 05-8902). It should follow the same course here, particularly because this case would be an unsuitable vehicle to address the question. Petitioner separately contends (Pet. 23-26) that the "committed on occasions different from one another" clause in 18 U.S.C. 924(e)(1) is unconstitutionally vague. The court of appeals did not address that question, petitioner identifies no sound reason for this Court to do so in the first

instance, and his vagueness argument lacks merit. The petition for a writ of certiorari should be denied.

1. The petition appears to be untimely and could be denied on that basis. Under Rule 13.1 of the Rules of this Court, "a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by * * * a United States court of appeals * * * is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment." Sup. Ct. R. 13.1 (2017 ed.). The time period runs from "the date of entry of the judgment" or, alternatively, "the date of the denial of rehearing." Sup. Ct. R. 13.3. Here, the court of appeals denied petitioner's request for rehearing on February 20, 2019. Pet. App. 19a. Petitioner's deadline for filing a petition for a writ of certiorari was therefore May 21, 2019. According to the Court's docket, the petition was filed one day out of time, on May 22, 2019. Cf. Bowles v. Russell, 551 U.S. 205, 212 (2007); Schacht v. United States, 398 U.S. 58, 64 (1970).

2. In any event, petitioner's forfeited Sixth Amendment challenge to the district court's determination that he had three prior convictions for violent felonies "committed on occasions different from one another," 18 U.S.C. 924(e)(1), does not warrant this Court's review.

a. The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a * * * trial[] by an impartial jury." U.S. Const. Amend. VI. "This right, in

conjunction with the Due Process Clause, requires that each element of a crime be proved to the jury beyond a reasonable doubt," or be admitted by the defendant. Alleyne v. United States, 570 U.S. 99, 104 (2013) (opinion of Thomas, J.). In a line of decisions beginning with Apprendi v. New Jersey, 530 U.S. 466 (2000), this Court has held that facts -- other than a prior conviction -- that increase the applicable minimum or maximum sentence that may be imposed on the defendant are elements of the defendant's offense "and must be submitted to the jury and found beyond a reasonable doubt." Alleyne, 570 U.S. at 108 (opinion of Thomas, J.); see id. at 123-124 (Breyer, J., concurring in part and concurring in the judgment).

In Almendarez-Torres v. United States, 523 U.S. 224 (1998), this Court held that a defendant's prior conviction may be used as the basis for enhanced penalties without transforming the fact of the prior conviction into an element of the offense that must be alleged in the indictment and proven beyond a reasonable doubt to the jury, see id. at 239-247. Consistent with Almendarez-Torres, the Court's holding in Apprendi is cabined to penalty-enhancing facts "[o]ther than the fact of a prior conviction." Apprendi, 530 U.S. at 490 (emphasis added). And this Court has repeatedly confirmed since then that the rule announced in Apprendi does not apply to "the simple fact of a prior conviction." Mathis v. United States, 136 S. Ct. 2243, 2252 (2016); see Descamps v. United States, 570 U.S. 254, 269 (2013); Alleyne, 570 U.S. at 111 n.1;

Southern Union Co. v. United States, 567 U.S. 343, 346 (2012); Carachuri-Rosendo v. Holder, 560 U.S. 563, 567 n.3 (2010); James v. United States, 550 U.S. 192, 214 n.8 (2007), overruled on other grounds by Johnson v. United States, 135 S. Ct. 2551 (2015); Cunningham v. California, 549 U.S. 270, 274-275 (2007); United States v. Booker, 543 U.S. 220, 244 (2005); Blakely v. Washington, 542 U.S. 296, 301-302 (2004).

A sentencing court's authority under Almendarez-Torres to determine the fact of a conviction, without offending the Sixth Amendment, necessarily extends to the ancillary determination of when a defendant's prior offenses occurred, and whether two of them occurred on the same or separate occasions. That determination is "sufficiently interwoven" with the fact of the conviction that "Apprendi does not require different fact-finders and different burdens of proof for Section 924(e)'s various requirements." United States v. Santiago, 268 F.3d 151, 157 (2d Cir. 2001), cert. denied, 535 U.S. 1070 (2002). Moreover, whether two offenses occurred on separate occasions "is not a fact which is different in kind from the types of facts already left to the sentencing judge by Almendarez-Torres," such as the fact that "the defendant being sentenced is the same defendant who previously was convicted of those prior offenses." Id. at 156 (emphasis omitted).

Thus, the courts of appeals have uniformly recognized that the Sixth Amendment does not foreclose Congress from assigning to sentencing judges the task of determining whether a defendant has

committed three or more predicate felonies "on occasions different from one another" under the ACCA. 18 U.S.C. 924(e)(1). See, e.g., United States v. Blair, 734 F.3d 218, 227-228 (3d Cir. 2013), cert. denied, 135 S. Ct. 49 (2014); United States v. Thomas, 572 F.3d 945, 952 n.4 (D.C. Cir. 2009), cert. denied, 559 U.S. 986 (2010); United States v. White, 465 F.3d 250, 254 (5th Cir. 2006) (per curiam), cert. denied, 549 U.S. 1188 (2007); United States v. Michel, 446 F.3d 1122, 1132-1133 (10th Cir. 2006); United States v. Spears, 443 F.3d 1358, 1361 (11th Cir.) (per curiam), cert. denied, 549 U.S. 916 (2006); United States v. Thompson, 421 F.3d 278, 284-287 (4th Cir. 2005), cert. denied, 547 U.S. 1005 (2006); United States v. Burgin, 388 F.3d 177, 184-186 (6th Cir. 2004), cert. denied, 544 U.S. 936 (2005); United States v. Morris, 293 F.3d 1010, 1012-1013 (7th Cir.), cert. denied, 537 U.S. 987 (2002); Santiago, 268 F.3d at 156-157.

b. Petitioner does not ask this Court to revisit or overrule Almendarez-Torres. He contends only that the determination that two prior offenses were committed "on occasions different from one another," 18 U.S.C. 924(e)(1), exceeds the "prior conviction exception" recognized in Almendarez-Torres because it goes beyond "the simple fact of a prior conviction." Pet. 11 (emphasis omitted). That contention does not warrant review.

As an initial matter, petitioner does not point to any division of authority in the courts of appeals on the issue. Cf. Pet. 15 (recognizing that "federal appellate courts have cast a

wary eye" on petitioner's argument); Pet. App. 13a (Stras, J., concurring) (similar). To the contrary, the courts of appeals have consistently recognized that Apprendi permits a sentencing court to determine whether two prior offenses occurred on different occasions, just as the sentencing court may determine that the prior convictions were for offenses committed by the same defendant. See p. 12, supra. Indeed, petitioner's extension of Apprendi would appear to foreclose courts even from concluding that two prior convictions reflect offenses on separate occasions because the convictions were entered a decade apart. See PSR ¶ 24 (eight-year timespan between petitioner's 2005 convictions and his 2013 conviction for domestic assault). Petitioner thus identifies no compelling need for this Court's review.

Petitioner suggests (Pet. 13-14, 16-17) that a sentencing court's authority under Almendarez-Torres to resolve the different-occasions inquiry has been undermined by this Court's decisions in Descamps and Mathis. That suggestion is incorrect. Descamps and Mathis concerned the modified categorical approach sometimes used to determine whether a prior conviction qualifies as a "violent felony" under 18 U.S.C. 924(e)(2)(B), not whether two or more such felonies were "committed on occasions different from one another" under 18 U.S.C. 924(e)(1).

This Court has interpreted Section 924(e)(2)(B) to call for a "categorical approach," under which a prior conviction qualifies, such as the violent felony of "burglary," only if the

elements of the crime of conviction substantially correspond to a generic definition of burglary. See Descamps, 570 U.S. at 260-261. If the statute on which the prior conviction is based contains alternative elements, a sentencing court may employ a "modified categorical approach" under which it consults "a limited class of documents * * * to determine which alternative formed the basis of the defendant's prior conviction." Id. at 257; see id. at 262 (discussing Shepard v. United States, 544 U.S. 13 (2005)). In Descamps, the Court held that the modified categorical approach may not be used when a statute defines a single, indivisible offense whose elements are broader than the relevant generic federal offense (e.g., generic burglary). Id. at 257, 264-265. Similarly, in Mathis, the Court held that the modified categorical approach may not be used when a statute "lists multiple, alternative means of satisfying one (or more) of its elements." 136 S. Ct. at 2248.

Those decisions do not speak to the distinct question presented here. The different-occasions requirement of Section 924(e)(1) does not involve any form of categorical comparison between a prior crime of conviction and a generic federal offense. And neither Descamps nor Mathis adopted petitioner's position here, under which a district court must treat every prior conviction as having occurred on a single occasion unless the court convenes a jury on that issue. See Descamps, 570 U.S. at 269 (confirming that Apprendi applies to penalty-enhancing facts

"other than the fact of a prior conviction") (brackets omitted); Mathis, 136 S. Ct. at 2252 (stating that, under Apprendi, "only a jury, and not a judge, may find facts that increase a maximum penalty, except for the simple fact of a prior conviction").*

c. As previously noted (p. 8, supra), this Court has repeatedly denied petitions raising the same question as this one. And, for several reasons, this case would be an unsuitable vehicle in which to change course.

First, petitioner affirmatively invited any error in the district court's deciding whether his prior convictions were for violent felonies committed on different occasions when he himself urged the court to do so. See Pet. Sent. Mem. 19 (arguing that the "application of whether the offense occurred on occasions different from one another requires the Court to evaluate the facts surrounding the offense") (emphasis altered); cf. Gov't C.A. Br.

* Petitioner contends (Pet. 18-23) that this Court should adopt what he describes as "the single criminal episode test" of United States v. Graves, 60 F.3d 1183 (6th Cir. 1995), for the different-occasions inquiry under Section 924(e)(1). To the extent that petitioner argues that the court of appeals should have applied that standard here, that argument is not properly before the Court because it is not within the questions presented as framed in the petition. See Sup. Ct. R. 14.1(a) (2017 ed.); Yee v. City of Escondido, 503 U.S. 519, 535-536 (1992). Moreover, the standard that petitioner prefers is not meaningfully different from the standard the court of appeals applied. Compare Graves, 60 F.3d at 1186 (asking "whether the crimes were committed against the same victims, whether the crimes were close in location, and whether the crimes were close in time"), with Pet. App. 6a (similar). Petitioner's disagreement with the application of that standard to his particular prior convictions does not warrant review.

in Opp. to Reh'g 8 (arguing that petitioner relinquished his Sixth Amendment challenge "[b]y inviting the district court to evaluate the facts surrounding his offenses for purposes of the different-occasions determination"). Indeed, petitioner did not raise any constitutional challenge to his ACCA sentence until his petition for rehearing en banc in the court of appeals, and that court did not address the question he now seeks to present (although two concurring judges expressed views on the issue sua sponte, without the benefit of briefing from the government). See pp. 7-8, supra; see also Wills v. Texas, 511 U.S. 1097, 1097 (1994) (O'Connor, J., concurring) ("It has been the traditional practice of this Court, * * * to decline to review claims raised for the first time on rehearing in the court below.").

Second, even if petitioner did not relinquish his Sixth Amendment challenge to his ACCA sentence, the district court's imposition of that sentence would be reviewable on appeal only for plain error because petitioner failed to make a timely objection. Fed. R. Crim. P. 52(b). To satisfy the plain-error standard, petitioner must establish (i) error that (ii) was "clear or obvious, rather than subject to reasonable dispute"; (iii) "affected [his] substantial rights, which in the ordinary case means he must demonstrate that it 'affected the outcome of the district court proceedings,'" and (iv) "'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.'" Puckett v. United States, 556 U.S. 129, 135 (2009)

(citations omitted); see Rosales-Mireles v. United States, 138 S. Ct. 1897, 1904-1905 (2018).

Petitioner does not claim to be able to satisfy that standard, and it is difficult to see how it could be clear or obvious error for the district court to decide an issue, without objection from the defendant, that every court of appeals to address the question has determined to be one that a district court can decide. On the facts of this case, petitioner also cannot claim that he lacked notice in the indictment of the prior convictions that formed the basis for his enhanced penalty. See Indictment 1-2. The court of appeals also emphasized that the district court's determination was consistent with the "undisputed facts in" the presentence report. Pet. App. 9a n.2. Petitioner identifies no reason to think that a jury would have evaluated those facts any differently than the district court. Petitioner thus cannot show that any error affected his substantial rights.

3. Petitioner briefly argues (Pet. 23-26) that Section 924(e)(1)'s different-occasions clause is unconstitutionally vague. Like his Sixth Amendment challenge, petitioner raised a vagueness challenge to the statute only in his petition for rehearing. Accordingly, the court of appeals did not address the issue (nor did either of the concurring judges). That alone is a sufficient reason for this Court to deny review. See United States v. Williams, 504 U.S. 36, 41 (1992) (noting this Court's "traditional rule" precluding a grant of certiorari when "'the

question presented was not pressed or passed upon below'") (citation omitted); see also Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

Petitioner also offers no sound reason for review. He does not, for example, point to any division of authority within the courts of appeals on this question; indeed, the petition does not identify any district or circuit court that has ever held that Section 924(e)(1) is unconstitutionally vague. His principal contention (Pet. 24) is that Section 924(e)(1) "bears the same hallmarks" as a different provision in the ACCA that this Court held to be unconstitutionally vague in Johnson, supra, but the two provisions are not similar. In Johnson, the Court held that the so-called residual clause in Section 924(e)(2)(B)(ii) is unconstitutionally vague. 135 S. Ct. at 2563. Unlike the residual clause, however, the different-occasions inquiry under Section 924(e)(1) does not task courts with "imagin[ing] [the] 'ordinary case' of a crime" or with evaluating the risk posed by that judge-made abstraction. Id. at 2557. Rather, a sentencing court considers only the defendant's actual prior convictions and asks whether they are for crimes committed on different occasions.

Moreover, petitioner's vagueness challenge to Section 924(e)(1) would be reviewed on appeal only for plain error, given his failure to raise the issue in a timely manner. Petitioner has not demonstrated any error, let alone an error that is "clear or obvious," "affected [his] substantial rights," and "'seriously

affect[ed] the fairness, integrity, or public reputation of judicial proceedings.'" Puckett, 556 U.S. at 135 (citations omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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